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Tuesday
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-24-AD; Amdt. 39-6309]

Airworthiness Directives; British Aerospace Model DH/HS/BH/BAE 125 Series Airplanes, Equipped With Sundstrand Turbomach Titan Gas Turbine Auxiliary Power Units (APU), Model T-62T Series, Installed in the Aft Equipment Compartment of the Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model DH/HS/BH/BAe 125 series airplanes equipped with certain APU's, which would require a revision to the Airplane Flight Manual Supplement Limitations Section and the installation of a placard in the cockpit prohibiting the use of the APU during flight, except during an emergency. This amendment is prompted by an FAA inspection of the APU, installed in accordance with a certain Supplemental Type Certificate (STC), in which it was determined that this unit must be restricted to ground use only. This condition, if not corrected, could result in a fire in the equipment compartment, a puncture of the aft pressure bulkhead, and severance of the flight control cables.

DATES: Effective September 28, 1989.

ADDRESSES: This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Standardization Branch, ANM-113; telephone (206) 431-2116. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to British Aerospace Model DH/HS/BH/BAe 125 series airplanes equipped with certain APU's, which requires a revision to the Airplane Flight Manual Supplement Limitations Section and the installation of a placard in the cockpit prohibiting the use of the APU during flight, was published in the **Federal Register** on April 28, 1989 (54 FR 18303).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter concurred with the proposed AD, but suggested that the wording of the required placard and AFM limitation be modified to allow the use of the APU during an emergency. The FAA concurs with this proposal, since the operation of the APU during an emergency, such as a dual generator failure, may enhance the continued safe flight and landing of the aircraft. The final rule has been revised to require wording of the placard and AFM limitation to read "OPERATION OF THE APU DURING FLIGHT IS PROHIBITED, EXCEPT DURING AN EMERGENCY."

Another commenter recommended that the proposed AD be withdrawn since the installation has had an excellent service record. With 15 years and over 1.5 million hours of operation, there has never been reported an uncontained APU failure which resulted in the severance of the control cables, or a fire or puncture of the aft pressure bulkhead. The FAA agrees that this statement is true. However, the FAA has determined that a potential hazard still exists and, by prohibiting the use of the APU during flight, the consequences of a uncontained rotor or fire in the aft equipment compartment will be minimized.

The same commenter also suggested that if the proposal is not withdrawn, it should be modified to allow pilot discretion for in-flight use during officially declared emergency conditions. The FAA concurs and, as discussed above, the final rule has been revised to permit use of the APU during emergency situations.

The third commenter objected to the proposed AD and requested its recision because proper installation of the APU is the responsibility of the installer, and this AD implies that the APU is deficient. Furthermore, the commenter suggested that the APU model be deleted from the AD and that reference to a generic APU on BAe Model 125 series airplanes should be used in lieu of reference to the specific APU model. The FAA does not concur with the suggestion that the proposal be withdrawn. It is not the intent of this AD action to imply that the APU, which has been approved under TSO C77, is deficient. It is the installation of the APU that is deficient and this AD addresses the improper installation of the APU. Further, the FAA does not concur with deleting the make and model of the APU from the applicability of the AD, since they are used in identifying those installations which are affected by this AD. If other installations with different APU models are found to be deficient, the FAA may mandate similar action.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 120 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,800.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model DH/HS/BH/BAe 125 series airplanes certificated in any category, equipped with Sundstrand Turbomach Titan Gas Turbine Auxiliary Power (APU) Unit, Model T–62T Series, installed in the aft equipment compartment of the airplane.

Note.—Installation of the subject APU's has been in accordance with, but are not limited to, the following Supplemental Type Certificates (STC): SA674CE, SA1196EA, SA1143EA, SA44ONE, SA4710SW, SA1176EA, SA1173EA, SA1923SW.

This AD applies to all Sundstrand Turbomach Titan APU installations in the aft equipment compartment. Compliance is required as indicated unless previously accomplished.

To prevent a fire in the aft equipment compartment, puncture of the aft pressure bulkhead, and severance of the control cables, due to an uncontained APU rotor failure, accomplish the following:

A. Within the next 10 days after the effective date of this AD:

1. Revise the Limitations Section in the FAA-approved Airplane Flight Manual (AFM) Supplement to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM Supplement Limitations Section: "OPERATION OF THE APU DURING FLIGHT IS PROHIBITED, EXCEPT DURING AN EMERGENCY."

2. Install a placard next to the APU start switch in the cockpit to state: "OPERATION OF THE APU DURING FLIGHT IS PROHIBITED, EXCEPT DURING AN EMERGENCY."

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region, Transport Airplane Directorate.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modifications required by this AD.

This amendment becomes effective September 28, 1989.

Issued in Seattle, Washington, on August 14, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–19677 Filed 8–21–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89–NM–54–AD; Amdt. 39–6310]

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1–11 200 and 400 series airplanes, which would limit the number of operations at increased cabin pressure differential, and would require repetitive structural inspections of the fuselage, and repair or replacement, as necessary. This amendment is prompted by the determination that airplanes operating at increased cabin pressure differential are more likely to develop fatigue cracking earlier in their service lives than those airplanes operating at normal cabin differential pressures. This condition, if not corrected, could result in the inability of the airplane structure to carry required loads.

DATES: Effective September 28, 1989.

ADDRESSES: The applicable service information may be obtained from British Aerospace PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 431–1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to British Aerospace BAC 1–11 200 and 400 series airplanes, which limits the number of operations at increased cabin pressure differential, and requires repetitive structural inspections of the fuselage, and repair or replacement, as necessary, was published in the **Federal Register** on May 30, 1989 (54 FR 22909).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 30 airplanes of U.S. registry will be affected by this AD, that it will take approximately 67 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $80,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the

regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1–11 200 and 400 series airplanes, Post-Modification PM2840 and PM3187, or PM4866 (excluding airplanes modified to PM5282, cabin freight door), certificated in any category. Compliance is required as indicated below, unless previously accomplished.

To ensure continued structural integrity, accomplish the following:

A. For airplanes modified for operation to a maximum of 7.75 pounds per square inch (psi) cabin pressure differential, as specified in British Aerospace Alert Service Bulletin 53–A–PM5922, Issue 1, dated January 27, 1987:

1. At or prior to the accumulation of 55,000 landings, or within 15 months after the effective date of this AD, whichever occurs later, perform the inspections specified in paragraph 2.1 of the service bulletin and repeat the inspections in accordance with paragraph 2.1.1 of the service bulletin at intervals shown in Table AA of the service bulletin.

2. At or prior to the accumulation of 60,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, reduce the aircraft maximum cabin pressure differential to 7.5 psi by system modification, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

B. For airplanes modified for operation at cabin pressure differentials above 7.75 psi up to a maximum of 8.2 psi, as specified in British Aerospace Alert Service Bulletin 53–A–PM5922, Issue 1, dated January 27, 1987:

1. For airplanes originally manufactured for operation at cabin pressure differentials above 7.75 psi, at or prior to the accumulation of the number of landings shown for initial inspection in the "NE period" column of Table AA in the service bulletin, or within 15 months after the effective date of this AD, whichever occurs later, perform inspections specified in paragraph 2.2.1 of the service bulletin and repeat the inspections as specified in paragraph 2.2.3 of the service bulletin at intervals shown in Table AA of the service bulletin.

2. For airplanes modifed for operation at cabin pressure differential above 7.75 psi after the airplane entered service, at or prior to the accumulation of the number landings shown for initial inspection in the "NE period" column (obtained using the inspection adjustment graph (page 6) of the service bulletin), in Table AA of service bulletin, or within 15 months after the effective date of this AD, whichever occurs later, perform initial inspections specified in paragraph 2.2.2 of the service bulletin. Repeat the inspections, as specified in paragraph 2.2.3 of the service bulletin, at intervals shown in Table AA of the service bulletin.

3. At or prior to the accumulation of 55,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, reduce the aircraft cabin maximum operating pressure differential to 7.5 or 7.75 psi by modification as specified in paragraph 2.2.4 of the service bulletin, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

4. For airplanes which have had the cabin pressure differential reduced form 8.2 psi to 7.75 psi as specified in paragraph 2.2.6 of the service bulletin, perform repetitive inspections at intervals specified in the "NE period" column in Table AA of the service bulletin.

5. At or prior to the accumulation of 60,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, the airplane cabin maximum operating pressure differential must be reduced to 7.5 psi by modification as specified in paragraph 2.2.7 of the service bulletin, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

6. For airplanes modified for 8.2 psi maximum cabin operating pressure differential and operated for a period in excess of any Table AA inspection threshold in the service bulletin, perform one additional inspection at or prior to the Table AA "NE period" column interval after limiting operation to 7.5 pounds per square inch, as specified in paragraph 2.2.5 of the service bulletin.

C. If defects are found during the inspections required by this AD, prior to further flight:

1. Replace with a serviceable part of the same part number; or

2. For damage within the limits specified in the BAC 1–11 Structural Repair Manual, repair in accordance with the Structural Repair Manual; or

3. Repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 28, 1989.

Issued in Seattle, Washington, on August 14, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–19676 Filed 8–21–89; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 117

[CGD8–89–02]

Drawbridge Operation Regulations; Terrebonne Bayou, LA; Correction

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule, correction.

SUMMARY: In notice document 89–15506 appearing on page 27642 in the issue of Friday, June 30, 1989, Amendatory Instruction 2 is corrected to read as follows:

"2. Section 117.505 is amended by removing existing paragraph (c), redesignating existing paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and by adding new paragraphs (a), (d), and (e) to read as follows:"

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, 8th Coast Guard District, (504) 589–2965.

Dated: August 4, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89–19597 Filed 8–21–89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 50

Public Health Service Grant Appeals Procedures

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) revises 42 CFR part 50, subpart D, which establishes an informal procedure for the resolution of certain Public Health Service (PHS) grant and cooperative agreement disputes prior to their submission to the Departmental Appeals Board. A revision of these procedures is necessary in order to bring them into conformance with the Department's rules at 45 CFR part 16 (46 FR 43817, August 31, 1981) which established the requirements and procedures applicable to the Departmental Appeals Board with respect to disputes arising under certain departmental grant and cooperative agreement programs. The major changes consist of the addition of one adverse determination to which the procedure is applicable and the deletion of another in order to eliminate the possibility of confusion arising as a result of the different areas of jurisdiction which are currently reflected by the two sets of regulations.

EFFECTIVE DATE: September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore J. Roumel, Phone: 301/443-1874.

SUPPLEMENTARY INFORMATION: HHS published a Notice of Proposed Rulemaking (NPRM) with respect to the revision of the informal PHS appeal procedures on July 8, 1988 (53 FR 25631). Comments from the public were requested. A single commenter provided several comments, but only one was considered to be relevant to the proposed changes in the regulatory text. That comment pertained to proposed § 50.404(a)(4) which describes the appealable adverse determination being added to the PHS regulations by this revision. That paragraph appeared in the NPRM as follows:

> A denial of a noncompeting continuation award under the project period system of funding where the denial is for failure to comply with the terms of a previous award. This does not apply to denials that are due to the grantee's poor performance or to the unavailability of funds.

The commenter suggested that the last sentence of the above paragraph rendered the paragraph more restrictive than the corresponding provision in the Departmental appeal regulations (45 CFR part 16, appendix A, paragraph (C)(a)(3)) the language of which is identical to the first sentence of the proposed paragraph quoted above.

It was not the intent of PHS to add language which would be interpreted as more restrictive than that in the Departmental regulations. The intent was to add language which would provide clarification as to the scope of the subject provision. Since the added language appears to have caused confusion, it has been deleted. The PHS language with respect to this adverse determination now exactly reflects that in the HHS regulations. In all other respects, except for minor editorial changes, the final rule follows the language of the proposed rule.

Impact Analysis

Executive Order 12291: Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the nationally economy of $100 million or more, or certain other specified effects. The Secretary certifies that these regulations are not major rules within the meaning of the Executive Order because they do not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980: The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. The Secretary has determined that this regulation will not have a significant economic impact on a substantial number of small entities and hereby certifies that an initial regulatory flexibility analysis is not required.

List of Subjects in 42 CFR Part 50

Administrative practice and procedure, Grant programs—health, Health care.

For the reasons set forth in the preamble, 42 CFR part 50, subpart D, is revised as set forth below:

Dated: April 12, 1989.

James F. Dickson,

Acting Assistant Secretary for Health.

Approved: August 4, 1989.

Louis W. Sullivan,

Secretary.

Subpart D—Public Health Service Grant Appeals Procedure

Sec.
50.401 What is the purpose of this subpart?
50.402 To what programs do these regulations apply?
50.403 What is the policy basis for these procedures?
50.404 What disputes are covered by these procedures?
50.405 What is the structure of review committees?
50.406 What are the steps in the process?

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); 45 CFR 16.3(c).

§ 50.401 What is the purpose of this subpart?

This subpart establishes an informal procedure for the resolution of certain postaward grant and cooperative agreement disputes within PHS.

§ 50.402 To what programs do these regulations apply?

This subpart applies to all grant and cooperative agreement programs, except block grants, which are administered by the U.S. Public Health Service, including those administered by the National Institutes of Health; the Health Resources and Services Administration; the Centers for Disease Control; the Agency for Toxic Substances and Disease Registry; the Alcohol, Drug Abuse, and Mental Health Administration; the Food and Drug Administration; the Indian Health Service; the Office of the Assistant Secretary for Health (OASH); and the PHS regional offices.

§ 50.403 What is the policy basis for these procedures?

The Secretary of Health and Human Services has established a Departmental Appeals Board for the purpose of providing a fair and flexible process for the appeal of written final decisions involving certain grant and cooperative agreement programs administered by constituent agencies of the Department. The regulatory provision which establishes the circumstances under which the Board will accept an appeal (45 CFR 16.3) provides, among other things, that the appellant must have exhausted any preliminary appeal process required by regulation before a formal appeal to the Departmental Board will be allowed. These regulations provide such an informal preliminary procedure for resolution of disputes within PHS in order to preclude submission of cases to the Departmental Appeals Board before PHS has had an opportunity to review decisions of its officials and to settle disputes with grantees.

§ 50.404 What disputes are covered by these procedures?

(a) These procedures are applicable to the following adverse determinations under PHS discretionary project grants and cooperative agreements (hereinafter both referred to as grants):

(1) Termination, in whole or in part, of a grant for failure of the grantee to carry out its approved project in accordance with the applicable law and the terms and conditions of such assistance or for failure of the grantee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the grant.

(2) A determination that an expenditure not allowable under the grant has been charged to the grant or that the grantee has otherwise failed to discharge its obligation to account for grant funds.

(3) A determination that a grant is void.

(4) A denial of a noncompeting continuation award under the project period system of funding where the denial is for failure to comply with the terms of a previous award.

(b) A determination subject to this subpart may not be reviewed by the review committee described in § 50.405 unless an officer or employee of the agency, OASH, or the regional office has notified the grantee in writing of the adverse determination. The notification must set forth the reasons for the determination in sufficient detail to enable the grantee to respond and must inform the grantee of the opportunity for review under this subpart.

§ 50.405 What is the structure of review committees?

The head of each agency or his/her designee shall appoint review committees to review appeals of adverse determinations made by headquarters officials for programs under the jurisdiction of that agency. The Assistant Secretary for Health, or his/her designee, shall appoint review committees to review adverse determinations made by OASH officials and regional officials for programs under their jurisdiction. A minimum of three employees shall be appointed (one of whom shall be designated as chairperson) either on an ad hoc, case-by-case basis, or as regular members of review committees for such terms as may be designated. None of the members of the review committee reviewing any given appeal may be from the office of the responsible official whose adverse determination is being appealed (e.g., project officer, grants specialist, program manager, grants management officer).

§ 50.406 What are the steps in the process?

(a) A grantee with respect to whom an adverse determination described in § 50.404(a) above has been made and who desires a review of that determination must submit a request for such review to the head of the appropriate agency or his/her designee (or in the case of an OASH program or regional office determination, to the Assistant Secretary for Health or his/her designee) no later than 30 days after the written notification of the determination is received, except that if the grantee shows good cause why an extension of time should be granted, the head of the appropriate agency or his/her designee (or in the case of an OASH program or regional office determination, the Assistant Secretary for Health or his/her designee) may grant an extension of time.

(b) The request for review must include a copy of the adverse determination, must identify the issue(s) in dispute, and must contain a full statement of the grantee's position with respect to such issue(s) and the pertinent facts and reasons in support of the grantee's position. In addition to the required written statement, the grantee shall provide copies of any documents supporting its claim.

(c) When a request for review has been filed under this subpart with respect to an adverse determination, no action may be taken by the awarding agency, OASH, or regional office pursuant to such determination until the request has been disposed of, except that the filing of the request shall not affect any authority which the agency, OASH, or regional office may have to suspend assistance or otherwise to withhold or defer payments under the grant during proceedings under this subpart. This paragraph does not require the awarding agency, OASH, or regional office to provide continuation funding during the appeal process to a grantee whose noncompeting continuation award has been denied.

(d) Upon receipt of a request for review, the head of the agency or his/her designee (or, if the adverse determination was made in an OASH program or regional office, the Assistant Secretary for Health or his/her designee) will make a decision as to whether the dispute is reviewable under this subpart and will promptly notify the grantee and the office responsible for the adverse determination of this decision. If the head of the agency or his/her designee (or, if applicable, the Assistant Secretary for Health or his/her designee) determines that the dispute is reviewable, he/she will forward the matter to the review committee appointed under § 50.405.

(e) The agency, OASH, or regional office involved will provide the review committee appointed under § 50.405 with copies of all relevant background materials (including application(s), award(s), summary statement(s), and correspondence) and any additional pertinent information available. These materials must be tabbed and organized chronologically and accompanied by an indexed list identifying each document.

(f) The grantee shall be given an opportunity to provide the review committee with additional statements and documentation not provided in the request for review described in paragraph (b) of this section. This additional submission, which must be organized and indexed as indicated under paragraph (e) of this section, should provide only material that is relevant to the review committee's deliberation of the issues in the case.

(g) The review committee may, at its discretion, invite the grantee and/or the agency/OASH/regional office staff to discuss the pertinent issues with the committee and to submit such additional information as the committee deems appropriate.

(h) Based on its review, the review committee will prepare a written decision to be signed by the chairperson and each of the other committee members. The review committee shall send the written decision with a transmittal letter to the grantee and shall send a copy of both to the official responsible for the adverse determination. If the decision is adverse to the grantee's position, the transmittal letter must state the grantee's right to appeal to the Departmental Appeals Board under 45 CFR Part 16.

[FR Doc. 89-19641 Filed 8-21-89; 8:45 am]
BILLING CODE 4160-17-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-218; RM-6232]

Radio Broadcasting Services; Statesboro, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Radio Statesboro, Inc., *See*, 53 FR 20656, June 6, 1988, substitutes Channel 261C2 for Channel 261A at Statesboro, Georgia, and modifies the license for Station WMCD(FM) to specify operation on the higher powered channel. Channel 261C2 can be allotted to Statesboro in compliance with the Commission's minimum distance separation requirements with a site restriction and can be used at its current transmitter site. The coordinates for this allotment are North Latitude 32–27–21 and West Longitude 81–46–27. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–218, adopted August 1, 1989, and released August 15, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments for Statesboro, Georgia, is amended by removing Channel 261A and adding Channel 261C2.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–19646 Filed 8–21–89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 161
Tuesday, August 22, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1405

Loans, Purchases and Other Operations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The regulations at 7 CFR Part 1405 set forth the general provisions applicable to Commodity Credit Corporation (CCC) loans, purchases and other operations. The amendment made by this proposed rule would provide that CCC will participate in State loan agricultural loan mediation programs with respect to farm facility loans made in accordance with 7 CFR 1474.

DATE: Comments must be received on or before September 21, 1989, in order to be assured of consideration.

ADDRESS: Director, Cotton, Grain and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: David Wolf, Program Specialist, Cotton, Grain and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013. Telephone: (202) 447–4704.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under United States Department of Agricultural (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to the proposed rule since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

CCC makes available nonrecourse price support loans to eligible producers under the provisions of the Agricultural Act of 1949, as amended, and the CCC Charter Act, as amended. These loans are nonrecourse in nature. Accordingly, it is proposed that CCC would not participate in State agricutural loan mediation programs with respect to such loans since these loans may be satisfied in full by forfeiture of the loan collateral to CCC without regard to the market value of the commodity. However, with respect to CCC farm facility loans, which are recourse loans made in accordance with 7 CFR Part 1474, CCC has generally renegotiated the terms and conditions of the loan in order to assist producers, to the extent practicable, to retain possession of the mortgaged facility. Therefore, it is proposed that CCC would participate in State agricultural loan medication programs with respect to loans made in accordance with 7 CFR Part 1474. Accordingly, it is proposed that 7 CFR Part 1405 be amended to provide that CCC would participate in such programs with respect to farm facility loans.

List of Subjects

Loan program/agriculture, Price support programs.

Accordingly, Title 7 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 1405—[AMENDED]

1. Authority citation for 7 CFR Part 1405 is revised to read as follows:

Authority: 15 U.S.C. 714b and 714c.

2. A new § 1405.4 is added to read as follows:

§ 1405.4 State loan mediation programs.

With respect to farm facility loans made in accordance with 7 CFR Part 1474, the Commodity Credit Corporation (CCC) will participate in mediations conducted pursuant to a State's agricultural loan mediation program under the same terms and conditions applicable to agricultural creditors generally and will cooperate in good faith in such mediations by complying with requests for information and analysis, and in presenting and exploring debt restructuring proposals whenever feasible, when that State is and remains a qualifying State as defined in 7 CFR 1946.2(b). CCC will not participate in such mediation programs with respect to commodity price support loans made in accordance with this title.

Signed at Washington, DC on August 15, 1989.

John A. Stevenson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–19664 Filed 8–21–89; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Parts 1900 and 1951

Administrative Offset

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Administration Offset regulation. This proposed amendment permits administrative offset against amounts that would otherwise be paid by other Federal agencies, including retirement funds and pension payments, to delinquent FmHA borrowers and other entities indebted to the Agency. The objective is to inform the public of the procedures that will be used by FmHA to exercise administrative offset. The intended effect is to allow the Agency to collect amounts that would otherwise be paid to delinquent borrowers and other debtors.

DATE: Comments must be received on or before September 21, 1989.

ADDRESSES: Send comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348–S, 14th and Independence SW., Washington, DC 20250. All written comments will be available for public inspection during normal working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Bob Nelson, Management Analyst, Farmers Home Administration, U.S. Department of Agriculture, Room 5505, South Agriculture Building, Washington, DC 20250, telephone (202) 475–4705.

SUPPLEMENTARY INFORMATION:

Comments Invited

FmHA will consider all aspects of its administrative offset regulations in this proceeding, and invites comments from interested persons on all factual matters, policy views and considerations, and legal arguments, relevant to the entirety of the subject of the Agency's use of administrative offset to collect debts owed to it and, as well, to the Agency's participation in administrative offsets initiated by other Federal agencies. Comments should not be limited to the specific proposals set out in this notice, since all issues concerning FmHA's use of administrative offset are within the scope of this proceeding. The Agency's final rule may be different from that set out in this proposal, depending on the comments received and on the Agency's internal deliberations.

General Information

The legislative history of the Debt Collection Act of 1982, 31 U.S.C. 3716, evidences public concern that Federal agencies were not taking sufficient action to collect debts owed to them. The Act was designed to facilitate the use of administrative offset, among other techniques, so as to permit agencies to remedy this problem. (See S. Rept. 97–378, 97th Cong. 1st Sess, 1983 U.S. Code, Cong. & Admin. News at p. 3377 *et seq.*)

While the central purpose of the Act was to reduce the amount of uncollected debts to the Government, the Act also requires Federal agencies to establish due process procedures for use in connection with administrative offsets. A situation frequently mentioned in the Congressional discussions on the Act was that of the unpaid student loan in which there had been no contract between the borrower and the Federal creditor agency for a period of several years. In this situation, notice and an opportunity to be heard before the agency took action would avoid surprise to the debtor, permit the debtor to raise any claims he or she might have of mistakes on the agency's part, such as the identity of the debtor and/or prior repayment of, or the amount, the debt. The General Accounting Office-Justice Department Federal Claims Collection Standards, 4 CFR 102.3, provide more detailed guidelines concerning the procedures that agencies must establish and use in connection with administrative offset.

FmHA intends to use the administrative offset procedures that it will establish through this rulemaking proceeding to collect all debts that may be owed to it in the future—including debts whose circumstances fit the Congressional model discussed above, and in which the debtor might have little reason to anticipate the use of administrative offset apart from the notice issued pursuant to these rules. The rules will be most frequently used, however, to recover losses on loan defaults on the Agency's farmer program and single-family housing loans. Because of the provisions of the Consolidated Farm and Rural Development Act, the Housing Act of 1949, and the Agency's regulations governing these programs, farmer and housing program borrowers will have received other notices concerning their overdue payments, and other notices concerning opportunities for debt servicing alternatives, before the Agency uses administrative offset as a collection tool. Thus, much of the procedure set out in these proposed rules may appear to duplicate the process that has already been given in connection with the indebtedness itself and hence legally unnecessary. (The Joint Standards state that agencies need not provide procedural rights in connection with administrative offset if the debtor has been provided those rights pursuant to other statutory or regulatory authority. 4 CFR 102.3(b)(2)(ii).)

Since these rules may also be used in situations other than defaults on farmer program and housing program loans, however, and since establishing different sets of rules to use in different circumstances would be administratively cumbersome, the Agency proposes to establish procedures that will satisfy the requirements of the Debt Collection Act and the Joint Standards even in situations in which the debtor has had no notice or process other than that set out in these proposed regulations.

FmHA is not now using administrative offset to collect debts owed to it, and does not intend to do so until it establishes final rules at the conclusion of this proceeding. The rules presently set out in the Agency's regulations (7 CFR 1951.104–107) were established in late 1986 and 1987 (see 51 FR 42820 *et seq.* (Nov. 28, 1986) and 52 FR 18543 *et seq.* (May 18, 1987)), and the Agency made some use of those regulations until December of 1987 to collect amounts owed to it. Use of administrative offset was less than it might otherwise have been because the Agency could not then accelerate most farmer program borrowers' accounts because of a then-pending injunction, which remained outstanding until February of 1989.

On November 23, 1987, suit was filed in the United States District Court in North Dakota (*Moseank, et al.* v. *Lyng, et al.*, Civil Action No. A1–87–196) complaining, among other things, that the Agency's administrative offset procedures were not in compliance with the Debt Collection Act and other governing law. Plaintiffs sought, among other things, to enjoin further use of the procedures. Since it seemed quite likely at that time that the use of administrative offset would have to be suspended in any event in the very near future because of the enactment of the Agricultural Credit Act of 1987, the Agency stipulated, on December 7, 1987, to refrain from using administrative offset in North Dakota for six months. The Agency thereupon unilaterally extended that policy to all other States by administrative directive. Both the stipulation and the directive were subsequently extended in effect up to and including the present time. Although the Agency's experience in using administrative offset is thus limited, FmHA has drawn two tentative conclusions from that experience that are reflected in changes to its existing rules set out in this proposal.

The first of these is that the use of "emergency" offset—i.e., offset without prior notice to the borrower—is unnecessary. While omitting prior notice is permitted by paragraph 102.3(b)(5) of the Joint Standards, the system of borrower servicing now established under the Consolidated Farm and Rural Development Act, pursuant to the amendments to that Act made by the Agricultural Credit Act of 1987, should permit the identification of instances in which administrative offset is warranted before an "emergency" arises. Moreover, in situations in which the debtor has not had other recent notice of the impending use of offset to collect a debt owed to the Agency, the proposed rules will provide better protection against mistaken use of the offset procedures. Thus the proposed rules

would no longer permit the use of administrative offset without prior notice to the borrower.

Secondly, the Agency's experience has been that only a minority of borrowers respond to a notice of intent to use administrative offset by requesting review or other process. (The Agency's experience in this respect is apparently shared by other Federal agencies. See Administrative Conferences of the United States Recommendation 87–9, *Dispute Procedures in Federal Agencies*, 5 CFR 305.87–9, and the report of consultant Martin B. White, *Offset Procedures under the Debt Collection Act of 1982*, underlying that recommendation. *Administrative Conference of the United States, 1987 Recommendations and Reports, Vol. II*, pp. 939–997.) The proposed rule precludes the use of notice, meetings, and other procedures to unduly postpone the use of offset when no colorable argument exists for so doing by allowing payments to be offset, subject to possible refund, during any administrative review of the decision. Therefore, the Agency tentatively concludes that including the opportunity for a face-to-face meeting with the decision maker as well as a right to make a written presentation, even in situations in which the debtor has had other recent meetings on the same debt, will not in practice create a substantial burden on decision-making officials. Thus the proposed rules provide an opportunity for a meeting with the decision maker, plus the opportunity for an appeal of the process used to initiate the administrative offset, in all cases.

The proposed rules do, however, provide for combining the meeting on offset with any meeting on other debt servicing matters which otherwise would be taking place. Neither the Act nor due process considerations seem to preclude the Agency from allowing the consideration of questions other than those pertaining to administrative offset. See, e.g., *Housing Authority of King County* v. *Pierce*, 701 F. Supp. 844, 850 (DC 1988).

The Debt Collection Act provides that the debtor should be given an opportunity to pay the debt in full before administrative offset is used (31 U.S.C. 3716(a)(4)). The Joint Standards also refer to this right, but subsection 102.3(b)(2)(i), appears to limit it to situations in which the debtor has established reasons why the use of offset would result in undue financial hardship or would be against equity and good conscience. The proposed regulations implement these instructions by giving a debtor the opportunity to make an offer to pay the debt within 30 days, and by including the possibility of obtaining a written agreement to pay the indebtedness, for which security may be required, when the agency has determined not to use administrative offset because of extreme hardship on the debtor.

FmHA is not entirely satisfied with this proposed treatment of this subject, as it applies to the use of offset to collect debts arising from defaults in paying program loans, and is very interested in receiving suggestions from the public on this point. This statutory provision was perhaps adopted with the long-overdue student loan (the situation mentioned in the legislative history and discussed above) in mind. In circumstances in which the debt may be small in relation to the debtor's total income, and in which the debtor may want to avoid suit as much as the agency, a written payment plan may well resolve the matter. In the case of FmHA's program loans, however, the situation may often be extremely different—especially in the case of FmHA's Farmer Program Loans. Before offset is used, the loan will have been accelerated and the borrower already offered a number of forms of debt servicing, including writing down both the principal and interest of the debt to the point at which the borrower can "cash flow". Offset will be initiated only after these forms of debt relief have not worked.

In this situation, it is highly unlikely that the borrow will be able to make an offer to repay the entirety of the debt that any reasonable Agency official could accept as credible. To hold out such an unreal possibility of avoiding offset to borrowers who have already unsuccessfully attempted to resolve their situation by using the Agency's more generous forms of debt relief—and who may be facing the loss of their farm and home through foreclosure—seems pointless and unfortunate. FmHA solicits suggestions on how to better resolve this issue in its rules.

The proposed additions to section 1900.51 of FmHA's rules governing administrative appeals, and proposed subsection 1951.104(i), provide for limited review of decisions to use administrative offset by FmHA's National Appeals Staff. This appeals staff, reporting to the Administrator independently of State officials, was established by FmHA in 1988 pursuant to the Agricultural Credit Act of 1987, enacted January 6, 1988. While the statutory jurisdiction of the National Appeals Staff extends only to adverse decisions under the Consolidated Farm and Rural Development Act—*i.e.*, to program loan decisions—and does not extend to decisions under other laws such as the Debt Collection Act, the agency has tentatively concluded that allowing debtors the right of appeal will assist in ensuring that administrative offsets are used only after the procedural protection proposed in these rules have been given. The review provided, however, is a limited one in that the hearing officers will confined their review to questions of compliance with the regulations and related matters. Decisions that are within the discretion of decisional officers—the decision on whether to decline to use administrative offset because of extreme hardship, for example—will not be reversible on appeal.

Since program borrowers will have been given other notices and opportunities for appeal on issues relating to the debt itself, the proposed appeal on administrative offset would not deal with those matters again, except where the debtor was not a program borrower and thus had not had another opportunity for administrative review of the agency's finding that a debt existed. See proposed § 1951.104(i). This distinction between the issues to be considered on a appeal of an administrative offset and the issues to be considered on the appeal of the agency's intention to accelerate a loan will become important in only a very few situations. Since the Agency ordinarily notifies a deliquent borrower of its intention to use administrative offset at the same time it advises the borrower that it intends to take adverse action—e.g., acceleration—on the underlying loan, the borrower will be able to raise any issues concerning the offset along with any issues concerning the debt itself in one meeting with the decisional official, and one administrative appeal.

In a more recent lawsuit on administrative offset quite similar to the *Moseanko* suit discussed earlier, entitled *Fitzner, et al.* v. *Yeuter*, et al., Case No. CV 6–89–240 (USDA, D, Minn.), filed on April 18, 1989, several farm borrowers seek to enjoin FmHA from using administrative offset to collect delinquent debts. One issue raised by this complaint is whether payments made by sister USDA agencies such as the Agricultural Stabilization and Conservation Service should be exempt from taking by administrative offset on the ground that taking such payments would, as the Joint Standards provide, "substantially interfere with or defeat the purposes of the program authorizing the payments * * *." 4 CFR 102.3(a)(2). FmHA has tentatively concluded, and here proposes (see proposed subsection 1951.103(e) to provide that payments that are like advance payments to a grantee or the payment of loan proceeds—e.g., the particular payment from the Soil Conservation Service with which the recipient is intended to cover the expenses of planting—would not be subject to offset, while payments representing rent would be so subject. It is FmHA's tentative conclusion that it should issue guidance for its field offices on which major Federal programs will be subject to offset, and the Agency solicits the views of interested members of the public on this idea, and on what other kinds of payments should be specifically included in these rules as being subject to, or not subject to, administrative offset.

Regulatory Reviews

This rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

The programs to which this regulation may apply are listed in the Catalog of Federal Domestic Assistance under the following:

10.404	Emergency Loans
10.405	Farm Labor Housing Loans
10.406	Farm Operating Loans
10.407	Farm Ownership Loans
10.410	Low Income Housing Loans
10.411	Rural Housing Site Loans
10.414	Resource Conservation and Development Loans
10.415	Rural Rental Housing Loans
10.416	Soil and Water Loans
10.418	Water and Waste Disposal Systems for Rural Communities
10.419	Watershed Protection and Flood Prevention Loans
10.420	Rural Self-Help Housing Technical Assistance
10.421	Indian Tribes and Tribal Corporation Loans
10.422	Business and Industrial Loans
10.423	Community Facility Loans
10.428	Economic Emergency Loans
10.433	Housing Preservation Grants
10.434	Nonprofit Corporations
10.435	Agricultural Loan Mediation Program

Programs listed under numbers 10.404, 10.406, 10.407, 10.410, 10.417, 10.421, 10.428, and 10.435 are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR 3015, subpart V, 48 FR 29112, June 24, 1983.)

Programs listed under numbers 10.405, 10.411, 10.414, 10.415, 10.416, 10.418, 10.419, 10.420, 10.422, 10.423, 10.427, 10.433, and 10.434 are subject to the provisions of Executive Order 12372 (7 CFR 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

While delinquent debts owed to FmHA remain unpaid, FmHA must borrow money to operate which increases the Federal deficit. Increased Government borrowing causes interest rates to rise and reduces the availability of credit in the country. The Debt Collection Act of 1982 (31 U.S.C. 3701, 3711 and 3716–19), the Attorney General-Comptroller General's joint claims collection standards for agencies (4 CFR parts 101–105) and the Department of Agriculture's debt collection regulations (7 CFR parts 1 and 3) contain specific and detailed requirements which agencies of the Department must follow in order to collect.

List of Subjects

7 CFR Part 1900

Appeals, Credit, Loan programs—Housing and community development.

7 CFR Part 1951

Account servicing, Loan programs—Agriculture, Accounting, Credit, Low and moderate income housing loans—Servicing.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1900—GENERAL

1. The authority citation for part 1900 is revised to read as follows:

Authority: 7 U.S.C. 1989; 31 U.S.C. 3701; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Adverse Decisions and Administrative Appeals

2. Section 1900.51 is amended in paragraph (b) by adding a new sentence at the end of the paragraph, and by adding a new paragraph (f) to read as follows:

§ 1900.51 General.

* * * * *

(b) * * * The provisions of this part also apply to appeals from decisions by FmHA under subpart C of part 1951 of this chapter to initiate administrative offsets.

* * * * *

(f) Administrative offsets initiated under Subpart C of Part 1951 of this chapter will not be stayed pending the hearing and any further review of the decision to initiate the offset.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

Subpart C—Offsets of Federal Payments to FmHA Borrowers

3. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; CFR 2.70.

4. Section 1951.101 is revised to read as follows:

§ 1951.101 General.

The Federal Claims Collections Act of 1966 as amended by the Debt Collection Act of 1982 and the Deficit Reduction Act of 1984 authorizes Farmers Home Administration (FmHA) to use administrative, salary, and Internal Revenue Service (IRS) offsets to collect delinquent debts. Any money that is or may become payable from the United States to an FmHA borrower or other individual or entity indebted to the Agency may be subject to offset for the collection of a debt owed to FmHA. In addition, money may be collected from the debtor's retirement payments for delinquent amounts owed to FmHA if the debtor is an employee or retiree of a Federal agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve. Amounts collected will be processed as regular payments and credited to the borrower's account. FmHA will process requests by other Federal agencies to offset amounts otherwise payable to FmHA in accordance with section 1951.102 of this subpart.

5. Sections 1951.102 through 1951.104 are added to subpart C to read as follows:

§ 1951.102 Standards and procedures for administrative offset against FmHA.

(a) Requests made by other Federal agencies to FmHA to offset moneys to be paid to FmHA debtors, including borrowers, contractors and grantees, must contain a written statement of the debt (including, where applicable, a separate statement of principal owed and overdue interest owed as of a given date, and the amount of interest currently running) owed by the debtor to the requesting agency, the due date of the debt, a description of the basis for the debt, and a certification that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met. Requests for offset will be sent to the appropriate FmHA State Director.

(b) Upon receipt of a request satisfying the requirements of paragraph (a) of this section, FmHA will effect an administrative offset from moneys payable to the debtor, giving written notice to the debtor, unless the offset might result in substantial interference with, or defeat the purpose of FmHA's program. For example, where the payment sought to be offset is a loan, offset will not be made since the debtor would not be able to use the loan funds for the intended purpose. Similarly, where the payment sought to be offset is an advance payment under a contract to purchase goods, FmHA will not make the requested offset because the debtor would in all likelihood refuse to furnish the goods. However, where the payment is being made to compensate for past performance, the offset will be effected. For example, where the payment sought to be offset is for goods already furnished, the offset could be made without conflict with the purpose of the payment.

(c) If FmHA determines not to effect an offset, a written statement, including the reasons for the refusal, will be sent to the requesting agency and a copy of that statement will be sent to the debtor.

§ 1951.103 Standards for FmHA-initiated administrative offset.

(a) This section explains the procedures to be followed to use administrative offset to collect amounts owed by a debtor to FmHA from payments to be made to the debtor by another Federal agency or from retirement payments to be made to a Federal or military retiree.

(b) Before another Federal agency can be asked to offset any amount, the debtor must have been given at least 30-days notice, on FmHA Form Letter 1951–1, must have been afforded the rights set out in this section, and, if the debtor is an FmHA borrower, the borrower's account must have been accelerated. A delinquent amount does not have to be reduced to judgment or be undisputed before offset can be used, and the payment does not have to be covered by an FmHA security instrument.

(c) Offset will not be used, if, according to State law, the receipt of payments after acceleration has the effect of reinstating the debtor's account. A State supplement will be issued explaining whether offset can be used in each State. Sums received through the use of administrative offset are not considered "payments" as that term is used in 7 CFR 1955.15(d)(3) of subpart A of part 1955 of this chapter.

(d) Administrative offset will be used only where it is feasible. Administrative offset is not feasible where, for example, the cost to the Government of collecting by offset will exceed the amount collectible.

(e) Administrative offset will be used only where it is in the best interests of the Government. It will not be used where it would substantially interfere with, or defeat, the purpose of the paying Agency's program. Examples of this situation are listed in § 1951.103(b) of this subpart. As another example, FmHA will not offset the initial payment for planting expenses under the Conservation Reserve Program (CRP) since an offset would possibly result in the land not being planted for conservation purposes; conversely, it will offset subsequent CRP payment which represent rental income to the debtor. In general, income supplementation and enhancement program payments by ASCS will be subject to offset. The National Office will provide guidance to FmHA County Supervisors as needed on the kinds of payments under other major Federal programs that will not be subject to offset.

(f) The use of administrative offset is limited when debtors have filed for bankruptcy. Before administrative offset is sought for a debtor who is subject to a pending bankruptcy, guidance with respect to each particular case will be sought from the Office of the General Counsel. Debts of debtors which have been discharged in bankruptcy will not be subject to offset.

(g) FmHA will not use offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to FmHA's right to collect were not known and could not reasonably have been known by the FmHA official(s) charged with the responsibility of servicing the debtor's account until a time less than 6 years before the offset is initiated. Prior to collecting a claim by administrative offset after the 6 year period for bringing a civil action on the claim has expired, the loan servicing official will obtain the concurrence of the Office of the General counsel to pursue the offset.

(h) FmHA will not use administrative offset with respect to debts owed by any State or local government; nor with respect to debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954 (IRS) debts may be offset under the IRS offset procedure in §§ 1951.121 through 1951.127 of this subpart), or the tariff laws of the United States.

§1951.104 Procedures for FmHA-initiated offset.

(a) The use of administrative offset will be initiated by giving notice to the debtor of the intention to use administrative offset. Such notice shall advise the debtors of their rights to:

(1) Inspect and copy their records;

(2) Avoid offset by paying the debt in full within 30 days;

(3) Present any reasons why administrative offset should not be used, including that the amount claimed to be owed is in error, that the use of administrative offset would create an extreme hardship, or that it would be unfair to the borrower for some other reason;

(4) Have a meeting with the decision-making officials, and

(5) Obtain administrative appeal of the decision to use administrative offset.

(b) The debtor will be given 7 calendar days after receipt of the notice to ask to inspect and/or copy his or her records, and 15 calendar days after receipt of the notice in which to:

(1) Make a written submission pursuant to paragraphs (a) (2) and (3) of this section, or

(2) Request a meeting at which the borrower can make such a submission and/or orally raise any matters relevant to the proposed use of administrative offset to collect the amount owed, or

(3) Request immediate administrative appeal of the decision to use administrative offset.

(c) When a debtor cannot, for a good reason, meet the time limits set out in this section, FmHA can, in its discretion, extend the time.

(d) FmHA Form Letter 1951–1 will be used to give the notice required by this section. Notice will be sent to the debtor, by certified mail, return receipt requested, at the debtor's last known address. A duplicate copy will be mailed to the debtor, on the same day,

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by ordinary mail. The date of signing of the certified mail receipt will be used to compute the periods for response or, if the certified mail receipt is not signed and returned, the time frame will commence with the third day after the date on which the duplicate was sent.

(e) If the debtor responds by asking for a meeting, it will be scheduled as set forth in 1900–B, and the debtor will be promptly advised in writing of the date, time, and place. If the response also asks to inspect and/or copy records, the response will give the debtor an opportunity, within 5 working days after the receipt of the request, to inspect and/or copy those records. The letter will explain where the records are and when the debtor can inspect and/or copy them. The meeting will be scheduled not less than 3 working days after the date on which the debtor is allowed to inspect and/or copy his or her records. At the meeting the debtor will be given an opportunity to present any evidence or arguments as to why administrative offset should not be used.

(f) If the debtor asks to inspect and/or copy records, but does not ask for a meeting, the debtor should, at the time of record inspection and/or copying, again be offered for meeting so that he or she will have an opportunity to discuss the contents of those records, or any other relevant matter, before FmHA actually begins to use administrative offset. This offer may be made orally and will be documented in the debtor's case file.

(g) Extreme hardship or unfairness to the debtor in using administrative offset are matters that are within the discretion of the FmHA County Supervisor or other decision-making officials. The reasons for decisions on claims of extreme hardship or unfairness will be documented in the debtor's case file. Substantial medical expenses, or the lack of funds (other than those to be offset) for essential family living expenses, especially when the debtor's family includes dependent minor children, are examples of situations in which a decision not to use administrative offset may be justified. In its discretion, FmHA may, as a condition to declining to use administrative offset because of extreme hardship or unfairness, require the debtor to enter into a written agreement concerning payment of the indebtedness and can require adequate security for such agreement.

(h) FmHA will respond promptly to all written or oral requests or presentations made by debtors under this section. Decisions to be made after a meeting with a debtor will be made promptly, and will be promptly communicated in writing to the debtor. If a request not to use offset is denied, either in response to a written submission or to matters raised at a meeting, the letter communicating that decision will also advise the debtor of his or her rights to administrative appeal. Other Federal agencies will not be requested to offset amounts before FmHA has mailed or hand delivered a letter to the debtor communicating its decision in response to any matters raised at a meeting or in response to a submission in writing.

(i) Decisions to use administrative offset are appealable under subpart B of part 1900 of this chapter, and may be reversed only if they are inconsistent with law or regulations. If the debtor is not an FmHA borrower who has had other opportunity to appeal FmHA's determinations on the indebtedness itself, the appeal will include consideration of any issues concerning the debt that the debtor wishes to raise.

6. Section 1951.105 is revised to read as follows:

§ 1951.105 Procedures for taking funds by administrative offset.

(a) *Requesting administrative offsets.* Administrative offset requests to other Federal agencies will be initiated by completing FmHA Form Letter 1951–3 and sending it to any Federal agency likely to have money scheduled for payment to the debtor. The debtor, and the FmHA State Director, will be sent a copy of this form letter when it is sent to the other Federal agency.

(b) *Application of payments, refunds and overpayments for administrative offsets.* (1) Only amounts that are delinquent can be collected by offset. Therefore, if an FmHA Form Letter 1951–3 is submitted to another Federal agency which owes a debtor an amount in excess of the FmHA delinquency, the excess will be remitted to the debtor by the other Federal agency.

(2) Administrative offset payments will be processed in accordance with FmHA Instruction 1951–B, Collections, including depositing the payments in the Concentration Banking System or sending the payments to a wholesale lockbox bank. The offset payments will be applied to the debtor accounts as regular payments.

(3) Refunds of amounts offset, plus interest, will be made promptly, pursuant to the provisions of 7 CFR 1951.13(b) of subpart A of part 1951 of this chapter, if FmHA determines that an amount should not have been offset or that the debtor has won an administrative appeal. The ninety-day Treasury bill rate, as published in exhibit B to FmHA instruction 440.1, in effect on the date the amounts were offset by the creditor agency, will be used to calculate interest payable to the debtor.

(4) The County Supervisor will record all borrowers referred for and/or collected through administrative offset on Form FmHA 1951–16, Detail Report of Administrative Offset. The unpaid interest and unpaid principal amounts referred for offset should be reported only one time when first referred and obtained from FmHA Form Letter 1951–3. Form FmHA 1951–16 will be filed in operational file B. At the close of each quarter, the County Supervisor will consolidate the information reported on Form FmHA 1951–16 into Form FmHA 1951–17, Consolidated Report of Administrative Offset. The consolidated county report will be forwarded to the State Administrative Officer within 5 calendar days after the end of each quarter (e.g., October 5, January 5, April 5, and July 5). If there is no activity for the quarter, a negative report is required. Using Form FmHA 1951–17, the State Administrative Officer will consolidate the reports received from the County Offices. The consolidated state report will be forwarded to the Finance Office, mail code FC–360A, within 10 calendar days after the end of each quarter (e.g., October 10, January 10, April 10, and July 10). If there is no activity for the quarter, a negative report is required.

(c) *Cancellation of administrative offset.* FmHA will promptly cancel administrative offset requests by written notification to every other Federal agency from which administrative offset was requested if, because of debtor payments or any other reason, FmHA is no longer entitled to administrative offset from payments to be made to a debtor.

Dated: July 19, 1989.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 89–19148 Filed 8–21–89; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–135–AD]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA); DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 series airplanes, which would require modification or replacement of certain fuselage and wing structural components. This proposal is prompted by reports of cracking discovered during full-scale fatigue testing of the Model ATR42 airframe. This condition, if not corrected, could result in structural failure of the fuselage or wing.

DATES: Comments must be received no later than October 13, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–135–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM–113; telephone (206) 431–1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Admnistrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–135–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Directive Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Aerospatiale Model ATR42 series airplanes. During full-scale fatigue testing of the Model ATR42 airframe, cracking was discovered in the fuselage and wing. This condition, if not corrected, could result in structural failure of the fuselage or wing.

Aerospatiale has issued Service Bulletins ATR42–53–0004, Revision 3, dated May 25, 1989; ATR42–53–0023, Revision 2, dated May 25, 1989; ATR42–53–0031, Revision 1, dated May 20, 1989; ATR42–53–0042, dated May 3, 1989; ATR42–57–0010, Revision 1, dated May 20, 1989; ATR42–57–0021, Revision 1, dated May 20, 1989; and ATR42–57–0027, Revision 1, dated May 25, 1989; which describe procedures for modification or replacement of certain fuselage and wing structural components. DGAC France has classified these service bulleting as mandatory and has issued Airworthiness Directive 89–017–017(B)R1 addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification or replacement of certain fuselage and wing structural components in accordance with the service bulletins previously described.

It is estimated that 50 airplanes If U.S. registry would be affected by this AD. The entire cost of the modifications and replacements required by this AD would be borne by the manufacturer; therefore, there is no cost impact on U.S. operators.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR42 series airplanes, certificated in any category. Compliance is required prior to the accumulation of 10,000 landings, or within the next 300 landings after the effective date of this AD, whichever occurs later, unless previously accomplished.

To prevent failure of structural components of the fuselage and wing, accomplish the following:

A. For airplane Serial Numbers 003 to 151: Reinforce fuselage frame 26, in accordance with Aerospatiale Service Bulletin ATR42–53–0042, dated May 3, 1989.

B. For airplane Serial Numbers 003 through 032, 034, and 035: Reinforce the fuselage secondary frames, in accordance with

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Aerospatiale Service Bulletin ATR42-53-0023, Revision 2, dated May 25, 1989.

C. For airplane Serial Numbers 003 through 059: Perform a cold expansion of the outer wing skin attach fastener holes, in accordance with Aerospatiale Service Bulletin ATR42-57-0010, Revision 1, dated May 20, 1989.

D. For airplane Serial Numbers 003 through 071. Reinforce fuselage frames 24 and 28, in accordance with Aerospatiale Service Bulletin ATR42-53-0004, Revision 3, dated May 25, 1989.

E. For airplane Serial Numbers 003 through 084, 086, 087, and 089 through 093: Perform a cold expansion of attach holes and reinforce wing/fuselage junction fittings, in accordance with Aerospatiale Service Bulletin ATR42-53-0031, Revision 1, dated May 20, 1989.

F. For airplane Serial Numbers 003 through 119: Perform a cold expansion of the wing front and rear spar attach holes, in accordance with Aerospatiale Service Bulletin ATR42-53-0021, Revision 1, dated May 20, 1989.

G. For airplane Serial Numbers 003 through 151: Replace the wing center box, in accordance with Aerospatiale Service Bulletin ATR42-57-0027, Revision 1, dated May 25, 1989.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirement of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 14, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19679 Filed 8-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-146-AD]

Airworthiness Directives; Aerospatiale Model ATR42-300 and ATR42-320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42-300 and ATR42-320 series airplanes, which would require a one-time inspection of the main landing gear (MLG) actuator fitting bolt holes, and rework of the fitting surface and bolt replacement, if necessary. This proposal is prompted by reports of incorrect perpendicularity between the bolt hole axis and the fitting surface. This condition, if not corrected, could lead to failure of the landing gear actuator attachment fitting bolts, which could result in the inability to retract the landing gear and failure to achieve an adequate climb gradient.

DATES: Comments must be received no later than October 13, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-146-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Standardization Branch, ANM-113; telephone (206) 432-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-146-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Aerospatiale Model ATR42-300 and ATR42-320 series airplanes. There has been one report of failure of the main landing gear actuator fitting attach bolts due to incorrect perpendicularity between the bolt hole axis and the fitting surface. Failure of the landing gear actuator fitting bolts could lead to inability to retract the main landing gear and failure to attain an adequate climb gradient.

Aerospatiale has issued Service Bulletin ATR42-53-0045, Revision 1, dated April 21, 1989, which describes procedures to inspect the MLG actuator fitting bolt holes for perpendicularity, elongation, and alignment between the bolt hole axis and fitting surface, and rework of the fitting surface and bolt replacement, if necessary. The French DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 89-067-020(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the

United States, an AD is proposed which would require a one-time inspection of the MLG actuator fitting bolt holes for correct perpendicularity, elongation, and alignment between the bolt hole axis and the fitting surface, and rework of the fitting surface and bolt replacement, if necessary, in accordance with the service bulletin previously described.

It is estimated that 50 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $40,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR42-300 and ATR42-320 series airplanes, Serial Numbers 003 through 155, which have not been modified in accordance with Service Bulletin ATR42-0023, Revision 1, dated April 20, 1989, certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished.

To prevent failure of the main landing gear (MLG) actuator fitting bolts due to an incorrect perpendicularity between the bolt hole axis and the fitting surface, accomplish the following:

A. Inspect the MLG actuator fitting bolt holes for correct perpendicularity, elongation, and alignment between the bolt hole axis and the fitting surface, in accordance with Aerospatiale Service Bulletin ATR42-53-0045, Revision 1, dated April 21, 1989.

1. If no discrepancies are found, reassemble in accordance with the service bulletin.

2. If discrepancies are found, prior to further flight, rework the fitting surface and replace the bolts in accordance with the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 14, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19680 Filed 8-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-147-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require inspection, repair as necessary, and modification of certain fuselage skin lap joints in the fuselage lower lobe. This action is prompted by reports of cracking detected in the stringer 34 lap joint near the interface with the wing-to-body fairing. This condition, if not corrected, could result in an in-flight depressurization of the airplane.

DATES: Comments must be received no later than September 25, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-147-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Richard Yarges, Airframe Branch, ANM-120S; telephone (206) 431-1925. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–147–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

One operator of a Model 747 airplane has reported finding skin cracks at six countersunk fastener locations in the upper row of fasteners of the stringer 34 lap joint immediately forward of the wing-to-body fairing. The cracks were from 0.05 to 0.30 inches in length extending forward and aft, emanating from countersunk fastener holes. The airplane had accumulated 23,926 flight cycles at the time that the cracks were found (however, since the airplane was a short range version of the Model 747 and is operated at a reduced pressure differential, this is equivalent to about 20,000 normal flight cycles). In addition to this incident, a single crack 0.1 inch long was found at one fastener hole in the same location on a fatigue test article at the manufacturer's facility.

It was also noted during the investigation of this cracking incident that some airplanes, including the ones which have exhibited the cracking, did not have the correct fasteners installed in the affected skin joints. Eight of eighteen airplanes checked had countersunk fasteners installed in a location where the design specified protruding head fasteners. The premature cracking at the affected skin joint is attributed to the use of improper fasteners.

In addition, all Model 747 airplanes through line number 765, incorporate countersunk fasteners in the upper row of fasteners in the lap joint directly under the wing-to-body fairing where the fairing joins to the fuselage. Premature fatigue cracking can be expected at this location as well on airplanes which do not have adhesively bonded lap joints (airplane line numbers 201 and on), because the skin thickness is too thin to effectively support the use of countersunk fasteners in the upper row.

From the cracking detected in service and from fatigue life calculations, the FAA has determined that detectable fatigue cracking can be expected to develop on some airplanes at about 11,000 flight cycles if the fastener configuration is not modified to incorporate protruding head fasteners in the above mentioned areas. Undetected fatigue cracking could result in eventual rupture of the fuselage shell and in-flight depressurization of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2312, dated June 12, 1989, which describes inspection, repair, and modification procedures for the affected fuselage skin lap joints.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection, repair if necessary, and modification of certain fuselage lap joints in the fuselage lower lobe, in accordance with the service bulletin previously described. In addition, operators would be required to submit a report of their inspection results to the FAA.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

There are approximately 550 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 63 airplanes of U.S. registry would be affected by this AD, that it would take approximately 220 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost for parts necessary to modify the airplane is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $554,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained form the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line numbers 201 through 765, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid in-flight depressurization of the airplane cabin, accomplish the following:

A. Conduct a high frequency eddy current (HFEC) inspection of the lower lobe lap joints in the vicinity of the wing to body fairing, in accordance with Boeing Alert Service Bulletin 747–53A2312 dated June 12, 1989, at the following threshold, as applicable:

1. For airplanes that have accumulated less than 11,200 landings as of the effective date of this AD, prior to the accumulation of 11,600 landings or with the next 800 landings after the effective date of this AD, whichever occurs later.

2. For airplanes that have accumulated less than 11,200 and 15,200 landings as of the effective date of this AD, within the next 800 landings after the effective date of this AD, or prior to the accumulation of 15,500 landings, whichever occurs first.

3. For airplanes that have accumulated between 15,201 and 18,200 landings as of the effective date of this AD, within the next 300 landings after the effective date of this AD, or prior to the accumulation of 18,250 landings, whichever occurs first.

4. For airplanes that have accumulated more than 18,200 landings as of the affective date of this AD, within the next 50 landings after the effective date of this AD.

B. Repair any cracks detected, prior to further flight, in accordance with Boeing Alert

Service Bulletin 747–53A2312, dated June 12, 1989.

C. Within 10 days, after the completion of the inspection required by this AD, submit a written report of the location and quantity of all affected countersunk fasteners found, along with aircraft line number and the number of flight cycles, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Prior to the accumulation of 11,000 landings or within the next 3,000 landings after the effective date of the AD, whichever occurs later, modify the airplane by replacing countersunk fasteners in the upper row of the lower lobe lap joints in the vicinity of the wing-to-body faring with protruding head fasteners, in accordance with the procedure described in Boeing Alert Service Bulletin 747–53A2312, dated June 12, 1989.

E. For the purpose of complying with the AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 2.0 psi.

F. For Model 747SR airplanes only, based on continued mixed operation of lower cabin differentials, the inspection and modification compliance times specified in this AD may be multiplied by a 1.2 adjustment factor.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 14, 1989.

Darrell Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–19681 Filed 8–21–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–140–AD]

Airworthiness Directives; Fokker Model F–28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F–28 series airplanes, which would require a one-time inspection for cracks of the wing rear spar web plates, between Wing Stations 4790 and 5280, and repair, if necessary. This proposal is prompted by results of manufacturer's fatigue testing, which revealed cracks developing in the rear spar web plate inboard of Wing Station 5280. Undetected fatigue cracks could lead to reduced structural capability of the wing.

DATES: Comments must be received no later than October 13, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–140–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 431–1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–140–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F–28 series airplanes. Fatigue testing by the manufacturer has revealed that cracks can develop in the rear spar web plate inboard of Wing Station 5280. These cracks can start in the holes of the rivets and bolts which attach the rear-spar-web plate to the lower girder. Undetected fatigue cracks could lead to reduced structural capability of the wing.

Fokker has issued Service Bulletin F28/57–84, dated April 7, 1989, which describes procedures for an external high-frequency eddy current inspection of the rear spar web plate between Wing Stations 4790 and 5280, and repair, if necessary. The RLD has classified this service bulletin as mandatory, and has issued Airworthiness Directive BLA No. 89–46 addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time inspection for cracks in the rear spar web plate between Wing Stations 4790 and 5280, and repair, if necessary, in accordance with the service bulletin previously described.

This is considered to be interim action. The manufacturer is currently attempting to determine the extent and nature of the addressed damage, and is developing an appropriate repetitive inspection schedule and/or modification that will preclude the need for repetitive inspections. Once these are developed, the FAA may consider further rulemaking to revise this AD to require additional necessary action.

It is estimated that 48 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,680.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of Power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F–28 series airplanes, Serial Numbers 11003 through 11241, and 11991 and 11992, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wing due to fatigue cracks, accomplish the following:

A. Perform external high-frequency eddy current inspection of the rear spar web plate between Wing Stations 4790 and 5260, in accordance with Part 1 of Fokker Service Bulletin F28/57–84, dated April 7, 1989, and the following schedule:

1. For airplanes that have accumulated fewer than 45,000 landings, inspect within the next 2,000 landings after the effective date of this AD or prior to the accumulation of 35,000 landings, whichever occurs later.

2. For airplanes that have accumulated 45,000 landings or more but less than 55,000 landings, inspect within the next 1,000 landings after the effective date of this AD.

3. For airplanes that have accumulated 55,000 landings or more, inspect within 500 landings after the effective date of this AD.

B. If cracks are found, repair prior to further flight, in accordance with Part 2 of Fokker Service Bulletin F28/57–84, dated April 7, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Suite 500, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 14, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–19662 Filed 8–21–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–ANE–28]

Airworthiness Directives; IPECO P/N 3A090–0021–01–2 et al.; Crew Seats

In the matter of Airworthiness Directives; IPECO P/N 3A090–0021–01–2, 3A090–0022–01–2, 3A090–0021–02–2, 3A090–0022–02–2, 3A090–0019–01–1, 3A090–0020–01–1, 3A090–0015–01–1, 3A090–0016–01–1, 3A090–0025–01–1, 3A090–0026–01–1, 3A090–0053–01–1, 3A090–0054–01–1, 3A090–0027–01–1, 3A090–0028–01–1, 3A090–0055–01–1, 3A090–0056–01–1, 3A090–0017–01–1, 3A090–0018–01–1, 3A090–0065–01–1, 3A090–0066–01–1, 3A102–0003–01–1, 3A103–0003–01–1, 3A118–0003–01–1, and 3A118–0004–01–1, crew seats.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt an airworthiness directive (AD) that would require inspection and modification of certain IPECO crew seats. The proposed AD is needed to prevent failure of the seat back structure which could result in impairment of the pilots ability to control the aircraft.

DATE: Comments must be received on or before November 30, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 89–ANE–28, 12 New England Executive Park, Burlington, Massachustts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket No. 89–ANE–28.

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletins may be obtained from IPECO Inc., 15201 South Prarie Avenue, Lawndale, California 90260, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Boston Aircraft Certivication Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to

participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments, in the Rules Docket at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89–ANE–28. The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that the backs on certain IPECO TSO–C39a crew seats have failed due to cracking. Failure of the backs could result in impairment of the pilot's ability to control the aircraft. Since this condition is likely to exist or develop on other crew seats of the same type design, the proposed AD would require inspection and modification of these crew seats.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves approximately 750 seats with the labor and materials costs to be covered under warranty by IPECO. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

*Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

IPECO: Applies to IPECO TSO–C39a crew seats, as follows:

Seat part number	Serial No. effectivity	Installed in but not limited to
3A090–0021–01–2	Up to and including 11009.	Boeing 737
3A090–0022–01–2		
3A090–0021–02–2		
3A090–0022–02–2		
3A090–0019–01–1	Up to and including 11115.	Boeing 737
3A090–0020–01–1		
3A090–0015–01–1	Up to and including 11143.	Boeing 757
3A090–0016–01–1		
3A090–0025–01–1	Up to and including 11054.	Boeing 757, 767
3A090–0026–01–1		
3A090–0054–01–1	Up to and including 11105.	Boeing 747–400
3A090–0054–01–1		
3A090–0027–01–1	Up to and including 11072.	Boeing 747
3A090–0028–01–1		
3A102–0003–01–1	Up to and including 11041.	Boeing 747–400
3A090–0055–01–1	Up to and including 11062.	Boeing 747–400
3A090–0056–01–1		
3A103–0003–01–1	Up to and including 11607.	Boeing 747–400
3A090–0017–01–1	Up to and including 10100.	Boeing 747
3A090–0018–01–1		
3A090–0065–01–1	Up to and including 11635.	Boeing 747–400
3A090–0066–01–1		
3A118–0003–01–1	Up to and including 11580.	Dehavilland DHC–7 and DHC–8
3A118–0004–01–1		

Compliance is required as indicated, unless already accomplished.

To prevent failure of the seat back structure, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, unless already accomplished within the last 90 days and, thereafter, at intervals not to exceed 120 days from the last inspection, visually inspect the seat assembly as follows:

(1) Remove seat pan cushion and back cushion from the seat assembly. Adjust the lumbar mechanism to the fully up, fully back position. Recline seat back to full recline.

(2) by looking through the lightening holes in the pan and back structure with a flashlight, examine the base of the back structure in the area where it attaches to the reclining mechanism. This area can be identified by the bracket at the base of the back structure. Return the seat back to its upright position and also examine the base of the back structure from the rear of the seat.

(3) If any cracks or deformation of the seat back structure are found, replace the seat assembly with a serviceable unit before further flight.

(4) When the repairs and modifications required by paragraph (b) have been accomplished, the repetitive visual inspections may be terminated.

(b) Within the next 15 months after the effective date of this AD, perform the repairs and modifications of the IPECO seat assemblies in accordance with the following service bulletins (SB):

IPECO SB No.	Applicable IPECO seat part numbers.
A001–25–29	3A090–0021–01–2 3A090–0022–01–2 3A090–0021–02–2 3A090–0022–02–2
A001–25–30	3A090–0019–01–1 3A090–0020–01–1
A001–25–31	3A090–0015–01–1 3A090–0016–01–1
A001–25–32	3A090–0025–01–1 3A090–0026–01–1
A001–25–33	3A090–0053–01–1 3A090–0054–01–1
A001–25–34	3A090–0027–01–1 3A090–0028–01–1
A001–25–35	3A102–0003–01–1

IPECO SB No.	Applicable IPECO seat part numbers.
A001-25-36	3A090-0055-01-1 3A090-0056-01-1
A001-25-37	3A103-0003-01-1
A001-25-38	3A090-0017-01-1 3A090-0018-01-1
A001-25-39	3A090-0065-01-1 3A090-0066-01-1
A001-25-40	3A118-0003-01-1 3A118-0004-01-1

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance time specified in this AD may be approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on August 11, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-19683 Filed 8-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ANE-05]

Airworthiness Directives; Rolls-Royce plc (R-R) Viper Mk.521, Mk.522, and Mk.601 Model Turbojet Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt an airworthiness directive (AD) that would establish reduced low cycle fatigue (LCF) retirement lives for stage 5 and 6 high pressure compressor (HPC) rotor disks in certain R-R Viper engines. The proposed AD is needed to prevent LCF failure of the subject disks, and possible uncontained engine failure.

DATES: Comments must be received on or before October 30, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-ANE-05, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket No. 87-ANE-05.

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Karen Grant, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7087.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 87-ANE-05. The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that the published LCF life limit for the stage 5 and 6 HPC rotor disks must be reduced from 14,225 cycles to 12,600 cycles. This determination is based on the findings of small cracks in the hirth coupling root radii of the stage 5 and 6 HPC rotor disks. Additional component rig testing accomplished by Rolls Royce has verified crack initiation in similar disks at life limits lower than originally predicted. Since this condition is likely to exist or develop on other engines of the same type design the proposed AD would require affected parts to be retired from service at or prior to reaching the reduced LCF life limit. Also, a removal from service schedule is provided for affected parts which are close to or at higher cycles than the reduced life limits.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves approximately 99 engines with an approximate total cost of $4,600.00 per engine. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected, since the proposed rule affects only operators using aircraft in which R-R Viper Mk.521, Mk.522, and Mk.601 turbojet engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, and Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Rolls-Royce: Applies to Rolls-Royce plc (R-R) Viper Mk.521, Mk.522, and Mk.601 turbojet engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of high pressure compressor (HPC) stage 5 and 6 disks, accomplish the following:

(a) Remove from service, HPC stage 5 and 6 disks, with the following part numbers (includes all Modification Standards): Viper Mk.521: V.20492, V.20494, V.27430, V.27433, V.39638, V.39639, V.39642, V.39643, V.39677, V.39678, V.39681, V.39682, V.42057, V.42059, V.46180, V.46181, V.46182, V.46204, V.46205, and V.46206; Viper Mk.522: V.20492, V.20494, V.27430, V.27433, V.39638, V.39639, V.39642, V.39643, V.39677, V.39678, V.39681, V.39682, V.42057, V.42059, V.46180, V.46181, V.46182, V.46204, V.46205, and V.46206; Viper Mk.601: V.42057, V.42059, V.44768, V.44769, V.44780, V.44781, V.46182, and V.46206, as follows:

(1) Disks which have accumulated 12,500 or more cycles since new, on the effective date of this AD, within the next 100 cycles in service.

(2) Disks which have accumulated less than 12,500 cycles since new, on the effective date of this AD, at or prior to accumulating 12,600 cycles since new.

Notes: (1) This action establishes new life limits of 12,600 service cycles for the parts noted above. The new limits are published in Chapter 5 of the Viper Mk.521, Mk.522, and Mk.601 Maintenance and Shop Manuals.

(2) Reference Rolls-Royce plc (R-R) Service Bulletins; No. 72-A154 for Viper Mk.601, and No. 72-A372 for Viper Mk.521 and Viper Mk.522 engines.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this proposed AD or adjustments to the compliance times specified in this proposed AD, may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on August 10, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-19684 Filed 8-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-142-AD]

Airworthiness Directives; Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 50 and 900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 50 and 900 series airplanes, which currently requires repetitive inspections of the main landing gear (MLG) door emergency release mechanism to detect broken or damaged unlocking pins, and replacement of the pins, if necessary. Broken or damaged unlocking pins, if not corrected, could prevent emergency extension of the MLG. This action would require installation of a modification of the emergency release mechanism of each MLG door uplock unit, which terminates the need for the repetitive inspections. This proposal is prompted by the development of new pin and lever which are not service life limited.

DATES: Comments must be received no later than October 13, 1989.

ADDRESSES: Send comments to the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-142-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. The applicable service information may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608.

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-142-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On February 24, 1989, the FAA issued AD 89-06-05, Amendment 39-6151 (54 FR 11163; March 17, 1989), applicable to Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 50 and 900 series airplanes, to require repetitive inspections of the main landing gear (MLG) door emergency release mechanism to detect broken or damaged unlocking pins, and replacement of the pins, if necessary. That action was promted by reports of the MLG door emergency unlocking pin breaking due to fatigue failure. This condition, if not corrected, could prevent emergency extension of the MLG.

Since issuance of that AD, the manufacturer has developed new pins and levers which are not service life limited. Avions Marcel Dassault-Breguet Aviation (AMD-BA) has issued Service Bulletin F50-208 (F50-32-18) Rev. 1, for the Model Falcon 50 series airplanes, and Service Bulletin F900-52 (F900-32-4) Rev. 1, for the Model Falcon 900 series airplanes, both dated July 25, 1989, which describes procedures for modification of the MLG manual emergency release mechanism of each MLG door uplock unit, which incorporates the improved pins and levers. The Direction Générale de L'Aviation Civile, which is the airworthiness authority of France, has classified both service bulletins as mandatory, and has issued Airworthiness Directive 89-041-007(B)R1 addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of these same type designs registered in the United States, an AD is proposed which would revise AD 89–06–05 to require modification of the MLG manual emergency release mechanism of each MLG door uplock unit, in accordance with the service bulletins previously described.

The service bulletins identify affected airplanes by serial numbers. These bulletins also specify that airplanes which have installed AMD–BA Modification F900 M1055B or M1055A (equipped with pins, Part Number FGFB793600180), and airplanes that have installed AMD–BA Modification M1596B or M1596A (equipped with pins, Part Number FGFB793600180) are affected. (The pins with that part number have a limited service life of 2,000 landings.) Accordingly, this proposal would revise the applicability of the existing AD by calling out those airplanes as listed in the service bulletins.

The FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is in consonance with that policy decision.

It is estimated that 171 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for parts is $645 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $192,375.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13. is amended by amending Amendment 39–6151 (54 FR 11163; March 17, 1989), AD 89–06–05, as follows:

Avions Marcel Dassault-Breguet Aviation (AMD–BA): Applies to Model Mystere Falcon 50 and 900 series airplanes, as listed in AMD–BA Service Bulletins F50–206, Rev. 1 and F900–52, Rev. 1 dated July 25, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent inability to open the main landing gear (MLG) door for MLG emergency extension, accomplish the following:

A. Prior to the accumulation of 1,000 landings on the MLG door emergency unlocking pin, or within 7 days after March 24, 1989 (the effective date of AD 89–06–05, Amendment 39–6151), whichever occurs later, verify the integrity of the MLG door emergency unlocking system by operating the manual opening system, in accordance with the instructions in the AMD–BA Falcon 50 or 900 series (as applicable) Maintenance Manual, Work Card 480.0, paragraph 3.

1. If the unlocking pin is broken or damaged, replace the pin with a serviceable pin of the same part number prior to further flight.

2. If the unlocking pin is not damaged, repeat the inspection prior to the accumulation of 2,000 landings. Replace broken or damaged pins in accordance with paragraph A.1., above.

B. Upon the accumulation of 2,000 or more landings on the MLG door emergency unlocking pin, repeat the inspection described in paragraph A., above, at intervals not to exceed 50 landings from last inspection. Replace broken or damaged pins in accordance with paragraph A.1., above.

C. Following the replacement of any unlocking pin with a new pin, repeat the inspection required by paragraphs A. and B., above, at the intervals specified. Replace broken or damaged pins in accordance with paragraph A.1., above.

D. Within 120 days after the effective date of this AD, modify the emergency release mechanism of each MLG door uplock unit in accordance with Service Bulletin AMD–BA/F900–52 (F900–32–4), Rev. 1, or AMD–BA/F50–32–4), Rev. 1 both dated July 25, 1989. Accomplishment of this modification constitutes terminating action for the inspections required by paragraphs A. through C. of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Standardization Branch, ANM–113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 14, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–19727 Filed 8–21–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89–ASO–36]

Proposed Revision of Transition Area, Lakeland, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Lakeland, FL, Transition Area in the vicinity of the Plant City Municipal Airport. A new standard instrument approach procedure (SIAP) has been developed to Runway 9 based on the Plant City nondirectional radio beacon (NDB). The radius of the transition area around the Plant City Municipal Airport would be increased from 5 to 6.5 miles and an arrival area extension would be added west of the airport. The additional controlled airspace is required for protection of instrument flight rule (IFR) aircraft executing the NDB Runway 9 SIAP to the Plant City Municipal Airport. Also, minor corrections would be made to the geographic position coordinates of the Bartow Municipal, Lakeland Municipal, and Winter Haven's Gilbert Airports.

DATES: Comments must be received on or before: October 6, 1989.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 89–ASO–36, P.O. Box 20636, Atlanta, Georgia 30320

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASO–36." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Lakeland, FL, transition area to enlarge the area around the Plant City Municipal Airport and add an arrival area extension west of the airport. This action is necessary to provide controlled airspace for protection of IFR aircraft executing a recently developed Runway 9 SIAP based on the Plant City NDB. Also, minor corrections would be made to the geographic position coordinates of Bartow Municipal, Lakeland Municipal, and Winter Haven's Gilbert Airports. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C 1348(a), 1354(a), 1510; Executive order 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Lakeland, FL [Revised]

That airspace extending upward from 700 feet above the surface within an 6.5-mile radius of Lakeland Municipal Airport (latitude 27°59'18" N, longitude 82°00'56" W); within a 7-mile radius of Bartow Municipal Airport (latitude 27°56'36" N, longitude 81°47'02" W); within a 6.5-mile radius of Plant City Municipal Airport (latitude 28°00'0" N, longitude 82°09'40" W); within 3 miles each side of the 266° bearing from the Plant City NDB (latitude 28°00'06" N, longitude 82°09'23" W), extending from the 6.5-mile radius area to 8.5 miles west of the NDB; within a 6.5-mile radius of Winter Haven's Gilbert Airport (latitude 28°03'25" N, longitude 81°45'25" W); within 2.5 miles each side of the Lakeland VORTAC 071° radial, extending from the 6.5-mile radius area to the Winter Haven's Gilbert Airport 6.5-mile radius area.

Issued in East Point, Georgia, on August 9, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89–19686 Filed 8–21–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89–ASO–35]

Proposed Designation of Transition Area, Greensboro, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Greensboro, GA, Transition Area. A Standard Instrument Approach Procedure (SIAP) has been developed to serve the Greene County Airpark Airport based on the Greensboro Nondirectional Radio Beacon (NDB). In order to provide controlled airspace for Instrument Flight Rules (IFR) aeronautical operations, it is necessary to lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. Concurrent with publication of the SIAP, the operating status of the airport would change from Visual Flight Rules (VFR) to IFR.

DATE: Comments must be received on or before: October 6, 1989.

ADDRESS: Send comments on the proposal in triplicate to:

Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-35, Atlanta, Georgia 30320

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-35." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR part 71) to designate the Greensboro, GA, Transition Area. This action would lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the Greene County Airpark Airport. A new NDB SIAP has been developed for the airport and the additional controlled airspace is necessary for protection of IFR aeronautical operations. If this action is approved, the operating status of the airport would change from VFR to IFR concurrent with publication of the SIAP. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Greensboro, GA, [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Greene County Airpark Airport (latitude 33°35'57"N, longitude 83°08'13" W); within three miles each side of the 072° bearing from the Greensboro NDB (latitude 33°35'41" N, longitude 83°08'27" W), extending from the 6.5-mile radius area to 8.5 miles east of the NDB.

Issued in East Point, Georgia, on August 9, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-19885 Filed 8-21-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-128-86]

RIN 1545-AK41

Minimum Coverage Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986.

DATES: The public hearing will be held on November 20, 1989, beginning at 10:00 a.m. Outlines of oral comments must be delivered by November 6, 1989.

ADDRESS: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, Attn: CC:CORP:T:R [EE-128-86], Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), Room 4429, 1111 Constitution Avenue NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 410(b) of the Internal Revenue Code of 1986. The proposed regulations appeared in the Federal Register for May 18, 1989 (54 FR 21437).

The rules of 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, November 6, 1989, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-19640 Filed 8-21-89; 8:45 am]

BILLING CODE 4830-01-M

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31 CFR Part 103

Office of the Assistant Secretary (Enforcement)

Proposed Amendment to the Bank Secrecy Act Regulations Relating to Identification Required to Purchase Bank Checks and Drafts, Cashier's Checks, Money Orders and Traveler's Checks

AGENCY: Department Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 6185(b) of title VI of the Anti-Drug Abuse Act of 1988, Public Law 100-690, November 18, 1988, prohibits financial institutions from issuing or selling cashier's checks, traveler's checks, money orders and bank checks in amounts of $3,000 or more in currency unless the financial institution verifies and records the identity of the purchaser as the Secretary of the Treasury shall prescribe in regulations. This is in addition to Treasury's authority in 31 U.S.C. 5313 to prescribe reports on domestic coins and currency. Treasury is proposing that financial institutions record this identifying information and maintain a chronological log or logs.

DATE: Comments are due on October 23, 1989.

ADDRESS: Comments should be sent to Amy G. Rudnick, Director, Office of Financial Enforcement, Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney Advisory, Office of the Assistant General Counsel (Enforcement), (202) 566-9947.

SUPPLEMENTARY INFORMATION: Section 6185(b) of title VI of the Anti-Drug Abuse Act of 1988 added a new section 5325 to the Bank Secrecy Act:

Section 5325 Identification Required to Purchase Certain Monetary Instruments

(a) *In General.* No financial institution may issue or sell a bank check, cashier's check, traveler's check, or money order to any individual in connection with a transaction or group of such contemporaneous transactions which involves United States coins or currency (or other such monetary instruments as the Secretary may prescribe) in amounts or denominations of $3,000 or more unless—

(1) The individual has a transaction account with such financial institution and the financial institution—

(A) Verifies that fact through a signature card or other information maintained by such institution in connection with the account of such individual; and

(B) Records the method of verification in accordance with regulations which the Secretary of the Treasury shall prescribe; or

(2) The individual furnishes the financial institution with such forms of identification as the Secretary of the Treasury may require in regulations which the Secretary shall prescribe and the financial institution verifies and records such information in accordance with regulations which such Secretary shall prescribe.

(b) *Report to Secretary Upon Request.* Any information required to be recorded by any financial institution under paragraph (1) or (2) of subsection (a) shall be reported to the Secretary of the Treasury at the request of such Secretary.

(c) *Transaction Account Defined.* For purposes of this section, the term "transaction account" has the meaning given to such term in section 19(b)(1)(C) of the Federal Reserve Act.

The legislative history indicates that Congress clearly felt that there was a need for this provision, because money launderers commonly purchase bank checks, cashier's checks, money orders and traveler's checks for amounts under $10,000. The House Committee Report noted that the only identification records required for persons who conduct currency transactions in amounts under $10,000 are those needed to open an account, thus permitting nonaccountholders to conduct currency transactions below $10,000 without having to identify themselves. The Committee indicated that it expected affected financial institutions to be "fully cooperative and responsive to this law enforcement effort." H. Rep. No. 100-716, 100th Cong., 2d Sess. 7.

Advance Notice of Proposed Rulemaking

On December 23, 1988 (53 FR 51846), Treasury published an Advance Notice of Proposed Rulemaking to solicit comments from the public on how best to implement this provision. In the Advance Notice, Treasury suggested that the best way to implement this new identification requirement might be by requiring a chronological log of the purchase of bank checks, cashier's checks, money orders and traveler's checks. One hundred fifty-six (156) comments were received from the public, primarily affected financial institutions, on how best to put this provision into effect.

Proposed Amendment

The comments covered a wide range of issues. Treasury has considered these ideas in formulating the regulation being proposed today. Treasury is proposing that a new section, "Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks" be added to the Bank Secrecy Act regulations, 31 CFR part 103. The section would require that all financial institutions subject to the Bank Secrecy Act regulations maintain a monthly chronological log or logs of their sales of bank checks and drafts, cashier's checks, money orders and traveler's checks to customers who purchase these instruments with currency in amounts of $3,000–$10,000 inclusive. If the purchaser has a transaction account (as that term is defined in § 103.11(p)) with the financial institution where the transaction is being conducted, the following information would be required on the log:

(1) The name of the purchaser;

(2) The number of the purchaser's account;

(3) The date of purchase;

(4) The branch where the purchase occurred; and

(5) The type(s), serial number(s), and the dollar amount of each of the instrument(s) purchased in currency.

In addition, the financial institution would be required to verify that the individual is an accountholder, either through a signature card on file or other record at the financial institution, if the accountholder's identity was verified at the time the account was opened, or at any subsequent time, and that information was recorded on the signature card or other file or record. The method of verification used shall be noted on the log, such as "checked computerized customer file system", or "checked signature card #124–890."

If the accountholder's identity was not verified previously, then the accountholder must be treated as a nonaccountholder for purposes of verification of identity only. The financial institution in that case shall verify the accountholder's name and address by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and shall record that specific identifying information on the log (*e.g.*, State of issuance and number of driver's license). Because a credit card normally does not contain a name and address of the credit card holder, a credit card alone generally would not be an adequate form of identification. The financial institution then may add that identifying information to its records so that the accountholder need not be required to produce identification for subsequent purchases of these instruments.

If the purchaser is a nonaccountholder, then the financial institution shall record the following information on the log:

(1) The name and address of the purchaser;

(2) The social security number of the purchaser, or if the person is an alien without a social security number, the purchaser's alien identification number;

(3) The date of birth of the purchaser;

(4) The date of purchase;

(5) The branch where the purchase occurred;

(6) The type(s), serial number(s) and dollar amount of the instrument(s) being purchased;

(7) For cashier's checks and bank checks or drafts, the payees on the instrument(s) purchased;

(8) The amount of the purchase in currency; and

(9) If the individual is purchasing the instrument for a third person, the name of the person on whose behalf the instrument is being purchased and the account number of that third party if the third person is an accountholder at the institution. If the third person is not an accountholder, then the name, address and social security number, taxpayer identification number or alien identification number of the third party shall be noted on the log.

In addition, for all nonaccountholders, the financial institution shall verify the purchaser's name and address by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and record that specific identifying information on the log (*e.g.*, State of issuance and number of driver's license). Again, because of credit card normally does not contain a name and address of the credit card holder, a credit card alone generally would not be an adequate form of identification.

Contemporaneous purchases of the same or different types of instruments totaling $3,000 or more would be treated as one purchase. Contemporaneous means originating, existing or happening at the same time. In addition, Treasury is using its general Bank Secrecy Act authority under 31 U.S.C. 5313 to propose that multiple purchases during the same business day by the same person be treated as one purchase if an individual employee, officer, director or partner of the financial institution has knowledge that the purchases have taken place or there is knowledge on the part of the financial institution's computer system that the purchases have taken place. Financial institutions do not have to purchase new hardware or software computer system to comply with this requirement. They may, but are not required, to change any of their computer programs or manual systems presently in place.

The financial institution may keep a single centralized chronological log or it may maintain individual chronological logs by branch. A separate chronological log for each type of instrument sold or issued also is permissible. If the financial institution maintains individual logs by branch, the financial institution must send those logs to a central location by the fifteenth day after the end of the calendar month for which the log was compiled. The logs need not be integrated with each other; they merely must be kept in one place. This will make it easier for both the financial institution and the Treasury Department when it requests information from the financial institution about its sales of these instruments.

Finally, the proposed regulation states that the Treasury Department may request the information at any time. The financial institution must provide the information, whether the log is at the central location or still is at the branch, even though the information is not required to be forwarded to the centralized location until fifteen days after the close of the calendar month.

Need for a Log

Treasury considered alternatives types of logs suggested in the comments to the Advance Notice. These alternatives included compiling a quarterly or yearly report, keeping the information on a copy of the instrument, or requiring a new standardized form. After considering these alternatives, Treasury decided to propose that financial institutions maintain a chronological log or logs by institution or branch because this alternative provided the most effective method of keeping the information required by the Secretary under section 5325 in one place, and easily accessible by both the financial institution and the Treasury Department. At the same time, it permits some flexibility for the financial institutions. Recording the information only on a copy of the instrument itself in many instances would force a financial institution to sift through thousands of documents from its many branches in order to comply with a request for the information from the Treasury Department. Also, while financial institutions may maintain copies of some of the money orders, traveler's checks, bank checks or drafts or cashier's checks they sell or issue, they do not maintain copies of all the noted instruments they sell or issue, and, indeed, may keep different kinds of records for each of the instruments included. A quarterly or yearly report also was rejected because the information would not be as readily accessible by Treasury as a monthly log. Finally, Treasury rejected the idea of requiring financial institutions to use a standardized form because it believes that financial institutions should be given some flexibility in the way the information is recorded and the format of the required information. Thus, each financial institution would be free to develop its own standardized form for internal use, if it so desired.

Treasury wishes to minimize any delay in the completion of transactions or the holding up of customer lines while the financial institution completes a log entry. The required information may be noted on a copy of the instrument or other record associated with the instrument, and later transferred to a log after the purchase is concluded, at the end of the day, or, if kept at a branch, at the end of the month before the logs are sent to the centralized location. For example, many banks sell cashier's checks and require the purchaser to fill out an application prior to issuing the check. The required information could be noted on the application. After the customer leaves, the information could than be transferred to the log. Or, if it is a branch bank that maintains its own log and sends its logs to a centralized location, it could prepare the log at the end of the month prior to forwarding it to the bank's centralized location.

Financial institutions should be aware, however, that Treasury has the right to request this information at any time. Thus, if Treasury requests information on sales of these instruments at an institution that records the information initially on another type of record and then transfers it to a log at a later date, the financial institution will have to be able to retrieve that information at any time after the purchase, even if it is not entered yet on the log.

For those financial institutions that keep branch log or logs, the logs may be kept at the branch during the calendar month. The logs must be sent to the financial institution's centralized location within fifteen (15) days after the end of the month.

The logs of purchases do not need to be formatted in any particular way, as long as all the required information is contained on the log. Some financial institutions may choose to maintain logs with the name of the branch, the date of purchase, and/or the type of instrument at the top of each page of the log; if so, then that information does not need to be repeated for each individual purchase.

In addition, financial institutions may maintain separate logs for each different type of instrument. The logs need not be integrated, at the branch level or at the centralized level, as long as the logs are all kept in one centralized place at the financial institution. For financial institutions that have branches all over the country, such as a telegraph or traveler's check company or a national securities dealer, the financial institution may centralize the logs by State, as opposed to one place for the entire country. However, a list of all such locations must be made available to the Treasury Department upon request.

Instruments and Transactions Covered

Treasury is proposing that purchases of all types of official bank checks and drafts be included in the identification requirement not just those that a bank may officially label "bank check" or "cashier's check." Foreign drafts, so-called "New York" drafts and Treasurers checks all are types of bank checks and, hence, they specifically are included within the requirements of this section.

In addition, in reliance on Treasury's authority in 31 U.S.C. 5313, the proposed regulation would cover all types of currency used to purchase these instruments, not just "United States coin and currency" as noted in section 5325. This would conform the proposed regulation more closely to the present definition of "currency" in the Bank Secrecy Act regulations, 31 CFR 103.11(d), and would close a potential loophole whereby purchasers could circumvent the requirements of this section merely by using foreign currency to purchase these instruments. Financial institutions should note that proposed regulation is applicable only to currency purchases of these instruments, and does not include debits to accounts or purchases with checks.

The proposed regulation is applicable to all contemporaneous purchases of all types of the instruments listed in the proposed regulation. Contemporaneous means occurring in the same period of time. This means that currency purchases totaling between $3,000 and $10,000 inclusive that occur at the same time of the same type of instrument (*e.g.*, two $2,500 currency purchases of traveler's checks) would be included as well as purchases that occur at the same time of different types of instruments totaling between $3,000 and $10,000 inclusive (*e.g.*, a $5,000 currency purchase of a $2,500 cashier's check and $2,500 in traveler's checks).

In addition, Treasury is using its authority under 31 U.S.C. 5313 to propose that the regulation also cover currency purchases of instruments totaling between $3,000 and $10,000 inclusive within the course of a business day if a financial institution has knowledge that this has occurred. Treasury feels that this is necessary to avoid easy evasion of the identification requirement by those who simply lower their purchases to below $3,000 and continue to make repeated purchases of these instruments in currency during the course of a business day at the same financial institution. This proposal does not require a financial institution to purchase computer systems, or purchase additional hardware or software systems for their existing computers in order to comply. If the financial institution does not have a computer or manual system that would capture that information, the financial institution instead will have to rely on the knowledge of individual employees, officers, directors or partners of multiple purchases.

For example, if a customer goes to different counters in the financial institution in order to purchase multiple bank checks or drafts, cashier's checks, money orders or traveler's checks and an employee at the financial institution knows that the customer is purchasing or has purchased several different types of instruments at different windows during one business day, those transactions must be aggregated and the identification requirement complied with if the total purchases are $3,000 or more in currency. This knowledge may come about because an employee sends the customer to several windows in order to make the purchases, or assists in making the different purchases for the customer while the customer waits. There also may be situations where an employee observes a customer come into the financial institution more than once during one business day and make currency purchases totaling between $3,000 and $10,000 inclusive of several of these instruments. Because the employee in that situation has knowledge of the multiple transactions, the financial institution must obtain identification before completing the last transaction.

Exemptions Prohibited

Some commenters to the Advance Notice of Proposed Rulemaking requested that Treasury permit exemptions to the identification requirements in certain instances. Treasury will not permit any exemptions to the requirements. The exemptions to the Bank Secrecy Act reporting requirements that now exist generally are for transactions affecting accounts. Transactions that would be subject to this identification requirement are currency purchases of these instruments and generally will not affect any account. Treasury sees no need to expand the exemption privilege in this instance.

Identification Requirements

In identifying accountholders, a financial institution will be permitted to check its records or files, including its computer system, to verify that the person conducting the purchase indeed is an accountholder and to note the method of verification, *e.g.*, "checked computerized customer file records" or "checked signature care #123–67". However, the financial institution may rely on its record, file or computer system only if the accountholder's identification was verified at the time the account was opened, or at any subsequent time thereafter, and that information was recorded in the financial institution's filed or records. Thus, in order to rely on the system, a financial institution must have verified the identity of the accountholder at the time the account was opened, or at any other subsequent time, by examination of a document containing a name and address, normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (such as a driver's license), and record that specific identifying information used in verifying the customer's identity in the financial encourages financial institutions that open accounts for customers to verify the identity of the person at the time the account is opened.

If a financial institution has not identified its accountholders at the time the account is opened or at any subsequent time, then it must follow the procedures required for identifying nonaccountholders, which are similar to the requirements of 31 CFR 103.27. This means that the financial institution must examine a document that contains the name and address of the purchaser and that normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and record that specific identifying information on the log (*e.g.*, State of issuance and number of a driver's license.) As noted above, because a credit card normally does not contain the card holder's name and address, a credit card alone generally will not be a sufficient means of identifying the purchaser. Once the financial institution does obtain identifying information, however, it may add this information to the signature card or other record and may rely upon it in the future. The financial institution does not have to obtain the other information required for purchases by nonaccountholders, such as social security numbers or dates of birth.

In addition, because Treasury is aware that many money launderers hire others to make these purchases for them, Treasury is using its authority under 31 U.S.C. 5313 in order to require instruments for another person with $3,000 to $10,000 inclusive in currency, the financial institution must record the name and account number of that third party, or if the third party is not an accountholder, then the financial institution will record the name, address and the social security number, taxpayer identification number or alien identification number of the third person.

Treasury notes that not all financial institutions offer transaction accounts within the definition in section 103.11. Indeed, most nonbank financial institutions, such as check cashers and sellers of money orders, do not. Therefore, Treasury expects that most nonbank financial institutions will have to use the nonaccountholder identification procedures whenever they sell bank checks or drafts, cashier's checks, money orders or traveler's checks to purchasers doing so with $3,000 to $10,000 inclusive in currency.

Miscellaneous Issues

The record retention period for these records would be five years which is the same retention period for all Bank Secrecy Act records. 31 CFR 103.38(d).

Some commenters to the Advance Notice suggested that there may be Right to Financial Privacy Act problems with these logs in that the logs might contain information on purchasers other than those covered by the regulation, for example, currency purchases of these instruments totaling less than $3,000. Treasury notes that to the extent that a financial institution adds extraneous material to the log, it is the financial institution's responsibility either to delete the information not required by the regulation prior to providing the information to Treasury or to assume any risk in including the information. Treasury notes that recording this information for purchases over $10,000 and providing the information to Treasury upon request does not violate the Right to Financial Privacy Act, because that information already is required to be reported to the Treasury Department on a Currency Transaction Report pursuant to § 103.22.

Some commenters to the Advance Notice asked how this requirement would interact with the reporting requirements of section 103.22. For example, if a person makes a $6,000 currency deposit to his checking account and at the same time purchases a $7,000 cashier's check with $7,000 in currency, financial institutions wondered whether they would be required to file a Currency Transaction Report and maintain a record of the purchase of the cashier's check. Under 31 CFR 103.22(a), the financial institution would be required to file a Currency Transaction Report because the transaction involves currency in excess of $10,000. In addition, the financial institution would be required to record the information necessary to complete the log. This is because the reporting and recordkeeping regulations are separate requirements and both requirements must be observed.

Treasury believes that the information required by the new regulation will be useful in identifying individuals who conduct currency transactions to evade the reporting requirements by purchasing instruments below $10,000. This information is useful to law enforcement officials who are conducting money laundering and other investigations. In addition, it is believed that by requiring identification for purchases at $3,000 and above, money laundering will be deterred.

Treasury encourages financial institutions to report suspicious activity by persons that the financial institution believes may be taking actions to evade the reporting requirements of § 103.22 or the identification requirements of this regulation. Some examples of activity that might be considered suspicious include a reluctance on the part of the customer to produce identification, a customer taking back part of the currency to reduce the purchase to below $3,000, or a customer coming into the same institution on consecutive or near-consecutive business days, as observed by the financial institution employee, and purchasing bank checks, cashier's checks, traveler's checks or money orders in amounts of less than $3,000. *See* BSA Administrative Ruling 88–1, dated June 22, 1988, printed at 53 FR 40062 (October 13, 1988). Financial institutions do not want to be abused by the money laundering or the tax evader; Treasury urges financial institutions to know their customers to avoid becoming involved inadvertently in illegal activity.

Finally, financial institutions should note that they do not have to institute any new procedures or change their present procedures to comply with this requirement until a Final Rule is effective.

Submission of Comments

Treasury requests comments from all interested persons concerning the proposed amendments. While Treasury welcomes comments on all aspects of the proposal, it particularly is interested in receiving comments on the following issues:

—What procedures do financial institutions follow now in issuing or selling bank checks or drafts, cashier's checks, money orders or traveler's checks? To what extent are the procedures different if the purchaser is an accountholder as opposed to a nonaccountholder?

—Do financial institutions have restrictions on the number or amounts of instruments that they will sell to a customer, either an accountholder or nonaccountholder, on one business day for currency?

—How long, from the date the final regulation is issued, will financial institutions need to implement this regulation?

All comments received before the closing date will be carefully considered. Oral comments must be reduced to writing and submitted to Treasury to receive consideration. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. The Treasury Department will not recognize any materials or comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in comments. All comments submitted will be available for public inspection during the hours that the Treasury Library is open to the public. The Treasury Library is located in Room 5030, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Appointments must be made to view the comments. Persons wishing to view the comments submitted should contact Dorothy Lane of the Office of Financial Enforcement at (202) 566–8022.

Executive Order 12291

This proposed rule, if adopted as a final rule, is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information contained in this Notice of Proposed Rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information and the burden estimate should be directed to the Office of Financial Enforcement at the address noted above or to the Office of Management and Budget, Paperwork Reduction Project (1505–0063), Washington, DC 20503.

The collections of information in this regulation are required and authorized by 31 U.S.C. 5313 and 31 U.S.C. 5325. This information is required by Treasury to identify persons purchasing bank checks and drafts, cashier's checks, money orders and traveler's checks with currency between $3,000 and $10,000 inclusive. This information will be used to detect and deter money laundering and other criminal, tax and regulatory violations. The likely respondents/recordkeepers are financial institutions who sell or issue bank checks or drafts, cashier's checks, money orders or traveler's checks to persons who purchase these instruments with between $3,000 and $10,000 inclusive.

Estimated number of recordkeepers: 30,000.

Estimated average annual burden per recordkeeper: 7.5 hours.

Estimated record retention period per recordkeeper: 5 years.

Estimated total annual recordkeeping burden: 225,000 hours.

Estimated number of respondents: 5,000.

Estimated hours per response: .33 hour.

Estimated annual frequency of responses: 1.

Estimated total annual response burden: 1,650 hours.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendment

For the reasons set forth below in the preamble, it is proposed to amend 31 CFR Part 103 as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 would continue to read as follows:

Authority: Pub. L. 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1730d, 1829b and 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5326).

2. It is proposed to add after section 103.27 a new § 103.28 to read as follows:

§ 103.28 Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.

(a) Each financial institution shall maintain a chronological log for each calendar month on which shall be recorded the following information for each issuance or sale of bank checks or drafts, cashier's checks, money orders or traveler's checks to any individual purchaser which involves currency in amounts of $3,000–$10,000 inclusive:

(1) If the purchaser has a transaction account with the financial institution:

(i)(A) The name of the purchaser;

(B) The number of the purchaser's account;

(C) The date of purchase;

(D) The branch where the purchase occurred;

(E) The type(s) of instrument(s) purchased;

(F) The serial number(s) of each of the instrument(s) purchased; and

(G) The dollar amount of each of the instrument(s) purchased in currency.

(ii) In addition, the financial institution shall verify that the individual is an accountholder, either through a signature card or other file or record at the financial institution, if the accountholder's name and address were verified at the time the account was opened, or at any subsequent time, and that information was recorded on the signature card or other file or record. The method of verification used shall be noted on the log. If the accountholder's identity has not been verified previously, then the financial institution shall verify the accountholder's identity by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and shall record the specific identifying information on the log (*e.g.*, State of issuance and number of driver's license).

(2) If the purchaser does not have a transaction account with the financial institution:

(i)(A) The name and address of the purchaser;

(B) The social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, then the alien identification number;

(C) The date of birth of the purchaser;

(D) If the individual is purchasing the instrument(s) on behalf of another person, the name of the person on whose behalf the instrument is being purchased and the account number of that third party; if there is no account number, then the name, address and social security number, taxpayer identification number, or alien identification number of such person;

(E) The date of purchase;

(F) The branch where the purchase occurred;

(G) The type(s) of instrument(s) purchased;

(H) The serial number(s) of each of the instrument(s) purchased;

(I) The dollar amount of each of the instrument(s) purchased;

(J) The payee(s) on each of the instrument(s) purchased (for cashier's checks and bank checks and drafts); and

(K) The amount of the purchase in currency.

(ii) In addition, the financial institution shall verify the purchaser's name and address by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and shall record the specific identifying information on the log (*e.g.*, State of issuance and number of driver's license).

(b) Contemporaneous purchases of the same or different types of instruments totaling $3,000 or more shall be treated as one purchase. Multiple purchases during one business day totaling $3,000 or more shall be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred.

(c) The financial institution may maintain a single centralized chronological log or it may maintain separate chronological logs by branch. A financial institution also may keep a separate chronological log for each type of instrument sold. If the financial institution maintains a separate chronological log or logs for each branch, all of the branch logs for a calendar month must be sent to a centralized location by the fifteenth (15th) day after the end of the calendar month for which the log was compiled. Financial institutions with branches in more than one State may centralize the logs by State. A list of the centralized locations and branches shall be available to the Secretary upon request.

(d) Chronological logs shall be retained by the financial institution for a period of five years.

(e) The chronological logs shall be available to the Secretary upon request at any time.

Dated: August 4, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89–19701 Filed 8–21–89; 8:45 am]

BILLING CODE 4810-25-M

POSTAL SERVICE

39 CFR Parts 775, 776

Amendments to Environmental Procedures and Procedures for Floodplain Management and Protection of Wetlands

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The purpose of the proposed amendments to part 775 is to clarify, update, and in some respcts extend the situations in which the Postal Service does not prepare environmental assessments under its facilities program. The revised exclusions draw on experiences over the past five years with numerous facility projects and accommodate new acquisition techniques such as advance site acquisitions.

Certain changes are also proposed in the Postal Service's facility planning procedures for floodplains and wetlands (part 776), but these changes are not intended to change the scope or level of review required.

DATES: Written comments must be received by September 21, 1989.

ADDRESS: Written comments must be sent to Director, Office of Facilities Planning and Management, Facilities Department, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Room 4126, Washington, DC 20260-6420. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 4130 at the above address.

FOR FURTHER INFORMATION CONTACT: Edward Wandelt, (202) 268-3135.

SUPPLEMENTARY INFORMATION: The United States Postal Service conducts environmental reviews for proposed facility actions through procedures outlined in 39 CFR 775, Environmental Procedures. These procedures define the types of facility projects for which the Postal Service prepares environmental assessments. Regulations concerning floodplains and wetlands appear in 39 CFR 776.

The categories of projects for which an environmental assessment is normally not done (referred to as categorical exclusions in § 775.4(b)) are being revised in order to clarify, update, and extend them.

Section 775.4(b)(1) is being replaced with new § 775.4(b)(1) and § 775.4(b)(5) to accommodate new real estate techniques such as landbanking and advance acquisition of sites. Advance site acquisition is used in "tight" real estate markets or to take advantage of real estate opportunities. Landbanking is used to acquire land in high-growth areas, where a future need for facilities is anticipated but specific needs or projects have not been identified. The revised criteria do not provide for environmental assessments for advance site acquisition and acquisition of land under landbanking procedures because the process of acquisition does not have environmental impacts. However, any plan for us or disposal of such land would be subject to applicable review requirements under this section.

New § 775.4(b)(2) is added, and the first part of § 775.4(b)(3) is amended to account for length of occupancy. Also, the former test for exclusion that there be no "enlarged occupancy" is changed to require that there be no "significant" change in the use of the property. Under proposed § 775.4(b)(2) those buildings acquired through purchase, lease, or exchange under 50,000 net interior square feet with occupancy of more than 90 days would not require an environment assessment. Under proposed § 775.4(b)(3) leasing buildings of any size for occupancy of 90 days or less would not require an environmental assessment. Temporary occupancies are viewed as not having environmental impacts of a nature warranting an environmental assessment.

Current § 775.4(b)(2) is renumbered § 775.4(b)(4) and amended to propose that the expansion or improvement of an existing postal facility would not involve an environmental assessment unless the gross square footage is to be increased 30,000 square feet or more. The revision conforms this threshold with that for the construction of a new building and reflects postal experience that renovation projects below this threshold do not involve significant environmental impacts.

The second part of current § 775.4(b)(3) is renumberd § 775.4(b)(10) and amended to refer to planned postal uses, instead of the size of the operation.

Current § 775.4(b)(4) is renumbered § 775.4(b)(7).

Current § 775.4(b)(5) is renumbered § 775.4(b)(9) and amended to provide an exclusion for disposal of improved real estate either through sale or outlease involving under 30,000 net interior square feet.

Section § 775.4(b)(6) is amended to provide that routine protection and maintenance of properties are excluded unless they alter the configuration of the building.

Current § 775.4(b)(7) is renumbered § 775.4(b)(15).

An exclusion is being proposed as new § 775.4(b)(8) for obtaining, granting, disposing, or changing easements, licenses and permits, and similar interests, since no environmental impacts have been associated with these actions.

Current § 775.4(b)(8) is renumbered § 775.4(b)(13) and amended to add an exclusion for the procurement or disposal of mail handling equipment. Experience has shown that the procurement and disposal of mail handling equipment does not involve environmental impacts.

Current § 775.4(b)(9) is renumbered § 775.4(b)(14).

An exclusion is proposed as new § 775.4(b)(11) for the extension, renewal, renegotiation, or termination of existing lease agreements. Again, experience has shown that these actions do not create environmental impacts.

An exclusion is proposed as new § 775.4(b)(12) for joint development and/or joint-use projects involving construction under 30,000 net interior square feet. Experience has shown that the degree of impacts does not differ whether construction within this limit is for ownership or lease.

Section § 775.6(a)(1)(ii) is being amended to make reference to a set of internal review procedures for assisting in the determination of extraordinary circumstances, which, if found, would lead to a preparation of an environmental assessment. In addition, § 775.6(b)(3) would be changed to make it clear that under appropriate circumstances, continued control of competing sites for purposes of this regulation could be accomplished by advance acquisition.

In the EIS evaluation process, the reference to "worst-case" analysis of alternatives in § 775.8(b)(6) would be replaced with a requirement to evaluate alternatives based on reasonably foreseeable future conditions. This change is made to be consistent with changes made in regulations of the Council on Environmental Quality. See 40 CFR 1502.22(b).

The Postal Service's planning process for facilities projects no longer requires the preparation of studies entitled "Site Planning Report" and "Economic Analysis Report," the names used in part 776. Changes are proposed to require that the same information be collected and analysis performed, and the same determinations made, without specifying the names of the analytical documents. Other changes would conform the regulations more closely to Executive Orders on floodplains and wetlands.

In view of the above considerations, the Postal Service proposes to amend 39 CFR parts 775 and 776 as follows:

List of Subjects in 39 CFR Parts 775 and 776

Environmental Assessments, Environmental Impact Statements, Floodplain Management and Protection of Wetlands Procedures.

PART 775—ENVIRONMENTAL PROCEDURES

1. The authority citation for Part 775 continues to read as follows:

Authority: 39 U.S.C. 401; 42; 42 U.S.C. 4331 *et seq.*; 40 CFR 1500.4(p).

2. Section 775.4(b) is revised to read as follows:

§ 775.4 Typical classes of action.

* * * * *

(b) *Categorical exclusions.* The classes of action in paragraphs (b) (1) through (15) of this section normally do not require either an environmental assessment or an environmental impact statement. However, the responsible official must be alert to unusual conditions that would require an environmental assessment or an environmental impact statement notwithstanding the applicability of a categorical exclusion to particular action.

(1) New construction, Postal Service owned, including site acquisition by any method, or Postal Service leased, of less than 30,000 net interior square feet.

(2) Acquisition by purchase, lease, or exchange, of existing buildings containing less than 50,000 net interior square feet with occupancy of greater than 90 days where planned postal uses do not differ significantly from past uses of the site.

(3) Lease of existing buildings of any size for occupancy of 90 days or less.

(4) Expansion or improvement of an existing facility where the expansion does not exceed 30,000 net interior square feet.

(5) Acquisition of unimproved real property not connected to specific facility plans or when necessary to protect the interests of the Postal Service in advance of final project approval. This categorical exclusion applies only to the acquisition. Any subsequent use of the property for a facility project must be considered under this part without regard to ownership of the real property.

(6) Routine actions normally conducted to protect and maintain properties and which do not alter the configuration of the building.

(7) Repair to, or replacement-in-kind of, building equipment or components (e.g., electrical distribution, HVAC systems, doors, windows, roofs, etc.).

(8) Obtaining, granting, disposing, or changing of easements, licenses and permits, rights-of-way and similar interests.

(9) Disposal through sale or outlease of unimproved real property of any size or improved real estate under 30,000 net interior square feet.

(10) Purchase of Postal Service occupied leased property where planned postal uses do not differ significantly from past uses of the site.

(11) Extension, renewal, renegotiation, or termination of existing lease agreements.

(12) Joint development and/or joint-use projects involving construction under 30,000 net interior square feet.

(13) Procurement or disposal of motor vehicles not involving a substantial increase in the concentration of vehicles in a geographic impact area. Procurement or disposal of mail handling equipment.

(14) Postal rate or mail classification actions.

(15) Postal facility function changes not involving construction, the relocation of a substantial number of employees, or a substantial increase in the number of motor vehicles at a facility.

3. In § 775.6, in the introductory text of paragraph (b)(3), add after the word "sites," the following: "(including advance acquisition, if necessary, and

where authorized by postal procedures),"; revise paragraphs (a)(1)(ii) and (b)(3)(ii) to read as follows:

§ 775.6 Environmental evaluation process.

(a) * * *

(1) * * *

(ii) The action is not affected by extraordinary circumstances which may cause it to have a significant environmental effect. This part of the determination may be supported by completion of an environmental checklist (referred to as a level I environmental review in the Handbook RE–6) for certain types of categorical exclusions.

* * * * *

(b) * * *

(3) [Amended]

* * * * *

(ii) The continued control of specified competing sites, (including advance acquisition, if necessary, and where authorized by postal procedures) chosen to preserve environmental or other options, and

* * * * *

§ 775.8 [Amended]

4. In § 775.8(b)(6), remove the second sentence and insert in its place the following: "There must be included in the statement an analysis of alternatives based on reasonably foreseeable conditions in the future and an indication of the probability or improbability of their occurrence."

PART 776—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS PROCEDURES

5. The authority citation for part 776 continues to read as follows:

Authority: 39 U.S.C. 401.

§ 776.4 [Amended]

6. In § 776.4, remove paragraphs (c) and (d).

§ 776.5 [Amended]

7. In § 776.5, remove the word "locating" from the introductory text of paragraph (i) and insert in its place "constructing"; and revise the heading and text of paragraphs (a) and (d), the heading and introductory text of paragraph (e), paragraph (e)(1), the introductory text of paragraph (f), paragraph (f)(1), paragraph (f)(4), paragraph (f)(5), and paragraph (h) to read as follows:

§ 776.5 New construction.

(a) *Construction of floodplain/wetland.* During the evaluation of contending sites for a proposed project, information concerning impacts on wetlands and floodplains will be collected and considered. If use of a site would require construction in a floodplain or wetland, the site may be considered only when there is no practicable alternative site.

* * * * *

(d) *Site planning.* During site evaluation, a determination must be made whether any of the identified site alternatives would require construction in, or appear to have an impact on, a floodplain or wetland. This information will be included as part of any required Environmental Assessment.

(e) *Analysis of alternatives.* If any of the site alternatives identified under paragraph (d) of this section would involve construction within a floodplain or wetland, an analysis of alternatives must be prepared, and must include:

(1) Alternate sites as identified in the site planning process;

* * * * *

(f) *Reevaluation.* If, after consideration of information and analyses produced under paragraphs (b), (d), and (e) of this section, and (if required) review through an Environmental Assessment or Environmental Impact Statement, the determination is that there appears to be no practicable alternative to locating in a floodplain or wetland, a final reevaluation of alternatives must be conducted. The Facilities Service Center Director is responsible for this reevaluation. To facilitate this reevaluation, the following data must be submitted to the Facilities Service Center Director:

(1) A summary of reasons why the rejected alternatives and alternative sites, if any, were considered impracticable.

* * * * *

(4) Documentation from the site evaluation and planning process.

(5) The Environmental Assessment or Environmental Impact Statement, if either was required.

* * * * *

(h) If the Facilities Service Center Director determines that there is not a practicable alternative to constructing in a floodplain or wetland, the appropriate Postal Service organization is so advised. The Director may provide instructions for mandatory measures to be accomplished during design and construction to minimize harm to the floodplain or wetland.

(i) [Amended]

* * * * *

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89–19702 Filed 8–21–89; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 91; FRL–3633–3]

Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces that the Environmental Protection Agency is proposing to approve a revision to the New Jersey State Implementation Plan (SIP) for ozone. This revision was prepared by the New Jersey State Department of Environmental Protection pursuant to a SIP commitment to reduce ozone levels in the State of New Jersey, as required under Section 110 and Part D of the Clean Air Act. Today's notice proposes to incorporate into the New Jersey SIP a revised regulation, New Jersey Administrative Code 7:27, Subchapter 16 "Control and Prohibition of Air Pollution by Volatile Organic Substances," which will reduce violatile organic compound emissions resulting from the refueling of motor vehicles at certain gasoline stations in the State of New Jersey.

COMMENTS: Comments must be received by September 21, 1989.

ADDRESSES: All comments should be addressed to:

William J. Muszynski, P.E., Acting Regional Administrator, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278.

Copies of the SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278

New Jersey State Department of Environmental Protection, Division of Environmental Quality, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, (212) 264–2517

SUPPLEMENTARY INFORMATION:

Background

In its most recent comprehensive State Implementation Plan (SIP) revision for ozone, which was submitted to the Environmental Protection Agency (EPA) on September 26, 1983 and approved by EPA on November 8, 1983 (48 FR 51472), the State of New Jersey committed to adopt a number of measures to control the emissions of volatile organic compounds (VOCs) into the ambient air. These control measures included source categories covered by EPA's Control Techniques Guidelines (CTGs), larger sources not covered by a CTG, as well as, control measures considered by New Jersey as reasonably available and those considered as "extraordinary." These measures would provide additional VOC emission reductions needed to attain the National Ambient Air Quality Standard (NAAQS) for ozone. One of these control measures is "Stage II Vapor Controls," the subject of this notice.

Whenever gasoline is transferred or stored, gasoline vapors can be released to the atmosphere. The collection and control of these fugitive gasoline vapors at storage facilities, terminals, and the loading of gasoline service station tanks is called Stage I vapor controls. Because emissions due to this bulk loading and unloading of gasoline are controlled at every point during its shipment (i.e., from storage and loading facilities to the tank truck, and from the tank truck to the service station storage tank), the control of the emissions due to the refueling of vehicles at gasoline service stations is the remaining uncontrolled link in the fuel distribution system.

State Submittals

On February 22, 1988, the New Jersey Department of Environmental Protection (NJDEP) submitted to EPA adopted revisions to Chapter 27, Title 7 of the New Jersey Administrative Code (N.J.A.C. 7:27) Subchapter 16 "Control and Prohibition of Air Pollution by Volatile Organic Substances" (Subchapter 16), which New Jersey had adopted and made effective as of February 22, 1988. On April 18, 1988 the State submitted information on test procedures which will be used to determine compliance with the revised provisions of Subchapter 16.

These revisions add to Subchapter 16 requirements for the control of gasoline vapors resulting form the refueling of vehicle fuel tanks at gasoline service stations. When vehicle fuel tanks are refilled, the air inside the tank is displaced and forced out into the atmosphere. This air is heavily saturated with gasoline vapors which are VOCs that contribute to the ozone nonattainment problem.

The control systems required under Subchapter 16, known as Stage II controls, are those that NJDEP determines are capable of capturing at least 95 percent of this vapor laden air before it enters the atmosphere. The vapor control system must be approved by the NJDEP and must be composed of equipment that has been certified by the California Air Resources Board (CARB). In addition, it must be designed to prevent overfilling and spillage of gasoline.

Subchapter 16 applies to any existing gasoline service station whose average monthly throughput, between September 1, 1986 and August 31, 1987, exceeds 10,000 gallons. It also applies to all new stations regardless of gasoline throughput. Each station owner must maintain records of the gasoline throughput. For each station required to be controlled a permit to construct a Stage II system must be submitted to and approved by the NJDEP. After construction of its system, a service station must pass mandatory pressure and blockage tests.

The schedule for service stations to comply with the Stage II provisions are dependent on the stations throughput. Those stations with an average monthly throughput of 40,000 gallons or greater must be in compliance by December 30, 1988. Those stations with an average monthly throughput of less than 40,000 gallons and exceeding 10,000 gallons must be in compliance by December 29, 1989. Stations constructed after February 21, 1988 regardless of throughput, must be in compliance prior to dispensing gasoline.

The NJDEP has identified the test methods that it will use to ensure compliance with its Stage II requirements. Pressure and blockage tests are required for all stations installing Stage II control systems and are included as conditions on the permit to contruct. Efficiency testing can be done using the CARB test procedure, "Test Procedure for Determining the Efficiency of Gasoline Vapor Recovery Systems at Service Stations."

Section 16.10 contains a general variance provision which permits the Commissioner of the New Jersey Department of Environmental Protection to accept alternate controls when a facility is unable to comply because of technical infeasibility. Variances adopted by the State become applicable only if approved by EPA as a SIP revision.

It is important to note that the State did not meet the schedule for implementing this measure that it committed to in its 1983 SIP revision. On November 17, 1987, it was ordered by the U.S. District Court, District of New Jersey in the case of the *American Lung Association, et al. v. Thomas H. Kean, Governor of New Jersey, et al.,* to implement Stage II. The compliance schedule contained in Section 16.3 conforms to the Court ordered schedule.

Finding

EPA finds that the adoption of Stage II controls in Subchapter 16 meets New Jersey's SIP commitment. The design of the Stage II program submitted by the State is substantially equivalent to the program committed to in the SIP, both in nature and emission reductions. The VOC reductions associated with this regulation are a necessary part of New Jersey's program to attain the ozone standards. EPA is, therefore, proposing to approve the revisions to Subchapter 16 of the N.J.A.C. 7:27 effective February 21, 1988 as it relates to Stage II controls. EPA further notes that experience with Stage II controls in other states has shown it to be a technologically feasible and an effective means of reducing VOC emissions.

EPA is soliciting public comments on its proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address noted at the beginning of today's notice.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of Section 110 of the Clean Air Act and 40 CFR Part 51.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone.

Date: December 13, 1988.

BEST COPY AVAILABLE

EDITORIAL NOTE: This document was received for publication by the Office of the Federal Register on August 17, 1989.

William J. Muszynski, P.E.,
Acting Regional Administrator, Environmental Protection Agency, Region II.

[FR Doc. 89–19734 Filed 8–21–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL–3633–2]

Approval and Promulgation of State Air Quality Plans; Massachusetts; Withdrawal of Proposed Approval of RACT for the Non-CTG Processes at General Electric Co., Pittsfield, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, withdrawal.

SUMMARY: EPA is withdrawing a proposed action, published on January 31, 1989 (54 FR 4838), to approve a revision to the Massachusetts State Implementation Plan (SIP). The Massachusetts Department of Environmental Protection (DEP) has formally withdrawn the SIP revision request which would have imposed reasonably available control technology (RACT) on certain processes at the General Electric Company's facility in Pittsfield, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Nam Nguyen at (617) 565–3249 or FTS 835–3249.

SUPPLEMENTARY INFORMATION: On January 31, 1989, EPA published a notice of proposed rulemaking (54 FR 4838) proposing to approve a request from the Massachusetts Department of Environmental Protection (DEP), formerly called the Department of Environmental Quality Engineering, to revise the Massachusetts State Implementation Plan (SIP). The DEP's SIP revision consisted of a plan approval imposing reasonably available control technology (RACT) on three operations at the General Electric Company in Pittsfield (G.E. Pittsfield) that are not otherwise subject to RACT under Massachusetts SIP regulations developed pursuant to EPA's Control Technique Guidelines (CTGs).

The Massachusetts' SIP includes regulation 310 CMR 7.18(17) which requires RACT on sources which emit 100 TPY more of volatile organic compounds (VOCs) from non-CTG processes. At the time DEP originally submitted its proposed RACT plan for G.E. Pittsfield, that facility had existing non-CTG processes which emitted more than 100 TPY of VOCs as defined by the Massachusetts SIP:

PRE-RACT POTENTIAL LEVELS (TPY)

Large transformer group	15.0
Military ordnance division	10.6
Plastic business group	[1] 477.3
	[1] 502.9

[1] 444 of which consist of methylene chloride.

On March 6, 1989, the DEP submitted new information regarding the Plastic Business Group. Since the time of DEP's SIP revision request, G.E. Pittsfield physically modified the laminating resins process of the Plastic Business Group thereby becoming subject to the Massachusetts SIP regulation for new source review. Massachusetts issued a federally enforceable permit to G.E. Pittsfield imposing best available control technology (BACT) requirements on the Plastic Business Group's laminating resins process which are more stringent than the proposed RACT requirements for that process. BACT applies under the Massachusetts SIP for any change in emissions due to a modification. Lowest achievable emission rate (LAER) requirements did not apply because the increase in VOC emissions from the modification was less than 40 TPY. Moreover, Massachusetts has revised its definition of VOC to exclude methylene chloride in accordance with the EPA recommended definition of VOC. Therefore, the VOC emissions from existing non-CTG processes at G.E. Pittsfield now total less than 100 TPY:

PRE-RACT POTENTIAL LEVELS (TPY)

Large transformer group	15.0
Military ordnance division	10.5
	25.6

As the applicability threshold for RACT under SIP regulation 310 CMR 7.18(17) is 100 TPY and G.E. Pittsfield's existing non-CTG processes' potential VOC emissions are less than 100 TPY, the DEP does not have to submit a source-specific SIP revision imposing RACT on the non-CTG processes at G.E. Pittsfield. Accordingly, on June 30, 1989, the DEP withdrew its SIP revision, and EPA is hereby withdrawing its proposed action to approve that revision.

Dated: August 14, 1989.

Paul G. Keough,
Acting Regional Administrator, Region I

[FR Doc. 89–19733 Filed 8–21–89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 662

[Docket No. 90775–9175]

Northern Anchovy Fishery, Preliminary Determination

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary determination.

SUMMARY: NOAA announces the estimated spawning biomass and preliminary determination of harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) for the 1989–90 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. Those regulations require this announcement to be made on or about July 1 each year. The optimum yield is set at 4,900 metric tons plus an unspecified amount for use as live bait; there is no U.S. harvest quota for reduction fisheries. There is no allocation for joint venture processing, nor for total allowable level of foreign fishing.

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Comments should be addressed to E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Fisheries Management and Analysis Branch, Southwest Region, NMFS, 213–514–6667.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the NMFS Southwest Fisheries Center, the Director of the Southwest Region has made a preliminary determination that the spawning biomass of the central subpopulation of northern anchovy, *Engraulis mordax*, is estimated to be 214,000 metric tons (mt). The biomass estimate is derived from, and is equivalent to, the Egg Production Method measurement, but is based on the Stock Synthesis Model.

Regulations implementing the FMP state that there will be no reduction fishery when the estimated spawning biomass is less than 300,000 mt. The Regional Director has made the following preliminary determinations for the 1989–1990 fishing season by applying the formulas in the FMP and in 50 CFR 662.20 of the implementing rules:

1. The total U.S. harvest quota or optimum yield (OY) of northern anchovy is 4,900 mt plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes is zero. There is no reduction harvest allocation when the spawning biomass is below 300,000 mt; therefore, there will be no reduction fishery during the 1989–1990 fishing season.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovy for use as dead bait and direct human consumption) is 4,900 mt.

4. The domestic annual processing capacity (DAP) is 1,468 mt. The FMP states that this amount is the maximum level of reduction plus non-reduction processing during the previous 3 years.

5. There is no U.S. harvest limit for the live bait fishery.

6. The amount allocated to joint venture processing (JVP) is zero because there is no history of, nor are there applications for, joint ventures.

7. Domestic annual harvest capacity (DAH) is 1,468 mt. This is the sum of DAP and JVP.

8. The total allowable level of foreign fishing (TALFF) is zero. When the spawning biomass is below 300,000 mt, there is no allocation for foreign fishing.

Information obtained through the peak spawning period of January-February shows two major factors that serve to explain this year's estimate:

1. Low temperatures during and preceding the spawning season reduce sexual maturity and spawning. The mean temperature for January-February, 1989 was 12.5° C; the mean temperature since 1960 is 14.3° C. Only 5 percent of 1-year-old anchovies are expected to be sexually mature and actively spawning at 12.5° C.

2. There is an apparently large 1988 year class recruiting to the 1989 population, although virtually none of this large year class spawned during the January-February period.

As a result of the above, there is an estimated total biomass of 984,000 mt and a spawning biomass of 214,000 mt. The low spawning biomass is primarily due to the effects of cold water and is not due to recruitment failure or over-fishing.

Classification

This action is authorized by 50 CFR part 662 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 662

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 16, 1989.

James W. Brennan,
Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89–19670 Filed 8–21–89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 161
Tuesday, August 22, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-137]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Iowa State University, to allow a field test in the State of Iowa of genetically engineered tobacco plants, modified to express a bacterial chloramphenicol acetyl transferase enzyme in order to confer resistance to the antibiotic, chloramphenicol, on these plants. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89–097–01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Iowa State University at Ames, Iowa, has submitted an application for a permit for release into the environment, to field test genetically engineered tobacco plants modified to express a bacterial chloramphenicol acetyl transferase enzyme in order to confer resistance to the antibiotic chloramphenicol. The field trial is to take place in Ames, Iowa.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tobacco plants under the conditions described in the Iowa State University application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Iowa State University, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the enviromental impacts associated with conducting the field testing.

The facts supporting APHIS's finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene which has the effect of making tobacco plants express a bacterial chloramphenicol acetyl transferase enzyme has been inserted into a tobacco chromosome. In nature, the genetic material contained in a chromosome of these plants can only be transferred to another sexually compatible plant by cross-pollination. In this field test trial, the inserted gene cannot spread to any other sexually compatible plant by cross-pollination because the field test plot is located at a sufficient distance from any sexually compatible plant with which these experimental tobacco plants could successfully cross-pollinate.

2. Neither the proteinase inhibitor II promoter or terminator signal sequence, the chloramphenicol acetyl transferase gene itself, nor the chloramphenicol acetyl transferase gene derived product confer on tobacco any plant pest characteristic.

3. The potato variety (Russett Burbank), from which the proteinase inhibitor II promoter and terminator signal sequences were obtained, is not a plant pest.

4. The chloramphenicol acetyl transferase gene does not provide the genetically engineered tobacco plants with any measurable selective advantage over nongenetically engineered tobacco plants in its ability to be disseminated or to become established in the environment.

5. The plasmid vector used to transfer the chloramphenicol acetyl transferase gene into the tobacco chromosome has been evaluated for its use in this experiment. The plasmid vector, although derived from the DNA of a tumor inducing (Ti) plasmid with known plant pathogenic potential, has been disarmed; that is, genes that are necessary for pathogenicity have been removed from the plasmid vector. The plasmid vector has been tested and shown to be not pathogenic to any susceptible plant.

6. The vector agent *Agrobacterium tumefaciens*, a phytopathogenic bacterium, was used to deliver the vector DNA and the chloramphenicol acetyl transferase gene into tobacco plant cells. The vector agent has been demonstrated by *in vitro* and *in vivo* assays to be eliminated and no longer associated with any genetically engineered tobacco plant or seed.

7. Horizontal movement by infectious transfer or transposition of any of the introduced genes or DNA sequences is not known to be possible. The plasmid vector acts by delivering the gene to the tobacco genome where it is stably inserted into the tobacco chromosomal DNA. The plasmid vector cannot replicate independently of its vector agent and does not survive alone in any plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a genetically engineered plant to any other organism.

8. The size of the field test trial plot is small (50 feet by 120 feet). The plot will be located on a research farm which will provide good security. The level of physical containment has been found to be adequate to prevent an accidental release or dissemination in the environment.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 17th day of August 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–19718 Filed 8–21–89; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Outfitter and Guide Fees

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of final policy.

SUMMARY: The Forest Service gives notice of adoption of a final policy to adjust the minimum fees required for outfitter and guide services on National Forest System lands for inflation. The fees will be adjusted every 3 years based on the Implicit Price Deflator Index, published every February in the "Economic Report of the President" to Congress. This action ensures that fees accurately reflect fair market value as required by law and regulation.

EFFECTIVE DATE: This policy is effective October 23, 1989. The first adjustment in minimum fees will occur in March 1990 and reflected in billings for annual permits sent out at that time.

FOR FURTHER INFORMATION CONTACT: John Shilling, Recreation Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. (202)–382–9426.

SUPPLEMENTARY INFORMATION: In 1984, the Forest Service adopted changes in its policy for managing special use permits for individuals or organizations conducting outfitting and guiding activities on the National Forests, including adoption of a new fee system.

When the new fee system was adopted in 1984, the minimum fair market value fee of an outfitting and guide permit was set at $50 and the charge for reserved use of a site at $100. The new fee system did not, however, allow for adjustment of fees to compensate for inflation. Office of Management and Budget Circular A–25 specifies that, "Where federally owned resources or property are leased or sold, a fair market value should be obtained."

The Forest Service decided to give notice and opportunity to comment on adjustment of minimum fees after a November 1988 meeting with representatives of the North American Outfitters Association and the National Forest Recreation Association, who expressed concern about the timeliness of the proposal.

On March 23, 1989, the Forest Service published for comment in the Federal Register (54 FR 11982) a proposed amendment to Forest Service Special Uses Management Handbook 2709.11 (Chapter 30, Fees Determination) to adjust minimum fees for outfitting and guiding on National Forest System lands for inflation. Under the proposed amendment, beginning March, 1990, the minimum fees for permits and for reserved use of a site would be adjusted based on the change in the Implicit Price Deflator. These fees would be adjusted every 3 years using 1984 as a base year.

Summary of Public Comments

The Forest Service received 9 letters commenting on the proposed amendment; 2 letters from outfitter associations and 7 letters from individual outfitters. Comments from respondents and Agency response follow.

One respondent felt that adjusting fees based on a broad economic indicator rather than on conditions occurring in the outfitting industry is unfair. The Agency chose the Implicit Price Deflator Index as the most comprehensive and reliable economic indicator available and believes it is fair to apply a uniform index to all permittees. Outfitting industry conditions would be difficult, if not impossible, to quantify with any reliability due to the variety of outfitter business sizes, types of operation, seasonal nature of operations and variability of local economic conditions. Accordingly, the agency is retaining the Implicit Price Deflator Index as the basis for adjustment of fees in the final policy.

Most respondents opposed any fee increase. While adjustment of minimum fees will result in increases as long as inflation continues, the Agency is not increasing fees in real terms. The current minimum fees were established with full consultation and input from the outfitting industry in 1984 and continues to enjoy the support of the industry as a fair and equitable fee system. In order to keep the fees consistent with the 1984 policy and to reflect fair market value as required by law and regulation, the fees must be adjusted occasionally for inflation. Failure to adjust minimum fees for the effects of inflation would, over time, result in a government subsidy of outfitter and guide service not enjoyed by other permittees who pay fees for use of National Forest System lands and would clearly be inconsistent with Federal policy on fee charges.

One respondent suggested that fees should be adjusted when individual permits are renewed (which may be as infrequently as every five years) instead of every three years as the amendment reads. We disagree. To be fair to all permittees, the adjustment interval period must be independent of the permit renewal period so that the adjustment occurs for all permittees at the same time. The agency selected three years instead of a longer interval in order to avoid a large cumulative increase in fees. The Implicit Price Deflator Index would not change significantly enough over a shorter period than three years to warrant the time spent on more frequent adjustments.

Final Policy

Having considered the comments and suggestions received on the proposed policy, the Forest Service has concluded that the proposed policy should be adopted without change. The policy as it will be issued to Forest Service employes in the Forest Service Special Uses Handbook reads as follows:

Fee Calculation and Collection

Beginning with fees due after March 1990, adjust the minimum annual fee for outfitting/guiding use every 3 years based on the Implicit Price Deflator Index, using 1984 as a base year.

Fee for Site Reservation

Beginning with fees due after March 1990, adjust the minimum annual reservation fee for each site every 3 years based on the Implicit Price Deflator Index, using 1984 as a base year.

Dated: July 27, 1989.

George M. Leonard,

Associate Chief.

[FR Doc. 89–19757 Filed 8–21–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Initiation of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various countervailing duty orders. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Holly Kuga, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with § 355.22(a)(1) of the Department's regulations, for administrative reviews of various countervailing duty orders.

Initiation of Reviews

In accordance with § 355.22(c), of the Department's regulations, we are initiating administrative reviews of the following countervailing duty orders. We intend to issue the final results of these reviews no later than July 31, 1990.

Countervailing duty proceedings—	Periods to be reviewed
European Communities:	
Sugar C–406–046	1/1/88–12/31/88
Uruguay:	
Leather Wearing Apparel C–355–001	1/1/88–12/31/88

Antidumping Duty Proceedings and Firms

We received no requests for review of antidumping duty orders and findings with July anniversary dates.

Interested parties must submit applications for administrative protective orders in accordance with § 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and § 355.22(c) of the Commerce Department's countervailing duty regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22(c)).

Dated: August 14, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89–19636 Filed 8–21–89; 8:45 am]

BILLING CODE 3510-DS-M

[A–122–808]

Initiation of Antidumping Duty Investigation: Limousines From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of limousines from Canada are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of limousines from Canada materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 7, 1989. If that determination is affirmative, we will make a preliminary determination on or before January 2, 1990.

EFFECTIVE DATE: August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–2613 or (202) 377–1769, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On July 24, 1989, we received a petition filed in proper form by Southampton Coachworks, Ltd. In compliance with the filing requirements of § 353.12 of the Department's revised regulations (54 FR 12772, March 28, 1989) (to be codified at 19 CFR 353.12), petitioner alleges that imports of limousines from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry. Petitioner also alleges that critical circumstances exist with respect to this merchandise.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(E) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the "**FOR FURTHER INFORMATION CONTACT**" section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in section 353.14 of the Department's regulations.

United States Price and Foreign Market Value

Petitioner based United States Price (USP) for limousines on a price list for U.S. distributors of limousines from Canada. Petitioner's Foreign Market Value (FMV) for limousines is based on a price list for Canadian distributors of

limousines. The margins put forth by petitioner range from 19.36 percent to 24.35 percent. Petitioner adjusted upward the USP to include delivery cost because the price list for Canadian distributors included the cost of delivery while the price list for U.S. distributors did not. However, because it is the Department's practice to use ex-factory prices in its fair value comparisons, we recalculated the margins to range from 21.14 percent to 25.20 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on limousines from Canada and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of limousines from Canada are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by January 2, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are limousines, which are defined as extended wheelbase and expanded seating capacity motor vehicles principally designed for the transport of persons, of a cylinder capacity exceeding 1,500 cubic centimeters, and having spark-ignition internal combustion reciprocating piston engines of six or more cylinders (gasoline-engine powered). The vehicles are built on Lincoln Town Car, Mercury Grand Marquis, Cadillac Brougham or any other six or eight cylinder gasoline engine powered chassis. The vehicle is cut in half and the wheelbase is extended, thereby providing additional rear seating capacity, area and comforts. The sheet metal work is formed to complement the original design of the base car. The vehicles are used by private individuals, corporations and limousine services. Limousines are currently provided for under the following HTS subheadings: 8703.23.00.75, 8703.24.00.75 and 9802.00.50.40. Prior to January 1, 1989, limousines were classifiable under items 806.2040, 692.1015 and 692.1030 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 7, 1989, whether there is a reasonable indication that imports of limousines from Canada materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: August 14, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–19637 Filed 8–21–89; 8:45 am]

BILLING CODE 3510-DS-M

[C–122–809]

Initiation of Countervailing Duty Investigation; Limousines From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Canada of limousines, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of limousines from Canada materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, we will make our preliminary determination on or before October 17, 1989.

EFFECTIVE DATE: August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Kay Halpern or Roy Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–0192 and (202) 377–5414.

SUPPLEMENTARY INFORMATION:

The Petition

On July 24, 1989, we received a petition in proper form from Southampton Coachworks, Ltd., of Farmingdale, New York. This petition is filed on behalf of the U.S. industry producing limousines. In compliance with the filing requirements of section 355.12 of the Commerce Regulations (19 CFR 355.12), the petition alleges that producers and exporters of limousines in Canada receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, the U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry producing the products that are subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the

Commerce officials cited in the "**FOR FURTHER INFORMATION CONTACT**" section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must make the determination on whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on limousines from Canada and have found that most of the programs alleged in the petition meet these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether Canadian producers or exporters of limousines, as described in the "Scope of Investigation" section of this notice, receive subsidies. However, we are not initiating an investigation for certain programs because the petition failed to allege the elements necessary for the imposition of a duty or in some instances failed to provide the necessary supporting information. If our investigation proceeds normally, we will make our preliminary determination on or before October 17, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The product covered by this investigation is limousines, which are defined as extended wheelbase and expanded seating capacity motor vehicles principally designed for the transport of persons, of a cylinder capacity exceeding 1,500 cubic centimeters, and having spark-ignition internal combustion reciprocating piston engines of six or more cylinders (gasoline-engine powered). The vehicles are built on Lincoln Town Car, Mercury Grand Marquis, Cadillac Brougham or any other six or eight cylinder gasoline engine powered chassis. The vehicle is cut in half and the wheelbase is extended, thereby providing additional rear seating capacity, area and comforts. The sheet metal work is formed to complement the original design of the base car. The vehicles are used by private individuals, corporations and limousine services. Limousines are currently provided for under the following HTS subheadings: 8703.23.00.75, 8703.24.00.75 and 9802.00.50.40. Prior to January 1, 1989, limousines were classifiable under items 806.2040, 692.1015 and 692.1030 of the *Tariff Schedules of the United States Annotated (TSUSA).*

Allegations of Subsidies

Petitioner lists a number of practices by the Government of Canada and the provincial governments of Ontario and Quebec which allegedly confer subsidies on producers or exporters of limousines. We are initiating an investigation of the following programs:

- Investment Tax Credits (ITCs) over and above the basic rate of seven percent
- Regional Development Incentive Program (RDIP) and Industrial and Regional Development Program IRDP)
- Loans under the Enterprise Development Program (EDP)
- Promotional Projects Program (PPP)
- Program for Export Market Development (PEMD)

We are not initiating an investigation of the programs listed below. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. All the programs listed below were alleged to confer domestic subsidies. The elements which must be alleged for a domestic subsidy program are (1) specificity (*i.e.*, the program is limited to a specific enterprise or industry or group of enterprises or industries), and (2) provision of a countervailable benefit (*i.e.*, a subsidy paid or bestowed directly or indirectly on the manufacturer, producer or exporter of any class or kind of merchandise). For upstream subsidies, the initiation threshold is higher. Under section 701(e) of the Act, the Department must have reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 771A of the Act, is being paid or bestowed upon merchandise under investigation. For the programs listed below, the requirements of section 702(b) or 701(e) of the Act were not fulfilled in the petition.

1. Provision of Subsidized Electric Energy by Hydro-Quebec

Petitioner alleges that a countervailable benefit is conferred on Canadian Limousine Manufacturers in the form of low-cost electric energy. Specifically, petitioner alleges that Hydro-Quebec, a provincially-owned power company, is being subsidized and that the subsidy passes through the limousine manufacturer's supplier of electricity, Ontario Hydro, to limousine manufacturers. Under section 701(e) of the Act, whenever the Department has reasonable grounds to believe or suspect that an upsteam subsidy is being paid or bestowed, the Department must investigate whether an upstream subsidy has in fact been paid or bestowed. The provisions of section 771A(a) of the Act define an upstream subsidy as:

> Any subsidy described in section 771(5)(B)(i), (ii), (iii), or (iv) by the government of a country that—(1) is paid or bestowed by that government with respect to a product (hereinafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding; (2) in the judgment of the administering authority bestows a competitive benefit on the merchandise; and (3) has a significant effect on the cost of manufacturing or producing the merchandise.

Because pettioner has not made a formal upstream subsidy allegation covering each of the elements listed above, we are not initiating on this program.

2. Other Investment Tax Credits

Petitioner alleges that a variety of investment tax credits provide a benefit to producers or exporters of limousines in Canada. As noted above, we are initiating an investigation on additional tax credits over and above the basic rate of seven percent, which are tied to certain regions of Canada. However, we are not initiating an investigation on the basic rate for investment in "qualified property," "certified property," and transportation and construction equipment. Petitioner argues that we must make a determination of whether the basic rate is limited to specific industries on a *de facto* basis. In *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada* (51 FR 10041,

March 24, 1986) (*Groundfish*), we determined that the basic rate of seven percent is not countervailable because it is not limited to a specific enterprise or industry or group of enterprises or industries. Absent the provision of new evidence, or an allegation of changed circumstances, we have no basis upon which to re-initiate an investigation of this type of investment tax credit.

3. EDP Loan Guarantees and Grants

Availability of loan guarantees and grants through the Enterprise Development Program was investigated in Groundfish. We determined that the provision of loan guarantees and grants under this program was not limited to a specific enterprise or industry or group of enterprises or industries. Absent the provision of new evidence, or an allegation of changed circumstances, we have no basis upon which to re-initiate an investigation of the provision of loan guarantees and grants under this program.

4. Federal Expansion and Development/Northern Ontario (FEDNOR)

FEDNOR is a federal economic development program which provides grants covering up to 35 percent of eligible capital costs. The program is targeted to promote the economy of northern Ontario. Petitioner provided no evidence to show that potential respondents are located in northern Ontario. Therefore, we are not initiating an investigation of this program.

The petitioner has alleged certain other subsidies. However, these allegations were not submitted in proper form. If allegations in proper form are submitted in the future, we will consider whether or not to include them in our investigation.

Allegation of Critical Circumstances

Petitioner alleges that critical circumstances exist with respect to imports of limousines from Canada. Petitioner claims that the products concerned benefit from export subsidies that are inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, and that imports have been massive over a relatively short period. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it comfirms that it will not disclose such information, either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 7, 1989, whether there is a reasonable indication that imports of limousines materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will continue according to the statutory procedures. This notice is published pursuant to section 702(c)(2) of the Act.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–19638 Filed 8–21–89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application No. 89–00011.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Northwest Gourmet Foods, Inc. (NGF). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Members (in addition to the applicant): Peter M.R. Fretwell.

Export Trade

1. *Products and Services.* All products and services.

2. *Export Trade Facilitation Services (as they relate to the export of Products and Services):* Consulting; financing; export licensing; shipping; transportation; taking title to goods; providing information on exporting mechanics to potential exporters; matching buyers with sellers; placing marine, casualty, war, and political risk insurance; coordinating the shipment of products; processing documentation; and providing market research.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

NGF, when conducting business under the name Northwest Gourmet Foods, Inc., or other registered business names, is certified to:

1. Enter into exclusive and non-exclusive agreements with individual Suppliers to act as the Supplier's export intermediary, whereby NGF may establish export prices, quantities, territories, and customer restrictions for Products and/or Services for the Export Markets. "Exclusive" means that NGF may agree not to represent any competitors of the Supplier without the Supplier's authorization, and the Supplier may agree not to otherwise sell, directly or indirectly, into Export Markets in which NGF serves the Supplier.

2. Enter into exclusive and/or non-exclusive agreements with Export Intermediaries. "Exclusive" means that NGF may agree to deal in Products and/or Services only through that Export Intermediary, and that Export Intermediary may agree not to represent anyone other than NGF in the sale of Products and/or Services.

3. Enter into exclusive and/or non-exclusive agreements with individual foreign buyers to act as their Purchasing Agent. "Exclusive" means that NGF may

agree to deal in Products and/or Services only through that individual foreign buyer, and that individual foreign buyer may agree not buy those Products and/or Services from anyone other than NGF.

4. Respond to sales opportunities in Export Markets by:

a. Contacting individual Suppliers of the Products and/or Services involved in the sales opportunity;

b. Inviting the Suppliers to provide independent price quotes for the Products and/or Services (to which NGF may add its own markup);

c. Entering into an agreement with individual Suppliers for which NGF submits a response to the sales opportunity;

d. Taking title to Products from Suppliers and shipping them to the buyer at NGF's quoted export price.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: August 15, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89–19760 Filed 8–21–89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 23, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories in Group I and the Group II limit are being adjusted, variously, for swing, carryforward and recrediting of carryforward not used.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50276, published on December 14, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 6, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on August 23, 1989, the directive of December 6, 1988 is amended further to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category Levels	Adjusted twelve-month limit [1]
Group I	
237	1,348,468 dozen
239	2,477,329 kilograms
300/301	2,717,703 kilograms
333	41,757 dozen
335	333,775 dozen
347/348	2,131,079 dozen
Group II	
330, 332, 349, 353, 354, 359–0 [2], 431, 432, 439, 459, 630, 632, 633, 643, 644, 653, 654 and 659–0 [3] as a group.	109,486,034 square meters equivalent

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Category 359–0, all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359–C; and 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 in Category 359–V.

[3] In Category 659–0, all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659–C; 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060 and 6505.90.8060 in Category 659–H; and 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 in Category 659–S.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–19759 Filed 8–21–89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Requests for Bilateral Consultations With the Government of Bangladesh on Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products

August 15, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

On July 30, 1989, the Government of the United States requested consultations with the Government of Bangladesh regarding textile products in Categories 351/651 and 847, produced or manufactured in Bangladesh.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Bangladesh, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from

warehouse for consumption of textile products in Categories 351/651 an 847, produced or manufactured in Bangladesh and exported during the twelve-month period which began on July 30, 1989 and extends through July 29, 1990, at levels of 206,298 dozen for Categories 351/651 and 228,956 dozen for Category 847.

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 351/651 and 847, or to comment on domestic production or availability of products included in these categories, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 351/651 and 847. Should such a solution be reached in consultations with the Government of Bangladesh, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1989).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Bangladesh—Market Statement

Pajamas and Other Nightwear (Category 351/651)

July 20, 1989.

Summary and Conclusions

U.S. imports of pajamas and other nightwear (Category 351/651) from Bangladesh reached 206,298 dozen during the year ending April 1989, nearly 4 times the 56,988 dozen imported a year earlier. During the first four months of 1989, imports of pajamas and other nightwear (Category 351/651) from Bangladesh reached 59,608 dozen, almost 4 times the amount imported in the first four months of 1988. Imports from Bangladesh were 44,559 dozen in 1987 and 163,229 dozen in 1988.

The sharp and substantial increase in Category 351/651 imports from Bangladesh is disrupting the U.S. market for pajamas and other nightwear.

U.S. Production and Market Share

U.S. production of pajamas and other nightwear including infants has been on the decline since 1983, falling from 22,836,000 dozen in 1983 to 19,933,000 dozen in 1985, a 13 percent decline. U.S. production of pajamas and other nightwear declined from 17,078,000 dozen in 1986 to 14,093,000 dozen in 1988, a decline of 18 percent. The domestic manufacturers' share of the pajamas and other nightwear market dropped from 77 percent in 1986 to 71 percent in 1988.

U.S. Imports and Import Penetration

U.S. imports of pajamas and other nightwear (Category 351/651) more than doubled, increasing from 2,611,000 dozen in 1982 to 5,770,000 dozen in 1988. Imports continue to increase in 1989, up 12 percent in the first four months of 1989 over the same period in 1988. The ratio of imports to domestic production increased 10 percentage points in just two years, increasing from 31 percent in 1986 to 41 percent in 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 68 percent of Category 351/651 imports from Bangladesh during the first four months of 1989 entered under HTSUSA number 6207.21.0030—men's cotton nightshirts and pajamas, other than of yarn dyed fabric; 6207.22.0000—men's or boys' man-made fiber nightshirts and pajamas, other than of yarn dyed fabric; 6208.21.0020 women's cotton nightshirts and pajamas, other than of yarn dyed fabric. These nightshirts and pajamas entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable nightshirts and pajamas.

Bangladesh—Market Statement

Vegetable fiber, Other than Cotton, and Silk-Blend Trousers, Slacks and Shorts (Category 847)

July 28, 1989

Import Situation and Conclusion

U.S. imports of vegetable fiber (other than cotton) and silk-blend trousers, slacks and shorts (Category 847) from Bangladesh reached 228,956 dozen during the year ending April 1989, almost 6 times the 39,281 dozen imported a year earlier. During the first four months of 1989 imports of Category 847 from Bangladesh reached 159,455 dozen, over 7 times the 21,912 dozen imported during the same period in 1988 and almost double Bangladesh's imports for all of calendar year 1988.

Virtually all of the imports of trousers, slacks and shorts in Category 847 are of vegetable fiber, other than cotton, and compete directly with domestically produced cotton trousers, slacks and shorts (Category 347/348). The U.S. market for cotton trousers, slacks and shorts (Category 347/348) is being disrupted by imports.

Category 347/348 imports from Bangladesh have been under restraint since February 1, 1986. The sharp and substantial increase of Category 847 imports from Bangladesh is causing further disruption in the U.S. cotton trousers, slacks and shorts market.

Import Penetration and Market Share

U.S. production of cotton trousers, slacks and shorts (Category 347/348) fell 15 percent in 1988 to its lowest level in 13 years. The ratio of imports to production in Category 347/348 increased to 84 percent in 1988. The share of the cotton trousers, slacks and shorts market held by domestic manufacturers dropped to 54 percent in 1988.

U.S. imports of vegetable fiber, other than cotton, and silk-blend trousers, slacks and shorts (Category 847)—adjusted for 1987 overshipments—increased 38 percent from 1,653,741 dozen in 1987 to 2,287,800 dozen in 1988. When imports of the directly competitive Category 847 are included in the market analysis, the import to production ratio jumps to 94 percent and the domestic manufacturers' share of the market falls to 52 percent.

Duty-Paid Value and U.S. Producers Price

Approximately 95 percent of Category 847 imports from Bangladesh in the first four months of 1989 entered under HTS number: 6204.69.9040—women's and girls' trousers, breeches and shorts subject to other than cotton, wool or man-made fiber restraints. These trousers entered the U.S. at duty-paid landed values below U.S. producers' prices for directly competing cotton garments.

[FR Doc. 89–19699 Filed 8–21–89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to renew on a noncompetitive basis a grant to the Council of Great Lakes Governors (CGLG) to organize and carry out a Regional Biomass Program in the Great Lakes Area of the Northern Tier States. The grant renewal will continue the project through August 31, 1990. The estimated amount is $290,000.

Procurement Request No.: 05-89OR21390.001.

Project Scope: This grant renewal is to continue a Regional Biomass Program in the Great Lakes Area of the Northern Tier States. The primary purpose is to implement biomass research and development, technology utilization, and technology transfer on a regional basis in the manner which will maximize the participation of the public and private sectors of each state. CGLC has the unique capability to equally represent all of the states in the Great Lakes subregion and involve the appropriate private and public interest groups in the states. CGLC is an existing, regionally organized consortium with background experience in management of similar activities. Eligibility for this award is, therefore, restricted to CGLG.

FOR FURTHER INFORMATION CONTACT: Lynda H. McLaren, Research Management Branch, Research & Laboratory, Waste Management Division, U.S. Department of Energy, Oak Ridge, TN 37831–8621 (615–576–1763).

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89–19704 Filed 8–21–89; 8:45 am]

BILLING CODE 6450-01-M

Invention Available for License

The Department of Energy hereby announces that U.S. Patent No. 4,722,201, entitled "Acoustic Cooling Engine" is available for license, in accordance with 35 U.S.C. 207–209. For further information concerning licensing of the invention, please contact Robert J. Marchick, Office of the Assistant General Counsel for Patents, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

A copy of the U.S. patent may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231.

Issued in Washington, DC, on August 14, 1989.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 89–19705 Filed 8–21–89; 8:45 am]

BILLING CODE 6450-01-M

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date & Time: Wednesday, September 6, 1989, 8:30 a.m. to 10:00 p.m.; Thursday, September 7, 1989, 8:30 a.m. to 3:00 p.m.

Place: U.S. Department of Energy, Savannah River Site—Main Entrance, Building 703–41A, Rainbow Conference Rooms, Aiken, South Carolina.

Contact: Wallace R. Kornack, Executive Director, ACNFS, S–2, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone: 202/586-1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda

September 6, 1989

8:30 a.m., Chairman John F. Ahearne Opens Meeting Review of Reactor Restart Plan
Noon: Lunch
1:00 p.m., Review of Reactor Restart Issues
5:30 p.m., Meeting Adjourned until 8:00 p.m.
8:00 p.m.–10:00 p.m., Public Comment Session

September 7, 1989

8:30 a.m., Status Report on Waste Isolation Pilot Plant Subcommittee Reports
Noon, Lunch
1:00 p.m., Review of Selected Technical Issues
3:00 p.m., Meeting Ends

Public Participation: This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace R. Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 16, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89–19707 Filed 8–21–89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF86–508–002]

Fort Howard Corp.; Errata Notice

August 16, 1989.

The following correction is made in column 2, 54 FR 32109 (August 4, 1989) to the Notice of Application for Commission Recertification of Qualifying Status of a Cogeneration Facility, issued July 31, 1989. The comment due date should have been 15 days from date of publication in the **Federal Register** in lieu of 30 days.

Lois D. Cashell,

Secretary.

[FR Doc. 89–19664 Filed 8–21–89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 943–025]

Public Utility District No. 1 of Chelan County, WA; Availability of Environmental Assessment

August 16, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing (OHL) has reviewed the proposal for constructing the Similkameen River fish rearing facility for the Rock Island Project in Okanogan County, Washington. This facility is part of the mitigation defined in the Rock Island settlement agreement that was adopted by order of the Commission dated January 18, 1989, for the Rock Island Project. The staff of OHL's Division of Project Compliance and Administration has prepared an environmental assessment (EA) for the proposed action. In the EA, staff concludes that approval of construction of the proposed fish rearing facility would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89–19652 Filed 8–2189; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 943–027]

Public Utility District No. 1 of Chelan County, WA; Availability of Environmental Assessment

August 16, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing (OHL) has reviewed the proposal for constructing the Chiwawa River fish rearing facility for the Rock Island Project in Chelan County, Washington. This facility is part of the mitigation defined in the Rock Island settlement agreement that was adopted by order of the Commission dated January 18, 1989, for the Rock Island Project. The staff of OHL's Division of Project Compliance and Administration has prepared an environmental assessment (EA) for the proposed action. In the EA, staff concludes that approval of construction of the proposed fish rearing facility would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89–19653 Filed 8–21–89; 8:45 am]

BILLING CODE 6717-01-M

Determinations Under the Natural Gas Policy Act for OCS Leases

Issued: August 16, 1989.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83–3 and RM81–12 (48 FR 44,508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MSS), must file within 60 days of the grant of the lease notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On July 25, 1989, the Commission received notice from MMS, Central Gulf of Mexico, that 5321 leases were issued as a result of OCS sale 118 for the Central Gulf of Mexico on March 15, 1989. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA section 102:

Effective Date 04–01–89 Lease Nos. OCS–GX

632, 775, 782

Effective Date 05–01–89 Lease Nos. OCS–GX

540, 541, 548, 549, 551, 552, 556, 557, 559, 560, 566, 570, 573, 584, 585, 591, 592, 596, 597, 603, 604, 605, 615, 621, 624, 627, 628, 630, 631, 633, 635, 636, 637, 638, 640, 642, 644, 646, 653, 654, 655, 657, 659, 660, 661, 662, 665, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 688, 693, 698, 699, 700, 701, 704, 705, 714, 724, 725, 727, 734, 737, 740, 746, 751, 752, 757, 759, 764, 769, 770, 773, 774, 776, 785, 786, 787, 788, 791, 792, 794, 804, 811, 812, 815, 817, 818, 823, 826, 830, 837, 838, 839, 840, 841, 842, 845, 849, 853, 855, 856, 858, 864, 868, 869, 873, 877, 880, 881, 882, 891, 899, 901, 906, 911, 916, 943, 944, 946, 947, 948, 949, 950, 959, 960, 966, 977, 978, 980, 981, 982, 983, 984, 985, 986, 990, 993, 994, 995, 996, 997, 998, 999

Effective Date 05–01–89 Lease Nos. OCS–GY

000, 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 015, 016, 018, 019, 020, 021, 024, 025, 027, 028, 029, 030, 031, 032, 033, 034, 035, 036, 037, 038, 039, 040, 041, 042, 043, 044, 045, 046, 047, 048, 049, 050, 051, 052, 053, 054, 055, 056, 057, 058, 059, 060, 061, 062, 063, 064, 065, 066, 067, 068, 069, 071, 078, 079, 080, 081, 082, 083, 084, 085, 086, 087, 088, 089, 090, 091, 092, 093, 094, 095, 096, 121, 122, 125, 126

Effective Date 06–01–89 Lease Nos. OCS–GX

543, 544, 545, 546, 547, 550, 553, 554, 555, 562, 563, 564, 565, 567, 568, 569, 571, 572, 574, 579, 580, 594, 599, 606, 607, 610, 611, 612, 613, 614, 616, 617, 618, 619, 629, 639, 643, 645, 647, 648, 649, 650, 651, 652, 656, 663, 664, 666, 667, 668, 669, 670, 671, 684, 685, 686, 687, 691, 694, 695, 696, 697, 706, 707, 710, 711, 712, 713, 719, 720, 722, 723, 726, 728, 729, 730, 731, 743, 745, 753, 758, 760, 771, 779, 795, 808, 809, 816, 824, 825, 827, 828, 836, 844, 846, 850, 852, 860, 862, 865, 866, 870, 871, 883, 884, 885, 886, 887, 888, 890, 892, 894, 896, 897, 905, 907, 908, 909, 912, 913, 914, 915, 919, 920, 921, 922, 923, 924, 927, 937, 936, 945, 953, 955, 957, 958, 961, 962, 963, 965, 967, 986, 987, 992

Effective Date 06–01–89 Lease Nos. OCS–GY

075

Effective Date 07–01–89 Lease Nos. OCS–GX

558, 561, 576, 577, 581, 582, 583, 586, 587, 588, 589, 590, 593, 595, 598, 600, 601, 602, 608, 609, 620, 622, 623, 625, 626, 634, 641, 658, 702, 703, 709, 716, 717, 718, 721, 732, 733, 735, 736, 738, 739, 741, 742, 744, 747, 748, 749, 750, 754, 755, 756, 761, 762, 763, 765, 766, 767, 768, 772, 777, 778, 780, 781, 783, 784, 789, 790, 793, 796, 797, 798, 799, 800, 801, 802, 803, 805, 806, 807, 810, 813, 814, 819, 820, 821, 822, 829, 831, 832, 833, 834, 835, 843, 847, 851, 854, 857, 859, 861, 863, 872, 874, 875, 876, 878, 879, 893, 895, 898, 902, 903, 910, 917, 925, 926, 929, 930, 931, 932, 933, 934, 935, 936, 939, 940, 941, 942, 951, 952, 956, 964, 969, 970, 971, 972, 973, 974, 975, 976, 979, 988, 989, 991,

Effective Date 07–01–89 Lease Nos. OCS–GY

012, 013, 017, 022, 023, 026, 070, 072, 073, 074, 076, 077, 097, 098, 099, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 123, 124, 127, 128, 129, 130

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89–19654 Filed 8–21–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89–1889–000]

ANR Pipeline Co.; Request Under Blanket Authorization

August 8, 1989.

Take notice that on August 1, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1889–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Chevron U.S.A., Inc. (Chevron), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport on an interruptible basis up to 3,000 dt equivalent of natural gas on a peak day, 3,000 dt equivalent on an average day and 1,086,000 dt equivalent on an annual basis for Chevron. ANR states that it would perform the transportation service for Chevron under ANR's Rate Schedule ITS. ANR indicates that it would transport the gas from receipt points in Louisiana, Oklahoma, and the offshore Louisiana and Texas gathering areas, to delivery points located in Iowa.

It is explained that the service commenced June 1, 1988, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4149. ANR indicates that no new facilities would be necessary to provide the subject service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-19655 Filed 8-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-44-013 and RP85-58-026]

El Paso Natural Gas Co.; Compliance Filing

August 15, 1989.

Take notice that on August 10, 1989, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, Fourth Revised Sheet No. 210, Fifth Revised Sheet No. 212, Fifth Revised Sheet No. 213, and Second Revised Sheet No. 214, for inclusion in its FERC Gas Tariff, First Revised Sheet No. 1, in compliance with the Commission's order issued July 11, 1989 at Docket Nos. RP88-44-005 and RP85-58-018.

El Paso states that in compliance with the July 11, 1989 order, El Paso is submitting the tariff sheets to reinstate the 10,000,000 dth per year minimum annual purchase volume requirement in Rate Schedule ABD-L which will consequently return Gas Company of New Mexico ("GCNM") to Rate Schedule ABD-S since GCNM purchases less then 10,000,000 dth from El Paso annually. In connection therewith, El Paso also filed tariff sheets eliminating GCNM's Billing Determinants from Rate Schedule ABD-L.

El Paso respectfully requests, pursuant to § 154.51 of the Commission's Regulations, that waiver of the notice requirements of § 154.22 of the Commission's Regulations be granted, to the extent necessary, so as to permit the tendered tariff sheets to become effective July 1, 1988, the same date El Paso initially revised Rate Schedule ABD-L.

Copies of the filing were served upon all interstate pipeline system sales customers of El Paso and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 22, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19656 Filed 8-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8121-003]

Warren B. Nelson; Withdrawal of Intervention and Dismissal of Appeal

August 14, 1989.

By order issued November 18, 1988,[1] the Director, Office of Hydropower Licensing (Director), issued a license to Warren B. Nelson for the Deer Creek Project No. 8121. On December 19, 1988, Idaho Power Company (Idaho Power) filed a timely appeal of the Director's order.

Idaho Power contends in its appeal that the conclusion that the power to be produced by this project is needed is erroneous. However, on January 24, 1989, the United States Court of Appeals for the District of Columbia Circuit rejected similar arguments regarding need for power from a licensed project raised by Idaho Power in another proceeding involving a project in Idaho.[2] On April 24, 1989 Idaho Power filed a notice of withdrawal of its motion to intervene in the Project No. 8121 proceedings, stating that the issue it had raised in these proceedings had been resolved by the above-referenced court opinion and that, in light of the opinion, Idaho Power's intervention in the Project No. 8121 proceedings was no longer appropriate.

Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,[3] the withdrawl of any pleading is effective 15 days after notice of the withdrawal is filed, unless the withdrawal is opposed or the decisional authority disallows the withdrawal. No objections to Idaho Power's withdrawal were filed within 15 days of the filing date of the withdrawal. Conseauently, Idaho Power's withdrawal of intervention became effective on May 10, 1989.

Since Idaho Power is no longer an intervenor in or a party to the proceedings in Project No. 8121, its appeal in these proceedings are accordingly dismissed.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19657 Filed 8-21-89 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-33-000]

Northern Border Pipeline Co.; Informal Technical Conference

August 15, 1989.

Take notice that at 10:00 a.m. on September 6, 1989, there will be an informal technical conference in the above-captioned cause in the offices of the Commission, 810 1st Street, NE., Washington, DC 20426. It is the intent of the parties to discuss at this time any outstanding discovery requests, the general status of the proceeding, and any future procedures thought necessary. All parties may at their option attend, but mere attendance will not serve to make one a party to the proceeding. A person must formally apply for party status pursuant to the Commission's Regulations.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19658 Filed 8-21-89; 8:45 am]

BILLING CODE 6717-01-M

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[1] 45 FERC ¶ 62,139 (1988).

[2] *See* 42 FERC ¶ 61,072 (1988), *aff'd sub nom.* Idaho Power Company v. FERC, 865 F.2d 1313 (D.C. Cir. 1989).

[3] 18 CFR 385.216(b) (1988).

[Docket No. CP89-1849-000]

Northern Natural Gas Co., Division of Enron Corp.; Request Under Blanket Authorization

July 31, 1989.

Take notice that on July 21, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1849-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to realign certain volumes to accommodate natural gas deliveries for Peoples Natural Gas, Division of Utilicorp United Inc. (Peoples), under the blanket certificate issued in Docket No. CP82-401-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to realign certain CD-1 entitlement volumes among existing delivery points at communities to be served by Peoples. Northern further stated that it is proposing, at People's request, to increase firm entitlements for six communities served by Peoples and to decrease firm entitlements for three communities served by Peoples. Northern advises that the proposed realignment of entitlements would not affect the total level of firm sales service provided by Northern to Peoples. Attached hereto is an appendix A which reflects the proposed change in entitlements.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

Appendix A

REALIGNMENT OF CD-1 ENTITLEMENT BY AFFECTED COMMUNITY FOR PEOPLES NATURAL GAS

(Volumes in Mcf)

Community, State	Existing CD	Proposed CD	Increase (decrease)
Council Bluffs, Iowa	19,507	19,632	125
Fort Crook, Nebraska	5,116	2,703	(2,413)
Spencer, Iowa	2,744	2,844	100
Fredricksburg, Iowa	555	655	100
New Hampton, Iowa	2,015	2,003	(12)
Eagan, Minnesota	5,041	5,146	105
Rosemount, Minnesota	3,851	4,901	1,050
Austin, Minnesota	119	64	(55)
Erie Mining and Hibbing, Minnesota	0	1,000	1,000
Total Realignment	38,948	38,948	0

[FR Doc. 89-19659 Filed 8-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA89-8-000]

Ozona Residue Systems Co.; Petition for Adjustment

August 15, 1989.

Take notice that on April 27, 1989, Ozona Residue Systems Company (Ozona) filed with the Federal Energy Regulatory Commission a petition for adjustment under Rule 1104 of the Commission's rules of practice and procedure and section 502(c) of the Natural Gas Policy Act of 1978 NGPA requesting, alternatively, (a) an order finding that Ozona is engaged solely in "gathering" and is therefore not subject to the Commission's Natural Gas Act jurisdiction; (b) approval of Ozona's proposed tariff on the grounds that the rate complies with §§ 284.123(b)(1)(ii) of the Commission's regulations; or (c) an adjustment allowing Ozona to use its proposed tariff for NGPA Section 311 transportation to avoid alleged special hardship and inequity.

The procedures applicable to the conduct of this adjustment proceeding are found in subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 89-19660 Filed 8-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA86-83-002]

Public Service Company of Colorado; Filing

August 14, 1989.

Take notice that on July 24, 1989, Public Service Company of Colorado (PSC) tendered for filing its compliance report in compliance with the Settlement Agreement filed in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 28, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19661 Filed 8-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-68-000 et al.

Transcontinental Gas Pipe Line Corp.; Offers of Settlement and Notice Granting Shortened Comment Period

August 14, 1989.

In the matter of Docket Nos. RP88-68-000, RP87-7-012, RP87-7-000, RP89-122-000, RP89-123-000, RP89-163-000, TA88-1-29-000, TA88-4-29-000, TQ88-1-29-000, TA88-5-29-000, TQ89-1-29-000, TQ-2-29-000, TQ89-4-29-000, TA89-1-29-000, CP89-1915-000, CP89-1916-000, CP74-33-013, CP84-335-022, CP61-194-000, CP63-228-000, G-2432-000.

Take notice that on August 11, 1989, Transcontinental Gas Pipe Line Corporation (Transco) filed an Offer of Settlement in the captioned proceedings which is applicable to Transco's Rate Schedules G and OG customers, which are Signatory Parties to the Offer of Settlement. This Offer of Settlement generally tracks the comprehensive August 7, 1989 Offer of Settlement filed in these dockets by Transco and most of its larger customers. However, in addition, this Offer of Settlement includes a rate modification which Transco states is required by the historic rate design for Transco's smaller customers.

On August 11, 1989, Transco and National Fuel Gas Supply Corporation (National Fuel) filed an Offer of Settlement with the following major elements:

(1) Article I incorporates the terms and conditions of the August 7 Offer of Settlement except as modified by the terms of the revised Offer of Settlement;

(2) Article II provides that National Fuel elects to become a Settling Party as to Transco's Order No. 500 filings;

(3) Article III provides that National Fuel will permanently convert 100 percent of its firm sales service with Transco to long-term Rate Schedule FT firm transportation service;

(4) Article IV provides that the Commission shall approve the flow-through of all transportation rates and charges billed to National Fuel pursuant to the revised Offer of Settlement.

Transco states that the two Offers of Settlement, together with all attachments thereto, have been served pursuant to Rule 602(d)(1) upon all participants listed on the offical service lists in the captioned proceedings on file with the Commission, and upon all persons who were required to be served with Transco's rate filings which initiated several of the captioned proceedings.

Any persons not already parties to these proceedings which desire to file comments regarding the Offers of Settlement and the certificate authorizations sought in connection with the Offers of Settlement should, on or before August 21, 1989, file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 602(f)), together with a motion to intervene in accordance with the requirements of the Commission's Regulations under the Natural Gas Act (18 CFR 157,10 and 385.214).

In order to coordinate the procedural schedule for comments on the Offers of Settlement with the schedule previously established concerning comments on the August 7, 1989 settlement, and with the date for motions to intervene established above, initial comments on the Offers of Settlement should be filed on or before August 21, 1989, and reply comments should be filed on or before August 28, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19662 Filed 8-21-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-28-NG]

Western Energy, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Western Energy, Inc. (WEI), blanket authorization to export natural gas from the United States to Mexico. The order issued in FE Docket No. 89-28-NG authorizes WEI to export up to 54.75 Bcf of gas for short-term and spot market sales over a two-year period beginning on the date of the first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 14, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-19706 Filed 8-21-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENT PROTECTION AGENCY

[FRL-3633-5]

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 US.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: TSCA Inspection-Related Forms (EPA ICR #0163.03; OMB #2070-0007). This is a request for reinstatement of a previously approved collection.

Abstract: To verify compliance with the Toxic Substance Control Act, section 11 authorizes EPA to inspect establishments used to manufacture, process, or store chemicals. EPA uses various forms, which are the subject of this collection request, to ensure that the Agency conducts inspections legally.

Burden Statement: The public reporting burden for this collection of information is estimated to vary from 5 to 30 minutes per response. This estimate included the time for reviewing instructions, and completing and reviewing the collection of information.

Respondents: Chemical manufacturers, processors, and storers.

Estimated No. of Respondents: 5700.

Estimated Total Annual Burden on Respondents: 1754 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460,

and,

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC. 20530.

Dated: August 10, 1989

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-19735 Filed 8-21-89; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3633-6]

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202-382-2740).

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburazation Vessels (Subpart AA and AAa). Information requirements. (EPA ICR No. 1060.05; OMB No. 2060-0038). (This is a reinstatement of a previously approved ICR).

Abstract: Sources must notify EPA of construction, modification, start-up, shutdown, malfunction, date and results of initial performance test. Owners/operators of affected facilities must install a continuous monitoring device to measure opacity, keep records of flow rate data and pressure data, and submit quarterly or semiannual reports of excess opacity, high fan motor amperage, and low flow rates. Electric Arc Furnaces subject to Subpart AA must also keep daily records of time and duration of each tap and charge. EPA uses these data to ensure compliance.

Burden Statement: The estimated average public burden for this collection of information is 25 hours for reporting and 310 hours for recordkeeping per respondent. This estimate includes all aspects of the information collection including time for reviewing instructions, and gathering and maintaining the data needed.

Respondents: Owners of steel plants/Operators of electric arc furnaces.

Estimated No. of Respondents: 48.

Estimated Total Annual Burden on Respondents: 17,333 hours.

Frequency of Collection: Semiannually.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460,

and,

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place SW., Washington, DC 20503 (Telephone (202) 395-3084).

Dated: August 9, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-19736 Filed 8-21-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3633-7]

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Monitoring Potential Arsenic Exposure Levels in Wood Treatment Plants (EPA ICR #1289.02; OMB #2070-0081). This submission requests reinstatement for a previously approved collection.

Abstract: According to the provisions of a final EPA position document, facilities that use inorganic arsenic to pressure treat wood must either monitor work areas for airborne concentrations of inorganic arsenic or provide employees with respirators. In addition, facilities must maintain records of monitoring results and submit them annually to EPA. The Agency uses these records to evaluate the effectiveness of the monitoring program and for enforcement purposes.

Burden Statement: The public reporting burden for this collection of information is estimated to average 50 minutes per response for non-monitoring plants and to vary from 17 to 19 hours per response for those who must monitor. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Arsenical wood treatment plants.

Estimated No. of Respondents: 165.

Estimated Total Annual Burden on Respondents: 578 hours.

Frequency of Collection: Annually.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and,

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 1502.01; EPA's Asbestos-Related Supplement to the Department of Energy's Commercial Buildings Energy Consumption Survey; was appproved 07/12/89; OMB # 2070–0104; expires 10/12/89.

Dated: August 10, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89–19737 Filed 8–21–89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3631-8]

Decisions Pursuant to the Clean Water Act

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of availability of decisions and notice of opportunity for public comment and petition.

SUMMARY: EPA, Region IX, has issued its decisions on the lists of waters, point sources, and pollutants submitted by the State of Arizona pursuant to section 304(1). Copies of these decisions can be obtained from the contract person identified below. EPA is accepting comments from the public on its proposals to modify the lists submitted by Arizona, and is accepting petitions from the public to list additional waters.

ADDRESS: Comments and petitions should be mailed to the following address: Ken Greenberg (W–5–1), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Ken Greenberg at the address given above, or by telephone at (415) 974–9748.

SUPPLEMENTARY INFORMATION: Section 304(1) of the Clean Water Act as amended by the Water Quality Act of 1987 requires every State to develop lists of impaired waters, identify certain point sources and amounts of pollutants causing toxic impact, and to develop individual control strategies for each point source.

EPA is proposing to modify the lists of waters, sources, and pollutants submitted by Arizona. EPA is requesting comments from the public on these proposed additions and deletions. Comments are due by December 29, 1989, and should be sent to the address given above.

Pursuant to section 304(1)(3), EPA is accepting petitions from the public to make further additions to waters listed under section 304(1). Petitions must be received no later than December 29, 1989, and should be addressed to Harry Seraydarian, Director, Water Management Division, EPA, Region IX, 215 Fremont Street, San Francisco, CA 94105. A copy of the petition should also be sent to the contact person named above. The petition should identify and describe the water proposed to be listed with sufficient detail so that EPA is able to determine the location and boundaries of the water. The petition must also identify the list or lists for which the waterbody qualifies, and contain supporting information or data to show that the water satisfies the criteria for listing.

The records documenting EPA's decisions regarding the submittal from the State of Arizona are on file and may be inspected at the EPA, Region IX, office between the hours of 9 a.m. and 4 p.m., Monday through Friday except holidays. To make arrangements to examine these records, contact the person named above.

Following the close of the comment period, EPA will consider the comments and petitions received and will provide a written response no later than June 4, 1990. This response to comments will be made available to the public in the same manner as today's notice.

Arizona did not submit any individual control strategies. Therefore, EPA will prepare the required individual control strategies, in cooperation with the State of Arizona, after EPA has taken final action on the lists.

Dated: August 7, 1989.

Keith Takata,

Acting Director, Water Management Division.

[FR Doc. 89–19739 Filed 8–21–89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3633-8]

Public Water Supply Supervision Program; Program Revision for the State of South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of South Carolina is revising its approved State Public Water Supply Supervision Primary Program. South Carolina has adopted (1) drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690) and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534). EPA has determined that these two sets of State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted September 21, 1989 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made September 21, 1989, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective September 21, 1989.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201; and

Regional Administrator, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Carla E. Pierce, EPA, Region IV, Drinking Water Section at the Atlanta address given above; telephone 404/347–2913, (FTS) 257–2913.

(Sec. 1413 of the Safe Drinking Water Act, as amended, (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: August 14, 1989.

Lee A. Dehihns III,

Acting Regional Administrator.

[FR Doc. 89–19738 Filed 8–21–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Georgia Public Telecommunications Commission et al

1. The Commission has before it the following groups of mutually exclusive applications for four new FM stations:

Applicant	File No.	MM Docket No.
A. Georgia Public Telecommunications Commission; Roswell, GA.	BPED-870727MA	89–337
B. Lowell Maze Jackson; Roswell, GA.	BPH-870727MD	
C. Ivan M. Miles; Roswell, GA.	BPH-870727ME	
D. Johnson Broadcasting, Inc.; Roswell, GA.	BPH-870727MF	
E. George S. Finn, Jr.; Roswell, GA.	BPH-870727MI	
F. Paul Uhry Mazo d/b/a Mazo Radio Co.; Roswell, GA.	BPH-870727MJ	
G. Robert W. Rounsaville; Roswell, GA.	BPH-870727MK	
H. Southern Radio Services, Inc.; Roswell, GA.	BPH-870727ML	
I. Roswell Broadcast Communications, Ltd.; Roswell, GA.	BPH-870727MM	
J. New Georgia Broadcasting, Ltd.; Roswell, GA.	BPH-870727MO	
K. Eathel Holley; Roswell, GA.	BPH-870727MQ	

Issue heading and applicants

1. See Appendix, D
2. See Appendix, D
3. See Appendix, D
4. See Appendix, D
5. Comperative, All
6. Ultimate, All

Applicant	File No.	MM Docket No.
II.		
A. Gary L. Acker d/b/a/ Good News Broadcasting; Wichita Falls, TX.	BPH-871110MQ	89–352
B. Ronald M. Campagna; Wichita Falls, TX.	BPH-871110MZ	
C. Wrangler FM Limited Partnership; Wichita Falls, TX.	BPH-871110NF	
D. Samwill Broadcasting; Wichita Falls, TX.	BPH-871110NH	
E. Fred R. Morton, Jr.; Wichita Falls, TX.	BPH-871110NV	

Issue heading and applicants

1. & 2. Real Party-in-Interest, C
3. Misrepresentation, C
4. Qualifications, C
5. Air Hazard, A, B, C
6. Financial, B, E
7. Cross-Interest, E
8. Comparative, A–E
9. Ultimate, A–E

Applicant	File No.	MM Docket No.
III.		
A. Jerry L. Roth d/b/a/ Richmond Hill Broadcasting; Richmond Hill, GA.	BPH-870819MG	89–353
B. G. Troy Mattox d/b/a/ Bryan County Broadcasting; Richmond Hill, GA.	BPH-870819MI	
C. Zephyr Communications Corp.; Richmond Hill, GA.	BPH-870819MK	
D. Georgia Broadcast Partnership; Richmond Hill, GA.	BPH-870819MQ	
E. MGT Limited; Richmond Hill, GA.	BPH-870819MV	
F. Anderson Bradcasting Co., Inc.; Richmond Hill, GA.	BPH-870819MC (Previously Dismissed)	
G. Saluki Broadcasting Corporation; Richmond Hill, GA.	BPH-870819MM (Previously Dismissed)	

Issue heading and applicant

1. (See Appendix), D
2. (See Appendix), D
3. (See Appendix), D
4. Qualifications, D
5. Financial, E
6. Comparative, A, B, C, D, E
7. Ultimate, A, B, C, D, E

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of thse issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix I (Roswell, Georgia)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (JBI).

2. To determine whether D (JBI's) organizational structure is a sham.

3. To determine whether D (JBI) violated Section 1.65 of the Commission's Rules, and/or lacked candor, by failing to timely report the designation of character issues against other applicants in which one or more of its partners has an ownership interest and/or the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issues pending.

4. To determine, from the evidence adduced pursuant to Issues 1 through 3 above, whether D (JBI) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix II (Wichita Falls, TX)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of C (Wrangler).

2. To determine whether C (Wrangler's) organizational structure is a sham.

3. To determine whether C (Wrangler) violated Section 1.65 of the Commission's Rules, and/or lacked candor, by failing to report the designation of character issues against other applicants in which one or more of its partners has an ownership interest and/or the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issues pending.

4. To determine, from the evidence adduced pursuant to Issues 1 through 3 above, whether C (Wrangler) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix III (Richmond Hill, GA)

Additional Issue Paragraphs

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (Georgia).

2. To determine whether D's (Georgia) organizational structure is a sham.

3. To determine whether D (Georgia) violated Section 1.65 of the Commission's Rules, and/or lacked candor by failing to report the designation of character issues against other applicants in which one or more of its partners has an ownership interest.

[FR Doc. 89–19647 Filed 8–21–89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Gulfway and EMC/JSS Cross Space Charter & Sailing Agreement; Filing

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011141–008.

Title: Gulfway.

Parties: Lykes Bros. Steamship Co., Inc., Hapag Lloyd AG, Sea-Land Service, Inc., P&O Containers (TFL) Ltd., Deppe Linie GMBH, Gulf Container Line (GCL), BV Compagnie Generale Maritime (CGM), Nedlloyd Lijnen BV South Atlantic Cargo Shipping, N.V. Euro-Gulf International, Inc.

Synopsis: The proposed modification would clarify the parties' ability to discuss and agree upon their separate service contracts in the Agreement trade. It does not authorize joint service contracts and adherence to any agreement reached would be voluntary.

Agreement No.: 232–011204–001.

Title: EMC/JSS Cross Space Charter & Sailing Agreement.

Parties: Evergreen Merchant Marine Corporation (Taiwan) Ltd., Johnson Scanstar ("JSS").

Synopsis: The proposed modification would reduce the minimum space allocated to JSS on each sailing.

By Order of the Federal Maritime Commission.

Dated: August 16, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–19686 Filed 8–21–89; 8:45 am]

BILLING CODE 6730-01-M

Port of Portland and City of Long Beach; Terminal Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200275.

Title: Port of Portland Terminal Agreement.

Parties: Port of Portland (Port) Nippon Yusen Kaisha, Ltd. (NYK).

Synopsis: The Agreement provides NYK preferential use of a container yard (approx. 10 acres), a vessel berth and two container cranes located at Terminal 6, Port of Portland. The Port will perform all terminal stevedoring and other services required in the movement of containers and cargo on or over the premises. In consideration, NYK will use Terminal 6 for a minimum of 17 vessel calls per year for its Far East Express Service and guarantees the Port a minimum throughput of 18,000 containers in any of their Pacific Northwest services. Also, in lieu of the Port's Tariff rates for wharfage and dockage, NYK will pay the Port specific per container wharfage and dockage rates based on its volume at Terminal 6.

Agreement No.: 224–010736–003.

Title: City of Long Beach Terminal Agreement.

Parties: City of Long Beach (City), Long Beach Container Terminal, Inc. (LBCT).

Synopsis: The agreement amends the basic agreement (Agree No. 224–010736). The City assigns to LBCT: an exclusive preferential assignment of an office building at Berth 640, Pier A; and, a nonexclusive preferential assignment of the remainder of the terminal areas at Berths 3–4 and Berths 6–10, Pier A. The Agreement also provides for a new compensation formula and describes the improvements to be made by the City to the areas assigned.

By Order of the Federal Maritime Commission.

Dated: August 16, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–19687 Filed 8–21–89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing of the Federal Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 5, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Mr. Ulysses G. Auger,* Washington, DC; to acquire up to 15 percent of each class of common stock of James Madison Limited, Washington, DC, and thereby indirectly acquire Madison National Bank, Washington, DC; United National Bank of Washington, Washington, DC; Madison Bank of Maryland, Silver Spring, Maryland; and Madison National Bank of Virginia, McLean, Virginia.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *William G. Barron,* Owensboro, Kentucky; to acquire 14.07 percent of the voting shares of Indiana United Bancorp, Greensburg, Indiana, and thereby indirectly acquire The Peoples Bank, Portland, Indiana, and Union Bank and Trust Co., Greensburg, Indiana.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *River Valley Bancshares, Inc. Employee Stock Ownership Trust,* Lewistown, Missouri; to acquire 24.25 percent of the voting shares of River Valley Bancshares, Inc., Lewistown, Missouri, and thereby indirectly acquire Lewistown State Bank, Lewistown, Missouri.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Gail K. Mathisen,* Chanhassen, Minnesota; to acquire an additional 40.95 percent of the voting shares of St. James Bancorp, Inc., Chanhassen, Minnesota, as the result of a stock redemption, and thereby indirectly acquire Citizens State Bank of St. James, St. James, Minnesota, and Jackson State Bank, Minnesota.

2. *John C. Mithun,* Wayzata, Minnesota, to acquire 13.23 percent; Lewis M. Mithun, Wayzata, Minnesota, to acquire 26.46 percent; and Raymond O. Mithun, Jr., Wayzata, Minnesota, to acquire 26.46 percent of the voting shares of R.O.M. Financial Services, Inc., Wayzata, Minnesota, and thereby indirectly acquire State Bank of Chanhassen, Chanhassen, Minnesota.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Willie E. Bewer,* Bowie, Texas; to acquire 100 percent of the voting shares of Ryan Bancshares, Inc., Ryan, Oklahoma, and thereby indirectly acquire First State Bank, Ryan, Oklahoma.

F. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Charles R. Wiggins,* Liberty, Texas, and Hillary G. Wiggins, Liberty, Texas; to each acquire 29.19 percent of the voting shares of First Liberty National Bancshares, Inc., Liberty, Texas, and thereby indirectly acquire First liberty National Bank, Liberty, Texas.

G. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Bay Commercial Services Employee Stock Ownership Plan,* San Leandro, California; to acquire 2.61 percent of the voting shares of Bay Commercial Services, San Leandro, California, and thereby indirectly acquire Bay Bank of Commerce, San Leandro, California.

Board of Governors of the Federal Reserve System, August 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–19691 Filed 8–21–89; 8:45 am]

BILLING CODE 6210-01-M

Center Banks Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 8, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Center Banks Incorporated,* Skaneateles, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Skaneateles Savings Bank, Skaneateles, New York.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Alliance Bancorporation and Trimpe's Inc.,* Lisbon, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Lisbon Bank and Trust Company, Lisbon, Iowa.

2. *Peoples Financial Corp. of Illinois, Inc.,* Kewanee, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples National Bank of Kewanee, Kewanee, Illinois.

3. *Prairie State Bancorp, Inc.,* Danforth, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank of Danforth, Danforth, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Blue Valley Ban Corp,* Leawood, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Blue Valley, Overland Park, Kansas.

2. *H. Pat Henson Company,* Maysville, Oklahoma; to acquire 90.8 percent of the voting shares of Peoples State Bank, Blair, Oklahoma, which engages in the sale of life and accident and health insurance directly related to credit extended by Peoples State Bank.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *East Texas Financial Corporation,* Kilgore, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank, Kilgore, Texas.

Board of Governors of the Federal Reserve System, August 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–19692 Filed 8–21–89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. 9214]

Lee M. Mabee, Jr., M.D.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Sioux Falls, S.D. physician from conspiring to interfere with the operation of the Medical School's OB/GYN department or faculty, or from preventing or restricting competition in the provision of OB/GYN care in the Sioux Falls, S.D., area.

DATE: Comments must be received on or before October 23, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael McNeely, FTC/S–3308, Washington, DC 20580. (202) 326–2904.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period

BEST COPY AVAILABLE

of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The agreement herein, by Lee M. Mabee, Jr., M.D., hereafter referred to as Respondent, and Counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent is a licensed physician and doing business under and by virtue of the laws of the State of South Dakota, with his office and principal place of business located at the address listed in the complaint attached hereto.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging him with a violation of Section 5 of the Federal Trade Commission Act and has filed an answer to the complaint denying the charges.

3. Respondent admits all the jurisdictional facts set forth in the complaint attached hereto.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and, except to the extent described in Paragraph Three of this agreement, does not constitute an admission by Respondent that the facts as alleged in the complaint are true or that the law has been violated as alleged in the complaint.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Respondent, (1) issue its decision containing the following Order to cease and desist in disposition of this proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to the address of the Respondent as stated in the complaint shall constitute service. Respondent waives any right he may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. Respondent has read the complaint and Order contemplated hereby. He understands that when the Order has been issued, he will be required to file one or more compliance reports showing he has fully complied with the Order. Respondent further understands he may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

For purposes of this Order, the following definitions shall apply:

A. "Respondent" means Lee M. Mabee, Jr., M.D.

B. "Medical School" means University of South Dakota School of Medicine.

C. "OB/GYN Center" means any medical facility or program established to provide obstetrical or gynecological care, research or education.

II

It is ordered, That the Respondent shall forthwith, directly, indirectly, or through any corporate or other device, in connection with the provision of health care services in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, as amended, cease and desist from entering into, attempting to enter into, organizing, continuing or acting in furtherance of any agreement or combination, either express or implied, with any physician(s), to refuse or threaten to refuse to deal with, or otherwise coerce, any person or entity for the purpose or with the effect of interfering with the operation of the academic or clinical programs of the Medical School's obstetrical/gynecological ("OB/GYN") department or faculty, or of preventing or restricting competition from any person or entity for the provision of OB/GYN care in the Sioux Falls, South Dakota, area, including but not limited to any agreement or combination to:

(1) Refuse or threaten to refuse to serve on the faculty of the Medical School;

(2) Make joint demands or joint decisions as to any term or condition for serving on the faculty of the Medical School;

(3) Refuse, or threaten to refuse, to refer patients to, receive referrals of patients from or provide any other form of professional cooperation to, any physician, based on his or her affiliation or prospective affiliation with the Medical School, or with any OB/GYN center, or on his or her treatment of, or attempts to attract, private patients;

(4) Interfere in a coercive manner with any attempt by the Medical School to recruit physicians to work in the Sioux Falls area, or to negotiate jointly with the Medical School concerning any term or condition with respect to its recruitment or hiring of such physicians;

(5) Refuse or threaten to refuse to admit patients to any hospital or other medical facility, based on the relationship of the hospital or facility with the Medical School, or based on the actual or prospective operation or funding, in whole or part, of any OB/GYN center by the hospital or facility; or

(6) Coerce the Medical School, any physician, or any other entity to eliminate, limit or restrict advertising for OB/GYN services in the Sioux Falls area.

Provided that nothing in this Order shall prohibit Respondent from entering into an agreement or combination with any physician with whom Respondent practices medicine in partnership or in a professional corporation, or who is employed by the same person as Respondent.

III

It is further ordered, That:

A. Respondent shall, within thirty (30) days after this Order becomes final, mail a copy of this Order and of the complaint in this proceeding to the Administrator, the Chairman of the Board of Directors, and the chief officer of the medical staff of Sioux Valley Medical Center and McKennan Hospital, in Sioux Falls.

B. Respondent shall, within sixty (60) days after service of this Order, and at any time the Commission, by written notice, may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which Respondent has complied with this Order.

C. If Respondent, at any time, discontinues his present business or employment, he shall promptly notify the Commission of such discontinuance. In addition, for a period of seven (7) years after this Order becomes final, Respondent shall promptly notify the Commission whenever he enters into any new business or employment whose activities involve the provision of OB/GYN services in the Sioux Falls area. Each such notice shall include Respondent's new business address and a statement of the nature of the business or employment in which Respondent is newly engaged as well as a description of Respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from a physician practicing in Sioux Falls, South Dakota. The agreement would settle charges by the Commission that the physician, along with eleven other physicians in Sioux Falls, violated section 5 of the Federal Trade Commission Act by, among other things, concertedly refusing to teach residents in the University of South Dakota School of Medicine's (the "Medical School") residency program in obstetrics and gynecology in order to force the Medical School to limit the provision of obstetrical/gynecological care by members of its full-time faculty in competition with the physician. The other eleven physicians have previously signed a consent agreement with the Commission in *Certain Sioux Falls Obstetricians*, C–3241 (Oct. 11, 1988).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

The Commission issued a complaint against Dr. Mabee on July 20, 1988. According to the complaint, the Medical School operates an obstetrics/gynecology ("OB/GYN") residency program in Sioux Falls and other locations in South Dakota. The Medical School has a full-time faculty of physicians employed by the school, including several physicians specializing in OB/GYN. In addition to teaching and conducting research, the full-time faculty engages in the practice of medicine through the Medical School's practice plan. The school depends to a large extent on a clinical faculty made up of private practitioners to teach both medical students and residents.

The complaint alleges that in 1985 the medical school expanded its OB/GYN residency program in Sioux Falls and was planning a further expansion, including hiring additional full-time faculty. According to the complaint, this expansion raised the prospect of increasing competition in Sioux Falls between the medical school's full-time OB/GYN faculty and the local private OB/GYN practitioners. In addition, the complaint alleges that the increased number of residents being trained in Sioux Falls would increase competition in the provision of OB/GYN care.

The complaint alleges that Dr. Mabee and all eleven other OB/GYNs in private practice in Sioux Falls, South Dakota, participated in a conspiracy to restrict competition from the full-time faculty and residents involved in the Medical School's OB/GYN residency program. For instance, Dr. Mabee and the other OB/GYNs, several of whom were on the Medical School's clinical faculty, signed a letter to the Medical School and the hospitals in Sioux Falls stating that they would not support the OB/GYN residency program. After the end of the school year, when their contracts expired, none of the private OB/GYNs in Sioux Falls participated in OB/GYN resident teaching. According to the complaint, the letter and other collective actions were an attempt by the private OB/GYNs in Sioux Falls to use their control over clinical faculty services needed by the Medical School to force it to limit competition with them. In furtherance of the conspiracy, the complaint alleges that the private OB/GYNs made numerous joint demands on the Medical School to limit competition from the OB/GYN residency as conditions of their participation in the residency program, and took other actions to restrict competition from the residency. In addition, the complaint alleges that the collective actions of the OB/GYNs significantly hindered the operation of the residency program and threatened its accreditation.

The complaint further alleges that the conduct of Dr. Mabee and the other OB/GYNs in Sioux Falls constitutes an unlawful conspiracy to eliminate or limit competition in the provision of OB/GYN care. It alleges that the purposes or effects of the combination or conspiracy have been to restrict competition for the provision of OB/GYN care and OB/GYN instruction among OB/GYNs in the Sioux Falls area, and thereby to deprive consumers of the benefits of competition.

The Proposed Consent Order

Part I of the order contains definitions of terms used in the order.

Part II of the order describes the conduct that the order prohibits. The order prohibits respondent from agreeing or combining with any physician to refuse, or threaten to refuse, to deal with any person for the purpose or with the effect of interfering with the operation of the Medical School's OB/GYN department or faculty, or of preventing or restricting competition in the provision of OB/GYN care in the Sioux Falls, South Dakota, area. Subsections (1) through (6) of Part II list several examples of the conduct that is prohibited by the order, including agreements or combinations to: (a) Refuse to serve on the faculty of the Medical School, (b) make joint demands on the Medical School, (c) refuse to refer patients to Medical School faculty, or receive referrals from Medical School faculty, (d) interfere in a coercive manner with recruiting by the Medical School for its full-time faculty, (e) refuse to admit patients to any hospital based on the relationship of the hospital with the Medical School, and (f) coerce the Medical School or any other person to limit advertising for OB/GYN services.

However, the order does not prohibit Dr. Mabee from engaging in concerted conduct with any physician with whom he practices medicine in partnership, or who is employed by the same employer as Dr. Mabee.

Part III of the order contains provisions relating to compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

This proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in the complaint.

Donald S. Clark,
Secretary.

[FR Doc. 89-19740 Filed 8-21-89; 8:45 am]

BILLING CODE 6750-01-M

[File No. 882 3248]

Nutronics Corp., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Longmont, Co. manufacturer of the Alter-Brake System (ABS) to have competent and reliable scientific research to substantiate its increased fuel-saving claims, and to cease misrepresenting that its ABS device has been approved by the government for sale to the public.

DATE: Comments must be received on or before October 23, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington DC 20580.

FOR FURTHER INFORMATION CONTACT: Claude C. Wild, III, Denver Regional Office, Federal Trade Commission, 1405 Curtis Street, Suite 2900, Denver, Co. 80202–2393. (303) 844–2271.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rule of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nutronics Corporation and Gary Kelsay (hereafter sometimes referred to as "proposed respondents") and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from use of the acts and practices being investigated.

It is hereby agreed, By and between Nutronics Corporation, by its duly authorized officers, Gary Kelsay, and their attorney, and counsel for the Federal Trade Commission that:

1. Nutronics Corporation is a corporation organized and existing under the laws of the State of Nevada. It is qualified to do business in the State of Colorado as a foreign corporation with its office and principal place of business located at 700 Weaver Park Rd., Suite A, Longmont, Colorado 80501.

2. Gary Kelsay is President and CEO of proposed corporate respondent Nutronics Corporation. He formulates, directs and controls the acts and practices of said corporate respondent.

3. Proposed respondents admit all of the jurisdictional allegations set forth in the attached draft complaint.

4. Proposed Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, both it and the draft complaint will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft complaint.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, in disposition of the proceeding, and without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order, to proposed respondents' address as stated in this agreement, shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order of the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered, That respondents Nutronics Corporation and Gary Kelsay, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of the "Alter Break System" or any other "automobile retrofit device" (as that term is defined in section 511 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2011), in or affecting commerce (as that term is defined in the Federal Trade Commission Act), do forthwith cease and desist from:

a. Misrepresenting, directly or by implication, that the government has approved such device for sale to the public; or

b. Misrepresenting, directly or by implication, that any person or entity has confirmed that such device increases gas mileage, unless such person or entity has, in fact, confirmed that such device increases gas mileage in the stated percentages.

II

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of any automobile retrofit device in or affecting commerce do forthwith cease and desist from representing, directly or by implication, that any such device will or may improve fuel economy when installed in an automobile, truck, recreational vehicle, or other motor vehicle, unless at the time of making such representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; *Provided, however,* That:

(a) With respect to such representation, "competent and reliable" scientific evidence means tests, demonstrations, research, studies, surveys or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Respondents may use tests such as the then current Environmental Protection Agency Federal Test Procedure, 40 CFR Part 86, or Highway Fuel Economy Test, 40 CFR Part 600, or other tests of equivalent competency or reliability;

(b) When making any such representation, any material limitation on the applicability of the representation to certain vehicles, including but not limited to any limitation regarding the number of cylinders a vehicle must have in order for it to benefit from use of an automobile retrofit device, and any limitation regarding the minimum number of miles a vehicle must be driven before the represented benefits can be expected, shall be clearly and conspicuously disclosed.

III

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of any automobile retrofit device in or affecting commerce shall clearly and conspicuously display the following disclaimer when making any representation, directly or by implication, of improved fuel economy or performance through the use of any such device: "Reminder: The actual fuel savings or level of performance attained may vary, depending on the kind of driving you do, how you drive, and the condition of your car."

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of any automobile retrofit device in or affecting commerce do forthwith cease and desist from making any fuel savings claims which use the phrase "up to" or words of similar import unless the maximum level of savings or performance claimed can be achieved by an appreciable number of consumers, and, further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the maximum level of savings or performance, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the maximum level of savings or performance.

V

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of any automobile retrofit device in or affecting commerce do forthwith cease and desist from making any claim regarding the length of time required to realize fuel savings equivalent to the cost of such automobile retrofit device, unless such claim is substantiated by results pursuant to Part II of this Order.

VI

It is further ordered, That respondents, their successors and assigns, shall, for three (3) years from the date any representation covered by this Order is disseminated, maintain and make available to the Federal Trade Commission for inspection and copying the following records:

(1) Dissemination schedules for all advertisements, sales promotional materials, and post-purchase materials containing the representation;

(2) All materials that were relied upon to substantiate the representation; and

(3) All tests, demonstrations, research, studies, surveys, or other evidence in respondents' possession or control that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation.

VII

It is further ordered, That the respondents shall distribute a copy of this order without delay to all present and future personnel, agents, or representatives having sales, advertising or policy responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed statement acknowledging receipt of this order.

VIII

It is further ordered, That each respondent shall notify the Commission of any discontinuance of its present business and/or affiliation with any new business or employment for a period of three (3) years from the effective date of this order. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with such business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

IX

It is further ordered, That the corporate respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

X

It is further ordered, That respondents shall, within sixty (60) days after service of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted an agreement to a proposed consent order from Nutronics Corporation, of Longmont, Colorado, and its president and principal shareholder, Gary Kelsey (hereinafter jointly referred to as "respondents").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents manufacture and distribute a retrofit device called the Alter-Break System ("ABS"). The ABS disengages the alternator during period of acceleration, thereby momentarily decreasing the load on the engine. Respondents claim that fuel savings and increased engine performance will result from this decreased engine load.

A complaint prepared for issuance by the Commission together with the proposed consent order references the following six claims made by respondents and alleges that they are false and misleading: (1) That the ABS increases gas mileage from 12-28%; (2) That the ABS, through increased fuel economy, "will pay for itself in only a few months;" (3) That the ABS has been endorsed by the Department of Energy; (4) That the ABS has been endorsed by the Department of Commerce; (5) That the Department of Energy has conducted scientific tests on the ABS which substantiate a gas mileage increase of 24%; and (6) That the Department of Commerce has conducted scientific tests on the ABS which substantiate a gas mileage increase of 24%. In addition, it is alleged that at the time the claims were being made, respondents also misrepresented, directly or by implication, that they possessed and relied upon a reasonable basis for the claims.

The proposed consent order ("Order") is designed to prevent respondents from making any statistical fuel savings claims for the ABS unless they possess competent and reliable scientific evidence to support the claims. In addition to this general restriction, the Order: (1) Prevents respondents from making fuel savings claims using the phrase "up to," or words of similar import unless an appreciable number of consumers can achieve the maximum stated level of fuel savings or performance; (2) prevents respondents from making unsubstantiated claims that the device, through increased fuel savings, will pay for itself within a certain time period; and (3) requires the respondents to display a specified disclaimer along with any fuel savings or performance claims.

Additionally, the Order prevents respondents from misrepresenting, directly or by implication, that any governmental agency has approved the ABS system for sale to the public or that the government has confirmed the fuel savings claims being made.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89-19741 Filed 8-21-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

[Transmittal No. 87-45]

Aid to Families With Dependent Children AFDC) Program; Hearing for the New York Disapproval of the State's Proposed State Plan Amendment

AGENCY: Family Support Administration, Department of Health and Human Services.

ACTION: Notice of hearing.

SUMMARY: By designation of the Family Support Administration, a member of the Departmental Appeals Board will hold a hearing pursuant to 45 CFR part 213 concerning the Family Support Administration's disapproval of a State Plan amendment submitted by New York.

EFFECTIVE DATE: The hearing will be held at 11:00 a.m. on September 22, 1989 at the Jacob Javitz Federal Building, Room 305A, 26 Federal Plaza, New York, New York 10278.

REQUESTS TO PARTICIPATE: Request to participate as a party must be submitted to the Departmental Appeals Board in the form specified at 45 CFR 213.15(b)(2) September 6, 1989. Requests to participate as *amicus curiae* must be submitted to the Departmental Appeals Board in the form specified at 45 CFR 213.15(c)(1) before the commencement of the hearing.

FOR FURTHER INFORMATION CONTACT: Sara Anderson, Staff Attorney, Departmental Appeals Board, Department of Health and Human Services, Room 635-F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, telephone: (202) 475-0344.

SUPPLEMENTARY INFORMATION: Notice of hearing is hereby given as set forth in the following letter, which has been sent to the New York Department of Social Services on July 31, 1989.

Ms. Ilene R. Bergman, Assistant Counsel, Bureau of Deferrals and Disallowances, 40 North Pearl Street, 10-C, Albany, New York 12243,
and,
Ms. Elizabeth Dusaniwskyj, Regional Counsel, Region II, Department of Health and Human Services, Room 3908, 26 Federal Plaza, New York, New York 10278.

Counsel:

This letter is in response to the June 28, 1989 request for reconsideration filed by the New York Department of Social Services (State) in which it seeks reconsideration of the Family Support Administration's (FSA) disapproval of the State's proposed State Plan amendment submitted as Transmittal No. 87-45.

In the proposed amendment to the State's plan for implementing Title IV-A of the Social Security Act under the Aid to Families with Dependent Children (AFDC) program, the State sought to validate the preexistent Emergency Assistance Rehousing Program (EARP), which provides for bonus payment to landlords, as of January 1, 1988, via its inclusion in the State Plan.

Pursuant to 45 CFR 213.21, I have designated Donald F. Garrett, a Departmental Appeal Board Member, to preside at the hearing, which will be conducted under the procedures in 45 CFR part 213. Pursuant to 45 CFR 201.4, a hearing has been scheduled to be held at 11:00 A.M, September 22, 1989 in Room 305A, Jacob Javitz Federal Building, 26 Federal Plaza, New York, New York 10278. A verbatim transcript will be taken.

The issues to be considered at the hearing include:

1. Whether the State Plan amendment violates the regulatory requirement that the needs of an AFDC family are to be determined on an "objective" basis (45 CFR 233.20(a)(1)(i)).
2. Whether the State Plan amendment violates the requirement that special need items be considered for all applicants and recipients requiring them (45 CFR 233.20(A)(2)(v)).
3. Whether the State Plan amendment violates the equitable treatment provisions at 45 CFR 233.10(a).
4. Whether section 1119 of the Act demonstrates that Congress had not intended for Title IV-A funds to be used to reimburse states for assistance to landlords, especially for such amounts as are involved in EARP.

A copy of this letter will appear as a Notice in the **Federal Register** and any person wishing to request recognition as a party will be entitled to file a petition

pursuant to 45 CFR 213.15(b) with the Department Appeals Board within 15 days after that notice has been published. A copy of the petition should be served on each party of record at that time. The petition must explain how the issues to be considered at the hearing have caused them injury and how their interest is within the zone of interests to be protected by the governing Federal regulations at 45 CFR 213.15(b)(1). In addition, the petition must concisely state (i) petitioner's interest in the preceeding, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesss in accordance with 45 CFR 213.15(b)(2). Any party may, within 5 days of receipt of such petition, file comments thereon; the presiding officer will subsequently issue a ruling on whether and on what basis participation will be permitted.

Any interested person or organization wishing to participate as *amicus curiae* may also file a petition with the Board, which shall conform to the requirements at 45 CFR 213.15(c)(1).

Any further inquires, submissions, or correspondence regarding this matter should be filed in an original and two copies with Mr. Garrett at the Departmental Appeals Board, Room 637-D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, where the record in this matter will be kept. Each submission must include a statement that a copy of the material has been sent to the other party, identifying when and to whom the copy was sent. For convenience please refer to Board Docket No. 89-143.

Sincerely,

Catherine Bertini,

Acting Assistant Secretary

Dated: August 15, 1989

Catherine Bertini,

Acting Assistant Secretary, Family Support Administration.

[FR Doc. 89-19665 Filed 8-21-89; 8:45 am]

BILLING CODE 4150-04-M

Health Resources and Services Administration

Program Announcement for Retention Program for Health Professions Schools With Individuals From Disadvantaged Backgrounds Grant

The Health Resources and Services Administration announces that applications for Fiscal Year 1990 Retention Program for Health Professions Schools With Individuals From Disadvantaged Backgrounds Grants are being accepted under the authority of section 787A of the Public Health Service Act as established by Public Law 100-607.

Section 787A authorizes a supplemental grant program to award grants to schools of medicine, schools of osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, or public health that demonstrate sufficient graduation of students from disadvantaged backgrounds. Such an institution will be eligible for funds under this section if it can demonstrate graduation of students from disadvantaged backgrounds at rates that are at least 90 percent of the graduation rate for nondisadvantaged students.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Formulas determining eligibility and reward levels are specified in the legislative authority. All applicant institutions meeting the eligibility requirements as provided by section 787A shall receive an equitable portion of appropriated funds. To be eligible for a grant, an institution must have a disadvantaged graduate figure, as defined below, which exceeds the nondisadvantaged graduate figure.

The amount awarded to each eligible institution shall be determined by: Dividing the total amount of available funds by the number of disadvantaged students who graduated from eligible institutions during the preceding fiscal year. This quotient is then multiplied by the number of students from disadvantaged backgrounds who graduated from the eligible institution during the preceding fiscal year to determine the amount of the grant.

Definitions

As used in this notice: *Disadvantaged graduate figure* is the quotient obtained by dividing the numbes of students from disadvantaged backgrounds who graduate from the institution as a part of such class by the number of students from disadvantaged backgrounds who matriculated into the same class at the institution.

Nondisadvantaged graduate figure is 90 percent of the quotient obtained by dividing the number of nondisadvantaged graduates from an institution as part of a class by, the number of nondisadvantaged students who matriculated into the same class at that institution.

Individual from a disadvantaged background means an individual who (a) comes from an environment that has inhibited the individual from obtaining the knowledge, skills and abilities required to enroll in and graduate from a health professions school or (b) comes from a family with an annual income below a level based on low income thresholds according to family size, published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and adjusted by the Secretary for use in all health professions programs, 42 CFR 57.1804(b)(2).

The following income figures determine what constitutes a low income family for purposes of the Retention Program for Health Professions Schools With Individuals From Disadvantaged Background Grants for Fiscal Year 1990:

Size of parents family [1]	Income level [2]
1	$7,900
2	10,300
3	12,300
4	15,700
5	18,500
6 or more	20,800

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to $100 adjusted gross income for calendar year 1988.

Grants awarded to eligible applicants may be used by the grantee institution for the following purposes:

(1) *Financial aid.* Financial aid services (including direct student aid in the form of traineeships) for disadvantaged students who enrolled at the grantee health professions school, to complete their education; and

(2) *Retention.* Activities designed to help student participants from disadvantaged backgrounds, who have been accepted to, or are enrolled in health professions schools, to complete their education. Such activities may include tutorial assistance, counseling, and assistance in adjusting to the environment of the school.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be mailed to the Grants Management Officer at the above address.

Questions regarding programmatic aspects of this grant program should be directed to: Chief, Analysis and Evaluation Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–3680.

The application deadline is October 4, 1989. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Postmarked on or before the deadline, and received in time for review. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

The standard application form and general instructions PHS 6025–1, HRSA Competing Training Grant Application has been approved by the office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060. The supplemental instructions have been submitted for OMB approval.

This program is not listed in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated July 25, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–19694 Filed 8–21–89; 8:45 am]

BILLING CODE 4160–15–M

Office of Human Development Services

Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and Date: Meeting begins at 9:00 a.m. and ends at 5:00 p.m. on Wednesday, August 30, 1989, and begins at 9:00 a.m. and ends at 4:30 p.m. on Thursday, August 31, 1989.

Place: On Wednesday, Augsut 30, Lewis Room, The Holiday Inn-Capitol, 550 C Street, SW., Washington, DC., from 9:00 a.m. to 5:00 p.m., and Thursday, August 31, Lewis Room The Holiday Inn-Capitol, from 9:00 a.m.—4:30 p.m.

Status: Meeting is open to the public.

Contact Persons: Barbara Forte, Room 4280, Wilbur Cohen Federal Building, 245–2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93–29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub.L. 92–453, 5 U.S.C. App. 1, Section 10, 1976) that the Council will hold its August quarterly meeting on August 30 & 31, 1989, from 9:00 a.m.—5:00 p.m. and from 9:00 a.m.—4:30 p.m. respectively, in the Lewis Meeting Room of the Holiday Inn-Captitol Hotel, 550 C Street, SW., Washington, DC. 20024. On August 30, the Council will open its regular meeting and then proceed with a Forum on Education and Employment for Women and the Elderly.

The agends for a Forum on Education and Employment for Women and the Elderly is as follows: Witnesses before the Council will include: Jane Marden, Director of Consumer Affairs, American Gas Association; Anita Stowell, American Association of Retired Persons; Representatives from the Edison Electric Institute, and the U.S. Department of Labor.

The rest of the two-day meeting will include discussion of Current Projects, Committee Reports, Agenda Projects and other matters as they relate to the aging population.

Dated: August 15, 1989.

Ingrid Azvedo,

Chairperson, Federal Council on the Aging.

[FR Doc. 89–19728 Filed 8–21–89

BILLING CODE 4130–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–060–09–4320–08]

Management Framework Plan; Price River Resource Area Plan; UT

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Decision Record—Plan amendment for Price River Resource Area Plan, Emery County, Utah.

SUMMARY: This decision record advises the public that the Bureau of Land Management (BLM) has amended an existing Management Framework Plan.

SUPPLEMENTARY INFORMATION: An amendment to the Price River Resource Area Management Framework Plan (MFP) was signed by the Utah State Director on July 17, 1989. In the original MFP, approved September 2, 1983, there was a resource allocation conflict between domestic livestock and wild bighorn sheep in six grazing allotments. The conflict was resolved in favor of the existing domestic livestock grazing permits. This decision precluded augmentation of bighorn sheep population. The grazing preference on four of the six allotments was relinquished by the grazing permittees after a negotiated settlement with the Utah Division of Wildlife Resources. Relinquishment of the grazing permits eliminated the domestic sheep/wild sheep conflict and rendered portions of the MFP meaningless.

The plan amendment provides the four allotments; Bighorn, Elliott Mountain, River, and Pack Trail be managed for wild land values, including bighorn sheep, riparian, and recreation. Grazing of domestic livestock is limited to trailing and recreational pack stock. The amendment provides for the same management of the Last Chance and Price River South allotments should the grazing preference be relinquished or otherwise lost on these allotments during the life of the plan. Scope of the amendment is limited to forage allocation. The area affected by this amendment is located in northeastern Emery County, Utah. The area encompasses approximately 123,500 acres of public land and 13,000 acres of state and private lands. The allotments are mostly within the Desolation Canyon (UT–068A) and Turtle Canyon (UT–067) Wilderness Study Areas.

The plan amendment and accompanying environmental assessment and Finding of No Significant Impact are available for public inspection at the Price River Resource Area. For further information, contact Mark Bailey, Price River Resource Area Manager, 900 North 700 Est, Price, Utah 84501 or call (801) 637–4584. Persons who have participated in the planning process may protest the amendment to the Director, Bureau of Land Management. Protests must be in accordance with 43 CFR 1610.5–2 and

must be filed within thirty days of the publication of this notice.

James M. Parker,

Utah State Director.

[FR Doc. 89–19742 Filed 8–21–89; 8:45 am]

BILLING CODE 4310–DQ–M

[AZ–020–9–4212–14; AZA–23855 through AZA–23861]

Realty Action; Competitive Sale of Public Land in Yavapai County, Arizona

The Bureau of Land Management will offer seven tracts of land for public sale. These tracts are located near Wickenburg, Arizona. The sale of these tracts is consistent with Section 203 of the Federal Land Policy and Management Act of October 21, 1976. These tracts will be sold at no less than the appraised fair market value. The subject lands are located at:

Gila and Salt River Meridian, Arizona

Serial Nos.		Acres
AZA–23855	T. 8 N., R. 5 W., Sec. 15, NE¼NE¼NW¼.	10.00
AZA–23856	T. 8 N., R. 5 W., Sec. 15, SE¼NE¼NW¼.	10.00
AZA–23857	T. 8 N., R. 5 W., Sec. 15, W½NE¼NW¼.	20.00
AZA–23858	T. 8 N., R. 5 W., Sec. 15, NW¼NW¼.	40.00
AZA–23859	T. 8 N., R. 5 W., Sec. 15, N½SW¼NW¼.	20.00
AZA–23860	T. 8 N., R. 5 W., Sec. 15, W½/SE¼NW¼.	20.00
AZA–23861	T. 8 N., R. 5 W., Sec. 15, E½SE¼NW¼.	20.00

The above description totals 140.00 acres of land in Yavapai County.

Federal law limits sale of this land to United States citizens, corporations subject to the laws of any State or of the United States, States, State instrumentalities or political subdivisions authorized to hold property, and any entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. The purchaser is deemed to be the individual(s) or corporation that will actually take title to the land from the government; the citizenship limitation does not apply to agents who bid on behalf of an associate, client or employer.

All of the parcels listed will contain the following reservations when patented:

1. A right-of-way for ditches and canals constructed by the authority of the United States. (Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.)

2. A reservation of all oil and gas to the United States with the right to prospect for, mine, and remove such deposits.

The following tracts will be sold subject to the following:

1. Parcels AZA–23855—AZA–23861 will be sold subject to BLM road right-of-way A–18698.

2. AZA–23859 will be sold subject to BLM road right-of-way A–18699.

The successful bidder will also be required to purchase the mineral estate at the time of final payment.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all forms of non-discretionary appropriation under the public land laws, including the mining laws, except the mineral leasing laws, for a period of 270 days or until the lands are sold. The segregative effect may otherwise be terminated by the authorized officer by publication of a termination notice in the **Federal Register** prior to the expiration of the 270 day period.

Additional information regarding these tracts of land will be contained in the sales brochure made available at least 30 days prior to the sale. This additional information includes: 1. Sealed bid instructions; 2. Times of first sealed bid opening; 3. Appraised fair market value of the tracts; 4. Any reservations or terms and conditions that apply to the tracts of land; 5. Maps showing the location of the tracts of land; 6. Requirements of parties wishing to bid; and 7. Payment procedures for the successful bidder.

For a period of 45 days from the date of this notice, interested parties may submit comments regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior. Comments regarding this action or requests for additional information should be sent to the Phoenix District, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Dated: August 16, 1989.

Henri R. Bisson,

District Managers.

[FR Doc. 89–19675 Filed 8–21–89; 8:45 am]

BILLING CODE 4310–32–M

[NM–010–9–5420–10–ZGKJ/GP–0115; NM NM 80786]

Albuquerque District, Issuance of Disclaimer of Interest to Land in New Mexico

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice of intent to issue a disclaimer of interest.

SUMMARY: Notice is hereby given that the United States of America, pursuant to the provisions of the Federal Land Policy and Management Act (FLPMA) of 1976, section 315, 43 U.S.C. 1745, does hereby disclaim and release to F.H. Parks and Louise S. Parks all interests in both the surface and mineral estate in the land described below.

A certain tract of land situated within section 36, T. 11 N., R. 5 E., NMPM, Bernalillo County, New Mexico, being and comprising the East portion of Small Holding Claim No. 1918, Lot 2 in said section (less right-of-way for State Highway) and being more particularly described as follows:

Beginning at the Northwesterly corner of said tract, being a point on the East right-of-way of State Highway 14, whence the Easterly section corner common to Sections 35 and 36 bears N. 53°23'25" W., 727.81 feet distant; thence from said point of beginning; leaving said right-of-way S. 78°08'30" E., 297.45 feet to the Northeast corner; thence S. 16°34'41" W., 136.06 feet to the Southeast corner; thence N. 79°10'30" W., 278.76 feet to the Southwest corner; a point on said Easterly right-of-way of State Highway 14; thence along said right-of-way along a curve to the right; having a radius of 1,225.78 feet, a distance of 140.90 feet to the point of beginning and containing 0.909 acre more or less.

After review of the official records and other title evidence, it has been determined by the Bureau of Land Management that the above described land is a portion of Lot 2, Small Holding Claim No. 1918 that was patented out of Federal ownership on March 19, 1906. The patent was filed for record on April 7, 1911, and recorded on April 10, 1911, in Book 5C, Page 33, Bernalillo Courthouse, Albuquerque, New Mexico.

The Bureau of Land Management has determined that the United States has no interest in the above described land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments on this disclaimer may present their views in writing to the District Manager, Albuquerque District Office, 435 Montano NE, Albuquerque, New Mexico

87107. If no protests are received within the time allowed, the disclaimer will be issued.

Dated: August 11, 1989.

Monte G. Jordan,

Associate State Director.

[FR Doc. 89-19695 Filed 8-21-89; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that FMP Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4897, Block 46, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on August 14, 1989. Comments must be received on or before September 6, 1989 Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Dated: August 15, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-19743 Filed 8-21-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Commitee Act (Pub. Law 92-463. 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that a meeting of the Acadia National Park Advisory Commission will be held on Monday, September 11, 1989.

The Commission was established pursuant to Public Law 99-420, Sec. 103. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the Park, including but not limited to the acquisition of lands and interests (in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at Acadia National Park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1:00 p.m. to consider the following agenda:

1. Old Business.
2. New Business:
   A. Committee reports—
      Acquisition—Criteria for setting Priorities in Land Protection Plan.
      Easement—Criteria for accepting Easements on Mount Desert Island.
   B. General Management Plan
   C. Needs Assessment
3. Proposed agenda and date of next Commission meeting.

The Commission meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609.

Dated: August 15, 1989.

Steven H. Lewis,

Acting Regional Director.

[FR Doc. 89-19754 Filed 8-21-89; 8:45 am]

BILLING CODE 4310-70-M

Farmington Wild and Scenic River Study, Massachusetts and Connecticut, Farmington River Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 s 10), that a meeting of the Farmington River Study Committee will be held Thursday, September 14, 1989.

The Committee was established pursuant to Public Law 99-590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of two segments of the Farmington River.

The meeting will convene at 7:30 p.m. at the Canton Town Hall, Canton, Connecticut, for the following reasons:

1. Approval of minutes of 6/8/89 meeting
2. Report on Budget Status
3. Update on Resource Assessment and Report from Eligibility Subcommittee
4. Report from Water Resources Subcommittee
5. Report from River Conservation Planning Subcommittee
6. Review of proposed themes/goals for the study and the river conservation plan
7. Opportunity for public comment
8. Other business.

It is anticipated that about 100 people will be able to attend the session in addition to the Committee members.

Interested persons may make oral/written presentations to the Committee or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the

Public Affairs Officer, National Park Service, North Atlantic Region, 15 State Street, Boston, Massachusetts 02109 (617) 223-5199.

Dated: August 15, 1989.

Steven H. Lewis,

Acting Regional Director.

[FR Doc. 89-19755 Filed 8-21-89; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 12, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by September 6, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Pulaski County

Rock Island—Argenta Depot, 4th and Hazel, North Little Rock, 89001403

FLORIDA

Leon County

Covington House, 328 Cortez St., Tallahassee, 89001386

INDIANA

Marion County

Indiana World War Memorial Plaza, Bounded by St. Clair, Pennsylvania, Vermont, and Meridian Sts., Indianapolis, 89001404

University Park, Bounded by Vermont, Pennsylvania, New York, and Meridian Sts., Indianapolis, 89001405

KANSAS

Reno County

Fox Theater, 18 E. First, Hutchinson, 89001391

LOUISIANA

Morehouse Parish

Excelsior, LA 133, Oak Ridge, 89001387

MASSACHUSETTS

Norfolk County

Alden, Arthur, House (Quincy MRA), 24 Whitney Rd., Quincy, 89001382

Bainbridge, Randolph, House (Quincy MRA), 133 Grandview Ave., Quincy, 89001340

Barker, George A., House (Quincy MRA), 74 Greenleaf St., Quincy, 89001345

Barker, Henry F., House (Quincy MRA), 103 Greenleaf St., Quincy, 89001346

Barnes House (Quincy MRA), 183 Pine St., Quincy, 89001362

Barnicoat, S.H., Monuments (Quincy MRA), 114 Columbia St., Quincy, 89001325

Bateman, William R., House (Quincy MRA), 148 Monroe Rd., Quincy, 89001359

Baxter Street Historic District (Quincy MRA), Roughly 19-34 Baxter St., Quincy, 89001309

Bethany Congregational Church (Quincy MRA), 8 Spear St., Quincy, 89001374

Brown-Hodgkinson House (Quincy MRA), 42 Bicknell St., Quincy, 89001319

Building at 1-7 Moscow Street (Quincy MRA), 1-7 Moscow St., Quincy, 89001360

Building at 51 Hunt Street (Quincy MRA), 51 Hunt St., Quincy, 89001355

Burgess, Charles H., House (Quincy MRA), 17 Whitney Rd., Quincy, 89001381

Burgess, Frank, House (Quincy MRA), 355 Highland Ave., Quincy, 89001354

Burgin, Clarence, House (Quincy MRA), 95 President's Ln., Quincy, 89001364

Central Fire Station (Quincy MRA), 26 Quincy Ave., Quincy, 89001371

Christ Church (Quincy MRA), 14 Quincy St., Quincy, 89001369

Christ Church Burial Ground (Quincy MRA), 54-60 School St., Quincy, 89001372

Coddington School (Quincy MRA), 26-44 Coddington St., Quincy, 89001323

Crane, Frank W., House (Quincy MRA), 11 Avon Way, Quincy, 89001312

Curtis, Noah, House (Quincy MRA), 313 Franklin St., Quincy, 89001335

Curtis, Thomas, House (Quincy MRA), 279 Franklin St., Quincy, 89001334

Davis, Dr. Frank, House (Quincy MRA), 25 Elm St., Quincy, 89001330

Dicey, Russell M., House (Quincy MRA), 56 Pope St., Quincy, 89001363

Dogget, Solon, House (Quincy MRA), 50 Union St., Quincy, 89001379

Dorothy Q Apartments (Quincy MRA), 36 Butler Rd., Quincy, 89001322

Elks Building (Quincy MRA), 1218-1222 Hancock St., Quincy, 89001348

Faxon House (Quincy MRA), 310 Adams St., Quincy, 89001310

First Baptist Church of Wollaston (Quincy MRA), 187 Warren Ave., Quincy, 89001380

Fore River Club House (Quincy MRA), Follett and Beechwood Sts., Quincy, 89001333

Glover House (Quincy MRA), 249 E. Squantum St., Quincy, 89001328

Granite Trust Company (Quincy MRA), 1400 Hancock St., Quincy, 89001351

Halloran, John, House (Quincy MRA), 99 E. Squantum St., Quincy, 89001327

Hardwick House (Quincy MRA), 59-61 Spear St., Quincy, 89001376

Hersey, Ebenezer B., House (Quincy MRA), 57 Coddington St., Quincy, 89001324

House at 105 President's Lane (Quincy MRA), 105 President's Ln., Quincy, 89001365

House at 15 Gilmore Street (Quincy MRA), 15 Gilmore St., Quincy, 89001336

House at 20 Sterling Street (Quincy MRA), 20 Sterling St., Quincy, 89001377

House at 23-25 Prout Street (Quincy MRA), 23-25 Prout St., Quincy, 89001367

House at 25 High School Avenue (Quincy MRA), 25 High School Ave., Quincy, 89001352

House at 32 Bayview Avenue (Quincy MRA), 32 Bayview Ave., Quincy, 89001314

House at 92 Willard Street (Quincy MRA), 92 Willard St., Quincy, 89001383

House at 94 Grandview Avenue (Quincy MRA), 94 Grandview Ave., Quincy, 89001339

Jewell, David L., House (Quincy MRA), 48 Grandview Ave., Quincy, 89001338

Lennon, Edward J., House (Quincy MRA), 53 Taber St., Quincy, 89001378

Marsh, Charles, House (Quincy MRA), 248 President's Ln., Quincy, 89001366

Marsh, Edwin W., House (Quincy MRA), 17 Marsh St., Quincy, 89001356

McIntire, Herman, House (Quincy MRA), 55 Dixwell Ave., Quincy, 89001326

Miller, Edward, House (Quincy MRA), 36 Miller Stile Rd., Quincy, 89001358

Munroe Building (Quincy MRA), 1227-1259 Hancock St., Quincy, 89001349

Nelson, John R., House (Quincy MRA), 4 Brunswick St., Quincy, 89001321

New England Telephone Building (Quincy MRA), 10 Merrymount Rd., Quincy, 89001357

Newcomb Place (Quincy MRA), 100 Putnam St., Quincy, 89001368

Nightengale House (Quincy MRA), 24 Quincy St., Quincy, 89001370

Nightengale, Solomon, House (Quincy MRA), 429 Granite St., Quincy, 89001342

Nowland, J. Martin, House (Quincy MRA), 31 Edgemere Rd., Quincy, 89001329

Pinkham House (Quincy MRA), 79 Winthrop Ave., Quincy, 89001384

Pratt-Faxon House (Quincy MRA), 75 Faxon Ln., Quincy, 89001331

Quincy Electric Light and Power Company Station (Quincy MRA), 76 Field St., Quincy, 89001332

Quincy Police Station (Quincy MRA), 442 Southern Artery, Quincy, 89001373

Quincy Savings Bank (Quincy MRA), 1370 Hancock St., Quincy, 89001350

Quincy Water Company Pumping Station (Quincy MRA), 106 Penn St., Quincy, 89001361

Record, Jonathan Dexter, House (Quincy MRA), 39-41 Grandview Ave., Quincy, 89001337

Reed, Timothy, House (Quincy MRA), 284 Adams St., Quincy, 89001311

Richards, Alfred H., House (Quincy MRA), 354 Highland Ave., Quincy, 89001353

Salem Lutheran Church (Quincy MRA), 199 Granite St., Quincy, 89001341

Sidelinger, George A., House (Quincy MRA), 19 Avon Way, Quincy, 89001313

South Junior High School (Quincy MRA), 444 Granite St., Quincy, 89001343

Spear, Seth, Homestead (Quincy MRA), 47-49 Spear St., Quincy, 89001375

White, Charles E., House (Quincy MRA), 101 Billings Rd., Quincy, 89001320

Winfield House (Quincy MRA), 853 Hancock St., Quincy, 89001347

Wollaston Branch, Thomas Crane Public Library (Quincy MRA), 41 Beale St., Quincy, 89001316

Wollaston Fire Station (Quincy MRA), 111 Beale St., Quincy, 89001317

Wollaston Theatre (Quincy MRA), 14 Beale St., Quincy, 89001315

Wollaston Unitarian Church (Quincy MRA), 155 Beale St., Quincy, 89001318

MISSOURI

Pettis County

Hotel Rothwell, 103 E. Fourth St., Sedalia, 89001408

NEW YORK

Dutchess County

Windswept Farm, Sunset Trail, Clinton, 89001390

Kings County

Atlantic Avenue Tunnel, Below Atlantic Ave. between Boerum Pl. and Columbia St., New York City, 89001368

Montgomery County

Sweet, Samuel, Canal Store, 65 Bridge St., Amsterdam, 89001380

OREGON

Clatsop County

ISABELLA Shipwreck Site and Remains, Address Restricted, Astoria vicinity, 89001385

TENNESSEE

Coffee County

Carroll, J.G., and R.H. Mitchell Houses (Tullahoma MPS), 211 and 217 S. Atlantic, Tullahoma, 89001399

Dewey-Troxler Building (Tullahoma MPS), 225 N. Atlantic St., Tullahoma, 89001400

East Central Tullahoma Historic District (Tullahoma MPS), Roughly bounded by E. Lincoln, S. Polk, E. Lauderdale, and S. Washington Sts., Tullahoma, 89001397

Hickerson, L.D., House (Tullahoma MPS), 215 N. Washington St., Tullahoma, 89001395

North Washington Street Historic District (Tullahoma MPS), 603–611 N. Washington St., Tullahoma, 89001396

South Jackson Street Historic District (Tullahoma MPS), 216 and 300–306 S. Jackson St., Tullahoma, 89001398

Tennessee Glove Factory (Tullahoma MPS), 106 S. Atlantic St., Tullahoma, 89001394

US Post Office—Tullahoma (Tullahoma MPS), 201 N. Atlantic St., Tullahoma, 89001393

VIRGINIA

Louden County

Old Stone Church Archeological Site (44LD376), Address Restricted, Leesburg vicinity, 89001402

The 15-day commenting period has been waived for the following property in order to assist in its preservation:

GEORGIA

Camden County

Little Cumberland Island Lighthouse, N end of Little Cumberland Island, St. Marys vicinity 89001407

[FR Doc. 89–19750 Filed 8–21–89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388; Sub-No. 7]

Intrastate Rail Rate Authority, Illinois

AGENCY: Interstate Commerce Commission.

ACTION: Notice of certification.

SUMMARY: The Commission grants final (5-year unconditional) certification to the Illinois Commerce Commission under 49 U.S.C. 11501(b) to regulate intrastate rail transportation.

DATES: Certification will begin September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENATRY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721].

Decided: August 15, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–19709 Filed 8–21–89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31503]

The Garden City Co-Op, Inc., Exemption From 49 U.S.C. 10746 and 11343

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts Garden City Co-op, Inc., from the requirements of 49 U.S.C. 11343–11345 for it to control Garden City Western Railway Company (GCW) and The Garden City Northern Railway, Inc. (GCN), subject to standard labor protective conditions. Its request to be exempted from 49 U.S.C. 10746, the commodities clause, is dismissed. The request is in connection with Finance Docket No. 31502, Garden City No. Ry., Inc.—Exempt. of Acq. and Oper. of Rail Line—Atchison, T. and S. F. Ry. Co. and Garden City, G. and No. R. Co., in which GCN plans to acquire and operate a 30.59-mile rail line between Garden City and Shallow Water, KS.

DATES: This exemption is effective on September 6, 1989. Petitions for stay must be filed by September 1, 1989, and petitions for reconsideration must be filed by September 18, 1989.

ADDRESSES: Send an original and 10 copies of pleadings referring to Finance Docket No. 31503 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioner's representative: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland, Emrich & Herman, 20 N. Wacker Drive, Chicago, IL 60606

FOR ADDITIONAL INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721].

Decided: August 14, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89–19708 Filed 8–21–89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31487]

Natchez Trace Railroad; Purchase and Lease; CSX Transportation Lines Between Wellington and Anniston, AL and Talladega and Gantt's Jct., AL

AGENCY: Interstate Commerce Commission.

ACTION: Correction to decision at 54 FR 30287 (July 19, 1989). The last sentence under "**DATES**" has been changed by adding a specific date for issuing a service list. The corrected paragraph follows.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than August 17, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by September 1, 1989. Applicants' reply is due September 21, 1989. Comments must be served on all parties of record within 10 days of the Commission's issuance of a service list. The Commission expects to issue the service list by September 1, 1989, or shortly thereafter.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This decision is effective on August 22, 1989.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 89–19536 Filed 8–21–89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Claims Against Egypt; Adjudication Program Transfer From State Department; Correction

AGENCY: Foreign Claims Settlement Commission of the United States, Justice.

ACTION: Notice; correction.

SUMMARY: The following is a correction of the notice published on August 10, 1989, at 54 FR 32856, concerning the transfer from the Department of State to the Foreign Claims Settlement Commission of the Department's program for adjudication of claims of United States nationals against the Government of the Arab Republic of Egypt. Among other things, this notice announced the setting of a final deadline for the filing of claims of United States nationals for losses resulting from the blocking of bank accounts by the Government of the Arab Republic of Egypt. However, due to an editing error, this final deadline was incorrectly stated at one place in the notice.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 1111 20th Street NW., Room 400, Washington, DC 20579, (202) 653–5883 or FAX (202) 653–6009.

In the first sentence of the Notice of Time for Filing and Completion of Program paragraph appearing in the **Federal Register** at page 32856, column 3, on August 10, 1989 (54 FR 32856), the date is corrected to read as follows:

Notice of Time for Filing and Completion of Program

I. Pursuant to section 4(b) of Title I of the International Claims Settlement Act of 1949, as amended (22 U.S.C. 1623(b)), the Foreign Claims Settlement Commission hereby gives notice that the period for the filing of any new, previously unadjudicated claims for losses resulting from the blocking by the Government of the Arab Republic of Egypt of bank accounts in Egypt owned by United States nationals will * * * end on November 30, 1989. * * *.

* * * * *

Dated at Washington, DC, August 16, 1989.

Judith H. Lock,

Administrative Officer.

[FR Doc. 89–19648 Filed 8–21–89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee for the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: September 12, 1989, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. section 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contract: Fernand Lavallee, Director, Labor Advisory Committee Group, Phone: (202) 523–6061.

Signed at Washington, DC, this 16th day of August.

Berton J. Braley, Jr.,

Acting Deputy Under Secretary International Affairs.

[FR Doc. 89–19715 Filed 8–21–89; 8:45 am]

BILLING CODE 4510-28-M

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–1301, Washington, D.C. 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration

Quarterly Determinations, Allowance Activities and Employability Services under the Trade Act & Training Waivers Issued and Revoked

1205–0016; ETA 563, ETA 9027

Form #	Affected Public	Respondents	Frequency	Average time per response
ETA 563	State or local governments.	52	Quarterly	12 minutes
ETA 9027	State or local governments.	52	Quarterly	15 minutes

1,331 total hours.

Quarterly data on Trade Adjustment Assistance activity is needed for timely program evaluation necessary for competent administration and for providing legally mandated reports to the Congress on the Trade Adjustment Assistance Program. Quarterly number of waivers of training issued and revoked by reason are needed for proper administration and to provide statutorily required report to the Congress.

Extension

Employment Standards Administration
Rehabilitation Maintenance Certificate
1215–0161; OWCP–17
On occasion

Individuals or households; small businesses or organizations 950 respondents; 1904 total hours; 10 minutes per response; 1 form. The form OWCP–17 serves as a bill submitted by the disabled worker to OWCP requesting reimbursement of expenses incurred due to participation in an approved rehabilitation effort for the preceding four week period.

Extension

Employment Standards Administration
OWCP Representative Fee Request
1215–0078; CA–38; 20 CFR 702.132
As needed

Businesses or other for profit; small businesses or organizations 11,000 responses; 10,000 total hours; .5 to 1.5 hrs. per response Requests for approval of a fee for services provided OWCP claimant/beneficiaries submitted by attorney/representative.

Signed at Washington, DC, this 17th day of August, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89–19716 Filed 8–21–89; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 1, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 1, 1989.

The petitions filed in this case area available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 14th day of August 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Barlyn Mfg. Corp. (ILGWU)	Newark, NJ	8/14/89	8/7/89	23,248	Intimate Apparel.
Beta Mfg. Co. (UAW)	Warren, MI	8/14/89	8/3/89	23,249	Electrical Assemblies.
Cosmo Fashions (ILGWU)	Newark, NJ	8/14/89	8/7/89	23,250	Sewing.
Diamond Well Service (Company)	Casper, WY	8/14/89	7/27/89	23,251	Oil and Gas.
Dotti Original, Inc. (ILGWU)	Elizbeth, NJ	8/14/89	8/7/89	23,252	Blouses.
ELRA Dress Co. (ILGWU)	Jersey City, NJ	8/14/89	8/7/89	23,253	Dresses.
Earnest Power Tong Service-Earnest Power Tong & Pipe (Workers).	Odessa, TX	8/14/89	7/26/89	23,254	Oil and Gas.
Enfield Apparel Co. (Workers)	Enfield, IL	8/14/89	8/3/89	23,255	Men and Childrens' Clothing.
First Financial Mgt. Corp.-Thrift Div. (Company)	Englewood, CO	8/14/89	7/25/89	23,256	Computers.
Guy Friel & Son Inc. (Workers)	Smyrna Mills, ME	8/14/89	8/2/89	23,257	Wood.
H.T. Geophysical Corp. (Workers)	Denver, CO	8/14/89	8/3/89	23,258	Seismic Data.
Horizon Well Serv. (Workers)	Woodward, OK	8/14/89	8/3/89	23,259	Oil and Gas.
JC Penney Co. (Workers)	New York, NY	8/14/89	7/3/89	23,260	Merchandise Apparel.
Ka'u Agribusiness Co., Inc. (ILWU)	Pahala, HI	8/14/89	7/28/89	23,261	Sugar Cane.
Koelling Metals (IAM)	St. Louis, MO	8/14/89	8/1/89	23,262	Metallic Ring.
Meilink Steel Safe Co. (Workers)	Toledo, OH	8/14/89	7/27/89	23,263	Vault Doors and Fire Safes.
Michel T. Halbouty Energy Co. (Workers)	Houston, TX	8/14/89	7/26/89	23,264	Oil and Gas.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Mobil Exploration & Producing US, Inc.; Midland Div. (Workers).	Midland, TX	8/14/89	7/31/89	23,265	Do.
Nichols Casing Crews (Company)	Oklahoma City, OK	8/14/89	8/2/89	23,266	Do.
North Central Oil Corp. (Workers)	Houston, TX	8/14/89	8/3/89	23,267	Do.
Oil Well Perforators, Inc. (Company)	Englewood, CO	8/14/89	8/3/89	23,268	Do.
P.S.&L. Corp. (ILGWU)	Orange, NJ	8/14/89	8/2/89	23,269	Sportswear.
Parker Seal Co. (IBFO)	Bekea, KY	8/14/89	8/4/89	23,270	'O' Rings.
Pullman Power Products (UAJA)	Williamsport, PA	8/14/89	7/29/89	23,271	Pipe Fabrication.
Pharaolt Design Corp. (ILGWU)	East Newark, NJ	8/14/89	7/21/89	23,272	Sportswear.
Rod Ric Corp. (Workers)	Odessa, TX	8/14/89	7/28/89	23,273	Oil and Gas.
Rwimco Drilling Inc. (Workers)	Cisco, TX	8/14/89	8/7/89	23,274	Do.
SSMC (Workers)	Fairfield, NJ	8/14/89	7/19/89	23,275	Design Sewing Machines.
Service America Corp. (Workers)	Springdale, AK	8/14/89	8/3/89	23,276	Food.
Snyder Tank Corp. (Workers)	Galeton, PA	8/14/89	7/31/89	23,277	Fuel Tanks
Somerset Knitting Mills (ILGWU)	Philadelphia, PA	8/14/89	8/7/89	23,278	Sweaters.
Sovonics Solar Systems (Workers)	Troy, MI	8/14/89	7/12/89	23,279	Electronic Devices.
Texaco, USA/Casper District (Workers)	Casper, WY	8/14/89	8/2/89	23,280	Oil and Gas.
Texaco, USA/Midland Div. (Company)	Midland, TX	8/14/89	8/1/89	23,281	Do.
V'Lora Swimwear, Inc. (ILGWU)	Bloomfield, NJ	8/14/89	8/7/89	23,282	Swimwear.

[FR Doc. 89–19711 Filed 8–21–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,805]

CRC Mallard d.b.a. Mallard Workover & Drilling, Inc., Lafayette, LA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 9, 1989 applicable to all workers of CRC Mallard Workover & Drilling, Inc., Lafayette, Louisiana.

The certification is being amended to properly reflect the correct worker group. New information from the bankruptcy trustee indicates that the correct name of the subject worker group was CRC Mallard, Lafayette, Louisiana. All the assets were sold in May 1987 including the name Mallard to another firm in the same business which became called Mallard Workover & Drilling, Inc., Lafayette, Louisiana. Mallard Workover & Drilling is the successor firm of CRC Mallard.

The notice is amended to include the correct name of the worker group, CRC Mallard, Lafayette, Louisiana and its successor firm Mallard Workover & Drilling, Inc., Lafayette, Louisiana.

The amended notice applicable to TA–W–21,805 is hereby issued as follows:

> All workers of CRC Mallard, Lafayette, Louisiana and its successor firm Mallard Workover & Drilling, Inc., Lafayette, Louisiana who became totally or partially separated from employment on or after October 1, 1985 and before January 1, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of August 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–19712 Filed 8–21–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W22, 459 and TA–W–22, 459A]

Phillips Petroleum Co., Western Division, Oklahoma City, OK; All Exploration and Production Units in Oklahoma; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 10, 1989 applicable to all workers of Phillips Petroleum Company, Western Division, Oklahma City, Oklahoma.

Based on new information from the company, additional workers were separated from Exploration and Production Units of the Western Division of Phillips Petroleum Company in the State of Oklahoma. The notice for the Oklahoma District of the Western Division of Phillips Petroleum Company is amended to include all exploration and production units of Phillips Petroleum Company in the State of Oklahoma.

The amended notice applicable to TA–W–22, 459 is hereby issued as follows:

> All workers of Phillips Petroleum Company, Western Division, Oklahoma City, Oklahoma and all Exploration and Production Units of Phillips Petroleum Company located throughout the State of Oklahoma who became totally or partially separated from employment on or after January 23, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of August 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Service, UIS.

[FR Doc. 89–19713 Filed 8–21–89 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of July 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the worker's firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases or imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the

separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-23,022; Witco Corp., Richardson Battery Parts Div, Clark, NJ

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-23,086; PMC Equipment Co., Inc., Chart Drive Recorder Dept., Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,121; Rockwell International Measurement & Flow Control Div., Pittsburgh, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,984; Amoco Production Co., General Office, Chicago, IL

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,985; Amoco Production Co., Research Center, Tulsa, OK

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,987; Amoco Production Co., New Orleans, LA Region and Operating at Various Locations in the Following States

TA-W-22,987A; Louisiana
TA-W-22,987B; Mississippi
TA-W-22,987C; Pennsylvania
TA-W-22,987D; Alabama

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,986; Amoco Production Co., Houston, TX Region and Operating at Various Locations in the Following States

TA-W-22,987A; New Mexico
TA-W-22,987B; Texas
TA-W-22,987C; Michigan

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,983; Amoco Production Co., Denver, CO Region and Operating at Various Locations in the Following States

TA-W-22,983A; New Mexico
TA-W-22,983B; Alaska
TA-W-22,983C; Wyoming
TA-W-22,983D; Colorado
TA-W-22,983E; Oklahoma
TA-W-22,983F; Utah
TA-W-22,983G; North Dakota
TA-W-22,983H; South Dakota
TA-W-22,983I; Nebraska
TA-W-22,983J; Kansas

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determination

TA-W-23,007; Hunt Energy Corp., Dallas, TX

A certification was issued covering all workers separated on or after May 3, 1988.

TA-W-23,002; Gruss Petroleum Management, Inc., Midland, TX

A certification was issued covering all workers separated on or after May 18, 1988.

TA-W-23,003; Gruss Petroleum Management, Inc., New York, NY

A certification was issued covering all workers separated on or after May 18, 1988.

TA-W-23,045; Scab Rock Feeders, Inc., Othello, WA

A certification was issued covering all workers separated on or after December 1, 1988.

TA-W-23,009; Jerry Scott Drilling Co., Inc., Seminole, OK

A certification was issued covering all workers separated on or after May 16, 1988.

TA-W-23,014; Maxim Drilling & Exploration, Inc., Gillette, WY

A certification was issued covering all workers separated on or after April 18, 1988.

TA-W-23,008; J.G. Carmel, Inc., Midland, TX

A certification was issued covering all workers separated on or after May 18, 1988.

TA-W-23,010; Jorgruss Oil Corp., Midland, TX

A certification was issued covering all workers separated on or after May 18, 1988.

TA-W-23,015; Pegasus Holding Corp., Midland, TX

A certification was issued covering all workers separated on or after May 18, 1988.

TA-W-23,062; Oryx Energy Co., Formerly Sun Exploration and Production Co., Headquartered in Dallas, TX and Operating at Various Locations in the Following States

TA-W-23,062A; California
TA-W-23,062B; Oklahoma
TA-W-23,062C; District of Columbia
TA-W-23,062D; Florida
TA-W-23,062E; Kansas
TA-W-23,062F; Louisiana
TA-W-23,062G; Michigan
TA-W-23,062H; Mississippi
TA-W-23,062I; New Mexico
TA-W-23,062J; Oklahoma
TA-W-23,062K; Texas
TA-W-23,062L; Wyoming

A certification was issued covering all workers separated on or after June 26, 1988.

I hereby certify that the aforementioned determinations were issued during the month of July 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: August 15, 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-19714 Filed 8-21-89 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-57]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee Informal Executive Subcommittee.

DATES: September 12, 1989, 1 p.m. to 5:30 p.m., and September 13, 1989, 8:30 a.m. to 12:30 p.m.

ADDRESSES: State Plaza Hotel, Envoy Room, 2117 E Street NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph K. Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1430).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Informal Executive Subcommittee will meet to formulate plans for the next meeting of the full Committee.

The Subcommittee is chaired by Dr. Berrien Moore and is composed of 8 members. The meeting will be open to the public up to the seating capacity of the room (approximately 15 people including members of the Subcommittee).

Type of Meeting: Open.

Agenda

Tuesday, September 12

1 p.m.—Office of Space Science and Applications Issues and Space Science and Applications Advisory Committee (SSAAC) tasks.

2 p.m.—Discussion of follow-up actions from the June SSAAC meeting.

3:30 p.m.—Discussion of SSAAC work priorities in Fiscal Year 1990.

5:50 p.m.—Adjourn.

Wednesday, September 13

8:30 a.m.—Discussion of November SSAAC meeting topics.

10:30 a.m.—Preparation of agenda for November meeting.

12:30 p.m.—Adjourn.

Dated: August 14, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-19693 Filed 8-21-89; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Notice of Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published July 26, 1989 (54 FR 31125). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meetings. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agendas for the September 1989 ACRS full Committee and the September 1989 ACNW meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/492-7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Regional Programs, August 29-30, 1989, King of Prussia, PA (Region I Office). The Subcommittee will review the activities under the purview of the NRC Regional I Office.

Joint Extreme External Phenomena and Severe Accidents, September 6, 1989, Bethesda, MD. The Subcommittees will be briefed by the NRC and industry on the Individual Plant Examination for External Events (IPEEE) program.

Joint Containment Systems and Structural Engineering, September 12, 1989, San Francisco, CA. The Subcommittees will discuss containment design criteria for future plants with invited speakers from industry and National Laboratories.

Thermal Hydraulic Phenomena, September 13 and a.m. on 14, 1989, *San Jose, CA.* The Subcommittee will discuss the capability of the thermal hydraulic codes to model BWR core power instability.

Joint Severe Accidents and Probabilistic Risk Assessment, September 19, 1989, Bethesda, MD. The Subcommittees will discuss the second draft of NUREG-1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants."

Severe Accidents, September 20, 1989, Bethesda, MD. The Subcommittee will discuss the proposed Generic Letter by NRR, the NRC Research Program, and the NUMARC/EPRI activities in the accident management area.

Advanced Pressurized Water Reactors, September 21, 1989, Bethesda, MD. The Subcommittee will discuss the comparison of the *W*APWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Human Factors, September 27, 1989, Bethesda, MD. The Subcommittee will review the proposed Access Authorization Rule and performance indicators.

Mechanical Components, October 3, 1989, Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 87, "Failure of HPCI Steamline Without Isolation,"—specifically the matter of implementing current design requirements on MOV's, status of Task Action Plan on check valves, and discuss Generic Letter 89-04, "Guidance on Developing Acceptable Inservice Testing Program."

Joint Containment Systems and Structural Engineering, October 17, 1989, Chicago, IL. The Subcommittees will discuss containment design criteria for future plants with invited speakers from industry and National Laboratories.

Thermal Hydraulic Phenomena, October 27, 1989, San Jose, CA. The Subcommittee will review the key thermal hydraulic design aspects of the GE ABWR.

Advanced Boiling Water Reactors (GE ABWR), October 31, 1989, Bethesda, MD. The Subcommittee will review the NRC staff's SER on Module One of GE ABWR.

Regulatory Policies and Practices, November 15, 1989, Bethesda, MD. The Subcommittee will discuss integration of the regulatory process.

Thermal Hydraulic Phenomena, November 22, 1989, Bethesda, MD. The Subcommittee will discuss selected topics related to the NRC-RES thermal hydraulic research program.

Decay Heat Removal Systems, Date to be determined (September/October), Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 84, "CE PORVs."

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (September/October), Bethesda, MD. The Subcommittees will continue their review of boiling water reactor core power stability pursuant to the core power oscillation event at LaSalle County Station, Unit 2.

General Electric Reactors, Date to be determined (September/October), Bethesda, MD. The Subcommittee will review the restart of Nine Mile Point Unit 1.

Advanced Pressurized Water Reactors, Date to be determined (September/October), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Severe Accidents, Date to be determined (September/October), Bethesda, MD. The Subcommittee will discuss the NRC Severe Accident Research Program (SARP) plan.

Decay Heat Removal Systems, Date to be determined (November), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Systematic Assessment of Experience, Date to be determined (November/December), Bethesda, MD. The Subcommittee will review the proposed power level increase for Indian Point Unit 2.

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry best-estimate ECCS model submittals for use with the revised ECCS Rule.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Reliability Assurance, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of implementation of the resolution of USI A–46, "Seismic Qualification of Equipment in Operating Plants," and other related matters.

Joint Regulatory Activities and Containment Systems, Date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

Safeguards and Security, Date to be determined, Bethesda, MD. The Subcommittee will review NUREG–1267, "Technical Resolution of Generic Safety Issue A–29, Nuclear Power Plant Design for Reduction of Vulnerability to Industrial Sabotage."

ACRS Full Committee Meetings

353rd ACRS Meeting, September 7–9, 1989—Items are tentatively scheduled.

*A. *Generic Issue A–29, "Nuclear Power Plant Design for Reduction of Vulnerability to Industrial Sabotage" (Open)*—Review and report on proposed resolution of this generic issue.

*B. *EPRI Requirements for Advanced LWRs (Open)*—Briefing and discussion regarding the status of the proposed EPRI Requirements for Advanced Light Water Reactors.

*C. *Individual Plant Examination for External Events (IPEEE) (Open)*—Briefing and discussion regarding the status of guidance regarding IPE consideration of external events.

*D. *ACRS Subcommittee Activities (Open)*—Reports and discussion of the status of assigned subcommittee activities, including the August 29–30, 1989 meeting of the ACRS Subcommittee on Regional Programs.

*E. *Generic Issue 99, "Improved Reliability of RHR Capability In PWRs" (Open)*—Briefing by NRC staff regarding implementation of this matter.

*F. *Seabrook Nuclear Plant (Open)*—Review and comment on the off-site emergency preparedness for this facility.

*G. *Accident Severity Scales (Open)*—Briefing and discussion regarding development of accident severity scales for use in the NRC regulatory process.

*H. *Maintenance of Nuclear Plants (Open)*—Review and comment on proposed NRC policy statement and an associated regulatory guide regarding maintenance programs for nuclear power plants.

*I. *Advanced PWRs (Open)*—Report and discussion of the status of NRC staff review of the Westinghouse (REAR SP-90 and AP–600), and Combustion Engineering (CE System–80+) standard plant designs.

*J. *NUREG–1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants" (Open)*—Meeting and discussion with NRC staff representatives regarding ACRS report dated May 9, 1989 on interim use of NUREG–1150.

*K. *Appointment of ACRS Members (Open/Closed)*—Discuss the qualifications of candidates proposed for nomination to the ACRS.

*L. *Anticipated Activities (Open)*—Discuss anticipated ACRS subcommittee activities and topics proposed for consideration by the full Committee.

354th ACRS Meeting, October 5–7, 1989—Agenda to be announced.
355th ACRS Meeting, November 16–18, 1989—Agenda to be announced.
356th ACRS Meeting, December 14–16, 1989—Agenda to be announced.

ACNW Full Committee Meetings

13th ACNW Meeting, September 13–15, 1989—The Committee will discuss the following topics:

A. A discussion of the approach to performance assessment for the high-level waste repository and status of activities.

B. A review of the Pathfinder Reactor Dismantlement Plan.

C. The review of a number of staff technical positions.

D. A discussion of the concrete bunker prototype license application.

E. A discussion on the availability of data from the USGS.

F. A discussion of activities at the Center for Nuclear Waste Regulatory Analyses.

G. A discussion of waste related activities of Nuclear Safety Research Review Committee.

H. A discussion of DOE's program to store and dispose of Greater-Than-Class C wastes.

I. An administrative session to discuss anticipated proposed Committee activities, future meeting agendas, and organizational matters, as appropriate.

14th ACNW Meeting, October 11–13, 1989—Agenda to be announced. No November Meeting
15th ACNW Meeting, December 27–29, 1989—Agenda to be announced.

Dated: August 17, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–19756 Filed 8–21–89; 8:45 am]

BILLING CODE 7590-01-M

Issuance and Availability of NUREG-1174, "Evaluation of Systems Interactions in Nuclear Power Plants: Technical Findings Related to Unresolved Safety Issue A17," and NUREG–1229, "Regulatory Analysis for Resolution of USI A–17—Systems Interactions in Nuclear Power Plants"

The U.S. Nuclear Regulatory Commission (NRC) staff is issuing the resolution of Unresolved Safety Issue (USI) A–17, "Systems Interactions in Nuclear Power Plants." The resolution is documented in two NUREG reports entitled "Evaluation of Systems Interations in Nuclear Power Plants: Technical Findings Related to Unresolved Safety Issue A–17" (NUREG–1174) and "Regulatory Analysis for Resolution of USI A–17—Systems Interactions in Nuclear Power Plants" (NUREG–1229). Systems interactions was identified as an Unresolved Safety Issue (USI) in NUREG–0510, "Identification of Unresolved Safety Issues Relating to Nuclear Power Plants," January 1979, and was reported to the Congress pursuant to section 210 of the Energy Reorganization Act of 1974 as amended on December 13, 1977.

Nuclear power plants contain many structures, systems, and components (SSCs), some of which are safety-related. Certain SSCs are designed to interact to perform their intended functions. These "systems interactions" are usually well recognized and therefore accounted for in the evaluation of plant safety by the designers and by those who assess plant safety.

A number of significant events have involved unintended or unrecognized dependencies among the SSCs. Some of these events have involved subtle dependencies between safety-related SCCs and other SCCs. Some events have also involved subtle dependencies between redundant safety-related SSCs that were believed to be independent.

Therefore, the purpose of USI A–17 was to investigate the potential that unrecognized, subtle dependencies among SSCs have remained hidden and that they could lead to safety-significant events. The term used to describe these unrecognized, subtle dependencies is adverse systems interactions (ASIs).

The staff is not recommending that further broad searches specifically for all ASIs be undertaken because such searches have not proved to be cost effective in the past, and there is no guarantee after such a study that all ASIs have been uncovered. Rather, the staff has concluded that certain more specific actions, together with other ongoing activitivies, should reduce the risk from adverse systems interactions.

The staff has concluded from its A–17 investigations that the following actions should be taken:

(1) Issuance of a generic letter that includes:

(a) The bases for resolution of USI A–17,

(b) A summary of information relevant to ongoing operating experience reviews.

(2) Recognition that Individual Plant Examinations (IPEs) already include evaluation of internal flooding and the A–17 insights will be referenced in the IPE guidance documents.

(3) Recognition that the USI A–46 resolution will address seismically induced systems interactions to verify that components and systems needed to safely shut down the plant are protected, given loss of offsite power. (New plants, not covered by A–46, have been reviewed to current requirements that address seismically induced systems interactions.)

(4) Communication of information regarding ASIs for staff review of PRAs and for staff evaluation of electric power supplies as part of GI–128, "Electric Power Reliability."

(5) Identification and definition of concerns related to A–17 and other programs that have not been specifically addressed. (The objective of this program is to define the concerns with sufficient specificity to permit them to be prioritized as potential generic safety issues.)

(6) Development of a Standard Review Plan for future plants that would include guidance regarding protection from internal flooding and water intrusion events.

Copies of the documents included in the final resolution for USI A–17 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC.

Dated at Rockville, Maryland this 14th day of August, 1989.

For the Nuclear Regulatory Commission.

R. Wayne Houston,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 89–19730 Filed 8–21–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-237 and 50–249]

Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit Nos. 2 and 3); Exemption

I

Commonwealth Edison Company (CECo, the licensee) is the holder of Provisional Operating License No. DPR–19 and Facility Operating License No. DPR–25 which authorizes the operation of Dresden Nuclear Power Station, Unit Nos. 2 and 3 (the facilities) at a steady state power level not in excess of 2,527 megawatts thermal. This license provides, among other things, that the facilities are subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission or the staff) now or hereafter in effect. The facilities are boiling water reactors (BWR's) located at the licensee's site in Grundy County, Illinois.

II

Section 50.54 of Title 10 of the Code of Federal Regulations (10 CFR 50.38, "Fire Protection") and Appendix R to 10 CFR part 50, "Fire Protection Program for Nuclear Facilities Operating Prior to January 1, 1979," set forth certain fire protection features required to satisfy the General Design Criterion related to fire protection (Criterion 3, Appendix A to 10 CFR part 50).

Section III.G of Appendix R requires fire protection for equipment important to post-fire shutdown. Such fire protection is achieved by various combinations of fire barriers, fire suppression systems, fire detectors, and separation of safety trains (III.G.2) or alternate post-fire shutdown equipment free of the fire area (III.G.3). The objectives of this protection is to assure that one train of equipment needed for hot shutdown would be undamaged by fire, and that systems needed for cold shutdown could be repaired within 72 hours (III.G.1).

III

By letter dated August 10, 1984 as supplemented by letters dated September 18, 1985, March 12 and March 20, 1986, CECo requested exemptions from section III.G of Appendix R to 10 CFR part 50. By letter dated October 16, 1985, CECo submitted additional fire protection exemption requests and by letter dated May 30, 1986, CECo further revised exemption request submittals based on a meeting held with the NRC staff on April 8, 1986. This information was further supplemented by CECo in a letter dated April 14, 1987. A description of the exemptions requested and a summary of the Commission's evaluation follows.

Exemption Requested

The licensee requested exemptions from the requirements of section III.G.1 of 10 CFR part 50 Appendix R which, in part, requires that one train of systems necessary to achieve and maintain hot shutdown be free of fire damage. In their submittals, the licensee identified several shutdown circuits and associated equipment that could be compromised due to failure or fuses associated with these circuits, or due to fire induced spurious operation of certain shutdown equipment. The licensee requested exemptions in regard to the following equipment and failure modes:

(1) Condensate transfer pumps 2A and 3A; control circuits for 4KV and 480V safe shutdown circuit breakers; inboard isolation condenser (IC) valves; and Swing DG 2/3 control circuits affected by postulated fuse failures due to inadequate electrical isolation from circuits compromised by the fire.

(2) 4KV and 480V safe shutdown buses affected by failures of non-safety load circuits to a fire.

(3) Reactor relief valves affected by fire induced failures of associated circuits causing their spurious operation.

The licensee proposed hot shutdown repairs to justify their request for exemption from section III.G.1. Fire induced postulated failures of fuses protecting safe shutdown circuits, prior to the isolation of these circuits for local control, was justified by evidence of redundant manual controls including pulling out of appropriate fuses, and by controls for fuse replacement. The staff determined that the licensee controls for the location, accessibility, surveillance, and operator safety in regard to replacement of fuses and other proposed manual controls are acceptable.

Repairs for fuse failures caused by high impedance faults associated with common power sources and fire induced spurious operation of equipment were justified by evidence of established plant shutdown procedures and controls requiring tripping of circuit breakers, operating disconnect switches, and removing fuses. These procedures also require shedding of non-safety loads from appropriate 4KV and 480V safety buses, and the removal of 125V DC control power fuses from appropriate non-safety load circuit breakers. The staff determined these procedures and controls to be acceptable.

The staff has also determined that there is reasonable assurance that the licensee's proposed manual actions including the hot shutdown repairs (fuse replacement) meet the intent and purpose of IE Information Notice No. 85–09, "Isolation Transfer Switches and Post-Fire Shutdown Capability," dated January 31, 1985, and are therefore acceptable.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case, the hot shutdown repairs involving fuse removal and replacement preclude the possibility of postulated fire induced fuse failures and high impedance faults from impairing the operability of required safe shutdown systems from performing their safety function. Thus, the underlying purpose of the rule would be satisfied without requiring redundant fusing and electrical isolation.

Exemption Requested

The licensee requested an exemption from the requirements of section III.G.2 of Appendix R because intervening combustibles or fire hazards are present between the redundant trains of safe shutdown equipment in the upper and lower crib houses (Fire Zone 11.3 Crib House).

The staff's principal concern was that the intervening combustibles and fire hazards may create a path for the spread of fire between redundant safe shutdown systems and result in a loss of safe shutdown capability. However, because of the light fuel load in these zones, a fire of significant magnitude or duration to cause a loss of safe shutdown capability is not expected to occur.

If a fire should occur, it should not spread from the place of origin or endanger redundant pumps in the upper or lower crib house because the installed curbs should contain lubricating oil spills, sprinkler systems installed above cable trays and in other areas should extinguish or control fires to prevent their spread via intervening combustibles, and the detection systems or water flow alarms should alert the plant fire brigade to respond to the fire. Upon arrival, the fire brigade should extinguish the fire if the sprinkler systems have not. On this basis, the staff concludes that the licensee's alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case, the light fuel load in these zones in combination with the existing fire protection features and completed modifications minimize the possibility of a fire in one train spreading and causing damage to the redundant train. Thus the underlying purpose of the rule would be satisfied without requiring the 20 foot minimum separation distance free of intervening combustible material

Exemption Requested

The licensee requested an exemption from the requirements of Secton III.G.2 of Appendix R in the following fire zones: Fire Zone 1.1.2.2, Unit 2 Reactor Building, Elevation 517 feet, 6 inches; Fire Zone 1.1.2.3, Unit 2 Reactor Building, Elevation 545 feet, 6 inches; Fire Zone 1.1.1.2, Unit 3 Reactor Building, Elevation 517 feet, 6 inches; Fire Zone 1.1.1.3, Unit 3 Reactor Building, Elevation 517 feet, 6 inches. These exemptions were submitted because: although safe shutdown equipment in these zones is separated by a horizontal distance of more than 20 feet, intervening combustibles or fire hazards are present between the redundant trains of equipment (reactor coolant water level and pressure instrumentation) and automatic fire suppression systems are not provided throughout the zones.

The staff's principal concern was that the intervening combustibles and fire hazards may create a path for the spread of fire between redundant safe shutdown systems and that the lack of fire suppression systems may permit the fire to continue and result in a loss of safe shutdown capability. However, because of the light to moderate fuel load, it is not expected that a fire of significant duration or magnitude would occur. Intervening combustibles in Fire Zones 1.1.2.2, 1.1.2.3, 1.1.1.2, and 1.1.1.3 provide a path for the spread of fire between redundant safe shutdown systems in the form of cables in trays. However, cable quantities along these paths are small, path distances are at least 75 feet, and the licensee has installed fire detection systems in all four of these zones and fire stops in cable trays in Fire Zones 1.1.2.2, 1.1.1.2, 1.1.2.3 and 1.1.1.3 which cross from one side of the Reactor Building to the other. Should a fire start, it should not spread to endanger redundant systems because the detection systems will alert the plant fire brigade to respond to the fire prior to extensive spread. On this basis, the staff concludes that the licensee's proposed fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not nececsary to achieve the underlying purpose of the rule. In this case, the light to moderate fuel load in combination with the fire detection systems installed by the licensee in all four of these zones and fire stops in cable trays in all four zones which cross from one side of the reactor building to the other minimize the possibility of a fire in one train spreading and causing damage to the redundant train. Thus the underlying purpose of the rule would be satisfied without requiring the 20 foot minimum separation distance free of intervening combustible material.

Exemption Requested

The licensee requested an exemption from the requirements of section III.G.3 of Appendix R in 23 fire zones located in Reactor Building Fire Areas RB2–1 and RB2–11 for Unit 2 and Reactor Building Fire Areas RB3–II for Unit 3 because fire detection systems and/or fixed fire suppression systems have not been installed in zones or areas for which alternative shutdown capability is provided.

The staff's principal concern was that a fire in one of these fire zones could cause a loss of normal safe shutdown capability. However, the fire loading in all of these fire zones ranges from negligible to low an in no case does the equivalent fire severity exceed 21 minutes. Because of the low combustible loading, a fire of significant magnitude or duration in not expected to occur. Except for seven fire zones, area-wide fire detection is provided. For the seven fire zones not having area-wide fire detection, there is either linear cable fire detection or spot fire detection, or the fire zones are open to an adjacent fire zone having fire detection installed throughout. Adequate means (extinguishers and/or hose lines) for manual fire fighting is available in all of the fire zones as required. Therefore, there is reasonable assurance that a fire in any of the 23 subject fire zones would be detected in its early stages and extinguished by the fire brigade before adjacent safety-related locations are threatened.

Should a fire damage any safe shutdown components in any of these locations before the fire brigade extinguishes it, an independent alternative shutdown capability is available to be used to achieve and maintain safe shutdown. The alternative safe shutdown path is separated from all fire zones where it is intended to be used by 3-hour fire rated barriers and any unsealed openings in a rated barrier are protected by an automatic suppression system in accordance with Generic Letter 86–10 for unsealed penetrations. On this basis, the staff concludes that the licensee's proposed alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.3.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case, the low fire loadings and the area-wide or linear cable or spot fire detection in combination with adequate means for manual fire fighting in all 23 fire zones and independent alternative shutdown capability eliminate the possibility of not achieving or maintaining safe shutdown. Thus the underlying purpose of the rule would be satisfied without requiring fire detection systems and/or fixed fire suppression systems in each of the zones.

Exemption Requested

The licensee requested an exemption from the requirements of section III.G.3 of Appendix R in 22 fire zones located in Central, Eastern, and Western Zone Groups of the Turbine Building because fixed-fire suppression systems and/or fire detection systems have not been installed in zones for which an alternative safe shutdown capability is provided.

The staff's principal concern was that a fire in one of these fire zones could cause a loss of normal safe shutdown capability. Although some of these fire zones have a high fire load, the fire loading is due to diesel fuel or lubricating oils in steel tanks. These steel tanks have been reviewed to the provisions of the "Flammable and Combustible Liquids Code" (NFPA–30) published by the National Fire Protection Association. While the tanks do not conform in all details to this code, they do satisfy the major provisions of the code and are considered to provide an equivalent level of protection. In addition, these fire loads are protected by automatic fire suppression systems. With these exceptions, however, the fire loads range from negligible to moderate and, in no case, do they exceed a 1-hour equivalent fire severity. Because of these low to moderate fire loadings, and given that the diesel fuel and lubricating oil fire hazards are contained and protected by fire suppression systems, a fire of significant magnitude or duration is not expected to occur. All fire zones are protected by fire detection or fire suppression systems or both. Therefore, there is reasonable assurance that a fire in any of the subject fire zones will be detected in its early stages and extinguished by the automatic fire suppression systems or by the fire brigade before adjacent safety-related locations are threatened.

If a fire should damage any normal shutdown components in any one of these zones before it is extinguished, the alternative shutdown capability, which is independent of these zones per section III.L of Appendix R, is available to be used to achieve and maintain safe shutdown. On this basis, the staff concludes that the licensee's proposed alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.3.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case, most of the fire zones have negligible to moderate fire loadings and the high fire loading zones, which have the diesel fuel and lubricating oil, are contained in tanks which satisfy the major provisions of the fire protection codes. Since all fire zones are protected by the fire detection cr suppression equipment or both and independent alternative shutdown capability is available, the possibility of not achieving or maintaining safe shutdown is eliminated. Thus the underlying purpose of the rule would be satisfied without requiring fire detection systems and/or fixed fire suppression systems in each of the zones.

Exemption Requested

The licensee requested an exemption from the requirements of section III.G.3 of Appendix R in Fire Zones 1.1.2.6 and 1.1.1.6 of the Unit 2 and 3 Reactor Building, respectively, because fire detection and/or fixed-fire suppression systems have not been installed since they form a part of the plant area for which an alternative shutdown system has been provided.

The staff's principal concern for a fire in one of these two fire zones is that a fire could develop and spread to adjacent fire zones (for which alternative shutdown capability has been provided) and damage normal safe shutdown system components contained therein. These two fire zones have fire loads that are negligible and, in no case, does the equivalent fire severity exceed 2 minutes. Because of the negligible fire loads, a fire of significant magnitude or duration is not expected to occur. Should a fire occur, it should develop slowly, remain small, and dissipate its heat to the surrounding environment without spreading to adjacent fire zones. The fire detection systems in the adjacent fire zones would detect the fire and the fire brigade would be summoned to extinguish the fire manually.

Since there are no safe shutdown components in these two fire zones, there is no concern for any immediate fire damage potential. On this basis, the staff concludes that the licensee's proposed alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.3.

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The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case, the negligible fire loadings in combination with the fire detection systems and alternate shutdown capability in adjacent zones eliminates the possibility of not achieving or maintaining safe shutdown. Thus the underlying purpose of the rule would be satisfied without requiring fire detection systems and/or fixed fire suppression systems in both of these zones.

Exemption Requested

The licensee requested an exemption from the requirement of section III.G.2 of Appendix R in Fire Zones 1.1.2.1 and 1.3.2 of the Unit 2 Reactor Building and Fire Zones 1.1.1.1 and 1.4.1 of the Unit 3 Reactor Building because an automatic fire suppression system has not been installed.

The staff's concern was that a fire in one of these fire zones could cause a loss of normal safe shutdown capability. However, the fire loading in these fire zones is negligible. Because of the low combustible loading, a fire of significant magnitude or duration is not expected to occur. Fire detection is provided for these fire zones. Therefore, there is reasonable assurance that a fire in any of the subject fire zones will be detected in its early stages and extinguished by the fire brigade before redundant safety-related components are threatened.

The provision of a 1-hour fire rated wrapped conduit that contains the alternative isolation condenser valves power and control feeds routed through these fire zones also ensures that the alternative safe shutdown path remains available with respect to the isolation condenser valve flow path because of the low fire severity potential and lack of fire hazards in these four fire zones. On this basis, the staff concludes, that the licensee's proposed alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case, the negligible fire loadings in combination with existing fire protection features and alternative shutdown capability eliminate the possibility of not achieving or maintaining safe shutdown. Thus the underlying purpose of the rule would be satisfied without requiring an automatic fire suppression system to be installed.

Exemption Requested

The licensee requested an exemption from the requirements of section III.G.2 of Appendix R in Fire Zones 1.1.1.2 and 1.1.1.3 of the Unit 3 Reactor Building because an automatic fire suppression system has not been installed.

The staff's concern for these two fire zones was that a fire could start and damage redundant Diesel Generator (DG)–⅔ cables or its bus ducts. DG–⅔ supplies power to both units and is required for emergency power in the event of a fire in most five zones.

For both of these fire zones, the fire load is low and does not exceed, on the average, a 21-minute fire severity. In the vicinity of the 1-hour wrapped DG–⅔ cables, there are either no combustibles or only a negligible amount. Therefore, it is expected that a fire would develop slowly and remain small.

Fire detection is provided for these two fire zones so that there is reasonable assurance that the fire brigade would be summoned in a timely manner. Because of the low fire load, the fire-brigade can quicly extinguish the fire. In the interim, the Unit 2 cables and bus duct which are 1-hour fire rated wrapped can successfully withstand the effects of a small fire associated with these two fire zones.

The staff has determined that there is reasonable assurance that a fire in either of these two fire zones will not result in the loss of safe shutdown capability. On this basis, the staff concludes that the licensee's proposed alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case, the low fire loadings in combination with fire detection and protection features provided, eliminate the possibility of not achieving or maintaining safe shutdown. Thus the underlying purpose of the rule would be satisfied without requiring an automatic fire suppression system to be installed.

Exemption Requested

The licensee requested an exemption from the requirements of section III.G.3 of Appendix R in Fire Area TB–V located in the Main Control Room and Auxiliary Electric Equipment Room because a fixed-fire suppression system has not been installed in a fire area for which an alternative shutdown capability is provided.

The staff's primary concern for this fire in the main control room could cause the loss of normal shutdown capability. However, should a fire occur within the main control room, it is expected to be promptly detected by either the automatic fire detection system or by one of the station's personnel manning the area. The fire is expected to develop slowly and be extinguished promptly by the control room personnel or the fire brigade. Should fire damage be extensive, requiring evacuation, then an alternative safe shutdown system can be used. Because Fire Area TB–V has complete 3-hour fire rated barriers (except, as described above, for the unprotected structural steel supporting the Control Room ceiling which will not be subjected to temperatures high enough to cause concern), it is expected that a fire would not spread beyond the barriers because of the low fire load. On this basis, the staff concludes that the licensee's proposed alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.3.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the existing fire detection system or station personnel manning the area should promptly detect the fire and once detected promptly, extinguish it. In the unlikely event that extensive damage, requiring control room evacuation should occur, the alternative safe shutdown system can be used. The above combination eliminates the possibility of not achieving or maintaining safe shutdown. Thus the underlying purpose of the rule would be satisfied without requiring a fixed-fire suppression system to be installed.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)ii), are present justifying the exemption, namely that the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Specifics are

discussed in each exemption request, but in general the underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and maintain the plant in a safe condition. This is accomplished by assuring that sufficient undamaged equipment is available to support safe shutdown, assuming a fire within the area of concern. In the areas for which an exemption is being requested, passive as well as active fire protection features assure that any single fire will not result in the loss of safe shutdown capability. These features include fire detection systems, separation distance, fire barriers, water spray systems to preclude propagation, and manual actions. The fire protection features, in conjunction with low combustible loadings and in some cases physical location and configurations, provide a high degree of assurance that a single fire will not result in loss of post-fire shutdown capability.

Accordingly, the Commission hereby grants the exemptions from the requirements of 10 CFR part 50, appendix R as described in section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (54 FR 32399) August 7, 1989.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 15th day of August 1989.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V, and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–19731 Filed 8–21–89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Revised, File No. 270–325, Rule 15c2–6]

Forms Under Review By Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142

Upon Written Request Copy Available From: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549

Notice is here given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance Rule 15c2–6, which would require a registered broker-dealer who recommends a Designated Security to a person other than an established customer to: (1) Approve the customer's account for transactions in Designated Securities by making a documented suitability determination; and (2) obtain written agreement to the transaction from the customer. Four hundred respondents incur an estimated average of seventy eight burden hours to comply with this rule. The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative summary or study of the cost of Commission rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget [Paperwork Reduction Project 3235–03zz], Room 3208, New Executive Office Building, Washington, DC 20543.

Dated: August 16, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–19719 Filed 8–21–89; 8:45 am]

BILLING CODE 8010-01-M

[34–27139; SR–DTC–88–19]

Self-Regulatory Organizations; Depository Trust Company; Order Approving Proposed Rule Change Implementing Automated Tender Offer Program

August 14, 1989.

On November 23, 1988, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR–DTC–88–19) under section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] to implement the Automated Tender Offer Program ("ATOP"). Notice of the proposal was published in the **Federal Register** on December 13, 1988.[2] No comments were received. On February 13, 1989, the Commission granted temporary approval of the proposal for a period of 90 days.[3] Subsequently, on April 13, 1989, DTC filed an amendment to the proposal that included ATOP operating procedures and an ATOP agent agreement.[4] On May 4, 1989, the Commission extended approval of the proposal for an additional 90 days.[5] This order grants permanent approval of the proposed rule change.

I. Description of the Proposal

The proposed rule change will implement ATOP, which is designed to further automate the manner in which tender and exchange offers are processed through DTC. For tender or exchange offers declared eligible for ATOP by DTC, ATOP will permit DTC participants to transmit electronically through DTC to a bidder's agent acceptance of and deliver securities on deposit at DTC that the participant intends to tender.

To accept an offer through ATOP, a participant will send an ATOP instruction to DTC through DTC's Communication system.[6] The ATOP instruction will contain the same information currently contained in DTC's hardcopy Voluntary Offering Instruction form and a special field in which the participant will acknowledge that it has received and agrees to be bound by the terms of the letter of transmittal. If the participant has correctly sent the ATOP instruction and has sufficient securities in its DTC account,[7] DTC will deduct the specified securities from the participant's account and add them to the tender or exchange agent's account. DTC then will generate hardcopy messages reflecting this transaction on the PTS printers in the Offices of the participant and agent. After the close of the offer, the securities are surrendered to the agent, who then makes payment to DTC, which in turn distributes the funds or securities to the tendering participants.

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[1] 15 U.S.C. 78(b)(1).

[2] Securities Exchange Act Release No. 26344 (December 7, 1988), 53 FR 50145.

[3] Securities Exchange Act Release No. 26538 (February 13, 1989), 54 FR 7316.

[4] Securities Exchange Act Release No. 26757 (April 21, 1989), 54 FR 18619.

[5] Securities Exchange Act Release No. 26784 (May 4, 1989), 54 FR 20221.

[6] Because the proposal was fully described in a previous order, only a brief description of ATOP is included here. For a more complete description of ATOP, *see* Securities Exchange Act Release No. 26538 (February 13, 1989), 54 FR 7316. For a description of DTC's communication systems, *see* Securities Exchange Act Release Nos. 24216 (March 3, 1987), 52 FR 8996; 20519 (Dec. 30, 1984), 49 FR 996.

[7] If the participant does not have a sufficient amount of securities in its DTC account at the time the ATOP instruction is submitted, the ATOP instruction will recycle until a sufficient amount of securities are in the account. If the participant does not have a sufficient amount of securities in the account by the end of the day, the ATOP instruction will not be processed.

Under ATOP, participants that accept an offer through the bidder's agent may surrender securities through ATOP. A participant having securities on deposit with DTC may accept an offer through the offeror's agent (also known as a "guarantee of delivery"). The participant then may surrender the securities by means of an ATOP instruction. The ATOP instruction must include an acknowledgement of the letter of transmittal and verification and the date of the acceptance of the offer to the offeror's agent. An incomplete instruction will not be processed. A complete instruction will be processed similar to an offer accepted through ATOP, including the movement of securities to the offeror's agent's account, generation of hardcopy messages and distribution of funds or securities.

II. DTC's Rationale

DTC states that the proposed rule change is consistent with the requirements of the Act and the rules thereunder applicable to DTC. Specifically, DTC believes that the proposed enhancement to DTC's tender and-exchange offer services is consistent with the requirement to safeguard securities and funds in DTC's custody or control or for which it is responsible under Section 17A of the Act.

DTC also states that ATOP will alleviate problems arising from use of hardcopy documents in tender and exchange offers, such as the risk of loss, delay during shipment and the expense and labor involved in the physical handling of documents. In addition, ATOP will provide agents for tender and exchange offers with an improved ability to control the processing of such offers by making more information available to the agent (and to the bidder) while an offer is open.

III. Discussion

The Commission believes that the proposal is consistent with section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. ATOP will improve tender and exchange offer processing by decreasing risk of loss, reducing participant costs and providing a later cut-off date for the submission of instructions.

ATOP is one step in a continuing effort to bring to the tender and exchange offer processing area the benefits of automation that many other areas of the securities processing industry have had for years. Originally, processing of tender and exchange offers was not integrated into the National Clearance and Settlement System and tender activity was handled through inefficient physical settlement. Significant improvement occurred after the promulgation of Exchange Act Rule 17Ad–14 in 1984, which requires the transfer agent for an issue that is the subject of a tender or exchange offer to establish an account at one or more qualified registered securities depositories to receive tendered securities and letters of transmittal from participants.[8] Since that time Rule 17Ad–14 has encouraged a majority of the tender and exchange offer processing activity to be brought within the automated, centralized environment of securities depositories such as DTC, which processes tender and exchange offers through its Voluntary Offering Program. The Commission agrees with DTC that the rule filing promotes the prompt and accurate clearance and settlement of tender and exchange offer processing by eliminating much of the hardcopy document movement between and among participants, DTC and agents.

DTC's operation ATOP during the pilot period has been smooth. As of July 14, 1989, DTC had processed four offers through ATOP and has six more that were still open. DTC had processed 1,516 instructions involving 22.5 million shares of stock and 1.4 million bonds with a total dollar value of over $681 million (based on tender price). DTC estimates that 200–300 participants have used ATOP to submit tender instructions and a letter of transmittal. DTC has represented that it has sufficient operation capacity to handle a foreseeable peak volume of tender or exchange offer instructions and deliveries through ATOP.[9]

The Commission notes that ATOP will provide, in essence, facilities for communications between agents and participants. Although Exchange Act Rule 17Ad–14 requires agents to establish accounts with DTC because DTC is a qualified securities depository, nothing in that rule currently requires agents to participate in ATOP or to accept ATOP transmittals absent an agreement to do so.

IV. Conclusion

The Commission finds that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) of the Act, that the proposed rule change (SR–DTC–88–19) be, and hereby is, permanently approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89–19720 Filed 8–21–89; 8:45 am]

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[8] *See* Securities Exchange Act Release No. 20581 (January 19, 1984), 49 FR 3064.

[9] *See* Letter from Carl Urist, Associate General Counsel, DTC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission, dated August 11, 1989. DTC's computer facility handles an ATOP instruction as if it were a deliver order. DTC can handle deliver orders on a daily basis in the hundreds of thousands. DTC expects that it will receive approximatley to 5000 ATOP instructions on a peak day, giving DTC ample excess processing capacity.

[34–27132; File No. SR–ICC–89–1]

Self-Regulatory Organizations; Intermarket Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Use of Material, Non-Public Information

August 11, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 28, 1989, The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this rule is to implement the provisions of regulation 1.59(c) of the Commodity Exchange Act. Regulation 1.59(c) generally prohibits governing members of self-regulatory

organizations who possess material, non-public information obtained as a result of their official duties as board or committee members from using or disclosing such information. The general purpose and effect of the prohibition was discussed in the Commodity Futures Trading Commission's release published in the **Federal Register** on December 29, 1987.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Proposed rule 223 would prohibit, pursuant to regulation 1.59(C) of the Commodity Exchange Act, a member of ICC's Board of Directors or a member of any committee of ICC from using or disclosing, for any purpose other than the performance of such member's official duties as a governing member, material, non-public information obtained as a result of such member's participation on the Board or any committee. The Rule further provides that if a governing member can show that a transaction was in the ordinary course of business, he will be deemed not to have misused the information he possessed unless it can be shown that he would not have effected the transaction in the absence of such information.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934, in that it will limit the use of material, non-public information obtained by governing members as a result of their official duties as board members or committee members. This limitation, in turn, is necessary for the protection of investors and the maintenance of a fair and orderly market.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

ICC did not solicit nor did it receive any comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of SR–ICC–89–1 will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR–ICC–89–1 and should be submitted by September 12, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89–19725 Filed 8–21–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–27144; File No. SR–NASD–89–36]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Registration Category, Study Outline and Specifications for Series 28 Examination, Introducing Broker/Dealer Financial and Operations Principal

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 28, 1989 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule amends Schedule C of the NASD By-Laws to add an additional category of registration, Introducing Broker/Dealer Financial and Operations Principal. Upon effectiveness of the proposed amendment, the new text would be designated as part II, section (2)(c) of schedule C. The text of the change is as follows:

(c) Limited Principal—Introducing Broker/Dealer Financial and Operations:

(i) Every member of the Corporation, which is operating pursuant to the provisions of SEC Rule 15c3–1(a)(2) (i) or (vi) and to the provisions of SEC Rule 15c3–3(k)(2)(ii), shall designate as Limited Principal—Introducing Broker/Dealer Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who perform the duties described in Part II, section (2)(c)(ii) hereof. Each person associated with a member who performs such duties shall be required to register as a Limited Principal—Introducing Broker/Dealer Financial and Operations with the Corporation and shall pass an appropriate Qualification Examination before such registration may become effective.

(ii) The term "Limited Principal—Financial and Operations" shall mean a person associated with a member whose duties include:

(a) final approval and responsibilities for the accuracy of financial reports submitted to any duly established securities industry regulatory body;

(b) final preparation of such reports;

(c) supervision of individuals who assist in the preparation of such reports;

(d) supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived;

(e) supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Securities Exchange Act of 1934;

(f) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; or

(g) any other matter involving the financial and operational management of the member.

Subsequent Sections To Be Re-Numbered Accordingly.

The National Association of Securities Dealers, Inc. ("NASD") is also submitting the examination specifications and study outline for this registration category. The examination will be designated Series 28. The specifications and study outline items do not involve any textual changes to the NASD's By-Laws, Schedules to the By-Laws, rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In implementing the recommendations of the Regulatory Review Task Force, the NASD Board of Governors determined that it was appropriate to approve a new registration category, Introducing Broker/Dealer Financial and Operations Principal, for principals of introducing general securities firms. All introducing and clearing firms are required to qualify financial and operations principals on the Series 27 examination. It was recognized, however, that the Series 27 examination tested knowledge of subject areas such as margin accounts, the Uniform Practice Code and the Customer Protection Rule (SEC Rule 15c3–3), which would not be relevant to a financial and operations principal at an introducing firm. The Board determined that the proposed registration category would address this situation, while still assuring an appropriate level of qualifications in introducing firms in the financial and operations area. The proposed registration category is also intended to povide greater flexibility to members in qualifying their personnel.

With respect to the Series 28 examination, specifications and study outline, it is the NASD's responsibility under section 15A(g)(3) of the Securities Exchange Act of 1934 ("the Act") to prescribe standards of training, experience, and competence for persons associated with the NASD members. Pursuant to this statutory obligation, the NASD has developed examinations that are administered to establish that persons associated with NASD members have attained specific levels of competence and knowledge.

The proposed rule change is consistent with the provision of section 15A(g)(3) of the Securities Exchange Act of 1934, pursuant to which the NASD prescribes standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the new registration category or the study outline and specifications impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments regarding the new registration category, study outline and specifications were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: August 15, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–19723 Filed 8–21–89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34–27142; Filed No. SR–NASD–89–34]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Buy-In Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the NASD's Uniform Practice Code (the "Code"). The proposed rule change amends the procedures for the handling of buy-ins and provides for the handling of buy-ins by electronic capabilities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In September of 1987 the NASD initiated a review of the Code with the intent of amending, where necessary, certain provisions to bring the Code into conformity with current industry standards and practices. One of the sections which has been reviewed in particular is section 59, pertaining to "buy-in" procedures. Aftrer extensive study and discussion, the NASD Board upon the recommendation of the Uniform Practice Committee and its Operations Subcommittee has adopted proposed amendments to section 59 to more clearly define the procedures which should be followed by broker, dealers in their handling of "buy-ins". The new procedures are specifically designed to provide for the use of sophisticated and modern methods of sending "buy-in" notices and reflect current electronic notification and response methods. The amendments will allow members to utilize the Depository Trust Company's ("DTC") Participant Exchange Service ("PEX") which is an on-line system whereby a member can send and repond to various types of "buy-in" reorganization and stock loan items. PEX is expected to be implemented in the third quarter of 1989.

The proposed rule change is intended to reflect current methods of communciation and to eradicate from the Code provisions that are obsolete.

The NASD has adopted the proposed rule change pursuant to Section 15A(b)(6) udner the act. In pertinent part, section 15A(b)(6) mandates that the rules of a national securities association be designed to "* * * foster cooperation and coordination with persons engaged in regulatory, clearing, settling and facilitating transactions in securities * * * The NASD believes that the proposed rule change is consistent with these objectives.

B. Self-Regulatory Organziation's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessarily or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organziation's Statement on Comments on the Proposed Rule change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

With 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with repsect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above (SR–NASD–89–34) and should be submitted by September 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 15, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–19722 Filed 8–21–89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34–27143; File No. SR–NSCC–89–10]

Self-Regulatory Organizations; Notice of Filing of the Proposed Rule Change by National Securities Clearing Corp.; Regarding a Description of NSCC's Telecommunications System

August 15, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 19, 1989 NSCC filed the proposed rule change File number SR–NSCC–89–10, with the Securities and Exchange Commission as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a description of NSCC's telecommunications system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) The purpose of the proposed rule filing is to comply with the Commission's request that NSCC describe its Data Communications Services, which facilitate the automated transmission of data between Members and the computer system operated by SIAC, NSCC's facilities manager.

The physical connection for the transmission of data is established by a communications link between the Member's Main Frame Computer or Personal Computer (PC) and SIAC's Main Frame Computer. When Members use Main Frame Computers, each Member develops its own application software that delivers data to (or receives data from) SIAC for a particular service in an NSCC prescribed standard manner. That is, NSCC prescribes the input and output formats, but the Member collects, edits and prepares data and then transmits it to (or receives it from) SIAC using the prescribed formats.

Members preferring to use a PC may also access SIAC's Main Frame Computer using NSCC's PC Access System or the IBM Information Exchange communications system, for input and output of bond data. NSCC also develops and provides the PC edit application software programs to simplify the Member's entry of data. Using the Information Exchange, data is sent by the Member (or SIAC) to a central IBM service bureau where it is collected and then routed to SIAC (or the Member).

NSCC's PC Access System is a PC communication methodology which will eliminate the IBM Information Exchange so that data will pass directly between SIAC and the Members PC. Members are currently being converted from the IBM Information Exchange to NSCC PC Access. NSCC anticipates that this methodology will be completely in place by the end of 1989.

NSCC is also in the process of developing a PC application for input of RECAPS data (scheduled to be available this September) and input and output of ACATS data (scheduled to be available fourth quarter 1989). Other PC applications will follow.

Members can utilize most types of Main Frame Computers. The PC's must be either IBM or IBM clones (perform the functions of an IBM PC). For both PC's and Main Frame Computers, the Member may connect to the SIAC computer via a private line, a dial-up line connected to a dedicated port, or a dial-up line connected to a hunt group. A private line is installed directly between the Member's system and a SIAC port and provides direct communications without use of a dial-up telephone line.

A dial-up line connected to a dedicated port allows the Member to dial a telephone line directly to a SIAC port dedicted to that Member at SIAC. Each private line and dedicated dial-up line associated with each port has definitions which are unique to the Member, so that one Member's line will not work in another's port.

A dial-up line connected to a hunt group allows the Member to dial a telephone line into a SIAC sharing device called a hunt group. A hunt group device is comprised of a five ports with twenty-five sharing Members per group. Only five of the twenty-five Members may be connected at any point in time. Each Member is provided a telephone number for his group. The call will hunt to one of four other numbers associated with the other ports in the hunt group if the first port is being utilized. In the unlikely event that a Member is unable to connect with one of the ports in the hunt group because all ports are being utilized, the Member may call the SIAC Help Desk and SIAC provides temporary access to a different port, or the Member may redial at a later time.

There are several compatibility requirements between the Member's and SIAC's systems. For PC's, SIAC accepts private and dial-up line speeds of either 4800 or 9600 bps (bit per second). For Main Frames, SIAC accepts private and dial-up line speeds of 4800 bps, 9600 bps, or 56,000 bps. In addition, the Member's Main Frame Computer must be compatible with SIAC's line protocols. (Line protocols define the method by which computers communicate with each other and transmit data to each other.) The line protocols must be either bisynchronous or SNA and also support either RJE or NJE. Bisychronous protocol requires a pause and line turnaround for the transmission of data and its acknowledgment. SNA allows the passage of data and acknowledgments to occur simultaneously without line turnaround. RJE and NJE are the subsets of the line protocols which identify the Member's computer system configuration that the data is coming from, in order to establish the way the systems communicate.

The Member's Main Frame Computers may also support theree different optional bulk transfer mechanisms, BDT II, NDM and Netview File Transfer. These mechansims provide benefits for services that require high volumes of data because they allow data to be compressed and allow an interrupted transmission of data to be restarted without resending the entire file from the beginning.

As stated above, Members can access NSCC services through either private lines or dial-up lines. At this time, 25% of NSCC's 290 Member connections are private lines, and 75% are dial-up lines. NSCC notes and shares the Commission concerns, expressed in orders approving other clearing agency automated communications systems, about unauthorized access to securities, funds, and data through use of dial-up computer connections (see Securities Exchange Act Release No. 20519 December 30, 1983, approving file Nos. SR–DTC–76–8; SR–MSTC–77–9; SR–MCC–77–4; SR–Philadep–83–3). However, the Commission has approved dial-up systems presented by other clearing agencies based on a review of the safeguards employed by those systems and the economic and beneficial alternative that dial-up systems present to smaller participants. (See Release No. 21227 dated August 15, 1984 approving SR–MCC–84–5 and SR–MSTC–84–5, and Release No. 22939 dated February 28, 1986 approving SR–OCC–85–20).

NSCC has, similar to these clearing agencies, developed a system of intruder blocks for dial-up lines which prevent unauthorized access into NSCC's system. There are four levels of blocks which must be passed before data can actually be entered:

(a) *Level One:* (Physical Connection) There must be a match between the physical connection of the Member's Main Frame Computer or PC (modem type, line speeds and protocol) and the SIAC port accessed by the telephone number.

(b) *Level Two:* (Computer Operating System Connection) Each Member is provided a unique communication ID (identifying the communications link) when first connected to SIAC's Main Frame. This ID is checked each time the Member tries to access the SIAC Computer. The Member will not be able to enter Job Control Language (JCL) (which is a programming language used to communicate with a Main Frame), unless the ID is correct.

(c) *Level Three:* (Job Entry System "JES" Identification) The Member's system sends a unique JES identification ID and a unique password in Job Control Language in order to log on to JES. Each Member has his own version of JCL in order to define himself to the SIAC system. The JES identification ID and JCL password are checked for validity and cross checked against the communication ID in the SIAC system. If valid, the JCL password and JES identification will only allow the Member to enter JES. JES is a set of codes which allows the Member to transmit data for subsequent processing or receive data that has already been processed. The Member is locked out of other SIAC systems which might allow for other tasks. Once the Member is logged on to JES he can inform the system that data is forthcoming or request transmission of data to him.

(d) *Level Four:* (Data Entry) Another unique password identifying the Member to the application programs and Datatrak is entered with his JCL and then used to allow the Member access to SIAC's Datatrak system. Datatrak routes data to the appropriate application program for subsequent processing. In addition, Datatrak does a basic check on the data to assure that it contains the

proper date, and the proper ID for the program to run. Datatrak also checks the first four lines of the data to make sure that it conforms to the required format for the service to be accessed. Finally, Datatrak checks the total number of records sent and compares it with a masterfile of the usual number of records sent by a particular Member. If any of the information is incorrect, the data will either be rejected or held in abeyance and sent to a Datatrak control desk, where the Member is contacted to investigate the problem and determine further action.

If a Member fails to connect at any level in the process after three attempts, his communication ID will not be able to be entered into the system to tray access again. Once the problem is resolved, the Member will be re-activated by SIAC security.

Private lines are secure by virtue of the fact that there is a direct line installed between the Member's system and a port at the SIAC computer. That line is used only by the Member and can only be rearranged (connected to another port) by SIAC. Even if the line is rearranged, it would not work on another Member's port unless the port were reprogrammed. Once the physical connection is established, the various levels of intruder blocks are the same for private lines as for dial-up lines. Specific conversion procedures for either Main Frame Computers or PC's have been established for access by a Member.

(2) The proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions by providing Members with automated, secure and cost effective access to NSCC services. Therefore, it is consistent with the requirements of the 1934 Act and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designated up to 90 days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR–NSCC–89–10 and should be submitted by September 12, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–19721 Filed 8–21–89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34–27141; File No. PHLX–89–44]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Revised Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") Limit Order Execution Criteria.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10, 1989, the Philadelphia Stock Exchange, Inc., filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange ("PHLX") submits as a proposed rule change revised Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") limit order execution criteria. The text of Rule 229 (b) (1) through (4) has been replaced in full with the following new text. Rule 229.

* * * Supplementary Material

.10(b) Market orders and round-lot limit orders of 600 to 1000 shares and PRLs of 601 to 1099 shares and such limit orders of greater size up to 5000 shares that the specialist may accept must be entered at least (3) minutes prior to the opening in order to be guaranteed the opening price. Round-lot limit orders and PRLs entered after the opening shall be provided a professional execution in accordance with the following standards.

1. Circumstance: Limit order price is between the PACE quote when received by the specialist.

Standard: Each time the primary market prints a trade at the limit order's price, a portion of the limit order equal to the size of the primary market print shall be entitled to be excuted.

2. Circumstance: Limit order price is away from the PACE quote when received by the specialist; limit order price is on the PACE quote when received by the specialist.

Standard: The primary market quotation size associated with the PACE bid or offer which matches the limit price shall be ascertained (hereinafter referred to as the Reference Quote.) The limit order shall be entitled to an execution when the primary market prints a trade or trades equaling the limit price and aggregating to the size of the Reference Quote; after which each time the primary market prints a trade at the limit order's price, a portion of the limit order equal to the size of the primary market print must be executed.

3. Circumstance: Order is received by the specialist two (2) minutes or less prior to the close.

Standard: A reasonable effort will be made to execute the order.

4. Orders executed under this paragraph (b) will be executed at or within the primary market high-low range existing at the time of execution.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The PACE system provides to PHLX member organizations a cost efficient, competitive order delivery and execution system for public customer orders. In the years prior to 1983, the PACE system was considered to be a system for the delivery and execution of small orders, *e.g.*, 1 to 599 shares.

On May 17, 1983, the Securities and Exchange Commission ("SEC") approved a PHLX rule change (SR-PHLX-83-5) which permitted use of PACE computer facilities to enable member organizations to electronically transmit, directly to the specialist post, orders in issues and of order size designated by the specialist, with a minimum order size of 600 shares.

On September 17, 1986, the SEC approved a PHLX rule change (SR-PHLX-86-30) which increased PACE order size eligibility from 599 to 1099 shares. Orders up to 599 shares continued to be executed in accordance with PHLX Rule 229. Orders of 600 to 1099 shares were not subject to the execution parameters of Rule 229 and such orders were executed in accordance with other applicable rules of the PHLX.

On May 19, 1988, the SEC approved a PHLX rule change (SR-PHLX-87-30) which provided for a professional execution for limit orders of 600 shares or greater routed to specialists over PACE as well as guidance to PHLX specialists, by identifying the types of trades that constitute a professional execution of this class of limit orders. Such standards imposed a number of trading obligations upon PHLX specialists when executing PACE limit orders of 600 shares or more.

By specifying the execution standards set forth in SR-PHLX-87-30, the Exchange provided for increased consistency in the execution of limit orders on the floor and, at the same time, provided notice to PACE users of the kind of execution they can expect for larger limit orders delivered over the PACE system. Such standards are reflected in Commentary .10(b) of PHLX Rule 229.

The purpose of the instant proposed rule change is to simplify and improve the standards approved on May 19, 1988, based upon experience gained during the appoximately one (1) year of their use. Under the proposed rule change, both market and limit orders up to 599 shares will continue to be executed in accordance with the current provisions of Rule 229 and its accompanying Commentary .01 through and including .10(a).

Prior to this amendment, paragraph .10(b) dealt only with orders delivered after the opening. The present proposal adds a standard of guaranteeing the opening price on orders entered at least three (3) minutes prior to the opening. In the case of orders received by the specialist less than three (3) minutes prior to the opening, a reasonable effort will be made to execute such orders at the opening price.

The standard under Circumstance 1 has been amended to delete reference to the New York market since both New York and American Stock Exchange issues are traded through PACE. The reference to New York caused confusion. It is proposed that the reference be changed to primary market. In addition, reference to execution of marketable limit orders has been deleted because such standard applies to all orders, whether or not delivered through the PACE system and, therefore, it is confusing and redundant.

Circumstance 2 has been broadened to include a limit order price which is outside the PACE quote when received by the specialist. In either case, when the limit order price is away (*i.e.*, outside) the PACE quote when received by the specialist or when the limit order price is on the PACE quote when received by the specialist, after ascertaining the primary market quotation size, the specialist would be obligated to execute the limit order when the primary market prints a trade that is equivalent to the limit price and aggregates to the size of the reference quote.

Old Circumstance 3, which dealt with a limit order price which is outside the PACE quote when received by the specialist, has been deleted in its entirety and such orders have been included in the execution criteria of Circumstance 2. The previously established standard for execution of this type of order was confusing and difficult to administer. The new execution criteria improves and simplifies executions and provides better service to retail users of the PACE system.

New Circumstance 3 has been established in order to afford specialists the opportunity to seek execution of orders in other markets by means of the Intermarket Trading System ("ITS"). By the terms of PHLX rules, members must avoid trading through a superior bid or offer of another market which is an ITS participant. In order to avoid such an occurrence, a PHLX specialist may choose to send a commitment to trade to such other market against the superior bid or offer. Since the receiving market has up to two (2) minutes to respond to the commitment, at least that much time is required of the PHLX specialist to make such effort and receive a response prior to the close.

Old Circumstance 4, which dealt with a limit price traded through by a transaction reported on a market eligible to compose the PACE quote, has been deleted in its entirety because such standard applies to all orders whether or not delivered through the PACE system and, therefore, is confusing and redundant.

New Circumstance 4 provides that execution of an order under the conditions set forth in this proposal will not breach the existing primary market high or low. In other words, the order will be executed at or within the primary market high-low range existing at time of execution. This new standard improves substantially the competitiveness of the criteria as proposed.

Equity specialists and member organizations may choose to participate in trading on the PACE system or they may choose not to do so. To the extent a specialist chooses to accept orders through the PACE system as described herein, such orders are entitled to an execution under the terms of the proposed rule.

Since such stock has unique trading characteristics respecting depth, liquidity, volatility and so forth, not every stock may be suitable for a program involving execution of larger orders on the basis of predetermined execution criteria. Because of this, and in the interest of administrative ease, specialists choosing to participate in the program will establish an order eligibility size of either 2500 shares or 5000 shares on a stock by stock basis. Orders up to either size will be executed under the terms of the proposed rule. Except under unusual circumstances, the specialist must remain committed to his order size eligibility elections for at least six (6) months thereby proving stability and continuity to the list of issues in the program. Under exceptional or extraordinary circumstances, the Floor Procedure Committee may grant a specialist's withdrawal from the program.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it will promote just and equitable principles of trade; facilitate transactions in securities and remove impediments to, and perfect the mechanism of, a free and open market and a national market system; and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 12, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 14, 1989.

Jonathan G.Katz,

Secretary.

[FR Doc. 89-19724 Filed 8-21-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 6814]

Arkansas; Declaration of Disaster Loan Area

The counties of Clark, Dallas, Drew, Grant, Hempstead, Hot Spring, Ouachita, Sevier, and Union, and the contiguous counties of Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Desha, Garland, Howard, Jefferson, Lafayette, Lincoln, Little River, Miller, Montgomery, Nevada, Pike, Polk, Pulaski, and Saline, in the State of Arkansas, constitute an Economic Injury Disaster Loan Area as a result of damages resulting from flooding caused by severe storms, including Tropical Storm Allison, beginning on May 4 and continuing through July 1989. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on May 4, 1990 at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, TX 75051.

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: August 4, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-19747 Filed 8-21-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2375]

OHIO; Declaration of Disaster Loan Area

Franklin County and the contiguous counties of Delaware, Fairfield, Licking, Madison, Pickaway, and Union, in the State of Ohio, constitute a disaster area as a result of damages from heavy rains and flooding which occurred on July 27, 1989. Applications for loans for physical damage may be filed until the close of business on October 12, 1989 and for economic injury until the close of business on May 11, 1990 at the address listed below: Disaster Areas 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Businesses and non-profit organizations (EIDL) without credit available elsewhere	4.000
Others (Including non-profit Organizations) with credit available elsewhere	9.125

The number assigned to this disaster for physical damage is 237506 and for economic injury the number is 682400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 11, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-19746 Filed 8-21-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 6808]

Washington; Declaration of Disaster Loan Area

The counties of Clallam, Skagit, and Whatcom, and the contiguous counties of Chelan, Island, Jefferson, Okanogan, San Juan, and Snohomish, in the State of

Washington, constitute an Economic Injury Disaster Loan Area as a result of damage from the oil spill in Alaska's Prince William Sound area, which occurred on March 24, 1989. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on May 2, 1990 at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, California 95853–4795.

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: August 2, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–19740 Filed 8–21–89; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council, Providence, R.I.; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Providence, will hold a public meeting at 9:00 a.m. on Wednesday, August 23, 1989, at Metacomet Country Club, Veterans Memorial Parkway, East Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Anthony J. McMahon, District Director, U.S. Small Business Administration, Providence District Office, 380 Westminster Mall, 5th Floor, Providence, Rhode Island 02903, phone (401) 528–4580.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 15, 1989.

[FR Doc. 89–19751 Filed 8–21–89; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council, Columbia, SC; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Columbia, will hold a public meeting at 9:30 a.m. on Tuesday, September 26, 1989, at The Heritage, 260 W. Palmetto Street, Florence, South Carolina to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John C. Patrick, Jr., District Director, U.S. Small Business Administration, P.O. Box 2786, Columbia, South Carolina 29202, phone (803) 765–5339.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 15, 1989.

[FR Doc. 89–19752 Filed 8–21–89; 8:45 am]

BILLING CODE 8025-01-M

National Small Business Development Center Advisory Board; Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Tuesday, September 26, 1989, from 9:00 a.m., to 10:00 a.m. at the Franklin Life Insurance Company, Franklin Square, Springfield, Illinois.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board Members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Hardy Patten, U.S. Small Business Administration, 1441 L Street, NW., Room 317, Washington, DC 20416, telephone (202) 653–6768.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 15, 1989.

[FR Doc. 89–19750 Filed 8–21–89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-0526]

Paribas Principal Inc., Notice of Issuance of a Small Business Investment Company License

On February 23, 1989, a notice was published in the **Federal Register** (54 FR 7908) stating that an application has been filed by Paribas Principal Incorporated, 727 Seventh Avenue, 33rd Floor, New York, New York 10019, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) for a license to operate as a small business investment company.

Interested parties were given until close of business March 25, 1989, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0526 on August 2, 1989, to Paribas Principal Incorporated to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small business Investment Companies)

Dated: August 11, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment

[FR Doc. 89–19753 Filed 1–21–89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 45663]

Robert O. Nay, Emerald Tours, Ltd. (Virginia), World Classics, Ltd., and Emerald Tours, Ltd. (Illinois), Enforcement Proceeding; Hearing

Notice is hereby given that the hearing in the above-entitled matter is assigned to be held on August 30, 1989, at 10:00 a.m. (local time), Room 5332, Department of Transportation, 400 7th Street SW., Washington, DC, before Administrative Law Judge Ronnie A. Yoder.

Dated at Washington, DC, August 15, 1989.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 89–19643 Filed 8–21–89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE–89–33]

Petitions for Exemption; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. the purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: September 11, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No.______, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued at Washington, DC, on August 15, 1989.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 24950
Petitioner: General Electric Company, Aircraft Engine Business Group
Sections of the FAR Affected: 14 CFR 21.325(b) (1) and (3)
Description of Relief Sought: To extend Exemption No. 4675 that allows Class I, II, and II products, which have been manufactured, assembled, and tested by Rolls Royce Limited, located in Derby, England, to be eligible for the issuance of export airworthiness approvals. Exemption No. 4675 will expire on December 29, 1989.

Docket No.: 24104
Petitioner: Robert Haveman Air Charter
Regulations Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow petitioner's pilots to change the seating configuration on petitioner's Cessna 310K, 401A, and 402B aircraft.

Docket No.: 25919
Petitioner: Kletus W. Rood
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to continue to serve as crewmember on commercial air carriers past his 60th birthday.

Docket No.: 25947
Petitioner: Embraer
Sections of the FAR Affected: 14 CFR 135.159 (a) and (b)
Description of Relief Sought: To allow petitioner to operate CBA–123 airplanes without being equipped with a gyroscopic rate-of-turn/slip-skid indicator. A backup, third attitude indicator would be substituted for the gyroscopic rate-of-turn indicator.

Docket No.: 25962
Petitioner: U.P. Exec Air
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow petitioner's properly trained pilot to remove and reinstall seats and a stretcher in either of the two aircraft operated by the petitioner (a Cessna 310 and a Cessna 421).

Docket No.: 25184
Petitioner: Imperial Aviation, Inc.
Regulations Affected: 14 CFR 121.371(a)
Description of Relief Sought/ Disposition: To extend Exemption No. 4793 that allows petitioner to use certain original equipment manufacturers to perform maintenance, preventive maintenance, and alterations outside of the United States on petitioner's Fairchild FH–227 aircraft. Grant, August 10, 1989, Exemption No. 5084

Docket No.: 25351
Petitioner: USAir
Regulations Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought/ Disposition: To amend Exemption No. 5005 that allows petitioner to utilize certain foreign original equipment manufacturers and related repair facilities to perform maintenance, preventive maintenance, and alterations on the compenents, parts, and applicances that are produced by such foreign manufacturers and used on the BAC 1–11, BAe–146, B–737–300, and MD–80 aircraft operated by USAir. The amendment would add the Fokker F–28 and F–100 and Boeing B–737–400 and B–767–200ER aircraft to the provisions of the exemption. Grant, August 2, 1989, Exemption No. 5005A

Docket No.: 25638
Petitioner: Midway Commuter Airlines
Sections of the FAR Affected: 14 CFR 135.429(a) and 135.435
Description of Relief Sought/ Disposition: To allow petitioner to use components, parts and accessories repaired, overhauled, or otherwise maintained by foreign original equipment manufacturers on its German-built DO228–201/202 aircraft. Grant, August 10, 1989, Exemption No. 5083

Docket No.: 25810, et al.
Petitioner: Mountain Air Cargo, Inc., et al.
Regulations Affected: 14 CFR 121.343(b)
Description of Relief Sought/ Disposition: To continue operation of certain aircraft with currently installed flight data recorders beyond the digital flight data recorder installation compliance data of May 26, 1989. Grant, May 25, 1989, Exemption No. 5051

Docket No.: 25972
Petitioner: Federal Express Corporation
Sections of the FAR Affected: 14 CFR 121.291(b0(1) and (d)
Description of Relief Sought/ Disposition: To allow petitioner to begin Boeing B–747 operations without first conducting a partial demonstration of emergency evacuation procedures and without showing by simulated ditching that it is able to efficiently carry out its ditching procedures. Grant, August 14, 1989, Exemption No. 5080

Docket No.: 25976
Petitioner: Resort Commuter, Inc.
Sections of the FAR Affected: 14 CFR 135.337(a)(2), (3), and (4) and 135.339(c)(1)
Description of Relief Sought/ Disposition: To allow petitioner to use certain instructor pilots of British Aerospace Corporation to train petitioner's initial cadre of pilots in the British Aerospace Jetstream 31 (BA–3201) type airplane without meeting all of the applicable training requirements of Subpart H of Part 135. Grant, August 7, 1989, Exemption No. 5081

Docket No.: 25986
Petitioner: Federal Express Corporation
Sections of the FAR Affected: 14 CFR 121.163(b)(1)
Description of Relief Sought/ Disposition: To allow petitioner to operate Boeing B–747 and McDonnell Douglas DC–8 airplanes without complying, at this time, with the requirements to conduct aircraft proving tests. Grant, August 4, 1989, Exemption No. 5079

[FR Doc. 89–19687 Filed 8–21–89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Forsyth County, North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be

prepared for a proposed highway project within Forsyth County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, District Engineer, Federal Highway Administration, P.O. Box 26806, Raleigh, NC 27611, Telephone (919) 790–2852.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the City of Winston-Salem and the North Carolina Department of Transportation (NCDOT), will prepare an Environmental Impact Statement (EIS) on a proposed Northern Beltway (Western Section) location. The proposed action will be a multi-lane divided facility, potentially on a new location, and will run from US 158 (Clemmonsville Road area) to US 52 near the NC 65 intersection in Forsyth County. Access control to the facility has not been determined at this time.

Alternatives under consideration include: (1) The "no-build," (2) improving existing facilities, (3) a highway on new location. Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State, and local agencies. Public meetings and meetings with local officials and neighborhood groups will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To assure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 14, 1989.

Roy C. Shelton,

District Engineer, Raleigh, NC.

[FR Doc. 89–19744 Filed 8–21–89; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Richmond and Montgomery Counties, North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project within Richmond County and Montgomery County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, District Engineer, Federal Highway Administration, P.O. Box 26806, Raleigh, NC 27611, Telephone (919) 790–2852.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposed US 220 improvement. The proposed action will be a multi-lane divided facility potentially on a new location and will run from the existing four-lane section just south of Ellerbe, in Richmond County, to the existing four-lane section just north of Emery, in Montgomery County. The proposed facility will have full control of access with interchanges and grade separations.

Alternatives under consideration include: (1) The "no-build," (2) improving existing facilities, (3) a full control of access highway on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State, and local agencies. Public meetings and meetings with local officials and neighborhood groups will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time. To assure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 14, 1989.

Roy C. Shelton,

District Engineer, Raleigh, NC.

[FR Doc. 89–19745 Filed 8–21–89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 15, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8817
Type of Review: New Collection
Title: Allocation of Patronage and Nonpatronage Income and Deductions
Description: Form 8817 is used by taxable Farmer Cooperatives to indicate their income and deductions by patronage and nonpatronage source. IRS uses this information to improve the classification of returns for examination, and to enhance taxpayer compliance.
Respondents: Farms, Businesses of other for-profit
Estimated Number of Respondents: 1,650
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 17 hours, 2 minutes
Learning about the law or the form, 30 minutes
Preparing and sending the form to IRS, 45 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/Reporting Burden: 22,728 hours

OMB Number: 1545–0099
Form Number: Form 1065 and Schedules D and K–1 (Form 1965)
Type of Review: Revision
Title: U.S. Partnership Return of Income, Capital Gains and Losses, Partner's Share of Income, Credits, Deductions, etc.
Description: Internal Revenue Code section 6031 requires partnerships to file returns that show gross income items, allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used to verify correct reporting of partnership items and general statistics.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 1,900,025
Estimated Burden Hours Per Response/Recordkeeping:

	1065	Sched. D	Sched. K–1
Recordkeeping	65 hours., 17 mins	5 hrs., 1 min.	27 hrs., 1 min.
Learning about the law or the form	29 hrs., 24 mins	2 hrs	10 hrs., 23 mins.
Preparing the form	54 hrs., 5 mins	4 hrs., 58 min	25 hrs., 15 mins.
Copying, assembling, and sending the form to IRS	6 hrs., 26 mins	46 mins	4 hrs., 1 min.

Frequency of Response: Annually
Estimated Total Recordkeeping/Reporting Burden: 1,006,211,641 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderfauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–19663 Filed 8–21–89; 8:45 am]

BILLING CODE 4810-25-M

Departmental Offices Performance Review Board

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice lists the membership of the Departmental Offices Performance Review Board (PRB) and supersedes the list published in 54 FR 20474 dated May 11, 1989, in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB is to review senior executive employees' performance and make recommendations regarding performance ratings, performance awards and other personnel actions.

The names and titles of the PRB members are as follows:

Linda M. Combs—Assistant Secretary of the Treasury for Management (Chair)
David M. Nummy—Deputy Assistant Secretary of the Treasury for Departmental Finance and Management
David W. Mullins—Assistant Secretary of the Treasury for Domestic Finance
Salvatore R. Martoche—Assistant Secretary of the Treasury for Enforcement
Edith E. Holiday—General Counsel
David C. Mulford—Under Secretary of the Treasury (International Affairs)
Charles H. Dallara—Assistant Secretary of the Treasury for International Affairs
Gerald Murphy—Fiscal Assistant Secretary
John P. Simpson—Deputy Assistant Secretary of the Treasury (Regulatory, Tariff and Trade Enforcement)
Marcus W. Page—Deputy Fiscal Assistant Secretary
Charles Schotta—Deputy Assistant Secretary for Arabian Peninsular Affairs
William E. Barreda—Deputy Assistant Secretary for Trade and Investment Policy
Charles B. Respass—Deputy Assistant Secretary for Administration
Steven W. Broadbent—Deputy Assistant Secretary for Information Systems
William H. Gillers—Deputy to the Assistant Secretary (Management)
John G. Wilkens—Senior Advisor (Economics)
John H. Auten—Director, Office of Financial Analysis
Ralph L. Bayrer—Director, Office of Synthetic Fuels Project
Jon M. Gaaserud—Director, U.S. Saudi Arabian Joint Commission Program Office
Thomas P. O'Malley—Director, Financial Services Directorate
Charlene J. Robinson—Director, Human Resources Directorate
G. Martin Wagner—Director, Office of Telecommunications Management
Thomas S. Neubig—Director, Office of Tax Analysis.

DATES: Memberships on the Performance Review Board are effective as of this date.

FOR FURTHER INFORMATION CONTACT: Larry G. Hicks, Executive Secretary, PRB, Room 1314, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Telephone: (202) 566–5468. This notice does not meet the Department's criteria for significant regulations.

Linda M. Combs,

Assistant Secretary of the Treasury for Management.

[FR Doc. 89–19696 Filed 8–21–89; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 161
Tuesday, August 22, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 1, 1989.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-19889 Filed 8-18-89; 3:18 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 1, 1989.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-19890 Filed 8-18-89; 3:12 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 15, 1989.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-19891 Filed 8-13-89; 3:18 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 22, 1989.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-19892 Filed 8-18-89; 3:18 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 29, 1989.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-19893 Filed 8-18-89; 3:18 am)

BILLING CODE 6351-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, August 28, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on August 24, 1989.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 18, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-19895 Filed 8-18-89; 3:51 am]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 21, 28, September 4, and 11, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 21

There are no meetings scheduled for the Week of August 21.

Week of August 28—Tentative

There are no meetings scheduled for the Week of August 28.

Week of September 4—Tentative

There are no meetings scheduled for the Week of September 4.

Week of September 11—Tentative

Thursday, September 14

10:00 a.m.
Briefing on Status of NRC Technical Training Programs (Public Meeting)
2:00 p.m.
Briefing on Emerging Technical Issues (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 15

9:00 a.m.
Briefing on Status of Maintenance Initiatives and Schedule (Public Meeting)

ADDITIONAL INFORMATION: By a vote of 4-0 on August 10, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Motion by Joseph J. Macktal for Disqualification of Commissioners from Further Consideration of Matters Relating to Him; Petition to Intervene in Limerick Remand Proceeding and Request for Stay of Low-Power Operation of Limerick Unit 2; and Response to Limerick Ecology Action's Motion for Reconsideration" (Public Meeting) scheduled for August 10, be held on less than one week's notice to the public.

By a vote of 4-0 on Agusut 15, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Collegial Discussion of Items of Commissioner Interest" (Public Meeting) scheduled for August 15, be held on less than one week's notice to the public.

By a vote of 4-0 on August 16, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required the "Affirmation of Morabito Request for Reconsideration" (Public Meeting) scheduled for August 16, be held on less than one week's notice to the public.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this data.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,
Office of the Secretary.

August 17, 1989

[FR Doc. 89-19887 Filed 8-18-89; 2:22 pm]

BILLING CODE 7590-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: The Pennsylvania Avenue Development Corporation announces a forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, September 27, 1989, at 10:00 a.m.

ADDRESS: The meeting will be held in the Main Lounge, National Press Club, 14th & F Streets, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Date: August 7, 1989.

M.J. Brodie,
Executive Director.

[FR Doc. 89-19638 Filed 8-18-89; 12:53 pm]

BILLING CODE 7630-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:36 p.m. on Thursday, August 17, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), seconded by Mr. Karl T. Hoyle, acting in the place and stead of Director of M. Danny Wall (Director of the Office of Thrift Supervision), concurred in by Director C.C. Hope, Jr. (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: August 17, 1989.

Resolution Trust Corporation.

Robert E. Feldman,
Acting Executive Secretary.

[FR Doc. 89-19834 Filed 8-22-89; 12:00 pm]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [54 FR 33146 August 11, 1989].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, August 8, 1989.

CHANGES IN THE MEETING: Time change/deletion.

An open meeting scheduled on Wednesday, August 16, 1989 at 10:00 a.m., was changed to Wednesday, August 16, 1989, at 9:30 a.m.

The following item was not considered at an open meeting on Wednesday, August 16, 1989, at 9:30 a.m.

Consideration of whether to issue a release for comment proposing amendments to transactional disclosure requirements to enhance shareholder analysis of corporate control transactions recommended or approved by the board of directors. Proposed amendments to Rule 13e-3 and Schedule 13E-3 would ensure that the purposes of the rule are met in all going private transactions in which management has a significant interest. The proposals also would impose a new disclosure requirement, modeled on the structure and interpretive positions of Rule 13e-3, for issuers engaged in extraordinary corporate transactions. Recommendations to reject a tender offer also would be subject to new disclosure requirements under certain circumstances. These additional disclosure requirements would be implemented by adding a new Item 703 to Regulation S-K. The Commission also will consider whether to propose amendments to Rule 14e-2 regarding the obligation of the issuer to respond promptly to revised tender offers. In addition, the Commission will consider whether to propose a procedure by which exhibits would be filed in connection with preliminary and definitive proxy materials. For further information, please contact Richard E. Baltz or Gregg Corso at (202) 272-3097.

Commissoner Fleischman, as duty officer, determined that Commission business required the above changes.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Kincaid at (202) 272-2300.

Jonathan G. Katz,
Secretary.

August 17, 1989.

[FR Doc. 89-19842 Filed 8-18-89; 8:45 am]

BILLING CODE 8010-01-M

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federal register

Tuesday
August 22, 1989

Part II

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 319

Training Personnel for the Education of the Handicapped; Grants to State Educational Agencies and Institutions of Higher Education; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 319

RIN 1820–AA65

Training Personnel for the Education of the Handicapped—Grants to State Educational Agencies and Institutions of Higher Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Training Personnel for the Education of the Handicapped Program under Part D of the Education of the Handicapped Act (EHA), as amended. The present regulations are codified in 34 CFR Part 319. These proposed regulations are needed to implement amendments made to section 632 of the EHA by Public Law 100–630, section 104 (November 7, 1988). Section 632 authorizes grants to State educational agencies (SEAs) and institutions of higher education (IHEs). The intended effort of these proposed regulations is to clarify the statutory requirements and to improve the operation of the program.

DATE: Comments must be received on or before September 21, 1989.

ADDRESS: Comments concerning these proposed regulations should be addressed to Dr. Norman Howe, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094–M/S 2651), Washington, DC 20202. A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Dr. Norman Howe, Telephone: (202) 732–1070.

SUPPLEMENTARY INFORMATION: The Training Personnel for the Education of the Handicapped Program is authorized by sections 631 and 632 of the EHA. Section 631 creates three specific subprograms, providing for grants to (1) nonprofit organizations for parent training and information, (2) IHEs and nonprofit organizations for training personnel for careers in special education and early intervention, and (3) IHEs, nonprofit organizations, and State agencies for special projects. Section 632 provides for grants to SEAs and IHEs, for preservice and inservice personnel training.

Under section 632 as amended in 1988, the Secretary is directed to make a grant of "sufficient size and scope" to each SEA for the purpose of assisting States in establishing and maintaining preservice and inservice programs to prepare personnel to meet the needs of handicapped infants, toddlers, children, and youth or supervisors of those persons, consistent with the personnel needs identified in the State's comprehensive system of personnel development under sections 613 and 676(b)(8).

The Secretary proposes to change the basic method for the allocation of these funds. In previous years, funds under this program have been awarded based on the applicant's need and on the quality of the grant application within a narrow range of funding. This method did not take into consideration the varying personnel training needs of States based on their population of students with handicaps.

The regulations propose that States henceforth will be awarded funds based on their proportionate share of the national "annual child count", i.e. the count of students receiving a free appropriate public education required under Part B of the EHA and Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 as amended by Public Law 100–297. Limited additional funds will be awarded for quality of the application (quality incentive funds). Moreover, the 1988 amendments provide that in any State in which the SEA does not apply for such a grant, any IHE within that State may apply for that grant. If any SEA chooses not to apply for any State grant award, it must notify all IHEs within the State of this decision one month prior to the competition closing date.

The Secretary may also make a limited number of awards to SEAs on a competitive basis.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 319.20, 319.22 and 319.33 contain information collection requirements. As required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3078, Switzer Building, 330 "C" Street, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burdens, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burden found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in the document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 319

Colleges and universities, Education, Education of handicapped, Education-training, Grant programs-education, Reporting and recordkeeping requirements, State educational agencies, Teachers.

Dated: June 12, 1989.

Lauro F. Cavazos,

Secretary of Education

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 319 to read as follows:

PART 319—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED—GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

Subpart A—General

Sec.
319.1 What is the purpose of this part?
319.2 What activities may the Secretary fund?
319.3 What regulations apply to this program?
319.4 What definitions apply to this program?
319.5–319.9 [Reserved]

Subpart B—How Does One Apply for an Award?

319.10 How does an eligible applicant apply for an award?
319.11–319.19 [Reserved]

Subpart C—How Does the Secretary Make an Award?

319.20 How does the Secretary determine the amount of a State grant?
319.21 How does the Secretary make an award under the competitive grant process?
319.22 What selection criteria does the Secretary use in the State grant and competitive grant programs?
319.23–319.29 [Reserved]

Subpart D—What Conditions Must be Met After an Award?

319.30 Is student financial assistance authorized?
319.31 What are the student financial assistance criteria?
319.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?
319.33–319.39 [Reserved]

Authority: 20 U.S.C. 1432 and 1434, unless otherwise noted.

Subpart A—General

§ 319.1 What is the purpose of this part?

The Secretary funds a mandatory State grant program and may conduct a competitive grant program under this part to assist States in establishing and maintaining preservice and inservice training programs that prepare personnel to meet the needs of infants, toddlers, children, and youth with handicaps or supervisors of such personnel.

(a) *State grant program.* Under the State grant program, the Secretary makes a grant to each State educational agency (SEA). If an SEA does not apply for a grant, the Secretary makes the grant to an institution of higher education (IHE) within that State.

(b) *Competitive grant program.* Under the competitive grant program, the Secretary may make grants to SEAs only (in addition to the grants awarded under the State grant program).

(Authority: 20 U.S.C. 1432)

§ 319.2 What activities may the Secretary fund?

(a) The Secretary supports preservice and inservice training programs that prepare personnel, or their supervisors, to serve infants, toddlers, children, or youth with handicaps.

(b) Any activities assisted under this part must be consistent with the personnel needs identified in the State's comprehensive system of personnel development.

(Authority: 20 U.S.C. 1432)

§ 319.3 What regulations apply to this program?

The following regulations apply to assistance under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), and Part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this Part 319.

(Authority: 20 U.S.C. 1432)

BEST COPY AVAILABLE

§ 319.4 What definitions apply to this program?

The following terms used in this part are defined in
34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Preschool
Project
Public
Secretary
State
State educational agency

(Authority: 20 U.S.C. 1432)

§ 319.5–319.9 [Reserved]

Subpart B—How Does One Apply for an Award?

§ 319.10 How does an eligible applicant apply for an award?

(a) Each SEA may make an application to the Secretary for a competitive grant under § 319.1(b).

(b) If an SEA elects not to apply for a State grant under § 319.1(a), IHEs within that State may apply for the grant for that State. However, only one State grant may be awarded in each State. If any SEA chooses not to apply for the State grant award, it must notify all IHEs within the State of this decision one month prior to the competition closing date.

(c) If applications are submitted by more than one IHE within a State, the Secretary uses the selection criteria in § 319.22 to evaluate the applications. An IHE that proposes to provide preservice special education and related services training must demonstrate that it meets State and professionally recognized standards for the training of special education and related services personnel, as evidenced by appropriate State and professional accreditation, unless—as indicated in a published priority of the Secretary—the grant is for the purpose of assisting the applicant to meet those standards.

(Authority: 20 U.S.C. 1432)

§ 319.11–319.19 [Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 319.20 How does the Secretary determine the amount of a State grant?

(a) The Secretary determines the amount of a grant under § 319.1(a) based upon the applicant's need for assistance under this part for activities in the State comprehensive system of personnel development, as follows:

(1) The Secretary provides each SEA a minimum proportionate share of no less than 80% of the funds available under this section, based on the State's proportion of the national child count provided under Part B of the Education of the Handicapped Act (EHA) and

Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended.

(2) However, in order to ensure that each State receives an award of sufficient size and scope, no State will receive less than $75,000.

(b) After determining a State's grant under paragraph (a) of this section, the Secretary determines annually the additional amount of funds to be awarded for the quality of the application based on the criteria set forth in § 319.22(b).

(Authority: 20 U.S.C. 1432)

§ 319.21 How does the Secretary make an award under the competitive grant process?

(a) The Secretary may make a limited number of awards to SEAs on a competitive basis for the purpose of assisting States in establishing and maintaining preservice and inservice programs to prepare personnel to meet the needs of handicapped infants, toddlers, children, and youth or supervisors of those persons, consistent with the personnel needs identified in the State comprehensive system of personnel development.

(b) In any fiscal year, the Secretary may not expend for this competitive program an amount that exceeds 10% of the amount expended under section 632 of the EHA in the preceding fiscal year.

(Authority: 20 U.S.C. 1432)

§ 319.22 What selection criteria does the Secretary use in the State grant and competitive grant programs?

(a) The Secretary uses the criteria in paragraph (b) of this section to evaluate an application for a State grant (SEA or IHE applicant) and for a competitive grant.

(b)(1) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine—

(i) The extent to which the project identifies and selects priority needs from the range of personnel needs identified in the State comprehensive system of personnel development;

(ii) The extent to which the project addresses the personnel needs selected by the applicant under paragraph (b)(1)(i) of this section; and

(iii) If appropriate, how the project relates to actual and projected personnel needs for certified teachers in the State as identified by the State educational agency in its annual data report required under section 618 of the Education of the Handicapped Act.

(2) *Program content.* (20 points) The Secretary reviews each application to determine the extent to which—

(i) Competencies that will be acquired by each trainee and how the competencies will be evaluated are identified;

(ii) Substantive content of the training to be provided is appropriate for the attainment of professional knowledge and competencies that are necessary for the provision of quality educational or early intervention services to infants, toddlers, children, and youth with handicaps;

(iii) Benefits to be gained by the number of trainees expected to be graduated or otherwise to complete training and employed over the next five years are described;

(iv) Appropriate methods, procedures, techniques, and instructional media or materials will be used in the preparation of trainees who serve infants, toddlers, children, and youth with handicaps;

(v) If relevant, appropriate practicum facilities are accessible to the applicant agency and trainees and will be used for such activities as observation, participation, practice teaching, laboratory or clinical experience, internships, and other supervised experiences of adequate scope, and length;

(vi) If relevant, practicum facilities for model programs will provide state-of-the-art educational services, including use of current and innovative curriculum materials, instructional procedures, and equipment; and

(vii) Program philosophy, program objectives, and activities to be implemented to attain program objectives are related to the educational or early intervention needs of infants, toddlers, children, and youth with handicaps.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) How the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable including, but not limited to, the number of trainees graduated or otherwise to complete training and hired. (See 34 CFR 75.590 Evaluation by the grantee).

(5) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(5) (i) and (ii) of this section plans to commit to the project;

(iv) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition; and

(v) Evidence of the trainer's past experience and training in fields related to the objectives of the project.

(6) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(7) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1432)

§ 319.23–319.29 [Reserved]

Subpart D—What Conditions Must be Met After an Award?

§ 319.30 Is student financial assistance authorized?

A grantee may use grant funds to provide traineeships or stipends. The sum of the assistance provided to a student through this part and any other assistance provided the student may not exceed the student's cost of attendance. "Cost of attendance" means—

(a) Tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(b) An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution;

(c) An allowance (as determined by the institution) for room and board costs incurred by the student that—

(1) For a student without dependents residing at home with parents, is not less than $1,500;

(2) For students without dependents residing in institutionally owned or operated housing, is a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board; and

(3) For all other students, is an allowance based on the expenses reasonably incurred by the students for room and board, except that the amount may not be less than $2,500;

(d) For less than half-time students (as determined by the institution) tuition and fees and an allowance for only books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (g) of this section);

(e) For a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(f) For a student enrolled in an academic program that normally includes a formal program of study abroad, reasonable costs associated with the study (as determined by the institution);

(g) For a student with one or more dependents, an allowance (as determined by the institution) based on the expenses reasonably incurred for dependent care based on the number and age of the dependents;

(h) For a handicapped student, an allowance (as determined by the institution) for those expenses related to his or her handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

(i) For a student receiving all or part of his or her instruction by means of telecommunication technology, no distinction may be made with respect to the mode of instruction in determining costs, but this pararaph may not be construed to permit including the cost of rental or purchase of equipment.

(Authority: 20 U.S.C. 1432)

§ 319.31 What are the student financial assistance criteria?

Direct financial assistance may only be paid to students in preservice programs and only if—

(a) The student is qualified for admission to the program of study;

(b) The student maintains satisfactory progress in a course of study as provided in 34 CFR 668.16(e);

(c) The student is a citizen or a national of the United States.

(Authority: 20 U.S.C. 1432)

§ 319.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for financial assistance to other students during the grant period.

(Authority: 20 U.S.C. 1432)

§ 319.33–319.39 [Reserved]

[FR Doc. 89–19650 Filed 8–21–89; 8:45 am]

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August 22, 1989

Part III

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Deposit of Biological Materials for Patent Purposes; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 70635-9174]

RIN 0651-AA13

Deposit of Biological Materials for Patent Purposes

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent Trademark Office (Office) is amending its rules of practice in patent cases to define procedures to govern the deposit of biological materials for patent purposes. Where an invention is or relies on a biological material which cannot be described in writing alone, and access to the biological material is necessary to satisfy the statutory requirements for patentability under 35 U.S.C. 112, these rules prescribe the procedures and conditions for making a deposit that will satisfy these requirements. These rules also prescribe examining procedures that will be used to address deposit issues, and the procedures pertaining to access to a deposit once a patent is granted.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Charles E. Van Horn or Harris A. Pitlick by telephone at (703) 557-4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Every patent must contain a written description of the invention sufficient to enable a person skilled in the art to which the invention pertains to make and use the invention. Where the invention involves a biological material and words alone cannot sufficiently describe how to make and use the invention in a reproducible or repeatable manner, access to the biological material is necessary for the satisfaction of the statutory requirements for patentability under 35 U.S.C. 112. The rules set forth examining procedures and conditions of deposit which must be satisfied in the event a deposit is required to provide the necessary access. The rules do not address the substantive issue of whether a deposit is required under any particular set of facts.

These rules will be effective for all applications filed on or after January 1, 1990, and for all reexamination proceedings in which the request for reexamination was filed on or after January 1, 1990, except that deposits made prior to the effective date which are acceptable under current practice will be acceptable in such applications and proceedings. Since most of the provisions reflect existing policy and practice, little change to existing practice or burden on applicants for patent and patent owners relying on the deposit of biological material is anticipated. Applicants and patent owners are encouraged to comply with these rules prior to the effective date.

The final rules on the deposit of biological materials for patent purposes have evolved over several years of actual experience in administering the guidelines set forth in section 608.01(p) of the Manual of Patent Examining Procedure, including several administrative and judicial decisions, and interaction with interested public, bar and industry groups. A draft policy statement on the deposit of biological materials was circulated among interested bar and industry groups and published in the BNA-Patent, Trademark and Copyright Journal on May 22, 1986. An advance notice of proposed rulemaking setting forth rules being considered for deposit of biological material was published in the Federal Register, 52 FR 34080 (September 9, 1987), and in the *Official Gazette*, 1082 O.G. 47 (September 29, 1987). Finally, a notice of proposed rulemaking relating to the deposit of biological materials for patent purposes was published in the Federal Register, 53 FR 39420 (October 6, 1988), and in the *Official Gazette*, 1095 O.G. 47 (October 25, 1988).

In this notice of final rulemaking, a description of the changes in the text of the proposed rules is provided along with an explanation of the reasons supporting the changes. In addition, comments received in response to the notice of proposed rulemaking are analyzed. Finally, an explanation of the content of the final rules is provided, together with a compilation of relevant comments and responses that have been made during the rulemaking process. This explanation and compilation of previous comments and responses will serve as a set of guidelines that will be reproduced in the Manual of Patent Examining Procedure in due course.

Changes in Text of Proposed Rules

Several changes have been made in the text of the final rules from the text of the proposed rules which were published for comment in the notice of proposed rulemaking. Those changes are discussed below.

Section 1.200 as proposed has been renumbered as § 1.801 as adopted and the term "patent purposes" as proposed has been replaced with the term "purposes of patents for inventions under 35 U.S.C. 101" as adopted to clarify that the regulations pertaining to the deposit of biological material do not apply for purposes other than patents for inventions. Thus, these regulations are not applicable to applications for plant patents under 35 U.S.C. 161-164.

Section 1.201 as proposed has been renumbered as § 1.802 as adopted and the term "or Opportunity" in the heading thereof has been inserted after "Need" to reflect the permissive nature of a deposit when not necessary to satisfy 35 U.S.C. 112.

Paragraph (a) thereof as proposed provided that where a claimed invention is or relies on a biological material, the disclosure may include a deposit of the biological material deposited in a depository and under conditions complying with these regulations, provided a precondition was satisfied. The precondition was that the biological material not be known and readily available to the public and not be describable in writing alone. Paragraph (a) as adopted eliminates this precondition, does not require that the biological material be, or be used for, a claimed invention, does not require that the deposit be made in a depository and under conditions complying with these regulations, and more accurately states that the disclosure may include reference to a deposit, since the deposit is not physically part of the disclosure. Paragraph (a) as adopted merely provides that where an invention is, or relies on, a biological material, the disclosure may include reference to a deposit of such biological material.

Paragraph (b) of § 1.802 prescribes that biological material need not be deposited unless access to the material is necessary to satisfy 35 U.S.C. 112. If a deposit is necessary, it shall be acceptable if made in accordance with these regulations. Proposed paragraph (b) made no reference to 35 U.S.C. 112. Situations where a biological material is known and readily available to the public or can be made or isolated without undue experimentation are now listed as some, but not an exhaustive set, of the circumstances where deposit need not be made. The term "from known and readily available material" has been dropped from the end of the term "can be made or isolated without undue experimentation" as redundant. Paragraph (b) as adopted also prescribes that once deposited in a depository complying with these regulations, a biological material will be considered to be readily available even

though some requirement of law or regulation permits access only under conditions imposed for safety, public health or similar reasons. Proposed paragraph (b) did not include the condition of deposit in a depository complying with these regulations.

Proposed paragraph (c) thereof was limited to reference to a specific organism or other biological material in a specification disclosure as not creating a presumption that the material was necessary to satisfy 35 U.S.C. 112 or that a deposit thereof is required. Paragraph (c) as adopted eliminates the term "specific organism or other" as redundant and also includes the act of deposit by an applicant or patent owner as not creating a presumption that the deposit is or was required.

Section 1.202 as proposed has been renumbered as § 1.803 as adopted.

Paragraph (a) thereof as proposed prescribed that a deposit shall be made in any International Depositary Authority (IDA) or any other depository recognized as suitable by the Office. Paragraph (a) as adopted now specifies that such deposits shall be recognized for the purpose of these regulations so as not to preclude deposits made for other reasons such as a gratuitous disclosure. Paragraph (a)(2) as adopted eliminates the requirement in the proposed rule that impartial consultants be from the biotechnology industry or governmental agencies. Paragraph (a)(2) as adopted also contains new sub-subparagraph (vii) as a requirement which a suitable depository must meet, *viz.*, that it promptly notify depositors of its inability to furnish samples, and the reasons why. This requirement appeared, in essence, in proposed § 1.204(a).

Proposed paragraph (b) thereof has not been adopted. Replacement of deposits is governed solely by § 1.805, *infra*.

Proposed paragraph (c) thereof has been adopted as paragraph (b). In subparagraph (2) thereof, "(b)" has been changed to "(a)(2)" to correct an inadvertent error in the proposed rule.

Proposed paragraph (d) thereof has been adopted as paragraph (c) except that the reference to paragraph (a) has been changed to paragraph (a)(2) to more clearly delineate which category of depository is intended to be covered by this paragraph of § 1.803 and all references to other paragraphs whose designations have been changed by adoption of these rules have been changed accordingly.

Proposed paragraph (e) thereof has been adopted as paragraph (d).

Section 1.203 as proposed has been renumbered as § 1.804 as adopted.

Paragraph (a) thereof prescribed that an original deposit of a biological material may be made before filing an application for patent or, pursuant to a requirement that will be made by the examiner no later than the date the Notice of Allowance and Issue Fee Due is mailed, during pendency of the application for patent. Paragraph (a) as adopted adds a precondition to making an original deposit that the biological material be specifically identified in the application as filed. Since proposed paragraph (a) did not address original deposits made during the pendency of an application that were not made pursuant to a requirement of an examiner, the rule as adopted states that original deposits may be made during pendency of an application for patent, subject to § 1.809, *infra*, which prescribes, *inter alia*, when during the pendency of an application for patent a deposit shall be made when made pursuant to a requirement by the examiner.

Paragraph (b) thereof as proposed required a statement that, for an original deposit made after the effective filing date of an application for patent, the biological material deposited was the same biological material described in the application as filed. Paragraph (b) as adopted substitutes the word "a" for the word "the" since more than one biological material may be referred to in the application as filed, drops the word "same" and requires the statement that the biological material deposited is a biological material specifically identified in the application as filed.

Section 1.204 as proposed has been renumbered as § 1.805 as adopted and a reference to supplemental deposits has been added to the heading thereof. Paragraphs (a) and (b) of the section as proposed have been substantially rewritten as paragraphs (a), (b) and (c). New elements have been added and some eliminated, although some elements of the proposed rule on replacement deposits have been adopted, either with similar language or different language.

Elements of the proposed rule on replacement deposits which have not been adopted include a requirement that replacement deposits be made or be made within a specific time limit. Ramifications in Office proceedings from not making a replacement deposit, or in the case of a patent, not diligently making a replacement deposit, are stated.

A requirement in the proposed section that depositories promptly notify depositors of an inability to furnish samples has been adopted as § 1.803(a)(2)(vii), *supra*.

Paragraph (a) of § 1.805 requires a depositor, after receiving notice during the pendency of an application for patent, application for reissue patent or reexamination proceeding, that the depository possessing a deposit either cannot furnish samples thereof or can furnish samples thereof but the deposit has become contaminated or has lost its capability to function as described in the specification, to notify the Office in writing, in each application for patent or patent affected. In such a case, or where the Office otherwise learns, during the pendency of an application for patent, application for reissue patent or reexamination proceeding, that the depository possessing a deposit either cannot furnish samples thereof or can furnish samples thereof but the deposit has become contaminated or has lost its capability to function as described in the specification, the need for making a replacement or supplemental deposit will be governed by the same considerations governing the need for making an original deposit under the provisions set forth in § 1.802(b). A replacement or supplemental deposit made during the pendency of an application for patent shall not be accepted unless it meets the requirements for making an original deposit under these regulations, including the requirement set forth under § 1.804(b). A replacement or supplemental deposit made in connection with a patent, whether or not made during the pendency of an application for reissue patent or a reexamination proceeding or both, shall not be recognized by the Office unless a certificate of correction under § 1.323 is requested by the patent owner which meets the terms of paragraphs (b) and (c) of this section. The proposed rules did not provide for certificates of correction relating to replacement or supplemental deposits.

Paragraph (b) of § 1.805 prescribes that a request for certificate of correction under this section shall not be granted unless the certificate identifies the accession number for the replacement or supplemental deposit; the date of the deposit; and the name and address of the depository.

Paragraph (c) of § 1.805 prescribes that a certificate of correction under this section shall not be granted unless the request therefor is made promptly after the replacement or supplemental deposit has been made and includes a verified statement of the reason for making the replacement or supplemental deposit; a verified statement from a person in a position to corroborate the fact, and shall state, that the replacement or supplemental deposit is of a biological material which is identical to that originally deposited; a verified showing that the patent owner acted diligently—in the case of a replacement deposit, in making the deposit after receiving notice that samples could no longer be furnished from an earlier deposit, or in the case of a supplemental deposit, in making the deposit after receiving notice that the earlier deposit had become contaminated or had lost its capability to function as described in the specification; a verified statement that the term of the replacement or supplemental deposit expires no earlier than the term of the deposit being replaced or supplemented; and otherwise establishes compliance with these regulations, except that if the person making one or more of the required statements or showing is an attorney or agent registered to practice before the Office, that statement or showing need not be verified.

Paragraph (d) of § 1.805 prescribes that a depositor's failure to replace a deposit, or in the case of a patent, to diligently replace a deposit and promptly thereafter request a certificate of correction which meets the terms of paragraphs (b) and (c) of this section, after being notified that the depository possessing the deposit cannot furnish samples thereof, shall cause the application or patent involved to be treated in any Office proceeding as if no deposit were made.

Paragraph (e) as adopted is identical to proposed paragraph (d) except that the word "the" before "patent" has been replaced with "a" because the term "the patent" had no antecedent basis, and the term "according to these regulations" has been inserted after the word "replaced" to make it clear that the rebuttable presumption according to this paragraph applies only where the replacement deposit has been made according to these regulations.

Paragraph (f) as adopted is substantially similar to proposed paragraph (e) with respect to an applicant's ability to make a replacement for any reason during the pendency of an application for patent. Paragraph (f) extends such applicant's ability to supplemental deposits as well. The first two sentences of proposed paragraph (e) prescribing when a replacement deposit shall be made while an application is still pending and that an applicant notify the Office when a replacement deposit is necessary have been adopted in § 1.805(a), *supra*.

Paragraph (g) as adopted is identical to proposed paragraph (f) except that supplemental deposits are also included and the reference to another section therein has been changed to reflect its renumbering.

Paragraph (h) as adopted is substantially similar to proposed paragraph (g) except for two changes. One is that the word "the" before "biological material" has been changed to "a" because the term "the biological material" had no antecedent basis. The other change is replacement of the term "viable deposit is in the depository" with the term "depository can furnish samples thereof". The term "in the depository" was not clear. The word "viable" before "deposit" would have excluded biological materials not capable of reproduction either directly or indirectly. For biological materials which are so capable of reproduction, samples of viable deposits thereof which become non-viable cannot be furnished by the depository.

Paragraph (i) as adopted modifies paragraph (h) as proposed. Whereas the proposed rule proscribed a patentee from replacing a viable deposit where the depository can furnish samples, the rule as adopted states that the Office will not recognize in any Office proceeding a replacement deposit of a biological material made by a patent owner where the depository could furnish samples of the deposit being replaced.

Section 1.205 as proposed has been renumbered as § 1.806 as adopted. The proposed rule had set the term of deposit as, *inter alia*, at least thirty years after the date of a viable deposit. The rule as adopted sets the thirty-year term to begin after a deposit, before or during pendency of an application for patent, is made. The term of a deposit made by a patent owner is not prescribed. However, § 1.805(a), *supra*, prescribes that a replacement or supplemental deposit made in connection with a patent will not be recognized in any Office proceeding unless a certificate of correction under § 1.323 is requested by the patent owner which meets the terms of paragraphs (b) and (c) of § 1.805, one of which terms is a verified statement by the patent owner that the term of the new deposit expires no earlier than the term of the deposit being replaced or supplemented. An additional change in the rule as adopted is the replacement of the term "deposited biological material" with the word "deposit" since the former term had no antecedent basis.

Section 1.206 as proposed has been renumbered as § 1.807 as adopted. The rule as adopted is identical to the rule as proposed except for the reference to a rule which has been renumbered.

Section 1.207 as proposed has been renumbered as § 1.808 as adopted.

In paragraph (a) thereof, first word, "The" as proposed has been replaced with "A" because "The" had no antecedent basis.

In view of the non-adoption of proposed § 1.207(c), *infra*, paragraph (a)(2) as adopted refers to only paragraph (b), not paragraphs (b) and (c).

Paragraph (b)(1) as proposed permitted a depositor to require, *inter alia*, that a depository furnish samples only if a request for a sample is in writing and signed. Paragraph (b) as adopted permits a depositor to require a request to be in writing or other tangible form. The signing requirement, however, has not been adopted.

Paragraph (b)(3) as proposed permitted a depositor to require, *inter alia*, that a depository furnish the depositor with a copy of the request. This requirement has not been adopted.

Paragraph (c) as proposed has not been adopted.

Paragraph (d) as proposed, with one change, has been adopted as paragraph (c). The change is the insertion of the term "made to the Office" after the term "Upon request" to make it clear that certification imposes no burden on a depository.

Section 1.208 as proposed has been renumbered as § 1.809 as adopted.

The term "required" when referring to "deposit" in proposed paragraphs (a), (b) and (c) thereof has been changed to "needed" as adopted for purposes of consistency with § 1.802. The term "in case one has not been made, or" as proposed in paragraph (a) has been replaced with "and if needed," as adopted for purposes of clarification. The statement as proposed that a deposit accepted in any acceptable depository under § 1.202(a) shall be accepted for patent purposes if made under conditions complying with § 1.207(a) has not been adopted. The statement is redundant in view of the provision in § 1.802(b) as adopted that a deposit necessary for the satisfaction of 35 U.S.C. 112 shall be acceptable if made in accordance with these regulations. Since the question of deposits may come up in reissue applications and reexamination proceedings as well as in applications for patents, paragraph (a) as adopted covers examination of all such applications and proceedings. Paragraph (a) as adopted also refers to supplemental deposits since issues of the need for a supplemental deposit may arise where a deposit has lost its capability to function as described in the specification. Paragraph (a) as proposed prescribed that affected claims would be rejected in an Office action.

Paragraph (a) as adopted drops "in an Office action" and instead prescribes that the claims would be rejected "where appropriate."

Paragraph (b)(1) as proposed was limited to applicants. Paragraph (b)(1) as adopted covers applicants for patents and patent owners involved in specified Office proceedings. The provision for applicants for patents in paragraph (b)(1) as adopted is identical to the provision for applicants in paragraph (b)(1) as proposed except for the additional adoption of a reference to supplemental deposits. Paragraph (b)(1) as adopted additionally provides for patent owners responding to a rejection under paragraph (a) of this section by requesting a certificate of correction of the patent which meets the terms of paragraphs (b) and (c) of § 1.805.

Paragraph (b)(2) as proposed has not been adopted. Subparagraph (3) has therefore been renumbered as (2) and the reference therein to paragraph (b)(2) has been eliminated. Two additions have been made. One, since the question of deposit may come up in connection with a reissue application or reexamination proceeding, the term "or patent" has been inserted after "application" in the first sentence. Two, since paragraph (a) provides for a rejection under 35 U.S.C. 112 when a deposit actually made cannot be accepted, it is considered an appropriate response that a deposit actually made should be accepted. Thus, the term "and/or why a deposit actually made should be accepted" has been inserted at the end of the first sentence of paragraph (b)(2) as adopted.

Paragraph (c) as proposed has been adopted except that the term "for patent" has been inserted after "application" in the first sentence to make it clear that this paragraph does not apply to other applications, such as applications for reissues. Additionally, the word "the" before the proposed term "required deposit" has been changed to "a" because the term "the required deposit" had no antecedent basis. Finally, the term "37 CFR" preceding "1.136" in the proposed rule has been replaced with "§" as adopted to be consistent with standard nomenclature.

Paragraph (d)(3) as proposed required a taxonomic description of the deposit. Paragraph (d)(3) as adopted requires a description of the deposited biological material sufficient to specifically identify it and to permit examination. Paragraphs (d)(1), (d)(2), (d)(3) and (d)(4) have otherwise been adopted except for the addition of prefatory articles "The" or "A".

Response to and Analysis of Comments

Written comments from sixteen (16) sources were received in response to the notice of proposed rulemaking. Some suggestions made in comments have been adopted as presented or in modified form and others have not been adopted. A detailed analysis of the comments follows.

Comment: The proposed rule numbers, except § 1.200, are the same as those of the old interference rules, and it appears to be Office practice to normally avoid using rule numbers which end in "00," especially for a rule, viz., § 1.200, which is the first of a group of rules. The rules, if adopted, should have different numbers.

Response: The suggestion has been adopted. Proposed §§ 1.200 through 1.208 have renumbered as §§ 1.801 through 1.809 as adopted, respectively.

Comment: Two comments ask whether the rules will apply retroactively. One comment suggests that they should and further, that the benefits provided for depositors in proposed § 1.207 (b) and (c) take effect immediately so that those patent applicants who would benefit from them will be encouraged not to delay in filing or obtaining a patent until a final rule takes effect.

Response: To the extent the rules codify existing office practice, they are already effective. Otherwise, the rules will be effective in applications for patent or for reissue of patent filed on or after January 1, 1990, and in reexamination proceedings in which the request for reexamination was filed on or after January 1, 1990, except that deposits made prior to the effective date which are acceptable under current practice will be acceptable in such application and proceedings. Applicants and patent owners are encouraged to comply now with those requirements of the rules not required by existing Office practice.

Comment: A sentence should be added at the end of proposed § 1.200 to clarify that the rule does not preclude the possibility of depositing other biological materials for patent purposes, such as plants *per se*, even though not within the scope of the term "biological material" as defined by the rule. Adding such a sentence would be consistent with previous concerns expressed to the Office over the possible requirement for deposits with respect to plant patents. With the added sentence, the rule would not address any kind of requirement for deposit in plant patents.

Response: In a response to a comment in the notice of proposed rulemaking, it was stated that the Office did not intend to propose rules on deposits under the Plant Patent Act (35 U.S.C. 161–164) at this time, nor will the Office take the position that a deposit is required under the present provisions of 35 U.S.C. 162. The text of the rule adopted in § 1.801 is the same as proposed in § 1.200 except that the rule now explicity states that the regulations are for purposes of patents for inventions under 35 U.S.C. 101. Thus, these regulations do not and are not intended to address the question of deposits in plant patent applications.

Comment: One comment suggests that the language in § 1.200 should be expanded to make it clear that other biological materials, such as plants *per se*, are not precluded from being deposited. Another comment assumes that the Office intends to limit the scope of "biological material" as defined by this rule. The rules and commentary should indicate that the scope and effect of the rules are limited to biological materials as defined in the rules. This rule is acceptable provided it simply defines what constitutes biological material.

Response: None of the suggestions have been adopted. In a response to a comment in the notice of proposed rulemaking, it was stated that biological material is defined in the proposed rule in terms of a non-exhaustive list of what it includes and that no materials were explicitly excluded. The response also stated that the Office does not contemplate that there would be many situations where a material that is not capable of self-replication either directly or indirectly would be acceptable as a deposit under these regulations but that an applicant was not precluded in any given case from attempting to show why such a material should be acceptable. Plants *per se* are an example of such materials.

Comment: The proposed rules do not, but should, address a problem associated with marine sponges and other marine macroorganisms. These materials and their natural location can be adequately described so that one skilled in the art could obtain them using the necessary equipment. But their taxonomy is in a developmental stage and scientific names are subject to revision. Deposit and maintenance of these materials in viable form is not practical. They can and have been deposited in non-viable form, preserved or fixated in a suitable non-destructive medium, where their shelf life is expected to be at least 30 years.

Response: See the response to the previous comment. As stated in a response to a comment in the advance notice of proposed rulemaking, the PTO

Board of Patent Appeals and Interferences held that a description of the precise geographic location of marine tunicates used in a claimed invention was adequate to satisfy the enablement requirement of 35 U.S.C. 112. *Ex Parte Rinehart*, 10 USPQ2d 1719 (PTO Bd. Pat. App. & Int. 1985). It was also stated in that response that the term "readily" as used in the term "known and readily available" appearing in the proposed rules is considered appropriate to define that degree of availability which would be reasonable under the circumstances. Since the comment states that the subject materials and their natural location can be adequately described so that one skilled in the art could obtain them using the necessary equipment, the disclosure would appear to be sufficient to meet the enablement requirements of 35 U.S.C. 112 without a deposit so long as their degree of availability is reasonable under the circumstances.

Comment: In a response to a comment in the notice of proposed rulemaking which was in response to a solicitation for comments in the advance notice of proposed rulemaking on the setting of an appropriate minimum number of seeds to ensure availability of the seed through the enforceable life of the patent, it was stated that the Office does not intend to propose rules quantifying a minimum number of seeds but that the Office will consider 2500 to be a minimum number in the normal case and will provide an applicant an opportunity to provide justification why a lesser number would be suitable under the circumstances of a particular case. One comment suggests that 2500 may present problems where the normal yield of a plant is only a few seeds. A more reasonable minimum is 1250. Another comment suggests that there be no minimum number but an obligation on the part of the depositor to replace a seed each time one is requested.

Response: Since the Office has stated that an applicant will be provided an opportunity to show why a lesser amount than 2500 seeds would be appropriate in a particular case, the policy of requiring a minimum number of 2500 is adhered to. An obligation on the part of the depositor to replace a seed each time one is requested is simply impractical.

Comment: The title of proposed § 1.201 should be changed from "Need to make a deposit" to "Opportunity to make a deposit" since the provision states that "the disclosure *may* include a deposit of a biological material * * *."

Response: The suggestion has been adopted in part. Since § 1.802 applies to situations both when a deposit may be made (optional) and when a deposit is necessary, the heading of the rule states both need and opportunity in the alternative.

Comment: Proposed § 1.201(a) should state that the disclosure may include reference to a deposit, rather than that the disclosure may include a deposit.

Response: The suggestion has been adopted in § 1.802(a).

Comment: Proposed § 1.201(a) does not clearly permit deposits where conditions enumerated therein do not apply. The proposed rule should be revised by eliminating the requirement that the biological material not be known and readily available to the public before a deposit may be made. The proposed revision would make clear that an applicant has a universal and unconditional right to make a deposit of a biological material whenever the biological material cannot be described in writing alone, regardless of whether the material is known and readily available. The rule as proposed is not consistent with the permissive use of deposits where they might not be mandated. The proposed revision would dispel any suggestion or implication that the legal standard under which deposits are mandated is that the biological material be neither known nor readily available. Obviously, such materials even if unknown and not readily available might be enabled solely through a written description, rendering deposit unnecessary.

Response: The suggestion has been adopted in § 1.802(a). In addition, the rule as adopted permits deposits even where the biological material can be described in writing alone and even where the claimed invention is not, or does not rely on, the biological material. Section 1.802(a) as adopted permits reference in the disclosure to a deposit of a biological material, the only precondition being that an invention is or relies on that material. The requirement in the proposed rule that the biological material not be known and readily available to the public and not be describable in writing alone, and that the material be, or be used for, the claimed invention, has not been adopted.

Comment: Two comments suggest that § 1.201(a) refer to 35 U.S.C. 112. One comment suggests that § 1.201(a) should make some reference to 35 U.S.C. 112 for completeness. Another comment suggests that proposed § 1.201(a) contains no standard and should thus make reference to 35 U.S.C. 112, for example, by inserting words to the effect that the biological material cannot be described in writing alone to satisfy the requirements of 35 U.S.C. 112.

Response: The suggestions have not been adopted. *But see* the response to the next comment.

Comment: Proposed § 1.201(b) should be revised by stating that biological material need not be deposited unless necessary for the satisfaction of the statutory requirements of 35 U.S.C. 112. Thus, the rule would state that the ultimate reason for a requirement for a deposit would be to satisfy 35 U.S.C. 112. Further, the rule should state one circumstance, among others, where a biological material need not be deposited, *viz.*, where it is known and readily available to the public or can be made or isolated without undue experimentation. The last sentence of proposed § 1.201(b) should state a precondition that a deposit of the biological material be made in a depository complying with these regulations.

Response: The suggestions have been adopted in § 1.802(b).

Comment: Proposed § 1.201(c) should be revised by stating that the actual deposit of a biological material referred to in a specification disclosure also does not create a presumption that the material is necessary to satisfy 35 U.S.C. 112 or that the deposit is or was required. The proposed revision would recognize that the act of deposit does not and should not constitute an admission by the applicant that the deposit was made because it was necessary to satisfy 35 U.S.C. 112. For example, deposit may be necessary in the United States prior to the time a patent application is filed in order for an applicant to be entitled to assert a priority right under patent laws of a foreign country based on a United States application which makes reference to such deposit. Additionally, applicants ought to be encouraged to make deposits in questionable cases without such act being construed as an admission of any sort.

Response: The suggestion has been adopted in § 1.803(c).

Comment: The term "or other biological material" in proposed § 1.201(c) should be changed to "or any other biological material" to make sure that all biological materials that would normally be considered for deposits are included.

Response: The comment is not understood. Nevertheless, it is moot. The term "specific organism or other biological material" in proposed § 1.201(c) has been changed to "biological material" in § 1.802(c) as adopted.

Comment: Two comments suggest that proposed § 1.202(a)(2) unnecessarily limits who may be consulted in determining the suitability of a depository to be recognized by the Office to those in the biotechnology industry or Government agencies. Views from academia may be wanted. One of the comments suggests, therefore, that the term "from the biotechnology industry or governmental agencies" be deleted from § 1.202(a)(2).

Response: The suggestions have been adopted in § 1.803(a)(2).

Comment: Proposed § 1.202(a) should be revised to state that a deposit shall be recognized for the purposes of these regulations if made in a depository according to subparagraph (1) or (2) thereof. The proposed revision would allow for deposits other than in Office-recognized depositories, but give deposits in Office-recognized depositories the "safe harbor" advantages of these regulations.

Response: The suggestion has been adopted in § 1.803(a). Simply put, the rules do not prohibit deposits made under any conceivable conditions. The Office will treat a deposit not made according to these regulations, however, as if no deposit had been made.

Comment: The provision set forth in proposed § 1.202(c)(3), i.e., that a depository seeking status under paragraph (a)(2) indicate that it intends to be available, for the purposes of deposit, to any depositor under these same conditions, should also be listed in § 1.202(a)(2), which enumerates the qualifications for a depository seeking recognition as suitable by the Office.

Response: The suggestion is not being adopted. The requirement in proposed § 1.202(a)(2)(v), and § 1.803(a)(2)(v) as adopted, that the depository be impartial and objective, is inclusive of a requirement that it be available, for purposes of deposit, to any depositor under these same conditions.

Comment: One comment suggests that the proposed rules do not adequately define the term "depositor". It could be the inventor, the assignee, one to whom the inventor has an obligation to assign, or the individual who signs the deposit form. In the case of joint inventors with different institutional ties, who is the depositor? Assuming that where the inventor is a university professor, the depositor is the university, deposit in that university's depository would be precluded by proposed § 1.202(a)(2)(ii) and possibly § 1.202(a)(2)(v). An exception should be made for non-profit organizations. They should be allowed to "self-deposit" since it is highly improbably that they would refuse to provide samples to third parties. The availability of a strain from a university was found to satisfy 35 U.S.C. 112 in *Merck and Co., Inc.* v. *Chase Chemical Co.*, 273 F.Supp. 68, 77, 92, 155 USPQ 139, 146, 159 (D.N.J. 1967). Another comment suggests that it is not clear, where the depositor is a separate, independent division of a particular entity and the depository is another separate, independent division of the same entity, whether this arrangement meets the terms of proposed § 1.202(a)(2)(ii).

Response: None of the suggestions have been adopted. In § 1.803(a)(2)(ii) as adopted, a depository recognized to be suitable by the Office and not otherwise an IDA must exist independent of the control of the depositor. In a response to a comment in the notice of proposed rulemaking, it was stated that the term "depositor" is intended to include the party on whose behalf the deposit is made. It was further stated in that response that the rationale of the Office in requiring that a depository, if not an IDA, be independent of the depositor was adequately discussed in the advance notice of proposed rulemaking. The advance notice stated:

> The concept of an independent depository of an IDA as an acceptable depository is based on the need and desire to ensure the safe and reliable storage of a deposited biological material under circumstances that are free of the opportunity for intentional or negligent handling of the deposited material. The use of an independent depository or an internationally recognized depository will tend to preserve the integrity of the deposit process against those that may accidentally alter the deposited material, may wish to tamper with the deposited material or may wish to resume control of its availability when the patent is no longer enforceable, and to preserve the interest of the public in the free access to the biological material for any purpose once the term of the patent expires. Further, while the PTO is constrained to approve independent depositories other than an IDA, the PTO has neither the resources nor capability to assess the individual capability of any party that wishes to act as its own depository. The rules under consideration are intended to minimize depositories that will be found acceptable.

The above discussion applies to non-profit organizations as well as for-profit organizations. Moreover, it is clear from the discussion above that the scope of the term "depositor" is limited only by the requirement that the depositor have no control over the depository. Such a relationship is not necessarily inconsistent with one where there is some legal relationship between depositor and depository. The *Merck* case cited above does not stand for the proposition that a university is necessarily an acceptable depository because it makes available samples of a biological material. In *Merck*, the availability of the biological material from the university was evidence that the biological material was known and readily available. While a deposit by an applicant in a depository under the applicant's control will not be recognized by the Office as a deposit under these regulations, an applicant is not precluded from showing that the deposited material, by virtue of conditions of public knowledge of unrestricted availability of samples of the deposit, is known and readily available to the public. However, depositors should be aware that relying on such a showing rather than making a deposit according to these regulations involves a risk that the biological material might in the future not be readily available. The university relied on in the *Merck* case, for example, eventually ceased its practice of making biological materials readily available.

Comment: Proposed § 1.202(b) is intended to apply in the event that a depository ceases to enjoy the status of a recognized depository. The manner of making a substitute deposit in such a situation would not seem to be fully explained by a reference to proposed § 1.204. For example, if a depository were to cease operation, it might not be able to, in the words of proposed § 1.204(a), "promptly after having noted its inability to furnish samples, notify the depositor of such inability". Second, the rule as proposed is difficult to follow. For example, it indicates that a substitute deposit "must be viable if the biological material is of a kind capable of self-replication". The implication that certain deposits might be non-viable is at best confusing in the absence of a definition for viability.

Response: Proposed § 1.202(b) has not been adopted. Section 1.805, the rule as adopted on replacement deposits, puts the burden exclusively on the applicant or patent owner, whatever the case may be, to both make a replacement deposit and make the necessary showing that such a deposit complies with these regulations. Viability is dealt with exclusively by § 1.807 as adopted.

Comment: Three comments suggest that it be a requirement of the rules that the biological material have been in existence at the time of filing the patent application. One comment suggests that a sentence be added to proposed § 1.208(a) to require that the application as filed state that the biological material is in existence. The other comments suggest that proposed § 1.203 require an averment that the deposited biological material was in existence at the time the application was filed.

Response: None of the suggestions have been adopted. Patent law does not require an actual reduction to practice as a condition precedent to filing a patent application. While few, if any, situations can be imagined where the description requirement of 35 U.S.C. 112 can be satisfied where the biological material was not in existence at the time of filing, the rules do not preclude such a situation. *But see* the response to the next comment.

Comment: Proposed § 1.203(a) should require that a biological material may be deposited only if an adequate antecedent basis exists in the specification as filed, i.e., the biological material to be deposited must be specifically identified therein.

Response: The suggestion has been adopted in § 1.804(a). It must be clear from the application as filed that the invention claimed and described in the specification "was fully capable of being reduced to practice (i.e., no technological problems, the resolution of which would require more than ordinary skill and reasonable time, remained in order to obtain an operative, useful process)." *Feldman* v. *Aunstrup*, 517 F.2d 1351, 1355, 186 USPQ 108, 113 (CCPA 1975), *cert. denied*, 424 U.S. 912 (1976). *Accord, In re Lundak*, 773 F.2d 1216, 1221, 227 USPQ 90, 94 (Fed. Cir. 1985).

Comment: Two comments suggest that proposed § 1.203(a) be revised so that it addresses the permissible situation where a deposit is made during the pendency of an application for patent not pursuant to a requirement made by an examiner.

Response: The suggestion has been substantially adopted in § 1.804(a). An original deposit may be made, subject to § 1.809, during pendency of the application for patent. Where § 1.809 does not apply, i.e., where a deposit is ultimately not required, a deposit may be made at anytime during pendency.

Comment: The Office should discuss in the commentary accompanying the notice of proposed § 1.203(b) as a final rule the meaning and intent behind the requirement that the deposited biological material be the "same" as the material described in the specification. For example, does the Office contemplate that the statement constitute a representation that the deposited material is in essentially the same form as was in existence at the time of the filing of the patent specification, and, accordingly as specifically described therein?

Response: Proposed § 1.203(b) has been adopted as § 1.804(b) but with the word "same" deleted and the term "described" replaced with "specifically identified." Under § 1.804(b), the biological material deposited must be a biological material specifically identified in the application as filed.

Comment: One comment asks whether a patent which is defective because of the lack of a deposit can be rectified by making the deposit in connection with a reissue application. Another comment points out that the issue of post-grant original deposits is not addressed by these regulations and the Office is urged to comment to this effect in the final promulgation of the rules.

Response: It is assumed from the comment that a deposit was necessary at the time the patent was issued. A patent defective because of lack of a necessary deposit is necessarily fatally defective for failure to comply with the first paragraph of 35 U.S.C. 112. Reissue is not available in such cases. *See In re Hay*, 534 F.2d 917, 189 USPQ 790 (CCPA), *cert. denied*, 429 U.S. 977 (1976). Whether reissue is available where a biological material necessary for compliance with 35 U.S.C. 112 was known and readily available at the time of issuance of the patent and subsequently ceased to be readily available is not addressed by this response. Nor do the rules address the question of post-issue original deposits, whether necessary or not to comply with the patent statutes.

Comment: Many comments were received regarding proposed § 1.204 and the subject of replacement deposits. One comment suggests that the time limits in proposed § 1.204(a) for making replacement deposits, specifically as they apply post-grant, are totally arbitrary. For example, a replacement deposit made four months after notice from the depository, without a suitable petition for extension of time, could not be relied on. A number of comments suggest that in proposed § 1.204(a), it is not clear who is required to petition whom in order to obtain an extension of time in which to make a replacement deposit. A depository is not equipped to deal with the legalities of such matters. If the petition is filed with the Office, there will be administrative burdens. Another comment suggests that instead of specified time limits and petitions for extensions of time, the rule should state that where a patentee makes a replacement deposit, the patentee shall promptly request a certificate of correction identifying the particulars of the replacement deposit and that no such certificate of correction shall be granted unless the request includes, *inter alia*, a verified showing that the patentee acted diligently in making the replacement deposit. A certificate of correction in providing the particulars of the new deposit (depository and accession number) would provide the simplest and most straightforward vehicle under which the patentee could assure continuing public notice (and accordingly public access) to particular biological materials described in the specification. Corrections to the issued patent would be made subject to all conditions of these deposit regulations and an additional specific requirement that the replacement deposit be made diligently after the notification is received that samples cannot be furnished from the deposit. This generalized requirement of diligence is preferable to the more rigid and cumbersome procedures set forth in the rules as proposed.

Response: The provisions of a three-month time limit for making a replacement deposit and petitioning for extensions of time to extend the limit in proposed § 1.204(a) applied by their terms only to patentees or patent owners. These provisions have not been adopted. Except in reexamination and reissue applications, it is beyond the rulemaking authority of the Office to regulate issued patents. Thus, instead of requiring patent owners to make replacement, or supplemental, deposits and to make them within a specified time, or to require them to request certificates of correction, paragraphs (a), (b) and (c) of § 1.805 as adopted specify that a replacement or supplemental deposit made in connection with a patent, whether or not made during the pendency of an application for reissue patent or a reexamination proceeding or both, shall not be recognized in any Office proceeding unless the patent owner requests a certificate of correction under § 1.323 provided certain specified conditions are met, including that the patent owner acted diligently in making the replacement or supplemental deposit and promptly thereafter requested the certificate of correction.

Comment: The rules should indicate that replacement deposits made during the pendency of an application will be treated in exactly the same way as any other deposit made after the filing date.

Response: The suggestion has been essentially adopted in § 1.805(a) which states, *inter alia*, that a replacement or supplemental deposit made in connection with an application for patent shall be accepted if it meets the requirements for making an original deposit under these regulations, including the requirement set forth under § 1.804(b)

Comment: The rules should address a situation where the deposit is of a non-viable biological material, such as a marine sponge or other marine macroorganism. Filling requests for samples can ultimately consume the entire deposit. Two other comments suggest that a depositor be permitted to charge the requesting party a fee sufficient to cover the cost of replacing the deposit. A competitor could "drain off" the store of deposit and thereby require replacement at significant economic hardship to the depositor.

Response: Where the biological material deposited is capable of self-replication either directly or indirectly, exhaustion of the deposit would appear to be highly unlikely. Regardless of the type of biological material deposited, however, the depositor must assure that samples thereof be available beyond the enforceable life of any patent relying on the material.

Comment: Nothing in the regulations which define the suitability of a depository requires that the depository itself must provide notice to depositors in the event of an inability to furnish samples yet proposed § 1.204(a) does.

Response: The suggestion has been adopted in § 1.803(a)(2)(vii).

Comment: A number of comments suggest that the legal ramifications of an additional deposit made pursuant to proposed § 1.204(h), i.e., made where an earlier deposit has become contaminated or has lost its capability to function as described in the specification, are not clear. Some of the same comments go on to suggest that the deposit provided for in § 1.204(h) be termed a "supplemental" deposit rather than an "additional" deposit to emphasize the relationship between it and the earlier deposit, that such a deposit have the same legal effect as the earlier deposit provided the patent holder provides a verified statement that it is identical to the earlier deposit, and that it have the same accession number as the earlier deposit, perhaps with a suffix modification. One comment suggests that the rules require that a deposit under paragraph (h) be assigned the same accession number but with an appropriate suffix. A depository commentator asks that where a deposit under paragraph (h) is made, which deposit—the earlier or the later one—should be made available to the public. Currently, this deposit advises a requesting party that there are two deposits.

Response: The suggestion of replacing the term "additional" with the term "supplemental" has been adopted but in a somewhat different setting. Whereas proposed § 1.204(h) stated that nothing in the regulations was intended to prohibit a patentee from making an additional deposit, paragraphs (a), (b), (c), (f) and (g) of § 1.805 as adopted provide for patent owners as well as patent applicants making supplemental deposits of a biological material earlier deposited from which a depository can still furnish samples. These paragraphs provide for supplemental deposits similar to the provisions in these paragraphs for replacement deposits, including the requirement of showing diligence in making the deposit in connection with a patent, except that instead of making the deposit after receiving notice that samples could no longer be furnished from an earlier deposit, as in the case of a replacement deposit, the deposit is made after receiving notice that the earlier deposit had become contaminated or had lost its capability to function as described in the specification. While the rules specify that the Office in any Office proceeding will recognize supplemental deposits if made under certain conditions, it is not known what legal effect a court will give to such recognition. As far as what accession number a depository should give to a supplemental deposit, this is a matter within the discretion of the depository. As to which deposit, either an earlier deposit or a supplemental deposit, should be made available to the public, this would depend on the accession number requested. A supplemental deposit made according to these regulations would be freely available to the public to the same extent as an original deposit made according to these regulations. Obviously, nothing in these regulations prohibits a depository from advising a requesting party that there is more than one deposit of a particular biological material.

Comment: To the extent proposed § 1.204 regulates the effects on patents, in other than certain statutorily defined situations such as reexamination and reissue, for failure to make replacement deposits according to the rule, it exceeds the rulemaking authority of the Office. An example is proposed § 1.204(c).

Response: Section 1.805 as adopted, to the extent it addresses replacement deposits made by patent owners, contains no affirmative provisions requiring or prohibiting replacement deposits. Rather, it prescribes what an applicant or patent owner may do vis-a-vis the Office if a replacement deposit is made and what the ramifications are in any Office proceeding if a replacement deposit is not made or improperly made. Proposed § 1.204(c) was, and § 1.805(d) as adopted is, limited to Office proceedings. The provision that a patentee may not replace a viable deposit where the depository can furnish samples in proposed § 1.204(h) has been replaced in § 1.805(i) as adopted with the provision that the Office will not recognize in any Office proceeding a replacement deposit made by a patent owner where the depository could furnish samples of the deposit being replaced.

Comment: One comment suggests that the term of deposit in proposed § 1.205 is excessive. The term should be through the expiration of the patent plus 10 years. Another comment suggests that § 1.205 be adopted except that the last sentence should be deleted and the term "viable" before "deposit"be dropped. The term "viable" should be deleted as viability is dealt with elsewhere, e.g., proposed § 1.206. The last sentence should be deleted because, while the Office may set what it considers adequate terms of deposit on or before patent grant, it has no statutory authority or mechanism for supervising the term of the agreement of the deposit. The last sentence is also highly indefinite in failing to indicate how far beyond the enforceable life of a patent the deposit must be maintained.

Response: The suggestions have been adopted in part. Proposed § 1.205, including the last sentence, has been adopted as § 1.806 except that the thirty-year term applies to any deposit made before or during pendency of an application for patent. No requirement of viability is stated in the rule. The Office agrees that once a patent issues, it has no authority or mechanism for supervising the term of the agreement of the deposit. But the Office does have the authority to set the term of deposit while an application is still pending. That is all § 1.806 does. In almost all cases, the term of deposit as set forth in the first sentence of § 1.806 will extend beyond the enforceable life of the patent for which a deposit was made. The last sentence of § 1.806 is intended to cover those rare circumstances where extended prosecution in the Office results in expiration of the term of deposit as set forth in the first sentence while the patent is still enforceable. At this time, there appears to be no need to specify any finite time period beyond the enforceable life of a patent. If experience demonstrates that the public interest is not being served by the present provisions, an appropriate amendment will be proposed.

Comment: A depository commentator suggests that the requirement in proposed § 1.207(b)(1) that a request for a sample of the deposited material be signed poses an administrative burden on depositories which accept telephone, telex and electronic mail requests for samples. Requiring that a request be signed can and will delay the receipt of samples by many days. The signing requirement should not be adopted.

Response: The suggestion has been adopted in § 1.808(b)(1).

Comment: A depository commentator suggests that the requirement in proposed § 1.207(b)(3) that a copy of the request be provided to the depositor poses a problem since most requests also include a request for samples of many other deposited biological materials. For such a request, it would be necessary to send a copy to each depositor, blanking out the other deposits not made by that depositor. It should be sufficient that the depositor is notified to whom and the date a sample was provided. The cost will be much greater if a copy has to be supplied.

Response: The suggestion has been adopted in § 1.808(b)(3).

Comment: A depository commentator suggests that in proposed § 1.207(b), it is not clear, after the term of the patent, whether the deposit is again restricted as it was before the patent was granted, i.e., not furnished unless the requesting party has the proper authorization from the depositor or the Commissioner, or whether the deposit is no longer subject to subparagraphs (1), (2) and (3) thereof and can be furnished without any specific identification or notification. It is suggested that either a statement be added as to what happens after the term of the patent or the term "during the term of the patent" be deleted.

Response: The suggestions have not been adopted. Section 1.808(a)(2) requires that subject to paragraph (b) thereof, all restrictions imposed by the depositor or the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent. Paragraph (b), by its terms, is limited to the term of the patent. A contract between a depositor and a depository according to paragraph (b) but which extends beyond the term of the patent would violate paragraph (a)(2). It should be self-evident that for deposits in compliance with these regulations, samples of the deposit may be furnished without any specific identification or notification for requests made after the term of the patent.

Comment: While many comments suggest adoption of a rule restricting the transfer of a sample of a deposited material to a third party without the depositor's permission, such as proposed § 1.207(c), as well as the adoption of a rule requiring other restrictions on access to deposited material, two comments suggest that such rules not be adopted. The rationale is that if a deposit is basically a replacement for that which could not be adequately written in the patent specification itself, no specific statutory authority exists for restricting access to the deposited material any more than the patent law would countenance restrictions on access to the written description itself. If abuses exist by virtue of the absence of limitations on access to deposited materials, then the remedy for patent infringement is as applicable to deposited material as it is to infringers acting from knowledge of the written description itself. Accordingly, unrestricted access to deposits should be allowed. One of the comments suggests further that if there are to be some restrictions to access, proposed § 1.207(c) is otherwise problematic and ineffective. For example, the limitation on access applies to "derived" materials which could include wholly noninfringing derivatives which might themselves constitute a patentable invention of a third party requester. The proposed rule would deny the third party requester the right to what ought to be an unrestricted right to sell or otherwise dispose of this derivative material to third parties. Moreover, the proposed rule is remediless since the Office neither has continuing jurisdiction over the patentee nor a third party requester. Two depository commentators expressed reservations about proposed § 1.207(c). One suggests that the first sentence therein is in direct contradiction to the long-standing policies of both NRRL and ATCC. Most depositories no longer require this type of guarantee from requesting parties as they find it almost impossible to enforce. The other suggests that the administrative burden to the depository in handling agreements made pursuant to the proposed rule will be great and the cost will be borne by the depositor. At $10 an agreement and 300 requests a year for a particular deposit, the cost to the depositor would be $3,000 a year. If § 1.207(c) is adopted, there should be some mention that if a depository charges a fee for this service, the fee must be paid or the depository will not be obligated to provide the service. In the European Patent Office (EPO), which has a similar provision, the EPO, not the depository, obtains the agreement and advises the depository to make the sample available. The comment asks if the Office is prepared to do this. Additional comments ask what rules govern a new deposit for patent purposes of the same or derived biological material by a requesting party if the substance of proposed § 1.207(c) is adopted. Some comments were in response to a solicitation in the notice of proposed rulemaking for alternative approaches and suggestions for an appropriate definition of "essential characteristics" with respect to derived material in proposed § 1.207(c).

Response: The Office has decided not to adopt a rule permitting a depositor to require that a sample of a deposited biological material shall be furnished only if the requesting party has agreed not to make the material or a derivative thereof available to a third party without the depositor's permission. Thus, proposed § 1.207(c) has not been adopted. The Office agrees with many of the comments about shortcomings in the proposed rule. Fundamentally, however, the proposed rule has not been adopted in view of the rationale stated in the comment that no greater restriction on access to a deposit should be permitted than is permitted on access to the written description itself, even considering that the practical value of access to a deposit may be substantially greater than access to the written description and that infringement may be more difficult to police. While it might be argued that the adoption of proposed § 1.207(b) with revisions as § 1.808(b) is inconsistent with this rationale, the Office believes that permitting the depositor to require a requesting party, in essence, to identify itself is not unreasonable under the circumstances and is consistent with international practice as embodied in the Budapest Treaty.

Comment: Many comments which suggest the adoption of the substance of proposed § 1.207(c) also suggest the adoption of rules incorporating the recommendations made in the April 8, 1987 World Intellectual Property Organization (WIPO) report on the Industrial Property Protection of Biotechnological Inventions (1) to use the biological material only for experimental purposes concerning the invention, and (2) not to export the biological material except to a country for which a relevant patent has been granted. The reasons generally given were that it is necessary to protect the patentee and enhance the patentee's ability to enforce a patent relying on a deposited material. One comment suggests that incorporating the recommendation on experimental use would clarify what is permitted by law. In the Notice of Proposed Rulemaking, 53 FR at 39423–24, the Office described the difficulties in drafting a regulation incorporating these recommendations and requested specific suggestions as to how to draft a regulation which both accomplishes the intended purpose and is not inconsistent with law. No specific suggestions were received, although one comment suggests that where a deposited material is covered by an

unexpired U.S. patent, a rule be adopted permitting the depositor to require the requesting party to agree to comply with the provisions of 35 U.S.C. 271. Another comment suggests that legislation is necessary to deal with the problems addressed by the WIPO recommendations. A restriction against exports could be considered to be violative of 35 U.S.C. 112 since foreign requesters would be denied access to deposits where a patentee had never sought foreign patent protection. A restriction to experimental purposes only, while more justifiable, raises two problems. One is that "experimental purposes" have not been defined and the term has been open to several interpretations. The other is that the proper redress for non-experimental use is a suit for patent infringement, not a suit based on the requester's promise to the depository. The comment suggests that a rule be adopted permitting the depositor to require that a requesting party acknowledge that the furnishing of a sample of the deposited biological material does not constitute a license, express or implied, to use that sample for any purpose.

Response: None of the suggestions have been adopted for essentially the same rationale discussed in the response to the previous comment. None suggest how to draft a regulation which both accomplishes the intended purpose and is not inconsistent with law, and which provides a compelling justification and rationale for departing from present policy and practice. The suggestion that a requesting party agree to comply with 35 U.S.C. 271 as a condition precedent to obtaining a sample of deposited biological material is interpreted as an agreement not to infringe a corresponding valid patent, something which a requesting party is already bound not to do under law. The suggestion that a depositor be permitted to require a requesting party to acknowledge that there is no express or implied license to use a sample for any purpose exceeds the rulemaking authority of the Office since certain unlicensed uses of patented subject matter have been found by the courts to be permissible.

Comment: Many of the comments suggesting adoption of the substance of § 1.207(c) and/or the WIPO recommendations on experimental use and export also suggest adoption of rules permitting additional restrictions. One comment suggests requiring the recipient of biological material to report, at least annually, to the patent holder, on the research and other results obtained by use of the biological material. The same commentator suggests that even after patent expiration, an unlicensed recipient should not be permitted to use the biological material for other than experimental purposes absent agreement from the depositor. The commentator would prohibit commercial use of the biological material without permission of the depositor. Another comment suggests that the policy consideration for permitting deposits is to insure that the patented invention can be practiced after patent expiration. Requiring a requesting party to enter into an agreement with the depositor defining the terms and conditions under which a sample of the deposited material would be used, making an accounting of such use, and proof of compliance, is neither unreasonable nor contrary to law. It would not place an administrative burden on the Office since the depository could be permitted to release samples only if the requesting party signs a license. Any attempt by the depositor to impose an unlawful restriction and withhold release would be a matter for the courts, not the Office. Another comment suggests various additional restricitons be adopted. These are (1) that the requesting party have residence in the U.S. or in the country where the depository is located, if different; (2) that the patentee be given the option to restrict furnishing of samples to independent experts only for the duration of the patent; and (3) that the deposit be released only if the depositor expressly consents (in the absence of which validity of the patent must be resolved without recourse to the deposit). Restriction (1) should be adopted so that the deposit cannot be legally exported to a country where the patent owner has no enforceable rights. Restriction (2) should be adopted to prevent access of the deposited material to potential infringers. Its adoption should be coupled with a statement that a deposit released to an expert shall be regarded as being available to the public. Restriction (3) should be adopted as an extension to the description in proposed § 1.201 that the disclosure "may include a deposit." In other words, the patentee at any time during the patent term should be able to rely on the written description alone for satisfying 35 U.S.C. 112, such as where the reasons for requiring a deposit originally no longer exist.

Response: None of the suggestions have been adopted for essentially the same reasons discussed in the responses to the previous two comments.

Comment: A depository commentator suggests that proposed § 1.207(d) needs further deliberation. Now, publication in a U.S. patent of a deposit and accession number is sufficient for that depository (ATCC) to make samples available. The Office should be prepared to receive several thousand requests for certification under § 1.207(d) if adopted. If the Office is going to certify the availability of deposits, it should certify the availability of all deposits. Easier than the proposed rule would be to include a statement in the patent that there is a deposit, its accession number and where it is deposited, and that it has been made under the condition that it is available upon publication of the issued patent.

Response: The suggestion has not been adopted. The comment appears to be interpreting the term "Upon request" at the beginning of proposed § 1.207(d) to mean "Upon request to a depository for a sample of a deposited material", or in other words, the commentator appears to have interpreted the proposed language as requiring the depository to request certification from the Office each time a request for a sample of a deposit is made. It was not intended to impose such a burden on depositories. Rather, it was intended that the term "Upon request" refer to a request made to the Office. Therefore, proposed § 1.207(d), revised by inserting the term "made to the Office" after "Upon request", has been adopted as § 1.808(c).

Comment: One comment suggests that there is no apparent reason for the use of the different words "[e]stablishing" and "[a]rguing", in proposed paragraphs (b)(2) and (b)(3), respectively, of § 1.208 since the same meaning is intended by each. Either word alone should be used in both subparagraphs (2) and (3). The same comment goes on to suggest that the reference to paragraph (b)(2) in the last sentence of proposed § 1.208(b)(3) is redundant since the examiner may be convinced that a deposit is not required where the applicant has established that the involved biological material is known and readily available to the public. A comment along the same lines suggests that paragraph (b)(2) is unnecessary. As a purely logical matter, an applicant ought to be entitled to reply to a rejection either by making an acceptable deposit or arguing why a deposit is not required under the circumstances. Proposed § 1.208(b)(2) is merely one possibility for an argument that a deposit is not required.

Response: The suggestions have been adopted. Proposed § 1.208(b)(2) has not been adopted and proposed § 1.208(b)(3) has been substantially adopted as § 1.809(b)(2). In addition, § 1.809(b)(2) provides for examination with respect to a patent, since deposit issues may arise in connection with a reissue application and/or a reexamination proceeding, and provides also for an argument that a deposit actually made should be accepted.

Comment: A number of comments suggest that the term "taxonomic description" in proposed § 1.208(d)(3) is unclear and inappropriate in some cases. One comment suggests that it is not clear how complete a description is required. If construed in its broadest sense, it could have the undesirable effect of delaying filing of an application until taxonomic characteristics have been determined. Some biological materials within the scope of the proposed rules, such as plasmids, are not susceptible of taxonomic description. The requirement that the specification contain a taxonomic description should not be adopted since such a description may not be possible and since the availability of a deposit makes such a description superfluous, since the taxonomy is inherent in the deposit. The response to comments made earlier regarding the taxonomic description requirement is inconsistent with the proposed rule. The response states that the extent to which a taxonomic description is required will depend on the facts of the case yet the proposed rule states that the specification shall contain such a description. The response states that the taxonomic description must be sufficient for purposes of 35 U.S.C. 112 yet the requirement of a deposit presupposes that a written description alone will not satisfy the statute. The need to verify that the deposited biological material is that disclosed in the specification arises only when the deposit is made after the filing date. That situation can be dealt with by deleting the taxonomic description requirement from § 1.208(d) and adding a new subparagraph (e) which would provide that in cases where a deposit is made after the filing date and where the nature of the material permits, a taxonomic description is required in addition to the items specified in subparagraph (d). Another comment suggests that the term "taxonomic" be deleted since it is irrelevant to many types of deposits and would provide greater clarity to the rules. Another comment suggests that the current language in proposed § 1.208(d)(3) be replaced with "Fully identify and describe the deposited material".

Response: The suggestions have been adopted in part. Section 1.809(d)(3) as adopted requires a description of the deposited biological material sufficient to specifically identify it and to permit examination. While the rule does not by its terms require a taxonomic description, such a description should satisfy the rule as adopted in cases where the biological material deposited admits of a taxonomic description.

Comment: The Office should petition the Budapest Assembly to address the same issues dealt with in the proposed rules so that they apply to both U.S. and foreign filings. Uniformity in the rules is important, especially for U.S. inventors who file here and abroad.

Response: While uniformity in both U.S. and foreign rules is desirable, this is not deemed to be the appropriate forum in which to address the suggestion.

Discussion of Specific Sections

Biological Material (Section 1.801)

The section indicates that the rules pertaining to deposits for purposes of patents for inventions under 35 U.S.C. 101 are intended to relate to biological material. For the purposes of these rules, the term "biological material" is defined in terms of a non-exhaustive list of representative materials which can be deposited in accordance with the procedures defined in these rules. Since these rules are intended to address procedural matters in the deposit of biological material for patent purposes, and are not designed to decide such substantive issues such as whether a deposit of a particular organism or material would be recognized or needed to be made for the purposes of satisfying the statutory requirements for patentability under 35 U.S.C. 112, the definition provided in this section is intended to be permissive—specifically defining materials which can be deposited.

Biological material includes material that is capable of self-replication either directly or indirectly. Direct self-replication includes those situations where the biological material reproduces by itself. Representative examples of materials capable of self-replication are defined in the rule. Indirect self-replication is meant to include those situations where the biological material is only capable of replication when another self-replicating biological material is present. Self-replication after insertion in a host is one example of indirect self-replication. Examples of indirect replicating biological materials include viruses, phages, plasmids, symbionts, and replication defective cells. The list of representative examples of each type of replicating material includes viruses to demonstrate that the lists are not intended to be mutually exclusive.

Although plant material is included within the scope of the definition of biological material for purposes of patents for inventions under 35 U.S.C. 101, these rules on deposits are not applicable to applications filed under the Plant Patent Act (35 U.S.C. 161–164). The Office is of the view that a deposit is not required under the present provisions of 35 U.S.C. 162. Thus, no plant patent granted under the provisions of 35 U.S.C. 161–164 need be supported by a deposit. As with other biological material deposited for purposes of patents for inventions under 35 U.S.C. 101, the deposit of plant material together with the written specification must enable those skilled in the art to make and use the claimed invention.

As with some types of reproducible biological material, seeds can be reproduced only after a growing season which may be relatively long. Although the rules do not specify a specific number of seeds to be deposited to meet the requirements of these rules, the Office will consider 2500 to be a minimum number in the normal case, but will give an applicant the opportunity to provide justification why a lesser number would be suitable under the circumstances of a particular case. The Department of Agriculture requires a deposit of 2500 seeds for the grant of a Plant Variety Protection Certificate. As the reproduction of seeds will often take a substantial period of time, the Office will require, at a minimum, a number of seeds that is likely to satisfy demand for samples once the patent is granted.

Section 1.801 does not attempt to identify what biological material either needs to be or may be deposited to comply with the requirements of 35 U.S.C. 112. For the most part, this issue must be addressed on a case-by-case basis. Thus, while the Office does not presently contemplate that there would be any situations where a material that is not capable of self-replication either directly or indirectly would be acceptable as a deposit, an applicant is clearly not precluded in any given application, by these rules, from attempting to show why the deposit of such a material should be acceptable to satisfy the requirements of 35 U.S.C. 112.

Need or Opportunity to Make a Deposit (Section 1.802)

This section permits a deposit of a biological material to be referenced in a patent application where an invention is, or relies on, a biological material. The invention may rely on a biological

material for the purposes of making or using the invention, either as a preferred mode or an alternative mode of operation. It is not necessary, for the purposes of paragraph (a), that a deposit be required to satisfy the requirements of 35 U.S.C. 112 *before* a reference to a deposit is permitted in the specification.

There is no necessary implication or presumption that can or should be made about the need for a deposit simply because reference to a deposit is made in an application disclosure. As noted in paragraph (b), biological material need not be deposited unless access to such material is necessary for the satisfaction of the statutory requirements for patentability under 35 U.S.C. 112 and that access is not otherwise available in the absence of a deposit. Where a deposit is required to provide the necessary access, a deposit is acceptable for patent purposes only where it is made in accordance with these regulations. Even where access to biological material is required to satisfy these statutory requirements, a deposit may not be necessary if access sufficient to satisfy these requirements is otherwise available.

For example, applicant could show that the biological material is known and readily available to the public. The concepts of "known and readily available" are considered to reflect a level of public accessibility to a necessary component of an invention disclosure that is consistent with an ability to make and use the invention. To avoid the need for a deposit on this basis, the biological material must be both known and readily available—neither concept alone is sufficient. A material may be known in the sense that its existence has been published, but is not available to those who wish to obtain that particular known biological material. Likewise, a biological material may be available in the sense that those having possession of it would make it available upon request, but no one has been informed of its existence.

By showing that a biological material is known and readily available or by making a deposit in accordance with these rules, applicant does not guarantee that such biological material will be available forever. Public access during the term of the patent may affect the enforceability of the patent. Although there is a public interest in the availability of a deposited biological material during and after the period of enforceability of the patent, the examiner need not be unduly concerned about continued access to the public. Unless there is a reasonable basis to believe that the biological material will cease to be available during the life of the patent, the examiner should accept current availability as satisfying the requirement. The incentives provided by the patent system should not be constrained by the mere possibility that a disclosure that was once enabling would become non-enabling over a period of time through no fault of the patentee. *In re Metcalfe,* 410 F.2d 1370, 161 USPQ 789 (CCPA 1969).

There are many factors that may be used as indicia that a biological material is known and readily available to the public. Relevant factors include commercial availability, references to the biological material in printed publications, declarations of accessibility by those working in the field, evidence of predictable isolation techniques, or an existing deposit made in accordance with these rules. Each factor may or may not be sufficient alone to demonstrate that the biological material is known and readily available. Those applicants that rely on evidence of accessibility other than a deposit take the risk that the patent may no longer be enforceable if the biological material necessary to satisfy the requirements of 35 U.S.C. 112 ceases to become accessible.

The Office will accept commercial availability as evidence that a biological material is known and readily available only when the evidence is clear and convincing that the public has access to the material. A product could be commercially available but only at a price that effectively eliminates accessibility to those desiring to obtain a sample. The relationship between an applicant relying on a biological material and the commercial supplier relied upon is one factor that would be considered in determining whether the biological material was known and readily available. However, the mere fact that the biological material was available only through the patent holder or the patent holder's agents or assigns shall not, by itself, justify a finding that the necessary material is not readily available, absent reason to believe that access to the biological material would later be improperly restricted.

The mere reference to a deposit or the biological material itself in any document or publication does not necessarily mean that the deposited biological material is readily available. Even a deposit made under the Budapest Treaty and referenced in a United States or foreign patent document would not necessarily meet the test for known and readily available unless the deposit was made under conditions which are consistent with those specified in these rules, including the one that requires, with one possible exception, that all restrictions on the accessibility will be irrevocably removed upon the granting of the patent.

Applicant may show that a deposit is not necessary even though specific biological materials are required to practice the invention if those biological materials can be made or isolated without undue experimentation. Deposits may be required to support the claims if an isolation procedure requires undue experimentation to obtain the desired biological material. *Ex Parte Jackson,* 217 USPQ 804 (PTO Bd. Pat. App. 1982) No deposit is required, however, where the required biological materials can be obtained from publicly available material with only routine experimentation and a reliable screening test. *Tabuchi* v. *Nubel,* 559 F.2d 1183, 194 USPQ 521 (CCPA 1977); *Ex Parte Hata,* 6 USPQ 2d 1652 (PTO Bd. Pat. App. & Int. 1987).

Once a deposit is made in a depository complying with these rules, and under conditions complying with these rules, a biological material will be considered to be readily available even though some requirement of law or regulation in the United States or in the country where the depository institution is located permits access to the material only under conditions imposed for health, safety or similar reasons. This provision is consistent with the Budapest Treaty (Article 5) and is designed to permit the patenting of inventions involving materials having restricted distribution, where the restrictions are imposed for the public, as opposed to the private, welfare.

Paragraph (c) specifically provides that the mere reference to a deposit of biological material in the specification disclosure or the actual deposit of such material does not create any presumption that such referenced or deposited material is necessary to satisfy 35 U.S.C. 112, or that a deposit in accordance with these regulations is or was required. Since reference to a biological material cannot be added to a specification disclosure after filing an application without risking the prohibited introduction of new matter (35 U.S.C. 132), applicants must be permitted to address the need to make a deposit in accordance with these regulations without jeopardizing a filing date. Thus, the examiner has the burden of showing that a deposit is required to satisfy 35 U.S.C. 112, and cannot rely on whether a deposit has been made or has been referenced in the specification disclosure to establish a *prima facie* case that the disclosure does not comply with 35 U.S.C. 112 without a deposit.

Acceptable Depository (Section 1.803)

This section indicates that a depository will be recognized as acceptable for the purposes of these regulations if it is either an International Depositary Authority (IDA) established under the Budapest Treaty, or if it is a depository recognized as suitable by the Commissioner. After the effective date of these regulations, a deposit of biological material which is made in a depository which is not recognized as acceptable under this regulation will not be considered as satisfying the requirements of 35 U.S.C. 112. On the other hand, if a deposit is not required to satisfy the requirements of 35 U.S.C. 112, it is permissible to make reference to such a deposit even though it may not be in a depository or made under the conditions which are acceptable under these regulations. As new depositories are accepted under the Budapest Treaty or are recognized as suitable by the Commissioner, their identity will be announced in the Official Gazette.

An organization may be recognized as suitable by the Office if the procedure and conditions specified in paragraphs (a)(2) and (b) are followed. Generally, it is not the intention of the Office to recognize as suitable any organization where the need for a suitable depository for patent purposes is being met by depositories recognized as IDAs under the Budapest Treaty. Suitability will be judged by the Commissioner, based on need and the information supplied by the organization seeking status, and information obtained from other sources that may be consulted.

While there is a desire to provide flexibility to a patent applicant in selecting an appropriate depository, these rules are not intended to permit each patent applicant to become its own depository since both the patent owner and the public have an interest in the continued availability and accessibility of the deposit during the enforceable life of the patent, and the public has a continuing interest in its availability when the patent is no longer enforceable. The concept of a depository independent of the control of the depositor or an IDA as an acceptable depository is based on the need and desire to ensure the safe and reliable storage of a deposited biological material under circumstances that are substantially free of the opportunity for intentional or negligent handling of the deposited material. The use of an independent depository or internationally recognized depository will tend to preserve the integrity of the deposit process against those that may accidentally alter the deposited material, may wish to tamper with the deposited material or may wish to resume control of its availability when the patent is no longer enforceable, and to preserve the interest of the public in the access to the biological material once the term of the patent expires.

When a depository having status under paragraph (a)(2) of this regulation seeks to change the kinds of biological materials that it will accept and maintain for the purposes of these rules, a communication requesting such a change should be directed to the Commissioner containing the information requested in paragraph (b). When such a change is requested, the requesting organization should provide a complete list of the kinds of biological materials it will accept.

Paragraph (d) of this section indicates that once a depository is recognized as suitable for the purposes of this rule, or has defaulted or discontinued its performance under this section, notice thereof will be published in the Official Gazette of the Patent and Trademark Office. A current list of IDAs recognized under the Budapest Treaty is as follows:

Agricultural Research Culture Collection (NRRL)—USA
American Type Culture Collection (ATCC)—USA
Australian Government Analytical Laboratories (AGAL)—Australia
Centraalburéau Voor Schimmelcultures (CBS)—Netherlands
Collection Nationale De Culture De Micro-organismes (CNCM)—France
Commonwealth Agriculturial Bureau (CAB), International Mycological Institute—United Kingdom
Culture Collection of Algae and Protozoa (CCAP)—United Kingdom
Deutsche Sammlung Von Mikroorganismen (DSM)—Federal Republic of Germany
European Collection of Animal Cell Cultures (ECACC)—United Kingdom
Fermentation Research Institute (FRI)—Japan
Institute of Micro-organism Biochemistry and Physiology of the USSR Academy of Science (IBRM)—Soviet Union
In Vitro International, Inc. (IVI)—USA
Mezogazdasagi Es Ipari Mikroorganizmusok Magyar Nemzeti Gyujtemenye (MIMNG)—Hungary
National Bank for Industrial Microorganisms and Cell Cultures (NBIMCC)—Bulgaria
National Collection of Industrial Bacteria (NCIB)—United Kingdom
National Collection of Type Cultures (NCTC)—United Kingdom
National Collection of Yeast Cultures (NCYC)—United Kingdom
USSR Research Institute for Antibiotics of the USSR Ministry of the Medical and Microbiological Industry (VNIIAA)—Soviet Union
USSR Research Institute for Genetics and Industrial Microorganism Breeding of the USSR Ministry of the Medical and Microbiological Industry (VNII Genetika)—Soviet Union

Time of Making an Original Deposit (Section 1.804)

This section specifies the time for making an original deposit to fulfill the requirements of 35 U.S.C. 112. Paragraph (a) specifies not only a permissible time frame for making an original deposit, but also specifies that the biological material deposited must be specifically identified in the application for patent as filed. The requirement for a specific identification is consistent with the description requirement of the first paragraph of 35 U.S.C. 112, and to provide an antecedent basis for the biological material which either has been or will be deposited before the patent is granted.

The description in the Lundak application as filed (now patent 4,594,325) provides a suitable illustration of the specific identification and description which is required in an application for patent as filed. In that application, an immortal B-cell line was disclosed and claimed. The cell line was referred to in the application as filed as WI–L2–729 HF2. The methods of obtaining and using this cell line were also described in the application as filed. A deposit of the cell line was made with the American Type Culture Collection (ATCC) about a week after the application was filed in the United States. The United States Court of Appeals for the Federal Circuit held that the requirements of access by the Office to a sample of the cell line during pendency, and public access after grant, were met by Lundak's procedures. The Court further held that the addition of information designating the depository, accession number, and deposit date of the deposited cell line in ATCC after the filing date did not violate the prohibition against new matter in 35 U.S.C. 132. *In re Lundak*, 773 F.2d 1216, 227 USPQ 90 (Fed. Cir. 1985). It must be clear from the application as filed that the invention claimed and described in the specification "was fully capable of being reduced to practice (i.e., no technological problems, the resolution of which would require more than ordinary skill and reasonable time, remained in order to obtain an operative, useful process)." *Feldman* v. *Aunstrup*, 517 F.2d 1351, 1355, 186 USPQ 108, 113 (CCPA 1975), *cert. denied*, 424 U.S. 912 (1976).

When the original deposit is made after the effective filing date of an application for patent, applicant is required to promptly submit a verified statement from a person in a position to corroborate that the biological material which is deposited is a biological material specifically identified in the application (the filing date of which is relied upon) as filed. The nature of this corroboration will depend on the circumstances in the particular application under consideration, including the length of time between the application filing date and the date of deposit. While few, if any, situations can be imagined where the description requirement of 35 U.S.C. 112 can be satisfied where the biological material was not in existence at the time of filing, the rules do not preclude such a situation. There is no requirment in the patent law that an actual reduction to practice occur as a condition precedent to filing a patent application. The requirement for a verified statement is not necessary under paragraph (b) of this section if the person making the statement is an attorney or agent registered to practice before the Office.

For the purposes of complying with the requirements of 35 U.S.C. 112, a deposit of a biological material may be made at any time before filing the application for patent or during the pendency of the application subject to the conditions of § 1.809. Where the deposit is needed to satisfy the requirement of 35 U.S.C. 112 and is made during the pendency of the application, it must be made no later than the time period set by the examiner at the time the Notice of Allowance and Issue Fee Due is mailed. A necessary deposit need not be made by applicant until the application is in condition for allowance so long as applicant provides a written assurance that an acceptable deposit will be made on or before the payment of the issue fee. This written assurance must provide sufficiently detailed information to convince the examiner that there is no outstanding issue regarding deposits that needs to be resolved.

Those applicants intending to file patent applications in a country foreign to the United States relying upon biological material that must be deposited to satisfy the requirements of 35 U.S.C. 112 when the application is filed in the United States are cautioned that in many countries the deposit must be made before the filing date of the priority application in order to obtain foreign priority rights. Thus, while the deposit of a biological material subsequent to the effective filing date of a United States application is sufficient to comply with 35 U.S.C. 112, an applicant may not be able to rely on the filing date of such a U.S. application if a patent is sought in a country foreign to the United States.

Replacement or Supplement of Deposit (Section 1.805)

This section relates to the deposit of a biological material to replace or supplement a previous deposit. The term "replacement" is directed to those situations where one deposit is being substituted for another. An applicant may have greater latitude in replacing a deposit during the pendency of an application than after the patent is granted. Replacement will typically take place where the earlier deposit is no longer viable. The term "supplement" is directed to those situations where the earlier deposit is still viable in the sense that it is alive and capable of replication either directly or indirectly, but has lost a quality (e.g., purity, functionality) it allegedly possessed at the time the application was filed. The procedures in these rules contemplate that only the original depositor would have a right to replace or supplement the original deposit.

Paragraph (a) relates to the procedure for replacing or supplementing a deposit with respect to a pending application or a patent. An applicant for patent or patent owner whose patent is the subject of a reissue application or reexamination proceeding is required to notify the Office when it obtains information that the depository possessing a deposit either cannot furnish samples thereof or can furnish samples thereof but the deposit has become contaminated or has lost its capabilty to function as described in the specification. When the Office is so notified or otherwise becomes aware of such information, the need for making a replacement or supplemental deposit will be determined by the same considerations used to determine the need for an original deposit under § 1.802(b).

A replacement or supplemental deposit made in connection with a pending application for patent will be accepted if it meets all the requirements for making an original deposit. It should be noted that for a pending application for patent, applicant need not replace or supplement the identical material previously deposited, but may make an original deposit of a biological material which is specifically identified and described in the application as filed. Whether this alternative deposit will meet the requirements of 35 U.S.C. 112 with respect to the claimed subject matter must be resolved by the examiner on a case-by-case basis.

A replacement or supplemental deposit made in connection with a patent, whether or not it is the subject of a pending reissue application or reexamination proceeding, shall not be recognized in any Office proceeding unless a certificate of correction under § 1.323 is requested by the patent owner which meets the terms of paragraphs (b) and (c) of this section. These paragraphs specify the procedures that a patent owner must follow to ensure both that a replacement or supplemental deposit will be recognized in any Office proceeding and that a certificate of correction under this section containing "up to date" information about a deposited biological material will be granted. The term "recognized in any Office proceeding" as used in this section includes the proceeding in which a request for certificate of correction under this section is acted upon. Paragraph (b) describes the information which must be contained in the certificate of correction, whereas paragraph (c) describes when the request must be made and the information which must be provided in the request to make the correction. The rules require, *inter alia*, that replacement or supplement of a deposit be made diligently, followed by prompt request thereafter for a certificate of correction, as conditions precedent to being recognized in any Office proceeding. Thus, for example, if a patent owner learns early during the term of the patent that the depository cannot furnish samples of a deposit described in the patent and the patent owner fails to both diligently make a replacement deposit and promptly thereafter request a certificate of correction under these rules, a replacement deposit made years later when the patent becomes the subject of a reissue application or reexamination proceeding will not be recognized by the Office nor will any request for certificate of correction in connection with that deposit be granted.

Where a proper request for certificate of correction is made and has been granted, any correction made to the original patent will be automatically incorporated into any reissued or reexamined patent unless changes are made during examination of the reissue application or reexamination proceeding.

Paragraph (d) of § 1.805 sets forth the Office position that the failure to make a replacement deposit or, in the case of a patent, diligently make a replacement deposit and promptly thereafter request a certificate of correction which meets the terms of paragraphs (b) and (c) of this section, after notification that samples of an earlier deposit cannot be furnished, shall cause the application or patent involved to be treated in any Office proceeding as if no deposit were made.

Paragraph (e) thereof indicates that the Office will apply a rebuttable presumption of an identity between the replacement deposit and an original deposit where a patent making reference to the deposit is relied on during any Office proceeding. This means that where a replacement deposit is permitted and made, the examiner will assume that the same material as described in the patent is accessible from the identified depository unless evidence to the contrary comes to the attention of the Office.

An applicant for patent may make a replacement or supplemental deposit during the pendency of the application for any reason. The provisions of paragraph (f) of § 1.805 recognize that since an original deposit may be made during the pendency of the application subject to the conditions of § 1.809, a replacement or supplemental deposit logically cannot be held to any higher standard or any further requirements. Likewise, the provisions of paragraph (g) indicate that neither a replacement nor a supplemental deposit need be made where, at the point in time when replacement or supplement would otherwise be necessary, access to the necessary biological material was otherwise available. For example, a replacement or supplemental deposit would not be required under the circumstances where access to the necessary biological material was established through commercial suppliers.

The provisions of paragraph (h) of § 1.805 indicate that a replacement deposit is not required even though the depository cannot furnish samples, under certain conditions, to those requesting a sample outside of the jurisdiction where the depository is located. The conditions are specified in this paragraph as being limited to national security, health or environmental safety reasons.

Finally, paragraph (i) of this section indicates that the Office will not recognize in any Office proceeding a replacement deposit made by the patent owner where the depository could furnish samples of the deposit being replaced. The best evidence of what was originally deposited should not be lost through destruction or replacement if made in association with an existing patent. A supplemental deposit may be accepted in an Office proceeding, however, depending on the circumstances in each case.

Term of Deposit (Section 1.806)

The term of deposit must satisfy the requirements of the Budapest Treaty which sets a term of at least 30 years from the date of deposit and at least five (5) years after the most recent request for the furnishing of a sample of the deposit was received by the depository. In the event that the 30-year term covers the 17-year term of the patent plus six (6) years to include the Statute of Limitations, no further requirement is necessary. The mere possibility of patent term extension or extended litigation involving the patent should not be considered in this analysis.

In the event that the 30-year term of deposit measured from the date of deposit would necessarily terminate within the period of enforceability of the patent (normally the 17-year term plus six (6) years), samples must be stored under agreements that would make them available beyond the enforceable life of the patent for which the deposit was made. No requirement should be made as to any particular period of time beyond the enforceable life of the patent. The purpose of the requirement is to insure that a deposited biological material necessary for the practice of a patented invention would be available to the public after expiration of the patent for which the deposit was made. The term of the deposit must comply with the requirements of each sentence of § 1.806 whether or not the deposit is made under the Budapest Treaty. A specific statement that the deposit complies with the second sentence of this section is required only where the 30-year term would terminate within the enforceable life of the patent.

Viability of Deposits (Section 1.807)

This section requires that the deposit of biological material that is capable of self-replication either directly or indirectly must be viable at the time of deposit and during the term of deposit. This requirement for viability is essentially a requirement that the deposited material is capable of reproduction. For the purpose of making a deposit under these rules, there is no requirement that evidence be provided that the deposited material is capable or has the ability to perform any function described in the patent application. However, as with any other issue of description or enablement, if the examiner has evidence or reason to question the objective statements made in the patent application, applicants may be required to demonstrate that the deposited biological material will perform in the manner described.

Under the Budapest Treaty, there is a requirement that the deposit be tested for viability before it is accepted. Thus, a mere statement by applicant, an authorized representative of applicant or the assignee that the deposit has been accepted under the Budapest Treaty would satisfy § 1.807.

For each deposit which is not made under the Budapest Treaty, a viability statement must be filed in the patent application and contain the information listed in paragraph (b) of this section. Under paragraph (c), the examiner will accept the conclusion set forth in a viability statement which is issued by a depository recognized under § 1.803(a). If the viability test indicates that the deposit is not viable upon receipt, or the examiner cannot for scientific or other valid reasons accept the statement of viability received from the applicant, the examiner shall so notify the applicant stating the reasons for not accepting the statement and proceed with the examination process as if no deposit had been made.

Furnishing of Samples (Section 1.808)

This section requires that the deposit of biological material be made under two (2) conditions:

(1) Access to the deposit will be available during pendency of the patent application making reference to the deposit to one determined by the Commissioner to be entitled thereto under § 1.14 and 35 U.S.C. 122, and

(2) With one exception, that all restrictions imposed by the depositor on the availability to the public of the deposited biological material will be irrevocably removed upon the granting of the patent.

The one exception that is permitted is specified in paragraph (b) of this section which permits the depositor to contract with the depository to require that samples of a deposited biological material shall be furnished only if a request for a sample, during the term of the patent meets any one or all of the three conditions specified in this paragraph. These conditions are:

(1) The request is in writing or other tangible form and dated; and/or

(2) The request contains the name and address of the requesting party and the accession number of the deposit; and/or

(3) The request is communicated in writing by the depository to the depositor along with the date on which the sample was furnished and the name and address of the party to whom the sample was furnished.

It should be noted that this exception to the general rule that all restrictions will be removed must be strictly followed and that no variations of this explicit exception will be accepted as meeting the conditions of this section. This exception is consistent with the provisions in the Budapest Treaty and its implementing regulations (Rule 11.4).

Since the mere description of a deposit or identity of a deposit in a patent specification is not necessarily an indication that a requirement for deposit was made or that a deposit which complies with these rules has been made, accessibility to a deposited material referenced in a patent may depend on the satisfaction of conditions not apparent on the face of the patent. For these reasons, and upon request made to the Patent and Trademark Office, the Office will certify whether a deposit has been stated to have been made under conditions which would make it available to the public as of the issue date of the patent grant provided the request is made to the Director of Patent Examining Group 180, and contains the following information:

(1) The name and address of the depository

(2) The accession number given to the deposit

(3) The patent number and issue date of the patent referring to the deposit and

(4) The name and address of the requesting party.

For those deposits made pursuant to the Budapest Treaty, the World Intellectual Property Organization provides a form (Form BP–12) for requesting a certification of the availability of samples of deposited microorganisms pursuant to Rule 11.3(a) of the regulations under the Budapest Treaty. Copies of this form are available from the Director of Patent Examining Group 180.

Examination Procedures (Section 1.809)

This section sets forth procedures that will be used by the examiner to address a deposit issue. Deposit issues may arise in the examination of claims in applications for patent and for reissue of a patent, and in the examination of new or amended claims in a reexamination proceeding. The burden is initially on the Office to establish that access to a biological material is necessary for the satisfaction of the statutory requirements for patentability under 35 U.S.C. 112. Once the Office has met this burden, the burden shifts to the applicant or patent owner to demonstrate that access to such biological material either is not necessary or is already available, or that a deposit of such material is being or will be made, replaced or supplemented in accordance with these regulations.

Under paragraph (a) of this section, once the examiner has determined that access to a biological material is necessary, and that access is not presently available in accordance with these regulations, the examiner should make an appropriate rejection under 35 U.S. 112.

The applicant or patent owner may respond, pursuant to paragraph (b)(2) of this section, to a rejection made under paragraph (a) thereof by arguing why a deposit is not needed under the circumstances and/or why a deposit actually made should be acceptable. Other prescribed responses which are available to such a rejection depend upon whether the rejection is made in an application for patent, on the one hand, or in a proceeding involving a patent, i.e., an application for reissue patent or reexamination proceeding, on the other hand.

In an application for patent, applicant may respond, pursuant to paragraph (b)(1) of this section, by either making an acceptable original, replacement or supplemental deposit in accordance with these regulations, or assuring the Office in writing that an acceptable deposit will be made on or before the date of payment of the issue fee. In a proceeding involving a patent, the patent owner may respond, pursuant to paragraph (b)(1) of this section, by requesting a certificate of correction of the patent which meets the terms of paragraphs (b) and (c) of § 1.805. In all cases, any other response shall be considered non-responsive. The rejection will be repeated and made final until the requirements of paragraph (b)(1) of this section are satisfied or the examiner is convinced that a deposit is not required for the claimed subject matter.

As set forth in paragraph (c) of this section, in the event that an application for patent is otherwise in condition for allowance except for a needed deposit and the Office has received a written assurance that an acceptable deposit will be made, the Office will mail to the applicant a requirement that the needed deposit be made within three (3) months together with the Notice of Allowance and Issue Fee Due. Although the period for paying the issue fee cannot be extended under the provisions of § 1.136, the period for satisfying the requirement to make an acceptable deposit may be extended under the provisions of that section. Failure to make the needed deposit in accordance with this requirement may be considered a failure to prosecute the application under 35 U.S.C. 133 and result in abandonment of the application.

The type of written assurance which will be considered acceptable by the Office that an acceptable deposit will be made within the required time must include sufficient information to conclude that there is no outstanding issue with regard to the deposit of an appropriate biological material under conditions which satisfy these rules.

In a proceeding involving a patent, it may not be possible to request a certificate of correction of the patent which meets the terms of paragraphs (b) and (c) of § 1.805. For example, if the patent owner is on notice that samples of an original deposit can no longer be furnished by the depository, failure to diligently make a replacement deposit will preclude grant of a certificate of correction. A replacement deposit subsequently made will not be recognized by the Office nor will a request for certificate of correction, even if made promptly thereafter, be granted. It would also not be possible to request a certificate of correction of the patent which meets the terms of paragraphs (b) and (c) of § 1.805 where no original deposit was made before or during the pendency of the application which matured into the patent.

A patent defective because of lack of a necessary deposit is necessarily fatally defective for failure to comply with the first paragraph of 35 U.S.C. 112. Reissue is not available in such cases. See *In re Hay*, 534 F.2d 917, 189 USPQ 790 (CCPA 1976). Whether reissue is available where a biological material necessary for compliance with 35 U.S.C. 112 was known and readily available at the time of issuance of the patent and subsequently ceased to be readily available is problematic. Nevertheless, the rules do not provide for post-issue original deposits.

Where an applicant for patent has any doubt whether access to a biological material specifically identified in the specification is necessary to satisfy 35 U.S.C. 112 or whether such a material, while presently freely available, may become unavailable in the future, the applicant would be well-advised to make a deposit thereof before any patent issues. Similarly, where a patent owner has any doubt whether a deposit referred to in the specification is of a biological material necessary to satisfy 35 U.S.C. 112 and, if the material is necessary, whether it is otherwise known and readily available, the patent

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owner would be well-advised to follow the procedures set forth in paragraphs (b) and (c) of § 1.805 after receiving the notice specified in those paragraphs.

Paragraph (d) of this section sets forth the requirements for the content of the specification with respect to a deposited biological material. Specifically, the specification shall contain the accession number for the deposit, the date of the deposit, the name and address of the depository, and a description of the deposited biological material sufficient to specifically identify it and to permit examination. The description must be sufficient to permit verification that the deposited biological material is in fact that disclosed. Once the patent issues, the description must be sufficient to aid in the resolution of questions of infringement. As a general rule, the more information that is provided about a particular deposited biological material, the better the examiner will be able to compare the identity and characteristics of the deposited biological material with the prior art.

Other Considerations

The rules are in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule change is not expected to have a significant adverse economic impact on a substantial number of small entites (Regulatory Flexibility Act, Pub. L. 96–354). The deposit practice will not impose extra work on patent applicants (whether small or large businesses or individuals).

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rules contain a collection of information requirement subject to the Paperwork Reduction Act which has been approved by the Office of Management and Budget under Control No. 0651–0022. Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed to make a deposit or request a sample, and completing and reviewing the collection of information. It is further estimated that a respondent depository would spend about five hours collecting and submitting the necessary information to be recognized as a suitable depository by the Office. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Organization, Patent and Trademark Office, Washington, DC 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Paperwork Reduction Project 0651–0022). No comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, were received in response to the notice of proposed rulemaking.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small business.

For the reason as set out in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. A new subpart G, consisting of an undesignated centered heading and §§ 1.801 to 1.809, is added to read as follows:

Subpart G—Biotechnology Invention Disclosures

Deposit of Biological Material

Sec.
1.801 Biological material.
1.802 Need or Opportunity to make a deposit.
1.803 Acceptable depository.
1.804 Time of making an original deposit.
1.805 Replacement or supplement of deposit.
1.806 Term of deposit.
1.807 Viability of deposit.
1.808 Furnishing of samples.
1.809 Examination procedures.

Subpart G—Biotechnology Invention Disclosures

Deposit of Biological Material

§ 1.801 Biological material.

For the purposes of these regulations pertaining to the deposit of biological material for purposes of patents for inventions under 35 U.S.C. 101, the term biological material shall include material that is capable of self-replication either directly or indirectly. Representative examples include bacteria, fungi including yeast, algae, protozoa, eukaryotic cells, cell lines, hybridomas, plasmids, viruses, plant tissue cells, lichens and seeds. Viruses, vectors, cell organelles and other non-living material existing in and reproducible from a living cell may be deposited by deposit of the host cell capable of reproducing the non-living material.

§ 1.802 Need or opportunity to make a deposit.

(a) Where an invention is, or relies on, a biological material, the disclosure may include reference to a deposit of such biological material.

(b) Biological material need not be deposited unless access to such material is necessary for the satisfaction of the statutory requirements for patentability under 35 U.S.C. 112. If a deposit is necessary, it shall be acceptable if made in accordance with these regulations. Biological material need not be deposited, inter alia, if it is known and readily avaliable to the public or can be made or isolated without undue experimentation. Once deposited in a depository complying with these regulations, a biological material will be considered to be readily available even though some requirement of law or regulation of the United States or of the country in which the depository institution is located permits access to the material only under conditions imposed for safety, public health or similar reasons.

(c) The reference to a biological material in a specification disclosure or the actual deposit of such material by an applicant or patent owner does not create any presumption that such material is necessary to satisfy 35 U.S.C. 112 or that deposit in accordance with these regulations is or was required.

§ 1.803 Acceptable depository.

(a) A deposit shall be recognized for the purposes of these regulations if made in

(1) any International Depositary Authority (IDA) as established under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, or

(2) any other depository recognized to be suitable by the Office. Suitability will be determined by the Commissioner on the basis of the administrative and technical competence, and agreement of the depository to comply with the terms and conditions applicable to deposits for patent purposes. The Commissioner may seek the advice of impartial consultants on the suitability of a depository. The depository must:

(i) Have a continuous existence;

(ii) Exist independent of the control of the depositor;

(iii) Possess the staff and facilities sufficient to examine the viability of a deposit and store the deposit in a manner which ensures that it is kept viable and uncontaminated;

(iv) Provide for sufficient safety measures to minimize the risk of losing biological material deposited with it;

(v) Be impartial and objective;

(vi) Furnish samples of the deposited material in an expeditious and proper manner; and

(vii) Promptly notify depositors of its inability to furnish samples, and the reasons why.

(b) A depository seeking status under paragraph (a)(2) of this section must direct a communication to the Commissioner which shall:

(1) Indicate the name and address of the depository to which the communication relates;

(2) Contain detailed information as to the capacity of the depository to comply with the requirements of paragraph (a)(2) of this section, including information on its legal status, scientific standing, staff and facilities;

(3) Indicate that the depository intends to be available, for the purposes of deposit, to any depositor under these same conditions;

(4) Where the depository intends to accept for deposit only certain kinds of biological material, specify such kinds;

(5) Indicate the amount of any fees that the depository will, upon acquiring the status of suitable depository under paragraph (a)(2) of this section, charge for storage, viability statements and furnishings of samples of the deposit.

(c) A depository having status under paragraph (a)(2) of this section limited to certain kinds of biological material may extend such status to additional kinds of biological material by directing a communication to the Commissioner in accordance with paragraph (b) of this section. If a previous communication under paragraph (b) of this section is of record, items in common with the previous communication may be incorporated by reference.

(d) Once a depository is recognized to be suitable by the Commissioner or has defaulted or discontinued its performance under this section, notice thereof will be published in the Office Gazette of the Patent and Trademark Office.

§ 1.804 Time of making an original deposit.

(a) Whenever a biological material is specifically identified in an application for patent as filed, an original deposit thereof may be made at any time before filing the application for patent or, subject to § 1.809, during pendency of the application for patent.

(b) When the original deposit is made after the effective filing date of an application for patent, the applicant shall promptly submit a verified statement from a person in a position to corroborate the fact, and shall state, that the biological material which is deposited is a biological material specifically identified in the application as filed, except if the person is an attorney or agent registered to practice before the Office, in which case the statement need not be verified.

§ 1.805 Replacement or supplement of deposit.

(a) A depositor, after receiving notice during the pendency of an application for patent, application for reissue patent or reexamination proceeding, that the depository possessing a deposit either cannot furnish samples thereof or can furnish samples thereof but the deposit has become contaminated or has lost its capability to function as described in the specification, shall notify the Office in writing, in each application for patent or patent affected. In such a case, or where the Office otherwise learns, during the pendency of an application for patent, application for reissue patent or reexamination proceeding, that the depository possessing a deposit either cannot furnish samples thereof or can furnish samples thereof but the deposit has become contaminated or has lost its capability to function as described in the specification, the need for making a replacement or supplemental deposit will be governed by the same considerations governing the need for making an original deposit under the provisions set forth in § 1.802(b). A replacement or supplemental deposit made during the pendency of an application for patent shall not be accepted unless it meets the requirements for making an original deposit under these regulations, including the requirement set forth under § 1.804(b). A replacement or supplemental deposit made in connection with a patent, whether or not made during the pendency of an application for reissue patent or a reexamination proceeding or both, shall not be accepted unless a certificate of correction under § 1.323 is requested by the patent owner which meets the terms of paragraphs (b) and (c) of this section.

(b) A request for certificate of correction under this section shall not be granted unless the certificate identifies:

(1) The accession number for the replacement or supplemental deposit;

(2) The date of the deposit; and

(3) The name and address of the depository.

(c) A request for a certificate of correction under this section shall not be granted unless the request is made promptly after the replacement or supplemental deposit has been made and:

(1) Includes a verified statement of the reason for making the replacement or supplemental deposit;

(2) Includes a verified statement from a person in a position to corroborate the fact, and shall state, that the replacement or supplemental deposit is of a biological material which is identical to that originally deposited;

(3) Includes a verified showing that the patent owner acted diligently—

(i) In the case of a replacement deposit, in making the deposit after receiving notice that samples could no longer be furnished from an earlier deposit or

(ii) In the case of a supplemental deposit, in making the deposit after receiving notice that the earlier deposit and become contaminated or had lost its compability to function as described in the specification;

(4) Includes a verified statement that the term of the replacement or supplemental deposit expires no earlier than the term of the deposit being replaced or supplemented; and

(5) Otherwise establishes compliance with these regulations, except that if the person making one or more of the required statements or showing is an attorney or agent registered to practice before the Office, that statement or showing need not be verified.

(d) A depositor's failure to replace a deposit, or in the case of a patent, to diligently replace a deposit and promptly thereafter request a certificate of correction which meets the terms of paragraphs (b) and (c) of this section, after being notified that the depository possessing the deposit cannot furnish samples thereof, shall cause the application or patent involved to be treated in any Office proceeding as if no deposit were made.

(e) In the event a deposit is replaced according to these regulations, the Office will apply a rebuttable presumption of identity between the original and the replacement deposit where a patent making reference to the deposit is relied upon during any Office proceeeding.

(f) A replacement or supplement deposit made during the pendency of an application for patent may be made for any reason.

(g) In no case is a replacement or supplemental deposit of a biological material necessary where the biological material, in accordance with § 1.802(b), need not be deposited.

(h) No replacement deposit of a biological material is necessary where a depository can furnish samples thereof but the depository for national security, health or environmental safety reasons is unable to provide samples to requesters outside of the jurisdiction where the depository is located.

(i) The Office will not recognize in any Office proceeding a replacement deposit of a biological material made by a patent owner where the depository could furnish samples of the deposit being replaced.

§ 1.806 Term of deposit.

A deposit made before or during pendency of an application for patent shall be made for a term of at least thirty (30) years and at least five (5) years after the most recent request for the furnishing of a sample of the deposit was received by the depository. In any case, samples must be stored under agreements that would make them available beyond the enforceable life of the patent for which the deposit was made.

§ 1.807 Viability of deposit.

(a) A deposit of biological material that is capable of self-replication either directly or indirectly must be viable at the time of deposit and during the term of deposit. Viability may be tested by the depository. The test must conclude only that the deposited material is capable of reproduction. No evidence is necessarily required regarding the ability of the deposited material to perform any function described in the patent application.

(b) A viability statement for each deposit of a biological material defined in paragraph (a) of this section not made under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure must be filed in the application and must contain:

(1) The name and address of the depository;

(2) The name and address of the depositor;

(3) The date of deposit;

(4) The identify of the deposit and the accession number given by the depository;

(5) The date of the viability test;

(6) The procedures used to obtain a sample if the test is not done by the depository; and

(7) A statement that the deposit is capable of reproduction.

(c) If a viability test indicates that the deposit is not viable upon receipt, or the examiner cannot, for scientific or other valid reasons, accept the statement of viability received from the applicant, the examiner shall proceed as if no deposit has been made. The examiner will accept the conclusion set forth in a viability statement issued by a depository recognized under § 1.803(a).

§ 1.808 Furnishing of samples.

(a) A deposit must be made under conditions that assure that:

(1) Access to the deposit will be available during pendency of the patent application making reference to the deposit to one determined by the Commissioner to be entitled thereto under § 1.14 and 35 U.S.C. 122, and

(2) Subject to paragraph (b) of this section, all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent.

(b) The depositor may contract with the depository to require that samples of a deposited biological material shall be furnished only if a request for a sample, during the term of the patent:

(1) Is in writing or other tangible form and dated;

(2) Contains the name and address of the requesting party and the accession number of the deposit; and

(3) Is communicated in writing by the depository to the depositor along with the date on which the sample was furnished and the name and address of the party to whom the sample was furnished.

(c) Upon request made to the Office, the Office will certify whether a deposit has been stated to have been made under conditions which make it available to the public as of the issue date of the patent grant provided the request contains:

(1) The name and address of the depository;

(2) The accession number given to the deposit;

(3) The patent number and issue date of the patent referring to the deposit; and

(4) The name and address of the requesting party.

§ 1.809 Examination procedures.

(a) The examiner shall determine pursuant to § 1.104 in each application for patent, application for reissue patent or reexamination proceeding if a deposit is needed, and if needed, if a deposit actually made is acceptable for patent purposes. If a deposit is needed and has not been made or replaced or supplemented in accordance with these regulations, the examiner, where appropriate, shall reject the affected claims under the appropriate provision of 35 U.S.C. 112, explaining why a deposit is needed and/or why a deposit actually made cannot be accepted.

(b) The applicant for patent or patent owner shall respond to a rejection under paragraph (a) of this section by—

(1) In the case of an applicant for patent, making an acceptable original or replacement or supplemental deposit or assuring the Office in writing that an acceptable deposit will be made on or before the date of payment of the issue fee, or, in the case of a patent owner, requesting a certificate of correction of the patent which meets the terms of paragraphs (b) and (c) of § 1.805, or

(2) Arguing why a deposit is not needed under the circumstances of the application or patent considered and/or why a deposit actually made should be accepted. Other replies to the examiner's action shall be considered non-responsive. The rejection will be repeated until either paragraph (b)(1) of this section is satisfied or the examiner is convinced that a deposit is not needed.

(c) If an application for patent is otherwise in condition for allowance except for a needed deposit and the Office has received a written assurance that an acceptable deposit will be made on or before payment of the issue fee, the Office will mail to the applicant a Notice of Allowance and Issue Fee Due together with a requirement that the needed deposit be made within three months. The period for satisfying this requirement is extendable under § 1.136. Failure to make the needed deposit in accordance with this requirement will result in abandonment of the application for failure to prosecute.

(d) For each deposit made pursuant to these regulations, the specification shall contain:

(1) The accession number for the deposit;

(2) The date of the deposit;

(3) A description of the deposited biological material sufficient to specifically identify it and to permit examination; and

(4) The name and address of the depository.

Dated: July 21, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89–19528 Filed 8–21–89; 8:45 am]

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Part IV

Department of Commerce

Patent and Trademark Office

37 CFR Part 2

Amendment of Trademark Rules Governing Inter Partes Proceedings, and Miscellaneous Amendments to Other Trademark Rules

DEPARTMENT OF COMMERCE

37 CFR Part 2

[Docket No. 81268-9163]

RIN 0651–AA36

Amendment of Trademark Rules Governing Inter Partes Proceedings, and Miscellaneous Amendments to Other Trademark Rules

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office is amending the rules of practice in trademark cases to revise and/or codify procedures for the examination of applications; appeals from final refusals of registration; and the institution and conduct of trademark interference, concurrent use, opposition, and cancellation proceedings. The amendments will assist the orderly and prompt resolution of issues in proceedings before the Trademark Trial and Appeal Board.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Janet E. Rice by telephone at (703) 557–3551 or by mail marked to her attention and addressed to Box 5, Trademark Trial and Appeal Board, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Amendments to §§ 2.42, 2.68, 2.91, 2.92, 2.93, 2.102, 2.104, 2.106, 2.112, 2.113, 2.114, 2.119, 2.120, 2.121, 2.122, 2.123, 2.125, 2.127, 2.128, 2.129, 2.134, 2.135, 2.142, 2.145, and 2.186 were proposed in a notice of proposed rulemaking published in the **Federal Register** on March 7, 1989, at 54 FR 9514, the Patent and Trademark Office *Official Gazette* of March 28, 1989, at 1100 O.G. 137, and the Bureau of National Affairs' *Patent, Trademark & Copyright Journal*, Vol. 37, No. 921, pp. 477–486 (March 9, 1989). Corrections to the **Federal Register** printing of the notice of proposed rulemaking were published in the **Federal Register** on April 4, 1989, at 54 FR 13605. The purpose of these proposed rule amendments was to revise, simplify, remove, or clarify existing rules or to codify in rules certain practices which are currently in effect. The rules involved included those relating to the requirements for concurrent use applications; abandonment of trademark applications; appeals to the Trademark Trial and Appeal Board (Board) from the final refusal of registration in ex parte applications; institution and conduct of interference, concurrent use, opposition, and cancellation proceedings before the Board; review by civil action of a decision of the Board; and allowing an assignee to take action with respect to the assigned application or registration. Written comments were submitted by two firms, five individuals, and one organization. The relevant committee of another organization stated that it had nothing to add to the comments of the first organization. Two other organizations submitted letters indicating that they accepted the proposed rule amendments in their entirety.

Discussion of Specific Sections Being Changed

In this discussion, "Patent and Trademark Office" is abbreviated as "PTO" and "Trademark Trial and Appeal Board" is abbreviated as "Board."

Section 2.42(a), which specifies certain requirements for an application for registration as a lawful concurrent user, is amended to remove the designation "(a)" (because § 2.42(b) is removed) and to delete the qualifying phrase "to the extent of his knowledge" from the requirement that an applicant for registration as a lawful concurrent user state in the application the area, the goods, and the mode of use for which registration is sought. This information obviously is within the knowledge of the applicant and is essential for purposes of examination and publication.

Section 2.42(b), which requires that the verification or declaration in an application for registration as a lawful concurrent user "be made with the stated exceptions," is removed to simplify practice. The paragraph has been construed, in applications for registration based on concurrent use, as requiring that the portion of the verification or declaration which normally reads, "to the best of his/her knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce," also include, after the word "association," the additional phrase "other than specified in the application." Because most applicants and/or their attorneys do not realize that this is the import of the paragraph, the examination process is often prolonged. Moreover, an applicant for registration based on concurrent use is required to list, in the statement portion of the application, the exceptions to applicant's right to exclusive use, so that it is clear that the verification or declaration is being made, in effect, with the stated exceptions. Therefore, the requirement for a verification or declaration which differs in form from that of an application for a geographically unrestricted registration is unnecessary.

Section 2.68, which pertains to the express abandonment of an application, presently provides, in the second sentence, that the fact that an application has been expressly abandoned shall not, in any proceeding in the PTO, affect any rights that the applicant may have in the mark which is the subject of the abandoned application. The section was proposed to be amended by inserting the phrase "during the ex parte prosecution thereof" immediately after the phrase "The fact that an application has been expressly abandoned." Instead, the section is being amended to include, at the beginning of the second sentence, a cross-reference to § 2.135 (i.e., "Except as provided in § 2.135, the fact that an application has been expressly abandoned shall not * * *"). The cross-reference to § 2.135 (which provides, in essence, that if an applicant whose application is the subject of an inter partes proceeding before the Board files a written abandonment of the application without the written consent of every adverse party, judgment shall be entered against the applicant) has been added, in lieu of the phrase specified in the notice of proposed rulemaking, and as a result of a written comment received thereon, to further clarify the section.

Section 2.91, which governs the declaration of interference proceedings, is amended to change the title of the section from "Interferences." to "Declaration of interference." The amendment is one of a series of amendments, involving §§ 2.91–2.93, intended to distinguish between the "declaration" of an interference by the Commissioner upon petition and the subsequent "institution" of the interference by the Board. *See* §§ 1208.04 and 1208.05 of the *Trademark Manual of Examining Procedure.*

Section 2.92, which pertains to certain matters preliminary to an interference, is revised to specifically indicate what must happen before an interference which has been "declared" by the Commissioner upon petition can be "instituted" by the Board.

Section 2.93, which governs the institution of an interference, is amended to, inter alia, change the title of the section from "Declaration of interference." to "Institution of interference.", and to revise the text of the paragraph to harmonize with §§ 2.91 and 2.92, as amended.

Section 2.102(c), which pertains to extensions of time for filing an opposition, was proposed to be amended to change the specified time period "120 days" to "four months." However, upon further consideration, it appears, for the reasons described hereafter in the "Response to Comments on the Rules" portion of this final rule notice, that the proposed amendment might add to confusion regarding the computation of extension periods. Accordingly, the proposal to amend this paragraph is withdrawn.

Section 2.104, which states certain requirements for a notice of opposition, is amended to redesignate the present paragraph as "(a)" and to add a new paragraph, designated "(b)," codifying the practice that oppositions to different applications owned by the same party may be joined in a consolidated opposition, when appropriate, provided that the required fees are paid. The proposed new paragraph parallels present § 2.112(b).

Section 2.106(b)(1), which contains provisions relating to opposition answers, is amended to include a short description of the content requirements for an answer to an opposition, just as present § 2.104 describes the content requirements for an opposition. The amendment parallels an amendment made herein to § 2.114(b)(1) concerning answers to petitions for cancellation. The description of the content requirements for an answer is modeled after portions of Rule 8 of the Federal Rules of Civil Procedure.

Section 2.106(c), which governs the withdrawal of an opposition, is amended to codify the practice that an applicant's written consent to the withdrawal of an opposition after answer may be signed by the applicant or by the applicant's attorney or other authorized representative. The amendment parallels amendments made herein to §§ 2.114(c), 2.134(a), and 2.135.

Section 2.112(a), which states requirements for a petition for cancellation, is revised to delete the requirement that a petitioner indicate in the petition "the respondent party to whom notification shall be sent," and to substitute a requirement that the petitioner indicate, to the best of the petitioner's knowledge, "the name and address of the current owner of the registration." The purposes of the revision are to provide the Board with information relating to the identity of the current owner of the registration sought to be cancelled, so that the Board can serve a copy of the petition on that party, and to remove any implication that the petitioner is permitted to designate who shall be the respondent. See also, in this regard, § 2.113, as amended herein.

Section 2.113, which concerns notification to the respondent of the filing of a petition for cancellation, is revised to codify the practice that the respondent shall be the party shown by the records of the PTO to be the current owner of the registration sought to be cancelled, except that the Board, in its discretion, may join or substitute as respondent a party who makes a showing of a current ownership interest in the registration. *See generally Gold Eagle Products Co.* v. *National Dynamics Corp.*, 193 USPQ 109 (TTAB 1976). The section is further revised to provide that when the party identified by the petitioner, pursuant to amended § 2.112(a), as the current owner of the registration or registrations is not the record owner thereof, a courtesy copy of the petition for cancellation shall be forwarded with a copy of the notification to the alleged current owner, which may file a motion to be joined or substituted as respondent.

Section 2.114(b)(1), which contains certain provisions relating to cancellation answers, is amended to include a short description of the content requirements for an answer to a petition for cancellation, just as present § 2.112(a) describes the content requirements for a petition for cancellation. The amendment parallels the amendment made herein to § 2.106(b)(1) concerning answers to oppositions.

Section 2.114(c), which governs the withdrawal of a petition for cancellation, is amended to codify the practice that a registrant's written consent to the withdrawal of a petition for cancellation after answer may be signed by the registrant or by the registrant's attorney or other authorized representative. The amendment parallels amendments made herein to §§ 2.106(c), 2.134(a), and 2.135.

Section 2.119, which presently governs service of papers, is amended to change the title from "Service of papers." to "Service and signing of papers.", so that the section title will describe the contents of the section as amended herein by the revision of paragraphs (b) and (c), and by the addition of two new paragraphs, designated "(d)" and "(e)."

Section 2.119(b), which states, inter alia, methods for service of papers, is revised to provide for two additional methods of service, namely, transmission by the "Express Mail" service of the United States Postal Service and transmission by overnight courier. The amendment codifies existing practice.

Section 2.119(c), which presently provides that when service is made by mail, the date of mailing will be considered the date of service; and that whenever a party is required to take some action within a prescribed period after the service of a paper upon him by another party and the paper is served by mail, 5 days shall be added to the prescribed period, is revised to specify that when service is made by first-class mail, "Express Mail," or overnight courier, the date of mailing or of delivery to the overnight courier will be considered the date of service; and that whenever a party is required to take some action within a prescribed period after the service of a paper upon such party by another party, and the paper is served by first-class mail, "Express Mail," or overnight courier, 5 days shall be added to the prescribed period. The amendments codify existing practice.

Section 2.119(d) is added to require that when a party to an inter partes proceeding before the Board is not domiciled in the United States, and is not represented by an attorney or other authorized representative located in the United States, the party must appoint a domestic representative on whom may be served notices or process in the proceeding. The purpose of the paragraph is to facilitate the service of papers on foreign parties not represented by domestic counsel in proceedings before the Board.

Section 2.119(e) is added to provide that every paper filed in an inter partes proceeding before the Board, and every request for an extension of time to file an opposition, must be signed by the party filing it, or by the party's attorney or other authorized representative. An unsigned paper will be refused consideration unless a signed copy is submitted before or within a time limit set in the PTO's notification of this defect. The purpose of the amendment is to simplify practice, and to eliminate the necessity for a petition to the Commissioner in the case of an unsigned notice of opposition or request for extension of time to oppose. The final rule includes a phrase that was not included in the proposed rule, namely, the phrase "and every request for an extension of time to file an opposition." The phrase has been added to further clarify the intent of the paragraph (that is, the paragraph was intended to cover requests for extension of time to oppose, but such a request is not, strictly speaking, a "paper filed in an inter partes proceeding before the Board," since at the time of the filing of a request for extension of time to oppose, there is not yet an opposition).

Section 2.120(a), which contains certain general provisions relating to discovery in inter partes proceedings before the Board, is amended to include a new sentence specifying that the opening of discovery is governed by the Federal Rules of Civil Procedure. The amendment is a codification of current practice. *See generally* Saul Lefkowitz and Janet E. Rice, *Adversary Proceedings Before the Trademark Trial and Appeal Board,* 75 TMR 323, 381–382 (1985).

Section 2.120(d), which presently pertains to document production, is amended to change the title from "Request for production." to "Interrogatories; request for production."; to redesignate the present paragraph as "(2)"; and to add a new paragraph, designated "(1)." The new paragraph limits the total number of interrogatories which a party may serve upon another party in a proceeding before the Board to seventy-five, counting subparts, with additional interrogatories being allowed by the Board, in its discretion, upon motion to the Board showing good cause, or upon stipulation of the parties; requires that a motion for leave to serve additional interrogatories be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories proposed to be served; and provide that if a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in the paragraph, and is unwilling to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and objections to the interrogatories, file a motion for a protective order, accompanied by a copy of the interrogatories which together are said to exceed the limitation. The purpose of the new paragraph is to discourage parties from using written interrogatories for purposes of harassment, as exemplified in the case of *C. H. Stuart Inc.* v. *S. S. Sarna, Inc.,* 212 USPQ 386 (TTAB 1980). The amendment is believed to be in general harmony with corresponding local rules now prevalent in the federal district courts.

Section 2.120(g), which provides for the imposition of sanctions for failure to comply with an order of the Board relating to discovery, is amended to change the title from "Failure to comply with order." to "Sanctions."; to redesignate the present paragraph as "(1)"; and to add a new paragraph, designated, "(2)," providing that if a party fails to attend its discovery deposition, after being served with proper notice, or fails to respond to a set of interrogatories or to a set of requests for production of documents and things, and the party or the party's attorney informs the party seeking discovery that no response will be made thereto, the Board may make any appropriate order by way of sanctions. The purpose of the amendment is to eliminate the expense and delay resulting from the present practice, embodied in present paragraphs (e) and (g) of § 2.120, that in situations of the type described in the new paragraph, a motion to compel must be filed and granted and the resulting order violated before the party seeking discovery may move for sanctions. The proposed practice is in harmony with Rule 37(d) of the Federal Rules of Civil Procedure.

Section 2.120(j)(3), which describes how a discovery deposition, interrogatory answer, or admission may be made of record by a party entitled to rely thereon, is amended to redesignate the present paragraph as "(i)" and to add a new paragraph, designated "(ii)." The new paragraph codifies the existing practice, exemplified in cases such as *Jeanne-Marc, Inc.* v. *Cluett, Peabody & Co., Inc.,* 221 USPQ 58 (TTAB 1984); *Autac Inc.* v. *Viking Industries, Inc.,* 199 USPQ 367 (TTAB 1978); *Harvey Hubbell, Inc.* v. *Red Rope Industries, Inc.,* 191 USPQ 119 (TTAB 1976); and *MRI Systems Corp.* v. *Wesley-Jessen, Inc.,* 189 USPQ 214 (TTAB 1975), that a party which has obtained documents from another party, pursuant to a request for production under Rule 34 of the Federal Rules of Civil Procedure, may not make the produced documents of record by notice of reliance alone, except to the extent that the documents fall within the provisions of § 2.122(e). The reason for the practice is that documents so obtained generally suffer from a lack of proper authentication, unless they are of the self-authenticating type admissible by notice of reliance under § 2.122(e).

Section 2.120(j)(4), which presently provides, in effect, that if an appropriate party files a notice of reliance upon only part of a discovery deposition, an adverse party may file a notice of reliance upon any other part of the deposition which should in fairness be considered so as to make not misleading what was offered by the submitting party, is amended to require that the notice of reliance filed by the adverse party be supported by a written statement explaining why the adverse party needs to rely upon each of the additional parts listed in the adverse party's notice, failing which the Board, in its discretion, may refuse to consider the additional parts. The amendment represents a codification of current practice. *Cf. Alabama Board of Trustees* v. *BAMA-Werke Curt Baumann,* 231 USPQ 408, 409 (TTAB 1986), and *Holiday Inns, Inc.* v. *Monolith Enterprises,* 212 USPQ 949, 950–951 (TTAB 1981).

Section 2.120(j)(5), which presently specifies who may make of record (by notice of reliance) an interrogatory answer or an admission, is amended to require that a party which seeks to rely upon certain of its own responses to interrogatories or requests for admissions, pursuant to the fairness exception presently provided in the paragraph, support its notice of reliance with a written statement explaining why it needs to rely upon each of the additional discovery responses listed in the notice, failing which the Board, in its discretion, may refuse to consider the additional parts. The amendment parallels the amendment made herein to paragraph (j)(4) of the section and represents a codification of current practice. *See The Board of Trustees of the University of Alabama* v. *BAMA–Werke Curt Baumann, supra,* and *Holiday Inns, Inc.* v. *Monolith Enterprises, supra.*

Section 2.120(j)(8), which presently provides that "[i]nterrogatories, requests for production, requests for admissions, and materials or depositions obtained during the discovery period" should not be filed with the Board except under certain specified circumstances, one of which is "when submitted with a motion to compel," is revised to provide that "requests for discovery, responses thereto, and materials or depositions obtained through the discovery process" should not be filed with the Board except under certain specified circumstances; to change the phrase "when submitted with a motion to compel" to "when submitted with a motion relating to discovery;" and to state that papers or materials filed in violation of the paragraph may be returned by the Board. The purpose of the revision is to clarify the beginning of the paragraph, and to reduce the number of papers and materials which must be retained in a proceeding file and stored by the Board. The amendment changing the phrase "when submitted with a motion to compel" to "when submitted with a motion relating to discovery" did not appear in the notice of proposed rulemaking as a proposed amendment. However, the amendment is "housekeeping" in nature, being necessary to harmonize this paragraph with amendment § 2.120(d)(1), which

requires that copies of interrogatories be filed with the Board in connection with two additional discovery motions, namely, the motion for leave to serve additional interrogatories, and the motion for a protective order filed in response to interrogatories believed to be excessive in number.

Section 2.121(a)(1), which governs the scheduling of trial periods, is amended to include a new sentence codifying the practice that the resetting of a party's time to respond to an outstanding request for discovery will not automatically result in the rescheduling of the discovery and/or testimony periods, and that such dates will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board.

Section 2.122(e), which presently requires that a notice of reliance on a printed publication specify the printed publication and the pages to be read, indicate generally the relevance of the material being offered, and be accompanied by "the printed publication or a copy of the relevant portion thereof, including the title page and any other page needed to show the place and date of publication, the name and address of the publisher, and the name of the author or the editor," is amended to require that the notice of reliance specify the printed publication (including information sufficient to identify the source and the date of the publication) and the pages to be read; indicate generally the relevance of the material being offered; and be accompanied by the printed publication or a copy of the relevant portion. The purpose of the amendment is to simplify practice.

Section 2.123(c), which governs notices of depositions, is amended to clarify the paragraph and to codify the current practice that testimony depositions may be noticed for any reasonable time and place in the United States, but that a testimony deposition may not be noticed for a place in a foreign country except as provided in paragraph (a)(2) of the section. This codification of practice as to the place where testimony depositions may be taken roughly parallels § 1.673(a), which governs the taking of testimony depositions in patent interference proceedings in the PTO.

Section 2.123(e)(2), which pertains to the examination of witnesses during oral deposition, is amended to include a new sentence stating that exhibits which are marked and identified at a deposition will be deemed to have been offered into evidence, without any formal offer thereof, unless the intention of the party marking the exhibits is clearly expressed to the contrary. The purpose of the amendment is to revise existing practice, which requires, on the part of the party marking the exhibits, either a formal offer or a clear indication in the transcript of an intent to introduce the exhibits. *See, e.g., Roux Laboratories, Inc.* v. *Kaler,* 214 USPQ 134, 135–136 (TTAB 1982); *H. Betti Industries, Inc.* v. *Brunswick Corp.,* 211 USPQ 1188, 1189 (TTAB 1981); and *Kay Corp.* v. *Weisfield's, Inc.,* 190 USPQ 565, 567–568 (TTAB 1976). Under the existing practice, a party can lose a case simply because the party's attorney forgets to make a formal offer of the exhibits marked and identified during the party's testimony deposition. Under the practice set forth in the amended paragraph, the Board will be able to determine such cases on their merits, rather than on the basis of a technical defect.

Section 2.123(g)(1), which relates to the form of deposition transcripts, is amended to permit the use of paper with numbered lines as an alternative to consecutively numbering the questions propounded to a witness. The amendment, which parallels § 1.677(a), the provision governing the form of deposition transcripts in patent interference proceedings, will simplify practice.

Section 2.125(a), which governs the filing and service of testimony, is amended to codify the existing practice that if a copy of a deposition transcript, with exhibits, is not served upon each adverse party within thirty days after completion of the taking of the testimony or within an extension of time for that purpose, any adverse party which was not served may have remedy by way of a motion to the Board to reset the adverse party's testimony and/or briefing periods, as may be appropriate. The paragraph is further amended to provide that if the deposing party fails to serve a copy of the transcript with exhibits on an adverse party after having been ordered to do so by the Board, the Board may strike the deposition, or enter judgment by default against the deposing party, or take other action as may be deemed appropriate.

Section 2.127(e)(1) is added to codify the long-established practice that a motion for summary judgment should be filed prior to the commencement of the first testimony period, as originally set or as reset, and that the Board, in its discretion, may deny as untimely any motion for summary judgment filed thereafter. *See Rainbow Carpet, Inc.* v. *Rainbow International Carpet Dyeing & Cleaning Co.,* 226 USPQ 718 (TTAB 1985); *Allegro High Fidelity, Inc.* v. *Zenith Radio Corp.,* 197 USPQ 550 (TTAB 1977); *La Maur, Inc.* v. *Bagwells Enterprises, Inc.,* 193 USPQ 234 (Comm'r Pat. 1976); *Peterson's Ltd., Inc.* v. *Consolidated Cigar Corp.,* 183 USPQ 559 (TTAB 1974); *Cities Service Oil Co.* v. *Perfection American, Inc.,* 157 USPQ 209 (TTAB 1968); T. Jeffrey Quinn, *Tips From the TTAB: Inter Partes Summary Judgment Revisited,* 76 TMR 73 (1986); and David J. Kera, *Tips From the TTAB: Summary Judgment,* 71 TMR 59, 61–62 (1981).

Section 2.127(e)(2) is added to provide, in essence, that for purposes of summary judgment only, a party may rely on its own responses to requests for discovery served upon it by an adverse party. The new paragraph changes the Board's current practice, under which a party normally is not permitted to rely upon its own responses to discovery for purposes of summary judgment. It is believed that the new practice will be more consistent with the practice in the Federal district courts.

Section 2.127(f) is added to codify the existing practice that the Board does not have authority to hold any person in contempt, or to award attorneys' fees or other expenses to any party. Although paragraphs (f), (g), and (h) of § 2.120, the section which governs the taking and use of discovery in inter partes proceedings before the Board, include provisions very similar in nature to the new paragraph, some litigants and/or their attorneys have mistakenly assumed that the Board has the authority to award attorneys' fees or other expenses in situations not involving a failure to provide discovery. The addition of this new paragraph to § 2.127, the section which governs motions in general, will clarify the matter.

Section 2.128(b), which presently provides, in pertinent part, that without leave of the Board, no brief shall contain more than fifty pages of argument, is amended to specify a minimum type or print size for a brief and to provide that without prior leave of the Board, a main brief on the case shall not exceed fifty-five pages in length in its entirety. Litigants before the Board, and their attorneys, are often confused as to exactly what is encompassed by the term "argument," as used in the present paragraph. The amendment simplifies and clarifies practice by specifying length limits for briefs in their entireties, followed by a list of the elements which are included within the length limit. The limit specified in the amended paragraph is five pages longer than that specified in the present paragraph, because the new length limit covers the entire brief, including the table of contents and index of cases, whereas the present length limit does not.

Section 2.129(a), which presently provides, in pertinent part, that oral arguments at final hearing will be heard by three Members of the Board, is amended to provide that such oral arguments will be heard by at least three Members of the Board. The purpose of the amendment, which parallels an amendment made herein to § 2.142(e)(1), is to reflect the Board's use of augmented panels in certain cases.

Section 2.134(a), which pertains to the surrender or voluntary cancellation of a registration which is the subject of a cancellation proceeding before the Board, is amended to codify the practice that in a cancellation proceeding, an adverse party's consent to the respondent's voluntary surrender of the involved registration may be signed by the adverse party or by the adverse party's attorney or other authorized representative. The amendment parallels amendments made herein to §§ 2.106(c), 2.114(c), and 2.135.

Section 2.135, which states the effect of the abandonment of an application which is the subject of an inter partes proceeding before the Board, is amended to codify the practice that in an opposition, concurrent use, or interference proceeding, an adverse party's consent to an applicant's abandonment of the applicant's involved application may be signed by the adverse party or by the adverse party's attorney or other authorized representative. The amendment parallels amendments made herein to §§ 2.106(c), 2.114(c), and 2.134(a).

Section 2.142(b), which governs ex parte appeal briefs, is amended to redesignate the present paragraph as "(1)" and to add a new paragraph, designated "(2)," codifying the form requirements and a length limit (twenty-five pages) for briefs filed in connection with ex parte appeals to the Board.

Section 2.142(e)(1), which presently provides that oral argument on an ex parte appeal to the Board will be heard by three Members of the Board, is amended to provide that oral argument will be heard by at least three Members of the Board. The purpose of the amendment, which parallels an amendment made herein to § 2.129(a), is to reflect the Board's use of augmented panels in certain cases.

Section 2.142(f)(6) is added to codify the practice that if, during an appeal to the Board from a refusal of registration, it appears to the examiner that an issue not previously raised may render the mark of the appellant unregistrable, the examiner may, by written request, ask the Board to suspend the appeal and to remand the application to the examiner for further examination.

Section 2.145(c)(4) is added to provide that a party to a proceeding before the Board which commences a civil action, pursuant to section 21(b) of the Act, seeking review of a decision of the Board should file written notice with the Board, within one month after the expiration of the time for appeal or civil action, in order to avoid premature termination of the Board proceeding. The purpose of the amendment is to ensure that parties who seek review of Board decisions by way of civil action will be aware of the need for informing the Board thereof.

Section 2.186, which presently provides that any action with respect to an assigned application or registration which may or must be taken by a registrant or applicant may be taken by the assignee provided that the assignment has been recorded, is amended by adding at the end the phrase "or that proof of the assignment has been submitted." The purpose of the amendment is to bring the section into closer conformity with section 10 of the Act.

Response to Comments on the Rules

The written comments received in response to the notice of proposed rulemaking have been given careful consideration, and a number of the suggested modifications have been adopted. The comments and responses are discussed below.

Comment: In the notice of proposed rulemaking, it was stated in the "Discussion of Specific Sections Proposed to be Changed" that § 2.68, which pertains to the express abandonment of an application, was proposed to be amended to indicate that the section applies only to the abandonment of an application during the ex parte prosecution thereof, i.e., an application not involved in an inter partes proceeding before the Board. Specifically, the proposed amendment was that the second sentence of the section, which presently reads, "The fact that an application has been expressly abandoned shall not, in any proceeding in the Patent and Trademark Office, affect any rights that the applicant may have in the mark which is the subject of the abandoned application," be amended by adding the phrase "during the ex parte prosecution thereof" immediately after the phrase "The fact that an application has been expressly abandoned." One firm commented that if the proposed amendment was intended to clarify the fact that this section applies only to ex parte applications, the phrase "during the ex parte prosecution thereof" should be added not to the second sentence of the section but rather after the words "An application" in the first sentence, which presently reads, "An application may be expressly abandoned by filing in the Patent and Trademark Office a written statement of abandonment or withdrawal of the application signed by the applicant, or the attorney or other person representing the applicant."

Response: The intent of the proposed amendment was to make it clear that the second sentence of the section (i.e., the sentence which provides, in essence, that the express abandonment of an application shall not, in any proceeding in the PTO, affect any rights which applicant may have in the mark which was the subject of the abandoned application) applies only to the abandonment of an application during ex parte prosecution (the effect of the abandonment of an application which is the subject of an inter partes proceeding before the Board being governed by § 2.135). Thus, the "Discussion of Specific Sections Proposed to be Changed" should have stated that § 2.68 was proposed to be amended to indicate that the "second sentence of the section" (not "the section") applies only to the abandonment of an application during the ex parte prosecution thereof. The first sentence of the section, which relates to the form of an express abandonment, is applicable both to applications which are the subject of an inter partes proceeding before the Board and to those which are not. Thus, the suggested modification has not been adopted. However, for purposes of added clarity, and in lieu of the amendment proposed in the notice of proposed rulemaking, the beginning of the second sentence of the section is being modified to include a cross-reference to § 2.135 (i.e., "Except as provided in § 2.135, the fact that an application has been expressly abandoned shall not * * *").

Comment: Section 2.102(c) was proposed to be amended to change the specified time beyond which an extension of time to oppose will not be granted without the consent of the applicant or a showing of extraordinary circumstances, from "120 days from the date of publication" to "four months from the date of publication." The organization indicated its belief that since the proposed change would not affect the statutorily mandated "30 day" period for filing an opposition, the amendment would (at least initially) add to confusion regarding the computation of extension periods. In the same vein, one firm commented that the proposed amendment would make sense provided the Board allows potential opposers to request extensions of time to oppose in terms of months rather than days.

Response: It is true that under section 13 of the Act of 1946, the statutorily mandated period for filing an opposition is "thirty days after the publication * * * of the mark sought to be registered." Section 13 further provides, in part, that the time for filing an opposition shall be extended for an additional thirty days upon written request prior to the expiration of the thirty-day opposition period, and that further extensions of time for filing an opposition may be granted by the Commissioner for good cause when requested prior to the expiration of an extension. Upon further consideration, it appears that the proposed amendment may encourage potential opposers to request the first and subsequent extensions of time to oppose in terms of months rather than days, causing confusion in the computation of extension periods. Accordingly, the proposal to amend § 2.102(c) is withdrawn. In the event that section 13 of the Act is amended to change the time periods specified therein from "thirty days" to "one month," the proposal to amend § 2.102(c) to change the designation "120 days" to "four months" may be included in a future notice of proposed rulemaking.

Comment: With respect to the proposal to revise § 2.113 (which concerns notification to the respondent of the filing of a petition for cancellation) to indicate that the respondent "shall be the party shown by the records of the Patent and Trademark Office to be the current owner of the registration or registrations sought to be cancelled, except that the Board, in its discretion, may join or substitute as respondent a party who makes a showing of a current ownership interest in such registration or registrations," one individual suggested, in effect, that the section be further revised to provide that if the party identified by the petitioner as the current owner of the registration is not the party shown by the records of the PTO to be the owner, service of the notification and of the petition will be made on the identified current owner as well as on the record owner. The individual notes that this revision would make § 2.113 consistent with proposed (and amended) § 2.112(a) (governing the contents of a petition for cancellation), which requires, in part, that the petitioner indicate, to the best of petitioner's knowledge, the name and address of the current owner of the registration. In addition, one firm suggested that § 2.113 be further revised to provide that a copy of a petition for cancellation will be sent (by the Board) both to the registrant and to the registrant's last attorney of record. The firm expressed its belief that sending a copy of the petition for cancellation to the registrant's last attorney of record as well as to the registrant "may serve to speed up cancellation proceedings, which are sometimes delayed by many months by reason of the fact that the registrant cannot be located and it is necessary to publish notice of the proceeding in the Office Gazette."

Response: Under present practice, when a petitioner informs the Board of petitioner's belief that the registration sought to be cancelled is currently owned by a party other than the party shown by the records of the PTO to be the owner, the Board sends a copy of the notification and of the petition to cancel both to the record owner, and to the party identified by the petitioner as the current owner. The current owner may file a motion, supported by evidence of its current ownership of the registration, to be joined or substituted as respondent. The paragraph has been modified, as suggested by the first individual, to reflect this practice.

As to the suggestion that § 2.113 be further revised to provide that a copy of the petition for cancellation will be sent both to the registrant and to the registrant's last attorney of record, it is the practice of the Board, in those cases where the respondent's copy of the petition for cancellation is returned to the Board as undeliverable, to send a written communication to the petitioner asking the petitioner for information concerning respondent's current address. If the petitioner files a response indicating that the respondent is no longer in business, notice of the proceeding is published in the *Official Gazette*. If the petitioner fails to file a reponse, or files a response indicating that it is unable to furnish respondent's current address, the Board attempts to locate the respondent. Typically, the Board will contact a telephone information operator in the city of respondent's last-known address; the respondent's last attorney of record, if there is an attorney and such attorney's last appearance of record on the respondent's behalf was within the last five years or so; and/or the Secretary of State of the respondent's state of incorporation. If the Board is unable to locate the respondent after reasonable investigation, notice of the proceeding is published in the *Official Gazette*.

The practice suggested by the firm would be burdensome to the Board since the Board would have to make an extra copy of the petition to cancel (and any exhibits attached thereto) to send to the attorney; this would have to be done for most cancellation proceedings, since most respondents have been represented by counsel at one time or another; and in those cases where the copy of the petition for cancellation mailed to the respondent's attorney was returned to the Board as undeliverable, the returns would be additional receipts to be processed by the Board.

Under the Board's present practice, on the other hand, the Board acts only in those cancellation proceedings in which the respondent's copy of the petition for cancellation is returned as undeliverable (a minority of cases).

Preliminary steps have been taken to begin giving notice, by publication in the *Official Gazette*, of the filing of every petition for cancellation soon after its filing date, thus eliminating the need for a later service by publication in cases where the Board's efforts to serve notice of the proceeding by mail are unsuccessful.

Accordingly, the modification suggested by the firm has not been adopted.

Comment: Section 2.119(b), which lists methods for service of papers by one party upon another in an inter partes proceeding before the Board, was proposed to be amended to specifically provide for the service of papers by two additional methods, namely, transmission by the "Express Mail" service of the United States Postal Service and transmission by overnight courier. One individual applauded the proposal but commented that on one occasion, a problem arose when an overnight courier delivered a paper directly to the PTO at its physical location in Virginia. The individual suggested that if the proposed amendment is adopted, "the overnight courier should be provided a physical address rather than Box 5 at Washington DC 20231."

Response: Section 2.119(b) pertains to the service of papers by one party upon another, not to the filing of papers with the PTO.

Comment: Section 2.119(c), which presently provides, in part, that whenever a party is required to take some action within a prescribed period after the service of a paper upon that party by another party and the paper is served by mail, 5 days shall be added to the prescribed period, was proposed to be amended to apply also to service by "Express Mail" or by ovenright courier. One individual commented that when service is made by "Express Mail" or overnight courier, the addition of 5 days to any prescribed time period for taking action seems unjustified. This individual suggested that the paragraph be modified to provide for the addition of only one day to the prescribed time for taking action when service is made by "Express Mail" or by overnight courier.

Response: Since papers transmitted by "Express Mail" or by overnight courier are not always delivered in one day, it was determined that the number of added days for service should be the same for service by "Express Mail" or by overnight courier as for service by first-class mail. An attorney who does not want to give an adverse party the advantage of having 5 added days after service by "Express Mail" or by overnight courier can always elect to serve by first-class mail instead. Accordingly, the suggested modification has not been adopted.

Comment: New § 2.119(d) was proposed to be added to require, in essence, that a party to an inter partes proceeding who is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States, appoint a domestic representative on whom may be served notices or process in the proceeding. One firm commented that the proposed paragraph might be redundant because any foreign applicant is required (by § 2.24) to designate a domestic representative in the application.

Response: In the notice of proposed rulemaking, the term "application" was inadvertently used instead of the correct term "proceeding" in the second sentence of the paragraph. Although § 2.24 requires that an applicant not domiciled in the United States appoint a domestic representative, there is no rule which makes any similar requirement in the case of a foreign opposer, petitioner, or respondent involved in an inter partes proceeding before the Board. The proposal to add new § 2.119 was intended to remedy that oversight and thus to facilitate the service of papers on foreign opposers, petitioners and respondents not represented by domestic counsel. Inasmuch as there is, in fact, a need for the proposed requirement, proposed § 2.119(d) is adopted herein as a final rule, and the second sentence has been corrected by substituting the term "proceeding" for the term "application."

Comment: Section 2.120(a), which contains certain general provisions relating to discovery in inter partes proceedings before the Board, was proposed to be amended to include a new sentence specifying that the opening of discovery is governed by the Federal Rules of Civil Procedure. One firm commented, in essence, that the proposed amendment "does not clarify the situation of when discovery opens;" that the opening of discovery as set forth in the Federal Rules of Civil Procedure does not work in opposition and cancellation proceedings because of the delay (of one to two months) between the filing of the complaint, i.e., the notice of opposition or petition for cancellation, and service of a copy of the complaint upon the defendant by the Board; that this delay gives the defendant, which may start to take discovery immediately after the complaint is filed, an advantage over the plaintiff, which cannot take discovery until a copy of the complaint has been served by the Board upon the defendant, and is not entitled to receive responses to its interrogatories, requests for production, and requests for admission until 45 days after such service by the Board; and that the "preferred situation would be for the Board to set forth a specific time before which discovery requests cannot be served," as, for example, to provide that discovery opens on the date that the Board notifies the defendant of the filing of the proceeding.

Response: It is apparent that the thrust of the firm's comments relating to this proposed amendment is not that the proposed new provision is unclear but rather that the firm would prefer a different practice with respect to the opening of discovery in proceedings before the Board. The proposed amendment codifies a long-standing practice which, in the experience of the Board, has worked smoothly. Although some defendants in Board opposition and cancellation proceedings learn about the existence of the proceeding, and serve discovery requests, before the Board serves them with a notice of the filing of the proceeding and a copy of the complaint, most do not. Nor does the plaintiff, who, after all, is the party which initiated the proceeding, and has had time to plan and prepare therefor, suffer any real prejudice (as opposed to a possible perceived tactical disadvantage) in those cases where the defendant does initiate discovery before the plaintiff can do so. Accordingly, the modification suggested by the firm has not been adopted.

Comment: Section 2.120(d) was proposed to be amended to include a new paragraph, designated "(1)," limiting the number of interrogatories which a party may serve upon another party to twenty-five, not counting subparts (required to be relevant, and reasonable in number), with additional interrogatories being allowed by the Board, in its discretion, only upon motion to the Board showing extraordinary circumstances, or upon stipulation of the parties.

One individual expressed his belief that the proposed "extraordinary circumstances" test is too harsh and suggested instead that the test be "substantial need in the preparation of the moving party's case."

A second individual expressed his belief that the "reasonable number of relevant subparts" provision is so subjective that it would lead to an increase in discovery disputes and motions. This individual suggested that the interrogatory limit be set at fifty rather than twenty-five, and that the "reasonable number of relevant subparts" provision be replaced with the sentence, "In computing the total number of interrogatories, each subdivision of separate questions shall be counted as an interrogatory."

A third individual commented that limiting interrogatories to twenty-five with a reasonable number of subparts would cause uncertainty over whether interrogatories, although numbered twenty-five or less, actually contain more than twenty-five separate questions, leading litigants to make their own count of the questions, answer twenty-five, and not answer fully the remainder on the ground that supernumerary questions are not authorized by the rules. To remedy this problem, the individual suggested that if the proposed rule is adopted, it might be advisable to add "a provision prescribing that relief for an excessive number of interrogatories is a protective order rather than an incomplete response to the interrogatories." The same individual also commented that in any event, the rule should not be applied to pending cases.

One firm commented that by stating that the twenty-five interrogatories may contain a reasonable number of relevant subparts, the whole purpose of the proposed rule (to discourage harassment by the use of too many interrogatories) has been defeated since the interrogatory limit can easily be avoided by using subparts. The firm suggested that the number of interrogatories be limited instead to a stated number, such as 125, including subparts; and that the rule be clarified to provide for extra interrogatories in cases where more than one mark is involved.

Another firm expressed its belief that the number of interrogatories should not be limited; that the proposed rule would make practice before the Board more expensive and less convenient; that the

particular number limit proposed is even below the number allowed by some federal courts; that the "extraordinary circumstances" test is not practical because of the lack of specificity as to what constitutes "extraordinary" circumstances, and because of the delay involved in having to file a motion to obtain a ruling on the question; and that a better practice would be a provision which allows a party to move for a limitation on the number of interrogatories if a problem arises. This firm submitted copies of a number of different federal district court local rules pertaining to interrogatories.

Finally, an organization expressed its concern that the proposed limitation on the number of interrogatories could: (1) Lead to an increase in motions to the Board in order to permit parties to serve valid follow-up interrogatories regarding prior responses and documents produced; or (2) result in increased reliance on depositions, generally a more costly and intrusive form of discovery. The organization recommended that the PTO monitor the impact of this amendment carefully and further amend the rule to make it less restrictive, if the circumstances warrant.

Response: Upon careful consideration of the comments, and supporting arguments, submitted with respect to proposed § 2.120(d)(1), it is concluded that the "reasonable number of relevant subparts" provision is so subjective that it would lead to a large increase in discovery disputes and motions, and hence be burdensome both to the Board and to litigants and their attorneys. Moreover, if unlimited subparts were allowed, the purpose of the proposed paragraph (to discourage parties from using written interrogatories for purposes of harassment) would, as noted by the firm, be defeated, since the interrogatory number limit could easily be avoided through the use of many subparts; whereas, if no subparts were allowed (or if each subpart were counted as an interrogatory), the limit in the proposed rule might lead to increased use of discovery depositions, a more costly form of discovery. The proposed limitation was not intended to deprive parties of interrogatories for which they have a legitimate need or to make it more expensive for parties to obtain discovery. Rather, it was intended to protect litigants from being harrassed by excessive numbers of interrogatories. Accordingly, the proposed paragraph has been modified to limit the total number of interrogatories which a party may serve upon another party in a proceeding to seventy-five, counting subparts, with additional interrogatories being allowed by the Board, in its discretion, upon motion to the Board showing good cause, or upon stipulation of the parties. The words "total" and "in a proceeding," which were not included in the proposed rule, have been included in the final rule to make it clear that the number limitation refers to the total number of interrogatories served during an entire proceeding, not just per set of interrogatories.

The suggestion that the final rule include, in lieu of a specific limitation on the number of interrogatories which may be served, a provision allowing a party to move for a limitation on the number of interrogatories if a problem arises, has not been adopted. It is believed that such a provision would result in a large number of motions from parties which would not be willing to answer interrogatories without first obtaining a ruling from the Board as to whether the interrogatories were reasonable in number.

The amended paragraph has not been modified to provide for extra interrogatories in cases where more than one mark is pleaded by the plaintiff, or where the proceeding involves more than one mark registered or sought to be registered by the defendant, because in such cases the adverse party may simply request that each interrogatory be answered with respect to each mark, and the interrogatories will be counted the same as if they pertained to only one mark. In the same vein, the final rule does not provide for extra interrogatories in cases where there is a counterclaim for cancellation of a plaintiff's pleaded registration or registrations, because the discovery information needed by a defendant in a proceeding before the Board for purposes of defending itself against the plaintiff's claim usually encompasses any information which may be needed for a counterclaim. Thus, it is believed that in most cases, the mere fact that there may be a multiple mark situation, or a counterclaim, will not result in a need for interrogatories exceeding in total number the limitation specified in the final rule. However, in those cases where there is, because of a multiple mark or counterclaim situation, a legitimate need for interrogatories exceeding the specified limit in number, the party who wishes to serve additional interrogatories will be able to make the requisite showing of good cause in support of a motion for leave to do so.

For purposes of clarity, the final paragraph includes (as did several of the Federal district court local rules submitted by one firm) a requirement that a motion for leave to serve additional interrogatories be accompanied by a copy of the interrogatories which have already been served by the moving party, if any, and by a copy of the interrogatories proposed to be served. Obviously, the Board cannot make an informed ruling on such a motion without these copies.

The final paragraph also includes, as suggested by one individual, a provision indicating that relief for an excessive number of interrogatories is a protective order rather than an incomplete response to the interrogatories. Specifically, the final paragraph states that if a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in the paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and objections to the interrogatories, file a motion for a protective order, accompanied by a copy of the interrogatories which together are said to exceed the limitation.

The suggestion that this rule not be applied to pending cases has not been adopted. By a final rule notice published in the **Federal Register** on April 18, 1972 at 37 FR 7605, the rules of practice in trademark cases were amended to substantially adopt the liberal discovery practice provided under the Federal Rules of Civil Procedure. Those rule amendments were made applicable to all proceedings filed on or after July 1, 1972. The result was that for a number of years, some inter partes cases before the Board were governed by one set of rules, providing a liberal discovery practice, and others were governed by another set of rules under which discovery was more restricted. This situation caused confusion among litigants and their attorneys and was burdensome to the Board. Further, it is desirable that other rule amendments herein be made effective in all cases as soon as possible, and it would be extremely confusing for all concerned if some of the rule amendments were made applicable to all cases pending before the Board on or after the effective date of the rule amendments, and others were made applicable only to proceedings which commenced on or after that date. For these reasons, it is believed that the better alternative is to make the new interrogatory rule applicable to all inter partes proceedings pending before the Board on or after the effective date of the rule amendments. However, the new rule will apply only to interrogatories served on or after that date (although interrogatories served prior to that date will, of course, be counted in determining whether interrogatories served after the effective date violate the limitation specified in the new rule; that is, a party who has served 100 interrogatories prior to the effective date of the new rule is not given license by the new rule to serve another 75 after the effective date).

Finally, as suggested by the organization, the PTO will monitor the impact of this rule amendment carefully and further amend the rule to make it less restrictive, if circumstances warrant.

Comment: One individual and one firm commented, with respect to proposed §§ 2.120(g)(2) and 2.120(j)(3)(i), that there appeared to be significant errors in the text as published in the **Federal Register** and in the *Patent, Trademark & Copyright Journal.*

Response: The noted errors were made in printing, when several pages of original text were transposed. On April 4, 1989, a correction notice pertaining to those errors, among others, was printed in the Federal Register at 54 FR 13605. The errors did not appear in the text as published in the *Official Gazette.*

Comment: Section 2.123(e)(2), which pertains to the examination of witnesses during oral deposition, was proposed to be amended to include a new sentence stating that exhibits which are marked and identified at a deposition will be deemed to have been offered into evidence, without any formal offer thereof, unless the intention of the parties is clearly to the contrary. The purpose of the proposed amendment was to revise existing practice, which requires, on the part of the party marking the exhibits, either a formal offer or a clear indication in the transcript of an intent to introduce the exhibits. One individual commented that the clause "unless the intention of the parties is clearly to the contrary" is somewhat inaccurate and ambiguous. The individual suggested that the proposed clause be modified to read, "unless the intention of the party marking the exhibit is clearly expressed to the contrary."

Response: The paragraph has been modified as suggested.

Comment: One individual commented that he applauded the proposal to amend § 2.123(g)(1), which relates to the form of deposition transcripts, to permit the use of paper with numbered lines as an alternative to consecutively numbering the questions propounded to a witness, but suggested that the paragraph be amended further to delete another requirement, namely, the requirement that the name of the witness be plainly and conspicuously written at the top of each page. The individual questioned whether "it is necessary to still require that the name of the witness be written at the top of each page provided that the testimony of each witness is bound into one or more volumes separately from the testimony of any other witness and clearly marked on the cover and at the first and last to indicate the name of that particular witness." The individual noted that many of the reporters available for use in this type of proceeding are retired former court reporters who have established independent businesses, and "who do not have elaborate word processing which could perform that task automatically during printing."

Response: The appearance of the name of the witness at the top of each page of a deposition transcript is quite helpful to the Board. For example, sometimes litigants submit, in connection with a motion, copies of several selected pages from one or more deposition transcripts. In such cases, the name at the top of the page is sometimes the only means the Board has of determining whose testimony is on each page. Moreover, often, while drafting an opinion, it is necessary for a Board Member to refer repeatedly to a number of open deposition transcripts, and it would be inconvenient for the Board Member to have to keep turning to the front of the transcripts to verify the identity of the witness in each one. Accordingly, the suggestion has not been adopted.

Comment: With respect to § 2.127(e)(1), which was proposed to be added to provide that a motion for summary judgment should be filed prior to the commencement of the first testimony period, and that the Board, in its discretion, may deny as untimely any motion for summary judgment filed thereafter, the organization commented that the language does not take into account the possibility that the trial periods may be reset; and recommended that the problem be corrected by substituting the phrase "opening trial date" for the phrase "first testimony period."

Response: The phrase "opening trial date" is somewhat ambiguous since "trial date" might be construed by some litigants as referring to the date on which testimony is actually scheduled to be taken, rather than the date of the commencement of the testimony period. Moreover, it is not believed that the substitution of the phrase "opening trial date" for the phrase "first testimony period" would solve the problem perceived by the organization. It appears that the organization may have construed the phrase "first testimony period" as meaning the opening testimony period as first set, when in fact the phrase was intended to signify the opening testimony period of the plaintiff, as distinguished from other testimony periods, such as the testimony period of the defendant (particularly where the defendant is also the plaintiff in a counterclaim, in which case the testimony period of the defendant as defendant in the main proceeding and as plaintiff in the counterclaim could be argued to be the "opening testimony period" for purposes of the counterclaim), the rebuttal testimony period of the plaintiff, etc. In any event, in order to further clarify the paragraph, the phrase "as originally set or as reset" has been included in the amended paragraph immediately after the phrase "first testimony period." This should not be construed as meaning, however, that when the Board denies a motion for summary judgment as untimely filed, but resets the plaintiff's main (i.e., "first") testimony period, the motion may be refiled before the commencement of the period as reset, and considered timely. *See La Maur, Inc.* v. *Bagwells Enterprises, Inc., supra.*

Comment: Section 2.127(e)(2) was proposed to be added to provide that for purposes of summary judgment only a party may rely upon its own responses to discovery requests. The organization stated that it opposes this amendment "because it could lead to discovery abuses and will create conflicting treatment of a party's own answers to discovery, depending upon whether the case is resolved on summary judgment or after a trial on the merits." The organization also expressed its belief that although the proposed paragraph follows practice in the Federal district courts, the limited jurisdiction and sanctioning power of the Board "would tend to frustrate the self-policing effect of the rule as it operates in a federal court context." One individual commented that the proposed paragraph may mislead some lawyers into thinking that the filing, without more, of a party's own interrogatory answers, etc., in connection with a motion for summary judgment will make them probative; that rule 56(e) of the Federal Rules of Civil Procedure specifies certain requirements for affidavits submitted in connection with a summary judgment motion; that these requirements (namely, that the affidavits be made on personal knowledge, set forth such facts as would be admissible in evidence, and show

affirmatively that affiant is competent to testify to the matters stated therein) have been applied by the courts to answers to interrogatories filed in support of or in opposition to a summary judgment motion; and that the proposed paragraph should be modified to refer to these requirements, as, for example, by the addition of the phrase "and subject to the requirements of rule 56(e) of the Federal Rules of Civil Procedure" after the introductory phrase "For purposes of summary judgment only."

Response: It is noted that the specific discovery abuses feared were not enumerated. To the extent that the proposed practice would create conflicting treatment of a party's own responses to discovery, depending upon whether a case is resolved upon summary judgment or after trial on the merits, it is not believed that this is a matter of great concern. Indeed, there is precedent for such a conflict in the treatment of evidence. Under present practice, there is conflicting treatment of affidavit "testimony," which is not admissible at trial except by agreement of the parties (see § 2.123(b)), but is admissible for purposes of a motion for summary judgment (subject to the requirements of rule 56(e) of the Federal Rules of Civil Procedure).

Essentially, the matters raised by the organization and by the individual are factors to be considered by the Board in determining the probative value of a party's own discovery responses submitted for purposes of summary judgment. However, the proposed paragraph relates to the admissibility of this type of evidence, not to its probative value. The fact that a piece of evidence is admissible does not mean that it will necessarily be accorded great, or even any, probative value.

Over the years, many attorneys have argued, in briefs filed in connection with summary judgment motions, that a party's own discovery responses should be admissible for purposes of summary judgment. Under the circumstances, the paragraph is being adopted as proposed, without any modifications. However, the impact of the new rule will be monitored carefully, and the paragraph will be modified by future rulemaking, if necessary.

Comment: Section 2.128(b), which governs the form of briefs at final hearing, presently provides, in part, that without leave of the Board, no brief shall contain more than fifty pages of argument and, in the case of a reply brief, the entire brief shall not exceed twenty-five pages. The paragraph was proposed to be amended to provide that without prior leave of the Board, "a main brief on the case shall not exceed fifty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of facts, argument, and summary, and a reply brief shall not exceed twenty-five pages in its entirety." The two firms commented that the table of contents and index of cases should not be included in the page limitations for main briefs. They stated that these two elements do not actually constitute the brief, but clearly facilitate the use and reading of the brief, and hence are helpful to both the Board and the parties; that incorporation of these parts into the page limitation will encourage minimal use of these features; and that in most federal courts which have a limitation on the number of pages, these two elements are excluded from the limitation.

Response: The provision of present § 2.128(b), that no (main) brief shall contain more than fifty pages of argument, has always been deemed by the Board to exclude the table of contents and index of cases (as well as any attached exhibits or appendices, which are not considered to be part of the brief itself), but to include (the term "argument" being construed broadly) the description of the record, statement of the issues, recitation of facts, arguments based on the law and the facts, and summary. Because of confusion on the part of litigants and their attorneys as to which parts of the brief are included within the length limitation of the present provision, and for purposes of clarity, the paragraph was proposed to be amended to include all parts of the brief itself (again, any exhibits or appendices to the brief are not considered to be part of the brief). Since the proposed amendment included in the length limitation the two elements which had not been included before, namely, the table of contents and index of pages, the brief length limitation was proposed to be increased from fifty pages to fifty-five pages. It is believed that the allowance of an extra five pages is more than sufficient to cover the table of contents and index of cases in main briefs before the Board, and that a page limitation which is all-inclusive is simpler and less confusing than one which is not all-inclusive. Therefore, the suggested modification has not been adopted.

Comment: Section 2.142(b)(2) was proposed to be added to govern the form of briefs on the case in ex parte appeals before the Board. The proposed paragraph provides, in part, that without prior leave of the Board, a brief shall not exceed twenty-five pages in length in its entirety. The organization commented that the proposed provision would limit appeal briefs "to a maximum of 25 pages, including all appendices and exhibits;" that although the proposed rule allows a party to seek prior leave to file a more extensive brief, it is likely that the need to seek such leave will arise too frequently, with the result being a counter-productive rule; and that if a page limit is required, it should either be increased or clarified to exclude exhibits and appendices.

Response: Exhibits and appendices to a brief are not considered by the Board to be part of the brief, and hence are not included within the length limitation. However, the inclusion in the paragraph of a reference to exhibits and appendices to an appeal brief may mislead some litigants and/or their attorneys into believing that new evidence may be submitted with an appeal brief by way of an exhibit or appendix thereto, when, in fact, an applicant may submit new evidence after appeal only with the consent of the Examining Attorney or in accordance with the provisions of § 2.142(d). Accordingly, the suggested modification has not been adopted.

Comment: Section 2.142(f)(6) was proposed to be added to provide, in part, that "if, during an appeal from a refusal of registration, it appears to the examiner that an issue not involved in the appeal may render the mark of the appellant unregistrable, the examiner may request the Board to suspend the appeal and to remand the application to the examiner for further examination." The organization commented that the paragraph should be modified to specify that the Examining Attorney must file a written request and show good cause before an application will be remanded for examination; that the situations in which remand is allowed by the Board should be closely scrutinized; that after an applicant has submitted its appeal brief, for example, remand should be allowed, if at all, only in the most exceptional circumstances; and that when a requested remand is for the purpose of curing technical problems previously overlooked, the consent of the applicant shall be sought.

Response: The proposed paragraph, which codifies present practice, has been modified to specify that the Examining Attorney's request for remand must be written (as is, in fact, the practice). The remainder of the organization's suggestions, if adopted, would make it much more difficult for the Examining Attorney to obtain a remand of the application for purposes of further examination with respect to an issue not involved in the appeal.

However, it is in the interest of the public, the applicant, and the PTO to avoid the issuance of an invalid registration. Accordingly, the remainder of the organization's suggestions have not been adopted.

Comment: Section 2.145(c)(4) was proposed to be added to provide that a party to a proceeding before the Board who commences a civil action, pursuant to section 21(b) of the Act, seeking review of a decision of the Board must file written notice thereof in the PTO, addressed to the Board, within one month after the expiration of the time for appeal or civil action, in order to avoid premature termination of the Board proceeding. The organization commented that the proposed paragraph requires further clarification to define what is meant by the term "premature termination;" that depending on the meaning, the result of a "premature termination" may be too harsh, e.g., where a party may have otherwise perfected an appeal of a Board decision with the exception of having timely filed written notice of the proceeding with the Board; and the word "should" should be substituted for the word "must" in the proposed paragraph.

Response: When a decision of the Board has become final, that is, when the time for appeal therefrom has expired and no appeal has been filed, the PTO takes certain further steps, based on the final decision, including those steps necessary to give effect to the decision. This process is referred to as the "termination" of the proceeding. For example, when a decision of the Board dismissing an opposition has become final, the word "Terminated" is stamped on the file of the opposition proceeding, the opposition file is sent to the warehouse where terminated proceeding files are stored, and the registration sought by the applicant is issued. When a decision of the Board granting a petition for cancellation has become final, one of the further steps taken as a consequence thereof is the cancellation of the respondent's subject registration. If an "appeal" by way of civil action is taken from a decision of the Board, and the PTO is not notified, the PTO, believing the Board's decision to be final, will take the further steps which are appropriate based on the decision, i.e., the PTO will "terminate" the proceeding, not knowing that it is doing so prematurely.

The premature termination of a Board proceeding has no effect on the perfection of the "appeal" by way of civil action, and is not in the nature of a sanction, but rather occurs because the PTO has followed its normal procedures to give effect to a decision of the Board. The purpose of the proposed paragraph is simply to warn litigants who have filed a civil action seeking review of a decision of the Board that they need to give timely notice to the PTO of the filing of the civil action so that the PTO will not take steps to give effect to the Board's decision in the mistaken belief that it is final, when in fact it is not.

However, it is possible that in some cases where a written notice of the commencement of a civil action is filed shortly after the time specified in the rule, the PTO will not yet have terminated the proceeding, and therefore the written notice, even though somewhat untimely, will serve to avoid premature termination of the proceeding. For this reason, the paragraph has been modified as suggested by substituting the word "should" for the word "must."

The adoption of the suggestion that the proposed paragraph be clarified to define what is meant by the term "premature termination" would result in a rule which is unduly lengthy. Moreover, a detailed explanation of the meaning of the term has been given in this final rule notice.

Comment: Two individuals and one firm submitted suggestions for changes to rules not involved herein.

Response: The suggested changes cannot be adopted without affording members of the public an opportunity to comment thereon. However, these suggestions will be considered in connection with any future amendments to the rules of practice in trademark cases.

Environmental, Energy, and Other Considerations

The rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). The rule change includes no additional or increased fees. Substantive rights to use valuable trademarks are not adversely affected.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect to the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no federalism implications affecting the relationship between the National Government and the states as outlined in Executive Order 12612.

This rule contains collections of information subject to the Paperwork Reduction Act previously approved by OMB under ICB Number 0651-0009. Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Commissioner of Patents and Trademarks, Washington, DC 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 37 CFR Part 2

Administrative practice and procedures, Courts, Lawyers, Trademarks.

Amendment of Regulations

For the reasons set forth in the preamble and pursuant to the authority contained in section 41 of the Trademark Act of July 5, 1946, as amended, part 2 of title 37 of the Code of Federal Regulations is amended as set forth below.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 6, unless otherwise noted.

1a. Section 2.42 is revised to read as follows:

§ 2.42 Concurrent use.

An application for registration as a lawful concurrent user shall specify and contain all the elements required by the preceding sections. The applicant in addition shall state in the application the area, the goods, and the mode of use for which applicant seeks registration; and also shall state, to the extent of the applicant's knowledge, the concurrent lawful use of the mark by others, setting forth their names and addresses; registrations issued to or applications filed by such others, if any; the areas of such use; the goods on or in connection with which such use is made; the mode of such use; and the periods of such use.

2. Section 2.68 is revised to read as follows:

§ 2.68 Express abandonment (withdrawal) of application.

An application may be expressly abandoned by filing in the Patent and Trademark Office a written statement of abandonment or withdrawal of the application signed by the applicant, or the attorney or other person representing the applicant. Except as provided in § 2.135, the fact that an application has been expressly abandoned shall not, in any proceeding in the Patent and Trademark Office, affect any rights that the applicant may have in the mark which is the subject of the abandoned application.

3. Section 2.91 is amended by revising the section heading to read as follows:

§ 2.91 Declaration of interference.

* * * * *

4. Section 2.92 is revised to read as follows:

§ 2.92 Preliminary to interference.

An interference which has been declared by the Commissioner will not be instituted by the Trademark Trial and Appeal Board until the Examiner of Trademarks has determined that the marks which are to form the subject matter of the controversy are registrable, and all of the marks have been published in the Official Gazette for opposition.

5. Section 2.93 is revised to read as follows:

§ 2.93 Institution of interference.

An interference is instituted by the mailing of a notice of interference to the parties. The notice shall be sent to each applicant, in care of the applicant's attorney or other representative of record, if any, and if one of the parties is a registrant, the notice shall be sent to the registrant or the registrant's assignee of record. The notice shall give the name and address of every adverse party and of the adverse party's attorney or other authorized representative, if any, together with the serial number and date of filing and publication of each of the applications, or the registration number and date of issuance of each of the registrations, involved.

6. Section 2.104 is revised to read as follows:

§ 2.104 Contents of opposition.

(a) The opposition must set forth a short and plain statement showing why the opposer believes it would be damaged by the registration of the opposed mark and state the grounds for opposition. A duplicate copy of the opposition, including exhibits, shall be filed with the opposition.

(b) Oppositions to different applications owned by the same party may be joined in a consolidated opposition when appropriate, but the required fee must be included for each party joined as opposer for each class in which registration is opposed in each application against which the opposition is filed.

7. Section 2.106 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 2.106 Answer.

* * * * *

(b)(1) An answer shall state in short and plain terms the applicant's defenses to each claim asserted and shall admit or deny the averments upon which the opposer relies. If the applicant is without knowledge or information sufficient to form a belief as to the truth of an averment, applicant shall so state and this will have the effect of a denial. Denials may take any of the forms specified in Rule 8(b) of the Federal Rules of Civil Procedure. An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, prior judgment, or any other matter constituting an avoidance or affirmative defense. When pleading special matters, the Federal Rules of Civil Procedure shall be followed. A reply to an affirmative defense need not be filed. When a defense attacks the validity of a registration pleaded in the opposition, paragraph (b)(2) of this section shall govern. A pleaded registration is a registration identified by number and date of issuance in an original notice of opposition or in any amendment thereto made under Rule 15, Federal Rules of Civil Procedure.

* * * * *

(c) The opposition may be withdrawn without prejudice before the answer is filed. After the answer is filed, the opposition may not be withdrawn without prejudice except with the written consent of the applicant or the applicant's attorney or other authorized representative.

8. Section 2.112 is amended by revising paragraph (a) to read as follows:

§ 2.112 Contents of petition for cancellation.

(a) The petition to cancel must set forth a short and plain statement showing why the petitioner believes it is or will be damaged by the registration, state the grounds for cancellation, and indicate, to the best of petitioner's knowledge, the name and address of the current owner of the registration. A duplicate copy of the petition, including exhibits, shall be filed with the petition.

* * * * *

9. Section 2.113 is revised to read as follows:

§ 2.113 Notification of cancellation proceeding.

When a petition for cancellation has been filed in proper form (see §§ 2.111 and 2.112), a notification shall be prepared by the Trademark Trial and Appeal Board, which shall identify the title and number of the proceeding and the registration or registrations involved and shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed. A copy of the notification shall be forwarded to the attorney or other authorized representative of the petitioner, if any, or to the petitioner. The duplicate copy of the petition for cancellation and exhibits shall be forwarded with a copy of the notification to the respondent (see § 2.118), who shall be the party shown by the records of the Patent and Trademark Office to be the current owner of the registration or registrations sought to be cancelled, except that the Board, in its discretion, may join or substitute as respondent a party who makes a showing of a current ownership interest in such registration or registrations. When the party identified by the petitioner, pursuant to § 2.112(a), as the current owner of the registration or registrations is not the record owner thereof, a courtesy copy of the petition for cancellation shall be forwarded with a copy of the notification to the alleged current owner, which may file a motion to be joined or substituted as respondent. If the petition is found to be defective as to form, the party filing the petition shall be so advised and allowed a reasonable time for correcting this informality.

10. Section 2.114 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 2.114 Answer.

* * * * *

(b)(1) An answer shall state in short and plain terms the respondent's defenses to each claim asserted and shall admit or deny the averments upon which the petitioner relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, respondent shall so state and this will have the effect of a denial. Denials may take any of the forms specified in Rule 8(b) of the Federal Rules of Civil Procedure. An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, prior judgment, or any other matter constituting an avoidance or affirmative defense. When pleading special matters, the Federal Rules of Civil Procedure shall be followed. A reply to an affirmative defense need not be filed. When a defense attacks the validity of a registration pleaded in the petition, paragraph (b)(2) of this section shall govern. A pleaded registration is a registration identified by number and date of issuance in an original petition for cancellation or in any amendment thereto made under Rule 15, Federal Rules of Civil Procedure.

* * * * *

(c) The petition for cancellation may be withdrawn without prejudice before the answer is filed. After the answer is filed, the petition may not be withdrawn without prejudice except with the written consent of the registrant or the registrant's attorney or other authorized representative.

11. Section 2.119 is amended by revising the section heading, paragraphs (b) and (c), and adding new paragraphs (d) and (e) to read as follows:

§ 2.119 Service and signing of papers.

* * * * *

(b) Service of papers must be on the attorney or other authorized representative of the party if there be such or on the party if there is no attorney or other authorized representative, and may be made in any of the following ways:

(1) By delivering a copy of the paper to the person served;

(2) By leaving a copy at the usual place of business of the person served, with someone in the person's employment;

(3) When the person served has no usual place of business, by leaving a copy at the person's residence, with a member of the person's family over 14 years of age and of discretion;

(4) Transmission by the "Express Mail Post Office to Addressee" service of the United States Postal Service or by first-class mail, which may also be certified or registered;

(5) Transmission by overnight courier.

Whenever it shall be satisfactorily shown to the Commissioner that none of the above modes of obtaining service or serving the paper is practicable, service may be by notice published in the *Official Gazette*.

(c) When service is made by first-class mail, "Express Mail," or overnight courier, the date of mailing or of delivery to the overnight courier will be considered the date of service. Whenever a party is required to take some action within a prescribed period after the service of a paper upon the party by another party and the paper is served by first-class mail, "Express Mail," or overnight courier, 5 days shall be added to the prescribed period.

(d) If a party to an inter partes proceeding is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States, the party must designate by written document filed in the Patent and Trademark Office the name and address of a person residing in the United States on whom may be served notices or process in the proceeding. In such cases, official communications of the Patent and Trademark Office will be addressed to the domestic representative unless the proceeding is being prosecuted by an attorney at law or other qualified person duly authorized under § 10.14(c) of this subchapter. The mere designation of a domestic representative does not authorize the person designated to prosecute the proceeding unless qualified under § 10.14(a), or qualified under paragraph (b) or (c) of § 10.14 and authorized under § 2.17(b).

(e) Every paper filed in an inter partes proceeding, and every request for an extension of time to file an opposition, must be signed by the party filing it, or by the party's attorney or other authorized representative, but an unsigned paper will not be refused consideration if a signed copy is submitted to the Patent and Trademark Office within the time limit set in the notification of this defect by the Office.

12. Section 2.120 is amended by revising paragraphs (a), (d), (g), (j)(3), (j)(4), (j)(5), and (j)(8) to read as follows:

§ 2.120 Discovery.

(a) *In general.* The provisions of the Federal Rules of Civil Procedure relating to discovery shall apply in opposition, cancellation, interference and concurrent use registration proceedings except as otherwise provided in this section. The Trademark Trial and Appeal Board will specify the closing date for the taking of discovery. The opening of discovery is governed by the Federal Rules of Civil Procedure.

* * * * *

(d) *Interrogatories; request for production.* (1) The total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional interrogatories upon motion therefor showing good cause, or upon stipulation of the parties. A motion for leave to serve additional interrogatories must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories proposed to be served. If a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and objections to the interrogatories, file a motion for a protective order, accompanied by a copy of the interrogatories which together are said to exceed the limitation.

(2) The production of documents and things under the provisions of Rule 34 of the Federal Rules of Civil Procedure will be made at the place where the documents and things are usually kept, or where the parties agree, or where and in the manner which the Trademark Trial and Appeal Board, upon motion, orders.

* * * * *

(g) *Sanctions.* (1) If a party fails to comply with an order of the Trademark Trial and Appeal Board relating to discovery, including a protective order, the Board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure, except that the Board does not have authority to hold any person in contempt or to award any expenses to any party. The Board may impose against a party any of the sanctions provided by this subsection in the event that said party or any attorney, agent, or designated witness of that party fails to comply with a protective order made pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.

(2) If a party, or an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or 31(a) of the Federal Rules of Civil Procedure to testify on behalf of a party, fails to attend the party's or person's discovery deposition, after being served with proper notice, or fails to provide any response to a set of interrogatories or to a set of requests for production of documents and things, and such party or the party's attorney or other authorized representative informs the party seeking discovery that no response will be made thereto, the Board may make any appropriate order, as specified in paragraph (g)(1) of this section.

* * * * *

(j) *Use of discovery deposition, answer to interrogatory, or admission.*

* * * * *

(3)(i) A discovery deposition, an answer to an interrogatory, or an admission to a request for admission, which may be offered in evidence under the provisions of paragraph (j) of this section may be made of record in the case by filing the deposition or any part thereof with any exhibit to the part that is filed, or a copy of the interrogatory and answer thereto with any exhibit made part of the answer, or a copy of the request for admission and any exhibit thereto and the admission (or a statement that the party from which an admission was requested failed to respond thereto), together with a notice of reliance. The notice of reliance and the material submitted thereunder should be filed during the testimony period of the party which files the notice of reliance. An objection made at a discovery deposition by a party answering a question subject to the objection will be considered at final hearing.

(ii) A party which has obtained documents from another party under Rule 34 of the Federal Rules of Civil Procedure may not make the documents of record by notice of reliance alone, except to the extent that they are admissible by notice of reliance under the provisions of § 2.122(e).

(4) If only part of a discovery deposition is submitted and made part of the record by a party, an adverse party may introduce under a notice of reliance any other part of the deposition which should in fairness be considered so as to make not misleading what was offered by the submitting party. A notice of reliance filed by an adverse party must be supported by a written statement explaining why the adverse party needs to rely upon each additional part listed in the adverse party's notice, failing which the Board, in its discretion, may refuse to consider the additional parts.

(5) An answer to an interrogatory, or an admission to a request for admission, may be submitted and made part of the record by only the inquiring party except that, if fewer than all of the answers to interrogatories, or fewer than all of the admissions, are offered in evidence by the inquiring party, the responding party may introduce under a notice of reliance any other answers to interrogatories, or any other admissions, which should in fairness be considered so as to make not misleading what was offered by the inquiring party. The notice of reliance filed by the responding party must be supported by a written statement explaining why the responding party needs to rely upon each of the additional discovery responses listed in the responding party's notice, failing which the Board, in its discretion, may refuse to consider the additional responses.

* * * * *

(8) Requests for discovery, responses thereto, and materials or dispositions obtained through the discovery process should not be filed with the Board except when submitted with a motion relating to discovery, or in support of or response to a motion for summary judgment, or under a notice of reliance during a party's testimony period. Papers or materials filed in violation of this paragraph may be returned by the Board.

13. Section 2.121 is amended by revising paragraph (a)(1) to read as follows:

§ 2.121 Assignment of times for taking testimony.

(a)(1) The Trademark Trial and Appeal Board will issue a trial order assigning to each party the time for taking testimony. No testimony shall be taken except during the times assigned, unless by stipulation of the parties approved by the Board, or, upon motion, by order of the Board. Testimony periods may be rescheduled by stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board. The resetting of the closing date for discovery will result in the rescheduling of the testimony periods without action by any party. The resetting of a party's time to respond to an outstanding request for discovery will not result in the automatic rescheduling of the discovery and/or testimony periods; such dates will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board.

* * * * *

14. Section 2.122 is amended by revising paragraph (e) to read as follows:

§ 2.122 Matters in evidence.

* * * * *

(e) *Printed publications and official records.* Printed publications, such as books and periodicals, available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant under an issue in a proceeding, and official records, if the publication or official record is competent evidence and relevant to an issue, may be introduced in evidence by filing a notice or reliance on the material being offered. The notice shall specify the printed publication (including information sufficient to identify the source and the date of the publication) or the official record and the pages to be read; indicate generally the relevance of the material being offered; and be accompanied by the official record or a copy thereof whose authenticity is established under the Federal Rules of Evidence, or by the printed publication or a copy of the relevant portion thereof. A copy of an official record of the Patent and Trademark Office need not be certified to be offered in evidence. The notice of reliance shall be filed during the testimony period of the party that files the notice.

* * * * *

15. Section 2.123 is amended by revising paragraphs (c), (e)(2), and (g)(1) to read as follows:

§ 2.123 Trial testimony in inter partes cases.

* * * * *

(c) *Notice of examination of witnesses.* Before the depositions of witnesses shall be taken by a party, due notice in writing shall be given to the opposing party or parties, as provided in § 2.119(b), of the time when and place where the depositions will be taken; of the cause or matter in which they are to be used, and the name and address of each witness to be examined; if the name of a witness is not known, a general description sufficient to identify the witness or the particular class or group to which the witness belongs, together with a satisfactory explanation, may be given instead. Depositions may be noticed for any reasonable time and place in the United States. A deposition

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may not be noticed for a place in a foreign country except as provided in paragraph (a)(2) of this section. No party shall take depositions in more than one place at the same time, nor so nearly at the same time that reasonable opportunity for travel from one place of examination to the other is not available.

* * * * *

(c) *Examination of witnesses.* * * *

(2) The deposition shall be taken in answer to questions, with the questions and answers recorded in their regular order by the officer, or by some other person (who shall be subject to the provisions of Rule 28 of the Federal Rules of Civil Procedure) in the presence of the officer except when the officer's presence is waived on the record by agreement of the parties. The testimony shall be taken stenographically and transcribed, unless the parties present agree otherwise. In the absence of all opposing parties and their attorneys or other authorized representatives, depositions may be taken in longhand, typewriting, or stenographically. Exhibits which are marked and identified at the deposition will be deemed to have been offered into evidence, without any formal offer thereof, unless the intention of the party marking the exhibits is clearly expressed to the contrary.

* * * * *

(g) *Form of deposition.* (1) The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicuously written at the top of each page. The deposition may be written on legal-size or letter-size paper, with a wide margin on the left-hand side of the page, and with the writing on one side only of the sheet. The questions propounded to each witness must be consecutively numbered unless paper with numbered lines is used, and each question must be followed by its answer.

* * * * *

16. Section 2.125 is amended by revising paragraph (a) to read as follows:

§ 2.125 Filing and service of testimony.

(a) One copy of the transcript of testimony taken in accordance with § 2.123, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be served on each adverse party within thirty days after completion of the taking of that testimony. If the transcript with exhibits is not served on each adverse party within thirty days or within an extension of time for the purpose, any adverse party which was not served may have remedy by way of a motion to the Trademark Trial and Appeal Board to reset such adverse party's testimony and/or briefing periods, as may be appropriate. If the deposing party fails to serve a copy of the transcript with exhibits on an adverse party after having been ordered to do so by the Board, the Board, in its discretion, may strike the deposition, or enter judgment as by default against the deposing party, or take any such other action as may be deemed appropriate.

* * * * *

17. Section 2.127 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 2.127 Motions.

* * * * *

(e)(1) A motion for summary judgment should be filed prior to the commencement of the first testimony period, as originally set or as reset, and the Trademark Trial and Appeal Board, in its discretion, may deny as untimely any motion for summary judgment filed thereafter.

(2) For purposes of summary judgment only, a discovery deposition, or an answer to an interrogatory, or a document or thing produced in response to a request for production, or an admission to a request for admission, will be considered by the Trademark Trial and Appeal Board if any party files, with the party's brief on the summary judgment motion, the deposition or any part thereof with any exhibit to the part that is filed, or a copy of the interrogatory and answer thereto with any exhibit made part of the answer, or a copy of the request for production and the documents or things produced in response thereto, or a copy of the request for admission and any exhibit thereto and the admission (or a statement that the party from which an admission was requested failed to respond thereto).

(f) The Board does not have authority to hold any person in contempt, or to award attorneys' fees or other expenses to any party.

18. Section 2.128 is amended by revising paragraph (b) to read as follows:

§ 2.128 Briefs at final hearing.

* * * * *

(b) Briefs shall be submitted in typewritten or printed form, double spaced, in at least pica or eleven-point type, on letter-size paper. Each brief shall contain an alphabetical index of cases cited therein. Without prior leave of the Trademark Trial and Appeal Board, a main brief on the case shall not exceed fifty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of facts, argument, and summary; and a reply brief shall not exceed twenty-five pages in its entirety. Three legible copies, on good quality paper, of each brief shall be filed.

19. Section 2.129 is amended by revising paragraph (a) to read as follows:

§ 2.129 Oral argument; reconsideration.

(a) If a party desires to have an oral argument at final hearing, the party shall request such argument by a separate notice filed not later than ten days after the due date for the filing of the last reply brief in the proceeding. Oral arguments will be heard by at least three Members of the Trademark Trial and Appeal Board at the time specified in the notice of hearing. If any party appears at the specified time, that party will be heard. If the Board is prevented from hearing the case at the specified time, a new hearing date will be set. Unless otherwise permitted, oral arguments in an inter partes case will be limited to thirty minutes for each party. A party in the position of plaintiff may reserve part of the time allowed for oral argument to present a rebuttal argument.

* * * * *

20. Section 2.134 is amended by revising paragraph (a) to read as follows:

§ 2.134 Surrender or voluntary cancellation of registration.

(a) After the commencement of a cancellation proceeding, if the respondent applies for cancellation of the involved registration under section 7(d) of the Act of 1946 without the written consent of every adverse party to the proceeding, judgment shall be entered against the respondent. The written consent of an adverse party may be signed by the adverse party or by the adverse party's attorney or other authorized representative.

* * * * *

21. Section 2.135 is revised to read as follows:

§ 2.135 Abandonment of application or mark.

After the commencement of an opposition, concurrent use, or interference proceeding, if the applicant files a written abandonment of the application or of the mark without the written consent of every adverse party to the proceeding, judgment shall be entered against the applicant. The written consent of an adverse party may

be signed by the adverse party or by the adverse party's attorney or other authorized representative.

22. Section 2.142 is amended by adding paragraph (f)(6); and revising paragraphs (b) and (e)(1), to read as follows:

§ 2.142 Time and manner of ex parte appeals.

* * * * *

(b)(1) The brief of appellant shall be filed within sixty days from the date of appeal. If the brief is not filed within the time allowed, the appeal may be dismissed. The examiner shall, within sixty days after the brief of appellant is sent to the examiner, file with the Trademark Trial and Appeal Board a written brief answering the brief of appellant and shall mail a copy of the brief to the appellant. The appellant may file a reply brief within twenty days from the date of mailing of the brief of the examiner.

(2) Briefs shall be submitted in typewritten or printed form, double spaced, in at least pica or eleven-point type, on letter-size paper. Without prior leave of the Trademark Trial and Appeal Board, a brief shall not exceed twenty-five pages in length in its entirety.

* * * * *

(e)(1) If the appellant desires an oral hearing, a request therefor should be made by a separate notice filed not later than ten days after the due date for a reply brief. Oral argument will be heard by at least three Members of the Trademark Trial and Appeal Board at the time specified in the notice of hearing, which may be reset if the Board is prevented from hearing the argument at the specified time or, so far as is convenient and proper, to meet the wish of the appellant or his attorney or other authorized representative.

* * * * *

(f) * * *

(6) If, during an appeal from a refusal of registration, it appears to the examiner that an issue not involved in the appeal may render the mark of the appellant unregistrable, the examiner may, by written request, ask the Board to suspend the appeal and to remand the application to the examiner for further examination. If the request is granted, the examiner and appellant shall proceed as provided by §§ 2.61, 2.62, 2.63 and 2.64. After the additional ground for refusal of registration has been withdrawn or made final, the examiner shall return the application to the Board, which shall resume proceedings in the appeal and take further appropriate action with respect thereto.

* * * * *

23. Section 2.145 is amended by adding new paragraph (c)(4) to read as follows:

§ 2.145 Appeal to court and civil action.

* * * * *

(c) * * *

(4) A party to a proceeding before the Trademark Trial and Appeal Board which commences a civil action, pursuant to section 21(b) of the Act, seeking review of a decision of the Board should file written notice thereof in the Patent and Trademark Office, addressed to the Board, within one month after the expiration of the time for appeal or civil action, in order to avoid premature termination of the Board proceeding.

* * * * *

24. Section 2.186 is revised to read as follows:

§ 2.186 Action may be taken by assignee of record.

Any action with respect to an assigned application or registration which may or must be taken by an applicant or registrant may be taken by the assignee provided that the assignment has been recorded or that proof of the assignment has been submitted.

Dated: July 6, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-19622 Filed 8-21-89; 8:45 am]

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federal register

Tuesday
August 22, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

High Density Traffic Airports; Slot Allocation and Transfer Methods; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 25758; Amdt. No. 93-56]

High Density Traffic Airports Slot Allocation and Transfer Methods

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This action makes several technical amendments to the regulations pertaining to the allocation and transfer of air carrier and commuter operator slots (i.e., allocated instrument flight rules (IFR) takeoff and landing reservations) at Kennedy International Airport, LaGuardia Airport, O'Hare International Airport, and Washington National Airport. First, the rule adopted provides that slots generally will not be withdrawn from carriers holding eight or fewer slots if the holding carrier itself operates the slots. The addition of an operating requirement to the existing rule prevents small incumbent carriers from using their protected status to protect slots actually used by larger incumbent carriers. The rule adopted also changes the maximum passenger seating capacity authorized for operations in "schedule commuter" slots from "less than 56" seats to "less than 75" seats in order to allow more economical and advances aircraft to be used in providing service to small communities. Finally, this action changes the definition of "summer season" and "winter season" to conform to the current legal definition of Daylight Savings Time and Local Standard Time.

EFFECTIVE DATE: September 21, 1989.

FOR FURTHER INFORMATON CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-3491

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-8058. Communications must identify the amendment number of the document.

Background

The High Density Traffic Airports Rule (14 CFR part 93, subpart K) limits the number of operations during certain hours or half hours at four airports: Kennedy International, LaGuardia, O'Hare International, and Washington, National. Comprehensive rules for the allocation and transfer of High Density Airport slots were adopted in December 1985 (14 CFR part 93, subpart S). A "slot" is defined as the authority to conduct one allocated IFR landing or takeoff operation during a specific hour or 30-minute period at one of the High Density Airports.

Notice of Proposed Rulemaking 88-18

On December 16, 1988, the Department of Transportation issued Notice of Proposed Rulemaking 88-18 (53 FR 51826, December 22, 1988; corrected 54 FR 831 and 54 FR 3079). In that notice, the Department denied the petition of America West Airlines to withdraw slots from incumbent carriers at National and LaGuardia Airports and reallocate those slots to new entrants and smaller incumbent carrriers.

Second, the Department proposed for discussion six issues relating to the effect of the slot restrictions on competition and market entry, as required by section 149 of Pub. L. 100-457.

Finally, the Notice proposed two specific amendments to the current slot rules. The first proposal was that slots will not be withdrawn from a carrier with eight or fewer slots, except for failure to use the slots, if the carrier itself uses the slots held. This proposal was intended to prevent the current practice by which large carriers transfer vulnerable slots (i.e., slots with a low withdrawal priority number) to carriers holding fewer than eight slots, and lease the slots back for operation. The second amendment proposed in the Notice was to increase the slot-use requirements for carriers holding a substantial number of slots in certain hours or half-hours to further reduce the retention of unused slots.

DOT has under consideration additional or alternate measures for slot allocation to new entrant and limited incumbent carriers and alternate requirements for slot use. It is anticipated that many of the issues raised in Notice 88-18 could require further rulemaking at the proposal stage and, therefore, are not addressed in this final rule.

Discussion of Comments

Twenty-six comments were received in response to Notice 88-18, including supplemental comments filed by Air Wisconsin, the Regional Airline Association, and the City of Chicago Department of Aviation.

Separate Air Carrier and Commuter Slot Categories

Section 93.123(c) of the Federal Aviation Regulations (14 CFR part 93, subpart K) establishes the maximum passenger seating capacity, for the purposes of § 93.123(a), as 56 seats or more for "air carriers," and less than 56 seats for "scheduled commuters."

Notice 88-18. Of those commenters addressing the underlying issue of the distinction between commuter and air carrier slots, Pan Am, Pan Am Express, the Regional Airline Association, and several other carriers stated that the practice of carrier slots being operated by commuters is necessary to maintain scheduling flexibility. American, Pan Am, Pan Am Express, and the Regional Airline Association also stated that scheduling flexibility could be increased by eliminating this distinction altogether. While USAir/Piedmont argued that the elimination of the distinction would threaten service to small markets, American suggested that removing this distinction would enhance such service. Air Wisconsin noted that a flat prohibition on the use of commuter aircraft in air carrier slots would unfairly penalize carriers that operate both types of aircraft as a single entity.

Pan Am, Pan Am Express, and the Regional Airline Association, and several of its individual members further noted that the types of aircraft which can use commuter slots should be expanded in response to the needs of smaller communities where traffic has increased significantly. These commenters argued that the 56-seat limit contained in the definitions of "air carrier" and "scheduled commuter operator" under § 93.123(c) is based on the types of aircraft that were available at the time of the adoption of the High Density Rule in 1969. Since that time, new aircraft have been developed which have more than 60 seats, but are still properly considered "commuter" aircraft for the purposes of § 93.123(c) due to their limited range and cruise speed.

Air Wisconsin petition for exemption. In addition to the request for comments on the distinction between air carrier and commuter slots in Notice 88-18, the FAA received separate petitions from British Aerospace and Air Wisconsin, which were published in the **Federal Register** on April 12, 1988 (53 FR 12092) and March 31, 1989 (54 FR 13344), respectively. The petitioners requested the FAA to authorize the use of aircraft having 60 and 64 seats, respectively, or less in "scheduled commuter" slots in order to allow more economical and advanced aircraft to be used in providing service to smaller communities. Air Wisconsin noted that traffic on the routes which serve these communities routinely exceeds the capacity of 56-seat aircraft.

The British Aerospace petition was denied on August 15, 1988, because British Aerospace, as an aircraft manufacturer, was found to be not eligible for an exemption from an operating rule and because the FAA considered the issue to be more appropriate for resolution by general rulemaking. However, the FAA did not take issue with the substantive justification raised in the British Aerospace petition.

Numerous comments were received in support of the Air Wisconsin petition, including several congressional responses, and comments filed by airport authorities, municipalities, chambers of commerce, and state transportation departments. With the exception of Pan Am Express, none of the carrier commenters were specifically opposed to the petition. Most, however, shared Pan Am Express's view that the FAA should treat the Air Wisconsin petition as a petition for rulemaking and amend part 93, subpart K of the Federal Aviation Regulations.

Therefore, in view of the comments requesting that larger aircraft be permitted to use commuter slots, and in considerations of the fact that such a higher seat limit (in conjunction with a limitation to propeller-driven aircraft) has no significant effect on the regional airline industry and the service to small communities provided by that industry, the FAA is amending § 93.123(c) of subpart K of the Federal Aviation Regulations to change the maximum passenger seating capacity authorized for operations in "scheduled commuter" slots from "less than 56 [seats]" to "less than 75 [seats]," with a limitation to reciprocating and turboprop aircraft. The 75-seat limit will allow for anticipated seating configurations of all aircraft in this category. The limitation to propeller-driven aircraft provides a clear distinction between commuter aircraft and the turbojet aircraft used for longer routes and higher volume markets.

Although the 75-seat maximum passenger seating capacity that is being adopted in this final rule was not expressly proposed in Notice 88-18, the Notice requested comments on the use of air carrier slots using commuter aircraft, and the agency sought and received public comment on the issue by publication of the Air Wisconsin petition in the Federal Register. This amendment represents final agency action on the Air Wisconsin petition for exemption and Air Wisconsin's request for rulemaking filed in its supplemental comments on Notice 88-18.

Withdrawal of Slots From Carriers Holding 8 or Fewer Slots

Section 93.223(f) of the Federal Aviation Regulations (14 CFR part 93, subpart S) currently provides that slots will not be withdrawn from an air carrier or commuter operator holding eight or fewer slots at an airport (not counting international slots). Notice 88-18 proposed to add a use requirement to this provision so that the exception from withdrawal would only apply to slots used by the holding carrier, and would clarify that the protection does not apply to withdrawal for nonuse under § 93.227(a)(1). The use requirement would prohibit the current practice by larger carriers of transferring vulnerable slots (i.e., slots with a low withdrawal priority number) to a carrier with fewer than eight slots, then leasing the slot back for operation.

Although the Regional Carrier Slotholders stated that the practice by which carriers in effect "hide" their most vulnerable slots as described above is not widespread, several commenters expressed dissatisfaction over this practice. America West argued that this practice is inconsistent with the use-or-lose provisions of the Buy/Sell Rule. The FAA notes that there was little specific opposition to the proposal which would prohibit the withdrawal of slots from carriers holding and using fewer than eight slots. The Airport Operators Council International, USAir, Piedmont, Midwest Express, and United all specifically noted their lack of objection and/or support of this proposal.

In consideration of the need to protect carriers with limited slot holdings while maintaining opportunities for market entry, and in the interest of preventing carriers from circumventing the withdrawal provisions of the slot transfer and allocation rules, the FAA is amending § 93.223(f) to provide that slots shall not be withdrawn from an air carrier or commuter operator holding and using fewer than eight slots, excluding withdrawal under § 93.217(a)(1).

Summer/Winter Season Dates

As part of this action, the FAA is correcting a reference to seasonal designations which currently correspond to an obsolete definition of the Daylight Savings Time period. Section 93.217 of the Federal Aviation Regulations (14 CFR part 93, subpart S) establishes procedures for the allocation of slots to U.S. and foreign air carriers for international operations at the High Density Airports. The procedures apply primarily at Kennedy International and O'Hare International Airports.

At Kennedy and O'Hare Airports, international slots are allocated in accordance with seasonal designations, as defined in § 93.213, with specific slot operations being designated as either summer or winter slots. The seasonal allocations correspond to the beginning and ending of the Daylight Savings and Local Standard Time periods.

The date on which Local Standard Time changes to Daylight Savings Time in the spring was changed by Congress on July 8, 1986 (Pub. L. 99-359, 100 Stat. 764). Previously, Daylight Savings Time extended from the fourth Sunday in April to the fourth Sunday in October, while the Local Standard Time period extended from the fourth Sunday in October to the fourth Sunday in April. The Daylight Savings Time period now extends from the first Sunday in April to the fourth Sunday in October while the Local Standard Time period extends from the fourth Sunday in October to the first Sunday in April.

The purpose of this amendment, therefore, is simply to amend the seasonal time designations in the rule to reflect the current changeover date (i.e., from Local Standard Time to Daylight Savings Time) of the first Sunday in April. The change is adopted without prior notice and comment because it represents a minor technical amendment on which there would be little interest in commenting. Accordingly, I find that notice and public comment under 5 U.S.C. 553(b) is unnecessary.

The Rule Adopted

For the reasons discussed above, the FAA is amending the regulations governing transfer and allocation of slots at high density traffic airports to do the following:

1. Increase the maximum passenger seating capacity authorized under § 93.123(c) for operations in "scheduled commuter" slots from "less than 56 [seats]" to "less than 75 [seats]," with a limitation to reciprocating and turboprop aircraft.
2. Provide that slots shall not be withdrawn from an air carrier or commuter operator holding fewer than eight slots if that carrier is itself operating the slots, excluding withdrawal under § 93.217(a)(1).
3. Change the time designations in the rule for the summer and winter

scheduling seasons to reflect the current changeover date from Local Standard Time to Daylight Savings Time.

Regulatory Evaluation

The changes contained in this rulemaking with respect to the maximum passenger seating capacity authorized for operations using commuter slots will have no effect on the actual operations of carriers currently using aircraft having fewer than 56 seats in these slots. With the adoption of this final rule, these carriers will have the operational flexibility to respond to traffic increases, market considerations, and other related factors by replacing and/or supplementing their fleets with aircraft having slightly higher maximum passenger seating capacities.

With respect to the changes adopted in the withdrawal provisions of FAR § 93.227(a), the FAA will not withdraw any slot that is held and operated by a carrier holding eight or fewer slots. It is unlikely that slots would be withdrawn from carriers holding fewer than eight slots and not operating those slots. Rather, those carriers would simply terminate the sale and leaseback arrangements currently in effect. The potential cost to these carriers, therefore, is only the speculative loss of lease income from slots the carrier did not intend to use.

Finally, the changes in the definition of "summer season" and "winter season" to conform to the legal definition of Daylight Savings Time and Local Standard Time will affect only scheduling requests for international operations by U.S. and foreign air carriers at Kennedy and O'Hare Airports. Actual operations are similarly unaffected by this change in designation. Air carriers will not experience any benefit or cost as a result of this rule, except for a minor administrative benefit in submitting flight schedule requests based on the actual time change time between Standard Time and Daylight Savings Time.

Regulatory Flexibility Analysis

As discussed above under Regulatory Evaluation, the impact on all operators will be minimal, and there will be no disproportionate impact on smaller operators. Accordingly, the FAA has determined that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

For the reasons set forth above, the FAA has determined that this amendment (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Further, I certify that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This amendment provides for no changes to the required reporting of information by air carrier and commuter operators to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget previously has approved the information collection provison of subpart S. OMB Approval Number 2120-0524 has been assigned to subpart S.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of Federalism Assessment.

List of Subjects in 14 CFR Part 93

Aviation safety, Air traffic control.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 93 of the Federal Aviation Regulations (14 CFR part 93) is amended as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106 (Revised Pub. L. 97-449, January 12, 1983).

2. In § 93.123, paragraph (c) is revised to read as follows:

§ 93.123 High density traffic airports.

* * * * *

(c) For purpose of this subpart—

(1) The number of operations allocated to "air carriers except commuters," under paragraph (a) of this section and § 93.127, refers to the number of operations conducted by air carriers with turbojet aircraft or any aircraft having a certificated maximum passenger seating capacity of 75 or more or, if used for cargo service in air transportation, with aircraft having a maximum payload capacity of 18,000 pounds or more.

(2) The number of operations allocated to "scheduled commuters," as used in paragraph (a) of this section and § 93.124, refers to the number of operations conducted by air carriers with turboprop or reciprocating engine aircraft having a certificated maximum passenger seating capacity of less than 75 or, if used for cargo service in air transportation, with aircraft having a maximum payload capacity of less than 18,000 pounds.

3. In § 93.213, paragraphs (a)(3) and (a)(4) are revised to read as follows:

§ 93.213 Definitions and general provisions.

(a) * * *

(3) *Summer season* means the period of time from the first Sunday in April until the fourth Sunday in October.

(4) *Winter season* means the period of time from the fourth Sunday in October until the first Sunday in April.

* * * * *

4. In § 93.223, paragraph (c)(3) is added to read as follows:

§ 93.223 Slot withdrawal.

* * * * *

(c) * * *

(3) Except as provided in § 93.227(a), the FAA shall not withdraw any slot held and operated by an air carrier or commuter operator at an airport if that air carrier or commuter operator holds eight or fewer slots at that airport (excluding slots used for operations described in § 93.217(a)(1)).

* * * * *

Issued in Washington, DC, on August 15, 1989.

Samuel K. Skinner,

Secretary, Department of Transportation.

[FR Doc. 89-19726 Filed 8-17-89; 1:46 pm]

BILLING CODE 4910-13-M

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federal register

Tuesday
August 22, 1989

Part VI

Congressional Budget Office

Initial Sequestration Report for Fiscal Year 1990 to Office of Management and Budget and Congress; Transmittal

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CONGRESSIONAL BUDGET OFFICE

Initial Sequestration Report for Fiscal Year 1990 to Office of Management and Budget and Congress; Transmittal

AGENCY: Congressional Budget Office.

ACTION: Report transmittal.

SUMMARY: This notice transmits the initial sequestration report for Fiscal Year 1990 to the Office of Management and Budget and the Congress in accordance with the procedures of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100-119.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

BILLING CODE 1450-01-M

INITIAL SEQUESTRATION REPORT FOR FISCAL YEAR 1990

A Congressional Budget Office
Report to the Congress
and the Office of Management and Budget

August 21, 1989

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NOTES

All years referred to in this report are fiscal years, unless otherwise noted.

Details in the text and tables of this report may not add to totals because of rounding.

The Balanced Budget and Emergency Deficit Control Act of 1985 (commonly known as Gramm-Rudman-Hollings) is referred to in this report more briefly as the Balanced Budget Act.

The source for all data in this report is the Congressional Budget Office, unless otherwise noted.

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Robert D. Reischauer
Director

August 21, 1989

Honorable Richard G. Darman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Darman:

I herewith submit to you my *Initial Sequestration Report for Fiscal Year 1990*, in accordance with the Balanced Budget and Emergency Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119).

Based on our updated economic and technical assumptions and on budgetary policies in effect on August 15, 1989, we estimate that the budget deficit in fiscal year 1990 will reach $141.5 billion, which exceeds by $41.5 billion the $100 billion target specified in the act.

This report presents the assumptions underlying CBO's deficit estimate, and calculates the amounts and percentages by which various budgetary resources would need to be sequestered to reduce the deficit to the target level under these assumptions.

I would be pleased to provide you with any assistance that you may require in preparing your own initial sequestration report.

Sincerely yours,

Robert D. Reischauer
Director

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Robert D. Reischauer
Director

August 21, 1989

Honorable Dan Quayle
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

I herewith submit to the Congress my *Initial Sequestration Report for Fiscal Year 1990*, in accordance with the requirements of the Balanced Budget and Emergency Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119).

The act specifies a 1990 deficit target of $100 billion. An across-the-board reduction of budgetary resources will be triggered if the deficit estimate made by the Office of Management and Budget exceeds the target by more than $10 billion. Based on our updated economic and technical assumptions and on budgetary policies in effect on August 15, 1989, we estimate that the budget deficit in fiscal year 1990 will reach $141.5 billion, which exceeds the target by $41.5 billion.

This report presents the assumptions underlying CBO's deficit estimate, and calculates the amounts and percentages by which various budgetary resources would need to be sequestered to reduce the deficit to the target level under these assumptions.

I would be pleased to provide the Congress with any assistance it may require in responding to this report, or to the initial report by the Director of the Office of Management and Budget.

Sincerely yours,

Robert D. Reischauer
Director

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Robert D. Reischauer
Director

August 21, 1989

Honorable Thomas S. Foley
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I herewith submit to the Congress my *Initial Sequestration Report for Fiscal Year 1990*, in accordance with the requirements of the Balanced Budget and Emergency Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119).

The act specifies a 1990 deficit target of $100 billion. An across-the-board reduction of budgetary resources will be triggered if the deficit estimate made by the Office of Management and Budget exceeds the target by more than $10 billion. Based on our updated economic and technical assumptions and on budgetary policies in effect on August 15, 1989, we estimate that the budget deficit in fiscal year 1990 will reach $141.5 billion, which exceeds the target by $41.5 billion.

This report presents the assumptions underlying CBO's deficit estimate, and calculates the amounts and percentages by which various budgetary resources would need to be sequestered to reduce the deficit to the target level under these assumptions.

I would be pleased to provide the Congress with any assistance it may require in responding to this report, or to the initial report by the Director of the Office of Management and Budget.

Sincerely yours,

Robert D. Reischauer
Director

INITIAL SEQUESTRATION REPORT FOR FISCAL YEAR 1990

A CONGRESSIONAL BUDGET OFFICE REPORT TO THE CONGRESS AND THE OFFICE OF MANAGEMENT AND BUDGET

August 21, 1989

SUMMARY

Though the federal government's budget deficit has retreated from the steep levels that prompted the enactment of the Balanced Budget Act four years ago, the deficit will not drop enough under current policies to meet the act's 1990 target, according to calculations prepared by the Congressional Budget Office (CBO). The deficit target specified by the Balanced Budget Act for 1990 is $100 billion, and CBO currently projects a federal budget deficit of $141.5 billion. If CBO's estimates were controlling, and if no further changes were made in taxing and spending policies, across-the-board reductions of 10.7 percent in defense and 15.6 percent in nondefense programs would be required to achieve the target. On August 25, 1989, the Director of the Office of Management and Budget (OMB) will issue an initial independent estimate of the projected deficit, and will determine the necessity of across-the-board spending cuts. Based on the Administration's *Mid-Session Review of the 1990 Budget* and laws enacted since July 18, 1989, it appears that OMB's initial estimate will exceed the target by about $16 billion.

INTRODUCTION

The Balanced Budget Act became law in December 1985 and established a series of annual budget deficit targets for the federal government that would lead to a balanced budget over five years. As amended in 1987, the Balanced Budget Act eased these annual targets and delayed the attainment of a balanced budget by one year, to fiscal year 1993. The deficit targets specified by the act are (in billions of dollars):

Fiscal Year	Maximum Deficit	Sequestration Threshold
1990	100	110
1991	64	74
1992	28	38
1993	0	0

For the years 1989 through 1992, the deficit projection may exceed the target by as much as $10 billion. If the Administration's deficit projection exceeds the target by more than this $10 billion margin, the act provides a procedure--known as sequestration--to cut federal spending automatically. For 1993, sequestration would be triggered if any deficit is estimated in the Administration's October 15, 1992, report.

Sequestration involves the permanent cancellation of new budget authority and other authority to obligate and expend funds, except for special and trust funds, where the sequestered amounts of spending authority remain in the funds. The sequestration of budgetary resources is designed to achieve outlay reductions sufficient to reach the annual deficit targets.

The Balanced Budget Act specifies roles for the Congressional Budget Office, the Office of Management and Budget, and the Comptroller General. CBO's role is to advise OMB and the Congress, while the Director of OMB must determine whether or not sequestration is necessary and, if so, the amount of reductions in budgetary resources and outlays required to achieve the deficit target. Each year, CBO and OMB are required to prepare independently two sets of sequestration reports. The CBO reports, which are transmitted to the Director of OMB and to the Congress, are a benchmark against which the Congress and others may assess the OMB reports. The OMB reports, which are made to the President and to the Congress, provide the basis for sequestration orders to be issued by the President. The timetable for the agency reports and sequestration orders is shown on page 3.

The initial CBO and OMB sequestration reports are based on laws that are enacted and regulations that are final at the time of a common snapshot date, August 15. The revised reports, however, must be based on laws enacted and regulations promulgated by the latest possible date before they are issued. Therefore, because the snapshot date may be

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TABLE 1. SUMMARY OF CBO BUDGET ESTIMATES FOR FISCAL YEAR 1990
(In billions of dollars)

	Revenues	Outlays	Deficit
Budget Baseline as of January 1, 1989	1,070.8	1,206.4	135.5
Effect of New Laws and Regulations:			
Financial Institutions Reform, Recovery, and Enforcement Act (P.L. 101-73)	0.6	2.9	2.3
Dire Emergency Supplemental Appropriations Act of 1989 (P.L. 101-45)	0.0	0.9	0.9
Disaster Assistance Act of 1989 (P.L. 101-82)	0.0	1.0	1.0
Other	0.0	-0.1	-0.1
Debt service costs	0.0	1.5	1.5
Subtotal	0.6	6.1	5.5
Budget Baseline as of August 15, 1989	1,071.4	1,212.5	141.0
Exclude Rural Electrification Administration Loan Prepayments			0.5
Balanced Budget Act Deficit Estimate			141.5
Balanced Budget Act Deficit Target			100.0
Excess Deficit			41.5

different in the two agencies' final reports, some legislation and regulations reflected in one report may not be reflected in the other.

The role of the Comptroller General under the amended Balanced Budget Act is threefold: to prepare a report each year to the Congress and the President that certifies whether the final sequestration order issued by the President complies with the requirements of the Balanced Budget Act; to assess the compliance and accuracy of the OMB sequestration reports; and to make recommendations for improving sequestration procedures. The Comptroller's report is due on November 15.

This document is the initial CBO report for 1990. The report:

o Estimates budget baseline levels as of January 1, 1989, and August 15, 1989, the amount of net deficit change that has occurred between the two dates, and the outlay reductions required for 1990;

o Provides CBO economic assumptions used for the two baseline estimates, including the estimated rate of real economic growth for fiscal year 1990 by quarter; and

o Calculates the amounts and percentages by which various budgetary resources must be sequestered in order to achieve the required outlay reductions.

BUDGET BASELINE TOTALS

The CBO budget baseline estimates of total revenues, outlays, and the deficit for fiscal year 1990 are shown in Table 1. Two sets of budget baseline estimates are provided--one for laws and regulations in effect on January 1, 1989, and the other for laws and regulations in effect on August 15, 1989. The economic and technical assumptions used for the August 15 budget baseline estimates are identical to those used for the January 1 estimates. The differences between the two sets of estimates, therefore, result only from laws enacted and final regulations promulgated since January 1.

These estimates are made in accordance with the specifications set forth in the Balanced Budget Act.

When appropriations for the new fiscal year have not been enacted--and, as of August 15, none of the 1990 appropriation bills had been completed--the CBO and OMB budget baseline estimates under the act are to be based on the appropriations enacted for the previous year, with an adjustment for inflation and increased pay costs. The act specifies the inflation adjustment as the estimated annual increase in the gross national product implicit price deflator, estimated by CBO to be 4.4 percent. For 70 percent of personnel costs, this inflation factor is increased to allow for higher agency retirement costs and for pay absorption in the previous fiscal year, and is reduced to account for pay absorption in the upcoming fiscal year.

For nonappropriated spending accounts and revenues, the baseline estimates assume that current laws and regulations will continue unchanged, and that expiring provisions of law will terminate as scheduled. The Balanced Budget Act, however, provides an exception to the general treatment of expiring provisions in the cases of excise taxes dedicated to trust funds, Commodity Credit Corporation agricultural price support programs, and contract authority for transportation trust funds. As required by the act, the budget baseline estimates include the receipts and outlays of the Social Security trust funds, even though they are legally off-budget.

The Balanced Budget Act provides that asset sales and loan prepayments shall neither be included in the budget baseline estimates nor count toward any net deficit reduction. The act makes an exception for asset sales and loan prepayments that are routine and ongoing according to the practices followed in fiscal year 1986 and for asset sales mandated by law as of September 17, 1987. The budget baseline estimates may not, however, assume or reflect an acceleration of routine asset sales or loan prepayments. As Table 1 shows, $0.5 billion in prepayments of Rural Electrification Administration loans is expected in fiscal year 1990 and is excluded from the CBO baseline.

Snapshot date for initial CBO and OMB reports	August 15
Initial CBO report	August 21[a]
Initial OMB report	August 25
Initial sequestration order	August 25
Revised CBO report	October 10
Revised OMB report	October 16[a]
Final sequestration order	October 16[a]

a. The statutory dates for the initial CBO report and the revised OMB report are August 20 and October 15, respectively; both dates fall on Sundays in 1989. The reports will therefore be submitted on the following Mondays.

The act also prohibits the inclusion of savings resulting from the transfer of outlays, receipts, or revenues from one year to an adjacent year, except for certain types of transfers identified in law. No such savings apply to fiscal year 1990. The prohibition of timing shifts does not apply to the advancing of certain farm deficiency payments into 1989 or to the shifting of the October 1, 1989, military pay date to September 29, because these actions did not result from new laws or regulations.

Under these specifications, CBO's estimate as of August 15, 1989, of the budget baseline deficit for 1990 is $141.5 billion.

Table 1 shows the estimated budget effect of laws enacted and final regulations promulgated since January 1, 1989. The estimated increase in the deficit since January 1 of $5.5 billion stems primarily from three laws: the Financial Institutions Reform, Recovery, and Enforcement Act, intended to resolve the savings and loan crisis; the Dire Emergency Supplemental Appropriations Act of 1989; and the Disaster Assistance Act of 1989, which extends assistance to farmers affected by persistent drought conditions.

Other laws enacted and regulations promulgated since January 1 lower the budget baseline deficit for 1990 by an estimated $0.1 billion. As a result of all these changes, federal government interest costs have increased by $1.5 billion since January 1. About $1.2 billion of this increase results from an estimated $13.8 billion boost in the 1989 deficit, brought on by the savings and loan legislation.

CBO's final sequestration report will be issued on October 10, 1989, and will take into account legislation enacted after August 15. Significant deficit reduction could occur over the next two months: the Congress must act on 13 appropriation bills, as well as on legislation designed to reconcile certain permanently authorized programs with the 1990 budget resolution.

ECONOMIC ASSUMPTIONS

The principal economic assumptions underlying the CBO budget baseline estimates for fiscal year 1990

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are shown in Table 2. The Balanced Budget Act requires the Directors of OMB and CBO to estimate the rate of real economic growth for the fiscal year covered by their reports, for each quarter of the fiscal year, and for the last two quarters of the preceding fiscal year. If either OMB or CBO projects real economic growth to be less than zero for any two consecutive quarters, or if the Department of Commerce reports actual real growth to have been less than 1 percent for two consecutive quarters, the Congress and the President may suspend many of the provisions of the act. Table 2 provides the CBO estimates for the rate of real economic growth and other economic variables for fiscal year 1990; Table 3 shows the quarterly estimates. CBO does not project real economic growth to be less than zero in any quarter during fiscal year 1990.

TABLE 2. CBO ECONOMIC ASSUMPTIONS FOR FISCAL YEAR 1990

Gross National Product:	
Billions of current dollars	5,463
Percent change, year over year	6.3
Billions of constant (1982) dollars	4,158
Percent change, year over year	1.9
GNP Implicit Price Deflator (Percent change, year over year)	4.4
CPI-U (Percent change, year over year)	4.9
Civilian Unemployment Rate (Percent, fiscal year average)	5.5
Interest Rates (Fiscal year average):	
91-day Treasury bills	7.3
10-year Treasury notes	8.2

REQUIRED OUTLAY REDUCTIONS

Sequestration of budgetary resources will be necessary for 1990 if the deficit estimated by OMB exceeds the $100 billion target by more than the $10 billion margin. Once sequestration is triggered, budget outlays must be reduced by the entire amount by which the deficit exceeds $100 billion. One-half of the required outlay reduction must be taken from defense programs (budget accounts in the national defense function, 050, excluding the Federal Emergency Management Agency) and the other half from nondefense programs. CBO's deficit projection of $141.5 billion would call for outlay reductions of $41.5 billion in 1990. Table 4 shows how budget outlays in defense and nondefense programs would be cut back to achieve this reduction.

TABLE 3. REAL ECONOMIC GROWTH RATES FROM PREVIOUS QUARTER (Percentage growth at annual rates)

Fiscal Year 1989	
Actual[a]	
January-March 1989	3.7
April-June 1989	1.7
CBO Estimate	
July-September 1989	1.5
Fiscal Year 1990	
CBO Estimate	
October-December 1989	1.5
January-March 1990	1.7
April-June 1990	1.7
July-September 1990	1.9

a. As reported by the Department of Commerce (July 27, 1989).

If sequestration is required, the law provides that the automatic spending increases in three programs--the National Wool Act, the special milk program, and vocational rehabilitation--be eliminated and the resulting savings be applied to the required reduction in outlays for nondefense programs. According to CBO estimates, only the vocational rehabilitation program will receive an automatic spending increase in fiscal year 1990; eliminating this increase would produce $47 million in outlay savings in 1990. The outlay savings to be obtained by applying four special rules are also credited to the required spending reductions in nondefense programs. These special rules are for guaranteed student loans, foster care and adoption assistance, Medicare, and certain health programs, and are described in a later section of this report. Applying the special rules to these programs would achieve $2 billion in outlay savings in 1990.

The outlay reductions of $20.8 billion in defense programs and the remaining reductions of $18.7 billion in nondefense programs must be taken as a uniform percentage of all sequesterable budgetary resources in each category. The uniform reduction percentages are computed from outlay estimates: the required outlay savings to be achieved through across-the-board reductions are divided by the total estimated outlays from sequesterable budgetary resources in each category. The resulting uniform reduction percentages are then applied to all of the sequesterable budgetary resources (budget authority, credit authority, and other spending authority) for defense and nondefense programs.

TABLE 4. CBO SEQUESTRATION CALCULATIONS FOR FISCAL YEAR 1990
(In millions of dollars)

	Defense Programs	Nondefense Programs
Total Required Outlay Reductions	20,761	20,761
Savings from Eliminating Automatic Spending Increases	0	47
Savings from the Application of Special Rules:		
Guaranteed student loans	0	26
Foster care and adoption assistance	0	4
Medicare	0	1,786
Other health programs	0	204
Remaining Reductions Required	20,761	18,694
Estimated Sequestration Outlay Base	193,862	119,649[a]
Uniform Reduction Percentage	10.7	15.6

a. Includes $6,274 million in estimated 1991 outlays for the Commodity Credit Corporation that can be affected by a 1990 sequestration (see discussion of special rule for CCC). Also includes an estimated $1,972 million in outlays from the spending of offsetting collections.

According to CBO estimates, the 1990 outlays associated with sequesterable budgetary resources for defense programs are $193.9 billion. From this base amount, $20.8 billion in across-the-board outlay reductions must be made. The uniform percentage to be applied to sequesterable defense budgetary resources is 10.7 percent, as shown in Table 4. The Balanced Budget Act allows the President to exempt military personnel spending from sequestration, which would reduce sequesterable outlays by about $75 billion; an exemption has not been issued this year. If the President had exempted military personnel spending from sequestration, the required reduction in other defense spending would have been 17.5 percent.

The 1990 outlays associated with budgetary resources for nondefense programs subject to across-the-board reduction are estimated to be $119.6 billion. To achieve $18.7 billion in nondefense outlay reductions, a 15.6 percent across-the-board reduction in nondefense sequesterable resources is required.

Table 5 lists budget baseline outlays for 1990. Defense outlays total $300.6 billion, of which $193.9 billion is subject to sequestration. In defense programs, unlike nondefense programs, the law specifies that spending from unobligated balances is subject to sequestration. Since the President has decided not to exempt military personnel spending, the only defense outlays that are not subject to sequestration are those resulting from previously appropriated budget authority that has already been obligated.

Nondefense baseline outlays for 1990 total $911.8 billion. Of this amount, only $113.4 billion is subject to across-the-board reduction. An additional $6.3 billion in 1991 Commodity Credit Corporation (CCC) outlays is counted under Balanced Budget Act specifications; together, these amounts yield the nondefense outlay base of $119.6 billion shown in Table 4. As Table 5 shows, a large percentage of nondefense outlays is exempted by law from the sequestration process. Social Security benefits, net interest payments, certain low-income programs, most federal retirement and disability benefits, veterans compensation and pensions, and regular state unemployment insurance benefits account for the largest exemptions. Outlays from appropriations for nondefense programs made in previous years are also not subject to sequestration.

The calculations in this report generally assume that all nonexempt budgetary resources can be sequestered in order to produce outlay savings, including entitlement programs and other mandatory spending programs where the spending authority is not controlled through the annual appropriation process. An exception is made for the administrative expenses of the Postal Service. While more than $1 billion of budgetary resources of the Postal Service is sequesterable under CBO estimates, no outlay savings are attributed by CBO to this sequestration because the Administration appears to have no mechanism for enforcing a sequestration order on the Postal Service. The Congress is currently considering legislation that would remove the Postal Service from federal budget totals and exempt it from sequestration calculations.

AUTOMATIC SPENDING INCREASES

The three programs with automatic spending increases currently subject to sequestration by the Bal-

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TABLE 5. COMPOSITION OF BASELINE OUTLAYS FOR FISCAL YEAR 1990

Category	Estimate (In billions of dollars)	Percentage of Total
Defense Programs [a]		
Subject to across-the-board reduction	193.9	16.0
Exempt from sequestration [b]	106.8	8.8
Subtotal, defense programs	300.6	24.8
Nondefense Programs		
Subject to sequestration:		
Certain programs with automatic spending increases [c]	1.6	0.1
Certain special rule programs [d]	129.0	10.6
Subject to across-the-board reduction [e]	113.4	9.4
Subtotal, subject to sequestration	244.0	20.1
Exempt from sequestration:		
Social Security	247.6	20.4
Federal Retirement, disability, and workers compensation	65.9	5.4
Earned income tax credit	4.1	0.3
Low-income programs [f]	83.0	6.8
Veterans compensation and pensions	15.0	1.2
State unemployment benefits	14.6	1.2
Offsetting receipts	-59.6	-4.9
Net interest payments	179.8	14.8
Other	117.5	9.7
Subtotal, exempt from sequestration	667.9	55.1
Subtotal, nondefense programs	911.8	75.2
Total	1,212.5	100.0

a. Budget function 050, excluding Federal Emergency Management Agency programs.
b. Outlays from obligated balances.
c. National Wool Act, special milk, and vocational rehabilitation programs.
d. Guaranteed student loans, foster care and adoption assistance, Medicare, veterans medical care, and other health programs.
e. Excludes 1991 outlays for the Commodity Credit Corporation.
f. Family Support payments, child nutrition, Medicaid, Food Stamps, Supplemental Security Income, the Women, Infants, and Children's program, Commodity Supplemental Food program, and Nutrition Assistance to Puerto Rico.

anced Budget Act are listed in Table 6. The scheduled percentage increases are shown as well as the amount of estimated outlay savings to be gained by eliminating these increases. According to CBO, only the vocational rehabilitation program will receive an automatic spending increase in 1990.

SPECIAL RULES

The Balanced Budget Act provides special rules for the sequestration of budgetary resources for certain federal programs. This section describes these special rules and their application to the 1990 sequestration calculations. The estimated outlay savings derived from the first four rules are shown separately in Table 4. Any outlay savings resulting from the remaining special rules are included in the amount to be obtained from the uniform percentage reductions.

Guaranteed Student Loan Program

The Balanced Budget Act requires two changes in the guaranteed student loan (GSL) program to occur automatically under sequestration. First, the statutory factor for calculating the quarterly special allowance payments to lenders will be reduced by the lesser of 0.40 percentage point or the amount by which the statutory factor exceeds 3 percent for the first four quarters after the loan is made. Under the current program, the reduction will be 0.25 percentage point. Second, a student's origination fee will increase by 0.50 pereentage point. In both cases, sequestration affects only GSL loans disbursed during

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TABLE 6. AUTOMATIC SPENDING INCREASES FOR FISCAL YEAR 1990 SUBJECT TO SEQUESTRATION

Program	Scheduled Increase (Percent)	Outlay Reduction (Millions of dollars)
National Wool Act	a	a
Special Milk Programs	b	b
Vocational Rehabilitation [c]	4.2	46.9
Total		46.9

a. No 1990 payment increase is expected for this program, based on declining wool support price levels in marketing year 1989.
b. Benefits are indexed to the producer price index for fresh processed milk. This index is not projected to increase between May 1989 and May 1990.
c. This program is indexed to the change in the consumer price index (CPI-U) from October of the previous year.

the applicable fiscal year, but after the order is issued. For 1990, these changes are estimated by CBO to reduce outlays by $26 million.

Foster Care and Adoption Assistance Programs

The Balanced Budget Act limits the amount to be sequestered in the foster care and adoption assistance programs to increases in foster care maintenance payment rates or adoption assistance payment rates taking effect during the current fiscal year. Moreover, the amounts are limited to the extent that the reduction can be made by reducing federal matching payments by a uniform percentage across states. The increases in payment rates for these programs are made by the states and localities. Any increases planned by the states for fiscal year 1990 were included in the CBO calculations for sequestration reductions. The estimated outlay savings in 1990 from sequestration are $4 million.

Medicare

The sequestration reductions in the Medicare program are to be achieved by reducing payment amounts for covered services. No changes in coinsurance or deductible amounts are to be made, and covered services are unaffected under a sequestration order. Under such an order, each payment amount for services provided during the fiscal year would be reduced by a maximum of 2 percent relative to whatever level of payment would otherwise be made under Medicare laws and regulations. According to CBO estimates, the outlay savings to be achieved in 1990 by applying this special rule are $1.8 billion.

Veterans Medical Care and Other Health Programs

The Balanced Budget Act limits reductions in budget authority for the nonadministrative expenditures for veterans medical care, community and migrant health centers, and Indian health services and facilities to 2 percent in 1990 and any subsequent year. The estimated outlay savings to be achieved in 1990 by applying this special rule to these programs are $204 million.

Child Support Enforcement Program

In the child support enforcement (CSE) program, the Balanced Budget Act provides that sequestration of entitlement payments to states is to be accomplished by reducing the federal matching rates for state administrative expenses. For 1990, the federal matching rates on most expenditures under CBO estimates would be reduced from 66 percent to 55.7 percent, and the rate for computer-related and laboratory expenditures would be reduced from 90 percent to 76 percent. These reductions in the matching rates are necessary to achieve the same 15.6 percent reduction applied to other nondefense programs.

If states increase their share of CSE spending to maintain total program spending at the expected 1990 level, this reduction in the federal matching rate will lower federal outlays by the same percentage as other nondefense programs. If states do not increase their 1990 budgeted amounts to compensate for lower matching rates, however, the lower federal matching rate would result in a larger percentage reduction in federal spending than the act requires. The estimated outlay savings that are to be achieved in 1990 by applying this special rule are $200 million.

Unemployment Compensation Programs

The Balanced Budget Act provides that the following items are not to be sequestered: regular state unemployment benefits, the state share of extended unemployment benefits, unemployment benefits paid to former federal employees and former members of the armed services, and loans and advances to the state and federal unemployment accounts. The

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federal share of extended benefits, unemployment insurance for railroad employees, other federally paid benefits, and state and federal administrative expenses are subject to sequestration.

Both the federal and state shares of extended unemployment benefits are paid from the Unemployment Trust Fund--the federal share from a federal account and the state share from each state's account. State law sets the amount of each weekly extended benefit. The Balanced Budget Act permits any state to reduce the weekly extended benefit amount by a percentage equal to the uniform reduction in the federal share. If states do not change their laws to provide for such a reduction, the weekly benefit payments will not be reduced, the state share will increase by the amount of the decrease in the federal share, and total budget outlays that include both federal and state benefits will not be changed by the sequestration. No states are currently paying extended benefits.

Commodity Credit Corporation

Under the Balanced Budget Act, payments and loan eligibility under any contract entered into by the Commodity Credit Corporation (CCC) after a sequestration order has been issued for a fiscal year are subject to a percentage reduction. The act requires that reductions for all farm commodities supported by the CCC be made in a uniform manner, including all noncontract programs, projects, and activities within the CCC's jurisdiction. The act further stipulates that outlay reductions in the post-sequestration year that are the result of contract adjustments in the sequestration year should be credited to the overall outlay reduction required in the sequestration year. The outlay savings to be achieved by applying this special rule are estimated by CBO to be $1.0 billion in 1990, and $1.0 billion in 1991. The actual amount of savings realized in each year will depend upon how the sequestration is carried out for the various CCC programs. In accordance with the act, however, all $2.0 billion of these estimated outlay savings are credited toward the $20.8 billion reduction in nondefense spending required for 1990.

Federal Pay

The Balanced Budget Act provides that rates of pay or any scheduled pay increases may not be reduced following a sequestration order. For members of the armed services, this provision applies to rates of basic pay, basic subsistence allowances, and basic quarter allowances. Budgetary resources available for federal pay, however, will be subject to sequestration as part of the reduction of administrative expenses, which include travel, printing, supplies, and other services. The total amount of government-wide savings to be achieved in 1990 from employee compensation cannot be estimated because program managers are expected to be urged not to resort to personnel furloughs and reductions in force until other administrative expenses are reduced as much as possible.

CONCEPTUAL ISSUES

In preparing its initial sequestration report for 1990, CBO has identified a few areas of ambiguity in the interpretation of the Balanced Budget Act. Some of these uncertainties affect the computation of the baseline deficit, while others involve the determination of whether or not a particular budget account is subject to sequestration.

Baseline Issues

In developing the 1990 baseline estimates for national defense, CBO has taken as its starting point the 1989 budget authority figures shown in the Administration's *Mid-Session Review of the 1990 Budget*. These figures reflect expected transfers of budget authority from one account to another, which the Secretary of Defense can make under existing legislative authority. The OMB estimate of the Balanced Budget Act baseline contained in the *Mid-Session Review* is predicated on 1989 budget authority figures that do not reflect expected transfers. CBO's assumption adds $0.9 billion to 1990 defense outlays and the deficit because the transfers are, on balance, from slow-spending to fast-spending accounts.

CBO and OMB also make different assumptions about pay absorption--the portion of the January 1989 pay raise that was not reflected in 1989 appropriations and that agencies had to accommodate through reductions in other spending. CBO assumes that the 1989 pay raise for civilian agency employees was fully absorbed, and that the Department of Defense absorbed 42 percent of the pay raise for civilian personnel and 7 percent of the military pay raise. CBO bases its assumption on language in the 13 appropriation bills and the accompanying conference reports for 1989. OMB, however, assumes that there was no pay absorption in fiscal year 1989. CBO's assumption adds $0.2 billion to defense spending and $1.0 billion to nondefense outlays.

Although not affecting the 1990 deficit estimate, several issues involving expiring entitlement programs merit clarification if the Congress considers

modifications to the Balanced Budget Act. While entitlements and other mandatory spending are generally projected in accord with current laws, the act provides that agricultural price support programs are to be continued at current rates. The meaning of the term "current rates," however, should be clarified. It has been interpreted both as a constant level of target prices and as a constant rate of decline in target prices. Also, the act does not provide for the continuation of the Food Stamp program (even though it is authorized by the same law that authorizes farm price supports), guaranteed student loans, or trade adjustment assistance. If one of these programs were to expire in the budget year, as Food Stamps will do at the beginning of fiscal year 1991, the baseline estimate would be sharply reduced and sequestration would be unlikely. Such circumstances would limit the realism and usefulness of the baseline.

Sequestration Issues

One problematic area is the treatment of three entitlement programs created by the Family Support Act of 1988. The three new programs are designed to benefit families receiving Aid to Families with Dependent Children (AFDC)--the Job Opportunities and Basic Skills training program (JOBS), child care for families who are in the JOBS program, and extended child care for families who cease to receive AFDC. Pending clarification of their treatment, both CBO and OMB have assumed that the JOBS program is subject to sequestration and that the two child care programs are exempt. The child care funds are authorized under the same part of the Social Security Act (Title IV-A) that authorizes AFDC, which is exempt from sequestration. The JOBS program, however, is distinct from AFDC. Many of its requirements are set out in a different part of the law (Title IV-F), a separate state plan is required, and funding is separate.

CBO and OMB differ with respect to the treatment of the administrative expenses of the vaccine improvement program trust fund. Section 2115(f)(3) of the Public Health Service Act exempts from sequestration any payments of vaccine injury compensation. Because no explicit exemption is provided for administrative expenses, CBO regards them as sequesterable, although OMB treats the entire program as exempt. If such ambiguities are to be avoided, as CBO and OMB have previously noted, exempting programs from sequestration should be accomplished by amending the specifications for the sequestration report contained in the Balanced Budget Act.

CBO and OMB continue to disagree over the treatment of the Treasury's payments to the Farm Credit System Financial Assistance Corporation for interest and the Railroad Retirement Board's supplemental annuity pension fund. In conformance with the opinion of the General Accounting Office, CBO regards these programs as exempt from sequestration.

SEQUESTRATION REDUCTIONS

A summary of CBO's calculations for the sequestration of budgetary resources and the estimated outlay savings for 1990 is provided for national defense programs in Table 7 and for nondefense programs by function in Table 8. The tables show CBO's budget baseline estimates for new budget authority and outlays, reductions in outlays caused by sequestration, and post-sequestration spending levels. In most instances, additional outlay savings would be gained in 1991 and later years as a result of the cancellation of 1990 budget authority. Interest costs would also be permanently lowered as a result of reduced federal borrowing needs. Savings in later years have not been estimated for this report. A detailed list of the sequestration base and reductions by agency and budget account by type of spending authority is provided as an appendix to this report.

The CBO sequestration calculations and post-sequestration spending levels are advisory only. OMB will determine whether a sequestration is triggered and, if so, the actual sequestration amounts. OMB's initial determination will be issued on August 25.

TABLE 7. DEFENSE PROGRAM SEQUESTRATIONS FOR FISCAL YEAR 1990
(In billions of dollars)

Budget Function 050	August Budget Baseline[a]	CBO Estimated Seques-tration[b]	Post-Seques-tration
Department of Defense-Military:			
Military personnel			
Budget authority	79.8	8.5	71.2
Outlays	76.8	8.1	68.7
Operation and maintenance			
Budget authority	89.8	9.6	80.2
Outlays	88.6	7.6	81.0
Procurement			
Budget authority	82.7	8.9	73.9
Outlays	80.5	1.7	78.8
Research, development, test, and evaluation			
Budget authority	39.2	4.2	35.0
Outlays	37.3	2.4	34.9
Military construction and other			
Budget authority	9.3	1.1	8.3
Outlays	8.9	0.3	8.6
Subtotal, DoD--military			
Budget authority	300.8	32.3	268.6
Outlays	292.1	20.1	272.0
Atomic Energy Defense Activities			
Budget authority	8.5	0.9	7.6
Outlays	8.3	0.6	7.7
Other Defense-related Activities[c]			
Budget authority	0.6	0.1	0.5
Outlays	0.5	d	0.5
Total			
Budget authority	309.9	33.2	276.6
Outlays	301.0	20.8	280.2

a. Does not include an estimated $39.6 billion in unobligated balances subject to sequestration.

b. Does not include $4.2 billion in unobligated balances that would be sequestered.

c. Includes the function 050 portion of Federal Emergency Management Agency budget accounts, which are reduced at the same rate as nondefense programs.

d. $50 million or less.

TABLE 8. NONDEFENSE PROGRAM SEQUESTRATIONS FOR FISCAL YEAR 1990 BY FUNCTION (In billions of dollars)

Budget Function		August Budget Baseline	CBO Estimated Seques-tration	Post-Seques-tration
150	International Affairs			
	Budget authority	19.0	2.9	16.1
	Outlays	17.2	1.6	15.6
250	General Science, Space, and Technology			
	Budget authority	13.4	2.1	11.3
	Outlays	13.6	1.3	12.4
270	Energy			
	Budget authority	5.7	1.2	4.5
	Outlays	3.4	0.6	2.8
300	Natural Resources and Environment			
	Budget authority	18.0	3.3	14.7
	Outlays	18.3	2.0	16.3
350	Agriculture[a]			
	Budget authority	19.5	1.5	18.0
	Outlays	16.2	1.6	14.6
370	Commerce and Housing Credit			
	Budget authority	25.6	0.4	25.2
	Outlays	23.1	0.6	22.4
400	Transportation			
	Budget authority	30.2	4.6	25.6
	Outlays	29.3	1.7	27.6
450	Community and Regional Development			
	Budget authority	6.9	0.8	6.1
	Outlays	6.8	0.3	6.5
500	Education, Training, Employment, and Social Services			
	Budget authority	39.7	4.9	34.8
	Outlays	38.5	1.8	36.7
550	Health			
	Budget authority	57.3	2.7	54.5
	Outlays	55.8	1.1	54.7
570	Medicare			
	Budget authority	123.6	0.0	123.6
	Outlays	100.1	2.1	98.0
600	Income Security			
	Budget authority	184.5	2.4	182.2
	Outlays	145.7	1.3	144.4
650	Social Security			
	Budget authority	313.9	0.0	313.9
	Outlays	249.2	0.3	249.0
700	Veterans Benefits and Services			
	Budget authority	31.6	0.7	30.9
	Outlays	30.8	0.5	30.3
750	Administration of Justice			
	Budget authority	10.3	1.7	8.6
	Outlays	10.1	1.4	8.7
800	General Government			
	Budget authority	10.4	1.6	8.8
	Outlays	10.4	1.5	8.9
900	Net Interest[b]			
	Budget authority	179.8	1.7	178.1
	Outlays	179.8	1.7	178.1
950	Undistributed Offsetting Receipts			
	Budget authority	-36.8	0.0	-36.8
	Outlays	-36.8	0.0	-36.8
	Total			
	Budget authority	1,052.6	32.6	1,020.0
	Outlays	911.5	21.4	890.1

a. Excludes $1.0 billion in estimated 1991 outlay savings for programs of the Commodity Credit Corporation that are credited toward the 1990 sequestration (see discussion of special rule for the CCC).

b. Includes $1.7 billion savings in debt service costs as a result of 1990 outlay reductions through sequestration.

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APPENDIX

SEQUESTRATION REDUCTIONS BY AGENCY AND BUDGET ACCOUNT

(Fiscal year 1990, in thousands of dollars)

Percentages used:

Defense	10.7 percent
Nondefense	15.6 percent

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Legislative Branch			
Senate			
Salaries, officers and employees			
00 0110 0 1 801	Budget Authority	371,217	57,910
	Outlays	351,037	54,762
House of Representatives			
Mileage of Members			
00 0208 0 1 801	Budget Authority	219	34
	Outlays	110	17
Salaries and expenses			
00 0400 0 1 801	Budget Authority	545,291	85,065
	Outlays	513,664	80,132
Congressional use of foreign currency, House of Representatives			
00 0488 0 1 801	401(C) Authority	3,360	524
	Outlays	3,360	524
Joint Items			
Capitol Guide Service			
00 0170 0 1 801	Budget Authority	1,327	207
	Outlays	1,194	186
Joint Committee on Printing			
00 0180 0 1 801	Budget Authority	1,244	194
	Outlays	1,154	180
Joint Economic Committee			
00 0181 0 1 801	Budget Authority	3,623	565
	Outlays	3,442	537
Joint Committee on Inaugural Ceremonies of 1989			
00 0186 0 1 801	Budget Authority	826	129
	Outlays	826	129
Office of the Attending Physician			
00 0425 0 1 801	Budget Authority	1,476	230
	Outlays	592	92
Joint Committee on Taxation			
00 0460 0 1 801	Budget Authority	4,687	731
	Outlays	4,453	695
Salaries, Capitol Police			
00 0474 0 1 801	Budget Authority	57,113	8,910
	Outlays	55,285	8,624
General expenses, Capitol police			
00 0476 0 1 801	Budget Authority	1,970	307
	Outlays	1,673	261
Statements of appropriations			
00 0499 0 1 801	Budget Authority	21	3
Official mail costs			
00 0825 0 1 801	Budget Authority	56,299	8,783
	Outlays	56,299	8,783
Congressional Budget Office			
Salaries and expenses			
08 0100 0 1 801	Budget Authority	19,764	3,083
	Outlays	17,788	2,775
Architect of the Capitol			
Office of the Architect of the Capitol: Salaries			
01 0100 0 1 801	Budget Authority	7,107	1,109
	Outlays	6,474	1,010
Contingent expenses			
01 0102 0 1 801	Budget Authority	104	16
	Outlays	104	16
Capitol buildings			
01 0105 0 1 801	Budget Authority	16,447	2,566
	Outlays	13,240	2,065
Capitol grounds			
01 0108 0 1 801	Budget Authority	4,051	632
	Outlays	3,370	526
Senate office buildings			
01 0123 0 1 801	Budget Authority	25,830	4,029
	Outlays	19,011	2,966
House office buildings			
01 0127 0 1 801	Budget Authority	30,942	4,827
	Outlays	22,000	3,432
Capitol Power Plant			
01 0133 0 1 801	Budget Authority	26,023	4,060
	401(C) Authority - Off. Coll.	253	39
	Outlays	22,633	3,530
Structural and mechanical care, Library buildings and grounds			
01 0155 0 1 801	Budget Authority	7,968	1,243
	Outlays	6,406	999

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Capitol Preservation Fund			
01 8888 0 7 801	Budget Authority	500	78
Library of Congress			
Salaries and expenses			
03 0101 0 1 503	Budget Authority	159,145	24,827
	401(C) Authority - Off. Coll.	5,060	789
	Outlays	135,559	21,147
Copyright Office: Salaries and expenses			
03 0102 0 1 376	Budget Authority	12,621	1,969
	401(C) Authority - Off. Coll.	8,144	1,270
	Outlays	18,872	2,944
Congressional Research Service: Salaries and expenses			
03 0127 0 1 801	Budget Authority	48,313	7,537
	Outlays	43,675	6,813
Books for the blind and physically handicapped: Salaries and expenses			
03 0141 0 1 503	Budget Authority	38,273	5,971
	Outlays	19,137	2,985
National Film Preservation Board,Salaries and expenses			
03 0143 0 1 503	Budget Authority	261	41
	Outlays	261	41
Furniture and furnishings			
03 0146 0 1 503	Budget Authority	3,534	551
	Outlays	2,000	312
Gift and trust fund accounts			
03 9971 0 7 503	401(C) Other - incl. ob. limit	328	51
	Outlays	328	51
Government Printing Office			
Office of Superintendent of Documents: Salaries and expenses			
04 0201 0 1 808	Budget Authority	14,446	2,254
	Outlays	8,971	1,399
Congressional printing and binding			
04 0203 0 1 801	Budget Authority	75,168	11,726
	Outlays	60,134	9,381
Government Printing Office revolving fund			
04 4505 0 4 808	401(C) Authority - Off. Coll.	66,093	10,311
	Outlays	66,093	10,311
General Accounting Office			
Salaries and expenses			
05 0107 0 1 801	Budget Authority	373,519	58,269
	Outlays	343,637	53,607
United States Tax Court			
Salaries and expenses			
23 0100 0 1 752	Budget Authority	31,278	4,879
	Outlays	25,022	3,903
Tax courts independent counsel, U.S. Tax Court			
23 5023 0 2 752	401(C) Authority	10	2
	Outlays	10	2
Legislative Branch Boards and Commissions			
Prescription Drug Payment Review Commission			
03 8880 0 1 570	Budget Authority	265	41
	Outlays	225	35
Commission on Security and Cooperation in Europe: Salaries and expenses			
09 0110 0 1 801	Budget Authority	800	125
	Outlays	719	112
Botanic Garden: Salaries and expenses			
09 0200 0 1 801	Budget Authority	2,721	424
	Outlays	2,449	382
Copyright Royalty Tribunal: Salaries and expenses			
09 0310 0 1 376	Budget Authority	132	21
	Outlays	119	19
Biomedical Ethics: Salaries and expenses			
09 0400 0 1 801	Budget Authority	254	40
	Outlays	183	29
International conferences and contingencies: House and Senate expenses			
09 0500 0 1 801	401(C) Authority	340	53
	Outlays	340	53
National Commission on Children			
09 1050 0 1 801	Budget Authority	847	132
	Outlays	742	116
United States Bipartisan Commission on Comprehensive Health Care			
09 1100 0 1 801	Budget Authority	1,111	173
	Outlays	933	146
Commission on Railroad Retirement Reform			
48 0850 0 1 801	Budget Authority	1,031	161
	Outlays	1,031	161

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Office of Technology Assessment			
Salaries and expenses			
09 0700 0 1 801	Budget Authority	19,202	2,996
	Outlays	14,402	2,247
John C. Stennis Center for Public Service Training and Development			
Payment to the John C. Stennis Center			
09 1200 0 1 801	Budget Authority	7,830	1,221
	Outlays	7,830	1,221
John C. Stennis Center for Public Service Development trust fund			
09 8275 0 7 801	401(C) Authority	564	88
	Outlays	564	88
TOTAL FOR Legislative Branch			
	Budget Authority	1,974,800	308,069
	401(C) Authority	4,274	667
	401(C) Authority - Off. Coll.	79,550	12,409
	401(C) Other - incl. ob. limit	328	51
	Outlays	1,857,351	289,746
The Judiciary			
Supreme Court of the United States			
Salaries and expenses			
10 0100 0 1 752	Budget Authority	15,987	2,494
	Outlays	12,790	1,995
Care of the buildings and grounds			
10 0103 0 1 752	Budget Authority	2,261	353
	Outlays	1,696	265
United States Court of Appeals for the Federal Circuit			
Salaries and expenses			
10 0510 0 1 752	Budget Authority	7,569	1,181
	Outlays	6,812	1,063
United States Court of International Trade			
Salaries and expenses			
10 0400 0 1 752	Budget Authority	7,599	1,185
	Outlays	6,839	1,067
Courts of Appeals, District Courts, and other Judicial Services			
Salaries and expenses			
10 0920 0 1 752	Budget Authority	1,158,940	180,795
	401(C) Authority - Off. Coll.	3,500	546
	Outlays	1,069,725	166,878
Defender services			
10 0923 0 1 752	Budget Authority	116,013	18,098
	Outlays	58,007	9,049
Fees of jurors and commissioners			
10 0925 0 1 752	Budget Authority	51,520	8,037
	Outlays	46,368	7,233
Court security			
10 0930 0 1 752	Budget Authority	43,272	6,750
	Outlays	28,127	4,388
Registry administration			
10 5101 0 2 752	401(C) Authority	21,000	3,276
	Outlays	21,000	3,276
Administrative Office of the United States Courts			
Salaries and expenses			
10 0927 0 1 752	Budget Authority	36,141	5,638
	Outlays	32,527	5,074
Federal Judicial Center			
Salaries and expenses			
10 0928 0 1 752	Budget Authority	11,907	1,857
	Outlays	9,526	1,486
Judiciary Retirement Funds			
Payment to judicial officers' retirement fund			
10 0941 0 1 752	Budget Authority	4,000	624
Judicial officers' retirement fund			
10 8122 0 7 602	401(C) Other - incl. ob. limit	4,000	624
	Outlays	4,000	624
TOTAL FOR The Judiciary			
	Budget Authority	1,455,209	227,012
	401(C) Authority	21,000	3,276
	401(C) Authority - Off. Coll.	3,500	546
	401(C) Other - incl. ob. limit	4,000	624
	Outlays	1,297,417	202,398
Executive Office of the President			
The White House Office			
Salaries and expenses			
11 0110 0 1 802	Budget Authority	29,942	4,671
	Outlays	26,948	4,204

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Executive Residence at the White House			
Operating expenses			
11 0210 0 1 802	Budget Authority	6,132	957
	401(C) Authority - Off. Coll.	855	133
	Outlays	6,678	1,042
Official Residence of the Vice President			
Operating expenses			
11 0211 0 1 802	Budget Authority	271	42
	Outlays	238	37
Special Assistance to the President			
Salaries and expenses			
11 1454 0 1 802	Budget Authority	2,346	366
	Outlays	2,064	322
Council of Economic Advisers			
Salaries and expenses			
11 1900 0 1 802	Budget Authority	2,998	468
	Outlays	2,608	407
Council on Environmental Quality and Office of Environmental Quality			
Council on Environmental Quality and Office of Environmental Quality			
11 1453 0 1 802	Budget Authority	915	143
	Outlays	870	136
Office of Policy Development			
Salaries and expenses			
11 2200 0 1 802	Budget Authority	3,222	503
	Outlays	2,803	437
National Security Council			
Salaries and expenses			
11 2000 0 1 802	Budget Authority	5,461	852
	Outlays	4,369	682
National Critical Materials Council			
Salaries and expenses			
11 0111 0 1 802	Budget Authority	243	38
	Outlays	221	34
Office of Administration			
Salaries and expenses			
11 0038 0 1 802	Budget Authority	19,440	3,033
	Outlays	13,997	2,184
Office of Management and Budget			
Office of Federal Procurement Policy: Salaries and expenses			
11 0201 0 1 802	Budget Authority	2,535	395
	Outlays	2,284	356
Salaries and expenses			
11 0300 0 1 802	Budget Authority	42,566	6,640
	Outlays	37,841	5,903
Office of National Drug Control Policy			
Salaries and expenses			
11 1457 0 1 802	Budget Authority	3,676	573
	Outlays	3,294	514
Office of Science and Technology Policy			
Salaries and expenses			
11 2600 0 1 802	Budget Authority	1,695	264
	Outlays	1,017	159
Office of the United States Trade Representative			
Salaries and expenses			
11 0400 0 1 802	Budget Authority	16,296	2,542
	Outlays	13,852	2,161
TOTAL FOR Executive Office of the President			
	Budget Authority	137,738	21,487
	401(C) Authority - Off. Coll.	853	133
	Outlays	119,084	18,578
Funds Appropriated to the President			
Unanticipated Needs			
Unanticipated needs			
11 0037 0 1 802	Budget Authority	855	133
	Outlays	823	128
Investment in Management Improvement			
Investment in management improvement (Executive direction and management			
11 0061 0 1 802	Budget Authority	1,044	163
	Outlays	783	122
International Security Assistance			
Peacekeeping operations			
11 1032 0 1 152	Budget Authority	33,083	5,161
	Outlays	25,375	3,959
Economic support fund			
11 1037 0 1 152	Budget Authority	3,401,874	530,692
	Outlays	1,901,648	296,657

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Military assistance			
11 1080 0 1 152	Budget Authority	488,509	76,207
	Outlays	95,748	14,937
International military education and training			
11 1081 0 1 152	Budget Authority	49,486	7,720
	Outlays	24,743	3,860
Foreign military sales financing			
11 1082 0 1 152	Budget Authority	4,460,751	695,877
	Direct Loan Limitation	428,040	66,774
	Outlays	1,879,200	293,155
Multilateral Assistance			
Contribution to the International Development Association			
11 0073 0 1 151	Budget Authority	1,038,780	162,050
Contribution to the Asian Development Bank			
11 0076 0 1 151	Budget Authority	159,097	24,819
Contribution to the International Bank for Reconstruction and Developmen			
11 0077 0 1 151	Budget Authority	52,201	8,143
	Outlays	5,220	814
Contribution to the International Finance Corporation			
11 0078 0 1 151	Budget Authority	5,107	797
	Outlays	5,107	797
Contribution to the African Development Fund			
21 0079 0 1 151	Budget Authority	109,620	17,101
Contribution to the African Development Bank			
11 0082 0 1 151	Budget Authority	7,668	1,196
	Outlays	7,668	1,196
International organizations and programs			
11 1005 0 1 151	Budget Authority	236,064	36,826
	Outlays	175,091	27,314
Agency for International Development			
Operating expenses Agency for International Development			
11 1000 0 1 151	Budget Authority	446,750	69,693
	Outlays	336,131	52,437
Operating expenses of the Agency for International Development Office of			
11 1007 0 1 151	Budget Authority	30,321	4,730
	Outlays	22,741	3,548
American schools and hospitals abroad			
11 1013 0 1 151	Budget Authority	36,540	5,700
	Outlays	12,168	1,898
Sub-Saharan Africa, development assistance			
11 1014 0 1 151	Budget Authority	574,200	89,575
	Outlays	48,807	7,614
Functional development assistance program			
11 1021 0 1 151	Budget Authority	1,266,249	197,535
	Outlays	107,631	16,790
International disaster assistance			
11 1035 0 1 151	Budget Authority	29,232	4,560
	Outlays	7,250	1,131
Housing and other credit guaranty programs			
72 4340 0 3 151	401(C) Authority - Off. Coll.	6,895	1,076
	Guaranteed Loan Limitation	130,500	20,358
	Outlays	6,736	1,051
Private sector revolving fund			
72 4341 0 3 151	Budget Authority	8,874	1,384
	Direct Loan Limitation	12,528	1,954
	Guaranteed Loan Limitation	52,200	8,143
	Outlays	920	144
Trade and Development Program			
Trade and development program			
11 1001 0 1 151	Budget Authority	26,156	4,080
	Outlays	5,414	845
Peace Corps			
Peace Corps			
11 0100 0 1 151	Budget Authority	163,497	25,506
	401(C) Authority - Off. Coll.	440	69
	Outlays	134,592	20,996
Overseas Private Investment Corporation			
Overseas Private Investment Corporation			
71 4030 0 3 151	401(C) Authority - Off. Coll.	12,030	1,877
	Direct Loan Limitation	24,012	3,746
	Guaranteed Loan Limitation	182,700	28,501
	Outlays	14,359	2,240
Inter-American Foundation			
Inter-American Foundation			
11 4031 0 3 151	Budget Authority	17,409	2,716
	401(C) Authority - Off. Coll.	13,277	2,071
	Outlays	12,275	1,915

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
African Development Foundation			
African Development Foundation			
11 0700 0 1 151	Budget Authority	8,417	1,313
	Outlays	4,629	722
Military Sales Programs			
Special defense acquisition fund			
11 4116 0 3 155	Obligation Limitation	247,287	38,577
	Outlays	2,473	386
Foreign military sales trust fund			
11 8242 0 7 155	401(C) Authority - Off. Coll.	263,000	41,028
	Outlays	244,590	38,156
Special Assistance for Central America			
Central American reconciliation assistance			
11 1038 0 1 152	Budget Authority	54,492	8,501
	Outlays	33,458	5,219
TOTAL FOR Funds Appropriated to the President			
	Budget Authority	12,706,276	1,982,178
	401(C) Authority - Off. Coll.	295,642	46,121
	Direct Loan Limitation	464,580	72,474
	Guaranteed Loan Limitation	365,400	57,002
	Obligation Limitation	247,287	38,577
	Outlays	5,115,580	798,031
Department of Agriculture			
Office of the Secretary			
Office of the Secretary			
12 0115 0 1 352	Budget Authority	6,590	1,028
	Outlays	6,188	966
Departmental Administration			
Rental payments and building operations			
12 0117 0 1 352	Budget Authority	73,994	11,543
	Outlays	63,561	9,916
Advisory committees			
12 0118 0 1 352	Budget Authority	1,582	247
	Outlays	1,149	179
Departmental administration			
12 0120 0 1 352	Budget Authority	27,960	4,362
	Outlays	18,789	2,931
Hazardous waste management			
12 0500 0 1 304	Budget Authority	5,220	814
	Outlays	2,610	407
Working capital fund			
12 4609 0 4 352	Budget Authority	4,978	777
	Outlays	3,918	611
Office of Governmental and Public Affairs			
Office of Governmental and Public Affairs			
12 0130 0 1 352	Budget Authority	9,510	1,484
	Outlays	7,228	1,128
Office of the Inspector General			
Office of the Inspector General			
12 0900 0 1 352	Budget Authority	54,283	8,468
	Outlays	48,529	7,571
Office of the General Counsel			
Office of the General Counsel			
12 2300 0 1 352	Budget Authority	22,491	3,509
	Outlays	20,309	3,168
Agricultural Research Service			
Agricultural Research Service			
12 1400 0 1 352	Budget Authority	600,971	93,751
	401(C) Authority - Off. Coll.	3,200	499
	Outlays	474,361	74,000
Buildings and facilities			
12 1401 0 1 352	Budget Authority	16,726	2,609
	Outlays	2,509	391
Cooperative State Research Service			
Cooperative State Research Service			
12 1500 0 1 352	Budget Authority	353,226	55,103
	401(C) Authority	2,850	445
	Outlays	188,647	29,429
Extension Service			
Extension Service			
12 0502 0 1 352	Budget Authority	377,665	58,916
	401(C) Authority - Off. Coll.	380	59
	Outlays	292,693	45,660

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
National Agricultural Library			
National Agricultural Library			
12 0300 0 1 352	Budget Authority	14,118	2,202
	Outlays	10,659	1,663
National Agricultural Statistics Service			
Salaries and expenses			
12 1801 0 1 352	Budget Authority	67,895	10,592
	401(C) Authority - Off. Coll.	1,200	187
	Outlays	60,337	9,412
Economic Research Service			
Salaries and expenses			
12 1701 0 1 352	Budget Authority	53,098	8,283
	Outlays	43,912	6,850
World Agricultural Outlook Board			
World agricultural outlook board			
12 2100 0 1 352	Budget Authority	1,958	305
	Outlays	1,523	238
Foreign Agricultural Service			
Foreign Agricultural Service			
12 2900 0 1 352	Budget Authority	101,070	15,767
	Outlays	58,722	9,161
Office of International Cooperation and Development			
Scientific activities overseas (foreign currency program)			
12 1404 0 1 352	Budget Authority	1,044	163
	Outlays	833	130
Salaries and expenses			
12 3200 0 1 352	Budget Authority	5,672	885
	Outlays	5,666	884
Foreign Assistance Programs			
Expenses, Public Law 480, foreign assistance programs, Agriculture			
12 2274 0 1 151	Budget Authority	996,049	155,384
	Direct Loan Limitation	825,700	128,809
	Obligation Limitation	1,547,104	241,348
	Outlays	1,407,864	219,627
Agricultural Stabilization and Conservation Service			
Salaries and expenses			
12 3300 0 1 351	Budget Authority	345	54
	401(C) Authority - Off. Coll.	19,954	3,113
	Outlays	19,954	3,113
Dairy indemnity program			
12 3314 0 1 351	Budget Authority	95	15
	Outlays	95	15
Agricultural conservation program			
12 3315 0 1 302	Budget Authority	184,720	28,816
	Outlays	84,971	13,255
Emergency conservation program			
12 3316 0 1 453	Budget Authority	5,220	814
	Outlays	2,349	366
Colorado river basin salinity control program			
12 3318 0 1 304	Budget Authority	5,692	888
	Outlays	2,846	444
Conservation reserve program			
12 3319 0 1 302	Budget Authority	1,602,604	250,006
	Outlays	873,305	136,236
Water Bank program			
12 3320 0 1 302	Budget Authority	9,396	1,466
	Outlays	1,400	218
Forestry incentives program			
12 3336 0 1 302	Budget Authority	12,994	2,027
	Outlays	5,016	782
Federal Crop Insurance Corporation			
Administrative and operating expenses			
12 2707 0 1 351	Budget Authority	212,169	33,098
	Outlays	120,300	18,767
Commodity Credit Corporation			
Temporary emergency food assistance program			
12 3635 0 1 351	Budget Authority	172,200	26,863
	Outlays	156,488	24,412
Commodity Credit Corporation Fund			
12 4336 0 3 351	401(C) Authority	12,812,000	1,998,672
	Direct Loan Limitation	10,251,000	1,599,156
	Guaranteed Loan Limitation	5,742,000	895,752
	Outlays	12,812,000	1,998,672

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Rural Electrification Administration			
Salaries and expenses			
12 3100 0 1 271	Budget Authority	33,534	5,231
	Outlays	30,248	4,719
Reimbursement to the Rural electrification and telephone revolving fund			
12 3101 0 1 271	Budget Authority	356,004	55,537
Purchase of Rural Telephone Bank capital stock			
12 3102 0 1 452	Budget Authority	29,973	4,676
	Outlays	29,973	4,676
Rural electrification and telephone revolving fund			
12 4230 0 3 271	Direct Loan Limitation	3,492,796	544,876
	Direct Loan Floor	1,867,944	291,399
	Outlays	85,904	13,401
Rural telephone bank			
12 4231 0 3 452	Direct Loan Limitation	219,804	34,289
	Direct Loan Floor	184,834	28,834
	Outlays	8,141	1,270
Farmers Home Administration			
Salaries and expenses			
12 2001 0 1 452	Budget Authority	446,539	69,660
	Outlays	397,420	61,998
Rural housing for domestic farm labor			
12 2004 0 1 604	Budget Authority	9,932	1,549
	Outlays	397	62
Mutual and self-help housing			
12 2006 0 1 604	Budget Authority	8,352	1,303
	Outlays	668	104
Very low income housing repair grants			
12 2064 0 1 604	Budget Authority	13,050	2,036
	Outlays	12,398	1,934
Rural development grant program			
12 2065 0 1 452	Budget Authority	6,788	1,059
	Outlays	1,697	265
Rural water and waste disposal grants			
12 2066 0 1 452	Budget Authority	122,030	19,037
	Outlays	2,441	380
Rural community fire protection grants			
12 2067 0 1 452	Budget Authority	3,227	503
	Outlays	1,452	227
Rural housing preservation grants			
12 2070 0 1 604	Budget Authority	19,982	3,117
	Outlays	1,199	187
Compensation for construction defects			
12 2071 0 1 371	Budget Authority	522	81
	Outlays	522	81
Agricultural credit insurance fund			
12 4140 0 3 351	401(C) Authority - Off. Coll.	115,000	17,940
	Direct Loan Limitation	1,637,619	255,469
	Guaranteed Loan Limitation	3,471,414	541,541
	Outlays	1,240,084	193,453
Rural housing insurance fund			
12 4141 0 3 371	401(C) Authority - Off. Coll.	17,000	2,652
	Direct Loan Limitation	1,926,170	300,483
	Obligation Limitation	286,600	44,710
	Outlays	1,240,290	193,485
Rural development insurance fund			
12 4155 0 3 452	401(C) Authority - Off. Coll.	2,000	312
	Direct Loan Limitation	447,354	69,787
	Guaranteed Loan Limitation	308,711	48,159
	Outlays	24,774	3,865
Self-help housing land development fund			
12 4222 0 3 371	Direct Loan Limitation	521	81
	Outlays	340	53
Rural development loan fund			
12 4233 0 3 452	Direct Loan Limitation	14,616	2,280
	Outlays	1,359	212
Soil Conservation Service			
Conservation operations			
12 1000 0 1 302	Budget Authority	501,048	78,164
	401(C) Authority - Off. Coll.	9,527	1,486
	Outlays	471,427	73,543
Resource conservation and development			
12 1010 0 1 302	Budget Authority	26,796	4,180
	401(C) Authority - Off. Coll.	4,600	718
	Outlays	20,624	3,218

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Watershed planning			
12 1066 0 1 301	Budget Authority	9,317	1,453
	401(C) Authority - Off. Coll.	213	33
	Outlays	8,282	1,292
River basin surveys & investigations			
12 1069 0 1 301	Budget Authority	12,971	2,023
	401(C) Authority - Off. Coll.	166	26
	Outlays	12,307	1,920
Watershed and flood prevention operations			
12 1072 0 1 301	Budget Authority	181,956	28,385
	401(C) Authority - Off. Coll.	11,849	1,848
	Outlays	134,123	20,923
Great plains conservation program			
12 2268 0 1 302	Budget Authority	21,646	3,377
	401(C) Authority - Off. Coll.	41	6
	Outlays	9,847	1,536
Miscellaneous contributed funds (Water resources)			
12 8210 0 7 301	401(C) Authority	482	75
	Outlays	482	75
Miscellaneous contributed funds (Conservation and land management)			
12 8210 0 7 302	401(C) Authority	100	16
Animal and Plant Health Inspection Service			
Salaries and expenses			
12 1600 0 1 352	Budget Authority	353,167	55,094
	401(C) Authority - Off. Coll.	17,434	2,720
	Outlays	311,975	48,668
Buildings and facilities			
12 1601 0 1 352	Budget Authority	2,658	415
Federal Grain Inspection Service			
Salaries and expenses			
12 2400 0 1 352	Budget Authority	8,734	1,363
	Outlays	7,520	1,173
Inspection and weighing services			
12 4050 0 3 352	401(C) Authority - Off. Coll.	36,856	5,750
	Outlays	36,856	5,750
Agricultural Marketing Service			
Marketing services			
12 2500 0 1 352	Budget Authority	35,816	5,587
	401(C) Authority - Off. Coll.	37,278	5,815
	Outlays	47,414	7,396
Payments to States and possessions			
12 2501 0 1 352	Budget Authority	983	153
	Outlays	153	24
Perishable Agricultural Commodities Act fund			
12 5070 0 2 352	401(C) Authority	5,500	858
	Outlays	4,131	644
Funds for strengthening markets, income, and supply (section 32)			
12 5209 0 2 605	401(C) Authority	522,746	81,548
	Outlays	191,000	29,796
Milk market orders assessment fund			
12 8412 0 8 351	401(C) Authority - Off. Coll.	38,709	6,039
	Outlays	38,709	6,039
Miscellaneous trust funds			
12 9972 0 7 352	401(C) Authority	85,979	13,413
	Outlays	55,673	8,685
Office of Transportation			
Office of Transportation			
12 2800 0 1 352	Budget Authority	2,585	403
	Outlays	2,130	332
Food Safety and Inspection Service			
Salaries and expenses			
12 3700 0 1 554	Budget Authority	436,157	68,040
	401(C) Authority - Off. Coll.	46,384	7,236
	Outlays	443,287	69,153
Expenses and refunds, inspection and grading of farm products			
12 8137 0 7 352	401(C) Authority	1,150	179
	Outlays	986	154
Food and Nutrition Service			
Cash and commodities for selected groups			
12 3503 0 1 605	Budget Authority	207,909	32,434
	401(C) Authority	40,000	6,240
	Outlays	212,564	33,160
Food stamp program			
12 3505 0 1 605	401(C) Authority	54,089	8,438
	Outlays	21,636	3,375

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Food program administration			
12 3508 0 1 605	Budget Authority	96,135	14,997
	Outlays	82,676	12,897
Supplemental feeding programs			
12 3510 0 1 605	Budget Authority	3,000	468
	Outlays	3,000	468
Child nutrition programs			
12 3539 0 1 605	401(C) Authority	6,935	1,082
	Outlays	6,935	1,082
Human Nutrition Information Service			
Salaries and expenses			
12 3501 0 1 352	Budget Authority	9,361	1,460
	Outlays	4,035	629
Packers and Stockyards Administration			
Packers and Stockyards Administration			
12 2600 0 1 352	Budget Authority	10,300	1,607
	Outlays	9,435	1,472
Agricultural Cooperative Service			
Salaries and expenses			
12 3000 0 1 352	Budget Authority	4,997	780
	Outlays	3,133	489
Forest Service			
Construction			
12 1103 0 1 302	Budget Authority	238,945	37,275
	401(C) Authority - Off. Coll.	2,835	442
	Outlays	142,140	22,174
Forest research			
12 1104 0 1 302	Budget Authority	147,957	23,081
	401(C) Authority - Off. Coll.	1,262	197
	Outlays	112,674	17,577
State and private forestry			
12 1105 0 1 302	Budget Authority	91,198	14,227
	401(C) Authority - Off. Coll.	550	86
	Outlays	67,763	10,571
National forest system			
12 1106 0 1 302	Budget Authority	1,533,654	239,250
	Outlays	1,329,678	207,429
Land acquisition			
12 5004 0 2 303	Budget Authority	67,111	10,469
	Outlays	26,844	4,188
Range betterment fund			
12 5207 0 2 302	Budget Authority	4,700	733
	Outlays	3,760	587
Acquisition of lands for national forests, special acts			
12 5208 0 2 302	Budget Authority	1,010	158
	Outlays	851	133
Acquisition of lands to complete land exchanges			
12 5216 0 2 302	Budget Authority	1,070	167
	Outlays	949	148
Operations and maintenance of quarters			
12 5219 0 2 302	401(C) Authority	6,078	948
	Outlays	4,881	761
Resource management-timber receipts			
12 5220 0 1 302	Budget Authority	104,681	16,330
	Outlays	83,745	13,064
Cooperative work trust fund			
12 8028 0 7 302	401(C) Authority	315,117	49,158
	Outlays	265,959	41,490
Highway Construction: Mount St. Helens National Monument			
12 8029 0 7 401	Budget Authority	5,574	870
	Outlays	1,115	174
Gifts, donations and bequests for forest and rangeland research			
12 8034 0 7 302	Budget Authority	94	15
	Outlays	94	15
Other appropriations			
12 9911 0 1 302	Budget Authority	38,242	5,966
	Outlays	35,183	5,489
Forest Service permanent appropriations			
12 9921 0 2 806	401(C) Authority	307,430	47,959
	Outlays	230,880	36,017
Forest Service permanent appropriations			
12 9922 0 2 302	Budget Authority	21,129	3,296
	401(C) Authority	140,747	21,957
	Outlays	122,939	19,178

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Reforestation trust fund			
20 8046 0 7 302	401(C) Other - incl. ob. limit	30,000	4,680
	Outlays	30,000	4,680
TOTAL FOR Department of Agriculture			
	Budget Authority	10,232,375	1,596,248
	401(C) Authority	14,301,203	2,230,988
	401(C) Authority - Off. Coll.	366,438	57,164
	401(C) Other - incl. ob. limit	30,000	4,680
	Direct Loan Limitation	18,815,580	2,935,230
	Direct Loan Floor	2,052,778	320,233
	Guaranteed Loan Limitation	9,522,125	1,485,452
	Obligation Limitation	1,833,704	286,058
	Outlays	24,477,833	3,818,542
Department of Commerce			
General Administration			
Salaries and expenses			
13 0120 0 1 376	Budget Authority	43,258	6,748
	Outlays	41,095	6,411
Grants and loans administration			
13 0125 0 1 452	Budget Authority	26,533	4,139
	Outlays	23,296	3,634
Economic development assistance programs			
13 2050 0 1 452	Budget Authority	190,037	29,646
	Guaranteed Loan Limitation	195,750	30,537
	Outlays	19,004	2,965
Bureau of the Census			
Salaries and expenses			
13 0401 0 1 376	Budget Authority	103,124	16,087
	401(C) Authority - Off. Coll.	8,000	1,248
	Outlays	90,499	14,118
Periodic censuses and programs			
13 0450 0 1 376	Budget Authority	595,107	92,836
	Outlays	578,444	90,237
Economic and Statistical Analysis			
Salaries and expenses			
13 1500 0 1 376	Budget Authority	35,352	5,515
	401(C) Authority - Off. Coll.	395	62
	Outlays	32,212	5,025
International Trade Administration			
Operations and administration			
13 1250 0 1 376	Budget Authority	179,248	27,963
	401(C) Authority - Off. Coll.	15,960	2,490
	Outlays	141,434	22,064
Export Administration			
Operations and administration			
13 0300 0 1 376	Budget Authority	42,775	6,673
	Outlays	29,943	4,671
Minority Business Development Agency			
Minority business development			
13 0201 0 1 376	Budget Authority	41,807	6,522
	Outlays	12,542	1,957
United States Travel and Tourism Administration			
Salaries and expenses			
13 0700 0 1 376	Budget Authority	14,614	2,280
	401(C) Authority - Off. Coll.	1,450	226
	Outlays	12,703	1,981
National Oceanic and Atmospheric Administration			
Operations, research, and facilities			
13 1450 0 1 306	Budget Authority	1,351,997	210,912
	401(C) Authority - Off. Coll.	11,434	1,784
	Outlays	930,791	145,203
Coastal energy impact fund			
13 4315 0 3 452	401(C) Authority - Off. Coll.	5,200	811
	Outlays	5,200	811
Federal ship financing fund, fishing vessels			
13 4417 0 3 376	401(C) Authority - Off. Coll.	7,300	1,139
	Guaranteed Loan Limitation	480,000	74,880
	Outlays	7,300	1,139
Fishermen's contingency fund			
13 5120 0 2 376	Budget Authority	752	117
	Outlays	714	111
Foreign fishing observer fund			
13 5122 0 2 376	Budget Authority	2,028	316
	Outlays	1,947	304

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Fisheries promotional fund			
13 5124 0 2 376	Budget Authority	3,135	489
	Outlays	1,724	269
Promote and develop fishery products and research pertaining to American			
13 5139 0 2 376	401(C) Other - incl. ob. limit	4,591	716
	Outlays	2,468	385
Aviation weather services program			
13 8105 0 7 306	Budget Authority	29,981	4,677
	Outlays	29,981	4,677
Patent and Trademark Office			
Salaries and expenses			
13 1006 0 1 376	Budget Authority	115,458	18,011
	401(C) Authority - Off. Coll.	180,032	28,085
	Outlays	162,520	25,353
Technology Administration			
Information products and services			
13 8546 0 7 376	401(C) Authority	49,528	7,726
	Outlays	33,828	5,277
National Institute of Standards and Technology			
Scientific and technical research and services			
13 0500 0 1 376	Budget Authority	167,861	26,186
	Outlays	129,687	20,232
Working capital fund			
13 4650 0 4 376	Budget Authority	1,608	251
	Outlays	804	125
National Telecommunications and Information Administration			
Salaries and expenses			
13 0550 0 1 376	Budget Authority	14,609	2,279
	Outlays	11,687	1,823
Public telecommunications facilities, planning and construction			
13 0551 0 1 503	Budget Authority	20,919	3,263
	Outlays	2,427	379
TOTAL FOR Department of Commerce			
	Budget Authority	2,900,203	464,910
	401(C) Authority	49,528	7,726
	401(C) Authority - Off. Coll.	229,771	35,845
	401(C) Other - incl. ob. limit	4,591	716
	Guaranteed Loan Limitation	675,750	105,417
	Outlays	2,302,250	359,151
Department of Defense--Military			
Military Personnel			
Military personnel, Marine Corps			
17 1105 0 1 051	Budget Authority	5,812,518	621,939
	Outlays	5,521,892	590,842
Reserve personnel, Marine Corps			
17 1108 0 1 051	Budget Authority	312,670	33,456
	Outlays	268,896	28,772
Reserve personnel, Navy			
17 1405 0 1 051	Budget Authority	1,575,460	168,574
	Outlays	1,417,914	151,717
Military personnel, Navy			
17 1453 0 1 051	Budget Authority	19,394,887	2,075,253
	Outlays	18,425,143	1,971,490
Military personnel, Army			
21 2010 0 1 051	Budget Authority	24,962,507	2,670,988
	Outlays	23,589,569	2,524,084
National Guard personnel, Army			
21 2060 0 1 051	Budget Authority	3,264,156	349,265
	Outlays	2,937,740	314,338
Reserve personnel, Army			
21 2070 0 1 051	Budget Authority	2,190,921	234,429
	Outlays	2,037,557	218,019
Military personnel, Air Force			
57 3500 0 1 051	Budget Authority	20,595,184	2,203,685
	Outlays	19,565,425	2,093,500
Reserve personnel, Air Force			
57 3700 0 1 051	Budget Authority	649,564	69,503
	Outlays	597,599	63,943
National Guard personnel, Air Force			
57 3850 0 1 051	Budget Authority	1,016,445	108,760
	Outlays	946,310	101,255
Operation and Maintenance			
Operation and maintenance, Marine Corps			
17 1106 0 1 051	Budget Authority	1,902,709	203,590
	Outlays	1,408,005	150,657

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Operation and maintenance, Marine Corps Reserve			
17 1107 0 1 051	Budget Authority	81,137	8,682
	Outlays	52,171	5,582
Operation and maintenance, Navy			
17 1804 0 1 051	Budget Authority	26,360,916	2,820,618
	Outlays	19,770,687	2,115,464
Operation and maintenance, Navy Reserve			
17 1806 0 1 051	Budget Authority	1,022,076	109,362
	Outlays	735,895	78,741
National Board for the Promotion of Rifle Practice, Army			
21 1705 0 1 051	Budget Authority	4,497	481
	Outlays	4,385	469
Operation and maintenance, Army			
21 2020 0 1 051	Budget Authority	23,348,989	2,498,342
	Outlays	18,679,191	1,998,673
Operation and maintenance, Army National Guard			
21 2065 0 1 051	Budget Authority	1,883,488	201,533
	Outlays	1,544,460	165,257
Operation and maintenance, Army Reserve			
21 2080 0 1 051	Budget Authority	832,120	89,037
	Outlays	733,098	78,441
Operation and maintenance, Air Force			
57 3400 0 1 051	Budget Authority	22,951,335	2,453,653
	Outlays	17,886,441	1,913,849
Operation and maintenance, Air Force Reserve			
57 3740 0 1 051	Budget Authority	1,081,486	115,719
	Outlays	954,952	102,180
Operation and maintenance, Air National Guard			
57 3840 0 1 051	Budget Authority	2,061,112	220,539
	Outlays	1,793,167	191,869
Operation and maintenance, Defense agencies			
97 0100 0 1 051	Budget Authority	8,054,745	861,858
	Outlays	6,927,081	741,198
Court of Military Appeals, Defense			
97 0104 0 1 051	Budget Authority	3,679	394
	Outlays	3,164	339
Drug interdiction, Defense			
97 0105 0 1 051	Budget Authority	219,240	23,459
	Outlays	164,430	17,594
Goodwill games			
97 0106 0 1 051	Budget Authority	5,220	559
	Outlays	2,297	246
Foreign currency fluctuations, Defense			
97 0801 0 1 051	Unobligated Balances - Defense	414,152	44,314
Humanitarian assistance			
97 0819 0 1 051	Budget Authority	10,440	1,117
	Outlays	6,139	657
Procurement			
Procurement, Marine Corps			
17 1109 0 1 051	Budget Authority	1,348,681	144,309
	Unobligated Balances - Defense	266,802	28,548
	Outlays	109,853	11,754
Aircraft procurement, Navy			
17 1506 0 1 051	Budget Authority	9,723,508	1,040,415
	Unobligated Balances - Defense	1,865,544	199,613
	Outlays	1,274,796	136,403
Weapons procurement, Navy			
17 1507 0 1 051	Budget Authority	6,358,973	680,411
	Unobligated Balances - Defense	2,295,631	245,633
	Outlays	952,007	101,865
Shipbuilding and conversion, Navy			
17 1611 0 1 051	Budget Authority	9,951,878	1,064,851
	Unobligated Balances - Defense	9,802,211	1,048,837
	Outlays	1,027,212	109,911
Other procurement, Navy			
17 1810 0 1 051	Budget Authority	4,828,908	516,693
	Unobligated Balances - Defense	1,804,590	193,091
	Outlays	669,984	71,688
Aircraft procurement, Army			
21 2031 0 1 051	Budget Authority	2,998,147	320,802
	Unobligated Balances - Defense	555,538	59,443
	Outlays	543,713	58,178
Missile procurement, Army			
21 2032 0 1 051	Budget Authority	2,706,056	289,548
	Unobligated Balances - Defense	779,755	83,434
	Outlays	209,148	22,379

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Procurement of weapons and tracked combat vehicles, Army			
21 2033 0 1 051	Budget Authority	2,944,449	315,056
	Unobligated Balances - Defense	1,303,644	139,490
	Outlays	195,413	20,910
Procurement of ammunition, Army			
21 2034 0 1 051	Budget Authority	2,093,424	223,996
	Unobligated Balances - Defense	168,801	18,062
	Outlays	565,556	60,514
Other procurement, Army			
21 2035 0 1 051	Budget Authority	4,864,989	520,554
	Unobligated Balances - Defense	1,602,125	171,427
	Outlays	375,092	40,135
Aircraft procurement, Air Force			
57 3010 0 1 051	Budget Authority	16,306,743	1,744,822
	Unobligated Balances - Defense	6,053,661	647,742
	Outlays	1,475,787	157,909
Missile procurement, Air Force			
57 3020 0 1 051	Budget Authority	7,433,693	795,405
	Unobligated Balances - Defense	2,758,717	295,183
	Outlays	2,537,911	271,557
Other procurement, Air Force			
57 3080 0 1 051	Budget Authority	8,512,255	910,811
	Unobligated Balances - Defense	2,139,693	228,947
	Outlays	5,219,454	558,482
Procurement, Defense agencies			
97 0300 0 1 051	Budget Authority	1,233,541	131,989
	Unobligated Balances - Defense	349,815	37,430
	Outlays	443,339	47,437
National guard and reserve equipment			
97 0350 0 1 051	Budget Authority	1,188,908	127,213
	Unobligated Balances - Defense	442,388	47,336
	Outlays	97,877	10,473
Defense production act purchases			
97 0360 0 1 051	Budget Authority	34,974	3,742
	Unobligated Balances - Defense	45,850	4,906
Chemical agents and munitions destruction, Defense			
97 0390 0 1 051	Budget Authority	187,397	20,051
	Unobligated Balances - Defense	31,788	3,401
	Outlays	132,872	14,217
Research, Development, Test, and Evaluation			
Research, development, test, and evaluation, Navy			
17 1319 0 1 051	Budget Authority	9,731,639	1,041,285
	Unobligated Balances - Defense	482,879	51,668
	Outlays	5,413,957	579,293
Research, development, test, and evaluation, Army			
21 2040 0 1 051	Budget Authority	5,352,817	572,751
	Unobligated Balances - Defense	395,274	42,294
	Outlays	3,103,969	332,125
Research, development, test, and evaluation, Air Force			
57 3600 0 1 051	Budget Authority	15,328,372	1,640,136
	Unobligated Balances - Defense	1,708,045	182,761
	Outlays	8,688,573	929,677
Research, development, test, and evaluation, Defense agencies			
97 0400 0 1 051	Budget Authority	8,542,111	914,006
	Unobligated Balances - Defense	629,063	67,310
	Outlays	4,860,722	520,097
Developmental test and evaluation, Defense			
97 0450 0 1 051	Budget Authority	155,890	16,680
	Unobligated Balances - Defense	34,398	3,681
	Outlays	57,086	6,108
Operational test and evaluation, Defense			
97 0460 0 1 051	Budget Authority	74,080	7,927
	Unobligated Balances - Defense	20,694	2,214
	Outlays	41,984	4,492
Military Construction			
Military construction, Navy			
17 1205 0 1 051	Budget Authority	1,647,242	176,255
	Unobligated Balances - Defense	374,393	40,060
	Outlays	586,274	62,731
Military construction, Naval Reserve			
17 1235 0 1 051	Budget Authority	63,580	6,803
	Unobligated Balances - Defense	10,927	1,169
	Outlays	11,176	1,195
Military construction, Army			
21 2050 0 1 051	Budget Authority	1,197,423	128,124
	Unobligated Balances - Defense	437,348	46,796
	Outlays	490,431	52,476

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Military construction, Army National Guard			
21 2085 0 1 051	Budget Authority	239,241	25,599
	Unobligated Balances - Defense	44,743	4,788
	Outlays	34,078	3,646
Military construction, Army Reserve			
21 2086 0 1 051	Budget Authority	89,778	9,606
	Unobligated Balances - Defense	21,950	2,349
	Outlays	27,933	2,989
Military construction, Air Force			
57 3300 0 1 051	Budget Authority	1,279,867	136,946
	Unobligated Balances - Defense	649,510	69,498
	Outlays	559,519	59,868
Military construction, Air Force Reserve			
57 3730 0 1 051	Budget Authority	73,706	7,887
	Unobligated Balances - Defense	23,702	2,536
	Outlays	10,909	1,167
Military construction, Air National Guard			
57 3830 0 1 051	Budget Authority	165,482	17,707
	Unobligated Balances - Defense	53,309	5,704
	Outlays	21,879	2,341
Military construction, Defense agencies			
97 0500 0 1 051	Budget Authority	689,024	73,726
	Unobligated Balances - Defense	356,803	38,178
	Outlays	292,832	31,333
Foreign currency fluctuations, construction			
97 0803 0 1 051	Unobligated Balances - Defense	195,814	20,952
North Atlantic Treaty Organization infrastructure			
97 0804 0 1 051	Budget Authority	513,648	54,960
	Unobligated Balances - Defense	133,905	14,328
	Outlays	51,804	5,543
Family Housing			
Family housing, Navy and Marine Corps			
17 0703 0 1 051	Budget Authority	834,199	89,259
	Unobligated Balances - Defense	173,606	18,576
	Outlays	564,370	60,387
Family housing, Army			
21 0702 0 1 051	Budget Authority	1,594,787	170,642
	Unobligated Balances - Defense	120,034	12,844
	Outlays	960,300	102,752
Family housing, Air Force			
57 0704 0 1 051	Budget Authority	950,964	101,753
	Unobligated Balances - Defense	105,938	11,335
	Outlays	591,865	63,330
Family housing, Defense agencies			
97 0706 0 1 051	Budget Authority	21,611	2,312
	Unobligated Balances - Defense	176	19
	Outlays	12,201	1,306
Revolving and Management Funds			
Navy stock fund			
17 4911 0 4 051	Budget Authority	192,827	20,632
	Outlays	19,476	2,084
Army stock fund			
21 4991 0 4 051	Budget Authority	304,744	32,608
	Outlays	17,675	1,891
Air Force stock fund			
57 4921 0 4 051	Budget Authority	195,124	20,878
	Outlays	19,708	2,109
National defense stockpile transaction fund			
97 4555 0 3 051	Budget Authority	34,974	3,742
	Unobligated Balances - Defense	460,973	49,324
	Outlays	34,974	3,742
Defense stock fund			
97 4961 0 4 051	Budget Authority	26,100	2,793
	Outlays	5,716	612
TOTAL FOR Department of Defense--Military			
	Budget Authority	301,593,255	32,270,480
	Unobligated Balances - Defense	39,114,189	4,185,221
	Outlays	188,283,033	20,146,282
Department of Defense--Civil			
Cemeterial Expenses, Army			
Salaries and expenses			
21 1805 0 1 705	Budget Authority	13,944	2,175
	Outlays	9,858	1,538

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Corps of Engineers--Civil			
Inland waterways trust fund			
20 8861 0 7 301	Budget Authority	64,122	10,003
	Outlays	53,221	8,302
Flood control, Mississippi River and tributaries			
96 3112 0 1 301	Budget Authority	358,132	55,869
	401(C) Authority - Off. Coll.	195	30
	Outlays	293,863	45,842
General investigations			
96 3121 0 1 301	Budget Authority	152,582	23,803
	Outlays	105,892	16,519
Construction, general			
96 3122 0 1 301	Budget Authority	1,177,870	183,748
	401(C) Authority - Off. Coll.	250	39
	Outlays	459,619	71,701
Operation and maintenance, general (Water resources)			
96 3123 0 1 301	Budget Authority	1,272,690	198,540
	401(C) Authority - Off. Coll.	3,500	546
	Outlays	1,031,952	160,985
Operation and maintenance, general (Recreational resources)			
96 3123 0 1 303	Budget Authority	15,909	2,482
	Outlays	12,409	1,936
General expenses			
96 3124 0 1 301	Budget Authority	131,599	20,529
	Outlays	105,279	16,423
Flood control and coastal emergencies			
96 3125 0 1 301	Budget Authority	21,128	3,296
	Outlays	10,564	1,648
Regulatory program			
96 3126 0 1 301	Budget Authority	68,490	10,684
	Outlays	63,930	9,973
Rivers and harbors contributed funds			
96 8862 0 7 301	401(C) Authority	169,465	26,437
	Outlays	105,068	16,391
Harbor maintenance trust fund			
96 8863 0 7 301	Budget Authority	164,000	25,584
	Outlays	164,000	25,584
Permanent appropriations (Water resources)			
96 9921 0 2 301	401(C) Authority	7,000	1,092
	Outlays	4,508	703
Permanent appropriations (Other general purpose fiscal assistance)			
96 9921 0 2 806	401(C) Authority	5,000	780
Soldiers' and Airmen's Home			
Operation and maintenance			
84 8931 0 7 705	Budget Authority	40,073	6,251
	401(C) Authority - Off. Coll.	144	22
	Outlays	35,208	5,492
Capital outlays			
84 8932 0 7 705	Budget Authority	15,472	2,414
	Outlays	464	72
Forest and Wildlife Conservation, Military Reservations			
Wildlife conservation			
97 5095 0 2 303	401(C) Authority	2,100	328
	Outlays	1,260	197
TOTAL FOR Department of Defense--Civil			
	Budget Authority	3,496,011	545,378
	401(C) Authority	183,565	28,637
	401(C) Authority - Off. Coll.	4,089	637
	Outlays	2,457,095	383,306
Department of Health and Human Services, except Social Security			
Food and Drug Administration			
Program expenses			
75 0600 0 1 554	Budget Authority	549,206	85,676
	Outlays	450,349	70,254
Buildings and facilities			
75 0603 0 1 554	Budget Authority	25,004	3,901
	Outlays	2,000	312
Revolving fund for certification and other services			
75 4309 0 3 554	401(C) Authority - Off. Coll.	3,187	497
	Outlays	3,187	497
Health Resources and Services Administration			
Vaccine improvement program trust fund			
20 8175 0 7 551	Budget Authority	1,566	244
	Outlays	783	122

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Health resources and services (Health care services)			
75 0350 0 1 551	Budget Authority	988,062	154,138
	Budget Authority - Spec. Rules	10,068	10,068
	401(C) Authority - Off. Coll.	365	57
	Direct Loan Limitation	522	81
	Outlays	599,243	98,580
Health resources and services (Education and training of health care wor			
75 0350 0 1 553	Budget Authority	207,545	32,377
	Outlays	124,527	19,426
Indian Health Service			
Tribal health administration			
75 0390 0 1 551	Budget Authority	79,995	12,479
	Budget Authority - Spec. Rules	20,020	20,020
	401(C) Authority - Spec. Rules	60	60
	Outlays	75,047	24,410
Indian health facilities			
75 0391 0 1 551	Budget Authority - Spec. Rules	1,291	1,291
	Outlays	258	258
Centers for Disease Control			
Disease control, research, and training (Health care services)			
75 0943 0 1 551	Budget Authority	904,998	141,180
	401(C) Authority - Off. Coll.	800	125
	Outlays	507,599	79,186
Disease control, research, and training (Health research)			
75 0943 0 1 552	Budget Authority	124,886	19,482
	Outlays	83,674	13,053
National Institutes of Health			
National Library of Medicine (Health research)			
75 0807 0 1 552	Budget Authority	26,649	4,157
	Outlays	16,522	2,577
National Library of Medicine (Education and training of health care work			
75 0807 0 1 553	Budget Authority	51,183	7,985
	Outlays	31,733	4,950
John E. Fogarty International Center			
75 0819 0 1 552	Budget Authority	16,666	2,600
	Outlays	8,833	1,378
Buildings and facilities			
75 0838 0 1 552	Budget Authority	40,227	6,275
	Outlays	20,114	3,138
National Institute on Aging (Health research)			
75 0843 0 1 552	Budget Authority	224,269	34,986
	Outlays	69,523	10,846
National Institute on Aging (Education and training of health care work			
75 0843 0 1 553	Budget Authority	8,896	1,388
	Outlays	3,647	569
National Institute of Child Health and Human Development (Health researc			
75 0844 0 1 552	Budget Authority	428,619	66,865
	Outlays	137,158	21,397
National Institute of Child Health and Human Development (Education and			
75 0844 0 1 553	Budget Authority	16,570	2,585
	Outlays	1,657	258
Office of the Director (Health research)			
75 0846 0 1 552	Budget Authority	69,156	10,788
	Outlays	42,877	6,689
Office of the Director (Education and training of health care work force			
75 0846 0 1 553	Budget Authority	7,183	1,121
	Outlays	4,310	672
Research resources (Health research)			
75 0848 0 1 552	Budget Authority	371,846	58,008
	Outlays	185,923	29,004
Research resources (Education and training of health care work force)			
75 0848 0 1 553	Budget Authority	2,374	370
	Outlays	119	19
National Cancer Institute (Health research)			
75 0849 0 1 552	Budget Authority	1,609,954	251,153
	Outlays	740,579	115,530
National Cancer Institute (Education and training of health care work fo			
75 0849 0 1 553	Budget Authority	34,780	5,426
	Outlays	1,043	163
National Institute of General Medical Sciences (Health research)			
75 0851 0 1 552	Budget Authority	635,228	99,096
	Outlays	254,091	39,638
National Institute of General Medical Sciences (Education and training o			
75 0851 0 1 553	Budget Authority	77,337	12,065
	Outlays	28,615	4,464

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
National Institute of Environmental Health Sciences (Health research)			
75 0862 0 1 552	Budget Authority	224,605	35,038
	Outlays	137,009	21,373
National Institute of Environmental Health Sciences (Education and train			
75 0862 0 1 553	Budget Authority	9,838	1,535
	Outlays	4,919	767
National Heart, Lung and Blood Institute (Health research)			
75 0872 0 1 552	Budget Authority	1,049,642	163,744
	Outlays	398,864	62,223
National Heart, Lung and Blood Institute (Education and training of heal			
75 0872 0 1 553	Budget Authority	43,706	6,818
	Outlays	1,748	273
National Institute of Dental Research (Health research)			
75 0873 0 1 552	Budget Authority	131,182	20,464
	Outlays	66,903	10,437
National Institute of Dental Research (Education and training of health			
75 0873 0 1 553	Budget Authority	5,963	930
	Outlays	3,280	512
National Institute of Diabetes and Digestive and Kidney Diseases (Health			
75 0884 0 1 552	Budget Authority	562,461	87,744
	Outlays	202,486	31,588
National Institute of Diabetes and Digestive and Kidney Diseases (Educat			
75 0884 0 1 553	Budget Authority	23,029	3,593
	Outlays	6,218	970
National Institute of Allergy and Infectious Diseases (Health research)			
75 0885 0 1 552	Budget Authority	760,728	118,674
	Outlays	220,611	34,415
National Institute of Allergy and Infectious Diseases (Education and tra			
75 0885 0 1 553	Budget Authority	15,347	2,394
	Outlays	2,302	359
National Institute of Neurological Disorders and Stroke (Health research			
75 0886 0 1 552	Budget Authority	489,497	76,362
	Outlays	181,114	28,254
National Institute of Neurological Disorcers and Stroke (Education and t			
75 0886 0 1 553	Budget Authority	12,935	2,018
	Outlays	3,751	585
National Eye Institute (Health research)			
75 0887 0 1 552	Budget Authority	235,614	36,756
	Outlays	77,753	12,129
National Eye Institute (Education and training of health care work force			
75 0887 0 1 553	Budget Authority	6,214	969
	Outlays	559	87
National Institute of Arthritis and Musculoskeletal and Skin Diseases (H			
75 0888 0 1 552	Budget Authority	160,885	25,098
	Outlays	57,919	9,035
National Institute of Arthritis and Musculoskeletal and Skin Diseases (E			
75 0888 0 1 553	Budget Authority	6,263	977
	Outlays	1,816	283
National Center for Nursing Research (Health research)			
75 0889 0 1 552	Budget Authority	26,464	4,128
	Outlays	7,410	1,156
National Center for Nursing Research (Education and training of health c			
75 0889 0 1 553	Budget Authority	4,003	624
	Outlays	1,001	156
National Institute of Deafness and Other Communication Disorders (Health			
75 0890 0 1 552	Budget Authority	87,885	13,710
	Outlays	32,517	5,073
National Institute of Deafness and Other Communication Disorders (Educat			
75 0890 0 1 553	Budget Authority	2,526	394
	Outlays	733	114
Alcohol, Drug Abuse, and Mental Health Administration			
Federal subsidy for Saint Elizabeths Hospital			
75 1300 0 1 551	Budget Authority	24,755	3,862
	Outlays	24,755	3,862
Alcohol, drug abuse, and mental health (Health care services)			
75 1361 0 1 551	Budget Authority	1,161,831	181,246
	Outlays	662,244	103,310
Alcohol, drug abuse, and mental health (Health research)			
75 1361 0 1 552	Budget Authority	720,244	112,358
	Outlays	597,803	93,257
Alcohol, drug abuse, and mental health (Education and training of health			
75 1361 0 1 553	Budget Authority	46,914	7,319
	Outlays	34,716	5,416

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Office of Assistant Secretary for Health			
Public health service management (Health care services)			
75 1101 0 1 551	Budget Authority	46,179	7,204
	Outlays	26,322	4,106
Public health service management (Health research)			
75 1101 0 1 552	Budget Authority	27,200	4,243
	Outlays	18,224	2,843
Health Care Financing Administration			
Federal supplementary medical insurance trust fund			
20 8004 0 7 571	401(C) Other - incl. ob. limit	57,920	9,036
	401(C) Authority - Spec. Rules	601,000	601,000
	Obligation Limitation	1,169,435	182,432
	Outlays	1,737,165	778,242
Federal hospital insurance trust fund			
20 8005 0 7 571	401(C) Other - incl. ob. limit	206,142	32,158
	401(C) Authority - Spec. Rules	1,143,000	1,143,000
	Obligation Limitation	997,458	155,603
	Outlays	2,150,649	1,300,194
Federal catastrophic drug insurance trust fund			
20 8183 0 7 571	401(C) Authority - Spec. Rules	2,000	2,000
	Outlays	2,000	2,000
Federal supplementary medical insurance trust fund, catastrophic			
20 8184 0 7 571	401(C) Authority - Spec. Rules	40,000	40,000
	Obligation Limitation	126,698	19,765
	Outlays	165,435	59,568
Program management (Health care services)			
75 0511 0 1 551	Budget Authority	87,442	13,641
	Outlays	74,326	11,595
Program management (Health research)			
75 0511 0 1 552	Budget Authority	10,358	1,616
	Outlays	8,286	1,293
Social Security Administration			
Supplemental security income program			
75 0406 0 1 609	Budget Authority	851,398	132,818
	Outlays	851,398	132,818
Special benefits for disabled coal miners.			
75 0409 0 1 601	401(C) Authority	7,000	1,092
	Outlays	7,000	1,092
Family Support Administration			
Program administration			
75 1500 0 1 609	Budget Authority	86,972	13,568
	401(C) Authority - Off. Coll.	450	70
	Outlays	65,679	10,246
Family support payments to States			
75 1501 0 1 609	401(C) Authority	1,279,000	199,524
	Outlays	1,279,000	199,524
Low income home energy assistance			
75 1502 0 1 609	Budget Authority	1,444,061	225,274
	Outlays	1,314,096	204,999
Refugee and entrant assistance			
75 1503 0 1 609	Budget Authority	399,180	62,272
	Outlays	259,467	40,477
Community services block grant			
75 1504 0 1 506	Budget Authority	397,344	61,986
	Outlays	273,373	42,646
Work incentives			
75 1505 0 1 504	Budget Authority	95,463	14,892
	Outlays	89,735	13,999
Interim assistance to States for legalization			
75 1508 0 1 506	401(C) Other - incl. ob. limit	895,000	139,620
	Outlays	225,000	35,100
Payments to states for AFDC work programs			
75 1509 0 1 609	401(C) Other - incl. ob. limit	465,000	72,540
	Outlays	465,000	72,540
Human Development Services			
Social services block grant			
75 1634 0 1 506	401(C) Authority	2,700,000	421,200
	Outlays	2,565,000	400,140
Human development services			
75 1636 0 1 506	Budget Authority	2,689,201	419,515
	Outlays	1,480,228	230,916
Payments to States for foster care and adoption assistance			
75 1645 0 1 506	401(C) Authority - Spec. Rules	5,000	5,000
	Outlays	3,750	3,750

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Departmental Management			
General Departmental management			
75 0120 0 1 609	Budget Authority	72,129	11,252
	Outlays	50,490	7,876
Policy research			
75 0122 0 1 609	Budget Authority	8,212	1,281
	Outlays	3,285	512
Office of the Inspector General			
75 0128 0 1 609	Budget Authority	49,238	7,681
	Outlays	36,929	5,761
Office for Civil Rights			
75 0135 0 1 751	Budget Authority	17,212	2,685
	Outlays	15,663	2,443
Office of Consumer Affairs			
75 0137 0 1 506	Budget Authority	1,819	284
	Outlays	1,455	227
TOTAL FOR Department of Health and Human Services, except So			
	Budget Authority	18,598,138	2,901,312
	Budget Authority - Spec. Rules	31,379	31,379
	401(C) Authority	3,986,000	621,816
	401(C) Authority - Off. Coll.	4,802	749
	401(C) Other - incl. ob. limit	1,624,062	253,354
	401(C) Authority - Spec. Rules	1,791,060	1,791,060
	Direct Loan Limitation	522	81
	Obligation Limitation	2,293,591	357,800
	Outlays	19,290,797	4,537,931
Department of the Interior			
Department of the Interior			
Oil Spill Emergency Fund			
14 0119 0 1 306	Budget Authority	7,621	1,189
	Outlays	3,811	595
Bureau of Land Management			
Management of lands and resources			
14 1109 0 1 302	Budget Authority	529,902	82,665
	Outlays	462,605	72,167
Construction and access			
14 1110 0 1 302	Budget Authority	11,748	1,833
	Outlays	2,937	458
Payments in lieu of taxes			
14 1114 0 1 806	Budget Authority	109,620	17,101
	Outlays	109,620	17,101
Oregon and California grant lands			
14 1116 0 1 302	Budget Authority	64,238	10,021
	Outlays	47,536	7,416
Special acquisition of lands and minerals			
14 1117 0 1 302	401(C) Authority	1,300	203
	Outlays	1,300	203
Service charges, deposits, and forfeitures			
14 5017 0 2 302	Budget Authority	6,367	993
	Outlays	4,508	703
Land acquisition			
14 5033 0 2 302	Budget Authority	14,892	2,323
	Outlays	7,446	1,161
Operation and maintenance of quarters			
14 5048 0 2 302	401(C) Authority	261	41
	Outlays	217	34
Range improvements			
14 5132 0 2 302	Budget Authority	8,406	1,311
	Outlays	5,313	829
Miscellaneous permanent appropriations (Conservation and land management			
14 9921 0 2 302	401(C) Authority	7,308	1,140
	Outlays	7,045	1,099
Miscellaneous permanent appropriations (Other general purpose fiscal ass			
14 9921 0 2 806	401(C) Authority	81,291	12,681
Miscellaneous trust funds			
14 9971 0 7 302	Budget Authority	107	17
	401(C) Authority	626	98
	Outlays	373	58
Minerals Management Service			
Leasing and royalty management			
14 1917 0 1 302	Budget Authority	181,893	28,375
	Outlays	118,230	18,444
Payments to States from receipts under Mineral Leasing Act			
14 5003 0 2 806	401(C) Authority	372,996	58,187
	Outlays	343,156	53,532

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Office of Surface Mining Reclamation and Enforcement			
Regulation and technology			
14 1801 0 1 302	Budget Authority	108,372	16,906
	Outlays	63,181	9,857
Abandoned mine reclamation fund			
14 5015 0 2 302	Budget Authority	202,211	31,545
	Outlays	55,001	8,580
Bureau of Reclamation			
Loan program			
14 0667 0 1 301	Budget Authority	27,194	4,242
	Direct Loan Limitation	28,998	4,524
	Outlays	16,724	2,609
Construction program			
14 0684 0 1 301	Budget Authority	745,800	116,345
	401(C) Authority - Off. Coll.	4,000	624
	Outlays	630,472	98,354
Lower Colorado River Basin development fund			
14 4079 0 3 301	401(C) Authority - Off. Coll.	95,456	14,891
	Outlays	95,456	14,891
Upper Colorado River Basin fund			
14 4081 0 3 301	401(C) Authority - Off. Coll.	32,375	5,051
	Outlays	32,375	5,051
Working capital fund			
14 4524 0 4 301	Budget Authority	4,229	660
	Outlays	3,383	528
Emergency fund			
14 5043 0 2 301	Budget Authority	1,044	163
	Outlays	632	99
General investigations			
14 5060 0 2 301	Budget Authority	15,179	2,368
	401(C) Authority - Off. Coll.	75	12
	Outlays	9,850	1,537
Operation and maintenance			
14 5064 0 2 301	Budget Authority	199,208	31,076
	401(C) Authority - Off. Coll.	10,136	1,581
	Outlays	164,921	25,727
General administrative expenses			
14 5065 0 2 301	Budget Authority	51,585	8,047
	Outlays	46,427	7,243
Colorado River dam fund, Boulder Canyon project			
14 5656 0 2 301	401(C) Authority	45,100	7,036
	Outlays	25,842	4,031
Reclamation trust funds			
14 8070 0 7 301	401(C) Authority	52,217	8,146
	Outlays	49,293	7,690
Miscellaneous permanent appropriations (Other general purpose fiscal ass			
14 9922 0 2 806	401(C) Authority	282	44
	Outlays	226	35
Geological Survey			
Surveys, investigations and research			
14 0804 0 1 306	Budget Authority	483,490	75,424
	401(C) Authority	250	39
	401(C) Authority - Off. Coll.	75,405	11,763
	Outlays	534,959	83,453
Operation and maintenance of quarters			
14 5055 0 2 306	401(C) Authority	75	12
	Outlays	40	6
Bureau of Mines			
Mines and minerals			
14 0959 0 1 306	Budget Authority	169,720	26,476
	Outlays	115,410	18,004
Helium fund			
14 4053 0 3 306	401(C) Authority - Off. Coll.	3,453	539
	Outlays	3,453	539
United States Fish and Wildlife Service			
Resource management			
14 1611 0 1 303	Budget Authority	385,177	60,087
	401(C) Authority - Off. Coll.	5,776	901
	Outlays	314,470	49,057
Construction			
14 1612 0 1 303	Budget Authority	49,798	7,769
	Outlays	9,959	1,554
Land acquisition			
14 5020 0 2 303	Budget Authority	78,252	12,207
	Outlays	31,301	4,883

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Operation and maintenance of quarters			
14 5050 0 2 303	401(C) Authority	1,736	271
	Outlays	1,215	190
National wildlife refuge fund			
14 5091 0 2 806	Budget Authority	6,973	1,088
	401(C) Other - incl. ob. limit	6,040	942
	Outlays	9,395	1,466
Migratory bird conservation account			
14 5137 0 2 303	401(C) Authority	33,340	5,201
	Outlays	23,338	3,641
Sport fish restoration			
14 8151 0 7 303	401(C) Authority	162,606	25,367
	Outlays	56,912	8,878
Contributed funds			
14 8216 0 7 303	401(C) Authority	4,165	650
	Outlays	2,916	455
Miscellaneous permanent appropriations			
14 9923 0 2 303	401(C) Authority	128,200	19,999
	Outlays	64,100	10,000
National Park Service			
Operation of the national park system			
14 1036 0 1 303	Budget Authority	797,428	124,399
	401(C) Authority - Off. Coll.	2,800	437
	Outlays	603,606	94,163
John F. Kennedy Center for the Performing Arts			
14 1038 0 1 303	Budget Authority	5,515	860
	Outlays	3,585	559
Construction			
14 1039 0 1 303	Budget Authority	206,874	32,272
	401(C) Authority - Off. Coll.	11,000	1,716
	Outlays	42,031	6,557
National recreation and preservation			
14 1042 0 1 303	Budget Authority	15,659	2,443
	Outlays	12,527	1,954
Illinois and Michigan canal national heritage-corridor Commission			
14 1043 0 1 303	Budget Authority	264	41
	Outlays	132	21
Land acquisition			
14 5035 0 2 303	Budget Authority	65,532	10,223
	401(C) Authority	30,000	4,680
	Outlays	33,436	5,216
Operation and maintenance of quarters			
14 5049 0 2 303	401(C) Authority	8,632	1,347
	Outlays	6,474	1,010
Historic preservation fund			
14 5140 0 2 303	Budget Authority	31,842	4,967
	Outlays	12,737	1,987
Miscellaneous permanent appropriations			
14 9924 0 2 303	401(C) Authority	953	149
	Outlays	324	51
Bureau of Indian Affairs			
Operation of Indian programs (Conservation and land management)			
14 2100 0 1 302	Budget Authority	163,386	25,489
	Outlays	135,774	21,181
Operation of Indian programs (Area and regional development)			
14 2100 0 1 452	Budget Authority	610,297	95,206
	401(C) Authority - Off. Coll.	4,000	624
	Outlays	500,171	78,027
Operation of Indian programs (Elementary, secondary, and vocational educ			
14 2100 0 1 501	Budget Authority	284,411	44,368
	Outlays	241,749	37,713
Construction			
14 2301 0 1 452	Budget Authority	99,425	15,510
	Outlays	22,868	3,568
Revolving fund for loans			
14 4409 0 3 452	Direct Loan Limitation	13,000	2,028
	Outlays	13,000	2,028
Indian loan guaranty and insurance fund			
14 4410 0 3 452	Budget Authority	5,259	820
	Guaranteed Loan Limitation	41,470	6,469
	Outlays	3,015	470
Operation and maintenance of quarters			
14 5051 0 2 452	401(C) Authority	7,487	1,168
	Outlays	5,990	934

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Cooperative fund (papago)			
14 8366 0 7 452	401(C) Authority	1,353	211
Miscellaneous permanent appropriations (Area and regional development)			
14 9925 0 2 452	401(C) Authority	55,929	8,725
	Outlays	26,958	4,205
Miscellaneous permanent appropriations (Other general government)			
14 9925 0 2 808	401(C) Authority	1,000	156
	Outlays	1,000	156
Territorial and International Affairs			
Administration of territories			
14 0412 0 1 808	Budget Authority	54,996	8,579
	Outlays	30,578	4,770
Trust Territory of the Pacific Islands			
14 0414 0 1 808	Budget Authority	29,685	4,631
	Outlays	15,733	2,454
Compact of free association			
14 0415 0 1 808	Budget Authority	13,029	2,033
	401(C) Authority	13,000	2,028
	Outlays	26,029	4,061
Office of the Secretary			
Salaries and expenses			
14 0102 0 1 306	Budget Authority	52,460	8,184
	Outlays	44,591	6,956
Construction management			
14 0103 0 1 306	Budget Authority	1,912	298
	Outlays	1,723	269
Office of the Solicitor			
Office of the Solicitor			
14 0107 0 1 306	Budget Authority	26,554	4,142
	Outlays	23,899	3,728
Office of Inspector General			
Office of Inspector General			
14 0104 0 1 306	Budget Authority	20,160	3,145
	Outlays	18,144	2,830
TOTAL FOR Department of the Interior			
	Budget Authority	5,947,714	927,841
	401(C) Authority	1,010,107	157,579
	401(C) Authority - Off. Coll.	244,476	38,139
	401(C) Other - incl. ob. limit	6,040	942
	Direct Loan Limitation	41,998	6,552
	Guaranteed Loan Limitation	41,470	6,469
	Outlays	5,301,422	827,026
Department of Justice			
Department of Justice			
Emergency Drug Funding			
15 0331 0 1 751	Budget Authority	75,973	11,852
	Outlays	68,072	10,619
General Administration			
Salaries and expenses			
15 0129 0 1 751	Budget Authority	91,911	14,338
	Outlays	82,352	12,847
Office of the Inspector General			
15 0328 0 1 751	Budget Authority	9,754	1,522
	Outlays	8,740	1,363
United States Parole Commission			
Salaries and expenses			
15 1061 0 1 751	Budget Authority	11,658	1,819
	Outlays	10,026	1,564
Legal Activities			
Salaries and expenses, Foreign Claims Settlement Commission			
15 0100 0 1 153	Budget Authority	504	79
	Outlays	365	57
Salaries and expenses, General Legal Activities			
15 0128 0 1 752	Budget Authority	263,514	41,108
	Outlays	229,257	35,764
Fees and expenses of witnesses			
15 0311 0 1 752	Budget Authority	54,500	8,502
	Outlays	38,150	5,951
Salaries and expenses, Antitrust Division			
15 0319 0 1 752	Budget Authority	48,084	7,501
	Outlays	39,429	6,151
Salaries and expenses, United States Attorneys			
15 0322 0 1 752	Budget Authority	493,644	77,008
	Outlays	434,407	67,767

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Salaries and expenses, United States Marshals Service			
15 0324 0 1 752	Budget Authority	219,877	34,301
	401(C) Authority - Off. Coll.	4,108	641
	Outlays	201,997	31,512
Independent counsel			
15 0327 0 1 752	401(C) Authority	6,000	936
	Outlays	6,000	936
Salaries and expenses, Community Relations Service			
15 0500 0 1 752	Budget Authority	29,313	4,573
	Outlays	20,519	3,201
Support of United States prisoners			
15 1020 0 1 752	Budget Authority	114,944	17,931
	Outlays	63,219	9,862
Assets forfeiture fund			
15 5042 0 2 752	Budget Authority	338,014	52,731
	Outlays	135,206	21,093
United States trustees system fund			
15 5073 0 2 752	Budget Authority	50,706	7,910
	Outlays	43,100	6,724
Federal Bureau of Investigation			
Salaries and expenses			
15 0200 0 1 751	Budget Authority	1,542,715	240,664
	401(C) Authority - Off. Coll.	24,354	3,799
	Outlays	1,258,526	196,330
Drug Enforcement Administration			
Salaries and expenses			
15 1100 0 1 751	Budget Authority	570,066	88,930
	401(C) Authority - Off. Coll.	1,500	234
	Outlays	429,050	66,932
Immigration and Naturalization Service			
Salaries and expenses			
15 1217 0 1 751	Budget Authority	880,308	137,328
	401(C) Authority - Off. Coll.	3,817	595
	Outlays	708,063	110,457
Immigration legalization			
15 5086 0 2 751	401(C) Authority	54,792	8,548
	Outlays	49,313	7,693
Immigration user fee			
15 5087 0 2 751	401(C) Authority	105,000	16,380
	Outlays	99,750	15,561
Immigration examinations fee			
15 5088 0 2 751	401(C) Authority	54,000	8,424
	Outlays	51,300	8,003
Federal Prison System			
Buildings and facilities			
15 1003 0 1 753	Budget Authority	312,789	48,795
	Outlays	31,279	4,880
National Institute of Corrections			
15 1004 0 1 754	Budget Authority	10,101	1,576
	Outlays	4,040	630
Salaries and expenses			
15 1060 0 1 753	Budget Authority	1,016,225	158,531
	401(C) Authority - Off. Coll.	12,746	1,988
	Outlays	927,349	144,666
Federal Prison Industries, Incorporated			
15 4500 0 4 753	Budget Authority	20,880	3,257
	Obligation Limitation	2,517	393
	Outlays	2,517	393
Office of Justice Programs			
Justice assistance			
15 0401 0 1 754	Budget Authority	331,584	51,727
	Outlays	122,784	19,155
Crime victims fund			
15 5041 0 2 754	401(C) Authority	125,000	19,500
	Outlays	62,500	9,750
TOTAL FOR Department of Justice			
	Budget Authority	6,487,064	1,011,983
	401(C) Authority	344,792	53,788
	401(C) Authority - Off. Coll.	46,525	7,257
	Obligation Limitation	2,517	393
	Outlays	5,127,310	799,861
Department of Labor			
Employment and Training Administration			
Program administration			
16 0172 0 1 504	Budget Authority	75,971	11,851
	Outlays	60,093	9,375

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Training and employment services			
16 0174 0 1 504	Budget Authority	3,904,165	609,050
	Outlays	148,358	23,144
Community service employment for older Americans			
16 0175 0 1 504	Budget Authority	358,952	55,997
	Outlays	65,688	10,247
State unemployment insurance and employment service operations (Training			
16 0179 0 1 504	Budget Authority	23,552	3,674
	Outlays	5,912	922
Federal unemployment benefits and allowances (Training and employment)			
16 0326 0 1 504	Budget Authority	80,000	12,480
	Outlays	47,854	7,465
Federal unemployment benefits and allowances (Unemployment compensation)			
16 0326 0 1 603	401(C) Authority	166,000	25,896
	Outlays	166,000	25,896
Unemployment trust fund (Training and employment)			
20 8042 0 7 504	Obligation Limitation	1,092,587	170,444
	Outlays	458,023	71,452
Unemployment trust fund (Unemployment compensation)			
20 8042 0 7 603	401(C) Other - incl. ob. limit	105,800	16,505
	Obligation Limitation	1,753,500	273,546
	Outlays	1,859,300	290,051
Labor-Management Services			
Salaries and expenses			
16 0104 0 1 505	Budget Authority	77,083	12,025
	Outlays	65,366	10,197
Pension Benefit Guaranty Corporation			
Pension Benefit Guaranty Corporation fund			
16 4204 0 3 601	401(C) Other - incl. ob. limit	13,900	2,168
	Obligation Limitation	57,600	8,986
	Outlays	71,500	11,154
Employment Standards Administration			
Salaries and expenses			
16 0105 0 1 505	Budget Authority	227,211	35,445
	401(C) Authority - Off. Coll.	1,500	234
	Outlays	196,447	30,646
Special workers' compensation expenses			
16 9971 0 7 601	Obligation Limitation	543	85
	Outlays	543	85
Black lung disability trust fund			
20 8144 0 7 601	Budget Authority	60,003	9,360
	Outlays	60,003	9,360
Occupational Safety and Health Administration			
Salaries and expenses			
16 0400 0 1 554	Budget Authority	263,173	41,055
	Outlays	234,224	36,539
Mine Safety and Health Administration			
Salaries and expenses			
16 1200 0 1 554	Budget Authority	174,967	27,295
	Outlays	159,220	24,838
Bureau of Labor Statistics			
Salaries and expenses			
16 0200 0 1 505	Budget Authority	199,243	31,082
	401(C) Authority - Off. Coll.	1,100	172
	Outlays	170,656	26,623
Departmental Management			
Office of the Inspector General			
16 0106 0 1 505	Budget Authority	42,228	6,588
	Outlays	36,781	5,738
Salaries and expenses			
16 0165 0 1 505	Budget Authority	128,491	20,045
	Outlays	106,403	16,599
TOTAL FOR Department of Labor			
	Budget Authority	5,615,039	875,947
	401(C) Authority	166,000	25,896
	401(C) Authority - Off. Coll.	2,600	406
	401(C) Other - incl. ob. limit	119,700	18,673
	Obligation Limitation	2,904,230	453,061
	Outlays	3,912,371	610,331
Department of State			
Department of State			
FMS interest buydown			
11 8082 0 1 152	401(C) Authority	270,000	42,120

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Administration of Foreign Affairs			
Salaries and expenses			
19 0113 0 1 153	Budget Authority	1,905,326	297,230
	Outlays	1,562,367	243,729
Protection of foreign missions and officials			
19 0520 0 1 153	Budget Authority	9,500	1,482
	Outlays	2,850	445
Emergencies in the diplomatic and consular service			
19 0522 0 1 153	Budget Authority	4,698	733
	Direct Loan Limitation	626	98
	Outlays	3,223	503
Payment to the American Institute in Taiwan			
19 0523 0 1 153	Budget Authority	11,369	1,774
	Outlays	7,390	1,153
Acquisition and maintenance of buildings abroad			
19 0535 0 1 153	Budget Authority	250,763	39,119
	401(C) Authority - Off. Coll.	4,900	764
	Outlays	52,545	8,197
Representation allowances			
19 0545 0 1 153	Budget Authority	4,792	748
	Outlays	4,116	642
International Organizations and Conferences			
Contributions for international peacekeeping activities			
19 1124 0 1 153	Budget Authority	30,276	4,723
	Outlays	30,276	4,723
International conferences and contingencies			
19 1125 0 1 153	Budget Authority	6,269	978
	Outlays	4,263	665
Contributions to international organizations			
19 1126 0 1 153	Budget Authority	507,321	79,142
	401(C) Authority - Off. Coll.	40	6
	Outlays	481,995	75,191
International Commissions			
Salaries and expenses, IBWC			
19 1069 0 1 301	Budget Authority	11,034	1,721
	Outlays	9,489	1,480
Construction, IBWC			
19 1078 0 1 301	Budget Authority	3,314	517
	Outlays	663	103
American sections, international commissions			
19 1082 0 1 301	Budget Authority	4,608	719
	Outlays	3,115	486
International fisheries commissions			
19 1087 0 1 302	Budget Authority	11,012	1,718
	Outlays	11,001	1,716
Other			
United States emergency refugee and migration assistance fund			
11 0040 0 1 151	Budget Authority	52,200	8,143
International narcotics control			
11 1022 0 1 151	Budget Authority	105,601	16,474
	Outlays	36,960	5,766
Anti-terrorism assistance			
19 0114 0 1 152	Budget Authority	10,273	1,603
	Outlays	6,164	962
Soviet-East European research and training			
19 0118 0 1 153	Budget Authority	4,802	749
	Outlays	240	37
Payment to the Asia Foundation			
19 0525 0 1 154	Budget Authority	14,303	2,231
	Outlays	12,158	1,897
Migration and refugee assistance			
19 1143 0 1 151	Budget Authority	482,586	75,284
	Outlays	330,572	51,569
U.S. bilateral science and technology agreements			
19 1151 0 1 153	Budget Authority	2,088	326
	Outlays	2,088	326
Fishermen's guaranty fund			
19 5121 0 2 376	Budget Authority	1,804	282
	Outlays	1,804	282
International Center, Washington, D.C.			
19 5151 0 2 153	401(C) Authority	1,284	200
	Outlays	1,225	191

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
TOTAL FOR Department of State			
	Budget Authority	3,433,939	535,696
	401(C) Authority	271,284	42,320
	401(C) Authority - Off. Coll.	4,940	770
	Direct Loan Limitation	626	98
	Outlays	2,564,502	400,063
Department of the Treasury			
Departmental Offices			
Salaries and expenses			
20 0101 0 1 803	Budget Authority	62,191	9,702
	401(C) Authority - Off. Coll.	5,123	799
	Outlays	58,918	9,191
International affairs			
20 0171 0 1 803	Budget Authority	24,662	3,847
	Outlays	21,333	3,328
Federal Law Enforcement Training Center			
Salaries and expenses			
20 0104 0 1 751	Budget Authority	36,904	5,757
	Outlays	33,214	5,181
Acquisitions, construction, improvements, and related expenses			
20 0105 0 1 751	Budget Authority	20,880	3,257
	Outlays	8,770	1,368
Financial Management Service			
Salaries and expenses			
20 1801 0 1 803	Budget Authority	292,595	45,645
	Outlays	254,558	39,711
St Lawrence Seaway toll rebate program			
20 8865 0 7 808	Budget Authority	11,178	1,744
	Outlays	11,178	1,744
Federal Financing Bank			
Federal Financing Bank			
20 4521 0 4 803	401(C) Authority - Off. Coll.	2,000	312
	Outlays	2,000	312
Bureau of Alcohol, Tobacco and Firearms			
Salaries and expenses			
20 1000 0 1 751	Budget Authority	258,565	40,336
	Outlays	224,952	35,093
United States Customs Service			
Salaries and expenses			
20 0602 0 1 751	Budget Authority	1,109,457	173,075
	401(C) Authority	116,584	18,187
	Outlays	1,042,134	162,573
Operation and maintenance, air interdiction program			
20 0604 0 1 751	Budget Authority	155,830	24,309
	Outlays	85,707	13,370
Customs forfeiture fund			
20 5693 0 2 803	Budget Authority	10,440	1,629
	401(C) Authority	20,000	3,120
	Outlays	30,440	4,749
Customs services at small airports			
20 5694 0 2 808	Budget Authority	1,718	268
	Outlays	1,718	268
Refunds, transfers and expenses, unclaimed, abandoned and seized goods			
20 8789 0 7 803	401(C) Authority	18,560	2,895
	Outlays	18,560	2,895
Bureau of Engraving and Printing			
Bureau of Engraving and Printing fund			
20 4502 0 4 803	401(C) Authority - Off. Coll.	333,809	52,074
	Outlays	333,809	52,074
United States Mint			
Salaries and expenses			
20 1616 0 1 803	Budget Authority	50,470	7,873
	401(C) Authority - Off. Coll.	112,170	17,499
	Outlays	155,070	24,191
Bureau of the Public Debt			
Administering the public debt			
20 0560 0 1 803	Budget Authority	231,202	36,068
	Outlays	184,962	28,854
Internal Revenue Service			
Salaries and expenses			
20 0911 0 1 803	Budget Authority	93,707	14,618
	Outlays	73,091	11,402
Processing tax returns			
20 0912 0 1 803	Budget Authority	1,845,424	287,886
	Outlays	1,476,339	230,309

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Examinations and appeals			
20 0913 0 1 803	Budget Authority	2,093,626	326,606
	Outlays	1,926,136	300,477
Investigation, collection and taxpayer service			
20 0914 0 1 803	Budget Authority	1,539,447	240,154
	Outlays	1,385,502	216,138
Federal tax lien revolving fund			
20 4413 0 3 803	401(C) Authority - Off. Coll.	8,451	1,318
	Outlays	8,451	1,318
United States Secret Service			
Contribution for annuity benefits			
20 1407 0 1 751	401(C) Authority	18,792	2,932
	Outlays	18,792	2,932
Salaries and expenses			
20 1408 0 1 751	Budget Authority	382,330	59,643
	Outlays	324,981	50,697
TOTAL FOR Department of the Treasury			
	Budget Authority	8,220,626	1,282,417
	401(C) Authority	173,936	27,134
	401(C) Authority - Off. Coll.	461,553	72,002
	Outlays	7,680,615	1,198,175
Department of Health and Human Services, Social Security			
Social Security			
Federal old-age and survivors insurance trust fund			
20 8006 0 7 651	Obligation Limitation	1,645,738	256,736
	Outlays	1,216,480	189,772
Federal disability insurance trust fund			
20 8007 0 7 651	Obligation Limitation	549,802	85,770
	Outlays	435,064	67,870
TOTAL FOR Department of Health and Human Services, Social Se			
	Obligation Limitation	2,195,540	342,506
	Outlays	1,651,544	257,642
Department of Education			
Office of Elementary and Secondary Education			
Indian education			
91 0101 0 1 501	Budget Authority	74,785	11,666
	Outlays	10,844	1,692
Impact aid			
91 0102 0 1 501	Budget Authority	765,352	119,395
	Outlays	609,220	95,038
Compensatory education for the disadvantaged			
91 0900 0 1 501	Budget Authority	4,780,620	745,777
	Outlays	573,674	89,493
School improvement programs			
91 1000 0 1 501	Budget Authority	1,270,651	198,222
	Outlays	152,478	23,787
Office of Bilingual Education and Minority Languages Affairs			
Bilingual, immigrant, and refugee education			
91 1300 0 1 501	Budget Authority	206,079	32,148
	Outlays	24,729	3,858
Office of Special Education and Rehabilitative Services			
Education for the handicapped			
91 0300 0 1 501	Budget Authority	2,052,961	320,262
	Outlays	252,514	39,392
Rehabilitation services and handicapped research			
91 0301 0 1 506	Budget Authority	224,420	35,010
	401(C) Authority - Spec. Rules	60,921	60,921
	Outlays	219,713	73,866
Payments to institutions for the handicapped (Elementary, secondary, and			
91 0600 0 1 501	Budget Authority	5,570	869
	Outlays	5,570	869
Payments to institutions for the handicapped (Higher education)			
91 0601 0 1 502	Budget Authority	34,792	5,428
	Outlays	34,792	5,428
Payments to institutions for the handicapped (Higher education)			
91 0602 0 1 502	Budget Authority	68,902	10,749
	Outlays	64,768	10,104
Promotion of education for the blind			
91 8893 0 7 501	401(C) Authority	10	2
	Outlays	5	1
Office of Vocational and Adult Education			
Vocational and adult education			
91 0400 0 1 501	Budget Authority	1,120,699	174,829
	401(C) Authority	7,148	1,115
	Outlays	135,342	21,114

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Office of Postsecondary Education			
Student financial assistance			
91 0200 0 1 502	Budget Authority	6,070,150	946,943
	Outlays	1,125,827	175,629
Higher education			
91 0201 0 1 502	Budget Authority	590,621	92,137
	Outlays	88,890	13,867
Guaranteed student loans			
91 0230 0 1 502	401(C) Authority - Spec. Rules	41,120	41,120
	Outlays	26,130	26,130
College housing and academic facilities loans			
91 0242 0 1 502	Budget Authority	37,148	5,795
	Direct Loan Limitation	30,944	4,827
	Outlays	6,204	968
Howard University			
91 0603 0 1 502	Budget Authority	186,848	29,148
	Outlays	178,066	27,778
College housing loans			
91 4250 0 3 502	401(C) Authority - Off. Coll.	650	101
	Outlays	650	101
Office of Educational Research and Improvement			
Libraries			
91 0104 0 1 503	Budget Authority	143,237	22,345
	Outlays	50,563	7,888
Education research and statistics			
91 1100 0 1 503	Budget Authority	81,642	12,736
	Outlays	35,106	5,477
Departmental Management			
Office for civil rights			
91 0700 0 1 751	Budget Authority	44,877	7,001
	Outlays	37,248	5,810
Program administration (Research and general education aids)			
91 0800 0 1 503	Budget Authority	267,775	41,773
	Outlays	222,253	34,671
Office of the Inspector General			
91 1400 0 1 751	Budget Authority	20,028	3,125
	Outlays	16,624	2,593
TOTAL FOR Department of Education			
	Budget Authority	18,047,157	2,815,350
	401(C) Authority	7,158	1,117
	401(C) Authority - Off. Coll.	650	101
	401(C) Authority - Spec. Rules	102,041	102,041
	Direct Loan Limitation	30,944	4,827
	Outlays	3,871,210	665,554
Department of Energy			
Atomic Energy Defense Activities			
Atomic energy defense activities			
89 0220 0 1 053	Budget Authority	6,959,601	744,677
	Unobligated Balances - Defense	471,675	50,469
	Outlays	4,607,392	492,991
Atomic energy defense activities			
89 0221 0 1 053	Budget Authority	1,502,394	160,756
	Outlays	931,484	99,669
Energy Programs			
Geothermal resources development fund			
89 0206 0 1 271	Budget Authority	81	13
	Outlays	81	13
Federal Energy Regulatory Commission			
89 0212 0 1 276	Budget Authority	116,670	18,201
	Outlays	99,170	15,471
Fossil energy research and development			
89 0213 0 1 271	Budget Authority	398,764	62,207
	Outlays	159,504	24,883
Energy conservation			
89 0215 0 1 272	Budget Authority	389,580	60,774
	Outlays	97,395	15,194
Energy information administration			
89 0216 0 1 276	Budget Authority	66,561	10,384
	Outlays	43,265	6,749
Economic regulation			
89 0217 0 1 276	Budget Authority	22,872	3,568
	Outlays	14,409	2,248
Strategic petroleum reserve			
89 0218 0 1 274	Budget Authority	181,306	28,284
	Outlays	99,718	15,556

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Naval petroleum and oil shale reserves			
89 0219 0 1 271	Budget Authority	193,416	30,173
	Outlays	116,050	18,104
General science and research activities			
89 0222 0 1 251	Budget Authority	962,805	150,198
	Outlays	681,666	106,340
Energy supply, R&D activities			
89 0224 0 1 271	Budget Authority	2,238,928	349,273
	Outlays	1,119,464	174,636
Uranium supply and enrichment activities			
89 0226 0 1 271	Budget Authority	1,236,969	192,967
	Outlays	1,079,393	168,385
SPR petroleum			
89 0233 0 1 274	Budget Authority	161,093	25,131
	401(C) Authority	91,555	14,283
	Outlays	189,486	29,560
Emergency preparedness			
89 0234 0 1 274	Budget Authority	6,595	1,029
	Outlays	5,276	823
Clean coal technology			
89 0235 0 1 271	401(C) Authority	710,000	110,760
	Outlays	8,450	1,318
Payments to states under Federal Power Act			
89 5105 0 2 806	401(C) Authority	2,446	382
	Outlays	2,446	382
Nuclear waste disposal fund			
89 5227 0 2 271	Budget Authority	380,330	59,331
	Outlays	190,165	29,666
Power Marketing Administration			
Operation and maintenance, Southeastern Power Administration			
89 0302 0 1 271	Budget Authority	932	145
	Outlays	848	132
Operation and maintenance, Southwestern Power Administration			
89 0303 0 1 271	Budget Authority	8,196	1,279
	Outlays	4,713	735
Operation and maintenance, Alaska Power Administration			
89 0304 0 1 271	Budget Authority	763	119
	Outlays	366	57
Bonneville Power Administration fund			
89 4045 0 3 271	401(C) Authority - Off. Coll.	45,800	7,145
	Outlays	45,800	7,145
Colorado river basins power marketing fund, Western Area Power Administr			
89 4452 0 3 271	401(C) Authority - Off. Coll.	7,668	1,196
	Outlays	7,668	1,196
Construction, rehabilitation, operation and maintenance, Western Area Po			
89 5068 0 2 271	Budget Authority	41,376	6,455
	Outlays	14,234	2,221
Departmental Administration			
Departmental administration			
89 0228 0 1 276	Budget Authority	427,648	66,713
	Outlays	256,589	40,028
TOTAL FOR Department of Energy			
	Budget Authority	15,296,880	1,971,677
	401(C) Authority	804,001	125,425
	401(C) Authority - Off. Coll.	53,468	8,341
	Unobligated Balances - Defense	471,675	50,469
	Outlays	9,775,034	1,253,502
Environmental Protection Agency			
Environmental Protection Agency			
Hazardous substance superfund			
20 8145 0 7 304	Budget Authority	1,476,778	230,377
	401(C) Authority - Off. Coll.	13,200	2,059
	Obligation Limitation	198,930	31,033
	Outlays	426,698	66,565
Leaking underground storage tank trust fund			
20 8153 0 7 304	Budget Authority	52,358	8,168
	Obligation Limitation	5,235	817
	Outlays	10,472	1,634
Construction grants			
68 0103 0 1 304	Budget Authority	2,035,800	317,585
	Outlays	71,253	11,115
Research and development (Energy supply)			
68 0107 0 1 271	Budget Authority	52,463	8,184
	Outlays	15,214	2,373

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Research and development (Pollution control and abatement)			
68 0107 0 1 304	Budget Authority	158,947	24,796
	Outlays	55,631	8,678
Abatement, control, and compliance			
68 0108 0 1 304	Budget Authority	751,289	117,201
	Outlays	334,754	52,222
Buildings and facilities			
68 0110 0 1 304	Budget Authority	8,352	1,303
	Outlays	1,420	222
Salaries and expenses			
68 0200 0 1 304	Budget Authority	873,110	136,205
	401(C) Authority - Off. Coll.	3,808	594
	Outlays	745,951	116,368
Payment to the hazardous substance superfund			
68 0250 0 1 304	Budget Authority	157,104	24,508
Reregistration and expedited processing revolving fund			
68 4310 0 3 304	401(C) Authority - Off. Coll.	14,500	2,262
	Outlays	14,500	2,262
Revolving fund for certification and other services			
68 4311 0 3 304	401(C) Authority - Off. Coll.	1,200	187
	Outlays	1,200	187
TOTAL FOR Environmental Protection Agency			
	Budget Authority	5,566,201	868,327
	401(C) Authority - Off. Coll.	32,708	5,102
	Obligation Limitation	204,165	31,850
	Outlays	1,677,093	261,626
Department of Transportation			
Federal Highway Administration			
Access highways to public recreation areas on certain lakes			
69 0503 0 1 401	Budget Authority	1,348	210
	Outlays	270	42
Motor carrier safety			
69 0552 0 1 401	Budget Authority	28,855	4,501
	Outlays	23,084	3,601
Railroad-highway crossings demonstration projects			
69 0557 0 1 401	Budget Authority	2,631	410
	Outlays	526	82
Trust fund share of other highway programs			
69 8009 0 7 401	Budget Authority	5,262	821
	Outlays	1,052	164
Baltimore-Washington Parkway			
69 8014 0 7 401	Budget Authority	13,389	2,089
	Outlays	2,678	418
Highway safety research and development			
69 8017 0 7 401	Budget Authority	6,348	990
	Outlays	1,270	198
Highway-related safety grants			
69 8019 0 7 401	401(C) Authority	10,000	1,560
	Obligation Limitation	9,819	1,532
	Outlays	1,963	306
Motor carrier safety grants			
69 8048 0 7 401	401(C) Authority	60,000	9,360
	Obligation Limitation	62,640	9,772
	Outlays	21,924	3,420
Federal-aid highways			
69 8083 0 7 401	401(C) Authority	14,103,000	2,200,068
	401(C) Authority - Off. Coll.	1,500	234
	Obligation Limitation	12,535,000	1,955,460
	Outlays	2,531,500	394,914
Right-of-way revolving fund (trust revolving fund)			
69 8402 0 8 401	Direct Loan Limitation	48,024	7,492
	Outlays	48,024	7,492
Miscellaneous appropriations			
69 9911 0 1 401	Budget Authority	57,029	8,897
	Outlays	11,406	1,779
Miscellaneous highway trust funds			
69 9972 0 7 401	Budget Authority	65,900	10,280
	Outlays	13,180	2,056
National Highway Traffic Safety Administration			
Operations and research			
69 0650 0 1 401	Budget Authority	71,756	11,194
	Outlays	46,641	7,276
Operations and research (trust fund share)			
69 8016 0 7 401	Budget Authority	32,488	5,068
	Outlays	21,117	3,294

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Highway traffic safety grants			
69 8020 0 7 401	401(C) Authority	126,000	19,656
	Obligation Limitation	131,544	20,521
	Outlays	52,618	8,209
Federal Railroad Administration			
Northeast corridor improvement program			
69 0123 0 1 401	Budget Authority	20,462	3,192
	Outlays	2,046	319
Office of the Administrator			
69 0700 0 1 401	Budget Authority	22,073	3,443
	Outlays	20,969	3,271
Railroad safety			
69 0702 0 1 401	Budget Authority	29,851	4,657
	Outlays	23,881	3,725
Grants to National Railroad Passenger Corporation			
69 0704 0 1 401	Budget Authority	609,696	95,113
	Outlays	548,726	85,601
Freightline rehabilitation			
69 0713 0 1 401	Budget Authority	6,264	977
	Outlays	3,758	586
Railroad research and development			
69 0745 0 1 401	Budget Authority	9,725	1,517
	Outlays	5,835	910
Conrail commuter transition assistance			
69 0747 0 1 401	Budget Authority	4,698	733
	Outlays	517	81
Urban Mass Transportation Administration			
Administrative expenses			
69 1120 0 1 401	Budget Authority	34,232	5,340
	Outlays	30,809	4,806
Research, training, and human resources			
69 1121 0 1 401	Budget Authority	10,440	1,629
	Outlays	2,088	326
Interstate transfer grants-transit			
69 1127 0 1 401	Budget Authority	208,800	32,573
	Outlays	4,176	651
Washington metro			
69 1128 0 1 401	Budget Authority	175,392	27,361
	Outlays	3,508	547
Formula grants			
69 1129 0 1 401	Budget Authority	1,675,620	261,397
	Outlays	632,716	98,704
Discretionary grants			
69 8191 0 7 401	401(C) Authority	1,300,000	202,800
	Obligation Limitation	1,190,160	185,665
	Outlays	28,658	4,471
Federal Aviation Administration			
Operations			
69 1301 0 1 402	Budget Authority	3,157,054	492,500
	401(C) Authority - Off. Coll.	14,650	2,285
	Outlays	2,732,066	426,202
Headquarters administration			
69 1302 0 1 402	Budget Authority	39,256	6,124
	Outlays	34,545	5,389
Aircraft purchase loan guarantee program			
69 1399 0 1 402	Budget Authority	150	23
	Outlays	150	23
Trust fund share of FAA operations			
69 8104 0 7 402	Budget Authority	506,593	79,029
	Outlays	506,593	79,029
Grants-in-aid for airports (Airport and airway trust fund)			
69 8106 0 7 402	Budget Authority	104	16
	401(C) Authority	1,700,000	265,200
	Obligation Limitation	1,461,600	228,010
	Outlays	233,960	36,498
Facilities and equipment (Airport and airway trust fund)			
69 8107 0 7 402	Budget Authority	1,446,948	225,724
	401(C) Authority - Off. Coll.	45,327	7,071
	Outlays	218,961	34,158
Research, engineering and development (Airport and airway trust fund)			
69 8108 0 7 402	Budget Authority	168,400	26,270
	401(C) Authority - Off. Coll.	500	78
	Outlays	101,540	15,840

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Coast Guard			
Operating expenses			
69 0201 0 1 403	Budget Authority	2,077,465	324,085
	401(C) Authority - Off. Coll.	5,181	808
	Outlays	1,708,703	266,558
Acquisition, construction, and improvements			
69 0240 0 1 403	Budget Authority	403,159	62,893
	Outlays	44,347	6,918
Retired pay			
69 0241 0 1 403	401(C) Authority	37,463	5,844
	Outlays	37,463	5,844
Reserve training			
69 0242 0 1 403	Budget Authority	71,937	11,222
	Outlays	62,585	9,763
Research, development, test, and evaluation			
69 0243 0 1 403	Budget Authority	19,808	3,090
	Outlays	6,735	1,051
Alteration of bridges			
69 0244 0 1 403	Budget Authority	14,094	2,198
	Outlays	3,242	505
Coast Guard shore facilities			
69 0246 0 1 403	Budget Authority	52,604	8,206
	Outlays	5,786	903
Offshore oil pollution compensation fund			
69 5167 0 2 304	Obligation Limitation	62,640	9,772
Pollution fund			
69 5168 0 2 304	401(C) Authority	5,700	889
	Outlays	1,710	267
Deepwater port liability fund			
69 5170 0 2 304	Obligation Limitation	52,200	8,143
Boat safety			
69 8149 0 7 403	Budget Authority	63,267	9,870
	Obligation Limitation	31,350	4,891
	Outlays	36,520	5,697
Maritime Administration			
Ready reserve force			
69 1710 0 1 403	Budget Authority	115,624	18,037
	Outlays	70,562	11,008
Operations and training			
69 1750 0 1 403	Budget Authority	70,233	10,956
	Outlays	59,698	9,313
Federal ship financing fund			
69 4301 0 3 403	401(C) Other - incl. ob. limit	3,820	596
	Outlays	3,438	536
Saint Lawrence Seaway Development Corporation			
Saint Lawrence Seaway Development Corporation			
69 4089 0 3 403	401(C) Authority - Off. Coll.	1,000	156
	Outlays	1,000	156
Operations and maintenance			
69 8003 0 7 403	Budget Authority	11,867	1,851
	Outlays	11,867	1,851
Office of the Inspector General			
Salaries and expenses			
69 0130 0 1 407	Budget Authority	31,204	4,868
	Outlays	27,147	4,235
Research and Special Programs Administration			
Research and special programs			
69 0104 0 1 407	Budget Authority	15,775	2,461
	Outlays	10,412	1,624
Pipeline safety			
69 5172 0 2 407	Budget Authority	9,803	1,529
	Outlays	9,313	1,453
Office of the Secretary			
Salaries and expenses			
69 0102 0 1 407	Budget Authority	58,447	9,118
	Outlays	52,602	8,206
Transportation, planning, research and development			
69 0142 0 1 407	Budget Authority	5,940	927
	Outlays	2,376	371
Payments to air carriers, DOT			
69 0150 0 1 402	Budget Authority	32,990	5,147
	Outlays	30,351	4,735
Working capital fund			
69 4520 0 4 407	Budget Authority	3,354	523
	Outlays	3,354	523

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
TOTAL FOR Department of Transportation			
	Budget Authority	11,468,335	1,789,059
	401(C) Authority	17,342,163	2,705,377
	401(C) Authority - Off. Coll.	68,158	10,632
	401(C) Other - incl. ob. limit	3,820	596
	Direct Loan Limitation	48,024	7,492
	Obligation Limitation	15,536,953	2,423,766
	Outlays	10,101,966	1,575,905
General Services Administration			
Real Property Activities			
Federal buildings fund			
47 4542 0 4 804	401(C) Authority - Off. Coll.	4,900	764
	Outlays	4,900	764
Personal Property Activities			
Federal supply service			
47 0116 0 1 804	Budget Authority	50,470	7,873
	Outlays	48,956	7,637
Expenses of transportation audit contracts			
47 5250 0 2 804	401(C) Authority	15,000	2,340
	Outlays	2,945	459
Information Resources Management Service			
Operating expenses, information resources management service			
47 0900 0 1 804	Budget Authority	34,046	5,311
	Outlays	22,130	3,452
Federal Property Resources Activities			
Operating expenses, federal property resources service			
47 0533 0 1 804	Budget Authority	11,546	1,801
	Outlays	7,447	1,162
Real property relocation			
47 0535 0 1 804	Budget Authority	4,176	651
	Outlays	2,088	326
Expenses, disposal of surplus real and related personal property			
47 5254 0 2 804	401(C) Authority	3,829	597
	Outlays	2,297	358
General Activities			
Allowances and office staff for former Presidents			
47 0105 0 1 802	Budget Authority	1,510	236
	Outlays	1,359	212
Expenses, presidential transition			
47 0107 0 1 802	Budget Authority	3,915	611
	Outlays	3,915	611
Office of Inspector General			
47 0108 0 1 804	Budget Authority	26,901	4,197
	Outlays	23,000	3,588
General management and administration, salaries and expenses			
47 0110 0 1 804	Budget Authority	129,416	20,189
	Outlays	90,590	14,132
Consumer information center fund			
47 4549 0 3 376	Budget Authority	1,423	222
	401(C) Authority - Off. Coll.	536	84
	Outlays	749	117
TOTAL FOR General Services Administration			
	Budget Authority	263,403	41,091
	401(C) Authority	18,829	2,937
	401(C) Authority - Off. Coll.	5,436	848
	Outlays	210,377	32,818
Department of Housing and Urban Development			
Housing Programs			
Housing counseling assistance			
86 0156 0 1 506	Budget Authority	3,654	570
Subsidized housing programs (Community development)			
86 0164 0 1 451	Budget Authority	5,220	814
Subsidized housing programs (Housing assistance)			
86 0164 0 1 604	Budget Authority	7,490,960	1,168,589
	Outlays	17,690	2,760
Congregate services program			
86 0178 0 1 604	Budget Authority	5,638	880
Transitional and supportive housing demonstration program			
86 0188 0 1 604	Budget Authority	83,520	13,029
	Outlays	1,670	261
Rental housing assistance fund			
86 4041 0 3 604	401(C) Authority - Off. Coll.	50,000	7,800
	Outlays	50,000	7,800
Nonprofit sponsor assistance			
86 4042 0 3 604	Direct Loan Limitation	1,000	156
	Outlays	236	37

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Federal Housing Administration fund			
86 4070 0 3 371	401(C) Other - incl. ob. limit	398,315	62,137
	Direct Loan Limitation	107,897	16,832
	Guaranteed Loan Limitation	100,224,000	15,634,944
	Outlays	336,576	52,506
Housing for the elderly or handicapped fund			
86 4115 0 3 371	Direct Loan Limitation	499,790	77,967
Interstate land sales			
86 5270 0 2 376	401(C) Authority	626	98
	Outlays	626	98
Manufactured home inspection and monitoring			
86 5271 0 2 376	401(C) Authority	7,642	1,192
	Outlays	6,259	976
Public and Indian Housing Programs			
Payments for operation of low income housing projects			
86 0163 0 1 604	Budget Authority	1,780,550	277,766
	Outlays	819,050	127,772
Government National Mortgage Association			
Guarantees of mortgage-backed securities			
86 4238 0 3 371	401(C) Authority - Off. Coll.	5,588	872
	Guaranteed Loan Limitation	149,942,000	23,390,952
	Outlays	4,868	759
Community Planning and Development			
Community development grants			
86 0162 0 1 451	Budget Authority	2,766,600	431,590
	Guaranteed Loan Limitation	150,336	23,452
	Outlays	110,664	17,264
Urban homesteading			
86 0171 0 1 451	Budget Authority	13,781	2,150
	Outlays	13,781	2,150
Emergency shelter grants program			
86 0181 0 1 604	Budget Authority	48,546	7,573
	Outlays	9,709	1,515
Rental rehabilitation grants			
86 0182 0 1 451	Budget Authority	156,600	24,430
	Outlays	15,660	2,443
Rehabilitation loan fund			
86 4036 0 3 451	401(C) Authority - Off. Coll.	13,567	2,116
	Direct Loan Limitation	70,000	10,920
	Outlays	34,567	5,392
Nehemiah housing opportunity program			
86 8888 0 1 451	Budget Authority	20,880	3,257
	Outlays	2,088	326
Policy Development and Research			
Research and technology			
86 0108 0 1 451	Budget Authority	17,957	2,801
	Outlays	5,387	840
Fair Housing and Equal Opportunity			
Fair housing activities			
86 0144 0 1 751	Budget Authority	10,440	1,629
	Outlays	3,132	489
Management and Administration			
Salaries and expenses, Including transfer of funds (Community developmen			
86 0143 0 1 451	Budget Authority	180,425	28,146
	Outlays	150,655	23,502
Salaries and expenses, Including transfer of funds (Housing assistance)			
86 0143 0 1 604	Budget Authority	121,370	18,934
	Outlays	105,228	16,416
Salaries and expenses, Including transfer of funds (Federal law enforcem			
86 0143 0 1 751	Budget Authority	15,567	2,428
	Outlays	11,862	1,850
TOTAL FOR Department of Housing and Urban Development			
	Budget Authority	12,721,708	1,984,586
	401(C) Authority	8,268	1,290
	401(C) Authority - Off. Coll.	69,155	10,788
	401(C) Other - incl. ob. limit	398,315	62,137
	Direct Loan Limitation	678,687	105,875
	Guaranteed Loan Limitation	250,316,336	39,049,348
	Outlays	1,699,708	265,154
National Aeronautics and Space Administration			
National Aeronautics and Space Administration			
Research and program management (Space flight)			
80 0103 0 1 253	Budget Authority	987,730	154,086
	401(C) Authority - Off. Coll.	5,000	780
	Outlays	850,497	132,677

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Research and program management (Space science, applications, and techno			
80 0103 0 1 254	Budget Authority	643,884	100,446
	Outlays	551,165	85,982
Research and program management (Supporting space activities)			
80 0103 0 1 255	Budget Authority	76,425	11,923
	Outlays	65,420	10,205
Research and program management (Air transportation)			
80 0103 0 1 402	Budget Authority	353,792	55,192
	Outlays	302,846	47,244
Space flight, control, and data communications			
80 0105 0 1 250	401(C) Authority - Off. Coll.	8,368	1,305
	Outlays	8,368	1,305
Space flight, control, and data communications (Space flight)			
80 0105 0 1 253	Budget Authority	3,668,512	572,288
	Outlays	2,586,301	403,463
Space flight, control, and data communications (Supporting space activit			
80 0105 0 1 255	Budget Authority	811,414	126,580
	401(C) Authority	47,935	7,478
	Outlays	494,213	77,097
Construction of facilities (Space flight)			
80 0107 0 1 253	Budget Authority	76,630	11,954
	Outlays	4,981	777
Construction of facilities (Space science, applications, and technology)			
80 0107 0 1 254	Budget Authority	11,902	1,857
	Outlays	774	121
Construction of facilities (Supporting space activities)			
80 0107 0 1 255	Budget Authority	143,863	22,443
	Outlays	9,351	1,459
Construction of facilities (Air transportation)			
80 0107 0 1 402	Budget Authority	54,810	8,550
	Outlays	3,563	556
Research and development (Space flight)			
80 0108 0 1 253	Budget Authority	1,643,256	256,348
	401(C) Authority - Off. Coll.	5,781	902
	Outlays	796,187	124,206
Research and development (Space science, applications, and technology)			
80 0108 0 1 254	Budget Authority	2,281,036	355,841
	Outlays	1,163,328	181,479
Research and development (Supporting space activities)			
80 0108 0 1 255	Budget Authority	19,627	3,062
	Outlays	12,620	1,969
Research and development (Air transportation)			
80 0108 0 1 402	Budget Authority	454,036	70,830
	Outlays	232,012	36,194
Science, space, and technology education trust fund			
80 8978 0 7 503	401(C) Authority	1,000	156
	Outlays	1,000	156
TOTAL FOR National Aeronautics and Space Administration			
	Budget Authority	11,226,917	1,751,400
	401(C) Authority	48,935	7,634
	401(C) Authority - Off. Coll.	19,149	2,987
	Outlays	7,082,626	1,104,890
Office of Personnel Management			
Office of Personnel Management			
Salaries and expenses			
24 0100 0 1 805	Budget Authority	115,832	18,070
	Outlays	110,040	17,166
Government payment for annuitants, employees health benefits			
24 0206 0 1 551	401(C) Authority	3,780,169	589,706
Government payment for annuitants, employee life insurance benefits			
24 0500 0 1 602	Budget Authority	2,700	421
	Outlays	2,100	328
Revolving fund			
24 4571 0 4 805	401(C) Authority - Off. Coll.	1,167	182
	Outlays	1,167	182
Civil service retirement and disability fund			
24 8135 0 7 602	Obligation Limitation	69,450	10,834
	Outlays	69,450	10,834
Employees life insurance fund			
24 8424 0 8 602	401(C) Other - incl. ob. limit	772	120
	Outlays	772	120
Employees health benefits fund			
24 8440 0 8 551	Obligation Limitation	10,650	1,661
	Outlays	10,650	1,661

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Retired employees health benefits fund			
24 8445 0 8 551	Obligation Limitation	130	20
	Outlays	130	20
TOTAL FOR Office of Personnel Management			
	Budget Authority	118,532	18,491
	401(C) Authority	3,780,169	589,706
	401(C) Authority - Off. Coll.	1,167	182
	401(C) Other - incl. ob. limit	772	120
	Obligation Limitation	80,230	12,515
	Outlays	194,309	30,311
Small Business Administration			
Small Business Administration			
Salaries and expenses			
73 0100 0 1 376	Budget Authority	243,659	38,011
	Outlays	246,120	38,395
Disaster loan fund			
73 4153 0 3 453	Direct Loan Limitation	323,000	50,388
	Outlays	138,000	21,528
Business loan and investment fund			
73 4154 0 3 376	Direct Loan Limitation	94,000	14,664
	Guaranteed Loan Limitation	3,910,000	609,960
	Outlays	53,000	8,268
Surety bond guarantees revolving fund			
73 4156 0 3 376	Guaranteed Loan Limitation	1,301,000	202,956
TOTAL FOR Small Business Administration			
	Budget Authority	243,659	38,011
	Direct Loan Limitation	417,000	65,052
	Guaranteed Loan Limitation	5,211,000	812,916
	Outlays	437,120	68,191
Department of Veterans Affairs			
Veterans Benefits Administration			
Readjustment benefits			
36 0137 0 1 702	401(C) Authority	212,119	33,091
	Outlays	196,352	30,631
Burial benefits and miscellaneous assistance			
36 0155 0 1 701	401(C) Authority	138,120	21,547
	Outlays	138,118	21,546
Veterans Health Services and Research Administration			
Grants to the Republic of the Philippines			
36 0144 0 1 703	Budget Authority	522	81
	Outlays	26	4
Medical administration and miscellaneous operating expenses			
36 0152 0 1 703	Budget Authority	51,345	8,010
	Outlays	37,995	5,927
Medical care			
36 0160 0 1 703	Budget Authority	955,770	149,100
	Budget Authority - Spec. Rules	213,999	213,999
	401(C) Authority - Spec. Rules	408	408
	Outlays	1,062,548	320,412
Medical and prosthetic research			
36 0161 0 1 703	Budget Authority	225,584	35,191
	Outlays	175,956	27,449
Departmental Administration			
Construction, major projects			
36 0110 0 1 703	Budget Authority	373,854	58,322
	Outlays	12,337	1,924
Construction, minor projects			
36 0111 0 1 703	Budget Authority	102,441	15,980
	Outlays	53,275	8,311
General operating expenses			
36 0151 0 1 705	Budget Authority	836,232	130,452
	Outlays	752,609	117,407
Office of the Inspector General			
36 0170 0 1 705	Budget Authority	21,982	3,429
	Outlays	19,784	3,086
Grants for construction of state extended care facilities			
36 0181 0 1 703	Budget Authority	43,848	6,840
Grants for the construction of State veterans cemeteries			
36 0183 0 1 705	Budget Authority	9,396	1,466
Parking garage revolving fund			
36 4538 0 3 703	Budget Authority	27,144	4,234
	401(C) Authority - Off. Coll.	647	101
	Outlays	2,004	313

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
TOTAL FOR Department of Veterans Affairs			
	Budget Authority	2,648,118	413,105
	Budget Authority - Spec. Rules	213,999	213,999
	401(C) Authority	350,239	54,638
	401(C) Authority - Off. Coll.	647	101
	401(C) Authority - Spec. Rules	408	408
	Outlays	2,451,004	537,010
Other Independent Agencies			
Other Independent Agencies			
Space Council			
11 0020 0 1 802	Budget Authority	194	30
	Outlays	175	27
White House Conference on Library and Information Sciences			
95 2701 0 1 503	Budget Authority	1,880	293
	Outlays	1,671	261
ACTION			
Operating expenses			
44 0103 0 1 506	Budget Authority	179,550	28,010
	Outlays	109,166	17,030
Administrative Conference of the United States			
Salaries and expenses			
95 1700 0 1 751	Budget Authority	2,001	312
	Outlays	1,601	250
Advisory Committee on Federal Pay			
Salaries and expenses			
95 1800 0 1 805	Budget Authority	220	34
	Outlays	209	33
Advisory Council on Historic Preservation			
Salaries and expenses			
95 2300 0 1 303	Budget Authority	1,911	298
	Outlays	1,720	268
American Battle Monuments Commission			
Salaries and expenses			
74 0100 0 1 705	Budget Authority	16,230	2,532
	Outlays	13,796	2,152
Architectural and Transportation Barriers Compliance Board			
Salaries and expenses			
95 3200 0 1 751	Budget Authority	2,025	316
	Outlays	1,559	243
Arms Control and Disarmament Agency			
Arms control and disarmament activities			
94 0100 0 1 153	Budget Authority	33,013	5,150
	Outlays	21,888	3,415
Barry Goldwater Scholarship and Excellence in Education Foundation			
Barry Goldwater Scholarship and Excellence in Education Foundation			
95 8281 0 7 502	401(C) Other - incl. ob. limit	1,307	204
	Outlays	1,307	204
Board for International Broadcasting			
Grants and expenses			
95 1145 0 1 154	Budget Authority	203,508	31,747
	Outlays	195,368	30,477
Israel relay station			
95 1146 0 1 154	Budget Authority	34,464	5,376
	Outlays	10,339	1,613
Commission of Fine Arts			
Salaries and expenses			
95 2600 0 1 451	Budget Authority	510	80
	Outlays	467	73
National capital arts and cultural affairs			
95 2602 0 1 503	Budget Authority	5,220	814
	Outlays	5,220	814
Commission on Civil Rights			
Salaries and expenses			
95 1900 0 1 751	Budget Authority	6,123	955
	Outlays	5,205	812
Committee for Purchase from the Blind and other Severely Handicapped			
Salaries and expenses			
95 2000 0 1 505	Budget Authority	924	144
	Outlays	877	137
Commodity Futures Trading Commission			
Commodity Futures Trading Commission			
95 1400 0 1 376	Budget Authority	37,305	5,820
	Outlays	32,455	5,063

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Consumer Product Safety Commission			
Salaries and expenses			
61 0100 0 1 554	Budget Authority	37,021	5,775
	401(C) Authority - Off. Coll.	10	2
	Outlays	31,478	4,911
Corporation for Public Broadcasting			
Public broadcasting fund			
20 0151 0 1 503	401(C) Authority	232,648	36,293
	Outlays	232,648	36,293
Court of Veterans Appeals			
Salaries and expenses			
95 0300 0 1 705	Budget Authority	3,329	519
	Outlays	2,996	467
District of Columbia			
Federal payment to the District of Columbia			
20 1700 0 1 806	Budget Authority	561,578	87,606
	Outlays	561,578	87,606
Equal Employment Opportunity Commission			
Salaries and expenses			
45 0100 0 1 751	Budget Authority	193,802	30,233
	Outlays	171,127	26,696
Export-Import Bank of the United States			
Export-Import Bank of the United States			
83 4027 0 3 155	Budget Authority	114,840	17,915
	Direct Loan Limitation	725,580	113,190
	Guaranteed Loan Limitation	10,648,800	1,661,213
	Obligation Limitation	21,900	3,416
	Outlays	128,400	20,030
Farm Credit Administration			
Revolving fund for administrative expenses			
78 4131 0 3 351	Obligation Limitation	39,776	6,205
	Outlays	39,776	6,205
Farm Credit System Financial Assistance Corporation			
Farm credit assistance fund			
78 4133 0 3 351	401(C) Authority	500,000	78,000
	Outlays	475,000	74,100
Federal Communications Commission			
Salaries and expenses			
27 0100 0 1 376	Budget Authority	107,309	16,740
	Outlays	100,870	15,736
Federal Election Commission			
Salaries and expenses			
95 1600 0 1 808	Budget Authority	16,821	2,624
	Outlays	15,139	2,362
Federal Emergency Management Agency			
Salaries and expenses (Defense-related activities)			
58 0100 0 1 054	Budget Authority	74,003	11,544
	Outlays	66,603	10,390
Salaries and expenses (Disaster relief and insurance)			
58 0100 0 1 453	Budget Authority	73,837	11,519
	Outlays	66,453	10,367
Emergency management planning and assistance (Defense-related activities			
58 0101 0 1 054	Budget Authority	267,529	41,735
	Outlays	147,141	22,954
Emergency management planning and assistance (Disaster relief and insura			
58 0101 0 1 453	Budget Authority	27,336	4,264
	Outlays	15,035	2,345
Emergency food and shelter program			
58 0103 0 1 605	Budget Authority	131,544	20,520
	Outlays	131,544	20,520
Disaster relief			
58 0104 0 1 453	Budget Authority	104,400	16,286
	Outlays	41,760	6,515
National insurance development fund			
58 4235 0 3 451	401(C) Authority	220	34
	Outlays	220	34
Federal Labor Relations Authority			
Salaries and expenses			
54 0100 0 1 805	Budget Authority	18,874	2,944
	Outlays	17,364	2,709
Federal Maritime Commission			
Salaries and expenses			
65 0100 0 1 403	Budget Authority	14,608	2,279
	Outlays	13,147	2,051

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Federal Mediation and Conciliation Service			
Salaries and expenses			
93 0100 0 1 505	Budget Authority	27,738	4,327
	Outlays	25,234	3,953
Federal Mine Safety and Health Review Commission			
Salaries and expenses			
95 2800 0 1 554	Budget Authority	4,332	676
	Outlays	4,029	629
Federal Trade Commission			
Salaries and expenses			
29 0100 0 1 376	Budget Authority	71,189	11,105
	Outlays	65,494	10,217
TOTAL FOR Other Independent Agencies			
	Budget Authority	2,375,168	370,522
	401(C) Authority	732,868	114,327
	401(C) Authority - Off. Coll.	10	2
	401(C) Other - incl. ob. limit	1,307	204
	Direct Loan Limitation	725,580	113,190
	Guaranteed Loan Limitation	10,648,800	1,661,213
	Obligation Limitation	61,676	9,621
	Outlays	2,756,039	429,942
Other Independent Agencies			
Harry S Truman Scholarship Foundation			
Harry S Truman memorial scholarship trust fund			
95 8296 0 7 502	401(C) Other - incl. ob. limit	3,061	478
	Outlays	3,053	476
American Revolution Bicentennial Administration			
American Revolution Bicentennial Administration			
76 1900 0 1 806	Budget Authority	5,075	792
	Outlays	4,568	713
Christopher Columbus Quincentennary Jubilee Commission			
Salaries and expenses			
76 0800 0 1 376	Budget Authority	226	35
	Outlays	204	32
Commission on the Bicentennial of the U.S. Constitution			
Salaries and expenses			
76 0054 0 1 808	Budget Authority	7,308	1,140
	Outlays	6,321	986
Franklin Delano Roosevelt Memorial Commission			
Salaries and expenses			
76 0700 0 1 808	Budget Authority	29	5
	Outlays	24	4
Institute of American Indian and Alaska Native Culture and Arts Developm			
Salaries and expenses			
95 2900 0 1 502	Budget Authority	3,230	504
	Outlays	3,230	504
Intelligence Community Staff			
Intelligence community staff			
95 0400 0 1 054	Budget Authority	15,291	2,786
	Outlays	16,439	1,759
Advisory Commission on Intergovernmental Relations			
Salaries and expenses			
55 0100 0 1 808	Budget Authority	1,119	175
	Outlays	952	149
Appalachian Regional Commission			
Appalachian regional development programs			
46 0200 0 1 452	Budget Authority	115,631	18,039
	Outlays	8,332	1,300
Delaware River Basin Commission			
Salaries and expenses			
46 0100 0 1 301	Budget Authority	220	34
	Outlays	205	32
Contribution to Delaware River Basin Commission			
46 0102 0 1 301	Budget Authority	275	43
	Outlays	275	43
Interstate Commission on the Potomac River Basin			
Contribution to Interstate Commission on the Potomac River Basin			
46 0446 0 1 304	Budget Authority	396	62
	Outlays	396	62
Susquehanna River Basin Commission			
Salaries and expenses			
46 0500 0 1 301	Budget Authority	207	32
	Outlays	195	30
Contribution to Susquehanna River Basin Commission			
46 0501 0 1 301	Budget Authority	274	43
	Outlays	274	43

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International Trade Commission			
Salaries and expenses			
34 0100 0 1 153	Budget Authority	38,529	6,011
	Outlays	33,173	5,175
Interstate Commerce Commission			
Salaries and expenses			
30 0100 0 1 401	Budget Authority	46,408	7,240
	Outlays	41,767	6,516
James Madison Memorial Fellowship Foundation			
James Madison Memorial Fellowship Trust Fund			
95 8282 0 7 502	401(C) Other - incl. ob. limit	500	78
	Outlays	250	39
Japan-United States Friendship Commission			
Japan-United States friendship trust fund			
95 8025 0 7 154	Budget Authority	1,483	231
	Outlays	1,483	231
Legal Services Corporation			
Payment to the Legal Services Corporation			
20 0501 0 1 752	Budget Authority	322,131	50,252
	Outlays	283,475	44,222
Marine Mammal Commission			
Salaries and expenses			
95 2200 0 1 302	Budget Authority	1,023	160
	Outlays	908	142
Merit Systems Protection Board			
Salaries and expenses			
41 0100 0 1 805	Budget Authority	22,019	3,435
	Outlays	18,716	2,920
Office of the Special Counsel			
41 0101 0 1 805	Budget Authority	5,388	841
	Outlays	4,952	773
National Archives and Records Administration			
Operating expenses			
88 0300 0 1 804	Budget Authority	129,501	20,202
	Outlays	103,601	16,162
National archives trust fund			
88 8436 0 8 804	401(C) Authority - Off. Coll.	10,555	1,647
	Outlays	10,555	1,647
National Capital Planning Commission			
Salaries and expenses			
95 2500 0 1 451	Budget Authority	3,186	497
	Outlays	2,931	457
National Commission on Libraries and Information Science			
Salaries and expenses			
95 2700 0 1 503	Budget Authority	796	124
	Outlays	637	99
National Commission on Migrant Education			
Salaries and expenses			
95 0600 0 1 501	Budget Authority	2,085	325
	Outlays	167	26
National Council on Disability			
Salaries and expenses			
95 3500 0 1 506	Budget Authority	1,234	193
	Outlays	987	154
National Endowment for the Arts			
National endowment for the arts: Grants and administration			
59 0100 0 1 503	Budget Authority	176,999	27,612
	Outlays	59,649	9,305
National Endowment for the Humanities			
National endowment for the humanities: Grants and administration			
59 0200 0 1 503	Budget Authority	160,175	24,987
	Outlays	72,079	11,244
Institute of Museum Services			
Institute of Museum Services: Grants and administration			
59 0300 0 1 503	Budget Authority	23,278	3,631
	Outlays	6,006	937
National Labor Relations Board			
Salaries and expenses			
63 0100 0 1 505	Budget Authority	147,561	23,020
	Outlays	138,855	21,661
National Mediation Board			
Salaries and expenses			
95 2400 0 1 505	Budget Authority	6,969	1,087
	Outlays	5,324	831

AGENCY, BUREAU AND ACCOUNT TITLE			BASE	SEQUESTER
National Science Foundation				
Research and related activities				
	49 0100 0 1 251	Budget Authority	1,692,745	264,068
		Outlays	824,312	128,593
Science and engineering education activities				
	49 0106 0 1 251	Budget Authority	178,524	27,850
		Outlays	26,600	4,150
U.S. Antarctic program				
	49 0200 0 1 251	Budget Authority	136,764	21,335
		Outlays	67,698	10,561
National Transportation Safety Board				
Salaries and expenses				
	95 0310 0 1 407	Budget Authority	27,221	4,246
		Outlays	24,499	3,822
Neighborhood Reinvestment Corporation				
Payment to the Neighborhood Reinvestment Corporation				
	82 1300 0 1 451	Budget Authority	20,352	3,175
		Outlays	20,352	3,175
Nuclear Regulatory Commission				
Salaries and expenses				
	31 0200 0 1 276	Budget Authority	446,277	69,619
		Outlays	334,708	52,214
TOTAL FOR Other Independent Agencies				
		Budget Authority	3,749,929	583,751
		401(C) Authority - Off. Coll.	10,555	1,647
		401(C) Other - incl. ob. limit	3,561	556
		Outlays	2,128,152	331,189
Other Independent Agencies				
Occupational Safety and Health Review Commission				
Salaries and expenses				
	95 2100 0 1 554	Budget Authority	6,284	980
		Outlays	5,781	902
Pennsylvania Avenue Development Corporation				
Salaries and expenses				
	42 0100 0 1 451	Budget Authority	2,498	390
		Outlays	2,023	316
Public development				
	42 0102 0 1 451	Budget Authority	3,319	518
		Outlays	2,489	388
Land acquisition and development fund				
	42 4084 0 3 451	401(C) Authority - Off. Coll.	10,000	1,560
		Outlays	10,000	1,560
Postal Service				
Payment to the Postal Service fund				
	18 1001 0 1 372	Budget Authority	455,619	71,077
		Outlays	455,619	71,077
Postal Service				
	18 4020 0 3 372	401(C) Other - incl. ob. limit	1,097,124	171,151
Railroad Retirement Board				
Railroad social security equivalent benefit account				
	60 8010 0 7 601	Obligation Limitation	28,123	4,387
		Outlays	28,123	4,387
Rail Industry Pension Fund				
	60 8011 0 7 601	Obligation Limitation	33,625	5,246
		Outlays	33,625	5,246
Supplemental Annuity Pension Fund				
	60 8012 0 7 601	Obligation Limitation	2,300	359
		Outlays	2,300	359
Securities and Exchange Commission				
Salaries and expenses				
	50 0100 0 1 376	Budget Authority	152,966	23,863
		Outlays	139,199	21,715
Selective Service System				
Salaries and expenses				
	90 0400 0 1 054	Budget Authority	28,202	3,038
		Outlays	23,154	2,477
Smithsonian Institution				
Salaries and expenses				
	33 0100 0 1 503	Budget Authority	226,568	35,345
		Outlays	200,060	31,209
Construction and improvements, National Zoological Park				
	33 0129 0 1 503	Budget Authority	5,538	864
		Outlays	2,492	389
Repair and restoration of buildings				
	33 0132 0 1 503	Budget Authority	21,647	3,377
		Outlays	8,659	1,351

AGENCY, BUREAU AND ACCOUNT TITLE			BASE	SEQUESTER
Construction				
	33 0133 0 1 503	Budget Authority	9,036	1,410
		Outlays	3,614	564
Salaries and expenses, National Gallery of Art				
	33 0200 0 1 503	Budget Authority	40,692	6,348
		Outlays	34,873	5,440
Repair, restoration, and renovation of buildings				
	33 0201 0 1 503	Budget Authority	784	122
		Outlays	188	29
Salaries and expenses, Woodrow Wilson International Center for Scholars				
	33 0400 0 1 503	Budget Authority	4,502	702
		Outlays	2,764	431
Payment to the endowment challenge fund				
	33 0401 0 1 503	Budget Authority	315	49
		Outlays	157	24
Endowment challenge fund				
	33 8188 0 7 503	401(C) Authority	270	42
		Outlays	270	42
Canal Zone biological area fund				
	33 8190 0 7 503	401(C) Authority	150	23
		Outlays	135	21
TOTAL FOR Other Independent Agencies				
		Budget Authority	957,968	148,063
		401(C) Authority	420	65
		401(C) Authority - Off. Coll.	10,000	1,560
		401(C) Other - incl. ob. limit	1,097,124	171,151
		Obligation Limitation	64,048	9,992
		Outlays	955,525	147,927
Other Independent Agencies				
Other Temporary Commissions				
State Justice Institute: Salaries and expenses				
	48 0052 0 1 752	Budget Authority	11,491	1,793
		Outlays	3,105	464
Commission on Agricultural Workers: Salaries and expenses				
	48 0057 0 1 352	Budget Authority	534	83
		Outlays	481	75
National Commission on Responsibilities for Financing Postsecondary Edus				
	48 0400 0 1 502	Budget Authority	827	129
		Outlays	618	96
Nuclear Waste Technical Review Board: Salaries and expenses				
	48 0500 0 1 271	Budget Authority	3,136	489
		Outlays	1,568	245
Office of the Nuclear Waste Negotiator: Salaries and expenses				
	48 0700 0 1 271	Budget Authority	3,136	489
		Outlays	1,568	245
Navajo and Hopi Indian Relocation Commission: Salaries and expenses				
	48 1100 0 1 808	Budget Authority	28,668	4,472
		Outlays	18,061	2,818
Interagency Council on the Homeless				
	48 1300 0 1 604	Budget Authority	1,145	179
		Outlays	678	106
Commission for the Study of International Migration and Cooperative Econ				
	48 1400 0 1 153	Budget Authority	1,368	213
		Outlays	821	128
National Commission to Prevent Infant Mortality				
	48 1500 0 1 808	Budget Authority	689	107
		Outlays	551	86
International Cultural and Trade Center Commission: Salaries and expense				
	48 1800 0 1 804	Budget Authority	847	132
		Outlays	424	66
National Economic Commission: Salaries and expenses				
	48 2100 0 1 802	Budget Authority	736	115
		Outlays	675	105
Tennessee Valley Authority				
Tennessee Valley Authority fund (Energy supply)				
	64 4110 0 3 271	401(C) Authority - Off. Coll.	73,500	11,466
		Outlays	64,680	10,090
Tennessee Valley Authority fund (Area and regional development)				
	64 4110 0 3 452	Budget Authority	108,436	16,916
		Outlays	26,675	4,161
United States Holocaust Memorial Council				
Holocaust Memorial Council				
	95 3300 0 1 808	Budget Authority	2,380	371
		Outlays	1,883	294

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
United States Information Agency			
Salaries and expenses			
67 0201 0 1 154	Budget Authority	661,368	103,174
	Outlays	521,819	81,404
East West Center			
67 0202 0 1 154	Budget Authority	20,880	3,257
	Outlays	19,732	3,078
Radio construction			
67 0204 0 1 154	Budget Authority	67,863	10,587
	Outlays	38,139	5,950
Radio broadcasting to Cuba			
67 0208 0 1 154	Budget Authority	11,914	1,859
	Outlays	9,531	1,487
Educational and cultural exchange programs			
67 0209 0 1 154	Budget Authority	156,642	24,436
	Outlays	71,272	11,118
National Endowment for Democracy			
67 0210 0 1 154	Budget Authority	16,495	2,573
	Outlays	6,598	1,029
United States Institute of Peace			
United States Institute of Peace			
95 1300 0 1 153	Budget Authority	7,297	1,138
	Outlays	5,838	911
United States Sentencing Commission			
Salaries and expenses			
10 0938 0 1 752	Budget Authority	5,535	863
	Outlays	4,982	777
TOTAL FOR Other Independent Agencies			
	Budget Authority	1,111,387	173,375
	401(C) Authority - Off. Coll.	73,500	11,466
	Outlays	799,697	124,753
REPORT TOTAL			
	Budget Authority	468,673,749	57,917,774
	Budget Authority - Spec. Rules	245,378	245,378
	401(C) Authority	43,604,739	6,802,343
	401(C) Authority - Off. Coll.	2,089,342	325,935
	401(C) Other - incl. ob. limit	3,293,620	513,804
	401(C) Authority - Spec. Rules	1,893,509	1,893,509
	Direct Loan Limitation	21,223,541	3,310,871
	Direct Loan Floor	2,052,778	320,233
	Guaranteed Loan Limitation	276,780,881	43,177,817
	Guaranteed Loan Floor	0	0
	Obligation Limitation	25,423,941	3,966,139
	Unobligated Balances - Defense	39,585,864	4,235,690
	Outlays	315,578,064	41,475,837

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H.R. 840/Pub. L. 101-92

To authorize appropriations for fiscal year 1990 for the Federal Maritime Commission, and for other purposes. (Aug. 16, 1989; 103 Stat. 601; 2 pages) Price: $1.00

H.R. 1426/Pub. L. 101-93

Drug Abuse Treatment Technical Corrections Act of 1989. (Aug. 16, 1989; 103 Stat. 603; 14 pages) Price: $1.00

H.R. 2727/Pub. L. 101-94

Court of Veterans Appeals Judges Retirement Act. (Aug. 16, 1989; 103 Stat. 617; 13 pages) Price: $1.00

Guide to Record Retention Requirements

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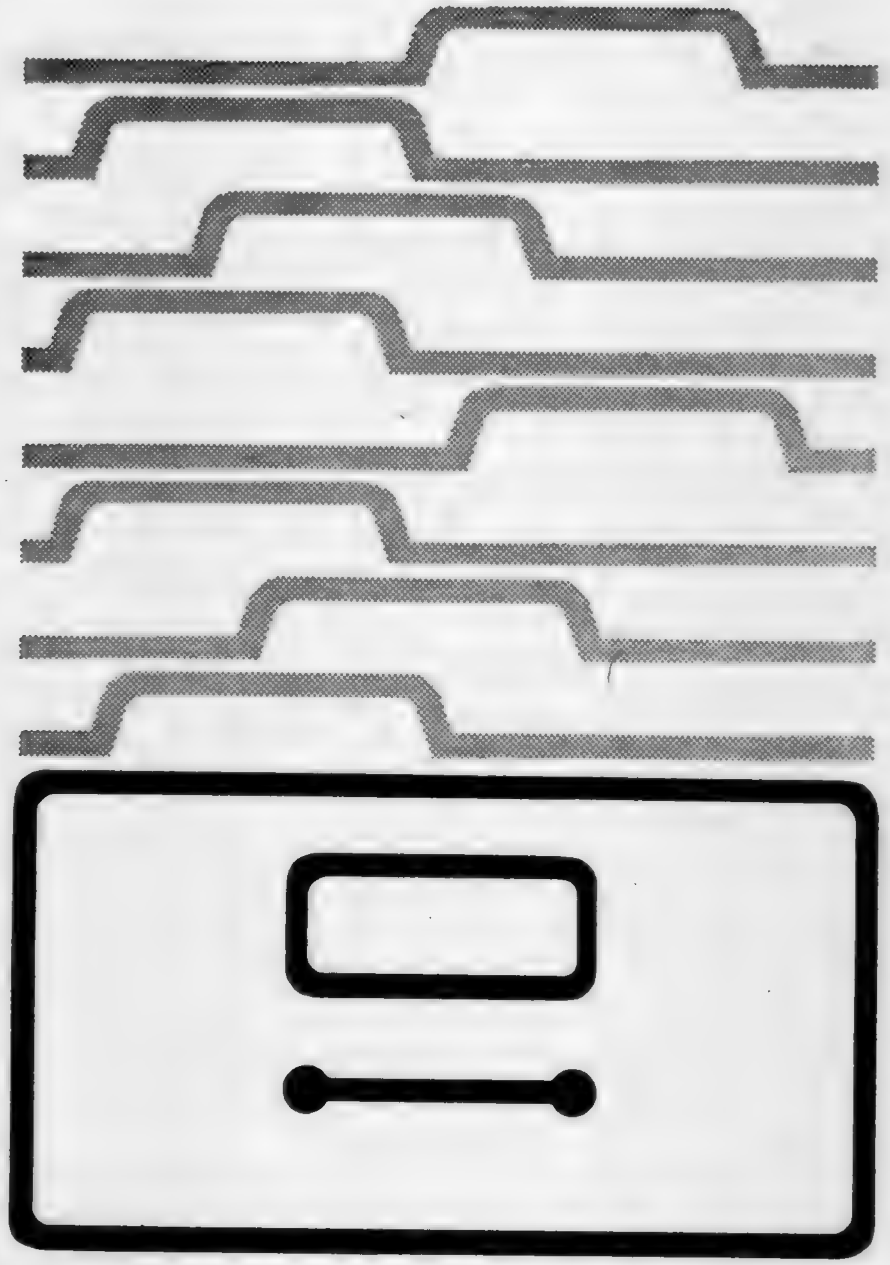

Revised January 1, 1989

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Rules and Regulations

Federal Register
Vol. 54, No. 162
Wednesday, August 23, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 151

[Docket No. 89-077]

Recognition of Breeds and Books of Record of Purebred Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations relating to recognition of breeds and books of record of purebred animals by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

EFFECTIVE DATE: August 23, 1989.

FOR FURTHER INFORMATION CONTACT: Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8682.

SUPPLEMENTARY INFORMATION:

The regulations in 9 CFR part 151 concern the recognition of breeds and books of record of purebred animals. Before the effective date of this document, these regulations indicated that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Service was the official responsible for various decisions made according to the regulations. We are revising 9 CFR part 151 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. These revisions will be published in separate **Federal Register** documents.

We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service (APHIS)." We are also adding a definition of "Administrator." Further, we are removing the definitions of "Deputy Administrator" and "Veterinary Services" because those terms are no longer used in the regulations.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR part 151 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 151

Animals, Animal pedigree, Imports, Purebred animals.

Accordingly, we are amending 9 CFR part 151 as follows:

PART 151—RECOGNITION OF BREEDS AND BOOKS OF RECORD OF PUREBRED ANIMALS

1. The authority citation for part 151 continues to read as follows:

Authority: 19 U.S.C. 1202; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 151.1, the definitions of "Deputy Administrator, Veterinary Services" and "Veterinary Services" are removed.

3. In § 151.1, the paragraph designations are removed and all definitions are rearranged in alphabetical order.

4. In § 151.1, definitions of "Administrator" and "Animal and Plant Health Inspection Service" are added in alphabetical order to read as follows:

§ 151.1 Definitions.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

* * * * *

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

* * * * *

§ 151.9 [Amended]

5. In § 151.9, remove the words "Veterinary Services" in the fourth sentence and in their place add "APHIS".

6. In § 151.9, remove "Veterinary Services," in the fifth sentence and in its place add the word "the".

§§ 151.1, 151.2, 151.5, 151.9, 151.11 [Amended]

7. In addition to the amendments set forth above, in 9 CFR part 151 remove the words "Deputy Administrator, Veterinary Services" and add, in their place, the word "Administrator" in the following places:

(a) Section 151.1, definition, "Certificates of pure breeding.";
(b) Section 151.2;
(c) Section 151.5;
(d) Section 151.9;
(e) Section 151.11(a).

§§ 151.1, 151.7 [Amended]

5. In addition to the amendments set forth above, in 9 CFR part 151 remove the words "Veterinary Services" and

add, in their place, the word "APHIS" in the following places:

(a) Section 151.1, definition, "Inspector";

(b) Section 151.7(c);

(c) Section 151.10.

Done in Washington, DC, this 17th day of August 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-19777 Filed 8-22-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-16-AD; Amdt. 39-6306]

Airworthiness Directives; American Champion Aircraft (Bellanca, Champion) Models 7ECA, 7GCAA, 7GCBC, 7KCAB, 8GCBC, and 8KCAB Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to American Champion Aircraft (Bellanca, Champion) Models 7ECA, 7GCAA, 7GCBC, 7KCAB, 8GCBC, and 8KCAB airplanes equipped with front folding seats. The FAA has received several reports of fatal accidents which have occurred after the seat back failed, causing the jamming of the rear control stick and loss of control of the airplane. The inspections specified in the AD will detect the cracks before a seat back failure occurs and the replacement of the seat frame also specified in the AD will preclude the development of these cracks.

DATES: *Effective Date:* September 21, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: American Champion Aircraft Service Letter No. 401, dated June 14, 1989, applicable to this AD may be obtained from American Champion Aircraft, P.O. Box 37, Rochester, Wisconsin 53167, Telephone (414) 534-6315. This information may also be examined at the Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City; Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Mr. Gregory J. Michalik, ACE-120C, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-7135.

SUPPLEMENTARY INFORMATION:

On January 15, 1987, the FAA was notified by Transport Canada of a fatal accident involving a Bellanca Model 7GCBC airplane. The preliminary investigation by the Canadian Aviation Safety Board (CASB) indicated that the crash was due to a failure of the folding backrest frame of the pilot's seat at the pivot point of the backrest which caused the pilot to shift aft contacting the rear flight control. This caused the airplane to pitch nose-up without recovery.

Two other airplanes of this type were inspected by the CASB and similar signs of metal fractures were evident on one of these seats. On February 18, 1987, Transport Canada issued Service Difficulty Alert (SDA) No. 87-01, relating to these failures. An alert similar to Canadian SDA No. 87-01 was issued by the FAA in the February 1987 issue of Advisory Circular (AC) No. 43-16, "General Aviation Airworthiness Alerts".

On November 14, 1988, the FAA was notified by the National Transportation Safety Board (NTSB) of a fatal accident involving a Bellanca Model 8KCAB airplane. The investigation by the NTSB disclosed that the pilot's folding seatback had failed at the hinge point on the right side and at the welded junction of the seat's lower side tube and seatback side brace on the left side. It is believed that the pilot fell backward and inadvertently exceeded the airplane's design stress limits by pulling or jerking on the front control stick or by hitting or jamming the rear control stick. A review of Service Difficulty Reports (SDR) regarding failures of the folding seatback frames in both Bellanca 7 and 8 series airplanes revealed reports of similar failures. Since February 1989, the FAA has been working with FRA Enterprises and American Champion Aircraft to increase the structural integrity of the folding seat frame and to develop a means for restraining aft seat movement. As a result, American Champion Aircraft has issued Service Letter No. 401, dated June 14, 1989, as a means to correct the front folding seat problem. Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring inspections for cracks in the seat frame and replacement of the seat frame on American Champion Aircraft (Bellanca, Champion) Models 7ECA, 7GCAA, 7GCBC, 7KCAB, 8GCBC, and 8KCAB airplanes equipped with front folding seats. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The FAA has determined that this regulation is an emergency regulation and that it is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

American Champion Aircraft (Bellanca, Champion): Applies to Models 7ECA, 7GCAA, 7GCBC, 7KCAB, 8GCBC, and 8KCAB (all serial numbers) airplanes certificated in any category, when equipped with front folding seats.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent failure of the seat back which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 25 hours time-in-service after the effective date of this AD and, thereafter at intervals not to exceed 25 hours time-in-service from the last inspection until the actions specified in paragraph (b) below are accomplished, accomplish the following:

(1) Magnetic particle or dye penetrant inspect the left and right sides of the welded lower seat frame side-tube/side-brace junction and seatback hinges for evidence of cracks. If any cracks are found, prior to further flight repair, in accordance with the recommended procedures in Advisory Circular (AC) 43.13-1A, the crack or replace the cracked part with a serviceable part.

(2) Fabricate and install on the instrument panel in clear view of the pilot a placard with letters of minimum 0.2 inches in height which reads as follows: "Warning: Do not pull or push on upper seat back."

(b) Within the next 150 hours time-in-service after the effective date of this AD, replace the front folding seat frame with an exchange unit in accordance with American Champion Aircraft Service Letter No. 401, dated June 14, 1989. The repetitive inspections and the placard specified in paragraph (a) above are no longer required after the actions specified in this paragraph have been accomplished.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Chicago Aircraft Certification Office, ACE-115C, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All persons affected by this directive may obtain copies of the documents referred to herein upon request to American Champion Aircraft, P.O. Box 37, Rochester, Wisconsin 53167, or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City; Missouri 64106.

This amendment becomes effective on September 21, 1989.

Issued in Kansas City, Missouri, on August 11, 1989.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19791 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-CE-17-AD; Amdt. 39-6307]

Airworthiness Directives; Gulfstream Aerospace Models AA-5, AA-5A, AA-5B, and GA-7 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Gulfstream Aerospace Models AA-5, AA-5A, AA-5B, and GA-7 airplanes, which requires a one-time inspection of the fuel tanks and the electric fuel pump filter for contamination, and resealing of the fuel tank access covers with a high-octane fuel resistant sealant. This action is prompted by reports of deteriorated fuel tank access cover sealant which can accumulate at the electric fuel pump filter and cause fuel flow interruption. The inspections and corrective actions required by this AD will eradicate the contamination problem and prevent possible fuel flow interruption.

DATES: *Effective Date:* September 21, 1989. Comments for inclusion in the Rules Docket must be received on or before September 22, 1989.

Compliance: Required within the next 25 hours time-in-service unless already accomplished.

ADDRESSES: Gulfstream Aerospace Corporation (GAC) Service Bulletins No. 176 and No. ME 22, both dated July 26, 1989, and applicable to this AD, may be obtained from the Gulfstream Aerospace Corporation, Technical Operations Department, Travis Field, P.O. Box 2206, Savannah, Georgia 31402-2206. This information may be examined at the Rules Docket at the address below. Send comments on the AD in triplicate to the FAA, Central Region, Attention: Rules Docket No. 89-CE-17-AD, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Durrance, Aerospace Engineer, ACE-140A, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Aircraft Certification Service, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349, Telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: Gulfstream Aerospace Models AA-5, AA-5A, AA-5B, GA-7 airplanes were originally manufactured using Product Research and Chemical Corporation PR-1321 sealant to seal the fuel tank access covers. Gulfstream Aerospace Single Engine Aircraft Service Kit No. 140, "Integral Fuel Tank Repairs," and Gulfstream Aerospace GA-7/Cougar Aircraft Service Kit No. 1, "Integral Fuel Tank Repairs," also specified the use of PR-1321 for this purpose. It was subsequently learned that PR-1321 is not suitable for use in a high-octane fuel environment. In December of 1983, the two service kits were revised to Single Engine Aircraft Service Kit No. 140A and GA-7/Cougar Aircraft Service Kit No. 1A respectively. These revised service kits deleted the reference to PR-1321 and required the use of PR-1403, (a sealant which is compatible with high-octane fuel) on integral fuel tank repairs.

Subsequently, the FAA has received eleven reports of deteriorated access cover sealant found in the fuel tanks of Gulfstream Models AA-5, AA-5A, AA-5B, and GA-7 airplanes. The contamination can appear in any of the following forms: (1) Sealant in a mushy state, usually found in the bottom of the tanks in chunk form; (2) a sticky resinous substance, varying in color and appearing in the drain areas; (3) a fine powder, pink in color, found in the areas of the access covers, and possibly, throughout the fuel system. Sealant which has deteriorated to the powder form poses the greatest hazard to the operation of the airplane because this powder can accumulate at the electric fuel pump filter and result in fuel flow interruption.

Gulfstream Aerospace Corporation (GAC) has written GAC Service Bulletin No. 176 (applicable to Gulfstream Aerospace Models AA-5, AA-5A, and AA-5B airplanes) and GAC Service Bulletin No. ME 22 (applicable to Gulfstream Aerospace Model GA-7 airplanes). These Service Bulletins provide instructions for: (1) Inspection of the fuel tanks and the electric fuel pump filter; (2) cleaning of the fuel tanks and/or fuel system (if contamination is present); (3) resealing of the access covers with high-octane fuel resistant sealant. Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, and AD is being issued requiring that the actions specified in GAC Service Bulletin No. 176 or ME 22, as applicable, be accomplished on all Gulfstream Aerospace Models AA-5, AA-5A, AA-5B, and GA-7 airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule.

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report summarizing each FAA public contract concerned with the substance of this AD, will be filed in the Rules Docket.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emerency regulation and that it is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of 14 CFR part 39 of the FAR as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Gulfstream Aerospace Corporation: Applies to Gulfstream Aerospace Models AA–5, AA–5A, AA–5B, and GA–7 (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 25 hours time-in-service after the effective date of this AD, unless already accomplished. To preclude fuel tank/fuel system contamination caused by deterioration of fuel tank access cover sealant, accomplish the following:

(a) Inspect the fuel tanks, fuel system, and the electric fuel pump filter for fuel tank sealant contamination in accordance with the instructions specified in Gulfstream Aerospace Corporation (GAC) Service Bulletin (S/B) No. 178, dated July 28, 1989, or GAC S/B No. ME 22, dated July 28, 1989, as applicable. If contamination is detected, prior to further flight clean the fuel system and all fuel system components in accordance with the instructions in the above listed applicable GAC S/B.

(b) Reseal the fuel tank access covers using high-octane fuel resistant sealant per the instructions in the applicable GAC S/B listed in paragraph (a) of this AD.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Aircraft Certification Service, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Gulfstream Aerospace Corporation, Technical Operations Department, Travis Field, P.O. Box 2206, Savannah, Georgia 31402–2206; or may examine the documents at the FAA, Office of the Assistant Chief Counsel, Room 1558 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on September 21, 1989.

Issued in Kansas City, Missouri, on August 11, 1989.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–19792 Filed 8–22–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88–NM–210–AD; Amdt. 39–6311]

Airworthiness Directives; Lockheed Aeronautical Systems Company Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Lockheed Model L–1011–385 series airplanes, which currently requires deactivation of the AC electric motor-driven hydraulic pumps. That action was prompted by a report of smoke and fire damage resulting from a failed AC electric motor-driven hydraulic pump electrical connector, in combination with leaking hydraulic fluid from the failed electro-hydraulic component. This amendment permits the installation of a newly-designed AC Hydraulic Pump Magnetic Circuit Breaker Panel (MCBP), which removes the restrictions on the use of the two hydraulic pumps imposed by the existing AD.

EFFECTIVE DATE: October 2, 1989.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Department 65–33, Unit 20, Plant A–1. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5344.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Lockheed Model L–1011–385 series airplanes, to permit the installation of a newly-designed AC Hydraulic Pump Magnetic Circuit Breaker Panel (MCBP), which would remove restrictions on the use of the pumps, was published in the

Federal Register April 10, 1989, (54 FR 14241).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comments were received from the Air Transport Association (ATA) of America and one operator, both of whom supported adoption of the proposal. However, one of the commenters requested that an alternate means of compliance be approved, in lieu of the circuit validation test procedures now provided by Lockheed Service Bulletin 093–29–088, Revision 1, dated March 7, 1989. The commenter stated that repeated validation testing could be more safely and easily accomplished by removing the pump electrical connector and connecting it to a test box. The test box operation would direct current from one of the three phases, through a known load and then into the neutral circuit, which would cause the magnetic circuit breaker to trip in the same manner as lifting a phase lead from the Remote Controlled Circuit Breaker (RCCB). The FAA agrees that the utilization of a test box for the repeated validation tests would be more efficient than lifting a phase lead from the RCCB, but a test box for accomplishing this task is not available at this time. Therefore, the FAA does not concur with the commenter's suggestion. Should such a test box become available, operators may apply to use it as an alternate means of compliance, as provided by paragraph D. of the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 241 Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 series airplanes of the affected design in the worldwide fleet. It is estimated that 116 airplanes of U.S. registry will be affected by this AD, that it will take approximately 29 manhours per airplane to accomplish the option terminating action, and that the average labor cost will be $40 per manhour. Kits to accomplish the modification will be provided by Lockheed at no cost to operators. Based on these figures, the total cost impact of the AD on those U.S. operators who accomplish the optional terminating action is estimated to be $1,160 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on "a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by amending Amendment 39–5923 (53 FR 17017; May 13, 1988), AD 88–07–51, as follows:

Lockheed Aeronautical Systems Company: Applies to Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 series airplanes, as listed in Lockheed TriStar L–1011 Service Bulletin 093–29–A088, dated April 14, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a fire from a failed AC electrical motor-driven hydraulic pump electrical connector, in combination with leaking hydraulic fluid from the failed electro-hydraulic component, accomplish the following:

A. Within 100 flight hours after June 3, 1988 (which is the effective date of Amendment 39–5923), accomplish the following:

1. On the Flight Engineer/Second Officer's (FE/SO) overhead CB panel CB2, open and collar circuit breakers L12 "AC Pump B3" and L22 "AC Pump C3", using PACO plastic ring P/N S–4933959–503 or equivalent.

2. As a verification that power has been removed from affected pumps, on the FE/SO hydraulic system control panel, cycle the AC pumps switch lights and verify that the "ON" legends do not illuminate.

B. Accomplishment of the requirements of paragraph A., above, in accordance with Lockheed TriStar L–1011 Alert Service Bulletin 093–29–A088, dated April 14, 1988, is considered an acceptable means of compliance with this AD.

C. Installation of a AC Hydraulic Pump Magnetic Circuit Breaker Panel (MCBP) in the Mid-Electrical Service Center (MESC) and associated aircraft wiring, in accordance with Lockheed TriStar L–1011 Service Bulletin 093–29–088, Revision 1, dated March 7, 1989, constitutes terminating action for the requirements of paragraph A., above. The hydraulic pumps may then be reactivated by removing the circuit breaker collars installed in accordance with paragraph A.1., above, and closing the circuit breakers.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: This request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Department 65–33, Unit 20, Plant A–1. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment amends Amendment 39–5923, AD 88–07–51.

This amendment becomes effective October 2, 1989.

Issued in Seattle, Washington, on August 15, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–19793 Filed 8–22–89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 101 and 103

RIN 1076–AC00 and 1076–AC01

Loans to Indians From the Revolving Loan Fund and Loan Guaranty, Insurance, and Interest Subsidy

July 21, 1989.

AGENCY: Bureau of Indian Affairs, Interior.

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ACTION: Final rule.

SUMMARY: The Indian Financing Act Amendments of 1984 amended the Indian Financing Act of 1974 by removing a restriction precluding individual Indians who are members of tribes having credit programs from receiving direct loans or loan guarantees from the Bureau of Indian Affairs; allowing the Secretary to cancel loan payment obligations without Congressional approval; authorizing annual appropriations to cover losses on guaranteed or insured loans, and making interest payments on such loans. These legislative amendments are the basis for amending subchapter G, parts 101 and 103, of the Code of Federal Regulations.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Nephew, Division of Financial Assistance, Bureau of Indian Affairs, telephone (202) 343–5324.

SUPPLEMENTARY INFORMATION: These amendments are published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons were given the opportunity to submit written comments regarding the proposed rule as they were published April 11, 1989, at 54 FR 14361.

One letter was received commenting that the 1988 amendments to the Indian Financing Act should be incorporated in the amendments to the Code of Federal Regulations. These 1988 amendments include authority to guarantee bonds, an increase in the maximum loan guaranty for individuals, and bonuses to Federal contractors who subcontract with Indian business enterprises. The proposed rulemaking for these regulations although published after the 1988 amendments became effective was prepared before their enactment and consequently reflects only the 1984 amendments to the Indian Financing Act. Consequently, except for amending § 103.13 in the final rule to reflect that the statutory limit for loan guarantees for individual Indians has been raised to $500,000 by the 1988 amendments, other changes in the regulations authorized by the 1988 amendments must await future proposed rulemaking.

This final rule reflects changes in the Indian Financing Act of 1974 which expand financing opportunities to individual Indians for participation in the development of Indian economies.

Prior to the passage of the Indian Financing Act Amendments of 1984, individual Indians who were members of tribes having relending programs were ineligible to receive guaranteed or direct loans from the Bureau. Guaranteed loans to other eligible individuals were limited by the Act to $100,000, and direct loans were administratively held to the same level. Since the limit for a guaranteed loan to an individual has been raised to $500,000 and eligibility expanded, use of the program is expected to increase. Direct loans to individuals are not limited by the Act or its Amendments and those are being set at a $350,000 limit in the rule. The minimum limit of $10,000 on guaranteed loans, along with the minimum time limit of one year, were removed because they are unnecessary.

The 1984 legislative amendments removed the Leavitt Act (47 Stat. 564, 25 U.S.C. 386a) restriction on reporting cancellations to Congress before they became effective. This allows cancellations to be considered at any time and eliminates the waiting period after the Secretary has signed the cancellation order.

Another change adds the 1984 amendment requirement that all guaranteed loans shall be reviewed by the Bureau, independent of the lending institution.

The rule also provides that loans with variable interest rates may be guaranteed.

The Department of the Interior has determined that this document is not a major action under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It is estimated the program regulated by this part will have no more than a $50 million gross annual effect on the national economy. It is then, by definition at 318 DM 5, not a major action. Since this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, no environmental assessments were made.

The collections of information contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* The clearance number assigned is 1076–0020.

Public reporting burden for this collection of information is estimated to vary from 15 minutes to 3 hours per response, with an average of one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337–SIB, 18th and C Streets NW., Washington, DC 20240; and the Paperwork Reduction Project (1076–0020), Office of Management and Budget, Washington, DC 20503.

The primary authors of this document are Richard K. Nephew and Woodrow Sneed, Division of Financial Assistance, Bureau of Indian Affairs, telephone number (202) 343–5324.

List of Subjects

25 CFR Part 101

Indians—business and finance, Loan programs—Indians, Reporting and recordkeeping requirements.

25 CFR Part 103

Indians—business and finance, Loan programs—business, Loan programs—Indians.

For the reasons set out in the preamble, parts 101 and 103 of title 25, chapter I of the Federal Regulations are amended as set forth below.

PART 101—[AMENDED]

1. The authority citation for part 101 is revised to read as follows:

Authority: 25 U.S.C. 1469.

2. Section 101.2 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 101.2 Kinds of loans.

* * * * *

(b) Direct loans may be made by the United States to eligible tribes, tribal organizations or corporations and tribal cooperative associations without fund restrictions. Direct loans to individual Indians, partnerships, and other non-tribal organizations shall not exceed $350,000. Direct loans from the United States shall be made for the following purposes:

* * * * *

3. Section 101.3 is amended by revising paragraph (a) to read as follows.

§ 101.3 Eligible borrowers under United States direct loan program.

(a) Loans may be made from the revolving loan fund to Indians, eligible tribes and relending organizations, and corporations, cooperative associations and partnerships having a form of organization satisfactory to the Commissioner. Loans may be made to applicants only when, in the judgment of the Commissioner, there is a reasonable prospect of repayment. Loans may be made only to an applicant who, in the opinion of the Commissioner, is unable to obtain financing on reasonable terms and conditions from other sources such as tribal relending programs, banks, Farmers Home Administration, Small Business Administration, Production Credit Associations, or Federal Land Banks, and is also unable to obtain a guaranteed or insured loan pursuant to title II of the Indian Financing Act of 1974 (88 Stat. 77).

* * * * *

4. Section 101.7 is amended by revising the first sentence to read as follows:

§ 101.7 Management and technical assistance.

Prior to and concurrent with the approval of a United States direct loan to finance an economic enterprise, the Commissioner will assure under title V of the Indian Financing Act of 1974 that competent management and technical assistance is available to the loan applicant for preparation of the application and/or administration of funds loaned consistent with the nature of the enterprise proposed to be or in fact funded by the loan. * * *

5. Section 101.17 is revised to read as follows:

§ 101.17 Uncollectable loans made by the United States.

If the Secretary determines that a United States direct loan is uncollectable in whole or in part or is collectable only at an unreasonable cost, or when such action would be in the best interest of the United States, the Secretary may cancel, adjust, compromise, or reduce the amount of any loan made from the revolving loan fund. The Commissioner may adjust, compromise, subordinate, or modify the terms of any mortgage, lease, assignment, contract, agreement, or other document taken as security for loans. The cancellation of all or part of a loan shall become effective when signed by the Secretary.

6. A new § 101.26 is added to read as follows:

§ 101.26 Information collection.

(a) The collections of information contained in §§ 101.3, 101.4, 101.12, and 101.25 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0020. The information will be used to rate applicants in accordance with the terms and conditions set forth in section 103 of the Indian Financing Act, as amended. Response is required to obtain a benefit in accordance with 25 U.S.C. 1451.

(b) Public reporting burden for this information is estimated to vary from 15 minutes to 3 hours per response, with an average of one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337–SIB, 18th and C Streets NW., Washington, DC 20240; and the Paperwork Reduction Project (1076–0020), Office of Management and Budget, Washington, DC 20503.

PART 103—[AMENDED]

7. The authority citation for part 103 is revised to read as follows:

Authority: 25 U.S.C. 1498.

8. Section 103.4 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 103.4 Management and technical assistance.

(a) Prior to and concurrent with the issuance of a guaranty certificate for a loan to finance an economic enterprise, the Commissioner will assure under title V of the Indian Financing Act that competent management and technical assistance are available for preparation of the application and/or administration of funds granted consistent with the nature of the enterprise proposed to be or that is in fact funded. * * *

* * * * *

9. Section 103.8 is revised to read as follows:

§ 103.8 Eligible individuals.

Indians who are members of tribes recognized by the federal government as eligible for services from the Bureau of Indian Affairs are eligible for guaranteed or insured loans. Individuals applying for a guaranteed or insured loan to purchase, establish or operate an economic enterprise on a reservation must comply with the requirements of applicable rules, resolutions or ordinances enacted by the governing body of the tribe.

10. Section 103.13 is amended by revising paragrpah (a) to read as follows:

§ 103.13 Amount of guaranty.

(a) The percentage of a loan that is guaranteed shall be the minimum necessary to obtain financing for an applicant, but may not exceed 90 percent of the unpaid principal and interest. The liability under the guaranty shall increase or decrease pro rata with any increase of decrease in the unpaid portion of the principal amount of the obligation. No loan to an individual Indian may be guaranteed for an unpaid principal amount in excess of $500,000.

* * * * *

11. A new § 103.55 is added to read as follows:

§ 103.55 Information collection.

(a) The collection of information contained in § 103.15 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0020. The information will be used to rate applicant in accordance with the terms and conditions set forth in §§ 103.4, 103.9, 103.15, 103.36, 103.37, 103.42, 103.43, and 103.52 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* information will be issued to rate applicants in accordance with the terms and conditions set forth in section 103 of the Indian Financing Act, as amended. Response is required to obtain a benefit in accordance with 25 U.S.C. 1451.

(b) Public reporting burden for this information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337–SIB, 18th and C Streets NW., Washington, DC 20240; and the Paperwork Reduction Project (1076–0020), Office of Management and Budget, Washington, DC 20503.

12. Section 103.15, Application for loans, is amended by removing the last sentence in paragraph (b)(2) and by adding a new paragraph (c) to read as follows:

§ 103.15 [Amended]

* * * * *

(c) The Commissioner will review applications for guaranteed loans individually and independently for the lending institution.

13. Section 103.39 is revised to read as follows:

§ 103.39 Cancellation.

The Secretary may cancel the uncollectable portion of any obligation assigned to the United States or rights to which the United States is subrogated and the security assigned to the United States.

14. Section 103.41 is amended by revising the next to the last sentence to read as follows:

§ 103.41 Interest.

* * * Once a loan is closed the interest rate may not be increased except when a variable interest rate tied to a specified base rate agreed upon by the borrower and the lender has been approved by the Commissioner. * * *

Walter R. Mills,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89-19814 Filed 8-22-89; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Bank Secrecy Act; Geographic Targeting of Certain Domestic Currency Transactions; Correction

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule, correction.

SUMMARY: A final rule was published on August 16, 1989, at 54 FR 33675, amending the Bank Secrecy Act regulations in 31 CFR part 103 relating to the geographic targeting of certain domestic currency transactions. This document corrects two minor errors in the amendatory language.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Office of the Assistant General Counsel (Enforcement), (202) 566-8947.

SUPPLEMENTARY INFORMATION: A final rule was published on August 16, 1989, at 54 FR 33675, amending the Bank Secrecy Act regulations in 31 CFR part 103 relating to the geographic targeting of certain domestic currency transactions. In that document, three amendments were made, one adding a new § 103.26 describing the procedures used in issuing such orders, and two others amending the present recordkeeping requirements in 31 CFR 103.33 and 103.38. In the amendatory language concerning the latter two amendments, the phrase "It is proposed to amend" is used instead of the proper amendatory language indicating that the sections were in fact being amended by the document.

Correction

On page 33679 of the August 16, 1989, **Federal Register**, amendment to the regulation section, the amendatory language of paragraph #3 should read "§ 103.33 is amended to add at the end a new paragraph (d) to read as follows:". On the same page, the amendatory language of paragraph #4 should read as follows: "Section 103.38 is amended by adding in paragraph (d), after the first sentence, a new sentence to read as follows:".

Dated: August 17, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-19785 Filed 8-22-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS COMSTOCK (LSD-45) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval dock landing ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number; (202) 325-9744.

SUPPLEMENTARY INFORMATION:

Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS COMSTOCK (LSD-45) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Judge Advocate General the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Foward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS COMSTOCK	LSD-45							×	64

Dated: August 9, 1989.

Approved:

J.E. Gordon,

Rear Admiral, JAGC, U.S. Navy Acting Judge Advocate General.

[FR Doc. 89-19833 Filed 8-22-89; 8:45 am]

BILLING CODE 3810-AE-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1190

Minimum Guidelines and Requirements for Accessible Design; Correction

AGENCY: United States Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Final rule; correction.

SUMMARY: On February 3, 1989, at 54 FR 5434, the Architectural and Transportation Barriers Compliance Board amended its Minimum Guidelines and Requirements for Accessible Design (MGRAD). This document corrects technical errors appearing in that document.

FOR FURTHER INFORMATION CONTACT: Ruth Lusher, Acting Director of Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1111 18th Street NW., Suite 501, Washington, DC 20036; (202) 653-7834 (voice or TDD).

SUPPLEMENTARY INFORMATION: In rule document 89-2435 beginning on page 5434, in the issue of Friday, February 3, 1989, make the following corrections:

PART 1190—[CORRECTED]

§ 1190.31 [Corrected]

1. On page 5445, in the first column, in amendatory instruction "h.", in the second line, the reference to "Section 1190.100, Platform lifts" should read "Section 1190.110, Platform lifts".

2. On page 5446, in the first column, amendatory instruction "u." was incomplete and should read as follows:

u. Section 1190.31(t) is amended by removing "Section 1190.240, Storage" and "Section 1190.240" wherever each appears and inserting in lieu thereof "ANSI A117.1-1986, section 4.23, Storage. (Incorporated by reference, see 1190.31(a).)"

Dated: August 16, 1989.

James J. Raggio,

Acting Executive Director, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 89-19866 Filed 8-22-89; 8:45 am]

BILLING CODE 6820-BP-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Chapter I

Nomenclature Changes; Technical Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Final technical amendments.

SUMMARY: The Department of Veterans Affairs Act established the Veterans Administration as the Department of Veterans Affairs, an executive-level Department, (see 54 FR 10476). The Department of Veterans Affairs (VA) is making technical amendments to title 38, Code of Federal Regulations, chapter I, to bring its nomenclature into conformance with the changes required by the Act.

EFFECTIVE DATE: These final amendments are retroactively effective to March 15, 1989, the effective date of VA becoming the Department of Veterans Affairs.

FOR FURTHER INFORMATION CONTACT: Lynn H. Covington, Director, Paperwork Management and Regulations Service (73), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3616.

SUPPLEMENTARY INFORMATION: VA is updating 38 CFR chapter I nomenclature to conform to the Department of Veterans Affairs, Act, Pub. L. 100-527. However, the Department's reorganization under Public Law 100-527 is not yet totally finalized. Any further changes requiring amendment of 38 CFR chapter I will be published at a later date. Those changes will primarily reflect new titles for personnel responsible for certain functions which appear in 38 CFR. At this time, VA is also taking the opportunity to remove any gender-specific language remaining in 38 CFR as required by 38 CFR 1.13, and is making certain that terms used by the Department are consistent throughout 38 CFR to avoid any confusion. For example, the terms field facility and field station have been used interchangeably in 38 CFR; the term field facility is now used throughout the title.

VA finds that good cause exists for making these amendments final without previous publication of a notice of proposed rulemaking, and for making them retroactively effective to the date of the establishment of the Department of Veterans Affairs, March 15, 1989. All the changes contained in these regulations are technical ones designed to correct erroneous references and eliminate sexually biased language. There are no substantive changes. Public participation in this rulemaking is therefore unnecessary (38 CFR 1.12).

Since a notice of proposed rulemaking is unnecessary and will not be published, these final amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of the Act. These amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These final regulatory amendments do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The final regulatory amendments will not have a $100 million annual effect on the economy, and will not cause a major increase in costs and prices for anyone. They will have no significant adverse effects on competition employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or foreign-based markets.

These final regulatory amendments do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

These amendments are promulgated under the authority granted the Secretary of Veterans Affairs by 38 U.S.C. 210(c).

Approved: August 15, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38. CFR chapter I, Pensions, Bonuses, and Veterans' Relief, is amended as follows:

38 CFR CHAPTER I—[AMENDED]

1. In 38 CFR chapter I remove the words "Veterans Administration" and "Veterans' Administration" and add, in their place, the words "Department of Veterans Affairs" everywhere they appear.

2. In 38 CFR chapter I remove the words "Department of Medicine and Surgery" and add, in their place, the words "Veterans Health Services and Research Administration" everywhere they appear.

3. In 38 CFR chapter I remove the words "Department of Veterans Benefits" and add, in their place, the words "Veterans Benefits Administration" everywhere they appear.

4. In 38 CFR chapter I remove the words "Department of Memorial Affairs" and add, in their place, the words "National Cemetery System" everywhever they appear.

5. In 38 CFR chapter I remove the acronyms "DM&S", "DVB", and "DMA" and add, in their place, the acronyms "VHS&RA", "VBA", and '"NCS" respectively everywhere they appear.

6. In 38 CFR Chapter I remove the words "Administrator" and "Adminisrator's" and add, in their place, the words "Secretary" and "Secretary's" respectively everywhere they appear.

7. In 38 CFR Chapter I remove the words "Administrator of Veterans' Affairs" and add, in their place, the words "Secretary of Veterans Affairs" everywhere they appear.

8. In 38 CFR Chapter I remove the words "Deputy Administrator" and "Deputy Administrator's" and add, in their place, the words "Deputy Secretary" and "Deputy Secretary's" respectively everywhere they appear.

9. In 38 CFR Chapter I remove the words "Chief Memorial Affairs Director" and add, in their place, the words "Director, National Cemetery System" everywhere they appear.

In addition to the amendments set forth above, 38 CFR Chapter I is further amended as follows:

PART 0—[AMENDED]

1. §§ 0.735–10, 0.735–11, 0.735–21, 0.735–51, 0.735–52, 0.735–53, 0.735–54, and 0.735.56 remove the word "himself" and add in its place, the words "himself or herself" in the following places:

(a) Section 0.735–10(a);
(b) Section 0.735–11(a) introductory text and (c);
(c) Section 0.735–21(f);
(d) Section 0.735–51;
(e) Section 0.735–52(a);
(f) Section 0.735–53;
(g) Section 0.735–54; and
(h) Section 0.735–56.

2. In §§ 0.735–10, 0.735–11, 0.735–12, 0.735–13, 0.735–19, 0.735–20, 0.735–21, 0.735–23, 0.735–51, 0.735–52, 0.735–53, 0.735–54, 0.735–55, 0.735–56, 0.735–57, 0.735–71, 0.735–82, 0.735–83, 0.735–84, and 0.735–85, remove the word "his" and add, in its place, the words "his or her" in the following places:

(a) Section 0.735–19(d);
(b) Section 0.735–11(a) introductory text, (a)(3), (b)(1), and (f);
(c) Section 0.735–12(a) introductory text, (a)(2) and (a)(6);
(d) Section 0.735–13(c);
(e) Section 0.735–19(a);
(f) Section 0.735–20(e)(1), (e)(3), and (g);
(g) Section 0.735–21(c) and (d)(2);
(h) Section 0.735–23(b) (14)(iii);
(i) Section 0.735–51;
(j) Section 0.735–52(a);
(k) Section 0.735–53;
(l) Section 0.735–54;
(m) Section 0.735–55(a), (b), (c)(3), (d); and (e)(2);
(n) Section 0.735–56;
(o) Section 0.735–57;
(p) Section 0.735–71;
(q) Section 0.735–82(b);
(r) Section 0.735–83;
(s) Section 0.735–84; and
(t) Section 0.735–85(d) and (e).

3. In §§ 0.735–10, 0.735–16, 0.735–20, 0.735–21, 0.735–51, 0.735–52, 0.735–53, 0.735–54, 0.735–55, 0.735–83, and 0.735–85 remove the word "he" and add, in its place, the words "he or she" in the following places:

(a) Section 0.735–10(d);
(b) Section 0.735–16(c);
(c) Section 0.735–20(g);
(d) Section 0.735–21(e)(2) and (f);
(e) Section 0.735–51;
(f) Section 0.735–52(a);
(g) Section 0.735–53;
(h) Section 0.735–54;
(i) Section 0.735–55(a), (b), (c)(3), (e) introductory text and (e)(1);
(j) Section 0.735–83; and
(k) Section 0.735–85(d) introductory text.

§§ 0.735–84 and 0.735–85 [Amended]

4. In §§ 0.735–84 and 0.735–85(d) introductory text remove the word "him" and add, in its place, the words "him or her".

5. In §§ 0.735–4(c), 0.735–19(a), 0.735–73(e), and 0.735–75 introductory text remove the word "station" or "stations" and add, in its place, the word "facility" or "facilities."

§§ 0.735–21 and 0.735–75 [Amended]

6. In §§ 0.735–21(m)(2) and 0.735–75 introductory text remove the word "Station" and add, in its place, the word "Facility".

§§ 0.735–73 and 0.735–80 [Amended]

7. In §§ 0.735–73(f)(1) and 0.735–80 remove the word "stations" and add, in its place, the word "facilities".

8. In §§ 0.735–19(a), 0.735–21(o), and 0.735–75 introductory text remove the word "department" and add, in its place, the word "administration.".

9. In §§ 0.735–12(c), 0.735–21(i), and 0.735–85(d) remove the word "agency's" and add, in its place, the word "Department".

§ 0.735–85 [Amended]

10. In § 0.735–85(d) remove the word "agency" and add, in its place, the word "Department's".

§§ 0.735–75 [Amended]

11. In §§ 0.735–75 introductory text and 0.735–80 remove the word "departments" and add, in its place, the word "administrations".

§ 0.735–82 [Amended]

12. In § 0.735–82 remove the word "he" and add, in its place, the words "the Secretary".

PART 1—[AMENDED]

§ 1,704 [Removed and Reserved]

1. Remove and reserve § 1.704.

§ 1.503 [Amended]

2. In § 1.503 table of contents and section heading remove the word "his" and add, in its place, the words "his or her".

§§ 1.982 and 1.983 [Amended]

3. In §§ 1.982 and 1.983 table of contents and section heading remove the "the VA" and add, in their place, the word "VA".

4. In §§ 1.303, 1.575, 1.902, 1.912, 1.912a, 1.916, 1.917, 1.918, 1.922, 1.923, 1.924, 1.925, 1.926, 1.927, 1.930, 1.932, 1.935, 1.937, 1.938, 1.940, 1.942, 1.951, 1.953, 1.982, 1.985, 1.990, and 1.994, remove the words "The VA" and add, in their place, the word "VA" in the following places:

(a) Section 1.303(a)(1);
(b) Section 1.575(b);
(c) Section 1.902 (c) and (d);
(d) Section 1.912 (a) NOTE:, and (b);
(e) Section 1.912a(a);
(f) Section 1.916;
(g) Section 1.917(c);
(h) Section 1.918;
(i) Section 1.922(d)(2)(i);
(j) Section 1.923 (a), (b)(1), (b)(2), and (b)(3);
(k) Section 1.924 (b) and (c);
(l) Section 1.925 (b)(2) and (b)(3);
(m) Section 1.926(b);
(n) Section 1.927(b);
(o) Section 1.930(a);
(p) Section 1.932;
(q) Section 1.935;
(r) Section 1.937;
(s) Section 1.938;
(t) Section 1.940(a);
(u) Section 1.942(f);
(v) Section 1.951 (a)(3)(ii)(C) and (b);
(w) Section 1.953 introductory text;
(x) Section 1.982(a);
(y) Section 1.985(b);
(z) Section 1.990(b); and;
(aa) Section 1.994 introductory text and (b).

5. In §§ 1.218, 1.302, 1.555, 1.575, 1.902, 1.907, 1.912, 1.917, 1.919, 1.922, 1.923, 1.924, 1.925, 1.926, 1.928, 1.930, 1.931, 1.940, 1.941, 1.942, 1.943, 1.950, 1.962, 1.980, 1.982, 1.983, 1.984, 1.989, 1.990, and 1.991, remove the words "the VA" and add, in their place, the word "VA" in the following places:

(a) Section 1.218 (a), (a)(2), and (b);
(b) Section 1.302(a);
(c) Section 1.555 (a)(2), (a)(8), (b)(4), (c), and (g)(1);
(d) Section 1.575(c);
(e) Section 1.902(b);
(f) Section 1.907 (a) and (b);
(g) Section 1.912 (a), (b), (b)(6), (c)(1), (c)(2), (c)(3), (e)(1), (e)(3) and (f);
(h) Section 1.917 (a), (b), (c), and (d);
(i) Section 1.919 (a) introductory text, (c), and (f)(1);
(j) Section 1.922 (a)(1) and (c);
(k) Section 1.923 (a)(1), (a)(4), (b)(4) and (b)(5) introductory text;
(l) Section 1.924 (a) and (b);
(m) Section 1.925 (a), (b) introductory text, (b)(1), (c), and (d);
(n) Section 1.926 (a), introductory text of (c), (c)(5), (d), and (e);
(o) Section 1.928(b);
(p) Section 1.930 (a) and (b);
(q) Section 1.931 (a), (a)(2), and (e);
(r) Section 1.940 (a) and (b);
(s) Section 1.941(b);
(t) Section 1.942(a);
(u) Section 1.943;
(v) Section 1.950 (b), (d) and (e);
(w) Section 1.962 introductory text, and paragraph (b);
(x) Section 1.980 (b) and (d);
(y) Section 1.982 heading and (a);
(z) Section 1.983 heading and (a), (b), and (b)(8);
(aa) Section 1.984(b);
(bb) Section 1.989(b);
(cc) Section 1.990(b); and
(dd) Section 1.991(a).

6. In §§ 1.925(e), 1.926(c)(2), 1.935, 1.950(a), 1.982(c)(2), 1.983(b)(5), and 1.987 (a) and (b) remove the words "the VA's" and add, in their place, the word "VA's".

7. In §§1.11, 1.500(d), 1.503, 1.507, 1.524(a), 1.525(a)(1), and 1.656(a) remove the word "him" and add, in its place, the words "him or her".

§§ 1.500 and 1.503 [Amended]

8. In §§ 1.500(b) and 1.503 remove the word "himself" and add, in its place, the words "himself or herself".

9. In §§ 1.500(b), 1.503 heading and text, 1.507, 1.510, 1.511(a)(1), 1.513(a)(xi), 1.513a(a), 1.514 (a) and (b), 1.514(a), 1.516(b)(2), 1.521, 1.525(a) (1) and (8), 1.527(a), 1.655, and 1.656 introductory text and paragraphs (a) and (b) remove the words "his" and add, in its place, the words "his or her".

§1.524 [Amended]

9a. In § 1.524(c) remove "his wife" and add, in its place "his or her spouse".

10. In §§ 1.500(d), 1.511(c), 1.525 (a)(4) and (e), 1.655 and 1.657 remove the words "he" and add, in its place, the words "he or she".

11. In §§ 1.10, 1.450(c), 1.500, 1.509, 1.511, 1.517, 1.527, 1.550, 1.555, 1.556, 1.657, 1.659, and 1.660 remove the word "station" and add, in its place, the word "facility" in the following places:

(a) Section 1.10;
(b) Section 1.450(c);
(c) Section 1.500(c);
(d) Section 1.509;
(e) Section 1.511(a)(1);
(f) Section 1.517;
(g) Section 1.527 (a), (b), and (e) and (l);
(h) Section 1.550(b);
(i) Section 1.555 (b)(3), (d)(4), (g)(1) through (g)(3);
(j) Section 1.556;
(k) Section 1.657;
(l) Section 1.659; and
(m) Section 1.660.

12. In §§ 1.500(c), 1.525(a)(1), 1.552(a), 1.553(b), 1.577(b), and 1.894 remove the word "stations" and add, in their place, the word "facilities".

§ 1.518 [Amended]

13. In § 1.518(c) remove the word "station's" and add, in its place, the word "facility's".

§ 1.525 [Amended]

14. In § 1.525(c) remove the word "Station" and add, in its place, the word "Facility".

15. In §§ 1.218, 1.500, 1.507, 1.527, 1.550, 1.555, 1.556, 1.579, 1.657, 1.660, and 1.672(a) remove the word "department" and add, in its place, the word "administration" in the following places:

(a) Section 1.218(c)(1);
(b) Section 1.500;
(c) Section 1.507;
(d) Section 1.527 (a) and (b);
(e) Section 1.550(b);
(f) Section 1.555(b)(3);
(g) Section 1.556;
(h) Section 1.579(b) introductory text;
(i) Section 1.657;
(j) Section 1.660; and
(k) Section 1.672(a).

16. In §§ 1.218(c) (1) and (2), 1.526(1), 1.551(b), and 1.672(c) remove the word "Department" and add, in its place, the word "Administration".

17. In §§ 1.15(f)(2), 1.554(c)(2), 1.555(b)(2) and (g)(4) (ii) and (iii), and 1.897 remove the word "Agency" and add, in its place, the word "Department".

§§ 1.555 and 1.911 [Amended]

18. In § 1.555(c) and §1.911(a) remove the word "Agency's" and add, in its place, the word "Department's".

§ 1.579 [Amended]

19. In § 1.579(b)(1) remove the word "Departments" and add, in its place, the word "Administrations".

§ 1.894 [Amended]

20. In § 1.894 remove the word "agencywide" and add, in its place, the word "departmentwide".

§ 1.897 [Amended]

21. In § 1.897 remove the word "agency" amd add, in its place, the word "Department".

§ 1.922 [Amended]

22. In § 1.922(a)(2) remove the words "agency's" and "agency" and add, in their place, the words "Department's" and "Department" respectively.

23. In §§ 1.11, 1.452(a) and (a)(7), and 1.651(c) remove the word "his" before the word "designee".

§ 1.12 [Amended]

24. In § 1.12 remove the words "his Deputies" and add, in their place the words "the Secretary's Deputies".

§ 1.15 [Amended]

25. In § 1.15(f)(3) remove the word "Alternative" and add, in its place, the word "Alternatives".

§ 1.17 [Amended]

26. In § 1.17(e) removed the words "sufficient" and "tha" and add, in their place the words "sufficient" and "the" respectively.

§ 1.452 [Amended]

27. In § 1.452(b) remove the word "him" and add, in its place, the words "the Chairman".

§ 1.501 [Amended]

28. In § 1.501 remove the word "his" and add, in its place, the words "the Secretary's or Deputy Secretary's".

§ 1.505 [Amended]

29. In § 1.505 remove the word "his" and add, in its place, the words "the Archivist's".

§ 1.508 [Amended]

30. In § 1.508(a) remove the word "he" and add, in its place, the words "the General Counsel".

§ 1.514 [Amended]

31. In § 1.514(a) and the first sentence of § 1.515, remove the word "hospital" and add, in its place, the words "medical center".

§ 1.526 [Amended]

32. In § 1.526(1) remove the word "Staff" and add, in its place, the word "staff".

§ 1.582 [Amended]

33. In § 1.582(c)(3)(iv) introductory text, remove the word "executive" and add, in its place, the word "Executive".

§ 1.600 [Amended]

34. In § 1.600 remove the last sentence.

§ 1.620 [Amended]

35. In § 1.620(c) remove the phrase "disease contracted on incurred" and add, in its place, the phrase "disease contracted or incurred".

§ 1.701 [Amended]

36. In § 1.701 remove the words "Gordon Boone" and add, in their place, the words "Marjorie M. Leandri, Chief,".

§ 1.774 [Amended]

37. In § 1.774(g)(2) remove the word "That" and add, in its place, the word "that".

§ 1.780 [Amended]

38. In § 1.780 remove the words "Pub. L. 95–563" where they appear.

§ 1.912 [Amended]

39. In § 1.912a(d)(2) remove the word "judgement'" and add, in its place, the word "judgment".

40. Section 1.980(a) is revised to read as follows:

§ 1.980 Scope.

(a) The provisions set forth in §§ 1.980 through 1.994 of this part implement the Department of Veterans Affairs (VA's) authority for the use of salary offset to satisfy certain debts owed to the government.

* * * * *

§ 1.992(a) [Amended]

41. In § 1.992(a) remove the word "installations" and add, in its place, the word "installments".

PART 2—[AMENDED]

§ 2.50 [Amended]

1. In § 2.50 Table of Contents and section heading remove the word "Department" and add, in its place, the word "Administration".

§§ 2.50 and 2.69 [Amended]

2. In §§ 2.50 and 2.69 table of contents and section heading and § 2.4 text remove the word "station" and add, in its place, the word "facility".

§ 2.56 [Amended]

3. In § 2.56 table of contents and section heading remove the word "hospitals" and add, in its place, the words "medical centers".

§ 2.68a [Amended]

4. In § 2.68a table of contents and section heading remove the word "him" and add, in its place, the words "the Director".

§ 2.74 [Amended]

5. In § 2.74 table of contents and section heading remove the word "Station" and add, in its place, the word "Facility".

6. In §§ 2.78 through 2.82, and 2.98, table of contents and section heading, remove the words "Education and Rehabilitation Service" and add, in their place, the words "Vocational Rehabilition and Education Service".

§§ 2.76 and 2.78 [Amended]

7. In §§ 2.76 and 2.78 table of contents and section heading remove the word "him" and add, in its place, the words "the Chief Benefits Director".

§ 2.81 [Amended]

8. In § 2.81 table of contents remove the word "state" and add, in its place, the word "State".

§§ 2.84 and 2.87 [Amended]

9. In §§ 2.84 and 2.87 table of contents and section heading remove the word "his" before the word "designee".

§ 2.90 [Amended]

10. In § 2.90 table of contents and section heading remove the word "his" and add, in its place, the words "the Chief Benefits Director's".

§ 2.91 [Amended]

11. In § 2.91 table of contents and section heading remove the word "his" and add, in its place, the words "the Chief Medical Director's".

§ 2.92 [Amended]

12. In § 2.92 table of contents and section heading remove the word "agency" and add, in its place, the word "Department".

§ 2.94 [Amended]

13. In § 2.94 table of contents and section heading remove the word "his" before the word "designated".

§§ 2.91 and 2.98 [Amended]

14. In §§ 2.91 and 2.98 table of contents and section heading remove the word "stations" and add, in its place, the word "facilities".

§ 2.1 [Amended]

15. In § 2.1(a) remove the word "form" and add, in its place, the word "Form".

§ 2.4 [Amended]

16. In § 2.4 remove the word "departments" and add, in its place, the word "administrations".

17. In § 2.6(d) remove the word "Department" and add, in its place, the word "Administration".

18. In §§ 2.6(d) and 2.7(c) remove the word "department" and add, in its place, the word "administration".

19. In § 2.6(d) remove the words "the VA" and add, in their place, the word "VA".

20. In § 2.6 the section heading and paragraph (f)(1) are revised to read as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 212(a)).

* * * * *

(f) * * *

(1) To act on all matters assigned to the National Cemetery System by statute (38 U.S.C. Chapter 24) and by regulation except where specifically requiring the personal attention or action of the Secretary and to authorize supervisory personnel within the jurisdiction of the Director, National Cemetery System, to perform such functions as may be assigned.

* * * * *

§ 2.7 [Amended]

21. In § 2.7(a) remove the word "he" and add, in its place the words "the Secretary".

PART 3—[AMENDED]

1. In §§ 3.7(b), 3.103(b), 3.103(c), and 3.655(f) remove the word "he" and add, in its place, the words "he or she".

2. In §§ 3.7, 3.8, 3.9, 3.103, 3.105, 3.114, 3.155, 3.450, 3.654, 3.703, and 3.1000 remove the word "his" and add, in its place, the words "his or her" in the following places:

(a) Section 3.7(b);
(b) Section 3.8(d)(1);
(c) Section 3.9(a)(4) and (b);
(d) Section 3.103(a), (c), and (e);
(e) Section 3.105 introductory text;
(f) Section 3.114(b);
(g) Section 3.155(a);
(h) Section 3.450(a)(1)(i);
(i) Section 3.654(c);
(j) Section 3.703(b); and
(k) Section 3.1000(a)(1) (i) through (iii).

§ 3.114 [Amended]

3. In §§ 3.114(a) introductory text and 3.342(b)(5) remove the word "his" and add, in its place, the words "the Secretary's".

§§ 3.103 and 3.704 [Amended]

4. In §§ 3.103 (a), (c), and (e) and 3.704(b) remove the word "him" and add, in its place, the words "him or her".

§ 3.100 [Amended]

5. In § 3.100 remove the word "him" and add, in its place, the words "the Director".

§ 3.1604 [Amended]

6. In § 3.1604 (a), (c), (d)(1) (iii) and (iv), (d)(2), and (d)(3) remove the word "state" and add, in its place, the word "State".

7. In §§ 3.27. 3.151. 3.152. 3.157, 3.311, 3.556, 3.557, 3.558, 3.808, 3.812, 3.813, 3.905, 3.1600, and 3.1612 remove the words "the VA" and add, in their place, the words "VA" in the following places:

(a) Section 3.27 (a) and (b);
(b) Section 3.151 (a) and (b);
(c) Section 3.152(a);
(d) Section 3.157(b)(1);
(e) Section 3.311b(d)(1);
(f) Section 3.556(e);
(g) Section 3.557 (a) and (b)(1);
(h) Section 3.558(c) (1) and (2);
(i) Section 3.808(c);
(j) Section 3.812(b)(5);
(k) Section 3.905(b)(5);
(l) Section 3.1600(c);
(m) Section 3.1612(e)(2) (ii), (iii) and (g).

§ 3.812 [Amended]

9. In § 3.812(d) remove the words "The VA" and add, in their place, the word "VA".

§ 3.1612 [Amended]

9. In § 3.1612(e)(2)(iii) remove the words "the VA's" and add, in their place, the word "VA's".

§ 3.1 [Amended]

10. In § 3.1(y)(2) introductory text remove the phrase in the last sentence which reads "POW (prisoner of war)" and add, in its place, the phrase "prisoner of war POW".

§ 3.12 [Amended]

11. In § 3.12(k)(2) remove the word "title" and add, in its place, the word "part".

§ 3.26 [Amended]

12. a. In § 3.26(c)(2) remove the word "bemade" and add, in its place, the words "be made".

b. In § 3.26(d) remove the word "parragraph and add, in its place, the word "paragraph".

§ 3.28 [Amended]

13. a. In § 3.28(b) remove the word "aveteran" and add, in its place, the words "a veteran".

b. In § 3.28(b) undesignated flush paragraph remove the word "increase" and add, in its place, the word "increases".

§§ 3.151 and 3.400 [Amended]

14. In § 3.151(b) and 3.400(b) remove the word "chapter" and add, in its place, the word "part".

§§ 3.210 and 3.213 [Amended]

15. In § 3.210(c)(2) and 3.213(a)(3) remove the word "veterans" and add, in its place, the word "veteran".

16. In § 3.272(f)(2)(iii) the first line is revised to read as follows:

§ 3.272 Exclusions from income.

* * * * *

(f) * * *

(2) * * *

(iii) They were or will be in excess of 5 percent of * * *.

§ 3.304 [Amended]

17. In §3.304(b)(1) remove the word "along" and add, in its place, the word "alone".

§ 3.312 [Amended]

18. In § 3.312(c)(3) remove the word "vistal" and add, in its place, the word "vital".

19. In § 3.350(f)(2)(vii)(C) remove the words "which ratable" and add, in their place, the words "which is ratable".

§ 3.371 [Amended]

20. In §3.371(c) remove the words "Military" and "military" where they appear and add, in their place, the words "Miliary" and "miliary".

§§ 3.401 and 3.454 [Amended]

21. In § 3.401(d)(2) and 3.454(a) headings, remove the word "hospital" and add, in its place, the words "medical center".

§ 3.402 [Amended]

22. In § 3.402(c)(1) in the second sentence, remove the phrase "DIC (dependency and indemnity compensation)" and add, in its place the phrase "dependency and indemnity compensation (DIC)".

PART 4—[AMENDED]

§ 4.29 [Amended]

In § 4.29(g) remove the citation "§ 3.321(b)" and add, in its place "§ 3.321(b)(1)".

PART 6—[AMENDED]

§ 6.164 [Amended]

1. In § 6.164 table of contents and section heading, remove the word "title" and add, in its place, the word "Title".

2. In §§ 6.56, 6.63, 6.123c(b), 6.150, and 6.162b remove the word "his" and add, in its place, the words "his or her".

§ 6.69 [Amended]

3. In §6.69(a) remove the word "He" and add, in its place, the words "He or she'.

§ 6.150 [Amended]

4. In §6.150 remove the word 'he" and add, in its place, the words "he or she".

§ 6.155 [Amended]

5. In § §6.155(b) remove the word "He" and add, in its place, the words "The Chief Benefits Director".

PART 7—[AMENDED]

§ 7.14 [Amended]

In § 7.14 remove the word "his" and add, in its place, the words "his or her".

PART 9—[AMENDED]

§ 9.5 [Amended]

a. In § 9.5(b)(3) remove the word "Secretary" and add, in its place, the words "Secretary of Veterans Affairs'.

b. In § 9.10(b) remove the phrase "purchased by the Secretary under 38 U.S.C. 766," and add, in its place, the phrase "purchased by the Secretary of Veterans' Affairs under 38 U.S.C. 766,".

c. In §§ 9.10(c) second sentence and (e) first sentence remove the word "Secretary" and add, in its place, the words "Secretary of Veterans' Affairs".

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d. In § 9.10(f) the second sentence is revised to read as follows:

§ 9.10 Deductions from pay.

* * * * *

(f) * * * Such regulations shall prescribe such procedures as the Secretary of Defense, after consultation with the Secretary of Veterans' Affairs, may consider necessary to ensure that such functions are carried out in a timely and complete manner and in accordance with the provisions of the section, including specifically the provisions of paragraph (e) relating to contributions from appropriations made for active duty pay .

(Authority: 38 U.S.C. 709)

e. In §9.12 the first sentence is revised to read as follows:

§ 9.12 Payment from extra hazards.

For each month for which any member is insured under Group Policy No. G–3200 there shall be contributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Secretary of Veterans Affairs and certified by the Secretary concerned to be the cost of such insurance which is traceable to the extra hazard of duty in the uniformed services.

* * * * *

f. Section 9.12 is further amended by removing the word "Secretary" where it appears after the first sentence and adding, in its place, the words "Secretary of Veterans Affairs."

PART 11—[AMENDED]

§ 11.104 [Amended]

In §11.104 add the numbers "20420" after the words "Washington, DC".

PART 12—[AMENDED]

1. The designated center heading for §§ 12.0 through 12.13 is revised by removing the words "On Station" and adding, in their place, the words "At Facility".

§ 12.0 [Amended]

2. In § 12.0(a) remove the word "hospitals" and add, in its place, the words "medical centers".

3. In § 12.0 (a) and (b) remove the word "stations" and add, in its place, the word "facilities".

4. In §§ 12.1, 12.3, 12.4, 12.5, 12.6, 12.7, 12.8, 12.9, 12.12, 12.13, 12.15, and 12.23 remove the word "station" and add, in its place, the word "facility" in the following places:

(a) Section 12.1 (a) and (b);
(b) Section 12.3 (a) introductory text, (a)(4);
(c) Section 12.4 (a) introductory text and undesignated flush paragraph, (a)(1), (a)(3), (a)(4), and (b);
(d) Section 12.5(a);
(e) Section 12.6(a)(3);
(f) Section 12.7;
(g) Section 12.8 (a) and (c);
(h) Section 12.9 (a), (c), (g)(1);
(i) Section 12.12;
(j) Section 12.13;
(k) Section 12.15; and
(l) Section 12.23.

5. In §§ 12.0, 12.1, 12.2, 12.4, 12.5, 12.6, 12.8, 12.9, 12.12, 12.16, 12.17, 12.19, and 12.21 remove the word "his" and add, in its place, the words "his or her" in the following places:

(a) Section 12.0(b);
(b) Section 12.1(a);
(c) Section 12.2(a);
(d) Section 12.4 (a) introductory text, (a)(1), (a)(3), (a)(6), and (b);
(e) Section 12.5(a);
(f) Section 12.6(a) (1), (2) and (3);
(g) Section 12.8 (a) and (b);
(h) Section 12.9 (a), (c), (d), (e), and (i);
(i) Section 12.12;
(j) Section 12.16(b);
(k) Section 12.17(a);
(l) Section 12.19 (a) and (b); and
(m) Section 12.21.

6. In §§ 12.1(a), 12.2(a), 12.3(a)(1), 12.3(a)(5), 12.4(a) undesignated flush paragraph, 12.6(a)(3), 12.9(a), and 12.16(b) remove the word "he" and add, in its place, the words "he or she".

§ 12.1 [Amended]

7. In § 12.1(a) remove the word "He" and add, in its place, the words "He or she".

§ 12.2 [Amended]

8. In § 12.2(a) remove the word "himself" and add, in its place, the words "himself or herself".

9. In §§ 12.4(c), 12.9(a), 12.10, and 12.16(b) remove the word "him" and add, in its place, the words "him or her".

§ 12.9 [Amended]

10. In § 12.9(a) remove the words "the VA" and add, in their place, the word "VA".

PART 13—[AMENDED]

1. In §§ 13.1, 13.2(a), 13.3 remove the word "station" and add, in its place, the word "facility".

2. In §§ 13.64, 13.71(b), 13.102(a), and 13.108 remove the words "the VA" and add, in their place, the word "VA".

§ 13.109 [Amended]

3. In § 13.109(d)(7) remove the word "title" and add, in its place, the word "chapter".

PART 14—[AMENDED]

1. Section 14.502 is revised to read as follows:

§ 14.502 Requests for legal opinions from Central Office.

Requests for formal legal advice, including interpretation of law or regulations, shall be made only by the Secretary, the Deputy Secretary, the Assistant Secretaries, the Deputy Assistant Secretaries, and the administration head or top staff office official having jurisdiction over the particular subject matter, or by a subordinate acting for any such official.

§§ 14.501 and 14.503 [Amended]

2. In §§ 14.501(e) and 14.503(b) remove the word "department" and add, in its place, the word "administration".

§ 14.503 [Amended]

3. In § 14.503(b) remove the word "benfefits" and add, in its place, the word "benefits".

4. In §§ 14.514(b), 14.515 footnote number 1, 14.518(a), 14.561, 14.605(a) (1) through (4), and 14.632 remove the word "station" and add, in its place, the word "facility".

§ 14.515 [Amended]

5. In § 14.515(c)(1) remove the word "administrator" and add, in its place, the word "Secretary".

§ 14.560 [Amended]

6. In §14.560(b) remove the words "the VA" and add, in their place, the word "VA".

§ 14.600 [Amended]

7. In § 14.600(b)(3) remove the word "withoiut" and add, in its place, the word "without".

§ 14.603 [Amended]

8. In §14.603(a)(5) remove the word "presentd" and add, in its place, the word "presented".

§ 14.605 [Amended]

9. In § 14.605(a)(3) removed the word "stations" and add, in its place the word "facilities".

10. In §§ 14.607(b), 14.606 (a) and (b), and 14.609, remove the word "agency" and add, in its place, the word "Department".

PART 15—[AMENDED]

Section 15.170(c) is revised to read as follows:

§ 15.170 Compliance procedures.

* * * * *

(c) The Deputy Assistant Secretary for Equal Employment Opportunity shall be responsible for coordinating implementation of this section. Complaints may be sent to the Secretary of Veterans Affairs or the Deputy Assistant Secretary for Equal Employment Opportunity at the following address: Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

PART 17—[AMENDED]

§ 17.501 [Amended]

1. In § 17.501 table of contents and section heading remove the word "Departmental" and add, in its place, the word "Administration".

2. In §§ 17.34, 17.45, 17.47, 17.48, 17.50b, 17.51, 17.51d, 17.51e, 17.51g, 17.56, 17.60, 17.62, 17.80a, 17.85, 17.100, 17.177, 17.521, 17.522, 17.527, and 17.534 remove the words "the VA" and add, in their place, the word "VA" in the following places:

(a) Section 17.34(a)(3);
(b) Section 17.45(a);
(c) Section 17.47(b) (1) and (2);
(d) Section 17.48(b)(1);
(e) Section 17.48 (d) (5) and (6), (e)(6), (e)(7), (g)(1)(ii), and (l);
(f) Section 17.50b (a)(2) (ii) and (iii), and (a)(6);
(g) Section 17.51 (a) (3), (4), and (5), (b)(1) and (b)(3);
(h) Section 17.51c;
(i) Section 17.51d(a) (2) and (3);
(j) Section 17.51e (a) and (b);
(k) Section 17.51g(b);
(l) Section 17.56(b);
(m) Section 17.60 (c), (j) introductory text and (j)(l);
(n) Section 17.62(h)(2)(ii);
(o) Section 17.80a(b);
(p) Section 17.85(b)(1);
(q) Section 17.100(k);
(r) Section 17.177 (k)(3) and (x) introductory text;
(s) Section 17.521(a);
(t) Section 17.522;
(u) Section 17.527(a); and
(v) Section 17.534 (a) introductory text, (b) (1) through (4), and (j).

§§ 17.166c and 17.177 [Amended]

3. In §§ 17.166c and 17.177(x)(4)(i)(B) remove the words "The VA" and add, in their place, the word "VA".

4. In §§ 17.500(a), 17.503 (c) and (d), 17.505 introductory text, 17.507(a) introductory text and 17.507(a)(4)(xi), 17.508(c)(4) introductory text, 17.509(a), 17.519(b) (4) and (7), 17.521(a), 17.527(i), and 17.534(c) remove the words "Medical Facility" and add, in their place, the words "medical facility".

§§ 17.505 and 17.507 [Amended]

5. In §§ 17.505 and 17.507(a)(4)(xi) remove the words "Medical Facility's" and add, in their place, the words "medical facility's".

§ 17.519 [Amended]

6. In § 17.519(b)(7) remove the words "Medical Facilities" and add, in their place, the words "medical facilities".

§ 17.62 [Amended]

7. In § 17.62(a) remove the word "he" and add, in its place, the words "he or she".

§ 17.115a [Amended]

8. In § 17.115a remove the word "him" and add, in its place, the words "him or her".

§ 17.115b [Amended]

9. In § 17.115b remove the words "he", "his", and "himself" and add, in their place, the words "he or she", "his or her", and "himself or herself" respectively.

§§ 17.64 and 17.65a [Amended]

10. In §§ 17.64(a), 17.65a introductory text, and 17.65a(a) remove the word "station" and add, in its place, the word "facility".

§§ 17.64 and 17.527 [Amended]

11. In §§ 17.64(b) and 17.527(j) remove the words "Public Law" and add, in their place the words "Pub. L.".

§ 17.115 [Amended]

12. In § 17.115(a) remove the phrase "§ 17.60 (a) through (d) and (f) through (i)" and add, in its place, the phrase "§ 17.60 (a) through (d), and (k) through (m)".

§ 17.115b [Amended]

13. In § 17.115b(a) remove the words "38 U.S.C. 314(1)(p)" and add, in their place, the words "38 U.S.C. 314(r)".

§ 17.115c [Amended]

14. In § 17.115c(a) designate paragraph (a) as paragraph (a)(1) and remove the words "38 U.S.C. 314(1)(p)" and add in their place, the words "38 U.S.C. 314(r)".

15. In §§ 17.210(d)(1), 17.367, 17.403(3), 17.404(a), 17.404(e)(2), 17.405(a), 17.406, 17.410(b), 17.411(a), and 17.412, remove the word "Secretary" where it stands alone and add, in its place, the words, "Secretary of Veterans Affairs".

§ 17.508 [Amended]

16. In § 17.508(c)(2) remove the phrase "38 CFR § 17.508(c)(2)" and add, in its place, the phrase "38 CFR 17.508(c)(2)".

17. In § 17.508(c)(5) remove the word "Agency" and add, in its place, the word "Department".

§ 17.534 [Amended]

18. In § 17.534(a) remove the words "the VA's" and add, in their place, the word "VA's".

19. In §§ 17.48(b)(1), 17.48(d)(5), 17.168, 17.173(a)(4) and 17.173(b)(10) remove the word "title" and add, in its place, the word "chapter".

§ 17.48 [Amended]

20. In § 17.48(g)(1)(ii) remove the word "Secretary" and add, in its place the words "the Secretary".

§ 17.58 [Amended]

21. In § 17.58(c)(5) remove the word "psyciatrist" and add, in its place, the word "psychiatrist".

22. In §§ 17.47(a)(6), 17.50b(a)(2)(iii), 17.60 (i) and (j)(2)(ii), and 17.60(a)(1) remove the words "Mexican Border Period" and add, in their place, the words "Mexican border period".

§ 17.60 [Amended]

23. In § 17.60(i) remove the phrase "or World War I" and add, in its place, the phrase "of World War I".

24. Section 17.160 is revised as follows:

§ 17.160 Organization.

The Veterans Canteen Service (VCS), established by Pub. L. 636, 79th Congress, as amended, will function as a unit within the Veterans Health Services and Research Administration and will have exclusive responsibility for all its activities. To effectuate the purpose of the act, an organization has been established consisting of a VCS central office located at Washington, DC, and a canteen at each Department of Veterans Affairs hospital, center, and domiciliary.

§ 17.161 [Amended]

25. In § 17.161(a) remove the words "veterans canteen service" and add, in their place, the words "Veterans Canteen Service".

§ 17.173 [Amended]

26. In § 17.173(e)(3) remove the phrase "subparagraph (1) of this paragraph" and add, in its place, the phrase "paragraph (e)(1) of this section.".

27. Section 17.210(d)(2) is revised to read as follows:

§ 17.210 Sharing specialized medical resources.

* * * * *

(d) * * *

(2) Procedures jointly prescribed by the Secretary of Health and Human Services and the Secretary of Veterans Affairs to assure reasonable quality of

care and service and efficient and economical utilization of resources.

* * * * *

28. In § 17.400, the first sentence is revised to read as follows:

§ 17.400 Purpose and scope of the program.

The provisions of §§ 17.400 through 17.416 are applicable to a program of grants and other forms of assistance under the "Veterans' Administration Medical School Assistance and Health Manpower Training Act of 1972" as amended by the Veterans Omnibus Health Care Act of 1976 (Pub. L. 94-581), the Veterans' Administration Programs Extension Act of 1978 (Pub. L. 94-520), the Veterans Health Programs Extension and Improvement Act of 1979 (Pub. L. 96-151), and the Veterans' Administration Health Care Amendments of 1980 (Pub. L. 96-330). (38 U.S.C. Chapter 82).

* * * * *

29. In § 17.402 paragraph (a) is revised to read as follows:

§ 17.402 Definitions.

* * * * *

(a) The "Secretary" means the Secretary of Veterans Affairs.

* * * * *

PART 18—[AMENDED]

1. In §§ 18.405(e), 18.541(a), 18.542 (b) introductory text and (c); 18.543 (a) introductory text, (c) and (e); 18.544 (a)(1), (a)(2), and (a)(3); 18.546 (a) introductory text, (b), (c) introductory text, (d) introductory text, and (d)(2), and 18.550(a)(2) remove the words "The VA" and add, in their place, the word "VA".

2. In §§ 18.532, 18.533 (a) and (b)(1), 18.534 (a) and (b), 18.541(b), 18.542 (a) and (c), 18.543 (c) and (g), 18.544 (a)(2) and (a)(4) and (b), 18.545(b), 18.546 (a)(1), (b), (d) introductory text, (d)(1), 18.547, 18.548, 18.549(a), and 18.550 (a)(1) and (b) introductory text remove the words "the VA" and add, in their place, the word "VA".

3. In § 18.501 the first sentence is revised to read as follows:

§ 18.501 Purpose.

The purpose of these regulations is to set out Department of Veterans Affairs (VA) policies and procedures under the Age Discrimination Act of 1975 and the governmentwide age discrimination regulations at 45 CFR Part 90. * * *

* * * * *

PART 18—[AMENDED]

APPENDIX A TO SUBPART E—STATUTORY PROVISIONS TO WHICH THIS SUBPART APPLIES

4. In Appendix A to Subpart E, number 10 reads as follows:

* * * * *

10. Veterans' Administration Health Professional Scholarship Program (38 U.S.C. 4141-4146).

* * * * *

PART 18a—[AMENDED]

1. In § 18a.1 the table of contents and section heading is revised to read as follows:

§ 18a.1 Delegations of responsibility between the Secretary of Veterans Affairs and the Secretary, Department of Health and Human Services, and the Secretary, Department of Education.

§ 18a.2 [Amended]

2. In §18a.2 remove the word "Secretary" and add, in its place, the words "Secretary of Veterans Affairs".

3. In §18a.2 remove the word "stations" and add, in its place, the word "facilities".

PART 18b—[AMENDED]

1. In the table of contents and text, the undesignated center heading which appears before §18b.77 is revised to read as follows:

Posthearing Department Actions

2. In §§18b.16, 18b.74(c), and 18b.77 table of contents and section heading, remove the word "agency" and add, in its place, the word "Department".

§ 18b.73 [Amended]

3. In §18b.73 remove the words "the VA" and add, in their place, the word "VA".

PART 21—[AMENDED]

1. In §§21.1022, 21.3022, and 21.4022 table of contents and section headings, remove the words "the VA" and add, in their place, the word "VA".

§ 21.222 [Amended]

2. In §21.222 redesignate paragraph (b) as paragraph (b)(1).

3. a. In §21.4201 (c)(3)(iii) remove the fourth level paragraph designations of *(a)* through *(b)* and add (A) and (B) in their place.

b. In §21.4201(c)(3)(iv) remove the fourth level paragraph designations of *(a)* through *(c)* and add (A) through (C) in their place.

c. In §21.4201(e)(1)(i) remove the fourth level paragraph designations of *(a)* through *(b)* and add (A) and (B) in their place.

d. In § 21.4201(e)(3)(ii) remove the fourth level paragraph designations *(a)* through *(c)* and add (A) through (C) in their place.

e. In §§21.4265(f)(2)(vi) and 21.4500(d)(2)(i) remove the fourth level paragraph designations of *(a)* through *(g)* and *(a)* through *(h)* respectively and add (A) through (G) and (A) through (H) respectively in their place.

§ 21.5740 [Amended]

4. In § 21.5740 redesignate the second paragraph (b)(2) as (b)(3).

5. a. In §§21.78, 21.128, 21.132, 21.148, 21.152, 21.162, 21.180, 21.182, 21.184, 21.186, 21.188, 21.190, 21.192, 21.194, 21.196, 21.197, 21.198, 21.210, 21.212, 21.214, 21.220, 21.222, 21.240, 21.242, 21.252, 21.256, 21.257, 21.258, 21.260, 21.262, 21.264, 21.266, 21.272, 21.274, 21.276, 21.284, 21.290, 21.292, 21.294, 21.296, 21.310, 21.322, 21.324, 21.330, 21.332, 21.340, 21.350, 21.362, 21.364, 21.370, 21.372, 21.376, 21.380, 21.382, 21.390, 21.400, 21.402, 21.412, 21.420, 21.1022, 21.1045, 21.3300, 21.3333, 21.4005, 21.4131, 21.4135, 21.4136, 21.4137, 21.4201, 21.4203, 21.4207, 21.4230, 21.4236, 21.4252, 21.4258, 21.4260, 21.4272, 21.4505, 21.5022, 21.5042, 21.5054, 21.5064, 21.5100, 21.5103, 21.5132, 21.5138, 21.5145, 21.5230, 21.5290, 21.5725, 21.5730, 21.5732, 21.5740, 21.5743, 21.5744, 21.5810, 21.5812, 21.5820, 21.5822, 21.5831, 21.5834, 21.5835, 21.5870, 21.5900, 21.5901, 21.6005, 21.6015, 21.6040, 21.6050, 21.6054, 21.6056, 21.6058, 21.6070, 21.6210, 21.6240, 21.6242, 21.6284, 21.6370, 21.6507, 21.6509, 21.6513, 21.6517, 21.7020, 21.7030, 21.7032, 21.7042, 21.7044, 21.7046, 21.7050, 21.7051, 21.7072, 21.7074, 21.7076, 21.7100, 21.7112, 21.7114, 21.7120, 21.7122, 21.7131, 21.7133, 21.7135, 21.7137, 21.7139, 21.7140, 21.7144, 21.7153, 21.7154, 21.7156, 21.7159, 21.7170, 21.7200, 21.7220, 21.7301, 21.7302, 21.7305, 21.7307, 21.7310, 21.7520, 21.7530, 21.7532, 21.7551, 21.7576, 21.7600, 21.7612, 21.7614, 21.7620, 21.7622, 21.7624, 21.7631, 21.7633, 21.7635, 21.7636, 21.7639, 21.7640, 21.7644, 21.7653, 21.7656, 21.7658, 21.7659, 21.7670, 21.7700, 21.7720, 21.7801, 21.7802, 21.7805, 21.7807, and 21.7810 remove the words "the VA" and add, in their place, the word "VA".

(1) Section 21.78(b)(3);

(2) Section 21.128(d)(2)(ii);

(3) Section 21.132(a);

(4) Section 21.148 (a) and (b);

(5) Section 21.152(c);

(6) Section 21.162(b)(2);

(7) Section 21.180(d);

(8) Section 21.182(a)(2);

(9) Section 21.184(c)(2) introductory text, (c)(2)(i) and (c)(2)(iii);

(10) Section 21.186 (a) and (b);

(11) Section 21.188(a)(2), and (d) (4) through (6);

(12) Sections 21.190(a)(2), (e) (2), (3), and (6);

(13) Sections 21.192 (a)(1) and (2), and (d) (3) through (5);

(14) Sections 21.194 (d) (3) and (4);

(15) Sections 21.196(b)(4)(iii);

(16) Section 21.197(a);

(17) Section 21.198(b);

(18) Section 21.210(b);

(19) Sections 21.212 (b), (c), and (e);

(20) Sections 21.214 (c) introductory text, and (c) (1) and (2);

(21) Sections 21.220(a) (1) and (2), (b), and (c);

(22) Sections 21.222 introductory text, (b)(1) introductory text, (b)(1)(iii), (b)(1)(v), (b)(2), and (c);

(23) Section 21.240(a);

(24) Section 21.242(b);

(25) Section 21.252(a)(1);

(26) Section 21.256(b)(1)(iii);

(27) Section 21.257(b)(2);

(28) Section 21.258(d);

(29) Section 21.260(c);

(30) Section 21.262(a);

(31) Section 21.264(a)(3);

(32) Section 21.266 (a)(1), (b)(1)(ii), (b)(2), and (d);

(33) Section 21.272 (b) introductory text, (c)(4), (d)(1), (g) introductory text, and (g)(1);

(34) Section 21.274(f)(2);

(35) Section 21.276(c);

(36) Section 21.284(c);

(37) Section 21.290 (a) introductory text and (a)(1);

(38) Section 21.292(b);

(39) Section 21.294(a)(4) (i) and (ii), (b)(2)(iii), (e), and (i);

(40) Section 21.296(a)(10);

(41) Section 21.310 (a)(2) introductory text, (a)(2)(iii), (a)(5);

(42) Section 21.322(c)(1) (ii) and (iii), (c)(2)(i) (B) and (C), and (e)(1)(ii) introductory text;

(43) Section 21.324 (e)(4), (g)(1) and (g)(2) introductory text, (h)(1), (i) introductory text, and (i)(2);

(44) Section 21.330(a);

(45) Section 21.332 (a) and (c)(2);

(46) Section 21.340(b);

(47) Section 21.350 (a)(1) and (b);

(48) Section 21.362(c)(4);

(49) Section 21.364(a);

(50) Section 21.370(b)(2)(x);

(51) Section 21.372(b)(10);

(52) Section 21.376;

(53) Section 21.380(a),

(54) Section 21.382(b);

(55) Section 21.390(a) introductory text;

(56) Section 21.400(b)(2);

(57) Section 21.402(c)(2);

(58) Section 21.412(a)(1);

(59) Section 21.420(d) (1) through (3);

(60) Section 21.1022(b) heading;

(61) Section 21.1045(c)(3);

(62) Section 21.3333(b);

(63) Section 21.4005(a)(1);

(64) Section 21.4131(a)(3)(ii);

(65) Section 21.4135 (p), (w)(1) and (w)(2) introductory text;

(66) Section 21.4136 footnote 5 to table under (a), and (k)(4);

(67) Section 21.4137(g)(2) (iv) and (v) introductory text, (g)(2)(v)(B), and (h)(4);

(68) Section 21.4201(e)(2), (f)(1)(i), and (h) introductory text and (h)(3);

(69) Section 21.4203(b)(1);

(70) Section 21.4207 introductory text;

(71) Section 21.4230(d) introductory text;

(72) Section 21.4236(c);

(73) Section 21.4252 (l)(2), (l)(2)(ii)(B), (l)(3) introductory text and (l)(3)(ii)(B);

(74) Section 21.4258(d)(3);

(75) Section 21.4260(b)(4) and (c)(2);

(76) Section 21.4272(g)(2) introductory text;

(77) Section 21.4505(d);

(78) Section 21.5022(b)(2);

(79) Section 21.5042(b) introductory text, (d)(2) and (d)(3) and (f);

(80) Section 21.5054(b)(2)(ii);

(81) Section 21.5064(b)(4)(iii);

(82) Section 21.5100(d) introductory text;

(83) Section 21.5103(a) introductory text;

(84) Section 21.5132(a) introductory text;

(85) Section 21.5138(a)(3);

(86) Section 21.5145(b) introductory text, (c) (2) and (4), (d)(1), (f), (g)(1), (g)(1)(i) and (h) introductory text;

(87) Section 21.5230;

(88) Section 21.5290(b)(2), (d)(2), (f), and (g)(2);

(89) Section 21.5725(a)(1) and (a)(2), (b) introductory text;

(90) Section 21.5730 (a), (b), and (c);

(91) Section 21.5732 (a), (b), and (c) introductory text;

(92) Section 21.5740(b)(3);

(93) Section 21.5743(e) introductory text;

(94) Section 21.5744(a)(1) introductory text and (b)(1) and (b)(2) introductory text;

(95) Section 21.5810(a);

(96) Section 21.5812 (a)(1) and (b)(3);

(97) Section 21.5820(c);

(98) Section 21.5822(a) introductory text, (b)(1)(iii), and (c);

(99) Section 21.5831(d);

(100) Section 21.5834(a);

(101) Section 21.5835, (b), (c)(2), (d), (f), (j) introductory text and (k) introductory text;

(102) Section 21.5870(b)(1) and (b)(2) introductory text and (c)(1);

(103) Section 21.5900;

(104) Section 21.5901(a);

(105) Section 21.6005(c);

(106) Section 21.6015(a) and (b);

(107) Section 21.6040(a)(3) and (5), (b)(2)(ii) and (iii);

(108) Section 21.6050(b);

(109) Section 21.6054(a), (e) introductory text, (e)(1) and (e)(3);

(110) Section 21.6056(b) and (c);

(111) Section 21.6058(a);

(112) Section 21.6070(d) introductory text and (e)(2);

(113) Section 21.6210(b);

(114) Section 21.6240(a);

(115) Section 21.6242(b);

(116) Section 21.6284(b) introductory text;

(117) Section 21.6370(b) and (c) introductory text;

(118) Section 21.6507(a) and (b);

(119) Section 21.6509(a) introductory text and (b);

(120) Section 21.6513(c);

(121) Section 21.6517(a) and (c);

(122) Section 21.7020(b)(16), (b)(19) introductory text, and (b)(25)(i)(A);

(123) Section 21.7030(a)(1) and (b);

(124) Section 21.7032(b), (c), (d), and (e) introductory text;

(125) Section 21.7042 introductory text and (b)(8);

(126) Section 21.7044 introductory text, (b)(7), and (b)(9);

(127) Section 21.7046(b)(5);

(128) Section 21.7050(a) introductory text;

(129) Section 21.7051(b)(2)(i) and (ii);

(130) Section 21.7072(e) introductory text;

(131) Section 21.7074 introductory text;

(132) Section 21.7076(b)(2) and (d)(4);

(133) Section 21.7100 introductory text;

(134) Section 21.7112(a);

(135) Section 21.7114;

(136) Section 21.7120(a), (b)(2), and (b)(2)(iii);

(137) Section 21.7122(d);

(138) Section 21.7131(a)(2) and (3), (d), (e)(1)(iii), (e)(2)(i)(B) and (C);

(139) Section 21.7133;

(140) Section 21.7135(d)(4), (e)(1), (e)(2) introductory text, (f)(2) and (3), (h)(1) through (4), (i) introductory text, (i)(2), (j)(2), (k) introductory text, (m), (o), (t), (y), and (z);

(141) Section 21.7137(a);

(142) Section 21.7139(a)(4)(ii), (b)(2), (c) introductory text, (c)(1), (e)(1)(ii), (e)(2)(i), (f)(1)(ii), and (f)(2)(i);

(143) Section 21.7140(b)(1) and (b)(3);

(144) Section 21.7144(a), (b)(2), and (c);

(145) Section 21.7153(b)

(146) Section 21.7154 introductory text;

(147) Section 21.7156(a) and (b);

(148) Section 21.7159;

(149) Section 21.7170 introductory text;

(150) Section 21.7200 introductory text;

(151) Section 21.7220(a)(1)(iii) and (b) introductory text;

(152) Section 21.7301;

(153) Section 21.7302(b), (c) introductory text, and (c)(2);

(154) Section 21.7305;

(155) Section 21.7307;

(156) Section 21.7310(b);
(157) Section 21.7520(b)(14);
(158) Section 21.7530 (a) and (b);
(159) Section 21.7532 (b), (c), (d), and (e) introductory text;
(160) Section 21.7551(b)(2) (i) and (ii);
(161) Section 21.7576 (b)(2) and (d)(4);
(162) Section 21.7600 introductory text;
(163) Section 21.7612 (a) and (b);
(164) Section 21.7614;
(165) Section 21.7620(a);
(166) Section 21.7622 (a), (d)(2), (d)(2)(iii), (e), and (f) introductory text;
(167) Section 21.7624(b);
(168) Section 21.7631 (a)(3) and (d);
(169) Section 21.7633;
(170) Section 21.7635 (b)(1), (b)(2) introductory text, (c)(1) through (5), (d)(1) and (d)(2) introductory text, (e) introductory text, (e)(2), (f)(2), (g) introductory text, (j), (n), (p), (q)(2), (r), (u), and (v);
(171) Section 21.7636(b)(3);
(172) Section 21.7639 (a)(4)(ii), (b)(2), (c) introductory text, (c)(2)(ii), (d)(1)(ii)(B), (d)(2)(i), (d)(3) introductory text, and (d)(3)(i);
(173) Section 21.7640 (a)(2), (b)(1) and (b)(3), (c)(2), (d)(4), and (e);
(174) Section 21.7644 (a), (b)(2), (c)(2) introductory text, and (d);
(175) Section 21.7653 (b), (c) introductory text and (c)(1) introductory text and (c)(2);
(176) Section 21.7656 (a) and (b) introductory text;
(177) Section 21.7658(b)(2);
(178) Section 21.7659;
(179) Section 21.7670 introductory text, (a) introductory text, (d)(1), (d)(1)(i), (e) introductory text, and (f);
(180) Section 21.7700 introductory text;
(181) Section 21.7720(a)(1)(iii), (b)(1) introductory text, and (b)(3);
(182) Section 21.7801;
(183) Section 21.7802 (a)(2) and (c);
(184) Section 21.7805;
(185) Section 21.7807; and
(186) Section 7810(b).

b. In §§ 21.100, 21.120, 21.130, 21.150, 21.152, 21.155, 21.182, 21.188, 21.190, 21.197, 21.198, 21.212, 21.214, 21.218, 21.220, 21.222, 21.252, 21.256, 21.270, 21.272, 21.294, 21.298, 21.310, 21.312, 21.322, 21.324, 21.332, 21.342, 21.344, 21.350, 21.362, 21.370, 21.374, 21.380, 21.382, 21.390, 21.420, 21.430, 21.1045, 21.3300, 21.3332, 21.3333, 21.4005, 21.4135, 21.4136, 21.4137, 21.4236, 21.4260, 21.4272, 21.4600, 21.5042, 21.5076, 21.5100, 21.5103, 21.5131, 21.5145, 21.5296, 21.5730, 21.5732, 21.5742, 21.5744, 21.5820, 21.5822, 21.5830, 21.5835, 21.5870, 21.6060, 21.6120, 21.6340, 21.6370, 21.7020, 21.7030, 21.7032, 21.7042, 21.7050, 21.7051, 21.7072, 21.7076, 21.7100, 21.7103, 21.7110, 21.7120, 21.7122, 21.7124, 21.7130, 21.7131, 21.7133, 21.7137, 21.7139, 21.7140, 21.7153, 21.7158, 21.7220, 21.7520, 21.7530, 21.7532, 21.7551, 21.7576, 21.7600, 21.7603, 21.7610, 21.7620, 21.7622, 21.7624, 21.7630, 21.7633, 21.7635, 21.7636, 21.7639, 21.7640, 21.7653, 21.7658, 21.7670, 21.7672, 21.7700, and 21.7720 remove the words "The VA" and add, in their place, the words "VA" in the following places:

(1) Section 21.100(b);
(2) Section 21.120(b) introductory text;
(3) Section 21.130(a);
(4) Section 21.150(e);
(5) Section 21.152(a) introductory text;
(6) Section 21.155(a);
(7) Section 21.182(b) introductory text and (b)(1);
(8) Section 21.188(d)(2);
(9) Section 21.190(d) introductory text;
(10) Section 21.197(b);
(11) Section 21.198 (b), (c)(2), and (d);
(12) Section 21.212(d);
(13) Section 21.214(b) introductory text, (d)(2), and (f) introductory text;
(14) Section 21.218;
(15) Section 21.220(a) introductory text, (a)(1), and (b);
(16) Section 21.222(a) introductory text and (b)(2);
(17) Section 21.252(c);
(18) Section 21.256 (a), (b)(3), and (f);
(19) Section 21.270(a) introductory text;
(20) Section 21.272(b) introductory text, (c)(1), (d)(2), (e), and (i);
(21) Section 21.294(b) introductory text, (b)(2), (c), and (g);
(22) Section 21.298(d) introductory text;
(23) Section 21.310(a)(1);
(24) Section 21.312(a);
(25) Section 21.322 (a), (c)(1)(i) (A) and (B), (c)(1)(ii) (A) and (B);
(26) Section 21.324 (g)(2) (i) and (ii)
(27) Section 21.332 (a), (b), (d), (f), and (g);
(28) Section 21.342(f);
(29) Section 21.344(b) introductory text and (d);
(30) Section 21.350(a) introductory text;
(31) Section 21.362 (a)(3) and (b) introductory text;
(32) Section 21.370 (a), (b) introductory text and (b)(1);
(33) Section 21.374 (b) (1) and (2), (c) (1) and (2),
(34) Section 21.380(b);
(35) Section 21.382(a) introductory text;
(36) Section 21.390 (a), (b), and (d);
(37) Section 21.420 (a) introductory text and (d);
(38) Section 21.430(a);
(39) Section 21.1045(h) introductory text;
(40) Section 21.3300(c);
(41) Section 21.3332 introductory text;
(42) Section 21.3333(b)(2) introductory text;
(43) Section 21.4005(a)(2);
(44) Section 21.4135 (s)(1) and (s)(2) introductory text;
(45) Section 21.4136 footnotes (4) and (5) under table in (a);
(46) Section 21.4137 footnote 2 under table in (a); (g)(2)(ii), (g)(2)(ii)(A), and (g)(2)(iv);
(47) Section 21.4236(d);
(48) Section 21.4260(c)(2);
(49) Section 21.4272 introductory text, (a) introductory text, and (b) introductory text;
(50) Section 21.4600;
(51) Section 21.5042(c)(2);
(52) Section 21.5076 (a) introductory text and (a)(2);
(53) Section 21.5730(b);
(54) Section 21.5732(a);
(55) Section 21.5100 (c) and (d)(3) introductory text;
(56) Section 21.5103 (a)(1), (b) introductory text, (b)(1)(ii), (b)(2), and (c);
(57) Section 21.5131 introductory text;
(58) Section 21.5145 (b) introductory text, (d)(2), (e), and (i);
(59) Section 21.5296(c)(2);
(60) Section 21.5742 (a) (1) through (5);
(61) Section 21.5744 (a)(2) and (b)(3);
(62) Section 21.5820 (b)(2) (i) and (ii) and (c);
(63) Section 21.5822(c);
(64) Section 21.5830(a);
(65) Section 21.5835 (a) (1) and (2), (e), and (g);
(66) Section 21.5870 (c)(2) and (d)(1);
(67) Section 21.6060 (a) introductory text and (b) introductory text;
(68) Section 21.6120(b) introductory text;
(69) Section 21.6340(a);
(70) Section 21.6370 (a) introductory text, (c) introductory text, and (e);
(71) Section 21.7020(b)(25)(ii);
(72) Section 21.7030(b);
(73) Section 21.7032 (b) and (c);
(74) Section 21.7042(d)(2) introductory text;
(75) Section 21.7050(c);
(76) Section 21.7051 (a) and (a)(2);
(77) Section 21.7072(c)(5) introductory text;
(78) Section 21.7076 (a) introductory text, (b)(1) introductory text, (b)(2) introductory text, (c) introductory text, and (d) introductory text;
(79) Section 21.7100(d);
(80) Section 21.7103;
(81) Section 21.7110(b) introductory text;
(82) Section 21.7120 (b) (1) and (2), and (c);
(83) Section 21.7122 (a), (b), (c), and (e) introductory text;
(84) Section 21.7124;
(85) Section 21.7130;
(86) Section 21.7131 (e)(1)(i) (A) and (B), and (e)(1)(ii) (A) and (B);

(87) Section 21.7133;
(88) Section 21.7137 (e) and (f);
(89) Section 21.7139 (b) introductory text, (e)(1), (f)(1) introductory text, and (g);
(90) Section 21.7140 (a)(1) introductory text, (a)(1) (ii) and (iii), and (d);
(91) Section 21.7153 (a) and (c)(1)(ii);
(92) Section 21.7158 (a) and (b)(1);
(93) Section 21.7220(a)(1)(iii);
(94) Section 21.7520(b)(19)(ii);
(95) Section 21.7530(b);
(96) Section 21.7532 (b) and (c);
(97) Section 21.7551 (a) introductory text, (a)(2) and (c) introductory text;
(98) Section 21.7576 (a), (b)(1) introductory text, (b)(2) introductory text, (c) introductory text, and (d);
(99) Section 21.7600(d);
(100) Section 21.7603;
(101) Section 21.7610(b) introductory text;
(102) Section 21.7620 (b), (c) introductory text, (d)(1) and (d)(2) introductory text;
(103) Section 21.7622 (a), (b), (c), and (d);
(104) Section 21.7624(a);
(105) Section 21.7630;
(106) Section 21.7633;
(107) Section 21.7635(d)(1) (i) and (ii), (d)(2) (i) and (ii);
(108) Section 21.7636(b)(3);
(109) Section 21.7639(b) introductory text and (d)(1) introductory text;
(110) Section 21.7640(a) introductory text, (c)(1), (d) introductory text, (d)(2) introductory text, (d)(4), (d)(6) introductory text, (e), and (f);
(111) Section 21.7653(d)(1)(ii);
(112) Section 21.7658(a), (b)(1) introductory text, and (b)(2);
(113) Section 21.7670(b)(1) introductory text, (c)(1) introductory text, (d)(1) (ii) and (iii), (d)(2) (i) and (ii), and (e) (1) through (4);
(114) Section 21.7672(a) introductory text; and
(115) Section 21.7700 introductory text;
(116) Section 21.7720(a)(1)(iii)

6. In §§ 21.74(c)(3); 21.98 (c) and (d); 21.100(a) introductory text, 21.162(a)(2) and (b) introductory text; 21.258(e); 21.3303(a); 21.4232(d), 21.4250(c)(1); and 21.6050(e) remove the words "Vocational Rehabilitation and Counseling Service" where they appear and add, in their place, the words "Vocational Rehabilitation and Education Service".

7. In §§ 21.100(d), 21.222(c)(3), 21.256(d), 21.258(c)(1) and (e), 21.292(e), 21.382(a) introductory text, 21.390(c), 21.430(c)(4), 21.6050(e), remove the acronym "VR&C" and add, in its place, the acronym "VR&E".

8. In §§ 21.4001 (a), (b), and (c) introductory text; 21.4005(c) (1) and (2); 21.4153(b), (c)(2)(iii) and (c)(4)(ii), and (f); 21.4203(b)(1)(i) (A) and (B); 21.4206 (a) and (b); 21.4205(c)(2)(iv)(A) and (B); 21.4250(c)(2); 21.4251(a)(6)(iv)(B), (f)(1), (g) introductory text and (g)(4); 21.4255 (b)(2), 21.4500(d)(2)(ii); 21.4622(a)(1) introductory text; 21.5901(a); 21.7140(b)(2) (i) and (ii); and 21.7301(a) remove the words "Education Service" and add, in their place, the words "Vocational Rehabilitation and Education Service".

9. In §§ 21.272(f); 21.372(a) and (b)(1)(i); 21.4135(j) (1) and (2), (k) (1) and (2); 21.4137(g)(2)(v); 21.4145(f) and (g)(1) introductory text; 21.4146(f); 21.4153(f) introductory text; 21.4201(c)(4)(ii); 21.4202(b)(8)(ii); 21.4203(b)(1)(i) and (b)(1)(i)(B); 21.4205(c)(2)(iv) introductory text, (iv)(B) and (c)(2); 21.4207(a)(2) introductory text and (a)(4), (e)(1), and (e)(2) (i) through (iii); 21.4255(b)(1) introductory text and (b)(2); 21.4500(d)(2)(i) introductory text, (d)(2)(i)(H), (d)(2) (ii) and (iii); 21.4622(a)(2), (b) introductory text, (b)(1)(iv), (b)(2) introductory text, (b)(3) and (c); 21.4624(a) introductory text and (b) introductory text; 21.7135(i)(1) and (2), (j)(1), and (k) (1) and (2); 21.7139(a)(4)(iv); 21.7140(b)(2) introductory text and (b)(2)(ii); and 21.7302(a) introductory text remove the words "station" or "field station" respectively and add, in their place the word "facility".

§ 21.180 [Amended]

10. In § 21.180(c) remove the phrase "VHS&RA (Veterans Health Services and Research Administration)" and add, in its place, the phrase "Veterans Health Services and Research Administration (VHS&RA)".

§ 21.4150 [Amended]

11. In § 21.4150(c) remove the word "approvin$" and add, in its place, the word "approving".

12. In § 21.4301(a) introductory text, (a)(2) introductory text, (a)(2)(iii), concluding paragraph to (a), (b), (c), and (d), 21.4304, and 21.4305, remove the words "Department of Health, Education, and Welfare" wherever they appear and add, in their place, the words "Department of Health and Human Services".

§ 21.4302 [Amended]

13. In § 21.4302 remove the word "his" in front of the word "designee".

§ 21.4306 [Amended]

14. In § 21.4306(b) remove the word "his" and add, in its place, the words "his or her".

§ 21.7137 [Amended]

15. In § 21.7137(a) table, footnote 1, remove the words "§ 21.713b" and add, in their place, the words "21.7135b".

PART 26—[AMENDED]

1. The title of part 26 is revised to read as follows:

PART 26—ENVIRONMENTAL EFFECTS OF THE DEPARTMENT OF VETERANS AFFAIRS (VA) ACTIONS

§§ 26.1 and 26.4 [Amended]

2. In § 26.1, § 26.4(b)(3), remove the word "agency" and add, in its place, the word "Department".

§ 26.21 [Amended]

3. In § 26.2 remove the word "departments" and add, in its place, the word "administrations".

4. In §§ 26.2, 26.4(a) introductory text, § 26.7(c), § 26.5(a)(4), § 26.8 (c), (d) and (e) remove the words "the VA" and add, in their place, the word "VA".

§§ 26.4 and 26.5 [Amended]

5. In § 26.4(a) and § 26.5(b) remove the words "The VA" and add, in their place, the word "VA".

6. In § 26.5(a)(3), § 26.7(b)(5), and § 26.9(c), remove the word "Secretary" and add, in its place the words "Secretary of Veterans Affairs".

7. Section 26.3(b) is revised to read as follows:

§ 26.3 Definitions.

* * * * *

(b) *VA elements*, for the purposes of this part, means the Veterans Health Services and Research Administration (VHS&RA), the Veterans Benefits Administration (VBA), the National Cemetery System (NCS), and the Office of Facilities.

* * * * *

8. In § 26.6, paragraphs (b)(1) introductory text, (b)(2) introductory text, (b)(3) introductory text, (c)(1) introductory text and (c)(2) introductory text are revised to read as follows:

§ 26.6 Environmental documents.

* * * * *

(b) * * *

(1) Typical classes of action which normally do not require either an Environmental Impact Statement or an Environmental Assessment: * * *

(2) Specific criteria for typical classes of action which normally do not require either an Environmental Impact Statement or an Environmental Assessment: * * *

(3) Extraordinary circumstances that must be considered by a VA element

before categorically excluding a particular Department action: * * *

(c) * * *

(1) Typical classes of action which normally do require Environmental Assessments, but not necessarily Environmental Impact Statements:

* * *

(2) Specific criteria for typical classes of action which normally do require an Environmental Assessment:

* * * * *

PART 36—[AMENDED]

1. In part 36 remove the citation "38 U.S.C. 1819" or the numbers "1819" wherever they appear, and add the citation "38 U.S.C. 1812" or the numbers "1812" in their respective places.

2. In part 36 remove the citation "38 U.S.C. 1816" or the numbers "1816" wherever they appear, and add the citation "38 U.S.C. 1832" or numbers "1832" in their respective places.

3. In § 36.4202(g), 36.4216(a)(1), 36.4301 in the definition "Lender" and "Manufactured home," 36.4306(g)(5), 36.4311(a)(2) and (b), 36.4331(a), remove the words "the VA" and add, in their place, the word "VA".

§ 36.4204 [Amended]

4. In § 36.4204(a)(7) remove the phrase "(1) through (6) of this paragraph" and add, in its place, the phrase "(a)(1) through (6) of this section".

§ 36.4204 [Amended]

5. In § 36.4204(d)(7)(iii)(D) remove the phrase "(7) of this paragraph" and add, in its place, the phrase "(d)(7) of this section".

6. Section 36.4301 is amended as follows:

a. Remove the numbers "1818" in the definition "A period of more than 180 days" and add, in their place, the phrase "1802(a)(2)(C)".

b. Remove the definition "Administrator" and add in alphabetical order the definition "Secretary" to read as follows:

§ 36.4301 Definitions.

* * * * *

Secretary. The Secretary of Veterans Affairs, or any employee of the Department of Veterans Affairs authorized to act in the Secretary's stead.

* * * * *

c. Remove the phrase "1815(a)" in the paragraph (5)(iii) under the definition "Full disbursement" and add, in its place, the phrase "1803(a)(2)".

d. Remove the numbers "1815" in the definition "Insurance" and add, in their place, the phrase "1803(a)(2)".

§ 36.4303 [Amended]

7. In § 36.4303(f) remove the word "be" in the first sentence and add, in its place, the word "by".

§ 36.4323 [Amended]

8. In § 36.4323(f) remove the numbers "1817" and add, in their place, the numbers "1813".

9. In § 36.4323(g) introductory text, remove the phrase "1817(a)" and add, in its place, the numbers "1813".

§§ 36.4342 and 36.4520 [Amended]

10. In §§ 36.4342(c)(1) and 36.4520(c) remove the phrase "1815(b)" and add, in its place the phrase "1803(a)(2)".

PART 39—[AMENDED]

1. In §§ 39.3 (b)(4), (b)(13) and 39.8(f) introductory text remove the words "the VA" and add, in their place, the word "VA".

§ 39.3 [Amended]

2. In § 39.3(b)(10) remove the words "Office of Construction" and add, in their place, the words "Office of Facilities".

§ 39.3 [Amended]

3. In § 39.3(b)(13) remove the word "agency" and add, in its place, the word "Department".

§ 39.5 [Amended]

4. In § 39.5(c) remove the words "The VA" and add, in their place, the word "VA".

§ 39.8 [Amended]

5. In § 39.8(a)(3) remove the phrase "VA (Department of Veterans Affairs)" and add, in its place, the phrase "Department of Veterans Affairs (VA)".

PART 40—[AMENDED]

1. In §§ 40.2(c), 40.4(a), 40.5, 40.7(b), 40.8(b), and 40.9 (c) and (d) remove the word "the VA" and add, in their place, the words "VA".

§ 40.3 [Amended]

2. In § 40.3 remove the words "the VA's" and add, in their place, the word "VA's".

PART 42—[AMENDED]

In § 42.2 remove the definition "Administrator" and add in alphabetical order the definition "Secretary" to read as follows:

§ 42.2 Definitions.

* * *

Secretary means the Secretary of Veterans Affairs.

* * * * *

[FR Doc. 89–19601 Filed 8–22–89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–3632–4]

Hazardous Waste Management Program Codification of Approved State Hazardous Waste Program for Indiana

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the United States Environmental Protection Agency (EPA) to grant Final Authorization to States to operate their hazardous waste management programs, in lieu of the Federal program. 40 CFR part 272 codifies EPA's prior authorization of State programs and incorporates by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA section 3008. Thus, EPA intends to codify the Indiana authorized States program in part 272.

DATES: The codification of Indiana's authorized hazardous waste program shall be effective October 23, 1989 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Indiana's codification must be received by the close of business September 22, 1989. The incorporation of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of October 23, 1989.

ADDRESS: Written comments should be sent to George Woods at the address listed below.

FOR FURTHER INFORMATION CONTACT: George Woods, Indiana Regulatory Specialist, Office of RCRA, U.S. EPA Region V, 230 South Dearborn Street, 5HR–JCK–13, Chicago Illinois 60604, (312) 886–6134, (FTS: 8–886–6134).

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6926 *et seq.*, allows the U.S. Environmental Protection Agency (EPA) to authorize State hazardous waste programs to

operate in the State in lieu of the Federal hazardous waste program. The purpose of today's **Federal Register** notice is to codify EPA's approval of Indiana's base hazardous waste management program and two revisions to this program.

On January 31, 1986, EPA published a **Federal Register** notice announcing its decision to grant final authorization to Indiana (see 51 FR 3953, January 31, 1986). On October 31, 1986 and January 5, 1988, EPA published **Federal Register** notices announcing its decisions to grant Indiana final authorization for two separate program revisions to its hazardous waste management program (see 51 FR 39752, October 31, 1986 and 53 FR 128, January 5, 1988). The October 31, 1986, **Federal Register** announced EPA's approval of changes to the name and organization of the lead State agency. Effective April 1, 1986, Indiana Public Law 112–1986 (Act) amended Indiana Public Law 143–1985 (Act) reorganizing the Indiana agency responsible for administering the hazardous waste management program. Prior to April 1, 1986, the Indiana hazardous waste management program was the responsibility of the Indiana State Board of Health (ISBH); the program was implemented by ISBH's Division of Land Pollution Control. On April 1, 1986, Indiana Public Law 143–1985, as amended by Indiana Public Law 112–1986, created a new State agency entitled the Indiana Department of Environmental Management (IDEM). The Division of Land Pollution Control became an office within the IDEM entitled the Office of Solid and Hazardous Waste Management. The organizational structure, the staff composition, and most importantly, the State's regulatory and statutory equivalence to the Federal RCRA program were in no way altered by this statutory reorganization of the RCRA program to the new agency. The final authorization for this program revision became effective on December 31, 1986.

The January 5, 1988, **Federal Register** announced EPA's approval of Indiana's equivalent rules for the following Federal hazardous waste regulatory amendments:

(1) Exclusion of Household Waste (49 FR 44980, November 13, 1984);

(2) Interim Status Standards Applicability (49 FR 46095, November 21, 1984);

(3) Corrections to the Test Methods Manual (49 FR 47391, December 4, 1984);

(4) Satellite Accumulation (49 FR 47391, December 20, 1984);

(5) Redefinition of Solid Waste (50 FR 614, January 4, 1985);

(6) Interim Status Standards for Landfill Cover Design Standards (50 FR 16044, April 23, 1985);

(7) Design Standards (50 FR 16044, April 23, 1985);

(8) Correction to Redefinition of Solid Waste (50 FR 33541, August 20, 1985), and;

(9) Clarification of Spent Pickle Liquor Listing (51 FR 19320, May 28, 1986).

Indiana submitted an application requesting approval of these rule changes on June 29, 1987. That application contained a description of the rule changes, a revised Memorandum of Agreement, an Attorney General's Statement certifying the equivalence of the State rules and a copy of the rules. EPA approved of the rule changes and the State application in the January 5, 1988, **Federal Register**. The final authorization for this program revision became effective on January 19, 1988.

EPA has decided to codify its approval of State programs in part 272 of title 40, Code of Federal Regulations (CFR) and to incorporate by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. The intended codification reflects the State program that was in effect when EPA granted Indiana final authorization under section 3006(b) for its revised hazardous waste program. This effort will provide clearer notice to the public of the scope of the authorized program in each State. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98–616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By codifying the authorized Indiana program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Indiana, the status of federally approved requirements of the Indiana program will be readily discernible.

The Agency will only codify for enforcement purposes those provisions of the Indiana hazardous waste management program for which authorization approval has been granted by EPA. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogues.

To codify Indiana's authorized hazardous waste program, EPA will add subpart P to part 272 of Title 40 of the CFR. Subpart P has previously been reserved for Indiana. Sections 272.751(a)(1)–(3), and 272.751 (b)–(d) intend to codify for enforcement purposes, the State statutes and regulations, the Memorandum of Agreement, the Attorney General's Statements, the Program Descriptions, and a letter from the State Health Commissioner which are authorized and made part of the hazardous waste management program under Subtitle C of RCRA.

The Agency retains the authority under Sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedures Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to codify for purposes of enforcement such particular, authorized Indiana enforcement authorities. Section 272.751(a)(2) lists those authorized Indiana authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i)). As a result, State provisions which are "broader in scope" than the Federal program are not codified for purposes of enforcement in part 272. Section 272.751(a)(3) of the intended codification simply lists for reference and clarity the Indiana statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being codified. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

As noted above, the Agency is not amending part 272 to include HSWA requirements and prohibitions that are immediately effective in Indiana and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (See 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and codified State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the part 272 codification every time a new HSWA provision takes effect under the authority of RCRA 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's Part 272 codification. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The codification of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to codify the decision already made to authorize Indiana's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: July 20, 1989.

Frank M. Covington,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart P of part 272 is amended by adding §§ 272.750 and 272.751 and by reserving §§ 272.752 through 272.799 to read as follows:

Subpart P—Indiana

272.750 State authorization
272.751 State-administered program: Final Authorization
272.752–272.799 [Reserved]

§ 272.750 State authorization.

(a) The State of Indiana is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6921 *et seq.*, subject to the Hazardous and solid Waste Amendments of 1984 (HSWA), (Pub. L. 98–616, Nov. 8, 1984), 42 U.S.C. 6926(c) and (g)). The Federal program for which a State may receive authorization is defined in 40 CFR part 271. The State's base program and revisions to that program, as administered initially by the Indiana State Board of Health and later by the Indiana Department of Environmental Management, were approved by EPA pursuant to 42 U.S.C. 6926(b) and part 271 of this chapter. EPA's approval of Indiana's base program was effective on January 31, 1986. EPA's approval of revisions to Indiana's base program were effective on December 31, 1986, and January 19, 1988.

(b) Indiana is not authorized to implement any HSWA requirements in lieu of EPA unless EPA has explicitly indicated its intent to allow such action in a **Federal Register** notice granting Indiana authorization.

(c) Indiana has primary responsibility for enforcing its hazardous waste program. However, EPA retains the authority to exercise its enforcement authorities under sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, and 6973, as well as under other Federal laws and regulations.

(d) Indiana must revise its approved program to adopt new changes to the Federal subtitle C program in accordance with section 3006(b) of RCRA and 40 CFR part 271, subpart A. Indiana must seek final authorization for all program revisions pursuant to section 3006(b) of RCRA but, on a temporary basis, may seek interim authorization for revisions required by HSWA pursuant to section 3006(g) of RCRA, 42 U.S.C. 6926(g). If Indiana obtains final authorization for the revised requirements pursuant to section 3006(b), the newly authorized provisions will be listed in § 272.751 of this subpart. If Indiana obtains interim authorization for the revised requirements pursuant to section 3006(g), the newly authorized provisions will be listed in § 272.752.

§ 272.751 State-administered program: Final authorization.

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Indiana has final authorization for the following elements submitted to EPA in Indiana's base program and base program revision applications for final authorization and approved by EPA effective on January 31, 1986, December 31, 1986, and January 19, 1988.

(a) *State Regulations.* (1) The following Indiana regulations are incorporated by reference and codified as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*: Indiana Administrative Code, title 320, articles 4.1–1–3 through 4.1–37–4, 4.1–37–6 through 4.1–39–12, and 4.1–40–1 through 4.1–54–8 (1987 Cumulative Supplement, Volume 2, as supplemented by Indiana Register, Volume 10, Number 8, pages 1563–1690, May 1, 1987). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Copies of the Indiana regulations that are incorporated by reference in this paragraph are available for the Indiana Legislative Services Agency, Administrative Code and Register Division, 302 State House, Indianapolis, Indiana 46204.

(2) The following statutes and regulations concerning State enforcement, although not codified herein, are part of the authorized State program:

(i) Indiana Code, title 4, article 21.5, chapters 1 through 4; title 13, article 6, chapter 1, section 6; and title 13, article 7, chapters 1 through 7, 8.5, 10 through 13 (except for chapter 13, Section 2(a)), and 16 (effective July 1, 1987).

(ii) Indiana Administrative Code, title 320, articles 4.1–1–1, 4.1–1–2, 4.1–37–5, and 4.1–39–13 through 4.1–39–21 (1987 Cumulative Supplement, Volume 2, as supplemented by Indiana Register, Volume 10, Number 8, pages 1563–1690, May 1, 1987).

(3) The following statutory provisions of the Indiana Code are broader in scope than the Federal program, are not part of the authorized program, and are not codified herein for enforcement purposes: Indiana Code, title 13, article 7, chapter 8.7 and chapter 13, section 2(a) (effective July 1, 1987).

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region V and the Indiana Department of Environmental Management, signed by the EPA Regional Administrator on July 18, 1986, is codified as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921*et seq.*

(c) *Statements of Legal Authority.* The Indiana Attorney General's Statements for final authorization signed by the Attorney General of Indiana on June 28, 1985, August 28, 1986, and June 1, 1987, are codified as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(d) *Program Description.* Program Descriptions dated August 5, 1985, April 24, 1986, and June 29, 1987, and any other materials submitted as part of, or as supplements to, the original application or revision applications are codified as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(e) *Letter from State Health Commissioner.* The letter from the State Health Commissioner, Indiana Board of Health to the Regional Administrator, EPA Region V dated November 4, 1985, as an addendum to the Indiana Final Authorization Application, is codified as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

[FR Doc. 89–19639 Filed 8–22–89; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 300

[FRL-3634-1]

National Priorities List for Uncontrolled Hazardous Waste Sites—Final Update #5; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting an error in the final rule #5 updating the National Priorities List which appeared in the **Federal Register** on March 31, 1989 (54 FR 13296).

FOR FURTHER INFORMATION CONTACT: Robert Myers at (202) 475–9702.

SUPPLEMENTARY INFORMATION: EPA has promulgated revisions to the National Priorities List on March 31, 1989 (54 FR 13296). The preamble to this final rule contained an error which is identified below and corrected by this notice.

Dated: August 16, 1989.

Elizabeth LaPointe,

Acting, Director, Resource Management Staff, Office of Solid Waste and Emergency Response.

The following correction is made in FRL 3546–3, the National Priorities List for Uncontrolled Hazardous Waste Sites—Final Update #5; Final Rule published in the **Federal Register** on March 31, 1989 (54 FR 13296):

PART 300—[CORRECTED]

On page 13305, in the third column, under PART 300—[AMENDED], item 2, "Appendix B of Part 300 is revised to read as set forth below" should read "Appendix B of Part 300 is amended to revise only the National Priorities List by rank, as set forth below. The National Priorities List, Federal Section (By Group) remains the same".

[FR Doc. 89–19852 Filed 8–22–89; 8:45 am]
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40 CFR Part 799

[OPTS–42059E; FRL 3634–6]

Testing Consent Order for 1,1,1-Trichloroethane and Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule announces that EPA has signed an enforceable testing consent order with five manufacturers of 1,1,1-trichloroethane (TCEA) (CAS No. 71–55–6), who have agreed to perform mutagenicity and neurotoxicity tests with TCEA. TCEA is added to the list of Testing Consent Orders in 40 CFR 799.5000 for which the export notification requirements of 40 CFR part 707 apply. This rule constitutes an additional EPA response to the Interagency Testing Committee's (ITC) recommendation that EPA consider health effects testing of TCEA. In October 1984, EPA issued a final Phase I test rule requiring that manufacturers perform a developmental toxicity test with TCEA.

EFFECTIVE DATE: August 23, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Room EB–44, 401 M Street SW., Washington, DC 20460, (202) 554–1404. TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under procedures described in 40 CFR part 790, The Dow Chemical Company, ICI Americas, Inc., Vulcan Chemicals, Occidental Chemical Corp., and PPG Industries, Inc., (the Companies) have entered into a Testing Consent Order with EPA in which these companies have agreed to perform mutagenicity and neurotoxicity testing of TCEA. This rule amends subpart C of 40 CFR part 799 to add TCEA to the list of chemical substances and mixtures subject to testing consent orders.

I. ITC Recommendation

In its Second Report to EPA, published in the **Federal Register** of April 19, 1978 (43 FR 16684), the ITC recommended that TCEA be considered for health effects testing.

In the **Federal Register** of October 10, 1984 (49 FR 39810), EPA issued a final phase I rule requiring manufacturers and processors of TCEA to perform a developmental toxicity test. The Agency deferred inclusion of mutagenicity and neurotoxicity testing because the tiered testing scheme for mutagenicity testing and the neurotoxicity test guidelines had not been sufficiently developed. Both the test scheme and guidelines are now available, the EPA is, therefore, requiring that this testing be performed.

II. Testing Consent Order Negotiations

In the **Federal Register** of August 20, 1987 (52 FR 31445), and in accordance with the procedures established in 40 CFR 790.28, EPA requested persons interested in participating in or monitoring testing negotiations on TCEA to contact the Agency. EPA held public meetings with interested parties on September 10 and October 29, 1987; August 4 and November 28 through 29, 1988; and February 3, 1989, to discuss the testing appropriate for TCEA. In July and August 1989, five TCEA manufacturers and EPA signed a Testing Consent Order for TCEA. Under the Order, the manufacturers agreed to conduct or provide for the conduct of an in vivo mammalian cytogenetics micronucleus assay, a rodent dominant lethal test (if triggered), and six neurotoxicity tests: Functional observational battery (acute and subchronic), sensory evoked potential battery (acute and subchronic), neuropathology, and a developmental neurotoxicity screen. The specific test standards to be followed and the testing schedule for each test were included in the Order. Procedures for submitting study plans, modifying the Order, monitoring the testing and other provisions were also included in the Order.

III. Use and Exposure

The final phase I test rule on TCEA issued on October 10, 1984, was issued under section 4(a)(1)(B) of TSCA. In that rule, EPA found that TCEA was produced in substantial quantities and there was substantial occupational and consumer exposure to TCEA resulting from its manufacture, processing, and use. The bases for the findings were presented in the final rule and the support document for the rule (Ref. 1). Additional information is now available which further documents the extent of consumer and general population exposure to TCEA (Refs. 2 through 4).

It is also worth noting that TCEA, because of its contribution to chlorine in the stratosphere, is under review for possible inclusion in future revisions to the Montreal Protocol on Substances That Deplete the Ozone Layer (April 17, 1989; 54 FR 15228). Although it is not now clear what controls the Parties to the Protocol will agree to, TCEA will continue to be used to some extent in the near future. In addition, due to the physicial and chemical properties of TCEA and its predominant use as an expendable solvent, even a major reduction in production volume would still result in substantial human exposure. Residual amounts of TCEA will remain in the environment contributing to human exposure and supporting the need for these data. Therefore, the tests specified in this consent order remain essential.

IV. Testing Program

A. Mutagenicity

The mutagenicity potential of TCEA and the limitations of the available studies have been adequately reviewed in EPA's "Health Assessment Document for 1,1,1-Trichloroethane (Methyl Chloroform)" (Ref. 5) and in EPA's support document for the phase I test rule for TCEA (Ref. 1). In brief, TCEA is mutagenic in *Salmonella typhimurium* strains TA 1535, TA 1537, and TA 100 both with and without metabolic activation (Refs. 6 and 7). In addition, in the *Drosophila* sex-linked recessive lethal study sponsored by EPA, TCEA was reported to induce recessive lethal mutations in spermatocytes when administered by feeding (Ref. 8). However, although there is some indication that TCEA may induce lethal mutations in this *Drosophila* study, the data indicate at most a weak response and are insufficient in themselves to warrant proposing that the mouse visible specific locus test be required at this time (Ref. 9).

Concerning chromosomal effects, three in vivo cytogenetics tests have been conducted with TCEA (Refs. 10 through 12). These tests, however, were not conducted well enough to evaluate the potential of TCEA to cause chromosomal effects. In the studies by Gocke et al. (Ref. 10) and Tsuchimoto and Matter (Ref. 11), the bone marrow was harvested too soon (only 6 hours) after the last dose. In the study by Salamone (Ref. 12), only male mice were tested. A dominant lethal test has also been conducted with TCEA as part of a two-generation fertility study in mice (Ref. 13). Statistically significant differences were reported in the ratio of dead to live fetuses; however, both increases and decreases were observed. This screening level study was judged to be inadequate because animals were not given doses high enough to produce overt signs of toxicity and because there is uncertainty over the dose the animals actually received (Ref. 5). In addition, the purity of the TCEA (95 percent TCEA, 3 percent dioxane) and route of administration (oral) are not comparable to the test substance and route specified in this Order. Other mutagenicity studies that have been identified and reviewed by EPA (Refs. 1 and 5) have been judged inadequate because conventional protocols were used that did not adjust test conditions and procedures to accommodate TCEA's high volatility and low water solubility; controls were not included in the experimental design; and/or too few animals were used in the study to provide adequate data.

The available studies are inadequate to fully characterize and evaluate the potential of TCEA to cause chromosomal effects.

Under the Consent Order, the Companies have agreed to a tiered testing program. The first tier test is a micronucleus test to be conducted according to an HSIA protocol. EPA has accepted this alternative methodology because it believes the test will provide reliable and adequate data equal to that which would be obtained from testing according to the TSCA guideline. The second tier test is the dominant lethal test which shall be conducted according to the TSCA guideline. The tests agreed upon are presented in IV.B. below.

B. Neurotoxicity

TCEA has been shown to produce non-specific central nervous system (CNS) depression in humans after exposure to doses ranging from 500 through 2,650 ppm (Refs. 14 through 17). Only one of these studies (Ref. 16) had an exposure duration of more than 1 day. In this study, CNS depression was observed after exposure to 500 ppm for 7 hours/day for 5 days. The other three studies utilized short-term exposures which varied from a few minutes to several hours. None of the studies were adequate to characterize either short- or long-term neurologic effects of exposure to TCEA. Of particular note, CNS effects were noted for the 5-day exposure to 500 ppm TCEA (Ref. 16) but not for the 78-minute exposure (Ref. 15) to this concentration, suggesting that exposure longer than 5 days may cause CNS effects at even lower concentations. In addition, 350 to 550 ppm TCEA have been shown to impair perceptual speed, manual dexterity and reaction time (Refs. 18 and 19).

A number of neuropathological and behavioral disorders are associated with chronic exposure to organic solvents such as TCEA. The effects noted in workers exposed to solvents include: decreased concentration ability, memory, learning ability, impulse control, and motivation; emotional instability; and impaired peripheral nerve function (Refs. 20 and 21). These disorders (referred to as solvent syndrome) can persist for years after cessation of exposure and may be irreversible. In addition, EPA has been informed of neurological problems (CNS depression, reoccurring loss of motor activity, and loss of memory) in workers exposed to TCEA (Refs. 22 and 23). Although these reports are anecdotal, they further support EPA's concern for the effects of TCEA on the nervous system.

Available animal studies of TCEA's effects on the nervous system and behavior are summarized in reference 5. Effects reported were on motor activity, vestibular control, and fixed-interval response rate. However, the endpoints measured in these studies were evaluated in only a preliminary manner and no-effect levels were not determined. Although these studies further support concern for the neurotoxicity potential of TCEA, they are inadequate to fully characterize the acute and chronic neurotoxic potential of TCEA, especially behavioral and developmental neurotoxicity effects. No adequate studies on the potential of TCEA to cause neurophysiological, neuropathological, or neurobehavioral effects were identified.

In the Consent Order, the Companies agreed to conduct six neurotoxicity tests with TCEA, and systems development and positive control verification of the developmental neurotoxicity test. These six tests will be conducted according to protocols submitted by HSIA, and approved by EPA. EPA has agreed to testing by these protocols because it believes that they will provide equally reliable and adequate data to evaluate the neurotoxic effects of TCEA. Some of these tests may provide better data than the current TSCA guidelines but EPA cannot determine this until the data have been thoroughly evaluated. The tests agreed upon are presented in the following table.

TABLE—TESTING PLAN FOR TCEA

	Test methods	Report date [1]
Tier 1 tests:		
Functional observational battery, acute and subchronic	HSIA Protocol [2], [3]	21
Sensory evoked potential battery, acute and subchronic	HSIA Protocol [2], [3]	21
Neuropathology, subchronic	HSIA Protocol [3]	21
Systems development and positive control verification of developmental neurotoxicity test	See Appendix 3	[4] 18
Developmental neurotoxicity test	HSIA Protocol [5]	36
Micronucleus test	HSIA Protocol [6]	14
Tier 2 test: Dominant lethal [7]	40 CFR 798.5450	24

[1] Number of months after the effective date of the Consent Order when the final test results must be submitted to EPA.

[2] Halogenated Solvents Industry Alliance (HSIA) Protocol entitled "Acute Motor Activity and Neurophysiologic Effects of 1,1,1-Trichloroethane in Rats", Appendix 1 to the Consent Order.

[3] HSIA Protocol entitled "Neurotoxicologic Examination of Rats Exposed to 1,1,1-Trichloroethane Vapor for 13 weeks", Appendix 2 to the Consent Order.

[4] An unaudited draft report will be submitted for review at this time. A final report will be prepared concurrently with the developmental neurotoxicity test of TCEA.

[5] HSIA Protocol entitled "Examination of Rats for Developmental Neurotoxicologic Effects from Maternal Exposure to 1,1,1-Trichloroethane", Appendix 4 to the Consent Order.

[6] HSIA Protocol entitled "An Inhalation Mouse Bone Marrow Micronucleus Test on 1,1,1-Trichloroethane", Appendix 5 to the Consent Order.

[7] This test must be conducted only if EPA notifies the Companies.

In this consent agreement, EPA has approved the use of test protocols specifically developed to evaluate the mutagenic and neurotoxic potential of TCEA. The data generated by these tests will be used to determine the risk of mutagenic and neurotoxic effects associated with the manufacture, processing, use, and disposal of TCEA. Until the results of the testing required by this consent order have been fully evaluated by EPA, EPA will probably not consider using these methods for neurotoxicity and mutagenicity testing in any other consent order under TSCA section 4.

V. Export Notification

In addition to the Phase I test rule, the issuance of the Consent Order subjects any person who exports or intends to export TCEA to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed in 40 CFR part 707. In the June 30, 1986 (51 FR 23706), Interim Rule establishing the Testing Consent Order process, EPA added and reserved subpart C of part 799 for listing of testing consent orders issued by EPA. This listing serves as notification to persons, who export or intend to export chemical substances or mixtures which are the subject of testing consent orders, that 40 CFR part 707 applies.

VI. Rulemaking Record

EPA has established a record for this rule and the Consent Order (docket number OPTS-42059E). This record contains the basic information considered by EPA in developing this rule and the Testing Consent Order. This record includes the following information:

A. Supporting Documentation

(1) Testing Consent Order between five TCEA manufacturers and the EPA.

(2) **Federal Register** notices pertaining to this rule and consent order consisting of:

(a) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(b) Notice of interim final rule on procedures governing Testing Consent Agreements and Test Rules and Exemption Procedures (51 FR 23706; June 30, 1986).

(c) Toxic Substances Control Act Test Guidelines; Final Rules (50 FR 39252; September 27, 1985).

(d) Notice of final rule revising the Toxic Substances Control Act Test Guidelines (52 FR 19056; May 20, 1987).

(e) Notice containing the ITC recommendation of TCEA to the Priority List (43 FR 16684; April 19, 1978).

(f) Notice of proposed test rule for 1,1,1-trichloroethane (46 FR 30300; June 5, 1981).

(g) Notice of final Phase I test rule for 1,1,1-trichloroethane (49 FR 39810; October 10, 1984).

(h) Notice of final Phase II test rule for 1,1,1-trichloroethane (50 FR 51683; December 19, 1985).

(i) Notice of proposed test rule for triethylene glycol monomethyl, monoethyl, and monobutyl ethers (51 FR 17883; May 15, 1986).

(j) Notice soliciting interested parties for developing a consent order for 1,1,1-trichloroethane (52 FR 31445; August 20, 1987).

B. References

(1) USEPA. U.S. Environmental Protection Agency. Assessment of Testing Needs: 1,1,1-Trichloroethane. Office of Pesticides and Toxic Substances. USEPA. Washington, DC. (May 1981).

(2) USEPA. Household Products Containing Methylene Chloride and Other Chlorinated Solvents: "A Shelf Survey." Office of Toxic Substances, USEPA, Washington, DC. (July 1987). (EPA 560/5-87-006).

(3) USEPA. Household Solvent Products: A National Usage Survey. Office of Toxic Substances, USEPA, Washington, DC. (July 1987). (EPA 560/5-87-005).

(4) Versar Inc., Springfield, VA. Physical-Chemical Properties, Environmental Fate and Mobility, and Monitoring Data for Six Halogenated Solvents. Prepared for the

Office of Toxic Substances, USEPA. Washington, DC. (July 1987).

(5) USEPA. Health Assessment Document for 1,1,1-Trichloroethane (Methyl Chloroform). Office of Health and Environmental Assessment. USEPA. Washington, DC (February 1984).

(6) Margard, W. "Summary report on in vitro biassay of chlorinated hydrocarbon solvents to Detrex Chemical Industries, Inc." Battelle Columbus Laboratories, Inc. Columbus, OH. (July 31, 1978).

(7) Simmon, V. F., Kauhanen, K., and Tardiff, R. G. "Mutagenic activity of chemicals identified in drinking water." *Developmental Toxicology and Environmental Science.* 2:249–258. (1977).

(8) USEPA. "*Drosophila* sex-linked recessive lethal assay of 1,1,1-trichloroethane." Genetic Bioassay Branch, Health Effects Research Laboratory. USEPA. Research Triangle Park, NC. (April 26, 1985).

(9) USEPA. "1,1,1-Trichloroethane (TCEA): Review of *Drosophila* Sex-linked Recessive Lethal Assay." Intra-agency memorandum from Micheal Cimino, Toxic Effects Branch to Frank Benenati, Test Rules Development Branch, Office of Toxic Substances, Washington, DC 20460. (June 30, 1987).

(10) Gocke, E., King, M. T., Eckhardt, K., and Wild, D. "Mutagenicity of cosmetics ingredients licensed by European Communities." *Mutation Research.* 90:91–109. (1981).

(11) Tsuchimoto, T. and Matter, B. E. "Activity of coded compounds in the micronucleus test." In: "Evaluation of short term tests for carcinogens. Report of the international collaborative study." *Progress in Mutation Research.* Volume 1. de Serres, F. and Ashby, J., eds. Amsterdam: Elsevier, pp. 705–11. (1981).

(12) Salamone, M. F., Heddle, J. A., and Katz, M. "Mutagenic activity of 41 compounds in the in vivo micronucleus assay." In: "Evaluation of short term tests for carcinogens. Report of the international collaborative study." *Progress in Mutation Research.* Volume 1. de Serres, F. and Ashby, J., eds. Amsterdam: Elsevier, pp. 686–97. (1981).

(13) Lane, R. W., Riddle, B. L., and Borzelleca, J. F. "Effects of 1,2-dichloroethane and 1,1,1-trichloroethane in drinking water on reproduction and development in mice." *Toxicology and Applied Pharmacology* 63:409–21. (1982).

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(20) National Institute for Occupational Safety and Health. "Organic Solvent Neurotoxicity." Current Intelligence Bulletin 48. Department of Health and Human Services, NIOSH Publication No. 87–104. (March 31, 1987).

(21) World Health Organization/Nordic Council of Ministers Working Group. "Chronic effects of organic solvents on the central nervous system and diagnostic criteria." Copenhagen, Denmark. (June 10–14, 1985).

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(23) USEPA. Telephone conversation between H. Sacarello, Science Management Corp., and Frank Benenati, Test Rules Development Branch, Office of Toxic Substances, USEPA, Washington, DC. (October 7, 1987).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OTS Public Information Office, Room NE–G004, 401 M Street, SW., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

VII. Other Regulatory Requirements

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0033), Washington, DC 20503.

List of Subjects in 40 CFR Part 799

Chemical export, Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Testing procedures.

Dated: August 7, 1989.

Charles L. Elkins,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

PART 799—[AMENDED]

The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding the following chemical substance in Chemical Abstract Service (CAS) Registry Number order to the table, to read as follows:

§ 799.5000 Testing consent orders.

* * * * *

CAS number	Substance or mixture name	Testing	Federal Register citation
*	*	*	*
71-55-6	1,1,1-Trichloroethane	Health effects	August 23, 1989.
*	*	*	*

[FR Doc. 89–19818 Filed 8–22–89 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket 87–14; FCC 89–206]

Allocation of the 216–225 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This action affirms the Commission's August 4, 1988, Report and Order (53 FR 36287, Sept. 19, 1988), which amended the Commission's Rules, § 2.106 (Table of Frequency Allocations), by reallocating the 220–225 MHz band. In the Report and Order the 220–222 MHz band was allocated to the land mobile service for government and nongovernment use and the 222–225 MHz band was allocated to the amateur service. This action responds to petitions for reconsideration filed by amateur licenses, amateur groups and the National Communications System which requested the Commission to allocate the entire 220–225 MHz band to the amateur service. It also responds to a petition for reconsideration filed by TV Answer, Inc. which requested a fixed allocation of one-half megahertz for a viewer-response service in the 220–222 MHz band.

EFFECTIVE DATE: August 23, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fred Thomas, telephone (202) 653–8112.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in General Docket 87–14, FCC 89–206, Adopted June 15, 1989, and Released August 17, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Final Rule

1. By this action the Commission responds to petitions for reconsideration by affirming its decision to: (1) Maintain the existing 216–220 MHz band allocation; (2) allocate the 220–222 MHz band to the land mobile service for both government and nongovernment operations; and, (3) allocate the 222–225 MHz band to the amateur service.

2. The Commission is unpersuaded by the petitions for reconsiderations to make any change to the decision of the Report and Order. It believes that all of the relevant issues were adequately addressed in the

Report and Order

3. In taking this action, the Commission considered a variety of factors, including the need to provide for narrowband land mobile operations, actions of the 1979 World Administrative Radio Conference (1979 WARC), potential interference to TV broadcasting, the impact on the amateur use of the 220–225 MHz band and other factors. The Commission concludes that the above allocations are in the public interest. In making this determination the Commission is particularly sensitive to the concerns expressed by amateur community in this proceeding. The Commission states that it will continue to support the spectrum needs of the amateur service. It believes that this service is important to promote the development of individuals schooled in the radio art, to advance radio technology and to provide public service, particularly in times of emergencies.

4. Government and non-government users will not be allowed access to the 220–222 MHz band until final service rules have been adopted by the Commission. Amateur stations may continue to use the 220–220 MHz band until that time. Amateur operators are cautioned, however, to refrain from making any investments in equipment that would be only suitable for operation in this band. Amateur stations should begin an orderly transition of on-going operations in the 220–222 MHz band to other amateur service frequency bands so that an abrupt termination of such activities will not be necessary. Additionally, the amateur community may wish to address any changes to the amateur service rules that it finds desirable in preparation of the removal of the 220–222 MHz band, yet are beyond the scope of this proceeding. For example, the lifting of the prohibition on auxiliary link operation on some or all of the longer wavelength bands and secondary amateur fixed use of a portion of the 216–220 MHz band are two matters the community may wish to consider and petition for amendment. However, with regard to amateur secondary fixed use of the 216–220 MHz band the Commission notes that such a proposal would need to provide support for why an allocation is needed and show how amateur operations could use this band without causing interference to existing users of the 216–220 MHz band and also to adjacent TV channel 13 operations in the 210–216 MHz band.

5. One other petition was received from TV Answer (TVA). It requested the Commission to reconsider its decision to the extent that the reallocation precludes the grant of TVA's Petition for Rule Making, RM–6196, which seeks a fixed allocation of one-half megahertz in the 216–222 MHz band for a television viewer-response radio service. TVA's Petition for Rule Making is being denied with regard to the 220–222 MHz band in this Memorandum Opinion and Order. TVA's request for use of the spectrum below 220 MHz for a viewer-response service will be considered in a separate item.

6. The Commission also denies a "Request For Oral Arguments" filed by the American Radio Relay League (ARRL). The Commission notes that it is not its policy to grant routinely oral arguments in rulemaking proceedings, particularly in proceedings that have a full written record as in the case of this proceeding. Further, the Commission states that oral *ex parte* presentations may be made to the Commissioners during the course of rulemaking proceeding. In this proceeding a number of such oral *ex parte* presentations were made to each of the Commissioners, including several presentations by the ARRL.

Ordering Clauses

7. Accordingly, *it is ordered,* That the petitions for reconsideration filed in this proceeding are denied.

8. *It is further ordered,* That TV Answer's Petition for Rule Making, RM-6196, is Denied with regard to an allocation of 0.5 MHz in the 220–222 MHz band.

9. *It is further ordered,* That this proceeding is terminated.

List of Subjects in 47 CFR Part 2

Frequency allocations and radio treaty matters, General rules and regulations.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–19800 Filed 8–22–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 88–467; FCC 89–266]

Amateur Radio Services; Use of the 17 Meter Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: Petitioner Dennis Murphy requested reconsideration of the Commission's refusal to allow Novice and Technician Class operators access to the 17 meter band. The Commission affirmed its refusal holding that Novice and Technician Class operators should be excluded because they had recently received enhanced privileges and because of the small size of the band. The refusal minimizes the possibility of interference in that band because Novices and Technicians are not as skillful as higher grade operators.

EFFECTIVE DATE: August 23, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Washington, DC 20554 (202) 632–4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Frequencies, Radio.

Memorandum Opinion and Order

Adopted: August 4, 1989. Released: August 15, 1989.

By the Commission:

I. Introduction

1. On January 31, 1989, we released a Report and Order[1] that authorized access to the 17 meter band[2] to all General, Advanced and Amateur Extra Class operator licensees. Dennis Murphy has requested reconsideration of the Commission's refusal also to allow access to the 17 meter band by Novice and Technician Class operators.

II. Background

2. The 17 meter band is one of three new high frequency (HF) bands allocated to the amateur service by the 1979 World Administrative Radio Conference.[3] The allocation for the 17 meter band generally followed the pattern of the amateur service rules for the seven other HF bands, with operating privileges based on the class of operator license, separation of analog and digital emission types, and maximum transmitter power.

III. Petition For Reconsideration

3. The petitioner asks that the 18.068–18.110 MHz segment of the 17 meter band, where telegraphy (A1A) and digital (F1B) emission types are permitted for stations with higher grade control operators, also be authorized with a 200 watt power limit for amateur stations whose control operators hold either a Novice or Technician Class operator license. Mr. Murphy states that there should be equal access to the 17 meter band by all amateur operator classes in order to enhance amateur station participation in the use of the 17 meter band. The American Radio Relay League, Inc., filed an opposition to the petition for reconsideration noting that the Commission had thoroughly considered the matter of access to the band by license class.

IV. Decision

4. The petitioner has not presented any facts or arguments that have not previously been considered. In fact, we discussed at length in our Report and Order the operator license classes that should be allowed access to the new 17 meter band, and concluded, *inter alia,* that Novice and Technician Class operators should be excluded from the 17 meter band in view of the enhanced privileges that they had recently received and because of the band's small size. In addition, we reiterate our belief that the potential for interference in the 17 meter band will be minimized if the skills associated with the General Class or higher operator license are required.[4]

V. Ordering Clauses

5. Accordingly, *it is ordered,* Pursuant to the authority contained in section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), that the petition for reconsideration is denied.

6. *It is further ordered,* That this proceeding is terminated.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–19801 Filed 8–22–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 207, 209, 215, 219, 225, 226, and 252

[Defense Acquisition Circular (DAC) 88–11]

Department of Defense Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule (Defense Acquisition Circular 88–11) which was published in the **Federal Register** on Wednesday, July 28, 1989, 54 FR 31035. This action is necessary to correct a reference in Introductory Item I.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, telephone (202) 697–7266.

Charles W. Lloyd,

Executive Secretary Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting Defense Acquisition Circular 88–11 as follows:

On page 31037, Item I is corrected by changing in the introductory paragraph and in paragraph a. of the certificate under Appendix B the reference "DAC 86–9" to read "DAC 88–11" in both places.

[FR Doc. 89–19778 Filed 8–22–89; 8:45 am]

BILLING CODE 3810-01-M

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[1] Report and Order, 4 FCC Rcd 1424 (1989) (54 FR 5933, Feb. 7, 1989).

[2] The frequencies between 18.068 MHz and 18.168 MHz are commonly referred to in the amateur community as the 17 meter band.

[3] *See* Final Acts of the World Administrative Radio Conference (Geneva 1979).

[4] Report and Order, *supra,* at paragraphs 8 and 9.

Proposed Rules

Federal Register

Vol. 54, No. 162

Wednesday, August 23, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Agency Administration of Failed or Failing Depository Institutions

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments

SUMMARY: The Administrative Conference's Special Committee on Financial Services has under consideration a draft recommendation on agency administration of failed or failing depository institutions. Interested persons are invited to comment on the draft recommendation.

DATES: Please submit comments by September 22, 1989.

ADDRESSES: Send comments to Brian C. Murphy, office of the Chairman, Adminsitrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Brian C. Murphy (202) 254–7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Special Committee on Financial Services has under consideration a draft recommendation on agency administration of failed or failing depository institutions, based on a report prepared by Professors Jonathan R. Macey, of Cornell University Law School, and Geoffrey P. Miller, of the University of Chicago Law School. Copies of the report are available from the Office of the Chairman of the Administrative Conference.

The Administrative Conference of the United States is an independent federal agency, established to promote improvements in the efficiency, adequacy and fairness of governmental processes (5 U.S.C. 571–576). In 1987, the Conference established the Special Committee on Financial Services to examine issues relating to procedural fairness and efficiency in the U.S. financial services industry. The Committee has taken up several issues, including the adjudication practices and procedures of the federal bank regulatory agencies, the Federal Reserve Board's handling of applications under the Bank Holding Company Act, and the resolution of claims against savings receiverships.

The Committee currently is examining the enforcement powers of the federal bank regulatory agencies; the informal audit and settlement practices of the bank regulatory agencies; and the role of those agencies in enforcing the Securities and Exchange Act of 1934, as well as the subject of the draft recommendation set forth below.

Draft Recommendation: Agency Administration of Failed or Failing Depository Institutions

Special Committee on Financial Services

Introduction

Not since the Great Depression has there been such concern about the fundamental stability of the U.S. banking industry. The apparent decline in public confidence stems from the unprecedented increase in the incidence of bank failures in the past decade and also from the heavy losses in the insurance funds overseen by the bank and thrift regulatory agencies that were designed to protect depositors from losses in such failures. One hundred twenty banks failed in 1985; 145 failed in 1986; 184 failed in 1987; and 200 failed in 1988.

The situation is even more grave in the savings and loan industry, in which a wave of failures and insolvencies has led to the passage of costly legislation to bail out failed thrifts which revamped the regulatory structure by abolishing the Federal Home Loan Bank Board and placing the replenished thrift insurance fund under the control of the banking regulators of the Federal Deposit Insurance Corporation.

The large stake that the Federal Government has in the finanical stability of depository institutions, as well as the current system of regulation that imposes many of the costs of depository institution failures on the general public, suggest that the administrative procedures used by the Federal bank regulatory agencies in administering failed or failing depository institutions warrant special attention. For the purposes of this discussion, the federal bank regulatory agencies that may be involved in administering failed or failing institutions include the Federal Deposit Insurance Corporation, the Office of Thrift Supervision in the Department of the Treasury, the National Credit Union Administration, and the Farm Credit Administration. Other fedeal agencies such as the Comptroller of the Currency and the Federal Reserve Board do not administer failed institutions *per se,* but play an important role in approving mergers and acquisitions of institutions.

The federal bank regulatory agencies use a variety of different methods for administering failed or failing depository institutions. The following methods used by the Federal Deposit Insurance Corporation are illustrative:

Payoff and liquidation. In a straight liquidation of a bank that has been declared insolvent, the FDIC, acting in its corporate capacity, pays off insured depositors. In its capaicty as receiver of an insured closed bank, the FDIC acts as trustee of the insolvent estate for the benefit of creditors, including the FDIC insurance fund. To the extent that funds are disbursed to insured depositors, the FDIC assumes the rights of such depositors as creditors. As receiver, the FDIC liquidates the bank's assets for the benefit of all creditors, including the insurance fund.

Modified payoffs. In a modified payoff, the FDIC makes full payments to insured depositors and partial payments to uninsured depositors, based on the FDIC's estimate of the proceeds from liquidation of the failed bank. The FDIC then liquidates the institution, and any excess is paid over to the uninsured depositors and other bank creditors.

Purchase-and-assumption transactions. In a purchase-and-assumption (P & A) transaction, deposit accounts and certain other liabilities of the failed depository institution are assumed by another institution, which also purchases some of the failed institution's assets. Thus, such a transaction essentially involves the merger of a failed institution into a solvent one. Usually only performing assets (that is, loans that are being paid off) are purchased. Any shortfall between the value of the assets purchased and the value of the liabilities assumed is made up by the FDIC. The

FDIC as receiver generally purchases all poor and non-performing assets and seeks to collect on those assets to offset its losses.

Open bank assistance. Before a troubled bank has been formally declared insolvent, the FDIC may, in certain circumstances, provide it with direct financial assistance to prevent it from failing. The FDIC also has authority to purchase a bank's bad loans and to buy its preferred stock or other securities (not including common stock).

Bridge banks. Under powers granted by the Competitive Equality Banking Act of 1987, the FDIC may establish bridge banks, which purchase the assets and assume the deposits and certain other liabilities of the failed institution and continue to provide banking services. Such bridge banks may be operated for three years (an original two-year term, with the possibility of a one-year extension). Bridge banks are not required to have any capital and receive operating funds from the FDIC, as the Board of Directors deems "necessary or advisable." The bridge banks allows the FDIC more time to facilitate an acquisition.

The FDIC and the other agencies involved in administering failed or failing institutions should keep the following objectives in mind when selecting methods and procedures:

Minimizing the cost to the deposit insurance funds. In determining a procedure for handling a depository institution failure, the agency should consider which method will result in the least cost to the Federal insurance funds. No two insolvencies are identical. It is essential that the agency evaluate each failure on a case-by-case basis and not rule out any particular procedure because of possibly unfavorable experiences in the past. Where methods that involve full payouts to uninsured depositors are considered, the goal of minimizing the burden on the insurance funds can only be accomplished if the agency weighs the expected benefits of such procedures, including the potentially increased stability of the banking system as a whole, against the costs of such procedures, including the additional drain on the deposit insurance funds and the potential loss of market discipline in the form of monitoring by large uninsured depositors and other creditors. Open bank assistance, in particular, needs to be used with caution because of the risk that a depository institution will eventually fail, notwithstanding the infusion of new capital.

Protecting small depositors. Because small depositors may find it more difficult than large depositors to obtain access to funds during the interim period between bank failure and repayment, the agency should remain sensitive to their need to obtain early access to their funds during the liquidation process, for example, by expediting payments to small depositors who may have to make home mortgage, tuition or other highly time-sensitive payments.

Ensuring efficient auctions for failed institutions. The process by which the agency determines who is eligible to bid at an auction for a failed depository institution is not clearly delineated. The agency conducting the auction normally does not give general public notice of impending auctions, but instead selectively contacts potential bidders. For example, established institutions are sometimes the only entities to participate in FDIC-managed auctions, while individual entrepreneurs and other potential bidders who might enter the industry by bidding on an insolvent bank are sometimes excluded. The reduction in the number of bidders may lower the amount paid for a failed bank, thus further straining the federal deposit insurance funds. On the other hand, selectivity in designating bidders may tend to weed out unreliable or inexperienced operators who might drive the institution into failure once again. Speedy actions may also be desirable in order to maintain public confidence in the banking system and ensure that insured depositors are paid off as rapidly as possible. The agencies might benefit from further study of alternatives available to auction procedures in order to weigh the costs and benefits of the existing system against the potential costs and benefits of increasing the number of bidders at auctions for failed depository institutions.

The acquisition of banking institutions while still solvent can forestall potential insolvencies. Thus the procedures for regulating such acquisitions deserve examination as part of the overall problem of how the Federal bank regulatory agencies proceed in the administration of failing institutions.

At present parties wishing to acquire a solvent depository institution must comply with a highly complex set of rules. The complexity and long lead time required for such acquisitions are potential deterrents to friendly as well as unfriendly acquisitions.

Three statutes control takeover activity for commercial banks:

The Change in Bank Control Act (12 U.S.C. 1817(i)) makes it impossible for someone to take control of a commercial bank without prior regulatory review. The Act prevents any person from acquiring control of an FDIC-insured bank, unless the appropriate Federal bank regulatory agency has been given 60 days' prior written notice of the proposed acquisition, although the FDIC frequently exercises its authority to reduce or extend this time limitation. Except as provided by regulation of the appropriate agency, the Change in Bank Control Act also requires that the acquiror disclose to the agency significant information about itself and the proposed acquisition, including its identity and the identity of each entity on whose behalf the acquisition is being made, and any strategic plans regarding disposition of the acquired bank.

The Bank Merger Act (12 U.S.C. 1828(c)) requires the prior approval of the relevant Federal bank regulatory agency before one bank may merge or consolidate with another bank. In addition, the agency must notify the Attorney General and other bank regulatory agencies of the proposed transaction. These agencies must prepare reports on the competitive factors involved in the proposed merger.

The Bank Holding Company Act (12 U.S.C. 1842) governs bank acquisitions by corporations, including bank holding companies. A corporation or bank holding company must obtain approval from the Federal Reserve Board to acquire more than twenty-five percent or more of a bank's stock (or where the Board determines that control will exist), to acquire all or substantially all of a bank's assets, or to merge or consolidate with another bank holding company. A minimum of 30 days' notice to the regulator is required before approval of a transaction may be given. Thus, the Act grants the Federal Reserve Board considerable power over certain proposed takeovers of banks by bank holding companies and other corporations.

Under this regulatory structure, every transfer of control of an insured bank involves regulatory review or approval under varying criteria and uncertain time frames. By increasing the costs of acquiring banks, this structure might reduce the incentives of prospective bidders to engage in monitoring activities that serve the desirable goal of identifying undervalued and mismanaged banks. On the other hand, Congress established this regulatory structure in order to accomplish policy objectives that may require some impediments to bank takeovers as compared with firms in other fields. There is no justification, however, for procedures that deter bank takeovers if such procedures are not reasonably related to countervailing policy concerns. Similarly, there is no

justification for inconsistent or non-uniform policies and procedures for the approval of proposed mergers.

Accordingly, Congress should authorized [1] the Federal bank regulatory agencies to consider establishing an interagency task force to rationalize and streamline the process for changes in bank control by merger, acquisition, or any other means, both in hostile and friendly situations. Such an interagency task force should have the goal of rationalizing and streamlining the bank acquisition, change in control and merger process. Clear and consistent rules among agencies would provide greater certainty to potential bidders and targets as to their legal rights and obligations. If appropriate, the task force should recommend legislative solutions.

Recommendation

I. Procedures for Administering Failed or Failing Depository Institutions

1. Federal bank regulatory agencies should not display a general preference for any particular method of administering failed or failing depository institutions. Instead, all strategies should be evaluated in light of the facts and circumstances of each case, in order to ensure safer and more competent management, preserve the insurance funds, and maintain speed of insured deposit payoffs.

2. In determining procedures for dealing with failed or failing depository institutions, the Federal bank regulatory agencies should consider the extent to which protecting uninsured depositors might impose unnecessary costs on the insurance funds and reduce institutional incentives to avoid excessive risk-taking.

3. Before granting open bank assistance, the relevant Federal bank regulatory agency should: (1) Determine that there is a substantial probability that the institution will return to profitable operations within a reasonable time; (2) determine that the total costs of the open bank assistance will clearly be lower than the costs of any alternative procedure; (3) insist as a prerequisite to such assistance that the depository institution also receive a significant infusion of capital from non-government sources; and (4) ordinarily require replacement of top management, unless the agency concludes that the problems of the depository institution were clearly beyond the control or influence of such management.

4. The relevant Federal bank regulatory agencies should study the process by which ownership of failed institutions is transferred to outside buyers. Specifically, the agencies should weigh the costs and benefits of (a) extending the length of time for bidding for the assets of failed institutions, and (b) ensuring that all eligible parties are notified and given an opportunity to bid.

II. Protection of Small Depositors

The Federal bank regulatory agencies should be sensitive to the needs of small, insured depositors in failed depository institutions who need immediate access to funds to make home mortgage payments, tuition payments or other highly time-sensitive obligations.

III. Procedures for Administering Acquisitions of Solvent Institutions

1. The Federal bank regulatory agencies should review their procedures for approving acquisitions or other ownership changes of solvent depository institutions in order to streamline such procedures and provide potential acquirors and targets with clear guidelines regarding the approval process.

2. Congress should authorize the Federal bank reglatory agencies to establish an interagency task force to review and evaluate acquisition, change in control, and merger applications in order to shorten, harmonize and rationalize such procedures for both hostile and friendly situations.

Dated: August 17, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89–19639 Filed 8–22–89; 8:45 am]

BILLING CODE 6110-01-M

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[1] Although such a task force could be established without the need for legislation, legislation would likely facilitate the agency process.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[FV–89–089PR]

Expenses and Assessment Rate for Almonds Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the 1989–90 crop year under the marketing agreement and order for California almonds. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the Almond Board of California (Board), the agency responsible for local administration of the order, to have sufficient funds to meet the expenses of operating the program. Expenses are incurred on a continuous basis.

DATES: Comments must be received by September 5, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, regulating the handling of almonds grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of California almonds, and there are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR

121.1) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of almond handlers and producers may be classified as small entities.

The marketing order for California almonds requires that the assessment rate for a particular crop year shall apply to all assessable almonds handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture for approval. The members of the Board are handlers and producers of regulated almonds. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of assessable almonds. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Board shortly after July 1 of each crop year, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Board will have funds to pay its expenses.

The Board met on July 21, 1989, and unanimously recommended 1989–90 marketing order program expenditures of $12,339,618, and an assessment rate for the 1989–90 crop year of 2.75 cents per pound (kernelweight basis). The Board also recommended that handlers should be eligible to receive credit for their own marketing promotion activities for up to 2.50 cents of this 2.75-cent-per-pound assessment rate.

The 2.75-cent-per-pound 1989–90 assessment rate compares with a 1988–89 assessment rate of 2.65 cents per pound. While the 2.50-cent-per-pound creditable rate is the same as the 1988–89 rate, the 0.25-cent per-pound non-creditable portion of the total assessment, which handlers must pay to the Board, is 0.10 cents higher than the 0.15-cent-per-pound 1988–89 rate.

Projected expenses of $12,339,618 for 1989–90 compare with 1988–89 budgeted expenses of $16,130,309. Budget categories for 1989–90 are $890,200 for administrative expenses, $352,018 for production research, $937,700 for public relations, and $59,700 for the 1990 crop estimate. Comparable actual expenditures for the 1988–89 crop were $779,561, $197,101, $996,900, and $56,800, respectively. The remaining $10,100,000 of proposed 1989–90 expenses is the estimated amount which handlers would spend on their own marketing promotion activities based on a projected 1989–90 marketable California almond production of 404,000,000 kernelweight pounds and assumes that all handlers receive full credit against their 2.50-cent-per-pound creditable assessment obligations. For the 1988–89 crop year, $13,925,000 was budgeted for handler marketing promotion activities based on a projected marketable production of 557,000,000 kernelweight pounds. An actual figure is not yet available because handlers have until December 31, 1989, to complete marketing promotion activities for which they may receive credit toward their 1988–89 crop year creditable assessment obligations.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. Further, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The Board must have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 981

Almonds, California, and Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—[AMENDED]

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 981.336 is revised to read as follows:

Almonds Grown in California

§ 981.336 Expenses and assessment rate.

Expenses of $12,339,618 by the Almond Board of California are authorized for the crop year ending June 30, 1990. An assessment rate for that crop year payable by each handler in accordance with § 981.81 is fixed at 2.75 cents per pound of almonds (kernelweight basis) less any amount credited pursuant to § 981.41, but not to exceed 2.50 cents per pound of almonds (kernelweight basis).

Dated: August 17, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–19776 Filed 8–22–89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–144–AD]

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757 and 767 series airplanes, which would require the replacement of the autopilot-flight control computer (FCC) with modified units. This proposal is prompted by reports of intermittent altitute capture/hold and anomalous flight director airspeed command in the FCC. This condition, if not corrected, could lead to navigational errors affecting air traffic aircraft separation, or an incorrect airspeed at single engine takeoff, resulting in a reduced climb gradient.

DATES: Comments must be received no later than October 16, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–144–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA,

Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Frank venLeyneele, Systems and Equipment Branch, ANM–130S; telephone (206) 431–1948. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspect of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–144–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Boeing Model 757 and 767 airplanes equipped with FCC's, part numbers (P/N) S241R100–103, –105, and –106, have been shown to have anomalous flight director commands. This is caused by a software error which can result in the flight director commanding a 15 knot high airspeed under a single engine takeoff condition. If the crew does not detect this anomaly by cross checking the primary flight display with raw data, the takeoff climb could then follow a flight path below the takeoff obstacle clearance height. In addition, P/N S241T100–105 and 106 FCC's may, at times, have the condition that the autopilot or the flight director does not capture the altitude that was selected on the mode control panel. This condition could compromise the airplane's airspace tolerances, if not corrected by the crew. This condition is the result of a modified memory storage device in the FCC that does not always initialize at zero.

The FAA has reviewed and approved Boeing Service Bulletins 767–22–0029 and 757–22–0921, both dated January 26, 1989, which provides instructions for replacing the FCC's with modified units that are not subject to these anomalies. Collins Service Bulletin FCC–701–22–16 provides instructions to rework the FCC's to the S241T100–108 configuration.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the FCC's with modified units, in accordance with the service bulletins previously mentioned.

There are approximately 165 Model 757 series airplanes and 239 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 109 Model 757 series airplanes and 106 Model 767 series airplanes of U.S. registry would be affected by this AD. It would take approximately 3 manhours per airplane to accomplish the required actions and the average labor cost would be $40 per manhour. Collins, the manufacturer of the FCC, would modify the affected units at no charge to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 and 767 series airplanes, equipped with Collins flight control computer (FCC), certificated in any category. Compliance required within 12 months after the effective date of this AD, unless previously accomplished.

To prevent intermittent altitude hold, altitude capture, and/or flight director mistracking anomalies, accomplish the following:

A. Remove Collins manufactured FCC's which have Boeing P/N/ S241T100–103, –105, and –106, and replace with units reworked to P/N S241T100–108, in accordance with Boeing Service Bulletins 757–22–0021 or 767–22–0029, both dated January 26, 1989, as appropriate.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office,

BEST COPY AVAILABLE

FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 15, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19794 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-122-AD]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all CASA Model C-212 series airplanes, which would require modification of the automatic power reserve (APR) system and revision to the Airplane Flight Manual that would provide new procedures for setting power. This proposal is prompted by reports that improper function of the APR system can cause improper thrust levels or engine overtorque. This condition, if not corrected, could, in the event of an engine failure on takeoff, result in the remaining engine exceeding maximum allowable torque levels and damage to or failure of that engine.

DATE: Comments must be received no later than October 16, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-122-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Contrucciones Aeronauticas, S.A. (CASA), Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-122-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Dirección General de Aviacion Civil (DGAC), which is the airworthiness authority of Spain, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on CASA Model C-212 series airplanes. The manufacturer has reported that improper function of the Automatic Power Reserve (APR) system, can cause improper thrust levels or engine overtorque. This condition, if not corrected, could, in the event of an engine failure on takeoff, result in the remaining engine exceeding maximum allowable torque levels and damage to or failure of that engine.

CASA has issued Service Bulletin 212-72-05, Revision 1, dated June 1, 1989, which describes procedures for replacing a switch and modifying the wiring of the APR system to provide fuel enrichment in the "Override" mode, and stipulates revisions to the Airplane Flight Manual, describing new procedures for setting power. The DGAC has classified this service bulletin as mandatory and has issued Spanish Airworthiness Directive 02-89 addressing this subject.

This airplane model is manufactured in Spain and Indonesia and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the United States, an AD is proposed which would require modification of the APR system and incorporation of a revision into the FAA-approved Airplane Flight Manual, describing new procedures for setting power, in accordance with the service bulletin previously described.

It is estimated that 43 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for the required parts is $350 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,370.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

CASA: Applies to all Model C-212 series airplanes, certificated in any category. Compliance required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent, following an engine failure on takeoff, damage to or failure of the remaining engine caused by overtorquing, accomplish the following:

A. Modify the Automatic Power Reserve (APR) system in accordance with CASA Service Bulletin 212-72-05, Revision 1, dated June 1, 1989.

B. Upon accomplishment of the modification required by paragraph A., above, revise the FAA-approved Airplane Flight Manual to include the appropriate revision, which provides new procedures for setting power, as specified in Paragraph 1.B. of CASA Service Bulletin 212-72-05, Revision 1, dated June 1, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Contrucciones Aeronauticas, S.A. (CASA), Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 15, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19795 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 89-ASO-34]

Proposed Establishment of Restricted Area R-7105; PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Restricted Area R-7105 located in the vicinity of Lajas, PR. The restricted area is necessary to provide airspace to contain an aerostat radar surveillance (ASR) system for drug interdiction purposes. This action is in support of a project linked to the Customs Service Southern Border Drug Interdiction Strategy.

DATE: Comments must be received on or before October 2, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 89-ASO-34, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-34." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendent to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish Retricted Area R-7105 located in the vicinity of Lajas, PR. The restricted area is required to provide the necessary airspace to activate an ASR system for drug interdiction purposes. This project is part of the Customs Service Southern Border Drug Interdiction Strategy. Section 73.71 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.71 [Amended]

2. Section 73.71 is amended as follows:

R-7105 Lajas, PR [New]

Boundaries. That airspace within a 3-nautical-mile radius centered on lat. 17°58'45" N., long. 67°04'55" W.

Designated altitudes. Surface to and including 15,000 feet MSL.

Times of designation. Continous.

Controlling agency. FAA, San Juan CERAP.

Using agency. Puerto Rico Police Department.

Issued in Washington, DC, on August 14, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-19796 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 89-ASO-33]

Proposed Establishment of Restricted Area R-2936; West Palm Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Restricted Area R-2936 West Palm Beach, FL, located approximately 4 miles west of the William P. Gwinn Airport, Jupiter, FL. The Pratt and Whitney Company, a division of United Technologies, is developing a turbopump for the main engine of the Space Shuttle. Ground test firing of hydrogen gas, through an exhaust stack, would create significant turbulence and ambient air temperature increase which would be hazardous up to and including 10,000 feet.

DATE: Comments must be received on or before October 2, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 89-ASO-33, Federal Aviation Administration, P. O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-33." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish Restricted Area R-2936. The Pratt and Whitney Company, a division of United Technologies, has requested the establishement of the restricted area. Pratt and Whitney has been awarded a contract to develop a turbopump for the main engine of the Space Shuttle. During test firing the hydrogen gas is released through an exhaust stack. Calculations indicate that significant turbulence and high air temperatures would be hazardous up to and including 10,000 feet. Section 73.29 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routing amendmets are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routing matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR part 73) as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.29 [Amended]

2. Section 73.29 is amended as follows:

R-2936 West Palm Beach, FL [New]

Boundaries. That airspace within a 1-nautical-mile radius centered at lat. 26°54'09"N., long 80°22'56"W.

Designated altitudes. Surfaced to and including 10,000 feet MSL.

Time of designation. Intermittent, by NOTAM.

Controlling agency. FAA, Palm Beach ATCT.

Using agency. United Technologies, Pratt and Whitney Company, West Palm Beach, FL.

Issued in Washington, DC, on August 10, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-19797 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Parts 380 and 399

[OST Docket No. 46410; Notice No. 89-6A]

RIN 2105-AB50

Price Advertising

AGENCY: Office of the Secretary, DOT.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period from August 25, 1989 until September 25, 1989 on the DOT's Price Advertising rulemaking (54 FR 31052, July 26, 1989). In the rulemaking, the Department is proposing to amend its rule and policy statement with respect to air transportation price advertising under 14 CFR parts 380 and 399 to comport with its current enforcement policy. The proposal would allow advertisers to list government-imposed and government-approved charges that are levied on a per passenger basis separately in price advertisements. It also would codify current practice allowing the advertisement of one-way fares that are available only on a round-trip basis, provided the ads are clear with regard to the round-trip conditions.

DATES: Comments are due on or before September 25, 1989.

ADDRESSES: Comments must be filed in Room 4107, Docket 46410, U.S. Department of Transportation, 400 7th St., SW., Washington DC 20590. Late-filed comments will be considered to the extent possible.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn, Office of the General Counsel, C-50, (202) 366-9307, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On August 15, 1989, the Attorney General of the State of Texas (Texas AG), on behalf of California, Iowa, Kansas, and New York, submitted a request for an extension of the comment period for 90 days. The Texas AG claims that the extension is needed because the rulemaking is a significant change from existing law, other organizations have indicated to the Texas AG that they also need additional time, and the State of Texas needs information recently requested from the Department under the Freedom of Information Act to prepare an adequate comment.

We do not believe that a 90 day extension is warranted. First, the rulemaking "merely codifies existing practices and enforcement policies" (54 FR at 31054), and does not constitute a change from existing law. Second, to date no other requests for extensions have been filed. Third, while the State has filed a FOIA request, the mere filing does not justify an extension. Allowing persons to seek more time on that basis would provide an avenue for others to seek delays in the rulemaking process. Finally, even under the Department's Regulatory Policies and Procedures, significant rulemakings are generally afforded only a 60-day comment period (44 FR 11044, Feb. 26, 1979). However, we have decided to exercise our discretion and provide an additional 30 days for persons to comment. Comments are now due on or before September 25, 1989.

Issued in Washington, DC on August 21, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-19999 Filed 8-21-89; 1:51 pm]

BILLING CODE 4910-62-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1360-89]

Establishment of User Fees

AGENCY: Office of the Attorney General, Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, United States National Central Bureau (USNCB)—INTERPOL is proposing to amend its regulations to establish a system of user fees for the noncriminal inquiries it processes yearly. The effect of the change will permit the USNCB to recover the administrative costs the USNCB incurs when processing these noncriminal inquiries.

DATES: Comments must be received on or before September 22, 1989.

ADDRESSES: Interested persons are invited to submit written comments regarding this change to Chief, United States National Central Bureau (INTERPOL), U.S. Department of Justice, Washington, DC 20530. All comments received will be available for public inspection only in the U.S. National Central Bureau (INTERPOL), 600 E Street, NW., Suite 600, Washington, DC 20530, and only between the hours of 9:00 a.m. through 5:00 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ronald B. Abrams, Counsel to the U.S. National Central Bureau (INTERPOL), (202) 272-8383. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The regulation is being expanded to permit the collection of user fees for noncriminal inquiries to the USNCB, such as background checks pertaining to adoptions, gaming licensing, and state bar examination applicants. The fees are intended to recover the administrative costs the USNCB incurs in processing the noncriminal inquiries.

This is not a major rule within the meaning of Executive Order 12291. This will not have an impact on a significant number of small businesses. 5 U.S.C. 901.

List of Subjects in 28 CFR Part 0

Authority: delegations (Government agencies).

By the authority vested in me including 28 U.S.C. 509, and 5 U.S.C. 301, subpart F-2 of part 0 of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303, 3101; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4201 et seq., 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 et seq.; 50 U.S.C. App. 1989b, 2001–2017p; Pub. L. 91–513, sec. 501; E.O. 11919; E.O. 11267; E.O. 11300.

2. Subpart F–2, § 0.34 is amended by adding a new paragraph (g) to read as follows:

0.34 General functions.

* * * * *

(g) Establish and collect user fees to process name checks and background records for licensing, humanitarian and other non-law enforcement purposes.

Dated: August 15, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89–19805 Filed 8–22–89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF DEFENSE

38 CFR Part 21

RIN 2900–AD88

Veterans Education; State Approving Agencies and the Post-Vietnam Era Veterans' Educational Assistance Program

AGENCY: Department of Veterans Affairs and the Department of Defense.

ACTION: Proposed regulations.

SUMMARY: The Veterans' Employment, Training and Counseling Amendments of 1988 contain several provisions which affect the Department of Veterans Affairs' (VA's) relationships with the State approving agencies (SAAs). In order to implement the new provisions of law VA has proposed a new section, § 21.4155, in 38 CFR part 21, subpart D. (See 54 FR 21230, May 17, 1989.) In administering Chapter 32, Title 38, United States Code, VA will apply the provisions of that new section in the same manner that it will be applied in the administration of chapters 34 and 36.

DATES: VA the Department of Defense are proposing to make the proposed amendment to § 21.5150, like the provision of law it implements, retroactively effective on May 20, 1988. Comments must be received on or before September 22, 1989. Comments will be available for public inspection until October 2, 1989.

ADDRESSES: Send written comments to: The Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comment received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Alan R. Zoeckler, Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: The Veterans' Employment, Training and Counseling Amendments of 1988 (Pub. L. 100–323) contain several provisions which affect VA's relationships with the various SAAs. Previously, the law provided that no department, agency, or officer of the United States could exercise any supervision or control over a State approving agency. This provision was the foundation of VA's relationships with SAAs.

Public Law 100–323 envisions a substantially new relationship. In particular, the law requires the Secretary of Veterans Affairs to conduct, in conjunction with SAAs, an annual evaluation of each SAA on the basis of standards developed by VA with the cooperation of the SAAs and to give each SAA an opportunity to comment on its evaluation. VA must take into account the results of the annual evaluation of the SAA when negotiating the terms and conditions of a contract or agreement with the SAA. VA may now supervise functionally the providing of approval services by the SAAs. VA must cooperate with SAAs in developing and implementing, to the extent practicable, a uniform national curriculum for training new SAA employees and for the continuing training of SAA employees. VA with the SAAs will sponsor the providing of this training. Finally, VA will prescribed prototype qualification and performance standards, developed in conjunction with SAAs, for use by the SAAs in the development of individual qualification and performance standards for SAA personnel carrying out approval duties.

In order to implement many of these new provisions of law, VA has proposed a new section, § 21.4155. In administering the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) the Department intends to apply the provisions of § 21.4155 in the same manner as it is applied to the administration of the Vietnam Era GI Bill.

VA and the Department of Defense find that good cause exists for making the amendment to § 21.5150, like the provision of law it implements, retroactively effective on May 20, 1988. To achieve the maximum benefit of this legislation for the State approving agencies it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; and would complicate administration of these provisions of law.

VA and the Department of Defense have determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and Secretary of Defense have certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the regulation affects only State approving agencies. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 26, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: June 30, 1989.

Donald W. Jones,

Lieutenant General, USA, Deputy Assistant Secretary, (Military Manpower & Personnel Policy).

PART 21—[AMENDED]

In 38 CFR part 21, Vocational Rehabilitation and Education, § 21.5150 is revised to read as follows:

§ 21.5150 State approving agencies.

In administering chapter 32, title 38, United States Code, VA will apply the provisions of the following paragraphs in the same manner as they are applied for the administration of chapters 34 and 36:

(a) Section 21.4150 (except par. (e))—Designation

(b) Section 21.4151—Cooperation

(c) Section 21.4152—Control by agencies of the United States

(d) Section 21.4153—Reimbursement of expenses

(e) Section 21.4154—Report of activities

(f) Section 21.4155—Evaluations of State approving agency performance

(Authority: 38 U.S.C. 1641, 1770–1774, 1774A; Pub. L. 94–502, Pub. L. 100–323)

[FR Doc. 89–19762 Filed 8–22–89; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6965]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinacnes, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Washington	City of Sedro Woolley, Skagit County.	Skagit River	Just east of Collins Road	None	*43
			Approximately 3,700 feet west (downstream) of State Highway 9.	None	*44
			Approximately 1,200 feet west (downstream) of State Highway 9.	None	*45

Maps are available for review at the Planning Department, 720 Murdock Street, Sedro Woolley, Washington.

Send comments to The Honorable Donald Walley, Mayor, City of Sedro Woolley, 720 Murdock Street, Sedro Woolley, Washington 98284.

Issued: August 17, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-19628 Filed 8-22-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[Gen. Docket No. 89-354 FCC 89-254]

Spread Spectrum Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: The notice of proposed rule making proposes to clarify the rules concerning the operation of spread spectrum systems under the part 15 rules by specifying the minimum length for the spreading codes for direct sequence spread spectrum systems. A minimum spreading code of 127 pseudorandomly generated bits is proposed. This requirement appears necessary to provide guidance to the industry and to minimize the potential interference that could be generated from the 1 watt transmitter power which these systems are authorized to transmit. The notice of proposed rule making also proposes to increase the maximum hopping channel bandwidth for frequency hopping systems from 25 kHz to 500 kHz. As the maximum transmitted power limit of 1 watt will be retained for these systems, the proposed increase in channel bandwidth would in most cases decrease potential interference by spreading the transmitted power over a larger bandwidth.

DATES: Comments are due on or before October 2, 1989, and Reply Comments are due on or before October 17, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph F. McNulty, Engineering Evaluation Branch, Office of Engineering and Technology, (301) 725-1585.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making in GEN Docket No. 89-354, FCC 89-254 adopted August 9, 1989, and released August 16, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of the Notice of Proposed Rule Making

1. Spread spectrum systems are communications systems in which information is conveyed by modulation of a carrier by some conventional means, but the bandwidth is deliberately broadened by means of a spreading function over a much wider bandwidth than that which would be needed to convey the information alone. On May 9, 1985, in the First Report and Order in General Docket No. 81-413 (50 FR 25234, June 18, 1985), the Commission adopted provisions for the use of spread spectrum emissions under § 15.126 of the rules. The rules allowed direct sequence and frequency hopping spread spectrum systems to operate in the 902-928 MHz, 2400-2483.5 MHz and 5725-5850 MHz frequency bands. Since that time, the Commission has received many requests for clarification of the minimum length of the spreading code.

2. In our analysis to determine an appropriate minimum length for the spreading code of direct sequence systems, the rules governing spread spectrum operation in the Amateur Radio Service were reviewed. The Amateur Radio rules require that a minimum spreading code length of 127 bits be used. This minimum length also appears a reasonable choice as the minimum length standard for part 15 direct sequence systems. Pseudorandomly generated codes of this length will provide an adequate and uniform spreading of the transmitted energy. As such codes are fairly easy to generate, the proposed rules would not be expected to impose a new technological burden upon industry. Therefore, we are proposing a minimum pseudorandomly generated code length of 127 bits.

3. To further encourage the development of this technology, the proposed rules would allow frequency hopping sytems to operate in the 902-928 MHz, 2400-2483.5 MHz and 5725-5850 MHz bands with hopping channel bandwidths of 500 kHz. As the maximum output power for these systems will still be maintained at 1 Watt, the larger hopping channel bandwidth would in most cases reduce any potential interference from these systems since the transmitted power is being spread over a larger bandwidth. However, to accommodate nonoverlapping hopping channels of 500 kHz bandwidth in the 902-928 MHz band, the minimum number of hopping frequencies prescribed for a frequency hopping system operating in this band would be reduced from 75 to 50. To further reduce potential interference to other communications systems operating within these bands, the new rules propose that the channel occupancy time for frequency hopping systems be averaged over a 5 second interval in the 902-928 MHz band and a 7.5 second interval in the 2400-2483.5 MHz and 5725-5850 MHz bands rather than the present 30 second interval.

4. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's rules, 47 CFR 1.1231 for rules governing permissible ex parte contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities because it provides guidance and minimum standards consistent with the industry's needs. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no additional information collection requirement on the public.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419, interested parties may file comments on or before October 2, 1989, and reply comments on or before October 17, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects

47 CFR Part 2

Terminology, Radio.

47 CFR Part 15

Intentional radiators, Radio.

Rule Changes

A. Title 47 of the Code of Federal Regulations, part 2, is proposed to be amended as follows:

PART 2—[AMENDED]

1. The authority citation for part 2 would continue to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, and 307.

2. Section 2.1 would be amended by adding the following definition in alphabetical order:

§ 2.1 Terms and definitions.

* * * * *

Pseudorandom sequence. A pseudorandom sequence is a sequence of data which has some of the characteristics of a random sequence but also has some characteristics which are not random. It resembles a true random sequence in that the one bits and zero bits of the sequence are distributed randomly throughout every length, N, of the sequence and the total numbers of the one and zero bits in that length are approximately equal. It cannot be called a true random sequence however because it consists of a fixed number (or length) of coded bits which repeats itself exactly whenever that length is exceeded, and because it is generated by a fixed algorithm from some fixed initial state.

* * * * *

B. Title 47 of the Code of Federal Regulations, part 15, is proposed to be amended as follows:

PART 15—[AMENDED]

1. The authority citation for part 15 would continue to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Section 15.247 would be amended by revising paragraph (a)(1) and adding paragraph (d) to read as follows:

§ 15.247 Operation within the Bands 902-928 MHz, 2400-2483.5 MHz, and 5725-5850 MHz.

(a) * * *

(1) Frequency hopping systems shall have non-overlapping hopping channels and the 20 dB bandwidth of the hopping channel shall not exceed 500 kHz. The hopping channel carrier frequencies shall be separated by at least 25 kHz, or the 20 dB bandwidth of the hopping channel, whichever is greater. At least 50 hopping frequencies shall be used for frequency hopping systems operating in the 902-928 MHz band; at least 75 hopping frequencies shall be used for frequency hopping systems operating in the 2400-2483.5 MHz and 5725-5850 MHz bands. The average time of occupancy on any frequency shall not be greater than 100 milliseconds within a 5 second period for frequency hopping systems operating in the 902-928 MHz band, and 100 milliseconds within any 7.5 second period for frequency hopping systems operating in the 2400-2483.5 MHz and 5725-5850 MHz bands. Each hopping frequency must be selected at least once in the hopping sequence before it repeats.

* * * * *

(d) For direct sequence systems, a pseudorandom spreading code which generates at least 127 binary bits before repeating shall be used. Alternative codes to produce the spreading for direct sequence systems will be accepted provided that the spreading of the resulting emissions is at least as random as that which would be produced using a code which generates 127 bits before repeating.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-19766 Filed 8-22-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-516, RM-6123]

Television Broadcasting Services; Yreka City, CA, and Medford, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Further Notice.

SUMMARY: The Commission is issuing a Further Notice in the above-referenced proceeding to provide an opportunity to comment on a proposal by Junko and Bobby C. Shehan to substitute Channel 26 for Channel 27 at Medford, Oregon, and to modify their application accordingly. Petitioners' original proposal to substitute Channel *35 for Channel *20+ at Yreka City, California, to accommodate their intended site for Channel 27 at Medford was withdrawn. See 53 FR 45524, November 10, 1988. Coordinates for Channel 26 at Medford are 42-17-54 and 122-44-59.

Although the Commission has imposed a freeze on TV allotments, or applications therefor in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby.

DATES: Comments must be filed on or before October 6, 1989, and reply comments on or before October 23, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Junko and Bobby C. Shehan, 2032 Amsterdam Lane, Modesto, CA 95356.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-518, adopted August 1, 1989, and released August 15, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-19645 Filed 8-22-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 100

[MM Docket No. 89-355; FCC 89-256]

Policies and Requirements Regarding Potential Uses of Certain Orbital Allocations by Operators in the Direct Broadcast Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; policies and requirements.

SUMMARY: This action solicits comment on what policies to adopt and requirements to impose in connection with the possible use of Direct Broadcast Satellite (DBS) signals that cover the entire continental United States with single DBS channels at the eastern DBS orbital positions, and corresponding use of western DBS orbital positions for alternative services. This mode of transmission had not been heretofore authorized, so the possible effects, including ancillary services now possibly available, had not been

previously considered. The Commission intends to adopt requirements and policies to govern such alternative services from the western DBS orbital locations, and in so doing will consider the effects of its action on possible DBS service to Alaska and Hawaii.

DATES: Comments must be submitted on or before October 13, 1989, and reply comments on or before November 13, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Distribution Services Branch, Bruce Romano, (202) 632–9356.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, in MM Docket No. 89–355, FCC 89–258, Adopted August 2, 1989, and Released August 15, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking in MM Docket No. 89–355

1. In this notice of proposed rulemaking, the Commission is seeking comment on the requirements or policies that may be appropriate to govern the services which may be offered on DBS frequencies from the western DBS orbital locations if full DBS service is provided from the DBS eastern orbital locations via full-CONUS signals.

2. The notice is issued in conjunction with Continental Satellite Corporation, FCC 89–257, adopted August 2, 1989, released August 15, 1989, in which the Commission formalized the requirement that DBS orbit/channel allocations be made in east/west pairs, provided for DBS service via full-CONUS signals, and granted a number of conditional construction permits for DBS systems.

3. The Commission seeks comment on a variety of issues implicated by its action in Continental Satellite Corporation, including application and licensing requirements and operational restrictions for service from the western DBS orbital allocations. It also seeks comment on the effects of full-CONUS signals and alternative services from western DBS orbital allocations on DBS service to Alaska and Hawaii, and what provisions, if any, may be appropriate to affect the provision of such service.

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposals will not, if promulgated, have a significant economic impact on a substantial number of small entities, as only a small number of entities are potentially affected by the proposals, and most of those affected will not be small entities.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease the burden hours imposed on the public.

6. This is a restricted notice and comment rule making proceeding. See § 1.1229 of the Commission's rules, 47 CFR 1.1229, for rules regarding permisible *ex parte* contacts.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 13, 1989, and reply comments on or before November 13, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 100

Direct broadcast satellite service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–19767 Filed 8–22–89; 8:45 am]

BILLING CODE 6712-01-M

PANAMA CANAL COMMISSION

48 CFR Ch. 35

RIN 3207–AA10

Acquisition Regulation; Establishment of Chapter 35

AGENCY: Panama Canal Commission.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on the Panama Canal Commission proposal to establish the Panama Canal Commission Acquisition Regulation (PAR) as chapter 35 of the Federal Acquisition Regulations System.

The proposed PAR implements and supplements the Federal Acquisition Regulation (FAR), which is the primary acquisition regulation that governs the contracting process of all executive agencies or otherwise controls the relationship between such agencies and their contractors or prospective contractors. This action is necessary to provide regulatory coverage pertinent to Commission acquisitions that is not otherwise provided in the FAR.

DATE: Written comments must be submitted not later than October 23, 1989, for consideration in the formulation of a final rule.

ADDRESS: The full text of the PAR proposed rule is available upon request, by telephoning Barbara Fuller at (202) 634–6441, or writing to Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street NW., Suite 550, Washington, DC 20036–4996.

Written comments should be submitted to Richard D. Morgan, Procurement Executive, Panama Canal Commission, at the above address.

FOR FURTHER INFORMATION CONTACT: Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, telephone (202) 634–6441, or Jim Doyle, Assistant Procurement Executive, telephone in Balboa, Republic of Panama, 011–507–52–4074.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
III. Public Comments

I. Background

The Federal Acquisition Regulation (FAR) is the uniform acquisition regulation for all executive agencies of the United States Government. The FAR is codified as chapter 1 of title 48 of the Code of Federal Regulations.

Because of differing statutory authorities among Federal agencies and because as a practical matter the FAR cannot contain all the procedural details of how to implement a particular policy, the FAR authorizes agencies to issue implementing and supplementing regulations. The regulation being proposed here represents the Commission's necessary implementation and supplementation of the FAR.

Since the FAR is the uniform Government-wide acquisition regulation, reviewers of the proposed PAR are advised that lack of coverage of a particular topic in the PAR means that the Commission shall use the FAR coverage of the topic without further implementing detail.

II. Procedural Requirements

A. *Executive Order 12291.* The proposed rule is not classified as a major rule because it does not meet the criteria for a major rule established in the executive order.

B. *Regulatory Flexibility Act.* The Panama Canal Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities because the rule serves only to implement or supplement the Federal Acquisition Regulation.

C. *Paperwork Reduction Act.* The information collection and recordkeeping requirements that are imposed on the public by the proposed rule were approved by the Office of Management and Budget (OMB) and have been assigned OMB Control No. 3207–0007.

III. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments in writing with respect to the proposed PAR. Any information considered confidential must be so identified and submitted in writing, one copy only. The Commission reserves the right to determine the confidential status of the information and to treat it according to its determination. Comments should be submitted to Richard D. Morgan at the address indicated under the "**ADDRESS**" caption of this preamble. All comments received not later than the date under the "DATE" caption of the preamble will be considered prior to publication of the PAR as a final rule.

List of Subjects in 48 CFR Ch.35

Government procurement.

Authority: 40 U.S.C. 486(C); 48 CFR 1.3.

Dated: July 19, 1989.

Michael Rhode, Jr.,

Assistant to the Chairman and Secretary.

[FR Doc. 89–19775 Filed 8–22–89; 8:45 am]

BILLING CODE 3640-04-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–18; Notice 03]

Federal Motor Vehicle Safety Standards; Reflecting Surfaces

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates a rulemaking action commenced by the agency in a notice of proposed rulemaking (NPRM) that would have extended Standard No. 107, *Reflecting Surfaces,* to non-metallic materials used in the list of components already specified in the standard. In view of the lack of substantiation of a problem, the apparent insignificance of any problem that does exist, and the costliness of developing and using a more complex test procedure, NHTSA has determined that extending the standard is not appropriate. This conclusion is reinforced by resource considerations. Given the amount of resources already committed to the agency's other safety rulemaking priorities, NHTSA cannot justify the substantial additional resource commitment which would be required to extend Standard No. 107 to non-metallic components.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington DC 20590. Telephone: (202) 366–5271.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 107, *Reflecting Surfaces,* (49 CFR 571.107) specifies reflecting surface requirements and a test procedure for certain bright metal vehicle components in the driver's field of view. The components listed in the standard, and therefore subject to its requirements, are the windshield wiper arms and blades, inside windshield moldings, horn ring and the hub of the steering wheel assembly, and the inside rearview mirror frame and mounting bracket. The standard applies to passenger cars, multipurpose passenger vehicles, trucks and buses, but does not apply to items of motor vehicle equipment.

Standard No. 107's intended purpose is to prevent glare (i.e., reflected sunlight) from the surfaces of the above mentioned components in the driver's field of view from hindering the safe and normal operation of a motor vehicle. The standard does this by regulating the specular gloss, which is the amount of light reflected from a test specimen. The specular gloss of the covered components must not exceed a specified test value referred to in the standard.

On February 14, 1985, Ms. Patricia Hill petitioned the agency to amend the standard, claiming that it was "obsolete, excessively specific, and unresponsive to changes in design, styling, and materials application that have occurred" since its issuance. The petitioner sought to expand the standard to any highly reflective component within the driver's field of view, and in the alternative, to high gloss non-metallic materials used in components specified in the standard.

On January 7, 1986, the agency granted the petition and issued a notice requesting comments concerning the effect of glare from unregulated components within the driver's field of view. 51 FR 657. In this notice, the agency specifically asked for comments concerning (1) whether the standard should be expanded to include additional components in the driver's field of view other than those currently listed in S4; (2) whether the standard should be expanded to include non-metallic components; (3) whether the incorporation by reference of the ASTM Standard established in 1962 to test the specular gloss should be updated to the 1980 revised ASTM Standard; and (4) whether Standard No. 107 should be revised to add a certification and marking requirement for manufacturers of the listed components. Given the absence of information regarding the need to regulate non-metallic components, the notice also raised the larger question of whether a safety need existed to retain the performance criteria of the existing standard.

On November 13, 1987, NHTSA issued a notice of proposed rulemaking (NPRM) proposing to revise Standard No. 107 to extend the specular gloss requirements to non-metallic materials used in parts that are currently listed in the standard. 52 FR 43628. The agency tentatively concluded that (1) "the absence of accidents or consumer complaints attributed to glare from components subject to Standard No. 107 [was] an insufficient basis to conclude that a safety hazard would not exist in the absence of the standard." (2) there was "no valid reason to distinguish between the safety hazards that could be caused by highly reflective metallic components versus highly reflective non-metallic components," and (3) that "no safety need has been demonstrated that would warrant adding components to Standard No. 107 at the time" because the identified components were the principal sources of glare. Accordingly, while proposing to extend the standard to those non-metallic surfaces already specified in Standard No. 107, the agency declined to propose rescinding the standard or expanding it to additional parts within the driver's field of view. The agency also did not propose any additional labeling or certification requirements.

II. Summary of Comments

NHTSA received six comments in response to the NPRM. The commenters were all motor vehicle manufacturers:

Blue Bird, Chrysler Motors, Mazda. Volkswagen of America, General Motors, and Ford. The commenters typically restated their views made to the request for comments in Docket 85–18, Notice 1. Twelve vehicle manufacturers, a testing laboratory, and an individual submitted comments to that earlier docket.

A. Safety Need and Costs

General Motors, Chrysler, and Mazda stated that there was no safety need and no benefits to justify extending the standard to non-metallic materials used in parts currently specified in the standard. These commenters believed that the costs related to extending the standard in this manner were unnecessary and excessive. Accordingly, they concluded that extending Standard No. 107 to parts made with non-metallic materials was not warranted.

Chrysler, Mazda, and General Motors further commented that Standard No. 107 should be rescinded because there is no safety need to support its retention.

Chrysler argued that there was no safety need for retaining or extending the standard. In particular, they stated that they were "not aware of any safety problems or complaints from the reflection of logos or trademarks which have been made from nonmetallic materials." Chrysler concluded that "(t)he additional cost from amending FMVSS No. 107 as proposed has not been supported by a safety need and will not provide an equivalent safety benefit."

Mazda argued that the agency's proposal to expand the standard "establishes a poor precedent by establishing stricter compliance requirements without evidence that additional requirements are needed." Mazda further stated that "Data does exist showing that there have been zero claims of unsafe glare from surfaces within the view of the driver." (emphasis in original). As a result, Mazda claimed that unnecessary costs related to certification and compliance testing, quality assurance testing, and recordkeeping would be passed to the consumer. Mazda further argued that extending the standard to non-metallic components would be based on an "undefined subjective analysis" rather than data and thus would be contrary to the Motor Vehicle Safety Act. These factors led Mazda to conclude that the agency should "delete FMVSS 107 or, at the very least, retain it unchanged."

General Motors stated that there are not any data establishing a correlation between glare from non-metallic components and motor vehicle accidents, and without such cause and effect evidence, the standard should not be expanded. Similarly, they argued that no data exist showing glare from presently unregulated components has presented a safety hazard. General Motors concluded that while "lack of evidence demonstrates current specifications are doing their job, one cannot argue that the lack of evidence justifies an expansion of the applicability of these same requirements." General Motors disagreed with the NPRM's statement that the costs necessary to comply with the extended standard would be minimal. They argued that the agency did not to provide documentation and claimed that adopting the proposal would impose a substantial burden on them. In particular, General Motors stated that the amendment "would require General Motors to scrap a significant amount of tooling * * * and * * * redesign the affected components for approximately one-half of all General Motors vehicles [and that] [t]he costs associated with these actions would be substantial."

On the other hand, Blue Bird stated without elaboration that the proposed rule appear(s) logical and in the best interest of safety. Volkswagen stated that it would not oppose the proposed extension to non-metallic components, provided that additional components were not added to the list of regulated components. Ford generally agreed with the proposal, commenting that glare could be caused as easily by non-metallic as by metallic surfaces.

B. Adequacy of Test

Chrysler and Ford questioned whether the procedures in ASTM Standard D523–62T (June 1962), which is incorporated by reference in Standard No. 107, are objective and meet the need for motor vehicle safety. Ford noted that this standard requires use of specially prepared samples that must be flat and a minimum size. Based on the limitations in the current test, Ford commented that the standard should more closely reflect real world conditions in vehicles. Chrysler and Ford contended that the test has the following shortcomings: (1) The test is inappropriate to measure the actual gloss on non-metallic surfaces, (2) it is inappropriate to measure the gloss on components such as logos on the vehicle steering wheels that are composed of both metallic and non-metallic surfaces, (3) it is inappropriate to measure smaller components, (4) it is inappropriate to test curved or transparent components, and (5) it is inappropriate for the standard to test surrogate rather than actual parts. These alleged deficiencies in the test led Ford to state that NHTSA must provide a test that will adequately measure these types of surfaces and that extending the requirement to non-metallic components raises unique problems.

As a result of these doubts, Chrysler requested an exception for the corporate logos because they would be difficult to measure. Similarly, General Motors noted that these emblems would be the component most affected by this rule and anticipated that 50 percent of their steering wheel pads would be in non-compliance with the new standard.

III. NHTSA Determination to Terminate Rulemaking

The agency begins its discussion of the public comments by noting that decision making regarding crash avoidance rulemaking is inherently difficult. While engineering and crash analyses can clearly demonstrate that certain vehicle improvements (e.g., better braking, better lighting) will facilitate the performance of the driver's task and thereby should improve safety, at times it is virtually impossible to isolate and quantify the individual factors leading to crashes and arrive at precise and certain conclusions about the quantified benefits that will accrue from those improvements. Accordingly, the existence or nonexistence of data or analyses linking vehicle components and performance to crash causation is not necessarily determinative of the outcome of decisions concerning crash avoidance rulemaking. Given NHTSA's duty to act in the area of crash avoidance notwithstanding an inherent measure of imprecision and uncertainty, the agency has developed and issued crash avoidance standards while attempting within its capabilities to quantify the benefits of the standards and thus limit the uncertainty. The agency emphasizes that those rulemakings depend in part on policy judgment regarding the significance of the safety problem and other factors such as the degree of difficulty in developing performance requirements and compliance test procedures.

In this rulemaking, the agency is confronted with an alleged problem which is unconfirmed by either crash causation data and analysis or consumer complaints. Further, any problem that might exist would appear to be relatively insignificant compared to the crash avoidance problems presented by other vehicle systems and components such as brake systems, lights and tires.

The agency is also confronted with a variety of criticisms regarding the test procedure. NHTSA recognizes that the sample currently used in compliance test procedure is not fully representative of the size and shape of some of the components regulated by the standard. However, the agency regards the test as an appropriate balance between representativeness on the one hand and cost and ease of testing on the other. By specifying what might be characterized as "worst case" testing, the standard seeks to ensure that all covered components, regardless of their individual peculiarities in size and/or shape, comply with the limits on glare. However, extending the standard to non-metallic components, which are apparently often smaller and more frequently curved than metallic components, might make it appropriate for the agency to develop a potentially much more complex test procedure that provides for testing of samples smaller and more curved than the currently specified samples. The development of such a test would be a costly and time consuming task.

In view of the lack of substantiation of the problem, the apparent insignificance of the problem, and the costliness of developing and using a more complex test procedure, NHTSA has determined that extending the standard is not appropriate and is therefore terminating this rulemaking. This conclusion is reinforced by resource considerations Given the amount of resources already committed to the agency's other safety rulemaking priorities, NHTSA cannot justify the substantial additional resource commitment which would be required to extend Standard No. 107 to non-metallic components.

IV. Miscellaneous Issues

Commenters raised additional issues such as harmonization, leadtime, consumer preferences, the standards's applicability to original parts but not aftermarket parts, and consumer preferences. NHTSA notes that the termination of this rulemaking renders these issues moot.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

Issued on August 18, 1989.

Jeffrey R. Miller,
Acting Administrator.

[FR Doc. 89–19851 Filed 8–22–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Foreign Proposals To Amend Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed amendments to appendices.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animals and plants. Species for which trade is controlled are listed in Appendices I, II, and III to CITES. Any nation that is a Party to CITES may propose amendments to Appendix I or II for consideration by the other Parties.

This notice announces proposals submitted by Parties other than the United States and the Service's tentative negotiating positions, and invites information and comments on them in order to develop negotiating positions for the United States delegation. The proposals will be considered at the seventh regular meeting of the Conference of the Parties to be held in Lausanne, Switzerland from October 9–20, 1989.

DATE: The U.S. Fish and Wildlife Service (Service) will consider all comments received by September 22, 1989 in developing final negotiating positions. The Service plans to publish a notice of its decisions on the positions prior to the meeting of the Parties.

ADDRESSES: Please send correspondence concerning this notice to the Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Department of the Interior; Washington, DC 20240. Background materials will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at the address given above, or telephone (703) 358–1708.

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration of meetings of the Conference of the Parties. The text of any proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses and the Secretariat's own findings and recommendations to all Parties no later than 30 days before the meeting. Amendments are adopted by a two-thirds majority of the Parties present and voting.

Information Sought

This notice announces proposals submitted by Parties other than the United States for consideration at the forthcoming meeting of the Parties, and sets forth tentative negotiating positions of the United States delegation on them. The Service solicits comments on its tentative negotiating positions and on the biological status of these species, on the amount and type of trade in specimens of these species, and on the impact of trade on the populations, especially on the survival of the species. Comments that relate this information to the criteria for adding or removing species from the Appendices would be especially helpful.

It is neither practical nor in the best interest of the United States to establish inflexible negotiating positions on proposals in advance of the meeting. The Service based the present tentative positions mainly on a review of information presented by proponents in terms of criteria adopted at previous meetings of the Conference of the Parties of CITES. Some of the proposals have had to be translated into English from Spanish or French (also official languages under CITES). Supporting statements for proposals by Japan and

Indonesia have not been submitted, although brief statements proposing certain species for the appendices have been received by the CITES Secretariat from those countries. How the Secretariat and Parties will deal with these proposals is unknown. Except for one or two species for which information comparable to the supporting statement is available the tentative negotiating position is to oppose the proposed amendment, and in fact the final position may be to oppose all proposals without supporting statements unless the best available scientific information supports the proposal.

Because information provided in many of the proposals and otherwise currently available to the Service is too incomplete to allow clear judgments about their merits, several of the tentative negotiating positions presented are likely to be revised as further biological and trade data are obtained. Final guidance for the delegation is to be based on the best available biological and trade information, including comments received in response to this notice.

Proposals

In accordance with the provisions of Article XV, paragraph 1(a), of the Convention; Austria, Belgium, Botswana, China, Denmark, Ethiopia, the Federal Republic of Germany, Gambia, Guatemala, Hungary, India, Indonesia, Israel, Japan, Kenya, Madagascar, Malawi, Mozambique, Netherlands, Paraguay, Philippines, Portugal, Somalia, Sweden, Switzerland, Tanzania, Thailand, United Kingdom, Uruguay, and Zambia, all Parties to the Convention, have communicated to the Secretariat the following proposals for amendment of Appendices I and II of the Convention. These proposals will be considered at the seventh meeting of the Conference of the Parties to the Convention, to be held in Lausanne, Switzerland, from October 9–20, 1989.

A total of 75 foreign proposals on both plant and animal species were submitted of which 14 were submitted by Switzerland based on a 10-year review of the listings that was adopted at the 1981 Conference of the Parties in New Delhi, India. The proposals by Switzerland recommend the removal of those species from the Appendices that have never been reported in trade and which the chairman of the 10-year review committee believed should be considered for deletion from the Appendices, unless the species should be included in Appendix II because they are very similar in appearance to related taxa that do appear in trade.

We point out, however, that the lack of reported trade for some species proposed for removal from the Appendices may be due to (1) their rarity, (2) the possibility that their listing in the Appendices has inhibited trade, or (3) the lack of proper documentation or reporting of trade. Consequently, the Service does not believe lack of appearance in trade is by itself a sufficient reason to warrant the removal of a taxon from the Appendices. In establishing the tentative negotiating position of these 10-year review, delisting proposals, the Service considered the degree of vulnerability of the species and the possibility of its being in trade.

Proposals by Parties other than the United States are listed in the following table. Tentative negotiating positions and the basis for them also are indicated. These positions were taken largely on the basis of the information contained in the proposal. If inadequate population and/or trade information was provided, the Service's position was usually opposed to the proposal. However, the Service was slightly more accepting of limited data and of data from other sources when considering uplisting proposals. The complete text of each proposal will be available for public inspection at the Service's Office of Scientific Authority (see address above).

Species	Proposed amendment	Proponent	Tentative U.S. position
MAMMALS			
Order Chiroptera			
Peteropus insularis (Truk flying fox)	Transfer from II to I	Sweden	Support (6,7).
Peteropus mariannus (Mariana flying fox)	do	do	Do.
Peteropus molossinus (Ponape flying fox)	do	do	Do.
Peteropus phaeocephalus (Mortlock flying fox)	do	do	Do.
Peteropus pilosus (Large Palau flying fox)	do	do	Do.
Peteropus samoensis (Samoan flying fox)	do	do	Do.
Peteropus tokudae (Little Mariana flying fox)	do	do	Oppose (8).
Peteropus tonganus (Insular flying fox)	do	do	Oppose (9).
Order Carnivora			
Melursus ursinus (Sloth bear)	Add to I	Federal Republic of Germany, India	Support (7).
Ursus americanus (Black bear)	Add to II	Japan	Oppose (1,14).
Ursus arctos (Brown bear)	Retain populations of Afghanistan, India, Mexico, Nepal, and Pakistan in I; include all other populations in II.	China, Denmark	Oppose (15).
Ursus arctos spp. (Brown bear)	Inclusion in II	Japan	Oppose (1,14).
Aonyx cinerea (Asian small-clawed otter)	Transfer from II to I	India	Support (6,7).
Lutra perspicillata (Smooth-coated otter)	Transfer from II to I	India	Do.
Felis pardalis (Ocelot)	Transfer from II to I	Federal Republic of Germany	Do.
Felis pardinus (Iberian lynx)	Transfer from II to I	Federal Republic of Germany	Do.
Felis tigrina (Little spotted cat)	do	Portugal, Federal Republic of Germany.	Do.
Felis weidii (Margay)	do	do	Do.
Order Proboscidea			
Loxodonta africana (African elephant)	do	Austria, Gambia, Hungary, Kenya, Somalia, Tanzania.	Do.
Order Artiodactyla			
Cephalophus jentinki (Jentink's duiker)	Transfer from II to I	Federal Republic of Germany	Oppose (9).
BIRDS			
Order Rheiformes			
Rhea americana (Rhea)	Add to II	Japan	Support (1,10).

Species	Proposed amendment	Proponent	Tentative U.S. position
Order Tinamiformes			
Rhynchotus rufescens (3 ssp.) (Rufous tinamous).	Remove from II	Uruguay	Support (2,3).
Order Ciconiiformes			
Ciconia ciconia (white stork)	Add to II	Federal Republic of Germany	Support (10).
Order Galliformes			
Francolinus ochropectus (Djibouti francolin)	Remove from II	Switzerland	Support (3,12).
Francolinus swierstrai (Swierstra's francolin)	do	do	Do.
Order Psittaciformes			
Agapornis cana (Grey-headed lovebird)	Remove from II (if accepted Madagascar has indicated that they would request inclusion on Appendix III.	Madagascar	Oppose (2,9).
Ara maracana (Illiger's macaw)	Transfer from II to I	Paraguay	Support (2,7).
Amazona tucumana (Tucuman Amazon)	do	Denmark	Support (6,16).
Cacatua moluccensis (Moluccan cockatoo)	do	Switzerland	Support (6,7).
Order Coraciiformes			
Buceros bicornis (Great pied hornbill)	Remove from I	Switzerland	Support (3,12).
Buceros spp. (Hornbills)	Add to II	do	Support (10).
Buceros rhinoceros (Rhinoceros hornbill)	do	Belgium	Support (10).
Order Passeriformes			
Pitta gurneyi (Gurney's pitta)	Add to I	Thailand	Support (7).
Pitta guajana (Banded pitta)	Add to II	do	Oppose (9).
Pseudochelion sirintarae (White-eyed river martin).	Add to I	do	Oppose (12,17).
REPTILES			
Order Crocodylia			
Crocodylus niloticus (Nile crocodile)	Transfer Botswana population from I to II, pursuant to resolution Conf. 3.15 on ranching.	Botswana	Support (4).
Crocodylus niloticus (Nile crocodile)	Transfer of the Ethiopian population from I to II, pursuant to resolution Conf. 5.21 subject to an annual Export quota of 2845.	Ethiopia	Oppose (5,9).
Crocodylus niloticus (Nile crocodile)	Transfer Kenya's population from I to II, pursuant to resolution Conf. 3.15 on ranching.	Kenya	Oppose (1,14).
Crocodylus niloticus (Nile crocodile)	Transfer of Madagascar's population from I to II, pursuant to resolution Conf. 3.15 on ranching.	Madagascar	Oppose (18).
Crocodylus niloticus (Nile crocodile)	Transfer of the Malawian population from I to II, pursuant to resolution Conf. 3.15 on ranching.	Malawi	Support (4).
Crocodylus niloticus (Nile crocodile)	Transfer of Mozambique's population from I to II, pursuant to resolution Conf. 3.15 on ranching, subject to an annual export quota of 1,000.	Mozambique	Support (4,22).
Crocodylus niloticus (Nile crocodile)	Transfer of the Somalian population from I to II subject to an annual export quota of 2000 specimens.	Somalia	Oppose (5,9).
Crocodylus niloticus (Nile crocodile)	Maintenance of the Tanzanian population in II subject to an export quota of 3500 specimens.	Tanzania	Support (5,7,22).
Crocodylus niloticus (Nile crocodile)	Transfer of Zambian population from I to II pursuant to resolution Conf. 3.15 on ranching.	Zambia	Support (4).
Crocodylus porosus (Saltwater crocodile)	Proposal submitted pursuant to resolution Conf. 5.21 with export quota of 5000 specimens.	Indonesia	Oppose (1,14).
Order Testudinata			
Chelonia mydas (Green sea turtle)	Transfer from I to II; Proposal submitted pursuant to resolution Conf. 5.21; export quota of 3,000 specimens. Proposal also submitted pursuant to resolution Conf. 3.15 on ranching.	do	Oppose (1,14).
Eretmochelys imbricata (Hawksbill sea turtle)	Transfer from I to II; Proposal submitted pursuant to resolution Conf. 5.21; export quota of 3,000 specimens. Proposal also submitted pursuant to resolution Conf. 3.15 on ranching.	do	Oppose (1,14).
Order Squamata			
Dracaena paraguayensis (Caiman lizard)	Add to II	Paraguay	Support (2,7).
Naja Naja (Cobra)	do	India	Support (7).
Ophiophagus hannah (King cobra)	do	do	Do.
Ptyas mucosus (Oriental ratsnake)	do	do	Do.
Shinisaurus crocodilurus (Chinese crocodile lizard).	do	Federal Republic of Germany	Do.
Varanus bengalensis (Bengal Monitor)	Transfer from I to II	Japan	Oppose (1,14).
Varanus grayi (Gray's monitor)	Transfer from II to I	Federal Republic of Germany	Support (11).
Varanus griseus (Desert monitor)	Transfer from I to II	Japan	Oppose (1,14).
FISHES (PISCES)			
Cynolebias spp. (Pearlfishes)	Remove from II	Switzerland	Support (3,12).
Latimeria chalumnae (Coelacanth)	Transfer from II to I	Federal Republic of Germany	Support (7,11).
Scleropages formosus (Asian bony-tongue)	Transfer from I to II pursuant to resolution Conf. 5.21, subject to an annual export quota of 2,500 specimens.	Indonesia	Oppose (1,14).
Corals (CNIDARIA)			
Athecata spp.	Add to II	Israel, Philippines	Oppose (19).
Coenothecalia spp.	do	do	Do.
Scleractinia spp.	do	do	Do.
Stolonifera spp.	do	do	Do.

Species	Proposed amendment	Proponent	Tentative U.S. position
PLANTS			
Family Amaryllidaceae:			
Sternbergia spp. (sternbergias)	Add to II	United Kingdom	Support (7).
Family Apocynaceae:			
Rauvolfia serpentina (snake-root devil-pepper)	Add to II	India	Support (7).
Family Aristolochiaceae:			
Aristolochia indica (Indian birthwort)	Add to II	do	Support (7).
Family Berberidaceae:			
Podophyllum hexandrum (Himalayan mayapple)	Add to I	do	Oppose (9,20).
Family Droseraceae:			
Drosera burmannii (Burmann's sundew)	Add to II	do	Oppose (9).
D. indica (Indian sundew)	do	do	Oppose (9).
D. peltata (shield sundew)	do	do	Oppose (9).
Family Fagaceae:			
Quercus copeyensis (copey oak)	Remove from II	Switzerland	Support (3).
Family Gentianaceae:			
Gentiana kurroo (Indian gentian)	Add to II	India	Support (7).
Family Humiriaceae:			
Vantanea barbourii (caracolillo)	Remove from I	Switzerland	Support (3).
Family Juglandaceae:			
Oreomunnea (*Engelhardia*) *pterocarpa* (gavil'n blanco).	do	do	Oppose (3,21).
Family Leguminosae (Fabaceae):			
Cynometra hemitomophylla (guapinol negro)	do	do	Support (3).
Platymiscium pleiostachyum (cristobal)	do	do	Oppose (3,21).
Tachigali versicolor (cañ fistula)	do	do	Oppose (3,21).
Family Liliaceae:			
Gloriosa superba (Malabar gloriosa-lily)	Add to II	India	Oppose (9).
Family Moraceae:			
Batocarpus costaricensis (ojoche macho)	Remove from I	Switzerland	Support (3).
Family Orchidaceae:			
Eriopsis biloba (Guatemalan pop.) (bilobed eriopsis).	Transfer from II to I	Guatemala	Support (7).
Lemboglossum (-*Odontoglossum*) *majale* (May lemboglossum).	do	do	Do.
L. uro-skinneri (Skinner's lemboglossum)	do	do	Do.
Paphiopedilum spp. (Asian tropical lady-slipper orchids).	do	Netherlands	Support (7,13).
Phragmipedium spp. (New World tropical lady-slipper orchids).	do	Federal Republic of Germany	Support (7).
Rossioglossum (-*Odontoglossum*) *williamsianum* (Williams rossioglossum).	do	Guatemala	Do.
Family Podocarpaceae:			
Podocarpus costalis (costal podocarp)	Remove from I	Switzerland	Support (3).
Family Podophyllaceae: see Family Berberidaceae			
Family Ranunculaceae:			
Aconitum deinorrhizum (then-rooted monkshood).	Add to II	India	Support (7).
Family Sterculiaceae:			
Pterygota (-*Basiloxylon*) *excelsa* (castano)	Remove from II	Switzerland	Support (3).
Family Valerianaceae:			
Nardostachys grandiflora (Indian nard)	Add to II	India	Support (7).

The basis for the tentative U.S. position on each proposal.

(1) While this amendment to the appendices has been proposed, the CITES Secretariat has not received any supporting documentation, as of July 25, 1989.

(2) The original proposal is in French or Spanish. The Service will provide an English translation upon request.

(3) Submitted as part of the 10-year review of listings for downlisting or removal from the Appendices. The Service either supports the proposal believing the information presented to be an accurate interpretation of the likely effect of trade or opposes the proposal because the lack of reported trade for some species proposed for removal may be due to their rarity or lack of proper documentation or reporting of trade.

(4) Transfer of certain Nile Crocodile populations from Appendix I to II pursuant to Resolution Conf. 3.15 on Ranching; some subject to annual export quotas as indicated. While the Service opposes the ranching proposals in general, the Service would support continuation of the downlisting from Appendix I to Appendix II with country by country export quotas, probably under an extension of the provisions of Conf. 5.21. The Service has several concerns about the ranching proposals. Most have inadequate biological information to support an actual downlisting, and some do not have sufficient information to justify adoption of the ranching proposal. Further, a patchwork pattern of countries with unrestricted export (accepted with ranching proposal) or with restricted trade with quotas or without authorized commercial trade might complicate implementation.

(5) Transfer of certain Nile Crocodile and sea turtle populations from Appendix I to II pursuant to Resolution Conf. 5.21, subject to annual export quotas.

(6) The intention of this proposal is to transfer the taxon from Appendix II to I since continued trade may threaten the species with possible extinction.

(7) Listing of the taxon, as proposed, appears to be justified by information in the proposal or currently available to the Service.

(8) While this species is probably extinct, any trade is likely to be internal to the United States and its separate listing on Appendix I does not seem warranted.

(9) The population status (i.e., degree of threat of extinction of the entire species) does not appear to warrant listing, downlisting, or delisting as proposed.

(10) Listing of this species or taxon appears justified because of the similarity of appearance of this species to others that are subject to trade.

(11) The Service would support listing this taxon in Appendix I on the basis of resolution Conf. 2.19 (i.e., due to the taxon's rarity any trade in the species would be detrimental) and trade has been documented and may increase.

(12) Available information suggests that there is little likelihood that there has been or will be any significant international trade in this species.

(13) More than half of the species in the genus are believed to be threatened with extinction. Resolution Conf. 6.19 provides for the artificially propagated hybrids to be treated as if on Appendix II. As a general matter, artificially propagated specimens of Appendix I species can be exported from the United States under a renewable export permit valid for multiple shipments during 6 months.

(14) The Service opposes this proposal until supporting documentation and additional biological and trade data become available.

(15) The listing of the taxon, as proposed, generally appears to be justified by the information in the proposal or currently available to the Service, but the proposal also transfers the Chinese and Russian populations of *Ursus arctos pruinosus* and *U. a. isabellinus* from Appendix I to II which does not appear to be warranted.

(16) Population information is limited although the information presented in the proposal suggests a small and declining population within its restricted range. Furthermore, trade appears sufficiently large to be affecting the survival of the species.

(17) One might presume that this species is sufficiently rare to be included in Appendix I under provisions of Conf. 2.19. However, the population information presented in the proposal is not adequate to make this determination.

(18) Population and internal trade information needs to be clarified, but information available suggests that trade should be curtailed.

(19) Biological and trade information presented on individual genera is not sufficient to meet the Berne criteria. However, we recognize that enough information may become available to support the addition of some genera to Appendix II.

(20) Biological and trade information presented do not appear to support listing in Appendix I. However, enough information may become available to support listing the species in Appendix II.

(21) Submitted as part of the 10-year review of the listing for removal from the Appendices because the species is believed to be more common and/or no trade has been documented. However, the species is sufficiently rare and/or the possibility of international trade sufficiently likely that our tentative position is to oppose complete removal from the Appendices, but to accept a downlisting of the species to Appendix II.

(22) Proposed quota consistent with quota adopted at COP6.

Future Actions

The next regular meeting of the Parties is scheduled to be held in Lausanne, Switzerland from October 9–20, 1989. The Service will develop final negotiating positions and announce these decisions prior to the meeting of the Parties. These negotiating positions will be based on the best available biological and trade information, taking into account comments received in response to this notice. If further information is presented at the meeting in Switzerland, the U.S. delegation will take it into account in determining whether these positions remain appropriate.

This notice was prepared by Dr. Richard M. Mitchell, Staff Zoologist, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Dated: August 15, 1989.

John F. Turner,

Director.

[FR Doc. 89–19847 Filed 8–22–89; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 54, No. 162

Wednesday, August 23, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Supplement to the White Stallion Draft Environmental Impact Statement; Bitterroot National Forest, Ravalli County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare a supplement to the draft environmental impact statement.

SUMMARY: The Forest Service will prepare a Supplement to the White Stallion Draft Environmental Impact Statement (DEIS) that was available to the public on April 21, 1989. The supplement is being prepared because of new information regarding the purchase of adjacent private lands and the harvest of commercial timber from these lands in the next 5 years. The Draft Environmental Impact Statement disclosed effects of removing timber from the adjacent private lands at a lower amount and over a longer time period. The supplement will consider alternatives with the effects of an accelerated rate of harvest from private land as additions to the original range of alternatives in the DEIS.

DATE: Public comments concerning the supplement and the scope of the analysis should be submitted by September 15, 1989.

ADDRESS: Send written comments to District Ranger, Darby Ranger District, P.O. Box 266, Darby, MT 59829.

FOR FURTHER INFORMATION CONTACT: Questions about the supplement to the White Stallion DEIS should be directed to Tim Trotter, Darby Ranger District, Phone: (406) 821–3913.

SUPPLEMENTARY INFORMATION: The supplement will address the environmental effects of accelerated removal of timber and associated access road construction on adjacent private lands to the proposed action in the White Stallion DEIS. The private lands are located within the area of the White Stallion DEIS in sections. 1, 3 and 11, T. 3 N., R. 19 W. Approximately 800 acres of this private land is within the Sleeping Child Roadless Area (X1074).

Scoping and identification of the environmental issues for the White Stallion proposed action were disclosed in the DEIS.

One of the issues identified was what will be the effects from planned timber cutting on private lands in the area? The supplement will address this issue in light of the new information.

Public participation is welcome during the analysis for the supplement. The Forest Service is seeking information and comments from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the new information.

The DEIS Supplement is expected to be available to the public in mid-October 1989. The comment period on the supplement to the White Stallion DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. To be most helpful, comments should be focused on the supplement. Comments received previously on the original DEIS will receive responses in the Final EIS, as will the comments to the DEIS Supplement.

The responsible official will consider the comments and responses to the DEIS and Supplement; environmental consequences discussed in the FEIS; and applicable laws, regulations, and policies in making a decision regarding the White Stallion proposal.

The responsible official will document the decision and reasons for the decision in the Record of Decision. The decision will be subject to review under applicable Forest Service Regulations.

Dated: August 5, 1989.

Bertha C. Gillam,

Forest Supervisor, Bitterroot National Forest.

[FR Doc. 89–19806 Filed 8–22–89; 8:45 am]

BILLING CODE 3410-11-M

Vegetation Management Activities, Intermountain Region

AGENCY: Forest Service, USDA.

ACTION: Cancellation of Notice of Intent to prepare Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, has withdrawn its intent to prepare an Environmental Impact Statement (EIS) for a programmatic vegetation program in the Intermountain Region. As a result of scoping (public participation in developing issues) it was determined that the issues and concerns would be more appropriately considered and addressed in the NEPA Process at the site-specific analysis for each individual Forest vegetation project. The Notice of Intent, published in the **Federal Register** of August 4, 1988, is hereby rescinded (53 FR 293549).

The Region will continue to involve the public in the development of a Human Health Risk Assessment for selected chemicals (herbicides) suitable for vegetation management. The Risk Assessment will provide sufficient analysis to evaluate the adverse impacts of the covered chemicals on the human environment. This analysis will be used by the responsible official to make a reasoned choice among alternatives considering herbicides and other vegetative treatments at the site specific project level. There will be no programmatic decisions other than those already made at the Forest Plan level

FOR FURTHER INFORMATION CONTACT: Warren Ririe, Vegetation Management Team Leader, U.S. Forest Service, 324 25th Street, Ogden, Utah 84401; telephone (801) 625–5255 or 8–586–5255.

Dated: August 9, 1989.

Clair C. Beasley,

Deputy Regional Forester.

[FR Doc. 89–19807 Filed 8–22–89; 8:45 am]

BILLING CODE 3410-11-M

Snowbasin Land Exchange; Wasatch-Cache National Forest, Weber County, Utah; Intent To Prepare an Environmental Impact Statement; Correction

AGENCY: Forest Service, USDA.

ACTION: Final environmental impact statement scheduled completion date; correction.

SUMMARY: This notice corrects the date previously published in the **Federal Register** July 21, 1989 (54 FR 30583) for scheduled completion of the Final Environmental Impact Statement. On page 30583, in the third column on the last line the completion date should read 1989 instead of 1990.

Dated: August 11, 1989.

Dale N. Bosworth,

Forest Supervisor.

[FR Doc. 89–19830 Filed 8–22–89; 8:45 am]

BILLING CODE 3410-11-M

Intermountain Region; Fee Schedule for Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Notice of fee schedule for communication uses.

SUMMARY: The Regional Forester, Intermountain Region, USDA Forest Service, is adopting a new fee schedule for communication site uses for National Forest System Lands which includes National Forest System lands in the States of Nevada, Utah, and portions of California, Colorado, Idaho, and Wyoming. The intent of the new fee schedule is to assess fees which are based on the Fair Market Value of the rights and privileges authorized, as mandated by the Federal Land Policy and Management Act, October 26, 1976.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Frank Elder or Lynn Bidlack, Recreation and Lands Staff, Federal Building, 324 25th Street, Ogden, UT 84401, (801) 625–5150.

SUPPLEMENTARY INFORMATION: On July 28, 1988, the Regional Forester for the Intermountain Region published a notice of a proposed fee schedule for communications uses (53 FR No. 145, pages 28615 to 28619). The comment period for this notice was 60 days. This comment period was extended for an additional 60 days (53 FR 38759 dated October 3, 1988).

The proposed fee schedule and policy were based on categories of use with individual fees to be determined by population, number of licensed transmitter frequencies, or the nature of the use. The proposal also called for annual adjustments of the scheduled fees based upon the Consumer Price Index—Urban (CPI–U) and provided for a phase-in of fee increases. The proposal was published simultaneously with the proposals of five other Regions, who had coordinated their proposals to achieve Service-wide consistency where possible.

Analysis of Public Comment

The Intermountain Region received 110 written responses to the proposal. The number and percentage of comments by respondents were:

Use categories	No. of comments	Percent
Amateur radio	7	6
Broadcast translator	14	13
Mobile radio; commercial communications	25	23
Mobile radio; internal communications	13	12
Common carrier microwave relay	4	4
Industrial microwave	10	9
Natural resource and environmental monitoring	3	2
Radio broadcast	12	11
Television broadcast	18	16
Other	4	4
Total	110	100

All of the comments received have been reviewed and given consideration in reaching the final decision. A summary of the major comments received and the Forest Service response by topic follows. It should be noted that the Intermountain Region has coordinated its review and response to the comments with the other Regions in order to achieve as much consistency Service-wide as possible.

The Forest Service has made adjustments in some of the communications site categories after review of comments and additional information which was submitted by the respondents. The revised fee schedule is responsive to industry and other concerns and is fully supported by the market data.

1. *Fee levels.* A number of respondents felt that the proposed fees are extreme and unreasonable. Many individuals and small businesses indicated that the proposed fees would be too great a burden for them and that they would have to abandon their sites if the schedule is implemented. Some suggested a re-evaluation and reduction in the proposed fees. Others recommended lower fee increases and a longer phase-in.

A few respondents said that the proposed fee rates were too low and thus amount to public subsidies. Several suggested alternative methods for determining fees, some of which would return many times the proposed rates to the Federal Government. Among alternatives proposed were: to adopt a fee policy based on site rental income (assess a percentage of gross rental income derived from the site); to consider site value in light of the alternative cost of constructing competitive towers on private lands; to base fee as a percentage of the user's investment in improvements and equipment; to use per capita income multipliers to adjust for differences between geographical areas; and to use private management companies, with no vested interest in the site, to establish individual fees.

After analysis of these comments, the Intermountain Region has made the following changes in the proposed communications use fee schedule:

a. To be consistent with other Regions, the fees for cable and subscription television will be based upon numbers of subscribers. In most situations this method reduces the fees charged to companies whose service is to small populations and offers more stratification of fees for the mid-size companies. In the proposed schedule, fees were based on the census population within the franchise or service area. The change allows the fee to be based on actual use.

b. The same fee structure is adopted for Mobile Radio: Commercial Communications and Mobile Radio: Internal Communications. There will be a $700 fee for the first transmitting frequency plus a $200 fee for each additional transmitting frequency. This will result in a reduction of fees for smaller operations, but will result in a slight increase for some large operations.

There were few responses with regard to the proposed fees in the following use categories; Amateur Radio, Cellular Telephone, Common Carrier Microwave Relay, Industrial Microwave, Personal/Private "Receive Only", Natural Resource and Environmental Monitoring, and Passive Reflector. The fees as proposed in the above categories will remain the same.

2. *Market Survey.* A number of respondents felt that the market survey used to develop the proposed fee schedule was inadequate. Some indicated that the market survey and resulting fees did not give credit for enhancing public lands, used ability-to-pay rather than fair market value to determine the fees, and others felt that the survey should have included all private land leases including donated (no charge) sites, used insufficient market data, and did not correlate fees with investment values and site improvement costs. Less than 7 percent of the respondents provided data supporting their position.

The Intermountain Region coordinated with the other Forest Service Regions in reviewing and re-analyzing the market data utilized in compiling the proposed fees. No major discrepancies were found in the market data compiled by the Forest Service.

The data was found to be adequate for fee determination.

For the purposes of determining fair market value, we examined available market leases to see if the expense of developing facilities, access, and power was a factor influencing private lease rates. We found no useable correlation. The private sector leases used to establish fair market value fees do not clearly discount the site rental because of the development cost incurred by the lessee.

3. *Fee Exemption/Waivers.* Under the proposed policy, exemptions from fees and fee waivers would remain a decision of the authorized officer (36 CFR 251.57(b)). A number of respondents objected to the Forest Service policy of charging fees for communications uses on National Forest System land. Others felt that fees should be waived for any use that provides a public benefit, whether that use is of a commercial nature or not. Most respondents on this issue found the current fee waiver policy unclear, vague, and subject to inconsistent application. They requested a clear, consistent statement of a National fee waiver policy for specific categories of use. Some respondents felt that government and public agencies, as well as certain other users (utilities, public broadcasters etc.) should be exempt from fees as a matter of national policy.

We agree that there should be national fee waivers established for specific categories of use or type of holder when the entire class of use or holder meets the rental fee waiver criteria. Therefore, national direction will be issued concerning fee waivers for specific categories of use and type of holder. The direction, which follows, is intended to clarify the intent of the waiver policy; it does not contain any substantive changes in current policy.

a. *Fee exemption.* Exemptions are determinations that certain classes of users will not be required to pay an annual rental fee. Most such exemptions are statutory, i.e., they derive from specific fee exemption language in Public Law, and are not subject to the discretion of the authorized officer. However, holders may be assessed an amount sufficient to reimburse the cost of administering the use. Holders exempt from fees include:

—Federal agencies;

—Facilities established by Rural Electrification Administration financing;

—Public telecommunication systems identified and licensed as such by the Federal Communications Commission (FCC) for educational, cultural, instructional, and institutional purposes and as described in the Communications Act of 1934, and the Federal Communications Regulations granting waiver of license fees; i.e., non-commercial educational broadcast stations as defined in part 15 CFR 2301–Public Telecommunications Facilities Program, Subpart A–Definitions, Program Purposes, and Special consideration.

b. *Fee Waiver.* Waivers are discounts or reductions from payment of the full annual rental fee, by provision of law and regulation, and at the discretion of the authorized officer. The Forest officer delegated the authority to issue the permit and establish the fee is also the officer authorized to determine if a holder qualifies for a fee waiver. Fee waivers may be full or partial, and must be equitable and in the public interest. (36 CFR 251.57(b)).

(1) *State and Local Government.* The authorized officer shall waive fees in full for telecommunications facilities and systems owned and operated by a State or local government agency or instrumentality thereof, when:

—The state or local government agencies or instrumentalities thereof do not charge the Forest Service for similar services;

—The use is not installed, maintained, or otherwise financed by means of customer charges, which include but are not limited to subscription fees, membership fees or dues, or special tax assessments, and;

The use furthers the public health, safety or welfare, or is otherwise to the benefit of the general public or the programs of the Secretary of Agriculture.

(2) *Other Holders.* Waivers for other holders will be considered by the authorized officer on a case-by-case basis. If granted, fees for other holders will not be waived below $75, which represents the cost to the Forest Service for administration of the authorization. This rate is, however, subject to revision on the basis of change in administrative costs.

There were also a number of responses, as well as comments sent to the Chief of the Forest Service on the proposals by all Regions, which requested a review of the Forest Service's rental fee waiver policy for radio broadcast (commercial), television broadcast (commercial), and associated broadcast translators. The respondents felt that a partial or full waiver should be granted based on the public service requirements of the Communications Act of 1934 and the provisions of the Federal Land Policy and Management Act of 1976.

As a result of these requests, the Forest Service is reviewing the National rental fee waiver policy for these categories of use. As a part of the review, the Forest Service is working with the Radio and Television Broadcasters to review the type and amount of public service provided.

Rental fees for these categories of use will remain at current levels until the review is completed and a final fee is established in the schedule. We anticipate fees for these uses will be established prior to January 1, 1990. All authorization holders and others expressing an interest in the fee schedules will be notified when the final fees are established.

4. *Categories of Use.* In the proposal, fees were based on categories of communications uses of National Forest System land. Each category was defined in the fee schedule to assure proper classification.

A number of respondents, including those for other Region's felt that the categories of uses were too narrowly defined. Various respondents urged separation of uses such as: (1) Specialized mobile radios from other uses; (2) commercial communication systems used for profit from those used for public services, and; (3) Cable TV enterprises serving major population centers from those serving sparsely populated rural areas.

After considering all comments, the categories of "Commercial Communicator" and "Internal Two-Way Radio Repeater" were changed to "Mobile Radio: Commercial Communications" and "Mobile Radio: Internal Communications. In addition, definitions for these categories were modified for clarification at the request of industry respondents. The other categories are adopted as proposed.

5. *Definitions.* Several respondents found certain definitions and terms inadequate or confusing. Industry suggested definitions and terms that more clearly define commercial communications and internal radio communication uses.

In coordination with other Regions and the Washington Office, the Intermountain Region has adopted terminology defining the various types of communication uses.

Most of the proposed definitions for the categories of use remain unchanged or slightly modified. Modifications were in response to reviewers' comments or to improve clarity.

Slight changes were made in the following definitions (changes to improve clarity not noted):

—A definition for Natural Resource and Environmental Monitoring is provided as follows: "This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations."

—All references to appurtenant uses are eliminated from the definition of Radio and Television Broadcast. Appurtenant uses are discussed in the Forest Service Manual Supplement.

Major changes were made in the definitions of Commercial Communicator and Internal Two-way Radio. We agree with the reviewers who commented that the original definitions did not adequately describe the two categories of uses. In the final policy, the terms are defined as follows:

Mobile Radio: Commercial Communications. This includes communication equipment which is used to provide communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMRs), private carrier two-day radio systems, and private carrier paging systems (PCPs). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

Mobile Radio: Internal Communications. A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

5. *Phase-in of Fee Increases.* The proposed fee schedule provided for a 3- or 5-year phased-in of fees for current holders. It was based on the percentage and amount of increase. There was concern that the phase-in did not adequately consider the financial impacts of the increases on some holders. There were examples of fees which exceeded 100 percent of the existing fee in each year of the phase-in. It was feared that the rapid increase would adversely affect the holders and their customers. As a result, the phase-in has been modified to allow a longer phase-in period.

The new phase-in will provide for a maximum increase of 25 percent of the previous year's fees with a minimum increase of $100 per year. The number of years it takes to reach the scheduled fee will vary. However, most of the fee increases should be phase-in within 10 years. New holders and holders adding new uses are not covered by the phase-in.

7. *Implementation.* Having considered the comments the Intermountain Region is adopting the fee schedule with the changes noted in the foregoing discussion of comments. The policy and procedures to guide Forest Service employees in implementing the Communications Use Fee Schedule will be issued as a Regional Supplement to Forest Service Manual Chapter 2720. The text of the supplement is set out at the end of this notice.

The fee schedule will apply immediately to all new authorizations issued on and after the effective date of this policy. The fee schedule will be implemented for all existing special use authorizations with the billings for calendar year 1990.

Dated: May 26, 1989.

T.A. Roederer,

Deputy Regional Forester.

Fee Schedule Policy and Procedures for Communication Uses

Note: The Forest Service uses alphanumeric codes and subject headings to organize the text of direction. Only those sections of the Forest Service Manual that would be revised are set out here. Readers should keep in mind that the audience of this direction is Forest Service employees charged with issuing and administering communication use authorizations.

Title 2700—Special Uses Management

2728—COMMUNICATIONS

2728.1—Communications Sites

2. Fee Determinations

c. Regional Fee Schedule—Communications use special use fees will be charged at the annual rates shown in the schedule below. These rates will apply without CPI–U adjustment for new authorizations issued during the remainder of C.Y. 1989, and with CPI–U adjustment beginning in C.Y. 1990 for all authorizations. The schedule will not affect fees which have been established through appraisal, competitive bid, negotiation, or other sound business management principles; fees for these uses will be updated in accordance with the terms of the authorization.

(1) *Individual Authorization*

Final Fee Schedule—Intermountain Region

Use Category	
Radio Broadcast (AM & FM)	
Service Area Population	
Less than 50,000	
50,000 to 100,000	*
More than 100,000	*
(For AM radio, sites exceeding one acre will require a separate feet determination)	
Television Broadcast	
Service Area Population	
Less than 50,000	*
50,000 to 100,000	*
More than 100,000	*
Mobile Radio: Commercial Communications	
—First licensed transmitter frequency	$700
—Each additional licensed transmitter frequency	$200
(This amount is not discounted in multiple-user situations)	
Common Carrier Microwave Relay	
Service Area Population	
Less than 50,000	$1,600
More than 50,000	$300
Passive Reflector	$600
TV or Radio Broadcast Translators [1]	
Service Area Population	
0–100	*
1001–2000	*
2001–3000	*
3001–4000	*
4001–5000	*
5001–6000	*
6001–14,000	*
14,001–50,000	*
Over 50,000	*
Cable and Subscription Television	
Number of Subscribers:	
Less than 200	$400
201–500	$700
501–1,500	$1,400
1,501–2,500	$2,000
More than 2,500	$2,400
Industrial Microwave	
Service Area Population	
Less than 50,000	$1,100
More than 50,000	$1,500
Mobile Radio: Internal Communication	
—First licensed transmitting frequency	$700
—Each additional licensed transmitter frequency	$200
(This amount is not discounted in multiple-user permit situations)	
Miscellaneous Communication Uses	$75
Examples:	
—Personal/Private Receive-Only	
—Amateur Radio Service	
—Natural Resource & Environmental Monitoring	

* Fee of these categories of use will be established prior to 1/1/89.

[1] Multiple broadcast translators (frequencies) in the same facility and operated by a single FCC licensee will be considered a single use for fee calculations.

(2) *Definitions*

(a) *Amateur Radio.* Equipment used by individuals or groups who are licensed by FCC as amateur radio operators.

(b) *Broadcast Translator.* This category of use consists of receiving a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translator. This category of use includes translators associated with public telecommunications service.

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(c) *Cable and Subscription Television.* This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

(d) *Cellular.* This is a specialized service provided by commercial communicators which involves a mobile (vehicular) radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

(e) *Common Carrier Microwave Relay.* This use typically includes long line carriers which relay intrastate and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. These uses are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to published rate schedules.

(f) *Industrial Microwave.* This use includes microwave communication equipment not regulated by state public utility commissions. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms.

(g) *Mobile Radio: Commercial Communications.* This includes communications equipment which primarily provides communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMRs), private carrier two-way systems, and private carrier paging systems (PCPs). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

(h) *Mobile Radio: Internal Communications.* A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

(i) *Natural Resource and Environmental Monitoring.* This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations.

(j) *Passive Reflector.* Passive reflectors include various types of non-powered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

(k) *Personal/Private "Receive Only".* These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes, including recreation residences. These facilities are personally owned and not operated for profit.

(l) *Radio Broadcast.* This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenues from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(m) *Television Broadcast.* This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include television stations (Major and independent networks) who generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(3) *Individual Authorizations Within Facilities Owned by Others.* When shared facility occupancy is authorized and each user has an authorization, the fee shall be 100% of the fee for each authorized use. There will be no $75 discount.

(4) *Fees under Multiple-User Authorizations.* To improve administration of communications sites, Forest Service policy encourages shared-facility occupancies under a single authorization. In these situations, the holder, rather than the Forest Service, authorizes and administers the use of the facilities by others, and serves as the facility manager.

The annual fee due from the holder of a multiple-user authorization is the total of the fees from the fee schedule for each individual use, at the full schedule value for the first use, and with a $75 discount applied to each subsequent use. (In the case of mobile radio users with multiple frequencies, the $75 discount applies to the base $700 for the first frequencies; the additional frequency charge remains at $200.

Example: Five individual uses; service area population = 38,900.

Category of Use	Fees if under separate permits	Fee if under one multiple-user permit
Industrial Microwave.	$1,100	$1,100 (1st use @ 100%).
Common Carrier Microwave.	1,600	1,525 (1600 − 75).
Mobile Radio: Commercial Communications, using 4 frequencies..	1,300 (700 + (200 × 3)).	1,225 (700 − 75 + (200 × 3)).
Amateur	75	0 (75 − 75).
Mobile Radio: Internal Communications (local non-profit Search & Rescue Association.	75 (700—625 waiver.	0 (75 − 75).
Total	$4,150	$3,850.

(5) *Discounts for Consolidation and Efficient Management.* There are situations where site or facility consolidation and efficient site management is intended to meet Forest Service objectives. In these situations, fees may be temporarily discounted to reflect the benefits received by the Forest Service. Annual fee discounts cannot exceed the holder's costs or the annual fee for use of the site. The fee discounts must be considered on a case-by-case basis and approved by the Regional Forester.

Efficient site management may include the formation of user associations which assume administrative duties traditionally completed by the Forest Service.

(6) *Use of Government Owned Facilities.* In addition to prescribed fees, authorized officers will require users occupying Forest Service facilities to perform or share in the costs of building or facility maintenance and repair, as provided by section 7, Act of April 24, 1950 (Granger-Thye Act) and FSM 2711.7.

(7) *Ancillary and Appurtenant Communication Uses.* Ancillary uses are those uses which provide support or intertie with another communication system on the site. The fee would be for the highest valued communications use of the holder. For example, a holder has installed a mobile radio used for internal communications which interties with an industrial microwave system in the same facility. In this case, the holder would be issued one authorization and charged a fee for industrial microwave.

Appurtenant uses are those communications uses incidential to another non-communications use of the National Forest System land, such as a ski resort or marina.

No fees will be charged for ancillary/appurtenant uses.

(8) *Phase-in of Fee Increases.* Fee increases for current holders will be phased-in at a rate of 25 percent of the previous year's fee with a minimum increase of $100 per year. The 25 percent increase will continue until the current scheduled fee is reached.

For example: Current fee is $300 and the scheduled fee is $800

Year	Phased-in Fee	Scheduled Fee*
1	$400 ($100 min.)	$800
2	500	832
3	625	865
4	781	900
5	936	936

*Indexed using a 4 percent CPI–U

The phase-in does not apply to new holders or existing holders adding new uses.

(9) *Annual Fee Schedule Adjustment.* All communication use fees are subject to annual adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year will be divided by the CPI–U for July of the previous year to yield a CPI–U multiplier which will be used to annually update the Communications Use Fee Schedule.

(10) *Other Methods of Establishing Fees.* Fees for atypical sites, or categories of use which were not established in the schedule, or sites servicing high populations, or AM radio broadcast sites exceeding 1 acre will be determined on an individual case basis.

The authorized officer may use site-specific appraisals, sound business management principles, and/or rental analysis as coordinated with the Regional Reviewing Appraiser to determine fees for individual sites when market evidence, such as leases for similarly used sites, demonstrate the inapplicability of the fee schedule.

Appraisals provided by the holder or other groups may be used to determine fees if the Regional Reviewing Appraiser establishes that the appraisal meets Forest Service appraisal standards and the report is approved.

Competitive bidding may be used to establish fees for new sites (and new development on established sites (FSM 2712.2).

(11) *Periodic Review of Fee Schedule.* The Intermountain Region shall, by December 31, 1994, review this schedule to determine whether market conditions and business practices have changed sufficiently to warrant a fee schedule revision. Fee waivers will also be reviewed at this time to ascertain holder's qualifications. Holders will be given an opportunity to provide data which might have a bearing on the review.

[FR Doc. 89–19856 Filed 8–22–89; 8:45 am]

BILLING CODE 3410-11-M

Northern Region; Fee Schedule for Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of fee schedule for communications uses.

SUMMARY: The Regional Forester, Northern Region, Forest Service, is adopting a new fee schedule for communications uses on National Forest System land in Montana, North Dakota, part of South Dakota and north Idaho. The intent of the new fee schedule is to assess fees that are based on fair market value of the rights and privileges as mandated by the Federal Land Policy and Management Act, October 21, 1976.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Jim Schoenbaum or Jim Hathaway, Lands Staff, Forest Service, U.S.D.A., Federal Building, P.O. Box 7669, Missoula, Montana, 59807, (406) 329–3601 or 3110.

SUPPLEMENTARY INFORMATION: On July 28, 1988, the Regional Forester for the Northern Region published a notice withdrawing the Northern Region Communications Fee Schedule and announced a new proposed fee schedule for communications uses (53 FR 28606) with request for comments. By notice published in the **Federal Register** (53 FR 38759) October 3, 1988 the comment period was extended.

The proposed fee schedule and policy was based on categories of use with individual fees to be determined by population, number of licensed transmitter frequencies, number of subscribers, or the nature of the use. The proposal also called for annual adjustments of the scheduled fees based upon the Consumer Price Index—Urban (CPI–U) and provided for a phase-in of fees. The proposal was published simultaneously with the proposals by 5 other Regions, which had coordinated their proposals to achieve nation-wide consistency where possible.

Analysis of Public Comment

The Northern Region received 52 responses to the proposal. The number and percentage of comments by respondents were:

Use categories	Number of respondents	Percent of total
Amateur radio	3	6
Broadcast translator	1	2
Cable & subscription TV	0	0
Cellular telephone	0	0
Mobile radio; commercial communications	8	15
Mobile radio; internal communications	6	11
Common carrier microwave relay	3	6
Industrial microwave	2	4
Natural resource and environmental monitoring	0	0
Passive reflector	0	0
Personal/private "Receive Only"	1	2
Radio broadcast	2	4
Television broadcast	1	2
Other	25	48

All of the comments received have been reviewed and given consideration in reaching the final decision. A summary of the major comments received and the Forest Service response by topic follows. It should be noted that the Northern Region has coordinated its review and response to the comments with the other Regions in order to achieve as much consistency Service-wide as possible.

1. *Fee levels.* A number of respondents felt that the proposed fees were extreme and unreasonable. Some individuals and small businesses indicated that the proposed fees would be too great a burden for them and that they would have to abandon their sites if the schedule were implemented. Some suggested a re-evaluation and reduction in the proposed fees. Others recommended lower fees and a longer phase-in period.

A few respondents said that the proposed fee rates were too low and thus amount to public subsidies. Several suggested alternative methods for determining fees, some of which would return many times the proposed rates to the Federal Government. Among alternatives proposed were: to adopt a fee policy based on site rental income (assess a percentage of gross rental income derived from the site); to consider site value in light of the alternative cost of constructing competitive towers on private lands; to base fee as a percentage of the user's investment in improvements and equipment; to use per capita income multipliers to adjust for differences between geographical areas; and to use private management companies, with no vested interest in the site, to establish individual fees. After analysis of these comments, the Northern Region is making the following changes in the proposed communication site fee schedule:

a. To be consistent with other Regions, the fees for cable and subscription television will be based on numbers of subscribers. In most situations, this method reduces the fees charged to companies who service small populations and offers more stratification of fees for the mid-size companies. In the proposed schedule, fees were based on the census population within the franchise or service area. The change allows the fee to be based on actual use.

b. The same fee structure is adopted for both Mobile Radio: Commercial Communication and Mobile Radio: Internal Communication. There will be a base fee for the first transmitting frequency plus a $200 fee for each additional transmitting frequency. This will result in a reduction of fees for smaller operations, but will result in a slight increase for some large operations.

A few respondents also commented that proposed fees were too high in the categories of: Amateur Radio, Common Carrier Microwave Relay, Industrial Microwave, and Mobile Radio: Commercial Communications. The claims of high fees were not supported by market data or were insufficient to warrant changing the fees in the final schedule. Therefore, the Region is adopting fees for these categories as proposed.

2. *Market Survey.* A number of respondents felt that the market survey used to develop the proposed fee schedule was inadequate. Most indicated that the market survey and resulting fees did not give credit for enhancing public lands, used ability to pay rather than fair market value to determine the fees, did not include comparable leases for the use of private land, used insufficient market data, and did not correlate fees with investment values and site improvement costs. Less than 3 percent of the respondents provided data supporting their position.

The Northern Region coordinated with the other Forest Service Regions in reviewing and re-analyzing the market data utilized in compiling the proposed fees. No major discrepancies were found in the market data compiled by the Forest Service. The data was found to be adequate for fee determination.

For the purposes of determining fair market value, we examined available market leases to see if the expense of developing facilities, access, and power was a factor influencing private lease rates. We found no useable correlation. The private sector leases used to establish fair market value do not clearly discount the site rental because of the development cost incurred by the lessee.

3. *Fee Exemption/Waivers.* Under the proposed policy, exemptions from fees and fee waivers would remain a decision of the authorizing officer (36 CFR 251.57(b)). A number of respondents objected to the Forest Service policy of charging fees for communication uses on National Forest System land. Others felt that fees should be waived for any use that provides a public benefit, whether that use is of a commercial nature or not. Most respondents to this issue found the current fee waiver policy unclear, vague, and subject to inconsistent application. They requested a clear, consistent statement of a national fee waiver policy for specific categories of use. Some respondents felt that government and public agencies, as well as certain other users (utilities, public broadcasters, etc.) should be exempt from fees as a matter of National policy.

We agree that there should be national fee waivers established for specific categories of use or type of holder when the entire class of use or holder meets the rental fee waiver criteria. Therefore, national direction will be issued concerning fee waivers for specific categories of use and/or type of holder. The direction, which follows, is intended to clarify the intent of the waiver policy, it does not contain any substantive changes in current policy.

a. *Fee exemption.* Exemptions are determinations that certain classes of users will not be required to pay an annual rental fee. Most such exemptions are statutory; i.e., they derive from specific fee exemption language in Public Law, and are not subject to the discretion of the authorized officer. However, holders may be assessed an amount sufficient to reimburse the cost of administering the use. Holders exempt from fees include:

—Federal agencies
—Facilities established by Rural Electrification Administration
—Public telecommunication systems identified and licensed as such by the Federal Communications Commission (FCC) for educational, cultural, instructional, and institutional purposes, and as described in the Communications Act of 1934, and the Federal Communications Regulations granting waiver of license fees; i.e., non-commercial educational broadcast stations as defined in 15 CFR part 2301—Public Telecommunications Facilities Program, Subpart A-Definitions, Program Purposes, and Special consideration.

b. *Fee Waiver.* Waivers are discounts or reductions from payment of the full annual rental fee, by provisions of law and regulation, and at the discretion of the authorized officer. The Forest Officer delegated the authority to issue the permit and establish the fee is also the officer authorized to determine if a holder qualifies for a fee waiver. Fee waivers must be equitable and in the public interest (36 CFR 251.57(b)).

(1) State and Local Government. The authorized officer shall waive fees for telecommunication facilities and systems owned and operated by a State or local government agency or instrumentality thereof, when:

—State or local government or instrumentalities thereof do not charge the Forest Service for similar services.
—The use is not installed, maintained, or otherwise financed by means of customer charges, which include but are not limited to subscription fees, membership fees or dues, or special tax assessments; and
—The use furthers the public health, safety, or welfare, or is otherwise to the benefit of the general public or the programs of the Secretary of Agriculture.

(2) Other Holders. Waivers for other holders will be considered by the authorized officer on a case by case basis. If granted, fees will not be waived below $75, which currently represents the cost to the Forest Service for administration of the authorization. This rate is, however, subject to revision on the basis of change in administrative costs.

There were also a number of responses, as well as comments sent to the Chief of the Forest Service on the proposals by all Regions, which requested a review of the Forest Service's rental fee waiver policy for radio broadcast (commercial), television broadcast (commercial) and associated broadcast translators. The respondents felt that a partial or full waiver should be granted based on the public service requirements of the Communications Act of 1934 and the provisions of the Federal Land Policy and Management Act of 1976.

As a result of these requests, the Forest Service is reviewing the National rental fee waiver policy for these categories of use. As a part of the review, the Forest Service is working with the Radio and Television Broadcasters to review the type and amount of public service provided.

Rental fees for these categories of use will remain at current levels until the review is completed and a final fee is established in the schedule. We anticipate fees for these uses will be established prior to January 1, 1990. All authorization holders and others expressing an interest in the fee schedules will be notified when the final fees are established.

4. *Categories of Use.* In the proposal, fees were based on categories of communication uses on National Forest System land. Each category was defined in the fee schedule to ensure proper classification.

A number of respondents felt that the categories of uses were too narrowly defined. Some respondents urged separation of uses such as: (1) Specialized mobile radios from other uses, (2) commercial communication systems used for profit from those used for public services, and (3) TV cable enterprises serving major population centers from those serving sparsely populated rural areas.

After considering comments, the categories of "Commercial Communicator" and "Internal Two-Way Radio" in the proposal have been changed to "Mobile Radio: Commercial Communications" and "Mobile Radio: Internal Communications". In addition, definitions for these categories have been modified for clarification at the request of industry respondents. The other categories are adopted as proposed.

5. *Definitions.* Several respondents found certain definitions and terms inadequate or confusing. Industry suggested definitions and terms that more clearly define commercial communications and internal radio communication uses.

In coordination with other Regions and the Washington Office, the Northern Region has adopted common terminology defining the various types of communication uses.

Most of the proposed definitions for the categories of use remain unchanged or slightly modified. Modifications were in response to reviewers comments or to improve clarity.

Slight changes were made in the following definitions (changes to improve clarity not noted):

—A definition for Natural Resource and Environmental Monitoring is provided as follows: "This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations."
—All references to appurtenant uses are eliminated from the definition of Radio and Television Broacast. Appurtenant uses are discussed in the Forest Service manual supplement.

Major changes were made in the definitions of Commercial Communicator and Internal Two-Way Radio. We agree with the reviewers who commented that the original definitions did not adequately describe the two categories of uses. In the final policy, the terms are defined as follows:

Mobile Radio: Commercial Communications. This includes communication equipment which is used to provide communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMR's), private carrier two-way radio systems, and private carrier paging systems (PCPS). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

Mobile Radio: Internal Communications. A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

6. *Phase-in of Fee Increases.* The proposed fee schedule provided for a 3 or 5 year phase-in of fees for current holders. It was based on the percentage and amount of increase. There was concern that the phase-in did not adequately consider the financial impacts of the increases on some holders. There were examples of fees which exceeded 100 percent of the existing fee in each year of the phase-in. It was feared that the rapid increase would adversely affect the holders and their customers. As a result, the phase-in has been modified to allow a longer phase-in period.

The new phase-in will provide for a maximum increase of 25 percent of the previous year's fees with a minimum increase of $100 per year. The number of years it takes to reach the scheduled fee will vary. However, most of the fee increases should be phased-in within 10 years. New holders and holders adding new uses are not covered by the phase-in.

7. *Implementation.* Having considered the comments received, the Northern Region is adopting the fee schedule with the changes noted in the foregoing discussion of comments. The policy and procedures to guide Forest Service employees in implementing the Communications Use Fee Schedule will be issued as a Regional Supplement to Forest Service Manual Chapter 2720. The text of the supplement is set out at the end of this notice.

The fee schedule will apply immediately to all new permits issued on and after the effective date of this policy. The fee schedule will be implemented for all existing special use authorizations with the billings for calendar year 1990.

Dated: May 24, 1989.

John W. Mumma,
Regional Forester.

Fee Schedule Policy and Procedures for Communications Uses

Note: The Forest Service uses alphanumeric codes and subject headings to organize the text of direction. Only those sections of the Forest Service Manual that would be revised are set out here. Readers should keep in mind that the audience of this direction is Forest Service employees charged with issuing and administering communication use authorizations.

Title 2700—Special Uses Management

2728—Communications

2729.1—Communications Sites

2. *Fee Determinations.*

c. Regional Fee Schedule—Communications use special use fees will be charged at the annual rates shown in the schedule below. These rates will apply without CPI—U adjustment for new authorizations issued during the remainder of C.Y. 1989, and with CPI—U adjustment in C.Y. 1990 for all authorizations. The schedule will not affect fee which have been established through appraisal, competitive bid, negotiation, or other sound business management principles; fees for these uses will be updated in accordance with the terms of the authorization.

(1) *Individual Authorization*

Final Fee Schedule—Northern Region

Use Category	Fee
Radio Broadcast (AM & FM) Service Area Population	*
(Not applicable for AM radio sites over one acre)	
Television Broadcast Service Area Population	*
Broadcast Translator	*
Cable and Subscription TV Number of subscribers:	
Less that 200	$400
201–500	$700
501–1,500	$1,400
1,501–2,500	$2,000
More than 2,500	$2,400
Common Carrier Microwave	
Relay	$1,500
Industrial Microwave	$1,000
Mobile Radio:	
Commercial Communication	
First licensed transmitter frequency	$700
Each additional licensed transmitter frequency	$200
Mobile Radio:	
Internal Communications	
First licensed transmitter frequency	$500
Each additional licensed transmitter frequency	$200
Cellular	
Passive Reflector	$500
Amateur Radio	$75
Personal/Private "Receive Only"	$75
Natural Resource and Environmental Monitoring	$75

* Fees of these categories of use will be established prior to 1/1/90.

(2) *Definitions*

(a) *Amateur Radio.* Equipment used by individuals or groups who are Licensed by FCC as amateur radio operators.

(b) *Broadcast Translator.* This category of use consists of receiving a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translater. This category of use includes translators associated with public telecommunications service.

(c) *Cable and Subscription Television.* This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

(d) *Cellular.* This is a specialized service provided by commercial communications which involves a mobile (vehicular) radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

(e) *Common Carrier Microwave Relay.* This use typically includes long line carriers which relay intrastate and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. These uses are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to published rate schedules.

(f) *Industrial Microwave.* This use includes microwave communication equipment not regulated by state public utility commissions. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms.

(g) *Mobile Radio: Commercial Communications.* This includes communications equipment which primarily provides communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMRs), private carriers two-way systems, and private carriers paging systems (PCPs). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

(h) *Mobile Radio: Internal Communications.* A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

(i) *Natural Resource and Environmental Monitoring.* This use includes the transmission of telemetery data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations.

(j) Passive Reflector. Passive reflectors include various types of non-powered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

(k) *Personal/Private "Receive Only"* These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes, including recreation residences. These facilities are personnally owned and not operated for profit.

(l) *Radio Broadcast.* This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenues from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(m) *Television Broadcast.* This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include television stations (Major and independent networks) who generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(3) *Individual Authorizations Within Facilities Owned by Others*

When shared facility occupancy is authorized and each user has an authorization, the fee shall be 100% of the fee for each authorized use. There will be no $75 discount.

(4) *Fees under Multiple-User Authorizations*

To improve administration of communications sites, Forest Service policy provides for authorizing shared facility occupancies under a single authorization. By the terms and conditions, these authorization holders, rather than the Forest Service, authorize and administer the use of their facilities by others. Collection of Forest Service fees required under this type of authorization, are burdens of the holder.

Fees for such a multiple-user authorization:

First use = 100% of fee schedule

All other uses are subject to a $75 discount, except for additional frequencies in the case of mobile radios. These additional frequencies are charged the full rate per the following example:

Mobile radio use will be $700 as listed in the schedule for first frequency (less $75 discount) plus $200 for each additional frequency.

(5) *Discounts for Consolidation and Efficient Management*

There are situations where site or facility consolidation and efficient site management is intended to meet Forest Service objectives. In these situations, fees may be temporarily discounted to reflect the benefits received by the Forest Service. Annual fee discounts cannot exceed the holders' costs or the annual fee for use of the site. The fee discounts must be considered on a case-by-case basis and approved by the Regional Forester in advance.

Efficient site management may include the formation of user associations which assume administrative duties traditionally completed by the Forest Service

(6) *Use of Government Owned Facilities*

In addition to prescribed fees, authorized officers will require users occupying Forest Service facilities to perform or share in the costs of building or facility maintenance and repair, as provided by Section 7, Act of April 24, 1950 (Granger-Thye and FSM 2711.7).

(7) *Ancillary and Appurtenant Communication Uses*

Ancillary uses are those uses which provide support or intertie with another communication system on the site. The fee would be calculated based on the highest value of the uses. For example, a holder has installed a mobile radio used for internal communications which interties with an industrial microwave system in the same facility. In this case, the holder would be issued one authorization and charged a fee for Industrial Microwave.

Appurtenant uses are those communication uses incidental to another non-communication use of the National Forest System land, such as a ski resort or marina.

No fees will be charged for ancillary/appurtenant uses.

(8) *Phase-in of Fee Increases*

Fee increases for current holders will be phased-in at a rate of 25 percent of the previous year's fee with a minimum increase of $100 per year. The 25 percent increase will continue until the current scheduled fee is reached.

For example: Current fee is $300 and the scheduled fee is $800

	Phased-in Fee	Scheduled Fee*
Year:		
1	$400 ($100 min.)	$800
2	500	832
3	625	865
4	781	900
4	936	936

*Indexed using a 4 percent CPI-U.

The phase-in does not apply to new holders or existing holders adding new uses.

(9) *Annual Fee Schedule Adjustment*

All communication use fees are subject to annual adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI-U) for July of the current year will be divided by the CPI-U for July of the previous year to yield a CPI-U multiplier which will be used to annually update the Communications Use Fee Schedule.

(10) *Periodic Review of Fee Schedule*

The Northern Region shall, by December 31, 1994, reviews this schedule to determine whether market conditions and business practices have changed sufficiently to warrant a fee schedule revision. Fee waivers will also be reviewed at this time to ascertain holder's qualifications. Holders will be given an opportunity to provide data which might have a bearing on the review.

(11) *Other Methods of Establishing Fees*

Fees for atypical sites, for categories of use which were not established in the schedule, for sites servicing high populations, or AM radio broadcast sites exceeding 1 acre will be determined on an individual case basis.

The authorized officer may use site-specific appraisals, sound business management principles, and/or rental analysis as coordinated with the Regional Reviewing Appraiser to determine fees for new categories of use or individual sites when market evidence, such as leases for similarly used sites, demonstrates the inapplicability of the fee schedule.

Appraisals provided by the holder or other groups may be used to determine fees if the Regional reviewing Appraiser establishes that the appraisal meets Forest Service appraisal standards and the report is approved.

Competitive bidding may be used to establish fees for new sites, (FSM 2712.2).

[FR Doc. 89–19857 Filed 8–22–89; 8:45 am]

BILLING CODE 3410-11-M

Rocky Mountain Region; Fee Schedule for Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of fee schedule for communications uses.

SUMMARY: The Regional Forester, Rocky Mountain Region, Forest Service, is adopting a new fee schedule for communications uses on National Forest System land in the states of Colorado, Kansas, Nebraska, South Dakota and Wyoming. The intent of the new fee schedule is to assess fees that are based on fair market value of the rights and privileges as mandated by the Federal Land Policy and Management Act, October 21, 1976.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Ben Wallingford, Lands Staff, Forest Service, Rocky Mountain Region, 11177 West 8th. Ave., Box 25127, Lakewood, CO 80225, (303) 236–9511.

SUPPLEMENTARY INFORMATION: On July 28, 1988, the Regional Forester for the Rocky Mountain Region published a notice of a proposed fee schedule for communications uses (53 FR 28026) with request for comment. By notice published in the **Federal Register** (53 FR 38759) October 3, 1988 the comment period was extended.

The proposed fee schedule and policy was based on categories of use with individual fees to be determined by population, number of licensed transmitter frequencies, number of subscribers, or the nature of the use. The proposal also called for annual adjustments of the scheduled fees based upon the Consumer Price Index—Urban (CPI–U) and provided for a phase-in of fees. The proposal was published simultaneously with the proposals by 5 other Regions, who had coordinated their proposals to achieve nation wide consistency where possible.

Analysis of Public Comment

The Rocky Mountain Region received 82 responses to the proposal. The number and percentage of comments by respondents were:

Use categories	No. of respondents	Percent of total
Amateur Radio	5	6
Broadcast Translator	7	9
Mobile Radio; Commercial Communications	14	17
Mobile Radio; Internal Communications	36	43
Common Carrier Microwave Relay	3	4
Industrial Microwave	1	1
Radio Broadcast	7	9
Television Broadcast	7	9
Other	2	2

All of the comments received have been reviewed and given consideration in reaching the final decision. A summary of the major comments received and the Forest Service response by topic follows. It should be noted that the Rocky Mountain Region has coordinated its review and response to the comments with the other Regions in order to achieve as much consistency Service wide as possible.

1. *Fees levels.* A number of respondents felt that the proposed fees were extreme and unreasonable. Many individuals and small businesses indicated that the proposed fees would be too great a burden for them and that they would have to abandon their sites if the schedule were implemented. Some suggested a re-evaluation and reduction in the proposed fees. Others recommended lower fees and a longer phase-in period.

A few respondents said that the proposed fee rates were too low and thus amount to public subsidies. Several suggested alternative methods for determining fees, some of which would return many times the proposed rates to the Federal Government. Among alternatives proposed were: to adopt a fee policy based on site rental income (assess a percentage of gross rental income derived from the site); to consider site value in light of the alternative cost of constructing competitive towers on private lands; to base fee as a percentage of the user's investment in improvements and equipment; to use per capita income multipliers to adjust for differences between geographical areas; and to use private management companies, with no vested interest in the site, to establish individual fees.

After analysis of these comments, the Rocky Mountain Region is making the following changes in the proposed communications use fee schedule:

a. To be consistent with other Regions, the fees for cable and subscription television will be based on a different stratification of numbers of subscribers. In most situations, this method reduces the fees charged to companies who service small populations and offers more stratification of fees for the mid-size companies. In the proposed schedule, fees were based on the census population within the franchise or service area. The change allows the fee to be based on actual use.

b. The same fee structure is adopted for both Mobile Radio: Commercial Communication and Mobile Radio: Internal Communication. There will be a base fee for the first transmitting frequency plus a $200 fee for each additional transmitting frequency. This will result in a reduction of fees for smaller operations, but will result in a slight increase for some large operations.

A few respondents also commented that proposed fees were too high in the categories of: Amateur Radio, Common Carrier Microwave Relay, Industrial Microwave, and Mobile Radio: Commercial Communications. The claims of high fees were not supported by market data or was insufficient to warrant changing the fees in the final schedule. Therefore the Region is adopting fees for these categories as proposed.

2. *Market Survey.* A number of respondents felt that the market survey used to develop the proposed fee schedule was inadequate. Most indicated that the market survey and resulting fees did not give credit for enhancing public lands, used ability to pay rather than fair market value to determine the fees, did not include comparable leases for the use of private land, used insufficient market data, and did not correlate fees with investment values and site improvement costs. Less than 8 percent of the respondents provided data supporting their position.

The Rocky Mountain Region coordinated with the other Forest Service Regions in reviewing and re-analyzing the market data utilized in compiling the proposed fees. No major discrepancies were found in the market data compiled by the Forest Service. The data was found to be adequate for fee determination.

For the purposes of determining fair market value, we examined available market leases to see if the expense of developing facilities, access, and power was a factor influencing private lease rates. We found no useable correlation. The private sector leases used to establish fair market value do not clearly discount the site rental because of the development cost incurred by the lessee.

3. *Fee Exemption/Waivers.* Under the proposed policy, exemptions from fees and fee waivers would remain a decision of the authorized officer (36 CFR 251.57(b)). A number of respondents objected to the Forest Service policy of charging fees for communication uses on National Forest System land. Others felt that fees should be waived for any use that provides a public benefit, whether that use is of a commercial nature or not. Most respondents to this issue found the current fee waiver policy unclear, vague, and subject to inconsistent application. They requested a clear, consistent statement of a national fee waiver policy for specific categories of use. Some respondents felt that government and public agencies, as well as certain other users (utilities, public broadcasters, etc.) should be exempt from fees as a matter of National policy.

We agree that there should be national fee waivers established for specific categories of use or type of holder when the entire class of use or holder meets the rental fee waiver criteria. Therefore, national direction will be issued concerning fee waivers for specific categories of use and/or type of holder. The direction, which follows, is intended to clarify the intent of the waiver policy, it does not contain any substantive changes in current policy.

a. *Fee exemption*—Exemptions are determinations that certain classes of users will not be required to pay an annual rental fee. Most such exemptions are statutory; i.e., they derive from specific fee exemption language in Public Law, and are not subject to the discretion of the authorized officer. However, holders may be assessed an amount sufficient to reimburse the cost of administering the use. Holders exempt from fee include:

—Federal agencies

—Facilities established by Rural Electrification Administration

—Public telecommunication systems identified and licensed as such by the Federal Communications Commission (FCC) for educational, cultural, instructional, and institutional purposes, and as described in the Communications Act of 1934, and the Federal Communications Regulations granting waiver of license fees; i.e., non-commercial educational broadcast stations as defined in 15 CFR part 2301–Public Telecommunications Facilities Program, Subpart A–Definitions, Program Purposes, and Special consideration.

b. *Fee Waiver*—Waivers are discounts or reductions from payment of the full annual rental fee, by provisions of law and regulation, and at the discretion of the authorized officer. The Forest officer delegated the authority to issue the permit and establish the fee is also the officer authorized to determine if a holder qualifies for a fee waiver. Fee waivers must be equitable and in the public interest (36 CFR 251.47(b)).

(1) *State and Local Government.* The authorized officer shall waive fees in full for telecommunication facilities and systems owned and operated by a State or local government agency or instrumentality thereof, when:

—State or local government or instrumentalities thereof do not charge the Forest Service for similar services; and

—The use is not installed, maintained, or otherwise financed by means of customer charges, which include but are not limited to subscription fees, membership fees or dues, or special tax assessments; and

—The use furthers the public health, safety, or welfare, or is otherwise to the benefit of the general public or the programs of the Secretary of Agriculture.

(2) *Other Holders.* Waivers for other holders will be considered by the authorized officer on a case by case basis. If granted, fees will not be waived below $75, which currently represents the cost to the Forest Service for administration of the authorization. This rate is, however, subject to revision on the basis of change in administrative costs.

There were also a number of responses, as well as comments sent to the chief of the Forest Service on the proposals by all Regions, which requested a review of the Forest Service's rental fee waiver policy for radio broadcast (commercial), television broadcast (commercial) and associated broadcast translators. The respondents felt that a partial or full waiver should be granted based on the public service requirements of the Communications Act of 1934 and the provisions of the Federal land Policy and Management Act of 1976.

As a result of these requests, the Forest Service is reviewing the national rental fee waiver policy for these categories of use. As a part of the review, the Forest Service is working with the Radio and Television Broadcasters to review the type and amount of public service provided.

Rental fees for these categories of use will remain at current levels until the review is completed and a final fee is established in the schedule. We anticipate fees for these uses will be established prior to January 1, 1990. All authorization holders and others expressing an interest in the fee schedules will be notified when the final fees are established.

4. *Categories of Use.* In the proposal, fees were based on categories of communications uses on National Forest System land. Each category was defined in the fee schedule to ensure proper classification.

A number of respondents felt that the categories of uses were too narrowly defined. Some respondents urged separation of uses such as: (1) Specialized mobile radios from other uses, (2) commercial communication systems used for profit from those used for public services, and (3) TV cable enterprises serving major population centers from those serving sparsely populated rural areas.

After considering comments, the categories of "Commercial Communicator" and "Internal Two-Way Radio" in the proposal have been changed to "Mobile Radio: Commercial Communications" and "Mobile Radio: Internal Communications". In addition, definitions for these categories have been modified for clarification at the request of industry respondents. The other categories are adopted as proposed.

To maintain consistency between the Regions, internal microwave has been changed to industrial microwave.

5. *Phase-in of Fee Increases.* The proposed fee schedule provided for a 3 or 5 year phase-in of fees for current holders. It was based on the percentage and amount of increase. There was concern that the phase-in did not adequately consider the financial impacts of the increase on some holders. There were examples of fees which exceeded 100 percent of the existing fee in each year of the phase-in. It was feared that the rapid increase would adversely affect the holders and their customers. As a result, the phase-in has been modified to allow a longer phase-in period.

The new phase-in will provide for a maxium increase of 25 percent of the previous year's fees with a minimum increase of $100 per year. The number of years it takes to reach the scheduled fee will vary. However, most of the fee

increases should be phased-in within 10 years. New holders and holders adding new uses are not covered by the phase-in.

6. *Definitions.* Several respondents found certain definitions and terms inadequate or confusing. Industry suggested definitions and terms that more clearly define commerical communications and internal radio communication uses.

In coordination with other Regions and the Washington Office, the Rocky Mountain Region has adopted common terminology defining the various types of communications uses.

Most of the proposed definitions for the categories of use remain unchanged or slightly modified. Modifications were in response to reviewers comments or to improve clarity.

Slight changes were made in the following definitions (changes to improve clarity not noted):

—A definition for Natural Resource and Environmental Monitoring is provided as follows: "This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations."

—All references to appurtenant uses are eliminated from the definition of Radio and Television Broadcast. Appurtenant uses are discussed in the Forest Service manual supplement.

Major changes were made in the definitions of Commercial Communicator and Internal Two-Way Radio. We agree with the reviewers who commented that the original definitions did not adequately describe the two categories of uses. In the final policy, the terms are defined as follows:

Mobile Radio: Commerical Communications. This includes communication equipment which is used to provide communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or many not be regulated by a state public utility commission. The use requires an FCC license. Example of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMR's), private carrier two-way radio systems, and private carrier paging system (PCPS). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

Mobile Radio: Internal Communications. A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

6. *Implementation.* Having considered the comments received, the Rocky Mountain Region is adopting the fee schedule with the changes noted in the foregoing discussion of comments. The policy and procedures to guide Forest Service employees in implementing the Communications Use Fee Schedule will be issued as a Regional Supplement to Forest Service Manual Chapter 2720. The text of the supplement is set out at the end of this notice.

The fee schedule will apply immediately to all new permits issued on and after the effective date of this policy. The fee schedule will be implemented for all existing special use authorizations with the billings for calendar year 1990.

Dated: May 18, 1989.

Sidney H. Hanks,

Deputy Regional Forester.

Fee Schedule Policy and Procedures for communications uses

(**Note:** The Forest Service uses alphanumeric codes and subject headings to organize the text of direction. Only those sections of the Forest Service Manual that would be revised are set out here. Readers should keep in mind that the audience of this direction is Forest Service employees charged with issuing and administering communication use authorizations.)

Title 2700—Special Uses Management

2728—COMMUNICATIONS

2728.1—Communications Sites

2. *Fee Determinations*

c. Regional Fee Schedule—Communications use special use fees will be charged at the annual rates shown in the schedule below. These rates will apply without CPI–U adjustment for new authorizations issued during the remainder of C.Y. 1989, and with CPI–U adjustment beginning in C.Y. 1990 for other authorizations. The schedule will not affect fees which have been established through appraisal, competitive bid, negotiation, or other sound business management principles; fees for these uses will be updated in accordance with terms of the authorization.

(1) *Individual Authorization*

Final Fee Schedule—Rocky Mountain Region

Use Category	Fee Schedule
Radio Broadcast (AM & FM) *Service Area Population*	*
(Not applicable for AM radio sites over one acre)	
Television Broadcast *Service Area Population*	*
Broadcast Translator	*
Cable and Subscription TV	
Number of subscribers:	
Less than 200	$400
201–500	$700
501–1,500	$1,400
1,501–2,500	$2,000
More than 2,500	$2,400
Common Carrier Microwave Relay	$1,500
Industrial Microwave	$1,000
Mobile Radio:	
Commercial Communication	
First licensed transmitter frequency	$700
Each additional licensed transmitter frequency	$200
Mobile Radio:	
Internal Communications	
First licensed transmitter frequency	$700
Each additional licensed transmitter frequency	$200
Passive Reflector	$500
Amateur Radio	$75
Personal/Private *"Receive Only"*	$75
Natural Resource and *Environmental Monitoring*	$75

* Fees of these categories of use will be established prior to 1/1/90.

(2) *Definitions*

(a) *Amateur Radio.* Equipment used by individuals or groups who are Licensed by FCC as amateur radio operators.

(b) *Broadcast Translator.* This category of use consists of receiving a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translator. This category of use includes translators associated with public telecommunications service.

(c) *Cable and Subscription Television.* This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

(d) **Cellular.** This is a specialized service provided by commercial communicators which involves a mobile (vehicular) radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

(e) *Common Carrier Microwave Relay.* This use typically includes long line carriers which relay intrastate and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. These uses are regulated by state public utility commissions and must provide services to any consumer with the ability to pay according to published rate schedules.

(f) *Industrial Microwave.* This use includes microwave communication equipment not regulated by state public utility commissions. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms.

(g) *Mobile Radio: Commercial Communications.* This includes communications equipment which primary provides communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMRs), private carrier two-way systems, and private carrier paging systems (PCPs). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

(h) *Mobile Radio: Internal Communications.* A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

(i) *Natural Resources and Environmental Monitoring.* This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations.

(j) *Passive Reflector.* Passive reflectors include various types of non-powered reflector devices used to bend or ricochet electronic signals beteen active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

(k) *Personal/Private "Receive Only".* These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes, including recreation residences. These facilities are personally owned and not operated for profit.

(l) *Radio Broadcast.* This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenues from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(m) *Television Broadcast.* This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include television stations (Major and independent networks) who generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(3) Individual Authorizations Within Facilities Owned by Others

When shared facility occupancy is authorized and each user has an authorization, the fee shall be 100% of the fee for each authorized use. There will be no $75 discount.

(4) Fees under Multiple-User Authorizations

To improve adminstration of communications sites, Forest Service policy provides for authorizing shared facility occupancies under a single authorization. By the terms and conditions, these authorization holders, rather than the Forest Service, authorize and administer the use of their facilities by others. Collection of Forest Service fees required under this type of authorization, are burdens of the holder.

Fees for such a multiple-user authorization:

First use=100% of fee schedule

All other uses are subject to a $75 discount, except for additional frequencies in the case of mobile radios. These additional frequencies are charged the full rate per the following example:

Mobile radio use will be $300 to $2,000 as listed in the schedule for first frequency (less $75 discount) plus $200 for each additional frequency.

(5) Discounts for Consolidation and Efficient Management

There are situations where site or facility consolidation and efficient site management is intended to meet Forest Service objectives. In these situations, fees may be temporarily discounted to reflect the benefits received by the Forest Service. Annual fee discounts cannot exceed the holder costs or the annual fee for use of the site. The fee discounts must be considered on a case-by-case basis and approved by the Regional Forester.

Efficient site management may include the formation of user associations which assume administrative duties traditionally completed by the Forest Service.

(6) Use of Government Owned Facilities

In addition to prescribed fees, authorized officers will require users occupying Forest Service facilities to perform or share in the costs of building or facility maintenance and repair, as provided by section 7, Act of April 24, 1950 (Granger-Thye and FSM 2711.7).

(7) Ancillary and Appurtenant Communication Users

Ancillary uses are those uses which provide support or intertie with another communication system on the site. The fee would be for the highest valued communication use of the holder. For example, a holder has installed a mobile radio used for internal communications which interties with an industrial microwave system in the same facility. In this case the holder would be issued one authorization and charged a fee for industrial microwave.

Appurtenant uses are those communication uses incidental to another non-communication use of the National Forest System land, such as a ski resort or marina.

No fees will be charged for ancillary/appurtenant uses.

(8) Phase-in of Fee Increases

Fee increases for current holders will be phased-in at a rate of 25 percent of the previous year's fee with a minimum increase of $100 per year. The 25 percent increase will continue until the current scheduled fee is reached.

For example: Current fee is $300 and the scheduled fee is $800

	Phased-in fee	Scheduled fee*
Year 1	[1] $400	$800
Year 2	500	832
Year 3	625	865
Year 4	781	900
Year 5	936	936

*Indexed using a 4 percent CPI–U.

[1] $100 min.

The phase-in does not apply to new holders or existing holders adding new uses.

(9) Annual Fee Schedule Adjustment

All communication use fees are subject to annual adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year will be divided by the CPI–U for July of the previous year to yield a CPI–U multiplier which will be used to annually update the Communications Use Fee Schedule.

(10) Periodic Review of Fee Schedule

The Rocky Mountain Region shall, by December 31, 1993, review this schedule to determine whether market conditions and business practices have changed sufficiently to warrant a fee schedule revision. Fee waivers will also be reviewed at this time to ascertain holder's qualifications. Holders will be given an opportunity to provide data which migh have a bearing on the review.

(11) Other Methods of Establishing Fees

Fees for atypical sites, or categories of use which were not established in the schedule, or sites servicing high populations, or AM radio broadcast sites exceeding 1 acre, will be determined on an individual case basis.

The authorized officer may use site-specific appraisals, sound business management principles, and/or rental analysis as coordinated with the Regional Reviewing Appraiser to determine fees for individual sites when market evidence, such as leases for similarly used sites, demonstrate the inapplicability of the fee schedule.

Appraisals provided by the holder or other groups may be used to determine fees if the Regional Reviewing Appraiser establishes that the appraisal meets Forest service appraisal standards and the report is approved.

Competitive bidding may be used to establish fees for new sies, (FSM 2712.2).

[FR Doc. 89–19854 Filed 8–22–89; 8:45 am]
BILLING CODE 3410-11-M

Pacific Southwest Region; Fee Schedule for Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of fee schedule for communications uses.

SUMMARY: The Regional Forester, Pacific Southwest Region, Forest Service, is adopting a new fee schedule for communications uses on National Forest System Lands within the Pacific Southwest Region. The intent of the new fee schedule is to assess fees that are based on fair market value of the rights and privileges as mandated by the Federal Land Policy and Management Act, October 21, 1976.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Adele H. Goss or Paul Tittman, U.S. Forest Room 1016, 630 Sansome St., San Francisco, CA, 94111.—(415/556–3415 or 556–4202).

SUPPLEMENTARY INFORMATION: On July 28, 1988, the Regional Forester for the Pacific Southwest Region published a notice of a proposed fee schedule for communications uses (53 FR 28620) with request for comment. By notice published in the **Federal Register** (53 FR 38759 October 3, 1988) the comment period was extended.

The proposed fee schedule and policy was based on categories of use with individual fees to be determined by population, number of licensed transmitter frequencies, number of subscribers, or the nature of the use. The proposal also called for annual adjustments of the scheduled fees based upon the Consumer Price Index—Urban (CPI–U) and provided for a phase-in statement. The proposal was published simultaneously with the proposals by 5 other Regions who had coordinated their proposals to achieve nationwide consistency where possible.

Analysis of Public Comment

Analysis of Public Comment:

The Pacific Southwest Region received 612 responses to the proposal. The number and percentage of comments by respondents were:

Use categories	Respondents percent	
	No.	Percent
Respondent:		
Amateur radio	10	2
Broadcast translator	3	
Cable and Subscription TV	9	1
Cellular telephone	8	1
Mobile radio: Commercial communications	520	85
Mobile radio: Internal communications	23	4
Common carrier microwave relay	3	
Industrial microwave	11	2
Natural resource and environmental monitoring	0	
Passive reflector	1	
Personal/private "receive only"	1	
Radio broadcast	12	2
Television broadcast	10	2
Other	1	

All of the comments received have been reviewed and given consideration in reaching the final decision. A summary of the major comments received and the Forest Service response by topic follows. It should be noted that the Pacific Southwest Region has coordinated its review and response to the comments with the other Regions in order to achieve as much consistency Service wide as possible.

1. *Fee levels.* A number of respondents felt that the proposed fees were extreme and unreasonable. Many individuals and small businesses indicated that the proposed fees would be too great a burden for them and that they would have to abandon their site if the schedule were implemented. Some suggested a re-evaluation and reduction in the proposed fees. Others recommended lower fees and a longer phase-in period.

A few respondents said that the proposed fee rates were too low and thus amount to public subsidies. Several suggested alternative methods for determining fees, some of which would return many times the proposed rates to the Federal Government. Among alternatives proposed were: to adopt a fee policy based on site rental income (assess a percentage of gross rental income derived from the site); to consider site value in light of the alternative cost of constructing competitive towers on private lands; to base fee as a percentage of the user's investment in improvements and equipment; to use per capita income multipliers to adjust for differences between geographical areas; and, to use private management companies, with no vested interest in the site, to establish individual fees.

After analysis of these comments, the Pacific Southwest Region is making the following changes in the proposed communications use fee schedule:

a. To be consistent with other Regions, the fee for cable and subscription television will be based on numbers of subscribers. In most situations, this method reduces the fees charged to companies who service small populations and offers more stratification of fees for the mid-size companies. In the proposed schedule, fees were based on the census population within the franchise or service area. The change allows the fee to be based on actual use.

b. Also, for consistency among the Regions, Common Carrier Microwave Relay and Industrial Microwave Relay have been separated and re-evaluated.

c. As a result of comments concerning the market survey, the market survey was re-evaluated and additional information from the western United States was reviewed. This has resulted in the following changes from the fee schedule published in the July, 1988 Draft Federal Notice for Common Carrier Microwave Relay:

North Zone—fee lowered from $3,500 to $3,000
South Zone—fee lowered from $6,500 to $5,500

For Industrial Microwave Relay the following changes have been made:

North Zone—fee lowered from $1,500 to $1,000
Central Zone—fee lowered from $4,000 to $3,000
South Zone—fee raised from $3,600 to $5,000

d. The fee schedule is based upon three zones as published in the July, 1988 draft **Federal Register** Notice. There was one modification made in the zones, Inyo County was changed from the South Zone to the Central Zone.

e. In the July 28, 1988 Draft **Federal Register** Notice, the Pacific Southwest Region based the fee structure for "Commercial Communicator" and "internal Two Way" use categories on 25% of total gross income from on-site equipment, space or frequency rentals, whichever was greater. To be consistent with other Regions and to be responsive to the mobile radio industry, the Pacific Southwest Region is adopting the same fee structure as other Regions.

The same fee structure is adopted for both Mobile Radio: Commercial Communication and Mobile Radio: Internal Communication. There will be a base fee for the first transmitting frequency plus a $200 fee for each additional transmitting frequency.

A few respondents also commented that proposed fees were too high in the categories of Amateur Radio and Cellular Telephone. The claims of high fees were not supported by market data or were insufficient to warrant changing the fees in the final schedule. Therefore the Region is adopting fees for these categories as proposed.

2. *Sites Not Included In The Schedule.* In the July 1988 draft **Federal Register** Notice, the Pacific Southwest Region addressed the issue of site specific appraisals for unique communications sites or sites servicing high populations such as Mt. Wilson and other sites servicing the Los Angeles Area. Mt. Wilson, Sunset Ridge, Mt. Lukins, Johnston Peak, Magic Mountain, Santiago Peak, Sierra Peak, and Strawberry Peak are not covered by this schedule. Fees for existing uses on these sites will continue at the current rate until the authorized officer determines the fair market value. Fees for new uses and Re-evaluation of existing fees may be established using site specific market analysis or other sound business management principles. Authorization holders will be notified of any proposed changes in fees.

3. *Market Surveys.* A number of respondents felt that the market survey used to develop the proposed fee schedule was inadequate. Most indicated that the market survey and resulting fees did not give credit for enhancing public lands, used ability to pay rather than fair market value to determine the fees, did not include comparable leases for the use of private land, used insufficient market data, and did not correlate fees with investment values and site improvement costs. Less than 1 percent of the respondents provided data supporting their position.

The Pacific Southwest Region coordinated with the other Forest Service Regions in reviewing and re-analyzing the market data utilized in compiling the proposed fees. The Region reviewed additional data from the western United States. Based on this review, some fees were adjusted. Most of the fees were adjusted down, refer to section 2 which describes fee levels.

For the purposes of determining fair market value, we examined available market leases to see if the expense of developing facilities, access, and power was a factor influencing private lease rates. We found no useable correlation. The private sector leases used to establish fair market value fees do not clearly discount the site rental because of the development cost incurred by the lessee.

4. *Fee Exemption/Waivers.* Under the proposed policy, exemptions from fees and fee waivers would remain a decision of the authorized officer (36 CFR 251.57(b)). A number of respondents objected to the Forest Service policy of charging fees for communications uses on National Forest System land. Others felt that fees should be waived for any use that provided a public benefit, whether that use is of a commercial fee waiver policy unclear, vague and subject to inconsistent application. They requested a clear, consistent statement of a national fee waiver policy for specific categories of use. Some respondents felt that government and public agencies, as well as certain other users (utilities, public broadcasters, etc.) should be exempt from fees as a matter of National policy.

We agree that there should be national fee waivers established for specific categories of use or type of holder when the entire class of use or holder meets the rental fee waiver criteria. Therefore, national direction will be issued concerning fee waivers for specific categories of use and/or type of holder. The direction, which follows, is intended to clarify the intent of the waiver policy, it does not contain any substantive changes in current policy.

a. *Fee Exemption*—Exemptions are determinations that certain classes of users will not be required to pay an annual rental fee. Most such exemptions are statutory; i.e., they derive from specific fee exemption language in Public Law, and are not subject to the discretion of the authorized officer. Holders may be assessed an amount sufficient to reimburse the cost of administering the use. Holders exempt from fees include:

—Federal agencies.
—Facilities financed by Rural Electrification Administration.
—Public telecommunication systems identified and licensed as such by the Federal Communications Commission (FCC) for educational, cultural, instructional, and institutional purposes, and as described in the Communications Act of 1934, and the Federal Communications Regulations granting waiver of license fees; i.e., non-commercial educational broadcast stations as defined in 15 CFR part 2301—Public Telecommunications Facilities Program-subpart A—Definitions, Program Purposes, and Special consideration.

b. *Fee Waiver*—Waivers are discounts or reductions from payment of the full annual rental fee, and at the discretion of the authorized officer. The Forest Officer delegated the authority to issue the permit and establish the fee is also the officer authorized to determine if a holder qualifies for a fee waiver. Fee waivers must be equitable and in the public interest (36 CFR 251.57 (b)).

(1) State and Local Government. The authorized officer shall waive fees for telecommunication facilities and systems owned and operated by a State or local government agency or instrumentality thereof, when:

—State or local government or instrumentalities thereof do not charge the Forest Service for similar services.
—The use is not installed, maintained, or otherwise financed by means of customer charges, which include but are not limited to subscription fees, membership fees or dues, or special tax assessments, and
—The use furthers the public health, safety or welfare, or is otherwise to the benefit of the general public or the programs of the Secretary of Agriculture.

(2) Other Holders. Waivers for other holders will be considered by the authorized officer on a case by case basis. If granted, fees will not be waived below $75, which currently represents the cost to the Forest Service for administration of the authorization. This rate is, however, subject to revision on the basis of change in administrative costs.

There were also a number of responses, as well as comments sent to the Chief of the Forest Service on the proposals by all Regions, which requested a review of the Forest Service's rental fee waiver policy for radio broadcast (commercial), television broadcast (commercial) and associated broadcast translators. The respondents felt that a partial or full waiver should be granted based on the public service requirements of the Communications Act of 1934 and the provisions of the Federal Land Policy and Management Act of 1976.

As a result of these requests, the Forest Service is reviewing the national rental fee waiver policy for these categories of use. As a part of the review, the Forest Service is working with the Radio and Television Broadcasters to review the type and amount of public service provided.

Rental fees for these categories of use will remain at current levels until the review is completed and a final fee is established in the schedule. We anticipate fees for these uses will be established prior to January 1, 1990. All authorization holders and others expressing an interest in the fee schedules will be notified when the final fees are established.

5. *Categories of Use.* In the proposal, fees were based on categories of communications uses of National Forest System land. Each category was defined in the fee schedule to ensure proper classification.

A number of respondents felt that the categories of uses were too narrowly defined. Some respondents urged separation of uses such as: (1) Commercial communication microwave uses from industrial microwave uses, (2) specialized mobile radios from other uses, (3) commercial communication systems used for profit from those used for public services, and (4) TV cable enterprises serving major population centers from those serving sparsely populated rural areas.

As noted under the earlier discussion of fees, Industrial Microwave uses have been placed in a separate category from Common Carrier Microwave uses in the final policy.

After considering comments, the categories of "Commercial Communicator" and "Internal Two-Way Radio" in the proposal have been changed to "Mobile Radio: Commercial Communications". In addition, definitions for these categories have been modified for clarification at the request of industry respondents. The other categories are adopted as proposed.

6. *Definitions.* Several respondents found certain definitiosn and terms inadequate or confusing. Industry representatives suggested definitions and terms that would more clearly define commercial communications and internal radio communication uses.

In coordination with other Regions and the Washington Office, the Pacific Southwest Region adopted terminology defining the various types of communication uses.

Most of the proposed definitions for the categories of use remain unchanged or slightly modified. Modifications were in response to reviewers comments or to improve clarity.

Slight changes were made in the following definitions (changes to improve clarity not noted):

—A definition for Natural Resource and Environmental Monitoring is provided as follows: "This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations."
—All references to appurtenant uses are eliminated from the definition of Radio and Television Broadcast. Appurtenant uses are discussed in the Forest Service manual supplement.

Major changes were made in the definitions of Commercial Communicator and Internal Two-Way Radio. We agree with the reviewers who commented that the original definitions did not adequately describe the two categories of uses. In the final policy, the terms are defined as follows:

Mobile Radio: Commercial Communications. This includes mobile radio equipment which is used to provide communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMR's), private carrier two-way radio systems, and private carrier paging systems (PCPS). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

Mobile Radio: Internal Communications. A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purposes of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

6. *Phase-in of Fee Increases.*

The proposed fee schedule provided for a 3 or 5 year phase-in of fees for current holders. It was based on the percentage and amount of increase. There was concern that the phase-in did not adequately consider the financial impacts of the increases on some holders. There were examples of fees which exceeded 100 percent of the existing fee in each year of the phase-in. It was feared that the rapid increase would adversely affect the holders and their customers. As a result, the phase-in has been modified to allow a longer phase-in period.

The new phase-in will provide for a maximum increase of 25 percent of the previous year's fees with a minimum increase of $100 per year. The number of years it takes to reach the scheduled fee will vary. However, most of the fee increase should be phase-in within 10 years. New holders and holders adding new uses are not covered by the phase-in.

8. *Implementation.* Having considered the comments received, the Pacific Southwest Region is adopting the fee schedule with the changes noted in the foregoing discussion of comments. The policy and procedures to guide Forest Service employees in implementing the Communications Use Fee Schedule will be issued as a Regional Supplement to Forest Service Manual Chapter 2720. The text of the supplement is set out at the end of this notice.

The fee schedule will apply immediately to new permits issued on and after the effective date of this Policy. However, the authorized officer may use site specific analysis or other sound business management principles when it is determined that the schedule is inapplicable. Fees which have been established through competitive bid, appraisal, negotiation, or other sound business management practices are not covered by the schedule and will be updated in acordance with the terms of the authorization.

The fee schedule will be implemented for existing special use authorizations with the billings for calendar year 1990.

Dated: July 14, 1989.

Norwood F. Robertshaw,

Assistant Regional Forester, Lands and Real Estate Management.

Fee Schedule Policy and Procedures for Communication Uses

Note: The Forest Service uses alphanumeric codes and subject headings to organize the text of direction. Only those sections of the Forest Service Manual that would be revised are set out here. Readers should keep in mind that the audience of this direction is Forest Service employees charged with issuing and administering communication use authorizations.

Title 2700—Special Uses Management

2728—Communications

2728.1—Communications Sites

2. *Fee Determinations*

c. Regional Fee Schedule—Communications site special use fees will be charged at the annual rates shown. These rates will apply without CPI–U adjustment for new authorizations issued during the remainder of C.Y. 1989, and with CPI–U adjustment in C.Y. 1990 for other authorizations. The schedule will not affect fees which have been established through appraisal, competitive bid, negotiation, or other sound business management principles; fees for these uses will be updated in accordance with terms of the authorization.

(1) *Individual Authorization*

FINAL FEE SCHEDULE—PACIFIC SOUTHWEST REGION

Use Category	
Amateur Radio: All zones	$75
Broadcast Translator	*
Cable and Subscription Television All zones:	
Number of subscribers served	
Less than 200	400
201–500	700

FINAL FEE SCHEDULE—PACIFIC SOUTHWEST REGION—Continued

Use Category	
501–1,500	1,400
1,501–2,500	2,000
More than 2,500	2,400
Cellular Telephone: Regionwide	5,000
Common Carrier Microwave Relay [1]	
North Zone	3,000
Central Zone	5,500
South Zone	5,500
Industrial Microwave:	
North Zone	1,000
Central Zone	3,500
South Zone	5,000

Note:*—Fees of these categories of use will be established prior to 1/1/90.

[1] Fees for local exchange communications facilities which provide service to small populations.

Mobile Radio: Commercial Communications

North Zone $700 for the 1st transmitting frequency, plus
$200 each subsequent transmitting frequency.
Central Zone $1,500 for the 1st transmitting frequency, plus
$200 each subsequent transmitting frequency
South Zone $2,500 for the 1st transmitting frequency, plus
$200 each subsequent transmitting frequency

Mobile Radio: Internal Communications

North Zone $700 for 1st transmitting frequency, plus
$200 each-subsequent transmitting frequency
Central Zone $1,500 for 1st transmitting frequency, plus
$200 each subsequent transmitting frequency.
South Zone $1,500 for 1st transmitting frequency, plus
$200 each subsequent transmitting frequency

Natural Resource and Environmental Monitoring.

Use Category	
All Zones	$75
Passive Reflector: [1] All Zones	500
Personal/Private "Receive Only": All Zones.	75
Radio Broadcast (AM/FM)	*
Television Broadcast	*
All Zones:	
0–100	75
101—300	250
301—500	300
500—1,000	500
over 1,000 refer to the scheduled fee.	

Note:*—Fees of these categories of use will be established prior to 1/1/90.

[1] Fees for local exchange communications facilities which provide service to small populations.

The zone descriptions are as follows:

Northern Zone: Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen (portion), Tehama, Plumas (portion), Mendicino, Butte, Glenn, Colusa, Lake and Yuba (that portion of the Plumas NF);

Central Zone: Sonoma, Napa, Sacramento, Sutter, Yuba (portion), Sierra, Nevada, Placer, Eldorado, Amador, Solano, Stanislaus, San Francisco, San Mateo, Santa Cruz, Santa Clara, Alameda, Contra Costa, San Joaquin, Calaveras, Alpine, Tuolomne, Monterey, San Benito, Merced, Mariposa, Madera, Fresno, Tulare, Kings, Yolo, Marin, Kern (except that portion within Los Padres NF), Plumas (that portion of the Tahoe NF), and the Lassen (except that portion of the Toiyabe NF);

Southern Zone: San Luis Obispo, Orange, Santa Barbara, Imperial, Ventura, San Diego, Kern (that portion of Los Padres NF), Los Angeles, San Bernardino, and Riverside.

(2) *Definitions*

(a) *Amateur Radio.* Equipment used by individuals or groups who are licensed by FCC as amateur radio operators.

(b) *Broadcast Translator.* This category of use consists of receiving a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translator. This category of use includes translators associated with public telecommunications service.

(c) *Cable and Subcription Television.* This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

(d) *Cellular.* This is a specialized service provided by commercial communicators which involves a mobile (vehicular) UHF radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

(e) *Common Carrier Microwave Relay.* This use typically includes long line carriers which relay intrastate and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. These uses are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to published rate schedules.

(f) *Industrial Microwave.* This use includes microwave communication equipment not regulated by state public utility commissions. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms.

(g) *Mobile Radio: Commercial Communications.* This includes communications equipment which primarily provides communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMRs), private carrier two-way systems, and private carrier paging systems (PCPs). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

(h) *Mobile Radio: Internal Communications.* A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

(i) *Natural Resource and Environmental Monitoring.* This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations.

(j) *Passive Reflector.* Passive reflectors include various types of non-powered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-site with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

(k) *Personal/Private "Receive Only".* These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes, including recreation residences. These facilities are personally owned and not operated for profit.

(1) *Radio Broadcast.* This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenues from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(m) *Television Broadcast.* This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include television stations (Major and independent networks) who generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(3) *Individual Authorizations Within Facilities Owned by Others*

When shared facility occupancy is authorized and each user has an authorization, the fee shall be 100% of the fee for each authorized use. There will be no $75 discount.

(4) *Fees under Multiple-User Authorizations*

To improve administration of communications sites. Forest Service policy provides for authorizing shared facility occupancies under a single authorization. By the terms and conditions, these authorization holders, rather than the Forest Service,

authorize and administer the use of their facilities by others. Collection of Forest Service fees required under this type of authorization, are burdens of the holder.

Fees for such a multiple-user authorization:
First use = 100% of fee schedule

All other uses are subject to a $75 discount, except for additional frequencies in the case of mobile radios. These additional frequencies are charged the full rate per the following example.

Mobile radio use is $700 as listed in the schedule for first frequency (less $75 discount) plus $200 for each additional frequency.

(5) *Discounts for Consolidation and Efficient Management*

There are situations where site or facility consolidation and efficient site management is intended to meet Forest Service objectives. In these, situations, fees may be temporarily discounted to reflect the benefits received by the Forest Service. Annual fee discounts cannot exceed the holders costs or the annual fee for use of the site. The fee discounts must be considered on a case-by-case basis and approved by the Regional Forester.

Efficient site management may include the formation of user associations which assume administrative duties.

(6) *Use of Government Owned Facilities*

In addition to prescribed fees, authorized officers will require users occupying Forest Service facilities to perform or share in the costs of building or facility maintenance and repair, as provided by section 7, Act of April 24, 1950 (Granger-Thye and FSM 2711.7).

(7) *Ancillary and Appurtenant Communication Uses*

Ancillary uses are those uses which provide support or intertie with another communication system on the site. The fee would be for the highest valued communications use of the holder. For example, a holder has installed a mobile radio used for internal communications which interties with an industrial microwave system in the same facility. In this case, the holder would be issued one authorization and charged a fee for industrial microwave.

Appurtenant uses are those communication uses incidental to another non-communication use of National Forest System land, such as a ski resort or marina.

No fees will be charged for ancillary/appurtenant uses.

(8) *Phase-in of Fee Increases*

Fee increases for current holders will be phased-in at a rate of 25 percent of the previous year's fee with a minimum increase of $100 per year. The 25 percent increase will continue until the current schedule fee is reached.

For example: Current fee is $300 and the scheduled fee is $800

	Phased-in Fee	Scheduled Fee*
Year:		
1	$400 ($100 min.)	$800
2	500	832
3	625	865
4	781	900
5	936	936

*Indexed using a 4 percent CPI–U.

The phase-in does not apply to new holders or existing holders adding new uses.

(9) *Annual Fee Schedule Adjustment*

All communication use fees are subject to annual adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year, will be divided by the CPI–U for July of the previous 1-year to yield a CPI–U multiplier which will be used to annually update the Communication Fee Schedule.

(10) *Other Methods of Establishing Fees*

Fees will be determined on individual case basis for: (1) Sites identified as atypical (currently Mt. Wilson, Sunset Ridge, Mt. Lukins, Johnston Peak, Magic Mountain, Santiago, Sierra Peaks, and Strawberry Peak are considered atypical); (2) Categories of use which were not established in the schedule; (3) Sites servicing high populations; and (4) AM radio braodcast sites exceeding 1 acre.

The authorized officer may use site-specific appraisals, sound business management principles, and/or rental analysis as coordinated with the Regional Appraiser to determine fees for individual sites when market evidence, such as leases for similarly used sites, demonstrate the inapplicability of the fee schedule.

Appraisals provided by the holder or other groups may be used to determine fees if the Regional Appraiser establishes that the appraisal meets Forest service appraisal standards and the report is approved.

Competitive bidding may be used to establish fees for new sites (FSM 2712.2).

(11) *Periodic Review of Fee Schedule*

The Pacific Southwest Region shall, by December 31, 1994, review this schedule to determine whether market conditions and business practices have changed sufficiently to warrant a fee schedule revision. Fee waivers will also be reviewed at this time to ascertain holder's qualifications. Holders will be given an opportunity to provide data which might have a bearing on the review.

[FR Doc. 89–19858 Filed 8–22–89; 8:45 am]

BILLING CODE 3410–11–M

Southern Region; Fee Schedule for Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of fee schedule for communications uses.

SUMMARY: The Regional Forester, Southern Region, Forest Service, is adopting a new fee schedule for communications uses on National Forest System Lands in the Southeastern States and Puerto Rico. The intent of the new fee schedule is to assess fees that are based on fair market value of the rights and privileges as mandated by the Federal Land Policy and Management Act, October 21, 1976.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Vince McCormack or George Hemingway, Lands Staff, Forest Service, U.S.D.A., 1720 Peachtree Rd., NW, Atlanta, Georgia 30367, (404) 347–2373.

SUPPLEMENTARY INFORMATION: On July 26, 1988, the Regional Forester for the Southern Region published a notice of a proposed fee schedule for communications uses (53 FR 28026) with request for comment. By notice published in the Federal Register (53 FR 38759 October 3, 1988) the comment period was extended.

The proposed fee schedule and policy was based on categories of use with individual fees to be determined by population, number of licensed transmitter frequencies, number of subscribers, or the nature of the use. The proposal also called for annual adjustments of the scheduled fees based upon the Consumer Price Index—Urban (CPI–U) and provided for a phase-in statement. The proposal was published simultaneously with the proposals by 5 other Regions who had coordinated their proposals to achieve nation wide consistency where possible.

Analysis of Public Comment

The Southern Region received 60 responses to the proposal. The number and percentage of comments by respondents were:

Use categories	No. of respondents	Percent of total
Amateur radio	5	8
Broadcast translator	2	3
Cable and subscription TV	5	8
Cellular telephone	0	0
Mobile radio; commercial communications	9	15
Mobile radio; internal communications	18	30
Common carrier microwave relay	1	2
Industrial microwave	7	12
Natural resources and environmental monitoring	0	0
Passive reflector	0	0
Personal/private "receive only"	0	0
Radio broadcast	5	8
Television broadcast	6	10
Other	2	4

All of the comments received have been reviewed and given consideration in reaching the final decision. A summary of the major comments received and the Forest Service response by topic follows. It should be noted that the Southern Region has coordinated its review and response to the comments with the other Regions in order to achieve as much consistency Service wide as possible.

1. *Fees levels.* A number of respondents felt that the proposed fees

were extreme and unreasonable. Many individuals and small businesses indicated that the proposed fees would be too great a burden for them and that they would have to abandon their sites if the schedule were implemented. Some suggested a re-evaluation and reduction in the proposed fees. Others recommended lower fees and a longer phase-in period.

A few respondents said that the proposed fee rates were too low and thus amount to public subsidies. Several suggested alternative methods for detemining fees, some of which would return many times the proposed rates to the Federal Government. Among alternatives proposed were: To adopt a fee policy based on site rental income (assess a percentage of gross rental income derived from the site); to consider site value in light of the alternative cost of constructing competitive towers on private lands; to base fee as a percentage of the user's investment in improvements and equipment; to use per capita income multipliers to adjust for differences between geographical areas; and to use private management companies, with no vested interest in the site, to establish individual fees.

After analysis of these comments, the Southern Region is making the following changes in the proposed communication site fee schedule:

a. To be consistent with other Regions, the fees for cable and subscriber television will be based on numbers of subscribers. In most situations, this method reduces the fees charged to companies who service small populations and offers more stratification of fees for the mid-size companies. In the proposed schedule, fees were based on the census population within the franchise or service area. The change allows the fee to be based on actual use.

b. Also, for consistency among the Regions, common carrier Microwave Relays and Industrial Microwave Relays have been separated and re-evaluated. This results in lower fees for Industrial Microwave Relays on those sites in the mountain areas of the Southern Region (AR, GA, KY, NC, TN, VA and PR).

c. The same fee structure is adopted for both Mobile Radio: Commercial Communication and Mobile Radio: Internal Communication. There will be a base fee for the first transmitting frequency plus a $200 fee for each additional transmitting frequency. This will result in a reduction of fees for smaller operations but will result in a slight increase for some large operations.

A few respondents also commented that proposed fees were too high in the categories of: Amateur Radio, Common Carrier Microwave Relay, Industrial Microwave, and Mobile Radio: Commercial Communications. The claims of high fees were not supported by market data or were insufficient to warrant the fees in the final schedule. Therefore the Region is adopting fees for these categories as proposed.

2. *Market Survey.* A number of respondents felt that the market survey used to develop the proposed fee schedule was inadequate. Most indicated that the market survey and resulting fees did not give credit for enhancing public lands, used ability to pay rather than fair market value to determine the fees, did not include comparable leases for the use of private land, used insufficient market data, and did not correlate fees with investment values and site improvement costs. Less than 8% of the respondents provided data supporting their position.

The Southern Region coordinated with the Forest Service Regions in reviewing the re-analyzing the market data utilized in compiling the proposed fees. No major discrepancies were found in the market data compiled by the Forest Service. The data was found to be adequate for fee determination.

For the purposes of determining fair market value, we examined available market leases to see if the expense of developing facilities, access, and power was a factor influencing private leases rates. We found no usable correlation. The private sector leases used to establish fair market value fee do not clearly discount the site rental because of the development cost incurred by the lessee.

3. *Fee Exemptions/Waivers.* Under the proposed policy, exemptions from fees and fee waivers would remain a decision of the authorized officer (36 CFR 251.57(b)). A number of respondents objected to the Forest Service policy of charging fees for communications uses on National Forest System land. Others felt that fees should be waived for any use that provides a public benefit, whether that use is of a commercial nature or not. Most respondents to this issue found the current fee waiver policy unclear, vague and subject to inconsistent application. They requested a clear, consistent statement of a national fee waiver policy for specific categories of use. Some respondents felt that government and public agencies, as well as certain other users (utilities, public broadcasters, etc.) should be exempt from fees as a matter of National policy.

We agree that there should be national fee waivers established for specific categories of use or type of holder when the entire class of use or holder meets the rental fee waiver criteria. Therefore, national direction will be issued concerning fee waivers for specific categories of use and/or type of holder. The direction, which follows, is intended to clarify the intent of the waiver policy, it does not contain any substantive changes in current policy.

a. *Fee exemption*—Exemptions are determinations that certain classes of users will not be required to pay an annual rental fee. Most such exemptions are statutory; i.e., they derive from specific fee exemption language in Public Law, and are not subject to the discretion of the authorized officer. However, holders may be assessed an amount sufficient to reimburse the cost of administering the use. Holders exempt from fees include:

—Federal agencies

—Facilities established by Rural Electrification Administration

—Public telecommunication systems identified and licensed as such by the Federal Communications Commission (FCC) for educational, cultural, instructional, and institutional purposes, and as described in the Communications Act of 1934, and the Federal Communications Regulations granting waiver of license fees; i.e., non-commercial educational broadcast stations as defined in 15 CFR Part 2301—Public Telecommunications Facilities Program, Subpart A—Definitions, Program Purposes, and Special consideration.

b. *Fee Waiver*—Waivers are discounts or reductions from payment of the full annual rental fee, by provisions of law and regulation, and at the discretion of the authorized officer. The Forest Officer delegated the authority to issue the permit and establish the fee is also the officer authorized to determine if a holder qualifies for a fee waiver. Fee waivers must be equitable and in the public interest. (36 CFR 251.57(b)).

(1) State and Local Government. The authorized officer shall waive fees for telecommunication facilities and systems owned and operated by a State or local government agency or instrumentality thereof, when:

—State or local government or instrumentalities thereof do not charge the Forest Service for similar services

—The use is not installed, maintained, or otherwise financed by means of customer charges, which include but are not limited to subscription fees, membership fees or dues, or special tax assessments; and

—The use furthers the public health, safety, or welfare, or is otherwise to the benefit of the general public or the programs of the Secretary of Agriculture.

(2) Other Holders. Waivers for other holders will be considered by the authorized officer on a case by case basis. If granted, fees will not be waived below $75, which currently represents the cost to the Forest Service for administration of the authorization. This rate is, however, subject to revision on the basis of change in administrative costs.

There were also a number of responses, as well as comments sent to the Chief of the Forest Service on the proposals by all Regions, which requested a review of the Forest Service's rental fee waiver policy for radio broadcast (commercial), television broadcast (commercial) and associated broadcast translators. The respondents felt that a partial or full waiver should be granted based on the public service requirements of the Communications Act of 1934 and the provisions of the Federal Land Policy and Management Act of 1976.

As a result of these requests, the Forest Service is reviewing the national rental fee waiver policy for these categories of use. As a part of the review, the Forest Service is working with the Radio and Television Broadcasters to review the type and amount of public service provided.

Rental fees for these categories of use will remain at current levels until the review is completed and a final fee is established in the schedule. We anticipate fee for these uses will be established prior to January 1, 1990. All authorization holders and others expressing an interest in the fee schedules will be notified when the final fees are established.

4. *Categories of Use.* In the proposal, fees were based on categories of communication uses on National Forest System land. Each category was defined in the fee schedule to ensure proper classification.

A number of respondents felt that the categories of uses were too narrowly defined. Some respondents urged separation of uses such as: (1) Commercial communication microwave uses from industrial microwave uses, (2) specialized mobile radios from other uses; (3) commercial communication systems used for profit from those used for public services, and (4) TV cable enterprises serving major population centers from those serving sparsely populated rural areas.

As noted under the earlier discussion of fees, industrial microwave uses have been placed in a separate category from common carrier microwave uses in the final policy.

After considering comments, the categories of "Commercial Communicator" and "Internal Two-Way Radio" in the proposal have been changed to "Mobile Radio: Commercial Communications" and "Mobile Radio: Internal Communications". In addition, definitions for these categories have been modified for clarification at the request of industry respondents. The other categories are adopted as proposed.

5. *Definitions.* Several respondents found certain definitions and terms inadequate or confusing. Industry suggested definitions and terms that more clearly define commercial communications and internal radio communication uses.

In coordination with other Regions and the Washington Office, the Southern Region has adopted common terminology defining the various types of communciation uses.

Most of the proposed definitions for the categories of use remain unchanged or slightly modified. Modifications were in response to reviewers comments or to improve clarity.

Slight changes were made in the following definitions (changes to improve clarity not noted):

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—All references to appurtenant uses are eliminated from the definition of Radio and Television Broadcast. Apputenant uses are discussed in the Forest Service manual supplement.

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Mobile Radio: Internal Communications. A private mobile radio system licensed by the Federal Communication Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

6. *Phase-in of Fee Increases.*

The proposed fee schedule provided for a 3 or 5 year phase-in of fees for current holders. It was based on the percentage and amount of increase. There was concern that the phase-in did not adequately consider the financial impacts of the increases on some holders. There were examples of fees which exceeded 100 percent of the existing fee in each year of the phase-in. It was feared that the rapid increase would adversely affect the holders and their customers. As a result, the phase-in has been modified to allow a longer phase-in period.

The new phase-in will provide for a maximum increase of 25 percent of the previous year's fees with a minimum increase of $100 per year. The number of years it takes to reach the schedule fee will vary. However, most of the fee increases should be phased-in within 10 years. New holders and holders adding new uses are not covered by the phase-in.

7. *Implementation.* Having considered the comments received, the Southern Region is adopting the fee schedule with the changes noted in the foregoing discussion of comments. The policy and procedures to guide Forest Service employees in implementating the Communications Use Fee Schedule will be issued as a Regional Supplement to Forest Service Manual Chapter 2720. The text of the supplement is set out at the end of this notice.

The fee schedule will apply immediately to all new permits issued on and after the effective date of this policy. The fee schedule will be implemented for all existing special use authorizations with the billings for calendar year 1990.

Dated: May 23, 1989.

should keep in mind that the audience of this

schedule below. These rates will apply

Dated: May 23, 1989.

Robert B. Erickson,

Deputy Regional Forester.

Fee Schedule Policy and Procedures for Communications Uses

Note: The Forest Service uses alphanumeric codes and subject headings to organize the text of direction. Only those sections of the Forest Service Manual that would be revised are set out here. Readers should keep in mind that the audience of this direction is Forest Service employees charged with issuing and administering communication use authorizations.)

Title 2700—Special Uses Management

2728—COMMUNICATIONS
2728.1—Communications Sites

2. *Fee determinations*

c. Regional Fee Schedule—Communications use special use fees will be charged at the annual rates shown in the schedule below. These rates will apply without CPI–U adjustment for new authorizations issued during the remainder of C.Y. 1989, and with CPI–U adjustment in C.Y. 1990 for all authorizations. The schedule will not affect fees which have been established through appraisal, competitive bid, negotiation, or other sound business management principles; fees for these uses will be updated in accordance with terms of the authorization.

(1) Individual Authorizaiton

FINAL FEE SCHEDULE—SOUTHERN REGION

Use Category	AL	AR	FL	GA, NC, SC, TN, VA	KY	LA	MS	TX	PR
Radio Broadcast (AM & FM) Service Area Population (Not applicable for AM radio sites over one acre)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Television Broadcast Service Area Population	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Broadcast Translator	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Cable and Subscription TV Number of subscribers:									
Less than 200									
201 to 500									
501 to 1,500									
1,501 to 2,500									
More than 2,500		2,500		2,500	2,500				1,300
Common Carrier Microwave Relay	300	3,000	2,000	2,500	2,400		600	1,800	4,000
Industrial Microwave	300	1,200		1,200	1,500		600	1,200	2,000
Mobile Radio: Commercial Communication, First licensed transmitter frequency		400		400	400				450
Each additional licensed transmitter frequency		200		200	200				200
Mobile Radio: Internal Communications, First licensed transmitter frequency	300	400		400	400	300	360	500	450
Each additional licensed transmitter frequency	200	200		200	200	200	200	200	200
Cellular									
Passive Reflector		400		400	400				225
Amateur Radio	75	75	75	75	75	75	75	75	75
Personal/Private "Receive Only"	75	75	75	75	75	75	75	75	75
Natural Resource and Environmental Monitoring	75	75	75	75	75	75	75	75	75

*Fees of these categories of use will be established prior to 1/1/90

(2) Definitions

(a) *Amateur Radio.* Equipment used by individuals or groups who are licensed by FCC as amateur radio operators.

(b) *Broadcast Translator.* This category of use consists of receiving a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translator. This category of use includes translators associated with public telecommunications service.

(c) *Cable and Subscription Television.* This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

(d) *Cellular.* This is a specialized service provided by commercial communicators which involves a mobile (vehicular) radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

(e) *Common Carrier Microwave Relay.* This use typically includes long line carriers which relay intrastate and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. These uses are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to published rate schedules.

(f) *Industrial Microwave.* This use includes microwave communication equipment not regulated by state public utility commissions. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms.

(g) *Mobile Radio: Commercial Communications.* This includes communications equipment which primarily provides communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMRs), private carrier two-way systems, and private carrier paging systems (PCPs). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

(h) *Mobile Radio: Internal Communications.* A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

(i) *Natural Resource and Environmental Monitoring.* This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations.

(j) *Passive Reflector.* Passive reflectors include various types of non-powered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

(k) *Personal/Private "Receive Only".* These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes, including recreation residences. These facilities are personally owned and not operated for profit.

(l) *Radio Broadcast.* This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenues from commercial advertising and public radio stations whose

revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(m) *Television Broadcast.* This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include television stations (Major and independent networks) who generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(3) Individual Authorizations Within Facilities Owned by Others

When shared facility occupancy is authorized and each user has an authorization, the fee shall be 100% of the fee for each authorized use. There will be no $75 discount.

(4) Fees Under Multiple-User Authorizations

To improve administration of communications sites, Forest Service policy provides for authorizing shared facility occupancies under a single authorization. By the terms and conditions, these authorization holders, rather than the Forest Service, authorize and administer the use of their facilities by others. Collection of Forest Service fees required under this type of authorization, are burdens of the holder.

Fees for such a multiple-user authorization:

First use = 100% of fee schedule

All other uses are subject to a $75 discount, except for additional frequencies in the case of mobile radios. These additional frequencies are charged the full rate per the following example:

Mobile radio use will be $300 to $500 as listed in the schedule for first frequency (less $75 discount) plus $200 for each additional frequency.

(5) Discounts for Consolidation and Efficient Management

There are situations where site or facility consolidation and efficient site management is intended to meet Forest Service objectives. In these situations, fees may be temporarily discounted to reflect the benefits received by the Forest Service. Annual fee discounts cannot exceed the holders costs or the annual fee for use of the site. The fee discounts must be considered on a case-by-case basis and approved by the Regional Forester.

Efficient site management may include the formation of user associations which assume administrative duties traditionally completed by the Forest Service.

(6) Use of Government Owned Facilities

In addition to prescribed fees, authorized officers will require users occupying Forest Service facilities to perform or share in the costs of building or facility maintenance and repair, as provided by section 7, Act of April 24, 1950 (Granger-Thye and FSM 2711.7).

(7) Ancillary and Appurtenant Communication Uses

Ancillary uses are those uses which provide support or intertie with another communication system on the site. The fee would be for the highest valued communications use of the holder. For example, a holder has installed a mobile radio used for internal communications which interties with an industrial microwave system in the same facility. In this case, the holder would be issued one authorization and charged a fee for industrial microwave.

Appurtenant uses are those communication uses incidental to another non-communication use of the National Forest System land, such as a ski resort or marina.

No fees will be charged for ancillary/appurtenant uses.

(8) Phase-in of Fee Increases

Fee increases for current holders will be phased-in at a rate of 25 precent of the previous year's fee with minimum increase of $100 per year. The 25 percent increase will continue until the current scheduled fee is reached.

For example: Current fee is $300 and the scheduled fee is $800

	Phased-in fee	Scheduled fee*
Year 1	[1] $400	$800
Year 2	500	832
Year 3	625	865
Year 4	781	900
Year 5	936	936

* Indexed using a 4 percent CPI–U.
[1] $100 min.

The phase-in does not apply to new holders or existing holders adding new uses.

(9) Annual Fee Schedule Adjustment

All communication use fees subject to annual adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year will be divided by the CPI–U for July of the previous year to yield a CPI–U multiplier which will be used to annually update the Communications Use Fee Schedule.

(10) Periodic Review of Fee Schedule

The Southern Region shall, by December 31, 1994, review this schedule to determine whether market conditions and business practices have changed sufficiently to warrant a fee schedule revision. Fee waivers will also be reviewed at this time to ascertain holder's qualifications. Holders will be given an opportunity to provide data which might have a bearing on the review.

(11) Other Methods of Establishing Fees

Fees will be determined on individual case basis for: (1) Atypical sites (the Mt. Pisgah Communications Site in North Carolina, the Puerto Rico Telephone Company Facility on the El Yunque Communications Site in Puerto Rico and the Federal Communications uses on East Peak in Puerto Rico); (2) Categories of use which were not established in the schedule; (3) Sites servicing high populations; and (4) AM radio broadcast sites exceeding 1 acre.

The authorized officer may use site-specific appraisals, sound business management principles, and/or rental analysis as coordinated with the Regional Reviewing Appraiser to determine fees for individual sites when market evidence, such as leases for similarly used sites, demonstrate the inapplicability of the fee schedule.

Appraisals provided by the holder or other groups may be used to determine fees if the Regional Appraiser establishes that the appraisal meets Forest Service appraisal standards and the report is approved.

Competitive bidding may be used to establish fees for new sites, (FSM 2712.2).

[FR Doc. 89–19859 Filed 8–22–89; 8:45 am]

BILLING CODE 3410-11-M

Southwestern Region; Fee Schedule for Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of fee schedule for communications uses.

SUMMARY: The Regional Forester, Southwestern Region, Forest Service, is adopting a new fee schedule for communications uses on National Forest System lands in New Mexico and Arizona. The intent of the new fee schedule is to assess fees that are based on fair market value of the rights and privileges authorized as mandated by the Federal Land Policy and Management Act, October 21, 1976.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Art Maynard, Recreation Staff, or Ray Woodbury, Lands and Minerals Staff, 517 Gold Avenue, SW, Albuquerque, New Mexico 87102, (505) 842–3156.

SUPPLEMENTARY INFORMATION: On July 28, 1988, the Regional Forester for the Southwestern Region published a notice of a proposed fee schedule for communications uses (53 FR 28026) with request for comment. By notice published in the **Federal Register** (53 FR 38759 October 3, 1988 the comment period was extended.

The proposed fee schedule and policy was based on categories of use with individual fees to be determined by population, number of licensed transmitter frequencies, number of subscribers, or the nature of the use. The proposal also called for annual adjustments of the scheduled fees based upon the Consumer Price Index—Urban (CPI–U) and provided for a phase-in of fees. The proposal was published simultaneously with the proposals by 5 other Regions, who had coordinated their proposals to achieve nationwide consistency where possible.

Analysis of Public Comment

The Southwestern Region received 50 responses to the proposal. The number and percentage of comments by respondents were:

Use categories	Total No. of respondents	No. of percent
Amateur Radio	2	1
Radio Broadcast	16	8
Independent TV Broadcaster	6	3
Low Power TV Broadcaster	2	1
Mobile Radio: Commercial Communications	18	9
Mobile Radio: Internal Communications	12	6
Common Carrier Microwave Relay	6	3
Industrial Microwave	6	3
Natural Resource and Environmental Monitoring	2	1
Translator (Broadcast)	10	5
Translator (TV)	10	5
Translator (FM)	8	4
Other (Communications Management Consultant)	2	1

All of the comments received have been reviewed and given consideration in reaching the final decision. A summary of the major comments received and the Forest Service response by topic follows. It should be noted that the Southwestern Region has coordinated its review and response to the comments with the other Regions in order to achieve as much consistency Servicewide as possible.

1. *Fee levels.* A number of respondents felt that the proposed fees were extreme and unreasonable. Many individuals and small businesses indicated that the proposed fees would be too great a burden for them and that they would have to abandon their sites if the schedule were implemented. Some suggested a re-evaluation and reduction in the proposed fees. Others recommended lower fees and a longer phase-in period.

A few respondents said that the proposed fee rates were too low and thus amount to public subsidies. Several suggested alternative methods for determining fees, some of which would return many times the proposed rates to the Federal Government. Among alternatives proposed were: to adopt a fee policy based on site rental income (assess a percentage of gross rental income derived from the site); to consider site value in light of the alternative cost of constructing competitive towers on private lands; to base fee as a percentage of the user's investment in improvements and equipment; to use per capita income multipliers to adjust for differences between geographical areas; and to use private management companies, with no vested interest in the site, to establish individual fees.

After anlysis of these comments, the Southwestern Region is making the following changes in the proposed communication site fee schedule:

a. To be consistent with other Regions, the fees for cable and subscription television will be based on numbers of subscribers. In most situations, this method reduces the fees charged to companies who service small populations and offers more stratification of fees for the mid-size companies. In the proposed schedule, fees are based on the census population within the franchise or service area. The change allows the fee to be based on actual use.

b. Also, for consistency among the Regions, common carrier Microwave Relays and Industrial Microwave Relays have been separated and re-evaluated.

c. The same fee structure is adopted for both Mobile Radio: Commercial Communications and Mobile Radio: Internal Communications. There will be a base fee for the first transmitting frequency plus a $200 fee for each additional transmitting frequency. These changes were made based on public comment and to achieve consistency between all of the Regions. For the Mobile Radio: Internal Communications, this will result in a reduction of fees for smaller operations, but may result in a slight increase for some large operations. Subatantial savings are possible when users agree to be included under a multiple user authorization. For Mobile Radio: Commercial Communications, the fee was changed from a fee per frequency with a minimum fee level established, to a base fee plus a fee for each additional transmitting frequency. The base fee will not apply to each tenant under the holder's multiple user authorization. These changes may result in slightly higher fees than proposed in earlier proposals; however, this will depend on the type and size of the business.

A few respondents also commented that proposed fees were too high in the categories of: Common Carrier Microwave Relay, Industrial Microwave, Commercial Communications, Industrial Communications, Radio and TV Broadcasters, and TV and FM Translators. The claims of high fees were not supported by market data or the data was insufficient to warrant changing the fees in the final schedule. Therefore the Region is adopting fees for these categories as proposed. Most of the FM and television broadcast authorizations in the Region are located on Sandia Crest, Peralta Ridge or the Santa Catalina Mountains; which are atypical sites. A proposed fee schedule for these atypical sites was announced in August of 1988 by a Regional Forester letter. Final fee schedules for atypical sites and translator users throughout all value zones will be announced by a Regional Forester Decision Notice at a later date.

2. *Market Survey.* A number of respondents felt that the market survey used to develop the proposed fee schedule was inadequate. Most indicated that the market survey and resulting fees did not give credit for enhancing public lands, used ability to pay rather than fair market value to determine the fees, did not include comparable leases for the use of private land, used insufficient market data, and did not correlate fees with investment values and site improvement costs. Some users suggested that fees be based on the square footage occupied or that fees be based on grazing land value and cost to administer (purported to be a sound business management practice). Less than 3% of the respondents provided data supporting their position.

The Southwestern Region coordinated with the other Forest Service Regions in reviewing and re-analyzing the market data utilized in compiling the proposed fees. No major discrepancies were found in the market data compiled by the Forest Service. The data was found to be adequate for fee determination.

For the purposes of determining fair market value, we examined available market leases to see if the expense of developing facilities, access, and power was a factor influencing private lease rates. The private sector leases used to establish fair market value do not clearly discount the site rental because of the development cost incurred by the lessee.

3. *Fee Exemption/Waivers.* Under the proposed policy, exemptions from fees and fee waivers would remain a decision of the authorized officer (36 CFR 251.57(b)). A number of respondents objected to the Forest Service policy of charging fees for communication uses on National Forest System land. Others felt that fees should be waived for any use that provides a public benefit, whether that use is of a commercial nature or not. Most respondents to this issue found the current fee waiver policy unclear, vague and subject to inconsistent application. They requested a clear, consistent

statement of a national fee waiver policy for specific categories of use. Some respondents felt that government and public agencies, as well as certain other users (utilities, public braodcasters, etc.) should be exempt from fees as a matter of National policy.

We agree that there should be national fee waivers established for specific categories of use or type of holder when the entire class of use or holder meets the rental fee waiver criteria. Therefore, national direction will be issued concerning fee waivers for specific categories of use and/or type of holder. The direction, which follows, is intended to clarify the intent of the waiver policy, it does not contain any substantive changes in current policy.

a. *Fee exemption*—Exemptions are determinations that certain classes of users will not be required to pay an annual rental fee. Most such exemptions are statutory; i.e., they derive from specific fee exemption language in Public Law, and are not subject to the discretion of the authorized officer. However, holders may be assessed an amount sufficient to reimburse the cost of administering the use. Holders exempt from fees include:

—Federal agencies
—Facilities established by Rural Electrification Administration
—Public telecommunication systems identified and licensed as such by the Federal Communications Commission (FCC) for educational, cultural, instructional, and institutional purposes, and as described in the Communications Act of 1934, and the Federal Communications Regulations granting waiver of license fees; i.e., non-commerical educational broadcast stations as defined in 15 CFR Part 2301—Public Telecommications Facilities Program, Subpart A—Definitions, Program Purposes, and Special consideration.

b. *Fee Waiver*—Waivers are discounts or reductions from payment of the full annual rental fee, by provisions of law and regulation, and at the discretion of the authorized officer. The Forest officer delegated the authority to issue the permit and establish the fee is also the officer authorized to determine if a holder qualifies for a fee waiver. Fee waivers must be equitable and in the public interest. (36 CFR 251.57(b)).

(1) State and Local Government: The authorized officer shall waive fees for telecommuication facilities and systems owned and operated by a State or local government agency or instrumentality thereof, when:

—State or local government or instrumentalities thereof do not charge the Forest Service for similar services;
—The use is not installed, maintained, or otherwise financed by means of customer charges, which include but are not limited to subscription fees, membership fees or dues, or special tax assessments; and
—The use furthers the public health, safety, or welfare, or is otherwise to the benefit of the general public or the programs of the Secretary of Agriculture.

(2) *Nonprofit Holders:* The holder is a nonprofit association or nonprofit corporation which is not controlled or owned by profit making corporations of business enterprises and which is engaged in public or semi-public activity to further public health, safety, or welfare, etc.

(3) *Other Holders:* Waivers for other holders will be considered by the authorized officer on a case by case basis. If granted, fees will not be waived below $75, which currently represents the cost to the Forest Service for administration of the authorization. This rate is, however, subject to revision on the basis of change in administrative costs.

There were also a number of responses, as well as comments sent to the Chief of the Forest Service on the proposals by all Regions, which requested a review of the Forest Service's rental fee waiver policy for radio broadcast (commerical), television broadcast (commercial) and associated broadcast translators. The respondents felt that a partial or full waiver should be granted based on the public service requirements of the Communications Act of 1934 and the provisions of the Federal Land Policy and Management Act of 1976.

As a result of these requests, the Forest Service is reviewing the national rental fee waiver policy for these categories of use. As a part of the review, the Forest Service is working with the Radio and Television Broadcasters to review the type and amount of public service provided.

Rental fees for these categories of use will remain at current levels until the review is completed and a final fee is established in the schedule. We anticipate fees for these uses will be established prior to January 1, 1990. All authorization holders and others expressing an interest in the fee schedules will be notified when the final fees are established.

4. *Categories of Use.* In the proposal, fees were based on categories of communication uses on National Forest System land. Each category was defined in the fee schedule to ensure proper classification.

A number of respondents felt that the categories of uses were too narrowly defined. Some respondents urged separation of uses such as: (1) Commercial communication microwave uses from industrial microwave uses, (2) specialized mobile radios from other uses, (3) commercial communication systems used for profit from those used for public services, and (4) TV cable enterprises serving major population centers from those serving sparsely populated rural areas.

As noted under the earlier discussion of fees, industrial microwave uses have been placed in a separate category from common carrier microwave uses in the final policy.

After considering comments, the categories of "Commercial Communicator' and "Internal Two-Way Radio" in the proposal have been changed to "Mobile Radio: Commercial Communications" and "Mobile Radio: Internal Communications". In addition, definitions for these categories have been modified for clarification at the request of industry respondents. The other categories are adopted as proposed.

5. *Phase-in of Fee Increases.* The proposed fee schedule provided for a 3 or 5 year phase-in of fees for current holders. It was based on the percentage and amount of increase. There was concern that the phase-in did not adequately consider the financial impacts of the increases on some holders. There were examples of fees which exceeded 100 percent of the existing fee in each year of the phase-in. It was feared that the rapid increase would adversely affect the holders and their customers. As a result, the phase-in has been modified to allow a longer phase-in period.

The new phase-in will provide for a maximum increase of 25 percent of the previous year's fees with a minimum increase of $100 per year. The number of years it takes to reach the scheduled fee will vary. However, most of the fee increases should be phased-in within 10 years. New holders and holders adding new uses are not covered by the phase-in.

6. *Definitions.* Several respondents found certain definitions and terms inadequate or confusing. Industry suggested definitions and terms that more clearly define commercial communications and internal radio communications uses.

In coordination with other Regions and the Washington Office, the Southwestern Region has adopted

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common terminology defining the various types of communications uses.

Most of the proposed definitions for the categories of use remain unchanged or slightly modified. Modifications were in response to reviewers comments or to improve clarity.

Slight changes were made in the following definitions (changes to improve clarity not noted):

—A definition for Natural Resource and Environmental Monitoring is provided as follows: "This use includes the transmission of telemetry data from a remote site to a central station. Uses may include weather stations, seismic stations, and snow measuring stations.

—All references to appurtenant uses are eliminated from the definition of Radio and Television Broadcast. Appurtenant uses are discussed in the Forest Service manual supplement.

Major changes were made in the definitions of Commercial Communicator and Internal Two-Way Radio. We agree with the reviewers who commented that the original definitions did not adequately describe the two categories of uses. In the final policy, the terms are defined as follows:

Mobile Radio: Commercial Communications. This includes communication equipment which is used to provide communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMR's), private carrier paging systems (PCPS). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

Mobile Radio: Internal Communications. A private mobile radio system licensed by the Federal Communications Commission (FCC) and used a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the permittee (license holder).

6. *Implementation.* Having considered the comments received, the Southwestern Region is adopting the fee schedule with the changes noted in the foregoing discussion of comments. The policy and procedures to guide Forest Service employees in implementing the Communications Use Fee Schedule will be issued as a Regional Supplement to Forest Service Manual Chapter 2720. The text of the supplement is set out at the end of this notice.

The fee schedule will apply immediately to all new permits issued on and after the effective date of this policy. The fee schedule will be implemented for all existing special use authorizations with the billings for calendar year 1990.

Dated: July 17, 1989.

David F. Jolly

Regional Forester

Fee Schedule Policy and Procedures for Communications Uses

Note: The Forest Service uses alphanumeric codes and subject headings to organize the test of direction. Only those sections of the Forest Service Manual that would be revised are set out here. Readers should keep in mind that the audience of this direction is Forest Service employees charged with issuing and administering communications use authorizations.

Forest Service Manual

Title 2700—Special Uses Management

2728—Communications

2728.1—Comunications Sites

2. *Fee Determinations*

c. Regional Fee Schedule—Communications use special use fees will be charged at the annual rates shown in the schedule below. These rates will apply without CPI–U adjustment for new permits issued during the remainder of C.Y. 1989, and with CPI–U adjustment beginning in C.Y. 1990 for all permits. The schedule does not affect fees established through appraisal, competitive bid, negotiation, or other sound business management principle. In these situations, fees will be updated in accordance with the terms of the authorization.

(1) *Individual Authorization*

FINAL FEE SCHEDULE—SOUTHWESTERN REGION

Use category	New Mexico				Arizona		
	Value Zone 2	Value Zone 3	Value Zone 4	Value Zone 5	Ord & Elden	Intermediate	Rural
Amateur Radio	75	75	75	75	75	75	75
Broadcast Translator	*	*	*	*	*	*	*
Cable & Subscription TV Number of subscribers					2,800	1,600	1,200
Less than 200	400	400	400	400			
201–500	750	750	750	750			
501–1,500	1,350	1,350	1,350	1,350			
1,501–2,500	2,000	2,000	2,000	2,000			
More than 2,500	2,000	2,000	2,000	2,000			
Cellular	3,5000	**	**	**	**	**	**
Common Carrier Microwave Relay	4,500	2,300	1,600	1,600	4,500	2,400	2,000
Industrial Microwave	2,000	1,500	1,000	750	2,500	1,600	1,200
Mobile Radio:							
Commercial Communication (First licensed transmitter frequency	1,000	800	500	400	1,200	600	500
Each additional licensed transmitter frequency	200	200	200	200	200	200	200
Mobile Radio:							
Internal Communications (First licensed Transmitter frequency)	1,000	500	500	400	1,200	500	500
Each additional licensed transmitter frequency	200	200	200	200	200	200	200
Natural Resource and Environmental Monitoring	75	75	75	75	75	75	75
Passive Reflector	**	**	475	475	**	500	400
Personal/Private "Receive Only"	75	75	75	75	75	75	75
Radio Broadcast (FM)	*	*	*	*	*	*	*
Television Broadcast	*	*	*	*	*	*	*

* Fees of these categories of use will be established prior to 1/1/90.

** Fees will be established when authorizations are issued.

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(2) *Definitions*

(a) *Amateur Radio.* Equipment used by individuals or groups who are Licensed by FCC as amateur radio operators.

(b) *Broadcast Translater.* This category for use consists of receiving a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translator. This category of use includes translators associated with public telecommunications service.

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When shared facility occupancy is authorized and each user has an authorization, the fee shall be 100% of the fee for each authorized use. There will be no $75 discount.

(4) Fees Under Multiple-User Authorizations

To improve administration of communications sites, Forest Service policy provides for authorizing shared facility occupancies under a single authorization. By the terms and conditions, these authorization holders, rather than the Forest Service, authorize and administer the use of their facilities by others. Collection of Forest Service fees required under this type of authorization, are burdens of the holder.

Fees for such a multiple-user authorization:

First use = 100% of fee schedule

All other uses are subject to a $75 discount, except for additional frequencies in the case of mobile radios. These additional frequencies are charged the full rate per the following example.

Mobile radio use will be $400 to $1,200 as listed in the schedule for first frequency (less $75 discount) plus *$200* for each additional frequency.

(5) Discounts for Consolidation and Efficient Management

There are situations where site or facility consolidation and efficient site management is intended to meet Forest Service objectives. In these situations, fees may be temporarily discounted to reflect the benefits received by the Forest Service. Annual fee discounts cannot exceed the holders cost or the annual fee for use of the site. The fee discounts must be considered on a case-by-case basis and approved by the Regional Forester.

Efficient site management may include the formation of user associations which assume administrative duties traditionally performed by the Forest Service.

(6) Use of Government Owned Facilities

In additional to prescribed fees, authorized officers will require users occupying Forest Service facilities to perform or share in the costs of building or facility maintenance and repair, as provided by Section 7, Act of April 24, 1950 (Granger-Thye and FSM 2711.7).

(7) Ancillary and Appurtenant Communication Users

Ancillary uses are those on site uses which provide support or intertie with another communication system on the site. The fee would be for the highest valued use of the holder. For example, a holder has installed a mobile radio for internal communication which interties with an industrial microwave system in the same facility. In this case, the holder would be issued one authorization and charged a fee for industrial microwave.

Appurtenant uses are those communcation uses incidental to another non-communication use of the National Forest System land, such as a ski resort or marina.

No fees will be charged for ancillary/appurtenant uses.

(8) Phase-in of Fee Increases

Fee increases for current holders will be phased-in at a rate of 25 percent of the previous year's fee with a minimum increase of $100 per year. The 25 percent increase will continue until the current scheduled fee is reached.

For example: Current fee is $300 and the scheduled fee is $800.

	Phased-in fee	Scheduled fee*
Year 1	$400	$800
Year 2	500	832
Year 3	625	865
Year 4	781	900
Year 5	936	936

*Indexed using a 4 percent CPI–U.

[1] $100 min.

The phase-in does not apply to new holders or existing holders adding new uses.

(9) Annual Fee Schedule Adjustment

All communication use fees are subject to annual adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year will be divided by the CPI-U for July of the previous year to yield a CPI-U multiplier which will be used to annually update the Communications Use Fee Schedule.

(10) Other Methods of Establishing Fees

Fees for atypical sites (currently identified as Sandia Peak, Peralta Ridge, and Santa Catalina Mountain), categories of use which were not established in the schedule, or AM radio broadcast sites exceeding 1 acre will be determined on individual case basis.

The authorized officer may use site-specific appraisals, sound business management principles, and/or rental analysis as coordinated with the Regional Appraiser to determine fees for individual sites when market evidence, such as leases for similarly used sites, demonstrate the inapplicability of the fee schedule.

Appraisals provided by the holder or other groups may be used to determine fees if the Regional Appraiser establishes that the appraisal meets Forest service appraisal standards provides a better supported fee estimate than the market survey, and the report is approved.

Competitive bidding may be used to esablish fees for new sites, (FSM 2712.2).

(11) Periodic Review of Fee Schedule

The Soutwestern Region intends, by December 31, 1994, to review this schedule to determine whether market conditions and business practices have changed sufficiently to warrant a fee schedule revision. Fee waivers will also be reviewed at this time to ascertain holder's qualifications. Holders will be given an opportunity to provide data which might have a bearing on the review.

[FR Doc. 89-19655 Filed 8-22-89 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Pollution Abatement Costs and Expenditures.

Form Number: MA-200.

Agency Approval Number: 0607-0176.

Type of Request: Revision of a currently approved form.

Burden: 21,250 hours.

Number of Respondents: 17,000.

Avg hours per response: One hour and fifteen minutes.

Needs and Uses: This survey is used to determine what effect pollution spending has on the U.S. economy, to forecast growth, to measure productivity determinants, and to assist in the calculation of the gross national product. Government agencies, industrial forms, and trade associations are the primary users of the data.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 16, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-19822 Filed 8-22-89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee will be held September 12, 1989, 9:30 a.m., Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect controls applicable to computer peripherals, components and related test equipment or technology.

Agenda

General Session

1. Opening Remarks by the Chairman & Commerce Representative.
2. Introduction of Members and Visitors.
3. Annual Report and Annual Plan.
4. Discussion of Effective Utilization of TACs Document.
5. Review of Newly-Assigned Control List Items.
6. Discussion of 10MB Bulgarian Hard File.
7. Subcommittee Report on Workstations 8.
8. Forming Working Groups.
9. Discussion of G-COCOM and AT Findings.
10. Presentation of Papers or Comments by the Public.

Executive Session

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue NW., Room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commmerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: August 17, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89-19823 Filed 8-22-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

ACTION: Notice.

The Department of Defense has submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Diagnostic Evaluation, Program for the Handicapped; DD Form 2451; and OMB Control Number 0704-0098.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 1 Hour.

Frequency of Response: Once per year.

Number of Respondents: 840.

Annual Burden Hours: 840.

Annual Responses: 840.

Needs and Uses: The Diagnostic Evaluation, Program for the Handicapped Form is used to provide medical information for periodic reviews on benefits provided to physically handicapped or mentally retarded CHAMPUS beneficiaries. The form is used to determine whether services/ supplies provided under the Program for the Handicapped are cost effective and efficient.

Affected Public: Individuals or households, businesses or other for-profit, non profit institutions and small businesses or organizations.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison. Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: August 18, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19631 Filed 8-22-89; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

ACTION: Notice.

The Department of Defense has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Public Official's Statement; CHAMPUS Form 769; and No OMB Control Number.

Type of Request: New Collection.

Average Burden House/Minutes Per Response: 2 hours.

Frequency of Response: Once per year (annually).

Number of Respondents: 2,500.

Annual Burden Hours: 5,000.

Annual Responses: 2,500.

Needs and Uses: The information collection requirement is necessary to obtain a public official's statement/ certification that public factilities are/ are not available or are/are not adequate to meet the needs of the handicapped dependent, and that public funds are/are not available for support of the needs of the handicapped dependent in alternative adequate facilities. This statement/certification must accompany all requests for CHAMPUS benefits under the program for the handicapped.

Affected Public: Individuals or households and State and local governments.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at the Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison. Written request for copies of the inforamtion collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: August 18, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19831 Filed 8-22-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Availability; Record of Decision for Remediation of Landfill No. 26, Hamilton Air Force Base, Novato, California

The Department of Army will release copies of the Record of Decision for the selection of the remedial alternatives for the remediation of Landfill 26, Hamilton Air Force Base, Novato, California on August 17, 1989.

The Record of Decision specifically describes and addresses the selected remedial alternatives to clean up the landfill and the associated groundwater. The landfill was identified in the 1987 remedial investigation at Hamilton AFB as a site containing soil and refuse that, in some locations exceeds criteria developed by the State of California for identification of hazardous waste. The Feasibility Study released to the public on January 9, 1989, describes eight remedial alternatives for addressing contamination in the soil/refuse. These alternatives range from no action (requiring continued groundwater monitoring) to excavation and disposal of contaminated soil/refuse in appropriate commercial landfills and range in costs from $2.8 million to $53.5 million.

Remediation of soil/refuse will subsequently require localized groundwater remediation at the landfill. The Draft Feasibility Study described six groundwater remedial alternatives utilizing various processes ranging in cost from $4.7 million to $18 million. A wetlands mitigation plan will be required for the selected remedial alternatives and will undergo a subsequent review period.

The Record of Decision selects Fixation and Class II Closure of the Landfill (Alternative 4A) and Trickling Filter—Equalization (Alternative 6B) for the soil/refuse operable unit and groundwater operable unit, respectively. Here is a brief description of the alternatives:

Landfill Soil-Refuse Operable Unit—Alternative 4A: All contaminated soil/ refuse exceeding levels appropriate for Class II landfill closure will be excavated and fixed with Portland cement or similar reagents. This fixed material would be redeposited into Landfill 26. A variance from the State of California for Class II closure would be required as fixed contaminants would still exceed Class II closure level requirements. The landfill would be capped and closed as a Class II landfill. Estimated cost—$13.2 million.

Groundwater Operate Unit—Alternative 6B: Contaminated groundwater will be extracted from wells located both downgradient and within Landfill 26. Extracted water will pass through and oil/water separator to capture free hydrocarbons and then be treated in a trickling filter to remove trace organics. Treated effluent will be stored on-site in an equalization tank for pH control and time-released to a sanitary treatment facility. Estimated cost—$4.7 million.

The Corps of Engineers has been conducting environmental investigations at Hamilton AFB since May, 1985. To date, clean up actions on the property have included removal of containerized hazards (1985) and removal of 65 underground fuel structures (1986). Total expenditure for the Hamilton AFB cleanup and investigations to date have been $13.8 million.

Copies of the Record of Decision for Landfill 26 may be obtained by calling the Sacramento District Corps of Engineers, (916) 551–2254, or by writing the Sacramento District Corps of Engineers, ATTN: CESPK–ED–M (ISS), 650 Capitol Mall, Sacrameto, California 95814–4794. A limited number of copies of the Record of Decision will also be available at the Hamilton Army Airfield Installation Manager's Office, Building No. 501, Hamilton Army Airfield.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environmental, Safety and Occupational Health), OASA(I&L).

[FR Doc. 89–19764 Filed 8–22–89; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

CFDA: 84.116A & B]

Invitation of Preapplications and Applications for New Awards under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1990

Purpose of Program: Provides grants to or enters into cooperative agreements with institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education and educational opportunities.

Deadline for Transmittal of Preapplications: October 17, 1989.

Deadline for Transmittal of Final Applications: March 2, 1990.

Deadline for Intergovernmental Review: May 2, 1990.

Application Available: August 25, 1989.

Estimated Range of Awards: $5,000 to $200,000.

Estimated Size of Awards: $65,000.

Estimated Number of Awards: 70.

Project Period: 12 to 36 months.

Available Funds: The President's Budget for fiscal year 1990 includes $11,856,000 for FIPSE. Of this amount, approximately $4,250,000 would be available for an estimated 70 new awards under the Comprehensive Program. The Congress has not yet completed action on the 1990 appropriation. The estimates above assume passage of the President's budget. These estimates, however, do not bind the Department of Education to a specific number of grants or to the amount of any grant.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, and 85; and (b) the regulations for this program in 34 CFR part 630.

Priorities: The Secretary supports a broad range of programs that seek to improve postsecondary education. In accordance with 34 CFR 75.105(c)(1), the Secretary invites applications addressing the following priorities. However, the list is not meant to be exhaustive. Projects that do not meet any of these priorities are also eligible for support if they address other immediate problems or issues in postsecondary education. Applications are invited that seek to—

(1) Ensure that undergraduate curricula provide the knowledge and skills which an educated citizen needs, including knowledge of our intellectual and cultural heritage;

(2) Ensure that recent increases in access to postsecondary education are made meaningful by improving retention and completion rates without compromising program standards;

(3) Develop a learning friendly campus ethos;

(4) Improve the scope and quality of international education;

(5) Improve the quality of undergraduate education by raising academic standards for the bachelors degree, strengthening the liberal arts component of undergraduate professional programs, developing means of assessing and comparing programs and institutions, and recognizing and rewarding outstanding undergraduate teaching through hiring, tenure, and promotion policies;

(6) Reform the education of school teachers by making it easier for able people, who have earned degrees in fields other than education and who currently lack pedagogical training, to qualify as teachers, increasing current and prospective teachers' mastery of the subjects they teach, ensuring that prospective teachers have a solid grounding in the liberal arts, and attracting more people, of commitment and high intellectual ability to the teaching profession;

(7) Reform graduate education by fostering the teaching skills of Ph.D. candidates bound for careers in teaching, and broadening the social and ethical perspectives of students in professional graduate programs generally;

(8) Improve financing and educational reform;

(9) Strengthen postsecondary educational institutions and organizations by providing incentives to develop the abilities of their leaders, administrators, faculty, and staff;

(10) Provide education for a changing economy by offering educational programs and services for workers, unemployed individuals, businesses, and communities;

(11) Develop educational uses of technology, including computers, television, and other electronic media.

Selection Criteria: Applications will be evaluated on the basis of the following selection criteria chosen from those listed in 34 CFR 630.32.

(a) *Significance for Postsecondary Education.* Each proposed project will be reviewed for its significance in improving postsecondary education by determining the extent to which it would—

(1) Address an important problem or need;

(2) Represent an improvement upon, or important departure from, existing practice;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching results through improvements that will be useful in a variety of ways and in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) *Feasibility.* Each proposed project will be reviewed for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of the availability of other funding sources for the proposed activities.

For preliminary proposals, the selection criteria under significance are more important than those under feasibility and appropriateness, which are equally important. For final proposals, all criteria are equally important. Within each of these criteria, equal weight will be given to each of the subcriteria. In applying the criteria, the Secretary first analyzes an application in terms of each individual criterion. The Secretary then bases the final judgement of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

FOR APPLICATIONS AND INFORMATION CONTACT: The Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, SW., Room 3100, ROB–3, Washington, DC 20202. Telephone (202) 732–6001.

Authority: 20 U.S.C. 1135

Dated: August 16, 1989

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89–19782 Filed 8–22–89; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.116F]

Invitation of Applications for New Awards under the Innovative Projects for Student Community Service Competition conducted by the Fund for the Improvement of Postsecondary Education

Purpose of Program: Provides grants to institutions of higher education and other public and private, non-profit institutions and agencies to support projects encouraging students to participate in community service activities in exchange for educational services or financial assistance in order to reduce the debt incurred by these students for attendance at institutions of higher education.

Deadline for transmittal of Applications: December 19, 1989.

Deadline for Intergovernmental Reveiw: February 19, 1990.

Applications Available: August 25, 1989.

Estimated Range of Awards: $10,000 to $70,000.

Estimated Size of Awards: $45,000.

Estimated Number of Awards: 12.

Project Period: 12 to 24 months.

Available Funds: The President's Budget for fiscal year 1990 does not include funds for this program. However, applications are invited to allow for sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for the program. The estimates above are based on the FY 1989 appropriation of $1,454,000.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, and 85; and (b) the regulations for this program in 34 CFR part 630.

Selection Criteria: Applications will be evaluated on the basis of the following selection criteria chosen from those listed in 34 CFR 630.32.

(a) *Significance for Postsecondary Education.* Each proposed project will be reviewed for its significance in improving postsecondary education by determining the extent to which it would—

(1) Achieve the purposes of the Innovative Projects for student Community Service Program, as referenced in 34 CFR 630.11;

(2) Address an important problem or need;

(3) Represent an important improvement upon, or important departure from, existing practice; and

(4) Achieve far-reaching results through improvements that will be useful in a variety of ways and a variety of settings.

(b) *Feasibility.* Each proposed project will be reviewed for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the proejct would be self-terminating);

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* Each proposed project will be reviewed to determine whether support of the proposed project by the Secretary is appropriate in terms of the availability of other funding sources for the proposed activities.

The Secretary will give equal weight to the selection criteria on significance, feasibility, and appropriateness. Within each of these criteria, the Secretary will give equal weight to each of the subcriteria. In applying the criteria the Secretary first analyzes an application in terms of each individual criterion. The Secretary then bases the final judgement of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

FOR APPLICATIONS AND INFORMATION CONTACT: The Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue SW., Room 3100, ROB–3, Washington, DC 20202. Telephone (202) 732–6001.

Authority: 20 U.S.C. 1135e–1

Dated: August 16, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89–19783 Filed 8–22–89; 8:45 am]

BILLING CODE 4000–01–M

National Institute of Disability and Rehabilitation Research

[CFDA No. 84.224A]

Invitation of Applications for New Awards Under the State Grants Program for Technology-Related Assistance for Individuals With Disabilities for Fiscal Year 1990

AGENCY: Department of Education.

Purpose of Program: This program provides financial assistance to States to assist each State to develop and implement a consumer-responsive, comprehensive statewide program of technology-related assistance for individuals with disabilities.

Deadline for Transmittal of Applications: December 1, 1989.

Deadline for Intergovernmental Review: February 1, 1990.

Applications Available: September 1, 1989.

Available Funds: $5,000,000.

Estimated Number of Awards: 9.

Estimated Range of Awards: $500,000–$600,000.

Estimated Average Award: $550,000.

Project Period: Up to 36 months, with the possibility of a 24-month extension.

Note: The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), in 34 CFR parts 74, 75, 77, 79, 80 (with exceptions as noted in the following program regulations), 81, and 85, and (b) The regulations for this program in 34 CFR part 345 as published on August 9, 1989 at 54 FR 32770.

FOR APPLICATIONS CONTACT: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC. 20202-2601, Attention: Peer Review Unit. Telephone: (202) 732–1141; deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

FOR FURTHER INFORMATION CONTACT: Carol Cohen, National Institute on Disability and Rehabilitation Research, (202) 732–5066.

Authority: 29 U.S.C. 2201–2271.

Dated: August 17, 1989.

Robert R. Davila,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 89-19781 Filed 8–22–89; 8:45 am]

BILLING CODE 4001-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

DEPARTMENT OF JUSTICE

Agreement to Delegate Certain Civil Rights Compliance Responsibilities for Elementary and Secondary Schools and Institutions of Higher Education

A. Purpose

Section 1–207 of Executive Order 12250 authorizes the Attorney General to initiate cooperative programs among Federal agencies responsible for enforcing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, and section 504 of the Rehabilitation Act of 1973, as amended, and similar provisions of Federal Law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs or activities receiving Federal financial assistance.

This agreement will promote consistent and coordinated enforcement of covered nondiscrimination provisions as required in the Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs (28 CFR 42.401–42.415), increase the efficiency of compliance activity, and reduce burdens on recipients, beneficiaries, and Federal agencies by consolidating compliance responsibilities, by eliminating duplication in civil rights reviews and data requirements, and by promoting consistent application of enforcement standards.

B. Delegation

By this agreement the National Endowment for the Humanities and the National Endowment for the Arts designate the Department of Education as the agency responsible for the specific civil rights compliance duties, as enumerated below, with respect to elementary and secondary schools and institutions of higher education. Responsibility for the following covered nondiscrimination provisions are delegated:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d–4); and
2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

This agreement specifies the duties to be performed by each agency. It does not alter the requirements of the joint Department of Justice/Equal Employment Opportunity Commission regulation concerning procedures for handling compliants of employment discrimination filed against recipients of Federal financial assistance. 28 CFR 42.601–42.613, 29 CFR 1691.1–1697.13, 48 FR 3570 (January 25, 1983). Complaints covered by the above regulation filed with the National Endowment for the Humanities or the National Endowment for the Arts against a recipient of Federal financial assistance, solely alleging employment discrimination against an individual, are to be referred directly to the Equal Employment Opportunity Commission (EEOC) by the National Endowment for the Humanities or the National Endowment for the Arts.

C. Duties of the Department of Education

The National Endowment for the Humanities and the National Endowment for the Arts assign the following compliance activities and duties to the Department of Education with respect to elementary and secondary schools and institutions of higher education. Specifically the Department of Education shall:

1. Maintain current files on all activities undertaken pursuant to this agreement and on the compliance status of applicants and recipients with respect to their programs or activities receiving Federal financial assistance resulting from preapproval and postapproval reviews, complaint investigations, and actions to resolve noncompliance. A summary of these activities and the compliance status of applicants and recipients shall be reported at least at the end of every fiscal year to the National Endowment for the Humanities and the National Endowment for the Arts.

2. Develop and use information for the routine, periodic monitoring of compliance by elementary and secondary schools and institutions of higher education with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

3. Perform, upon request by the National Endowment for the Humanities or the National Endowment for the Arts, preapproval reviews for which supplemental information or field reviews are necessary to determine compliance.

4. Conduct an effective program of postapproval reviews of recipients with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

5. Receive complaints alleging that recipients subject to this agreement have discriminated in violation of covered nondiscrimination provisions in

their programs or activities receiving Federal financial assistance, and attempt to obtain information necessary to make complaints complete, and investigate complete complaints.

6. Issue a written letter of findings of compliance or a letter of findings of noncompliance that (a) advises the recipient and, where appropriate, the complainant of the results of the postapproval review or complaint investigation, (b) provides recommendations, where appropriate, for achieving voluntary compliance, and (c) offers the opportunity to engage in negotiations for achieving voluntary compliance. The governor of the state in which the applicant or recipient is located will be notified if the letter of findings of noncompliance is made pursuant to a statute requiring that the governor be given an opportunity to secure compliance by voluntary means. The Department of Education promptly shall provide a copy of its letter of findings to the National Endowment for the Humanities or the National Endowment for the Arts and to the Assistant Attorney General for Civil Rights.

7. Conduct, after a letter of findings of noncompliance, negotiations seeking voluntary compliance with the requirements of covered nondiscrimination provisions.

8. (a) If compliance cannot be voluntarily achieved, and the Department of Education does not fund the applicant or recipient, refer the matter to the National Endowment for the Humanities or the National Endowment for the Arts for its own independent action and notify the Assistant Attorney General for Civil Rights of the referral. (b) If compliance cannot be achieved and both the Department of Education and the National Endowment for the Humanties or the National Endowment for the Arts fund the applicant or recipient, initiate formal enforcement action. When the Department of Education initiates formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, provide the National Endowment for the Humanities or the National Endowment for the Arts with an opportunity to participate as a party in a joint administrative hearing. When the Department of Education initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the National Endowment for the Humanities or the National Endowment for the Arts of the referral.

9. Notify the National Endowment for the Humanities or the National Endowment for the Arts and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and any action taken against the applicant or recipient.

D. Duties of the National Endowment for the Humanities and the National Endowment for the Arts

The National Endowment for the Humanities and the National Endowment for the Arts shall:

1. Issue and provide to the Department of Education all regulations, guidelines, reports, orders, policies, and other documents that are needed for recipients to comply with covered nondiscrimination provisions and for the Department of Education to administer its responsibilities under this agreement.

2. Provide the Department of Education with information, technical assistance, and training necessary for the Department of Education to perform the duties delegated under this agreement. This information shall include, but is not limited to, a list of recipients receiving Federal financial assistance from the National Endowment for the Humanities or the Nation Endowment for the Arts, the types of assistance provided, compliance information solely in the National Endowment for the Humanities' or the National Endowment for the Arts' possession or control, and data on program eligibility and/or actual participants in assisted programs or activities.

3. Perform preapproval reviews of applicants for assistance, as required by 28 CFR 42.407(b), that do not require supplemental information or field reviews. The reviews may require information to be supplied by the Department of Education. If the National Endowment for the Humanities or the National Endowment for the Arts requests the Department of Education to undertake an onsite review because it has shown it has reason to believe discrimination is occurring in a program or activity that is either receiving Federal financial assistance or that is the subject of an application, the National Endowment for the Humanities or the National Endowment for the Arts shall supply information necessary for the Department of Education to undetake such a review.

4. Refer to the Department of Education all complaints alleging discrimination under covered nondiscrimination provisions filed with the National Endowment for the Humanities or the National Endowment for the Arts against a recipient subject to this delegation and determine, if possible, whether program involved receives Federal financial assistance from the National Endowment for the Humanities or the National Endowment for the Arts.

5. Where the Department of Education has notified the applicant or recipient in writing that compliance cannot be achieved by voluntary means and the Department of Education has referred the matter to the National Endowment for the Humanities or the National Endowment for the Arts, make the final compliance determination and:

(a) If the National Endowment for the Humanities or the National Endowment for the Arts wishes to initiate formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, notify the Department of Education if the National Endowment for the Arts will either join as a party in Department of Education hearing or will conduct its own administrative hearing.

(b) When the National Endowment for the Humanities or the National Endowment for the Arts initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, the agency shall notify the Department of Education of the referral.

(c) If the National Endowment for the Humanities or the National Endowment for the Arts conducts its own hearing, the agency will notify the Department of Education and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and any action taken against the applicant or recipient. The agency may request the Department of Education to act as counsel in its administrative hearing.

(d) If the National Endowment for the Humanities or the National Endowment for the Arts neither initiates steps to deny or terminate Federal financial assistance nor refers the matter to the Department of Justice, the agency will notify the Department of Education and the Assistant Attorney General for Civil Rights, in writing, within 15 days after notification from the Department of Education that voluntary compliance cannot be achieved.

E. Effects on Prior Delegations

This agreement supersedes and replaces the delegation agreements regarding elementary and secondary schools and institutions of higher education entered into between the National Endowment for the Humanities and the National Endowment for the

Arts and the Department of Health, Education, and Welfare dated January 26, 1976 and November 19, 1975, respectively, and accepted by Department of Health, Education and Welfare on June 8, 1976.

F. Redelegation

Duties delegated herein to the Department of Education may be redelegated to the Department of Health and Human Services or the Veterans Administration. The Department of Education shall notify the National Endowment for the Humanities or the National Endowment for the Arts of any such redelegation prior to its effective date.

G. Approval

This agreement shall be signed by the Assistant Attorney General for Civil Rights. It shall be signed by all parties and become effective 30 days from publication in **Federal Register.**

H. Termination

This agreement may be terminated by the Department of Education, the National Endowment for the Humanities or the National Endowment for the Arts after written notice to the other agencies and to the Assistant Attorney General for Civil Rights.

Dated: March 1, 1989

Lynn V. Cheney,

chairman National Endowment for the Humanities

Dated: February 23, 1989.

Frank Hodsoll,

Chairman National Endowment for the Arts.

Dated: July 28, 1989.

James Turner

Acting Assistant Attorney General Civil Rights Division Department of Justice

Dated: April 27, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-19780 Filed 8-22-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89-601-000, et al.]

Florida Power & Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 15, 1989.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER89-601-000]

Take notice that on August 10, 1989, Florida Power & Light Company (FP&L), tendered for filing a document entitled Amendment Number Ten to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Florida Power Corporation (Rate Schedule FERC No. 61).

FRL states that under Amendment Number Ten, FPL will transmit power and energy for Florida Power Corporation as is required in the implementation of its interchange agreement with Jacksonville Electric Authority.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately. FPL states that a copy of the filing was served on Florida Power Corporation.

Comment date: August 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Washington Water Power Company

[Docket No. ER89-602-000]

Take notice that on August 10, 1989, Washington Water Power Company (WWP) tendered for filing eleven (11) agreements which have been terminated according to the terms of the individuals agreements.

Comment date: August 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Company

[Docket No. ER89-597-000]

Take notice that on August 9, 1989, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on July 25, 1989, by the respective parties: Edison-NCPA, Southern California Edison Company, and Northern California Power Agency.

The filed Agreement establishes the terms and conditions under which Interruptible Transmission Service will be proved to NCPA from Edison over certain Edison facilities.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Nantahala Power & Light Company

[Docket No. ER89-595-000]

Take notice that on July 31, 1989, Nantahala Power & Light Company (Nantahala) tendered for filing computations showing the calculation of the cost for the period July 1, 1988 to June 30, 1989 utilizing the billing format resulting from the New Fontana Agreement (NFA), the 1971 Apportionment Agreement as modified by the FERC, and the 1971 Power Purchase Contract with TVA.

Comment date: August 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Gulf States Utilities Company

[Docket No. ER89-603-000]

Take notice that Gulf States Utilities Company (Gulf States) on August 11, 1989, tendered for filing rate schedule changes applicable to (1) the City of Newton, Texas, (2) the City of Kirbyville, Texas, (3) the City of Caldwell, Texas, (4) the City of Gueydan, Louisiana, (5) the City of Erath, Louisiana, (6) the City of Kaplan, Louisiana, and (7) Brazos Electric Power Cooperative, Inc. (collectively referred to as the "Wholesale Customers").

The rate schedule changes included Amended Agreements for Wholesale Electric Service ("Amended Agreements") for each of the Wholesale Customers. The Amended Agreements extend the terms of the wholesale electric service contracts between Gulf States and the Wholesale Customers through March 31, 2000. In consideration of the extension of the terms of the contracts, Gulf States is providing the Wholesale Customers, effective April 1, 1990, a rate reduction which is reflected in a new Rate Schedule WPS. The rate schedule changes also include various other miscellaneous agreements concerning substation facilities charges for Gueydan, Erath, and Kaplan, certain debts of Kaplan and the deferral of certain billings, and the purchase of power from the Southwest Power Administration by Brazos.

Gulf States states that the rates contained in Rate Schedule WPS were offered to all wholesale electric service customers of Gulf States that would agree to an extension of the term of their contract for wholesale electric service as described above.

Gulf States requests an effective date for the Amended Agreements of October 17, 1989. The effective date for Rate Schedule WPS under the terms of the Amended Agreements will be April 1, 1990. Gulf States requests an effective date for its letter agreement with Kaplan regarding the deferral of certain billings of July 20, 1989, and requests pursuant to section 35.11 of the Commission's regulations a waiver of the notice requirements of the Federal Power Act and the Commission's regulations to allow the effective date.

Copies of the filing were served on all of Gulf States' customers purchasing wholesale electric service and the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: August 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER89-598-000]

Take notice that on August 9, 1989, Southern California Edison Company (Edison) tendered for filing Amendment No. 1 to the Los Angeles-Edison Exchange Agreement (Amendment), designated Rate Schedule FERC No. 219, which has been executed by Edison and the Department of Water and Power of the City of Los Angeles (Los Angeles): Amendment No. 1 to the Los Angeles-Edison Exchange Agreement.

This Amendment modifies the Exchange Agreement to reflect the delay of the in-service date of the Devers-Palo Verde No. 2 Transmission Line (DPV2 Line) from June 1, 1990, to June 1, 1993. This Amendment includes the following:

—Los Angeles' right to build the line is delayed from July 1, 1989, to June 1, 1990, if Edison has not begun construction of the DPV2 Line by said date;

—Edison will make available to Los Angeles 368 MW of firm bidirectional transmission service between Palo Verde and Devers over the Devers-Palo Verde No. 1 Transmission Line (DPV1 Line);

—The 368 MW of firm bidirectional transmission service to Los Angeles between Devers and Sylmar will commence June 1, 1990;

—The 100 MW of firm bidirectional transmission service to Los Angeles between Palo Verde and Sylmar will commence June 1, 1990, and will terminate May 31, 2012;

—The 320/500 MW Northwest transmission exchange will commence June 1, 1990; and

—The Castaic Base Service is deemed to have started May 8, 1988. The Castaic Additional Service will commence January 1, 1990.

The Amendment is proposed to become effective when executed by the Parties and accepted for filing by the Commission.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Los Angeles.

Comment date: August 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp, doing business as Pacific Power & Light Company and Utah Power & Light Company

[Docket No. ER89-600-000]

Take notice that on August 10, 1989, PacifiCorp doing business as Pacific Power & Light Company and Utah Power & Light Company tendered for filing a Notice of Termination of PacifiCorp/Utah Power & Light Company Rate Schedule FERC No. 144.

Pacific requests an effective date of June 1, 1989, and therefore requests waiver of the Commission's notice requirements.

Comment date: August 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19772 Filed 8-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER89-596-000, et al.]

New England Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 14, 1989.

Take notice that the following filings have been made with the Commission:

1. New England Power Company

[Docket No. ER89-596-000]

Take notice that New England Power Company (NEP) on August 1, 1989 tendered for filing a proposed change in its Service Agreement for Primary Service for Resale with the Narragansett Electric Company (Narragansett). The proposed change would increase the fixed credits allowed Narragansett on its purchased power billing by NEP in the amount of $3,048,300 annually based on the 12-month period ending December 31, 1990.

NEP requests an effective date of October 1, 1989. However, NEP requests that the amendment be suspended for three months to become effective January 1, 1990, in order to coincide with the effective date of its W-11 wholesale rate filing also filed on August 1, 1989.

Comment date: August 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Tucson Electric Power Company

[Docket No. ER89-599-000]

Take notice that on August 10, 1989, Tucson Electric Power Company (Tucson) tendered for filing an economy Energy Agreement (the Agreement) between Tucson and the City of Burbank; City of Glendale and the City of Pasadena. Tucson states that services may be provided under Service Schedule A to the Agreement entitled "Economy Energy Interchange."

Tucson requests an effective date of June 22, 1989, and therefore requests waiver of the Commission's notice requirements.

Tucson states that copies of the filing were served upon the City of Burbank; City of Glendale and City of Pasadena.

Comment date: August 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas Power and Light Company

[Docket No. ER89-455-000]

Take notice that on August 8, 1989, the Kansas Power and Light Company (KPL) tendered for filing an amendment to its proposed changes in its schedule of rates and charges applicable to its partial requirements municipal customers located in the State of Kansas, as follows:

Partial requirements municipal customer	FERC rate schedule No.
City of Burlingame	250
City of Clay Center	241
City of Ellingwood	242
City of Herington	209
City of Holton	226
City of Larned	240
City of Minneapolis	211
City of Osage City	249
City of Sabetha	235
City of St. John	252
City of Stafford	243
City of Sterling	237
City of Wamego	184

KPL states that the amendment is necessary to reflect modifications to the proposed rate schedule requested by the Commission Staff.

Copies of the filing were served upon each affected customer and the Kansas Corporation Commission.

Comment date: August 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER89-538-000]

Take notice that on August 4, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to its July 5, 1989 filing.

Copies of this filing were served upon CCSF, the California Public Utilities Commission, Turlock Irrigation District, Modesto Irrigation District and NI Industries.

Comment date: August 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Washington Water Power Company

[Docket No. ER89-385-000]

Take notice that on August 10, 1989, Washington Water Power Company (Washington) amended its filing in this docket for a firm capacity and energy sale which Washington refers to as a Letter Agreement between Washington and Sierra Pacific Power Company (SPP). Washington states that energy deliveries associated with capacity deliveries will be made available to SPP from December 27, 1988 through January 2, 1989 and January 23 through December 31, 1989.

Washington requests that the requirements of prior notice be waived and the effective date be made retroactive to December 27, 1988.

Comment date: August 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER89-590-000]

Take notice that on August 4, 1989, Northeast Utilities Service Company as agent for the Connecticut Light and Power Company (CP&L) and Western Massachusetts Electric Company (WMECO) tendered for filing Notices of Termination of the following rate schedules:

Rate schedule	Termination date
CL&P Rate Schedule FERC No. 367.	July 7, 1989
CL&P Rate Schedule FERC No. 384.	Do.
CL&P Rate Schedule FERC No. 198.	Do.
CVPS Rate Schedule FERC No. 98.	Do.
CL&P Rate Schedule FERC No. 357.	Do.
CL&P Rate Schedule FERC No. 168.	Do.
GMP Rate Schedule FERC No. 71.	Do.
CL&P Rate Schedule FERC No. 123.	Do.
LILCO Rate Schedule FERC No. 22.	Do.
CL&P Rate Schedule FERC No. 129.	Do.
WMECO Rate Schedule FERC No. 112.	Do.
LILCO Rate Schedule FERC No. 23.	Do.
CL&P Rate Schedule FERC No. 147.	Do.
LILCO Rate Schedule FERC No. 25.	Do.
CL&P Rate Schedule FERC No. 212.	Do.
WMECO Rate Schedule FERC No. 177.	Do.
LILCO Rate Schedule FERC No. 31.	Do.
CL&P Rate Schedule FERC No. 360.	Do.
CL&P Rate Schedule FERC No. 362.	Do.
PSNH Rate Schedule FERC No. 118.	Do.

Comment date: August 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19773 Filed 8-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1918-000 et al.]

Panhandle Eastern Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1918-000]

August 11, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77152-1642, filed in Docket No. CP89-1918-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Access Energy Corporation (Access), a marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport, on a firm basis, up to 5,000 Dt. equivalent of natural gas per day for Access. Panhandle states that construction of facilities would not be required to provide the proposed service.

Panhandle further states that the maximum day, average day, and annual transportation volumes would be approximately 5,000 Dt. equivalent, 5,000 Dt. equivalent and 1,825,000 Dt. equivalent respectively.

Panhandle advises that service under Section 284.223(a) commenced July 1, 1989, as reported in Docket No. ST89-4316.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1922-000]

August 11, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle) P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1922-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas on an interruptible basis, under its blanket certificate issued in Docket No. CP86-585-000, a maximum of 6,000 Dt. per day on behalf of Centran Corporation (Centran) a shipper, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle indicates that service commended July 1, 1989, under §284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4318 and estimates the volumes transported to be 6,000 Dt. on peak day,

5,000 Dt. on an average day and 1,825,000 Dt. on an annual basis. It is asserted that Panhandle would receive gas from various existing points of receipt on its system and would transport and redeliver the subject gas, less fuel and unaccounted line loss gas, to Northern Natural-Greensburg in Kiowa County, Kansas.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Easter Pipe Line Company

[Docket No. CP89-1923-000]

August 14, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle) P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1923-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to trransport gas on an interruptible basis for Amgas, Inc. (Amgas) under the blanket certificate issued in Docket No. CP89-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that it proposes to transport up to 2,345 Dt per day on an interruptible basis on behalf of Amgas pursuant to a Transportation Agreement dated June 9, 1989 between Panhandle and Amgas (Transportatin Agreement). The Transportation Agreement provides for Panhandle to receive gas from various existing points of receipt on its system. Panhandle will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Union Electric—Curryville in Pike County, Missouri.

Panhandle states that the estimated daily and estimated annual quantities would be 1,173 dt and 428,145 dt, respectively.

Panhandle further states it commenced service on July 1, 1989, as reported in Docket No. ST89-4332-000.

Comment date: September 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-1932-000]

August 14, 1989.

Take notice that on August 10, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188 filed in Docket No. CP89-1932-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texas Eastern Services Company (Texas Eastern), under the authorization issued in Docket No. CP86-435-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Texas Eastern, a marketer of natural gas, pursuant to an interruptible transportation agreement IT-1 dated July 10, 1989 (transportation agreement number 72741). The term of the transportation agreement is for one year from the date of initial delivery, and month to month thereafter unless terminated upon 30 days prior written notice to the other party. Northern proposes to transport on a peak day up to 50,000 MMBtu; on an average day up to 37,500 MMBtu; and on an annual basis 18,250,000 MMBtu of natural gas for Texas Eastern. It is stated that unless Northern agrees in writing to a lower rate, Texas Eastern shall pay Northern each month for transportation service at the maximum rates or charges in effect from time to time under Rate Schedule IT-1, or any effective superseding rate schedule on file with the Commission. Northern proposes to receive the subject gas from various existing receipt points on its system for transportation to various existing delivery points on its system. Northern avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Northern commenced such self-implementing service on July 10, 1989, as reported in Docket No. ST89-4274-000.

Comment date: September 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1925-000]

August 14, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1925-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Mountain Iron & Supply Company (Mountain Iron), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that pursuant to Transportation Agreement dated June 20, 1989, between Panhandle and Mountain Iron (Agreement), it would transport up to 2,000 dekatherms (dt) per day equivalent of natural gas, on an interruptible basis, for Mountain Iron. Panhandle further states that the Agreement provides for Panhandle to receive the natural gas from various existing points of receipt on its system in the states of Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma, Texas and Wyoming. Panhandle would then transport and redeliver the natural gas, less fuel used and unaccounted-for line loss, to the Village of Divernon in Sangamon County, Illinois.

Panhandle states that Mountain Iron has indicated that the estimated daily and estimated annual quantities would be 260 dt and 94,900 dt, respectively.

Panhandle states that it commenced the transportation of natural gas for Mountain Iron on July 1, 1989, as reported in Docket No. ST89-4325-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: September 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1917-000]

August 14, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1917-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Access Energy Corporation (Access), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle requests authorization to transport, on a firm basis, up to a maximum of 4,880 dt equivalent of natural gas per day for Access pursuant to a transportation agreement dated July 1, 1989. Panhandle states that it would receive the gas from Haven Pool in Reno County, Kansas and redeliver the gas, less fuel and unaccounted for line loss, to Central Illinois Public Service Company—Quincy in Adams County, Illinois. Panhandle indicates that the total volume of gas to be transported for Access on a peak day would be 4,880 dt; on an average day would be 4,880 dt; and on an annual basis would be 1,781,200 dt.

Panhandle states that it commenced the transportation of natural gas for Access on July 1, 1989, at Docket No. ST89–4317–000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: September 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. El Paso Natural Gas Company

[Docket No. CP89–1942–000]

August 15, 1989.

Take notice that on August 11, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978 filed in Docket No. CP89–1942–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Access Energy Corporation (Access), a marketer of natural gas, under El Paso's blanket certificate issued in Docket No. CP88–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport, on an interruptible basis, up to 211,000 MMBtu of natural gas per day for Access. El Paso states that construction of facilities would not be required to provide the proposed service.

El Paso further states that the maximum day, average day, and annual transportation volumes would be approximately 211,000 MMBtu, 52,750 MMBtu and 19,253,750 MMBtu respectively.

El Paso advises that service under § 284.223(a) commenced June 16, 1989, as reported in Docket No. ST89–4191.

Comment date: September 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Natural Gas Pipeline Company of America

[Docket No. CP89–1952–000]

August 15, 1989.

Take notice that on August 15, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 2nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1952–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for American Central Gas Marketing Company (American Central), a marketer, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation service agreement dated June 6, 1989, under its Rate Schedule ITS, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas for American Central. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) from receipt points in New Mexico, Texas, offshore Texas, Oklahoma, Louisiana, offshore Louisiana, Illinois, Arkansas, Kansas, Nebraska and Wyoming, and would deliver the gas to a delivery point in Oklahoma.

Natural advises that service under § 284.223(a) commenced June 9, 1989, as reported in Docket No. ST89–4467–000. Natural further advises that it would transport 20,000 MMBtu on an average day and 7,300,000 MMBtu annually.

Comment date: September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Tennessee Gas Pipeline Company

[Docket No. CP89–1941–000]

August 15, 1989.

Take notice that on August 11, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–1941–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Panhandle Trading Company (Panhandle), a marketing company, under Tennessee's blanket certificate issued in Docket No. CP87–115–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that, pursuant to a transportation agreement dated June 21, 1989, as amended, it proposes to transport up to 100,000 Dt. per day of natural gas for Panhandle. Tennessee further states that the agreement provides for it to receive the gas from various receipt points located Offshore Louisiana and to redeliver the gas to various points of delivery along Tennessee's system. Panhandle has informed Tennessee that it expects to have the full 100,000 Dt. transported on an average day and, based thereon, estimates that 3,650,000 Dt. would be transported annually. Tennessee advises that, the service commenced July 2, 1989, as reported in Docket No. ST89–4308 (filed July 28, 1989), pursuant to § 284.223 of the Commission's Regulations.

Comment date: September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Tennessee Gas Pipeline Company

[Docket No. CP89–1940–000]

August 15, 1989.

Take notice that on August 11, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) to construct and operate metering facilities for the delivery of natural gas to two existing customers at three delivery points under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is one file with the Commission and open to public inspection.

Tennessee proposes to replace existing metering facilities for the delivery of gas to Boston Gas Company at Arlington and Reading in Middlesex County, Massachusetts, and to Concord Gas Company at Concord, Merrimack County, New Hampshire. It is stated that the replacement facilities are required to more accurately measure daily variances in deliveries and to reflect the differences in delivery pressures. It is estimated that the cost of installing the facilities would be $438,000. It is asserted that there would be no change in the authorized quantities delivered at the three points and that there would be no impact on Tennessee's peak day and annual deliveries.

Comment date: September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

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11. Natural Gas Pipeline Company of America

[Docket No. CP89–1943–000]

August 15, 1989.

Take notice that on August 11, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148 filed in Docket No. CP89–1943–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Shell Gas Trading Company (Shell), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86–582–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on a firm basis up to 25,000 MMBtu, plus any additional volumes accepted pursuant to the overrun provision of Natural's Rate Schedule FTS, on behalf of Shell pursuant to a gas transportation agreement dated April 19, 1989, between Natural and Shell. Natural would receive the gas at various existing points of receipt on its system in Texas and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at various existing delivery points in Louisiana.

Natural further states that the estimated average daily and annual quantities would be 25,000 MMBtu and 9,125,000 MMBtu respectively. Service under § 284.223(a) commenced on July 1, 1989, as reported in Docket No. ST89–4288–000, it is stated.

Comment date: September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–1944–000]

August 15, 1989.

Take notice that on August 11, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–1944–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Centran Corporation (Centran), a marketer, under the blanket certificate issued in Docket No. CP86–435–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated July 2, 1989, under its Rate Schedule IT–1, it proposes to transport up to 5,000 MMBtu per day equivalent of natural gas for Centran. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement. Northern also states that the proposed service may involve the compression of gas at its Fort Buford Compressor Station for delivery to Northern Border Pipeline Company.

Northern advises that service under § 284.223(a) commenced July 2, 1989, as reported in Docket No. ST89–4238–000 (filed July 21, 1989). Northern further advises that it would transport 3,750 MMBtu on an average day and 1,825,000 MMBtu annually.

Comment date: September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Paiute Pipeline Company

[Docket No. CP89–1946–000]

August 15, 1989.

Take notice that on August 14, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP89–1946–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for KTM, Inc. (KTM), a marketer, under the blanket certificate issued in Docket No. CP87–309–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation agreement dated July 1, 1989, under its Rate Schedule IT–1, it proposes to transport up to 22,193 MMBtu per day equivalent of natural gas for KTM. Paiute states that it would transport the gas through its system from the existing interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border, and would redeliver the gas to KTM at the delivery points identified in the transportation agreement.

Paiute advises that service under § 284.223(a) commenced July 2, 1989, as reported in Docket No. ST89–4334–000 (filed July 31, 1989). Paiute further advises that it would transport 2,019 MMBtu on an average day and 737,000 MMBtu annually.

Comment date: September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Paiute Pipeline Company

[Docket No. CP89–1945–000]

August 15, 1989.

Take notice that on August 14, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89103–4197, filed in Docket No. CP89–1945–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for High Sierra Hotel/Casino, (High Sierra), an end-user, under Paiute's blanket certificate issued in Docket No. CP87–307–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation service agreement dated May 18, 1989, it proposes to receive up to 200 dt equivalent of natural gas per day from High Sierra at the Idaho-Nevada interconnection between Paiute and Northwest Pipeline Corporation and redeliver the gas at a specified point in Douglas County, Nevada. Paiute estimates that the peak day, average day, and annual volumes would be 200 million Btu, 33 million Btu, and 12,000 million Btu, respectively. It is indicated that on June 29, 1989, Paiute initiated a 120-day transportation service for High Sierra under § 284.223(a) as reported in Docket No. ST89–4226–000.

Paiute further states that no facilities need be constructed to implement the service. Paiute states that the primary term of the service would expire on October 31, 1991, but that the service would continue on a month-to-month basis until terminated by either party on thirty days written notice. Paiute proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT–1.

Comment date: September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89–1949–000]

August 15, 1989.

Take notice that on August 14, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No.

CP89–1949–000 a request pursuant to

delivery points shown in Exhibit "B" of

convenience and necessity (OEC)

CP89–1949–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Vantage Pipeline Systems, Inc. (Vantage), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport, on an interruptible basis, up to 15,000 MMBtu equivalent of natural gas on a peak day, 11,250 MMBtu equivalent on an average day, and 5,475,000 MMBtu equivalent on an annual basis for Vantage. It is stated that Northern would receive the gas for Vantage's account at designated points on Northern's system and would deliver equivalent volumes at designated points on Northern's system. It is asserted that the service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced July 1, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–4235.

Comment date: September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. United Gas Pipe Line Company

[Docket No. CP89–1950–000]

August 15, 1989.

Take notice that on August 14, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1950–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Exxon Corporation (Exxon), a producer, under the blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated June 9, 1989, under its Rate Schedule ITS, it proposes to transport up to 103,000 MMBtu per day equivalent of natural gas for Exxon. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced July 1, 1989, as reported in Docket No. ST89–4281–000 (filed July 24, 1989). United further advises that it would transport 103,000 MMBtu on an average day and 37,595,000 MMBtu annually.

Comment date: September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89–1948–000]

August 15, 1989.

Take notice that on August 14, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–1948–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Adobe Gas Marketing Co. (Adobe), under Northern's blanket certificate issued in Docket No. CP89–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern requests authorization to transport, on an interruptible basis, up to a maximum of 150,000 MMBtu of natural gas per day for Adobe, a marketer of natural gas, from receipt points located in Texas, Oklahoma, Kansas and Iowa to delivery points located in Texas, Oklahoma and Kansas. Northern anticipates transporting 112,500 MMBtu on an average day and an annual volume of 54,750,000 MMBtu.

Northern states that the transportation of natural gas for Adobe commenced July 1, 1989, as reported in Docket No. ST89–4236–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northern in Docket No. CP86–435–000.

Comment date: September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. El Paso Natural Gas Company

[Docket No. CP89–1909–000]

August 15, 1989.

Take notice that on August 4, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed an application in Docket No. CP89–1909–000, under sections 7(b) and 7(c) of the Natural Gas Act, for an optional certificate of public convenience and necessity (OEC) authorizing (i) the construction and operation of certain facilities, with appurtenances; (ii) the firm transportation certificate and (iii) conditional pregranted abandonment of the facilities and related application on file with the Commission and open to public inspection.

The application states that El Paso proposes to expand its interstate pipeline system by up to 600 MMcf/d, primarily to meet principal market area of California. The expansion will serve shippers desiring firm transportation service for gas to be delivered at or in the vicinity of the western terminus of El Paso's mainline system at Topock, Arizona, including shippers engaged in enhanced oil recovery (EOR) operations in central California.

El Paso's expanded system would be connected at or near El Paso's Topock delivery point with the existing utility systems of Pacific Gas and Electric Company and Southern California Gas Company, as well as with the facilities to be constructed and operated by Mojave Pipeline Company, for the ultimate delivery of gas to shippers utilizing such systems, principally EOR and associated cogeneration users operating in the heavy oil fields in Kern County, California.

El Paso further states that its proposal has been prompted more specifically by several recent developments which evidence a substantial market interest in the facilities and service which are the subject of the instant application. Among these are: (i) The California Public Utilities Commission's ongoing investigation into the need for new interstate pipeline capacity to and within California which, while not yet complete, has thus far resulted in substantial market support for, and regulatory interest in, the construction of new interstate pipeline capacity and new firm interstate transportation for service not only to the EOR market, but also to enhance service levels to existing California gas consumers; (ii) the continuing market viability of the Mojave project; and (iii) El Paso's continuing discussions and negotiations with EOR and other gas consumers in California regarding new transportation services.

El Paso states that it has executed agreements with several EOR users which provide for long-term firm transportation commitments on El Paso's system up to an aggregate maximum quantity of approximately 225,000 MMbtu per day. El Paso states it is also presently engaged in ongoing negotiations with additional potential

firm shippers in California, including EOR users, regarding future firm transportation arrangements, and anticipates that additional commitments for firm transportation service on Applicant's system would be secured in the near future.

Because the total transportation market to be served by El Paso is not yet clear due to the ongoing nature of its negotiations, El Paso's application presents illustrative engineering studies based on three (3) design alternatives: The 200 Case presents the minimum expenditures by El Paso for additional facilities only on the San Juan Mainline System necessary to transport and deliver 200 MMcf/d; the 400 Case presents a design alternative which would permit the initial transportation and delivery of 400 MMcf/d, expandable to 600 MMcf/d; and the 600 Case reflects the facilities necessary to permit El Paso to transport and delivery 600 MMcf/d. The facilities El Paso will actually construct will match the level of firm commitments, but not in excess of the 600 MMcf/d level. Each of the design alternatives incorporates compatible engineering design considerations relative to the construction of Mojave Pipeline Company's proposed interstate pipeline system extending from Topock, Arizona, to Kern County, California. El Paso estimates that the facility cost for each of the three (3) cases are $68,708,000, $143,670,000 and $201,035,000, respectively. El Paso seeks flexible authorization to construct and implement facilities necessary to provide its proposed service at the aggregate level ultimately secured through negotiations.

El Paso further states that it will perform the proposed firm transportation service under the provisions of its existing Rate Schedule T–3, contained in its FERC Gas Tariff, Original Volume No. 1–A, and consistent with the general terms and conditions contained in such tariff and applicable to this service. Use of the existing Rate Schedule T–3 rate structure involves rolling-in the incremental costs of the new construction with the existing rate base. El Paso states that its Rate Schedule T–3 includes a reservation charge, and also a one-part volumetric rate based on an assumed throughput of 95% of design capacity. El Paso states that its T–3 rate is cost-based and has prescribed maximum and minimum levels. In addition, El Paso states, its Rate Schedule T–3 has an established priority queue based on requests for future service that was compiled on a first come, first served basis.

El Paso states that rolled-in treatment is appropriate in this case because (i) with the additional looping Applicant can reduce the existing isolated instances of underutilized mainline capacity and thus provide additional firm service to Topock without adversely affecting service to existing customers [enhances efficiency]; and (ii) the additional throughput resulting would have a positive cost impact on existing customers. El Paso states that the new capacity would be available to those shippers in the firm queue and to any new shippers securing a position in such queue. El Paso states that it believes it would be able to accommodate the requirements of all potential firm shippers, irrespective of the position held in the queue.

El Paso states that the EOR customers provide a maximum assurance of constant throughput which is particularly valuable to El Paso's existing customers because an associated increase in the total system throughput redounds to the benefit of those customers. The application states that El Paso is cognizant that existing pipeline customers should not bear any of the present or future risk associated with recovery of the OEC facility costs. That risk, however minimal in this case, must rest on the pipeline and/or new shippers. El Paso states that it does not seek to avoid or evade the required assumption of this risk and is fully prepared to accept the responsibility for recovery (or non-recovery) of the capital and operational costs associated with the new facilities for which certificate authority is requested in this application.

With respect to the three (3) design alternatives, El Paso has included in its environmental assessment identification of those exceptions to the prior environmental report contained in the application filed November 8, 1985, as amended, in Docket No. CP86–197–000, *et al.* These exceptions do not, in the opinion of El Paso, constitute a major federal action which will necessitate another environmental impact statement.

El Paso has also requested, pursuant to § 157.103(f), conditional pregranted abandonment authority to abandon the services which are undertaken and/or the facilities which are constructed pursuant to the certificate authority requested herein.

Comment date: September 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear to be represented at the hearing.

G. Any person of the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19774 Filed 8-22-89; 8:45 am]

BILLING CODE 6717-01-M

Idaho Operations Office

Intent To Negotiate Cooperative Agreement With Modell Development Corporation, Framingham, MA

AGENCY: Department of Energy.

ACTION: Intent to negotiate a cooperative agreement with the Modell Development Corporation, Framingham, MA.

SUMMARY: "Wet Oxidation System for Burning Waste and Low Grade Fuels" The U.S. Department of Energy (DOE), Idaho Operations Office, intends to negotiate, on a noncompetitive basis, a cooperative agreement for approximately $100,000 and six months duration with the Modell Development Corporation (Modec), Framingham, MA. This action is prompted by Public Law 93–577, the Federal Nonnuclear Energy Research and Development Act of 1974. The project will evaluate technology relative to supercritical wet oxidation of water borne waste to destroy the water and to generate energy for industrial use. The Modec work involves preparation of a research unit design, fabrication plan, and test plan with companion cost estimates and schedules. The project could proceed through additional phases involving proof concept, pilot system development, and testing the pilot system at an industrial site. Should the participant proceed through the additional phases the DOE cost of the proposed agreement could increase to approximately $1,500,000. The authority and justification for determination of authority and justification for determination of noncompetitive financial assistance is DOE Financial Assistance Rules 10 CFR Part 600.7(b)(2)(i); (A) The activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE, and for which competition for support would have a significant adverse effect on completion of the activity; and (D) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise and proprietary designs.

The work at Modec meets the purpose of Public Law 95–577 and addresses a public need for decreasing the utilization of energy. Public response may be addressed to the contract specialist below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE PLACE, Idaho Falls, Idaho 83402, Marshall C. Garr, Contract Specialist (208) 526–1536.

Dated: August 11, 1989.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89-19853 Filed 8-22-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 6G3341/T583; FRL 3634-4]

Chevron Chemical Co.; Renewal of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed a temporary tolerance for residues of the herbicide 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate (lactofen) in or on the raw agricultural commodity cottonseed at 0.01 part per million (ppm) when applied post-directed. Use is limited to one post-directed application at a rate not to exceed 0.2 pound per acre applied after the cotton is at least 8 inches high, but not less than 90 days before harvest. Treated plants are not to be used for feed or forage.

DATE: This temporary tolerance expires April 11, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Larry Schnaubelt, Acting Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557–1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 19, 1987 (52 FR 31083), stating that a temporary tolerance had been established for residues of the herbicide 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate (lactofen) in or on the raw agricultural commodity cottonseed at 0.01 part per million (ppm) when applied post-directed. Use is limited to one post-directed application at a rate not to exceed 0.2 pound per acre applied after the cotton is at least 8 inches high, but not less than 90 days before harvest. Treated plants are not to be used for feed or forage. This tolerance is renewed in response to pesticide petition (PP) 6G3341, submitted by Chevron/Valent Chemical Co., 15049 San Pablo Ave., P.O. Box 4010, Richmond, CA 94804–0010.

The company has requested a 1-year renewal of a temporary tolerance for residues of the herbicide to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 239–EUP–115, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136). The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerance will protect the public health. Therefore, the temporary tolderance has been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.
2. Chevron/Valent Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires April 1, 1991. Residues not in excess of this amount remaining in or on the above raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance

requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: August 7, 1989.

Herbert S. Harrison,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-19821 Filed 8-22-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30277B; FRL 3634-2]

Merck and Co., Inc.; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by MSD Division of Merck and Co., Inc., to conditionally register the pesticide product Zephyr 0.15 EC involving a changed use pattern pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Managet (PM) 15, Registration Division (H7505C), Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM # 2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–557–2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of March 25, 1987 (52 FR 9537), which announced that MSD AGVET, Division of Merck and Co., Rahway, NJ 07065, had submitted an application to conditionally register the pesticide product Agrimec™ 0.15 EC an insecticide/miticide, containing the active ingredient avermectin B_1 [A mixture of avermectins containing >80% avermectin B_{1a} (5-0-demethyl avermectin A_{1a}) and <20% avermectin B_{1b} (5-0-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})] 2.0 percent; an active ingredient involving a changed use pattern of the product.

The application for "Zephyr 0.15 EC" formerly "Agrimec™ 0.15 EC" was approved on March 23, 1989, for restricted use, to include in its presently registered use, a new use to control mites on cotton. The product was assigned EPA Registration No. 618–97.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of avermectin B_1 and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of avermectin B_1 during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

This registration has been issued on the condition that the following information is submitted by the listed dates:

Type of submission	Deadline for submission
1. Fish life cycle test (sec. 72–5).	October 1991.
2. Mesocosm aquatic study (sec. 72–7).	October 1991.
3. Simulated mammal field test (sec. 71–5).	October 1991.
4. Soil absorption/desorption (sec. 163–1).	June 1990.
5. The results of analysis of the remaining soil core samples for the field dissipation study previously submitted (sec. 164–1).	July 24, 1989.

Note: See 40 CFR 158.20(c) for explanation and availability of guidelines.

This conditional registration will automatically expire on March 31, 1992.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of this pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticide will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in a Chemical Fact Sheet on avermectin B_1.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (H7505C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M Street SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM # 2, Arlington, VA 22202 (703–557–3262). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M Street SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: August 2, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-19819 Filed 8-22-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180815; FRL 3634-3]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 23 States as listed below. Four crisis exemptions were initiated by various States, and one by the United States Department of Agriculture for the month of April. These exemptions, issued during the month of May, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of permethrin on southern peas to control the insect cowpea curculio; May 22, 1989, to October 31, 1989. (Robert Forrest)

2. Arizona Commission of Agriculture and Horticulture for the use of acephate on citrus to control citrus thrips; May 17, 1989, to June 30, 1989. (Gene Asbury)

3. Arkansas State Plant Board for the use of imazethpyr (Pursuit) on southern peas to control puncture vines; May 22, 1989, to July 31, 1989. (Robert Forrest)

4. Arkansas State Plant Board for the use of sethoxydim on snap beans to control Johnsongrass; May 30, 1989, to July 31, 1989. (Susan Stanton)

5. Arkansas State Plant Board for the use of triclopyr on rice to control broadleaf weeds; May 15, 1989, to August 1, 1989. (Gene Asbury)

6. Arkansas State Plant Board for the use of metalaxyl on blueberries to control phytophthora root rot; May 1, 1989, to December 1, 1989. (Susan Stanton)

7. California Department of Agriculture for the use of azinphos-methyl on pomegranates to control filbert moths; May 9, 1989, to June 30, 1989. (Gene Asbury)

8. California Department of Food and Agriculture for the use of triadimefon on fresh market and processing tomatoes to control powdery mildew; May 5, 1989, to March 31, 1990. (Libby Pemberton)

9. California Department of Food and Agriculture for the use of fenamiphos on walnut trees to control nematodes; May 17, 1989, to June 15, 1989. (Libby Pemberton)

10. California Department of Food and Agriculture for the use of fenbutatin-oxide on mixed melons, watermelons and squash to control spider mites; May 22, 1989, to October 15, 1989. (Robert Forrest)

11. Colorado Department of Agriculture for the use of fenvalerate on small grains to control cutworms; May 11, 1989, to July 1, 1989. Colorado has initiated a crisis exemption for this use. (Libby Pemberton)

12. Colorado Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 5, 1989, to August 15, 1989. (Gene Asbury)

13. Georgia Department of Agriculture for the use of permethrin on southern peas to control the insect cowpea curculio; May 22, 1989, to October 31, 1989. Georgia has initiated a crisis exemption for this use. (Robert Forrest)

14. Hawaii Department of Agriculture for the use of amdro on pineapples to control fire ants; May 22, 1989, to May 22, 1990. (Robert Forrest)

15. Idaho Department of Agriculture for the use of pendimethalin on dry bulb onions to control weeds; May 17, 1989, to May 31, 1989. (Jim Tompkins)

16. Idaho Department of Agriculture for the use of avermectin B_1 on pears to control spider mites; May 30, 1989, to September 1, 1989. (Libby Pemberton)

17. Illinois Department of Agriculture for the use of sethoxydim on snap beans to control Johnsongrass; May 22, 1989, to August 15, 1989. (Susan Stanton)

18. Louisiana Department of Agriculture and Forestry for the use of triclopyr on rice to control broadleaf weeds; May 15, 1989, to August 1, 1989. (Gene Asbury)

19. Michigan Department of Agriculture for the use of fenarimol on tart cherries to control cherry leaf spot and powdery mildew; May 30, 1989, to August 15, 1989. (Susan Stanton)

20. Michigan Department of Agriculture for the use of carboxin (Pro-Gro) on onion seeds to control onion smut diseases; May 30, 1989, to May 1, 1990. (Gene Asbury)

21. Michigan Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 5, 1989, to August 30, 1989. (Gene Asbury)

22. Michigan Department of Agriculture for the use of pendimethalin on dry bulb onions to control specified weeds; May 3, 1989, to June 30, 1989. (Jim Tompkins)

23. Minnesota Department of Agriculture for the use of sethoxydim on snap beans to control wild proso millet; May 17, 1989, to August 31, 1989. (Susan Stanton)

24. Minnesota Department of Agriculture for the use of terbufos on rape and mustard seeds to control flea bettles; May 28, 1989, to June 31, 1989. (Gene Asbury)

25. Minnesota Department of Agriculture for the use of corboxin (Pro-Gro) on onion seedlings to control onion smut disease; May 1, 1989, to April 1, 1990. (Gene Asbury)

26. Minnesota Department of Agriculture for the use of pendimethalin on onions to control weeds; May 9, 1989, to June 30, 1989. (Jim Tompkins)

27. Mississippi Department of Agriculture and Commerce for the use of triclopyr on rice to control broadleaf weeds; May 15, 1989, to August 1, 1989. (Gene Asbury)

28. Montana Department of Agriculture for the use of clopyralid on peppermint and spearmint to control horseweed, salsify, Canada thistle and other weeds; May 1, 1989, to June 1, 1989. (Gene Asbury)

29. New York Department of Environmental Conservation for the use of pendimethalin on dry bulb onions to control specified weeds; May 3, 1989, to June 30, 1989. (Jim Tompkins)

30. North Dakota Department of Agriculture for the use of fenoxaprop-ethyl on hard red spring wheat to control foxtail; May 1, 1989, to July 15, 1989. (Libby Pemberton)

31. North Dakota Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; May 17, 1989, to August 31, 1989. (Susan Stanton)

32. Oregon Department of Agriculture for the use of pendimethalin on onions grown on mineral soils to control weeds; May 9, 1989 to May 31, 1989. (Jim Tompkins)

33. Oregon Department of Agriculture for the use of sethoxydim on green peas to control annual ryegrass and barnyardgrass; May 1, 1989, to May 31, 1989. (Susan Stanton)

34. Oregon Department of Agriculture for the use of tridiphane on sweet corn to control wild proso millet; May 3, 1989, to July 20, 1989. (Robert Forrest)

35. Oregon Department of Agriculture for the use of pendimethalin on dry bulb onions to control specified weeds; May 3, 1989, to June 30, 1989. (Jim Tompkins)

36. Oregon Department of Agriculture for the use of fluazifop-butyl on mint to control quackgrass and green foxtail; May 5, 1989, to June 15, 1989. (Susan Stanton)

37. Oregon Department of Agriculture for the use of sethoxydim on snap beans to control wild proso millet; May 11, 1989, to July 10, 1989. (Susan Stanton)

38. Puerto Rico Department of Agriculture for the use of hydramethylnon (Amdro) on coffer to control fire ants; May 22, 1989, to February 28, 1990. (Robert Forrest)

39. South Dakota Department of Agriculture for the use of fenvalerate on winter wheat to control cutworms; May 11, 1989, to July 1, 1989. (Libby Pemberton)

40. South Dakota Department of Agriculture for the use of Harmony on oats to control broadleaf weeds; May 15, 1989, to June 30, 1989. (Robert Forrest)

41. Tennessee Department of Agriculture for the use of sethoxydim on snap beans to control Johnsongrass; May 22, 1989, to July 31, 1989. (Susan Stanton)

42. Utah Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 5, 1989, to September 30, 1989. (Gene Asbury)

43. Virginia Department of Agriculture and Consumer Services for the use of clomazone on snap beans, cucumbers, and squash to control annual broadleaf weeds; May 22, 1989, to September 30, 1989. (Libby Pemberton)

44. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sethoxydim on snap beans to control wild proso millet, volunteer corn, and quackgrass; May 22, 1989, to August 31, 1989. (Susan Stanton)

45. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of pendimethalin on dry bulk onions to control specified weeds; May 3, 1989, to June 30, 1989. (Jim Tompkins)

46. Wisconsin Department of Agriculture, Trade and Consumer Protection for the use of oxyfluorfen on horseradish to control broadleaf weeds; May 5, 1989, to June 30, 1989. A notice of Solicitation of public comment was published in the **Federal Register** of March 1, 1989 (54 FR 8594); no comments were received. Oxyfluorfen was referred to special review in January of 1980, because pesticide products containing oxyfluorfen as an active ingredient were shown to contain perchlorethylene (PCE), a liver carcinogen in B6C3F1 mice. A Special Review process was completed on June 30, 1982, and the decision was made to continue registration of the herbicide subject to certain restrictions (on PCE) pertaining to formulation of the product (47 FR 27118). (Gene Asbury)

Crisis exemptions were initiated by the:

1. Illinois Department of Agriculture on May 1, 1989, for the use of sethoxydim on peas to control volunteer wheat and rye. This program has ended. (Susan Stanton)

2. Minnesota Department of Agriculture on May 30, 1989, for the use of fenoxaprop-ethyl on wheat to control foxtail, wild proso millet, and wild oats. This program has ended. (Libby Pemberton)

3. Texas Department of Agriculture on May 12, 1989, for the use of chlorothalonil on mushrooms to control fungal diseases. Since it was anticipated that this program would be needed for more than 15 days, Texas has requested a specific exemption to continue it. The need for this program is expected to last until May 11, 1990. (Susan Stanton)

4. Texas Department of Agriculture on May 17, 1989, for the use of sodium chlorate on winter wheat to control weeds. This program has ended. (Susan Stanton)

6. United States Department of Agriculture on April 25, 1989, for the use of methyl bromide on chayote to control various plant pests. Since it was anticipated that this program would be needed for more than 15 days, USDA has requested a specific exemption to continue it. The need for this program is expected to last until April 24, 1992. (Libby Pemberton)

Authority: 7 U.S.C. 136.

Dated: August 7, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89–19620 Filed 8–22–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Comments Invited on Chicago Metropolitan Area Regional Public Safety Plan

August 15, 1989.

The Commission has received the public safety radio communications plan for the Chicago Metropolitan area (Region 54).

In accordance with the Commission's Report and Order in General Docket 87–112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of **Federal Register** publication of this public notice to file comments and fifteen days to reply to any comments filed. (See Report and Order, General Docket 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87–112, Region 54 consists of the following counties: Winnebago, McHenry, Cook, Kane, Kendall, Grundy, Boone, Lake, Dupage, De Kalb, Will, and Kankakee, Illinois; Kenosha, Milwaukee, Washington, Dodge, Walworth, Jefferson, Racine, Ozaukee, Waukesha, Dane, and Rock, Wisconsin; Lake, La Porte, Jasper, Starke, St. Joseph, Porter, Newton, Pulaski, Marshall, and Elkhart, Indiana; and Ottawa, Kent, Van Buren, Kalamazoo, Barry, Muskegon, Allegan, Berien, Cass, and St. Joseph, Michigan. General Docket 87–112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to General Docket 89–363, Chicago Metropolitan Area—Region 54, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Fred Thomas, Office of Engineering and Technology, (202) 653–8112, or Maureen Cesaitis, Private Radio Bureau, (202) 632–6497.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–19799 Filed 8–22–89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Emergency Food and Shelter Program Allocations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: On June 30, 1989, the President signed Public Law 101–45, the Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplemental and Correcting Enrollment Errors Act of 1989, which made available an additional $12 million for the Emergency Food and Shelter Program. This notice announces allocations made by the Emergency Food and Shelter National Board to jurisdictions from that award. These funds are to be distributed to local private voluntary organizations and units of local government for the purpose of delivering emergency food and shelter to needy individuals in localities determined by the Board as being in high need.

These awards are in addition to the previous allocations listing (**Federal Register**, Vol. 54, No. 125, pp. 27705–27734, June 30, 1989) made under Public Law 100–404 for Phase VII (Fiscal Year 1989) of the Emergency Food and Shelter National Board Program. The program was authorized by Public Law 100–77, the Stewart B. McKinney Homeless Assistance Act.

DATE: The supplemental award to the National Board was made on July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Francis X. McCarthy, Individual Assistance Division, Disaster Assistance Progams, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3652.

BEST COPY AVAILABLE

SUPPLEMENTARY INFORMATION:

Allocation Formula

The following jurisdictions that qualified for awards were chosen based on the original Phase VII criteria:

1. Most current 12-month national unemployment rates.
2. Jurisdictions with a minimum of 1,000 people unemployed.
3. Jurisdictions with 18,000+ unemployed and a 4.9% rate of unemployment.
4. Jurisdictions with 1,000 to 17,999 unemployed and a 7.5% rate of unemployment.
5. Jurisdictions with 1,000 or more unemployed and an 11% rate of poverty.

Note: Due to the urgency of this legislation, and the amount of funds involved for a national program, the National Board did not fund the State Set-Aside Committees with this appropriation. Also, unlike the original awards (under Pub. Law 100–404), no State minimum was established.

Dated: August 14, 1989.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS

		Public Law 100–404	Public Law 101–45
Alabama:			
7–0032–00	Baldwin County	52,616.00	6,639.00
7–0036–00	Blount County	21,412.00	2,702.00
7–0044–00	Calhoun County	64,499.00	8,138.00
7–0050–00	Chilton County	22,162.00	2,796.00
7–0054–00	Clarke County	22,911.00	2,891.00
7–0060–00	Coffee County	19,006.00	2,398.00
7–0062–00	Colbert County	37,912.00	4,783.00
7–0068–00	Covington County	21,813.00	2,752.00
7–0072–00	Cullman County	40,943.00	5,166.00
7–0074–00	Dale County	22,926.00	2,893.00
7–0076–00	Dallas County	50,282.00	6,344.00
7–0078–00	De Kalb County	36,291.00	4,579.00
7–0080–00	Elmore County	21,743.00	2,743.00
7–0082–00	Escambia County	27,458.00	3,464.00
7–0084–00	Etowah County	60,073.00	7,579.00
7–0088–00	Franklin County	24,984.00	3,152.00
7–0098–00	Houston County	37,250.00	4,700.00
7–0102–00	Jackson County	35,211.00	4,443.00
7–0104–00	Jefferson County	358,087.00	45,180.00
7–0110–00	Lauderdale County	48,139.00	6,074.00
7–0112–00	Lawrence County	24,322.00	3,069.00
7–0114–00	Lee County	33,347.00	4,207.00
7–0116–00	Limestone County	32,058.00	4,045.00
7–0122–00	Madison County	112,496.00	14,194.00
7–0128–00	Marion County	26,099.00	3,293.00
7–0130–00	Marshall County	51,031.00	6,439.00
7–0132–00	Mobile County	284,076.00	35,842.00
7–0136–00	Montgomery County	111,244.00	14,036.00
7–0142–00	Morgan County	63,540.00	8,017.00
7–0152–00	Russell County	26,029.00	3,284.00
7–0154–00	St. Clair County	21,061.00	2,660.00
7–0158–00	Shelby County	31,883.00	4,023.00
7–0160–00	Talladega County	51,153.00	6,454.00
7–0162–00	Tallapoosa County	20,696.00	2,611.00
7–0164–00	Tuscaloosa County	68,836.00	8,685.00
7–0168–00	Walker County	49,045.00	6,188.00
7–0174–00	Winston County	20,437.00	2,579.00
7–0176–00	State Set-Aside Committee, AL	166,115.00	0.00
Total		2,219,214.00	259,042.00
Alaska:			
7–0188–00	Anchorage Borough	154,748.00	19,524.00
7–0196–00	Fairbanks North Star Boro	70,318.00	8,872.00
7–0202–00	Kenai Peninsula Borough	45,142.00	5,696.00
7–0210–00	Matanuska-Susitna Census	45,560.00	5,748.00
7–0232–00	State Set-Aside Committee, AK	54,081.00	0.00
Total		369,849.00	39,840.00
Arizona:			
7–0242–00	Apache County	40,926.00	5,164.00
7–0244–00	Cochise County	49,742.00	6,276.00
7–0246–00	Coconino County	59,080.00	7,454.00
7–0248–00	Gila County	25,907.00	3,269.00
7–0256–00	Maricopa County	854,768.00	107,848.00
7–0268–00	Mohave County	36,849.00	4,649.00
7–0270–00	Navajo County	56,937.00	7,184.00
7–0272–00	Pima County	258,099.00	32,564.00
7–0276–00	Pinal County	64,255.00	8,107.00
7–0278–00	Santa Cruz County	20,472.00	2,583.00
7–0280–00	Yavapai County	36,518.00	4,607.00
7–0282–00	Yuma County	141,158.00	17,810.00
7–0284–00	State Set-Aside Committee, AZ	12,460.00	0.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Public Law 100–404	Public Law 101–45
Total		1,657,191.00	207,515.00
Arkansas:			
7–0310–00	Benton County	33,643.00	4,245.00
7–0322–00	Clark County	18,311.00	2,310.00
7–0334–00	Craighead County	33,817.00	4,267.00
7–0336–00	Crawford County	24,589.00	3,102.00
7–0338–00	Crittenden County	35,960.00	4,537.00
7–0348–00	Faulkner County	40,664.00	5,131.00
7–0354–00	Garland County	48,975.00	6,179.00
7–0358–00	Greene County	22,996.00	2,902.00
7–0362–00	Hot Spring County	24,409.00	3,080.00
7–0366–00	Independence County	23,521.00	2,968.00
7–0370–00	Jackson County	20,384.00	2,572.00
7–0372–00	Jefferson County	54,554.00	6,886.00
7–0390–00	Lonoke County	20,141.00	2,541.00
7–0396–00	Miller County	25,296.00	3,192.00
7–0398–00	Mississippi County	49,062.00	6,190.00
7–0406–00	Ouachita County	20,437.00	2,579.00
7–0412–00	Phillips County	27,456.00	3,464.00
7–0416–00	Poinsett County	17,858.00	2,253.00
7–0420–00	Pope County	25,836.00	3,260.00
7–0424–00	Pulaski County	211,581.00	26,695.00
7–0432–00	St. Francis County	47,076.00	5,940.00
7–0434–00	Saline County	38,190.00	4,818.00
7–0440–00	Sebastian County	54,916.00	6,929.00
7–0450–00	Union County	28,643.00	3,614.00
7–0454–00	Washington County	41,727.00	5,265.00
7–0456–00	White County	47,477.00	5,990.00
7–0462–00	State Set-Aside Committee, AR	224,915.00	0.00
Total		1,262,536.00	130,919.00
California:			
7–0464–00	Fresno County/City	543,813.00	68,613.00
7–0634–00	Alameda County	330,787.00	41,735.00
7–0646–00	Oakland County	212,469.00	26,807.00
7–0654–00	Butte County	94,100.00	11,873.00
7–0660–00	Contra Costa County	320,681.00	40,460.00
7–0676–00	Glenn County	17,911.00	2,260.00
7–0678–00	Humboldt County	63,575.00	8,021.00
7–0680–00	Imperial County	157,169.00	19,830.00
7–0684–00	Kern County	397,863.00	50,198.00
7–0686–00	Kings County	55,613.00	7,017.00
7–0690–00	Lake County	29,549.00	3,728.00
7–0695–00	Los Angeles County/City	3,990,737.00	503,489.00
7–0760–00	Madera County	58,436.00	7,373.00
7–0768–00	Mendocino County	50,125.00	6,324.00
7–0770–00	Merced County	133,544.00	16,849.00
7–0776–00	Monterey County	223,794.00	28,236.00
7–0786–00	Orange County	706,105.00	89,089.00
7–0820–00	Riverside County	441,559.00	55,711.00
7–0824–00	Sacramento County	453,232.00	57,184.00
7–0828–00	San Benito County	35,873.00	4,526.00
7–0830–00	San Bernardino County	466,961.00	58,916.00
7–0840–00	San Diego County	825,310.00	104,129.00
7–0858–00	San Francisco City/County	306,586.00	38,682.00
7–0860–00	San Joaquin County	320,663.00	40,458.00
7–0864–00	San Luis Obispo County	67,304.00	8,492.00
7–0876–00	Santa Barbara County	140,339.00	17,706.00
7–0880–00	Santa Clara County	586,080.00	73,945.00
7–0892–00	Santa Cruz County	140,583.00	17,737.00
7–0896–00	Shasta County	88,246.00	11,134.00
7–0900–00	Siskiyou County	32,075.00	4,047.00
7–0902–00	Solano County	140,095.00	17,676.00
7–0912–00	Stanislaus County	314,983.00	39,741.00
7–0916–00	Sutter County	52,790.00	6,660.00
7–0918–00	Tehama County	26,360.00	3,326.00
7–0922–00	Tulare County	237,035.00	29,907.00
7–0926–00	Tuolumne County	24,374.00	3,075.00
7–0928–00	Ventura County	314,909.00	39,719.00
7–0938–00	Yolo County	79,395.00	10,017.00
7–0940–00	Yuba County	36,030.00	4,546.00
7–0942–00	State Set-Aside Committee, CA	342,026.00	0.00
Total		12,858,981.00	1,579,246.00
Colorado:			
7–0968–00	Adams County	216,703.00	27,341.00
7–0990–00	Boulder County	122,045.00	15,398.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Public Law 100–404	Public Law 101–45
7–1012–00	Denver City/County	345,874.00	43,639.00
7–1022–00	El Paso County	269,546.00	34,008.00
7–1026–00	Fremont County	22,545.00	2,844.00
7–1028–00	Garfield County	19,792.00	2,497.00
7–1056–00	La Plata County	21,552.00	2,719.00
7–1058–00	Larimer County	105,546.00	13,317.00
7–1068–00	Mesa County	66,175.00	8,602.00
7–1074–00	Montezuma County	17,562.00	2,216.00
7–1076–00	Montrose County	22,754.00	2,871.00
7–1092–00	Pueblo County	82,096.00	10,358.00
7–1116–00	Weld County	89,988.00	11,354.00
7–1122–00	State Set-Aside Committee, CO	455,095.00	0.00
Total		1,859,273.00	177,164.00
Connecticut:			
7–1422–00	Fairfield County (See Sub Juris)	0.00	0.00
7–1422–01	Fairfield/Bridgeport	113,428.00	14,311.00
7–1422–02	Fairfield/Danbury	34,522.00	4,356.00
7–1422–03	Fairfield/Norwalk	41,919.00	5,289.00
7–1422–04	Fairfield/Stamford	56,714.00	0.00
7–1438–00	Hartford County	242,105.00	30,546.00
7–1458–00	New Haven County	228,062.00	28,774.00
7–1478–00	State Set-Aside Committee, CT	105,341.00	0.00
Total		822,091.00	83,276.00
Delaware:			
7–1480–00	Kent County	32,859.00	4,146.00
7–1482–00	New Castle County	118,979.00	15,012.00
7–1486–00	Sussex County	29,915.00	3,774.00
7–1488–00	State Set-Aside Committee, DE	68,247.00	0.00
Total		250,000.00	22,932.00
District of Columbia:			
7–1492–00	District of Columbia	333,591.00	42,089.00
Total		333,591.00	42,089.00
Florida:			
7–1556–00	Alachua County	52,059.00	6,568.00
7–1562–00	Bay County	90,737.00	11,448.00
7–1566–00	Brevard County	153,720.00	19,395.00
7–1570–00	Broward County	458,494.00	57,848.00
7–1586–00	Citrus County	32,720.00	4,128.00
7–1590–00	Collier County	53,470.00	6,746.00
7–1592–00	Columbia County	27,824.00	3,511.00
7–1594–00	Dade County	650,543.00	82,079.00
7–1598–00	Miami City	239,927.00	30,271.00
7–1606–00	Duval County	329,532.00	41,577.00
7–1612–00	Escambia County	125,095.00	15,783.00
7–1620–00	Gadsden County	17,510.00	2,209.00
7–1632–00	Hendry County	20,228.00	2,552.00
7–1634–00	Hernando County	37,372.00	4,715.00
7–1636–00	Highlands County	24,583.00	3,102.00
7–1638–00	Hillsborough County	372,042.00	46,940.00
7–1644–00	Indian River County	51,153.00	6,454.00
7–1646–00	Jackson County	20,768.00	2,620.00
7–1652–00	Lake County	57,442.00	7,247.00
7–1654–00	Lee County	87,566.00	11,048.00
7–1656–00	Leon County	68,436.00	8,635.00
7–1666–00	Manatee County	62,338.00	7,865.00
7–1668–00	Marion County	74,900.00	9,450.00
7–1670–00	Martin County	38,992.00	4,920.00
7–1672–00	Monroe County	20,280.00	2,559.00
7–1674–00	Nassau County	22,406.00	2,827.00
7–1676–00	Okaloosa County	64,115.00	8,089.00
7–1680–00	Orange County	295,139.00	37,237.00
7–1684–00	Osceola County	36,187.00	4,566.00
7–1686–00	Palm Beach County	360,387.00	45,470.00
7–1694–00	Pinellas County	293,624.00	37,046.00
7–1702–00	Polk County	256,531.00	32,366.00
7–1706–00	Putnam County	31,291.00	3,948.00
7–1708–00	St. Johns County	345,176.00	4,438.00
7–1710–00	St Lucie County	95,598.00	12,062.00
7–1712–00	Santa Rosa County	34,497.00	4,352.00
7–1714–00	Sarasota County	73,350.00	9,255.00
7–1726–00	Volusia County	117,220.00	14,790.00
7–1738–00	State Set-Aside Committee, FL	224,582.00	0.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Public Law 100–404	Public Law 101–45
Total		5,107,814.00	616,116.00
Georgia:			
7–1740–00	Atlanta/Dekalb, Fulton Counties	618,066.00	77,981.00
7–1742–00	Macon/Bibb, Jones Counties	77,531.00	9,782.00
7–1786–00	Bartow County	27,580.00	3,480.00
7–1806–00	Burke County	19,095.00	2,409.00
7–1816–00	Carroll County	32,423.00	4,091.00
7–1822–00	Chatham County	111,662.00	14,088.00
7–1832–00	Clarke County	29,758.00	3,755.00
7–1840–00	Cobb County	151,576.00	19,124.00
7–1844–00	Colquitt County	21,639.00	2,730.00
7–1850–00	Coweta County	21,064.00	2,658.00
7–1870–00	Dougherty County	78,594.00	9,916.00
7–1892–00	Floyd County	41,518.00	5,238.00
7–1906–00	Glynn County	26,552.00	3,350.00
7–1908–00	Gordon County	19,461.00	2,455.00
7–1932–00	Houston County	33,138.00	4,181.00
7–1956–00	Laurens County	24,688.00	3,115.00
7–1966–00	Lowndes County	32,981.00	4,161.00
7–1994–00	Muskogee County	81,886.00	10,332.00
7–1998–00	Newton County	22,179.00	2,798.00
7–2026–00	Richmond County	95,058.00	11,993.00
7–2036–00	Spalding County	27,946.00	3,526.00
7–2056–00	Thomas County	23,085.00	2,913.00
7–2066–00	Troup County	33,312.00	4,203.00
7–2076–00	Walker County	27,528.00	3,473.00
7–2078–00	Walton County	17,457.00	2,203.00
7–2080–00	Ware County	24,357.00	3,073.00
7–2094–00	Whitfield County	36,047.00	4,548.00
7–2104–00	State Set-Aside Committee, GA	763,165.00	0.00
Total		2,519,368.00	221,576.00
Hawaii:			
7–2108–00	Hawaii County	51,153.00	6,454.00
7–2116–00	State Set-Aside Committee, HI	198,847.00	0.00
Total		250,000.00	6,454.00
Idaho:			
7–2134–00	Bannock County	43,522.00	5,491.00
7–2140–00	Bingham County	26,848.00	3,387.00
7–2146–00	Bonner County	18,396.00	2,321.00
7–2156–00	Canyon County	62,948.00	7,942.00
7–2184–00	Kootenai County	49,898.00	6,296.00
7–2198–00	Nez Perce County	19,322.00	2,438.00
7–2212–00	Twin Falls County	32,249.00	4,069.00
7–2218–00	State Set-Aside Committee, ID	171,447.00	0.00
Total		424,632.00	31,944.00
Illinois:			
7–2342–00	Adams County	41,292.00	5,210.00
7–2348–00	Boone County	29,880.00	3,770.00
7–2352–00	Bureau County	25,420.00	3,207.00
7–2360–00	Champaign County	65,439.00	8,256.00
7–2364–00	Christian County	25,507.00	3,218.00
7–2370–00	Clinton County	27,719.00	3,497.00
7–2372–00	Coles County	28,016.00	3,535.00
7–2374–00	Cook County	1,206,430.00	152,214.00
7–2378–00	Chicago City	1,984,402.00	250,371.00
7–2402–00	Dekalb County	27,423.00	3,460.00
7–2414–00	Edgar County	17,562.00	2,216.00
7–2420–00	Fayette County	18,520.00	2,337.00
7–2424–00	Franklin County	48,052.00	6,063.00
7–2426–00	Fulton County	29,862.00	3,768.00
7–2432–00	Grundy County	34,288.00	4,326.00
7–2442–00	Henry County	36,570.00	4,614.00
7–2444–00	Iroquois County	20,524.00	2,589.00
7–2446–00	Jackson County	39,410.00	4,972.00
7–2450–00	Jefferson County	45,020.00	5,680.00
7–2464–00	Kankakee County	75,945.00	9,582.00
7–2468–00	Knox County	43,766.00	5,522.00
7–2474–00	La Salle County	101,556.00	12,813.00
7–2478–00	Lee County	22,144.00	2,794.00
7–2484–00	Mc Donough County	19,130.00	2,414.00
7–2490–00	Macon County	95,215.00	12,013.00
7–2494–00	Macoupin County	34,863.00	4,399.00
7–2496–00	Madison County	176,421.00	22,259.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

	Public Law 100–404	Public Law 101–45
7–2498–00 Marion County	42,424.00	5,353.00
7–2512–00 Montgomery County	24,932.00	3,146.00
7–2518–00 Ogle County	34,131.00	4,306.00
7–2520–00 Peoria County	108,038.00	13,631.00
7–2524–00 Perry County	26,500.00	3,343.00
7–2536–00 Randolph County	24,200.00	3,053.00
7–2540–00 Rock Island County	107,376.00	13,548.00
7–2542–00 St. Clair County	192,468.00	24,284.00
7–2546–00 Saline County	29,009.00	3,660.00
7–2562–00 Tazewell County	74,795.00	9,437.00
7–2564–00 Union County	17,771.00	2,242.00
7–2566–00 Vermilion County	84,517.00	10,663.00
7–2574–00 Wayne County	18,381.00	2,319.00
7–2576–00 White County	20,541.00	2,592.00
7–2578–00 Whiteside County	37,946.00	4,788.00
7–2580–00 Will County	236,982.00	29,900.00
7–2586–00 Williamson County	61,484.00	7,757.00
7–2588–00 Winnebago County	192,711.00	24,314.00
7–2594–00 State Set-Aside Committee, IL	765,443.00	0.00
Total	6,420,025.00	713,435.00
Indiana:		
7–2622–00 Allen County	134,259.00	16,939.00
7–2656–00 Delaware County	66,241.00	8,358.00
7–2662–00 Elkhart County	72,026.00	9,087.00
7–2666–00 Fayette County	19,566.00	2,469.00
7–2678–00 Grant County	46,832.00	5,909.00
7–2680–00 Greene County	23,277.00	2,937.00
7–2690–00 Henry County	30,228.00	3,814.00
7–2696–00 Jackson County	24,374.00	3,075.00
7–2708–00 Knox County	20,925.00	2,640.00
7–2714–00 Lake County	166,351.00	20,988.00
7–2716–00 Gary City	113,108.00	14,271.00
7–2722–00 Lawrence County	26,482.00	3,341.00
7–2724–00 Madison County	66,763.00	8,423.00
7–2728–00 Marion County	385,127.00	48,591.00
7–2736–00 Miami County	20,576.00	2,596.00
7–2738–00 Monroe County	37,615.00	4,746.00
7–2770–00 Randolph County	18,869.00	2,381.00
7–2776–00 St. Joseph County	116,627.00	14,715.00
7–2794–00 Tippecanoe County	40,804.00	5,148.00
7–2800–00 Vanderburgh County	93,507.00	11,798.00
Indiana:		
7–2806–00 Vigo County	52,007.00	6,562.00
7–2818–00 Wayne County	46,536.00	5,871.00
7–2826–00 State Set-Aside Committee, IN	543,265.00	0.00
Total	2,165,365.00	204,659.00
Iowa:		
7–2858–00 Blackhawk County	72,182.00	9,107.00
7–2952–00 Johnson County	19,810.00	2,499.00
7–2962–00 Lee County	28,956.00	3,653.00
7–3038–00 Wapello County	22,911.00	2,891.00
7–3052–00 Woodbury County	55,544.00	7,008.00
7–3060–00 State Set-Aside Committee, IA	516,363.00	0.00
Total	715,766.00	25,158.00
Kansas:		
7–3116–00 Crawford County	17,492.00	2,207.00
7–3124–00 Douglas County	25,836.00	3,260.00
7–3208–00 Montgomery County	18,398.00	2,321.00
7–3244–00 Riley County	17,597.00	2,220.00
7–3296–00 Wyandotte County	123,230.00	15,548.00
7–3300–00 State Set-Aside Committee, KS	399,552.00	0.00
Total	602,107.00	25,556.00
Kentucky:		
7–3324–00 Barren County	29,696.00	3,746.00
7–3328–00 Bell County	24,758.00	3,124.00
7–3334–00 Boyd County	34,026.00	4,293.00
7–3336–00 Boyle County	23,068.00	2,910.00
7–3358–00 Carter County	29,601.00	3,735.00
7–3362–00 Christian County	28,136.00	3,550.00
7–3364–00 Clark County	19,374.00	2,444.00
7–3374–00 Daviess County	73,767.00	9,307.00
7–3384–00 Lexington/Fayette	91,895.00	11,569.00
7–3388–00 Floyd County	37,650.00	4,750.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

	Public Law 100–404	Public Law 101–45
7–3400–00 Graves County	21,883.00	2,761.00
7–3402–00 Grayson County	19,095.00	2,409.00
7–3406–00 Greenup County	24,548.00	3,097.00
7–3410–00 Hardin County	35,906.00	4,530.00
7–3412–00 Harlan County	30,751.00	3,880.00
7–3418–00 Henderson County	36,570.00	4,614.00
7–3424–00 Hopkins County	27,526.00	3,473.00
7–3428–00 Jefferson County	440,653.00	55,597.00
7–3434–00 Johnson County	20,855.00	2,631.00
7–3436–00 Kenton County	69,830.00	8,810.00
7–3442–00 Knox County	20,193.00	2,548.00
7–3446–00 Laurel County	31,692.00	3,999.00
7–3454–00 Letcher County	20,628.00	2,603.00
7–3458–00 Lincoln County	22,440.00	2,831.00
7–3468–00 Mccracken County	35,647.00	4,498.00
7–3472–00 Madison County	25,803.00	3,256.00
7–3478–00 Marshall County	20,297.00	2,561.00
7–3494–00 Montgomery County	24,461.00	3,086.00
7–3498–00 Muhlenberg County	24,287.00	3,064.00
7–3500–00 Nelson County	25,942.00	3,273.00
7–3504–00 Ohio County	19,409.00	2,449.00
7–3514–00 Perry County	24,548.00	3,097.00
7–3516–00 Pike County	70,927.00	8,949.00
7–3520–00 Pulaski County	32,511.00	4,102.00
7–3548–00 Warren County	72,461.00	9,142.00
7–3556–00 Whitley County	23,346.00	2,946.00
7–3562–00 State Set-Aside Committee, KY	426,202.00	0.00
Total	2,040,180.00	203,634.00
Louisiana:		
7–3564–00 Shreveport/Bossier, Caddo Parishes	300,017.00	37,853.00
7–3574–00 Acadia Parish	57,704.00	7,280.00
7–3576–00 Allen Parish	21,534.00	2,717.00
7–3578–00 Ascension Parish	59,829.00	7,549.00
7–3580–00 Assumption Parish	26,446.00	3,337.00
7–3582–00 lAvoyelles Parish	47,806.00	6,032.00
7–3584–00 Beauregard Parish	28,538.00	3,601.00
7–3598–00 Calcasieu Parish	162,483.00	20,500.00
7–3610–00 Concordia Parish	26,099.00	3,293.00
7–3612–00 De Soto Parish	26,134.00	3,297.00
7–3614–00 East Baton Rouge Parish	274,424.00	34,624.00
7–3622–00 Evangeline Parish	31,413.00	3,963.00
7–3624–00 Franklin Parish	21,813.00	2,752.00
7–3628–00 Iberia Parish	73,489.00	9,272.00
7–3630–00 Iberville Parish	32,996.00	4,163.00
7–3634–00 Jefferson Parish	349,253.00	44,065.00
7–3638–00 Jefferson Davis Parish	32,563.00	4,108.00
7–3640–00 Lafayette Parish	145,304.00	18,332.00
7–3644–00 Lafourche Parish	73,297.00	9,248.00
7–3650–00 Livingston Parish	74,656.00	9,419.00
7–3652–00 Madison Parish	17,492.00	2,207.00
7–3654–00 Morehouse Parish	31,518.00	3,977.00
7–3656–00 Natchitoches Parish	28,852.00	3,640.00
7–3658–00 New Orleans City/Orleans	405,250.00	51,130.00
7–3660–00 Ouachita Parish	119,659.00	15,097.00
7–3664–00 Plaquemines Parish	19,775.00	2,495.00
7–3666–00 Pointe Coupee Parish	23,120.00	2,917.00
7–3668–00 Rapides Parish	101,313.00	12,783.00
7–3674–00 Richland Parish	22,493.00	2,838.00
7–3678–00 St Bernard Parish	64,446.00	8,131.00
7–3680–00 St Charles Parish	34,357.00	4,335.00
7–3684–00 St James Parish	24,008.00	3,029.00
7–3686–00 St John Baptist Parish	32,946.00	4,157.00
7–3688–00 St Landry Parish	96,068.00	12,121.00
7–3690–00 St Martin Parish	41,518.00	5,238.00
7–3692–00 St Mary Parish	76,520.00	9,654.00
7–3694–00 St Tammany Parish	99,413.00	12,543.00
7–3696–00 Tangipahoa Parish	91,173.00	11,503.00
7–3700–00 Terrebonne Parish	87,636.00	11,057.00
7–3702–00 Union Parish	17,667.00	2,229.00
7–3704–00 Vermilion Parish	57,355.00	7,236.00
7–3706–00 Vernon Parish	30,211.00	3,812.00
7–3708–00 Washington Parish	36,587.00	4,616.00
7–3710–00 Webster Parish	44,515.00	5,616.00
7–3712–00 West Baton Rouge Parish	18,590.00	2,345.00
7–3714–00 West Carroll Parish	19,461.00	2,455.00
7–3720–00 State Set-Aside Committee, LA	186,048.00	0.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Public Law 100–404	Public Law 101–45
Total		3,692,795.00	442,567.00
Maine:			
7–3726–00	Androscoggin County	41,857.00	5,256.00
7–3728–00	Aroostook County	53,418.00	6,740.00
7–3730–00	Cumberland County	55,804.00	7,041.00
7–3736–00	Hancock County	21,047.00	2,655.00
7–3738–00	Kennebec County	42,180.00	5,322.00
7–3744–00	Oxford County	19,668.00	2,484.00
7–3746–00	Penobscot County	48,765.00	6,153.00
7–3752–00	Somerset County	26,500.00	3,343.00
7–3756–00	Washington County	23,346.00	2,946.00
7–3760–00	State Set-Aside Committee, ME	50,289.00	0.00
Total		382,675.00	41,940.00
Maryland:			
7–3774–00	Allegany County	58,331.00	7,360.00
7–3790–00	Dorchester County	20,263.00	2,557.00
7–3794–00	Garrett County	19,478.00	2,458.00
7–3812–00	Somerset County	19,566.00	2,469.00
7–3818–00	Wicomico County	37,267.00	4,702.00
7–3820–00	Worcester County	25,995.00	3,280.00
7–3822–00	Baltimore City	427,081.00	53,885.00
7–3824–00	State Set-Aside Committee, MD	572,787.00	0.00
Total		1,160,768.00	76,711.00
Massachusetts:			
7–4462–00	Bristol County	183,094.00	23,101.00
7–4490–00	Essex County	201,962.00	25,481.00
7–4502–00	Hampden County	115,634.00	14,589.00
7–4506–00	Hampshire County	33,277.00	4,199.00
7–4510–00	Middlesex County	323,990.00	40,876.00
7–4540–00	Plymouth County	115,218.00	14,537.00
7–4550–00	Suffolk County	181,805.00	22,938.00
7–4554–00	Worcester County	181,892.00	22,949.00
7–4558–00	State Set-Aside Committee, MA	133,965.00	0.00
Total		1,470,836.00	166,672.00
Michigan:			
7–4560–00	Lansing/Eaton, Ingham Counties	243,985.00	30,783.00
7–4638–00	Alpena County	28,660.00	3,616.00
7–4646–00	Barry County	28,730.00	3,625.00
7–4648–00	Bay County	87,618.00	11,055.00
7–4652–00	Berrien County	95,128.00	12,002.00
7–4654–00	Branch County	23,852.00	3,009.00
7–4656–00	Calhoun County	91,782.00	11,580.00
7–4660–00	Cass County	24,217.00	3,055.00
7–4664–00	Cheboygan County	27,441.00	3,462.00
7–4666–00	Chippewa County	28,468.00	3,592.00
7–4674–00	Delta County	28,294.00	3,570.00
7–4682–00	Emmet County	21,258.00	2,682.00
7–4684–00	Genesee County	480,603.00	60,637.00
7–4692–00	Grand Traverse County	46,292.00	5,841.00
7–4694–00	Gratiot County	33,451.00	4,220.00
7–4695–00	Hillsdale County	31,465.00	3,970.00
7–4696–00	Houghton County	18,137.00	2,288.00
7–4700–00	Huron County	28,558.00	3,603.00
7–4708–00	Ionia County	35,072.00	4,425.00
7–4714–00	Isabella County	27,841.00	3,513.00
7–4716–00	Jackson County	84,883.00	10,710.00
7–4718–00	Kalamazoo County	105,302.00	13,286.00
7–4724–00	Kent County	277,036.00	34,953.00
7–4734–00	Lapeer County	70,004.00	8,832.00
7–4738–00	Lenawee County	70,457.00	8,890.00
7–4744–00	Mackinac County	22,858.00	2,884.00
7–4746–00	Macomb County	531,380.00	67,045.00
7–4758–00	Manistee County	17,684.00	2,231.00
7–4760–00	Marquette County	38,382.00	4,843.00
7–4762–00	Mecon County	18,520.00	2,337.00
7–4764–00	Mecosta County	19,984.00	2,521.00
7–4772–00	Monroe County	83,716.00	10,562.00
7–4774–00	Montcalm County	39,497.00	4,983.00
7–4776–00	Muskegon County	109,641.00	13,833.00
7–4780–00	Newaygo County	27,695.00	3,493.00
7–4782–00	Oakland County	668,471.00	84,341.00
7–4796–00	Oceana County	18,851.00	2,378.00
7–4814–00	Saginaw County	141,942.00	17,909.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Public Law 100–404	Public Law 101–45
7–4816–00	St. Clair County	118,438.00	14,943.00
7–4820–30	St Joseph County	45,838.00	5,783.00
7–4822–00	Sanilac County	35,978.00	4,539.00
7–4826–00	Shiawassee County	67,582.00	8,527.00
7–4828–00	Tuscola County	45,142.00	5,696.00
7–4830–00	Van Buren County	50,579.00	6,381.00
7–4832–00	Washtenaw County	113,822.00	14,361.00
7–4836–00	Wayne County	629,044.00	79,366.00
7–4844–00	Detroit City	975,963.00	123,137.00
7–4854–00	Wexford County	20,419.00	2,576.00
7–4858–00	State Set-Aside Committee, MI	329,241.00	0.00
Total		6,209,199.00	741,858.00
Minnesota:			
7–4902–00	Becker County	18,137.00	2,288.00
7–4904–00	Beltrami County	17,841.00	2,251.00
7–4906–00	Benton County	14,722.00	1,857.00
7–4914–00	Carlton County	17,614.00	2,222.00
7–4924–00	Clay County	19,618.00	2,475.00
7–4932–00	Crow Wing County	23,799.00	3,003.00
7–4950–00	Hennepin County	392,514.00	49,523.00
7–4968–00	Itasca County	27,737.00	3,500.00
7–5004–00	Morrison County	19,060.00	2,405.00
7–5020–00	Otter Tail County	27,772.00	3,504.00
7–5028–00	Polk County	19,496.00	2,460.00
7–5048–00	St. Louis County	122,690.00	15,480.00
7–5054–00	Sherburne County	19,287.00	2,433.00
7–5058–00	Stearns County	53,731.00	6,779.00
7–5062–00	Winona County	19,357.00	2,442.00
7–5068–00	State Set-Aside Committee, MN	534,953.00	0.00
Total		1,348,328.00	102,622.00
Mississippi:			
7–5090–00	Adams County	29,862.00	3,768.00
7–5092–00	Alcorn County	32,894.00	4,150.00
7–5100–00	Bolivar County	33,852.00	4,271.00
7–5116–00	Coahoma County	27,338.00	3,449.00
7–5118–00	Copiah County	22,562.00	2,847.00
7–5122–00	De Soto County	35,037.00	4,421.00
7–5124–00	Forrest County	37,511.00	4,733.00
7–5128–00	George County	19,182.00	2,420.00
7–5134–00	Hancock County	18,503.00	2,335.00
7–5136–00	Harrison County	109,606.00	13,829.00
7–5138–00	Hinds County	153,458.00	19,362.00
7–5142–00	Holmes County	20,350.00	2,568.00
7–5150–00	Jackson County	101,034.00	12,747.00
7–5156–00	Jones County	40,717.00	5,137.00
7–5166–00	Lauderdale County	48,975.00	6,179.00
7–5172–00	Lee County	38,730.00	4,887.00
7–5174–00	Leflore County	34,288.00	4,326.00
7–5176–00	Lincoln County	24,148.00	3,047.00
7–5178–00	Lowndes County	38,243.00	4,825.00
7–5180–00	Madison County	32,145.00	4,056.00
7–5182–00	Marion County	21,691.00	2,737.00
7–5184–00	Marshall County	26,517.00	3,346.00
7–5186–00	Monroe County	21,395.00	2,699.00
7–5198–00	Panola County	24,270.00	3,062.00
7–5200–00	Pearl River County	24,601.00	3,104.00
7–5204–00	Pike County	30,768.00	3,882.00
7–5212–00	Rankin County	36,483.00	4,603.00
7–5224–00	Sunflower County	30,472.00	3,845.00
7–5232–00	Tishomingo County	18,921.00	2,387.00
7–5240–00	Warren County	43,400.00	5,476.00
7–5242–00	Washington County	68,802.00	8,681.00
7–5254–00	Yazoo County	17,701.00	2,233.00
7–5256–00	State Set-Aside Committee, MS	267,325.00	0.00
Total		1,530,779.00	159,412.00
Missouri:			
7–5258–00	Kansas City/Clay,Jackson,Platte County	442,308.00	55,806.00
7–5290–00	Boone County	34,358.00	4,335.00
7–5294–00	Buchanan County	46,431.00	5,858.00
7–5298–00	Butler County	24,043.00	3,033.00
7–5306–00	Cape Girardeau County	25,785.00	3,253.00
7–5346–00	Franklin County	52,512.00	6,625.00
7–5354–00	Greene County	79,952.00	10,087.00
7–5360–00	Jasper County	41,066.00	5,181.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

	Public Law 100–404	Public Law 101–45
7-5428-00 Newton County	20,123.00	2,539.00
7-5442-00 Pettis County	16,886.00	2,383.00
7-5474-00 St. Francois County	29,706.00	3,748.00
7-5486-00 Scott County	20,994.00	2,649.00
7-5498-00 Taney County	22,667.00	2,860.00
7-5506-00 Washington County	18,015.00	2,273.00
7-5516-00 St. Louis City	304,077.00	38,365.00
7-5518-00 State Set-Aside Committee, MO	619,953.00	0.00
Total	2,000,875.00	148,995.00
Montana:		
7-5558-00 Flathead County	44,497.00	5,614.00
7-5560-00 Gallatin County	25,158.00	3,174.00
7-5592-00 Missoula County	45,351.00	5,722.00
7-5610-00 Ravalli County	18,921.00	2,387.00
7-5622-00 Silver Bow County	22,998.00	2,902.00
7-5644-00 State Set-Aside Committee, MT	170,498.00	0.00
Total	327,423.00	19,799.00
Nebraska:		
7-5722-00 Douglas County	192,364.00	24,270.00
7-5828-00 Scotts Bluff County	25,263.00	3,167.00
7-5858-00 State Set-Aside Committee, NE	191,438.00	0.00
Total	409,065.00	27,457.00
Nevada:		
7-5868-00 Clark County	365,004.00	46,052.00
7-5906-00 State Set-Aside Committee, NV	101,849.00	0.00
Total	466,853.00	46,052.00
New Hampshire: 7-5942-00 State Set-Aside Committee, NH	250,000.00	0.00
New Jersey:		
7-5948-00 Atlantic County	115,495.00	14,572.00
7-5954-00 Camden County	179,174.00	22,606.00
7-5962-00 Cumberland County	74,899.00	9,450.00
7-5966-00 Essex County	172,972.00	21,824.00
7-5974-00 Newark City	184,819.00	23,318.00
7-5978-00 Hudson County	301,307.00	38,016.00
7-5988-00 Mercer County	94,780.00	11,958.00
7-6018-00 Passaic County	189,854.00	23,954.00
7-6026-00 Salem County	26,099.00	3,293.00
7-6034-00 Union County	196,545.00	24,798.00
7-6042-00 State Set-Aside Committee, NJ	560,604.00	0.00
Total	2,096,548.00	193,789.00
New Mexico:		
7-6044-00 Bernalillo County	285,871.00	36,068.00
7-6050-00 Chaves County	29,636.00	3,739.00
7-6052-00 Cibola County	20,733.00	2,616.00
7-6056-00 Curry County	24,845.00	3,135.00
7-6060-00 Dona Ana County	72,078.00	9,094.00
7-6064-00 Eddy County	39,201.00	4,946.00
7-6074-00 Lea County	35,072.00	4,425.00
7-6082-00 Mckinley County	39,427.00	4,974.00
7-6086-00 Otero County	26,901.00	3,394.00
7-6090-00 Rio Arriba County	44,933.00	5,669.00
7-6094-00 Sandoval County	34,985.00	4,414.00
7-6096-00 San Juan County	82,548.00	10,415.00
7-6098-00 San Miguel County	22,597.00	2,851.00
7-6100-00 Santa Fe County	58,592.00	7,393.00
7-6108-00 Taos County	44,741.00	5,645.00
7-6114-00 Valencia County	26,343.00	3,324.00
7-6116-00 State Set-Aside Committee, NM	57,742.00	0.00
Total	946,245.00	112,102.00
New York:		
7-6120-00 Albany County	70,422.00	8,885.00
7-6126-00 Allegany County	19,444.00	2,453.00
7-6130-00 Broome County	63,645.00	8,030.00
7-6136-00 Cattaraugus County	36,622.00	4,621.00
7-6138-00 Cayuga County	37,981.00	4,792.00
7-6140-00 Chautauqua County	58,244.00	7,349.00
7-6142-00 Chemung County	27,685.00	3,493.00
7-6144-00 Chenango County	18,416.00	2,324.00
7-6146-00 Clinton County	37,180.00	4,691.00
7-6150-00 Cortland County	20,228.00	2,552.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

	Public Law 100–404	Public Law 101–45
7-6156-00 Erie County	220,170.00	27,779.00
7-6160-00 Buffalo City	180,690.00	22,796.00
7-6168-00 Essex County	18,607.00	2,346.00
7-6170-00 Franklin County	28,138.00	3,550.00
7-6172-00 Fulton County	34,828.00	4,394.00
7-6180-00 Herkimer County	29,131.00	3,675.00
7-6182-00 Jefferson County	59,359.00	7,489.00
7-6190-00 Madison County	34,270.00	4,324.00
7-6192-00 Monroe County	217,452.00	27,436.00
7-6202-00 Nassau County	365,214.00	46,079.00
7-6212-00 Niagara County	107,062.00	13,508.00
7-6216-00 Oneida County	84,935.00	10,716.00
7-6220-00 Onondaga County	205,483.00	25,926.00
7-6232-00 Oswego County	80,946.00	10,213.00
7-6234-00 Otsego County	19,200.00	2,422.00
7-6240-00 Rensselaer County	44,881.00	5,663.00
7-6254-00 St. Lawrence County	56,136.00	7,083.00
7-6258-00 Schenectady County	48,940.00	6,175.00
7-6268-00 Steuben County	37,511.00	4,733.00
7-6270-00 Suffolk County	407,341.00	51,394.00
7-6282-00 Sullivan County	20,994.00	2,649.00
7-6286-00 Tompkins County	18,311.00	2,310.00
7-6288-00 Ulster County	44,062.00	5,559.00
7-6290-00 Warren County	26,256.00	3,313.00
7-6292-00 Washington County	19,391.00	2,447.00
7-6296-00 Westchester County	248,115.00	31,305.00
7-6314-00 New York City	2,875,377.00	362,764.00
7-6312-00 State Set-Aside Committee, NY	297,401.00	0.00
Total	6,220,068.00	747,262.00
North Carolina:		
7-6316-00 High Point/Guilford, Davidson Counties	147,463.00	18,608.00
7-6332-00 Beaufort County	22,684.00	2,862.00
7-6338-00 Brunswick County	28,834.00	3,638.00
7-6340-00 Buncombe County	59,133.00	7,461.00
7-6352-00 Carteret County	25,454.00	3,212.00
7-6366-00 Cleveland County	26,798.00	3,381.00
7-6368-00 Columbus County	23,642.00	2,983.00
7-6370-00 Craven County	23,137.00	2,919.00
7-6372-00 Cumberland County	82,862.00	10,455.00
7-6386-00 Duplin County	18,991.00	2,396.00
7-6388-00 Durham County	51,222.00	6,463.00
7-6392-00 Edgecombe County	29,462.00	3,717.00
7-6394-00 Forsyth County	87,828.00	11,081.00
7-6398-00 Franklin County	18,729.00	2,363.00
7-6400-00 Gaston County	61,240.00	7,727.00
7-6418-00 Halifax County	23,555.00	2,972.00
7-6420-00 Harnett County	24,548.00	3,097.00
7-6422-00 Haywood County	19,217.00	2,425.00
7-6424-00 Henderson County	19,531.00	2,464.00
7-6436-00 Johnston County	32,685.00	4,124.00
7-6440-00 Lee County	21,203.00	2,675.00
7-6442-00 Lenoir County	23,974.00	3,025.00
7-6454-00 Mecklenburg County	146,263.00	18,454.00
7-6464-00 Nash County	33,695.00	4,251.00
7-6466-00 New Hanover County	62,913.00	7,938.00
7-6470-00 Onslow County	21,970.00	2,772.00
7-6472-00 Orange County	21,134.00	2,666.00
7-6482-00 Person County	20,768.00	2,620.00
7-6484-00 Pitt County	31,779.00	4,010.00
7-6490-00 Richmond County	20,019.00	2,526.00
7-6492-00 Robeson County	57,826.00	7,296.00
7-6494-00 Rockingham County	36,797.00	4,643.00
7-6498-00 Rutherford County	19,357.00	2,442.00
7-6500-00 Sampson County	22,022.00	2,779.00
7-6506-00 Stokes County	18,451.00	2,328.00
7-6508-00 Surry County	24,636.00	3,108.00
7-6518-00 Vance County	24,409.00	3,080.00
7-6520-00 Wake County	111,697.00	14,093.00
7-6530-00 Wayne County	32,650.00	4,119.00
7-6532-00 Wilkes County	18,416.00	2,324.00
7-6534-00 Wilson County	47,041.00	5,935.00
7-6540-00 State Set-Aside Committee, NC	354,892.00	0.00
Total	1,998,945.00	207,432.00
North Dakota:		
7-6596-00 Grand Forks County	23,730.00	2,994.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Public Law 100–404	Public Law 101–45
7-6670-00	State Set-Aside Committee, ND	226,270.00	0.00
Total		250,000.00	2,994.00
Ohio:			
7-6672-00	Columbus/Fairfield, Franklin Counties	478,094.00	60,321.00
7-6678-00	Adams County	18,137.00	2,288.00
7-6684-00	Ashtabula County	80,980.00	10,217.00
7-6686-00	Athens County	28,939.00	3,651.00
7-6690-00	Belmont County	52,860.00	6,669.00
7-6692-00	Brown County	24,148.00	3,047.00
7-6694-00	Butler County	141,890.00	17,902.00
7-6702-00	Clark County	65,962.00	8,322.00
7-6706-00	Clinton County	22,336.00	2,818.00
7-6710-00	Columbiana County	64,986.00	8,199.00
7-6712-00	Coshocton County	22,040.00	2,781.00
7-6714-00	Crawford County	29,775.00	3,757.00
7-6716-00	Cuyahoga County	717,046.00	90,469.00
7-6730-00	Defiance County	25,036.00	3,159.00
7-6740-00	Fayette County	17,858.00	2,253.00
7-6746-00	Fulton County	28,782.00	3,631.00
7-6748-00	Gallia County	20,437.00	2,579.00
7-6754-00	Guernsey County	32,302.00	4,076.00
7-6756-00	Hamilton County	410,007.00	51,730.00
7-6762-00	Hardin County	18,747.00	2,365.00
7-6766-00	Henry County	18,764.00	2,367.00
7-6768-00	Highland County	21,865.00	2,759.00
7-6770-00	Hocking County	18,555.00	2,341.00
7-6774-00	Huron County	47,111.00	5,944.00
7-6776-00	Jackson County	23,764.00	2,998.00
7-6778-00	Jefferson County	46,222.00	5,832.00
7-6780-00	Knox County	25,890.00	3,267.00
7-6784-00	Lawrence County	37,563.00	4,739.00
7-6788-00	Logan County	21,395.00	2,699.00
7-6790-00	Lorain County	152,988.00	19,302.00
7-6796-00	Lucas County	269,526.00	34,006.00
7-6802-00	Mahoning County	174,174.00	21,975.00
7-6806-00	Marion County	44,445.00	5,608.00
7-6818-00	Montgomery County	271,095.00	34,204.00
7-6828-00	Muskingum County	59,376.00	7,491.00
7-6832-00	Ottawa County	31,012.00	3,913.00
7-6836-00	Perry County	34,235.00	4,319.00
7-6840-00	Pike County	19,304.00	2,436.00
7-6846-00	Putnam County	21,796.00	2,750.00
7-6848-00	Richland County	75,910.00	9,578.00
7-6852-00	Ross County	39,480.00	4,981.00
7-6854-00	Sandusky County	45,787.00	5,777.00
7-6856-00	Scioto County	53,714.00	6,777.00
7-6858-00	Seneca County	35,316.00	4,456.00
7-6862-00	Stark County	227,644.00	28,722.00
7-6866-00	Summit County	292,177.00	36,864.00
7-6870-00	Trumbull County	164,138.00	20,709.00
7-6884-00	Washington County	42,476.00	5,359.00
7-6894-00	State Set-Aside Committee, OH	796,812.00	0.00
Total		5,412,898.00	582,407.00
Oklahoma:			
7-6896-00	Oklahoma City/Canadian, McLain, Oklahoma	476,857.00	60,165.00
7-6916-00	Caddo County	21,012.00	2,651.00
7-6922-00	Carter County	27,092.00	3,418.00
7-6924-00	Cherokee County	22,858.00	2,884.00
7-6938-00	Comanche County	43,835.00	5,531.00
7-6946-00	Creek County	43,435.00	5,480.00
7-6962-00	Grady County	25,907.00	3,269.00
7-6990-00	Le Flore County	23,974.00	3,025.00
7-6992-00	Lincoln County	19,461.00	2,455.00
7-7002-00	McCurtain County	21,743.00	2,743.00
7-7010-00	Mayes County	24,688.00	3,115.00
7-7014-00	Muskogee County	49,341.00	6,225.00
7-7026-00	Okmulgee County	27,996.00	3,532.00
7-7034-00	Ottawa County	22,615.00	2,853.00
7-7038-00	Payne County	24,932.00	3,146.00
7-7040-00	Pittsburg County	36,936.00	4,660.00
7-7042-00	Pontotoc County	19,931.00	2,515.00
7-7052-00	Rogers County	36,361.00	4,588.00
7-7054-00	Seminole County	19,966.00	2,519.00
7-7056-00	Sequoyah County	17,475.00	2,205.00
7-7058-00	Stephens County	26,012.00	3,282.00
7-7064-00	Tulsa County	327,406.00	41,309.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Public Law 100–404	Public Law 101–45
7-7068-00	Wagoner County	26,761.00	3,376.00
7-7078-00	State Set-Aside Committee, OK	434,221.00	0.00
Total		1,820,817.00	174,946.00
Oregon:			
7-7080-00	Portland-Clackamas, Multnomah, Washington	526,755.00	66,460.00
7-7082-00	Salem/Marion, Polk Counties	136,244.00	17,190.00
7-7090-00	Benton County	22,562.00	2,847.00
7-7096-00	Clatsop County	18,085.00	2,282.00
7-7098-00	Columbia County	21,796.00	2,750.00
7-7100-00	Coos County	41,204.00	5,199.00
7-7106-00	Deschutes County	47,250.00	5,962.00
7-7106-00	Douglas County	58,314.00	7,357.00
7-7108-00	Jackson County	76,660.00	9,672.00
7-7122-00	Josephine County	31,376.00	3,959.00
7-7124-00	Klamath County	36,709.00	4,632.00
7-7128-00	Lane County	134,624.00	16,985.00
7-7132-00	Lincoln County	20,750.00	2,618.00
7-7134-00	Linn County	55,944.00	7,058.00
7-7156-00	Umatille County	45,926.00	5,794.00
7-7172-00	State Set-Aside Committee, OR	214,755.00	0.00
Total		1,486,956.00	160,765.00
Pennsylvania:			
7-7174-00	Bethlehem/Northampton, Lehigh Cos.	212,296.00	26,785.00
7-7180-00	Allegheny County	607,318.00	76,625.00
7-7184-00	Armstrong County	43,539.00	5,493.00
7-7186-00	Beaver County	105,842.00	13,354.00
7-7188-00	Bedford County	28,678.00	3,618.00
7-7190-00	Berks County	140,618.00	17,742.00
7-7194-00	Blair County	73,506.00	9,274.00
7-7198-00	Bradford County	27,528.00	3,473.00
7-7206-00	Cambria County	84,291.00	10,635.00
7-7214-00	Centre County	57,146.00	7,210.00
7-7218-00	Clarion County	27,719.00	3,497.00
7-7220-00	Clearfield County	56,188.00	7,089.00
7-7222-00	Clinton County	25,054.00	3,161.00
7-7224-00	Columbia County	33,242.00	4,194.00
7-7226-00	Crawford County	50,438.00	6,364.00
7-7230-00	Dauphin County	108,856.00	13,734.00
7-7242-00	Erie County	151,890.00	19,164.00
7-7246-00	Fayette County	98,438.00	12,420.00
7-7254-00	Greene County	27,894.00	3,519.00
7-7256-00	Huntingdon County	28,817.00	3,636.00
7-7258-00	Indiana County	57,599.00	7,267.00
7-7260-00	Jefferson County	28,643.00	3,614.00
7-7264-00	Lackawanna County	109,937.00	13,871.00
7-7268-00	Lancaster County	142,656.00	17,999.00
7-7282-00	Luzerne County	205,587.00	25,939.00
7-7290-00	Mifflin County	27,214.00	3,434.00
7-7306-00	Northumberland County	62,634.00	7,902.00
7-7310-00	Philadelphia City/County	755,706.00	95,347.00
7-7320-00	Somerset County	46,919.00	5,920.00
7-7324-00	Susquehanna County	20,001.00	2,524.00
7-7326-00	Tioga County	19,165.00	2,418.00
7-7334-00	Washington County	118,718.00	14,979.00
7-7336-00	Wayne County	17,996.00	2,271.00
7-7338-00	Westmoreland County	234,979.00	29,647.00
7-7344-00	State Set-Aside Committee, PA	777,097.00	0.00
Total		4,614,151.00	484,119.00
Rhode Island:			
7-7354-00	Providence County	206,754.00	26,086.00
7-7368-00	State Set-Aside Committee, RI	58,918.00	0.00
Total		265,672.00	26,086.00
Tennessee:			
7-7720-00	Lawrence County	25,820.00	3,258.00
7-7728-00	McMinn County	24,845.00	3,135.00
7-7730-00	McNairy County	18,625.00	2,350.00
7-7734-00	Madison County	47,929.00	6,047.00
7-7738-00	Marion County	18,642.00	2,352.00
7-7742-00	Maury County	28,259.00	3,565.00
7-7746-00	Monroe County	20,559.00	2,594.00
7-7748-00	Montgomery County	39,323.00	4,961.00
7-7766-00	Putnam County	25,629.00	3,234.00
7-7768-00	Rhea County	17,597.00	2,220.00
7-7770-00	Roane County	25,054.00	3,161.00

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EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Public Law 100–404	Public Law 101–45
7–7772–00	Robertson County	20,977.00	2,647.00
7–7774–00	Rutherford County	48,557.00	6,126.00
7–7780–00	Sevier County	46,571.00	5,876.00
7–7782–00	Shelby County	360,997.00	45,547.00
7–7790–00	Sullivan County	83,524.00	10,538.00
7–7804–00	Warren Counmty	19,775.00	2,495.00
7–7804–00	Washington County	45,065.00	5,685.00
7–7818–00	State Set-Aside Committee, TN	306,873.00	0.00
Total		2,160,816.00	233,910.00
Texas:			
7–7820–00	Abilene/Jones, Taylor Counties	80,754.00	10,189.00
7–7824–00	Austin/Travis, Williamson Counties	456,316.00	57,573.00
7–7826–00	Dallas/Collin, Dallas, Denton Counties	1,375,359.00	173,528.00
7–7828–00	Houston/Fort Bend, Harris Counties	2,122,344.00	267,775.00
7–7830–00	Longview/Gregg, Harrison Counties	137,969.00	17,407.00
7–7856–00	Anderson County	35,612.00	4,493.00
7–7860–00	Angelina County	46,971.00	5,926.00
7–7868–00	Atascosa County	20,210.00	2,550.00
7–7876–00	Bastrop County	22,127.00	2,792.00
7–7880–00	Bee County	18,451.00	2,328.00
7–7882–00	Bell County	105,912.00	13,363.00
7–7886–00	Bexar County	797,433.00	100,612.00
7–7896–00	Bowie County	57,495.00	7,254.00
7–7900–00	Brazoria County	131,854.00	16,636.00
7–7902–00	Brazos County	51,745.00	6,529.00
7–7912–00	Brown County	21,099.00	2,662.00
7–7920–00	Calhoun County	18,137.00	2,288.00
7–7924–00	Cameron County	243,393.00	30,709.00
7–7934–00	Cass County	26,901.00	3,394.00
7–7940–00	Cherokee County	24,235.00	3,058.00
7–7972–00	Coryell County	24,827.00	3,132.00
7–8028–00	Ector County	84,534.00	10,666.00
7–8034–00	Ellis County	60,840.00	7,676.00
7–8036–00	El Paso County	447,918.00	56,514.00
7–8044–00	Fannin County	18,973.00	2,394.00
7–8066–00	Galveston County	194,575.00	24,549.00
7–8092–00	Guadalupe County	28,625.00	3,612.00
7–8094–00	Hale County	19,165.00	2,418.00
7–8104–00	Hardin County	35,647.00	4,498.00
7–8122–00	Hays County	34,915.00	4,405.00
7–8126–00	Henderson County	39,410.00	4,972.00
7–8128–00	Hidalgo County	463,215.00	58,444.00
7–8138–00	Hopkins County	18,573.00	2,343.00
7–8142–00	Howard County	20,489.00	2,585.00
7–8146–00	Hunt County	43,678.00	5,511.00
7–8158–00	Jasper County	31,709.00	4,001.00
7–8162–00	Jefferson County	200,359.00	25,279.00
7–8170–00	Jim Wells County	35,803.00	4,517.00
7–8180–00	Kaufman County	31,082.00	3,922.00
7–8196–00	Kleberg County	21,395.00	2,699.00
7–8200–00	Lamar County	31,256.00	3,944.00
7–8214–00	Liberty County	43,574.00	5,498.00
7–8226–00	Lubbock County	117,028.00	14,765.00
7–8234–00	McLennan County	130,095.00	16,414.00
7–8248–00	Matagorda County	45,874.00	5,788.00
7–8250–00	Maverick County	67,199.00	8,478.00
7–8256–00	Midland County	67,251.00	8,485.00
7–8268–00	Montgomery County	109,205.00	13,778.00
7–8276–00	Nacogdoches County	30,995.00	3,911.00
7–8278–00	Navarro County	31,639.00	3,992.00
7–8284–00	Nueces County	253,169.00	31,942.00
7–8292–00	Orange County	93,472.00	11,793.00
7–8294–00	Palo Pinto County	17,701.00	2,233.00
7–7804–00	Polk County	19,322.00	2,438.00
7–8306–00	Potter County	71,416.00	9,011.00
7–8336–00	Rusk County	32,145.00	4,056.00
7–8344–00	San Patricio County	56,728.00	7,157.00
7–8358–00	Smith County	110,355.00	13,923.00
7–8364–00	Starr County	99,762.00	12,587.00
7–8376–00	Tarrant County	731,798.00	92,329.00
7–8402–00	Titus County	18,936.00	2,389.00
7–8404–00	Tom Green County	48,052.00	6,063.00
7–8416–00	Upshur County	25,489.00	3,216.00
7–8420–00	Uvalde County	23,068.00	2,910.00
7–8422–00	Val Verde County	37,424.00	4,722.00
7–8424–00	Van Zandt County	22,301.00	2,814.00
7–8426–00	Victoria County	52,336.00	6,603.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Public Law 100–404	Public Law 101–45
7–8430–00	Walker County	19,130.00	2,414.00
7–8438–00	Webb County	119,980.00	15,139.00
7–8442–00	Wharton County	27,859.00	3,515.00
7–8446–00	Wichita County	73,245.00	9,241.00
7–8452–00	Willacy County	21,691.00	2,737.00
7–8464–00	Wood County	18,747.00	2,365.00
7–8472–00	Zavala County	20,611.00	2,600.00
7–8474–00	State Set-Aside Committee, TX	2,068,392.00	0.00
Total		12,407,296.00	1,304,453.00
Utah:			
7–8480–00	Cache County	20,541.00	2,592.00
7–8510–00	Salt Lake County	320,489.00	40,438.00
7–8528–00	Utah County	98,264.00	12,398.00
7–8540–00	Weber County	86,956.00	10,971.00
7–8544–00	State Set-Aside Committee, UT	116,500.00	0.00
Total		642,750.00	66,397.00
Vermont:			
7–8568–00	Rutland County	19,095.00	2,409.00
7–8576–00	State Set-Aside Committee, VT	230,950.00	0.00
Total		250,000.00	2,409.00
Virginia:			
7–8610–00	Buchanan County	26,970.00	3,403.00
7–8654–00	Halifax County	18,050.00	2,277.00
7–8702–00	Montgomery County	29,183.00	3,682.00
7–8720–00	Pittsylvania County	34,497.00	4,352.00
7–8742–00	Russell County	23,033.00	2,906.00
7–8748–00	Smyth County	20,559.00	2,594.00
7–8760–00	Tazewell County	31,796.00	4,012.00
7–8764–00	Washington County	24,618.00	3,106.00
7–8768–00	Wise County	25,768.00	3,251.00
7–8784–00	Chesapeake City	49,080.00	6,192.00
7–8792–00	Danville City	24,252.00	3,060.00
7–8806–00	Hampton City	57,617.00	7,269.00
7–8814–00	Lynchburge City	28,155.00	3,552.00
7–8822–00	Newport News City	64,307.00	8,114.00
7–8824–00	Norfolk City	86,608.00	10,927.00
7–8828–00	Petersburg City	20,210.00	2,550.00
7–8832–00	Portsmouth City	55,055.00	6,946.00
7–8836–00	Richmond City	92,845.00	11,714.00
7–8838–00	Roanoke City	43,905.00	5,539.00
7–8846–00	Suffolk City	28,991.00	3,658.00
7–8856–00	State Set-Aside Committee, VA	522,687.00	0.00
Total		1,408,186.00	99,104.00
Washington:			
7–8862–00	Benton County	79,621.00	10,046.00
7–8864–00	Chelan County	49,742.00	6,276.00
7–8866–00	Clallam County	36,448.00	4,599.00
7–8868–00	Clark County	138,718.00	17,502.00
7–8872–00	Cowlitz County	54,916.00	6,929.00
7–8874–00	Douglas County	18,329.00	2,313.00
7–8876–00	Franklin County	30,768.00	3,882.00
7–8882–00	Grant County	48,191.00	6,080.00
7–8884–00	Grays Harbor County	49,167.00	6,203.00
7–8890–00	King County	778,722.00	98,251.00
7–8898–00	Kittitas County	20,384.00	2,572.00
7–8900–00	Klickitat County	20,715.00	2,614.00
7–8902–00	Lewis County	45,386.00	5,726.00
7–8906–00	Mason County	18,573.00	2,343.00
7–8908–00	Okanogan County	34,758.00	4,385.00
7–8914–00	Pierce County	315,942.00	39,862.00
7–8920–00	Skagit County	62,791.00	7,922.00
7–8924–00	Snohomish County	235,154.00	29,669.00
7–8928–00	Spokane County	203,026.00	25,616.00
7–8932–00	Stevens County	20,437.00	2,579.00
7–8938–00	Walla Walla County	34,375.00	4,337.00
7–8940–00	Whatcom County	84,813.00	10,701.00
7–8944–00	Yakima County	183,112.00	23,105.00
7–8948–00	State Set-Aside Committee, WA	137,817.00	0.00
Total		2,701,905.00	323,510.00
West Virginia:			
7–8950–00	huntington/Wayne, Cabell Counties	85,823.00	10,828.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

FEMA Region III, Liberty Square

comments are found in § 572.603 of title

addition, the organization serves 3,000

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

	Public Law 100-404	Public Law 101-45
7-8956-00 Berkeley County	25,890.00	3,267.00
7-8958-00 Boone County	28,800.00	3,634.00
7-8974-00 Fayette County	38,643.00	4,876.00
7-8980-00 Greenbrier County	31,552.00	3,981.00
7-8988-00 Harrison County	66,084.00	8,338.00
7-8990-00 Jackson County	21,918.00	2,765.00
7-8944-00 Kanawha County	149,730.00	18,891.00
7-9000-00 Lincoln County	21,343.00	2,693.00
7-9002-00 Logan County	37,615.00	4,746.00
7-9004-00 Mcdowell County	44,672.00	5,536.00
7-9006-00 Marion County	45,578.00	5,751.00
7-9008-00 Marshall County	26,709.00	3,370.00
7-9010-00 Mason County	22,074.00	2,785.00
7-9012-00 Mercer County	46,065.00	5,812.00
7-9016-00 Mingo County	23,764.00	2,998.00
7-9018-00 Monongalia County	35,211.00	4,443.00
7-9024-00 Nicholas County	22,092.00	2,787.00
7-9026-00 Ohio County	31,483.00	3,972.00
7-9034-00 Preston County	19,653.00	2,480.00
7-9036-00 Putnam County	31,221.00	3,939.00
7-9038-00 Raleigh County	69,690.00	8,793.00
7-9040-00 Randolph County	24,165.00	3,049.00
7-9054-00 Upshur County	21,447.00	2,706.00
7-9066-00 Wade County	56,728.00	7,157.00
7-9068-00 Wyoming County	29,078.00	3,669.00
7-9070-00 State Set-Aside Committee, WV	155,284.00	0.00
Total	1,212,312.00	133,366.00
Wisconsin:		
7-9072-00 Eau Claire/Chippewa,Eau Claire Count	67,843.00	8,560.00
7-9100-00 Barron County	24,374.00	3,075.00
7-9104-00 Brown County	100,755.00	12,712.00
7-9120-00 Clark County	19,827.00	2,502.00
7-9122-00 Columbia County	33,556.00	4,234.00
7-9126-00 Dane County	130,408.00	16,453.00
7-9132-00 Door County	28,225.00	3,561.00
7-9148-00 Grant County	23,311.00	2,941.00
7-9164-00 Kenosha County	59,324.00	7,485.00
7-9170-00 La Crosse County	42,320.00	5,339.00
7-9190-00 Milwaukee County	443,162.00	55,913.00
7-9216-00 Portage County	34,375.00	4,337.00
7-9220-00 Racine County	91,260.00	11,514.00
7-9226-00 Rock County	81,921.00	10,336.00
7-9244-00 Trempealeau County	17,562.00	2,216.00
7-9272-00 State Set-Aside Committee, WI	604,375.00	0.00
Total	1,802,598.00	151,178.00
Wyoming:		
7-9280-00 Campbell County	20,106.00	2,537.00
7-9288-00 Fremont County	24,357.00	3,073.00
7-9302-00 Natrona County	44,009.00	5,553.00
7-9316-00 Sweetwater County	29,723.00	3,750.00
7-9326-00 State Set-Aside Committee, WY	131,805.00	0.00
Total	250,000.00	14,913.00
American Samoa: 7-9328-00 American Samoa	66,060.00	8,335.00
Guam: 7-9330-00 Guam	62,730.00	7,915.00
Northern Marianas: 7-9332-00 Northern Mariana Islands	39,414.00	4,973.00
Puerto Rico: 7-9334-00 Puerto Rico	1,646,995.00	207,800.00
Trust Territories: 7-9338-00 Trust Territories	221,021.00	0.00
Virgin Islands: 7-9340-00 Virgin Islands	86,600.00	10,926.00

[FR Doc. 89-19619 Filed 8-22-89; 8:45 am]

BILLING CODE 6718-02-M

[Docket: FEMA-REP-3-PA-2]

Radiological Emergency Response Plan; Pennsylvania

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of receipt of plans.

SUMMARY: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has the responsibility for reviewing the State and local governments' plans, the Commonwealth of Pennsylvania has submitted radiological emergency response plans to the FEMA Regional Office. These plans support nuclear power plants which impact on Pennsylvania and include the plans of Columbia and Luzerne Counties which are near the Pennsylvania Power and Light Company's Susquehanna Steam Electric Station, located in Luzerne County, Pennsylvania.

DATE PLANS RECEIVED: August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Paul P. Giordano, Regional Director, FEMA Region III, Liberty Square Building, 105 S. 7th Street, Philadelphia, Pennsylvania 19106.

NOTICE: In support of the Federal requirement for emergency response plans, FEMA has established a Rule describing its procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to this FEMA Rule (44 CFR 350.8) "Review and Approval of State Radiological Emergency Plans and Preparedness," the Commonwealth of Pennsylvania Disaster Operations Plan, Annex E was received by the Federal Emergency Management Agency Region III Office.

Included are the plans for Columbia and Luzerne Counties and twenty-seven municipalities, which are fully or partially within the plume exposure pathway emergency planning zone of the nuclear plant. Also included are the emergency plans for nine schools and school districts, seven support counties, and thirteen counties that are partly or wholly within the ingestion pathway emergency planning zone.

Copies of the Plan are available for review at the FEMA Region III Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR part 5. There are 5760 pages in the document, reproduction fees are $.10 a page payable with the request for copy.

Comments on the Plan may be submitted in writing to Mr. Paul P. Giordano, Regional Director, at the above address within thirty days of this Federal Register Notice.

Paul P. Giordano,

Regional Director.

[FR Doc. 89-19829 Filed 8-22-89; 8:45 am]

BILLING CODE 6718-20-M

FEDERAL MARITIME COMMISSION

Georgia Port Authority Terminal Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200254-001

Title: Georgia Ports Authority Terminal Agreement

Parties: Georgia Ports Authority Columbus Line

Synopsis: The Agreement revises paragraph 2 of the basic agreement (Agreement No. 224-200254) to provide that if the renewal option is exercised, the basic agreement will be amended and filed with the Federal Maritime Commission.

By Order of the Federal Maritime Commission.

Dated: August 18, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-19828 Filed 8-22-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement Number 946]

Development of Environmental Short Courses for Health Professionals

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of funds for a Cooperative Agreement with the National Association of County Health Officials (NACHO) in Fiscal Year 1989 for educating health professionals concerning the surveillance, diagnosis and treatment of persons exposed to hazardous substances.

Authority

This program is authorized under section 104(i)(14) and section 104(i)(15) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. 9604(i)(14), (15)).

Eligible Applicant

This is not a formal request for applications. Assistance will be provided only to the National Association of County Health Officials (NACHO). NACHO is the only umbrella health organization that represents all local (city, county, town and township) political jurisdictions. Approximately 400 jurisdictions are represented. In addition, the organization serves 3,000 local health departments. A majority of these health departments are directed by a physician, the chief public health official of the locality. By working through its own membership, the NACHO Executive Committee, and United States Conference of Local Health Officers, Black Health Officials, and Town and Township members, NACHO has developed a unique knowledge and understanding of the needs and operations of all local health agencies. The members of NACHO have already gained an enormous wealth of experience in surveillance and educational activities dealing with hazardous substances. As an organization, NACHO has direct and familiar access to its own health membership of chief local public health officials and their affiliated networks. Therefore, NACHO has the capacity to meet the objectives of this agreement in a timely and efficient manner. No other applications are solicited or will be accepted.

Availability of Funds

A minimum of $200,000 will be available in Fiscal Year 1989. It is expected that the award will begin on or about September 30, 1989, for a 12-month budget period within an 18-month project period. Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this award is to develop and implement through instructional mechanisms a series of short courses to improve the knowledge and practice of county/city health professionals concerning the surveillance, screening and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances.

Program Requirements

The specific Cooperative Activities, Application Content and Evaluation Criteria are set forth in the Request for Application (RFA) Program Announcement.

EO 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

CFDA Number

The catalog of Federal Domestic Assistance Number is 13.161, Health

Programs for Toxic Substances and Disease Registry.

Application Submission and Deadline

NACHO must submit an original and two copies of application form PHS 5161–1 (Rev. 3/98) to Henry S. Cassell, III, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NW., Room 300, Atlanta, Georgia 30305, on or before August 25, 1989. By formal agreement, the CDC Grants Office will act on behalf of and for ATSDR on this matter.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 946 and contact the following: Business: Harvey Rowe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E14, Atlanta, Georgia 30305, or by calling (404) 842–6797 or FTS 236–6797. Technical assistance may be obtained from Max Lum, Ed.D., Agency for Toxic Substances and Disease Registry, Office of External Affairs, (404) 488–4630 or FTS 236–4630.

Dated: August 17, 1989.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 89–19817 Filed 8–22–89; 8:45 am]

BILLING CODE 4160-70-M

[Announcement No. 001]

Centers for Disease Control

Availability of Funds for Fiscal Year 1990 for Epidemiologic Research Studies of Acquired Immunodeficiency Symdrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection

Introduction

The Centers for Disease Control (CDC) announces a program for competitive cooepative agreement and/or research project grant applications to conduct epidemiologic research studies of AIDS and HIV infection. These include studies of: the natural history of HIV infection in homosexual mnles and their male sex partners and natural history studies of HIV-infected transfusion recipients. The study of these research areas as they pertain to minority populations is encouraged because minorities constitute over 43% of all reported cases of AIDS.

Authority

These cooperative agreements and/or grants are authorized under sections 301(a), 311, and 317(k)(3) of the Public Health Service Act, as amended. Regulations are set forth in 42 CFR 52, entitled "Grants for Research Projects."

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, State and local health departments and small, minority and/or women-owned businesses are eligible for these grants and/or cooperative agreements.

Availability of Funds

Approximately $1,700,000 will be available in fiscal year 1990 to fund approximately 6 awards. It is expected that the average award will be approximately $275,000, ranging from $90,000 to $500,000. It is expected that about 3 new and 3 competing renewal awards will be made and that awards will begin on or about November 1, 1989 and May 1, 1990. Awards are usually made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of these awards is to help support researchers in the study of important HIV-related epidemiologic issues concerning risks of transmission, the natural history and trends of the disease in certain populations, and the development and evaluation of behavioral recommendations for reducing AIDS and HIV infection. Of special interest are programs that examine these research issues as they impact on minority populations.

Two research issues of programmatic interest to the health care community and to CDC for FY 1990 are listed below, and they are considered to be of significant importance in gaining a greater understanding of the epidemiology of AIDS and HIV infection. However, applications submitted by organizations that examine other important HIV-related epidemiologic research issues will also be accepted and considered for funding.

1. Prospective Epidemiologic Study of the Natural History of Transfusion-Associated HIV Infection.

Studies should be designed to identify a cohort of HIV-infected transfusion recipients and to perform periodic clinical evaluations of the participants. Preference will be given to studies of transfused children and to proposals in which a cohort of HIV-infected blood transfusion recipients has already been established and is currently being followed. Proposals should demonstrate capacity to evaluate all participants for HIV-related neurologic disease, and to assess the growth and development of pediatric participants. Laboratory studies should include blood cell counts and lymphocyte studies but other immunologic and virologic studies related to HIV infection will also be considered. Competing renewal awards for this study will be made on or about October 30, 1989.

2. Natural History Study of HIV Infection in Homosexual Partner-Pairs

Studies should be designed to enroll HIV seropositive and HIV seronegative homosexual men and their steady sex partners (partners-pairs) for prospective evaluation of the effects of behavioral and biologic factors on the transmission of HIV infection. Biologic studies should include immunologic and virologic analysis of blood and semen. Appropriate counseling and risk reduction education must be provided to subjects at risk for infection. Competing renewal awards for this study will be made on or about April 30, 1990.

Program Requirements

1. Research Project Grants

A research project grant is one in which substantial programmatic involvement by CDC is not anticipated by the recipient during the project period. Applicants for grants must demonstrate an ability to conduct the proposed research with minimal assistance, other than financial support, from CDC. This would include possessing sufficient resources for clinical, laboratory, and data management services and a level of scientific expertise to achieve the objectives described in their research proposal without substantial technical assistance from CDC.

2. Cooperative Agreements

A cooperative agreement implies that CDC will assist the collaborator in conducting the epidemiologic research of AIDS and HIV infection that is described in the Purpose section of this notice. The application should be presented in a manner that demonstrates the applicant's ability to address the research problem in a collaborative manner with CDC. In addition to the financial support provided, CDC will collaborate by: (1) Providing technical assistance in the design and conduct of the research; (2) providing technical guidance in the development of study protocols, consent forms, and questionnaires, including training and pretesting as necessary; (3) assisting in designing a data management system; (4) performing selected laboratory tests; (5) coordinating research activities among the different sites, including laboratories and consultants; and (6) participating in the analysis of research information and the presentation of research findings.

3. Determination of Which Instrument To Use

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. The funding agency will review the applications in accordance with the evaluation criteria. The CDC will determine before making each award whether the use of a grant or cooperative agreement is appropriate based upon the need for substantial Federal involvement in the project.

Evaluation Criteria

Applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicants' abilities to meet the following criteria:

1. The plans to develop and implement the study describing how study participants will be identified, enrolled, tested, and followed. (25 points)

2. The ability to enroll and follow an adequate number of eligible study participants to assure proper conduct of the study. The known or projected prevalence of HIV infection in the population to be studied will be an important area of consideration. (25 points)

3. The applicant's current activities in AIDS and HIV research and how they will be applied to achieving the objectives of the study. Letters of support from cooperating organizations should be included that demonstrate the nature and extent of such cooperation. (25 points)

4. The applicant's understanding of the research study objectives and its ability, willingness and/or need to cooperate in a study with CDC. (15 points)

5. The plan to protect the rights and confidentiality of all participants and ensure adequate participation. (15 points)

6. The size, qualifications, and time allocation of the proposed staff and the availability of facilities to be used during the research study. (15 points)

7. How the project will be administered to assure the proper management of the daily activities of the program. (10 points)

8. The proposed schedule for accomplishing the activities of the research, including time frames. (10 points)

9. The quality of an evaluation plan which specifies the methods and instruments to be used to evaluate the progress made in attaining research objectives. (10 points)

(A maximum of 150 points can be awarded.)

The budget will be reviewed to determine the extent to which it is reasonable, clearly justified, and consistent with the intended use of funds. Budget information should be specific to the purpose of each budget item, and all budget categories should be itemized.

Funding Priorities

Preference will be given to competing continuation applications over applications for projects not already receiving support under the program.

Other Requirements

1. Paperwork Reduction Act

The projects that will be funded through the cooperative agreement mechanism of this program that involve the collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

2. Human Subjects

This program involves research on human subjects, therefore, all applicants must comply with Public Law 93–348 regarding the protection of human subjects. Assurances must be provided that demonstrate that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

3. HIV Program Review Panel

Recipients must comply with the requirement to establish an HIV Program Review Panel as defined in the document entitled, "CONTENT OF AIDS-RELATED WRITTEN MATERIALS, PICTORIALS, AUDIOVISUALS, QUESTIONNAIRES, SURVEY INSTRUMENTS, AND EDUCATIONAL SESSIONS (OCTOBER 1988)." (54 FR 10049, March 9, 1989)

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.118, Acquired Immunodeficiency Syndrome (AIDS) Activity.

Application Submission and Deadline

A signed original and two copies of the application form PHS 5161–1 must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 300, Atlanta, Georgia 30305, on or before September 22, 1989, for competing continuations of epidemiologic studies of the natural history of transfusion-associated HIV infection (F1), and February 1, 1990, for competing continuations of the natural history study of HIV infection in homosexual partner pairs (F2). Other applications submitted in response to this announcement may be submitted on or before either deadline date.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1. a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures and an application package may be obtained from Carole J. Tully or Marsha D. Driggans, Grants Management Specialists, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, (404) 842–6575 or FTS 236–6575.

Please refer to Announcement Number 001 when requesting information and submitting any application on the Request for Application.

Technical assistance may be obtained from John Narkunas, AIDS Program, Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333, (404) 639–2030 or FTS 236–2030.

Dated: August 17, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89–19787 Filed 8–22–89; 8:45 am]

BILLING CODE 4160–18–M

[Program Announcement No. 922]

Development and Maintenance of a Human Immunodeficiency Virus (HIV)-Related Policy, Regulation and Legislation Tracking System for Rapid Communication To State and Local Health Agencies

Introduction

The Centers for Disease Control (CDC), announces the availability of FY 1989 funds for a cooperative agreement with the Association of State and Territorial Health Officials (ASTHO) to identify and track those new HIV-related developments and issues that affect State and Territorial health departments.

Authority

This program is authorized under the Public Health Service Act: Section 317(k)(3).

Eligible Applicants

Assistance will be provided only to the Association of State and Territorial Health Officials (ASTHO) for this project. ASTHO is the officially established organization representing the State Health Officers in all 50 States, the District of Columbia, and all U.S. Territories. As such it represents the officials from throughout the U.S. who have legal responsibility for protecting the health of U.S. citizens, including health threats such as human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) which results from HIV infection.

Because health threats such as HIV are not limited by geographic boundaries, ASTHO was formed to promote coordination of health efforts between the States and Territories and as an instrument to monitor and assess health issues which pose threats to the public health.

It is critical that the health officials of this country monitor not only the medical issues that HIV/AIDS presents to them, but also the economic, policy and legislative issues which it poses to them in protecting the public health of the nation. As such, ASTHO needs to establish and maintain a system to monitor State HIV/AIDS policy issues as they are evolving and to develop and maintain a communications network which will facilitate rapid information sharing with other State health officials who have addressed similar policy issues. In addition, ASTHO needs to establish and maintain a system which will assist State and local health officials in implementing and coordinating applicable national HIV/AIDS programs, policies and legislation.

It is critical that ASTHO conduct these services since they are the representatives of the persons who will have to implement and coordinate relevant programs, policies and legislation. They are also the only organization which can reasonably evaluate the potential impact of Federal HIV/AIDS policies and legislation since they are the officials who must assess the policy and legislation in terms of existing State laws and regulations.

ASTHO already has established mechanisms for communicating certain types of information to the States and to the political subdivisions of the States which carry out the nation's public health programs. No other applications will be solicited or accepted.

Availability of Funds

Approximately $60,000 is available in Fiscal Year 1989 to support this project. It is expected that the award will begin on or about September 29, 1989, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The proposed cooperative agreement is intended to address the need to identify and track new HIV-related developments and issues and facilitate the rapid exchange of critical information at the State and local levels in order to implement effective HIV prevention programs.

Program Requirements

A. ASTHO's activities will include the following:

1. Identify State HIV/AIDS-related policy issues as they are evolving.

2. Develop a communications network to assist health officials in the HIV/AIDS-related policy decision making process.

3. Provide assistance and coordination in the implementaiton of national HIV/AIDS-related policies and legislation by State and local health officials.

4. Serve as liaison to State-affiliated organizations as well as organizations representing local health officials for timely distribution and dissemination of national HIV/AIDS policies information.

B. CDC's activities will include the following:

1. Provide technical advice in the development of systems to identify State HIV/AIDS policy issues.

2. Provide technical advice in the development of systems to facilitate critical HIV/AIDS policy information sharing among State and local health officials in the decision making process.

3. Provide information, legislative and policy determinations for rapid dissemination and/or coordination and implementation.

Evaluation Criteria

The application will be reviewed and evaluated on the following:

1. Extent to which the applicant understands the requirements, problems, objectives, complexities, and interactions required of this cooperative agreement;

2. Degree to which proposed objectives are clearly stated, realistic, measurable, time-phased, and related to the purpose of this project;

3. Degree to which the applicant provides evidence of an ability to carry out the proposed project and the extent to which the applicant institution documents demonstrates capability to achieve objectives similar to those of this project;

4. Extent to which professional personnel involved in this project are qualified, including evidence of past achievements appropriate to this project; and

5. Adequacy of plans for administering the project.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 13.118.

Application Submission and Deadline

The Association of State and Territorial Health Officials must submit an original and two copies of the application form PHS 5161–1 must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305 on or before September 29, 1989.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 922 and contact the following:

Business:

Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, Telephone: (404) 842–6575 or FTS 236–6575.

Technical:

Gil Hawkins, (A–43), Office of Deputy Director (HIV), Centers for Disease Control, Atlanta, Georgia 30333, Telephone: (404) 639–0911 or FTS 236–0911.

Dated: August 17, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89–19788 Filed 8–22–89; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 89N–0317]

Information on Developing and Testing a New Acellular Pertussis Vaccine; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of information and materials developed by FDA scientists that the agency believes may be useful in developing and testing a new acellular pertussis vaccine.

ADDRESSES: Submit written requests for single copies of information on developing and testing a new acellular pertussis vaccine to the Center for Biologics Evaluation and Research (HFB–680), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The information is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles R. Manclark, Center for Biologics Evaluation and Research (HFB–680), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–496–5564.

SUPPLEMENTARY INFORMATION: As part of continuing efforts to improve the safety and effectiveness of pertussis vaccine, FDA scientists have compiled information and scientific data that may be of significant value in the development of a new acellular pertussis vaccine. A new method has been developed for purifying an outer membrane protein that appears to serve as a protective antigen in animal models and is a candidate for inclusion in an acellular vaccine. FDA scientists have also developed monoclonal antibodies against this protein moiety that can be used in monitoring the purification of the antigen. FDA scientists have applied for patents on this purification method and these monoclonal antibodies. FDA intends to release information regarding the new purification process and to distribute the monoclonal antibodies to interested parties for use in monitoring the purification of large volumes of the antigen.

Dated: August 16, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–19804 Filed 8–22–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89M–0321]

Bio-Rad Laboratories; Premarket Approval of Bio-Rad Cyclosporine by HPLC Test

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Food and Drug Administration (FDA) is announcing its approval of the application by Bio-Rad Laboratories, Hercules, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Bio-Rad Cyclosporine by HPLC Test. After reviewing the recommendation of the Clinical Chemistry and Clinical Toxicology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 24, 1989, of the approval of the application.

DATES: Petitions for administrative review by September 22, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for adminsitrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kaiser Aziz, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1096.

SUPPLEMENTARY INFORMATION: On January 6, 1989, Bio-Rad Laboratories, Hercules, CA 94547, submitted to CDRH an application for premarket approval of the Bio-Rad Cyclosporine by HPLC Test. The Bio-Rad Cyclosporine by HPLC Test is a cyclosporine assay by high performance liquid chromatography (HPLC) and is indicated for the quantitative measurement of cyclosporin A in whole blood as an aid in the management of renal transplant patients.

On May 15, 1989, the Clinical Chemistry and Clinical Toxicology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 24, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kaiser Aziz (HFZ–440), address above.

Opportunity for Administration Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative

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practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through adminstrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 22, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 16, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–19803 Filed 8–22–89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Home Health Quality Indicator System (HHQUIS)," HHS/HCFA/ORD No. 09–70–0046. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of information and Regulatory Affairs, Office of Management and Budget (OMB), on August 17, 1989. The new system of records, including routine uses, will become effective October 16, 1989 unless HCFA receives comments which would necessitate alterations to the system.

ADDRESS: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room G–M–1, East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Tony Hausner, Division of Long-Term Care, Office of Research and Demonstrations, Health Care Financing Administration, Room 2F5, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: 301–966–6662.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records and to-collect data under the authority of section 207 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) which mandates that the Secretary of Health and Human Services shall study long-term care services for Medicare beneficiaries, including home care.

The Privacy Act permits us to disclose information without consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information. The proposed routine uses in the new system meet the compatibility criteria, since the information is collected for measuring the quality of Medicare home health services. We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: August 15, 1989

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

09–70–0046

SYSTEM NAME:

Home Health Quality Indicator System (HHQUIS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207 (Contact system manager for location of Magnetic Computerized records). Contractor (see Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare Beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information concerning the patient's name, Health Insurance Claim number, medical diagnoses, surgical procedures, conditions, problems, functional status, living arrangement, utilization of services, outcomes of care.

AUTHORITY OF MAINTENANCE OF THE SYSTEM:

Section 207 of Pub. L. 100–360.

Purpose of the System:

To assess the quality of Medicare home health care. To determine the appropriate balance between outcome, process, and structural measures for quality assurance purposes. To develop outcome-based measures of home health care quality that are reliable and valid. To evaluate the differential impacts of various types of outcome measures on the data collection and administrative costs for HCFA and home health agencies. To determine how differences in patient outcomes are related to differences in patient characteristics, and how case mix differences can be recognized in outcome-based quality indicators.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made to:

1. A contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

2. A congressional office from the record of an individual in response to an inquiry from the congresional office at the request of that individual.

3. The Department of Justice, to a court or other tribunal, or to another party before such a tribunal, when

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components;

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained.

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that an additional exposure of the record might bring; and

(3) There is reasonable probability that the objective for the use would be accomplished.

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another research project, under these same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(d) When required by law.

d. Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions.

Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System:

Storage:

Paper and magnetic media.

Retrievability:

Records are retrieved by the Health Insurance Claim Number.

Safeguards:

a. Authorized Users: Only agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of the criminal sanctions for unauthorized disclosure information.

b. Physical safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas

c. Procedural safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Contracts related to this system contain Privacy Act language.

d. Implementation Guidelines: Safeguards implemented in accordance with all guidelines required by the Department of Health and Human Services. Safeguards for automated records have been established in accordance with the Department of HHS' automated Data Processing Manual, part 6, "ADP System Security."

Retention and Disposal:

Records are retained for 5 years after the last action on the record.

System Manager(s) and Address:

Director, ORD, Health Care Financing Administration, 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Notification Procedures:

Inquiries and requests for system records should be addressed to the system manager at the address above. The requestor must specify the Health Insurance Claim Number.

Record Access Procedures:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2).)

Contesting Record Procedures:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete or not current). (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

Records Source Categories:

HCFA obtains the identifying information in this system from the home health patient records of which some will be verified by beneficiaries. In addition to these patient records other information will be obtained from interview with the patients and caregivers.

Systems Exempted From Certain Provisions of the Act:

None.

Appendix A

Policy Center, Inc., 1355 South Colorado Blvd., Suite 706, Denver, CO 80222.

[FR Doc. 89–19798 Filed 8–22–89; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-2037]

Submission of Proposed Information Collections to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested pesons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Officer of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 17, 1989.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: Public Housing—Life-Cycle Cost Analysis of Utility Combinations

Office: Public and Indian Housing

Description of the Need for the Information and Its Proposed Use: The Department will use the information collected to assure the selection of the most cost effective utilities, fuels, related mechanical equipment and methods of purchase for public housing projects.

Form Number: HUD-51994

Respondents: State or Local Governments and Non-profit Institutions

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD-51994	250		1		6		1,500
Recordkeeping	250		1		.25		62

Total Estimated Burden Hours: 1,562

Status: Extension

Contact: William Thorson, HUD (202) 755-6460 John Allison, OMB, (202) 395-6880

Date: August 17, 1989.

Proposal: Survey of Mortgage Lending Activity

Office: Housing

Description of the Need for the Information and Its Proposed Use: HUD-136 will be used to obtain information on the developments in the mortgage market. It will be used to monitor such developments and to provide statistical data to Federal, State, and non-governmental entities.

Form Number: HUD-136

Respondents: State or Local Governments, Businesses or Other For-Profit, and Federal Agencies or Employees

Frequency of Submission: Monthly

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD-136	822		12		1.50		14,796

Total Estimated Burden Hours: 14,796

Status: Extension

Contact: John N. Dickie, HUD (202) 755-7270; John Allison, OMB, (202) 395-6880

Date: August 17, 1989.

[FR Doc. 89-19835 Filed 8-22-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Allocation of Bureau of Indian Affairs Operations and Maintenance (O&M) Program Using a Formula Methodology

AGENCY: Office of Construction Management, Interior.

ACTION: Notice.

The Department of the Interior, Bureau of Indian Affairs, and Office of Construction Management, have established an allocation formula for Facilities Operations and Maintenance funding which allows for an equitable distribution process at educational and non-educational locations beginning with the 1990 fiscal year.

Following four regional tribal consultations, held in Arlington, VA; Minneapolis, MN; Clackamas, OR and Albuquerque, NM in August 1988, to present the proposed allocation formula (refer to **Federal Register**, Vol. 53, No. 149, Wednesday, August 3, 1988), the following issues were voiced by Tribal membership:

1. The formula should reflect needs rather than be limited by historical cost data;
2. Room use, rather than building use, should be considered in calculating utilization of space;
3. The definition of utilization should be redefined;
4. Building inventories should be reviewed for accuracy; and
5. Distance to service centers should be calculated and more credit given to remote locations.

In order to address the concerns received by the Tribes, the formula was revised to include room use, clarify the definition of utilization and determine the distance to the service centers. The revised formula appears as follows:

(1) Utilities + (2) Custodial + (3) Preventive Maintenance + (4) Unscheduled Maintenance + (5) Educational Efficiency (Utilization) + (6) Isolation + (7) Program support = (8) O&M budget at the local level.

The individual components are:

1. Utilities—The three year average of utility costs (obligations) at a location.
2. Custodial—Includes the material, supplies and labor for providing janitorial services to the location level summarized by the room and building use data.
3. Preventive Maintenance—Includes the materials, supplies, and labor required to perform scheduled work on the facility; its mechanical systems and utility systems which supply the facility; scheduled painting, and routine inspections of the facility.
4. Unscheduled Maintenance—Includes the materials, supplies, and labor required to perform the necessary minor repairs on facilities or utility systems generated either by a user request or breakdown of equipment.

The unscheduled maintenance was divided into two categories: (a) service calls, and (b) repairs.

5. Educational Efficiency—The effective use of space to achieve maximum efficiency of facilities funded through the Bureau's operation and maintenance program.
6. Isolation—The additional funds required to provide preventive maintenance services to a location because of its distance to the nearest equipment repair and supply center.
7. Program Support—The funds required to provide (a) particular services to users that cannot be identified to a building, and (b) the necessary personnel, materials and supplies to administer the Facilities Management Program. This includes the budgeting for monitoring, and evaluation of work accomplishments.

More specifically, at the Area level, program support includes: (a) fire protection; (b) major equipment purchase; (c) training; (d) personnel; (e) leave (sick & annual), and (f) travel, material, and supplies.

And, at the location/Agency level, program support includes: (a) personnel services; (b) leave (sick & annual); (c) contract monitoring; (d) communications; (e) site/central utilities; (f) protection/security services; (g) pest control, and (h) expendable equipment.

SUPPLEMENTARY INFORMATION: The Assistant Secretary, Bureau of Indian Affairs, was mandated by the Congress of the United States pursuant to Pub. L. 95-561, as amended under title 11 of the Education Amendments of 1978 (25 U.S.C. 2008 sec. 1128) to establish a formula for determining the minimum annual amount of funds necessary to sustain each Bureau or contract school. The Director, Office of Construction Management was also mandated in reports accompanying Appropriations Bills for FY 1986, FY 1987 and FY 1988 to develop an equitable Operations and Maintenance funding formula, which considers utilization for Bureau funded school facilities.

The funding formula, as mandated, will provide:

1. A means of identifying and justifying O&M needs for both educational and non-educational facilities;
2. A means for allocating resources in an equitable manner for educational facilities;
3. Greater efficiency by providing resources in relationship to the number of pupils, thereby reducing under-utilization of educational facilities;
4. A method for predicting future needs, fiscal year expenses, and funding resources for facilities programs; and
5. Assistance to Tribes wishing to contract by giving a clearer picture of the custodial and preventive maintenance work required to maintain facilities, mechanical systems and utilities in good operational condition and estimates for staff and funding required to do so.

The formula will serve as a basis for allocating funds on an Area and Agency-wide basis for Bureau funded facilities beginning on the first day of Fiscal Year 1990 (October 1, 1989).

FOR FURTHER INFORMATION CONTACT: Arthur M. Love, Jr., Director; Office of Construction Management, Department of the Interior, 18th & C Streets, NW, Mail Stop 2415, Washington, DC 20240, (202) 343-2403.

Charles E. Kay,

Assistant Secretary, Policy, Budget & Administration.

[FR Doc. 89-19813 Filed 8-22-89; 8:45 am]

BILLING CODE 4310-RK-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for Canby's Dropwort for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service annouces the availability for public review of a draft recovery plan for Canby's dropwort. This plant occurs on public and private lands in the coastal plain of North Carolina, South Carolina, Georgia, and Maryland. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before

October 23, 1989 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/259-0321; FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of time and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conseravation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is Canby's dropwort (*Oxypolis canbyi*). The area of emphasis for recovery actions is the coastal plain of North Carolina, South Carolina, Gerogia, and Maryland. Habitat protection and management are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f)

Dated: August 14, 1989.

Brian P. Cole,

Field Supervisor.

[FR Doc. 89-19611 Filed 8-22-89; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AZ040-09-4351-02]

Call for Nominations for the San Pedro Riparian National Conservation Area Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations—San Pedro Riparian National Conservation Area Advisory Committee.

SUMMARY: The purpose of this notice is to solicit public nominations to fill two positions whose terms expire this year on the Bureau of Land Management's San Pedro Riparian National Conservation Area Advisory Committee, which was established earlier this year, pursuant to section 104 of the Arizona-Idaho Conservation Act of 1988, Public Law 100-696.

The Committee is comprised of seven members. Under the Committee's staggered-term arrangement, the terms of two members of the Committee will expire on December 31, 1989. The current members may be reappointed, or new members may be appointed. However, the eligibility of current Committee members for reappointment may be affected by governing provisions in the Committee's Charter. The new terms will be for 3 years, ending December 31, 1992.

Appointments made by the Secretary of the Interior pursuant to this call will ensure continued representation of specific categories of interest on the Committee. Nominees must be persons with recognized backgrounds in the following disciplines: Environmental Education and Riparian Ecology.

The purpose of the Committee is to provide informed advice to the Bureau's Safford District Manager on the preparation and implementation of the comprehensive plan for the long-range management and protection of the San Pedro National Conservation Area, as required by section 103 of the Arizona-Idaho Conservation Act of 1988, Public Law 100-696.

Members will service without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

The Committee normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on the Committee should contact the Safford District Manager at the address below and provide the names, addresses, professions, and other biographical data of qualified nominees.

DATE: All nominations should be received by September 25, 1989.

ADDRESS: Safford District, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Cindy Alvarez, Planning and Environmental Coordinator, Safford District Office, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546. Telephone (602) 428-4040.

Dated: August 15, 1989.

Margaret Jensen,

Acting District Manager.

[FR Doc. 89-19616 Filed 8-22-89; 8:45 am]

BILLING CODE 4310-32-M

[UT-040-09-4212-12; 4-62299]

Realty Action; Exchange of Surface and Mineral Interests in Public and Private Lands, Washington and Kane Counties, UT

AGENCY: Interior, Bureau of Land Management.

SUMMARY: The Bureau of Land Management is considering a proposal to dispose of the following described public lands by exchange under section 206 of the Federal Land Policy and Management Act of 1976, (43 USC 1716): Salt Lake Meridian, Utah, T. 42 S., R. 14 W., sec. 8 NE¼SE¼NE¼, W½SE¼NE¼, NE¼NW¼SE¼, W½NW¼SE¼, NE¼SE¼SW¼, W½SE¼SW¼; sec. 9, NE¼NW¼NW¼, W½NW¼NW¼; sec. 17, NW¼NW¼NW¼, E½SW¼NE¼, SW¼SW¼NE¼; sec. 18, lots 7, 11, 12, S½NE¼, SE¼, NE¼NE¼; containing 560 acres. In exchange for these lands, the United States will acquire lands of equal value from the State of Utah.

ADDRESSES: Requests for information can be sent to the Bureau of Land Management, Cedar City District, 176 East DL Sargent Drive, Cedar City, Utah 84720 (801/586-2401).

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire non-public lands valuable for their public recreational resources, and to improve the land ownership patterns of the public lands. The public lands described above are segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or two years from date of publication of this notice, whichever occurs first.

Dated: August 15, 1989.

Gordon R. Staker,

District Manager.

[FR Doc. 89-19612 Filed 8-22-89; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-940-09-4214-10; CA 391]

Cancellation of Withdrawal Application and Opening of Land; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, has cancelled in its entirety their withdrawal application for public land to be developed as a roadside rest adjacent to California State Highway 299 within the Six Rivers National Forest. This notice terminates the segregation imposed by the Notice of Proposed Withdrawal published in the **Federal Register** on December 19, 1973 (8 FR 34824), correction published January 28, 1974 (39 FR 3576), and notice republished on May 4, 1978 (43 FR 19295), and opens the land to the operation of the U.S. mining laws. This land has been and continues to be open to mineral leasing and to Forest Service Management.

Humboldt Meridian

Six Rivers National Forest

T. 6 N., R. 6 E.,

Sec. 19, Beginning at Corner 4B of Trace 51; then S.0°14′00″ E., 89.07 feet; then N. 69°03′53″ W., 246.64 feet; then N. 32°09′30″ W., 686.59 feet; then S. 25°20′30″ W., 250.00 feet; then S. 40°34′19″ W., 471.94 feet; then S. 0°14′00″ E., 100.00 feet; then S. 89°46′00″ W., 378.00 feet; then N. 56°40′00″ W., 74.22 feet; then S. 53°41′43″ W., 382.37 feet; then S. 62°40′07″ W., 177.56 feet; then S. 49°11′02″ W., 127.14 feet; then S. 17°25′56″ W., 121.22 feet; then S. 72°34′04″ E., 50.00 feet; then S. 17°25′56″ W., 200.00 feet; then N. 72°34′04″ W., 200.00 feet; then N. 17°25′56″ E., 200.00 feet; then S. 72°34′04″ W., 50.00 feet; then N. 17°25′56″ E., 149.66 feet; then N. 49°11′02″ E., 179.56 feet; then N. 62°40′07″ E., 177.56 feet; then N. 53°41′43″ E., 328.63 feet; then N. 56°40′00″ W., 224.72 feet; then S. 51°31′30″ W., 425.00 feet; then S. 84°00′00″ W., 590.00 feet; then N. 0°00′00, 170.00 feet; then N. 79°00′00″ E., 690.00 feet; then N. 51°31′30″ E., 510.00 feet; then N. 1°55′30″ E., 123.43 feet; then N. 73°54′20″ E., 183.85 feet; then N. 51°31′30″ E., 129.46 feet; then along a curve to the right with a radius of 690 feet through an angle of 44°56′, for a distance of 541.12 feet; then along a nontangent course N. 17°39′40″ E., 142.26 feet; then S. 60°11′50″ E., 41.53 feet; then S. 7°12′10″ E., 175.31 feet; then from a tangent that bears S. 73°59′30″ E., along a curve to the right with a radius of 666 feet through an angle of 48°28′, for a distance of 563.37 feet; then S. 25°31′30″ E., 105.62 feet; then along a curve to the left with a radius of 384 feet through an angle of 33°57′, for a distance of 227.54 feet; then S. 59°28′30″ E., 75.05 feet; then S. 0°14′00″ E., 111.06 feet to the point of beginning.

The area described contains 26.71 acres in Trinity County.

DATES: At 10 a.m. on September 25, 1989, the lands shall be opened to location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Date: August 15, 1989.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-19615 Filed 8-22-89; 8:45 am]

BILLING CODE 4310-40-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-294]

Commission Decision Not To Review an Intitial Determination Terminating all Respondents on the Basis of a Consent Order; Issuance of Consent Order; Termination of Investigation

In the Matter of Certain Carrier Materials Bearing Ink Compositions To Be Used in a Dry Adhesive-Free Thermal Transfer Process and Signfaces Made by Such a Process.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 6) issued by the presiding administrative law judge (ALJ) terminating the above-captioned investigation with respect to all respondents in the investigation on the basis of a consent order, thereby terminating the investigation.

ADDRESSES: Copies of the consent order, the ID, and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1104.

Hearing-impaired individuals are advised that tinformaiton about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On June 30, 1989, the presiding ALJ issued an ID granting the joint motion of compleinant Minnesota Mining and Manufacturing Corp. and respondents Signtech Inc., Acme Wiley Corp., Dualite Inc., Fairmont Sign Company, Graflex Inc., Harlan Laws Corp., McHenry Industries, Persona Inc., and Superior Electrical Advertising to terminate the investigation on the basis of a consent order.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (53 FR 33070, Aug. 29, 1988).

Issued: August 16, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-19649 Filed 8-22-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-285]

Issuance of General Exclusion Order

In the matter of: Certain Chemiluminescent Compositions and Components Thereof and Methods of Using, and Products Incorporating, the Same.

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is given that the Commission has issued a general exclusion order in the above-captioned investigation. The order prohibits the unlicensed importation from any country of certain chemiluminescent compositions, components thereof, products incorporating the same, and certain packaging and literature pertaining to such articles.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202)-252-1116. Copies of the Commission's order, the nonconfidential version of the opinion issued therewith, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 am to 5:15 pm) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202)–252–1000. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation upon the filing of a complaint on July 21, 1988, by American Cyanamid Company (Cyanamid), of Wayne, N.J. The complaint alleged violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation and sale of certain chemiluminescent compositions and components thereof by reason of infringement of three registered trademarks and various claims of seven U.S. patents. Respondents named in the notice of investigation were Societe Prolufab of Seresnes, France (Prolufab) and Mr. Luc Noel of Los Angeles, CA (53 FR 32476–77, August 25, 1988).

The notice of investigation was amended to conform to the August 1988 amendments to section 337 (53 FR 43276, October 26, 1988), and was also amended to include within the scope of the investigation products incorporating chemiluminescent compositions (54 FR 11822, March 22, 1989).

On January 6, 1989, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding respondent Prolufab to be in default. The Commission determined not to review the ID, thereby allowing it to become the determination of the Commission (54 FR 6181, February 8, 1989). The ID provided that Prolufab had waived its right to appear in the investigation, to contest the allegations at issue, and to be served with documents. On March 14, 1989, the Commission determined not to review an ID terminating the investigation as to one of the two respondents—Luc Noel—on the basis of a consent order (54 FR 11822, March 22, 1989).

On March 22, 1989, the ALJ issued an ID granting complainant's motion for summary determination regarding violation of section 337. The ID found that respondent Prolufab had violated section 337 with regard to infringement of the following:

Claims 1–5 and 7–10 of U.S. Letters Patent 3,749,679;
Claims 1, 2, 4, 6, and 8 of U.S. Letters Patent 3,775,336;
Claims 1–6 of U.S. Letters Patent 3,888,786;
Claims 1, 4, and 5 of U.S. Letters Patent 4,313,843;
Claims 1, 2, 4, 6, and 7 of U.S. Letters Patent 3,729,426;
Claims 1 and 3 of U.S. Letters Patent 4,076,645;
Registered Trademark Number 925,341; and
Registered Trademark Number 1,141,455.

The Commission decided to review only that portion of the ID relating to contributory infringement of the two registered trademarks listed above, thereby allowing the ALJ's findings with regard to all other issues in the ID, including patent infringement, to become the determination of the Commission (54 FR 19250, May 4, 1989). The Commission invited submissions from the parties, government agencies, and the public on the issues of remedy, public interest, and bonding during the period of Presidential review. The Commission received comments from complainant, from the Commission investigative attorney, and from former respondent Luc Noel. No agency comments were received. Having considered these submissions, the Commission made its determination regarding the issue under review, remedy, public interest, and bonding.

The authority for this action is conferred by section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and by Commission interim rules 210.56 and 210.58 (53 FR 33071–72, Aug. 29, 1988).

Issued: August 17, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–19848 Filed 8–22–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 22–51]

Cotton Comber Waste

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 22(d) of the Agricultural Adjustment Act (7 U.S.C. 624(d)) and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: On July 25, 1989, the Commission received a letter from the President stating that the President had been advised by the Secretary of Agriculture, and that he agreed with the Secretary, "that there is reason to believe that the quota on cotton comber waste, wherever classified in the Harmonized Tariff Schedule of the United States, may need to be terminated or modified since the circumstances requiring the proclamation of such import quota restrictions have changed."

As directed by the President, the Commission has instituted an investigation under section 22(d) of the Agricultural Adjustment Act (7 U.S.C. 624(d)) to determine whether the quota on cotton comber waste, provided for in subheading 9904.30.50 of the Harmonized Tariff Schedule of the United States, should be terminated or modified, including globalizing country quota allocations, eliminating the staple length restrictions on cotton used to make cotton comber waste, or distinguishing between bleached and unbleached cotton comber waste, or whether the quota should otherwise be adjusted to take account of circumstances that have changed since the quota was proclaimed. Subheading 9904.30.50 includes two quota subcategories. Subcategory A establishes a "minimum quota" for certain cotton comber waste" and subcategory B establishes an "unreserved quota" for all quota-type cotton waste imports, including cotton comber waste, certain card strips lap waste, sliver waste, and roving waste. Because both subcategories include cotton comber waste, the Commission's investigation will examine imports entering under both subcategories.

The President asked that the Commission report its findings and recommendations at the earliest practicable date. The Commission anticipates submitting its report to the President on January 25, 1990.

For further information concerning the conduct of this investigation, hearing procedures and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E, and part 204 (19 CFR parts 201, 204).

EFFECTIVE DATE: July 25, 1989.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–252–1190), Office of investigations, U.S. International Trade Commission, Mary Elizabeth Enfield (202–252–1455), Textiles, Leather Products, and Apparel Division, Office of Industries, or Rick Rhodes (202–252–1322), Agriculture, Fisheries, and Forest Products Division, Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 202.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to section 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16.(c) of the rules (19 CFR § 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on November 28, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 13, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 16, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 20, 1989.

Testimony at the public hearing must be limited to a nonconfidential summary and analysis of material contained inprehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs. Post hearings briefs must not exceed ten (10) pages of textual material, double spaced, on stationary measuring 8½ × 11 inches, and must be submitted not later than the close of business on December 5, 1989. In addition, the presiding official may permit persons to file answers to requests made by the Commission at the hearing within a specified time. The Secretary will not accept for filing posthearing briefs or answers which do not comply with the provisions contained in this notice.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a witten statement of information pertinent to the subject of the investigation on or before December 5, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business information will be available for public inspection during regular business hours (8)45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which confidential treatment is desired shall be susbmitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

This notice is published pursuant to § 204.4 of the Commission's rules (19 CFR 204.4).

By order of the Commission.

Issued: August 18, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–19845 Filed 8–22–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–238 (Final)]

12-Volt Motorcycle Batteries From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Taiwan of 12-volt motorcycle batteries, provided for in subheading 8507.10.00 of the Harmonized Tariff Schedule of the United States (previously reported under items 683.01 and 683.05 of the Tariff Schedules of the United States), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective April 18, 1989, following a preliminary determination by the Department of Commerce that imports of 12-volt motorcycle batteries from Taiwan were being sold at LTFV within the meaning of section 735 of the act (19 U.S.C. 1673d(a)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 4, 1989 (54 FR 19253). The hearing was held in Washington, DC, on July 6, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 16, 1989. The views of the Commission are contained in USITC Publication 2213 (August 1989), entitled "12-Volt Motorcycle Batteries from Taiwan: Determination of the Commission in Investigation No. 731–TA–238 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

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[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

By Order of the Commission:

Issued: August 17, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–19846 Filed 8–22–89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 320X)]

CSX Transportation Inc.; Abandonment of Railroad Line in Brunswick County, NC

Applicant has filed a notice of exemption under 49 CFR Part 1152 subpart F—Exempt Abandonments to abandon its 1.12-mile line of railroad between mileposts AC–248.20 and –249.32 at Navassa, in Brunswick County, NC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years: (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant with the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 22, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by September 5, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by September 12, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Particia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 28, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interest Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 16, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–19710 Filed 8–22–89; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).*

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Settlement Agreement Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 14, 1989, a consent decree in *United States* v. *Springs Industries, Inc.*, Civil Action D:89 1900 8, was lodged with the United States District Court for the District of South Carolina. The complaint filed by the United States, pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, as amended, sought injunctive relief to require defendant to abate an imminent and substantial endangerment to public health or welfare or the environment from the actual or threatened release of hazardous substances at the Wamchem site, located in Beaufort County, South Carolina. The complaint also sought reimbursement for EPA's past response costs. The proposed consent decree requires the defendant to perform the Remedial Design and Remedial Action in accordance with EPA's Record of Decision, signed by the Regional Administrator of EPA Region IV on June 30, 1988, and reimburse the United States for past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Springs Industries, Inc.*, D.J. Ref. No. 90–11–2–265. The proposed consent decree may be examined at the Office of the United States Attorney, The Summerall Center, 19 Hagood Avenue, 10th Floor, Charleston, South Carolina and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NW., Atlanta, Georgia. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed settlement agreement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $3.20 (10 cents per page

reproduction costs), payable to the Treasurer of the United States.

Donald A. Carr,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–19840 Filed 8–22–89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Volkswagen of America, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 15, 1989, a proposed Consent Decree in *United States* v. *Volkswagen of America, Inc.* No. 89–1687, was lodged with the United States District Court for the Western District of Pennsylvania. The proposed Consent Decree arises from a civil action filed simultaneously pursuant to section 113(b) of the Clean Air Act ("the Act"), 42 U.S.C. 7413(b), seeking civil penalties and injunctive relief for emissions of volatile organic compounds ("VOCs") in violation of the Pennsylvania State Implementation Plan ("SIP") and the Act at Volkswagen's auto assembly and surface coating facility in New Stanton, Pennsylvania. The proposed Decree requires the company to pay a civil penalty of $600,000 for its past violations of the Act through July 1988. Volkswagen ceased operations at the New Stanton facility in July 1988.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Volkswagen of America, Inc.*, DJ Ref No. 90–5–2–1–1238. The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–19841 Filed 8–22–89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—CAD Framework Initiative, Inc.; Correction

In notice document 89–14802 concerning CAD Framework Initiative, Inc. appearing in the issue of Thursday, June 22, 1989 at 54 FR 26265, make the following correction: in the list of Corporate Members delete "Apollo Bell Laboratories;" add "Apollo Computer, Inc." and "AT&T Bell Laboratories." This correction replaces the correcting notice of August 4 (notice document 89–14802, 54 FR 32141).

Joseph H. Widmer,

Director of Operations, Antitrust Division.

[FR Doc. 89–19836 Filed 8–22–89; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—NAHB Research Foundation; National Cooperative Research Act of 1984; Smart House Project

Notice is hereby given that, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the NAHB Research Foundation, Inc. ("NAHB") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on June 30, 1989 disclosing (1) the identities of two additional parties and five additional advisors to the Smart House Project,

Parties

Ducane Industries
Pioneer Electronics (USA) Inc.

Advisors

Florida Power & Light Company
Midwest Gas Company
National Rural Electric Cooperative Association
Public Service Company of Colorado
Southern Connecticut Gas Co.;

(2) the identities of four advisors that no longer are involved in the Smart House Project,

Advisors

Boston Edison Company
Detroit Edison Company
Hydro Quebec
US West; and

(3) the revision of the listing or name for one other party,

Party

Interior Piping Systems, Inc.

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of current parties to the Smart House Project, and its general areas of planned activity, are given below.

The Smart House Project is a joint venture project that will be implemented in a series of stages by separate agreements at each stage. The following are current parties and have signed agreements to fund or otherwise participate in the first stage of the venture, which involves, among other things, organizational activities:

AMP, Incorporated
Apple Computer, Inc.
Arco Solar, Inc.
AT&T Technologies, Inc.
Bell Northern Research Ltd.
Bose Corporation
BRIntec Corporation
Broan Mfg. Co., Inc.
Burndy Corporation
Canada Wire & Cable Limited
Carrier Corporation
Challenger Electrical Equipment Corp.
Dicon System Ltd.
Ducane Industries
Dukane Corporation
E. I. duPont de Nemours & Company (Inc.)
Emerson Electric Co.
Federal Pioneer, Ltd.
Gas Research Institute
General Electric Company
Honeywell Corporation
Interior Piping Systems, Inc.
Johnson Controls
Kohler Company
Landis & Gyr Metering, Inc.
Lennox Industries Inc.
Molex Incorporated
Multiplex Technology, Inc.
NAHB Research Foundation, Inc.
North American Philips Consumer Electronics Corp., on its own behalf and on behalf of Signetics Corporation
Northern Telecom, Inc.
Onan Corporation
Pioneer Electronics (USA) Inc.
Robertshaw Controls Company
Schlage Lock Company
SCICON Systems Control, Inc.

Scott Instruments Corporation
Scovill Inc.
Shell Chemical Company (Division of Shell Oil Company)
Siemens Energy and Automation, Inc., Circuit Protection Division
Slater Electric, Inc.
Smart House Development Venture, Inc.
Smart House, L.P.
Sola Basic Industries, Inc.
Southwire Company
Square D Company
Whirlpool Corporation
The Wiremold Company

The following entities are serving as advisors to the venture:

AquipPetroli
Allegheny Power Service Corporation
American Electric Power Service Corp.
American Gas Association
Arkla, Inc.
Baltimore Gas & Electric Company
Bell Canada
Bell South Services
Columbia Gas Distribution Companies
Consolidated Natural Gas Company
Consumers Gas Company, Ltd.
Consumers Power Company
Copper Development Association Inc.
Delmarva Power & Light Company
Duke Power Company
Edison Electric Institute
Electric Power Research Institute
Florida Power & Light Company
Gas Research Institute
Home Builders Institute
Houston Lighting & Power Company
Illinois Consolidated Telephone Co.
International Conference of Building Officials
Kansas Gas & Electric Company
Lone Star Gas Company
Michigan Consolidated Gas Company
Midwest Gas Company
Minnesota Blue Flame Gas Asso.
National Association of Homes Builders
National Cable Television Association
National Joint Apprenticeship & Training Committee
National Rural Electric Cooperative Association
Northern Illinois Gas
Oklahoma Gas & Electric Company
Oklahoma Natural Gas Company
Ontario Hydro
Pacific Gas & Electric Company
Pacific Power & Light Company
Paragon Design Resource S.W., Ltd.
Portland General Electric Company
Potomac Electric Power Company
Professional Builder
Public Service Company of Colorado
Southern California Edison Company
Southern Connecticut Gas Co.
Southwest Gas
Southwestern Bell Telephone Company
Union Gas, Ltd.
U.S. Dept. of Housing & Urban Dev.
Virginia Electric and Power Company
Washington Gas Light Company
Wisconsin Electric Power Company

The Smart House Project will engage in activities the purpose of which will be to develop a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features. The project is intended to design and develop a set of compatible products, including integrated power and signal cabling to tie home electrical products into a single power and communications network; communications-capable appliances, heating and cooling equipment, utility meters and home electrical and electronic products; electric power conditioning and conversion equipment; controllers and software to make logical decisions, issue control instructions, and regulate the distribution of energy, information and instructions throughout the network; monitoring and control devices to detect and neutralize malfunctions in energy distribution within the home; telephone and CATV interfaces to allow information to be passed to and from the home over telephone and CATV lines; and input and output devices with which users can control and receive information from the network and the devices attached to it.

On June 14, 1985 NAHB filed its original notification pursuant to section 6(a) of the Act. On september 13, 1985, January 9, 1986, April 28, 1986, July 30, 1986, December 16, 1986, April 8, 1987, June 30, 1987, August 25, 1987, December 4, 1987, February 22, 1988, April 5, 1988, and October 27, 1988, NAHB filed additional written notifications. The Department of Justice published notices in the **Federal Register** in response to these additional notifications on October 10, 1985 (50 FR 41428), on January 28, 1986 (51 FR 3520), on May 16, 1986 (51 FR 18049), on August 28, 1986 (51 FR 30724), on January 15, 1987 (52 FR 1673), on May 8, 1987 (52 FR 17490), on July 30, 1987 (52 FR 28494), on September 22, 1987 (52 FR 35596), on January 5, 1988 (53 FR 188), on March 21, 1988 (53 FR 9154), on May 3, 1988 (53 FR 15750) and on December 8, 1988 (53 FR 49614), respectively.

The principal business address of the Smart House Project is 400 Prince Georges Center Boulevard, Upper Marlboro, Maryland 20772—6731

Joseph H. Widmar,
Director of Operations, Antitrust Division

[FR Doc. 89–19837 Filed 8–22–89 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on July 20, 1989, disclosing that there has been a change in the membership of PCA. Specifically, Hercules Cement Company, RC Cement Co., Inc., River Cement Company, and Signal Mountain Cement Company joined PCA effective July 1, 1989, and should therefore be listed as members. In addition, Santee Portland Cement Corp. should be listed as a separate member. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Accordingly, at present the members of the PCA are those companies listed below:

United States

Aetna Cement Corporation
Alamo Cement Company
Alaska Basic Industries
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Blue Circle Atlantic, Inc.
Blue Circle, Inc.
Blue Circle West Inc.
Calaveras Cement Company
CalMat Co.
Capitol Aggregates, Inc.
Continental Cement Company Inc.
Coplay Cement Company
Davenport Cement Company
Dragon Products Company
Dundee Cement Company
Glens Falls Cement Company, Inc.
Hawaiian Cement
Hercules Cement Company
Ideal Basic Industries, Inc.
Independent Cement Corporation
Lafarge Corporation
Lehigh Portland Cement Company
LoneStar-Falcon
Lone Star Industries, Inc.
Lone Star Northwest
Medusa Cement Corporation
Missouri Portland Cement Company
The Monarch Cement Company
National Cement Company, Inc.
National Cement Company of California, Inc.
Northwestern States Portland Cement Co.
Phoenix Cement Company
RC Cement Co., Inc.
Rinker Materials Corporation
River Cement Company
RMC Lonestar
Rochester Portland Cement Corporation
St. Marys Peerless Cement Company
St. Marys Wisconsin Inc.

Santee Portland Cement Corp.
Signal Mountain Cement Company
The South Dakota Cement Plant
Southwestern Portland Cement Company
Tarmac-LoneStar, Inc.
Tilbury Cement Company

Canada

Federal White Cement Ltd.
Ideal Cement Company Ltd.
Inland Cement Limited
Lafarge Canada Inc.
Lake Ontario Cement Limited
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Corporation
Tilbury Cement Limited

Mexico

Instituto Méxicano del Cemento y del Concreto (IMCYC)
Cementos Acapulco, S.A.
Cementos Apasco, S.A.
Cementos de Chihuahua, S.A.
Cementos Mexicanos, S.A.
Cementos Moctezuma, S.A.
Cooperativa de Cementos Cruz Azul
Cooperativa de Cementos Hidalgo

Affiliate Members

Cement and Concrete Promotion Council of Texas
Florida Concrete and Products Association
Mississippi Concrete Industries Association
North Central Cement Promotion Association
Northern California Cement Promotion Group
Northwest Concrete Promotion Group
Rocky Mountain Cement Promotion Council
South Central Cement Promotion Association
Southern California Cement Group

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C–E Raymond
Claudius Peters, Inc.
F.L. Smidth and Company
Holderbank Consulting Ltd.
Humboldt Wedag Company
Magotteaux-Slegten Companies
Polysius Corp.
The Fuller Company
W.R. Grace & Company

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 509 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, January 23, 1989, February 24, 1989, March 13, 1989, and May 25, 1989, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on Apri 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 28183), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29397), September 15, 1988 (53 FR 35935), September 28, 1988 (53 FR 37883), February 23, 1989 (54 FR 7894), March 20, 1989 (54 FR 11455), April 25, 1989 (54 FR 17835), and June 28, 1989 (54 FR 27220), respectively.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 89–19903 Filed 8–22–89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 89–70; Exemption Application No. D–7794 et al.]

Grant of Individual Exemptions; Bear Lumber Co., Inc./Bear Brothers, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addtion the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Bear Lumber Company, Inc./Bear Brothers, Inc., Second Amended and Restated Profit Sharing Plan (the Plan) Located in Montgomery, Alabama

[Prohibited Transaction Exemption 89–70; Exemption Application No. D–7794]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash by the Plan of certain real property (the Real Property) to Bear Lumber Company, Inc., the Plan sponsor, for $415,000, provided that the price is no less than the fair market value of the Real Property on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 22, 1989 at 54 FR 26269.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Frank W. Hilliard, D.D.S., M.S.D., Inc. Profit Sharing Plan and Trust (the Plan) located in Arlington, TX

[Prohibited Transaction Exemption 89–71; Exemption Application No. D–7821]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective June 30, 1984, to the past and proposed lease by the individual account of Frank W. Hilliard, D.D.S., M.S.D. in the Plan of certain real property located in Arlington, Texas To Frank W. Hilliard, D.D.S., M.S.D., Inc., the sponsor of the Plan; provided that all terms of such transactions are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 22, 1989 at 54 FR 26270.

EFFECTIVE DATE: This exemption is effective as of June 30, 1984.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

J. Lee Milligan, Inc. Profit Sharing Plan and Trust (the Plan) Located in Amarillo, Texas

[Prohibited Transaction Exemption 89–72; Exemption Application No. D–7836]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash of certain real property (the Real Property) to J. Lee Milligan, Inc., the Plan sponsor, provided that the price paid for the Real Property be no less than the greater of the fair market value of the Real Property as of the date of sale, as determined by an independent and qualified appraiser, or the total outlay by the Plan in connection with its acquisition and retention of the Real Property to the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 22, 1989 at 54 FR 26271.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Eubanks & Eubanks, D.O., P.C. Pension and Profit Sharing Trust Fund (the Plan) Located in Troutdale, Oregon

[Prohibited Transaction Exemption 89–73; Exemption Application No. D–7897]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a proposed cash sale by the separate accounts of Robert L. Eubanks and Theresa M. Eubanks (the Eubanks) in the Plan of certain land to the Eubanks, parties in interest with respect to the Plan, provided that the Plan receives the greater of $37,100 or the fair market value at the time of the sale.

Written Comments

The applicant submitted a written comment in which it informed the Department that it wished to corrct certain information published in the notice of proposed exemption. Accordingly, as corrected:

(a) As of December 31, 1988 the Plan had 16 participants.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 24, 1989 at 54 FR 22502.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of August, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89–19862 Filed 8–22–89; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–7684–7685 et al.]

Proposed Exemptions; Ophthalmic Associates, P.A. Employees' Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the International Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Ophthalmic Associates, P.A. Employees' Pension Plan (the Pension Plan) and Ophthalmic Associates, P.A. Employees' Money Purchase Pension Plan (the Money Purchase Pension Plan; collectively, the Plans) Located in Lansdale, PA

[Application Nos. D–7684 and D–7685, Respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the transfer by the Pension Plan to the Money Purchase Pension Plan of a 50 percent tenant-in-common interest in certain improved real property (the Property) and cash, provided the terms of the transaction are at least as favorable to the Money Purchase Pension Plan as those obtainable in an arm's-length transaction with an unrelated party. In addition, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the assumption, by the Money Purchase Pension Plan, of certain pre-existing loan, lease and sublease obligations of the Pension Plan with persons who are parties in interest with respect to both Plans, provided the terms of the transaction are at least as favorable to the Money Purchase Pension Plan as those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. Ophthalmic Associates, P.A. (Ophthalmic) is a professional association organized under the laws of the Commonwealth of Pennsylvania. Physicians affiliated with Ophthalmic are engaged in the medical practice of ophthamology in a two story office building located at 1000 N. Broad Street, Lansdale, Pennsylvania. Other occupants of the Property are Pearlstine, Salkin, Hardison and Robinson (Pearlstine-Salkin), a professional corporation of attorneys and CBS Optical (CBS Optical), an entity which is in the business of fitting and selling eyeglasses. Pearlstine-Salkin is legal counsel to Ophthalmic and provides legal services to employee benefit plans sponsored by Ophthalmic. As such, Pearlstine-Salkin is a party in interest with respect to the Ophthalmic Plans. CBS Optical is also a party in interest since it is exclusively owned by the trustees (the Trustees) of the Plans.

2. Ophthalmic sponsors the Pension Plan and the Money Purchase Pension Plan. The Pension Plan is a defined benefit plan with 21 participants and total assets of approximately $2,994,839 as of July 31, 1988. The Money Purchase Pension Plan is a defined contribution plan having 22 participants and total assets of approximately $1,566,315 as of July 31, 1988. The Plans share common participants but neither Plan is a party in interest with respect to the other. The Plans also share common trustees who are responsible for making investment decisions affecting the Plans. The Trustees of the Plans are Messrs. Paul L. Carmichael, Robert W. Connor, Louis W. Schwartz and Jonathan D. Belmont.

3. On June 25, 1982, the Department granted Prohibited Transaction Exemption (PTE) 82–103 at 47 FR 27645. PTE 82–103 permitted the Ophthalmic Pension Plan and the Pearlstine-Salkin Associates Employees Pension Plan (the Pearlstine Pension Plan)[1] to purchase 50 percent interests in the Property, as tenants in common, from Ophthalmic Investors Associates (Ophthalmic Investors), a partnership comprised of certain principals of Ophthalmic and Pearlstine-Salkin. The sales price for the Property was $900,000. This amount reflected the independently appraised value of the subject realty as of September 26, 1980. On July 1, 1982, the Ophthalmic Pension Plan and the Pearlstine Pension Plan each paid $100,000 in cash to Ophthalmic Investors as the initial downpayment on the Property. Both plans took the Property subject to an existing first mortgage in the original principal amount of $550,000 and an additional loan of $75,000 (the First Mortgage and Addendum) between Ophthalmic Investors and an unrelated party. The First Mortgage and the Addendum carried annual interest rates of 6¼ percent and 9½ percent, respectively. Such loans, which were secured by the Property, had a combined outstanding balance of $401,074 as of July 1, 1982. Although the Ophthalmic and Pearlstine Pension Plans were not required to assume the obligations of Ophthalmic Investors pursuant to the First Mortgage and the Addendum, they were required to make payments to satisfy the terms of the loan instruments. Both plans also entered into a second mortgage (the Second Mortgage) in the original principal amount of $298,926 with Ophthalmic Investors for the balance of the sales price which was to be repaid over a ten year period commencing July 1, 1982 and ending June 30, 1992 at an annual interest rate of 10⅛ percent. The Second Mortgage was also secured by the Property.

The applicants represent that the sale of the property by Ophthalmic Investors to the Ophthalmic Pension Plan and the Pearlstine Pension Plan was carried out in the manner and on the terms described in PTE 82–103. The applicants also represent that payments under the First Mortgage, Addendum and Second Mortgage have been timely made. As of July 31, 1988, the applicants state that the principal balances outstanding under the First Mortgage, the Addendum and the Second Mortgage were $76,326, $6,654 and $157,539, respectively, or $240,520 in the aggregate.

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[1] The applicants represent that none of the plans described herein is a party in interest with respect to the other within the meaning of section 3(14) of the Act.

4. PTE 82–103 also permitted the leasing of the property (the Lease) by the plans to Pearlstine-Salkin Ophthalmic Associated Investors (PSO), a party in interest. The Lease is a triple-net lease providing for an initial term of ten years commencing July 1, 1982 and ending June 30, 1992. The Lease requires that rentals be based on the fair market rental value of the Property, as determined by an independent appraiser. It also stipulates that the Property be reappraised every three years in order that rental payments can be adjusted to reflect the fair market rental value of the Property. The Lease further states that adjusted rentals may not be less than the rentals received during the preceding Lease term.

In the event of a default, the plans may sell the Property to Ophthalmic Investors at the greater of its fair market value or the $900,000 original sales price. At the occurrence of the repurchase, the plans will be relieved of their outstanding mortgage obligations. The balance owed by the plans will then be credited against the purchase price.

The Lease is intended to amortize the Ophthalmic and Pearlstine Pension Plans' obligations under the First Mortgage, the Addendum and the Second Mortgage through the rental payments received such that the plans will own the Property free of any encumbrance at the termination of these obligations. PSO, in turn, subleases the Property (the Subleases) to Pearlstine-Salkin, Ophthalmic, and since July 1, 1984, to CBS Optical. The economic effect of the Sublease involving CBS Optical is such that Pearlstine-Salkin and Ophthalmic receive a credit for amounts actually paid by CBS Optical under their respective Subleases with PSO. If rentals are not paid by CBS Optical, Pearlstine–Salkin and Ophthalmic remain fully liable to PSO which, in turn, remains fully liable to the Ophthalmic and the Pearlstine Plans.

According to the applicants, all rental payments due under the Lease and Subleases have been timely paid and rental adjustments have been in compliance with Lease/Sublease terms. The applicants also represent that the rental payments received by PSO under its Subleases have not been greater than the rental payments PSO has paid the Ophthalmic and Pearlstine Plans under the Lease.

The transactions subject to PTE 82–103 are being monitored by the National Bank of Boyerton (the Bank) located in Boyerton, Pennsylvania. The Bank presently serves as the independent fiduciary on behalf of the Ophthalmic Pension Plan and the Pearlstine-Salkin Associates Profit Sharing and Salary Savings Plan and Trust (the Pearlstine 401(k)Plan) which replaced the Pearlstine Pension Plan in 1985.[2]

5. On October 12, 1987, the Board of Governors of Ophthalmic decided to terminate the Pension Plan effective October 31, 1987 because of benefit restrictions imposed by the Tax Reform Act of 1986. To effectuate the termination, the Trustees intend to discharge the obligations of the Pension Plan by giving Pension Plan participants the opportunity of: (a) Having their benefits paid through annuity contracts of one or more life insurance companies; (b) having their benefits distributed in a single sum settlement; or (c) electing to have their benefits transferred to the Money Purchase Pension Plan. Each participant deciding to have his or her benefits transferred to the Money Purchase Pension Plan will have a rollover account established in the name of such participant.[3]

6. The Trustees have obtained the nonbinding election to have the benefits of four Pension Plan participants transferred to the Money Purchase Pension Plan. The present value of the accrued benefits for these participants is $1,083,144. Accordingly, the Trustees request an administrative exemption to transfer, to the Money Purchase Pension Plan, certain assets of the Pension Plan equal to the value of the transferred benefits. Among the assets of the Pension Plan that are proposed for the direct transfer are the Pension Plan's 50 percent interest in the Property plus cash. The transfer will be a unilateral transaction wherein the Pension Plan will not receive any cash consideration from the Money Purchase Pension Plan. In addition, the Money Purchase Pension Plan will not be required to pay any real estate fees or commissions in connection therewith. Following the transfer, all participants in the Money Purchase Pension Plan will share in the appreciation, depreciation, income and loss attributable to the Property.

7. The Trustees also request an administrative exemption to permit the Money Purchase Pension Plan to assume the obligations of the Pension Plan under the First Mortgage, the Addendum and the Second Mortgage and the Pension Plan's obligations under the Lease and Subleases as set forth in PTE 82–103 and as described above. In other words, exemptive relief is requested to permit the Money Purchase Pension Plan to "stand in the shoes" of the Pension Plan. All other conditions and guarantees that are set forth in PTE 82–103 will remain in full force and effect. In this regard, the Trustees of the Ophthalmic Plans have obtained a novation from Pearlstine-Salkin, the trustees of the Pearlstine 401(k) Plan and the Bank consenting to the transfer and the assumption of the pre-existing transactions by the Money Purchase Pension Plan.

8. The Property was appraised by Mr. Ken L. Steigelman (Mr. Steigelman), C.C.I.M., S.I.O.R., S.R.S., an independent appraiser affiliated with Steigelman and Associates, Inc. Realtors of Line Lexington, Pennsylvania. In an appraisal report dated October 23, 1984, Mr. Steigelman valued the Property at $1,006,000 as of October 12, 1984. In an updated appraisal report dated February 11, 1988, Mr. Steigelman placed the fair market value of the Property at $1,177,000 as of February 9, 1988.

9. The value of the interest that will be transferred to the Money Purchase Pension Plan will reflect 50 percent of the fair market value of the Property less the Pension Plan's proportionate shares of the First Mortgage, the Addendum and the Second Mortgage. The remainder of the consideration will be transferred by the Pension Plan in cash. Thus, the total transferred benefit will equal $1,083,144.

10. The Bank will continue serving as the independent fiduciary for the Plans with respect to the proposed transfer of the Property as well as for those transactions approved by the Department in PTE 82–103. The Bank represents that it has over 100 years of fiduciary responsibility experience and that its staff administers over $117 million of trust assets. In particular, the Bank states that it is responsible in various capacities for approximately $15.5 million of employee benefit plan-related assets. The Bank also asserts that it understands and acknowledges its duties, responsibilities and liabilities in acting as a fiduciary under the Act.

The Bank states that it maintains a commercial relationship, in the form of a checking account with Pearlstine-Salkin but no such relationship exists between it and Ophthalmic. The Bank explains that the checking account represents 0.05 percent of its total deposits. The Bank further states that it does not share common officers or directors with either Pearlstine-Salkin or Ophthalmic.

The Bank believes that the transactions compare favorably to the terms of similar transactions that might take place between unrelated parties based upon its review of Mr. Steigelman's appraisal of the Property, the fact that rentals for the Property are at fair market value and will amortize all of the indebtedness and other expenses incurred by the Plans, the guaranteed repurchase of the Property by the original principals, the favorable location of the Property and its past history of investment appreciation. The Bank also believes the transactions are in the best interests of the Money Purchase Pension Plan and its participants and beneficiaries because, consistent with what has transpired to date, such transactions would be easy to monitor and should not create any administrative difficulties. In arriving at its opinion, the Bank asserts that it has examined the investment portfolio for the Money Purchase Pension Plan, considered the Plan's liquidity requirements and examined the diversification of the assets of the Money Purchase Pension Plan in light of the transactions. The Bank further represents that it believes the transactions comply with the investment objectives and policies of the Money Purchase Pension Plan. In undertaking its responsibilities as the independent fiduciary, the Bank represents that it has approved and will monitor rentals under the Lease and Subleases to ensure that no defaults have occurred and to protect the rights of the Money Purchase Pension Plan and its participants and beneficiaries.

11. In summary, the applicants represent that the proposed transactions will satisfy the criteria for an exemption under section 408(a) of the Act because: (a) The transfer is confined primarily to a single transaction in which a 50 percent tenant-in-common interest is being transferred by the Pension Plan to the Money Purchase Pension Plan; (b) the transfer will be a unilateral transaction wherein the Pension Plan will not receive any consideration from the Money Purchase Pension Plan; (c) the acquisition of the 50 percent interest in the Property by the Money Purchase Pension Plan will provide such plan with leasehold income and the benefits of investment appreciation; (d) the Money Purchase Pension Plan will not pay any real estate fees or commissions in connection with the transactions; and (e) as the independent fiduciary, the Bank approves of the transactions and it believes they are in the best interest of the Money Purchase Pension Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Margaret L. Lial, Inc. Defined Benefit Pension Plan (the Plan) Located in Sacramento, California

[Application No. D–7954]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of certain real property (the Property) from the Plan to Edwin C. Lial and Margaret L. Lial (the Lial's), disqualified persons with respect to the Plan, provided the Plan receives the greater of $220,000 or fair market value for the Property at the time of sale.[4]

Summary of Facts and Representations

1. Margaret L. Lial, Inc. (the Employer) is a corporation engaged in the business of writing a series of mathematics textbooks. Edwin C. Lial and his wife, Margaret L. Lial, are the sole owners of the Employer. The Lial's are also the trustees of the Plan and are the only participants in the Plan. The Plan is a defined benefit plan which had total assets of approximately $1,614,704 in March of 1988.

2. The Property consists of approximately 1.6 acres of vacant land located in Sacramento, California. The Property is a specific portion (Lot 5) of a larger parcel of land owned by the Plan. The Plan acquired the larger parcel in September 1982 from an unrelated seller for a total purchase price of $100,000. The Plan gave the seller a promissory note, secured by a deed of trust on the larger parcel, in the amount of $62,500 and paid the remainder of the purchase price in cash. Payment of the note was completed in January 1986 and the larger parcel is currently not subject to any indebtedness. The portion of the $100,000 purchase price attributable to the Property is $32,852. The remainder of the larger parcel also is vacant land and will be retained by the Plan. The total cost to the Plan of acquiring and holding the Property since the time of purchase has been $106,415, including interest payments on the $62,500 promissory note (allocable to the Property), property taxes and allocable development costs relating to streets, water lines and other improvements.

3. The Plan obtained an appraisal on the Property from Brian P. Roche (Roche) of the American Pacific Appraisal Company of Sacramento. The applicant represents that Roche is independent of the Employer and of the Plan. Roche describes the Property as vacant industrial land (in the Del Paso Heights area of Sacramento) and believes that the highest and best use of the Property would be light industrial development, with some degree of office space. Utilizing the market data approach to value, Roche estimated the fair market value of the Property to be approximately $220,000 as of December 16, 1988. In determining this amount, Roche made an adjustment for a required 25-foot setback and related developer's cost.

4. Since the assets of the Plan are currently invested completely in real estate, a sale of a portion of such real property will provide the Plan with greater liquidity. Also, the Property has produced no income for the Plan. The applicant represents that the Plan has attempted unsuccessfully to sell all or a portion of the real estate held by the Plan at the market value of the land. Accordingly, the Plan now proposes to sell the Property to the Lial's. The Lial's will pay no less than fair market value for the Property at the time of sale, based on an updated independent appraisal. The taxes on the Property will

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[2] The current application for Ophthalmic states that the Pearlstine Pension Plan was terminated and replaced with the Pearlstine 401(k) Plan in 1985. In a separate exemption application (D–6178 and D–6179), Pearlstine-Salkin sought relief similar to what is being requested in this notice of proposed exemption. That earlier exemption application was withdrawn by Pearlstine-Salkin in September 1985. No exemptive relief is being proposed herein for the transaction involving the Pearlstine 401(k) Plan and the Pearlstine Pension Plan.

[3] The applicants state that the termination of the Pension Plan will result in a reversion of assets to Ophthalmic. The applicants also assert that such asset reversion will comply with the "Implementation Guidelines on Asset Reversions" (the Guidelines) that were issued jointly by the Department, the Department of the Treasury and the Pension Benefit Guaranty Corporation in a news release dated May 23, 1984. In accordance with current law, when an employer terminates a defined benefit pension plan, it may not recover any surplus assets until it has fully vested all participants' benefits and has purchased and distributed annuity contracts to protect participants against the risk that their accrued benefits may be jeopardized by future market fluctuations. The applicants assert that the Pension Plan participants have become 100 percent vested and that annuity contracts will be purchased and distributed to participants electing not to transfer their benefits to the Money Purchase Pension Plan or to take a lump sum cash distribution. Further, the applicants state that the Pension Plan's actuary has confirmed that the amount of assets reverting to Ophthalmic complies with the Guidelines.

[4] Because the Lial's are the sole shareholders of the Employer and the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

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be prorated as of the time of sale. The transaction will be entirely for cash, and the Plan will pay no fees or commissions in regard to the sale.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 4975(c)(2) of the Code because: (1) The Lial's will pay no less than fair market value for the Property at the time of sale; (2) the fair market value will be established by an independent appraisal of the Property; (3) the transaction will be entirely for cash; and (4) the sale of the Property will enhance the diversification and liquidity of the assets of the Plan.

Notice to Interested Persons: Because the Lial's are the applicants and the only participants in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Clark, Partington, Hart & Hart Employee Profit Sharing Plan and Trust (the Plan) Located in Pensacola, Florida

[Application No. D-8003]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed loan (the Loan) of $60,000 by the Plan to Clark, Partington, Hart & Hart, P.A. (the Employer), a party in interest with respect to the Plan; and (2) the joint and several guarantees (the Guarantees) of the proposed Loan by eight principals of the Employer, each a party in interest with respect to the Plan, provided that the terms and conditions of the Loan and the Guarantees are not less favorable to the Plan than those obtainable in an arm's-length transaction with unrelated parties.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 35 participants. As of January 31, 1989, the Plan had net assets of approximately $1,830,000. Messrs. William H. Clark, Donald H. Partington, Robert D. Hart, Jr., and Harry B. Stackhouse serve as the trustees (the Trustees) of the Plan, and are also officers, directors, shareholders, and employees of the Employer. The Trustees constitute the investment and administrative committee for the Plan which is responsible for making decisions regarding Plan investments. The Employer is a Florida professional association engaged in the practice of law.

2. The amount of the proposed Loan represents approximately 3.28 percent of the assets of the Plan. The proceeds of the Loan will be used by the Employer to purchase office equipment, furniture, and fixtures for its existing offices. The Loan will be made at no expense to the Plan and will be represented by a promissory note having a 15 year term and payable in 180 monthly installments of principal and interest with interest adjusted annually on the unpaid balance at 1.5 percent above the prime rate charged by the Citizens and Peoples National Bank of Pensacola, Florida, on the date of execution of the Loan and on each anniversary date thereafter. The Loan will be secured by a perfected first security interest agreement in which the Employer conveys to the Plan a first security interest in specified office equipment, furniture, and fixtures that are unencumbered and owned by the Employer (the Collateral). All Collateral will be insured against fire and other hazards with the Plan named as beneficiary of insurance policies purchased by the Employer. The Collateral was appraised by Mr. Joel D. Gonia, Senior Personal Property Staff Appraiser of Allied Appraisal Associates, Inc., Gulf Breeze, Florida. Mr. Gonia affirms his lack of interest in the Collateral and his independence of the parties involved in the proposed transactions. His appraisal, rendered in accordance with standards established by the American Society of Appraisers, determined on June 4, 1989, that the fair liquidation value of the Collateral is $121,375 (in excess of 200 percent of the Loan), an amount which would be realized from a public auction conducted under duress.

3. The Loan will be jointly and severally guaranteed by Messrs. William H. Clark, Donald H. Partington, Robert D. Hart, Jr., W. Christopher Hart, Dennis K. Larry, William E. Bond, Jr., Harry B. Stackhouse, and Robert L. Stone (collectively, the Guarantors), all of whom are principals of the Employer. Each of the Guarantors has a net worth and annual income substantially in excess of the amount of the proposed Loan.

4. The Citizens and Peoples National Bank (the Bank), located in Pensacola, Florida, has been appointed to serve as independent fiduciary for the Plan with respect to the Loan. There is a *de minimis* banking relationship between the Employer and the Bank, consisting of deposits and loans. Deposits by the Employer are less than .0002 percent of the total deposits with the Bank and loans to the employer are less than .007 percent of the total loan portfolio of the Bank. None of the proceeds from the proposed Loan will be used by the Employer to pay off any indebtedness it owes the Bank. On July 3, 1989, the Employer paid in full the prior loan for $40,000 that it had obtained from the Plan under Prohibited Transaction Exemption 84-157, published October 12, 1984 at 49 FR 40116.

The Bank has examined the terms and conditions of the Loan, including the personal Guarantees, the security agreement with the appraisal of the Collateral, and the latest financial statement of the Plan to determine that the Loan is in the best interests of the Plan and its participants and beneficiaries. The Bank considered the entire investment portfolio of the Plan, including the diversification of its investments, when making its determination as to the worthiness to the Plan of the proposed Loan. The Bank also represents that it would make an identical loan to the Employer at a lesser rate of interest.

5. The Bank, as independent fiduciary, has the irrevocable power and authority to monitor and enforce all the terms and conditions of the Loan. This includes making demand for timely payments, requiring appropriate annual adjustments of the interest rate, accelerating demand for payment in full of unpaid principal and accrued interest due upon default, and commencing litigation or other appropriate action against the Employer or Guarantors upon default by the Employer. Also, the Bank has the power and authority to require the Employer to pledge additional Collateral to ensure that at all times the Collateral remains at or exceeds 200 percent of the balance owing on the Loan and to require the Employer to maintain fire and hazard insurance on the Collateral with the Plan as named beneficiary of the insurance policies.

6. In summary, the applicant represents that the proposed Loan and Guarantees will satisfy the statutory criteria of section 408(a) of the Act because (a) the Loan will be secured by a perfected first security agreement in insured collateral which will at all times during the term of the Loan have a liquidation value of not less than 200 percent of the outstanding balance of the Loan; (b) the Bank, a qualified and independent person, will serve as the fiduciary of the Plan with regard to the Loan and the Guarantees, and in that capacity has determined that the Loan is in the best interests of the Plan and its participants and beneficiaries; (c) the Bank will monitor the Loan for its entire term and will enforce performance of the obligations of the Employer and Guarantors under the applicable documents; and (d) the Loan will be made at no expense to the Plan and will be jointly and severally guaranteed by eight principals of the Employer.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of August, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-19861 Filed 8-22-89; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORPORATION

Grant Award to D.C. Students in Court for the Expansion and Development of a Law School Civil Clinical Program

AGENCY: Legal Services Corporation.

ACTION: Announcement of a grant award.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award a grant to D.C. Students in Court through the 1989-90 Law School Civil Clinical Program. The purpose of this grant is to assist LSC-eligible clients with their civil legal cases. Pursuant to the Corporation's announcement of funding availability in Volume 54, No. 90, pages 20454 and 20455 of the **Federal Register** of May 11, 1989, a total of $1,080,766 will be awarded to nineteen applicants for funding, including D.C. Students in Court. Announcement of the grant awards to the other applicants was published in the August 15, 1989 issue of the **Federal Register**.

This one-year grant is awarded pursuant to authority conferred by sections 1006(a)(1)(B) and 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of this Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATE: All comments and recommendations must be received by the Office of Field Services of the Legal Services Corporation on or before September 24, 1989.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses, III, Associate Director, or Victoria O'Brien, Counsel to the Director, Legal Services Corporation, Office of Field Services, 400 Virginia Ave., SW., Washington, DC 20024-2751, telephone number: (202) 863-1837.

SUPPLEMENTARY INFORMATION: This grant is issued to support the provision of legal services to eligible clients by law students from a consortium of five Washington, D.C. law schools. By funding the development and expansion of the D.C. Students in Court clinical program, the Corporation educates law students to the legal problems of poor persons. This clinical experience encourages future lawyers to become interested in the provision of legal services to poor persons, acting either as legal aid attorneys or through *pro bono* or reduced fee efforts as members of the private bar.

Dated: August 17, 1989.

Ellen J. Smead,

Acting Director, Office of Field Services.

[FR Doc. 89-19860 Filed 8-22-89; 8:45 am]

BILLING CODE 7050-1-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 31, 1989 through August 11, 1989. The last biweekly notice was published on August 9, 1989 (54 FR 32704).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 22, 1989 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: July 31, 1989

Description of amendment request: The proposed amendment would delete the onsite and offsite organization charts and specify general requirements in place of the deleted charts. The proposed change affects Section 6.0, "Administrative Control" of the Pilgrim Technical Specifications. The proposed change is submitted in accordance with the guidance provided in the NRC Generic Letter (GL) 88-06 dated March 22, 1988.

Basis for proposed no signficant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes proposed to remove corporate and plant organization charts from the Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated. As stated in NRC Generic Letter 88-06, the requirements necessary for safe operation of the plant have been retained in the Technical Specifications; the changes do not eliminate or alter the functions previously reviewed; and the changes do not affect plant operation and design or create a new accident mode. The changes proposed were modeled after Enclosure 2 to NRC Generic Letter No. 88-06 in conformance with Commission requirements.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in a margin of safety because Boston Edison, through its quality assurance programs, its commitment to maintain only qualified personnel in positions of responsibility, and other required controls, assures that safety functions will be performed at a high level of competence. Therefore, removal of the organization charts from the Technical Specifications will not affect the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff agrees with the licensee's analysis. Therefore, based on its review, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

NRC Project Director: Richard H. Wessman

Consolidated Edison Company of New York, Docket Nos. 50-003 and 50-247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of amendments request: July 25, 1989

Description of amendments request: The proposed amendments would revise the "Indian Point Station Units 1 and 2 Physical Security Plan" to (1) redefine several vital areas of Indian Point 2 as Type I rather than Type II and vice versa, (2) make several changes for clarification and standardization of terminology, (3) remove several items from the list of vital equipment but not actually remove the equipment from vital areas, and (4) remove the City Water Tank from the list of vital equipment and delete its vital area.

Basis for proposed no significant hazards consideration determination: The licensee provided the following analysis of the proposed changes:

The Commission has provided guidance concerning the application of the standards for determining whether "significant hazards considerations" exist by providing certain examples at 51 FR 7744 (March 6, 1986). Example (i) of 51 FR 7744 which applies to editorial changes, states:

"(i) a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

Although the example cited in 51 FR 7744 refers specifically to proposed change to technical specifications, it is understood that the intent of the guidance is that it apply to license amendment changes, in general, including Physical Security Plan changes such as proposed herein. With the exception of the proposed change to delete the City Water Tank from Table 3.2, the changes to the Physical Security Plan proposed in this application are shown not to involve a significant hazards consideration by reason of the guidance in example (i) above since they amount to merely administrative changes such that there are no functional alternatives being made. Note that the level of security afforded Type I and Type II vital areas at Indian Point is identical and this policy will not change without another amendment request. Likewise, the deletion of items, other than the City Water Tank, from the list of vital equipment will not alter their physical location within vital areas.

Concerning the remaining proposed change, the Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed amendments have been evaluated below and determined not to involve a Significant Hazards Consideration.

(1) Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The City Water Tank is utilized for normal plant operation and may be used as a backup to safety equipment cooling. Its damage or destruction would not cause or increase the probability or consequences of an accident since safety-related vital equipment would not be affected by such

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sabotage and would, therefore, remain operable. Therefore, since sabotage in a non-vital area can be assumed to be successful but safety-related equipment in vital areas is assumed to operate as required, the deletion of this item from the list of vital equipment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Deletion of this item from the vital equipment list implies that we must assume its inoperability in the event of successful sabotage. Such inoperability, caused by damage or destruction, would be serious enough to cause reactor shutdown as required by Technical Specifications but would not result in any previously unanalyzed accident. Overall plant design is such that adequate safety-related equipment and cooling to that equipment exists to bring the plant to a safe shutdown and assure that escalation of an accident beyond the damage to this non-vital piece of equipment would not occur. Successful sabotage of the item deleted from the list of vital equipment with this proposed revision would, therefore, not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Do the proposed changes involve a significant reduction in the margin of safety?

No. Deletion of this item from the vital equipment list and its subsequent inoperability or destruction due to successful sabotage could yield a forced plant shutdown as required by Technical Specifications. The other consequences of such sabotage would be the elimination of certain backup systems which are not required or relied upon for accident prevention or mitigation purposes. This effect would not be a significant one since the functionally equivalent safety-related vital equipment would not be adversely affected. Therefore, the overall margin of safety would not be significantly reduced.

The staff agrees with the licensee's analysis. Therefore, based on the above, the staff proposes that the proposed amendment will not involve a Significant Hazards Consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: July 27, 1989

Description of amendment request: The proposed amendment would revise Section 4.7.12 of the Technical Specifications to relax the surveillance frequency of failed snubbers resulting from isolated damage events that cannot be related generically to other snubbers. Specifically, the proposed changes would eliminate the requirement to reduce the surveillance intervals for cases that result from isolated damage. In addition, another change would permit either satisfactory functional test result, or applied remedy be the basis to declare snubbers as operable for the purpose of establishing the next inspection interval. Both these changes have been implemented in the Unit 1 Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazard consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed changes do not involve any changes to plant hardware or operating procedures. All snubbers and related components will continue to be visually and functionally inspected in accordance with the current specifications, and hence the overall operability of the snubbers are not affected. Thus the answers to the first 2 criteria are negative. None of the previous safety analyses are affected, and no safety assumptions need to be changed. Thus the answer to criterion (3) is also negative. The staff therefore proposes to determine that the requested amendment involves no significant hazards considerations.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment requests: July 28, 1989

Description of amendment requests: These proposed amendments would revise Technical Specifications Sections 3.7 for both units to clarify testing requirements for the main feedwater line isolation valves and the main steam line isolation valves (MSIVs).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria:

Criterion 1

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The bases for Technical Specifications 3.7.1.5 for Units 1 and 2 and Technical Specification 3.7.1.6 for Unit 2, state that the main steam isolation valves and main feedwater isolation valves are maintained in the closed position to ensure that the consequences of an excess steam demand event are limited. With the main steam line isolation valves and the main feedwater line isolation valves maintained closed the functional design bases under accident conditions are met by prohibiting the blowdown of both steam generators and ensuring that all main feedwater flow is stopped. Therefore, the potential for excessive cooldown of the reactor coolant system, and the accompanying return to power from subcritical conditions, are reduced by the proposed license amendment.

Adding the statement regarding the inapplicability of Technical Specification 3.0.4 to the Unit 1 MSIV specification is administrative in nature, and brings the Unit 1 specification into agreement with the Combustion Engineering (CE) Standard Technical Specifications. Changing modes with the MSIVs closed does not involve any increase in accident probability or consequences because these valves will already be in their required accident position.

Criterion 2

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Maintaining the main steam isolation valves and main feedwater isolation valves closed in Modes 2 through 4 does not create a new or different kind of accident from any previously established. Overpressurization of the main steam lines when the main steam line isolation valves are closed is prevented by the safety valves on the main steam lines. The availability of feedwater to the steam generators is ensured by the operability requirements for the auxiliary feedwater system.

Allowing Unit 1 to change modes while both main steam line isolation valves are closed is in accordance with the CE Standard Technical Specifications, and will not create the potential for a new or different kind of accident or event.

Criterion 3

Use of the modified specification would not involve a significant reduction in a margin of safety.

By maintaining the main steam line and main feedwater isolation valves in a closed position, the potential consequences of a steam line break event are minimized, and the margins of safety provided in the accident analyses of record are increased.

Based upon the above, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences or an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any previously evaluated, or (3) involve a significant reduction in a margin of safety, and therefore does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes to the TS involve no significant hazards considerations.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: July 26, 1989

Description of amendment request: This amendment revises Action f. of Technical Specification 3.8.1.1. to make it consistent with the Emergency Diesel Generator testing action requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria:

Criterion 1

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR) has not been affected as the proposed change is administrative in nature, and is intended to restore consistency in testing requirements for the emergency diesel generators when one offsite power source is inoperable. No parameters which affect the probabilities of occurrence of any accident are affected by this change.

The consequences of an accident previously evaluated in the UFSAR have not been increased as the proposed surveillance requirements will not adversely affect the operation or operability of the diesels or any other safety related equipment.

The probability of a malfunction of equipment important to safety has not changed since reducing the test frequency of the diesel generators and modifying the starting requirements to be consistent with the manufacturer's recommendations are intended to enhance diesel reliability by minimizing severe test conditions which can lead to premature failures.

Criterion 2

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is administrative in nature and is intended to restore consistency between ACTION statements relative to the starting of emergency diesel generators when one offsite power source is inoperable. The net effect of this change is to reduce the diesel generator testing frequency and starting requirements such that there is still a high degree of assurance that they would operate, if called upon, when one offsite circuit is inoperable, and has no impact on actual accident analysis.

The possibility of a malfunction of equipment important to safety of a different type than any analyzed in the UFSAR has not been increased in that the proposed license amendment incorporates the starting and testing requirements recommended by Generic Letter 84-15. The intent of the change is to enhance the reliability of the emergency diesel generators by adherence to manufacturer recommendations regarding engine prelube and warmup.

Criterion 3

Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed change restores consistency between action statements in St. Lucie Unit 2 Technical Specification 3/4.8.1.1, reducing the frequency of diesel engine starts and diesel engine fast, cold starts while providing a high degree of assurance that they would operate, if called upon, when one offsite power circuit is inoperable. The reduction of diesel generator testing frequency should increase the reliability of the diesel generators because the diesel engines will be properly conditioned before startup and the number of starts decreased to reduce wear.

Based upon the above, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences or an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any previously evaluated, or (3) involve a significant reduction in a margin of safety, and therefore does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes to the TS involve no significant hazards considerations.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 28, 1989

Description of amendment request: The proposed amendment would revise License Condition 2.C(14), Emergency Response Capabilities, Attachment 5, Item 3. Item 3 of Attachment 5 to the license specifies the schedule for implementation of modifications (installations or upgrade) for neutron flux monitoring consistent with the guidance of Regulatory Guide 1.97, Revision 2 or the NRC Staff's Safety Evaluation Report (SER) of the BWR Owners Group (BWROG) Licensing Topical Report (NEDO-31558, Position on NRC Regulatory Guide 1.97, Revision 3, Requirements for Post-Accident Neutron Monitoring System). The current schedule, as established by Amendment No. 28 to the license, states that modifications, if required shall be completed before restart from the next refueling outage starting after 10 months from the date of receipt of the NRC Staff SER on NEDO-31558, but no later than January 1, 1991 unless otherwise notified in writing by the NRC staff.

The proposed change would modify the implementation schedule to state that modifications, if required, shall be completed before restart from the next refueling outage starting after 18 months from the date of receipt of the NRC Staff SER on NEDO-31558. The licensee's submittal indicates that the reason for the proposed change is that an 18-month period is required from initial specification release to completed installation of the neutron monitoring system (NMS).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this proposed change because:

There is no change in system design or operation. The license condition currently requires upgrade of NMS during the third refueling outage. This proposed change will allow operation with the currently installed NMS which has been found to comply with all criteria proposed in the BWROG letter. This system is required to provide neutron flux indication and is not postulated to initiate any accidents. The NMS is used to verify reactor shutdown as part of the Emergency Operating Procedures (EOPs). The use of neutron monitoring in the EOPs is conservative in that, if it is not available, actions are specified which will lead to safe shutdown without the system. The requirements of RG 1.97 concerning neutron monitoring are additions to the existing system abilities. Therefore, delay in upgrade to RG 1.97 requirements will not significantly increase the probability of an accident and would not lead to an increase in the consequences of an accident as defined in the safety analysis because of the conservative EOP actions.

2. This proposed change will not create the possibility of a new or different kind of accident than any previously evaluated because:

The current system has been evaluated using alternate criteria proposed in NEDO-31558 and found acceptable for continued operation. This change does not involve any changes to design or operation. In addition, the neutron monitoring system is not postulated as the initiator of any accidents. Therefore, no new or different accidents are created.

3. This proposed change does not involve a significant reduction in the margin of safety because:

Design, function, and operation of the existing NMS remain the same. There is no specific "margin of safety" associated with this system as used in RG 1.97 other than to assure reactor shutdown following a transient or accident. EOP actions are conservative with respect to the use of the NMS for verification that the reactor is shutdown. When not available during an accident or transient scenario, actions are specified which will lead to safe reactor shutdown. Because these actions lead to a safe plant condition (reactor shutdown), the margin of safety is not reduced. In addition, this request does not result in a reduction to the margin of safety as defined in the bases of the RBS Technical Specifications.

Because the present RBS design meets all criteria provided in the BWROG License Topical Report, NEDO-31558, which was submitted to the NRC April 1, 1988, as supported by the plant-specific evaluation attached [to the June 28, 1989 submittal], extension of the implementation date for a NMS meeting RG 1.97 guidance is justified. This proposed extension allows the NRC to complete their evaluation of the report, which provides an alternative design as allowed by the current license condition to comply with the RG 1.97 requirements. In addition, GSU will be able to better plan its resource utilization to address the NMS pursuant RG 1.97 after the Staff's SER is received.

The NRC staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Frederick J. Hebdon

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: October 13, 1987

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 3.2-B, "Instrumentation That Initiates or Controls the Core and Containment Cooling Systems." The revision of TS Table 3.2-B would reflect the Containment High Pressure trip level setting to be greater than 2 psig, rather than the current setting of greater than 1 psig but less than 2 psig. Additionally, the remarks section of TS Table 3.2-B would be revised to state "Prevents inadvertent operation of containment spray during normal operation," rather than during "...accident condition". These revisions are necessary to resolve an inconsistency between the DAEC Final Safety Analysis Report (FSAR) and the DAEC TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards consideration in its request for a license amendment. The licensee has concluded that the TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated because this change to the TS would resolve an inconsistency in the instrument setpoint dealing with the control of the containment spray system at primary containment pressures below 2 psig. The resolution of the inconsistency would not increase the probability or consequences of an accident previously evaluated.

The licensee has concluded that the TS change would not create the possibility of a new or different kind of accident because this change would resolve an inconsistency in the TS to reflect an accident that has previously been evaluated in the FSAR. Therefore, no possibility of a new or different kind of accident would be created by the TS modification.

Finally, the licensee has concluded that the TS change would not involve a significant reduction in the margin of safety because the proposal would not change the original margin of safety.

The staff has reviewed the licensee's evaluation of the proposed changes and agrees with the licensee's conclusion. Therefore, the staff proposes to determine that the proposed change to the Technical Specifications does not involve a significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: June 1, 1989

Description of amendment request: The proposed amendment would revise Technical Specification Table 4.6.2g, Instrumentation That Initiates Control Rod Withdrawal Block - Surveillance Requirement and Table 4.6.2g Note (g) to delete surveillance requirements that are either inapplicable or cannot be performed due to instrument design limitations. The proposed changes will (1) remove the surveillance requirement to calibrate the Detector Not In Startup Position control rod block instruments associated with the Source Range Monitoring (SRM) and the Intermediate Range Monitoring (IRM) instrument channels, (2) remove the surveillance requirement to calibrate the SRM and the IRM Instrument Inoperative control rod block instrument channels, (3) remove the surveillance requirement to perform sensor checks on the SRM and the IRM control rod withdrawal block instrumentation and (4) revise Note (g) to Table 4.6.2g to reflect the changes made to the table and the deletion of the requirement to calibrate SRM and IRM rod block instrumentation prior to shutdown.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The staff has reviewed the licensee's submittal and concludes:

1. The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated because the deleted surveillance requirements will not have an adverse effect upon the ability of the Control Rod Block circuitry to perform its intended safety function.

The SRM and IRM systems provide multi-channel monitoring of the core thermal neutron flux during startup and low power operation. In addition, the SRM and IRM systems will initiate a rod withdrawal block for high neutron flux or channel malfunction conditions. Both the SRM and the IRM systems provide Detector Not In Startup Position, Inoperative and Upscale trip signals to the control rod withdrawal block circuitry and the IRM system provides a Downscale trip signal.

The SRM and the IRM Detector Not in Startup Position instrument channels initiate a control rod block to ensure that control rods are not withdrawn unless the appropriate detectors are properly positioned and capable of providing the operator and the circuitry with neutron flux information. The licensee has indicated that the design of these instrument channels does not allow the output of the detector to be varied in response to a variable test signal. Therefore, since the trip is either on or off in response to the detector position switch, it cannot be calibrated. The proposed change to delete the requirement to calibrate this function will not affect the ability of the rod block to function as required, since the performance of the associated functional tests at the existing Technical Specification required frequency verifies operability of the rod block function. Also, preventive maintenance realignment of the detector retraction mechanism limit switches each refueling outage ensures proper detector and position switch alignment.

An SRM and IRM instrument channel inoperative rod block is initiated on low detector voltage, electronics drawer internal module unplugged, or the channel mode switch not in the Operate position. Since none of these inputs require calibration, the proposed change to delete the surveillance requirement to calibrate the instrument channel Inoperative function will not affect their ability to initiate a rod block when required. Additionally, the functional tests on the instrument channels at the existing Technical Specification required frequency ensures operability of the rod block function.

The rod block instrument channels are digital/bistable channels and their output signal is either present or absent depending upon the state of the sensor. Because the conditions that generate an output signal (high neutron flux or channel malfunction) are received only when the event is present, a qualitative determination of acceptable operability by observation or comparison with other independent sensors measuring the same variable (i.e., a sensor check) is not possible. Therefore, the proposed change to delete the sensor check requirement for the SRM and IRM instrument channels will not affect the ability of the channels to perform as required.

A control rod withdrawal block functions to prevent control rod withdrawal only. Therefore, the change to delete the requirement to calibrate the SRM and IRM rod withdrawal block instrument channels prior to shutdown (rod insertion) does not affect the ability of these channels to perform as required.

A proposed administrative change to Note (g) of Table 4.6.2g reflects the above proposed changes to Table 4.6.2g.

In summary, the proposed changes do not affect the analyses of abnormal operational transients or design basis accidents as presented in Section XV of the Final Safety Analysis Report. The proposed changes do not change the design or operation of the detector or instrumentation and, therefore, do not increase the probability or consequences of any accident previously evaluated.

2. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated since the proposed changes do not alter the design or operation of the detector or instrumentation systems.

3. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety because, as discussed previously, the deleted surveillance requirements are unnecessary and do not affect the ability of the Control Room Block circuitry to function as required.

Specifically, the SRM and the IRM Detector Not In Startup Position rod block instrument channel calibrations required by the existing Technical Specification are being deleted because the design of the instrumentation does not facilitate calibration. The performance of functional tests on the instrument channels and preventive maintenance checks of the detector limit switches presently required by the Technical Specifications adequately ensures instrument operability and alignment, respectively. Calibration of the SRM and the IRM instrument channel inoperative rod block required by the existing Technical Specification is not necessary because the channel inputs do not require calibration.

The sensor checks required by the Technical Specifications are not applicable because sensor checks cannot be performed on the digital/bistable outputs from the SRM and IRM sensors that initiate control rod blocks (detector not in startup position, inoperative, upscale and downscale).

The requirement to calibrate Control Rod Withdrawal instrumentation prior to shutdown (control rod insertion) is not necessary since control rod withdrawal blocks are only applicable for rod withdrawal.

Based upon the above, the staff proposes that the amendment will not involve a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: July 11, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) in response to NRC Generic Letter (GL) 88-06 "Removal of Organization Charts from Technical Specification Administrative Control Requirements" to: (1) remove the onsite and offsite organizational charts from TS Section 6.2.1 and 6.2.2, respectively and (2) make certain miscellaneous administrative changes in Section 6 of the TSs (Administrative Control) related to revisions to the corporate organization.

GL 88-06 encourages licensees to propose changes to their TS to remove organizational charts from TS and replace them with descriptions of the organizational structure and characteristics which are important to safety. The proposed changes concern the Administrative Controls in Section 6.0, and do not affect any Limiting Conditions for Operation or Surveillance Requirements. The proposed changes in this amendment request are grouped into two categories, Category A and Category B. Category 'A' proposed changes involve removing the onsite and offsite organizational charts from TS Sections 6.2.1 and 6.2.2, respectively. These proposed changes are consistent with the guidance provided in GL 88-06. Category 'B' proposed changes are five miscellaneous administrative changes. These proposed changes are to: (1) revise paragraphs in Sections 6.2 and 6.5 to reflect the new organization under the Executive Vice President-Nuclear, (2) revise paragraph 6.5.2.1 to indicate that the Nuclear Review Board (NRB) reports to and advises the Executive Vice President-Nuclear, (3) revise paragraph 6.5.2.9.C to indicate that NRB audit reports shall be forwarded to the Corporate Officer(s) responsible for the areas audited, (4) revise paragraphs 6.2.3.2 and 6.2.3.4 to reflect title changes and the deletion of the corporate Independent Safety Engineering Group and (5) revise paragraph 6.14.2 to reflect the groups responsible for technical review of the Offsite Dose Calculation Manual.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of the no significant hazards consideration in its request for a license amendment for each of the proposed changes discussed previously. The Staff has reviewed the licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 and finds that:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Removing the organization charts from TS does not affect plant operation. The proposed changes do not increase or decrease the qualification, experience or training requirements of onsite or offsite Limerick Generating Station (LGS) personnel. The LGS Quality Assurance Program contains detailed organization charts and associated descriptions of responsibilities. Appendix B to 10 CFR 50 and 10 CFR 50.54(a)(3) govern changes to the organizations described in the QA Program. In accordance with the requirements of 10 CFR 50.34(b)(6) the applicant's organizational structure is included in the LGS Final Safety Analysis Report, Chapter 13. As required by 10 CFR 50.71(e), the licensee submits annual updates to the FSAR.

The administrative changes involving a position title change, creation of an advisory board, distribution of audit reports, ISEG composition, and elimination of unnecessary review details, do not involve the design or operation of plant hardware or systems. Accidents analyzed remain unaffected by these changes.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Removing the organization charts from TS does not affect plant operation. The proposed changes do not increase or decrease the qualification, experience or training requirements of onsite or offsite Limerick Generating Station (LGS) personnel. The LGS Quality Assurance Program contains detailed organization charts and associated descriptions of responsibilities. Appendix B to 10 CFR 50 and 10 CFR 50.54(a)(3) govern changes to the organizations described in the QA Program. In accordance with the requirements of 10 CFR 50.34(b)(6) the applicant's organizational structure is included in the LGS Final Safety Analysis Report, Chapter 13. As required by 10 CFR 50.71(e), the licensee submits annual updates to the FSAR.

The administrative changes involving a position title change, creation of an advisory board, distribution of audit reports, ISE&G composition, and elimination of unnecessary review details, do not involve the design or operation of plant hardware or systems. No new modes of operation, changes to setpoints or changes in operating parameters result from this change.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The removal of the organization charts from TS is accompanied by the addition of requirements for the Limerick organizational structure which are needed to maintain the essential aspects of the material being removed. This will permit the implementation of organizational changes without prior NRC approval provided the change meets these added organizational structure requirements. Consequently, enhancements to the organizational structure, as well as minor administrative changes such as position title revisions, can be implemented promptly upon identification of the need

for the change thereby creating a positive impact on safety.

The administrative changes involving a position title change, creation of an advisory board, distribution of audit reports, ISEG composition, and elimination of unnecessary review details, do not involve the design or operation of plant hardware or systems. No new modes of operation, changes to setpoints or changes in operating parameters result from this change.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves no significant hazards consideration. Therefore, the Staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: July 11, 1989

Description of amendment request: These amendments would remove the organization charts from the technical Specifications to the FSAR in response to the guidance set forth in the NRC staff's Generic Letter 88-06 "Removal of Organization Charts from Technical Specification Administrative Control Requirements." Several administrative changes involving changes in position titles and reporting relationships are also proposed. These proposed changes to the organization charts and the administrative changes have been grouped as Category A and Category B changes, respectively in the licensee's application.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below. The licensee has arranged these changes into two categories. The licensee's discussion of each of these categories is presented separately as follows.

Standard 1

The proposed Category 'A' changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Removing the organization charts from the Technical Specifications and replacing them with more general language does not affect plant operation. The proposed changes do not increase or decrease the qualification, experience or training requirements of onsite or offsite nuclear personnel. Additionally, the proposed changes do not affect the shift crew composition or the facility management positions requiring an NRC license.

The Peach Bottom Quality Assurance Plan contains detailed organization charts and associated description of individual and group responsibilities as they apply to the operation and support of the Peach Bottom facility. Appendix B to 10 CFR 50 and 10 CFR 50.54(a)(3) govern changes to the organization as described in the Quality Assurance Plan. 10 CFR 50.34(b)(6) requires that the organizational structure also be included in the Final Safety Analysis Report. Section 13 of the Updated Final Safety Analysis Report provides a description of the organization and detailed organization charts. As required by 10 CFR 50.71(e), this information must be maintained and updated annually. Based on this review, it is concluded that the proposed Category 'A' changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Standard 2

The proposed Category 'A' changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature, and do not involve any physical alterations of plant configurations or changes to setpoints, or operating parameters. It is therefore concluded that removing the organization charts from the Technical Specifications does not create the possibility of a new or different kind of accident from any previously evaluated.

Standard 3

The proposed Category 'A' changes do not result in a significant reduction in the margin of safety.

Removing the organization charts from the Technical Specifications enhances the margin of safety by permitting an organizational change without NRC approval provided that the objectives of proposed paragraph 6.2.1 are met, thereby allowing a more timely response to situations where the appropriate action is a prompt organizational change. Safety is further enhanced by providing clear and concise definitions of responsibility for the Shift Supervisor, Plant Manager and Vice President, Peach Bottom Atomic Power Station. Further, the proposed changes include additional administrative controls which capture the essential aspects of the material being removed such that the associated requirements will continue to be met. Based on this review, it is concluded that the proposed Category 'A' changes do not result in a significant reduction in the margin of safety, but improve the margin of safety.

Standard 1

The proposed Category 'B' miscellaneous changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Replacing the technical Engineer with the Engineer-Systems on the PORC will not decrease the effectiveness of the PORC. As required by proposed specification 6.2.2.g, either the Superintendent-Technical or the Engineer-Systems will hold a Senior Reactor Operator license, thereby ensuring the level of plant operations expertise of the PORC.

Sufficient corporate management involvement in nuclear plant safety will be maintained with the elimination of the direct reporting requirement of the NRB to the Office of the Chief Executive. The Office of the Chief Executive will be made aware of NRB activities by the Nuclear Committee of the Board through the Board of Directors and by the Executive Vice President-Nuclear.

Designating Corporate Officer(s) responsible for the areas audited instead of the Executive Vice President-Nuclear as the recipient(s) of NRB audit reports is a more appropriate initial level of review. The Corporate Officers have a closer proximity to the sources of problems and therefore can take prompt corrective actions. If NRB audit findings are not satisfactorily addressed by the Corporate Officer(s), the NRB may inform the Executive Vice President-Nuclear through its normal communication channel as defined in Specification 6.5.2.9.

Section 14 of the PBAPS UFSAR has been reviewed to determine the effect of the proposed administrative changes on previously evaluated accidents. It is concluded that the accident analyses in Section 14 of the UFSAR are not affected by the proposed miscellaneous changes. For this reason, as well as the reasons presented above, it is concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2

The proposed Category 'B' miscellaneous changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The implementation of these miscellaneous changes will not affect the interpretation or intent of the specifications they involve (6.5.1.2, 6.5.2.9 and 6.5.2.10.c). These changes are purely administrative and do not involve any hardware changes or plant modifications. Therefore, these changes will not create the possibility of a new or different kind of accident from any previously evaluated.

Standard 3

The proposed Category 'B' miscellaneous changes do not involve a significant reduction in a margin of safety.

The administrative nature of these changes will not impact plant systems or operation. For this reason, as well as the reasons presented in the Safety Assessment and in response to item 1 above, it is concluded that these changes will not involve any reduction in a margin of safety.

The staff has reviewed the license's no significant hazards consideration determination for the Category A and B changes discussed above and agrees with the licensee's analysis. Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: July 19, 1989

Description of amendment request: The proposed amendments would eliminate the requirement for use of the Rod Sequence Control System (RSCS) and would decrease the power level setpoint above which the Rod Worth Minimizer (RWM) would no longer be required to be used from the existing 25% power level requirement at both units to a new 10% power level setpoint. The licensee states that these proposed amendments are based on and are consistent with the NRC Safety Evaluation Report issued to J. S. Charnley on December 27, 1987, which approved Amendment 17 of General Electric Topical Report NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel".

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below.

Standard 1: The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Deleting the RSCS and changing the low power set point on the RWM has no effect on the probability of equipment malfunction in other systems or within the RWM.

The probability of occurrence of an accident is not affected by this change. The probability of an RDA is dependent only on the control rod drive system and mechanisms themselves, and not in any way on the RSCS or RWM.

The consequences of an RDA as evaluated in the PBAPS UFSAR will not be affected by this modification. An extensive probabilistic study was performed by the NRC staff (letter and enclosure from B. C. Rusche, NRR, to R. Fraley, ACRS, dated June 1, 1978, "Generic Item IIA-2 Control Rod Drop Accident (BWRs)"). This study indicated that there was not a need for the RSCS. Furthermore, improved methodologies in the RDA analysis methods (e.g. BNL-NUREG 28109, "Thermal-Hydraulic Effects on Center Rod Drop Accidents in a Boiling Water Reactor," October 1980) indicated that the peak fuel enthalpies resulting from an RDA are significantly lower than previously determined by less refined methodologies.

The RSCS duplicates the function of the RWM. So long as the RWM is operable, the RSCS is not needed since the RWM prevents control rod pattern error. In the event the RWM is out of service, after the withdrawal of the first 12 control rods, the proposed Technical Specifications require that control rod withdrawal movement and compliance with the prescribed control rod pattern be verified by a second licensed operator or technically qualified member of the station technical staff. The verification process is controlled procedurally to ensure a high quality, independent review of control rod movement. In addition, to further minimize control rod movement at low power with the RWM out of service, the proposed Technical Specifications will permit only one plant start-up per calendar year with the RWM out of service prior to or during the withdrawal of the first twelve control rods. All the above taken together demonstrate consistency and applicability to those conclusions reached in the referenced NRC SER, and substantiate the conclusion that there will be no increase in the consequences of an RDA as evaluated in the FSAR as a result of eliminating the RSCS.

There will also be no increase in the consequences of an RDA as evaluated in the UFSAR due to lowering the RWM set point from 25% to 10%. The effects of an RDA are more severe at low power levels and are less severe as power level increases. Although the original calculations for the RDA were performed at 10% power, the NRC required that the generic BWR Technical Specifications be written to require operation of the RWM below 25% power in order to ensure conservatism. However, GE continued to perform the RDA analyses at and below 10% power because these produced more conservative analytical results. More refined calculations by BNL (BNL-NUREG 28109, "Thermal-Hydraulic Effects on Center Rod Drop Accidents in a Boiling Water Reactor," October 1980) have shown that even with the maximum single control rod position error, and most multiple control rod error patterns, the peak fuel rod enthalpy reached during an RDA from these control rod patterns would not exceed the NRC limit of 280 cal/gm for RDAs above 10% power, confirming the original GE analyses. Hence, lowering the RWM set point from 25% to 10% will not result in an increase in the consequences of an RDA as evaluated in the UFSAR. The previously referenced NRC SER has concluded this RWM set point reduction to be acceptable.

Standard 2: The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation of the RSCS and RWM cannot cause or prevent an accident. They function to minimize the consequences of an RDA. The RDA is already evaluated in the UFSAR, and the effect of this proposed change on the analyses is discussed in Item 1 above.

Elimination of the RSCS and lowering the RWM set point will have no impact on the operation of any other systems, and hence would not contribute to a malfunction in any other equipment nor create the possibility for an accident to occur which has not already been evaluated.

Standard 3: The proposed revisions do not involve a significant reduction in a margin of safety.

Elimination of the RSCS will not lower the margin of safety for the reasons discussed in Item 1 above and summarized below:

a) An extensive NRC study has determined that the possibility of an RDA resulting in unacceptable consequences is so low as to negate the requirement for the RSCS.

b) Recent calculations have determined that the consequences of an RDA are acceptable above 10% power.

c) The RSCS is redundant in function to the RWM. Eliminating the RSCS does not eliminate the control rod pattern monitoring function performed by the RWM.

d) To ensure that the RWM will be in service when required, the proposed RWM Technical Specification will be revised to allow only one startup per calendar year with the RWM out of service prior to or during the withdrawal of the first twelve control rods. If the RWM is out of service below 10% power, control rod movement and compliance with prescribed control rod patterns will be

verified by a second licensed operator or technically qualified member of the station technical staff. This situation is controlled by station procedure which specifically requires the following:

- Plant Management approval is required in order for the operator to bypass the inoperable RWM.
- A second operator or technically qualified staff member, with no other duties, is required to verify the first operator's actions while the first operator performs rod movements.
- The startup and the shutdown sequences with their respective signoff sheets provide for verification by the second operator after each rod movement step is completed by the first operator.
- The startup and shutdown sequences follow the same control rod patterns that the RWM enforces if it were not bypassed.

There is no significant reduction in the margin of safety resulting from lowering the RWM set point from 25% to 10% because calculations by GE and BNL have shown that even with the maximum single control rod position error, and most multiple error patterns, the peak fuel rod enthalpy during an RDA from these patterns would not exceed the NRC limit (280 cal/gm) above 10% power.

In summary, GE has provided technical justification for the proposed changes in the Topical Report NEDE-24011-P-A and associated references which justify the acceptability of the proposed changes.

The NRC has reviewed and accepted the GE analysis and provided guidelines for licensees wanting to make the changes proposed in NEDE-24011-P-A and approved in the NRC SER issued December 27, 1987 to J.S. Charnley of General Electric.

The proposed changes are consistent with those approved in the NRC SER and the guidelines set forth therein. Therefore, there is no significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 31, 1989 and amplified by letter dated July 7, 1989

Description of amendment request: The proposed amendment would modify the core spray (CS) pump flow rate test requirements to make the wording more consistent with the wording of the flow rate test requirements of other pumps in the Emergency Core Cooling System. Presently, the CS pump test requirement in Specification 4.5.A.1.b states that the "Core Spray shall deliver at least 4625 gpm against a system head corresponding to a total pump developed head of greater than or equal to 113 psig." The amendment would change this to read that the "Core Spray pumps shall deliver at least 4625 gpm against a system head corresponding to a reactor vessel pressure of greater than or equal to 113 psi above primary containment pressure."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as stated in 10 CFR 50.92, since it would not:

1. involve significant increase in the probability or consequences of an accident previously evaluated. The intent of the proposed change is to clarify and correct the Technical Specifications. The change is purely administrative in nature. There are no setpoint changes, safety limit changes, or changes to limiting conditions for operation. The proposed change assures that the core spray system is tested in accordance with the assumptions contained in the existing accident analyses. This change has no impact on plant safety operations. The change will have no impact on previously evaluated accidents.

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed change is purely administrative in nature and is intended to clarify and improve the quality of the Technical Specification. The change cannot create the possiblity of a new or different kind of accident.

3. involve a significant reduction in the margin of safety. The proposed change corrects an error which currently exists in the Technical Specifications. The change is administrative in nature and will clarify the specifications. This change does not contain any setpoint or safety limit changes regarding isolation or alarms. The proposed change does not affect the environmental monitoring program. This change does not negatively affect the plant's safety systems and does not reduce any safety margins.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 9, 1987

Description of amendment request: The licensee proposes to modify the Salem Unit 1 and Unit 2 Technical Specifications by:

1. Changing the channel description format for item 7.a of Table 3.3-3, Loss of Voltage, to specify that the total number of channels is 1 per bus.

2. For Item 7.b of Table 3.3-3, Sustained Degraded Voltage, changing the Total Number of Channels, Channels to Trip and Minimum Channels Operable to 3 per bus, 2 per bus and 3 per bus, respectively.

3. For Item 7.b of Table 3.3-4, Sustained Degraded Voltage, changing the Trip Setpoint to greater than or equal to 91.6 percent of bus voltage for less than or equal to 13 seconds and changing the Allowable Values to greater than or equal to 91 percent of bus voltage for less than or equal to 15 seconds.

Basis for proposed no significant hazards consideration determination:

Item 1, Table 3.3-3 Item 7.a

This item is being revised to be consistent with the channel description format used for other items in this Table. This is an editorial change only. No modification is being made to the primary undervoltage protection system.

Item 2, Table 3.3-3 Item 7.b

The second level undervoltage protection system has been redesigned

The change from 3 to 1 per bus is a

prior to withdrawal of any rods in

Pennsylvania Avenue, NW.,

as a result of an event which occurred at Salem Unit No. 2 on August 26, 1988. Immediately following a reactor trip with safety injection, the Unit 2 vital buses began flip-flopping between the No. 21 and 22 Station Power Transformers (SPT) (preferred source of power) until they eventually separated from the offsite power system. The previous design provided for the transfer of a vital bus to the alternate SPT whenever the secondary voltage for its designated SPT dropped below 91 percent of rated bus voltage for greater than 10 seconds. This function was controlled by 2 relays on each vital bus. These relays were positioned such that they monitor the secondary voltage of each of the SPT (1 per SPT). In addition to initiating the transfer function these relays provided a transfer permissive signal such that a vital bus could not be transferred unless the alternate SPT has an acceptable secondary voltage. A separate relay monitored vital bus voltage and provided an input to each of the three Safeguards Equipment Controllers (SEC) such that, for a sustained degraded voltage (less than 91 percent for greater than 13 seconds) condition on 2 out of 3 vital buses, all vital buses were separated from the offsite source and sequenced onto the emergency source.

As redesigned, the transfer function was eliminated. The existing transfer relays were replaced with relays of similar design but with improved setpoint drift characteristics. These new relays (1 per bus) were connected to operate in parallel with the previous vital bus degraded voltage relay. The previous vital bus degraded voltage relay was also replaced with an upgraded relay. The interface with the SEC was then reconfigured from its previous 2 out of 3 bus design to a 2 out of 3 relay per bus design. A failure analysis has been completed by the licensee for each component in the system and demonstrates that no single failure will result in the creation of an unanalyzed condition. The new configuration: (1) eliminates the possibility of vital bus flip-flopping, (2) provides for the separation of the vital buses from the preferred source on an individual basis only, and (3) satisfies General Design Criterion 17 relative to maintaining the connection between the offsite source and the onsite distribution system.

Item 3, Table 3.3-4 Item 7.b

This table is being revised to: (1) incorporate the revised trip setpoint for the second level undervoltage protection relays, and (2) to correct the allowable value for second level undervoltage protection. The present Technical Specification allowable value for second level undervoltage protection is in error as it does not reflect an allowance for line loss due to cable length (about 0.7 percent). However, the present trip setpoint for the second level undervoltage protection system (equal to or greater than 91 percent) provides sufficient margin to account for these losses. The new trip setpoint of greater than or equal to 91.6 percent is based on the results of detailed analyses of the Salem Generating Station electrical distribution system transient response characteristics. Those analyses indicate that, at the Public Service Electric and Gas (PSE&G) bulk power system minimum expected value of 505 KV and for a LOCA on one Salem Unit and a concurrent orderly shutdown of the other Unit, vital bus voltage will recover to a worse case value of about 92.9 percent. The minimum allowable trip value and trip setpoint are derived using the 90 percent minimum motor terminal voltage requirement as a starting point, and then applying appropriate allowances as provided in Regulatory Guide 1.105.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

1. For Item 7.b of Table 3.3-3, the licensee has analyzed the proposed amendment to determine if a significant hazard exists:

1) The proposed changes do not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The failure analysis [performed by the licensee] demonstrates that no single failure results in the existence of an unanalyzed condition. Additionally, the second level undervoltage protection system does not provide an input to the Reactor Protection System nor can it cause any one of the incoming 500 KV sources to be isolated from the Salem Station electrical distribution system. All equipment used in the system will be seismically qualified. Therefore, the probability of occurrence of an accident remains unchanged.

The second level undervoltage system is required to protect against those events (e.g. bulk power system degradation) which result in a degraded voltage at the vital buses but which do not result in a complete loss of voltage. The modified system continues to satisfy this requirement as previously discussed. Additionally, by eliminating the ability to transfer between SPTs, the potential for damage to safety related motors from frequent starts is eliminated. The increased redundancy in the SEC logic inputs provides greater assurance that the system will perform its intended function. Therefore, the consequences of previously analyzed accidents remain unchanged.

2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. As demonstrated in [the failure analysis], no single failure will result in the existence of an unanalyzed condition. The second level undervoltage system does not provide any input to the Reactor Protection System nor can it cause any one of the incoming 500 KV sources to be isolated from the Salem Station electrical distribution system. The modified design eliminates the possibility of flip-flopping of the vital buses between offsite power sources and thereby assures the availability of all safety related equipment.

3) The proposed changes do not involve a significant reduction in a margin of safety. The changes to the second level undervoltage system maintain the existing margin of safety by eliminating the transfer between offsite sources, thereby assuring that the integrity of safety related electrical equipment is maintained. The additional redundancy provided in the revised design enhances the overall reliability of the system and further assures that the system function will be completed.

The staff has reviewed the licensee's significant hazards consideration determination analysis for the changes associated with Item 7.b of Table 3.3-3 and concurs with the licensee's determination that the proposed changes do not involve a significant hazards consideration.

2. With respect to the proposed change to Item 7.a of Table 3.3-3 and Item 7.b of Table 3.3-4, the Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 by providing certain examples (51 FR 7751). One of the examples, (i), of an amendment likely to involve no significant hazards consideration relates to "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature."

Another example, (ii), of an amendment likely to involve no significant hazards consideration relates to "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement."

(a) Item 7.a of Table 3.3-3

The change from 3 to 1 per bus is a change in nomenclature. There are 3 buses, each equipped with a shutdown channel so the change to 1 per bus meets example (i).

(b) Table 3.3-4, Item 7.b, Allowable Value

The current Technical Specifications do not take into account the line loss (voltage drop) because of cable length. This change will correct that and therefore, meets example (i).

(c) Table 3.3-4, Item 7.b Trip Setpoint

Changing the value from greater than or equal to 91 percent to greater than or equal to 91.6 percent is a more stringent requirement. Therefore this change meets example (ii).

Based on the above the staff proposes to determine that the changes to Table 3.3-3, Item 7.a and Table 3.3-4, Item 7.b do not involve a significant hazards consideration because they change the nomenclature, correct an error or provide a more stringent requirement.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: January 26, 1989 and May 22, 1989

Description of amendment request: By letter dated January 26, 1989, the licensee proposed to withdraw the wording in their June 23, 1988 letter, of Surveillance Requirement 4.1.3.4.a (no change from current Technical Specifications).

By letter dated May 22, 1989, the licensee proposed to modify Surveillance Requirement 4.1.3.4 and 4.1.3.5 by adding a footnote as follows: **For power levels below 50 percent one hour thermal "soak time" is permitted. During this soak time, the absolute value of rod motion is limited to six steps.

This is applicable prior to verification of rod positions.

The original request, dated June 23, 1988, was noticed on January 11, 1989 (54 FR 1024).

Basis for proposed no significant hazards consideration determination: The licensee's January 26, 1989 letter withdrew a proposed change in Surveillance Requirement 4.1.3.4.a that would have replaced "Within 15 minutes prior to withdrawal of any rods in control banks A, B, C or D during an approach to reactor critically (sic)" with "Within 15 minutes prior to withdrawal of any control bank during an approach to reactor critcally (sic)". Because this change was not discussed in the licensee's June 23, 1988 application the licensee was asked to justify the change. The licensee chose to withdraw the change. Therefore, no change is being proposed to this section.

The original application would have, among other things, deleted any reference to a waiting period before rod position verification after rod motion. Because individual rod position indication is subject to thermal transients, it is important that thermal equilibrium be achieved before rod position verification at power levels below 50 percent. In their May 22, 1989 letter, the licensee opted to include a footnote to Surveillance Requirements 4.1.3.4 and 4.1.3.5 to allow a one-hour thermal soak period before rod position verification to allow thermal equilibrium to be reached at powers below 50 percent. Also, during the soak time rod motion would be limited to six steps absolute. For powers above 50 percent, rod motion is expected to be small and will not induce significant thermal transients.

In the initial application the licensee had determined that the proposed change did not constitute a significant hazards consideration. The staff reviewed the licensee's analysis and concurred with the licensee's determination that the proposed amendment did not involve a significant hazards consideration. The staff had proposed to determine that the proposed amendment involves no significant hazards consideration [54 FR 1024 dated January 11, 1989].

The licensee has reviewed the original Significant Hazards Consideration and determined: The proposed changes do not affect the previously submitted Significant Hazards Consideration.

The staff has reviewed the licensee's analysis and concurs with the licensee's determination that the proposed amendment change does not involve a significant hazards consideration and the original significant hazards consideration remains valid. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: June 20, 1989, as supplemented by letter of July 25, 1989 (TS 271)

Description of amendment requests: The proposed changes would delete Technical Specification (TS) 3.10.B.1.b.2 and 3.10.B.1.3 which currently allow reactivity additions without continuous core monitoring. Other proposed changes would correct certain identified deficiencies, thereby, resulting in more conservative controls during fuel load and bringing the Browns Ferry TS into consistency with the staff's guidance in the Standard Technical Specifications for Boiling Water Reactors (NUREG-0123).

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. This proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design basis accident during core alterations is the dropping of a fuel assembly. Since these changes increase the monitoring requirements for core alterations and there is no new fuel handling activity introduced that was not previously allowed by the current technical specifications, there is no increase in the probability or consequence of the dropped assembly accident. These changes do not increase the probability or consequences of a control rod removal error or a fuel rod assembly insertion error. There is no increased probability or consequences of an accidental reactivity insertion or an inadvertent criticality.

2. This proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

These TS changes result in improved monitoring requirement during core alterations that would add reactivity. There are no new activities required during core alterations due to these proposed changes which could introduce any new or different accident. The deletion of the two options of loading fuel without continuous SRM monitoring will require the use of fuel load chambers (FLCs) during part of the fuel loading. FLCs have been used during 13 previous fuel loadings at BFN. The proposed clarification of the TS allowing the SRM count rate to decrease below 3 cps during the special conditions specified for complete core unloading do not change the intent of the current TS. The Control Rods are fully inserted in the core and are electrically disarmed and cannot be moved. Therefore, no reactivity can be added by control rod movement. In addition, any fuel movements would be to remove a fuel assembly from the reactor core. In either case, no core alterations will be made that would increase core reactivity. All other changes are more conservative than the current TS requirements on core alterations, including normal control rod movement. Therefore, the possibility of a new kind of accident is not created.

3. This change does not involve a significant reduction in the margin of safety.

The only margin of safety applicable to fuel loading is the requirement for having 0.38 percent delta K shutdown margin. The proposed changes are conservative by requiring continuous SRM monitoring during core alterations which could add reactivity. In addition, the requirements for control rod withdrawal with the vessel head removed will be considered as a core alteration which is also more conservative than the current TS. The use of SRMs for core monitoring during core alterations is not taken credit for in any margin of safety as defined in the TS bases. Since these proposed TS changes are more restrictive, they will not result in the reduction of any margin of safety as defined in the TS bases.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: July 24, 1989

Description of amendment request: The proposed change would modify the Administrative Controls Section of the Technical Specifications (TS) which identifies the membership composition of the Station Nuclear Safety and Operating Committee (SNSOC) by adding the Superintendent-Engineering to the list of members.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed change in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve significant hazards considerations in that it would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated, because the [change reflects] administrative considerations and [does] not change the plant design or operation. Presently, provisions made in the Technical Specifications for the appointment of alternate members to the SNSOC may be utilized with regard to the Superintendent-Engineering. The proposed change merely allows the augmentation of the pool of members readily available to convene meetings of the SNSOC; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated, because, as above, plant design or operation is not affected by [the] proposed [change], or

(3) Involve a significant reduction in a margin of safety, because neither plant design or operation is affected. [The] proposed [change does] not alter the function, alternates, meeting frequency, quorum, responsibilities, authority, or records of the SNSOC as defined by the Administrative Controls of the Technical Specifications.

Based on the staff's review of the licensee's evaluation, the staff agrees with the licensee's conclusions as stated above. Therefore, the staff proposes to determine that the proposed amendments do not involve significant hazards considerations.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow **Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington**

Date of amendment request: June 15, 1989

Description of amendment request: The licensee has completed the installation of a wide range neutron flux monitoring system as required by license condition 2.C.(16) Attachment 2, Item 3(b). The amendment request is to put the operability requirement for this wide range flux monitoring system into Technical Specification Table 3.3.7.5-1, "Accident Monitoring Instrumentation." Surveillance requirements for the wide range monitor would be put into Table 4.3.7.5-1, "Accident Monitoring Instrumentation Surveillance Requirements." Under accident conditions the wide range monitoring system will replace three other neutron flux monitoring systems. Requirements for the average power range monitor (APRM), the intermediate range monitor (IRM), and the source range monitor (SRM) would be removed from these two tables.

The licensee has also requested a change to the Action Statement to be implemented in the event of inoperability of the wide range flux monitoring system. The current action statement to be applied when the neutron flux monitors are inoperable would require repair or shutdown within a specified time. The proposed action statement would allow use of an alternate sampling method instead of shutdown in the event of inoperability of the wide range system. The alternate sampling method would utilize the APRM, the IRM, and the SRM.

By letter dated November 18, 1986 the licensee notified the NRC that the installation of the wide range monitoring system would take place during the 1987 refueling outage and requested that the technical specifications be revised to incorporate the requirements for this new system. Notice of consideration of issuance of this amendment was published in the **Federal Register** on April 8, 1987 (52 FR 11377). The licensee experienced a number of difficulties in demonstrating the environmental qualifications of the system and asked to defer action on the November 1986 request. Because of the significant lapse in time, on May 17, 1989 the NRC notified the licensee that the November 18, 1986 request was being denied. Subsequently the licensee resolved the environmental qualification problems.

The June 15, 1989 amendment request seeks the exact changes sought in the November 18, 1986 request. The licensee declared that the statements made in the 1986 letter are still accurate and applicable including their arguments supporting the determination of no significant hazards. Therefore, the November 18, 1986 letter will be

considered as part of the amendment request.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has determined and the staff agrees, that the requested amendment per 10 CFR 50.92 does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the equipment installed will not provide input to any safety systems relied upon in the licensing bases accident analyses. The change in action statements does not significantly increase the probability or consequences of an accident previously evaluated because the redundant APRM, IRM, and SRM monitors presently in use will be available should the wide range monitors be declared inoperable.

(2) Create the possibility of a new or different kind of accident than previously evaluated because the equipment provides monitoring only and merely provides another display that indicates neutron flux or power levels in addition to the existing devices currently relied upon. The change in action statements does not create the possibility of a new or different kind of accident because the equipment provides a monitoring function only and has adequate redundancy with the existing APRM, IRM, and SRM monitors so that no new or different kind of accident is credible.

(3) Involve a significant reduction in a margin of safety because no safety margins are affected. This wide range monitoring equipment provides a passive monitoring function only and is not part of any plant safety related system, thus safety margins will not be affected. The change in action statements does not involve a significant reduction in margin of safety because the existing redundant monitors provide adequate backup given the remote possibility that both wide range monitors become inoperable.

Based on the above considerations the Commission proposes to determine that the requested change to the WNP-2 Technical Specifications involves no significant hazards considerations.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorneys for licensees: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

NRC Project Director: George W. Knighton

Yankee-Rowe Nuclear Power Corporation, Docket No. 50-029, Yankee-Rowe Nuclear Power Station, Bolton, Massachusetts

Date of amendment request: July 24, 1989

Description of amendment request: The proposed amendment consists of two proposed changes: (1) The proposed amendment modifes Table 3.2-1 of Technical Specification 3.2.4 to substitute a limit on the operating loop average temperature for the current limit on cold leg temperature. The proposed average temperature limit will allow greater operational flexibility during part-load operation and will maintain DNB margins to be bounded by full power conditions. (2) The proposed amendment removes the word "Exxon" from the last paragraph of Technical Specification Base 3/4.2.4.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following for the first proposed change:

(1) An increase in temperature will not increase the probability of an accident. The main steam line break is the only licensing analysis affected by the change. The reanalysis of this event has shown that the consequences remain acceptable. Therefore, there is not a significant increase in the probability or consequences of a previously analyzed event.

(2) An increase in temperature will not result in a new failure mechanism which could initiate an accident. Therefore, the proposed change will not create the possibility of a new or different type of accident from any previously analyzed.

(3) The steady-state DNBR margin has been evaluated at part-load conditions with the increased cold leg temperatures allowed by this change. The DNB performance at reduced load is bounded by the limiting full power condition. The transient licensing analyses were also evaluated, with the main steam line break being the only affected event. Reanalysis of this transient has shown that the results will remain acceptable. Therefore, this change will not result in a significant decrease in safety margins.

For the second proposed change: This change is editorial in nature and would not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore determines that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for Licensee: John A. Ritsher, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: August 26, 1988

Brief description of amendment request: This amendment revises the Technical Specification Limiting Conditions for Operations (LCO) and Surveillance Requirements (SRs) for the Containment Cooling System (CCS) in TS 3/4.5.B and would revise related requirements for diesel generator (DG) testing in TS 3/4.5.F and the associated Bases.

Date of publication of individual notice in **Federal Register:** July 28, 1989 (54 FR 31395)

Expiration date of individual notice: August 28, 1989

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: July 12, 1989, as supplemented July 26, 1989

Brief description of amendment request: The proposed amendments would revise the North Anna Units 1 and 2 Technical Specifications by revising the definition of slave relay testing and by clarifying the test requirements for Engineered Safeguards Features (ESF) slave relays.

Date of publication of individual notice in **Federal Register:** August 9, 1989 (54 FR 32729)

Expiration date of individual notice: September 8, 1989

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois; Docket Nos. 50-456 and 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: May 22, 1989

Brief description of amendments: These amendments modify Technical Specification 5.3.2 to allow the use of hafnium, or silver-indium-cadmium, or a combination of both, as the absorber material in the rod control cluster assemblies.

Date of issuance: July 17, 1989

Effective date: July 17, 1989

Amendment Nos.: 30 for Byron and 19 for Braidwood

Facility Operating License Nos. NPF-37, NPF-66, NPF-72, and NPF-77. The amendments revised the Technical Specification.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27224). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 17, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron Station, the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendment: June 13, 1989

Brief description of amendment: These amendments modify Sections 4.0.3 and 4.0.4, General Surveillance Requirements, of the Technical Specifications for Zion Station. In addition Section 3.3.1.F, Relief Valves, is revised to include exception to General Limiting Condition 3.0.4.

Date of issuance: August 1, 1989

Effective date: August 1, 1989

Amendments Nos.: 117, 106

Facility Operating License No. DPR-39. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27225). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: February 6, 1987 as supplemented November 2, 1987.

Brief description of amendment: This amendment modifies paragraph 2.C.(5) of the license to require compliance with the amended for a "call-in" program for off-duty guards from their residences. This Plan was amended to conform to the requirements of 10 CFR 73.55.

Date of issuance: July 28, 1989

Effective date: July 28, 1989

Amendment No.: 98

Facility Operating License No. DPR-6. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40983). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: May 25, 1989 and supplemented on June 30, 1989

Brief description of amendment: This amendment revises Section 3.7(d), (e) and (f) to depict the requirements of 10 CFR Part 50, Appendix J and NUREG-0123, Standard Techncal Specifications for General Electric Boiling Water Reactors and to remove the 24 hour duration requirement to reduce the impact of diurnal effects by using an NRC approved "Total Time" or Point-to-Point method described in ANSI N45.4-1972 and Bechtel Topical Report BN-TOP-1, Rev. 1.

Date of issuance: July 31, 1989

Effective date: July 31, 1989

Amendment No.: 99

Facility Operating License No. DPR-6. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27227). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: August 11, 1988

Brief description of amendment: The amendment revises the supplemental leak collection and release system (SLCRS) flow rate from 59,000 cfm to 57,000 cfm, reflecting an approved change to the design basis of the SLCRS. This is a partial response to the licensee's application.

Date of issuance: August 2, 1989

Effective date: August 2, 1989

Amendment No. 19

Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39168). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: April 5, 1989

Brief description of amendments: The amendments modified the Technical Specifications to delete footnotes that are no longer applicable.

Date of issuance: August 8, 1989

Effective date: August 8, 1989

Amendment Nos.: 21 and 2

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21308). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 8, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: April 6, 1989

Brief description of amendments: The amendments modified Technical Specification 4.5.2.h.1)b) to increase for Unit 1 the maximum total charging pump flow rate with a single pump running.

Date of issuance: August 8, 1989

Effective date: August 8, 1989

Amendment Nos.: 22 and 3

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23314). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 8, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 1, 1989

Brief description of amendments: The proposed changes allow the use of both hafnium (Hf) and silver-indium-cadmium (Ag-In-Cd) design Rod Cluster Control Assemblies (RCCA) within the core.

Date of issuance: July 31, 1989

Effective date: July 31, 1989

Amendment Nos.: 10 and 2

Facility Operating License Nos. NPF-76 and NPF-80. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27229). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: May 18, 1988

Description of amendment request: The change revised the setpoint requirement for the control rod scram accumulator low pressure alarm.

Date of issuance: August 4, 1989

Effective date: August 4, 1989

Amendment No.: 24

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 14, 1988 (53 FR 50330). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public

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Library, 120 West Johnson Street

various Control Rod Block

Date of issuance: August 7, 1989

Tennessee Valley Authority, Dockets

Tennessee Valley Authority Docket Nos.

Monitoring," to demonstrate automatic

Library, 120 West Johnson Street, Clinton, Illinois 61727.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: April 14, 1989

Brief description of amendment: The amendment revised the Duane Arnold Energy Center (DAEC) Facility Operating License No. DPR-49, extending the DAEC Integrated Plan for 2 years beyond the current expiration date of May 3, 1989.

Date of issuance: August 8, 1989

Effective date: August 8, 1989

Amendment No.: 161

Facility Operating License No. DPR-49. Amendment revised the license.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27231). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: May 27, 1988

Brief description of amendment: The amendment corrects several editorial, typographical, and other minor errors.

Date of issuance: July 19, 1989

Effective date: July 19, 1989

Amendment No.: 134

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15835). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 5, 1989

Brief description of amendment: The amendment request increases the Technical Specification channel functional test surveillance intervals for various Control Rod Block instrumentation in accordance with General Electric Company Licensing Topical Report NEDC-30851P-A, Supplement 1.

Date of issuance: July 28, 1989

Effective date: July 28, 1989 and shall be implemented within 60 days of issuance.

Amendment No. 29

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25376). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: July 15, 1988 and supplemented by letters dated April 25, 1989 and May 24, 1989.

Brief description of amendments: These amendments deleted the organization charts, Figures 6.2-1 and 6.2-2 and replaced them with more general organizational requirements.

Date of issuance: July 31, 1989

Effective date: Units 1 and 2, as of the date of issuance to be implemented within 45 days of the date of issuance.

Amendment Nos. 99 and 76

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23322). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 31, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: August 24, 1988

Brief description of amendment: The amendment modifies the value for the average electrotype temperature and the average battery capacity.

Date of issuance: August 7, 1989

Effective date: August 7, 1989

Amendment No.: 80

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18959). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: May 22, 1989

Brief description of amendment: This Amendment allows, in the case of a missed surveillance requirement, delaying compliance with the Action Statement for a period up to 24 hours to permit the completion of the surveillance when the allowed outage time limits of the Action Statement are less than 24 hours and establishes as the starting time of the noncompliance that time when it is discovered that the Surveillance Requirement has not been performed. This Amendment also permits passage through or to Operational Conditions as required in order to comply with the Action Statements.

Date of issuance: August 8, 1989

Effective date: August 8, 1989

Amendment No.: 81

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29411). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 1989. The amendment was inadvertently issued before expiration of the comment period. However, no comments or requests for hearing were received within the period for such comments or requests.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: January 13, 1989 (TS 256)

Brief description of amendments: The proposed changes would delete certain surveillance testing requirements on redundant but independent systems when a system is declared inoperable and a requirement to verify alignment of valves in the injection/safety related flow paths.

Date of issuance: August 2, 1989

Effective date: August 2, 1989

Amendments Nos.: 169, 169, 140

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21316). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: May 15, 1989 (TS 270)

Brief description of amendments: This amendment corrects Technical Specification Surveillance Requirement 4.6.A.3 to comply with 10 CFR 50, Appendix H and revises the Bases section to reflect the specimen withdrawal program agreed upon by TVA and the NRC.

Date of issuance: August 3, 1989

Effective date: August 3, 1989

Amendments Nos.: 170, 170, 141

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25379). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 27, 1989 (TS 88-27)

Brief description of amendments: The amendments revise the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications. The changes increase the base current value for the containment air return fans, in Surveillance Requirement 4.6.5.6, from 28 amperes to 32 amperes. The band for an acceptable current (i.e., 277.5 amperes) is not being changed.

Date of issuance: July 31, 1989

Effective date: July 31, 1989

Amendment Nos.: 121, 110

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15838). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 22, 1988 (TS 88-34)

Brief description of amendments: The amendments modify the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications (TS). The changes remove inappropriate testing requirements associated with the auxiliary building gas treatment system (ABGTS) and add a new requirement on the automatic isolation of the auxiliary building ventilation exhaust. Surveillance requirements for ABGTS activation exist in Section 7, "Plant Systems," and Section 9, "Refueling Operations," of the TS. The ABGTS test requirement associated with the auxiliary building ventilation monitoring system (ABVMS) was deleted from both Section 7 and Section 9. The ABGTS test requirement associated with a Phase A containment isolation signal was deleted from Section 9 but remains in Section 7. The ABGTS test requirement associated with the high radiation signal from the spent fuel pool monitors was deleted from Section 7 but remains in Section 9. A new requirement was added to Table 4.3.9 of Specification 3.3.3.10, "Radioactive Gaseous Effluent Monitoring," to demonstrate automatic isolation of the auxiliary building ventilation exhaust any time the ABVMS (radiation monitor) indicates measured levels above the alarm/trip setpoint. The requirement was in Sections 7 and 9 as part of the ABGTS actuation test for a high radiation signal from the ABVMS but was deleted. Also, two typographical errors in the Unit 1 Specification 3.3.3.10 have been corrected.

Date of issuance: August 3, 1989

Effective date: August 3, 1989

Amendment Nos.: 122, 111

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 8, 1989 (54 FR 6212). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: January 15, 1988

Brief description of amendment: This amendment deleted Sections 3/4.3.3.7, Chlorine Detection Systems, from Appendix A, Technical Specifications, and Section 3/4.3.3.7 from the Bases. The index in Appendix A has also been updated to reflect this deletion.

Date of issuance: August 4, 1989

Effective date: August 4, 1989

Amendment No. 134

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27241). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of applications for amendment: November 2, 1987; January 5, 1989

Brief description of amendment: This amendment corrects typographical errors and makes minor word changes to achieve consistency between the Technical Specifications and plant nomenclature. It also deletes certain statements that are no longer necessary because of elapsed time and/or completion of specified actions.

Date of issuance: August 4, 1989

Effective date: August 4, 1989

Amendment No. 135

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21317). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: May 23, 1989

Brief description of amendments: The amendments reduce the NA-1&2 TS 3/4.2.5 limit on the minimum measured flow rate in the reactor coolant system from 289,200 gallons per minute (gpm) to 284,000 gpm. This reduction in the minimum flow rate is enveloped within the NA-1&2 UFSAR Chapter 15 accident analyses.

Date of issuance: July 31, 1989

Effective date: July 31, 1989

Amendment Nos.: 120 and 104

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27244). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: June 8, 1989

Brief description of amendments: The amendments revise TS 3.3.3.5, Table 3.3-9, which addresses the auxiliary shutdown panel monitoring instrumentation. The measurement range of the charging flow instrumentation is changed from 0-150 gpm to 0-180 gpm, and the format of Table 3.3-9 and Table 4.3-6 is changed from horizontal to vertical.

Date of issuance: August 2, 1989

Effective date: August 2, 1989

Amendment Nos.: 121 and 105

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27244). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 28, 1989

Brief description of amendments: The amendments revise the TS Table 3.3-6 which specifies the operability requirements for radiation monitors. The change is in conformance with the NRC guidance provided in Generic Letter No. 83-37, dated November 1, 1983.

Date of issuance: August 2, 1989

Effective date: August 2, 1989

Amendment Nos.: 122 and 106

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18962). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: August 5, 1988, as supplemented January 25, 1989.

Brief description of amendments: These amendments revise the requirements governing the operability of the Individual Rod Position Indicating System (IRPIS). The changes involve shifting the emphasis from the IRPIS to the demand position indicating system (the step counters) for rod group position information during shutdown and certain transient operational modes such as reactor startup.

Date of issuance: August 2, 1989

Effective date: August 2, 1989

Amendment Nos. 131 and 131

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7647). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: March 17, 1989.

Brief description of amendments: The Technical Specification 15.2.3.1.B.(5) is revised to eliminate the f-delta-I function from the Overpower Delta T (OPDT) setpoint to increase the flexibility of operation at full power by allowing use of the full flux difference operating envelope.

Date of issuance: July 31, 1989

Effective date: July 31, 1989

Amendment Nos.: 123 and 128

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21318). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 28, 1988

Brief description of amendment: The current Wolf Creek Technical Specifications did not identify actions to be taken if either the measured overall integrated containment leakage rate or the measured combined leakage rate for all penetrations and valves subject to Type B and C tests exceed allowable limits when the reactor coolant system temperature is above 200° F. The amendment introduced Action statements to be taken if local leak rate testing, performed at power, exceeds allowable limits.

Date of Issuance: August 9, 1989

Effective date: August 9, 1989

Amendment No.: 33

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 24, 1988 (53 FR 32301). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By September 22, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's

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property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: August 3, 1989.

Brief description of amendment: The amendment raises the maximum allowed service water system inlet water temperature from 85° F to 90° F and raises the allowable containment air temperature from 120° F to 130° F.

Date of issuance: August 7, 1989

Effective date: August 7, 1989

Amendment No.: 143

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 7, 1989.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: August 4, 1989

Brief description of amendment: The amendment revises Technical Specification 3 to permit the plant to operate with a service water temperature above 90° F with containment air temperatures up to 130° F for up to seven hours before reaching the hot shutdown condition via normal operation procedures.

Date of issuance: August 11, 1989

EFfective date: August 11, 1989

Amendment No.: 87

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, consulation with the State, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 11, 1989.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

Dated at Rockville, Maryland, this 16th day of August, 1989.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 89-14729 Filed 8-22-89; 8:45 am]

BILLING CODE 7590-01-D

Generic Letter (GL) 89-10, Safety-Related Motor-Operated Valve Testing and Surveillance; Meeting

SUMMARY: The United States Nuclear Regulatory Commission (USNRC) is planning to hold three public meetings to discuss Generic Letter (GL) 89-10, "Safety-Related Motor-Operated Valve Testing and Surveillance." The purpose of these meetings is to discuss the guidance contained in Generic Letter 89-10 with operators of commercial nuclear power plants and near term operating license applicants of nuclear power plants. The NRC staff plans to make a brief presentation on the contents of the Generic Letter at each meeting. However, the main focus of these meetings will be to discuss questions received from licensees and applicants.

DATE AND LOCATION: These meetings will be held from 10:00 a.m.–5:00 p.m. on the following dates at the following locations:

September 18, 1989: O'Hare Marriott, 8535 West Higgins Road, Chicago, IL 60631, (312) 693-4444.

September 20, 1989: Registry Hotel, 3203 Quebec Street, Denver, CO 80207, (303) 321-3333.

September 26, 1989: Holiday Inn Crown Plaza, 1750 Rockville Pike, Rockville, MD 20852, (301) 468-1100.

FOR FURTHER INFORMATION CONTACT: Thierry M. Ross, U. S. Nuclear Regulatory Commission, Office of

Nuclear Reactor Regulation, Washington, D.C. 20555. Telephone (301) 492-3016.

SUPPLEMENTARY INFORMATION: These meetings are intended to be workshops where technical personnel from nuclear power plants or utility corporate offices may obtain information on expected responses to the Generic Letter. In order to assist NRC staff in preparing for these meetings, individuals planning to attend are requested to forward questions on the Generic Letter to their respective NRC Project Manager and to indicate the particular meeting they will attend. As time permits, additional questions will be solicited from the audience. Opportunities will be provided for the public to ask questions although priority will be given to nuclear utility personnel.

Dated at Rockville, Maryland this 16th day of August 1989.

For the Nuclear Regulatory Commission.

Thierry M. Ross,

Project Manager, Project Directorate III-2, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-19827 Filed 8-22-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 7-9, 1989 in Room P-110, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the **Federal Register** on July 26, 1989.

Thursday, September 7, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman—The ACRS Chairman will report on items of current interest.

8:45 a.m.–12:00 Noon: Maintenance of Nuclear Power Plants (Open)—The Committee will review and report on the proposed NRC policy statement and an associated draft regulatory guide related to maintenance programs at nuclear power plants.

1:00 p.m.–1:45 p.m.: Severe Accident Risks (NUREG–1150) (Open)—The Committee will meet with the NRC staff representatives to discuss the NRC staff's resolution of ACRS comments included in its report of May 9, 1989 regarding proposed use of NUREG–1150, Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants.

1:45 p.m.–4:15 p.m.: Individual Plant Examination for External Events (IPEEE) (Open)—A briefing and discussion with representatives of the NRC staff and the nuclear industry will be held regarding the status of the IPEEE program.

4:30 p.m.–5:30 p.m.: Industrial Sabotage (Open/Closed)—The Committee will review and report on a proposed resolution of Generic Issue A-29, Nuclear Power Plant Design for Reduction of Vulnerability to Industrial Sabotage.

Portions of this session will be closed as necessary to discuss information related to security provisions at nuclear power plants.

5:30 p.m.–6:15p.m. Accident Severity Scale (Open)—A briefing and discussion regarding proposed accident severity scale for use in the public announcement of nuclear power plant events and accidents will be held.

Friday, September 8, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–11:30 a.m.: Seabrook Nuclear Power Station, Unit 1 (Open)—

The Committee will review and report on the proposed off-site emergency preparedness for full power operation of the Seabrook nuclear power plant.

11:30 a.m.–12:00 Noon: Future ACRS Activities (Open)—The Comment will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1:00 p.m.–3:00 p.m. and 3:15 p.m.–4:15 p.m.: EPRI Requirements for Advanced Light Water Reactors (Open)—A briefing and discussion will be held regarding the status of the NRC review of the proposed EPRI Requirements for Advanced LWRs.

4:15 p.m.–5:15 p.m.: Improved RHR Capability for Residual Heat Removal Capability in LWRs (Open)

A briefing and discussion will be held regarding the NRC staff evaluation of the implementation of requirements pursuant to the NRC generic letter regarding this matter, including, in particular, the strictures pertaining to containment closure.

5:15 p.m.–5:45 p.m.: Advance Pressurized Water Reactors (Open)—A briefing and discussion will be held regarding the status of the NRC staff review of Westinghouse and Combustion Engineering standardized nuclear power plants.

5:45 p.m.–6:30 p.m.: Preparation of ACRS Reports to NRC (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Saturday, September 9, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–9:15 a.m.: Appointment of ACRS Members (Open/Closed)—The Committee will discuss qualifications of candidates proposed for nomination as ACRS Members.

Portions of this session will be closed as appropriate to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

9:15 a.m.–12:00 Noon: Preparation of ACRS Reports to NRC (Open)—The Committee will continue the discussion of the proposed ACRS reports to NRC regarding items considered during this meeting.

1:00 p.m.–1:45 p.m.: Subcommittee Activities (Open)—The Committee will discuss the status of assigned ACRS subcommittee activities, including activities of NRC regional offices.

1:45 p.m.–2:30p.m. Miscellaneous (Open)—The Committee will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would

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represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552(c)(6)) and Safeguards/Security Information applicable to specific nuclear facilities (5 U.S.C. 552b(c)(3)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling or requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 8:15 a.m. and 5:00 p.m.

Dated: August 21, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-20012 Filed 8-22-89; 9:11 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[New, Form 5, File No. 270-323; Rev., Form 4, File No. 270-125, Rev., Form 3, File No. 270-126]

Forms Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash, (202) 272-2142

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval amendments to Forms 3 and 4, as well as a new Form 5, which will restructure the manner in which transactions and holdings by persons subject to section 16 of the Securities Exchange Act of 1934 are reported. The amendments should reduce the number of filings on each form. With respect to Form 3, the Commission estimates that approximately 9,656 respondents would be effected at an estimated one-half burden hour per response. Form 4 would be filed by 69,162 persons annually at an estimated one-half burden hour per response. Form 5 would be filed by 40,500 persons at one burden hour per response. The estimated average burden hour are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of the Commission's rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0104, 0287, and 0362), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 17, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-19850 Filed 8-22-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-19572]

Application and Opportunity for Hearing; Delta Air Lines, Inc.

August 17, 1989.

Notice is hereby given that Delta Air Lines, Inc. (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (hereinafter referred to as the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Citizens and Southern Trust Company (Georgia), National Association (the "Bank") under ten indentures (the "1989 Indentures") to be qualified under the Act relating to the 1989 Equipment Trust Certificates, Series A through J, under seven indentures dated October 25, 1988 (the "1988 Indentures") that were qualified under the Act relating to 1988 Equipment Trust Certificates, Series A through G, and under an indenture dated January 1, 1988 (the "Other Indenture") that was not qualified under the Act because the securities were exempt from registration under the Securities Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bank from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the 1988 Indentures, the Company has issued $253,471,000 aggregate principal amount of 1988 Equipment Trust Certificates, Series A through G, (the "1988 Certificates") and pursuant to the Other Indenture, the Company has outstanding $44,900,000 aggregate principal amount of its Development Authority of Clayton County Special Facilities Adjustable Tender Revenue Refunding Bonds, Series 1988 (Delta Air Lines, Inc. Project) (the "Bonds"). The 1988 Certificates were registered under the Securities Act of 1933 (the "1933 Act") and the 1988 Indentures were qualified under the Act. The Bonds were exempt from registration and the Other Indenture was not qualified under the Act.

(2) Pursuant to the 1989 Indentures, the Company will issue $285,963,000 aggregate principal amount of its Equipment Trust Certificates, Series A through J (the "1989 Certificates"). The 1989 Certificates will be registered under the 1933 Act and the 1989 Indentures will be qualified under the Act.

(3) The Company is not in default under the 1988 Indentures or the Other Indenture. The Company's obligations under the 1989 Indentures, the 1988 Indentures and the Other Indenture are general, wholly unsecured obligations and rank *pari passu inter se.* Each of the 1988 Indentures and 1989 Indenture is separately collateralized by a security interest in different aircraft and the lease relating thereto. The Other Indenture is secured by payments made pursuant to a Loan Agreement and Promissory Note.

(4) The provisions of the 1988 Indentures, the Other Indenture and the 1989 Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under said Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter. For a more detailed statement of the matters of fact and law asserted, all persons are referred to as said application which is on file in the Office of the Commission's Public Reference Section, File Number 22-19572, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, no later than September 10, 1989 request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19844 Filed 8-22-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24941]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 17, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 11, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

QMT Holding Company, Inc. (70-7274)

QMT Holding Company, Inc., ("QMT"), an Illinois corporation, 607 East Adams Street, Springfield, Illinois 62739, has filed an application and amendments thereto pursuant to sections 3(a)(1), 9(a)(2), and 10 of the Act. The latest amendment was filed on May 24, 1989. A notice in this matter was previously issued on September 11, 1986 (HCAR No. 24189).

QMT requests an order of the Commission (1) approving QMT's proposed acquisition of all of the outstanding shares of common stock of Central Illinois Public Service Company ("CIPS"), an Illinois corporation, and the indirect acquisition of 20% of the outstanding shares of capital stock of Electric Energy, Inc. ("EEI"), also an Illinois corporation, through CIPS' ownership of these shares, and (2) granting QMT and its subsidiary companies, upon consummation of the proposed transaction, an exemption under section 3(a)(1) of the Act from all provisions of the Act except section 9(a)(2).

QMT was incorporated by CIPS on July 11, 1986, for the purpose of acquiring all of CIPS' common stock. QMT proposes to acquire all of CIPS' common stock by exchanging shares of its authorized common stock for all of the currently outstanding shares of CIPS common stock ("Stock Exchange"). QMT currently owns no utility assets and is not a holding company under the Act. QMT states that the purpose of the reorganization is to provide the flexibility and capability to make investments in other business ventures.

CIPS is a public-utility company and an exempt holding company by reason of filing exemption statements pursuant to rule 2 under the Act. It is principally engaged in the generation, transmission, distribution, and sale of electricity in central and southern Illinois to approximately 306,000 customers in 550 communities and adjacent suburban and rural areas. CIPS also furnishes natural gas service to approximately 157,000 Illinois customers in 257 communities and adjacent suburban and rural areas. CIPS' total operating revenues for 1988 were $616,188,000, of which $499,486,000 (81%) was from electric service and $116,702,000 (18%) was from gas service. CIPS does not provide electric or gas service outside of Illinois. As of December 31, 1988, CIPS had outstanding 34,171,873 shares of its common stock, no par value. CIPS also had 920,000 shares of preferred stock, $100 par value, outstanding as of this date.

CIPS owns 20% of the capital stock of EEI, which owns a 1,000 MW generating station at Joppa, Illinois. EEI was organized in 1950 by CIPS and several other public-utility companies ("Sponsoring Companies") primarily to supply a substantial portion of the electric power requirements of a federal atomic energy installation ("Installation") at Paducah, Kentucky, now administered by the Department of Energy ("DOE"). The Commission, taking notice of the Installation's importance to national defense, approved CIPS' acquisition of the capital stock of EEI in *Central Illinois Public Service Co.,* 32 S.E.C. 202, 204 (1951), and *Electric Energy, Inc.,* 38 S.E.C. 658, 660 (1958). All of the electricity sold by EEI is purchased by DOE and the Sponsoring Companies, and those sales are EEI's only sources of revenue. EEI does not sell electricity to private consumers and does not have any equity securities outstanding in the hands of the public. EEI had outstanding at December 31, 1988, $34,200,000 in short-term and long-term notes under two revolving credit agreements with banks.

CIPS' investment of $2,042,561 in its 20% interest in EEI is 0.12% of CIPS' total assets as of December 31, 1988. During the 12-month period ending December 31, 1988, CIPS received $2,248,619 as its share of EEI's net income, which amounted to 2.6% of CIPS' net income for that period.

QMT and CIPS intend that, as a result of the Stock Exchange, QMT will own all the outstanding common stock of CIPS. CIPS will continue to own 20% of the capital stock of EEI. Holders of CIPS preferred stock and first mortgage bonds will continue as security holders of CIPS. CIPS intends to submit the Stock Exchange to its share holders for their approval.

The proposed Stock Exchange was approved by an initial order of the Illinois Commerce Commission ("ICC"), dated October 7, 1987; however, consideration of other issues, including the issue of "compensatory payments" to CIPS from nonutility affiliates, resulted in a reopening of the case. The ICC issued its final order, which approved the transaction, on April 26, 1989. QMT filed its latest amendment on May 24, 1989, following receipt of the ICC's final order. The Federal Energy Regulatory Commission issued an order approving the transaction under the Federal Power Act on November 30, 1988.

Ohio Power Company (70-7633)

Ohio Power Company ("Ohio Power"), 301 Cleveland Avenue, SW., Canton, Ohio 44702, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

Ohio Power proposes to issue and sell through December 31, 1990, up to $100,000,000 aggregate principal amount of its First Mortgage Bonds ("Bonds"). The Bonds, which shall be offered from time to time in one or more series, will have maturities ranging from five to thirty years, with expected redemption protection for a period not to exceed 5 years. Interest rates and the price to be paid to Ohio Power for the Bonds will be determined by competitive bidding. If market conditions should not be propitious for the sale of the Bonds on a competitive bidding basis, Ohio Power proposes, subject to further authorization by the Commission, either to place the Bonds privately with institutional investors or to negotiate with underwriters for the sale of the Bonds.

Ohio Power states that the proceeds realized from the sale of the Bonds, together with any other funds which may become available to Ohio Power, will be used to refund Ohio Power's 12¾% Series First Mortgage Bonds due 2013 prior to their stated maturity (or to retire short-term indebtedness issued for such purpose), to repay other short-term indebtedness at or prior to maturity, to reimburse Ohio Power's treasury for expenditures incurred in connection with its construction program and for other corporate purposes.

Alabama Power Company (70-7673)

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, a wholly owned subsidiary of The Southern Company, a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

Alabama proposes to sell to Chemical Waste Management, Inc. ("Chemical Waste") certain distribution facilities for a sale price of $139,972.97. Alabama will obtain from its first mortgage bond Trustee a release of the Facilities from the lien of Alabama's first mortgage indenture.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19843 Filed 8-22-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1298]

Shipping Coordinating Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct a public meeting at 1000 on Monday, 11 September 1989 in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC in preparation for:

1. The upcoming 6th and final session of the International Maritime Organization (IMO)/United Nations Conference on Trade and Development (UNCTAD) Joint Intergovernmental Group of Experts (JIGE) on Maritime Liens and Mortgages (London, 25–29 September 1989);

2. The 61st session of the IMO Legal Committee (London, 28–29 September 1989); and

3. The anticipated 3rd session of the Intergovernmental Talks hosted by the United Kingdom on the question of liability and compensation related to maritime carriage of hazardous and noxious substances (HNS) (London, 21–22 September 1989).

By way of background concerning the IMO/UNCTAD JIGE, since 1986 this body has been considering possible changes in existing international treaties relating to maritime liens and mortgages and to vessel arrest. In view of progress to date, a new draft maritime liens and mortgages treaty will probably be finalized by this September. Consequential revisions to the 1952 Convention on the Arrest of Seagoing Ships may also be developed.

On 20 June 1989, the U.S. submitted a position paper for the sixth JIGE session. In further preparation for the upcoming negotiating session, a final reading of both the latest draft of the new Maritime Liens and Mortgages Convention and the 1952 Arrest Convention will be conducted at the public meeting.

With respect to HNS liability and compensation, the IMO Legal Committee resumed work on this subject in 1987 in an effort to develop an international HNS regime which will prove more acceptable than that which was considered but not adopted at a 1984 Diplomatic Conference. It should be noted that implementation of an international HNS regime would have significant impacts on a wide range of U.S. interests related to the maritime and chemical industries, government and the environment.

Recent negotiating developments indicate a continuing strong international desire to expedite this HNS work. In light of this desire, in addition to the anticipated intergovernmental talks, HNS liability and compensation may also be discussed at the IMO Legal Committee's two-day 61st session. U.S. positions concerning the preferred approach to development of the proposed new international HNS regime are currently being developed, and progress will be discussed at the 11 September 1989 public meeting.

The foregoing topics will be discussed extensively at the open SHC meeting. The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested.

Members of the public are invited to attend the 11 September 1989 SHC meeting, up to the seating capacity of the room.

For further information or to submit views concerning any of the topics to be discussed at the SHC meeting, contact either Captain Jonathan Collom or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G-LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1527, telefax (202) 267–4163.

Dated: August 14, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89-19808 Filed 8-22-89; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1299]

Shipping Coordinating Committee; 16th Session of Assembly and Associated Bodies; Meeting

The Shipping Coordinating Committee, (SHC), will conduct an open meeting at 9:30 a.m. on Monday, October 2, 1989 in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. The purpose of the meeting is to finalize preparations for the 16th Session of Assembly and associated bodies of the International Maritime Organization, (IMO), which is scheduled for October 9–20, 1989 at the IMO Headquarters in London. The purpose of the meeting is to discuss the papers received and the draft U. S. Positions for the 16th Session.

Inter alia, the items of particular interest are:

—Reports of the various Committees
—Reports on Diplomatic Conferences
—28th Session Marine Environment Protection Committee (re: Amendment to Annex V; MARPOL 73/78)
—Report on the implementation of Resolution A.500 (XII)

—Approval of appointment of the new Secretary-General
—Work Programme and Budget
—Arrears of Contributions

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: CAPT M. C. Grace, U. S. Coast Guard (G-CI), 2100 Second Street SW, Washington, DC 20593 or by calling: (202) 267–2280.

Dated: August 11, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89-19810 Filed 8-22-89; 8:45 am]

BILLING CODE 4710-07-M

Director General of the Foreign Service and Director of Personnel

[Public Notice 1124]

State Department Performance Review Board Members

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following members to the State Department Performance Review Board register.

John P. Boright, Director, Office of Nuclear Technology and Safeguards
Mark M. Lowenthal, Office Director, Office of Strategic Forces Analysis, Bureau of Intelligence and Research
Michael J. Matheson, Deputy Legal Adviser, Office of the Legal Adviser
Michele E. Truitt, Director, Office of Consular Fraud Prevention Programs
Joyce Fleischman, Deputy Inspector General, Department of Interior
Gene Richardson, Assistant Inspector General for Investigations, Agency for International Development
Kenneth Hunter, Deputy Assistant Secretary for Personnel
Gloria Gaston-Shapiro, Public Member

Dated: August 11, 1989.

Kenneth Hunter,

Deputy Assistant Secretary for Personnel.

[FR Doc. 89-19809 Filed 8-22-89; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 89-8-35; Docket 46343]

Application of Ryan International Airlines, Inc. for a Fitness Redetermination

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not (1) find Ryan International Airlines, Inc., fit, willing, and able to resume interstate and overseas cargo air transportation, subject to conditions; and (2) reissue the carrier's sections 401 and 418 certificates of public convenience and necessity to reflect the change in name from PHH Air, Inc., to Ryan International Airlines, Inc.

DATES: Persons wishing to file objections should do so no later than September 1, 1989.

ADDRESSES: Objections and answers to objections should be filed in Docket 46343 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Delores King, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2343.

Dated: August 17, 1989.

Samuel W. Fairchild,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-19765 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Aviation, Marine and Land Radionavigation Users Conference

AGENCY: Federal Aviation Adminstration (FAA), DOT.

ACTION: Notice of conference.

SUMMARY: An Aviation, Marine and Land Radionavigation Users Conference will be conducted in Washington, DC on November 16 and 17, 1989. The purpose of the conference is to present to the users and suppliers of navigation equipment the opportunity to comment on current plans and policy for federally provided systems which satisfy aviation, marine, inland waterway and land radionavigation requirements.

Date, Time and Place: November 16 and 17, 1989 beginning 9:00 am each day at the Crystal Gateway Marriot Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia. November 16 will focus primarily on marine and land requirements. November 17 will focus primarily on aviation requirements.

Further Information: For aviation information contact Thomas H. Higgins, Advanced Systems Design Service, Federal Aviation Administration, Department of Transportation (ADS-110), 800 Independence Avenue SW., Washington, DC 20591, (202) 267–9844. For marine and land information contact David C. Scull, Office of Research and Technology, Research and Special Programs Administration, Department of Transportation (DRT-20), 400 7th Street, SW., Washington, DC 20590, (202 366–4355.

SUPPLEMENTARY INFORMATION: Each day the meeting will open with an overview of the federal radionavigation planning process, the federal Radionavigation Plan, and current plans and policy for Federally operated radionavigation systems. This information relates to the selection of a future mix of radionavigation systems as required by the Federal Radionavigation Plan. An opportunity will be provided for organizations or individuals representing the users and suppliers of radionavigation systems to participate in the meeting and make their comments to representatitives of FAA, Coast Guard, RSPA, Maritime Administration and other government agencies participating in the conference.

Issued in Washington, DC on August 10, 1989.

Jerry W. Bradley,

Manager, Requirements & CNS Concepts Branch.

[FR Doc. 89-19789 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 135—Environmental Conditions and Test Procedures for Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92–463; 5 U.S.C. App. I), notice is hereby given for the fifteenth meeting of RTCA Special Committee 135 on Environmental Conditions and Test Procedures for Airborne Equipment to be held September 19–21, 1989, in the Society of Automotive Engineers Headquarters, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096, commencing at 9 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) introduction of attendees; (3) approval of the fourteenth meeting's minutes, RTCA Paper No. 270–89/SC135–302; (4) review the fifth draft of the proposed revision to DO–160B/ED–14B, RTCA Paper No. 269–89/SC135–301 (section reviews will be coordinated by assigned Change Coordinators); (5) review completion schedule for revised draft; (6) review new proposal for section 22.0, "Lightning Induced Transient Susceptibility"; (7) other business; (8) date and place of next SC-135 meeting and future joint meetings of SC-135/WG-14; and (9) joint plenary meeting with ISO/TC 20/SC 5 (last day of 3-day meeting, September 21, 1989).

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 16, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89-19790 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

Manufacturing Inspection District Office at Dallas-Fort Worth Airport; Opening

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Information Notice.

SUMMARY: This Notice announces that the Manufacturing Inspection District Office (MIDO) will be moving from the Fort Worth Regional Office to the Dallas-Fort Worth (DFW) International Airport. This move involves moving the office for six employees approximately 20-miles. Additional space is needed to accommodate present personnel and increased staffing that is anticipated for a tiltrotor certification program and for increased production surveillance activities. The present office space cannot be expanded to accommodate increased staffing and the DFW location will allow a more centralized location in which to better serve the public.

OPENING DATE: September 1, 1989.

ADDRESSES: Federal Aviation Administration, DFW MIDO-42, DFW Business Center, Suite 325, DFW International Airport, Texas 75261.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Merrill, Manager, Manufacturing Inspection Office, ASW-180, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0180, telephone No. (817) 624-5180 or FTS 734-5180.

Issued in Fort Worth, Texas.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service

[FR Doc. 89-19668 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: August 17, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New

Form Number: 8818

Type of Review: New Collection

Title: Record of Redemption of College Savings Bonds Issued After 1989

Description: If an individual redeems U.S. Savings Bonds issued after 1989 and pays qualified higher education expenses during the year, the interest on th bonds is excludable from income. The form can be used by the individuals to keep a record of the bonds cashed so that he or she can claim the proper interest exclusion.

Respondents: Individuals or households

Estimated Number of Respondents: 25,000

Estimated Burden Hours Per Response/Recordkeeping: Recordkeeping, 7 minutes; Learning about the law or the form, 3 minutes; Preparing the form, 15 minutes.

Frequency of Response: Other (kept by taxpayers)

Estimated Total Recordkeeping/Reporting Burden: 20,500 hours.

OMB Number: 1545-0126

Form Number: 1120F

Type of Review: Revision

Title: U.S. Income Tax Return of a Foreign Corporation

Description: Form 1120F is used by foreign corporations that have investments, or a business, or a branch in the U.S. The IRS uses Form 1120F to determine if the foreign corporation has correctly reported its income, deductions and tax and if it has paid the correct amount of tax.

Respondents: Businesses or other for-profit

Estimated Number of Respondents: 18,000

Estimated Burden Hours Per Response/Recordkeeping: Recordkeeping, 100 hours, 55 minutes; Learning about the law or the form, 29 hours, 34 minutes; Preparing the form, 55 hours, 47 minutes; Copying, assembling, and sending the form to IRS, 6 hours, 42 minutes.

Frequency of Response: Annually

Estimated Total Recordkeeping/Reporting Burden: 3,600,000 hours

OMB Number: 1545-0892

Form Number: 8300

Type of Review: Revision

Title: Report of Cash Payments over $10,000 Received in a Trade or Business

Description: Anyone in a trade or business who, in the course of such trade or business, receives more than $10,000 in cash or foreign currency in one or more related transactions must report it to the IRS and provide a statement to the payor. Any transactions which must be reported under Title 31 on Form 4789 is exempted from reporting the same transaction on Form 8300.

Respondents: Farms, Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations

Estimated Number of Respondents: 8,300

Estimated Burden Hours Per Response/Recordkeeping: 18 minutes

Frequency of Response: On occasion

Estimated Total Recordkeeping/Reporting Burden: 9,127 hours

OMB Number: 1545-0956

Form Number: 5500EZ

Type of Review: Revision

Title: Annual Return of One-Participant (Owners and Their Spouses) Pension Benefit Plan

Description: Form listed in item 4 is an annual return filed by a one-participant or one-participant and spouse pension plan. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 50,000

Estimated Burden Hours Per Response/Recordkeeping: Recordkeeping, 10 hours, 17 minutes; Learning about the law or the form, 1 hour, 4 minutes; Preparing the form, 2 hours, 13 minutes; Copying, assembling, and sending the form to IRS, 16 minutes.

Frequency of Response: Annually

Estimated Total Recordkeeping/Reporting Burden: 691,000 hours

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-19779 Filed 8-22-89; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

Supplement to Department Circular—Public Debt Series—No. 23-89

Treasury Bonds of 2019

Washington, August 11, 1989.

The Secretary announced on August 10, 1989, that the interest rate on the bonds designated Bonds of 2019, described in Department Circular—Public Debt Series—No. 23-89 dated August 3, 1989, will be 8⅛ percent. Interest on the bonds will be payable at the rate of 8⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-19768 Filed 8-22-89; 8:45 am]

BILLING CODE 4810-40-M

Supplement to Department Circular—Public Debt Series—No. 22-89

Treasury Notes, Series C-1999

Washington, August 10, 1989.

The Secretary announced on August 9, 1989, that the interest rate on the notes designated Series C-1999, described in Department Circular—Public Debt Series—No. 22-89 dated August 3, 1989, will be 8 percent. Interest on the notes will be payable at the rate of 8 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-19769 Filed 8-22-89; 8:45 am]

BILLING CODE 4810-40-M

Supplement to Department Circular—Public Debt Series—No. 21-89

Treasury Notes, Series T-1992

Washington, August 9, 1989.

The Secretary announced on August 8, 1989, that the interest rate on the notes designated Series T-1992, described in Department Circular—Public Debt Series—No. 21-89 dated August 3, 1989, will be 7⅞ percent. Interest on the notes will be payable at the rate of 7⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-19770 Filed 8-22-89; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

[T.D. 89-80]

Guidance for Interpretation of Harmonized System

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice giving guidance on use of certain documents to Interpret Harmonized Tariff Schedule of the United States.

SUMMARY: Since the entry into force of the Harmonized Tariff Schedule, much interest has been generated in the international trade community as to the weight accorded by Customs to various types of documents by the Customs Cooperation Council. This document sets forth Customs views regarding these documents.

FOR FURTHER INFORMATION CONTACT: Paul Giguere, Director, International Nomenclature Staff, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-8530).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 1204 of Public Law 100-418, the Omnibus Trade and Competitiveness Act of 1988, the Harmonized Tariff Schedule of the United States (HTS) was implemented effective as to merchandise entered or withdrawn for consumption on or after January 1, 1989.

Since the implementation of the HTS, Customs has been urged to take into consideration a host of documents as background documentation in the classification of goods. These have included, not only the Explanatory Notes to the Harmonized System (HS), but such documents as reports of the Nomenclature Committee (the committee that administered the Customs Cooperation Council Nomenclature), letters from the Secretariat of the Customs Cooperation Council (CCC) and rulings and regulations from other Customs administration. All of these matters are urged on Customs as an indication of the intent of the Harmonized System Committee (HSC) in drafting the system, or, sometimes, on the grounds that Customs has an obligation to interpret the HTS in uniformity with the interpretation of the CCC or that of other Contracting Parties to the Convention on the Commodity Description and Coding System (the Convention).

This notice explains Customs position on the various documentation that is available and gives an overall assessment of the weight that should be accorded to the various documents.

Uniformity in the interpretation of the international system, the HS, is not a function of Customs. Customs is charged with the administration and interpretation of the HTS, the tariff enacted by Congress. The function of maintaining the uniform application of the HS resides with the HSC per Article 7 of the Convention. It is fundamental that the United States did not give up sovereignty when it acceded to the Convention. There is, as such, no obligation on Contracting Parties for uniform application of the HS. There is, however, an obligation on Contracting Parties to "not modify the scope of the sections, chapters, headings or subheadings of the Harmonized System." Consequently, Customs takes background documentation into consideration so that classification rulings do not so modify the system.

The Committees

An understanding of the documentation issued by the CCC requires some background into the various committees that dealt with the HS. The HS was drafted by a committee known as the HSC. Unfortunately this is the same name as the committee formed under the Convention, and this has produced some confusion. Four committees have dealt with the HS: (1) The HSC which existed from 1973 to 1983; (2) the Interim HSC; (3) the HSC formed under the Convention; and (4) the Nomenclature Committee.

The drafting Harmonized System Committee: The HSC which was charged with drafting the HS met in 31 sessions from June 1973 to June 1983. Its reports are designated: Summary Record of the xx Session of the Harmonized System Committee and its Working Party.

The Interim Harmonized System Committee (IHSC): This committee met in 9 sessions, jointly with the Nomenclature Committee, from 1983 till the Convention went into force on January 1, 1988. It drafted the HS Explanatory Notes and reviewed the Compendium of Classification Opinions. Although it had no particular legal standing it did make proposals for amending the HS.

The Harmonized System Committee: The committee formed under the Convention. It is the committee currently charged with the administration of the Convention. It meets twice a year and held its first session in April 1988.

The Nomenclature Committee: The committee formed to administer the Customs Cooperation Council Nomenclature (CCCN) (first known as the Brussels Tariff Nomenclature), the nomenclature which is replaced by the HS. Because the Nomenclature Committee had agreed to amend the CCN to conform to the HS, it reviewed the work of the HSC to see if it found it acceptable for purposes of the CCCN.

The Documents

Explanatory Notes

The status of the Explanatory Notes (ENs) to the HS is specifically addressed in the report of the Joint Committee on the Omnibus Trade and Competitiveness Act of 1988. It is there stated:

> The Explanatory Notes constitute the Customs Cooperation Council's official interpretation of the Harmonized System. They provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system.
>
> The Explanatory Notes were drafted subsequent to the preparation of the Harmonized System nomenclature itself, and will be modified from time to time by the CCC's Harmonized System Committee. Although generally indicative of proper interpretation of the various provisions of the Convention, the Explanatory Notes, like other similar publications of the Council, are not legally binding on contracting parties to the Convention. Thus, while they should be consulted for guidance, the Explanatory Notes should not be treated as dispositive.

This is a clear statement of the intent of Congress in adopting the HS as a basis for the U.S. Tariff. The status outlined by the Joint Committee of Congress applies only to the ENs and "similar publications of the Council." In that connection Customs would point out that the only similar publication of the Council is the Compendium of Classification Opinions.

Among the international conventions administered by the CCC, the HS is a replacement for the former CCCN. There were ENs to the CCCN and they are sometimes cited in requests for rulings. The CCCN ENs have no value in interpreting the HS. They are the ENs to a different system; one which is now virtually nonexistent since most nations have adopted the HS.

It should also be noted that the ENs are a dynamic instrument reflecting the intent of the Contracting Parties on the application and interpretation of the HS. They will be amended from time to time and may thus reflect a change in interpretation. Customs believes they should always be consulted.

Classification Opinions

The CCC publishes a Compendium of Classification Opinions. These opinions represent decisions by the HSC on the classification of various products that were presented to the HSC for consideration. When a classification question is presented to the HSC, the Committee will frequently draft an opinion to be published in the Compendium. However, that is not always the case. Sometimes the decision of the HSC is converted into an amendment to the ENs, and sometimes it is merely reported in the report of the session of the HSC when the decision was made. The decision is included in the Compendium when it is thought to be particularly instructive.

When a decision of the HSC is published in the Compendium it should receive the same weight as ENs. They constitute the official interpretation of the HS in consideration of a particular issue placed before the HSC.

There was also a Compendium of Classification Opinions under the CCCN. The Interim HSC reviewed that Compendium and adopted into the HS Compendium a number of the CCCN opinions. Approximately 20 percent of the CCCN opinions were carried over to the HS. The remainder were discarded, some because they were outdated, some because their substance had been incorporated into the HS ENs and some because they were thought to be erroneous under the HS. Opinions reported in the CCCN Compendium have no validity under the HS for the same reasons the CCCN ENs are not valid under the HS.

HSC Reports Prior to July 1983

The HSC prior to 1983 was tasked with drafting the HS. This required numerous decisions and these are reported in the Summary Records of the HSC sessions. The Summary Records of HSC sessions are a resource in ascertaining the intent of the Committee in the drafting of any particular text. Because the sessions were long and rather involved, the deliberations of the Committee are reported only in summary form. The Summary Records do contain reports on a number of decisions of the HSC. When such decisions are clearly reported they constitute history for the text concerned. The Summary Records are available to the public through the Department of Commerce National Technical Information Service. While these documents do not carry the weight of the ENs or the Compendium of Classification Opinions, they are frequently guides to the intention of the HSC.

Interim HSC Reports

The IHSC drafted the ENs and reviewed the CCCN Compendium of Classification Opinions. The reports of this Committee have the same relationship to those documents as do the Summary Records of the HSC to the legal texts of the HS. Since the ENs have no legal standing, these reports are not considered history for the HS. Customs considers them to be instructive in some instances.

The IHSC also considered a number of amendments to the HS. Because the IHSC had no defined standing, all of the IHSC decisions on amendments were referred to the HSC when the Convention came into force. Therefore, for some of the proposed amendments to the HS, background information can be found in the reports of the IHSC.

Report of the HSC After 1/1/88

The Convention went into force on January 1, 1988, and sessions thereafter are reported in Reports of the Harmonized System Committee. The first session was held in April 1988. Decisions of this committee are advice and guides to the interpretation of the HS. None of these decisions are binding, but Customs considers that they often provide valuable insight into how the HSC views certain provisions.

In rendering its decisions, the HSC also usually decides whether the decision merits an amendment to the ENs, the issuance of a classification opinion to be added to the Compendium, or to merely report the decision in the report of the session. If the decision results in amendment of the EN or goes into the Compendium, it, then, should receive considerable weight. As Congress made clear, however, the decision should not be treated as dispositive.

Decisions of the HSC that are merely given in the report should be given little weight.

Decisions to amend the HS itself need to go through the amendment procedure provided in the Convention. They require domestic legislation to go into effect in the United States.

Nomenclature Committee Reports

Customs is frequently asked to consider reports of the Nomenclature Committee. They carry virtually no weight. Decisions of the Nomenclature Committee cannot imply an intent on the HSC. They are two separate committees, differently constituted, and set up for different purposes.

Normally, the HSC received reports from the Nomenclature Committee without comment. When the HSC adopted an opinion or decision of the Nomenclature Committee it was specifically noted in the Summary Record.

When the HS was drafted it was decided to prepare an entirely new convention to implement it. It was the intention of the HSC to start anew; to have a new convention unencumbered by the many years of action by the Nomenclature Committee. Although the HS is primarily based on the CCCN, it is a new and different nomenclature with a convention that provides for substantial difference in its voting membership. Customs finds that there is no reason to believe that questions decided by the Nomenclature Committee would produce the same result in the HSC.

Working Documents

Customs calls "working documents" those documents issued by the Nomenclature and Classification Directorate of the CCC. These are the documents that form the basis for discussions in HSC sessions. They carry virtually no weight in interpreting the system. Working documents usually consist of commentary by delegations on questions before the Committee, commentary by the Secretariat on various drafts and proposals, commentary by the Secretariat on the comments made by delegations, and other material designed to frame the question the HSC is to discuss and to stimulate the discussion. Because it is preliminary material, none of it reflects the intent of the HSC.

The working documents are sometimes interesting because they contain more detailed descriptions of the goods under consideration and they sometimes contain the rationale for certain positions.

Rulings of Other Countries

The General Rules for the Interpretation of the Harmonized System, the Section and Chapter Notes and the first six digits of the Harmonized System constitute the international nomenclature. Therefore, in principle, all Contracting Parties to the Convention should give the same classification to identical merchandise through the six-digit subheading level. In this regard, classification rulings from other Customs administrations are sometimes submitted to Customs with a ruling request as evidence of how similar merchandise has been classified under the HS by that country.

Customs is not bound to abide by another country's rulings. The foreign ruling may have been subject to political realities or domestic regulations which are different from our own. The merchandise at issue in our ruling may not be identical to that in the foreign ruling. In either case, the foreign ruling is unlikely to describe fully the context in which it was issued. Therefore, at best, the foreign ruling is merely instructive of how others may classify like goods.

Position Papers

Prior to each session of the HSC, Customs, the International Trade Commission and the Bureau of the Census prepare position papers to reflect the position to be taken by the U.S. delegation at the session. These documents in no way reflect the position of Customs in the interpretation of the HTS. Position papers are guides for the delegation in the context of the HSC session; they are essentially negotiating positions. They are mentioned here because some position papers have received some circulation and have been cited in support of a classification; they have no value whatever for such purposes.

Summary

Customs is charged with the interpretation of the HTS and not, as such, of the HS.

Customs concern in looking at documents is to find the scope of headings and subheadings of the HTS.

As indicated by Congress, Customs will give considerable weight to Explanatory Notes and the Compendium of Classification Opinions because they are the official interpretation of the HS, but they shall not be treated as dispositive.

When it is necessary to determine the intent of the HSC, Customs will look to the Reports and Summary Records of the HSC.

Other documentation may be consulted for information purposes only.

Approved: August 16, 1989.

D. Lynn Gordon,

Assistant Commissioner, Commercial Operations.

[FR Doc. 89-19763 Filed 8-22-89; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 162
Wednesday, August 23, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 17, 1989.

TIME AND DATE: 10:00 a.m., Thursday, August 24, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor, MSHA* v. *Garden Creek Pocahontas Co.*, Docket No. VA 88-9, etc. (Issues include whether certain injuries were "occupational injuries" required to be reported to MSHA pursuant to 30 CFR 50.20(a).)

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10))

The meeting will be closed after discussion of the above.

The Commission will continue its consideration of the following:

2. *Westwood Energy Properties*, Docket No. PENN 88-42-R. (Issues include whether Secretary has jurisdiction under the Mine Act to inspect operations involving a culm bank at Westwood's power plant.)

3. *FMC Wyoming Corporation*, Docket No. WEST 88-43-RM, etc. (Issues include whether FMC Wyoming's violation of 30 CFR 57.5002 was a significant and substantial contribution to a mine health hazard and the result of FMC's unwarrantable failure to comply, and whether FMC violated 30 CFR 57.18002.)

Any person intending to attend the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629/(202) 708-9300 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-19970 Filed 8-21-89; 12:07 pm]

BILLING CODE 6735-01-M

Corrections

Federal Register
Vol. 54, No. 162
Wednesday, August 23, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ89-3-27-000]

North Penn Gas. Co.; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 89-19263 beginning on page 33964 in the issue of Thursday, August 17, 1989, make the following corrections:

1. On page 33964, in the third column, the date preceding the first paragraph of the document is corrected to read "August 11, 1989".

2. On page 33965, in the first column, the FR Doc. line is corrected to read:

[FR Doc. 89-19263 Filed 8-16-89; 8:45 am]

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA 6959]

Proposed Flood Elevation Determinations

Correction

In proposed rule document 89-15012 beginning on page 26802 in the issue of Monday, June 26, 1989, make the following corrections:

1. On page 26802, in the table, in the third column, "Campbell" should read "Campbell Creek".

2. On page 26803, under "Arizona", in the second column, insert a comma after "City of Casa Grande".

3. On the same page under the same State in the last column, in the second entry, "1368" should read "*1368".

4. On the same page, under "California", in the second and third columns, remove the second and fourth entries respectively.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 484

[BERC-476-IFC]

RIN 0938-AD45

Medicare Program; Home Health Care Agencies: Conditions of Participation and Reduction in Recordkeeping Requirements

Correction

In rule document 89-18762 beginning on page 33354 in the issue of Monday, August 14, 1989, make the following correction:

On page 33369, in the third column, following § 484.12(c), remove the FR Doc. line and the Billing Code line.

BILLING CODE 1505-01-D

federal register

Wednesday
August 23, 1989

Part II

Office of Personnel Management

Department of Agriculture; Proposed Demonstration Project; Notice

OFFICE OF PERSONNEL MANAGEMENT

Proposed Demonstration Project; Department of Agriculture

AGENCY: Office of Personnel Management.

ACTION: Notice of a proposed demonstration project.

SUMMARY: Title VI of the Civil Service Reform Act authorizes the Office of Personnel Management (OPM) to conduct demonstration projects which experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedure would result in improved Federal personnel management. This notice meets the legal requirement under Title VI that OPM publish a project plan in the **Federal Register** before conducting, or entering into any contract or agreement to conduct, a demonstration project.

DATES: *Comment date:* To be considered, written comments must be received on or before October 23, 1989. *Hearing date:* A public hearing will be held on the proposed plan on October 18, 1989, at the Jefferson Auditorium, U.S. Department of Agriculture, South Building, 14th and Independence Avenue SW., Washington, DC, beginning at 10:00 a.m.

ADDRESSES: Comment address: Written comments may be addressed to Donna Beecher, Assistant Director for Systems Innovation and Simplification, U.S. Office of Personnel Management, 1900 E Street NW., Room 7638, Washington, DC 20415. Public hearing address: Jefferson Auditorium, U.S. Department of Agriculture, South Building, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: (1) On proposed demonstration project and public hearing: Mary Ellen Recchia, U.S. Department of Agriculture, (202) 447–8580; (2) on proposed demonstration project, Paul R. Thompson, Office of Personnel Management, (202) 632–6164.

SUPPLEMENTARY INFORMATION: On proposed demonstration project: the Department of Agriculture has submitted a proposed demonstration project for consideration under chapter 47 of title 5, U.S. Code entitled "The U.S. Department of Agriculture Demonstration Project."

The purpose of the project is to demonstrate a flexible and responsive staffing system which will permit managers to attain a quality workforce reflective of society. To this end, the demonstration project tests four major innovations in current personnel policy and practice:

(1) Delegation of authority for the day-to-day recruitment and hiring process to the agency for internal redelegation, as appropriate;

(2) A streamlined candidate assessment and selection process, based on greater delegation of direct hire authority and replacement of numerical ratings with broad quality groupings;

(3) Recruitment incentives, including bonuses and relocation expenses, to attract candidates to hard-to-fill positions; and

(4) Establishment of a 2–3 year provisional appointment, to provide greater opportunity to evaluate employee performance before granting career status.

The demonstation project will cover up to 5000 newly hired employees, at any given time, at over 130 locations within the Forest Service and the Agricultural Research Service. Covered employees will represent all occupational groups and grade levels (excluding SES) at the project sites, including both General Schedule (GS) and Federal Wage System (FWS) employees.

On public hearing: A public hearing will be conducted by OPM at the Department of Agriculture in Washington, DC on October 18, 1989. At this time, interested persons or organizations may present their written or oral comments on the proposed demonstration project. The hearing will be informal. However, anyone wishing to testify should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**," so that OPM can plan the hearing and provide sufficient time for all interested persons and organizations to be heard. Priority will be given to those on the schedule, with others speaking in any remaining available time. Each speaker's presentation will be limited to 10 minutes. The hearing record will be left open two weeks, until November 1, 1989, to receive additional written data, comments, and arguments from hearing participants.

U.S. Office of Personnel Management.

Constance B. Newman,

Director.

The plan for the proposed demonstration project reads as follows:

U.S. Department of Agriculture, Demonstration Project—Project Plan

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I. Executive Summary

A. Purpose

The purpose of this demonstration project is to develop a recruitment and selection program for new hires that is flexible and responsive to local recruitment needs and which will facilitate the attainment of a quality workforce reflective of society.

In support of this goal, the following project objectives have been identified:

(1) Increase the flexibility and responsiveness of the recruitment and hiring system.

(2) Increase the reliability of the decision to grant career tenure.

During the course of this project, the following interventions will be tested:

(a) Decentralize the decision to authorize direct hire in shortage categories.

(b) Establish an alternative candidate assessment method which uses categorical grouping instead of numeric score.

(c) Provide monetary incentives for recruitment purposes.

(d) Reimburse travel and transportation expenses beyond those currently authorized for travel to first post of duty.

(e) Make initial appointments on a provisional basis, with career tenure earned through on-the-job performance.

B. Benefits To Be Derived From the Project

The combined changes are expected to simplify the hiring system, and to improve the ability of the agency to compete for quality candidates, reflective of society.

C. Project Administration

The project is a joint effort on the part of the U.S. Department of Agriculture Office of Personnel, the Agricultural Research Service, and the Forest Service. The project will be guided by an Executive Steering Committee and conducted through a project task group. Representatives from the Office of

Personnel, the Agricultural Research Service, and the Forest Service, will serve on both the steering committee and the task group, reflecting the joint nature of the project.

D. Participating Organizations

The demonstration project will be conducted entirely within the Agricultural Research Service and the Forest Service of the U.S. Department of Agriculture, at selected experimental and comparison sites, which have been listed in Appendix B. These sites may be subject to change prior to final implementation.

E. Types and Numbers of Participating Employees

Demonstration project coverage is limited to 500 employees hired under project provisions and currently serving under a provisional appointment or receiving a recruitment incentive. Since the project covers only prospective new hires, the occupational mix of participating employees cannot be identified precisely. Based on historical staffing patterns at the participating sites, it is anticipated that the annual breakdown of new hires will include the following approximate percentages for each of the participating agencies:

Agricultural Research Service: 17% scientific, 9% professional, 11% administrative, 36% technical, and 27% clerical and wage grade.

Forest Service: 2% scientific, 18% professional, 8% administrative, 43% technical, and 29% clerical and wage grade.

The most populous occupational series at the Agricultural Research Service include biological technician, entomologist, plant physiologist, and chemist. The most populous occupational series at the Forest Service include forester, forestry technician, engineering technician, and civil engineer.

F. Labor Participation

Agricultural Research Service employees are represented at various experimental locations by the American Federation of Government Employees (AFGE) and the National Federation of Federal Employees (NFFE); Forest Service employees are also represented by both AFGE and NFFE and by the National Association of Government Employees (NAGE).

Briefings will be conducted by both agencies during the developmental stage of the project. In accordance with 5 U.S.C. 4703 (f) and (g), the agencies will consult and negotiate, as appropriate, with employees and labor organizations before publication of the final project plan.

G. Methodology

This proposal provides a detailed description of the following interventions, or personnel system changes, to be tested and evaluated during the life of the project: (1) Delegated direct hire authority; (2) an alternative candidate assessment method; (3) recruitment incentives; (4) payment of travel and transportation expenses; and (5) a provisional appointment system.

H. Training

A comprehensive training effort will be accomplished prior to project implementation in order to ensure that project interventions are implemented as originally conceived.

I. Evaluation Plan

A preliminary evaluation plan has been designed for the purpose of measuring the outcomes expected to result from project implementation. The scope of the evaluation plan is intended to provide sufficient data to evaluate the Federal sector-wide applicability of each of the interventions.

The evaluation model is part of a quasi-experimental design using experimental and comparison groups matched for characteristics but not necessarily for population numbers. The model will provide statistical and historical data regarding the effects attributable to the experiemental treatments. Baseline data collection will occur pre-treatment, and data will be collected during the post-treatment period for comparison and analysis.

II. Introduction

A. Purpose

The project was conceived in response to managerial concern with the adequacy of the present recruiting and hiring system in light of the predicted recruitment challenges of the future, which have been described in recent publications including Workforce 2000, and Civil Service 2000, which were prepared by the Hudson Institute for the Department of Labor and The Office of Personnel Management, respectively. The purpose of this project is to develop and test an alternative system which will enable Federal managers to meet these challenges.

Workforce 2000 outlines an employment future characterized by a slowly growing population, which will result in slower labor force growth. This, in turn, is expected to result in tighter labor markets, with fewer well-educated workers available, and increased competition among employers for available candidates.

Civil Service 2000 provides the following analysis of the impact of these trends within the Federal sector: "Because these tight labor markets are likely to develop in different ways in different states and to shift quickly in response to economic and population changes, it is essential to decentralize responsibility and to provide more flexibility in hiring and personnel management than is characteristic of the current system. Federal employers in locally tight or expensive labor markets must be able to compete for workers on a par with private employers if they are to continue to fulfill their responsibilities" (page 27).

This publication goes on to describe a slowly emerging crisis of competence, as labor markets become tighter and it becomes increasingly more difficult to hire qualified workers. The competition for qualified workers will only intensify, for coupled with slower labor force growth is the fact that substantial numbers of new entrants to the labor market will have lower levels of competence in language, math, and other basic skills. The inability of Federal agencies to adapt as easily as private employers to fluctuating labor market conditions means that,

"* * * some of them will be unable to compete successfully with the private sector, and may find it much harder to recruit and keep good employees" (page 30).

It is imperative that Federal managers and others in positions of responsibility prepare to meet the recruitment challenges of the future. This project was developed as part of a continuing effort to anticipate and successfully confront these challenges. The strategies and recommendations provided by Workforce 2000, Civil Service 2000, and other publications provided guidance and direction as we developed this project. It is our intention to evaluate the demonstration project in order to determine the extent to which each intervention impacts the recruitment and hiring program.

It is anticipated that an alternative recruitment and hiring system, offering expanded incentives for recruitment purposes, will enable Federal managers to more readily adapt to fluctuating labor market conditions. In addition, the level of performance demonstrated by those hired under the new system is expected to be equal to the level of performance demonstrated by employees hired through traditional methods.

B. Problems With the Present System

The current method of employee intake, through centralized testing, assumes a surplus of applicants for available positions within the Federal sector, with a concomitant emphasis on the stratification process required to provide manageable rosters of best qualified candidates from among the numerous applicants for a given position vacancy.

In reality, however, the manner in which changing demographics have fundamentally altered the American labor force has been well documented in the publications cited above. As the population ages and technological innovation accelerates, shortages of qualified candidates either already exist or are predicted to develop in a wide variety of occupations. Trend lines indicate an exacerbation of this problem. Simply stated, the supply/demand curve for labor resources no longer reflects an excess of supply but, rather, an almost insatiable demand for well-trained, quality candidates.

For example, the Forest Service has been recruiting candidates with backgrounds in engineering research combined with a knowledge of wood technology. These candidates are in exceedingly short supply; the few meeting these criteria are found either in academia, or conducting research in private wood technology firms. Experience has shown that potential candidates have been lost to competing employers who can more quickly make position offers and establish reporting dates.

As another example, the Agricultural Research Service has advertised a GS-13 Plant Geneticist position at a remote location on two separate occasions during the past year and received only two applications. Neither applicant possessed the highly specialized skills necessary to perform the duties of the position. The availability of recruitment incentives might have enhanced the ability of the agency to attract qualified candidates to this location.

C. Benefits To Be Derived From the Project

The demonstration system is expected to simplify the selection and appointment of candidates to the Federal service. Additionally, the system is expected to improve the ability of agencies to compete with other public employers and private industry for available quality candidates.

D. Participating Organizations

Agricultural Research Service and Forest Service experimental and comparison sites are identified in Appendix B. These sites may be subject to change prior to final implementation.

E. Types and Numbers of Participating Employees

Demonstration project coverage is limited to permanent new hires receiving provisional appointment to the competitive service at the experimental sites identified in Appendix B whose appointments fall within the following categories: First permanent competitive Federal appointment, and appointments currently made under Schedule B PAC or future equivalent.

Excluded from coverage are candidates who transfer from other Federal agencies; candidates whose initial appointments confer noncompetitive conversion eligibility (other than Schedule B PAC), e.g., appointments through cooperative education programs, Veterans Readjustment appointments, etc.; and candidates for positions for which direct hire authorized by OPM is in effect at any time during the life of the project.

Candidates with reinstatement eligibility as currently defined by regulation may continue to be noncompetitively appointed under the reinstatement authority. At the discretion of the selecting official, however, these candidates as well as candidates eligible for any of the appointment types listed under exclusions, above, may be considered for competitive appointment under the demonstration project authority and all provisions pertaining thereto.

Candidates for appointment to the Senior Executive Service or under the Executive Assignment System are excluded from coverage.

Demonstration project coverage is extended to General Schedule (GS), Federal Wage System (FWS), and Performance Management and Recognition System (PMRS) employees, regardless of occupational series.

The rate at which the number of accessions approaches the regulatory limitation of 5,000 employees to be covered under this authority will be centrally monitored throughout the test sites.

III. Methodology

A. Objective #1: Increase the Flexibility and Responsivenss of the Recruitment and Hiring System

1. Interventions

(a) Decentralize the decision to authorize direct hire in shortage categories.

(b) Establish an alternative candidate assessment method which uses categorical grouping instead of numeric score.

(c) Provide monetary incentives for recruitment purposes.

(d) Reimburse travel and transportation expenses beyond those currently authorized for travel to first post of duty.

Interventions (a) and (b), and (c) and (d), will be discussed separately in the sections that follow.

2. Description of Interventions (a) and (b)

A. Introduction. Civil Service 2000 recommends a number of strategies for attracting, hiring, training, motivating, and keeping talented people. Chief among these is the following: "Decentralize authority and responsibility for operations and hiring * * * Standardized recruiting, testing, competition, classification, and pay should give way to decentralized personnel management, giving agency managers full responsibility not only for their missions, but for the human resources they need to accomplish them * * *" (page 32).

The concept of decentralized authority and full responsibility for human resources is fundamental to this project. The alternative system is founded upon the assumption that centralized registers no longer meet local hiring needs and that a level of qualifications can be established at which all candidates meeting this level are well qualified. Selection will be made from this group following the normal candidate evaluation process, which may include such additional measures as personal interview, reference checks, etc.

The experimental sites will have examining authority for all of their positions. The elimination of centralized registers which establish fine distinctions among candidates will be balanced by an increased emphasis on the responsibility and accountability of managers for ensuring that selection and advancement are determined on the basis of the ability, knowledge, and skills necessary to perform the duties of the position.

This system is expected to produce a workforce equal to that which has been obtained through traditional testing and examining, without compromising the merit system principles, outlined in 5 U.S.C. 2301, which stipulate that, "* * * Recruitment should be from qualified individuals from appropriate sources in an effort to achieve a workforce from all segments of society, and selection and advancement should be determined solely on the basis of relative ability,

knowledge, and skills, after fair and open competition which assures that all receive equal opportunity."

Fair and open competition will be provided by the proposed system as follows:

(1) All candidates (other than those eligible for appointment under the direct hire option) will be considered against the same job-related evaluation criteria for the purpose of placing candidates in the quality group.

(2) All candidates meeting these criteria will be available for selection, taking veterans preference into account. Candidates who do not meet these criteria are available for selection when there is an inadequate number of candidates in the quality group.

(3) Candidates will no longer be eliminated from consideration by the rule of three or point score ranking.

(4) Information regarding all vacancies to be filled under the demonstration project authority shall be made available to the appropriate State Employement Service offices and local Federal Job Information Centers.

Finally, recognizing the mandate contained in title 5, U.S. Code, that the work force be from all segments of society, and to the extent that the current system may be a barrier to proportional representation of protected groups, the alternative system will allow managers and supervisors more direct access to a candidate pool that is reflective of society.

b. Overview of Method. Candidates eligible for appointment under the demonstration project authority will be evaluated using the following method:

(1) Candidate's basic eligibility is determined using OPM Handbook X–118 or modified standard, as outlined below. Questions regarding a candidate's suitability or general fitness to perform the duties of the position may be resolved at this or at any stage prior to appointment.

(2) Candidates meeting basic eligibility requirements are then evaluated for eligibility under the direct hire option, which allows candidates in shortage categories to be directly appointed.

(3) All remaining candidates meeting basic eligibility requirements are evaluated against job-related evaluation criteria, outlined below, which measure above average educational achievement, quality experience, and high ability. Candidates meeting any one of these criteria are place in the quality group.

Selection will be made from the quality group, taking into account such factors as personal interview or reference check, etc. Candidates not meeting any of these criteria are in the eligible group, and may only be selected when there is an inadequate number of quality candidates available. Veterans preference will apply when selecting candidates from either group. The agency will justify the nonselection of preference eligibles.

c. Recruitment Methods and Sources. The agency will identify appropriate recruitment methods and sources in order to ensure that qualified candidates are available for consideration. Demonstration project implementation at experimental sites does not preclude the use of other available noncompetitive appointing authorities intended to facilitate access to particular candidates, e.g., disabled individuals, students eligible for cooperative education programs, etc. The continued use of these programs is encouraged in support of agency employment goals and objectives.

Appropriate recruitment methods and sources include those that are likely to yield candidates with knowledges, skills, or abilities sufficient to perform the duties of the position. Agencies will continue to utilize recruitment methods and sources which identify disabled individuals or members of protected groups.

As no specific waivers of law or regulation are required prior to the development of an effective recruitment strategy, agencies will explore the use of innovative or creative recruitment methods and sources in order to facilitate the attainment of a quality workforce, reflective of society. Towards this end, agencies will take advantage, to the extent necessary, of the full range of telecommunications, printed, and other media in order to reach a sufficient number of qualified candidates.

Recruitment and consideration of candidates under the demonstration project authority will be subject to the following requirements:

(1) Current law and regulation concerning the Reemployment Priority List (RPL), and Displaced Employee (DE) or other outplacement programs, will be observed. The agency is responsible for maintaining and following the regulations concerning the RPL as outlined in pertinent FPM and Departmental guidance. No part of these regulations is waived for the purpose of this project.

Additionally, agencies are responsible for contacting the appropriate OPM office concerning the referral of displaced employees prior to making competitive appointments under the demonstration project authority, and according bona fide consideration, as appropriate, to DE or other outplacement program eligibles.

(2) Information regarding all vacancies to be filled under the demonstration project authority regardless of source will be made available to the appropriate State Employment Service offices and local Federal Job Information Centers. Procedures for providing such notification will be established at the local level.

Recruitment sources may include, but are not limited to, such activities as attendance at a job fair, career day, or professional association meeting; preparation and distribution of a vacancy announcement; on-campus recruiting; or other focused recruitment effort, etc. Procedures for the acceptance of unsolicited or walk-in applications will be established at the local level.

d. Determination of Basic Eligibility. A determination regarding each candidate's basic eligibility for a particular position will be made utilizing the standard criteria.

No part of law or regulation concerning citizenship requirements, security investigations, or other suitability issues is waived under this authority. Additionally, the requirement to pass any pre-employment physical, drug screening, or other fitness for duty examination remains in effect.

The determination that a candidate meets experience or education requirements will be made using OPM Handbook X–118 or approved single-agency standards. Positive education, licensure, and professional certification requirements will remain in effect as currently reflected in the standards unless waived through some other authority.

Selective placement factors may be established when judged to be critical to successful job performance and will be communicated to all candidates for particular position vacancies. These must be met for basic eligibility.

Test requirements as outlined in X–118 or elsewhere, including minimum typing or stenography scores, are eliminated. Emphasis will instead be placed on the supervisor's assessment of the candidate's ability to do the work of the position. Supervisors may, however, continue to accept candidates' self-certification of typing or stenography proficiency when such documentation is necessary to perform an adequate assessment of basic eligibility.

Agencies are authorized to modify X–118 experience requirements (other than positive education, professional certification, or licensure requirements) when the candidate's background

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includes experience which has provided

(2) Evaluation of Candidates in Non-

Applicants may not be appointed on

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of education completed to the

requirements; therefore, modification of

2. Candidate has a grade point

includes experience which has provided the skills and abilities necessary for successful job performance. Agencies may not, however, require additional amounts of education or experience beyond those required by the standards, other than selective placement factors as indicated above.

The decision to modify X–118 experience requirements is discretionary on the part of the supervisor and is intended to provide management with a recruitment tool which will allow the consideration of candidates for whom X–118 might otherwise serve as a prima facie basis for exclusion. The opportunity to qualify under a modified standard, however, will be given to all candidates being considered in connection with a particular position vacancy.

Agencies may delegate the decision to use a modified standard to the lowest practicable level within the organization. The decision to modify X–118 requirements will be documented and placed on the right-hand or permanent side of the Official Personnel Folder.

e. *Candidate Evaluation.* (1) *Direct Hire of Individuals in Shortage Categories.* Candidates meeting basic eligibility requirements as outlined above, and who are in shortage categories as locally determined by the agency, may be directly appointed. Agency determination of shortage category will be made by applying the criteria in 5 CFR 572.301 or other factors which the agency has determined to be significant, and may be delegated to the lowest practicable level within the organization.

Agency determination of shortage category may include, but is not limited to, consideration of such factors as external or local labor market demands, extent or impact or prior recruitment efforts, critical or recurring need for particular knowledges or skills based on chronic shortages, turbulent state of the art, etc.

A determination by one agency that a shortage of eligibles exists for a particular title, series, grade, and geographical location does not require a like determination by any other agency. A determination made in connection with one specific vacancy does not establish a precedent in connection with future vacancies.

Agency determination of shortage category will be documented. The documentation supporting the decision to appoint an individual under this authority will be placed on the right-hand or permanent side of the Official Personnel Folder.

(2) Evaluation of Candidates in Non-Shortage Categories. Candidates meeting basic eligibility requirements as outlined above, but who are not eligible for direct hire as outlined in the section immediately preceding, may be considered for appointment against the job-related evalution criteria outlined below under above average educational achievement, quality experience, and high ability.

All candidates, to the extent necessary, will be evaluated against each of these criteria; that is, no candidate will be eliminated from the quality group without being considered under the three criteria outlined under (a), (b), and (c), below.

It is hypothesized that all employees hired through this system are equally likely to demonstrate successful job performance, regardless of the criterion under which the candidate qualifies.

Minimum grade point averages established under above average educational achievement or high ability, below, may be adjusted by mutual agreement between the participating agencies and OPM.

(a) Candidates demonstrating above average educational achievement under any of the options outlined below are eligible for the quality category:

1. Candidate has completed all the requirements for, or is a candidate, within nine months, for a high school diploma, or a degree from an accredited junior college, college, university, or other baccalaureate institution, provided he or she meets one of the requirements listed below (b. & c. apply to post-high school only):

a. Candidate's grade point average is at least 2.70 on a 4.0 scale or equivalent. This is either the average of all completed courses at the time of application, or the average of all courses completed during the last two years of a high school, college, or other four year program, in which case verification that the required average was maintained is prerequisite to appointment.

b. Candidate's grade point average in the major field of study is at least 3.0 on a 4.0 scale or equivalent. This is either the average of all completed courses at the time of application, or the average of all courses completed during the last two years of a four year curriculum, in which case verification that the required average was maintained is prerequisite to appointment.

c. Candidate is a member of one of the national honorary scholastic societies meeting the minimum requirements of the Association of College Honor Societies, other than freshman honor societies.

Applicants may not be appointed on the basis of overall grade point average if more than 10 percent of their grades were based on pass/fail or similar systems rather than on traditional grading systems. Such applicants may claim credit under this provision only on the basis of national honorary society membership.

Candidates are required to submit an official transcript or similar correspondence documenting grade point average in order to establish eligibility for appointment based on above average educational achievement. In the event that grade point average has not been computed by the educational institution, an official transcript may provide the basis for manual computation. Transfer credits, foreign credits, and credits from more than one educational institution must be evaluated and included to the extent that they provided the basis for awarding the degree or the certificate.

Eligibility under this provision is awarded to candidates who have completed or who are about to complete a formal educational program culminating in the granting of a degree. Once a candidate has completed a qualifying period of education as outlined above, leading to the completion of a degree or a diploma, and during which a qualifying grade point average was maintained, he or she is eligible for the quality category. Additional course work has no impact on eligibility, once established.

For example, a candidate qualifying on the basis of high school grade point average retains that eligibility even though he or she may go on to complete several more courses as part of a continuing education program. The additional course work does not become part of the overall grade point average computation. However, unsuccessfully completed course work beyond the high school level should be factored into the decision to appoint candidates to administrative, management, specialist, or other positions for which such education would normally be qualifying in lieu of experience.

2. Candidate has completed all requirements for an advanced degree from an accredited institution, appropriate to the position being filled. An advanced degree is defined as beyond the baccalaureate , e.g., D.V.M., M.A., Ph.D., etc. Candidate must provide certification of completion of all degree requirements, e.g., thesis, dissertation, etc.

Evaluation of candidates under this provision will take into account the relevancy of both the type *and* the level

of education completed to the knowledges, skills, and abilities required to perform the duties of the position.

Candidates are required to submit an official transcript or similar correspondence documenting actual course work, and grade point average, if necessary, in order to establish eligibility for appointment based on above average educational achievement. In the event that grade point average has not been computed by the educational institution, an official transcript may provide the basis for manual computation. Transfer credits, foreign credits, and credits from more than one educational institution must be evaluated and included to the extent that they provided the basis for awarding the degree.

Inasmuch as eligibility under this provision requires completion of a degree or a diploma, candidates who have completed either without meeting any of the criteria outlined above, or who have not completed any type of degree or diploma, will be evaluated under the criteria addressing experience and ability outlined in (b) and (c), below.

(b) Candidates who have quality experience in the field are eligible for the quality category.

Quality experience in the field is defined as directly related experience, and is differentiated from the specialized experience requirements outlined in X–118 to the extent that it is directly related to the position to be filled, was gained in the same functional specialization, and has clearly equipped the candidate with superior ability to perform the duties and responsibilities of the position. The directly related experience must have been at an acceptable level of competence in order to qualify for appointment under this provision.

OPM's generic standard for two-grade interval professional positions defines specialized experience as that, "... which is in or related to the line of work of the position to be filled and which has equipped the applicant with the specific knowledge, skills, and abilities to successfully perform the duties of the position." Similar language also appears in the other generic standards. The intent of the "quality experience" provision is to go beyond experience which is simply related to the line of work and focus upon directly related experience in the same field.

Assessment of individual candidates under this provision will take into account the extent of the candidate's experience beyond that which is necessary to meet basic eligibility requirements; therefore, modification of X–118 qualification requirements is not an option for these candidates.

Candidates currently employed in the same or a directly related occupation, either within the agency under temporary or excepted service appointments, or outside the agency in State or local government, private industry or academia, are likely to qualify for provisional appointment leading to career status under this authority. For example, candidates employed in one of the private forestry operations located in the Pacific Northwest may possess experience that is directly related to one of the specializations covered by the forester or forestry technician standard.

Candidates who have made an outstanding contribution to the state of the art or to the advancement of knowledge in a directly related field may also qualify under this provision. Evaluation of these candidates will be performed by an agency subject matter expert and will focus upon extraordinary professional achievement, beyond normal professional competency, which may include, but is not limited to, such accomplishments as the publication of groundbreaking experimental results, authorship of seminal works in the field, or other noteworthy achievements or credentials.

Documentation regarding the extent to which the candidate's experience exceeds that which is required for basic eligibility, or documentation of extraordinary professional achievement, will be placed on the right-hand or permanent side of the Official Personnel Folder.

(c) Candidates who demonstrate high ability to do the work of the position are eligible for the quality category.

The intent of this provision is to allow candidates, who do not meet criteria established for above average educational achievement or quality experience, to be considered on the basis of having demonstrated high ability through some other means.

Assessment of the candidate's high ability will utilize the following measures:

1. Candidate has received a certificate or other indicator of successful completion of a trade or vocational program that is directly related to the work of the position to be filled, for positions for which this type of education has been determined to be appropriate. Candidates must also meet applicable experience requirements; that is, program completion is not a substitute for, but clearly exceeds, basic eligibility requirements.

2. Candidate has a grade point average of at least 2.7 on a 4-point scale, or equivalent, for at least 24 semester hours, or equivalent, of course work above the high school level that is directly related to the position to be filled.

f. *Grouping of Eligibles.* Candidates who have been evaluated against the criteria outlined above are grouped as follows:

(1) Candidates meeting any one of the criteria outlined above are placed in the quality group.

(2) Candidates who do not meet any of these criteria are placed in the eligible group.

(3) Within each group, veterans will be listed ahead of nonveterans. In addition, for positions other than scientific and professional at GS–9 and above, preference eligibles with a compensable service-connected disability of 10 percent or more who meet basic qualifications requirements will be listed at the top of the quality group.

The quality group and/or the eligible group for a particular position vacancy may include candidates from one or more sources, provided that candidates from the State Employment Service or Federal Job Information Center are included, as appropriate.

g. *Selection and Appointment.* Selection will be made from among candidates in the quality group. When an inadequate number of candidates are in the quality group, all qualified candidates from all sources will be listed as a single group.

In making selections, veterans will be given preference over nonveterans. The provisions granting extra points for veterans and the rule of three (i.e., selection from the top three) will not be followed because candidates will not be assigned points or ranked numerically within a group. However, a preference eligible may not be passed over to select a nonpreference eligible, except under formal objection procedures. The agency will have authority to act on proposals to pass over preference eligibles, including compensably disabled veterans, for suitability, qualifications, and other disqualifying reasons. To do so, the agency will follow the procedures in title 5, United States Code.

Candidates selected under the demonstration project authority will receive provisional appointments and may be eligible for recruitment incentives, subject to the requirements outlined below.

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3. Description of Interventions (c) and (d)

a. Introduction. Incentives will be authorized in order to positively impact the complete employment and compensation package as part of an effort to enhance the ability of the agency to compete with other employers for individuals with desired skills. Subject to OPM approval, the agency may decide to identify additional incentives under this authority at a future date. Any such additions will be published in the **Federal Register**.

b. Method. Recruitment incentives will be authorized to encourage individuals to enter as well as to remain with the Federal service. These will include cash payments and reimbursement for travel and transportation expenses, any combination of which may be authorized for an individual candidate.

The decision to authorize an incentive will be based upon such market factors as salary comparability and salary offer issues; relocation considerations; programmatic urgency; emerging technologies; unique qualifications; and shortage categories.

(1) Cash Payments. Cash payments as a percentage of salary are authorized for recruitment purposes. The amount of a cash payment will be firmly established prior to entrance on duty, and is not considered to be a part of an individual's basic pay.

Cash payments may be made either in a lump sum upon entrance on duty, incrementally over a period not to exceed 36 months, or deferred until the completion of a specified period, not to exceed 36 months.

(2) Travel and Transportation Expenses. The authority to reimburse new appointees for travel and transporation expenses is expanded to include all of the expenses authorized for transferred employees as outlined in 5 U.S.C. 5724 and 5724a, 5724b, and 5724c. This includes payment to new appointees for such expenses as house hunting trips, sale of residence, purchase of new residence, access to relocation services, and other services normally available only to transferred employees.

(3) Statement of Conditions of Employment. A statement summarizing conditions of employment under which a recruitment incentive will be authorized will be prepared in each case, and will address the following:

(a) Type of incentive(s)
1. Cash payment
2. Travel and transportation expenses
(b) Total authorized percentage of salary
(c) Method and schedule for payment
1. Cash payment
2. Intermittent over a period NTE 36 methods
3. Deferred until the end of a specified period, NTE 36 months
(d) Service requirement
1. Time: 0 to 36 months
2. Location in which to be served
a. Federal service
b. Hiring agency or subdivision thereof
(e) Conditions for repayment or cessation of payment
1. Repayment of lump sum not required
2. Intermittent payment ceases, repayment not required
3. Full repayment of lump sum or travel required

(4) Failure to Meet Service Requirement. Repayment of incentives is required if the employee is separated from the location identified under conditions of employment prior to fulfilling the service requirement, unless the reasons for the separation are beyond the control of the employee and are acceptable to the agency. Repayment is required in all cases where the employee is separated for misconduct. Actions to collect repayment may be terminated under appropriate circumstances and in accordance with 5 U.S.C. 5584.

B. Objective #2: Increase the reliability of the decision to grant career tenure.

1. Intevention

Make initial appointments on a provisional basis, with career tenure earned through on-the-job peformance.

2. Introduction

The purpose of the provisional appointment is to allow managers an adequate period of time within which to assess job performance, and determine whether or not to continue the employment of the individual. The provisional appointment system replaces the current three-tier system of initial probationary period, career-conditional status, and career tenure, with a two-tiered system which effectively extends the maximum length of the probationary period, and which provides for conversion to career tenure.

The provisional appointment system will change the timeframes within which new hires are awarded career tenure. The formal processes required to effect these changes will be incorporated, to the maximum extent possible, into established processes and systems within the agency.

Aside from extending the time period, all other features of the current probationary period are retained, including the potential to remove an employee without providing the full substantive and procedural rights afforded a career employee. This creates a clear distinction between provisional and career status. Under the experimental system the new employee's status remains provisional until his or her performance and conduct have been evaluated over an appropriate period of time.

3. Method

Candidates hired under the demonstration project authority, as described under section II. E., above, Types and Numbers of Participating Employees, will be given provisional appointments to the competitive service as follows:

Scientific positions: Three year provisional appointment.

All others: Two year provisional appointment.

To ensure that supervisors have sufficient time to make tenure decisions, provisional appointment may be extended by the amount of time spent in non-duty status, except when protected by law, e.g., credit is given for nonpay time due to compensable injury and military service.

For the purpose of this subsection, provisional appointment means a permanent appointment, to the competitive service, which provides for conversion to career tenure. Scientific positions are those which are covered under the Research Grade Evaluation Guide.

A provisional appointee to the competitive service is given the full range of benefits provided to career-conditional employees under the current system, i.e., retirement, insurance, leave, within grade increases, etc. Provisional appointees are assigned to tenure group II.

Provisional appointees are eligible for training opportunities and position changes, subject to the time after competitive appointment requirement, in the same manner as career and career-conditional employees. Provisional appointment is portable both within and between ARS and FS experimental sites. Provisional appointment is not portable to non-experimental sites or to non-participating agencies. On position change within USDA but outside the experimental sites, an employee is converted to career conditional status. A discussion of probation and tenure follows in the next paragraph. Provisional appointees who have already been converted to career tenure remain in tenure group I upon position change, regardless of the length of time spent under provisional appointment.

Provisional appointees are eligible for transfer to other Federal agencies as career conditional employees. In such conversions both within and outside of USDA, employees must serve any remaining balance of the one-year probationary period. The three year period counting toward career tenure begins with the provisional appointment. Provisional appointees who have already been converted to career tenure transfer as career employees, tenure group I, regardless of the length of time served under provisional appointment.

Provisional appointment confers reinstatement eligibility identical to that conferred through career conditional employment, as outlined in 5 CFR 315.401. A provisional employee reinstated to a demonstration project test site begins a new provisional appointment. A provisional employee reinstated to either a comparison site, or to a non-participating agency, becomes a career conditional employee and must serve a one-year probationary period if the employee has not completed one year of satisfactory service under provisional appointment. In both cases, reinstatement is to tenure group II. Provisional appointees who have already been converted to career tenure, and preference eligibles, have unlimited reinstatement eligibility, regardless of the length of time served under provisional appointment.

Provisional appointees will have restoration rights under 5 CFR part 353 following military service or a job-related injury. They will not be eligible, however, for the reemployment rights in 5 CFR part 352 based on other service such as with an international organization, as these rights are generally discretionary with the agency head or reserved for non-probationers. Therefore, exclusion of provisional appointees is consistent with existing policies.

Completion of provisional appointment as a supervisior or manager fulfills the requirement to complete a supervisory probationary period.

Any employee appointed prior to the implementation date of the project will not be affected. Present performance management systems will not be affected, as performance standards must still be established against which employees will continue to be rated annually.

If the agency decides to separate a provisional employee for non-RIF reasons, the agency shall follow the current procedures for separating probationary employees, as outlined in 5 CFR 315.804, 315.805, and 315.806. 5 CFR parts 432 and 752 do not apply to an employee under a provisional appointment, regardless of the employee's length of service.

If the agency must consider the employee for release from the competitive level under reduction in force procedures as outlined in FPM Chapter 351, provisional appointees are in tenure group II, subgroup AD, A, or B, as appropriate. They will be eligible for retained grade and pay and severance pay, as well as for the Displaced Employee Program and the Reemployment Priority List, if requirements unrelated to appointment type are met. Former provisional appointees who have been converted to career tenure are in tenure group I, regardless of the length of provisional appointment.

On the basis of exceptional performance, the agency may choose to convert the employee to a career appointment prior to the conclusion of the two or three year provisional appointment. If the supervisor decides to convert the employee to career tenure at an earlier date, documentation must be provided in support of this decision. This documentation should address the employee's exceptional performance, along with any exceptional skills or abilities demonstrated by the employee. However, the employee must serve at least one year before conversion to career tenure under provisional appointment.

The decision to convert an employee may take into account such factors as performance, suitability, conduct, aptitude, etc., as outlined in FPM Chapter 315, Subchapter 8. The decision to convert an employee in a scientific position will also take into account the documentation of his or her research findings. Employees must be rated at least fully successful in order to be converted.

Four months prior to the conclusion of the provisional appointment, the supervisor will be asked for a decision to either convert the employee to career tenure, or to separate the employee. This does not preclude the agency from separating a provisional employee any time prior to the conclusion of the provisional appointment.

IV. Training

A coordinated and extensive training effort, for managers and personnelists at both experimental and comparison sites, will be conducted prior to project implementation. The purpose of the training is to ensure that the experimental interventions are implemented as originally conceived, and that the intent of all interventions, policies, and procedures developed in connection with the project are clearly communicated to all managers, supervisors, employees, and others affected by project implementation.

Training will be conducted prior to implementation to ensure that managers and personnelists understand not only the internal and standard operating procedures established in connection with the project but also the expanded role of the personnelist in providing management advisory services.

Training and orientation will include the following major elements:

1. An in-depth description of each of the project interventions, including philosophy and expected effects;
2. A detailed outline of the policies and procedures established in support of each intervention; and,
3. An overview of the project evaluation effort, including the methods through which data collection will be accomplished.

To the extent that the continuing success of the project is a function of the adequacy of the training effort, periodic refresher training sessions are planned for the purpose of ensuring that experimental interventions continue to be implemented as originally conceived. As the system was designed to increase managerial and supervisory accountability for the success of the recruitment and hiring program, a training effort particularly directed at managers and supervisors is critical to implementation.

More specifically focused and ad hoc training modules will be developed as additional training needs are identified throughout the life of the project.

V. Cost/Benefit Analysis

The experimental modifications are expected to be budget neutral. Current decentralized policies and procedures regarding the expenditure of agency funds will be retained. No additional funding will be requested; all costs will be charged to available funds through existing appropriations, including those incurred in the areas of project development, training, and project evaluation.

No additional costs are expected to accrue to the implementation of the alternative recruitment and hiring, the provisional appointment, or the recruitment incentive system. In fact, the alternative recruitment and hiring system is expected to reduce the number of staff hours expended testing, examining, and rating applicants, as well as to alleviate some of the administrative burden generated in support of these activities.

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VI. Duration of the Project

either be modified or aborted. This is to

otherwise would create inadequate

TABLE 1.—EXPECTED EFFECTS, MEASURES, AND DATA SOURCES—Continued

VI. Duration of the Project

The project will terminate at or before the end of the five year period beginning on the date on which the project takes effect, unless otherwise extended or terminated at an earlier date in accordance with 5 U.S.C. 4703(e).

VII. Evaluation Plan

A. Introduction

An evaluation methodology is established in order to comply with the requirement that the demonstration project be evaluated in terms of the impact of project results against stated objectives as well as to determine whether or not permanent changes in law and/or regulation should be considered or proposed. The agency plans to enter into an agreement or contract with a qualified third party, to be identified at a later date, for the purpose of conducting the evaluation.

B. Methodology

While the formal evaluation will be conducted by an independent external party, it is expected to follow a modified Action Research Model process. The utilization of that model in this situations means that the evaluators, researchers, and research participants share information about the research results to the extent that interventions detrimental to the organization can either be modified or aborted. This is to prevent the continuation of an intervention with obvious and severe impact deficiencies.

The evaluation effort will be carried out in four distinct phases, as follows:

1. Design phase—includes the development of the experimental model, selection of test and comparison sites, and the collection of baseline data prior to implementation;
2. Implementation phase—includes actual project implementation, and monitoring to assure that each of the project interventions has been operationalized as originally conceived;
3. Evaluation phase—includes data collection and analysis. Periodic reports and annual summaries will be presented throughout the life of the project; and,
4. Concluding phase—summary evaluation and overall assessment of the impact of the project; conclusions and final recommendations.

C. Model

There are two objectives, five interventions, two constraints, and fourteen related hypotheses. It is operationally not feasible to apply interventions (a), (b), and (e) independently, nor can interventions (c) and (d) be broken into separate experiments. It was further decided to apply all interventions as one experimental design because to do otherwise would create inadequate sample sizes and become too difficult to manage. Hence, all interventions will be introduced at each of the experimental sites, although the authorization of recruitment and retention incentives is discretionary on the part of management. The utilization and results of experimentation with these incentives will be separately identified to the extent possible.

1. Objectives

(a) Increase the flexibility and responsiveness of the recruitment and hiring system.

(b) Increase the reliability of the decision to grant career tenure.

2. Interventions

(a) Decentralize the decision to authorize direct hire in shortage categories.

(b) Establish an alternative candidate assessment method which uses categorical grouping instead of numeric score.

(c) Provide monetary incentives for recruitment purposes.

(d) Reimburse travel and transportation expenses beyond those currently authorized for travel to first post of duty.

(e) Make initial appointments on a provisional basis, with career tenure earned through on-the-job performance.

TABLE 1.—EXPECTED EFFECTS, MEASURES, AND DATA SOURCES

Constraints/Hypotheses	Measures	Data sources
Overall Project Constraints:		
A. Fair representation of protected groups, will not be adversely impacted	Number of women & minorities in workforce	PR
	Number among applicants	RAF
	Number offered positions	RAF
	Number hired	PR
B. Demonstration project will be cost neutral	Administrative costs for recruiting and hiring	To be identified
	Amount spent for recruitment incentive & travel expenses.	
Objective 1: Increase the flexibility and responsiveness of the recruitment and hiring system		
Interventions:		
(a) Expand authority for approving direct hire		
(b) Implement alternative candidate assessment method using categorical groupings		
(c) Provide option of awarding monetary incentives for recruiting purposes		
(d) Provide option of reimbursing travel and transportation expenses for recruiting purposes		
Hypotheses:		
A. Managers will perceive the new system as more responsive to local recruitment needs.	Managers' perceptions	Annual Survey of managers (AS)
B. Managers will be more satisfied with the new recruitment and hiring system than with the traditional system.	Managers' attitudes	AS
C. Under the experimental employee intake process, new employees will be hired more quickly than under the traditional system.	Time required to fill positions	RAF
	Managers' perceptions	AS
	New hire's perceptions	Pre-employment survey (PES)
D. The experimental employee intake process will require less staff time than the traditional system.	Activities required to fill positions	RAF
	Staff hours required to fill positions	RAF

TABLE 1.—EXPECTED EFFECTS, MEASURES, AND DATA SOURCES—Continued

Constraints/Hypotheses	Measures	Data sources
E. Quality of new hires under the experimental system, as measured by appropriate indicators, will be equivalent to that of employees hired through traditional methods.	GPA	PES
	Education level	PES
	School attended	PES
	Field of Study	PES
	Scholastic honors	PES
	Year of degree	PES
	Number of professional publications	PES
	Level of experience	PES
	Relevant experience	PES
	Previous salary	PES
	Competing offers	PES
F. Level of performance for new hires will be equal to or greater than that for those hired through traditional means.	Performance appraisal	PR
	Performance awards	PR
	Adverse actions	PR
	Managers' perceptions	AS
G. Competitive recruiting position will improve for sites using the experimental recruiting and hiring system relative to those using traditional procedures.	Managers' perception of competitive position	AS
	Candidates lost to competition	RAF
	Number of qualified candidates who apply for USDA positions.	RAF
	Ability to hire candidates whom managers perceive as best qualified.	AS
	Declination/acceptance ratio	RAF
	Number, type, and $ values of incentives awarded.	RAF
H. Recruitment incentives and payment of expenses will increase acceptance rates above and beyond any effects of the new recruitment and hiring system.	Declination/acceptance ratio	RAF
	Number, type, and $ value of incentives awarded.	PR
I. Recruitment incentives tied to service agreements will improve retention of appointees relative to those hired without service agreements.	Rate at which service agreements are met	PR
	Turnover rates	PR
	Number, type, and $ value of incentives awarded.	PR
	Time span of service agreements	PR
Objective 2: Increase the reliability of the decision to grant career tenure		
Intervention: (e) Make initial appointments on a provisional basis, with career tenure earned through job performance		
A. Managers will have more confidence in career tenure decisions under the new system than under the traditional system.	Managers' perceptions	AS
B. Managers will utilize the flexibilities provided by the provisional appointment system.	Turnover rates, reasons	PR
	Length of time spent under provisional appointments.	PR
C. Recruitment efforts will not be hampered by the requirement to hire new employees under provisional appointments.	Managers' perceptions	AS
	New employees' perceptions	PES
Overall Project Expectations:		
A. Supervisory accountability for the success of the recruitment and hiring program will increase.	Managers' perceptions	AS
	Senior managers' perceptions	Interviews
	Documentation of accountability	Performance Standards
B. Management advisory role for personnel specialists will increase	Managers' perceptions	AS Interviews

D. Procedures

Experimental results will be evaluated annually (1) against baseline data collected before the implementation of the interventions, and (2) between the experimental and comparison populations in each block and in toto. While the introduction of the interventions will continue throughout the five year life of the project, the collection of data and consequent evaluation efforts will continue until reasonably stable results can be identified. It is not necessary to wait until the results of the last experimentally hired employee can be fully evaluated before declaring the evaluation completed if the evaluators are satisfied that sufficient valid data have been accumulated to draw such a conclusion.

E. Implementation Evaluation

The evaluation model presents a framework for evaluating the success of the demonstration project in meeting its stated objectives. An equally important component of the overall evaluation is the description and monitoring of the implementation of the project.

Implementation monitoring will provide a qualitative context in which to understand and interpret evaluation results. This facet of the evaluation will help to answer the "why" questions that are likely to arise, whether the project is a success or failure, and provide the documentation of actual implementation necessary to replicate the results of this demonstration project in other settings.

Through examination of project-related documents, ongoing contact with key players in the participating agencies, interviews with project participants, and case studies of selected units, the implementation evaluation will address such questions as:

1. When are project changes implemented?
2. What training and orientation is delivered to facilitate implementation?
3. What operating procedures/guidelines are developed to manage project implementation? How do these guidelines differ from the project plan?
4. How does actual practice differ from the project plan and/or operating guidelines?
5. To what extent are recruiting and hiring practices being carried out in a manner consistent with the merit principles outlined in 5 U.S.C. 2301?

6. To what extent do users of the new system understand it?

7. What differences in actual practice exist with respect to different types of candidates and/or new appointees?

8. To what extent are discretionary interventions (i.e., recruitment incentives) actually used?

9. How similar are the experimental and the comparison sites? How are they different?

10. What other changes occurring at experimental/comparison sites might provide competing explanations for observed changes?

11. What events in the external environment might provide competing explanations for observed changes or lack of change?

12. What unintended consequences of the demonstration project initiative may be observed?

13. What impact does the application of veterans preference under the project have on the examining and selection process? How many preference eligibles are being hired at experimental and comparison sites?

VIII. Experimental Design

The experimental design uses experimental and comparison groups matched for characteristics but not necessarily for population numbers in ten population blocks. The populations were classified into five occupational categories: scientists, professionals, administrative employees, technicians, and all others (includes clerical and Federal Wage System). Each participating unit of the two agencies, the Agricultural Research Service and Forest Service, appeared in as many of these five blocks as the occupational category distribution represents.

The occupational categories were then further subdivided into two situational categories: Difficult and simple. In the difficult situation, the working site or environment, and/or the local personnel supply pool, make it very difficult to attract candidates in a particular occupational category. This situational condition is not necessarily constant for all five occupational categories at any one location. It was postulated that this random assignment to the experimental and comparison groups within these ten groupings would result in ten matched groups. Except for limited administrative pre-selection, the assignments to experimental and comparison groups within each of the ten blocks were by random draw.

A detailed description of the selection process is available upon request.

Appendix A—Required Waivers to Law and Regulation [1]

Waivers to title 5 United States Code

1104.(a)(2) Delegation of authority for personnel management
3309. Preference eligibles; examinations; additional points for
3312.(b) Preference eligibles; physical qualifications; waiver
3313. Competitive service; registers of eligibles
3317.(a) Competitive service; certification from registers
3318.(a),(b) Competitive service; selection from certificates
3582. Rights of transferring employees
4303.(f) Actions based on unacceptable performance
5723. Travel and transportation expenses of new appointees and student trainees; manpower shortage positions
5724a, 5724b, 5724c. (Relocation Expenses)
7511.(a)(1) Definitions; application

Waivers to title 5 Code of Federal Regulations

1.3 (c) Definitions.
2.1(b) Competitive Examinations and Eligible Registers.
2.2 Appointments.
212.301 Competitive status defined.
315.201 Service requirement for career tenure.
315.301 Tenure on appointment from register.
315.302 Acquisition of competitive status.
315.401(a) Reinstatement.
315.402 Tenure on reinstatement.
315.501 (Transfer) Agency authority.
315.502 Tenure on transfer.
315.801 Probationary period; when required.
315.802 Length of probationary period.
330.303 OPM (Displaced Employee) program.

Part 332—Recruitment and Selection Through Competitive Examination (except 332.101)

335.101 Effect of position change on status and tenure.
335.102 Agency authority to promote, demote, or reassign.
337.101 Rating applicants. (except (c))
351.501(b)(2) Order of retention—competitive service.

Part 352—Reemployment Rights

Part 353—Restoration to Duty

410.302 Selection and assignment of trainees.

Part 432—Reduction in Grade and Removal Based on Unacceptable Performance

536.102 (Grade and Pay Retention) Definitions.
550.701(b) (Severence Pay) Coverage.

Part 752—Adverse Actions

Appendix B—Experimental and Comparison Sites; Agricultural Research Service

Experimental Sites:

Aiea/Hilo/Honolulu, HI
Akron, OH
Albany, CA
Ames/Ankeny, IA
Athens, Ga
Beaumont, TX
Beckley, WV
Beltsville, MD
Bozeman, MT
Byron, GA
Canal Point, FL
Charleston, SC
Clemson, SC
Columbia, MO
Corvallis, OR
Davis, CA
Dawson, GA
East Grand Forks, MN
East Lansing, MI
Experiment, GA
Fairbanks, AK
Fargo, ND
Florence, SC
Frederick, MD
Fresno, CA
Fort Collins, CO
Geneva, NY
Grand Forks, ND
Houston, TX
Ithaca, NY
Kerrville, TX
Lane, OK
Las Cruces, NM
Lexington, KY
Logan, UT
Lubbock, TX
Madison, WI
Manhattan, KS
Miami, FL
Miles City, MT
New Orleans, LA
Orient Point, NY
Orlando, FL
Orono, ME
Oxford, MS
Oxford, NC
Pasadena, CA
Peoria, IL
Phoenix, AZ
Pullman, WA
Raleigh, NC
Reno, NV
Riverside, CA
San Francisco, CA
Shafter, CA
Sidney, MT
St. Paul, MN
St. Croix, VI
Stillwater, OK
Stoneville, MS
Suffolk, VA
Temple, TX
Tifton, GA
Tucson, AZ
University Park, PA
Watkinsville, GA
Weslaco, TX
Woodward, OK
Wooster, OH

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[1] Waiver required only to the extent that the project conflicts with pertinent provisions of law and regulation.

Yakima, WA

Comparison Sites:

Aberdeen, ID
Auburn, AL
Baton Rouge, LA
Boise, ID
Booneville, AR
Boston, MA
Brawley, CA
Brookings, SD
Brooksville, FL
Brownwood, TX
Burns, OR
Bushland, TX
Cheyenne, WY
Clay Center, NE
College Station, TX
Columbus, OH
Coshocton, OH
Delaware, OH
Dubois, ID
Durant, OK
El Reno, OK
Ft. Lauderdale, FL
Gainesville, FL
Georgetown, DE
Greeneville, TN
Headquarters, MD
Houma, LA
Jackson, TN
Kearneysville, WV
Kimberly, ID
Laramie, WY
Lewisburg, TN
Lincoln, NE
Mandan, ND
Mayaguez, PR
Mississippi State
Morris, MN
Newark, DE
Pendleton, OR
Poplarville, MS
Prosser, WA
Salinas, CA
Savannah, GA
Stuttgart, AR
Tuxtla, MX
Urbana, IL
Wenatchee, WA
West Lafayette, IN
Winter Haven, FL
Wyndmoor, PA

Forest Service

Experimental Sites:

Region 1

Regional Office (includes MTDC)
Clearwater NF
Custer NF (includes Helena NF)
Flathead NF
Idaho Panhandle NF
Kootenai NF
Lolo NF

Region 2

Big Horn NF
Black Hills NF (includes Nebraska NF)
Grand Mesa, Uncompahgre, and Gunnison NF
Pike and San Isabel NF
Rio Grande NF
Routt NF
Shoshone NF

Region 3

Apache Sitgraves NF
Cibola NF
Coconino NF
Coronado NF
Kaibab NF
Lincoln NF
Sante Fe NF
Tonto NF

Region 4

Regional Office/Intermountain Station
Targhee NF (includes Bridger-Teton, Challis, Caribou, and Salmon NF)

Region 6

Colville NF
Deschutes NF (includes Malheur and Ochoco NF)
Mt. Baker/Snoqualmie NF (includes Seattle Lab)
Mt. Hood NF
Olympic NF
Siuslaw NF
Umpqua NF
Wallowa-Whitman NF (includes LaGrande Lab and Umatilla NF)
Wenatchee NF (includes Wenatchee Lab and Okanogan NF)
Willamette NF
Winema NF (includes Fremont NF)

Region 8

Region Office (includes Macon Seed Lab and Caribbean NF)
Chattahoochee and Oconee NF (includes Frances Marion and Sumter NF)
Jefferson NF (includes George Washington NF)
Kisatchie NF (includes Texas NF, part of Alexandria Lab)
Mississippi NF (includes NF's in Alabama and Florida)

Region 9

Region Office
Allegheny NF
Chequamegon NF
Chippewa NF
Hiawatha NF
Huron-Manistee NF
Mark Twain NF
Monongahela NF
Nicolet NF
Ottowa NF
Superior NF
Wayne-Hoosier NF

Region 10

Regional Office
Chatham Area
Chugach NF
Ketchikan Area

Research Units

Forest Products Lab
Intermountain Station/R–4 RO
Northeast Station/Area
Southeast Station (includes North Carolina NF)
Southern Station

Headquarters

Comparison Sites:

Region 1

Beaverhead NF (includes Gallatin NF)
Bitterroot NF
Deerlodge NF
Lewis and Clark NF
Nez Perce NF

Region 2

Regional Office
Medicine Bow NF
San Juan NF
White River NF

Region 3

Regional Office
Carson NF
Gila NF
Prescott NF

Region 4

Payette NF (includes Boise and Sawtooth NF)
Utah-Nevada Cluster: Fish Lake, Dixie, Humboldt, Toiyabe, Uinta, Wasatch-Cache, Manti-LaSal, Ashley NF, and Geometronics Service Center

Region 6

Regional Office/PNW
Gifford Pinchot NF
Rogue River NF (includes Siskiyou NF)

Region 8

Daniel Boone NF (includes Cherokee NF)
Ouachita NF (includes Ozark-St. Francis NF)

Region 9

Green Mountain and Finger Lakes NF
Shawnee NF
White Mountain NF

Region 10

Stikine Area

Research Units

North Central Station
Pacific NW Station/R–6 RO
Rocky Mountain Station (includes Arapahoe and Roosevelt NF)

Headquarters

Washington Office

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Wednesday
August 23, 1989

Part III

The President
Panama Canal Commission

35 CFR Parts 133 and 135
Tolls for Use of Canal and Rules for Measurement of Vessels; Final Rule

The President

PANAMA CANAL COMMISSION

35 CFR Parts 133 and 135

RIN 3207-AA04

Tolls for Use of Canal and Rules for Measurement of Vessels

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: This rule announces an increase of approximately 9.8% in the rates of tolls for use of the Panama Canal. The increase is necessary to comply with the requirements of law that tolls be set to produce revenues sufficient to cover all costs of maintenance and operation of the Panama Canal, including capital for plant replacement, expansion and improvements. The effect of this action is to increase the rates of tolls for: (a) Merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, from $1.83 to $2.01 per net Panama Canal ton, (b) vessels in ballast without passengers or cargo, from $1.46 to $1.60 per net Panama Canal ton, and (c) other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, from $1.02 to $1.12 per ton of displacement.

In addition to the toll rate increase, certain rules of measurement of vessels for the Panama Canal are amended in order to simplify the Commission's measurement procedures and bring them in line with industry standards. These amendments will have a minimal impact on the amount of tolls collected.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street NW., Suite 550, Washington, DC 20036–4996. Telephone (202) 634–6441.

SUPPLEMENTARY INFORMATION: On June 1, 1989, an advance notice of proposed rulemaking was published in the **Federal Register** (54 FR 23493) recommending a 9.8% increase in the rates of Canal tolls, to become effective October 1, 1989. At that time, a written analysis showing the basis and justification for the proposed toll increase was made available to interested parties. The analysis stated that the increase was necessary because, by October 1, 1989, the Canal Commission would experience a significant deficit created by a trend of traffic growth revenue inadequate to absorb cost increases due to inflation and other factors. Written comments were solicited and received from interested parties and a public hearing was held in Washington, DC on July 6, 1989. The views presented by the interested parties were considered by the Supervisory Board of the Commission at its quarterly meeting of July 1989. On July 28, 1989, the Board voted to recommend to the President that the measurement changes and the proposed 9.8% increase be implemented on October 1, 1989. The notice of proposals recommended by the Board to the President was published in the **Federal Register** (54 FR 32099) on August 4, 1989. A complete record of the proceedings since initiation of the proposals, including the data, views and arguments submitted by interested parties, was included in the Canal Commission's final recommendation and was forwarded to the President.

Section 1602(b) of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3792(b), requires that Canal tolls be prescribed at rates calculated to produce revenues to cover, as nearly as practicable, all costs of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto, and capital for plant replacement, expansion and improvements. From a review of the information submitted by the Canal Commission, it is evident that for the Canal to remain self-sufficient, a toll rate increase of 9.8% is required.

List of Subjects in 35 CFR Parts 133 and 135

Panama Canal, Vessels.

Accordingly, 35 CFR parts 133 and 135 are amended to read as follows.

PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for part 133 continues to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR 36043.

2. Section 133.1 is revised to read as follows:

§ 133.1 Rates of toll.

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, $2.01 per net vessel ton of 100 cubic feet each of actual earning capacity—that is, the net tonnage determined in accordance with Part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, $1.60 per net vessel ton.

(c) On other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, $1.12 per ton of displacement.

3. Section 133.34 is revised to read as follows:

§ 133.34 Tolls for vessels in ballast.

In order for a vessel to secure the reduced rate of toll for vessels in ballast, it may not be carrying any passengers or cargo nor any fuel for its own consumption in a quantity which exceeds the spaces on the vessel which are available for the carriage of fuel (i.e., the actual volume of tanks or fixed compartments, including settling tanks, used for the storage of lubricating oil or fuel, which spaces cannot be used to stow cargo or stores and which have been certified by official marketing to be spaces for the vessel's own fuel).

PART 135—RULES FOR MEASUREMENT OF VESSELS

4. The authority citation for part 135 is revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215; 45 FR 36043.

5. Section 135.285 is revised to read as follows:

§ 135.285 Water ballast spaces, deducted.

(a) Water ballast spaces, other than spaces in the vessel's double bottom, shall be deducted if they are adapted and used only for water ballast, have for entrance only ordinary circular or oval manholes whose greatest diameter does not exceed thirty-four inches (864 mm), and are not available for the carriage of cargo, stores, or fuel. Spaces that would otherwise qualify as water ballast except that they are also used for fuel for the vessel's own use shall be regarded as part of the vessel's fuel space as defined in section 135.390 of this part.

(b) Tonnage of tanks may be obtained by using liquid capacity times the conversion factor with one-sixth off for frames in case of peak tanks and one-twelfth off in case of wings or deep tanks when they cannot be readily measured.

6. Section 135.352 is revised to read as follows:

§ 135.352 Definition of phrase "space occupied by engine rooms".

The space occupied by engine rooms is defined as that occupied by the engine room itself and the boiler room, together

with the spaces strictly required for the working of the engines and boilers. In addition to those, included are the spaces taken up by the shaft trunks in vessels with screw propellers, the spaces which enclose the funnels, and the casings necessary for the admission of light and air into the engine room to the extent that such spaces are located below the upper deck (as defined in §§ 135.61 through 135.63 of this part) or below a deck with openings. These are usually designated as tonnage openings, which may be so closed as to permit the carriage of cargo or stores under the deck or a portion thereof. This definition also covers donkey-engine and boiler spaces when the donkey-engine and boiler are situated within the boundary of the main engine room, or of the light and air casing above it and when they are used in connection with the main machinery for propelling the vessel. When the shafts of screw propellers pass through open spaces not enclosed within tunnels, the spaces allowed in lieu of tunnels must be of reasonable dimensions suitable for the vessel in question. When a protion of the space within the boundary of the engine or boiler room is occupied by a tank or tanks for the storage of fresh water, lubricating oil, or fuel, including settling tanks, the space considered to be within the engine room shall be reduced by the space taken up by such tanks. Installations not strictly required for the working of the engines or boilers but that would otherwise qualify as a deduction under §§ 135.271 through 135.285 of this part may be left in and included in the engine room measurement.

Dated: August 15, 1989.

G Bush

President.

[FR Doc. 89–19784 Filed 8–22–89; 8:45 am]

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Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Berms or Guardrails at Metal and Nonmetal Mines; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

RIN 1219–AA56

30 CFR Parts 56 and 57

Safety Standards for Berms or Guardrails at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: MSHA published a final rule for Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment at Metal and Nonmetal Mines on August 25, 1988 (53 FR 32496) which took effect October 24, 1988. After further Agency analysis and review of public comments, MSHA stayed the effective date of a portion of the berms or guardrails standard §§ 56.9300(d) and 57.9300(d) (53 FR 41600). The Agency has reviewed the stayed provision and is now proposing new language to replace the stayed paragraph.

DATES: Written comments on the proposed rule must be received on or before October 23, 1989.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances; MSHA; Room 631, Ballston Towers No. 3; 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, or Yvonne Johnson, Project Officer, Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Introduction and Rulemaking Background

The final rule for Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment at Metal and Nonmetal Mines was published on August 25, 1988 (53 FR 32496) as a revised a Subpart H-Loading, Hauling and Dumping and a revised Subpart M-Machinery and Equipment, of parts 56 and 57 of Title 30 of the Code of Federal Regulations. The final rule, which became effective on October 24, 1988, represents an updating, revision and reorganization of the existing standards in these areas.

Sections 56.9300 and 57.9300 of the final rule address the use of berms or guardrails on elevated roadways. A new paragraph (d) permits an alternative to berms or guardrails for elevated portions of infrequently traveled roadways used only by service or maintenance vehicles. It is the Agency's position that under these limited conditions, berms or guardrails are not necessary if other safety precautions can provide at least the same degree of protection. Paragraph (d) of §§ 56.9300 and 57.9300 includes requirements that would assure the safety of miners using these roadways when berms or guardrails are not present.

After reviewing the final rule in preparation for implementation, and analyzing comments received at public meetings held for the purpose of describing the application of the rule, the Agency determined that paragraph (d) of §§ 56.9300 and 57.9300 did not appropriately address MSHA's goals. Therefore, MSHA stayed paragraph (d) of §§ 56.9300 and 57.9300 pending reconsideration of the provision by the Agency. Upon careful review, the Agency has determined that it is necessary to propose new language for paragraph (d) to accurately reflect the goals of the Agency.

II. Discussion and Summary of Proposed Rule

Section 56/57.9300(d) Berms or Guardrails

MSHA proposes to retain the introductory language to §§ 56.9300(d) and 57.9300(d) which allows a limited exception to the general berms or guardrails requirement for elevated roadways which are infrequently traveled and used only by service or maintenance vehicles. The standard continues to require berms or guardrails on elevated roadways which do not meet all the alternative requirements.

The Agency also proposes to retain paragraphs (1), (2), (4), and (5) of paragraph (d). Paragraph (d)(1) requires locked gates at entrance points to elevated roadways. Locked gates at entrance points limit uncontrolled and accidental access to unbermed areas. Paragraph (d)(2) requires posting of warning signs. Warning signs notify intended users of the unbermed roadways and remind them of the existing hazard.

MSHA proposes to modify paragraph (d)(3) of the stayed provision. The stayed paragraph (d)(3) requires reflectors (delineators) to be placed at 25-foot intervals along the perimeter of elevated roadways. The Agency has reviewed this provision and is proposing a performance-based alternative which is derived primarily from Department of Transportation (DOT) and Bureau of Mines (BOM) analyses. The proposal requires that delineators be installed along the perimeter of the elevated roadway so that, for both directions of travel, the reflective surfaces of at least three delineators along each elevated shoulder are always visible to the driver, and spaced at intervals sufficient to indicate the edges and attitude of the roadway.

Road delineators are light reflecting devices mounted at the side of the roadway, in series, to indicate the roadway alignment. Delineators serve as a guidance device to aid vehicle operators in identifying elevated roadway edges and changes in direction under all circumstances of impaired visibility, including but not limited to darkness and adverse weather. In its Manual on Uniform Traffic Control Devices, paragraph 3D–3, the DOT states that delineators shall consist of reflector units capable of clearly reflecting light under normal atmospheric conditions from a distance of 1,000 feet when illuminated by the upper beam of standard automobile lights. MSHA would accept such delineators as conforming with the intent of the standard.

In the DOT manual, intended for application to streets and highways, DOT provides a table (Table III–1) for variable spacing of delineators as a function of horizontal curve radius. In order to provide drivers with the necessary level of guidance required to safely negotiate roadways, DOT suggests delineators be placed as close as 20 feet apart on curves having a radius of 50 feet. They also include a recommendation for spacing of delineators on uninterrupted highways. This uninterrupted highway spacing recommendation provides a range of 200 to 528 feet with the understanding that "spacing should be adjusted on approaches and throughout horizontal curves so that several delineators are always visible to the driver". A 528 foot spacing serves the purpose of providing 1/10 mile distance markers. The guidance role of delineators in unbermed elevated roadways is much more critical than on public highways. On public highways, berms or guardrails are provided in many instances as a physical backup to the guidance provided by the delineators. In addition to physical barriers, public highways typically have center lines and edge lines to assist delineators in providing the driver the necessary guidance. Since unbermed elevated mine roads do not have these and other safety features, MSHA feels the maximum recommended DOT delineator spacing of 528 feet would not provide adequate guidance to drivers. As mentioned, DOT has recognized that depending on the circumstances of a particular straight roadway, marker spacing should range from 200–528 feet.

In addition, the DOT manual indicates that the placement of signs warning of a change in road direction or attitude where speeds are relatively low should allow for an advance distance of about 250 feet. MSHA believes that delineators should be spaced at intervals sufficient to indicate the edges and attitude of the roadway to provide the driver with the necessary guidance to safely travel on the elevated roadway. MSHA particularly solicits comment on the appropriate spacing of delineators along a straight portion of an unbermed elevated mine road, and whether a specific distance should be set in the standard.

MSHA also recognizes that closer delineator spacing would be necessary on curved portions of unbermed elevated roadways to provide the driver with the guidance needed to safely negotiate these areas. A minimum of three points are necessary to indicate departure from a straight line to a curve. Therefore, to keep the driver constantly aware of approaching changes in road direction and edge location, it is necessary for the operator to have at least three delineators visible to him along each edge of an elevated roadway at all times. In light of this, MSHA proposes that at least three delineators be visible to the driver at all times on each elevated shoulder of an elevated roadway and spaced at intervals necessary to sufficiently indicate the direction and attitude of the roadway. The driver is thereby provided with feedback to maintain safe control of the vehicle.

Paragraph (d)(4) sets a speed limit of 15 MPH on unbermed roadways. Although §§ 56.9101 and 57.9101 require that operating speeds be consistent with the conditions of roadways, they contain no specific limits on speeds. In this alternative to berms or guardrails, a physical barrier to over-travel is not present. In order to assure safety, MSHA proposes to adopt a specific speed limit of 15 MPH at unbermed areas. This additional precaution is necessary to assure that the operator has sufficient time to react and avoid the edge of the elevated roadway in unexpected circumstances.

Paragraph (d)(5) assures proper traction on unbermed elevated roadways. The hazards to travel on an unbermed elevated roadway are significantly increased when weather conditions impair the traction. These roadways could be used only if corrective action, such as tire chains, plowing, or sanding is used to improve traction.

Executive Order 12291 and the Regulatory Flexibility Act

This proposed rule would revise one previously issued standard to require that delineators shall be installed along the perimeter of elevated roadways so that the reflective surfaces of at least three delineators are always visible to the driver along each elevated shoulder for both directions of travel. In comparison with the stayed rule, the proposed rule would involve a minor cost reduction to some mine operators. Accordingly, the Agency has determined that this rule would not result in a major cost increase or have an incremental effect of $100 million or more on the economy. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has also determined that the final rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The proposal does not contain any information collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Parts 56 and 57

Mine safety and health, Metal and nonmetal mining, Safety standards for berms or guardrails.

Dated: August 16, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Title 30, chapter I, subchapter N, parts 56 and 57 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

1. The authority citation for subpart H is added after the subpart heading to read as follows:

Authority: 30 U.S.C. 811.

2. In § 56.9300 paragraph (d) is revised to read as follows:

§ 56.9300 Berms or guardrails.

* * * * *

(d) Where elevated roadways are infrequently traveled and used only by service or maintenance vehicles, berms or guardrails are not required when all of the following are met:

(1) Locked gates are installed at the entrance points to the roadway.

(2) Signs are posted warning that the roadway is not bermed.

(3) Delineators are installed along the perimeter of the elevated roadway so that, for both directions of travel, the reflective surfaces of at least three delineators along each elevated shoulder are always visible to the driver, and spaced at intervals sufficient to indicate the edges and attitude of the roadway.

(4) A maximum speed limit of 15 miles per hour is posted for the elevated unbermed portions of the roadway.

(5) Road surface traction is not impaired by weather conditions, such as sleet and snow, unless corrective measures are taken to improve traction.

* * * * *

PART 57—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

3. The authority citation for subpart H is added after the subpart heading to read as follows:

Authority: 30 U.S.C. 811.

4. In § 57.9300 paragraph (d) is revised to read as follows:

§ 57.9300 Berms or guardrails.

* * * * *

(d) Where elevated roadways are infrequently traveled and used only by service or maintenance vehicles, berms or guardrails are not required when all of the following are met:

(1) Locked gates are installed at the entrance points to the roadway.

(2) Signs are posted warning that the roadway is not bermed.

(3) Delineators are installed along the perimeter of the elevated roadway so that, for both directions of travel, the reflective surfaces of at least three delineators along each elevated shoulder are always visible to the driver, and spaced at intervals sufficient to indicate the edges and attitude of the roadway.

(4) A maximum speed limit of 15 miles per hour is posted for the elevated unbermed portions of the roadway.

(5) Road surface traction is not impaired by weather conditions, such as sleet and snow, unless corrective measures are taken to improve traction.

* * * * *

[FR Doc. 89–19674 Filed 8–22–89; 8:45 am]

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August 23, 1989

Part V

Department of Education

34 CFR Part 303
Early Intervention Program for Infants and Toddlers With Handicaps; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 303

RIN 1820-AA49

Early Intervention Program for Infants and Toddlers With Handicaps

AGENCY: Department of Education.

ACTION: Final rule; Correction.

SUMMARY: On June 22, 1989, final regulations for 34 CFR part 303, titled "Early Intervention Program for Infants and Toddlers with Handicaps", were published at 54 FR 26306. The regulations are corrected as set forth below.

EFFECTIVE DATE: September 4, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas B. Irvin, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4618 M/S 2313–4600), Washington, DC 20202. Telephone: (202) 732–1114.

§ 303.4 [Corrected]

1. On page 26310, in the third column, under § 303.4 Applicable regulations, paragraph (a)(1)(ii), the second line, is corrected to read "Department Regulations);".

2. On page 26311, in the first column, paragraph (a)(1)(v) is corrected to read "(v) Part 81 (General Education Provisions Act—Enforcement); and".

3. On the same page, same column, under *Definitions*, the twelfth listed word is corrected to read "Method (§ 303.344(d)(2)(iii))".

§ 303.12 [Corrected]

4. On page 26312, in the second column under paragraph (d)(7)(ii), the fifth line is corrected to read "paragraph (d)(7)(i) of this section; and".

§ 303.13 [Corrected]

5. On page 26313, in the second column, in the Note, the thirteenth line is corrected to read "this part. (See § 303.344(e), and the note 2".

§ 303.15 [Corrected]

6. On the same page, in the second column, the authority citation under § 303.15 is corrected to read "(Authority: 20 U.S.C. 1483)".

§ 303.19 [Corrected]

7. On page 26314, in the first column, in § 303.19(b)(2), the second line is corrected to read " "developmental delay" (see 303.300);".

§ 303.22 [Corrected]

8. On the same page, in the second column, in § 303.22, the first line is corrected to read "Except as provided in § 303.200(b)(3),". Also, the citation of authority for this section is corrected to read "(Authority: 20 U.S.C. 1401(a)(6))".

§ 303.121 [Corrected]

9. On page 26315, in the second column, in § 303.121(b), the first line is corrected to read "Keeping such records and affording such".

§ 303.122 [Corrected]

10. On the same page, in the same column, in § 303.122(a), the third line is corrected to read "acquired with those funds, will be in a public". Also in § 303.122(b), the first line is corrected to read "(b) A public agency will administer the".

§ 303.123 [Corrected]

11. On the same page 26315, in the same column, in § 303.123, the fourth line of the first paragraph is corrected by removing the word "the" at the end of the line.

§ 303.200 [Corrected]

12. On page 26318, in the third column, the second line is corrected to read "most recent satisfactory data as".

§ 303.202 [Corrected]

13. On the same page, in the same column, under § 303.202, the authority citation is corrected to read "(Authority: 20 U.S.C. 1484(c)(1))".

§ 303.203 [Corrected]

14. On the same page, in the same column, in § 303.203, the first line is corrected by adding the word "the" to the end of the line.

§ 303.300 [Corrected]

15. On page 26319, in the first column, the first line of the Note under § 303.300 is corrected to read "Note: Under § 303.322(c)(2), States are".

§ 303.321 [Corrected]

16. On the same page, in the third column, in § 303.321(c)(1), the designation of the fourth paragraph is corrected to read "(iv)".

§ 300.322 [Corrected]

17. On page 26320, in the first column, the section designated "§ 300.322" is corrected to read "§ 303.322".

§ 303.341 [Corrected]

18. On page 26321, in the first column, in § 303.341(a)(1), the end of the second line is corrected by adding ";".

§ 303.344 [Corrected]

19. On page 26322, in the second column, in Note 2 the second paragraph, first line, is corrected to read "The "other services" in paragraph (e) of this".

§ 303.361 [Corrected]

20. On page 26323, in the second column, in § 303.361(b)(2), the seventh line is corrected to read "certification, licensing, registration, or other".

§ 303.402 [Corrected]

21. On page 26324, in the first column, in § 303.402, the eight line is corrected to read "assessments, eligibility determinations".

§ 303.404 [Corrected]

22. On the same page, in the second column, in Note 1, the seventh and the eighth lines are corrected to read "300.571, and in 34 CFR part 99 (Family Educational Rights and Privacy), both of".

§ 303.423 [Corrected]

23. On page 26325, in the third column, the Note is corrected in the thirteenth line to read "the timeline for the due process hearing".

§ 303.460 [Corrected]

24. On page 26326, in the first column, in the Note, the second paragraph, third line is corrected to read "(Family Educational Rights and Privacy);".

§ 303.522 [Corrected]

25. On page 26328, in the first column, in the Note, the second paragraph, seventh line is corrected to read "states, in effect, that nothing in that title shall". Also in the same paragraph, the eleventh line is corrected to read "payment under subsection (a) of section 1903 of the Social Security Act for medical".

§ 303.600 [Corrected]

26. On the same page, in the second column, in the Note, the seventh line is corrected to read "appoint additional members on an ex officio".

§ 300.601 [Corrected]

27. On the same page, in the second column, the section number "§ 300.601" is corrected to read "§ 303.601".

§ 303.604 [Corrected]

28. On page 26329, in the first column, the authority citation for § 303.604 is corrected to read "(Authority: 20 U.S.C. 1482(f))".

Authority: 20 U.S.C. 1471–1485, unless otherwise noted.

Dated: August 16, 1989.

Robert R. Davila,

Assistant Secretary for Office of Special Education and Rehabilitative Services.

[FR Doc. 89–19649 Filed 8–22–89; 8:45 am]

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August 23, 1989

Part VI

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 665
Bus Testing; Rule

DEPARTMENT OF TRANSPORTATION

available under the Urban Mass

The agency anticipates that the final

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 665

[Docket No. 89-B]

RIN 2132-AA30

Bus Testing

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Interim final rule.

SUMMARY: On May 25, 1989, the Urban Mass Transportation Administration published a proposed rule on its bus testing facility program. At the time of the proposal, the agency indicated that it would issue interim guidance to ensure timely implementation of the program. Today's document contains those interim procedures for the bus testing facility program.

DATES: *Effective date:* These procedures are effective from October 1, 1989, up to September 30, 1990.

Comment due date: Comments must be submitted by November 21, 1989.

FOR FURTHER INFORMATION CONTACT: For technical issues, Steven A. Barsony, Director, Office of Engineering Evaluations, Office of Technical Assistance and Safety, (202) 366–0090; for legal issues, Daniel Duff or Susan Schruth, (202) 366–4011. The test facility can be reached by contacting James C. Wambold, Director of Automotive Research, (814) 863–1869.

ADDRESSES: For comments, UMTA, Department of Transportation, Office of the Chief Counsel, Rules Docket Clerk, 400 Seventh Street, SW., Room 9316, Washington, DC 20590. For UMTA staff, UMTA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. For the bus testing facility, Penn State Automotive Research Division, Research Building B, University Park, PA 16802.

SUPPLEMENTARY INFORMATION:

I. Background

The Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking (NPRM) on May 25, 1989, to implement section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). (See 54 FR 22716). The NPRM's comment period ended on July 24, 1989.

Section 317 directs the Secretary of DOT (as delegated to UMTA) to establish a bus testing facility at Altoona, Pennsylvania, and provides that no funds appropriated or made available under the Urban Mass Transportation Act, as amended, after September 30, 1989, may be used to purchase a "new bus model", unless a bus of such model has been tested at the facility.

Section 317 also specifies that UMTA is to contract with a "qualified person" for the maintenance and operation of the facility. The agency has entered into an agreement with Pennsylvania State University to operate and maintain the bus testing facility. Penn State will operate the bus testing facility from two locations: first, its own test track and related facilities at State College, Pennsylvania; and, second, the former rail personnel training center at Altoona, Pennsylvania.

The agency's NPRM was expansive—proposing coverage of *all* vehicles used in mass transit and any new bus model used in mass transit after April 2, 1987 (the effective date of STURAA). In addition, the agency specifically requested comment on several issues.

To ensure that there are bus testing procedures in place before the statutory deadline of October 1, 1989, the agency indicated in the NPRM that it would issue interim guidance in advance of the agency's final rule. This document contains the interim guidance.

The preamble includes an overview of the comments received and an overview of the interim program, followed by specific procedural information on how the facility will operate and how a manufacturer can obtain information.

The agency has made the preliminary determinations needed to issue these procedures and to ensure that the bus testing facility is operational by October 1, 1989. While the interim guidance indicates the agency's position regarding testing at the facility during the interim period, these are only interim procedures and the agency in the final rule may decide to change certain of these procedures once it has some experience with the test facility and it has had the opportunity to analyze the comments in depth. Accordingly, actions and procedures provided for during the interim period do not necessarily represent decisions that will be reflected in the final rule.

The next section contains a brief summary of the comments submitted on the NPRM. Where appropriate, the preamble to this interim rule contains a discussion of the comments. As just indicated, however, the decisions made to implement the interim program are not necessarily the same as those that will be made at the time of the final rule.

The agency will provide a complete analysis of and response to the comments at the time of the final rule. The agency anticipates that the final rule will be issued before the end of the interim procedure period. Among other things, information gained during this interim period will be useful to UMTA as it develops its final rule.

II. Public Comments

Fifty-one comments were submitted to the bus testing docket, although not all were received by the July 25, 1989, close of the comment period. As indicated earlier, a complete discussion of the comments, as well as the agency's response to the comments, will be provided in the final rule issued by the agency sometime before the end of the interim period. While a general indication of the comments are noted in the various program issues discussed in the next section of the preamble, the agency provides the following general information about the comments.

Comments were submitted by transit bus operators (22), state and local governments (12), bus manufacturers (including a component manufacturer and a final stage manufacturer) (12), one member of Congress, one test facility operator, one association, and one UMTA regional office.

Nineteen commenters submitted views on the interim period, and their views were as varied as the range of options presented by the agency in the NPRM. Five commenters recommended that *no* testing be done until the test facility is completed. Several others indicated that they objected to testing at or results from a source other than the Altoona facility.

Five commenters recommended a two-year transition period, allowing manufacturers to perform their own testing during this period. A few commenters indicated that these test results should be submitted to Altoona as a substitute for the facility tests.

In response to the agency's query about testing some but not all vehicle types initially, three commenters recommended that small vehicles be phased in for testing first, while one commenter recommended that 40-foot buses be phased in first.

Of specific concern to the agency is determining the cost of this program to the manufacturers, and ultimate purchasers of these tested vehicles. Several commenters submitted opinions concerning the cost of this program. One transit agency estimated the cost of testing a 40-foot bus to range between $750,000 and $1,250,000, while a bus manufacturer estimated the cost for this size bus to be approximately $250,000. One bus manufacturer estimated that the requirement will impose "excessive although presently incalculable costs on each bus funded with UMTA money." While few commenters provided the data to support their conclusions, the agency is carefully examining the information provided in preparing its final regulatory analysis for the final rule.

III. Overview of the Interim Program

This section contains a discussion of a number of the key issues concerning interim period procedures at the bus testing facility. To set the framework for the discussion, we provide the following summary of key interim period requirements:

- The interim period is October 1, 1989 up to September 30, 1990. The agency may shorten the interim period, with **Federal Register** notice.
- A recipient of UMTA funds cannot lease or purchase a new model bus with any grants (including amendments) approved by UMTA after September 30, 1989, unless a model of such bus has been tested at the facility in accordance with these interim procedures.
- A new model bus is a bus put into mass transportation service in the United States after September 30, 1988, or a bus that has had a major change in components or a significant structural modification after September 30, 1988.
- During the interim period three categories of buses are subject to the bus testing procedures. (The agency may, after appropriate notice, expand the types of vehicles to be tested during the interim period.)
- A manufacturer that wants to have a bus tested contacts the facility, at which time the manufacturer will be told the fee for the testing, the specific tests to be conducted on the vehicles, and other facility procedures.
- The Test Report applicable to each vehicle will not become available publicly until the manufacturer provides an UMTA recipient with the Test Report as part of a procurement of an UMTA-funded vehicle.

A. *Federal Funds Subject to Interim Procedures.* (§ 665.1). In the NPRM, UMTA sought comment on its view that the bus testing facility requirements would apply to any funds "obligated or expended" by UMTA or a recipient after September 30, 1989. UMTA pointed out that this could affect ongoing recipient procurements, since funds "expended" by a recipient would be from grants made available by UMTA before October 1, 1989.

A significant number of commenters opposed this point of view noting, among other things, that it could disrupt ongoing procurement cycles, thereby causing delay, increased costs, and reduced mass transit services.

In response to these concerns UMTA has reviewed its initial position, the statute, and its legislative history. On the basis of this review, the agency has determined that there appears to be no intent in the statute or its legislative history for the provision to be implemented in a fashion that would disrupt ongoing procurements. Moreover, the language of the statute dealing with Federal funds—"[n]o funds appropriated or made available pursuant to this Act after September 30, 1989 * * *"—has been interpreted by the agency in the same or similar contexts to apply to grants made after the date specified, not to the expenditure of funds by a recipient after that date.

Accordingly, these interim procedures apply only to grants (or amendments to existing grants) made after September 30, 1989. It is important to point out that funds for such grants may come from any fiscal year, not just fiscal year 1990. That is, any grant made after September 30, 1989, or any amendment to an existing grant made after that date, would be subject to these interim procedures regardless of the fiscal year from which the grant funds are made available. Stated another way, these interim procedures apply to all funds obligated by UMTA after September 30, 1989.

B. *Length of Transition Period.* (§ 665.3). The transition period for the bus testing facility will be from October 1, 1989, up to September 30, 1990. Before the end of this transition period, the agency will publish a final rule containing the final requirements for the bus testing program that will go into effect on October 1, 1990. The agency will use the information acquired during the transition period, in addition to the comments received in response to the NPRM, to make final determinations on the program.

If at any time during this transition period, however, UMTA determines that the facility is ready for full operation, UMTA reserves the right to end the interim period earlier than the twelve month period currently projected. Before doing so, however, the agency will publish a final rule outlining the specific final requirements applicable to this program, and establish the effective date for full operation at the facility in accordance with traditional notice requirements. Furthermore, the agency may, after appropriate notice, expand the scope of the interim period procedures to include vehicle types beyond those covered in this notice.

C. *Types of Vehicles Covered in Interim Program.* (§ 665.11) One of the key issues identified in the proposed rule was the definition of bus, which determines the vehicles to be tested at the facility. The agency had proposed a comprehensive definition, including small vans. During this start-up phase of the facility, however, the agency recognizes that there are certain limitations affecting the ability of the facility to test comprehensively all vehicles. Accordingly, for purposes of the transition period, a vehicle under one of the following categories is covered by the interim procedures:

(1) Heavy duty large buses, approximately 35–40 foot, as well as articulated buses, with a minimum service life of 12 years or 500,000 miles.

(2) Heavy duty small buses, approximately 30 foot with a minimum service life of ten years or 350,000 miles.

(3) Purpose-built medium duty buses approximately 25–35 foot with a minimum service life of seven years or 200,000 miles.

By limiting the transition program to these vehicle types we are excluding from testing both body on chassis medium duty buses with a service life of seven years or 200,000 miles as well as vans, purpose-built paratransit vehicles and other light duty chassis vehicles with a service life of four years or 100,000 miles.

For purposes of the interim transition period, the three categories of vehicles noted above vary somewhat from the categories described in the proposed rule. Specifically, the proposed rule contained a category of bus called medium duty, which the agency now has split into purpose-built medium duty buses and body on chassis medium duty buses. Again, the purpose-built medium duty buses are subject to testing during the interim period, as are the two categories of heavy-duty buses, but body on chassis medium duty buses with a service life of seven years or 200,000 miles, vans, purpose-built paratransit vehicles, and other light duty chassis vehicles with a service life of four years or 100,000 miles are not subject to testing during the interim period.

The agency may, after appropriate notice, expand the scope of vehicles to be tested at the facility during the interim period.

D. *New Bus Model.* (§ 665.5) The law provides that funds appropriated or made available after September 30, 1989, may not be obligated or expended for the acquisition of a new bus model unless a model of such bus has been tested at the bus testing facility. The law

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also defines a "new bus model" as "a

of the NPRM, and included twelve

program, UMTA is not covering such

contacting Penn State's Transportation

Report becoming available to the public

preliminary regulatory evaluation,

also defines a "new bus model" as "a bus model which has not been used in mass transportation service in the United States before the date of production of such model or a bus model which has been used in such service but which is being produced with a major change in configuration or components."

On the one hand, as UMTA noted in the NPRM, it could be argued that only a new bus model introduced after September 30, 1989, would be subject to the bus testing provision, since it is after that date that UMTA funds appropriated or made available may not be obligated or expended on the acquisition of a new bus model that has not been tested at the bus testing facility. On the other hand, the drafters of the legislation may have meant to have the provision apply to any new bus model introduced after the 1987 STURAA was enacted into law, April 2, 1987. Choosing such a date would preclude manufacturers from trying to rush a new bus model into production before some later effective date. UMTA also sought comment on whether some date in between these two dates might be appropriate.

After consideration of this issue, UMTA has decided that a new bus model is one that is put in mass transportation service in the United States after September 30, 1988. UMTA believes that this date strikes a reasonable balance between the two other dates. For example, many commenters opposed an April 2, 1987, date as being inconsistent with the statute. Any such bus will have been in service for such a period of time that testing it at the facility probably would not provide any new information about its bus performance characteristics.

A bus model placed in service only on October 1, 1988, or later, would in the agency's view have insufficient operating experience such that testing at the facility would prove beneficial. Any such vehicle would be considered new for purposes of these procedures, and in conformance with the underlying purpose of the statute. Among other things, this approach also prevents a new bus model from being rushed into service, say, by September 25, 1989, to avoid a possible effective date of October 1, 1989.

E. *Major Changes in Configuration or Components.* (§ 665.5) Section 317 also provides that any major change in configuration or components made to an existing model would require such modified vehicle to be tested at the facility before it could be purchased or leased with UMTA funds. Examples of changes in configuration or components were provided in the definitions section of the NPRM, and included twelve different items.

Because of the start up nature of the interim period, UMTA has decided to limit the types of change in component or configuration triggering testing to two specific categories. Accordingly, during the interim period only changes of major components or significant structural modifications will require testing at the facility. The final rule will address this issue in detail.

Examples of changes in components include, but are not necessarily limited to, changes in engine, transmission, or axles. Examples of significant structural modification include a dimensional change or the introduction of new structural materials.

The agency recognizes that in some cases a manufacturer may not be certain whether, for purposes of the interim period, a change is a type that would require testing at the facility. Accordingly, UMTA will respond to specific inquires on this matter. In this connection, a manufacturer should write the Office of Technical Assistance and Safety at the address provided in the Addresses section of this Premable.

It is important to note that the effective date of any such change is the same as that for a new model bus, as discussed above. That is, any change in major components or any signficant structural modifications made to a bus after September 30, 1988, would require a model of that bus to be tested at the facility before a recipient could take final acceptance of such a model using funds from grants (including amendments) made after September 30, 1989.

F. *Acquisition of a New Bus Model.* (§ 665.7) The statute provides that UMTA funds may not be used for the "acquisition" of a new bus model unless it first has been tested at the facility. In the NPRM UMTA stated that acquisition included either purchase or lease of a bus, since in either case UMTA funds are being used to acquire a bus. In connection with leasing, the program should be easy to administer when a grantee leases a vehicle itself, since the grantee can require that any leased buses comply with these procedures. For the interim procedures, acquisition will apply to any purchase or lease of a bus.

UMTA noted in the NPRM that the agency saw potential compliance problems when a grantee leases services to be provided by, for example, a private operator. If the agency were to adopt a broad approach, it could require that vehicles used by a private company under service contract with the recipient comply with the provisions of this program. UMTA is not covering such contracted for services under the interim procedures, but will address this issue in the final rule.

G. *Certification of Compliance.* (§ 665.7) A recipient must certify in each application to UMTA for the acquisition of vehicles that any new model bus or a bus produced with a major change in components to be purchased or leased with UMTA funds obligated after September 30, 1989, will be tested at the bus testing facility, and a Test Report provided, before final acceptance of the first vehicle by the recipient.

It is the responsibility of the recipient, in dealing with the manufacturer, to establish whether a vehicle to be acquired is subject to these interim procedures.

H. *Tests in Operation During Transition Period.* (§ 665.11) The test facility will conduct the following types of tests: maintainability; reliability; safety; performance; structural integrity; fuel economy; and noise. These tests are described in Appendix A to Part 665. As the agency indicated in the NPRM, we anticipate that the contractor running the test facility will modify the different tests as it gains more experience with the tests and the vehicles coming through the test facility. In the NPRM the agency indicated that the manufacturer will receive notice of these changes when the manufacturer registers for testing at the facility. It is important to note that such test changes are not subject to notice and comment rulemaking. More specifically, during the interim procedure a manufacturer will receive specific information of the test procedures to be conducted on its specific vehicle type when the manufacturer begins discussions with the operators of the facility to submit its vehicle to the facility for testing, as well as at contract execution.

The agency anticipates that the durability test in particular will be changed during the interim period. While the contractor has developed a modified test to simulate durability, current plans include the construction of a final "durability track." Once the track is complete (which the agency anticipates will be some time during the transition period) the contractor will update the tests procedures to indicate this, and provide manufacturers with the information about the expanded durability tests.

IV. Procedural Information for the Transition Period

A. *Scheduling a vehicle to be tested at the facility.* (Subpart C). A manufacturer may schedule a vehicle for testing by contacting Penn State's Transportation Institute, the contractors for the bus testing facility program. In this connection, a manufacturer should contact James C. Wambold, Director of Automotive Research, The Pennsylvania State University, Pennsylvania Transportation Institute, Research Building B, University Park, PA 16802, (814) 863–1889.

When a manufacturer contacts Penn State, it will be provided with a draft contract for the testing, a fee schedule, and the test procedures that will be conducted on the vehicle. A manufacturer is responsible for transporting its vehicle to and from the facility at the beginning and completion of testing. (§ 665.27) Penn State will process vehicles for testing in the order in which the contracts are signed. The length of time to complete the testing will vary according to vehicle type, although actual testing time is not expected to exceed three months.

B. *Fees.* (§ 665.25) Section 317 provides that the contractor is to develop a fee schedule and is to collect the fees from the manufacturers. Section 317 also requires that UMTA approve the fee schedule. The agency anticipates that the fee schedule will be developed and approved by September 15, 1989. After this time a manufacturer may contact Penn State at the above address and request fee information.

C. *Administration of Tests.* (§ 665.29) The tests will be conducted at the facility, consistent with established procedures and will be consistent with the testing procedures provided to the manufacturer at the time of contract execution. As indicated in the test descriptions, Penn State will perform all normal maintenance and repair work on the vehicles. However, there also will be an office available to the manufacturer for on-site personnel to observe testing.

If at any time during the testing the manufacturer determines that it is in its best interest to withdraw its vehicle, the manufacturer may do so, without prejudice. No information about the tests will be made available in such cases. However, the manufacturer will be responsible for fees incurred up to the point of withdrawal.

D. *Release of Test Data.* (§ 665.13) The interim period procedures provide, consistent with the NPRM, that a manufacturer will be able to withdraw a vehicle from testing at any time before the completion of the tests, and no record of the partial tests will be kept. After vehicle testing is complete, Penn State will provide the entity with a copy of the Test Report for its vehicle.

For the interim period, the agency has decided that the trigger for the Test Report becoming available to the public is at some point during the procurement process when a manufacturer responds to a procurement bid by an UMTA recipient. The specific time *when* that information is to be made available is a local option, but it must be made available no later than the point at which the recipient is to take final acceptance of the first vehicle. That is, a recipient is free to develop bid specifications that require the Test Report to be available, for example, when a manufacturer bids in response to the specifications, but in any event the Test Report must be made available no later than at the final acceptance of the first vehicle. From that point, on the Test Report will available to the public.

The agency requested comment on this issue in the proposed rule, since there may be some entities interested in obtaining the information generated at the test center. A distinct majority favored maintaining the confidentiality of the material until the manufacturer decides that the bus actually will be the subject of a bid response. However, as already noted, this issue as well as all other issues are open for comment and subject to further analysis before the agency issues its final rule. In any event, once a Test Report becomes public, the facility will keep it and all other publicly available Test Reports available.

V. Regulatory Analyses and Certifications

A. *Executive Order 12291.* This action has been reviewed under Executive Order 12291, and UMTA has determined that this is not a major rule. As promulgated, this rule will not result in an annual effect on the economy of $100 million or more, nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises in domestic or export markets.

B. *Regulatory Evaluation.* This regulation is significant under the Department's Regulatory Policies and Procedures, because of the potential high level of public interest. A final regulatory evaluation will be prepared before the final rule is issued. These interim procedures will assist the agency in its continuing effort to collect specific cost data on the program. To some extent commenters responded to the agency's request for specific data, although estimates were not accompanied by any underlying analysis or information. The agency has docketed an Addendum to its preliminary regulatory evaluation, outlining the data available to date. The agency will issue a final regulatory analysis at the time the final rule is issued.

C. *Regulatory Flexibility Act.* In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96–354, UMTA believes that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Act, and accordingly has addressed this impact in its preliminary regulatory evaluation. The NPRM sought comment on the potential impact on this rule on the small manufacturer—of vans, paratransit vehicles and the like.

D. *Paperwork Reduction Act.* The collection of information requirements in this rule are subject to the Paperwork Reduction Act (44 U.S.C. Chapter 35). Section 317 of STURAA specifically requires the establishment of the facility, as well as the Test Reports. The paperwork requirements contained in this rule have been or will be submitted to the Office of Management and Budget for approval.

E. *Federalism—Executive Order 12612.* UMTA has reviewed this rule in light of the Federalism considerations set forth in Executive Order 12612. That Executive Order requires each Federal agency to address the impact of its regulations on State and local governments. Although this rule will have definite Federalism implications, because it will impose additional requirements on States, local governments, and public transit operators receiving Federal financial assistance from UMTA, this rulemaking is required by statute. UMTA considered the Federalism implications of this rulemaking during its development, and has designed it to provide recipients with as much flexibility as possible under the law. UMTA does not expect that this rule will have a substantial direct effect on the relationship between the Federal Government and the States or the distribution of power and responsibilities among the various levels of government.

In addition, UMTA has considered the Federalism implications of this rulemaking on public transit operators which are quasi-governmental or instrumentalities of States and local governments, and UMTA does not expect that this rule will have a substantial direct effect on the relationship between those public operators and the governmental entities with which they are associated. Accordingly UMTA has determined that

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the preparation of a Federalism Assessment under Executive Order 12612 is not warranted.

Lists of Subjects in 49 CFR Part 665

Vehicle testing, Grant programs—transportation, Mass transportation.

Accordingly, for the reasons described in the Preamble, 49 CFR Chapter VI is amended by adding a new part 665, as set forth below:

PART 665—BUS TESTING

Subart A—General

Sec.
665.1 Purpose.
665.3 Scope.
665.5 Definitions.
665.7 Grantee certification of compliance.

Subart B—Bus Testing Procedures

665.11 Testing requirements.
665.13 Test report and manufacturer certification.

Subart C—Operations

665.21 Bus testing facility.
665.23 Scheduling.
665.25 Fees.
665.27 Transportation of vehicles.
665.29 Procedures during testing.

Appendix A—Tests To Be Performed at the Bus Testing Facility

Authority: Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*, 1608(h), section 317, Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR 1.51.

Subpart A—General

§ 665.1 Purpose.

An applicant for Federal financial assistance under the UMT Act for the purchase or lease of buses with funds obligated by UMTA after September 30, 1989, must certify to UMTA that any new bus model acquired with such assistance has been tested in accordance with this part. This part contains the information necessary for a recipient to ensure compliance with this provision.

§ 665.3 Scope.

This part applies to a recipient of Federal financial assistance under sections 3, 9, 16(b)(2), or 18 of the UMT Act. These interim procedures shall be in effect from October 1, 1989, up to September 30, 1990, unless the agency, with appropriate notice, expands the scope of this rule to cover additional vehicles or makes the interim rule final.

§ 665.5 Definitions.

As used in this part—

Administrator means the Administrator of the Urban Mass Transportation Administration or his or her designee.

Bus means a rubber-tired automotive vehicle used for the provision of mass transportation service by or for a recipient.

Bus Model means a bus design or variation of a bus design usually designated by the manufacturer by a specific name and/or model number.

Bus Testing Facility means a testing facility established by renovation of a facility constructed with Federal assistance at Altoona, Pennsylvania under section 317(b)(1) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and includes proving ground facilities operated in connection with the facility.

Major changes in configuration or components means a change of major components or significant structural modifications.

Mass Transportation Service means the operation of a vehicle which provides general or special service to the public on a regular and continuing basis.

New Bus Model means a bus model which—

(1) Has not been used in mass transportation service in the United States before October 1, 1988; or

(2) Has been used in such service but which after September 30, 1988, is being produced with a change of major components or significant structural modifications.

Recipient means a direct recipient of funds under sections 3, 9, 16(b)(2), or 18 of the UMT Act.

Test Report means the final document prepared by the operator of the bus Testing Facility stating the results of the tests performed on each bus.

UMT Act means the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. app. 1601 *et seq.*)

§ 665.7 Grantee certificate of compliance.

(a) In each application to UMTA for the purchase or lease of buses, a recipient will certify that any new bus model, or any bus model with a major change in configuration or components, to be acquired or leased with funds obligated by UMTA after September 30, 1989, will be tested at the Bus Testing Facility, and a Test Report provided before final acceptance of the first vehicle by the recipient.

(b) It is the responsibility of the recipient in dealing with a manufacturer, to establish whether a vehicle to be acquired is subject to these procedures.

Subpart B—Bus Testing Procedures

§ 665.11 Testing requirements.

(a) A new bus model to be tested at the Bus Testing Facility shall—

(1) Be a single model;

(2) Meet all applicable Federal Motor Vehicle Safety Standards, as defined by the National Highway Traffic Safety Administration in part 571 of this title;

(3) Be substantially fabricated and assembled by techniques and tooling that will be used in production of subsequent buses of that model.

(b) The model shall be tested for maintainability, reliability, safety, performance, structural integrity, fuel economy, and noise.

The following vehicle types shall be tested:

(1) Heavy duty large buses, approximately 35–40 foot, as well as articulated buses, with a minimum service life or 12 years or 500,000 miles.

(2) Heavy duty small buses, approximately 30 foot with a minimum service life of ten years or 350,000 miles.

(3) Purpose-built medium duty buses approximately 25–35 foot with a minimum service life of seven years or 200,000 miles.

(c) The operator of the facility shall develop a test plan for the testing of vehicles at the facility, which is approved by UMTA, and which generally follows the guidelines set forth in appendix A of this part.

§ 665.13 Test report and manufacturer certification.

(a) Upon completion of testing, the operator of the facility shall provide a Test Report to the entity that has had the bus tested.

(b)(1) A manufacturer of a new bus model or a bus produced with a major change in component or configuration shall provide a copy of the Test Report to a recipient during the point in the procurement process specified by the recipient.

(2) A manufacturer who releases a report under paragraph (b)(1) of this section also shall provide notice to the operator of the facility that the report is available to the public.

(c) If a bus model subject to a Test Report has a change that is not a major change under this part, the manufacturer shall advise the recipient during the procurement process and shall include a description of the change and its basis for concluding that it is not a major change.

(d) A Test Report shall be available publicly once the owner of the Report makes it available during the recipient's procurement process. The operator of

the facility will have available for distribution copoies of all the publicly available reports.

(e) The Test Report is the only information or documentation that will be made available publicly in connection with any bus model tested at the facility.

Subpart C—Operations

§ 665.21 Bus testing facility.

(a) *Location.* The bus testing facility is located at Altoona, Pennsylvania, and includes proving ground facilities.

(b) *Operator.* The facility is operated by Penn State University under contract with UMTA.

§ 665.23 Scheduling.

(a) A manufacturer may schedule a vehicle for testing by contacting Penn State's Transportation Institute (PSTI) at the following address: The Pennsylvania State University, Pennsylvania Transportation Institute, Research Building B, University Park, PA 16802 (814) 863–1889.

(b) Upon contacting PSTI, the manufacturer will be provided the following:

(1) A draft contract for the testing;

(2) A fee schedule; and

(3) The draft test procedures that will be conducted on the vehicle.

(c) PSTI will provide final test procedures to be conducted on the vehicle at the time of contract execution.

(d) PSTI will process vehicles for testing in the order in which the contracts are signed.

§ 665.25 Fees.

(a) Fees charged by the operator are according to a schedule approved by UMTA.

(b) Fees will be prorated for a vehicle withdrawn from the facility before the completion of testing.

§ 665.27 Transportation of vehicle.

A manufacturer is responsible for transporting its vehicle to and from the facility at the beginning and completion of the testing.

§ 665.29 Procedures during testing.

(a) The facility operator shall perform all testing, consistent with established procedures at the facility and with the test procedures provided the manufacturer at the time of contract execution.

(b) The manufacturer of a bus being tested may terminate the test program at any time before the completion of testing, and shall be charged a fee for the tests performed.

(c) The operator shall perform all maintenance and repairs on the test vehicle, consistent with manufacturers specifications.

(d) The manufacturer may observe all tests. The manufacturer may not provide maintenance or service.

Appendix A to Part 665—Tests To Be Performed at the Bus Testing Facility

The seven tests to be performed on each vehicle are required by the bus testing legislation and are based in part on tests described in the UMTA report "First Article Transit Bus Test Plan", which is mentioned in the legislative history of section 317. When appropriate, SAE test procedures and other procedures accepted by the transit industry will be used. The seven tests are described in general terms in the following paragraphs.

1. *Maintainability.* The maintainability test includes bus servicing, preventive maintenance, inspection, and repair. It also will include the removal and reinstallation of the engine and drive train components that would be expected to require replacement during the bus' normal life cycle. Much of the maintainability data will be obtained during the bus durability test at the proving ground. Up to twenty-five percent of the bus life will be simulated and there will be servicing, preventive maintenance, and repair actions. These actions will be done by test facility staff, although manufacturers will be allowed to maintain a representative on site during the testing. Since the operator will not become familiar with the detailed design of all new bus models that are tested, tests to determine the time and skill required to remove and reinstall an engine, a transmission, or other major propulsion system components may require advice from the bus manufacturer. All routine and corrective maintenance will be carried out by the test operator in accordance with the manufacturer's specifications.

The maintainability Test Report will include the frequency, personnel hours, and replacement parts or supplies required for each action during the test. The accessibility of selected components and other observations that could be important to a bus user will be included in the report.

2. *Reliability.* The question of reliability will be addressed by recording all bus breakdowns during testing. It is recognized that with one test bus it is not feasible to conduct statistical reliability tests. It is anticipated that bus operation on the durability course should reveal the problems that would otherwise not be detected until much later during scheduled transit service. The bus failures, repair time end the actions required to get the bus back into operation will be recorded in the report.

3. *Safety.* The safety test will be a handling and stability test. The test is an obstacle avoidance or double-lane change test that will be performed at the proving ground. The double-lane change course will be different for each type of bus and the speed could be different for each type of bus. Coach speed will be held constant throughout a given test run. Individual test runs will be made at increasing speeds up to 45 mph or until the coach can no longer be operated safely over the course, whichever speed is lower. Both left- and right-hand lane changes will be tested. The 45 mph maximum speed was selected because it is a reasonable speed at which to expect this bus type to maneuver safely.

4. *Performance.* The performance test will be performed on the proving ground and will measure acceleration and gradeability with the test vehicle operated at seated load weight. Top speed also will be measured if it can be done safely on the track. The test will be performed using a fifth wheel or equivalent and associated instrumentation. The bus will be accelerated at full throttle from standstill to maximum safe speed on the track. The report will include a table of time required to accelerate to each 10 mph increment of speed and when possible, the top speed. The gradeability capabilities will be calculated both from the test data and a test from a dead stop on a minimum of a 15 percent grade.

5. *Structural Integrity.* Two different structural integrity tests will be performed. Structural strength and distortion tests will be performed at the testing facility in Altoona and structural durability tests will be performed at the proving ground.

a. Structural Strength and Distortion Tests

(1) The structural strength and distortion tests will be conducted and will be different for each type of bus. For example, a shakedown of the bus structure will be conducted by loading and unloading the bus no more than three times with a distributed load equal to 2.5 times gross load. The bus then will be loaded with a distributed load to gross vehicle weight. (Gross vehicle weight is a curb weight plus gross load.) Increase in floor deflection will be measured as the bus weight is increased from curb weight to gross vehicle weight. Then the bus will be loaded with a distributed load equal to 2.5 times gross load. The bus then will be unloaded and inspected for any permanent deformation on the floor or coach structure.

(2) The bus will be loaded to gross vehicle weight, with one wheel on top of a 6-inch-high curb and then in a 6-inch-deep pot hole. This test will be repeated for all four wheels. The test will verify: (a) Normal operation of the steering mechanism and (b) operability of all passenger doors, passenger escape mechanisms, windows, and service doors. In addition, a water leak test will be conducted.

(3) Using a load-equalizing towing sling, a static tension load equal to 1.2 times the bus curb weight will be applied to the bus towing fixtures (front and rear). The load will be removed and the tow eyes and adjoining structure will be inspected for damages or permanent deformations.

(4) The bus at curb weight will be towed with a heavy wrecker truck for several miles after which it will be inspected for structural damage or permanent deformation.

(5) With the bus at curb weight probable damages due to tire deflating and jacking will be tested.

(6) With the bus at curb weight possible damages or deformation associated with lifting the bus on a two post hoist system or supporting it on jack stands will be assessed.

b. Structural Durability

The structural durability test also will be different for each type of bus, but all tests will be performed on the durability course at the proving ground, simulating up to twenty-five percent of the vehicle's normal service life. During the test there will be inspections of the bus structure and the mileage and identification of possible structural anomalies.

6. *Fuel Economy.* This test will be run to determine the fuel economy in miles per gallon or equivalent of the new bus models. The test will be run at seated load weight on a duty cycle that simulates transit service for the type of vehicle being tested. (The methods of fuel use measurement for different fuels have yet to be determined) The fuel measurement devices under consideration include volumetric, gravimetric, flow, and pressure.

The agency notes that this fuel economy test bears no relation to the calculations done by the Environmental Protection Agency (EPA) to determine fuel economy levels for the Corporate Average Fuel Economy Program. However, the test will provide data which can be used by recipients in their purchase decisions.

7. *Noise.* There will be two noise tests: (1) Interior noise and vibration and (2) exterior noise. It is recognized that different levels of noise are expected and acceptable with different types of vehicles and different test procedures might be required.

Issued: August 21, 1989.

Roland J. Mross,

Deputy Administrator.

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Rules and Regulations

Federal Register
Vol. 54, No. 163
Thursday, August 24, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 571

[No. 89-2347]

Applications Processing Guidelines

Date: August 8, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; solicitation of comments.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is revising its policy statement, 12 CFR 571.12, which sets forth guidelines concerning the processing of applications filed with the Board and the FSLIC, to make various technical amendments that will streamline and update applications processing, clarify certain procedures, and conform the guidelines to current Board practice, all as more fully described in the preamble to this final rule.

EFFECTIVE DATE: August 24, 1989. Comments on the revised policy statement must be received on or before October 23, 1989.

ADDRESS: Send comments to Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Jacqueline L. Lassier, Attorney, (202) 906–6575; V. Gerard Comizio, Director, (202) 906–6411, Corporate and Securities Division, or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 906–6459, Office of General Counsel; Cindy L. Hausch, Financial Analyst, (202) 906–7488; Cheryl A. Martin, Regional Director, (202) 906–7869; Patrick G. Berbakos, Director, (202) 906–6720, Office of District Banks; Stephen D. Johnson, Attorney, (202) 906–6318, Office of Community Investment, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; Robyn H. Dennis, Financial Analyst, (202) 331–4572; Jerry Kluckman, Director of Compliance Programs, (202) 785–5442, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On October 2, 1987, by Resolution No. 87–1038, the Board issued a policy statement that promulgated applications processing guidelines ("Guidelines") (effective October 9, 1987) setting forth maximum time periods for approval of completed applications filed with the Board. *See* 52 FR 39064 (October 20, 1987). The Guidelines are currently set out at 12 CFR 571.12. The Board adopted the Guidelines as a result of section 410 of the Competitive Equality Banking Act of 1987, Public Law No. 100–86, 101 Stat. 552 (August 10, 1987) ("CEBA"), which directed the Board in section 410(a) to promulgate guidelines providing that each completed application filed with the Board or the FSLIC (other than applications submitted under section 408(g) of the National Housing Act, 12 U.S.C. 1730a(g) ("NHA") concerning holding company indebtedness) shall be deemed to be approved as of the end of the period prescribed by such guidelines unless the Board or the FSLIC approves or disapproves the application before the end of the period.[1]

Section 410(d) of CEBA provided that the guidelines required to be promulgated under section 410(a) would take effect on October 9, 1987, *i.e.*, at the end of the 60-day period beginning on August 10, 1987, the date of enactment of CEBA.

While the Guidelines were promulgated in final form, the Board also invited public comment as to how the Board's then current regulations related to regulatory applications review and processing and the newly adopted Guidelines could be further streamlined. In addition, the Board conducted public hearings on November 3 and 4, 1987, on regulations proposed in response to CEBA. The hearing on November 3 covered the Guidelines, which were already effective at the time of the hearing. A number of commenters responded with letters addressing issues covered by the Guidelines and suggested modifications to some of the provisions of the Guidelines.

The Board has carefully studied the issues raised by the commenters. The Board has also studied issues identified as a result of the Board's experience in processing applications under the Guidelines. Accordingly, today the Board is issuing a revised statement of policy on the Guidelines.

The Board notes that the Administrative Procedures Act ("APA"), 5 U.S.C. 553(b)(3)(A), exempts general policy statements and interpretative rules from notice and comment requirements. As permitted by section 553(b)(3)(A) of the APA, the Board has not submitted the revisions to the Guidelines for public comment before adopting this final revised statement of policy. However, the Board also is soliciting comments from interested parties as to how the Board's Guidelines may be further streamlined. Comments should be submitted within 60 days of the effective date of this revised statement of policy.

This preamble will first review the comments received on the Guidelines. An overview of the amendments to the Guidelines is then provided.

I. Summary of Comments

The Board received a total of 17 comment letters in response to the request for written comments. The Board also heard testimony from eight speakers at the public hearing held on November 3, 1987. Nine of the written commenters were thrift industry trade associations (including six state savings institutions leagues), five were FSLIC-insured institutions, one was a professional society of financial managers, one was a law firm, and one was an organization involved in assisting community groups. Four of the commenters at the hearing were representatives of thrift industry trade associations and four were members of law firms. Three of the thrift industry trade associations that had representatives testify at the hearing also submitted comment letters. Generally, the written comments supported the Guidelines, although many comment letters contained suggestions concerning particular aspects of the Guidelines.

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[1] Section 410(b) of CEBA amended section 408(g) of the NHA to provide that any completed application submitted for approval under that subsection shall be deemed to be approved 60 days after the filing of such completed application, unless the FSLIC approves or disapproves the application prior to the expiration of that period.

The comments primarily addressed two issues: The number and types of applications excluded from the timelines set out in the Guidelines, and the timelines themselves. Commenters also made numerous suggestions to speed the review and the processing of applications and to increase communication between the Board and applicants.

A. Written Comments

1. Applications Excluded From Applications Processing Guidelines

The Guidelines exclude certain categories of applications from the stricture of the time deadlines. Eight commenters addressed this issue, three of whom asserted that the Board has no authority to exclude, any category of application from the timelines. The remaining five urged that the Board include more types of applications within the coverage of the timelines.

Even those commenters who did not assert that the Board has no authority to exclude categories of applications from the timelines disagreed with the number of exclusions. They urged that the categories of covered applications be expanded to include as many as possible, no matter how long a time period the Board may assign, for the sake of certainty in business planning. A number of commenters pointed out the need for speed in acting on transactions related to bringing new capital into the industry. One commenter asked that the Board clarify whether "securities-related filings" are covered by the Guidelines.

2. Length of Time Allowed for Review

The Guidelines set out timelines for the Board or the FSLIC to review and act on applications. Ten commenters addressed the issue of the timelines, three suggesting that some or all of the timelines should be shortened. The extension of time for review provided by paragraph (f) of the Guidelines (12 CFR 571.12(f)) for applications involving significant issues of law or policy elicited three comments.

Of the three commenters who urged shorter time frames, one suggested a 60-day overall time limit with a ten-day time limit for debt applications. This commenter pointed out the need to move quickly to take advantage of desirable financing rates and business opportunities. This commenter also suggested that there is no need for the 30-day extension at the discretion of the Board in paragraph (e) (12 CFR 571.12(e)), because the "law or policy" exception in paragraph (f) should subsume any need to extend consideration of an application.

Another commenter suggested that the review process be modeled after that of the Securities and Exchange Commission ("SEC"). This commenter suggested that an applicant be notified within three to five days whether its application would be afforded "no," "limited," or "full" review, and within 30 days whether additional information is required. This additional information would then be reviewed by the staff within two weeks.

The third commenter who addressed the review period for applications said that the time limits are "completely unworkable for an institution trying to move quickly when an opportunity presents itself." This commenter suggested the following time limitations: Ten days to request additional information, and five days after its receipt to request further information, and for any application that can be approved by a Principal Supervisory Agent or designated Supervisory Agent, a total of 30 days to review from the date of initial filing, tolled only for the period the Board is awaiting additional information. All other applications would have a maximum review period of 45 days.

The three commenters who addressed the extension of time available for those applications determined to present a significant issue of law or policy under paragraph (f) of the Guidelines (12 CFR 571.12(f)) asked that there be some time limit placed on those applications, no matter how long, for the sake of predictability in business planning. One commenter suggested a system whereby the applicant would be notified that its application has been determined to raise a significant issue of law or policy with a statement explaining the reasons, and providing for notice every 30 days to the applicant until 90 days have elapsed. At that point the applicant could request a public hearing to resolve the delay.

One commenter expressed concern that there is no provision made in the text of the Guidelines for stopping the automatic approval process when a protest under the Community Reinvestment Act is filed, noting that a footnote to the Preamble of the Guidelines provides that the automatic approval process will be discontinued until the issues relating to the protest are resolved. The commenter urged that this provision be incorporated into the text of the Guidelines so that the Board's policy on protests is clear.[8]

Another commenter expressed fears that the automatic approval feature might allow "highly objectionable" applications to be automatically approved, merely because the Board had not had the time to review the application properly. This commenter did not suggest a remedy to this perceived danger.

3. Suggested Improvements to Applications Processing

A number of commenters suggested ways to improve and streamline the applications review process. Three commenters suggested, that the information required in any application be explicitly spelled out in detailed forms and regulations similar to the SEC's forms and Regulations S–K and S–X. This should reduce the need for, and therefore the delay from, requests for additional information from the Board's staff.

Four commenters urged greater communication between the staff and an applicant; one commenter suggested the creation of an office that would act as a central clearing house to track the status of an application and keep the applicant informed. The other commenters asked for formal written notification of status at each point in the application's review, including affirmative, written notification that an application has been automatically approved by the expiration of the relevant review period. One commenter suggested that the Guidelines should specify standards with respect to when an application is deemed complete.

Three commenters also suqgested that the provision for extending the review period of applications raising significant issues of law or policy under paragraph (f) of the Guidelines (12 CFR 571.12(f)) should be limited by (1) defining "a significant issue of law or policy," (2) establishing a process and timeline for the treatment of an application once it has been determined to involve a significant issue of law or policy, and (3) limiting the number of staff who have the power to delay or suspend an application that involves a significant issue of law or policy.

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[8] The Board notes that the protest procedures discussed in the footnote to the Preamble to the original Guidelines are designed to apply to applications subject to the protest procedures set forth in 12 CFR 543.2. There are also different procedures for the processing of other types of protested applications, such ac holding company applications under 12 CFR part 574. *See* section II.B.7, below.

B. Comments of Panelists at Public Hearing on November 3, 1987

Four commenters expressed general, qualified support, while suggesting substantive and minor revisions. Two commenters addressed particular issues but expressed no overall view of the Guidelines, while one commenter expressed general disagreement. No commenter expressed unqualified support for the Guidelines.

1. Applications Excluded from Applications Processing Guidelines

A number of panelists addressed the exclusions from the Guidelines. Several stated that a time clock system should be applied to all applications submitted to the Board. This would provide applicants with certainty as to the time frame which they should expect. They asserted that CEBA requires the Board to promulgate time limits for processing all applications and does not contain any exceptions. The Guidelines contain numerous exceptions to the time limits. Some of these exceptions were viewed as appropriate, such as litigation or enforcement matters, because these are not in the nature of an application. However, several panelists stated that there was little justification for excepting applications for supervisory acquisitions. One suggested that once the terms of a supervisory transaction are arranged, then the time limits should apply to the processing of the necessary applications. Another panelist suggested that the matters that come before the Board that are not considered "applications" (*e.g.*, requests for legal opinions) should be addressed.

A majority of the panelists expressed concern about the provision permitting an exception from the standard review timetable for applications raising issues of law or policy. One person recommended that fewer persons be permitted to decide whether an application involves a significant issue of law or policy and that the meaning of what is a significant issue of law or policy should be clarified. One panelist suggested that guidelines be added setting forth a time frame to decide significant issues of law or policy, just like routine applications. One panelist suggested that a guideline be added stating that the Board will make a good faith attempt to resolve a significant issue of law or policy within 60 or 90 days after determining that one exists.

2. Length of Time Allowed For Review

A number of panelists urged that the processing time be shortened on certain applications, such as branching applications. Other panelists stated that because the Guidelines provide that the "review" period does not begin until the Board deems an application "complete," the chance for delay before the review process begins is high because the Board has "complete control" over when the limits are triggered. The likelihood of numerous requests for additional information from a number of the staff's reviewers is high. This panelist suggested that an absolute time limit from the date of filing of an application be established, notwithstanding requests for additional information. If the record is insufficient to support action because of a lack of adequate information in the application, the applicant should be advised that unless he requests a suspension of processing and leave to amend to correct the deficiency, the Board will deny the application. If the applicant refuses to request a suspension, the Board cannot act on the application because it is incomplete, and it should then be denied. This would put the decision on extensions in the applicant's hands and establishes absolute deadlines. The commenter claimed that the benefit from this approach is that in cases where the record is "substantially complete," it will not be possible for the staff to delay processing by "immaterial or tardy" requests for additional information.

This panelist also recommended the following: First, the Board should establish a centralized office in charge of coordinating and scheduling the processing of all items submitted, whether or not the Guidelines apply; second, the Board should develop a status tracking system to keep track of all items in the system; and third, the Board should delegate as much as possible to the Supervisory Agents to lighten the burden on the Board's Washington staff.

One panelist recommended that the Guidelines be amended to clarify the following issues:

(a) Priorities: It should be a priority of the Board to encourage bringing new capital into the industry. Applications involving new capitalization or supervisory conversions should be processed quickly;

(b) Materiality: It should be the Board's policy that materiality governs completeness. Under the present system, an application that is immaterially incomplete cannot be acted on. This has been employed in the past to forestall processing; the Guidelines should be amended to prevent that situation; and

(c) The Board's staff should evaluate every application immediately upon its filing and determine whether it is the kind of application the Board wants to encourage. If it is a priority application (*i.e.*, one that will put money into the industry), then it should be processed as quickly as possible.

Many panelists commented about requests for additional information. Commenters generally urged that such requests should not be duplicative of the requests of other reviewing offices; should substantively advance the application process; and should not be overused because this results in an application never being reviewed, because it is never deemed complete.

3. Suggested Improvements to Applications Processing

One panelist recommended that a review of the forms of applications be undertaken. Certain applications could be eliminated; others could be tailored more specifically to what is required for that type of application; and a regulation analogous to SEC Regulation S–K should be implemented. The regulation should include, for example, a uniform description for all financial statements, biographical data, and anti-competitive material. Each application should list the type of information required. This would result in a list of standard application components and would thereby reduce staff requests for additional information.

One person recommended that all applications and approvals be published. This would establish precedent to help other applicants understand what is permitted. This would also lighten the staff's workload because they would not be asked questions which have already been decided.

II. Discussion of Amendments to the Guidelines

In the months since the adoption of the Guidelines, the Board has gained significant experience in regulatory applications review and processing under the Guidelines. The Board also has taken action on a number of fronts to improve the efficiency of the agency's application processing procedures. For example, the Board has adopted amendments to its acquisition of control regulations, 12 CFR part 574, designed to streamline the regulatory processing of the wide range of acquisition of control filings made with the Board under part 574 by revising regulatory application processing time periods and procedures consistent with the Guidelines. *See, e.g.*, Acquisition of Control of Insured Institutions; Procedural Requirements, 52 FR 48519 (Dec. 23, 1987) (revising filing procedures and time frames for public notification and sufficiency determinations for applications, notices and rebuttal filings filed pursuant to 12 CFR part 574); Acquisition of Control of Insured Institutions; Delegations of Authority and Technical Amendments, 53 FR 33104 (Aug. 30, 1988) (expanding the authority of the Principal Supervisory Agents to approve and disapprove certain change of control notices and applications under 12 CFR part 574, and certain other technical amendments to streamline 12 CFR part 574).[3] The Board has also established internal applications processing guidelines. *See* Office of District Banks Applications Procedure Memorandum #014–1, August 1, 1988 ("AP 14–1"). Many of the amendments being adopted today are as a result of the Board's experience in processing applications under the Guidelines.

A. Completed Applications to Which the Guidelines Apply

Section 410 of CEBA, by its terms, applies to all completed "applications" under the Board's regulations. Congress did not, however, expressly define the term "application" regarding the nature and type of applications intended to be within the scope of section 410(a). In determining which applications should be governed by the Guidelines, the Board excluded certain matters that it believed do not appear to appropriately fall within the scope or intent of section 410. A number of commenters criticized the exclusions and urged that as many types of applications as possible be covered by the Guidelines. The Board is amending paragraph (a) of the Guidelines (12 CFR 571.12(a)) to delete from the category of applications not covered by the Guidelines those applications involving requests for non-standard supervisory forbearances in connection with mergers or acquisitions under 12 CFR 563.22(e)(1)(i) that do not involve FSLIC assistance. If additional time for review is necessary, there are mechanisms available under the Guidelines to extend the review period. *See 12 CFR 571.12 (e) and (f).*

Second, the Board is amending paragraph (a) of the Guidelines to clarify that under certain circumstances, certain applications that pertain to the Board's litigation and enforcement activities will be covered by the Guidelines. Requests submitted pursuant to special requirements imposed pursuant to cease and desist orders, removal/prohibition orders, supervisory agreements, consent merger agreements, and agreements reached pursuant to the terms of a settlement of litigation are not covered by the Guidelines. Such litigation and enforcement documents often contain provisions that require that the institution in question restrict certain of its activities and/or engage in certain transactions only after obtaining the prior written approval of the Supervisory Agent. Requests to engage in activities that are subject to special limitations or restrictions that are imposed by such documents or that require the prior written approval of the Supervisory Agent, as well as requests for termination or modification of such documents, are not covered by the Guidelines. However, the fact that a regulation involving an application may be mentioned in an enforcement document does not necessarily mean that the Guidelines do not apply to that application. Applications submitted pursuant to a regulatory requirement that an institution obtain the prior written approval of the Board or its delegate before engaging in the proposed activity should be covered by the Guidelines, whether or not the regulation involving the application is mentioned in an enforcement document. Only if the application relates to an activity uniquely covered or restricted by an enforcement document, is the application then excluded from coverage of the Guidelines.

For example, the Board may issue a cease and desist order against an association for violations of the provisions of 12 CFR 563.41, restrictions on real and personal property transactions with affiliated persons, and specifically require that the association not violate § 563.41 in the future. Section 563.41 requires that the prior written approval of the Principal Supervisory Agent must be obtained before an association may enter into any real or personal property transaction specified therein with an affiliate. If, after the entry of the cease and desist order, the association were to file an application for permission to engage in a covered transaction with an affiliate under § 563.41, that application would be subject to the Guidelines because the regulation already requires supervisory approval. If, on the other hand, under the terms of the cease and desist order, the association were required to obtain the special permission of the Supervisory Agent before the association could make commercial loans of any type, then the association's request in that case would not be covered by the Guidelines because there is no independent regulatory requirement for such approval.

This clarification should enhance the prompt and timely processing of regularly required applications that involve institutions that are subject to supervisory or enforcement orders or other documents, where the proposed activity is not specifically constrained by the enforcement document.

Third, the Board is amending paragraph (a) to correct an error in the designation of one of the statutes enumerated in that paragraph. The third sentence of paragraph (a) states that the Guidelines do not apply to, among others, "requests for Corporation assistance or assistance payments in connection with a merger, acquisition or restructuring of an insured institution pursuant to section 406(f)(1)–(4) of the NHA, 12 U.S.C. 1729(f)(1)–(4) * * *". Section 406(f) of the NHA presently contains 6 subparagraphs. It was not the intent of the drafters of the Guidelines to exclude subparagraphs (f)(5), Net Worth Certificates, or (f)(6), Capital Instrument Purchase Program, from the types of FSLIC-assisted transactions that are not covered by the Guidelines. The omission of reference to subparagraphs (f)(5) and (f)(6) appears to have been inadvertent. First, footnote 2 of the Preamble to the Guidelines states explicitly that requests for the purchase of Net Worth Certificates are not covered by the Guidelines, on the ground that 12 CFR part 572 already provides detailed standards, guidelines and timeframes for handling such requests. Second, CEBA added subparagraph (f)(6), the capital instrument purchase program (section 405 of CEBA). Its omission appears to have been unintentional. Accordingly, the phrase in the third sentence is being amended to delete the reference to subparagraphs (f)(1) through (f)(4) of section 406(f) of the NHA, and to refer instead simply to requests for assistance or assistance payments in connection with a merger, acquisition or restructuring of an institution.

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[3] *See also* Acquisition of Securities of Converting and Converted Insured Institutions, 52 FR 42091 (Nov. 3, 1987) (delegating authority to the General Counsel or his designee to approve routine applications filed pursuant to 12 CFR 563b.3(i)(3)); Holding Company Indebtedness, 52 FR 49381 (Dec. 31, 1987) (revising the time frame for the processing of debt applications and delegating authority to the Supervisory Agent to approve or deny most debt applications); Restrictions on Repurchase of Stock of Recently Converted Insured Institutions, 53 FR 2477 (Jan. 28, 1988) (preapproving certain requests for waiver of the regulatory restrictions on repurchases of stock by recently converted insured institutions); Policy Statement on Merger Conversions (Board Res. No. 88–280, Apr. 21, 1988) (restating and clarifying the Board's position on merger-conversions); Charter and Bylaw Amendments; Delegations of Authority, 54 FR 4257 (Jan. 30, 1989) (delegating authority to the Principal Supervisory Agent to grant or deny preliminary approval of most charter amendments and to approve or deny most bylaw amendments); Preapproved Securities Brokerage Service Corporation Activities, 54 FR 14091 (Apr. 7, 1989) (proposed preapproval of certain securities brokerage service corporation activities).

Fourth, the Board is amending paragraph (a) to clarify that requests for reconsideration, modification or appeals of final decisions of the Board are not covered by the Guidelines. Where the Board has previously rendered a timely decision on an application, thereby fulfilling its obligation under section 410 of CEBA to expedite applications processing, the Board believes that appeals of such final agency actions are not, in essence, applications and should not be subject to the automatic approval process. However, the Board and its staff will act on such appeals in a timely fashion.

Fifth, the Board is amending the third sentence of paragraph (a) to delete as unnecessary all of the statutory citations to the types of applications and other requests for approval that are excluded from coverage of the Guidelines.

The Board notes that, after considering the public comments urging that the categories of applications covered by the Guidelines be expanded to include as many as possible, it has concluded that no additional categories of applications currently excluded from coverage should now be covered by the Guidelines. In response to those commenters who asserted that the Board does not have the authority to exclude any category of application from coverage, the Board continues to hold the view that it was given the discretion under section 410 of CEBA to determine which applications should be governed by the Guidelines and which do not appropriately fall within the scope of section 410. The predominant nature of the applications and other requests for approval excluded from coverage in paragraph (a) of the Guidelines involve either requests for FSLIC assistance or the resolution of litigation and enforcement issues. The excluded matters do not fall into the category of traditional "applications." The Board believes that maximum flexibility must be retained in these areas and that therefore standardized timetables are not appropriate.

B. Acceptance of Applications for Processing

Paragraph (c) of the Guidelines (12 CFR 571.12(c)) states that the review period for the determination whether to approve or deny an application will not commence until an application is deemed complete. The Board is adopting a number of amendments to paragraph (c) based upon its experience in processing applications. The Board believes that the adoption of these amendments will enhance the prompt processing of applications as well as provide additional guidance to potential applicants and their professional advisors.

1. Requests for Additional Information

The Board is amending paragraph (c) of the Guidelines to make it clear that requests for additional information on applications covered by the Guidelines must be in writing. Experience has shown that written requests provide applicants with greater certainty regarding the information the Board's staff needs to complete its review of an application. Also, because a number of offices within the Federal Home Loan Bank System may need to coordinate in order to issue a request for additional information (at least in the context of applications not delegated to the Principal Supervisory Agent), the issuance of oral comments by a particular office may lead to unnecessary confusion. AP 14–1, a memorandum distributed by the Office of District Banks to all Supervisory Agents, whose stated purpose is to clarify the Guidelines and to delineate internal processing procedures to enhance the processing and monitoring of the Guidelines by the Federal Home Loan Bank System, states that any requests for additional information must be in writing. This amendment to the Guidelines is intended to make the Guidelines consistent with current Board policy as expressed in AP 14–1.

2. Requests for Extension

The Board is amending paragraph (c) of the Guidelines to add a provision addressing procedures for requests by applicants for additional time to respond to requests for additional information from the Board's staff. Paragraph (c) states that in the event that any additional information is requested, the applicant must respond fully to the request within 30 days. Failure to respond within such time period may cause the application to be treated as having been withdrawn or may provide grounds for denial of the application. In the staff's experience, applicants occasionally request extensions, but there is currently no uniform method for applicants to request extensions and for staff to respond. Under the new procedure, applicants may request reasonably brief extensions in writing prior to the expiration of the initial 30-day period. The Board's staff may, in its sole discretion, grant limited extensions in writing. As a general matter, the Board's staff will not consider a request for an extension of more than 30 additional calendar days to respond to a request for additional information unless the applicant shows good cause for an extension for longer than 30 calendar days. The Board expects that the Board's staff will respond to such requests promptly.

3. Status of Withdrawn Applications

The Board is amending paragraph (c) of the Guidelines to clarify that in the event an application is deemed withdrawn by the Board or its delegate, any resubmission will constitute a new filing, which will cause all applicable time frames to begin anew, and all applicable procedures are required to be complied with again as if it were a new filing.

4. Material Change in Completed Application

Paragraph (c) provides that, with respect to additional information requests following the initial request, the inquiries must be limited to (1) those matters derived from or prompted by information furnished in response to the previous request, or (2) material information that was not reasonably available from the applicant at the time of the application, was concealed, or pertains to developments subsequent to the initial request. In those situations in which the second type of information is being requested, *after* the application has been deemed complete, the Board or its delegate, at its option, may revoke the completeness determination and deem the application incomplete until the requested information is submitted and, upon receipt of the additional information, deem the application complete and commence the review period of the application again.

The Board wishes to clarify the procedures that will apply when the completeness determination is revoked. In the event the Board or its delegate revokes the completeness determination, deems the application incomplete, and requests additional information, the applicant will have 30 calendar days to respond to the request for additional information. Failure by an applicant to respond fully within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of the application or issuance of a notice of disapproval of a notice.

Upon the timely filing of the additional information, the Board or its delegate shall (1) request in writing further additional information to complete the application, (2) deem the application to be complete, or (3) return the application if it is deemed by the Board or its delegate to be materially deficient and/or, substantially incomplete. The Board or its delegate shall notify the applicant as to whether the application is deemed complete within 15 calendar days after timely filing of the additional information. The new period for review by the Board or its delegate of the application will commence on the date the application is deemed complete. If the Board or its delegate fails to notify the applicant within such 15 day period, the application shall be deemed to be complete as of the expiration of such 15 day period.

The Board is amending paragraph (c) to add to the actions that the Board or its delegate may take upon receipt of such additional information. If the additional information furnished changes the application fundamentally and if the Board consequently lacks sufficient information to reach a decision on the application, then, rather than deeming the application complete and commencing the review period again, the Board or its delegate at that point also has the option, at its discretion, of returning the application to the applicant without further review on the grounds that it has become materially deficient and/or substantially incomplete.

5. Effect of Determination that Application Cannot Be Processed Under Delegated Authority

The Board is amending paragraph (c) of the Guidelines to conform the Guidelines to a provision that currently appears in the Board's Acquisition of Control Regulations, 12 CFR part 574. The Board believes that this provision should apply generally to applications covered by the Guidelines. The Guidelines are being amended to provide that in the case of an application that is not eligible for processing under delegated authority by the Principal Supervisory Agent, actions taken by the Principal Supervisory Agent or its delegate shall not commence any of the periods for review of a completed application. If it is determined that an application is not eligible for processing under delegated authority after the application has been deemed complete, the applicant will be required to refile the application with the proper offices of the Board. If the application is refiled with the proper offices, it will be deemed a new filing under the applicable statute or regulation. The refiling will cause all applicable time frames to begin anew, and applicable procedures must be complied with again.

The purpose of this amendment is to ensure that, in the event an application must be processed in Washington, the Board's Washington staff will have the opportunity to determine whether it has the information and the time it needs to process the application. In such case, all periods for determining sufficiency and for review of a completed application will recommence.

However, with respect to applications that involve the publication of notice of filing, the refiling of the application with the proper offices may not necessarily require the applicant to republish the notice. The Board or its delegate will have the discretion to determine on a case-by-case basis whether to require republication. Such determination will depend on the nature of the refiled application and the timing of the resubmission.

6. Waiver of Required Information

Paragraph (c)(1) requires the Board or its delegate to determine whether the application is complete within 30 days of the filing of a properly submitted application. Paragraph (c)(3) also states that when an applicant requests a waiver of information required to be included in the application, the application will not be deemed complete until a final determination is made on the waiver request. The Board is amending this provision to conform to the practice currently followed with respect to waiver requests on applications governed by the Acquisition of Control Regulations. The new procedure requires that within the initial 30-day period after the filing of an application, or within 15 days after the filing of an addition information by an applicant that includes a request for the waiver of required information, the Board or its delegate must determine whether to (1) grant the waiver request, (2) require additional information regarding the requested waiver, or (3) deny the waiver request. Upon expiration of the 30-day or 15-day period, as the case may be, the waiver request will be automatically granted unless it has been denied or additional information has been specifically requested by such date.[4]

7. Protested Applications

The Board is amending paragraph (c) of the Guidelines to add a new provision dealing with the effect of protests on the processing of applications covered by the Guidelines. Under current Board practice, the filing of a protest suspends the automatic approval time frames specified in the Guidelines, although the application will continue to be processed. See AP-14-1 and Office of District Banks Applications Procedure Memorandum #018-1, June 30, 1989.

A commenter pointed out that the Guidelines are silent on the issue of whether the processing of applications will be suspended when a protest is filed, whereas the Preamble to the Guidelines addresses this issue. See footnote 6, 52 FR 39064, 39066. The Preamble states: "Where a regulation prescribes a procedure for submission of protests on an application following publication of notice of a proposed activity after the application has been deemed complete (*e.g.*, 12 CFR 543.2), the automatic approval process will be discontinued until the issues relating to the protest are resolved. In this situation, the review period will not commence until the Corporation or its delegate informs the applicant that a protest has been deemed to be not 'substantial' or that such issues have been resolved." The Board believes that the omission of this item from the text of the Guidelines was inadvertent, and the revisions to the Guidelines correct this omission.

However, not all applications with respect to which protests may be submitted following publication of notice are affected by this amendment. In accordance with paragraph (a) of the Guidelines, where other Corporation or Board regulations establish specific procedures for the processing of applications or set forth specific time periods for automatic approval of applications unless such applications are disapproved or objections are raised, the provisions of those regulations are controlling with respect to the matters to which they pertain. For example, the regulations set forth in 12 CFR part 574 applicable to holding company applications and change in control notices set forth procedures for the processing of public comments on applications after publication of notice of the filing of such applications. Accordingly, such applications are not covered by the protest procedures of the Guidelines. The filing of a protest on applications submitted pursuant to 12 CFR part 574 will not automatically suspend the automatic approval process.[5]

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[4] The new procedure on requests for waivers of information required to be included in an application applies to informational requirements only; it does not apply to requests for waivers of statutes, regulations or related regulatory requirements such as policy statements or guidelines.

[5] It should be noted that 12 CFR part 563e outlines the Board's substantive responsibilities with respect to the consideration of issues under the Community Reinvestment Act ("CRA") in acting on holding company applications. In this regard, the Board

Continued

The revision also comports with the "Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act" adopted by the Board on March 21, 1989, in Board Resolution No. 89-1036, because the joint statement was carefully drafted to allow for the differing application processing procedures of the agencies. See 54 FR 13742 (April 5, 1989) for the text of the joint statement.

8. Effect of Pending Investigation

The Board is amending paragraph (c) of the Guidelines to add a new provision providing a mechanism whereby the Board may discontinue the review or automatic approval process pending the completion of an investigation, examination, or administrative proceeding by the Board or other government entity or self-regulatory organization of an applicant or an affiliate of an applicant that pertains to standards the Board must apply or a determination the Board is required to make in connection with its review of the application. In a number of past instances, during the course of processing an application, the Board has learned of the existence of a government investigation of the applicant or an affiliate of the applicant that pertains to the issues presented by the application. The Board should have the flexibility to suspend processing pending the outcome of the investigation.

9. Completeness Determination: Clarification

Although no amendment to paragraph (c) is being made at this time, the Board wishes to clarify an issue on the effect of an application's being deemed complete. In the Board's experience, certain applications can raise issues and concerns that are not resolved to the mutual satisfaction of the Board and the applicant in the course of the determination of the application's sufficiency. Initial and subsequent requests for additional information may raise issues and concerns to which an applicant cannot or will not fully respond. In those limited cases, the Board believes that further requests for additional information raising the same issues and concerns would not be productive. Therefore, under those circumstances, the Board may deem an application complete for purposes of further processing, and the Board's staff will notify the applicant that while the application is being deemed complete, the applicant's responses to the requests for additional information nevertheless did not respond fully to the requests nor address in a satisfactory manner the issues and concerns expressed in the requests for additional information.

Subparagraph (c)(2) of the Guidelines has always provided that failure by an applicant to respond fully to a written request by the Board or its delegate for additional information within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of an application or issuance of a notice of disapproval of a notice. Accordingly, an applicant's failure to respond fully to the issues and concerns raised during the sufficiency determination process may be treated as grounds for denial of the application, even though an application has been deemed "complete" for processing purposes.

C. Board Review Time Frames

Under paragraph (e) of the Guidelines, the Board or its delegate may extend the review period of a completed application for an additional 30 days, thereby increasing the period within which a determination must be made to either 90 or 120 days. If the Board or its delegate elects to extend the review period in this manner, it must notify the applicant at least 30 days prior to the expiration of the applicable period for review of a completed application.

The Board is reducing the notice period to an applicant from 30 to 20 days prior to the expiration of the applicable period for review of a completed application. In the Board's experience, this will give the Board's staff the additional needed flexibility to determine whether an extension for an additional 30-day period is necessary. The Board believes that the reduction of the required time period for advance notice will not unreasonably hamper an applicant's preparation for consummation of a proposed transaction or commencement of a planned activity. Moreover, reducing the advance notice requirement by ten days may, in certain cases, eliminate the need to invoke the extension procedures set forth in paragraph (f), which remove an application entirely from the automatic approval process of the Guidelines.

D. Other Comments

The Board has also undertaken other initiatives designed to streamline and improve further the regulations and procedures governing the various types of applications filed with the Board. These initiatives address certain concerns raised by the commenters. For example, the Board has instituted extensive internal applications tracking procedures, and its Operations Tracking Committee meets regularly to discuss applications. The Board has implemented a National Applications Tracking System to monitor the processing of all applications. AP 14-1 and Federal Home Loan Bank System Regulatory Handbooks delineating applications processing also have been issued. Additionally, many of the Board's application forms have been revised. As indicated above, delegations of authority to the Principal Supervisory Agents have been greatly expanded with appropriate oversight. The Board is currently proceeding with a rulemaking project to implement an Applications File Room for the central filing of most non-delegated applications.

The Board has also considered the public comments on revising the applications processing time frames set out in the Guidelines and revising paragraph (f). The Board has determined not to make any changes in these areas.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements have been incorporated into the Board's discussion set forth in the **SUPPLEMENTARY INFORMATION** section.

2. *Issues raised by comments and agency assessment and response.* As explained in the **SUPPLEMENTARY INFORMATION** section, the Board is revising the policy statement in final form without prior opportunity for comment, although the Board is soliciting post-promulgation public comment. Accordingly, at this time, there are no issues raised by comments that require Board assessment and response.

3. *Significant alternatives minimizing small-entity impact and agency response.* The applications processing guidelines will have no disproportionate impact on small institutions or other entities. The guidelines do not alter or supersede any pre-existing regulations regarding processing of applications, but rather only establish time periods within which action by the Board is required on completed applications submitted pursuant to Corporation or Board regulations.

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decides all holding company applications involving "substantial" protests (because these constitute significant issues of law or policy) and is required to base its decision on all information available, including, in part, the applicant's CRA assessment record, CRA protests or public comments and any other relevant information.

List of Subjects in 12 CFR Part 571

Accounting, Bank deposit insurance, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends part 571, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 571—STATEMENTS OF POLICY

1. The authority citation for part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Section 571.12 is revised to read as follows:

§ 571.12 Applications processing guidelines.

(a) *General.* Section 410 of Title IV of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552, 620, section 410 generally requires that the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation") (hereinafter collectively referred to as the Board), "promulgate guidelines which provide that with respect to each type of completed application" filed by any person for approval by the Corporation, the application "shall be deemed to be approved" as of the end of the period prescribed under such guidelines unless the Board approves or disapproves such application before the end of such period [section 410(a)]. To comply with these requirements and to ensure the timely processing of applications and notices throughout the Federal Home Loan Bank System, the Board hereby sets forth guidelines for the processing of completed applications and notices (hereinafter collectively referred to as "applications") filed with the Board or its delegate subsequent to October 9, 1987. This section does not apply to applications for approval of holding company indebtedness; requests for Corporation assistance or assistance payments in connection with a merger, acquisition, or restructuring of an insured institution; requests in connection with Corporation authorizations of emergency thrift acquisitions; or requests submitted in connection with cease-and-desist orders, temporary cease-and-desist orders, removal and/or prohibition orders, temporary suspension orders, supervisory agreements, consent merger agreements, or documents negotiated in settlement of litigation (including requests for termination or modification of, or for approval pursuant to, such orders, agreements, or documents), or similar litigation or enforcement matters. Requests submitted in connection with cease-and-desist orders, removal/prohibition orders, supervisory agreements, consent merger agreements, and other documents negotiated in settlement of litigation ("enforcement documents") are not covered by this section. However, the fact that a regulation involving an application may be mentioned in an enforcement document does not mean that this section does not apply to that application. Requests to engage in activities that are restricted by enforcement documents and requests for termination or modification of such documents are not covered by this section. Applications submitted pursuant to a regulatory requirement that prior Board approval be obtained before engaging in a proposed activity, however, are covered, whether or not mentioned in an enforcement document. If the application or request is unique to the enforcement document, then it is not covered by this section. Requests for reconsideration, modification, or appeal of final agency actions of the Board are not covered by this section. In addition, where other Corporation or Board regulations establish specific procedures for processing of applications or set forth specific time periods for automatic approval of applications unless such applications are disapproved or objections are raised, the provisions of those regulations are controlling with respect to the matters to which they pertain. Where a regulation sets forth a procedure for processing an application but does not contain a time period pursuant to which such application is to be processed, the application will be processed under the procedure established by the regulation, but will be subject to the time periods contained in this policy statement.

(b) *Applications submitted for review.* An application submitted to the Board or its delegate for processing shall be submitted on the designated form of application and shall comply with all applicable regulations and guidelines governing the filing of such application.

(c) *Accepting applications for processing.* (1) Within 30 calendar days of receipt of a properly submitted application for processing, the Board or its delegate shall:

(i) Request in writing additional information to complete the application,

(ii) deem the application to be complete, or

(iii) return the application if it is deemed by the Board or its delegate to be materially deficient and/or substantially incomplete.

Failure by the Board or its delegate to act as described in paragraph (c)(1) (i), (ii), or (iii) of this section within 30 calendar days of receipt of an application for processing shall result in the filed application's being deemed complete, thereby commencing the period for review. If an application includes a request for a waiver of an application requirement that certain information be supplied, the waiver request shall be deemed granted, unless within 30 calendar days of receipt of a properly submitted application for processing, the Board or its delegate requests in writing additional information about the waiver request, or denies the waiver request in writing.

(2) Failure by an applicant to respond fully to a written request by the Board or its delegate for additional information within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of the application or issuance of a notice of disapproval. If an application is deemed withdrawn, the application may be resubmitted for processing, but it will be deemed a new filing under the applicable statute or regulation.

(3) An applicant may request in writing a brief extension of the 30-day period for responding to a request for additional information described in paragraph (c)(2) of this section prior to the expiration of the 30-day time period. The Board or its delegate, at its option, may grant an applicant a limited extension of time in writing. Failure by an applicant to respond fully to a written request for additional information by the expiration of the extended period permitted by the Board or its delegate may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of the application or issuance of a notice of disapproval of a notice.

(4) The period for review by the Board or its delegate of an application will commence on the date that the application is deemed complete. The Board or its delegate shall notify an applicant in writing as to whether the application is deemed complete within 15 calendar days after timely filing of any additional information furnished in response to any initial or subsequent request by the Board or its delegate for

additional information. If the Board or its delegate fails to notify an applicant within such time, the application shall be deemed to be complete as of the expiration of such 15-day period. If additional information furnished in response to a written request by the Board or its delegate for additional information includes a request for a waiver of an application requirement that certain information be supplied, the waiver request shall be deemed granted, unless within 15 calendar days after the timely filing of such additional information the Board or its delegate (i) requests in writing additional information about the waiver request, or (ii) denies the waiver request in writing.

(5) After additional information has been requested and supplied, the Board or its delegate may request additional information only with respect to matters derived from or prompted by information already furnished, or information of a material nature that was not reasonably available from the applicant at the time of the application, was concealed, or pertains to developments subsequent to the time of the Board's initial request for additional information. With regard to information of a material nature that was not reasonably available from the applicant, was concealed at the time an application was deemed to be complete, or pertains to developments subsequent to the time an application was deemed to be complete, the Board or its delegate may request in writing such additional information as it considers necessary and, at its option, may deem the application not to be complete until such additional information is furnished. Upon receipt of such additional information, the Board or its delegate shall:

(i) Request in writing further additional information to complete the application,

(ii) deem the application to be complete and commence a new review period of the completed application, or

(iii) deem the application to be materially deficient and/or substantially incomplete and return it to the applicant.

In the case of an application that is not eligible for decision under delegated authority by the Principal Supervisory Agent, actions taken by the Principal Supervisory Agent or its delegate shall not commence any of the periods for review of a completed application described in paragraph (d) of this section.

(6) Where a regulation prescribes a procedure for submission of protests to an application and a protest is filed, the automatic approval timeframes specified herein shall be temporarily suspended until a record sufficient to support a determination on the protest is developed.

(7) The Board or its delegate, at its option, may deem an application materially deficient and/or substantially incomplete in the event that the applicant or an affiliate of the applicant is or becomes subject to an investigation, examination, or administrative proceeding by a federal or state or municipal court, department, agency or commission or other governmental entity, or a self-regulatory trade or professional organization that is pertinent to the standards applicable to the Board's evaluation of the application or relates to a determination the Board or its delegate is required to make in connection with the application under the applicable statute or regulation.

(d) *Failure by the Board to approve or deny an application or to disapprove a notice.* (1) If, upon expiration of the applicable period for review of any complete application to which this policy statement applies, or any extension of such period, the Board or its delegate has failed to approve or deny such application (or, in the case of a notice, to disapprove such notice), the application shall be deemed to be approved or, in the case of a notice, not disapproved by the Board or its delegate. For purposes of the previous sentence, the applicable period for review shall be (i) 60 calendar days for an application that is eligible for action by a Principal Supervisory Agent or a Supervisory Agent or for any application or notice submitted pursuant to part 574 of the Corporation's regulations, or (ii) 90 calendar days for any other application.

(2) In the event that more than one application is being submitted in connection with a proposed transaction or other action, the applicable period for review of all such applications shall be the review period for the application having the longest period for review.

(e) *Extension of time for review.* The applicable period for review of an application deemed to be complete may be extended by the Board or its delegate for 30 days beyond the time period for review set forth in paragraph (d) of this section. The Board or its delegate shall notify an applicant at least 20 days prior to the expiration of the applicable period for review of a complete application that such review period is being extended for 30 days and shall state the general reasons therefor.

(f) *Extension of time for Board review of applications raising significant issues of law or policy.* In those situations in which an application presents a significant issue of law or policy, the applicable period for review of such application also may be extended by any member of the Board or its General Counsel, Executive Director, Executive Director for Policy, or the Executive Director of the Office of Regulatory Activities of the Federal Home Loan Bank System beyond the time period for review set forth in paragraph (d) of this section or any extension thereof pursuant to paragraph (e) of this section until such time as the Board acts upon the application. In such cases, written notice shall be provided to an applicant not later than the expiration of the time period set forth in paragraph (d) of this section or any extension thereof pursuant to paragraph (e) of this section that the period for review is being extended in accordance with this paragraph (f), which notice shall also state the general reason(s) therefor.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–19824 Filed 8–23–89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 776 and 779

[Docket No. 90759-9159]

Digital Computers: Revisions to Section 776.10

AGENCY: Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: Section 776.10(a) of the Export Administration Regulations (EAR) contains general requirements concerning support documents for applications to export or reexport digital computers to destinations in Country Groups Q, W, and Y, Afghanistan and the People's Republic of China (PRC). This final rule revises § 776.10(a)(1) by removing the more detailed instructions for completing and filing Form BXA–6031P. Form BXA–6031P has been revised to include these instructions. Placing the instructions on Form BXA–6301P will make them more accessible to applicants, thereby reducing the chance that applicants will fail to notice them.

Paragraph (c)(1) of Advisory Note 12 to ECCN 1565A contains a specific list of items that, under CoCom requirements, must be addressed in an end-user or importer certification.

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Paragraph (a)(2) of § 776.10 also contains the list of such items. The list of such items in paragraph (a)(2) is being deleted and replaced by a reference directing the reader to paragraph (c)(1) of Advisory Note 12 to ECCN 1565A. This amendment will direct exporters to the current source of the CoCom requirements.

Paragraph (c)(4) of Advisory Note 12 to ECCN 1565A describes the CoCom visitation rquirements applicable to equipment whose technical parameters exceed those described in paragraph (c)(3) of the Advisory Note. Paragraph (a)(3) of § 776.10 also describes the visitation requirements. The visitation requirements in paragraph (a)(3) are being deleted and replaced by a reference directing the reader to paragraphs (c)(3) and (c)(4) of Advisory Note 12 to ECCN 1565A.

Section 776.12(e)(5) is revised, consistent with § 776.10(a)(1), to require a Form BXA–6031P for Afghanistan—as well as Country Groups Q, W, and Y, and the People's Republic of China—when submitting a parts and components request for the export of a foreign-made computer system.

EFFECTIVE DATE: This rule is effective November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377–3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been submitted to the Office of Management and Budget for review. Public reporting for this collection of information is estimated to average one hour and 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If applicable, the signed statement required as a special documentation will require an additional five minutes and visitation reports will require five minutes each. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503—Attn: Paperwork Reduction Project (0694–0013).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 776 and 779

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, parts 776 and 779 of the Export Administration Regulations are amended as follows:

1. The authority citation for 15 CFR part 776 continues to read as follows:

Authority: Public Law 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Public Law 97–145 of December 29, 1981, by Public Law 99–64 of July 12, 1985, and by Public Law 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citation for 15 CFR part 779 continues to read as follows:

Authority: Public Law 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Public Law 97–145 of December 29, 1981, by Public Law 99–64 of July 12, 1985, and by Public Law 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Public Law 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Public Law 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 776—[AMENDED]

3. Section 776.10 is amended by revising paragraph (a) and by removing Note 1 and Note 2 that follow paragraph (a)(3)(iii)(B), as follows:

§ 776.10 Electronic computers and related equipment

* * * * *

(a) Digital computers.

(1) General requirements. Applications to export or reexport "digital computers" or equipment containing digital computers to destinations in Country Groups Q, W, and Y, Afghanistan and the People's Republic of China or to upgrade existing "digital computer" installations in those areas, must be accompanied by Form BXA–6031P, Digital Computer System Parameters. Two or more forms may be submitted if needed to describe all equipment on complex systems. Specification sheets should be furnished to corroborate the data supplied on Form BXA–6031P and calculations used to arrive at values should also be furnished, as appropriate. Observe the precise definitions in Advisory Notes 9, 12, and 16 to ECCN 1565A before making calculations.

(2) Special documentation requirements. Applications to export or reexport computers that are described in Advisory Note 12 to ECCN 1565A, or that exceed any of the limits specified in Advisory Note 12, must be accompanied by a signed statement from a responsible representative of the end-user or importing agency that describes the proposed end-use and includes the certifications contained in paragraph (c)(1) of Advisory Note 12 to ECCN 1565A.

(3) Visitation requirements. Quarterly visits and periodic reports on computer systems described by Advisory Note 12 to ECCN 1565A will be required if the parameters of the equipment to be exported exceed the limits contained in paragraph (c)(3) of Advisory Note 12.

The visitation and reporting requirements are described in paragraph (c)(4) of Advisory Note 12.

* * * * *

4. Section 776.12 is amended by revising paragraph (e)(5) to read as follows:

§ 776.12 Parts, components, and materials in foreign-made products

* * * * *

(e) How to request approval.

* * * * *

(5) Supporting documentation. The supporting documentation otherwise required for a license application need not be submitted with a parts and components request, except that Form BXA–6031P should be furnished when a computer system is being exported to Country Group Q, W, or Y, Afghanistan or the People's Republic of China.

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PART 779—[AMENDED]

§ 779.8 [Amended]

5. In § 779.8(b)(3)(i)(D), the phrase "Form ITA–6031P" is revised to read "Form BXA–6031P".

Dated: August 18, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89–19963 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Parts 776, 779 and 799

[Docket No. 90360–9060]

Butadiene Polymers; Transfer of Export Controls From 1801A to 1746A on the Commodity Control List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On September 14, 1988, the Bureau of Export Administration published in the Federal Register (53 FR 35459) a final rule amending various entries on the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. Those amendments resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM).

Among the amendments to the CCL in the September 14 rule was the transfer of certain butadiene polymers from Export Control Commodity Number (ECCN) 1801A to 1746A. These butadiene polymers remained subject to controls, including those related to non-proliferation of nuclear weapons delivery systems.

However, regulatory language related to nuclear weapons delivery controls was inadvertently omitted from the regulatory text. This rule corrects § 776.18, Supplement 4 to part 779, and the *Reason for Control, Special Licenses Available,* and *Technical Data* paragraphs of ECCN 1746A to properly reflect the transfer of these butadiene polymers to that entry.

With the concurrence of the Department of Defense, the Department of Commerce has determined that these amendments to the CCL are necessary to protect U.S. national security interests.

DATES: This rule is effective August 24, 1989.

FOR FURTHER INFORMATION CONTACT: Jim Seevaratnam, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377–5695.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule will have no effect on the paperwork burden on the public. This collection has been approved by the Office of Management and Budget under control number 0694–0005.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Willard H. Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 776, 779 and 799

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, the Export Administration Regulations (15 CFR Parts 700–799) are amended as follows:

1. The authority citation for part 776 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

§ 776.18 [Amended]

2. The introductory text of § 776.18 is amended by removing the number "1801" and inserting in its place the number "1746".

3. The authority citations for parts 779 and 799 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 4 to Part 799 [Amended]

4. In Supplement No. 4 to part 779, the last entry of paragraph (4) is amended by removing the number "1801A" and inserting in its place the number "1746A".

Supplement No. 1 to § 799.1 [Amended]

5. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1746A is amended by revising the *Reason for Control, Special Licenses Available* and *Technical Data* paragraphs to read as follows:

1746A Polymeric substances and manufactures thereof, as described in this entry.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply, for crime control purposes, to police-model helmets and, for nuclear weapons delivery purposes (§ 776.18), to propellants and constituents as follows: polymeric substances, specifically, carboxyl-terminated polybutadiene (CTPB) and hydroxyl-terminated polybutadiene (HTPB).

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities controlled by ECCN 1746A.

Special Foreign Policy Controls: * * *

Technical Data: Export of technical data related to police-model helmets containing 50% or more aromatic polyamide fiber by value require a validated license to all destinations except Australia, Japan, New Zealand, and members of NATO. Exports of technical data related to butadiene polymers require a validated license to all destinations except Canada (see § 779.4(d)(20)).

* * * * *

Dated: August 18, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-19962 Filed 8-23-89; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 799

[Docket No. 90885-9185]

Revisions to the Commodity Control List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which includes those items subject to Department of Commerce export controls. This rule amends two Export Control Commodity Numbers (ECCNs) on the CCL.

A note is added at the end of ECCN 2410A to indicate that this entry controls parachutes designed for use in dropping personnel only and that parachutes specially designed for other military purposes are licensed by the U.S. Department of State. This change is made as a clarification only and neither expands nor limits the provisions of the Export Administration Regulations. It will assist exporters in determining whether a particular parachute system is subject to control by the Department of Commerce or the Department of State.

Section 6(k) of the Export Administration Act of 1979 (EAA), as amended, requires that items designated as "crime control and detection instruments and equipment" be exported only under a validated license, except to specified countries. ECCN 5597B is amended to designate electronic monitoring restraint devices as items included among "crime control and detection instruments and equipment" and, therefore, subject to U.S. foreign policy controls for human rights purposes under section 6(k) of the EAA. This change reflects recent technological developments in the crime control field and is made with the concurrence of the U.S. Department of State.

EFFECTIVE DATE: This rule is effective August 24, 1989.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under Control Number 0694-0005.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule imposes a foreign policy control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730-799) is amended as follows:

PART 799—[AMENDED]

1. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 799.1 [Amended]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 2410A is amended by adding a note at the end of the entry to read as follows:

2410A Equipment specially designed for military purposes.

* * * * *

Note: This entry controls parachute systems designed for use in dropping personnel only. Parachute systems designed for use in dropping military equipment, braking military aircraft, slowing spacecraft descent, or retarding weapons delivery are licensed by the U.S. Department of State. See the U.S. Munitions List, Category VIII, Supp. No. 2 to part 770.

3. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 5597B is amended by revising the heading, as follows:

5597B Polygraphs (except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint analyzers, cameras and equipment, n.e.s.; automated fingerprint and identification retrieval systems, n.e.s.; psychological stress analysis equipment; electronic monitoring restraint devices; and specially designed parts and accessories, n.e.s.

* * * * *

Dated: August 18, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-19961 Filed 8-23-89; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Rel. No. IC-17097; File No. S7-15-88]

RIN 3235-AA14

Offers of Exchange Involving Registered Open-End Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is announcing the adoption of a rule (11a-3) that permits a mutual fund or its principal underwriter to make certain exchange offers to the fund's shareholders or to shareholders of another fund in the same group of funds. Absent the rule, such entities would be prohibited from making exchange offers without Commission approval. The rule eliminates the need to obtain those approvals.

EFFECTIVE DATE: October 23, 1989.

Any holder of an order under section 11 of the Investment Company Act of 1940 that was granted without the specific condition that the exchange offer would comply with rule 11a-3, if and when adopted, shall have one year from the effective date of rule 11a-3 to bring its fees and sales loads into conformity with the requirements of the rule or to obtain an individual Commission order approving the offer. However, fees and sales loads permitted with respect to shares purchased while the existing exchange offer remains in effect may continue to be imposed until such shares are redeemed.

FOR FURTHER INFORMATION CONTACT: Brian P. Kindelan, Special Counsel, (202) 272-2048, or Wendy B. Finck, Staff Attorney (202) 272-3045, Mail Stop 5-2, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting rule 11a-3 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "Act"), which will permit a registered open-end company (other than an insurance company separate account) (a "fund") or its principal underwriter to make certain exchange offers to the fund's shareholders or to shareholders of another fund in the same group of funds.

Executive Summary

In December 1986, the Commission issued a release ("proposing release") on proposed rule 11a-3 under the Act, which would have permitted a registered open-end management investment company ("fund") or its principal underwriter (sometimes referred to collectively as the "offering company") to make certain exchange offers to the fund's shareholders or to shareholders of another fund in the same family of funds.[1] In response to the comments received and developments occurring after issuance of the proposing release, the Commission issued a release (the "revised proposing release") on a revised proposal (the "revised proposed rule") in July 1988.[2] The Commission received 16 letters of comment in response to the revised proposing release. The rule, as adopted, has been modified in some respects to address commenters' concerns, and has been reorganized.

The final rule permits, notwithstanding the provisions of section 11(a) of the Act (15 U.S.C. 80a-11(a)), a fund or its principal underwriter to make certain exchange offers to the fund's shareholders or to shareholders of another fund in the same group of funds. As in the revised proposal, the rule permits the offering company to charge a shareholder a sales load on the acquired security, a redemption fee, an administrative fee, or any combination of the foregoing, provided certain conditions are met. Several conditions are unchanged from the conditions that were proposed in the revised proposed rule:

(1) Sales loads charged with respect to the security acquired in the exchange (the "acquired security") are limited to a percentage rate no greater than the excess of the sales load rate applicable to that security in the absence of an exchange over the sum of the rates of all sales loads previously paid on the security relinquished in the exchange and on any predecessor of such security (the "sales load differential");[3]

(2) No deferred sales load may be imposed on the security relinquished in the exchange (together with any predecessor of such security, the "exchanged security") at the time of an exchange;

(3) Any redemption fee charged with respect to the exchanged security must be paid to the fund, must apply uniformly to all shareholders of the specified class, and may not exceed the redemption fee charged in the absence of an exchange;

(4) The prospectus of the offering company must disclose the amount of any administrative fees charged in connection with an exchange and, if the fund reserves the right to terminate or change the terms of the offer, disclose that the offer is subject to termination or its terms are subject to change;

(5) Any advertising that mentions the existence of the exchange offer must disclose the existence of any administrative fee or redemption fee that would be imposed at the time of an exchange. In addition, if the offering company reserves the right to terminate the offer or change its terms, any advertising or sales literature that mentions the offer must disclose that the offer is subject to termination or its terms are subject to change; and

(6) Shareholders are to be given prominent notice 60 days prior to the effective date of any termination or material amendment of the terms of an exchange offer.

Several proposed conditions in the revised proposed rule have been changed:

(1) An offering company that previously made an exchange offer pursuant to an order under section 11(a) of the Act that was not conditioned specifically upon complying with rule 11a-3, if and when adopted, shall have one year after the effective date of the rule to bring its fees and sales loads into compliance with the rule. However, an

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[1] See Investment Company Act Rel. No. 15404 (Dec. 23, 1986) (51 FR 47260, Dec. 31, 1986).

[2] See Investment Company Act Rel. No. 16504 (July 29, 1988) (53 FR 30299, Aug. 11, 1988).

[3] The rule does not, however, address charging installment-type deferred sales loads in connection with exchange offers. Proposed rule 6c-10, if adopted, would permit funds to charge installment-type deferred sales loads under certain conditions. See Investment Company Act Rel. No. 16619 (Nov. 2, 1988) (53 FR 45275, Nov. 9, 1988). Until the Commission takes further action on proposed rule 6c-10, it will consider applications under section 11(a) for exchange offers involving funds with installment-type deferred sales loads on a case-by-case basis.

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offering company may continue to apply the terms of an existing order related to fees or sales loads to shares purchased prior to the time that the fund's offer comes into conformity with the rule (and to shares acquired through reinvestment of dividends or capital gains distributions based on such shares) until such shares are redeemed. The revised proposed rule contained no grandfathering provision;

(2) An offering company may rely on the rule to amend the terms of an exchange offer if its prospectus disclosed, for a period of at least two years prior to the effective date of the amendment, that the terms of the offer were subject to change. The revised proposed rule would have required the fund's prospectus to have made such disclosure at all times during which the prior offer had been outstanding;

(3) In calculating any deferred sales load when the acquired security ultimately is redeemed, the time period during which the acquired security was held need not be considered (*i.e.*, may be "tolled") if (i) the deferred sales load is solely that which was owed on the exchanged security at the time of the exchange, (ii) no sales load differential or deferred sales load was or will be collected on the acquired security, and (iii) the amount of the load is reduced by the amount of any fees collected with respect to the acquired security under a plan adopted pursuant to rule 12b–1 under the Act (17 CFR 270.12b–1) (a "12b–1 plan").[4] The revised proposed rule would not have permitted tolling if the acquired security was subject to a 12b–1 plan. The rule also permits tolling of the time the *exchanged security* was held if the exchanged security was not subject to any sales load, and if any deferred sales load with respect to the acquired security is reduced by the amount of any fees previously collected under a 12b–1 plan with respect to the exchanged security. In addition, the rule permits holding periods for deferred sales loads to be computed as of the end of the month in which any security was purchased or redeemed;

(4) The rule prohibits the sum of the rates of all sales loads imposed prior to and at the time the acquired security is redeemed from exceeding the maximum sales load rate that would be applicable in the absence of an exchange to the security (exchanged or acquired) with the highest such rate;

(5) Any sales literature that mentions the existence of an exchange offer must disclose the existence of any administrative fee or redemption fee that would be imposed at the time of an exchange. The revised proposed rule would have required any sales literature to disclose the amount, as well as the existence, of such fees;

(6) No notice need be given to shareholders prior to changing materially the terms of an exchange offer if, under extraordinary market conditions, redemption of the security that otherwise would be exchanged is suspended under the rules and regulations under the Act, or the sale of the security that otherwise would be acquired is delayed or suspended;

(7) Funds with investment advisers or principal underwriters that are "affiliated persons" of each other as defined in section 2(a)(3) of the Act (15 U.S.C. 80a–2(a)(3)) are included within the definition of "group of investment companies." The rule thus broadens the scope of funds that come within the definition of "group of investment companies";

(8) The definition of "administrative fee" specifies that the fee be reasonably intended to cover costs incurred in "processing exchanges of the type for which the fee is charged"; and

(9) The definition of "redemption fee" specifies that the fee must be for expenses "directly related to the redemption of fund shares." Also, any scheduled variation of a redemption fee must be reasonably related to the costs to the fund of processing the type of redemptions for which the fee is charged. The revised proposed rule did not have the "reasonable relation" requirement.

The Commission is continuing to consider whether to adopt proposed rule 11c–1, which would permit unit investment trusts ("UITs") and their sponsors to make certain exchange offers without prior Commission approval, provided certain conditions are met. As proposed, rule 11c–1 would limit sales loads upon exchanges of units of UITs to the differential between any sales load charged with respect to the acquired unit in the absence of an exchange over any sales load previously paid on the exchanged unit.[5] The Commission is continuing to consider commenters' claims that the proposed rule would not permit adequate compensation for a sponsor that maintains a secondary market for units of a UIT and would present problems in tracking investments for the purpose of determining sales loads previously paid over a series of exchanges.[6] Until the Commission takes further action on proposed rule 11c–1, it will continue to consider exchange offers involving UITs on a case-by-case basis through the application process.

The Commission also is giving further consideration to whether to propose amendments to rule 11a–2 (17 CFR 270.11a–2), which permits, under certain conditions, offers of exchange by registered insurance company separate accounts.[7] The Commission requested public comment on whether, upon adoption of rule 11a–3, rule 11a–2 should be amended to make insurance company separate accounts subject to the same requirements in the exchange offer area as mutual funds.[8] Until the Commission determines whether to propose any amendments to rule 11a–2, a separate account or its principal underwriter may continue to make exchange offers the terms of which meet the requirements set forth in rule 11a–2.

Background

Section 11(a) of the Act prohibits a fund or its principal underwriter from making an offer to exchange shares of the fund for other shares of that fund or of another fund on any basis other than the relative net asset values of the securities to be exchanged, unless the terms of the offer have been submitted to and approved by the Commission or the terms are in accordance with any rules that the Commission may have prescribed.[9] Since 1940, the Commission has issued numerous orders under section 11 permitting offers of exchange at other than relative net asset value.[10] The original proposal of rule 11a–3, in essence, would have codified those orders.[11] The six comment letters received generally supported the proposal, but argued that certain provisions should be modified or eliminated.

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[4] The Commission recognizes that only funds that can account for 12b–1 fees on an individual shareholder basis will be able to rely on this provision. The Commission understands that some funds are considering developing ways to account for 12b–1 fees on an individual shareholder basis. Funds that cannot account for 12b–1 fees paid on an individual shareholder basis would be unable to avail themselves of this provision of the rule. Also, funds with "defensive" 12b–1 plans under which no fees are charged could rely on this provision of the rule. See *infra* note 34 and accompanying text.

[5] See revised proposing release at nn.85–86 and accompanying text.

[6] See revised proposing release at nn.57–71 and accompanying text.

[7] See revised proposing release at n.11 and accompanying text. See also Investment Company Act Rel. No. 13407 (July 28, 1983) (48 FR 36243, Aug. 10, 1983) (adopting release for rule 11a–2).

[8] See revised proposing release at n.11 and accompanying text.

[9] The legislative history of section 11 is fully discussed in the proposing and revised proposing releases. See *supra* notes 1–2.

[10] See proposing release at nn. 9–20 and accompanying text.

[11] See *generally* the proposing release.

In response to those comments and developments occurring after issuance of the proposal, the Commission issued revised proposed rule 11a–3. As in the initial proposal, revised proposed rule 11a–3 would have permitted the imposition of an administrative fee and a sales load on the acquired security. For purposes of calculating any sales load on the acquired security, both proposals would have required that an exchanging shareholder receive credit for any sales load previously paid on the exchanged security and, in the case of an acquired security subject to a contingent deferred sales load, for the length of time the shareholder held the exchanged security. Both proposals also would have required disclosure of any administrative fee in the prospectus of the offering company and in certain sales literature and advertising.

The revised proposed rule contained several changes from the initial proposal. First, the revised proposed rule stated that an offering company that had previously made an exchange offer could not rely on the rule to change the terms of such prior offer unless that company's prospectus had disclosed, at all times the offer was outstanding, that the offer was subject to termination and that its terms were subject to change, unless the only effect of the change was to reduce or eliminate a charge payable at the time of the exchange. Second, the revised proposed rule would have defined the term "administrative fee." Third, the revised proposed rule would have permitted the imposition of certain redemption fees on the exchanged security at the time of an exchange. Fourth, the revised proposed rule would have required sales literature and advertising to disclose the intention to impose a redemption fee. Fifth, the revised proposed rule would have prohibited expressly the imposition of a deferred sales load on the exchanged security at the time of an exchange. Such a prohibition was merely implicit in the original proposal. Sixth, the revised proposed rule would have expanded and relabelled the "family of funds" concept contained in the original proposal. Seventh, the revised proposed rule would have required any offering company that reserved the right to change the terms of or terminate its exchange offer to disclose in its prospectus and in certain advertising and sales literature that the offer may be terminated and that its terms are subject to change. Finally, the revised version would have required that shareholders be given 60 days notice of any material amendment to the terms of an exchange offer, unless the only effect of the amendment was to reduce or eliminate a charge payable at the time of the exchange. These provisions are discussed in more detail below.

The Commission received 14 letters of comment in response to revised proposed rule 11a–3.[12] In general, the commenters supported the Commission's efforts to codify existing orders and relieve funds and the Commission from the expense and burden of filing and reviewing otherwise routine applications for orders under section 11. The commenters opined, however, that the revised proposed rule would go beyond the codification of section 11 orders previously granted, and impose new requirements of questionable value. The commenters specifically opposed several provisions of revised proposed rule 11a–3 that they asserted would impose additional restrictions on exchange offers. The rule, as adopted, has been modified in some respects to address the commenters' concerns.

Discussion

This section discusses provisions in rule 11a–3 that reflect changes from the revised proposed rule, as well as provisions that have been left unchanged.

1. Effect of the Rule on Prior Orders

As stated in the revised proposing release, rule 11a–3 is prospective in effect, is intended to set forth for the entire fund industry the Commission's standards for approval of exchange offers at other than relative net asset value,[13] and supersedes all outstanding Commission orders that approved exchange offers at other than relative net asset value.[14] Each holder of an order under section 11(a) of the Act that was not conditioned specifically upon compliance with rule 11a–3, if and when adopted, shall have one year from the rule's effective date to conform its fees and sales loads to the requirements set forth in the rule or to obtain individually an order approving its exchange offer. However, paragraph (d) permits an offering company that previously made an offer of exchange pursuant to an order to continue to apply any fees or sales loads permitted by the order to shares purchased before the earlier of (i) one year after the effective date of the rule, or (ii) when the offer has been brought into compliance with the rule, until redemption of the shares. The rule permits shares acquired through reinvestment of dividends or capital gains distributions to be treated in the same manner, with respect to fees or sales loads, as the shares on which the dividend was paid or the distribution made. Thus, for example, a fund with an order permitting a deferred sales load to be assessed at the time of an exchange may continue to assess that charge on shares purchased prior to the time that the fund's exchange offer otherwise comes into conformity with the rule. The remaining requirements of the rule (*i.e.*, requirements other than those related to fees and sales loads), such as the requirements related to disclosure and notice to shareholders, will apply to all shares upon the effective date of the rule.

Many commenters objected to the Commission's determination to supersede, through the rulemaking process, orders previously issued under section 11(a) of the Act. Some commenters questioned the Commission's legal authority to supersede orders previously granted without affording individual hearings to holders of the orders. One commenter opined that section 40(a) of the Act (15 U.S.C. 80a–39(a)), which provides that orders of the Commission shall be issued only after appropriate notice and opportunity for hearing, sets forth requirements applicable also to amending or rescinding orders under section 38(a) of the Act (15 U.S.C. 80a–37(a)).[15] Another commenter stated that, although it did not contest the Commission's regulatory power to amend existing orders by means of rule amendments with notice and comment periods, revised proposed rule 11a–3, if adopted, should have no effect on continuing exchange offer arrangements in reliance on those orders. The commenter argued that there had been no demonstration of any unfairness to shareholders such as would warrant costly changes to the structure of arrangements for exchanges under existing orders. Several commenters

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[12] In addition, the Commission received two letters that commented only on proposed rule 11c–1.

[13] The rule applies only to exchanges among registered open-end investment companies other than insurance company separate accounts. Thus, orders under section 11 involving separate accounts, UITs, or face-amount certificate companies are not superseded by the rule and remain effective.

[14] Orders under section 11 issued since rule 11a–3 was initially proposed have been conditioned specifically on compliance with the rule if and when adopted. *See* revised proposing release at n. 14.

[15] Section 38(a) provides that the Commission shall have the authority to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred elsewhere in the Act.

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suggested that superseding prior orders would cause funds to terminate exchange programs that would be unable to comply with the conditions of the rule.

Proceeding by general rulemaking, with public notice in the Federal Register and the consideration of all comments received on the revised proposed rule prior to the adoption of the rule, meets the requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and due process requirements.[16] This procedure is the most efficient use of the Commission's resources in developing standards regarding exchange of fund securities that protect the reasonable expectations of both fund investors and offering companies, and are consistent with the purposes and policies of the Act.

Holders of orders under section 11(a) of the Act have had reasonable notice that the orders will be superseded by rule 11a–3.[17] Orders issued since the proposing release was issued have been conditioned specifically on compliance with rule 11a–3, if and when adopted.[18] In addition, the revised proposing release provided public notice that, when adopted, rule 11a–3 would supersede all prior orders that approved exchange offers at other than relative net asset value, and that holders of such prior orders should avail themselves of the comment process on the revised proposed rule, if they should so desire.[19]

To respond to those commenters who argued that revocation of existing orders would work hardship on existing arrangements, the rule will permit holders of the prior orders that were not conditioned specifically on compliance with rule 11a–3, if and when adopted, one year to bring their fees and sales loads into conformity with the requirements of the rule. Additionally, the rule permits a company that previously made an offer of exchange pursuant to an order under section 11(a) to continue to apply fees or sales loads permitted by the order to shares purchased prior to the time the exchange offer is otherwise brought into compliance with the rule. Such "grandfathering" ends as such shares are redeemed.

Affording holders of prior orders, except orders conditioned specifically upon compliance with rule 11a–3, if and when adopted, with a one year period to bring their fees and sales loads into conformity with the requirements of the rule, or to obtain a new order, strikes a balance between the Commission's interest in setting forth fair standards for the entire fund industry for approval of certain offers of exchange and the appropriateness of affording an adequate transition period. The one year transition provision should be sufficient to permit offering companies with existing orders to amend the terms of their offers without undue disruption of their exchange systems, or to obtain a new order based on individual circumstances. Holders of orders under section 11(a) that were granted after rule 11a–3 was proposed, and that were conditioned specifically upon compliance with rule 11a–3, if and when adopted, already should be in substantial compliance with the rule and, in any event, have agreed to come into compliance with the rule upon its effective date.

Permitting offering companies that previously made exchange offers pursuant to orders under section 11(a) to charge the fees or sales loads permitted by the orders on shares purchased before the exchange offer otherwise conforms to the rule, provides additional accommodation to those companies, without being unfair to affected investors. In light of the Commission's desire to minimize disruption of the exchange offer systems presently operating under orders, it appears appropriate to "grandfather" the fees and sales loads assessed on shares purchased while the orders remain in effect. However, the remaining provisions of rule 11a–3, including those relating to disclosure and notice to shareholders, will apply to all shares upon the effective date of the rule, including shares purchased before that date.

Finally, where individual circumstances warrant, offering companies may request Commission approval of exchange offers that differ from these uniform standards. Any such company will be entitled to request a hearing on such application as provided in the Act and the rules and regulations thereunder.[20]

2. Funds That May Rely on the Rule

Paragraph (e) of the rule prohibits an offering company that has previously made an offer of exchange from relying on the rule to amend the offer unless its prospectus had disclosed for at least the two year period prior to the amendment of the offer (or, if the fund is less than two years old, at all times the offer has been outstanding) that the terms of the offer were subject to change. The revised proposed rule would have required the offering company's prospectus to have made this disclosure at all times that the offer was outstanding. In the revised proposing release, the Commission requested comment on whether rule 11a–3 should state that if prospectus disclosure had been made for a particular number of years, then the fund could rely on the rule to amend an exchange offer.[21]

Many commenters objected to the condition of the revised proposed rule requiring prospectus disclosure at all times the offer had been outstanding. One commenter said that the effect of such a retroactive disclosure requirement would be to increase rather than decrease the number of applications filed under section 11(a). Another commenter stated that the concept of conditioning use of the rule on prior prospectus disclosure, perhaps decades earlier, was unprecedented and would result in another variation in exchange program standards among funds. Other commenters stated that it seemed implicit that an exchange program could be amended with or without disclosure, or that such amendments should be within the prerogative of a fund's board of directors.

One commenter opined that the requirement for explicit disclosure prior to allowing any changes in an exchange policy elevated the fund's prospectus into a binding contract between a fund and each investor who purchased shares in reliance on the prospectus. This commenter stated that this creation of contractual obligations would inequitably disadvantage some funds on a retroactive basis and impose burdensome recordkeeping requirements on funds to match the date of an investor's purchase of shares with the terms of the exchange privilege as described in the prospectus on the date of purchase.

Another commenter suggested permitting a fund to modify its exchange offer if the fund reserved the right to make changes in its prospectus for, at most, one year before such modification, and having such a provision take effect one year after the rule is adopted in order to provide an orderly transition.

In considering the comments received, the Commission is persuaded that requiring prospectus disclosure at all times the exchange offer was outstanding prior to permitting amendment of the terms of an exchange offer in reliance on the rule would be unnecessarily restrictive. The purpose of the proposed requirement was to protect the interests of investors who purchased a fund in reliance on certain terms of its exchange privilege. Having no requirement for prospectus disclosure that the offer was subject to change might permit funds that had promoted the sales of fund shares based in part on the existence of a specific exchange privilege to use the rule, for example, to impose charges so as to restrict the use of that privilege. The Commission recognizes that this provision will permit a fund, after a two year period of prospectus disclosure, to rely on the rule to impose new charges on exchanges by existing shareholders, who may have already paid a front-end sales load with the expectation of a liberal and inexpensive exchange privilege, or who may be subject to a deferred sales load or an exit fee to liquidate their investment. Such shareholders will lose whatever sales load or exit fee they paid or will have to pay. However, the two year requirement adopted in the final rule gives reasonable comfort that shareholders in the fund at the time the rule is relied on to change an existing exchange offer have received adequate notice of the possibility of such a change.[22]

3. Calculating the Sales Load Differential

Paragraph (b)(4) of the rule requires that, in calculating any sales load with respect to the acquired security, the rate of the sales load must be limited to a percentage no greater than the excess, if any, of the rate of the sales load applicable to that security in the absence of an exchange over the sum of the rates of all sales loads previously paid on the exchanged security and its predecessors.[23] Paragraph (b)(9)(i) of the rule requires that, in calculating the sales load charged with respect to a security acquired in an exchange, if a securityholder exchanges less than all of his securities, the security upon which the highest sales load rate was previously paid be deemed exchanged first. Paragraph (b)(9)(ii) requires that, if the exchanged security was acquired through reinvestment of dividends or capital gains distributions, the security be deemed to have been sold with a sales load rate equal to the sales load rate previously paid on the security on which the dividend was paid or the distribution made. In the revised proposing release, the Commission requested specific comment on whether the final rule should require that any share acquired through reinvestment of dividends or capital gains distributions not be subject to any sales load upon an exchange, noting that the revised proposed rule would not preclude a waiver of sales load on those shares.[24]

The rule, as adopted, also includes a new provision, paragraph (b)(4)(ii), that limits the sum of the rates of all sales loads that may be imposed prior to and at the time the acquired security is redeemed, including any sales load paid or to be paid with respect to the exchanged security, to the maximum sales load rate applicable to the security (exchanged or acquired) with the highest such rate in the absence of an exchange. This provision is particularly important if there has been more than one exchange and if a deferred sales load is imposed at the time the acquired security is ultimately redeemed.[25]

One commenter agreed that if a shareholder exchanges less than all of his or her securities, the security upon which the highest load rate was previously paid should be deemed exchanged first. It also agreed that if an exchanged security was acquired through reinvestment of dividends or capital gains distributions, such security should be deemed to have been sold with a sales load equal to that paid on the underlying security, in order to save tracking problems. It suggested, however, that the decision on treatment of reinvested shares should be left to the fund, subject to appropriate disclosure. Another commenter disagreed, stating that it saw no reason to exclude shares acquired through reinvestment of dividends from any sales load upon any exchange, since such shares had not previously been subject to a load.

After considering the comments received, the Commission has decided not to change these provisions. By limiting the sales load permitted to be charged on the acquired security to the differential of the rate of the sales load charged on the acquired security in the absence of an exchange over the sum of the rates previously paid on the exchanged security, the rule diminishes the incentive to induce exchanges for the purpose of generating additional sales loads. The sales load differential provisions also seek to assure that investors who purchase a no-load or a low load fund pay, upon exchanging into a load fund in the same group of investment companies, sales charges equivalent to those paid by the acquired fund's other shareholders.[26] The

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[16] Agencies with the statutory authority to conduct rulemaking generally have discretion to issue a new rule either through rulemaking procedures or on a case-by-case basis. *See* B. Mezines, J. Stein and J. Gruff, 3 Administrative Law § 14.01, at 14–12 (1988). *See also SEC.* v. *Chenery Corp.*, 332 U.S. 194 (1947), in which the Court concluded that it was within the agency's discretion to decide to proceed by rulemaking or by adjudication, 322 U.S. at 202–203; and *NLRB* v. *Bell Aerospace Co., Div. of Textron, Inc.*, 416 U.S. 267 (1974), in which the Court stated that "the choice between rulemaking and adjudication lies in the first instance within the [National Labor Relations] Board's discretion." 416 U.S. at 294. Moreover, agencies may formulate rules and regulations for general prospective application that modify the rights of holders of certificates or licenses previously issued by the agency, without affording each affected person a hearing. *See Air Line Pilots Ass'n* v. *Quesada*, 276 F.2d 892 (2d Cir. 1960), *cert. denied*, 366 U.S. 962 (1961). *See generally* K. Davis, 3 Administrative Law Treatise § 14:5, at 24–28 (1980).

[17] *See* revised proposing release at nn. 12–14 and accompanying text. Although publication in the Federal Register satisfies the obligation to notify all interested persons, the Division of Investment Management also sent to all holders of prior orders individual letters to remind them of their opportunity to participate in the comment process. Those letters were accompanied by copies of the revised proposing release.

[18] *See* revised proposing release at n.14.

[19] *See* revised proposing release at text accompanying n.14.

[20] *See, e.g.*, section 40(a) of the Act, which provides that orders of the Commission shall be issued only after appropriate notice and opportunity for hearing; and rule 0–5(c) under the Act (17 CFR 270.0–5(c)), which provides that the Commission will order a hearing on a matter if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors, upon the request of any interested person or upon its own motion.

[21] *See* revised proposing release at nn.15–18 and accompanying text.

[22] Funds that amend the terms of an existing exchange offer in compliance with the two-year disclosure requirement and the other conditions of rule 11a–3 will be deemed to be in compliance with section 11(a) of the Act. The Commission expresses no opinion, however, as to whether any such disclosure is sufficient to relieve a fund from any potential liability under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (the "Securities Act"), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Exchange Act"), or any applicable state law. Furthermore, the Commission expresses no opinion as to whether, depending on the circumstances, a shareholder may have a contractual right to an existing exchange offer on its present terms. Such issues may arise whenever a fund decides to amend an existing exchange offer, whether by imposing a new fee or by otherwise restricting the use of an exchange privilege. In such situations, in order to minimize potential problems with respect to future purchasers, a fund that intends to amend an existing exchange offer should sticker its prospectus or amend its registration statement so that prospective purchasers of the fund's shares are given appropriate notice of the fund's intent.

[23] *See Appendix*, Example No. 1.

[24] *See* revised proposing release at n. 23.

[25] This limitation is intended to discourage offering companies or their agents from inducing exchanges to generate higher sales loads than would be payable in the absence of an exchange. See Appendix, Example No. 10.

[26] Paragraph (b)(4) contains a minor modification to clarify that the differential sales load is limited to the excess of the rate charged with respect to the acquired security in the absence of an exchange over the sum of the rates previously charged on the exchanged security. See *Appendix*, Example No. 1.

Commission also remains unpersuaded that shares acquired through reinvestment of dividends or other distributions should be subject to a full sales load upon an exchange, rather than being limited to the sales load differential.

4. Deferred Sales Load at Time of Exchange

Paragraph (b)(3) of rule 11a–3 prohibits the imposition of a deferred sales load on the exchanged security at the time of an exchange.[27] The revised proposing release stated that permitting a deferred sales load to be imposed at the time of an exchange could raise problems of the type with which section 11 of the Act is concerned.[28] In this regard, inducing an exchange would, among other things, permit a fund's underwriter to accelerate payment of a sales load with no corresponding benefit to the shareholder.

One commenter asserted that prohibiting the imposition of a deferred sales load at the time of an exchange for the purpose of preventing switching does not recognize how fund salesmen are compensated. According to the commenter, salesmen are paid upfront commissions for sales from monies advanced in anticipation of recovery of the principal underwriter's expenses through receipt of 12b–1 fees and deferred sales loads. The commenter concluded that, therefore, exchanges do not generate any additional compensation to salesmen.

Other commenters asserted that permitting deferred sales loads to be charged at the time of an exchange would not lead to the abuse that section 11 was intended to prevent, but would relieve funds that charge deferred sales loads of the administrative and recordkeeping burdens of imposing the deferred loads upon the ultimate redemption of the acquired shares, or the financial burden of waiving the deferred load on the exchanged security. Yet another commenter asserted that switching was no more likely to occur to collect a deferred sales load than to earn a sales load on an acquired fund.

Another commenter stated that the prohibition on charging deferred sales loads at the time of an exchange was unnecessary to protect shareholders. The commenter stated that a fund could achieve the same result by having a policy of prohibiting exchanges for the purpose of generating additional commissions and by having a compliance department that monitors account executives to prevent violations of that policy.

One commenter stated that prohibiting the imposition of a deferred sales charge at the time of an exchange failed to recognize the time value of money because a deferred sales load collected years later upon the ultimate redemption of shares of the acquired fund fails to compensate adequately a distributor for its initial expenses and the costs of financing such expenses. This commenter suggested that the decision of whether to postpone the collection of a deferred sales load or to impose its payment at the time of an exchange should be left to the business judgment of a fund's directors in consultation with its distributor.

The Commission has decided to retain the prohibition on the imposition of a deferred sales charge on the exchanged security at the time of an exchange. As adopted, the rule is consistent with the policy of the Act to minimize incentives for switching investors to generate additional sales charges. Even if a particular salesman does not receive a portion of the sales load at the time of an exchange, a deferred sales load at that time often would still inure to the benefit of others, such as the principal underwriter, who may be in a position to encourage switching. As one commenter noted, receiving even the same dollar amount of sales load sooner rather than later may be a benefit because of the time value of money.

5. Tolling and Deferred Sales Loads

Paragraph (b)(5) of rule 11a–3 requires that any deferred sales load charged at the time the acquired security is redeemed be calculated as if the holder of the acquired security had held that security from the time he or she became a holder of the exchanged security.[29] There are two exceptions to this requirement when time periods need not be included in the calculations of the holding period:

(1) The time during which the acquired security was held need not be included in the calculation if there were no sales loads imposed with respect to the acquired security and if the amount of any deferred sales load with respect to the exchanged security is reduced by the amount of any fees collected on the acquired security under a 12b–1 plan,[30] and

(2) The time during which the exchanged security was held need not be included in the calculation if there were no sales loads imposed with respect to the exchanged security and if the amount of any deferred sales load with respect to the acquired security is reduced by the amount of any fees collected on the exchanged security under a 12b–1 plan.

The revised proposed rule would have prohibited tolling of the time during which the acquired shares were held if the acquired shares were subject to a 12b–1 plan.[31] This prohibition recognized that contingent deferred sales loads ("CDSLs") are reduced over time to reflect amounts paid through a 12b–1 plan.[32] The Commission's position of that time was that, if a shareholder were making any payments for distribution through a 12b–1 plan, those payments should be reflected in a commensurate reduction of the CDSL owed, but that tolling would prevent a shareholder from receiving credit for the 12b–1 payments made while holding the acquired shares.[33]

One commenter suggested that tolling should not be prohibited whenever the acquired security is subject to a 12b–1 plan, but that the rule should distinguish between 12b–1 plans that are "spread-load," "supplemental," or purely "defensive." [34] The commenter opined that the rule should permit tolling whenever the acquired fund has no sales load or no spread-load 12b–1 plan. According to the commenter, supplemental and defensive 12b–1 plans are not for the purpose of reimbursing distributors for costs of distribution and therefore should not prevent tolling upon an exchange.

Another commenter stated that a total prohibition on tolling if the acquired fund had any 12b–1 plan is unduly restrictive and suggested that tolling be permitted where the acquired fund has a 12b–1 plan with annual payments of no more than 25 basis points.

The Commission has revised the tolling provision of the rule in response to the comments received. The final rule

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[27] As noted earlier, rule 11a–3 does not cover installment-type deferred sales loads. See *supra* note 3.

[28] See revised proposing release at nn. 24–32 and accompanying text.

[29] See Appendix, Example Nos. 2–4.

[30] See *supra* note 4. See also Appendix, Example No. 8.

[31] See revised proposing release at n.33 and accompanying text.

[32] *Id.* at n.30.

[33] *Id.*

[34] According to the commenter: (i) Under a "spread-load" 12b–1 plan, payments are substituted for all or part of a traditional sales load; (ii) under a "supplemental" 12b–1 plan, payments of less than 50 basis points per year are used as an additional source for financing advertising and similar activities; and (iii) under a "defensive" 12b–1 plan, no fees are charged. Instead, a defensive plan simply authorizes, without requiring, the fund advisor to use some unspecified portion of the advisory fee to pay for distribution.

permits tolling of the time the acquired shares are held if a credit is given to the investor for any 12b–1 fees paid with respect to the acquired shares, provided the acquired shares are not subject to any sales load.[35] This requirement is intended to give shareholders credit in calculating CDSLs for any payments actually made under a 12b–1 plan. Such credit should be given, regardless of the type of 12b–1 plan involved.

On a related matter, the revised proposed rule did not provide for tolling of the time the exchanged shares were held in calculating the amount of a deferred sales load with respect to the acquired shares. The final rule does permit such tolling, if the exchanged shares were not subject to any sales load and if a credit is given for any 12b–1 fees previously paid under a 12b–1 plan with respect to the exchanged shares. This provision simply is analogous to permitting tolling with respect to the time the acquired shares were held under equivalent circumstances.

Paragraph (b)(5)(iii) of the rule also permits all holding periods to be computed as of the end of the calendar month in which a security was purchased or redeemed. This provision was added in response to two commenters who stated that some funds presently compute holding periods with reference to such dates, and that doing so was simpler and more efficient for the funds with no adverse effect on shareholders.

6. Redemption and Administrative Fees

Paragraph (b)(1) of the rule permits a fund to charge an administrative fee, as defined in paragraph (a)(2) of the rule, or any scheduled variation thereof, provided the administrative fee is applied uniformly to all shareholders of the specified class. Paragraph (b)(2) of the rule permits a fund to charge a redemption fee, as defined in paragraph (a)(7) of the rule, or scheduled variation thereof, provided the fee is applied uniformly to all shareholders of the specified class and the fee does not exceed the redemption fee applicable to a redemption of the exchanged security if it were redeemed rather than exchanged. Unlike the revised proposal, the final rule's definition of "redemption fee" specifies that any scheduled variation thereof must be reasonably related to the costs to the fund of processing the type of redemptions for which the fee is charged.

One commenter supported the revised proposed rule's division of exchange related charges into administrative fees, redemption fees, and deferred sales loads, stating that this division would give directors flexibility to use economic forces to moderate shareholder behavior and provide compensation to the fund or administrative service provider. This commenter requested that the final rule state more clearly that a fund could charge a redemption fee upon an exchange in addition to a deferred sales load or an administrative fee, and further suggested that the final rule should allow a redemption fee to be imposed after a certain number of exchanges or on exchanges effected within a specified time period after purchase. The commenter also requested clarification that a "nominal" administrative fee, based on a 1980 no-action position of the Division of Investment Management (the "Division") that permitted a $5.00 administrative fee, [36] would result in an inflation-adjusted fee of approximately $7.70 as of June 1988. Two commenters also suggested a clarification that "actual costs" permitted in connection with administrative fees would include all relevant costs of implementing an exchange system, including costs reasonably related to employment of personnel to deal with and monitor cash volatility issues and the development of computer systems to track exchanges.[37]

The language of the revised proposed rule that has been adopted in the final rule already states clearly, in paragraph (b), that funds may charge any combination of fees permitted in connection with an exchange that meet the conditions set forth in the rule. With respect to the suggestion that the rule permit funds to impose a redemption fee after a certain number of exchanges or on exchanges effected within a specified time period after purchase, the rule would permit such fee if the fund could establish that: (i) As required by paragraph (b)(2), such a variation was reasonably related to the costs to the fund of processing the type of redemptions for which the fee is charged; (ii) as required by paragraph (b)(2)(i), the variation is applied uniformly to all shareholders of the class specified; and (iii) as required by paragraph (b)(2)(ii), the fee does not exceed the redemption fee applicable to a redemption in the absence of an exchange.[38]

With respect to the suggestion that the rule specify a specific amount that would constitute a "nominal fee" as of a particular date, the Commission has decided that the definition in paragraph (a)(8) would provide more flexibility and is preferable to the Commission setting such a rate for the industry. Moreover, as the rate of inflation changes, the inflation-adjusted amount of a "nominal" fee necessarily will change also.

Finally, the Commission rejects the suggestion that the rule permit administrative fees to be used to cover additional costs related to establishing an exchange offer, such as overhead expenses of the funds. Any fees assessed in connection with exchanges must be reasonable, with the fund maintaining records of any determination of costs as required by paragraph (a)(2) of the rule, or "nominal" as defined by paragraph

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[35] The final rule does not permit tolling where the acquired shares are subject to a sales load because the incentive for switching would be greater in such circumstances. See Appendix, Example No. 7.

[36] *See* Chase Fund of Boston (pub. avail. July 28, 1980).

[37] Paragraph (a)(2) of rule 11a–3 requires an administrative fee to be either nominal or reasonably intended to cover the costs incurred in processing exchanges of the type for which the fee is charged. Similarly, paragraph (a)(7) requires a redemption fee to be reasonably intended to compensate the fund for expenses directly related to the redemption of fund shares. Thus, administrative fees encompassed by the rule could cover such costs as transfer agent fees incurred in effecting exchanges, costs of mailing confirmation statements to investors who make exchanges, and other transaction costs involved in processing exchanges, such as telephone charges and the cost of personnel assigned to process exchange requests made by telephone or in writing. Redemption fees under the rule could cover the types of costs borne by the fund in any redemption of shares, whether or not related to exchanges. Appropriate costs could include brokerage commissions charged to the fund in connection with any liquidation of portfolio securities necessitated by the redemption portion of the exchange, as well as any processing or other transaction costs incident to the redemption and not covered by any administrative fee charged.

The inclusion of costs, other than those directly related to processing exchanges, in fees imposed in connection with exchanges will continue to be considered by the Commission, or by the Division by delegated authority, on a case-by-case basis through applications and interpretive or no-action letters. In this regard, an application under section 11(a) has been filed seeking approval to charge an administrative fee and a redemption fee on exchanges to cover costs related to the modification and maintenance of systems to monitor cash flow volatility and exchange levels; employment of additional portfolio managers, trading department personnel, tax managers, and legal advisers to deal with the problems of high portfolio turnover; and maintenance of a specially trained group of employees to deal with active traders and to enforce exchange limitations. The Commission will consider the appropriateness of including these costs in fees charged in connection with exchanges in the context of the pending application.

[38] For example, the rule will permit a fund to have a policy of permitting a shareholder to make five exchanges per year without the imposition of a redemption fee, but impose a 1% fee on each additional exchange, if such redemption fee were reasonably related to the costs to the fund of processing that type of redemption, and if the redemption fee applicable to a redemption in the absence of an exchange were at least 1%.

(a)(8). Any other expansion of the authority of funds to impose fees in connection with exchanges could permit the recovery of costs only remotely related to an exchange offer and would raise issues of the type that section 11 of the Act was intended to prevent.

7. Disclosure and Advertising

Paragraphs (a)(8) and (a)(9) of the revised proposed rule, concerning sales literature and advertising, respectively, have been combined into paragraph (b)(7) of the final rule. The rule requires all advertising and sales lliterature that mentions an exchange offer also to disclose the existence of any administrative fee or redemption fee that would be imposed at the time of an exchange. In addition, if the offering company reserves the right to terminate or change the terms of the exchange offer, the advertising and sales literature must disclose that the offer is subject to termination or its terms are subject to change. The revised proposed rule also had required any sales literature that mentioned the exchange offer to disclose the amount of any administrative charges. Paragraph (b)(6) of the rules requires the prospectus of an offering company to disclose the amount of any administrative or redemption fee imposed in connection with an exchange and, if the company reserves the right to terminate the offer or change its terms, that the offer is subject to termination or change.

The rule was modified to require only that the existence of an administrative fee or redemption fee be disclosed in sales literature, rather than also requiring the amount to be disclosed, in response to many comments objecting to the revised proposed rule.[39] Most commenters asserted that the amount of the fees are disclosed in the offering company's prospectus, which is required to be provided in all investors. The modification also was made because there may be space constraints in sales literature and advertising. Although many commenters also objected to the requirement that any advertising or sales literature that mentions the existence of the exchange offer disclose an offering company's reservation of the right to terminate or change the terms of the offer, the Commission has not modified this requirement. If an offering company believes that the exchange offer is a significant enough selling point that it mentions the offer in sales literature or advertising, then it should state that the offer may be terminated or the terms changed, if the company reserves the right to do so.[40]

8. Minimum Holding Periods

Paragraph (c) of the final rule permits an offering company to require an exchanging shareholder to have held the exchanged security for a minimum period of time either if no sales load is imposed on the acquired security or if the sales load imposed is less than the sales load differential.

Only one commenter addressed this provision, opining that the decision to establish a minimum holding period should be left to the business judgement of the offering company. The Commission agrees and has not modified this provision.

9. Amending the Terms of Exchange Offers

Paragraph (b)(8) of the final rule requires an offering company to provide any holder of the security subject to an exchange offer with notice at least 60 days prior to terminating or amending materially the terms of the offer, unless the only material effect of the amendment is to reduce or eliminate an administrative fee, sales load, or redemption fee payable at the time of an exchange. During the 60 day notice period, shareholders would be entitled to make exchanges under the terms of the exchange offer prior to its amendment.

Many commenters objected to the notice requirement because it would lock in for 60 days decisions of directors determining that the best interests of the fund and its shareholders would require changes in the exchange offer. However, the Commission has decided to maintain the 60 day notice requirement in the final rule because the requirement is a reasonable accommodation both to investors who purchased a fund at least in part in reliance on the terms of the existing exhange offer and to the interests of the remaining shareholders. The Commission recognizes, however, that even 60 days notice will not necessarily help shareholders who have paid a front-end sales load, or who will incur a deferred sales load or a redemption fee to exit a fund.

The final rule includes two exceptions to the notice requirement permitted under extraordinary circumstances. The first exception is if there is a suspension of the redemption of the security that otherwise would be exchanged, under section 22(e) of the Act (15 U.S.C. 80a-22(e)) and the rules thereunder.[41] The other exception is if the offering company temporarily delays or ceases the sale of the security that otherwise would be acquired, because the offering company is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

The provision regarding extraordinary conditions was added in recognition that a fund should be permitted some flexibility to respond to changing market conditions to prevent the necessity of selling portfolio securities when the fund has suspended redemptions of its shares pursuant to section 22(e). Also, this provision recognizes that an offering company temporarily may delay or cease to sell shares of the fund to be acquired because trading in the fund's portfolio securities is affected by extreme market conditions.[42]

Finally, in response to the comments, the Commission is not adopting the suggestion in the revised proposing release that, during the 60 day period, shareholders be permitted to redeem out of the fund without the imposition of any CDSL or redemption fee that would otherwise be imposed and receive a refund of any front-end sales load previously paid.[43] The commenters objected to the suggestion that CDSLs or redemption fees might be waived, or front-end sales loads refunded, stating that such a requirement would make changes in an exchange privilege too costly, may artificially stimulate redemptions necessitating portfolio liquidations under unfavorable conditions, and would prevent a distributor from recovering commissions and other costs already incurred in connection with the sale of fund shares.

10. Scope of "Group of Investment Companies"

Paragraph (a)(5) of the rule has been modified from the revised proposed rule to define "group of investment companies" to include funds whose investment advisers or principal underwriters are affiliated persons of each other as defines in section 2(a)(3) of the Act. The revised proposed rule would have included in the definition of "group of investment companies" only funds with common advisers or underwiters, or whose advisers and underwriters were under common control. This modification was made in response to a specific suggestion by a commenter. As stated in the revised proposing release, the purpose of the introduction of the term "group of investment companies" was to broaden the scope of funds eligible to rely on the rule and to avoid confusion with the term "family of investment companies" used elsewhere in the rules and regulations under the Act.[44] The commenter's suggestion was consistent with those purposes and, accordingly, has been incorporated into the final rule.

Cost/Benefit of Action

Rule 11a-3 will not impose any significant additional burdens on funds and may reduce the costs that they would incur by eliminating the need to file many applications. Funds, advisers or principal underwriters may incur some costs in complying with the disclosure and notice provisions of the rule. The costs related to the notice requirement may be minimized by including the notice on a separate document with one of the mailings to shareholders that funds make to comply with the federal securities laws and the rules thereunder, or for other purposes. The rule also will require offering companies that impose administrative fees on exchanges based on a cost standard to maintain records with respect to the actual costs incurred in connection with exchanges. Offering companies will save the time and expense of filing applications for approval of exhange offers that meet the requirement set forth in the rule. The Commission will benefit from the rule because its staff will have to review fewer applications requesting orders in this area.

Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in Investment Company Act Rel. No. 16504. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by contacting Wendy B. Finck, Esq., Mail Stop 5-2, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule

Part 270 of chapter II of title 17 of the Code of Federal Regulations is amended as shown.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a-37, 80a-39; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 *et seq.*; unless otherwise noted. * * * Section 270.11a-3 is also issued under Secs. 6(c) [15 U.S.C. 80a-6(c)] and 11(a) [15 U.S.C. 80a-11(a)].

2. By adding § 270.11a-3 to read as follows:

§ 270.11a-3 Offers of exchange by open-end investment companies other than separate accounts.

(a) For purposes of this rule:

(1) "Acquired security" means the security held by a securityholder after completing an exchange pursuant to an exchange offer;

(2) "Administrative fee" means any fee, other than a sales load, deferred sales load or redemption fee, that is

(i) Reasonably intended to cover the costs incurred in processing exchanges of the type for which the fee is charged, *Provided that:* the offering company will maintain and preserve records of any determination of the costs incurred in connection with exchanges for a period of not less than six years, the first two years in an easily accessible place. The records preserved under this provision shall be subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a-30(b)) as if such records were records required to be maintained under rules adopted under section 31(a) of the Act (15 U.S.C. 80a-30a)); or

(ii) A nominal fee as defined in paragraph (a)(8) of this section;

(3) "Deferred sales load" means any amount properly chargeable to sales or promotional activities that is or may be deducted upon redemption of all or a portion of a securityholder's interest in an open-end investment company;

(4) "Exchanged security" means

(i) The security actually exchanged pursuant to an exchange offer, and

(ii) Any security previously exchanged for such security or for any of its predecessors;

(5) "Group of investment companies" means any two or more registered open-end investment companies that hold themselves out to investors as related companies for purposes of investment and investor services, and

(i) That have a common investment adviser or principal underwriter, or

(ii) The investment adviser or principal underwriter of one of the companies is an affiliated person as defined in section 2(a)(3) of the Act (15 U.S.C. 80a-2(a)(3)) of the investment adviser or principal underwriter of each of the other companies;

(6) "Offering company" means a registered open-end investment company (other than a registered separate account) or any principal underwriter thereof that makes an offer (an "exchange offer") to the holder of a security of that company, or of another open-end investment company within the same group of investment companies as the offering company, to exchange that security for a security of the offering company;

(7) "Redemption fee" means any fee (other than a sales load, deferred sales load or administrative fee) that is paid to the fund and is reasonably intended to compensate the fund for expenses directly related to the redemption of fund shares; and

(8) "Nominal fee" means a slight or *de minimis* fee.

(b) Nothwithstanding section 11(a) of the Act (15 U.S.C. 80a-11(a)), and except as provided in paragraphs (d) and (e) of this section, in connection with an exchange offer an offering company may cause a securityholder to be charged a sales load on the acquired security, a redemption fee, an administrative fee, or any combination of the foregoing, *Provided that*:

(1) Any administrative fee or scheduled variation thereof is applied uniformly to all securityholders of the class specified;

(2) Any redemption fee charged with respect to the exchanged security or any scheduled variation thereof

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[39] The amount of any administrative fee or redemption fee, however, must be disclosed in the prospectus.

[40] Additionally, a fund salesman who describes a fund's exchange privilege when recommending that an investor purchase a fund has an obligation to tell the investor any material facts about the exchange offer. That obligation extends to material facts about the nature and level of charges imposed upon an exchange and, if applicable, the fund's right to alter the terms of the exchange privilege. See rule 10b-5(b) under the Exchange Act (17 CFR 240.10b-5(b)). See also supra note 22.

[41] Section 22(e) permits a fund to suspend the right of redemption of its redeemable securities for more than seven days only during periods when the New York Stock Exchange (the "NYSE") is closed (other than customary week-end and holiday closings); when trading on the NYSE is restricted; when an emergency exists as a result of which (i) disposal by the company of securities owned by it is not reasonably practicable, or (ii) it is not reasonably practicable for the fund fairly to determine the value of its net assets; or when the Commission, by order, may permit such suspension for the protection of the company's security holders.

[42] Several orders under section 11(a) issued after the revised proposed rule was published have included a condition similar to the one included in paragraph (b)(8)(ii) of the rule. *See, e.g.*, Pacific Horizon California Tax-Exempt Bond Portfolio, Inc., Investment Cmpany Act Rel. Nos. 16653 (Nov. 23, 1988) (53 FR 48361, Nov. 30, 1988) (notice of application) and 16696 (Dec. 20, 1988) (order); and Hutton Municipal Series Inc., Investment Company Act Rel. Nos. 16561 (Sept. 12, 1988) (53 FR 36518, Sept. 20, 1988) (notice of application) and 16586 (Oct. 6, 1988) (order).

[43] *See* revised proposing release at nn.63-64 and accompanying text.

[44] *See* revised proposing release at n.54-56 and acrompanying text.

(i) Is applied uniformly to all securityholders of the class specified, and

(ii) Does not exceed the redemption fee applicable to a redemption of the exchanged security in the absence of an exchange.

Any scheduled variation of a redemption fee must be reasonably related to the costs to the fund of processing the type of redemptions for which the fee is charged;

(3) No deferred sales load is imposed on the exchanged security at the time of an exchange;

(4) Any sales load charged with respect to the acquired security is a percentage that is no greater than the excess, if any, of the rate of the sales load applicable to that security in the absence of an exchange over the sum of the rates of all sales loads previously paid on the exchanged security, *Provided that*:

(i) The percentage rate of any sales load charged when the acquired security is redeemed, that is solely the result of a deferred sales load imposed on the exchanged security, may be no greater than the excess, if any, of the applicable rate of such sales load, calculated in accordance with paragraph (b)(5) of this section, over the sum of the rates of all sales loads previously paid on the acquired security, and

(ii) In no event may the sum of the rates of all sales loads imposed prior to and at the time the acquired security is redeemed, including any sales load paid or to be paid with respect to the exchanged security, exceed the maximum sales load rate, calculated in accordance with paragraph (b)(5) of this section, that would be applicable in the absence of an exchange to the security (exchanged or acquired) with the highest such rate;

(5) Any deferred sales load charged at the time the acquired security is redeemed is calculated as if the holder of the acquired security had held that security from the date on which he became the holder of the exchanged security, *Provided that*:

(i) The time period during which the acquired security is held need not be included when the amount of the deferred sales load is calculated, if the deferred sales load is

(A) reduced by the amount of any fees collected on the acquired security under the terms of any plan of distribution adopted in accordance with rule 12b–1 under the Act (17 CFR 270.12b–1) (a "12b–1 plan"), and

(B) Solely the result of a sales load imposed on the exchanged security, and no other sales loads, including deferred sales loads, are imposed with respect to the acquired security.

(ii) The time period during which the exchanged security is held need not be included when the amount of the deferred sales load on the acquired security is calculated, if

(A) The deferred sales load is reduced by the amount of any fees previously collected on the exchanged security under the terms of any 12b–1 plan, and

(B) The exchanged security was not subject to any sales load, and

(iii) The holding periods in this subsection may be computed as of the end of the calendar month in which a security was purchased or redeemed;

(6) The prospectus of the offering company discloses

(i) The amount of any administrative or redemption fee imposed on an exchange transaction for its securities, as well as the amount of any administrative or redemption fee imposed on its securityholders to acquire the securities of other investment companies in an exchange transaction, and

(ii) If the offering company reserves the right to change the terms of or terminate an exchange offer, that the exchange offer is subject to termination and its terms are subject to change;

(7) Any sales literature or advertising that mentions the existence of the exchange offer also discloses

(i) The existence of any administrative fee or redemption fee that would be imposed at the time of an exchange; and

(ii) If the offering company reserves the right to change the terms of or terminate the exchange offer, that the exchange offer is subject to termination and its terms are subject to change;

(8) Whenever an exchange offer is to be terminated or its terms are to be amended materially, any holder of a security subject to that offer shall be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, *Provided that:*

(i) No such notice need be given if the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange, and

(ii) No notice need be given if, under extraordinary circumstances, either

(A) There is a suspension of the redemption of the exchanged security under section 22(e) of the Act [15 U.S.C. 80a–22(e)] and the rules and regulations thereunder, or

(B) The offering company temporarily delays or ceases the sale of the acquired security because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions; and

(9) In calculating any sales load charged with respect to the acquired security:

(i) If a securityholder exchanges less than all of his securities, the security upon which the highest sales load rate was previously paid is deemed exchanged first; and

(ii) If the exchanged security was acquired through reinvestment of dividends or capital gains distributions, that security is deemed to have been sold with a sales load rate equal to the sales load rate previously paid on the security on which the dividend was paid or distribution made.

(c) If either no sales load is imposed on the acquired security or the sales load imposed is less than the maximum allowed by paragraph (b)(4) of this section, the offering company may require the exchanging securityholder to have held the exchanged security for a minimum period of time previously established by the offering company and applied uniformly to all securityholders of the class specified.

(d) Any offering company that has previously made an offer of exchange may continue to impose fees or sales loads permitted by an order under section 11(a) of the Act upon shares purchased before the earlier of (1) One year after the effective date of this section, or (2) When the offer has been brought into compliance with the terms of this section, and upon shares acquired through reinvestment of dividends or capital gains distributions based on such shares, until such shares are redeemed.

(e) Any offering company that has previously made an offer of exchange cannot rely on this section to amend such prior offer unless

(1) The offering company's prospectus disclosed, during at least the two year period prior to the amendment of the offer (or, if the fund is less than two years old, at all times the offer has been outstanding) that the terms of the offer were subject to change, or

(2) The only effect of such change is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange.

By the Commission.
Dated: August 3, 1989.

Jonathan G. Katz,
Secretary.

Value of a $10,000 initial investment, assuming (i) a 0% annual return and (ii) redemption at the end of each time period:

Appendix—Illustrations of Sales Load Provisions of Rule 11a–3

	1 yr.	2 yrs.	3 yrs.	4 yrs.	5 yrs.
FUND A:					
6 percent front-end sales load	9,400	9,400	9,400	9,400	9,400
FUND B:					
5 percent CDSL (assume rate declines 1 percent/yr) and no 12b–1 fee	9,500	9,600	9,700	9,800	9,900
FUND C:					
3 percent front-end sales load	9,700	9,700	9,700	9,700	9,700
FUND D:					
5 percent CDSL (assume rate declines 1 percent/yr) and 1 percent 12b–1 fee/yr	9,405	9,409	9,412	9,414	9,415
FUND E:					
No sales load and no 12b–1 fee	10,000	10,000	10,000	10,000	10,000
FUND F:					
1 percent front-end sales load and 2 percent deferred sales load	9,702	9,702	9,702	9,702	9,702
FUND G:					
2 percent front-end sales load	9,800	9,800	9,800	9,800	9,800
FUND H:					
No sales load and 1 percent 12b–1 fee/yr	9,900	9,801	9,703	9,606	9,510

Note: This appendix will not appear in the Code of Federal Regulations.

1. *Sales load differential.*

Assume a shareholder holds shares of FUND C for 2 years. At that time, the shareholder exchanges from FUND C to FUND A and then redeems out of FUND A at the end of the third year. FUND C has a 3% front-end sales load, so the investment in FUND C is worth $9,700. At the time of the exchange into FUND A, FUND A is limited to charging the 3% excess of its 6% front-end sales load over the 3% sales load already paid to FUND C (the "sales load differential"). See paragraph (b)(4). The investment in FUND A is worth $9,409 ($9,700−291 (3% of 9,700)). At the time of the redemption, the investment is worth $9,409.

2. *Deferred sales load of acquired security exceeding sales load of exchanged security.*

Assume a shareholder holds shares of FUND C for 1 year. At that time, the shareholder exchanges from FUND C to FUND B, and then redeems out of FUND B at the end of the second year. At the time of the exchange into FUND B, the investment is worth $9,700. At the time of the redemption, FUND B is required to calculate its CDSL as if the shareholder had held FUND B from the date on which he became the holder of FUND C. See paragraph (b)(5). At the end of the second year (1 year in FUND C and 1 year in FUND B), FUND B otherwise would be entitled to charge a CDSL rate of 4%. (FUND B's CDSL is 5% if a shareholder redeems during the first year, and the rate subsequently declines 1% per year.) However, paragraph (b)(4) limits the sales load of an acquired security to a percentage no greater than the excess, if any, of the acquired security's sales load in the absence of an exchange over the sum of the rates previously paid on the exchanged security. In this example, the sales load rate of FUND B is limited to 1% (the excess of 4% over the 3% rate previously paid to FUND C). Upon redemption, the investment is worth $9,603 ($9,700−97 (1% of 9,700)).

3. *Deferred sales load of acquired security not exceeding sales load of exchanged security.*

Assume a shareholder holds shares of FUND A for 2 years. At that time, the shareholder exchanges from FUND A to FUND B, and then redeems out of FUND B at the end of the third year. At the time of the exchange, the investment is worth $9,400. At the time of the redemption, FUND B is required by paragraph (b)(5) to calculate its CDSL as if the shareholder had held FUND B from the date on which he became the holder of FUND A. At the end of the third year (2 years in FUND A and 1 year in FUND B), FUND B otherwise would be entitled to a CDSL rate of 3%. However, paragraph (b)(4) limits the deferred sales load to the excess, if any, of the rate of the sales load of the acquired security in the absence of an exchange over the rate previously paid on the exchanged security. In this example, there is no excess due to FUND B over the 6% previously paid to FUND A. Therefore, no CDSL may be charged. Upon redemption, the investment is worth $9,400.

4. *Deferred sales load of exchanged security.*

Assume a shareholder holds shares of FUND B for 1 year. At that time, the shareholder exchanges from FUND B to FUND G, and then redeems out of FUND G at the end of the second year. Paragraph (b)(3) prohibits FUND B from charging a deferred sales load at the time of the exchange, but FUND G may charge its 2% front-end sales load, so the investment in FUND G is worth $9,800 at the time of the exchange. At the time of the redemption from FUND G, FUND B is entitled to impose its CDSL, but subject to two conditions: (1) paragraph (b)(5) requires a deferred sales load charged at the time the acquired security is redeemed to be calculated as if the shareholder had held the shares from the date on which he became the holder of the exchanged security; and (2) paragraph (b)(4)(i) limits the rate of the sales load charged when the acquired security is redeemed that is solely the result of a deferred sales load imposed on the exchanged security to the excess, if any, of the applicable rate over the rate previously paid on the acquired security. In this example, the CDSL rate otherwise due to FUND B (4% based upon a holding period of 2 years in FUNDS B and G) exceeds the rate already paid to FUND G (2%) by 2%, so FUND B may charge 2% of the 4% CDSL to which it otherwise would be entitled. Upon redemption, the investment is worth $9,604 ($9,800−$196 (2% of $9,800)).

5. *Tolling.*

Assume a shareholder holds shares of FUND B for 2 years. At that time, the shareholder exchanges from FUND B to FUND E, and then redeems out of FUND E at the end of the sixth year. Paragraph (b)(3) prohibits FUND B from charging any deferred sales load at the time of the exchange, and FUND E does not have any sales load, so the investment is worth $10,000 in Fund E. Upon redemption from FUND E, FUND B is entitled to impose its CDSL. Paragraph (b)(5) would require FUND B to calculate its CDSL as if the shareholder had held the shares 6 years (2 years in FUND B and 4 years in FUND E). However, paragraph (b)(5)(i)(B) permits "tolling" of the time the shareholder held shares in FUND E because no sales loads were imposed with respect to FUND E. Therefore, FUND B may calculate its CDSL at the time of the redemption from FUND E based upon a holding period of 2 years, which would result in a CDSL of 4%. Upon redemption, the investment is worth $9,600 ($10,000−400 (4% of 10,000)).

6. *Tolling with credit for 12b–1 fees.*

Assume a shareholder holds shares of FUND B for 2 years. At that time, the shareholder exchanges from FUND B to FUND H, and then redeems out of FUND H at the end of the fifth year. At the time of the exchange into FUND H, the investment is worth $10,000 because FUND B is prohibited from charging its CDSL at the time of the exchange by paragraph (b)(3). FUND H charges a 1% 12b–1 fee per year, so the investment in FUND H is worth $9,900 after being invested in FUND H for 1 year ($10,000−100 (1% of 10,000)); $9,801 after 2 years ($9,900−99 (1% of 9,900)); and $9,703 after 3 years ($9,801−98 (1% of $9,801)). At the time of the ultimate redemption out of FUND H, FUND B is entitled to charge its CDSL. Paragraph (b)(5)(i)(A) permits FUND B to "toll" the time the shareholder held shares in FUND H, provided the deferred sales load is reduced by the amount of any fees collected on FUND H under a 12b–1 plan. Therefore, based on a holding period of 2 years, FUND B is permitted to charge a CDSL of 4% ($388 (4% of $9,703)), reduced by $297 ($100+99+98). Upon redemption, the investment is worth $9,612 ($9,703−91 (388−297)).

7. *Tolling not permitted if acquired security subject to a sales load.*

Assume a shareholder holds shares of FUND B for 2 years. At that time, the shareholder exchanges from FUND B to FUND A, and then redeems out of FUND A at the end of the fourth year. At the time of the exchange, no CDSL may be charged with respect to FUND B, but FUND A may charge its 6% front-end load, so the investment in FUND A is worth $9,400. Upon redemption, no tolling is permitted of the time the acquired security was held because the acquired security was subject to a sales load. See paragraph (b)(5)(i)(B). The CDSL to which FUND B otherwise would be entitled cannot be charged because a deferred sales load is limited to the excess, if any, of the applicable rate (2% based upon a holding period of 4 years) over the sum of the rates of all sales loads previously paid on the acquired security (6%). *See* paragraph (B)(4)(i). In this example, 2% does not exceed 6%, so no CDSL may be charged. Upon redemption, the investment is worth $9,400.

8. *Exchanges from fund with both CDSL and 12b–1 fee to funds with front-end sales loads.*

Assume a shareholder holds shares of FUND D for 2 years. At that time, the shareholder exchanges from FUND D into FUND C. At the end of the fourth year, the shareholder exchanges from FUND C into FUND A, then redeems out of FUND A at the end of the fifth year. FUND D charges a 1% 12b–1 fee per year, so the investment is worth $9,900 at the end of the first year. At the end of the second year, another 1% 12b–1 fee per year has been deducted, so the investment is worth $9,801 ($9,900−99 (1% of 9,900)). Paragraph (b)(3) prohibits FUND D from charging a CDSL at the time of exchange into FUND C, but FUND C may collect its 3% front-end sales load, so the investment in FUND C is worth $9,507 ($9,801−294 (3% of 9,801)). When the investment in FUND C is exchanged into FUND A, FUND A may charge a 3% front-end sales load (the differential between 6% otherwise charged by FUND A and the 3% paid already to FUND C). *See* paragraph (b)(4). The investment is then worth $9,222 ($9,507−285 (3% of 9,507)). Upon the ultimate redemption from FUND A, FUND D otherwise would be entitled to charge a 1% CDSL (based upon a holding period of 5 years in FUNDS D, C and A, with no tolling permitted). However, front-end sales load rates (3% to FUND C and 3% to FUND A), no CDSL may be charged because there is no excess due. Upon redemption, the investment is worth $9,222.

9. *Maximum sales loads.*

Assume a shareholder holds shares of FUND F for 2 years. At that time, the shareholder exchanges from FUND F to FUND G, and then redeems at the end of the fourth year. At the time of the exchange, the investment in FUND F is worth $9,900. Upon exchange into FUND G, the shareholder pays a 1% sales load (the differential between the 2% payable to FUND G and the 1% already paid to FUND F). The investment in FUND G is thus worth $9,801 ($9,900−99 (the 1% load paid to FUND G)). At the time of redemption, FUND F otherwise would be entitled to a 2% deferred sales load, but may charge only 1% of that load (because the rate of a deferred sales load with respect to an exchanged security that is charged at the time the acquired security is redeemed is limited to the excess of the applicable rate of such sales load over the sum of the rates of all sales loads previously paid on the acquired security). See paragraph (b)(4)(i). Upon redemption, the investment is worth $9,703 ($9,801−98 (1% of 9,801)).

10. *Maximum sales loads.*

Assume a shareholder holds shares of FUND F for 2 years. At that time, the shareholder exchanges from FUND F to FUND G. At the end of the fourth year, the shareholder exchanges from FUND G to FUND E, and then redeems out of FUND E at the end of the fifth year. The investment in FUND F is worth $9,900 because FUND F charges a 1% front-end sales load. At the time of the exchange from FUND F to FUND G, FUND G is permitted to charge 1% of its 2% front-end sales load (the sales load differential). See paragraph (b)(4). The investment in FUND G is worth $9,801 ($9,900−99 (1% of 9,900)). At the time of the exchange into FUND E, FUND E charges no sales load so the investment is still worth $9,801 in FUND E. At the time of the redemption from FUND E, FUND F otherwise would be entitled to its 2% deferred sales load, but may charge only 1% of that load. FUND F is limited to charging 1% of its deferred sales load because the sum of the rates of all sales loads may not exceed the maximum sales load rate that would be applicable in the absence of an exchange to the security (exchanged or acquired) with the highest such rate. See paragraph (b)(4)(ii). In this example, the highest rate of FUNDS F, G, and E, in the absence of an exchange, is 3% for FUND F (1% front-end plus 2% deferred). Since the shareholder has already paid a sum of 2% (1% to FUND F plus 1% to FUND G), FUND F is limited to charging an additional 1% upon redemption from FUND E. Upon redemption, the investment is worth $9,703 ($9,801−98 (1% of 9,801)).

[FR Doc. 89–20011 Filed 8–23–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 682

RIN 1840–AB21

Student Assistance General Provisions and Guaranteed Student Loan and PLUS Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends 34 CFR parts 668 and 682 to add Office of Management and Budget (OMB) control numbers to certain sections of the regulations. These sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: These regulations are effective August 24, 1989.

FOR FURTHER INFORMATION CONTACT: Pamela A. Moran, Chief, Policy Section, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4310 ROB–3, Washington, DC 20202. Telephone: (202) 732–4242.

SUPPLEMENTARY INFORMATION: On June 5, 1989, final regulations were published for 34 CFR parts 668 and 682 (54 FR 24114–24127). The effective date of certain sections of these regulations was delayed until information collection requirements contained in those sections were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has approved the information collection requirements, and these sections of the regulations are now effective.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b(2)(A)) and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest and that a delayed effective date is not required under 5 U.S.C. 553(b)(3).

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and Recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number: 84.032, Guaranteed Student Loan and PLUS Programs)

Dated: August 22, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends parts 668 and 682 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

§§ 668.15, 668.23, 668.44, and 668.90 [Amended]

2. Sections 668.15, 668.23, 668.44 and 668.90 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0537)" following each section.

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

3. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§§ 682.604, 682.606, and 682.610 [Amended]

4. Sections 682.604, 682.606, and 682.610 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0538)" following each section.

[FR Doc. 89–20114 Filed 8–23–89; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 259

[FRL–3633–9]

Standards for the Tracking and Management of Medical Waste

AGENCY: Environmental Protection Agency.

ACTION: Amendment to final rule.

SUMMARY: The purpose of this rule is to specify the States in which the medical waste demonstration program, published in the **Federal Register** on March 24, 1989 (54 FR 12326), will be effective. The medical waste regulations apply to certain medical wastes generated in states participating in the program ("Covered States"). On June 6, 1989, the Environmental Protection Agency (EPA) published in the **Federal Register** (54 FR 24310) a notice identifying the Covered States. Since the publication of that notice, the Agency has received petitions from two States that elected to participate in the demonstration program; these States have asked EPA to reconsider their participation. The Governor of Louisiana and the Mayor of the District of Columbia have requested removal from the program. EPA is removing Louisiana and the District of Columbia from the list of Covered States. The following States remain Covered States: Connecticut, New Jersey, New York, Rhode Island, and the Commonwealth of Puerto Rico.

EFFECTIVE DATE: These amendments are effective August 24, 1989.

ADDRESSES: The public docket for this Notice (Docket No. F–89–MTPF–FFFFF) is located at Room M2427, RCRA Docket (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. EPA's RCRA Docket is open from 9:00 a.m. to 4:00 p.m., Monday to Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 475–9327. A maximum of 100 pages may be copied from any regulatory docket at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline toll free at (800) 424–9346 (in Washington, DC, call (202) 382–3000). For information on specific aspects of today's Notice, contact Paul Mushovic, Office of Solid Waste (OS–332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Authority

This Notice is issued under the authority of sections 2002, 11001, 11002, 11003, 11004, 11010, and 11011 of the Solid Waste Disposal Act of 1970 as amended by the Medical Waste Tracking Act of 1988, 42 U.S.C. 6992 *et seq.*

II. Background

Recent incidents of medical waste mismanagement resulted in enactment of a two-year demonstration program for tracking medical waste from the point of its generation to its point of disposal. The Medical Waste Tracking Act (MWTA) of 1988, 42 U.S.C. 6992 *et seq.*, requires this demonstration program to be established in a limited number of States. Congress chose this option in order to regulate medical waste on a small scale.

EPA published in the **Federal Register** on June 6, 1989 (54 FR 24310) the list of States participating in the demonstration program. The "Covered States" included Connecticut, New York, and New Jersey, which under the Act were required to participate or to have a State program that is at least as stringent as the Federal program. The requirements promulgated in the **Federal Register** on March 24, 1989 (54 FR 12326), which established the medical waste tracking demonstration program, were effective on June 24, 1989 for certain medical wastes generated in these States.

In the June 6 Notice, the Agency explained that each of the Great Lakes States (Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin) identified in the MWTA had elected to opt out of the medical waste demonstration tracking program. As required under the MWTA, the Governors of these States notified the EPA Administrator of their intent to opt out.

Pursuant to section 11001 of the MWTA, the March 24, 1989 **Federal Register** notice provided the States not identified in the Act an opportunity to participate in the demonstration program. The Governor of any State electing to participate was required to submit a letter petitioning the EPA Administrator to allow the State to participate. The Governors of the States of Louisiana and Rhode Island, the Mayor of the District of Columbia, and the Governor of the Commonwealth of Puerto Rico petitioned the Administrator to be included in the demonstration program. These petitions were accepted, and the June 6 Notice identified Louisiana, Rhode Island, the District of Columbia, and Puerto Rico as Covered States in addition to the States of Connecticut, New Jersey, and New York. The requirements of the demonstration program contained in the March 24 **Federal Register** notice were effective on July 24, 1989 for certain medical wastes generated in Louisiana, Rhode Island, the District of Columbia, and Puerto Rico.

III. States Electing To Opt Out of the Demonstration Program

Since publishing the Notice identifying the States participating in the demonstration program in the June 6, 1989 **Federal Register**, EPA has received a letter from the Governor of Louisiana requesting that Louisiana be removed from the list of Covered States, and a letter from the Mayor of the District of Columbia, requesting that the District of Columbia be removed from the program. Copies of the letters from Louisiana and the District of Columbia, petitioning in and withdrawing from the program, are available in the public docket for this Notice.

EPA received a letter from the Mayor of the District of Columbia dated July 13, 1989 requesting that the District of Columbia be allowed to withdraw its petition to participate in the medical waste demonstration program, because the District would not be able to implement the program fully until well into the second year of the demonstration.

EPA also received a letter from the Governor of Louisiana dated July 28, 1989 requesting that Louisiana be allowed to withdraw its petition for inclusion in the medical waste demonstration program. In the Governor's April 20, 1989 letter to the Administrator petitioning that the State be included in the program, the Governor made Louisiana's participation contingent upon EPA's implementation of the medical waste rules until the State had promulgated its own regulations. Recent State legislation places restrictions on Louisiana's development of medical waste regulations, and on Louisiana's participation in the Federal demonstration program. Thus Louisiana's active participation in the program could not commence until well into the demonstration program period, if then. Given these circumstances, the Governor requested that Louisiana be removed from the program.

EPA has accepted the withdrawal of petitions from the District of Columbia and Louisiana for participation in the medical waste demonstration program. EPA believes that strong State commitment to the program is a necessary prerequisite for an effective program, and that the interests of the demonstration program are not served by implementing the regulations without State participation. Congress intended that State participation, with the exceptions of Connecticut, New York, and New Jersey, be voluntary. The District of Columbia's and Louisiana's requests for removal are based on significant concerns about the effective implementation of the program given the circumstances both jurisdictions currently face. Furthermore, EPA does not believe an effective program can be established in DC and Louisiana without strong support from those States. Therefore, it is in the interest of the demonstration program to remove those States. Effective August 24, 1989, medical waste generated in the District of Columbia and Louisiana is no longer subject to the requirements of the tracking program promulgated March 24, 1989.

IV. Regulatory Impact

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Administrator determined in the interim final rule that the Medical Waste Demonstration Tracking Program had a total estimated cost of less than $100 million per year. This estimated cost was based on expected costs for management practices and assumed that the ten States identified in the Medical Waste Tracking Act would participate in the program.

The program costs for management practices are expected to remain under $100 million due to the number of States expected to participate. After removal of the two States that opted in but petitioned for removal, only five States will remain in the program. Given that the estimated annual compliance cost for ten States was $55.5 million, the Agency does not believe that the cost for the five participating States would exceed the $100 million major rule threshold. Therefore, no Regulatory Impact analysis is required.

List of Subjects in Part 259

Medical waste, Labeling, Packaging and Containers, Reporting and Recordkeeping requirements.

Dated: August 16, 1989.

Robert L. Duprey,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 259—STANDARDS FOR THE TRACKING AND MANAGEMENT OF MEDICAL WASTE

1. The authority citation for part 259 continues to read as follows:

Authority: 42 U.S.C. 6912, 6992, *et. seq.*

2. Section 259.10 is amended by revising the definition for "Covered States" in paragraph (b) to read as follows:

§ 259.10 Definitions.

* * * * *

(b) * * *

"Covered States" means those States that are participating in the demonstration medical waste tracking program and includes: Connecticut, New Jersey, New York, Rhode Island, and Puerto Rico. Any other State is a Non-Covered State.

* * * * *

Subpart C—Covered States

3. Section 259.20 is revised to read as follows:

§ 259.20 States included in the demonstration program.

(a) The regulations of this part apply to regulated medical waste that is generated in any Covered State.

(b) For the purposes of this part, Covered States are the States of Connecticut, New Jersey, New York, Rhode Island, and Puerto Rico.

[FR Doc. 89-19732 Filed 8-23-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-230]

Organization and Delegation of Powers and Duties

AGENCY: U.S. Coast Guard, Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Secretary of Transportation has delegated authority to the Commandant, United States Coast Guard, to accept voluntary services for a museum or a family support program operated by the Coast Guard and to provide for reimbursement of incidental expenses incurred by persons providing voluntary services as an ombudsman or for a family service center program. The *Code of Federal Regulations* does not reflect this delegation, and therefore a change is necessary.

EFFECTIVE DATE: August 17, 1989.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn, Office of the General Counsel, C-50, (202) 366-9307, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Secretary Skinner has delegated to the Commandant, United States Coast Guard, authority under 10 U.S.C. 1588 to accept from any person voluntary services to be provided for a museum or a family support program operated by the Coast Guard; to determine which expenses are eligible for reimbursement; and to provide from non-appropriated funds for reimbursement of incidental expenses which are incurred by a person providing voluntary services as an ombudsman or for a family service center program.

The *Code of Federal Regulations* does not reflect this delegation and therefore a change is necessary.

Since this amendment relates to Departmental management, procedures and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register**. Since the authority was initially delegated by the Secretary on August 17, 1989, the delegation is effective immediately.

In accordance with the Secretary's authority, the following change is made.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the forogoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—AMENDED

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.46 is amended by adding a new paragraph (rr) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(rr) Exercise the authority of the Secretary contained in 10 U.S.C. 1588 to accept voluntary services for a museum or a family support program operated by the Coast Guard; to determine which expenses are eligible for reimbursement; and to provide reimbursement from non-appropriated funds of incidental expenses incurred by persons providing voluntary services as an ombudsman or for a family service center program.

Issued on: August 17, 1989

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 89-19887 Filed 8-23-89; 8:45 am]

BILLING CODE 4910-62-M

Proposed Rules

Federal Register

Vol. 54, No. 163

Thursday, August 24, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[FV-89-052PR]

Raisins Produced From Grapes Grown in California; Revision of the Maturity Dockage System for Certain Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the maturity dockage system for natural (sun-dried) seedless, golden seedless, dipped seedless, oleate and related seedless, Monukka, and other seedless raisins. Currently, handlers may acquire any lot of these raisins which contain 35.0 percent to 49.9 percent, by weight, well-matured or reasonably well-matured raisins under a maturity dockage system. This action would reduce by 50 percent the dockage factors applied to such lots. This proposed revision was recommended by the Raisin Administrative Committee (RAC), the agency responsible for local administration of the order. The purpose of the proposed revision is to provide a more accurate determination of the creditable weight of lots of raisins which are delivered to handlers by producers.

DATES: Comments must be received by September 8, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2524-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 475-3861.

SUPPLEMENTARY INFORMATION:

This proposed rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512-1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A majority of raisin producers and a minority of raisin handlers may be classified as small entities.

This proposed rule invites comments on a revision of one section of the administrative rules and regulations of the raisin marketing order. This action was recommended by the RAC at its April 20, 1989, meeting.

The marketing order provides that handlers may receive natural condition raisins which exceed the tolerance established for maturity (i.e., at least 50 percent of the raisins must be well-matured or reasonably well-matured) under the maturity dockage system. This system applies a weight reduction to individual lots of raisins which contain from 35.0 percent through 49.9 percent, by weight, well-matured or reasonably well-matured raisins. The weight reduction approximates the weight of raisins needed to be removed in order for the lot to meet minimum grade requirements.

The dockage system is used for the following varietal types: natural (sun-dried) seedless raisins, golden seedless raisins, dipped seedless raisins, oleate and related seedless raisins, Monukkas, and other seedless raisins.

The creditable weight of each lot of raisins acquired by handlers under the maturity dockage system is obtained by multiplying the applicable net weight of the lot of raisins by the applicable dockage factors in the dockage table under 989.213. Handlers acquire and producers are paid according to the creditable weight of raisins delivered to handlers. Lots of raisins containing 50.0 percent or more raisins which are well-matured or reasonably well-matured have met what the industry calls the "B or better" maturity standard. These raisins are accepted by handlers as standard raisins.

In addition to meeting the requirement that 50 percent or more of the raisins are well-matured or reasonably well-matured, lots of raisins must meet other requirements in order to be considered standard. Natural (sun-dried) seedless raisins, for example, must have been prepared from sound, wholesome, matured grapes that have been properly dried and cured. They must be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury. They must have the normal characteristic color, flavor, and odor of properly prepared raisins for that varietal type. They must contain no more than five percent, by weight, of underdeveloped raisins. They must be fairly free from shattered or loose end berries and be uniformly cured. These are most, but not all, of the requirements.

Handlers may also acquire raisin lots which contain fewer that 50.0 percent, by weight, well-matured or reasonably well matured raisins. However, raisin lots containing 49.9 percent or less, by weight, raisins which are well-matured or reasonably well-matured are subject to a dockage factor. These factors reduce the weight of raisin lots by an amount approximating the weight of the raisins needed to be removed in order to meet minimum grade requirements. The producers' payments are reduced accordingly. Raisin lots below the 35.0 percent level are considered off-grade and require reconditioning. Producers incur the reconditioning costs necessary to bring such lots within acceptable requirements.

Currently, the weight of the raisin lots containing between 45.0 percent and 49.9 percent well-matured or reasonably well-matured raisins is reduced by 0.1 percent for each 0.1 percent of well-matured or reasonably well-matured raisins the lot contains below 50.0 percent down to 45.0 percent. The weight of lots containing between 40.0 percent and 44.9 percent well-matured or reasonably well-matured raisins is reduced an additional 0.2 percent for each 0.1 percent the lot is below 45.0 percent down to 40.0 percent. The weight of raisin lots containing between 35.0 percent and 39.9 percent raisins which are well-matured or reasonably well-matured is reduced an additional 0.3 percent for each 0.1 percent the lot is below 40.0 percent down to 35.0 percent.

A majority of the RAC believes that the current dockage factors are too stringent and that applying them results in a creditable fruit weight which understates the maturity of lots of raisins in the three maturity levels mentioned above (45.0 to 49.9 percent, 40.0 to 44.9 percent, and 35.0 to 39.9 percent well-matured or reasonably well-matured). Therefore, the RAC has recommended revisions in the maturity dockage system in order to provide creditable fruit weights which better represent the maturity of the raisins.

The RAC has recommended that the dockage factors be reduced by 50 percent for each of the three maturity levels. Lots of the previously named varietal types containing between 45.0 percent to 49.9 percent well-matured or reasonably well-matured raisins would be docked 0.05 percent (i.e., the weight would be reduced by 0.05 percent) for each 0.1 percent the lot is below 50.0 percent down to 45.0 percent. Producers delivering raisins in the 40.0 percent to 44.9 percent well-matured or reasonably well-matured range would receive an additional 0.1 percent weight reduction for each 0.1 percent the raisins were below 45 percent down to 40.0 percent. Producers delivering raisins in the 35.0 percent to 39.9 percent range would receive an additional 0.15 percent weight reduction for each 0.1 percent the raisins were below 40.0 percent down to 35.0 percent. Lots containing 34.9 percent or less raisins which are well-matured or reasonably well-matured would continue to be considered off-grade and require reconditioning before they could be acquired by handlers.

The maturity dockage system was implemented to deduct from the delivered weight an amount approximating the amount of raisins which would need to be removed by handlers during reconditioning to bring the lot of raisins to the 50 percent well-matured or reasonably well-matured level. This proposed action is needed to provide creditable fruit weights which are more representative of the maturity of the raisins. Reducing the dockage factors as proposed would increase producer returns because the weight of raisin lots, from the 35 percent to 50 percent well-matured or reasonably well matured levels, would not be reduced as much as the rules currently provide. Since producers' payments are based on the creditable weight of the raisins, producers would be credited with delivering more raisins. This would increase producer payments and the increases would be paid by handlers. In addition, this action may reduce producers' expenses because it may reduce the cost of reconditioning a lot of raisins to bring it to the 50.0 percent level.

Based on available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered appropriate because the changes, if implemented, should be in effect for as much of the new crop year, which begins on August 1, as possible.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing Agreements and Orders, Raisins.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 is proposed to be revised as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674.

Subpart—Administrative Rules and Regulations

2. Paragraphs (b), (c), and (d) of § 989.213 are revised to read as follows:

§ 989.213 Maturity dockage.

* * * * *

(b) Maturity dockage table applicable to lots of natural (sun-dried) seedless, golden seedless, dipped seedless, oleate and related seedless, Monukka, and other seedless raisins which contain 45.0 percent through 49.9 percent well-matured or reasonably well-matured raisins:

Percent well-matured or reasonably well-matured	Dockage factor
50.0 or more	[1]
49.9	.9995
49.8	.9990
49.7	.9985
49.6	.9980
49.5	.9975

[1] No dockage.

Note: Percentages less than the last percentage shown in the table, down to 45.0 percent, shall be expressed in the same increments as the foregoing, and the dockage for each such increment shall be .0005 less than the dockage factor for the preceding increment.

(c) Maturity dockage table applicable to lots of natural (sun-dried) seedless, golden seedless, dipped seedless, oleate and related seedless, Monukka, and other seedless raisins which contain 40.0 percent through 44.9 percent well-matured or reasonably well-matured raisins:

Percent well-matured or reasonably well-matured	Dockage factor
44.9	.974
44.8	.973
44.7	.972
44.6	.971
44.5	.970
44.4	.969

Note: Percentages less than the last percentage shown in the table, down to 40.0 percent, shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment.

(d) Maturity dockage table applicable to lots of natural (sun-dried) seedless, golden seedless, dipped seedless, oleate and related seedless, Monukka, and other seedless raisins which contain 35.0 percent through 38.9 percent well-matured or reasonably well-matured raisins:

Percent well-matured or reasonably well-matured	Dockage factor
39.9	.9235
39.8	.9220
39.7	.9205
39.6	.9190
39.5	.9175
39.4	.9160

Note: Percentages less than the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment be .0015 less then the dockage factor for the preceding increment. No dockage shall apply to lots of raisins containing 34.9 percent or less of well-matured or reasonably well-matured raisins.

Dated: August 18, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–19907 Filed 8–23–89; 8:45am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–133–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require high frequency eddy current (HFEC) inspection of certain fuselage skin lap joints for cracks, and repair, if necessary. This proposal is prompted by reports of cracking along the upper fastener row of certain longitudinal lap joints that incorporate a cold metal bonding process. This condition, if not corrected, could result in rapid decompression of the airplane.

DATES: Comments must be received no later than October 16, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–133–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM–120S; telephone (206) 431–1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–133–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The FAA issued AD 89–15–08, Amendment 39–6262 (54 FR 29530; July 13, 1989), to require inspection, using non-destructive inspection procedures, for small fatigue cracks in the fuselage skin lap joints, located at stringer (S) 4 and S–10 on certain Boeing Model 727 series airplanes. Additionally, the AD requires visual inspection of all lap joints for corrosion, delamination, and cracking. That AD was prompted by reports of cracking along the upper fastener row of certain longitudinal lap joints that incorporate a cold metal bonding process. This condition, if not corrected could result in rapid decompression of the airplane.

Since issuance of that AD the FAA has determined that it is prudent to ascertain if multiple small cracks are beginning to appear at the remaining lap splices in these airplanes. The FAA is concerned because such cracks in these lap joints could jeopardize the fail-safe capability of the fuselage after experiencing discrete source damage. These small cracks result from repeated pressurization cycles on the fuselage skin lap joint after a delamination of the lap joint bond. The lap joint bond delamination problem is limited to the first 849 Boeing Model 727 airplanes, on which a cold bonding technique was employed in these joints.

The FAA has reviewed and approved Boeing Service Bulletin 727–53–0072, Revision 5, dated June 1, 1989, which describes the inspection for cracking, repair, and modification of the fuselage skin longitudinal lap joints.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require a one-time inspection of lap joints S–14, S–19, S–20, and S–26, at locations where the outer skin is less than .056 inch thick, in accordance with the service bulletin previously described. Operators would be required to submit reports of their findings, upon which the FAA would evaluate the "health" of the fleet. Future rulemaking action may be considered, based upon the results of the inspection results.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

There are approximately 813 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 623 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $498,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727–53–0072, Revision 5, dated June 1, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. Within the next 2,500 landings or 18 months after the effective date of this AD, whichever occurs first, unless previously accomplished within the last 18 months, perform a high frequency eddy current (HFEC) inspection for cracks of the fuselage skin at lap joints, S–14, S–19, S–20, and S–26 at locations where the upper skin is less than .056 inch thick, from body station (BS) 259 to BS 1183, in accordance with paragraph A. of part I of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0072, Revision 5, dated June 1, 1989. If any cracks are detected, repair prior to further flight, in accordance with part III of the Accomplishment Instructions of the service bulletin.

B. To conduct the inspections required by this AD:

1. Remove the paint, using an approved chemical stripper; or

2. Ensure that the fastener head is clearly visible.

C. Airplanes with affected lap splices modified in accordance with figure 4 or part IV of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0072, Revision 5, dated June 1, 1989, are not subject to the requirements of this AD.

D. Within 10 days after the completion of the inspection for cracks required by this AD, report a complete description of the location and size of all cracks found, along with aircraft line number and the number of flight cycles, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 15, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–19942 Filed 8–23–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–149–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which would require the addition of a cotter pin to the landing gear control selector valve actuator arm. This proposal is prompted by one report of an all wheels-up landing, due to a nut missing from the landing gear control selector valve actuator arm installation. This condition, if not corrected, could result in additional wheels-up landings.

DATES: Comments must be received no later than October 16, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–149–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Airframe Branch, ANM–120S; telephone (206) 431–1525. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–149–AD." The post card will be date/time stamped and returned to the commenter.

Discussion:

One operator has reported the occurrence of an all wheels-up landing on a Boeing Model 727 series airplane. Investigation revealed that the landing gear control selector valve actuator arm had disconnected from the splined shaft on the drum assembly, and the self-locking nut which secures the arm to the shaft was missing. Replacement of the existing nut with a self-locking castellated nut and cotter pin will provide additional assurance that the arm will not disconnect from the shaft. Loss of the nut could result in additional all wheels-up landings.

The FAA has reviewed and approved Boeing Service Bulletin 727–32–0372, dated May 11, 1989, which describes modification of the valve actuator arm and the splined shaft to allow the installation of a castellated nut and cotter pin.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require installation of a castellated nut and cotter pin at the connection between the valve actuator arm and the splined shaft, in accordance with the service bulletin previously described.

There are approximately 1,710 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,143 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Parts cost is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $68,580.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes certificated in any category. Compliance required within the next 3,000 landings after the effective date of this AD, unless previously accomplished.

To prevent nose and main landing gear failure to extend properly due to a disconnect of the landing gear control selector valve actuator arm, accomplish the following:

A. Modify the selector valve actuator arm and splined shaft, in accordance with figure 1. of Boeing Service Bulletin 727–32–0372, dated May 11, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 15, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89–19943 Filed 8–23–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89–NM–107–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires frequent inspections of the forward end of the Model 747 flap tracks for cracks emanating from fail-safe bar fastener holes until these holes are verified to be corrosion free. This condition, if not corrected, could lead to separation of the flap from the airplane and partial loss of controllability of the airplane. This action would require modification of the fail-safe bar fastener holes to remove corrosion, would tighten certain inspection requirements, and would impose a limitation on the use of flaps to 25 degrees or less.

DATES: Comments must be received no later than October 16, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–107–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office,

FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, ANM–120S; telephone (206) 431–1925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–107–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On February 14, 1989, the FAA issued AD 89–05–04, Amendment 39–6148 (54 FR 7759; February 23, 1989), to require frequent inspections of the forward end of the Model 747 flap tracks for cracks emanating from fail-safe bar fastener holes, until these holes are verified to be corrosion-free. That action was prompted by fractures of trailing edge flap tracks in service. This condition, if not corrected, could lead to separation of the flap from the airplane and partial loss of controllability of the airplane.

The crack growth rates for the cracks in the area of concern is extremely high, necessitating very frequent inspections. Because of the urgency of the required inspections, AD 89–05–04 was issued immediately without a public comment period. The FAA has determined that additional, longer term actions are also required to reduce the probability of another in-service incident.

The FAA has reviewed and approved Boeing Alert Service Bulletin 74757A2229, Revision 8, dated January 31, 1989, which describes a modification procedure for the first four fail-safe bar fastener holes on each side of the flap track. This procedure describes removal of corrosion and corrosion pitting which has been the precursor to cracking found in service and will, thereby, reduce the probability of cracking.

Since this condition is likely to exist or develop on other airplanes of this same type design, this proposal would revise AD 89–05–04 to require modification of the flap tracks in accordance with the service bulletin previously described.

It is the FAA's objective to ensure this modification is accomplished fleet-wide at the earliest practical date. The FAA recognizes that the modification is difficult and that special tooling must be created to accomplish it properly. The manufacturer has created some tool kits, but it is the FAA's understanding that still more are required. Considering this information, the proposed compliance time of six months is based on the FAA's current best estimate as to how quickly the fleet modification can be accomplished.

In addition, since the cracking incidents that have occurred in service have been associated with the frequent use of the maximum flap setting, the proposed AD would impose a limitation on the use of landing flaps to 25 degrees or less, until more durable flap tracks of a later design are installed. The FAA specifically invites alternate proposals to the imposition of such a restriction, that would achieve an equivalent effect.

In addition, since issuance of AD 89–05–04, one operator reported finding an eight-inch crack emanating from the fifth most-forward failsafe bar fastener hole on the outboard side of track number six. This location had been visually inspected for cracking approximately 400 landings prior to the crack discovery, and no crack was detected at that time. Since this indicates a higher than expected crack growth rate, the FAA has determined that the currently-required visual inspection interval at this location should be reduced. Therefore, the proposed AD would require repetitive visual inspections of the track for cracks in the web extending from fastener holes 5 through 10, at intervals of 300 flight cycles.

In addition to the actions proposed in this Notice, the FAA is also proposing, as part of a separate rulemaking activity, the eventual replacement of the flap tracks affected by AD 89–05–04 with more durable flap tracks of a later design. This separate rulemaking is contained in Regulatory Docket 89–NM–68–AD, issued May 1, 1989 (54 FR 22300; May 23, 1989).

There are approximately 240 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 125 airplanes of U.S. registry would be affected by this AD, that it would take approximately 296 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of tooling is estimated to be $8,000 per airplane, based on the manufacturer's quoted rental charges for the tool kit. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,480,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

BEST COPY AVAILABLE

§ 39.13 [Amended]

2. Section 39.13 is amended by amending AD 89-05-04, Amendment 39-6148 (54 FR 7759; February 23, 1989), by revising existing paragraph E. and adding new paragraphs L., M., and N., as follows:

E. Within the next 50 landings after August 15, 1988 (the effective date of AD 88-16-03, Amendment 39-5985), unless accomplished within the past 950 landings, and thereafter at intervals not to exceed 1,000 landings, visually inspect numbers 1 through 8 flap track webs for cracks extending from all fastener holes not inspected in accordance with the requirements of paragraphs A., B., C., or D., above or paragraph L., below. These visual inspections must be accomplished in accordance with the procedures described in Boeing Service Bulletin 747-57-2146, Revision 3, dated May 9, 1988.

L. Within 150 landings after the effective date of this amendment, unless accomplished within the last 150 landings, and thereafter at intervals not to exceed 300 landings, remove the fairing from the forward end of flap track numbers 1 through 8 (except tracks 4 and 5 with a spliced-in end fitting) and visually inspect the flap track webs for cracks extending from the fifth through the tenth most-forward failsafe bar fastener holes on each side of the track. These visual inspections must be accomplished in accordance with the procedures described the Boeing Service Bulletin 747-57-2146, Revision 3, dated May 9, 1988.

M. Within the next 6 months, after the effective date of this amendment, accomplish the following on the first four fail-safe bar fastener holes on each side of the track (eight per track) of flap track numbers 1 through 8 (except tracks 4 and 5 with a spliced-in end fitting):

1. Modify the fastener holes in accordance with Boeing Service Bulletin 747-57A2229, Revision 8, dated January 31, 1989.

2. Verify that modified fastener holes are crack-free and corrosion-free in accordance with paragraph B.2., above.

Note: Modification of the fastener holes does not terminate the repetitive inspection requirements of paragraph B.2.)

N. For airplanes on which the first four flap track failsafe bar fastener holes have been verified to be corrosion-free in accordance with paragraph B.2. of this AD, within 6 months after the effective date of this amendment, and until reworked and interim production flap tracks are replaced with more durable later design flap tracks in accordance with Boeing Service Bulletin 747-57A2229, Revision 8, dated January 31, 1989, revise the Limitations Section of the Airplane Flight Manual (AFM) by adding the following instructions. This may be acccomplished by inserting a copy of this AD into the AFM.

Landing Flaps

Maximum landing flaps shall not exceed 25 degrees, unless deemed necessary for safe operation by the pilot.

Issued in Seattle, Washington, on August 15, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19044 Filed 8-23-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AEA-11]

Proposed Alteration of Transition Area; Winchester, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration is proposing to amend the description of the Winchester, Virginia, 700 foot Transition Area. This is necessary due to the decommissioning of the Shawnee, Virginia VHF Omnidirectional Range/Tactical Air Navigaiton (VORTAC) aid to navigation. The associated Standard Instrument Approach Procedures (SIAP's) based upon this VORTAC have been cancelled as the result of a previous non rule-making study. The intended effect of this proposed action would be to realign the transition area to reflect the actual amount of airspace needed to contain instrument operations when aircraft are executing the SIAP's to the Winchester, VA airport.

DATES: Comments must be received on or before September 15, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Charles S. Shuler, Manager, Systems Management Branch, AEA-530, Docket No. 89-AEA-530, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AEA-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the description of the Winchester, Virginia, Transition Area due to the decommissioning of the Shawnee VORTAC and the prior cancellation of SIAP's which were based upon this VORTAC. Section

71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Winchester, VA [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the center, lat. 39°08'30" N., long. 78°08'30" W., of Winchester Municipal Airport; within a 9.5-mile radius of the center of the airport extending clockwise from a 187° bearing to a 008° bearing from the airport; within 4 miles either side of the 043° bearing extending from the 6.5-mile radius to 10 miles northeast of the airport; within 5 miles each side of a 134° bearing from a point at lat. 39°08'17" N., long. 78°08'16" W., extending from said point to 14 miles southeast of said point.

Issued in Jamaica, New York, on August 3, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89-19945 filed 8-23-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 89-21]

RIN 2125-AC37

Truck Size and Weight; Dromedary Decks and Plates

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA proposes to amend its current regulations to clarify that dromedary decks and plates are included under its dromedary box provisions. This would preempt inconsistent State laws and regulations to permit truck tractors equipped with dromedary decks or plates having the capacity to carry cargo that were in legal use on December 1, 1982, to continue to operate throughout their useful lives. Proof of such legal use would continue to rest with the operator of the equipment.

DATE: Comments on this docket must be received on or before October 23, 1989.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 89-21, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street. SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect or WordStar. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Max Pieper, Office of Motor Carrier Information Management and Analysis, (202-366-4029) or Mr. Charles Medalen, Office of the Chief Counsel (202-366-1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Surface Transportation Assistance Act of 1982 (STAA), Public Law 97-424, 96 Stat. 2097, required the States to permit the operation of specified equipment on the National Network (NN) highways. The purpose of the legislation was to increase motor carrier productivity, but its definition of a truck tractor as a "noncargo carrying power unit" inadvertently denied to operators of tractors already equipped with dromedary boxes the opportunity to use the larger semitrailers authorized by the statute. However, the STAA also authorized the Secretary of Transportation to establish rules to accommodate specialized equipment on the NN. The FHWA, therefore, concluded that it was consistent with the intent of Congress to allow truck tractors with dromedary equipment in lawful operation on December 1, 1982 (the cut-off date for other grandfather rights created by the STAA), to operate on the NN for the remainder of their useful lives. A final rule requiring the States to permit the operation of such vehicles was adopted on June 5, 1984 (49 FR 23302) and codified at 23 CFR 658.13(f).

Truck tractors equipped with functionally-similar, cargo-carrying, dromedary decks or plates were not the subject of any of the comments to the docket for this rulemaking and were, therefore, not addressed in the June 5, 1984, final rule. We are now finding that there exists a small group of carriers that were using dromedary decks or plates to carry cargo, particularly crated household goods, before December 1, 1982. The rationale for grandfathering dromedary boxes appears to be equally applicable to these decks or plates.

Request for Comments

The FHWA solicits comments from all interested persons in regard to the following:

1. Should dromedary decks and plates (some equipped with plywood ends and tops and side curtains) be subject to the same regulations as dromedary boxes?

2. Are there other types of dromedary equipment that should be considered in this proceeding?

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. As discussed herein, this proposal merely clarifies the definition of specialized equipment permitted under the provisions of the STAA.

Further, a small number of vehicles, whose productivity will be increased as intended by the STAA, will be affected by this proposal.

Regulatory Impact

The FHWA has considered the impact of this notice and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the DOT. These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the June 5, 1984, final rule (49 FR 23302), clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in this rulemaking do not differ in substance from those fully considered in the original impact statement accompanying the June 5 final rule. The Regulatory Impact Analysis prepared for that rule is available for inspection in the Headquarters Office of FHWA, Public Docket Room 4232, 400 Seventh Street, SW., Washington, DC 20590.

Under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

In consideration of the foregoing, the FHWA proposes to amend chapter 1 of title 23, Code of Federal Regulations, by revising part 658 as set forth below.

List of Subjects in 23 CFR Part 658

Grants program—transportation, Highways and roads, Motor carrier size and weight.

Issued on: August 17, 1989.

Thomas D. Larson,

Federal Highway Administrator.

The FHWA proposes to amend 23 CFR part 658 as follows:

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97–424, 96 Stat 2097 (23 U.S.C. 127; 49 U.S.C. App. 2311, 2312, 2313, and 2316), as amended by Pub. L. 98–17, 97 Stat. 59, and Pub. L. 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.13 is amended by revising paragraph (f) to read as follows:

§ 658.13 Length.

* * * * *

(f) Truck tractors containing a dromedary box, deck or plate in legal operation on December 1, 1982, shall be permitted to continue to operate, notwithstanding their cargo carrying capacity, throughout their useful life. Proof of such legal operation on December 1, 1982, shall rest upon the operator of the equipment.

[FR Doc. 89–19908 Filed 8–23–89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 35a and 46

[INTL-0536-89]

RIN 1545-AN60

Registration Requirements With Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to the definition of the term "registration required obligations" with respect to obligations issued to certain foreign persons and relating to the imposition of sanctions on issuers of registration required obligations in bearer form. These regulations would provide the public with guidance necessary to comply with the Tax Equity and Fiscal Responsibility Act of 1982. This document also contains proposed Income Tax Regulations relating to the repeal of 30 percent withholding on certain types of interest by the Tax Reform Act of 1984. They provide the public with guidance necessary to comply with the Tax Reform Act of 1984.

DATES: The regulations amending § 1.163–5(c) are proposed to be effective for obligations issued after the 30th day following the date that final regulations are published in the **Federal Register**. The regulations amending § 1.163–5T and § 35a.9999–5 are proposed to be effective upon the date that temporary regulations are published in the **Federal Register**. Comments and requests for a public hearing must be delivered or mailed by October 10, 1989.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, (Attention: CC:CORP:T:R, INTL–0536–89), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attention: CC:CORP:T:R(INTL–0536–89)) (202–566–6795, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.163–5(c)(2)(i)(D). This information is required by the Internal Revenue Service to insure that purchasers of bearer obligations are not U.S. persons (other than those permitted to hold such obligations under section 165(j)). The likely respondents or recordkeepers are individuals and businesses and other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents or recordkeepers may require greater or less time depending on their particular circumstances. Estimated total annual reporting and recordkeeping burden: 852 hours.

The estimated annual burden per respondent or recordkeeper is estimated to be approximately 10 minutes (.167 hours). It is estimated that there will be 5,000 respondents, and 100 recordkeepers required to maintain records. Estimated number of respondents and recordkeepers: 5,100. Estimated annual frequency of responses: On occasion.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 163 of the Internal Revenue Code of 1986. Section 1.163–5(c) of the current regulations incorporates by reference certain requirements based on the interpretation of the Securities Act of 1933 by the Securities and Exchange Commission (SEC). The SEC has proposed to revise its interpretation of that Act. The amendments proposed in this document are in response to that action.

In addition, this document contains other proposed income tax regulations relating to sections 163, 871, 1441, 1442, and 4701 of the Internal Revenue Code of 1986.

Explanation of Provisions

Section 1.163–5(c)(2)(i)(A) of the current regulations provides that an obligation will be considered to be issued under arrangements reasonably designed to insure that the obligation will be sold (or resold in connection with its original issuance) only to a person who is not a U.S. person if, among other things, the obligation is not registered under the Securities Act of 1933 because it is intended for distribution to persons who are not U.S. persons, and the issuer has obtained, and relies in good faith on, a written opinion of counsel to that effect. It further provides that the term "U.S. person" has the same meaning for this purpose as it has for the purpose of determining whether an obligation is intended for distribution to foreign persons under the Securities Act of 1933.

Section 1.163–5(c)(2)(i)(B) provides that an obligation which is registered under the Securities Act of 1933 or is exempt from registration by reason of section 3 or 4 of such Act, or does not qualify as a security under such Act, will be considered to be issued under arrangements reasonably designed to insure that the obligation will be sold only to a person who is not a U.S. person, if five requirements are met. In general, these requirements reflect the requirements necessary for obtaining an opinion of counsel under § 1.163–5(c)(2)(i)(A). In brief, they are;

(1) The obligation is offered for sale only outside the U.S.;

(2) The issuer does not offer to sell the obligation inside the U.S. or to a U.S. person, and each underwriter promises not to do so;

(3) The issuer or underwriter sends a confirmation to the purchaser of the obligation stating that the purchaser represents that it is not a U.S. person;

(4) The obligation is not delivered in bearer form to the purchaser until a certificate is presented stating that the purchaser is not a U.S. person and is not acquiring for sale or resale inside the U.S. or to a U.S. person; and

(5) The issuer or underwriter does not have actual knowledge that the certificate is false.

The SEC has proposed to change its interpretation of the requirements of the Securities Act of 1933 in a number of respects. Among these proposed changes are a redefinition of the term "U.S. person" on the basis of residence, and elimination of the certification in most cases.

Many of the changes proposed by the SEC are reflected in the proposed revision of § 1.163–5(c)(2)(i). However, the Internal Revenue Service does not believe that the two specific changes described above are consistent with the general purpose of section 163(f) to prevent avoidance of U.S. tax by U.S. persons. In order to insure the effective operation of section 163(f), the proposed regulations in this document provide that § 1.163–5(c)(2)(i) (A) and (B) are amended by the insertion of termination date provisions. Under the termination date provisions, the "A" and "B" alternatives generally cannot be used for obligations issued after the 30th day following the date that final regulations are published in the **Federal Register**. Obligations issued after such day must be foreign targeted under the new proposed "D" alternative of § 1.163–5(c)(2)(i)(D) or under the interstate commerce alternative of § 1.163–5(c)(2)(i)(C), if applicable.

The proposed "D" alternative uses the definition of the term "U.S. person" provided by section 7701(a)(30) of the Code and also retains the certification requirement referred to above. The proposed "D" alternative parallels the SEC's changes in many other respects; however, the proposed "D" alternative is separate and independent from rules or interpretations that the SEC chooses to adopt in its administration of the securities laws. The SEC's interpretation of the securities laws will be considered by the Service where appropriate; however, the Service must ultimately base its interpretations on the tax policies underlying section 163(f)(2)(B).

The proposed regulations in this document also revise paragraphs (a), (c), and (e) of § 35a.9999–5 and add new paragraph (e) of § 1.163–5T.

A–5 of paragraph (a) of § 35a.9999–5 provides conditions that must be satisfied to obtain an exemption from information reporting and backup withholding in the case of interest described in section 861(c) (as in effect prior to the Tax Reform Act of 1986) that is paid outside the United States on an obligation that would be a registration required obligation but for the fact that it has a maturity (at issue) of less than one year. A–6 of paragraph (a) extends the requirements of A–5 to original issue discount obligations. One of the conditions of A–5 is that the obligation satisfy the requirements of section 163 (f)(2)(B) (i) and (ii)(I) and the regulations thereunder (as if the obligation would otherwise be a registration required obligation within the meaning of section 163 (f)(2)(A)).

Proposed § 1.163–5 (c)(2)(i)(D)(*1*) would provide that an obligation generally will not satisfy the requirements of 163 (f)(2)(B)(i) unless a certificate is presented at the end of a 40-day restricted period stating that the obligation is not being acquired by or on behalf of a United States person. Obviously, this certificate cannot be provided in respect of an obligation with a maturity at the time of original issuance of less than 40 days. Moreover, the Internal Revenue Service believes that it may be difficult to satisfy the certification requirement in respect of short-term obligations with maturities of longer than 40 days.

These regulations therefore propose to amend A–6 of paragraph (a) to provide an exception from the certification requirement for certain short-term commercial paper. Under this provision, a certificate would not be required under § 1.163–5(c)(2)(i)(D)(*1*) by virtue of A–6 if the obligation is an original issue discount obligation with a maturity of 90 days or less from the date of issuance.

A–18 of paragraph (c) of § 35a.9999–5 provides that an obligation that would otherwise be in registered form but for the fact that it is convertible into bearer form is considered to be in bearer form. Under A–1 of § 35a.9999–5 (a), this provision applies to obligations issued after July 18, 1984. The provision in A–18 is amended in order to better coordinate the provision with § 1.163–5(c)(2)(vi). A–21 of paragraph (e) of § 35a.9999–5 provides that interest paid to the holder of a pass-through certificate described in § 1.163–5T(d) may qualify as portfolio interest. It provides further that for purposes of sections 871(h) and 881(c), interest is considered to be paid on or with respect to the pass-through certificate and not with respect to any obligations held by the fund or trust to which the pass-through certificate relates. This rule was intended to apply with respect to payments from the trustee of the pass-through trust to the certificate holder, but not with respect to payments made to the trustee of the pass-through trust. Thus, the rule applies when the trustee of the pass-through trust is a United States person who collects and pays out interest to the certificate holders, but does not apply when the payment is made to a trustee that is a foreign person. A–21 would be amended to clarify this point. A–21 would also be amended to clarify its application to REMICs. Section 1.163–5T is amended to add paragraph (e) concerning REMICS.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Commissioner of Internal Revenue. Comments are specifically requested on the following subjects: (i) The "targeted offshore offering" exception to the certification requirement under § 1.163–5(c)(2)(i)(D)(*7*); (ii) the applicability of the certification requirement to short-term obligations under § 35a.9999–5(a)(A–6); (iii) the feasibility of adopting an alternative system of periodic blanket certification that would also satisfy the requirement under § 1.163–5(c)(2)(i)(D)(*7*); and (iv) the feasibility of allowing offerings of foreign targeted obligations to foreign persons together with convertible obligations in registered form to U.S. persons.

All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Carl M. Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR §§ 1.161–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 35a

Employment taxes, Income taxes, Backup withholding, Interest and Dividends Tax Compliance Act of 1983.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 35a and 46 are amended as follows:

Income Tax Regulations

(26 CFR Part 1)

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.163–5 (c) is amended as follows:

1. Paragraph (c)(2)(i) is amended by removing the first and fourth sentences thereof and be adding the sentences set forth below in their respective places.

2. Paragraph (c)(2)(i)(A) is amended by adding the sentence set forth below after the last sentence thereof.

3. Paragraph (c)(2)(i)(B) is amended by removing the first sentence thereof and adding the sentence set forth below in its place.

4. Paragraph (c)(2)(i)(D) is added as set forth below.

5. Paragraph (c)(3) is amended by redesignating the existing text as paragraph (c)(3)(i) and by adding a new paragraph (c)(3)(ii) as set forth below.

§ 1.163–5 Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form.

* * * * *

(c) *Obligations issued to foreign persons after September 21, 1984.* * * *

(2) *Rules for the application of this paragraph*—(i) *Arrangements reasonably designed to insure sale to non-United States persons.* An obligation will be considered to satisfy paragraph (c)(1)(i) of this section if the conditions of paragraph (c)(2)(i) A, (B), (C), or (D) of this section (i) are met in connection with the original issuance of the obligation. * * * Obligations that meet the conditions of paragraph (c)(2)(i) (A), (B), (C) of this section other than certificates of deposit issued under the conditions of paragraph (c)(2)(i)(C) of this section by a United States person or by a controlled foreign corporation within the meaning of section 957 (a) that is engaged in the active conduct of a banking business within the meaning of section 954 (c) (3) (B) as in effect prior to the Tax Reform Act of 1986, and the regulations thereunder), or (D) may be issued in a single public offering. * * *

(A) * * * Except as provided in paragraph (c)(3 of this section this paragraph (c)(2)(i)(A) applies only to obligations issued on or before [insert date which is 30 days after final regulations are published in **Federal Register**].

(B) The obligation is registered under the Securities Act of 1933, is exempt from registration by reason of section 3 or section 4 of such Act, or does not qualify as a security under the Securities Act of 1933; all of the conditions set forth in paragraph (c)(2)(i)(B)(*1*), (*2*), (*3*), (*4*) and (*5*), of this section are met with respect to such obligation; and, except as provided in paragraph (c)(3) of this section the obligation is issued on or before [insert date which is 30 days after final regulations are published in **Federal Register**].

* * * * *

(D) The obligation is issued after [insert date which is 30 days after final regulations are published in **Federal Register**], is not described in § 1.163–5 (c)(2)(i)(C), and all of the conditions set forth in this subdivision (D) are met with respect to such obligation.

(*1*) *Directed selling efforts.* Neither the issuer nor any distributor makes a directed selling effort with respect to the obligation (or other obligations included in the same offering that are identical to the obligation). For purposes of this paragraph (c) (2) (i) (D) (*1*), the term "directed selling effort" means activity that is undertaken prior to or during the restricted period for an obligation—and that has the purpose of, or could reasonably be expected to have the effect of, conditioning the market in the United States or its possessions for the obligation. The term "directed selling effort" shall include, but not be limited to, the placing of an advertisement in a publication with a general circulation in the United States that refers to the offering of the obligation. However, the placing of an advertisement that is required to be published under foreign law, which contains no more

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information than legally required, shall not be deemed to constitute a "directed selling effort." For purposes of this paragraph (c)(2)(i)(D)(*1*), the term "publication with a general circulation in the United States" shall mean any publication that satisfies one or more of the following requirements:

(*i*) The publication is printed in the United States primarily for distribution in the United States;

(*ii*) The publication has had, during the preceding twelve months, an average circulation in the United States of 15,000 or more copies per issue; or

(*iii*) The publication has had, during the preceding twelve months, an average of 50 percent or more of its circulation per issue in the United States.

(*2*) *Offers.* Neither the issuer nor any distributor offers the obligation within the United States or its possessions or to a United States person (other than an exempt distributor or a person described in paragraph (c)(2)(i)(D)(*10*) of this section) during the restricted period. For purposes of this paragraph (c)(2)(i)(D)(*2*), an obligation shall be deemed to be offered within the United States or its possessions if the offeree is within the United States or its possessions.

(*3*) *Sales* (*i*) *In general.* The issuer does not, and each distributor covenants that it will not, sell the obligation within the United States or its possessions or to any United States person (other than an exempt distributor or a person described in paragraph (c)(2)(i)(D)(*10*) of this section) during the restricted period. For purposes of this paragraph (c)(2)(i)(D)(*3*), a sale is deemed to be made to a United States person if the seller of the obligation (whether the issuer or a distributor) has an address within the United States or its possessions for the buyer of the obligation.

(*ii*) *Knowledge.* The issuer does not know that a distributor has sold the obligation within the United States or its possessions or to a United States person, in violation of the covenant described in paragraph (c)(3)(i) of this section, during the restricted period.

(*4*) *Delivery.* Neither the issuer nor any distributor delivers the obligation within the United States or its possessions in connection with a sale of the obligation during the restricted period.

(*5*) *Offering materials.* All offering materials and documents used in connection with the original issuance of the obligation include a statement to the effect that the obligation may not be offered or sold in the United States or its possessions or to a United States person as defined in section 7701(a)(30) (other than an exempt distributor or a person described in paragraph (c)(2)(i)(D)(10)) of this section during the restricted period. Such statement shall appear on the cover or inside cover page of any prospectus or offering circular used in connection with the original issuance of the obligation; in the tax section of any prospectus or offering circular used in connection with the original issuance of the obligation; and in any press release or advertisement made or issued by the distributor. Such statement may appear in summary form on prospectus cover pages and in advertisements or press releases.

(*6*) *Confirmations.* If the issuer or any distributor sells the obligation during the restricted period to a distributor, a dealer, or any other person who receives a selling concession, fee or other remuneration in respect of the securities sold, the seller sends a confirmation to such person stating that such person is subject to the restrictions regarding the offer, sale, and delivery of the obligation during the restricted period as set forth in paragraphs (c)(2)(i)(D) (*1*), (*2*), (*3*), (*4*), and (*5*) of this section. Confirmations may be provided electronically, and in such a case may be stated in summary form.

(*7*) *Certification*—(*i*) *In general.* No later than the 10th day after the last day of the restricted period, a certificate is provided to the issuer or a distributor of the obligation stating that the owner of the obligation on the last day of the restricted period either is not a United States person or is a United States person described in paragraph (c)(2)(i)(D)(*10*) of this section. The certificate must be signed (or sent, as provided in paragraph (c)(2)(i)(D)(7)(*ii*) of this section) either by the owner of the obligation or by a financial institution or clearing organization through which the owner holds the obligation directly or indirectly. For purposes of this paragraph (c)(2)(i)(D)(*7*), the term "financial institution" means a financial institution described in § 1.165–12 (c)(i)(v). When a certificate is provided by a clearing organization, the certificate must be based on statements provided to it by its member organizations. The requirement of this paragraph (c)(2)(i)(D)(*7*) shall be deemed not to be satisfied with respect to an obligation if the issuer or a distributor knows that the certificate with respect to such obligation is false. The issuer or distributor will be deemed to know that the certificate is false if the issuer or distributor has a United States address for the owner (other than an owner that is a United States person described in paragraph (c)(2)(i)(D)(*10*) of this section) and does not have documentary evidence as described in subdivision (iii) of A–5 of section 35a.9999–4T that the owner is not a United States person. The certificate must be retained by the issuer or distributor (and statements by member organizations must be retained by the clearing organization, in the case of certificates based on such statements) for a period of four calendar years following the year in which the certificate is received.

(*ii*) *Electronic certification.* The certificate required by paragraph (c)(2)(i)(D)(*7*)(*i*) of this section (including a statement provided to a clearing organization by a member organization) may be provided electronically, but only if the person receiving such electronic certificate maintains adequate records, for the retention period described in paragraph (c)(2)(i)(D)(*7*)(*i*) of this section, establishing that such certificate was received in respect of the subject obligation, and only if the person sending the electronic certificate has agreed in writing with the recipient, prior to the time of certification, that the electronic certificate shall have the effect of a signed certificate described in paragraph (c)(2)(i)(d)(*7*)(*i*) of this section.

(*iii*) *Exception for targeted offshore offerings.* This paragraph (c)(2)(i)(D)(*7*) shall not apply, and no certificate shall be required, in the case of an obligation that is sold during the restricted period in a targeted offshore offering. For purposes of this paragraph (c)(2)(i)(D)(*7*)(*iii*) of this section, a "targeted offshore offering" is an offering of obligations that is targeted to the domestic capital markets of a single foreign country in accordance with customary local practices and documentation; that is neither listed nor the subject of an application for listing on a securities exchange outside the targeted foreign country; and that consists solely of obligations denominated in the local currency of the targeted foreign country. An offering shall not be considered to be a "targeted offshore offering" if the issuer or any distributor knows or has reason to believe that a substantial portion of the offering will be sold or resold outside of the domestic markets of the targeted foreign country in connection with the original issuance.

(*8*) *Distributor.* For purposes of this § 1.163–5(c)(2)(i)(D), the term "distributor" means:

(*i*) Any affiliate of the issuer;

(*ii*) The lead underwriter;

(*iii*) Any person that participates in the original issuance of the obligation pursuant to a contractual arrangement; and (*iv*) Any person acting on behalf of any of the foregoing, or acting on behalf of the issuer.

(*9*) *Exempt distributor.* For purposes of this § 1.163–5(c)(2)(i)(D), the term "exempt distributor" means a distributor that certifies in writing to the selling issuer or distributor that it is buying for the purpose of resale in connection with the original issuance of the obligation, and that if it retains the obligation for investment, it will only do so in accordance with the requirements of paragraph (c)(2)(i)(D)(*10*) of this section. In the latter case, the certificate required under paragraph (c)(2)(i)(D)(*10*) of this section (other than a blanket certificate) shall be provided to the selling issuer or distributor no later than the 40th day of the restricted period. The provisions of paragraph (c)(2)(i)(D)(*11*) governing the restricted period for unsold allotments or subscriptions shall apply to any obligation retained for investment by an exempt distributor.

(*10*) *Certain United States persons.* An obligation may be offered and sold outside the United States and its possessions to a United States person that is a financial institution purchasing for its own account, or to a United States person that is a customer of, and holds the obligation through, a financial institution, provided that the financial institution holding the obligation provides a certificate to the issuer or distributor no later than the end of the restricted period stating that it agrees to comply with the requirements of section 165(j)(3) (A), (B), or (C) and the regulations thereunder. For purposes of this paragraph (c)(2)(i)(D)(*10*), the term "financial institution" means a United States person that is a financial institution as defined in § 1.165–12(c)(1)(v). A financial institution may provide a blanket certificate to the issuer or distributor stating that the financial institution will comply with the requirements of section 165(j)(3) (A), (B), or (C) and the regulations thereunder. A blanket certificate must be received by the issuer or distributor in the year of the issuance or in either of the preceding 2 calendar years, and must be retained by the issuer or distributor for at least 4 years after the end of the last calendar year to which it relates.

(*11*) *Restricted period.* The purposes of this § 1.163–5(c)(2)(i)(D), the term "restricted period" means the 40-day period beginning on the later of the closing of the offering or the first date on which the obligation (or any other obligation included in the same issue that is identical to the obligation) is offered to persons other than a distributor. Notwithstanding the preceding sentence, any offer of the obligation by the issuer or a distributor shall be deemed to be during the restricted period if the issuer or distributor holds the obligation as part of an unsold allotment or subscription.

(*12*) *Special rule for international organizations and foreign central banks.* For purposes of this § 1.163–5(c)(2)(i)(D), an obligation that is offered or sold to an international organization or foreign central bank shall be deemed not to be offered or sold to a United States person. For purposes of this paragraph (c)(2)(i)(D)(*12*), the terms "international organization" and "foreign central bank" shall have the meanings set forth in section 7701(a)(18) and section 895, respectively, and the regulations thereunder.

(*13*) *Clearing organization.* For purposes of this § 1.163–5(c)(2)(i)(D), a "clearing organization" is an entity which is in the business of holding obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member without the necessity of physical delivery of the obligation.

(3) *Effective date—(i) In general.* * * *

(ii) *Special rules.* If an obligation is originally issued after [insert date which is 30 days after final regulations are published in **Federal Register**] pursuant to the exercise of a warrant or the conversion of a convertible obligation, which warrant or obligation (including conversion privilege) was issued on or before [insert date on which final regulations are published in **Federal Register**], then the rules of § 1.163–5(c)(2)(i)(A) or § 1.163–5(c)(2)(i)(B) shall apply to such obligation as if such rules contained no termination date provision. The issuer of an obligation may choose to apply either the rules of § 1.163–5(c)(2)(i) (A) or (B), or the rules of § 1.163–5(c)(2)(i)(D), to an obligation that is originally issued after [insert date on which final regulations are published in **Federal Register**] and on or before [insert date which is 30 days after final regulations are published in the **Federal Register**].

Paragraph 3. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par 4. § 1.163–5T is amended by adding new paragraph (e) to read as follows:

§ 1.163–5T Denial of the interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form (temporary).

* * * * *

(e) *Regular interests in REMICS.* (1) A regular interest in a REMIC, as defined in sections 860D and 860G and the regulations thereunder, is considered to be a "registration-required obligation" under section 163(f)(2)(A) and § 1.163–5(c) if the regular interest is described in section 163(f)(2)(A) and § 1.163–5(c), without regard to whether any obligation held by the REMIC to which the regular interest relates is described in section 163(f)(2)(A) and § 1.163–5(c). A regular interest in a REMIC is considered to be described in section 163(f)(2)(B) and § 1.163–5(c) if the regular interest is described in section 163(f)(2)(B) and § 1.163–5(c), without regard to whether any obligation held by the REMIC to which the regular interest relates is described in section 163(f)(2)(B) and § 1.163–5(c).

(2) An obligation held by a REMIC is considered to be described in section 163(f)(2) (A) or (B) if such obligation is described in section 163(f)(2) (A) or (B), respectively, without regard to whether the regular interests in the REMIC are so considered.

(3) For purposes of section 4701, a regular interest is considered to be issued solely by the recipient of the proceeds from the issuance of the regular interest (hereinafter the "sponsor"). The sponsor is therefore liable for any excise tax under section 4701 that may be imposed with reference to the principal amount of the regular interest.

(4) In order to implement the purpose of section 163, section 163–5(c), and this section, the Commissioner may characterize a regular interest in a REMIC and any obligation held by such REMIC in accordance with the substance of the arrangement they represent and may impose the penalties provided under sections 163(f)(1) and 4701 in the appropriate amounts and on the appropriate persons. This provision may be applied, for example, where a corporation issues an obligation that is purportedly in registered form and that will qualify as a "qualified mortgage" within the meaning of section 860G(a)(3) in the hands of a REMIC, contributes the obligation to a REMIC as its only asset, and arranges for the sale to investors of regular interests in the REMIC in bearer form that do not meet the requirements of section 163(f)(2)(B). If this provision is applied, the obligation held by the REMIC will not be considered to be issued in registered form or to meet the requirements of section 163(f)(2)(B). The corporation will not be allowed a deduction for the payment of interest on the obligation held by the REMIC, and the excise tax under section 4701,

calculated with reference to the principal amount of the obligation held by the REMIC, will be imposed on the corporation and may be collected from the corporation and its agents.

Par 5. The authority for part 35a continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par 6. Section 35a.9999–5 is amended by adding a sentence immediately after the last sentence of A–6 of paragraph (a); by removing the sentence immediately before the last sentence of A–18 of paragraph (c), and adding two new sentences in its place; in paragraph (e), by redesignating the text of existing A–21 as subdivision (i) and adding a sentence immediately following the second sentence, and adding new subdivision (ii). The added sentences read as follows:

§ 35a.9999–5 Questions and answers relating to repeal of 30 percent withholding by section 127 of the Tax Reform Act of 1984 and to the application of information reporting and backup withholding in light of such repeal.

* * * * *

(a) *Rules concerning obligations in bearer form.*

* * * * *

A–6. * * * However, an original issue discount obligation with a maturity of ninety days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163–5(c)(2)(i)(D)(*7*).

* * * * *

(c) *Convertibility of obligations.*

A–18. * * * An obligation issued after July 18, 1984, and on or before September 21, 1984, that would otherwise be in registered form but for the fact that it is convertible into bearer form, shall be considered to be in bearer form for purposes of A–1 if it satisfies the applicable requirements of the relevant temporary or proposed regulations under section 163(f)(2)(B), as described in § 1.163–5(c)(2)(vi). An obligation issued after September 21, 1984, that would otherwise be in registered form but for the fact that it is convertible into bearer form shall be considered to be in bearer form. * * *

* * * * *

(e) *Application of Repeal of 30 Percent Withholding to Pass-through Certificates.*

* * * * *

A–21. (i) * * * The rule of this A–21 applies only to payments made to the holder of the pass-through certificate from the trustee of the pass-through trust and does not apply to payments made to the trustee of the pass-through trust. * * *

(ii) Interest paid to a holder of a regular or residual interest in a REMIC will qualify as portfolio interest under section 871(h)(2) or section 881(c)(2) for purposes of the exemption from 30 percent withholding if the interest paid to the holder satisfies the conditions described in A–1 or A–8 of this section. For purposes of A–1 or A–8 of this section and sections 871(h) and 881(c), interest paid to the holder of a regular interest in a REMIC is considered to be paid on or with respect to the regular interest in the REMIC and not on or with respect to any mortgage obligations held by the REMIC. The foregoing rule, however, applies only to payments made to the holder of the regular interest from the REMIC and does not apply to payments made to the REMIC. For purposes of A–1 or A–8 of this section and sections 871(h) and 881(c), interest paid to the holder of a residual interest in a REMIC is considered to be paid on or with respect to the obligations held by the REMIC, and not on or with respect to the residual interest. For purposes of A–1 and A–8 of this section and section 127 of the Tax Reform Act of 1984, a residual interest in a REMIC will be considered as issued after July 18, 1984, only to the extent that the obligations held by the REMIC are issued after July 18, 1984, but a regular interest in a REMIC will be considered issued after July 18, 1984, if the regular interest was issued after July 18, 1984, without regard to the date on which the mortgage obligations held by the REMIC were issued.

Par. 7. The authority for Part 46 continues to read as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 8. Section 46.4701–1 is amended by adding paragraph (b)(5) to read as follows:

§ 46.4701–1 Tax on issuer of registration required obligation not in registered form.

* * * * *

(b) *Definitions.* * * *

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(5) *Issuer.* Except as provided in § 1.163–5T(d) (relating to pass-through certificates) and § 1.153–5T(e) (relating to REMICs), the "issuer" is the person whose interest deduction would be disallowed solely by reason of section 163(f)(1).

* * * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 89–19868 Filed 8–23–89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Regulatory Program; Public Notice; Permits; Performance Standards; Civil Penalties

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to make the requirements of the Illinois program no less effective than the Federal program. They concern proposed changes to the Illinois Administrative Code (IAC) at 62 IAC 1700 General; 62 IAC 1701 Definitions; 62 IAC 1761 Areas Designated by Acts of Congress; 62 IAC 1772 Coal Exploration Requirements; 62 IAC 1773 Permits and Permit Processing Requirements; 62 IAC 1774 Revision, Renewal and Transfer of Permit Rights; 62 IAC 1778 Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information; 62 IAC 1779 Permit Applications—Minimum Requirements for Information on Environmental Resources; 62 IAC 1780 Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; 62 IAC 1784 Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; 62 IAC 1800 Bonding and Insurance Requirements for Surface Coal Mining; 62 IAC 1816 Permanent Program Performance Standards—Surface Mining; 62 IAC 1817 Permanent Program Performance Standards—Underground Mining; 62 IAC 1843 State Enforcement; and 62 IAC 1846 Individual Civil Penalties.

This notice sets forth the times and locations that the Illinois program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on

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September 25, 1989. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on September 18, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on September 8, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois program and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Springfield Field Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 600 East Monroe Street, Room 20, Springfield, Illinois 62701, Telephone: (217) 492–4495.

Illinois Department of Mines and Minerals, 300 West Jefferson Street, Suite 300, Springfield, Illinois 62791, Telephone: (217) 782–4970.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office; (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883 *et seq.*). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.16, and 913.17.

II. Discussion of Proposed Amendments

Pursuant to 30 CFR 732.17, OSMRE identified required revisions to the Illinois regulatory program by letters dated June 9, 1987; December 16, 1988; and May 11, 1989. OSMRE also notified Illinois of deficiencies which OSMRE had determined to be less effective than the Federal requirements for surface mining and reclamation operations in Illinois program amendments approved by the Director on October 25, 1988 (53 FR 43112), and January 4, 1989 (54 FR 118).

In response to these notifications, Illinois by letter dated July 17, 1989 (Administrative Record No. IL–1075), submitted the following proposed amendments to its program.

The Illinois Administrative Code (IAC), Title 62, Mining, chapter I: Regulations of the Illinois Department of Mines and Minerals, § 1700.11(a), limits the applicability of IAC rules to all coal exploration and active surface coal mining operations.

Section 1701, General Definitions, Appendix A, changes the definition of "previously mined area" to those lands not reclaimed in accordance with the Act and changes the definition of "valid existing rights" in response to a required regulatory program amendment notice published in the **Federal Register** on January 4, 1989 (54 FR 123).

Section 1761.11(a), Areas Designated by Act of Congress, is revised to remove the quarter-mile restriction on the maximum width of wild or scenic river study corridors and § 1761.11(c) is revised to extend the prohibitions/limitations to privately owned places listed on the National Register of Historic Places. Section 1761.12(e) is likewise revised to extend prohibitions/limitations to privately owned places listed on the National Register of Historic Places.

Section 1772.12(b), Requirements for Coal Exploration, is revised to require the applicant for a coal exploration permit to provide, if requested, other information regarding known or unknown historic or archeological resources.

A new § 1773.5, Requirements for Permits and Permit Processing, is added which defines the phrases "owned or controlled" and "owns or controls".

Section 1773.11(a) is revised to restrict the permit renewal requirement to those operations actively conducting surface coal mining operations.

Section 1773.15(b) is revised to prohibit the issuance of permits to any person currently in violation of the Federal Act who owns or controls the permit applicant.

Section 1773.15(c) is revised to delete one permit finding and add two new permit findings. Existing subsection (c)(11) concerning cemeteries is deleted and a new subsection (c)(11) adds a finding that the site of a remining operation, where the applicant intends to reclaim to the lesser standards applicable to remining, is considered a previously mined area. New subsection (c)(12) adds a finding that the effect of the proposed permitting action on properties listed or eligible for listing on the National Register of Historic Places has been taken into account. Section 1773.15(e) is revised to require reconsideration of any approved permit, prior to issuance, based on a review of any new violation and compliance information submitted pursuant to proposed new 62 IAC 1778.13(i) and 1778.14(e).

Section 1773.17(h) is revised to require that, in the absence of a legal stay, within 30 days after issuance of a cessation order for operations conducted under the permit, the permittee must notify the State of any changes that have occurred in the ownership information submitted at the time of application or since submittal of the last update of this information.

Subsection (a)(2)(D) is added to § 1773.19 to clarify the time limits for final permit decisions by the State.

Sections 1773.20 and 1773.21 are added to outline Illinois' procedures for identifying and rescinding improvidently issued permits.

Section 1774.15(b), Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, is revised to correct a typographical error in this section. The citation to 62 IAC 1773.19(b) is changed to section 1773.19(a)(3).

Section 1774.17(b) is revised to add a new sentence to subsection (b)(2) clarifying the number of newspaper advertisements to be published when an application is filed.

Section 1778.13, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, subsection (b) is revised to expand the information requirements for permit applications to include the person who will pay the abandoned mine land reclamation fees. Subsections (c) and (d) are revised to expand informational requirements to include persons who own or control the applicant. New subsection (i) is added to require the applicant to update the identification of interests sections of the permit application after State approval, if necessary. New subsection (j) is added to require the applicant to submit all identification of interests and violation and compliance information in a prescribed format.

Section 1778.14, subsection (c) is revised to require that each permit application include a list of all unabated cessation orders and unabated air or water quality violation notices received prior to the application by any suface coal mining and reclamation operation owned or controlled by either the applicant or any person who owns or controls the applicant. New subsection (e) requires the applicant to update the compliance and violation section of the permit application after State approval, if necessary.

Sections 1779.12(b)(1) and (b)(2), Surface Mining Permit Applications—

Minimum Requirements for Information on Environmental Resources, and sections 1783.12(b) (1) and (b)(2), Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, are revised to require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places through the collection of additional information, including field investigations.

Section 1779.20 for surface mining permit applications and Section 1783.20 for underground coal mining permit applications are deleted and the requirements for fish and wildlife resources information are transferred to sections 1780.16 and 1784.21 respectively.

Section 1780.16, Surface Mining Permit Application—Minimum Requirements for Reclamation and Operation Plan, is revised to add the requirements for fish and wildlife resource information from section 1779.20. Section 1780.21(a) is revised to correct a typographical error in the address of the Department's Land Reclamation Division. Section 1780.21(f) is revised to add provisions for the determination of probable hydrologic consequences. Section 1780.21(i) is revised to define when the State may exercise its power to waive the ground water monitoring requirement, in accordance with section 4.02 of the Illinois Administrative Procedures Act (IAPA).

Section 1780.31 is revised to require the applicant to prevent or minimize the impacts of proposed operations on privately-owned places listed on the National Register of Historic Places and allow the State to specify appropriate mitigation and treatment measures for places listed and eligible for listing.

Section 1784.14(a), Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, is revised to correct an address for the State Land Reclamation Division. Section 1784.14(e) is revised to clarify the scope of the determination of probable hydrologic consequences. Section 1784.14(h) is revised to allow the State to waive the ground water monitoring requirement if it finds the operation will not proximately result in contamination, diminution or interruption of a water source in the permit or adjacent area.

Section 1784.17 is revised to correspond with the requirements for the protection of public parks and historic places previously discussed at sections 1780.31.

Section 1784.21 is revised to add the requirements for fish and wildlife information from section 1783.20.

Section 1800.21(b)(4), Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations, is revised to require that the ten percent capital and surplus accounts limitation for letters of credit is applied on a cumulative rather then on an individual basis.

Section 1800.40, subsection (a)(2), is revised to provide a 45 day time frame for submitting a copy of a bond release advertisement. The reference to "informal conferences" is deleted. Revisions to subsection (b)(1) replace the word "receipt" with the word "filing" and extend the period in which to conduct the bond release inspection to 60 days. Revisions to subsection (b)(2) extend the time period for the final bond release decision to 90 days, extend the notification period after a public hearing to 60 days, and add the words "nearest municipality", so that subsection (e), which discussed notification requirements to municipalities, could be deleted. Revisions to subsection (f) would extend the period for holding a public hearing to 60 days after receipt of the request.

Revisions to section 1800.60(b) require that an applicant's public liability insurance policy be maintained in full force during the life of the permit and the liability period necessary to complete all reclamation operations.

Section 1816.49, Permanent Program Performance Standards—Surface Mining Activities, and section 1817.49, Permanent Program Performance Standards—Underground Mining Activities, are revised. Subsection (a)(9) specifies a level of required experience for professionals charged with inspecting impoundments, specifies the timing of impoundment inspections, and clarifies the location at which impoundment inspection reports are to be retained. Subsection (a)(10) specifies exemptions from quarterly impoundment examinations for certain classes of impoundments. Subsections (b)(9) and (c) clarify the spillway requirements for both permanent and temporary impoundments.

Revisions to section 1816.61 for surface mining and section 1817.61 for underground mining relating to general requirements for use of explosives place limitations on requirements specified in other regulations to blasts using more than 25 pounds of explosives.

Section 1816.64(c) for surface mining, subsection (c)(1), is revised to require a public notice of blasting schedule for all blasts. The five pound exemption is deleted.

Revisions to section 1817.64(a) for underground mining would require the operator to notify the State of proposed times and locations of blasting operations.

Revisions to section 1817.66(a) for underground mining require the operator to place signs in the vicinity of the location of blasting.

Revisions to section 1816.67(c) for surface mining and section 1817.67(c) for underground mining requirements for limiting and monitoring the off-site adverse effects of blasting operations change the cube root scaled distance formula for blasts from 500 to 350.

Revisions to section 1816.68(a) for surface mining and 1817.68(a) for underground mining delete the requirement to record wind velocity and direction in the record of blasting operations.

Revisions to section 1816.83(a) for surface mining and 1817.83(a) for underground mining correct a typographical error in a regulation citation in subsection (a)(3). The correct citation for underdrain requirements is section 1816.73(1).

Revisions to section 1816.97 for surface mining and section 1817.97 for underground mining for requirements concerning the protection of fish, wildlife, and related environmental values include a requirement that operators use appropriate methods to exclude wildlife from ponds which contain toxic-forming materials.

Section 1816.99(c) for surface mining is revised to specify that lateral support requirements apply to any mine-related excavation.

Section 1816.102(a) for surface mining is revised to correct a typographical error in a regulation citation. The correct citation for previously mined highwalls is subsection (k)(3)(C).

Section 1817.122 for underground mining is revised to require operators to maintain copies of all public notices mailed pursuant to this section and to make said copies available for inspection by State agents.

Section 1843.11(a)(2), State Enforcement, is revised to limit automatic issuance of cessation orders for non-permitted operations to those operators actually engaged in surface coal mining. New section 1843.11(g) requires that, within 60 days of the issuance of a cessation order, the State shall notify all owners and controllers.

In section 1846, Individual Civil Penalties, regulations for individual civil penalties are provided. They include provisions for computing, assessing, and collecting the penalties.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15.

If the amendments are deemed adequate, they will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the OSMRE Springfield Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. on September 8, 1989. If no one requests an opportunity to coment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public, and, if possible, notices of meetings will be posted at the locations under "ADDRESSES". A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 11, 1989.

Guy Padgett,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 89-19988 Filed 8-23-89; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 936

Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSMRE is announcing receipt of additional information and revisions pertaining to previously proposed amendments to the Oklahoma permanent regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional information and revisions pertain to exploration, permit requirements, applicant ownership and control information, reclamation and operations plans, special categories of mining, performance standards for surface mining, performance standards for underground mining, bonding, and inspections. The amendment is intended to revise the State program to be consistent with the corresponding Federal standard, incorporate the additional flexibility afforded by the revised Federal regulations, provide additional safeguard, clarify ambiguities, improve operational efficiency, and achieve use of the best technology currently available.

This notice sets forth the times and locations that the Oklahoma program and the proposed amendment to the program are available for public inspection and reopens the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4:00 p.m., c.d.t., September 25, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one copy of the proposed amendment, free of charge, by contacting OSMRE's Tulsa Field Office.

Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Dirve, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430.

Oklahoma Department of Mines, 4040 N. Lincoln, Oklahoma City, OK 74105, Telephone: (918) 521-3859.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, at the address or telephone number listed in "ADDRESSES."

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program were published in the January 19, 1981, **Federal Register** (46 FR 4910). Subsequent actions concerning the Oklahoma program and program amendments are at 30 CFR 936.15.

II. Proposed Amendment

By letter dated May 18, 1988, (administrative record No. OK-843), Oklahoma submitted a proposed amendment to its program under SMCRA. Oklahoma submitted the proposed amendment in response to a July 15, 1985, letter (administrative record No. OK-681) and a June 9, 1987, letter (administrative record No. OK-811) that OSMRE sent in accordance with 30 CFR 732.17(d) through (f). Oklahoma proposed to amend 33 Sections of its program in response to the OSMRE letters. OSMRE published a notice in the June 28, 1988, **Federal Register** (53 FR 24321) announcing receipt of the May 18, 1988; amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended July 28, 1988. Specific information on the proposed revisions to the Oklahoma program as a result of the May 18, 1988 submittal are presented in the June 28, 1988 **Federal Register** (53 FR 24321).

In a letter dated October 6, 1988, (administrative record No. OK-873), OSMRE notified Oklahoma, pursuant to 30 CFR 732.17(f)(1), of additional changes necessary to make the

Oklahoma program no less effective than the Federal regulations. By letter dated November 14, 1988, (administrative record No. 866) Oklahoma responded by asking OSMRE to formally consider a previously submitted informal amendment package dated September 16, 1988 (administrative record No. OK-862). The amendment package submitted by the November 14, 1988, letter contains proposed changes to 4 parts of the Oklahoma program. This amendment also adds Part 846, Individual Civil Penalties. Specific information on the proposed changes is presented in the January 9, 1989 **Federal Register** (54 FR 634).

To facilitate the processing of the May 18 and November 14, 1988 amendments, OSMRE combined the two amendments into a single amendment. Consequently, OSMRE published a notice in the January 9, 1989, **Federal Register** (54 FR 634) announcing the receipt of the November 14, 1988, amendment, the reopening and extension of the May 18, 1988 amendment, and inviting public comment on the adequacy of the proposed amendments. The public comment period ended February 8, 1989.

During its review of the proposed amendment, OSMRE identified concerns relating to: Jurisdiction, definitions, mining plans, Federal lands, lands unsuitable, exploration, permit requirements, permit revisions, applicant ownership and control, reclamation and operations plans, special categories of mining, bonding, performance standards for surface mining, performance standards for underground mining, prime farmland, preparation plants, inspections, and civil penalties. OSMRE notified Oklahoma of its concerns during a March 3, 1989, meeting (administrative record No. OK-887). In a letter dated June 22, 1989 (administrative record No. OK-888) Oklahoma responded to these concerns by submitting a revised proposed amendment package. The OSMRE reopened the public comment period for 30 days in the July 13, 1989 **Federal Register** notice (54 FR 133).

During its review of the June 22, 1989, amendment package, OSMRE identified concerns relating to: exploration, permit requirements, applicant ownership and control information, reclamation and operations plans, special categories of mining, performance standards for surface mining, performance standards for underground mining, bonding, and inspections. OSMRE notified Oklahoma of its concerns during a meeting on July 6, 1989 (administrative record No. OK-889). Oklahoma responded to OSMRE's concerns by submitting a revised proposed amendment package dated August 8, 1989 (administrative record No. OK-890).

Public Comment Procedures

OSMRE is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted on August 8, 1989. In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 17, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-19989 Filed 8-23-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL-3634-9]

National Emission Standards for Hazardous Air Pollutants; Mississippi and Tennessee; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: On April 28, 1989, the State of Mississippi requested delegation of authority for the implementation and enforcement of certain standards in 40 CFR part 60, Standards of Performance for New Stationary Sources (NSPS) and 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP), that had been promulgated and revised since December 14, 1988. On May 31, 1989, these NSPS and NESHAP were delegated to Mississippi (listed in "Supplementary Information").

On May 4, 1989, the Knox County Department of Air Pollution Control requested delegation of one NSPS category. This was delegated to them on May 16, 1989.

Three requests for delegation of authority for the implementation and enforcement of the NSPS and NESHAP were received from the Metropolitan Health Department of Nashville/Davidson County.

On May 10, 1989, the Metropolitan Health Department requested delegation of several NSPS. Also on May 10, 1989, the Metropolitan Health Department resubmitted a June 23, 1986, delegation request for several NESHAP which was inadvertently overlooked by EPA. These NSPS and NESHAP standards were delegated to the Metropolitan Health Department on May 31, 1989 (listed in "Supplementary Information").

The third request was made on May 30, 1989, for three NESHAP categories which were delegated on June 20, 1989 (listed in "Supplementary Information.").

On December 6, 1988, the State of Tennessee requested delegation of several NSPS and NESHAP standards. Since some of the standards were outdated when EPA received the request, EPA requested that Tennessee commit to updating the outdated standards. The committal letter was received on June 5, 1989. The standards were delegated on June 27, 1989.

DATES: The effective dates of the delegation are: Mississippi, May 31, 1989; Knox County, Tennessee, May 16, 1989; Nashville/Davidson County, Tennessee; May 31, 1989 and June 20, 1989; State of Tennessee, June 27, 1989.

ADDRESSES: Copies of the requests for delegation of authority and EPA's letters of delegation may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV—Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Knox County Department of Air Pollution Control, City/County Building, Room 459, 400 West Main Street, Knoxville, Tennessee 37902.

Metropolitan Health Department, Air Pollution Control Division, 311—23rd Avenue, North, Nashville, Tennessee 37203.

Bureau of Pollution Control, Mississippi Department of Natural Resources, Post Office Box 10385, Jackson, Mississippi 39209.

Division of Air Pollution Control,
Tennessee Department of Public
Control, 4th Floor, Customs House,
701 Broadway, Nashville, Tennessee
37219.

FOR FURTHER INFORMATION CONTACT: Rosalyn D. Hughes of the EPA Region IV Air Programs Branch, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Sections 101, 111(c)(1) and 112(d)(1) of the Clean Air Act authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, Standards of Performance for New Stationary Sources (NSPS) and 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

On April 28, 1989, the State of Mississippi requested delegation of the NSPS and NESHAP standards that had been promulgated and revised as of December 14, 1988. The following standards were requested by Mississippi (the revised standards are designated by "(R)"):

40 CFR Part 60 Subpart
- F—Portland Cement Plants (R)
- O—Sewage Treatment Plants (R)
- QQQ—VOC Emissions from Petroleum Refinery Wastewater Systems
- SSS—Magnetic Tape Manufacturing

40 CFR Part 61 Subpart
- N—Inorganic Arsenic Emissions from Glass Manufacturing Plants
- O—Inorganic Arsenic Emissions from Primary Copper Smelters
- P—Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities

After a thorough review of the request, the Division Director of the Air, Pesticides and Toxics Management Division determined that such a delegation was appropriate for these source categories with all the conditions set forth in the delegation letter of November 30, 1981, and delegated them to Mississippi on May 31, 1989.

On May 10, 1989 Metropolitan Health Department of Nashville/Davidson County requested delegation of several NSPS. Also, on May 10, 1989, the local agency's Director of Environmental Services brought to EPA's attention a June 23, 1988, request from the Metropolitan Health Department that the delegation of several NESHAP standards be updated. This request was inadvertently overlooked. The following NSPS and NESHAP were requested:

40 CFR Part 60 Subpart
- Subpart Db—Industrial-Commercial Institutional Steam Generating Units for which Construction Commenced After June 19, 1986 (R)
- Subpart Na—Basic Oxygen Process Steelmaking Facilities for which Construction Commenced After January 20, 1983
- Subpart BBB—Rubber Tire Manufacturing Industry
- Subpart QQQ—VOC Emissions from Petroleum Refinery Wastewater Systems
- Subpart TTT—Surface Coating of Plastic Parts for Business Machines

40 CFR Part 61 Subpart
- B—Radon-222 Emissions from Underground Uranium Mines
- C—Beryllium (R)
- D—Beryllium Rocket Motor Firing (R)
- E—Mercury (R)
- F—Vinyl Chloride (R)
- H—Radionuclide Emissions from the Department of Energy Facilities
- I—Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not covered by Subpart H
- J—Equipment Leaks (Fugitive Emission Sources) of Benzene (R)
- K—Radionuclide Emissions from Elemental Phosphorus Plants
- M—Equipment Leaks (Fugitive Emissions Sources)

After a thorough review of both requests, the Division Director determined that such a delegation was appropriate for all the NSPS and NESHAP standards, except for subparts B, H, I, and K, with all the conditions set forth in the delegation letters of May 25, 1977, and February 20, 1988, and delegated them to Nashville/Davidson County on May 31, 1989. NESHAP subparts B, H, I, and K were not delegated because EPA has not developed the proper technical guidance. Once guidance is developed EPA will on a case-by-case basis review delegation requests for these standards.

On May 30, 1989, the Metropolitan Health Department requested authority for three NESHAP categories:

40 CFR Part 61 Subpart
- N—Inorganic Arsenic Emissions from Glass Manufacturing Plants
- O—Inorganic Arsenic Emissions from Primary Copper Smelters
- P—Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.

After a thorough review of the request, the Division Director determined that such a delegation was appropriate for these source categories with all the conditions set forth in the delegation letters of May 25, 1977, and February 20, 1988, and delegated them to Nashville on June 20, 1989.

On May 4, 1989, the Knox County Department of Air Pollution Control requested delegation of NSPS Subpart QQQ, VOC Emissions from Petroleum Wastewater Systems. After a thorough review of the request, the Division Director determined that such a delegation was appropriate for this source category with all the conditions set forth in delegation letters of May 20, 1977, and December 15, 1985, and delegated them to Knox County on May 14, 1989.

On January 6, 1989, the State of Tennessee submitted several NSPS and NESHAP regulations and requested delegation for those source categories. Their NSPS and NESHAP regulations go through the same process as State Implementation Plan revisions. Once the NSPS or NESHAP is State-effective, it is submitted to EPA. EPA reviewed the regulations and discovered that the submitted version of some source categories was outdated. Before EPA would delegate those source categories to Tennessee, Tennessee was required to submit a letter committing to update the outdated NSPS and NESHAP standards. The letter was received June 5, 1989. The NSPS and NESHAP which were requested are listed below:

40 CFR Part 60 Subpart
- D—Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced after April 3, 1972 (R)
- Da—Electric Utility Steam Generating Units for Which Construction is Commenced After September 8, 1978 (R)
- Db—Industrial-Commercial-Institutional Steam Generating Units
- I—Hot Mix Asphalt Facilities (R)
- J—Petroleum Refineries (R)
- N—Iron and Steel Plants (R)
- Na—Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
- T—Phosphate Fertilizer Industry: Wet Phosphoric Acid Plants (R)
- U—Phosphate Fertilizer Industry: Superphosphoric Acid Plants (R)
- V—Phosphate Fertilizer Industry: Diammonium Phosphate Plants (R)
- W—Phosphate Fertilizer Industry: Triple Superphosphate Plants (R)
- AA—Steel Plants: Electric Arc Furnaces Constructed After October 24, 1974, and on or Before August 17, 1983 (R)
- AAa—Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983
- BB—Kraft Pulp Mills (R)
- CC—Glass Manufacturing Plants (R)
- EE—Surface Coating of Metal Furniture
- GG—Stationary Gas Turbines (R)
- HH—Lime Manufacturing Plants (R)
- KK—Lead-Acid Battery Manufacturing Plants
- MM—Automobile and Light-Duty Truck Surface Coating Operations
- NN—Phosphate Rock Plants
- QQ—Graphic Arts Industry: Publication Rotogravure Printing

- RR—Pressure Sensitive Tape and Label Surface Coating Operations
- SS—Industrial Surface Coating: Large Appliances
- TT—Metal Coil Surface Coating
- UU—Asphalt Processing and Asphalt Roofing Manufacture
- VV—Equipment leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry
- WW—Beverage Can Surface Coating Industry
- XX—Bulk Gasoline Terminals
- FFF—Flexible Vinyl and Urethane Coating and Printing
- GGG—Equipment Leaks of VOC in Petroleum Refineries
- HHH—Synthetic Fiber Production Facilities
- JJJ—Petroleum Dry Cleaners
- KKK—Equipment Leaks of VOC from Onshore Natural Gas Processing Plants
- LLL—Onshore Natural Gas Processing: SO_2 Emissions
- OOO—Nonmetallic Mineral Processing Plants
- PPP—Wool Fiberglass Insulation Manufacturing Plants
- TTT—Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines

40 CFR Part 61 Subpart
- E—Mercury (R)
- F—Vinyl Chloride (R)
- J—Equipment Leaks (Fugitive Emission Sources) of Benzene
- N—Inorganic Arsenic Emissions from Glass Manufacturing Plants
- O—Inorganic Arsenic Emissions from Primary Copper Smelters
- P—Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities
- V—Equipment Leaks (Fugitive Emissions Sources)

After a thorough review of the request, EPA's Division Director determined that such a delegation was appropriate for these source categories with all the conditions set forth in the delegation letters of April 11, 1980, and delegated them to Tennessee on June 27, 1989.

I certify, pursuant to 5 U.S.C. section 605(b), that these delegations will not have a signficant impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: Secs. 111 and 112 of the Clean Air Act (42 U.S.C. 7411 and 7412).

Dated: August 14, 1989.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 89–19979 Filed 8–23–89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 151

[CGD 81–082]

RIN 2115–AA70

Unmanned Barges Carrying Certain Bulk Dangerous Cargoes

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal.

SUMMARY: On June 4, 1984, an advance notice of proposed rulemaking (ANPRM) concerning the revision of rules in 46 CFR part 151 for barges carrying bulk cargoes was published in the Federal Register (49 FR 23085). This rulemaking project is being withdrawn because the amendments that this project would have made have since been made under other Coast Guard rulemakings.

DATE: The advance notice of proposed rulemaking is withdrawn as of August 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. T.J. Felleisen, Office of Marine Safety, Security and Environmental Protection (G–MTH–1), Room 1214, U.S. Coast Guard Headquarters, Washington, DC 20593–0001, (202) 267–1217.

Dated: August 18, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–20005 Filed 8–23–89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[Gen. Dkt No. 89–44; DA 89–943]

Measuring Electromagnetic Emission From Digital Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment time.

SUMMARY: The Chief Engineer, in response to several requests for a 60–day extension, granted an additional 30–day time period in which to file reply comments in the proceeding to revise the FCC procedure for testing digital devices (TP–5). The additional time will give interested parties the necessary time to file meaningful reply comments.

DATES: The new date for filing reply comments is September 6, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard Fabina, FCC Laboratory, 301–725–1585.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rule Making was published at 54 FR 11415, March 20, 1989.

Order Extending Time to File Reply Comments

In the matter of Procedure for measuring electromagnetic emissions from digital devices.

Adopted: August 4, 1989.

Released: August 7, 1989.

By the Chief Engineer:

1. A Notice of Proposed Rule Making in the above entitled proceeding, FCC 89–53, was adopted by the Commission on February 13, 1989, and released on March 7, 1989. Comments in this proceeding originally due May 8, 1989, were extended twice—30 days each time by two separate Commission Orders. The dates for Reply comments originally due June 7, 1989, were extended the same amount of time by each Order. The date for filing comments expired on July 7, 1989. Reply comments are currently due on August 7, 1989.

2. The Computer and Business Equipment Manufacturers Association ("CBEMA") filed with the Commission a petition requesting an additional 60 day extension of the time for filing reply comments. The petitioner expresses the opinion that additional time is needed because the substantial changes to the proposed digital device measurement procedure have elicited comments from more than 24 different parities. The issues raised in these comments are substantive and warrant full investigation before reply comments may be submitted. Separate petitions filed by Hewlett-Packard and Tandy Corporation support CBEMA's motion.

3. Because of the complexity and technical nature of this proceeding, as well as our desire to have a fully developed record before us, we are persuaded that a 30 day extension of the reply comment date is warranted. A 60 day extension is not justifiable because of the two previous 30 day extensions.

4. Accordingly, it is ordered, Pursuant to the delegated authority contained in 47 CFR 0.241(a)(5), that the period of time for the filing of reply comments in

the above proceeding is extended until September 6, 1989.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 89-19933 Filed 8-23-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 15

[Gen. Docket Nos. 89-116, 89-117 and 89-118; DA 89-673]

Procedure for Measurement of Intentional Radiators; Extension of Comment Period

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Chief Engineer, in response to several requests for a 60-day extension, granted an additional 30-day time period in which to file comments in the proceeding to revise the FCC procedure for testing intentional radiators (TP-3), unintentional radiators (TP-4) and radio control and security devices and their associated receivers (TP-6) (54 FR 28690-28693, July 7, 1989). The additional time will give interested parties the necessary time to file meaningful comments.

DATES: Comments to be filed on or before September 11, 1989 and reply comments to be filed on or before October 9, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard Fabina, FCC Laboratory, 301-725-1585.

SUPPLEMENTARY INFORMATION:

In the matter of: FCC procedure for measurement of intentional radiators (except for periodic and spread spectrum devices and devices operating below 30 MHz); FCC procedure for measuring RF emissions from intentional radiators with periodic operation and associated superregenerative receivers; FCC procedure for measurement of unintentional radiators (except digital devices and devices operating below 30 MHz).

Adopted: August 14, 1989

Released: August 16, 1989

By the Chief Engineer: 1. Notices of Proposed Rule Making in the above entitled proceedings, FCC 89-154, FCC 89-155 and FCC 89-156, respectively, were adopted by the Commission on May 12, 1989, and released on June 29, 1989. Comments and reply comments in these proceedings are due on August 21, 1989, and September 5, 1989, respectively.

2. On July 28, 1989, the Computer and Business Equipment Manufacturers Association (CBEMA) filed with the Commission a petition requesting an extension of the time for filing comments in these proceedings to October 9, 1989. A concurrent proceeding in General Docket No. 89-44 is seeking to revise the FCC established measurement procedure for digital devices. The measurement procedures in these proceedings are similar in many aspects, indeed, have the same foundation in RF emission measurement techniques as the digital device measurement procedure proposed in Gen. Docket No. 89-44. Since many of the its members are expected to expand their interests into other low power uses of the RF spectrum, CBEMA is asking for more time for its members to adequately evaluate the proposals in these proceedings.

3. On August 3, 1989, Compaq Computer Corporation (Compaq) filed a petition supporting the CBEMA petition requesting a 60 day extension on the date for filing comments in these proceedings. The Compaq petition essentially states the same reasons for the requested 60 day extension.

4. The Commission values contributions made to the development of national measurement standards by organizations such as CBEMA and Compaq. Because of the additional information and experience which can be added to these proceedings by CBEMA, Compaq and others, as well as our desire to have a fully developed record before us in each proceeding, it has been determined that an extension of the reply comment date in each proceeding is warranted. However, due to our desire to resolve these proceedings as soon as possible, we feel that extending the reply comment period as requested will prolong these proceedings unnecessarily. We believe that the concerns of all interested parties can still be resolved by extending the comment period in each proceeding by 30 days, instead of the requested 60 days. Accordingly, it is ordered, pursuant to the delegated authority contained in 47 CFR 0.241(a)(5), that the period of time for the filing comments in the above proceedings is extended until September 11, 1989, and the time for filing of reply comments is extended until October 9, 1989.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 89-19935 Filed 8-23-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[Docket No. 90693-9193]

RIN 0648-AC29

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 2 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). This proposed rule would establish a regulatory amendment procedure for the future implementation of specified types of gear and harvest restrictions applicable to the fishery in the exclusive economic zone (EEZ). The intended effects of this proposed rule are to provide a more flexible and timely system implementing rules governing the conduct of the spiny lobster fishery, enhance cooperative Florida (State)/federal management, reduce federal management costs, improve the effectiveness of necessary rules, and presumably increase productivity from the resource.

DATE: Written comments must be received on or before October 10, 1989.

ADDRESSES: Comments on this proposed rule and requests for copies of Amendment 2 which incorporates the draft regulatory impact review (RIR) and the draft environmental assessment (EA) should be sent to Michael E. Justen, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery is managed under the FMP, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 640, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 2, prepared jointly by the Councils, proposes a regulatory amendment procedure to implement or modify certain gear and harvest limitations, as a substitute for the costly, time-consuming FMP amendment process presently required for such actions. Amendment 2 also modifies in the FMP several of the issues, a management objective, the statement of optimum yield, and the habitat section and adds a new section on vessel safety to the FMP.

The directed fishery for spiny lobsters occurs entirely within or off the waters of Florida with the principal harvest area being the Florida Keys reef tract. Consequently, the great preponderance of landings have occurred in Monroe County, Florida (96 percent in 1984). East coast landings have occurred primarily in Dade County (Miami area), Florida. Landings of smaller amounts and/or of a sporadic nature have

occurred in other east and west coast Florida counties. Over 80 percent of spiny lobsters consumed in the U.S. are imported. Management of the fishery has been based on rules almost entirely developed by the State of Florida.

The FMP provides management authority only for that part of the fishery operating in the EEZ. The fishery within State waters remains under State authority. To achieve its conservation and management objectives of protecting the fishery throughout its range and to effectively coordinate management with the State, the FMP, as implemented in 1982, complemented the State's management regime. Subsequent amendments have largely extended State rules into the EEZ. However, some measures implemented in the EEZ were different from those of the State. In 1984, the Councils prepared Amendment 1 in an attempt to resolve the remaining State/federal management incompatibilities and generally to improve management of the resource. Although the State, through its representative on the two Councils, had extensive input during the 3-year development process of Amendment 1, the resulting state and federal regulations implemented in 1987 still contained significant incompatibilities with regard to bag and size limits, permits, and use of undersized lobsters as attractants. These incompatibilities are largely due to changes by the State during the lengthy period required to implement a change via an amendment to the FMP and exemplify the differences in the relative responsiveness of the federal and state management systems.

Concern over the difficulties experienced in implementing compatible regulations prompted the Councils, the Florida Marine Fisheries Commission (FMFC), and the Director, Southeast Region, NMFS (Regional Director) to pursue alternative state/federal management structures that would optimize the use of limited state and federal resources, prevent duplication of effort, and make maximum use of the existing State regime. Accordingly, Amendment 2 proposes a procedure whereby the FMFC may request the Regional Director to implement in the EEZ by regulatory amendment, with Councils' oversight, modification to certain gear and harvest limitations applicable to State waters that were proposed by the FMFC and approved by the Florida Governor and Cabinet. The regulatory amendment process requires publication of a proposed rule in the **Federal Register**, a public comment period, and, if the rule is approved, publication of a final rule in the **Federal Register**.

Under Amendment 2, the Councils, FMFC, and NMFS would adopt a protocol that describes the roles and positions of the federal and State governments in the management of the spiny lobster fishery. The provisions of the protocol are as follows:

1. The Councils and NMFS acknowledge that the fishery is a State fishery (which extends into the EEZ) in terms of current participants in the directed fishery, major nursery, fishing, and landing areas, and historical regulation; and it is a fishery requiring cooperative State/federal efforts for effective management through an FMP.

2. The Councils and NMFS acknowledge that the State is managing and will continue to manage the resource to protect and increase the long-term yields and prevent depletion of the lobster stocks and that the State Administrative Procedure Act and rule implementation procedures, including final approval of the rules by Governor and Cabinet, provide ample and fair opportunity for all persons to participate in the rulemaking procedure.

3. The FMFC acknowledges that rules proposed for implementation under this amendment must be consistent with the management objectives of the FMP, the national standards, other provisions of the Magnuson Act, and other applicable federal law. Federal rules will be implemented in accordance with regulatory amendment procedures.

4. The Councils and NMFS agree that, for any of the rules defined within this amendment, the State may propose the rule directly to NMFS, concurrently informing the Councils of the nature of the rule, and that NMFS will implement the rule within the EEZ provided it is consistent under protocol number 3. If either of the Councils informs NMFS of its concern over the rule's inconsistency with protocol number 3, NMFS will not implement the rule until the Councils, FMFC, and NMFS or their representatives meet and resolve the issue (i.e., until the Council has withdrawn its objection).

5. The State will have the responsibility for collecting and developing the information upon which to base the fishing rules, with assistance by NMFS as needed, and will cooperatively share the responsibility for enforcement with federal agencies.

6. FMFC will provide to NMFS and to the Councils written explanations of its decisions related to each of the rules (including a statement of the problem that the rulemaking addresses, how the rule will solve the problem, and how interested parties were involved in the rulemaking), summaries of public comments, biological, economic and social analyses of the impacts of the proposed rule and alternatives, and such other information that is relevant.

7. The rules will apply to the EEZ for the management area (North Carolina to Texas) unless the Regional Director determines they may adversely impact other state and federal fisheries. In that event, the Regional Director may limit the application of the rule, as necessary, to address the problem.

8. NMFS agrees that its staff will prepare the proposed federal rule. The Councils agree that their staffs, with assistance by the staffs of FMFC and NMFS, will prepare the EA/RIR and other documents required in support of the rule.

The Councils believe that using a regulatory amendment procedure for implementation by the Regional Director, under oversight by the Councils, of certain types of rules adopted by the State has the following advantages:

1. It provides a more flexible and timely system that should result in compatible rules between State and federal jurisdictions.

2. It provides ample and fair opportunity for public input into the rulemaking process through state hearings and workshops, Council oversight, and public comment to NMFS on the proposed rule.

3. It is more cost-effective by (a) allowing the Councils and the Regional Director to use public hearing information gathered by and socioeconomic analyses prepared by the State, (b) increasing enforcement effectiveness through compatible State/federal rules, and (c) shifting the costs of data gathering and interpretation to the State.

4. It provides the Councils with opportunity to review each rule for consistency with the FMP objectives and the Magnuson Act and ensures that Councils' concerns regarding consistency are resolved before a rule may be implemented.

5. It does not prohibit the Councils from exercising their amendment or public hearing authority for changes to the FMP.

6. It provides the State with a more responsive management system for the EEZ portion of a fishery that is largely a State fishery (99.3 percent of spiny lobster permit holders in 1986 were State residents), whereas previously, by virtue of the localized geographical scope of the spiny lobster fishery, the Councils placed higher priority on

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amending FMPs with regional application, thereby delaying implementation of compatible rules and adversely impacting effective management of the fishery.

7. It assures that the management objectives of the Council and FMFC are carried out in a manner that more effectively benefits the resource and user groups, within the standards of the Magnuson Act and the standards of the FMFC.

Concomitant with the proposed regulatory amendment procedure for changing certain gear and harvest limitations, Amendment 2 proposes to (1) amend and add to the issues of the "Problems and Issues in the Fishery" identified in the FMP; (2) add to the FMP a "Management Objective" to provide for a more flexible management system that minimizes regulatory delay, thus assuring more effective, cooperative State and federal management of the fishery; (3) modify the statement of optimum yield to remove numerically specified minimum legal carapace and tail lengths, thus permitting modification of those lengths by the regulatory amendment process contained in Amendment 2; (4) add a "Vessel Safety" section; and (5) update the "Habitat of the Stocks" section. These amendments and additions are discussed in Amendment 2, the availability of which was published in the **Federal Register** (54 FR 31063, July 26, 1989. The Secretary may adopt the proposed regulatory text in some form other than as an amendment to 50 CFR part 640, or as an appendix to that part.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99–659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of an amendment and regulations. At this time, the Secretary has not determined that Amendment 2, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Councils prepared within Amendment 2 an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained at the address listed above and comments on it are requested.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Councils prepared within Amendment 2 a regulatory impact review (RIR) which concludes that this rule, if adopted, would have the economic effect of reducing federal spiny lobster management costs. A copy of the draft RIR may be obtained at the address listed above.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the rule would only establish a procedure for the future implementation of specified types of gear and harvest restrictions on fishing in the EEZ. Each future action will be accompanied by an RIR and, if it will have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis will be prepared. As a result, a regulatory flexibility analysis was not prepared for this rule to implement Amendment 2.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana. Georgia and Texas do not have approved coastal zone management programs. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Deputy Assistant Secretary of Commerce for Intergovernmental Affairs has determined that Amendment 2 and this proposed rule have sufficient federalism implications to warrant preparation of a federalism assessment (FA) under E.O. 12612. Because section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council within 15 days of receipt, there is insufficient time to prepare an FA prior to publication. However, an FA is being prepared and will be available, upon request, at the address listed above approximately 10 days after the date this rule is published in the **Federal Register**. Based on a preliminary analysis, there are no provisions or elements of Amendment 2 or this proposed rule that are inconsistent with the principles, criteria, and requirements set forth in sections 2 through 5 of E.O. 12612. Further, Amendment 2 and the proposed rule would not appear to affect Florida's ability to discharge traditional state governmental functions, or other aspects of state sovereignty. The FA will address these preliminary determinations as well as the extent to which Amendment 2 and this proposed rule will impose costs or burdens on Florida, and Florida's ability to carry out its responsibilities under Amendment 2 and this proposed rule.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 16, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 640 is proposed to be amended as follows:

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for the part 640 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 640.24 is redesignated as § 640.25 and a new § 640.24 is added to read as follows:

§ 640.24 Modification of gear and harvest limitations.

(a) *Applicability.* The following specified types of rules applicable to the spiny lobster fishery in the EEZ may be established or modified in accordance with the procedures of paragraphs (b), (c), and (d) of this section:

(1) Gear limitations:

(i) Setting the number of traps that may be fished by each vessel;

(ii) Prescribing the construction characteristics of traps, including escape gaps;

(iii) Specifying gear and vessel identification requirements;

(iv) Specifying gear that may be used or prohibited in a directed fishery;

(v) Specifying bycatch levels that may be taken as incidental catch in a non-directed fishery; and

(vi) Specifying the soak or removal periods for traps and the procedures for removal of lost or abandoned traps.

(2) Harvest limitations:

(i) Specifying the recreational bag and possession limits;

(ii) Specifying fishing seasons;

(iii) Restricting use, possession, and handling of undersized lobsters; and

(iv) Specifying minimum legal size limits.

(b) *Initiation.* (1) After final approval by the Florida Governor and Cabinet of a rule proposed by the Florida Marine Fisheries Commission (FMFC), the FMFC will advise the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and the Regional Director of any rule within the scope of paragraph (a) of this section that the FMFC is recommending for implementation in the EEZ by regulatory amendment. Such written recommendation must include:

(i) The FMFC rule;

(ii) The proposed implementation date;

(iii) A statement of the problem that the rule addresses and how the rule will solve the problem;

(iv) A summary of the best available scientific information relative to the problem;

(v) Alternatives to the rule that were considered by the FMFC;

(vi) Analyses of the biological, economic, and social impacts of the rule and the alternatives;

(vii) A statement of how interested persons were involved in the rulemaking and a summary of public comments; and

(viii) Such other information that is relevant.

(2) For a rule to be implemented by the start of the next fishing season, an FMFC rule and recommendation that is consistent with the criteria specified in paragraph (c)(1) of this section must be provided to the Councils and the Regional Director not later than 6 months before the start of the fishing season. The effective date of an FMFC rule implemented under this procedure will be the starting date of the next fishing season following final approval of the regulatory amendment unless otherwise agreed upon by the FMFC, the Councils, and the Regional Director.

(3) The Councils will submit the rule and supporting analyses to their Scientific and Statistical Committees who will advise the Regional Director of the scientific validity of the analyses. The Councils will also submit the rule and supporting analyses to their advisory panels for comment to the Councils and the Regional Director.

(4) If either Council judges the FMFC rule to be inconsistent with the Magnuson Act or the objectives of the FMP, that Council will so advise the other Council, the Regional Director, and the FMFC of that judgment. In that event, the Regional Director will not proceed with implementation of the FMFC rule until the issue of consistency is resolved (i.e., until the Council has withdrawn its objection).

(5) With assistance from the FMFC, the Councils will prepare such supporting documentation (environmental assessment/environmental impact statement, regulatory impact review, regulatory flexibility analysis) as may be required.

(c) *Review.* The Regional Director will review the FMFC rule and recommendations, the supporting analyses, and the supporting documentation. If the Regional Director preliminarily concludes that the rule is consistent with the national standards, other provisions of the Magnuson Act, other applicable law, and the objectives of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP) and that the FMFC rule and recommendation are consistent with the scope and procedures of paragraphs (a) and (b) of this section, he will notify the Councils and the FMFC of his intent to implement the FMFC rule in the EEZ by regulatory amendment. If he concludes that the FMFC rule or recommendation is not consistent, he will immediately notify the Councils and the FMFC. The Councils and the FMFC will be given an opportunity to correct a deficiency in the FMFC rule or recommendation, the record, or the supporting documents.

(d) *Implementation.* (1) When the Regional Director preliminarily concludes that the FMFC rule and recommendation are consistent with the criteria specified in paragraph (c) of this section, provided any issue of consistency raised by a Council has been resolved, the Regional Director will draft and the Secretary will publish in the **Federal Register** a Federal proposed rule with a 30-day public comment period.

(2) After reviewing any public comment, if the Regional Director finally concludes that the rule is consistent with the criteria specified in paragraph (c) of this section, the Secretary will publish in the **Federal Register** the final rule.

[FR Doc. 89–19786 Filed 8–18–89; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 54, No. 163
Thursday, August 24, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 18, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC. 20250, (202) 447–2118.

Revision

- Agricultural Research Service

Patent License Application
AD–761
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit Institutions; Small businesses or organizations; 100 responses; 300 hours; not applicable under 3504(h)
Willard J. Phelps (301) 344–4032

- Farmers Home Administration

7 CFR 1930–C, Management and Supervision of Multiple Family Housing
Borrowers and Grant Recipients
FmHA 444–27A, 1944–8, –25, –27, –29, 1930–5, –6, –7, and –8
Recordkeeping; On occasion; Monthly
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 1,701,985 responses; 1,985,534 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

- Farmers Home Administration

7 CFR 1944–E, Rural Rental Housing Loan Policies, Procedures and Authorizations
FmHA 1944–7, –33, –34, –35
On occasion
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 20,935 responses; 139,630 hours; Not applicable under 3504(h)
Jack Holston (202) 382–9736

Extension

- Foreign Agriculture Service

Importation or Sugar; Free From Quota
FAS–947
On occasion; Weekly; Monthly; Quarterly; Annually
Businesses or other for-profit; 1,395 responses; 1,885 hours; not applicable under 3504(h)
Allen Vandergriff (202) 447–2916

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 89–19967 Filed 8–23–89; 8:45 am]

BILLING CODE 3410–01–M

Federal Crop Insurance Corporation

Nominations for Appointment to the Federal Crop Insurance Commission

The Federal Crop Insurance Corporation (FCIC) solicits, on behalf of the Secretary of Agriculture, nominations for appointment to fill one vacancy on the Congressionally created Federal Crop Insurance Commission (the "Commission"). The Commission was created by the Federal Crop Insurance Act of 1988 (Pub. L. 100–546) (the "Act").

The Act provides for the establishment of a commission to study problems with respect to participation in the crop insurance program; program operations; and ways to improve crop insurance. The Commission consists of twenty one voting members and four non-voting members. The Secretary of Agriculture has appointed ten (10) individuals representing various constituencies of the insurance industry, and ten (10) individuals representing agricultural producer interests. The Manager of FCIC also serves as a voting member and the Chairman and Ranking Minority Members of the House and Senate Agriculture Committees also serve as non-voting members of the Commission.

Nominations from interested parties are hereby solicited to fill one vacancy on the Commission according the following criteria in section 4.(b)(1)(A) of Public Law 100–546:

(A) Four (4) individuals who will represent the views of the companies (for managing general agencies which write crop insurance through other companies) that:

(1) Have a 1989 Reinsurance Agreement under the Federal Crop Insurance Act; and

(2) For the 1967 crop year, wrote the greatest dollar volume of federally reinsured crop insurance;

The Department of Agriculture's programs are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, or marital status. Further, it is the Secretary of Agriculture's policy that membershp on USDA boards and committees reflect, to the extent practicable, the diversity of individuals served by the programs.

Nominations to the Commission in response to this notice are accepted by the filing of a National Agency Check Standard Form (SF–85A).

Interested parties may request a National Agency Check Standard Form (SF–85A), either in writing or by telephone, from Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

Nominations should be mailed to Peter F. Cole at the above address. For timely consideration, completed SF–85A Forms must be received by not later than September 12, 1989.

Done in Washington, DC on August 15, 1989.

John Marshall,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 89–20004 Filed 8–23–89; 8:45 am]

BILLING CODE 3410–08–M

Forest Service

Mallard Timber Sales; Nez Perce National Forest; Idaho County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service will prepare an environmental impact statement (EIS) to be known as the Mallard EIS on a proposal to build roads and harvest timber in Mallard Roadless Area 1847, which lies about 36 miles southeast of Grangeville, Idaho. This roadless area is proximate to the Frank Church-River of No Return Wilderness on the south and east; and effects of proposed development have been highly controversial in the past.

DATE: Written comments and suggestions should be received on or before September 25, 1989.

ADDRESS: Submit comments and suggestions to the District Ranger, Red River Ranger District, Nez Perce National Forest, Box 23, Elk City, ID. 83525.

FOR FURTHER INFORMATION CONTACT: Mark Peterson, Supervisory Forester, Red River Ranger District, Elk City, Idaho 83525, telephone (208) 842–2255.

SUPPLEMENTARY INFORMATION. The proposed action to be analyzed in this EIS calls for harvest of timber on 1,140 acres over ten years. Collector and local roads would be constructed. A range of alternatives to this proposed action will be considered, including no action (nondevelopment of the roadless area). The EIS will tier to the Nez Perce Forest Plan and Forest Plan EIS. The purpose of the proposed action is to help satisfy short-term demands for timber and to move toward an equal distribution of timber age classes on suitable lands.

On March 12, 1986, notice was published in the **Federal Register** (51 FR 8524) that an environmental impact statement would be prepared to assess the effects of a transportation system and associated timber sales within the Jersey Creek, Noble Creek, and Big Mallard Creek areas. Analysis began on schedule, but was delayed until the Nez Perce Forest Plan was approved in October, 1987. Further analysis after that date indicated that the scope of the proposed action was likely too broad for reasonably thorough site-specific treatment in a single EIS. As a result of this additional analysis two separate proposed actions were formulated. The original notice of intent was cancelled (54 FR 32677); this notice is one of the two which replace it.

All management activities proposed in the Mallard EIS would occur within Roadless Area 1847. Similar management activities are planned at about the same time entirely within Roadless Area 1921; these will be considered separately in the Cove EIS. The two roadless areas are separated by a road corridor, and although the proposed actions are similar and could possibly be treated in the same EIS (40 CFR 1508.25 (a)(3)), the scope of the combined proposals is such that the best way to adequately assess reasonable alternatives and combined impacts is to prepare an EIS for activities proposed within each roadless area.

The two proposed actions may have cumulatively significant impacts on some environmental components in both roadless areas. For example, the Big Mallard Creek drainage would be affected by both proposed actions. Therefore, discussions of fisheries and water quality in this drainage in each EIS will include activities proposed in the other EIS and the combined impact of all activities. Evaluations of impacts on threatened or endangered species habitat will be handled in like manner. Analysis may show further combined treatments to be necessary.

The actions are not connected. The timber harvest and road construction proposed in either roadless area would not automatically trigger actions in the other which may require an environmental impact statement. Either action could proceed without the other; and neither depends upon a larger action for justification.

Primitive area and wilderness possibilities of Roadless Area 1847 have been examined several times over the past 53 years by both the Forest Service and Congress. It was excluded from the Frank Church-River of No Return Wilderness in the Central Idaho Wilderness Act and was not recommended for wilderness or continued roadless management in the Nez Perce Forest Plan.

Public participation in the environmental analysis for the proposed projects was first solicited in the spring of 1986. Two hundred letters were sent to individuals, organizations, and government agencies. Public meetings were held at Red River Ranger Station and Grangeville. Comments on the draft Forest Plan EIS specific to Roadless Area 1847 were reviewed.

Among the issues identified to date are those associated with the magnitude of impacts on:

1. Fish habitat, water quality, and riparian areas;
2. Threatened or endangered species;
3. Big game habitat;
4. Commercial outfitters;
5. Recreational use of the area;
6. Visual quality;
7. Wilderness characteristics.

Considerable interest has also been shown in the silvicultural treatment of high-risk, decadent stands and the economics of timber sales in the area.

Development of alternatives is underway, and additional comments or questions are being solicited at this time. Consultation with the U.S. Fish and Wildlife Service will be initiated with regard to listed species. Letters explaining the division of the project into two proposed actions to be considered in two EISs together with maps of the proposed actions will be sent to those who received previous mailings. No public meetings are scheduled, but they will be arranged if necessary. While public participation in the development of the Mallard EIS is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft environmental impact statement (DEIS), which is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in December, 1989. The Cove EIS is on a similar schedule.

A 45-day comment period will follow publication of a notice of availability of the DEIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final environmental impact statement (FEIS). The FEIS is scheduled to be completed by May, 1990; and a decision will be made and documented in a Record of Decision.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact

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statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

I am the responsible official for this environmental impact statement.

Dated: August 17, 1989.

Tom Kovalicky,

Forest Supervisor, Nez Perce National Forest.

[FR Doc. 89-19948 Filed 8-23-89; 8:45 am]

BILLING CODE 3410-11-M

Cove Timber Sales; Nez Perce National Forest; Idaho County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service will prepare an environmental impact statement (EIS) to be known as the Cove EIS on a proposal to build roads and harvest timber in Gospel-Hump (Jersey-Jack) Roadless Area 1921, which is about 30 miles southeast of Grangeville, Idaho. This roadless area is proximate to the Frank Church-River of No Return Wilderness and effects of proposed development have been highly controversial in the past.

DATE: Written comments and suggestions should be received on or before September 25, 1989.

ADDRESS: Submit comments and suggestions to the District Ranger, Red River Ranger District, Nez Perce National Forest, Box 23, Elk City, ID. 83525.

FOR FURTHER INFORMATION CONTACT: Mark Peterson, Supervisory Forester, Red River Ranger District, Elk City, Idaho 83525, telephone (208) 842-2255.

SUPPLEMENTARY INFORMATION: The proposed action to be analyzed in this EIS calls for harvest of timber on 2,200 acres over ten years. Collector and local roads would be constructed. A range of alternatives to this proposed action will be considered, including no action (nondevelopment of the roadless area). The EIS will tier to the Nez Perce Forest Plan and Forest Plan EIS. The purpose of the proposed action is to help satisfy short-term demands for timber and to move toward an equal distribution of timber age classes on suitable lands.

Entry into the area was originally scheduled for 1981. Planning began soon after the Frank Church-River of No Return Wilderness boundary was established in law by the Central Idaho Wilderness Act of 1980 (Pub. L. 96-312) and culminated in four environmental assessments. The first of these dealt with a 14.2-mile collector road, and the other three addressed individual timber sales to be served by the road.

The Forest Supervisor's decision to approve what soon came to be known as the "Jersey-Jack Road" was issued in February, 1981. The decision was appealed in April, and the Forest was upheld by both the Regional Forester and the Chief of the Forest Service. The appellants then took the decision to court and in February, 1985 the Ninth Circuit Court of Appeals in *Thomas* v. *Peterson*, 753 F. 2d 754, 755 ruled that the Forest must "prepare an Environmental Impact Statement(EIS) that analyzes the combined impacts of the road and the timber sales that the road is designed to facilitate."

On March 12, 1986, notice was published in the **Federal Register** (51 FR 8524) that an environmental impact statement would be prepared to assess the effects of a transportation system and associated timber sales within the Jersey Creek, Noble Creek, and Big Mallard Creek areas. Analysis began on schedule, but was delayed until the Nez Perce Forest Plan was approved in October, 1987. Further analysis after that date indicated that the scope of the proposed action was likely too broad for reasonably thorough site-specific treatment in a single EIS. As a result of this additional analysis two separate proposed actions were formulated. The original notice of intent was cancelled (54 FR 32677); this notice is one of the two which replace it.

All management activities proposed in the Cove EIS would occur within Roadless Area 1921. Similar management activities are planned at about the same time entirely within Roadless Area 1847; these will be considered separately in the Mallard EIS. The two roadless areas are separated by a road corridor, and although the proposed actions are similar and could possibly be treated in the same EIS (40 CFR 1508.25 (a)(3)), the scope of the combined proposals is such that the best way to adequately assess reasonable alternatives and combined impacts is to prepare an EIS for activities proposed within each roadless area.

The two proposed actions may have cumulatively significant impacts on some environmental components in both roadless areas. For example, the Big Mallard Creek drainage would be affected by both proposed actions. Therefore, discussions of fisheries and water quality in this drainage in each EIS will include activities proposed in the other EIS and the combined impact of all activities. Evaluations of impacts on threatened or endangered species habitat will be handled in like manner. Analysis may show further combined treatments to be necessary.

The actions are not connected. The timber harvest and road construction proposed in either roadless area would not automatically trigger actions in the other which may require an environmental impact statement. Either action could proceed without the other, and neither depends upon a larger action for justification.

Primitive area, wilderness, and roadless possibilities of Roadless Area 1921 have been examined several times over the past 53 years by both the Forest Service and Congress. It was excluded from the Frank Church-River of No Return Wilderness in the Central Idaho Wilderness Act and was not recommended for wilderness or continued roadless management in the Nez Perce Forest Plan.

Public participation in the environmental analysis for the proposed projects was first solicited in the spring of 1986. Two hundred letters were sent to individuals, organizations, and government agencies. Public meetings were held at Red River Ranger Station and Grangeville. Comments on the draft Forest Plan EIS specific to Roadless Area 1921 were reviewed.

Among the issues identified to date are those associated with the magnitude of impacts on:

1. Fish habitat, water quality, and riparian areas;
2. Threatened or endangered species;
3. Big game habitat;
4. Commercial outfitters;
5. Recreational use of the area;
6. Visual quality;
7. Wilderness characteristics.

Considerable interest has also been shown in the silvicultural treatment of high-risk, decadent stands and the economics of timber sales in the area.

Development of alternatives is underway, and additional comments or questions are being solicited at this time. Consultation with the U.S. Fish and Wildlife Service will be initiated with regard to listed species. Letters explaining the division of the project into two proposed actions to be considered in two EISs together with maps of the proposed actions will be sent to those who received previous mailings. No public meetings are scheduled, but they will be arranged if necessary. While public participation in the development of the Cove EIS is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft environmental impact statement (DEIS), which is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in December 1989. The Mallard EIS is on a similar schedule.

A 45-day comment period will follow publication of a notice of availability of the DEIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final environmental impact statement (FEIS). The FEIS is scheduled to be completed by May 1990; and a decision will be made and documented in a Record of Decision.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

I am the responsible official for this environmental impact statement.

Dated: August 17, 1989.

Tom Kovalicky,

Forest Supervisor, Nez Perce National Forest.

[FR Doc. 89-19949 Filed 8-23-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Applications and Reports for Scientific Research and Public Display Permits Under the Marine Mammal Protection Act, the Fur Seal Act, and the Endangered Species Act.

Form Numbers: NOAA—None; OMB—0648-0084, 0648-0085.

Type of Request: Request for reinstatement of previously approved collections.

Burden: 487 respondents; 6,393 reporting hours; average hours per response—13 hours.

Needs and Uses: Federal law requires permits for either displaying or conducting scientific research on marine mammals or endangered species. Applicants must submit information showing whether their request meets permit standards set by law. Permit holders must submit reports to ensure the conditions of the permit have been followed.

Affected Public: State or local governments, businesses or other for profit institutions, federal agencies or employees, nonprofit institutions, small businesses or organizations.

Frequency: On occasion, annual.

Respondent's Obligation: Required for benefit.

OMB Desk Officer: Russell Scarato, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 17, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-19960 Filed 8-23-89; 8:45 am]

BILLING CODE 3510-CW-M

National Institute of Standards and Technology

Users and Implementors of Integrated Services Digital Network (ISDN); Workshop

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The National Computer Systems Laboratory (NCSL) at the National Institute of Standards and Technology (NIST) announces the Seventh North American ISDN Users' Forum (NIU-FORUM). The NIU-FORUM will be hosted by U S WEST Communications. The NIU-FORUM was formed in 1988 under the auspices of NIST to create a strong user voice in the implementation of Integrated Services Digital Network (ISDN) and to ensure that the emerging ISDN services meet users' application needs.

DATES: The Seventh North American ISDN Users' Forum (NIU-FORUM) will be held at The Hyatt Regency, Phoenix, Arizona, October 9-12, 1989. Tutorials will be conducted on October 9. This FORUM will consist of joint workshops for the User's (IUW) and Implementor's (IIW). The IUW will continue work identifying, defining, and prioritizing user applications of ISDN. The IIW will continue defining implementation agreements for ISDN. Working group meetings will discuss issues related to the use and implementation of ISDN technology. Manufacturers and service providers are invited to participate in this workshop.

ADDRESS: To obtain registration forms for the workshops, companies may contact: ISDN Workshops, Attn: Kim Brashears, National Institute of Standards and Technology, Building 223, Room B364, Gaithersburg, MD 20899, Telephone: (301) 975–4853.

Upon receipt of the completed registration form, additional registration information will then be mailed to the registrant.

FOR FURTHER INFORMATION CONTACT: Dawn Hoffman, (301) 975–2967.

SUPPLEMENTARY INFORMATION: The registration fee before September 14, 1989, will be $275. After September 15, 1989, the registration fee will be $325. Participants are expected to make their own travel arrangements and accommodations. NIST reserves the right to cancel any part of the workshops.

Dated: August 21, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89–19994 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Fishery Planning Committee and the Council's Interim Pacific Northwest Crab Industry Advisory Committee will hold public meetings.

On September 6, 1989, at 8:30 a.m., the Fishery Planning Committee will meet at the North Pacific Council's office, 605 W. 4th Avenue, Suite 306, Anchorage, AK. The Committee will receive an update on the status of the draft sablefish limited access plan, review halibut limited access alternatives, and make recommendations concerning inshore/offshore allocation alternatives, including the course of future Council action.

On September 6 at 9 a.m., the Council's newly-formed Interim Pacific Northwest Crab Industry Advisory Committee will meet at the Alaska Fisheries Science Center, National Marine Fisheries Service, 7600 Sand Point Way, N.E., Seattle, WA. The Committee is being formed as a result of the North Pacific Council's recently-approved Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan, which defers management of the resource to the State of Alaska, while maintaining federal oversight. The Committee will develop operational procedures and provide an opportunity for the Pacific northwest crab industry to develop and to discuss shellfish management proposals. For more information contact the North Pacific Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501; telephone: (907) 271–2809.

Dated: August 18, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–19973 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-22-M

Endangered Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 675.

SUMMARY: On Thursday, April 6, 1989, notice was published in the Federal Register (54 FR 13932), that an application (P440) and been filed by Dr. C. Scott Baker, the Department of Health & Human Services, National Cancer Institute, to take by harassment, including photo-identification and the collection of skin biopsies, 400 humpback whales (*Megaptera novaeangliae*) in territorial waters of the United States.

Notice is hereby given that on August 4, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), the National Marine Fisheries Service Regulations Governing Endangered Fish and Wildlife permits (50 CFR parts 217–222), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), issued a Permit for the above activities subject to the Special Conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Rm. 7330, Silver Spring, Maryland 20910;

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle Washington 98115;

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415; and

Administrator, Western Pacific Program Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, Room 106, Honolulu, Hawaii 96822–2396.

Dated: August 4, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–19914 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Dr. Thomas N. James (P452)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permit (50 CFR parts 217–222).

1. *Applicant:* Dr. Thomas N. James, President, University of Texas Medical Branch, Galveston, TX 77550–2774.

2. *Type of Permit:* Scientific research under MMPA and scientific purposes under ESA.

3. *Name and Number of Marine Mammals:* sperm whale specimen (*Physeter catodon*) 1½ hearts.

4. *Type of Take:* The applicant requests authorization to import one and one half sperm whale hearts to study the morphological features of the conduction system of sperm whale hearts and to compare the findings to those of other mammalian species. The findings will be useful for understanding the anatomy and function of the hearts of sperm whales. The hearts are fixed in 10% formalin and have been at the University of Osaka, Japan since 1966.

5. *Location of and Duration of Activity:* Importation from University of Osaka, Japan. 2 years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the descretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg Florida 33702;

Director, Southeast Region, National Marine Fisheries Service, 9450, Koger Blvd., St. Petersburg, Florida 33702.

Dated: August 16, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–19915 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Dr. Joseph R. Mobley, (P453)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (15 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permit (50 CFR parts 217–222).

1. *Applicant:* Joseph Robert Mobley, Jr., Ph.D. Chair, Dept. Behavioral Sciences, Chaminade University of Honolulu, 3140 Waialae Ave., Honolulu, HI 96816.

2. *Type of Permit:* Scientific research under MMPA and scientific purposes under ESA.

3. *Name and Number of Marine Mammals:* Humpback whales (*Megaptera novaeangliae*).

4. *Type of Take:* Inadvertent harassment during aerial surveys.

5. *Location of Activity:* Coastlines of all major Hawaiian Islands including Hawaii, Maui, Molokai, Penguin Bank, Lanai, Kahoolawe, Oahu, Kauai, and Niihau.

6. *Period of Activity:* January through April over a 3-year period.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7514.

Dated: August 16, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–19916 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals: Issuance of Permit; NMFS, Southwest Fisheries Center (P77#33)

On May 9, 1989, notice was published in the Federal Register (54 FR 19934) that an application had been filed by the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038–0271 for a scientific research permit to take tissue samples via projectile dart from marine mammals encountered during dolphin surveys.

Notice is hereby given that on August 16, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No lethal taking is authorized.

The Permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: August 16, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–19917 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Application for Permit; Dr. J. Ward Testa (P420B).

SUMMARY: Notice is hereby given that an Applicant has applied in due form for a Scientific Research Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and

Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Dr. J. Ward Testa, Institute of Marine Science, University of Alaska, Fairbanks, AK 99775–1080.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:*

Weddell seal (*Leptonychotes weddellii*)—2000
Crabeater seal (*Lobodon carcinophagus*)—30
Leopard seal (*Hydrurga leptonyx*)—30
Ross seal (*Ommatophoca rossii*)—30
Southern elephant seal (*Mirounga leonina*)—30

4. The Applicant requests permission to (1) capture with physical restraint using a canvas bag placed over the head and tag up to 1200 individual Weddell seals including 500 pups, 400 adult females (of which up to 50% may be pregnant), and 300 adult males, and up to 30 each of Leopard seals, crabeater seals, Ross seals, and southern elephant seals annually with plastic cattle ear tags in both rear flippers, (2) implant up to 300 adult Weddell seals of either sex annually with transponders in the blubber layer just anterior to the tail; (3) instrument up to 30 adult Weddell seals over three years with satellite and radio transmitters; (4) collect and import foreflipper claws from up to 100 subadult animals annually for age estimation; (5) weigh up to 200 pups and up to 200 adults and subadults for both sexes annually using a mobile platform sled; (6) collect blood samples from up to 100 Weddell seals of any age annually; (7) conduct up to seven (7) censuses of the eastern McMurdo Sound population annually and count all seals present on the surface of the ice and record tag numbers and; (8) salvage and import any parts of natural fatalities of the above fire (5) seal species. Permission is also requested to approach up to 2000 Weddell seals each not more than ten (10) times annually in order to read tags. The proposed research is part of a continuing program to understand the population ecology and behavior of Weddell seals in McMurdo Sound, is expected to advance the understanding of the diving behavior and movements of a large marine mammal outside of the breeding season, and to provide continuity in the long-term study of this large marine mammal.

5. Location and Duration of Activity: The focus of this activity will be McMurdo Sound, Antarctica, for a 3-year period. Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: August 16, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89–19918 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

August 18, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 24, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: *Authority.* Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased, variously, for swing and carryforward. The limit for Category 352 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 52463, published on December 28, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated March 14, 1989, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 18, 1989.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive issued to you on March 22, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in the United Arab Emirates and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on August 24, 1989, the directive of March 22, 1989 is amended to adjust the limits for the following categories, as provided under the provisions of the Memorandum of Understanding dated March 14, 1989 between the Governments of the United States and the United Arab Emirates:

Category	Adjusted Twelve-Month Limit [1]
338/339	371,000 dozen of which not more than 247,333 dozen shall be in Categories 338–S/339–S [2].
340/640	243,600 dozen.
341/641	201,400 dozen.
347/348	291,200 dozen of which not more than 145,600 dozen shall be in Categories 347–T/348–T [3].
352	115,895 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Categories 338–S/339–S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0009, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338–S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339–S.

[3] In Categories 347–T/348–T, only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040, in Category 347–T; and HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050 in Category 348–T.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–19964 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment Clarifying a Previous Directive Concerning Visa and Quota Reporting for Garments and Clothing Accessories Entered as Sets

August 18, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs clarifying a previous directive.

EFFECTIVE DATE: August 24, 1989.

FOR FURTHER INFORMATION CONTACT: Brian Fennessy, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A **Federal Register** notice and letter to the Commissioner of Customs published on December 29, 1988 (53 FR 52765) announced separate visa and separate statistical reporting requirements for textiles and textile products entered as sets. The letter published below is an amendment, clarifying the previously published letter.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This letter amends the directive of December 23, 1988 to further clarify the intent of the Committee for the Implementation of Textile Agreements on the applicability of visa requirements and quota reporting of textiles and their products entered as parts of sets under GRI 3 of the Harmonized Tariff Schedule.

Effective on August 24, 1989, the directive of December 23, 1988 is amended to read as follows:

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended; all applicable visa and quota requirements will apply for textiles and their products which are classified as parts of a set. This rule applies to all items which, if imported separately, would have required a visa and the reporting of quota.

Effective January 1, 1989, you are directed to prohibit entry for consumption or withdrawal from warehouse for consumption into the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) of any textile item for which classification is claimed as sets under General Rules of Interpretations (GRI) 3 of the HTS, where a separate textile category currently exists or comes into existence requiring separate reporting of the components forming those sets.

Entry shall be permitted if all visa and quota requirements are met.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–19965 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Scientific Advisory Board; Meeting

August 18, 1989.

The USAF Scientific Advisory Board Strategic Cross-Matrix Panel scheduled to meet on September 8, 1989, at HQ Strategic Air Command (SAC), Offutt AFB NE, has been canceled.

The purpose of this meeting was to facilitate the exchange of information amongst Scientific Advisory Board members and SAC staff on strategic missile programs.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–19960 Filed 8–23–89; 8:45 am]

BILLING CODE 3910-01-M

Scientific Advisory Board; Meeting

August 17, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Science and Technology (S&T) Broad Program Appraisal will meet on September 29, 1989, from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330–5430.

The purpose of this meeting is to review the Air Force S&T base programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4848.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–19971 Filed 8–23–89; 8:45 am]

BILLING CODE 3910-01-M

Scientific Advisory Board; Meeting

August 16, 1989.

The USAF Scientific Advisory Board Strategic Cross-Matrix Panel will meet on September 12, 1989, from 8:00 a.m. to 5:00 p.m., at Space Systems Division, Los Angeles AFB, CA.

The purpose of this meeting will be to gather information on space technologies as requested by CINCSAC. The meeting at Space Systems Division will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–19972 Filed 8–23–89; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2683 and 588]

James River II, WA; Intention To Prepare an Environmental Impact Statement

August 17, 1989.

The Federal Energy Regulatory Commission (FERC) has received an application for an original license for the operation of the Elwha Project, FERC No. 2683 and an application for a new license for the operation of the Glines Canyon Project, FERC No. 588. The two hydropower projects are located on the Elwha River in Clallam County, Washington. The FERC staff has determined that licensing these projects would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the hydroelectric projects in accordance with the National Environmental Policy Act. The staff's EIS will objectively consider both site specific and cumulative environmental impacts of the projects and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping Meetings

FERC staff will conduct public scoping meetings in the Seattle and Port Angeles, Washington area. The place and time of these meetings will be announced in a subsequent notice.

Procedures

The purpose of the notice is to invite all interested individual's, organizations, tribes, and agencies to assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS. Anyone who has views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. All comments must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. All correspondence should clearly show the following caption on the first page: Elwha/Glines Canyon Projects, Washington, Docket Nos. P–2683 and 588.

All those that are formally recognized by the Commission as intervenors in the Elwha/Glines Canyon Projects proceedings are asked to refrain from engaging the staff or its contractor in discussions of the merits of the projects outside of any announced meetings.

Further, parties are reminded of the Commission Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name is on the official service list.

For further information please contact S. Ronald McKitrick at (202) 376–0269.

Lois D. Cashell,

Secretary.

[FR Doc. 89–19675 Filed 8–23–89; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 503–006, et al.]

Hydroelectric Applications (Idaho Power Co., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. *Type of Application:* Amendment of License.

b. *Project No:* 503–006.

c. *Date Filed:* April 24, 1989.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Swan Falls.

f. *Location:* On the Snake River in Ada and Owyhee Counties, Idaho, partially on lands of the United States administered by the U.S. Department of the Interior.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Robert W. Stahman, Secretary and General Counsel, 1220 Idaho Street, P.O. Box 70, Boise, ID 83707, (206) 383–2676.

Mr. Lee S. Sherline, Leighton & Sherline, Suite 101, 1010 Massachusetts Ave. NW, Washington, DC 20001–5402, (202) 898–1122.

i. *Commission Contact:* Mr. James Hunter (202) 376–1943.

j. *Comment Date:* September 15, 1989.

k. *Applicant proposes to:* (1) Replace the existing powerhouse, which contains generating units with a total rated capacity of 10.4 MW, with a new powerhouse on the east bank, containing two identical generating units with a total rated capacity of 25 MW; (2) remove all equipment from the existing powerhouse and fill the draft tubes and turbine pits with concrete to elevation 2,315 feet; (3) construct a new switchyard on the east bank 200 feet downstream from the powerhouse; and (4) build a new 1.2-mile-long, 138–kV transmission line. The estimated cost of this new development is $53,814,800 in August 1988 dollars.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

2. a. *Type of Application:* Transfer of License.

b. *Project No.:* 2307–022.

c. *Date Filed:* June 5, 1989.

d. *Applicant:* Alaska Electric Light and Power Company of Juneau (Licensee) and Alaska Electric Light and Power Company (Transferee).

e. *Name of Project:* Annex Creek and Salmon Creek.

f. *Location:* On Annex and Salmon Creeks near Juneau, Alaska, partially within the Tongass National Forest, in T41S, R69E, 68E, and 67E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. William A. Corbus, 612 Willoughby Avenue, Juneau, AK 99801–1798.

i. *FERC Contact:* Julie Bernt, (202) 376–1936.

j. *Comment Date:* September 15, 1989.

k. *Description of Project:* On August 31, 1989, a new license was issued to Alaska Electric Light and Power Company of Juneau for the continued operation of the Annex Creek and Salmon Creek Project No. 2307. It is proposed to transfer the license to Alaska Electric Light and Power Company. The purpose of this proposed license transfer is to reflect a corporate name change.

The licensee certifies that it has fully complied with the terms and conditions of its license and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C.

3. a. *Type of Application:* Transfer of License.

b. *Project No.:* 2622–001.

c. *Date filed:* June 20, 1989.

d. *Applicant:* Hammermill Paper Company.

e. *Name of Project:* Turners Falls.

f. *Location:* On a power canal taking water from the Connecticut River at Turners Falls, Franklin Cou9nty, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* William J. Madden, Jr., Attorney, Law Offices of Bishop, Cook, Purcell, & Reynolds, 1400 L Street, NW., Washington, DC 20005–3502, (202) 371–5700.

i. *FERC Contact:* Mary Nowak (202) 376–9634.

j. *Comment Date:* September 18, 1989.

k. *Description of Project:* Hammermill Paper Company proposes to transfer the license for the Turners Falls Project No. 2622 to International Paper Company. Through a series of transactions, Hammermill Paper Company was merged into International Paper Company on January 1, 1989. The parties inadvertently failed to seek a transfer of the license for the project prior to the merger and now seek to correct that error with the instant application.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4. a. Type of Application: Transfer of License.

b. Project No.: 2631–003.

c. Dated Filed: June 20, 1989.

d. Applicant: Hammermill Paper Company.

e. Name of Project: Woronoco Hydroelectric.

f. Location: On a Westfield River, in Hampden County, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: William J. Madden, Jr., Attorney, Law Offices of Bishop, Cook, Purcell, & Reynolds, 1400 L Street NW., Washington, DC 20005–3502, (202) 371–5700.

i. FERC Contact: Mary Nowak (202) 376–9634.

j. Comment Date: September 18, 1989.

k. Description of Project: Hammermill Paper Company proposes to transfer the license for the Woronoco Project No. 2631 to International Paper Company. Through a series of transactions, Hammermill Paper Company was merged into International Paper Company on January 1, 1989. The parties inadvertently failed to seek a transfer of the license for the project prior to the merger and now seek to correct that error with the instant application.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5. a. Type of Filing: Transfer of License.

b. Project No.: 7174–006.

c. Date Filed: June 13, 1989.

d. Applicant: Mr. Truman Price (transfetor) and Truman Price, Inc. (transferee).

e. Name of Project: Cottrell Hydroelectric Project.

f. Location: On McCloskey Creek in Skamania County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. Peter W. Brown, Brown, Olsen & Wilson, 21 Green Street, Concord, New Hampshire 03301.

i. Commission Contact: Ms. Deborah Frazier–Stutely at (202) 376–1669.

j. Comment Date: September 15, 1989.

k. Description of Proposed Action: On December 26, 1985, aa major license was issued to Mr. Truman Price for the construction, operation, and maintenance of the Cottrell Project No. 7174. Mr. Truman Price proposes to transfer the license to Truman Price, Inc.

The transferee is a private corporation organized under the laws of the state of Delaware, and domesticated in the states of Maryland and Washington.

The licensee certifies that it has fully complied with the terms and conditions of its license, as amended, and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferee accepts all the terms and conditions as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C.

6. a. Type of Application: Surrender of License.

b. Project No.: 7806–012.

c. Date filed: June 16, 1989.

d. Applicant: Richard J. Wilkinson and Georgenia M. Wilkinson.

e. Name of Project: Prospect Creek.

f. Location: On the licensee's land on Prospect Creek in Sanders County, Montana near the town of Thompson Falls. T21N R29W, section 18.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Richard J. and Georgenia, M. Wilkinson, P.O. Box 848, Thompson Falls, MT l59873.

i. FERC Contact: Ms. Deborah Frazier-Stutely at (202) 376–1669.

j. Comment Date: September 7, 1989.

k. Description of Proposed Action: The proposed project for which the license is being surrendered would have consisted of: (1) A 10-foot-high, 50-foot-long reinforced concrete diversion dam at elevation 2,555 feet; (2) a 6-foot-diameter, 4,170-foot-long penstock; (3) a powerhouse containing two generating units with a combined capacity of 2,900 kW; (4) a tailrace; (5) 2.4–kV generator leads; (6) a 2.4/4.16–kV step-up transformer; (7) a 200-foot-long, 4.16–kV transmission line tying into an existing Montana Power Company line; and (7) appurtenant facilities.

The licensee states that the project is not financially feasible at this time. Construction of the project has not begun.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

7. a. Type of Application: Surrender of License.

b. Project No.: 9214–005.

c. Date Filed: June 14, 1989.

d. Applicant: Provo Hydro Associates.

e. Name of Project: Murdock Dam Hydro Project.

f. Location: On Provo River in Utah County, Utah.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Domonique Darne, 1900 L Street NW., Suite 606, Washington, DC 20036.

i. FERC Contact: Nanzo T. Coley (20) 376–9416.

j. Comment Date: September 9, 1989.

k. Description of Proposed Action: The license to be surrendered would have included a project consisting of (1) a 60-inch-diameter, 6-foot-long penstock; (2) a powerhouse with an installed capacity of 200 kW under a head of 23 feet; (3) a tailrace returning the flow to the provo River; (4) an underground 12.5–kV transmission line, about 100 feet long; and (5) appurtenant facilities. The applicant estimates the average annual energy output at 1,178,373 kWh. Energy produced at the project would have been sold to Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: B and C, & D2.

8. a. *Type of Application:* Exemption (small conduit).

b. *Project No.:* 10720–000.

c. *Date Filed:* January 19, 1989.

d. *Applicant:* South Central Connecticut Regional Water Authority.

e. *Name of Project:* Gaillard Hydroelectric Project.

f. *Location:* At the Lake Gaillard Water Treatment Plant, New Haven County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. *Applicant Contact:* Mr. Frank O. Christie, Christie Engineering, South William St., Ballard Mill, Malone, NY 12953.

i. *FERC Contact:* Michael Dees (202) 376–9414.

j. *Comment Date:* September 22, 1989.

k. *Description of Project:* The constructed Gaillard small conduit hydroelectric facility is part of the Lake Gaillard Water Treatment Plant. The water to the hydroelectric plant (and water treatment plant) is conveyed from Lake Gaillard by a 54" pipeline placed in a 76" diameter Great Hill Tunnel. The

300 kW Turbine generator is installed on this raw water pipeline just before it enters into the water treatment plant. The project consist of: (1) a 54′ dia. 75 ft. long intake pipe; (2) a 37′ W X 44′ L X 18′ H concrete powerhouse with one 300 kW turbine-generator; (3) a 250′ long, 480 volt underground transmission line; (4) 72′ dia. 35 ft. long discharge/influent pipeline into water treatment plant; and (5) appurtenant facilities. Applicant estimates that the average annual energy production will be 1.5 GWh. All energy production will be used at the applicants water treatment plant.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

9. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10790–000.

c. *Date Filed:* June 2, 1989.

d. *Applicant:* West Rutland Pumped Storage Hydroelectric Inc.

e. *Name of Project:* West Rutland Pumped Storage Hydro Project.

f. *Location:* On the Castleton River near West Rutland, Rutland County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Dermont A. McGuigan, Chase Mill, 1 Mill Street, Burlington, VT 05401, (802) 658–5110.

i. *FERC Contact:* Ed Lee (202) 376–5786.

j. *Comment Date:* September 22, 1989.

k. *Description of Project:* The proposed project would consist of either: (1) a 160–MW closed-looped pumped storage project designed to operate with a minimum head of 1000 feet (Alternative No. 1); or (2) a 200–MW closed-looped pumped storage project designed to operate with a minimum head of 1060 feet (Alternative No. 2). Both alternatives will consist of a new upper reservoir and existing querries as the lower reservoir. The reservoirs will be connected by a tunnel with a underground power-pumping house located in the lower reservoir. No areas within or in the vicinity of the proposed project boundary are included in or have been designated for study for inclusion in the National Wild and Scenic River System. The applicant estimates that the average annual generation would be 2,000 MWh for Alternative No. 1 and 2,400 MWh for Alternative No. 2. The cost of the work and studies to be performed under the permit would be $250,000. No lands of the United States are included in the project. The applicant states that due to the availability of borings from wells and roads constructed in or adjacent to the upper reservoir and tunnel sties, no subsurface exploration will be required, and no disturbance of land, water, or habitat will occur.

l. Purposes of Project: The applicant will sell the generated power to one or more electric utilities located in New York or the New England states.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10793–000.

c. *Date Filed:* June 5, 1989.

d. *Applicant:* Mitia Hydro Corporation.

e. *Name of Project:* Mitchell Mill Dam Project.

f. *Location:* On the Cedar River near Mitchell, Mitchell County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Wilkinson, 700 Higley Bldg., P.O. Box 1968, Cedar Rapids, IA 52406, (319) 366–4990.

i. *FERC Contact:* Ed Lee (202) 376–5786.

j. *Comment Date:* September 22, 1989.

k. *Description of Project:* The proposed project would consist of: (1) An existing 195–foot-long and 20-foot-high concrete dam; (2) a 120-acre reservoir; (3) a new powerhouse containing a single 510-kW generator; (4) a 400-foot-long, 13.8-kV transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 2,829 MWh. The cost of the work and studies to be performed under the permit would be $27,000. The site is owned by the Mitchell County Conservation Board, Osage, IA 50461. The applicant estimates that the power generated will be sold to a local utility company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10797–000.

c. *Date Filed:* June 5, 1989.

d. *Applicant:* Greia Hydro Corporation.

e. *Name of Project:* Greene Mill Dam Project.

f. *Location:* On the Shell Rock River near Greene, Bulter County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Wilkinson, 700 Higley Bldg., P.O. Box 1968, Cedar Rapids, IA 52406, (319) 366–4990.

i. *FERC Contact:* Ed Lee (202) 376–5786.

j. *Comment Date:* September 22, 1989.

k. *Description of Project:* The proposed project would consist of: (1) An existing 290-foot-long and 11-foot-high concrete dam; (2) an 85-acre reservior; (3) a new powerhouse containing two 325-kW generators for a total installed capacity of 650 kW; (4) a 25-foot-long, 13.8-kV transmission line; and (5) appurtenant facilities. The applicant estimates that average annual generation would be 3,347 MWh. The cost of the work and studies to be performed under the permit would be $27,000. The site is owned by the Bulter County Conservation Board, Clarksville, IA 50619. The applicant estimates that all power generated will be sold to a local utility company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12. a. *Type of Filing:* Minor License (5–MW or less).

b. *Project No.:* 10800–000.

c. *Date Filed:* June 9, 1989.

d. *Applicant:* Hydrodynamics, Inc.

e. *Name of Project:* Ross Creek Hydroelectric Project.

f. *Location:* On Ross Creek near the town of Bozeman, in Gallatin County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Roger Kirk or Susan Young, Hydrodynamics, Inc., P.O. Box 6165, Bozeman, MT 59771, (406) 586–1272.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* September 15, 1989.

k. *Description of project:* The proposed project would consist of: (1) A stream-side intake structure at elevation 5,560 feet msl; (2) a 24-inch-diameter, 3,200-foot-long pipeline leading to; (3) a powerhouse at elevation 5,240 feet msl containing a single generating unit with an installed capacity of 450 kilowatt; (4) a tailrace; and (5) a 0.5-mile-long, 12.5 kV transmission line. The applicant estimates the average annual energy generation to be 2.5 GWh.

l. Purpose of Project: Applicant intends to sell project power to Montana Power Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

13. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10802–000.

c. *Date Filed:* June 22, 1989.

d. *Applicant:* Grover-Kelly No. 2 Corp. and RK-DK Associates.

e. *Name of Project:* Braendly Project.

f. *Location:* On the Fishkill Creek in Dutchess County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

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h. *Applicant Contact:* Kenneth M. Grover, Box 538, Route 100, Croton Falls, NY 10519, (914) 277–8000.

i. *FERC Contact:* Ed Lee, (202) 376–5786.

j. *Comment Date:* September 22, 1989.

k. *Competing Application:* Project No. 10745–000, Date Filed: March 13, 1989, Due Date: June 6, 1989.

l. *Description of Project:* The proposed project would consist of: (1) An existing dam, approximately 165 feet long and 18 feet high, constructed of cut stone with a concrete cap and having a spillway section and two-foot-high flashboards to an elevation of 121.5 feet m.s.l.; (2) a 4.5-acre reservoir having minimal pondage; (3) a new intake structure; (4) a new steel penstock, 8 feet in diameter and approximately 400 feet long; (5) powerhouse containing generator unit with a rated capacity of 925 kW; (6) a tailrace; (7) a 13.8-kV transmission line, approximately 50 feet long, connecting to existing lines; and (8) appurtenant facilities.

The applicant estimates the average annual generation would be 3,450 MWh. The applicant estimates that the cost of studies under permit would be $24,700.

m. *Purpose of Project:* Project power would be sold to Central Hudson Gas and Electric Company.

n. This notice also consists of the following standard paragraphs: A8, A9, A10, B, C, and D2.

14. a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 10804–000.

c. *Date Filed:* June 14, 1989.

d. *Applicant:* City of Ephraim, Utah.

e. *Name of Project:* Ephraim City Hydroelectric Project No. 3.

f. *Location:* On New Canyon and Cotton Creek in Sanpete County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Alden C. Robinson, Sunrise Engineering, Inc., 71 West Center Street, Fillmore, Utah 84631, (801) 743–6151.

i. *Commission Contact:* Nanzo T. Coley, (202) 376–9416.

j. *Comment Date:* September 15, 1989.

k. *Description of Project:* The applicant proposes to utilize the water from the existing water supply system, part of licensed project No. 6117, by tapping the existing penstocks. The proposed project would consist of: (1) A proposed 14-inch-diameter penstock that would be connected to the existing 8-inch and 12-inch-diameter penstocks; (2) a proposed powerhouse containing one generating unit rated at 120-kW; (3) a proposed tailrace that would discharge the water into a proposed 21-inch-diameter pipe which would be connected to the existing penstocks and returning the water to the existing system; (4) a proposed 400-foot-long, 480 volt transmission line; (5) appurtenant facilities. The applicant estimates that the average annual energy output would be 632,000 kWh.

l. *Purpose of Project:* Energy produced at the project would be utilized by the applicant.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

Standard Paragraph

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motion to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents

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must be filed by providng the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in Section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filig comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments—The Commission requests that the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agenc(ies), for the purposes set forth in Section 408 of the Energy Security Act of 1980, file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 18, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89–19904 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2389-002, et al.]

Hydroelectric Applications (Augusta Dev. Corp., et al.) Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. *Type of Application:* Transfer of License.

b. *Project No.:* 2389–002.

c. *Date Filed:* June 12, 1989.

D. *Applicant:* Augusta Development Corporation (Transferor) and Edwards Manufacturing Company, Inc. (Transferee).

e. *Name of Project:* Edwards Dam Project.

f. *Location:* On Kennebec River, Augusta, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Transferor: Amy S. Koch, Chadbourne & Parke, 1101 Vermont Ave., NW., Suite 900, Washington, DC 20005, (202) 289–3000.

Transferee: Mark Isaacson, Vice President, Edwards Manufacturing Company, Inc., P.O. Box 97, Lisbon Falls, ME 04252, (207) 353–4111.

i. *FERC Contact:* Ed Lee at (202) 376–5786.

j. *Comment Date:* September 28, 1989.

k. *Description of Proposed Action:* On August 12, 1964, a license was issued for the construction, operation, and maintenance of the Edwards Dam project. It is proposed to transfer the license to Edwards Manufacturing Company because the project was sold to Edwards Manufacturing Company. The proposed transfer will not result in any changes to the proposed development. The Transferor certifies that it has fully complied with the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

2. a. *Type of Filing:* Amendment of License.

b. *Project No.:* 2426–028.

c. *Date Filed:* January 23, 1989.

d. *Applicant:* State of California, Department of Water Resources.

e. *Name of Project:* California Aqueduct Project.

f. *Location:* The Mojave Siphon Development is on the California Aqueduct near Silverwood Lake, 15 miles north of the City of San Bernardino, San Bernardino County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Viju Patel, Chief, Energy Division, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236–0001, (916) 445–6687.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* September 25, 1989.

k. *Description of Project:* The Mojave Siphon Development of the California Aqueduct Project as amended on August 12, 1982, would consist of: (1) Modification to the existing gated reinforced concrete intake structure; (2) an 11-foot-diameter, 650-foot-long penstock leading to; (3) a powerhouse containing a single generating unit with a capacity of 7.2 megawatts; (4) an 11-foot-diameter, 190-foot-long pipeline, and a 17-foot-diameter, 865-foot-long tunnel to convey plant tailrace water to Silverwood Lake; (5) a 0.5-mile-long, 33-kV transmission line; and (6) appurtenant facilities. The estimated average annual energy generation is 47 GWh.

The applicant proposes to modify its amended Mojave Siphon Development by: (1) Adding an 18-foot-diameter, 2.36-mile-long pipeline parrallel to the existing 11-foot-diameter pipeline; (2) adding an 18-foot-diameter, 360-foot-long penstock extending from the existing Mojave Siphon valve vault to the powerhouse; (3) changing the single generating unit with three generating units with a combined installed capacity of 32.4 megawatts; (4) adding an 18-foot-diameter, 480-foot-long discharge pipe extending from the powerhouse to the tailrace tunnel; and (5) change the transmission line to 0.1-mile-long and 115-kV. The average annual energy generation with the increased capacity is 111 GWh.

l. *Purpose of Project:* Applicant intends to either wheel the power generated from the proposed facility to its pumping plants for the California Aqueduct, or exchange the power with Southern California Edison Company.

m. This notice also consists of the following standard paragraphs: A4, B, and C.

3. a. Type of Applications: Amendment of License.

b. Project No.: 2543–021.

c. Date Filed: July 13, 1989.

d. Applicant: The Montana Power Company.

e. Name of Project: Milltown Dam Hydroelectric Project.

f. Location: On the Clark Fork River, near Milltown, Missoula County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

G. Howard Van Noy, 40 East Broadway, Butte, MT 59701, (406) 723–5421.

i. FERC Contact: Edward Melisky, (202) 376–8255.

j. Comment Date: September 28, 1989.

k. Description of Project: In an application for amendment of license filed with the Commission on July 13, 1989, the Montana Power Company (licensee) requested that the Commission extend the term of the license for the Milltown Dam Hydroelectric Project. The license, which was issued on June 3, 1968, has a termination date of December 31, 1993. The licensee requests that the Commission change that termination date to December 31, 1999. This notice is being issued to inform interested parties that the Commission will now consider the licensee's request to extend the term of the license.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4. a. Type of Applications: Transfer of License.

b. Project No.: 2801–011.

c. Date Filed: June 8, 1989.

d. Applicant: Mary C. Heather.

e. Name of Project: Glendale Project.

f. Location: On the Housatonic River, Town of Stockbridge, Berkshire County, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mary C. Heather, Sergeant Street, P.O. Box 336, Stockbridge, MA 01262, (413) 298–3141.

i. FERC Contact: Mary Nowak (202) 376–9634.

j. Comment Date: September 21, 1989.

k. Description of Project: Mary C. Heather proposes to transfer the license for the Glendale Project No. 2801 to Mr. Joseph A. Guerrieri. The transferor lacks the time to manage the project and wishes to be disassociated from the project. The transferor inadvertently conveyed project property to the transferee without prior Commission approval. Such an error violates Article 5 of the license for Project No. 2801.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5. a. Type of Filling: Surrender of License.

b. Project No.: 3552–010.

c. Date Filed: July 28, 1989.

d. Applicant: Oakdale and South San Joaquin Irrigation Districts.

e. Name of Project: Goodwin Dam.

f. Location: On the Stanislaus River in Tuolumne and Calaveras Counties, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Jeffrey A. Meith, Minasian, Minasian, Minasian, Spruance, Baber, Meith & Soares, P.O. Box 1679, 1681 Bird Street, Oroville, CA 95965, (916) 533–2885.

i. Commission Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: September 9, 1989.

k. Description of Proposed Action: The license to be surrendered would have included a project consisting of: (1) A 79-foot-high, 480-foot-long dam; (2) a reservoir with a surface area of 70 acres and a storage capacity of 502 acre-feet at elevation 357 feet m.s.l.; (3) a 11-foot-diameter, 100-foot-long penstock; (4) a powerhouse with an installed capacity of 5MW under a head of 61 feet; (5) a 300-foot-long, 17-kV transmission line; and (6) appurtenant facilities. The applicant estimates the average annual energy output at 16,530,000 KWh. Energy produced at the project would have been sold to Pacific Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: B, C, & D2.

6. a. Type of Applications: Surrender of License.

b. Project No.: 4369–009.

c. Date Filed: June 5, 1989.

d. Applicant: City of Anoka.

e. Name of Project: Coon Rapids Dam.

f. Location: In Anoka and Hennepin Counties, Minnesota, on the Mississippi River.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mark Nagel, City Manager, City of Anoka, Minnesota, 2015 First Avenue, Anoka, MN 55303, (612) 421–6630.

i. FERC Contact: Mary Nowak (202) 376–9634.

j. Comment Date: September 28, 1989.

k. Description of Project: The license for this project was issued on May 29, 1987, for an installed capacity of 10.4 megawatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

7. a. *Type of Application:* Transfer of License.

b. *Project No.:* 7860–010.

c. *Date Filed:* July 3, 1989.

d. *Applicant:* O'Connell Management Company, Inc. and Ammonoosuc River Hydroelectric Corporation.

e. *Name of Project:* Bethlehem Dam Project.

f. *Location:* On the Ammonoosuc River in Grafton County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. George K. Lagassa, Mainstream Associates, P.O. Box 947, North Hampton, NH 03862, (603) 431–3748.

i. *FERC Contact:* Robert Bell (202) 376–9237.

j. *Comment Date:* September 28, 1989.

k. *Description of Project:* On December 1, 1987, a licensee was issued to O'Connell Management Company, Inc. (licensee) to construct, operate, and maintain the Bethlehem Dam Project No. 7860. The Licensee intends to transfer the license to Ammonoosuc River Hydroelectric Corporation (transferee), which will purchase, construct and operate the project. The transferee agrees to accept the terms and conditions of the license as if it were the original licensee. The transfer is requested to facilitate the financing and construction of the project.

l. This notice also consists of the following standard paragraphs: B and C.

8. a. *Type of Application:* Amendment of License.

b. *Project No.:* 8615–002.

c. *Date Filed:* May 8, 1989.

d. *Applicant:* Fiske Mill Hydro, Inc.

e. *Name of Project:* Fiske Hydro Project.

f. *Location:* On the Ashuelot River in Cheshire County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Persons:*

Richard Ireland, P.O. Box 2520, South Hamilton, MA 01982, (508) 927–5054.

Matthew J. Bonaccorsi, Timothy Buzzell & Associates, Inc., HC 64 Box 185C, Methodist Hill Rd., Lebanon, NH 03766, (603) 448–3245.

i. *FERC Contact:* Ed Lee (202) 376–5786.

j. *Comment Date:* October 10, 1989.

k. *Description of Project:* The Fiske Mill Hydro Project No. 8615 as licensed consists of: (1) A 19-foot-high and 185-foot-long concrete-capped dam with a spillway crest elevation of 226.8 feet mean sea level (m.s.l.); (2) 2-foot-high flashboards at the spillway creating an impoundment of 4 acres at surface elevation of 228.8 feet m.s.l.; (3) an intake structure at the north abutment; (4) an 80-foot-long steel plate arch canal, 20.5 feet by 13.5 feet in diameter; (5) a powerhouse with 3 turbine-generator units with an installed capacity of 221 kW each, and one unit with an installed capacity of 147 kW; (6) generator leads, a 0.48/4.16-kV step-up transformer, a 100-foot-long 4.16 kV transmission line; and (7) appertenant facilities.

The Applicant proposes to amend its license by increasing the total installed capacity by 100-kW with the installation of one generator located in the northerly existing waste bay adjacent to the powerhouse at the north abutment of the dam. The Applicant states that the new facilities would be in the same general project area, and that no adverse impacts would be expected other than those addressed in the original licensing process. The project would be operated as already licensed with no other charges.

l. *Purpose of Project:* All of the power generated by the Applicant will be sold to a local utility.

m. This notice also consists of the following standard paragraphs: B, C, and D1.

9. a. *Type of Application:* Surrender of License.

b. *Project No.:* 9727–002.

c. *Date Filed:* June 28, 1989.

d. *Applicant:* Bellamy's Mill Power, Ltd.

e. *Name of Project:* Bellamy's Mill Hydropower Project.

f. *Location:* On Fishing Creek, Nash and Halifax Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. T. Stewart Gibson, 605 Sunset Avenue, P.O. Box 269, Rocky Mountain, NC 27802, (919) 977–2333.

i. *FERC Contact:* Michael Dees (202) 376–9414.

j. *Comment Date:* September 21, 1989.

k. *Description of Project:* On December 28, 1988, a license was issued to construct, operate, and maintain the Bellamy's Mill Hydropower Project No. 9727. The project would consist of: (a) A granite block gravity dam with an overall length of 220 feet and a height of 12 feet; (b) a 1.0-acre reservoir with a storage capacity of 5.0 acre-feet at a normal water surface elevation of 91.5 feet MSL; (c) a powerhouse to contain an installed capacity of 39 kW; (d) a second powerhouse to contain an installed capacity of 115 kW; (e) generator leads; (f) a 0.44/7.2-kV transformer; (g) a 50-foot-long, 7.2-kV, single-phase transmission line and; (h) appurtenant facilities.

Licensee states that the project is no longer economically feasible.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

10. a. Type of Filing: Minor License (5–MW or less).

b. Project No.: 10048–002.

c. Date Filed: October 26, 1988.

d. Applicant: Turner Creek Power Company, Inc.

e. Name of Project: Turner Creek Hydroelectric Project.

f. Location: In the Tahoe National Forest on Turner Creek, near the town of Sierraville, in Sierra County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. section 791(a)–825(r).

h. Applicant contracts:

Mr. Russell Turner, Turner Creek, Power Company, Inc., P.O. Box 7, Sattley, CA 96124, (916) 587–8909.

i. FERC Contact: Thomas Dean, (202) 376–9562.

j. Comment Date: October 11, 1989.

k. Description of project: The proposed project would consist of: (1) A 6-foot-high, 20-foot-long diversion structure at elevation 5,780 feet msl; (2) a 10-inch-diameter, 5,000-foot-long penstock leading to; (3) a powerhouse at elevation 4,980 feet msl containing a single generating unit with an installed capacity of 100 kilowatts; (4) a tailrace; and (5) a 2,600-foot-long, 12.5-kV transmission line. The applicant estimates the average annual energy generation at 740 MWh.

l. Purpose of Project: Applicant intends to sell project power to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

11. a. Type of Application: Preliminary Permit.

b. Project No.: 10780–000.

c. Date Filed: May 22, 1989.

d. Applicant: Flannagan Hydro Associates.

e. Name of Project: Flannagan Dam Project.

f. Location: On the Pound River near Clintwood, Dickenson County, Viriginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Applicant Contact:

Mr. David K. Iverson, Synergics, Inc., 410 Severn Avenue, Suite 313, Annapolis, MD 21403, (301) 268–8820.

i. FERC Contact: Michael Dees (202) 386–9414.

j. Comment Date: October 2, 1989.

k. Competing Application: Project No. 10779–000

Date Filed: May 15, 1989

Competition Due Date: September 7, 1989

l. Description of Project: The proposed project would utilize the existing Corps of Engineers' Flannagan Dam and reservoir and would consist of: (1) An existing intake structure and tunnel; (2) a proposed penstock; (3) a proposed powerhouse housing a hydropower unit rated at 7.0 MW; (4) a proposed transmission line 4,500 feet long; and (5) appurtenant facilities. The estimated annual energy production is 17.5 GWh. Project energy would be sold to Appalachian Power Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

12. a. Type of Application: Preliminary Permit.

b. Project No.: 10783–000.

c. Date Filed: May 22, 1989.

d. Applicant: James A. Riendeau.

e. Name of Project: Bean Brook Water Power Project.

f. Location: On Bean Reservoir on Bean Brook, near Berlin/Success Town Line, in Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. James A. Riendeau, 8 Gordon Avenue, Cascade/Gorham, NH 03581, (603) 752–4874.

i. FERC Contact: Mary Nowak (202) 376–9834.

j. Comment Date: October 13, 1989.

k. Description of Project: The proposed project would consist of the following facilities: (1) An existing concrete gravity dam 15 feet high and 262 feet long; (2) an existing reservoir with a surface area of 2 acres and a total storage capacity of 9 acre-feet at a surface elevation of 1,282 feet mean sea level; (3) an existing penstock approximately 5,280 feet long and 10 feet in diameter; (4) a proposed powerhouse containing one generating unit at a total installed capacity of 40 kilowatts; and (5) appurtenant facilities. The applicant estimates that the cost of the studies under permit would be about $1,000. The existing dam is owned by the City of Berlin Water Works and the average annual generation would be 180,000 kilowatthours.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13. a. Type of Application: Preliminary Permit.

b. Project No.: 10791–000.

c. Date filed: June 2, 1989.

d. Applicant: FORIA Hydro Corporation.

e. Name of Project: Fort Dodge Mill Project.

f. Location: On the Des Moines River in Webster County, Iowa.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Thomas J. Wilkinson, FORIA Hydro Corporation, 700 Higley Bldg., P.O. Box 1968, Cedar Rapids, IA 52406, Phone: (319) 366–4990.

i. FERC Contact: Robert Bell (202) 376–9237.

j. Comment Date: October 12, 1989.

k. Description of Project: The proposed project would consist of: (1) The existing 18-foot-high, 372-foot-long concrete Fort Dodge Dam; (2) an impoundment having a surface area of 90 acres with negligible storage and a normal water surface elevation of 990 feet m.s.l.; (3) an existing powerhouse with two proposed generating units having a total installed capacity of 1260-kW; (4) a proposed 200-foot-long, 13.8-kV transmission line; and (5) appurtenant facilities. The existing dam is owned by the City of Fort Dodge, Iowa. The Applicant estimates the average annual generation would be 7507 MWH. All project energy generated would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14. a. Type of Application: Preliminary Permit.

b. Project No.: 10795–000.

c. Date filed: June 5, 1989.

d. Applicant: RUTIA Hydro Corporation.

e. Name of Project: Rutland Mill Dam Project.

f. Location: On the West Fork, Des Moines River in Humboldt County, Iowa.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Thomas J. Wilkinson Jr., RUTIA Hydro Corporation, 700 Higley Bldg., P.O. Box 1968, Cedar Rapids, IA 52406, Phone: (319) 366–4990.

i. FERC Contact: Robert Bell (202) 376–9237.

j. Comment Date: October 12, 1989.

k. Description of Project: The proposed project would consist of: (1) The existing 260-foot-long, 13-foot-high concrete Rutland Mill Dam; (2) an impoundment having a surface area of 80 acres with negligible storage and a normal water surface elevation of 1090 feet m.s.l.; (3) an existing powerhouse containing one proposed generating unit having an installed capacity of 700-kW; (4) a proposed 200-foot-long, 24-kV transmission line; and (5) appurtenant facilities. The existing dam is owned by the Humboldt County Conservation Board. The Applicant estimates the average annual generation would be 3549 MWH. All project energy generated would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

15. a. Type of Application: Preliminary Permit.

b. Project No.: 10798–000.

c. Date filed: June 5, 1989.

d. Applicant: HUMIA Hydro Corporation.

e. Name of Project: Humboldt Mill Dam Project.

f. Location: On the East Fork, Des Moines River in Humboldt County, Iowa.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Thomas J. Wilkinson Jr., HUMIA Hydro Corporation, 700 Higley Bldg., P.O. Box 1968, Cedar Rapids, IA 52406, Phone: (319) 366–4990.

i. FERC Contact: Robert Bell (202) 376–9237.

j. Comment Date: October 12, 1989.

k. Description of Project: The proposed project would consist of: (1) An existing 557-foot-long, 12-foot-high concrete Humboldt Dam; (2) an impoundment having a surface area of 80 acres with negligible storage and normal water surface elevation of 1070 feet m.s.l.; (3) an existing powerhouse containing a proposed generating unit with an installed capacity of 634 kW; (4) a proposed 50-foot-long, 12.47-kV transmission line; and (5) appurtenant facilities. The existing dam is owned by the Humboldt County Conservation Board. The Applicant estimates the average annual generation would be 3003 MWH. All project energy generated would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in Section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 18, 1989, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19905 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CS71-760 et al.]

Fair Operating, Inc. (Ralph E. Fair, Inc.), et al.;

Applications for Small Producer Certificates [1]

August 17, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 5, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS71-760	2-13-89 [1]	Fair Operating, Inc., (Ralph E. Fair, Inc.) P.O. Box 4495, Boerne, Texas, 78006.
CS87-8-001	7-25-89 [2]	Chieftain International (U.S.) Inc., (Chieftain International, Inc.), 1201 TD Tower, Edmonton Centre, Edmonton, Alberta, Canada, T5J 2Z1.
CS89-43-000	7-20-89	Westland Energy Company, P.O. Box 380, Pampa, Texas, 79065.
CS89-44-000	7-31-89	Harman Operating Company, Inc., 121 S. Broadway, Suite 476, Tyler, Texas, 75702.
CS89-45-000	7-28-89	J. M. Szabuniewicz, INDV. and DBA ITC Texas Property Trust No. 10, P.O. Box 60127, San Angelo, Texas, 76906.

[1] By letter dated February 9, 1989, Applicant states that on August 29, 1989, Ralph E. Fair, Inc. changed its name to Fair Operating, Inc.

[2] By letter dated July 21, 1989, Applicant requests that the small producer certificate issued in Docket No. CS87-8-000 be redesignated in the name of Chieftain International (U.S.) Inc.

[FR Doc. 89-19874 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket Nos. RP89-14-009, TA89-1-45-006, and TQ89-1-45-005]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

August 17, 1989.

Take notice that on August 10, 1989, Inter-City Minnesota Pipelines, Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing a revised tariff sheet to Original Volume 1 and Original Volume 2 of its FERC Gas Tariff to be effective December 1, 1988 and February 1, 1989:

Original Volume No. 1
  Corrected Third Substitute First Revised Thirty-First Revised Sheet No. 4
  Corrected Fourth Substitute First Revised Thirty-First Revised Sheet No. 4
Original Volume No. 2
  First Revised Fifth Revised Sheet No. 11
  First Revised Fifth Revised Sheet No. 12

Inter-City states that these sheets are filed in compliance with the Commission orders issued in these dockets on January 30, 1989 and letter order issued August 31, 1989.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19869 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-47-001]

Natural Gas Pipeline Company of America; Changes in PGA Tariff Procedure

August 17, 1989.

Take notice that on August 9, 1989, Natural Gas Pipelines Company of America (Natural) tendered for filing tariff sheets as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff) the below listed tariff sheets to be effective January 1, 1989.

Fifth Revised Sheet Nos. 121C and 121D
Third Revised Sheet Nos. 121E and 121F

Natural states the purpose of the instant filing is to comply with the Commission's July 11, 1989 letter order issued at Docket No. RP89-47-000. Said order granted Natural's request for waiver of § 154.305(h)(3)(ii)(D) of the Commission's Regulations effective January 1, 1989. The waiver will allow Natural to calculate carrying charges on the Account No. 191 balance using Natural's Temporary LIFO Liquidation Account as the offset rather than the rolling weighted average method set forth in the Regulations.

A copy of this filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such protests must be filed on or before August 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19870 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-259-019 and RP85-136-007]

Northern Natural Gas Company; Proposed Changes in FERC Gas Tariff

August 17, 1989.

Take notice that on August 9, 1989, Northern Natural Gas Company (Northern) (Division of Enron Corp.), tendered for filing proposed changes in its FERC Gas Tariff to correct pagination errors in the filing made June 30, 1989 in this proceeding.

The Company states that copies of the filing have been mailed to all parties of record in these proceedings, each of its customers purchasing gas and receiving transportation and gathering services under its FERC Gas Tariff and to interested State Commissions. Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such protests should be filed on or before August 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19671 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP74-41-046, et al.]

Texas Eastern Transmission, Corp., et al., Filing of Pipeline Refund Reports

August 17, 1989.

Take notice that the pipeline listed in the Appendix hereto heve submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before September 7, 1989. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

Appendix

Filing date	Company	Docket No.
1-8-87	Texas Eastern Transmission Corp.	RP74-41-046.
12/30/88	Texas Eastern Transmission Corp.	RP74-41-047.
7/20/89	Northwest Pipeline Corporation.	RP72-154-019.
7/27/89	Questar Pipeline Company.	RP86-87-009.

[FR Doc. 89-19672 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-421-000]

Texas Eastern Oil Co.; Application

August 17, 1989.

Take notice that on July 14, 1989, Texas Eastern Oil Company (TEOC) of P.O. Box 2521, Houston, Texas 77252, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a certificate of public convenience and necessity authorizing TEOC to make and continue sales of natural gas to Texas Eastern Transmission Corporation (Texas Eastern) from properties to be acquired from Texas Eastern, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

TEOC states that Texas Eastern proposes to transfer certain properties located in Texas and West Virginia to TEOC and that production from the subject properties is delivered directly to Texas Eastern for use as system supply. TEOC proposes to make sales from the subject properties to Texas Eastern pursuant to six contracts between TEOC and Texas Eastern dated July 11, 1989. According to TEOC, the gas subject to the application qualifies for NGPA section 104 and 108 pricing. In support of its application, TEOC states that no change in the service provided to Texas Eastern or its respective customers will result from the grant of this application.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 7, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TEOC to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19676 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-003]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

August 17, 1989.

Take notice that Trunkline Gas Company (Trunkline), on August 10, 1989 tendered for filing the following proposed changes in its FERC Gas Tariff, Original Volume No. 1:

Second Substitute Eleventh Revised Sheet No. 3-A.1
Second Substitute Original Sheet No. 9-JC

The proposed effective date of these revised tariff sheets is May 1, 1989.

Trunkline states that these revised tariff sheets are being filed in accordance with Ordering Paragraph (D) of the Commission's Order issued July 11, 1989.

Copies of this letter and enclosure are being served on all jurisdictional customers and interested state agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19673 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Adjusted Final Post-1989 Allocation of Power; Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of adjustments to the Final Post-1989 Power Allocations; Salt Lake City Area Integrated Projects.

SUMMARY: Final post-1989 allocations from the Salt Lake City Area Integrated Projects (SLCA/IP) were published in the **Federal Register** on April 2, 1987 (52 FR 10620), and a correction notice for those final allocations was published on May 20, 1987 (52 FR 18945). Subsequently, the allocations of certain allottees have been withdrawn, either at the request of the allottee or because the allottees have failed to meet the eligibility requirements listed in the General Power Marketing and Allocation Criteria (Criteria), published in the **Federal Register** on February 7, 1986 (51 FR 4844). Available energy and capacity have been administratively reallocated to Enterprise and Hurricane, Utah. Other adjustments have been made to the allocations of other allottees, who have approached the Western Area Power Administration (Western) with requests that their individual final allocations be modified because of unusual or extenuating circumstances.

DATES: These allocations will become final on August 24, 1989, and become effective on September 25, 1989.

ADDRESS: For further information on these adjusted final allocations, contact: Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524-5493.

SUPPLEMENTARY INFORMATION:

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I. Background of Allocation Procedures

On February 4, 1983, Western published a **Federal Register** notice (48 FR 5303) requesting applicant profile data (APD) from existing and potential customers in order to determine entities' eligibility to receive allocations of post-1989 SLCA/IP resources. Hypothetical allocations were published in the **Federal Register** on September 4, 1984 (49 FR 34900). Based on public comment, Western formulated and published its Post-1989 General Power Marketing and Allocation Criteria and Call for Applications for Power (Criteria) on February 7, 1986 (51 FR 4844). The hypothetical allocations were revised and published as proposed allocations in the **Federal Register** on September 11, 1986 (51 FR 32362). Following additional public comment, final post-1989 allocations were published in the **Federal Register** on April 2, 1987 (52 FR 10620), and a notice of correction was published on May 20, 1987 (52 FR 18945).

II. Final Allocation Adjustment Procedures

A. Refused or Rescinded Allocations

The February 7, 1986, Criteria indicate that contractors must have the means to receive and distribute power by September 30, 1988, in order to avoid automatic forfeiture of their contract rights unless Western specifically agrees otherwise in writing. Contractors were required to (1) have transmission arrangements in place by the September 30 deadline in order to receive SLCA/IP power and energy, and (2) have acquired electrical distribution systems with the capability of delivering SLCA/IP power and energy to their loads reported in the 1983 APD. Five entities not meeting the September 30, 1988, deadline were determined to be ineligible for their post-1989 SLCA/IP allocations. The capacity and energy either refused by or rescinded from these entities is listed in table 1 in section II.C.1.

B. Reallocation of Capacity and Energy Adjustments

1. First Right of Refusal Allocations

In the February 1987 Criteria, the cities of Enterprise and Hurricane, Utah, were granted first right to any reallocable energy and capacity, up to an amount equal to one-half of their individual peakloads in the 1975 summer and 1975-76 winter seasons. Since there is sufficient capacity available for reallocation to meet the specified requirements of the two cities, the final special allocations of SLCA/IP energy and capacity of both Enterprise and Hurricane will be adjusted consistent with the Criteria. Enterprise's allocation will be adjusted to a total of 1.292 megawatts (MW) of capacity and 2,945.890 megawatthours (MWh) of energy in the winter season and .992 MW of capacity and 2,265.232 MWh of energy in the summer season. Hurricane's allocation will be adjusted to a winter season total of 3.882 MW of capacity and 8,851.348 MWh of energy and a summer season total of 1.716 MW of capacity and 3,918.486 MWh of energy.

2. Capacity Adjustments

Following the publication of the final post-1989 allocations, several allottees have requested that their capacity allocations be adjusted due to unusual circumstances. All reduced capacity adjustment requests have been granted. Requested increased capacity adjustments have been granted only if, in Western's determination, such adjustments are necessary to ensure that all customers have been treated equitably through the allocation procedures specified in the February 1987 Criteria. Any capacity adjustments will be or have been reflected in the individual allottee's post-1989 firm power sales contracts.

a. *Requested capacity reductions.* Central Valley Electric Cooperative, Inc., Colorado-Ute Electric Association, Inc., Lea County Electric Cooperative, and Roosevelt County Electric Cooperative, Inc., requested and were granted capacity reductions. Those reductions are listed in table 1 in section II.C.1.

b. *Farmers Electric Cooperative, Inc.* After the final allocations were published, Western became aware that Farmers Electric Cooperative, Inc.'s (Farmers), load factor at its requested capacity level was greater than 100 percent. Since Western cannot deliver power at a load factor greater than 100 percent, Western has increased Farmers' capacity to allow it to take its full allocated energy entitlement. Farmers' resulting capacity allocation in the winter season has therefore been changed from 1.602 MW to 2.353 MW, and its summer season capacity allocation has been changed from 1.857 MW to 2.576 MW.

c. Weber Basin Water Conservancy District

(1) Background. Weber Basin Water Conservancy District (Weber Basin), the contracting entity for the Bureau of Reclamation's (Reclamation) Weber Basin Project, is a Northern Division existing customer with only a summer allocation. Weber Basin has its own generation to supply a portion of its needs, and Western has historically supplied Weber Basin with all its capacity and energy needs above its own generation. By letter dated April 12, 1968, the Commissioner of Reclamation agreed that Reclamation would supply Weber Basin all its power needs above Weber Basin's own generation in exchange for Colorado River Storage Project (CRSP) use of Weber Basin's excess generation.

Article 10 of Contract No. 14–06–400–5002 between Reclamation and Weber Basin provides that Weber Basin may purchase power from Reclamation as needed to supply Weber Basin's power requirement. Weber Basin has requested and been granted the ability to overrun its allocation under article 10 of that contract.

(2) Basis for Adjustment. Because Reclamation and Western have historically delivered more capacity and energy to Weber Basin than its contract rate of delivery (CROD), Weber Basin requested that its final capacity allocation reflect Western's historic deliveries and commitment to Weber Basin rather than Weber Basin's CROD. Western has considered Weber Basin's request upon the condition that such an adjustment should not affect the final allocations of other allottees.

(3) Allocation Adjustment Methodology. Western has used Weber Basin's 1980–82 CRSP peak demand and 3-year average energy as bases for adjusting Weber Basin's allocation by applying the allocation methodology for Northern Division existing customers found in the February 1987 Criteria. After applying these bases to the allocation methodology, Western has calculated the following adjusted Weber Basin associated capacity allocations:

	Associated capacity	SLCA/IP energy entitlement
Resource Pool 4.	1.820 MW	915.704 MWh
Resource Pool 6.	3.324 MW	1,939.439 MWh
Total	5.144 MW	2,855.153 MWh

(4) Conclusion. Weber Basin's Resource Pool 4 capacity allocation has been adjusted from 0.415 MW to 1.820 MW. Its Resource Pool 6 capacity allocation has been adjusted from 0.758 MW to 3.324 MW. Weber Basin's final post-1989 SLCA/IP energy entitlement will remain unadjusted.

C. Reallocation of Capacity and Energy

1. Available Capacity and Energy

Capacity and energy available for reallocation are shown on the following table:

	Winter		Summer	
	MW	MWh	MW	MWh
Refused or Rescinded Allocations				
Cedar City	3.475	8,655.275	2.750	6,987.911
Ivins	0.131	328.168	0.116	300.073
LaVerkin	0.246	617.549	0.211	538.062
Springdale	0.029	72.781	0.024	81.052
West Bountiful	0.469	1,167.983	0.444	1,126.827
Subtotal rescinded	4.350	10,841.756	3.547	9,013.925
Reduced Capacity Allocations				
Central Valley Electric Cooperative, Inc	3.081		2.812	
Colorado-Ute Electric Association, Inc	56.000		52.000	
Lea County Electric Cooperative	2.335		2.570	
Roosevelt County Electric Cooperative, Inc	2.517		2.869	
Subtotal reduced	63.933		60.051	
4-2-87 allocations	74.490		67.856	
Available capacity	10.557		7.805	
(4–2–87 Allocations Minus Subtotal Reduced Allocations) Total Available (Rescinded and Reduced Allocations)	14.907	10,841.756	11.352	9,013.925
Increased Capacity and Energy Allocations				
Enterprise, UT	1.292	2,945.890	0.992	2,265.232
Farmers Electric Cooperative, Inc	2.353		2.576	
Hurricane, UT	3.882	8,851.348	1.716	3,916.486
Weber Basin Water Conservative District			5.144	
Subtotal increased	7.527	11,797.238	10.428	6,183.718
4-2-87 allocations	−4.189	−5,898.619	−4.349	−3,091.859
Total unavailable	3.338	5,898.619	6.077	3,091.859
(Required for Increased Allocations) Total Available for Reallocation (Available less Unavailable)	11,569	4,943.137	5.275	5,922.066

2. Administrative Reallocation

The February 7, 1986, Criteria indicate that long-term firm energy and associated capacity made available from refused or rescinded allocations may be administratively reallocated without further public process.

III. Adjusted Final Allocations

A. Southern Division Existing Customers

Table 2: Adjusted final SLCA/IP post-1989 allocations to Southern Division existing customers.

B. Northern Division Existing Customers

Table 3: Adjusted final SLCA/IP post-1989 allocations to Northern Division existing customers.

C. Northern Division Participating Customers

Table 4: Adjusted final SLCA/IP post-1989 allocations to Northern Division participating customers and special allocations.

Issued at Golden, Colorado, August 11, 1989.

William H. Clagett,

Administrator.

TABLE 2—POST 1989 SLCA/IP ALLOCATIONS, SOUTHERN DIVISION EXISTING CUSTOMERS.

Customer Group (1)	Customer (2)	Resource Pool 1— Capacity (MW) (3)	Energy (MWH) (4)	Capacity (MW) (5)	Energy (MWH) (6)
Southern Division, Existing Customers	AK-Chin Indian Community	1.920	4,273.433	4.244	9,373.563
	Arizona Power Pooling Association	13.568	30,197.295	27.275	60,248.025
	Chandler Heights Citrus Irrig. D	0.302	671.748	0.400	881.769
	Colorado River Commission of NV	29.477	65,603.370	22.420	49,521.161
	Colorado River Agency	0.881	1,933.823	0.442	1,011.397
	Electrical District No. 3	2.880	6,409.748	8.631	19,063.962
	Electrical District No. 4	3.680	8,189.262	4.897	10,815.570
	Electrical Dist. No. 5-Maricopa Co	0.233	518.692	1.274	2,813.842
	Electrical Dist. No. 5-Pinal Co	2.633	5,859.936	2.948	6,510.552
	Electrical District No. 6	0.000	0.000	6.245	13,794.766
	Electrical District No. 7	0.729	1,623.416	4,807	10,618.756
	Maricopa County MWCD No. 1	2.373	5,280.927	5.748	12,697.156
	Ocotillo Water Cons. Dist	0.272	606.459	1.162	2,565.706
	Queen Creek Irrig. Dist	0.000	0.000	1.887	4,167.452
	Roosevelt Irrig. Dist	1.761	3,918.404	5.243	11,581.167
	Roosevelt Water Cons. Dist	1.616	3,596.519	2.364	5,221.513
	Safford	0.560	1,246.991	1.227	2,710.445
	Salt River Project Agricultural Improvement and Power District	52.113	15,980.176	103.224	228,005.552
	San Carlos Irrig. Project	1.840	4,094.242	1.366	3,018.303
	San Tan Irrig. District	0.000	0.000	0.882	1,948.991
	Thatcher	0.363	806.786	0.556	1,228.656
	Wellton-Mohawk Irrig. Dist	0.448	996.974	0.146	320.783
	Williams Air Force Base	0.912	1,993.462	2.265	5,002.065
	Yuma Proving Grounds	0.415	1,040.333	0.347	732.808
Total, Southern Division Existing Customers.		[1] 118.976	264,842.000	210.000	463,854.000

[1] 24 kilowatts unallocated.

TABLE 3—POST 1989 SLCA/IP ALLOCATIONS, NORTHERN DIVISION EXISTING CUSTOMERS, LOVELAND AREA CUSTOMERS

Customer Group (1)	Customer (2)	Resource Pool 3—Winter Season Capacity (MS) (3)	Energy (MWH) (4)	Resource Pool 4—Summer Season Capacity (MW) (5)	Energy (MWH) (6)
Northern Division Existing Customers, Loveland Area Customers.	Center	1.801	3,954.115	1.082	2,330.498
	Colorado Springs	64.864	141,272.844	16.289	35,559.319
	Fleming	0.066	141.403	0.087	188.137
	Fort Morgan	9.081	19,015.973	8.584	18,495.260
	Frederick	0.045	115.384	0.038	95.511
	Haxtun	0.546	1,103.302	0.575	1,217.513
	Holyoke	2.023	4,214.092	1.598	3,441.244
	Lamar	2.663	5,555.122	2.192	4,715.263
	Platte River Power Authority	145.955	382,403.019	113.902	273,383.902
	Pueblo Army Depot	2.856	6,253.067	2.641	5,820.433
	Torrington	1.302	2,673.435	1.922	4,127.592
	Tri-State G&T Assn., Inc. (CO-WY)	226.027	472,836.547	272.938	587,818.863
	Willwood Light & Power	0.039	86.267	0.050	108.933
	Wyoming Municipal Power Agency	6.731	14,727.997	5.036	10,775.526
	Wray	1.059	2,318.709	0.501	1,104.557
	Yuma, Co	1.411	2,950.599	1.223	2,634.474

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TABLE 3—POST 1989 SLCA/IP ALLOCATIONS, NORTHERN DIVISION EXISTING CUSTOMERS, LOVELAND AREA CUSTOMERS—Continued

Customer Group (1)	Customer (2)	Resource Pool 3—Winter Season: Capacity (MS) (3)	Resource Pool 3—Winter Season: Energy (MWH) (4)	Resource Pool 4—Summer Season: Capacity (MW) (5)	Resource Pool 4—Summer Season: Energy (MWH) (6)
Subtotal, Loveland Area Customers.		466.471	1,059,621.875	426.658	951,797.046
Northern Division Existing Customers, Salt Lake City Area Customers.	Aztec	2.778	6,082.156	2.039	4,494.653
	Brighan City	12.594	27,577.770	8.932	19,650.298
	Colorado-Ute Elec. Assn.[2]	30.339	76,184.288	29.309	71,185.143
	Defense Depot Ogden	3.532	7,734.000	3.169	6,984.667
	Delta	1.211	2,650.876	1.061	2,337.584
	Deseret G&T Cooperative, Inc.[3]	110.346	230,865.569	101.616	218,834.447
	Dixie-Escalante Rural Electric Association, Inc.[3]	24.065	50,110.977	19.072	40,956.172
	DOE-Albuq. Oper. Office	21.127	46,260.616	16.328	35,985.282
	Farmington	17.577	42,676.272	15.968	35,191.494
	Gunnison	7.225	15,821.430	4.812	10,605.277
	Navajo Tribal Util. Auth	20.817	54,457.724	18.589	48,629.623
	Oak Creek	0.465	1,014.500	0.320	702.204
	Page	8.040	17,604.906	6.687	14,737.305
	Plains Electric G&T Coop., Inc	177.722	372,222.505	142.303	312,070.292
	Saint George[3]	31.915	66,005.078	19.673	42,118.273
	Truth or Consequences	6.506	14,234.333	6.025	13,285.367
	Utah Associated Municipal Power Systems[3]	159.714	322,700.063	103.718	222,853.999
	Utah Municipal Power Agency	93.566	204,880.060	79.126	174,385.170
	Weber Basin Water Cons. Dist	0.000	0.000	1.820	915.704
Subtotal, Salt Lake City Area Customers.		729.579	1,569,083.125	580.567	1,275,922.954
Total, Northern Division Existing Customers.		1,196.050	2,628,705.000	1,009.225	2,227,720.000

[2] Allocations assigned to Colorado-Ute Electric Association, Inc., by the following allottees: Delta-Montrose Electric Association, Empire Electric Association, Grand Valley Rural Power, Gunnison County Electric Association, Holy Cross Electric Association, Inc., Intermountain Rural Electric Association, La Plata Electric Association, Sangre de Cristo Electric Association, Inc., San Isabel Electric Association, Inc., San Luis Valley Rural Electric Cooperative, San Miguel Power Association, Inc., Southeast Colorado Power Authority, White River Electric Association, Inc., and Yampa Valley Electric Association, Inc.

[3] Intermountain Consumer Power Association is acting as a single purchasing agent for the following allottees: Deseret G&T Cooperative, Inc., Dixie-Escalante Rural Electric Association, Inc., Saint George, and Utah Associated Municipal Power Systems.

TABLE 4—NORTHERN DIVISION PARTICIPATING CUSTOMERS, PROSPECTIVE CUSTOMERS

Customer Group (1)	Resource Pool 5—Winter Season: Customer (2)	Resource Pool 5—Winter Season: Capacity (MW) (3)	Resource Pool 6—Summer Season: Energy (MWH) (4)	Resource Pool 6—Summer Season: Capacity (MW) (5)	Energy (MWH) (6)
Participating Customers—Prospective Customers	Arkansas River Power Auth[4]	1.637	4,077.916	1.078	2,737.564
	Aspen	1.677	4,234.809	1.062	2,714.455
	Blending	0.765	1,926.300	0.500	1,278.588
	Cannon Air Force Base	1.419	3,573.678	1.387	3,545.692
	Central Valley Elec. Coop., Inc	3.061	9,046.605	2.612	9,092.366
	County of Los Alamos	1.569	3,951.530	1.056	2,701.693
	Central Utah WCD	0.095	285.651	0.237	607.009
	Farmers Electric Cooperative, Inc	2.353	6,867.176	2.576	7,963.671
	Gallup	3.592	9,048.605	3.439	8,795.248
	Glenwood Springs	1.689	4,243.525	1.246	3,182.500
	Helper	0.472	1,181,057	0.304	773.637
	Hill Air Force Base	3.592	9,048.805	3.555	9,092.366
	Holloman Air Force Base	2.065	5,366.666	1.925	4,933.272
	Kanab	0.611	1,539.732	0.476	1,216.504
	Lea County Elec. Coop	2.335	9,048.805	2.570	9,092.366
	Mun. Subdist., Northern Co WCD	0.000	0.000	3.573	9,078.000
	Panguitch	0.686	1,722,833	0.642	1,638.063
	Price	1.702	4,287.107	1.119	2,861.732
	Roosevelt County Elec. Coop., Inc	2.517	7,769.264	2.869	8,788.350
	Sandia/Kirtland	3.592	9,048.805	3.555	9,092.366
	Santa Clara	0.331	826.047	0.300	764.669
	Tooele Army Depot	1.307	3,291.706	0.920	2,352.296
	University of Utah	3.461	8,944.220	3.104	8,021.611
	Utah State University	1.152	3,017.143	1.124	2,881.047
	Washington	0.691	1,728.876	0.556	1,417.587
Subtotal, Prospective Customers		42.391	114,121,261	41.785	114,642.674

TABLE 4—NORTHERN DIVISION PARTICIPATING CUSTOMERS, PROSPECTIVE CUSTOMERS—Continued

Customer Group (1)	Resource Pool 5—Winter Season: Customer (2)	Resource Pool 5—Winter Season: Capacity (MW) (3)	Resource Pool 6—Summer Season: Energy (MWH) (4)	Resource Pool 6—Summer Season: Capacity (MW) (5)	Energy (MWH) (6)
Participating Customers—Existing Customers	Colorado-Ute Elect. Assn.[5]	25.661	76,083.552	22.691	53,962.745
	Delta	0.510	1,294.641	0.449	1,149.168
	DOE-Albuq. Oper. Office	0.000	0.000	3.555	9,092.366
	Farmington	1.289	3,254.728	3.555	9,092.366
	Navajo Tribal Util. Auth	2.860	7,482.443	3.213	8,404.460
	Weber Basin Water Cons. Dist.	0.000	0.000	3.324	1,939.439
Subtotal, Existing Customers		30.320	88,105.364	36.787	93,640.542
Subtotal, Exist. + Prosp. (Excl: Spec. Alloc)		72.711	202,226.625	78.572	208,283.216
Participating Customers—Special Allocations	DOE-Albuq. Oper. Office	15.000	0.000	15.000	0.000
	Enterprise[6]	1.292	2,945.890	0.992	2,265.232
	Hurricane[6]	3.882	8,851.346	1.716	3,918.486
Subtotal, Special Allocations		20.174	11,797.238	17.708	6,183.718
Total, Participating Customers		92.885	214,023.863	96.280	214,466.934

[4] Allocation assigned to Arkansas River Power Authority by Raton, New Mexico.

[5] Allocations assigned to Colorado-Ute Electric Association, Inc. by the following allottees: Delta-Montrose Electric Association, Empire Electric Association, Grand Valley Rural Power, Gunnison County Electric Association, Holy Cross Electric Association, Inc., La Plata Electric Association, San Miguel Power Association, Inc., White River Electric Association, Inc., and Yampa Valley Electric Association, Inc.

[6] Intermountain Consumer Power Association is acting as a single purchasing agent for the following allottees: Enterprise, Utah, and Hurricane, Utah.

[FR Doc. 89-20010 Filed 8-23-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3634-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), these notices announce that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comments. The ICRs describe the nature of the information collections and their expected costs and burdens; where appropriate, they include the actual data collection instrument.

DATES: Comments must be submitted on or before September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Onshore Natural Gas Processing Plants—Reporting and Recordkeeping. (EPA ICR #1086.02; OMB #2060-0123). This is a reinstatement of a previously approved collection.

Abstract: Onshore natural gas processing plants must keep records demonstrating VOC leak detection, conducted repair programs, and records demonstrating compliance with equipment standards. Semiannual reports of exceedances, which enable enforcement agencies to monitor the leak detections, are required. Also required are records of operation of continuous emission monitoring and of excess emission for SO2. EPA uses records and reports to determine compliance with the standards.

Burden statement: The public reporting burden for this collection of information is estimated to average 195 hours per response for reporting and 447 hours per response for recordkeeping. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners/Operators of Onshore Natural Gas Processing Plants.

Estimated No. of respondents: 92.

Estimated total annual burden of respondents: 17,963 hours for reporting and 41,088 hours for recordkeeping.

Frequency of collection: Semiannually.

Title: NSPS for Primary Aluminum Reduction Plants (Subpart S)—Reporting and Recordkeeping. (EPA ICR #1067; OMB #2060-0031). This is a reinstatement of a previously approved collection.

Abstract: Owners/Operators must monitor and maintain records of daily production rates for aluminum anode, raw material feed rates, and potline voltages for two years. Monthly performance tests and reports are required. Also required are reports of operation and maintenance conditions when tests reveal high emission levels. This information is used to ensure continuing compliance with the standards.

Burden statement: The public reporting burden for this collection of information is estimated to average 67 hours per response for reporting and 88 hours per response for recordkeeping. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners/Operators of Primary Aluminum Reduction Plants.

Estimated numbers of respondents: 5.

Estimated total annual burden on respondents: 1,331 hours for reporting and 438 hours for recordkeeping.

Frequency of collection: On occasion.

Title: NSPS for Bulk Gasoline Terminal (Subpart XX)—Information Requirements. (EPA ICR #0664.03; OMB #2060-0006). This is a reinstatement of a previously approved collection.

Abstract: Owners/Operators must notify EPA of construction, modifications, start-ups, shutdowns, malfunctions and dates and result of performance tests; they must record the tank identification number of each gasoline truck loaded; they must notify

EPA of each non-vapor-tight gasoline truck, and record each leak detected; they must also inspect control equipment during loading operations. No excess emission reports are required. EPA uses the information to implement and enforce the standards.

Burden statement: The public reporting burden for this collection of information is estimated to average 19.3 hours per response for reporting and 8.5 hours per response for recordkeeping. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners/Operators of Bulk Gasoline Terminals.

Estimated No. of respondents: 31.

Estimated total annual burden of respondents: 599 hours for reporting and 284 hours for recordkeeping.

Frequency of collection: Initial performance test, and on occasion.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460
and
Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20530.

Dated: August 15, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-19980 Filed 8-23-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3634-8]

RCRA Inspection Manual

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of Inspection Manual.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a final inspection guidance entitled the *RCRA Inspection Manual.* It was finalized on April 22, 1988, and replaces the RCRA Inspection Manual completed in 1981. The manual provides guidance concerning the procedures and checklists employed by duly authorized inspectors during RCRA inspections pursuant to section 3007 of the Resource Conservation and Recovery Act.

Initially, the Manual was intended only for RCRA field inspectors to assist them in their performance of Compliance Evaluation Inspections of RCRA generators, transporters, and treatment, storage, and disposal facilities. With this notice, we are also making it available to the regulated community.

ADDRESS: Copies of the document entitled *RCRA Inspection Manual* are available for viewing at all EPA libraries and the RCRA/Superfund docket. The docket number is F-89-RIMA-FFFFF. The docket is located at EPA Headquarters (room M2427), 401 M Street SW., Washington, DC 20460 and is open from 9:00 a.m. to 4:00 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call 475-9327 for appointments. Copies cost $.15/page. In addition, this document is available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: RCRA Inspection Manual. (NTIS #PB89-208-169/AS).

FOR FURTHER INFORMATION CONTACT: For general information contact: RCRA/Superfund Hotline, (800) 424-9346. For technical information contact Peter R. Siebach, USEPA (OS-520), Office of Waste Programs Enforcement, 401 M Street SW., Washington, DC 20460, telephone (202) 475-9849.

Dated: August 9, 1989.

Robert L. Duprey,

Acting Assistant Administrator.

[FR Doc. 89-19978 Filed 8-23-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59272A; FRL-3635-2]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This ntoice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-89-18. The test marketing conditions are described below.

EFFECTIVE DATES: August 17, 1989.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-608, 401 M St. SW., Washington, DC 20460, (202) 382-2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TMS-89-18. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-89-18. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-89-18

Date of Receipt: July 14, 1989 (54 FR 29779).

Applicant: Westvaco Corporation.

Chemical: (G) Rosin, polymer with substituted phenols, formaldehyde, pentaerythritol and metal hydroxide.

Use: (G) Ink resin.

Production Volume: (Confidential).

Number of Customers: (Confidential).

Test Marketing Period: 1 Year, commencing on first day of manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not persent any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 17, 1989.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 89-19976 Filed 8-23-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-81015; FRL-3634-5]

TSCA Inventory; Notice of Intent To Remove 217 Reported Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In reviewing the chemical substances included on the Toxic Substances Control Act Chemical Substance Inventory, EPA has concluded that certain chemical substances were incorrectly reported and listed. EPA intends to remove 217 chemical substances from the Inventory and solicits public comment on the appropriateness of that removal.

DATES: Comments must be received by EPA on or before October 10, 1989).

ADDRESSES: Three copies of the written comments should be addressed to: TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments should bear the identifying notation OPTS-81015. The administrative record supporting this action is available for public inspection in the OPTS Reading Rm. NE Mall G004, at the above address, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, U.S. Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 8(b) of the Toxic Substances Control Act (TSCA), Pub. L. 94-469, requires the Administrator of the EPA to identify, compile, and keep current a list of chemical substances which are manufactured, imported, or processed for commercial purposes in the United States. To meet this requirement, EPA promulgated the Inventory Reporting Regulations (40 CFR part 710), which appeared in the **Federal Register** of December 23, 1977 (42 FR 64572). These regulations provided the basis for the initial compilation of the TSCA Chemical Substance Inventory, which identifies chemical substances in U.S. commerce.

The Inventory is a compilation of chemical substances that have been manufactured, imported, or processed in the United States for commercial purposes since January 1, 1975. The Inventory's primary purpose is regulatory. It defines a new chemical substance for purposes of section 5(a)(1)(A) of TSCA. If a chemical substance is not included in the Inventory, it is considered a new substance (section 3(9) of TSCA), and a premanufacture notice (PMN) is required at least 90 days before the manufacture or import of such a substance can begin.

For the Inventory to perform its regulatory functions, it must be continuously and accurately updated as new information becomes available. Updated information includes identities of new chemical substances which are being introduced into U.S. commerce and corrections for previously reported information. Recognizing industry's need for making corrections to incorrectly submitted Inventory reports, EPA announced, in the **Federal Register** of July 29, 1980 (45 FR 50544), that it would accept certain types of corrections related to substances previously reported for the Inventory. The types of corrections specified in the July 29, 1980 **Federal Register** notice relate to chemical identity.

Since the publication of the Inventory and the July 29, 1980 **Federal Register** notice, the Agency has received numerous requests to correct certain previously submitted Inventory reports. The Agency reviewed these correction requests and the corresponding reports originally submitted for the Inventory, and concluded that a number of the chemical substances currently listed on the Inventory were erroneously reported. Furthermore, in reviewing the total body of the Inventory submissions, the Agency discovered that each of the incorrectly listed substances was reported only by a submitter who subsequently requested that EPA correct the chemical identity originally reported, or who subsequently notified the Agency that the substance in question was solely manufactured for a non-TSCA use.

There are various reasons why chemical substances were incorrectly reported for the Inventory. First, the mistakes could have been typographical or transcriptional and were not known to the submitter when the original report was submitted. Second, improved analytical equipment and methods may have allowed for a more accurate description of a previously reported substance. Third, EPA may have identified reporting errors and requested corrections. Regardless of the source of error, the result is the same: A chemical substance not eligible for inclusion on the Inventory was reported and currently is included on the Inventory. If these mistakes are not corrected, the integrity of the Inventory will be impaired, and its reliability as an accurate compilation of commercial substances for TSCA purposes will diminish. In addition, substances which should be subject to premanufacture notification (PMN) review before they are manufactured or imported would not be reviewed.

In this notice, the Agency proposes to remove 217 chemical substances. The Agency has found that these chemical substances were incorrectly reported and listed. The substances proposed for removal from the TSCA Inventory are listed by Chemical Abstracts Service (CAS) Registry Number. Each of the 217 chemical substances is further identified by its corresponding Chemical Abstracts Preferred Name.

Each of the 217 chemical substances proposed for removal was reported for the Inventory. Subsequently, persons who had reported the chemical substances in question informed EPA of errors in their submissions. In the majority of the cases the errors were due to mistaken chemical identities. The corrected identities for these chemical substances have been added to the Agency's Master Inventory File. In other cases, substances which are not eligible for reporting under TSCA were included on the Inventory. EPA has checked each of these 217 chemical substances, as originally reported, to determine whether any other person had also reported the same chemical substance for the Inventory. No others were found.

In accordance with EPA policy (OTS Order 7730.7), an erroneously or incorrectly reported chemical substance should be removed from the Inventory. Accordingly, these 217 chemical substances do not appear to be eligible for continued inclusion on the Inventory.

Publication of this notice does not mean that EPA will actually and automatically delete from the Inventory any of the 217 chemical substances listed below. Rather, the Agency solicits public comments on its intent to remove from the TSCA Inventory the listed substances. EPA is specifically interested in knowing whether any of the chemical substances listed below have been manufactured, imported, or processed for TSCA commercial purposes other than research and development, as defined in the Inventory Reporting Regulations (40 CFR 710.2 (p)), by anyone during the period January 1, 1975 through August 24, 1989. The Agency is also interested to know whether any person can show that any of the chemical substances could have been properly reported for the Inventory. EPA also solicits comments from anyone who believes that any of the chemical substances listed below should not be removed from the TSCA Inventory for any reason. With the publication of this notice, any on-going manufacture, import, or processing of any of the 217 chemical substances listed below which was begun prior to the publication date of this notice may continue until publication of the final notice of disposition. All such comments must be submitted to EPA within the 45-day comment period.

EPA will review all comments received and will make a determination regarding the eventual status of each of the chemical substances listed below. The Agency will announce its decision in a final notice of disposition in the Federal Register. EPA will not consider any request to retain any of the listed chemical substances on the Inventory based solely on manufacture, import, or processing of that substance which begins after August 24, 1989. If the Agency determines that any of the listed chemical substances should not be removed from the Inventory, manufacturers, importers, or processors of these chemical substances would be invited to submit Inventory Reports to establish the need to retain the chemical substances on the Inventory. The substance would then remain on the Inventory. On the other hand, if the Agency concludes that a chemical substance is not eligible for inclusion on the Inventory, effective with the publication of the final notice of disposition, the chemical substance will be considered removed from the Inventory—the presence of its name in any previously published version of the Inventory notwithstanding. In that event, the premanufacture requirements of section 5(a) of TSCA would apply to any manufacture or import of the chemical substance from the date of removal.

CHEMICAL SUBSTANCES PROPOSED FOR REMOVAL FROM TSCA INVENTORY

CAS Registry No.	Name
80-63-7	2-Propenoic acid, 2-chloro-, methyl ester
925-76-6	2-Propenamide, N-[2-(dimethylamino)ethyl]-
1471-18-7	1-Propene, 3,3'-[[2,2-bis[(2-propenyloxy) methyl]- 1,3-propanediy]bis(oxy)]bis-
1611-83-2	2-Propenamide, 2-methyl-N-phenyl-
2039-85-2	Benzene, 1-chloro-3-ethenyl-
2556-36-7	Cyclohexane, 1,4-diisocyanato-
3121-60-6	Benzenesulfonic acid, 4-hydroxy-5-(2-hydroxy-4- methoxybenzoyl)-2-methoxy-, monosodium salt
3435-51-6	Benzonitrile, 4-ethenyl-
3539-43-3	1-Hexadecanol, dihydrogen phosphate
4270-70-6	Sulfonium, triphenyl-, chloride
5045-40-9	1H-Isoindol-1-one, 3,3'-[(2-methyl-1,3- phenylene)diimino]bis[4,5,6,7-tetrachloro-
5339-85-5	Benzeneethanol, 2-amino-
6370-14-5	Chromate(3-), bis[5-chloro-2-hydroxy-3-[(2-hydroxy-1- naphthalenyl)azo]benzenesulfonato(3-)]-, trisodium
6709-58-8	Benzenediazonium, 4-[(2,6-dichloro-4-nitrophenyl)azo]-2,5-dimethoxy-
7195-45-1	1,2-Benzenedicarboxylic acid, bis(oxiranylmethyl) ester
9022-52-0	Benzene, chloroethenyl-, homopolymer
10054-29-2	1-Tetradecanol, dihydrogen phosphate
10127-28-3	C.I. Solvent Orange 6
13103-75-8	Benzenamine, N,N-dimethyl-4-(2-pyridinylazo)
13401-85-9	2-Propenoic acid, 2-chloro-, butyl ester
14049-79-7	Cobaltate(3-), hexakis(cyano-C)-, zinc (2:3), (OC-6- 11)-
19824-98-6	Phosphoric acid, monobutyl ester, diammonium salt
20640-71-5	Benzoic acid, 2-[(4-amino-9,10-dihydro-9,10-dioxo-3- sulfo-1-anthracenyl)amino]-4[[2-(sulfooxy)ethyl]sulfonyl]-
23089-48-9	Disulfide, cyclohexyl ethyl
25086-42-4	Benzenamine, 4-ethenyl-, homopolymer
25765-19-9	2-Propenenitrile, polymer with 2,5-furandione
26100-51-6	Propanoic acid, 2-hydroxy-, homopolymer
26375-31-5	2-Propenoic acid, 2-methyl-, polymer with ethene and ethenyl acetate
27306-79-1	Poly(oxy-1,2-ethanediyl), .alpha.-methyl-.omega.-[3- [1,3,3,3-tetramethyl-1-[(trimethylsilyl)oxy]disiloxanyl]propyl]-
28107-22-4	Benzoic acid, 2-hydroxy-, methyl ester, polymer with formaldehyde
28677-93-2	1-Propanol, methoxy-
32445-13-9	Benzenediazonium, 4-[(4-methoxyphenyl)amino]-
34323-54-1	2-Propenoic acid, ethyl ester, polymer with ethenyl acetate and 2,5-furandione
34591-13-4	1-Hexadecanol, dihydrogen phosphate, monoammonium salt
36491-08-6	Phosphoric acid, dibutyl ester, ammonium salt
38808-51-4	2-Propenoic acid, 2-methyl-, oxiranylmethyl ester, polymer with ethenylbenzene and 2-propenoic acid
41989-08-6	Phosphoric acid, monooctyl ester, monopotassium salt
42986-19-6	2-Naphthalenesulfonic acid, 6-amino-4-hydroxy-5-[[2- sulfo-4-[[2-(sulfooxy)ethyl] sulfonyl]phenyl]azo]-
46300-01-0	Benzenediazonium, 4-cyano-2,5-dimethoxy-
47300-91-4	Benzenediazonium, 2-methoxy-5-methyl-4-[(4-methyl-2- nitrophenyl)azo]-
52264-35-0	2-Anthracenesulfonic acid, 1-amino 4-[[4-[[3-[(2- chloroethyl)sulfonyl]benzoyl] methylamino]-2-sulfophenyl]amino]-9,10- dihydro-9,10-dioxo-
52371-97-8	1-Naphthalenesulfonic acid, 6-amino-5-[[2-sulfo-4- [[2-(sulfooxy)ethyl] sulfonyl]phenyl]azo]-
53802-03-2	C.I. Solvent Red 109
55850-01-6	3H-Indolium, 1,3,3-trimethyl-2- [(methylphenylhydrazono)methyl]-, chloride
56512-40-3	Benzenesulfonyl chloride, 4-[[4- (dimethylamino)phenyl]azo]-
61670-11-9	2,7-Naphthalenedisulfonic acid, 4-hydroxy-5-[(2- hydroxy-1-naphthalenyl)azo]-3-[(2-hydroxy-3-nitro-5-sulfophenyl)azo]-'

CHEMICAL SUBSTANCES PROPOSED FOR REMOVAL FROM TSCA INVENTORY—Continued

CAS Registry No.	Name
61951-72-2	C.I. Leuco Sulphur Yellow 1
63082-99-5	2-Cyclohexene-1-octanoic acid, 5-carboxy-4-hexyl-, monosodium salt
63450-32-8	2(3H)-Furanone, 4-hexyldihydro-
63833-78-3	3-Pyridinecarbonitrile, 5-[(2-cyano-4- nitrophenyl)azo]-6-[(2-hydroxyethyl)amino]-4-methyl-2-[[3-(2- phenoxyethoxy)propyl]amino]-
64346-12-9	Phosphoric acid, monooctadecyl ester, compound with 2,2'-iminobis[ethanol] (1:1)
64346-51-6	Phosphoric acid, monodecyl ester, compound with 2,2'-iminobis[ethanol] (1:2)
64346-58-3	Phosphoric acid, monododecyl ester, compound with morpholine (1:1)
64509-06-4	Tetradecen-1-ol, hydrogen phosphate
64509-07-5	Octadecadien-1-ol, dihydrogen phosphate
64601-16-7	Docosanoic acid, compound with 1,3-propanediamine acetate eicosanoate (1:1)
64611-70-7	Chromate(2-), [2-[[(2-hydroxyethyl)imino] methyl]phenolato(2-)-N,O,O'][6-hydroxy-5-[(2-hydroxy-4-nitrophenyl)azo]-1-naphthalenesulfonato(3-)]-, disodium
65104-37-2	Phosphoric acid, monododecyl ester, compound with morpholine (1:2)
65104-38-3	Phosphoric acid, monododecyl ester, compound with 2,2'-iminobis[ethanol] (1:1)
65104-39-4	Phosphoric acid, monododecyl ester, compound with 2,2'-iminobis[ethanol] (1:2)
65104-55-4	1-Tetradecanol, dihydrogen phosphate, diammonium salt
65104-56-5	1-Tetradecanol, dihydrogen phosphate, compound with 2,2'-iminobis[ethanol] (1:1)
65104-57-6	1-Tetradecanol, dihydrogen phosphate, compound with 2,2'-iminobis[ethanol] (1:2)
65104-58-7	1-Tetradecanol, dihydrogen phosphate, monoammonium salt
65104-59-8	1-Tetradecanol, dihydrogen phosphate, compound with morpholine (1:1)
65104-60-1	1-Tetradecanol, dihydrogen phosphate, compound with morpholine (1:2)
65104-94-1	Hexadecadien-1-ol, hydrogen phosphate
65104-95-2	Hexadecen-1-ol, hydrogen phosphate
65104-96-3	Octadecadien-1-ol, hydrogen phosphate
65121-80-4	Phosphoric acid, monodecyl ester, compound with morpholine (1:2)
65121-81-5	Phosphoric acid, monodecyl ester, compound with 2,2'-iminobis[ethanol] (1:1)
65121-90-6	Tetradecen-1-ol, dihydrogen phosphate
65122-24-9	1-Hexadecanol, dihydrogen phosphate, compound with 2,2'-iminobis[ethanol] (1:1)
65122-25-0	1-Hexadecanol, dihydrogen phosphate, diammonium salt
65122-28-3	Hexadecadien-1-ol, dihydrogen phosphate
65138-75-2	Phosphoric acid, monododecyl ester, diammonium salt
65138-76-3	Phosphoric acid, monododecyl ester, monoammonium salt
65138-84-3	1-Hexadecanol, dihydrogen phosphate, compound with 2,2'-iminobis[ethanol] (1:2)
65151-42-0	1,5-Naphthalenedisulfonic acid, 3,3'-[carbonylbis(imino-4,1-phenyleneazo)]bis-, tetralithium salt
65151-45-3	1-Hexadecanol, dihydrogen phosphate, compound with morpholine (1:1)
65151-46-4	1-Hexadecanol, dihydrogen phosphate, compound with morpholine (1:2)
65151-78-2	Phosphoric acid, monooctadecyl ester, compound with 2,2'-iminobis[ethanol] (1:2)
65151-79-3	Phosphoric acid, monooctadecyl ester, compound with morpholine (1:1)
65151-80-6	Phosphoric acid, monooctadecyl ester, compound with morpholine (1:2)
65151-84-0	Phosphoric acid, monooctyl ester, compound with 2,2'-iminobis[ethanol] (1:1)
65151-85-1	Phosphoric acid, monooctyl ester, compound with morpholine (1:1)
65151-86-2	Phosphoric acid, monooctyl ester, compound with morpholine (1:2)
65151-91-9	Hexadecen-1-ol, dihydrogen phosphate
65180-68-9	1H-Pyrazole-3-carboxylic acid, 1-[4-[[4-[bis [2-[(2- chloroethyl)sulfonyl]ethyl]amino]-6-chloro-1,3,5-triazin-2-yl]amino]- 2-sulfophenyl]-4,5-dihydro-5-oxo-4-[(2-sulfophenyl)azo]-
65253-54-5	1H-Imidazolium, 1-ethenyl-1-methyl-, methyl sulfate, polymer with ethenylbenzene and 2-methylpropyl 2-propenoate
65629-44-9	Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2- hydroxy-3-nitro-5-sulfopheny)azo]-2-naphthalenesulfonato(4-)][4- hydroxy-6-[(2-hydroxy-5-methylphenyl)azo]-3-[(2-hydroxy-3-nitro-5- sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentahydrogen
65718-42-5	Chromate(5-), bis[4-hydroxy-6-[(2-hydroxy-5- methylphenyl)azo]-3-[(2-hydroxy-3-nitro-5-sulfophenyl)azo]-2- naphtalenesulfonato(4-)]-
66071-02-1*	Fatty acids, dehydrated castor-oil, polymers with pentaerythritol, phthalic anhydride and trimethyloilethane
66558-73-4	Ethanamine, N,N',N>-[(2,4,6,8,8- pentamethylcyclotetrasiloxane-2,4,6-triyl)tris(oxy)]tris[N-ethyl-
67663-01-8	2(3H)-Furanone, 5-hexyldihydro-4-methyl-
67689-48-9	Cuprate(2-), [3-[[4,5-dihydro-3-methyl-5-oxo-1-[4- [[2-(sulfooxy)ethyl]sulfonyl]phenyl]-1H-pyrazol-4-yl]azo]-4- hydroxybenzenesulfonato(4-)]-, dihydrogen
67746-21-8*	Fatty acids, tallow, polymers with formaldehyde, phthalic anahydride and trimethylolpropane
67762-89-4*	Siloxanes and Silicones, di-Me, Me 3- (oxiranylmethoxy)propyl, reaction products with N-methylglycine sodium salt
67846-54-2	2-Anthracenesulfonic acid, 1-amino-4-[[3-[[3,6-dichloro-4-pyridazinyl) carbonyl]amino]-2,4,6-trimethyl-5-sulfophenyl]amino]-9,10-dihydro-9,10-dioxo-
67873-88-5*	1,2-Benzenedicarboxylic acid, polymer with 1,4- butanediol, (Z)-2-butenedioic acid and 1,2-ethanedoil, reaction products with 3-(triethoxysilyl)-1-propanamine
67892-59-5	Cuprate(2-), [4-hydroxy-3-[[2-hydroxy-4-[[2- (sulfooxy)ethyl]sulfonyl]phenyl]azo]-1-naphthalenesulfonato(4-)]-, dihydrogen
67923-16-4*	Siloxanes and Silicones, di-Me, [(3- mercaptopropyl)silylidyne]tris-
67939-48-4	1H-Imidazo[1,2-a]imidazole-1-carboximidamide, 2,3,5,6-tetrahydro-N-[imino(2,3,5,6-tetrahydro-1H-imidazo[1,2-a]imidazol-1-yl)methyl]-, monohydrochloride
67953-72-4	Poly(oxy-1,2-ethanediyl), .alpha.-sulfo-.omega.- [2,4,6-tris(2-methylpropyl)phenoxy]-, sodium salt
67969-70-4	9,12-Octadecadienoic acid (Z,Z)-, dimer, polymer with 2,2'-[1,4-butanediylbis (oxymethylene)]bis[oxirane] and hexahydro-1, 3-isobenzofurandione
68025-49-0	Poly[oxy(methyl-1,2-ethanediyl)], .alpha., .alpha.', .alpha.>-phosphinylidynetris [.omega.-hydroxy-, polymer with 1,1'- methylenebis[4-isocyanatobenzene]
68039-62-3	Chromate(3-), bis[(6-[(5-chloro-2-hydroxy-4-nitrophenyl)azo]-5-hydroxy-1-naphthalenesulfonato(3-)]-, trihydrogen
68039-63-4	Chromate(3-), [6-[(5-chloro-2-hydroxy-4-nitrophenyl)azo]-5-hydroxy-1-naphthalenesulfonato(3-)][3-hydroxy-4- [(2-hydroxy-1-naphthanlenyl)azo]-1-naphthalenesulfonato(3-)]-, trihydrogen
68071-46-5*	Urea, polymers with formaldehyde, phenol and sulfonated o-cresol, sodium salts
68083-43-2	Methanaminium, N-[4-[[4-(dimethylamino)phenyl] [4- (methylamino)phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-N-methyl- tetracosa-.mu.-oxododecaoxo[.mu.$_{12}$ -[phosphato(3-)- 0:0:0:0':0':0':0>:0>:0>:0''': 0''':0'''']]dodecamolybdate(3-) (3:1)
68083-73-6	1,3-Isobenzofurandione, polymer with 2,2-bis[(2- propenyloxy)methyl]-1-butanol, 1,2-ethanediol, ethenylbenzene, 2,5-furandione and 1,2-propanediol
68083-96-5	Propanoic acid, 3-hydroxy-2,2-dimethyl-, 3-hydroxy- 2,2-dimethylpropyl ester, polymer with oxirane
68155-48-6	Chromate(5-), bis[6-(acetylamino)-4-hydroxy-3-[(2- hydroxy-5-nitro-3-sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentahydrogen
68155-90-8	Ethanol, 2-chloro-, phosphate (3:1), polymer with phosphorus oxide
68201-73-0	Chromate(5-), bis[4-hydroxy-6-[(2-hydroxy-5- methylphenyl)azo]-3-[2-hydroxy-5-nitro-3-sulfophenyl)azo]-2- naphthalenesulfonato (4-)]-, pentahydrogen

CHEMICAL SUBSTANCES PROPOSED FOR REMOVAL FROM TSCA INVENTORY—Continued

CAS Registry No.	Name
68201-74-1	Chromate(5-), bis[6-(acetylamino)-4-hydroxy-3-[(2- hydroxy-3-nitro-5-sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentahydrogen
68214-71-1	1H-Imidazo[1,2-a]imidazole-1-carboximidamide, 2,3,5,6-tetrahydro-N-[imino(2,3,5,6-tetrahydro-1H-imidazo[1,2- a]imidazol-1-yl)methyl]-, sulfate (1:1)
68227-48-5	2-Cyclohexene-1-octanoic acid, 5-carboxy-4-hexyl-, compound with 2,2',2>-nitrilotris[ethanol]
68227-50-9	2-Cyclohexene-1-octanoic acid, 5-carboxy-4-hexyl-, monopotassium salt
68227-90-7	Poly(oxy-1,2-ethanediyl), .alpha.-[2-(butylamino)ethyl]-.omega.-hydroxy-, compound with acetic acid (1:1)
68258-66-2	2-Naphthalenecarboxylic acid, 3-hydroxy-4-[[1- (sulfomethyl)-2-naphthalenyl]azo]-, disodium salt
68295-50-1	2,5-Furandione, polymer with 2-methylbutene, 1- pentene and 2-pentene
68324-22-1	2-Cyclohexene-1-octanoic acid, 5-carboxy-4-hexyl-, compound with 2,2'-iminobis[ethanol] (1:1)
68399-94-0	2-Anthracenesulfonic acid, 1-amino-9,10-dihydro-4- [[4-[(2-hydroxyethyl)sulfonyl]phenyl]amino]-9,10-dioxo-
68411-30-3*	Benzenesulfonic acid, C_{10-13} -alkyl derivs., sodium salts
68412-61-3*	Phosphoric acid, di-C_{6-11} -alkyl esters, compounds with morpholine
68412-62-4*	Phosphoric acid, di-C_{6-11} -alkyl esters, ammonium salts
68427-33-8	1H,3H-Naphtho[1,8-cd]pyran-6-sulfonic acid, 1,3- dioxo-, potassium salt (2:1)
68427-34-9	1,8-Napthalenedicarboxylic acid, 4-sulfo-, potassium sodium salt (2:1:4)
68440-71-1*	Siloxanes and Silicones, di-Me, Me 3- (oxiranylmethoxy)propyl
68440-72-2*	Siloxanes and Silicones, di-Me, Me 3- (oxiranylmethoxy)propyl, reaction products with 2-(methylamino)ethanesulfonic acid
68441-40-7*	Benzenediazonium, 4-[(4-sulfophenyl)azo]-, chloride, reaction products with formaldehyde-salicylic acid polymer
68459-66-1	Oxirane, 2,3-dimethyl-, polymer with ethyloxirane and methyloxirane
68512-38-9*	Heparin, reaction products with N,N-didodecyl-N- methyl-1-dodecanaminium chloride
68513-70-2*	Castor oil, polymer with 2,4-TDI and trimethylolpropane
68515-41-3*	1,2-Benzenedicarboxylic acid, di-C_{7-9} - branched and linear alkyl esters
68515-42-4*	1,2-Benzenedicarboxylic acid, di-C_{7-11} - branched and linear alkyl esters
68517-01-1	Chromium, tris(5-hexadecyl-2-hydroxybenzoato- O^1,O^2)-
68526-68-1*	Amines, di-C_{8-20} -alkylmethyl
68540-40-9	Benzoic acid, 5-hexadecyl-2-hydroxy-, calcium salt (2:1)
68551-08-6*	Alchohols, C_{9-11} -branched
68610-57-1*	Phenol, 4,4'-(1-methylethylidene)bis-, polymer with (chloromethyl)oxirane, reaction products with phenol and 2,4,4- trimethyl-1,6-hexanediamine
68610-81-1*	Benzenediazonium, 4-[(2-methoxy-5-sulfophenyl)azo]- 2-methyl-5-[(2-nitro-4-sulfophenyl)amino]-, chloride, reaction products with formaldehyde-salicylic acid polymer
68647-92-7*	Fatty acids, C_{16-18} , polymers with glycerol and phthalic anahydride
68647-93-8*	Fatty acids, C_{16-18}-unsaturated, polymers with benzoic acid, pentaerythritol and phthalic anhydride
68649-64-9*	2-Propenoic acid, polymer with 1,3-butadiene and 2- propenenitrile, reaction products with bisphenol A-epichlorohydrin polymer, 3-carboxy-1-cyano-1-methylpropyl-terminated polybutadiene and 4,4'-sulfonylbis[benzenamine]
68784-56-5*	Benzene, mono-C_{6-9} -alkyl derivs.
68815-25-8*	Sulfuric acid, mono-C_{12-15} -alkyl esters, compounds with triethanolamine
68908-59-8*	Phosphoric acid, di-C_{7-16} -alkyl esters, compounds with diethanolamine
68911-68-2*	Amines, C_{12-14} -tert-alkyl, compounds with 2(3H)-benzothiazolethione
68912-09-4	Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2-hydroxy-5-nitro-3-sulfophenyl)azo]-2-naphthalenesulfonato(4-)][4-hydroxy-6-[(2-hydroxy-5-methylphenyl)azo]-3-[(2-hydroxy-5-nitro-3- sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentahydrogen
68912-10-7	Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2-hydroxy-3-nitro-5-sulfophenyl)azo]-2-naphthalenesulfonato(4-)][4-hydroxy-6-[(2-hydroxy-5-methylphenyl)azo]-3-[(2-hydroxy-5-nitro-3- sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentahydrogen
68912-11-8	Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2-hydroxy-5-nitro-3-sulfophenyl)azo]-2-naphthalenesulfonato(4-)][4-hydroxy-6-[(2-hydroxy-5-methylphenyl)azo]-3-[(2-hydroxy-3-nitro-5- sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentahydrogen
68922-29-1	Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2- hydroxy-3-nitro-5-sulfophenyl)azo]-2-naphthalenesulfonato(4-)][6- (acetylamino)-4-hydroxy-3-[(2-hydroxy-5-nitro-3-sulfophenyl)azo]-2- naphthalenesulfonato (4-)]-, pentahydrogen
68953-01-5*	Fatty acids, tall-oil, esters with ethoxylated sorbitol
68953-32-2*	Fatty acids, tall-oil, mixed esters with myristyl alcohol and pentaerythritol
68953-48-0*	Fatty acids, tall-oil, lauryl esters, mixed with menhaden oil, oxidized
68954-64-3*	2-Oxepanone, homopolymer, carboxy-terminated
68954-77-8*	Phosphoric acid, di-C_{9-15} -alkyl esters
69178-36-5	3,6,9,12,15,18-Hexaoxapentatriacontanoic acid, 34- methyl-
70025-18-2*	Ethanaminium, 2-hydroxy-N,N-bis(2-hydroxyethyl)-N- methyl-, monoesters with tall-oil fatty acids, Me sulfates (salts)
70210-14-9	2-Naphthalenesulfonic acid, 6-amino-5-[[4-chloro-2- (2-chlorophenoxy)phenyl]azo]-4-hydroxy-, monosodium salt
70693-26-4*	Urea, reaction products with formaldehyde, glyoxal, melamine and methanol
70788-60-2	Ethanaminium, N,N,N-trimethyl-2-[(1-oxo-2- propenyl)oxy]-, polymer with N-(1,1-dimethyl-3-oxobutyl)-2-propenamide and methyl 2-methyl-2-propenoate
70815-11-1	9-Octadecenamide, N-(2-hydroxyethyl)-N-[2-[[2-[(2- hydroxyethyl)amino]ethyl]amino]ethyl]-, (Z)-
70815-19-9	Cobaltate(1-), [2,4-dihydro-4-[(2-hydroxy-5- nitrophenyl)azo]-5-methyl-2-phenyl-3H-pyrazol-3-onato(2-)][1-(2- hydroxyphenyl)azo]-2-naphthalenolato(2-)]-, hydrogen, compound with 1- tridecanamine (1:1)
71002-38-5	Ethanaminium, N,N,N-triethyl-2-[(1-oxo-2- propenyl)oxy]-, ethyl sulfate, polymer with 2-propenamide
71155-97-0	Phosphoric acid, monodecyl ester, compound with morpholine (1:1)
71173-57-4	3-Oxazolidinepropanesulfonic acid, 5-[2-(3-ethyl- 2(3H)-benzoxazolylidene)-1-methylethylidene]-4-oxo-2-thioxo-
71243-81-7*	Hexanedioic acid, polymer with N-(2-aminoethyl)- 1,2-ethanediamine and aziridine, reaction products with epichlorohydrin and polyethylene glycol
71294-50-3	Hexanedioic acid, polymer with N-(2-aminoethyl)-1,2- ethanediamine, (chloromethyl) oxirane, 2,2-dimethyl-1,3-propanediol, 2-(methylamino)ethanol and 4,4'-(1-methylethylidene)bis[phenol], 2- hydroxypropanoate (salt)
71477-63-3	Spiro[5H-[1]benzopyrano[2,3-d]pyrimidine-5,1'(3'H)- isobenzofuran]-7,8-diamine, N',N'-dibutyl- N⁸,N⁸-diethyl-4-methyl-
71566-78-4	Benzenesulfonic acid, dodecyl ester, compound with 4-(phenylazo)-1,3-benzenediamine (1:1)
71889-16-2	1-Propanesulfonic acid, 2-methyl-2-[(1-oxo-2- propenyl)amino]-, polymer with N-ethenyl-N-methylacetamide and 2- propenamide
72066-98-3	Hexanedioic acid, polymer with N-(2-aminoethyl)-1,2- ethanediamine, aziridine and (chloromethyl)oxirane
72089-20-4	2,7-Naphthalenedisulfonic acid, 4-amino-6-[[4-[[[4-[(2,4-diaminophenyl)azo]phenyl]amino]sulfonyl]phenyl]azo]-5-hydroxy-3-[(4-nitrophenyl)azo]-
72175-36-1	9,10-Anthracenedione, 2-[2-(2-methoxyethoxy)ethoxy]-
72245-24-0*	Benzoic acid, 2-hydroxy-, reaction products with formaldehyde, coupled with diazotized 5-amino-8-[[4-[(4-nitro-2- sulfophenyl)amino] phenyl]azo]-2-naphthalenesulfonic acid disodium salt
72245-25-1*	Cobalt, 4-amino-5-hydroxy-6-[(2-hydroxy-5- nitrophenyl)azo]-1,7-naphthalenedisulfonate 2-[[5-(aminosulfonyl)-2- hydroxyphenyl]azo]-3-oxo-N-phenylbutanamide sodium complexes
72251-76-4*	2,7-Naphthalenedisulfonic acid, 4-[[2,4-dihydroxy(hydroxymethyl)phenyl]azo]-5-hydroxy-, coupled with diazotized 2-[(4-aminophenyl)amino]-5-nitrobenzenesulfonic acid monosodium salt
72269-57-9	1H-Thioxantheno[2,1,9-def]isoquinoline-1,3(2H)- dione, 2-(1-oxooctadecyl)-
72269-58-0	1-Naphthalenesulfonic acid, 4-hydroxy-3-[[4-[[[3- [[2-(sulfooxy)ethyl]sulfonyl]phenyl] amino]carbonyl]phenyl]azo]-

CHEMICAL SUBSTANCES PROPOSED FOR REMOVAL FROM TSCA INVENTORY—Continued

CAS Registry No.	Name
72403-26-0*	Benzoic acid, 2-hydroxy-, reaction products with formaldehyde, coupled with 2-[(4-aminophenyl)amino]-5- nitrobenzenesulfonic acid monosodium salt
72987-40-7	2,7-Naphthalenedisulfonic acid, 4-hydroxy-3-[[1- sulfo-6-[[2-(sulfooxy)ethyl]sulfonyl]-2-naphthalenyl]azo]-
73049-37-3*	Amides, C_{12-18} and C_{18}- unsaturated, N,N'-(methylenedi-1,4-phenylene)bis-
73157-49-0	1H-Pyrazole-3-carboxylic acid, 1-[3-[(4-amino-9,10- dihydro-9,10-dioxo-3-sulfo-1-anthracenyl)amino]-5-sulfophenyl]-4,5- dihydro-5-oxo-4-[[4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo]-, 3-methyl ester
73297-17-3	Cobaltate(1-), [4-hydroxy-3-[(2-hydroxy-1- naphthalenyl)azo]benzenesulfonamidato(2-)][8-[(2-hydroxyphenyl)azo]-2- naphthalenolato(2-)]-, hydrogen, compound with 3-[(2-ethylhexyl)oxy]- 1-propanamine (1:1)
73297-20-8	Xanthylium, 3-(diethylamino)-9-[2- (ethoxycarbonyl)phenyl]-6-(ethylamino)-, [2,4-dihydro-4-[(2-hydroxy-5- nitrophenyl)azo]-5-methyl-2-phenyl-3H-pyrazol-3-onato(2-)][2-[(4,5- dihydro-3-methyl-5-oxo-1-phenyl-1H-pyrazol-4-yl)azo]benzoato(2-)]chromate(1-)
73378-64-0*	Copper, [29H,31H-phthalocyaninato(2-)- N^{29},N^{30},N^{31},N^{32}]-, chlorosulfonyl derivs., reaction products with 9-methyl-1-decanamine
73378-65-1*	Copper, [29H,31H-phthalocyaninetetrasulfonyl tetrachloridato(2-)- N^{29},N^{30},N^{31},N^{32}]-, reaction products with 4-methyl-1-pentenamine
73507-73-0	Cobaltate(3-), bis[2-hydroxy-5-nitro-3-[[2-oxo-1- [(phenylamino)carbonyl]propyl]azo] benzenesulfonato(3-)]-, sodium dihydrogen
74411-37-3	Chromate(3-), bis[3-[(4,5-dihydro-3-methyl-5-oxo-1- phenyl-1H-pyrazol-4-yl)azo]-2-hydroxy-5-nitrobenzenesulfonato(3-)]-, trihydrogen, compound with 3-[(2-ethylhexyl)oxy]-1-propanamine (1:1)
74411-39-5	Chromate(1-), [2,4-dihydro-4-[(2-hydroxy-5- nitrophenyl)azo]-5-methyl-2-phenyl-3H-pyrazol-3-onato(2-)][2-[(4,5- dihydro-3-methyl-5-oxo-1-phenyl-1H-pyrazol-4-yl)azo]benzoato(2-)]-, hydrogen, compound with 3-[(2-ethylhexyl)oxy]-1-propanamine (1:1)
75113-51-8	Ethanol, 2,2'-[[3-methyl-4-[[4-[[2- (sulfooxy)ethyl]sulfonyl]phenyl]azo]phenyl]imino]bis-, bis(hydrogen sulfate) (ester)
75150-07-1	Cuprate(4-), [3-[[8-[[4-[bis[2-[(2- chloroethyl)sulfonyl]ethyl]amino]-6-chloro-1,3,5-triazin-2-yl]amino]- 1-hydroxy-3,6-disulfo-2-naphthalenyl]azo]-4-hydroxy-1,5- naphthalenedisulfonato(6-)]-, tetrahydrogen
75701-43-8	1,3-Benzenedicarboxylic acid, polymer with 1,4- butanediol, dimethyl 1,4-benzenedicarboxylate, 2,2-dimethyl-1,3- propanediol, 1,2-ethanediol and nonanedioic acid
78280-22-5	2-Anthracenesulfonic acid, 1-amino-9,10-dihydro- 9,10-dioxo-4-[[4-[[2-(sulfoxy)ethyl]sulfonyl]phenyl]amino]-, potassium sodium salt
78592-92-4	Chromate(1-), bis[4-[[4-(ethylsulfonyl)-2- hydroxyphenyl]azo]-2,4-dihydro-5-methyl-2-phenyl-3H-pyrazol-3-onato(2-)]-, hydeogen compound with 1,6-hexanediamine (1:1)
81457-66-1*	Amines, C_{16-18} -alkyl, bis[2,4-dihydro-4- [(2-hydroxy-5-nitrophenyl)azo]-5-methyl-2-phenyl-3H-pyrazol-3-onato(2-)]chromate(1-) (1:1)
83899-28-9*	Phosphoric acid, C_{8-16} -alkyl esters, compounds with 2-ethyl-1-hexanamine
85631-50-1*	Diphosphoric acid, C_{4-20} -alkyl esters, potassium salts
90247-37-3*	Diphosphoric acid, C_{4-20} -alkyl esters
90247-38-4*	Diphosphoric acid, C_{4-20} -alkyl esters, ammonium salts
90247-39-5*	Diphosphoric acid, C_{4-20} -alkyl esters, compounds with diethanolamine
90247-40-8*	Diphosphoric acid, C_{4-20} -alkyl esters, compounds with morpholine
90247-41-9*	Diphosphoric acid, mixed C_{16-18} - alkadienyl and C_{14-18} -alkenyl esters
101377-63-1*	Copper, [29H,31H-phthalocyaninato(2-)- N^{29},N^{30},N^{31},N^{32}]-, sulfo[[4- [[2-(sulfooxy)ethyl]sulfonyl]phenyl] amino]sulfonyl derivs., potassium sodium salts
106906-32-5	Xanthylium, 9-(2-carboxyphenyl)-3,6- bis(diethylamino)-,salt with dodecylbenzenesulfonic acid (1:1)
112764-80-4*	Amines C_{12-14} -alkyl, bis[3-hydroxy-4- [(2-hydroxy-1-naphthalenyl)azo-7-nitro-1-naphthalenesulfonato(3-)]chromate(3-) (3:1)
112764-81-5*	Amines C_{16-18} -alkyl, [3-hydroxy-4-[(2- hydroxy-1-naphthalenyl)azo]-7-nitro-1-naphthalenesulfonato(3-)][1-[2- hydroxy-4-nitorphenyl)azo]-2-naphthalenolato(2-)] chromate(2-) (2:1)
112764-82-6*	Amines C_{16-18} -alkyl, [3-hydroxy-4-[(2- hydroxy-1-naphthalenyl)azo]-7-nitro-1-naphthalenesulfonato(3-)][1-[(2- hydroxy-5-nitrophenyl)azo]-2-naphthalenolato(2-)] chromate(2-) (2:1)

The following Zeolites are listed on the TSCA Inventory, as a result of errors in processing. The Zeolites are considered mixtures, components of which are separately reportable under TSCA. In order to correct these errors, EPA intends to remove these chemical substances from the Inventory.

68608-42-4*	Zeolites, manganese-containing.
68918-02-5*	Zeolites, calcium-iron-magnesium-vanadium- containing.
68989-20-8*	Zeolites, CaA
68989-21-9*	Zeolites, KA
68989-22-0*	Zeolites, NaA
68989-23-1*	Zeolites, NaX

* CAS Registry numbers followed by an asterisk represent chemical substances of unknown or variable composition, complex reaction products, or biological materials. These substances have nonspecific registrations and lack accepted molecular formula representatives.

Accordingly, EPA proposes the delisting of the 217 chemical substances listed above from the TSCA Inventory.

Dated: August 15, 1989.

Linda A. Travers,
Director,
Information Management Division,
Office of Pesticides and Toxic Substances.

[FR Doc. 89-19825 Filed 8-23-89; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010875–002.

Title: Maryland Port Administration Terminal Agreement.

Parties: Maryland Port Administration, Ceres Marine Terminals, Inc. (Ceres).

Synopsis: The Agreement provides that the basic agreement (Agreement No. 224–010975) will continue on a month-to-month basis for a term of 3 months pending the final negotiations of a long term lease. The Agreement also provides for Ceres to release 945 square feet of shed space originally leased under the basic agreement.

By Order of the Federal Maritime Commission.

Dated: August 21, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-19940 Filed 8-23-89; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR part 540):

Chandris Incorporated and Fantasia Cruising Inc., 900 Third Avenue, New York, New York 10022.

Vessel: Horizon.

Dated: August 21, 1989

Joseph C. Polking,

Secretary.

[FR Doc. 89-19939 Filed 8-23-89; 8:45 am]

BILLING CODE 6730-01-M

Petition No. P3–89 Maximum Container Weights; Filing of Petition for Rulemaking

Notice is given that a petition for rulemaking has been filed by the South Europe/USA Freight Conference, American Trucking Associations, and ATA Intermodal Council.

Petitioners request that the Commission issue a uniform tariff rule prescribing maximum weights for containers which can be transported in the U.S. foreign commerce and placing responsibility on shippers to comply with all applicable laws and regulations pertaining to road weight limitations. Petitioners propose a rule which would, in the case of an overweight container, authorize carriers to either remove excess cargo from a container and forward the excess as a separate freight collect shipment or to discharge the container to the consignee at any port. Moreover, the proposed rule would place joint and several liability on shippers, consignees and cargo owners for damages, fines and penalties resulting from overweight containers which are supplied or stored by shippers, consignees or cargo owners, or on their behalf.

To facilitate thorough consideration of the petition, interested persons are requested to submit comments regarding the petition no later than October 20, 1989. Comments shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001 and shall consist of an original and 15 copies. Comments shall also be served on the filing parties as follows: (1) Attorneys for South Europe/U.S.A. Freight Conference—Stanley O. Sher, Marc J. Fink, Dow, Lohnes & Albertson, 1255 Twenty-third Street NW., Suite 500, Washington, DC 20037; and (2) Attorney for American Trucking Associations and ATA Intermodal Council—Kenneth E. Siegel, Associate General Counsel, American Trucking Associations, 2200 Mill Road, Alexandria, VA 22314.

Copies of the petition are available for examination at the Washington, DC, Office of the Commission, 1100 L Street NW., Room 11101.

Notice of the filing of a related petition for rulemaking regarding the overweight container issue has also been issued this date. See P4–89 Elimination of "Per Container" Rates—Notice of Filing of Petition for Rulemaking.

Joseph C. Polking,

Secretary.

[FR Doc. 89-19863 Filed 8-23-89; 8:45 am]

BILLING CODE 6730-01-M

Petition No. P4–89 Elimination of "Per Container" Rates; Filing of Petition for Rulemaking

Notice is given that a petition for rulemaking has been filed by the Transpacific Westbound Rate Agreement, American Trucking Associations, and ATA Intermodal Council.

Petitioners request that the Commission promulgate rules to preclude common carriers from publishing and assessing rates on a "per container" basis with respect to certain commodities which are shown to contribute to overweight container abuses and that the Commission publish a list of such commodities in its rules.

To facilitate thorough consideration of the petition, interested persons are requested to respond to the petition no later than October 20, 1989. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, and shall consist of an original and 15 copies. Responses shall also be served on the filing parties as follows: (1) Attorneys for Transpacific Westbound Rate Agreement—R. Frederic Fisher, Lillick & Charles, Two Embarcadero Center, Suite 2700, San Francisco, CA 94111, and (2) Attorney for American Trucking Associations and ATA Intermodal Council—Kenneth E. Siegel, Associate General Counsel, American Trucking Associations, 2200 Mill Road, Alexandria, VA 22314.

Copies of the petition are available for examination at the Washington, DC, Office of the Commission, 1100 L Street, NW., Room 11101.

Notice of the filing of a related petition for rulemaking regarding the overweight container issue has also been issued this date. See P3–89 Maximum Container Rates—Notice of Filing of Petition for Rulemaking.

Joseph C. Polking,

Secretary.

[FR Doc. 89-19864 Filed 8-23-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Deposit Guaranty Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presention would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 14, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Deposit Guaranty Corp.*, Jackson, Mississippi; to acquire 100 percent of the voting shares of Commercial National Corporation, Shreveport, Louisiana, and thereby indirectly acquire Commercial National Bank in Shreveport, Shreveport, Louisiana.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Amarillo Delaware Bancorp, Inc.*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Amarillo National Bank, Amarillo, Texas.

Board of Governors of the Federal Reserve System, August 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19936 Filed 8-23-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 7, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Nicholas A. Karris*, Chicago, Illinois; to acquire 48.2 percent of the voting shares of First Alsip Bancorp, Alsip, Illinois, and thereby indirectly acquire First State Bank of Alsip, Alsip, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Arnold K. Skeie*, Burnsville, Minnesota, and Frank L. Farrar, Britton, South Dakota; to acquire 92.11 percent of the voting shares of Oppegard Agency, Inc., Dilworth, Minnesota.

Board of Governors of the Federal Reserve System, August 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-20007 Filed 8-23-89; 8:45 am]

BILLING CODE 6210-01-M

The Nippon Credit Bank, Ltd., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Nippon Credit Bank, Ltd.*, Tokyo, Japan; to engage *de novo* through its subsidiary, Trading Desk Systems, Inc., New York, New York, in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means, provided that: (i) The data to be processed or furnished will be financial, banking, or economic, and the services will be provided pursuant to a written agreement so describing and limiting the services; (ii) the facilities will be designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and (iii) the hardware provided in connection therewith will be offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware will not constitute more than 30 percent of the cost of any packaged offering pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Sioux Bancshares, Inc.*, Sioux Center, Iowa; to engage *de novo* through its subsidiary, First Sioux Financial, Sioux Center, Iowa, in the combination of investment advice and brokerage activities pursuant to §§ 225.25 (b)(15) and (b)(4) of the Board's Regulation Y. These activities will be conducted in the State of Iowa.

Board of Governors of the Federal Reserve System, August 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19938 Filed 8-23-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions and Delegations of Authority; Secretary of Health and Human Services

Notice is hereby given that on July 21, 1989, the President issued a delegation of authority to the Secretary of Health and Human Services as follows:

> By virtue of the authority vested in me as President by the Constitution and the statutes of the United States of America, including sections 241–49 of the National Commission on Acquired Immune Deficiency Syndrome Act (Public Law 100–607, Title II, Subtitle D), section 208 of Title 18 of the United States Code, and Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of Health and Human Services my authority to make determinations under subsection (b) of section 208 of the United States Code for the two members of the National Commission on Acquired Immune Deficiency Syndrome appointed under section 244(a)(1)(A)(ii) of the National

Commission on Acquired Immune Deficiency Syndrome Act.

Dated: August 16, 1989.

Michael J. Astrue,

General Counsel.

[FR Doc. 89-19894 Filed 8-23-89; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the NCVHS Executive Subcommittee established pursuant to 42 U.S.C. 242k, section 306(k)(2), of the Public Health Service Act, as amended, announces the following meeting.

Name: NCVHS Executive Subcommittee.

Time and Date:

3:00 p.m.–7:00 p.m.—September 11, 1989;

8:00 a.m.–6:00 p.m.—September 12, 1989;

8:00 a.m.–12:00 noon—September 13, 1989.

Place: 235 West Main Street, Charlottesville, Virginia 22901.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to review activities and work plans of the full Committee and other Subcommittees and to make plans for the November 1989 NCVHS meeting.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: August 18, 1989.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-19919 Filed 8-23-89; 8:45am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Region X—Seattle; Statement of Organization, Functions, and Delegations of Authority

Part F. of the statement of organization, functions and delegations of authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 46, No. 223, pp. 56927–56929, dated Thursday November 19, 1981; Vol. 48, No. 198, pp. 46446–46447, dated Wednesday, October 12, 1983; Vol. 53, No. 195, pp. 39525–39526, dated Friday, October 7, 1988; Vol. 54, No. 95, pp. 21476–21479, dated Thursday, May 18, 1989; and Vol. 54, No. 102, pp. 22955–22958, dated Tuesday, May 30, 1989) is amended to reflect a reorganization within Region X (Seattle), Office of the Associate Administrator for Operations (AAO). The regional office is reorganizing from a functional structure to a programmatic structure with respect to the administration of the Medicare and Medicaid programs. The reorganization abolishes the current Division of Program Operations and Division of Financial Operations and replaces them with the Division of Medicare and the Division of Medicaid. The organizational alignment and functional statements are identical to those approved within the last 2 years in Regions I, II, III, IV, VII, VIII and IX. The appropriate section titles in the **Federal Register** are being updated to identify the current organizational alignment in each regional office. No changes are being made to the functional statements.

The specific amendments to Part F. are described below:

- Section FP.20.D.2., Division of Financial Operations (FPD(V, VI and X)C) is amended by deleting Region X from the title. The new section title reads: Section FP.20.D.2., Division of Financial Operations (FPD(V and VI)C).
- Section FP.20.D.3., Division of Program Operations (FPD(V, VI and X)D) is amended by deleting Region X from the title. The new section title reads: Section FP.20.D.3., Division of Program Operations (FPD(V and VI)D).
- Section FP.20.D.4., Division of Medicaid (FPD(I–IV and VII–IX)E) is amended by including Region X in the title. The new section now reads: Section FP.20.D.4., Division of Medicaid (FPD I–IV and VII–X)E).
- Section FP.20.D.5., Division of Medicare (FPD(I–IV and VII–IX)F) is amended by including Region X in the title. The new section title reads: Section FP.20.D.5., Division of Medicare (FPD(I–IV and VII–X)F).

Robert A. Streimer,

Acting Associate Administrator for Management.

[FR Doc. 89-19974 Filed 8-23-89; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Designation of Medically Underserved Populations Including Areas Recommended by the Chief Executive Officer and Local Officials of a State

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: Under the provisions of section 330(b)(6) of the Public Health Service (PHS) Act, 42 U.S.C. 254c(b)(6), as amended by Public Law 99-280, the Governor of the State of Oklahoma has asked the Secretary of Health and Human Services (HHS) to designate a specific population within the State as a medically underserved population (MUP). Also, under section 330(b)(3) of the PHS Act, areas in the States of Michigan, California and Ohio have been proposed for MUP designation. This notice provides an opportunity for local officials and appropriate Community Health Center organizations of States of Oklahoma, Michigan, California and Ohio to provide recommendations and to comment on the proposal to designate as MUPs the populations described in this notice.

DATE: Comments should be in writing and should be received by September 25, 1989.

If no adverse comments are received within this period, the populations specified in this notice will be designated as MUPs by the Secretary, effective 30 days after publication. If adverse comments supported by objective data are received, the Secretary will, within 75 days from the date of publication of this notice, review the data and comments received together with the data already provided and any relevant information otherwise available, provide written responses to the commenters, and grant, modify or deny designation of the population(s) as MUPs, as appropriate, based on the review.

ADDRESS: Mail comments to Ms. Rhoda Abrams, Director, Office of Program and Policy Development, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7A-08, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bohrer, Director, Division of Primary Care Services, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7A-55, Rockville, Maryland 20857, (301) 443-2260.

SUPPLEMENTARY INFORMATION: Section 330 of the PHS Act provides that grants may be made to public and nonprofit

private entities to plan, develop and operate Community Health Centers which serve medically underserved populations. Section 330(b)(3) of the PHS Act (42 U.S.C. 254c(b)(3)) and implementing regulations define a medically underserved population as the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services. On September 2, 1975, and October 15, 1976, the Department of Health and Human Services published criteria in the **Federal Register** for use in designating and prioritizing such medically underserved areas (MUAs), and the Secretary has made designations and redesignations of MUAs using these criteria. According to the published criteria, a population must have an Index of Medical Underservice (IMU) score of 62 or less to be recommended for additions to the MUA list.

The PHS Act, as amended in 1986 by Public Law 99-280, provides at section 330(b)(6) that the Secretary may also designate a medically underserved population (MUP) which does not meet the published medically underserved population criteria if the chief executive officer and the local officials of the State in which such a population is located recommend the designation of that population, based on unusual local conditions which are a barrier to access to, or availability of, personal health services. The amendments to section 330 made by Public Law 99-280 also provide (in section 330(b)(5)) that the Secretary must notify and consult with the chief executive officer of the State, local officials of the State, and the State organization, if any, which represents a majority of Community Health Centers in such State, before designating or terminating designation of MUPs.

HHS is currently developing a regulation which will specify MUP criteria, procedures for designation of populations which meet those criteria, procedures for designation of recommended populations which do not meet the MUP criteria but have unusual conditions, and procedures for providing the notifications and opportunities for comment required by the law. The Secretary has determined that it would be inappropriate to delay acting on the request of the Governor of Oklahoma or on the requests from the States of Michigan, California and Ohio until the regulations are published. Therefore, the Health Resources and Services Administration (HRSA) is publishing this notice as a way of seeking comments and recommendations on these proposed designations from local officials of the affected areas, from the organizations which represent a majority of the Community Health Centers in the States involved, and from other interested or affected parties.

The MUP justifications which have been submitted by the Governors and/or States and which are presented in this Notice have been reviewed by HRSA and are considered acceptable to support the designations of the populations or areas listed below was MUPs, unless adverse comments are received as a result of publication of this Notice.

The populations and areas which have been recommended for designation as MUPs are:

(1) Oklahoma—Eastern Oklahoma County

The Governor of the State of Oklahoma is requesting that the population of census tracts 1080.03, 1080.05, 1080.10, 1080.11, 1081.03, 1088.01, 1088.02, 1088.03, 1088.04, 1089, 1090 of eastern Oklahoma County, which represent the service area of the Mary Mahoney Memorial Health Center, be designated as a Medically Underserved Population (MUP). According to the request, when Federal poverty guidelines are applied, nearly 3,500, or roughly 50 percent of the Mary Mahoney Health Center's patients are not able to pay for medical services. Also, many of these patients do not qualify for programs such as Medicare or Medicaid.

Staff analysis indicates that not all of the requested area is clearly underserved. Census tracts 1080.03, 1080.05, and 1081.03 had only single-digit poverty levels in the 1980 census. Tracts 1080.10 and 1080.11 had 10% poverty, also below the U.S. average, and are within or immediately contiguous to Midwest City, where significant numbers of primary care physicians are located.

However, a smaller area consisting of tracts 1088.01, 1088.02, 1088.03, 1088.04, 1089, and 1090 (including Nicoma Park, Choctaw, and Jones) has an above-average poverty level of 15.7%, a population-to-primary care physician ratio of 2400:1 (demonstrating overutilization), and is further from Midwest City, thus indicating more limited access. Therefore, given the Governor's recommendation, HRSA will concur with designation of this smaller area if no objections are received.

(2) Michigan—Portions of Flint and Beecher (in Genesee County)

The Office of Health and Medical Affairs of the State of Michigan is requesting that census tracts 1, 2, 3, 103.02, 103.03, 103.04, 122.01 and 122.02 of Genesee County be designated as a MUP. This area is located along the far north side of the city of Flint and the contiguous unincorporated area further to the north, known as Beecher. This area is an extremely depressed, urban area that has a large minority population, and suffers from chronic high unemployment rates. An area immediately south of this, within Flint, has already been designated as an MUA; an area almost identical to the already-designated MUA plus the proposed MUP has previously been designated as a primary care health manpower shortage area (HMSA).

The requested area scores 49.9 on the Index of Medical Underservice (IMU):

Factor	Percent/ratio	Weighted score
Infant Mortality (deaths per 1000 live births)	23.2	13.1
Population 65+ (as a percent of total population)	4.6	20.2
Population Below Poverty (as a percent of total population)	24.7	10.9
Primary Care Physician to Population Ratio (primary care physicians per 1000 population 1000 population)	.246	5.7
Total Index of Medical Underservice Score		49.9

This score is significantly lower than the maximum value of 62.0 used to indicate underservice.

(3) Michigan—Portions of Ypsilanti (in Washtenaw County)

The Office of Health and Medical Affairs of the State of Michigan is requesting that census tracts 25.01, 25.02 and 26.00 of Washtenaw County be designated as an MUP. This area is located in the city of Ypsilanti, Michigan. It is a low-income area that is economically isolated, despite its inclusion in the Ann Arbor-Ypsilanti metropolitan area and its proximity to the Detroit metropolitan area. The area is also isolated by several geographic boundaries—the Huron River to the east, Interstate Highway 94 to the south and southwest, and Michigan Avenue to the north. There are large concentrations of populations which have been deinstitutionalized from nearby mental hospitals and a large concentration of public housing. Durable goods manufacturing plants have laid off significant numbers of individuals over the past few years which has severed access to needed health benefits. The population's IMU score is well below the 62 upper limit:

Factor	Percent/ ratio	Weighted score
Infant Mortality	20.2	16.4
Population 65+	12.4	19.1
Population Below Poverty	33.0	5.8
Primary Care Physician to Population Ratio	.382	10.7
Total IMU Score		51.8

(4) California—Vacaville Area (in Solano County)

The Office of Statewide Health Planning and Development of the State of California is requesting that census tracts 2529.02, 2529.03, 2532.02 and 2532.03 in the Vacaville Division of Solano County, served by the Vacaville Community Clinic, be designated as an MUP.

Slightly more than 11 percent of the primary-service area population is of Hispanic origin, which approximates the countywide distribution of 10.5 percent. The California Employment Development Department estimates that in 1985 the average monthly number of farmworkers in Solano County was 2,390—ranging from 1,530 in March to 3,380 in September. Of these, 29.9 percent were migrant workers and 20.7 percent were local seasonal workers. The characteristics of this migrant population that place added demands on health services are well known: life expectancy that is 60 percent of the U.S. average; higher infant mortality; and more than twice the national death rate from accidents, tuberculosis, influenza, and pneumonia.

In addition to the farmworkers, the area has a second "migratory" group—wives, relatives, dependents, and friends of inmates who are incarcerated at the California Medical Facility. Most are, by definition, single-female parents and children, according to anecdotal clinic records, they often live two or more families to a dwelling. Also, they appear in the census count of their permanent address rather than the census count for the Vacaville area.

In addition to geographic barriers and service deficiencies, several socioeconomic characteristics of the target population tend to isolate medically indigent and Medi-Cal eligible patients from existing health services. Most are probably below the poverty level and are Medi-Cal enrollees whose access to other providers in the county is increasingly limited, owing to their transitory lifestyle. In addition, many have social problems, including alcohol and drug abuse and smoking.

In summary, the proposed MUP population has higher percentages than the areawide population—up to five times higher—of persons who are poor or near poor, on fixed incomes, aged, disabled, and with social handicaps, such as single-parent status and lack of education. It should be clear that they are also up to five times as vulnerable to inadequate health services as is the areawide population.

The Vacaville Census Division of Solano County is currently designated as a primary care HMSA. Primary-care services are available in varying capacities in contiguous Vallejo and Fairfield. Vallejo, however, is more than 30 minute travel time away from the target area under the HMSA guidelines (20 miles under normal conditions on primary roads, 15 miles on mountainous terrain or on secondary roads) and therefore is not readily accessible to the population. Fairfield is more than 20 minutes travel time away and Solano County's Fairfield clinic, the only other area provider of services to the medically indigent, has reached service capacity.

The proposed Vacaville area's IMU score is below the 62.0 upper limit:

Factor	Percent/ ratio	Weighted score
Infant Mortality	9.3	24.8
Population 65+	16.8	16.1
Population Below Poverty	16.6	16.2
Physician to Population Ratio	.1811	2.8
		59.9

(5) Ohio—Columbus South Side (in Franklin County)

The Scioto Valley Health Systems Agency of the State of Ohio is requesting that 18 census tracts in Franklin County (52, 55, 56.10, 56.20, 57, 58.10, 58.20, 59, 60, 61, 87.10, 87.20, 87.30, 88.11, 88.12, 88.13, 88.21, 88.22) be designated as an MUP. The area is on the south side of Columbus, Ohio and is served by the South Side Family Health Center. This is a high need area with a large minority population. It is bounded by the outer belt, I270; the Scioto River to the west; and major roads and railroads. An area immediately to the north has already been designated as an MUA.

The proposed Columbus South Side area's IMU score is below the 62.0 upper limit.

Factor	Percent/ ratio	Weighted score
Infant Mortality	14.1	20.5
Population 65+	10.2	19.6
Population Below Poverty	19.8	14.9
Primary Care Physician to Population Ratio	.17	2.8
Total IMU Score		57.8

(6) Ohio—Lower Linden Area of Columbus (in Franklin County)

The Department of Health of the State of Ohio is requesting that the Lower Linden area of Columbus, Ohio (census tracts 7.1, 7.2, 7.3, 9.1, 14.0, 15.0, 75.11 and 75.20) be designated as an MUP. The area is currently designated as a primary care Health Manpower Shortage Area. This is the service area for the St. Stephen Clinic, a comprehensive primary care clinic funded by the Columbus City Health Department. Not only does the area have a high poverty rate (26.50), a high infant mortality rate (18.73 percent), and an inadequate number of primary care physicians, but, because of high poverty rates in contiguous tracts, it is unlikely that resources in these contiguous areas would be available for utilization. The area's IMU score is well below the 62.0 upper limit.

Factor	Percent/ ratio	Weighted score
Infant Mortality	18.73	16.4
Population 65+	7.2	20.1
Population Below Poverty	26.5	9.3
Physician to Population Ratio	.28	5.7
Total IMU Score		51.5

This data has been reviewed by the Bureau of Health Care Delivery and Assistance and found to be accurate.

Dated: August 18, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-19866 Filed 8-23-89; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute on Aging; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, September 14–15, 1989, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 9:00 a.m. on Thursday, September 14 until approximately 5:00 p.m. and will again be open to the public from 9:00 a.m. on Friday, September 15 until 12:00 noon. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on September 14 from 5:00 p.m. until recess, and again on September 15 from 1:00 p.m. until adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, NIA, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 5C02, National Institutes of Health, Bethesda, Maryland 20892, (telephone: 301/496-9322) will provide a summary of the meeting and a roster of committee members. Dr. George R. Martin, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: August 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19877 Filed 8-23-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging (NIA), on September 21–22, 1989. On September 21 the Council will meet in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 8:00 a.m. until 2:00 p.m. for a status report by the Director, National Institute on Aging; reports on the Behavioral and Social Research Program; Cancer and Aging; Long Term Care Research; and for discussions of program policies and issues, recent legislation, and other items of interest.

The Council will meet on Friday, September 22 in Conference Room 1-117 at the Gerontology Research Center in Baltimore, Maryland. This meeting will be open to the public from 9:00 a.m. to adjournment for a report on the NIA Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the Council will be closed to the public on September 21 from 2:00 p.m. to recess for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 5C02, Bethesda, Maryland 20892 (301/496-9322), will provide a summary of the meeting and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: August 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19880 Filed 8-23-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meetings of National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee, Allergy and Immunology Subcommittee, Microbiology and Infectious Diseases Subcommittee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on September 28–29, 1989 at the National Institutes of Health, Building 31C, Conference Room 10, Bethesda, Maryland 20892.

The meeting will be open to the public on September 28 from approximately 8:30 a.m. to 8:45 a.m. for opening remarks of the Institute Director and from 10:15 a.m. to recess for meetings of the Council subcommittees. On September 29 the meeting will be open to the public from approximately 8:30 a.m. until 12:15 p.m. for discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include remarks by the Acting Director, NIH; a report on the Intramural Research Program; an update on the National Vaccine Plan; a report on the establishment of STD centers; and, a report from each of the Council subcommittees.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:45 a.m. until approximately 10:15 a.m. on September 28, in conference rooms 4, 8 and 9 respectively. The meeting of the full Council will be closed from approximately 12:15 p.m. until adjournment on September 29 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301-496-7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: August 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19881 Filed 8-23-89; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on October 26–27, 1989. The meeting will be held in Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1:00 p.m. to recess on October 26 and from 9:00 a.m. to adjournment on October 27 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 9:00 a.m. to approximately 12:00 Noon on October 26 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will furnish substantive program information.

Dated: August 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–19678 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), September 21, 22, and 23, 1989, National Institutes of Health, Building 2, Room 102, Bethesda, Maryland 20892. This meeting will be open to the public on September 21 from 8 p.m. to 10 p.m., September 22 from 9 a.m. to 12 noon and again from 2 p.m. to 4:30 p.m., and September 23 from 9 a.m. to 10:30 a.m. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIDDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 21 from 7:30 p.m. to 8 p.m., September 22 from 12 noon to 2 p.m. and again from 4:30 p.m. to recess, and September 23 from 10:30 a.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, Room 9A19, Bethesda, Maryland 20892. Further information concerning the meeting may be obtained by contacting the office of Dr. Jesse Roth, Executive Secretary, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128.

Dated: August 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–19679 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on September 25–26, 1989, Wilson Hall, Building 1, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public September 25, from 8:30 a.m. to 12 noon and again on September 26 from 1 p.m. to adjournment to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the subcommittee and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on September 25 from 1 p.m. to recess: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on September 26 from 8:30 a.m. to approximately 12 noon.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, Room 657, Bethesda, Maryland 20892, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 13.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: August 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 89–19682 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine on September 21, 1989, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m. The Subcommittee will discuss electronic imaging technologies and the role of the National Library of Medicine in relation to these technologies. Attendance by the public will be limited to space available.

Ms. Susan Buyer Slater, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301–496–2311, will provide a summary of the meeting, a roster of subcommittee members, and substantive program information upon request.

Date: August 16, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–19686 Filed 8–23–89; 8:45am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on October 26 and 27, 1989, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 12:45 p.m. and from 1:45 to 4:45 p.m. on October 26 and from 8:30 a.m. to approximately 12 noon on October 27 for the review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 26, from approximately 12:45 p.m. to 1:45 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Daniel R. Masys, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: August 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–19683 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on September 18 and 19, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public on September 18, in Building 31, Conference Room 10, from 8:30 a.m. to 11:00 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 18 from 11:00 a.m. to 6:00 p.m., and on September 19 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: 301, 496–7301 will provide a summary of the meeting, roster of council members. Dr. W. Sue Shafter, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 953, Bethesda, Maryland 20892, Telephone: 301, 496–7061 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13–821, Biophysics and Physiological Sciences; 13–859, Pharmacological Sciences; 13–862, Genetics Research; 13–863, Cellular and Molecular Basis of Disease Research; and 13–880, Minority Access to Research Careers [MARC]).

Dated: August 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–19684 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

National Center for Nursing Research; Meeting: National Advisory Council for Nursing Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Center for Nursing Research, September 13–14, 1989, Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on September 13, from 9 a.m. to 2:30 p.m. and on September 14 from approximately 9:30 a.m. to adjournment. Agenda items to be discussed will include the NCNR Director's Report, National Advisory Council for Nursing Research Biennial Report, Report on the Task Force on Nursing Research, and Report from the Director, Office of Minority Health.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d)) of Public Law 92–463, the meeting will be closed to the public on September 13 from 2:30 p.m. to recess and on September 14 from 8:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ruth K. Aladj, Executive Secretary, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, Room 5–B–23, Bethesda, Maryland 20892, (301) 496–0207, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: August 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 89–19685 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-060-09-4212-08]

Management Framework Plans; Coeur d'Alene District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of action; amendment of the Emerald Empire and Chief Joseph Management Framework Plans, Coeur d'Alene District, Idaho.

NOTICE: Notice is hereby given that the Emerald Empire and Chief Joseph Management Framework Plans have been amended to categorize all District administered lands into either Management Areas or the Adjustment Area.

SUMMARY: Through the Bureau's land use planning process, District administered lands have been categorized so as to permit land tenure adjustments. Nineteen Management Areas have been identified. These areas contain public lands which have been determined to be suitable for long-term retention and other lands which may abe suitable for acquisition. The Adjustment Area contains public lands which have been determined to be nonessential for long-term public ownership. Under this amendment, all public lands currently within Management Areas will be retained in public ownership. The long-term objective being to expand the public land base within the Management Areas by exchanging public land in the Adjustment Area for non-public land in Management Areas. All lands acquired will be managed in accordance with current land use plans.

Any landownership adjustments which may be considered as a result of this land use plan amendment, will involve additional public participation with appropriate notification through the **Federal Register**, news media, and letters to affected and interested parties. A site-specific environmental analysis will be required for each ownership adjustment proposal.

SUPPLEMENTARY INFORMATION: Detailed information about the plan amendment can be obtained by contacting Ted Graf, District Planning Coordinator, Bureau of Land Management, Coeur d'Alene District Office, 1808 N. Third Street, Coeur d'Alene, Idaho 83814, phone (208) 765-1511.

Planning Protest. Any party that participated in the plan amendments and is adversely affected by the amendments may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the Director (760), Bureau of Land Management, 18th and C Streets NW., Washington DC 20240, within 30 days of this notice. The procedures for filing a protest are contained in 43 CFR 1610.5-2. In the absence of any planning protests, this action will become the final determination of the Department of the Interior and the plan amendments will be in affect.

Dated: August 10, 1989.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 89-19951 Filed 8-23-89; 8:45 am]

BILLING CODE 4310-GG-M

[CO-010-09-4142-02]

Craig, CO; Advisory Council Meeting

Time and Date: October 11, 1989, at 10 a.m.

Place: BLM-Craig District Office, 455 Emerson Street, Craig, Colorado.

Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters To Be Considered

1. Approval of final Recreation 2000 resolution.
2. Approval of final weed control resolution.
3. Riparian workshop update.

Contact Person for More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

Dated: August 10, 1989.

Dave Nylander,

Acting District Manager.

[FR Doc. 89-19952 Filed 8-23-89; 8:45 am]

BILLING CODE 4310-JB-M

[ID-050-09-4322-14]

Shoshone District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

DATE: Thursday, October 12, 1989, at 9:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: K. Lynn Bennett, District Manager, Shoshone District Office, P.O. Box 2B, Shoshone, ID 83352. Telephone (208) 886-2206 or FTS 554-6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items: (1) The proposed range improvement (8100) fund allocation for 1990 projects, (2) a field inspection of completed projects funded by the Advisory Board contributions, (3) responsibility for maintenance of range improvements, (4) District Fire Rehabilitation Plan, (5) District riparian program update, and (6) the Idaho water adjudication.

Operation and administration of the Board will be in accordance with the Federal Advisory Committee Act of 1972 (Pub. L. 92-463; 5 U.S.C. Appendix 1) and Department of the Interior regulations, including 43 CFR part 1984.

The meeting will be open to the public. Anyone may present an oral statement between 10:00 and 11:00 a.m. or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District by Tuesday, October 10, 1989. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

K. Lynn Bennett,

District Manager.

[FR Doc. 89-19953 Filed 8-23-89; 8:45 am]

BILLING CODE 4310-GG-M

[ID-050-09-4212-11; IDI-26377]

Realty Action; Recreation and Public Purposes Act Classification; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: The following lands in Jerome County, Idaho have been examined and found suitable for classification for lease or conveyance to Jerome County, Idaho under the provisions of the Recreation and Public Purposes Act (R&PP), as amended (43 U.S.C. 869 *et. seq.*). The County proposes to use the land for an agricultural museum and visitor information center.

T. 9 S., R. 17 E., Boise Meridian
  Sec. 14: S2NW4, NE4SW4, N2NW4SW4, N2S2NW4SW4, SE3SW4NW4SW4, S2SE4NW4SW4, NE4NE4SW4SW4, N2N2SE4SW4, S2NE4SE4SW4, SE4NW4SE4SW4, NE4SE4SE4SW4; containing 180 acres.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use

planning and would be in public interest.

The lease/patent, when issued will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. The following rights-of-way:

Serial No.	Holder	Use
I-015016	ID Dept. of Transportation.	I-84 Highway.
I-2031	ID Dept. of Transportation.	Land for Highway R/W.
I-504	ID Dept. of Transporation.	Land for Loop Road.
I-13654	Jerome County	Road Right-of-Way.
I-20205	Jerome County	Road Right-of-Way.
I-26906	Crossroads of Idaho, Inc.	Road, utilities, and sign right-of-way.

Detailed information concerning this action is available for review at the Shoshone District BLM Office at 400 West F Street, Shoshone, Idaho.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or convenyance under the Recreation and public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication on this notice, interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, BLM Shoshone District Office, P.O. Box 2-B, Shoshone, ID 83352. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

K. Lynn Bennett,

District Manager.

[FR Doc. 89-19957 Filed 8-23-89; 8:45 am]

BILLING CODE 4310-GG-M

[NM-010-4212-20/GP9-0110]

Realty Action on Proposed Land Disposal in Rio Arriba County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land disposal.

SUMMARY: This notice is to advise the public that the Albuquerque District, of the Bureau of Land Management (BLM), is proposing to dispose of approximately 30.44 acres of public land near the Village of Dixon within Rio Arriba County, State of New Mexico.

SUPPLEMENTARY INFORMATION: The BLM has determined that the acres of public land described below are suitable for disposal under the Color-of-Title Acts of 1928 (45 Stat. 1069), 1932 (47 Stat. 53; 43 U.S.C. 178), and Sales under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 (1976).

New Mexico Principal Meridian

Dixon II, New Mexico Public Land Disposal Block

T. 23 N., R. 10 E.,
  Sec. 28, lots 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126;
  Sec. 29, lot 20.

Comprising approximately 16.28 acres.

Disposal of these lands is consistent with: (1) The approved Land Use Recommendations of the BLM's 1979 Rio Grande Management Framework Plan, (2) The 1988 Taos Resource Management Plan, (3) Their location as well as the physical characteristics and the private ownership of adjoining lands, make them difficult and uneconomical to manage as public lands, so disposal would best serve the public interest, (4) This Notice of Realty Action will be published once a week for three weeks in a newspaper of general circulations and will be sent to the New Mexico Congressional Delegation and the relevant congressional committees by BLM. The specific parcels of public land will be disposed of using the following "Tract Disposal Criteria" in descending order of priority:

1. *Color of Title.* Color-of-Title disposal will be made to any applicant within the disposal area who qualifies under the Color-of-Title Acts.
2. *Non-Competitive (Direct) Sale.* Public lands within the disposal block will be sold without competition at Fair Market Value to those individuals who occupied the parcels before June 11, 1979 (the date land use plans were approved) but who do not qualify for title under one of the color-of-title acts.

The terms and conditions applicable the disposal are:

1. The patents will contain a reservation to the United States for ditches and canals.
2. All disposals are for surface estate only. The patents will contain a reservation to the United States for all minerals.
3. Tracts which lie within the 100 year floodplain of the Rio Embudo will be subject to EO 11988 which precludes the seeking of compensation from the United States or its agencies in the event existing or future facilities on those tracts are damaged by flood.
4. All disposal will be made subject to prior existing rights.

Additional information pertaining to this disposal including the environmental documents are available for review at the Taos Resource Area Office, Plaza Montevideo, Cruz Alta Road, Taos, New Mexico 87571, or telephone (505) 758-8851. For a period of 45 days from the date of this notice, interested parties may submit written comments to the Taos Resource Area Manager. Any adverse comments will be evaluated by the New Mexico State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: August 14, 1989.

Robert Dale,

District Manager.

[FR Doc. 89-19955 Filed 8-23-89; 8:45 am]

BILLING CODE 4310-FB-M

[WY-040-09-4400-90]

Resource Management Plan and Environmental Assessment; Pinedale Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Preparation of a Coordinated Resource Management Plan and Environmental Assessment for the Big Piney-LaBarge Area in the Pinedale Resource Area, Rock Springs District, Wyoming.

SUMMARY: The Pinedale Resource Area is initiating a coordinated resource management plan (CRMP) for the Big Piney-LaBarge area, west of Highway 189. The objective of the plan is to integrate several activity plans, resource concerns, and anticipated future oil and gas development. An environmental assessment will be prepared, providing analysis of proposed goals and actions provided in the CRMP.

DATES: The CRMP and environmental assessment are scheduled for completion in the spring of 1990.

ADDRESS: The documents will be available at the Pinedale Resource Area, P.O. Box 768, Pinedale, Wyoming 82941.

FOR FURTHER INFORMATION CONTACT: If you wish to be placed on the mailing list or if you wish to provide resource information for the CRMP, contact Arlan Hiner at the address above or phone (307) 367–4358.

SUPPLEMENTARY INFORMATION: The CRMP will look at integrated resource concerns, such as wildlife habitat, watershed management, livestock grazing, vegetation, soils, etc. in the Big Piney-LaBarge area.

Specific resource management prescriptions, projects, and actions will be developed. The management prescriptions will be developed in accordance with the direction provided in the current land use plan (Pinedale approved RMP). Initial review of the project indicated that an EIS is not necessary and that an environmental assessment will provide in-depth analysis of alternatives. If, after completion and public review of the EA, a determination is made to prepare an EIS, this notice will serve as the Notice of Intent to prepare an EIS.

Donald H. Sweep,

District Manager.

[FR Doc. 89–19956 Filed 8–23–89; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

[DES 89–17]

Availability of the Draft Supplement to the Final Environmental Impact Statement for the Proposed 5-Year Outer Continental Shelf Oil and Gas Leasing Program for Mid-1987 to Mid-1992

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior's Minerals Management Service has prepared a draft supplement to the final Environmental Impact Statement (SEIS) for the 5-Year Outer Continental Shelf Oil and Gas Leasing Program Mid-1987 to Mid-1992 revising the cumulative impact analysis on migratory species for the Alaska and Pacific Outer Continental Shelf Regions.

Information on the availability of the draft SEIS can be obtained from: Regional Director, Alaska Region, Minerals Management Service, 949 East 36th Street, Anchorage, Alaska 99508–4302, phone: (907) 261–4677; Area Coordinator, Pacific Region, Minerals Management Service, 1340 West Sixth Street, Los Angeles, California 90017, phone: (213) 894–4480; and Chief, Branch of Environmental Evaluation, Minerals Management Service, Mail Stop 644, 381 Elden Street, Herndon, Virginia 22070, phone: (703) 787–1674.

Copies of the draft SEIS will be available for review in public libraries located throughout the coastal States. Information regarding the locations of libraries where copies of the statements will be available may be obtained from the offices listed above.

In accordance with 30 CFR 256.2(b), public hearings are tentatively schedueld for the week of September 25th in Los Angeles, California; Sacramento, California; Portland, Oregon; and Anchorage, Alaska, for the purpose of receiving comments and suggestions relating to the draft SEIS. The exact dates, times, and locations of the hearings will be announced by **Federal Register** Notice in the near future.

Comments resulting from reviews of the draft SEIS and written materials prepared as part of testimony at the public hearings will be accepted until October 17, 1989. All comments should be mailed to Minerals Management Service, Mail Stop 644, 381 Elden Street, Herndon, Virginia 22070. Hand deliveries to the Department of the Interior may be made to Room 4230, 18th and C Streets, NW., Washington, DC 20240. Envelopes or packages should be marked "5-Year Program draft SEIS."

After the public hearing testimony and written comments on the draft SEIS have been reviewed and analyzed, a final EIS will be prepared.

Dated: August 21, 1989.

William D. Bettenberg,

Associate Director for Offshore Minerals Management, Minerals Management Service.

Approved:

Jonathan P. Deason,

Director, Office of Environmental Project Review.

[FR Doc. 89–20001 Filed 8–23–89; 8:45 am]

BILLING CODE 4310-MR-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–431 (Final)]

Aluminum Sulfate From Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–731 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Venezuela of aluminum sulfate, provided for in subheading 2833.22.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 417.16 of the Tariff Schedules of the United States), that have been found by the Department of Commerce, in a preliminary determination to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before October 18, 1989 and the Commission will make its final injury determination by December 6, 1989 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207, as amended, 53 FR 33034 (Aug. 29, 1988) and 54 FR 5220 (Feb. 2, 1989)), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–252–1180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted as a a result of an affirmative preliminary determination by the Department of Commerce that imports of aluminum sulfate from Venezuela are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on March 29, 1989 by General Chemical de Puerto Rico, Inc., Dorado, Puerto Rico. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (54 FR 22632, May 25, 1989).

Participation in the investigation. Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report. The prehearing staff report in this investigation will be placed in the nonpublic record on October 13, 1989, and a public version will be issued thereafter, pursuant to § 201.21 of the Commission's rules (19 CFR 207.21).

Hearing. The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on October 26, 1989 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 16, 1989. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 19, 1989, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is October 23, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions. Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 2, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 2, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than November 7, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: August 16, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–19906 Filed 8–23–89; 8:45 am]

BILLING CODE 7020-02-M

BEST COPY AVAILABLE

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31367 (Sub-No. 1)]

Canadian National Railway Co.; Lease From Grand Trunk Western Railroad Co.

August 18, 1989.

Notice to the Parties:

A decision in the above proceeding, served August 17, 1989, and published in the Federal Register on August 18, 1989, at 54 FR 34260, inadvertently contained an error in the "Dates" paragraph.

The "Dates" paragraph is corrected to read as follows:

DATES: Written comments must be filed with the Interstate Commerce Commission no later than September 18, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by October 2, 1989. The service list will be issued shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of the service list. Applicant's reply is due by October 23, 1989.

Noreta R. McGee,

Secretary.

[FR Doc. 89-19966 Filed 8-23-89; 8:45 am]

BILLING CODE 7035-01-M

[ICC Order No. P-103]

Passenger Train Operation; Belt Railway Co. of Chicago

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and New Orleans, Louisiana, Train Nos. 58 & 59, the City of New Orleans. These train operations require the use of tracks and other facilities of the Illinois Central Railroad Company (IC). A portion of the IC tracks near Gilman, Illinois are temporarily out of service because of a derailment. An alternate route is available via the Missouri Pacific System that requires the use of approximately 2,000 feet of track of The Belt Railway Company of Chicago, between 80th and 83rd Streets in Chicago.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, (a) Pursuant to authority vested in me by order of the Commission decided January 13, 1988, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 USC 562(c)), The Belt Railway Company of Chicago is directed to operate trains of the National Railroad Passenger Corporation over approximately 2,000 feet of track between 80th and 83rd Streets in Chicago, Illinois in order to permit a rerouting around the derailment utilizing the Missouri Pacific System.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 6:00 p.m., (CDT), August 2, 1989.

(e) *Expiration date.* The provisions of this order shall expire at 6:00 p.m., (CDT), August 3, 1989, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon The Belt Railway Company of Chicago and the National Railroad Passenger Corporation, and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, August 2, 1989.

William J. Love, Agent.

Noreta R. McGee,

Secretary.

[FR Doc. 89-19933 Filed 8-23-89; 8:45 am]

BILLING CODE 7035-01-M

[ICC Order No. P-104]

Passenger Train Operation; Chicago Central & Pacific Railroad Co.

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and Seattle, Washington, Train Nos. 7 & 8, the Empire Builder. These train operations require the use of tracks and other facilities of the Soo Line Railroad Company (SL). A portion of the SL tracks between Grand Crossing and West Salem, Wisconsin are out of service because of track work and bridge repair. An alternate route is available via the Burlington Northern Railroad that requires the use of the Chicago & Centeral Pacific Railroad Company tracks between Portage and Savanna, Illinois.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice. *It is ordered,* (a) Pursuant to authority vested in me by order of the Commission decided January 13, 1988, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 USC 562(c)), Chicago & Central Pacific Railroad Company is directed to operate trains of the National Railroad Passenger Corporation between Portage and Savanna, Illinois, in order to permit a rerouting utilizing the Burlington Northern Railroad.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 7:00 a.m., (CDT), August 7, 1989.

(e) *Expiration date.* The provisions of this order shall expire at 7:00 a.m., (CDT), August 8, 1989, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon the Chicago Central & Pacific Railroad Company and the National Railroad Passenger Corporation, and a copy of

this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC., August 4, 1989.

William J. Love, Agent.

Noreta R. McGee,

Secretary.

[FR Doc. 89-19964 Filed 8-23-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated November 3, 1988, and published in the **Federal Register** on November 10, 1988, (53 FR 45605), Hoffmann-La Roche Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Alphaprodine (9010)	II
Levorphanol (9220)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 10, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-19995 Filed 8-23-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated March 27, 1989, and published in the **Federal Register** on April 5, 1989, (54 FR 13754), M.D. Pharmaceutical Inc., 3501 Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 10, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-19996 Filed 8-23-89; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By Notice dated March 30, 1989, and published in the **Federal Register** on April 12, 1989, (54 FR 14692), Minn-Dak Growers Limited, Highway 81 North, P.O. Box 1276, Grand Rapids, North Dakota 58206-1276, made application to the Drug Enforcement Administration to be registered as an importer of marihuana (7360), a basic class of controlled substance listed in Schedule I. This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird feed.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 10, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-19997 Filed 8-23-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated August 16, 1988, and published in the **Federal Register** on August 24, 1988, (53 FR 32285), Pharmaceuticals Division, Ciba-Geigy Corporation, Regulatory Compliance SEF 1030, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 10, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-19998 Filed 8-23-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Drug-Free Workplaces

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Governmentwide interim final rules issued by the Office of Management Budget (OMB), implementing the November 18, 1988, Drug-Free Workplace Act of 1988, require Department of Labor (DOL) grantees and contractors to certify that they will provide drug-free workplaces as a precondition of receiving a grant or contract from DOL. The rules are explained in a Training and Employment Information Notice (TEIN) No. 1-89 issued July 3, 1989, and published at the end of this document. Attachment No. 1 to the TEIN, as **Federal Register** Notice, is not reprinted with this notice.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: James MacDonald or Renee Parker, Division of Debt Management, Office of Grants and Contracts Management, Employment and Training Administration, Department of Labor, Room N-4671, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 535-0704.

SUPPLEMENTARY INFORMATION: The interim final rules for grantees, effective as of March 18, 1989, and published January 31, 1989, in the Federal Register at 54 FR 4946, are incorporated as an amendment to the governmentwide common rules pertaining to nonprocurement debarment and suspension. The Department of Labor's rule was published on the same date in the Federal Register at 54 FR 4959 and codified at 29 CFR part 98. The interim final rules relating to contracts are detailed in amendments to the Federal Acquisition Regulation published January 31, 1989, in the Federal Register at 54 FR 4967 and codified at 48 CFR parts 1, 9, 23, and 52.

The interim final rules require grantees to make a drug-free certification as a precondition to the awarding of a grant. Additionally, section B of the drug-free certification requires grantees to submit the listing of the "site(s) for the performance of work" done in connection with the specific grant. A grantee, which is a State, may elect to make a single annual certification to the Department of Labor (DOL). After the effective date of March 18, for calendar year 1989, the certifications must be received prior to the award of new funds. This notice summarizes and announces the issuance of the Training and Employment Information Notice 1-89.

Signed at Washington, DC., this 11th day of August 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION Drug-Free Workplace Act CORRESPONDENCE SYMBOL TM DATE July 3, 1989

TRAINING AND EMPLOYMENT INFORMATION NOTICE NO. 1-89

TO: STATE JTPA LIAISONS
STATE EMPLOYMENT SECURITY AGENCIES
STATE WORKER ADJUSTMENT LIAISONS

FROM: ROBERTS T. JONES
Assistant Secretary of Labor

SUBJECT: Drug-Free Workplace Regulatory Requirements

1. Purpose. To explain the responsibilities of the Employment and Training Administration (ETA) and its grantees under the Drug-Free Workplace Act regulatory requirements.

2. References. Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 29 CFR Part 98 (Federal Register 54 FR 4946); and Training and Employment Information Notice (TEIN) No. 21-88.

3. Background. On November 18, 1988, Congress enacted the Drug-Free Workplace Act requiring Federal agency contractors and grantees to certify that they will provide a drug-free workplace as a pre-condition of receiving a contract or a grant from a Federal agency.

The Office of Management and Budget (OMB) coordinated the participation of over 30 Federal agencies, including the

RESCISSIONS	EXPIRATION DATE Continuing

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BILLING CODE 4510-30-C

Department of Labor, in the development of regulatory requirements to ensure prompt compliance, prompt issuance of final rules, and uniform government-wide implementation of the Act.

The governmentwide rule was issued as an interim final rule, published in the Tuesday, January 31, 1989, Vol. 54, No. 19 **Federal Register**. As an interim final rule, this regulation is fully in effect and binding after its effective date of March 18, 1989. Comments were solicited and some of the rules may be revised.

The Federal Acquisition Regulation (FAR) rules for contracts are contained in the same **Federal Register** notice but are not covered in this information notice which is addressed only to grantee organizations.

The common rule for grants amends the governmentwide nonprocurement debarment and suspension common rule at 29 CFR part 98 to allow agencies to make use of existing debarment and suspension remedies as an ultimate consequence of noncompliance with the requirements of the Drug-Free Workplace Act. It should be noted that, in contrast to the debarment common rule, the drug-free common rule applies only to prime grantees and does not extend to subgrantees.

These requirements are effective for all grants awarded on or after March 18, 1989 or for existing grants if modified "in such a manner that it would be considered a new commitment."

4. *Definitions:* Controlled substance means a controlled substance as it is used in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 through 1300.15. Neither the regulations nor this TEIN expand upon the definition.

Grantee means a person who applies for or receives a grant directly from a Federal agency. (See definition of "person" at 29 CFR 98.105(n))

The term "employee" is intended to include persons hired by the grantee to manage the program and serve participants but is not intended to include the program participants.

Certifications are to be signed by the Governor or by a State official authorized to commit the State and its agencies to the requirements of the Drug-Free Workplace regulations.

5. *Requirements.* The ETA may not award a grant unless the certification has been made that the potential grantee will maintain a drug-free workplace.

As a pre-condition to receiving a grant, a potential grantee shall certify to the ETA that it will maintain a drug-free workplace by:

(a) Publishing and distributing to each employee a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace, and specifying the action that will be taken against employees for violation of such prohibition.

(b) Establishing a drug-free awareness program to inform employees about (1) the dangers of drug abuse in the work-place, (2) the grantee's drug-free workplace policy, (3) any available drug counseling and rehabilitation, and (4) the penalties for drug-abuse violations happening in the workplace.

(c) Providing each employee with a statement including language required by (a) above and (d) requiring the employee to abide by the statement and to notify the grantee with five days if he or she is convicted of a drug violation in the workplace.

(e) Notifying the Grant Officer within 10 days of receiving notice of any drug violation conviction. (Such notifications shall be sent to the appropriate ETA Grant Officer.) If the ETA was notified at the time of the violation through the Incident Report system, a supplemental report should be submitted at the time of notice of conviction.

(f) Within 30 days of such notice, taking one of the following actions—a personnel action against the employee up to and including termination, or requiring such employee to participate satisfactorily in a drug-abuse assistance or rehabilitation program. (See the attached certification for more specific language on all of the above requirements.)

6. *Frequency of Certification.* The rules require grantees to make the drug-free certification for each grant. A grantee, which is a State, however, may elect to make a single annual certification to the Department of Labor (DOL). Thus, if a State receives grants from the DOL under a number of different programs, only one certification to DOL has to be made. Therefore, States may choose to make a certification with each grant application or they may choose to make one annual certification.

Certifications from States making one annual certification to DOL should be sent to: U.S. Department of Labor, Office of Procurement and Grants Management, Room S1522, FPB Attn.: Mr. Richard Strom, 200 Constitution Avenue NW., Washington, DC 20210.

After the effective date of March 18, 1989, the annual certification for Calendar Year 1989 must be received prior to receiving any new grants or the award of new funds. Although not required, it is requested that the annual certification for all subsequent calendar years be received by January 31.

Since States may be the recipients of several grant awards from ETA, both at the National and Regional Office levels, although not required, the States are strongly encouraged to include a copy of the single annual certification with each grant application. This will facilitate the processing of grants.

7. *Listing of Worksites.* Section B of the attached sample certification requires the listing of the "site(s) for the performance of work" done in connection with the specific grant. Space is provided for a street address, city, county, State, and zip code.

The common rules defines Drug-Free workplace as a "site for the performance of work" done in connection with a specific grant * * * (29 CFR 98.605(a)(4)). In the preamble to the common rule, it states that the term "site for the performance of work" is taken directly from the statute and it is intended that the grantee will determine what the "site for the performance of work" is and specify such in the grantee's certification (Section by Section Analysis–54 FR 4948). In determining the number of "site(s) for performance of work," to be listed, it should be noted that only the "prime grantee," and not "subgrantees," are covered by requirements under this subpart. Although not specifically addressing the number of sites to be listed, the preamble states that, if a Federal agency provides financial assistance to a State agency, which in turn passes through the assistance to several local agencies, only the State agency that receives the assistance directly from the Federal agency receives the "grant." Consequently, it is only the State agency that is required to make a drug-free workplace certification under the regulation (Section by Section Analysis–54 FR 4948). Again, emphasizing the limits of the requirements, the preamble states that only "prime grantees" and not "sub-grantees" are covered by requirements * * * even when the prime grantee is only an office that passes Federal funds through to subgrantees who actually do the work (Section by Section Analysis–54 FR 4949).

8. *Grounds for Suspension, Termination or Debarment.* Grantees found in violation of any of the following will be subject to the imposition of sanctions set forth in the Act: (a) Submission of a false certification; (b) Failure to comply with the requirements of the certification; and (c) Failure by the grantee to make a good faith effort to maintain a drug-free workplace. Lack of a good faith effort would be indicated by such a number of the grantee's employees having been convicted under criminal drug statutes for violations occurring in the workplace. Circumstances of grantees vary widely so that the actual number of violations will be determined on a case by case basis.

The preamble specifically states that criminal drug violations by employees not occurring in the workplace are not grounds for a sanction. Likewise, evidence of drug abuse by employees in the workplace that does not result in a criminal conviction is not a ground for a sanction.

9. *Sanctions.* Sanctions set forth in the Drug-Free Workplace Requirements include: (a) Suspension (i.e., withholding) of payments under the grant; (b) Suspension or termination of the grant; and (c) Suspension or debarment of the grantee. The decision of which sanction or sanctions to apply in a particular case is left to the discretion of the Federal grantor agency.

In determining the level of organization at which a sanction should be imposed in case of a violation of the certification requirements, the intent of the regulation, where appropriate, is to focus on the "department, division, or other unit" of the grantee responsible for performance under the grant. For example, if several different organizational units of a State agency receives grants from a Federal agency, and one of the State organizational units violates a requirement of the regulation, sanctions could be imposed on that organizational unit, not on the entire State agency. On the other hand, where it is appropriate, in the context of a particular Federal grant program, to view the entire grantee organization as responsible for the implementation of drug-free workplace requirements under this rule, the entire organization could be subject to sanctions.

If the third sanction is exercised, the debarred grantee is ineligible for the award of any grant from any Federal agency for a period, to be specified in the final decision, not to exceed five years. The rules include a provision which allows the agency head to issue a written waiver of any of these sanctions if the agency head determines that such a waiver would be in the public interest. The determination of the "public interest" is within the discretion of the agency head (i.e., in the DOL, the Secretary of Labor) and this waiver authority may not be delegated.

The review and administrative appeal available to grantees can be found in the debarment procedures at 29 CFR 98.310. The debarment regulations at 29 CFR 98.200 state that debarment or suspension does not affect a person's (organization's) eligibility for statutory entitlements or mandatory awards * * *.

10. *Coverage.* For the purpose of the Drug-Free Workplace Act, *grants* include block grants and entitlement grant programs, *whether or not* they are exempted from coverage under the grants management common rule (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

Subgrantees are not required to make a drug-free workplace certification under the regulation.

11. *Exemptions.* Exemptions include grants providing technical assistance in the form of in-kind services; other assistance in the form of loans, loan guarantees, interest subsidies, insurance; direct appropriations; and any veterans' benefits to individuals.

Current grantees, whose grants were approved and awarded prior to the effective date of this regulation, are not required to make certifications in order to continue receiving payments under existing grants.

Grantees are not required to make a certification prior to a no-cost time extension of an existing grant.

12. *Costs.* A grantee's costs incurred specifically to comply with these requirements are to be regarded as allowable costs under the grant, provided that the costs meet the usual criteria for allowability.

Employers are not required by the common rule to provide or pay for rehabilitation programs.

13. *Effective Date.* This Training and Employment Information Notice shall be effective as of the date of issuance.

14. *Inquiries.* Questions concerning this information notice should be directed to James MacDonald on (202) 535–0704.

15. *Attachments.* (1) **Federal Register**. Notice—"The Drug-Free Workplace Requirements; Notice and Interim Final Rules," (2) A sample "Certification Regarding Drug-Free Workplace Requirements."

Attachment—Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 29 CFR part 98, §§ 98.305, 98.320 and subpart F.

In addition, this certification is a material representation of fact upon which reliance is placed when the agency determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

A. The prospective grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantees policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (D)(2), with respect to any employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free

workplace through implementation of

equipment and computer-assisted

of Standards, Regulations and

received in that office on or before

Paul F. Holloway, Deputy Director

Endowment for the Arts, Washington

workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below, or include as a separate attachment, a listing of the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

____

____

____

____

Name of Organization

____

Name and Title of Authorized Representative

____

Signature

____

Date

[FR Doc. 89-19697 Filed 8-23-89; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act; Announcement of Proposed Noncompetitive Grant Awards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intent to award noncompetitive grants.

SUMMARY: The Employment and Training Administration (ETA) announces its intent to award a grant on a noncompetitive basis to Industrial Technology Institute for the Provision of specialized job training and placement services under the authority of the Job Training Partnership Act (JTPA).

DATES: It is anticipated that this grant agreement will be executed by September 15, 1989, and will be funded for 18 months. Submit comments by 4:45 p.m. (Eastern Time), on September 8, 1989.

ADDRESS: Submit comments regarding the proposed assistance award to: U.S. Department of Labor, Employment and Training Administration, Room C-4305, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Gwendolyn Baron-Simms; Reference FR-DAA-102.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to the Industrial Technology Institute. The proposed grantee will conduct a study of the training and occupational impacts of programmable automation upon U.S. manufacturing in six States: Michigan, Illinois, Ohio, Wisconsin, Indiana, and Minnesota. Examples of programmable automation include: robotics, computer numerical control equipment, computer-assisted design equipment and computer-assisted engineering. A carefully drawn sample of 150 facilities identified as major users of programmable automation will be drawn from a unique data base completed by the Industrial Technology Institute in the summer of 1986. The data base consists of 1400 cases representing 22,000 durable goods manufacturers in Michigan, Illinois, Ohio, Wisconsin, Indiana, and Minnesota. Funds for this activity are authorized by the Job Training Partnership Act (JTPA), as amended, Title IV-Federally Administered Programs. The proposed funding is approximately $89,516 and the project will be completed in 18 months.

Signed at Washington, DC, on August 14, 1989.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 89-19696 Filed 8-23-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-112-C]

Dorchester Mining Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Dorchester Mining Company, Inc., P.O. Box 2560, Wise, Virginia 24293 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 44-06337) located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.
2. The mine is in the Dorchester coal seam, and ranges in height from 40 to 54 inches. The rock partings in this area change often making mining heights very inconsistent. The coal seam also has several dips and an uneven bottom throughout the mine.
3. The use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety because the canopies would:

(a) Dislodge roof bolts; and

(b) Create inadequate visibility and cramped conditions for the operators.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 25, 1989. Copies of the petition are available for inspection at that address.

Dated: August 16, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-19698 Filed 8-23-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-110-C]

Leeco, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Leeco, Inc., 100 Coal Drive, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 62 (I.D. No. 15-16412) and its Mine No. 63 (I.D. No. 15-16413) both located in Perry County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mines' electric face equipment.
2. The mines are in the Hazard No. 4 coal seam, and range in height from 39 to 70 inches.
3. The use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety to the miners because the canopies would:

(a) Reduce the equipment operator's vision and seating position causing fatigue, reduced mental alertness, and unsafe operation;

(b) Hinder the operator's escape from the compartment in the event of an emergency; and

(c) Strike and dislodge permanent overhead roof support, due to the undulating character of the coal seam.

4. For these reasons, petitioner requests a modification of the standard in mining heights less than 56 inches.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virignia 22203. All comments must be postmarked or received in that office on or before September 25, 1989.

Copies of the petition are available for inspection at that address.

Dated: August 15, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-19699 Filed 8-23-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-58]

Performance Review Board; Senior Executive Service

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Membership of SES Performance Review Board.

SUMMARY: The Civil Service Reform Act of 1978, Pub. L. 95-454 (section 405) requires that appointments of individual members to a Performance Review Board be published in the **Federal Register**.

The performance review function for the Senior Executive Service in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator. The following individuals are serving on the Committee and the Board:

Senior Executive Committee

Samuel W. Keller, Chairperson, Associate Deputy Administrator, NASA Headquarters.

C. Howard Robins, Jr., Associate Administrator for Management, NASA Headquarters.

Franklin D. Martin, Assistant Administrator for Exploration, NASA Headquarters.

Thomas P. Murphy, Non-NASA Member.

Performance Review Board

Franklin D. Martin, Chairperson, Assistant Administrator for Exploration, NASA Headquarters.

Ann P. Bradley, Executive Secretary, Assistant Associate Administrator for Personnel Management, NASA Headquarters.

Margaret G. Finarelli, Deputy Associate Administrator for External Relations, NASA Headquarters.

Charles T. Force, Associate Administrator for Space Operations, NASA Headquarters.

Paul F. Holloway, Deputy Director, NASA Langley Research Center.

Richard H. Kohrs, Director, Space Station Freedom, Office of Space Station, NASA Headquarters.

Robert Rosen, Acting Associate Administrator for Aeronautics and Space Technology, NASA Headquarters.

Lawrence J. Ross, Deputy Director, NASA Lewis Research Center Gary L. Tesch, Deputy General Counsel, NASA Headquarters.

James H. Trainor, Director of Space and Earth Sciences, NASA Goddard Space Flight Center.

Thomas E. Utsman, Deputy Director, NASA Kennedy Space Center Paul J. Weitz, Deputy Director, NASA Johnson Space Center.

Richard J. Wisniewski, Deputy Associate Administrator (Institutions), Office of Space Flight, NASA Headquarters.

Thomas N. Tate, Aerospace Industries Association, Non-NASA Member.

Dated: August 18, 1989

Richard H. Truly,

Administrator.

[FR Doc. 89-20003 Filed 8-23-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Advancement Grant Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Advancement Grant Advisory Panel to the National Council on the Arts will be held on September 14-15, 1989, from 9:00 a.m.-5:30 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-19966 Filed 8-23-89; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on September 19, 1989, from 9:00 a.m.-5:00 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 19, 1989, from 4:00 p.m.-5:00 p.m., time permitting. The topic for discussion will be policy issues.

The remaining portion of this meeting on September 19, 1989, from 9:00 a.m.-4:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington; DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-19967 Filed 8-23-89; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Presenters/Jazz Ensembles Section) to the National Council on the Arts will be held on September 13–15, 1989, from 9:00 a.m.–5:00 p.m. in Room M09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 15, 1989, from 3:00 p.m.–5:00 p.m. The topic for discussion will be policy issues.

The remaining portion of this meeting on September 13–14, 1989, from 9:00 a.m.–4:00 p.m. and on September 15, 1989, from 9:00 a.m.–3:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–19966 Filed 8–23–89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guides 3.65, "Standard Format and Content of Decommissioning Plans for Licensees Under 10 CFR parts 30, 40, and 70," identifies the information needed by the NRC staff for evaluations involving decommissioning. The guide also provides a format for submitting this information in a decommissioning plan.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 17th day of August 1989.

For the Nuclear Regulatory Commission.

Themis P. Speis,

Deputy Director for Generic Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 89–19991 Filed 8–23–89; 8:45 am]

BILLING CODE 7590-01-M

Availability of Draft Technical Position on Methods of Evaluating the Seismic Hazard at a Geologic Repository

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the "Draft Technical Position on Methods of Evaluating the Seismic Hazard at a Geologic Repository."

DATE: The comment period expires October 23, 1989.

ADDRESSES: Send comments to Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of this document may be obtained free of charge upon written request to Marlene Creviston, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 4–H–3, Washington, DC 20555, Telephone 1/800/368–5642, Ext. 20440. Local callers should dial 301/492–3387.

FOR FURTHER INFORMATION CONTACT: Kenneth Kalman, Project Manager, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301/492–0426.

SUPPLEMENTARY INFORMATION: This Technical Position (TP) is undertaken by the Division of High-Level Waste Management (DHLWM) to provide regulatory guidance to the U.S. Department of Energy (DOE) on appropriate methodologies that address seismic hazard at a geologic repository. This paper considers the seismic hazard for the construction and operation period through permanent closure ("preclosure"), and the period following permanent closure ("postclosure"). This position also considers differences that may exist, during the preclosure, among the surface facilities and the underground facility. Finally, the applicability of existing methodologies for evaluating seismic hazard to a geologic repository is discussed. The term seismic hazard, as used in this TP, is meant to encompass the hazard due to either vibratory ground motion or coseismic faulting, or both, that can affect the design and performance of the geologic repository.

Dated at Rockville, Maryland this 1st day of August 1989.

For the Nuclear Regulatory Commission.

John J. Linehan,

Director, Repository Licensing and Quality Assurance Project Directorate Division of High-Level Waste Management Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89–19990 Filed 8–23–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-05004]

Consideration of Amendment to Pathfinder Atomic Plant License and Opportunity for Hearing Northern States Power Co.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Byproduct Material License No. 22–08799–02 issued to Northern States Power Company (the licensee) for possession of the Pathfinder Atomic Plant located in Minnehaha County, South Dakota.

The licensee requested the amendment in a letter dated July 18, 1989, which included as enclosures a decommissioning plan, an environmental report, and a safety analysis report.

The amendment would authorize the licensee to perform final decommissioning of the fuel handling building and the reactor building in accordance with the licensee's decommissioning plan.

The fuel handling building and reactor building contain radioactivity and radioactive components, parts, and waste generated as a result of operation of the Pathfinder Atomic Plant from 1964 through 1967 to produce electricity under License No. DPR–11. The reactor was last operated in September, 1967. Subsequent to final shutdown all fuel was removed from the reactor and shipped offsite, the reactor was permanently disabled, and the facility was repowered with three package boilers burning fossil fuel. The fuel handling and reactor buildings were partially dismantled and decontaminated, placed in a safe-storage condition and isolated from the balance of plant. Following completion of these actions in 1971, the 10 CFR part 50 license was surrendered and a separate license issued pursuant to 10 CFR part 30 was amended to authorize possession only of residual radioactive materials as byproduct material.

Prior to issuance of the proposed amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended, and the Commission's regulations.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR part 2. Pursuant to § 2.1205(a) any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852;

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch;

In addition to meeting other applicable requirements of 10 CFR part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Northern States Power Company, to the attention of Mr. David Musolf, Manager, Nuclear Support Services, 414 Nicollet Mall, Minneapolis, Minnesota 55401; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings in 10 CFR part 2, subpart L.

For further details with respect to the proposed action, see the licensee's request for license amendment dated July 18, 1989, which is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

Dated at Rockville, Maryland this 17th day of August, 1989.

For the Nuclear Regulatory Commission.

John T. Greeves,

Deputy Director, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89–19993 Filed 8–23–89; 8:45 am]

BILLING CODE 7590-01-M

Philadelphia Electric Company

[Docket Nos. 50-352-OL-2, 50-353-OL-2 (Severe Accident Mitigation Design Alternative)]

(Limerick Generating Station, Units 1 and 2); Appointment of Adjudicatory Employee

Commissioners: Kenneth M. Carr, Chairman, Thomas M. Roberts, Kenneth C. Rogers, James R. Curtiss.

In accord with the requirements of 10 CFR 2.4, notice is hereby given that Mr. Darrel Nash, a Commission employee in the Office of Nuclear Reactor Regulation, has been appointed as a Commission adjudicatory employee within the meaning of § 2.4 to advise the Commission on issues in the above-captioned proceeding related to consideration under the National Environmental Policy Act of severe accident mitigation design alternatives.

Mr. Nash has not been engaged in the performance of any investigative or litigating function in connection with the Limerick facility or in any factually-related proceeding.

Until such time as a final decision is issued in the above-captioned matter, interested persons outside the agency and agency employees performing investigation or litigating functions in the limerick proceeding are required to observe the restrictions of 10 CFR 2.780 and 2.781 in their communications with Mr. Nash.

It is so ordered.

Dated at Rockville, Maryland this 18th day of August, 1989.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89–20013 Filed 8–23–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-272 and 50-311]

Public Service Electric & Gas Co.; Correction

54 FR 31270 published on July 27, 1989 contained exemptions to 10 CFR part 50,

appendix R related to the Salem Generating Station, Units 1 and 2. The word "smoke" on page 31275, Section 9.3, column 2 on line 2 should be corrected to read "fire."

Dated at Rockville, Maryland, this 15th day of August 1989.

For the Nuclear Regulatory Commission.

Walter Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-19992 Filed 8-23-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27146; File No. SR-PSE-89-19]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Filing of Proposed Rule Change Relating to Clearing Symbol "Give-Up" for Transactions on the Intermarket Trading System ("ITS")

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1989, the Pacific Stock Exchange, Inc. ("Exchange" or "PSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Item 1. Text of the Proposed Rule Change

The PSE propopses to amend Rule I, section 17(h), to require Equity Floor Brokers to "give-up" Options Market Maker clearing symbols for equity trades originating on the Options Trading Floor and sent out over the Intermarket Trading System ("ITS"). (Brackets indicate language to be deleted, italics indicates new language.)

Rule I

ITS Clearing Member Give-Up

Sec. 17 (a)-(g) No change.

(h) For each ITS transaction executed for an Exchange Options Floor Member, an Equity Floor Broker shall immediately "give-up" the proper Options Floor Member clearing symbol through which the transaction is to be cleared.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed PSE Rule I, section 17(h), will require Equity Floor Brokers to "give-up" Options Market Maker clearing symbols for equity trades originating on the Options Trading Floor and sent out over the Intermaket Trading System ("ITS").

The purpose of the proposed rule is to close a loop hole that presently results in substantial lost revenue in the form of outgoing ITS transaction charges. Without an Options Market Maker clearing symbol, the Exchange currently has no way of directly billing the Options Market Maker for equity trades sent on the ITS system by an Equity Floor Broker. Estimated revenue lost in 1988 was approximately $40,000-$50,000.

The proposed rule is presently an informal Exchange policy, and while a few Equity Floor Brokers do "give-up" the Options Market Maker clearing symbol, it is not mandatory. As a result, a strong enforcement stance is not possible. By requiring Equity Floor Brokers to "give-up" the Options Market Maker clearing symbol, the Exchange can begin to generate the lost transaction revenue and institute formal disciplinary action against those failing to abide by the rule provisions.

The proposed rule change is consistent with section 6(b)(4) of the Act, 15 U.S.C. 78f(b)(4), in that it provides for the equitable allocation of reasonable fees among PSE members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (1) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 14, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 17, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-20007 Filed 8-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27147; File No. SR-PHLX-88-32]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Technical Amendment to Equity Specialist Evaluation Rules

I. Introduction

On October 11, 1988, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change which provides for a technical amendment to existing Exchange Rule 515.01. The proposed rule change clarifies the operation of the Exchange's equity specialist evaluation rules.

Notice of the filing of the proposed rule change and its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26731, April 17, 1989) and by publication in the **Federal Register** (54 FR 16438H, April 24, 1989). No comments were received in connection with the proposal.

II. Description of the Proposal

Under PHLX Rule 515.01, the operations of PHLX equity specialists are reviewed on a quarterly basis utilizing objective performance data gathered through the Exchange's Equity Specialist Statistical Evaluation Questionnaire ("Equity Statistical Questionnaire").[3] The Equity Statistical Questionnaire consists of 15 weighted questions covering a wide spectrum of equity specialist functions and activities. The Equity Statistical Questionnaire is divided into four categories—PACE, ITS, General and Primary Issues—with each section containing one or more evaluation categories. Specialist units are ranked from worst to best on an overall basis and in each of the ratings categories.[4] Under existing PHLX Rule 515.01, any specialist units ranking in the bottom 15% in overall ratings for two consecutive quarters, or in the bottom 15% on the PACE, ITS or General sections of the survey for three consecutive quarters, will be judged to have performed below minimum standards and are automatically subject to special scrutiny by the Exchange's Allocation, Evaluation and Securities Committee ("Committee"). As a result, a special review of the specialist will be undertaken by the Committee within the following 60 days to determine whether the specialist's performance has improved. If the Committee concludes that the equity specialist's performance has not improved, it may institute reallocation proceedings, although reallocation of the specialist's registered securities is discretionary.

The Exchange is proposing to amend PHLX Rule 515.01 to reflect the fact that although the Committee will automatically review an equity specialist following a substandard rating, the review does not itself automatically result in a reallocation proceeding. As discussed above, currently the language in PHLX Rule 515.01 provides that an equity specialist unit that ranks in the bottom 15% of the ratings over certain periods of time "will be deemed to have performed below minimum standards." This same specialist unit, however, would not automatically be subject to a reallocation proceeding. Rather, the rule provides that, under these circumstances, the Committee "may institute proceedings to determine whether to remove and reallocate one or more securities." The Exchange, in reviewing this rule, determined to correct this apparent inconsistency. Accordingly, the Exchange is proposing this technical amendment so that the language of the rule is consistent with the actual operation of the Exchange's evaluation procedures.

III. Discussion and Conclusion

The Commission's Division of Market Regulation ("Division") has long favored the incorporation of relative performance measures into specialist evaluation programs "so that specialist who were regularly among the lowest ranked specialists would be subject to performance reviews, regardless of whether their performance met an arbitrarily determined level of acceptable performance."[5] PHLX Rule 515.01 currently employs such relative performance measures, since any equity specialist units ranking in the bottom 15% in overall ratings for two consecutive quarters, or in the bottom 15% on the PACE, ITS or General sections of the survey for three consecutive quarters, are automatically subject to a special review of the Committee within the following 60 days to determine whether the specialist's performance has improved. If the Committee concludes that the equity specialist's performance has not improved, it may institute reallocation proceedings, although reallocation of the specialist's registered securities is discretionary. Moreover, pursuant to PHLX Rule 515.01, mandatory Committee reviews are required if a unit performed below minimum standards on a prior occasion, did not have a specialty stock reallocated, and continues over the next year to demonstrate performance weakness.[6] In such cases the Committee may commence reallocation proceedings if it concludes such action is warranted. The PHLX is proposing to clarify the language of PHLX Rule 515.01 to reflect its actual operation.

In response to questions by Commission staff about how the proposed rule change would affect the PHLX's relative performance criteria, the Exchange responded by emphasizing the fact that the proposed rule change in no way represents a departure from the relative performance standards applicable to PHLX equity specialists.[7] The Exchange contended that although the proposed rule change does not modify the operation of PHLX Rule 515.01, the language of the rule is at variance with the operation of the rule. Finally, the Exchange voiced its continued commitment to employing relative rankings when evaluating equity specialist performance.

The Division agrees with the Exchange's contention that the proposed rule change is technical in nature, and in no way does the change modify the operation of the Exchange's allocation rules or lessen the Exchange's commitment to an effective equity specialist evaluation program that employs relative performance rankings. The current rule does not automatically subject an equity specialist whose performance is below the specified thresholds to a reallocation proceeding. Yet the rule as stated could be construed to deem that the specialist's performance is substandard, a label which may not be warranted. To the extent that there is any opprobrium attached to such a label it may be unjustified. The Commission agrees that that it could appear questionable for an exchange to determine that a specialist's performance is substandard, but then determine not to commence a reallocation proceeding. Thus, the Commission believes it is appropriate for the Exchange to amend the rule's language to render it consistent with the rules's operation.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The Exchange's surveillance staff compiles the statistical data and transmits it directly to the Committee for evaluation purposes.

[4] A mean and standard deviation are computed to arrive at overall ratings as well as ratings for the individual PACE, ITS and General categories. Categories may each have different weightings in determining a firm's evaluation overall and on each section.

[5] SEC, Division of Market Regulation, The October 1987 Market Break, at 4-29 (February 1988).

[6] *See, supra* note 6, and accompanying text.

[7] *See* Letter from Richard T. Chase, Executive Vice-President, PHLX, to Howard Kramer, Assistant Director, SEC, Division of Market Regulation, dated February 8, 1989.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade and strengthen the Exchange's specialist system as well as further investor protection and the public interest in fair and orderly auction markets on national securities exchanges.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change is hereby approved

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: August 17, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–20006 Filed 8–23–89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9070]

Self-Regulatory Organizations; Order Granting Application To Strike From Listing and Registration by the American Stock Exchange, Inc.; Adams-Russell, Inc.

August 16, 1989.

The American Stock Exchange, Inc. ("Exchange") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(c) promulgated thereunder to strike the above specified security from listing and registration thereon.

The reasons alleged for striking this security from listing and registration include the following:

The delisting policies of the Exchange provide that consideration may be given to the suspension or removal of any security when, among other things, it appears that the extent of public distribution or the aggregate market value of the security has become so reduced as to make further dealings on the Exchange inadvisable.

In applying these policies, the Exchange gives consideration to suspending dealings in, or removing from the list, a common stock issue if the number of shares publicly held (exclusive of holdings of officers, directors, controlling shareholders or other family or concentrated holdings) is less than 200,000.

The common stock of Adams-Russell, Inc. ("Company") (common stock, par value 1¢) does not qualify for continued listing under these policies for the following reasons:

Pursuant to an offering circular dated June 14, 1989, a wholly-owned subsidiary of M/A–COM, Inc. offered to purchase all of the Company's outstanding common shares at $15.50 each. That offer expired on July 12, 1989. As a result of the offer only 150,998 shares of the Company's common stock remain publicly held.

The Commission, having considered the facts stated in the application and having due regard for the public interest and protection of investors, orders that said application be, and it hereby is, granted, effective at the opening of business on August 17, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–20000 Filed 8–23–89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 18, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46446

Date Filed: August 16, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope:

September 13, 1989

Description:

Application of Aeronautica De Cancun, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit to provide charter transportation of persons and accompanying baggage between points in the United States and points in Mexico.

Docket Number: 46448

Date Filed: August 16, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope:

September 13, 1989

Description:

Application for Federal Express Corporation pursuant to section 401 of the Act and subpart Q of the Regulations applies for renewal of its authority to serve Vietnam, contained in Segment 3 of Federal Express' certificate of public convenience and necessity for Route 205–F.

Docket Number: 46449

Date Filed: August 17, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope:

September 14, 1989

Description:

Application of British Airways PLC, pursuant to section 402 of the Act and subpart Q of the Regulations requests an amendment of its foreign air carrier permit to authorize it to engage in scheduled foreign air transportation of persons, property and mail between Bermuda and San Juan, Puerto Rico.

Docket Number: 46452

Date Filed: August 17, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope:

September 14, 1989

Description:

Application of Aero-Chago, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, request renewal of its Foreign Air Carrier Permit to engage in nonscheduled foreign air transportation of property and mail between points in the United States and points in the Dominican Republic.

Docket Number: 46454

Date Filed: August 18, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope:

September 15, 1989

Description:

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[8] 15 U.S.C. 78f(b)(5) (1982).

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30–3 (1989).

Application of American Airlines, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity so as to authorize nonstop air service between Miami, Florida, and Toronto, Ontario, Canada.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89–20000 Filed 8–23–89; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Santa Clara and San Benito Counties, California.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent revision.

SUMMARY: The FHWA is issuing this notice revision to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Santa Clara and San Benito Counties, California. The original notice, published Thursday, August 4, 1988, on page 29411, Vol. 53, No. 150 of the **Federal Register**, specified the project limits to be within the vicinity of Uvas Creek (post mile 5.4) west of the City of Gilroy and Route 156 (post mile 22.1). This revision expands the scope of study to include upgrading from highway to freeway status a 4.6-mile portion of U.S. Route 101 in Santa Clara County from post mile 0.0 to 4.6, and to expand a 4.6-mile portion of State Route 25 from a 2-lane to a 4-lane facility from Route 101 to the proposed Route 152 near Shore Road.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915, Telephone: (916) 551–1314, or Hilmer A. Forsen, Study Manager, State of California, Department of Transportation, Transportation Studies Branch, P.O. Box 7310, San Francisco, California 94120, Telephone: (415) 557–9150.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare a draft environmental impact statement covering alternative highway development proposals in the State Route 152 corridor in Santa Clara and San Benito Counties in the vicinity of Uvas Creek, west of Gilroy, Santa Clara County, to the junction of State Routes 152 and 156 in Santa Clara County, a distance of approximately 17 miles. Other project activities would include upgrading to freeway status a 4.6-mile portion of Route 101 in Santa Clara County from the San Benito County line to southern Gilroy, and to expand a 4.6-mile portion of State Route 25 from a 2-lane to a 4-lane facility from Route 101 to the proposed Route 152 near Shore Road. The earlier Notice of Intent for this project, published in the **Federal Register** on August 4, 1988, page 29411, described only work on Route 152.

Transportation improvements are needed in the area to relieve existing and anticipating traffic congestion on highways and streets in the corridor.

Alternatives to be considered, in addition to doing nothing or low-cost improvements to the existing transportation systems, include alternative alignments and selection of a route location and right-of-way protection for the construction of a freeway, expressway, conventional highway, or combination thereof.

A public information "open house" to gather information was held on May 6, 1987 in the City of Gilroy's Council Chambers. A public scoping meeting was held at the City Council Chambers on August 17, 1988. An informal public meeting was held on October 11, 1988 in Hollister at the Pacheco School. Other public information meetings will be held as necessary to inform the public on the study.

Letters describing the proposed action, giving the time and place of the meeting, and soliciting comments were sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who previously expressed or were known to have interest in this proposal. Additional meetings will be scheduled with interested agencies and parties who are not already participating in this study. Those parties are urged to advise the persons, previously listed in this notice, of their interest.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided herein.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on August 18, 1989.

C. Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 89–19962 Filed 8–23–89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. IP89–09; Notice 1]

Receipt of Petition for Determination of Inconsequential Noncompliance; Philips Lighting Co.

Philips Lighting Company of Somerset, NJ, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment," on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 108 requires that the base of each Type HB3 and HB4 light source be marked by its manufacturer or its importer with its HB Type Designation. In June 1989, Philips Lighting Company stamped approximately 28,800 bulbs with an HB3 designation when the proper type designation for these bulbs was HB4. Of the 28,800 noncompliant bulbs Philips Lighting Company recovered 13,800. The company is seeking exemption primarily for the 15,000 bulbs that were not recovered. However, it is also seeking exemption for the remaining unused 13,800 bulbs and any unshipped units that were similarly marked with the wrong HB number.

Philips Lighting Company supports its petition for inconsequential noncompliance with the following reasons:

1. The "HB" type is not generally used by vehicle owners to identify the proper headlamp bulb, and no confusion by owners is expected to occur as a result of the wrong HB number marking.

2. The number more likely to be used, i.e. the 9005 designation, is correctly stamped on the base and the bulbs that were installed in the correct lens and reflector assemblies, and no safety problems are anticipated.

3. Specific notice of the wrong HB number will be provided to any customer to whom Philips sells to insure that installations are correct.

Interested persons are invited to submit written data, views and arguments on the petition of Philips Lighting Company described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC, 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 25, 1989.

Authority: Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: August 21, 1989.

Ralph Hitchcock,

Acting Associate Administrator for Rulemaking.

[FR Doc. 89–19959 Filed 8–23–89; 8:45 am]

BILLING CODE 4910-59-M

Saint Lawrence Seaway Development Corporation Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2:00 p.m., September 11, 1989, at the Corporation's Administration Headquarters, Room 5424, 400 Seventh Street SW., Washington, DC. The agenda for this neeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business, Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than September 6, 1989, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590; 202/366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on August 18, 1989.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 89–19961 Filed 8–23–89; 8:45 am]

BILLING CODE 4910-61-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1987 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Twelve Artists from the German Democratic Republic" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display or the listed exhibit objects at the Harvard University Art Museums in Cambridge, Massachusetts, beginning on or about September 15, 1989 to on or about November 5, 1989; the Wight Art Gallery of the University of California at Los Angeles December 3, 1989 to on or about January 21, 1990; the University of Michigan Museum of Art, Ann Arbor, beginning on or about February 9, 1990 to on or about March 25, 1990, and potentially at the Albuquerque Museum, Albuquerque, New Mexico, from mid-April to mid-June 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 17, 1989

Alberto J. Mora,

General Counsel.

[FR Doc. 89–19913 Filed 8–23–89; 8:45 am]

BILLING CODE 8230-01-M

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[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/485–8827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 54, No. 163
Thursday, August 24, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10:00 a.m., Wednesday, August 30, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 22, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–20155 Filed 8–22–89; 3:53 pm]

BILLING CODE 6210-01-M

NATIONAL SCIENCE FOUNDATION MEETING

NAME: Advisory Committee for Critical Engineering Systems.

DATE AND TIME: September 11, 8:30 a.m.–5:00 p.m.; September 12, 8:30 a.m.–12:00 pm.

PLACE: National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

TYPE: Open.

CONTACT: Dr. Robert D. Hanson, Division Director, Biological & Critical Systems, National Science Foundation, 1800 G Street, NW.–Room 1132, Washington, DC 20550, Phone: 202–357–9545.

MINUTES: May be obtained from contact person listed above.

PURPOSE OF MEETING: To provide advice and recommendations concerning fundamental research for biological and critical engineering systems.

AGENDA: Review research content of the Division research programs and discuss plans for the future.

Dated: August 21, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–20055 Filed 8–22–89; 10:22 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 22, 1989.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 22, 1989, at 2:30 p.m., will be: Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Robert Rosenblum at (202) 272–2400.

Dated: August 21, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–20100 Filed 8–22–89; 12:48 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 163
Thursday, August 24, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-020-09-4212-12; I-27064]

Amendment to the Malad Hills Management Framework Plan; Idaho

Correction

In notice document 89-18142 beginning on page 32016 in the issue of Thursday, August 3, 1989, make the following corrections:

1. On page 32017, in the 1st column, in the 12th line, "Section 31: Ne¼, E½ NW¼" should read "Section 31: NE¼, E½ NW¼".
2. On the same page, in the same column, in the last paragraph, in the fourth line, after "from"insert "appropriation under the public land".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-09-4214-12; MTM 15568]

Termination of Classification for Multiple-Use Management; Montana

Correction

In notice document 89-17586 beginning on page 31254 in the issue of Thursday, July 27, 1989, make the following correction:

On page 31255, in the first column, the 14th line should read, "sec. 9 W½ SW¼, and SE¼ SW¼".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2373 and #2374]

New Jersey; Declaration of Disaster Loan Area (And Contiguous Counties in the State of Pennsylvania)

Correction

In notice document 89-19164 appearing on page 33809 in the issue of Wednesday, August 16, 1989, make the following correction:

The agency docket line should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Highway Safety Program; Amendment of Conforming Products List of Evidential Breath Testing Devices

Correction

In notice document 89-18534 beginning on page 32556 in the issue of Tuesday, August 8, 1989, make the following corrections:

1. On page 32559, in the first column, in the first line "CAMED" should read "CAMEC".
2. On the same page, in the same column, under "CMI, Inc., Owensboro KY", the 14th line should read, "5000 (w/3/8" ID".
3. On the same page, in the same column, under "Intoximeters, Inc., St. Louis, MO", in the 10th and 12th lines "3000 (rev B2A)" should read "3000 (rev B2)", and in the 16th line "Alco-Sensor III" should read "Alco-Sensor IIIA".

BILLING CODE 1505-01-D

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federal register

Thursday
August 24, 1989

Part II

Environmental Protection Agency

40 CFR Parts 80 and 86

Regulation of Fuels and Fuel Additives; Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[AMS-FRL-3577-3]

RIN 2060-AC00

Regulation of Fuels and Fuel Additives; Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes in today's notice a new national program of diesel fuel quality control. The proposed action would require refiners to reduce the sulfur content of on-highway diesel fuel from current average levels of approximately 0.25 weight percent to levels not exceeding 0.05 percent by weight. The proposal would also require that on-highway diesel fuel aromatic levels be held at or below current average levels (approximately 34 percent). The proposed mechanism for capping aromatics would be to set a minimum cetane index specification of 40. Both requirements would take effect at all points throughout the distribution system on October 1, 1993. These proposed actions would result in substantial reductions in emissions of particulate matter and sulfur dioxide (SO_2).

Certification diesel fuel would be changed beginning with both the 1991 and 1994 model years to reflect the changes in commercial diesel fuel quality. Vehicles sold in model years 1991 through 1993 would be certified using 0.10 weight percent sulfur fuel, reflecting the average fuel sulfur level expected to be used over these vehicles' useful lives (as defined in CFR title 40 § 86.085-2). Beginning with the 1994 model year, the certification fuel sulfur level would be that of commercial diesel fuel (*i.e.*, not to exceed 0.05 weight percent).

DATES: EPA has not scheduled a public hearing on this Notice of Proposed Rulemaking. A hearing will be held if requested on or before September 7, 1989. Comments on this proposal will be accepted through September 25, 1989. Additional information on the submission of comments can be found under "Public Participation" in the Supplementary Information section of today's notice.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to: Air Docket Section (A-130), U.S. Environmental Protection Agency, Attention: Docket No. A-86-03, 401 M Street, SW., Washington, DC 20460.

Materials relevant to this proposal have been placed in Docket No. A-86-03 by EPA. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor), and may be inspected between 8 a.m. and 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Moulis, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4229.

SUPPLEMENTARY INFORMATION:

I. Introduction

This preamble presents the major issues raised by today's proposed action and discusses EPA's rationale for each aspect of that action. The following sections of the preamble describe: (1) The background of the proposal, (2) the control options which were considered during the rulemaking development process, (3) the cost to the refining industry of the proposed diesel fuel requirements, (4) the economic and environmental benefits of the proposed rulemaking, (5) the overall cost effectiveness of the proposed fuel regulations, (6) the leadtime issues involved, (7) the enforcement aspects of the proposed rulemaking, (8) the issue of diesel engine certification, and (9) the actual proposal in detail, with request for comments on specific issues.

II. Background

In March of 1985, EPA promulgated particulate emission standards of 0.25 grams per brake horsepower-hour (g/BHP-hr) for heavy-duty trucks (greater than 8,500 lbs), and 0.10 g/BHP-hr for buses, effective beginning in the 1991 model year; and 0.10 g/BHP-hr for heavy-duty trucks beginning in the 1994 model year (50 FR 10606, March 15, 1985). During the rulemaking process, manufacturers expressed concern that sulfur in diesel fuel could either plug the trap-oxidizers that EPA projected would be needed to meet the proposed particulate standard or generate significant particulate sulfate emissions that would make it difficult to meet the standards. To address this concern commenters recommended that EPA regulate the sulfur content of diesel fuel. In the preamble to the final rule, EPA responded that not enough was then known about the effect of diesel fuel sulfur on traps or particulate emissions to take regulatory action at that time, but that it would continue to study the issue and, if warranted, consider regulating diesel fuel sulfur content. In June of 1986, EPA released for public comment a study prepared under contract for EPA by Energy and Resource Consultants, Inc. (ERC), and Sobotka and Company, Inc. (SCI), entitled "Diesel Fuel Quality Effects on Emissions, Durability, Performance, and Costs" (51 FR 23437, June 27, 1986). The draft report by ERC presented the important emission- performance- and durability-related properties of diesel fuel. A version of the Department of Energy's Refinery Evaluation Modeling System (REMS) was used by SCI to estimate the cost involved in making changes in fuel composition.

As presented in the ERC report, the most important emission-related properties of diesel fuel are its sulfur and aromatics content. A reduction in fuel sulfur would directly reduce SO_2 and sulfate particulate emissions, while reducing fuel aromatics would reduce carbonaceous and organic particulate emissions. The report also concluded that back-end volatility (*e.g.*, the 90-percent distillation point) does not significantly affect particulate emissions.

ERC and SCI also concluded that, in addition to the emission benefit, a reduction of fuel sulfur from estimated present levels to 0.05 weight percent would reduce corrosive engine wear and extend engine life. A 30 percent extension in engine life was estimated and used in their cost-effectiveness analysis. This effect is difficult to quantify, however, as data which quantify the effect under in-use conditions with modern oils are scarce. According to the report, a reduction of fuel aromatics content would improve ignition quality, which would in turn improve the ability of engines to start in cold temperatures and reduce engine noise.

The REMS refinery model was used to estimate the cost of reducing fuel sulfur alone from estimated average levels of 0.274 percent to 0.05 percent. The results of the model showed that by segregating the production of highway diesel fuel from distillate burner fuels and by using existing desulfurization capacity, this sulfur reduction could be accomplished at a cost of about 1.2 cents per gallon. ERC claimed that this cost would be more than offset by the savings generated by the increased engine life resulting from desulfurization.

ERC and SCI also concluded (although EPA disagreed with this conclusion) that the desulfurization process would effect a reduction in aromatics content to about 20.3 volume percent varying from refinery to refinery. It was further estimated that an additional reduction of aromatics content to 17 percent would increase refining cost by an additional 0.4 cent per gallon.

Comments received from industry on the ERC/SCI study indicated that additional work was needed in estimating the refinery cost of controlling diesel fuel quality as well as in evaluating the effect of fuel sulfur control on engine life. As a result, EPA commissioned Southwest Research Institute (SWRI) and Bonner and Moore Consultants, Inc. (B&M) to investigate these areas further. A report prepared by SWRI entitled "Study of the Effects of Reduced Diesel Fuel Sulfur Content on Engine Wear" and a B&M report entitled "A Study on Restriction of Sulfur and Aromatics Content of Highway Diesel Fuel" were the result of this effort.

The report by SWRI gave further indication that a reduction in fuel sulfur content might result in a substantial reduction in engine wear. Data in the literature were reviewed and summarized, and an analysis of used oil samples taken from engines operating on high and low sulfur fuel was performed. As documented in the report, it was found that in a large number of used oil samples the amount of wear particles was significantly lower in cases where low sulfur fuel had been used. After reviewing the report, members of industry cautioned that still more investigation was needed before firm conclusions could be drawn regarding the effect of sulfur on engine life.

The Bonner and Moore report examined the effect of fuel quality regulations on the cost of producing diesel fuel. The costs of controlling sulfur to 0.05 weight percent, controlling aromatics to 20 volume percent, and controlling both simultaneously were estimated. Two assumptions regarding the volume of fuel controlled were made in the study. One assumption was that the current degree of segregation (or lack thereof) of heating oil and "highway" diesel fuel would be maintained. The other was that all heating oil would be produced and distributed separately, and would therefore not need to meet "on-highway" fuel specifications. Fuel control cost estimates were developed for each segregation scenario.

In addition to these contracting efforts EPA also engaged in a series of meetings with engine manufacturers. The purpose of these meetings was to monitor the progress being made toward meeting the 1991 and 1994 heavy-duty diesel particulate emission standards. Engine manufacturers repeatedly expressed the need for a reduction in sulfur levels in commercial diesel fuel.

Most recently, in a landmark initiative, members of the diesel engine manufacturing and petroleum refining industries submitted a joint proposal for on-highway diesel fuel modification to EPA. In the proposal, refiners stated that they could provide diesel fuel containing no more than 0.05 weight percent sulfur and meeting a minimum cetane index specification of 40 (as a means of capping aromatics at current levels) by October 1, 1993. Diesel engine manufacturers expressed their belief that this level of fuel quality improvement would be sufficient to allow compliance with the 1994 emission standards. To provide flexibility within the refining industry, it was suggested that only "on-highway" diesel fuel be required to meet these specifications, and that individual refiners be allowed to choose whether or not to market "on-highway" diesel. Engine manufacturers also stated that EPA should allow certification using low sulfur fuel beginning with the 1991 model year to reflect upcoming changes in commercial fuel quality.

The information received from members of industry and government contractors was incorporated into a more recent EPA study. The major focus of the analysis was to determine the cost-effectiveness of a reduction in diesel fuel sulfur content alone, and of a subsequent reduction in diesel fuel aromatics. Thus assumptions were made that would result in the most conservative cost-effectiveness estimates.

Specific topics which were evaluated in detail include the refinery cost of fuel control, the effect of fuel regulations on engine manufacturers' compliance strategies, and the effect of fuel control on engine wear, air quality and health effects.

This more recent study is published today as the Draft Regulatory Impact Analysis (Draft RIA) supporting this proposed rulemaking and has been placed in Docket A-86-03, as referenced above. Although the Draft RIA is now outdated in some aspects, it still comprises the technical basis for today's proposal.

III. Control Options

The control options which were considered in the rulemaking process include several combinations of fuel sulfur and aromatics control. Sulfur control options were considered down to levels as low as 0.05 percent by weight. The primary sulfur control scenario which was evaluated quantitatively was a sulfur reduction to 0.05 percent by weight with no change in aromatics. Intermediate levels of sulfur control were evaluated qualitatively relative to the 0.05 weight percent level.

Aromatics control options ranging from no control to a reduction to 20 volume percent were also considered. Since diesel fuel aromatics levels have been increasing over past years (due to increased blending of high-aromatic cracked stocks into diesel fuel) and the oil industry proposed to eliminate this slippage, the prospect of merely capping aromatics content at current levels to avoid future deterioration was also considered. The primary scenario evaluated quantitatively was a reduction in aromatics to 20 volume percent subsequent to a reduction of fuel sulfur to 0.05 percent by weight. Both primary control scenarios are evaluated in detail in the Draft RIA.

IV. Cost of Fuel Control

To date, several independent analyses of the cost and feasibility of diesel fuel quality control have been prepared. These include studies performed for EPA under contract by SCI and Bonner and Moore Management Consultants, Inc., and a survey conducted by the National Petroleum Refiners Association (NPRA) of member refineries. The results of these different studies show some disagreement over the total cost of diesel fuel modifications due to: (1) Uncertainties involved in the modeling process, and (2) uncertainties in the analytical techniques and assumptions made by the NPRA members in their survey responses. The major areas of modeling uncertainty include: (1) The amount of desulfurization equipment currently in place in the refining industry, (2) the availability and performance of technology required for aromatics control, and (3) the ability of the refining industry and fuel distribution system to segregate "on-highway" and "off-highway" distillate fuels. The degree to which the cost of diesel fuel modification is dependent on these areas of uncertainties is discussed in more detail below.

Of these uncertainties, the segregation issue is the most important. According to the NPRA survey, if current fuel distribution practices are maintained, about 2.4 million barrels per day (bbl/day) of distillate would have to meet the low sulfur requirement. Of these 2.4 million bbl/day, however, only 1.2 million bbl/day are used on highways. If refiners and distributors could completely segregate the on- and off-highway portions of the distillate pool,

BEST COPY AVAILABLE

the controlled volume (and regulatory cost) could be cut nearly in half. In the joint industry proposal for on-highway diesel fuel specifications, it was strongly requested that only on-highway fuel be regulated and that individual refiners be allowed to determine whether or not to market on-highway diesel fuel. The joint industry proposal also contained provisions for distinguishing between on-highway and off-highway diesel fuel (*i.e.*, fuel dying). Although EPA is unable to accurately estimate the quantity of distillate that would be segregated, the language of the joint industry proposal indicates that increased segregation of distillate fuels is likely. To bracket this likelihood, a range of costs will be presented: One assuming complete segregation of on-highway fuel and the other assuming current segregation practices.

A. Sulfur Reduction

Diesel fuel sulfur reduction is accomplished by the hydrodesulfurization process. Hydrogen is introduced at elevated temperature and pressure in distillate hydrotreaters, resulting in a reduction in fuel sulfur content. The technology is commercially proven and is currently employed to a large degree by the refining industry. Thus, regulation of fuel sulfur would merely require the extended application of an existing technology.

The near term cost of mandatory removal of sulfur from diesel fuel is affected significantly by two factors: The amount of excess desulfurization capacity that currently exists in the refining industry, and the degree to which refiners can segregate the production of on-highway diesel fuel. The amount of excess desulfurization capacity available will certainly effect the amount of capital investment required for compliance with sulfur regulations. The degree to which the refining industry can segregate distillate fuel types will impact both capital investment and operating cost requirements.

In 1986, NPRA surveyed member refineries to determine the cost of making changes in fuel quality. The results of the survey showed that while 65 of the 139 refiners which responded had no distillate desulfurization capacity, a significant amount of desulfurization capacity did exist. It was estimated that full practical utilization of existing facilities could result in the production of 315,785 bbl/day of 0.05 weight percent sulfur fuel in 1991. NPRA also concluded that increased segregation of distillate fuels would take place in some refineries, but only to a marginal degree. The NPRA survey estimated that controlling diesel fuel sulfur to 0.05 weight percent would require capital expenditures of $3.3 billion and would cost approximately 3.11 cents per gallon of diesel fuel controlled.

This cost is higher than that estimated by the EPA contractor studies. SCI, in an analysis performed subsequent to the ERC/SCI report, estimated that costs for sulfur control could be as low as 1.41 cents per gallon. This cost estimate was generated assuming that only 69 percent of current desulfurization capacity is utilized and that "on-highway" diesel fuel could be segregated. SCI estimated a cost of 2.28 cents per gallon of controlled fuel assuming no excess desulfurization capacity exists and no increased segregation of distillate products is feasible.

Bonner and Moore Consultants Inc. recently completed another study for EPA on the cost of modifying diesel fuel quality. The results of that study showed that diesel fuel sulfur control would cost 2.69 cents per gallon controlled assuming no excess desulfurization capacity is available and no increase in segregation would take place. The cost per gallon of controlled fuel was estimated to be about the same under an increased segregation scenario (off-highway diesel quality was not allowed to deteriorate in the model).

The NPRA survey's estimate of current excess desulfurization capacity and Bonner & Moore's sulfur reduction cost estimates (adjusted for after tax real rate of return on investment) were used to develop a final estimate of sulfur control costs. The Bonner and Moore costs incorporated and addressed comments which were received on the earlier SCI work, and thus were used preferentially here. These adjusted costs were calculated by EPA to be about 2.3 cents per gallon of controlled fuel assuming no increased segregation of distillate products over the base case. This figure is close to that calculated by SCI, as indicated above. A cost of 1.8 cents per gallon of controlled fuel was estimated for the complete (100 percent) segregation scenario.

B. Aromatics Control

There are a number of technical options for the removal of aromatics from diesel fuel. Hydrocracking, a technology in widespread use, can be used to mildly reduce aromatic levels in distillate fuels. A more severe process, hydrodearomatization, can also be used, although commercial experience is limited. Solvent extraction can also be used for aromatics removal and is also commercially available, but may not be practical in many refining situations. The Mobil "methanol-to-olefin-to-distillate" process can also be used to produce a low aromatic distillate fuel. Whatever process is used, significant capital investment would be required.

The 1986 NPRA survey results indicated that, not only would aromatics control be expensive, but that 53 of the 139 refineries reporting would be financially unable to install the equipment necessary to produce low aromatics fuel. The control of sulfur and aromatics would require capital investment of an additional $3.34 billion beyond that necessary for sulfur control ($6.65 billion total). This investment Plus operating expenses would raise diesel fuel prices by an additional 3.24 cents per gallon (6.35 cents per gallon for both sulfur and aromatics control).

In an analysis performed after the initial ERC/SCI report, SCI estimated aromatic control costs, assuming solvent extraction would be the technology employed for aromatics removal. Costs for controlling aromatics to 20 percent after controlling sulfur to 0.05 weight percent were estimated in its report to be 0.48 cent per gallon assuming 100 percent segregation. A control cost estimate of 1.26 cents per gallon was generated assuming no increase in fuel segregation (*i.e.*, NPRA segregation assumption).

The recently completed Bonner & Moore report estimated costs for controlling aromatics, with hydrodearomatization used as the principal technology for aromatics reduction. Incremental costs for aromatics control (the difference between sulfur and sulfur/aromatics control costs) were projected to be 2.5 cents per gallon of controlled fuel assuming no increase in fuel segregation, and 2.6 cents per gallon of controlled fuel in the increased segregation case.

Using information contained in all three of these studies, EPA estimates that, with NPRA segregation, aromatics control would cost on additional 2.1 cents per gallon of treated fuel with 0.05 weight percent sulfur control already in place. With 100 percent distillate fuel segregation, aromatics control would cost an additional 2.4 cents per gallon of treated fuel.

V. Benefits of Fuel Control

Reductions in diesel fuel sulfur and diesel fuel aromatics would result in a number of benefits (both financial and environmental) which can be weighed against the refining cost of modification. As will be described in Section A, improvements in fuel quality would allow engine manufacturers to comply

more easily with future heavy-duty diesel particulate standards and would reduce the cost and complexity of engine hardware necessary for particulate control. In Section B, the relationship between fuel sulfur and engine wear will be described and possible economic benefits will be quantified. The projected nationwide emission and air quality benefits will be presented in Section C. In Sections D and E, the projected health effects and visibility effects of emission reductions resulting from fuel control will be presented.

A. Exhaust Aftertreatment Technology Benefits

The 0.1 g/BHP-hr particulate emissions standard promulgated for heavy-duty diesel vehicles for the 1994 model year (50 *FR* 10606, March 15, 1985) will likely necessitate the use of some type of exhaust aftertreatment device. The design and the cost of the device will be affected by the quality of the fuel used. The purpose of this section is to identify the impact that the proposed fuel control will have on exhaust aftertreatment technology requirements.

The benefits of sulfur control in this area are two-fold. First of all, fuel sulfur contributes to particulate emissions directly via formation of sulfate in the engine exhaust. On average, about 2 percent of the sulfur in the fuel is emitted as sulfate particulate, or about 0.06–0.08 g/BHP-hr (including the weight of bound water). The proposed fuel sulfur regulations would reduce this amount by roughly 80 percent, greatly enhancing engine manufacturers' abilities to comply with the particulate standards.

Secondly, the use of some aftertreatment devices, particularly flow through catalysts or catalyzed traps is effectively prohibited by the current levels of sulfur in fuel. While a catalyst would significantly reduce organic particulate emissions, a highly active catalyst would also greatly increase the amount of sulfate particulate produced in the exhaust, thus negating the beneficial effects of the catalyst. When fuel sulfur is reduced, however, this effect becomes less pronounced, as the concentration of sulfur species in the exhaust is reduced proportionally. A less active catalyst formulation may be able to avoid this problem, albeit with a loss of efficiency in controlling organic particulates.

A smaller emissions benefit can also be achieved by aromatics control. Engine test results show that reductions in fuel aromatics levels result in lower emissions of carbonaceous (RCP) and soluble organic fraction (SOF) particulates. Hence, a reduction in fuel aromatics would reduce particulate formation, and subsequently reduce the need for exhaust treatment devices.

A projection of exhaust aftertreatment technology requirements was made for heavy-duty diesel vehicles for the 1994 and later model years under various fuel control scenarios. The likely aftertreatment technology mixes were determined by evaluating the cost-effectiveness of each technology type with respect to particulate control, for each heavy-duty vehicle class.

The first step in this process was to establish a distribution of baseline particulate emission levels and compositions, based on available test data, for each vehicle class. Next, various aftertreatment technologies were applied incrementally to engines in each heavy-duty class according to the cost-effectiveness of control, until aftertreatment application was sufficient to insure compliance with the particulate standards (assuming averaging within each heavy-duty subclass).

For 1994 and later model year heavy-duty diesels, due to the large contribution of sulfates to engine-out particulate, compliance with the 0.1 g/BHP-hr particulate standard will likely require fleetwide trap-oxidizer application if no fuel controls are implemented. The only exception is the heavy-heavy-duty engine class, where, with averaging, it is projected that slightly under 90 percent of vehicles will require traps.

With sulfur control, the 1994 picture is projected to be somewhat different. The enhanced feasibility of high-activity flow-through oxidation catalysts with sulfur control would allow the displacement of some traps by oxidation catalysts. On average, it is projected that approximately 35 percent of engines would require traps in all vehicle classes while an additional 29 to 55 percent, depending on engine subclass, would require flow-through oxidation catalysts.

Further reduction of aromatics to 20 volume percent would displace traps from an additional 5 percent of all engines and also decrease oxidation catalyst requirements. The only exception would be the medium heavy-duty diesel engine subclass, where trap displacement would be about 9 percent, but oxidation catalyst usage would increase about 8 percent.

The fuel economy, hardware, and maintenance costs savings associated with sulfur control for 1994 would be $324 for light-heavy duty diesels (LHDDEs), $651 for medium-heavy duty diesels (MHDDEs), $752 for heavy-heavy duty diesels (HHDDEs), and $700 for urban buses. The subsequent reduction in fuel aromatics to 20 percent would result in further savings of $31 for LHDDEs, $87 for MHDDEs, $78 for HHDDEs, and $94 for urban buses.

An analysis to determine the savings in aftertreatment costs for 1991–93 model year engines was also performed and is described in the Draft RIA. This analysis was initiated some time ago and assumed that traps would be used on a substantial number of 1991–93 engines. Presently, however, it appears that manufacturers will not use traps to comply with the 1991 model year truck standard, but instead rely on engine-related controls. The adoption of a 0.10 percent sulfur level for certification fuel is expected to reduce certification emissions by about 0.03–0.04 g/BHP-hr from what they would have been, using a 0.25 percent sulfur fuel and thus ease the manufacturers' attempts to achieve the 1991 standards. Nevertheless, since manufacturers' plans for 1991 engines are already largely fixed, EPA does not expect fuel control to affect manufacturers' plans for engine-related controls in this timeframe. Consequently, in-use emissions would remain unaffected. Some truck manufacturers not able to comply with the standard without fuel control might choose to pay nonconformance penalties (NCPs). However, since NCPs are not a net cost to society, but rather a "transfer payment" from one sector of society to another, no aftertreatment-related societal savings can be claimed for fuel control on these engines.

Traps are still expected to be the primary technology used by bus engine manufacturers to comply with the 0.10 g/BHP-hr 1991 bus standard; use of an alternative fuel, such as methanol, may also be employed. Some reduced usage of traps is likely if certification fuel sulfur were reduced. However, due to the fact that a relatively small number of bus engines would be certified over the 3-year period, this savings due to fuel control was not quantified.

B. Wear Benefits

An extensive body of data exists in the literature documenting the relationship between diesel fuel sulfur and corrosive engine wear. Because of this effect, engine oils typically contain alkaline additives which work to neutralize the acidic sulfur species present in the combustion chamber. As was postulated in the ERC/SCI study, current oil formulations may not be sufficient to completely control corrosive wear, and, consequently, a reduction in fuel sulfur levels may significantly reduce engine wear rates. Based on data available at the time, the ERC/SCI report predicted that the reduction in wear as a result of fuel sulfur controls would increase engine life by approximately 30 percent.

After the ERC/SCI report was released, Southwest Research Institute (SwRI) was commissioned by EPA to study the issue further. As stated in its report, SwRI found that engines which had operated on both high and low sulfur fuels in Southern California exhibited a reduction in wear particles found in used oil samples when operated on low sulfur fuel. While the effect of low sulfur fuel differed among engines and fleets, the vast majority of the data showed that a fuel sulfur reduction from roughly 0.3 to 0.05 weight percent resulted in a 30 to 40 percent reduction in wear particles (*i.e.*, oil iron content).

Based on these data, EPA calculates that a reduction in sulfur level to 0.05 weight percent from the national average baseline sulfur level of 0.25 weight percent would result in a wear rate reduction of about 18 percent. Estimating the financial savings to consumers of such a decrease in engine wear rates, however, is a more difficult task. Engines are currently rebuilt for a number of reasons, including excessive oil consumption, loss of power, and major engine failures. While those engines which fail due to cylinder wear-related factors would realize a benefit, many engines may not. For instance, if an engine experiences a major failure, items such as piston rings and cylinder liners will normally be replaced during rebuild. This would effectively eliminate any benefit of reduced corrosive wear which would have been realized had another engine component not failed.

Further, the relative contributions of corrosive and abrasive wear to engine life is not well understood. While both types of wear contribute to deterioration in engine performance and life, it is possible that abrasive wear contributes more to loss of oil control than does corrosive wear. With these factors in mind, an attempt to quantify the economic benefits of reduced engine wear was made.

Three different approaches were taken to this problem. The first was based on the assumption that lower fuel sulfur levels would allow engine manufacturers to extend recommended oil change intervals, with no resulting change in engine life. The second approach assumed that reduced corrosive wear would result in an extension in the life of the engine. The third approach was to assume that a reduction in wear would extend the life of both the engine and vehicle chassis. These methods provided three independent estimates of the potential cost savings.

Using the first approach, information on lifetime mileage, oil change interval, and vehicle life was used to estimate the annual number of oil changes for each diesel vehicle class. It was then assumed that oil change intervals could be extended by 18 percent, resulting in oil cost savings for owners. The results of this analysis showed present value savings of 1.6¢/gal for light-duty diesel vehicles (LDDVs), 1.2¢/gal for light-duty diesel trucks (LDDTs), 0.8¢/gal for LHDDEs, 1.3¢/gal for MHDDEs, 0.9¢/gal for HHDDEs, and 1.8¢/gal for urban buses. The benefit was assumed to apply, beginning in 1994, only to 1988 MY and later LDDVs and LDDTs, and to 1991 MY and later HDDVs. Vehicles produced in previous model years exhibit much higher particulate emissions, which may contaminate the oil and eliminate the ability to extend oil change intervals.

The second approach was to assume that there would be no change in oil change interval, but that reduced wear rates would lead to a longer engine life. The reduction in engine wear was expected to result in longer rebuild intervals only in engines which are rebuilt for reasons related to high oil consumption. Based on data obtained from an EMA survey of rebuild practices, it was estimated that 42 percent of trucks would realize the 18 percent increase in engine life as a result of sulfur control. This 18 percent increase in engine life translates into an economic benefit for the owner by delaying rebuild maintenance costs. Estimated cost savings under this scenario (averaged over the entire fleet) were 2.51¢/gal of diesel fuel consumed for MHDDEs, 2.52¢/gal for HHDDEs and 1.98¢/gal for urban buses. LDDVs, LDDTs and LHDDEs received no benefit since these engines are not normally rebuilt and there was no credit taken for extended vehicle life under this scenario.

The third approach was to estimate the cost savings assuming that reduced engine wear would result in both an extension in rebuild intervals and in total vehicle life. Under this approach, the economic benefits include both delaying maintenance costs and delaying subsequent vehicle purchases. Once again using information on rebuild practices, rebuild costs, and vehicle costs, an estimate of the cost savings on a per gallon fuel consumed basis was generated. Total costs savings estimates were 30¢/gal for LDDVs, 26¢/gal for LDDTs, 23¢/gal for LHDDEs, 11.7¢/gal for MHDDEs, 8.4¢/gal for HHDDEs, and 11.5¢/gal for urban buses. These estimates represent the highest cost savings which could potentially result from sulfur control.

In summary, EPA estimates the potential for reduced engine wear from low-sulfur fuel under three alternative truck manufacturer/owner response scenarios: (1) Extended oil change intervals with no increase in engine life, (2) no change in oil change intervals but an increase in engine life, and (3) no change in oil change intervals with increases in both engine and total vehicle life. EPA has no data to determine which scenario is most likely to occur. The annual benefits of decreased engine wear in year 2010 are estimated at between $400 million and $3.7 billion; fuel costs, however, are estimated to increase between $540 million and $1.3 billion.

Based on these estimates, the annual net benefit accruing directly to truck owners from reduced engine wear alone could be over $2 billion. Under this scenario, truck owners would be willing to pay over $2 billion more per year for low-sulfur diesel fuel than it would cost refiners to produce it. To the extent that these estimates accurately reflect the effects of the proposed regulation, there must be a reason why such large potential net gains have not materialized based on market forces alone. EPA seeks comment on this issue.

One possible explanation is that there are significant costs to truck owners of determining the actual effects of reduced sulfur fuels on engine wear. Since the effects take place inside engines over fairly long periods of time, it may not be easy to observe, isolate, and measure the effects of reduced sulfur fuels. If these information costs are sufficiently large, they could outweigh the potential net benefits of a move to low-sulfur fuel resulting from market forces alone. Under these circumstances, the information costs would effectively prevent the introduction of low-sulfur fuel.

While these cost savings estimates indicate that substantial societal benefits may result from sulfur control, it is fair to include the caveat that the data base behind this analysis is limited. It has even been argued that sulfur control would have no impact on engine wear. However, as will be seen in Section VI of today's notice, fuel sulfur control is desirable even without the inclusion of reduced engine wear benefits.

C. Emissions and Air Quality

The diesel fuel quality changes being considered would result in substantial reductions in SO_2 emissions and particulate matter formation beyond the reductions resulting from the 1994 0.1 g/BHP-hr particulate standard. In addition, emissions of CO and HC will be indirectly affected by fuel quality modification, due to the changes in aftertreatment technology strategies used by engine manufacturers to comply with the 1994 particulate standards. The projected nationwide emission reductions under the two extreme distillate fuel segregation scenarios (100 percent and NPRA segregation) resulting from fuel sulfur and aromatics control are shown in Tables 1 and 2. Because the effect of diesel fuel control on vehicle emissions changes with model year, the overall emissions and air quality impacts of fuel control varies over time. Because of this, both the near and long term effects of fuel control were evaluated.

As shown in Table l, fuel sulfur control would result in additional reductions in direct particulate matter (PM) from baseline levels (*i.e.*, particulate matter emitted from the exhaust) over that accomplished by the HDD particulate standards alone. This is because fuel sulfur control will result in particulate reductions from pre-1991 HDD and light-duty diesel engines, as well as, depending on the degree of segregation, off-highway sources. In addition, a large reduction in diesel SO_2 emissions would result, representing an 80 percent reduction from baseline levels for those emission sources where diesel fuel is controlled. This would represent a reduction of 1.0–2.5 percent in total national SO_2 emissions. Beyond that, as described in more detail in the Draft RIA, it was estimated that approximately 12 percent of urban SO_2 emissions are converted to sulfate particulates in the urban atmosphere. These atmospherically-formed particulate are referred to as indirect PM. Thus, the reduction in SO_2 emissions would result in substantial indirect PM reductions in both the short and long term as well.

TABLE 1.—PROJECTED NATIONWIDE EMISSION REDUCTIONS DUE TO DIESEL FUEL SULFUR CONTROL

[1000 tons/yr]

Pollutant	1995	2015
Total Particulate	*99–196	159–321
Directly Emitted	10–29	3–35
Indirect	89–167	156–286
SO_2	310–560	542–993
HC	14	86
CO	141	916

*Lower end of range result of 100% distillate segregation, upper end result of current segregation practices.

The emission impacts of controlling fuel aromatics to 20 volume percent were also evaluated and are shown in Table 2. Total particulate emission reductions range from 10,000 tons per year in 1995 to 600 tons per year in 2015. Small HC and CO emission reductions would also result from aromatics control. These particulate reductions are a factor of 10 to 20 smaller in the short term than those resulting from sulfur control. Due primarily to the steady state nature of off-highway diesel operation, emissions from off-highway sources should not be strongly affected by fuel aromatics levels. Thus, estimated emission reductions are constant over the range of distillate segregation scenarios.

TABLE 2.—PROJECTED NATIONWIDE EMISSION REDUCTIONS DUE TO SUBSEQUENT DIESEL FUEL AROMATICS CONTROL

[1000 tons/yr]

Pollutant	1995	2015
Direct PM	10	0.6
SO_2	0	0
HC	38	15
CO	69	96

Should the degree of segregation of distillate fuels increase significantly, it is possible that refiners may change blending practice to direct low sulfur and aromatic blend stocks to the on-highway pool. Directionally, this practice would have the undesirable side effect of increasing the sulfur and aromatic content of non-highway distillate fuels, thus decreasing environmental benefits. Although this practice might take place to some extent, EPA expects the primary approach to meeting this standard would be to desulfurize on-highway diesel fuel blend stocks. Roughly 70 percent of home heating oil is marketed in northeastern states, where limits on the sulfur content of home heating oils would effectively prohibit the shifting to high sulfur blendstocks to the off-highway pool. Thus, most of the home heating oil market is not even potentially available for such a change. The costs for fuel control presented in this preamble were generated under the assumption that the sulfur and aromatics content of the off-highway pool would not increase. To the extent the sulfur content of off-highway distillate does increase in reality, actual refining costs and emission reductions will be commensurately lower.

The air quality impacts of today's proposed rulemaking were also evaluated using a lead-surrogate model developed for previous analyses supporting diesel particulate emission standards (explained in the Draft RIA). Concentrations of various pollutants in urban areas of various sizes were projected. Model results indicate that by the year 2015, in large metropolitan areas (greater than 1,000,000 residents), annual arithmetic mean particulate concentrations would decrease by an additional 2.3–6.3 mg/m^3 as a result of sulfur control. Reductions in annual arithmetic mean concentrations of SO_2 ranging from 7.0–16.7 mg/m^3 are also projected. (These compare to current PM_{10} and SO_2 concentrations in urban areas ranging from 18–90 mg/m^3 and 3–67 mg/m^3, respectively.)

Results of similar modeling for subsequent diesel fuel aromatics control indicate that for large metropolitan areas (greater than 1,000,000 residents) in the year 2015, aromatics control would result in particulate reductions of only 0.01 mg/m^3. A more detailed analysis of the air quality impacts of today's proposal is presented in the Draft RIA.

D. Health Effects

As presented above, the fuel controls proposed today will result in reductions in emissions of diesel particulate, SO_2 and HC, and at the same time decrease the levels of ambient particles that are atmospheric products of SO_2 emissions. Because of the adverse health effects of PM, and SO_2, EPA has developed National Ambient Air Quality Standards (NAAQS). Insofar as an area is out of compliance with these standards, a reduction of these regulated pollutants would reduce health risk. The quantitative degree of benefit cannot be calculated precisely since it depends on current levels in a locality and the precise decrease in levels. Nevertheless, the health effects that can be caused by these compounds is very briefly discussed below to illustrate the utility of reducing any existing unacceptable risk.

Short- and long-term exposure to SO_2 in association with particles causes excess mortality and morbidity. People with cardiorespiratory diseases are at higher risk for mortality following long-term exposure. The increase in morbidity from long-term exposure is reflected as an increase in the prevalence of respiratory symptoms in children and adults and the frequency of respiratory illness in children. Acute exposure to low levels of SO$_2$ alone causes pulmonary function changes in asthmatics.

Upon atmospheric transformation, SO$_2$ can form a class of particles called acidic sulfates, which include ammonium sulfate (the least acidic), ammonium bisulfate, and sulfuric acid (the most acidic). Acute exposure of asthmatics to sulfuric acid can cause pulmonary function changes, and it appears that adolescent asthmatics may be more responsive. Acute exposure of animals and humans changes the ability of the lung to clear particles. Animals exposed for long terms to sulfuric acid exhibit alterations in lung function, structure, and clearance; a few of these changes may be permanent. Given the nature of these changes, some scientists have hypothesized (but not proved) that chronic sulfuric acid exposure may lead to chronic bronchitis. Preliminary estimates from an epidemiological study also raise concern about possible chronic effects. Another significant issue relates to the effects of exposure to sulfuric acid plus other chemicals. A 5-year exposure of animals to a combination of SO$_2$ plus sulfuric acid caused pulmonary function decrements and structural damage to the lungs. In some animal studies, acute exposure to sulfuric acid mixed with particles has been found to be synergistic for some types of pulmonary effects.

The non-cancer effects of exposure to low levels of diesel particles such as might occur in the ambient air are not well understood. High levels have been observed to cause effects in occupational situations and in animal studies, but for non-cancer effects, it is not currently possible to quantitatively extrapolate to lower levels.

The non-cancer health effects of exposure to light aromatic and short-chain aliphatic hydrocarbons are not well understood. Persons chronically exposed to some hydrocarbon mixtures have complained of dizziness, drowsiness, headaches, confusion, and general lethargic feeling. Animal studies of some hydrocarbons show neurotoxic and other effects. When such effects are observed, scientists often become concerned about whether children's developing nervous systems may be affected.

Although this discussion focuses on a few chemicals present in emissions that also serve as precursors to other potentially toxic atmospheric chemicals, there are likely to be more complex alterations that will have an unknown impact on health risk. For example, changes in the chemistry of a diesel particle has the potential to alter its health risk, *i.e.*, potency of a particle, which needs to be evaluated separately from a simple reduction in the mass of particles emitted. While it is clear that the emissions of some toxic chemicals will be decreased, the net health impact of all the changes involved can only be assessed with an appropriate research program.

Another area of concern related to diesel particulate control is that of cancer impacts. It might be argued that, since today's proposal will reduce sulfate emissions, there would be a corresponding increase in organic particulate emissions as manufacturers adjusted their control strategies to keep the same total emission rate. In fact, this assumption is the basis of the analysis of the cancer impacts contained in the draft RIA. However, based upon a more current assessment of expected manufacturer control strategies, the Agency no longer expects this to be the case. The position of engine manufacturers is that the 1994 standard is not feasible without sulfur control, in part because the sulfur itself contributes to the particulate level requiring control. The Agency, therefore, expects that the emission reductions associated with lower sulfur fuels will be used by manufacturers not to increase non-sulfate emissions, but to permit certification of their engines at levels sufficiently below the standard to ensure in-use compliance.

There is a second impact of lower sulfur fuels as it relates to available technology for controlling engine-out emissions. The switch to low sulfur fuel will allow the use of catalyzed devices, both catalyzed traps and flow through reduction catalysts, which could not be used without sulfur control. This change will tend to reduce the organic fraction of particulate emissions, because catalyzed devices operate preferentially on the organics. Thus, rather than increasing cancer incidences, sulfur control may actually reduce them a small amount. However, at this time there is inadequate information to make a quantitative estimate of the impact and update the analysis in the draft RIA. The Agency desires to make it clear that EPA no longer believes that the cancer impacts of sulfur control developed in the draft RIA are correct and specifically requests comment on this matter and how the question of cancer impacts should be analyzed. In addition, comments are requested regarding whether regulatory measures should be taken to encourage catalyzed devices for maximum control of the organic emissions.

The proposed cap on the aromatics levels of diesel fuel is not expected to have a significant impact on cancer incidence since it serves only to prevent the levels from increasing in the future. However, to the extent that average aromatics levels drop as the result of this cap, there could be a very small reduction in cancer due to both a decrease in total particulate emissions, and a decrease in the average carcinogenic potency of the particulates. More stringent control of aromatics would result in a somewhat larger reduction in cancer incidence. The cancer-related benefit of such stringent aromatics control is discussed further in Chapter 6 of the Regulatory Impact Analysis, and interested readers are referred to that chapter for more information. Unlike the analysis of the cancer impacts of sulfur, EPA believes the analysis for aromatics control is still fundamentally sound.

E. Visibility

Because particulate matter both scatters and absorbs light, a change in urban visibility is also projected to result from the diesel fuel modifications proposed in today's notice. The projected changes in urban ambient particulate concentrations described above were used in conjunction with a visibility model developed to support previous rulemakings implementing diesel particulate emission standards to project visibility impacts.

Baseline visibilities were determined for the year 1990 for four ranges of city size as well as for rural areas. The percent change in average visibility by the year 2015 for each population category was then determined assuming no change in non-distillate related particulate. It is projected that, with sulfur control, visibility in the year 2015 will improve by amounts ranging from 0.6 to 4.3 percent in urban areas, and will improve by 1.0 percent in rural areas, relative to baseline 2015 levels. An additional reduction of fuel aromatics to 20 volume percent would have little visibility impact.

VI. Cost-Effectiveness

The cost effectiveness of pollution control is defined as the net societal cost per ton of pollutant removed and is used to rank pollution control programs. The projections of pollutant reductions and the cost and credit elements described above were used in estimating

the cost-effectiveness of diesel fuel control according to a calendar year approach discounted over a 33-year period. The proposed reduction of diesel fuel sulfur would have impacts on the emissions of a number of different pollutants, including particulates (PM), HC, CO, and SO$_2$. However, since PM control is the major focus of this proposal, in the cost-effectiveness analysis the net cost per ton of PM controlled was determined and used in evaluating the various fuel control options. The net societal cost consists of the refinery cost of the fuel control and any fuel composition-related fuel economy penalty, less any societal cost savings "credits" resulting from fuel control. These societal cost savings include utilization of less expensive new engine technology, decreased fuel consumption as a result of reduced trap usage, and savings associated with reduced engine wear.

Since the fuel controls proposed in today's notice would affect different model years' vehicles at the same time, and to varying degrees, a calendar year approach to cost-effectiveness was used (*i.e.*, net costs and emission reductions were estimated for each calendar year). Since the effectiveness of the control changes dramatically over time (due to fleet and technology turnover) the cost-effectiveness was estimated over a 33-year period using a discount rate of 10 percent. The cost-effectiveness, including and excluding various wear credits and gaseous pollutant credits, is shown in Table 3.

TABLE 3.—33-YEAR URBAN COST-EFFECTIVENESS ANALYSIS

	Cost-Effectiveness ($/ton)
Sulfur Control	
Maximum wear credit included.	−66,148 to −19,253.
Minimum wear credit included.	−3,906 to 4,304.
No wear credit included.	2,82[illegible] to 6,773.
Aromatics Control	
Primary Analysis	310,751 to 560,378.
High Emission Reduction Sensitivity Analysis.	135,789 to 244,868.

As can be seen in Table 3, even if savings from reduced wear are not counted, the cost-effectiveness, of fuel sulfur control is at most $6,773 per ton, and is significantly less when engine wear credits are included. Table 3 shows that aromatics control is much less cost-effective than sulfur control (or the particulate standards themselves). The 33-year cost-effectiveness for aromatics control to 20 percent was calculated to be $310,000–560,000 per ton.

Intermediate sulfur control levels would be less costly to refiners. A small amount of sulfur removal can be obtained very inexpensively, since the necessary equipment already exists and need only be operated. However, any substantial degree of sulfur control will entail the building of new desulfurization capacity with roughly a constant cost per ton of sulfur removal. Since the resulting diesel emission reductions are proportional to the fuel sulfur level, the cost per ton of sulfurous emission controlled is relatively constant down to 0.05 weight percent.

The use of catalytic exhaust treatment devices requires fuels with very low sulfur levels, certainly below 0.10 weight percent and probably quite near the 0.05 weight percent level. Thus, for any sulfur level above 0.05 weight percent, much of the technology credit is lost and the cost-effectiveness would be worse than that for 0.05 weight percent. This, coupled with the oil and engine industries' own proposal of the 0.05 weight percent level, indicates that no lesser amount of control appears appropriate.

Likewise, a sulfur standard below 0.05 weight percent would not appear appropriate at this time. While such control is likely feasible for some combinations of refineries, crude oil slates, and product slates, EPA lacks evidence that such a standard would be feasible for all or even most refineries. Also, 0.05 weight percent appears to be sufficient to permit compliance with the 1994 diesel particulate standard.

With respect to aromatics control, EPA would expect some improvement in the cost-effectiveness of aromatics control as the standard were increased from 20 volume percent. However, like sulfur control, for any substantive degree of control, we expect such improvement to be much less than a factor of two, leaving the 33-year cost-effectiveness well above $150,000 per urban ton of PM control. Further, EPA's assessment is that fuel aromatics control is not necessary for compliance with emission standards, and, in fact, that any emissions effect, or overall environment benefit, would be small or negligible. Therefore, EPA believes it would be inappropriate to propose more stringent controls at this time.

At the same time, capping aromatics at current levels would likely entail only operational adjustments within the refinery and no need for new equipment. Coupled with control of only on-highway diesel fuel, we expect such a cap to entail little cost. EPA believes it is appropriate to propose such a cap today and has chosen a minimum cetane specification (recommended in the joint industry proposal) as a means of so doing. However, it is uncertain whether setting a cetane index specification is the most effective method of capping aromatics. As described more thoroughly in Section X of this preamble, EPA is requesting comments on the adequacy of this proposed specification as a means of capping aromatics.

VII. Leadtime

The effective date of the diesel fuel regulations proposed in today's rulemaking is based on two factors. One, refiners need time to design, purchase, and install the required processing equipment. Two, the benefits of sulfur control in expanding the technological options for compliance with the 1994 heavy-duty diesel particulate regulations make it highly desirable that today's proposed regulations take effect prior to the introduction of the 1994 model year. EPA contracted with SCI to study the leadtime necessary for complying with the proposed regulations, taking into account the potential burden to the refining industry of the RVP regulations proposed in 1987 (52 FR 31274). Considering the amount of capital equipment necessary, SCI concluded that, if on-highway and off-highway diesel fuel could be segregated, compliance could be achievable by late 1993, given promulgation of a final rule by mid-1990. If segregation of diesel fuels proved infeasible, SCI concluded that compliance might require a longer leadtime.

In the joint industry proposal submitted to EPA, the oil refiners proposed that diesel fuel containing no greater than 0.05 percent sulfur by weight could be supplied by October 1, 1993. The proposal indicated that segregation of on-highway and off-highway diesel would likely occur to some extent. Thus, both those organizations responsible for the joint industry proposal and SCI agree that compliance could take place by late 1993. Therefore, an effective date for today's proposed regulations of October 1, 1993 appears appropriate.

VIII. Enforcement Options and Selection

A. Introduction

The environmental goal of motor fuel regulation is to improve or protect air quality by controlling the type of fuel used in motor vehicles or motor vehicle

regulation, unless it is visibly dyed.

arises as to which fuel, or a combination

2. Enforcement Provisions

engines. Environmental benefits can be lost through misfueling, when a noncomplying or inappropriate fuel is used in a motor vehicle. Regulations could forbid misfueling itself or seek to prevent misfueling by controlling fuel distribution. To reach the environmental goal with the most efficient use of enforcement resources, motor fuel regulations are best targeted at the fuel distribution network.

As in all regulations controlling the marketing of motor fuels, the fact that motor fuel passes through the control of many parties, from refiner to retailer, before reaching the consumer, raises questions of responsibility and control when violations are identified. This aspect of the distribution system raises two principal issues pertaining to enforcement: (1) At what point in the distribution network should diesel fuel be required to meet standards, and (2) which parties should be held legally responsible for violations of these standards at the various points in the distribution network. Each of these issues will be discussed in turn.

B. Point of Application

An important consideration affecting enforcement is the issue of where in the distribution network standards will be applied. The options considered by the Agency in deciding where the diesel fuel standards should apply include:

1. At all sites in the distribution network;
2. Only sites under the control of "downstream" parties, including retail outlets and wholesale purchaser-consumers;
3. Only sites under the control of "upstream" parties, including refiners and importers;
4. Sites controlled by both "downstream" and "midstream" parties, including retail outlets, wholesale purchaser-consumers, blending facilities, bulk terminals, and bulk plants; and
5. Sites controlled by both "upstream" and "midstream" parties, including refineries, import and blending facilities, bulk terminals, and bulk plants.

In choosing among these options, some of the factors which were considered by the Agency were: (1) Which plan offers the best chance of preventing a noncomplying fuel from reaching consumers, (2) the amount of resources needed for successful enforcement of the regulations, taking into consideration the number of facilities that will have to be monitored and the difficulty of identifying the party who initially introduced the noncomplying fuel into the distribution network, and (3) which plan would most effectively encourage quality control measures and discourage fuel switching (the use of less expensive noncomplying diesel fuel).

Highway diesel engines can operate equally well on either off-highway or on-highway diesel fuel. Only on-highway diesel fuel, however, will bear the cost of additional processing required for compliance with today's proposed standards. Thus, it is likely that there will be a possibility of, and an economic incentive for, fuel switching at each point in the distribution network. Therefore, in order to ensure that unregulated diesel fuel is not used in highway vehicles, the Agency today proposes a diesel fuel standard that is applicable throughout the entire distribution network. This approach is consisted with that used in the lead in gasoline and recently promulgated volatility regulations.

C. Legal Responsibility for Violations

In general, there are three options for the assignment of legal responsibility for diesel fuel standards violations. The first option is to place legal responsibility only on the party who originally introduced the noncomplying diesel fuel into commerce. This would be the party who manufactured, blended, or initially mislabeled the noncomplying diesel fuel. Under this option, when a violation is found, the responsible party must be identified by tracing the noncomplying diesel fuel back through the distribution chain to its source.

A second option is to hold liable the regulated party offering for sale, supplying or transporting a noncomplying diesel fuel. Under this enforcement approach, the source of the noncomplying diesel fuel need not be identified. Every regulated party selling, supplying or transporting diesel fuel or offering to sell or supply, would effectively be responsible for monitoring the diesel fuel to verify that the fuel complies with standards.

The third option includes both types of liability described above but goes one step further to include a vicarious liability provision. Vicarious liability, for purposes of diesel fuel regulation, means that parties upstream in the distribution chain can be held responsible for violations which are found at downstream facilities over which they could exercise some control. vicarious liability raises a presumption of liability, that can be rebutted by the regulated party, as specified in the defenses included in the proposed regulations.

The Agency proposes that the third option, with the vicarious liability provisions, be implemented. This approach has been used by the Agency in its fuel contamination liability regulations (40 CFR 80.23). It has also been adopted in the recently promulgated volatility control regulations (40 CFR 80.27). While these two sets of regulations cover gasoline and include specifications different from those proposed in this regulation, essentially the same parties are covered by all three sets of regulations. Therefore, it is appropriate that these proposed regulations covering diesel fuel contain the same liability scheme which has previously been applied to the regulated parties. The commonality of these enforcement schemes simplifies the industry's ability to comply and enhances the Agency's enforcement of the regulations.

D. Compliance Monitoring

In the case of the lead in gasoline control regulations, industry compliance with the regulations is monitored through a combination of auditing and spot sampling in the field. The gasoline volatility regulations will be enforced primarily through spot sampling at all points in the distribution chain. Monitoring compliance with the diesel fuel standards, however, presents some enforcement problems which differ from those of gasoline. As the diesel fuel industry notes in the proposal it and other related industries and associations submitted to the Agency, the diesel fuel industry's past experience with the collection of fuel excise taxes has shown that the greater the number of suppliers and resellers, the more difficult, costly and ineffective auditing can be.

Another of the difficulties in verifying compliance with diesel fuel standards is distinguishing between diesel motor fuel which is intended for on-highway use and meets standards for on-highway diesel fuel, and diesel fuel which is intended for off-highway use and is not in compliance with on-highway diesel fuel standards. The sulfur content and cetane index of diesel fuel can only be determined through sophisticated laboratory tests which will make field compliance testing impossible.

To address this problem, the diesel fuel industry suggests that off-highway diesel fuel be dyed as a way of marking or labeling the off-highway diesel fuel. The Agency finds the industry's suggestion to be a practical one. Therefore, the Agency proposes to establish the presumption that any diesel fuel in the control of a regulated party is on-highway diesel fuel and subject to the standards of this proposed

regulation, unless it is visibly dyed. More specifically, EPA proposes that any diesel fuel which does not show visible evidence of being dyed with 1,4 dialkylamino-anthraquinone (which has a characteristic blue color and is currently used in some grades of aviation gasoline), will be considered to be subject to the proposed standards. Comments are requested on this approach, including the Agency's choice of dye and whether a concentration of dye should be specified along with the visible color requirement.

This scheme of dyeing will place the impetus on the industry to add the dye at the earliest possible point once the decision is made that the diesel fuel will be used for other than motor vehicle purposes. Once dye is added to the non-highway diesel fuel, it cannot be removed later in the distribution chain if the fuel is subsequently used for motor vehicles. Any mixing of complying and noncomplying blends will also be apparent. Requiring that on-highway diesel fuel be dyed, on the other hand, would permit distributors to wait to the last point in the distribution chain to dye the fuel, preventing EPA from enforcing the sulfur content and aromatics standards earlier in the distribution chain. However, with the off-highway fuel dyed, the decision to produce or import complying fuel will probably be made at the refinery or import facility and no dye would be added.

In addition to the usual control afforded by the use of dyes, the Agency will also collect diesel fuel samples at any point in the distribution chain. These samples will be collected according to the procedures outlined in Appendix G of these proposed regulations. These samples will then be tested according to the ASTM standard test methods for sulfur percentage (ASTM–2622–82) and cetane index (ASTM–976). The ASTM methods for determining cetane index and sulfur percentage will be incorporated by reference in the final rule.

IX. Diesel Engine Certification Fuel

EPA has consistently required that diesel fuel for certification (and subsequent compliance testing) be representative of commercially available diesel fuel. As such, it is appropriate to propose that the sulfur level of fuel used to certify 1994 and later engines be no more than 0.05 weight percent. (The current specification for aromatics and cetane appears adequate, so no change here appears necessary.) However, 1991–93 engines would operate on both current fuel (roughly 0.25 weight percent sulfur) and controlled fuel, so the question arises as to which fuel, or a combination thereof, should be used in certification.

The joint industry proposal requested that 1991–93 certification fuel contain no more than 0.05 weight percent sulfur. EPA believes this would be inappropriate since these engines would be operated on high sulfur fuel for much of their useful lives and their emissions could exceed the PM standards during this time, while just meeting the standards on low-sulfur fuel. However, it also appears inappropriate to ignore the fact that these engines would be operated on low-sulfur fuel for a portion of their useful lives. Thus, EPA believes it is appropriate to require these engines to certify on a fuel with a sulfur level representing an average of what will be used over the engines' useful life. We considered doing this for each model year individually, but this would be costly and very complex logistically, as each laboratory would have to maintain stocks of five diesel fuels for many years to come. Thus, we propose that a single average sulfur level fuel be used for 1991–93 certification. Based on mileage accumulation data taken from heavy-duty diesel vehicles, this average sulfur level is 0.10 weight percent.[1] Thus the certification levels of 1991–1993 model year engines would represent the average in-use emissions over the full useful life of these engines. It is important to note, however, that EPA believes that, for the reasons discussed previously, actual in-use emissions of these vehicles will not be affected by this change to the certification fuel.

X. Description of the Proposal

This section summarizes in detail the proposed control measures contained in today's notice. The detailed requirements may be found in their entirety in the proposed regulations published with today's notice.

A. Commercial Fuel Requirements

1. Standards

After September 30, 1993, all diesel fuel sold, supplied, offered for sale or supply, dispensed, or transported in any state for use in on-highway diesel vehicles shall contain no more than 0.05 percent sulfur by weight, and shall have a minimum cetane index of 40. EPA is aware that the effective date of compliance for refiness will be prior to September 30, 1993, because the on-highway diesel fuel must be fully available throughout the distribution system by that date.

2. Enforcement Provisions

a. *Overall Enforcement Scheme.* The proposed enforcement provisions in this notice are based on the requirement that on-highway diesel fuel have a cetane index number of at least 40 and that the percentage of sulfur by weight be no greater then 0.05 percent at all points in the distribution network. All parties in the distribution network are covered by these regulations, including refiners, importers, distributors, carriers, resellers, retail and wholesale purchaser-consumers. Any diesel fuel for use in motor vehicles must comply with these standards when introduced into commerce, sold, offered for sale, supplied, offered for supply, dispensed, or transported. Basically, once diesel fuel has been introduced into the distribution network, the fuel must comply with these standards at all points up to and including the time it leaves the pump.

The proposed regulations define cetane, cetane index, diesel fuel, sulfur percentage, refinery, retail outlet, distribution, reselling, wholesale purchaser-consumer and carrier. Methods of determining cetane index and sulfur percentage will be incorporated by reference to 40 CFR Part 80 and are ASTM standard test method and *7622–82*, respectively.

This notice also sets forth proposed regulations establishing presumptions of liability for parties found with noncomplying fuel. There is also a vicarious liability provision which holds certain upstream parties in the distribution network responsible for violations at downstream facilities over which they could have exercised some control. Defenses to vicarious liability are included in the proposed regulations.

b. *Sampling Methodology.* The proposed sampling methodology is set forth in appendix G. The sampling procedures include nozzle sampling, bottle sampling, tap sampling, and manual line sampling. The purpose of the sampling methodology is to assure that the sample taken is true and unaltered and is representative of the diesel fuel being tested.

c. *Testing Methodologies.* Two testing methodologies have been proposed. The first one, ASTM standard test method 2622–82, determines the percentage of sulfur in the diesel fuel by means of X-ray spectrometry. The second test, ASTM standard test method, is a method for estimating the ASTM cetane index of the diesel fuel from the API gravity and mid-boiling point.

The issue of what enforcement tolerance should be allowed when using these test methods will be addressed in a manner consistent with other mobile source related standards. The diesel fuel refiners and other regulated parties will be expected to meet the applicable sulfur and cetane limits as established by the regulations when finalized. They must take test variability into account in producing and marketing diesel fuel and cannot rely on the Agency to automatically provide an enforcement tolerance in addition to the absolute standards established for sulfur or cetane limits. If the sulfur content of motor vehicle diesel fuel were found to contain 0.06 weight percent sulfur and the applicable standard were 0.05 weight percent sulfur, this would be considered a violation of the regulatory standard that could subject liable parties to enforcement action.

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[1] "Calculation of Average Fuel Sulfur Level of 1991–93 Model Year Heavy-Duty Diesels," Timothy Sprik, EPA, December, 1988.

d. *Liability provisions.* The proposed liability Provisions (40 CFR 80.29 through 80.31) are patterned after the liability scheme used in the Agency's lead contamination regulations, at 40 CFR 80.23 and are almost identical to the volatility regulations, at 40 CFR 80.27. One of the main features of these provisions is the presumption of liability where regulated parties are found offering for sale, supplying, or transporting diesel fuel which fails to meet the requirements for sulfur percentage or cetane index. It is the responsibility of the regulated party to monitor the diesel fuel which is being offered for sale, supplied or transported control to verify that the fuel complies with standards.

Another important feature of the diesel fuel enforcement provisions is the inclusion of vicarious liability provisions, much like those used successfully in the lead contamination regulations and recently promulgated in the volatility regulations. Vicarious liability means that parties upstream from the site of the violation can be held responsible for violations found at downstream facilities over which they can exercise some control. The proposed regulations will also extend vicarious liability for violations at non-branded retail outlet and wholesale purchaser-consumers to refiners and importers. This change from previous schemes places all parties on the same level in terms of oversight for assuring product quality. Years of enforcement experience with the gasoline regulations have shown that a far larger percentage of violations occur at non-branded facilities.

Defenses to vicarious liability are set forth in the proposed regulations. Basically, an upstream party can avoid vicarious liability if that party can show that the violation was caused by actions of someone other than that party's employees or agents. For the purpose of these proposed regulations, carries will be presumed to be the agents of distributors and are also presumptively liable. The specific evidence required to support this defense varies depending on which party is raising the defense, but in general a party must show proof of some kind of oversight program, such as records of testing on the diesel fuel or a contractual obligation between the upstream and the downstream parties involved.

B. Fuel Specifications for Vehicle Certification and Other Compliance Testing

Certification fuel used for 1991–1993 model year engines would contain 0.10 sulfur percentage by weight (%0.02 weight percent). Beginning with the 1994 model year, certification fuel would have a sulfur content ranging from 0.03 to 0.05 sulfur percentage by weight. All other compliance testing (e.g., recall, selective enforcement audits) would be conducted using test fuels containing the same amount of sulfur as the test fuel used in certifying the particular model year vehicle being tested. That is, 1991–1993 model year engines would be tested with fuel containing 0.10 sulfur percentage by weight (±0.02 weight percent) and 1994 and later model year engines would be tested with fuel having a sulfur content ranging from 0.03 to 0.05 sulfur percentage by weight.

C. Requests for Comment on Specific Issues

We request and encourage general and specific comments with supporting data and analysis on the following issues.

1. In the Draft RIA, the cost and feasibility of fuel sulfur and aromatics control was evaluated over the entire range of on-highway and off-highway distillate segregation scenarios. EPA requests comments on all elements of the refining cost analysis as presented in the Draft RIA. EPA specifically requests comments on the feasibility of and extent to which such segregation would likely take place, as well as the likely cost of so modifying the fuel distribution system. Comments on the amount of excess desulfurization capacity available and the time period over which it will be available are also requested. To the extent that increased capacity is required, comments are also requested on the potential for increased VOC or other emissions from refineries.

2. EPA has assessed the impact of a sulfur reduction on engine manufacturer ability to comply with the 1994 particulate standard. This assessment was based on projections of likely engine-out emissions and their composition and estimates of specific aftertreatment device costs, feasibilities and efficiencies. Please provide specific comments on each of the elements of this analysis.

3. Please comment on the effect of fuel sulfur reductions on diesel emissions.

4. We request comments on the effect of aromatics control on particulate, HC, CO, and NOx emissions, particularly the relative effect of different aromatic species (*e.g.*, mono-, di-, tri-cyclic) on emissions, and how this effect varies between older, high-emitting engines and future, low-emitting engines. We also request comment on whether cetane index or aromatics content is the cause of the occasional NOx emission effect and whether this effect would occur in-use with aromatics control.

5. We request specific comments on the assumptions and methodology used in the analysis of the effects of a fuel sulfur reduction on engine and vehicle life.

6. We request specific comments on EPA's analysis of the amount of urban sulfate particulate produced from SO_2 emissions.

7. We request comments on the credits used to value the control of emissions of gaseous pollutants in the cost effectiveness analysis presented in the Draft RIA.

8. An analysis of the potential economic benefits of trading and banking of sulfur credits in the context of this proposed regulation was performed for EPA by SCI. The SCI analysis was based on creating credits by providing fuel with lower sulfur levels than current average fuel sulfur content levels for each of the five PADDs. Results of the study (available in Public Docket A–86–03) showed that a significant savings to the refining industry would result if credits could be created and banked prior to the imposition of controls in October 1993. However, refining industry members, in the joint industry proposal to EPA, specifically stated that banking and trading would not be desirable. EPA's previous experience with lead trading and banking under the lead phasedown regulations has shown that enforcement of a bank and trading scheme applicable to sulfur content would be extremely difficult to enforce.

EPA requests comments on the merits and demerits of phased and "non-phased" (as defined by the SCI analysis) sulfur regulations, in which refiners could earn credits for achieving lower than certain specified levels of sulfur in diesel fuel prior to October 1, 1993, in exchange for permission to sell higher than 0.05 percent on-highway diesel fuel for a period thereafter. It should be recognized that if the engine exhaust characteristics of the pre- and post-1994 diesel fleet are likely to differ, full credit may not be granted, (*i.e.*, the credits could be required to be exchanged at other than 1:1 after 1994). EPA is interested in comments as to whether reductions in diesel sulfur prior to October 1, 1993, are sufficiently valuable to merit the implementation of a credit banking and trading system. Does the 0.10 sulfur percentage certification fuel specification for 1991–93 engines affect the desirability of credit trades? What reporting requirements would be necessary to enforce a banking and trading program?

9. As part of the enforcement scheme outlined in this preamble, EPA has proposed that diesel fuels intended exclusively for off-highway use could be distinguished by the addition of 1,4-dialkylamino-anthraquinone dye. The Agency is interested in comments from the industry as to the practicality of this approach. Specific issues upon which comments are sought include what specific dyes should be used and whether these dyes present any health-based risk either in the fuel or when combusted? Is any test beyond the proposed visibility standard required to identify dyed fuel? Will the inclusion of such a dye present any problems to the users of off-highway diesel fuel? Where in the distribution system can this approach be implemented. Is the dyeing rule feasible to apply to imported distillates? If so, how would it be implemented operationally? Do any countries currently use a dyeing program for diesel fuel control purpose? If so, what experience have the refiners had with the success of these programs? Cost?

10. EPA has proposed setting a minimum cetane index specification of 40 as a means of capping fuel aromatics at current levels. However, fuel survey data shows that diesel fuel aromatics correlates rather poorly with cetane index, and may not be a sufficient safeguard against future aromatics increases. EPA requests specific comments on the effectiveness with which the Proposed cetane index specification would control fuel aromatics and also on the merits and demerits of other possible means of capping fuel aromatics, including direct measurement of diesel aromatics by Fluorescent Indicator Adsorption (FIA). EPA requests comments on whether the level of such a cap should be set at current average aromatic levels (requiring the control of fuels which are currently higher than average), or at less stringent levels (e.g., 75th percentile, 90th percentile, etc.).

XI. Public Participation

Comments and the Public Docket

As in past rulemaking actions, EPA desires full public participation in arriving at our final decisions. In addition to those areas where specific comment has been requested earlier in this preamble, EPA solicits comments on all aspects of today's proposal from all interested parties. Wherever applicable, full supporting data and detailed analyses should also be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for changes to any aspects of the proposal that they believe need to be modified or improved. All comments should be directed to the EPA Air Docket Section, Docket No. A–86–03 (see "ADDRESSES").

The Agency will base its decision on the discloseable public record. However, the Agency realizes that some manufacturers may want EPA to consider pertinent information that may be proprietary. Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to base the final rule in part on a submission labeled as confidential business information, then a nonconfidential version of the document which summarizes the key data or information should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

XII. Statutory Authority

Authority for the actions proposed in this notice is granted to EPA by sections 114, 202, 206, 207, 208, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7521, 7525, 7541, 7542, 7545, and 7601).

XIII. List of Subjects

40 CFR Part 80

Fuel additives, Diesel fuel, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 86

Administrative practice and procedures, Air pollution control, Diesel fuel, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

XIV. Regulatory Flexibility Analysis

Section 605 of the Regulatory Flexibility Act requires EPA to perform an analysis of the impact of proposed regulations on small entities when a significant impact on a substantial number of such entities would occur. An analysis of this issue was performed for EPA by SCI. According to the SCI report, 74 refineries, representing 8.4 percent of the total U.S. crude distillation capacity, were classified as small refiners at the beginning of 1988. SCI used aggregate refinery modeling to estimate the cost of modifying fuel quality at these facilities. The modeling results showed that, for those refineries which could finance the necessary equipment, sulfur control costs were nearly the same for small refiners as for the rest of the U.S. refining industry. Control costs to reduce both sulfur and aromatics were from 26 to 51 percent higher for small refiners.

SCI did state that the investments required for fuel control might be difficult for some small refiners to finance, and might cause some small refiners to discontinue the production of highway diesel fuel. This should not be an insurmountable problem, however, since these refiners should be able to shift their product slates to meet "off-highway" distillate needs in their geographic area, while other refiners with hydrodesulfurization capacity (or the financial ability to build it) would increase "on-highway" diesel production. The request for product slate flexibility in the joint industry proposal suggests that this approach would be taken by some refiners. Thus, this proposed regulation should not have a significant impact on a substantial number of small entities, if segregation in the distribution system takes place.

XV. Administrative Designation and Regulatory Analysis

The Administrator has determined that this proposed action would constitute a major regulation, and accordingly a Draft Regulatory Impact Analysis has been prepared as required under Executive Order 12291. This analysis includes detailed assessments of the estimated economic and environmental impacts of the regulations proposed here, as well as thorough analyses of the technological feasibility of the proposed emission standards and other regulatory provisions and the alternatives that were considered in the development of this proposal.

The Draft Regulatory Impact Analysis has been placed in the public docket referenced at the beginning of today's notice. In addition, interested parties may obtain single copies through a written request to the public contact listed previously.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

XVI. Reporting and Recordkeeping Requirements

This proposed rulemaking does not impose any reporting or record keeping requirements, and thus is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Dated: August 11, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, parts 80 and 86 of Title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545 and 7601(a).

2. Section 80.2 is proposed to be amended by adding new paragraphs (w), (x), (y), (z), (aa), (bb), (cc), (dd) and (ee) to read as follows:

80.2 Definitions.

* * * * *

(w) "Cetane index" or "Calculated cetane index" is a means for directly estimating the ASTM cetane number (a number representing the ignition properties of diesel engine fuel oils) of distillate fuels from API gravity and mid-boiling point.

(x) "Diesel fuel" means any fuel sold in any State and suitable for use in diesel motor vehicles and diesel motor vehicle engines, and which is commonly or commercially known or sold as diesel fuel.

(y) "Sulfur percentage" is the percentage of sulfur by weight in diesel fuel as determined by ASTM standard test method D–2622–82.

(z) "Refinery" means a plant at which diesel fuel is produced.

(aa) "Retail outlet" means any establishment at which diesel fuel is sold or offered for sale for use in motor vehicles.

(bb) "Distributor" means any person who transports or stores or causes the transportation or storage of diesel fuel at any point between any diesel fuel refinery and any retail outlet or wholesale purchaser-consumer's facilities.

(cc) "Reseller" means any person who purchases diesel fuel identified by the corporate, trade, or brand name of a refiner from such refiner or a distributor and resells or transfers it to retailers or wholesale purchaser-consumers displaying the refiner's brand, and whose assets or facilities are not substantially owned, leased, or controlled by such refiner.

(dd) "Wholesale purchaser-consumer" means any organization that is an ultimate consumer of diesel fuel and which purchases or obtains diesel fuel from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

(ee) "Carrier" means any distributor who transports or stores or causes the transportation or storage of diesel fuel without taking title to or otherwise altering either the quality or quanity of the diesel fuel.

3. New § 80.29 is proposed to be added, to read as follows:

§ 80.29 Controls and prohibitions on diesel fuel quality.

(a) *Prohibited activities.* Beginning October 1, 1993, no refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall manufacture, introduce into commerce, sell, offer for sale, supply, dispense, offer for supply, or transport any diesel fuel for use in motor vehicles unless the diesel fuel is free of visible evidence of the dye 1,4-dialkylamino-anthraquinone and has a cetane index of at least 40 and a sulfur percentage no greater than 0.05 percent.

(b) *Determination of compliance.* Any diesel fuel which does not show visible evidence of being dyed with 1,4-dialkylamino-anthraquinone (which has a characteristic blue color) shall be considered to be available for use in diesel motor vehicles and motor vehicle engines, and shall be subject to the prohibitions of paragraph (a) of this section. Compliance with the standards listed in paragraph (a) of this section shall be determined by the use of one of the sampling methodologies specified in Appendix G to this part.

Note: The testing methodologies specified for sulfur percentage, ASTM D–2622–82, and cetane index, ASTM D–976, will be incorporated by reference in the final regulation.

(c) *Liability.* Liability for violations of paragraph (a) of this section shall be determined according to the provisions of § 80.30.

(d) *Penalties.* Penalties for violations of paragraph (a) of this section shall be determined according to the provisions of § 80.5.

4. New § 80.30 is proposed to be added, to read as follows:

§ 80.30 Liability for violations of diesel fuel control and prohibitions.

(a) *Violations at refiners or importers facilities.* Where a violation of a diesel fuel standard set forth in § 80.29 is detected at a refinery or importer's facility, the refiner or importer shall be deemed in violation.

(b) *Violations at carrier facilities.* Where a violation of a diesel fuel standard set forth in § 80.29 is detected at a carrier's facility, whether in a transport vehicle, in a storage facility, or elsewhere at the facility, the following parties shall be deemed in violation:

(1) The carrier, except as provided in paragraph (g)(1) of this section; and

(2) The refiner or importer at whose refinery or import facility the diesel fuel was produced or imported, except as provided in paragraph (g)(2) of this section.

(c) *Violations at branded distributor or reseller facilities.* Where a violation of a diesel fuel standard set forth in § 80.29 is detected at a distributor or reseller's facility which is operating under the corporate, trade or brand name of a refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The distributor or reseller, except as provided in paragraph (g)(3) of this section;

(2) The carrier (if any), if the carrier caused the diesel fuel to violate the standard by fuel switching, blending, mislabeling, or any other means; and

(3) The refiner under whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) the distributor or reseller is operating, except as provided in paragraph (g)(4) of this section

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(d) *Violations at unbranded distributor facilities.* Where a violation of a diesel fuel standard set forth in § 80.29 is detected at the facility of a distributor not operating under a refiner's corporate, trade, or brand name, or that of any of its marketing subsidiaries, the following shall be deemed in violation:

(1) The distributor, except as provided in paragraph (g)(3) of this section;

(2) The carrier (if any), if the carrier caused the diesel fuel to violate the standard by fuel switching, blending, mislabeling, or any other means; and

(3) The refiner or importer at whose refinery or import facility the diesel fuel was produced or imported, except as provided in paragraph (g)(2) of this section.

(e) *Violations at branded retail outlets or wholesale purchaser-consumer facilities.* Where a violation of a diesel fuel standard set forth in § 80.29 is detected at a retail outlet or at a wholesale purchaser-consumer facility displaying the corporate, trade, or brand name of a refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) of this section;

(2) The distributor and/or reseller (if any), except as provided in paragraph (g)(3) of this section;

(3) The carrier (if any), if the carrier caused the diesel fuel to violate the standard by fuel switching, blending, mislabeling, or any other means; and

(4) The refiner whose corporate, trade, or brand name, or that of any of its marketing subsidiaries, is displayed at the retail outlet or wholesale purchaser-consumer facility, except as provided in paragraph (g)(4) of this section.

(f) *Violations at unbranded retail outlets or wholesale purchaser-consumer facilities.* Where a violation of a diesel fuel standard set forth in § 80.29 is detected at a retail outlet or at a wholesale purchaser-consumer facility not displaying the corporate, trade, or brand name of a refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) of this section;

(2) The distributor (if any), except as provided in paragraph (g)(3) of this section;

(3) The carrier (if any), if the carrier caused the diesel fuel to violate the standard by fuel switching, blending, mislabeling, or any other mean; and

(4) The refiner or importer at whose refinery or import facility the diesel fuel was produced or imported, except as provided in paragraph (g)(2) of this section.

(g) *Defenses.* (1) In any case in which a carrier would be in violation under paragraph (b)(1) of this section, the carrier shall not be deemed in violation if he can demonstrate:

(i) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner or importer at whose refinery or import facility the diesel fuel was produced or imported, or the carrier, reseller, or distributor from whom the diesel fuel was received, which represented to the carrier that the diesel fuel was in compliance with the diesel fuel standards; and

(ii) Evidence of an oversight program conducted by the carrier, for monitoring the diesel fuel stored or transported by that carrier, such as periodic sampling and testing of the cetane index and sulfur percentage of incoming diesel fuel, or any other evidence that shows that care was taken to avoid blending the diesel fuel with anything which would change its cetane index or sulfur percentage; and

(iii) That the violation was not caused by the carrier or his employee or agent.

(2) In any case in which a refiner or importer would be in violation under paragraph (b)(2), (d)(3), or (f)(4) of this section, the refiner or importer shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Test results, performed in accordance with the sampling and testing methodologies set forth in Appendix G to this part, ASTM test method D–2622–82 for sulfur percentage, or ASTM test method D–976 for cetane index, which evidence that the diesel fuel determined to be in violation was in compliance with the diesel fuel standards when it was delivered to the next party in the distribution scheme.

(3) In any case in which a distributor or reseller would be in violation under paragraph (c)(1), (d)(1), (e)(2) or (f)(2) of this section, the distributor or reseller shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner at whose refinery the diesel fuel was produced, the importer at whose facility the diesel fuel was imported, or the carrier, reseller or distributor from whom the diesel fuel was received, which represented to the distributor or reseller that the diesel fuel was in compliance with the diesel fuel standards when delivered to the distributor or reseller; and

(iii) Evidence of an oversight program conducted by the distributor or reseller, such as periodic sampling and testing of diesel fuel, for monitoring the sulfur percentage and cetane index of the diesel fuel that the distributor or reseller sells, supplies, offers for sale or supply, or transports.

(4) In any case in which a refiner would be in violation under paragraph (c)(3) or (e)(4) of this section, the refiner shall not be deemed in violation if he can demonstrate all of the following:

(i) Test results, performed in accordance with the sampling and testing methodologies set forth in Appendix G to this part, ASTM test method D–2622–82 for sulfur percentage, or ASTM test method D–976 for cetane index, at the refinery at which the diesel fuel was produced, which evidence that the diesel fuel determined to be in violation was in compliance with the diesel fuel standards when transported from the refinery;

(ii) That the violation was not caused by him or his employee or agent; and

(iii) That the violation:

(A) Was caused by an act in violation of law (other than the Act or this part), or an act of sabotage or vandalism, whether or not such acts are violations of law in the jurisdiction where the violation of the requirements of this part occurred, or

(B) Was caused by the action of a reseller or a retailer supplied by such reseller, in violation of a contractual undertaking imposed by the refiner on such reseller designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(C) Was caused by the action of a retailer who is supplied directly by the refiner (and not by a reseller), in violation of a contractual undertaking imposed by the refiner on such retailer designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(D) Was caused by the action of a distributor subject to a contract with the refiner for transportation of diesel fuel from a terminal to a distributor, retailer or wholesale purchaser-consumer, in violation of a contractual undertaking imposed by the refiner on such distributor designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to ensure compliance with such contractual obligation, or

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(E) Was caused by a carrier or other distributor not subject to a contract with the refiner but engaged by him for transportation of diesel fuel from a terminal to a distributor, retailer or wholesale purchaser-consumer, despite reasonable efforts by the refiner (such as specification or inspection of equipment) to prevent such action, or

(F) Occurred at a wholesale purchaser-consumer facility: Provided, however, that if such wholesale purchaser-consumer was supplied by a reseller, the refiner must demonstrate that the violation could not have been prevented by such reseller's compliance with a contractual undertaking imposed by the refiner on such reseller as provided in paragraph (g)(4)(iii)(B) of this section.

(iv) In paragraphs (g)(4)(iii) (A) through (E) of this section, the term "was caused" means that the refiner must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(5) In any case in which a retailer or wholesale purchaser-consumer would be in violation under paragraph (e)(1) or (f)(1) of this section, the retailer or wholesale purchaser-consumer shall not be deemed in violation if he can demonstrate that the violation was not caused by him or his employee or agent.

(6) In paragraphs (g)(1)(iii), (g)(2)(i), (g)(3)(i), (g)(4)(ii) and (g)(5) of this section, the respective party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that it or its employee or agent did not cause the violation.

5. New Appendix C is proposed to be added to read as follows:

Appendix C—Sampling Procedures for Diesel Fuel

1. *Scope*

1.1 This method covers procedures for obtaining representative samples of diesel fuel for the purpose of testing for compliance with the cetane index and sulfur percentage standards set forth in § 80.29.

2. *Summary of Method*

2.1 It is necessary that the samples be truly representative of the diesel fuel in question. The precautions required to ensure the representative character of the samples are numerous and depend upon the tank, carrier, container or line from which the sample is being obtained, the type and cleanliness of the sample container, and the sampling procedures that are to be used. A summary of the sampling procedures and their application is presented in table 1. Each procedure is suitable for sampling a material under definite storage, transportation, or container conditions. The basic principle of each procedure is to obtain a sample in such manner and from such locations in the tank or other container that the sample will be truly representative of the diesel fuel.

3. *Description of Terms*

3.1 "Average sample" is one that consists of proportionate parts from all sections of the container.

3.2 "All-levels sample" is one obtained by submerging a stoppered beaker or bottle to a point as near as possible to the draw-off level, then opening the sampler and raising it at a rate such that it is about ¾ full (maximum 85 percent) as it emerges from the liquid. An all-levels sample is not necessarily an average sample because the tank volume may not be proportional to the depth and because the operator may not be able to raise the sampler at the variable rate required for proportionate filling. The rate of filling is proportional to the square root of the depth of immersion.

3.3 "Running sample" is one obtained by lowering an unstoppered beaker or bottle from the top of the gasoline to the level of the bottom of the outlet connection or swing line, and returning it to the top of the top of the diesel fuel at a uniform rate of speed such that the beaker or bottle is about ¾ full when withdrawn from the diesel fuel.

3.4 "Spot sample" is one obtained at some specific location in the tank by means of a thief bottle, or beaker.

3.5 "Top sample" is a spot sample obtained 6 inches (150 mm) below the top surface of the liquid (Figure 1).

3.6 "Upper sample" is a spot sample taken at the mid-point of the upper third of the tank contents (Figure 1).

3.7 "Middle sample" is a spot sample obtained from the middle of the tank contents (Figure 1).

3.8 "Lower sample" is a spot sample obtained at the level of the fixed tank outlet or the swing line outlet (Figure 1).

3.9 "Clearance sample" is a spot sample taken 4 inches (100 mm) below the level of the tank outlet (Figure 1).

3.10 "Bottom sample" is one obtained from the material on the bottom surface of the tank, container, or line at its lowest point.

3.11 "Drain sample" is one obtained from the draw-off or discharge valve. Occasionally, a drain sample may be the same as a bottom sample, as in the case of a tank car.

3.12 "Continuous sample" is one obtained from a pipeline in such manner as to give a representative average of a moving stream.

3.13 "Mixed sample" is one obtained after mixing or vigorously stirring the contents of the original container, and then pouring out or drawing off the quantity desired.

3.14 "Nozzle sample" is one obtained from a diesel pump nozzle which dispenses diesel fuel from a storage tank at a retail outlet or a wholesale purchaser-consumer facility.

4. *Sample Containers*

4.1 Sample containers may be clear or brown glass bottles, or cans. The clear glass bottle is advantageous because it may be examined visually for cleanliness, and also allows visual inspection of the sample for free water or solid impurities. The brown glass bottle affords some protection from light. The only cans permissible are those with the seams soldered on the exterior surface with a flux of rosin in a suitable solvent. Such a flux is easily removed with gasoline, whereas many others are very difficult to remove.

4.2 Container closure. Cork, rubber or glass stoppers, or screw caps of plastic or metal, may be used for glass bottles; screw caps only shall be used for cans to provide a vapor-tight closure seal. Any closure method will be satsifactory as long as no leakage will occur nor will the stopper or cap affect sample results.

4.3 Cleaning procedure. All sample containers must be absolutely clean and free of water, dirt, lint, washing compounds, naphthas, or other solvents, soldering fluxes or acids, corrosion, rust, and oil.

5. Regular *Sampling Apparatus*

5.1 Sampling apparatus is described in detail under each of the specific sampling procedures. Clean, dry, and free all sampling apparatus from any substance that might contaminate the material, using the procedure described in 4.3.

6. *Time and Place of Sampling*

6.1 When loading or discharging diesel fuel, take samples from both shipping and receiving tanks, and from the pipeline if required.

6.2 Ship or barge tanks. Sample each product after the vessel is loaded or just before unloading.

6.3 Tank cars. Sample the product after the car is loaded or just before unloading.

Note: When taking samples from tanks suspected of containing flammable atmospheres, precautions should be taken to guard against ignitions due to static electricity. Metal or conductive objects, such as gage tapes, sample containers, and thermometers, should not be lowered into or suspended in a compartment or tank which is being filled or immediately after cessation of pumping. A waiting period of approximately one minute will generally permit a substantial relaxation of the electrostatic charge; under certain conditions a longer period may be deemed advisable.

7. *Obtaining Samples*

7.1 Directions for sampling cannot be made explicit enough to cover all cases. Extreme care and good judgement are necessary to ensure samples that represent the general character and average condition of the material. Clean hands are important. Clean gloves may be worn but only when absolutely necessary, such as in cold weather, or when handling materials at high temperature, or for reasons of safety. Select wiping cloths so that lint is not introduced, contaminating samples.

7.2 As many petroleum vapors are toxic and flammable, avoid breathing them or igniting them from an open flame or a spark produced by static. Follow all safety precautions specific to the material being sampled.

8. *Handling Samples*

8.1 Container outage. Never completely fill a sample container, but allow adequate room for expansion, taking into consideration the temperature of the liquid at the time of filling and the probable maximum temperature to which the filled container may be subjected.

9. *Shipping Samples*

9.1 To prevent loss of liquid during shipment, and to protect against moisture and dust, cover with suitable vapor tight caps. The caps of all containers must be screwed down tightly and checked for leakage. Postal and express office regulations applying to the shipment of flammable liquids must be observed.

10. *Labeling Sample Containers*

10.1 Label the container immediately after a sample is obtained. Use waterproof and oilproof ink or a pencil hard enough to dent the tag, since soft pencil and ordinary ink markings are subject to obliteration from moisture, oil smearing and handling. Include the following information:

10.1.1 Date and time (the period elapsed during continuous sampling);

10.1.2 Name of the sample;

10 1.3 Name or number and owner of the vessel, car, or container;

10.1.4 Brand and grade of material; and

10.1.5 Reference symbol or identification number.

11. *Sampling procedures*

11.1 The standard sampling procedures described in this method are summarized in Table 1. Alternative sampling procedures may be used if a mutually satisfactory agreement has been reached by the party(ies) involved and EPA and such agreement has been put in writing and signed by authorized officials.

TABLE 1.—SUMMARY OF DIESEL FUEL SAMPLING PROCEDURES AND APPLICABILITY

Type of Container	Procedure	Paragraph
Storage tanks, ship and barge tanks, tank cars, tank trucks.	Bottle sampling	11.2
Storage tanks with taps.	Tap sampling	11.3
Pipe and lines	Continuous line sampling.	11.4
Retail outlet and whole-sale purchaser-consumer facility storage tanks.	Nozzle sampling	11.5

11.2 Bottle or beaker sampling. The bottle or beaker sampling procedure is applicable for sampling liquids of 16 pounds (1.12 kgf/cm^2) RVP or less in tank cars, tank trucks, shore tanks, ship tanks, and barge tanks.

11.2.1 Apparatus. A suitable sampling bottle or beaker as shown in Figure 2 is required

11.2.2 Procedure.

11.2.2.1 All-levels sample. Lower the weighted, stoppered bottle or beaker as near as possible to the draw-off level, pull-out the stopper with a sharp jerk of the cord or chain and raise the bottle at a uniform rate so that it is about ¾ full as it emerges from the liquid.

11.2.2.2 Running sample. Lower the unstoppered bottles or beaker as near as possible to the level of the bottom of the outlet connection or swing line and then raise the bottle or beaker to the top of the gasoline at a uniform rate of speed such that it is about ¾ full when withdrawn from the diesel fuel.

11.2.2.3 Upper, middle, and lower samples. Lower the weighted, stoppered bottle to the proper depths (Figure 1) as follows:

Upper sample—middle of upper third of the tank contents

Middle sample—middle of the tank contents

Lower sample—level of the fixed tank outlet or the swing-line outlet

At the selected level pull out the stopper with a sharp jerk of the cord or chain and allow the bottle or beaker to fill completely, as evidenced by the cessation of air bubbles When full, raise the bottle or beaker, pour off a small amount, and stopper immediately.

11.2.2 4 Top sample. Obtain this sample (Figure 1) in the same manner as specified in 11.2.2.3 but at six inches (150 mm) below the top surface of the tank contents.

11.2.2.5 Handling. Stopper and label bottle samples immediately after taking them, and deliver to the laboratory in the original sampling bottles.

11.3 Tap sampling. The tap sampling procedure is applicable for sampling liquids of twenty-six pounds (1.83 kgf/cm^2) RVP or less in tanks which are equipped with suitable sampling taps or lines. The assembly for tap sampling is shown in Figure 3.

11.3.1 Apparatus.

11.3.1.1 Tank taps. The tank should be equipped with at least three sampling taps placed equidistant throughout the tank height and extending at least three feet (0.9 meter) inside the tank shell. A standard ¼ inch pipe with suitable valve is satisfactory.

11.3.1.2 Tube. A delivery tube that will not contaminate the product being sampled and long enough to reach to the bottom of the sample container is required o allow submerged filling.

11.3.1.3 Sample containers. Use clean, dry glass bottles of convenient size and strength or metal containers to receive the samples.

11.3.2 Procedure.

11.3.2.1 Before a sample is drawn, flush the tap (or gage glass draincock) and line until they are purged completely Connect the clean delivery tube to the tap. Draw upper, middle, or lower samples directly from the respective taps after the flushing operation. Stopper and label the sample container immediately after filling, and deliver it to the laboratory.

11.4 Continuous sampling. The continuous sampling procedure is applicable for sampling liquids of 16 pounds (1.12 kgf/cm^2) RVP or less and semiliquids in pipelines, filling lines, and transfer lines. The continuous sampling may be done manually or by using automatic devices.

11.4.1 Apparatus.

11.4.1.1 Sampling probe. The function of the sampling probe is to withdraw from the flow stream a portion that will be representative of the entire stream. The apparatus assembly for continuous sampling is shown in Figure 4. Probe designs that are commonly used are as follows:

11.4.1.1.1 A tube extending to the center of the line and beveled at a 45 degree angle facing upstream (Figure 4(a)).

11.4.1.1.2 A long-radius forged elbow or pipe bend extending to the center line of the pipe and facing upstream. The end of the probe should be reamed to give a sharp entrance edge (Figure 4(b)).

11.4.1.1.3 A closed-end tube with a round orifice spaced near the closed end which should be positioned in such a way that the orifice is in the center of the pipeline and is facing the stream as shown in Figure 4(c).

11.4.1.2 Probe location. Since the fluid to be sampled may not in all cases be homogeneous, the location, the position and the size of the sampling probe should be such as to minimize stratification or dropping out of heavier particles within the tube or the displacement of the product within the tube as a result of variation in gravity of the flowing stream. The sampling probe should be located preferably in a vertical run of pipe and as near as practicable to the point where the product passes to the receiver. The probe should always be in a horizontal position.

11.4.1.2.1 The sampling lines should be as short as practicable and should be cleared before any samples are taken.

11.4.1.2.2 Where adequate flowing velocity is not available, a suitable device for mixing the fluid flow to ensure a homogeneous mixture at all rates of flow and to eliminate stratification should be installed upstream of the sampling tap. Some effective devices for obtaining a homogeneous mixture are as follows: Reduction in pipe size; a series of baffles; orifice or perforated plate; and a combination of any of these methods.

11.4.1.2.3 The design or sizing of these devices is optional with the user, as long as the flow past the sampling point is homogeneous and stratification is eliminated.

11.4.1.3 To control the rate at which the sample is withdrawn, the probe or probes should be fitted with valves or plug cocks.

11.4.1.4 Automatic sampling devices that meet the standards set out in 11.4.1.5 may be used in obtaining samples of diesel fuel. The quality of sample collected must be of sufficient size for analysis, and its composition should be identical with the composition of the batch flowing in the line while the sample is being taken. An automatic sampler installation necessarily includes not only the automatic sampling device that extracts the samples from the line, but also a suitable probe, connecting lines, auxiliary equipment, and a container in which the sample is collected. Automatic samplers may be classified as follows:

11.4.1.4.1 Continuous sampler, time cycle (nonproportional) type. A sampler designed and operated in such a manner that it transfers equal increments of liquid from the pipeline to the sample container at a uniform rate of one or more increments per minute is a continuous sampler.

11.4.1.4.2 Continuous sampler, flow responsive (proportional) type. A sampler that is designed and operated in such a manner that it will automatically adjust the quantity of sample in proportion to the rate of flow is a flow-responsive (proportional) sampler. Adjustment of the quantity of sample may be made either by varying the frequency of transferring equal increments of sample to the sample container, or by varying the volume of the increments while maintaining a constant frequency of transferring the increments to the sample container. The apparatus assembly for continuous sampling is shown in Figure 4.

11.4.1.4.3 Intermittent sampler. A sampler that is designed and operated in such a manner that it transfers equal increments of liquid from a pipeline to the sample container at a uniform rate of less than one increment per minute is an intermittent sampler.

11.4.1.5 Standards of installation. Automatic sampler installations should meet all safety requirements in the plant or area where used, and should comply with American National Standard Code for Pressure Piping, and other applicable codes (ANSI B31.1). The sampler should be so installed as to provide ample access space for inspection and maintenance.

11.4.1.5.1 Small lines connecting various elements of the installation should be so arranged that complete purging of the automatic sampler and of all lines can be accomplished effectively. All fluid remaining in the sampler and the lines from the preceding sampling cycle should be purged immediately before the start of any given sampling operation.

11.4.1.5.2 In those cases where the sampler design is such that complete purging of the sampling lines and the sampler is not possible, a small pump should be installed in order to circulate a continuous stream from the sampling tube past or through the sampler and back into the line. The automatic sampler should then withdraw the sample from the sidestream through the shortest possible connection.

11.4 1.5.3 Under certain conditions, there may be a tendency for water and heavy particles to drop out in the discharge line from the sampling device and appear in the sample container during some subsequent sampling period. To circumvent this possibility, the discharge pipe from the sampling device should be free of pockets or enlarged pipe areas, and preferably should be pitched downward to the sample container.

11.4.1.5.4 To ensure clean, free-flowing lines, piping should be designed for periodic cleaning.

11.4.1.6 Field calibration. Composite samples obtained from the automatic sampler installation should be verified for quantity performance in a manner that meets with the approval of all parties concerned (including EPA), at least once a month and more often if conditions warrant. In the case of time-cycle samplers, deviations in quantity of the sample taken should not exceed ±five percent for any given setting. In the case of flow-responsive samplers, the deviation in quantity of sample taken per 1,000 barrels of flowing stream should not exceed ±5 percent. For the purpose of field-calibrating an installation, the composite sample obtained from the automatic sampler under test should be verified for quality be comparing on the basis of physical and chemical properties, with either a properly secured continuous nonautomatic sample or tank sample. The tank sample should be taken under the following conditions:

11.4.1.6.1 The batch pumped during the test interval should be diverted into a clean tank and a sample taken within one hour after cessation of pumping.

11.4.1.6.2 If the sampling of the delivery tank is to be delayed beyond one hour, then the tank selected must be equipped with an adequate mixing means. For valid comparison, the sampling of the delivery tank must be completed within eight hours after cessation of pumping, even though the tank is equipped with a motor-driven mixer.

11.4.1.6.3 When making a normal full-tank delivery from a tank, a properly secured sample may be used to check the results of the sampler if the parties (including EPA) mutually agree to this procedure.

11.4.1.7 Receiver. The receiver must be a clean, dry container of convenient size to receive the sample. All connections from the sample probe to the sample container must be free of leaks. Two types of container may be used, depending upon service requirements.

11.4.1 7.1 Atmospheric container. The atmospheric container shall be constructed in such a way that it retards evaporation loss and protects the sample from extraneous material such as rain, snow, dust, and trash. The construction should allow cleaning, interior inspection, and complete mixing of the sample prior to removal. The container should be provided with a suitable vent.

11.4.1.7.2 Closed container. The closed container shall be constructed in such a manner that it prevents evaporation loss. The construction must allow cleaning, interior inspection and complete mixing of the sample prior to removal. The container should be equipped with a pressure-relief valve.

11.4.2 Procedure.

11.4.2.1 Nonautomatic sample. Adjust the valve or plug cock from the sampling probe so that a steady stream is drawn from the probe. Whenever possible, the rate of sample withdrawal should be such that the velocity of liquid flowing through the probe is approximately equal to the average linear velocity of the stream flowing through the pipeline. Measure and record the rate of sample withdrawal as gallons per hour. Divert the sample stream to the sampling container continuously or intermittently to provide a quantity of sample that will be of sufficient size for analysis.

11.4.2.2 Automatic sampling. Purge the sampler and the sampling lines immediately before the start of a sampling operation. If the sample design is such that complete purging is not possible, circulate a continuous stream from the probe past or through the sampler and back into the line. Withdraw the sample from the side stream through the automatic sampler using the shortest possible connections. Adjust the sampler to deliver not less than one and not more than 40 gallons (151 liters) of sample during the desired sampling period. For time-cycle samplers, record the rate at which sample increments were taken per minute. For flow-responsive samplers, record the proportion of sample to total stream. Label the samples and deliver them to the laboratory in the containers in which they were collected.

11.5 Nozzle sampling. The nozzle sampling procedure is applicable for sampling diesel fuel from a retail outlet or wholesale purchaser-consumer facility storage tank.

11.5.1 Apparatus. Sample containers conforming with 4.1 should be used. A spacer, if appropriate, and a nozzle extension as shown in Figures 6 and 7 shall be used when nozzle sampling.

11.5.2 Procedure. Immediately after diesel fuel has been delivered from the pump and the pump has been reset, deliver a small amount of product into the sample container. Rinse sample container and dump product into waste container. Insert nozzle extension (Figure 7) into sample container and insert pump nozzle into extension with slot over air bleed hole. Fill slowly through nozzle extension to 70–80 percent full (Figure 8). Remove nozzle extension. Cap sample container at once. Check for leaks.

12. *Special Precautions and Instructions.*

12.1 Precautions. Official samples should be taken by, or under the immediate supervision of, a person of judgement, skill, and sampling experience. Never prepare composite samples for this test. Make certain that containers which are to be shipped by common carrier conform to applicable Interstate Commerce Commission, state, and local regulations. When flushing or purging lines or containers, observe the pertinent regulations and precautions against fire, explosion, and other hazards.

12.3 Sample containers. Use containers of not less than one quart (0.9 liter) nor more than two gallons (7.6 liters) capacity, of sufficient strength to withstand the pressure to which they may be subjected. Open-type containers have a single opening which permits sampling by immersion. Closed-type containers have two openings, one in each end (or the equivalent thereof), fitted with valves suitable for sampling by water displacement or by purging.

12.4 Transfer connections. The transfer connection for the open-type container consists of an air tube and a liquid delivery tube assembled in a cap or stopper. The air tube extends to the bottom of the container. One end of the liquid delivery tube is long enough to reach the bottom of the diesel fuel chamber while the sample is being transferred to the chamber. The transfer connection for the closed-type container consists of a single tube with a connection suitable for attaching it to one of the openings of the sample container. The tube is long enough to reach the bottom of the diesel chamber while the sample is being transferred.

12.5 Sampling open tanks. Use clean containers of the open type when sampling open tanks and tank cars. An all-level sample obtained by the bottle procedure described in 11.2 is recommended. Before taking the sample, flush the container by immersing it in the product to be sampled. Then obtain the sample immediately. Pour off enough so that the container will be 70–80 percent full and close it promptly. Label the container and deliver it to the laboratory.

12.6 Sampling closed tanks. Containers of either the open or closed type may be used to obtain samples from closed or pressure tanks. If the closed type is used, obtain the sample using the water displacement procedure described in 12.8 or the purging procedure described in 12.9. The water displacement procedure is preferable because the flow of product involved in the purging procedure may be hazardous.

12.8 Water displacement procedure. Completely fill the closed-type container with water and close the valves. While permitting a small amount of product to flow through the fittings, connect the top or inlet valve of the container to the tank sampling tap or valve. Then open all valves on the inlet side of the container. Open the bottom or outlet valve slightly to allow the water to be displaced slowly by the sample entering the container. Regulate the flow so that there is no appreciable change in pressure within the container. Close the outlet valve as soon as diesel fuel discharges from the outlet; then in succession close the inlet valve and the sampling valve on the tank. Disconnect the container and withdraw enough of the contents so that it will be 70–80 percent full. If the vapor pressure of the product is not high enough to force liquid from the container, open both the upper and lower valves slightly to remove the excess. Promptly seal and label the container, and deliver it to the laboratory.

12.9 Purging procedure. Connect the inlet valve of the closed-type container to the tank sampling tap or valve. Throttle the outlet valve of the container so that the pressure in it will be approximately equal to that in the container being sampled. Allow a volume of product equal to at least twice that of the container to flow through the sampling system. Then close all valves, the outlet valve first, the inlet valve of the container second, and the tank sampling valve last, and disconnect the container immediately. Withdraw enough of the contents so that the sample container will be 70–80 percent full. If the vapor pressure of the product is not high enough to force liquid from the container, open both the upper and lower valves slightly to remove the excess. Promptly seal and label the container, and deliver it to the laboratory.

For the reasons set forth in the preamble, part 86 of title 40 of the *Code of Federal Regulations* is revised to read as set forth below:

6. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, 301(a), of the Clean Air Act as Amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a).

7. A new § 86.113–91 is proposed to be added to subpart B, to read as follows:

§ 86.113–91 Fuel specifications.

(a) *Otto-cycle test fuel.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust and evaporative emission testing of petroleum-fueled Otto-cycle vehicles. Gasoline having the following specification or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust and evaporative testing except that octane specifications do not apply.

Item	ASTM test method No.	Value
Octane, research, min.	D2699	93
Sensitivity, min.		7.5
Lead (organic), g/U.S. gal.	D3237	0.050[1]
(g/liter)		(0.013)[1]
Distillation Range:		
IBP[2], °F	D86	75–95
(°C)		(23.9–35)
10 pct. point, °F	D86	120–135
(°C)		(48.9–57.2)
50 pct. point, °F	D86	200–230
(°C)		(93.3–110)
90 pct. point, °F	D86	300–325
(°C)		(148.9–162.8)
EP, (max.) °F	D86	415
(°C)		(212.8)
Sulfur, weight pct., max.	D1266	0.10
Phosphorus, max. g/U.S. gal.	D3231	0.005
(g/liter)		(0.0013)
RVP[3,4], psi	D3231	8.7–9.2
(kPa)		(60.0–63.4)
Hydrocarbon composition:		
Olefins, max. pct	D1319	10
Aromatics, max. pct	D1319	35
Saturates	D1319	[5]

[1] Maximum.
[2] For testing at altitudes above 1,219 m (4,000 ft) the specified range is 75°–105°F (23.9°–40.6 °C).
[3] For testing which is unrelated to evaporative emission control, the specified range is 8.0–9.2 psi (55.2–63.4 kPa).
[4] For testing at altitudes above 1,219 m (4,000 ft) the specified range is 7.9–9.2 psi (54.5–63.4 kPa).
[5] Remainder.

(2) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation for petroleum-fueled Otto-cycle vehicles. Leaded gasoline will not be used in service accumulation.

(i) The octane rating of the gasoline used shall be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled Otto-cycle vehicles shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (a)(3) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(4) Other methanol fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that

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only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraph (a)(3) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (a)(2), (a)(3), and (a)(4) of this section shall be reported in accordance with § 86.090–21(b)(3).

(b) *Diesel test fuel.* (1) The petroleum fuels employed for testing diesel vehicles shall be clean and bright, with pour and cloud points adequate for operability. The petroleum fuel may contain nonmetallic additives as follows: cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant and biocide.

(2) Petroleum fuel for diesel vehicles meetinq the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emission testing. The grade of petroleum fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel, shall be used.

Item	ASTM test method No.	Type 2-D
Cetane Number	D613	42-50
Distillation range:		
IBP, °F	D86	340—400
(°C)		(171.1–204.4)
10 pct. point. °F.	D86	400–460
(°C)		(204.4–237.8)
50 pct. point, °F.	D86	470–540
(°C)		(243.3–282.2)
90 pct. point, °F.	D86	560–630
(°C)		(293.3–332.2)
EP, °F	D86	610–690
(°C)		(321.1–365.6)
Gravity, °API	D287	32–37
Total sulfur, pct.	D2622	0.08–0.12
Hydrocarbon composition.	D1319	
Aromatics, min. pct.		27
Paraffins, naphthenes, olefins.		[1]
Flashpoint, min. °F.	D93	130
(°C)		(54.4)
Viscosity, centistokes.	D445	2.2-3.4

[1] Remainder.

(3) Petroleum fuel for diesel vehicles meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of petroleum diesel fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel fuel, shall be used.

Item	ASTM test method No.	Type 2–D
Cetane Number	D613	38–58
Distillation range:		
90 pct. point, °F.	D86	540–650
(°C)		(282.2–343.3)
Gravity, °API	D287	30–39
Total sulfur, pct.	D2622	0.08–0.12
Flashpoint, min. °F.	D93	130
(°C)		(54.4)
Viscosity, centistokes.	D455	1.5–4.5

(4) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled diesel vehicles shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (b)(4) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(5) Other fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) or (b)(4) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(6) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section shall be reported in accordance with § 86.090–21(b)(3).

(c) Fuels not meeting the specifications set forth in this section may be used only with the advance approval of the Administrator.

(d) *Mixtures of petroleum and methanol fuels for flexible fuel vehicles.* (1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall be within the range of fuel mixtures for which the vehicle was designed.

(2) Manufacturer testing and service accumulation may be performed using only those mixtures (mixtures may be different for exhaust testing, evaporative testing, and service accumulation) expected to result in the highest emissions, provided:

(i) The fuels which constitute the mixture will be used in customer service, and

(ii) Information, acceptable to the Administrator, is provided by the manufacturer to show that the designated fuel mixtures would result in the highest emissions, and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraph (d)(1) of this section shall be reported in accordance with § 86.090–21(b)(3).

8. A new § 86.113–94 is proposed to be added to Subpart B, to read as follows:

§ 86.113–94 Fuel specifications.

(a) *Otto-cycle test fuel.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust and evaporative emission testing of petroleum-fueled Otto-cycle vehicles. Gasoline having the following specification or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust and evaporative testing except that octane specifications do not apply.

Item	ASTM test method no.	Value
Octane, research, min.	D2699	93
Sensitivity, min.		7.5
Lead (organic), g/U.S. gal.	D3237	0.050[1]
(g/liter)		(0.013)[1]
Distillation Range:		
IBP[2], °F	D86	75–95
(°C)		(23.9–35)
10 pct. point, °F	D86	120–135
(°C)		(48.9–57.2)
50 pct. point, °F	D86	200–230
(°C)		(93.3–110)
90 pct. point, °F	D86	300–325
(°C)		(148.9–162.8)
EP, (max.) °F	D86	415
(°C)		(212.8)
Sulfur, weight pct., max.	D1266	0.10
Phosphorus, max. g/U.S. gal.	D3231	0.005
(g/liter)		(0.0013)
RVP[3,4], psi	D3231	8.7–9.2
(kPa)		(60.0–63.4)
Hydrocarbon composition:		
Olefins, max. pct.	D1319	10
Aromatics, max. pct.	D1319	35
Saturates	D1319	[5]

[1] Maximum.

[2] For testing at altitudes above 1,219 m (4,000 ft) the specified range is 75°–105 °F (23.9°–40.6 °C).

[3] For testing which is unrelated to evaporative emission control, the specified range is 8.0–9.2 psi (55.2–63.4 kPa).

[4] For testing at altitudes above 1,219 m (4,000 ft) the specified range is 7.9–9.2 psi (54.5–63 4 kPa).

[5] Remainder.

(2) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation for petroleum-fueled Otto-cycle vehicles. Leaded gasoline will not be used in service accumulation.

(i) The octane rating of the gasoline used shall be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled Otto-cycle vehicles shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (a)(3) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(4) Other methanol fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraph (a)(3) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing

(5) The specification range of the fuels to be used under paragraphs (a)(2), (a)(3), and (a)(4) of this section shall be reported in accordance with § 86.090–21(b)(3).

(b) *Diesel test fuel.* (1) The petroleum fuels employed for testing diesel vehicles shall be clean and bright, with pour and cloud points adequate for operability. The petroleum fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant and biocide.

(2) Petroleum fuel for diesel vehicles meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emission testing. The grade of petroleum fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel, shall be used.

Item	ASTM test method No.	Type 2–D
Cetane Number	D613	40–48
Cetane Index	D976	40–48
Distillation range:		
IBP, °F	D86	340–400
(°C)		(171.1–204.4)
10 pct. point, °F	D86	400–460
(°C)		(204.4–237.8)
50 pct. point, °F	D86	470–540
(°C)		(243.3–282.2)
90 pct. point, °F	D86	560–630
(°C)		(293.3–332.2)
EP, °F	D86	610–690
(°C)		(321.1–365.6)
Gravity, °API	D287	32–37
Total sulfur, pct.	D2622	0.03–0.05
Hydrocarbon composition.	D1319	
Aromatics, min. pct.		27
Parafins, naphthenes, olefins.		[1]
Flashpoint, min. °F	D93	130
(°C)		(54.4)
Viscosity, centistokes.	D445	2.2-3.4

[1] Remainder.

(3) Petroleum fuel for diesel vehicles meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of petroleum diesel fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel fuel, shall be used.

Item	ASTM test method No.	Type 2-D
Cetane Number	D613	38–58
Distillation range:		
90 pct. point, °F	D86	540-630
(°C)		(282.2-343.3)
Gravity, °API	D287	30–39
Total sulfur, pct.	D2622	0.03–0.05
Flashpoint, min. °F	D93	130
(°C)		(54.4)
Viscosity, centistrokes.	D455	1.5–4.5

(4) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled diesel vehicles shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufactureres shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (b)(4) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(5) Other fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) or (b)(4) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(6) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section shall be reported in accordance with § 86.090–21(b)(3).

(c) Fuels not meeting the specifications set forth in this section may be used only with the advance approval of the Administrator.

(d) *Mixtures of petroleum and methanol fuels for flexible fuel vehicles.* (1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall be within the range of fuel mixtures for which the vehicle was designed.

(2) Manufacturer testing and service accumulation may be performed using only those mixtures (mixtures may be different for exhaust testing, evaporative testing, and service accumulation) expected to result in the highest emissions, provided:

(i) The fuels which constitute the mixture will be used in customer service, and

(ii) Information, acceptable to the Administrator, is provided by the manufacturer to show that the designated fuel mixtures would result in the highest emissions, and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraph (d)(1) of this section shall be reported in accordance with § 86.090–21(b)(3).

9. A new § 86.1313–91 is proposed to be added to subpart N, to read as follows:

§ 86.1313–91 Fuel specifications.

(a) *Otto-cycle test fuel.* (1) Gasoline having the specifications listed in Table N90–1 will be used by the Administrator

TABLE N91-2

in exhaust emission testing petroleum-fueled Otto-cycle engines. Gasoline having these specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust emission testing, except that the octane specification does not apply.

TABLE N91-1

Item	ASTM	Value
Octane, research, min	D2699	93
Sensitivity, min		7.5
Lead (organic), g/U.S. gal.	D3237	(0.050) [1]
(g/liter)		(0.013) [1]
Distillation range:		
IBP, °F	D86	75–95
(°C)		(23.9–35)
10 pct. point, °F	D86	120–135
(°C)		(48.9–57.2)
50 pct. point, °F	D86	200–230
(°C)		(93.3–110)
90 pct. point, °F	D86	300–325
(°C)		(148.9–162.8)
EP, max. °F	D86	415
(°C)		(212.8)
Sulphur, max. wt. pct.	D1266	0.10
Phosphorus, max., g/U.S. gal.	D3231	0.005
(g/liter)		(0.0013)
RVP, psi	D323	8.0–9.2
(kPa)		(60.0–63.4)
Hydrocarbon composition:		
Olefins, max. pct.	D1319	10
Aromatics, max. pct.	D1319	35
Saturates	D1319	[2]

[1] Maximum.
[2] Remainder.

(2) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation.

(i) The octane rating of the gasoline used shall be not higher than one Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled Otto-cycle engines shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (a)(3) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(4) Other methanol fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraph (a)(3) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (a)(2), (a)(3), and (a)(4) of this section shall be reported in accordance with § 86.090–21(b)(3).

(b) *Diesel test fuel.* (1) The petroleum fuels for testing diesel engines employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The petroleum fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant, and biocide.

(2) Petroleum fuel for diesel engines meeting the specifications in Table N90–2, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of petroleum fuel recommended by the engine manufacturer commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel shall be used.

TABLE N91-2

Item	ASTM	Type 1–D	Type 2–D
Cetane	D613	48–54	42–50
Distillation range:			
IBP, °F	D86	330–390	340–400
(°C)		(165.6–198.9)	(171.1–204.4)
10 pct. point, °F	D86	370–430	400–460
(°C)		(187.8–221.1)	(204.4–237.8)
50 pct. point, °F	D86	410–480	470–540
(°C)		(210–248.9)	(243.3–282.2)
90 pct. point, °F	D86	460–520	560–630
(°C)		(237.8–271.1)	(293.3–332.2)
EP, °F	D86	500–560	610–690
(°C)		(260–293.3)	(321.1–365.6)
Gravity, °API	D287	40–44	32–37
Total sulfur, pct.	D2622	0.08–0.12	0.08–0.12
Hydrocarbon composition:			
Aromatics, pct.	D1319	8[1]	27[1]
Parafins, Naphthenes, Olefins	D1319	[2]	[2]
Flashpoint, min., °F	D93	120	130
(°C)		(48.9)	(54.4)
Viscosity, centistokes	D445	1.6–2.0	2.2–3.4

[1] Minimum.
[2] Remainder.

(3) Petroleum fuel for diesel engines meeting the specifications in Table N90–3, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of petroleum diesel fuel recommended by the engine manufacturer, commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel shall be used:

TABLE N91-3

Item	ASTM	Type 1–D	Type 2–D
Cetane Number	D613	42–56	30–56
Distillation range:			
90 pct. point, °F	D86	440–530	540–630
(°C)		(226.7–276.7)	(282.2–332.2)
Gravity, °API	D287	39–45	30–42
Total sulfur, pct.	D2622	0.08–0.12	0.08–0.12
Flashpoint, min., °F	D93	120	130
(°C)		(48.9)	(54.4)
Viscosity, centistokes	D455	1.2–2.2	1.6–4.5

(4) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled diesel engines shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (b)(4) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(5) Other fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) or (b)(4) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(6) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section shall be reported in accordance with § 86.090–21(b)(3).

(c) Fuels not meeting the specifications set forth in this section may be used only with the advance approval of the Administrator.

(d) *Mixtures of petroleum and methanol fuels for flexible fuel vehicles.* (1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall be within the range of fuel mixtures for which the vehicle was designed.

(2) Manufacturer testing and service accumulation may be performed using only those mixtures (mixtures may be different for exhaust testing, evaporative testing, and service accumulation) expected to result in the highest emissions, provided:

(i) The fuels which constitute the mixture will be used in customer service, and

(ii) Information, acceptable to the Administrator, is provided by the manufacturer to show that the designated fuel mixtures would result in the highest emissions, and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraph (d)(2) of this section shall be reported in accordance with § 86.090–21(b)(3).

10. A new § 86.1313–94 is proposed to be added to Subpart N, to read as follows:

§ 86.1313–94 Fuel specifications.

(a) *Otto-cycle test fuel.* (1) Gasoline having the specifications listed in Table N90–1 will be used by the Administrator in exhaust emission testing petroleum-fueled Otto-cycle engines. Gasoline having these specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust emission testing, except that the octane specification does not apply.

TABLE N94-1

Item	ASTM	Value
Octane, research, min	D2699	93
Sensitivity, min		7.5
Lead (organic), g/U.S. gal.	D3237	(0.050)[1]
(g/liter)		(0.013)[1]
Distillation range:		
IBP, °F	D86	75–95
(°C)		(23.9–35)
10 pct. point, °F	D86	120–135
(°C)		(48.9–57.2)
50 pct. point, °F	D86	200–230
(°C)		(93.3–110)
90 pct. point, °F	D86	300–325
(°C)		(148.9–162.8)
EP, max. °F	D86	415
(°C)		(212.8)
Sulphur, max. wt. pct.	D1266	0.10
Phosphorus, max., g/U.S. gal.	D3231	0.005
(g/liter)		(0.0013)
RVP, psi	D323	8.0–9.2
(kPa)		(60.0–63.4)
Hydrocarbon composition:		
Olefins, max. pct.	D1319	10
Aromatics, max. pct.	D1319	35
Saturates	D1319	[2]

[1] Maximum.
[2] Remainder.

(2) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation.

(i) The octane rating of the gasoline used shall be not higher than one Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled Otto-cycle engines shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (a)(3) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(4) Other methanol fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that

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only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraph (a)(3) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (a)(2), (a)(3), and (a)(4) of this section shall be reported in accordance with § 86.090–21(b)(3).

(b) *Diesel test fuel.* (1) The petroleum fuels for testing diesel engines employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The petroleum fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant, and biocide.

(2) Petroleum fuel for diesel engines meeting the specifications in Table N94–2, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of petroleum fuel recommended by the engine manufacturer commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel shall be used.

TABLE N94–2

Item	ASTM	Type 1–D	Type 2–D
Cetane Number	D613	40–54	40–48
Cetane Index	D976	40–52	40–48
Distillation range:			
IBP, °F	D86	330–390	340–400
(°C)		(165.6–198.9)	(171.1–204.4)
10 pct. point, °F	D86	370–430	400–460
(°C)		(187.8–221.1)	(204.4–237.8)
50 pct. point, °F	D86	410–480	470–540
(°C)		(210–248.9)	(243.3–282.2)
90 pct. point, °F	D86	460–520	560–630
(°C)		(237.8–271.1)	(293.3–332.2)
EP, °F	D86	500–560	610–690
(°C)		(260.0–293.3)	(321.1–365.6)
Gravity, °API	D287	40–44	32–37
Total sulfur, pct	D2622	0.03–0.05	0.03–0.05
Hydrocarbon composition:			
Aromatics, pct	D1319	8[1]	27[1]
Paraffins, Naphthenes, Olefins	D1319	[2]	[2]
Flashpoint, min., °F	D93	120	130
(°C)		(48.9)	(54.4)
Viscosity, centistokes	D445	1.6–2.0	2.0–3.2

[1] Minimum.
[2] Remainder.

(3) Petroleum fuel for diesel engines meeting the specifications in Table N94–3, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of petroleum diesel fuel recommended by the engine manufacturer, commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel shall be used:

TABLE N94–3

Item	ASTM	Type 1–D	Type 2–D
Cetane Number	D613	40–56	30–50
Distillation range:			
90 pct. point, °F	D86	440–530	540–630
(°C)		(226.7–276.7)	(282.2–332.2)
Gravity, °API	D287	39–45	30–42
Total sulfur, pct	D2622	0.03–0.05	0.03–0.05
Flashpoint, min., °F	D93	120	130
(°C)		(48.9)	(54.4)
Viscosity, centistokes	D445	1.2–2.2	1.5–4.5

(4) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled diesel engines shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (b)(4) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(5) Other fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) or (b)(4) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(6) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section shall be reported in accordance with § 86.090–21(b)(3).

(c) Fuels not meeting the specifications set forth in this section may be used only with the advence approval of the Administrator.

(d) *Mixtures of petroleum and methanol fuels for flexible fuel vehicles.* (1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall be within the range of fuel mixtures for which the vehicle was designed.

(2) Manufacturer testing and service accumulation may be performed using only those mixtures (mixtures may be different for exhaust testing, evaporative testing, and service accumulation) expected to result in the highest emissions, provided:

(i) The fuels which constitute the mixture will be used in customer service, and

(ii) Information, acceptable to the Administrator, is provided by the manufacturer to show that the designated fuel mixtures would result in the highest emissions, and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraph (d)(2) of this section shall be reported in accordance with § 86.090–21(b)(3).

[FR Doc. 89–19616 Filed 8–23–89; 8:45 am]

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federal register

Thursday
August 24, 1989

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Sacramento Prickly Poppy and the Virgin River Chub; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AA10

Endangered and Threatened Wildlife and Plants; Final Rule to Determine Argemone pleiacantha ssp. pinnatisecta (Sacramento prickly poppy) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines *Argemone pleiacantha* ssp. *pinnatisecta* (Sacramento prickly poppy) to be an endangered species, under the authority contained in the Endangered Species Act of 1973 (Act), as amended. The Sacramento prickly poppy is endemic to several canyons in the Sacramento Mountains, Otero County, New Mexico. Known populations consist of 1,310 plants, which occur on Bureau of Land Management (BLM), Lincoln National Forest, Oliver Lee State Park, New Mexico and Otero County Highway rights-of-way, and private lands. This species is threatened by livestock grazing, pipeline construction, flooding, and road construction and maintenance. Final determination that *Argemone pleiacantha* ssp. *pinnatisecta* is endangered implements the protection provided by the Act.

EFFECTIVE DATE: September 25, 1989.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Ecological Services Field Office, 3530 Pan American Highway NE., Suite D, Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Charlie McDonald, Endangered Species Botanist, U.S. Fish and Wildlife Service Ecological Services Field Office, Albuquerque, New Mexico (see **ADDRESSES** above) (505/883–7877 or FTS 474–7877).

SUPPLEMENTARY INFORMATION:

Background

Argemone pleiacantha ssp. *pinnatisecta* (Sacramento prickly poppy) is a robust perennial known from nine canyons in the Sacramento Mountains of Otero County, south-central New Mexico. The Sacramento prickly poppy was first collected in 1953 by Mr. G.B. Ownbey and Mr. Findley on the western slopes of the Sacramento Mountains. Mr. Ownbey described the taxon in a monograph of the genus *Argemone* for North America and the West Indies (Ownbey 1958).

This member of the Poppy family (Papaveraceae) has 3–12 prickly stems branching from the base, and commonly grows to a height of 5–15 decimeters (20–60 inches) (Soreng 1982). The pale lemon to nearly white milky sap readily distinguishes this subspecies from the typical subspecies, which has yellow-orange sap. The attractive flowers have numerous yellow stamens and six white petals that are 3–4 centimeters (1.2–1.6 inches) long and as wide. Leaves are long, relatively narrow, and have box-shaped sinuses between spine-tipped lobes.

The Sacramento prickly poppy occurs at 1300–2200 meters (4,200–7,100 feet) elevation. At lower elevations, the surrounding vegetation is Semi-Desert Grassland; at the upper elevations the vegetation is Great Basin Conifer Woodland (Brown 1980). The Sacramento prickly poppy occurs in open, disturbed, or relatively undisturbed areas within these plant communities. The species grows in limestone canyons, or roadsides, fields, grassy flats, steep slopes, and floodplain and channel deposits. Populations are usually found where there is enhanced, but not wet, soil moisture conditions. These conditions are met on north-facing slopes, in canyon bottoms, along roadsides, and near leaks in pipelines.

The plants are located on New Mexico State and Otero County highway rights-of-way, on private land, Oliver Lee State Park, Bureau of Land Management lands, and Lincoln National Forest lands.

Soreng (1982) estimated that three populations of *Argemone pleiacantha* ssp. *pinnatisecta* contained fewer than 170 plants in 1982, and suggested that these populations were declining. Flash floods are one of the reasons for this decline: one population decreased from 100 plants to six after a flash flood scoured the canyon in 1978 (Soreng 1982). The probability of such flooding has been increased by overgrazing, which disturbs topsoil and reduces plant cover. Plant recruitment may be low because seedlings and young plants are more palatable to livestock than mature plants (Soreng 1986). Soreng suggested that regeneration was insufficient to maintain population numbers.

Malaby (1987) surveyed eight canyons and found 1,290 plants. A total of 6,330 acres of Federal, State, city, and private land was surveyed. In a 1988 survey, Malaby (1988) found 23 additional plants in two locations. Previous surveys (Hutchins 1974, Spellenberg 1977 and 1978, and Meiiji 1979) have been conducted on both BLM and BIA administered lands and only 1 population was found on BLM land.

Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a report of those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4 of the Act and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act.

This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Argemone pleiacantha* ssp. *pinnatisecta* was included in the July 1, 1975, notice of review and in the June 16, 1976, proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979, (44 FR 70796), the Service published a notice of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired; this notice of withdrawal included *Argemone pleiacantha* ssp. *pinnatisecta*.

On December 15, 1980 (45 FR 82485), and September 27, 1985 (50 FR 39526), the Service published updated notices reviewing the native plants being considered for classification as threatened or endangered. *Argemone pleiacantha* ssp. *pinnatisecta* was included in these notices as a category 1 species. Category 1 comprises taxa for which the Service has sufficient biological data to support proposing them as endangered or threatend.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within one year of their receipt. Section 2(b)(1) of the Act's Amendments of 1982 further requires that all petitions pending on October 12, 1982, be treated as having

been newly submitted on that date. Because *Argemone pleiacantha* ssp. *pinnatisecta* was included in the 1980 notice, the petition to list this species was treated as being newly submitted on October 12, 1982. On October 13, 1983; October 12, 1984; October 11, 19085; and October 10, 1986, the Service made the required one-year findings that listing of *Argemone pleiacantha* ssp. *pinnatisecta* was warranted, but precluded by other listing actions of higher priority. Biological data, supplied by Soreng (1982, 1986), fully support the listing of *Argemone pleiacantha* ssp. *pinnatisecta*. The proposed rule of July 13, 1987 (52 FR 26164) was based primarily on Soreng's biological data and constituted the final one-year finding required by section 4(b)(3)(B) of the Act for this species.

Summary of Comments and Recommendations

In the July 13, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Alamogordo Daily News* on August 2, 1987. No public hearing was requested or held.

Three comments were received. The Nature Conservancy supports the listing, the biologist who prepared the initial status report for the Service supports the listing and provided information on population declines, and the U.S. Forest Service requested that the species not be listed. Specific issues raised in these comments are discussed below.

Comment: The Nature Conservancy agreed with the proposal to list *Argemone pleiacantha* ssp. *pinnatisecta* as endangered and requested that the Service designate critical habitat for this plant. *Response:* As discussed in the rule, the Service has determined that it would not be prudent to determine critical habitat for the plant at this time. The U.S. Forest Service, which administers much of the land on which the plant occurs, has implemented conservation measures such as reduced livestock grazing and plant propagation from seed. The Service notes that, even without critical habitat designation, the habitat of the Sacramento prickly poppy receives protection under Section 7 of the Act whenever a Federal agency is involved.

Comment: The U.S. Forest Service stated that adequate protection measures on Forest land and a greater abundance of plants than previously thought both may preclude the need for listing. In addition, they recommend additional surveys on BLM and BIA lands. They also suggest formulation of a conservation agreement with the Service. *Response:* The Service recognizes and appreciates the conservation measures enacted by the U.S. Forest Service. However, the Service believes that the plant is still in danger of extinction owing to habitat destruction and modification, scarcity, and limited distribution. Of the plants found in the 1987 Forest Service survey, 74% occurred in the Alamo Canyon System. A 1978 flood destroyed most of the plants in Alamo Canyon, and a future catastrophic event such as this is a potential threat. Of the other canyons surveyed, only two contained more than 100 plants. Soreng (pers. comm., 1987) reported that several populations had declined since his 1982 status report. Surveys have been conducted on both BLM and BIA administered lands and only 12 plants were found on BLM lands in 1988 (Howard pers. comm., 1989). Conservation agreements may be appropriate when only one landowner is involved. However, the Sacramento prickly poppy is found on Federal, State, City, and private land. A conservation agreement is not appropriate in this case.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Argemone pleiacantha* ssp. *pinnatisecta* G.B. Ownbey (Sacramento prickly poppy) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Sacramento prickly poppy habitat has been and continues to be destroyed or modified by livestock grazing, pipeline construction, flooding, and road construction and maintenance. Cattle grazing has both direct and indirect effects on the Sacramento prickly poppy. When cattle stocking rates are high, plants of this species are trampled and others are eaten (Soreng 1982). While trampling or grazing may not kill mature plants with an established tap root, these actions may kill seedlings and affect the reproduction of mature plants. Overgrazing has caused disturbance of topsoil and a reduction in plant cover throughout the range of the Sacramento pickly poppy (Soreng 1982). The poor condition of the watershed could increase the probability of flash floods. The Sacramento prickly poppy is particularly vulnerable to flooding because many plants occur on floodplain and channel deposits. Forest Service personnel noted that one population was nearly eliminated during a flash flood in 1978 (Soreng 1982).

The diversion of permanent spring water from drainages in the Sacramento Mountains to pipelines for human and livestock use has created artificially dry conditions in the areas where the Sacramento prickly poppies occur. Fletcher (pers. comm., 1986) believes the installation of a pipeline in one canyon and subsequent drying was the cause of the greatest reduction in the numbers of Sacramento prickly poppy.

Road construction, widening, and maintenance pose a threat to the Sacramento prickly poppy because a number of plants occur along roadsides. These plants are subject to destruction by mechanical disturbance, herbicide application, and soil and gravel dumping.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Alkaloids present in the seeds and juices of other species of *Argemone* have been used in the past as purgatives and as treatments for a wide variety of ailments including ophthalmia. However, no medicinal use of the Sacramento prickly poppy is known.

C. *Disease or predation.* Although Soreng (1982) noted that the stems of some plants had been chewed by insects, and Fletcher (1978) reported insect larvae boring into the stems, such damage to Sacramento prickly poppy plants appears to be insignificant. As indicated above, grazing by cattle may be causing reduction in recruitment rates.

D. *The inadequacy of existing regulatory mechanisms.* The taxon is protected by the New Mexico Native Plant Law. This law prohibits the collection of this species unless a permit is granted by the New Mexico Department of Energy, Minerals and Natural Resources. The Forest Service has included *Argemone pleiacantha* ssp. *pinnatisecta* on its Sensitive Plant Species List. As a matter of policy, the Forest Service and BLM consider Federal candidate species in their environmental assessments and planning.

E. *Other natural or manmade factors affecting its continued existence.*

Scarcity and limited distribution make this species vulnerable to both natural and man-caused threats. Any further reduction in plant numbers could reduce the reproductive capabilities and genetic potential of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Argemone pleiacantha* ssp. *pinnatisecta* as endangered without critical habitat. This status seems appropriate because the habitat of the few remaining populations is threatened by overgrazing, pipeline construction, flooding, and road construction and maintenance. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Sacramento prickly poppy at this time. Plants are vulnerable to taking or vandalism because of their immobility and accessibility. Any reduction in the small number of plants would be significant. Publication of critical habitat descriptions and maps would be detrimental, highlighting the easy accessibility of the plants. No benefit can be identified that would outweigh the threats of vandalism or taking that might result from such a publication. The Forest Service and BLM are aware of the locations of the Sacramento prickly poppy, have acknowledged the threats to these populations, and are considering the species during planning. All other involved parties and landowners will be notified of the location and importance of protecting this species and its habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Argemone pleiacantha* ssp. *pinnatisecta* at this time. No net benefit would accrue from designating critical habitat for the conservation of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service at the earliest opportunity. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Most populations of the Sacramento prickly poppy have been found on U.S. Forest Service lands. In the past, Forest Service actions such as trail and road construction and maintenance, and designation of water rights and grazing allotments have impacted known populations. Future management activities can be planned to avoid adverse impacts on populations and potential habitat of the Sacramento prickly poppy. A 1988 field survey identified 12 plants occurring on BLM land in San Andreas Canyon. There is an existing water pipeline and grazing allotment in the area; however, BLM anticipates no future increase in the grazing allotment and BLM will coordinate with the Service and the pipeline right-of-way owner to minimize impacts from potential future pipeline improvements (Mike Howard pers. comm., 1989). Section 7(a) of the Act requires the Forest Service and BLM to consult with the U.S. Fish and Wildlife Service prior to the initiation of planned activities that may affect this listed plant. Road construction or maintenance that is done by the State or County with Federal funds and that may affect the Sacramento prickly poppy would require the Federal Highways Administration to consult with the Service.

The Act and its implementing regulations found at 50 CFR 17.61 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant; transport it in interstate or foreign commerce in the course of a commercial activity; sell or offer it for sale in interstate or foreign commerce; or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With regard to the subject of this final rule, it is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20238–7329 (202/343–4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Hutchins, C.R. 1974. A Flora of the White Mountain Area, southern Lincoln and northern Otero Counties, New Mexico. Albuquerque, NM. 583 pp.

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Soreng, R.J. 1988. Fresnal Canyon Preserve for *Argemone pleiacantha* ssp. *pinnatisecta*. The Nature Conservancy, Albuquerque, NM. 18 pp.

Spellenberg, R. 1977. Final report on the survey for threatened and endangered plant species on the East Side Socorro area, central New Mexico, 1976–1977. Bureau of Land Mangement, Socorro District, NM. 221 pp

Spellenberg, R. 1978. Review of federally "threatened" or "endangered" plant species in the Las Cruces District of the Bureau of Land Management, U.S. Department of the Interior. Bureau of Land Mangement, Las Cruces, NM. 160 pp.

Author

The primary authors of this final rule are Sonja E. Jahrsdoerfer and Sue Rutman, Endangered Species Biologists, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972). Status information was provided by Dr. Robert Soreng, New Mexico State University, Las Cruces, New Mexico.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12 (h) by adding the following, in alphabetical order under the family Papaveraceae, to the List of Endangered and Threatened plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Papaveraceae—Poppy family:						
*	*	*	*	*	*	*
Argemone pleiacantha ssp. *pinnatisecta*	Sacramento prickly poppy	U.S.A. (NM)	E	359	NA	NA
*	*	*	*	*	*	*

Dated: July 18, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–19901 Filed 8–23–89; 8:45 am]

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50 CFR Part 17

RIN 1018–ABOZ

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Virgin River Chub

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Virgin River chub (*Gila robusta seminuda*) to be an endangered species under the provisions of the Endangered Species Act (Act) of 1973, as amended. This species occurs in the Virgin River in Arizona, Nevada, and Utah. Threats to the Virgin River chub include habitat changes, disease, floods, toxic spills, and competition with exotic fishes. The species is particularly vulnerable to these threats because of its very limited distribution. In accordance with 4(b)(6)(C) of the Act, the final designation of critical habitat included in the proposed rule is postponed. This rule implements the full protection provided by the Act for the Virgin River chub.

EFFECTIVE DATE: September 25, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Fish and Wildlife Enhancement Office, 1745 West, 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: Mr. Donald L. Archer, Salt Lake City, Utah (see ADDRESSES above) (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

Gila robusta seminuda was first collected from the Virgin River near Washington, Utah, by members of the Wheeler Survey and described as a species intermediate between *Gila robusta* and *Gila elegans* (Cope and Yarrow 1875). Later authors have treated this chub as a subspecies of robusta along with other chubs from various stream systems in the Colorado River basin (Ellis 1914, Miller 1946, LaRivers and Trelease 1952). Holden and Stalnaker (1970) showed that the subspecific name *seminuda* should refer only to the chub in the Virgin River, and that specimens from other localities represent other subspecies of *Gila robusta*. Holden and Stalnaker (1970) and Minckley (1973) indicated that the Virgin River population is a valid subspecies, and Smith et al. (1977) supported this conclusion with extensive taxonomic analyses.

The Virgin River chub is a very silvery medium-sized minnow that averages about 20 centimeters (cm) or 8 inches (in) in total length but can grow to a length of 45 cm (18 in). *Gila robusta seminuda* can be distinguished from other subspecies by the number of rays (9 to 10) in the dorsal, anal, and pelvic fins, and the number of gill rakers (24 to 31). The back, breast, and part of the belly have small, deeply embedded scales that are difficult to see and may be absent in some individuals. This characteristic is the basis for the subspecific name *seminuda*.

A closely related form of *Gila robusta*, which appears to be an undescribed subspecies, is found in the Moapa River in Nevada. The Moapa River was originally a tributary of the Virgin River, but both are now tributaries to Lake Mead, a reservoir on the Colorado River. Although the Moapa form of *Gila robusta* has also suffered population declines in the past, has a reduced range, and presently exists at low population levels (Cross 1976, Deacon and Bradley 1972), the Moapa form is not affected by the present listing of the Virgin River chub.

Gila robusta seminuda is endemic to 134 miles of the Virgin River in southwest Utah, northwest Arizona, and southeast Nevada. Historically, the Virgin River chub is believed to have occurred throughout most of the Virgin River from its original confluence with the main stem Colorado upstream to La Verkin Creek, near the town of Hurricane, Utah. Cope and Yarrow (1875) refer to the chub's abundance near Washington, Utah, as "this species is by no means scarce, as several hundred were observed captured by boys with hook and line." However, recent studies (Cross 1975, Woundfin Recovery Team 1977–1986) suggest that a large decrease in range and numbers of this species has occurred in the last century, primarily from 1860 to 1900 when many of the present water diversions were constructed. These diversions dewatered approximately 35 miles of the chub's natural habitat. With the construction of Hoover Dam and the impoundment of Lake Mead an additional 40 miles of river was inundated, for a nearly total destruction of almost 56 percent of the chub's original habitat.

This species presently occurs in only 50 miles of the mainstream Virgin River between Mesquite, Nevada, and La Verkin Creek near Hurricane, Utah; only twice has it been recorded in a tributary (Cross 1975, Hickman 1985). It is most common in deeper areas where waters are swift, but not turbulent, and is generally associated with boulders or other cover (Minckley 1973). It occurs over sand and gravel substrates in water less than 90 °F (30 °C), and is very tolerant of high salinity and turbidity (Deacon and Holden 1977). The Virgin River chub is an omnivore, eating algae, aquatic and terrestrial insects, organic detritus, and crustaceans (Cross 1975).

In a study of the fishes of the Virgin River from 1973 to 1975, Cross (1975) found very few young-of-the-year Virgin River chubs or adults over 17.5 cm (7 in) in standard length. During this study, Cross was able to capture only 154 individual chubs, comprising only 1 percent of the 10,622 native fish specimens he collected. The Woundfin Recovery Team reported good chub reproduction in 1978, 1983 and 1986. Hickman (1988) found good reproduction in 1983 and 1986 but very little in 1984, 1985, 1987 or 1988.

The size of many riverine fish populations, such as the Virgin River chub population, often fluctuates over time due to erratic environmental conditions. It is not clear what the major influencing factors are but fish produced during successful years may dominate the population and, for long-lived species, may influence its structure for many years. Thus, the size and future survival of the population is strongly influenced by the frequency of successful reproductive years and the survival of the young of those years. Man's alteration of natural hydrologic cycles and other perturbations in the Virgin River has caused changes in this system that may have resulted in fewer periods of optimal reproduction for the Virgin River chub.

During 1988, after salvaging 1200 Virgin River chub, all fishes were eradicated from a 21-mile reach of the Virgin River in Utah from the Washington Fields diversion downstream to the head of the Virgin River Gorge. The purpose was to eradicate the exotic red shiner (*Notropis lutrensis*). A few months later the fish population below Quail Creek Reservoir was further impacted by a devastating flood which resulted from the collapse of a dike retaining about 25,000 acre feet of water in the Quail Creek Reservoir. This event is believed to have had a devastating impact on the entire fish population in 85 miles of the Virgin River.

Potential threats to the species' survival include further water removal, additional impoundments, sedimentation, pollution, channel alteration, disease, and competition and/or predation by introduced species. The threats are magnified by the low numbers and naturally limited range of this fish and its consequent vulnerability to extensive losses from a single threat or even a single event.

Lands along those portions of the Virgin River occupied by the Virgin River chub are administered by the Bureau of Land Management (BLM), the States of Utah and Arizona, and private landowners. In Arizona about 80 to 90 percent of the lands along the river are administered by BLM, with private land being concentrated in the vicinity of Littlefield. In Utah, about 13 miles of the lands along the river are managed by BLM, the State owns 4 parcels with small amounts of river frontage, and the remainder is privately owned. In Nevada, lands along the river above the town of Mesquite are privately owned.

On August 23, 1978, the Service published a proposal to list the Virgin River chub as endangered with critical habitat (43 FR 37668). On September 30, 1980, the Service withdrew the above proposal, because it was not finalized within 2 years of its initial publication in the **Federal Register** (45 FR 64853) as required by the Endangered Species Act Amendments of 1978. On December 30, 1982, *Gila robusta seminuda* was included on the Vertebrate Notice of Review (47 FR 58454) in category 1. Category 1 includes those taxa for which the Service currently has substantial biological information to support proposing to list the species as endangered or threatened. In April 1983 the Woundfin Recovery Team recommended that this chub, which is found in the same river as the endangered woundfin (*Plagopterus argentissimus*), be added to the Federal list as endangered. Under contract with the Service, a status report on the Virgin River chub was prepared by Mr. C.O. Minckley. This 1983 report recommended that the chub be listed as endangered with critical habitat. On June 24, 1986, the Service published in the **Federal Register** (51 FR 22949) a proposal to list the Virgin River chub as endangered and to designate its critical habitat.

Summary of Comments and Recommendations

In the June 24, 1986, proposed rule (51 FR 22949) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The original comment period closed on August 25, 1986, but was reopened on September 18, 1986 (51 FR 33096), to accommodate the public hearing and remained open until December 15, 1986. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices summarizing the proposed rule and inviting general public comment were published in the *Daily Spectrum* on July 28, 1986, and in the *Deseret News* on July 31, 1986. Comments were received from 40 entities and are discussed below. Comments given at the public hearing are also summarized.

Requests for a public hearing were received from John S. Williams, Executive Director, Five County Association of Governments, St. George, Utah; Jerry B. Lewis, Chairman, Washington County Commission, St. George, Utah; Callister, Duncan and Nebekes, Attorneys-at-Law, Salt Lake City, Utah; Tom Hatch, Chairman, Color Country Resource Conservation and Development, Cedar City, Utah; Norman H. Bangerter, Governor, State of Utah, Salt Lake City; and Robert A. Stark, Mayor, Washington City, Utah. A public hearing was held in St. George, Utah, on October 15, 1986. Interested parties were contacted and notified of the hearings, and a notice of the hearing was published in the **Federal Register** on September 8, 1986 (51 FR 33096). Newspaper notices announcing the public hearing were published in the *Daily Spectrum* on October 5, 1986, and in the *Deseret News* on September 19, 1986. A total of 30 people attended the hearing. A transcript of this hearing is available for inspection (see **ADDRESSES**). The 17 oral comments received in the hearings are also summarized below.

Because of the need for a prompt determination of endangered status for the Virgin River chub, and because of the complexity of the economic analysis that must accompany the final rule designating critical habitat, the Service has decided for the present to make final only the listing portion of the proposed rule. Section 4(b)(6)(C) of the Act allows the Service to postpone the designation of critical habitat for up to one additional year from the date of publication of the proposed rule. The final decision on the designation of critical habitat for the Virgin River chub will be made at a later date. Therefore, comments received regarding the proposed critical habitat designation will not be discussed here, but will be addressed in the final notice on critical habitat.

Comments from 32 parties were received: 12 supported the proposal; seven questioned or opposed the proposal and 13 either commented on information in the proposal but expressed neither support nor opposition, were nonbiological or irrelevant to the proposal, or contained only economic or other comments related to critical habitat designation.

Of the 30 people attending the public hearing, 16 people representing 17 parties presented oral statements. Seven parties opposed the listing, six supported the listing, and four parties either commented on information in the proposal but expressed neither support nor opposition, gave nonbiological comments, or provided economic or other comments related to critical habitat designation.

All letters and written or oral statements received during the comment period and public hearings are combined in the following discussion. All comments are available for public inspection (see **ADDRESSES**).

Comments supporting the proposal were received from Arizona Game and Fish Department, Arizona Department of Commerce, Nevada Department of Wildlife, Desert Fishes Council, American Society of Ichthyologists and Herpetologists, Utah Wildlife Federation, American Fisheries Society, Southern Utah Residents Concerned about the Environment, and seven other interested parties,

Comments questioning or in opposition to the proposal were received from Governor Norman Bangerter, Washington County Commission, Washington County Water Conservancy District, Washington County Farm Bureau, Utah Farm Bureau Federation, Five County Association of Governments, Color Country Resource Conservation and Development, Washington City, Cities of Hurricane and St. George, and two other interested parties.

Requests for information or comments that expressed neither support nor opposition, were nonbiological, economic, or related to critical habitat were received from Senator Orin Hatch, Senator Jake Garn, Arizona Department of Water Resources, Arizona State Land Department, Utah Department of Natural Resources, Soil Conservation Service (Utah Office), Bureau of Reclamation Upper Colorado Regional Office and Lower Colorado Regional Office, Federal Highways Administration, Washington Office of the Bureau of Land Management (responding for the Arizona State Office), Colorado River Basin Salinity Control Forum, and three interested parties.

Summaries of substantive comments addressing the listing of the Virgin River chub are covered in the following discussion. Comments of similar content are placed in a number of general groups. These comments and the Service's responses are given below:

Issue 1: Listing the Virgin River chub will adversely affect future economic development of southern Utah, particularly by affecting water resource development. In addition, listing is not necessary because existing regulations and controls, along with better water planning, are sufficient to protect the chub.

Response: The Act requires the Service to list a species "solely on the basis of the best scientific and commercial data available", regardless of the economic impacts. However, the Service does not intend to curtail the future economic development of the area by listing this species. Rather, the Service's intent is to provide the legal platform whereby the conservation of this species will be recognized in future planning. The Act only requires Federal agencies that carry out, fund, or permit projects to provide for the conservation of only those species that are listed as endangered or threatened. The listing of the woundfin as endangered, in 1970, has not impacted ongoing irrigation projects nor has it prevented the construction of Quail Creek Reservoir. Listing the Virgin River chub means that the Service will continue to work with other Federal agencies when they plan a project that may affect the continued survival of the species. The record demonstrates that endangered species rarely cause the abandonment of a project, but rather cause the project to proceed in a manner that provides for the conservation of the species. In addition to working with other Federal agencies, the Service hopes to develop a cooperative relationship with State and local governments and private local user groups to work towards the conservation and recovery of the species.

Issue 2: The 1984 studies by Hickman (Hickman 1985) seem to show an increase in chub abundance since Cross sampled the population in the early 1970's (Cross 1975).

Response: Hickman's data (1985, 1988) is not directly comparable with Cross (1975) because Hickman used more efficient sampling gear and sampled at different sampling sites. While Hickman has collected many more chubs, his sampling efforts greatly exceeded that of Cross. Hickman's observations relative to reproductive success concur with that of the Woundfin Recovery Team, which shows that the chub has spawned successfully only 3 of the past 12 years (1978, 1983, and 1986). This lack of breeding success has continued through the 1988 spawning season. The Service does not interpret 3 years of reproductive success out of the past 12 years as either establishing a trend or as acceptable evidence that the species is not endangered.

Issue 3: Listing the Virgin River chub is premature; the Service should wait until additional biological data are gathered or until ongoing studies are complete.

Response: The available biological data indicate that the Virgin River chub is sufficiently reduced in numbers and range, and is faced with threats serious enough to warrant listing this species as endangered.

Issue 4: The endangered woundfin inhabits some of the same reaches of the Virgin River as the Virgin River chub. Why does the Service need to list the Virgin River chub when the protection of the Act given to the woundfin will be good enough to protect the Virgin River chub too?

Response: The Virgin River chub fully meets the requirements for listing as endangered as defined by the Act, therefore, the Service is required to list the species. If the Virgin River chub is not listed, its habitat needs will not be taken into account when planning for the habitat needs of the woundfin. Hickman's (1985) results indicate that both young-of-the-year and larger chubs may frequent the same areas as the woundfin, but according to current ecological theory, their habitat requirements cannot be identical. Therefore, the habitat for the chub cannot be adequately considered and protected in the planning and recovery process for the woundfin.

Issue 5: Several commenters disagreed with the Service's conclusion that habitat alteration is a threat to the species. They questioned whether any significant alteration has occurred, and argue that in the past the species has coexisted with development and can be expected to continue to coexist.

Response: The Service believes that habitat alterations, particularly impoundments and irrigation diversions that have already occurred, have significantly changed and reduced the habitat of the Virgin River chub and have contributed to the species' decline. The Virgin River chub has persisted in this greatly modified river, but further alteration and destruction of the species' habitat can only contribute to its decline. Ways in which habitat alteration and destruction have affected the Virgin River chub are discussed under "Factor A" of the "Summary of Factors Affecting the Species."

Issue 6: Chubs are more abundant in heavily impaired habitat (between the Washington Fields Diversion to the Arizona State line) than they are in what appears to be better habitat.

Response: The available data does not support this statement. Virgin River chub abundance is generally highest where the best feeding and holding habitats occur. These habitats are not spread evenly throughout the river, but are usually found where the better flows occur in the river. Highly impacted areas, such as immediately below Washington Fields Diversion, have lower concentrations of chubs.

Issue 7: The Service's population estimates are artificially low because flooding has decreased the number of fish.

Response: It is true that recent flood events appear to have negatively affected the chub populations in some areas. These floods are catastrophic events that have reduced the chub populations, thus the Service's population estimates are not "artificially low." Because there has been a major reduction in the species range, substantial changes in its native habitat, and infrequent spawning success, it will be much harder for these populations to recover to preflood numbers.

Issue 8: The fish is not a valid species or subspecies.

Response: Taxonomic experts unanimously agree that *Gila robusta seminuda* is a valid subspecies. The Virgin River chub has several features that distinguish this subspecies from other subspecies in the genus.

Issue 9: Instead of listing, why can't the Service form a committee, like that formed for the Upper Colorado River fishes, to oversee recovery actions and resolve water use conflicts?

Response: The available data indicate that the Virgin River chub fully meets all the criteria necessary for listing as endangered. Therefore, the Service is required to list the species. Once listed, the chub will receive the same protection the woundfin, Colorado squawfish, humpback chub, and bonytail chub receive. Recovery efforts for the latter three species are coordinated by both the Upper Colorado River Coordinating Committee and the Colorado River Fishes Recovery Team. Virgin River Chub recovery will be coordinated by the Woundfin Recovery Team, which will be renamed the Virgin River Fishes Recovery Team. Without listing, there would be little reason to consider chub habitat needs in any planning for the Virgin River.

Issue 10: Several commenters provided or commented on new data that have been collected since the publication of the proposed rule.

Response: The Service is aware of these data and has incorporated them into the final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Virgin River chub should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Virgin River chub (*Gila robusta seminuda*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* As with most desert river systems, the Virgin River has been extensively modified to accommodate human needs, which include irrigation, municipal and industrial uses, recreation, and limited hydropower production. Types of river modifications include: Conversion of flowing waters into still waters by impoundment; alteration of flow regimes (including conversion of perennial waters to intermittent or no flow, and the reduction, elimination, or modification of natural flooding patterns); alteration of water temperatures (either higher or lower); alteration of silt and bed loads; increase in water salinity; loss of marshes and backwaters; and alteration of stream channel characteristics from a well-defined, surface level, vegetated channel with a diversity of substrates and habitats, into a shallower, wider stream bed with little riparian vegetation, uniform substrates, and little habitat diversity. Causes of such alterations include: impoundments, water diversions, riparian vegetation destruction and alteration, channel down cutting, erosion, road construction, channelization, flood control, agricultural use of the stream banks, water pollution, and other watershed disturbances.

Water diversions and impoundments have caused the most obvious negative effects to the Virgin River chub population. Diversions have dewatered or reduced to shallow, braided streams some 35 miles of the Virgin River. These early changes in the Virgin River undoubtedly caused reductions in the abundance of native fishes, including the Virgin River chub, but the changes did not reduce the chubs to the point of extinction.

The Virgin River chub population has persisted in the river despite major river modifications and loss of habitat. Further modifications proposed along the Virgin River and its tributaries are likely to reduce habitat to a point that the river will no longer support the chub and the species will become extinct. Planned modifications to Virgin River tributaries include the following actions. The Washington County Conservancy District has identified four potential reservoir sites including: Ash Creek above Toquerville, the East Fork of the Virgin River, North Creek above the town of Virgin, and Bullock Reservoir on the North Fork of the Virgin River (Thompson 1986). In addition, the Soil Conservation Service has several projects proposed in the Virgin River basin in Utah, including flood control and irrigation projects (Holt, *in litt.*). To avoid negative impacts to the chub, these projects will have to be carefully planned to provide for the conservation of the chub and its habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The Service has no evidence to suggest overuse of this fish for any of these purposes.

C. *Disease or predation.* The Asian fish tapeworm (*Bothriocephalus acheilognathi*) poses a major threat to the Virgin River chub (Deacon 1986, Heckmann *et al.* 1986). This parasite was first recorded in Virgin River chubs in the St. George area by Heckmann *et al.* (1986), but probably occurred in chub populations in the lower river since 1979 (Heckmann *et al.* 1986). Fish heavily infected with tapeworms may be less able to cope with environmental stresses created by river modifications and to compete with exotic fishes than are uninfected fish. Heckmann *et al.* (1986) found that parasite loads were correlated with water quality, flow rates, and habitat disturbance, with the highest number and frequency occurring in disturbed sites. Heckmann *et al.* (1986) has speculated that the Asian tapeworm was introduced into the Virgin River via the non-native red shiner (*Notropis lutrensis*).

Unlike other portions of the Colorado River basin, the Virgin River has had relatively few exotic predatory fish species. In the past 70 years, only a few exotic predatory fish, such as green sunfish (*Lepomis cyanellus*), black bullhead (*Ictalurus melas*), and largemouth bass, have been able to invade the Virgin River, and then only with limited success. This lack of success is due primarily to the naturally high salinity, temperature, and turbidity of the stream and its highly fluctuating flows. The extreme physical conditions appear to have inhibited the invasion of many exotic species. Actions that alter natural environmental conditions may create conditions more favorable to exotic fishes.

The red shiner (*Notropis lutrensis*), an exotic species, is a relatively recent addition to the ichthyofauna of the upper Virgin River system. Red shiners have been found below the Virgin River Gorge for more than 25 years, where their increase has corresponded to a decrease in native fishes. Red shiners have been implicated in the decline of several other native species, are considered to be a threat to the federally endangered woundfin, and may present a significant threat to early life stages of the chub. In the St. George area, the red shiner (*Notropis lutrensis*) became established in 1985 and dominated fish collections within one year. In 1988 a major renovation effort was undertaken to remove the red shiner from 21 miles of the upper river and prevent its reinvasion through the construction of a barrier dam at the head of the Virgin River Gorge. The success of this undertaking continues to be evaluated. The red shiner's recent invasion demonstrates the seriousness of the threat of exotic fish invasions to all native species in the Virgin River.

D. *The inadequacy of existing regulatory mechanisms.* The State of Arizona currently lists the Virgin River chub under Group 2 of the Threatened Native Wildlife of Arizona (Arizona Game and Fish Commission 1982). Group 2 includes those animals whose continued presence in Arizona is now in jeopardy. The State of Nevada lists the species as sensitive (Nevada Board of Wildlife Commissioners 1981), a category which includes those species that may be candidates for classification to a more restrictive status. The State of Utah lists the Virgin River chub as threatened, meaning it is likely to become endangered in the foreseeable future. These State listings protect the chub from unregulated taking. However, none of these State listings provide habitat protection for the chub.

In 1986, Utah passed a law which provides the Utah Division of Wildlife Resources with the opportunity to acquire water rights for in-stream flow purposes to protect fish and wildlife habitat. This provision may allow the State to work with cooperating agencies and individuals to protect sensitive, endangered or threatened species and their habitats. The Nevada water law has no provisions for the acquisition and protection of in-stream water rights for the preservation of fish and wildlife in their habitat.

E. *Other natural or manmade factors affecting its continued existence.* The reduced numbers and range of the Virgin River chub make it particularly vulnerable to the threats discussed above. Because the Virgin River chub exists under continued and expanding levels of stress, any activity that affects the quantity or quality of its habitat will also affect the subspecies.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the Service has decided to list the Virgin River chub as endangered. A decision to take no action would constitute failure to properly classify the Virgin River chub pursuant to the Endangered Species Act and would exclude this chub from the protection provided by the Act. A decision to propose only threatened status would not adequately reflect the small population size, the reduced range, and the multiple threats faced by this fish. For the reasons given below, critical habitat designation is being postponed. Designation of critical habitat will be addressed in a subsequent **Federal Register** notice.

Critical Habitat

Section 4(a)(3) of the Act requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Section 4(b)(6)(C) further indicates that a concurrent critical habitat determination is not required, and that the final decision on designation may be postponed for one additional year from the date of publication of the proposed rule, if the Service finds that a prompt determination of endangered or threatened status is essential to the conservation of the species involved. The Service considers that a prompt determination of endangered status for the Virgin River chub is essential. As a proposed species, the Virgin River chub is eligible only for the limited consideration given under the conference requirement of section 7(a)(4) of the Act, as amended. This does not require a limitation on the commitment of resources on the part of concerned Federal agencies or applicants for Federal permits. Therefore, to ensure that the full benefits of section 7 and other conservation measures provided by the Act will apply to the Virgin River chub, prompt determination of endangered status is essential.

Section 4(b)(2) of the Act requires the Service to consider economic impacts of designating a particular area as critical habitat. The Service received considerable information during the comment period on the possible economic impacts of designating critical habitat. Critical habitat designation is being deferred to allow time to undertake a full economic analysis.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Potential recovery actions for the Virgin River chub include: (1) Conducting studies on larval drift and the impact of parasites and red shiners; (2) chemical elimination of all fish from below Washington Fields Diversion and restocking the reclaimed river with native species (including the chub); (3) construction of a fish passage barrier below Riverside, Nevada; (4) recommending water management policies; and (5) providing legally protected in-stream flow. The protection required of Federal agencies and prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Portions of the Virgin River flow through Bureau of Land Management lands, the Soil Conservation Service is involved in irrigation water conservation and water quality improvement, potential water projects on the river would be under the jurisdiction of the Bureau of Reclamation, and most construction and alteration activities in the river require an authorizing permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. These agencies will have to consult with the Service if their actions may affect the Virgin River chub or its critical habitat. In addition, Federal agencies that fund, authorize, or construct flood control, agricultural, hydropower facilities, channelization, and highway and bridge construction projects would also have to consult with the Service prior to the action.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specific period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

This rule was prepared by Sonja Jahrsdoerfer, U.S. Fish and Wildlife

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Service, Endangered Species Biologist, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972). Donald Archer, U.S. Fish and Wildlife Service, Salt Lake City, Utah (801/524–4430 or FTS 588–4430) reviewed the rule and provided information on the 1988 eradication project and 1989 flood.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulation, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 et seq.); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
*	*	*	*	*	*	*	
Chub, Virgin River	*Gila robusta semidnuda*	U.S.A. (AZ, NV, UT).	Entire	E	360	NA	NA

* * * * *

Dated: August 1, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 89–19902 Filed 8–23–89; 8:45 am]

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Presidential Documents

Title 3—

The President

Presidential Determination No. 89-17 of July 8, 1989

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for Secretary of State

Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962 (the "Act), as amended, 22 U.S.C. 2601 (c) (1), I hereby determine that it is important to the national interest to meet unexpected urgent needs for assistance of Afghan refugees and displaced persons. I further determine, pursuant to Section 2 (c) (1) of the Act, that up to $23 million shall be made available to meet these needs from the United States Emergency Refugee and Migration Assistance Fund in accordance with the pertinent provisions in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (P.L. 100-461).

You are authorized and directed to inform the appropriate committees of the Congress of this Determination and the obligation of funds under this authority.

This Determination shall be published in the Federal Register.

G Bush

THE WHITE HOUSE,
Washington, July 8, 1989.

[FR Doc. 89-20240
Filed 8-23-89; 3:16 pm]
Billing code 3195-01-M

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Presidential Documents

Presidential Determination No. 89-19 of July 20, 1989

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to Section (2)(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), in order to meet unexpected urgent refugee and migration needs around the world, I hereby determine that it is important to the national interest that $6 million be made available from the Emergency Refugee and Migration Assistance Fund (Emergency Fund) to meet unexpected urgent needs of African, Indochinese, and Palestinian refugees, victims of conflict and displaced persons. Of this $6 million, $2 million will be contributed to the International Committee of the Red Cross (ICRC) for assistance to the victims of the conflict in Lebanon; $3 million will be contributed to the United Nations High Commissioner for Refugees (UNHCR) to assist refugees in Africa and Southeast Asia; and $1 million will be contributed to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to support emergency assistance programs in the Occupied Territories.

You are directed to inform the appropriate committees of the Congress of this Determination and the obligation of funds under this authority.

This Determination shall be published in the Federal Register.

THE WHITE HOUSE,
Washington, July 20, 1989.

[FR Doc. 89-20241
Filed 8-23-89; 3:17 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 54, No. 164
Friday, August 25, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the delegations of authority from the Secretary of Agriculture to the Inspector General to include providing physical protection for the Deputy Secretary as part of the Inspector General's responsibility for the personal security of the Secretary. This amendment also adds a delegation designating the Inspector General as the Departmental liaison official with the General Accounting Office (GAO) for all GAO audit related matters.

This amendment is needed to assure that the delegations properly reflect the responsibilities inherent in a security program to protect top level Department officials, and to more clearly define the responsibilities for coordination with GAO to avoid possible overlap or conflict between agencies in carrying out assigned responsibilities.

EFFECTIVE DATE: August 25, 1989.

FOR FURTHER INFORMATION CONTACT: Paula Hayes, Assistant Inspector General for Policy Development and Resources Management, Office of Inspector General, USDA, Washington, DC 20250 (202-447-6979).

SUPPLEMENTARY INFORMATION: This amendment expands the delegation of authority for Secretarial security to include the other individuals covered by 18 U.S.C. 351 which pertains, in part, to violent crimes against the head of a Cabinet department and the second ranking official in such department.

This rule is a rule of agency procedure and practice related to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register.**

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291.

Finally, this action is not a rule as defined by the Regulatory Flexibility Act and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

For the reasons set out in the preamble, Title 7, Subtitle A, Part 2, Subpart D of the Code of Federal Regulations, is amended as set forth below.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for 7 CFR part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise noted.

2. Section 2.33 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 2.33 Delegations of Authority to the Inspector General.

* * * * *

(b) Provide for the personal security of the Secretary and the Deputy Secretary.

(c) Serve as liaison official for the Department for all audits of USDA performed by the General Accounting Office.

* * * * *

Dated: August 16, 1989.

Clayton Yeutter,
Secretary of Agriculture.

[FR Doc. 89-20097 Filed 8-24-89; 8:45 am]
BILLING CODE 3410-33-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 680]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 680 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 300,000 cartons during the period August 27 through September 2, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 680 (7 CFR 910.980) is effective for the period August 27 through September 2, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than

$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on August 22, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been appraised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.980 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.980 Lemon Regulation 680.

The quantity of lemons grown in California and Arizona which may be handled during the period August 27, 1989, through September 2, 1989, is established at 300,000 cartons.

Dated: August 23, 1989.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89–20218 Filed 8–24–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 967

[FV–89–061FR]

Expenses and Assessment Rate for Celery Grown in Florida; Committee Address Change

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 967 for the 1989–90 fiscal year established under the celery marketing order. An annual budget of expenses is prepared by the Florida Celery Committee (Committee), the agency responsible for local administration of the celery marketing order, and submitted to the U.S. Department of Agriculture (Department) for approval. Authorization of this budget will allow the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

In addition, this final rule will revise the administrative rules and regulations under the celery marketing order to reflect the Committee's new mailing address.

EFFECTIVE DATES: August 1, 1989, through July 31, 1990, for the expenses and assessment rate (§ 967.325). August 25, 1989, for the address change (§ 967.141).

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is effective under Marketing Agreement and Order No. 967 (7 CFR part 967), both as amended, regulating the handling of celery grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven handlers of celery grown in Florida who are subject to regulation under the celery marketing order, and approximately 13 producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of celery handlers and producers may be classified as small entities.

The celery marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable celery handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The Committee consists of handlers, producers, and a public member. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approvals must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on May 24, 1989, and unanimously recommended 1989–90 fiscal year expenditures of $131,500, ($127,000 from income and $4,500 from the reserve) and an assessment rate of $0.02 per 60-pound crate of celery shipped. In comparison, 1988–89 fiscal year budgeted expenditures were $126,000, and the assessment rate was $0.02 per 60-pound crate.

Major expenditure categories in the 1989–90 budget include $60,000 for administration, $54,500 for promotion, merchandising, and public relations, $8,800 for travel, and $5,000 for research. Assessment income for 1989–90 is estimated at $120,000, based on a crop of 6,000,000 crates of celery. An additional $7,000 is expected to be received from interest. Additional reserve funds may be used to meet any deficit in assessment income.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 967.325 and is based on Committee recommendations and other information. A proposed rule was published in the July 24, 1989, issue of the **Federal Register** (54 FR 30754). Comments on the proposed rule were invited from interested persons until August 3, 1989. No comments were received.

In addition, at its May 24, 1989, meeting the Committee unanimously recommended revising § 967.141(a) in the rules and regulations under the celery marketing order to reflect the Committee's new mailing address. Therefore, the post office box number will be changed from 20067 to 140067 in § 967.141(a).

After consideration of the information and recommendation submitted by the Board and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This rule should be expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the Committee at public meetings. Further, the address change is administrative in nature and as such has no regulatory effect. Therefore, it is found that good cause exists for not postponing the effective date of these actions until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 967

Celery, Florida, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 967 is amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31t. 31, as amended; 7 U.S.C. 601–674.

2. New § 967.325 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 967.325 Expenses and assessment rate.

Expenses of $131,500, by the Florida Celery Committee are authorized, and an assessment rate $0.02 per crate of celery is established for the 1989–90 fiscal year ending July 31, 1990. Unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

3. Section 967.141(a) is amended by revising paragraph (a) to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 967.141 Nomination procedures.

(a) Names of candidates together with evidence of qualification for public membership on the Florida Celery Committee shall be submitted to the Committee at its business office, 4401 East Colonial Drive, or P.O. Box 140067, Orlando, Fla. 32814, no later than April 15.

* * * * *

Dated: August 21, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–20042 Filed 8–24–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 987

[Docket No. FV–89–069FR]

Expenses and Assessment Rate for Marketing Order Covering Domestic Dates Produced or Packed in Riverside County, California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Market Order 987 for the 1989–90 crop year established for that order. This action is needed for the California Date Administrative Committee (committee) to incur operating expenses during the 1989–90 crop year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to adminsiter this program are derived from assessments on handlers.

EFFECTIVE DATES: October 1, 19[illegible] through September 30, 1990.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 987 (7 CFR part 987) regulating the handling of dates produced or packed in Riverside County, California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California dates regulated under this marketing order each season, and approximately 135 date producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers of California dates may be classified as small entities.

The California date marketing order, administered by the Department of Agriculture (Department), requires that the assessment rate for a particular crop year shall apply to all assessable dates handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are date handlers and producers. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of dates (in hundredweight). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on June 8, 1989, and unanimously recommended 1989–90 crop year expenditures of $361,460 and an assessment rate of $1.30 per hundredweight of assessable dates shipped under M.O. 987. In comparison, 1988–89 crop year budgeted expenditures were $394,500 and the assessment rate was $1.30 per hundredweight.

The major expenditure item this year is $325,000 for continuation of the committee's market promotion program. The industry is faced with a serious oversupply of product dates, and the committee considers this program necessary to stimulate sales. The rest of the anticipated expenditures are for program administration and are budgeted at about last year's amounts with the exception of $5,400 budgeted for liability insurance for the committee's officers and management.

Income for the 1989–90 season is expected to total $363,550. Such income consists of $362,050 in assessment revenue based on shipments of 27,850,000 pounds of dates and $1,500 in interest income.

The committee also unanimously recommended that any unexpended funds or excess assessments from the 1988–89 crop year be placed in its reserves. The committee's reserves are well within authorized limits.

Notice of this action was published in the July 12, 1989, issue of the Federal Register (54 FR 29342). The comment period ended August 11, 1989. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committee, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 987

California, Dates, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 987.334 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 987.334 Expenses and assessment rate.

Expenses of $361,460 by the California Date Administrative Committee are authorized, and an assessment rate of $1.30 per hundredweight of assessable dates is established for the crop year ending September 30, 1990. Unexpended funds from the 1988–89 crop year may be carried over as a reserve.

Dated: August 21, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–20043 Filed 8–24–89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–ANM–06]

Control Zone, Miles City, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Miles City, Montana Control Zone. The amendment is necessary to provide continuously accurate information to the aviation public. A temporary reduction in personnel staffing at Miles City has resulted in reduced weather observations which would otherwise be available 24 hours a day. Consequently, the effective hours of the Control Zone must be amended on a periodic basis.

EFFECTIVE DATE: 0901 u.t.c., September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 89–ANM–01, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2536.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Miles City, Montana Control Zone (54 FR 15777).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The Montana State Aeronautics Division objected on the basis that weather services should be available 24 hours a day. The FAA concurs; however, reorganization of FAA and National Weather Service facilities is focused on providing services where most needed until automated weather observation equipment can be installed at relatively low activity locations. No other comments were received. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will provide a means whereby pilots will have access to continuously updated hours of control zone operation. Subsequent changes will be published for pilot reference by Notice to Airmen (NOTAM) and in the Airport/Facility Directory.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Miles City, Montana Control Zone [Amended]

Add "The Control Zone shall be effective during the specified dates and times established in advance by a Notice To Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

Issued in Seattle, Washington, on August 3, 1989.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 89–20057 Filed 8–24–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89–ANM–2]

Salt Lake City Transition Area, Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Salt Lake City, Utah, 1,200 feet transition Area. Additional controlled airspace is necessary to provide low altitude holding outside of Salt Lake City Approach Control's airspace.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM–535, Federal Aviation Administration, Docket No. 89–ANM–2, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2536.

SUPPLEMENTARY INFORMATION:

History

On May 10, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the 1,200 foot Transition Area for Salt Lake City, Utah, (54 FR 20145). The action proposed to provide additional controlled airspace for low altitude holding outside of Salt Lake City Approach Control's existing airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The proposed amendatory language contained a typographical error which is corrected herein. On the next-to-the-last line in the proposed amendment (54 FR 20146), reference is made to "the east edge of * * * R–6406 * * *" The final rule has been corrected to refer to "the east edge of * * * R–6406B * * *" This minor correction does not change the scope of the proposal, and the rule is otherwise adopted as proposed. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 13, 1989.

The Rule

This amendment is part 71 of the Federal Aviation Regulation will provide additional controlled airspace for low altitude holding outside of Salt Lake City Approach Control's existing airspace. The airspace is intended to segregate aircraft operating in visual flight rules conditions from other aircraft operating in instrument flight rules conditions. The area will be depicted on appropriate Aeronautical Charts, thereby enabling pilots to circumnavigate the area or otherwise comply with instrument flight rules procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71), is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation of part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 19, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. 71.181 is amended as follows:

Salt Lake City, Utah [Amended]

On the seventh line after "to the point of beginning" remove the words "that airspace extending upward from 1,200 feet above the surface bounded on the north Lat. 41°00′00″ N., on the east by Long. 111°25′30″ W., on the south by lat. 39°56′30″ N., on the west by the east

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edge of R-6402A, R-6402B, and R-6406B and Long. 113°00'00" W.", and replace with the following:

> The airspace extending upward from 1,200 feet above the surface bounded on the north be Latitude 41°00'00" N., on the east by Longitude 111°25'30" W., on the south by Latitude 39°56'30" N., to Longitude 111°55'00" W., thence south to latitude 38°48'00" N., and on the west by the east edge of R-6402A, R-6402B and R-6406B and longitude 113°00'00" W.

Issued in Seattle, Washington, on July 27, 1989.

Temple H. Johnson, Jr.,
Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 89-20068 Filed 8-24-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 95

[Docket No. 25992; Amdt. No. 352]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective: September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Manager, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and are free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on August 15, 1989.

Robert L. Goodrich,
Director of Flight Standards.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 352 EFFECTIVE DATE, SEPTEMBER 21, 1989

§95.6013 VOR FEDERAL AIRWAY 13

IS AMENDED TO READ IN PART

FROM	TO	MEA
HUMBLE, TX VORTAC	CLEEP, TX FIX	2300

IS AMENDED TO DELETE

FROM	TO	MEA
LAREDO, TX VORTAC *2000 - MOCA	MC ALLEN, TX VOR/DME	*5000

§95.6074 VOR FEDERAL AIRWAY 74

IS AMENDED TO READ IN PART

FROM	TO	MEA
GREENVILLE, MS VOR/DME *1800 - MOCA	JACKSON, MS VORTAC	*2500

§95.6078 VOR FEDERAL AIRWAY 78

IS AMENDED TO READ IN PART

FROM	TO	MEA
HURON, SD VORTAC VIA S ALTER.	WATERTOWN, SD VORTAC VIA S ALTER.	3700

§95.6095 VOR FEDERAL AIRWAY 95

IS AMENDED TO READ IN PART

FROM	TO	MEA
LAZON, CO FIX	*POWES, CO FIX	
	N BND	15000
	S BND	16100
*14100 - MCA POWES FIX, S BND		
POWES, CO FIX	*BLUE MESA, CO VORTAC	12500
*12600 - MCA BLUE MESA VORTAC, S BND		
*12900 - MCA BLUE MESA VORTAC, NE BND		
BLUE MESA, CO VORTAC	BALOO, CO FIX	
	NE BND	16300
	SW BND	12800
BALOO, CO FIX	BALIF, CO FIX	
	SW BND	15000
	NE BND	16300
BALIF, CO FIX	TREES, CO FIX	16300
TREES, CO FIX	*CHILT, CO FIX	
	SW BND	16000
	NE BND	13600
*12800 - MCA CHILT FIX, SW BND		

§95.6162 VOR FEDERAL AIRWAY 162

IS AMENDED TO DELETE

FROM	TO	MEA
CLARKSBURG, WV VOR/DME	EMMIT, WV FIX	4000
EMMIT, WV FIX	DERIN, WV FIX	6000

§95.6187 VOR FEDERAL AIRWAY 187

IS AMENDED TO READ IN PART

FROM	TO	MEA
RIZAL, CO FIX	MANCA, CO FIX	10900

§95.6210 VOR FEDERAL AIRWAY 210

IS AMENDED TO READ IN PART

FROM	TO	MEA
RESER, NM FIX	CAPUL, CO FIX	15000

§95.6245 VOR FEDERAL AIRWAY 245

IS AMENDED TO READ IN PART

FROM	TO	MEA
NATCHEZ, MS VOR/DME *3400 - MRA	*AYMAN, MS FIX	3000
AYMAN, MS FIX	JACKSON, MS VORTAC	3000

§95.6306 VOR FEDERAL AIRWAY 306

IS AMENDED TO READ IN PART

FROM	TO	MEA
GOMER, TX FIX	CLEEP, TX FIX	5000

§95.6417 VOR FEDERAL AIRWAY 417

IS AMENDED TO READ IN PART

FROM	TO	MEA
JACKSON, MS VORTAC *3300 - MRA **1800 - MOCA	*FANEN, MS FIX	**3000

§95.6421 VOR FEDERAL AIRWAY 421

IS AMENDED TO READ IN PART

FROM	TO	MEA
LAZON, CO FIX	*POWES, CO FIX	
	S BND	16100
	N BND	15000
*14100 - MCA POWES FIX, S BND		
POWES, CO FIX	*BLUE MESA, CO VORTAC	12500
*12600 - MCA BLUE MESA VORTAC, S BND		
*12900 - MCA BLUE MESA VORTAC, N BND		
BLUE MESA, CO VORTAC	WENDT, CO FIX	
	N BND	16300
	S BND	13000
WENDT, CO FIX *14600 - MOCA	CAZUU, CO FIX	*16300
SKIER, CO FIX *14900 - MOCA	RED TABLE, CO VOR/DME	*16300

§95.6495 VOR FEDERAL AIRWAY 495

IS AMENDED TO READ IN PART

FROM	TO	MEA
U.S. CANADIAN BORDER	BELLINGHAM, WA VORTAC	3000

§95.6539 VOR FEDERAL AIRWAY 539

IS AMENDED TO READ IN PART

FROM	TO	MEA
GOODY, FL FIX	FORT MYERS, FL VORTAC	2000

§95.6408 HAWAII VOR FEDERAL AIRWAY 8

IS AMENDED TO READ IN PART

FROM	TO	MEA
HONOLULU, HI VORTAC *5000 - MRA	*ALANA, HI FIX	3000

§95.6416 HAWAII VOR FEDERAL AIRWAY 16

IS AMENDED TO READ IN PART

FROM	TO	MEA
SOUTH KAUAI, HI VORTAC	MORKE, HI FIX	
	NW BND	5000
	SE BND	3000

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§95.7080 JET ROUTE NO. 80

IS AMENDED TO READ IN PART

FROM	TO	MEA	MAA
BELLAIRE, OH VORTAC	VINSE, PA FIX	18000	45000
VINSE, PA FIX	KIPPI, PA FIX	26000	45000

§95.7110 JET ROUTE NO. 110

IS AMENDED TO READ IN PART

FROM	TO	MEA	MAA
BELLAIRE, OH VORTAC	VINSE, PA FIX	18000	45000
VINSE, PA FIX	KIPPI, PA FIX	26000	45000

§95.7149 JET ROUTE NO. 149

IS AMENDED TO READ IN PART

FROM	TO	MEA	MAA
ARMEL, VA VORTAC	GEFFS, WV FIX	31000	45000

§95.7230 JET ROUTE NO. 230

IS AMENDED TO READ IN PART

FROM	TO	MEA	MAA
BELLAIRE, OH VORTAC	VINSE, PA FIX	18000	45000
VINSE, PA FIX	BOGGE, PA FIX	26000	45000
BOGGE, PA FIX	ROBBINSVILLE, NJ VORTAC	18000	45000

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§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-495		
	IS AMENDED BY ADDING		
VICTORIA, CANADA VOR/DME	BELLINGHAM, WA VORTAC	28	VICTORIA

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	J-80		
	IS AMENDED BY ADDING		
BELLAIRE, OH VORTAC	EAST TEXAS, PA VORTAC	132	BELLAIRE
	J-110		
	IS AMENDED BY ADDING		
BELLAIRE, OH VORTAC	COYLE, NJ VORTAC	132	BELLAIRE
	J-230		
	IS AMENDED BY ADDING		
BELLAIRE, OH VORTAC	ROBBINSVILLE, NJ VORTAC	132	BELLAIRE

[FR Doc. 89-20059 Filed 8-24-89; 8:45 am]

BILLING CODE 4910-13-C

BEST COPY AVAILABLE

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule revises the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), by establishing restrictions on the amount of currency that travelers to Cuba may carry with them for transactions subject to the Regulations.

EFFECTIVE DATE: August 25, 1989.

FOR FURTHER INFORMATION: William B. Hoffman, Chief Counsel (telephone: 202/376-0408), or Steven I. Pinter, Chief of Licensing (telephone: 202/376-0236), Office of Foreign Assets Control, Department of the Treasury, 1331 G Street NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: This rule places a $100 per day limit on transactions ordinarily incident to travel within Cuba, currently authorized in § 515.560(c)(2).

In addition, § 515.569 is added to the Regulations which specifies the amount of currency that a person authorized to engage in transactions related to Cuban travel may carry for transactions in Cuba which are subject to the Regulations. Persons traveling under the general licenses contained in § 515.560 (a) and (b) may carry $100 per day for authorized travel-related expenses and $100 for the purchase of merchandise in Cuba intended for importation into the United States as accompanied baggage. Carrying funds for living expenses in Cuba and for the purchase of merchandise there is not authorized for persons traveling to Cuba as fully sponsored or hosted visitors.

Any person traveling to Cuba may also carry family remittances for the support or emigration of close relatives of the traveler and members of his household to the extent authorized by § 515.563 of the Regulations (for support, $500 per household in any three-month period; for emigration from Cuba, a one-time payment of $500 per recipient). This provision does not authorize any person traveling to Cuba to carry family remittances on behalf of another person.

Persons wishing to carry additional currency for transactions in Cuba subject to the Regulations or wishing to carry family remittances to Cuba on behalf of another person must obtain a specific license from the Office of Foreign Assets Control.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required under the Administrative Procedure Act or any other law, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are also inapplicable.

List of Subjects in 31 CFR Part 515

Cuba, Currency, Travel and transportation expenses.

PART 515—[AMENDED]

1. The "Authority" citation for part 515 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp. p. 157; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp. p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp. p. 748.

§ 515.560 [Amended]

2. Paragraph (c)(2) of § 515.560 is revised to read as follows:

* * * * *

(c) * * *

(2) All transactions ordinarily incident to travel within Cuba, including payment of living expenses and the acquisition in Cuba of goods for personal consumption there, provided the total for such expenses does not exceed $100 per day unless otherwise specifically licensed pursuant to the procedures contained in § 515.801.

3. Section 515.569 is added to read as follows:

§ 515.569 Currency carried by travelers to Cuba.

(a) Persons authorized to engage in transactions related to Cuban travel pursuant to § 515.560 (a) or (b) may carry currency for living expenses in Cuba and the purchase in Cuba of goods for personal consumption there in an amount not to exceed $100 per day. In addition, each such person may carry an additional $100 for the purchase of merchandise in Cuba intended for importation as accompanied baggage pursuant to § 515.560(c)(3).

(b) Persons authorized to engage in transactions related to fully sponsored or hosted travel to Cuba pursuant to § 515.560(j) may not carry currency to pay for living expenses or the purchase of goods in Cuba except as specifically licensed pursuant to, or exempted from the application of, this part.

(c) Persons authorized to engage in transactions related to Cuban travel pursuant to § 515.560 (a), (b), or (j) may also carry family remittances for the support and/or emigration of close relatives of the traveler who reside in Cuba, at the times and in the amounts authorized by § 515.563. No such remittances may be carried by a traveler on behalf of remitters who are not members of the traveler's household, as defined in § 515.563(c).

(d) Persons traveling to Cuba may carry currency for transactions in Cuba subject to this part in amounts greater than those authorized by this section only pursuant to a specific license issued pursuant to § 515.801.

(e) For purposes of this section, the term "currency" used means money, cash, drafts, notes, travelers checks, negotiable instruments, or scrip, having a specified or readily determinable face value or worth, but does not include gold or other precious metals in any form.

Dated: July 31, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-20230 Filed 8-23-89; 4:15 pm]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY-044; FRL-3633-4]

Approval and Promulgation of Implementation Plans for Kentucky; Redistribution of Allowable Sulfur Dioxide Emissions at TVA's Paradise Steam Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a redistribution of allowable sulfur dioxide emissions at the Paradise Steam Plant of the Tennessee Valley Authority (TVA). This redistribution was submitted to EPA as a State Implementation Plan (SIP) revision by the Kentucky Natural Resources and Environmental Protection Cabinet on June 29, 1987. The revised limits are contained in permit 0-87-012 issued by Kentucky on June 29, 1987. The revision allows unit-specific sulfur dioxide emission limits of 1.2 pounds per million BTU heat input (lb/mmBTU) on Units 1 and 2 and 5.4 lb/mmBTU on Unit 3.

Overall, these limits are equivalent to the 3.1 lb/mmBTU emission limit specified for each unit in the current SIP. Dispersion modeling shows that the revision will not jeopardize the attainment and maintenance of the National Ambient Air Quality Standards. This SIP revision was evaluated under the full criteria of an ordinary SIP revision, and not under the streamlined criteria allowed when a SIP revision qualifies as a "bubble" under EPA's Emissions Trading Policy Statement. This revision to 401 KAR 61:015, section 3 was proposed on May 15, 1989 (54 FR 20863).

EFFECTIVE DATE: This action will become effective September 25, 1989.

ADDRESSES: Copies of the State submittal and other relevant documents are available for public inspection during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
U.S. Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365
Kentucky Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Richard A. Schutt, U.S. Environmental Protection Agency, Region IV, Air Programs Branch at the above listed address or at (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: The Paradise Steam Plant is a three-unit coal-fired facility operated by the Tennessee Valley Authority (TVA) and located in Muhlenberg County, Kentucky. Units 1 and 2 have an electric generating capacity of 704 megawatts (MW) each and are served by 600-foot (183-meter) stacks. Unit 3, with a generating capacity of 1150 MW, is served by an 800-foot (244-meter) stack. Since they were constructed prior to December 31, 1970, all three stacks were grandfathered from the stack height regulations.

Muhlenberg County is currently classified in 40 CFR part 81 as nonattainment for the secondary National Ambient Air Quality Standards (NAAQS) for sulfur dioxide. On October 31, 1980 (45 FR 72153), EPA approved Kentucky's most recent SIP submittal for Muhlenberg County under part D of the Clean Air Act. This SIP revision requires each unit at the Paradise Plant to meet an emission limit of 3.1 lb./mmBTU. A federally enforceable consent decree in 1979 had early established limits of 0.9 lb./mmBTU for Units 1 and 2 and 5.7 lb./mmBTU for Unit 3, which are equivalent to the 3.1 lb./mmBTU emission limit specified for each unit in the part D SIP. In 1983, the TVA constructed a coal-washing plant and installed scrubbers on Units 1 and 2 to meet these emission limits. Monitoring data for Muhlenberg County showed no exceedances of the NAAQS for 1984–1986.

Based on its experience in operating the sulfur dioxide control system at Paradise, the TVA requested a redistribution of the allowable sulfur dioxide emission rates for the three units. The revised emission rates are 1.2 lb./mmBTU for Units 1 and 2 and 5.4 lb./mmBTU for Unit 3. Although the scrubbers on Units 1 and 2 are capable of meeting a standard of 0.9 lb./mmBTU, they can only do so reliably if these units burn coal with a sulfur content equivalent to 5 lb. SO_2/mmBTU or less. The revised unit-specific emission limits will result in substantial cost savings because they would enable TVA to fine-tune the washing process and produce a coal that conforms more closely to pollution control requirements. On a plantwide basis, the revised emission limits are equivalent to the 3.1 lb./mmBTU emission limit specified for each unit in the current SIP for Paradise.

An evaluation estimating ambient sulfur dioxide concentrations resulting from the revised emission limits and assessing the attainment of ambient sulfur dioxide air quality standards for the Paradise Steam Plant has been completed. The modeling techniques used in the initial demonstration supporting this SO_2 redistribution are, for the most part, based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA "Guideline on Air Quality Models (1978)." Following the submittal of the modeling analysis to the Regional Office (March 1987), revisions were required. The models used in the revision followed the guidance in place at that time (51 FR 32176, September 9, 1986). Since that time, revisions to modeling guidance have been promulgated by EPA (53 FR 592, January 6, 1988). Because the modeling analysis was substantially complete prior to publication of the revised guidance, EPA accepts the analysis. The grandfathering of the modeling analysis is also based on a July 9, 1986, memorandum from EPA Region IV to EPA's Office of Air Quality Planning and Standards listing sources, including TVA Paradise, which should be grandfathered under the then current EPA modeling guidance. This evaluation includes an inventory of sources within 50 km of Paradise and estimates of ambient sulfur dioxide concentrations using screening techniques and coarse receptor grids to identify extreme concentrations. Fine-grid analyses and estimates of ambient background concentrations are also included. The modeling analysis was based on block averaging. For further information on this evaluation, the reader may consult a Technical Support Document which contains a more detailed discussion on the model input, the annual-average screening analysis, the short-term analysis, and the background concentrations utilized to estimate the ambient sulfur dioxide concentrations resulting from the revised emission limits. This document is available at the EPA address given above.

After a public hearing held on March 23, 1987, the Kentucky Natural Resources and Environmental Protection Cabinet adopted this redistribution pursuant to the provisions of Regulation 401 KAR 61:015, section 3. The emission limits are specified in permit number 0-87-012 issued by Kentucky on June 29, 1987. Kentucky Regulation 401 KAR 50:015, Documents incorporated by reference, incorporates 40 CFR part 60, Method 6 entitled "Determination of sulfur dioxide emissions from stationary sources". This method is listed under 401 KAR 50:015 section 1(c)(1)(l), and is the method required for sulfur dioxide compliance determinations for Paradise Units 1–3. The revisions to 401 KAR 61:015, section 3 was submitted by the Kentucky Natural Resources and Environmental Protection Cabinet on June 29, 1987. EPA proposed approval on May 15, 1989 (54 FR 20863). No comments were received during the public comment period.

Final Action

EPA is today finalizing a redistribution of allowable sulfur dioxide emissions at Tennessee Valley Authority's (TVA's) Paradise Steam Plant. This redistribution allows unit-specific sulfur dioxide emission limits of 1.2 lb./mmBTU on Units 1 and 2 and 5.4 lb./mmBTU on Unit 3. These limits are equivalent to the 3.1 lb./mmBTU emission limit specified for each unit in the current SIP for Paradise. Modeling has demonstrated that the ambient air quality standards are protected when the plant is operated at the revised emission limits. The State authority for this revision is provided in Regulation 401 KAR 61:015, section 3.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 14, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

Part 52 of chapter I, title 40, of the Code of Federal Regulation, is amended as follows:

Subpart S—Kentucky

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.920 is amended by adding paragraph (c)(49) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(49) A revision to the Kentucky SIP for Tennessee Valley Authority Paradise Steam Plant pursuant to the procedures specified in Kentucky regulation 401 KAR 61:015, section 3 was submitted on June 29, 1987, by the Kentucky Natural Resources and Environmental Protection Cabinet. The revised SO_2 limits are contained in Permit Number 0-87-012, issued on June 29, 1987.

(i) Incorporation by reference.

(A) Permit Number 0-87-012, issued by the Kentucky Natural Resources and Protection Cabinet on June 29, 1987.

(ii) Other material.

(A) Letter of June 27, 1987 from the Kentucky Natural Resources and Environmental Protection Cabinet.

* * * * *

[FR Doc. 89-20110 Filed 8-24-89; 8:45 am]

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40 CFR Part 148

[FRL-3635-4]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions, Additional Effective Dates; First Third Wastes; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: EPA is correcting an error in the final rule establishing effective dates prohibiting the underground injection of selected hazardous wastes. This action is mandated by section 3004(g) of the Resource Conservation and Recovery Act (RCRA). These rules were effective on June 7, 1989, and published in the Federal Register on June 14, 1989 (54 FR 25416 *et seq.*).

FOR FURTHER INFORMATION CONTACT: Bruce Kobelski, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5508.

EFFECTIVE DATE: June 7, 1989.

SUPPLEMENTARY INFORMATION: On June 14, 1989, the Agency published rules establishing effective dates prohibiting the land disposal by injection of certain wastes covered by section 3004(g) of RCRA. (These rules were signed effective on June 7, 1989.)

At that time the Agency banned the underground injection of K101 and K102 wastes, consistent with the policy of banning the future underground injection of wastes that are not currently being disposed of in this manner.

Pursuant to sections 3004 (g) and (m), however, such a ban cannot take place without the establishment of treatment standards for the waste in question. Treatment standards have been established only for the wastewater and low arsenic (less than 1% total arsenic) nonwastewater subcategories of the K101 and K102 waste groups (see 53 FR 31170 *et seq.*). The Agency should have banned only these subcategories from underground injection, leaving the high arsenic (greater than or equal to 1% total arsenic) nonwastewater subcategories of K101 and K102 under the effect of the "soft hammer" provisions of section 3004(g)(6)(A).

The Agency is today issuing a technical amendment to § 148.14(a) to clarify that the wastewater and low arsenic nonwastewater subcategories of K101 and K102 are banned from underground injection on June 7, 1989. Treatment standards and effective dates for the high arsenic nonwastewater subcategories of K101 and K102 will be established at a later date.

List of Subjects in 40 CFR Part 148

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply, Water pollution control.

Dated: August 17, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

The following correction is made in FRL-3556-8, Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions, Additional Effective Dates; First Third Wastes; Final Rule, published in the Federal Register on June 14, 1989 (54 FR 25416 *et seq.*) and amended on June 23, 1989 (54 FR 26594 *et seq.*).

PART 148—[AMENDED]

1. The authority citation for part 148 continues to read as follows:

Authority: Sec. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.14(a) is revised to read as follows:

§ 148.14 Waste specific prohibitions—first third wastes.

(a) Effective June 7, 1989, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste numbers F006 (nonwastewaters) and the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K001, K015 (wastewaters), K016 (at concentrations greater than or equal to 1%), K018, K019, K020, K021 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes), K022

(nonwastewaters), K024, K030, K036 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes), K037, K044, K045, nonexplosive K046 (nonwastewaters), K047, K048, K060 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes), K061 (nonwastewaters), noncalcium sulfate K069 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes), K086 solvent washes, K087, K099, K101 (all wastewaters and less than 1% total arsenic nonwastewaters), K102 (all wastewaters and less than 1% total arsenic nonwastewaters), and K103 are prohibited from underground injection.

* * * * *

[FR Doc. 89-20101 Filed 8-24-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 403

[BERC-483-IFC]

RIN 0938-AE32

Medicare Program; Demonstration Project to Develop a Uniform Cost Reporting System for Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period implements the provisions of section 4007(c) of the Omnibus Budget Reconciliation Act of 1987, as amended by section 411(b)(6)(C) of the Medicare Catastrophic Coverage Act of 1988, which require that the Secretary conduct a demonstration project to develop a uniform cost reporting system for hospitals under the Medicare program. Under this rule, all hospitals in the States of California and Colorado are required to participate in this demonstration project. For the duration of the demonstration, those hospitals are required to submit the cost report currently required under Medicare regulations and additional worksheets specifically developed for the demonstration in a uniform, electronic format.

DATES: *Effective Date:* This final rule is effective for cost reporting periods beginning on or after July 1, 1989 and before July 1, 1991

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 23, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-483-IFC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey
Building, 200 Independence Ave. SW.,
Washington, DC.

Room 132, East High Rise Building, 6325
Security Boulevard, Baltimore,
Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. If comments concern information collection or recordkeepng requirements, please address a copy of comments to:

Office of Management and Budget,
Office of Information and Regulatory
Affairs, Room 3208, New Executive
Office Building, Washington, DC
20503, Attention: Allison Herron.

In commenting, please refer to file code BERC-483-IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday though Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION, CONTACT: David Goldberg, (301) 966-4512.

SUPPLEMENTARY INFORMATION:

I. Background

Under Medicare, hospitals are paid for inpatient hospital services they furnish to beneficiaries under Part A (Hospital Insurance). Currently, most hospitals are paid for their inpatient hospital services under the prospective payment system in accordance with section 1886(d) of the Social Security Act (the Act) and 42 CFR part 412. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge based on the information contained on actual bills submitted.

Those hospitals and hospital units that are excluded from the prospective payment system generally are paid based on the reasonable cost of services furnished to beneficiaries. The inpatient operating costs of these hospitals and hospital units are subject to the rate-of-increase limits, in accordance with section 1886(b) of the Act and 42 CFR 413.40.

Sections 1815(a) and 1833(e) of the Act provide that no payments will be made to a hospital unless its has furnished the information requested by the Secretary needed to determine the amount of payments due the hospital under the Medicare program. In general, hospitals submit this information through cost reports that cover a 12-month period of time. Even though most prospective payment hospitals are paid on the basis of actual bills submitted, these hospitals continue to receive payment for certain costs, such as capital-related costs, on a reasonable cost basis and are required to submit cost reports. Section 1886(f)(1)(A) of the Act, as amended by section 411(b)(6)(B) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360), which was enacted on July 1, 1988, provides that the Secretary will maintain a system for reporting costs of hospitals paid under the prospective payment system.

Regulations at § 413.20(a) require that hospitals "maintain sufficient financial records and statistical data for proper determination of costs * * * ." In addition, hospitals must use standardized definitions and follow accounting, statistical, and reporting practices that are widely accepted in the hospital and related fields. Under the provisions of §§ 413.20(b) and 413.24(f), hospitals are required to submit cost reports annually, with the reporting period based on the hospital's accounting year (generally a consecutive 12-month period). Section 413.20(d) requires that hosptials furnish to their fiscal intermediary the information necessary to ensure proper payment by Medicare. The hospital must allow the fiscal intermediary to examine the records and documents maintained by the hospital in order to ascertain the validity of the data submitted by the hospital.

II. Summary of New Legislation

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) was enacted. Section 4007 of Public Law 100-203, which was subsequently amended by section 411(b)(6) of Public Law 100-360, sets forth several provisions concerning the reporting of hospital information under the Medicare program. Section 4007(a) of Public Law 100–203 requires the Secretary to develop and put into effect by June 1, 1989, a data base of the operating costs of inpatient hospital services for all hospitals receiving payment under Medicare. Section 4007(b) of Public Law 100–203 provides that, for cost reporting periods beginning on or after October 1, 1989, the Secretary will place into effect a standardized electronic cost reporting format for hospitals under Medicare. This provision now appears as section 1886(f)(1) (A) and (B) of the Act.

Section 4007(c)(1) of Public Law 100–203 requires the Secretary to provide for a demonstration project to develop and determine the costs and benefits of establishing a uniform system of cost reporting for hospitals participating in the Medicare program. Under the authority of this statutory provision, the Secretary will require hospitals in at least two States to participate in the demonstration. Section 4007(c)(2) of Public Law 100–203, as amended by section 411(b)(6)(C) of Public Law 100–360, specifies that these hospitals must report the following information to the Secretary:

- Hospital discharges (classified by class of primary payer).
- Patient days (classified by class of primary payer).
- Licensed beds, staffed beds, and occupancy.
- Inpatient charges and revenues (classified by class of primary payer).
- Outpatient charges and revenues (classified by class of primary payer).
- Inpatient and outpatient hospital expenses (by cost center classified for operating and capital).
- Reasonable costs.
- Other income.
- Bad debt and charity care.
- Capital acquisitions.
- Capital assets.

Section 4007(c)(3) of Public Law 100–203 provides that the Secretary will develop the system so as to facilitate the submittal of the information in the report in and electronic form and to be compatible with the needs of the Medicare prospective payment system. Section 4007(c)(5)(A) of Public Law 100–203, as amended by section 411(b)(6)(C)(viii) of Public Law 100–360, authorizes the Secretary to establish a definition of the term "bad debt and charity care" for the purpose of the demonstration project. Section 4007(c)(5)(B) of Public Law 100–203, as amended by section 411(b)(6)(C)(ix) of Public Law 100–360, provides that the term "class", with respect to payers, means at least the Medicare program, State Medicaid programs, other third party payers, and other persons (including self-paying individuals). As amended by section 411(b)(6)(C)(vi) of Public Law 100–360, section 4007(c)(2) of Public Law 100–203 also specifies that the Secretary will develop a definition of "outpatient visit" for purposes of reporting hospital information.

III. Provisions of this Interim Final Rule

A. General

This interim final rule implements section 4007(c) of Public Law 100–203, which requires the Secretary to provide for a demonstration project to develop and determine the costs and benefits of establishing a uniform cost reporting system to be used by Medicare participating hospitals. The system will be used to report balance sheet and other information specified in the legislation. The Conference Report that accompanied Public Law 100–203 indicates that we are expected to develop a reporting format to collect additional information on hospital costs, revenues, and charges within one year of enactment of Public Law 100–203. (See H.R. Rep. No. 495, 100th Cong., 1st Sess. 538 (1987).) The report further specifies that the reporting format will be similar to the reporting formats used in the statewide reporting systems in California and New York. In addition, the Secretary is expected to implement the new cost reporting format to collect data in the States selected for the demonstration for the remaining years of the project. Subsequent meetings with the Congressional staff led to an agreement that implementation of this project would be delayed 6 months.

B. Selection of the States to Participate in the Demonstration

Section 4007(c)(1) of Public Law 100–203 provides that the Secretary must select at least two States in which all of the hospitals must participate in the demonstration. Because of the relatively short time period we have to implement the demonstration, we have decided that it is more feasible to limit the demonstration to two States. As required by the law, one of the States selected must currently maintain a uniform system of hospital reporting. The Conference Report states that "The conferees intend that the Secretary will select the State of California to meet this requirement. The Secretary is also required to select the second demonstration State from among those States which do not presently operate such a system." (H.R. Rep. No. 495, 100th Cong., 1st Sess. 538 (1987).)

While section 4007(c) of Public Law 100–203 does not specifically require the Secretary to select California as one of the States whose hospitals participate in the demonstration, the Conference Report makes it clear that Congress intended that California be chosen. Thus, we have selected California to take part in the demonstration as representative of the States that maintain a uniform reporting system.

Besides California, eight States (that is, New York, New Jersey, Massachusetts, Maryland, Washington, Florida, Connecticut, and Arizona) maintain a system of uniform hospital reporting. Since it is the intent of the conferees that the other State chosen should not have a uniform reporting system, those eight States are not eligible to take part in the demonstration unless more than two States are selected.

In order to select the other State that will participate in the demonstration (that is, the State that does not have a uniform reporting system), we obtained from HCFA's Hospital Cost Report Information System (HCRIS) a list of the number of hospitals in each State as follows;

- Number of hospitals by type (that is, short-term, long-term, psychiatric, rehabilitation, and other).
- Number of urban and rural hospitals.
- Number of hospitals serving a disproportionate share of low-income patients and their percentage of the total hospitals in the State.
- Number of teaching hospitals expressed as a percentage of the total hospitals in the State.
- Number of hospitals by type of control (that is, voluntary, nonprofit, proprietary, and governmental).
- Number of hospitals by bed size category (for example, 0–99 beds, 100–199 beds).

The individual State statistics were compared to similar data for the United States as a whole. Based on these comparisons, and other considerations such as geographic location and the total number of hospitals that would be involved, we narrowed our selection to four States: Ohio, Illinois, Virginia, and Colorado. We believe that the cross section of hospitals in these four States is fairly representative of the cross section of hospitals in the country as a whole.

Accordingly, we met with representatives of the State hospital associations of these four States. Based upon our discussions, we selected Colorado to be the second State to participate in the demonstration. Besides being fairly representative of the rest of the country, Colorado has a

significant number of small rural hospitals, which are the hospitals upon which we believe the introduction of electronic cost report submission may have the greatest impact.

Under section 4007(c) of Pubic Law 100–203, the reporting system developed under the demonstration is to facilitate the submittal of information in an electronic form. In addition, under section 4007(b) of Public Law 100–203, effective with cost reporting periods beginning on or after October 1, 1989, electronic reporting is mandatory for hospitals in all States except in those instances where the Secretary determines implementation would result in financial hardship. Therefore, the inclusion in the early stage of the development of the system of a State with many small rural hospitals is important to help resolve those hospitals' problems with electronic processing. For these reasons, Colorado has been selected for the demonstration project as the representative of the State that does not have a uniform reporting system for its hospitals.

C. Implementation of the Demonstration

This demonstration is intended to accomplish the following objectives:

- More timely collection of cost report data.
- Collection of more uniform data.
- The reporting and collecting of additional data.

The demonstration will begin with cost reporting periods beginning on or after July 1, 1989. It will encompass two full consecutive cost reporting period cycles. Hospitals in the two States participating in this demonstration are required to file annually the current form, Hospital and Hospital Health Care Complex Cost Report (HCFA 2552–89), and additional worksheets developed specifically for the demonstration project. At least one interim report will be required under the demonstration. This interim report will be for the first six-month period in which the hospital participates in the demonstration project. The purpose of the interim report is twofold. First, it will be used to evaluate the accuracy of the data source hospitals use to collect the additional data. Second, it will be used to test the electronic submission process. The need for subsequent interim reports will be evaluated once the demonstration has been implemented.

The cost report developed for purposes of the demonstration is an expanded version of the current form HCFA 2552–89. Additional worksheets will be developed to allow for the collection of additional data elements. For example, the statistics will be expanded to collect patient days and discharges by classes of primary payer such as Maternal and Child Health (title V of the Act), Medicare (title XVIII of the Act), Medicaid (title XIX of the Act), other third party payers, and other persons (including self-paying individuals).

With respect to electronic reporting, the reports must be submitted in a standardized electronic format. The hospitals' electronic programs must be able to produce a standardized output file that can be used in any intermediary's automated system.

The specifications for this system are currently being developed. We have convened a workgroup comprising representatives of the health care industry, Medicare fiscal intermediaries, the State of California, Colorado and California State hospital associations, the Prospective Payment Assessment Commission, and HCFA. The workgroup will finalize the specific methodology that will be used in the design of the demonstration cost report.

We anticipate that through the data collected during the demonstration we will be able to determine definitions for bad debt and charity care and outpatient visits.

As previously indicated, all hospitals in the States of California and Colorado are required to participate in the demonstration project. The HCFA intermediaries will work with hospitals to develop the capability to submit the additional data that are required and to submit the cost reports electronically. However, if a hospital refuses to submit the data or refuses to submit the cost reports electronically, Medicare payments to that hospital may be suspended under the provisions of sections 1815(a) and 1833(e) of the Act. As explained above, sections 1815(a) and 1833(e) of the Act provide that no Medicare payments will be made to a hospital unless it has furnished the information requested by the Secretary needed to determine the amount of payments due the hospital under the Medicare program. Regulations at § 405.371(d) provide for suspension of Medicare payments to a hospital by the intermediary if the hospital has failed to submit information requested by the intermediary that is needed to determine the amount due the hospital under Medicare. The general procedures that are followed when Medicare payment to a hospital is suspended for failure to submit information that is needed by the intermediary to determine Medicare payment (that is, when a hospital fails to furnish a cost report or furnishes an incomplete cost report or fails to furnish other needed information) are located in section 2231 of the Intermediary Manual (HCFA Pub. 13). These procedures includes timeframes for "demand letters" to hospitals, which in addition to reminding hospitals to file timely and complete cost reports, explain possible adjustments to Medicare payments of a hospital and the right to request a 30-day extension of the due date. HCFA or the fiscal intermediary will suspend payments only after exhausting all reasonable attempts to obtain the requested information.

Hospitals participating in the demonstration project and fiscal intermediaries may obtain help including advice in completing the cost reporting forms and worksheets by calling toll free 1–800–525–5274.

As explained above, section 4007(c)(1) of Public Law 100–203 requires the Secretary to provide for this demonstration project, which will be used to develop and determine the costs and benefits of establishing a uniform system of cost reporting for hospitals. In addition, section 4007(c)(3) of Public Law 100–203 requires the Secretary to develop the uniform system of cost reporting for hospitals so as to facilitate the submittal of the information in the cost report in an electronic form and to be compatible with the needs of the Medicare prospective payment system. We believe that the requirements in section 4007(c)(1) and (c)(3) of Public Law 100–203 (that the Secretary provide for this demonstration project that will be used to develop a uniform system of cost reporting which will facilitate electronic reporting) taken together with sections 1815(a) and 1833(e) of the Act (which provide that no Medicare payments will be made to a hospital unless it has furnished the information requested by the Secretary needed to determine the amount of payments due the hospital under the Medicare program) provide us with the authority to suspend payments to a hospital in this demonstration project that does not submit its information in an electronic form.

IV. Regulatory Impact Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule such as this that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries,

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Federal, State, or local government agencies, or geographic regions; or

- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule is not a major rule under E.O. 12291 criteria, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule such as this will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all hospitals are treated as small entities.

Section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area (MSA).

As discussed in detail above, section 4007(c)(1) of Public Law 100–203, as amended by section 411(b)(6)(C) of Public Law 100–360, requires that we undertake a demonstration project that will develop and assess the costs and benefits of establishing a uniform system of cost reporting for hospitals participating in the Medicare program. We estimate that it will affect approximately 634 hospitals: 542 in California and 92 in Colorado (Hospital Statistics, 1987 Edition).

We believe that certain benefits will accrue to the Medicare hospitals, State Medicaid agencies, and private insurance companies in California and Colorado as a result of participating in this demonstration project. Among them will be an improvement in the quality and management of information in relation to cost reports, and an ability to more easily adapt to the reporting format that will be instituted as an outcome of the demonstration project.

Section 4007(c)(6) of Public Law 100–203 (42 USC 1395ww note) indicates that the Secretary must set aside at least a total of $3,000,000 for fiscal years 1988, 1989, and 1990 from existing research funds or from operation funds to develop the format of the demonstration project and for data collection and analysis, but total funds must not exceed $15,000,000. Under the demonstration, costs will be incurred by HCFA, the fiscal intermediaries, and hospitals. HCFA will incur costs for the development and operation of two types of software. One software package is needed to permit intermediaries to receive and process cost reports under the new standard electronic reporting format. The second software package will enable hospitals to submit cost report input data electronically to their intermediaries. The intermediaries will directly incur the cost to collect and process cost report data to be forwarded to HCFA, and validate hospitals' reporting processes of the new data under the demonstration.

The statute does not explicitly require HCFA to pay hospitals for their costs incurred under the demonstration project. However, hospitals participating in the demonstration project will be required to perform several broad functions. These hospitals will need to submit their cost reports electronically; collect and report the additional data specified in the legislation; and submit at least one interim cost report. We recognize that in the performance of these functions hospitals will incur additional costs. However, we also recognize that all hospitals will not incur these additional costs to the same extent. For example, some hospitals may already be collecting part or all of the additional information required by the statute but which is not included in the current Medicare cost report. Also, implementation of the electronic format for cost reports will not have the same financial impact on all hospitals.

We plan to make specific payments to hospitals for the incremental costs that are reasonable in amount and can be directly identified as having been incurred solely because of the demonstration project; that is, costs incurred for the collection, reporting, and electronic submission of the additional data. These payments should represent the cost of collecting the additional data, reporting the additional data, and the electronic submission of the additional data only. For hospitals paid based on reasonable cost (that is, hospitals not subject to the prospective payment system), the payment of the incremental costs incurred because of the demonstration project is justified on the basis of section 1861(v)(1)(A) of the Act, which states in part:

> The reasonable cost of any services shall be the cost actually incurred, excluding therefrom any part of incurred cost found to be unnecessary in the efficient delivery of needed health services, and shall be determined in accordance with the regulations establishing the method or methods to be used, and the items to be included, in determining such costs for various types or classes of institutions, agencies and services; * * * Such regulations may provide for determination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances. * * *

We believe that this departure from the usual Medicare reasonable cost payment rules is appropriate as the incremental costs would not have been incurred but for the hospitals' participation in this demonstration.

For hospitals paid under the prospective payment system, payment of these incremental costs is appropriate as these costs are not covered by the standard prospective payment rate. We therefore intend to pay prospective payment hospitals for the incremental costs of participating in this demonstration under the authority of section 1886(d)(5)(iii) of the Act, which states "The Secretary shall provide by regulation for such other exceptions and adjustments to such payment amounts under this subsection as the Secretary deems appropriate. * * *"

In addition, as noted above, section 1886(f)(1) of the Act was recently amended by section 411(b)(6)(B) of Public Law 100–360 to continue the requirement that prospective payment hospitals must submit Medicare cost reports. The cost report for the hospitals participating in the demonstration consists of the current HCFA–2552–89 and the additional demonstration worksheets. The incremental costs will be reported on the Medicare cost report and paid on a reasonable cost basis, that is, as a pass-through cost.

At this time, we are unable to estimate the costs that will be incurred by each hospital participating in this demonstration. We plan to ascertain, to the extent possible, the incremental costs that hospitals incur during the course of this project. Hospitals will be expected to have supporting documentation available to support their claims. However, payments may not necessarily equal the hospital's total incremental costs incurred since those costs are substantially part of administrative and general costs. Therefore, we do not guarantee that hospitals will be paid for all of the incremental costs incurred for the collection, reporting, and electronic submission of the additional data.

We do not anticipate paying hospitals for the cost of electronically submitting their annual Medicare cost report. Since almost all hospitals will be required by

section 4007(b) of Public Law 100–203 to submit cost reports electronically effective with cost reporting periods beginning on or after October 1, 1989, we believe it would be inappropriate to make specific payments for these costs to hospitals in the demonstration when all other hospitals will not be similarly compensated. For prospective payment hospitals, these costs are covered by the standard prospective payment rate and for all other hospitals they are included in the reasonable costs reported. Therefore, Medicare's proportionate inpatient share is included in the diagnostic related group (DRG) payment for prospective payment hospitals and for all other hospitals in the reasonable cost unit of payment. For all hospitals, Medicare's proportionate outpatient share is paid based on cost.

V. Other Required Information

A. Waiver of Prior Public Comment Period and 30-Day Delay in Effective Date

We ordinarily publish a proposed notice of rulemaking in the **Federal Register** for substantive rules and provide a period for public comment. Also, we normally publish rules of this kind 30 days before the effective date. However, we may waive these procedures if we find good cause that notice and comment and a delayed effective date are impractical, unnecessary, or contrary to the public interest. When we do so, we incorporate our findings in the notice to be issued.

Section 4039(g) of Public Law 100–203 provides that we may issue regulations to implement the amendments made by subtitle A of title IV of Public Law 100–203 on an interim or other basis as may be necessary. The Conference Report that accompanied Public Law 100–203 indicates that HCFA should develop the reporting format authorized under section 4007(c) within one year of enactment. (See H.R. Rep. No. 495, 100th Cong., 1st Sess. 538 (1987).) Notwithstanding the 6-month delay mentioned earlier, it is clear that undergoing a proposed rulemaking process for this final rule with comment period and providing a 30-day delay in effective date would be impractical and, in terms of notifying affected parties of the provisions of the legislation as soon as possible, would not be in the public interest. Therefore, we find good cause to waive publication of a proposed notice and the 30-day delay in effective date and to issue an interim final rule. Nevertheless, we are providing a 60-day comment period as indicated at the beginning of this interim final rule.

Because of the large number of items of correspondence we normally receive on a rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATE" section of this preamble and, if we decide that changes are necessary as a result of our consideration of timely comments, we will issue a final rule and respond to the comments in the preamble of that rule.

B. Paperwork Reduction Act

Section of 403.408 of this final rule contains information collection requirements that are subject to the Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of this interim final rule to OMB for its review of these information collection requirements. This section of the "Uniform Cost Reporting System for Hospitals" rule sets forth the information submission requirements for the cost reports of hospitals under this demonstration project. Public reporting burden for this collection of information is estimated to be 150 hours per response. A notice will be published in the **Federal Register** after approval is obtained.

During the course of the demonstration, we will be measuring the burden associated with the additional information submitted by hospitals participating in the demonstration. We will adjust the burden hours as needed at the completion of the first year of the demonstration. Organizations and individuals desiring to submit comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should direct them to the OMB official whose name appears in the "ADDRESS" section of this preamble.

C. List of Subjects in 42 CFR Part 403

Health insurance, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR part 403 is amended as set forth below.

PART 403—SPECIAL PROGRAMS AND PROJECTS

A new subpart D is added to read as follows:

Subpart D—Demonstration Project to Develop a Uniform Hospital Cost Reporting System

Sec.
403.400 Basis and scope.
403.402 Definition.
403.406 Selection of States to participate in the demonstration.
403.408 Requirements for hospitals in States participating in the demonstration.
403.410 Payments to hospitals participating in the demonstration.

Subpart D—Demonstration Project to Develop a Uniform Hospital Cost Reporting System

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1345hh) and section 4007(c) of Public Law 100–203, as amended (42 U.S.C. 1395ww note).

§ 403.400 Basis and scope.

(a) *Basis.* This subpart implements the provisions of section 4007(c) of Public Law 100–203 by establishing a demonstration project to develop a uniform cost reporting system for hospitals under Medicare.

(b) *Scope of subpart.* This subpart sets forth the requirements that those hospitals participating in demonstration project must meet.

§ 403.402 Definition.

For purposes of this subpart, *"class"*, with respect to payers, means the Medicare program, the State Medicaid programs, Maternal and Child Health programs (title V of the Act), other third-party payers, and all other payers, which includes self-paying individuals.

§ 403.406 Selection of States to participate in the demonstration.

(a) *General rule.* At least two States must participate in the demonstration, and the following requirements must be met:

(1) At least one State must currently maintain a uniform system of hospital reporting.

(2) At least one State must not currently maintain a system of uniform hospital reporting.

(b) *Selection of States.* The following two States are selected to participate in the demonstration project:

(1) California, as the State that maintains a uniform system of hospital cost reporting.

(2) Colorado, as the State that does not maintain a uniform system of hospital cost reporting.

§ 403.408 Requirements for hospitals in States participating in the demonstration.

(a) *General.* For cost reporting periods beginning on or after July 1, 1989 and

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before July 1, 1991, all hospitals in California and Colorado must submit the cost report required under §§ 413.20 and 413.24 of this chapter and the data specified in (b) below.

(b) *Cost reporting requirements for the demonstration.* Hospitals are required to submit a demonstration project cost report that includes the following information:

(1) Hospital discharges (classified by class of primary payer).

(2) Patient days (Classified by class of primary payer).

(3) Licensed beds, staffed beds, and occupancy.

(4) Inpatient charges and revenues (classified by class of primary payer).

(5) Outpatient charges and revenues (classified by class of primary payer).

(6) Inpatient and outpatient hospital expenses (by cost center classified for operating and capital).

(7) Reasonable costs.

(8) Other income.

(9) Bad debt and charity care.

(10) Capital acquisitions.

(11) Capital assets.

(c) *Due date for demonstration project cost report.* Due dates for demonstration cost reports are established by HCFA through instructions but are no more often than the due dates specified in § 413.24(f) of this chapter for hospital cost reports.

(d) *Interim reporting.* Hospitals participating in the demonstration project are required to submit an interim report covering the first six months in which the hospital participates in the demonstration project. Hospitals are required to submit additional interim reports requested by HCFA on the due dates established by HCFA.

(e) *Reporting format.* Demonstration project cost reports must be submitted in an electronic format. The hospital's electronic programs must be capable of producing an output file compatible with their respective intermediary's automated systems.

§ 403.410 Payments to hospitals participating in the demonstration.

(a) *General.* Hospitals participating in the demonstration project are paid on a reasonable cost basis for 100 percent of the incremental costs (as defined in paragraph (b) of this section) incurred as a result of that participation. To prevent duplicate payments, payments made to a hospital under the provisions of this section are subtracted from the hospital's total allowable costs subject to cost finding and apportionment.

(b) *Incremental costs.* Incremental costs are those costs that are reasonable and can be identified directly as having been incurred solely because of participation in the demonstration project. They do not represent any of the same costs that are incurred by other hospitals not participating in the demonstration project or costs that would have otherwise been incurred by hospitals participating in the demonstration. These costs include those attributable to the collection, reporting, and electronic submission of the additional data specified in § 403.408(b). Incremental costs do not include those costs incurred because of the requirement in section 4007(b) of Public Law 100–203 for the electronic submission of annual cost reports.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: December 13, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: May 30, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89–20091 Filed 8–24–89; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–178; RM–6118, 6439]

Radio Broadcasting Services; Kremmling and Widefield, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 292C2 for Channel 292A at Kremmling, Colorado, and modifies the license for Station KRKY–FM accordingly, in response to a petition filed by Grand Lake Broadcasting, Inc. Coordinates used for Channel 292C2 at Kremmling are 40–04–58 and 106–22–39, with a site restriction of 2.3 kilometers (1.4 miles) northeast of the community to prevent a short-spacing to Channel 291A at Basalt, Colorado. This document also substitutes Channel 292C2 for Channel 292A at Widefield, Colorado, and modifies the license for Station KKLI–FM accordingly, at the request of Tipple Communications, Inc. (COLO). Coordinates used for Channel 292C2 at Widefield are 38–44–47 and 104–51–37. See 53 FR 17084, May 13, 1988. With this action, the proceeding is terminated.

EFFECTIVE DATE: October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–178, adopted July 31, 1989, and released August 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Brach (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended for Colorado as follows: under Kremmling, delete Channel 292A and add Channel 292C2; and under Widefield, delete Channel 292A and add Channel 292C2.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–20019 Filed 8–24–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–221; RM–6177]

Radio Broadcasting Services; Fort Valley and Wrightsville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document at the request of Fox Valley Broadcasting Corporation, *See*, 53 FR 22544, June 6, 1988, substitutes Channel 292C2 for Channel 292A at Fort Valley, Georgia, modifies its license for Station WQBK(FM) to specify operation on the higher powered channel, substitutes Channel 298A for Channel 292A at Wrightsville, Georgia, and modifies the license of Wrightsville Broadcasting Co., for Station WBML(FM) to specify the new channel. Channel 292C2 can be allotted to Fort Valley in compliance with the minimum distance separation requirements of the rules, provided that petitioner relocates his transmitter site 8 kilometers (5 miles) east of Fort Valley. The coordinates for

this allotment are North Latitude 32–33–12 and West Longitude 83–47–59. Channel 298A can be allotted to Wrightsville in compliance with minimum distance separation requirements at Station WIML(FM)'s present site. The coordinates for this allotment are North Latitude 32–42–24 and West Longitude 82–43–08. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–221, adopted August 1, 1989, and released August 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments is amended by revising the entry for Fort Valley, Georgia, by removing 292A and adding Channel 292C2, and by revising the entry for Wrightsville, Georgia, by removing Channel 292A and adding Channel 298A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–20020 Filed 8–24–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–591; RM–5845, 5935, 5992]

Radio Broadcasting Services; Scottsboro, AL, et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 251A to Signal Mountain, Tennessee, as that community's first local FM service, in response to a petition filed by SonCom, Inc. This document also dismisses petitions for rulemaking filed by Kea Radio, Inc., licensee of Station WKEA(FM), Channel 252A, Scottsboro, Alabama, seeking the substitution of Channel 251C2 for Channel 252A and modification of its license to specify operation on the higher powered channel, and RA–AD of Trenton, Inc., seeking the allotment of Channel 251A to Trenton, Georgia. Coordinates used for Channel 251A at Signal Mountain are 35–05–33 and 85–22–07. *See* 53 FR 1386, January 19, 1988. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 2, 1989. The window period for filing applications on Channel 251A at Signal Mountain, Tennessee, will open on October 3, 1989, and close on November 2, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87–591, adopted July 31, 1989, and released August 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Signal Mountain, Channel 251A, under Tennessee.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–20021 Filed 8–24–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–375; FCC 89–232]

FM Broadcast Service; Amendment of Part 73 of the Rules To Provide for Additional FM Station Class (Class C3) and To Increase Maximum Transmitting Power for Class A FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its rules to increase the maximum permitted effective radiated power for Class A FM broadcast stations from 3000 to 6000 watts, and revises the minimum distance separation requirements applicable to Class A stations in order to maintain protection for the service of FM stations of all classes. For existing Class A stations, the Commission will implement the power increase on a selective basis, rather than as a blanket increase. Existing stations at locations that do not meet one or more of the revised requirements are "grandfathered." That is, modifications and relocations of such stations will be allowed under the previous power limit and distance separation requirements. The purpose of this action, which will allow the majority of existing Class A FM broadcast stations to operate with increased power, is to enable Class A stations to provide better service to their listeners.

EFFECTIVE DATE: October 2, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James E. McNally, Jr., Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to vary from 20 hours to 1039 hours per response with an average of 97 hours and 4 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–0029), Washington, DC 20503.

Following is a summary of Commission's Second *Report and Order* in MM Docket No. 88–375, adopted July 13, 1989 and released August 18, 1989. The full text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Second Report and Order

1. On July 20, 1988, the Commission adopted a *Notice of Proposed Rule Making ("Notice")* (53 FR 38743, October 3, 1988) proposing rule amendments that would potentially permit improvements in the facilities of the majority of Class A FM broadcast stations in the United States. Specifically, the Commission proposed the creation of a new intermediate class of FM broadcast stations in Zone II, and a general increase in the maximum permitted transmitting power for Class A FM broadcast stations from 3000 to 6000 watts.

2. In response to the *Notice*, the Commission received 98 formal comments, 16 reply comments, and several hundred informal letters and inquiries. The proposal to create a new intermediate FM station classification (Class C3) received virtually unanimous support from commenting parties. On March 30, 1989, the Commission adopted a *First Report and Order* (54 FR 16363, April 24, 1989; corrected 54 FR 19374, May 5, 1989), amending 47 CFR Part 73 to provide for the new Class C3 FM broadcast station class.

3. The commenters also generally support the proposal to increase the maximum permitted transmitting power for Class A FM broadcast stations. Most of the commenters agreed with the Commission's assessment of the benefits of increased power for Class A FM stations. Additionally, the vast majority of comments submitted by licensees of Class A stations related specific coverage problems experienced by their particular stations which they believe the proposed power increase would help to solve. These problems generally fall into the categories of terrain shielding and obstruction shadowing, temperature inversions and other propagation vagaries, building penetration difficulty, and signal domination by larger class FM stations.

4. In the *Notice*, the Commission proposed to increase the maximum permitted ERP for Class A FM broadcast stations from 3000 to 6000 watts, while leaving the reference antenna height above average terrain at 100 meters (328 feet). Also, the Commission outlined two possible methods (termed "METHOD 1" and "METHOD 2") for implementing the Class A power increase, the requested further public comment addressing the advantages and drawbacks of each method. Under METHOD 1, the Commission would raise the maximum ERP limit for all Class A FM stations while retaining the existing minimum co-channel and adjacent channel spacings. Grandfathered shortspaced stations would be allowed to increase ERP subject to the provisions of 47 CFR 73.213.

5. METHOD 2 would permit the increase in power for only those Class A stations able to meet appropriate new separation distances. Service gains would not be as great as with METHOD 1, but adverse effects on existing stations would be minimized. METHOD 2 would create two categories of Class A FM stations—those allowed to increase power to 6000 watts, and those remaining limited to 3000 watts. Grandfathered short-spaced stations would fall into the latter category; however, some of these stations might be able to increase power if mutual agreements could be reached with all involved stations, and if it were shown that such an increase would serve the public interest.

6. In general, comments of most Class A FM broadcast station licensees favor a "blanket" power increase; that is, they request that the Commission allow all Class A stations to increase power without regard to the individual situations of the stations. Accordingly, between the two methods proposed, most Class A licensees prefer METHOD 1, which is closer to the blanket upgrade approach. These licensees oppose a selective upgrade approach, such as METHOD 2, based on increased distance separation requirements. Some of the reasons cited by these commenters in support of the blanket upgrade are:

(a) The blanket approach would allow all Class A stations to increase power, whereas the selective approach would exclude many Class A stations, particularly in the urban northeast, where the competitive imbalance is most severe.

(b) The blanket approach would be relatively simple to administer, whereas the selective approach would involve additional paperwork and delay associated with a case-by-case implementation.

(c) Under the blanket approach, all Class A stations would be on an equal footing, whereas under the selective approach, there would be two categories of Class A station, 3000 watt and 6000 watt.

(d) Under the blanket approach, all Class A stations could increase power at their current locations, whereas under the selective approach, costly relocations could be necessary in order for some Class A stations to increase power.

7. On the other hand, comments filed by many broadcast organizations, consulting engineering firms, and most licensees of Class B FM stations strongly oppose any form of blanket power increase for Class A stations. These commenters favor increased power for Class A stations, but only where no interference would result. Thus they believe that any Class A power increase must be administered on a selective basis, and favor METHOD 2. The principal reasons given by these commenters for their opposition to a blanket Class A power increase are:

(a) A blanket power increase for Class A stations would cause unacceptable interference to the current service of Class B and B1 stations, whereas a selective power increase would protect this service.

(b) A blanket power increase would cause overall degradation of the FM service.

(c) A blanket power increase would destroy the technical integrity of the minimum distance separation requirements.

8. The Commission stated in the *Notice* that regardless of which method for implementing a Class A power increase were to be selected, it would be preferable to minimize the administrative burdens on licensees and FCC staff. While noting that it generally proceeds upon individual applications in upgrading FM facilities, the Commission expressed concern that employment of a strictly case-by-case approach would result in excessive processing delays, even for problem-free applications.

9. Thus, the Commission proposed to employ procedures combining elements of both the blanket approach and the case-by-case approach. Specifically, it was proposed to allow Class A stations that can effect the power increase by simple technical means to do so without individual prior approval. In such cases, the station licensee would be required only to file FCC Form 302, together with a supplemental exhibit within ten days after the power increase is made. In all other cases, the Class A station licensee would be required to file FCC Form 301 and obtain prior approval for the power increase.

10. *Class A power limit raised to 6000 watts.* The record clearly shows that a substantial number of the persons most familiar with the day to day operation of Class A stations firmly believe that the current 3000 watt power level is inadequate for these stations to be technically and economically competitive in the current radio marketplace environment, and that the proposed increase to 6000 watts would make a significant improvement in the ability of these stations to serve the public. In consideration of this evidence, the Commission is amending 47 CFR 73.211 to raise the maximum effective radiated power limit for Class A FM broadcast stations from 3000 to 6000 watts. The current reference antenna HAAT of 100 meters for Class A stations other than those located in Puerto Rico and the Virgin Islands is retained. Equivalent combinations of lower ERP and higher antenna HAAT, such as 4000 watts with 125 meters, will be permitted under the new limit (see 47 CFR 73.211(b)(2)).

11. *Increased minimum power requirement for Class B1 and C3.* The minimum power requirement for each FM station class (47 CFR 73.211) generally corresponds to the maximum power limit for the next lower station class. This helps to avoid ambiguity in station classification. In view of the increase in the maximum power limit for Class A, the Commission is also raising the minimum power requirement for Class B1 and C3 stations accordingly. Currently Class B1 and C3 stations must operate with an ERP greater than 3000 watts. In this order, 47 CFR 73.211 is revised to require that Class B1 and C3 stations must operate with an ERP greater than 6000 watts. The Commission did not propose the reclassification of existing Class B1 authorizations in the *Notice*, therefore, no reclassification procedures for them are being established at this time.

12. *Selective implementation method chosen.* After careful review of the record, in particular the engineering statements and other comments that support or oppose, on technical grounds, each of the proposed methods, the Commission concludes that the Class A power increase should be implemented on a selective basis, rather than as a blanket increase. The Commission further concludes that the minimum distance separation requirements applicable to Class A stations should be adjusted to account for the increase in transmitting power. The rules adopted are thus similar to proposed METHOD 2, however, they also incorporate some aspects of proposed METHOD 1. For example, increased power operation by existing grandfathered short-spaced stations will be permitted, subject to 47 CFR 73.213. In addition, amended 47 CFR 73.1619 will allow the licensees of fully-spaced Class A stations that can effect the power increase by simple technical means to do so prior to filing an application.

13. *New minimum distance separation requirements for Class A stations.* The purpose of minimum distance separation requirements for FM stations is to allow FM assignments to be made without excessive delay on an administratively convenient "go — no go" basis. FM stations are entitled only to such coverage protection as the separation requirements provide. Consequently, if the maximum power limit for Class A stations is to be raised and involuntary loss of currently protected service area is to be prevented, it follows that the distance separation requirements applicable to Class A stations must be increased. The Commission is adopting new requirements that will maintain present protection.

14. *Grandfathered short-spaced stations.* The Commission has decided to grandfather all existing stations that do not meet the new distance separation requirements. A new category of grandfathered short-spaced stations under 47 CFR 73.213, comprising these stations, will be created. For stations in this new category, the Commission will allow (1) Class A stations broadcasting with no more than the current maximum facilities (3000 watts ERP and an antenna HAAT of 100 meters, or equivalent lower ERP and higher HAAT) and newly short-spaced stations of all other classes, and (2) Class A stations operating with more than 3000 watts ERP, but with no greater interference potential than a station operating at the current maximum facilities to be modified or relocated provide that the appropriate separation requirements are met. The first provision preserves the freedom to modify or relocate, under the terms of the current rules, the newly-grandfathered Class A stations that do not increase power above the current limit and the stations of other classes that become short-spaced to Class A stations as a result of the Commission's revision of 47 CFR 73.207 in this order. The second provision allows licensees of newly-grandfathered Class A stations using an antenna HAAT less than 100 meters the option to increase power above 3000 watts. Although a power increase under these circumstances will not expand service area beyond that of a 3000 watt, 100 meter Class A station, it may still prove to be of some value in overcoming the building penetration and temperature inversion interference problems frequently cited by commenters.

15. The Commission will also consider applications by newly created short-spaced Class A stations, on a case-by-case basis, in the following limited circumstances. In the case of Class A stations which are newly short-spaced to each other and which seek mutual increases in facilities, the Commission will allow such increases in power provided that all Class A stations seeking the increase first obtain the consent of any other stations who may be affected by the change, and that the increase is otherwise consistent with the public interest. Unilateral increases will be permitted if a station has obtained the consent of all other stations which may be affected, and the increase is consistent with the public interest. The Commission notes that agreement among stations which may be affected is a necessary but not sufficient condition to granting a power increase. As between Class A and other facilities, the Commission will examine each request to insure that no fully spaced or less short spaced site is available.

16. *IF distance separation requirements.* Because IF interference may potentially affect all of the FM stations in an area, in addition to the two IF-related stations, the Commission will not allow agreements for short-spaced IF related stations. To increase power beyond the current 3000 watt, 100 meter maximum facilities, a Class A station's antenna site must meet the modified IF distance separation requirements of 47 CFR 73.207.

17. *Public radio service.* The Commission believes that any adverse effect of the Class A power increase on public radio service operating in the upper portion of the reserved spectrum will be minimal. For second and third adjacent channel stations the distance separation requirements are increased only for the Class A to Class A and Class A to Class C1 relations. The other second and third adjacent requirements are unchanged. The IF distance separation requirements are increased slightly (by 1 to 2 km typically), but some of these requirements were recently reduced and the two changes offset each other to some extent. Moreover, there are very few IF-related station pairs anyway. Consequently, the only significant increases affecting the upper portion of the reserved band are in the first adjacent minimum distance separation requirements. Also, for those stations that are affected, the commercial Class A station is limited to

the current 3000 watt, 100 meter maximum facilities or other facilities with no greater interference potential, unless consent is obtained from all affected stations, including the NCE-FM station(s). Therefore, the Commission concludes that this action will not have significant adverse impact upon public radio service, and that no special restrictions or requirements in connection with the power increase for Class A stations operating on Channels 221, 222 and 223 are necessary.

18. *Administrative procedures.* To allow as many Class A stations as possible to upgrade without unnecessary delay and expense, the Commission is adopting administrative procedures similar to those proposed in the *Notice*. Specifically, in November of this year, the Commission will publish a list of licensed Class A stations at sites that appear to meet all of the appropriate minimum distance separation requirements.[1] Of the stations on this list [2], those for which the power increase can be implemented by replacing a non-directional antenna with a higher gain non-directional antenna, changing the transmitter output power [3], changing the type or length of the transmission line, and/or installing or removing certain components in the transmission line, may begin operation with increased ERP on or after December 1, 1989, but prior to the filing of an application for such operation. In such cases, licensees will be required to file FCC Form 302, together with a supplemental exhibit addressing environmental matters within 10 days after the power increase is made.[4] This automatic authority does not extend to stations for which an increase in facilities would expose workers or the general public to levels of rf radiation in excess of the "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz," (ANSI C95. 1–1982) by the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, New York 10017. Such stations may not operate with increased facilities until measures are taken to prevent workers and the general public from being exposed to the excess levels of rf radiation or unless they first receive authorization from the Commission.

19. In all other respects, the rules adopted herein will become effective on October 2, 1989. Applications and petitions filed prior to October 2, 1989 must comply with, and will be processed in accordance with, the current rules. Applications on FCC Form 301 to increase Class A station power pursuant to the rules adopted herein (for stations that will be newly grandfathered, or for some other reason will be unable to utilize the FCC Form 302 procedure described above) may be filed on or after October 2, 1989. Because some Class A stations not meeting the new distance separation requirements may nevertheless be able to increase power by utilizing the contour protection provisions of 47 CFR 73.215, such stations will be exempt from the temporary 5 mile (8 kilometer) limit on short-spaced locations under this rule.

Final Regulatory Flexibility Analysis

I. Need and Purpose of this Action

The Commission is increasing the maximum permitted power for Class A FM broadcast stations. The principal purpose of this action is to provide additional opportunities for improvement of the facilities of existing Class A FM broadcast stations. The need for such improvement was outlined in the *Notice* and confirmed by the majority of the commenting parties. Existing Class A stations will be allowed to increase to the new power limit on a selective basis.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No commenters addressed the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered and Rejected

The Commission considered the alternative of allowing existing Class A stations, other than grandfathered short-spaced stations, to increase power on an across-the-board basis, rather than a selective basis. However, the Commission determined that to do so could reduce the expected coverage areas of certain other classes of FM broadcast stations, and that to impose such a reduction would not be in the public interest.

20. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been found to impose a modified information collection requirement on the public. Implementation of any modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

21. *It is ordered,* pursuant to authority contained in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, and effective October 2, 1989, That part 73 of the Commission's Rules, 47 CFR part 73, is amended as set forth below, and That authority to order Class A station licensees found to have improperly increased power to return to licensed parameters is delegated to the Chief, Mass Media Bureau.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Part 73

Radio broadcasting, FM broadcast stations, Class A.

For the reasons set forth in the preamble. 47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.207 is amended by revising the numbers of the first seven rows of Table A in paragraph (b)(1), by revising the introductory texts of paragraphs (b)(2) and (b)(3), and by revising the numbers in the first row of the table in paragraph (c), to read as follows:

§ 73.207 Minimum distance separation between stations.

* * * * *

(b) * * *

(1) Domestic allotments and assignments must be separated from each other by not less than the distances in Table A which follows:

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[1] It may be necessary to exclude Canadian and Mexican border area Class A stations from the initial list and to publish subsequent lists for those stations when international coordination procedures are complete.

[2] Because the appearance of a particular station does not constitute a modification of license, the Commission may correct the list of stations by adding or deleting stations included or excluded by administrative error without affording subject stations the opportunity for hearing.

[3] This includes replacement of the transmitter with one capable of higher power output.

[4] If an FCC Form 302 or supplement reveals any discrepancy from the licensed parameters of record (*e.g.*, geographical coordinates, antenna heights), the Commission delegates authority to the Chief, Mass Media Bureau, to order that the Class A station be returned to its licensed parameters, and to require the station licensee to file other forms or informational showings as necessary.

TABLE A.—MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS (MILES)

Relation	Co-channel	200 kHz	400/600 kHz	10.6/10.8 MHz
A to A	115 (71)	72 (45)	31 (19)	10 (6)
A to B1	143 (89)	96 (60)	48 (30)	12 (7)
A to B	178 (111)	113 (70)	69 (43)	15 (9)
A to C3	142 (88)	89 (55)	42 (26)	12 (7)
A to C2	166 (103)	106 (66)	55 (34)	15 (9)
A to C1	200 (124)	133 (83)	75 (47)	22 (14)
A to C	226 (140)	165 (103)	95 (59)	29 (18)

* * * * *

(1) Under the Canada-United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Canadian allotments and assignments by not less than the distances given in Table B, which follows. When applying Table B, U.S. Class C2 allotments and assignments are considered to be Class B; also, U.S. Class C3 allotments and assignments and U.S. Class A assignments operating with more than 3 kW ERP and 100 meters antenna HAAT (or equivalent lower ERP and higher antenna HAAT based on a class contour distance of 24 km) are considered to be Class B1.

* * * * *

(3) Under the Mexico-United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Mexican allotments and assignments by not less than the distances given in Table C, which follows. When applying Table C, U.S. Class C2, C3 and B1 allotments and assignments are considered to be Class B; U.S. Class C1 allotments and assignments are considered to be Class C; also, U.S. Class A assignments operating with more than 3 kW ERP and 100 meters antenna HAAT average terrain (or equivalent lower ERP and higher antenna HAAT based on a class contour distance of 24 km) are considered to be Class B.

* * * * *

(c) The distances listed below apply only to allotments and assignments on Channel 253 (98.5 MHz). The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any TV Channel 6 allotment or assignment are not met:

MINIMUM DISTANCE SEPARATION FROM TV CHANNEL 6 (82–88 MHz)

FM class	TV zone I	TV zones II and III
A	17	22

* * * * *

3. 47 CFR 73.210 is amended by revising paragraphs (b)(1), (b)(2)(i) and (b)(3)(i) to read as follows:

§ 73.210 Station classes.

* * * * *

(b) * * *

(1) Determine the reference distance of the station using the procedure in paragraph (b)(1)(i) of § 73.211. If this distance is less than or equal to 28 km, the station is Class A; otherwise,

(2) * * *

(i) If this distance is greater than 28 km and less than or equal to 39 km, the station is Class B1.

* * * * *

(3) * * *

(i) If this distance is greater than 28 km and less than or equal to 39 km, the station is Class C3.

* * * * *

4. 47 CFR 73.211 is amended by revising paragraphs (a)(1)(ii) and (a)(1)(iv), by republishing the introductory text of paragraph (b)(1) and by revising the numbers in the first row of the table in the introductory text of paragraph (b)(1), by revising paragraph (b)(1)(ii), and by revising the first row in the table in paragraph (b)(3) to read as follows:

§ 73.211 Power and antenna height requirements.

(a) * * *

(1) * * *

(ii) The ERP for Class B1 stations must exceed 6 kW.

* * * * *

(iv) The ERP for Class C3 stations must exceed 6 kW.

* * * * *

(b) *Maximum limits.* (1) Except for stations located in Puerto Rico or the Virgin Islands, the maximum ERP in any direction, reference HAAT, and distance to the class contour for each FM station class are listed below:

Station class	Maximum ERP	Reference HAAT in meters (ft)	Class contour distance in kilometers
A	6kW (7.8 dBk)	100 (328)	28

* * * * *

(ii) If a station's ERP is equal to the maximum for its class, its antenna HAAT must not exceed the reference HAAT, regardless of the reference distance. For example, a Class A station operating with 6 kW ERP may have an antenna HAAT of 100 meters, but not 101 meters, even though the reference distance is 28 km in both cases.

* * * * *

(3) For stations located in Puerto Rico or the Virgin Islands, the maximum ERP in any direction, reference HAAT, and distance to the class contour for each FM station class are listed below:

Station class	Maximum ERP	Reference HAAT in meters (ft)	Class contour distance in kilometers
A	6kW (7.8 dBk)	240 (787)	42

* * * * *

5. 47 CFR 73.213 is amended by adding a new paragraph (c) to read as follows:

§ 73.213 Grandfathered short-spaced stations.

* * * * *

(c) Stations at locations authorized by grant of applications filed prior to October 2, 1989 that became short-spaced as a result of the revision of § 73.207 in the *Second Report and Order* in MM Docket No. 88–375 may be modified or relocated in accordance with paragraph (c)(1) or (c)(2) of this section. New stations on channel allotments made by order granting petitions to amend the Table of FM

Allotments which were filed prior to October 2, 1989, may be authorized in accordance with paragraph (c)(1) or (c)(2) of this section. No other stations will be authorized pursuant to these paragraphs.

(1) *Applications for authorization under requirements equivalent to those of prior rules.* Each application for authority to operate a Class A station with no more than 3000 watts ERP and 100 meters antenna HAAT (or equivalent lower ERP and higher antenna HAAT based on a class contour distance of 24 km) must specify a transmitter site that meets the minimum distance separation requirements in this paragraph. Each application for authority to operate a Class A station with more than 3000 watts ERP (up to a maximum of 5800 watts), but with an antenna HAAT lower than 100 meters such that the distance to the predicted 0.05 mV/m (34 dBμV/m) F(50,10) field strength contour does not exceed 98 km must specify a transmitter site that meets the minimum distance separation requirements in this paragraph. Each application for authority to operate an FM station of any class other than Class A must specify a transmitter site that meets the minimum distance separation requirements in this paragraph with respect to Class A stations operating pursuant to this paragraph or paragraph (c)(2) of this section, and that meets the minimum distance separation requirements of § 73.207 with respect to all other stations.

MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS (MILES)

Relation	Co-channel	200 kHz	400/600 kHz	10.6/10.8 MHz
A to A	105 (65)	64 (40)	27 (17)	8 (5)
A to B1	138 (86)	88 (55)	48 (30)	11 (6)
A to B	163 (101)	105 (65)	69 (43)	14 (9)
A to C3	138 (86)	84 (52)	42 (26)	11 (6)
A to C2	163 (101)	105 (65)	55 (34)	14 (9)
A to C1	196 (122)	129 (80)	74 (46)	21 (13)
A to C	222 (138)	161 (100)	94 (58)	28 (17)

(2) *Applications for authorization of Class A facilities greater than 3000 watts ERP and 100 meters HAAT.* Each application to operate a Class A station with an ERP and HAAT such that the reference distance would exceed 24 kilometers must contain an exhibit demonstrating the consent of the licensee of each co-channel, first, second or third adjacent channel station (for which the requirements of § 73.207 are not met) to a grant of that application. Each such application must specify a transmitter site that meets the applicable IF-related channel distance separation requirements of § 73.207. Applications that specify a transmitter site which is short-spaced to an FM station other than another Class A station which is seeking a mutual increase in facilities may be granted only if no alternative fully-spaced site or less short-spaced site is available. Licensees of Class A stations seeking mutual increases in facilities need not show that a fully spaced site or less short spaced site is available. Applications submitted pursuant to the provisions of this paragraph may be granted only if such action is consistent with the public interest.

§ 73.215 [Amended]

6. 47 CFR 73.215 is amended by removing the NOTE that follows paragraph (b)(2)(ii).

7. 47 CFR 73.610 is amended by revising the introductory text of paragraph (f) and the first row of numbers in the table in paragraph (f) as follows:

§ 73.610 Minimum distance separations between stations.

* * * * *

(f) The distances listed below apply only to allotments and assignments on Channel 6 (82–88 MHz). The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any FM Channel 253 allotment or assignment are not met:

MINIMUM DISTANCE SEPARATION FROM FM CHANNEL 253 (98.5 MHz)

FM class	TV zone I	TV zones II & III
A	17	22

* * * * *

8. 47 CFR 73.1690 is amended by revising paragraph (b)(2) and adding a new paragraph (c)(4) and a NOTE following that new paragraph, to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(b) * * *

(2) Change in the operating power from that specified on the station authorization, except as provided in paragraph (c)(4) of this section.

* * * * *

(c) * * *

(4) On or after December 1, 1989, increase in the effective radiated power of eligible Class A FM stations pursuant to MM Docket 88–375, when such increase is effected by:

(i) Replacement of a non-directional antenna with another non-directional antenna having higher gain, provided that the height above ground of the center of radiation is within ±2 meters of that specified in the station authorization; and/or

(ii) Increase in the power input to the antenna, as a result of adjustment of the transmitter output power, change in the type or length of the transmission line, and/or installation of filters or diplexers.

Note: Class A stations eligible for a power increase pursuant to paragraph (c)(4) are those which appear on a list issued by the Commission in November 1989.

* * * * *

[FR Doc. 89–20060 Filed 8–24–89; 8:45 am]

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47 CFR Part 74

[MM Docket 86–112, FCC 89–276]

Satellite and Terrestrial Microwave Feeds to Noncommercial Educational FM Translators

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The action taken herein amends the Commission's rules regarding applications for noncommercial FM translators assigned to reserved channels (channels 200–220), owned and operated by their primary stations and proposing to use alternate signal delivery. Certain applicants may be required to make a special showing that an alternative noncommerical FM frequency remains available. The rule modified herein strikes a balance between the public interest embodied in ensuring the development and expansion of local public radio service and increasing noncommerical FM service to unserved and underserved areas.

EFFECTIVE DATE: October 2, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in MM Docket No. 86–112, adopted August 4, 1989, and released August 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street Northwest, Suite 140, Washington, DC 20037.

Summary of the Memorandum Opinion and Order

1. On October 31, 1985, the Moody Bible Institute petitioned the Commission to permit noncommercial educational FM (NCE–FM) translators to rebroadcast signals delivered via satellite and terrestrial microwave facilities. Moody further proposed that such signal delivery be limited to NCE–FM translators on reserved channels (200–220) and owned and operated by the primary station to be rebroadcast. The Commission initiated a rule making proceeding in response to the Moody petition, culminating in a Report and Order deleting the requirement that NCE–FM translators assigned to reserved channels and owned and operated by their primary stations receive signals from their primary stations, or another translator, directly over-the-air. The revised rules permit use of signal delivery means that include, but are not limited to, satellite and terrestrial microwave facilities.

2. As a consequence of that action, the Commission received petitions for reconsideration. Petitioners uniformly opposed the rule change adopted in the Report and Order, arguing that the new rule undermines the concept of localism, increases interference problems, and thwarts the growth of fullpower FM service to the public. In general, petitioners asked that the Commission vacate or substantially modify the alternative signal delivery rule.

3. Subsequent to the reconsideration period, several of these petitioners submittted a Joint Proposal intended to resolve the issues raised in the docket. The Joint Proposal proposes to allow use of alternative signal delivery to NCE–FM translators which are owned and operated by the licensee of the primary station to be rebroadcast if these translators comply with a series of conditions that are designed, according to these parties, to assure continued interference-free radio service in the NCE–FM band and to allow expansion of service through the use of NCE–FM translators.

4. Upon consideration of the commenters' concerns on this issue expressed in the Joint Proposal, the Commission concluded that the rules adopted in the Report and Order, permitting unrestricted use of alternative signal delivery for licensee owned and operated NCE–FM translators, should be amended to incorporate certain provisions of the Joint Proposal. Thus, the amended rules provide that an applicant for an NCE–FM translator seeking authorization to use alternative signal delivery will have to make a showing that at least one alternative NCE–FM frequency that provides comparable signal coverage to the same area encompassed by the applicant's proposed 1 mV/m contour remains available. Applicants will be required to make such a showing during a transitional period that will extend until October 1, 1992. Applicants need not make such a showing if the proposed NCE–FM translator is within 80 kilometers of the 1 mV/m contour of the primary station to be rebroadcast or is greater than 160 kilometers from any NCE–FM radio station.

5. In justifying its decision, the Commission stated that the limitations imposed on unrestricted alternative signal delivery authority will have minimal effect in most cases. While NCE–FM translator applicants proposing to locate more than 80 kilometers outside of the 1 mv/m contour of the primary station, or within 160 kilometers from any NCE–FM radio station must establish the availability of at least one other frequency for an additional translator, the Commission does not anticipate that in most rural areas this requirement will be difficult to show or represent a significant constraint. This is because there are likely to be many unused frequencies in such areas. It is only in densely populated urban areas that it may be relatively difficult to demonstrate that there would be an additional channel available for another translator. However, in urban areas there is also likely to already exist a number of full-service noncommercial and commercial stations. Hence, in such areas the benefits from authorizing a translator to rebroadcast the signal of a distant FM station should be less than in rural areas, because listeners are likely to already be exposed to a variety of local FM stations.

6. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of these new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

7. The Secretary shall cause a copy of this Memorandum Opinion and Order to be sent to the Chief Counsel for Advocacy of the Small Business Administration.

8. Accordingly, *it is ordered*, That under the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, part 74 of the Commission's rules and regulations is amended as set forth below effective October 2, 1989. *It is further ordered*, That the Petitions for Reconsideration filed by the Association of Maximum Service Telecasters, Inc.; the National Association of Broadcasters; Salem Broadcasting Services; and, a joint petition for reconsideration filed by National Public Radio, the National Federation of Community Broadcasters, the Intercollegiate Broadcasting Systems, Inc., the Office of Communication of the United Church of Christ, and the People For the American Way are granted to the extent adopted herein and denied in all other aspects. Finally, the petition for rule making filed by the Association of Maximum Service Telecasters is denied.

9. *It is furthered ordered*, That this proceeding is terminated.

List of Subjects in 47 CFR Part 74

FM broadcast translator stations, FM broadcast booster stations.

Part 74 of title 47 of the Code of Federal Regulations is amended as follows:

PART 74—[AMENDED]

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, and 303.

2. Section 74.1231 is amended by revising paragraph (b) to read as follows:

§ 74.1231 Purpose and permissible service.

* * * * *

(b) Except as provided in paragraphs (f) and (g) of this section, an FM translator may be used only for the purpose of retransmitting the signals of an FM broadcast station or another FM translator station which have been received directly through space, converted, and suitably amplified. However, a noncommercial educational FM translator operating on a reserved channel (Channels 200–220) and owned and operated by the licensee of the primary noncommercial educational FM station it rebroadcasts may use alternative signal delivery means including, but not limited to, satellite and microwave facilities, if the applicant complies with either paragraph (b)(1) or (2) of this section:

(1) The applicant demonstrates that:

(i) The transmitter site of the proposed FM translator station is within 80 kilometers from the predicted 1 mV/m contour of the primary station to be rebroadcast; or,

(ii) The transmitter site of the proposed FM translator station is more than 160 kilometers from the transmitter site of any authorized full service noncommercial educational FM station; or,

(iii) The application is mutually exclusive with an application containing the showing as required by § 74.1231(b)(2)(i) or (ii); or,

(iv) The application is filed after October 1, 1992.

(2) If the transmitter site of the proposed FM translator station is more than 80 kilometers from the predicted 1 mV/m contour of the primary station to be rebroadcast or is within 160 kilometers of the transmitter site of any authorized full service noncommercial educational FM station the applicant must show that:

(i) An alternative frequency can be used at the same site as the proposed FM translator's transmitter location and can provide signal coverage to the same area encompassed by the applicant's proposed 1 mV/m contour; or,

(ii) An alternative frequency can be used at a different site and can provide signal coverage to the same area encompassed by the applicant's proposed 1 mV/m contour.

* * * * *

Federal Communications Commission.
Donna R. Searcy,
Secretary.

[FR Doc. 89-20061 Filed 8-24-89; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1011, 1181, 1182, 1183, 1186, 1187, and 1188

[Ex Parte No. MC-179]

Purchase, Merger, and Control of Motor Passenger and Water Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting final regulations, as set forth below, governing: (1) Applications under 49 U.S.C. 11343–11344 to purchase, merge, or acquire control of motor passenger and water carriers; and (2) requests for temporary authority under 49 U.S.C. 11349 during the pendency of: (a) Applications to transfer operating rights of motor and water carriers under 49 U.S.C. 10926; and (b) applications and petitions for exemption to purchase, merge, or acquire control of motor and water carriers under 49 U.S.C. 11343–11344. Application Forms OP–F–44 and OP–F–45, now used for motor passenger finance transactions, are discontinued, and temporary authority Form OP–F–46 is revised. More general application requirements keyed to the applicable statutory burden of proof have been adopted in lieu of Forms OP–F–44 and OP–F–45, and safety fitness has been incorporated as an issue in passenger finance applications. To assist applicants in determining whether their finance applications are within the jurisdictional scope of 49 U.S.C. 11343, the rules for identifying applicable gross operating revenues have been consolidated in a new Part 1188. Temporary authority procedures have been consolidated in a new part 1187. Additionally, we have codified authority for rendering initial decisions in motor passenger and water carrier finance proceedings under 49 U.S.C. 11343–11344 to the Motor Carrier Board. The final rules in the above areas are the same as those proposed, with only minor modifications.

Finally, we have codified in parts 1181, 1182, and 1186 (which cumulatively cover all motor finance transactions) the longstanding requirement that the party to whom motor carrier operating rights are being transferred certify that it is not domiciled in Mexico nor owned or controlled by persons of Mexico. The proposed rules were published on March 24, 1989 at 54 FR 12252.

EFFECTIVE DATE: September 24, 1989.

FOR FURTHER INFORMATION CONTACT:
Richard B. Felder, (202) 275–7691
or
James L. Brown, (202) 275–7898.
[TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 275–1721.]

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We affirm our prior certification. The rules we are adopting will have an indirect and positive but not significant impact on a substantial number of small entities. With one minor exception concerning the certification of safety ratings by motor passenger applicants, the rules will not impose additional reporting, recordkeeping, or compliance requirements on applicants. Conversely, the total information requirements for all applicants have been reduced appreciably, and the revised rules will not duplicate, overlap, or conflict with any existing Federal rule.

Paperwork Reduction Analysis

We estimate that an average of 25 burden hours per response are required to complete the collection of information involved with the proposed revised temporary authority form OP–F–46. This represents no change from the estimate applicable to the current form, inasmuch as we propose no significant changes to that form. However, whereas OMB's current approval is based on an estimate of 300 responses per year, only 175 such responses were collected during the 1988 fiscal year. In view of program changes already reflected in *Transfer Rules, supra,* we estimate a further dramatic reduction in the number of temporary authority applications filed in connection with small carrier transfers since such transactions now may be consummated 10 days after filing the application. Therefore, we now estimate that only 125 annual responses will be collected, thus reducing the total estimated annual reporting hours to 3,125.

It is estimated that an average of 60 burden hours per response are required to complete the collection of information involved with finance applications submitted in lieu of current forms OP–F–44 and OP–F–45, proposed to be discontinued. The present OMB approval of form OP–F–44 estimates 14 annual responses, with an average reporting burden of 80 hours per response; the approval of form OP–F–45 estimates 11 annual responses with an average reporting burden of 120 hours per response. We estimate that the total number of annual responses in these areas will remain unchanged at 25, which tends to be confirmed by the statistic that a total of 20 such applications were filed during the 1988 fiscal year. However, our proposed simplification and streamlining of these matters through elimination of the forms and the needlessly detailed data they require would, we estimate, reduce the average burden per response to only 60 hours. Accordingly, the total estimated annual reporting hours would be reduced to 1,500.

These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the section of Administrative Services, Interstate Commerce Commission, and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 3120–0079), Washington, DC 20503.

List of Subjects

49 CFR Part 1003

Brokers, Freight forwarders, Insurance, Maritime carriers, Motor carriers, Securities, Surety bonds.

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and function (Government agencies).

49 CFR Part 1181

Administrative practice and procedure, Brokers, Freight forwarders, Maritime carriers, Motor carriers.

49 CFR Part 1182

Administrative practice and procedure, Motor carriers, Maritime carriers.

49 CFR Part 1183

Administrative practice and procedure, Motor carriers.

49 CFR Part 1186

Administrative practice and procedure, Freight forwarders, Motor carriers.

49 CFR Part 1187

Administrative practice and procedure, Motor carriers, Maritime carriers.

49 CFR Part 1188

Administrative practice and procedure, Motor carriers.

Authority: 5 U.S.C. 551 and 553; 31 U.S.C. 9701; and 49 U.S.C. 10301, 10302, 10304, 10305, 10321, 10922, 10926, 10322, 11321, 11343, 11344, 11345a, and 11349.

Decided: August 16, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioner André, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X of the Code of Federal Regulations is amended as follows:

PART 1003—LIST OF FORMS

1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 551(a), 5 U.S.C. 553(1)(c) and 49 U.S.C. 10321.

2. The Forms OP–F–44 and OP–F–45 are removed from § 1003.2.

3. The entry for OP–F–46 in § 1003.2 is revised to read as follows:

§ 1003.2 Motor and water carrier, broker, and household goods freight forwarder forms.

* * * * *

OP–F–46

Application for approval, under 49 U.S.C. 11349, of the temporary operation of motor carrier or water carrier properties.

Cross Reference: 49 CFR part 1187.

* * * * *

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF

4. The authority citation for part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, and 10321; 31 U.S.C. 9701; and 5 U.S.C. 553.

5. Section 1011.6(i)(2) is revised to read as follows:

§ 1011.6 Employee boards.

* * * * *

(i) * * *

(2) Motor passenger carrier (except applications by carrier with less than satisfactory safety ratings from DOT), water carrier finance applications under 49 U.S.C. 11343–11344, and small carrier transfer applications under 49 U.S.C. 10926.

* * * * *

PART 1181—TRANSFERS OF OPERATING RIGHTS UNDER 49 U.S.C. 10926

6. The authority citation for part 1181 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10926; 5 U.S.C. 553.

7. In § 1181.2(b)(1), a new paragraph (ix) is added to read as follows:

§ 1181.2 Applications.

* * * * *

(b) * * *

(1) * * *

(ix) If motor carrier operating rights are being transferred, certification by the transferee that it is not domiciled in Mexico nor owned or controlled by persons of that country.

* * * * *

8. Part 1182 is revised to read as follows:

PART 1182—PURCHASE, MERGER, AND CONTROL OF MOTOR PASSENGER CARRIERS AND WATER CARRIERS

* * * * *

Subpart A—Applications

Sec.
1182.1 Applications covered by these rules.
1182.2 Starting the application process.
1182.3 Content of applications.
1182.4 Directly related applications.
1182.5 Filing the application.
1182.6 Commission review of the application.

Subpart B—Protests

1182.7 Protests.
1182.8 Notice.
1182.9 Contents of a protest.
1182.10 Filing a protest.
1182.11 Withdrawing a protest.

Subpart C—General Requirements

1182.12 Amendments.
1182.13 Replies.
1182.14 Withdrawing an application.
1182.15 Copies.
1182.16 Certificate of service.
1182.17 Verification of statements.
1182.18 Statutory findings.

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Authority: 5 U.S.C. 559 and 49 U.S.C. 10321, 11321, 11341, 11343, 11344, and 11345a.

Subpart A—Applications

§ 1182.1 Applications covered by these rules.

These rules govern applications for authority under 49 U.S.C. 11343–11344 to consolidate, merge, purchase, or lease operating rights and properties of a motor carrier of passengers or a water carrier, or to acquire control of one or more motor carriers of passengers or water carriers through ownership of stock or otherwise.

§ 1182.2 Starting the application process.

There is no application form for these proceedings. Applicants for authority under 49 U.S.C. 11343–11344 to consolidate, merge, purchase, or lease operating rights and properties of a motor carrier of passengers or a water carrier, or to acquire control of one or more motor carriers of passengers or water carriers, through ownership of stock, or otherwise, shall file a pleading containing the information described in 49 CFR 1182.3. *See* 49 CFR 1002.2(f)(21) for filing fees.

§ 1182.3 Content of applications.

(a) The application must contain the following information:

(1) Full name, address, and signature of each of the parties to the transaction.

(2) Copies or descriptions of the pertinent operating authorities of the parties.

(3) A description of the proposed transaction.

(4) Identification of any ICC-regulated carriers affiliated with the parties, a brief description of their operations, and a summary of the intercorporate structure of the corporate family from top to bottom.

(5) If applicants are motor carriers, a jurisdictional statement that the aggregate gross operating revenues from interstate operations conducted by them and their motor carrier affiliates, if any, exceeded $2 million for a period of 12 consecutive months, ending not more than six months preceding the date of the parties' agreement covering the transaction. *See* 49 CFR part 1186.

(6) A statement indicating whether the transaction will or will not significantly affect the quality of the human environment and the conservation of energy resources.

(7) Information to demonstrate that the proposed transaction is consistent with the national transportation policy and the public interest, including particularly:

(i) The effect of the proposed transaction on competition within the involved transportation markets;

(ii) The effect of the proposed transaction on accommodating significant transportation needs; and

(iii) If the proceeding involves a motor passenger or rail carrier, the effect of the proposed transaction on the adequacy of transportation to the public; the effect on the public interest of including, or failing to include, other carriers in the area invovled in the proposed transaction (if applicable); the total fixed charges that result from the proposed transaction; and the interest of carrier employees affected by the proposed transaction. *See* 49 U.S.C. 111344(b)(2).

(8) Certification of the U.S. Department of Transportation safety fitness rating of each motor passenger carrier involved in the transaction, whether that carrier is a party to the transaction or is affiliated with a party to the transaction.

(9) If motor passenger carriers are involved in the transaction, certification by the party acquiring any operating rights through the transaction that it has sufficient insurance coverage under 49 U.S.C. 10927 for the service it intends to provide.

(10) If water carriers are involved in the transaction, information to show that the acquiring party is fit, willing, and able properly to perform the service authorized by the certificate or permit involved and to conform to the applicable statutory and administrative requirements.

(11) If motor passenger carriers are involved in a purchase of assets or merger transaction, certification by the party acquiring any operating rights through the transaction that it is not domiciled in Mexico nor owned or controlled by persons of that country.

(b) The application shall contain applicants' entire case unless: (1) The Commission finds, on its own motion or that of a party to the proceeding, that additional evidentiary submissions are required to resolve the issues in a particular case; or (2) the application contains an impediment. (*See* 49 CFR 1182.12.)

(c) Any statements submitted on behalf of an applicant supporting the transaction shall be verified. Pleadings consisting strictly of legal argument, however, need not be verified.

(d) If an application or supplemental pleading contains false or misleading information, the granted application is void *ab initio*.

§ 1182.4 Directly related applications.

(a) Directly related applications shall be filed along with the proposed acquisition transaction in a single submission. Such applications are those filed under other provisions of title 49, subtitle IV, U.S. Code, "Transportation," that either directly affect or are directly affected by the application filed under 49 U.S.C. 11343–11344. Typically, they include requests to obtain new operating authority, or to modify or convert existing operating authority. Whenever an application is filed under these rules and a directly related application also is filed, each application shall make reference to the other.

(b) Whenever possible, the Commission will decide directly related applications in a consolidated proceeding. In such cases, the statutory time frames governing the lead proceeding under 49 U.S.C. 11343–11344 will be applied.

§ 1182.5 Filing the application.

(a) Each application shall be filed with the Commission as provided at 49 CFR 1182.15. In addition, one copy shall be delivered to the Commission's Regional Office for the region in which each party's headquarters is located. Upon written request of a State, one copy shall be delivered, by first-class mail.

(b) In their application, the parties shall certify that they have delivered copies of the application as provided in paragraph (a) of this section.

§ 1182.6 Commission review of the application.

(a) All applications will be reviewed for correctness and completeness. Minor errors will be corrected with notification to the applicants. Incomplete applications may be rejected.

(b) A summary of the application will be published in the *ICC Register* to give notice to the public. The summary for an application involving motor carriers also will be published in the **Federal Register**. It will be published in the form of a tentative grant of authority. (*See also* 49 CFR 1182.12, regarding applications published with impediments.)

(c) If the published notice does not properly describe the authority sought, applicants shall inform the Commission within 10 days after the publication date.

Subpart B—Protests

§ 1182.7 Protests.

(a) Protests to an application shall be filed (received at the Commission) within 45 days after the date the application is published.

(b) Failure to file a timely protest waives further participation in the proceeding. If no one opposes the application, the published tentative grant of authority will automatically become effective at the close of the comment period.

§ 1182.8 Notice.

A copy of the application will be available for inspection at the Commission's offices in Washington, DC, or at the Regional Office for each applicant's domicile. Interested persons may request a copy of the application by writing to the Commission-designated contract agent (as identified in the *ICC Register*), Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, and including a check or money order for $10 made payable to such contract agent; or, by contacting the contract agent at (202) 289–4357/4359 [TDD for hearing impaired (202) 275–1721] and arranging billing acceptable to the agent.

§ 1182.9 Contents of a protest.

(a) Protests shall be verified.

(b) The protest shall contain all information upon which the protestant plans to rely, including the grounds for the protest and the protestant's interest in the proceeding.

(c) A protest may include a request that the Commission allow:

(1) Additional evidentiary submissions from the parties to a proceeding; or

(2) Further procedural steps to develop the evidentiary record (*e.g.*, discovery).

The request must demonstrate that this procedure is necessary to resolve the specific issues giving rise to the request. If the Commission finds, whether on its own motion or that of a party, that the record requires supplementation, a decision will be issued indicating the additional information required and the time frames within such information must be submitted.

§ 1182.10 Filing a protest.

(a) The protest is to be sent to the Commission with the docket number of the proceeding conspicuously placed on the top of the first page of the protest.

(b) A copy of the protest shall be served on applicant's representative(s).

§ 1182.11 Withdrawing a protest.

A protestant wishing to withdraw from a proceeding shall concurrently inform the Commission and the applicants in writing.

Subpart C—General Requirements

§ 1182.12 Amendments.

(a) After notice of an application is published, applicants may not amend their proposal unless specifically required to do so by the Commission because of an "impediment" in the application (*e.g.*, a jurisdictional problem, unresolved fitness issue, or question concerning possible unlawful control). Any such impediment will be indicated in the published notice.

(b) If an impediment is noted, applicants file a pleading suggesting a "cure" to the impediment and/or containing legal argument, within 20 days after the date the notice is published. Applicants must subsequently serve any protestant(s) with a copy of their pleading. Failure to comply with these provisions may result in dismissal of the application.

(c) Protestants wishing to file a reply to the applicants' pleading must do so within 20 days after the date applicants' pleading is filed.

(d) If replies to applicants' pleading are filed, applicants may file a rebuttal within 15 days after the date the replies were due. This optional pleading will be in addition to any evidence previously submitted by applicants in the application or the reply to protests.

§ 1182.13 Replies.

(a) If the application is opposed, applicants may file a reply to the protest(s). This reply statement is due at the Commission within 60 days after the date of publication of the application.

(b) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(c) The reply statement shall be verified unless it consists strictly of legal argument. A copy of the reply statement shall be served on protestants.

§ 1182.14 Withdrawing an application.

If applicants wish to withdraw an application, they shall jointly request dismissal in writing as provided at 49 CFR 1182.15.

§ 1182.15 Copies.

An original and one copy of all applications filed under this part and all other pleadings and material relating to such applications must be filed with the Commission in Washington, DC, and, if mailed, addressed to "Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423."

§ 1182.16 Certificate of service.

(a) Where the rules require service of a pleading on another party, that pleading shall be mailed or delivered by hand concurrently with its service on the Commission.

(b) The pleading shall contain a statement (certificate of service) that the pleading has been mailed or hand delivered in accordance with paragraph (a) of this section.

(c) All motions and replies shall be served on all parties.

§ 1182.17 Verification of statements.

(a) All applications and related pleadings (except motions to strike, replies thereto, and other pleadings that consist only of legal argument) must be verified by the person offering the statement.

(b) The manner of verification must be as follows:

I, __________, verify
(name and title of witness)
under penalty of perjury, under the laws of the United States of America, that all information supplied in connection with this application is true and correct. Further, I certify that I am qualified and authorized to file this application or pleading. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to five years for each offense.

____
(Signature and Date)

§ 1182.18 Statutory findings.

The following findings are made for applications to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor passenger carriers or water carriers under 49 U.S.C. 11343–11344:

We find, with the exception of those applications involving impediments (*e.g.*, jurisdictional problems, unresolved fitness questions, or questions involving possible unlawful control) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11321, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated. This finding shall not be deemed to exist where the application is opposed. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

PART 1183—CONTROL OR CONSOLIDATION OF MOTOR CARRIERS OF PASSENGERS OR THEIR PROPERTIES [REMOVED]

9. Part 1183 is removed.

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PART 1186—EXEMPTION OF CERTAIN TRANSACTIONS UNDER 49 U.S.C. 11343

10. The authority citation for part 1186 continues to read as follows:

Authority: 49 U.S.C. 10321 and 11343(e) and 5 U.S.C. 553.

11. In § 1186.2, a new paragraph (e) is added to read as follows:

§ 1186.2 Notice of exemption.

* * * * *

(e) In purchase of assets or merger transactions, certification by the party acquiring any motor carrier operating rights through the transaction that it is not domiciled in Mexico nor owned or controlled by persons of that country.

12. Section 1186.4 is revised to read as follows:

§ 1186.4 Temporary authority.

Parties may simultaneously request temporary authority during the pendency of the exemption proceeding by submitting Form OP–F–46 in accordance with the regulations at 49 CFR part 1187.

13. Part 1187 is added to read as follows:

PART 1187—TEMPORARY AUTHORITY IN MOTOR AND WATER CARRIER FINANCE PROCEEDINGS

Sec.
1187.1 Applications governed by these rules.
1187.2 Procedures used generally.
1187.3 Applications.
1187.4 Commission action.
1187.5 Protests.

Authority: 5 U.S.C. 559 and 49 U.S.C. 10321, 10926, 11341, 11343, 11344, and 11349.

§ 1187.1 Applications governed by these rules.

These rules govern the handling of applications filed for temporary authority to operate motor property carrier, motor passenger carrier, and water carrier properties sought to be acquired in separately filed applications or petitions for exemption under:

(a) 49 U.S.C. 11343–11344 (for authority to consolidate, purchase, merge, or lease operating rights and properties of, or to acquire control of, motor property carriers, motor passenger carriers, and water carriers); or

(b) 49 U.S.C. 10926 (for the transfer of certificates and permits of motor property carriers, motor passenger carriers, and water carriers).

§ 1187.2 Procedure used generally.

Since the basis for filing applications for temporary authority under these rules is to prevent destruction of or injury to motor carrier or water carrier properties sought to be acquired under 49 U.S.C. 11343–11344 or 10926, these rules are designed to permit the Commission to decide expeditiously temporary authority applications. The Commission has no obligation to give public notice of applications filed under these rules for temporary authority. Cases are decided without hearing or other formal proceeding. However, the rules do permit the Commission, when feasible, to publish notice of temporary authority applications, and such applications may be opposed.

§ 1187.3 Applications.

(a) *Starting the application process.* Persons seeking temporary authority under this section shall complete application form OP–F–46. (*See* 49 CFR part 1003 and § 1002.2(f)(24) regarding forms and filing fees.) An application for temporary authority may only be filed concurrently with or after the filing of a related application or petition for exemption under 49 U.S.C. 11343–11344 or 10926.

(b) *Information to be submitted by applicants.* The application form constitutes applicants' entire case and shall contain all of the information on which applicants intend to rely.

(c) *Where the application is sent.* The original and one copy of the application shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, along with the application fee. In addition, one copy of the application shall be sent by applicants to each of the persons and State officials specified on the application form. When an application for temporary authority is filed after the filing and publication of notice of the related acquisition transaction (under 49 U.S.C. 11343–11344 or 10926), applicants also shall serve a copy of the temporary authority application on all parties of record in the related transaction as of the date of the filing.

§ 1187.4 Commission action.

(a) Where an application for temporary authority is filed concurrently with the related acquisition application or petition for exemption, notice of filing of the temporary authority application will appear in the published notice of the corresponding permanent application or petition.

(b) The temporary authority application (and protests, if any) will be submitted to an appropriate decisional body for disposition as soon as possible after filing. These rules do not provide for any specific time period for the filing of opposition to concurrently filed temporary authority applications. A temporary authority request may be acted upon before the publication of the related permanent application or petition for exemption.

§ 1187.5 Protests.

(a) *Who can oppose an application.* A protest to an application for temporary authority filed under these rules may be filed only by persons who oppose or intend to oppose the related permanent application or petition for exemption filed under 49 U.S.C. 11343–11344 or 10926.

(b) *Contents of a protest.* A protest to an application for temporary authority shall be in writing. The protest shall state the protestant's interest in the proceeding and the specific grounds on which protestant relies in opposing the temporary authority application. The protest also shall indicate that a copy has been served on applicants' representative(s).

(c) *To whom the protest is sent.* The original and one copy of the protest shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423. A copy of the protest shall be served on applicants' representative(s).

14. Part 1188 is added to read as follows:

PART 1188—GROSS OPERATING REVENUES OF CARRIERS INVOLVED IN FINANCE PROCEEDINGS

Sec.
1188.1 Computation of gross operating revenues of carriers involved in unifications.
1188.2 Deduction of revenues from sources other than regulated transportation.

Authority: 5 U.S.C. 559 and 49 U.S.C. 10321, 11341, 11343, 11344, and 11345a.

§ 1188.1 Computation of gross operating revenues of carriers involved in unifications.

In proceedings involving consolidation, merger, or acquisition of control of motor carriers under 49 U.S.C. 11343, the aggregate gross operating revenues of carriers attributable to transportation from the use of their respective operating rights subject to subchapter II of chapter 105 of the Act shall be deemed to have exceeded $2 million for the period of 12 consecutive months ending not more than six months preceding the date of the agreement of the parties covering the transaction, within the meaning of 49 U.S.C. 11343(d)(1), unless otherwise shown, under each of the following circumstances:

(a) At the end of the preceding calendar year the carriers involved in the transaction filed reports with the Commission, as required by 49 U.S.C. 11145, showing annual gross operating revenues from motor carrier operations totaling more than $2 million, and none of the carriers has sold or otherwise disposed of any portion of its operating rights subsequent to the end of the preceding calendar year;

(b) A carrier involved in the transaction filed a quarterly report or reports for subsequent quarters, and a reasonable estimate of its annual gross operating revenues and the reported annual gross operating revenues of the other carriers involved in the transaction for the preceding calendar year aggregates more than $2 million; or

(c) A reasonable estimate of: (1) The annual gross operating revenues of any carrier which sold or otherwise disposed of any portion of its operating rights or which began new operations or extended existing operations subsequent to the end of the preceding calendar year; and (2) the reported annual gross operating revenues of the other carriers involved in the transaction for the preceding calendar year aggregates more than $2 million.

§ 1188.2 Deduction of revenues from sources other than regulated transportation.

(a) In determining whether a proposed transaction is subject to the provisions of 49 U.S.C. 11343, applicant motor carriers and their affilitate motor carriers must select the same 12-month period and indicate the 12-month period selected, as provided in § 1188.1, and must disclose the gross revenues received by each such carrier during the critical period selected and the revenues derived from sources other than transportation subject to subchapter II of chapter 105 of the Act. Such latter revenues may be deducted from the gross revenues for the purpose of determining jurisdiction.

(b) Applicants shall show the amounts which they claim should be deducted, the sources from which the revenues were derived, and the circumstances under which transportation performed is claimed not to have been subject to subchapter II of chapter 105 of the Act, in transfer proceedings under 49 CFR part 1181 or in support of a motion for dismissal of proceedings under 49 CFR part 1182 or 1186.

(c) Applicants shall not be required to show that the revenues computed under § 1188.1 were dervived from transportation subject to subchapter II of chapter 105 of the Act.

[FR Doc. 89–20094 Filed 8–24–89; 8:45 am]

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Proposed Rules

Federal Register

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that small businesses will not be unduly

established under the order are

information to be retained by handlers

Proposed Rules

Federal Register
Vol. 54, No. 164
Friday, August 25, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 918

[Docket No. AO–162–A6; AMS–FV–88–039]

Fresh Peaches Grown in Georgia; Secretary's Decision and Referendum Order on Proposed Further Amendment of Marketing Agreement and Order No. 918

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision recommends further amendment of Marketing Agreement and Marketing Order No. 918 (7 CFR part 918), covering Georgia peaches, and directs a referendum to be conducted to determine if the growers of Georgia peaches favor the various amendment proposals. If approved, these proposals would amend the provisions of the marketing agreement and order to: (1) Limit the terms of office of Industry Committee (committee) members to six consecutive one-year terms; (2) change committee voting procedures on size regulation recommendations by requiring at least one affirmative member vote from each of the three growing districts; (3) authorize container and pack regulations and container marking regulations; (4) add authority for positive lot identification procedures for inspected peaches; (5) authorize production research and marketing research and development projects; (6) require a referendum at least every six years to determine if growers are in favor of continuing the marketing order; (7) add provisions protecting the confidentiality of information provided by handlers; (8) add provisions specifying that the Secretary and the Committee may verify the correctness of reports filed by handlers and compliance with recordkeeping requirements; and, (9) make any necessary conforming changes. The amendment proposals are designed to improve the administration, operations, and functioning of the marketing order.

DATES: The referendum shall be conducted during the period September 1 through 22, 1989. The representative period for the purposes of the referendum herein ordered is August 15, 1988, through August 14, 1989.

FOR FURTHER INFORMATION CONTACT: G. J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3919, or John R. Toth, Officer-In-Charge, Southeast Marketing Field Office, Florida Citrus Building, 500 Third Street, NW, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (813) 299–4770. Copies of this decision may be obtained from either of the above named individuals.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued April 6, 1988, and published in the **Federal Register** on April 11, 1988 (53 FR 11867); and Recommended Decision issued April 12, 1989, and published in the **Federal Register** April 17, 1989 (54 FR 15218).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512–1.

Preliminary Statement

This proposed amendment of the order was formulated on the record of a public hearing held at Byron, Georgia, on April 28, 1988, to consider the proposed further amendment of Marketing Agreement and Order No. 918 (7 CFR part 918), both as amended, regulating the handling of fresh peaches grown in Georgia, hereinafter referred to collectively as the order. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained amendment proposals submitted by the committee, which locally administers the order. Those proposals pertained to: (1) Limiting the terms of office of committee members to six consecutive one-year terms; (2) changing committee voting procedures on size regulation recommendations by requiring at least one affirmative member vote from each of the three growing districts; (3) authorizing container and pack regulations and container marking regulations; (4) adding authority for positive lot identification procedures for inspected peaches; (5) authorizing production research and marketing research and development projects; (6) requiring a referendum at least every six years to determine if growers are in favor of continuing the marketing order. The notice also included proposals by the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), to: (1) add provisions protecting the confidentiality of information provided by handlers; (2) add provisions specifying that the Secretary and the Committee may verify the correctness of reports filed by handlers and compliance with recordkeeping requirements; and (3) make any necessary conforming changes.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS), on April 12, 1989, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision containing a notice of the opportunity to file written exceptions thereto by May 17, 1989. No exceptions were filed.

Small Business Consideration

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which include handlers under this marketing agreement and order, are defined as those firms with gross annual receipts of less than $3,500,000.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Interested persons were invited in the Notice of Hearing to present evidence at the hearing on the probable regulatory and informational impact of the proposed changes on small businesses. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act are compatible with respect to small entities.

Approximately 30 handlers of Georgia peaches are subject to regulation under the order. In addition, there are approximately 265 peach growers in Georgia. The majority of these handlers and growers may be classified as small entities.

The proposed amendment of § 918.26 to limit the terms of office of committee members to six consecutive one-year terms would facilitate a regular rotation in committee membership and broaden industry participation in committee decision making. This would strengthen the program with no adverse impact on small entities.

Revising § 918.30(a) to alter committee voting procedures to require at least one affirmative vote from each of the three representation districts for any recommendation on size regulations would ensure that there was support for such recommendations in each district. The proposal should benefit small entities in all representation districts.

The proposal to add a new § 918.61a would authorize the committee, with the approval of the Secretary, to establish container, pack, and container-marking regulations in order to facilitate the efficient marketing of Georgia peaches and benefit growers and handlers. Such authority could reduce container and other marketing costs which would benefit small entities. Any savings would be directly proportional to the quantity of peaches handled. The impact of any particular proposed container, pack, and container-marking regulations would, of course, be considered at the time that such proposal would be made.

The proposed change amending § 918.64, would authorize the committee, with the approval of the Secretary, to establish positive lot identification procedures for peaches inspected under the order and would facilitate the committee's compliance effort by providing it with a reliable means of tying the inspection certificates it receives to the lots covered by the certificates. This could benefit both growers and handlers because the minimum quality and size requirements established under the order are important to the industry in fostering consumer satisfaction and increasing the demand for Georgia peaches. Hence, any advantages resulting from these procedures would be expected to outweigh any additional costs incurred by growers and handlers for positive lot identification. The additional costs would be proportional to the quantity of peaches handled. The impact of any particular proposal pertaining to positive lot identification would be considered at the time it is made.

The proposed addition of § 918.72 would authorize the committee, with the approval of the Secretary, to establish or provide for the establishment of production research and market research and development projects in order to facilitate research on many of its production and marketing problems. Such projects would benefit growers and handlers and would not adversely impact small entities. Any costs associated with this provision would be outweighed by the benefits of such projects.

The proposed amendment to § 918.81 would require a continuance referendum at least every six years which would provide growers a more frequent opportunity to periodically vote on whether the order should be continued. Such referenda would not adversely affect small entities.

The proposed amendment to § 918.76 containing provisions which would require confidential information provided by handlers to be protected from disclosure would improve operation of the order and would not adversely affect small entities.

The addition of § 918.77 authorizing the Secretary and the committee to verify the correctness of reports filed by handlers and to check handler compliance with recordkeeping requirements also would improve operation of the order and would not adversely affect small entities.

All of the proposed changes set forth in this document are designed to enhance the administration, operation, and functioning of the order.

The proposed amendments to the order would not have a significant impact on the recordkeeping and reporting burdens of the Georgia peach industry. Moreover, the proposed changes would not appreciably change the reporting and recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), which have been previously approved by the Office of Management and Budget, (OMB) under OMB No. 0581–0135. The action includes proposed amendments that would require information to be retained by handlers for at least two years. The evidence of record indicates that handlers generally maintain such information in the normal course of business for periods longer than two years. The information collection and recordkeeping requirements contained in this proposed action will be submitted to the OMB for approval. The requirements will not become effective prior to OMB approval.

Findings and Conclusions

Discussions and rulings included in the discussions of the material issues, findings, and general findings of the Recommended Decision set forth in the **Federal Register** (54 FR 15218; April 17, 1989) are hereby approved and adopted subject to the following modification:

In the findings and conclusions, a new paragraph is added at the end of Material Issue (5) on page 15223 to include a necessary conforming change relating to authorizing the committee, with the approval of the Secretary, to use funds, other than assessments collected from handlers, to pay expenses for projects conducted pursuant to proposed § 918.72. That paragraph should read as follows:

Currently, § 918.40 specifies that funds to cover committee expenses shall be acquired by the levying of assessments on handlers. In connection with authorizing the committee, with the approval of the Secretary, to use funds, other than those from assessments, to pay expenses for projects conducted pursuant to proposed § 918.72, the following sentence should be added as a conforming change at the end of § 918.40: "For projects conducted pursuant to § 918.72, other funds approved by the Secretary may also be used."

Rulings on Exceptions

The period for filing exceptions to the Recommended Decision ended May 17, 1989. No exceptions were filed.

Marketing Agreements and Orders

Annexed hereto and make part hereof are the documents entitled, "Order Amending the Order, As Amended, Regulating the Handling Of Fresh Peaches Grown In Georgia" and "Marketing Agreement, As Amended, Regulating the Handling of Fresh Peaches Grown In Georgia." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the annexed marketing agreement, be published in the Federal Register. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the annexed order which is published with this decision.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*), to determine whether the issuance of the annexed order, as amended and as hereby proposed to be further amended, regulating the handling of fresh peaches grown in Georgia, is approved or favored by growers, as defined under the terms of the order, who were engaged in the production for market of fresh peaches in the production area in Georgia. The representative period for such referendum is hereby determined to be August 15, 1988, through August 14, 1989.

The agents of the Secretary to conduct such referendum are hereby designated to be John R. Toth and William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Florida Citrus Building, 500 3rd Street NW., (or Post Office Box 2276), Winter Haven, Florida 33883–2276, telephone: (813) 299–4770, and George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3919.

Order Amending The Order, As Amended, Regulating The Handling Of Fresh Peaches Grown in Georgia[1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon proposed further amendment of the marketing agreement, as amended, and Order No. 918, as amended (7 CFR part 918), regulating the handling of fresh peaches grown in Georgia.

Upon the basis of the record it is found that:

General Findings

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of fresh peaches grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as amended, and as hereby further amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of fresh peaches grown in the production area; and

(5) All handling of fresh peaches grown in the production area defined in the order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 918

Marketing agreements and orders, Georgia, Peaches.

Order Relative to Handling

It is therefore ordered, than on and after the effective date hereof, the handling of fresh peaches grown in Georgia shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended, as follows:

With the exception of a conforming change in § 918.40, the provisions of the proposed marketing agreement and order, amending the order, contained in the Recommended Decision issued by the Administrator on April 12, 1989, and published in the **Federal Register** (54 FR 15218, April 17, 1989), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 918—FRESH PEACHES GROWN IN GEORGIA

1. The authority citation for 7 CFR part 918 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 918.26 is amended by changing the period at the end to a colon and adding a provisio to read as follows:

§ 918.26 Term of office.

* * * *Provided,* That no member shall serve more than six full consecutive terms starting with the term beginning March 1, 1989.

3. The last sentence of § 918.30(a) is revised to read as follows:

§ 918.30 Procedure.

(a) * * * For any recommendation of the Industry Committee to be valid, not less than five (5) affirmative votes shall be necessary: *Provided,* That any recommendation on minimum size regulations also shall require at least one (1) concurring vote from each district.

* * * * *

4. A sentence is added at the end of § 918.40 to read as follows:

§ 918.40 Expenses.

* * * For projects conducted pursuant to § 918.72, other funds approved by the Secretary may also be used.

5. A new § 918.61a is added to read as follows:

§ 918.61a Container regulation.

Whenever the Industry Committee deems it advisable to establish a container regulation for any variety or varieties of peaches, it shall recommend to the Secretary the size, capacity, weight, marking, or pack of the container, or containers, which may be used in the handling of these peaches. If the Secretary finds upon the basis of such recommendation or other information available that such container regulation would tend to effectuate the declared policy of the Act the Secretary shall establish such regulation. Notice thereof shall be sent by the Industry Committee to all handlers of record.

§ 918.63 [Amended]

6. Section 918.63 is amended by changing the words "pursuant to §§ 918.60 and 918.61," in the first sentence to "pursuant to §§ 918.60 through 918.61a."

7. Section 918.64 is amended by designating the current provisions as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 918.64 Inspection.

* * * * *

(b) The Industry Committee may establish with the approval of the Secretary positive lot identification requirements for lots of peaches inspected and certified pursuant to this section. Whenever implemented, such requirements shall at least specify that upon inspection, all peaches shall be identified by tags, stamps, marks, or other means of identification recognized by the Federal Inspection Service or the Federal-State Inspection Service or any other inspection service designated by the Secretary; that such identification shall be affixed to the container by the handler under the supervision of the Federal Inspection Service or the Federal-State Inspection Service or any other inspection service designated by the Secretary; and that such identification shall not be altered or removed except as directed by the Federal Inspection Service or the Federal-State Inspection Service or any other inspection service designated by the Secretary. For the purposes of this section, lot means the aggregate quantity of peaches of the same variety, in like containers with like identification offered for inspection as a shipping unit.

8. Insert the undesignated center heading, "RESEARCH AND DEVELOPMENT," after § 918.71 and add § 918.72 to read as follows:

Research and Development

§ 918.72 Production research and market research and development.

The Industry Committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research and marketing research and development designed to assist, improve or promote the marketing, distribution and consumption of peaches and the efficient production thereof. The expenses of such projects shall be paid from funds collected pursuant to § 918.41, or from any other sources approved by the Secretary.

9. A new § 918.76 is added to read as follows:

§ 918.76 Confidential information.

All data or other information constituting a trade secret or disclosing a trade position or business condition shall be received by, and kept in the custody of, one or more designated employees of the Industry Committee, and information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

10. A new § 918.77 is added to read as follows:

§ 918.77 Verification of reports and records.

For the purpose of checking compliance with recordkeeping requirements and verifying reports filed by handlers, the Secretary and the Industry Committee through its duly authorized employees shall have access to any premises where peaches are held and, at any time during reasonable business hours, shall be permitted to examine any peaches held and any and all records with respect to matters within the purview of this part. Handlers shall furnish labor necessary to facilitate such examinations at no expense to the Industry Committee. All handlers shall maintain complete records which accurately show the quantity of peaches held, sold, and shipped. The Industry Committee, with the approval of the Secretary, may establish the type of records to be maintained. Such records shall be retained by handlers for not less than two years subsequent to the termination of each fiscal period.

11. Section 918.81 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 918.81 Termination.

* * * * *

(d) The Secretary shall conduct a referendum among growers every six years after the effective date of this amended subpart to ascertain whether continuance of this part is favored by growers. However, when a continuance referendum is conducted pursuant to paragraph (c) of this section, this referendum shall be conducted six years after the referendum conducted to paragraph (c) of this section. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by growers who, during a representative period determined by the Secretary, have been engaged in the production for market of the fruit in the production area, except that termination of this part shall be effective only if announced on or before the last day of the then current fiscal period.

* * * * *

Dated: August 21, 1989.

JoAnn R. Smith,

Assistant Secretary for Marketing and Inspection Services.

OMB Approval No. 0581–0135
Expiration Date: 8/31/91

United States Department of Agriculture

Agricultural Marketing Service

Marketing Agreement, as Further Amended, Regulating the Handling of Fresh Peaches Grown in Georgia

The parties hereto, in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*), and in accordance with the applicable rules of practice and procedure effective thereunder (7 CFR part 900) desire to enter into this agreement further amending the marketing agreement regulating the handling of fresh peaches grown in Georgia; and each party hereto agrees that such handling shall, from the effective date of this marketing agreement, be inconformity to and in compliance with the provisions of said marketing agreement as hereby further amended.

The provisions of §§ 918.1 through 918.92, inclusive, of Marketing Order 918 (7 CFR part 918) as amended, and as further amended by the order annexed to and made a part of the decision of the Secretary of Agriculture with respect to the marketing agreement and order regulating the handling of fresh peaches grown in Georgia, plus the following additional provisions shall be, and the same hereby are, the terms and conditions hereof; and the specified provisions of said annexed order are hereby incorporated into this marketing agreement as if set forth in full herein.

Section 918.93 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

Section 918.94 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

Section 918.95 Order with marketing agreement.

Each signatory handler requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of peaches in the same manner as is provided for in this agreement.

The undersigned hereby authorizes the Director, or Acting Director, Fruit and Vegetable Division, Agricultural Marketing

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[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Service, U.S. Department of Agriculture, to

DATES: Comments are due no later than

§ 1065.7(b) and the diversion limitations

Therefore, it may be appropriate to

Regulatory Flexibility Act (5 U.S.C. 601–

The revision was proposed by

Service, U.S. Department of Agriculture, to correct any typographical errors which may have been made in this marketing agreement.

In witness whereof, the contracting parties, acting under the provisions of the Act, for the purpose and subject to the limitations therein contained, and not otherwise, have hereto set their signatures and seals.

(Firm Name) [1]

By:

(Signature)

(Mailing Address)

(Title)

(Corporate Seal; if none, so state)

(Date of Execution)

[FR Doc. 89-20098 Filed 8-24-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1065

[DA-89-032]

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Revision of Supply Plant Shipping Percentage and Diversion Limitation Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rules.

SUMMARY: This notice invites written comments on a proposal to revise certain provisions of the Nebraska-Western Iowa Federal milk order. The proposed action would reduce the shipping standard for pooling supply plants by 10 percentage points and increase by 20 percentage points the amount of milk that may be moved directly from farms to nonpool plants and still be priced under the order. The action was requested by Associated Milk Producers, Inc. (AMPI), which operates pool supply plants and represents a significant number of producers whose milk is pooled under the order. AMPI contends that the revisions are needed to maintain the pool status for producers who have historically been associated with the market and to prevent uneconomic movements of milk. AMPI has requested the action for the months of September 1989 through March 1990 and has also requested that consideration be given to indefinitely revising these standards because of the past history of revisions during the fall and spring months over the last five years.

DATES: Comments are due no later than September 1, 1989.

ADDRESSES: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action would lessen the regulatory impact of the order on milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of §§ 1065.7(b)(3) and 1065.13(d)(4) of the order, the revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include September in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the shipping standards set forth in § 1065.7(b) and the diversion limitations set forth in § 1065.13(d) (2) and (3). The revision would be effective beginning with the month of September 1989. The specific revisions would reduce the supply plant shipping percentage by 10 percentage points, from the present 40 to 30 percent for the months of September through March. Also, the diversion limits on producer milk would be increased by 20 percentage points, from 40 to 60 percent for the months of September through March, and from 50 to 70 percent during other months.

Sections 1065.7(b)(3) and 1065.13(d)(4) of the Nebraska-Western Iowa order allow the Director of the Dairy Division to increase or reduce the shipping percentage standard and the diversion limitation percentage by up to 20 percentage points. The adjustments can be made to help encourage additional shipments of milk or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order.

Revision of the supply plant shipping standard and the diversion limitations was requested by Associated Milk Producers, Inc. (AMPI). AMPI operates supply plants that historically have been pooled under the order and represents a substantial number of the dairy farmers who supply the market.

AMPI requested that the revision be applicable during September 1989 through March 1990. AMPI indicates that for the first six months of 1989 producer milk on the market is about 5.9 percent above the same period of 1988, while Class I utilization is down by about one percent. In view of the supply/demand relationship, AMPI indicates that it would be very unlikely for the marketwide Class I utilization to be more than 35 percent during the fall of 1989 or the spring of 1990. As a result, AMPI contends that the supply plant shipping standard should be reduced and the diversion limits should be increased. Such revision, AMPI contends, will eliminate the need for unnecessary shipments of milk and provide for the efficient disposition of milk supplies that are in excess of fluid milk needs.

AMPI also requested that consideration be given to extending the revision for an indefinite period of time. Such an action would eliminate the need for repeating the revision process every spring and fall. AMPI indicates that such a process has been repeated to revise these standards over the past five years and that such a history of the actions provide a basis for longer term action.

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[1] If one of the contracting parties to this agreement is a corporation, my signature constitutes certification that I have the power granted to me by the Board of Directors to bind this corporation to the marketing agreement.

Therefore, it may be appropriate to revise the aforementioned provisions of §§ 1065.7(d) and 1065.13(d)(2) and (3) to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1065

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR part 1065 continues to read as follows:

Authority: (Secs. 1-19, 84 Stat. 31, as amended; 7 U.S.C. 601-674)

Signed at Washington, DC, on August 21, 1989.

Richard M. McKee,

Acting Director, Dairy Division.

[FR Doc. 89-20040 Filed 8-24-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1079

[DA-89-034]

Milk in the Iowa Marketing Area; Proposed Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rules.

SUMMARY: This notice invites written comments on a proposal to revise certain provisions of the Iowa Federal milk order for the months of September through November. The proposal would reduce the shipping percentage for pool supply plants by 10 percentage points from 35 to 25 percent of receipts. The action was requested by Beatrice Cheese, Inc., a handler who operates a pool supply plant under the order. The handler contends that the action is necessary to prevent uneconomic shipments of milk from supply plants to distributing plants. The handler has also requested that consideration be given to lowering the shipping percentage during the months of September-November for an indefinite period in view of a four-year history of reducing the shipping percentages during these months.

DATES: Comments are due no later than September 1, 1989.

ADDRESSES: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action would reduce the regulatory impact on milk handlers and tend to ensure that the market would be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1079.7(b)(1) of the order, the revision of certain provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for the months of September-November.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include September in the revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the supply plant shipping percentages for the months of September through November. The proposed action would reduce the shipping percentage by 10 percentage points from the present 35 to 25 percent of receipts.

Section 1079.7(b)(1) of the Iowa order provides that the Director of the Dairy Division may increase or reduce the supply plant shipping percentage by up to 10 percentage points. The adjustments can be made to encourage additional milk shipments or to prevent uneconomic shipments.

The revision was proposed by Beatrice Cheese, Inc., a handler who operates a pool supply plant under the order. The handler contends that the reduction of the shipping standard is necessary to prevent uneconomic shipments from supply plants to distributing plants. The handler points out that receipts of producer milk under the order during the first six months of 1989 were up about 4.5 percent from the previous year. In addition, about 26.5 percent of producer milk pooled under the order was used in Class I during the first six months, compared to 27.3 percent the previous year. The handler also points out that receipts of milk at its supply plant during the first six months were about 3.4 percent greater than the previous year. Based on the relationship of fluid milk sales to the receipts of milk, the handler contends that a reduction of the supply plant shipping percentage is necessary to prevent uneconomic shipments during the months of September-November. Absent a reduction, the handler contends that it would have to engage in the uneconomic backhauling of 3.0 to 3.2 million pounds of milk per month in order to pool its supply of milk. The handler maintains that distributing plants would be adequately supplied with milk with a lowering of the supply plant shipping percentage by 10 percentage points to 25 percent of receipts.

The handler has also requested that consideration be given to reducing the shipping percentage during the months of September through November for an indefinite duration. It is pointed out that the supply plant shipping percentage has been reduced by 10 percentage points during these months for the last four years. As a result, it may be appropriate to indefinitely reduce the shipping percentage for the months of September through November.

List of Subjects in 7 CFR Part 1079

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR part 1079 continues to read as follows:

Authority: (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Signed at Washington, DC, on August 21, 1989.

Richard M. McKee,

Acting Director, Dairy Division.

[FR Doc. 89-20041 Filed 8-24-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1079

[DA-89-031]

Milk in the Iowa Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend certain provisions of the Iowa Federal milk marketing order for the months of September through November. The proposed suspension would increase the amount of milk not needed for fluid use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by Associated Milk Producers, Inc. (AMPI), a cooperative association that represents producers who supply the market. AMPI contends that the action is necessary to avoid making costly and inefficient movements of milk that would otherwise be made to pool the milk of dairy farmers who have historically supplied the market. AMPI has requested that consideration be given to an indefinite duration of a suspension during these months to eliminate the subsequent need for suspension actions that have been made during the last five years.

DATES: Comments are due on or before September 1, 1989.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for September through November:

In § 1079.13(d)(2) and (3), the words "50 percent in the months of September through November and," and the words "in other months," as they appear in each such paragraph.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because longer period would not provide the time needed to complete the required procedures and include September 1989 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would allow more than 50 percent of a handler's producer milk receipts to be moved directly from farms to nonpool plants (diverted) and still be priced under the order during the months of September-November. The proposal was submitted by Associated Milk Producers, Inc. (AMPI), a cooperative association that represents producers who supply the market. AMPI maintains that the diversion limitations need to be relaxed, by a suspension action, to avoid the costs associated with receiving and transferring milk solely for the purpose of pooling the milk of dairy farmers who have historically supplied the market.

AMPI contends that the action is necessary because of the relationship between available milk production and fluid milk sales. AMPI points out that producer milk receipts during the first six months of 1989 are up about 4.7 percent from the previous year while fluid milk sales are at about the same level as a year earlier. As a result, the Class I utilization of producer milk for the first six months was about 26.5 percent, down slightly from the previous year. Consequently, AMPI projects that about 30 percent of the market's milk supply will be needed for Class I use during the September-November period this year. Thus, about 70 percent of the market's milk supply will be available for manufacturing uses, which AMPI contends can be most efficiently handled by diverting milk directly from farms to nonpool plants for processing. Absent a suspension action, AMPI maintains that the costly and inefficient marketing practices of receiving and transferring milk from pool plants would be undertaken to continue to pool the milk of dairy farmers who supply the market.

AMPI has also requested that consideration be given to suspending the 50 percent diversion limitation for the September through November period for an indefinite duration. AMPI points out that the same provisions have been suspended during each of the last five years. In view of this history, AMPI maintains that there is a sufficient basis for a suspension action of an indefinite duration that is more likely to reflect a diversion limitation that is more consistent with the market's supply and demand relationship during these months.

List of Subjects in 7 CFR Part 1079

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR part 1079 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on August 21, 1989.

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 89-20096 Filed 8-24-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 140

[FHWA Docket No. 89-14]

RIN 2125-AC07

Construction Engineering Costs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA proposes to implement changes mandated by section 133 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 (Pub. L. 100-17, 101 Stat. 132) and to clarify the FHWA policy relating to the limitation for reimbursement of eligible construction engineering (CE) costs established in 23 U.S.C. 121(d). These changes will establish the limitation at 15 percent and will eliminate the administrative burden placed on State highway agencies to prepare justifications to increase the limitation.

DATES: Written comments are due on or before October 24, 1989.

ADDRESSES: Submit written, signed comments, to the FHWA Docket No. 89-14, Federal Highway Administration, HCC-10, Room 4232, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Max I. Inman, Office of Fiscal Services, (202) 366-2853, or Michael J. Laska, Office of the Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 133 of the STURAA of 1987 revised 23 U.S.C. 121(d) by eliminating the 10 percent limitation on CE costs and increasing the limitation to 15 percent of construction costs.

Prior to the revision of 23 U.S.C. 121(d), reimbursement of CE costs to State highway agencies (SHA) was limited by law to 10 percent of construction costs. SHAs were required to submit a request to FHWA, along with adequate justification and supporting data, to demonstrate that a percentage increase in excess of 10 percent was necessary when actual eligible CE costs exceeed the limitation.

The current revision establishes the limitation at 15 percent and will eliminate the administrative burden placed on SHAs to prepare justifications to increase the limitation.

Other revisions are also being proposed to clarify current FHWA policy regarding CE costs. The specific changes proposed for each section of the regulation are as follows:

Section 140.201 Purpose

This section would be amended by removing the statement relating to increasing the statutory limitation from 10 to 15 percent.

Section 140.203 Definitions

This section would be revised by removing the definitions and adding a new section, Policy. This proposed new section includes provisions relating to the 15 percent limitation and also includes the following provisions which have been added to clarify existing FHWA policy on reimbursement of CE costs:

(1) Proposed § 140.203(d) requires that estimated CE costs approved at the time of project authorization be based on the amount of costs the SHA expects to incur, not to exceed the 15 percent limitation. The 15 percent is not a standard additive rate for project cost estimates.

(2) Proposed § 140.203(e) provides clarification of FHWA policy for determining CE costs when SHAs opt to use average rates in lieu of actual costs per project in accordance with the provisions of 23 U.S.C. 120 (h).

Section 140.205 Increase in Per Centum of Limitation

This section would be revised to remove the procedures for increasing the percentage limitation from 10 to 15 percent which are no longer applicable. The proposed revision to § 140.205 contains provisions relating to the application of the limitation.

Section 140.207 Categories of Funds Subject to Application of Limitation

Section 140.207 would be removed, but the provisions of this section would be included in the proposed revised § 140.205, Application of Limitation. The current regulation lists specific categories of funds subject to the limitation. Since most categories of funds are subject to the limitation, the proposed revised section lists only those categories of funds exempt from the limitation.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. This rulemaking action is being initiated in order to implement a statutory mandate. A regulatory evaluation is not required because of the ministerial nature of this action. However, this revision will eliminate the administrative burden upon SHAs which was necessary to justify an increase in the construction engineering limitation from 10 percent to 15 percent.

Based on the information available to the FHWA at this preliminary stage of the rulemaking, it does not appear that this action will have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act (Public Law 96-354).

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

In consideration of the foregoing, the FHWA proposes to amend Title 23, Code of Federal Regulations, by revising Part 140, Subpart B as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 140

Accounting, Grant programs—transportation, Highways and roads.

Issued on: August 18, 1989.

Eugene R. McCormick,
Deputy Administrator.

The FHWA proposes to revise 23 CFR part 140, subpart B as follows:

PART 140—REIMBURSEMENT

1. The authority citation for part 140 is revised to read as follows and all other authority citations which appear following the subpart headings and at the end of sections throughout part 140 are removed:

Authority: 23 U.S.C. 101(e), 114(a), 120, 121, 122 and 315; and 49 CFR 1.48(b).

2. Subpart B of part 140 is revised to read as follows:

Subpart B—Construction Engineering Costs

Sec.
140.201 Purpose.
140.203 Policy.
140.205 Application of limitation.

§ 140.201 Purpose.

The purpose of this subpart is to

prescribe policies for claiming reimbursement for eligible construction engineering (CE) costs.

§ 140.203 Policy.

(a) States may be reimbursed for the Federal share of CE costs incurred in

(1) The supervision and inspection of construction activities,

(2) The additional staking functions considered necessary for effective control of the construction operations,

(3) The testing of materials incorporated into construction,

(4) The checking of shop drawings, and

(5) The taking of measurements needed for the preparation of pay estimates.

(b) Reimbursement of CE costs is limited to 15 percent of the costs of construction of a project, exclusive of the costs for preliminary engineering, CE, and rights-of-way.

(c) The 15 percent limitation applies to projects for which a final voucher was not approved prior to April 2, 1987.

(d) The estimated CE costs approved at the time of project authorization shall be based on the amount of costs the SHA expects to incur, not to exceed the 15 percent limitation.

(e) If the SHA claims CE costs as an average percentage of the actual construction costs in accordance with 23 U.S.C. 120(h), the average rate shall be determined based upon reimbursable CE costs. If the individual projects used in developing the average percentage contain CE costs exceeding the limitation established in 23 U.S.C. 121(d), then those excess costs shall not be included in determining the average percentage.

§ 140.205 Application of limitation.

All projects financed with Federal-aid highway funds are subject to the limitation except for projects funded from the following categories:

(a) Emergency Relief (23 U.S.C. 125),

(b) Federal Lands Highways (23 U.S.C. 204),

(c) Defense Access Roads (23 U.S.C. 210),

(d) Appalachian Development Highways (section 201 of Pub. L. 89–4, 79 Stat. 5),

(e) Public Lands Development Roads and Trails (23 U.S.C. 214), and

(f) Other categories determined by FHWA to be exempt from the limitation.

[FR Doc. 89–20048 Filed 8–24–89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Belt Entry Ventilation Review; Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of availability; comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is announcing the availability of a report of findings and recommendations regarding belt conveyor entry ventilation in underground coal mines. Public comments may be submitted to the Agency on issues addressed in the report which are relevant to the Agency's ongoing rulemaking revision of existing mandatory safety standards for ventilation of underground coal mines in 30 CFR part 75. The report, along with the comments received, will become part of the rulemaking record for the proposed rules. Comments which address issues unrelated to the ventilation proposal will be considered by the Agency in identifying subjects for future rulemaking.

DATES: Written comments must be submitted on or before September 25, 1989.

ADDRESSES: The report may be obtained from the Business Office of the National Mine Health and Safety Academy, P.O. Box 1166, Beckley, West Virginia, 25802–1166. Phone (304) 256–3206. Send written comments to the Office of Standards, Regulations, and Variances; MSHA; Room 631; Ballston Tower No. 3; 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: The Assistant Secretary of Labor for Mine Safety and Health formed a special committee on March 24, 1989, to review major aspects of the issues surrounding the use of air coursed through belt conveyor entries to ventilate working places in underground coal mines. The committee completed its report of findings and recommendations on July 31, 1989. The report analyzes three recognized methods of belt entry ventilation and makes recommendations for minimizing the hazard to miners of possible belt entry fires. Other recommendations include changes in mine ventilation design, further research, and improved training of miners. The report concludes that using belt air to ventilate working places, with proper monitoring for the products of combustion, is a safe method.

Belt conveyor entry ventilation and related matters addressed in the new report are subjects of MSHA's proposed ventilation standards for underground coal mines. The Agency is currently preparing the final rule and believes that public comments on these issues will be useful in drafting the final rule. Therefore, MSHA is making the report available to the public and is requesting comments. The comments submitted to the Agency, and the report, will be made a part of the rulemaking record for MSHA's proposed rules for ventilation of underground coal mines, published in the **Federal Register** on January 27, 1988 (53 FR 2382).

The Agency is especially interested in comments on the findings and conclusions in the report which directly relate to the ventilation proposal. At this stage in rulemaking, MSHA believes that these findings and conclusions must be considered in developing the final rule. The relevant findings and conclusions address these areas: (1) Protection of the intake escapeway from leakage from adjacent air courses; (2) belt entry ventilation where air from the belt entry will be used to ventilate working places, as well as where it will not be used to ventilate working places; (3) protection of the intake escapeway from fire sources in the escapeway; (4) smoke sensors; and (5) air velocities in belt entries. Comments, including technological and cost impact data, submitted to the Agency on these matters will assist MSHA in determining how the findings and conclusions in the report should be used in drafting the final rule.

Dated: August 23, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 89–20165 Filed 8–24–89; 8:45 am]

BILLING CODE 4510-43-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–362, RM–6694, RM–6893]

Radio Broadcasting Services; Monroeville and Thomasville, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately-filed rule making proposals. The first, filed on behalf of WJDB Radio, Inc., licensee of Station WJDB(FM), Channel 237A, Thomasville, Alabama, proposes the substitution of Channel 244C2 for Channel 237A and modification of its license accordingly (RM–6694). The second petition, filed on behalf of Hub City Broadcasting Corporation, proposes the allotment of Channel 237C3 to Monroeville, Alabama, in the event Channel 237A is relinquished at Thomasville (RM–6893). Coordinates for Channel 244C2 at Thomasville are 31–54–42 and 87–44–24. Coordinates for Channel 237C3 at Monroeville are 31–31–18 and 87–19–30.

DATES: Comments must be filed on or before October 10, 1989, and reply comments on or before October 25, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Jeffrey D. Southmayd, Esq., Southmayd, Powell & Taylor, 1764 Church St., NW, Washington, DC 20036 (WJDB Radio, Inc.); and M. Scott Johnson and Catherine M. Grofer, Esqs., Gardner, Carton & Douglas, 1000 Penn. Ave., NW, Suite 750–N, Washington, DC 20004 (Hub City Broadcasting Corporation).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–362, adopted August 1, 1989, and released August 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–20017 Filed 8–24–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–361, RM–6718]

Radio Broadcasting Services; Beulah, Michigan

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Roger L. Hoppe II, proposing the allotment of FM Channel 221A to Beulah, Michigan, as that community's first FM broadcast service. Concurrence of the Canadian government is required for the allotment of FM Channel 221A at Beulah at coordinates 44–37–36 and 86–05–54.

DATES: Comments must be filed on or before October 10, 1989, and reply comments on or before October 25, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Roger L. Hoppe II, 8420 Deadstream Road, R.R. #1, Box No. 51G, Honor, Michigan 49640.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–361 adopted August 1, 1989, and released August 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–20018 Filed 8–24–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81–742; FCC 89–109]

Broadcast Service; Comparative Renewal Process

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks comment on an additional proposal in its inquiry into reforms of the standards used in comparative hearings in the license renewal context. The proposal, which would adopt a new order of proof for determining entitlement to a renewal expectancy credit, may improve the Commission's current process for determining such an entitlement. Thus, the instant Third Further Notice of Inquiry and Notice of Proposed Rule Making (Third Further Notice) is issued to solicit comment on this proposal.

DATES: Comments are due by October 10, 1989, and reply comments are due by October 25, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marilyn Mohrman-Gillis, Mass Media Burean, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Third Further Notice of Inquiry and Notice of Proposed Rule Making in BC Docket No. 81–742, adopted March 30, 1989, and released August 16, 1989. The complete text of this Third Further Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the

Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Third Further Notice of Inquiry and Notice of Proposed Rule Making

1. This Third Further Notice is a continuation of a comprehensive inquiry into proposals for reforming the standards used for selecting among competing applicants and incumbent licensees in comparative hearings in the license renewal context. The Commission took the first step toward reforming the comparative renewal process by adopting the First Report and Order in this proceeding (54 FR 22506, May 25, 1989). This decision placed limitations on the payments competing applicants and petitioners to deny could receive in exchange for settling their license renewal challenges. A Report and Order in a separate proceeding (*see* the Report and Order in Gen. Docket 88–328, 54 FR 19951, May 9, 1989) enacted revisions to FCC Form 301, the form for construction permit applications. These revisions were intended, among other things, to weed out sham and abusive applicants in the license renewal context.

2. The instant Third Further Notice relates to the standards used for comparing incumbent licensees and competing applicants in the license renewal context. These standards, in their present format, are not ideal for application in the renewal context because they often involve subjective, program-based judgments by the trier of fact. In previous notices in this proceeding (Notice of Inquiry at 88 FCC 2d 120, 1981; Further Notice of Inquiry at 47 FR 46117, October 15, 1982; and Second Further Notice of Inquiry and Notice of Proposed Rule Making at 53 FR 31894, August 22, 1988) comments were solicited on proposals for modifying the criteria used for comparing incumbent licensees and competing applicants in a license renewal hearing, as well as the stanadards used for determining whether an incumbent licensee is entitled to a "renewal expectancy" credit.

3. Because of drawbacks associated with each of the proposals related to reforming the procedure for awarding a renewal expectancy, the Commission issued this Third Further Notice to obtain comment on an additional proposal. In issuing this Notice, the Commission is not rejecting any of its former proposals.

4. Under this additional proposal, the Commission would continue to use its current standard for awarding a renewal expectancy credit—"meritorious" service to the broadcaster's community of license— but would adopt a new order of proof for determining entitlement to the credit. Upon demonstrating certain clearly defined, objective evidence at the hearing, an incumbent licensee would be granted a rebuttal presumption that it has provided meritorious service sufficient to warrant a renewal expectancy credit. The challenger would than have the opportunity to rebut the presumption with a specific evidentiary showing. The Commission believes that this additional proposal may improve its current process for determining entitlement to a renewal expectancy credit by limiting the hearing issues and reducing the degree of government intrusion into the licensee's editorial judgments and journalistic discretion.

5. While the Commission invited comment as to what kinds of evidence should be sufficient to trigger the presumption of meritorious service, it proposed that a licensee could meet the burden of going forward if it presents its "issues/programs" list as provided for in §§ 73.3526(a) (8) and (9) and 73.3527(a)(7) of the Commission's Rules. Once an existing licensee has carried this burden of going forward, other applicants would have an opportunity to dispute the incumbent's evidentiary showing and the resulting rebuttable presumption. While the Commission also invited comment as to what kinds of evidence could rebut a presumption of entitlement to a renewal expectancy, it proposed that a presumption based on compliance with the issues/programs list requirement could be rebutted by demonstrating that: (1) The licensee did not broadcast programs listed on its issues/programs list; or (2) the programs listed were not responsive to issues of concern to the licensee's audience and the licensee's judgments in this regard were not reasonably made.

6. Should the judge in the hearing, determine that the licensee did not meet its burden of going forward on the renewal expectancy issue, or that it met its burden but the challenger succesfully rebutted the presumption, the issue of whether the incumbent should be awarded any preference for past service would be part of the comparative hearing, and the onus would fall upon the licensee to demonstrate that it should receive the preference. Should the judge determine that the challenger failed to sufficiently rebut the presumption of entitlement to a renewal expectancy credit or that a renewal expectancy was appropriate, the incumbent would be compared with the competing applicants with a preference for past meritorious service. This preference would be given significant weight *vis-a-vis* the other comparative criteria.

7. The Commission requested comment on whether this burden-shifting approach would be an improved method for applying the meritorious service renewal expectancy standard. The Commission specifically requested comment on the workability of the proposal. Will the procedure, in practice, narrow the hearing issues and reduce Commission involvement in scrutinizing broadcasters' program-related judgments? Will this proposal provide more certain guidelines for determining the likelihood that a license will or will not be renewed? Will this, in turn, encourage incumbents to invest in their broadcast facilities, and thereby ensure the quality of service rendered?

8. The Commission also requested comment on the type of evidence that should be required to grant an incumbent a presumption of entitlement to a renewal expectancy credit, as well as the type of showing that should be required by the challenger to rebut the presumption. The Commission specifically requested comment on its proposal that the incumbent's submission of its "issues/programs" list constitutes a *prima facie* showing, including comment on what, if any, rule changes are needed to implement the proposal. The Commission also urged commenters to suggest details as to how its proposal should be applied in practice.

9. Further, the Commission requested comment on whether this proposal is consistent with the comparative hearing requirement of section 309(e) as interpreted by the courts. Specifically, does the rebuttable presumption permit a fair and meaningful comparison between the incumbent and challengers? Finally, it asked commenters to evaluate the burden-shifting proposal described in this Third Further Notice *vis-a-vis* the other renewal expectancy reforms proposed in the Second Further Notice. Which of all of the proposals discussed do the commenters believe will best achieve the Commission's goals and why?

Paperwork Reduction Act Statement

10. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, and/or

record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ex Parte Consideration

11. This is a non-restricted notice and comment rule making proceeding. *See* Section 1.1200 *et seq.* of the Commission's Rules, 47 CFR Section 1.1200 *et seq.*, for rules governing permissible *ex parte* contacts.

Comment Information

12. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 10, 1989, and reply comments on or before October 25, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Further Initial Regulatory Flexibility Analysis

13. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will affect broadcast licensees who are seeking license renewal and applicants for construction permits for broadcast facilities that are mutually exclusive with facilities subject to license renewal. All broadcasters and competing applicants, including small entities and entrepreneurs, could benefit from the additional proposal suggested in this decision. The new order of proof could limit the issues in some license renewal hearings, thereby making them simpler and less expensive, and could reduce unnecessary Commission oversight of broadcasters' program-related judgments. This proposal would shift the burden of proving meritorious service away from the incumbent licensee, and place the burden of proving failure to provide meritorious service on the competing applicant, thus impacting on both parties. Public comment is requested on the Further Initial Regulatory Flexibility Act Analysis set out in full in the Commission's complete decision.

14. As required by section 603 of the Regulatory Flexibility Act, a further initial regulatory flexibility analysis (FIRFA) of the expected impact of the proposed reform on small entities is set forth in summary above, and in full in the complete text of the Commission's decision. Written public comments are requested on the FIRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Third Further Notice of Inquiry and Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this Further Notice, including the FIRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 73

Television broadcasting, Radio broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–20063 Filed 8–24–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 88–548; FCC 89–255]

Frequency Coordination in the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the Commission's rules governing frequency coordination in the private land mobile radio services. Since the Commission changed these rules in 1986, some applicants have complained that they have no alternative to using the designated coordinator. The proposed rule changes would offer applicants two alternative ways of filing directly with the Commission.

DATES: Comments must be received by December 1, 1989; replies must be received by January 12, 1990.

ADDRESS: Comments should be sent to The Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kent Nakamura at (202) 632–6940 or Joseph Levin at (202) 632–6497.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket 88–548, adopted August 2, 1989, released August 15, 1989.

The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of the Notice of Proposed Rule Making may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

On December 5, 1988, the Commission released a report on its experience with frequency coordination in the private land mobile radio services since the current rules went into effect in October 1986. In it, the Commission stated its general satisfaction with the frequency coordination procedures. It did, however, solicit comments on several alternatives to the existing structure.

Based on the record of that proceeding, the Commission has adopted this Notice soliciting comment on specific alternatives to the existing frequency coordination strucure. The proposal would allow an applicant for a radio license in the private land mobile radio services to file an application directly with the Commission rather than through a coordinator. Such an applicant would select a frequency through monitoring or through a database search to identify all co-channel licensees within 75 miles of the proposed transmitter location. The Notice further proposes that such an alternative be authorized as a two year pilot program to allow the Commission to evaluate the success of the new procedure and to assess its impact on Commission resources and procedures before committing to it permanently.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission's initial regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction

The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and contain new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and may increase burden hours imposed on the public. Implementation of new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

List of Subjects in 47 CFR Part 90

Frequency coordination, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-20062 Filed 8-24-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 54, No. 164

Friday, August 25, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Peanut Price Support Adjustment for 1989 Crop

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination.

SUMMARY: This notice sets forth a determination by the Executive Vice President, Commodity Credit Corporation, that the support rate for individual lots of 1989-crop quota and additional peanuts will be discounted by 100 percent from the support rate that otherwise would be applicable to such lots if a peanut producer is asked to certify whether a growth regulator has been applied with respect to the peanuts (1) refuses to make the certification; (2) certifies that a growth regulator has been used; or (3) supplies an inaccurate certification.

EFFECTIVE DATE: August 25, 1989.

FOR FURTHER INFORMATION CONTACT: Jack S. Forlines, Tobacco and Peanut Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202-382-0156.

SUPPLEMENTARY INFORMATION: Section 401 of the Agricultural Act of 1949 (the 1949 Act) authorizes the Secretary of Agriculture, except as otherwise provided in the 1949 Act, to determine the amounts, terms and conditions of price support operations and the extent to which such operations are carried out. Section 403 provides that appropriate adjustments may be made in the support price for any commodity for differences in grade, type, staple, quality, location, and other factors.

The adjustments to be made in determining the price support rate for the various types of 1989-crop peanuts were announced on April 19, 1989. The adjustments included premiums and discounts for differences in quality and location. Subsequent to the announcement, processors of peanuts have indicated that they will not purchase 1989-crop peanuts to which a growth regulator has been applied. Accordingly, a reduction in the commercial value of such peanuts may occur. In June the manufacturer voluntarily withdrew the product from the market and has written to all peanut producers notifying them that the company will buy back any stocks of the growth regulator. In addition, the Environmental Protection Agency is proposing to lower the legal residue level (tolerance) such growth regulator. The new tolerance (4 ppm) will cover any raw peanuts treated in 1989 and any processed products that may remain in channels of trade. The discount in the support rate that otherwise would be applicable to such peanuts prevents the Commodity Credit Corporation's price support program from becoming the "market" for peanuts to which a growth regulator was applied during production. Because of price support peanut pool accounting procedures and possible diminished selling prices for these peanuts out of the price support inventory, this could, unless a discount is implemented, result in losses to the Commodity Credit Corporation and/or losses to those peanut producers who pledge, as collateral for price support loans, peanuts that were produced without the use of a growth regulator.

Determination

The price support rate for an individual lot of 1989-crop quota and additional peanuts shall be discounted by 100 percent from the support rate that otherwise would be applicable to such peanuts if a peanut producer is asked to certify whether a growth regulator has been applied with respect to the peanuts and (1) refuses to make the certification; (2) certifies that a growth regulator has been used; or (3) supplies an inaccurate certification. If an inaccurate certification is made, a refund of the monies received as a result of the inaccurate certification will be required, and in addition, the producer may be assessed damages and other charges. If a producer offers to pledge peanuts as collateral for a price support loan but is not asked to provide a certification or other assurance that a growth regulator was not used to produce the peanuts, such discount shall not apply.

Authority: Sections 401 and 403 of the Agricultural Act of 1949 (7 U.S.C. 1421 and 1423).

Signed at Washington, DC on August 21, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-20029 Filed 8-24-89; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Rocky Mountain Region; Exemption of Fire Recovery Projects From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that certain fire recovery projects are exempted from apeals under provisions of 36 CFR part 217.

SUMMARY: This is a notification that decisions to implement certain projects pertaining to recovery from the Clover-Mist fire on the Shoshone National Forest are exempted from appeal per provisions of 36 CFR Part 217.4 (a) (11) as published January 23, 1989, at Vol. 54, No. 13, page 3342.

EFFECTIVE DATE: Effective on August 25, 1989.

FOR FURTHER INFORMATION CONTACT: Barry Davis, Forest Supervisor, Shoshone National Forest, P.O. Box 2140, Cody, WY 82414-2140.

Background

In 1988, the Clover-Mist fire burned over 120,000 acres of the Shoshone National Forest. In September and October 1988, an interdisciplinary team surveyed much of the burned area, in part to identify emergency and long term rehabilitation needs. From this survey it was found that in many places, this fire burned hot enough to cause severe damage to vegetation, soil and water resources. Other burn damage includes: habitat essential to the endangered grizzly bears; habitat for other major species of wildlife; nursery streams for a Blue Ribbon Trout fishery; areas along a State and Nationally designated scenic By-way and an entrance to Yellowstone National Park; streams providing water for domestic and agricultural use; as well as structures for recreation and range management. The damage to soils is of greatest concern because this will affect the length of time necessary to achieve natural revegetation as well as quantity and quality of water run-off from the area.

The emergency rehabilitation interdisciplinary team concluded that there was risk of flooding and reduced water quality caused by this fire. If left "untreated" these problems will persist for several years and the resulting vegetation will provide no diversity necessary for habitat of most wildlife species. The risk of insect and disease infestations in both the short and long run are possible and were noted by the team. They also projected a substantial loss of timber values over the 9,000 acres to 11,000 acres of suited timber base that was burned.

Field surveys of the burned area during June and July of 1989 indicate that many of the predicted consequences of the fire are taking place. In many areas, stream courses and riparian vegetation were severely damaged and natural process will take as much as 10 years to stabilize these areas. Damage to vegetation is great enough that a return to the prefire conditions of species diversity may take as much as 350 years through natural processes. In one instance in July, a flash flood at least 3 times the size of a 500 year event was caused by less than ⅛ inch of rain in a drainage that had been burned by the fire. This washed out a temporary bridge and stream gauge, and caused damage on the Forest as well as on private land down stream.

Because of the drought leading up to the fires in 1988, trees were damaged more than anticipated and are losing their sawlog value quicker than anticipated. Insects that attack both dead and live trees have moved into the area and threaten those areas not burned by the fire. If left untreated, this will cause loss of much of the unburned vegetation, further degradating wildlife habitat, recreation opportunities, visual quality and soil and water resources. All of these factors could increase the possibility for "landslides" in response to summer storms for the next 5 to 10 years.

In response to this new information, an accelerated schedule of planned fire recovery efforts including salvage of burned timber is necessary to mitigate as much of the damage caused by the fire as possible.

Planned Actions

Emergency rehabilitation efforts were limited to seeing only the most severely burned areas and work along trails to provide better drainage and sediment traps (by felling trees along these trails) to reduce water quality degradation. This emergency work was accomplished in 1988. Beyond this, the emergency rehabilitation team recommended a number of actions for restoration of the entire burned area as well as mitigation of the effects of the fires. Among these recommendations were:

Stirring up the burned soils and breaking the existing crust to allow for water infiltration and plant growth;

Felling and leaving trees perpendicular to slopes to slow run-off and trap sediment;

Leaving tops and limbs of cut trees as well as other vegetation to provide sediment traps and/or filter out sediment;

Plant different types of vegetation in patches to provide filtration of run-off in the short term and diversity in the longer term;

Remove fire damaged trees to remove breeding areas for harmful insects, enhance visual resources as well as remove a potential hazard to forest visitors;

Create "brush piles" to provide cover for smaller species of wildlife; and

Rehabilitate roads and trails to lessen run-off and sediment production.

The acres to be treated and decisions on what to plant vary by location and with the extent of the fire damage over the 120,000 acres of burn depending on the severity of burn, habitat types/soils, geology and location within/outside of wilderness. A number of projects aimed at accomplishing recovery objectives as planned for the summer of 1989 are being implemented.

Recent information on the extent of damage to natural ecological processes indicates that there is a need for increasing the number and extent of fire recovery efforts this year. Conclusions from the interdisciplinary team preparing Environmental Assessments for the salvage sales planned for 1989 indicate that such operations when done in conjunction with other recovery efforts will assist mitigation of fire effects and speed recovery. For these reasons, some of the recovery work, including 3 possible timber salvage sales, originally planned for the summer of 1990 will be attempted in 1989. These three salvage sale/recovery projects will include all of the above recommendations as part of the work to be accomplished during and/or after removal of most of the fire damaged trees. The feasibility of these projects is being analyzed at this time and environmental analyses will be completed within the next two to three months. This will assure that the most cost efficient manner for accomplishing specific recovery objectives will be identified and documented in an Environmental Assessment for each project.

Because of the extensive damage done to all resources within this area there is a need to remedy this damage as quickly as possible. Further, to accomplish this work in a manner which recovers part of the cost requires that the fire damaged trees be of commercial sawlog value. Not only will removing these trees accomplish many of the actions listed above, but a significant portion of the receipts from these sales will provide funding for the other work planned through collection of KV funds. Some of the fire damaged trees are deteriorating to the point where they will have no commercial value and it is anticipated that much of the commercial value will be lost in the next 12 to 18 months.

For these reasons, the next 3 salvage sale projects designed to accomplish the above objectives must be undertaken as quickly as possible, if, through environmental analysis, it is found that all three projects are feasible. To expedite these sale projects and the accompanying work, I am exempting these projects from review (appeal) under 36 CFR Part 217.

These three salvage sales are:

Cathedral Salvage Sale;
One Mile Salvage Sale; and
Oliver Gulch Salvage Sale.

Dated: August 16, 1989.

Charles J. Hendricks,

Acting Regional Forester.

[FR Doc. 89-19947 Filed 8-24-89; 8:45 am]

BILLING CODE 3410-11-M

National Agricultural Statistics Service

Proposed Change in Durum Wheat Estimating Program

Notice is hereby given that the National Agricultural Statistics Service (NASS) plans to change the Durum Wheat estimating program.

The proposed changes focus on Arizona and California. Estimates of Durum seeded acreage for these two States will be added to the *Wheat and Rye Seedings* report beginning with the January 1990 release. Forecasts of Durum production in Arizona and California will be added to the May and June 1 *Crop Production* reports. All six Durum estimating States will make July 1 production forecasts. Only the four northern Durum States will make new production forecasts for August 1 (Arizona and California estimates will be carried forward).

The Arizona and California changes are at the request of the Industry because of the large existing differences

in planting and harvesting dates between the northern and "Desert" Durum growing areas.

Comments from data users regarding the proposed modifications outlined should be addressed to Donald M. Bay, Director, Estimates Division, NASS/USDA, Washington, DC 20250.

Done at Washington, DC this 21st day of September 1989.

Charles E. Caudill,

Administrator.

[FR Doc. 89-20122 Filed 8-24-89; 8:45 am]

BILLING CODE 3410-20-M

Proposed Change in Unit of Measure for Sugar Deliveries

Notice is hereby given that the National Agricultural Statistics Service (NASS) plans to change the unit of measure for a portion of the data shown in the quarterly Sugar Market Statistics reports. Beginning with the first report of 1990, NASS plans to change the unit of measure for "sugar deliveries by type of product or business of buyer" from hundredweights, refined basis, to short tons, refined basis. Units of measure for all other tables in the publication are short tons, raw value.

This change is being proposed at the request of data users who historically have converted hundredweights in the publication to short tons in order to have all data in the same units.

Comments from data users regarding the proposed modifications outlined should be addressed to Donald M. Bay, Director, NASS/USDA, Washington, DC 20250.

Done at Washington, DC this 22nd day of August, 1989.

Charles E. Caudill,

Administrator.

[FR Doc. 89-20121 Filed 8-24-89; 8:45 am]

BILLING CODE 3410-20-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-037]

Drycleaning Machinery From West Germany; Final Results of Antidumping Duty Administrative Review in Accordance With Decision Upon Remand

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Review in Accordance with Decision upon Remand.

SUMMARY: On December 1, 1988, the United States Court of International Trade ("the Court") ordered the Department of Commerce ("the Department") to reconsider respondent Boewe Maschinenfabrik GmbH's ("Boewe") claim for a "level of trade" adjustment in the administrative review of drycleaning machinery from West Germany. *American Permac, Inc.* v. *United States,* 12 CIT ___, 703 F. Supp. 97 (1988). The Department filed the required remand results with the Court on March 20, 1989. On June 14, 1989, the Court affirmed, in its entirety, the remand determination by the Department. *American Permac, Inc.* v. *United States,* 13 CIT ___, Slip Op. 89-83 (1989). As a result the margin for Boewe was reduced from 30.05 percent to 15.85 percent.

EFFECTIVE DATE: August 25, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Chip Hayes, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/2923.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1985, the Department published in the **Federal Register** (50 FR 1256) the final results of its administrative review of the antidumping duty finding on drycleaning machinery from West Germany. The review covered two producers and/or exporters of this merchandise to the United States and the period July 1, 1979 through June 30, 1980. That notice gave 30.05 percent as the margin for Boewe. The notice stated that the Department had compared sales through distributors in the United States with direct sales to end-users in the home market, with no adjustment for level of trade differences because the differences were not adequately quantified.

Respondent Boewe field a lawsuit challenging our denial of a level trade adjustment. Boewe alleged that it had, in fact, provided sufficient quantification of expenses attributable to level of trade differences.

On December 1, 1988, the Court remanded the final results of review to the Department for reconsideration of Boewe's level of trade claim. On March 20, 1989, the Department issued remand results that amended the final results of review on drycleaning machinery from West Germany. The Department determined that Boewe had adequately quantified certain level of trade differences that were claimed. The amended results were affirmed by the Court, in their entirety, as a result of the ruling issued on June 14, 1989. *American Permac, Inc.* v. *United States,* 13 CIT ___, Slip. Op. 89-83 (1989). We have changed the margin for Boewe from those presented in the final results to 15.85 percent.

Amended Final Results of the Review

The Department has amended the final results. The amended weighted-average margin for Boewe is 15.85 percent.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

This amendment to final results of antidumping duty administrative review notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the new Commerce Regulations (19 CFR 353.22).

Dated: August 17, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-20014 Filed 8-24-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-811]

Preliminary Determination of Sales at Less Than Fair Value; Drafting Machines and Parts Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that drafting machines and parts thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of drafting machines and parts thereof from Japan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by November 1, 1989.

EFFECTIVE DATE: August 25, 1989.

FOR FURTHER INFORMATION CONTACT: Mark Wells or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3798 and (202) 377–1769, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that drafting machines and parts thereof from Japan are being, or are likey to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (54 FR 19424, May 5, 1989), the following events have occurred: On May 22, 1989, the ITC determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Japan of drafting machines and parts thereof (USITC Pub. 2192, May 1989).

On May 26, 1989, the respondent in the investigation, Mutoh Industries, Ltd. and Mutoh America, Inc. (collectively Mutoh), asked for the exclusion of parts data from the questionnaire response.

On May 30, 1989, the Department presented sections A, B and C of the antidumping questionnaire to respondent.

On June 8, 1989, respondent requested an extension of the deadline for filing the response to sections B and C of the questionnaire. We also granted respondent's May 26, 1989 request for the exclusion of parts data from the questionnaire response.

On June 14, 1989, we granted respondent an extension to July 13, 1989 for filing the response to sections B and C of the questionnaire. We also received section A of the questionnaire response from respondent.

On July 13, 1989, counsel for respondent notified the Department that respondent has decided not to actively participate in the investigation. Respondent requested the return of all submissions made to the Department and asked the Department to instruct petitioner's counsel to return all materials released under the terms of the administrative protective order (APO).

On July 17, 1989, citing § 353.15(e) of the Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.15), counsel for Vemco, petitioner in this investigation, requested a disclosure conference and also inquired about the disposition of petitioner's business proprietary data that had been released to respondent's counsel under APO.

On July 19, 1989, counsel for petitioner informed the Department and the counsel for respondent that material and copies of material released under the APO had been destroyed pursuant to the Department's instructions.

On July 20, 1989, counsel for respondent informed the Department that, although respondent would not provide further factual information in the investigation, counsel for respondent still intended to participate in the proceeding and wanted to retain information released under the APO.

On August 4, 1989, we informed counsel for petitioner that counsel for respondent was still entitled to information released under the APO. We also determined that a disclosure conference as specified by § 353.15(e) of the Department's regulations, did not apply in this investigation.

Period of Investigation

The period of investigation (POI) is November 1, 1988 through April 30, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation include drafting machines and parts thereof from Japan, currently classifiable under the Harmonized Tariff Schedule sub-headings 9017.10.00, and 9017.90.00. Prior to January 1, 1989, such merchandise was classified under item 710.8025 of the Tariff Schedules of the United States Annotated (TSUSA).

The scope of this investigation includes drafting machines that are finished, unfinished, assembled, or unassembled, and drafting machine kits. For purposes of this investigation, "drafting machine" refers to "track" or "elbow-type" drafting machines used by designers, engineers, architects, layout artists, and others. Drafting machines are devices for aligning scales (or rulers) at a variety of angles anywhere on a drawing surface, generally a drafting board. A protractor head allows angles to be set and read and lines to be drawn at this angle. The machine is generally clamped to the board. Both "track" and elbow-type" drafting machines are classified under HTS 9017.10.00.

Also included within the scope of this investigation are parts of drafting machines classified under HTS 9017.90.00. Parts include, but are not limited to, horizontal and vertical tracks, parts of horizontal and vertical tracks, band and pulley mechanisms, parts of band and pulley mechanisms, protractor heads, and parts of protractor heads, destined for use in drafting machines. Accessories, such as parallel rulers, lamps and scales are not subject to this investigation.

Such or Similar Comparisons

For respondents, pursuant to section 771(16)(c), we established two categories of "such or similar" merchandise: (1) Track drafting machines and (2) elbow-type drafting machines.

Product comparisons for track and elbow-type drafting machines were based on information submitted in the petition.

Some Japanese models sold only in the home market during the period of investigation include a scale balancer, which is found only on track drafting machines. A scale balancer keeps the scale stationary and allows for added balance to the equipment, thus increasing the efficiency and precision of the drafting machine.

Fair Value Comparisons

To determine whether sales of drafting machines and parts thereof from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Since Mutoh Industries declined to participate in this investigation we used the best information available as required by section 776(c) of the Act. As best information available, we used data contained in the petition. Petitioner provided price data on five models of drafting machines exported to the United States and five comparable models sold in the home market. Some of petitioner's price adjustments were disallowed because sufficient documentation was not provided to support its allegations.

Since petitioner did not provide a 1988 price list for respondent's sales in the United States, price data from the petition over a thirty-four month period (January 1985–October 1987) was used to calculate an average yearly price increase for each model. This price increase was then applied to respondent's 1987 list prices for all five U.S. models to arrive at an estimated 1988 list price for each model. Deductions from the estimated 1988 list price were made for sales discounts to unrelated dealers, U.S. customs duties and fees, and U.S. warehousing fees, to arrive at an adjusted United States price for each model.

Prices contained in the petition for the only two alleged U.S. importers were used because the petitioner provided inadequate support for the derivation of estimated prices charged by Mutoh, Japan.

The Department's estimate of foreign market value was based on list prices in Japan as adjusted and explained above, less sales discounts to unrelated dealers and a difference in merchandise adjustment for Japanese models that include a scale balancer.

We took the highest margin for each such or similar category of merchandise and calculated a simple average of the values to determine the margin for Mutoh Industries and the All Other rate.

United States Price

United States price was based on the U.S. price information provided in the petition as adjusted and explained in the "Fair Value Comparisons" section of this notice.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition as adjusted and explained in the "Fair Value Comparisons" section of this notice.

Verification

Since Mutoh did not furnish a complete response to the questionnaire, we will not conduct a verification.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of drafting machines and parts thereof from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Japan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The estimated less than fair value margins are shown below.

Manufacturer/Producer/Exporter	Margin percentage
Mutoh Industries, Ltd. (Mutoh)	66.91
All Others	66.91

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protection order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injury, or threaten material injure to, a U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with § 353.38 of the Department's regulations, case briefs, and any other written comments, in at least ten copies must be submitted to the Assistant Secretary by October 2, 1989, and rebuttal briefs by October 10, 1989. In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs at 10:00 a.m. on October 13, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC. 10230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the arguments to be raised. In accordance with § 353.38(b) of the Department's regulations, presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: August 18, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

FR Doc. 89–20138 Filed 8–24–89; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Malcolm Balridge National Quality Award's Panel of Judges

AGENCY: National Institute for Standards and Technology, Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that there will be a closed meeting of the Panel of Judges of the Malcolm Baldrige National Quality Award from Wednesday, October 4, through Friday, October 6, 1989. The Panel of Judges is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the 1989 Award applications and to select applicants to be recommended for receipt of the Award. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene October 4, 1989 at 8:30 a.m. and adjourn at approximately 2:00 p.m. on October 6, 1989. The entire meeting will be closed.

ADDRESSES: The meeting will be held in Lecture Room C, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Associate Director for Quality Programs, National Institute for Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 19, 1989 that the meeting of the Panel of Judges will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of records and discussion of Award applicant data,

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may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: August 21, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89-20077 Filed 8-24-89; 8:45 am]

BILLING CODE 3510-13-M

National Telecommunications and Information Administration

Comprehensive Study of the Radio Frequency Spectrum

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice.

Commencing this fall, the National Telecommunications and Information Administration (NTIA) will undertake a comprehensive policy review of the use and management of radio spectrum in the United States. While NTIA has previously analyzed and reviewed in detail many policy aspects of spectrum use and management, this announcement marks the start of the first fundamental reexamination of spectrum policy objectives and issues since NTIA's organization in 1978.

Such a review is timely in light of sweeping changes in demand for spectrum as well as the associated technology. These changes require the development and fostering of policies that will encourage the most effective, efficient, and fair use of spectrum.

For example, while demand for spectrum continues to expand dramatically, technological advances such as the widespread deployment of fiber optics and satellite technologies afford users the opportunity to shift among communications media and thereby free spectrum for other needs. Moreover, advanced management techniques could permit more efficient use of spectrum and exploitation of underutilized bands.

In the near future, NTIA intends to issue a Notice of Inquiry (NOI) to request public comment on specific economic, technical, and regulatory issues to be studied concerning U.S. spectrum policy. General policy goals for spectrum use and management include affording maximum opportunity for the development of innovative services; ensuring U.S. national defense, law enforcement and other essential government service requirements are met; ensuring that international frequency management accommodates U.S. interests; and providing U.S. spectrum users with fair and efficient access to this resource.

NTIA is the Executive Branch agency principally responsible for the development and presentation of domestic and international telecommunications policy. Under Executive Order 12046, NTIA acts as principal adviser to the President on telecommunication policy, and is directed to develop a long range U.S. spectrum management plan. NTIA also has statutory authority to license government radio frequency use.

ADDRESSES: National Telecommunications and Information Administration, Room HCH 4725, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joseph L. Gattuso, Office of Policy Analysis and Development, 202-377-1880, or Fred Wentland, Office of Spectrum Management, 202-377-1850.

Janice Obuchowski,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 89-20006 Filed 8-24-89; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 25, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 28 and May 12, 1989 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 18324 and 20628) of the proposed addition of 100 percent of the total Government requirements for cold weather undershirts and cold weather drawers to Procurement List 1989, November 15, 1988 (53 FR 46018).

Comments were received from several firms and others on their behalf objecting to the addition of the total requirements for the undershirts and drawers to the Procurement List. The significant issues raised involved the firms' expenditure of substantial nonreimbursable funds to assist the Government in developing the specification for the items without the opportunity to compete for the initial quantity purchased under the finalized specification; the difficulty in producing the items involved; and adverse impact on the Defense Mobilization Base, the previous contractors, and a current subcontractor. In addition, comments were received from the workshops proposed to produce these items and from others on their behalf recommending that the drawers and undershirts be added to the Procurement List because of the employment and training opportunities that would be generated for persons with severe disabilities.

Lack of Opportunity To Compete Under Finalized Specification

Seven firms received contracts for these items during the 1986-1989 period. Of these, five received small contracts, and two received small contracts and substantial follow-ons to produce the items prior to the development of the final specifications.

Three of the five firms which had received small contracts during the 1986-1987 period but are not current contractors wrote to complain about the lack of opportunity to compete for future contracts under the finalized specification. These firms stated that they had expended significant nonreimbursable funds to test the Government specification and that the addition of the undershirt and drawers to the Procurement List would make it impossible for them to recoup costs incurred in working with suppliers, purchasing equipment, preproduction planning, start-up, and training workers to produce the items. They indicated that the lack of opportunity would cause irreparable harm to their firms.

For fixed price contracts of the type received by these firms, contractors are only guaranteed that the quantities included in the contracts will be procured. A firm that expends funds to develop its capability to produce an item for the Government does so with no guarantee that it will receive future contracts for the item involved. The former contractors in question expended funds of their own volition, knowing that they would not necessarily receive additional work. In fact, in each case, the firms did not receive any of the substantial follow-on purchases made during the 1988-1989 period. Consequently, since those firms do not currently hold contracts and have no guarantee that they will receive contracts in the future, adding 100 percent of the items to the Procurement List would not have a severe adverse impact on their operations.

Adverse Impact on Defense Mobilization Base

One commenter indicated that the Defense Mobilization Base for these items would be adversely affected if they were added to the Procurement List. There is no justification for this assertion, which assumes that work centers cannot meet Government needs for DOD Industrial Preparedness program items. In fact, there are a number of DOD Industrial Preparedness items on the Procurement List which workshops have been successfully producing in accordance with Government requirements.

Ability To Produce

One commenter indicated that some of the manufacturing operations require significant eye/hand coordination. Another stated that the items are highly specialized requiring extensive training of the labor force. In considering comments of this nature, the Committee relies primarily upon information provided by the appropriate central nonprofit agency (in this case, the National Industries for the Severely Handicapped) and the procuring agency (in this case, DPSC). The central nonprofit agency is charged with the responsibility of working closely with work centers to ensure that they will have the equipment and raw materials, the technical knowledge, and the quality assurance procedures needed to produce the commodity in compliance with Government specifications. The procuring agency is asked to review the workshops' capability and to conduct an on-site inspection if deemed necessary.

Information provided by these sources in this case led the Committee to conclude that the eye/hand coordination and labor force training requirements associated with these items can be handled by the workshops and, in fact, are not as significant as those required for other items being successfully provided by workshops. The Committee was influenced, however, by concerns expressed by DPSC about the workshops' abilities to produce the large volumes that will be required initially.

Impact on Current Contractors

Of the two contractors that received substantial awards for these items during the 1988-1989 period prior to finalization of the specifications, one submitted comments. The letter explained that the contractor did not intend to bid on future solicitations for the items but that its subcontractor, which had handled 100 percent of the production under earlier contracts, did. The contractor indicated that the addition would have a tremendous effect on the subcontractor and had the potential of forcing it to close. The contractor also expressed the hope that the subcontractor would have the opportunity to bid on at least a portion of future contracts.

The estimated annual values of the total Government requirements for the drawers and undershirts represent approximately 1.3 percent and 0.04 percent of the annual sales of the current contractor. This is not considered to be severe adverse impact.

Other Impact

The Committee's procedures require consideration of the impact of a proposed addition of the current or most recent contractor and not upon subcontractors. However, the Committee does take into account comments submitted by all parties, including subcontractors.

In this case, a subcontractor to one of the current contractors for both items submitted comments. The firm's vice-president expressed concern about the addition, indicating that it would be extremely harmful to the firm's business, resulting in the termination of a large number of employees and the possible closing of the firm. He indicated that sales of the two items represented more than half of the firm's business and that his firm intended to bid as a contractor on future procurements of the items. The subcontractor also indicated that a compromise could be reached by giving the "Handicapped" a portion of the future contracts.

In response to the subcontractor's compromise suggestion, the Committee asked the subcontractor what impact the addition to the Procurement List of 50 percent of each of the two items would have on his firm. The subcontractor indicated that a 50 percent addition would allow it an opportunity to bid on future contracts and that the economic impact on the firm would be less.

Committee Decision

After consideration of the material presented to it concerning the capability of qualified workshops to produce the drawers and undershirts at fair market prices and the impact of the addition on the current or most recent contractor, the Committee has determined that the undershirts and drawers are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6. Taking into account the circumstances of the subcontractor, the compromise suggestions, and the DPSC concerns about the work centers' capabilities to produce the entire initial amount, the Committee decided to add only 50 percent of the total Government requirements for each of the items to the Procurement List at this time.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List in 1989:

Drawers, Cold Weather, 8415-01-227-9542, 8415-01-227-9543, 8415-01-227-9544, 8415-01-227-9545, 8415-01-227-9546, (50 percent of the Government's requirement).

Undershirt, Cold Weather; 8415-01-227-9547, 8415-01-227-9548, 8415-01-227-9549, 8415-01-227-9550, 8415-01-227-9551, (50 percent of the Government's requirement).

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 89-20061 Filed 8-24-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 25, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On June 16, 30 and July 10, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 25601, 27667 and 28632) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1989:

Commodity

Strap Assembly, Webbing

2540–00–894–9545

Services

Janitorial/Custodial
  Federal Building and U.S. Courthouse, 131 East Fourth Street, Davenport, Iowa
Janitorial/Custodial
  U.S. Army Corps of Engineers at the following Yakima, Washington locations:
  Fort Lewis Resident Office
  Project Office adjacent to Building 810
  Yakima Firing Center.

E.R. Alley, Jr.,
Deputy Executive Director.
[FR Doc. 89–20082 Filed 8–24–89; 8:45 am]
BILLING CODE 6820–33–M

Procurement List 1989 Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1989 a commodity to be produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 25, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodity listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Cushion, Seat, Vehicular

2540–00–737–3309.

E. R. Alley, Jr.,
Deputy Executive Director.
[FR Doc. 89–20083 Filed 8–24–89; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the DoD Clothing and Textile Board

ACTION: Establishment of the DoD Clothing and Textile Board.

SUMMARY: Under the provisions of Public Law 92–463, "Federal Advisory Committee Act," notice is hereby given that the Department of Defense (DoD) Clothing and Textile Board has been determined to be in the public interest and has been established.

The DoD Clothing and Textile Board will provide the Under Secretary of Defense (Acquisition) and the Director, Defense Logistics Agency with advice on matters related to the acquisition of clothing and textile items for all the Military Services. The range of advice will include: Developing a strategy to broaden the production base for clothing and textile items and encourage more participation by a larger segment of the clothing and textile industry; recommending improvements to military specifications to achieve higher quality and productivity; and suggesting and evaluating improvements in contracting and contract administration to facilitate more effective Government and industry working relationships.

The DoD Clothing and Textile Board will be well balanced with respect to the types and diversity of the members appointed to serve. Candidates for membership will be selected from outstanding leaders in the clothing and textile industry, both fabric and clothing item manufacturers, and will also include academicians with expertise in the field, as well as Government members from the Military Services and the Defense Logistics Agency.

Dated: August 21, 1989.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 89–20047 Filed 8–24–89; 8:45 am]
BILLING CODE 3810–01–M

Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATES: Wednesday, 13 September 1989 (8:30 a.m. to 4 p.m.)

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be

closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

Dated: August 21, 1989.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 89–20046 Filed 8–24–89; 8:45 am]
BILLING CODE 3810–01–M

Defense Manufacturing Board Project on Defense Industrial Strategy; Planning Meeting

AGENCY: Under Secretary of Defense (Acquisition).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Office of the Under Secretary of Defense for Acquisition announces a forthcoming planning meeting for a Defense Manufacturing Board project on Defense Industrial Strategy.

DATE AND TIME: 15 Sep 89, 0900–1630.

ADDRESS: Institute for Defense Analysis (Softech Building, 4th Floor), 2000 N. Beauregard, Alexandria, VA.

The agenda for the meeting will include a discussion of methods for identifying critical opportunities in the defense industry and ways of generating strategies for ensuring their viability.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Fitzpatrick of the DMB Secretariat, (202) 697–0957.

Dated: August 21, 1989.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 89–20044 Filed 8–24–89; 8:45 am]
BILLING CODE 3810–01–M

Defense Manufacturing Board Project on Foreign Ownership and Control; Planning Meeting

AGENCY: Under Secretary of Defense (Acquisition).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Office of the Under Secretary of Defense for Acquisition announces a forthcoming planning meeting for a Defense Manufacturing Board project on Foreign Ownership and Control.

DATE AND TIME: 7 Sep 89, 0830–1700.

ADDRESS: Institute for Defense Analysis (Softech Building, 4th Floor) 2000 N. Beauregard, Alexandria, VA.

The agenda for the meeting will include a review of federal agency initiatives to monitor foreign ownership and control of defense industrial facilities, and methods for assessing their impact on national security.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Fitzpatrick of the DMB Secretariat, (202) 697–0957.

Dated: August 21, 1989.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 89–20045 Filed 8–24–89; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 25, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests available from Margaret Webster at the address specified above.

Dated: August 22, 1989.

Carlos U. Rice,
Director, for Office of Information Resources Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.

Title: Descriptive Study of Significant Features of Exemplary Special Alternative Instructional Programs.

Frequency: Semi-Annually.

Affected Public: State or local governments; Federal agencies or employees; Non-profit institutions.

Reporting Burden:

Responses: 360
Burden Hours: 90

Recordkeeping Burden:

Recordkeepers: 0
Burden Hours: 0

Abstract: This study will provide the Department with data about exemplary Special Alternative Instructional Programs. A sample of teachers will be asked to provide data about a targeted population of students who exit SAIP programs and enter regular classroom activities.

Office of Planning, Budget, and Evaluation

Type of Review: New.

Title: Design for a Study of Chapter 1 Services in Secondary Schools.

Frequency: One time.

Affected Public: State or local governments.

Reporting Burden:

Responses: 240
Burden Hours: 160

Recordkeeping Burden:

Recordkeepers: 0
Burden Hours: 0

Abstract: The purpose of this study is to provide the Department with detailed information of Chapter 1 programs in secondary schools and to examine existing dropout rates or prevention programs that might serve as models for administering Chapter 1 services.

[FR Doc. 89-20113 Filed 8-24-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to Grinding Consultants Company

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15447 to Grinding Consultants Company to assist in the development of an invention entitled "Energy Predictive High Speed Grinding." The technology is a production metal grinding system based on predictive control of machine operating parameters to control the unit volume energy of high speed grinding.

SCOPE: This grant will aid in the assembly of a prototype of the inventor's self-truing grinding system and establish correct operating parameters to maintain grinding wheel temperatures between 300-400 degrees. Direct comparisons of production rates, part quality, and costs for conventional and this grinding system will also be made.

The current technology consists of machine mounted, organic- and vitreous-bonded grinding wheels which are used in the precision grinding of moving machine components. The amount of metal that can be removed per minute is a function of grinding wheel surface roughness (grade) and speed. The vitreous-bonded wheels are limited by internal strength to speeds of 6000 feet/minute. Organic bonded wheels have these same limits, since higher speeds cause the edges of the surface to break, causing fines which fill in surface pores, reducing the grade and efficiency.

The National Institute of Standards and Technology (NIST) estimates that 1.2 billion kWh (or 700,000 barrels of oil) per year would be saved at the powerplant. This assumes 25 percent market penetration and realization of 60 percent energy saving, as estimated by the inventor.

ELIGIBILITY: Based on receipt of an unsolicited application, eligibility of this award is being limited to Grinding Consultants Company. Mr. Roderick L. Smith, the inventor, is President of Grinding Consultants Company of Rockford, Illinois, and has 40 years of engineering and management experience with industrial machinery, and is the holder of more than 20 patents.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rosemarie H. Marshall, MA-453.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Branch B, Office of Procurement Operations.

[FR Doc. 89-20124 Filed 8-24-89; 8:45 am]

BILLING CODE 6450-01-M

Secretarial Panel for the Evaluation of Epidemiologic Research Activities; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretarial Panel for the Evaluation of Epidemiologic Research Activities.

Date and Time:

Tuesday, September 12, 1989, 1:30 p.m.—4:30 p.m.

Wednesday, September 13, 1989, 8:30 a.m.—5:30 p.m.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact: Steven F. Boedigheimer, Executive Director, S.P.E.E.R.A., 1000 Independence Ave. SW., Washington, DC 20585, Telephone: (202) 586-7304.

Purpose: The Panel was established to provide the Secretary with an independent evaluation of the Department of Energy's epidemiology program and the appropriateness, effectiveness, and overall quality of the Departments epidemiologic research activities.

Tentative Agenda:

Tuesday, September 12, 1989

1:30 p.m. *Panel Procedural Business*
- Introductions of members and staff
- Establishment of operational procedures
- Review of relevant rules governing advisory committee operations

2:30 p.m. *Overview of the Department of Energy*
- Officials of the Department of Energy

Purpose and Objectives of the Panel
- The Honorable James D. Watkins, Secretary, Department of Energy

Epidemiology Program of Department of Energy
- Robert Goldsmith, Ph.D.

4:30 p.m. Meeting adjourned until 8:30 a.m. September 13, 1989

Wednesday, September 13, 1989

8:30 a.m. *Epidemiology Program of Department of Energy (con't)*
- Robert Goldsmith, Ph.D.

10:30 a.m. *Invited Testimony*

12:00 p.m.-1:00 p.m. Lunch Break

1:00 p.m. *Invited Testimony (con't)*

3:00 p.m. *Public Comment*

4:00 p.m. *Panel Discussion of Work Plan*

5:30 p.m. Meeting adjourned.

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairperson's judgement, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Director at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room 1E-190, Forrestal Building, 1000 Independence Ave. SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on August 22, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-20128 Filed 8-24-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 89-16; Certification Notice—42]

Office of Fossil Energy

Filing Certification of Compliance; Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as to base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplants has filed self certifications in accordance with section 201(d). Further information is provided in the "SUPPLEMENTARY INFORMATION" section below.

SUPPLEMENTARY INFORMATION: The following company has filed two self certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
Florida Power & Light Company, Miami, FL	08-04-89	Combined Cycle	456-524	Ft. Lauderdale, FL
Florida Power & Light Company, Miami, FL	08-04-89	Combined Cycle	770	Indiantown, FL

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Issued in Washington, DC on August 21, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-20123 Filed 8-24-89; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order With Occidental Petroleum Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Additional notice and opportunity for public comment on proposed consent order.

SUMMARY: On May 24, 1989, the Economic Regulatory Administration (ERA) gave Notice in the **Federal Register** of a proposed Consent Order between the Department of Energy (DOE) and Occidental Petroleum Corporation (Occidental) which would resolve matters relating to Occidental's compliance with the federal petroleum price and allocation regulations during the period October 1979 through January 1981. 54 FR 22469. The proposed Consent Order requires Occidental to pay DOE $205,080,000, which includes interest over eight years, in settlement of Occidental's potential liability for $263.9 million in alleged overcharges, plus interest, found by DOE's Office of Hearings and Appeals (OHA) in a September 30, 1988, Remedial Order issued to Occidental's wholly-owned subsidiary, OXY USA Inc. (formerly Cities Service Oil and Gas Corporation, successor in interest to Cities Service Company). *Cities Service Oil and Gas Corp.*, 17 DOE ¶83,021 (1988). Under the proposed settlement, persons claiming to have been harmed by the overcharge claims resolved by the proposed Consent Order will be able to present applications for refunds in an administrative claims proceeding before OHA.

As of August 11, 1989, ERA had received eighteen submissions concerning the proposed Consent Order. After review of those submissions, ERA has determined to invite additional written comments addressed to certain issues raised in some of those submissions. ERA will consider any additional comments that are received from the public within thirty (30) days following publication of this Notice. Following this comment period, on September 27, 1989, at 10:30 a.m. in the Department of Energy Auditorium, Room GE-086, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, ERA will conduct a public hearing to provide interested persons an additional opportunity to present comments on matters solicited for comment in this Notice.

Requests to make presentations must be received in writing by 5:00 p.m. September 25, 1989, and should be marked "Request To Make Oral Comments" and forwarded to the same address indicated for written comments.

The request should identify the person (with address and telephone number) who wishes to make a presentation and the amount of the time desired. Presentations should be limited to 15 minutes. ERA will consider the written and oral comments in determining whether to accept the settlement and issue a final Order, reject the settlement, or renegotiate the agreement and, if successful, issue a modified agreement as a final Order. In view of the public interest in a prompt determination on the proposed Consent Order, and because of the number and nature of the comments already received, the only additional comments that will be considered by ERA in making a determination on whether to finalize the proposed Consent Order will be those solicited by this Notice which are received within the additional 30-day comment period and oral comments presented at the September 27, 1989 hearing.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1699.

SUPPLEMENTARY INFORMATION:

I. Comments Received

II. Analysis of Comments

III. Submission of Additional Comments.

I. Comments Received

The May 24 Notice solicited written comments to enable the ERA to receive information from the public relevant to the decision whether the proposed Consent Order should be finalized as proposed, modified, or rejected. To ensure public understanding of the bases for the proposed settlement, the May 24 Notice provided detailed information regarding Occidental's potential liability for the matters resolved by the proposed Consent Order and the considerations which formed the bases of the ERA's preliminary agreement to the proposed settlement terms. ERA received eighteen written comments on behalf of various interests, eleven of which were received during the 30-day period prescribed by the May 24 Notice.

Three letters were received from the Honorable John D. Dingell, Chairman of the House Energy Subcommittee on

Oversight and Investigations. Two of those letters were written prior to publication of the May 24 Notice. The third letter commented upon some of the considerations outlined in the May 24 Notice, and addressed a number of matters contained in ERA's May 19, 1989, response to prior correspondence from Chairman Dingell concerning the proposed Consent Order. A filing and five letters were submitted on behalf of Chevron U.S.A., Inc. (Chevron). The last three letters were submitted after the expiration date of the comment period. A comment was filed by Energy Refunds, Inc. (ERI), and comments from the following were also received: (1) Alabama, California, Connecticut, Idaho, Indiana, Maryland, Michigan, Mississippi, Montana, Ohio, South Dakota, Vermont, Wisconsin, and Wyoming (hereinafter the States); (2) the Attorney General of Texas, on behalf of Texas, New Jersey, and New Mexico (hereinafter Texas comments) (New Jersey also filed a separate one-page letter endorsing the Texas comments); and (3) a group of five utilities, eighteen transporters, and four manufacturers (hereinafter UTM, for Utilities, Transporters and Manufacturers).

A series of written comments were filed after expiration of the 30-day public comment period. Late comments were filed by Occidental (on July 7, July 31 and August 4), Senator Don Nickles (on July 10) and Chevron (on July 28, August 2 and August 9). Copies of all of the written comments are available through the Public Reading Room of the DOE's Freedom of Information Act office, 1000 Independence Avenue SW., Washington, DC 20585.

The Texas comments urge ERA's withdrawal from the proposed Consent Order, the continuation of litigation on the *Cities* Remedial Order, and the issuance of a Proposed Remedial Order to Cities regarding the Entitlements Program reporting matter remanded to ERA by OHA's *Cities* Remedial Order decision. The States would support either the continuation of litigation of the *Cities* Remedial Order through the administrative and judicial appeals process or a settlement which considers both Cities' price violations adjudicated in the OHA Remedial Order and also the "full impact of [Cities'] pecuniary benefit from its entitlements participation." The UTM also take the position that the proposed settlement should be renegotiated, or rejected in favor of continuing the *Cities* litigation, on the basis that the proposed settlement amount is inadequate and not in line with other recent settlements, especially compared to the 1988 Consent Order with Texaco Inc. for $1.25 billion, and that the eight-year payment period is unwarranted. In addition, in undertaking a rebuttal of each of Cities' principal defenses to the overcharge claims adjudicated in the *Cities* Remedial Order, the foregoing commenters appear to take the position that there are few, if any, risks to the government in continuing the *Cities* litigation through the remaining levels of administrative review and judicial appeal.

Chairman Dingell and Chevron take the position that final action by ERA join the proposed Consent Order should be deferred. In his May 26, 1989, letter to ERA, the Chairman urges that "allegations of fraud" committed by Cities be fully investigated by DOE and resolved before the proposed settlement is finalized, and asserts that the eight-year payout period is not appropriate. Chevron suggests that ERA conduct "further proceedings" with regard to Cities' "fraud" on the Delaware district court and the DOE in connection with Cities' 1980–82 declaratory judgement action against DOE,[1] such further proceedings to include Cities' "full" production of documents (i) currently in Chevron's (but not DOE's) possession and under seal by order of a Tulsa, Oklahoma state court in private litigation between Cities and Chevron (successor in interest to Gulf Oil Corporation), and, (ii) currently the subject of attorney-client privilege claims by Cities in private litigation between Cities and Chevron in federal district court for the Southern District of New York. Both of these referenced lawsuits arise out of Gulf's 1982 tender offer to merge with Cities.[2]

In comments received after the June 23, 1989, expiration of the original public comment period, Occidental, in responding to the comments filed by Chevron and the States, asserted, among other arguments: (1) that it is appropriate for the ERA to recognize the "preliminary nature" of OHA's Remedial Order findings concerning Cities' lack of a good faith belief that the crude oil transactions at issue in the *Cities* litigation complied with DOE regulations, and to weigh the "additional record evidence" which assertedly shows that Cities made reasonable efforts to obtain DOE guidance while the regulations were still in effect;[3] (2) that Cities disclosed to the Delaware district court and to DOE in Cities' 1980 request for Interpretation the key characteristics of several illustrative crude oil transactions of the type at issue in the *Cities* litigation; (3) that in entering into the proposed settlement, DOE has had access to all relevant documents to which either the DOE itself or the courts have determined DOE is entitled;[4] and (4) that if, as Chevron asserts, the evidence is already "overwhelming" that Cities believed it was burying miscertified oil, then further evidence to the same effect which Chevron "speculates" is contained in the undisclosed documents currently the subject of discovery proceedings in the Gulf/Cities tender offer litigation would be merely cumulative.

By letter of July 10, 1989, Senator Nickles urged prompt finalization of the proposed Consent Order.

Chevron's later comments dated July 28, August 2, and August 9, 1989, and Occidental's later comments dated July 31, 1989, and August 4, 1989, each take issue with the other party's next preceding submission characterizing Cities' representations to the Delaware federal district court in 1980–81 and the import of the *Cities* Remedial Order's finding concerning Cities' lack of a good faith belief that its tie-in crude oil transactions complied with DOE regulations.

II. Analysis of Comments

A. Comments Related to Process

A number of comments received address the process utilized by the ERA in reaching the proposed settlement with Occidental. The States maintain that the May 24 Notice is so lacking in substance that it cannot be deemed to comply with the requirements of 10 CFR 205.199J, and that it fails to "fulfill the Department of Energy's promise to the Court—and the States and the public—in the *Stripper Well* Final Settlement Agreement, and to the Congress, that it would bring all violators to justice." The States' arguments are misplaced, and without foundation. The notice requirements of 10 CFR 205.199J(c) state in relevant part:

> The **Federal Register** * * * will state at a minimum the name of the company concerned, a brief summary of the Consent Order and other facts or allegations relevant thereto, the address and telephone number of the DOE office at which copies of the Consent Order will be available free of charge, the address to which comments on the Consent Order will be received by the DOE, and the date by which such comments should be submitted * * *

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[1] *Cities Service Co. v. DOE*, 520 F. Supp. 1132 (D. Del. 1981), *aff'd per curiam*, No. 3–28 (TECA August 27, 1982).

[2] *Cities Service Co. v. Gulf Oil Corp.*, No. C–82–1996 (Okla.); *In re Gulf Oil/Cities Service Tender Offer Litigation*, No. 82 Civ. 5253 (S.D.N.Y.); *W. Alton Jones Foundation v. Chevron U.S.A., Inc.*, No. 87 Civ. 8962 (S.D.N.Y.).

[3] See *Cities Service Co.*, Interpretation 1980–43, 45 Fed. Reg. 82575 (December 15, 1980).

[4] *See United States v. Gulf Oil Corp.*, 760 F.2d 292 (TECA 1985); *United States v. Arthur Young & Co.*, 1 FR Serv. 3d 440 (N.D. Okla. 1984).

The May 24 Notice regarding the proposed Occidental Consent Order clearly exceeded these regulatory requirements. Not only was a summary of the proposed settlement terms provided, but the entirety of the Occidental Consent Order was published as well. The matter sought to be resolved by the proposed Consent Order were specifically identified, and the bases for the DOE's preliminary agreement to the proposed; settlement were explained.

Regarding the adequacy of the May 24 Notice as it relates to the Department's compliance with the terms of the Final Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan.), the States' comments fail to articulate any basis to support their conclusion concerning the alleged inadequacy of the May 24 Notice. As discussed above, the May 24 Notice exceeds the regulatory requirements of 10 CFR 205.199J(c). Whether Occidental is brought "to justice" is precisely the point in considering whether the proposed settlement is in the public interest, comment concerning which is what the May 24 Notice invites. And, while the States are accorded the opportunity by 10 CFR 205.199J(c) to comment on this or any other proposed Consent Order, paragraph IV.A.2 of the *Stripper Well* Final Settlement Agreement expressly provides that "it remains solely in the DOE's discretion to determine whether an enforcement proceeding should be initiated, settled, pursued on particular terms or terminated." The States and Texas were signatories to that agreement.

Texas takes the position that because the DOE has not yet responded to the Texas Attorney General's pending Freedom of Information Act request for documents relating to the proposed Consent Order, it was "unable to ascertain the full scope of ERA's proposed compromise consent agreement, its litigation risk analysis methodologies, and such other pertinent information as the documents may reveal." Texas comments at 14. In fact, the "full scope" of the proposed settlement is set forth in the proposed Consent Order, the entirety of which was published in the May 24 Notice. As to the assertion that Texas was unable to ascertain ERA's "litigation risk analysis methodologies" and "other pertinent information" without benefit of DOE's FOIA response, it appears that Texas fails to comprehend the purpose and nature of the Consent Order process. That process is designed to elicit public comment on and evaluation of the terms of the proposed agreement itself, not to probe the ERA's internal deliberations which preceded its decision to enter into the proposed Consent Order. In this case, as it has in the past, DOE generally described in its public notice the factors it considered in preliminarily agreeing to the particular proposed Consent Order.[5] However, the agency does not publicly disclose the relative weights it would assign to the generally described factors. Public disclosure of litigation risk analysis methodologies would impair DOE's litigation and/or bargaining positions both in the case proposed for resolution, as well as in other pending cases.

The States' comments regarding Occidental Chairman Armand Hammer's approach to the former Secretary of Energy regarding resolution of the *Cities* litigation and "concerns about government ethics" are also misplaced.[6] Citizens have a right to petition their government, and the States have availed themselves of that opportunity in the very matter under consideration by seeking a direct contact with the present Secretary of Energy to advance their own viewpoint regarding the proposed Consent Order. In any event, the States' comments are not relevant to the merits of the question whether the proposed Consent Order should be finalized.

The States also "formally request", pursuant to 10 CFR Part 205, Subpart H, that "this matter be decided directly by the Secretary without further involvement by ERA", and if this request is rejected for any reason, that the proposed order be modified to provide the following:

> [I]f within a period of not less than 90 days after payment, any interested party institutes proceedings to seek available administrative, judicial, or legislative review of the compliance of the substance and procedure of this proposal with applicable legal and regulatory standards, including 10 CFR Part 205 and the Stripper Well Agreement, then the effectiveness of the agreement will automatically be stayed and the money be held in escrow pending a further determination of the validity of the consent order.

The consent order process falls under the provisions of 10 CFR Part 20.5, Subpart O; and 10 CFR 205.199J(b) specifically prohibits appeals. The express regulatory prohibition reflects the considered policy that, ultimately, the enforcement branch of an agency is charged with the responsibility for case resolution. Case resolution might be accomplished through the initiation of litigation, settlement, or termination of a suit. The States' proposed modification is contrary to this policy and to the express regulatory prohibition of appeals of final Consent Orders. The proposed modification would shift case resolution authority and responsibility from enforcement officials to adjudicators and legislators. The States assert no cognizable basis for modifying the proposed Consent Order to provide for any judicial or legislative review, which in any event the States contend is already "available", and, moreover, the States' proposal would effectively negate the purpose of the notice and comment process prescribed by 10 CFR 205.199J. Accordingly, the proposed Consent Order will not be modified as the States request. Furthermore, inasmuch as the States provide no legally sufficient basis for excluding the ERA Administrator from involvement in this matter, and in light of the fact that the Administrator's exercise of authority is pursuant to direct delegation from the DOE Secretary, neither will ERA's "involvement" in the Occidental Consent Order process be terminated.

Chairman Dingell and Texas expressed concern regarding allegations that the ERA Administrator excluded ERA litigation staff from the settlement negotiations and process. These allegations are factually incorrect, and in any event are not relevant to the reasonableness of the proposed Consent Order itself.

Chevron, in its June 8, 1989, submission, questions the ERA Administrator's authority to enter into Consent Orders, and asserts that the explanatory rationale for the proposed settlement set forth in the May 24 Notice impermissibly contradicts OHA's adjudicatory findings in the *Cities* Remedial Order, thereby "invading" both OHA's and FERC's jurisdictions. Both claims are unfounded. First, in the eleven-year existence of the DOE, no settlement has been found wanting due to any lack of authority of the ERA Administrator. Many hundreds of enforcement cases, involving over $6 billion, have been resolved by way of settlement pursuant to the authority of the ERA Administrator as delegated by the Secretary of Energy. Indeed, Chevron itself has entered into such settlements with the ERA in the recent past, including resolution by settlement of matters that were the subject of adjudication by the OHA. See *Gulf Oil Corporation,* 12 DOE ¶ 83,004 (1984), 29 FERC ¶ 62,095 (1984), *appeal dismissed,* 32 FERC ¶ 63,010 (1985); *Gulf Oil Corporation,* 10 DOE ¶ 81,011 (1982), 27 FERC ¶ 62,172 (1984), *appeal dismissed,* 32 FERC ¶ 63,022 (1985).

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[5] *See, e.g.*, 53 FR 48710 (December 2, 1988) (proposed Tesoro Consent Order notice); and 53 FR 15106 (April 27, 1988) (proposed Tesoro Consent Order notice).

[6] The States may be unaware of the facts that Mr. Hammer wrote to Chairman Dingell on two occasions and advised Chairman Dingell of the initial contact with former Secretary Herrington. Furthermore, during the comment period Chevron sought to meet with the DOE Deputy Secretary and Under Secretary to discuss its views on the proposed Consent Order with Occidental.

Second, just as ERA possesses authority to prosecute enforcement actions, it has concomitant authority to resolve them. Resolution can be accomplished by determining whether a proceeding should be pursued, terminated, or settled. In the case of settlements, all consent orders, including the one under consideration, represent compromises by both parties. Contrary to Chevron's assertion, ERA's agreement to particular settlement terms with Occidental does not constitute the "overruling" of OHA factual findings in the *Cities* Remedial Order concerning witness credibility or any other matter. By the express terms of the proposed Occidental Consent Order (Paragraph 303), the DOE and Occidental each asserted its belief that its respective legal and factual positions resolved by the Consent Order are meritorious. At the same time, both parties agreed to compromise their differences, to avoid protracted litigation of unknown outcome.

In conclusion, for the reasons stated, none of the foregoing comments related to process will be considered further in determining appropriate action with respect to the proposed settlement.

B. The Permian Corporation

ERI urged that a former subsidiary of Occidental, The Permian Corporation (Permian), should be made a party to the proposed Consent Order. ERI asserts without explanation that Occidental benefited from Permian's alleged regulatory violations and should therefore be held accountable for Permian's obligations. ERI submitted in 1989 on behalf of one of its clients a refund claim based on the Permian Consent Order that was made final by publication of notice in the **Federal Register** on June 25, 1982. Potential refund claimants in that proceeding were permitted three years in which to file their claims before any unclaimed amounts were finally distributed. ERI's refund claim was filed beyond the three-year claim period and its client's refund claim was rejected, inasmuch as the Permian settlement funds had been distributed in June 1985 pursuant to the Consent Order terms. By the terms of its Consent Order, Permian's compliance therewith was deemed to constitute full compliance with respect to all matters covered by the Consent Order. ERI's failure to file a timely refund claim for a portion of the Permian settlement monies is not an appropriate basis on which to modify the proposed Occidental Consent Order, which is based on resolution of an enforcement action against Cities arising out of transactions entirely unrelated to Permian's conduct. Accordingly, the proposed Consent Order will not be modified as requested by ERI.

C. Eight-Year Payout Terms

In his May 26, 1989, letter, Chairman Dingell expressed concern about the proposed Consent Order provisions which permit OXY USA Inc. extended time payments and urged that ERA "should *not* accept Oxy's *word* that it lacks 'sufficient cash reserves' to make payments immediately or at least earlier than the period specified." The UTM argue that a delay in payment "inflicts another injury upon consumers" inasumuch as interest at the rate of 10% "is no solace to a[n] electric utility who must pay a substantially higher rate of interest if he desires to obtain the benefit of the anticipated refunds at an earlier date." UTM comments at 4.

The ERA did not intend to rely, and has not relied, solely on the oral representations of OXY USA regarding the nature of its cash flow position. The ERA requested, and received, information from Occidental regarding the levels of OXY USA's recent cash flow experience. ERA is continuing its review of that information. Moreover, as an additional assurance of payment, Occidental, with stockholders' equity of $6.2 billion as of December 1988, is the signatory to the proposed Consent Order and therefore obligated to make the required payments.

The issue raised by Chairman Dingell and the UTM more appropriately focuses on the relative merits of an eight-year period for payments.[7] Although extended payments would include interest at an effective rate of 10% (as prescribed by DOE policy), the UTM argue that some customers who need the monies immediately may have to borrow against the anticipated refunds at a higher rate of interest. ERA has determined that additional comment on this subject is in order, and specifically requests comments addressing whether the eight-year payment period should be renegotiated.

D. Effect of OHA's Remedial Order

Several commenters provided extensive commentary regarding the *Cities* Remedial Order. Variously describing the OHA's decision as "well reasoned" (States comments at 2), and a "well conceived, immently [sic] logical and wholly defensible opinion" (Texas comments at 11), the States, Texas and Chevron used the language and findings in the Remedial Order or ERA's litigation pleadings to rebut the stated considerations in the May 24 Notice for the Department's preliminary agreement to the proposed settlement. These commenters apparently urge the ERA to conclude that its explanatory rationale for agreeing to the proposed Consent Order is improper or without merit.

Contrary to the assumption underlying these comments, ERA, the principal advocate of the factual findings and legal conclusions reflected in OHA's Remedial Order decision, fully endorses that decision. See Occidental Proposed Consent Order, Paragraph 303. That assessment, however, does not militate against settlement generally, or against the terms of the proposed Occidental Consent Order in particular. To the extent that the commenters appear to take the position that there is no litigation risk whatever to the government obtaining a final judgment in its favor in the *Cities* litigation, such a position is, in ERA's view, unrealistic. As to OHA's particular findings in the Remedial Order, including those dealing with Cities' defenses of good faith and estoppel, the assessment of litigation risk cannot appropriately focus on the OHA Remedial Order decision alone. That Order is subject to several additional levels of appeal, so it cannot represent the conclusive assessment of case value.

ERA recognizes that OHA, in ruling on Cities' affirmative defense of judicial estoppel, found that Cities did not hold a good faith belief that its crude oil transactions complied with the regulations and that Cities did not disclose in its request for Interpretation or in the Delaware declaratory judgment action the key characteristics of Cities' so-called "tier trades." Notwithstanding the commenters' general endorsement of the correctness of OHA's ruling in assessing the DOE's litigation risk, ERA invites additional comment as to whether, in a settlement context, it is appropriate to exclude consideration of all other factors in reaching an appropriate level of compromise with Occidental.

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[7] The UTM comments erroneously stated the time period as being nine years.

E. Additional Documents

As noted in Section I of this Notice, Chevron has suggested that ERA conduct "further proceedings" with regard to Cities' "fraud" on the Delaware district court and the DOE in connection with Cities' 1980–82 declaratory judgment action against DOE, such proceedings to include Cities' production to DOE both of documents held under seal by order of a Tulsa, Oklahoma state court and documents currently the subject of attorney-client privilege claims by Cities in the Cities/Gulf tender offer litigation in a New York federal district court. Similarly, Chairman Dingell urges that no settlement be approved as long as DOE has not obtained those two categories of Cities documents which "reportedly" bear on the issue of fraud.

In light of OHA's Remedial Order findings regarding Cities' asserted good faith belief that entitlements exempt uses, rather than miscertification, explained the tie-in transactions, and the underlying evidence of record in the *Cities* litigation relating to the state of Cities officials' knowledge of this matter, all of which findings and submission of evidence predate the ERA's agreement to the proposed Consent Order, ERA also requests comment on the additional significance, if any, which should be attached to the undisclosed contents of documents that are currently subject to privilege claims or under seal in private litigation between Chevron and Cities in federal and state courts and are not in the DOE's possession.

Finally, Chairman Dingell's May 26 letter refers to "an allegation made to [his] staff that some of the documents obtained in discovery by Chev[]ron (which unquestionably has an important interest separate from that of the Government) may have been withheld from the [DOE] when DOE sought relevant documents." Chevron, in its August 2 comment, states that "there are documents which are *not* privileged which Chevron has and which Cities refuses to give to ERA" (emphasis in original). In view of the significance which Chairman Dingell and Chevron attach to ERA obtaining additional documents alleged to be relevant to ERA action on the proposed Consent Order, and in order to permit ERA to consider these allegations, ERA urges all persons with specific information concerning any relevant documents which Cities is alleged to have withheld from DOF to provide the particulars regarding the same to ERA during the 30-day additional comment period announced in this Notice.

III. Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part. The ERA continues to review the numerous comments received on the proposed Consent Order. In view of the diversity of the parties filing comments and the views expressed by them, ERA has determined to offer an additional opportunity to the submitters and other members of the public to file comments on the specific issues described above involving the proposed Consent Order.

Interested persons are invited to submit written comments to: Occidental Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585. Any information considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Although this proposed settlement does not resolve a wide range of issues within the meaning of the Notice published at 49 Fed. Reg. 12301 (March 29, 1984), DOE has determined it would be useful to hold a public hearing in this instance because the proposed Consent Order would resolve issues concerning a large monetary amount. Accordingly, interested persons are also invited to appear at a public hearing beginning at 10:30 a.m. on September 27, 1989. All comments received by the thirtieth day following publication of this Notice in the **Federal Register** and all comments made at the hearing will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of notice in the **Federal Register.**

Issued in Washington, DC on August 22, 1989.

Chandler L. van Orman,

Administrator, Economic Regulatory Administration.

[FR Doc. 89–20129 Filed 8–24–89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER89-255-001 et al.]

Arizona Public Service Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER89–255–001]

August 16, 1989.

Take notice that on August 14, 1989, Arizona Public Service Company (APS or Company) tendered for filing amendments affecting estimated contract demands or maximum demands in the following FPC/FERC Electric Service Rate Schedules:

FPC/FERC No.	Customer	Revised exhibit
56	Wellton-Mohawk	Exhibit B.
59	APA	Exhibit B.
65	CRIIP	Exhibit A.
66	SCIIP	Exhibit A.
74	Wickenburg	Exhibit B.
120	Southern California Edison.	Exhibit B.
126	ED–6	Exhibit "II".
126	ED–7	Exhibit "II".
140	ED–8	Exhibit "II".
141	AID	Exhibit "II".
142	McMullen Valley	Exhibit "II".
143	Tonopah	Exhibit "II".
149	Citizens Utility Company.	Exhibit B.
153	Harquahala	Exhibit "II".
155	Buckeye	Exhibit "II".
158	Roosevelt	Exhibit "II".
161	PTUA	Exhibit B.
170	Wickenburg	Exhibit A.

APS states no changes from the currently effective Wholesale Power or Transmission ("Wheeling") rate levels are proposed herein. No new facilities are required to provide these services.

A copy of this filing has been served on the above customers, the California Public Utilities Commission and the Arizona Corporation Commission.

Comment date: August 31, 1989, in accordance with Standard Paragraph E at the end of this document.

2. Florida Power & Light Corporation

[Docket No. ER89–357–000]

August 16, 1989.

Take notice that on August 10, 1989, Florida Power & Light Corporation (Florida Power) tendered for filing an amendment to its April 19, 1989 filing in this docket in order to withdraw a proposed amendment filed on June 15, 1989 in this docket and replace it with a similar amendment in order to clarify the charges under Schedule D, Long Term Firm Interchange for Kissimmee Utility Authority, the City of St. Cloud, and the Sebring Utility Commission. Florida Power states this amendment is being filed to provide a definition for hourly broker sell quotes during periods of firm commitment sales.

According to Florida Power, the filing has been served on each of the affected utilities and the Florida Public Service Commission.

Comment date: August 31, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company

[Docket No. ER89-527-000]

August 16, 1989.

Take notice that on August 14, 1989, Minnesota Power & Light Company tendered for filing supplemental information relating to the rate charged for energy under the Participation Power Transaction Agreement between Minnesota Power & Light Company and Iowa Electric Light and Power Company. The agreement was tendered for filing on June 30, 1989. The parties request a waiver of the Commission's 60 day filing period for this Agreement and an effective date of May 1, 1989.

Comment date: August 31, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Leonard A. O'Connor

[Docket No. ID-1612-000]

August 16, 1989.

Take notice that on August 7, 1989, Leonard A. O'Connor (Applicant) tendered for filing a Notice of Change. The notice of change states that effective July 1, 1989, Applicant resigned from the position as Vice President of Connecticut Light and Power Company. The notice further states that applicant now holds no position with this company.

Comment date: August 31, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. John J. Smith

[Docket No. ID-2002-001]

August 16, 1989.

Take notice that on August 7, 1989, John J. Smith (Applicant) tendered for filing a Notice of Change. The notice of change states that effective July 1, 1989, Applicant resigned from the position as Vice President of Connecticut Light and Power Company. The notice further states that applicant now holds no position with this company.

Comment date: August 31, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Philip T. Ashton

[Docket No. ID-1843-002]

August 16, 1989.

Take notice that on August 7, 1989, Philip T. Ashton (Applicant) tendered for filing a Notice of Change. The notice of change states that effective July 1, 1989, Applicant resigned from the following positions:

Senior Vice President & Director.	Connecticut Light and Power Company
Director	Western Massachusetts Electric Company
Director	Holyoke Water Power Company
Director	Holyoke Power and Electric Company

The notice further states that Applicant now holds no position with any of the above companies.

Comment date: August 31, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Interstate Power Company

[Docket No. ER89-524-000]

August 17, 1989.

Take notice that on August 16, 1989, Interstate Power Company (Interstate) tendered for filing an amendment to its June 27, 1989 filing in this docket.

Interstate's present fuel cost adjustment computation includes only fuel and energy related costs. The proposed change will update the fuel cost adjustment clause in accordance with FERC Order No. 352 in Docket No. RM83-62-000; allowing recovery of all expenses related to power or energy purchased over a period of twelve months or less where the total cost of the purchase is less than Interstate's total avoided variable cost and the purchase is not made to maintain reserve levels.

According to Interstate the purpose of this amendment is to revise the system reserve criteria, stated in the original filing, to include the method used to derive Interstate's daily operating reserve obligation.

Copies of the filing were served upon Interstate's jurisdictional customers and the State Commissions of Iowa, Illinois and Minnesota.

Comment date: September 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Ohio Edison Company

[Docket No. ER86-544-000]

August 17, 1989.

Take notice that on August 11, 1989, Ohio Edison Company (Ohio) tendered for its compliance refund report in this docket between Ohio and American Municipal Power-Ohio, Inc.

Comment date: September 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Company

[Docket No. ER89-472-000]

August 17, 1989.

Take notice that on July 31, 1989, Idaho Power Company (Idaho) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 78 between Idaho and Washington Water Power Company.

Comment date: August 31, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. UNITIL Power Corporation

[Docket No. ER89-607-000]

August 17, 1989.

Take notice that on August 15, 1989, UNITIL Power Corporation (UNITIL) filed with the Commission an Electric Tariff No. 3, Sale of Electric Generating Capacity and Energy, for the sale of capacity and associated energy from UNITIL's excess capacity entitlements in various generating plants.

UNITIL requests an effective date of February 29, 1988 and states that waiver of the notice requirement will not adversely affect any of the utility customers.

Comment date: September 1, 1989, in accordance with Paragraph E at the end of this notice.

11. Consolidated Edison Company

[Docket No. ER89-606-000]

August 17, 1989.

Take notice that on August 15, 1989, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to its Rate Schedules FERC Nos. 60, 66 and 78, agreements to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplements provide for an increase in the monthly transmission charge from $1.06 to $1.14 per kilowatt for transmission of power and energy sold by the Authority to Brookhaven National Laboratory, Grumman Corporation and the Long Island Municipal Distribution Agencies, thus increasing annual revenues under the Rate Schedules by a total of $42,587.38 Con Edison has requested waiver of notice requirements so that the increase can be made effective as of July 1, 1989.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: September 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER89-605-000]

August 17, 1989.

Take notice that on August 15, 1989, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate schedule FERC No. 51, an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for a decrease in the monthly transmission charge from $2.57 to $2.55 per kilowatt for transmission of power and energy sold by the Authority to the Long Island Village of Freeport, Greenport and Rockville Centre, thus decreasing annual revenues under the Rate Schedule by a total of $14,120.64 Con Edison has requested waiver of notice requirements so that the decrease can be made effective as of July 1, 1989.

Con Edison states that a copy of this filing has been served by mail upon the Authority and the Villages.

Comment date: September 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Mississippi Power & Light Company

[Docket No. ER89-604-000]

August 17, 1989.

Take notice that on August 14, 1989, Mississippi Power & Light Company (MP&L) tendered for filing a Notice of Cancellation of the following Rate Schedules:

Rate schedule	Termination date
Supplement No. 25 to MP&L Rate Schedule No. 35.	December 9, 1988.
Supplement No. 26 to MP&L Rate Schedule No. 35.	February 28, 1989.
Supplement No. 27 to MP&L Rate Schedule No. 35.	December 16, 1988.

MP&L states that copies of the filing have been mailed to the Mississippi Public Service Commission and TVA.

Comment date: September 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. N. B. Partners, Ltd.—North Branch Power Project

[Docket No. QF86-412-001]

On August 1, 1989, N. B. Partners, Ltd., c/o EASE/NMI, Inc., (Applicant), of 9171 Towne Centre Drive, Suite 400, San Diego, California 92122, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located approximately two miles southeast of the town of Bayard, in Grant County, West Virginia. The facility will consist of two fluidized bed combustion boilers, an extraction/condensing steam turbine generator and approximately 6.7 miles of 115 kV transmission line. Applicant states that the thermal output of the facility, in the form of heated water, will be sold to a non-affiliated controlled environment growing facility primarily for use in growing tomatoes and bell peppers. The net electric power production capacity of the facility will be 80 MW. Construction of the facility began in December 1988.

Comment date: September 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropirate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20039 Filed 8-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST89-4077-000 Through ST89-4358-000]

Natural Gas Pipeline Company of America et al.; Self-Implementing Transactions

August 18, 1989.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before September 8, 1989.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines—pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

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[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's Regulations.

A "K–S" indicates transporation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines—pursuant to § 284.303 of the Commission's Regulations.

Lois D. Cashell,

Secretary.

Docket Number*	Transporter/Seller	Recipient	Date Filed	Part 284 Subpart	Expiration Date**	Transportation Rate (¢/MMBtu)
ST89–4077	Natural Gas Pipeline Co. of America	Phillips 66 Natural Gas Co	07–03–89	G–S		
ST89–4078	Gulf Energy Pipeline Co	Tennessee Gas Pipeline Co	07–03–89	C		
ST89–4079	Acadian Gas Pipeline System	ANR Pipeline Co	07–03–89	C		
ST89–4080	Texas Eastern Transmission Corp	Equitable Gas Co	07–03–89	B		
ST89–4081	Texas Eastern Transmission Corp	Hope Gas, Inc	07–03–89	B		
ST89–4082	Texas Eastern Transmission Corp	Brooklyn Union Gas Co	07–03–89	B		
ST89–4083	Gulf States Pipeline Corp	Mississippi River Trans. Corp., et al	07–03–89	C		
ST89–4084	Texas Eastern Transmission Corp	Access Energy Pipeline Corp	07–03–89	B		
ST89–4085	Texas Eastern Transmission Corp	Torch Energy Marketing, Inc	07–03–89	B		
ST89–4086	Stingray Pipeline Co	Texas Eastern Transmission Corp	07–03–89	K		
ST89–4087	Tennessee Gas Pipeline Co	Florida Gas Transmission Co	07–03–89	G		
ST89–4088	Transok, Inc	Phillips Gas Pipeline Co	07–03–89	C	11–30–89	32.50
ST89–4089	Enogex Inc	Natural Gas Pipeline Co. of America	07–03–89	C	11–30–89	43.57
ST89–4090	Enogex Inc	Iowa Public Service Co	07–03–89	C	11–30–89	43.57
ST89–4091	Enogex Inc	Peoples Natural Gas Co	07–03–89	C	11–30–89	43.57
ST89–4092	Williams Natural Gas Co	Atchison Pipeline Co., L.P	07–03–89	B		
ST89–4093	Williams Natural Gas Co	Consolidated Fuel Corp	07–03–89	G–S		
ST89–4094	Williams Natural Gas Co	Farmland Industries, Inc	07–03–89	G–S		
ST89–4095	Northwest Pipeline Corp	Gasmark Inc	07–03–89	G–S		
ST89–4096	Northwest Pipeline Corp	Roseburg Forest Products Co	07–03–89	G–S		
ST89–4097	Northwest Pipeline Corp	Union Pacific Resources Co	07–03–89	G–S		
ST89–4098	El Paso Natural Gas Co	Gulf Gas Utilities Co	07–05–89	G–S		
ST89–4099	Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	07–05–89	B		
ST89–4100	Transcontinental Gas Pipe Line Corp	Transco Energy Marketing Co	07–05–89	G–S		
ST89–4101	Transcontinental Gas Pipe Line Corp	Mobil Vanderbilt-Beaumont Pipeline Co	07–06–89	B		
ST89–4102	Tennessee Gas Pipeline Co	Southeastern Natural Gas Co	07–06–89	B		
ST89–4103	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	07–06–89	B		
ST89–4104	Transcontinental Gas Pipe Line Corp	Access Energy Pipeline Corp	07–06–89	B		
ST89–4105	Arkla Energy Resources	Cornerstone Natural Gas Co	07–06–89	B		
ST89–4106	Arkla Energy Resources	Louisiana Gas Marketing Co	07–06–89	B		
ST89–4107	Arkla Energy Resources	Woodward Pipeline, Inc	07–06–89	B		
ST89–4108	East Ohio Gas Co	Greenland Petroleum Co	07–06–89	G–HT		
ST89–4109	Natural Gas Pipeline Co. of America	Delhi Gas Pipeline Corp	07–07–89	B		
ST89–4110	Natural Gas Pipeline Co. of America	Crescent Gas Corp	07–07–89	B		
ST89–4111	Sea Robin Pipeline Co	CNG Trading Co	07–07–89	B		
ST89–4112	United Gas Pipe Line Co	Pennzoil Gas Marketing Corp	07–07–89	G–S		
ST89–4113	Colorado Interstate Gas Co	Marathon Oil Co	07–07–89	G–S		
ST89–4114	Colorado Interstate Gas Co	Marathon Oil Co	07–07–89	G–S		
ST89–4115	Colorado Interstate Gas Co	Associated Intrastate Pipeline Co	07–07–89	B		
ST89–4116	Arkla Energy Resources	Louisville Gas & Electric Co	07–07–89	B		
ST89–4117	Colorado Interstate Gas Co	Helmerich & Payne, Inc	07–10–89	G–S		
ST89–4118	Colorado Interstate Gas Co	Associated Intrastate Pipeline Co	07–10–89	B		
ST89–4119	Colorado Interstate Gas Co	Associated Intrastate Pipeline Co	07–10–89	B		
ST89–4120	Colorado Interstate Gas Co	Coastal States Gas Transmission Co	07–10–89	B		
ST89–4121	Colorado Interstate Gas Co	Minnegasco, Inc	07–10–89	B		
ST89–4122	Natural Gas Pipeline Co. of America	Natural Gas Clearinghouse, Inc	07–10–89	G–S		
ST89–4123	Sabine Pipe Line Co	Seagull Louisiana Intrastate Pipeline Co	07–10–89	B		
ST89–4124	Sabine Pipe Line Co	FRM, Inc	07–10–89	B		
ST89–4125	Sabine Pipe Line Co	Union Exploration Partners, Ltd	07–10–89	G–S		
ST89–4126	Columbia Gulf Transmission Co	Pontchartrain Natural Gas System	07–10–89	B		
ST89–4127	Columbia Gulf Transmission Co	Consolidated Edison Co. of NY, Inc	07–10–89	B		
ST89–4128	ANR Pipeline Co	Texaco Gas Marketing, Inc	07–11–89	G–S		
ST89–4129	Natural Gas Pipeline Co. of America	Elf Aquitaine, Inc	07–11–89	G–S		
ST89–4130	Tennessee Gas Pipeline Co	Elf Aquitaine, Inc	07–11–89	G–S		
ST89–4131	Texas Eastern Transmission Corp	South Central Intrastate Pipe Line Co	07–11–89	B		
ST89–4132	Texas Eastern Transmission Corp	Apollo Gas Co	07–11–89	B		
ST89–4133	Texas Eastern Transmission Corp	Energy Supply Consultants	07–11–89	B		
ST89–4134	Texas Eastern Transmission Corp	Wellhead Ventures Corp	07–11–89	B		
ST89–4135	Panhandle Eastern Pipe Line Co	V.H.C. Gas System, L.P	07–11–89	G–S		
ST89–4136	Panhandle Eastern Pipe Line Co	Boyd Rosene & Associates, Inc	07–11–89	G–S		
ST89–4137	Trunkline Gas Co	Michigan Gas Utilities Co	07–11–89	B		
ST89–4138	Western Gas Supply Co	Northwest Pipeline Corp	07–12–89	C		
ST89–4139	Tennessee Gas Pipeline Co	North Alabama Gas District	07–12–89	B		
ST89–4140	Tennessee Gas Pipeline Co	Nashville Gas Co	07–12–89	B		
ST89–4141	ANR Pipeline Co	Howard Energy Co., Inc	07–12–89	G–		
ST89–4142	ANR Pipeline Co	BP Gas Transmission Co	07–12–89	B		
ST89–4143	ANR Pipeline Co	Semco Energy Services, Inc	07–12–89	G–S		
ST89–4144	ANR Pipeline Co	B & A Pipeline Co	07–12–89	B		
ST89–4145	ANR Pipeline Co	Dekalb Energy Canada, Ltd	07–12–89	G–S		
ST89–4146	ANR Pipeline Co	Battle Creek Gas Co	07–12–89	B		
ST89–4147	ANR Pipeline Co	Peoples Gas Light & Coke Co	07–12–89	B		
ST89–4148	ANR Pipeline Co	Grace Petroleum Corp	07–12–89	G–S		
ST89–4149	ANR Pipeline Co	Chevron U.S.A., Inc	07–12–89	G–S		
ST89–4150	ANR Pipeline Co	Dekalb Energy Canada, Ltd	07–12–89	G–S		
ST89–4151	ANR Pipeline Co	Mobil Vanderbilt-Beaumont Pipeline Co	07–12–89	B		
ST89–4152	Transok, Inc	Amoco Gas Co	07–12–89	C	12–09–89	32.50
ST89–4153	Tennessee Gas Pipeline Co	Entrade Corp	07–13–89	G–S		
ST89–4154	ANR Pipeline Co	Unifield Natural Gas Group	07–13–89	G–S		
ST89–4155	ANR Pipeline Co	Inland Steel Co	07–13–89	G–S		
ST89–4156	ANR Pipeline Co	Wisconsin Gas Co	07–13–89	B		
ST89–4157	ANR Pipeline Co	Texas Industrial Energy Co	07–13–89	B		
ST89–4158	ANR Pipeline Co	Michigan Consolidated Gas Co	07–13–89	B		
ST89–4159	ANR Pipeline Co	Madison Gas & Electric Co	07–13–89	B		
ST89–4160	ANR Pipeline Co	Madison Gas & Electric Co	07–13–89	B		
ST89–4161	ANR Pipeline Co	Apache Transmission Corp	07–13–89	B		
ST89–4162	ANR Pipeline Co	Panhandle Gas Co	07–13–89	B		
ST89–4163	ANR Pipeline Co	Michigan Consolidated Gas Co	07–13–89	B		
ST89–4164	ANR Pipeline Co	Coastal States Gas Transmission Co	07–13–89	B		
ST89–4165	ANR Pipeline Co	West Ohio Gas Co	07–13–89	B		
ST89–4166	ANR Pipeline Co	Indiana Gas Co	07–13–89	B		
ST89–4167	ANR Pipeline Co	NGC Intrastate Pipeline Co	07–13–89	B		
ST89–4168	ANR Pipeline Co	Consumers Power Co	07–13–89	B		
ST89–4169	ANR Pipeline Co	NGC Intrastate Pipeline Co	07–13–89	B		
ST89–4170	ANR Pipeline Co	Venture Pipeline Co	07–13–89	B		
ST89–4171	United Gas Pipe Line Co	Centran Corp	07–13–89	G–S		
ST89–4172	United Gas Pipe Line Co	PSI, Inc	07–13–89	G–S		
ST89–4173	United Gas Pipe Line Co	Phoenix Gas Pipeline Co	07–13–89	G–S		
ST89–4174	Cabot Gas Supply Corp	Northern Natural Gas Co	07–13–89	C		
ST89–4175	Sea Robin Pipeline Co	City Gas Co., et al	07–13–89	B		
ST89–4176	Tennessee Gas Pipeline Co	CNG Transmission Corp	07–13–89	G		
ST89–4177	Transwestern Pipeline Co	Cabot Energy Marketing Corp	07–13–89	G–S		
ST89–4178	Houston Pipe Line Co	Amoco Gas Co	07–13–89	C		
ST89–4179	Houston Pipe Line Co	Northern Natural Gas Co	07–13–89	C		
ST89–4180	Houston Pipe Line Co	Black Marlin Pipeline Co	07–13–89	C		
ST89–4181	Houston Pipe Line Co	Enron Industrial Natural Gas Co	07–13–89	C		
ST89–4182	Houston Pipe Line Co	Natural Gas Pipeline Co of America	07–13–89	C		
ST89–4183	Houston Pipe Line Co	Trunkline Gas Co	07–13–89	C		
ST89–4184	Houston Pipe Line Co	Enron Industrial Natural Gas Co	07–13–89	C		
ST89–4185	Northern Natural Gas Co	Tennessee Gas Pipeline Co	07–13–89	G		
ST89–4186	Oasis Pipe Line Co	Transwestern Pipeline Co	07–13–89	C		
ST89–4187	Tennessee Gas Pipeline Co	Varibus Corp	07–14–89	B		
ST89–4188	Algonquin Gas Transmission Co	Connecticut Light & Power Co	07–14–89	B		
ST89–4189	Algonquin Gas Transmission Co	Providence Gas Co	07–14–89	B		
ST89–4190	Algonquin Gas Transmission Co	Colonial Gas Company	07–14–89	B		
ST89–4191	El Paso Natural Gas Co	Access Energy Corp	07–14–89	G–S		
ST89–4192	Equitrans, Inc	Equitable Gas Co	07–17–89	B		
ST89–4193	Valero Interstate Transmission Co	Valero Transmission, L.P	07–17–89	B		
ST89–4194	Cavallo Pipeline Co	Enron Industrial Natural Gas Co	07–17–89	C		
ST89–4195	Algonquin Gas Transmission Co	Bay State Gas Co	07–17–89	B		
ST89–4196	Algonquin Gas Transmission Co	Colonial Gas Company	07–17–89	B		
ST89–4197	Columbia Gulf Transmission Co	Houston Lighting and Power Co	07–17–89	B		
ST89–4198	Columbia Gulf Transmission Co	Tejas Power Corp	07–17–89	G–S		
ST89–4199	Columbia Gulf Transmission Co	Eastex Gas Transmission Co	07–17–89	B		
ST89–4200	Columbia Gulf Transmission Co	Lafayette Gas Intrastate Co	07–17–89	B		
ST89–4201	Texas Gas Transmission Corp	Western Kentucky Gas Co	07–18–89	B		
ST89–4202	Texas Gas Transmission Corp	Transco Energy Marketing Co	07–18–89	G–S		
ST89–4203	Texas Gas Transmission Corp	American Central Gas Marketing Co	07–18–89	G–S		
ST89–4204	Texas Gas Transmission Corp	NGC Transportation, Inc	07–18–89	G–S		
ST89–4205	Questar Pipeline Co	Northwest Natural Gas Co	07–18–89	B		
ST89–4206	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc	07–18–89	B		
ST89–4207	United Gas Pipe Line Co	Conoco, Inc	07–18–89	G–S		
ST89–4208	El Paso Natural Gas Co	Union Pacific Resources Co	07–18–89	G–S		
ST89–4209	El Paso Natural Gas Co	Hadson Gas Sytems, Inc	07–18–89	G–S		
ST89–4210	El Paso Natural Gas Co	Bonneville Fuels Corp	07–18–89	G–S		
ST89–4211	United Gas Pipe Line Co	Delhi Gas Pipeline Corp	07–19–89	B		
ST89–4212	ONG Transmission Co	Northern Illinois Gas Co	07–19–89	C	12–15–89	24.32
ST89–4213	BP Gas Transmission Co	Panhandle Eastern Pipeline Co., et al	07–19–89	C	12–15–89	25.60
ST89–4214	Northwest Pipeline Corp	Kimball Energy Corp	07–19–89	G–S		
ST89–4215	Northwest Pipeline Corp	Arco Oil & Gas Co	07–19–89	G–S		
ST89–4216	Northwest Pipeline Corp	KTM, Inc	07–19–89	G–S		
ST89–4217	Northwest Pipeline Corp	Northwest Pipeline Corp	07–19–89	G–S		
ST89–4218	Transcontinental Gas Pipe Line Corp	B & A Pipeline Co	07–19–89	B		
ST89–4219	Transcontinental Gas Pipe Line Corp	Southern Industrial Gas Corp	07–19–89	B		
ST89–4220	Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	07–19–89	B		
ST89–4221	Transcontinental Gas Pipe Line Corp	Neches Gas Distribution Co	07–19–89	B		
ST89–4222	Transcontinental Gas Pipe Line Corp	Texaco Gas Marketing, Inc	07–19–89	G–S		
ST89–4223	Neches Pipeline System	Natural Gas Pipeline Co. of America	07–20–89	C		
ST89–4224	Neches Pipeline System	Spindletop Gas Distribution System	07–20–89	C		

Docket Number*	Transporter/Seller	Recipient	Date Filed	Part 284 Subpart	Expiration Date**	Transportation Rate (¢/MMBtu)
ST89-4225	BP Gas Transmission Co	ANR Pipeline Co., et al	07-20-89	C	12-17-89	13.70
ST89-4226	Paiute Pipeline Co	High Sierra Casino Hotel	07-20-89	G-S		
ST89-4227	Neches Pipeline System	Natural Gas Pipeline Co. of America	07-20-89	C		
ST89-4228	Colorado Interstate Gas Co	Coastal States Gas Transmission Co	07-20-89	B		
ST89-4229	Taft Pipeline Co	Northern Natural Gas Co	07-20-89	C	12-17-89	9.00
ST89-4230	Texas Eastern Transmission Corp	Allied Gas Co	07-20-89	B		
ST89-4231	Texas Eastern Transmission Corp	Rockland Pipeline System	07-20-89	B		
ST89-4232	Texas Eastern Transmission Corp	Crescent Gas Corp	07-20-89	B		
ST89-4233	Webb/Duval Gatherers	Tennessee Gas Pipeline Co	07-21-89	C		
ST89-4234	El Paso Natural Gas Co	Western Gas Processors, Ltd	07-21-89	G-S		
ST89-4235	Northern Natural Gas Co	Vantage Pipeline Systems, Inc	07-21-89	G-S		
ST89-4236	Northern Natural Gas Co	Adobe Gas Marketing Co	07-21-89	G-S		
ST89-4237	Northern Natural Gas Co	Centran Corp	07-21-89	C-S		
ST89-4238	Tennessee Gas Pipeline Co	Varibus Corp	07-21-89	B		
ST89-4239	Williston Basin Interstate P/L Co	MGTC, Inc	07-21-89	B		
ST89-4240	Williston Basin Interstate P/L Co	Quivira Gas Co	07-21-89	B		
ST89-4241	Williston Basin Interstate P/L Co	MGTC, Inc	07-21-89	B		
ST89-4242	Colorado Interstate Gas Co	NGC Intrastate Pipeline Co	07-21-89	B		
ST89-4243	Colorado Interstate Gas Co	Golden Gas Energies, Inc	07-21-89	B		
ST89-4244	Colorado Interstate Gas Co	Phillips Pipeline Co	07-21-89	G-S		
ST89-4245	Colorado Interstate Gas Co	Coastal Gas Marketing Co	07-21-89	G-S		
ST89-4246	Colorado Interstate Gas Co	Associated Intrastate Pipeline Co	07-21-89	B		
ST89-4247	Colorado Interstate Gas Co	NGC Intrastate Pipeline Co	07-21-89	B		
ST89-4248	Gas Co. of NM (Div. Public Serv. Co. NM)	El Paso Natural Gas Co	07-24-89	G-HT		
ST89-4249	BP Gas Transmission Co	Texas Eastern Trans., Corp., et al	07-24-89	C	12-21-89	18.66
ST89-4250	BP Gas Transmission Co	ANR Pipeline Co., et al	07-24-89	C	12-21-89	13.70
ST89-4251	Sea Robin Pipeline Co	Phillips Natural Gas Co	07-24-89	B		
ST89-4252	Western Gas Supply Co	El Paso Natural Gas Co	07-24-89	C		
ST89-4253	Western Gas Supply Co	Questar Pipeline Co	07-24-89	C		
ST89-4254	Western Gas Supply Co	Northwest Pipeline Corp	07-24-89	C		
ST89-4255	Western Gas Supply Co	El Paso Natural Gas Co	07-24-89	C		
ST89-4256	Western Gas Supply Co	Northwest Pipeline Corp	07-24-89	C		
ST89-4257	Western Gas Supply Co	Northwest Pipeline Corp	07-24-89	C		
ST89-4258	Western Gas Supply Co	El Paso Natural Gas Co	07-24-89	C		
ST89-4259	United Gas Pipe Line Co	Prior Intrastate Corp	07-24-89	B		
ST89-4260	United Gas Pipe Line Co	Conoco, Inc	07-24-89	G-S		
ST89-4261	United Gas Pipe Line Co	Exxon Corp	07-24-89	G-S		
ST89-4262	United Gas Pipe Line Co	Graham Energy Marketing Co	07-24-89	G-S		
ST89-4263	United Gas Pipe Line Co	American Central Gas Cos., Inc	07-24-89	G-S		
ST89-4264	Tennessee Gas Pipeline Co	Kerr-McGee Corp	07-24-89	G-S		
ST89-4265	Tennessee Gas Pipeline Co	Western Kentucky Gas Co	07-24-89	B		
ST89-4266	Columbia Gulf Transmission Co	Transco Energy Marketing Co	07-24-89	G-S		
ST89-4267	Columbia Gulf Transmission Co	Seagull Marketing Services, Inc	07-24-89	G-S		
ST89-4268	Columbia Gulf Transmission Co	Bridgeline Gas Distribution Co	07-24-89	B		
ST89-4269	Columbia Gulf Transmission Co	Diamond Shamrock Offshore Partners Ltd	07-25-89	G-S		
ST89-4270	Utah Gas Service Co	Northwest Pipeline Corp	07-25-89	C	12-22-89	18.00
ST89-4271	Transok, Inc	Northern Illinois Gas Co	07-26-89	C	12-23-89	32.50
ST89-4272	BP Gas Transmission Co	ANR Pipeline Co., et al	07-26-89	C	12-23-89	13.70
ST89-4273	Northern Natural Gas Co	Llano, Inc	07-26-89	B		
ST89-4274	Northern Natural Gas Co	Texas Eastern Gas Services Co	07-26-89	G-S		
ST89-4275	Tennessee Gas Pipeline Co	Olympic Pipeline Co	07-26-89	B		
ST89-4276	United Gas Pipe Line Co	Air Products & Chemicals, Inc	07-26-89	G-S		
ST89-4277	United Gas Pipe Line Co	Marathon Oil Co	07-26-89	G-S		
ST89-4278	United Gas Pipe Line Co	PSI, Inc	07-26-89	G-S		
ST89-4279	United Gas Pipe Line Co	Texaco Gas Marketing, Inc	07-26-89	G-S		
ST89-4280	United Gas Pipe Line Co	Seagull Marketing Services, Inc	07-26-89	G-S		
ST89-4281	United Gas Pipe Line Co	Midcon Marketing Corp	07-26-89	G-S		
ST89-4282	United Gas Pipe Line Co	Midcon Marketing Corp	07-26-89	G-S		
ST89-4283	Arkla Energy Resources	Polaris Pipeline Co	07-25-89	B		
ST89-4284	Arkla Energy Resources	Wisconsin Natural Gas Co	07-25-89	B		
ST89-4285	Arkla Energy Resources	AER Intrastate Pipeline	07-25-89	B		
ST89-4286	Arkla Energy Resources	Orange and Rockland Utilities, Inc	07-25-89	B		
ST89-4287	Tennessee Gas Pipeline Co	City of Grayson	07-27-89	B		
ST89-4288	Natural Gas Pipeline Co. of America	Shell Gas Trading Co	07-27-89	G-S		
ST89-4289	ANR Pipeline Co	Consumers Power Co	07-27-89	B		
ST89-4290	ANR Pipeline Co	Kaztex Energy Management, Inc	07-27-89	G-S		
ST89-4291	ANR Pipeline Co	Northern Illinois Gas Co	07-27-89	B		
ST89-4292	ANR Pipeline Co	Xebec Gas Co	07-27-89	G-S		
ST89-4293	ANR Pipeline Co	Xebec Gas Co	07-27-89	G-S		
ST89-4294	ANR Pipeline Co	Clinton Gas Marketing, Inc	07-27-89	G-S		
ST89-4295	ANR Pipeline Co	Semco Energy Services, Inc	07-27-89	G-S		
ST89-4296	ANR Pipeline Co	Coastal Gas Marketing Co	07-27-89	G-S		
ST89-4297	ANR Pipeline Co	Dekalb Energy Canada, Ltd	07-27-89	G-S		
ST89-4298	Sabine Pipe Line Co	Petrofina Gas Pipeline Co	07-28-89	B		
ST89-4299	Mid Louisiana Gas Co	Tennessee Gas Pipeline Co	07-28-89	G		
ST89-4300	Tennessee Gas Pipeline Co	Entrade Corp	07-28-89	G-S		
ST89-4301	Natural Gas Pipeline Co. of America	Illinois Power Co	07-28-89	B		
ST89-4302	Natural Gas Pipeline Co. of America	Southern California Gas Co	07-28-89	B		
ST89-4303	Natural Gas Pipeline Co. of America	Petrofina Gas Pipeline Co	07-28-89	B		
ST89-4304	Natural Gas Pipeline Co. of America	Illinois Power Co	07-28-89	B		
ST89-4305	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	07-28-89	B		
ST89-4306	Natural Gas Pipeline Co. of America	Midcon Marketing Corp	07-28-89	B		
ST89-4307	Natural Gas Pipeline Co. of America	Phibro Distributors Corp	07-28-89	G-S		
ST89-4308	Tennessee Gas Pipeline Co	Panhandle Trading Co	07-28-89	G-S		
ST89-4309	United Gas Pipe Line Co	Tenngasco Corp	07-28-89	G-S		
ST89-4310	United Gas Pipe Line Co	Texaco Gas Marketing, Inc	07-28-89	G-S		
ST89-4311	Texas Eastern Transmission Corp	Coastal States Gas Transmission Co	07-28-89	B		
ST89-4312	Texas Eastern Transmission Corp	Coastal States Gas Transmission Co	07-28-89	B		
ST89-4313	Texas Eastern Transmission Corp	Quivira Gas Co	07-28-89	B		
ST89-4314	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	07-28-89	B		
ST89-4315	Panhandle Eastern Pipe Line Co	Energy Pipeline Co	07-28-89	B		
ST89-4316	Panhandle Eastern Pipe Line Co	Access Energy Corp	07-28-89	G-S		
ST89-4317	Panhandle Eastern Pipe Line Co	Access Energy Corp	07-28-89	G-S		
ST89-4318	Panhandle Eastern Pipe Line Co	Centran Corp	07-28-89	G-S		
ST89-4319	Texas Gas Transmission Corp	Ladd Gas Marketing, Inc	07-28-89	G-S		
ST89-4320	Texas Gas Transmission Corp	Ladd Gas Marketing, Inc	07-28-89	G-S		
ST89-4321	Texas Gas Transmission Corp	Krupp and Assoc	07-28-89	G-S		
ST89-4322	Texas Gas Transmission Corp	United Cities Gas Co	07-28-89	B		
ST89-4323	Texas Gas Transmission Corp	Western Kentucky Gas Co	07-28-89	B		
ST89-4324	Panhandle Eastern Pipe Line Co	Gastrak Corp	07-31-89	G-S		
ST89-4325	Panhandle Eastern Pipe Line Co	Mountain Iron & Supply Co	07-31-89	G-S		
ST89-4326	Panhandle Eastern Pipe Line Co	Mountain Iron & Supply Co	07-31-89	G-S		
ST89-4327	Panhandle Eastern Pipe Line Co	Vesta Energy Co	07-31-89	G-S		
ST89-4328	Panhandle Eastern Pipe Line Co	Colony Pipeline Corp	07-31-89	B		
ST89-4329	Panhandle Eastern Pipe Line Co	Mountain Iron & Supply Co	07-31-89	G-S		
ST89-4330	Panhandle Eastern Pipe Line Co	Mountain Iron & Supply Co	07-31-89	G-S		
ST89-4331	Panhandle Eastern Pipe Line Co	Mountain Iron & Supply Co	07-31-89	G-S		
ST89-4332	Panhandle Eastern Pipe Line Co	Amgas, Inc	07-31-89	G-S		
ST89-4333	United Gas Pipe Line Co	Seagull Marketing Services, Inc	07-31-89	G-S		
ST89-4334	Paiute Pipeline Co	KTM, Inc	07-31-89	G-S		
ST89-4335	Texas Eastern Transmission Corp	Somerset Gas Service	07-31-89	B		
ST89-4336	Texas Eastern Transmission Corp	Somerset Gas Service	07-31-89	B		
ST89-4337	Texas Eastern Transmission Corp	Equitable Gas Co	07-31-89	B		
ST89-4338	Texas Eastern Transmission Corp	Excel Intrastate Pipeline Co	07-31-89	B		
ST89-4339	Transcontinental Gas Pipe Line Corp	Citizens Gas Supply Corp	07-31-89	B		
ST89-4340	Transcontinental Gas Pipe Line Corp	NGC Intrastate Pipeline Co	07-31-89	B		
ST89-4341	Transcontinental Gas Pipe Line Corp	Panhandle Gas Co	07-31-89	B		
ST89-4342	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	07-31-89	B		
ST89-4343	Natural Gas Pipeline Co. of America	Texarkoma Transportation Co	07-31-89	G-S		
ST89-4344	Stingray Pipeline Co	Phibro Distributors Corp	07-31-89	K-S		
ST89-4345	Stingray Pipeline Co	Amoco Production Co	07-31-89	K-S		
ST89-4346	Tennessee Gas Pipeline Co	Neches Gas Distribution Co	07-31-89	B		
ST89-4347	Columbia Gas Transmission Corp	Columbia Gas of Ohio, Inc	07-31-89	B		
ST89-4348	Trunkline Gas Co	United Cities Gas Co	07-31-89	B		
ST89-4349	Trunkline Gas Co	Missouri Public Service Co	07-31-89	B		
ST89-4350	Trunkline Gas Co	BP Gas Transmission Co	07-31-89	B		
ST89-4351	Trunkline Gas Co	Mobil Natural Gas, Inc	07-31-89	G-S		
ST89-4352	Trunkline Gas Co	American Central Gas Marketing Co	07-31-89	G-S		
ST89-4353	Trunkline Gas Co	Access Energy Corp	07-31-89	B		
ST89-4354	Trunkline Gas Co	Hadson Gas Systems, Inc	07-31-89	G-S		
ST89-4355	South Georgia Natural Gas Co	Sonat Marketing Co	07-31-89	B		
ST89-4356	Southern Natural Gas Co	Kerr-McGee Corp	07-31-89	G-S		
ST89-4357	Southern Natural Gas Co	Kerr-McGee Corp	07-31-89	G-S		
ST89-4358	Southern Natural Gas Co	Kerr-McGee Corp	07-31-89	G-S		

* Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (Final rule and notice requesting supplemental comments, 50 FR 42,372, 10/18/85).

** The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 89-20036 Filed 8-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9697-001; Maryland]

Savage Hydro Associates; Surrender of Preliminary Permit

August 18, 1989.

Take notice that Savage Hydro Associates, permittee for the Savage River Dam Project, located on the Savage River in Garrett County, Maryland, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 14, 1988, and would have expired on October 31, 1991. Following issuance of the preliminary permit, the permittee has pursued first round consultations with government agencies and concerned recreational interests, and explored power sales options and project financing alternatives. The permittee has determined that the construction and operation of this project is not feasible at this time.

The permittee filed the request on July 14, 1989, and the preliminary permit for Project No. 9697 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20035 Filed 8-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2368–001 Maine]

Maine Public Service Co.; Establishment of Procedures for Relicensing and a Deadline for Submission of Final Amendments

August 18, 1989.

The license for the Squa Pan Hydro Project No. 2368 located on the Squa Pan Stream in Aroostook County, Maine expires on December 31, 1990. The statutory deadline for filing applications for new license was December 31, 1988. An application for new license has been filed as follows:

Project No.	Applicant	Contact
2368–001	Maine Public Service Company, 209 State Street, P.O. Box 1209, Presque Isle, ME 04769.	Mr. Frederick C. Bustard, MPSC, (207) 768–5811 Ext. 122

Pursuant to section 15(c)(1) of the Federal Power Act, the deadline for the applicant to file final amendments, if any, to its application is October 1, 1989.

The following is the schedule and procedures that will be followed in processing the application.

Date	Action
July 31, 1989	The Commission notified the applicant that its application had been accepted.
August 8, 1989	The Commission issued public notice of application that had been accepted describing project and established October 12, 1989, as the date for filing motions to intervene, comments, protests, and agency recommendations.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Ed Lee at (202) 376–5786.

Lois D. Cashell,
Secretary.

[FR Doc. 89–20034 Filed 8–24–89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RP88–94–000]

Natural Gas Pipeline Company of America; Technical Conference

August 18, 1989.

Pursuant to the Commission's order, which issued on August 15, 1989, a technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Thursday, September 21, 1989 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,
Secretary.

[FR Doc. 89–20036 Filed 8–24–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89–120–000]

Questar Pipeline Co.; Technical Conference

August 18, 1989.

Pursuant to the Commission's order, which issued on June 28, 1989, a technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Thursday, September 14, 1989 at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,
Secretary.

[FR Doc. 89–20037 Filed 8–24–89; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. RP88–227–018]

Paiute Pipeline Co.; Compliance Filing

August 18, 1989.

Take notice that on August 14, 1989, Paiute Pipeline Company (Paiute), in compliance with the order issued by the Federal Energy Regulatory Commission on June 7, 1989, in Docket Nos. RP88–227–014 and –015, submitted Fourth Revised Sheet No. 99 to be a part of its FERC Gas Tariff, Original Volume No. 1.

Paiute states the purpose of this filing is to comply with the Commission's order to conform its Index of Purchasers to reflect service levels that are consistent with the D–2 nominations of Paiute's customers.

Paiute requests an effective date of February 1, 1989 for its proposed tariff sheet since said tariff sheet was submitted in response to the Commission's directive that Paiute revise Third Revised Sheet No 99, which the Commission accepted effective February 1, 1989, subject to modification.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before August 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89–20030 Filed 8–24–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89–8–002]

Pacific Interstate Transmission Co.; Filing

August 18, 1989.

Take notice that on August 11, 1989, Pacific Interstate Transmission Company (PITCO) filed Second Revised Sheet No. 7 and Fourth Revised Sheet No. 9 to its FERC Gas Tariff, Original Volume No. 1, to be effective August 1, 1989.

PITCO states these tariff sheets were originally submitted in its Offer of Settlement, and the Commission, on August 1, 1989, found the Offer of Settlement to be a reasonable resolution of the issues and in the public interest. PITCO states that it is now submitting these tariff sheets for final acceptance to be incorporated into its FERC Gas Tariff.

PITCO states that a copy of this filing has been served to the parties on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before August 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89–20031 Filed 8–24–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90–1–40–000]

Raton Gas Transmission Co.; Filing of Annual Purchased Gas Adjustment

August 18, 1989.

Raton Gas Transmission Company (Raton) on August 11, 1989, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to implement its annual purchased gas adjustment under the provisions of Order Nos. 483 and 483A. The proposed tariff sheets are to be effective October 1, 1989.

Raton states that the revised tariff sheets reflects a demand rate decrease of 28 cents and an increase in commodity rate of 22.4 cents to track rate changes filed by Colorado Interstate Gas Compnay (CIG) to be effective on October 1, 1989. CIG is the sole gas supplier to Raton.

Raton states that the filing also reflects an increase in surcharge rate from 1.09 cents to 2.92 cents for the twelve months period beginning October 1, 1989 due to increase in Account 191. Unrecovered Purchased Gas Costs as of May 31, 1989.

Raton also states that copies of this filing have been served on Raton's two customers and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC, 29426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.11 (1989)). All such motions or protests shuld be filed on or before September 6, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89–20032 Filed 8–24–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89–147–005]

United Gas Pipe Line Co.; Filing

August 18, 1989.

Take notice that on August 11, 1989, United Gas Pipe Line Company (United) filed Third Substitute Original Sheet Nos. 4–M, 4–O, 4–Q and Second Substitute Original Sheet No. 4–Q1 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective May 1, 1989.

United states that this filing corrects several clerical errors found in its July 31, 1989 filing.

United states it is serving this filing upon all parties listed on the official service list for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before August 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89–20033 Filed 8–24–89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of July 14 Through July 21, 1989

During the Week of July 14 through July 21, 1989, the applications listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 16, 1989.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 14 through July 21, 1989]

Date	Name and location of applicant	Case No.
7/14/89	Walsh' Gulf	RF300–10648
7/14/89	Wingate Management Corporation.	RF272–75560
7/14/89	United Technologies	RF307–10010
7/14/89	Holtzman Petroleum Company.	RFRF307–10011
7/14/89	Mobil Oil Corporation	RF307–10012
7/14/89	Enron Corporation	RF307–10013
7/14/89	A–1 Exxon Service Station.	RF307–10014
7/14/89	Cliff's Exxon	RF307–10015
7/14/89	Sanders Associates	RF307–10016
7/14/89	Dryden Oil Company	RF307–10017
7/14/89	Central Gulf Lines, Inc	RF307–10018
7/14/89	Odessa L.P.G. Transport, Inc.	RF307–10019
7/14/89	Autex Fibers, Inc	RF307–10020
7/14/89	The Hertz Corporation	RF307–10021
7/14/89	Thibodeau's Gulf	RF300–10649
7/14/89	Red's Gulf	RF300–10650
7/14/89	Longie's Gulf Service	RF300–10651
7/14/89	Slew's Gulf	RF300–10652
7/14/89	Country Gulf	RF300–10653
7/17/89	Ford Wholesale Company, Inc.	RF272–75561
7/17/89	Red River Parish Sheriff's.	RF272–75562
7/17/89	Gulf States Asphalt Company.	RF307–10022
7/17/89	ANR Freight Systems, Inc..	RF307–10023
7/17/89	Memphis City Schools	RF307–10024
7/17/89	Redland's Exxon	RF307–10025
7/17/89	The Flintkote Company.	RF307–10026
7/17/89	Hernamdze Exxon	RF307–10027
7/17/89	Silva's Exxon	RF307–10028
7/17/89	McLaughlin's Exxon	RF307–10029
7/17/89	William R. Bonnett	RF307–10030
7/17/89	McLaughlins Exxon	RF307–10031
7/17/89	J&O Trucking, Inc	RF313–203
7/17/89	Crown Gas	RF319–204
7/17/89	Dewey Clark	RC272–57
7/17/89	Dewey Clark	RF272–75563
7/17/89	Gray's Creek Superette.	RF307–10032
7/18/89	Johnson's Esso	RF307–10033
7/19/89	Farmers Cooperative Oil & Svs.	RF272–75564
7/19/89	Farmers Cooperative Oil & Svs.	RA–272–57
7/20/89	Dewey Clark	RA–272–10
7/20/89	Clark Oil Company	RF309–1369
7/20/89	The Firestone Tire & Rubber.	RF307–10034
7/20/89	A. T. Williams Oil Company.	RF313–205
7/20/89	Petroleum Wholesale, Inc.	RF313–206

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of July 14 through July 21, 1989]

Date	Name and location of applicant	Case No.
7/14/89 thru 7/21/89	Atlantic Richfield Refund. Applications Received	RF304-9055 thru RF304-9972
7/14/89 thru 7/21/89	Shell Oil Refunds Applications Received	RF315-6545 thru RF315-6577

[FR Doc. 89-20125 Filed 8-24-89; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of July 21 Through July 28, 1989

During the week of July 21 through July 28, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 16, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 21 Through July 28, 1989]

Date	Name and location of applicant	Case No.	Type of submission
July 21, 1989	Don Devereux, Phoenix, AZ	KFA-0307	Appeal of an information request denial. If granted: Don Devereux would receive access to information requested.
July 27, 1989	Boulder Scientific Company, Washington, DC	KFA-0308	Appeal of an information request denial. If granted: The June 12, 1989, Freedom of Information Request Denial issued by the Savannah River Operations Office would be rescinded and the Boulder Scientific Company would receive access to certain DOE documents.

REFUND APPLICATIONS RECEIVED

[Week of July 21 to July 28, 1989]

Date received	Name if refund applicant	Case No.
12/31/87	Pr. William Co. Dept. of Gen. Svs.	RF272-75571
7/12/89	F&M Canterbury, Inc	RF300-10854
7/19/89	Farmers Cooperative Oil & Ser.	RF272-57
7/20/89	Dewey Clark	RA272-10
7/20/89	Clark Oil Company	RF309-1369
7/20/89	The Firestone Tire & Rubber.	RF307-10034
7/20/89	A. T. Williams Oil Company.	RF313-205
7/20/89	Petroleum Wholesale, Inc.	RF313-206
7/21/89	Joe Simmons Trucking	RF272-75565
7/21/89	Ashtabula County Commissioners.	RF272-75566
7/21/89	Rockingham Cooperative Farm.	RF272-75567
7/24/89	Moore's Crown	RF313-208
7/24/89	Minit Mart	RF313-209
7/24/89	Hyman Litsky	RF272-58
7/24/89	William F. Allen	RF307-10035
7/24/89	Leonard J. Clanton	RF307-10036
7/24/89	Nat'l Steel Corp.—Midwest.	RF272-75568
7/24/89	Warren & Miller, Inc.	RF272-75569
7/24/89	Pat O'Keefe Texaco	RF272-75570
7/24/89	Adamidis Service Station.	RF300-10855
7/26/89	Annandale Crown	RF313-210
7/26/89	Burch's Crown P-31	RF313-211
7/25/89	Oaks Esso S/C	RF307-10037
7/26/89	Gilbert's Exxon Servicenter.	RF307-10038
7/26/89	State Escrow Distribution.	RF302-7

REFUND APPLICATIONS RECEIVED—Continued

[Week of July 21 to July 28, 1989]

Date received	Name if refund applicant	Case No.
7/27/89	Abray Service Station, Inc.	RF307-10039
7/27/89	Shelly-Scott SVC Station Inc.	RF307-10040
7/27/89	Enron Corporation	RF300-10856
7/27/89	J. R. Mabbett & Son, Inc.	RF313-212
7/27/89	Tauler's Crown	RF313-213
7/27/89	James Morse	RC272-59
7/27/89	A. S. Casky Communications.	RC272-60
7/31/89	Jacksonville Electric Auth.	RC272-61
7/28/89	SVC Station Management Corp.	RF313-214
7/26/89	Philip H. Bailey Jr.	RF313-215
7/28/89	Carroll Independent Fuel.	RF313-216
7/28/89	Caddo Parish Commission.	RF272-75572
7/28/89	Abbey of Gethsemani, Inc.	RF272-75573
7/21/89 thru 7/26/89	Atlantic Richfield Refunds. Applications Received	RF304-9973 thru RF304-10080
7/21/89 thru 7/28/89	Shell Oil Refunds Applications Received	RF315-6571 thru RF315-6660

[FR Doc. 89-20126 Filed 8-24-89; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of July 7 Through July 14, 1989

During the Week of July 7 through July 14, 1989, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regualtions, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 15, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 7 through July 14, 1989]

Date	Name and location of applicant	Case No.	Type of submission
July 13, 1989	William R. Bowling, II, Rolla, Montana	KFA-0305	Freedom of information appeal. If granted: William R. Bowling, II would receive access to certain DOE documents.
July 14, 1989	Lynn K. Zusman & Associates, Washington, D.C.	KFA-0306	Appeal of an informaiton request denial. If granted: Lynne K. Zusman & Associates would receive access to documents in order to correct Seymour Kleiman's personnel records.
July 12, 1989	341 Tract Unit of Citronelle Field,	KEZ-0089	Supplemental order. If granted: The office of Hearings and Appeals would issue an Order (i) approving the settlement agreement concerning the exception relief granted to the 341 Tract of Citronelle Field and (ii) dismissing related OHA proceedings, Case Nos. HER-0050, HER-0108. Comments or requests for oral argument may be filed.
July 13, 1989	Gasoline Marketers of America, Washington, D.C.	KEF-0138	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with September 30, 1988 Remedial Order issued to Gasoline Marketers of America.

REFUND APPLICATIONS RECEIVED

[Week of July 7 to July 14, 1989]

Date received	Name of refund applicant	Case No.
7/7/89 thru 7/14/89	Atlantic Richfield Refund. Applications received	RF304-8655 thru RF304-8994
7/7/89 thru 7/14/89	Shell Oil Refund Applications received	RF315-6485 thru RF315-6544
7/10/89	Guignard Freight Lines, Inc.	RF272-75554
7/10/89	National Steel Corp./GRT Lakes.	RF272-75555
7/10/89	Ed's Eastside Exxon	RF307-10001
7/10/89	Forest Lane Exxon	RF307-10002
7/10/89	The Henley-Lundgren Company.	RF307-10003
7/10/89	Livingston Supreme, Inc.	RF313-195
7/10/89	Enterprise Products	RF313-197
7/11/89	Georgia Kraft Co.	RC272-53
7/11/89	Kimberly Clark Corp.	RC272-54
7/11/89	W.L.F., Inc.	RF313-196
7/11/89	Norman E. Schwartz	RF272-75556
7/12/89	Paul S. Stevens	RA272-9
7/12/89	Conway Asphalt Company.	RF272-75558
7/12/89	Conway Asphalt Company.	RC272-55
7/12/89	Tross Farming Company.	RC272-56
7/12/89	Paul S. Stevens	RA272-9
7/12/89	Jones Oil Inc.	RF313-198
7/12/89	Roberts Oil Co.	RF313-199
7/12/89	Doris Foster	RF307-10004
7/12/89	Faustino O. Sanchez	RF307-10005
7/12/89	Lincoln Exxon Servicenter.	RF307-10006
7/12/89	Tony's Exxon	RF307-10007
7/12/89	Public Service Electric & Gas.	RF307-10008
7/12/89	Solar Gas, Inc.	RF272-75559
7/12/89	Lawton's Texaco	RF272-75557
7/13/89	Jet-Pep Oil Co.	RF313-200
7/13/89	M & G Gas Company	RF307-10009
7/13/89	Bill's APCO Service Station.	RF310-343
7/14/89	Metro Oil Company	RF313-201
7/14/89	Cougar Oil, Inc.	RF313-203

[FR Doc. 89-20127 Filed 8-24-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3635-6]

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.)*, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Notification of Substantial Risk under TSCA section 8(e) (EPA ICR # 0794.03, OMB Control # 2070-0046). This submission requests an extension of the expiration date for a currently approved collection.

Abstract: Under section 8(e) of TSCA, chemical manufacturers, importers, processors, and distributors must immediately inform EPA when they obtain information which indicates that their product(s) may present a substantial risk of injury to health or the environment. EPA and other federal agencies use this information to determine and control chemical risks.

Burden Statement: The public reporting burden for this collection of information is estimated to average 21 hours per response for initial submissions and 4 hours per response for follow-up submissions. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Chemical manufacturers, importers, processors, and distributors.

Estimated No. of Respondents: 250.

Estimated Total Annual Burden on Respondents: 2020 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460,

and,

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

Dated: August 17, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-20108 Filed 8-24-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3635-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 7, 1989 through August 11, 1989 pursuant to the Environmental Review Process (ERP), under section 309

BEST COPY AVAILABLE

of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-COE-K32045-HI, Rating LO, Kahului Harbor Light Draft Navigation Improvement, Implementation, Island of Maui, Hawaiian Archipelago, HI.

Summary: EPA expressed a lack of objections with the proposed project, but requested that certain conditions be included in the Section 404/10 permit application to protect marine resource, and that the Army Corps coordinate with the Hawaii Health Department on the protection of water quality and beneficial uses.

Final EISs

ERP No. F-BLM-K65118-AZ, San Pedro River Riparian Resource Management Plan, Implementation, San Simon Resource Area, Safford District, Cochise County, AZ.

Summary: Review of the final EIS was not deemed necessary.

ERP No. F-FHW-D40229-MD, MD-228 Extension, US 301 to MD-210 and MD-210 Improvement, MD-228 Extended to Old Fort Road, Funding, Charles and Prince Georges Counties, MD.

Summary: EPA believes that most of the environmental concerns have been addressed in this document.

ERP No. FS-USA-K21000-00, Johnston Atoll Chemical Agent Disposal System (JACADS), Implementation, Updated Information, Johnston Island, TT.

Summary: EPA requested that the Record of Decision contain a commitment that JACADS liquid waste/waste brine will be dried to salts and disposed as solid waste in an approved landfill rather than disposed of in the ocean, in order to comply with the Ocean Dumping Ban Act of 1988.

Dated: August 22, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-20102 Filed 8-24-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3635-5]

Science Advisory Board; Relative Risk Reduction Strategies Subcommittee; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Environmental Protection Agency's Science Advisory Board (SAB) has formed a Relative Risk Reduction Strategies Subcommittee (RRRSS). This Subcommittee, along with various EPA sponsored workgroups, will meet during the coming months to provide technical advice to the EPA Administrator on strategic options that will assist EPA in assessing possible Agency actions to reduce relative risk. The RRRSS will hold its first meeting on October 25, 1989, from 8:30 a.m. to 12:30 p.m. in the Education Center Auditorium, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Future meetings of the Subcommittee and the Workgroups will be announced in subsequent **Federal Register** Notices.

BACKGROUND: In its 1988 report on research strategies for the 1990's, "Future Risk", the SAB recommended that the concept of risk reduction be used more broadly in EPA. As a follow-up to that report, the EPA Administrator requested that the SAB develop risk reduction strategic options that will assist him in assessing possible Agency activities. As part of this process, the RRRSS will review an Agency report prepared two years ago by senior EPA Staff entitled "Unfinished Business: A comparative Assessment of Environmental Problems."

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public. Any member of the public wishing further information or an agenda concerning the meeting, the role of the RRRSS, its Charge, and its membership, should contact Dr. Donald Barnes, Director, or Mrs. Joanna Foelmer, Secretary to the Director, Science Advisory Board (A-101F), U.S. EPA, 401 M Street, SW., Washington, DC 20460, (202) 382-4126, (FTS) 382-4126. Seating at the meeting will be on a first come basis.

Dated: August 16, 1989.

A. Robert Flaak,

Acting Deputy Director, Science Advisory Board.

[FR Doc. 89-20109 Filed 8-24-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00281; FRL-3636-3]

FIFRA Scientific Advisory Panel/Science Advisory Board; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting held jointly by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) and the Science Advisory Board (SAB) to review a set of scientific issues being considered by the Agency in connection with a draft report of Cholinesterase Inhibition as an Indication of Adverse Toxicological Effect.

DATE: Wednesday, September 27, 1989, from 8:30 a.m. to 5 p.m.

ADDRESS: The meeting will be held at: Holiday Inn/National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202, (703) 920-0772.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert B. Jaeger, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (H7509C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 816G, CM#2, Arlington, VA, (703) 557-4369.

And/or

Samuel R. Rondberg, Science Advisory Board (A101F), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2552.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following topics:

Review a set of scientific issues in connection with a draft report prepared by the Risk Assessment Forum entitled, "Cholinesterase Inhibition as an Indication of Adverse Toxicological Effect." Clinical determination of cholinesterase enzyme changes in animal studies, and less frequently in human monitoring, are continually used to evaluate exposure to, and the degree of, absorption of cholinesterase inhibiting compounds. The degree of change and the specific cholinesterase enzyme involved may connote adverse effects on biological systems.

The SAP/SAB Joint Panel will review the scientific issues identified and provide comment which will assist the Agency in interpreting cholinesterase enzyme data derived from laboratory animal studies and human monitoring data. These comments will form the scientific basis toward developing a uniform Agency approach to regulating cholinesterase inhibiting compounds, such as carbamates and organophosphates.

Copies of documents relating to these items may be obtained by containing:

By mail: Information Services Branch, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 244 Bay, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2805.

Any member of the public wishing to submit written comments should contact Robert B. Jaeger or Samuel R. Rondberg at the address or telephone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons should file such statements before the meeting. To the extent that time permits and upon advance notice to the officials named above, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel should be limited due to time constraints. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Room 240 Bay at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral and/or written statements should notify the officials named above and submit ten copies of a summary no later than September 12, 1989, in order to ensure appropriate consideration by the Panel.

Dated: August 22, 1989.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-20204 Filed 8-24-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00280; FRL-3636-4]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with proposed guidelines for Neurotoxicity Testing and Mutagenicity Testing under FIFRA; to review a set of scientific issues being considered by the Agency in connection with the peer review of DDVP as a Class C oncogen; to review a set of scientific issues being considered by the Agency in connection with the peer review of Acetochlor as a Class B oncogen; and to review a set of scientific issues being considered by the Agency in connection with the peer review of Simazine as a Class C oncogen.

DATE: Thursday, September 28, 1989, from 8:30 a.m. to 5 p.m., and on Friday, September 29, 1989, from 8:30 a.m. to 11 a.m.

ADDRESS: The meeting will be held at: Holiday Inn/National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202, (703) 920-0772.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert B. Jaeger, Executive Secretary, FIFRA Scientific Advisory Panel (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 816G, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-4369/2244.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following topics:

1. Review a set of scientific issues in connection with proposed guidelines for Neurotoxicity Testing under FIFRA, and to request the comments of the FIFRA Scientific Advisory Panel (SAP) on the technical merits of these methods and the desirability of combining certain related guidelines to achieve efficiency.

2. Review a set of scientific issues in connection with the Agency's classification of DDVP as a Class C oncogen based on the biological significance of forestomach tumors in B6C3F1 mice following exposure to DDVP.

3. Review a set of scientific issues in connection with the Agency's classification of Acetochlor as a Class B2 oncogen and request comments of the FIFRA SAP on the assessment of the weight of evidence, according to the Agency's guidelines for Carcinogen Risk Assessment.

4. Review a set of scientific issues in connection with the Agency's classification of Simazine as a Class C oncogen based on increased incidence of malignant mammary and pituitary tumors in female Sprague-Dawley mice.

5. Review a set of scientific issues in connection with proposed guidelines for Mutagenicity Testing under FIFRA to reflect the current science of mutagenicity testing and to incorporate a uniform testing approach with other Agency offices.

Copies of documents related to items 1-5 may be obtained by contacting:

By mail: Information Services Branch, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 244 Bay, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2805.

Any member of the public wishing to submit written comments should contact Robert B. Jaeger at the address or the phone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to about 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Room 244 Bay at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit ten copies of a summary no later than September 12, 1989, in order to ensure appropriate consideration by the Panel.

Dated: August 22, 1989.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-20190 Filed 8-24-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3635-7]

Environmental Impact Statements; Availability

Responsibility Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environment Impact Statements filed August 14, 1989 through August 18, 1989, pursuant to 40 CFR 1506.9.

EIS No. 890228, Final, COE, OH, Swan Creek Local Flood Protection Project, Implementation, Heatherdale-Lemond Drive Area, Lucus County, OH, Due: September 25, 1989, Contact: William Bulter (716) 876-5454.

EIS No. 890229, Draft, FHW, CO., CO-82 Improvement, East of Basalt to 7th and Main Streets in Aspen, Funding and Section 404 Permit, Pitkin County, CO, Due: October 10, 1989, Contact: Leon Witman (303) 969-6730.

EIS No. 890230, Draft, AFS, NV, South Twin Lodge Mining and Development Proposal, Approval of Plan of Operations, Arc Dome Recommended Wilderness Area, Toiyabe Mountains, Toiyabe National Forest, Nye County, NV, Due: October 23, 1989, Contact: Maureen Joplin (702) 331-6444.

EIS No. 890231, Final, SCS, NY, Virgil Creek Watershed Flood Prevention Plan, Funding and Implementation, Town of Dryden, Town of Harford and Village of Dryden, Tomkins and Cortland Counties, NY, Due: September 25, 1989, Contact: Charles Terrell (202) 447-4925.

EIS No. 890232, Final, UMT, CA, Muni Metro System Turnaround Project, Facilities Construction, Embarcadero, Clay Street to Brannon, Funding, City and County of San Francisco, CA, Due: September 25, 1989, Contact: Carmen Clark (415) 974-7317.

EIS No. 890233, Draft, BOP, IL, Pekin Federal Correctional Institution, Construction and Operation, Tazewell County, IL, Due: October 10, 1989, Contact: William J. Patrick (202) 272-6871.

EIS No. 890234, Draft, COE, NC, Core Creek Bridge Replacement, Atlantic Intercoastal Waterway Bridge, Implementation, Carteret County, NC, Due: October 10, 1989, Contact: Coleman Long (919) 251-4751.

EIS No. 890235, Final, FHW, MD, MD-100 Extension, US 29 to I-95, Funding and 404 Permit, Howard County, MD, Due: September 25, 1989, Contact: Herman Rodrigo (301) 962-4010.

EIS No. 890236, Final, FAA, CO, New Denver Airport Development, Construction and Operation Plan for Replacement of the Stapleton International Airport, Approval and Funding, Denver County, CO, Due: September 25, 1989, Contact: Dennis G. Ossenkop (206) 431-2646.

EIS No. 890237, DSuppl, MMS, SEV, Mid 1987—Mid 1992 Outer Continental Shelf (OCS) Oil and Gas Lease Sales, 5 Year Program, Cumulative Impacts of OCS Development on Migratory Species, Lease Offerings, Offshore the Alaska and Pacific Regions, AK, WA, CA and OR, Due: October 17, 1989, Contact: Debra Purvis (703) 787-1674.

EIS No. 890238, Final, AFS, OR, Tepee Butte Fire Recovery Project, Implementation, August thru September 1988 Tepee Butte Fire Damage Recovery Land Management Plan, Hells Canyon National Recreation Area, Wallowa-Whitman National Forest, Wallowa County, OR, Due: September 25, 1989, Contact: Steven Howes (503) 523-9401.

EIS No. 890239, Final, FHW, AK, Glenn Highway Improvement, Village of Eklutna to Parks Highway, Funding and Section 404/10 Permit, Muncipality of Anchorage, Matanuska-Susitna Borough, AK, Due: September 25, 1989, Contact: Tom Neunaber (907) 586-7428.

Amended Notices

EIS No. 890219, Draft, CGD, FL, Miracle Parkway Everest Parkway Improvement and Midpoint Bridge Construction, Over the Caloosahatchee River, U.S. Coast Guard Approval and Permit, Cape Coral to Fort Myers, Lee County, FL, Due: September 25, 1989, Contact: Brodie Rich (305) 536-4103. Published FR 08-11-89—Notice was published with incorrect agency.

Dated: August 22, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-20103 Filed 8-24-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

[Notice 1989-14]

Filing Dates for Texas Special Runoff Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Texas special runoff election.

SUMMARY: Texas has scheduled a special runoff election on September 12, 1989, in the 12th Congressional District to fill the seat that was held by Representative Jim Wright.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E St., NW., Washington, DC 20463, Telephone: (202) 376-3120; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: Principal campaign committees of candidates who participate in the Texas Special Runoff Election must file reports according to the schedule in the following chart. Party committees and PACs that make contributions or expenditures in connection with the Special Runoff Election during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not file Special Pre- and Post-Election reports.

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL RUNOFF ELECTION

Report	Period covered [1]	Reg./Cert. mailing date [2]	Filing date
Pre-election	07/24/89-08/23/89	08/28/89	08/31/89
Post-election	08/24/89-10/02/89	10/12/89	10/12/89
Year-end	10/03/89-12/31/89	01/31/90	01/31/90

[1] The period begins with the close of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

Dated: August 21, 1989.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89-20066 Filed 8-24-89; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Lloyd/Netumar Association Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-009938-008.

Title: Lloyd/Netumar Association Agreement.

Parties: Compania de Navegacao Lloyd Brasileiro, Companhia de Navegacao Maritima Netumar.

Synopsis: The proposed modification would permit the parties to charter space from one another.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: August 21, 1989.

[FR Doc. 89-20028 Filed 8-24-89; 8:45am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Draper Holding Co.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 15, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Draper Holding Company*, Draper, South Dakota; to acquire Dave Moore Insurance Company, Vivian, South Dakota, and thereby engage in insurance activities in a town with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities would be conducted in Vivian, South Dakota, and immediate environs.

Board of Governors of the Federal Reserve System, August 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-20051 Filed 8-24-89; 8:45 am]

BILLING CODE 6210-01-M

FirstBank Holding Company Employee Stock Ownership Plan; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notice are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 8, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FirstBank Holding Company Employee Stock Ownership Plan,*

Lakewood, Colorado; to acquire an

Board of Governors of the Federal Reserve

OMB Desk Officer: Shannah Koss-

Time: Each workshop will begin on

Family Support Administration

Lakewood, Colorado; to acquire an additional 3.9 percent of the voting shares of FirstBank Holding Company of Colorado, Lakewood, Colorado, for a total of 24.9 percent, and thereby indirectly acquire FirstBank of Westland, National Association, Lakewood, Colorado; FirstBank of Vail, Vail, Colorado; FirstBank of Wheat Ridge, National Association, Wheat Ridge, Colorado; FirstBank of Minturn, Minturn, Colorado; FirstBank of North Longmont, National Association, Longmont, Colorado; FirstBank of Boulder, National Association, Boulder, Colorado; FirstBank of Castle Rock, National Association, Castle Rock, Colorado; FirstBank of Academy Park, Lakewood, Colorado; FirstBank of South Longmont, National Association, Longmont, Colorado; FirstBank of West Arvada, National Association, Arvada, Colorado; FirstBank of Colorado, National Association, Littleton, Colorado; FirstBank of Villa Italia, National Association, Lakewood, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of Tech Center, National Association, Englewood, Colorado; FirstBank of Aurora, National Association, Aurora, Colorado; FirstBank of Denver, National Association, Denver, Colorado; FirstBank of Lakewood, National Association, Lakewood, Colorado; FirstBank of Silverthorne, National Association, Silverthorne, Colorado; FirstBank of Arapahoe County, National Association, Littleton, Colorado; FirstBank at Arapahoe/Yosemite, Englewood, Colorado; FirstBank at Wadsworth/Coal Mine, National Association, Littleton, Colorado; Breckenridge FirstBank, National Association, Breckenridge, Colorado; FirstBank at 88th/Wadsworth, National Association, Westminster, Colorado; FirstBank of Cherry Creek, National Association, Denver, Colorado; FirstBank of Republic Plaza, National Association, Denver, Colorado; FirstBank of West Vail, Vail, Colorado; FirstBank at Arapahoe/Holly, National Association, Littleton, Colorado; FirstBank of Green Mountain, National Association, Lakewood, Colorado; FirstBank at Buckley/Quincy, National Association, Aurora, Colorado; FirstBank at Chambers/Mississippi, National Association, Aurora, Colorado; FirstBank at 9th/Corona, National Association, Denver, Colorado; FirstBank of Edgewater, National Association, Edgewater, Colorado; FirstBank of Erie, Erie, Colorado; FirstBank of Littleton, Littleton, Colorado.

Board of Governors of the Federal Reserve System, August 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-20053 Filed 8-24-89; 8:45 am]

BILLING CODE 6210-01-M

Green Top, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 11, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Green Top, Inc.,* Central City, Nebraska, and its subsidiaries, Shelby Insurance, Inc., Central City, Nebraska, and Clarke, Inc., Central City, Nebraska; to acquire Midlands Bancorp, Inc., Papillion, Nebraska, and thereby indirectly acquire Bank of the Midlands, Papillion, Nebraska.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ford Bank Group, Inc.,* Lubbock, Texas; to acquire 100 percent of the voting shares of First Borger Bancshares, Inc., Borger, Texas, and thereby indirectly acquire First National Bank of Borger, Borger, Texas.

2. *Ford Bank Group, Inc.,* Lubbock, Texas; to acquire 100 percent of the voting shares of First Canyon Bancorporation, Inc., Canyon, Texas, and First Canyon Bancshares, Inc., Canyon, Texas, and thereby indirectly acquire The First National Bank in Canyon, Canyon, Texas.

3. *Ford Bank Group, Inc.,* Lubbock, Texas; to acquire 100 percent of the voting shares of Permian Financial Corporation, Crane, Texas, and thereby indirectly acquire First State Bank, Crane, Texas.

4. *New Borger Bancorporation,* Lubbock, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Borger Bancshares, Inc., Borger, Texas, and thereby indirectly acquire First National Bank of Borger, Borger, Texas.

5. *New Canyon Bancorporation, Inc.,* Lubbock, Texas; to acquire 100 percent of the voting shares of First Canyon Bancorporation, Inc., Canyon, Texas, and First Canyon Bancshares, Inc., Canyon, Texas, and thereby indirectly acquire The First National Bank in Canyon, Canyon, Texas.

Board of Governors of the Federal Reserve System, August 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-20052 Filed 8-24-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those information collections recently submitted to OMB.

1. Social Security Client Satisfaction Survey—0990-0171—revision—This survey of Social Security beneficiaries will obtain information on client satisfaction with Social Security services in order to determine the effects of staff reductions and improvement initiatives on clients. The information will be used to identify areas where improvements in service delivery are necessary. Respondents: Individuals; Annual Number of Respondents: 640; Frequency of Response: one time; Average Burden per Response: 22 minutes; Estimated Total Annual Burden: 235 hours.

OMB Desk Officer: Shannah Koss-McCallum

Copies of the information collection pacakges listed above can be obtained by calling the OS Reports Clearance Officer on (202) 245-6511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: August 17, 1989.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 89-20151 Filed 8-24-89; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse and Mental Health Administration

Substance Abuse Prevention Technical Assistance Workshops

AGENCY: Office for Substance Abuse Prevention (OSAP), ADAMHA, HHS.

ACTION: Notice of Technical Assistance Workshops.

SUMMARY: This notice sets forth the schedule and proposed agenda of three (3) technical assistance workshops to assist prospective applicants in responding to the Office for Substance Abuse Prevention's grant announcements: Drug and Alcohol Abuse Prevention—High Risk Youth Demonstration Grants; Model Projects for Pregnant and Postpartum Women, and their Infants; and the Substance Abuse Conference grant.

Name: Office of Substance Abuse Prevention Technical Assistance Workshops.

Locations: San Francisco, CA September 28-29, 1989, Baltimore, MD—October 2-3, 1989, Kansas City, MO October 5-6.

Workshop sites to be in registration information.

Time: Each workshop will begin on Day 1 at 1:00 p.m. and will end on Day 2 at 12:00 p.m.

Agenda Highlights include:

Day 1—Overview of the three Grant Announcements Grant Submission Review/Award Process General Principles of Prevention/Early Intervention Lessons learned on High Risk Youth and Resiliency Factors

Day 2—Technical/Practical Aspects of the Grant Application Process including: completing forms, program narrative, budget justification, approach, method, management, and evaluation

Status of Workshops: They are open to prospective OSAP grant applicants.

To receive a workshop registration form and grant kit contact: National Clearinghouse for Alcohol and Drug Information (NCADI), PO Box 2345, Rockville, MD 20852, Telephone: (301) 468-2600.

For more information about the technical assistance workshops contact: OSAP, Division of Demonstrations and Evaluation, Rockwall II, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4564/443-0353.

Purpose: In cooperation with the State Alcohol and Drug Authorities, the Office for Substance Abuse Prevention, Division of Demonstration/Evaluation and the Division of Prevention Implementation want to provide general assistance to prospective applicants in responding to the OSAP grant announcements.

Dated: August 21, 1989.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-20073 Filed 8-24-89; 8:45 am]

BILLING CODE 4160-20-M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following is the package submitted for expedited clearance to OMB since the last publication on August 11, 1989. (Call the Reports Clearance Officer on 202-252-5604 for copies of package)

Survey of Job Programs, for Indians (American Indians & Alaska Natives)—FSA-105—New—The information received on this form will be used to compile a compendium for Congressional reference. FSA will maintain the data for related studies and to answer any further inquiries from Congress or other interested parties regarding the application of JOBS programs specifically directed to Indians.

Respondents: Individuals or households; Number of Respondents: 506; Frequency of Response: One-time; Average Burden per Response: 1 hour; Estimated Annual Burden: 506 hours.

OMB Desk Clearance Officer: Justin Kopca.

Consideration will be given to comments and suggestions received within 15 days of publication. Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: August 20, 1989.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems.

BILLING CODE 4150-04-M

"DRAFT" FOR COMMENT ONLY

This is a two part survey consisting of 20 questions. The purpose of the survey is to determine the effectiveness of education, training, and employment programs available to American Indians and Alaskan Natives living on or near reservations/villages.

SURVEY OF JOBS PROGRAMS FOR INDIANS (FSA Form 105)
INSTRUCTIONS

- Identify all employment, training, and education programs that are currently available to Indians living on or near the reservation/village and answer questions related to each program.
- Part II of the Survey is for individual program evaluations. We have provided four copies of this section. However, if you have more than four programs to be evaluated, please make additional copies of Part II for your use.
- If additional space is needed for remarks/comments or to respond to any question, please use the back of the survey or attach additional sheets as necessary to explain circumstances. Be sure to clearly reference the question/item number on any additional sheets.
- When asked to rate the overall effectiveness of a program and related activities, please circle the number which best describes your opinion, assuming 5 as the highest and 1 as the lowest rating.
- **Use the enclosed Business Reply Envelope to return the survey** to the following address before **September 15, 1989** or as soon as possible thereafter:

Department of Health and Human Services
Family Support Administration
Office of Family Assistance
Attn: DPE/Indian Survey
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

" DRAFT" FOR COMMENT ONLY

SURVEY OF JOBS PROGRAMS FOR INDIANS[1]
(American Indians & Alaskan Natives)

Instructions: This is a two part survey consisting of 20 questions. If additional space is needed to respond to any question, please use the back of this form or attach additional sheets which clearly reference the item number. Please use the enclosed Business Reply Envelope to return the survey before September 15, 1989 or as soon as possible thereafter to: Department of Health and Human Services, Family Support Administration, Office of Family Assistance, Attn: DPE/Indian Survey, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

I. IDENTIFICATION & GENERAL INFORMATION

1. Description: [ ] Tribe [ ] Consortium [ ] Village
2. Name: ______________________________
3. Contact/Name of Person Completing Form: ______________________________
4. Telephone Number: ______________ Survey Date: ______________

5. Total Number of Education, Training or Employment Programs Available.......... ==========
6. Number of Programs Available by Type:
   a) Education.......................... ________
   b) Training........................... ________
   c) Employment......................... ________

7. How would you rate the degree of coordination between the employment, training, and education programs that are available to Indians? Circle the number which best describes your opinion, assuming 5 as the highest and 1 as the lowest rating: 5 4 3 2 1
   Remarks/Comments: ______________________________

8. Support Services (child care, transportation, substance abuse, etc.)
   a) How would you rate the overall availability of support services which are needed to assist Indians in participating in employment, training, and education programs or in obtaining permanent employment? Circle the number which best describes your opinion, assuming 5 as the highest and 1 as the lowest rating: 5 4 3 2 1
      Remarks/Comments: ______________________________
   b) Specify how the support services situation could be improved or what additional services are needed to meet the education, employment, and training needs of Indians:
      ____

9. Identify sustainable job markets which exist on or near the reservation/village: ______________________________

10. Specify suggestions for improving or restructuring programs to more effectively meet the needs of Indians: ______________________________

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[1] Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Health & Human Services, Family Support Administration, Attn: DPE/Indian Survey, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

"DRAFT" FOR COMMENT ONLY

HHS,FSA SURVEY - Page 2

Instructions: Please make as many copies of this page as needed to complete one for each employment, training, and education program that is available to Indians. Briefly answer questions as they relate to the individual program. If additional space is needed to respond to any question, please use the back of this form or attach additional sheets which clearly reference the item number.

II. INDIVIDUAL PROGRAM EVALUATION

#______ PROGRAM NAME:____

1. Identify Funding Agency for this program (e.g., DHHS, Bureau of Indian Affairs, State JTPA, etc.)
   a. Agency Name:______________________________
   b. Amount Funded for current fiscal year: $______________

2. Indicate the type of program: [ ] Employment [ ] Training [ ] Education

3. Is this program available on or near the reservation/village? [ ]Yes [ ]No

4. Is there specific eligibility criteria for participation in this program: [ ] No [ ]Yes, specify
____
____
____
____
____

5. Does this program serve both Indian and non-Indian program applicants? [ ]Yes [ ]No

6. Does this program offer priority or preference to Indians? [ ]Yes [ ]No

7. What was your employment placement rate in this program for the last two years? 1988:__________
1987:__________

8. Program Effectiveness
   a) Rate the overall effectiveness of this program in meeting the education, training, or employment needs of Indians living on or near the reservation/village. Circle the number which best describes your opinion, assuming 5 as the highest and 1 as the lowest rating:
   5 4 3 2 1
   Remarks/Comments:______________________________
   ____
   ____
   b) If the program is not effective, explain why you believe it does not meet the education, training, employment, or supportive service needs of Indians living on or near the reservation/village:______________________________
   ____
   ____
   ____
   ____

9. Specify suggestions to improve or restructure this program to effectively meet the needs of Indians:______________________________
____
____
____
____

10. Other Remarks/Comments:______________________________
____
____
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____

FSA Form 105

[FR Doc. 89-20084 Filed 8-24-89; 8:45 am]

BILLING CODE 4150-04-C

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following are the packages submitted to OMB since the last publication on August 11, 1989.

(Call the FSA, Reports Clearance Officer on 202-252-5604 for copies of package)

1. Worksheet for Integrated AFDC, Food Stamp and Medicaid Quality Control Reviews—FSA-4340—0970-0072

The integrated worksheet serves to document the findings of State quality control reviewers who review the correctness of a sample of eligibility decisions made by the States for the AFDC, Food Stamp and Medicaid programs. The findings are used to identify areas where corrective action is needed. Respondents: State or local governments; Number of Respondents: 52,662; Frequency of Response: 1; Average Burden per Response: 11.0236 hours; Estimated Annual Burden: 580,525 hours.

2. Annual Statistical Report on Children in Foster Homes and Children in Families Receiving AFDC Payment In Excess of the Poverty Income Level—FSA-4125—0970-0004

The information collected by the use of this form is provided by State public assistance agencies. It is used in the Title I formula for computing entitlements to the States for educationally deprived children. Respondents: State or local governments; Number of Respondents: 52; Frequency of Response: 1; Average Burden per Response: 6 hours; Estimated Annual Burden: 312 hours.

OMB Desk Clearance Officer: Justin Kopca.

Consideration will be given to comments and suggestions received within 60 days of publication. Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: August 14, 1989.

Sylvia E. Vela,

Deputy Associate Administrator for Office of Management and Information Systems, FSA.

[FR Doc. 89-19909 Filed 8-24-89; 8:45 am]

BILLING CODE 4150-04-M

Health Care Financing Administration

[BERC 636-N]

Medicare Program; Employers and Duplicative Medicare Benefits; Clarification

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: On December 6, 1988, we published in the **Federal Register** (53 FR 49233) a notice that announced the national average actuarial value of additional Medicare Part A benefits available in 1989, as required by section 421 of the Medicare Catastrophic Coverage Act of 1988 (MCCA). The national average actuarial value of the Medicare Part A benefits added or increased by MCCA was $61 as of July 1, 1988. For 1989, the national average actuarial value is $65. The notice also contained guidelines to be used by employers to compute the actuarial value of duplicative benefits. As a result of inquiries from employers, insurers and others, we are providing clarification and further interpretation of our guidelines with regard to the requirement that employers must maintain levels of effort under their health benefit plans in cases where part A benefits expanded under MCCA duplicate benefits under the employers' health plans. We also are correcting and clarifying several items included in the original notice of December 6, 1988.

DATE: The effective date for the Maintenance of Effort Provision with regard to Part A duplicative benefits is January 1, 1989. The effective date for this clarification is also January 1, 1989.

FOR FURTHER INFORMATION, CONTACT: Kenneth Leong (for actuarial values and guidelines) (301) 966-7908. Morton Marcus (for all other information) (301) 966-4477.

SUPPLEMENTARY INFORMATION:

I. Background

On December 6, 1988, we published in the **Federal Register** (53 FR 49233) a notice implementing section 421, commonly referred to as the Maintenance of Effort (MOE) Provision, of the Medicare Catastrophic Coverage Act of 1988 (MCCA). Section 421 requires employers that provide health benefits to employees and retired former employees to determine the extent to which the new Medicare benefits available under MCCA duplicate benefits available under their health benefit plans, and provide additional, non-duplicative benefits and/or refunds under certain conditions. (The term "retiree" as used in this notice refers to both Medicare eligible retired former employees and Medicare eligible current employees. The MOE provision does not apply to most employees and their Medicare eligible dependents, since Medicare is secondary payer for such individuals, except in limited situations.)

Since the publication of the December 6, 1988 notice, we have received numerous telephone and written inquiries from employers, insurers, attorneys, benefit consultants, and others seeking clarification and further interpretation of the HCFA guidelines. The questions indicate that some provisions of the notice may be subject to differing interpretations.

Using a question and answer format, we address a number of areas that inquirers said were not clear in the notice published December 6, 1988. This clarifying information will be useful to employers with MOE responsibilities. Where applicable, we have cross referred to our December 6, 1988 notice. (In the future we will publish a **Federal Register** notice dealing with duplicative Part B benefits in accordance with section 421 of MCCA.)

II. Questions and Answers

Question 1: May an employer that is paying the Part B premium for its retirees as of July 1, 1988 consider its payment of the $4 per month catastrophic coverage premium as an "additional benefit"? (Top of column 1, p. 49234.)

Answer: The fact that an employer was paying the Part B premium prior to July 1, 1988 would not in itself preclude the employer from counting its payment of the $4 per month increase as an "additional benefit." There may be other factors, however, which lead retirees to believe that it is already the employer's obligation to pay the $4 per month catastrophic coverage premium, and that therefore the employer cannot consider payment of the $4 as an additional benefit which counts toward satisfying its MOE obligation. This could be the case, for example, if, prior to July 1, 1988, the employer had conveyed to its retirees, either implicitly or explicitly, that it would purchase Part B coverage for them. If, based on the nature of the communication or agreement between the employer and retirees, the retirees had a reasonable basis to expect the employer to bear the $4 per month premium increase, the employer would not be permitted to treat it as an "additional benefit." The question of whether or not the employer had committed itself to pay the $4 premium increase in a particular case depends on the factual situation, and would normally be settled by negotiation between the employer and retirees.

Question 2: Are dependents eligible to receive additional benefits and/or refunds if they are receiving duplicative benefits? (1st paragraph of SUMMARY, p. 49233.)

Answer: The law specifies that employers are to provide "employees" and "retired former employees" with additional benefits and/or refunds which are equivalent in actuarial value to any duplicative part A benefits they were providing their employees on July 1, 1988, the date of enactment of MCCA. The law does not mention the Medicare-eligible spouses and other dependents of employees and retirees. Nevertheless, duplicative part A benefits provided to a dependent constitute an employer benefit for the retiree and must be taken into account when computing additional benefits and/or refunds for the retiree. Therefore, if an employer decides to provide additional benefits instead of a refund, such benefits must be provided to dependents; and an employer that decides to provide cash refunds only must make an appropriate refund to retirees for dependents covered under the employer plan.

Example

Assuming a $65 refund amount, with the employer contributing 100 percent toward retiree and dependent health care benefits, the payout would work as follows:

100 retirees	at $65×100=	$6,500
Each retiree has one Medicare eligible dependent	at $65×100=	6,500
Total		13,000

In this example, the total payout pool amounts to $13,000, taking into consideration each retiree's Medicare-eligible dependent. Because the law is clear that the retiree receives the benefit, the employer must refund to each retiree $130, i.e., $65×2.

Question 3: Are employers precluded from increasing the cost of plan benefits to retirees if the retirees were not notified of such cost increase before July 1, 1988, the date of enactment of MCCA? (First column, last paragraph, p. 49234.)

Answer: With regard to MOE, an employer that did not notify its retirees of an increase in the cost of plan benefits may increase the cost only if, and to the extent that, such action is in response to increased costs to the employer of providing health plan benefits that were already being provided, and it does not have the effect of enabling the employer to circumvent its MOE obligation to provide additional benefits and/or refunds. The employer's reason for increasing the cost of plan benefits to retirees should be documented. If an employer has annually increased premiums to keep up with inflation, such an historic practice would serve as evidence that the employer did not intend to circumvent the MOE provision. When an employer cannot reasonably justify an increase in plan costs, the employer has not complied with its obligation to provide additional benefits and/or refunds.

Question 4: How does the employer determine if the duplicative Part A benefits it provided under its health plan had an actuarial value as of July 1, 1988 of at least 50 percent of the national average actuarial value of the benefits added or increased by MCCA? (Section B, first paragraph, p. 49233, and third column, p. 49235.)

Answer: The national average actuarial value of the Medicare benefits added or increased by MCCA was $61 as of July 1, 1988. Fifty percent of that amount is $30.50. The employer is responsible for paying cash refunds and/or additional benefits if, as of July 1, 1988, the duplicative Part A benefits it furnished the retirees and Medicare-eligible dependents enrolled in the employer's plan had an average actuarial value (on a per capita basis) at least equal to $30.50. If the actuarial value of the duplicative Part A benefits provided by the employer's plan equals or exceeds $30.50 on a per capita basis, the employer must then subtract from that value the average amount each retiree contributed toward the benefits package for his own benefits and any amount each retiree contributed toward his Medicare-eligible dependent's benefits. If the remaining amount is at least equal to $30.50, the employer is responsible for paying additional benefits and/or refunds.

Example

a. An employer determines that $60 is the average actuarial value of its duplicative Part A benefits on a per capita basis for each Medicare-eligible retiree and dependent enrolled in the plan. The average retiree contribution to the benefit package for his own and any dependent benefits is $15. The employer is therefore paying $45 toward the plan's duplicative part A benefits for retirees. Since this amount is more than $30.50, the employer has met the 50 percent test, and is responsible for paying cash refunds and/or providing additional benefits.

b. Assume, in the above example, that the average retiree contributes 60 percent of the cost of the health benefits the employer provides for the retiree and for the retiree's Medicare-eligible dependent. The employer contributes the remaining 40 percent, or $24 (40% of $60=$24). The employer is not responsible for paying any additional benefits and/or refunds, because $24 is lower than the threshold $30.50 level.

Question 5: How does an employer calculate the amount of cash refund for each individual when the retiree contributes a different amount toward his own health benefits plan than he does for his or her Medicare-eligible dependent?

Answer: Although there may be differences in the amount contributed by retirees for themselves and their dependents, the employer should determine the average per capita contribution of the retirees and Medicare-eligible dependents and subtract such amount from the average actuarial value of the duplicative Part A benefits (see previous answer). The remainder is what the employer should pay the retiree on behalf of each eligible individual.

Example

The employer chooses the national average actuarial value of $61 (1988) as the value of its duplicative Part A benefits. (a) If neither the retiree nor the Medicare-eligible dependent contributes toward the cost of the employer health plan, the employer is required to pay $65 per eligible individual in 1989. (b) If retirees and their Medicare-eligible dependents together, on the average, contribute 20 percent of the cost of the health benefits plan, the employer should pay $52 ($65×80 percent) per eligible individual.

Question 6: An employer provides a health plan which includes duplicative Part A benefits. Both the employer and employee contribute to the cost of the employer plan. The employer calculates the actual value of the Part A duplicative benefits under its health plan and this amount is greater than the national average actuarial value of the Part A duplicative benefits ($61). The employer elects the national average actuarial value, i.e., $61, as the value of its duplicative benefits. To determine if the employer is subject to the MOE provision, must the employer subtract the employee contribution from the actual value of the duplicative benefits, or may the employer subtract the employee contribution from the national average actuarial value?

Answer: Once the employer elects the national average actuarial value of duplicative part A benefits as the value of its plan's duplicative benefits, then

the national average actuarial value becomes the basis from which employee contributions must be subtracted. For example, an employer determines the actuarial value of its duplicative part A benefits to be $100 per individual enrolled in the plan and, as a result, chooses the lower value, the national average actuarial value, as the value of its duplicative benefits. The average contribution rate for retirees and Medicare-eligible dependents is 50 percent. The employer must take 50 percent of $61 (not 50 percent of $100) and subtract that amount, i.e., $30.50, from the national average actuarial value. Thus, in this example, the employer is subject to MOE because it is providing duplicative part A benefits that have an actuarial value equivalent at least to 50 percent of the national average actuarial value of the benefits added or increased by MCCA.

Question 7: How does an employer determine the amount of refund when the retiree and/or dependent is not entitled to Medicare throughout 1989, or where Medicare is not primary payer throughout 1989?

Answer: Following are examples that illustrate how an employer should determine the amount of refund in this type of situation:

Situation	Employer responsibility
1. Retiree is not eligible for Medicare throughout 1989. Dependent is Medicare-eligible.	Employer is responsible to provide additional benefits to dependent, or pay refund to retiree, because the law stipulates that the employer should pay the retiree.
2. Retiree dies after July 1, 1988, but before January 1, 1989, leaving Medicare-eligible dependent.	Employer is responsible to provide additional benefits and/or refunds to dependent.
3. Medicare-eligible dependent dies after July 1, 1988, but before January 1, 1989.	Employer not responsible to pay refund.
4. Retiree or Medicare-eligible dependent dies in 1989.	Employer responsible to provide additional benefits up to date of death of retiree or dependent or to refund prorated amount to the surviving retiree or dependent. Employer MOE obligation for duplicative benefits continues unchanged with respect to the surviving retiree or dependent. If retiree dies before additional benefits and/or refunds are provided, employer responsible to pay refund to surviving insured dependent unless State law requires a different disposition.
5. Retiree dies prior to July 1, 1988 Medicare-eligible dependent is receiving health benefits from employer as of July 1, 1988 and through 1989.	Employer responsible to provide additional benefits and/or refunds to dependent.
6. Medicare becomes secondary payer for an individual in 1989.	Employer responsible to provide additional benefits or prorated refunds only during period in which Medicare is primary payer.

Question 8: Is an employer required to provide MOE benefits to retirees/dependents who were not entitled to Medicare on July 1, 1988, but become eligible for Medicare sometime between August 1, 1988 and December 1, 1989?

Answer: Yes, an employer is responsible for full refunds/additional benefits if the retiree/dependent becomes Medicare-eligible by January 1, 1989. The employer is responsible for a prorated amount if the retiree/dependent becomes Medicare-eligible between February 1, 1989 and December 1, 1989.

Question 9: Is an employer required to provide MOE benefits to employees hired after July 1, 1988?

Answer: No.

Question 10: Is an employer required to provide MOE benefits to its former employees who are under 65 and entitled to Medicare based on disability?

Answer: Yes. The law specifies that employers must provide their "employees" and "retired former employees" with additional benefits and/or refunds. Disabled Medicare-eligible individuals for whom Medicare is primary payer and who were receiving health benefits from their former employer as of July 1, 1988 are entitled to MOE additional benefits and/or refunds. They are deemed to be "retired former employees" for MOE purposes. (Note, however, that disabled employees are not entitled to MOE refunds or additional benefits when Medicare is secondary payer for such individuals. (See section II.D.3., column 3, p. 49234.))

Question 11: Is the MOE provision applicable to all HMOs, or just to risk-based HMOs as discussed in the notice? (Section II.G., column 1, p. 49236.)

Answer: The discussion regarding MOE applicability to the HMOs in our December 6, 1988 notice dealt solely with risk-based HMOs. This was an oversight on our part. Employer responsibility under MOE is not confined to HMOs with a Medicare risk contract. An employer that contracts with an HMO, whether or not the HMO has a contract with Medicare, is responsible for determining the value of the duplicative benefits provided to its retirees by the HMO. The employer is expected to negotiate with the HMO for the provision of additional benefits and/or refunds to affected retirees.

Question 12: Does the law place any administrative sanctions on employers that fail to comply with the MOE provision? Are there any reporting or recordkeeping requirements?

Answer: The MOE provision is silent regarding administrative penalties on employers that fail to comply with the provision, and specific reporting or recordkeeping requirements. We anticipate that employee associations, retiree associations, labor unions and other employee groups will take an active interest in employer compliance, and that disputes that may arise between employers and retirees with respect to MOE will be resolved through negotiations between the parties.

Question 13: What are the components that constitute the national average actuarial value of $65 in 1989? Such information could be very helpful to employers to calculate the cost of the duplicative benefits.

Answer: The components that constitute the national average actuarial value of $65 in 1989 are as follows:

Inpatient hospital	$53.00
Skilled nursing	12.00
Total	65.00

The above component costs are determined as follows:

Inpatient hospital:	
Deductible change	19.70
Copayment elimination	22.70
Unlimited Days	10.60
Total	53.00
Skilled nursing:	
Coinsurance change	7.20
Eliminating prior hospitalization and providing 150 days of care	4.80
Total	12.00

III. Clarification of Previous Published Information

We are republishing portions of our notice published December 6, 1988 (53 FR 49233) to further clarify several items of information. On page 49233, column 3, in the last paragraph we incorrectly included the words "national average" in the fourth line. As corrected, the sentence reads: "If an employer provides only additional benefits, the benefits must be equal in value at least to the 1989 actuarial value of the duplicative part A benefits that were provided as of July 1, 1988." Additional benefits and/or refunds must total at least the actuarial value of the duplicative Part A benefits (see section 421(a)(1) of MCCA).

In the last sentence on page 49234, column 1, third full paragraph, we asserted that each employee and retired former employee will receive an equal refund, using the computation methodology contained in the previous sentence. However, the discussion does not take into account individuals with Medicare-eligible dependents. For example, a retiree whose spouse is Medicare-eligible and enrolled in the plan would receive double the refund of an employee who is single. To clarify this paragraph, in the second to last sentence, substitute "Medicare eligible employees, retired former employees and dependents" for "employees and retired former employees." As revised, the sentence reads: "The amount refunded to each individual should be determined by dividing the actuarial value of the duplicative benefits by the total number of Medicare-eligible employees, retired former employees and dependents enrolled in the plan." Also, the last sentence of that paragraph should be revised to read as follows: "Thus, each employee and retired former employee will receive an equal refund for each Medicare eligible individual covered by the employer's plan under the employee/retiree's enrollment."

The second bullet point on page 49234 at column 3 under "2. Part B" should be revised to read "Payment for home intravenous drug therapy services" instead of "Payment for home intravenous drug therapy and associated items and services." This correction conforms it to the term used in section 1861(jj) of the Social Security Act as amended by section 203(b) of MCCA. This same wording should be used in the next to the last bullet in the middle column on page 49235. That is, delete "Coverage for home intravenous drugs and associated items and services (including supplies, equipment, and nursing and pharmacy services)", and replace with "Coverage for home intravenous drug therapy services." (Note that this item does not include the drugs themselves. Section 1861(jj)(2) of the Social Security Act.)

On page 49235, column 3, there is a typographical error. The major heading after the bullet point should read "F. Determining the Actuarial Value of Duplicative Benefits" instead of "D. Determining the Actuarial Value of Duplicative Benefits."

On page 49238, column l, in line 7, first full paragraph, the word "above" should be replaced by "in section IV below." As corrected, the sentence reads "If a collective bargaining agreement provides that certain company paid health benefits are vested upon retirement of the employee, the employer is not required to provide additional benefits beyond the time periods stated in section IV below, i.e., until the later of 12/31/89 or the date of the expiration of the agreement for duplicative Part A benefits and until the later of 12/31/90 or the date of the expiration of the agreement for duplicative Part B benefits." While the time periods for providing additional benefits and/or refunds are addressed earlier in the notice, we feel that the discussion in section IV is more explicit.

(Section 421 of Pub. L. 100-360, as amended (42 U.S.C. 1395(b) Note))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; and No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: June 9, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-20067 Filed 8-24-89; 8:45 am]

BILLING CODE 4120-01-M

Food and Drug Administration

[Docket No. 89M-0302]

Wesley-Jessen; Premarket Approval of AQUAFLEX® (Tetrafilcon A) Hydrophilic Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Wesley-Jessen, Chicago, IL, for premarket approval, under the Medical Device Amendments of 1976, of the spherical AQUAFLEX® (tetrafilcon A) Hydrophilic Contact Lenses for daily wear. The lenses are to be manufactured under an agreement with CooperVision, Inc., San Jose, CA, which has authorized Wesley-Jessen to incorporate information contained in its approved premarket approval application for the AQUAFLEX® (tetrafilcon A) Hydrophilic Contact Lenses. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 28, 1989, of the approval of the application.

DATES: Petitions for administrative review by September 25, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

SUPPLEMENTARY INFORMATION: On December 16, 1988, Wesley-Jessen, Chicago, IL 60610, submitted to CDRH an application for premarket approval of the spherical AQUAFLEX® (tetrafilcon A) Hydrophilic Contact Lenses. The lenses are indicated for daily wear use for the correction of visual acuity in not-aphakic patients with nondiseased eyes that are myopic or hyperopic. The lenses may be worn by persons who may exhibit astigmatism of 2.50 diopters (D) or less that does not interfere with visual acuity. The lenses are indicated in a power range of -20.00 D to +9.75 D and are to be disinfected using either a heat or chemical disinfection system. The application includes authorization from CooperVision, Inc., San Jose, CA 95134, to incorporate information contained in its approved premarket approval applications for the AQUAFLEX® (tetrafilcon A) Hydrophilic Contact Lenses.

On April 28, 1989, CDRH approved the application by letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above. The labeling of the AQUAFLEX® (tetrafilcon A) Hydrophilic Contact Lenses states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 25, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 14, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-20080 Filed 8-24-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89M-0313]

Sola/Barnes-Hind; Premarket Approval of Fluorocon™-60 (Paflufocon B) Rigid Gas Permeable Contact Lens (Clear and Tinted)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Sola/Barnes-Hind, sunnyvale, CA, for premarket approval, under the Medical Device Amendments of 1976, of the spherical Fluorocon™-60 (paflufocon B) Rigid Gas Permeable Contact Lens (Clear and Tinted) for daily wear. The lens is to be manufactured under an agreement with Paragon Optical, Mesa, AZ, which has authorized Sola/Barnes-Hind to incorporate information contained in its approved premarket approval application and related supplements for the FluoroPerm (paflufocon A), FluoroPerm 60 (paflufocon B) and FluoroPerm 30 (paflufocon C) Rigid Gas Permeable Contact Lenses. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 23, 1989, of the approval of the application.

DATES: Petitions for administrative review by September 25, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

SUPPLEMENTARY INFORMATION: On March 20, 1989, Sola/Barnes-Hind, Sunnyvale, CA 94086-5200, submitted to CDRH an application for premarket approval of the spherical Fluorocon™-60 (paflufocon B) Rigid Gas Permeable Contact Lens (Clear and Tinted). The lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who may exhibit astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The lens is indicated in a power range of −20.00 D to +12.00 D and is to be disinfected using a chemical disinfection system. The lens is available in untinted (clear) and blue or green tints. The tinted lens contains one or both of the color additives, D&C Green No. 6 and D&C Yellow No. 10, in accordance with the color additive listing provisions of 21 CFR 74.3206 and 74.3710. The application includes authorization from Paragon Optical, Mesa, AZ 85204, to incorporate information contained in its approved premarket approval application and related supplements for the FluoroPerm (paflufocon A), FluoroPerm 60 (paflufocon B) and FluoroPerm 30 (paflufocon C) Rigid Gas Permeable Contact Lenses.

On June 23, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from the office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above. The labeling of the spherical Fluorocon™-60 (paflufocon B) Rigid Gas Permeable Contact Lens (Clear and Tinted) states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 25, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 14, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–20079 Filed 8–24–89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N–0332]

Evaluation of Incentives for Development of Orphan Medical Foods; Announcement of Study; Request for Scientific Data and Information

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) is conducting a study to evaluate incentives for development of orphan medical foods. FASEB is inviting submission of scientific data and information on this topic. The purpose of the information request is to obtain public comment on needs and incentives for, and barriers to, development and use of orphan medical foods. In addition, interested persons and organizations with questions regarding this study are invited to communicate with the LSRO contact person identified below.

DATES: Scientific data and information should be received by September 25, 1989.

ADDRESSES: Scientific data and information to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Two copies of the information should be submitted to each office.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030.

SUPPLEMENTARY INFORMATION: FDA has a contract (223–88–2124) with FASEB concerning the analysis of scientific issues in food and cosmetic safety. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with the safety of foods and cosmetics.

An orphan medical product is one which is required for the treatment of a rare medical condition and, consequently, has very limited marketability. A medical food is defined as "a food which is formulated to be consumed or administered enterally under the supervision of a physician and which is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation." (the Orphan Drug Amendments of 1988 (21 U.S.C. 360ee(b))). An orphan medical food, then, is a medical food used in the dietary management of a rare medical condition.

FDA is announcing that it has asked LSRO of FASEB, as a task under the contract, to determine the need for incentives useful in, and barriers to, the development of medical food products with orphan status. Such guidance should include identification of human diseases and disorders that may benefit from orphan medical foods; criteria for defining orphan status; identification of incentives to enhance development of orphan medical foods; the scope of research and development efforts necessary to permit routine use of such foods; the impact of barriers to product development; and a comparison between development of these products in the United States and in other countries.

This notice also invites submission of other information that should be considered in the development of orphan medical foods. Two copies of any ge scientific data and information should be submitted to both LSRO of FASEB and the Dockets Management Branch (addresses above). The deadline for receipt of such submissions is September 25, 1989. Pursuant to its contract with FDA, FASEB will provide the agency with a scientific reprot on these issues concerning orphan medical foods.

Dated: August 21, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–20078 Filed 8–24–89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) To Develop and Maintain a Human Tissue Bank

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) desires to enter into a Cooperative Research and Development Agreement (CRADA) to develop, maintain and use a bank of human tumor tissue with associated clinical follow-up information. The bank will be used to study the utility of selected oncogene markers in the diagnosis and prognosis of human cancer. The commercial organization will support all aspects of (a) tumor tissue procurement, (b) frozen tissue storage, (c) computerized retrieval of associated clinical data, and (d) case reviews by a board certified pathologist. The NCI will provide putative markers in the form of molecular probes or antibodies. The commercial organization will then work together with NCI's Oncogene Working Group to measure the level of the marker in portions of the specimens derived from the tumor bank and compare the clinical outcome or treatment response with the level of the marker.

It is anticipated that all interventions which may arise from this CRADA will be jointly owned and licensed on a royalty-bearing basis exclusively to the company with which the CRADA is made. The CRADA will be executed for a five-year period with the possibility of renewal for another five-year period.

Nothing in this CRADA will prohibit or prevent the company from dealing with scientists who are not parties to this project per se. For example, a nonparticipating scientist may wish the company to screen markers furnished by his/her laboratory on a fee-for-service basis, said markers to remain the property of the scientist and/or organization which submits them. However, such ancillary non-CRADA activity may not interfere with the parties' carrying out the CRADA expeditiously.

SUPPLEMENTARY INFORMATION: This opportunity is available until October 10, 1989. For additional information contact: Alan S. Rabson, M.D., Director, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31, Room 3A03, Bethesda, Maryland 20892–3100 (301) 496–4346. Late response will not be considered. Respondents may be provided an additional opportunity to furnish additional information if the NCI finds this necessary.

Applicants will be judged according to the following criteria: (1) Full-time board-certified pathologist on company staff; (2) full-time molecular biologist on company staff; (3) full-time biostatistician experienced in compiling tumor bank data on company staff; (4) management and logistic capabilities suited to this CRADA; (5) facilities for storage of tissue and extraction of RNA and DNA; (6) fully equipped and staffed immunohistology laboratory; (7) network of potentially participating academic collaborators established; (8) demonstrated scientific credibility, commitment to publications, and academic excellence demonstrated; (9) commitment and ability to develop rapidly newly validated probes to the level of a product which benefits the oncology patient.

Dated: August 18, 1989.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 89–20104 Filed 8–24–89; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of Board of Scientific Counselors, Division of Cancer Biology and Diagnosis

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Biology and Diagnosis, National Cancer Institute, October 27, 1989. The meeting will be held in Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public on October 27 from 8:30 a.m. to adjournment for concept review of proposed projects and administrative details. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summary minutes of the meeting and roster of committee members.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31, Room 3A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496–3251) will provide substantive program information.

Dated: August 21, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–20105 Filed 8–24–89; 8:45 am]

BILLING CODE 4140-01-M

Programs for Support of Minorities in Biomedical Research; Meetings

Notice is hereby given that the National Institutes of Health (NIH) will hold the fourth and fifth of a series of five regional public hearings to be conducted under the auspices of the Office of the Director, NIH, on "Programs for Support of Minorities in Biomedical Research." The purpose of the hearings is two-fold:

(1) To provide current information concerning the activities of the NIH by describing in broad terms existing programs offered by NIH, and

(2) To solicit through public testimony the views of biomedical researchers, university faculty and administrators, students, representatives of professional societies, and other interested parties regarding the nature and scope of programs to attract and support minorities in biomedical research.

The fourth hearing will be held on Sunday, September 24, 1989 from 10 a.m. to 4 p.m. in the Doubletree Suite Hotel, Phoenix Gateway Center, Phoenix, Arizona, preceding the annual meeting of the Hispanic Association of Colleges and Universities. The fifth hearing will be held on October 9, 1989, from 9 a.m. to 4 p.m. at the Anchorage Hilton Hotel, Anchorage, Alaska, in conjunction with the National Indian Education Association Annual Meeting.

Following presentations by senior NIH staff, a panel composed of NIH program administrators will spend the remainder of each day receiving testimony from public witnesses. Each witness will be limited to a maximum of ten minutes. Attendance and the number of presentations will be limited to the time and space available. Consequently, all individuals wishing to attend or to present a statement at either of these public hearings should notify, in writing, William H. Pitlick, Ph.D., Executive Secretary, National Institutes of Health, Shannon Building, Room 252, Bethesda, Maryland, 20892. Those planning to make a presentation should file a one-page summary of their remarks with Dr. Pitlick by September 15, 1989. A copy of the full text should be submitted for the record at the time of the meeting. Additional information may be obtained by calling Ms. Loretta Beuchert, Office of Extramural Research, National Institutes of Health, at (301) 496–9743.

Dated: August 18, 1989.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 89–20106 Filed 8–24–89 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Board of Scientific Counselors Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting on September 20, 1989, of the National Toxicology Program (NTP) Board of Scientific Counselors, Reproductive and Developmental Toxicology Program Review Subcommittee. The meeting will be held at the National Institute of Environmental Health Sciences, Building 101, South Campus, Conference Room B204, 111 Alexander Drive, Research Triangle Park, North Carolina.

The meeting is from 8:15 a.m. to 5:30 p.m., and will be open to the public. The primary agenda topics are reviews of the research efforts and reproductive and developmental toxicity contracts of the staffs at the National Institute of Environmental Health Sciences (NIEHS) and the National Institute for Occupational Safety and Health (NIOSH).

The Executive Secretary, Dr. Larry Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, Telephone (919) 541–3971, FTS 629–3971, will furnish the final agenda. The roster of Subcommittee members and other program information will be available prior to and at the meeting, and summary minutes will be available subsequent to the meeting.

Dated: August 22, 1989.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 89-20107 Filed 8-24-89; 8:45 am]

BILLING CODE 4140-01-M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, August 11, 1989.

Call the PHS Reports Clearance Officer on 202-245-2100 for copies of package.

1. Survey and Instrument for Assessing the Impact of the 1990 Medicare Legislation on Mammography Usage in the NCI Mammography Consortium—NEW. Starting January 1, 1990, Medicare will pay $50.00 towards the cost of biennial screening mammograms for covered females age 65 and over. This request is for the pretesting and fielding of surveys to assess mammography usage before and after this benefit takes effect, in order to determine its impact and to assess other barriers to mammography use which may exist in this population. Respondents: Individuals or households; Number of Respondents: 5,359; Number of Responses per Respondent: 1; Average Burden per Response: .283 hours; Estimated Annual Burden: 1,517 hours.

2. HRSA Competing Training Grant Application—Revision—0915-0060. The Health Resources and Services Administration uses this information to determine the eligibility of applicants for awards, to calculate the amount of each award, and to judge the relative merit of applications. The purpose of this revision is to add one new program as user of the application: Retention Programs for Health Professions Schools with Individuals from Disadvantaged Backgrounds Grant Program. Respondents: Nonprofit institutions; Number of Respondents: 275; Number of Responses per Respondent: 1; Average Burden per Response: 56.26 hours; Estimated Annual Burden: 15,472 hours.

3. National Survey of Uses of Animals in Research (CONCEPT)—NEW. The National Institutes of Health is requesting concept approval for a national survey of who uses animals in research, education, and testing; how many are used, and for what purposes; their sources and care; and how legal requirements governing animal use and care are met. This information will enable Federal agencies which conduct, support, or regulate research involving animals to identify and allocate scarce resources and review policies on laboratory animals. Respondents: State or local governments; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations. Annual Reporting Burden: Since this is a concept clearance, definitive burden estimates are not yet available. These estimates will be provided when the study design and questionnaire are final and the final clearance request is submitted.

4. Labeling of Weight Control Foods—0910-0218. Obesity is a major health problem in the United States. These regulations provide for labeling to enable those persons who need to control their weight to identify and evaluate particular foods which may help them to attain and maintain desired weight within the limits of a balanced and nutritious diet program. Respondents: Businesses or other for-profit; Number of Respondents: 82; Number of Responses per Respondent 18.3; Average Burden per Response; 200 hours; Estimated Annual Burden 300,025.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: August 22, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89-20086 Filed 8-24-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Montana; Notice of Butte District Grazing Advisory Board Meeting

[MT-070-09-4050-91]

AGENCY: Bureau of Land Management, Butte District Office.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Grazing Advisory Board will be held Thursday, September 21 in the conference room of the Dillon Resource Area office, 730 N. Montana Street in Dillon, Montana. The meeting will begin at 8 a.m. On the agenda will be a review of proposed range projects throughout the district and discussion of the district's weed program. At about 9 a.m., the board will depart on a field tour in conjunction with the Butte District Advisory Council of points of interest in the Dillon Resource Area.

The meeting and the field tour are open to the public although transportation will not be provided on the field tour for members of the public. Interested persons may make oral statements to the board or file written statements for the board's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Orval L. Hadley, Acting District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

Dated: August 17, 1989.

Orval L. Hadley,

Acting District Manager.

[FR Doc. 89-20024 Filed 8-24-89; 8:45 am]

BILLING CODE 4310-DN-M

Montana; Notice of Butte District Advisory Council Meeting

[MT-070-09-4050-91]

AGENCY: Bureau of Land Management, Butte District Office.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Advisory Council will be held Wednesday and Thursday, September 20 and 21. The meeting will begin at 1:00 p.m. on September 20 in the Butte District conference room, 106 North Parkmont (Industrial Park), Butte, Montana. The agenda will include; 1) strategic goals for BLM in Montana, 2) rights-of-way procedures, 3) the bureau's Recreation 2000 program in the Butte district, 4) the weed program, including a cooperative weed free hay area in Madison County and 5) council topics. On September 21 the council will go on a field tour in conjunction with the Butte District Grazing Advisory Board of various points of interest in the Dillon Resource Area. The field tour will depart at 9:00 a.m. from the Dillon

Resource Area office, 730 N. Montana Street in Dillon, Montana.

The meeting and the field tour are open to the public although transportation will not be provided on the field tour for members of the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Orval L. Hadley, Acting District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

Dated: August 17, 1989.

Orval L. Hadley,

Acting District Manager.

[FR Doc. 89-20025 Filed 8-24-89; 8:45 am]

BILLING CODE 4310-DN-M

[NM-060-4410-90]

Intent To Prepare Resource Management Plan and Invitation To Participate in Identification of Issues and Planning Criteria

AGENCY: Bureau of Land Management, Roswell District, New Mexico.

ACTION: Notice of intent to prepare resource management plan.

SUMMARY: The BLM, Roswell Resource Area, Roswell, New Mexico, is initiating the preparation of a Resource Management Plan (RMP) which will include an Environmental Impact Statement (EIS). The plan will guide and control future management actions on approximately 1.5 million acres of public land and 2.4 million acres of subsurface, mineral resources managed by the BLM's Roswell Resource Area. The Code of Federal Regulations, title 43, subpart 1600, will be followed for this planning effort. The public is invited to participate in the planning process, beginning with the identification of issues and planning criteria in April 1991.

DATE: Comments relating to the identification of issues and planning criteria will be accepted until September 1991.

ADDRESS: Send comments to Pat Kelley, RMP Team Leader, Bureau of Land Management, Roswell Resource Area, P.O. Drawer 1857, Roswell, New Mexico 88202.

FOR FURTHER INFORMATION CONTACT: Phil Kirk, Area Manager or Pat Kelley, RMP Team Leader, Roswell Resource Area, (505) 624-1790.

SUPPLEMENTARY INFORMATION: The planning area includes the public land and Federal mineral ownership in Quay, Guadalupe, Curry, De Baca, Roosevelt, Lincoln and Chaves Counties in southeastern New Mexico. Anticipated issues to be addressed during development of the RMP include, but are not limited to, the following: (1) Lands in the Roswell Resource Area which could be transferred to other then BLM administration or may require further study, and which lands would be beneficial to BLM programs if acquired; (2) Public land which requires special management practices to protect or enhance significant scenic, riparian, natural, cultural, plant, wildlife, or other values; (3) Public land which requires that legal access be acquired, and on which land should vehicular access be provided.

Management concerns and opportunities include but are not limited to, (1) How the on-going oil and gas activities and operations should be managed; (2) What types of recreation opportunities, settings, and activities should be provided; (3) How the wildlife habitat will be managed; and (4) What the future management of Fort Stanton should be. These preliminary issues, management concerns, and management opportunities are not final. They may be further refined, or additional issues identified through active public participation. The RMP will be developed by an Interdisciplinary Team.

The team will include specialists representing Range, Oil & Gas, Wildlife, Recreation, Archaeology, Lands, Surface Protection, Soils & Watershed, Fire Management, and Non-Energy Minerals. A comprehensive public participation plan has been prepared. It is intended to involve interested or affected parties early and continuously throughout the planning process. The plan emphasizes localized one-to-one contacts, media coverage, direct mailings, and continued coordination with local, State, and other Federal agencies. Meetings to determine the scope of the RMP and to obtain input on the issues will tentatively be held in Roswell, Capitan, and other locations as necessary in April 1990. A scoping package will be issued in early March 1990, giving the times and location for these meetings.

A second set of public meetings will be held in April 1991 for final public input on the issues and planning criteria. Meeting dates and locations will be announced in the planning newsletter which will be issued on at least a bi-yearly basis.

An individual may protest approval of a Proposed Plan only with respect to those items submitted in writing to the Area Manager during the planning process.

Complete records of all phases of the planning process will be available for public review at the Roswell Resource Area located in the Federal Building, 5th and Richardson, Roswell, New Mexico throughout development of the RMP.

A Draft and Proposed Plan including a Draft and Final EIS will be published. This will be followed at the completion of this project by the publication of a Record of Decision and Approved Plan.

Larry L. Woodard,

State Director.

Dated: August 16, 1989.

[FR Doc. 89-19956 Filed 8-24-89; 8:45 am]

BILLING CODE 4310-FB-M

[ID 942-09-4730-12]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land, will be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., September 28, 1989.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the survey of a portion of the subdivisional lines and the survey of Little Banks Island and other small islands in the Snake River, T. 9 N., R. 5 W., Boise Meridian, Idaho, Group No. 675, was accepted August 14, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: August 18, 1989.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 89-20026 Filed 8-24-89; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF INTERIOR

[NM-060-09-4340-90]

Roswell District Multiple Use Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Multiple Use Advisory Board Meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Multiple Use Advisory Board.

DATE: Tuesday, September 28, 1989, beginning at 10 a.m. A public comment period will be held following conclusion of the agenda.

Location: BLM Roswell District Office, 1717 West Second Street, Roswell, NM 88201

FOR FURTHER INFORMATION CONTACT: David L. Mari, Associate District Manager, or Terry Keim, Public Affairs Specialist, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201, (505) 622-9042.

SUPPLEMENTARY INFORMATION: The proposed agenda will include: (1) Roswell RMP; (2) Automated Potash Map; (3) Black River Exchange; (4) Hazardous Materials Update; (5) Bottomless Lakes Overflow. The meeting is open to the public. Interested persons may make oral statements to the Council during the public comment period, or may file written statements. Anyone wishing to make an oral statement should notify the Associate District Manager by September 20, 1989. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

Herbert L. Hubbard,

Acting District Manager.

[FR Doc. 89-20133 Filed 8-24-89; 8:45 am]

BILLING CODE 4310-FB-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management (BLM)

[AZ-020-09-4212-12; A 20346-X]

Realty Action; Exchange of Public Land in Navajo and Apache Counties, AZ

The Phoenix District proposes to exchange public land in Navajo and Apache Counties, south of Interstate 40, to the state of Arizona under the federal/state exchange program.

In exchange, BLM will acquire lands in the Arizona Strip District in northern Coconino and Mohave Counties.

Portions or all public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

(a) Navajo County

T. 11 N., R. 22 E., secs. 6, 12.
T. 12 N., R. 22 E., sec. 10.
T. 12 N., R. 23 E., sec. 20
T. 13 N., R. 21 E., secs. 4, 10.
T. 13 N., R. 22 E., secs. 18, 20, 28, 34.
T. 14 N., R. 21 E., secs. 4, 8, 10, 14, 20, 22, 26, 28, 34.
T. 14 N., R. 23 E., sec. 14.
T. 15 N., R. 16 E., secs. 20, 22, 24.
T. 15 N., R. 17 E., secs. 20, 22, 24.
T. 15 N., R. 18 E., secs. 20, 22, 24, 26.
T. 15 N., R. 19 E., secs. 4, 8, 18, 20, 22, 24, 26, 28, 30.
T. 15 N., R. 20 E., secs. 12, 20, 24, 26, 28, 30.
T. 15 N., R. 21 E., secs. 4, 6, 10, 18, 20, 22, 28, 30, 34.
T. 15 N., R. 22 E., secs. 2, 4, 8, 12.
T. 15 N., R. 23 E., secs. 6, 8.
T. 16 N., R. 17 E., sec. 6.
T. 16 N., R. 19 E., secs. 24, 26, 34.
T. 16 N., R. 20 E., secs. 4, 8, 12, 18, 24.
T. 16 N., R. 21 E., secs. 6, 8, 18, 20, 28, 30.
T. 16 N., R. 22 E., secs. 6, 8, 18, 20, 26, 28, 30, 32, 34, 36.
T. 17 N., R. 17 E., sec. 28.
T. 17 N., R. 20 E., secs. 6, 22, 24, 26, 28, 34.
T. 17 N., R. 21 E., secs. 4, 18, 20, 22, 26, 28, 30, 34.
T. 17 N., R. 23 E., secs. 4, 6, 12.
T. 18 N., R. 18 E., secs. 8, 20, 26, 30, 32.
T. 18 N., R. 21 E., secs. 22, 28.
T. 18 N., R. 22 E., secs. 12, 14, 20, 22.
T. 18 N., R. 23 E., secs. 8, 10, 12, 14, 22, 28, 34.

Containing 61,453.77 acres, more or less.

(b) Apache County

T. 18 N., R. 24 E., secs. 10, 12.
T. 18 N., R. 25 E., secs. 18, 30.
T. 19 N., R. 24 E., sec. 22.

Containing 2,627.52 acres, more or less.

Other realty actions published in the **Federal Register** for exchange of land in these counties are:

Navajo County

A 20346-O published October 20, 1988 affecting 6,356.11 acres.

A 20346-V published April 14, 1989 affecting 959.94 acres.

Apache County

A 23376 published July 6, 1988 affecting 117,430.26 acres.

Excluded from exchange will be lands in proximity to the Petrified National Park proposed for inclusion in the park.

Final determination on disposal will await completion of an environmental analysis.

Individual exchanges will be completed on an equal value basis as determined by appraisal.

All grazing lessees and other affected parties will be notified of pending exchanges.

Copies of the complete legal descriptions may be obtained from the Phoenix District Office, address shown below.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the land in (a) and (b) above from appropriation under the public land laws, and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-mentioned land shall terminate upon issuance of a document conveying such land or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: August 18, 1989.

Henri R. Bisson,

District Manager.

[FR Doc. 89-20132 Filed 8-24-89; 8:45 am]

BILLING CODE 4310-32-M

[AZ-050-4333-12]

Arizona; Yuma District Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Corrections and supplement to notice of intent to prepare Category I amendment to the Yuma District Resource Management Plan, Yuma District, Arizona.

This notice corrects and supplements a **Federal Register** Notice printed in Vol. 54, No. 136, July 18, 1989, p. 30113.

The corrections, which pertain to the changes in the Land Ownership Adjustment and Recreation sections of the Yuma District RMP, are as follows—(a) the changes in the Land Ownership Adjustment section will allow for the disposal through sale or exchange of approximately 3,635 acres of public land not previously identified for disposal, instead of the 4,317.5 acres originally identified in the notice of intent; and (b) the changes in the Recreation section will allow for classification of approximately 610 acres as limited for off-road vehicle use to designated roads and trails, instead of the 560 acres originally identified in the notice of intent.

As a result of the corrections, the lands proposed to be available for disposal through sale or exchange are limited to sections 15, 17, 20, 21, 22, 23, 26, 28, and 29 of T. 4 N., R. 19 W., G&SRM.

The supplement pertains to additional changes in the Recreation section of the

Yuma District RMP. These new changes will allow for withdrawal of the La Posa Long-Term Visitor Area (LTVA) from entry for exploration and development of locatable minerals.

The La Posa LTVA (located south of Quartzsite, Arizona) covers approximately 10,920 acres in sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 15, 16, and 17 of T. 3 N., R. 19 W., and sections 26, 27, 28, 32, 33, 34, 35, and 36 of T. 4 N., R. 19 W., G&SRM. Final acreage and boundaries for this area will be determined at a later date.

A public meeting on the proposed amendment will be held in Quartzsite during the 30-day public comment period.

Dated: August 17, 1989.

Herman L. Kast,

District Manager.

[FR Doc. 89-20065 Filed 8-24-89; 8:45 am]

BILLING CODE 4333-12-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Establishment of the Advisory Committee for the U.S. Trade and Development Program

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the establishment of the Advisory Committee for the U.S. Trade and Development Program.

The purpose of the committee is to provide a forum through which TDP and others, including representatives from the private sector, can exchange information, review strategies, and explore areas of mutual interest to assist TDP in being an effective agency for export promotion.

It has been determined by TDP that the committee is necessary and that establishment of the committee is in the public interest.

It is suggested that those who wish more specific information concerning the advisory committee contact Ms. Priscilla Rabb, Director, TDP, Rm 309, S.A.-16, Washington, DC 20523.

Dated: August 11, 1989.

Priscilla Rabb,

Director, TDP.

[FR Doc. 89-20130 Filed 8-24-89; 8:45 am]

BILLING CODE 4116-01-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Grand Metropolitan Incorporated, 100 Paragon Drive, Montvale, NJ 07645.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) The Pillsbury Company ("Pillsbury")—Incorporated in the State of Delaware; and

(ii) Alpo Petfoods, Inc.—Incorporated in the Commonwealth of Pennsylvania

B. 1. Parent corporation. Kaybee & Associates, Inc., 6427 Fallengate Drive, Spring, Texas 77373.

2. Kaybee Operations, Inc. DBA Kaybee Enterprises, 6427 Fallengate Drive, Spring, Texas. and Kaybee Products, Inc. 6427 Fallengate Drive, Spring, Texas 77373.

3. All are Texas Corporations.

C. 1. Parent corporation and address of principal office: Sara Lee Corporation, Three First National Plaza, Chicago, Illinois 60602-4260.

2. Wholly-owned subsidiaries which will participate in the operations, the address of their respective principal offices and their states of incorporation.

Name	State of incorporation
Adams-Millis Corporation, 224 North Elm Street, High Point, North Carolina 27261-2650.	North Carolina.
Silver Knit Sales Inc., 350 5th Avenue, 38th Floor, New York, New York 10118.	North Carolina.
Aris Isotoner Inc. 417 Fifth Avenue, New York, New York 10016.	Delaware
Bali Company, 3330 Healy Drive, Winston-Salem, North Carolina 27103.	Delaware
Bil Mar Foods, Inc., 8300 96th Avenue, Zeeland, Michigan 49464.	Delaware
Bil Mar Farms, Inc., 8300 96th Avenue, Zeeland, Michigan 49464.	Delaware.
Booth Fisheries Corporation, 107 Frederick Street, Greenville, South Carolina 29607.	Delaware.
Bryan Foods, Inc., 1 Churchill Road, P.O. Box 1177, West Point, Mississippi 39773.	Mississippi.
Champion Products Inc., 3141 Monroe Avenue, Rochester, New York 14618.	New York.
Pensic Corporation, 73 Cook Drive, Rochester, New York 14623.	Delaware
Circle T Foods Company, Inc., 4560 Leston, Dallas, Texas 75247.	Texas
Coach Leatherware Company, Inc., 300 Chubb Avenue, Lyndhurst, New Jersey 07071.	New Jersey.
Coach Leatherware New York, Inc., 516 West 34th Street, New York, New York 10001.	New York.
Coach Stores, Inc., 516 West 34th Street, New York, New York 10001.	Delaware.
Country Commons Inc., 500 Waukegan Road, Deerfield, Illinois 60015.	Delaware.
Droste U.S.A. Limited, Park 80 West Plaza One, Garden State Parkway at 80, Saddlebrook, New Jersey 07662.	Delaware
The Fuller Brush Company, 5635 Hanes Mill Road, Winston-Salem, North Carolina 27106.	Connecticut.
Gibbon Packing, Inc., Post Office Box 730, East Highway 30, Gibbon, Nebraska 68840.	Nebraska.
Hanes Menswear, Inc., 3334 Healy Drive, Winston-Salem, North Carolina 27103.	Delaware.
Hygrade Food Products Corporation, 40 Oak Hollow, Suite 355, Southfield, Michigan 48034.	New York.
Jimmy Dean Manufacturing Company, Jimmy Dean Drive, P.O. Box 467, Osceola, Iowa 50213.	Delaware.
Kiwi Brands Inc., Route 662 North, Douglassville, Pennsylvania 19518.	Delaware.
L'eggs Brands, Inc., P.O. Box 2495, 5660 University Parkway, Winston-Salem, North Carolina 27105.	North Carolina
Ozark Salad Company, Inc., 100 N. Youngman, Baxter Springs, Kansas 66713.	Delaware.
PYA/Monarch, Inc., 107 Frederick Street, P.O. Box 1328, Greenville, South Carolina 29602.	Delaware.
Rice Hosiery Corporation, 550 Fairfield Road, High Point, North Carolina 27261.	North Carolina.
Sara Lee Knit Products, Inc., 3334 Healy Drive, Winston-Salem, North Carolina 27103.	Delaware.

BEST COPY AVAILABLE

Name	State of incorporation
Schloss & Kahn, Inc., US Highway 80 & Newcomb Avenue, Montgomery, Alabama 36195.	Delaware.
Seitz Foods, Inc., Box 247, St. Joseph, Missouri 64502.	Delaware.
Synergy Enterprises, Inc., 720 Second Avenue South, Franklin, Tennessee 37064.	Tennessee.
Wolfermen's Inc., One Muffin Lane, North Kansas City, Missouri 64116.	Delaware.

[FR Doc. 89-20092 Filed 8-24-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31412]

Washington Corporations; Control Exemption for Western Transport Crane and Rigging, Inc. and Montana Rail Link, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343 Washington Corporations' acquisition of common control of Western Transport Crane and Rigging, Inc. and Montana Rail Link, Inc.

DATES: This exemption will be effective on September 25, 1989. Petitions to stay must be filed by September 5, 1989. Petitions for reconsideration must be filed by September 14, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31412 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives: Kevin M. Sheys, Weiner, McCaffrey, Brodsky, & Kaplan, P.C., 1350 New York Avenue, NW., Washington, DC 20005-4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.

Decided: August 18, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips. Commissioners Lamboley concurred in the result with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89-20093 Filed 8-24-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Champion International Corp.

Notice is hereby given that on August 15, 1989, a proposed Consent Decree in *United States of America* v. *Champion International Corporation,* Civil Action No. CV-89-127-M-CCL, was lodged with the United States District Court for the District of Montana.

The proposed consent decree requires Champion International Corporation to implement the December 1988 Record of Decision of the United States Environmental Protection Agency (EPA) to address the release and threatened release of hazardous substances at the Champion Lumber Mill, U.S. Highway 2, Libby, Montana. The remedy to be conducted by Champion includes clean up of contaminated soils and shallow groundwater, and study of the deep groundwater contamination at the site for possible future clean up. The decree also requires Champion to pay $585,000 toward the federal government's past costs incurred in connection with the site, and to pay all future oversight costs to be incurred by the United States at the site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Champion International Corporation,* Civil Action No. CV-89-127-M-CCL, DOJ Ref. No. 90-11-3-379. The proposed Consent Decree may be examined at the office of the United States Attorney, District of Montana, Room 564, Federal Building, 301 S. Park Avenue, Helena, Montana, or at the office of the Lincoln County Sanitarian, 418 Mineral Avenue, Libby, Montana. Copies of the Consent Decree may also be examined and obtained in person at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC 20044. When requesting a copy, please present or enclose a check in the amount of $5.40 (ten cents per page reproduction costs) payable to the Treasurer of the United States.

Donald A Carr,

Acting Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 89-20069 Filed 8-24-89; 8:45 am]

BILLING CODE 4410-01-7

Lodging of Consent Decree Pursuant to the Clean Water Act; Gardinier, Inc., et al.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Gardinier, Inc., et al.,* Civil Action No. 89-1120-CIV-T-10B, was lodged with the United States District Court for the Middle District of Florida, Tampa Division, on August 11, 1989. This agreement resolves a judicial enforcement action brought by the United States against the defendants which alleged violations of the Clean Water Act arising from the discharge of a hazardous substance into the Alafia River near Tampa Bay.

The proposed consent decree provides for payment of $40,000 in civil penalties in settlement of the action.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justics, Washington, DC 20530, and should refer to *United States* v. *Gardinier, Inc., et al.,* D.J. Ref. 90-5-1-1-3319.

The proposed consent decree maybe examined at the office of the United States Attorney, Middle District of Florida, Robert Timberlake Bldg., Rm. 410, 500 Zack Street, Tampa, Florida 33602. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section of the Department of Justice. In requesting a copy, please enclose a check in the amount of sixty (60) cents (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-20070 Filed 8-24-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Final Consent Decree Pursuant to the Clean Water Act; City of Neptune Beach, FL, and the State of Florida

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on the 14th day of August, 1989, a proposed final consent decree in *United States* v. *City of Neptune Beach, Florida, and the State of Florida,* (M.D. Fla.), was lodged with the United States District Court for the Middle District of Florida. The complaint sought the imposition of injunctive relief and civil penalties against the City of Neptune Beach ("City") and the State of Florida for violations of sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1311 and 1342.

The proposed consent decree imposes a permanent injunction against future violations of the Clean Water Act, and establishes a court-ordered compliance schedule to require the City to complete the necessary construction and improvements to bring its discharges within the terms and limitations of a valid National Pollution Elimination System ("NPDES" permit). It also imposes a civil penalty of $18,300.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City of Neptune Beach, Florida, and the State of Florida,* D.J. Ref. 90-5-1-1-3199.

The proposed consent decree may be examined at the Office of the United States Attorney, 409 Post Office Building, 311 West Monroe Street, Jacksonville, Florida 32201 and at the U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30364. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $2.90 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-20071 Filed 8-24-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Final Consent Decree Pursuant to the Clean Water Act; City of Wildwood, FL, and the State of Florida

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on the 14th day of August, 1989, a proposed final consent decree in *United States* v. *City of Wildwood, Florida, and the State of Florida,* (M.D. Fla.), was lodged with the United States District Court for the Middle District of Florida. The complaint sought the imposition of unjunctive relief and civil penalties against the City of Wildwood ("City") and the State of Florida for violations of sections 301 and 402 of the Clean Water Act, 33 U.S.C. § 1311 and 1342.

The proposed consent decree imposes a permanent injunction against future violations of the Clean Water Act, and establishes a court-ordered compliance schedule to require the City to complete the necessary construction and improvements to bring its discharges within the terms and limitations of a valid National Pollution Elimination System ("NPDES") permit. It also imposes a civil penalty of $12,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Wildwood, Florida, and the State of Florida,* D.J. Ref. 90-5-1-1-3255.

The proposed consent decree may be examined at the Office of the United States Attorney, 409 Post Office Building, 311 West Monroe Street, Jacksonville, Florida 32201 and at the U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30364. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-20072 Filed 8-24-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act of 1984; OSF/Open Software Foundation, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on May 3, 1989, disclosing changes in its membership. The additional notification was filed for the purpose of extending the protections of section 4 of the Act limiting recovery of antitrust plantiffs to actual damages under specific circumstances.

On August 8, 1988, OSF and the Open Software Foundation Research Institute, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on September 7, 1988, 53 FR 34594. On November 4, 1988, February 2, 1989, and July 28, 1989, OSF filed additional written notifications. The Department published notices in the Federal Register in response to the November 4, 1988 and February 2, 1989 additional notifications on November 25, 1988 (53 FR 47773), and February 23, 1989 (54 FR 7893). The Department will publish a notice in the Federal Register in response to the July 28, 1989 additional notification.

The identities of the new, non-voting

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members of OSF as of April 28, 1989 are

Inc. filed its original notification

DEPARTMENT OF LABOR

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received by the agency, whichever is

NY89-5 (January 8, 1989), p.755

publication is available at each of the 50 members of OSF as of April 28, 1989 are as follows:

Massachusetts Institute of Technology	02/01/89.
Carnegie Mellon University	02/02/89.
Synthesis Software Solutions, Inc.	02/02/89.
Fraunhofer Inst. for Info. & Data Process	02/07/89.
GMD-Gesellschaft fur Mathematik & Datenv	02/10/89.
Kontron Elektronik GmbH	02/13/89.
Boeing Computer Services	02/15/89.
VDMA FG BIT	02/15/89.
Berkeley Computer Science Dept	02/16/89.
Visix Software, Inc	02/16/89.
Quantum GmbH	02/17/89.
Sony Corporation	02/21/89.
Sumitomo Electric Industries Ltd	02/21/89.
Univ. of Wisconsin, Madison, CS Dept	03/01/89.
McDonnell Douglas CAD/CAM/CALS Program	03/02/89.
Tektronix, Inc	03/02/89.
University of Illinois, CS Dept	03/02/89.
University of Utah, CS Dept	03/02/89.
Integrated Solutions, Inc	03/06/89.
The Santa Cruz Operation	03/06/89.
U.S. D.O.T. Transportation Systems Center	03/06/89.
Zentrum fur Graphische Datenverarbeitung	03/06/89.
SMT Goupil	03/07/89.
University of Washington	03/10/89.
Electronic & Telecommunications Rsch	03/13/89.
Brown University, CS Dept	03/16/89.
Ricoh Company Ltd	03/16/89.
Clemson University, CS Dept	03/21/89.
University of Calgary, CS Dept	03/21/89.
University of Massachusetts—CS Dept	03/24/89.
IXoS Software GmbH	03/28/89.
Univ. of Milan—Computer Science Dept	03/31/89.
SAP AG	04/07/89.
Edinburgh University	04/10/89.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-20067 Filed 8-24-89; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; OSF/Open Software Foundation, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on July 28, 1989, disclosing changes in its membership. The additional notification was filed for the purpose of extending the protections of section 4 of the Act limiting recovery of antitrust plantiffs to actual damages under specific circumstances.

On August 8, 1988, OSF and the Open Software Foundation Research Institute, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988, 53 FR 34594. On November 4, 1988, February 2, 1989, and May 3, 1989, OSF filed additional written notifications. The Department published notices in the **Federal Register** in response to the November 4, 1988 and February 2, 1989 additional notifications on November 25, 1988 (53 FR 47773), and February 23, 1989 (54 FR 7893). The Department will publish a notice in the **Federal Register** in response to the May 3, 1989 additional notification.

The identities of the new, non-voting members of OSF are as follows:

University of Lowell, CS Dept.	4/16/89.
ASCII Corporation	4/22/89.
Cadence Design Systems, Inc.	4/22/89.
Mannesmann AG	4/22/89.
Motorola, Inc.	4/27/89.
Integrated Computer Solutions	4/30/89.
Eureka Software Factory	5/03/89.
Rutherford Appleton Laboratory	5/04/89.
ANSA	5/05/89.
INESC	5/09/89.
IRIT	5/09/89.
North Carolina State University	5/09/89.
Sybase, Inc.	5/09/89.
UCLA Computer Science Dept	5/09/89.
Electronic Research & Service Org	5/10/89.
Cranfield Information Technology Inst.	5/17/89.
Harvard Univ.—Div. of Applied Sciences	5/17/89.
ARIX Corporation	6/05/89.
Baan Information Systems b.v.	6/05/89.
Centre Universitarie D'Informatique	6/05/89.
Defense Intelligence Agency	6/05/89.
EMULEX Corporation	6/05/89.
Yokogawa Electric Corporation	6/05/89.
Mamram Computer Training Center	6/15/89.
Atlantic Richfield Company	6/19/89.
Dansk Data Elektronik A/S	6/20/89.
Fox Chase Cancer Center	6/20/89.
Uppsala University Computing Center	6/20/89.
Korea Advance Institute Science/Technol	6/23/89.
Alliant Computer Systems Company	6/28/89.
Hellas Institute of Computer Science	6/30/89.
Michigan State University	7/06/89.
University of Virginia	7/11/89.
Fraunhofer—Institute IAO	7/25/89.
KnowledgeSet Corporation	7/25/89.
Royal Insitute of Technology	7/27/89.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-20066 Filed 8-24-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is

received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I:	
NEW JERSEY:	
NJ89-2 (January 6, 1989)	p.613 pp.614-619
NJ89-3 (January 6, 1989)	p.633 pp.634-638
NJ89-4 (January 6, 1989)	p.657 pp.658-661
NEW YORK:	
NY89-2 (January 6, 1989)	p.638 pp.687-689
NY89-3 (January 6, 1989)	p.701 p.702
NY89-4 (January 6, 1989)	p.709 p.710
NY89-5 (January 6, 1989)	p.717 p.718
NY89-6 (January 6, 1989)	p.727 pp.729,733
NY89-7 (January 6, 1989)	p.737 pp.738-740
NY89-8 (January 6, 1989)	p.755 pp.756-756
NY89-9 (January 6, 1989)	p.767 p.768
NY89-11 (January 6, 1989).	p.781 pp.782,784
NY89-12 (January 6, 1989).	p.789 p.790
NY89-13 (January 6, 1989).	p.799 p.801
NY89-14 (January 6, 1989).	p.807 p.808
NY89-17 (January 6, 1989).	p.817 pp.818,820
VOLUME II:	
INDIANA:	
IN89-6 (January 6, 1989)	p.313 pp.314-324
MISSOURI:	
MO89-2 (January 6, 1989).	p.647 pp.648-652
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3138.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered off for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 18th day of August 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-19865 Filed 8-24-89; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Indian and Native American Programs; Final Total Allocations, Allocation Formulas, and Formula Rationales for Job Training Partnership Act Program Year 1989 Title IV-A, Regular Program, and Calendar Year 1989 (Program Year 1988) Summer Youth Employment and Training Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor is publishing the final Native American allocations, allocation formulas and formula rationales for the Program Year 1989 (July 1, 1989-June 30, 1990) Title IV-A regular program funded under the Job Training Partnership Act and for the Calendar Year 1989 Summer Youth Employment and Training Program funded under Title II-B of the Job Training Partnership Act.

FOR FURTHER INFORMATION CONTACT: Mr. Carmelo J. Milici. Telephone: (202) 535-0507.

SUPPLEMENTARY INFORMATION: Pursuant to section 162 of the Job Training Partnership Act (JTPA), the Employment and Training Administration (ETA) of the Department of Labor (DOL) publishes the final allocations.

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION PY 1989 TITLE IV-A AND PY 1988 II-B (SUMMER 1989) allocation formulas and rationales for those formulas for Native American grantees to be funded under JTPA, Title IV–A, Section 401 and JTPA Title II–B. The total amounts to be allocated are $58,998,000 for the Program Year 1989 JTPA, Title IV–A, Section 401 regular program, and $13,058,321 for the Calendar Year 1989 JTPA, Title II–B, Summer Youth Employment and Training Program (SYETP).

This information, along with individual grantee planning estimates, was published in the **Federal Register** as a proposal on December 6, 1988. 53 FR 49250.

Written comments were invited from the public. One was received regarding the inadvertent omissions of a Title II–B planning estimate of $2,370.00 for one grantee. The inclusion of this amount in the final allocations resulted in a minor reduction in the final Title II–B allocations to all eligible grantees. Certain grantees gained or lost all or part of their proposed allocations as a result of the grantee designation process for Program Years 1989/90. The planning estimates published as a Notice in the **Federal Register** of December 6, 1988 have been changed to account for the above conditions and are published here as final allocations.

The formula for JTPA, Title IV–A, Section 401 provides that 25 percent of the funding will be based on the number of unemployed Native Americans in the grantee's area, and 75 percent will be based on the number of poverty-level Native Americans in the grantee's area.

The formula for allocating the JTPA, Title II–B, SYETP funds divides the funds among eligible recipients based on the proportion that the number of Native American youths in a recipient's area bears to the total number of Native American youths in all eligible recipients' areas.

The rationale for the above formulas is that the number of poverty-level persons, unemployed persons and youth among the Native American population is indicative of the need for training and employment funds.

Statistics on poverty-level persons, unemployed persons and youth among Native Americans used in the above programs are derived from the Decennial Census of the population, 1980.

Signed at Washington, DC, this 10th day of August 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION PY 1989 TITLE IV–A AND PY 1988 II–B (SUMMER 1989) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES—JUNE 23, 1989

	PY 1989 IV–A			PY 1988 II–B		
	Total	Program	Cost pool	Total	Program	Cost pool
Poarch Band of Creek Indians, Route 3, Box 243A, Atmore, Alabama 36502, Grant Number: 99–7–0648–55–104–02	384,452	307,562	76,890	2,370	1,896	474
Aleutian/Pribilof Islands Assoc. Inc., 1689 C Street, Suite 205, Anchorage, Alaska 99501, Grant Number: 99–7–0117–55–071–02	45,853	36,682	9,171	34,978	27,982	6,996
Assoc. of Village Council Presidents, P.O. Box 848, Bethel, Alaska 99559 Grant Number: 99–7–2713–55–135–02	545,040	436,032	109,008	262,857	210,286	52,571
Bristol Bay Native Association, P.O. Box 310, Dillingham, Alaska 99576, Grant Number: 99–7–0116–55–070–02	135,110	108,088	27,022	79,815	63,852	15,963
Central Council of Tlingit and Haida Indians Tr, 320 W. Willoughby, Suite 300, Juneau, Alaska 99801, Grant Number: 99–7–0114–55–068–02	210,978	168,782	42,196	169,488	135,590	33,898
Cook Inlet Tribal Council, 670 West Fireweed Lane, Anchorage, Alaska 99503, Grant Number: 99–7–3402–55–189–02	350,125	280,100	70,025	202,191	161,753	40,438
Kawerak Incorporated, P.O. Box 948, Nome, Alaska 99762, Grant Number: 99–7–0123–55–073–02	212,885	170,308	42,577	92,896	74,317	18,579
Kenaitze Indian Tribe, P.O. Box 988, Kenai, Alaska 99611, Grant Number: 99–7–0089–55–087–02	29,043	23,234	5,809	17,631	14,105	3,526
Kodiak Area Native Association, 402 Center Avenue, Kodiak, Alaska 99615, Grant Number: 99–7–0115–55–069–02	61,556	49,245	12,311	33,746	26,997	6,749
Maniilaq Manpower, P.O. Box 725, Kotzebue, Alaska 99752, Grant Number: 99–7–0124–55–074–02	167,053	133,642	33,411	89,463	71,566	17,897
Metlakatla Indian Community, P.O. Box 8, Metlakatla, Alaska 99926, Grant Number: 99–7–0084–55–063–02	15,157	12,126	3,031	18,390	14,712	3,678
North Pacific Rim, 3300 C Street, Anchorage, Alaska 99503, Grant Number: 99–7–0118–55–072–02	55,595	44,476	11,119	26,352	21,082	5,270
Tanana Chiefs Conference, Inc., 201 First Avenue—Doyon Bldg., Fairbanks, Alaska 99701, Grant Number: 99–7–3109–55–150–02	371,420	297,136	74,284	217,452	173,962	43,490
Affiliation of Arizona Ind. Cntrs, Inc., 333 West Indian School Road, Suite 210, Phoenix, Arizona 85013, Grant Number: 99–7–0268–55–089–02	245,680	196,544	49,136	0	0	0
American Indian Assoc. of Tucson, P.O. Box 7246, Tucson, Arizona 85725, Grant Number: 99–7–0492–55–096–02	320,585	256,468	64,117	0	0	0
Colorado River Indian Tribes, Route 1, Box 23–B, Parker, Arizona 85344, Grant Number: 99–7–0499–55–097–02	78,516	62,813	15,703	31,471	25,177	6,294
Gila River Indian Community, Box 97, Sacaton, Arizona 85247, Grant Number: 99–7–0054–55–049–02	469,469	375,575	93,894	135,552	108,442	27,110
Hopi Tribal Council, Box 123, Kykotsmovi, Arizona 86039, Grant Number: 99–7–0057–55–050–02	367,883	294,306	73,577	107,873	86,298	21,575
Indian Dev. Dist. of Arizona, Inc., 4560 North 19th Ave., Suite 200, Phoenix, Arizona 85015, Grant Number: 99–7–0053–55–048–02	107,287	85,830	21,457	43,983	35,186	8,797
Native Americans for Community Action, 2717 North Steves Boulevard, Suite 11, Flagstaff, Arizona 86004, Grant Number: 99–7–1777–55–119–02	109,356	87,485	21,871	0	0	0
Navajo Tribe of Indians, P.O. Box 1889, Window Rock, Arizona 86515, Grant Number: 99–7–0059–55–052–02	6,520,025	5,216,020	1,304,005	2,378,704	1,902,963	475,741
Pasqua Yaqui Tribe, 7474 S. Camino De Oeste, Tucson, Arizona 85746, Grant Number: 99–7–3269–55–160–02	36,862	29,490	7,372	9,384	7,507	1,877
Phoenix Indian Center, Inc., 333 West Indian School Road, Suite 200, Phoenix, Arizona 85013, Grant Number: 99–7–0195–55–084–02	674,521	539,617	134,904	0	0	0
Salt River Pima-Maricopa Ind. Commun., Route 1, Box 216, Scottsdale, Arizona 85256, Grant Number: 99–7–0479–55–094–02	91,782	73,426	18,356	47,111	37,689	9,422

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION PY 1989 TITLE IV–A AND PY 1988 II–B (SUMMER 1989) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES—JUNE 23, 1989—Continued

	PY 1989 IV–A			PY 1988 II–B		
	Total	Program	Cost pool	Total	Program	Cost pool
San Carlos Apache Tribe, P.O. Box'O', San Carlos, Arizona 85550, Grant Number: 99–7–0173–55–081–02	299,431	239,545	59,886	118,584	94,867	23,717
Tohono O'Odham Nation, P.O. Box 837, Sells, Arizona 85634, Grant Number: 99–7–0181–55–083–02	409,211	327,369	81,842	128,253	102,602	25,651
White Mountain Apache Tribe, P.O. Box 700, White River, Arizona 85941, Grant Number: 99–7–0174–55–186–02	318,024	254,419	63,605	132,993	106,394	26,599
Am. Indian Center of Arkansas, Inc., 2 Van Circle, Suite 7, Little Rock, Arkansas 72207, Grant Number: 99–7–1778–55–120–02	445,452	356,361	89,090	0	0	0
California Indian Manpower CSRT., 4153 Northgate Boulevard, Sacramento, California 95834, Grant Number: 99–7–2058–55–181–02	2,908,780	2,327,024	581,756	154,700	123,760	30,940
Candelaria American Indian Council, 2635 Wagon Wheel Road, Oxnard, California 93030, Grant Number: 99–7–0086–55–066–02	440,863	352,690	88,173	0	0	0
Hoopa Valley Business Council, P.O. Box 815, Hoopa, California 95546–0815, Grant Number: 99–7–1142–55–114–02	49,524	39,619	9,905	22,845	18,276	4,569
Indian Center of San Jose, Inc., 935 the Alameda, San Jose, California 95126 Grant Number: 99–7–0499–55–098–02	226,295	181,036	45,259	0	0	0
Indian Human Resources Center, 4040 30th Street, Suite A, San Diego, California 92104, Grant Number: 99–7–2441–55–134–02	431,594	345,275	86,319	0	0	0
Northern Calif. Ind. Dev. Council, Inc., 241 F Street, Eureka, California 95501, Grant Number: 99–7–0686–55–015–02	310,876	248,701	62,175	15,546	12,437	3,109
Southern California Indian Center, Inc., 12755 Brookhurst Street, P.O. Box 2550, Garden Grove, California 92642–2550, Grant Number: 99–7–0170–55–172–02	1,905,900	1,524,720	381,180	0	0	0
Tule River Tribe, Dept. of Health, Safety & Welfare, P.O. Box 589, Porterville, California 93258, Grant Number: 99–7–3219–55–153–02	127,869	102,295	25,574	4,266	3,413	853
United Indian Nations, 1404 Franklin Street, Suite 202, Oakland, California 94612 Grant Number: 99–7–2310–55–133–02	614,563	491,650	122,913	0	0	0
Ya-Ka-Ama Indian Educ. and Dev., Inc., 6215 Eastside Road, Forestville, California 95436, Grant Number: 99–7–0082–55–065–02	126,584	101,267	25,317	0	0	0
Denver Indian Center, Inc., 4407 Morrison Road, Denver, Colorado 80219, Grant Number: 99–7–0076–55–062–02	590,353	472,282	118,071	0	0	0
Southern Ute Indian Tribe, P.O. Box 800, Ignacio, Colorado 81137, Grant Number: 99–7–2714–55–136–02	54,615	43,692	10,923	15,451	12,361	3,090
Ute Mountain Ute Tribe, P.O. Box 30, Towaoc, Colorado 81334, Grant Number: 99–7–1143–55–115–02	65,850	52,680	13,170	18,674	14,939	3,735
American Indians for Development, Inc., P.O. Box 117, Meriden, Connecticut 06450 Grant Number: 99–7–0361–55–091–02	183,860	147,088	36,772	0	0	0
Nanticoke Indian Association, Inc., Rt. 4, Box 107A, Millsboro, Delaware 19966, Grant Number: 99–9–3516–55–019–02	37,974	30,379	7,595	0	0	0
Fla. Governors Council on Ind. Affairs, 521 E. College Avenue, Tallahassee, Florida 32301, Grant Number: 99–7–0692–55–107–02	1,166,402	933,122	233,280	0	0	0
Miccosukee Corporation, P.O. Box 440021, Tamiami Station, Miami, Florida 33144, Grant Number: 99–7–0052–55–047–02	116,961	93,569	23,392	40,192	32,154	8,038
Seminole Tribe of Florida, JTPA Department, 6073 Stirling Road, Hollywood, Florida 33024, Grant Number: 99–7–0004–55–009–02	65,872	52,698	13,174	7,868	6,294	1,574
Alu Like, Inc., 1024 Mapunapuna Street, Honolulu, Hawaii 96819–4417, Grant Number: 99–7–1179–55–116–02	2,426,082	1,940,866	485,216	2,086,556	1,669,245	417,311
American Indian Services Corporation, 1405 North King Street, Suite 302, Honolulu, Hawaii 96817, Grant Number: 99–7–3404–55–189–02	85,540	68,432	17,108	0	0	0
Kootenai Tribe of Indians, P.O. Box 1269, Bonners Ferry, Idaho 83805, Grant Number: 99–7–3334–55–161–02	31,596	25,277	6,319	1,327	1,062	265
Nez Perce Tribe, P.O. Box 365, Lapwai, Idaho 83540–0305, Grant Number: 99–7–0065–55–054–02	79,036	63,229	15,807	12,418	9,934	2,484
Shoshone-Bannock Tribes, Fort Hall Business Council, P.O. Box 306, Fort Hall, Idaho 83203, Grant Number: 99–7–1780–55–121–02	234,683	187,746	46,937	40,286	32,229	8,057
American Indian Business Association, 4753 North Broadway, Suite 700, Chicago, Illinois 60640, Grant Number: 99–7–0809–55–109–02	1,063,617	850,894	212,723	0	0	0
Mid America All Indian Center, Inc., 650 N. Seneca, Wichita, Kansas 67203, Grant Number: 99–7–0168–55–078–02	158,591	126,873	31,718	0	0	0
United Tribes of Kansas and S.E. Neb., P.O. Box 29, Horton, Kansas 66439, Grant Number: 99–7–0178–55–082–02	484,971	387,977	96,994	9,858	7,886	1,972
Inter-Tribal Council of Louisiana, Inc., 5425 Galeria Drive—Suite A, Baton Rouge, Louisiana 70816, Grant Number: 99–7–0026–55–026–02	439,485	351,588	87,897	5,498	4,398	1,100
Central Maine Indian Association, Inc., 157 Ark Street, Suite 3C, P.O. Box 2280, Bangor, Maine 04401, Grant Number: 99–7–2719–55–182–02	89,496	71,596	17,900	0	0	0
Tribal Governors, Inc., 93 Main Street, Orono, Maine 04473, Grant Number: 99–7–0001–55–167–02	102,956	82,365	20,591	27,564	22,067	5,517
Baltimore American Indian Center, 113 So. Broadway, Baltimore, Maryland 21231, Grant Number: 99–7–3405–55–192–02	349,606	279,685	69,922	0	0	0
Area formerly assigned to Boston Indian Council—Grantee to be designated, Grant Number: xx–x–xxxx–xx–xxx–xx	232,970	186,376	46,594	0	0	0
Mashpee-Wampanoag Indian Tribal Council, P.O. Box 1048, Mashpee, Massachusetts 02649, Grant Number: 99–7–0406–55–093–02	81,252	65,002	16,250	0	0	0
Grand Rapids Inter-Tribal Council, 45 Lexington Ave. N.W., Grand Rapids, Michigan 49504, Grant Number: 99–7–0694–55–108–02	116,280	93,024	23,256	0	0	0
Grand Traverse Band of Ottawa and Chippewa Ind., Route 1, Box 135, Suttons Bay, Michigan 49682, Grant Number: 99–7–2721–55–137–02	53,872	43,098	10,774	2,465	1,972	493

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION PY 1989 TITLE IV–A AND PY 1988 II–B (SUMMER 1989) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES—JUNE 23, 1989—Continued

	PY 1989 IV–A			PY 1988 II–B		
	Total	Program	Cost pool	Total	Program	Cost pool
Inter-Tribal Council of Michigan, Inc., 405 East Easterday Avenue, Sault Ste. Marie, Michigan 49783, Grant Number: 99-7-0172-55-080-02	64,535	51,628	12,907	30,618	24,494	6,124
Michigan Indian Employment and Training Service, 2405 East Mount Hope, Lansing, Michigan 48910, Grant Number: 99-7-1144-55-179-02	777,630	622,104	155,526	0	0	0
North American Indian Assoc. of Detroit, 22720 Plymouth Road, Detroit, Michigan 48122, Grant Number: 99-7-0695-55-176-02	391,793	313,434	78,359	0	0	0
Potawatomi Indian Nation, 53237 Townhall Road, Dowagiac, Michigan 49047, Grant Number: 99-7-3339-55-164-02	148,827	119,062	29,765	0	0	0
Sault Ste. Marie Tribe of Chippewa Indians, 2151 Shunk Road, Sault Ste. Marie, Michigan 49783, Grant Number: 99-7-0597-55-100-02	228,887	183,110	45,777	42,941	34,353	8,588
Southeastern Michigan Indians, Inc., 22620 Ryan Road, P.O. Box 861, Warren, Michigan 48090, Grant Number: 99-7-3220-55-154-02	63,073	50,458	12,615	0	0	0
American Indian Fellowship Assn., 8 East Fourth Street, Duluth, Minnesota 55806, Grant Number: 99-7-0254-55-067-02	132,945	106,356	26,589	2,085	1,668	417
American Indian Opportunities Ctr., 2495-18th Avenue South, Minneapolis, Minnesota 55404, Grant Number: 99-7-3221-55-156-02	511,075	408,860	102,215	0	0	0
Bois Forte R.B.C., P.O. Box 16, Nett Lake, Minnesota 55772, Grant Number: 99-7-0010-55-014-02	37,964	30,371	7,593	9,005	7,204	1,801
Fond Du Lac R.B.C., 105 University Road, Cloquet, Minnesota 55720, Grant Number: 99-7-0009-55-013-02	38,799	31,039	7,760	6,446	5,157	1,289
Leech Lake R.B.C., Route 3 Box 100, Cass Lake, Minnesota 56633, Grant Number: 99-7-0012-55-017-02	175,402	140,322	35,080	49,197	39,358	9,839
Mille Lacs Band of Chippewa Indians, Star Route-Box 194, Onamia, Minnesota 56359, Grant Number: 99-7-0008-55-012-02	32,020	25,616	6,404	8,910	7,128	1,782
Minneapolis American Indian Center, 1530 East Franklin Avenue, Minneapolis, Minnesota 55404, Grant Number: 99-7-0204-55-065-02	299,245	239,396	59,849	12,418	9,934	2,484
Red Lake Tribal Council, P.O. Box 310, Red Lake, Minnesota 56671, Grant Number: 99-7-0017-55-020-02	140,449	112,359	28,090	63,416	50,733	12,683
White Earth R.B.C., Box 418, White Earth, Minnesota 56591, Grant Number: 99-7-0011-55-016-02	157,219	125,775	31,444	50,619	40,495	10,124
Mississippi Band of Choctaw Indians, Route 7, Box 21, Philadelphia, Mississippi 39350, Grant Number: 99-7-0005-55-010-02	304,495	243,596	60,899	52,230	41,784	10,446
Region VII American Indian Council, Inc., 310 Armour Road, Suite 205, North Kansas City, Missouri 64116, Grant Number: 99-7-0967-55-177-02	564,167	451,334	112,833	0	0	0
Assiniboine and Sioux Tribes, Fort Peck Indian Reservation, P.O. Box 1027, Poplar, Montana 59255, Grant Number: 99-7-0033-55-031-02	210,085	168,068	42,017	77,160	61,728	15,432
Blackfeet Tribal Business Council, P.O. Box 1090, Browning, Montana 59417, Grant Number: 99-7-0006-55-011-02	243,696	194,957	48,739	92,706	74,165	18,541
Chippewa Cree Tribe, Rocky Boys Reserv., Rocky Boy Route—P.O. Box 578, Box Elder, Montana 59521, Grant Number: 99-7-0035-55-033-02	98,065	78,452	19,613	29,859	23,887	5,972
Confederated Salish & Kootenai Tribes, P.O. Box 278, Pablo, Montana 59855, Grant Number: 99-7-0031-55-030-02	246,561	197,249	49,312	72,800	58,240	14,560
Crow Indian Tribe, P.O. Box 159, Crow Agency, Montana 59022, Grant Number: 99-7-0030-55-029-02	207,081	165,665	41,416	81,426	65,141	16,285
Fort Belknap Indian Community, P.O. Box 249, Harlem, Montana 59526, Grant Number: 99-7-0032-55-168-02	79,058	63,246	15,812	36,590	29,272	7,318
Montana United Indian Association, P.O. Box 6043, Helena, Montana 59601, Grant Number: 99-7-0074-55-060-02	425,177	340,142	85,035	0	0	0
Northern Cheyenne Tribe, P.O. Box 368, Lame Deer, Montana 59043, Grant Number: 99-7-0034-55-060-02	164,096	131,277	32,819	54,600	43,680	10,920
Indian Center, Inc., 1100 Military Road, Lincoln, Nebraska 68508, Grant Number: 99-7-2722-55-183-02	169,227	135,382	33,845	0	0	0
Nebraska Indian Inter-Tribal Dev. Corp., Route 1—Box 66–A, Winnebago, Nebraska 68071, Grant Number: 99-7-0087-55-171-02	306,929	245,543	61,386	55,074	44,059	11,015
Inter-Tribal Council of Nevada, 806 Holman Way, Sparks, Nevada 89431, Grant Number: 99-7-0058-55-051-02	329,426	263,541	65,885	69,388	55,510	13,878
Las Vegas Indian Center, Inc., 2300 West Bonanza Road, Las Vegas, Nevada 89106, Grant Number: 99-7-0887-55-106-02	92,191	73,753	18,438	0	0	0
Shoshone Paiute Tribes, P.O. Box 219, Owyhee, Nevada 89832, Grant Number: 99-7-2723-55-138-02	162,332	129,866	32,466	19,336	15,470	3,866
Powhatan Renape Nation, Rankokus Reservation—P.O. Box 225, Rankokus, New Jersey 08073, Grant Number: 99-7-3222-55-156-02	291,671	233,337	58,334	0	0	0
Alamo Navajo School Board, P.O. Box 907, Magdalena, New Mexico 87825, Grant Number: 99-7-2724-55-139-02	76,239	60,991	15,248	17,916	14,333	3,583
All Indian Pueblo Council, Inc., 3939 San Pedro, NE, P.O. Box 3256, Albuquerque, New Mexico 87190, Grant Number: 99-7-3341-55-165-02	125,582	100,466	25,116	64,811	51,849	12,962
Eight Northern Indian Pueblo Council, P.O Box 969, San Juan Pueblo, New Mexico 87566, Grant Number: 99-7-3223-55-157-02	78,818	63,054	15,764	39,365	31,492	7,873
Five Sandoval Indian Pueblos, Inc., P.O. Box 580, Bernalillo, New Mexico 87004, Grant Number: 99-7-3336-55-162-02	118,193	94,554	23,639	68,629	54,903	13,726
Jicarilla Apache Tribe, P.O. Box 507, Dulce, New Mexico, 87528-0507, Grant Number: 99-7-2725-55-140-02	53,175	42,540	10,635	31,376	25,101	6,275
Mescalero Apache Tribe, P.O. Box 176, Mescalero, New Mexico 88340, Grant Number: 99-7-3100-55-149-02	74,254	59,403	14,851	30,523	24,418	6,105
National Indian Youth Council, 318 Elm Street SE, Albuquerque, New Mexico 87102, Grant Number: 99-7-0077-55-063-02	705,631	564,505	141,126	0	0	0

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION PY 1989 TITLE IV–A AND PY 1988 II–B (SUMMER 1989) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES—JUNE 23, 1989—Continued

	PY 1989 IV–A			PY 1988 II–B		
	Total	Program	Cost pool	Total	Program	Cost pool
Pueblo of Acoma, P.O. Box 469, Pueblo of Acoma, New Mexico 87034, Grant Number: 99-7-2199-55-128-02	99,677	79,742	19,935	41,614	33,291	8,323
Pueblo of Laguna, P.O. Box 194, Laguna, New Mexico 87026, Grant Number: 99-7-1583-55-117-02	74,812	59,850	14,962	58,297	46,638	11,659
Pueblo of Taos, P.O. Box 1846, Taos, New Mexico 87571, Grant Number: 99-7-2200-55-129-02	32,085	25,668	6,417	12,702	10,162	2,540
Pueblo of Zuni, Zuni Tribal Council, P.O. Box 339, Zuni, New Mexico 87327, Grant Number: 99-7-0021-55-023-02	286,114	228,891	57,223	128,822	103,058	25,764
Ramah Navajo School Board, Inc., Drawer G, Pine Hill, New Mexico 87357, Grant Number: 99-7-0146-55-075-02	91,358	73,086	18,272	23,508	18,806	4,702
Santa Clara Indian Pueblo, P.O. Box 580, Espanola, New Mexico 87532, Grant Number: 99-7-3224-55-158-02	19,128	15,302	3,826	5,688	4,550	1,138
Santo Domingo Tribe, P.O. Box 99, Santo Domingo, New Mexico 87052, Grant Number: 99-7-1781-55-122-02	124,548	99,638	24,910	41,614	33,291	8,323
American Indian Community House, Inc., 842 Broadway, 8th Floor, New York City, New York 10003-4889, Grant Number: 99-7-0348-55-090-02	763,833	611,066	152,767	3,128	2,502	626
Native American Cultural Center, Inc., 2115 East Main Street, Rochester, New York 14609, Grant Number: 99-7-3407-55-191-02	280,499	224,400	56,100	7,299	5,839	1,460
Native American Community Services of Erie, 1047 Grant Street (Rear)—P.O. Box 86, Buffalo, New York 14207-0086, Grant Number: 99-7-0689-55-106-02	227,487	181,990	45,497	10,238	8,190	2,048
St. Regis Mohawk Tribe, Community Building, Hogansburg, New York 13655, Grant Number: 99-7-0522-55-103-02	162,268	129,814	32,454	27,774	22,219	5,555
Seneca Nation of Indians, 1490 Route 438, Irving, New York 14081, Grant Number: 99-7-0169-55-079-02	301,742	241,394	60,348	54,695	43,756	10,939
Cumberland County Assoc. for Ind. People, 102 Indian Drive, Fayetteville, North Carolina 28301, Grant Number: 99-7-1762-55-123-02	123,496	98,796	24,700	0	0	0
Eastern Band of Cherokee Indians, P.O. Box 455, Cherokee, North Carolina 28719, Grant Number: 99-7-0003-55-008-02	232,763	186,210	46,553	87,208	69,766	17,442
Guilford Native American Assoc., P.O. Box 5623, 400 Prescott Street, Greensboro, North Carolina 27435-0623, Grant Number: 99-7-2727-55-142-02	93,871	75,097	18,774	0	0	0
Haliwa-Saponi Tribe, Inc., P.O. Box 99, Hollister, North Carolina 27844, Grant Number: 99-9-3514-55-015-02	65,425	52,340	13,085	0	0	0
Lumbee Reg. Dev. Assoc., P.O. Box 68, Pembroke, North Carolina 28372-0068, Grant Number: 99-7-067-5-055-02	1,268,699	1,014,959	253,740	0	0	0
Metrolina Native American Assn., 6407 Idlewild Road—Suite 103, Charlotte, North Carolina 28212, Grant Number: 99-7-2726-55-141-02	95,941	76,753	19,188	0	0	0
North Carolina Comm. of Ind. Affairs, P.O. Box 27228, Raleigh, North Carolina 27611-7228, Grant Number: 99-7-0070-55-057-02	312,757	250,206	62,551	0	0	0
Devils Lake Sioux Tribe, P.O. Box 300, Fort Totten, North Dakota 58335, Grant Number: 99-7-0037-55-034-02	116,885	93,508	23,377	38,770	31,016	7,754
Standing Rock Sioux, Box D, Fort Yates, North Dakota 58538, Grant Number: 99-7-0046-55-041-02	244,610	195,688	48,922	94,223	75,378	18,845
Three Affiliated Tribes, Box 597, New Town, North Dakota 58763 Grant Number: 99-7-0062-55-170-02	165,319	132,255	33,064	56,022	44,818	11,204
Turtle Mountain Band of Chippewa Ind., P.O. Box 900, Belcourt, North Dakota 58316 Grant Number: 99-7-0075-55-061-02	332,405	265,924	66,481	109,484	87,587	21,897
United Tribes—Ed. Tech. Cntr., 3315 University Drive, Bismarck, North Dakota 58504 Grant Number: 99-7-0208-55-173-02	167,685	134,148	33,537	0	0	0
North American Indian Cultural Centers, 1062 Triplette Boulevard, Akron, Ohio 44306, Grant Number: 99-7-3349-55-186-02	709,287	567,430	141,857	0	0	0
Caddo Tribe of Oklahoma, P.O. Box 487, Binger, Oklahoma, 73009, Grant Number: 99-7-1783-55-124-02	27,314	21,851	5,463	12,418	9,934	2,484
Central Tribes of the Shawnee Area, Inc., 624 North Broadway, Shawnee, Oklahoma 74801, Grant Number: 99-7-0036-55-035-02	79,131	63,305	15,826	49,481	39,585	9,896
Cherokee Nation of Oklahoma, P.O. Box 948, Tahlequah, Oklahoma 74465, Grant Number: 99-7-0027-55-027-02	1,382,457	1,105,966	276,491	742,883	594,306	148,577
Cheyenne-Arapaho Tribes, P.O. Box 67, Concho, Oklahoma 73022, Grant Number: 99-7-0048-55-043-02	207,428	165,942	41,486	92,990	74,392	18,598
Chickasaw Nation of Oklahoma, 520 East Arlington, P.O. Box 1548, Ada, Oklahoma 74820, Grant Number: 99-7-0042-55-038-02	370,645	296,516	74,129	190,057	152,046	38,011
Choctaw Nation of Oklahoma, Drawer 1210, Durant, Oklahoma 74702-1210, Grant Number: 99-7-0041-55-037-02	754,840	603,872	150,968	333,857	267,086	66,771
Citizens Band Potawatomi Ind. of Okla., 1901 South Gordon Cooper Drive, Shawnee, Oklahoma 74801, Grant Number: 99-7-2202-55-131-02	187,064	149,651	37,413	156,027	124,822	31,205
Comanche Tribe of Oklahoma, P.O. Box 908, Lawton, Oklahoma 73502, Grant Number: 99-7-3150-55-151-02	153,948	123,158	30,790	120,196	96,157	24,039
Creek Nation of Oklahoma, P.O. Box 580, Okmulgee, Oklahoma 74447, Grant Number: 99-7-0025-55-025-02	562,493	449,994	112,499	359,071	287,257	71,814
Four Tribes Consortium of Oklahoma, P.O. Box 1193, Anadarko, Oklahoma 73005, Grant Number: 99-7-2728-55-143-02	70,563	56,450	14,113	37,253	29,802	7,451
Inter-Tribal Council of N.E. Oklahoma, P.O. Box 1308, Miami, Oklahoma 74355, Grant Number: 99-7-1135-55-110-02	49,313	39,450	9,863	36,210	28,968	7,242
Kiowa Tribe of Oklahoma, P.O. Box 369, Carnegie, Oklahoma 73015, Grant Number: 99-7-0047-55-042-02	199,885	159,908	39,977	85,976	68,781	17,195

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION PY 1989 TITLE IV-A AND PY 1988 II-B (SUMMER 1989) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES—JUNE 23, 1989—Continued

	PY 1989 IV-A			PY 1988 II-B		
	Total	Program	Cost pool	Total	Program	Cost pool
Oklahoma Tribal Assistance Program, Inc., 1806 East 15th Street, P.O. Box 2841, Tulsa, Oklahoma 74101, Grant Number: 99-7-0072-55-058-02	326,329	261,063	65,266	197,262	157,810	39,452
Osage Tribal Council, P.O. Box 147—Osage Agency Campus, Pawhuska, Oklahoma 74056, Grant Number: 99-7-0022-55-024-02	99,629	79,703	19,926	77,066	61,653	15,413
OTOE-Missouria Indian Tribe of Okla., P.O. Box 99, Red Rock, Oklahoma 74651, Grant Number: 99-7-2730-55-145-02	13,587	10,870	2,717	21,044	16,835	4,209
Pawnee Tribe of Oklahoma, P.O. Box 470, Pawnee, Oklahoma 74058, Grant Number: 99-7-1785-55-126-02	22,492	17,994	4,498	16,399	13,119	3,280
Ponca Tribe of Oklahoma, White Eagle—Box 2, Ponca City, Oklahoma 74601, Grant Number: 99-7-0029-55-028-02	53,033	42,426	10,607	48,439	38,751	9,688
Seminole Nation of Oklahoma, P.O. Box 1498, Wewoka, Oklahoma 74884, Grant Number: 99-7-0051-55-046-02	141,976	113,581	28,395	67,492	53,994	13,498
Tonkawa Tribe of Oklahoma, P.O. Box 70, Tonkawa, Oklahoma 74653, Grant Number: 99-7-1136-55-111-02	41,887	33,510	8,377	47,491	37,993	9,498
United Urban Indian Council, 1501 Classen Blvd., Suite 100, Oklahoma City, Oklahoma 73106-5435, Grant Number: 99-7-2731-55-146-02	293,995	235,196	58,799	221,528	177,222	44,306
Confed. Tribes of Siletz Indians, P.O. Box 549, Siletz, Oregon 97380, Grant Number: 99-7-3153-55-152-02	585,902	468,722	117,180	13,934	11,147	2,787
Confed. Tribes of the Umatilla Ind. Res., P.O. Box 638, Pendleton, Oregon 97801, Grant Number: 99-7-3065-55-148-02	43,466	34,773	8,693	16,494	13,195	3,299
Confederate Tribes of Warm Springs, P.O. Box C—Tenino Road, Warm Springs, Oregon 97761, Grant Number: 99-7-0256-55-088-02	91,728	73,382	18,346	42,846	34,277	8,569
Organization of Forgotten Americans, P.O. Box 1257, 4509 South 6th Street, Rm. 206, Klamath Falls, Oregon 97601-0276, Grant Number: 99-7-2732-55-147-02	426,622	341,298	85,324	4,171	3,337	834
Council of Three Rivers, 200 Charles Street, Pittsburgh, Pennsylvania 15238, Grant Number: 99-7-0642-55-175-02	677,339	541,871	135,468	0	0	0
United Am. Indians of the Del. Valley, 225 Chestnut Street, Philadelphia, Pennsylvania 19106, Grant Number: 99-7-0477-55-095-02	193,645	154,916	38,729	0	0	0
Rhode Island Indian Council, 444 Friendship St., Providence, Rhode Island 02907, Grant Number: 99-7-0510-55-101-02	141,406	113,125	28,281	0	0	0
Catawba Indian Nation, 1480 Hopewell Road, Rock Hill, South Carolina 29730, Grant Number: 99-9-3516-55-017-02	258,661	206,929	51,732	11,565	9,252	2,313
Cheyenne River Sioux Tribe, P.O. Box 788, Eagle Butte, South Dakota 57625, Grant Number: 99-7-0039-55-036-02	221,306	177,045	44,261	83,322	66,658	16,664
Lower Brule Sioux Tribe, P.O. Box 187, Lower Brule, South Dakota 57548, Grant Number: 99-7-0073-55-059-02	56,084	44,867	11,217	14,598	11,678	2,920
Oglala Sioux Tribe, P.O. Box G, Pine Ridge, South Dakota 57770, Grant Number: 99-7-0043-55-039-02	698,422	558,738	139,684	228,922	183,138	45,784
Rosebud Sioux Tribe, Box 430, Rosebud, South Dakota 57570, Grant Number: 99-7-0044-55-040-02	413,698	330,958	82,740	116,404	93,123	23,281
Sisseton-Wahpeton Sioux Tribe, P.O. Box 509, Agency Village, South Dakota 57262, Grant Number: 99-7-0045-55-169-02	161,127	128,902	32,225	49,292	39,434	9,858
United Sioux Tribes Dev. Corp., P.O. Box 1193, Pierre, South Dakota 57501, Grant Number: 99-7-0165-55-077-02	684,412	547,530	136,882	64,269	51,415	12,854
Native American Indian Association, 211 Union Street, Suite 404, Stahlman Building, Nashville, Tennessee 37201, Grant Number: 99-9-3515-55-016-02	329,886	263,910	65,976	0	0	0
Alabama-Coushatta Indian Tribal Council, Route 3—Box 645, Livingston, Texas 77351, Grant Number: 99-7-1784-55-125-02	641,216	512,973	128,243	5,403	4,322	1,081
Dallas Inter-Tribal Center, 209 East Jefferson Blvd., Dallas, Texas 75203-2690, Grant Number: 99-7-0078-55-064-02	263,150	210,520	52,630	0	0	0
Tigua Indian Tribe, P.O. Box 17579—Ysleta Station, El Paso, Texas 79917, Grant Number: 99-7-2099-55-127-02	437,991	350,393	87,598	11,849	9,479	2,370
Indian Center Employment Services, Inc., 144 North Pinewood Circle, Layton, Utah 84041, Grant Number: 99-9-3517-55-018-02	402,059	321,647	80,412	0	0	0
Ute Indian Tribe, P.O. Box 190, Fort Duchesne, Utah 84026, Grant Number: 99-7-0049-55-044-02	72,258	57,806	14,452	35,736	28,589	7,147
Abenaki Self-Help Assn./N.H. Ind. Counc., Box 276, Swanton, Vermont 05488, Grant Number: 99-7-3064-55-185-02	107,069	85,655	21,414	0	0	0
Mattaponi Pamunkey Monacan Consortium, Route 2—P.O. Box 280, West Point, Virginia 23181, Grant Number: 99-7-3227-55-159-02	232,367	185,894	46,473	1,611	1,289	322
American Indian Community Center, East 801 Second Ave., Spokane, Washington 99202 Grant Number: 99-7-1138-55-112-02	690,872	552,698	138,174	119,722	95,778	23,944
Colville Confederated Tribes, P.O. Box 150, Nespelem, Washington 99155, Grant Number: 99-7-1726-55-118-02	195,988	156,790	39,198	50,714	40,571	10,143
Lummi Indian Business Council, 2616 Kwina Road, Bellingham, Washington 98226, Grant Number: 99-7-2204-55-338-02	43,001	34,401	8,600	20,096	16,077	4,019
N.W. Inter-Tribal Council, P.O. Box 115, Neah Bay, Washington 98357, Grant Number: 99-7-0069-55-056-02	44,620	35,696	8,924	33,177	26,542	6,635
Puyallup Tribe, 2002 East 28th St., Tacoma, Washington 98404, Grant Number: 99-7-1137-55-178-02	158,231	126,585	31,646	20,191	16,153	4,038
Seattle Indian Center, 611 12th Avenue South—Suite 300, Seattle, Washington 98144, Grant Number: 99-7-0511-55-102-02	414,513	331,610	82,903	0	0	0
Western Wash. Ind. Empl. and Trng. Prog., 4505 Pacific Highway East, Suite C-5, Tacoma, Washington 98424, Grant Number: 99-7-1933-55-180-02	833,851	667,081	166,770	132,424	105,939	26,485

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION PY 1989 TITLE IV-A AND PY 1988 II-B (SUMMER 1989) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES—JUNE 23, 1989—Continued

	PY 1989 IV-A			PY 1988 II-B		
	Total	Program	Cost pool	Total	Program	Cost pool
Lac Courte Oreilles Tribal Governing Board, Route 2, Box 2700, Hayward, Wisconsin 54843, Grant Number: 99-7-0018-55-021-02	93,936	75,149	18,787	25,878	20,702	5,176
Lac du Flambeau Band of Lake Superior Chippewa, P.O. Box 67, Lac du Flambeau, Wisconsin 54538, Grant Number: 99-7-1139-55-113-02	45,227	36,182	9,045	19,906	15,925	3,981
Menominee Indian Tribe, P.O. Box 397, Keshena, Wisconsin 54135-0397, Grant Number: 99-7-0013-55-018-02	71,747	57,398	14,349	48,533	38,826	9,707
Milwaukee Area Am. Ind. Manpower Counc., 3121 W. Wisconsin Ave., Milwaukee, Wisconsin 53208, Grant Number: 99-7-0227-55-086-02	222,408	177,926	44,482	0	0	0
Oneida Tribe of Indians of Wis., Inc., P.O. Box 365, Oneida, Wisconsin 54115-0365, Grant Number: 99-7-0015-55-019-02	197,165	157,732	39,433	32,134	25,707	6,427
Stockbridge-Munsee Community, Route 1, Bowler, Wisconsin 54416, Grant Number: 99-7-0500-55-099-02	59,926	47,941	11,985	9,574	7,659	1,915
Wisconsin Indian Consortium, P.O. Box 181, Odanah, Wisconsin 54861, Grant Number: 99-7-2207-55-132-02	88,094	70,475	17,619	27,016	21,613	5,403
Wisconsin-Winnebago Business Committee, P.O. Box 311, Tomah, Wisconsin 54660, Grant Number: 99-7-0019-55-022-02	191,268	153,014	38,254	15,356	12,285	3,071
Shoshone/Arapahoe Tribes, P.O. Box 920, Fort Washakie, Wyoming 82514, Grant Number: 99-7-0050-55-045-02	215,497	172,398	43,099	72,421	57,937	14,484
National Total	58,996,000	47,196,803	11,799,197	13,058,321	10,446,655	2,611,666

[FR Doc. 89-20119 Filed 8-24-89; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Addition to the List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The addition to the list of labor surplus areas is effective June 1, 1989.

SUMMARY: The purpose of this notice is to announce an addition to the list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., Room N4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-535-0185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation Part 20 (48 CFR Part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation Part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation Part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 6, 1988 (53 FR 39367).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below has been classified by the Assistant Secretary of Labor as a labor surplus area pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and is effective June 1, 1989.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on May 31, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

ADDITION TO THE ANNUAL LIST OF LABOR SURPLUS AREAS

[June 1, 1989]

Labor surplus area	Civil jurisdiction included
Georgia:	
Pickens County	Pickens County.

[FR Doc. 89-20120 Filed 8-24-89; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Enforcement of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:00 a.m., Tuesday, September 12, 1989, in Suite N-3437, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This seven member work group was formed by the Advisory Council to study issues relating to enforcement for employee welfare plans covered by ERISA.

It is anticipated that the twelve month

3:00 p.m.—Adjourn.

for recent Ph.D.'s who specialize or wish

The purpose of the meeting will be to organize the Work Group, set its agenda for the year, discuss the October 1988-March 1989 Semiannual Report of the Labor Department's Inspector General to Congress concerning the ERISA enforcement plan, and to accept comments on the Report from the organizations described below which have been invited to participate.

The agenda will include the following items:

1. Organization of the Work Group;
2. Discussion of the Work Group's purpose and agenda for the year;
3. Work Group Members' statements regarding the Inspector General's Semiannual Report;
4. Comments by representatives of the Office of the Inspector General (invited);
5. Comments by representatives of the Pension and Welfare Benefit Administration;
6. Comments by representatives of the Office of the Solicitor of Labor;
7. Comments by representatives of the U.S. Department of Justice (invited);
8. Comments by representatives of the American Institute of Certified Public Accountants;
9. Statements from the Public;
10. Adjourn.

The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before September 7, 1989 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies or such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 7, 1989.

Signed at Washington, DC this 21st day of August, 1989.

Ann L. Combs,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration.

[FR Doc. 89–20049 Filed 8–24–89; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Access to Health Care of the Advisory Council on Employee Welfare and Pension Benefits Plans will be held at 10:00 a.m., Monday, September 11, 1989, in Suite S–4215, Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This six member work group was reconstituted by the Advisory Council to continue to study issues relating to access to health care, and is a carry over from a similar work group that was initially formed by the Advisory Council in 1988 to pursue this subject.

In 1988, the prior work group held hearings on March 24, 1988, July 13, 1988 and September 9, 1988—at which testimony was received from governmental and labor-management witnesses concerning universal health access legislation at the federal and state level—and subsequently identified three initial areas of concern that pertain to regulatory governance under ERISA: (1) The scope of federal preemption under mandatory employer health plan legislation, (2) potential governmental jurisdictional conflicts and duplication with respect to the enforcement of access to health care legislation, and (3) the continued appropriateness of ERISA benefit claim dispute procedures with respect to health benefit claims arising directly from mandated statutory provisions. In the latter part of 1988 the Work Group prepared and submitted to the Advisory Council a preliminary discussion paper with respect to issues arising under (1), the scope of federal preemption under mandatory employer health plan legislation.

At its September 11, 1989 meeting, the Access to Health Care Work Group will resume its endeavor to identify issues and options for solutions in connection with the three areas of concern outlined above. Also, the work group will attempt to determine whether areas of concern in addition to the three outlined above require their study. Finally, the work group will attempt to formalize its agenda and procedure for the remainder of 1989 and 1990.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before September 6, 1989 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 6, 1989.

Signed at Washington, DC this 21st day of August, 1989.

Ann L. Combs,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration.

[FR Doc. 89–20050 Filed 8–24–89; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORPORATION

Request for Comments on a Grant Award to SUPPORT

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces its intention to award a one-time, non-recurring grant of $50,000 in fiscal year 1989 to SUPPORT. The purpose for making this grant is to provide legal services in child support cases pending in the Allegheny County Family Division courts. These services will be provided to client eligible residents residing in or near Allegheny County, Pennsylvania.

DATE: All comments and recommendations must be received by the Office of Field Services of LSC on or before September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Victoria O'Brien, Counsel to the Director, or Charles T. Moses, Associate Director, Legal Services Corporation, Office of Field Services, 400 Virginia Ave., SW., Washington, DC 20024–2751, (202) 863–1837.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national independent organization charged with implementing the federally funded system of legal services for low-income people. It hereby announces its intention to award a grant in the amount of $50,000 to SUPPORT. The grantee will use this grant to finance the provision of legal services by law students supervised by a licensed attorney. These services will assist the client eligible population residing in or near Allegheny County, Pennsylvania with child support matters.

It is anticipated that the twelve month term of this grant will extend from September 25, 1989 to September 24, 1990.

Interested persons are invited to submit written comments and/or recommendations concerning the above to Victoria O'Brien or Charles T. Moses.

Dated: August 21, 1989.

Ellen J. Smead,

Acting Director, Office of Field Services.

[FR Doc. 89–19946 Filed 8–24–89; 8:45 am]

BILLING CODE 7050-01-M

THE MARTIN LUTHER KING, JR. FEDERAL HOLIDAY COMMISSION

Meeting

August 21, 1989.

AGENCY: The Martin Luther King, Jr. Federal Holiday Commission.

ACTION: Notice of meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463 as amended, the Martin Luther King, Jr. Federal Holiday Commission announces two forthcoming meetings of the Commission.

DATES: September 19, 1989, 12 Noon to 3:00 p.m., November 28, 1989, 12 Noon to 3:00 p.m.

ADDRESS: Rayburn House Office Building, Room 2168, Independence Ave., SW., Washington, DC 20515.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Davis, The Martin Luther King, Jr. Federal Holiday Commission, Washington, DC 20410 (202/755–1005).

Type of Meetings: Open

Agenda: Tuesday, September 19,

12:15 p.m.—Adoption of Minutes of Previous Meeting.

12:30 p.m.—Discussion of Critical Issues to be addressed by the Commission will include: (1) Swearing in new Commissioners; (2) Funding appropriation and donations; (3) Reports on Commission Conferences at the King Center in Atlanta; (4) 1990 Holiday Observance materials; and, (5) Distribution of 1989 Annual Report.

3:00 p.m.—Adjourn.

Agenda: Tuesday, November 28

12:15 p.m.—Adoption of Minutes of Previous Meeting.

12:30 p.m.—Discussion of Critical Issues to be addressed by the Commission will include: (1) Complete issues pending from the September 19 meeting; (2) Materials and Advisory assistance available to States, Cities, other public and private institutions and organizations; and, (3) Improving work of the King Commission.

3:00 p.m.—Adjourn.

Charles R. Sadler,

Acting Director.

FR Doc. 89–20023 Filed 8–24–89; 8:45 am]

BILLING CODE 4210-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cancellation of Meeting of Humanities Panel

The meeting of the Humanities Panel scheduled for August 25, 1989, and published in the **Federal Register** on July 18, 1989, at page 30118, has been cancelled. The meeting was to review applications submitted to the Humanities Projects in Libraries and Archives Program, Division of General Programs for the August 1989 deadline. The meeting was to be held at the National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Washington, DC, Room 430 from 9 a.m. to 5:30 p.m.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 89–20027 Filed 8–24–89; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

[OMB Number 3145–0058]

Postdoctoral Fellowships and Professional Development Awards in Science, Technology and Society

Objectives and Scope

The Program for Studies in Science, Technology, & Society (SSTS) is pleased to issue guidelines for postdoctoral fellowships and professional development awards. SSTS considers proposals for projects that examine the social, economic, intellectual and political contexts that govern the development and use of science and technology. Postdoctoral fellowships and professional development awards are made to scholars who wish to improve and expand their skills in historical, philosophical, ethical, normative, or social science studies of science, engineering and technology.

The major purpose of these awards is to link opportunities for original research to further training and study experiences. Proposals are expected to have both a research component and an educational plan which is developed in conjunction with a host scholar.

Two kinds of awards will be made: postdoctoral fellowships and professional development awards. Postdoctoral fellowships are intended for recent Ph.D.'s who specialize or wish to specialize in an area of science, technology and society studies (for instance, history and philosophy, ethics, sociology, psychology, or anthropology of science or technology). Professional development awards are intended to support established scholars from the field of science, technology and society studies to improve their understanding of science and technology *or* to support experienced scientists, social scientists and engineers wishing to develop or improve science or technology studies skills. Depending on recipients' backgrounds, these awards should (1) enhance methodological and technical skills in science, technology and society studies or in areas of natural or physical sciences, mathematics or engineering; (2) allow recipients to undertake original independent research; and (3) pursue special studies while working with a senior sponsoring scholar or scholars.

Eligibility

The research and educational activities proposed for the awards may be in any SSTS field. Projects in twentieth century science and technology, including science and technology policy, are especially encouraged. Projects examining social, economic, intellectual and political issues for science and engineering education are eligible. Specifically ineligible are studies in medicine and society which have a public health or clinical orientation.

To be eligible for fellowships or professional development awards in SSTS, applicants must be nationals of the United States, that is, citizens of the United States or native residents of a possession of the United States. Citizens of other countries who have applied for United States citizenship or who have permanent residency status are not eligible.

Applicants for postdoctoral fellowships must have been awarded their first doctoral degree within five years of the deadline for application or realistically expect to earn this degree by no later than one year after the deadline. Postdoctoral fellows must have earned the Ph.D. degree before tenure may begin. Persons with pre-doctoral degrees may be eligible for doctoral dissertation support through the Foundation's doctoral dissertation research support programs, explained in NSF publication 89–32.

Normally applicants for professional development awards must have at least five years of advanced teaching and/or research experience in science, social science or engineering, history, philosophy, ethics, or the social study of science, engineering or technology. Scholars without Ph.D.'s who wish to be considered for professional development awards must demonstrate to the satisfaction of an external review panel that their training, professional status, and experience are equivalent to the requirement for the Ph.D., and that their credentials include at least five years of postdoctoral-level research experience and a record of publications or comparable professional accomplishment.

Project Sites

During the tenure of their awards, recipients must work in established and fiscally responsible nonprofit host institutions (U.S. or foreign). The institutions should clearly offer the opportunity to enhance the training and methodological sophistication of the award recipients or offer exceptional tutorial or collaborative relationships consistent with enhancement of research quality. Accessibility to laboratories and other research sites, or to relevant archival materials should also be taken into consideration in selecting institutional affiliations.

All arrangements for affiliations with senior scholars and institutions are the responsibility of the applicant. Applications must include letters from the host institutions, signed by authorized officials, affirming that the applicant will be welcome and will be provided with adequate space and basic services. Applicants must provide statements from the senior scholars with whom they plan to work, indicating a commitment to consultation and assistance in the applicant's research and learning program during the requested tenure period. Applicants who need assistance in identifying suitable hosts are encouraged to contact the SSTS Program to discuss possibilities. For information, write or call 202–357–9894.

Preference will be given to applicants who move to new institutions and research environments with which they have not been affiliated at the graduate or postgraduate level, or with which they will have been affiliated for no more than three months prior to the start of fellowship tenure. Applicants who wish to affiliate with institutions with which they have had prior association should have special justification for such arrangements in their proposals.

Preference among professional development applicants will be given those who affiliate with host scholars from disciplines different from the category in which they have their degree or equivalent. Thus, a natural scientist who affiliates with a philosopher would be preferred to one who affiliates with another natural scientist. Similarly, an historian who affiliates with an engineer would be preferred to one who affiliates with another historian.

Tenure, Stipends, and Allowances

Postdoctoral fellowships are generally awarded for one year of full-time research though the funds may be used over a two year period. Fellowships provide stipends of $24,000, payable at the rate of $2,000 per month; special allowances of $2,000 for supplies, special travel, publication expenses, and other research related costs; and separate institutional allowances of $2,000 (for domestic host institutions only). Institutional allowances will be paid directly to U.S. host institutions to partially defray administrative costs incurred in conjunction with the fellowships. No allowances for dependents are available.

Professional development awards may be used to support full or half-time activities for up to two years. Plans for less than half-time or for intermittent tenures should provide special justification. Total stipends will not exceed $36,000. Applicants are encouraged to supplement this support from sabbatical pay and other souces. Special allowances of $2,000 are available for supplies, special travel, publication expenses and other research related costs. Institutional allowances of $2,000 (for domestic host institutions only) will be paid directly to U.S. host institutions to defray costs incurred in conjunction with the awards. Up to $3,000 will be available for moving expenses if necessary.

Evaluation and Selection of Awardees

Evaluation criteria include: the merit of the educational program that is proposed; the degree of enhancement of the applicant's methodological skills and/or knowledge of science and technology; the significance and intrinsic merit of the proposed research; the perceived research competence and potential of the applicant; and the suitability and availability of the sponsoring senior scholar at the host institution. The nature and degree of cross-disciplinary interchange and interaction will be given significant weight, especially for professional development awards. Judicious selection of a research problem, logical organization of the learning program, clarity in project design and description, and lucid writing will weigh heavily in the evaluation process. Additional factors include: evidence of past research accomplishments (especially those documented through papers published in high-quality, peer-reviewed journals); suitability of the host institution; likely effect of the proposed project on the future research development of the applicant; and the potential impact of the project.

Awards will be made by the National Science Foundation on the basis of the recommendations of a panel of experts applying the above criteria, with due consideration of impact of the awards on studies in science, technology and society. Successful applicants will be notified by letter six months after the closing date.

Conditions of Appointment

Unless explained in the proposal and approved by NSF, postdoctoral fellows will be expected to devote full time to appropriate research and studies during the tenure of the Fellowship; recipients of professional development awards will generally be expected to devote at least half-time during their tenures. All recipients of awards are expected to pursue the program for which the award was granted. Major changes in the research or learning plan, in tenure, or in institutional affiliation will require prior Foundation approval. Under exceptional circumstances, with NSF concurrence, research sites or host institutions may be changed.

The annualized salaries of the recipients cannot be augmented by receipt of the award. Professional Development Award recipients may use sabbatical leave pay along with this award. Alternatively or additionally, institutions may supplement stipends for both fellows and professional development award recipients without prior permission from the Foundation, provided that such supplements accord with established institutional policies. Supplements may not be conditioned on any requirement for duties in addition to normal activities of the recipients and may involve teaching only to the extent that the recipients conduct or participate in seminars clearly related to their programs. In the context of these guidelines, funds that the institution has obtained from external (including Federal) sources may be considered institutional funds. When appropriate, NSF project grants may be used for supplementation to recipients of these awards for duties which are related to their award programs.

Within 90 days of the conclusion of the tenure of each award, a brief final report using NSF Form 98A must be submitted to SSTS.

Intellectual Property Rights

The National Science Foundation claims no rights to any inventions or writings that might result from these awards. Recipients should note their obligation to include an acknowledgement of NSF support (citing an award number) and a disclaimer of NSF responsibility for the impact of any inventions or writing that might result from these awards.

Privacy Act Notice

The application forms request certain information pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861 et seq.). The information concerning citizenship, field of study, and prior educational experience is used to determine eligibility for this competition. Personal data such as social security numbers are used in correlating application information and materials, and for distinguishing applicants with similar names. The remaining information assists reviewing panelists in evaluating qualifications for the awards. The information supplied will be used and disclused only in connection with the evaluation of projects, the selection of award recipients, and the administration of awards. It will be used for statistical reports in a form that will not allow identification of individual applicants. Other than these uses, the information will be held in confidence to the extent permitted by law.

Post-Project Review

Selected award recipients may be invited to participate in a special NSF-sponsored symposium focused on their activities under this program's support. They may be asked either to present papers or participate as discussants.

Application Procedures and Materials

To be eligible for consideration, as application must be complete. The signed original and all copies should be printed on only one side of the paper. Except as may be modified by this announcement, all applications should follow the standard NSF guidelines in "Grants for Research and Education in Science and Engineering," (GRESE, NSF 83–57, rev. March, 1989). Reproductions of all forms are acceptable. Except for the "Statement from Senior Advisor", all forms are contained in GRESE.

NSF should be sent ten (10) collated sets of the proposal containing (in the order listed below):

(a) The application cover page [Appendix III of GRESE]. In the upper left box, indicate for consideration by "SSTS Postdoctoral Fellowship Award", or "SSTS Professional Development Award", depending on which is being applied for. In the upper right box, indicate the number of this announcement, NSF 89– . In the box marked submitting organization, put "Individual Award". Complete the questions at the bottom of the form concerning drug-free work place, delinquency, etc. Applicants should sign the cover page in the space marked "Authorized Oraganizational Rep.";

(b) A project summary of 200 words or less written to stand alone;

(c) The proposal text containing a training/study and research plan. This section should not exceed eight (8) single-spaced typewritten pages. The text should include a discussion of the objectives, methods and significance of the research during the tenure period, and the studies in the host discipline or related disciplines that will be undertaken over the period of the award;

(d) A personal statement of no more than one single-spaced typewritten page. This statement should describe the applicant's career goals in the research areas covered by SSTS, and the role that the project, sponsoring senior scholar, and host institution will play in enhancing those goals;

(e) A Summary Proposal Budget [Appendix IV, GRESE]. Use the feft column. List number of Calendar Months and total stipend request under "Senior Personnel" A–1. List special allowance and, for Professional Development Awards, moving expenses under "Other Direct Costs" G–6. List the Institutional Allowance for domestic institutions under "Indirect Costs (I.);

(f) The statement, [Appendix I in this Announcement] from the senior scholar at the proposed host institution indicating agreement to work with the applicant if the award is made;

(g) A letter from the host institution, signed by an authorized official, affirming that if the award is made, the applicant will be provided with adequate space and basic services.

(h) Complete, up-to-date *curriculums vitae* for the applicant and the host scholar;

(i) If the applicant has received an NSF award in the past five years, a section entitled "Results from Prior NSF Support" is required, consisting of no more than a single additional page for each prior award. Each statement should include the award number, amount and duration of support, title of the project, summary of results, and list of publications acknowledging the NSF award;

(j) Postdoctoral applicants should provide a copy of their dissertation abstract, the date Ph.D was or is expected to be received, and a statement of the relationship (if any) of the proposed award to the applicant's dissertation work;

(k) A "Current and Pending Support" Statement [Appendix VI, GRESE];

(l) Three letters of recommendation may be attached. New Ph.D's should, in general, obtain one of these letters from their thesis adviser. A copy of the applicant's training/study and research plan should be provided to these referees;

(m) A copy of NSF Form 1225, "Information about Principal Investigators/Project Directors" [Appendix II, GRESE] should be clipped to the cover page of the original signed proposal.

Timetable

Proposal submission deadline: Proposals must be received in NSF by November 15 of each year.

Award announcement: During the following May.

Tenure may begin any time after June 1 of the award year and before June 1 of the following year.

Address

Send the original and 8 copies of the application to: Proposal Processing Unit, Room 223, National Science Foundation, 1800 G St. NW., Washington DC 20550.

Send one information copy directly to: Studies in Science, Technology and Society (SSTS) Program, Division of Instrumentation and Resources, Room 312, National Science Foundation, Washington DC 20550.

The Foundation welcomes proposals on behalf of all qualified scholars, and strongly encourages women, minorities and persons with disabilities to compete fully in the program described in this document. Facilitation Awards for Handicapped Scientists and Engineers (FAH) provide support for special assistance or equipment to enable investigators, students, or staff with disabilities to work on an NSF-supported project. See the FAH announcement (NSF 89–), or contact the FAH coordinator (202/357–7456).

In accordance with Federal statutes and regulations and NSF policies, race, color, age, sex, national origin, or disability shall not be used against, deny benefits to, or exclude any person from participation in any program or activity receiving financial assistance from the National Science Foundation.

The foundation provides awards for research in the sciences and engineering. Award recipients are wholly responsible for the conduct of such research and preparation of the results for publication. The foundation, therefore, does not assume responsibility for such findings or their interpretation.

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or general information. This number is (202) 357-7492.

(Catalogue of Federal Domestic Assistance: 47.051 Biological, Behavioral and Social Sciences)

Appendix I—National Science Foundation, Studies in Science, Technology and Society; Information From Scholarly Advisor

__________ has applied for an NSF Postdoctoral or Professional Development Award in Science, Technology and Society and proposes to conduct a research and study project at your institution. Selection of award recipients will be based on the value of the educational and study program you will undertake with the applicant, the significance and intrinsic merit of the proposed project, the perceived research competence and potential of the applicant, and the suitability and availability of the sponsoring senior scholar and host institution. On an attached page, please briefly describe your qualifications and current research and explain how the applicant's project and the study plan which you have developed with the applicant would fit into your program. It would be helpful to describe other persons with whom the awardee would work both in research and study. Also needed is an abbreviated version of your *curriculum vitae* (limit publication list to the past five years).

Typed Name, Title and Institutional Affiliation: ______________________________

____

Signature: ______________________________

Please return this form to the applicant:

Deadline for submission to NSF: November 15:

Rachelle D. Hollander,

Ronald J. Overmann,

Program Directors, Studies in Science, Technology and Society

[FR Doc. 89-20134 Filed 8-24-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Boston Edison Co. Pilgrim Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact Relating to the Restart of Pilgrim Nuclear Power Station

Introduction

In April 1986 the Boston Edison Company, after discussion with NRC Region I officials, decided to keep the Pilgrim Nuclear Power Station shut down and to undertake a substantial corrective action program aimed at ensuring compliance with NRC requirements and enhancing overall plant operational safety. After substantial corrective actions had been taken, the Pilgrim plant resumed operation in December 1988, with the concurrence of the NRC.

Need for the Proposed Action

The restart of the facility was challenged in *Commonwealth of Massachusetts* v. *NRC*, NO. 88-2211 (1st. Cir.). In its decision upholding the restart, the Court concluded that the Pilgrim restart involved NRC action to reinstate the license. The Court went on to hold the NRC actions actions against other related challenges. The case did not raise, nor did the Court address, any National Environmental Protection Act (NEPA) related issued in connection with this matter.

Although the reinstatment action may well be considered part of an overall enforcement process, so that NEPA consideration is not required, the Commission has determined that it is desirable to document the absense of environmental impacts associated with the resumption of licensed operations at the Pilgrim facility.

Environmental Impacts of the Proposed Action

The environmental impacts associated with operation of the Pilgrim Station are thoroughly documented in the Final Environmental Statement (FES) issued by the NRC in connection with the issuance of the full power operating license for the Pilgrim Station in May 1972.

The FES discusses site characteristics, general plant design, and operating characteristics, as well as the environmental impacts of plant construction, the impacts of plant operation, and the impacts of postulated accidents. The FES also discusses a number of other NEPA considerations, including the need for power and alternatives to the facility. The environmental impacts of operation discussed in the FES include land use, water use including biological aquatic impacts, radiological impacts of routine operation, and fuel and solid radioactive waste transportation impacts.

The reinstatement of the license does not affect the site characteristics or basic plant design, although the licensee's corrective actions program included a number of plant improvements designed to enhance the safety of plant operation. These included a self initiated re-review of emergency planning; plant hardware improvements in accordance with the requirements of 10 CFR 50.62 (the Anticipated Transients Without Scram (ATWS) Rule); and significant improvements in containment integrity through the addition of a torus vent and an on-site emergency diesel generator as part of the Pilgrim Safety Enhancement Program (SEP). The SEP is a licensee initiated program which included several modifications, in addition to those identified, to enhance overall plant safety.

1. *Land Use and Water Use Impacts*

The reinstatement of the license does not affect land use in any way other than that addressed in the FES. Land use was evaluated in the FES and has not changed.

Water Use, including aquatic impacts, are discussed at length in the FES. The use of Cape Cod Bay waters for the resumed operation of the facility remains the same as when the plant was licensed in 1972. Operation of the facility produces thermal and other water discharges from the plant. These were evaluated in the FES. Discharges to Cape Cod Bay from resumed plant operation will be consistent with those previously evaluated.

2. *Radiological Impacts*

Routine operations affecting radiological impacts have significantly improved over the past few years as a result of improved effluent release systems and closer control of radioactive effluents as noted in NUREG/CR-2850 (Vol. 7) and NUREG/CR-2907 (Vol. 7). Plant restart does not adversely affect or change routine releases from the facility from those described in the FES. One area of further improvement, which was the subject of plant corrective actions during the shutdown, included plant health physics and improved effluent release controls. The improvements were noted in the most recent NRC report on the Safety Assessment of Licensee Performance (SALP) for Pilgrim, SALP Report No. 50-293/87-99, provided by letter to Boston Edison Company dated July 27, 1988.

Radiological impacts of plant accidents due to plant restart are not increased over those described in the FES. None of the previously analyzed postulated accidents are adversely affected by the resumption of operations at the facility. Indeed, as set forth in the NRC letters to the licensee dated August 21, 1987, and October 12, 1988, related to our assessment of the Pilgrim SEP, there have been significant improvements in plant safety features, procedures, and control. These improvements inlcude additional sources of water to the reactor pressure vessel, containment enhancements, a back-up nitrogen supply, and improvements in the Reactor Core Isolation Cooling System.

3. *Fuel and Solid Radioactive Waste Transportation Impacts*

Impacts associated with fuel and solid radioactive waste transportation are unchanged from those described in the FES except for spent fuel. Transportation impacts associated with spent fuel shipments from the facility are different from those described in the FES because of the modification in spent fuel processing capability in the United States since that time. Fuel is now stored on site until a permanent respository is established. The impacts associated with storage of fuel, however, were considered in the Environmental Assessment (EA) of August 17, 1978, issued in support of Amendment Number 33 to Facility Operating License No. DPR-35 for the Pilgrim Nuclear Power Station. This amendment authorized an increase in the spent fuel storage capacity at the site. The supporting EA concluded that the increased storage capacity will not significantly affect the quality of the human environment and that there will be no environmental impacts attributable to the proposed action other than those described in the FES.

Alternatives to the Proposed Action

The principal alternatives would be to deny restart of the plant. Since plant problems which lead to the shut down have been corrected, and since restart will be controlled through a carefully phased power ascension program with adequate hold points to assure safe resumption of full power operations, there is no safety or environmental reason to deny the phased restart. Power from the Pilgrim facility is still needed for Massachusetts and the New England area. Last summer (1988) the New England Power Pool called for five percent voltage reductions on 10 occasions. Eight of the reductions took place in eastern Massachusetts.

Alternatives Use of Resources

This action does not involve the use of resources not previously related to the operation of the plant.

Agencies and persons Consulted

This assessment was prepared entirely by the NRC staff. No other agencies nor persons were consulted.

Basis and Conclusion for not Preparing an Environmental Impact Statement

Based on this assessment, the staff concludes that there are no significant radiological or nonradiological impacts associated with the restart and operation to licensed power levels of the Pilgrim Station and that the restart and operation to licensed power levels will have no significant impact on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for this action.

Dated at Rockville, Maryland, this 18th day of August 1989.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Acting Director, Project Directorate I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-20117 Filed 8-24-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Co. of New York, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-26, issued to Consolidated Edison Company of New York, Inc. (the licensee), for operation of Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York. The application for amendment is dated June 20, 1989.

The proposed amendment would authorize expansion of the spent fuel pool storage capacity from its current 980 storage locations to 1,376 storage locations. The increase in storage capacity would be accomplished by replacing the existing free-standing and self supporting fuel storage racks with new high density, free-standing and self supporting fuel storage racks that incorporate a neutron absorber material. The licensee's proposal does not include plans for fuel assembly consolidation. This expansion of the spent fuel pool storage capacity will provide full core off load capability until approximately 2,007.

The proposed amendment would revise Technical Specification (TS) 3.8.B.4 to prohibit movement of fuel out of the reactor core until the reactor has been subcritical for at least 174 hours (a longer delay would be required by proposed TS Figure 3.8-1 if the Hudson River water temperature was above 70°F); add TS 3.8.C.2, which specifies a maximum spent fuel storage pit bulk temperature; modify TS 3.8.D.1 to reflect the analysis for the expanded spent fuel storage capacity; add TS 3.8.D.2, which specifies a minimum spent fuel storage pit boron concentration; relocate the refueling boron concentration requirements for the spent fuel storage pit from TS 5.4.3 to TS 3.8.D.3 with the other requirements for spent fuel storage pit boron concentration; add TS 3.8.E; revise the basis for TS 3.8 to reflect the above; revise TS Table 4.1-2 to reflect the above by requiring a monthly boron concentration sampling frequency for the spent fuel storage pit; and revise TS 5.4.2.B to include the increase in fuel initial enrichment to be stored in the spent fuel storage pit.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 25, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Mr. Robert A. Capra: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, October 15, 1985) 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, Subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions). The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, Subpart G apply.

For further details with respect to this action, see the application for amendment dated June 20, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 16th day of August 1989.

For the Nuclear Regulatory Commission

Robert A. Capra,

Director Project Directorate I-1 Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89-20118 Filed 8-24-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-65]

Proposed Determination Under Section 304 of the Trade Act of 1974, as Amended, Regarding the Republic of Korea's Restrictions on Imports of Beef; Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of, and request for written comments on, proposed determination under section 304 of the Trade Act of 1974 (the "Trade Act"), as amended, 19 U.S.C. 2414.

SUMMARY: Pursuant to section 304(a)(2) of the Trade Act, 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness Act of 1988, the United States Trade Representative ("USTR") is required to determine on or before September 28, 1989, whether United States' rights under a trade agreement are being denied by Korea's restrictions on the import of beef and whether the Korean practices at issue are injustifiable or unreasonable, and burden or restrict U.S. commerce, within the meaning of section 301(a)(1)(B) or 301(b)(1), 19 U.S.C. 2411(a)(1)(B) and 19 U.S.C. 2411(b)(1), respectively. The Trade Representative is also considering appropriate action (subject to the specific direction, if any, of the President) in response to Korea's practices. The USTR welcomes written comments regarding such determination or responsive action with respect to the subject Korean practices.

DATES: Written comments from interested persons are due September 25, 1989.

ADDRESS: Comments should be addressed to the Chairman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Gordana Earp, (202) 395-6813, or Les Glad, (202) 395-3077.

SUPPLEMENTARY INFORMATION: On February 16, 1988, the American Meat Institute (AMI) filed a petition under section 302(a) of the Trade Act of 1974, as amended, 19 U.S.C. 2412(a), alleging that the Government of the Republic of Korea maintains a restrictive import licensing system covering all bovine meat, including high-quality beef, and noting that on May 21, 1985, the Korean Government had banned the importation of beef. AMI maintained that this prohibition violates Article XI of the General Agreement on Tariffs and Trade (GATT), nullifies and impairs tariff concessions on beef made by Korea under the GATT, and is otherwise unjustifiable and unreasonable and burdens or restricts U.S. commerce.

On March 28, 1988, the Trade Representative initiated an investigation of these practices (53 FR 16995). On May 4, 1988, the GATT council of Representatives ("GATT Council") authorized establishment of a dispute settlement panel, under GATT Article XXIII:2, to examine the United States complaint regarding Korea's import restrictions on beef.

In July 1988 Korea announced a 14,500 MT quota for beef imports for the second half of 1988, during which period the value of U.S. beef exports to Korea was approximately $25.6 million. The 1989 quota was set at 50,000 MT. In the period January-May, 1989, the value of U.S. beef exports to Korea was approximately $41.1 million. (Source: U.S. Census data.)

On May 24, 1989, the GATT dispute settlement panel issued a report concluding that Korea's import restrictions on beef are contrary to the provisions of GATT Article XI:1, and not justified for balance-of-payments purposes in light of the continued improvement of the Korean balance-of-payments situation. The panel recommended prompt establishment of a timetable for phasing out Korea's restrictions on beef. At meetings of the GATT Council on June 21 and July 19, 1989, Korea declined to agree to adoption of the panel report. Adoption will be reviewed again in October. However, on August 21–22, 1989, bilateral consultations were held between representatives of the Governments of Korea and the United States, to discuss removal of Korea's import restrictions on beef.

Pursuant to 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness Act of 1988, the USTR is required to determine whether Korea's import restrictions deny "rights to which the United States is entitled" under the GATT and whether such practices are unjustifiable or unreasonable and burden or restrict U.S. commerce. This determination must be made no later than September 28, 1989, which is 18 months after the date of initiation of this investigation. (This notice amends a previous notice published at 54 FR 11105, which identified the determination date erroneously as September 18.)

In light of the GATT panel report on this matter, the Trade Representative proposes to determine that rights to which the United States is entitled under a trade agreement are violated by Korea's restrictions on imports of beef.

Public Comment

The public is invited to comment on this proposed determination and on appropriate action that should be taken in response to Korea's restrictions. The comments submitted will be considered in determining actionability under section 301 and in recommending any action under section 301 to the USTR. All written submissions must be filed in accordance with 15 U.S.C. part 2006.8. Submissions are to be made in twenty (20) copies, in English, by noon Monday, September 25, 1989 to Chairman, Section 301 Committee, Office of the U.S. Trade Representative, Room 222, 600 17th Street, NW., Washington, DC 20506.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89-20236 Filed 8-24-89; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27149; File No. SR-Phlx-89-39]

Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Stock Exchange, Inc. Relating to Tape Indications and Pre-Opening Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), notice is hereby given that on June 26, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange"), pursuant to Rule 19b-4, hereby proposes to adopt an equity floor procedure advice respecting procedures governing the commencement of trading on the PHLX when an opening is arranged in an ITS security ahead of another market center. The text of the proposed floor procedure advice is as follows: Italics indicates additions.

Equity Floor Procedure Advice E-4 The "Three by Three" Requirement Applicable To Tape Indications and Pre-Openings

An appropriate tape indication must precede the initiation of an ITS Pre-Opening Administrative Message (PODADM). Requirements in this regard are as follows:

(i) the tape indication shall be submitted to the correction post and shall be legible as to ticker symbol, previous consolidated close, and price range of no more than 5 points.

(ii) the floor member initiating the tape indication must record the time the indication prints on the tape.

(iii) three minutes or longer after the tape indication has been disseminated, a POADM must be sent (if arranging an opening transaction at a price requiring a POADM). In which case the Pre-Opening process shall be conducted in accordance with ITS plan provisions and Exchange Rules.

(iv) three minutes after issuance of the Pre-Opening Admin. (or longer if required in the event of additional POADMs), the issue may be opened.

Fine Schedule (Violations compound daily only when they occur within one year of each other)

1st Occurrance—$100.00

2nd Occurrence—$500.00

3rd and Thereafter Occurrence—Sanction is Discretionary with Business Conduct Committee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to provide procedures governing the commencement of trading on PHLX when it arranges an opening in an ITS stock ahead of any other market. The rule provides what is called a "three by three" requirement because it generally provides for two separate waiting periods that are each a minimum of three minutes. First, the floor member seeking to open the stock before the primary market must initiate a tape indication specifying the stock to be opened, its previous night's close, and the price range in which it is anticipated to open. After a minimum of three minutes, an ITS pre-opening administrative message must be sent. Three minutes after that, the issue may be opened.

The only exception to these requirements is that, if a stock is to be opened within a specified range from the previous close (generally, 3/8 point for stocks trading above $15; 1/4 point for stocks below $15), an ITS administrative message need not be sent and only the first three minute waiting period need be observed.

The proposed rule change is based on Section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of the publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-20009 Filed 8-24-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2353; Amdt. 7]

Texas; (And Contiguous Counties in the State of Oklahoma); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated July 24, 1989, to include the counties of Blanco, Burnet, Comanche, Lamar, Mason, Red River, and Somervell, in the State of Texas, as a result of damages from severe storms, tornadoes, and flooding which occurred May 4 through June 15, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Comal, Gillespie, Hays, Hopkins, Kendall, Kimble, and Llano, in the State of Texas, and McCurtain County in the State of Oklahoma, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

As the termination date for filing applications for physical damage closed on July 18, 1989, prior to the Notice of Amendment cited above, the termination date for filing applications for physical damage is extended to September 20, 1989, 30 days from the date of this action. The termination date for filing applications for economic injury remains the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 21, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-20015 Filed 8-24-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1125]

Determination Under FAA 620(q); Subject: Assistance to Lebanon

Pursuant to the authority vested in me by Section 620(q) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163, and the Department of State Delegation of Authority No. 145, I hereby determine that the furnishing of assistance under the Act to Lebanon is in the national interest of the United States.

This determination shall be reported to the Congress as required by law.

This determination shall be published in the **Federal Register.**

Dated: August 15, 1989.

Lawrence Eagleburger,

Acting Secretary of State.

[FR Doc. 89-20131 Filed 8-24-89; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. S-851]

American President Lines, Ltd.; Application for a Waiver

American President Lines, Ltd. (APL), by application dated August 14, 1989, requests an amendment of the waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), as previously granted for foreign-flag feeder operations to the People's Republic of China (PRC).

APL's Existing Services

APL now performs four subsidized containership services. Its two transpacific services cover the range of former Trade Route (TR) 29 to/from California on up to 108 annual sailings (Line A) and to/from Oregon-Washington on up to 80 annual sailings (Line B). Former TR 29 includes ports in the Far East on the continent of Asia from the U.S.S.R. to Thailand, inclusive, Japan, Taiwan, Hong Kong, and the Philippines. APL's two extension services add authority to serve the ports of Southeast and South Asia and the Persian Gulf on up to 28 sailings to/from California (Line A Extension) and up to 80 sailings to/from Oregon-Washington (Line B Extension) annually. APL is permitted by its contract to provide any part of the service by transfer or relay of cargo between subsidized vessels at any foreign port on the authorized services.

APL performs its Line A and Line B services primarily with line-haul vessels making direct calls at most major foreign TR 29 ports, including Yokohama, Kobe, and Nagoya, Japan; Kaohsiung and Chi-lung, Taiwan; and Hong Kong. Korea and the Philippines are served by APL subsidized feeder vessels.

The APL Extension services are currently performed by a feeder network that includes five subsidized U.S.-flag APL owned vessels: four providing service on a relay basis to Singapore and Colombo via Kaohsiung, and one vessel to Masqat and Karachi via Fujayrah. The remaining feeder services in the area of the contractual service are with APL chartered foreign-flag vessels.

APL's Existing Waivers

APL has section 804 waiver authority to operate four foreign-flag vessels on weekly service between a foreign port on Line A or Line B as described in Appendix A of Contract MA/MSB-417, including Singapore, and Manila and Thailand.

APL also has waiver authority to operate 10 foreign-flag vessels in six feeder services in southern and southwestern Asia.

APL's waiver authority for the PRC permits APL to own or charter and operate two foreign-flag vessels of approximately 200 FEU capacity each, said vessels to be operated between a foreign port on Line A or Line B as described in Contract MA/MSB-417, including Singapore, and a port or ports in the People's Republic of China.

The Requested Waiver

The applicant requests the PRC waiver be amended to authorize APL to own or charter and operate six foreign-flag vessels of up to approximately 400 FEU capacity each, said vessels to be operated between a foreign port or ports on Line A or Line B as described in Appendix A of Contract MA/MSB-417, including Singapore, and a port or ports in the People's Republic of China.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on Sept. 11, 1989. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

Dated: August 22, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 89-20075 Filed 8-24-89; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: August 21, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0129
Form Number: 1120-POL
Type of Review: Revision
Title: U.S. Income Tax Return for Certain Political Organizations
Description: Form 1120-POL is used by certain political organizations to report the tax imposed by section 527. The form is used to designate principal campaign committees that are subject to a lower rate of tax under section 527(h). IRS uses this information to determine whether the tax is being properly reported.
Respondents: Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 6,527

BEST COPY AVAILABLE

Estimated Burden Hours Per Response/ Recordkeeping:

Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

Comptroller of the Currency

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Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping 14 hours, 35 minutes;
Learning about the law or the form, 6 hours, 23 minutes;
Preparing the form, 15 hours, 17 minutes;
Copying, assembling, and sending the form to IRS, 2 hours, 25 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 252,530 hours

OMB Number: 1545–0203
Form Number: 5329
Type of Review: Revision
Title: Return for Additional Taxes Attributable to Qualified Retirement Plans (including IRAs), Annuities, and Modified Endowment Contracts
Description: This form is used to compute and collect taxes related to distributions from individual retirement arrangements (IRAs) and other qualified plans. These taxes are excess contributions to an IRA, premature distributions from an IRS, and other qualified retirement plans excess accumulations in an IRA and excess distributions from qualified retirement plans. The data is used to help verify that the correct amount of tax has been paid.
Respondents: Individuals or households
Estimated Number of Respondents: 1,291,321
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 2 hours, 31 minutes;
Learning about the law or the form, 47 minutes;
Preparing the form, 1 hour, 34 minutes;
Copying, assembling, and sending the form to IRS, 35 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/ Reporting Burden: 7,024,786 hours

OMB Number: 1545–0350
Form Number: 6561
Type of Review: Reinstatement
Title: Payer Summary of Form W–2P Magnetic Media Pension Information
Description: Payers of pension income who file their Forms W–2P on magnetic media with the Social Security Administration must submit Form 6561 which is used to balance the payer's submission.
Respondents: State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 40,000
Frequency of Response: Annually
Estimated Total Reporting Burden: 10,000 hours

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–20115 Filed 8–24–89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: August 21, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0158
Form Number: CF 349 and CF 350
Type of Review: Revision
Title: Harbor Maintenance Fee
Description: The collection of information will be used to verify that the harbor maintenance fee paid is accurate and current for each individual importer, exporter, shipper, or cruise line.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 16,450
Estimated Burden Hours Per Response/ Recordkeeping: 29 minutes
Frequency of Response: Quarterly
Estimated Total Recordkeeping/ Reporting Burden: 29,314 hours

Clearance Officer: Dennis Dore (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–20116 Filed 8–24–89; 8:45 am]

BILLING CODE 4810-25-M

Comptroller of the Currency

Office of the Assistant Secretary for International Affairs

[Document No. 89–12]

Foreign Treatment of United States Financial Institutions

AGENCY: Comptroller of the Currency and Office of the Assistant Secretary for International Affairs, U.S. Treasury.

ACTION: Notice of study and request for comments.

SUMMARY: Section 3602 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418, requires that a quadrennial report on the foreign treatment of United States financial institutions be submitted to Congress by the Department of the Treasury, working with other agencies. The first report is due no later than December 1, 1990. This report will describe, *inter alia*, "the extent to which foreign countries deny national treatment to United States banking organizations and securities companies." Public comment is requested on significant denials of national treatment to United States banking organizations and securities companies.

DATES: Comments must be delivered on or before September 30, 1989.

ADDRESSES: Comments regarding banking market activities should be directed to: Communications Division, Office of the Comptroller of the Currency, 5th Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219; Attention: Jacqueline England; Docket No. 89–12. Comments will be available for inspection and photocopying at the same location.

Comments regarding securities market activities should be directed to: Office of International Banking and Portfolio Investment, Office of the Assistant Secretary for International Affairs, Room 5323, U.S. Treasury Department, Washington, DC 20220.

These comments will be available for public inspection and photocopying during the hours that the Treasury Department Library is open (by appointment) to members of the public. The Treasury Library is located in Room 5030, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Appointments can be made by calling the Treasury Library at (202) 566–2777.

FOR FURTHER INFORMATION CONTACT: William Albrecht, Study Director (Banking) or Jose Tuya, Senior Advisor, International Banking and Finance, Office of the Comptroller of the

Currency (202–447–1700) and James Ammerman, Study Director (Securities), Report on Foreign Treatment of United States Financial Institutions, Office of International Banking and Portfolio Investment, Treasury Department (202–566–5628).

SUPPLEMENTARY INFORMATION: In September 1979, 1984, and 1986, Treasury, working with other interested departments and agencies, prepared reports on the treatment of U.S. commercial banks by foreign governments. (The 1986 report also covered securities markets). In 1988, Congress passed the Financial Reports Act as part of the Omnibus Trade and Competitiveness Act, which in section 3602 requires that Treasury, working with other agencies, report to the Congress on (1) the foreign countries from which foreign financial services institutions have entered into the business of providing financial services in the United States, (2) the kinds of financial services which are being offered, (3) the extent to which foreign countries deny national treatment to United States banking organizations and securities companies, and (4) the efforts undertaken by the United States to eliminate such discrimination. The report shall focus on those countries in which there are significant denials of national treatment which impact United States financial firms.

The policy of providing foreign financial firms an opportunity to compete on an equal basis with local domestic firms is known as "national treatment" or "equality of competitive opportunity."

Treasury would welcome specific comments on:

(a) Those markets which deny national treatment to U.S. banking organizations and securities companies in banking and/or securities activities;

(b) The laws, regulations, restrictions, or practices which result in the denial of equality of competitive opportunity; and

(c) The seriousness of such obstacles to business operations.

Dated: August 22, 1989.

Robert L. Clarke,

Comptroller of the Currency.

Dated: August 22, 1989.

Robert M. Bestani,

Acting Assistant Secretary for International Affairs.

[FR Doc. 89–20112 Filed 8–24–89; 8:45 am]

BILLING CODE 4810-33-M

Fiscal Service

[Dept. Circ. 570, 1989 Rev., Supp. No. 2]

Surety Companies Acceptable on Federal Bonds; U.S. Capital Insurance Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1989 Revision, on page 27825 to reflect this addition:

U.S. Capital Insurance Company. Business Address: 4 West Red Oak Lane, White Plains, New York 10604. Underwriting Limitation ^{b}: $2,004,000. Surety Licenses ^{c}: AZ, ID, IN, MI, NY and WI. Incorporated IN: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287–3921.

Dated: August 21, 1989.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

[FR Doc. 89–20085 Filed 8–24–89; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

[Delegation Order No. 11 (Rev. 19)]

Organization Functions, and Authority Delegations: District Director

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Allows redelegation of authority from the District Director to accept or reject offers in compromise to the level of Division Chief or Chief Collection Section in streamlined districts where this position exists.

EFFECTIVE DATE: August 25, 1989.

FOR FURTHER INFORMATION CONTACT: Don Schumacher, CO:O, Room 7535, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 566–4471, (not a toll-free number).

Order No. 11 (Rev. 19)
Effective date: 8–25–89

Authority to Accept or Reject Offers in Compromise

The authority vested in the Commissioner of Internal Revenue by Treasury Order Nos. 150–04 and 150–09, 26 CFR 301.7122–1 and 26 CFR 301.7701–9, and Treasury Order No. 150–13 is hereby delegated as follows:

1. The Deputy Assistant Commissioner (International), the Associate Chief Counsel (Technical and International), Assistant District Directors, Regional Counsel, Chiefs and Associate Chiefs, Appeals Offices, are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise and to reject offers in compromise regardless of the amount of the liability sought to be compromised. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. The authority delegated to District Directors may not be redelegated lower than Division Chief (Chief, Collection Section, in streamlined districts where the position exists); except that the authority with respect to the withdrawal of an offer in compromise based upon doubt as to collectibility may be redelegated to Chief, Special Procedures. The authority delegated to Regional Counsel may not be redelegated, except that the authority to reject offers in compromise may be redelegated, but not lower than to District Counsel. Regional Director of Appeals, Chiefs and Associate Chiefs, Appeals Offices, may not redelegate this authority.

2. Assistant Service Center Directors are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise, limited to penalties based solely on doubt as to liability, and to reject offers in compromise, limited to penalties, regardless of the amount of the liability sought to be compromised, and to summarily reject without further investigation, offers based solely on doubt as to liability regardless of the amount of the liability sought to be compromised, limited to obvious offers that are frivolous, groundless or dilatory, or where the liability has been finally determined by the Tax Court or other courts, or by a Commissioner's final closing agreement, or where the offer is based upon an agreed liability in which administrative appeal rights have

been exercised or waived. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. This authority may be redelegated only to the Chief, Compliance Division.

3. Delegation Order No. 11 (Rev. 18), effective May 10, 1988, is superseded.

Dated: August 7, 1989.

Approved Date: August 7, 1989.

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 89-20016 Filed 8-24-89; 8:45 am]

BILLING CODE 4830-01-M

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federal register

Friday
August 25, 1989

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 502

Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services; Rule

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DEPARTMENT OF LABOR

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PART 502—REPORTING AND

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DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 502

RIN 1215-AA

Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor

ACTION: Final Rule.

SUMMARY: This rule amends the regulations to specify the INS Alien Registration Number series announced by INS for replenishment agricultural workers. A replenishment agricultural worker (RAW) is one who, pursuant to section 210A of the Immigration and Nationality Act (INA), is admitted to the United States or otherwise acquires the status of alien lawfully admitted for temporary residence, to meet a shortage of agricultural workers during the period beginning October 1, 1989 through September 30, 1993.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Telephone (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 9, 1988 (53 FR 35154), the Department of Labor issued final regulations, 29 CFR Part 502, entitled "Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services." These regulations were effective October 1, 1988.

Section 502.1(b)(2) of the regulations referred to above, provided that a technical amendment to the regulations would be issued to specify the Alien Registration Number ("A" number) series announced by the Immigration and Naturalization Service (INS) for replenishment agricultural workers. Accordingly, this document revises the regulations at § 502.2(m) to specify that a "replenishment agricultural worker" is identified by an "A" number beginning with A94 and followed by any six digits. In this regard, conforming changes are made to §§ 502.1 (b)(2), (d), and (f), 502.10(c)(1), and 502.13(a).

The "A" number is utilized by employers pursuant to section 502.10 of the regulations in identifying "reportable workers" for whom reports are required to be submitted to the Government. In addition, the "A" number will identify which of the reportable workers are replenishment agricultural workers (who are identified by an INS Alien Registration Number beginning with A94 and followed by any six digits) for whom additional labor standard protections are afforded, as discussed below. The "A" number can be ascertained when an employer completes the INS Form I–9, as required for all persons hired after November 6, 1986. When completing the top portion of the I–9 Form, a prospective employee who is not a U.S. citizen must provide an "A" number in completing Part 1 of the form.

Pursuant to section 210A of the INA, § 502.13 of these regulations requires that for the period beginning October 1, 1989, through September 30, 1992, any person employing any replenishment agricultural worker (who is identified by an INS Alien Registration Number beginning with A94 and followed by any six digits) in seasonal agricultural services for one or more work-day(s) during any pay period shall provide such worker, with each wage payment—but no less than twice per month, a complete, accurate, and legible report certifying such reportable worker's employment. The employment information reported to the replenishment agricultural worker documents the worker's employment history for retention of legal status and avoidance of deportation, and makes it possible for workers with the required work in seasonal agricultural services to apply for and be granted permanent residency in the U.S. after three years, and to apply for naturalization after five years. Properly filled out, optional Form WH–501R, attached as an appendix hereto, will satisfy the requirements of section 210A of the INA and will also satisfy the requirements of sections 201(d)(2) and (c)(2) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

In addition to the reporting requirement, employers of replenishment agricultural workers (who are identified by an INS Alien Registration Number beginning with A94 and followed by any six digits) must: (1) Provide the same transportation arrangements to other workers as are provided to any replenishment agricultural worker, and (2) not discriminate against any replenishment agricultural worker. In addition, any employer who would otherwise be exempt from MSPA pursuant to section 4(a) (1) or (2) of that Act, shall not knowingly provide false or misleading information to a replenishment worker concerning the terms, conditions, or existence of agricultural employment.

Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on these amendments to the regulations. Such comment is unnecessary because the Department is performing a ministerial act pursuant to a previously announced intention to make a technical amendment to the regulations to specify the "A" number series announced by INS for replenishment agricultural workers.

Executive Order 11291

The Department has determined that this rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it will have no substantive impact and therefore is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Public Law 96–354, Stat. 1165, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2). In any event, the rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

As the amendments to this rule require the collection of no additional information, additional approval of the Office of Management and Budget is not required. See 44 U.S.C. 3501 *et seq.* Prior OMB approval was obtained under OMB Control Number 1215–0148.

For reasons set out in the above preamble, Part 502 of Chapter V of Title 29 of the Code of Federal Regulations, is amended as set forth below:

PART 502—REPORTING AND EMPLOYMENT REQUIREMENTS FOR EMPLOYERS OF CERTAIN WORKERS EMPLOYED IN SEASONAL AGRICULTURAL SERVICES

1. The authority citation for Part 502 continues to read as follows:

Authority: 8 U.S.C. 1160, 1161; 29 U.S.C. 1801 et seq. Section 502.6 also issued under 29 U.S.C. 49k.

2. In section 502.1, paragraphs (b)(2), (d), and (f) are revised to read as follows:

§ 502.1 Purpose and scope.

* * * * *

(b) * * *

(2) Section 210A of the INA provides that before the beginning of each fiscal year (beginning 1990 and ending 1993), the Secretaries of Labor and Agriculture shall jointly determine the number (if any) of replenishment agricultural workers (RAWS) to be admitted to the United States, or otherwise acquire the status of aliens lawfully admitted for temporary residence, to meet a shortage of agricultural workers. A replenishment agricultural worker is identified by an INS Alien Registration Number beginning with A94 and followed by any six digits.

* * * * *

(d) Any person who hires any worker must complete the Employment Eligibility Verification Form (INS Form I–9). Any resident alien who is identified with an Alien Registration Number ("A" number) in the A90000000 series on the I–9 Form (including any replenishment agricultural worker, who is identified by an INS Alien Registration Number beginning with A94 and followed by any six digits) and who is employed in seasonal agricultural services, is an employee subject to this part (termed "reportable worker"). Employers cannot reliably determine whether such an employee is a special agricultural worker since employees cannot be required to document such status to anyone other than INS (see 8 CFR 274a.2(b)(v)).

* * * * *

(f) Any employment of a reportable worker for at least one work-day in seasonal agricultural services is subject to reporting to the Federal Government. Additionally, any employment of a replenishment agricultural worker (who is identified by an INS Alien Registration Number beginning with A94 and followed by any six digits) in seasonal agricultural services is subject to both the reporting requirements to the Federal Government and to the individual worker.

* * * * *

2. In § 502.2, paragraph (m) is revised to read as follows:

§ 502.2. Definitions pertaining solely to a reportable worker employed in seasonal agricultural services.

* * * * *

(m) "Replenishment Agricultural Worker" (RAW) is an individual with an INS Alien Registration Number beginning with A94 and followed by any six digits who was admitted to the United States during FY 1990 through FY 1993 for lawful temporary resident status or whose status was adjusted to lawful temporary residency to meet a shortage of workers employed in seasonal agricultural services.

* * * * *

3. In § 502.10, paragraph (c)(1) is revised to read as follows:

§ 502.10 Requirements for reporting and employing a reportable worker in seasonal agricultural services.

* * * * *

(c) * * * (1) For the period October 1, 1989, through September 30, 1992, furnish to any reportable worker who is a replenishment agricultural worker (identified by an INS Alien Registration Number beginning with A94 and followed by any six digits) and who is employed for at least one work-day in seasonal agricultural services during the pay period, a report on each pay day containing the information specified in this part (see § 502.13), formulated from employment records maintained (see § 502.11; and

* * * * *

4. In § 502.13, paragraph (a) is revised to read as follows:

§ 502.13 Reporting to the replenishment agricultural worker.

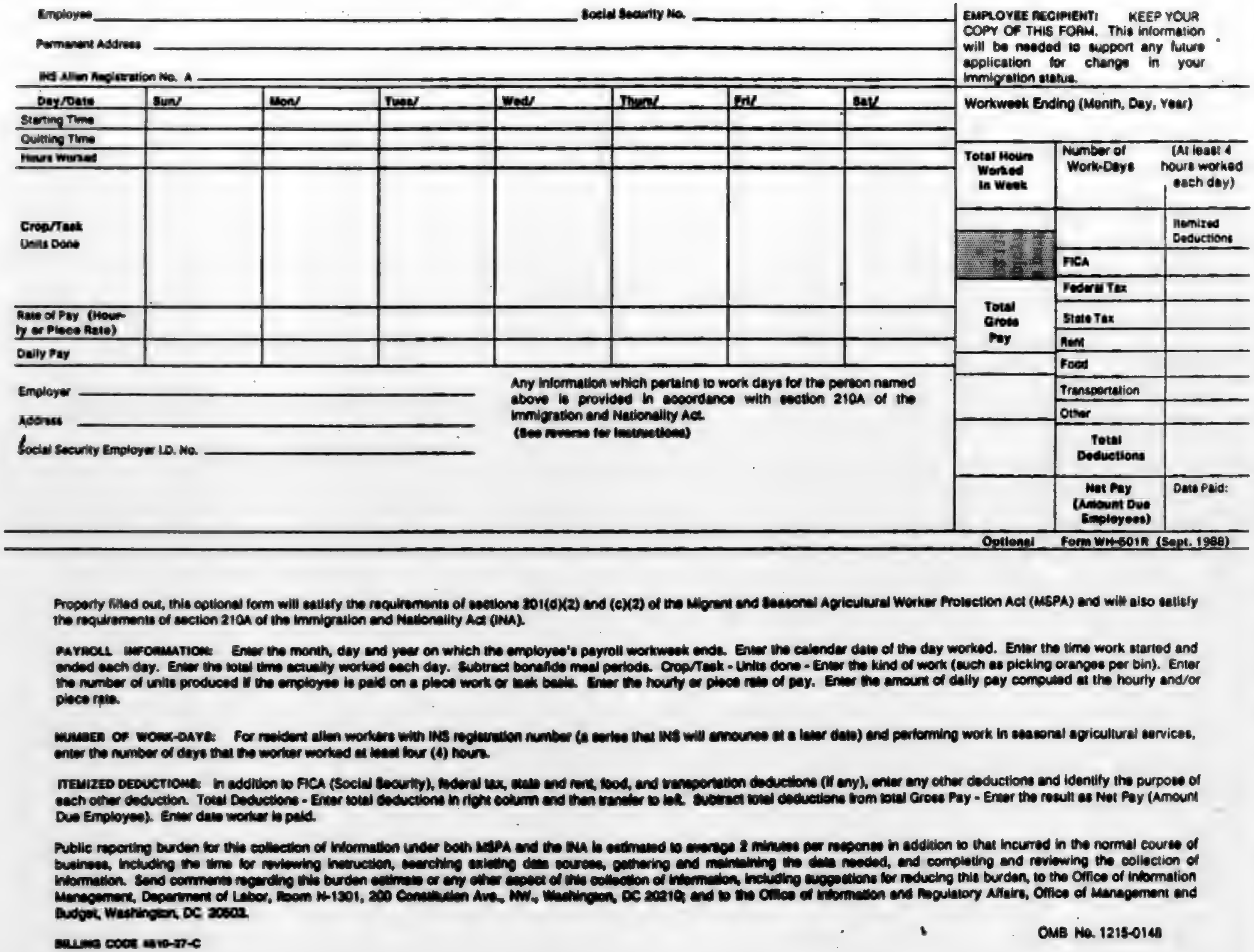
* * * * *

(a) For the period beginning October 1, 1989, through September 30, 1992, any person employing any reportable worker who is a replenishment agricultural worker (identified as an INS Alien Registration Number beginning with A94 and ending with any six digits) in seasonal agricultural services for one or more work-day(s) during any pay period shall provide such worker, with each wage payment, no less than twice per month, a complete, accurate, and legible report certifying such reportable worker's employment.

Note: The Department presents a form in the Appendix which satisfies certain recordkeeping aspects of the Act and regulations. This form, however, will not appear in the Code of Federal Regulations.

BILLING CODE 4510-27-M

Appendix A—Optional Form WH-501R.



Employee ____________________ Social Security No. ____________________

Permanent Address ____________________

INS Alien Registration No. A ____________________

Day/Date	Sun/	Mon/	Tues/	Wed/	Thurs/	Fri/	Sat/
Starting Time							
Quitting Time							
Hours Worked							
Crop/Task Units Done							
Rate of Pay (Hourly or Piece Rate)							
Daily Pay							

Employer ____________________

Address ____________________

Social Security Employer I.D. No. ____________________

Any information which pertains to work days for the person named above is provided in accordance with section 210A of the Immigration and Nationality Act.

(See reverse for instructions)

EMPLOYEE RECIPIENT: KEEP YOUR COPY OF THIS FORM. This information will be needed to support any future application for change in your immigration status.

Workweek Ending (Month, Day, Year)

Total Hours Worked in Week	Number of Work-Days	(At least 4 hours worked each day)
		Itemized Deductions
▨	FICA	
	Federal Tax	
Total Gross Pay	State Tax	
	Rent	
	Food	
	Transportation	
	Other	
	Total Deductions	
	Net Pay (Amount Due Employees)	Date Paid:

Optional Form WH-501R (Sept. 1988)

Properly filled out, this optional form will satisfy the requirements of sections 201(d)(2) and (c)(2) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and will also satisfy the requirements of section 210A of the Immigration and Nationality Act (INA).

PAYROLL INFORMATION: Enter the month, day and year on which the employee's payroll workweek ends. Enter the calendar date of the day worked. Enter the time work started and ended each day. Enter the total time actually worked each day. Subtract bonafide meal periods. Crop/Task - Units done - Enter the kind of work (such as picking oranges per bin). Enter the number of units produced if the employee is paid on a piece work or task basis. Enter the hourly or piece rate of pay. Enter the amount of daily pay computed at the hourly and/or piece rate.

NUMBER OF WORK-DAYS: For resident alien workers with INS registration number (a series that INS will announce at a later date) and performing work in seasonal agricultural services, enter the number of days that the worker worked at least four (4) hours.

ITEMIZED DEDUCTIONS: In addition to FICA (Social Security), federal tax, state and rent, food, and transportation deductions (if any), enter any other deductions and identify the purpose of each other deduction. Total Deductions - Enter total deductions in right column and then transfer to left. Subtract total deductions from total Gross Pay - Enter the result as Net Pay (Amount Due Employee). Enter date worker is paid.

Public reporting burden for this collection of information under both MSPA and the INA is estimated to average 2 minutes per response in addition to that incurred in the normal course of business, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Ave., NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

OMB No. 1215-0148

BILLING CODE 4510-27-C

Signed at Washington, DC this 17th day of August, 1989.

Paula V. Smith,

Administrator, Wage and Hour Division, Employment Standards Administration.

[FR Doc. 89-19941 Filed 8-24-89; 8:45 am]

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Friday
August 25, 1989

Part III

Department of Housing and Urban Development

Delaying Submission of Comprehensive Homeless Assistance Plans; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-89-1716; FR-2386]

Delaying Submission of Comprehensive Homeless Assistance Plans

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice is intended to inform grantees under Titles IV and VII of the Stewart B. McKinney Homeless Assistance Act that they need not submit their Comprehensive Homeless Assistance Plans (CHAP) to HUD by the October 1, 1989 deadline, as previously requested. Instead, Emergency Shelter Grants (ESG) formula cities and counties should submit their CHAPs to the Department by July 15, 1990, and simultaneously send an information copy to the State in which they are located. State grantees should submit their CHAPs to HUD by August 30, 1990, and simultaneously send information copies to the formula jurisdictions in their state. Thereafter, CHAPS should be annually submitted to HUD in accordance with the July 15 and August 30 deadlines.

FOR FURTHER INFORMATION CONTACT: For information concerning HUD provisions under Title IV of the McKinney Act, James N. Forsberg, Coordinator, Special Needs Assistance (Homeless Programs, Room 7228, (202) 755-6300.

For the Department of Labor provisions under Title VII, John D. Heinberg, Office of Strategic Planning and Policy Development, Employment and Training Administration, Room N-5629, Frances Perkins Building, 200 Constitution Avenue, Washington, DC 20210, telephone (202) 535-0682.

For the Department of Education voluntary CHAP provisions under Title VII, Sarah Newcombe, Office of Vocational and Adult Education, 400 Maryland Avenue, SW., Room 4428, Washington, DC 20202, telephone (202) 732-2390. (None of these telephone numbers are toll-free.)

SUPPLEMENTARY INFORMATION:

Background

On July 22, 1987, the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77) (the Act) was signed into law. Title IV of the Act contained a number of homeless assistance and related provisions to be administered by HUD.

Subtitle A of Title IV established the requirements for the Comprehensive Homeless Assistance Plan (CHAP). On August 14, 1987, HUD published a notice in the **Federal Register** implementing the initial CHAP requirements (52 FR 30628). Under Subtitle A, HUD was prohibited from making assistance under Title IV's programs available to, or within the jurisdiction of, States, or metropolitan cities or urban counties eligible for a formula allocation under the Emergency Shelter Grants program (ESG formula cities and counties), unless the jurisdiction and a HUD-approved CHAP.

In addition, individual applications for Title IV assistance were required to include a certification that the activities proposed for assistance were consistent with the jurisdiction's approved CHAP.

The Title IV programs affected by the CHAP requirement included the Emergency Shelter Grants program under Subtitle B; the Supportive Housing Demonstration program (both Transitional and Permanent Housing components) under Subtitle C; the Supplemental Assistance for Facilities to Assist the Homeless program under Subtitle D; and the Section 8 Moderate Rehabilitation program under Subtitle E.

In addition, the CHAP was required in connection with programs administered by the Departments of Education and Labor under Title VII of the Act. Section 702 of the Act originally required the Secretary of Education to distribute funds under the Adult Education for the Homeless Programs on the basis of assessments of the homeless population made in State CHAPs. However, subsequent legislation removed this requirement and converted the program from a formula program to a discretionary program, requiring the Secretary to consider as a factor in making discretionary awards the number of homeless adults receiving literacy and basic skills training in each project. Plans to provide for the educational needs of homeless adults are submitted in each State's adult education plan submitted directly to the Secretary of Education every four years. Currently, States may continue to include State Education Agencies in their CHAP process at the State's option, although CHAP data are not required for formula purposes.

Under Section 732, States are required to describe in their CHAPs how they will coordinate job training demonstration projects for homeless individuals under Subtitle C of Title VII with other services for homeless individuals assisted under the Act.

Annual CHAP Submission Under the 1988 Amendments Act

On November 7, 1988, President Reagan signed the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628) (the 1988 Amendments). The 1988 Amendments revised a number of provisions of the Act, including the CHAP submission requirement which was changed from a one-time submission into an annual submission requirement.

On December 28, 1988, the Department published in the **Federal Register** a notice implementing the CHAP provisions in the 1988 Amendments Act (53 FR 52600). Under section 485 of the 1988 Amendments, HUD is required to publish by November 7, 1989 a final rule based on the December CHAP notice.

Included in the December notice was a provision informing grantees under Titles IV and VII of the Act that the next CHAPs needed to be submitted to HUD by February 13, 1989, but thereafter that CHAPs should be submitted annually by October 1. This Notice is intended to inform Titles IV and VII grantees that they need *not* submit their CHAPs to HUD by the stated October 1, 1989 deadline.

The Department is currently considering a number of revisions to the content of the CHAP which are intended to provide additional data on the extent of the homeless need, and on the development of an effective strategy to respond to that need. HUD intends to publish these requirements as proposed provisions, either in conjunction with the final CHAP rule that the Department publishes by the November 7, 1989 statutory deadline, or in a separate proposed rulemaking. (Following a notice and comment period, these revised requirements will be published in a final rule that will govern the next CHAP submissions, as described below.)

As a result, during this transition period in implementing the annual CHAP requirement, and because of the relatively brief period between the February 1989 CHAP submission and the projected October 1, 1989 submission, HUD will not require grantees to submit CHAPs by October 1. Instead, CHAPs reflecting the Department's revised content requirements should be submitted to HUD in accordance with the following schedule:

(1) Grantees that are ESG formula cities and counties should submit their CHAPs to HUD by July 15, 1990, with a CHAP information copy simultaneously forwarded to the State in which the formula city or county is located.

(2) State grantees should use the formula jurisdictions' CHAP information copies in the preparation of their own Statewide CHAPs. To provide State grantees with an adequate review period of the formula jurisdictions' CHAPs, HUD is not requiring State grantees to submit their CHAPs until August 30, 1990. At that time, State grantees should simultaneously forward CHAP information copies to each of the formula jurisdictions in their State.

HUD will continue to use the July 15 (formula communities) and August 30 (States) deadlines for all subsequent CHAP submissions.

It should be noted that the Department expects grantees to submit their annual CHAP performance reports by the May 31, 1990 deadline, and voluntarily to submit amendments to their existing CHAPs during the transition period announced in this Notice.

Authority: Sec. 485, Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 17, 1989.

Audrey E. Scott,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 89-20054 Filed 8-24-89; 8:45 am]

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Friday
August 25, 1989

Part IV

Department of Health and Human Services

Public Health Service

Announcement of Availability of Funds for Family Planning Service Grants; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Announcement of Availability of Funds for Family Planning Service Grants

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: For Fiscal Year (FY) 1990, approximately $130 million will be provided to fund family planning services grants under title X of the Public Health Service Act (42 U.S.C. 300 *et seq.*). The Office of Population Affairs is announcing the availability of approximately ⅕ of this amount for competitive grants.

OMB Catalog of Federal Domestic Assistance: 13.217.

DATE: Application due dates vary. See Supplementary Information below.

ADDRESSES: Additional information may be obtained from and completed applications should be sent to the appropriate Regional Health Administrator at the address below:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): DHHS/PHS Region I, John F. Kennedy Federal Building, Government Center, Room 1400, Boston, MA 02203.

Region II (New Jersey, New York, Puerto Rico, Virgin Islands): DHHS/PHS Region II, 26 Federal Plaza, Room 3337, New York, NY 10278.

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, W. Virginia): DHHS/PHS Region III, 3535 Market Street, Philadelphia, PA 19101.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, N. Carolina, S. Carolina, Tennessee): DHHS/PHS Region IV, 101 Marietta Tower, Suite 1002, Atlanta, GA 30323.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): DHHS/PHS Region V, 300 South Wacker Drive, 34th Floor, Chicago, IL 60606.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): DHHS/PHS Region VI, 1200 Main Tower Building, Room 1800, Dallas, TX 75202.

Region VII (Iowa, Kansas, Missouri, Nebraska): DHHS/PHS Region VII, 601 East 12th Street, 5th Fl. W., Kansas City, MO 64106.

Region VIII (Colorado, Montana, N. Dakota, S. Dakota, Utah, Wyoming): DHHS/PHS Region VIII, 1961 Stout Street, Denver, CO 80294.

Region IX (Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Repubic of Palau, Federated States of Micronesia, Republic of the Marshall Islands): DHHS/PHS Region IX, 50 United Nations Plaza, Room 327, San Francisco, CA 94102.

Region X (Alaska, Idaho, Oregon, Washington): DHHS/PHS Region X, Blanchard Plaza, 2201 Sixth Avenue, M/S RX–20, Seattle, WA 98121.

FOR FURTHER INFORMATION CONTACT: Grants Management Offices, Region I: Mary O'Brien–617/565–1482; Region II: Thomas Butler–212/264–4496; Region III: Richard Dovalovsky–215/596–6663; Region IV: Wayne Cutchins–404/331–2597; Region V: Lawrence Poole–312/353–8700; Region VI: Frank Cantu–214–767–3879; Region VII: Hollis Hensley–816/426–2924; Region VIII: Jerry F. Wheeler–303/844–6163; Region IX: Alan Harris–415/556/5810; Region X: J. O'Neal Adams–206/442–7997.

Program Officers, Region I: James Sliker–617/565–1452; Region II: Eileen Connolly–212/264–3939; Region III: Joe Healey–215/596–6686; Region IV: Ed Rogge–404/331–5316; Region V: George Hockenberry–312/353–1700; Region VI: Paul Smith–214/767–3072; Region VII: Will Marshall–816/426–2924; Region VIII: John J. McCarthy, Jr.–303/844–5955; Region IX: James Hauser–415/556–7117; Region X: Vivian Lee–206/442–1030.

Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300 *et seq.*, authorizes the Secretary of Health and Human Services to award grants and enter into contracts with public or private nonprofit entities to assist in the establishment and operation of voluntary family planning projects to provide a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). To the extent practicable, entities shall encourage family participation. No funds may be used in programs where abortion is a method of family planning. Implementing regulations have been published at 42 CFR part 59, subpart A. At 53 FR 2922, (February 2, 1988), the Department of Health and Human Services promulgated rules revising the requirements for compliance by grantees and applicants for grants with the statutory provision relating to abortion. Since promulgation of the revised rules, suits have been filed in four jurisdictions challenging the rules, and the February 1988 rules have been enjoined by two of the jurisdictions. Consequently, portions of the regulations currently appearing at 42 CFR Part 59 Subpart A are effective at present for certain organizations and not with respect to others. Users or organizations with questions as to whether the rules issued on February 2, 1988 apply to them should contact the appropriate program officer at the telephone number listed above.

Approximately $130 million nationwide is available in funding for Title X services grants, which are normally awarded for 3 years. The entire $130 million is allocated among the 10 departmental regions, and will in turn be awarded to public and private nonprofit agencies located within the regions. Each regional office is responsible for evaluating applications, establishing priorities, and setting funding levels according to criteria in statute Part 59, Subpart A, Subsection 59.7.

This notice announces the availability of approximately $24,000,000 to provide services in 17 States. This notice includes those projects for which the application due date has not passed at the time of publication. Applications are invited for the following areas:

Area(s) to be served	Number of grants to be awarded	Approximate funding level	Application due date	Grant funding date
Region I:				
Connecticut	1	$1,170,000	9/1/89	1/1/90
Metro Boston	1	809,000	5/1/90	9/1/90
Western MA	1	527,000	12/1/89	4/1/90
Northeastern MA	1	751,000	3/1/90	7/1/90
Vermont	1	432,000	12/1/89	4/1/90
New Hampshire	1	547,000	3/1/90	7/1/90
Maine	1	861,000	3/1/90	7/1/90
Rhode Island	1	334,000	3/1/90	7/1/90
Region II:				
New York excel. NYC	1	5,571,000	3/1/90	7/1/90
Region V:				
St. Paul & Ramsey Co., MN	1	197,000	9/1/89	1/1/90
Cuyahoga, Geauga, Lake and Lorain Counties, OH	1	1,012,000	12/1/89	4/1/90
Westland and River Rouge, MI	1	178,000	12/1/89	4/1/90
Region VI:				
Texas	1	7,600,000	12/1/89	4/1/90
3 Job Corps sites:				
San Marcos, McKinney and El Paso, Texas	1	310,000	6/1/90	10/1/90
Region VII:				
KS excl. Wyandotte County	1	1,100,000	3/1/90	7/1/90
Region VIII:				
Larimer Co., Colorado	1	132,000	9/1/89	1/1/90
Montana	1	822,000	3/1/90	7/1/90
Utah	1	516,000	3/1/90	7/1/90
Northern Wyoming	1	155,000	11/1/89	3/1/90
Southern Wyoming	1	316,000	11/1/89	3/1/90
Region IX:				
Guam	1	102,000	3/1/90	7/1/90
Region X:				
Idaho	1	558,000	3/1/90	7/1/90
Total	22	24,000,000		

Applications must be postmarked or received at the appropriate Grants Management Office no later than close of business on application due dates listed above. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked or delivered to the appropriate Grants Managements Office later than the application due date will be judged late and will not be accepted for review. Applications which do not conform to the requirements of this program announcement or do not meet the assurances for project requirements in regulation 42 CFR Part 59, Subpart A will not be accepted for review. Applicants will be so notified, and the applications will be returned.

Applicants will be evaluated on the following criteria:

(1) The number of patients and, in particular, the number of low-income patients to be served;

(2) The extent to which family planning services are needed locally;

(3) The relative need of the applicant;

(4) The capacity of the applicant to make rapid and effective use of the Federal assistance;

(5) The adequacy of the applicant's facilities and staff;

(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project; and

(7) The degree to which the project plan adequately provides for the requirements set forth in the Title X regulations.

Application Requirements: Application kits, including the application form, PHS 5161, and technical assistance for preparing proposals are available from the respective regional office. An application must contain: (1) A narrative description of the project and the manner in which the applicant intends to conduct it in order to carry out the requirements of the law and regulations; (2) a budget that includes an estimate of project income and costs, with justification for the amount of grant funds requested; (3) a description of the standards and qualifications that will be required for all personnel and facilities to be used by the project; and (4) such other pertinent information as may be required by the Secretary and specified by the regional office. In preparing an application, applicants should respond to all applicable regulatory requirements. (The information collections contained in this notice have been approved by the Office of Management and Budget and assigned control number 0937–0189.)

Application Review and Evaluation: Each regional office is responsible for establishing its own review process. Applications must be submitted to the appropriate regional office at the address listed above. Applications not meeting the due dates above will not be accepted for review.

Grant Awards: Grants are generally awarded for 3 years with an annual non-competitive review of a continuation application to continue support. Non-competing continuation awards are subject to the project making satisfactory progress and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Federal Government.

Review Under Executive Order 12372: Applicants under this announcement are subject to the review requirements of Executive Order 12372, State Review applications for Federal Financial Assistance, as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the Grants Management Office of the appropriate region. State Single Point of Contact comments must be received by the regional office 30 days prior to the funding date to be considered.

When final funding decisions have been made, each applicant will be notified by letter of the outcome of their application. The official document

notifying an applicant that a project

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notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Dated: July 26, 1989.

Nabers Cabaniss,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 89-20066 Filed 8-24-89; 8:45 am]

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federal register

Friday
August 25, 1989

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Final Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA 24

Final Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special migratory bird hunting regulations to be established for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This season begins as early as September 1.

EFFECTIVE DATE: This rule takes effect on September 1, 1989.

ADDRESSES: Comments received on the proposed special hunting regulations and tribal proposals are available for public inspection during normal business hours in Room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. Communications regarding the documents should be addressed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Room 634—Arlington Square, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Fant W. Martin, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634—Arlington Square, Washington, DC 20240 (703–358–1773).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the July 24, 1989, **Federal Register** (54 FR 30658), the U.S. Fish and Wildlife Service (hereinafter the Service) proposed special migratory bird hunting regulations for the 1989–90 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (at 50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for: (1) on-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. Tribes that desired special hunting regulations in the 1989–90 hunting season were requested in the February 27, 1989, **Federal Register** (54 FR 8221) to submit a proposal that included details on: (1) Requested season dates and other regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations that are established by the State(s) in which an Indian reservation is located. The guidelines have been used successfully since the 1985–86 hunting season, and they were made final beginning with the 1988–89 hunting season.

In the July 24, 1989, proposed rule, the Service pointed out that duck hunting regulations for the upcoming season likely would be restrictive in the 1989–90 hunting season because of a reduced fall flight caused by drought. Hunting regulations also were restrictive last year for the same reason. Recently completed surveys on the breeding ground have confirmed that there has been little improvement in duck population status since 1988. Although duck hunting regulations have not been established yet for the late season, they can be expected to be restrictive again during the 1989–90 hunting season.

Comments and Issues Concerning Tribal Proposals

Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

In a June 30, 1989 letter, Mr. C.D. Besadny, Secretary, Wisconsin Department of Natural Resources, raised a number of concerns regarding the regulations requested by the Great Lakes Indian Fish and Wildlife Commission for hunting of migratory birds by Chippewa Indians on ceded lands in Wisconsin. Mr. Besadny had no objections to the requested goose hunting regulations. However, he asked that the tribes delay the duck season one week (from September 18 to September 25) because of the decline in duck numbers caused by drought, that tribal members observe the same shooting hours that will be established throughout the Mississippi Flyway, and that the opening dates for hunting of migratory game birds other than ducks and geese be concurrent with the opening of the tribal duck season. Mr. Besadny also asked that the tribes retain the 48-hour emergency closure rule that was included in the past because of concern over possible displacement of waterfowl caused by the early season.

In the July 24, 1989, **Federal Register** (54 FR 30658), the Service pointed out that preliminary survey results indicated little improvement since 1988 in duck numbers or breeding ground conditions, and that it was likely that it would be necessary to establish conservative hunting regulations again for the 1989–90 hunting season. As noted earlier in this document, completed surveys have confirmed that no increase in the fall flight is expected this year, and continued harvest restrictions will be necessary. Last year, the different Chippewa Indian Tribes opened the duck season later than usual as a means of reducing the harvest. They have agreed to delay the season again this year, and it will open on September 25, rather than on September 18, as was proposed earlier in the July 24, 1989, proposed rule (54 FR 30658). Season dates for geese and woodcock will begin on the dates shown in the July 24, 1989, proposed rule. Seasons on other species will be concurrent with the early duck season for tribal members. Daily bag and possession limits for Canada geese on ceded lands in Michigan, Minnesota, and Wisconsin will be 4 and 8, respectively, rather than 3 and 6, respectively, as shown in the July 24, 1989, proposed rule. The increase in Canada goose bag and possession limits is authorized for tribal members

because of an anticipated substantial increase in the fall flight in Michigan and Wisconsin, where virtually all of the tribal harvest occurs.

The tribes will observe the same shooting hour regulations that will be established for States in the flyway, under final Federal frameworks to be announced. The Service does not believe that the small number of tribal hunters in the early season will have adverse effects on the population status of migratory game birds or cause a major change in their distribution. However, in an emergency, the Great Lakes Indian Fish and Wildlife Commission will exercise its authority to close the season under provisions in the Chippewa Inter-tribal Agreement Governing Resource Management and Regulation of Off-reservation Treaty Rights in the Ceded Territory.

As discussed in the July 24, 1989, proposed rule, the Michigan Department of Natural Resources concurred with the proposed regulations for hunting by tribal members in the State's Upper Peninsula. However, Minnesota continues to oppose special regulations for hunting by Chippewa Indians on ceded lands in the State. The Service recognizes Minnesota's concerns, but for the reasons discussed in the July 24, 1989, proposed rule, believes that continued carefully regulated seasons for Chippewa Tribal members are appropriate in Minnesota, as well as in Michigan, and Wisconsin. Therefore, special regulations for the 1989–90 hunting season are made final in this rule. The regulations take into account the need to continue the reduced harvest of ducks, and as in the past, the Great Lakes Indian Fish and Wildlife Commission will conduct a survey to monitor harvest by tribal members.

Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana

As discussed in the July 24, 1989, proposed rule, the Confederated Salish and Kootenai Tribes and the State of Montana are continuing to work toward a comprehensive and long-term agreement. There is no disagreement over the migratory bird hunting regulations requested by the tribes, however, and they are made final in this rule. In the past, the final rule for the Flathead Indian Reservation provided for an early closure of goose hunting on a portion of the reservation. Any such closure or other restrictions on migratory bird hunting on the reservation for the 1989–90 hunting season may be established at a later date under tribal and State authority.

Yankton Sioux Tribe, Marty, South Dakota

In the July 24, 1989, proposed rule, the Service proposed special Canada goose and White-fronted goose hunting regulations for both tribal and nontribal members on tribal and trust lands of the Yankton Sioux Tribe. In the past, nontribal members hunting on tribal and trust lands observed the regulations established by the South Dakota Game, Fish, and Parks Department. However, in a May 22, 1989 proposal, the Yankton Sioux Tribe requested a later season for Canada geese than is usually established by the State in the Missouri River unit. The later season was requested because of the delayed arrival of geese onto Indian lands. The tribe requested that the Service approve the same season dates for duck hunting on tribal and trust lands that will be established in surrounding areas by the State for the 1989–90 hunting season.

In an August 8, 1989, letter, John P. Guhin, Deputy Attorney General, State of South Dakota, raised a number of concerns about the proposed hunting regulations. Some of these concerns also were raised in an earlier telephone conversation in which the Service pointed out that the tribe would revise the proposal to make it complete. In his letter, Mr. Guhin stated that the description of the tribal proposal in the July 24, 1989, proposed rule was cursory, that the proposal was amended through a telephone conversation with the Service, and that the State should not be expected to comment on the proposal until it is complete. Mr. Guhin requested that the proposal be withdrawn and submitted again to South Dakota for comment when a complete proposal is available. Mr. Guhin concluded that it is the view of the State that the tribe has no jurisdiction to allow a nonmember to hunt outside of the seasons prescribed by South Dakota and that the State therefore objects to the proposed regulations. In his letter, Mr. Guhin stated that the State has no objection to tribal members hunting on their lands in a season other than that adopted by the State. He pointed out further that the State also has no objection to a tribal requirement of a nonmember license if the nonmember also has a State license, and the nonmember hunts during the State prescribed season and abides otherwise by State requirements.

In response, the Service acknowledges that the tribal proposal is incomplete in some respects and that steps will soon be taken to make it complete. Specifically, the Service intends to meet promptly with tribal officials to ensure that the area where hunting will occur is well-defined, that it includes only tribal and trust lands, and that bag checks or other procedures are followed to ensure that the species composition and size of harvest is measured during the 1989–90 hunting season. The Service will request that a State representative participate in the meeting.

As stated in the July 24, 1989, proposed rule, the Service believes that Indian tribes generally have the authority to regulate migratory bird hunting on tribal and trust lands, and that tribes are entitled to establish special migratory bird hunting regulations for nontribal members, subject to Service approval. The Service will not approve special regulations if they are likely to result in excessive harvest. The Service does not believe that there will be a large goose harvest on Yankton Sioux lands but will require that the 1989–90 hunting season is experimental, pending the collection and evaluation of harvest information. The Service believes that prompt consultation will rectify the omissions in the tribe's May 22, 1989, proposal and the special regulations requested by the tribe are made final in this rule.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988, (53 FR 22582) and June 17, 1988, (53 FR 22727). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Nontoxic Shot Regulations

On November 9, 1988, (at 53 FR 45296), the Service proposed nontoxic shot zones for the 1989–90 waterfowl hunting season. This proposed rule was sent to all affected tribes and to Indian organizations for comment. The final rule on nontoxic shot zones for the 1989–90 hunting season was published on April 13, 1989, in the **Federal Register** (54 FR 14814). All of the hunting regulations

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covered by this final rule are in compliance with the Service's nontoxic shot restrictions.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and shall) "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of [critical] habitat * * *." Consequently, the Service initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season on Federal Indian reservations and ceded lands.

On August 3, 1989, the Division of Endangered Species and Habitat Conservation notified the Office of Migratory Bird Management of its concurrence with the finding that the proposed action will not affect any listed species or any critical habitat.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the March 27, 1989, Federal Register (54 FR 12534), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Excutive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634—Arlington Square, Washington, DC 20240. These regulations contain no collection of information subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the Federal Register on August 11, 1989, (54 FR 32975).

Authorship

The primary author of this final rule is Fant W. Martin, Office of Migratory Bird Management, working under the direction of Byron K. Williams, Acting Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed hunting regulations for certain tribes were published on July 24, 1989, the Service established the longest period possible for public comments. In doing this, the Service recognized that time would be of the essence. The comment period provided the maximum amount of time possible while ensuring that a final rule was published before the beginning of the hunting season on September 1, 1989.

Therefore, under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 et seq.), the Service prescribes final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds other than waterfowl. However, final Federal frameworks for the waterfowl hunting season (opening and closing framework dates, daily bag and possession limits, etc.) are planned for publication on September 18, 1989. Because it was necessary to publish this document by September 1, 1989, most waterfowl regulations for the tribes listed here are shown as "within final Federal frameworks to be established."

Therefore, for the reasons set out above, the Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this final rule, therefore, will take effect on September 1, 1989.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, 50 CFR part 20 is amended as follows:

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K, is amended as set forth below.

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act sec. 3, Pub. L. 65-186, 40 Stat. 755 (16 U.S.C. 701-708h); sec. 3(h), Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712).

Editorial Note.—The following annual hunting regulations provided for by § 20.110 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) *Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nonmembers).*—(1) *Ducks (including Mergansers). Season Dates:* Earliest opening date and longest season permitted Pacific Flyway States under final Federal frameworks to be announced. *Daily bag and possession limits:* Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(2) *Goose Season Closed on All Species.*

(3) *General Conditions:* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Jicarilla Apache Tribe also apply on the reservation.

(b) *Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers).*—(1) *Ducks (including Mergansers). Season Dates:* Earliest opening date and longest season permitted Pacific Flyway States under final Federal frameworks to be announced. *Daily Bag and Possession Limits:* Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(2) *Canada Geese (Season closed on other geese). Season Dates:* December 16–January 7. *Daily Bag and Possession Limits:* 2 daily. Possession limit 4.

(3) *Coots and Common Moorhens (Gallinule). Season Dates:* Same as for ducks. *Daily Bag and Possession Limits:* Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(4) *Common Snipe. Season Dates:* Same as for ducks. *Daily Bag and Possession Limits:* 8 daily. Possession limit 16.

(5) *Band-tailed Pigeons. Season Dates:* September 1–September 30. *Daily Bag and Possession Limits:* 5 daily. Possession limit 10.

(6) *Mourning Doves and White-winged Doves. Season Dates:* September 1–September 30. *Daily Bag and Possession Limits:* 10 mourning and white-wing doves daily in the aggregate, of which no more than 6 may be white-winged doves. Possession limit is 20 mourning and white-winged doves in the aggregate, of which no more than 2 may be white-winged doves.

(7) *General Conditions:* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(c) *Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Members Only)*—(1) *Ducks (including Mergansers). Season Length and Dates:* Begin continuous season on October 14, with longer season permitted Pacific Flyway States under final Federal frameworks to be announced. *Daily Bag and Possession Limits:* Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(2) *Geese (Canada, Blue, Snow, White-fronted). Season Length and Dates:* Begin continuous season on October 14, with longest season permitted Idaho under final Federal frameworks to be announced. *Daily Bag and Possession Limits:* Same as permitted Idaho under final Federal frameworks to be announced.

(3) *Common Snipe. Season Length and Dates:* Same as for ducks. *Daily Bag and Possession Limits:* 8 daily. Possession limit 16.

(4) *General Conditions:* Nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation State (duck stamp) signed in ink across the face. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(d) *Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nonmembers)*—(1) *Ducks (including Mergansers). Season Length and Dates:* Latest closing date and longest season permitted Pacific Flyway States under final Federal frameworks to be announced. *Daily Bag and Possession Limits:* Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(2) *Geese (Canada, Blue, Snow, White-fronted). Season Length and Dates:* Latest closing date and longest season permitted Arizona under final Federal frameworks to be announced. *Daily Bag and Possession Limits:* Same as permitted Arizona under final Federal frameworks to be announced.

(3) *Coots and Common Moorhens (Gallinule). Season Dates:* Same as for ducks. *Daily Bag and Possession Limits:* Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(4) *Common Snipe. Season Length and Dates:* Same as for ducks. *Daily Bag and Possession Limits:* 8 daily. Possession limit 16.

(5) *Mourning Doves and White-winged Doves. Season Length and Dates:* ½ hour before sunrise until noon, September 1–10; ½ hour before sunrise until sunset, November 24–January 12. *Daily Bag and Possession Limits:* 10 mourning and white-winged doves daily in the aggregate, of which no more than 6 may be white-winged doves. Possession limit is 20 mourning and white-winged doves in the aggregate, of which no more than 12 may be white-winged doves.

(6) *Band-tailed Pigeons. Season Dates:* October 13–November 11. *Daily Bag and Possession Limits:* 5 daily. Possession limit 10.

(7) *General Conditions:* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation State (duck stamp) signed in ink across the face. Special regulations established by the White Mountain Apache Tribe also apply on the reservation.

(e) *Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nonmembers)*—(1) *Ducks (including Mergansers). Season Length and Dates:* Same as Colorado River Zone in California. *Daily Bag and Possession Limits:* Same as Colorado River Zone in California.

(2) *Geese (Canada, Blue, Snow, White-fronted). Season Length and Dates:* Same as Colorado River Zone in California. *Daily Bag and Possession Limits:* Same as Colorado River Zone in California.

(3) *Coots and Common Moorhens (Gallinule). Season Dates:* Same as for ducks in Colorado River Zone in California. *Daily Bag and Possession Limits:* Same as Colorado River Zone in California.

(4) *Common Snipe. Season Length and Dates:* Same as for ducks in Colorado River Zone in California. *Daily Bag and Possession Limits:* 8 daily. Possession limit 16.

(5) *Mourning Doves and White-winged Doves. Season Length and Dates:* September 1–15 and November 11–December 25. *Daily Bag and Possession Limits:* 10 mourning and white-winged doves, singly or in the aggregate. Possession limit is 20, singly or in the aggregate.

(6) *General Conditions:* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation State (duck stamp) signed in ink across the face. Special regulations established by the Colorado River Indian Tribes also apply on the reservation.

(f) *Penobscot Indian Nation, Old Town, Maine (Tribal Members and Nonmembers)*—(1) *Ducks:* Same species, season dates, season length, and daily bag and possession limits as regular duck season in Maine.

(2) *Geese:* Same species, season dates, season length, and daily bag possession limits as regular goose season in Maine.

(3) *General Conditions:* (i) Tribal members may hunt waterfowl (ducks and geese) on Penobscot Indian Territory under special sustenance regulations during the 1989–90 hunting season. Sustenance season dates are September 16–November 30. The daily bag limit in the sustenance season is 4 ducks, including no more than 1 black duck and 2 wood ducks. The daily bag limit for geese is 3 Canada geese, 3 snow geese, or 3 in the aggregate. When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members is only the larger of the two daily bag limits.

(ii) Possession limits on ducks and geese during the tribal sustenance season are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's residence.

(iii) Tribal members shall comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking, except during the sustenance season, tribal members shall be permitted to

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hunt one-half hour before sunrise to one-half hour after sunset.

(iv) Each tribal and nontribal waterfowl hunter 16 years of age or over must possess and carry on his/her person a valid Migratory Bird Stamp and Conservation Stamp (duck stamp), signed in ink across the face.

(v) Nontribal members hunting waterfowl on Penobscot Indian Territory shall comply with all Federal and State hunting regulations. Special regulations established by the Penobscot Indian Nation also apply on Penobscot Indian Territory.

(g) *Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)*—(1) *Ducks (including Mergansers). Wisconsin and Minnesota Zones: Season Dates:* Begin September 25. End with closure of Wisconsin Northern Zone duck season. *Daily Bag and Possession Limits:* Same as permitted Wisconsin under final Federal frameworks to be announced.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

(2) *Canada Geese. Wisconsin and Minnesota Zones: Season Dates:* Begin September 18. End with closure of Wisconsin Northern Zone duck season. *Daily Bag and Possession Limits:* 4 daily. Possession limit 8.

Michigan Zone: Season Dates: Same opening date and season length permitted Michigan under final Federal frameworks to be announced. *Daily Bag and Possession Limits:* 4 daily. Possession limit 8.

(3) *Other Geese (Blue, Snow, and White-fronted). Wisconsin and Minnesota Zones: Season Dates:* Begin September 18. End with closure of Wisconsin Northern Zone duck season. *Daily Bag and Possession Limits:* Same as permitted Wisconsin under final Federal frameworks to be announced.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final frameworks to be announced.

(4) *Coots and Common Moorhens (Gallinule). Wisconsin and Minnesota Zones: Season Dates:* Begin September 25. End with closure of Wisconsin Northern Zone duck season. *Daily Bag and Possession Limits:* 20 daily, singly or in the aggregate. Possession limit 40.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federl frameworks to be announced.

(5) *Sora and Virginia Rails. Wisconsin and Minnesota Zones: Season Dates:* Begin September 25. End with closure of Wisconsin Northern Zone duck season. *Daily Bag and Possession Limits:* 25 daily, singly or in the aggregate. Possession limit 25.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

(6) *Common Snipe: Wisconsin and Minnesota Zones: Season Dates:* Begin September 25. End with closure of Wisconsin Northern Zone duck season. *Daily Bag and Possession Limits:* 8 daily. Possession limit 16.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

(7) *Woodcock. Wisconsin and Minnesota Zones: Season Dates:* September 16–November 20. *Daily Bag and Possession Limits:* 5 daily. Possession limit 10.

Michigan Zone: Season Dates: September 15–November 14. *Daily Bag and Possession Limits:* 5 daily. Possession limit 10.

(8) *General Conditions:* (i) While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

(ii) Tribal members will comply with all basic Federal migratory bird hunting regulations, 50 CFR part 20, and shooting hour regulations, 50 CFR part 20, subpart K.

(iii) Nontoxic shot will be required for all off-reservation hunting by tribal members of waterfowl, coots, moorhens, and gallinules.

(iv) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

(v) *Wisconsin Zone.* Tribal members will comply with NR 10.09 (1)(a) (2) and (3), Wis. Adm. Code (shotshells), sec. NR 10.12 (1) (C), Wis. Adm. Code (shooting from structures), sec. NR 10.12 (1) (g), Wis. Adm. Code (decoys), and § 29.27 Wis. Stats. (duck blinds). The Canada goose season at Powell Marsh will begin on September 18. A tribal quota of 25 Canada geese will be in effect until September 25, or until daily censuses by Great Lakes Indian Fish and Wildlife Commission or Wisconsin Department of Natural Resources employees indicate that at least 300 Canada geese are in the area, whichever comes first. If the tribal quota is reached before September 25, and before 300 Canada geese are present, Powell Marsh will be closed to tribal hunting until September 25. Thereafter, the tribal season will resume without a quota and with a daily bag limit of 3 Canada geese.

(vi) *Minnesota Zone.* Tribal members will comply with M.S. 100.29, Subd. 18 (duck blinds and decoys). (vii) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with sec. NR 19.12, Wis. Adm. Code. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(h) *Flathead Indian Reservation, Pablo, Montana (Nontribal Members Only).*—(1) *Ducks (including Mergansers:* Same species, season dates, season length, and daily bag and possession limits as permitted Pacific Flyway portion of Montana under final Federal frameworks to be announced.

(2) *Geese:* Same species, season dates, season length, and daily bag and possession limits as permitted Pacific Flyway portion of Montana under final Federal frameworks to be announced.

(3) *General Conditions:* Nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp), signed in ink across the face. Special regulations established by the Confederated Salish and Kootenai Tribes also may apply on the reservation.

(i) *Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nonmembers)*—(1) *Ducks. Season Dates:* Begin October 21, 1989, with longest season permitted Low Plains portion of South Dakota under final Federal frameworks to be announced. *Daily Bag and Possession Limits:* Same as permitted Low Plains portion of South Dakota under final Federal frameworks to be announced.

(2) *Geese:* Same species, season dates, season lengths, and daily bag and possession limits as established by South Dakota in the Missouri River Unit under final Federal frameworks to be announced.

(3) *General Conditions:* The waterfowl hunting regulations established by this final rule apply only to designated tribal and trust lands within the external boundaries of the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

(j) *Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nonmembers)*—(1) *Ducks:* Same species, season dates, season length, and daily bag and possession limits as established by South Dakota in the Low Plains Area under final Federal frameworks to be announced.

(2) *Canada and White-fronted Geese:* Begin October 21, 1989, with longest season permitted South Dakota in Missouri River Unit under final Federal frameworks to be announced. *Daily Bag and Possession Limits:* Same as permitted South Dakota in Missouri River Unit under final Fedeal frameworks to be announced.

(3) *Other Geese* (Blue and Snow): Same season dates, season length, and daily bag and possession limits as established by South Dakota under final Federal frameworks to be announced.

(4) *General Conditions:* The waterfowl hunting regulations established by this final rule apply only to designated tribal and trust lands. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Yankton Sioux Tribe also apply on tribal and trust lands.

Dated: August 22, 1989.

Richard N. Smith,

Acting Director,

[FR Doc 89–20090 Filed 8–24–89; 8:45 am]

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WHO: The Office of the Federal Register.

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WASHINGTON, DC

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Docket No. FV-89-047FR]

Limes Grown in Florida; Expenditure and Assessment Rate Increases for the 1989-90 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the authorized expenditures and assessment rate for the 1989-90 fiscal year for the Florida Lime Administrative Committee (committee), established under Marketing Order No. 911. This rule increases authorized expenditures to $278,000 from $233,000, and the assessment rate to $0.18 from $0.15 per bushel (55 pounds) of assessable limes. These increases are needed by the committee to pay additional anticipated marketing order expenses and to collect additional assessments from handlers to pay those expenses.

EFFECTIVE DATE: April 1, 1989, through March 31, 1990.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Agreement and Marketing Order No. 911, both as amended (7 CFR part 911), regulating the handling of limes grown in Florida. This agreement and order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 28 handlers subject to regulation under the marketing order for limes grown in Florida and about 230 lime growers in Florida. Small agricultural growers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and growers may be classified as small entities.

The Florida lime marketing order administered by the U.S. Department of Agriculture (Department) requires that the assessment rate for a particular fiscal year shall apply to all of the assessable commodity handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and growers of Florida limes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected shipments of limes in bushels (55 pounds). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the committee shortly before a season starts, or during the season when changes are needed, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee met on April 12, 1989, and unanimously recommended increasing 1989-90 budgeted expenditures from $233,000 to $278,000 and the assessment rate from $0.15 to $0.18 per bushel (55 pounds) of assessable limes shipped. The "marketing" item in the 1989-90 budget is increased from $25,000 to $70,000 to fund additional market promotion. The committee plans to develop and submit for approval its market promotion projects later in the season. The current expenditure level and assessment rate was authorized by a final rule signed on April 12, 1989, and published in the **Federal Register** (54 FR 15168, April 17, 1989), based on a January 11, 1989, unanimous recommendation of the committee.

Based on shipments of 1,500,000 bushels of assessable limes and an $0.18 assessment rate, committee assessment income for 1989-90 is estimated at $270,000. Interest income continues to be estimated at $8,000.

The committee also unanimously recommended that excess 1988-89 assessments of about $12,000 be refunded to handlers, as provided in § 911.42, rather than be placed in its reserve as it recommended on January 11, 1989. The committee's reserve currently contains about $156,000, an amount well within the maximum authorized under the order.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action amends § 911.228 and is based on the committee's recommendations and other information. A proposed rule concerning this action was published in the **Federal Register** (54 FR 31843, August 2, 1989). Comments on the proposed rule were invited from interested persons until August 14, 1989. No comments were received.

After consideration of the information and recommendations submitted by the committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because the committee needs sufficient funds to pay its increased expenses, which are incurred on a continuous basis. In addition, handlers are aware of the action, which was recommended by the committee at public meetings. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 911

Florida, limes, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 911 is amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 911.228 is amended to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 911.228 Expenses and assessment rate.

Expenses of $278,000 by the Florida Lime Administrative Committee are authorized and an assessment rate of $0.18 per bushel (55 pounds) of assessable limes is established for the fiscal year ending on March 31, 1990. Excess funds from the 1988–89 fiscal year may be refunded to handlers from whom collected.

Dated: August 23, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–20220 Filed 8–25–89; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AC22 and 3150–AA05

Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on August 11, 1989 (54 FR 33168), that improves the hearing process with due regard for the rights of the parties. This action is necessary to correct the text of a footnote.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Stuart A. Treby, Assistant General Counsel, Rulemaking and Fuel Cycle Division, Offices of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone 492–1636.

SUPPLEMENTARY INFORMATION: On Page 33171, footnote number 2 is corrected to read as follows:

[2] The Commission recognizes that in some cases the applicant's and the NRC staff's position on a particular issue will be similar. Although under these rules the contention must be framed to disagree with the applicant's position, an intervenor's evidentiary presentation in such cases at the hearing may be directed towards both the staff and the applicant to the extent required for a consistent litigation strategy.

Dated at Bethesda, Maryland, this 22nd day of August 1989.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 89–20225 Filed 8–25–89; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[OTS–89058; No. 89–58]

12 CFR Part 571

Investment Portfolio Policy and Accounting Guidelines

Date: August 21, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final statement of policy; delay of effective date.

SUMMARY: The Office of Thrift Supervision (the "Office") is hereby delaying the effective date of its final statement of policy on investment portfolio policy and accounting guidelines in order to allow time for a consistent policy in this area to be developed by the Federal banking agencies, including the Office, pursuant to the mandate of Title XII, section 1215, of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. 101–73, 103 Stat. 183 ("FIRREA").

EFFECTIVE DATE: August 28, 1989. Pre-existing GAAP requirements remain unaffected by this Statement of Policy. Savings associations must comply with the documentation requirements of an investment policy and strategies and board of director reviews on January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Joe A. Hargett, Professional Accounting Fellow, (202) 331–4583, David H. Martens, Chief Accountant, (202) 331–4579, Douglas P. Foster, Chief Accountant, Corporate and Securities Division, (202) 906–7503, Gary Jeffers, Staff Attorney, Corporate and Securities Division, (202) 906–6457, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Office is delaying the effective date of its final statement of policy on investment portfolio policy and accounting guidelines, published at 54 FR 23457 (June 1, 1989), to be codified at 12 CFR 571.19, from August 30, 1989, until January 1, 1990. The Office has requested the Federal Financial Institutions Examination Council ("FFIEC") to convene a task force to develop a joint Statement of Policy that clarifies Generally Accepted Accounting Principles for investment portfolios of financial institutions. The Office believes that FFIEC participation will ensure that consistent accounting standards are applied to all insured financial institutions in this crucial area. The Office believes that the mandate contained in section 1215 of the recently enacted FIRREA that "each appropriate Federal banking agency shall establish uniform accounting standards to be used for determining the capital ratios of all federally insured depository institutions and for other regulatory purposes" will be best served by these actions.

Pre-existing GAAP requirements remain unaffected by the delay in implementation of this Statement of Policy. The Office will continue to

aggressively pursue its efforts to ensure fair and consistent application of generally accepted accounting principles and to identify and prohibit abusive accounting practices. Savings associations must comply with the documentation requirements of an investment policy and strategies and board of director reviews on January 1, 1990.

List of Subjects in 12 CFR Part 571

Accounting, Bank deposit insurance, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Office hereby amends chapter V of title 12, Code of Federal Regulations, as set forth below.

1. The heading for Chapter V is revised to read as follows:

CHAPTER V—OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY

PART 571—[AMENDED]

2. The authority citation for part 571 is revised to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 571.19 [Amended]

3. Amend paragraph (e) of § 571.19 by changing "August 30, 1989" to "January 1, 1990".

Darrel W. Dochow,

Acting Director, Office of Thrift Supervision.

[FR Doc. 89–20173 Filed 8–25–89; 8:45 am]

BILLING CODE 6720–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AB92

Business Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Public Law 100–590, enacted November 3, 1988, amended the *alter ego* rule for development companies so that complete identity of ownership interests would not be required if certain listed family members were owners of the operating business and the so-called *alter ego*, the real estate holding company. This final rule promulgates an identical change in the regulations for *alter ego* loan guarantees made under section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Deputy Associate Administrator for Financial Assistance, 1441 L Street NW., Washington, DC 20416. telephone (202) 653–6574.

SUPPLEMENTARY INFORMATION: On November 3, 1988, Public Law 100–590, 102 Stat. 2989, was enacted (1988 legislation). Section 114 of the 1988 legislation amended the Small Business Investment Act of 1958 (15 U.S.C. 697(a)(2)) to lessen the restrictions on the use of the *alter ego* rule in the development company area. Under the old rule, there had to be a complete identity of ownership interests between the applicant real estate holding company (the *alter ego*) and the operating small business concern. The 1988 legislation provided that there did not have to exist a complete identity of ownership interests if one or more of the following classes of relatives have the ownership interests in either the *alter ego* real estate entity or the operating small business concern: father, mother, son, daughter, wife, husband, brother or sister. Regulations implementing this change have been promulgated with respect to development companies (54 FR 6265, February 9, 1989).

There is no reason to have a different *alter ego* rule with respect to loans guaranteed under section 7(a) of the Small Business Act (15 U.S.C. 636(a)). Up until the present time, the *alter ego* regulations for both the development company area (13 CFR part 108) and section 7(a) loans (13 CFR part 120) have been substantially similar. It is SBA's view that if Congress expressly amended the rule for development companies, the Agency should revise the rule for section 7(a) loans so that the rules would continue to be substantially similar. S. Rep. 416, 100th Cong., 2nd Sess. (1988), stated that the former strict rule had prevented a number of meritorious projects from receiving financing. Similarly, while the SBA does not maintain statistics in this regard, it is possible that strict adherence to the complete identity of interest rule has also prevented some meritorious financing in the loan guaranty field.

Accordingly, on April 28, 1989, the SBA published in the **Federal Register** (54 FR 18299), a notice of proposed rulemaking to eliminate the complete identity of ownership requirement for section 7(a) loans provided that certain listed family members were owners of the operating business and the real estate holding company (*i.e.*, the *alter ego*). The Agency received no comments and the regulation is being promulgated as final.

Section 120.101–2(e)(5) of SBA regulations (13 CFR 120.101–2(e)(5)) is hereby amended so that the ownership interests between the applicant real estate holding company (the *alter ego*) and the operating small concern do not need to be identical if such ownership is by the father, mother, son, daughter, wife, husband, brother or sister.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this final rule will not have a significant impact on a substantial number of small entities since the preponderance of the Agency's guaranteed loans are not made to *alter ego* applicants of small concerns. Similarly, SBA certifies that this final rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more.

This final rule does not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

This final rule does not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 120

Loan programs/business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA hereby amends part 120, chapter I, title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a)(h).

2. Section 120.101–2(e)(5) is amended by revising it to read as follows:

§ 120.101–2 Type of business.

* * * * *

(e) *Lending or investment, "Alter Ego."* * * *

(5) It must have ownership interest(s) completely identical with and in the same proportion as the ownership interest(s) in the operating company and agree in writing that such identity of ownership shall remain unchanged until the loan is paid in full or unless SBA gives written approval for an earlier change, *Provided*, however, that SBA shall not decline a loan or a guaranty to an applicant when the ownership interests in the operating small concern and in such applicant holding company are not identical and not in the same proportion solely because one or more of the following members of the same family have such interest or interests in

one and/or the other: Father, mother, son, daughter, wife, husband, brother or sister. In each such case, SBA shall make a determination that such ownership, such guaranty and the proceeds of such loan will substantially benefit the operating small concern.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans.)

Susan Engeleiter,

Administrator.

[FR Doc. 89-20184 Filed 8-25-89; 8:45 am]

BILLING CODE 8025-01-M

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13 CFR Part 121

Small Business Size Standards; Revision; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: On March 31, 1989, the Small Business Administration (SBA) revised its regulations to set an explicit size standard of 500 employees for nonmanufacturers. A "nonmanufacturer" is a company offering to supply to the Federal Government an item which it does not itself manufacture. However, the subheadings of the size standards table for Division F—Wholesale Trade and Division G—Retail Trade can give the unintended impression that all retail and wholesale procurement contracts, including those for services, are included under the 500-employee nonmanufacturer standard. The regulations cover only contracts for supplies. Institutional food service, computer software and other service-type contracts are excluded from the nonmanufacturer's size standard. The final rule is corrected by adding the words "of supplies" to the subheadings of Division F and G.

EFFECTIVE DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Director, Size Standards Staff, (202) 653-6373.

SUPPLEMENTARY INFORMATION: On March 31, 1989, SBA published a Final Rule (54 FR 13160) which established a size standard of 500 employees for nonmanufacturers. This rule applies only to contracts for supplies and not for construction or service contracts (as stated in the regulations in § 121.5(b)(2)). However, through misinterpretation of subheadings in Table 2 of the regulations, contracts for services with firms under Division F (Wholesale Trade) or Division G (Retail Trade) might be construed also to be covered. By adding the words "of supplies" to the center subheadings under both Divisions F and G, as set forth below, any erroneous impressions are avoided.

Accordingly, the subheadings of Division F—Wholesale and Division G—Retail Trade in Table 2 of §121.2(d)(2), which appeared as a final rule in the **Federal Register** on March 31, 1989 (54 FR 13163), are correctly revised as set forth below:

Division F—Wholesale Trade

(Not Applicable to Government Procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government Procurement of supplies.)

* * * * *

Division G—Retail Trade

(Not Applicable to Government Procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government Procurement of supplies.)

* * * * *

Dated: August 16, 1989.

Susan Engeleiter,

Administrator, U.S. Small Business Administration.

[FR Doc. 89-20188 Filed 8-25-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 25994; Amdt. No. 1407]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESS: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in the amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationships between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 1229; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on August 18, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective September 21, 1989*

Parker, AZ—Avi Suquilla, VOR/DME-A, Amdt. 2
Coeur D'Alene, ID—Coeur D'Alene Air Terminal, VOR RWY 1, Amdt. 1
Fort Wayne, IN—Fort Wayne Muni/Baer Field, LOC BC RWY 23, Amdt. 7
Sulphur, LA—Southland Field, VOR DME-A, Orig.
Wiscasset, ME—Wiscasset, VOR/DME RWY 25, Orig.
Islip, NY—Long Island MacArthur, ILS RWY 24, Amdt. 1, Cancelled
Islip, NY—Long Island MacArthur, ILS RWY 24, Orig.
Salem, OR—McNary Fld, LOC/DME RWY 31, Amdt. 2
Salem, OR—McNary Fld, NDB RWY 31, Amdt. 16
Salem, OR—McNary Fld, ILS RWY 31, Amdt. 27
Sioux Falls, SD—Joe Foss Field, VOR or TACAN RWY 15, Amdt. 18
Sioux Falls, SD—Joe Foss Field, VOR/DME or TACAN RWY 33, Amdt. 9

* * * *Effective October 19, 1989*

Chicago, IL—Chicago Midway, NDB RWY 31L, Amdt. 12
Chicago, IL—Chicago Midway, ILS RWY 31L, Amdt. 3
Sterling Rockfalls, IL—Whiteside County Airport Joseph H. Bittorf Field, LOC BC RWY 7, Amdt. 4
Sterling Rockfalls, IL—Whiteside County Airport Joseph H. Bittorf Field, NDB RWY 7, Amdt. 4
Sterling Rockfalls, IL—Whiteside County Airport Joseph H. Bittorf Field, ILS RWY 25, Amdt. 9
Lafayette, IN—Purdue University, VOR-A, Amdt. 24
Portales, NM—Portales Muni, NDB RWY 2, Amdt. 2, Cancelled
Muleshoe, TX—Edward Warren Field, VOR/DME-A, Amdt. 1, Cancelled

* * * *Effective November 16, 1989*

Lakeland, FL—Lakeland Muni, VOR RWY 9, Orig.
Swainsboro, GA—Emanuel County, VOR/DME-A, Amdt. 1
Swainsboro, GA—Emanuel County, NDB RWY 13, Orig.
Salem, IL—Salem-Leckrone, NDB RWY 18, Amdt. 8
New Orleans, LA—New Orleans Intl (Moisant Field), LOC RWY 10, Orig.
New Orleans, LA—New Orleans Intl (Moisant Field), NDB RWY 10, Amdt. 23
New Orleans, LA—New Orleans Intl (Moisant Field), ILS RWY 10, Amdt. 28, Cancelled
Portland, ME—Portland Intl Jetport, RADAR-1, Amdt. 2
Jackson, MS—Hawkins Field, NDB RWY 16, Amdt. 5
Jackson, MS—Hawkins Field, ILS RWY 16, Amdt. 4
Greeneville, TN—Greeneville Muni, LOC RWY 5, Amdt. 3
Greeneville, TN—Greeneville Muni, NDB RWY 5, Amdt. 2
Lafayette, TN—Lafayette Muni, NDB RWY 19, Amdt. 2
Smithville, TN—Smithville Muni, NDB RWY 24, Amdt. 1
Waverly, TN—Humphreys County, VOR/DME-A, Amdt. 2
Waverly, TN—Humphreys County, NDB RWY 21, Amdt. 2
Snyder, TX—Winston Field, NDB RWY 35, Amdt. 1
Eagle River, WI—Eagle River Union, VOR/DME RWY 4, Orig.
Eagle River, WI—Eagle River Union, NDB RWY 22, Amdt. 4

The FAA published an Amendment in Docket No. 25970, Amdt. No. 1405 to part 97 of the Federal Aviation Regulations (VOL 54 FR No. 144 Page 31328; dated Friday, July 28, 1989, under § 97.27 effective September 21, 1989, which is hereby amended as follows:

Rescind:

Chickasha, OK—Chickasha Muni, NDB RWY 17, ORIG.
Bay City, TX—Bay City Muni, NDB RWY 13, AMDT. 2

[FR Doc. 89-20174 Filed 8-25-89; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1261

RIN 2700–AA62

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1261, subpart 1261.1, by correcting the authority citation and by revising § 1261.102 to comply with Public Law 100–565 dated October 31, 1988.

EFFECTIVE DATE: August 28, 1989.

ADDRESS: Office of General Counsel, Code GG, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Sara Najjar, 202/453–2465.

SUPPLEMENTARY INFORMATION: Public Law 100–565 was approved on October 3, 1988, which amends title 31 of the United States Code to increase from $25,000 to $40,000 the maximum that the United States may pay in settlement of a claim against the United States made by an officer or employee of the Government.

Because this rule is only technical in nature and corrects a statutory citation and revises a mandated dollar amount, it does not constitute a major rule for purposes of Executive Order 12291 and is not subject to the Regulatory Flexibility Act at 5 U.S.C. 601 et seq.

List of Subjects in 14 CFR Part 1261

Administrative practice and procedures, Claim, Dept collections, Administrative offset, Government employees, Pay administration, Personal property, Salary offset, Wages.

For reasons set out in the preamble, 14 CFR part 1261 is amended as follows:

PAST 1261—PROCESSING OF MONETARY CLAIMS (GENERAL)

1. The autority citation for 14 CFR subpart 1261.1 is revised to read as follows:

Authority: 31 U.S.C. 2371, et seq.

2. Section 1261.102 is revised to read as follows:

§ 1261.102 Maximum Amount.

From October 1, 1982, to October 30, 1988, the maximum amount that may be paid under the Military Personnel and Civilian Employees' Claim Act of 1964, as amended (31 U.S.C. 3721) is $25,000, and on or after October 31, 1988, the maximum amount is $40,000 (Pub. L. 100–565, 102 Stat. 2833, October 31, 1988).

Richard H. Truly,
Administrator.

[FR Doc. 89–20221 Field 8–25–89; 8:45 am]

BILLING CODE 7510–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 424

Amendment to Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices

AGENCY: Federal Trade Commission.

ACTION: Final amendments to trade regulation rule.

SUMMARY: The Federal Trade Commission issues a final amendment to 16 CFR part 424, which is retitled Retail Food Store Advertising and Marketing Practices as amended. The trade regulation rule, as amended, requires retail food stores to have adequate stock to meet reasonable demand for items advertised for sale at specified prices unless the store publishes in the advertisement a clear and adequate disclosure that quantities are limited. Additionally, the amended rule provides that, even when stores do not publish a limited quantity disclaimer, it is not a violation of the rule, when unavailability of an advertised item does occur, if the store (1) ordered sufficient quantities of the item to meet reasonably anticipated demand; (2) offers a raincheck for the unavailable item; (3) offers a substitute for the unavailable item at the advertised price or at a comparable price reduction; or (4) offers other compensation at least equal to the advertised value.

This notice contains a Statement of Basis and Purpose for the amendments to the Rule, which incorporates a regulatory analysis, and the text of the Rule as amended.

EFFECTIVE DATE: August 28, 1989.

ADDRESS: Requests for copies of the Rule and the Statement of Basis and Purpose should be sent to the Public Reference Branch, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Walter Gross, Division of Service Industry Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3319.

List of Subjects in Part 424

Retail food stores, Trade rules.

By direction of the Commission.

Donald S. Clark,
Secretary.

STATEMENT OF BASIS AND PURPOSE

I. Introduction

A. Overview of the Rule

The Commission promulgated the Retail Food Store Advertising and Marketing Practices Rule [1] in May, 1971 concluding that "on the basis of the entire public record * * * the issuance of the Trade Regulation Rule with respect to the unavailability and mispricing of advertised food and grocery products is required by that record, and is in the public interest." [2] The Rule required retail food stores to have every advertised item readily available for sale at or below the advertised price. If an advertised item was not available, the Rule required that grocers be able to document that they ordered and received sufficient quantities of the item to meet reasonably anticipated demand. The Rule permitted disclosures of some restrictions on availability, such as "Available only at stores featuring delicatessen departments." [3]

Between 1973 and 1978, the Commission entered nine cease and desist orders against food chains charged with failing to have advertised items available. Some of the complaints in these cases charged violations of the Rule; others charged that conduct in violation of the principles expressed in the Rule violated section 5 of the Federal Trade Commission Act.[4]

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[1] 16 CFR part 424 (hereinafter cited as "the Rule" or "the current Rule").

[2] 36 FR 8777 (hereinafter cited as "SBP").

[3] The Rule included an exception to the general availability requirement—a provision permitting "clear and conspicuous disclosure * * * as to all exceptions and/or limitations or restrictions with respect to stores, products or prices otherwise included within the advertisements." A 1975 staff interpretation of the Rule's disclosure provision concluded that advertisements containing a notice that supplies of a number of items available at each store location, would not excuse a retailer from the Rule's requirement that retailers must have sufficient quantities on hand to meet demand.

[4] *Food Fair Stores, Inc.*, 90 F.T.C. 491 (1977); *Fisher Foods, Inc.*, 90 F.T.C. 473 (1977); *Shop Rite Foods, Inc.*, 90 F.T.C. 500 (1977); *Kroger Co.*, 90 F.T.C. 459 (1977); *Mayfair Supermarkets, Inc.*, 87 F.T.C. 286 (1976); *Pacific Gamble-Robinson Co.*, 86 F.T.C. 1694 (1975); *Boso'r, Inc.*, 86 F.T.C. 1028 (1975); *The Great Atlantic and Pacific Tea Company, Inc.*, 86 F.T.C. 601 (1975); *Albertsons, Inc.*, 85 F.T.C. 500 (1975). Two additional Orders, *Safeway Stores, Inc.*, 91 F.T.C. 975 (1978), and *Fred Meyer, Inc.*, 87 F.T. C. 112 (1976) dealt only with mispricing.

The Commission is promulgating the amended Rule in order to reduce costs on the retail food industry that are passed along to consumers. The Commission has concluded that these costs, though difficult to measure precisely, exceed the benefits the original Rule may have provided to consumers. The Commission has also concluded that the amended Rule will not significantly reduce consumer protection because injury caused by such instances of unexpected unavailability as do occur will be substantially mitigated by the amended Rule's requirement that consumers be offered rainchecks or comparable substitute items.

B. Background of this Proceeding

In 1980, the Commission published [5] for comment A Study of Consumer Response to the Availability of Advertised Specials, which describes the results of a survey that was conducted for the Commission by an independent research organization, Market Facts, Inc.[6] The findings of the Market Facts Study suggested that consumers realize little, if any, benefit as a result of the Rule. Comments by various grocers on the published Study indicated that costs of complying with the Rule were far in excess of any benefits that had been identified.[7] On December 10, 1984, the Commission published an Advance Notice of Proposed Rulemaking ("ANPR").[8] The ANPR indicated that the Commission was seeking further information on the costs and benefits of the current Rule as well as comments on whether the Commission should repeal the Rule, amend it or make no change.[9] Comments received in response to both the ANPR and the staff's economic analysis indicated strong consumer opposition to repeal of the Rule. The staff subsequently recommended that the Commission reduce the costs imposed by the Rule by amending its provisions to allow grocers greater flexibility in disclosing in advertising when there are only limited quantities of advertised items and to permit additional defenses to unavailability.[10]

The Commission then published a Notice of Proposed Rulemaking ("NPR") on October 24, 1985.[11] The major amendments proposed in the NPR permitted grocers to (1) publish clear and adequate limited quantity disclosures in their advertising and (2) defend against instances of unavailability by demonstrating that they provide rainchecks, substitutions of items of comparable value or other compensation at least equal to the advertised value.

A ninety-day comment period on the NPR concluded on January 24, 1986. The Commission received 35 comments on the NPR, including two from industry trade associations, three from retail grocers, seven from state, federal and local government agencies, three from consumer groups and 20 from individual consumers.

On April 1 and 2, 1986, public hearings on the Rule were held in Washington, DC. Two parties, the Food Marketing Institute ("FMI"), a trade association representing approximately 1,500 wholesale and retail grocers, and Consumers Union, applied for and were granted designation as interested parties to participate in the hearings. Eight witnesses, four for the Staff and four for industry, testified at the hearings. Consumers Union decided not to present any witnesses, but did conduct cross-examination of both staff witnesses and industry witnesses.

In December, 1986, the staff published its Final Report, recommending, with one minor adjustment, the adoption of the proposed amendments.[12] In an accompanying statement, the Bureau Director indicated that he favored repealing the Rule because the record evidence demonstrated that retail food stores appear to have adequate incentives to avoid unavailability even without the presence of an FTC rule.[13] On January 20, 1987, the Presiding Officer published his Report, in which he recommended amendments to the Rule that deviated substantially from those that the Commission had initially proposed and staff had subsequently recommended in its Staff Report.[14] Twenty-one comments were received during a ninety-day comment period on both reports that ended on March 24, 1987: two from industry trade groups, one from a federal agency, three from state and local consumer agencies, one from an academic/staff consultant, one from the publisher of a newsletter for specialty dealers in the consumer electronics industry and thirteen from individual consumers.

On December 1, 1987, the Bureau of Consumer Protection forwarded its final recommendations to the Commission on this proposed rulemaking. Two members of the rulemaking staff favored amending the Rule, while one favored repeal. The Assistant Director for Service Industry Practices also favored amendment. The Bureau Director favored repeal as did the Bureau of Economics.[15] On April 19, 1988, after reviewing the rulemaking record as a whole, the Commission voted three to two to amend the Rule as the majority of the rulemaking staff had proposed.

II. Basis for Amended Rule

A. The Legal Standard for Amending the Rule

Section 18(d)(2) of the FTC Act states that "[a] substantive amendment to, or repeal of, a rule promulgated under subsection (a)(1)(B) shall be prescribed * * * in the same manner as a rule under such subsection." That section also provides that an amendment or repeal of a Section 18 rule shall be "subject to judicial review, in the same manner as" any other Section 18 rule. Section 18(e)(3) provides that a rule may be judicially reviewed under either a substantial evidence standard or, in accordance with 5 U.S.C. 706(2)(A), an arbitrary and capricious standard. According to section 18(e)(3), all factual matters upon which the amendment is based should be supported by substantial evidence in the rulemaking record.

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[5] 45 FR 59634 (1980).

[6] Market Facts, Inc., A Study of Consumer Response to the Availability of Advertised Specials, (1979) R–B–1* (hereinafter cited as "Market Facts Study" or "Study").

*In this document, references made to material contained in the rulemaking record are made in the footnotes using the following abbreviations:

Tr.—The transcript of the hearings.

HX.—Exhibits presented and accepted into evidence at the hearings.

R.—Materials submitted by the Commission staff or interested parties as well as materials placed on the record at the direction of the Presiding Officer.

References to documents contained in the written ("R" portion) of the rulemaking record show the category in which the document was placed, the number of the document, and the internal page number of the document on which the cited reference appears. The reference number for the rulemaking record itself is 215–65.

[7] *See* Bureau of Consumer Protection, Federal Trade Commission, Retail Food Store Advertising and Marketing Practices: Final Staff Report to the Federal Trade Commission on Proposed Amended Trade Regulation Rule 7, 9 (1986) R–O–1, (hereinafter cited as "Staff Report" in text, "S.R." in notes).

[8] 49 FR 48059 (1984).

[9] *See* Joint Memorandum from the Bureau of Consumer Protection and the Bureau of Economics to the Federal Trade Commission, Staff Report on the Retail Food Store Advertising and Marketing Practices Trade Regulation Rule, 16 CFR part 424, (July 25, 1984) R–B–23 (hereinafter cited as "1984 Staff Memorandum").

[10] *See* Joint Memorandum from the Bureau of Consumer Protection and the Bureau of Economics to Federal Trade Commission, Retail Food Store Advertising and Marketing Practices Proposed Amendment of Trade Regulation Rule, (August 29, 1985) R–B–67 (hereinafter cited as "1985 Staff Memorandum").

[11] 50 FR 43224 (1985) R–A–3.

[12] S.R., *supra* n.7 at 7.

[13] *Id.* at Appendix E.

[14] Henry B. Cabell, Report of the Presiding Officer on Proposed Trade Regulation Rule: Retail Food Store Advertising and Marketing Practices (1987), R–P–1 (hereinafter cited as "P.O.R.").

[15] *See* Memorandum from William C. MacLeod, Director, Bureau of Consumer Protection, to the Commission (November 30, 1987). *See also* FTC Press Release, "Consumer Protection and Economics Directors Recommend Repealing Food Store Advertising Rule; Staff Sees Basis For Either Repealing or Amending Rule" (April 19, 1988).

In addition to this statutory requirement, the Commission should "articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." [16] Since the courts have noted that there is a presumption against changes to an existing course of action, the Commission should "supply reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance." [17] If the Commission's decision to amend or repeal a rule is based upon factual findings, those findings should be supported by substantial evidence. If the decision to amend or repeal is based on policy grounds, the Commission should articulate its reasoning so that it is clear it is not acting arbitrarily or capriciously.

The Commission adopted the original Rule in 1971, on the basis of a record containing survey evidence that indicated overall unavailability rates of 11 percent of advertised items and overpricing rates of between 3.0 percent and 4.6 percent in the ten leading food chains.[18] The Commission's current rulemaking standards might require a more persuasive record before imposing an industry-wide Rule.[19] However, given that the Rule is in place, these same standards now require "a preponderance of substantial reliable evidence" in support of any proposed change to the Rule.

In the case of this rulemaking, the Commission has concluded that there is substantial evidence to support a finding that the costs of complying with the original Rule far outweigh its benefits. Moreover, the Commission believes that the amendments it has adopted will reduce these costs while serving to ensure that consumers will still be protected from losses associated with unavailability of advertised items.

B. The Benefits of the Original Rule

One means of determining the benefits of the Rule is to measure the extent to which it may have been effective in reducing unavailability of advertised specials that existed prior to the Rule and then to estimate the actual consumer dollars saved as a result of that reduction. The rulemaking record in this matter contains evidence on this issue in the form of retail food store unavailability surveys that were conducted before and after the Rule was promulgated, as well as academic research that permits the conversion of the differences in unavailability rates into consumer dollars. This section first compares pre-Rule and post-Rule survey rates of unavailability and then, using the findings from the academic research, estimates the maximum level of likely savings that consumers have realized as a result of the Rule.

A second means of determining consumer benefits is to survey consumers as to how the unavailability of advertised products affects them and how much they value availability of these products as compared with other attributes of retail grocery stores. Using the data from that survey of consumers regarding unavailability, a separate estimate of consumer benefits is generated.

1. Pre-Rule and Post-Rule Measures of Unavailability

a. Survey Rates of Unavailability. In 1967–68, as part of a larger study of food store selling practices conducted in Washington, DC and San Francisco, California, staff surveyed retail food stores' shelves for the presence of advertised items. [20] This survey indicated an average overall unavailability rate in the two metropolitan areas studied of 11 percent.[21] This study was the primary basis for promulgation of the original Rule.[22]

In contrast, the record evidence indicates that unavailability rates in the period after the Rule was promulgated have been cut in half. In 1973, Commission staff surveyed unavailability and mispricing of advertised items in 640 retail food stores of leading grocery store chains in 40 Standard Metropolitan Statistical Areas ("SMSA").[23] The overall average unavailability rate was 5.5 percent.[24]

A recent survey, conducted in the Borough of Manhattan of New York City by the Better Business Bureau of Metropolitan New York, Inc., in 1985, showed an unavailability rate (4.6%) consistent with previous post-Rule studies.[25] Only one study, which was conducted in New Jersey in 1980, showed post-Rule unavailability rates to be higher (6.8%) than rates found in the studies already mentioned.[26]

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[16] Motor Vehicle Manufacturer's Ass'n. v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 42–43, 103 S.Ct. 2856, 2866–67 (1983).

[17] *Id.* at 2866.

[18] SBP, *supra* n. 2 at 8777–78.

[19] The Commission has indicated that before it will promulgate a Rule, it will first assure that the rulemaking record contains "a preponderance of substantial reliable evidence" in support of the Rule. Initially, it will require substantial evidence for the factual propositions underlying a determination that an existing practice is unfair or deceptive. Additionally, the Commission will consider the following questions in deciding to promulgate a Rule: (1) Is the act or practice prevalent? (2) Does a significant harm exist? (3) Will the proposed Rule reduce that harm? and (4) Will the benefits of the Rule exceed its costs? Statement of Basis and Purpose, Credit Practices TRR, 49 FR 7740 (March 1, 1984).

[20] Bureau of Economics, Federal Trade Commission, Economic Report on Food Chain Selling Practices in the District of Columbia and San Francisco 1 (1969) R–I–61 (hereinafter cited as "Market Basket Survey"). The survey covered an average of 65 advertised items in each of 137 stores in the Washington, DC and San Francisco sales areas.

[21] In Washington, DC, the staff found chain store unavailability rates to be 23 percent in low-income areas and 11 percent in high-income areas, with an overall rate of 14.4 percent. In San Francisco, where there was no such discrepancy between low-income and high-income areas, staff found an overall rate of six percent. Overall, a total of 11 percent of the items were found to be unavailable.

It should be noted, however, that in this study, surveyors did not ask store personnel, as they did in later studies, about items they could not find on the shelves. Presumably, some items not found on the shelves may have been in the back of the store or located elsewhere in the sales area. This survey was criticized by industry members as being unsound methodologically. *See* S.R., *supra* n. 7 at 19, n. 41. While the failure to ask routinely for items not found on the shelves could have resulted in a slight overstatement of actual unavailability rates, it is unlikely that this oversight resulted in any substantial distortion of the results. In a similar study conducted by the Better Business Bureau of Metropolitan New York, Inc., surveyors did ask for items they could not find. Of the 480 items checked, only two out of 22 items not found on the shelves were in storage. Comment of Better Business Bureau of Metropolitan New York (1986) R–H–1 ("NYBBB 1986"). It does appear, however, that in order to account for differences between pre- and post-Rule methodologies, the overall pre-Rule unavailability rate should be adjusted slightly downward.

[22] SBP, *supra* n. 2 at 8777–78.

[23] Statement of Michael Lynch, Bureau of Economics, Federal Trade Commission, HX. 12, Exhibit 2 (1973 Commission Survey). Four stores from each of the four leading chains in each SMSA were picked at random. An item was considered unavailable if it could not be found anywhere in the sales area of the store and was not available on request from any part of the store not open to the public. *Id.*

[24] *Id.* Primarily on the basis of this survey, the Commission issued complaints against eleven supermarket chains alleging high unavailability rates in nine of them. *See* discussion *supra* at § II.A. An analysis of the unavailability rates contained in mandatory reports filed by the stores under orders as a result of these actions ("compliance reports"), submitted mostly in 1978 shows unavailability rates ranging from 0.3 percent to six percent and an average reported rate of 2.4 percent. However, because in many cases the order provisions requiring the surveys permitted the chain named in the order to determine the time and place of the surveys of its own stores, staff estimated that the true overall rates were closer to four percent. S.R., *supra* n. 7 at 21.

[25] S.R., *supra* n. 7 at 22.

[26] *Id.* at 22–23. A similar study conducted in 1978 by the same agency had found the overall

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On the basis of the comparison of pre-Rule and post-Rule survey rates, it appears that overall unavailability rates have been reduced by about 50 percent to current levels of about five percent since the Rule's promulgation. Although other factors, such as the introduction of computerized inventory records, may have served to reduce unavailability somewhat, evidence as to the measures that stores have taken to assure Rule compliance [27] leads the Commission to conclude that this reduction can be attributed primarily to the Rule and the resulting enforcement actions brought in the mid-seventies. Accordingly, benefits that may result from the original Rule can be measured in terms of the reduction in consumer losses from pre-Rule levels of unavailability of about 10 percent to post-Rule levels of unavailability of about five percent.

b. The Ferguson Study. [28] In 1980, academic researchers from the Marketing Department of the University of Alabama reported on a simulation study that estimated losses from unavailability of items featured in a typical retail food store ad. This research, referred to herein as the Ferguson Study, provides the basis for a direct measurement of Rule benefits by providing a basis for estimating an aggregate annual loss incurred by customers confronted with unavailability.[29]

The simulation technique used in the Ferguson Study permitted the researchers to calculate the losses incurred by consumers at various levels of unavailability.[30] Comparing losses generated by an unavailability level near that which existed prior to the Rule with losses generated by an unavailability level approximating the post-Rule unavailability level results in a new benefit per consumer of less than one cent per shopper per week.[31]

This estimate takes into account only the savings realized through the avoidance of trip losses ("the trip gain"), which are losses that result from the expense of wasted trips to retail outlets for advertised items that are unavailable. The price savings on advertised specials ("the savings gain")—which to the individual consumer shopping for that special may seem important—are not included in the benefits calculation because consumers in the aggregate do not actually realize a savings from the purchase of items on special. This is because grocers compensate for losses they incur from price reductions by increasing prices elsewhere or reducing services.[32]

2. The Consumer Survey Regarding Unavailability

A survey of consumer attitudes and perceptions of unavailability commissioned by the staff, the Market Facts Study,[33] addressed such issues as (1) the degree to which consumers experience unavailability, (2) the ability of consumers to take corrective action when they encounter unavailability, (3) the extent to which consumers consider unavailability to be a problem, and (4) the value consumers place on availability.[34] Consumer responses to these questions produced the following results:

—More than eight out of ten consumers have experienced at least occasional unavailability; a typical encounter usually results in the consumer either doing without the item, buying a comparable item at the regular price or going elsewhere to get the item. Most consumers indicated that they are not significantly inconvenienced by unavailability.

—Seven out of ten consumers have access to several stores that compete for their business by means of newspaper advertising.[35] of the more than half of the respondents who had encountered a store with "too few of its advertised items available," most would respond by either paying less attention to that store's advertising or shopping there less often.

—When asked to rank by importance various store attributes, consumers ranked availability of advertised items seventh out of 21 factors, behind quality of produce, quality of meat, overall price, amount of savings of advertised items, variety of items and friendly, helpful store personnel.

—Consumers report that they are willing to accept availability levels as low as 70 percent rather than experience either a one percent increase in prices, reduced savings on advertised specials, an increase in cashier overcharge mistakes, or a significant reduction in consumer services.[36]

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unavailability rate to be five percent. *Id.* However, little is known concerning the methodology used in either of these studies. For example, the methodology does not reveal whether shoppers asked store personnel for items that they could not find on the shelves.

[27] *See* discussion *infra* at section II.C.

[28] Ferguson, Mason and Wilkinson, Simulating Food Shoppers' Losses as a Result of Supermarket Unavailability, 11 Decision Sciences 535 (1980), R–I–40 (hereinafter cited as "the Ferguson Study").

[29] The Study researchers generated the data on shopper losses by simulating a year's worth of typical shopping transactions at a supermarket believed to be representative in terms of size and sales volume. The design of the simulation model was based on previously obtained information about management's stocking policies, store sales volume, the number and size of transactions, customer demographics, shopping patterns, and customer and management responses to unavailability. The items purchased in the simulation were derived from an actual advertisement of the supermarket, typical of the number and variety of items featured in the weekly grocery advertising of that market. The Ferguson loss calculation does not take into account the time and aggravation expended by shoppers encountering unavailability because of the difficulty in quantifying such factors. *Id.* at 544 n. 7.

[30] To obtain the weekly per shopper gain, the average gain for each transaction in the simulation is multiplied by the average number of weekly transactions made by an average shopper (1.5). *See* Progressive Grocer, 48th Annual Report of the Grocery Industry (1981), R–I–55. The resulting per week gain ($0.008) is then converted to an annual figure by multiplying the average number of supermarkets in 1980 (28,680) times the average number of customers per supermarket (about 4000) as reported in Progressive Grocer, 49th Annual Report of the Grocery Industry, 5 (1982), R–B–42. This result is then multiplied by the average gain per week per shopper and converted to 1985 dollars (see below) to produce an annual figure of $48 million.

All benefits and costs estimates are converted to 1985 dollars using the consumer price index in order to make them comparable to each other. The conversion formula follows:

Amount Year Y Dollars = (Amt in Year X Dollars) (CPI of Year Y) divided by (CPI of Year X).

[31] *See* S.R., *supra* n. 7 at 80–82. The Presiding Officer criticized the omission of savings gains and the justification therefor. He concluded that "Staff has averaged away the benefits for the individual consumer." P.O.R., *supra* n. 14 at 100. However, these individual consumer gains are not as significant as critics may think. First, the more that individual shoppers exclusively shop for bargains, the more other shoppers will have to absorb increased prices. The benefit to those individual shoppers thus becomes a loss to the other shoppers and the net benefit is still zero. Second, it is unlikely that many consumers actually save substantial sums on the yearly food budget by shopping specials.

[32] *See* S.R., *supra* n. 7 at 80–81. The savings gain per shopper per week is approximately 2.8 cents.

[33] *Supra* n. 6.

[34] The Study is based on a sample taken from a universe of 65,000 households comprising the Market Facts Mail Panel, demographically balanced to represent U.S. consumers and the U.S. population as a whole. The sample was chosen randomly from a universe of all panel members. The sample consisted of 3,036 households, each of which was mailed a questionnaire with instructions that it should be completed by the household member who does at least half of the shopping, to insure that it was completed by the most experienced shopper. Questionnaires were returned by 2,563 respondents, representing an 84 percent response rate.

[35] The study also found that consumers regularly read food store advertising and most of them pay some attention to featured items in those ads.

[36] The Study also reported that consumers generally were unwilling to give up any other store attributes—some arguably much lower in value than a one percent price hike—to assure higher availability rates. For example, generally, it was more important to consumers to maintain the same level of items advertised than to have them available 70, 80, 90 or even 100 percent of the time;

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In light of the findings of the Market Facts Study, that, in general, consumers do not object to availability going as low as 70 percent, then even a decrease to the 90 percent pre-Rule levels would not appear to pose a major problem. Moreover, the Market Facts Study indicates that while most consumers have experienced unavailability of advertised items, they have alternative food stores available to them and would switch to them if their regular store had too few of its advertised items available. Under the circumstances, therefore, the Commission concludes that the Market Facts Study indicates that, in general, the Rule has provided relatively small benefits to most consumers.

3. Conclusion

Based on the two studies relied on in assessing Rule benefits, the Commission finds that the measurable benefits to consumers under the Rule are less than one cent per week per shopper and, in the aggregate, range no higher than $48 million per year for all supermarket shoppers. Consumers may also realize additional—albeit unquantifiable—benefits, inasmuch as the Rule's assurance of availability saves consumers the aggravation expended when an advertised product proves unavailable.[37]

C. The Costs of the Original Rule

According to the record evidence, most food retailers feel compelled to take precautions that they would otherwise not take in the ordinary course of business to avoid inadvertent violations of the Rule. They take extraordinary measures to ensure that they have sufficient inventory of advertised items on hand to satisfy the last customer on the last day of the sale. These measures include maintaining inventory cushions over and above what is needed to meet reasonably anticipated demand, performing additional checks of retail shelves, and creating and maintaining records of their cumulative monitoring activities. These measures result in costs to the food retailers that are attributable solely to the Rule. This section analyzes the direct costs of these efforts. Evidence of the magnitude of these costs is provided by estimates from five separate supermarket chains.[38] In addition, the Commission staff's own independent analysis of the costs produced by investing in excess inventory, using data from the Ferguson Study, is also set forth. This independent analysis, developed by Michael Lynch, a staff economist in the FTC's Bureau of Economics, generally supports the supermarket chains' estimates of inventory costs.[39]

For purposes of this analysis, industry cost data are broken down into four expense categories: (1) Increased inventories to reduce unavailability ("inventory costs"); (2) extra internal monitoring of shelf stock and back room inventories to reduce ordering and pricing errors ("monitoring costs"); (3) compiling and monitoring extra records to prove compliance ("recordkeeping costs"); and (4) extra legal advice and consultation as well as extra monitoring by outside auditors and the like ("legal and survey costs").[40] The Table at Appendix A to this statement breaks out cost data (stated in 1985 dollars) by source and expense category.

1. Inventory Costs

The record indicates that one of the more costly measures that stores use to avoid inadvertently violating the Rule is to purchase and stock more inventory of advertised products than they realistically expect to sell. This measure results in both the cost of investing in (or carrying) excess inventory[41] ("inventory investment costs") and the monetary loss that stores incur when the excess inventory in perishables, *e.g.*, meat and produce, spoils or is reduced below cost for quick sale before it spoils ("spoilage and distress costs").[42]

As staff's independent analysis of inventory costs demonstrates,[43] the cost of stocking inventory cushions in perishable items can be extremely high. This is because these products have a very limited shelf life and, if not sold quickly, will spoil and must be discarded at a total loss. In order to reduce losses from spoilage, grocers attempt to sell excess inventory in perishables below their costs to move them quickly ("distress selling"). The extent to which grocers incur losses from spoilage or distress selling constitutes a second type of cost attributable to the perceived need to stock inventory cushions for advertised items. Staff estimates from industry figures that these costs range from $1,697 to $8,789 per store annually.[44]

2. Monitoring Costs

Monitoring costs represent the labor cost of having in-store personnel and supervisory personnel perform extra checks to see that advertised items are in stock and priced correctly.[45] As a matter of good business practice, food retailers regularly monitor inventory levels to ensure that they have adequate stock. In order to ensure Rule compliance, however, they make these checks more often than would be required in the regular course of business.[46] Staff estimates from industry figures that annual per store monitoring costs ranged from $2,268 to $9,830.

3. Recordkeeping Costs

Recordkeeping costs are the costs food retailers incur to develop and compile records to show that they ordered and had delivered sufficient quantities of advertised items to meet reasonably anticipated demand in order to defend themselves against any charges that they violated the Rule. Food retailers indicated that recordkeeping costs exist at both the store level where these records are developed and at the central office level where the records generally are compiled and stored. Staff estimates from industry figures that annual recordkeeping costs ranged from $52 to $2,312 per store.

4. Legal and Survey Costs

This cost category includes the cost of legal services used in connection with Rule compliance or defense (the legal costs). It also includes the cost of audits of Rule compliance by independent firms that some stores retain (the survey costs). Staff estimates from industry figures that such costs ranged from $12 to $249 annually.[47]

5. Indirect Costs

The indirect costs of the Rule are mainly opportunity costs, *i.e.*, costs that are the result of the lost opportunities from action not taken. These indirect costs may occur because the threat of penalties resulting from a Rule violation may inhibit some types of food store advertising. As a result, food stores may advertise fewer items, run fewer specials or change the types of products they advertise. For example, food stores may advertise new products less often because demand for them may be hard to predict. They may be reluctant to advertise produce or other perishables, because at the end of the sale period, unsold items may spoil or need to be sold at distress prices. They may restrict their advertising of items with limited demand, such as ethnic items, because all stores would have to carry the item regardless of the segmented demand. They may advertise directly delivered items, such as beer and soft drinks, less often because deliveries from many independent suppliers are more difficult to coordinate than deliveries from the store's warehouse. They also may advertise less frequently items available in limited quantity, such as products on "deal", because they may not be able to guarantee quantities sufficient to meet demand. While these costs are real, they are not readily quantifiable and thus are not included in the cost-benefit calculation.[48]

D. Cost/Benefit Comparison

On the basis of the various estimates of costs of Rule compliance as compared with the estimates of maximum benefits under the Rule, the Commission concludes that the costs of complying with this Rule greatly exceed the benefits. Depending upon which food retailers' cost figures are used and assuming benefits of a magnitude indicated by the Ferguson Study, the record indicates that the costs imposed by the Rule exceed its benefits by ratios that range from over 2⅓ to one to nearly eight to one.[49] If the sum of the averages for each cost category is used, the ratio of costs to benefits is more than five to one.[50] Moreover, staff's independent analysis of the data used in the Ferguson Study demonstrates that the costs of reducing survey rates of unavailability by investing in excess inventory can result in costs that exceed benefits by an overwhelming margin.[51]

As previously noted, there are both benefits and costs, indirect in nature and difficult to quantify, that are not included in the cost benefit calculation.[52] On the benefits side of the equation are unquantified "transactional costs," or costs in the form of wasted time and frustration that result when an advertised item is unavailable.[53] On the cost side are the "indirect costs" of lost information, *e.g.*, information lost as a result of food retailers' avoiding advertising of certain categories of products—meat, produce, new products, etc.—because it may be difficult to accurately predict demand for them or assure adequate inventories.[54]

Record evidence indicates that savings from avoiding transactional costs are *de minimis*. Both the Market Facts Study and the Ferguson Study indicate that the overwhelming majority of consumers who have encountered unavailability report minimal inconvenience as a result. In the Ferguson Study, 83 percent of shoppers who encountered unavailability indicated that they did not experience significant inconvenience.[55] Likewise, the independent surveys supporting the Market Facts findings revealed that 74 percent of shoppers who encountered unavailability experienced little or no inconvenience (44 percent reported none), while only three percent reported "great inconvenience."

The indirect costs of limited information about items specially reduced in price are also minor. Indeed, if specials are not advertised, consumers may not realize the savings available had they known about and purchased those items at reduced prices. However, these "savings gains" do not affect the cost-benefit calculus inasmuch as grocers must raise other prices or reduce services to compensate for these price reductions.[56] Thus, the actual loss in

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consumers also placed more value in having 80 percent of regularly stocked non-advertised items available than 100 percent of advertised items. Market Facts Study, *supra* n. 6 at 24.

[37] *See supra* n. 29. *See also infra* at section II.D where the Commission concludes that the magnitude of the unquantified transactional costs are *de minimis*.

[38] All per store cost figures have been converted to 1985 dollars. *See supra* no. 30.

[39] *See* Statement of Michael Lynch, Bureau of Economics, Federal Trade Commission, Exhibit 13 (1986) HX-12, R-LL-1.

The industry cost data includes data submitted by the Food Marketing Institute (FMI) on behalf of three supermarket chains, identified in the record only as Company A, Company B, and Company C, and data submitted separately by Safeway, Inc., Kroger Stores, Inc. and Albertsons, Inc. However, a number of factors indicate that Safeway is Company A in FMI's submission. *See* S.R., *supra* n. 7 at 92. Thus they are treated as one ("Company A/Safeway") for purposes of this analysis.

Although the retail food industry alleged that their costs were indeed incremental costs attributable solely to Rule compliance, some commenters were skeptical that the chains could demonstrate successfully their basis for distinguishing alleged incremental costs from costs incurred in the ordinary course of doing business. The Presiding Officer also believed that the industry cost data were not reliable. P.O.R., *supra* n. 14 at 97. Staff, however, carefully probed industry witnesses at the hearings to determine the methodologies the chains used to identify and quantify their costs. *See* S.R., *supra* n. 7 at 111–112. In some instances, staff recalculated cost components of some stores that it believed to be based upon erroneous accounting principles. *Id.* at 98–99 and 101–102.

In the Commission's opinion, industry witnesses provided generally objective criteria for their costs, and each chain that submitted cost figures for the record demonstrated that it had an objective basis from which it estimated incremental Rule compliance costs. As adjusted by staff, the figures may be relied upon to support a finding as to the magnitude of costs to the industry for Rule compliance.

[40] S.R., *supra* n. 7 at 93.

[41] When retailers purchase extra inventory for advertised items that they do not expect to sell during the sales periods, they either have to borrow the money or invest capital that otherwise would be earning money for them. Either the amount of interest paid for the loan or the amount of money that stores could realize had that capital been invested at prevailing interest rates represents the inventory investment cost to the retailer. Of course, except for perishables that spoil or that are reduced below cost for quick sale, stores eventually will sell the excess inventory at the normal profit margin. For that reason the amount of money actually borrowed or invested is not a cost to the stores because ultimately they will recoup that expenditure. However, the fact that grocers eventually will earn a profit on the excess inventory does not offset the lost interest. Retailers, as long as they remain in business, must invest continually in new inventory cushions for their weekly advertising specials. Accordingly, they always will have an amount of capital tied up in excess inventory; even as they are recouping capital previously invested, they are investing new capital. Thus, the loss of interest on the average amount of capital invested in the excess inventory cushion represents the retailer's inventory investment cost.

[42] These costs varied widely (from $356 per store to $4,778 per store) and some were subject to controversy. *See* discussion in S.R., *supra* n. 7 at 97–103 for an explanation of how they were derived.

[43] *See infra* at section II.D. *See also* testimony of Michael Lynch, Staff Economist, Bureau of Economics, Tr. at 296–301.

[44] *See* S.R., *supra* n. 7 at 95.

[45] *Id.* at 107–08.

[46] *Id.* at 107, n. 283.

[47] *Id.* at 109–10.

[48] *See infra* at section II.D, where the Commission concludes that these costs are *de minimis*.

[49] Staff estimated maximum direct benefits under the Rule to be $48 million per year. The lowest overall estimate of annual costs (based on the submission of the only grocery store chain that did not attempt to estimate its inventory costs) was approximately $132 million when extrapolated industrywide. On the high side of the range are costs extrapolated to the industry at about $370 million. Even selecting the lowest costs in each category and extrapolating their total to an industrywide figure results in costs of about $126 million per year.

[50] Staff estimated that the total of the averages for all cost categories is approximately $319 million, or, converted to a per customer per week basis, 5.3 cents. To obtain the per customer per week cost, the industrywide cost per year was divided by the number of supermarket shoppers in 1980, 114.7 million, *see* S.R., *supra* n. 7 at 82, n. 231, and then divided by the 52 weeks in a year. As previously noted, the maximum benefit was estimated by staff to be only 0.8 cents per customer per week.

[51] From the raw data supporting the Ferguson Study, staff used the annual demand levels generated by the Study to project annual costs of inventory cushions for a store that chooses to invest in extra inventory in amounts sufficient to lower unavailability from pre- to post-Rule levels. *See* S.R., *supra* n. 7 at 104–05. Carrying inventories at two standard increments above the normal level reduces survey unavailability rates from a level approximating the pre-Rule level to that approximating the post-Rule level. Such a practice results in inventory investment costs on a per store basis (in 1985 dollars) of $839 and spoilage/distressing costs of $29,046. These reductions would produce benefits of only $1149. *Id.* at 106–07.

As staff notes, the figures as generated should not be considered *actual* costs of a typical store, however, since actual costs depend upon *all* strategies that an individual chain might adopt to achieve Rule compliance. These figures are based upon reliable data, however, and confirm that the inventory figures produced by industry are reasonable cost estimates.

[52] The Presiding Officer claimed that the existence of both costs and benefits that could not be quantified rendered the entire cost-benefit analysis unreliable P.O.R., *supra* n. 14 at 53.

[53] *See supra* n. 29.

[54] *See* discussion *supra* at § II.C.5.

[55] HX. 5 at 8.

[56] *See* discussion *supra* at § II.D.

this respect is limited to the information itself, not the savings to be gained from knowing it. Thus, for example, the loss occasioned by a grocer's failure to advertise a new breakfast cereal at a reduced introductory price is the information that a new product exists, not the savings to be realized from purchasing it.

After considering all of the options for correcting this imbalance, including repeal of the Rule, the Commission has concluded that amending the Rule as proposed will substantially reduce costs while preserving the benefits that accrue to consumers from increased availability.

E. Legal Basis for Amending the Rule

As previously noted, the basis for amending the Rule is the record evidence that the cost of complying with the Rule substantially exceeds the benefits. Given this basis for action, the Commission is adopting measures that should substantially mitigate or eliminate the compliance costs. There is also substantial evidence in the current rulemaking record that, under the Commission's deception standard, failing to have adequate supplies of advertised products on hand in sufficient quantities to meet reasonably anticipated demand is deceptive.[57]

The Commission's deception standard requires that there be a representation, omission or practice that is material and likely to mislead consumers acting reasonably under the circumstances.[58] Certainly, there is little dispute that a retail food store ad listing items on sale at specified prices is a material representation. What remains to be determined, therefore, is whether the record contains substantial evidence that consumers who shop for items featured in the ad and find them unavailable are reasonably misled.

The Market Facts Study contains substantial evidence that would provide a basis for concluding that failing to have sufficient quantities of advertised items on hand to meet anticipated demand misleads many consumers. The Study indicates that a substantial portion of the public (34%) expect that grocers will not run out of advertised goods unless there are qualifications or limitations as to their availability expressed in the ad.[59] Moreover, according to the same study, 30 percent of consumers consider it very important and an additional 48 percent find it somewhat important that they be able to find all advertised items on the last day of a sale.[60] The Market Facts Study also found that 87 percent of consumers actually experienced unavailability in recent years even when post-Rule unavailability levels of five rather than ten percent were believed to prevail.[61] More significantly, at this same post-Rule level, 56 percent of consumers found a store that had levels of unavailability that they considered too high.[62]

In summary, the Commission concludes that there is substantial evidence in the current record that unavailability of advertised items would constitute a deceptive practice.[63] The amendments that the Commission is promulgating, therefore, retain basic protection against deception while eliminating the need for grocers to adopt costly compliance measures against the possibility of inadvertent unavailability of advertised items.

III. Section-by-Section Analysis

A. Introduction

The Rule as amended contains two new provisions that should reduce the costs imposed by the original Rule significantly. Both of the amendment proposals are intended to relieve any uncertainty about Rule compliance, by making explicit the steps that a grocery food retailer can take to defend against a charge of unavailability.

B. Disclosure Amendment: Section 424.1 Unfair or Deceptive Practices [64]

This section sets out the basic requirement of the Rule that stores have in stock and readily available for sale the items that they advertised. The major change in the section from the original Rule is its allowance for a broader use of limited availability disclosures in advertising. Specifically, if the ads disclose that supplies of the advertised product are limited or available for sale only at some outlets, § 424.1 creates an exception to the requirement that stores have in stock the items that they advertise. Under this exception, as long as an advertisement covered by the Rule contained a clear and adequate disclosure of limited availability, the food retailer would not violate the Rule by failing to have adequate supplies of the advertised product on hand during the entire duration of the sale period. The disclosure would have to specify, however, whether the limitation on availability was the result of limited quantities or limited outlets. This disclosure provision is adapted from the Commission's Guidelines Against Bait Advertising [65] and is intended (1) to emphasize that under the amended Rule, food retailers still will not be permitted to engage in bait advertising and (2) to ensure that consumers will not be deceived about the availability of advertised items when availability is limited.

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[57] This does not mean that grocers are expected to meet a 100 percent availability standard. Even the original Rule indicated that it "will consider * * * all circumstances surrounding non-delivery of advertised products which were actually ordered in quantities sufficient to meet reasonably anticipated demands, but were beyond the advertisers' control."

[58] Cliffdale Associates, Inc., 103 F.T.C. 110, 164–65 (1984).

[59] Market Facts Study, *supra* n. 6 at Table 16.

[60] *Id.* at Table 9. This notion that advertisers have on hand sufficient quantities of advertised merchandise to meet reasonably anticipated demand is not unique to the Rule. It is a direct extension of principles expressed in the Commission's Guides Against Bait Advertising (16 CFR 238.3(c)) as well as decision in litigated cases. *See, e.g., The Great Atlantic and Pacific Tea Company, Inc.*, 85 F.T.C. 601 (1975).

The Market Facts findings that 34 percent of consumers expect 100 percent availability can also be reasonably read as a statement that they expected greater than 90 percent availability. Unfortunately, the survey did not allow consumers to choose levels between 90 percent and 100 percent availability. Consumers responding to the survey were asked to indicate how many items out of ten advertised that they expected to find at the store. Consumers who typically shop in a market that features weekly advertising of over 200 items per store may have selected ten out of ten items only because they expected more than 90 percent availability. Expecting more than 90 percent is not unrealistic, particularly in an environment where at the time of the survey the average availability rate may have been [illegible] percent.

This evidence could also reasonably be interpreted to mean that these consumers do not expect that grocers who run out of stock of advertised items should necessarily be punished for violating laws against deception unless they are unwilling, when unavilability occurs, to offer rainchecks or substitute items, as the amended Rule would require. According to this analysis, it is not unreasonable for consumers to expect—in the absence of disclaimers—that compensation will be offered in cases when unavailability does occur.

[61] *Supra* n. 6 at 29.

[62] *Id.*

[63] This discussion is not meant to exhaust the possible instances in which unqualified retail food store advertising might be found deceptive. That determination would be affected by the number of factors that go beyond an analysis of the average level of unavailability. There are possible instances in which much lower average levels of unavailability might still be deceptive to consumers, as where a store substantially under-orders turkeys featured in advertisements placed just before Thanksgiving. The fact that the store may have in stock all of the other items it advertises would not prevent the Commission from examining whether consumers were, in fact, deceived by the ad.

[64] This section first defines the unfair or deceptive practice that the amended Rule addresses as, basically, advertising products for sale at a stated price when the advertised products are not in stock and readily available to customers during the effective period of the advertisement. This satisfies the requirement of the Second Circuit Court of Appeals decision in Katharine Gibbs School, Inc. v. FTC, 612 F. 2d 658 (1979), that the Commission define with specificity in the rule itself the unfair or deceptive acts or practices that the rule prohibits.

[65] 16 CFR 283.3(c) (1986).

At the same time, by allowing grocers greater latitude to advertise items with limited availability, the disclosure amendment should eliminate the costs associated with the current Rule's discouraging advertising of items in limited supply (such as closeout specials, seasonal products and special purchase items), products of interest only in certain neighborhoods and those items with particularly high carrying costs (such as perishables). The amendment should encourage food retailers to disseminate more information to consumers and increase the number of advertised specials on a variety of products, to the benefit of both consumers and food retailers. Moreover, since the cost savings realized through this amendment would be reflected in reduced prices or improved services or both, consumers would realize an additional benefit from the amendment.[66]

C. Defenses: Section 424.2

This section sets out the four defenses to a Rule violation that excuse any failure of a store to have in stock the items they advertise. The first defense—that the advertised products were ordered in adequate time for delivery in quantities sufficient to meet reasonably anticipated demand—is based on a defense to unavailability that was included in the original Rule. Unlike the original Rule, the amended Rule does not require that stores maintain records demonstrating that the order had been made. This defense recognizes that there may be situations where the failure to have advertised items in stock was beyond the store's control.

The amended Rule provides three additional defenses against a charge of unavailability for grocers who offer consumers appropriate alternative compensation—a raincheck, a substitute item of comparable value or other compensation at least equal to the value of the advertised item—for the unavailable item.[67]

By allowing food retailers to offer a raincheck or comparable value substitute when they run out of an advertised item, the amendment should eliminate virtually all of the nonproductive costs associated with compliance efforts under the current Rule.[68] Stores can abandon the overkill measures of stocking excessive inventory or performing duplicative shelf inspections and opt for far less costly measures of providing rainchecks and substitutions which many if not most of them already provide in the ordinary course of doing business. As in the case of the disclosure amendment, the benefit of lowered costs of compliance can then be passed on to consumers.[69] Additionally, by providing for an offer of compensation equal to that of the advertised savings in the event of unavailability, the amendment seeks to ensure that consumers will not be denied the benefit of any bargain advertising on which they relied in making their shopping choice.[70]

IV. Alternatives Considered

A. Maintain the Status Quo

The Commission could choose to take no action and leave the current Rule in place. For all of the reasons already set out in this statement, a majority of the Commission believes that the costs of complying with the original Rule greatly exceed its benefits. The Rule imposes costly burdens on grocers in the form of investment in unnecessary inventory and excessive monitoring and recordkeeping costs. These costs are ultimately passed along to consumers in the form of higher prices or reduced services. Savings that have been realized by consumers are principally the result of reduction in the number of unsuccessful trips made to purchase items that are not in stock. These savings, or benefits, are only a small fraction of the costs that the Rule imposes.

B. Repeal the Rule

Another alternative that the Commission considered was to repeal the Rule and handle individual instances of deceptive advertising of unavailable products on a case-by-case basis. If the Rule were repealed, food retailers should be able to avoid all of the costs that they now incur as a result of the

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[66] Many members of the retail grocery industry who commented on the proposed amendments felt that this section allows grocers greater flexibility in deciding whether to use limited availability disclosures. They noted that the availability of such disclosures gives retailers opportunities to convey useful information and pass on valuable savings to consumers on a variety of products, the advertising of which is restricted by the stringent availability and disclosure requirements of the current Rule. *See, e.g.*, Comment of the Food Marketing Institute 9 (1985) R–B–58 ("FMI 1985"); Saldin, Tr. 190, 191. Specifically, those who favored the amendment believed that it will encourage food retailers to increase the number and type of products advertised and offer more specials on such products. *See, e.g.*, FMI 1985 at 9; Comment of National Grocers Association 3 (1986) R–E–2 ("NGA 1986"); Saldin, Tr. 190, 191; Comment of Albertson's, Inc. 2 (1986) R–D–2 ("Albertson's 1986"). Secondly, industry representatives supported the fact that the disclosure amendment gives retailers the discretion to use general disclosures in limiting availability, noting that retailers need the flexibility to decide whether to use general or specific disclosures, claiming that the circumstances that prevail when an ad is published are sometimes difficult to predict at the time that the commitment is made to run the ad. *See, e.g.*, Comment of Food Marketing Institute 6–7 (1986) R–E–1 ("FMI 1986"); Comment of the Kroger Co. 2–3 (1986) R–D–3 ("Kroger 1986"); Saldin, Tr. 201, 204.

[67] This policy, it is argued, is well accepted by consumers. *See, e.g.*, Statement of Dr. Timothy Hammonds, Senior Vice President, Food Marketing Institute 5 (1986), HX. 8; FMI 1985, *supra* n. 66 at 11, 12; Hicks, Tr. 255–256. Evidence of consumer acceptance of rainchecks as a remedy for unavailability is on the record. The Market Facts Study found that 60 percent of the consumers questioned felt rainchecks constituted a satisfactory remedy in the case of unavailability. Market Facts, *supra* n. 6 at 32–33. Similarly, a 1980 study conducted by the National Association of Supermarket Shoppers indicated that 67 percent of the respondents found rainchecks to be a sufficient remedy when an advertised item is unavailable. Comment of the National Association of Supermarket Shoppers, Attachment 2 at 6 (1980) R–B–55 ("NASS Survey"). And finally, a 1976 study of consumer behavior with respect to rainchecks by Wilkinson *et al.*, found that 82 percent of shoppers who received rainchecks redeemed them. Moreover, 83 percent of this group indicated they were able to redeem their rainchecks on their first return trip to the store. The remainder of the respondents indicated that no more than two trips were necessary to redeem the raincheck. Statement of Dr. J. B. Wilkinson, Associate Professor of Marketing, University of Akron, at Exhibit 6, 156–57 (1986) HX.

[68] Industry commenters noted that the availability of such a defense would eliminate most of the overkill costs imposed by the Rule's strict availability requirements—in particular the burdensome costs attributable to both over-ordering of inventory and recordkeeping. *See, e.g.*, Statement of Dean Hicks, Vice President, The Kroger Co. at 1, 2 (1986) HX. 8; Hammonds, HX. 1 at 4.

[69] *See, e.g.*, Albertson's 1986, *supra* n. 66 at 1.

[70] Industry representatives emphasized that the amendment achieves a balance between the need to reduce the excessive compliance costs associated with the current Rule and the need to preserve consumer benefits realized under the Rule. *See, e.g.*, FMI 1986, *supra* n. 66 at 1; Comment of Safeway Stores, Inc., 2 (1986) R–D–1 ("Safeway 1986"). They also noted that in permitting such defenses, the proposed Rule would encourage a "sound, pro-consumer business practice," by reinforcing the already well-established policy among grocery retailers of offering the types of compensation provided for in the amendment in the event an advertised item is unavailable. As support for this point, the Food Marketing Institute cited a 1982 survey of its members to determine what type of compensation grocers offer in the event of unavailability, noting that all 341 retailers responding to the survey—regardless of size—had established a policy or program to handle out-of-stocks for advertised items, the most common being issuance of rainchecks (95%), an offer of substitute merchandise (75%) and a combination of a raincheck and substitute offer (48%).

The amended Rule also allows food retailers to offer "other compensation at least equal to the advertised value" whenever advertised items subject to the rule are unavailable. This contemplates that, when reduced price specials are involved, rather than offer rainchecks or substitutions, the retailer might choose to reduce the customer's total bill by the difference between the regular price and the advertised price. Alternatively, under this provision, the retailer might choose to provide the customer with savings coupons for comparable products that, when redeemed, would produce a similar savings gain to the customer.

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Rule's requirements. Consumers would ultimately benefit to the extent that these costs are no longer passed along to them. Consumers would also benefit from being able to receive more information through advertising about the availability of reduced price specials on products that food retailers do not regularly feature under the current Rule either because they are available in limited quantities or because it is difficult for food retailers to predict demand for them. Increasing the flow of price information to consumers should lower the time costs of shoppers, encourage competition and lower the prices of these goods.

In the Rule's absence, however, food retailers might lack clear guidance on what standards the Commission would use in enforcing the general prohibition on deceptive advertising. In the face of this uncertainty, advertisers might continue to incur some of these costs, for example, by ordering excessive inventory or maintaining records that they would not maintain in the ordinary course of business, costs that would ultimately be passed along to consumers.

Additionally, repeal of the Rule might encourage some food retailers to take advantage of the elimination of specific regulation in the area and engage in practices that are intended to deceive the public since the immediate threat of civil penalties would have been eliminated. While existing market forces would probably hold the number of such perpetrators down, repeal of the Rule might remove a deterrent factor and tempt unscrupulous grocers to risk the reduced consequences of deceptive claims.

Amending the Rule as proposed would eliminate virtually all of the costs of complying with the current Rule and impose no significant new costs.[71] While there are differences in costs savings between amendment and repeal, they are so small as to be *de minimis*. Moreover, the Rule as amended provides the certainty that food retailers may need in order to avoid inadvertent law violations. It also retains the deterrent impact of civil penalties for rule violations. In effect, it reduces costs almost as much as repeal of the Rule would while retaining the positive advantages of having a rule in place. Accordingly, the Commission believes that amending the Rule is preferable to repealing it.

C. Modify the Amendments

Several comments that were received on the proposed amendments contained suggestions for modifying them in ways that the commenters believed would either make them more helpful to consumers or foreclose food retailers from taking advantage of what were perceived to be overly broad exceptions to liability. Additionally, the Presiding Officer recommended several modifications to the proposed amendments to bring about the same result. This section sets forth those suggested modifications and the Commission's conclusions regarding them.

1. Modifications to the Disclosure Amendment

Limited quantity disclosures are intended to provide food retailers with a means for advertising products that may not be available in quantities sufficient to satisfy anticipated demand, and for which rainchecks or substitutions are not possible or practical. A single clear and adequate limited quantity disclaimer applicable to all items featured in an ad serves as a defense to liability under the Rule for unavailability of any single featured item, and relieves the food retailer of any obligation to give out rainchecks or otherwise compensate consumers for the unavailable item. Although it may not be deceptive to use general disclaimers for advertised products that the grocer can readily restock, neither would such action promote informed consumer choice or customer convenience.[72] Such broad general disclaimers fail to inform consumers which items truly were limited in quantity and which were in plentiful supply.

The Presiding Officer recommended a rule amendment that requires that a limited quantity disclosure accompany each individual item to which it applies.[73] Although this approach eliminates the opportunity for grocers to use broad general disclaimers for everything advertised and may be of some value to consumers, there is no evidentiary basis in the record for adopting it. While broad general disclaimers are not as helpful or informative to consumers as more specific ones, there is no evidence that the public is deceived by them. Trade Regulation Rules can only be imposed if they are reasonably necessary to prevent unfairness or deception. Likewise, fencing-in measures may be included in such Rules only if the record demonstrates a likelihood that without them consumers will be deceived or misled.[74] No such record exists here, so the Presiding Officer's proposal cannot be justified.[75] As long as consumers are informed that not all products may be in sufficient supply to meet actual demand, they are on notice that there is some risk of unavailability at that particular store. They will be likely to include that factor among the variables they consider when deciding where to shop. Since it would not generally be deceptive to advertise in this manner, there is no justification for attempting to curtail such advertising through modifying the amendment.

Several commenters also urged adoption of a specific numeric quantity requirement to discourage grocers from using limited quantity disclaimers where their supply of an advertised item is extremely low.[76] Under such a requirement, the food retailer would have to disclose the minimum quantity of items available at each store for any advertised item that was subject to a minimum quantity disclaimer. The Commission has decided not to promulgate such a provision because it would impose costly impediments to using limited quantity disclaimers for

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[71] One of the assumptions fundamental to the Commission's decision to propose amending the Rule was that the amendments would eliminate virtually all of the industry compliance costs. This assumption has been confirmed by the industry representatives who participated in the Rulemaking. *See* Testimony of Dr. Timothy Hammonds, Senior Vice President, FMI, Tr. at 11, 20–21.

[72] Evidence in the rulemaking record indicates that the larger supermarkets are able to replenish exhausted inventories for most products several time a week, if not daily. *See* Hammonds, Tr. 45, 73–74. Consequently, it does not appear that these stores need to make limited quantity disclosures except in certain exceptional situations such as seasonal closeouts or special purchases. Spokespersons for two leading grocery chains testified, moreover, that limited quantity disclosures would be appropriate only in the limited circumstances described above. *See* Saldin, Tr. 190–191; Hicks, Tr. 243–45, 280–281. One grocer went so far as to say he saw no reason for using limited quantity disclosures for items that a store regularly stocks. *See* Hicks, Tr. 200. Thus, even without a restriction on limited quantity disclosures in an amended rule, it does not appear necessary or likely that retailers will uniformly use the disclosure option for all item advertised.

[73] P.O.R., *supra* n. 14 at 115.

[74] Katharine Gibbs School, Inc. v. FTC, 612 F.2d 658 (2d Cir. 1979), *reh'g denied*, 627 F.2d 758 (2d Cir. 1980).

[75] This approach would not permit grocers any flexibility to use a general disclaimer in circumstances that would not hamper customer convenience. For example, such a requirement might discourage grocers from advertising end-of-season closeout sales or other groups of specials that are indeed available only in limited quantities. Such promotions may feature several items, all of which are limited to supplies on hand. Grocers may wish to run special advertising or highlight a portion of more general advertising to promote such sales. In such circumstances, a single clear and adequate disclosure that is clearly applicable to a readily identifiable set or subset of items would fully inform consumers. Requiring that a disclaimer accompany each item advertised would likely restrict consumers' opportunities to learn of such specials.

[76] *See e.g.*, Comment of Consumers Union 7 (1986), R–H–3 ("CU 1986").

any purpose and consequently frustrate the function of the amendment to increase the advertising of limited quantity items that are not now advertised. Furthermore, such disclosures would not be informative to consumers because stores are likely to understate the minimum quantity available and because consumers would not know how quickly the supply would be exhausted.[77] Finally, they are unnecessary because possible abuses of the Rule's exception for less specific disclosures can be addressed through section 5 of the FTC Act.[78]

Some commenters also suggested that disclaimers concerning availability limited to certain outlets be more specific than the amendment would require. They said that a disclosure declaring only that advertised products are "not available at all stores" does not sufficiently inform consumers of the store locations where such items may be unavailable.[79] The Commission believes, however, that requiring grocers to list all store locations where a particular product can be found (or, in the alternative, where it cannot be found) would consume too much costly advertising space. The current Rule restricts limited outlet disclaimers to notifying consumers of limited availability either by a common location or by a common characteristic, *e.g.*, "not available at stores in Maryland," or "available only in stores with delicatessen departments." However, there was no evidence presented during the rulemaking hearings that consumers are harmed if grocers clearly disclose that "not all items are available at all stores." Consumers confronting that disclaimer are put on notice that certain items may not be carried at all stores and they can call ahead if availability of a particular item is important to their decision as to where to shop.[80]

2. Modifications to the Defenses Amendment

This amendment permits food retailers to defend against a charge of unavailability by offering any one of the alternative forms of compensation, and thereby relieves the food retailer of the obligation to demonstrate that he or she ordered sufficient quantities to meet reasonably anticipated demand. Some commenters recommended modifying the proposed Rule to incorporate a minimum stocking requirement as a pre-condition to the raincheck or comparable value substitute defenses. They argued that this modification would protect consumers against potentially deceptive advertising and assure reasonable levels of availability, while significantly reducing the recordkeeping and inventory costs associated with meeting the "last unit of demand" under the current Rule.[81] Similarly, the Presiding Officer's substitute amendment would impose a proviso that the offer of rainchecks or substitutions would constitute a valid defense only in situations where the food retailer ordered sufficient quantities of the unavailable item to meet reasonably anticipated demand. His revision explicitly deletes the requirement for recordkeeping by the food retailer.[82]

Making the new defenses in an amended Rule conditional upon first ordering or having in stock sufficient quantities to meet reasonably anticipated demand or imposing some other minimum stocking requirement preserves the need for food retailers to continue to overstock and perform monitoring and recordkeeping over and above that which is done in the ordinary course of business. The mere fact that the Presiding Officer's recommendation would remove the specific documentation requirement in the current Rule does not remove entirely the burdens imposed by the Rule. Under his suggested modification, grocers may still reasonably perceive the need to continue some or all of the costly measures they are currently employing or in order to avoid the risk of civil penalty liability.[83] Moreover, other costs could increase whenever the requirement resulted in stores having ordered more inventory than they could sell. The result would be at least a partial frustration of the goal of the proposed amendments—lowering the cost of complying with the Rule. Mandating such pre-conditions to the availability of the raincheck and substitution defenses, then, cannot be justified either to prevent deception—since rainchecks and substitutions will serve as acceptable substitutes for and incentives against unavailability—or to reduce costs.

Finally, such requirements would have the likely effect of imposing costs on an industry that the record evidence demonstrates already has incentives to stock as much inventory of advertised merchandise as is necessary to meet demand. There has never been any evidence to suggest that food retailers engage in systematic and deliberate understocking of advertised items.[84] Nevertheless, there is at least the concern on the part of some commenters that, but for the Rule, some grocers would indeed engage in a form of bait and switch advertising, *i.e.*, advertising attractive prices for items that they knew they did not have in sufficient quantities to meet the anticipated demand. The proposed amendments do not relieve grocers from liability for stockouts that are the result of deliberately understocking advertised items without disclosing that quantities are limited. As the Commission has already observed, such behavior will subject food retailers to liability through administrative or injunctive proceedings under section 5 of the FTC Act. Bait advertising, as defined in the Commission's Guides Against Bait Advertising, would still be actionable under section 5 regardless of whether rainchecks or substitutions were offered.

The amendment gives food retailers, rather than consumers, both the right to choose the form of alternative compensation when an advertised item is unavailable, and the right to determine what constitutes a comparable substitute. Some comments noted that, depending upon the particular circumstances surrounding the purchase, the consumer may have a preference for one type of compensation and should not be forced to accept an undesirable alternative to the advertised item.[85] Other commenters pointed out that allowing food retailers to choose the type of compensation provides them opportunities to substitute lower quality items for the advertised items in order to increase profits.[86]

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[77] Stores might avoid disclosing their best estimate of actual quantity for fear of inadvertently overstating it.

[78] The Commission agrees that grocers should not use general limited quantity disclaimers to disguise severely restricted quantities of merchandise that will only satisfy the first few customers who seek the items. The amended Rule does not preclude an action for unfair and deceptive advertising under Section 5 of the FTC Act for engaging in such a practice. If there are grocers who may be tempted to employ such tactics, they would still be in violation of Section 5 of the FTC Act for engaging in bait advertising and subject to a Commission enforcement action.

[79] *See, e.g.*, CU 1986, *supra* n. 76 at 7. *See also* Comment of Public Voice for Food and Health Policy 3 (1986) R–H–2 ("Public Voice 1986").

[80] Disclosing more detailed information, such as listing the locations that carry a particular item may well benefit consumers. But the record does not provide a basis for concluding that such a requirement is necessary to prevent unfairness or deception. Stores should recognize the benefits of disclosing that information voluntarily rather than risk annoying potential customers.

[81] *See* CU 1986, *supra* n. 76 at 6.

[82] P.O.R., *supra* n. 14 at 114–18. *See also id.* at 107.

[83] *See* Comment of Sullivan, FMI, R–Q–17 at 8.

[84] *See* 1985 Staff Memorandum, *supra* n. 10 at 4. *See also* 1984 Staff Memorandum, *supra* n. 9 at 9–15.

[85] *See, e.g.*, Comment of California Department of Justice, 3 (1985) R–I–76 ("California 1985"); Comment of the Alaska Office of the Attorney General 3 (1986) R–J–7 ("Alaska 1986"); Comment of Public Voice for Food and Health Policy 3 (1986) R–H–2 ("Public Voice 1986").

In view of these concerns, these commenters suggested modifying the amendment to allow consumers the option of choosing the preferable method of compensation, and in the case of a substitute, the option to decide what constitutes a "comparable" substitute.[87] The Presiding Officer's modified rule would require that, where the unavailable item was one that was regularly stocked, the customer would be given the opportunity to elect to receive a raincheck over any other compensation that the food retailer might offer.[88]

The Commission does not believe that a requirement that the customer have an option between a raincheck and a store designated substitute is necessary. Industry spokespersons were unanimous in indicating that customer satisfaction is the ultimate goal whenever unavailability of advertised products arises; thus, when a customer expresses a preference for a raincheck or substitute item, store managers do their best to accommodate the customer.[89] Given the highly competitive nature of the grocery industry and the considerable and uncontroverted record testimony that stores are motivated to satisfy their customers, there is no reason to doubt this contention. It would appear, therefore, that one-on-one negotiation between the customer and the store is the best means for settling the matter when the customer prefers that the store exercise its raincheck policy instead of its substitution policy.

Another modification suggested by some commenters would require that any food retailer relying on the raincheck defense must reorder the item in question promptly [90] and notify customers when it is again in stock.[91] The Presiding Officer would impose a "reasonable time" requirement for food retailers' redeeming rainchecks.[92]

Such a requirement would be burdensome and complicate Rule compliance.[93] Use of vague terms such as "reasonable time" or "promptly" does not provide needed regulatory certainty in order for food retailers to know when they must resort to extraordinary compliance measures and when they can avoid them. Moreover, there is convincing record evidence that the great majority of supermarket shoppers are able to redeem their rainchecks on the next regular visit to the market.[94] Furthermore, representatives of the grocery industry testified that most supermarkets are able to replenish supplies for most products, if not on a daily basis, certainly within the week.[95] Accordingly, there does not appear to be a need for elaborate standards governing the issuance and redemption of rainchecks. Such requirements, if imposed, would add to the costs without appreciably improving the benefits. Consumers who might have to make a special trip to redeem a raincheck can always call ahead to make sure that the rainchecked item has been restocked.

V. Other Matters

A. Cost-Benefit Analysis

In this section the Commission considers the projected benefits and effects of the amended Rule that it is promulgating.

1. Effect on Consumers

Consumers are likely to benefit from the amended Rule in two principal ways. First, any savings in compliance costs that food retailers realize from this Rule are likely to be passed along to them.[96] Second, by allowing stores to advertise limited-quantity bargain items, the amended Rule permits consumers to receive more price and product information than they received under the original Rule.

More importantly, the amended Rule should not reduce consumer protection. The Market Facts study indicates that the great majority of consumers can and do punish stores if they consistently have too few items available to satisfy demand. This, in conjunction with the Rule's continued requirement that stores have in stock the items that they advertise, should provide substantial incentives to stock those items in adequate quantities. Accordingly, it is unlikely that unavailability levels will rise to any significant degree. What should be eliminated, however, are the excess monitoring and inventory costs that stores pass along to consumers.[97]

2. Effect on Industry Members

Substituting the requirements of the amended Rule for those of the original Rule should result in a substantial net gain for food retailers.[98] The

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[86] *See, e.g.,* Comment of George Washington University National Law Center 10–11 (1986) R–B–89 ("GWU 1986").

[87] *See, e.g.,* Alaska 1986, *supra* n. 85 at 3; Comment of United Food and Commercial Workers International Union AFL–CIO & CLC 3 (1986) R–B–84; Comment of Suffolk County 1 (1986) R–I–80, Comment of the United States Office of Consumer Affairs 3 (1986) R–B–81. *See also* Wilkinson and Mason, Dissatisfaction and Complaining Behavior as a Result of Unavailable Advertised Food Specials, 31 J. of Consumer Policy 43, 49 (1979), R–I–39 (only 63 percent of those shoppers offered a substitute accepted it, with 44 percent of these indicating that the reason for turning down the substitute offer was that it was not comparable in value to the unavailable advertised item).

[88] P.O.R., *supra* n. 14 at 110.

[89] Hammonds, Tr. 80; Hicks, Tr. 255, 256.

[90] Alaska 1986, *supra* n. 86 at 3.

[91] Comment of Vermont Attorney General 5, (1986) R–J–6 ("Vermont 1986").

[92] P.O.R., *supra* n. 14 at 110.

[93] *See, e.g.,* Hammonds Statement, *supra* n. 67, at 7.

[94] *See, e.g.,* Ferguson Study, *supra* n. 28 at 545, Figure 2, n. d; Market Facts Study, *supra* n. 6 at 32.

[95] *See, e.g.,* Hammonds, Tr. 73–74; Saldin, Tr. 251.

[96] With regard to savings passed along, it is unlikely that they will be significant to many individual consumers. The annual costs of complying with the original rule were only a few cents, per consumer, per week. However, average annual savings for all shoppers are more significant, exceeding the maximum estimate of consumer benefits by more than $250 million.

[97] The Commission has also taken into consideration how amending this Rule might affect the poor and the elderly. These groups, it is argued, lack the mobility of the general public to punish stores that have high levels of unavailability by shopping elsewhere, and must stretch limited budgets by searching for and buying advertised grocery specials. *See* Comment of New York City Department of Consumer Affairs (1986), R–Q–20. The staff noted, however, that the current Rule may not benefit the poor any more than any other class of shopper. *See,* Final Staff Memorandum to the Commission, September 4, 1987, at 18. The Market Facts Study indicates that the poor are, in fact, less cost conscious with respect to grocery purchases than the average shopper, and, furthermore, that they do not encounter unavailability any more often than other groups. (*Supra* n. 4 at 30.)

On the other hand, record evidence with regard to the shopping habits of the elderly shows that this group is indeed more cost conscious than other shoppers and, therefore, more likely than others to shop for advertised specials. Additionally, they are less likely than others to encounter unavailability, reflecting, perhaps, more diligent efforts to follow-up after finding shelf stock depleted. They are, however, equally as likely as others to find stores with too few items available and considerably less likely than others to shop elsewhere as a consequence. (*Id.* at 38–39.)

Nevertheless, staff noted that rainchecks should serve as adequate substitutes when the elderly encounter unavailability, and, since their immobility locks them into their regular market for shopping advertised specials, they will not have to make special trips to redeem them. Additionally, staff noted that, in most cases, the elderly will be able to rely on shoppers in their regular markets to keep grocers alert to inventory levels lest they lose those more mobile shoppers to competitors. *See* Final Staff Memorandum, *supra* at 16–17.

[98] All of the food retailers that addressed the effect of amendment on their compliance costs agreed that the amendments would reduce these costs significantly. Hammonds, Tr. 21; Kroger Cost Item Chart (1986) HX. 9A, R–LL–1; Saldin, Tr. 173, 218–219. Nevertheless, while food retailers agreed that the proposed amendments would substantially reduce costs, they emphasized that they prefer repeal. *See* FMI 1986, *supra* n. 66, at 9; Comment of the Kroger Co., by Arthur L. Ferguson, Senior Counsel, at 3 (1985) R–B–69; Comment of Albertson's, Inc. 2–3 (1986) R–B–62; Safeway 1986, *supra* n. 70, at 1–2.

amendments would eliminate or reduce over-ordering of advertised items because grocers could (1) offer rainchecks or adequate compensation if demand exceeded what they reasonably expected and (2) use disclosures of limitations on ad items to avoid carrying excessive inventories. Thus, the amendments would allow grocers to eliminate or reduce substantially the costs associated with carrying extra inventories.

Moreover, excess recordkeeping and monitoring costs could be eliminated under the amendments. Instead of conducting audits and compiling records to prove Rule compliance, grocers could use, under the amended rule, a limited quantity disclosure or a raincheck or substitute item policy as a defense to a Rule violation.

A reduction in the number and types of items advertised is an indirect cost of the restrictions imposed by the current Rule. The amendments may also reduce this cost by eliminating the disincentive to advertise items that are in limited supply. For example, grocers could advertise close-outs and other items available in limited supply if they either disclosed the limitation or offered rainchecks or other adequate compensation if supplies ran out.

Although grocers would incur the costs of administering raincheck and substitution policies, the evidence indicates that the need to keep customers satisfied leads many stores to do so in any event. The Food Marketing Institute survey indicates that 94 percent of those grocers surveyed already have a raincheck policy in effect and 75 percent have a substitution policy.[99] Since these policies currently are not defenses to Rule violations, grocers would not use them if they were not cost-effective.[100] Finally, although grocers would incur the cost of ensuring that proper disclosures were made, they would likely incur these costs whether the Rule were repealed or amended.

3. Effect on Small Businesses

The amended Rule should reduce the burdens on small businesses as well as major grocery chains.[101] There is, to be sure, a greater burden the more that a store advertises and the greater the variety of products in the store's inventory. Smaller food retailers are not likely to advertise as frequently as the larger grocery chains. Furthermore, when the smaller food retailers do advertise, they are not likely to feature hundreds of products in their ads. Thus, small businesses are likely to have incurred burdens under the original Rule that are proportional to their size. The same is likely to be true for the amended Rule.

The Small Business Association, however, recommended that grocery stores with ten or fewer employees be completely excluded from coverage under the amended Rule, noting that the difference in compliance costs for the very small grocery store presents an excellent argument for making a regulatory distinction between the two.[102] While this suggestion may have merit, there is little or no evidence on the record as to what the effect of such an exclusion might be.

4. Effect on State Law

Amending the Rule may have some impact on state enforcement of unavailability laws.[103] In approximately half of the states, interpretations of section 5(a)(1) of the FTC Act are considered in interpreting state law.[104] Even in jurisdictions where such is not the case, state courts may look to FTC interpretations on their own initiative. It is also likely that pressure will be exerted on legislatures to bring state law into line with the amended FTC Rule. In a few additional jurisdictions, state law provides that acts or practices that are subject to and comply with rules and regulations or statutes enforced by the FTC or other federal agencies are exempt from state enforcement.[105]

Some states have filed comments that note this outcome and seek to avoid it.[106] The Commission believes, however, that since this Rule, as amended, should result in a net consumer benefit and eliminate costs that are now passed on to consumers, it is appropriate that the defenses that it contains should extend to state and local enforcement to the extent that state or local law requires.

B. Final Regulatory Analysis

The final regulatory analysis [107] of this Rule amendment has been integrated into the Statement of Basis and Purpose, as allowed by statute.[108]

Accordingly, title 16, part 424 of the Code of Federal Regulations is revised to read as follows:

PART 424—RETAIL FOOD STORE ADVERTISING AND MARKETING PRACTICES

Sec.
424.1 Unfair or deceptive acts or practices.
424.2 Defenses.

Authority: 88 Stat. 2193, as amended: 15 U.S.C. 57a(a)(1)(B).

§ 424.1 Unfair or deceptive acts or practices.

In connection with the sale of offering for sale by retail food stores of food, grocery products or other merchandise to consumers in or affecting commerce as "commerce" is defined in section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, it is an unfair or deceptive act or practice in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), to offer any such products for sale at a stated price, by means of an advertisement disseminated in an area served by any stores which are covered by the advertisement, if those stores do not have the advertised products in stock and readily available to customers during the effective period of the advertisement, unless the advertisement clearly and adequately discloses that supplies of the advertised products are limited or the advertised products are available only at some outlets.

§ 424.2 Defenses.

No violation of § 424.1 shall be found if:

(a) The advertised products were ordered in adequate time for delivery in quantities sufficient to meet reasonably anticipated demand;

(b) The food retailer offers a "raincheck" for the advertised products;

(c) The food retailer offers at the advertised price or at a comparable price reduction a similar product that is at least comparable in value to the advertised product; or

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[99] FMI 1986, *supra* n. 66, at 12.

[100] The small percentage of grocers who currently do not have either of these policies in effect would incur only a one time start-up cost in addition to their small ongoing administrative costs. *See* Hammonds, Tr. 34–35.

[101] *See, e.g.,* Hammonds, Tr. 77, 78; Comment of U.S. Small Business Administration at 1, 3, 5 (1986), R–J–2.

[102] *Id.*

[103] *See* 1985 Staff Memorandum, *supra* n. 10 at 28–29.

[104] *Id.*

[105] *Id.*

[106] A number of government officials expressed the general concern that any modification of the Rule could have serious implications for state and local laws, which make specific exceptions or create defenses based on the Rule. *See, e.g.,* Vermont 1986, *supra* n. 91 at 1–2; Comment of Iowa Department of Justice, Attachment at 4 (1986), R–J–4.

[107] The statute requires that the analysis contain (1) a statement of the need for and objectives of the rule; (2) a summary of the issues raised by public comments, a summary of the agency's assessment of such issues, and a statement of the changes made in the rule as a result of those comments; and (3) a description of the significant alternatives to the rule considered and the reasons for rejecting each alternative. 5 U.S.C. 604.

[108] 5 U.S.C. 605(a).

(d) The food retailer offers other compensation at least equal to the advertised value.

Dissenting Statement of Commissioner Calvani

I dissent from the Commission's decision today to amend the Retail Food Store Advertising and Marketing Practices Trade Regulation Rule (the Unavailability Rule). The Commission has acknowledged today that the original Unavailability Rule is not justified, and approved amendments designed to lower its costs to grocers. However, in my view, common sense tells us that in the highly competitive grocery store business, where consumers return week after week to the same store, any supermarket that frustrates its customers through unavailability of advertised items will not long keep those customers. In other words, it is clear to me that existing market forces adequately police unavailability, and that, therefore, no Federal Trade Commission rule is necessary, amended or otherwise. The Commission's action today to retain even an amended Unavailability Rule does not conform to common sense.

Statement of Commissioner Andrew J. Strenio, Jr., Retail Food Store Advertising and Marketing Practices Rule

Although revising the"Unavailability Rule" has a certain intuitive appeal, there is insufficient evidence on the record to conclude that these changes will result in net consumer benefits. Accordingly, I could not support amending the Rule in this manner. However, now that the step has been taken, it is to be hoped that experience will bear out the optimistic expectations of the Commission majority.

[FR Doc. 89-20166 Filed 8-25-89; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34-27160; File No. S7-3-89]

Sales Practice Requirements for Certain Low-Priced Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting Rule 15c2-6, which imposes sales practice requirements on broker-dealers who recommend purchases of certain low-priced, non-NASDAQ over-the-counter securities to persons who are not established customers. Such broker-dealers are required to make a documented suitability determination regarding the purchaser, and to obtain the purchaser's written agreement to the first three purchases of these securities. The Commission is taking this action in response to the widespread incidence of misconduct by some broker-dealers in connection with transactions in low-priced securities.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Robert L. D. Colby, Chief Counsel, (202) 272-2844, or Dan Gray, Attorney, (202) 272-2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Commission is adopting Rule 15c2-6 ("Rule") to regulate the sale practices of broker-dealers active in the market for low-priced, non-NASDAQ over-the-counter ("OTC") securities. As a means reasonably designed to prevent fraud, the Rule makes it unlawful for a broker-dealer to sell a security subject to the Rule ("Designated Security") to, or to effect the purchase of a Designated Security by, any person unless (1) the transaction is exempt under paragraph (c) of the Rule, or (2) prior to the transaction, the broker-dealer has (i) approved the purchaser's account for transactions in Designated Securities, and (ii) received written agreement to the transaction from the purchaser. In approving an account for transactions in Designated Securities, a broker-dealer must obtain sufficient information from the purchaser to make an appropriate suitability determination, provide the purchaser with a written statement setting forth the basis of the determination, and obtain a signed copy of the suitability statement from the purchaser.

The scope of the Rule is limited in order to exclude transactions that are less likely to be subject to fraudulent, high pressure sales practices. Application of the Rule is limited to transactions in Designated Securities, which are defined as non-NASDAQ OTC equity securities whose issuers have less than $2,000,000 in net tangible assets. In addition, exemptions are provided in paragraph (c) of the Rule for: (1) Transactions in which the price of the security is five dollars or more; (2) transactions in which the purchaser is an accredited investor or an established customer of the broker-dealer; (3) transactions that are not recommended by the broker-dealer; and (4) transactions by a broker-dealer who is not a market maker in the Designated Security that is the subject of the transaction, and whose sales-related revenue from transactions in Designated Securities does not exceed five percent of its total sales-related revenue from transactions in securities.

II. Introduction

In Securities Exchange Act Release No. 26529 (February 8, 1989), 54 FR 6693 ("Release 34-26529"), the Commission published for comment proposed Rule 15c2-6 ("Proposed Rule") under the Securities Exchange Act of 1934 ("Exchange Act"),[1] which would have required written customer agreement to, and a documented suitability determination for, certain recommended transactions in equity securities that are not registered on a national securities exchange or authorized for quotation in the NASDAQ system, and whose issuers do not meet certain minimum financial standards. These securities are quoted primarily in the "pink sheets," which are daily listings of dealers published by the National Quotation Bureau.[2] Many are low-priced securities commonly referred to as "penny stocks." The Commission has undertaken a concerted campaign to reduce fraud and manipulation in the market for these securities, including the creation of a Penny Stock Task Force to coordinate the Commission's enforcement, regulatory, and educational efforts in this area.[3] As a part of this effort, the Commission published the Proposed Rule to address the widespread incidence of misconduct by some broker-dealers in connection with transactions in low-priced securities. In particular, the Proposed Rule was intended to prevent the indiscriminate use by broker-dealers of fraudulent, high pressure telephone sales campaigns to sell such securities to unsophisticated investors.

The Commission solicited comment on the general design of the Proposed Rule, and whether it was likely to address the targeted broker-dealer misconduct without imposing undue burdens on broker-dealers and issuers. The Commission was particularly concerned with the effect of the Proposed Rule on small business capital formation, and invited comment on whether its requirements would, in practice, impede the public offering of the securities of small businesses, or reduce liquidity in the secondary market for such securities. Conversely, the Commission sought comment on whether the Proposed Rule would have the intended effect of providing greater protections for investors, thus increasing investor confidence and involvement in the securities of small businesses.

The Commission received letters from 123 commenters setting forth their views on the Proposed Rule.[4] In addition, members of the Commission staff spoke directly with eleven broker-dealers in an effort to obtain the comments of broker-dealers who are actively involved in securities issued by small businesses. Commenters generally agreed that serious problems of broker-dealer misconduct existed in the market for low-priced, non-NASDAQ OTC securities, and overwhelmingly supported increased enforcement efforts against broker-dealers and individuals who engaged in such misconduct. Commenters were sharply divided, however, on whether the Proposed Rule was an appropriate regulatory response to the problem.

Commenters supporting the Proposed Rule particularly noted the seriousness and extent of broker-dealer misconduct in the market for low-priced, non-NASDAQ OTC securities, and the need for effective regulatory tools with which to address such misconduct.[5] Commenters who opposed the Proposed Rule did so primarily because of the adverse effect that they believed it would have on the operations of legitimate broker-dealers involved in the securities of small businesses, and, consequently, on capital formation of small businesses.[6]

After carefully considering the views of the commenters, the Commission has determined to adopt Rule 15c2-6,[7] but with significant modifications that expand the exceptions contained in the Proposed Rule, and that streamline the paperwork requirements of the Proposed Rule. With these changes, the Commission believes that Rule 15c2-6 will provide a needed regulatory tool with which to combat abuses involving low-priced securities in the non-NASDAQ OTC market, without imposing undue burdens on legitimate broker-dealers underwriting and trading in the securities of small businesses.[8] By improving investor safeguards, Rule 15c2-6 is intended to increase investor confidence in the market for low-priced securities and to enhance the ability of small issuers to raise capital effectively.

III. Background

A. Broker-Dealer Misconduct Involving Low-Priced Securities

The Commission's proposal of Rule 15c2-6 reflected its growing concern with the widespread incidence of broker-dealer fraud and other misconduct in connection with low-priced stocks that are traded predominantly in the non-NASDAQ OTC market.[9] The commenters, including each of the twenty state regulators who commented on the Proposed Rule, shared the Commission's concern in this area. In a resolution supporting adoption of Rule 15c2-6, the North American Securities Administrators Association stated that "penny stock manipulation schemes and fraudulent cold calling sales tactics are among the most prevalent fraudulent schemes being perpetrated on the investing public, resulting in millions of dollars of losses annually, damaging the efficient operation of the market and reducing the amount of capital available to legitimate business." [10] In another comment letter supporting adoption of Rule 15c2-6, the Attorney General for the State of New York noted that four penny stock brokerage firms had been shut down in New York alone during a three-month period, and stated that "in the wake of these closings, it has become clear that tens of thousands of investors—and mostly unsophisticated investors of modest means—have suffered staggering financial losses, probably totalling several hundred million dollars." [11]

Most of the sales practice abuses involving low-priced securities are conducted over the telephone by broker-dealers engaging in "boiler-room" operations.[12] Improved communications technology has enabled an increasing number of this type of broker-dealer to engage in high pressure sales campaigns on a nationwide basis. An essential aspect of a boiler-room operation is the use of numerous salespersons making hundreds of high pressure cold calls each day to generate sales of low-priced securities to new customers. Cold calls are telephone calls made to persons whose names are drawn from a telephone directory or a membership list. Consequently, many of the persons called with have little investment experience and limited financial resources. The salespersons are trained in high pressure sales tactics designed to elicit a buy decision during the course of a telephone call,[13] and typically are compensated solely by commissions generated by sales of securities. Because many of the persons called are inexperienced investors, they are particularly vulnerable to deceptive sales pitches promising high profits made by salespersons willing to disregard the unsuitability of a security for the purchaser.

Broker-dealers engaging in boiler-room operations frequently choose a low-priced, non-NASDAQ OTC security as their sales product for several reasons. First, low-priced securities sold in large volume can generate enormous profits for broker-dealers. Price spreads in these securities, while small in dollar amount, can be very large in percentage terms. For example, if a stock is quoted at five cents bid and ten cents asked, the spread, while only five cents in amount, constitutes a potential 100% profit per share to the broker-dealer.[14] The

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[1] 15 U.S.C. 78a-78jj.

[2] The formal name of this quotation system is the National Daily Quotation Service.

[3] *See* SEC News Release, Remarks of David S. Ruder, Chairman, U.S. Securities and Exchange Commission, Before the Twenty-First Annual Rocky Mountain State-Federal-Provincial Securities Conference, Denver, Colorado, Penny Stock Manipulation and the Small Investor (October 21, 1988) ("Chairman's Remarks").

[4] A detailed comment summary has been prepared by the staff and placed in the Commission's public files, together with all comment letters received. *See* File No. S7-3-89.

[5] *E.g.*, North American Securities Administrators Association, Inc. ("NASAA"); Securities Industry Association ("SIA"); Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch").

[6] *E.g.*, L'Argent Securities, Inc. ("L'Argent Securities"); Subcommittee on Broker-Dealer Matters of the Committee on Federal Regulation of Securities of the Section of Business Law of the American Bar Association ("ABA/Broker-Dealer Subcommittee").

[7] Rule 15c2-6, although denominated under section 15(c) of the Exchange Act, 15 U.S.C. 78o(c), also was proposed, and herein is adopted, under the Commission's authority in sections 3, 10, 15, and 23 of the Exchange Act, 15 U.S.C. 78c, 78j, 78o, 78w.

[8] The effective date of the Rule has been set for January 1, 1990, in order to provide broker-dealers with an opportunity to implement any revised systems and procedures that may be needed to comply with the Rule.

[9] One indication of broker-dealer misconduct in connection with low-priced securities is provided by the increasing number of investor complaints received by the Commission regarding broker-dealers selling low-priced securities. In fiscal year 1988, the Commission received approximately 1500 complaints regarding these broker-dealers. In only the first six months of fiscal year 1989, the Commission has received more than 2400 such complaints.

[10] Resolution of the North American Securities Administrators Association, Inc., Regarding Proposed Rule 15c2-6 (April 29, 1989).

[11] Letter from Robert Abrams, Attorney General, State of New York, to Jonathan G. Katz, Secretary, SEC (May 18, 1989) ("New York").

[12] For a comprehensive description of the sales practice abuses and other misconduct engaged in by one broker-dealer operating a boiler room operation, see Staff of House Comm. on Energy and Commerce, 100th Cong., 1st Sess., Securities Activities of First Jersey Securities, Inc., and Robert Brennan, Owner and Former Chairman (Comm. Print 1987) ("Report on First Jersey Securities"). *See also* Letter from Richard Barry, Supervisor of Enforcement, Bureau of Securities, State of New Jersey, to Jonathan G. Katz, Secretary, SEC (May 24, 1989) ("New Jersey") (includes a copy of the criminal information of Robert W. Humphrey describing criminal practices engaged in by associated persons of F.D. Roberts Securities, Inc.).

[13] For a description of some of these tactics, see SEC Information for Investors, "Penny Stock Telephone Fraud" (August 1989), SEC Press Release No. 89-58.

[14] Indeed, the per share profit to the broker-dealer may be much higher than the spread alone. The "market" for these securities is frequently dominated and controlled by the broker-dealer,

Continued

broker-dealer can attract purchasers to these stocks by touting that a small gain in price will produce large percentage gains in value. Unsophisticated investors may fail to recognize, however, that if they purchase a stock with a 100% spread they will not break even on a sale of their investment until the bid price doubles (assuming that a broker-dealer actually will buy all of the investor's stock at that bid price).

Second, many low-priced securities are issued by smaller, little-known companies that may attract little attention outside that generated by a boiler-room sales campaign. Often, these issuers are not subject to Exchange Act reporting requirements. The scarcity of information about the issuer is further aggravated by the lack of information on transactions in the issuer's securities. The non-NASDAQ OTC market does not have reliable quotation or trade information that the public could use to examine the nature of the market. In contrast, firm quotations are readily available in exchange and NASDAQ markets, and all exchange securities and NASDAQ/National Market System securities have minute by minute trade reports that are disseminated to investors. The availability of this information makes possible ongoing electronic surveillance of exchange and NASDAQ markets by the relevant self-regulatory organization ("SRO"). Many unsophisticated investors may not appreciate the vast difference in the nature, market information, and supervision of the market between the exchange and NASDAQ markets, and the non-NASDAQ OTC market.

B. The Commission's Response

The Commission realizes that only comprehensive action will successfully reduce fraud in the sale of low-priced securities, and therefore has undertaken a broad-based program in this area that includes expanded enforcement efforts, a public education program, and regulatory initiatives. The Commission has begun a concerted enforcement program against broker-dealers and individuals engaging in misconduct in connection with transactions in low-priced securities. Release 34–26529 noted that in 1986 the Commission had initiated more than 25 enforcement actions involving fraud and abuse in the non-NASDAQ OTC market, and that since 1986, the Denver Regional Office alone had initiated more than thirty such actions. Thus far in 1989, the Commission has initiated more than forty additional enforcement actions involving fraud and other misconduct in connection with transactions in low-priced securities,[15] and is investigating many other cases involving similar abuses. In addition, the Commission has cooperated with the SROs, other federal agencies, and state regulatory authorities in proceedings involving penny stock fraud, and these efforts have resulted in a number of criminal prosecutions.[16]

The Commission also has begun a campaign to educate the public concerning the risks of fraud in the market for low-priced securities.[17] Ultimately, the best defense against fraudulent activities by securities salespersons is an informed investing public that recognizes deceptive sales pitches and is not misled. The Commission's public education campaign is intended to increase the number of investors who can guard themselves against fraudulent practices.

Finally, the Commission has developed, and has encouraged the SROs to develop, new regulatory initiatives designed to address fraud and manipulation in connection with transactions in low-priced securities. In a forthcoming release, the Commission will propose amendments to Rule 15c2–11 under the Exchange Act[18] that would emphasize the responsibility of market makers to review information concerning non-NASDAQ OTC securities and take it into account in their market making activities. In addition, the NASD has implemented a program that requires broker-dealers to report to the NASD volume and price information concerning their transactions in non-NASDAQ OTC securities.[19] This program should provide assistance to regulators in monitoring the non-NASDAQ OTC market, and in identifying fraudulent or manipulative trading activities in that market.

In addition to these ongoing efforts, the Commission continues to believe that a comprehensive program to deter fraud in connection with transactions in low-priced securities must address the sales practices of broker-dealers actively involved in selling low-priced securities to new customers. In this connection, the Commission is adopting Rule 15c2–6.

IV. Rule 15c2–6

A. Objectives of the Rule

In adopting the Rule, the Commission has sought to combat the unscrupulous, high pressure sales tactics of certain broker-dealers by imposing objective and readily reviewable requirements that condition the process by which new customers are induced to purchase low-priced stocks. The requirements are intended to assist investors in protecting themselves from fraudulent sales practices, and also to reinforce a broker-dealer's suitability obligations, which historically have been an important standard constraining indiscriminate high pressure sales tactics by broker-dealers.[20]

An essential aspect of high pressure "boiler-room" operations is the constant solicitation of new, and often unsophisticated, customers. The Rule conditions this process by establishing account opening procedures that must be followed before Designated Securities are recommended to unsophisticated new customers. The procedures are intended to provide greater assurance that the broker-dealer will make an appropriate suitability determination by obtaining sufficient information concerning the customer and by considering the customer's previous investment experience, investment objectives, and financial situation.

In addition, the Rule will protect investors from fraudulent sales practices in low-priced stocks in two ways. First, the requirement that the customer agree to purchases in writing provides the customer with an opportunity to make an investment decision outside of a pressured telephone conversation with a salesperson. Boiler room salespersons realize the importance of making a sale while on the telephone and use high pressure tactics to close the sale. The written agreement requirement is intended to remove this pressure for an immediate decision. Second, the account opening procedures require the broker-dealer to provide a copy of the broker-dealer's suitability determination to the customer prior to the customer's commitment to purchase a Designated Security. The customer therefore will have the opportunity to review the determination, and decide whether the broker-dealer has made a good faith attempt to consider the customer's financial situation, investment experience, and investment objectives.

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thereby permitting arbitrary pricing. In the above example, the broker-dealer may not purchase any securities at its five cents bid. Instead, the broker-dealer may have acquired large amounts of the stock at nominal cost (*e.g.*, one cent per share or less) immediately prior to commencing an intensive sales campaign. Securities acquired for one cent per share and sold at ten cents per share represent a 900% gross profit to the broker-dealer. *See* Chairman's Remarks, *supra* note 3, at 2–9. As noted *infra* note 49, this practice can constitute a violation of SEC and NASD rules.

[15] *See, e.g.*, *SEC* v. *Murray*, SEC Litigation Release No. 12136 (June 27, 1989), 43 SEC Doc. 2309; *SEC* v. *Brownstone-Smith Securities Corp.*, SEC Litigation Release No. 12126 (June 12, 1989), 43 SEC Doc. 2072; In re The David-Maxwell Company, Inc., Securities Exchange Act Release No. 26823 (May 15, 1989), 43 SEC Doc. 1636; In re The Stuart-James Co. Inc., Securities Exchange Act Release No. 26700 (April 5, 1989), 43 SEC Doc. 998; *SEC* v. *Stoneridge Securities, Inc.* (February 13, 1989), 42 SEC Doc. 1047.

[16] *See, e.g.*, *United States* v. *Kimmes*, SEC Litigation Release No. 12211 (August 11, 1989); *United States* v. *Hansen*, SEC Litigation Release No. 12094 (May 15, 1989), 43 SEC Doc. 1692; *United States* v. *Gleave*, SEC Litigation Release No. 12024 (March 8, 1989), 43 SEC Doc. 108.

[17] *See, e.g.*, SEC Information for Investors, Penny Stock Telephone Fraud (August 1989), SEC Press Release No. 89–58; SEC Information for Investors, Beware of Penny Stock Fraud! (November 1988).

[18] 17 CFR 240.15c–11.

[19] *See* NASD Schedules to the By-Laws, Schedule H, NASD Manual (CCH) ¶¶1932–33.

[20] *See* generally Report of Special Study of Securities Markets of the SEC (1963), reprinted in H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963), pt. 1 at 237–40, 302–30 ("Special Study").

The Commission realizes that certain broker-dealers may ignore the requirements of the Rule. The Rule therefore requires records to be kept that will indicate their compliance with each of its provisions. This documentation will enable regulatory authorities to review a broker-dealer's compliance with the Rule, and will provide the basis for simple and direct enforcement actions against broker-dealers that fail to comply. Many commenters, particularly regulatory authorities, noted the value of this aspect of the Rule.[21] For example, the Attorney General for the State of California stated that:

> The proposed rule's effect on enforcement is particularly important. Although existing laws and rules permit prosecution for a variety of unfair and deceptive acts, proving such acts can be so burdensome as to be impossible. This is particularly true where the solicitation is made by telephone. There is no written record, and consumers often have difficulty at a later date remembering exactly what they were told in a telephone conversation. The rule addresses this problem by prohibiting sales and recommendations of designated securities unless the basis for the broker-dealer's suitability determinations is set forth in writing and retained. Enforcement actions can be taken against those who fail to maintain such documentation without the necessity of proving numerous instances of specific misrepresentations or other violations of particular laws.

B. Effect on Small Business Capital Formation

The Commission recognized in proposing Rule 15c2–6 that, while non-NASDAQ OTC securities issued by smaller companies frequently provide the greatest opportunity for abusive sales practice activity, many securities trading in this market are issued by legitimate small businesses that do not meet the qualifications for quotation on NASDAQ. The Commission therefore was concerned that the Proposed Rule not adversely affect these legitimate small issuers, and solicited the views of commenters on this issue.

Many commenters on the Proposed Rule argued that small business capital formation would be harmed by the Proposed Rule. In particular, they maintained that legitimate broker-dealers would not attempt to comply with the paperwork requirements of the Proposed Rule. They asserted that, instead, these broker-dealers would either withdraw entirely from underwriting and making markets in securities subject to the Proposed Rule, or they would limit their activities to dealing with established customers, thus constricting the potential market for these securities. As a result, they argued that capital formation by those small businesses whose securities were no longer handled by broker-dealers would be impaired, and the holdings of current stockholders of such small businesses would be reduced in value.

The Commission considers legitimate small business capital formation to be of great importance,[22] and has considered carefully the effect of the Rule on small business capital formation, taking into account the views of the commenters. While many small businesses might have been able to avoid the effects of the Proposed Rule by raising capital through informal investors[23] and venture capital, the Commission is concerned that the rule as proposed could have reduced the access of legitimate small issuers to the public markets.[24] Accordingly, the Commission has modified the Proposed Rule in several respects to limit its effect on small business capital formation.

First, the Commission has streamlined substantially the paperwork requirements of the Rule. Broker-dealers are no longer required to obtain a manually-executed statement from customers setting forth a number of specific items of information, as required in the Proposed Rule. Instead, a broker-dealer can obtain over the telephone the customer information it needs for a responsible suitability determination, record its basis for this determination, and then send the information and this determination to the customer for verification. The Commission believes that these procedures are more in accordance with responsible industry practice than the proposed procedures, and that they substantially reduce the paperwork burden discussed by the commenters.

Second, the Rule provides that offerings of securities approved for trading on an exchange or NASDAQ upon notice of issuance are excluded from the Rule.[25] The Proposed Rule did not make clear that offerings of securities scheduled to be traded on an exchange or NASDAQ after the offering, including the initial public offerings of many small issuers, would not be subject to the Proposed Rule. The current requirements for qualification on NASDAQ are relatively low, including total assets of $2 million and capital and surplus of $1 million. Consequently, the initial public offerings of small businesses that are going to be traded on NASDAQ will not be covered by the Rule.[26]

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[21] *See, e.g.*, State of California, Attorney General ("California"); State of Colorado, Division of Securities ("Colorado"); New Jersey; NASAA.

[22] The Commission has taken numerous actions within the last decade to facilitate the issuance of securities by small businesses, such as promulgating Regulation D, 17 CFR 230.501–230.508, under the Securities Act of 1933, 15 U.S.C. 77a–77aa ("Securities Act"), which provides exemptions from registration that are helpful to small businesses. The Commission also adopted Form S–18, which provides a simplified registration process for issuers raising less than $7.5 million. *See* Securities Act Release No. 6049 (April 3, 1979), 44 FR 21567. Furthermore, the Commission has increased the asset level that triggers reporting requirements under section 12 of the Exchange Act from $1 million to $5 million. *See* 17 CFR 240.12g–1. Each of these initiatives was intended to lower the costs and simplify the process of small business capital formation. In addition, the Commission annually holds the Government-Business Forum on Small Business Capital Formation in order to obtain a wide range of views on initiatives that would facilitate small business capital formation.

[23] *See infra* note 24.

[24] In weighing the effect of the Rule on small business capital formation, the extent to which the public securities markets provide capital to small businesses must be considered. The U.S. Small Business Administration has indicated that approximately 75% of the capital for small businesses is provided by the operators of the business and their families, and by informal investors—those who invest in small businesses without the intermediation of financial professionals. The other 25% of capital for small businesses is provided by public investors and professional venture capitalists. *See* Text of Remarks of Frank S. Swain, Chief Counsel for Advocacy, U.S. Small Business Administration, in U.S. Securities and Exchange Commission, Final Report of the Seventh Annual Government-Business Forum on Small Business Capital Formation, appendix F (1989).

[25] The Rule excludes securities registered on a national securities exchange that makes transaction reports available pursuant to Rule 11Aa3–1 under the Exchange Act. 17 CFR 240.11Aa3–1.

[26] *Cf.* Rule 174(d) under the Securities Act, 17 CFR 230.174(d), which substantially reduces the dealer prospectus delivery requirement for securities that become qualified for exchange listing or NASDAQ authorization immediately upon issuance.

Third, the Commission has enabled additional issuers to qualify for an exclusion from the Rule by the reformulation of the issuer financial standards in the Proposed Rule. The Rule's definition of Designated Security excludes securities issued by companies with net tangible assets in excess of $2 million. This standard compares with the $10 million total assets and the $8 million capital and surplus alternative standards contained in the Proposed Rule. The Commission's review indicates that a substantial number of issuers will meet the net tangible assets standard that would not have met any one of the three standards in the Proposed Rule.

Fourth, as discussed below,[27] the Rule contains a new exemption for transactions in Designated Securities at prices of five dollars or more. Thus, issuers can avoid perceived adverse effects of the Rule by adjusting their capital structure and setting the offering price for their securities at five dollars or more, thereby reducing the opportunities for abusive sales practices in their securities. While the five dollar price exemption may create a risk of circumvention of the Rule's requirements, the Commission believes that this risk is more than outweighed by the benefits of providing issuers with greater control over the application of the Rule to their securities.

Finally, as discussed at greater length below, the Rule contains a number of other changes that will reduce its impact on broker-dealers, and, indirectly, its effect on small business capital formation. In particular, the definition of the type of customer excluded from the Rule has been reformulated in response to comment. All persons who have been customers of a broker-dealer for over a year are excluded. Moreover, once a customer is exempted from the Rule, the customer is permanently exempted with respect to that broker-dealer, thereby simplifying broker-dealer compliance procedures. Consequently, the Commission believes that the reformulated exemption for established customers will be more useful to broker-dealers and further limit the Rule's impact on their operations.

The Commission believes that the changes incorporated in the Rule substantially reduce the Rule's effect on legitimate broker-dealers and issuers. The Commission also believes that the significant potential for sales practice abuse and manipulation in connection with the transactions covered by the Rule justifies the Rule's adoption as modified.

V. Description of the Rule

A. Scope of the Rule

The Rule generally provides that any broker-dealer who sells a Designated Security to, or effects the purchase of a Designated Security by,[28] any person must comply with the account approval and written agreement requirements of the Rule, unless the transaction qualifies for one of the exemptions set forth in paragraph (c) of the Rule.[29] The major limitations on the scope of the Rule are its restriction to Designated Securities and its exemption of: (1) Transactions at prices of five dollars or more; (2) purchasers who are established customers or accredited investors; (3) transactions that do not involve a recommendation; and (4) broker-dealers who engage in limited activities in Designated Securities.

1. Designated Security

A Designated Security is defined in the Rule as any equity security other than a security: (1) Registered, or approved for registration upon notice of issuance, on a stock exchange that makes transaction reports pursuant to Rule 11Aa3–1 under the Exchange Act; (2) authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system; (3) issued by an investment company registered under the Investment Company Act of 1940; (4) that is an option issued by The Options Clearing Corporation;[30] or (5) whose issuer has net tangible assets in excess of $2,000,000, as demonstrated by financial statements dated less than fifteen months previously that the broker or dealer has reviewed and has a reasonable basis for believing are true and complete in relation to the date of the transaction with the customer, and, for issuers other than foreign private issuers, that are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of Regulation S–K.[31] The three major components of the definition therefore are its inclusion of all equity securities, its exclusion of securities traded on an exchange or NASDAQ, and its exclusion of issuers with more than $2 million in net tangible assets.

a. *Equity Security.* Several commenters indicated that the definition of a Designated Security in the Proposed Rule encompassed several types of equity securities other than corporate stock that did not rise the regulatory concerns to which the Rule was addressed.[32] In particular, they said that interests in limited partnerships, real estate investment trusts ("REITs"), non-convertible preferred stock, certain types of asset-backed securities, and the securities of acquisition vehicles should not be covered by the Rule. They noted that these types of securities have not been subject to the sales practice and manipulation abuses that characterized the market for low-priced corporate stocks.[33]

The Commission concurs with the views of these commenters that the Rule generally should not apply to these types of securities, but is concerned that an exclusion from the Rule for these securities not create a loophole for unscrupulous broker-dealers. Rather than exempting entire classes of equity securities or all securities offerings made pursuant to registration or an exemption from registration under the Securities Act, as some commenters suggested, the Commission has exempted from the Rule transactions in which the price of the Designated Security is five dollars or more, as more fully discussed below.[34] As noted by the commenters, limited partnership interests, REITs, non-convertible preferred stock, asset-backed securities, and similar securities generally are priced at far more than five dollars.[35]

The Commission also solicited comment in Release 34–26529 on whether the definition of Designated Security should be expanded to include debt securities. Several commenters believed that the Proposed Rule should apply to transactions in debt securities.[36] They stated that debt securities were subject to the types of sales practice abuses to which the Proposed Rule was addressed, and believed that a potential loophole in the Proposed Rule would be created if debt were excluded. Other commenters, however, indicated that sales practice abuses were not prevalent in connection with transactions in debt securities, and did not believe that the Proposed Rule should be expanded to cover debt securities.

The Commission has determined not to include debt transactions within the Rule at this time. Although there is evidence that boiler room abuses can occur in connection with debt transactions,[37] such abuses do not appear to be of the same nature or to have occurred with the same frequency as abuses in connection with equity transactions. Consequently, the Commission does not believe that the benefits to be gained by including debt transactions would justify the costs of imposing the sales practice requirements of the Rule. The Commission will continue to monitor, however, whether the sales practices of broker-dealers regarding debt securities require special regulatory treatment, such as application of the Rule.

b. *Exchange and NASDAQ Securities.* The definition of Designated Security in the Proposed Rule excluded securities that are registered on an exchange or authorized for quotation on NASDAQ. Release 34–26529 noted that transactions in these securities were subject to the protections of trading in markets that had, at a minimum, real time quotation reporting and extensive surveillance systems in place. The Release requested comment, however, on whether the Proposed Rule should apply to the securities of all issuers who did not meet the minimum financial standards in the Proposed Rule, regardless of the market in which they were traded.

Several commenters specifically supported the exclusion from the Proposed Rule of exchange and NASDAQ securities.[38] Other commenters, however, believed that the Proposed Rule should apply to all transactions in securities issued by companies not meeting the Proposed Rule's minimum financial standards, regardless of whether they were traded on an exchange or NASDAQ.[39] These commenters felt that despite the protections provided by an organized and visible market, many stocks of smaller issuers involved the potential for sales practice abuses, and that investors in these stocks could benefit from the protections provided by the Proposed Rule.

The Commission has retained the exclusion of exchange and NASDAQ securities from the Rule,[40] although it recognizes that sales practice abuses and manipulations similar to those in the non-NASDAQ OTC market also can occur in exchange and NASDAQ markets, particularly with respect to NASDAQ securities that are not designated as National Market System securities and subject to last sale reporting. At this point, however, the Commission believes that the exchange and NASDAQ transaction reporting and surveillance systems operated by the SROs provide the basis for sufficient monitoring and prosecution of fraudulent activities, without the imposition at this time of the requirements of the Rule. In addition, issuers of securities traded on an exchange or NASDAQ must comply with increased corporate disclosure requirements.[41] Moreover, an issuer whose securities trade on an organized, visible market is more likely to be followed by professional securities analysts and the public, with greater opportunity for efficient pricing of the issuer's securities. The Commission expects the SROs to join it, however, in closely monitoring for fraudulent sales practice activities in exchange and NASDAQ markets following effectiveness of the Rule to prevent the transfer of such activities into these markets.

Finally, several smaller broker-dealers contacted by members of the Commission staff indicated their concern that initial public offerings of securities should not be considered Designated Securities if, upon completion of the offering, they would be traded on an exchange or NASDAQ. The Commission agrees, and has included express language in the Rule clarifying that a security approved for trading on an exchange or NASDAQ upon notice of issuance will be excluded from the Rule.

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[27] *See infra,* text accompanying notes 46–51.

[28] The Rule makes it unlawful both to sell and to effect purchases of Designated Securities in order to clarify that both principal and agency transactions are covered by the Rule.

[29] The organization of the Rule is somewhat changed from that of the Proposed Rule to reflect more clearly the transactions to which the rule applies.

[30] Sales of these options already are subject to special suitability and risk disclosure requirements under Commission and SRO rules. *See, e.g.,* 17 CFR 240.9b–1; CBOE Rules, ch. IX, CBOE Guide (CCH) ¶¶ 2301–23; NASD Rules of Fair Practice, Appendix E, NASD Manual (CCH) ¶ 2184.

[31] 17 CFR 210.2–02. In the event the issuer is a foreign private issuer, the financial statements must be the most recent financial statements for the issuer that have been filed with the Commission; furnished to the Commission pursuant to 17 CFR 240.12g3–2(b); or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

[32] The term "equity security" is defined in section 3(a)(11) of the Exchange Act, 15 U.S.C. 78c(a)(11), as "any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security."

Rule 3a11–1, 17 CFR 240.3a11–1, defines the term "equity security" to include "any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so."

[33] The commenters noted that offerings of real estate securities are subject in many states to the guidelines of the North American Securities Administrators Association regarding disclosure, suitability, and recordkeeping. *See* NASAA Statement of Policy on Real Estate Programs, NASAA Reports (CCH) ¶¶ 3601–10. Also, offerings of direct participation programs are subject to disclosure, suitability, and recordkeeping standards under NASD rules. *See* NASD Rules of Fair Practice, Appendix F, NASD Manual (CCH) ¶ 2192. Commenters also indicated that, because of federal income tax considerations, limited partnership interests generally were either traded on an exchange or NASDAQ, or were illiquid because of restrictions on transferability. Finally, commenters noted that the minimum sales price of interests in partnership offerings usually ranged from $2500 to $5000, far higher than the price of most non-NASDAQ OTC stocks.

[34] *See infra,* text accompanying notes 46–51.

[35] In addition, in the event that a type of security generally is priced at less than five dollars, is not otherwise excluded from the Rule, and does not raise the concerns to which the Rule is addressed, the Commission retains general exemptive authority pursuant to paragraph (c)(5) of the Rule that will enable it to provide relief in specific situations.

[36] One commenter suggested that the Rule should apply to any secondary market security if competitive price information was not readily available to the public on an instantaneous basis.

[37] *See, e.g.,* Mitchell, Fast-Talking Brokers in Little Rock Target Small-City Treasuries, Wall St. J., April 12, 1989, at A1.

[38] In addition, one commenter suggested that, if an ADR for a foreign security was traded on an exchange or NASDAQ, then the underlying security should also be excluded from the Rule. The Toronto Stock Exchange ("TSE") commented that the definition of Designated Security should not include securities listed on the TSE. It noted that companies were required to meet minimum requirements to be listed on the TSE, and also that companies listed on the TSE were subject to the same kinds of public reporting and timely disclosure requirements that are imposed by exchanges in the United States. The Commission believes that the $2 million net tangible assets exclusion and the five dollar price exemption will except most foreign securities broadly traded in the non-NASDAQ OTC market. For foreign securities that do not qualify for these exclusions, the Commission has retained general exemptive authority under paragraph (c)(5) of the Rule to provide relief in appropriate situations.

[39] Two other commenters felt that the Rule should apply to securities authorized for quotation on NASDAQ, but which did not qualify for designation as National Market System ("NMS") securities.

[40] The Rule excludes securities registered on a national securities exchange that makes transaction reports available pursuant to Rule 11Aa3–1 under the Exchange Act, 17 CFR 240.11Aa3–1. The Commission believes that exchange-listed securities exempt from the Rule at a minimum should be subject to quotation and last sale reporting. Because this definition would not cover options traded on the Chicago Board Options Exchange, options issued by The Options Clearing Corporation are excluded separately from the definition of a Designated Security.

[41] *See, e.g.,* NASD Schedules to the By-Laws, Schedule D, pt. II, section 1, NASD Manual (CCH) ¶ 1803.

c. $2,000,000 Net Tangible Assets. The definition of a Designated Security in the Proposed Rule excluded securities whose issuer met any one of the following three financial standards: (1) Annual net income in excess of $300,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years; (2) capital and surplus in excess of $8,000,000 at the end of the most recently completed fiscal year; or (3) total assets in excess of $10,000,000 at the end of the most recently completed fiscal year. The Commission solicited comment on whether these standards should be raised or lowered, or whether they should be eliminated altogether so that the Proposed Rule would apply to all pink sheet stocks.

The comments split widely on the appropriateness of the issuer financial standards contained in the Proposed Rule. Some commenters believed that the standards should be eliminated altogether so that the Proposed Rule would apply to all pink sheet securities. These commenters believed that abuses occurred largely because of lack of information in the pink sheet market, and therefore the profitability, capitalization, or size of the issuer was not sufficient to reduce the risk of fraud in the market. Conversely, several commenters believed that the issuer financial standards were too high, and would include many companies of sufficient size and capitalization that abuses would not occur in their securities. Finally, other commenters objected to the Rule's issuer financial standards as a matter of principle, suggesting in particular that the Commission should be more concerned with the amount of information available about a company, rather than its financial characteristics. In this regard, they felt that the Rule should exclude reporting companies under section 12 of the Exchange Act.[42]

In addition, several commenters indicated that the net income and total assets standards were manipulable, and should be eliminated or modified. The NASD, NASAA, and ABA/Broker-Dealer Subcommittee stated that the net income standard could be circumvented easily by including income from extraordinary items, and suggested that the standard only should include income from continuing operations. NASAA also noted that the net income standard could lead to the use of accounting devices to recognize income in one year and expenses in another in order to meet the standard. Another commenter suggested that the net income standard should be met by an issuer for at least two years in order to establish a substantial operating history.

Several commenters also believed that the total assets standard was manipulable. In particular, they indicated that an issuer could easily increase its total assets by increasing debt, without adding any real financial strength to the issuer. Also, NASAA noted that an issuer's intangible assets could be used to meet the total assets standards, and that an issuer's securities could be excluded from the Rule even though it had a negative net worth if intangible assets were excluded. In this regard, the NASD suggested changing the total assets standard to a net tangible assets standard, noting that this standard would exclude goodwill, and therefore, be more meaningful and less subject to circumvention.

The Commission's intent in including the financial standards in the Proposed Rule was not to differentiate among issuers on the basis of investment merit. Rather, these standards were intended to exclude from the Proposed Rule issuers of such size that they were not commonly subject to the types of sales practice abuses targeted by the Proposed Rule.

After considering the views of the commenters, the Commission has consolidated the issuer financial standards contained in the Proposed Rule into a single net tangible assets standard.[43] This standard is intended to exclude larger issuers whose securities are unlikely to be the vehicles for sales practice abuse and manipulation, even though traded outside of an organized market at prices below five dollars. In view of the comments, the total assets and the net income standards have been deleted from the Rule. The capital and surplus standard has been replaced by a net tangible assets standard in order to exclude intangible assets, which may be inflated improperly despite the audited financial statement requirement. In maintaining a relatively high financial standard for Designated Securities in the Rule, the Commission's sole purpose is to retain the intended screening function, and not to imply anything about the quality of the issuers covered by the standard.

In light of the shift to net tangible assets and commenter's suggestions that the proposed standards could be lowered and still properly identify issuer securities which were substantially less likely to be subject to fraudulent boiler room practices, the Commission has set the net tangible asset standard at $2,000,000. The Commission believes that the companies historically used in penny stock manipulations rarely have had $2,000,000 in net tangible assets. While the Rule's net tangible assets standard is higher than the $1,000,000 capital and surplus qualification standard for NASDAQ suggested by some commenters, it is substantially lower than the $4,000,000 net tangible assets standard for designation as a National Market System security suggested by others. The Commission believes that the absence of the protections of trading in a market with visible quotations, transaction reporting, and electronic surveillance capabilities justifies having standards in the Rule higher than those for qualifications on NASDAQ.

Although the Commission in most circumstances looks to full and accurate disclosure rather than prescriptive rules to protect investors, the Commission does not believe that issuer disclosure is sufficient protection against the gross misrepresentations in the sales process often characteristic of the market for low-priced, non-NASDAQ OTC securities.[44] In particular, the Commission does not believe that the disclosure provided by Exchange Act reporting companies constitutes by itself an adequate substitute for the prophylactic measures of the Rule. Broker-dealers using high pressure sales tactics often may misstate information available to the market, particularly if broker-dealers are directly soliciting unsophisticated investors at a time when they have not received any information on the security. Moreover, the markets for many low-priced, non-NASDAQ OTC securities are dominated by a single market maker and, as a result, the pricing of the security may not reflect the available public information.

All of the commenters who addressed the requirement that compliance with the Proposed Rule's financial standards be demonstrated by financial statements certified by an independent public accountant believed that it was an appropriate requirement for issuers who sold their securities to the public. Accordingly, the Commission has retained the requirement in the Rule, with technical revisions.[45]

2. Price of Security

The Proposed Rule did not differentiate among securities based on market price, although Release 34–26529 noted that Designated Securities often were traded at less than one dollar per share. In addition, Release 34–26529 solicited comment on whether the Proposed Rule's definition of Designated Security was appropriately tailored to include those securities that presented the problems to which the Proposed Rule was addressed without unnecessarily including securities that were not generally the vehicles used for fraudulent high pressure activity. Several commenters suggested that the Proposed Rule should include a price per share limitation. For example, the NASD concluded that a price standard would make the Proposed Rule more workable in practice and aid the broker-dealer in the initial evaluation of whether a security was a Designated Security.

The Commission has determined to provide an additional exemption from the Rule for transactions in which the price of the security is five dollars or greater.[46] This exemption will allow issuers to avoid perceived adverse effects of the Rule by adjusting their capital structure and setting the offering price for their securities at five dollars or more. Therefore, issuers of equity securities, whether common stock, preferred stock, limited partnership interests, or other equity securities, will have greater control over the application of the Rule to their securities. The price exemption also has the benefit of being easily monitored by broker-dealers. Broker-dealers who wish to underwrite and trade in the securities of small, non-NASDAQ OTC issuers without being subject to the Rule and without implementing extensive compliance procedures can do so by restricting their activities to securities priced at five dollars or more.

Smaller issuers who set the offering price for their shares at five dollars or more in order to avoid application of the Rule may be limited in the number of shares that they can issue, which may limit somewhat secondary trading in their securities. A five dollar price standard is consistent, however, with the Uniform Limited Offering Registration ("ULOR") project developed by the State Regulation of Securities Committee of the American Bar Association. ULOR is intended to provide a streamlined procedure for small businesses raising less than $1,000,000 in offerings exempt from registration under Rule 504 of Regulation D.[47] In order to prevent abuses in the secondary market for securities issued pursuant to ULOR, issuers cannot use ULOR for offerings in which the offering price of common stock, or the exercise price or conversion price of any warrants, options, rights, or convertible securities included in the offering, is less than five dollars.[48]

The Commission intends to monitor closely the use of the price exemption. While most abuses that have occurred in the non-NASDAQ OTC market have involved securities trading at less than five dollars, the Commission is aware of the risk that the price exemption could result in increased attempts to employ abusive sales practices and manipulative schemes in stocks trading above five dollars. Nevertheless, the Commission believes that this risk is outweighed by the substantial benefits of a price exemption.

The Commission does not believe that the price exemption will result in widespread circumvention of the Rule, because stocks priced at five dollars or more appear to be less susceptible to manipulation and high pressure sales campaigns. First, the spreads at this price level are generally much smaller. While it is common to see quotes for securities at five cents bid and ten cents asked,[49] instances of 100% price spreads in stocks priced in excess of five dollars are rare. Moreover, a five dollar spread would be much more likely to attract notice and increase investor caution, even on the part of unsophisticated investors. Second, low-priced stocks often are sold through a sales pitch that is dependent upon their initial low price. Broker-dealers selling low-priced, speculative stocks frequently promise high profits, arguing that high percentage returns will result from only a few cents rise in price. For example, a high pressure salesperson touting a five cent stock may emphasize that a mere five cent rise in price will produce a 100% return on investment. This tactic is less effective with respect to stocks selling for five dollars or more.

The Commission is aware that issuers of low-priced securities often raise capital by issuing units containing a variety of securities components, for example, multiple shares of common stock and warrants for the purchase of the stock. In these situations, the unit and the individual components of the unit would be considered separately under the Rule's criteria for a Designated Security. To qualify for the price exemption, each must be priced at five dollars or more. However, to avoid the need to assign a price to warrants, options, rights, and the conversion option of a convertible security, the value of these components of a unit would not be considered in determining whether a transaction in the unit was covered by the Rule. Thus, units would be subject to the Rule unless (1) the unit price divided by the number of shares (or interests, in the case of a partnership or trust) included in the unit was five dollars or more; and (2) the exercise price of any warrant, option, or right, or the conversion price of a convertible security, included in the unit was five dollars or more. Once the components of a unit begin trading separately, both the transaction price and the exercise price of warrants, options, or rights, or the conversion price of convertible securities, would have to be five dollars or more to qualify for the five dollar exclusion.

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[42] 15 U.S.C. 78l

[43] Regulation S–X currently requires issuers to state separately each class of intangible assets that is in excess of five percent of the issuer's total assets. 17 CFR 210.5–02. The types of assets that constitute intangible assets are discussed in Accounting Principles Board Opinion No. 17 (August 1970).

[44] As the Special Study noted, "no amount of disclosure in a prospectus can be effective to protect investors unless the securities are sold by a salesman who understands and appreciates both the nature of the securities he sells and his responsibilities to the investor to whom he sells." Special Study, *supra* note 20, pt. 1, at 556.

[45] One commenter suggested modifying the Rule to make clear that an issuer's financial statements would continue to qualify under the Rule in the period between the end of a fiscal year and the time that new statements became available, and that suggestion has been incorporated into the Rule. In addition, the audited financial statement requirement references Regulation S–K, 17 CFR 210.2–02, in order to provide greater guidance as to the requirement. Finally, the standard of broker-dealer review of an issuer's financial statements has been phrased in affirmative terms rather than the "double negative" phrase used in the Proposed Rule to provide greater clarity as to the standard. The Commission notes, for example, that the existence of an unqualified opinion by an independent public accountant would constitute, in the absence of information to the contrary, a reasonable basis for a broker-dealer to believe that the financial statements were true and complete.

[46] A five dollar price criterion has been adopted in several other contexts involving securities regulation. *See* 12 CFR 220.17(a)(2) (five dollars per share requirement for inclusion on list of OTC margin stocks); Washington Administrative Code section 460–17A–030(d), *Blue Sky Law Reporter* (CCH) ¶61,588C (five dollars per share requirement for offerings pursuant to Uniform Limited Offering Registration); NASD Schedules to the By-Laws, Schedule D, pt. III, section 2, *NASD Manual* (CCH) ¶1809 (five dollars per share requirement for designation as National Market System security).

[47] 17 CFR 230.504. For a description of the purposes and requirements of ULOR, see J. Harris, S. Keller, G. Stakias & M. Liles, Financing the "American Dream"—Small Business and the ULOR Project, 43 Bus. Law. 757, 762–63 (1988).

[48] The U.S. Small Business Administration and the Washington State Business Assistance Center submitted comments recommending that ULOR offerings be excluded from the Proposed Rule, and noting the utility of the five dollar price limitation in preventing abuses in ULOR securities.

[49] *See supra* note 14, and accompanying text. The Commission notes that, in dominated or inactive markets, market makers generally must calculate mark-ups on the basis of actual transactions, and not on quotations. *See In re* Alstead, Dempsey & Company, Securities Exchange Act Release No. 20825 (April 5, 1984), 30 SEC Doc. 258. Undisclosed excessive mark-ups constitute violations of NASD rules and Rule 10b–5 under the Exchange Act, 17 CFR 240.10b–5.

As noted previously, several commenters believed that offerings of securities pursuant to registration or an exemption from registration under the Securities Act should be excluded from the Proposed Rule. In particular, they believed that the disclosure provided by the issuer in the registration process would constitute an adequate safeguard against the abuses to which the Proposed Rule was addressed. As noted above,[60] however, the Commission is not persuaded that issuer disclosure provides an adequate safeguard against the abusive broker-dealer sales practices present in this market. Moreover, the Commission believes that the price exemption along with the exclusion of offerings that are approved for exchange or NASDAQ trading substantially addresses the concerns of many of these commenters. With respect to offerings of securities below five dollars per share that are not approved for exchange or NASDAQ trading, the Commission believes that the requirements of the Rule are warranted in view of the substantial potential for sales practice abuse, even when a disclosure document is available.[61]

3. Established Customers and Accredited Investors

The Proposed Rule excluded sales to accredited investors, as defined in Regulation D under the Securities Act,[62] and regular customers of a broker-dealer. A regular customer was defined as any person for which the broker-dealer, or a clearing broker on behalf of such broker-dealer, maintains a margin account or a cash account as provided for in Regulation T of the Federal Reserve Board, and who has purchased in either or both of such accounts the securities of three or more different issuers on three separate occasions within the preceding two years. Release 34–26529 indicated that the definition was intended to exclude persons with whom the broker-dealer previously had established a business relationship, and who presumably had the opportunity to become acquainted with the nature and business conduct of the broker-dealer.

The Proposed Rule's definition of regular customer was criticized by commenters for several reasons. First, several commenters believed that the definition would permit inappropriate circumvention of the Proposed Rule's requirements. For example, Merrill Lynch stated that an unscrupulous broker-dealer could convince a client to purchase three small positions in securities other than Designated Securities, such as money market funds or Treasury securities, immediately prior to commencing aggressive cold calling activities in Designated Securities. Second, commenters suggested that merely making three purchases of any security in an account with a broker-dealer did not necessarily mean that the customer was familiar with the reputation and business conduct of that broker-dealer with respect to Designated Securities. Finally, commenters believed that legitimate broker-dealers would have difficulty implementing systems to monitor compliance with the regular customer exclusion.

To address these problems, several commenters suggested that the definition of regular customer should focus on the length of time that a customer had an account with a broker-dealer, rather than the number of transactions in the account. They believed that focusing on the age of the account would provide more assurance that a customer was familiar with the nature and business practices of a broker-dealer.

The Commission agrees with the concerns of these commenters and has reflected their suggestions in the Rule. The term "regular customer" has been changed to "established customer" to reflect the elimination of the requirement that a customer have recent activity in the account to qualify for an exclusion from the Rule. Instead, once a customer of a broker-dealer qualifies as an established customer, the customer's transactions with the broker-dealer will be permanently excluded from the Rule. Paragraph (d)(3) of the Rule defines an established customer as any person for whom the broker-dealer, or a clearing broker on behalf of a broker-dealer,[63] carries an account, and who in such account has (1) effected a securities transaction, or made a deposit of funds or securities, more than one year previously, or (2) made three purchases of Designated Securities that occurred on separate days and involved separate issuers.[64]

The Commission believes that this definition will assist broker-dealers in monitoring compliance with the Rule, as well as prevent inappropriate circumvention of the Rule. It is less likely that a person who has had a significant relationship with a broker-dealer for over a year will be victimized by that broker-dealer engaging in boiler-room abuses. In addition, the alternative requirement of three purchases of Designated Securities increases the likelihood that the customer will be familiar with the risks of Designated Securities, and that the broker-dealer will have made an appropriate suitability determination for customers with accounts less than one year old prior to selling them a Designated Security.

4. Recommended Purchases

The Proposed Rule made it unlawful for a broker-dealer to recommend, and subsequently to sell, any Designated Security without complying with the Proposed Rule. Several commenters suggested that clarification was needed as to when a purchase would be considered to have been recommended by the broker-dealer. Moreover, two commenters suggested that the Proposed Rule would be clearer if the term "solicited" rather than "recommended" were used in the Proposed Rule.

The Commission has determined to retain the exemption from the Rule for transactions that are not recommended by a broker-dealer. One of the major requirements of the Rule is the suitability determination involved in approving an account for transactions in Designated Securities, and the NASD and other suitability rules have long applied only to "recommended" transactions. As noted in Release 34–26529, the Rule would not apply to situations in which a broker-dealer functioned solely as an order taker and executed transactions for persons who on their own initiative decided to purchase a Designated Security without a recommendation from the broker-dealer. Nor would the Rule apply to general advertisements not involving a direct recommendation to the individual. The Rule would apply, however, to situations where the broker-dealer recommends to an investor the purchase of a specific Designated Security, whether through direct telephone communication with the customer or through sending promotional material through the mail.

While in some contexts determining whether a transaction was recommended may raise close questions, the Commission understands that in practice most Designated Securities are "sold, not bought," and in most cases the determination will not be difficult. In particular, in most situations in which the broker-dealer brings a specific Designated Security to the attention of the customer, a subsequent purchase of the security will involve an implicit or explicit recommendation by the broker-dealer. For example, if several different customers dealing with a registered representative purchased the same security within a short period of time and without communicating with each other, it would be strong evidence that the registered representative had recommended the security.

Some commenters believed that the Proposed Rule should apply to investor responses to general advertisements by a broker-dealer, one noting that general advertisements could serve the same purpose as cold calls by laying the groundwork for subsequent high pressure sales tactics. The Commission notes, however, that these high pressure sales tactics generally would involve a recommendation after the customer calls for information in response to a general advertisement, and therefore any resulting transactions would be covered by the Rule.

5. Limited Broker-Dealer Activity in Designated Securities

The Proposed Rule excluded transactions in a Designated Security by a broker-dealer whose total transactions in the Designated Security had not exceeded an aggregate volume of $5000 or 10,000 shares during any period of five consecutive business days that ended within the preceding 90 days. Release 34–26529 noted that the Proposed Rule was directed at concentrated selling efforts, and that the benefits of imposing the Proposed Rule's requirements on broker-dealers who were executing only minimal transactions in a security might not exceed the costs of compliance. Release 34–26529 solicited comment on whether the proposed volume standards were appropriately drawn. In particular, comment was requested on whether the standards focused the Proposed Rule on situations where abusive selling practices were most prevalent while avoiding situations where these abusive sales practices were uncommon.

The commenters criticized this limited transaction exclusion for several reasons. They believed that the standards were too low to provide practical benefits to broker-dealers. In addition, the commenters indicated that broker-dealers would have great difficulty monitoring whether they qualified for the limited transaction exclusion because of its "rolling" nature. Finally, one commenter noted that the limited transaction exclusion could be used by unscrupulous broker-dealers to promote different securities on a rotating basis and thereby circumvent the Proposed Rule's requirements. It suggested that any limited transaction exclusion should be based on the firm's total volume of transactions in all Designated Securities.

Several commenters suggested an alternative formulation of the limited transaction exclusion that excluded sales by broker-dealers whose commission revenue derived from transactions in Designated Securities did not exceed a certain percentage of their overall commission revenue. They believed that this percentage approach would provide a more effective way to identify those firms whose primary business purpose is to sell pink sheet stocks, while providing an easily determinable exclusion for firms engaging in only a minimal amount of business in Designated Securities.[65]

The Commission has replaced the proposed limited transaction exclusion with an exemption similar to the percentage approach suggested by the commenters. Paragraph (c)(4) of the Rule exempts transactions by a broker-dealer (1) whose commissions, commission equivalents, and mark-ups from transactions in Designated Securities during each of the immediately preceding three months, and during eleven or more of the preceding twelve months,[66] did not exceed five percent of its total commissions, commission-equivalents, and mark-ups from securities transactions during those months; [67] and (2) who has not been a market maker in the Designated Security that is the subject of the transaction during the previous twelve months. The Commission believes that making a market in a security provides an incentive for high pressure sales practices and an opportunity for manipulation of the price of that security that would not otherwise be present, and, consequently, all market makers in a Designated Security should be subject to the Rule, irrespective of the percentage of revenue accounted for by Designated Securities. The percentage of revenue exemption also will restrict collusion between broker-dealers active in penny stocks, in which each firm would sell as agent Designated Securities in which the other firm was a market maker.

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[60] *See supra*, text accompanying note 44.

[61] In this connection, the Commission solicited comment in Release 34–26529 on the issue of whether transactions subject to the disclosure document delivery requirements of Rule 15c2–8(b) under the Exchange Act, 17 CFR 240.15c2–8(b), or Regulation A under the Securities Act, 17 CFR 230.256(a)(2), should be excluded from the written agreement requirement of the Proposed Rule. The NASD indicated in its comment letter that broker-dealers often had difficulty complying with the prospectus delivery requirement, and the Commission is not satisfied that the delivery requirements would constitute adequate substitutes for the Rule.

[62] 17 CFR 230.501(a). The Commission received limited comment on the exclusion of sales to accredited investors, and transactions in which the purchaser is an accredited investor continue to be exempted in the Rule.

[63] The reference in the Rule to a clearing broker is intended merely to recognize that introducing broker-dealers do not carry accounts. The Rule is not intended to alter existing responsibilities of introducing broker-dealers and their clearing brokers.

[64] If the person had more than one personal account with the broker-dealer, purchases in all of the accounts could be aggregated to meet the three purchase requirement. In the context of introducing and clearing brokers, however, purchases by a person with more than one personal account carried by the clearing broker could be aggregated only with purchases in accounts that were carried by the clearing broker on behalf of a single introducing broker.

[65] Several commenters, however, recommended that the limited transaction exclusion be deleted from the Proposed Rule. They believed that, in light of the purpose of the Proposed Rule to eliminate high pressure sales tactics and indiscriminate recommendations, it was inappropriate to adopt an exclusion based on the volume of broker-dealer transactions, as this would permit such activities to occur to a limited extent. The Commission agrees with the view of these commenters that even a limited amount of sales practice abuses should not be permitted, but believes that firms engaging in a limited business in Designated Securities are far less likely to be involved in fraudulent sales activities. Moreover, the Commission fully intends to monitor the limited activity exemption provided in the Rule to detect abuses in Designated Securities.

[66] The Commission recognizes that broker-dealers will need a period of time after the end of a month in order to determine whether their sales-related revenue from transactions in Designated Securities during the preceding month was less than five percent of their total sales-related revenue from securities transactions. Accordingly, if a broker-dealer's non-market maker transactions during the preceding month were exempt under the percentage exemption, such transactions by the broker-dealer will continue to qualify for the exemption for the first ten business days after the end of the preceding month in order to provide the broker-dealer with an opportunity to make the percentage determination. For example, if a broker-dealer's non-market maker transactions were exempt under the percentage exemption during the month of April because the broker-dealer's sales-related revenue from transactions in Designated Securities during each of the months of January, February, and March was less than five percent of its total sales-related revenue during those months, the non-market maker transactions of the broker-dealer during the first ten business days of May would continue to qualify for the percentage exemption. Of course, the broker-dealer's sales-related revenue during this ten-day period in May would have to be included in determining whether the broker-dealer's sales-related revenue during May exceeded the five percent standard.

[67] Revenues received in connection with transactions in securities other than commissions, commission-equivalents, and mark-ups, such as revenues from repurchase transactions, would not be included in this computation.

6. General Exemptive Authority

The Proposed Rule enabled the Commission to exempt, conditionally or unconditionally, any transactions that it determined were not encompassed within the purposes of the Proposed Rule. There were no comments on this provision. The Commission believes that it provides needed flexibility in applying the Rule and has retained the provision.

B. Requirements of the Rule

For transactions that fall within the scope of the Rule, paragraph (a)(2) of the Rule provides that, prior to the transaction, the broker-dealer must: (1) Approve the purchaser's account for transactions in Designated Securities in accordance with the procedures set forth in paragraph (b) of the Rule; and (2) receive from the purchaser a written agreement to the transaction setting forth the identity and quantity of the Designated Security to be purchased.

1. Account Approval Procedures

The Commission has determined to modify the account approval procedures contained in the Proposed Rule to lessen the compliance burden on broker-dealers, while maintaining the purposes of the procedures in the Proposed Rule. The Proposed Rule required a broker-dealer to obtain a manually-executed and dated statement from the customer setting forth detailed items of information concerning the customer's financial situation, investment experience, and investment objectives that were specified in the Proposed Rule. Release 34–26529 indicated that a customer's failure to provide this information would preclude the broker-dealer from approving the account. In addition to obtaining the written statement of customer information, the Proposed Rule required a broker-dealer to set forth in writing the basis of its suitability determination and to send this statement to the customer along with the confirmation of the transaction required by Rule 10b–10 under the Exchange Act.[58]

Many commenters believed that the procedures in the Proposed Rule, and in particular the requirement of a manually-executed statement of customer information, imposed an unreasonable paperwork burden on broker-dealers. For example, the ABA Broker-Dealer Subcommittee noted that requiring customers to provide in writing significant information about themselves might have an undesirable "chilling" effect on legitimate transactions in Designated Securities. It added, however, that customers might be more willing to provide such information orally. In addition, commenters noted the difficulties broker-dealers often experience in getting customers to fill out and return forms. Consequently, commenters said that the account approval procedures would interfere substantially with the process of obtaining new customers.

To lessen these burdens on broker-dealers while maintaining the purposes of the Proposed Rule, the Commission has eliminated from the Rule the requirement that a broker-dealer obtain a manually-executed statement of customer information. In addition, the Rule does not require broker-dealers to obtain each of the specific items of customer information identified in the Proposed Rule. Instead, as discussed below, the Rule requires a broker-dealer, prior to the purchase of a Designated Security, to (1) obtain, orally or in writing, information from the customer concerning the customer's financial situation, investment experience, and investment objectives; (2) reasonably determine the customer's suitability for, and capability of evaluating the risks of, transactions in Designated Securities; (3) deliver to the customer a written statement setting forth the basis of such determination, disclosing the written agreement requirement of the Rule, and stating that the customer should not sign and return the written statement to the broker-dealer if it does not accurately reflect the customer's circumstances; and (4) receive back from the customer a manually signed and dated copy of the suitability statement.

a. Customer Information. Several commenters supported the requirement in the Proposed Rule that broker-dealers obtain and preserve in writing information concerning the customer's financial situation, investment experience, and investment objectives. Many of these commenters, as well as several broker-dealers contacted by members of the Commission staff, noted that broker-dealers typically used account forms that included much of the information required by the Proposed Rule. This information is obtained by registered representatives over the telephone, and the representatives fill out the account form and make a suitability determination. For example, the SIA stated that: "We do not view the requirement under the Proposed Rule regarding the retention of the suitability information in connection with recommended purchases to be burdensome. Most firms currently retain such information as a means to demonstrate compliance with Article III, section 2 of the NASD Rules of Fair Practice and NYSE Rule 405."

To conform to this industry practice, the Rule no longer specifies each item of information that the broker-dealer must obtain, and permits this information to be obtained orally. The Commission wishes to emphasize, however, that the broker-dealer must obtain sufficient information concerning the customer that it can reasonably make its suitability determination. In the Commission's view, the customer information specified in the Proposed Rule remains highly relevant to the broker-dealer's suitability determination,[59] and broker-dealers should seek to obtain this information from customers. While in some cases a customer may refuse to provide each of the items of information specified in the Proposed Rule, such a refusal will not absolve the broker-dealer of its obligations under the Rule. Consequently, a broker-dealer must obtain sufficient information for a reasonable suitability determination prior to approving the customer's account for transactions in Designated Securities.

b. Suitability Determination. The Rule requires a broker-dealer reasonably to determine that transactions in Designated Securities are suitable for the customer, and that the customer (or the customer's independent adviser in these transactions) has sufficient knowledge and experience in financial matters that the customer (or the customer's independent adviser in these transactions) reasonably may be capable of evaluating the risks of transactions in Designated Securities.[60]

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[58] 17 CFR 240.10b–10.

[59] The Proposed Rule required a broker-dealer to obtain information concerning a customer's: (1) Financial situation, including age, marital status, number of dependents, employment status, estimated annual income and the sources of that income, estimated net worth (exclusive of family residence), and estimated liquid net worth (cash, securities, other); (2) investment experience and knowledge, including the number of years of experience, and the size, frequency, and types of transactions in stocks, bonds, options, commodities, and other investments; and (3) investment objectives, such as safety of principal, income, growth, or speculation.

[60] The Rule's requirement that a broker-dealer make a special suitability determination in approving a customer's account for transactions in Designated Securities is in addition to, and in no way replaces, a broker-dealer's general obligation under SRO rules to make a suitability determination for all recommended transactions. Thus, a broker-dealer would remain obligated to make a suitability determination for each recommended purchase of a Designated Security by a customer even after such customer's account had been approved for transactions in Designated Securities, as well as for recommended purchases by customers that are not covered by the Rule, such as accredited investors and established customers.

Several commenters expressed the view that requiring a determination of the customer's capability of evaluating the risks of a transaction was subjective and would create confusion. As noted in Release 34–26529, however, a customer's ability to evaluate the risks of a transaction is an integral aspect of any suitability determination. This aspect of suitability is emphasized in the Rule because it is frequently ignored in sales practice abuses in the non-NASDAQ OTC market, which typically involve indiscriminate recommendations to unsophisticated investors. Release 34–26529 noted that many Designated Securities are speculative securities that require purchasers to possess a significant degree of expertise, as well as access to issuer financial information, before an informed investment decision can be made. The issuers of Designated Securities are rarely followed by professional securities analysts or covered by the financial press, and may not be making complete information about their operations and financial condition publicly available on a regular basis.

The required determination focuses on the customer's knowledge and experience in financial matters. Persons who have no prior investment experience are unlikely to appreciate the risks of transactions in Designated Securities without special efforts by the broker-dealer or the person's personal advisers to inform them of the risks. For example, one of the individual investors who commented on the Proposed Rule indicated that she had been induced to place her entire retirement savings of $6600 in a self-directed IRA, which her broker recommended she invest entirely in penny stocks. She further stated that the broker was aware that her knowledge of investments was very limited and that she had no other savings or investments of any kind, not even a savings account. She lost her entire investment. Many other complaint letters received by the Commission indicate that her experience is not an aberration, and the Commission strongly believes that the special problems to which the rule is addressed require a specific investigation of the customer's capability to evaluate the risks of transactions in Designated Securities.

Release 34–26529 solicited comment on the effect of a customer's consultations with a personal adviser who was capable of evaluating the risks of transactions in Designated Securities. Several commenters suggested that, if such an adviser was permitted to help establish the customer's capability to evaluate such risks, then the adviser should be completely independent of the broker-dealer and the issuer of the Designated Securities. The Commission believes that it would be useful for investors, particularly inexperienced investors, to consult with an adviser prior to investing in Designated Securities. The Rule therefore provides that a broker-dealer can approve a customer's account if the customer's independent adviser in transactions in Designated Securities is capable of evaluating the risks of transactions in Designated Securities. The Commission wishes to emphasize, however, that the broker-dealer must reasonably determine that the adviser will consult with the customer on transactions in Designated Securities, and that the adviser is completely independent of the transactions. Any connection between the adviser and either the broker-dealer or the issuer that compromises the adviser's independence, such as an affiliation or compensation, would preclude the adviser from qualifying under the Rule.

The Commission also wishes to emphasize the point made in Release 34–26529 that the target of the Rule is sales practice abuse and manipulation, not small issuers or speculative investment decisions *per se*. It is, however, in low-priced, non-NASDAQ OTC securities that the Commission has found a disproportionate number of such abuses to occur, and it is for this reason that the Commission is adopting a prophylactic rule for recommended sales of such securities.

c. Suitability Statement. The Commission continues to believe that a customer should have an opportunity to review the information on which a broker-dealer makes its suitability determination regarding the customer. Such a review enables the customer to check the accuracy of this information recorded by the broker-dealer. Moreover, as a state regulatory authority indicated in its comment letter, by requiring the purchaser to sign a statement containing financial information, the importance of making an informed and deliberate investment decision will be made clear to the purchaser. Setting forth the suitability determination in writing also increases the likelihood that a determination will be made and facilitates subsequent review by regulatory authorities.

The Rule therefore provides that, prior to approving an account for transactions in Designated Securities, a broker-dealer must deliver to the customer a written statement: (1) Setting forth the basis of the broker-dealer's suitability determination; (2) stating in a highlighted format the written agreement requirement of the Rule; and (3) stating in a highlighted format immediately preceding the customer signature line that the broker-dealer is required by the Rule to provide the customer with the suitability statement, and that the customer should not sign and return the statement to the broker-dealer if it does not accurately reflect the customer's financial situation, investment, experience, and investment objectives. The broker-dealer then must obtain a manually signed and dated copy of the suitability statement from the customer. These requirements are intended to convey to the customer the importance of the suitability statement, and to prevent a salesperson from convincing the customer to sign the statement without a review for accuracy.

The Rule's new procedures are less burdensome than those in the Proposed Rule, however, because the customer need only sign and date a copy of the suitability statement, and return the statement to the broker-dealer. Thus, only one suitability document must be processed by the broker-dealer, and the signed copy can be obtained from customers at the same time customers send the broker-dealer their written agreement to the first purchase of a Designated Security in their accounts.[61] The Commission believes that the Rule's revised procedures for opening new accounts are substantially less burdensome than the procedures required by the Proposed Rule, while maintaining effective discipline over the broker-dealer's preexisting obligation to not make unsuitable recommendations.

2. Written Agreement to a Purchase

The Proposed Rule required the broker-dealer to obtain written agreement from the customer for each purchase of a Designated Security covered by the Proposed Rule. The written agreement was required to set forth the identity and number of shares or units of the Designated Security to be purchased. This requirement was intended to provide the customer with an opportunity to evaluate the security without the necessity for an immediate final decision that is characteristic of high pressure telephone sales tactics.

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[61] This procedure is in accordance with that suggested by the NASD in its comment letter. The NASD noted that it had published for comment a modification of its books and records rule that required much of the same information specified in the Proposed Rule to be gathered regarding customers. While the proposed NASD rule would not require a customer signature, the NASD indicated that a uniform approach with respect to the information required would allow firms to follow normal procedures and add only one additional step—obtaining the customer's signature as required by the Rule.

Many commenters specifically supported the Proposed Rule's requirement that broker-dealer obtain written agreement to purchases from the customer. A state regulatory authority noted the particular problems of regulating telephone solicitations, and stated that the Proposed Rule would have a "profound and salutary effect on such sales by requiring that the sale of designated securities be pursuant to a written agreement. In the cases of telephone solicitations, the time required to obtain such written agreement will necessarily give the consumer time to consider the purchase and to obtain whatever information is necessary and available in order to make a careful decision." An individual investor stated that "a written agreement, with time for the buyer to think about what he or she is doing, making sure the investment is right for themselves, is definitely needed." Another individual investor strongly supported the requirement that purchases be well documented, noting that on several occasions purchases had been made in his account without his authorization.

Conversely, many commenters opposed the written agreement requirement. One broker-dealer stated that the written agreement requirement was "draconian and unrealistic. It would expose brokerage firms to significant potential losses by giving an escape clause to investor if the security decreased in value." Another broker-dealer stated that most brokerage firms would stop dealing in Designated Securities rather than comply with the written agreement requirement.

The Commission believes that the written agreement requirement is critical to the effectiveness of the Rule, and has retained the requirement in the Rule. The written agreement requirement provides the Rule's most direct protection against high pressure sales tactics by enhancing the ability of investors to guard themselves against such tactics. Broker-dealers involved in boiler-room abuses typically use prepared scripts designed by marketing experts that try to elicit immediate buy decisions during the course of one or a series of telephone calls. Moreover, the Commission is aware of instances in which high pressure salespersons interpreted noncommittal responses as the placing of an order, with confirmations sent to customers of purchases that they had not intended to make.[62] The written agreement requirement has the beneficial effect of ensuring that the customer's final decision will be made outside of a pressured telephone call, and of providing objective evidence of whether a customer has agreed to a transaction.

While the written agreement requirement is an additional paperwork burden on broker-dealers, the Commission believes that the Rule would be substantially less effective without the requirement, and that its benefits outweigh the compliance burden it entails. The Commission notes that most retail securities transactions involve communicating with the customer, and obtaining payment, through the mail, and that obtaining a written agreement therefore will not constitute a unique processing procedure for broker-dealers. In addition, despite the assertions of some commenters, the written agreement requirement does not force a broker-dealer to, in effect, provide an option to the customer to purchase a Designated Security at a specified price.[63] Instead, as discussed in Release 34–26529, the written agreement only must set forth the identity and quantity of the Designated Security. Price can be agreed upon over the telephone when the broker-dealer receives the customer's written agreement.[64] Modification of the identity or quantity of the Designated Security specified in the written agreement, however, would require a new written agreement.

VI. Conclusion and Solicitation of Comment

The Commission believes that the Rule will provide a needed regulatory tool with which to combat sales practice abuse and manipulation by broker-dealers involving low-priced, non-NASDAQ OTC securities, without imposing undue burdens on legitimate broker-dealers underwriting and trading in the securities of small businesses. The Commission solicits comment, however, on whether any of the exclusions from the scope of the Rule will provide unscrupulous broker-dealers with unacceptable opportunities to circumvent the requirements of the Rule. These exclusions include the definition of Designated Security, which excludes non-NMS NASDAQ securities and securities whose issuers have net tangible assets in excess of $2,000,000; and the five dollar price exemption, the established customer exemption, the unrecommended transaction exemption, and the percentage of revenue exemption contained in paragraph (c) of the Rule. The Commission is particularly interested in learning the views of commenters after the Rule has been effective for a period of time, and its impact has been ascertained through practical experience.

VII. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act[65] requires that the Commission, in adopting rules under the Exchange Act, consider the anticompetitive effects of such rules, if any, and balance any anticompetitive effect against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission is of the view that Rule 15c2–6 will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[66] regarding the Rule. The FRFA indicates that Rule 15c2–6 will impose some additional costs on certain small broker-dealers and small issuers. The Commission believes, however, that the inclusion of additional exclusions in the Rule as adopted provide small broker-dealers and small issuers with greater control over whether they will be subject to the Rule. With respect to the transactions that remain within the scope of the Rule, the Commission believes that the requirements of the Rule have been streamlined to bring them more into accord with existing industry practice, and that any additional costs imposed by the Rule are outweighed by the benefits of reducing fraud through more effective regulation of the sales

practices of broker-dealers active in the market for low-priced, non-NASDAQ OTC securities.

A copy of the FRFA may be obtained from Dan Gray, Attorney, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5–1, Washington, DC 20549, (202) 272–2848.

VIII. List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

IX. Statutory Basis and Text of Amendments

The Commission hereby adopts § 240.15c2–6 in chapter II of title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * * § 240.15c2–6, also issued under secs. 3, 10, and 15, 15 U.S.C. 78c, 78j, and 78o.

2. By adding § 240.15c2–6 as follows:

§ 240.15c2–6 Sales practice requirements for certain low-priced securities.

(a) As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for a broker or dealer to sell a designated security to, or to effect the purchase of a designated security by, any person unless:

(1) The transaction is exempt under paragraph (c) of this section; or

(2) Prior to the transaction:

(i) The broker or dealer has approved the person's account for transactions in Designated Securities in accordance with the procedures set forth in paragraph (b) of this section; and

(ii) The broker or dealer has received from the person a written agreement to the transaction setting forth the identity and quantity of the Designated security to be purchased.

(b) In order to approve a person's account for transactions in Designated Securities, the broker or dealer must:

(1) Obtain from the person information concerning the person's financial situation, investment experience, and investment objectives;

(2) Reasonably determine, based on the information required by paragraph (b)(1) of this section and any other information known by the broker-dealer, that transactions in Designated Securities are suitable for the person, and that the person (or the person's independent adviser in these transactions) has sufficient knowledge and experience in financial matters that the person (or the person's independent adviser in these transactions) reasonably may be expected to be capable of evaluating the risks of transactions in Designated Securities;

(3) Deliver to the person a written statement:

(i) Setting forth the basis on which the broker or dealer made the determination required by paragraph (b)(2) of this section;

(ii) Stating in a highlighted format that it is unlawful for the broker or dealer to effect a transaction in a Designated Security subject to the provisions of paragraph (a)(2) of this section unless the broker or dealer has received, prior to the transaction, a written agreement to the transaction from the person; and

(iii) Stating in a highlighted format immediately preceding the customer signature line that:

(A) The broker or dealer is required by this section to provide the person with the written statement; and

(B) The person should not sign and return the written statement to the broker or dealer if it does not accurately reflect the person's financial situation, investment experience, and investment objectives; and

(4) Obtain from the person a manually signed and dated copy of the written statement required by paragraph (b)(3) of this section.

(c) For the purposes of this section, the following shall be exempt transactions—

(1) Transactions in which the price of the Designated Security is five dollars or more; *provided, however,* That if the Designated Security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities, must be five dollars or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of five dollars or more.

(2) Transactions in which the purchaser is an accredited investor or an established customer of the broker or dealer.

(3) Transactions that are not recommended by the broker or dealer.

(4) Transactions by a broker or dealer:

(i) Whose commissions, commission equivalents, and mark-ups from transactions in Designated Securities during each of the immediately preceding three months, and during eleven or more of the preceding twelve months, did not exceed five percent of its total commissions, commission-equivalents, and mark-ups from transactions in Securities during those months; and

(ii) Who has not been a market maker in the Designated Security that is the subject of the transaction in the immediately preceding twelve months.

(5) Any transaction or transactions that, upon prior written request or upon its own motion, the Commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.

(d) For the purposes of this section—

(1) The term "accredited investor" shall have the same meaning as in 17 CFR 230.501(a).

(2) The term "designated security" shall mean any equity security other than a security:

(i) Registered, or approved for registration upon notice of issuance, on a a national securities exchange that makes transaction report available pursuant to 17 CFR Part 11Aa3–1;

(ii) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;

(iii) Issued by an investment company registered under the Investment Company Act of 1940;

(iv) That is a put option or call option issued by The Options Clearing Corporation; or

(v) Whose issuer has net tangible assets in excess of $2,000,000, as demonstrated by financial statements dated less than fifteen months previously that the broker or dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and

(A) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2–02; or

(B) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the Commission; furnished to the Commission pursuant to 17 CFR 240.12g3–2(b); or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdication.

(3) The term "established customer" shall mean any person for whom the

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[62] *See, e.g.,* Report on First Jersey Securities, *supra* note 12, at 11, 14.

[63] The Rule does not require a broker-dealer to bind itself to the terms of a transaction prior to receipt of a customer's written agreement. Moreover, the execution of a transaction by a broker-dealer in a customer's account without the customer's prior written agreement would violate the Rule, even if the broker-dealer were willing to rescind the transaction if the customer did not subsequently agree in writing to the transaction.

[64] The Rule would not preclude a written agreement from including the price agreed upon by the broker-dealer and the customer. If, however, the market price of the security at the time the broker-dealer receives the written agreement is less than the price specified therein, the broker-dealer's "best execution" obligations would preclude the broker-dealer from executing the transaction at that price. *See* NASD Rules of Fair Practice, Art. III, sections 1 and 4, Interpretation of the Board of Governors re NASD Mark-Up Policy, NASD Manual (CCH) ¶ 2154 at 2050.

[65] 15 U.S.C. 78w(a)(2).

[66] 5 U.S.C. 604.

broker or dealer, or a clearing broker on behalf of such broker or dealer, carriers an account, and who in such account:

(i) Has effected a securities transaction, or made a deposit of funds or securities, more than one year previously; or

(ii) Has made three purchases of designated securities that occurred on separate days and involved different issuers.

By the Commission.

Dated: August 22, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-20192 Filed 8-25-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

RIN 0960-AA90

Treatment of Old-Age Survivors, and Disability Insurance Payments in the Aid to Families With Dependent Children Program (AFDC); Direct Payment to Beneficiaries Under Age 18

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final rules amend 20 CFR 404.2040 which prescribes the use of benefit payments by a representative payee. The final regulations cover our existing policy on the treatment of all title II benefits (retroactive lump-sum and monthly) when paid to a representative payee on behalf of a beneficiary who is a member of an Aid to Families with Dependent Children (AFDC) assistance unit. We are clarifying existing policy to state that we do not consider it inappropriate for a representative payee to make the benefit payments available to the AFDC assistance unit.

EFFECTIVE DATES: These amendments are effective August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 965-1769.

SUPPLEMENTARY INFORMATION: On August 22, 1988, we published proposed rules intended to provide a needed clarification of our policy concerning the treatment of all title II benefits (retroactive lump-sum and monthly) when paid to a representative payee on behalf of a beneficiary who is a member of an AFDC assistance unit by stating that we do not consider it inappropriate for a representative payee to make the benefit payments available to the AFDC assistance unit (53 FR 31886-31888). We received one comment on the proposed rules. This comment was from a State agency and agreed with the proposed rules.

Section 402(a)(17) of the Social Security Act (the Act), which was amended by section 2304 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), provides that when a person in an AFDC assistance unit receives an amount of income that, together with other countable income in the month of receipt not excluded under section 402(a)(8) of the Act, exceeds the State's standard of need, the assistance unit is ineligible for AFDC for a prescribed period of time. This period (in months) is determined by dividing the total of the lump-sum and other countable income received in the month by the State's monthly needs standard applicable to the family unit. The Senate Committee on the Budget, in addressing this provision, specifically identified retroactive Social Security benefits as the kind of lump-sum payments that should be considered available to meet the ongoing needs of an AFDC family (Senate Rep. No. 97-139, 97th Cong., 1st Sess. (1981) at p. 504, printed in (1981) U.S. Code Cong. and Admin. News 771.)

Section 402(a)(38) of the Act, as amended by section 2640 of the Deficit Reduction Act of 1984 (Pub. L. 98-369), generally requires that parents and brothers and sisters of a dependent child who are living in the same household as the dependent child and who meet the age and deprivation requirements must also be included in the assistance unit. Thus, it is no longer possible, as under prior law, for a caretaker relative to exclude a potentially eligible child who is, or will be, receiving other income (e.g., title II benefits) from the AFDC assistance unit.

AFDC interim final regulations published on September 10, 1984, at 49 FR 35586 provide that income and resources of all the individuals required to be included in the assistance unit must be considered in determining eligibility and payment for the assistance unit. In this connection, the statute specifically provides for the inclusion of title II benefits, notwithstanding the authority for payment of such benefits to representative payees which is found in section 205(j). Under the AFDC policy, when title II benefits are paid to a representative payee on behalf of a member of the assistance unit and the payee lives in the same household as the assistance unit, the title II benefits must be counted as income. When the representative payee does not live in the household, the title II benefits are included only to the extent that the payee makes them available for the support of the beneficiary. This is consistent with our permitting the benefits to be used for other members of the unit.

Because of the above changes in the Act, we are revising 20 CFR 404.2040, which prescribes the use of benefit payments by a representative payee, by adding a paragraph to this section that covers our policy concerning the treatment of all title II benefits (retroactive lump-sum and monthly) when paid to a representative payee on behalf of an AFDC recipient. We are clarifying existing policy by stating that we do not consider it inappropriate for a representative payee to make the benefit payments available to the AFDC assistance unit. In addition, we are also making a technical revision to 20 CFR 404.2045 to reflect this clarification.

Finally, we are also revising 20 CFR 404.2010(b)(6) and 20 CFR 416.610(b)(3) to provide that we will make direct payments to a beneficiary under age 18 if the beneficiary is within 7 months of attaining age 18 and is initially filing an application for benefits. This proposed revision extends to 7 months the 4-month period in our current regulations to be consistent with the program policy which permits direct payment to a child beneficiary within 7 months of age 18 when an initial claim is filed. This change is unrelated to the above-described provisions regarding the treatment of title II benefits.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order No. 12291 because it will result in negligible administrative costs or savings. It has no affect on the amount of benefit payments of existing operating procedures under the Old-Age, Survivors and Disability Insurance program. The provision for direct payment to beneficiaries under age 18 will have no cost impact. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because these rules only affect

individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

Thee final regulations impose no additional reporting/recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insuarance; 13.803 Social Security—Retirement Insurance; 13.804 Social Security—Survivors Insurance; 13.807 Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, Survivors, Disability insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental Security Income (SSI).

Dated: April 5, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: August 4, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart U of part 404 and subpart F of part 416 of 20 CFR chapter III are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

1. The authority citation for subpart U continues to read as follows:

Authority: Secs. 205 (a), (j), and (k), and 1102 of the Social Security Act; 42 U.S.C. 405 (a), (j), (k), and 1302.

§ 404.2010 [Amended]

2. Section 404.2010 is amended by changing "4" to "7" in paragraph (b)(6).

3. Paragraph (a) of § 404.2040 is revised to read as follows:

§ 404.2040 Use of benefit payments.

(a) *Current maintenance.* (1) We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

Example: An aged beneficiary is entitled to a monthly Social Security benefit of $400. Her son, who is her payee, disburses her benefits in the following manner:

Rent and utilities	$200
Medical	25
Food	60
Clothing (coat)	55
Savings	30
Miscellaneous	30

The above expenditures would represent proper disbursements on behalf of the beneficiary.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, if a beneficiary is a member of an Aid to Families With Dependent Children (AFDC) assistance unit, we do not consider it inappropriate for a representative payee to make the benefit payments available to the AFDC assistance unit.

* * * * *

4. Section 404.2045 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 404.2045 Conservation and investment of benefit payments.

(a) *General.* After the representative payee has used benefit payments consistent with the guidelines in this subpart (see § 404.2040 regarding use of benefits), any remaining amount shall be conserved or invested on behalf of the beneficiary. * * *

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for subpart F continues to read as follows:

Authority: Secs. 1102 and 1631 (a)(2) and (d)(1) of the Social Security Act; 42 U.S.C. 1302 and 1383 (a)(2) and (d)(1).

§ 416.610 [Amended]

2. Section 416.610 is amended by changing "4" to "7" in paragraph (b)(3).

[FR Doc. 89-20089 Filed 8-25-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 172

[DoD Instruction 7310.1]

Disposition of Proceeds From DoD Sales of Surplus Personal Property

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part issues a final rule on expanded instruction on the collection and disposition of payments received in connection with DoD sales of surplus property and Administrative Service Act of 1949. The issuance includes new guidance on term bids, use of credit cards, and expedited return of negotiable instruments to losing bidders. It also contains expanded guidance on the form of payment required in support of bids and final settlement.

EFFECTIVE DATE: July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Melburn, Office of the Comptroller, DoD, Room 3A882, the Pentagon, Washington, DC 20301-1100, telephone (202) 697-3135.

SUPPLEMENTARY INFORMATION: All comments received on the proposed rule were considered in the issuance of the final rule.

List of Subjects in 32 CFR Part 172

Defense contracts, Government property management.

Accordingly, title 32, subchapter E, is amended to add part 172 to read as follows:

PART 172—DISPOSITION OF PROCEEDS FROM DOD SALES OF SURPLUS PERSONAL PROPERTY

Sec.
172.1 Purpose.
172.2 Applicability and scope.
172.3 Policy.
172.4 Responsibilities.
172.5 Procedures.
172.6 Information requirements.

Appendix A—Efforts and Costs Associated With the Disposal of Recyclable Material

Appendix B—Disposition of Amounts Collected From Successful Bidders

Authority: 40 U.S.C. 484 and 485, 10 U.S.C. 2577.

§ 172.1 Purpose.

This document provides revised and expanded instructions on the collection and disposition of cash and cash equivalents received by the DoD Components for the DoD sale of surplus personal property.

§ 172.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS) and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, and DoD Field Activities (hereafter referred to collectively as "DoD Components").

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(b) Applies to the proceeds resulting from sales made under authority of Public Law 152 and to the following:

(1) Personal property governed by DoD 4160.21–M.

(2) Surplus Government-owned personal property in the possession of contractors, as described in FAR subpart 45.6.

(3) Recyclable material governed by 10 U.S.C. 2577. Such materials would otherwise be sold as scrap or discarded as waste, but are capable of being reused after undergoing some type of physical or chemical processing. The recycling of hazardous materials or hazardous waste shall be accomplished with due recognition of the types of materials being processed and the applicable regulation governing the handling and disposal of such materials. Qualified recyclable materials do not include the following:

(i) Precious metal-bearing scrap and those items that may be used again for their original purposes or functions without any special processing; e.g., used vehicles, vehicle or machine parts, bottles (not scrap glass), electrical components, and unopened containers of oil or solvent.

(ii) Ships, planes, or weapons that must undergo demilitarization or mutilation before sale.

(iii) Scrap generated from DoD industrial fund (IF) operations that has been routinely sold with the proceeds being used to offset customer costs.

(iv) Bones, fats, and meat trimmings generated by a commissary store or exchange.

§ 172.3 Policy.

(a) Cash or cash equivalents in the prescribed amounts shall accompany bid deposits for a bid to be considered responsive. Similarly, cash or cash equivalents for the total sales price shall be received by the DoD Components or, in authorized cases, by contractors before the transfer of physical possession to the successful bidder.

(b) Amounts collected by the DoD Components in connection with the sale of excess and surplus property shall be deposited promptly to the U.S. Treasury accounts prescribed in accordance with this instruction. The use of suspense accounts shall be minimal. If the account, ultimately to be credited with the proceeds of a sale, can be determined reasonably at the time funds are collected, the deposit shall be made immediately to that account.

(c) The Secretary of each Military Department shall establish qualified recycling programs. The effort associated with the collecting, processing and selling of recyclable material is in appendix A to this part.

(1) Proceeds from the sale of recyclable material shall be used to reimburse installation-level costs incurred in operation of the recyclable program.

(2) After reimbursement of the cost incurred by the installation to operate the recycling program, installation commanders may use up to 50 percent of remaining sale proceeds for pollution abatement, energy conservation, and occupational safety and health activities. A project may not be carried out for an amount greater than 50 percent of the amount established by law as the maximum amount for a minor construction project.

(3) Any sale proceeds remaining after paragraphs (c)(1) and (2) of this section may be transferred to installation morale or welfare activities.

§ 172.4 Responsibilities.

The *Heads of DoD Components* that sell surplus personal property shall implement the procedures prescribed in this part for the disposition of cash and cash equivalents received in connection with such sales.

§ 172.5 Procedures.

(a) *Required bid deposits.* When a sale conducted by a DoD Component provides for bid deposit with subsequent removal, the following procedures shall apply:

(1) *Term bid.* This type of bid deposit is applicable when the sale involves the purchase of scrap or disposable material that will be generated over time with periodic removal by the successful bidder. The amount of the bid deposit required to accompany such bids is the average estimated quantity of such material to be generated during a 3 month period multiplied by 20 percent of the bid price. The calculation is illustrated, as follows:

Estimated quantity of material to be generated each quarter (pounds).	3,000
Bid price—$1.00 per pound...	× $1.00
Subtotal	$3,000
20 percent of bid price	20
Amount to accompany bid.	$600

(2) *Other than term bid.* With the exception of term bids, payment in the amount of 20 percent of the bid shall accompany the bid.

(b) *Payment terms.* When a sale conducted by a DoD Component provides for immediate pickup, the entire amount of the sales price shall be collected from the buyer at the conclusion of the sale. If the sale provides for a bid deposit, the balance of the bid price shall be paid before removal of the property.

(c) *Form of payment*—(1) *Cash and certified checks.* When a sale is conducted by a DoD Component, cash or its equivalent shall be collected for bid deposits and for remaining amounts due. Guaranteed negotiable instruments, such as cashiers checks, certified checks, travelers checks, bank drafts, or postal money orders are acceptable as a cash equivalent.

(2) *Personal checks.* Personal checks may be accepted by a DoD Component only when a performance bond or a bank letter of credit is on hand that will cover the amount due. If the check is dishonored, amounts due shall be collected from the issuer of the performance bond or letter of credit.

(i) If a bidder intends to use a bond or letter of credit without an accompanying personal check, the claim against the performance bond or letter of credit shall be made for any amounts due.

(ii) If personal checks are used, the bond or letter of credit shall be returned intact after the applicable personal checks are honored, unless other instructions have been received from the bidder.

(2) *Credit cards.* Approved credit cards may be accepted by a DoD Component for payment.

(i) Before initiating any credit card transactions, the selling DoD Component shall enter into an agreement with a network commercial bank. Currently, the Treasury has approved the use of "Master Card" and "Visa" charge cards. Changes or additions to approved credit cards are announced in Comptroller of the Department of Defense (C, DoD) memoranda or in changes to the TFM. Except for equipment and communication costs, the Treasury pays any fees normally charged to sellers. If the Treasury policy of paying such charges is changed, any charges for the processing of approved credit card transactions shall be assessed to the buyer.

(ii) If a credit card is used for the bid deposit and authorization is declined, the bid shall be rejected as nonresponsive and other bidders considered.

(iii) Approval for charges against credit cards shall be processed as follows:

(A) The credit card presented shall be passed through the DoD installation's credit card swiper. The swiper is connected electronically with the network commercial bank selected by the DoD Component, and keys are provided to enter the proposed charge amount. If the charge is approved, the swiper will provide an approval number that shall be recorded on the charge slip.

Note: A swiper is an electronic device that is used to capture the magentic information contained on a credit card and transmit it to the network commercial bank for validation and authorization of a sale. The information captured normally includes the account number, issuing bank, date of expiration of the card, and any credit restrictions that may apply.

(B) The bidder shall sign a standard credit card charge form at the sale contracting office. A copy of this form shall be returned to the card holder at that time. A copy of the charge slip shall be retained by the selling DoD activity as a record of the sale. On the following business day, the installation finance and accounting officer or the activity providing accounting support shall submit the signed credit card forms with a supporting cover sheet showing the total charges to the network commercial bank. Accounting control must be maintained over such in-transit deposits.

(C) On receipt of the credit card charge forms, the network commercial bank shall charge the bidder's credit card account and deposit the funds to the Treasury general account. The network commercial bank also is required to forward a copy of the deposit slip to the DoD installation making the sale within 1 business day. On receipt of the deposit slip, the in-transit account shall be cleared and appropriate accounts credited following the procedures in paragraph (d) of this section:

(iv) If a contractor's bid is provided by message, mail, or telephone to the U.S. Government using a credit card instead of other forms of payment, the following information is required:

(A) Account number.

(B) Bidders name, as it appears on the credit card.

(C) Date of expiration of the card.

(D) Issuing bank.

(E) Type of card.

Any additional cost incurred by the Department of Defense in connection with the use of the charge card, such as telephone calls to obtain approval from the network bank, shall be billed to the purchaser as an additive charge.

(d) *Disposition of proceeds.* (1) Proceeds from the sale of surplus personal property shall be deposited by the collecting DoD Component promptly to the U.S. Treasury accounts prescribed in appendix B to this part. The use of suspense accounts shall be minimal. If the account ultimately to be credited with the proceeds of a sale can be determined reasonably at the time the funds are collected, the deposit shall be made immediately to that account.

(2) See paragraph (f) of this section for special instructions on the processing of proceeds resulting from the sale of recyclable material.

(e) *Return of bid deposits to unsuccessful bidders.* (1) Cash collected from unsuccessful bidders by a DoD Component shall be deposited to account X6875, "Suspense," and a check shall be drawn on that account to reimburse unsuccessful bidders.

(2) Normally, noncash bid deposits shall be returned to unsuccessful bidders by DoD Components through the mail. However, when a bidder has requested expedited return and has provided the name of a carrier and a charge account number, the designated carrier shall be called to pick up the deposit with the explicit condition that applicable carrier costs will be charged to the bidder's account.

(f) *Sales of recyclable material.* The efforts associated with collection and processing of recyclable material are reflected in appendix A to this part. The following transactions for others (TFO) procedures apply:

(1) Proceeds from the sale of recyclable material shall be deposited in F3875, "Budget Clearing Account (Suspense)." The deposit to F3875 shall identify the fiscal station and the name of the installation (use the full name and do not abbreviate) that is to receive the proceeds. Deposits that do not provide the necessary information shall be referred formally to the property disposal cashier for the required information.

(2) The Military Department's finance and accounting office receiving the sales proceeds shall mail a copy of the cash collection voucher to the fiscal station shown on the collection voucher. This advance copy shall be used by the fiscal station to record the collection of proceeds to its account and shall be used for followup purposes, as necessary. The copy received through the financial network shall be used to clear the undistributed collection. These vouchers shall be mailed in the weekly TFO cycle.

(3) The Military Department's finance and accounting office shall:

(i) Report weekly transactions to the responsible fiscal station cited on the collection voucher.

(ii) Report the collections within the same month in the "Statement of Transactions" to the Treasury.

(g) *Contractor sales of surplus Government-furnished property.* (1) DFARS § 245.610 provides overall direction for crediting proceeds from contractor conducted sales of surplus Government furnished property. Paragraph (g)(5) of this section provides the procedures that shall be used to ensure proper accounting for such proceeds.

(2) The contractor making the sale may follow normal company policy on bid deposits and form of payment. However, any loss associated with dishonored payment shall be the contractor's responsibility.

(3) The plant clearance officer (PLCO) is responsible for notifying the appropriate accounting office of the amounts collected by the contractor. The PLCO shall also notify the accounting office whether such collections:

(i) Represent an increase in the dollar value of the applicable contract(s).

(ii) Were made instead of disbursements on the applicable contract(s).

(iii) Were returned to miscellaneous receipt account 972651, "Sale of Scrap and Salvage, Materials, Defense."

(4) The accounting office for the contract is identified in the accounting classification code. See DoD 7220.9–M, chapter 17 for additional information.

(5) The accounting office shall prepare the source documents necessary to account properly for the transaction. The value of applicable Government property general-ledger-asset accounts shall be reduced for each alternative set forth in paragraph (g)(3) of this section. Additionally, for alternatives (addressed in paragraph (g)(3)(i) or (g)(3)(ii) of this section, an accounting entry shall be made to reflect the creation of reimbursable obligational authority and the use of such authority.

§ 172.6 Information requirements.

The reports cited in §§ 172.5(f)(3) (i) and (ii) of this part are exempt from licensing in accordance with paragraph E.4g. of DoD 7750.5–M.

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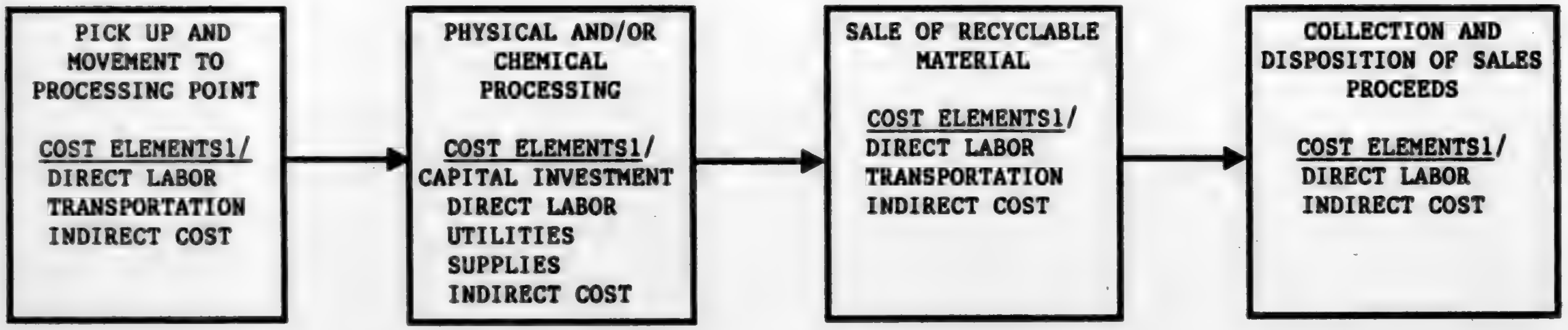
APPENDIX A -

EFFORTS AND COSTS ASSOCIATED WITH THE DISPOSAL OF RECYCLABLE MATERIAL


PICK UP AND MOVEMENT TO PROCESSING POINT
COST ELEMENTS1/
DIRECT LABOR
TRANSPORTATION
INDIRECT COST
PHYSICAL AND/OR CHEMICAL PROCESSING
COST ELEMENTS1/
CAPITAL INVESTMENT
DIRECT LABOR
UTILITIES
SUPPLIES
INDIRECT COST
SALE OF RECYCLABLE MATERIAL
COST ELEMENTS1/
DIRECT LABOR
TRANSPORTATION
INDIRECT COST
COLLECTION AND DISPOSITION OF SALES PROCEEDS
COST ELEMENTS1/
DIRECT LABOR
INDIRECT COST

1/ The proceeds of sales of DoD-purchased materials, labor, and assets shall be recouped on the basis of a sale to "Another Federal Agency," as prescribed in DoD 7220.9-M, chapter 26 (reference (h)). This procedure excludes capital investment costs. Such costs may be paid from recyclable material sales proceeds in their entirety. Therefore, amortization of capital items is not applicable.

APPENDIX B - DISPOSITION OF AMOUNTS COLLECTED FROM SUCCESSFUL BIDDERS

Type of Property	Disposition of:	
	(20%) Bid Deposit	(80%) Remaining Balance
1. Scrap turned in by IF activities.	IF	IF
2. Usable personal property purchased by and turned in by IF activities.	IF	IF
3. Property purchased with funds from trust fund _X8420, "Surcharge Collections, Sales of Commissary Stores."	__X8420	__X8420
4. Automatic data processing equipment owned by the General Services Administration (GSA) and leased to the Department of Defense.	__F3875, Budget Clearing Account (Suspense).	__F3875. On receipt of the entire amount due from the bidder, a check shall be drawn on the suspense account and forwarded to the GSA at the following address: General Services Administration Office of Finance (WBCRC) Collections and Securities 7th and I Streets, NW, Washington, D.C. 20407.
5. Pre Military Assistance Program (MAP) merger (Pre fiscal (FY) 1982) property issued under the MAP and returned as no longer needed, and all MAP-funded administrative property belonging to the Security Assistance Offices.	11__1080, "Military Assistance, Funds Appropriated to the President."	11__1080

DISPOSITION OF AMOUNTS COLLECTED FROM SUCCESSFUL BIDDERS - CONTINUED

Type of Property	Disposition of:	
	(20%) Bid Deposit	(80%) Remaining Balance
6. Coast Guard property under the physical control of the Coast Guard at the time of sale.	__F3875	__F3875. On receipt of the entire amount due from the bidder, a check shall be drawn on the suspense account and forwarded to the Coast Guard at the following address: Commandant U.S. Coast Guard (GFAC) Washington, D.C. 20593
7. Property owned by nonappropriated fund instrumentalities, excluding garbage suitable for animal consumption that is disposed of under a multiple-pickup contract.	__X6875, "Suspense"	__X6875. On receipt of the entire amount due from the bidder, a check shall be drawn on the suspense account and forwarded to the applicable instrumentality.
8. Recyclable material. NOTE 1/ 10 U.S.C. 2577(reference (e)) limits the amounts which can be held in F3875 at the end of any FY resulting from the program to $2 million. Amounts in excess of $2 million are to be transferred to "Miscellaneous Receipts of the Treasury." This Instruction provides for immediate distribution of all sales proceeds received from the recyclable program.	__F3875 1/	__F3875.1/ On receipt of the entire amount due from the bidder, deposit total proceeds to the accounts designated by the DoD military installation that gave the material up for disposal.

DISPOSITION OF AMOUNTS COLLECTED FROM SUCCESSFUL BIDDERS - CONTINUED

Type of Property	Disposition of:	
	(20%) Bid Deposit	(80%) Remaining Balance
9. Lost, abandoned, or unclaimed privately owned personal property.	972651, "Sale of Scrap and Salvage Materials, Defense."	__X6001, "Proceeds of Sales of Lost, Abandoned or Unclaimed Personal Property." The owner(s) of lost, abandoned, or unclaimed property may claim the net proceeds from sale of that property within 5 years of the date of the sale by providing proof of ownership to the government. After 5 years from the date of the sale, any unclaimed net proceeds shall be transferred from __X6001 to general fund miscellaneous receipt account __1060, "Forfeitures of Unclaimed Money and Property."
10. Property owned by a country or international organization.	Operation and maintenance appropriation of the DoD Component that sells the property. (This is reimbursement for selling expenses.)	__X6875. On receipt of the entire amount due from the bidder, a check for 80% of the sales price shall be drawn on the suspense account and forwarded to the applicable foreign country or international organization.
11. Bones, fats, and meat trimmings generated by a commissary store.	Stock Fund.	Stock Fund.
12. Government furnished property sold by contractors. NOTE: 1/ See subsection E.7. of the Instruction.	1/	1/

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DISPOSITION OF AMOUNTS COLLECTED FROM SUCCESSFUL BIDDERS - CONTINUED

Type of Property	Disposition of:	
	(20%) Bid Deposit	(80%) Remaining Balance
13. All other property	972651	972651

Dated: August 23, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR. Doc. 89–20198 Filed 8–25–89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–89–24]

Drawbridge Operation; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary Rule.

SUMMARY: At the request of the Town of Jupiter, the Coast Guard is temporarily changing the regulations governing the Indiantown Road (SR 706) drawbridge in Palm Beach County by scheduling openings at 30 minute intervals from 7 a.m. to 6 p.m. on weekdays. This temporary deviation from the regulations is being made in order to evaluate suggested changes to the drawbridge operation requirements due to increases in both navigational and vehicular traffic This action may accommodate the increasing needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATE: These temporary regulations become effective on July 17, 1989 and terminate on September 15, 1989.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor, of the Brickell Plaza Federal Building, 909 SE 1st Ave., Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received, the overall effect of this temporary regulation change and determine a course of future action on this proposal.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander D.G. Dickman, project attorney.

Discussion of Temporary Regulations

The bridge is presently opened on signal, except that from November 1 through April 30 from 7 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. This change which limits openings to the hour and half hour from 7 a.m. to 6 p.m. Monday through Friday is intended to provide a longer interval between openings which may improve vehicle traffic flow. It is recognized that limiting the frequency of openings may increase their duration. The rule is being implemented on a temporary basis to study its effect on navigation and vehicular traffic.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

2. Paragraph (q) of § 117.261 is revised to read as follows for the period July 17, 1989 through September 15, 1989. Because this is a temporary rule, this revision will not appear in the Code of Federal Regulations.

§ 117.261 Atlantic Intracoastal Waterway, St. Mary's River to Key Largo.

* * * * *

(q) The draw of the Indiantown Road (SR 706) bridge, mile 1006.2 at Jupiter shall open on signal, except that from November 1 through April 30 from 7 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour and 40 minutes after the hour. From July 17, through September 15, 1989, Monday through Friday except federal holidays,

from 7 a.m. to 6 p.m., the draw need open only on the hour and half hour.

* * * * *

Dated: August 14, 1989.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 89–20146 Filed 8–25–89; 8:45 am]

BILLING CODE 4910-14-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM89–3; Order No. 839]

Rules of Practice and Procedure Relating to Documentation of Statistical and Volume Evidence

Issued: August 22, 1989.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its rules of practice requiring improved documentation of econometric studies offered in evidence (Rule 31(k)(2)), improved documentation of volume estimates offered in evidence by the Postal Service (Rule 54(j)), and periodic reports by the Postal Service of certain data relating to volumes (Rule 102(a)).

EFFECTIVE DATE: These amendments shall become effective August 28, 1989.

ADDRESS: Correspondence relating to this Notice of Rulemaking should be sent to Charles L. Clapp, Secretary of the Commission, 1333 Street, NW., Washington DC 20268 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 Street, NW., Washington, DC 20268 (telephone: 202/789–6840).

SUPPLEMENTARY INFORMATION: The Commission issued its First Notice in this docket on March 1, 1989 (54 FR 9848–52, March 8, 1989). There we proposed amendments to 39 CFR 3001.31(k)(2), which governs the statistical presentations of all parties to our proceedings, 39 CFR 3001.54(j), which governs the Postal Service's presentation of projected volumes in our proceedings, and 39 CFR 3001.102(b), which governs periodic data reporting requirements to the Commission. These proposals were prompted by a perceived need by the Commission and numerous parties for clearer and more specific standards for initial documentation of econometric studies in our proceedings, particularly as they are employed in the increasingly complex demand analyses submitted by the Postal Service and others.

In response to comments on our First Notice, we issued a Second Notice of proposed rulemaking (54 FR 22317–24 (May 23, 1989)) in which we significantly revised our proposals concerning documentation of econometric studies. In this Notice, we promulgated final rules concerning documentation of econometric studies. Our final rules reflect further modest revisions to proposed rules 31(k)(2), 54(j), and 102(a), in response to comments received on our Second Notice.

Responding to our First Notice, several parties proposed amendments to our documentation standards governing various kinds of non-econometric evidence. Taken together they would involve major changes to a wide range of documentation standards. Thorough consideration of those changes would have delayed implementation of our proposals in this docket. For that reason we severed them from this docket in our Second Notice. Further action on these proposals is under consideration.

The Postal Service generally approved of the revisions that we made to our proposals in our Second Notice. They continued to express reservations, however, about several proposed requirements.

As modified in our Second Notice, proposed rule 31(k)(2)(iii)(d) requires, among other things, that parties provide reasons for rejecting alternative econometric models whose computed results influenced the choice of their preferred model. 54 FR 22320, 22324. It is the Postal Service's view that such statements would only occasionally be of interest to opposing parties, and, therefore, should only be required if opposing parties request them. Postal Service Comments on Second Notice at 4–5. We do not agree that it is excessive to make a statement of reasons for rejecting alternative models mandatory. This requirement would apply only to rejected alternatives that influenced the selection of a perferred model. Only very brief statements need be given to comply with the rule. We believe that interrogatories from opposing parties concerning reasons for rejecting such alternatives would be almost inevitable, absent the requirement. Therefore, we believe that providing such statements at the outset will speed discovery without adding signficantly to the documentation burden.

As modified in our Second Notice, proposed rule 31(k)(2)(iii)(e) requires that each econometric technique incorporated into an evidentiary submission either be referenced to a standard text or supported by a description and analysis that is sufficient for *ad hoc* technical evaluation. In its comments on our First Notice, the Postal Service expressed concern that this referencing requirement is too broad. In our Second Notice, we responded by explaining that it is intended to apply only to techniques used for fitting equations to data. We illustrated the scope of this requirement as applied to demand studies with citations to Appendix H of our Opinion in Docket No. R87–1. 54 FR 22319.

Commenting on our Second Notice, the Postal Service agrees that, with this guidance, the referencing requirement is manageable with respect to demand analysis. It maintains, nevetheless, that the requirement remains unmanageably broad as applied to other areas where econometric techniques are used. It warns that it will be difficult for a party submitting other forms of econometric evidence to recognize where a reference is required. It recommends that a reference not be required unless requested, to prevent disputes over whether the submitting party complied with the rule. Postal Service Comments on Second Notice at 3. We believe that it is best to keep the referencing requirement in mandatory form to avoid the delay that would otherwise occur. We are confident that techniques for fitting equations to data will not be substantially more numerous or more difficult for a submitting party to recognize in costing analyses that they are in demand studies. Presiding Officers will, however, be encouraged to apply a rule of reason to complaints of noncompliance, and cut motion practice short where an omitted reference is promptly provided.

Proposed rules 54(j)(5)(ii) and (iii) require that the Postal Service's before- and after-rates volume forecast extend four quarters beyond the test year. The Postal Service continues to oppose this requirement.

In our Second Notice we expressed our conviction that how a predictive model behaves if it is incrementally extended beyond the test year has a bearing on the reasonableness of the test-year prediction. The extra four quarters should make implausible dynamic behavior affecting the test year more readily apparent. 54 FR 22321. Econometric models with lagged variables and other time-dependent features, such as those of Postal Service witness Tolley, may have unsuspected dynamic properties. Extending the forecasts enhances our prospects of recognizing explosive growth, unstable oscillations and implausible reversals of direction that may be implied by the dynamic characteristics of an econometric model. These properties may not be apparent from forecasts for the close-in period, especially where price has transition effects. Requiring forecasts for an additional four quarters will enhance our ability to identify any such properties, free of transition effects.

The Postal Service questions whether its underestimation of Bulk Rate Regular Volumes in Docket No. R84–1 provides an appropriate illustration of the potential usefulness of this requirement. It argues that we were able to identify this underestimation because forecasted interim volumes could be compared with historical volumes while that docket was still pending. It points out that this would not be possible with post test-year forecasts. It also argues that it was able to identify anomalous forecasting properties of Dr. Hausman's econometric model for Bulk Rate Regular mail in Docket No. R87–1 by careful scrutiny of the model structure, without the aid of any post test-year forecasts based upon his model. Postal Service Comments on Second Notice at 8.

We grant that being able to compare predicted with historical results, as well as careful inspection of an econometric model, can be helpful in identifying anomalous forecast volume trends affecting the test year. Conceding this, however, does not detract from the fact that it would have been easier to identify both the unreasonable test year trends forecast by witness Tolley, and those implied by witness Hausman's model, if they had provided forecasts for several adjecent post test-year quarters.

The Postal Service argues that post test-year forecasts would shed no light on its test year forecasts, because if a mechanical extrapolation from its demand model were to yield an unreasonable post test-year forecast, its witnesses would modify it through judgmental adjustments. *Id.* This may be true, but, especially under our amended documentation standards, both the unreasonable extrapolation and the judgmental adjustment of it would be readily identifiable. So documented, the post test-year forecast would still provide useful notice to the parties that the result warrants further investigation or explanation.

The Postal Service questions our rationale that post test-year forecasts are useful because they show the results of the forecasting method free of transition affects. It contends that if we were in earnest about the need to evaluate a forecast, free of transition effects, our current test-year rule would require that the test year consist of the "first four quarters after new rates took effect." Postal Service Comments on Second Notice at 7.

Such an argument assumes that because we think it is useful to evaluate forecast results free of transition effects, this concern must override all others that have gone into the fashioning of our current test year rule. There are myriad reasons that we have not adopted such a test year definition, and myriad reasons that the Postal Service would doubtless object to it if we had. One is the fact that it would require the Postal Service to commit itself in advance of filing to a date certain for implementing its requested rates. Others are that it would ignore our need to have a fiscal-year test year, for accounting purposes, and our need to limit the range of allowable test years, so that they will not be too prospective, but will be reasonably representative of the period throughout which requested rates are actually in effect. See Notice of Proposed Rulemaking in Docket No. RM82–3, issued August 1, 1983 (48 FR 35914 (August 8, 1983)) and Order No. 529 (48 FR 50715 (November 3, 1983)). The usefulness of viewing forecasts free of transition effects must be balanced against these considerations. We think that it is much more reasonable to employ the modest requirements of proposed rules 54(j)(5) (ii) and (iii) to help us evaluate volume forecasts free of transition effects, than to rewrite our basic test-year rule in a manner that ignores its other objectives.

In our Second Notice, we discussed the Consumer Advocate's (OCA's) request that we revise our proposed rule 54(j)(5)(i) to require the Postal Service to document its econometric demand study in sufficient detail to allow parties to replicate it regardless of whether they have the exact software application that the Postal Service used. We said that we agreed that such detail should be provided, but that our proposed rule 54(j)(7)(i) already required such detail. 54 FR 22325. Clarification of these remarks is in order.

Proposed rule 54(j)(7)(i) requires the Postal Service to provide all "input files and programs needed to replicate" its econometric demand study. Our remarks in our Second Notice characterized proposed rule 54(j)(7)(i) as being more prescriptive than it actually is. It does not prescribe that the Postal Service provide documentation in so much detail that any party with standard software can replicate its demand study. It requires that computer materials sufficient to replicate the study be provided. This should be read to mean sufficient under the circumstances. The most relevant circumstances would ordinarily be the degree of detailed documentation that the Postal Service has included with its demand study. Under the rule, the Postal Service may provide any combination of computer materials and documentation of its model that is sufficient to allow parties of reasonable skill and expertise to replicate its model.

If, for example, the Postal Service has used non-standard software programs to develop its demand study, it may satisfy the rule either by providing those non-standard programs (and the documentation necessary to run them), or by providing documentation of its method that is thorough enough to allow parties to replicate its demand study without those non-standard programs. Of course, custom-written software must always be provided and documented under rule 31(k)(3). For purposes of rule 54(j)(7)(i), we will assume that parties have access to and sufficient skill to implement any standard statistical software packages in general commercial use. We will not, however, assume that parties have independently acquired access to, or the skill to use, unusual software capability not in general commercial use that the Postal Service might have employed to develop its demand model.

In our Second Notice, we revised the ongoing reporting requirements that we originally proposed for volume-related data. That revision took the form of proposed rule 102(a)(10), which would require that the Postal Service annually provide billing determinants from which price indices can be calculated. 54 FR 22322, 22324. The Postal Service has expressed its concern that current billing determinants for Express Mail, Priority Mail, and parcel post have commercial value that would cause competitive harm if regularly disclosed. It notes that in our recent Express Mail rulemaking, Docket No. RM88–2 (54 FR 25132, 25136–37 (June 13, 1989)), we acknowledged the commercial sensitivity of billing determinants for Express Mail by allowing it to file them one year late.

The Postal Service assumes that the one-year lag allowed there is one year from the time that non-competitive billing determinants are filed. See its proposed revised language for rule 102(a)(10) in footnote 1, at page 3 of its comments on our Second Notice. Our Express Mail rulemaking, however, allows the Postal Service to delay filing billing determinants up to one year from the time that the events occur. Nevertheless, we will revise our proposed rule 102(a)(10) to allow the Postal Service to file billing

determinants for its competitive services one year later than it files them for other services, consistent with its proposed revision of the rule. For purposes of rule 102(a)(10), regular reporting of billing determinants is more important than how current they are. For purposes of the proposed rules for expedited Express Mail hearings, it is more important to have current billing determinants.

In our Second Notice we added to our proposed rule 54(j)(6)(i) a requirement that the Postal Service present representative step-by-step derivations of its volume forecast from its econometric demand study for two major mail classes, and present any methodological departures from those representative derivations for remaining classes and subclasses. We did so in response to the OCA's suggestion that detailed derivations be presented for all classes and subclasses. *See* 54 FR 22319. The OCA asks us to reconsider our partial acceptance of his proposal. He argues that to present detailed derivations for all classes and subclasses would be very helpful and could be presented in only a few additional workpaper pages. As an illustration, he asserts that in Docket No. R87–1, such derivations for the three First-Class letter rate groups and the three third-class regular rate groups were presented in only two pages of Table 26 of Postal Service witness Tolley's Workpaper H. OCA Comments on Second Notice at 4.

It appears to us, however, that Table 26 omits some intermediate steps in the derivations of the forecasts for these mail categories. We remain concerned that to require step-by-step derivations for all classes and subclasses would require more documentation than is practical. We do agree with OCA, however, that additional documentation for the remaining classes and subclasses would be helpful. We are therefore adding to our final rule 54(j)(6)(i) a requirement that the Postal Service provide, at a minimum, summaries of derivations for remaining classes and subclasses of mail. Presentations at the level of detail comparable to witness Tolley's Table 26, referenced above, will be sufficient to satisfy the rule.

Responding to our First Notice, the OCA urged us to revise our proposed rule 31(k)(2)(iii)(h) to require that the party submitting an econometric model provide statistical tests of hypotheses concerning the functional form of the model, and the model's parameter constraints. In our Second Notice, we declined this suggestion, observing that functional forms are usually received hypotheses not capable of an econometric test. 54 FR 22323.

Commenting on our Second Notice, the OCA asks us to reconsider our rationale for declining his suggestion. He continues to assert that it would be appropriate to require hypothesis testing of a model's functional form and parameter constraints. He quotes an econometrics text that, he contends, confirms the value of testing functional forms to the designer of econometric models. He argues that requiring such tests would be an important means of documenting the judgmental selection of a model's functional form and its parameter constraints. OCA Comments on Second Notice at 3. We continue to adhere to the view that most aspects of the functional form of an econometric model are untestable. In applied econometrics, the functional forms and the identity of the variables in the model are regarded as received hypotheses. Testing is restricted to hypotheses about parameter values, the distribution of the errors, and other computed statistics. We are unaware of any generally-accepted statistical test of, for example, the log-log functional form that has been incorporated repeatedly in the submissions of the Postal Service and other parties in our rate proceedings. The passage from the text by Judge, *et al.*, that the OCA quotes at page 3 of his comments on our Second Notice, makes reference to Wald, likelihood ratio, Lagrange multiplier, and Hausman specification tests. None of these tests applies to the functional form of a model, as we understand them.

We should make a fundamental point about the OCA's suggestion that we neglected to make in our First Notice. He proposes that we insert in proposed rule 31(k)(2)(iii)(h) a partial list of subjects for required testing that includes functional forms and parameter constraints. Proposed rule 31(k)(2)(iii)(h) requires parties submitting econometric models to submit the results of all tests that they conduct, including those conducted for the purposes urged by the OCA. It was not our intent in proposing this rule to prescribe either the tests or the subjects of tests that parties must make. Our intent was merely to require full disclosure of whatever tests the parties undertake. In our view, the battery of statistical tests that is available to an econometrician is too large, and the suitability of any test is too dependent on the purpose for which it is applied, to make a rule prescribing the subjects for testing appropriate. For these reasons we decline to adopt the OCA's suggestion.

In our Second Notice, we decided to delete rule 31(k)(2)(iii)(j) from our proposed requirements for documenting econometric models. That rule would have required the submitting party to rerun its model with alterations suggested by others, where the suggested alterations were reasonably necessary to validate the model. The main use of the rule would have been to have sensitivity tests run to establish the robustness of the model. Despite its desirable purpose, the parties persuaded us that it would be difficult to implement, because there was likely to be excessive litigation over whether requests for alternative runs were reasonably necessary and nonburdensome. We concluded that with the improved documentation that our proposed rules would require, it would be more practical for opposing parties to make desired alternative runs of the model themselves. 54 FR 22320–21. With this reasoning we declined the suggestion of the Federal Trade Commission's Bureau of Economics (Bureau) that we require parties to submit unspecified sensitivity tests along with their models. We did, however, invite further discussion of specific suggestions as to how sensitivity tests might be required.

The Bureau responded by suggesting that we require parties to submit three kinds of sensitivity tests that it asserted "were frequently part of standard econometric practice and should not be too costly to perform," *i.e.*, deletion of variables, partitioning of data, and changing the form of variables. Bureau Comments of Second Notice at 6.

Even though these particular sensitivity tests are about as close as one might come to identifying standard tests, we are not confident that even they will be the best tests, or even meaningful tests, in all cases. We must concede that universally appropriate sensitivity tests cannot be identified in advance, considering the wide variety of models that might be submitted, and the wide variety of uses for which they might be submitted. Accordingly, we have decided not to adopt the Bureau's suggestion that we prescribe sensitivity tests in our rules.

In response to our First Notice, the Bureau suggested that we require the Postal Service to submit econometric analyses of the reliability of previous Postal Service models in predicting demand, and the reliability of its current model in predicting past changes in demand, using historical data. We indicated in our Second Notice that we agreed, in principle, that a track record is one of the best ways of assessing the reliability of a forecasting model, especially where judgmental "add factors" are a major component. But we expressed our skepticism that the Postal Service's models lend themselves to meaningful track record analysis, since, to the best of our knowledge, they are significantly revised each time they are implemented, and their implementations are few and intermittent. We nevertheless invited comment on more specifically framed proposals to require such analysis. 54 FR 22321–32.

In its response, the Bureau argues that a track record compiled from the Postal Service's models would still be meaningful despite the discontinuous implementation of those models. It reiterates its recommendation that the current model's specifications be applied to the circumstances of past implementations of the model, and that past models' specifications be applied to current circumstances. It asserts that such analysis would help us identify persistent biases, the effects of changes in specifications, which explanatory variables have been the most powerful predictors, and how accurate the Postal Service's forecasts have become over time. Bureau Comments on Second Notice at 7–8.

Up to now, the Postal Service has judgmentally adjusted the forecasts implied by its demand models so substantially that few generalizations about its underlying demand models could be drawn from a comparison of its adjusted forecasts. The Bureau, by contending that the exercises it recommends would provide meaningful comparisons of one model's forecasting properties with another, must have in mind comparing mechanically extrapolated forecasts from the various underlying demand models that the Postal Service has employed in past rate proceedings, rather than its judgmentally adjusted forecasts. It appears to us that even comparing unadjusted forecasts would be relatively uninformative. The disparity between the Postal Service's unadjusted results and known historical values is likely to be so large that meaningful generalizations as to their cause would be difficult to draw. Even is the Postal Service, in future proceedings, were to switch to forecasting methods that did not depend heavily on judgmental adjustments of the results of its econometrics, a number of rate cycles would be necessary before a meaningful track record could be compiled. For these reasons, we conclude that, at least in the near future, a rule making it mandatory for the Postal Service to present a track record analysis would not be productive.

Impact of changes. Pursuant to Executive Order 12291, the Commission finds that these amendments to our rules do not, individually or collectively, constitute a "major rule." They affect only rules of practice governing hearing procedures. Their economic impact will be negligible, including their impact on the costs or prices for consumers, individual industries, federal, state, or local government, agencies, or geographic regions. Additionally, these rule changes will have no measurable effect on competition, employment, investment, productivity, innovation, or on the employment, investment, productivity, innovation, or on the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

The above analysis that these rule changes do not constitute a major rule applies, as well, to the Regulatory Flexibility Act.

These rule changes do not contain policies with Federalism implications, and therefore do not warrant preparation of a Federalism assessment under E.O. 12612.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

Therefore, in consideration of the foregoing, part 3001, title 39, Code of Federal Regulations is amended as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–24, 3661, 3662, 84 Stat. 759–62,764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. In § 3001.31, the introductory text of paragraph (k)(2) and paragraphs (k)(2)(ii), (k)(2)(iii), and (k)(2)(iv) are revised to read as follows:

§ 3001.31 [Amended]

* * * * *

(k) * * *

(2) *Statistical studies.* All statistical studies offered in evidence in hearing proceedings or relied upon as support for other evidence shall include a comprehensive description of the assumptions made, the study plan utilized and the procedures undertaken. Where a computer analysis is employed to obtain the result of a statistical study, all of the submissions required by § 3001.31(k)(3) shall be furnished, upon request. In addition, for each of the following types of statistical studies, the indicated information should be furnished:

* * * * *

(ii) *Experimental analyses. (a)* A complete description of the experimental design, including a specification of the controlled conditions and how the controls were realized;

(b) A complete description of the methods of making observations and the adjustments, if any, to observed data.

(iii) *Econometric Studies. (a)* A presentation of the economic theory underlying the study;

(b) A complete description of the econometric model(s) and the reasons for each major assumption and specification;

(c) The definition of the variables selected and the justification for their selection;

(d) For any alternative model whose computed econometric results influenced the choice of the preferred model, a statement of the reasons for rejecting that alternative, an identification of any differences between that alternative and the preferred model with respect to variable definitions, equation forms, data, or estimation methods, and, upon request, the computed econometric results for that alternative;

(e) A reference to a detailed description in a text, manual, or technical journal for every econometric technique used in the estimation process and the reasons for selecting the technique, or, in the alternative, a description and analysis of the technique that is sufficient for a technical evaluation;

(f) Summary descriptions and source citations for all input data and, upon request, a complete listing of the data. Complete descriptions of any alterations or transformations made to the data as received from the original sources, and the reasons for making the alterations;

(*g*) A complete report of the econometric results including, where applicable:

(*1*) coefficient estimates

(*2*) standard errors and t-values,

(*3*) goodness-of-fit statistics,

(*4*) other appropriate test statistics,

(*5*) the variance/covariance matrix of the estimates,

(*6*) computed residuals for results computed from samples composed of fewer than 250 observations, and, upon request, other computed residuals;

(*h*) Descriptions of all statistical tests of hypotheses and the results of such tests;

(iv) *All other studies involving statistical methodology.* (*a*) The formula used for statistical estimates;

(*b*) The standard errors of each component estimated;

(*c*) Test statistics and the description of statistical tests and all related computations, and final results; and

(*d*) Summary descriptions of input data, and upon request the actual input data shall be made available at the offices of the Commission.

* * * * *

3. In § 3001.54, paragraphs (j)(5), (j)(6), and (j)(7) are revised to read as follows:

§ 3001.54 [Amended]

* * * * *

(j) * * *

(5) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request, for each class and subclass of mail and postal service, the following:

(i) An econometric demand study relating postal volumes to their economic and noneconomic determinants including postal rates, discounts and fees, personal income, business conditions, competitive and complementary postal services, competitive and complementary nonpostal activities, population, trend, seasonal patterns and other factors.

(ii) The actual or estimated volume of mail at the prefiled rates for each postal quarter beginning with the first quarter of the most recent complete fiscal year and ending one year beyond the last quarter of the future fiscal year.

(iii) The estimated volume of mail assuming the effectiveness of the suggested rates for each postal quarter beginning with the quarter in which the rates are assumed to become effective and ending one year beyond the last quarter of the future fiscal year.

(6) The estimated volumes and revenues referred to in paragraphs (j)(2), (j)(3) and (j)(5) of this section shall be derived from the econometric demand study referred to in paragraph (j)(5)(i) of this section. Any departure from the assumptions and specifications in the demand study made in estimating volumes of any class or subclass of mail shall be explained.

(i) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a detailed explanation of the methodology employed to forecast volumes for each class and subclass of mail and postal service. Representative derivations of these forecasts from the econometric demand study shall be presented in detail for two major mail classes, showing each intermediate value or factor employed. For remaining classes and subclasses of mail, such derivations may be summarized, except where their derivations depart from the representative methods presented.

(ii) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a detailed explanation of the methodology employed to forecast changes in revenues for each class and subclass of mail and postal service resulting from changes in rates and fees.

(iii) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a computer implementation of the methodology employed to forecast volumes and revenues for each class and subclass of mail and postal service.

(iv) The computer implementation described in paragraph (j)(6)(iii) of this section shall be able to compute forecasts of volumes and revenues compatible with those referred to in paragraphs (j)(2), (j)(3), and (j)(5) of this section for:

(*a*) Any set of rates and fees within a reasonable range of the prefiled and suggested rates,

(*b*) any date of implementation within the range spanned by the assumed date and the start of the future fiscal year,

(*c*) alternative forecasts of the economic determinants of postal volumes other than postal rates and fees, and

(*d*) alternative values of any parameters with assigned values that are based upon unverifiable judgments.

(v) The computer implementation described in paragraph (j)(6)(iii) of this section shall comply with § 3001.31(k)(3).

(7) Subject to paragraph (a)(2) of this section, there shall be made available at the offices of the Commission with every formal request, in a form that can be read directly by a standard digital computer, the following:

(i) All of the input files and programs needed to replicate the econometric demand study referred to in paragraph (j)(5)(i) of this section;

(ii) Any input files and programs employed to derive a price index for any class or subclass of mail or postal service from postal rates, discounts and fees;

(iii) Any input files and programs used to prepare data for use in the econometric demand study referred to in paragraph (j)(5)(i) of this section.

* * * * *

4. § 3001.102 is amended by adding a new paragraph (a)(10) to read as follows:

§ 3001.102 [Amended]

* * * * *

(a) * * *

(10) Billing determinants, at the level of detail employed in the most recent formal request for a change in rates or fees, except that the filing of billing determinant information for Express Mail, Priority Mail, and parcel post pursuant to this section may be delayed for up to one year.

* * * * *

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 89–20095 Filed 8–25–89; 8:45 am]

BILLING CODE 7710-FW-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[OPTS–82033; FRL–3636–5]

Comprehensive Assessment Information Rule; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in the Comprehensive Assessment Information Rule that was published in the Federal Register of July 19, 1989.

EFFECTIVE DATE: This document is effective August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E–545, 401 M Street SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 19, 1989 (54 FR 30211), EPA solicited comments from the public on certain issues concerning the Toxic Substances Control Act section 8(a) Comprehensive Assessment Information Rule (CAIR). On page 30212, column one, the eighteenth line of the third full paragraph, the production volume was incorrectly listed as 10,000 pounds; the correct number is 1,100.

Dated: August 11, 1989.

Frank D. Kover,

Chief, Chemical Screening Branch, Office of Toxic Substances.

[FR Doc. 89–20205 Filed 8–25–89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201-19

[FIRMR Amdt. 16]

RIN 3090 AD 22

Information Resources Management Reviews

AGENCY: Information Resources Management Services, GSA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to codify relevant information regarding the Federal Information Resources Management (IRM) Review Program previously delineated in Federal Information Resources Management Regulation (FIRMR) Temporary Regulation (TR) 10 and supplements to TR 10. Guidance and general information regarding this program have been removed from regulatory coverage and are now located in the newly developed FIRMR Bulletin 59, Federal Information Resources Management Review Program. This rule incorporates comments received in response to requests for comments on TR 10 and supplements to TR 10. This rule also consolidates and strengthens reporting requirements for the Federal IRM Review Program. Changes to the reporting requirements will allow the General Services Administration (GSA) to provide current and complete information on the impact and benefits of IRM reviews for all agencies in the annual report to Congress required by the Paperwork Reduction Act of 1980, as amended.

The Federal IRM Review Program was initiated in fiscal year 1986, and all 76 executive agencies have now formally entered into the program. GSA's first Consolidated Final Report covering the fiscal year 1986 through 1988 review cycle was forwarded to the Office of Management and Budget (OMB) on March 2, 1989. A recent GSA review of the Federal IRM Review Program indicated that Federal agencies generally have succeeded in establishing effective review programs within their IRM organizations. The success of the program to date has led GSA to conclude that it is appropriate to streamline and consolidate agency reporting requirements. Agencies will now be required to submit an Annual Executive Summary that also contains synopses of IRM reviews conducted during the previous year. This summary report, as described in FIRMR Bulletin 59, shall include: An overview of the previous year's effort; an evaluation of IRM review objectives; a summary of benefits realized through the IRM Review Program; a status of compliance with section 3506 of the Paperwork Reduction Act, as amended; and a description of planned review activities for the coming year.

This simplification of reporting requirements should not affect the substance or functioning of agency review programs. Departments and agencies have indicated the changes will allow them to focus on the reviews and their results instead of on a complex reporting cycle.

EFFECTIVE DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Regulations Branch, Office of Information Resources Management Policy, telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: (1) Reserved part 20-19 is activated under the title, Review and Evaluation. It contains policies and procedures pertaining to the Federal Information Resources Management Review Program.

(2) FIRMR Temporary Regulation 10 is canceled.

(3) The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of, the rule. This rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide regulation that will have little or no net cost effect on society. It is therefore certified that this rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 201-19

Government information resources activities, Government procurement, Information resources management reviews.

For the reasons set forth in the preamble, 41 CFR part 201-19 is added to chapter 200, subchapter C to read as follows:

PART 201-19—REVIEW AND EVALUATION

Sec.
201-19.000 Scope of part.

Subpart 201-19.1—Federal Information Resources Management Review Program

201-19.100 Scope of subpart.
201-19.101 General.
201-19.102 Policies.
201-19.103 Procedures.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345, 40 U.S.C. 751(f).

§ 201-19.000 Scope of part.

This part prescribes policies and procedures for agency conducted evaluation programs to help agencies ensure that the acquisition, management, collection, maintenance, use, and dissemination of Federal information processing and related resources are consistent with applicable laws and regulations.

Subpart 201-19.1—Federal Information Resources Management Review Program

§ 201-19.100 Scope of subpart.

This subpart prescribes policies and procedures for the Federal Information Resources Management (IRM) Review Program as it relates to the management and use of information and to the acquisition, management and use of Federal information processing and related resources.

§ 201-19.101 General.

(a) Section 3513 of Title 44 of the United States Code (The Paperwork Reduction Act of 1980, Pub. L. 96-511) requires the Administrator of General Services to assist the Director of the Office of Management and Budget (OMB) in reviewing, at least once every three years, the information management activities of each executive agency. GSA is the focal agency for collecting, assessing and reporting on IRM review results to OMB. GSA has additional review and oversight responsibilities under the Federal Property and Administrative Services Act and the National Archives and Records Administration Act.

(b) The principal objectives of the Federal IRM Review Program are to:

(1) Determine if each agency is carrying out its information management activities in an efficient, effective, and economical manner in support of program missions and objectives.

(2) Determine how well each agency is complying with established IRM policies, procedures, principles, standards, and guidelines.

(3) Determine whether each agency is complying with the responsibilities assigned by The Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3506).

(c) The following GSA-issued documents provide additional guidance related to this subpart:

(1) Federal Information Resources Management Review Program—An Executive Guide.

(2) IRM Review Handbook.

(3) FIRMR Bulletin series.

§ 201-19.102 Policies.

(a) Each executive agency shall establish an IRM review capability commensurate with the scope and complexity of the agency program objectives and missions.

(b) The agency head, in coordination with the agency's Designated Senior Official (DSO) for IRM, shall delegate IRM review authorities and responsibilities within the agency consistent with the Paperwork Reduction Act and this regulation. Specifically, the agency head shall ensure that the agency's review organization:

(1) Has authority to review programs, functions, and activities within the objectives and scope of IRM.

(2) Is responsive to established Governmentwide and agency-specific priorities.

(3) Is responsible for meeting the reporting requirements of the Federal IRM Review Program.

§ 201-19.103 Procedures.

(a) Each agency shall develop for its own use an IRM review plan which addresses, at a minimum, review priorities, objectives, compliance with section 3506 of the Paperwork Reduction Act, and planned reviews for the coming year. Each agency shall submit a report entitled "Annual Executive Summary", to GSA by November 1 in accordance with procedures established in the FIRMR Bulletin series. In the report, each agency shall provide an overview of the agency reviews conducted during the previous year; evaluate how well the reviews met overall agency review objectives; assess the benefits of the review effort to the agency; demonstrate how the agency is complying with Federal agency responsibilities of section 3506 of the Paperwork Reduction Act, as amended; describe planned review activities for the coming year; and synopsize each of the previous year's IRM reviews. This report has been cleared in accordance with FIRMR 201-45.6 and assigned Interagency Report Control Number 0326-GSA-AN.

(b) GSA may periodically conduct separate reviews of agencies' IRM activities to complement and supplement agency efforts. Prior to a GSA-conducted review, the designated senior official will be informed of its scope and the manner in which it will be conducted.

Dated: July 10, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-20213 Filed 8-25-89; 8:45 am]

BILLING CODE 6820-25-M

Proposed Rules

Federal Register
Vol. 54, No. 165
Monday, August 28, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

[DA-89-035]

Milk in the Eastern Colorado Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend for the months of September 1989 through February 1990 portions of the Eastern Colorado Federal milk order. The provisions proposed to be suspended were also suspended for the same period during the previous three years. Provisions proposed to be suspended relate to the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February period. Also proposed to be suspended for the same period are the "touch-base" and diversion limit requirements that each producer's milk be received at least three times each month at a pool distributing plant. Suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due no later than September 5, 1989.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered for the months of September 1989 through February 1990:

1. In the second sentence of § 1137.7(b), the words "plant which has qualified as a", and "of March through August".

2. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of," as the word "distribution."

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1989 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested the suspension. For the months of September 1989 through February 1990, the suspension would remove the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February, and suspend the requirement that three deliveries of each producer's milk be received at a pool distributing plant each month.

Mid-Am states that the volume of producer milk pooled on the Eastern Colorado order during the first six months of 1989 increased 13.3 percent over year-earlier levels. During the same period, according to the cooperative, producer milk used in Class I has increased only 0.3 percent over the previous year. Mid-Am states also that present projections indicate that there will be ample supplies of locally produced milk to meet the fluid requirements of Eastern Colorado distributing plants.

Mid-Am observes that suspension of the order's "touch-base" delivery requirement for each producer would not allow for additional milk supplies to be pooled, but would provide for more efficient disposition of producer milk not needed for fluid requirements of Eastern Colorado distributing plants.

Without the suspension action, Mid-Am states that the cooperative will be required to ship milk from the western Nebraska and western Kansas area to Denver-area distributing plants, displacing locally-produced milk and resulting in shipments from the Denver area to surplus handling plants increasing by an identical amount. Both movements, according to Mid-Am, would represent uneconomic movements of milk. Without the requested continued suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

List of Subjects in 7 CFR Part 1137

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR part 1137 continues to read as follows:

Authority: Sections. 1-19, 48 Stat. 31, as amended; 7 U.S.C 601-674.

Signed at Washington, DC, on August 23, 1989.

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 89-20219 Filed 8-25-89; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 123

RIN 3245-AB99

Business and Disaster Loans

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Small Business Administration (SBA) makes financial assistance available to individuals and businesses through direct and guaranteed loan programs. SBA proposes this rule to allow SBA to recover its collection costs from borrowers who have failed to satisfy their loan agreements and to assess additional penalties permitted by law. This proposed rule complies with the policies expressed in the Debt Collection Act of 1982, Public Law 97-365, and OMB Circular A-129.

DATE: Comments must be submitted on or before September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Deputy Associate Administrator for Financial Assistance, 1441 L St. NW., Washington, DC 20416, telephone (202) 653-6574.

ADDRESSES: For comments relating to Part 120, Business Loans, contact Charles R. Hertzberg, Deputy Associate Administrator for Financial Assistance, 1441 L Street, NW., Washington, DC 20416, telephone (202) 653-6574.

For comments relating to part 123, Disaster Loans, contact Bernard Kulik, Deputy Associate Administrator for Disaster Assistance. 1441 L Street, NW., Washington, DC 20416, telephone (202) 653-6879.

SUPPLEMENTARY INFORMATION: The Debt Collection Act was enacted in 1982 to improve the recovery of delinquent debt owed to the Federal Government. It created new collection mechanisms for creditor Agencies and set forth interest, penalties and fees to be charged recalcitrant debtors. SBA makes financial assistance available to individuals and businesses through various direct and guaranteed loan programs. When SBA promulgated rules implementing the Debt Collection Act, it authorized the use of the new collection techniques, but continued to rely on the Small Business Act and/or other preexisting authorities as a legal basis for the imposition of fees on delinquent debtors.

SBA has now begun to rely more heavily on new Debt Collection Act techniques and is incurring costs of a nature and size not previously envisioned. For example, the Debt Collection Act authorizes SBA to refer delinquent debt to contractors for collection. These firms charge fees for their services. The Debt Collection Act permits such fees to be collected from the delinquent debtor.

To comply with the Administration's initiative to standardize collection processes, SBA proposes the following amendments to its regulations covering the business loan program and the disaster loan program. Conforming language will be added to promissory notes used subsequent to the effective date of these regulations, and will affect only those loans made subsequent to the effective date of these regulations, and will affect only those loans made subsequent to the effective date of these regulations. Together, these changes will allow fees and collection expenses, including collection agency fees to be passed on to a delinquent borrower whose obligation contains the above-referenced note provisions.

Initial Regulatory Flexibility Analysis

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this proposed rule, if promulgated in final form, will not have a significant impact on a substantial number of small entities. However, because the proposed rule represents a significant change from SBA's long-established practice, the following analysis is presented.

SBA's portfolio of loans to small entities contains approximately 140,000 loans of which 80 percent are paid current. 20,000 new loans are made each year. If this rule becomes final, all new Notes for such loans will permit SBA to collect fees from delinquent borrowers. Of approximately 28,000 loans which may be delinquent at any one time, most will not incur the costs discussed in the proposed regulations. Many borrowers will voluntarily bring their loan current or reschedule their debt. Others will obtain protection under the Bankrupcty code.

SBA has not compiled statistics that would show the exact costs of this proposal on the average affected small entity. However, SBA now has over two years experience using debt collection contractors. Fees paid to contractors are the largest cost item which would be charged to delinquent borrowers under the proposed regulation. From this experience, SBA makes the following estimates.

SBA referred fewer than 16,000 accounts in two years. Under this proposal, the number of entities affected would be much lower for two to three years until borrowers who signed Notes with the newly-inserted fee provisions began to default. The contractors collected on 10-15% of the accounts referred. SBA paid average fees of $400 on 1,800 accounts. SBA estimates many accounts incurred costs under $200 and a much smaller number incurred costs in excess of $2,000.

Some borrowers will never completely satisfy their obligation. Fewer than 400, or 3%, of the small entities whose accounts SBA referred to collection agencies paid their debts in full. In all other cases, the proposed regulation would have changed SBA's internal accounting, but would have had no economic impact on the small entity. SBA concludes that in most cases the actual impact of the proposed regulation will be insignificant in relation to the principal balance owed by each affected entity.

SBA proposes to charge collection costs to borrowers so that SBA's collection practices will more closely parallel those of Agencies operating under direct authority of the Debt Collection Act. SBA has determined that there is no alternative way to collect these fees other than by promulgating the proposed regulation and changing the language in SBA promissory notes and other documents. If there were an alternative, the economic impact would be the same as that under the proposed regulation.

SBA certifies that the proposed rule does not constitute a major rule for the purposes of Executive Order 12291. The change is not likely to result in an annual effect on the economy of $100 million or more. In over two years of referring consumers, businesses and others to debt collection contractors, SBA incurred charges of less than $1,500,000. The annual effect should remain approximately $500,000 per year.

If promulgated in final form, this proposed rule would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

The proposed rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

13 CFR Part 120

List of Subjects in 13 CFR Part 120

Loan programs business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend part 120, Chapter I, Title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for part 120 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h); 31 U.S.C. 3717(e).

2. Section 120.101–4(b) would be amended by revising it to read as follows:

§ 120.104-2 Service And commitment fees.

* * * * *

(b) *Late payments.* Additional fees for servicing accounts of borrowers who have not made timely payments or have otherwise failed to comply with loan conditions may be charged to the borrower to the extent authorized by the Debt Collection Act of 1982, 31 U.S.C. 3717(e), the Federal Claims Collection Standards, 4 CFR part 101, or agreement with the borrower (Note). The amount charged shall be limited to actual amounts paid by the bank or SBA, but may cover overhead and in-house costs, or a reasonable estimation thereof, and the full amount charged for collection or other services provided by third parties as authorized by the Debt Collection Act and the Federal Claims Collection Standards. A lender shall obtain SBA's prior written approval before charging such additional costs to the borrower.

13 CFR Part 123

List of Subjects in 13 CFR Part 123

Disaster assistance—Loan programs/business; Small businesses.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend part 123, title 13, Code of Federal Regulations, as follows:

PART 123—DISASTER—PHYSICAL DISASTER AND ECONOMIC INJURY LOANS

1. The authority citation for part 123 is revised to read as follows:

Authority: Secs. 5(b)(6), 7(b), (c), (f) of the Small Business Act, 15 U.S.C. 634(b)(6) and 636(b), (c), (f); Pub. L. 100–590; 31 U.S.C. 3717(e).

2. Section 123.6(b) would be amended by adding three sentences at the end as follows:

§ 123.6 Fees and charges.

* * * * *

(b) * * * Borrowers may be charged for costs and expenses set forth in the Debt Collection Act, Pub. L. 97–365, 31 U.S.C. 3717(e), and implementing regulations appearing in the Federal Claims Collection Standards, 4 CFR part 101. These fees may include overhead and in-house costs incurred as a result of borrower's failure to make timely payments or otherwise comply with loan conditions. Any such fees shall be limited to actual expenses, or a reasonable estimation thereof, plus amounts billed by third parties as authorized by the Debt Collection Act and the Federal Claims Collection Standards, and shall be approved in writing by SBA.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

(Catalog of Federal Domestic Assistance, Numbers 59002, Economic Injury Disaster Loans; 59.008, Physical Disaster Loans)

Dated: July 27, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–20163 Filed 8–25–89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–ANM–7]

Proposed Alteration of VOR Federal Airway V–382; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter VOR Federal Airway V–382 between Grand Junction, CO, and Durango, CO. This action would expedite air traffic arriving and departing the Telluride Regional Airport. Altering V–382 would utilize the Cones very high frequency omni-directional radio range and distance measuring equipment (VOR/DME) and support the VOR/DME approach to Runway 9 to Telluride Regional Airport.

DATE: Comments must be received on or before October 13, 1989.

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, Air Traffic Division, ANM–500, Docket No. 89–ANM–7, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ANM–7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC. 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter VOR Federal Airway V–382 between Grand Junction, CO, and Durango, CO. This extension would expedite air traffic departing from and landing at the Telluride Regional Airport, in the vicinity of the Cones VOR. In addition, altering V–382 would support the VOR/DME Runway 9 approach to the Telluride Regional Airport. The action would reduce controller workload and aid flight planning. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–382 [Amended]

By removing the words "to Grand Junction, CO." and substituting the words "Grand Junction; Cones, CO; to Durango, CO."

Issued in Washington, DC, on August 21, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–20170 Filed 8–25–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 89–ANM–8]

Proposed Alteration of Jet Route J–54; Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Jet Route J–54 in the vicinity of Pendleton, OR, to create a more efficient traffic flow into and around the Seattle, WA, area. This action would save fuel, aid flight planning and reduce controller workload.

DATE: Comments must be received on or before October 13, 1989.

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, Air Traffic Division, ANM–500, Docket No. 89–ANM–8, Federal Aviation Administration, 17900 Pacific Highway South, C68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on the notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ANM–8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter Jet Route J–54 in the vicinity of Pendleton, OR. This action is in conjunction with Seattle Air Route Traffic Control Center's sector realignment to create a more efficient traffic flow around the Seattle, WA, area. Altering J–54 would provide aircraft with a more direct route and would improve the traffic flow in this area. This action would save fuel, aid flight planning and reduce controller workload. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

Section 75.100 is amended as follows:

J–54 [Amended]

By removing the words "Pendleton, OR" and substituting the words "Baker, OR".

Issued in Washington, DC, on August 21, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–20172 Filed 8–25–89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 89–ASW–2]

Proposed Establishment of Jet Route J–234; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 89–ASW–2, which was published in the **Federal Register** on March 30, 1989. The NPRM proposed was Jet Route J–234 located in the vicinity of Amarillo, TX. The proposed route is aligned from Amarillo, via San Angelo,TX, to Junction, TX, in order to reroute traffic around the Brownwood 4 Military Operations Area (MOA)/Air Traffic Control Assigned Airspace (ATCAA). Based on usage statistics for the Brownwood 4 MOA/ATCAA compiled during the comment period, this action is no longer necessary.

EFFECTIVE DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

The Proposed Rule

On March 30, 1989, a Notice of Proposed Rulemaking was published in the **Federal Register** to establish new Jet Route J–234 located in the vicinity of Amarillo, TX. This route would be established from Amarillo, via San Angelo, TX, to Junction, TX, to reroute traffic around the Brownwood 4 MOA/ATCAA.

Conclusions

Based on usage statistics for the Brownwood 4 MOA/ATCAA, the FAA has concluded that the establishment of new Jet Route J–234, which was to bypass the Brownwood 4 MOA/ATCAA, is not necessary. We are therefore withdrawing Airspace Docket No. 89–ASW–2.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 89–ASW–2, as published in the **Federal Register** on March 30, 1989 (54 FR 13072), is hereby withdrawn.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, DC, on August 15, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–20171 Filed 8–25–89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Reclamation Board of Review

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed Program Amendment Number RBR–5 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to incorporate changes to the Ohio Reclamation Board of Review (RBR) initiated by Ohio and to revise the Ohio Revised Code (ORC) and the Ohio Administrative Code (OAC) to be consistent with the corresponding Federal regulations. The proposed amendments would revise the composition of the RBR, would increase the per diem pay to RBR members, and would revise the standards to be applied concerning awards of costs and expenses, including attorneys' fees, by the RBR.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on September 27, 1989. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on September 22, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on September 12, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contracting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B–3 Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

On August 10, 1987 (52 FR 29515), the Deputy Director of OSMRE approved Program Amendment No. RBR–3 which revised the rules of the Ohio Reclamation Board of Review (RBR) at Ohio Administrative Code (OAC) sections 1513–3–21(E) (3), (4), and (5). These amendments had been required by OSMRE at 30 CFR 935.16(a) so that the standards used by the RBR to award costs and expenses, including attorney's fees, would be no less effective than the Federal counterparts at 43 CFR part 4.

During Ohio's promulgation of Program Amendment No. RBR–3, the Ohio Mining and Reclamation Association (OMRA) voiced opposition to the rule change and the RBR withdrew the amendments in a letter dated November 13, 1987 (Administrative Record No. OH–0993). The disputed issues concerning this rule change were subsequently resolved under a settlement agreement filed in *Ohio Mining and Reclamation Association, et al.* v. *Hodel et al.*, Civil Action No. C3–86–0611 (S.D. Ohio, December 23, 1987) between OMRA, the Mining and Reclamation Council of America, and OSMRE.

By letter dated March 24, 1988 (Administrative Record No. OH–1021), the RBR submitted proposed Program Amendment No. RBR–4 to revise OAC sections 1513–3–21(E) (3), (4), and (5) to reflect the terms of the settlement agreement. On July 14, 1988 (53 FR 26592), the Deputy Director of OSMRE approved this amendment.

During Ohio's promulgation of Program Amendment No. RBR–4, the OMRA again voiced opposition to the rule change and the RBR withdrew the amendments in a letter dated October 19, 1988 (Administrative Record No. OH–1106). The disputed issues concerning this rule change were subsequently resolved between Ohio and the OMRA.

By letter dated August 11, 1989 (Administrative Record No. OH–1199), Ohio submitted proposed Program Amendment No. RBR–5. This proposed Program Amendment would revise the Ohio Program at ORC sections 1513.05 and 1513.13 (E) and (F) and at OAC section 1513–3–21(E). The substantive changes in these sections are discussed briefly below.

(1) ORC section 1513.05: This section is being rewritten to change the composition of the RBR. Under the existing Ohio program, four of the seven members of the RBR are appointees who represent the public and of whom one must be an attorney. Under the proposed revision, these four members would be changed to two appointees who own and operate a farm or are retired farmers, one appointee who is the representative of an operator of a coal mine, and one appointee who is a representative of the public. The composition of the three remaining RBR members would not be revised: one appointee who is experienced in modern forestry practices, one appointee who is experienced in agronomy, and one appointee who is either experienced in earth-moving or is a civil engineer.

This section is also being rewritten to increase the per diem pay of members of the RBR from one hundred to one hundred fifty dollars per day.

(2) ORC section 1513.13 paragraph (E): This paragraph is being rewritten to authorize the award of costs and expenses, including attorneys' fees, under three circumstances to parties involved in appeals before the RBR:

(1) To either the permittee or to the person requesting payment of costs and expenses from the Ohio Department of Natural Resources, Division of Reclamation if the RBR determines that the permittee or other person made a substantial contribution to a full and fair determination of the appeal or administrative proceeding before the RBR.

(2) To a permittee from a person who initiated or participated in an appeal if the permittee demonstrates that the person did so in bad faith and for the purpose of harassing or embarrassing the permittee.

(3) To the Ohio Department of Natural Resources, Division of Reclamation from a person who initiated an appeal if the Division of Reclamation demonstrates that the person initiated or participated in the appeal in bad faith and for the purpose of harassing or embarrassing the Division of Reclamation.

The proposed revisions to this section would delete the current possibility of the award of costs and expenses to a person from a permittee.

Nonsubstantive changes are also proposed in this rule to correct paragraph letter notations.

(3) ORC section 1513.13 paragraph (F): This paragraph is being added to provide that costs and expenses may be awarded by court order at the request of any party in connection with judicial review of orders issued under ORC § 1513.13

(4) OAC section 1513–3–21 paragraph (E): This paragraph is being rewritten to delete discussion of the standards for awards of costs and expenses by the RBR which are to be included in ORC 1513.13(E).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the

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and the owner of the structure have no

considered in the final rulemaking or

ACTION: Proposed rule; public comment final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR MORE INFORMATION CONTACT**" by 4:00 p.m. on September 12, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 17, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-20152 Filed 8-25-89; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Liability for Subsidence Damage

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed Revised Program Amendment Number 28 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to incorporate rule changes initiated by the State. The amendments would specify the use of agreements between mine operators and surface owners concerning subsidence damage, would limit exemptions of structures to those owned by mine operators, and would specify mine operators' responsibilities if a surface owner prevents the implementation of the operator's plan for repair or compensation of subsidence damage.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATE: Written comments must be received on or before 4:00 p.m. on September 27, 1989. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on September 22, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on September 12, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendents by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated February 6, 1989 (Administrative Record No. OH-1142), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment No. 38 to the Ohio program at Ohio Administrative Code (OAC) section 1501:13-12-03(B), (D)(2)(a) and (b), (D)(4)(a)(ii), and (D)(4)(b). The proposed amendments were initiated by the State.

OSMRE announced receipt of the proposed amendment in the March 1, 1989 **Federal Register** (54 FR 8561), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment.

By letter dated August 10, 1989 (Administrative Record No. OH-1198), Ohio withdrew proposed Program Amendment No. 38 and submitted a new Revised Program Amendment No. 38. Revised Program Amendment No. 38 would modify OAC Section 1501:13-12-03 paragraphs (D)(2), (D)(2) (a) and (b), (D)(4), and (D)(4) (a) and (b) and would create new paragraphs (E) and (H)(3). The proposed amendment would also make nonsubstantive changes to paragraph letter notations throughout the rule.

The proposed new paragraph (E) in OAC section 1501:13-12-03 would provide that agreements between mine operators and surface owners which address the repair of or compensation for subsidence damage shall take precedence over the provisions of OAC section 1501:13-12-03 and that the provisions of OAC section 1501:13-12-03 shall not apply to damage to structures covered under such agreement.

The proposed changes to paragraph (D)(2) would rewrite this paragraph to specify that the mine operator shall repair subsidence damage to structures or shall compensate the owner of the damaged structure if the mine operator

and the owner of the structure have no agreement for repair or compensation of subsidence damage.

The proposed changes to paragraph (D)(2)(a) and (b) would rewrite these paragraphs to delete an existing provision in the Ohio regulations concerning relief of liability for subsidence damage. This existing provision exempts underground mine operators from the liability to repair or compensate for damage to structures from mine subsidence if the mine operator has an agreement with the owner of the affected structure relieving the mine operator of that liability. The proposed amendments would delete this exemption and provide that underground mine operators are relieved of the liability to repair or compensate for subsidence damage only if the mine operator is the owner of the affected structure.

The proposed changes to paragraphs (D)(4) and (D)(4) (a) and (b) would rewrite these paragraphs to specify that, if the mine operator has not reached an agreement with the owner of a structure damaged by subsidence, then the operator shall fully perform the obligations specified in any remedial plans submitted under existing paragraph (D)(3), provided that the surface owner does not prevent the mine operator from performing those obligations.

The proposed new paragraph (H)(3) would provide that, if the surface owner prevents the implementation of the mine operator's plan for repair or compensation of subsidence damage, then the Chief of the Division of Reclamation, Ohio Department of Natural Resources shall take no further action and the surface owner may pursue whatever private rights of action may be available to the surface owner.

III. Public Comment Procedure

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR MORE INFORMATION CONTACT" by 4:00 p.m. on September 12, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface Mining, Underground mining.

Dated: August 17, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-20153 Filed 8-25-89; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the Utah permanent regulatory program (hereinafter, the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a new set of coal rules that would completely replace those rules currently in effect. The amendment is intended to revise the State program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

This notice sets forth times and locations that the Utah program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and public hearing procedures that will be followed if a hearing is requested.

DATES: Written comments must be received by 4:00 p.m., m.d.t., September 27, 1989. If requested, a public hearing on the proposed amendment will be held on September 22, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on September 12, 1989.

ADDRESSES: Written comments should be mailed or delivered to Mr. Robert H. Hagen at the address provided below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below. These offices are open during normal business hours, Monday through Friday, excluding holidays. One free copy of the proposed amendment is available upon request by contacting the OSMRE Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, S.W., Suite 310, Albuquerque, New Mexico 87102, Telephone: (505) 766-1486

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Ste, 350, Salt Lake City, UT 84180-1203, Telephone: (801) 538-5340

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, whose address and telephone number are listed in "**ADDRESSES.**"

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

The Secretary of the Interior conditionally approved the Utah program on January 21, 1981. Background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981, **Federal Register** (46 FR 589). Subsequent actions concerning Utah's regulatory program can be found at 30 CFR 944.12, 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated August 11, 1989 (Administrative Record No. UT–515), Utah submitted a proposed amendment to its program pursuant to SMCRA and 30 CFR 732.17(f) and (g). Utah submitted the proposed amendment in response to (1) the May 12, 1986, June 9, 1987, and November 21, 1988, OSMRE letters to Utah in which deficiencies in the Utah program were identified in accordance with 30 CFR 732.17(c); and (2) the disapprovals of certain provisions of the Utah program at 30 CFR 944.12 (a) and (b) that OSMRE made to comply with the February 26, 1980, May 16, 1980, and August 15, 1980, opinions and orders of the U.S. District Court for the District of Columbia (in re: *Permanent Surface Mining Regulation Litigation* (Civil Action 79–1144)).

In addition to revising its rules in response to OSMRE identified deficiencies, Utah at its own initiative substantially reorganized its rules and revised its guideline for revegetation. The rules that Utah proposes to amend are:

R614–100—Administrative: Introduction
R614–101—Administrative: Restrictions on State Employees
R614–102—Administrative: Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction
R614–103—Administrative: Areas Unsuitable for Coal Mining and Reclamation Operations
R614–104—Administrative: Protection of Employees
R614–105—Administrative: Blaster Training, Examination, and Certification
R614–200—Coal Exploration: Introduction
R614–201—Coal Exploration: Requirements for Exploration Approval
R614–202—Coal Exploration: Compliance Duties
R614–203—Coal Exploration: Public Availability of Information
R614–300—Coal Mine Permitting: Administrative Procedures
R614–301—Coal Mine Permitting: Permit Application Requirements
R614–301–100—General Contents
R614–301–200—Soils
R614–301–300—Biology
R614–301–400—Land Use and Air Quality
R614–301–500—Engineering
R614–301–600—Geology
R614–301–700—Hydrology
R614–301–800—Bonding and Insurance
R614–302–100—General
R614–302–200—Special Categories of Mining
R614–302–300—Special Areas of Mining
R614–303—Coal Mine Permitting: Change, Renewal, and Transfer, Assignment, or Sale of Permit Rights
R614–303–100—General Information on the Change, Renewal, Assignment, or Sale of Permit Rights
R614–303–200—Permit Review, Change, and Renewal
R614–303–300—Transfer, Assignment, or Sale of Permit Rights
R614–400—Inspection and Enforcement: Division Authority and Procedures
R614–400–100—General Information on Authority and Procedures
R614–400–200—When Penalty Will be Assessed
R614–401–300—Point System for Penalties
R614–401–400—Assessment of Separate Violations for Each Day
R614–401–500—Waiver of Use of Formula to Determine Civil Penalty
R614–401–600—Procedures for Assessment of Civil Penalties—Proposed Assessment
R614–401–700—Procedures for Informal Assessment Conference
R614–401–800—Request for Formal Hearing
R614–401–900—Final Assessment and Payment of Penalty Revised Vegetation Guideline

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah Program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., m.d.t. on September 12, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing or in advance of the hearing is requested to assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who are not scheduled to testify, and who wish to do so, will be heard immediately following the testimonies of those who were scheduled. The hearing will end after all persons scheduled or present have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons who wish to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at each of the locations listed under "**ADDRESSES.**" A written summary of each meeting will be prepared and entered in the administrative record.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 18, 1989.

Raymond L. Lowrie,
Assistant Director, Western Field Operations.

[FR Doc. 89–20154 Filed 8–25–89; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[OGD 05–89–81]

Special Local Regulations for Marine Events; Diet Pepsi Triathlon, Wrightsville Channel, Wrightsville Beach, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish permanent special local regulations for the Swim portion of the Diet Pepsi Triathlon held annually in Wrightsville Channel between daybeacon 18 (LLNR 28050) and daybeacon 23 (LLNR 28065), Wrightsville Beach, North Carolina. The regulations are necessary to control spectator craft and to provide for the safety of life and property on the navigable waters during the event.

DATE: Comments must be received on or before September 18, 1989.

ADDRESSES: Comments should be mailed or hand carried to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments will be available for inspection and copying at Room 209 of this address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (OGD 05–89–81) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations

The Diet Pepsi Triathlon has been an annual event for the past ten years, but has not been regulated in the past. The swim portion of the triathlon will consist of approximately 800 swimmers racing in a section of Wrightsville Channel. The participants are to swim one and one tenth miles as the first leg of the triathlon, starting at the Blockade Runner Hotel beach, located east of Wrightsville Channel Daybeacon 18 (LLNR 28050) and swim westward past the Sea Path Boatominium Marina finishing at Atlantic Marina located north of Wrightsville Channel Daybeacon 23 (LLNR 28080). It is necessary to close a portion of Wrightsville Channel to all traffic except participants for the safety of those competing in the swim and their attending personnel. If adopted, this proposal will apply to the swim portion of the 11th Annual Diet Pepsi Triathlon, scheduled from 7:00 a.m. to 8:45 a.m., October 1, 1989. Because closure of the waterway is not anticipated for any extended period, waterborne traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 on Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of this minimal impact, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.513 is added to read as follows:

§ 100.513 Wrightsville Channel, Wrightsville Beach, North Carolina.

(a) *Definitions.*—(1) *Regulated area.* The waters of, and adjacent to, Wrightsville Channel, from Wrightsville Channel Daybeacon 14 (LLNR 28040), located at latitude 34°12'18.0" N, longitude 77°48'10.0" W, to Wrightsville Channel Daybeacon 25 (LLNR 28080), located at latitude 34°12'51.0" N, longitude 77°48'58.0" W.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Fort Macon.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of this section, but may not block a navigable channel.

(c) *Effective Period:* The Commander, Fifth Coast Guard District will publish a notice in the **Federal Register** and in the Fifth Coast Guard District Local Notice to Mariners announcing the times and dates that this section is in effect.

Dated: August 17, 1989.

P.A. Welling,
Rear Admiral, U.S. Coast Gaurd, Commander, Fifth Coast Guard District.

[FR Doc. 89–20147 Filed 8–25–89; 8:45 am]
BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AD99

Definition of Marginal Employment in Consideration of Total Evaluations Based on Individual Unemployability

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulation.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend the Schedule for Rating Disabilities to define marginal employment in consideration of total disability ratings based on unemployability of an individual. This amendment is necessary to respond to a General Accounting Office (GAO) study on this subject. The intended effect is to promote consistency in making determinations of marginal employment.

DATES: Comments must be received on or before September 27, 1989. Comments will be available for public inspection until October 10, 1989. This rule is proposed to be effective 30 days after the date of final publication.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed admendment to the Secretary of Veterans Affairs (271A) Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, Room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration (202) 233-3005.

SUPPLEMENTARY INFORMATION: The GAO report "Veterans Benefits: Improving the Integrity of VA's Unemployability Compensation Program," revealed that many veterans with earnings are not reporting those earnings to VA as required. To run an effective verification program, VA needs to clarify its policy and regulations on marginal employment as the GAO study revealed that VA regional offices were interpreting marginal employment in a number of different ways, and that marginal employment was determined on a case-by-case basis. The GAO report concluded and recommended that VA define marginal employment so that the criteria used in making determinations of marginal employment in claims for unemployability are consistent between rating boards.

Section 4.16(a) currently provides, in pertinent part, that total disability ratings may be assigned, where the schedular rating is less than total, when the veteran is, in the judgment of the rating agency, unable to secure or follow substantially gainful employment as a result of service-connected disabilities. It has been VA policy that marginal employment is not to be considered substantially gainful employment.

It is proposed to amend § 4.16(a) to define marginal employment as existing when a veteran's earned annual income does not exceed the amount established by the Bureau of the Census as the poverty threshold for one person (by age). The poverty thresholds are computed each March for the preceding calendar year.

The Secretary hereby certifies that this proposed regulatory amendment will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that the amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulations, we have determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance program number is 64.109.

List of subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: July 21, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 4—[AMENDED]

In 38 CFR part 4, Schedule for Rating Disabilities, § 4.16 is amended by revising paragraph (a) to read as follows:

§ 4.16 Total disability ratings for compensation based on unemployability of the individual.

(a) Total disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is, in the judgment of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities: *Provided That,* if there is only one such disability, this disability shall be ratable at 60 percent or more, and that, if there are two or more disabilities, there shall be at least one disability ratable at 40 percent or more, and sufficient additional disability to bring the combined rating to 70 percent or more. For the above purpose of one 60 percent disability, or one 40 percent disability in combination, the following will be considered as one disability:

(1) Disabilities of one or both upper extremities, or one or both lower extremities, including the bilateral factor, if applicable;

(2) Disabilities resulting from common etiology or a single accident,

(3) Disabilities affecting a single body system, e.g. orthopedic, digestive, respiratory, cardiovascular-renal, neuropsychiatric,

(4) Multiple injuries incurred in action, or

(5) Multiple disabilities incurred as a prisoner of war.

It is provided further that the existence or degree of nonservice-connected disabilities or previous unemployability status will be disregarded where the percentages referred to in this paragraph for service-connected disabilities render the veteran unemployable. Marginal employment shall not be considered substantially gainful employment. For purposes of this section, marginal employment generally shall be deemed to exist when a veteran's earned income does not exceed the amount established by the U.S. Department of Commerce, Bureau of the Census, as the poverty threshold of one person. Marginal employment may also be held to exist, on a facts found basis, when earned annual income exceeds the poverty threshold. Consideration shall be given in all claims to the nature of the employment and the reason for termination.

(Authority: 38 U.S.C. 210(c))

* * * * *

[FR Doc. 89-20165 Filed 8-25-89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 272

[Docket No. R-128]

RIN 2133-AA64

Requirements and Procedures for Conducting Condition Surveys and Administering Maintenance and Repair Subsidy

AGENCY: Maritime Administration, DOT.

ACTION: Proposed rule.

SUMMARY: This proposed revision of 46 CFR part 272 includes amendments of requirements and procedures for conducting condition surveys of subsidized vessels and for administering the payment of maintenance and repair (M&R) subsidy. This revision is intended to clarify and restructure the present regulations.

DATES: Comments must be received on or before October 27, 1989.

ADDRESS: Address comments to the Secretary, Maritime Subsidy Board, Maritime Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Interested persons may inspect these comments during normal business hours in Room 7300, Department of Transportation.

FOR FURTHER INFORMATION CONTACT: Joseph H. Seelinger, Chief, Division of Ship Maintenance and Repair, Office of Ship Operations, Maritime Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone (202)366-5776.

SUPPLEMENTARY INFORMATION: Title VI of the Merchant Marine Act, 1936, as amended (Act), authorizes the Secretary of Transportation to enter into Operating-Differential Subsidy agreements (ODSA) with operators of U.S.-flag vessels operating in an essential service in the foreign commerce of the United States. ODS is intended to offset certain lower costs of operating vessels under a foreign flag, and may include the fair and reasonable cost of M&R that is not compensated by insurance. Part 272 includes provisions for administering the determination and payment of M&R subsidy to the operators of subsidized vessels for which M&R subsidy is provided under an ODSA. These regulations do not apply to vessels carrying bulk raw and processed agricultural commodities from the U.S. to the U.S.S.R., which are subject to the regulations in 46 CFR part 294.

This rulemaking would give MARAD the discretion to require vessel condition surveys on specified occasions for vessels receiving M&R subsidy only, rather than make such condition surveys mandatory for all ODS vessels on the occurrence of these events, as under existing regulations. It has been MARAD's experience in administering condition surveys, since the last amendments to these regulations in 1970, that condition surveys are not always necessary on the occasions when now required under § 272.2 of the present regulations.

This rulemaking also clarifies the issue of what costs represent a repair which is not eligible for M&R subsidy (§ 272.23). This regulation recognizes that an item of M&R may have two severable cost components—the cost of a part and the cost of its installation, irrespective of whether the installation occurs contemporaneously with or subsequent to the expenditure for the part. Consistent with the legislative history of section 606(6) of the Merchant Marine Act of 1936, as amended ("Act") (46 App. U.S.C. 1176), it allows the payment of M&R subsidy for any portion of the cost of an otherwise eligible repair that is a "domestic" repair, i.e., a cost incurred in the continental United States or Puerto Rico. Section 606(6) of the Act, dealing with eligiblibity of M&R expenses for subsidy, is intended to assist U.S. shipyards, U.S. labor, and U.S. manufacturers. This rulemaking would make clear that whatever portion of a repair is domestic is eligible for subsidy when the repair is performed outside the continental limits of the United States.

MARAD proposes to restructure the entire part to clarify and simplify the regulations and to add definitions. In addition, extraneous provisions concerning internal agency administrative procedures (such as internal copy requirements) have been deleted. The proposed revision includes a number of significant procedural changes. For example, new procedures for appealing and M&R disallowance are set forth in § 272.43. The existing part refers concerned persons to appeal procedures contained in an internal administrative order which is less readily available to the public than the Code of Federal Regulations or the **Federal Register**. MARAD proposes to reduce the amount of documentation required to support the information contained in MARAD Form MA-140 for work performed by an independent contractor who has provided an adequately detailed invoice covering such work.

Section 272.17 would provide for disallowance of a claim for M&R subsidy if an Operator fails to comply with various vessel condition survey requirements. Another provision, in § 272.26, would require an operator receiving M&R subsidy to repay a portion of such subsidy when the operator has not used subsidized spare parts, has received reimbursement for a marine loss that was compensated by insurance, or has permanently gone off subsidy within three years of the payment of M&R subsidy for an improvement to the vessel.

Analysis of Regulatory Impact

The Maritime Administrator has determined that this is not a major rule under the criteria of Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule is not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part, because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, the Maritime Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This rule does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

The rule contains existing reporting requirements, in §§ 272.12, 272.25 and 272.41, which have the approval of the Office of Management and Budget (Approval No. 2133-0007). There are no additional reporting requirements in this rulemaking.

List of Subjects in 46 CFR Part 272

Maritime carriers, Vessel maintenance and repairs.

Accordingly MARAD proposes to revise 46 CFR part 272, to read as follows:

PART 272—REQUIREMENTS AND PROCEDURES FOR CONDUCTING CONDITION SURVEYS AND ADMINISTERING MAINTENANCE AND REPAIR SUBSIDY

Subpart A—General

Sec.
272.1 Purpose.
272.2 Scope.
272.3 General definitions.
272.4 Effective date.
272.5 Prior instructions superseded.

Subpart B—Requirements and Procedures for Determining the Condition of Eligible Vessels

272.11 Scope.
272.12 Determining the condition of eligible vessels.
272.13 Operator's responsibilities.
272.14 Survey procedures.
272.15 Execution of condition survey reports.
272.16 Non-compliance with survey requirements.

Subpart C—Eligibility Criteria for M&R Subsidy; Substantiation of M&R Expenses

272.21 General eligibility criteria.
272.22 Improvements and other similar work.
272.23 Examples of ineligible expenses.
272.24 Subsidy repair summaries.
272.25 Requirements for subsidy repayment.

Subpart D—Penalties

272.31 Determination of penalty.
272.32 Mitigation of penalty.
272.33 Penalty appeals.

Subpart E—Examination, Audit, Review, and Appeal Procedures

272.41 Requirements for examination and allocation of M&R expenses.
272.42 Audit requirements and procedures.
272.43 Review and appeal procedures.
272.44 Dates.

Authority: Sec. 204(b), 603 and 606, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1173, 1176); 49 CFR 1.66.

Subpart A—General

§ 272.1 Purpose.

The purpose of this part is to prescribe the requirements and procedures for determining the condition of vessels receiving operating-differential subsidy, to prescribe the requirements for reporting and substantiating maintenance and repair expenses, and to establish the criteria and procedures for determining whether a maintenance and repair expense is subsidizable.

§ 272.2 Scope.

Except as otherwise provided in subpart B of this part, the provisions of this part apply only to vessels operating under an operating-differential subsidy agreement which provides for the payment of maintenance and repair subsidy, except that this part does not apply to any vessel operating under an operating-differential subsidy agreement for the carriage of bulk raw and processed agricultural commodities from the United States to the Union of Soviet Socialist Republics, pursuant to part 294 of this chapter.

§ 272.3 Definitions.

For the purposes of this part:

(a) *Act* means the Merchant Marine Act, 1936, as amended.

(b) *Marad* means the Maritime Administration, a unit of the United States Department of Transportation, as distinguished from the Board (which is a unit of MARAD).

(c) *Board* means the Maritime Subsidy Board of the Maritime Administration.

(d) *Domestic Origin:* (1) *Labor.* With respect to labor, Domestic Origin means that the work shall be performed by a ship repair facility located in the United States or Puerto Rico, performed by a U.S. citizen independent contractor, or performed in the United States or Puerto Rico by the Operator's own shore gang, using only the labor of persons who, whether U.S. citizen's or aliens, are domiciled in the United States or Puerto Rico.

(2) *Materials.* With respect to materials, Domestic Origin means that all articles, materials, and supplies shall be of the growth, production or manufacture of the United States or Puerto Rico.

(e) *Eligible vessel* means a vessel operated under an ODSA, other than an ODSA subject to part 294 of this chapter, which provides for the payment of M&R subsidy with respect to the operation of that vessel.

(f) *Equipment* means that part of an Eligible Vessel that is not part of the vessel's hull or machinery.

(g) *Expendable Equipment* means those articles, outfittings and furnishings that are portable, semi-portable or detachable, that are used in equipping a ship for service and in its normal day-to-day maintenance and operation, and that are subject to casual or gradual deterioration and replacement. It does not include items classified as stores and supplies or Spare Parts.

(h) *Improvement* means work to be performed on an Eligible Vessel which is a modification, alteration, addition or betterment, which may be accomplished separtely from M&R, but may be eligible for M&R subsidy pursuant to § 272.23 of this part.

(i) *M&R* and *M&R Subsidy* mean, respectively, maintenance and repairs and maintenance and repair subsidy payable pursuant to section 603 of the Act.

(j) *ODS* and *ODSA* refer, respectively, to operating-differential subsidy provided under an operating-differential subsidy agreement entered into pursuant to title VI of the Act.

(k) *Operator* means any individual, partnership, corporation, or association that enters into an ODSA with the Board pursuant to title VI of the Act.

(l) *Permanent equipment* means Equipment that is, or is intended to become when installed, an integral, permanent, built-in part of the vessel.

(m) *Region Office* means any one of the four Maritime Administration Region Offices in New York, NY; New Orleans, LA; San Francisco, CA; and Chicago, IL; established pursuant to section 809 of the Act.

(n) *Spare Parts* means such items as spare propellers and tailshafts and self-contained operable units of machinery or equipment, as well as those items generally recognized within the maritime industry as Spare Parts.

(o) *United States* means the fifty individual states and the District of Columbia.

§ 272.4 Effective date.

The provisions of this part apply to voyages of every Eligible Vessel which terminate on or after __________

§ 272.5 Prior instructions superseded.

The provisions of this part supersede any provisions of MARAD Circular Letters and Accounting Instructions applicable to M&R and dated prior to the effective date of these regulations to the extent that the provisions of this part may be inconsistent with the provisions of such prior instructions.

Subpart B—Requirements and Procedures for Determining the Condition of Eligible Vessels

§ 272.11 Scope.

This subpart applies to any Eligible Vessel, other than one operating under an ODSA subject to part 294 of this chapter.

§ 272.12 Determining the condition of eligible vessels.

(a) *General.* The Operator of an Eligible Vessel shall make the vessel available whenever MARAD requires a vessel condition survey.

(b) *Survey events.* MARAD may require a vessel condition survey for a vessel in each of the following instances:

(1) At the commencement of the first subsidized voyage, except for a newly constructed vessel which enters subsidized service immediately upon delivery by the shipyard, and for which

there is a prior condition survey report. If that subsidized service commences outside the continental limits of the United States, the vessel may be surveyed at the first United States port of call;

(2) At the commencement of the first voyage following the effective date for M&R subsidy established by MARAD, if such M&R rate was not established at the commencement of the vessel's first voyage;

(3) Upon the discontinuance of an M&R subsidy rate;

(4) Upon resumption of subsidized voyages after temporary withdrawal from subsidized operation. The vessel shall not be considered as having been temporarily withdrawn shall not be considered as having been temporarily withdrawn from subsidized service if it performed unsubsidized voyages in a subsidized service of the Operator;

(5) Upon withdrawal from subsidized service, either temporarily (subject to the provisions of paragraph (d) of § 272.14), or permanently;

(6) During the drydocking period incident to the vessel's American Bureau of Shipping Special Surveys;

(7) Upon termination of the last voyage under the ODSA, or at the end of the contract period, with respect to subsidized vessels in idle status at that time; or

(8) At any other time that MARAD considers to be appropriate.

§ 272.13 Operator's responsibilities.

Whenever MARAD notifies an Operator that a survey of an Eligible Vessel is required under this section, the Operator shall:

(a) Make the vessel immediately available for survey if the vessel is in a port of the United States at the time of notification; or make the vessel available for survey immediately upon arrival at the first port of call in the United States if the vessel is not in a port of the United States at the time of notification; and

(b) Furnish to the Secretary of the Board the following:

(1) A copy of each American Bureau of Shipping report and every other salvage association or damage survey report; and

(2) Copies of certificates or other evidence of compliance with applicable laws, rules, and regulations as to vessel condition and operation, including, but not limited to, those administered by the United States Coast Guard, Environmental Protection Agency, Federal Communications Commission, Public Health Service, or their respective successors, and all applicable treaties and conventions to which the United States is a signatory.

(Reporting requirements approved by the Office of Management and Budget under control number 2133–0007)

§ 272.14 Survey procedures.

(a) *Prior to survey.* Unless otherwise directed by MARAD, the Operator of a vessel which is required to be surveyed under this subpart shall contact the ship operations unit of the Region Office in which the survey is to be conducted.

(b) *Operator's assistance to surveyor.* The Operator shall assist the marine surveyor performing the survey for MARAD and shall permit access by that surveyor to all parts of the vessel, its log books, and other officials records. The Operator may designate a representative to accompany the marine surveyor during the survey, but no Operator's representative is required to be present during the survey.

(c) *On-subsidy surveys.* An on-subsidy survey consists of the following:

(1) *Vessel survey.* This includes an inspection and the completion of reports by the surveyor, in sufficient detail to reveal a comprehensive picture of the conditions noted.

(2) *On-subsidy survey report.* The on-subsidy survey report consists of:

(i) Ship Survey Report, Form MA–58; and

(ii) As appropriate for the circumstances of the survey and the respective vessel, Forms MA–55 (Turbines and Gears Report); MA–56 (Tooth Contact Report); MA–57 (Drydock Report); and MA–59 (Measurements of Piston Rings and Grooves).

(d) *Off-subsidy surveys.* An off-subsidy survey consists of the following:

(1) *Repair specifications.* The Operator shall prepare and furnish to the appropriate Region Office detailed repair specifications covering all repair work attributable to completed subsidized service.

(2) *Off-subsidy report.* The survey report for an off-subsidy survey consists of the repair specifications required by paragraph (c)(1) of this section, and the findings of the Region Office on these specifications after the survey required by paragraph (c)(2) of this section.

§ 272.15 Execution of condition survey reports.

Every survey report shall be signed by:

(a) The Operator's representative, when designated pursuant to § 272.13(a), but only if that representatives was in attendance during the survey;

(b) The Operator's superintendent engineer or equivalent;

(c) The marine surveyor who conducted the survey; and

(d) The appropriate representative of the Region Office for the Region in which the survey was conducted.

§ 272.16 Non-compliance with survey requirements.

MARAD may disallow any one or more M&R claims otherwise eligible for subsidy if an Operator fails to:

(a) Contact the appropriate Region Office as required by § 272.14(a);

(b) Comply with provisions of § 272.14(c)(1) with respect to repair specifications, or to make the vessel reasonably available for inspection before its next sailing; or

(c) Comply with any other requirement specified in subpart B of this part.

Subpart C—Eligibility Criteria for M&R Subsidy; Substantiation of M&R Expenses

§ 272.21 General eligibility criteria.

(a) *Eligible maintenance and repairs.* Costs of maintenance and repair are eligible for M&R subsidy participation if they are:

(1) Performed on an Eligible Vessel;

(2) Necessary, because of subsidized operation, for the maintenace and repair or replacement of damaged or worn parts of the vessel's hull, machinery, or Permanent Equipment;

(3) Uncompensated by insurance;

(4) Considered fair and reasonable by the Board;

(5) Of Domestic Origin; and

(6) Otherwise eligible in accordance with provisions of this part.

(b) *Off-subsidy survey items.* Any maintenance and repair contained in an executed off-subsidy survey report is eligible maintenance and repair if:

(1) Items in Paragraph (a) (1)–(6) of this section are met;

(2) The work is accomplished by the Operator before or during the next drydocking period (periodic or otherwise); and

(3) The vessel is either owned by the same Operator who owned it at the time of the off-subsidy survey, or ownership was transferred to the Federal Government pursuant to section 510 of the act.

(c) *Operator furnished items.* In addition to the general requirements of paragraph (a) of this section, the cost of the Operator's materials, supplies, or both, furnished by the Operator which are necessary to the performance of eligible maintenance and repair, is eligible for M&R subsidy if:

(1) The items for which the cost was incurred are issued by the Operator from ship's inventory or the Operator's shoreside inventory, or are issued by direct purchase to the ship repair yard, other independent contractor, or shore gang labor; and

(2) No subsidy, whether M&R or otherwise, has previously been paid for such material, supplies, or both.

(d) *Costs associated with shore gang labor.* In addition to the general requirements of paragraph (a) of this section, the costs incurred with respect to the Operator's employment of U.S. shore gang labor necessary for the performance of eligible maintenance and repair are eligible for M&R subsidy participation only if such costs are:

(1) For direct labor charges;

(2) For eligible Spare Parts, as described in paragraph (e) of this section; or

(3) Incidental to the payment of wages for the direct labor, to the extent that such costs are required by State or Federal law or by collective bargaining agreements.

(e) *Spare Parts.* Spare Parts are eligible for M&R subsidy if they are:

(1) Necessary for eligible maintenance and repair;

(2) Issued by the Operator from the Operator's shoreside inventory or issued by direct purchase of a U.S. ship repair yard, U.S. independent contractor, or U.S. shore gang labor; and

(3) Placed aboard an Eligible Vessel.

§ 272.22 Improvements and other similar work.

(a) *Eligible expenditures.* Any expenditure not in excess of $200,000 for work which the Operator and MARAD consider to be an improvement is eligible for M&R subsidy if otherwise eligible for such subsidy pursuant to provisions of this part.

(b) *Capital expenditures.* An expenditure in excess of $200,000 for work which is not necessary for maintenance or repair shall be considered to be a capital expenditure, ineligible for M&R subsidy, except that work on an Eligible Vessel which the operator considers to be an Improvement is eligible for M&R subsidy if, before awarding this work:

(1) The Operator submits a written request to the Director, Office of Ship Operations, for consideration of the expenditures;

(2) The Director determines that the work is an Improvement and is technically acceptable; and

(3) The Associate Administrator for Maritime Aids approves M&R subsidy for the work, as appropriate, pursuant to the provisions of title VI of the Act.

(c) *Improvements performed in more than one repair period.* Whenever an Operator decides to spread the work incident to any Improvement over more than one repair period, the operator shall give written notice to the Director, Office of Ship Operations, prior to commencement of the work, as to the scope of work involved, expected benefits, and the number of voyages over which the work and the estimated total cost will be extended.

§ 272.23 Examples of ineligible expenses.

Expenses ineligible for M&R subsidy participation include, but are not limited to, the following examples:

(a) *Specialized improvements.* Any expenditure or Improvement required to alter, outfit or otherwise equip a vessel for its intended subsidized service which MARAD determines should have been performed before the initial entry of the vessel into subsidized service;

(b) *Convenience items.* Any expenditure for items that the Region Director determines to be aboard a ship only for the convenience of the Operator or crew members, and which are not considered integral parts of the vessel and are not required for seaworthiness, navigation or the health or well-being of the crew or passengers.

(c) *Unsupported expenses.* Any expense item which the Operator fails to substantiate adequately with documentation, as required by § 272.25.

(d) *Untimely submission.* Any expense included in either a repair summary or supplement which was not submitted by the operator within the required time period for M&R items and Marine Loss items as set forth in §§ 272.25 and 272.41, respectively, unless the Operator can prove that such untimeliness was due to circumstances beyond the Operator's control.

(e) *Untimely requests for review.* Any disallowed expense item for which the Operator fails to make a timely request for review, as required by § 272.43.

(f) *Untimely appeals.* Any expense item disallowed in the final determination by the Director, Office of Ship Operations, for which the Operator fails to make a timely appeal to the Board, pursuant to § 272.43.

(g) *Absence of notice of multi-repair period improvements.* Any expenses for an improvement extending over more than one repair period in which the Operator did not notify the Director, Office of Ship Operations, as required by § 272.22(c).

(h) *Cargo expenses.* Any expense of special cargo fittings of a temporary nature, dunnage, ceiling, battens, the cleaning of cargo holds and tanks for cargo, the reading and certification of temperatures for refrigerated cargoes, and similar expenses.

(i) *Stevedore damage.* Any expense or any damage to the vessels or cargo gear directly attribuable to a stevedore.

(j) *Rented equipment.* Any expense for the rental of Permanent or Expendable Equipment, such as compressors, paint floats, and other similar items for use by shore gangs or ship's crew on repair or other work, radar, radio telephone, and other similar items for use by ship's crew in this operations.

(k) *Special requirements for trade routes.* Any expense for the initial installation of equipment necessary for the vessel's particular trade route, such as Suez Canal davits, which should have been installed before the entry of the vessel into the particluar subsidized service.

(l) *General operating expenses.* Any expense for the loading of stores, the landing and sorting of laundry, pilot service, tug charges, removing surplus equipment to warehouses, and other similar expenses which do not involve actual maintenance and repair.

(m) *Items attributable to unsubsidized operations.* Any item of maintenance or repair that is clearly attributable to unsubsidized operation, including expenses noted on-subsidy surveys for repairs which clearly should have been made before departure from the last United States or Puerto Rican port on the first voyage:

(1) In subsidized service, or

(2) Upon resumption of subsidized operation following temporary withdrawal.

(n) *Overdue classification and inspection requirements.* Any expenses for work required by a classification society or an agency of the Federal Government, which was due (irrespective of any grace period granted) and not completed before the first voyage:

(1) In subsidized service, or

(2) Upon resumption of subsidized operation following temporary withdrawal, except when such work is attributable to prior subsidized service.

(o) *Foreign maintenance and repairs.* Any expense for any item of maintenance and repairs, including insurance repairs, that is performed outside the United States or Puerto Rico, and that is not of Domestic Origin.

(p) *Marine or other loss.* Any part of an expense or a repair which is recovered or recoverable from an insurer or another party.

(q) *Consumables, expendables.* Any procurement expense for consumables, expendables, and Expendable Equipment, when used or installed by ship's crew or furnished for inclusion in ship's inventory, and any expense for maintenance, repair, or replacement of Expendable Equipment.

(r) *Excessive costs.* Costs for maintenance and repair which MARAD considers excessive, after allowing the Operator an opportunity to present all relevant facts pertinent to such costs.

(s) *Overhead costs.* Any expense included in shore gang labor charges which is an overhead items, as prescribed by 46 CFR part 232—Uniform Financial Reporting Requirements.

(t) *Guarantee items.* Any expense for an item adjudged or noted as being a guarantee item of a construction or repair contractor.

§ 272.24 Subsidy repair summaries.

(a) *Filing requirements.* The Operator of an Eligible Vessel shall submit to the appropriate MARAD regional Ship Operations Office a Subsidy Repair Summary (Form MA–140) for each quarter of a calendar year in which one or more of the Operator's Eligible Vessels (including any vessel which has been temporarily withdrawn from subsidized service) terminates a voyage. This quarterly report shall include supporting documents and information, as described in paragraph (c) of this section. This summary may be for either a single voyage or multiple voyages, and shall be filed not later than 120 days after:

(1) The close of the calendar quarter in which a voyage is terminated, or

(2) The date the reported vessel is temporarily or permanently withdrawn from subsidized service.

(b) *Form requirements.*—(1) *Availability and certification.* MARAD will make available one copy of the Form MA–140 upon request. Each Operator shall furnish its own supply of the form and prepare each form for submission. Information on any Form MA–140 shall pertain to only one vessel. The Operator's superintendent engineer or other responsible official shall certify every summary submitted by an Operator in the following manner:

> This is to certify that, to the best of my knowledge and belief, and based on recorded entries through (*Date*), this is a true and correct statement of repair and maintenance expenditures for the period stated, and that the repair and maintenance items indicated as eligible for subsidy participation are reasonably attributable to service subsequent to commencement of the first voyage under the Operating-Differential Subsidy Agreement and were necessary, satisfactorily completed, and the price is fair and reasonable (exceptions are listed on separate page).

(c) *Categorization.* The Operator shall exercise due diligence in identifying each item in the Form MA–140 within the following three separate categories:

(1) *Claimed for subsidy.* This includes the following:

(i) M&R,

(ii) Spare Parts,

(iii) Improvements.

(2) *Marine loss.* If any M&R expense is incurred because of marine loss, the Operator shall list such an M&R expense under this separate category, and shall exclude such expense from the totals for the "Claimed for Subsidy" and "Non-Subsidized Items" categories provided for in this section.

(3) *Non-subsidized items.* This category shall include builders' guarantee items, foreign repairs, and other items of M&R expense not claimed for subsidy.

(d) *Required supporting documents and information.*—(1) *General.* The Operator shall support every item in the Form MA–140 with documents or other information, in sufficient detail to permit MARAD to determine the fairness and reasonableness of the prices for the submitted work. With respect to any claims for M&R performed outside the United States or Puerto Rico, the Operator shall submit with the claim a certificate, signed either by the Operator (if it uses its own shore gang labor or materials from its own inventory) or by an official of the ship repair yard or the independent contractor performing the work, stating that the maintenance and repairs were performed with materials, labor, or both, of Domestic Origin.

(2) *U.S. Independent contractors.* If a U.S. independent contractor performed M&R work, the Operator shall support each such expense with one copy of the contractor's invoices covering the work performed. If an invoice is not itemized and fully descriptive of the work performed with item prices, then the Operator shall attach to the contractor's invoice other supporting documentation, such as specifications, prepared in sufficient detail to permit a determination of the fairness and reasonableness of the prices for each segment of the work performed.

(3) *Operator's shore Gang.* If an Operator's own U.S. shore gang has performed any M&R work, the Operator shall submit with the Form MA–140 specifications covering that work, prepared in sufficient detail (including the material and labor cost of each item) to permit a determination of the specific cost of each segment of work performed.

(4) *Operator furnished material.* Whenever an Operator furnishes to a contractor material obtained either from the Operator's own ship stores or shoreside inventory, or by direct purchase for a specific job, the Operator shall include on the invoice, requisition form or other form of transfer memorandum the item number for which the material was used and the contract number covering the work performed.

(5) *Spare parts.* The Operator shall ensure that the invoice covering any Spare Part for an Eligible Vessel which is to be used or installed as an integral, permanent part of the vessel, indicates the specific piece or part of the vessel's hull, machinery, or Equipment for which the Spare Part was obtained

(6) *Foreign repairs.* Operators receiving M&R subsidy shall submit copies of all U.S. Customs entry forms detailing foreign expenditures on behalf of Eligible Vessels. The copies shall include all expenditures made during the quarter.

(Approved by the Office of Management and Budget under Control Number 2133–0007)

§ 272.25 Requirements for subsidy repayment.

(a) *Repayment of M&R subsidy for compensated marine or other loss.* If an Operator eventually receives compensation from an insurer or any other person for a marine loss or any other loss for which M&R subsidy has been paid, the Operator shall repay to MARAD an amount equal to the amount of subsidy paid with respect to that loss.

(b) *Repayment of M&R subsidy for improvements*—(1) *Three year service requirement.* If, within three years after the completion of an improvement for which M&R subsidy was paid, the Operator permanently withdraws the Eligible Vessel from the ODSA, the Operator shall repay to MARAD an amount equal to the amount of M&R subsidy paid with respect to that improvement unless MARAD shall have determined that such action was beyond the control of the Operator.

(2) *Repayment of M&R subsidy due to allocation of costs.* If the allocation of total M&R costs required by § 272.41(e) of this part results in the allocation of a lesser amount of subsidizable M&R costs than were actually paid for during the calendar year, the Operator shall repay to MARAD the amount of ODS which was paid in excess of the allocated subsidizable costs.

(3) *Administration action.* If an Operator fails to repay an M&R subsidy required to be repaid by this section, MARAD may either reduce any ODS payable by the amount of M&R subsidy required to be repaid by the section, or take any other action necessary to secure repayment.

Subpart D—Penalties

§ 272.31 Determination of penalty.

Operators whose Eligible Vessels have undergone foreign repairs, which MARAD determines are non-emergency in nature, may be subject to a penalty in an amount equal to the total cost (exclusive of applicable U.S. Customs duties) of such foreign repairs and purchases, such penalty to be effected by a deduction from the Operator's total ODS otherwise accrued. The Director, Office of Ship Operating Assistance, shall notify the Operator by letter with respect to:

(a) MARAD's determination of a penalty and the reasons therefore; and

(b) Whether the determination is final or subject to the submission of additional information.

§ 272.32 Mitigation of penalty.

The Director, Office of Ship Operating Assistance, may decide, after a non-emergency foreign repair occurs, to mitigate the penalty. Any mitigation of penalty shall be based on a determination that special circumstances existed at the time of repair. The Director shall not consider the difference in the price of foreign and domestic repair work in making this determination, and shall not grant prior approval of foreign repairs. In determining whether special circumstance existed, the Director shall consider, among others, the following factors.

(a) The trading area of the vessel both before and after the repair was performed;

(b) Loss of revenue and effect on vessel utilization if the vessel had returned to the United States for repairs;

(c) The additional operating expense which would have resulted from a return to the United States to repair the vessel; and

(d) Whether the repairs could have been deferred until return to the United States, taking into consideration the Coast Guard requirements for drydocking and special surveys.

§ 272.33 Penalty appeals.

The Operator may appeal final penalty determinations of the Director, Office of Ship Operating Assistance, to the Board, as provided in § 272.43(c) of this part.

Subpart E—Examination, Audit, Review and Appeal Procedures

§ 272.41 Requirements for examination and allocation of M&R expenses.

(a) *Examination requirement.* Pursuant to the specific limitations on M&R subsidy in section 603 of the Act, the Region Office shall examine the expenses submitted by an operator on the Form MA-140 in order to determine eligibility to receive M&R subsidy and the reasonableness of such expenses.

(b) *Operator's responsibility.* During the examination, the operator shall provide, at the request of the Director or other official of the Region Office, any further documentation or information necessary to support an M&R expense. If such documentation or information, including information required under paragraph (e) of this section, is not received at the Region Office on a timely basis, the Director or other official of the Region Office may disallow the M&R expense.

(c) *Notification of examination results.* At the completion of the examination the Director or other appropriate official of the applicable Region Office shall notify the Operator by letter of the results of the examination and shall state the reason for each disallowance of an item claimed for subsidy and/or each non-approval of a marine loss item.

(d) *Record retention requirements.* To facilitate an audit examination of M&R made pursuant to § 272.42 of this part, the Operator shall maintain files arranged by vessel and voyage, which shall include, at a minimum, a copy of the Region Office notice letter, a copy of the Form MA-140 with all supporting documents submitted therewith, and the condition survey report. The Operator shall retain all the required materials in files for not less than 3 years after competion of the audit.

(Reporting requirements approved by the Office of Management and Budget under Control Number 2133-0007)

(1) *Limitation on approval.* Any approval for payment of M&R subsidy for a subsidy for a marine loss time shall be subject to rescission or modification if the Operator subsequently receives insurance or other compensation for the item. The Region Finance Officer may at any time request verification that the Operator has not received such compensation.

(2) *Status report on approved marine loss items.* The Operator shall advise the Region Finance Office by letter as to whether insurance or other compensation will be recovered for the marine loss item. The Operator is responsible for ensuring that the lettter reaches the applicable Region Office within 120 days after:

(i) The date on which all repairs for damage attributed to the "Policy Voyage" (as defined in the Operator's insurance policy) are completed when the amount for such repairs does not exceed the franchise or deductible of the policy, or

(ii) The date of the underwriter's rejection of the Operator's marine loss insurance claim or claims.

(e) *Allocation of costs.* An Operator shall allocate total M&R costs if an Eligible Vessel terminates voyages during the calendar year which were made:

(1) In more than one subsidized service; or

(2) In a subsidized service as well as in an unsubsidized service while under an ODSA;

(f) *Manner of allocation.* The Operator shall allocate the total M&R costs of the vessel which have been approved by MARAD to all voyages terminating during the calendar year according to the ratio which the number of days in each voyage (determined in accordance with part 281 of this chapter) bears to the total voyage days of the vessel during the year. The Operator shall keep a record of these allocations and make these records available for any audit conducted pursuant to this part.

(g) *M&R subsidy payment.* During any year in which the Operator is required to allocate total M&R costs, as described in paragraph (f) of this section, and if the other requirements of this part are satisfied, the Operator shall be eligible to receive M&R subsidy payments for repairs charged to each voyage at the rates determined by the Board as applicable to the service, and on the basis authorized by the ODSAs.

§ 272.42 Audit requirements and procedures.

(a) *Required audit.* MARAD shall audit the Operator's M&R costs, as necessary, in conjunction with the audit of the Operator's subsidizable expenses for the determination of final subsidy rates. The Operator shall substantiate those costs recorded on the books of account which have been approved by the Administration.

(b) *Notification of audit results.* Upon completion of the audit, the Office of Financial Approvals of MARAD shall notify the Operator of the audit results, including the items disallowed and the reasons for such audit disallowable.

§ 272.43 Review and appeal procedures.

(a) *Exclusive procedures.* Notwithstanding the audit appeal procedures of part 205 of this chapter, the provisions of this section shall be the exclusive remedy available to an Operator for the review and appeal of any disallowance of subsidy for a M&R expense claimed or any penalty assessed pursuant to section.

(b) *Request for review.* An Operator may request review by:

(1) The Director, Office of Ship Operations, with respect to any disallowance by the Region office of a claimed M&R expense, after receiving the notification required by § 272.41(c); or

(2) The Director, Office of Financial Approvals, with respect to any disallowance of a claimed M&R expense, after receiving the notification required by § 272.42(b).

(c) *Timeliness of request.* The Operator shall file all requests for review pursuant to paragraph (b) of this section within 30 days after the date of the audit notification. Any disallowance with respect to which the Operator fails to file a timely request for review shall be final and shall not be subject to appeal to the Board pursuant to paragraph (e) of this section.

(d) *Notification of review determination.* The appropriate MARAD Office Director shall notify the Operator by letter, with respect to each timely filed review request, of the Director's determination and the reasons for each disallowance and whether the determination is final or subject to the submission of additional information.

(e) *Appeal to the Maritime Subsidy Board*—(1) *Right to appeal.* An Operator may appeal a MARAD Office Director's final determination issued pursuant to § 272.32 (penalties) or § 272.43 (review of claims disallowance or of audit results) of this section to the Board in writing.

(2) *Contents and timeliness.* The Operator shall set forth in any appeal the reasons for the Operator's objection to a disallowance of penalty and shall file such appeal with the Secetary of the Board within 30 days after the date of the notification sent to the operator by the appropriate Director pursuant to paragraph (d) of this section or § 272.33. The Board will grant no extensions of the 30-day filing period.

§ 272.44 Dates.

The dates noted on the letters or notifications sent to the Operator by officials of the Region Office, any Director or any other official of MARAD, pursuant to the provisions of this part, shall be conclusive for the purposes of determining the timeliness of any requests for review made under the provisions of this part.

Dated: August 21, 1989.

By Order of the Maritime Subsidy Board/Maritime Administrator.

James E. Saari,
Secretary.

[FR Doc. 89-20074 Filed 8-25-89 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-17; Notice 01]

RIN 2127-AC82

Safe Entry and Exit Requirements for Commercial Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice seeks comment on issues relating to a rulemaking action begun in 1980 when NHTSA granted a petition from the International Brotherhood of Teamsters requesting that the agency establish safe entry and exit requirements for commercial vehicles. NHTSA is seeking information that would update its data files on driver "slips and falls" from locations on the vehicle to which the driver had climbed to perform duties relating to the operation, servicing or maintenance of the vehicle or its equipment. This information is needed to assist the agency in assessing the next step in the rulemaking proceeding, i.e., continuing toward a proposed rule or terminating the rulemaking action.

DATE: Comments on this notice must be received by the agency no later than October 12, 1989.

ADDRESS: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5267. Docket hours are 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, NRM-11, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone (202) 366-5273.

SUPPLEMENTARY INFORMATION: This notice concerns a rulemaking action begun in 1980 when NHTSA granted a petition from the International Brotherhood of Teamsters (IBT) requesting that the agency establish safe entry and exit requirements for commercial vehicles. (45 FR 45336, July 3, 1980.) NHTSA is seeking information that would update its data files on driver "slips and falls" from locations on truck tractors and trailers to which the driver had climbed to perform duties relating to the operation, servicing or maintenance of the vehicle or equipment thereon. This information is needed to assist the agency in assessing the next step in the rulemaking proceeding.

In April 1979, the IBT petitioned NHTSA to issue a regulation on "safe entry and exit from commercial vehicles" to address what petitioner called "the alarming frequency of slip and fall injuries among professional drivers." IBT made this request for three reasons: (1) At the time of the petition, petitioner believed that on-going rulemaking efforts by the formerly-named Bureau of Motor Carrier Safety of the Federal Highway Administration (FHWA) concerning step, handhold and deck requirements were proceeding to slowly; (2) the FHWA regulation would apply only to high profile cab-over-engine (COE) vehicles (i.e., a truck or truck-tractor having all, or the front portion, of the engine under the cab, and the door sill step above the height of the front tires), and petitioner believed "safe entry and exit" requirements should apply to all tractors and tractor-trailer combinations; and, (3) the FHWA regulation would apply only to vehicles operating in interstate commerce. The FHWA published its final rule on step, handhold and deck requirements in July 1979, applicable to high profile COE trucks and truck-trailers manufactured on or after September 1, 1982 (49 CFR part 399, subpart L; 44 FR 43730, July 26, 1979.)

NHTSA had granted the 1979 IBT petition because the agency had thought a safety problem may have existed. In its grant notice, NHTSA announced its intention to examine available data and determine whether to propose a new FMVSS to establish entry and exit requirements (i.e., some form of step, handhold, and deck requirements) for commercial motor vehicles. Since then, the agency has been unable to find data indicating a safety need for such a proposal for vehicles not already subject to FHWA entry and exit requirements.

In light of the past public interest and administrative activity regarding entry and exit requirements, NHTSA is issuing this notice to obtain information that would assist the agency in determining whether further rulemaking appears to be warranted. Depending on the information provided by the comments and NHTSA's consideration of them, the agency may proceed to develop a proposal or terminate the rulemaking action.

NHTSA seeks responses from drivers, fleet owners, manufacturers and other parties to the following questions concerning driver "slip and fall" injuries from truck tractors and trailers. In responding to a particular question, NHTSA requests that interested persons provide any relevant factual information to support their conclusions or opinions, including but not limited to statistical data and estimated costs and benefits, and the source of such information.

1. What is the frequency and severity of driver slip and fall injuries from trucks, truck trailers and trailers occurring annually, and under what conditions (weather, time of day, operations, etc.) and from which locations on the vehicle have drivers had the most falls?

2. Which vehicles (make and model year) or type of vehicle (e.g., cab over engine) have been involved in driver slip and fall injuries?

3. To what extent, if any, have mandated or voluntary actions by manufacturers addressed the frequency and magnitude of such injuries?

Comments

NHTSA solicits public comments on this notice. It is requested, but not required, that commenters provide 10 copies of written comments and two copies of films, tapes, and other materials.

All comments must not exceed 15 pages in length. (49 CFR 553.21.) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this notice will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on the notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

Issued: August 21, 1989.

Ralph J. Hitchcock,

Acting Associate Administrator for Rulemaking.

[FR Doc. 89-20207 Filed 8-25-89; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 54, No. 165
Monday, August 28, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Amendment to the Forest Land and Resource Management Plan for the Grand Mesa, Uncompahgre, and Gunnison National Forests, Delta, Garfield, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, San Juan, and San Miguel Counties, Colorado

AGENCY: Forest Service, USDA.

ACTION: Extension of public comment period.

SUPPLEMENTARY INFORMATION: The Public Comment Period for the Draft Supplemental EIS and Proposed Amendment to the Forest Land & Resource Management Plan (54 FR 21646; May 19, 1989) has been extended from August 25, 1989, to September 25, 1989.

Gary E. Cargill, Regional Forester, Rocky Mountain Region, is the responsible official.

FOR FURTHER INFORMATION CONTACT: Nick Greear, Forest Planner, 2250 Highway 50, Delta, Colorado 81416, telephone (303)-874-7691.

Dated: August 22, 1989.

Roger A. Shepard,

Acting Forest Supervisor.

[FR Doc. 89-20214 Filed 8-25-89; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Certification of Central Filing System; Oregon

The Statewide central filing system of Oregon has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Barbara Roberts, Secretary of State, for specified farm products produced in that State (51 FR 43647, December 3, 1986, and 52 FR 33260, September 2, 1987).

The certification is hereby amended on the basis of information submitted by Barbara Roberts, Secretary of State, for all farm products produced in that State.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: August 22, 1989.

B. H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 89-20157 Filed 8-25-89; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review and determination not to revoke in part.

SUMMARY: On August 30, 1988, the Department of Commerce published the preliminary results of review and intent to revoke in part the antidumping finding on television receivers, monochrome and color, from Japan. The review covers seven manufacturers and/or exporters of this merchandise to the United States and various periods from April 1, 1980 through February 28, 1987.

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke in part. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results for certain firms, and we have determined not to revoke the finding in part.

EFFECTIVE DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Wendy J. Frankel, or J.E. Downey, or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/5222.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1988, the Department of Commerce (the Department) published in the **Federal Register** (53 FR 33164) the preliminary results of antidumping duty administrative review and intent to revoke in part the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). A domestic party to the proceeding and two respondents requested in accordance with 19 CFR 353.53a(a) that we conduct these administrative reviews. We have now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of television receiving sets, monochrome and color, and include, but are not limited to, projection televisions, receiver monitors, and kits (containing all the parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image.

The review covers seven manufacturers and/or exporters of Japanese television receivers, monochrome and color, and various periods from April 1, 1980 through February 28, 1987. All reviewed periods are identified in the Final Results of Review section.

Sharp Corporation failed to respond to our supplemental sales questionnaire for the second review period, covering April 1, 1980 through March 31, 1981. The questionnaire covered sales between Sharp's home market related distributors and unrelated dealers. Funai Electric did not respond to our sales questionnaire for the eighth review period, covering March 1, 1986 through February 28, 1987. NEC did not respond to our cost-of-production questionnaire for the eighth review period.

Therefore, for these three firms we used the best information available for assessment and estimated antidumping duty deposit purposes. As best information available, we used information that was adverse to the firms. For Sharp, we used the highest rate for any company during the same period. For Funai, we used the company's last rate as best information available. For NEC, we used the firm's own data as best information available, since this rate is in excess of the company's previous rate. After publication of the preliminary results, NEC notified the Department of previously unreported purchase price sales to one customer during the seventh review period. NEC reported only sales quantities and dates, not sales values. As best information available for these transactions, we used the highest single purchase price margin in this review that we were able to verify. For cash deposit purposes, we used the weighted average sales price for each model to this customer, verified for reported sales, in order to calculate the weighted average dumping margin.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of two respondents, we held a public hearing on November 3, 1988. We received comments from Zenith; the Independent Radionic Workers of America, the International Brotherhood of Electrical Workers, the International Union of Electrical, Radio & Machine Workers, and the Industrial Union Department, AFL–CIO (the Unions); and six respondents, Fujitsu General, Hitachi, Mitsubishi Electric, NEC, Sanyo, and Sharp.

In this final results notice, we have corrected the following inadvertent programming errors in our calculations: erroneous deductions of credit expenses from PP sales (NEC; fifth, sixth, and seventh reviews); and incorrect programming statements that omitted home market advertising expenses in the exporter's sales price (ESP) offset (NEC; fifth, sixth, and seventh reviews). In addition, in response to comments concerning mathematical or clerical errors, we have corrected the following errors: Incorrect home market sales promotion expenses (NEC; fifth, sixth and seventh reviews), incorrect imputed interest for U.S. storage (Mitsubishi Electric; fifth and sixth reviews), incorrect calculation of time on the water (Mitsubishi Electric; sixth review), and incorrect export selling expenses (Mitsubishi Electric; fifth review).

Mitsubishi Electric made certain errors in the calculation of its U.S. "Rebate 3" and U.S. warranty claims in preparing its computer tape. We corrected those errors to reflect the ratios reported in the narrative portion of its response.

Finally, in our preliminary calculations for Fujitsu General and NEC, we inadvertently calculated the home market commodity tax according to the calculation methodology used to derive the tax forgiven on U.S. sales. We have corrected our calculations to reflect the verified commodity tax expenses in the home market.

Comment 1: Zenith and the Unions argue that, under 19 CFR 353.54(a), the Department is not at liberty to exercise its authority to revoke antidumping determinations unless it is satisfied that there is no likelihood that less-than-fair-value (LTFV) sales will resume.

Zenith and the Unions argue that the burden of proof that LTFV sales are not likely to resume falls on the respondent companies, Hitachi and Sanyo, and that neither has met it. The domestic parties allege that Hitachi and Sanyo's involvment in various other antidumping cases impugns these respondents' credibility. Therefore, the Department should view skeptically the letters submitted by both respondents agreeing to the immediate reinstatment of the finding should LTFV imports occur.

The Unions and Zenith argue that the following market conditions contribute to the probability that any future imports by Hitachi or Sanyo will be made at LTFV: the prices of color TVs in the United States have declined steadily over the past six years; Japanese production costs have been increasingly; other Japanese respondents have recently been found to be dumping; and the current dollar/yen exchange rate imposes unusually strong competitive pricing pressures on Japanese exporters. In addition, the domestic parties argue that prices have been kept low in the United States by imports from such countries as the Republic of Korea, Taiwan, Mexico, Malaysia, and Singapore. Imports from these countries apply downward pressure on the price level and influence all market participants. Thus, should Hitachi and Sanyo resume commercial shipments from Japan, they would have to sell at LTFV in order to be competitive in the U.S. market.

The Unions allege that it would be easy for Hitachi and Sanyo to shift television production to lines now dedicated to other consumer items (such as color picture tubes). Zenith argues that the Japanese TV industry has excess production capacity, and that domestic demand cannot absorb all television production. Therefore, Japanese producers will need to find other markets to accommodate this excess production. Zenith contends that as other countries (such as the E.C. nations) institute more restrictive import controls over consumer products, the Japanese will increasingly depend on sales in the U.S. market. This greater supply of Japanese TVs will result in keener competition and increase the likelihood of LTFV sales.

The Unions contend that, since Sanyo and Hitachi have both been developing Liquid Crystal Diode (LCD) televisions, both companies intend to resume shipments of televisions to the United States. Because of current market conditions, such sales will necessarily be made at LTFV and, therefore, should remain subject to the antidumping finding on televison receivers.

Hitachi and Sanyo argue that they have no economic incentive to divert televisions sold in Japan to the U.S. market precisely because of the current unfavorable business climate in the United States.

Sanyo claims that because production costs at its Mexican and U.S. facilities far undercut production costs in Japan, it would not resume shipments from Japan but would continue to supply the U.S. market from its U.S. and Mexican production facilities. Hitachi and Sanyo also contend that, contrary to Zenith's argument, they are currently operating at full capacity and have had to import televisions from third countries in order to meet domestic demand. Moreover, Sanyo maintains that it does not produce LCD TVs, as is made clear by the fact that the company did not participate in the International Trade Commission's investigation concerning the effect of sales of LCD TVs in the U.S. market.

Hitachi contends that Japan is no longer a viable export base for the majority of television receivers. The comparative advantage in television production has shifted to the United States and to other countries. The company notes that "[i]n view of high production costs and the high value of the yen it would make no sense for Hitachi to attempt to compete in the price sensitive segment of the U.S. market with television sets manufactured in Japan * * *"

Both Hitachi and Sanyo dispute the domestic parties' contentions that involvement in other antidumping cases and various other types of investigations impugn their integrity. Both respondents point out that they are not related to some of the firms noted by the domestic parties that are involved in other antidumping cases.

Department's Position: We determine that we cannot conclude from the evidence in the record that there is no likelihood of the resumption of LTFV sales by Hitachi and Sanyo. Consistent with our analysis in Canned Bartlett Pears from Australia (46 FR 43224, August 27, 1981), we have examined competitive pricing pressures and Market conditions in both the U.S. and the home market. In our tentative determinations to revoke (48 FR 37506; August 18, 1983; and 48 FR 44101, September 27, 1983), we stated:

> In evaluating the requests for tentative revocation, we have reviewed a large volume of data including: (1) information on recent Japanese domestic television production and investment; (2) current pricing trends for U.S. imports of Japanese television receiving sets; (3) European Communities' market restrictions on the importation of such sets; and (4) the emergence of Taiwan and Korea as significant television set producers and exporters, with the consequence (sic) impact on prices in international markets. This information is disturbing. However, both companies have met the minimum requirements for our publishing this tentative determination to revoke in part. We intend to continue evaluating such factors in making any decisions in the future on these tentative determinations.

We have examined these factors, as well as other factors, in light of evidence placed on the record by parties to this proceeding in order to determine whether there is a likelihood of resumed LTFV sales by Hitachi and Sanyo. Since publication of the tentative determination to revoke, the evidence shows that imports as a percentage of U.S. consumption have increased, competitive pricing pressures in the United States have become stronger, E.C. import controls have become more restrictive, and, at least through 1988, the yen has appreciated against the dollar, thereby making it more difficult for Japanese exporters to be competitive in the U.S. market without selling at LTFV.

These market factors are important where, as in this case, there have been no shipments for many years, and there is therefore little information regarding these companies' pricing practices. In this case, Hitachi provided no product-specific price data. Sanyo provided information on two hypothetical purchase price sales but provided no back-up documentation. A sample of two hypothetical sales is insufficient to determine that there is no likelihood of the resumption of LTFV sales after so many years of no shipments.

Although the Japanese yen has been appreciating against the U.S. dollar, prices of Japanese TVs in the U.S. market have not risen at the same rate. In fact, prices of televisions in the United States have declined steadily over the past six years. However, because of conflicting evidence, we cannot determine whether the decline in Japanese market prices (excluding below-cost sales) has kept pace with that in the United States. During this same period, however, production costs in Japan have been rising.

In the most recent administrative reviews of this finding (*see, e.g.*, "Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review" (52 FR 8940, March 20, 1987); and "Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review," (54 FR 13197, April 6, 1989)), we found substantial dumping margins for several Japanese respondents that have continued to export televisions from Japan for sale in the U.S. market. Competition in the U.S. market is further affected by television imports, including many at LTFV, from such countries as the Republic of Korea and Taiwan. Given the high production costs in Japan and the high value of the yen, it is difficult to see how Hitachi or Sanyo, if they were to resume shipments to the United States on a competitive basis, could compete in such a tight market without selling at LTFV. We have no reason to believe that present market conditions in the United States and Japan will change.

Finally, we are aware that there are new technological trends in the television industry, such as liquid crystal diode (LCD) TVs, which are within the scope of this finding. Televisions using new technologies are likley to be developed and produced in Japan. We cannot predict who will enter this market, and the incentive to sell such products at LTFV will depend on competitive market pressures. However, given the number of companies currently pursuing the new technologies and the high production costs in Japan combined with the high value of the yen, it is difficult to conclude that there is no likelihood of selling the new products at LTFV in the future.

For these reasons, we cannot conclude at this time that there is no likelihood of the resumption of LTFV sales by Hitachi or Sanyo. Therefore, we determine not to revoke, in part, the finding with respect to Hitachi and Sanyo.

Comment 2: Zenith argues that the Department is required by statute to verify all information relied upon in making a determination to revoke. To satisfy this requirement, the Department may not rely on its method of asking Customs if any shipments were made and of interpreting Customs' lack of response as an affirmative declaration of no shipments. Rather, the Department must conduct on-site verification even in no-shipment cases in order to determine whether or not to revoke.

Department's Position: Since we have determined not to revoke the finding in part, this issue is moot.

Comment 3: Zenith argues that the Department should implement the ruling of the Court of International Trade in *Zenith* v. *United States* (April 24, 1988) by adding to United States price (USP) the internal taxes rebated or forgiven upon exportation of the merchandise only to the extent that those taxes are "passed through" and included in the price of televisions sold in Japan.

Department's Position: We do not agree with the court in Zenith but have not had an opportunity to appeal the decision on its merits.

Consistent with our long-standing policy, we have not attempted to measure the amount of tax "passed through" to customers in the Japanese market. We do not agree that the statutory language limiting the amount of the adjustment to the amount of the commodity tax "added to or included in the price" of televisions sold in Japan requires the Department to measure the incidence of the tax in an economic sense. Furthermore, applying such an interpretation would be contrary to the obligations of the United States under the General Agreement on Tariffs and Trade (GATT). Article VI of the GATT prohibits a finding of dumping due solely to the exemption of the exported product from taxes in the country of origin—a result that the "pass-through" method could lead to.

We agree that the amount of commodity tax forgiven by reason of the export of televisions to the United States must be added to USP under the statute. We calculated the adjustment by multiplying the ex-factory U.S. price by the tax rate and adding the result to USP. To avoid artificially inflating or deflating margins, we made circumstance of sale adjustments equal to the difference in the tax per unit, where appropriate.

Comment 4: Zenith argues that the Department failed to account for what Zenith regards as interest income earned on deferred payments of rebates and discounts.

Department's Position: We disagree. We have addressed this issue in past reviews of this case. *See, e.g., Comment 8,* "Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative

Review," (52 FR 8940, March 20, 1987) and *Comment 2*, "Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review," (54 FR 13197, April 6, 1989). We avoid imputing expenses where a company quantifies the actual expenses and provides adequate documentation of those expenses.

Comment 5: Zenith alleges that respondents may have included non-selling expenses as indirect selling expenses for the ESP offset to FMV. The Department should examine each of the items individually and make an affirmative determination that each claimed expense is, in fact, a selling expense.

Department's Position: Zenith has not indicated which expenses may not be selling expenses. Without more specific allegations, the Department is unable to respond to detail. However, we have no reason to believe that the claimed expenses are not related to selling activities. Additionally, where verification has occurred, we have examined the nature of items selected for verification to establish that they are selling expenses.

Comment 6: Zenith argues that the Department failed to deduct antidumping legal expenses from ESP.

Department's Position: We do not agree that legal expenses associated with antidumping proceedings should be deducted from ESP because such expenses are not incurred in selling merchandise in the United States. *See* our position on Comment 3 in "Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review," (52 FR 8940, March 20, 1987) and on Comment 4 in "Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review," (54 FR 13197, April 6, 1989).

Comment 7: Zenith contends that the Department should deduct from USP the actual amount of estimated antidumping duties paid by the respondents.

Department's Position: We disagree. We do not consider estimated antidumping duties paid to be expenses related to the sales under consideration. *See* our position on Comment 5 in "Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review", (54 FR 13197, April 6, 1989).

Comment 8: Zenith argues that the Department should identify the direct and indirect components of U.S. commissions and should offset home market indirect selling expenses only up to the amount of the indirect component of U.S. commissions.

Department's Position: We disagree. Respondents have demonstrated that all commissions paid to unrelated parties bear a direct relationship to the sales under consideration. Therefore, they are all direct selling expenses. *See* our position on Comment 6 in "Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review," (54 FR 13197, April 6, 1989).

Comment 9: Zenith argues that the Department's policy of instructing Customs to collect cash deposits for future entries on the basis of the weighted average percentage of entered value understates the amounts that should be collected because the weighted average margin is calculated on the basis of USP, and USP will always be higher than entered values. Since the percentage calculated on the basis of USP will subsequently be applied to the lower entered value, this calculation will understate the estimated duty. Zenith urges the Department to calculate the deposit rate as a percentage of entered value.

Department's Position: Section 731 of the Tariff Act defines an antidumping duty as the amount by which foreign market value exceeds United States price. We do not have the authority to calculate dumping margins on the basis of the difference between FMV and entered values.

At the time of entry of any shipment, USP has yet to be determined. Since cash deposits of estimated antidumping duties are required at the time of entry, we instruct Customs to require such deposits expressed as a percentage of the only informatoin available, which is entered value. *See* our position on Comment 7 in "Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review," (54 FR 13197, April 6, 1989).

Comment 10: Mitsubishi argues that the Department should calculate the commodity tax on U.S. sales on the basis of Mitsubishi's U.S. subsidiary's sales prices to its customers, instead of basing it on the transfer price less transportation costs and packing. Mitsubishi urges the Department to change this calculation in order to bring it more closely into accord with Japanese commodity tax law.

Department's Position: We disagree. Japanese law provides several different methods for the assessments of commodity taxes; the amount of forgiven tax could be computed in a number of different ways. The Department, however, lacks the resources to determine how each respondent would calculate the amount of forgiven commodity tax in every instance. The method we chose to calculate the tax is a reasonable one and is consistent with Japanese law. *See* our position on Comment 67 in "Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review," (54 FR 13197, April 6, 1989).

Comment 11: Mitsubishi argues that the Department should not calculate separate margins for assessment and duty deposit purposes.

Department's Position: In our preliminary results, we published separate margins for assessment and cash deposit purposes. For assessment purposes, we accounted for differences in taxation between the U.S. market and the home market by making a circumstance of sale adjustment for the tax differences. We made no such adjustment for cash deposit purposes. We have reconsidered this issue and have concluded that it is inappropriate to use different methodologies to calculate margins for assessment and cash deposit purposes.

By using a different methodology for cash deposit purposes, we were intending to determine an estimated dollar amount of duty deposit that would be as close as possible to the dollar amount to be assessed. Since the home market indirect tax, though added to USP pursuant to section 772(d)(1)(C) in our calculations for assessment purposes, is not actually paid by exporters, and therefore not acutally included in the invoice price most commonly used by the Customs Service as entered value, we believed that the deposit rate would be more accurate if it did not include the addition of the tax. Therefore, for cash deposit purposes, we did not include the circumstance of sale adjustment to FMV for the difference in taxes between the two markets. However, we now believe that the difference in taxes will be caused by many other factors in the calculation of FMV and USP, such as discounts, rebates, freight, other differences in circumstances of sale, and physical differences in merchandise. Given the practical impossibility of ever calculating a deposit rate that will reflect actual dumping margins for future sales, we have concluded that the use of a single method of margin calculation for both assessment and deposit purposes is more appropriate.

Comment 12: Mitsubishi argues that the Department should not deduct U.S. direct selling expenses from ESP, but instead should adjust FMV for

differences between the U.S. and home market expenses. As support for its argument, Mitsubishi cites the CIT's decision in *Timken Co.* v. *United States*, 673 F. Supp. 495 (1987).

Department's Position: Section 772(e)(2) provides that the Department shall deduct from ESP the amount of any expenses incurred on behalf of the exporter in the United States. We interpret this provision to cover both direct and indirect expenses. Section 773(a)(4)(B) provides that adjustments shall be made to FMV to account for differences in circumstances of sale. We interpret this provision to mean that, in a purchase price transaction, FMV should be adjusted for differences between U.S. and home market selling expenses. Section 773(a)(4)(B) does not preclude the Department from applying the specific directions in section 772(e)(2) regarding ESP transactions.

Our consistent practice of deducting direct selling expenses from ESP is appropriate and reasonable under the statutory scheme because it allows us to account for all expenses attributable to sales in the United States (both direct and indirect).

We disagree with the court's decision in Timken, and we are addressing this issue in a redetermination under remand in that case. We are also litigating this issue before the CIT in *Zenith* v. *United States*, Consolidated Court No. 88-02-00122.

Comment 13: Mitsubishi notes that there is a methodological discrepancy concerning home market warranty expenses between the Department's analysis memorandum and its computer program; and urges the Department to treat the expenses as direct, as the analysis memo indicates. Mitsubishi argues taht its home market warranty expenses are direct selling expenses because payments to the service company are made at arm's length, as shown by the service company's profitability in the following year.

Department's Position: We incorrectly considered these warranty expenses to be direct expenses in our analysis memorandum. However, in the computer program, we treated warranty expenses as indirect expenses. We consider these warranty expenses to be indirect selling expenses because the warranties were provided by related companies, and the respondent did not adequately demonstrate that payments to the service company were made at arm's length. For such warranty coverage to be considered a direct selling expense, it must represent a variable cost incurred as the result of an arm's length transaction. We cannot conclude that, merely because a related company with which MELCO did business was profitable, individual transactions between MELCO and the related company were at arm's length.

Comment 14: Sharp argues that during its disclosure conference, the Department failed to provide an explanation of the basis for its decision to use best information available (BIA).

Department's Position: The purpose of a disclosure conference is to clarify how the Department computes its margins, not to discuss whether it was justified in applying a particular methodology or standard. As we stated in our preliminary results notice, our decision to use BIA was based on Sharp's failure to respond to our supplemental questionnaire. *See* also our response to Comment 15.

Comment 15: Sharp asserts that the Department acted improperly in rejecting the statistical information used in the first notice of preliminary results for this period (48 FR 37506, August 18, 1983) to calculate expenses between Sharp's related distributors and unrelated dealers. Sharp claims that the Department has no valid reasons for rejecting the statistical information and that the Department cannot change its original preliminary results without substantial evidence to support such a change. Therefore, Sharp contends that the Department may not use BIA under these circumstances.

Department's Position: As stated in our revised preliminary results notice of August 30, 1988, our decision to use BIA was based specifically on Sharp's failure to respond to our supplemental questionnaire of August 1, 1986. In that document, we asked that Sharp provide data regarding prices between Sharp's related distributors and unrelated dealers in the home market. Sharp did not respond, even after we granted a one-month extension.

After publishing the original preliminary results notice, we concluded that we had an inadequate basis for determining that Sharp's prices to related distributors were made at arm's length. Although in our original preliminary results we relied on statistical information, which was based on studies conducted by Japan's Ministry of International Trade and Industry, we decided, for reasons identified in the record, that the statistical information was insufficient to demonstrate that sales between Sharp and its related distributors were at arm's length. For that reason, we were not able to base our analysis on those sales. Therefore, we decided to request data on sales between Sharp's related distributors and its unrelated dealers. We would have used this information as the basis for calculating FMV. Since Sharp did not respond to our supplemental questionnaire, we are resorting to BIA.

Comment 16: Sharp asserts that even if the Department does use BIA, it should not use 3.37 percent, but should use the highest preliminary rate for the second administrative review period, which is 0.53 percent.

Department's Position: We disagree. It is not appropriate to use a preliminary rate for assessment purposes. Instead, we have chosen as BIA the highest rate for any company during the same review period, which is 0.66 percent (50 FR 24278, June 10, 1985).

Comment 17: Fujitsu General asserts that the Department improperly denied as a direct expense a certain portion of advertising expenses.

Department's Position: We allowed only the portions of the home market advertising claim covering the printing and manufacturing cost of catalogues. We disallowed all other portions of the claim because Fujitsu General could not adequately demonstrate at verification a relationship between the reported expenses and the sale of CTVs in the home market.

Comment 18: Fujitsu General argues that the Department incorrectly disallowed the company's trade credit and market rebate (TCMR) as a circumstance of sale adjustment directly attributable to color television sales and other products.

Department's Position: We disagree. Fujitsu General presented a two-part TCMR claim: TCMR for CTVs and TCMR for "CTV/Other Products." The company adequately demonstrated the relationship between TCMR for CTVs and sales of CTVs. However, the company could not provide an adequate explanation of the methodology used to allocate the TCMR for "CTV/Other Products." Therefore, we disallowed that portion of the claim.

Comment 19: Fujitsu General asserts that in calculating FMV, the Department should not have included sales to farmer cooperatives because such sales are not made in the principal markets or in the ordinary course of trade, or at the same level of trade.

Department's Position: We disagree. In calculating foreign market value (FMV), we consider all home market sales of such or similar merchandise that are in the ordinary course of trade as the principal markets absent evidence that some markets should be excluded from the principal markets. Fujitsu General furnished no evidence that its principal markets were other than all markets in Japan or that certain sales were not in the ordinary course of trade or at a different level of trade. The purpose of presuming that all home market sales are in the principal market absent evidence to the contrary is to enable the Department to make fair comparisons of sales to the United States (all of which are included in US price).

Comment 20: NEC and Fujitsu General argue that in the settlement agreements, signed on April 28, 1980 by the Department and 22 importers, the Department agreed to determine FMV precisely as it had in the past, that is, to use "traditional methodology" in calculating home market advertising, sales promotion, and warranty expenses, and that the Department is therefore obligated to use the so-called "traditional methodology" in this review.

Department's Position: We disagree with NEC's and Fujitsu General's interpretation of the phrase "traditional methodology." *See* our position on Comment 28 in "Television Receivers, Monochrome and Color From Japan; Final Results of Antidumping Duty Administrative Review," (52 FR 8943, March 20, 1987). We reiterate our position that in the 1980 settlement agreements, our commitment was: (1) To forgo the use of the commodity tax method for calculating FMV, previously applied by the Treasury Department; and (2) to rely upon information and data submitted by the Japanese respondents, provided that such data were adequate and verified. This commitment did not constitute an agreement to "freeze" the antidumping calculation methodology for television receivers from Japan in time as of 1980, regardless of improvements made in our methodology.

Comment 21: According to NEC, the Department's regulations require a comparison of home market and U.S. sales made at the same commercial level of trade. Therefore, NEC argues, in calculating FMV for purchase price (PP) sales, the Department should use the sales by NEC Home Electronics (NECHE) to NEC's related sales companies (NECSCs). If the Department uses the NECSCs' sales to unrelated distributors to determine FMV, it is required by law to make an appropriate level of trade adjustment.

NEC identifies three commercial levels of trade: (1) The "ex-factory" level is the exchange that occurs between the manufacturer and the distributor; (2) the "wholesale" level is the exchange between the distributor and the retailer; and (3) the "retail" level is the exchange between the retailer and the ultimate customer. According to NEC, prices at the ex-factory level reflect the cost of producing the television, plus the manufacturer's profit. Prices at the wholesale level reflect the cost of producing the television, the manufacturer's profit, plus the cost of the distributor's services and the distributor's profit. Finally, prices at the retail level of trade reflect the cost of producing the television, the manufacturer's profit, the cost of the distributor's services, the distributor's profit, plus the cost of the retailer's services and the retailer's profit.

NEC contends that home market sales to related NECSCs, like U.S. PP sales to Original Equipment Manufacturers (OEMs), are made at the ex-factory level of trade and therefore should have been used to calculate FMV for U.S. PP sales. However, according to NEC, home market sales by the NECSCs to unrelated retailers are made at the wholesale level of trade and therefore do not constitute an appropriate base on which to calculate FMV for PP transactions.

NEC asserts that the Department impermissibly disregarded sales between NECHE and the NECSCs solely on the grounds that such sales are transactions betwen related parties. NEC argues that the statute and the regulations contemplate use of sales to related persons as the basis for calculating FMV where such sales are at prices comparable to those that would have been charged to an unrelated buyer (arm's length transactions). According to NEC, the prices charged by NECHE to the NECSCs were at arm's length. NEC asserts that the Department can determine the arm's length nature of these transactions by comparing the prices between the NEC related parties with the prices of other TV manufacturers to unrelated distributors in Japan. NEC further contends that the Japanese tax authority's acceptance of NECHE's prices to the NECSCs as the basis for the Japanese commodity tax confirms that such prices were not affected by the relationship between the parties.

Alternatively, NEC contends that if, in the case of NECHE's U.S. purchase price sales, the Department does not base FMV on sales transactions between NECHE and the NECSCs, but instead uses the prices charged by the NECSCs to unrelated retailers, the Department must make an adjustment to FMV for differences in levels of trade. NEC cites the CIT decision in *Silver Reed America Inc.* v. *United States*, 581 F. Supp. 1290, 1296 (CIT 1984), in which the court stated that "sales at different levels of trade may not be comparable without appropriate adjustments." NEC cites the Department's regulations, which require that where the comparison of the U.S. price with the applicable price in the home market is not made at the same commercial level of trade, "the comparison will be made at the nearest comparable commercial level of trade and appropriate adjustments will be made for differences affecting price comparability." (19 CFR 353.19 (1988)). In this scenario, according to NEC, the adjustment should be equal to the cost of distribution services incurred by the NECSCs in selling to unrelated retailers, *i.e.*, the selling expenses that are incurred at the wholesale level of trade in Japan, but that are not incurred at the ex-factory level of trade (PP) in Japan.

NEC asserts that it has provided the Department with the requisite level of trade data, and the Department is therefore obligated to allow an adjustment.

Department's Position: We do not agree that prices charged by other manufacturers to unrelated distributors adequately demonstrate the arm's length nature of NECHE's sales to related distributors (NECSCs) because products and production costs may differ from company to company. NEC has not provided any data indicating that related party sales between NECHE and the NECSCs were made at arm's length. Moreover, NEC has not adequately quantified the difference in price between the two markets (home market sales from NECSCs to unrelated distributors in Japan and PP sales from NECHE to unrelated U.S. distributors) attributable to the different levels of trade.

The purpose of a level of trade adjustment is to create an "apples-to-apples" comparison of the United States price with foreign market value by adjusting the home market price at one level of trade to represent what the price would have been at a different level of trade. Any quantification of that adjustment must be based on differences in the home market. Thus, any determination as to whether a level of trade adjustment is warranted depends on the sufficiency of the evidence provided by NEC. *See* our "Revised Final Results of Antidumping Duty Administrative Review Pursuant to Court Remand, Portable Electric Typewriters from Japan", December 7, 1988. In the results of that remand, we noted a number of ways a respondent could demonstrate such cost differences. NEC did not provide such information before publication of the preliminary results, and we do not accept new information after the preliminary results. The burden is on the respondent to

support claims for adjustments. We reviewed all of the data submitted by NEC in light of the criteria outlined in results of the PETs remand. Since NEC provided no data indicating that cost differences between the two markets were solely attributable to differences in levels of trade, we determine that no level of trade adjustment is warranted.

Comment 22: NEC contends that the Department's model-specific methodology for calculating advertising, sales promotion, and warranty expenses departs from the Department's traditional methodology.

Department's Position: We disagree with NEC's interpretation of the phrase "traditional methodology." *See* our position on Comment 20.

For our treatment of advertising and sales promotion expenses, *see* our position on Comment 25. For our treatment of warranty expenses, *see* our position on Comment 27.

Comment 23: NEC asserts that the Department should have based FMV on sales in the company's "principal markets" rather than in all markets in Japan, by excluding certain remote, non-competitive regions of Japan.

Department's Position: We disagree. In calculating FMV, we use all home market sales of such or similar merchandise that are in the ordinary course of trade and in the usual commercial quantities unless there is evidence that certain markets should be excluded. *See* our position on Comment 19. NEC furnished no evidence that its principal markets were other than all markets in Japan, and we were therefore unable to substantiate its claim.

Comment 24: NEC asserts that the Department violated the Administrative Procedure Act (APA) by examining sales in all markets in Japan to calculate FMV while the statute provides that only sales in the principal markets be used. The Department's practice constitutes rulemaking, and the Department cannot adopt rules without following the notice and comment requirements of the APA. As support for its position, NEC cites the Court of International Trade decisions in *IPSCO* v. *United States*, 687 F. Supp. 614, 628 (CIT May 4, 1988), and *Carlisle Tire and Rubber* v. *United States*, 634, F. Supp. 419 (CIT 1986).

Department's Position: We disagree. Because NEC furnished no evidence that its principal markets were other than all markets in Japan, we based our FMV analysis on all markets in Japan. This practice is, at most, a general statement of policy, to which the APA notice and comment requirements do not apply (5 U.S.C. 553(b)(3)(A)).

We gave NEC and the other respondents notice and an opportunity to comment on the practice that NEC contests. The administrative process would be severely constrained if the Department were only permitted to apply methodologies that had been promulgated pursuant to the APA.

The CIT decisions in Carlisle and IPSCO are not relevant. In Carlisle the court ruled that Commerce could not automatically disregard dumping margins of 0.5 percent of less as *de minimis* without first promulgating a rule to that effect pursuant to the APA. In IPSCO the court held that the Department must similarly follow APA procedures before automatically allocating certain grants over 15 years. Although we do not necessarily agree with the court's decisions, these cases involved the automatic application of an exact numerical standard in an administrative determination without regard to the particular facts presented in the case.

In this case, NEC failed to provide enough information regarding its principal markets to support a determination that particular sales should be excluded. The basis for rejecting NEC's claim was not that it conflicted with an absolute rule concerning the definition of principal markets. Rather, we merely followed the broad principle that there must be substantial evidence on the record to support claimed adjustments. Therefore, our determination was based on the particular facts of this case.

Comment 25: NEC contends that the Department should not calculate advertising and sales promotion expenses on a model-specific basis because such an approach is arbitrary, lacks any rational basis, and does not accurately measure the advertising and sales promotion expenses associated with selling TVs. NEC argues that advertising and sales promotion are designed to increase sales of all models, regardless of the specific content of a particular advertisement.

Department's Position: We agree that advertising and sales promotion expenses should be allocated on a product-line, rather than a model-specific, basis. Although we have used the model-specific allocation method in the past, we now believe that model-specific allocation: (1) Leads to inaccurate and erratic results in many instances since most companies do not keep advertising records on a model-specific basis; (2) is susceptible to manipulation by foreign companies in order to reduce dumping margins; and (3) is unnecessarily burdensome for both respondents and the Department. We note, however, that for the eighth review, NEC did not provide any documentation to support its advertising expenses. Therefore, we denied the entire home marekt advertising claim. For that review, we allowed only the home market sales promotion claim and U.S. advertising and sales promotion expenses that we were able to verify.

Comment 26: NEC asserts that the Department violated the APA by retroactively applying any methodologies other than the "traditional methodology" (*See* Comment 20) to the fifth, sixth, and seventh review periods.

Department's Position: We disagree. We consider the methodological improvements that we applied in these reviews to be general statements of policy, which are not subject to the APA. *See* positions on Comment 24 in this notice and on Comment 1 in the "Final Determination of Sales at Less Than Fair Value: Color Televisions from Korea," (49 FR 7620, March 1, 1984). Furthermore, there is no requirement that we apply changes in methdology only on a prospective basis.

Comment 27: NEC contends that the Department should not calculate home market warranty expenses on a model-specific basis. Instead, the Department should use a weighted-average of the product-line warranty expenses.

Department's Position: We disagree. We used the model-specific, weighted-average warranty expenses incurred during the past five years because the sales volume varied greatly from year to year. In our view, this allocation offers the best approximation of the eventual warranty costs for the sales under consideration. We calculate warranty expenses on a model-specific basis because, unlike advertising expenses, warranty expenses are inherently model-specific. Advertising may promote a product line or even a brand name, but repairs must be performed on a specific television set.

Comment 28: NEC contends that the Department should have treated the warranty labor costs as direct expenses in both the home market and U.S. Market.

Department's Position: Because NEC did not identify or quantify for its ESP sales which portions of its claimed U.S. warranty expenses were attributable to specific labor and parts, we considered the full warranty expenses to be direct selling expenses and adjusted ESP accordingly. From FMV we deducted only those portions of claimed home market warranty expenses which NEC demonstrated were directly related to sales of comparison model televisions.

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Because NEC's service contractor is related to NEC, we consider the labor portion of the warranty claim to be a fixed cost, not directly related to the sales under consideration. For such warranty coverage to be considered a direct selling expense, it must represent a variable cost incurred as the result of an arm's length transaction. However, we allowed home market warranty labor costs as indirect selling expenses in the ESP offset.

Comment 29: NEC argues that the Department should not have classified NECHE's home market and U.S. inventory carrying costs as indirect selling expenses, but as direct selling expenses.

Department's Position: We disagree. The cost of carrying merchandise in inventory is indirect because such costs are incurred whether or not a sale is made.

Comment 30: For the eighth review, NEC contends that the Department should not have accepted Zenith's sales-below-cost allegation because the allegation was untimely.

Department's Position: We consider Zenith's allegation of sales below cost in the home market to have been submitted in a timely fashion because it was filed within one week after Zenith had been served with the proprietary version of NEC's supplemental questionnaire response. Zenith based its allegations on information in NEC's supplemental response.

Comment 31: NEC contends that the Department deducted an incorrect amount for warranty parts cost for home market model C-14N12PV in the fifth and sixth administrative review periods and an incorrect amount for warranty labor in the sixth review period.

Department's Position: We disagree. We reexamined NEC's warranty claims for these periods and determine that we deducted the correct amounts.

Comment 32: NEC asserts that the Department overstated U.S. advertising costs in the eighth review period.

Department's Position: We disagree. At verification for the eighth review, we discovered unreported advertising expenses in the United States. Therefore, we increased the deduction from USP for advertising expenses.

Comment 33: NEC argues that the Department deducted an incorrect amount for home market credit costs incurred during the eighth review period.

Department's Position: We disagree. We confirmed that we deducted the verified amount.

Comment 34: NEC contends that the Department used an incorrect FMV for July sales of model CT-1901A(R) in the eighth review period.

Department's Position: We disagree. Because NEC failed to respond to our COP questionnaire, we used the best information available to calculate FMV for NEC during the eighth review period. As BIA, we used NEC's own price data. Because there were no sales in the same month in which the home market comparison model was made, we examined the 90 day back/60 day forward period and used the highest FMV. To do otherwise would reward respondents for not providing complete and accurate responses.

Final Results of Review

As a result of the comments received, we have revised our preliminary results for Funai, Fujitsu General, Hitachi, Mitsubishi, NEC, and Sanyo, and we determine that the following margins exist:

Manufacturer	Review No.	Period of Review	Margin (Percent)
Fujitsu General	5	04/01/83-03/31/84	[1].015
	6	04/01/84-02/28/85	0.19
Funai Electric	8	04/01/86-02/28/87	21.93
Hitachi	5	04/01/83-09/27/83	[1]0.16
	8	03/01/86-02/28/87	[1]0.16
Mitsubishi	5	04/01/83-03/31/84	0.00
	6	04/01/84-02/28/85	0.00
NEC	5	04/01/83-03/31/84	18.21
	6	04/01/84-02/28/85	7.37
	7	03/01/85-02/28/86	7.16
	8	03/01/86-02/28/87	22.90
Sanyo	5	04/01/83-03/31/84	[1]2.86
	6	04/01/84-02/28/85	[1]2.86
	8	03/01/86-02/28/87	[1]2.86
Sharp	2	04/01/80-03/31/81	0.86

[1] No shipments during the period; rate from last review in which there were shipments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions for each exporter directly to the Customs Service.

As provided for in section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above rates shall be required for the above firms, except for Fujitsu General and Mitsubishi. The deposit rates for Fujitsu General and Mitsubishi remain unchanged from the rates in the last results of review, published on February 11, 1988 (53 FR 4050). For any shipments of this merchandise from Matsushita Electric Industrial Corporation (Matsushita), Victor Company of Japan (Victor), or Toshiba Corporation (Toshiba), the cash deposit will continue to be the same as the rate published in the final results of the last administrative review for each of those firms (54 FR 13917, April 6, 1989). Since the cash deposit for Hitachi Ltd. (Hitachi) is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for Hitachi.

For any future entries of this merchandise from a new exporter, not covered in this or prior reviews, whose first shipments occurred after February 28, 1987, and who is unrelated to any reviewed firm, a cash deposit of estimated antidumping duties of 26.94 percent shall remain in effect. This is the rate for Matsushita in the eighth review period (54 FR 13917, April 6, 1989). These deposit requirements are effective for all shipments of television receivers, monochrome and color, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 18, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-20137 Filed 8-25-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold public hearings on the management measures being considered by the Council for development of the Queen Conch Fishery Management Plan. Oral and written presentations will be accepted.

DATES: Written comments will be accepted until October 11, 1989.

The public hearings are scheduled as follows:

1. September 11, 1989, 3:00 p.m., Lajas, Puerto Rico.
2. September 12, 1989, 3:00 p.m., Salinas, Puerto Rico.
3. September 13, 1989, 3:00 p.m., Fajardo, Puerto Rico.
4. September 14, 1989, 3:00 p.m., Vieques, Puerto Rico.
5. September 18, 1989, 3:00 p.m., Arecibo, Puerto Rico.
6. September 20, 1989, 7:30 p.m., St. Croix, U.S.V.I.
7. September 21, 1989, 7:30 p.m., St. Thomas, U.S.V.I.

ADDRESSES: Written comments should be sent to the Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918.

The hearings will be held at the following locations:

1. Lajas, Puerto Rico—Hotel Villa Parguera, La Parguera.
2. Salinas, Puerto Rico—Club Naútico de Salinas, Road 701, Playa Salinas.
3. Fajardo, Puerto Rico—El Mesón Criollo, Road 987, Km. 3.2, Las Croabas.
4. Vieques, Puerto Rico—Parador Esperanza, Rural Road, Km. 12, Bo. Esperanza.
5. Arecibo, Puerto Rico—Club Naútico de Arecibo, Road 681, Km. 3, Bo. Vigia.
6. St. Croix, U.S.V.I.—Conference Room, Legislature Building, Christiansted.
7. St. Thomas, U.S.V.I.—Conference Room, Virgin Isle Hotel.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 809-766-5926.

Dated: August 22, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-20216 Filed 8-25-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: Geochemical and Environmental Research Group (P454)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the regulations governing endangered fish and wildlife permit (50 CFR parts 217-222).

1. *Applicant:* Geochemical and Environmental Research Group, Department of Oceanography, Texas A&M University, 10 South Graham Road, College Station, Texas 77840.
2. *Type of permit:* Scientific research; scientific purposes.
3. *Name and number of marine mammals:* Right whales (*Eubalaena glacialis*) 150.
4. *Type of take:* The applicant proposes to take right whales by harassment during photographic studies. The study will involve photography for mark-capture population analyses, and boat based environmental monitoring to characterize the occurrence and ecological use patterns of right whales.
5. *Location of activity:* Atlantic offshore waters of the southeast United States between Savannah, Georgia and Miami.
6. *Period of activity:* 3 year period.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Rm. 7324, Silver Spring, MD;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Bldg., Gloucester, Massachusetts 01930;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Dated: August 22, 1989.

Richard H. Schaefer,

Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-20217 Filed 8-25-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Hungarian People's Republic

August 22, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 30, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain cotton, wool and man-made fiber textile products from Hungary are being adjusted, variously, for swing, carryover, carryforward and unused carryforward.

A description of the textile and apparel categories in terms of HTS number is available in the *Correlation:* Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49342, published on December 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

August 22, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 2, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. This directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Hungary and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on August 30, 1989, the directive of December 2, 1988 is amended to adjust the limits for the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and the Hungarian People's Republic:

Category and adjusted twelve-month limit [1]

300/301—1,334,242 kilograms
313—13,035,184 square meters
410—937,383 square meters
433—9,402 dozen
434—8,301 dozen
435—14,898 dozen
442—20,180 dozen
443—99,104 numbers
444—29,229 numbers
445/446—46,203 dozen of which not more than 34,652 dozen shall be in Category 445 and not more than 34,652 dozen shall be in Category 446
448—22,381 dozen
604—800,545 kilograms
645/646—102,912 dozen

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–20178 Filed 8–25–89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

August 22, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 643 is being increased for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the *Correlation:* Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50276, published on December 14, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

August 22, 1989.

Commissioner of Customs,
Department of Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 6, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on August 22, 1989, the directive of December 6, 1988 is amended further to increase to 460,789 numbers [1] the sublevel under Group II for man-made fiber textile products in Category 643, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–20177 Filed 8–25–89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China; Correction

August 22, 1989.

In the letter to the Commissioner of Customs published on July 28, 1989 (54 FR 31068), correct the 1989 level for Category 448, as adjusted, from 20,604 dozen to 21,077 dozen.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–20141 Filed 8–25–89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Macau

August 22, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: August 29, 1989.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6495. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current sublevels for certain categories in Groups I and II are being reduced for carryforward used in 1988.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 51297, published on December 21, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral

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[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 22, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 16, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on August 29, 1989, the directive of December 16, 1988 is amended to reduce the sublevels for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Macau:

Category	Adjusted 12 month limit [1]
Sublevels in Group I:	
338	192,960 dozen.
339	820,669 dozen.
340	167,424 dozen.
345	33,165 dozen.
Sublevel in Group II:	
445/446	72,088 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–20143 Filed 8–25–89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

August 22, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 29, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories in Group I are being increased by application of swing. The limit for Categories 226/313 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50438, published on December 15, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 22, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 12, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concern imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on August 29, 1989, the directive of December 12, 1988 is being amended to include the following adjusted limits, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and Pakistan:

Category	Adjusted 12-month limit [1]
Levels in Group I:	
226/313	63,641,609 square meters equivalent.
331	796,278 dozen pairs.
334	48,513 dozen.
335	59,904 dozen.
336	160,578 dozen.
338	3,234,082 dozen.
339	742,245 dozen.
340	171,818 dozen.
341	297,069 dozen.
342	98,003 dozen.
347/348	386,591 dozen.
351	49,002 dozen.
352	245,009 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–20139 Filed 8–25–89; 8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

August 22, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending limits.

EFFECTIVE DATE: August 29, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8791. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Coordination Council of North American Affairs and the American Institute in Taiwan agreed to amend the current Group II level and its Category 659–H sublevel to conform with the Harmonized System.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49345, published on December 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 22, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 2, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on August 29, 1989, the directive of December 2, 1988 is amended further to include increased limits for the following categories:

Category Group II	Amended 12-month limit[1]
237, 239, 330–354, 359, 431–448, 459, 630–654 and 659, as a group.	530,261,367 square meters equivalent.
Sublevel in Group II: 659–H[2].	2,805,127 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Category 659–H, only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060 and 6505.90.8060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–20140 Filed 8–25–89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan; Correction

August 22, 1989.

On page 29922 of the notice published in the Federal Register on July 17, 1989, third column, second paragraph under "**SUPPLEMENTARY INFORMATION**," change "Group I" to "Groups I and II."

In the table on page 29923, the amended levels are in Groups I and II, as indicated below.

Levels in Group I	Levels in Group II
301	633/634/635
611	642
619/620	644

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–20142 Filed 8–25–89; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange; Proposed Amendment Relating to Quality Specifications for the Live Cattle Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Mercantile Exchange ("CME") has submitted a proposed amendment to its live cattle futures contract which would reduce to four from eight the maximum number of yield grade 4 choice quality steers permitted in a delivery unit. The amendment as proposed would apply to newly listed contract months only, beginning with the October 1990 contract month. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposed amendment is of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before September 27, 1989.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the proposed change in the maximum number of yield grade 4 steers deliverable on the CME live cattle futures contract.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: The live cattle futures contract currently provides for the delivery at par of 40,000 pounds of choice quality steers of yield grades 1, 2, and 3, with the average weight per steer in the delivery unit falling between 1,050 and 1,200 pounds. The contract also provides for the delivery of a maximum of eight yield grade 4 choice quality steers in a single delivery unit. The existing terms of the contract provide that delivery units containing up to four yield grade 4 steers are deliverable at par. Delivery units containing more than four up to the existing limit of eight yield grade 4 steers are subject to a discount of 15 percent of the settlement price for each yield grade 4 steer in excess of four.

The proposed amendment would reduce to four from eight the maximum number of yield grade 4 steers permitted in a delivery unit. Under proposed amendment, delivery units containing up to the revised maximum level of four yield grade 4 steers would continue to be deliverable at par. The CME proposes to apply the amendment only to newly listed contract months following Commission approval commencing with the October 1990 contract month. Existing positions in the live cattle futures contract would not be affected.

The CME submits that the proposed amendment is needed to keep the terms of the live cattle futures market consistent with prevailing cash market practices. In particular, the CME states that:

> The Live Cattle futures contract calls for 40,000 pounds of USDA estimated yield grade 1, 2, 3, or 4 Choice quality grade live steers, averaging between 1,050 pounds and 1,200 pounds. This is equivalent to approximately 38 head at an average weight of 1,050 pounds, or 33 head at an average weight of 1,200 pounds.
>
> Eight (8) head of yield grade 4 cattle comprises between 21 percent (at an average weight of 1,200 pounds) and 24 percent (at an average weight of 1,050 pounds) of the delivery unit under current contract specifications. However, as the industry has moved to place a greater emphasis on leaner cuts of beef, current standards are much tighter, rarely allowing for more than 10% yield grade 4 cattle. This is equivalent to no more than four (4) head of yield grade 4 cattle in a delivery unit.
>
> The Exchange believes it is important to reduce the maximum number of yield grade 4 steers permitted under the Live Cattle contract from eight (8) to four (4) to keep our contract consistent with prevailing cash market practice. Such a change would bring the contract closer in line with current industry practices and thereby make the contract a more effective hedging vehicle.

The Division notes that the effect of the proposal will be to limit to four the maximum number of yield grade 4 steers that deliverers may include in a single delivery unit.

Copies of the proposed amendment will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the CME in support of the proposed amendment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on August 22, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89–20169 Filed 8–25–89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Low Observable Technology

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology will meet in closed session on September 12–13, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate low observable technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Dated: August 23, 1989.

Linda M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–20187 Filed 8–25–89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Surprise Task Force will meet November 14–15, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the possibility of unexpected technological breakthroughs that vastly change warfighting capabilities. The entire agenda of the meeting will consist of discussions of key issues regarding the potential for unexpected technology breakthroughs that could have an acute impact on naval and other military forces. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: August 23, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–20167 Filed 8–25–89; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Surprise Task Force will meet October 12–13, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the possibility of unexpected technological breakthroughs that vastly change warfighting capabilities. The entire agenda of the meeting will consist of discussions of key issues regarding the potential for unexpected technology breakthroughs that could have an acute impact on naval and other military forces. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: August 22, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–20168 Filed 8–25–89; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Surprise Task Force will meet September 19, 1989 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss policy and budgetary matters of immediate Navy interest. The entire agenda of the meeting will consist of discussions of key issues regarding national security, maritime defense needs, defense policy, planning, and budgetary matters of immediate Navy interest. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: August 23, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-20160 Filed 8-25-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Assistance to States for Education of Handicapped Children Program; Intention to Compromise a Claim

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: Notice is given that the Acting Deputy Under Secretary for Management intends to compromise a claim against the Massachusetts Department of Education now pending before the Education Appeal Board, Docket No. 12-(276)-88.

DATE: Interested persons may express their opinions by submitting written data, views, or arguments on or before October 12, 1989.

FOR INFORMATION CONTACT: Additional information may be obtained by writing to Mr. Sergio Kapfer, Office of the General Counsel, Department of Education, 400 Maryland Ave., SW. (Room 4090, FOB-6), Washington, DC 20202.

SUPPLEMENTARY INFORMATION: Part B of the Education of the Handicapped Act (EHA-B), 20 U.S.C. 1401, 1411-1420, assists State educational agencies (SEAs) in providing special education and related services to handicapped children. The regulations implementing this program are at 34 CFR part 300.

On May 22, 1986 the Assistant Secretary for Special Education and Rehabilitative Services issued a letter of final audit determination (FLD) disallowing $48,535 of fiscal year (FY) 1983 and FT 1984 EHA-B funds awarded by this Department to the Massachusetts Department of Education (Massachusetts). The basis for this disallowance was the finding that the counts of handicapped children submitted by Massachusetts to calculate its FY 1983 and FY 1984 EHA-B awards were not supported by adequate documentation. More specifically, the Assistant Secretary concluded in the FLD that the Watertown School District had improperly included in its EHA-B child counts for the two years in question a total of 234 children whose eligibility to be counted could not be documented. Massachusetts filed a timely appeal of the FLD and the case was docketed for hearing before the Education Appeal Board. The parties filed briefs pursuant to a schedule established by the Education Appeal Board panel hearing the case.

As a result of settlement negotiations between the Assistant Secretary for Special Education and Rehabilitative Services and Massachusetts and a review of relevant materials, the Acting Deputy Under Secretary for Management proposes to compromise this claim for $31,000. The Acting Deputy Under Secretary for Management has determined that it would not be practicable or in the public interest to continue this proceeding. In addition, Massachusetts has provided adequate assurance that the practice which resulted in the claim has been corrected and will not recur. More specifically, Massachusetts has agreed that, for purposes of the child counts on which its future applications for EHA-B funds are to be based, it will include as eligible only those students with handicaps in the State who are receiving special education and related services in accordance with an individualized education program that meets the requirements of 34 CFR 300.340-300.349. This proposed compromise meets the requirements of section 452(f)(1) of the General Education Provisions Act, 20 U.S.C. 1234a(f)(1) (1988), and will not adversely affect any other audit proceedings currently pending before the Education Appeal Board.

The public is invited to comment on the Acting Deputy Under Secretary's intent to compromise this claim. Additional information may be obtained by writing to Mr. Sergio Kapfer at the address given at the beginning of this Notice.

Authority: 20 U.S.C. 1234a(f) (1982).

Dated: August 22,1989.

Gary J. Rasmussen,

Acting Deputy Under Secretary for Management.

[FR Doc. 89-20156 Filed 8-25-89; 8:45 am]

BILLING CODE 4000-01-M

Fund for the Improvement and Reform of Schools and Teaching Board; Closed Meeting

AGENCY: Fund for the Improvement and Reform of Schools and Teaching Board.

ACTION: Notice of a closed meeting.

SUMMARY: This notice sets forth the schedule and agenda of a closed meeting of a subcommittee of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the council. Notice of this meeting is required under section 10(a) (2) of the Federal Advisory Committee Act.

DATES: August 14, 1989, 9:00 a.m.—5:00 p.m. (Closed) August 15, 1989, 9:00 a.m.—5:00 p.m. (Closed).

ADDRESS: U.S. Department of Education, 555 New Jersey Avenue, NW., Room 328, Washington, DC 20208-5524.

FOR FURTHER INFORMATION CONTACT: Richard T. LaPointe, Director, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW. Room 522, Washington, DC 20208-5524, (202) 357-6496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching Board (FIRST) is established under section 3231 of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297). The Board is established to advise the Secretary concerning developments in education that merit his attention; identifying promising initiatives to be supported under the authorizing legislation; and advise the Secretary and the Director of the Fund on the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by the Fund.

The Department is in the process of awarding grants under the Family-School Partnership Program and the Schools and Teachers Program to schools throughout the United States. During the closed meeting, the subcommittee reviewed grant proposals under these programs. Because of the need to award these grants at the earliest possible moment and because of scheduling difficulties, notice in the Federal Register could not be produced before the meeting was held.

The meeting was closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix I) and under exemptions (4) and (6) of section 552b(c) of the Government in the Sunshine Act. (Pub. L. 94-409; 5 U.S.C. 552b). This closed meeting involved discussion on matters that would have disclosed sensitive information about the applicants, funding levels and requests, and comments of expert reviewers who conducted the initial screening of applications. Any such discussion might disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, and disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of privacy if conducted in open session. Such matters are protected by exemptions (c)(4) and (6) of section 552b of Title 5 U.S.C.

A summary of the activities at the closed session and related matters, which are informative to the public consistent with policy of Title 5 U.S.C. 552b will be available to the public within fourteen days after the meeting. Records are kept of all Council proceedings, and are available for public inspection at the office of the Fund for Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW. Room 522, Washington, DC 20208-5524 from the hours of 8:30 a.m. to 5:00 p.m.

Dated: August 21, 1989.

Bruno V. Manno,

Acting Assistant Secretary Educational Research and Improvement.

[FR Doc. 89-20235 Filed 8-23-89; 3:45 pm]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of requests submitted to the Office of Management and Budget for review.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public Law 96-511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before September 27, 1989. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, 1000 Independence Avenue SW., Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2172.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. FERC-73
3. 1902-0019
4. Service Life Data
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for profit
9. 26 respondents
10. 26 responses annually
11. The estimated average hours per response for each of the respondents is 210 burden hours.
12. The estimated total reporting hours are 5,460.
13. The data collected on this form are used to perform service life analysis for oil pipeline properties. These data are necessary to determine book depreciation rates.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law NO. 93-275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89-20215 Filed 8-25-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP82-124-011, RP81-53-008, RP81-55-037, RP85-149-014]

East Tennessee Natural Gas Co., Rate Filing Pursuant to Tariff Rate Adjustment Provisions

August 21, 1989.

Take notice that on August 15, 1989, East Tennessee Natural Gas Company (East Tennessee) hereby files ten copies of Substitute Fifty-First Revised Sheet No. 4 of its FERC Gas Tariff, Original Volume No. 1.

East Tennessee states that in Opinion No. 282, the Commission determined that the Mcf-mile methodology is the appropriate allocation method on the East Tennessee system and ordered East Tennessee to phase in the Mcf-mile methodology completely by 1989. Specifically, the Commission ordered

East Tennessee to: (1) Amend its rates, effective September 1, 1987, to reflect a 50–50 weighting of the first amendment, (2) amend its rates so that 75 percent of the composite zone rate differentials will be based upon the Mcf-mile methodology, and (3) in 1989, on the anniversary date, amend its rates so that 100 percent of the zone rate differentials shall be based on the Mcf-mile methodology. Accordingly, the instant filing is made in compliance with the terms of Opinion 282 in order to reflect, effective September 1, 1989, the 100% weighting of the Mcf-mile methodology pursuant to the Commission's opinion.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 28, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–20159 Filed 8–25–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89–217–001]

El Paso Natural Gas Co.; Revised Tariff Filing

August 21, 1989.

Take notice that on August 15, 1989, El Paso Natural Gas Company ("El Paso") filed, pursuant to part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act, Substitute Third Revised Sheet No. 368–B to its FERC Gas Tariff, First Revised Volume No. 1, as a revision to the filing made by El Paso on August 3, 1989 at Docket No. RP89–217–000.

El Paso states that the tariff sheets tendered on August 3, 1989, when accepted by the Commission and permitted to become effective, serve to clarify El Paso's authority to selectively adjust (discount) its Order No. 500 Throughput Surcharge for interruptible sales service.

El Paso further states that the Commission Staff informally requested that El Paso further revise its revision to subparagraph 21.3(b) of section 21, Take-or-pay Buyout and Buydown Cost Recovery, of the General Terms and Conditions contained in its First Revised Volume No. 1 Tariff to clarify that the discount of the throughput surcharge for interruptible sales customers is specifically for interruptible sales customers udner Rate Schedule IS–1. Accordingly, El Paso revised its August 3, 1989 filing by tendering Substitute Third Revised Sheet No. 368–B which reflects the further revision to subparagaraph 21.3(b)

El Paso requested pursuant to § 154.51 of the Commission's Regulations, that waiver of the notice requirements of § 154.22 of said Regulations be granted so as to permit the tendered tariff sheet to become effective August 1, 1989, which is the effective date requested in El Paso's August 3, 1989 filing.

Copies of this filing were served upon all interstate pipeline system sales customers and shippers of El Paso and all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 28, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–20160 Filed 8–25–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89–6–16–000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

August 21, 1989.

Take notice that on August 17, 1989, National Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective September 1, 1989.

Eighth Revised Sheet No. 71, Page 1 of 2

Seventh Revised Sheet No. 71, Page 2 of 2

Eighth Revised Sheet No. 72, Page 1 of 3

Eighth Revised Sheet No. 72, Page 2 of 3

Eighth Revised Sheet No. 72, Page 3 of 3

National states that the purpose of this filing is to update the amount of take-or-pay charges approved by the Federal Energy Regulatory Commission to be billed to National by its pipeline-suppliers and to be recovered by National by operation of section 20 of the General Terms and Conditions to National's FERC Gas Tariff, First Revised Volume No. 1. National further states that its pipeline-supplier which received approval to flow-through take-or-pay charges to National was Texas Eastern Transmission Corporation.

Copies of National's filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 28, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–20161 Filed 8–25–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89–49–000]

National Fuel Gas Supply Corp.; Cancellation of Settlement Conference

August 21, 1989.

Take notice that an informal settlement conference previously scheduled for August 29, 1989, convened for the purpose of exploring a possible settlement in the above proceeding, is cancelled.

The conference will be re-scheduled pursuant to a notice to be issued in the near future.

Participants as defined by 18 CFR 385.102(b), will be invited to attend. For further information, contact Russell Mamone, (202) 357–5744.

Lois D. Cashell,

Secretary.

[FR Doc. 89–20158 Filed 8–25–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. IR–000–168–001]

Soyland Power Cooperative, Inc., et al.; Filing

August 21, 1989.

In the matter of Soyland Power Cooperative, Inc.; Clay Electric Co-Operative, Inc.; Clinton County Electric Cooperative, Inc.; Coles-Moultrie Electric Cooperative; Corn Belt Electric Cooperative, Inc.; Eastern Illini Electric Cooperative; Edgar Electric Co-Operative Association; Farmers Mutual Electric Co.; Illinois Valley Electric Cooperative, Inc.; McDonough Power Cooperative; Monroe County Electric Cooperative, Inc.; Shelby Electric Cooperative; Southwestern Electric Cooperative Inc.; Tri-County Electric Cooperative, Inc.; Wayne-White Counties Electric Coóperative; Adams Electric Co-Operative; Illinois Rural Electric Co.; M.J.M. Electric Cooperative, Inc.; Menard Electric Cooperative; Spoon River Electric Co-Operative, Inc.; and Western Illinois Electrical Coop.

Take notice that on August 3, 1989, Soyland Power Cooperative, Inc. (Soyland) on behalf of itself and the twenty above-named electric cooperatives, tendered for filing a petition for waiver of certain obligations imposed on Soyland and certain of the Member-Petitioners under §§ 202.303(a) and 292.303(b) of the Commission's regulations implementing the Public Utility Regulatory Policies Act of 1978 (PURPA).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–20162 Filed 8–25–89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Requests for Comments on Proposed Changes to the Reports of Condition and Income Required of All FDIC-Insured Commercial Banks and All FDIC-Supervised Savings Banks

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice of request for comments.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) is proposing certain changes to the Reports of Conditions and Income (Call Reports) required quarterly by the Office of the Comptroller of the Currency (OCC) for national banks, the Federal Reserve Board (FRB) for state member banks, and the Federal Deposit Insurance Corporation (FDIC) for insured state nonmember commercial and savings banks. The proposed Call Report changes would fulfill two objectives: (1) To provide the banking agencies with sufficient data to permit the monitoring of banks' risk-based capital levels, while limiting the amount of information reported by individual banks on the basis of bank size and capital level and (2) to provide other data considered necessary for bank supervisory purposes, particularly with respect to the nature and extent of banks' off-balance sheet activities. These changes would be implemented through the adoption of a new risk-based capital schedule (Schedule RC–RBC), a revised version of the current off-balance sheet schedule (Schedule RC–L), and modifications of existing items or the addition of new items in five other schedules. The proposed effective date for these reporting changes is the March 31, 1990, report date, except for one new item that would be added as of June 30, 1990.

DATE: Comments must be received on or before October 13, 1989.

ADDRESS: All comments should be sent to Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street, NW., Suite 701, Washington, DC 20006 or delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: David C. Motter, Special Assistant to the Chief National Bank Examiner, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219, (202) 447–1587.

FRB: Rhoger H. Pugh, Manager, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, (202) 728–5883.

FDIC: Robert F. Storch, Chief, Securities and Accounting Section, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, (202) 898–8906.

SUPPLEMENTARY INFORMATION: During the first quarter of 1989, each of the three Federal banking agencies (OCC, FRB, and FDIC) adopted risk-based capital standards that are applicable to all of the banks under their supervision. Under these standards, banks will be expected to achieve a minimum interim risk-based capital ratio of 7.25 percent by year-end 1990. A final minimum risk-based capital ratio of 8 percent should be achieved by all banks by year-end 1992. Although an explicit minimum ratio will not be in effect until December 31, 1990, the banking agencies have encouraged banks to begin monitoring their risk-based capital positions and to work toward achieving or maintaining at least the interim and final minimum risk-based capital ratios during the current transition period.

In order for the banking agencies to compare bank risk-based capital positions to the minimum standards and monitor the progress of banks whose capital levels are below the standards, the FFIEC is proposing to introduce a new risk-based capital schedule (Schedule RC–RBC) in which all banks would report the maturities of any limited-life capital instruments and their total regulatory capital as defined for risk-based capital purposes. These two items would be preceded by a simplified risk-based capital test in which banks with less than $1 billion in total assets would indicate through their response to a "yes" or "no" question whether the test calculation resulted in a risk-based capital ratio of at least eight percent. The objective of this calculation is to minimize the additional reporting burden that this new schedule would impose on banks, particularly small banks, by exempting those banks with less than $1 billion in total assets whose risk-based capital ratios exceed the required minimum from having to compile and report the data needed to more precisely measure their risk-based capital ratios. All banks with $1 billion or more in total assets and smaller banks that do not "pass" the simplified risk-based capital calculation would complete the remainder of the risk-based capital schedule each quarter. The remainder of the schedule requests information on the amount of assets and the credit equivalent amount of off-balance sheet items by risk-weight category and related data on interest rate and foreign exchange rate contracts.

Using year-end 1988 Call Report data to perform the simplified risk-based capital calculation, approximately 85 percent of all banks with less than $1 billion in total assets (including more than 88 percent of all banks with less than $100 million in total assets) met the threshold for exemption. It should be noted, however, that a bank that is exempt from this reporting requirement is not exempt from the risk-based capital requirements themselves.

The Call Report has collected information from all banks on off-balance sheet activities since June 1983. The FFIEC is proposing to expand the Call Report schedule in which such data are gathered (Schedule RC–L) to include more complete data on the nature and extent of banks' off-balance sheet activities. The changes that would be made to the schedule are intended primarily to further aid the banking agencies in carrying out their supervisory responsibilities and would be needed even in the absence of risk-based capital. The FFIEC has deferred making substantive changes to the Call Report's off-balance sheet schedule for more than three years despite its supervisory shortcomings while the risk-based capital standards, which specifically incorporate off-balance sheet exposures within their framework, were being developed by the banking agencies.

The FFIEC is also proposing certain changes to four other Call Report scheduled. Changes affecting Schedules RC, Balance Sheet, and RC–M, Memoranda, relate to the measurement of the capital components of risk-based capital. In Schedule RC–B, Securities, more detailed breakdowns of bank holdings of U.S. Government agency and corporation obligations and securities issued by states and political subdivisions in the U.S. would be collected because of the different risk weights attached to various types of agency and municipal securities under the risk-based capital framework. New memorandum items on foreign-currency denominated deposits in domestic offices and the number of deposit accounts of $100,000 or less in domestic offices would be added to Schedules RC–E, Deposit Liabilities, and RC–O, Other Data for Deposit Insurance Assessments, respectively. This latter memorandum item would be collected only with the reports for June 30 each year.

Each commercial and savings bank required to file Call Reports is being sent (1) a document describing the proposed changes in reporting requirements, (2) samples of the report schedules that would be added or otherwise modified, and (3) draft instructions for the proposed risk-based capital schedule (Schedule RC–RBC) and the revised off-balance sheet schedule (Schedule RC–L). Copies of these documents are also being sent to state banking supervisors, banking trade associations, the financial press, and interested federal agencies. The FFIEC will make copies of these documents available upon request to any other interested parties. Written requests should be directed to the address for the FFIEC shown above while telephone requests should be directed to (202) 357–0177.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the current Reports of Condition and Income required of all FDIC-insured commercial banks and all FDIC-supervised savings banks have been submitted to, and approved by, the Office of Management and Budget (OMB). (OMB Control Numbers: for OCC, 1577–0090; for FRB, 7100–0036; for FDIC, 3064–0052.) The final version of the proposed changes that are the subject of the FFIEC's request for comments, which will be developed after consideration of the comments received, will be submitted to OMB for its review.

Dated: August 22, 1989.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 89–20176 Filed 8–25–89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200278

Title: Port of Oakland Terminal Agreement

Parties: Port of Oakland (Port) Hyundai Merchant Marine Co., Ltd. (HMM)

Synopsis: The Agreement provides for HMM to have a non-exclusive right to use certain assigned premises at the Port's Charles P. Howard Terminal with certain rights to transfer HMM's rights and obligations to other of the Port's public terminals. HMM agrees that the assigned premises shall be the regularly scheduled Northern California port of call for its vessel operations. In compensation, HMM will pay the Port certain discounted dockage and wharfage payments based on the volume of traffic generated by HMM.

By Order of the Federal Maritime Commission.

Dated: August 23, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–20196 Filed 8–25–89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N–0394]

Generic Animal Drug and Patent Term Restoration Act, Third Policy Letter; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a third policy letter, dated August 2, 1989, on the implementation of the Generic Animal Drug and Patent Term Restoration Act. The letter contains draft policy statements regarding exclusivity, withdrawal periods, substitution of active ingredients, and labeling that have been prepared by the Center for Veterinary Medicine (CVM). The agency is soliciting comments on the letter.

DATES: Written comments may be submitted at any time regarding this and previous policy letters and implementation of the new law in general.

ADDRESSES: Submit written requests for single copies of the third policy letter to the Industry Information Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the policy letter to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The letter and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard B. Talbot, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4313.

SUPPLEMENTARY INFORMATION: On November 16, 1988, the President signed into law the Generic Animal Drug and Patent Term Restoration Act (the new law) (Pub. L. 100–670, 102 Stat. 3971). The new law amends the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) by extending the generic approval system to copies of new animal drugs that were approved after October 1962, and provides patent extension for certain animal drugs.

In the **Federal Register** of December 15, 1988 (53 FR 50460), FDA published a notice of availability of a policy letter, dated November 23, 1988, implementing certain aspects of the new law. The letter discusses the list of approved drugs that FDA must publish, patent certifications that generic applicants must make, the patent information that pioneer sponsors must submit, and the exclusivity claims pioneer sponsors may make.

In the **Federal Register** of June 21, 1989 (54 FR 26111), FDA published a notice of availability of a second policy letter dated June 7, 1989, implementing certain additional aspects of the new law. The letter introduced a document entitled "Generic Animal Drug and Patent Term Restoration Act—Implementation." The document includes a description of the proposed administrative procedures to be used in implementation of the new law, a draft of CVM's Manufacturing Requirements for abbreviated new animal drug applications (ANADA's), a draft Bioequivalence Guideline, and draft procedures for Environmental Review of Generic Animal Drugs.

FDA is now announcing the availability of a third policy letter dated August 2, 1989, further describing polices used to implement certain aspects of the new law. The current letter introduces five draft policy statements:

(1) "Exclusivity for Human Food Safety Data Submitted in a Supplemental Application."

(2) "Withdrawal Period for Generic Drugs."

(3) "Substitution of an Active Ingredient in a Combination Drug or in a Feed Use Combination."

(4) "Labeling Requirements for Generic Drugs."

(5) "Can a Generic Animal Drug Sponsor Obtain Exclusivity for an Innovation Approved Under a Supplement to an ANADA and Can the Pioneer Drug Sponsor Copy the Generic Innovation Without Submitting Additional Data?"

The agency anticipates that changes in these policy statements may occur in the future. When and if changes are made, copies of the revised policy statements will be placed on display in the Dockets Management Branch (address above) and a notice of availability will be published in the **Federal Register.**

Dated: August 21, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–20199 Filed 8–25–89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N–0350]

Vitarine Pharmaceuticals, Inc.; Withdrawal of Approval of Abbreviated New Drug Application for Triamterene and Hudrochlorothiazide Capsules

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the abbreviated new drug application (ANDA) for triamterene 50 milligrams (mg) and hydrochlorothiazide 25 mg capsules held by Vitarine Pharmaceuticals, Inc., Springfield Gardens, NY (Vitarine). At FDA's request, Vitarine has agreed that approval of the application be withdrawn and has waived its opportunity for a hearing. FDA has become aware that the application contains untrue statements of material facts.

EFFECTIVE DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret F. Sharkey, Division of Regulatory Affairs (HFD–366), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of the submission of flase data in support of the approval of ANDA 71–737 held by Vitarine for a product containing 50 mg of triamterene and 25 mg of hydrochlorothiazide. Vitarine's product is a generic version of Dyazide Capsules manufactured by Smith Kline & French. Among other things, the bioequivalence studies submitted in support of the Vitarine product were not based on Vitarine's product but on another firm's product. Because such submission, therefore, contained untrue statements about the product's bioequivalence (in that the data were not based on Vitarine's product at all), FDA asked that Vitarine request that the approval of its application be withdrawn and waive its opportunity for a hearing. (See 21 CFR 314.150(d).) By letter dated July 12, 1989, Vitarine has complied with FDA's request and asked that the ANDA be withdrawn. Vitarine is also recalling the product to the retail level.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of abbreviated new drug application 71–737, and all amendments and supplements thereto, is hereby withdrawn, effective August 28, 1989.

Dated: August 15, 1989.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 89–20135 Filed 8–25–89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

ACTION: The Health Care Financing Administration (HCFA) has submitted the following public information collection requirement to the Office of Management and Budget (OMB) for review and clearance in compliance with the Paperwork Reduction Act (Pub. Law 96-511).

SUMMARY: Section 4007 of the Omnibus Budget Reconciliation Act of 1987, as amended by section 411(b)(6) of the Medicare Catastrophic Act of 1988, requires the Secretary to provide for a demonstration project to determine the costs and benefits of establishing a uniform system for the reporting of Medicare participating hospitals to report balance sheet information and information specified in the legislation. Form HCFA-2552-DEMO has been developed to collect the specified information. In view of the critical importance of these cost report forms to the implementation of the demonstration project and the considerable opportunity already extended to the public for comment, the HCFA has requested the Office of Management and Budget to expedite their review by September 1, 1989.

Type of Request: Revision; *Originating Office*: Health Care Financing Administration; *Title of information collection*: Demonstration Cost Report; *Form number*: Form HCFA-2552; *Frequency*: Annual; *Respondents*: All hospitals in the State of California and Colorado; *Estimated number of responses*: 700; *Average hours per response*: 150; *Total estimated burden hours*: 105,000; *Additional Information or Comments*: A copy of Section 403.408 of BERC-483 IFC are published herewith. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: August 22, 1989.

Robert A. Streimer,

Acting Administrator, Health Care Financing Administration.

Section 403.408 Requirements for hospitals in States participating in the demonstration.

(a) *General.* For cost reporting periods beginning on or after July 1, 1989 and before July 1, 1991, all hospitals in California and Colorado must submit the cost report required under §§ 413.20 and 413.24 of this chapter and the data specified in (b) below.

(b) *Cost reporting requirements for the demonstration.* Hospitals are required to submit a demonstration project cost report that includes the following information:

(1) Hospital discharges (classified by class of primary payer).

(2) Patient days (classified by class of primary payer).

(3) Licensed beds, staffed beds, and occupancy.

(4) Inpatient charges and revenues (classified by class of primary payer).

(5) Outpatient charges and revenues (classified by class of primary payer).

(6) Inpatient and outpatient hospital expenses (by cost center classified for operating and capital).

(7) Reasonable costs.

(8) Other income.

(9) Bad debt and charity care.

(10) Capital acquisitions.

(11) Capital assets.

(c) *Due date for demonstration project cost report.* Due dates for demonstration cost reports are established by HCFA through instructions but are no more often than the due dates specified in § 413.24(f) of this chapter for hospital cost reports.

(d) *Interim reporting.* Hospitals participating in the demonstration project are required to submit an interim report covering the first six months in which the hospital participates in the demonstration project. Hospitals are required to submit additional interim reports requested by HCFA on the due dates established by HCFA.

(e) *Reporting format.* Demonstration project cost reports must be submitted in an electronic format. The hospital's electronic programs must be capable of producing an output file compatible with their respective intermediary's automated systems.

[FR Doc. 89-20184 Filed 8-25-89; 8:45 am]

BILLING CODE 4120-03-M

Office of Human Development Services

Agency Information Collection Under Office of Management and Budget Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for approval of an information collection for the Administration on Developmental Disabilities 1990 Report to Congress required under the Developmental Disabilities Assistance and Bill of Rights Act.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Administration on Developmental Disabilities 1990 Report to Congress.

OMB No.: N/A.

Description: Part B, Section 122(f) of the Developmental Disabilities Assistance and Bill of Rights Act requires that each State Developmental Disabilities Planning Council conduct a comprehensive review of all State and Federal policies that affect services for persons with developmental disabilities. It further requires that each Council conduct a survey of a representative sample of persons with developmental disabilities to determine their satisfaction with services (including Social Security) and hold public forums regarding the needs of unserved and the underserved populations. The States are required to report their findings to the Secretary. The Secretary is required to summarize the findings reported by the States in a report to Congress.

Annual Number of Respondents	56
Annual Frequency	1
Average Burden Hours Per Response	1,600
Total Burden Hours	89,600

Dated: August 21, 1989.

Donna Givens,

Deputy Assistant Secretary for Human Development Services.

[FR Doc. 89-20150 Filed 8-25-89; 8:45 am]

BILLING CODE 4130-01-M

President's Committee on Mental Retardation; Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation.

Time and Date: Executive Committee, Wednesday, September 13, 1989, 6:00 p.m.—8:00 p.m. Full Committee, September 14, 1989, 9:30 a.m.—5:30 p.m.

Presidential Forum: The Offender with Mental Retardation and the Criminal Justice System—September 15–16, 1989, 8:30 a.m.—6:00 p.m.

Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Wisconsin Avenue & Old Georgetown Road, Bethesda, Maryland 20814.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters to Be Considered: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevent to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

Contact Person for More Information: Jim F. Young, 330 Independence Avenue, SW., Room 4262–Wilbur J. Cohen Building, Washington, DC 20201-0001, (202) 245-7634.

Date: August 21, 1989.

George N. Bouthilet,

Acting Executive Director, PCMR.

[FR Doc. 89-20149 Filed 8-25-89; 8:45 a.m.]

BILLING CODE 4130-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: August 28, 1989.

ADDRESS: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: August 22, 1989.

C. Austin Fitts,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-20224 Filed 8-25-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Request for Additional Public Comments on the Need for Updating the Environmental Analysis of the Administration and Management of the Pittman-Robertson Federal Aid in Wildlife Restoration Program and the Dingell-Johnson Federal Aid in Sport Fish Restoration Program as Amended.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; amendment.

SUMMARY: On July 14, 1989, the Fish and Wildlife Service (Service) published a notice (54 FR 29789) advising of its intention to issue a revised and updated Environmental Impact Statement (EIS) for the Federal Aid in Wildlife and Sportfish Restoration Programs. That notice is hereby revised to extend the public comment period by 30 days, to expand and clarify the alternatives listed and to provide additional explanation. The 50 States, 5 Territories and the District of Columbia are involved. A Public meeting will be called in the vicinity of the Service's headquarters in Washington, DC. Public meetings may be called in the vicinity of one or more of the Services headquarters in Portland, Oregon; Albuquerque, New Mexico; Minneapolis, Minnesota; Atlanta, Georgia; Boston, Massachusetts; Denver, Colorado; and Anchorage, Alaska in response to indicated needs. Locations and times of such meetings will be provided by notice in the Federal Register.

For clarity purposes, the contents of the previous notice are incorporated into this notice.

DATES: Written comments should be received no later than October 12, 1989.

ADDRESS: Comments should be addressed to Director, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 322, Arlington Square, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phillip Agee, Wildlife Biologist, U.S. Fish and Wildlife Service Division of Federal Aid; Telephone 703/358-2156.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service is exploring the need for additional environmental documentation to supplement or replace the eixsting EIS entitled "Environmental Statement—Operation of the Federal Aid in Sport Fish and Wildlife Restoration Program" which was published in 1978. The analysis of Environmental impacts will consider actions to be carried out by the 50 States, Guam, Puerto Rico, the Virgin Island, the Northern Mariana Islands, American Samoa and the District of Columbia, with funding assistance by the Pittman-Robertson Federal Aid in Wildlife Restoration Act, as amended (16 U.S.C. 669-669i) and the Dingell-Johnson Federal Aid in Sport Fish Restoration Act as amended (16 U.S.C. 777–777k)). The existing regulations for implementing these Acts are found in 50 CFR part 80.

Federal funds utilized in this program are derived from excise taxes and fees which are levied on products employed in hunting, fishing, shooting and boating. The resulting revenue is allocated annually among the States in conformance with statutory formulae based on geographic areas and numbers of licensed hunters and fishermen and among the Territories and Insular Possessions listed above based on prescribed percentage shares.

A State may propose specific activities within prescribed categories (land acquisition, development, research, surveys and inventories, hunter education, aquatic education, boating facilities, etc.). If the Service, acting on behalf of the Secretary, finds the proposal to be substantial in character and design, the State may proceed with accomplishing the activity, using non-Federal funds. The State may then claim reimbursement of up to 75 percent of the cost. Territories and Insular Possessions may claim up to 100 percent.

The States' average annual use of funds from these two assistance programs during fiscal years 1985, 1986 and 1987 are summarized as follows:

Activity	Funds ($1000) and percent of total expended	
	Pittman-Robertson	
	Amount	Percent
Hunter education	$7,865	9
Land acquisition	5,297	6
Development	10,056	11
Surveys and inventories	15,318	17
Research	9,410	11
Technical guidance	3,258	4
Operation and maintenance	28,952	33
Planning	1,074	1
Administration	7,454	8
	Dingell-Johnson	
	Amount	Percent
Hunter education		
Land acquisition	$1,155	2
Development	10,297	21
Surveys and inventories	16,958	35
Research	11,656	24
Technical guidance	2,242	5
Operation and maintenance	2,176	4
Planning	848	2
Administration	3,174	7

It is not possible to specify with certainty the actions that will characterize this program in years ahead since the States are the primary determinants in the selection of these actions. For any analysis, anticipated activities will be based on the expectations of a panel of State officials and on records from recent years but with modifications to accommodate known trends and legislative redirections.

The environmental impacts produced by these programs are believed to be primarily beneficial. Such impacts include the maintenance of lands in a more or less natural state, the restoration and maintenance of fish and wildlife species and providing for a sustained program of public recreation and education. However, the execution of these programs may result in other impacts, such as altering certain habitats and animal populations, flooding or burning certain vegetation areas and affecting changes in local economic activity by altering the status or availability of fish and wildlife. Administration requirements are currently in place whereby proposals of such projects may not be approved until all necessary environmental analyses have been satisfactorily completed. The EIS will address these impacts including cumulative impacts that can result from individually minor but collectively significant actions taking place over a period of time.

Many of the fish and wildlife species given management attention under this program are subject to harvest by hunters, fishermen and trappers. Such harvests, if properly conceived and carried out, are considered legitimate and biologically defensible parts of fish and wildlife management. However, this activity is a State responsibility performed upon action by the State's policy-making body. Hence, hunting, fishing and trapping are not program activities and will not be addressed in any analysis.

Since their inception in 1937 and 1950, the Wildlife Restoration and Sport Fish Restoration Acts, respectively, have been primary forces in the recovery of numerous wildlife and fish species. During early years, managers focused almost exclusively on species of interest to hunters and fishermen. The States still direct all of their Dingell-Johnson funds to sport fish (as required by that Act) but only about 80 percent of their Pittman-Robertson funds to harvested species.

In the period since publication of the existing EIS, the Wildlife Restoration Program has undergone no substantial changes. Revenue has grown from $67.8 million in 1978 to $126.5 million in 1989. There were no major changes in the Act or its administration during that period. However, substantial changes have occurred in the Sport Fish Restoration Program as a result of the 1984 Wallop-Breaux amendment of the Dingell-Johnson Act. This amendment was responsible for the broadening of the list of fishing equipment subject to the manufacturers' excise tax, the capture of highway taxes paid on fuels used in motorboats, of import duties on pleasure boats, fishing equipment and of interest earned by these funds while held in the Treasury. Hence, revenues under this Act increased from about $26.3 million in 1978 to $186.7 million in 1989.

The Wallop-Breaux amendment also expanded the range of activities undertaken by the States. They now include developing and upgrading boating access facilities, authorization for aquatic education and a requirement to allocate funds for marine sport fisheries projects.

During the past decade there has been widespread and persistent interest in certain initiatives where Federal grants are involved. Among these are:

- Applying grant monies to Federal priorities in place of State priorities.
- Abolishing all Federal restraints on the States' use of Federal grants.
- Increasing attention to the management of non-harvested species and the needs of nonconsumptive users.
- Exclusive attention under the Wildlife and Sportfish Restoration Acts to harvested species and the needs of fishermen and hunters.
- Elimination of management and research practices considered to cause pain or death in animals.
- Maximization of biodiversity.

Such initiatives have been or may be proposed for imposition on this program. Thus, they suggest certain modes of operation to be considered along with the present program if an analysis is to be carried out.

No-Change Alternative. The Sport Fish and Wildlife Restoration Programs would proceed without significant changes from that described above. The types of activities authorized, the levels of funding provided and the administrative latitudes and constraints exercised would be unchanged from the present.

Alternative #1 Federal requirements would mandate that at least 50 percent of each year's Pittman-Robertson funds expended by the State would be on waterfowl habitat or in pursuit of the North American Waterfowl Management Plan and at least 50 percent of each year's Dingell-Johnson funds expended by the State would be on the protection, maintenance and improvement of aquatic habitats, including water quality.

Alternative #2. At least 50 percent of each year's Pittman-Robertson funds would be expended on restoring and enhancing terrestrial ecosystems without reference to hunted/non-hunted status. At least 50 percent of each year's Dingell-Johnson funds would be expended on restoring and enhancing aquatic ecosystems.

Alternative #3. All projects would be required to show primary benefits to harvested species of fish and/or wildlife or to sportsmen.

Alternative #4. All projects funded would be required to be free of practices considered offensive to significant portions of the public (e.g., marsh burning, the use of fish toxicants, the use of herbicides or insecticides, research resulting in death or stress on animals, etc.).

Alternative #5. By 1995, all States would be required to have in place a comprehensive plan or other systematic process for setting work priorities consistent with human needs and the status of the resource base. Thereafter, all requirements and prohibitions on activities would be repealed and the Federal role would be limited to allocating funds and, monitoring compliance with Federal statutes.

Alternative #6. All limitations and restrictions in the Federal Aid Acts and related regulations and policies would be removed to permit the States unimpeded pursuit of their own priorities.

The Service requests written comments from the public regarding this Notice. Of specific interest will be comments which:

—Propose changes, deletions or additions to the above list of alternatives.

—Address the environmental impacts, either individually or cumulatively, of the current program or any of the alternatives.

Any environmental review of this program will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331, *et seq.*), National Environmental Policy Act regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and Service procedures for compliance with those regulations.

The public is encouraged to participate in this process by providing comments on the above or other items related to this program. The public's comments will be incorporated into the preparation of the environmental document.

Dated: August 16, 1989.

Richard N. Smith,

Acting Deputy Director.

[FR Doc. 89–20146 Filed 8–25–89; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[ID–010–09–4212–14; IDI–9115; IDI–26611]

Realty Action; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Termination of recreation and public purposes classification/notice of realty action, IDI–26611, direct sale of public land in Elmore County, Idaho.

SUMMARY: This order terminates a Bureau of Land Management classification affecting 60 acres of public land near Glenns Ferry, Idaho. After termination of the classification, the underlying lands (both surface and mineral estates) will immediately become available for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 at the appraised fair market value.

The following public lands are involved in this action:

Boise Meridian, Idaho

T. 5 S., R. 10 E.,
  Sec. 21, E½SW¼NW¼, NW¼SW¼.
  Containing 60 acres.

By virtue of the authority vested in the Secretary of the Interior by the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869, 869–4), it is ordered as follows: Pursuant to the regulations in 43 CFR 2091.7–1(b)(1) and the authority delegated to me by BLM Manual Section 1203 (48 FR 85), the classification on the 60 acres of public land as suitable for recreation and public purposes under the Act of June 14, 1926, as amended (43 U.S.C. 869–4), under serial number IDI–9115, is hereby revoked. Upon termination of the classification the lands (both surface and mineral estates) will be sold under the authority of section 203 of the Federal Land Policy and Management Act to Elmore County.

The previously-described land has been examined and through land use planning and public input has been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976.

DATES: The sale offering will be held on October 31, 1989, at 10:00 a.m. If the parcel is not sold at that time, the sale will be cancelled.

The previously-described lands are hereby segregated from appropriation under the public land laws, including the mining laws, except section 203 of the Federal Land Policy and Management Act of 1976, for a period of 270 days or until patent is issued, whichever comes first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, at the address shown below.

ADDRESS: The sale offering will be held at the Boise District Office, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale can be obtained by contacting John Thornburgh, Realty Specialist, at (208) 334–1306 or at the above address.

SUPPLEMENTARY INFORMATION: When patented, the lands will be subject to the following reservations:

1. Ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. A perpetual right-of-way over and across a strip of land 30 feet wide along the existing road crossing the E½SW¼NW¼, section 21, T. 5 S., R 10 E., Boise Meridian, Idaho, for public access and use by the people of the United States generally.

3. Subject to those rights for an existing country road exercised under RS 2477 and noted under serial number IDI–20029.

This parcel is being offered directly to Elmore County based on historical use, adjacent land use, and value added by them to the land. Failure of the proponent to purchase the land on the date of the sale will result in cancellation of the sale, and the lands will be withdrawn from sale and will continue under management by the Bureau of Land Management.

The offer to purchase will be at fair market value and will constitute an application to purchase the mineral estate. A 30 percent (30%) deposit must accompany the offer. An additional $50 non-returnable mineral conveyance processing fee is required. The filing fee and deposit must be paid by certified check, money order, bank draft or cashier's check. The offer will be rejected if accompanied by payment other than as listed above.

The remainder of the full price shall be paid within 180 days of the date of the sale. Failure to pay the full price within the 180 days shall disqualify the purchaser and cause the deposit to be forfeited to the BLM.

Objections to this Notice of Realty Action will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: August 21, 1989.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 89–20212 Filed 8–25–89; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

Draft Legislative Environmental Impact Statement on the Exchange of Land Interests in Gates of the Arctic Preserve, AK

AGENCY: National Park Service, Interior.

ACTION: Delay in availability of draft environmental impact statement.

SUMMARY: The Notice of Intent for the Draft Legislative Environmental Impact Statement on the Exchange of Land Interests in Gates of the Arctic National Park and Preserve, Federal Register, Vol. 54, No. 15, Wednesday, January 15, 1989, stated that the draft statement would be available for public review by June 1989.

As a result of a change in the schedule for preparation of this document, it will

not be available for public review until the fall of 1989. Issuance of final document is anticipated by January 1990.

FOR FURTHER INFORMATION CONTACT: Paul Haertel, Associate Regional Director, Resource Services, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892. Telephone: (907) 257–2684.

Dated: August 22, 1989.

James W. Stewart,

Assistant Director, Planning.

[FR Doc. 89–20201 Filed 8–25–89; 8:45 am]

BILLING CODE 4310-70-M

Environmental Impact Statement Availability; Big Cypress National Preserve, FL

AGENCY: National Park Service, Interior.

ACTION: Correction of deadline for comments on the draft environmental impact statement for Big Cypress National Preserve.

SUMMARY: The **Federal Register** Notice of August 8, 1989, (Vol. 54, No. 151) is hereby corrected to extend the deadline for comments to December 1, 1989. This deadline coincides with the deadline given in the Draft Environmental Impact Statement and the EPA's Notice published in the **Federal Register** of August 11, 1989, (Vol. 54, No. 154).

FOR FURTHER INFORMATION CONTACT: Fred Fagergren, Superintendent, Big Cypress National Preserve, Star Route Box 110, Ochopee, Florida 33943, Telephone (813) 695–2000.

Dated: August 22, 1989.

James W. Stewart,

Assistant Director, Planning.

[FR Doc. 89–20200 Filed 8–25–89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31517]

Chattanooga & Chickamauga Railway Co.; Lease and Operation of Railroad Lines and Property of Central of Georgia Railroad Co., et. al.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts Chattanooga & Chickamauga Railway Co. from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, for the lease and operation of two lines of railroad and rail-related property known as the Lyerly and Hedges Lines, which are presently owned and operated by rail subsidiaries of the Norfolk Southern Corporation. These lines run between Chattanooga, TN, on the one hand, and, Lyerly and Hedges, GA, on the other. The exemption is subject to employee protective conditions and an Historic Preservation Act condition.

DATES: This exemption is effective on September 7, 1989. Petitions for reconsideration must be filed by September 22, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31517 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives: Lester A. Sittler, P.O. Box 128, 137 Main Street, Cooperstown, NY 13326.

and

Mark D. Perreault, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202 275–1721).]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: August 18, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–20180 Filed 8–25–89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–55 (Sub-No. 193)]

CSX Transportation, Inc.; Abandonment of Railroad Line in Vermilion County, IL; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc., to abandon its 5.93-mile line of railroad between Collison (milepost ZE 120.05) and Brothers (milepost ZE 125.98) in Vermilion County, IL.

The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB'OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Decided: August 18, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–20179 Filed 8–25–89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Renewal; Child Labor Advisory Committee

Notice is given that after consultation with the General Services Administration (GSA), it has been determined that the Child Labor Advisory Committee whose charter expires August 5, 1989, is hereby renewed for the period August 5, 1989 to August 5, 1991. This action is necessary and in the public interest.

The Committee will advise the Secretary of Labor on the effective administration of the child labor provisions of the Fair Labor Standards Act.

Committee membership is designed to insure that all major groups affected by the Acts and the regulations issued thereunder are represented. The Committee shall consist of 21 members, appointed by the Secretary of Labor, and shall include representatives from such fields as child advocacy groups, employers, unions, the education community, civic organizations, State officials, child guidance professionals, and safety groups.

The members are selected on the basis of their expertise and serve in their individual capacities, not as representatives of their organizations.

The Committee will function solely as an advisory body and in compliance

with the provisions of the Federal Advisory Committee Act. The charter will be filed with GSA and the appropriate Congressional Committee.

Further information may be obtained from: Paula V. Smith, Administrator, Wage and Hour Division, Department of Labor, Room S3502, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 523–8305.

Signed at Washington, DC, this 22nd day of August 1989.

Elizabeth Dole

Secretary of Labor.

[FR Doc. 89–20209 Filed 8–25–89; 8:45 am]

BILLING CODE 4510-27-M

State Research Advisory Committee on Occupational Safety and Health Statistics; Establishment

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with the General Services Administration, the Secretary of Labor has determined that the establishment of the State Research Advisory Committee to the Bureau of Labor Statistics (BLS) on Occupational Safety and Health Statistics is in the public interest in connection with the performance of duties imposed on the Department of Labor by the Occupational Safety and Health Act of 1970 (29 USC 651). The Committee will advise the Commissioner for the Bureau of Labor Statistics on the broader aspects of proposals for the redesign of the Bureau's occupational safety and health program, including developmental as well as implementational facets.

The Committee will consist of one representative from each State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam. A Chairperson will be selected from the membership by the Commissioner for the Bureau of Labor Statistics and appointed by the Secretary of Labor. Nominations for Committee representatives will be made by each jurisdiction and forwarded to the BLS Regional Commissioner for the BLS regional office serving each jurisdiction.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act; its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the State Research Advisory Committee on Occupational Safety and Health Statistics to the Bureau of Labor Statistics. Such comments should be addressed to William M. Eisenberg, Assistant Commissioner for Occupational Safety, Health and Working Conditions, Bureau of Labor Statistics, Department of Labor, Room 4014, Patrick Henry Building, 601 D Street, NW., Washington, DC 20212, telephone: 202—272–3487.

Signed at Washington, DC this 22nd day of August 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89–20210 Filed 8–25–89; 8:45 am]

BILLING CODE 4510-30-M

LEGAL SERVICES CORPORATION

Request for Comments on a Grant Award to the Drake University Law School Legal Clinic

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces its intention to award a one-time, non-recurring grant of $45,000 in fiscal year 1989 to the Drake University Law School Legal Clinic and its Dispute Resolution Resource Center. The purpose for making this grant is to provide mediation services in civil and small claims cases pending in the Polk County courts, and matters referred by the Legal Aid Society of Polk County. These services will be provided to client eligible residents residing in or near Polk County, Iowa.

DATE: All comments and recommendations must be received by the Office of Field Services of LSC on or before September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Victoria O'Brien, Counsel to the Director or Charles T. Moses, Associate Director, Office of Field Services, Legal Services Corporation, 400 Virginia Ave., SW., Washington, DC 20024–2751, (202) 863–1837.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national independent organization charged with implementing the federally funded system of legal services for low-income people. It hereby announces its intention to award a grant in the amount of $45,000 to the Drake University Law School Legal Clinic and its Dispute Resolution Resource Center. This grant is to finance the provision of mediation services by licensed attorneys to the eligible client population residing in or near Polk County, Iowa.

It is anticipated that the twelve-month term of this grant will extend from September 28, 1989 to September 27, 1990.

Interested persons are invited to submit written comments and/or recommendations concerning the above to Victoria O'Brien or Charles T. Moses.

Dated: August 23, 1989.

Ellen J. Smead,

Acting Director, Office of Field Services.

[FR Doc. 89–20223 Filed 8–25–89; 8:45 am]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341; FERMI–2]

Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for the operation of Fermi–2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) to reflect modifications which are to be made to the actuation logic for the Automatic Depressurization System (ADS). The ADS will be modified in accordance with Three Mile Island Action Plan, Item II.K.3.16 of NUREG–0737.

The proposed action is in accordance with the licensees' application for amendment dated April 3, 1989.

The Need for the Proposed Action

The proposed changes to the TS are required in order include appropriate requirements in regards to the as-modified ADS design as required by NUREG–0737.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The proposed revision would revise TS 3/4.3.3, "Emergency Core Cooling System Actuation Instrumentation," Tables 3.3.3–1, –2 and –3 and Table 4.3.3–1 to include the addition of drywell pressure-high bypass timers and manual inhibit switches, which are being added to the ADS design. The drywell pressure-high bypass timer functions to provide automatic initiation of ADS for postulated events which currently rely on manual initiation of ADS to prevent core damage. The manual inhibit switches provide a means for the operator to inhibit ADS initiation through a single action when called for by the plant emergency procedures. Currently, a sequence of actions is required to manually inhibit ADS. Administrative changes are proposed to be made to other TS tables and ACTIONS to be consistent with the above changes. Therefore, the proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact and could result in the reduction of the radiological impacts.

With regard to potential nonradiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This would result in the TS not correctly reflecting all of the requirements needed for complete operability of the ADS.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Fermi-2," dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environment impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 13, 1989 (54 FR 29662). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action, see the application for amendment dated April 3, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 22nd of August 1989.

For the Nuclear Regulatory Commission.

John O. Thoma,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-20229 Filed 8-25-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co., Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-42 and DPR-60, issued to Northern States Power Company (licensee), for operation of the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, located in Goodhue County, Minnesota.

Environmental Assessment.

Identification of the Proposed Action

The proposed amendments would revise Technical Specifications modifying the pressure-temperature limits taking into consideration the irradiation effects of the embrittlement of the reactor vessel material up to 20 effective full power years. Other modifications are administrative in nature serving to clarify the existing requirements.

The proposed action is in accordance with the licensee's application for amendment dated January 12, 1989.

The Need for the Proposed Action

The proposed changes to the Technical Specifications are required in order to meet the requirements of Appendices G and H to 10 CFR part 50 describing specific requirements for fracture toughness and the reactor vessel material surveillance for establishing pressure/temperature limits for the operation of the reactor coolant system. Other minor administrative changes are necessary to clarify and eliminate any possible ambiguity in the interpretation of the Technical Specifications.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the licenses. The proposed revisions would change the pressure-temperature limits for the reactor coolant system and clarify existing requirements involving operation of safety injection pumps, minimum pressurization temperature (MPT) and the description of the steam generator and the pressurizer pressure-temperature limits. The proposed changes would in no way result in increasing the dose to the general public as referenced in the Final Environmental Statements regarding pathways from gaseous or liquid effluents. Collective doses are expected to remain the same as previously analyzed and are very unlikely to pose a significant impact on the quality of the human environment.

With regard to potential non-radiological impacts, the proposed change involves facilities located entirely within the restricted area as defined in the 10 CFR part 20, 10 CFR 51.31, and Regulatory Guide 8.8. It does not affect non-radiological plant effluents and has no other environmental impact, Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 8, 1989 (54 FR 24609). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the staff concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2 dated May 1973.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated January 12, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and the Technology and Science Department, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland this 16th day of August 1989.

For the Nuclear Regulatory Commission.

Dominic C. DiIanni,

Acting Director, Project Directorate III—1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-20228 Filed 8-25-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co., Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-42 and DPR-60, issued to Northern States Power Company (licensee), for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota.

Environmental Assessment

Identification of the Proposed Action

The proposed amendments would revise the provisions in the Technical Specifications relating to fuel enrichment.

The proposed action is in accordance with the licensee's application for amendment dated April 6, 1989.

The Need for the Proposed Action

The proposed changes to the Technical Specifications are required so that the licensee can use higher enrichment fuel, and provide the flexibility of extending the fuel irradiation and permitting operation of longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would permit use of fuel enriched to 4.25 weight percent Uranium-235. The safety considerations associated with reactor operation with higher enrichment have been evaluated by the NRC staff. The staff has concluded that such a change would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased enrichment may slightly change the mix of fission products that might be released in the event of serious accident but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite during normal operation. There is also no significant increase in the allowable individual of cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment, the proposed changes to the Technical Specifications involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel have been discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Full Enrichment and Irradiation," dated July 7, 1988 (53 FR 30355). As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment is either unchanged or may in fact be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c).

Therefore, the staff concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the staff concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, dated May 1973.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated April 6, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Technology and Science Department, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland this 16th day of August, 1989.

For the Nuclear Regulatory Commission.

Dominic C. DiIanni,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-20227 Filed 8-25-89; 8:45 am]

BILLING CODE 7590-01-M

BEST COPY AVAILABLE

Firearms and Explosives Recognition and Detection; Training Symposium

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of training symposium.

SUMMARY: The Nuclear Regulatory Commission (NRC) will sponsor a three-day training symposium for its staff and interested licensees on the topic: "Meeting the Challenge-Firearms and Explosives Recognition and Detection."

DATES: November 28, 29, and 30, 1989.

ADDRESS: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Dwyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone (301) 492-0478.

SUPPLEMENTARY INFORMATION: This symposium is being sponsored by the Division of Safeguards and Transportation, Office of Nuclear Material and Safety and Safeguards. Its purpose is to provide to NRC staff and interested licensees information about state-of-the-art firearms and explosives technologies, methods of detection and events involving firearms and explosives. The symposium is being planned as part of a new initiative to foster technology exchange among NRC staff, NRC licensees, and the Federal community. The decision to sponsor the symposium at this time is not reflective of a change in the domestic threat environment. The symposium will be unclassified.

Based upon the training nature of the symposium and possible seating limitations which may occur based upon response, the NRC plans to use the following order of priority in approving registrants for participation in the symposium. Attendance will be limited to approximately 400.

1. NRC personnel directly engaged in the development of physical security regulations, inspection or licensing of NRC licensees required to have search capabilities.
2. Support staff of instructional personnel.
3. Personnel of NRC licensees who perform, provide training in, or establish policy for physical security searches.
4. Persons who, as agents of NRC licensees, formulate or develop licensee policy on physical security searches.
5. Personnel from other government agencies with on going programs directly related to firearms and explosives recognition and detection.
6. Other personnel desiring to participate in the training symposium.

Registration information, which is presently under development, will be made available to prospective attendees later this year. At this time it is anticipated that a registration fee in the neighborhood of $150.00 will be charged to nongovernment attendees. All attendees will be required to pre-register. There will be no registration at the training symposium.

Dated at Rockville, Maryland, this 21st day of August 1989.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89-20226 Filed 8-25-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-603 and 50-604; License Nos. CPEP-1 and CPEP-2]

All Chemical Isotope Enrichment, Inc.; Order Modifying Licenses and Order To Show Cause Why Licenses Should Not Be Revoked

All Chemical Isotope Enrichment, Inc. (AlChemIE or licensee), Pine Ridge Office Park, Suite 202-B, 702 Illinois Avenue, Oak Ridge, TN 37380, is the holder of Construction Permits (licenses) numbered CPEP-1 and CPEP-2, issued by the Nuclear Regulatory Commission (NRC) pursuant to 10 CFR part 50. Construction Permit No. CPEP-1 was issued on February 10, 1989, and was amended on June 20, 1989, to extend its latest date for completion to November 3, 1989. Construction Permit No. CPEP-2 was issued on February 10, 1989, and has a latest date for completion of March 31, 1992.

Construction Permit No. CPEP-1 authorizes the modification of the existing Centrifuge Plant Demonstration Facility (CPDF) at the U.S. Department of Energy's (DOE) Oak Ridge Gaseous Diffusion Plant. Specifically, CPEP-1 also authorizes the licensee to acquire ownership of and take possession of security-classified gas centrifuge machines and associated classified equipment capable of enriching uranium, to transport the equipment as necessary, and to conduct, in the CPDF, tests using up to two gas centrifuge machines. CPEP-1 also provides for the implementation of security and safeguards measures at CPDF and modification of that facility to enrich stable isotopes. Construction Permit No. CPEP-1 also authorizes the licensee to possess uranium as calibration sources and as contamination on the machines.

Construction Permit No. CPEP-2 authorizes the licensee to construct in Oliver Springs, Tennessee, a new facility for the enrichment of stable isotopes, and to possess uranium as calibration sources and as contamination on gas centrifuge machines and associated equipment brought from the Department of Energy's Gas Centrifuge Enrichment Plant (GCEP). To date no construction activities have been undertaken pursuant to Construction Permit No. CPEP-2.

II

The licensee's proposed enrichment of stable isotopes would utilize classified gas centrifuge equipment. Specifically, this gas centrifuge equipment has been tested by the DOE and has been shown to be capable of producing special nuclear material in the form of enriched uranium in such quantity as to be of significance to the common defense and security. Consequently, this equipment is a production facility which must be licensed in accordance with the Atomic Energy Act of 1954, as amended (Act) (see sections 11v, 101, and 103).

Section 103 production facilities are licensed pursuant to 10 CFR part 50. Under 10 CFR part 50, the applicant for a license is required to submit information showing that it is financially qualified to carry out, in accordance with the Commission's regulations, the activities for which the license is sought. In judging the adequacy of an application, the Commission must find, *inter alia*, that the applicant is financially qualified, and that the issuance of a license will not be inimical to the common defense and security. As described in the **Federal Register** Notice of the construction permit proceeding on this licensing action for CPEP-1 and CPEP-2 (52 FR 15315, April 28, 1988), one of the issues in this construction permit licensing proceeding was whether the applicant (now licensee) is technically and financially qualified to modify and construct the proposed facilities in such a way as to assure adequate protection of the common defense and security.

In that proceeding, the licensee provided written evidence and testimony in hearings of the Atomic Safety and Licensing Board. Based upon that information, the staff found that the licensee was technically and financially qualified to modify the existing CPDF facility in such a way as to assure adequate protection of the common defense and security; this finding appears in Construction Permit CPEP-1. A similar process led to a similar finding

regarding construction of the proposed facility in Construction Permit CPEP-2.

Since issuance of the construction permits, certain events and information materially affect the findings and conclusions required for issuance of the construction permits. A letter of June 14, 1989, from Elbert M. Cooper, Jr., attorney for the Anderson County Bank, (Bank), to AlChemIE, asserts that AlChemIE has certain loans with the Anderson County Bank, which loans were due and payable in full on November 4, 1988. Further, it is asserted in the letter that the notes were seven months delinquent on June 4, 1989. Contrary to these assertions, the licensee's submittals to the NRC staff and the Licensing Board of November 11, 1988, December 19, 1988, and January 4, 9, and 17, 1989, consistently presented an optimistic picture of, *inter alia*, its ability to obtain bank loans. Specifically, AlChemIE failed to notify the staff or the Licensing Board that its loans with the Bank were delinquent during the period of the licensing review.

By letter dated June 28, 1989, AlChemIE notified the Commission that, for protection from creditors, AlChemIE had filed for reorganization in the United States Bankruptcy Court for the Eastern District of Tennessee (Case #89-01095RS-11A). Pursuant to 10 CFR 50.54(f), in a letter dated July 17, 1989, the Director, Office of Nuclear Material Safety and Safeguards, required AlChemIE to provide in writing, by August 15, 1989, under oath or affirmation, answers to the request for information which was attached to the letter as Enclosure 1. The information was required for purposes of determining whether or not AlChemIE is currently in compliance with the licensing basis for Construction Permits Nos. CPEP-1 and CPEP-2. On August 15, 1989, documents were received from AlChemIE in response to that request for information. Based upon our review of these documents, AlChemIE has not demonstrated that it is financially qualified to conduct the activities under its license.

By letter of August 11, 1989, DOE advised AlChemIE that the Sales Agreement, (Contract No. DE-R005-880R21776 titled "Centrifuge Equipment Agreement and Bill of Sale," dated November 20, 1987), between DOE and AlChemIE for, *inter alia*, transfer to AlChemIE of gas centrifuge machines at DOE's Gas Centrifuge Enrichment Plant, was to expire on August 15, 1989, and would not be extended by DOE. DOE indicated that its decision not to extend the Sales Agreement was "based substantially on the continuing failure of AlChemIE to meet contractual commitments to the DOE, and the clear indication that AlChemIE is in no position now or in the foreseeable future to meet those commitments." Finally, DOE stated, "[i]n addition to not extending the Sales Agreement with AlChemIE, the DOE will discontinue discussions with AlChemIE on the sale of centrifuge equipment contained in and the lease of the Centrifuge Plant Demonstration Facility located at the Oak Ridge Gaseous Diffusion Plant."

III

Based on the above, it appears that the licensee failed to fully and accurately disclose to the staff or the Licensing Board its true financial condition during the licensing review period when it was presenting documents and testimony before the Board. The apparently incomplete and inaccurate information which the licensee did provide led the Staff to find that the licensee was financially qualified to modify and construct the facilities in such a way as to assure adequate protection of the common defense and security, and to issue Construction Permits Nos. CPEP-1 and CPEP-2. Had the staff known the licensee's true financial condition, the staff would not have issued construction permits to AlChemIE.

The NRC must be able to rely on its licensees to provide complete and accurate information. Section 50.9(a) of 10 CFR part 50 specifies that information provided to the Commission shall be complete and accurate in all material respects. Section 186 of the Act provides for revocation of any license for any material false statement in the application or upon obtaining other information which would warrant the Commission to refuse to grant a license on an original application. The licensee's disregard of the Commission's need for complete and accurate information in this instance cannot and will not be tolerated.

Furthermore, the issuance of the construction permits to AlChemIE was based upon the license taking possession of the classified gas centrifuge equipment under the terms of the Sales Agreement. AlChemIE has failed to take possession of the equipment and, based upon DOE's decision not to extend the said Sales Agreement, has no further opportunity to take possession. Without possession of the gas centrifuge machines, the projected activities for which AlChemIE sought licenses cannot occur. Thus, there is no longer any purpose for Construction Permits CPEP-1 and CPEP-2.

For all the above reasons and because I find that I lack the requisite reasonable assurance that the licensee can proceed with operations under Construction Permits Nos. CPEP-1 and CPEP-2 in compliance with the Commission's regulations and in such a way that there will be adequate protection of the common defense and security, I have determined that Construction Permits Nos. CPEP-1 and CPEP-2 should be modified to require notice to the Commission prior to licensee's taking possession of classified equipment. Furthermore, pursuant to 10 CFR 2.201(c) and 2.204, I find that the public interest requires that this Order Modifying Licenses be immediately effective and that no prior notice is required.

IV

Accordingly, pursuant to sections 103, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, *it is hereby ordered*, effective immediately, That construction permits Nos. CPEP-1 and CPEP-2 are modified as follows:

As Condition III.12 in CPEP-1 and as Condition III.11 in CPEP-2 is added the following:

> Licensee shall notify in writing the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and the Regional Administrator, NRC Region II, 101 Marietta Street, NW. Suite 2900, Atlanta, GA 30323, at least 30 days before taking possession of any classified equipment.

V

It is Further ordered, that licensee show cause why construction permits Nos. CPEP-1 and CPEP-2 should not be revoked. Pursuant to 10 CFR 2.202(b), the licnesee may show cause why its licenses should not have been modified and why its licnese should not be revoked, by filing a written answer under oath or affirmation within 20 days after the date of issuance of this Order, setting forth the matters of fact and law on which the licensee relies. The licensee may answer this Order, as provided in 10 CFR 2.202(d), by consenting to the provisions specified in section IV above.

VI

Pursuant to 10 CFR 2.202(b), the licensee may, in its answer filed under section V, request a hearing. The licensee or any other person adversely affected by this Order may request a hearing within 20 days of its issuance. Any answer to this Order or any request for hearing shall be submitted to the

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies also shall be sent to the Assistant General Cousel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, GA 30323. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). Upon the licensee's consent to the provisions set forth in section IV of this Order, or upon failure of the licensee to file and answer within the specified time, and in the absence of any other request for a hearing, the provisions specified in section IV above shall be final without further Order or proceedings. An answer under section V or A request for hearing under section VI of this order shall not stay the immediate effectiveness of this order. Upon the failure of the licensee to file an answer within the specified time, and in the absence of any other request for a hearing, Construction Permits CPEP–1 and CPEP–2 are revoked and this action shall be final without further Order or proceeding.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Rockville, Maryland this 8th day of August, 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 89–20230 Filed 8–25–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No 50–254 and 50–265]

Commonwealth Edison Co., Quad Cities Nuclear Power Station, Unit Nos. 1 and 2; Exemption

I

The Commonwealth Edison Company (CECo, the licensee) is the holder of Operating License No. DPR–29 which authorizes operation of Quad Cities Nuclear Power Station (QCNPS) Unit 1, and Operating License No. DPR–30 which authorizes operation of Unit 2. These licenses provide, among other things, that QCNPS Units 1 and 2 are subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station is comprised of two boiling water reactors at the licensee's site located in Rock Island County, Illinois.

II

On November 19, 1980, the Commission published revised § 50.48, "Fire Protection," and a new Appendix R to 10 CFR part 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," regarding fire protection features of nuclear power plants requried to satisfy the General Design Criterion related to fire protection (Criterion 3, Appendix A to 10 CFR part 50). The revised § 50.48 and Appendix R became self-evaluation, CECo submitted additional letters dated December 4, 1985, June 25, 1986 and July 22, 1986, September 30, October 1, and November 23, 1987. These letters modified and withdrew some previous exemption requests and proposed other exemption requests from section III.G.

Concurrent with these subsequent submittals, in response to Commission inquiries on issues concerning high impedance faults and electrical isolation deficiencies that surfaced during review of the original December 18, 1984 letter, CECo submitted further exemption requests by letters dated January 12, 1987, September 30, 1987 (different letter than as above), October 1, 1987 (same letter as above), November 20, 1987, November 23, 1987 and November 30, 1987. These letters specifically requested approval for exemptions from Subsection III.G.1, to allow manual operations, including hot shutdown repairs (i.e. pulling and/or replacing fuses), for achieving and maintaining hot shutdown which would resolve the Commissions concerns and preclude other problems associated with fire-induced spurious actuations.

On December 1 (Hot Shutdown Repairs) and December 11 (Fire Protection) of 1987, the NRC issued Safety Evaluation Reports (SER) approving all exemptions from Appendix R Section III.G requested by CECo except for those identified by CECo in applications dated September 30, October 1, and November 23, 1987 (these exemption requests are still under NRC review). By letter dated February 19, 1988, CECo provided unsolicited comments to the aforementioned SERs and requested that some specific changes be made in them to improve accuracy and clarity. Consequently, the NRC reissued revised SERs dated April 20 and July 21, 1988 (respectively).

The following is a list of the exemptions from Appendix R, section III.G requested by CECo, with a brief description. Detailed descriptions of these exemption requests and of the NRC staff's evaluation are contained in the previously mentioned CECo and NRC documents, which are located in the Public document Room.

(1) Turbine Building Northern and Southern Zone Groups (Fire Areas TB–I and TB–III) to the extent that manual operations (including hot shutdown repairs) disallowed by section III.G.1 are necessary to prevent spurious operations and high impedance faults of safe shutdown equipment.

(2) Control power circuits for Diesel Generators and certain 480V breakers to the extent that hot shutdown repairs disallowed by section III.G.1 are required to compensate for fire induced electrical isolation design deficiencies.

(3) Unit 1 Reactor Building (Fire Zones 1.1.1.2, 11.2.2, 1.1.1.1S—Torus South, 1.1.1.1N—Torus North) and Unit 2 Reactor Building (Fire Zones 1.1.2.2, 11.3.2, 1.1.2.1S—Torus South, and 1.1.2.1N Torus North) to the extent that complete 3-hour fire rated barriers pursuant to Section III.G.2.a are not provided.

(4) Unit 1 Reactor/Turbine Building Interface Boundary and Unit 2 Reactor/Turbine Building Interface Boundary to the extent that 3-hour fire rated barriers pursuant to section III.G.2.a are not provided.

(5) Unit 1 Reactor Building (Fire Zones 1.1.1.1, 1.1.1.2, 1.1.1.3, 1.1.1.4, 1.1.1.5, 1.1.1.6, 11.1.3, 11.2.1, 11.2.2, 11.2.3, and 11.2.4) and Unit 2 Reactor Building (Fire Zones 1.1.2.1, 1.1.2.2, 1.1.2.3, 1.1.2.4, 1.1.2.5, 11.1.4, 11.3.1, 11.3.2, 11.3.3, and 11.3.4) to the extent that automatic fire detection and fixed fire suppression systems pursuant to section III.G.3 are not provided.

(6) Units 1 and 2 Control Room (Fire Zone 2.0), Units 1 and 2 Auxiliary Computer Room, and Unit 1 and 2 Auxiliary Electric Equipment Room (Fire Zone 6.3) to the extent that a fixed fire suppression pursuant to section III.G is not provided.

(7) 4–KV Bus Duct Penetrations to the extent that complete 3-hour fire rated barriers pursuant to section III.G.2.a are not provided.

(8) Standby Gas Treatment System and the Reactor Building Vent System Piping Penetrations to the extent that a complete 3-hour fire rated barrier pursuant to section III.G.2.a are not provided.

(9) Drywell Expansion Gap in Units 1 and 2 to the extent that automatic fire detection and fixed fire suppression systems pursuant to section III.G.3 are not installed.

(10) Units 1 and 2 Turbine Building Southern and Central Zone Groups to the extent that a complete 3-hour fire rated barrier pursuant to section III.G.2.a is not provided.

(11) Units 1 and 2 Turbine Building Southern and Northern Zone Groups to the extent that a complete 3-hour fire rated barrier pursuant to section III.G.2.a is not provided.

(12) Turbine Building Operating Floor (Fire Zones 8.2.8.A, 8.2.8.B, 8.2.8.C, 8.2.8.D, and 8.2.8.E) to the extent that complete 3-hour fire rated barriers pursuant to section III.G.2.a are not provided.

(13) Watertight Door (Fire Zone 11.1.1.B) to the extent that a complete 3-hour fire rated barrier pursuant to section III.G.2.a is not provided.

(14) Northern/Central Zone Groups and Fire Zone 8.2.8.D to the extent that a complete 3-hour fire rated barrier pursuant to section III.G.2.a is not provided.

The NRC did not evaluate CECo's exemption request from III.G. 3 for the Turbine Building (Northern and Central Zone Group, and Operating Floor) and Southern/Northern Zone Groups (Fire Zones 8.2.1.A, 11.1.1.A, and 8.2.7.D) because exemptions are not required per the guidance contained in Generic Letter 86–10.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, these exemptions (listed above) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present to justify granting the exemptions; namely, that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule. In general, the underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and maintain the plant in a safe shutdown condition. This is accomplished by assuring that sufficient undamaged equipment is available to support safe shutdown assuming a fire within the area of concern. In the areas for which an exemption is being requested, passive as well as active fire protection features assure that any single fire will not result in the loss of safe shutdown capability. These features include manual actions, automatic suppression, and early detection of fires in their incipient stages. The fire protection features, in conjunction with low combustible loadings, provide a high degree of assurance that a single fire will not result in loss of safe shutdown capability. In addition, the special circumstances of 10 CFR 50.12(a)(2)(iii) apply in that compliance would result in costs that are significantly in excess of those contemplated when the regulation was adopted. Providing additional protection features, as would be required to meet the regulations, would not result in a significant increase in the level of protection and would result in undue costs and resource expenditures for the licensee in additional engineering, procurement of materials, fabrication, and installation. Accordingly, the Commission hereby grants exemptions for the conditions listed in section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that granting these exemptions will have no significant impact on the environment as published in the Federal Register on July 31, 1989 (54 FR 31599).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 18th day of August, 1989.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects III, IV, V, and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89–20232 Filed 8–25–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–155]

Consumers Power Co.; Issuance of Amendments to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 100 to Facility Operating License No. DPR–6, issued to Consumers Power Company (the licensee), which revised the Technical Specifications (TSs) for operation of the Big Rock Point Plant (the facility), located in Charlevoix County, Michigan. The amendment is effective as of the date of issuance.

This amendment modified the Technical Specifications sections 6.2 and 6.5 to reflect the replacement of the Nuclear Safety Board (NSB) with the Nuclear Safety Services Department (NSSD) and the elimination of the Independent Safety Engineering Group (ISEG).

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on March 29, 1989 (54 FR 12977). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated September 22, 1988, and supplemented January 17, and April 12, 1989 (2) Amendment No. 100 to License No. DPR–6, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC and at the North Central Michigan College, 1515 Howard Street, Petosky, Michigan 49770. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this August 16th day of 1989.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Project Directorate III–1, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20231 Filed 8–25–89; 8:45 am]

BILLING CODE 7590-01-M

Duke Power Co., Oconee Nuclear Station, Units 1, 2, and 3; Exemption

[Docket Nos. 50-269, 50-270, and 50-287]

I

Duke Power Company (Duke or the licensee) is the holder of Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 which authorize the operation of the Oconee Nuclear

Station, Units 1, 2, and 3 (Oconee or the facility) at steady-state power levels not to exceed 2568 megawatts thermal for each unit. These licenses provide, among other things, that the facilities are subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of three pressurized water reactors at the licensee's site located in Oconee County, South Carolina.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new 10 CFR part 50, appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979." On February 17, 1981, the revised § 50.48 and appendix R became effective. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these subsections, III.G, is the subject of Duke's exemption requests.

Section III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of six means. The two paragraphs, a and d, that pertain to the Duke exemption requests are as follows:

> A. Separation of cables and equipment and associated non-safety circuits of redundant trains [shall be accomplished] by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier; or
>
> d. Separation of cables and equipment and associated non-safety circuits of redundant trains [shall be accomplished] by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards.

III

By letters dated November 11 and October 24, 1983, and August 14, 1984, Duke requested exemptions for Oconee from appendix R to 10 CFR part 50. By letter dated February 28, 1985, Duke sent additional information to clarify the exemption requests. Further, Duke stated that two of the submitted exemption requests would be withdrawn based on the successful fire testing of associated fire barriers. In a letter dated September 30, 1985, Duke presented the fire test data, its favorable evaluation, and their formal request to withdraw exemption requests nos. 1 and 2 of the November 11, 1983 letter. By letter dated November 14, 1986, the staff requested further information on the remaining exemption requests. By letter dated December 23, 1986, Duke responded initially to the questions. Later, in a letter dated April 21, 1987, Duke sent additional information.

The staff has reviewed the remaining five exemption requests as discussed below.

1. Auxiliary and Reactor Buildings—Expansion Joints

Duke requested an exemption from the technical requirements of section III.G.2.a of Appendix R because the seismic expansion joints, used in fire barriers between the auxiliary building and the reactor building, are not rated for 3-hour fire resistance.

The auxiliary building is next to the reactor building; these two buildings are above the east and west penetration rooms. A 3-hour fire resistive barrier was constructed to separate the east from the west penetration room. These fire barriers separate trains of safe shutdown equipment and associated circuits. Cork is embedded in the concrete slabs above and below the wall adjacent to the reactor building wall. Duke states that the exemption request is only for the compressed cork in the expansion joints, located between the auxiliary building floor slabs and the reactor building walls at the ceiling of the west penetration room. The joints have compressed cork installed as filler material. Because the compressed cork in the expansion joints is not a 3-hour, fire-rated assembly, Duke evaluated the acceptability of using these joints in fire-rated barriers.

In evaluating the exemption request, the staff considered the following three characteristics about the penetration rooms: (1) The amount of combustible material (also called combustible loading); (2) the installed smoke detectors; and (3) the distance between the combustibles and the cork.

First the combustible loading of the area is low. It consists primarily of cable insulation for fan motors and lights. No fixed combustibles are installed near the exposed cork. The penetration rooms, constructed of reinforced concrete, have a ceiling height of about 25 feet. The area above the east and west penetration rooms contains only air handling equipment. The west penetration room contains only cables of one train of equipment necessary to achieve safe shutdown. If a fire were to occur, the redundant safe shutdown equipment would not be affected. Because this area has low combustible loading, the area is unlikely to have a fire that would propagate through the expansion joints and into the east and west penetration rooms and damage the redundant safe shutdown equipment.

Second, smoke detectors have been installed by Duke throughout the east and west penetration rooms. These detectors alarm in the main control room. If a fire were to occur, the smoke detectors would give the reactor operators early warning. Although this area does not have fire suppression, it does have portable extinguishers and manual hose stations. After receiving the alarm, the reactor operators would dispatch the fire brigade to the area; the fire brigade would then extinguish the fire by using the portable extinguishers and manual hose stations.

Finally, the distance between the combustibles and the exposed cork and also the separation between the two trains of safe shutdown equipment provide sufficient protection to ensure the ability to achieve and maintain safe shutdown until Duke extinguishes the fire.

Thus, the staff finds that the low combustible loading, the automatic fire detection, the passive protection of fire area boundaries, and the separation of safe shutdown equipment provide reasonable assurance that the fire brigade would be able to extinguish a fire before it develops to the point of preventing a safe plant shutdown. Furthermore, the staff finds acceptable the compressed cork used in the seismic expansion joints located at the ceiling of the west penetration room, for each of the three units, because the cork does not decrease the level of fire protection. Therefore, the staff concludes that Duke's fire protection features meet the underlying purpose of the rule because they provide an equivalent level of fire protection as would literal compliance with appendix R.

2. Reactor Buildings—Separation Distance Between Safety Circuits and Non-Safety Circuits

Duke requested an exemption from the technical requirements of section III.G.2.d of appendix R for two cases where either the distance between redundant instruments is less than 20 feet or where the distance between redundant components necessary for achieving hot shutdown is 20 feet, but intervening combustibles exist between them.

In the first case, Duke stated that the pressurizer level transmitter in the Unit 1 reactor building is separated by about 15 feet from the balance of plant instruments although there are no intervening combustibles. In the second case, Duke states that although they are separated by more than 20 feet, the

primary and alternate trains of instrumentation have intervening combustibles between them.

In evaluating the exemption request, the staff considered the specific configuration of the cases. In the first case, although there are no intervening combustibles between them, the two instruments are separated by only 15 feet. Furthermore, in the rest of the area, the combustible loading, which consists primarily of cable, is low. To reduce the probability of a fire from transient combustibles, Duke has incorporated administrative controls to limit transient combustibles and inspections to detect any combustibles before starting the unit after an outage. Also, reactor buildings are huge structures whose appreciable volume dissipates the heat from a fire.

In the second case where the primary and alternate trains of instrumentation, i.e, cables, valves and instruments of the safe shutdown system, are located in two different areas within each reactor building, the trains are separated by more than 20 feet. However, there are also intervening combustibles between them. Although their concentration is low, the intervening combustibles consist of cable trays traversing the reactor building (RB). Because the cable insulation contained within the trays is comparable to IEEE–383 qualified cable, the cable insulation will burn slowly with an initially low rate of heat release.

Thus, for the first case of pressurizer level instrumentation, the staff finds that the low combustible loadings and large RB volume provide reasonable assurance that the fire brigade would be able to extinguish a fire before it develops to the point of preventing a safe plant shutdown. In the second, the distance between redundant and alternate standby shutdown equipment, combined with the low rate of fire propagation through the trays, provides reasonable assurance that the fire brigade will extinguish the fire before it affects redundant trains of instrumentation. Therefore, the staff concludes that Duke's fire protection features within the RB meet the underlying purpose of the rule because they provide an equivalent level of fire protection as would literal compliance with appendix R.

3. Pipe Tunnel Access Area

Duke requested an exemption from the technical requirements of section III.G.2.a of appendix R because the pipe tunnel access area holding the standby shutdown system cables located in the pipe tunnel access area does not have a 3-hour, fire-rated barrier separating it from the east penetration room above.

In evaluating the exemption request, the staff considered the amount of combustible loading and manual fire suppression.

First, the combustible loading in the pipe tunnel access is low. If a fire were to occur, it would develop slowly. Also, the fire propagation path between the standby shutdown system cables and the east penetration room is circuitous, consisting of several unrated barriers and open areas. Second, the fire brigade may use the portable extinguishers, manual hose stations, or a fire hose supplied from the fire hydrant to extinguish the fire.

Thus, the staff finds that the low combustible loading and manual fire suppression provide reasonable assurance that the fire will not propagate between the pipe tunnel access area and the east penetration room above.

Therefore, the staff concludes that the existing separation between the pipe tunnel access area and the east penetration room provides a level of fire protection equivalent to the technical requirements of section III.G.2.a of appendix R.

4. East and West Penetration Rooms

Duke requested an exemption from the technical requirements of section III.G.2.a of appendix R for pipe penetrations through the floor and ceilings of the penetration rooms.

The licensee stated that "Armaflex" and "Rubatex" insulating materials are used to seal pipe penetrations through the floor and ceilings of the east and west rooms. Armaflex is described in the Oconee Nuclear Station Fire Protection Safety Evaluation Report dated August 11, 1978, and has a flame spread rating of 50. Rubatex is a similar material with a flame spread of 25.

The licensee has stated that due to the presence of this insulating material at pipe penetrations, an exemption is required from the specific technical requirements of section III.G.2.a of appendix R.

By letter dated April 21, 1987, Duke stated that the west penetration room and cask decontamination rooms are considered a single fire area. Therefore, the exemption request applies only to the ceilings of the west penetration room.

The pipe penetrations through the ceiling of the west penetration room do not comply with the technical requirements of section III.G.2.a of appendix R because of the pipe insulation materials installed. The insulating materials used are known as Armaflex and Rubatex.

The west penetration room contains only one train of equipment necessary to achieve safe shutdown. The penetration room is constructed of reinforced concrete and has a ceiling height of approximately 25 feet. The predominant combustible within the room is cable insulation.

Smoke detectors are provided for the west penetration room. These detectors alarm in the main control room. If a fire occurs, it should be detected in its early stages and alarmed in the main control room. The fire brigade will be dispatched to the area to extinguish the fire using the portable extinguishers and manual host stations provided.

By letter dated May 11, 1984, information concerning Rubatex was submitted to the staff as part of the licensing review for the Catawba Nuclear Station. The staff has accepted the use of this material as described in Supplement 3 to the Catawba Nuclear Station Safety Evaluation Report (SSER 3) dated July 1984. The Rubatex insulation has a Flame Spread Index of 25, a Smoke Development Index of 100 (maximum), and a Fuel Contribution Index of 30.

For the Oconee Nuclear Station, "Armaflex", a similar material with a flame spread index of 50 or less, was submitted to the staff for review by Duke's letter dated January 25, 1978. The use of this material in an arrangement similar to that used in the ceiling of the west penetration room was accepted as described in the Oconee Fire Protection Safety Evaluation Report dated August 11, 1978.

Because of the limited combustibility of the insulation material, it is unlikely that a fire would propagate through the penetration seals from one fire area to the other. Should a fire occur in the penetration room, it would be detected in its incipient stage. The alarms from the detectors annunciate in the control room where the fire brigade would be dispatched to extinguish the fire manually.

Based on the above evaluation, previous acceptance of the insulating material, and the staff review of site conditions, the staff concludes that the piping penetrations at the ceiling of the west penetration room, provide reasonable assurance that a fire would not propogate through the barrier and, therefore, provide a level of fire protection equivalent to the technical requirements of section III.G.2. of appendix R.

5. Reactor Building Walls

Duke requested an exemption from the technical requirements of section

III.G.2.a of appendix R to the extent that … application of the regulation in the

Administrative Judge Gustave A. … in sections (A), (B), and (C) below, of the … Two exceptions to this new policy are

III.G.2.a of appendix R to the extent that three-hour, fire-rated pipe penetrations are not provided within the reactor building wall contiguous to the penetration rooms.

Duke has stated that the mechanical pipe penetrations in the reactor building walls are not fire rated. The reactor building walls serve as fire barriers separating redundant trains of cables in the east and west penetration rooms. Because of the presence of these unrated penetrations, the reactor building walls do not conform with the technical requirements of section III.G.2.a of appendix R to 10 CFR part 50.

The containment penetration design for pipe containing less than 150°F process fluids consists of a sleeved opening with a steel housing assembly anchored to the reactor building wall, with a pipe cap attached to the pipe for containment integrity. Penetrations for higher temperature process piping are similar in design but have insulation between the process pipe and the wall sleeve.

The mechanical pipe penetration design was observed during the plant appendix R inspection during the week of January 28–30, 1987, to be similar to penetration designs used at other facilities. The penetrations have been designed to meet multiple containment integrity criteria.

The combustion loadings near the penetration are low; therefore, a fire of significant magnitude or duration should not occur near the penetrations. If a fire does occur, it is probable that the substantial construction of the piping penetrations, combined with the large room volumes on either side of the penetrations, will prevent fire propagation through the containment boundary. It is, therefore, concluded that the existing unrated containment mechanical pipe penetrations provide reasonable assurance that a fire will not propagate through the barrier and are, therefore, an acceptable deviation from the technical requirements of section III.G.2.a of appendix R.

Based on the above evaluation, the existing mechanical pipe penetrations in the reactor building walls provide a level of fire protection equivalent to the technical requirements of section III.G.2.a of appendix R and provide reasonable assurance that the fire will not propagate through the containment boundaries.

6. 10 CFR 50.12 Determination

Pursuant to 10 CFR 50.12(a)(2), the Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of section III.G is to provide adequate protection of redundant components of safety-related equipment by limiting damage in the event of a fire at one safety-related component location so the performance of the other redundant safety-related component is not affected. As described in the evaluation section of each exemption request, the staff has concluded that the existing fire protection systems provide equivalent protection to that which would be provided by meeting the literal separation requirements of section III.G of appendix R.

In summary, the staff has concluded that the alternative fire protection provided in support of the exemptions meets the fire protection which would otherwise occur if literal compliance with the separation requirements of appendix R were required. Therefore, the staff concludes that special circumstances exist for the licensee's requested exemptions in that imposition of the literal requirements of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of appendix R to 10 CFR part 50.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) an exemption as described in section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants an exemption from the requirements of section III.G. of appendix R to 10 CFR part 50 as described in section III. above.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (53 FR 50139).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of August 1989.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20233 Filed 8–25–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-25; ASLBP No. 89-594-01-ML]

Rockwell International Corp.; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials Licensing proceeding.

Rockwell International Corporation, Rocketdyne Division, Special Nuclear Materials License No. SNM–21

The Presiding Officer is being designated pursuant to 10 CFR 2.1207 of the Commission's Regulations, "Informal Hearing Procedures for Materials Licensing Adjudications," published in the **Federal Register**, 54 FR 8269 (1989). This action is in response to requests for an adjudicatory hearing submitted by Jon Scott and Estelle Lit, representing themselves and Jerome E. Raskins, the lead signatory on a letter to the Executive Director for Operations signed by thirty-seven individuals. The requestors desire a hearing on the application of the Rocketdyne Division of Rocketwell International Corporation for renewal of Special Material License Number SNM–21 for ten years. The License renewal request was submitted to the Commission by letter dated May 25, 1989.

The presiding officer in this proceeding is Administrative Judge Peter B. Bloch.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Gustave A. Linenberger, Jr., to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bloch and Judge Linenberger in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge Peter B. Bloch,
Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Gustave A.
Linenberger, Jr., Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 21st day of August 1989.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89–20136 Filed 8–25–89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27153; File No. SR–Amex–89–18]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Audit Committee Requirements and Other Listing Guidelines and Instructions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 26, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend certain provisions of the Company Guide to require listed companies to establish and maintain audit committees, and conform certain other listing guidelines and instructions with current practices and procedures.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Audit Committees. Audit committees have come to be accepted as a necessary and integral part of corporate boards of directors. Beginning with the 1960's, many business leaders began embracing the idea of audit committees as a way of coping with criticism regarding the accuracy and completeness of financial statements, and the growing complexities of accounting and business matters in general. This trend has accelerated since 1978 when the Amex determined to strongly encourage domestic listed companies to establish audit committees.[1]

Over the past several months, the Amex has been reconsidering its position on audit committees in light of evolving industry practice, and recently concluded that an audit committee requirements for Amex-listed companies is now appropriate.

A recent survey of listed company proxy statements shows that approximately 85% of all Amex domestic listed companies with a traditional corporate board structure already have audit committees, and that nearly 93% of such companies have two or more independent directors. While the Exchange is aware that some who have written on this subject have suggested that audit committees be comprised solely of independent directors,[2] it is not convinced that this is necessary and/or practical for Amex-listed companies, and accordingly, proposes that only a majority of the audit committees members be required to be outside directors. This would be consistent with the requirements for NASDAQ National Market System Securities that has been approved by the Commission.[3]

Two exceptions to this new policy are proposed: first, the Exchange believes that the rule should not apply to foreign issuers if inconsistent with the custom and/or practice in the company's country of domicile. This is contemplated by the Exchange's foreign issuer guideline [4] and consistent with the audit committee rules of the other marketplaces.[5]

Second, neither audit committees (nor for that matter independent directors) should be required—as a condition to listing—for any entity which is not structured along traditional corporate lines. For example, publicly traded partnerships without a corporate general partner should not be require to establish a special structure solely to accommodate an audit committee.[6] Similarly, the rule is not intended to be applied to an issuer of preferred stock or debt whose common stock is privately held. In these latter cases, which typically arise in the context of a leveraged buy-out, the rights and obligations of the parties are essentially contractual in nature. To require audit committees and/or independent directors in these situations appeers impractical.

Finally, to allow sufficient time for existing listed companies to comply with this new requirement, and if necessary, secure added outside directors, the Exchange proposes a phase-in period for existing companies of 12–18 months following SEC approval. New companies which apply for listing after SEC approval would, however, be expected to have or to establish an audit committee within approximately 90 days following the commencement of trading.

Conforming changes to listing guidelines and instructions. The Amex also proposes several other minor changes to its existing published requirements to conform existing guidelines and instructions with current practices and procedures. These revisions are not viewed as substantive policy changes, but rather are intended as clarification of our existing requirements.

Independent directors. Section 121 of the Amex Company Guide states that the Exchange recommends that listed companies have at least two independent directors on the board. This statement of policy has evolved over the years to the point where it is now viewed as a requirement. Accordingly, the Exchange proposes to amend this provision to make explicit what has come to be current practice; namely, that each domestic listed company with publicly traded common stock is required to have at least two independent directors.

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[1] Currently, section 121 of the Amex Company Guide, among other things, recommends that every listed company establish and maintain an audit committee composed solely of independent directors.

[2] See Report of National Commission on Fraudulent Financial Reporting (October 1987) at 40–41; GAO Report on CPA Audit Quality (March 1989) at 40–41.

[3] Schedule D, Section 5(d) of the NASD By-Laws provides that each NASDAQ/NMS issuer shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors.

[4] Section 110 of the Amex Company Guide sets forth the original listing requirements for securities of foreign companies.

[5] For example, paragraph 303.00 of the NYSE Listed Company Manual requires each domestic company with common stock listed on the Exchange, as a condition to listing or continued listing of its securities on the Exchange, to establish an Audit Committee comprised solely of directors independent of management.

[6] However, all partnerships with corporate general partners would be strongly encouraged to establish such a committee.

Listing applications—Exhibits. Section 213 of the Company Guide specifies a number of exhibits required to be filed in support of an original listing application. Review has shown, however, that certain of these items no longer serve any regulatory purpose and are seldom—if ever—considered by the Staff during the listing evaluation process.

Accordingly, the Exchange proposes that the three exhibits mentioned below (Items 10, 11 and 12) be eliminated, and a general provision added reserving to the Exchange the right to request such material on an as-needed basis:

- Item 10 requires the production of certified copies of each option, bonus, profit-participation, pension and retirement plan.
- Item 11 requires certified copies of patent or royalty agreements.
- Item 12 calls for all state "Blue Sky" memoranda and related correspondence with the various State Securities Administrators.

Warrant listing fees. Section 140 of the Company Guide provides that listing fees for warrants are to be based on the aggregate number of shares into which the warrants are exercisable. Although the overwhelming majority of warrants are initially issued on a 1-to-1 conversion basis, the Exchange has, on occasion, encountered a new warrant issue which provides that each warrant is exercisable into more than one share of stock. Were section 140 to be applied literally, such issuers would be required to pay a higher fee for listing their warrants than for any other new equity issue. Section 140 is, therefore, being amended to provide that the fees for listing a new warrant issue shall be based solely upon the number of warrants to be listed, and not the number of shares into which they are exercisable.

Listing fee refunds. Companies leaving the Exchange, whether because of merger, transfer or otherwise, have always been entitled to a pro-rated refund of any pre-paid annual fee. Since there is typically a time delay of several months between the cessation of trading and formal SEC approval of the company's removal application, companies should not be charged for this "stub" period. As presently written, however, section 141 states that issuers must formally apply for a refund, and that any pro-rated fee should be calculated from the time of "removal". Section 141, as amended, would make clear that the Exchange will automatically remit a pro-rated refund calculated from the date of suspension from trading.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is intended to prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-89-18 and should be submitted by September 18, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 21, 1989.

Shirley E. Hollis,

Assistant Secretary

[FR Doc. 89-20193 Filed 8-25-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27161; File No. IDD-89-02]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Amendment to Index Participations Disclosure Document

On August 21, 1989, the Options Clearing Corporation ("OCC"), in conjunction with the Philadelphia ("Phlx") and American ("Amex") Stock Exchanges and the Chicago Board Options ("CBOE") Exchange, Inc. [collectively, the self-regulatory organizations ("SROs")] submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 9b-1 of the Securities Exchange Act of 1934 ("Act")[1] copies of an amendment to the Index Participations ("IPs") Disclosure Document ("IDD").[2]

The proposed amendment to the IDD provides disclosure concerning the August 18, 1989, opinion of the United States Court of Appeals for the Seventh Circuit ("Seventh Circuit") holding that IPs are futures contracts subject to the exclusive jurisdiction of the Commodity Futures Trading Commission, and that the Commission orders approving the proposed SRO rule changes to list for trading and to issue, clear, and settle IPs should be set aside.[3] The amendment notes that the Court's mandate will issue and the orders will be set aside effective on September 8, 1989, unless a petition for rehearing is pending at that time or an earlier or later date is established by action of the Seventh Circuit.[4] The amendment notes further, however, that from August 21, 1989, until further notice, trading in IPs is restricted to closing transactions, except (1) trading by IPs market makers or specialists, (2) trading to facilitate the liquidation of customer IP positions, or (3) as otherwise may be approved by an exchange for the protection of investors, the maintenance of fair and orderly markets or the safeguarding of securities or funds.

Rule 9b-1 provides that an options market must file five copies of amendments to a disclosure document with the Commission at least 30 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the protection of investors.[5]

The Commission has reviewed the IDD amendment and finds that it provides adequate disclosure of the change in IP's status due to the Seventh Circuit opinion as well as the trading restrictions put in place to comply with the opinion. In addition, the Commission believes it is consistent with the public interest and the protection of investors to allow its distribution as of August 22, 1989, less than 30 days prior to the date definitive copies are furnished to customers. Specifically, allowing immediate distribution of the IDD amendment should help eliminate any possible investor confusion concerning the restrictions applicable to IPs trading as a result of the Seventh Circuit opinion.

For the Commisison, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: August 22, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-20191 Filed 8-25-89; 8:45 am]

BILLING CODE 8010-01-M

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[1] 17 CFR 240.9b-1 (1988).

[2] See Letter from James R. McDaniel, Schiff Hardin & Waite, OCC legal counsel, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated August 21, 1989.

[3] Chicago Mercantile Exchange, et al. v. Securities and Exchange Commission et al., Nos. 89-1538, 89-1786, 89-1790, and 89-2012 (7th Cir., Aug. 18, 1989).

[4] The OCC intends to seek a stay of the Seventh Circuit's mandate in order to permit the OCC cash-out of outstanding IP longs to occur in conjunction with the next IP dividend equivalent day.

[5] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[6] 17 CFR 200.30-3(a)(12) (1988).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2354; Amdt. No. 7]

Louisiana and Contiguous Counties in the States of Texas, Arkansas and Mississippi; Declaration of Disaster Loan Area

On July 25, 1989, the Small Business Administration amended the above-numbered declaration in accordance with the Notice of Amendment to the President's declaration, dated July 13, 1989, to include the parishes of Jackson and Webster, in the State of Louisiana, as a result of damages from severe storms and flooding which occurred May 4 through May 27, 1989.

As the termination date for filing applications for physical damage closed on July 18, 1989, prior to the amendment cited above, the termination date for filing applications for physical damage is extended to September 20, 1989, 30 days from the date of this action. The termination date for filing applications for economic injury remains the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 21, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-20186 Filed 8-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 6825]

New York; Declaration of Disaster Loan Area

The counties of Genesee, Orleans, and Wyoming, and the contiguous counties of Allegany, Cattaraugus, Erie, Livingston, Monroe, and Niagara, in the State of New York, constitute an Economic Injury Disaster Loan Area as due to damages resulting from widespread flooding caused by a severe storm with excessive precipitation which occurred on June 22, 1989. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on May 17, 1990, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410.

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Programs No. 59002.)

Dated: August 17, 1989.

Susan Engeleiter,

Administrator

[FR Doc. 89-20187 Filed 8-25-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/10-0150]

Capital Marketing Corp.; Application for Conflict of Interest Transaction

Notice is hereby given that Capital Marketing Corporation (CMC), 100 Nat Gibbs Drive, Keller, Texas 76248, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b)(5) of the Regulations governing small business investment companies (13 CFR 107.903(b)(5) (1989)) for an exemption from the provisions of the cited Regulations.

CMC proposes to loan $275,000 to Kenneth R. Wright to purchase Woody's Discount Food & Family Center (Discount), located at 104 Main Street, Wolfe City, Texas 75496.

The proposed financing is brought within the purview of § 107.903(b)(5) of the Regulations because James T. Woodruff, a partial owner of the Discount grocery store, is an Associate of CMC by virtue of his being a member of the Board of Directors of Affiliated Food Stores, Inc., a more than 10% owner of CMC.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Keller, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: August 22, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-20181 Filed 8-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 03/03-5189]

Millicom Capital Corporation; Application for License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*), has been filed by Millicom Capital Corporation (Applicant), 1200 18th Street, NW., Suite 705, Washington, DC 20036, with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1989).

The officers, directors and sole shareholder of the Applicant are as follows:

J. Shelby Bryan, Chairman of the Board, Director, 220 East 63rd Street, New York, NY 10021.
Walter L. Treadgill, President, CEO, Director, 5006 Weaver Terrace, NW. Washington, DC 20016.
Lawrence Melillo, Secretary, Treasurer, Director, 20 Summer Court, Emerson, NJ 07630.
Millicom Incorporated, Sole Shareholder, Suite 5500, 155 East 53rd Street, New York, NY 10022.

The following three individuals, collectively, have voting control (51.8 percent) of Millicom Incorporated, a company whose stock is traded over the counter:

J. Shelby Bryan, 200 East 63rd Street, New York, NY 10021.
Bjorn Wissen, 333 East 68th Street, New York, NY 10021.
Madison H. Haythe, 142 Peruvian Avenue, Palm Beach, FL 33480.

The Applicant, a Delaware corporation, will begin operations with $1,000,000 paid-in capital and paid-in surplus. It will conduct its operations primarily in the District of Columbia, and in the states of Maryland, Virginia, West Virginia, Pennsylvania, Delaware and North Carolina.

As an SBIC under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business investment concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in free enterprise system is hampered because of social or economic disadvantage.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Washington, DC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: August 21, 1989.

Robert G. Linsberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-20182 Filed 8-25-89; 8:45 am]

BILLING CODE 8025-01-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4W 13B, Chattanooga, TN 37402; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Forest Industries Survey 1989.

Frequency of Use: On occasion.

Type of Affected Public: Businesses or other for-profit and small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 3600.

Estimated Total Annual Burden Hours: 2401.

Estimated Average Burden Hours Per Response: 667.

Need For and Use of Information: The purpose of this information collection is to measure trends in industrial wood use, employment, and number and kinds of forest industries. These data will be used to evaluate progress in forest industrial development.

Louis S. Grande,

Vice President, Information Services, Senior Agency Official.

[FR Doc. 89-20211 Filed 8-25-89; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. EX89-3; Notice 2]

Avanti Automotive Corp.; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

This notice grants the petition by Avanti Automotive Corporation of Youngstown, Ohio, for a temporary exemption of its convertible models from the automatic crash protection requirements of Motor Vehicle Safety Standard No. 208, Occupant Restraint Systems, but only for two years, and not the three years that it had requested. The basis of the petition was that compliance would cause substantial economic hardship.

Notice of receipt of the petition was published on July 6, 1989, and an opportunity afforded for comment (54 FR 28550).

Petitioner's total production from January 1987 to June 1989 was 434 passenger cars. Of these, 203 were convertibles, and 231 were coupes. It requested an exemption of three years from the automatic protection requirements of Motor Vehicle Safety Standard No. 208 for its convertible models, which become effective September 1, 1989, for that type of motor vehicle. The company's coupes and contemplated 4-door sedans are and will

be fitted with automatic protection systems.

In arguing that compliance would cause it substantial economic hardship, Avanti discussed the recent troubled history of the company. The original Avanti Corporation acquired tooling from the Studebaker Corporation in 1964, and manufactured passenger cars in South Bend, Indiana, from that time until 1987. In 1985, Avanti filed for bankruptcy. It assets were purchased in 1986, and formed the basis of a new corporation, The New Avanti Motor Corporation. Business interests in Youngstown, Ohio, offered incentives to move production to that "economically troubled area", including "an eight million dollar financial package * * * which included loans and grants from the State of Ohio, local grants, private financing, and equity". New Avanti accepted, and moved in September 1987. However, start-up costs, including the training of a new work force, absorbed available capital, and the specter of bankruptcy again arose. A reorganization occurred in the Fall of 1988, and the Avanti Automotive Corporation emerged. Much of the year since then has been devoted to a reevaluation of its market, a search for a suitable chassis for its 1991 and subsequent models, and an examination of ways to reduce production costs. Although "over the last four months, Avanti Automotive Corporation has received additional capital of $600,000 per month", such an infusion is required to compensate for the company's continuing losses over the past few years. The latest income statement it made available (June 1—November 30, 1988) showed a net loss of over $2,000,000 incurred in that time period. In the year ending April 30, 1988, it had a net loss of almost $3,000,000. In the year ending April 30, 1987, it had a net gain of slightly less than $25,000.

With regard to its efforts to comply with Standard No. 208, Avanti investigated the feasibility of providing a three-point automatic safety belt system. However, this system is feasible in the Avanti convertible only with a roll bar. In Avanti's opinion, installation of a roll bar would substantially reduce the consumer appeal of the convertible (This could result in fewer sales, with a resulting negative effect on the income that would be available for development and implementation of an airbag system). Nevertheless, it is attempting to make the roll bar/three-point automatic belt system available as an option, "possibly as early as the 1990 model year". In the meantime, it has been planning to install a driver's side air bag, and commenced its efforts in the Spring of 1988. It has learned from Breed Corporation and Allied Signal that total design and tooling costs will exceed $1,500,000 for the convertible alone (it believes that this system will be easily adaptable for the coupe and planned 4-door sedan). Avanti did not have sufficient funds to undertake this, at that time, since it did not know whether it would even be in business 18 months later when the requirement came into effect. However, it believes that it could develop and implement an air bag system over the 3-year period that its exemption would be in effect, and thus, produce a conforming convertible by September 1, 1992, if not 6 to 12 months before then. It estimated that, if the exemption is granted, 600 convertibles will be produced over the next 3 years and covered by it. In the absence of an exemption, Avanti argued that it would be forced to cease operations as the convertible now forms a large majority (64% thus far in 1989) of its production.

Petitioner stated that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. Its convertibles would continue to be equipped with the three-point active safety belt system presently installed, and the small number of vehicles likely to be produced under the exemption will not materially affect motor vehicle safety. An exemption would afford Avanti the opportunity to modify the intended air bag system for use in its enclosed vehicles, to replace the automatic belt system presently offered in those vehicles. Avanti affords job opportunities in an economically depressed area, its payroll approximately $250,000 a month. Other jobs have been created by suppliers to Avanti. Finally, maintaining the existing diversity of motor vehicles is also in the public interest and an objective of the Vehicle Safety Act.

No comments were recieved on the petition.

The authority of the Administrator to grant a temporary exemption in this case is premised upon finding that immediate compliance of Avanti convertibles with the automatic protection requirement would cause a small volume manufacturer substantial economic hardship and that the manufacturer has, in good faith, attempted to comply with the standard from which it requests to be exempted. In addition, a finding must be made that the exemption is in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

In the past, the agency has tended to view a continuing net loss position as constituting substantial economic hardship *per se.* On this basis, the cumulative net loss of almost $5,000,000 experienced by New Avanti/Avanti Automotive in the 25-month period from April 30, 1986, to November 30, 1988, is evidence of the long-standing and continuing precarious finacial condition of the enterprise. If a manufacturer is convinced that funds necessary for its compliance will be lessened by shot-term modifications that may reduce the sales appeal of its product, that view must be accorded consideration, though it is necessarily a somewhat speculative and subjective argument if not supported by consumer surveys. In other words, the economic conditions of a low volume manufacturer may prevent immediate compliance, or the method of compliance achievable by that manufacturer could itself create substantial economic hardship through reduction of sales of a model whose volume of sales is necessary to the continued well-being of the small manufacturer. Avanti Automotive has represented that the convertible now represents almost two-thirds of its vehicle sales, and could become as high as 70%. NHTSA accepts the argument that this volume is critical to Avanti's fortunes.

With respect to the company's good faith efforts to conform, these are not in doubt. Although not mentioned in Avanti's petition, NHTSA has recently concluded without penatly an investigation (agency file IR 143) of the failure of the company to meet the automatic protection requirements of Standard No. 208 for the production year September 1, 1986-August 30, 1987. This noncompliance came to the agency's attention in the course of a telephone call initiated by an Avanti engineer, seeking to ensure that the company was meeting all Federal requirements. Avanti was able to ensure that it met the then-current requirements in the short time remaining in the production year, and its coupes have been in conformance ever since. Avanti has also concluded that within a relatively short time it could conform its convertibles through a roll bar/automatic belt system, but that this might result in a failure to generate enough funds to develop an airbag system for installation by 1992 in all its models, whether open or closed.

NHTS also accepts the arguments of Avanti Automotive that it is contributing to the economy of a troubled industrial area by providing employment to its workers, and job opportunities to its local suppliers. It further agrees that one of the objectives of the Vehicle Safety Act was to afford a continuing wide choice of vehicles of the motoring public. However, considerations of public interest and objectives must take into account in this instance the demonstrated efficacy of automatic protection systems. The development and requirement of such systems has been a goal of this agency almost since its founding. In NHTSA's view, Avanti's petition merits favorable consideration, but for a period of time less than that requested. In its petition, Avanti Automotive represented that it "is attempting to make a three-point passive restraint system and roll bar combination available to interested customers, possibly as early as the 1990 model year." NHTSA interprets this as an indication that, if the petition were denied. Avanti would seek to offer a convertible/roll bar combination rather than drop the convertible from its line, and that the engineering of such a system is fairly complete. NHTSA does not wish to compromise Avanti's stated goal of 100% compliance with the automatic protection requirements through airbags, but the agency is interested in helping to introduce automatic protection to Avanti convertible purchasers in the near future, and in the company's achieving full conformance with Standard No. 208 before 1992. The agency is therefore providing a 2-year exemption, rather than the 3-year exemption that was sought. While the exemption is in effect, NHTSA encourages Avanti to afford its convertible buyers the option of a roll bar/automatic belt system, in addition to a convertible with the three-point system. Should the company require the additional year it sought, it may petition for a renewal of the exemption. As part of any argument that Avanti has attempted in good faith to meet the requirement by September 1, 1991, NHTSA will consider the company's efforts to offer and market convertibles with the rollbar/automatic belt option.

In consideration of the foregoing it is hereby found that compliance of convertibles with the automatic protection requirements woud cause Avanti Automotive Corporation substantial economic hardship and that it has in good faith attempted to comply with these requirements. It is further found that a temporary exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. Accordingly, Avanti Automotive Corporation is hereby granted NHTSA Temporary Exemption No. EX89-3 from paragraph S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 Occupant Restraint Systems for its convertible models only, such exemption to expire September 1, 1991.

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50.)

Issued on: August 22, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-20208 Filed 8-25-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 24-89]

Treasury Notes of August 31, 1991, Series AD-1991

Washington, August 17, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $9,500,000,000 of United States securites, designated Treasury Notes of August 31, 1991, Series AD-1991 (CUSIP No. 912827 XX 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated August 31, 1989, and will accure interest from that date, payable on a semiannual basis on February 28, 1990, and each subsequent 6 months on August 31 and February 28 through the date that the principal becomes payable. They will mature August 31, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sales Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, August 22, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, August 21, 1989, and received no later than Thursday, August 31, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specific yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose or any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the Customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, following by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, August 31, 1989. Payment in full must accompany tenders submitted by all other investors. Payments must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, August 29, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, August 31, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tendered and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessery, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-20275 Filed 8-24-89; 10:13 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 25-89]

Treasury Notes of November 15, 1994, Series L-1994

Washington, August 17, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,750,000,000 of United States securities, designated Treasury Notes of November 15, 1994, Series L-1994 (CUSIP No. 912827 XY 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated September 1, 1989, and will accrue interest from that date, payable on a semiannual basis on May 15, 1990, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereafter by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC, 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, August 23, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 22, 1989, and received no later than Friday, September 1, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purposes are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of these bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5 must be made or completed on or before Friday, September 1, 1989. Payment in full must accompany tenders submitted

by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, August 30, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, September 1, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89–20270 Filed 8–24–89; 10:13 am]

BILLING CODE 4810-40-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under Office of Management and Budget Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 27, 1989.

Dated: August 16, 1989.

By direction of the Secretary.

David N. Stone,

Executive Assistant, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration
2. Request for Information Concerning Medical, Legal or Other Expenses
3. VA Form 21–8416
4. This form is used to report medical, legal or other expenses paid in connection with claims for VA pension or other income-based benefits. These expenses may be excluded from countable income in determing the correct rate of VA benefit payment.
5. On occasion
6. Individuals or households
7. 56,400 responses
8. ⅙ hour
9. Not applicable

[FR Doc. 89–20164 Filed 8–25–89; 8:45 am]

BILLING CODE 8320-01-M

Geriatrics and Gerontology Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAS) will be held September 28, 1989, at the VA Medical Center, 1660 S. Columbian Way, Seattle, Washington 98108 in Auditorium BB108. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Secretary of Veterans Affairs and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers. The meeting will convene at 8:30 a.m. and adjourn at 5:30 p.m. and is open to the public up to the seating capacity of the room. For those wishing to attend contact Jacqueline Holmes, Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care (phone 202/233–5983) prior to September 22, 1989.

The purpose of this meeting is to discuss activities of the Office of Geriatrics and Extended Care, future plans of the GGAC and review site visits to Portland and Spokane.

Dated: August 15, 1989.

By direction of the Secretary.

Sylvia Chaves Long,

Committee Management Officer.

[FR Doc. 89–20144 Filed 8–25–89; 8:45 am]

BILLING CODE 8320-01-M

Veterans' Advisory Committee on Rehabilitation; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 201, Building 65, Foot Root, N. Little Rock, AR 72115, September 12, 13, and 14, 1989. The sessions will begin at 9 a.m. The Committee will be discussing issues related to the administration of veterans' rehabilitation programs.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202–233–6525) prior to September 6, 1989.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 10 a.m. on September 13, 1989.

Dated: August 17, 1989.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89–20145 Filed 8–25–89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, 165
Monday, August 28, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:06 p.m. on Tuesday, August 22, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) A memorandum regarding proposed revisions to the Corporation's General Travel regulations; (2) matters relating to the possible failure of certian insured banks; (3) matters relating to the Corporation's assistance agreements with insured banks; and (4) a personnel matter.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: August 23, 1989.

Federal Deposit Insurance Corporation,

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89–20309 Filed 8–24–89; 11:52 am]

BILLING CODE 6714-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, September 13, 1989.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of August, 1989.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523–5920.

Date of Notice: August 21, 1989.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 89–20280 Filed 8–24–89; 4:28 pm]

BILLING CODE 7550-01-M

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federal register

Monday
August 28, 1989

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Alteration of the Seattle Terminal Control Area; Washington; Notice of Proposed Rulemaking

BEST COPY AVAILABLE

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-10]

Proposed Alteration of the Seattle Terminal Control Area; Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Seattle, WA, Terminal Control Area (TCA). This proposal would raise the upper limits of the TCA to 10,000 feet mean sea level (MSL) to enable air traffic control (ATC) to provide terminal ATC service to arriving and departing turbojet aircraft in a TCA environment throughout transition to an from the en route structure. Additionally, this proposal would extend the lateral limits of the TCA north and south to 30 nautical miles, east and west to 18 nautical miles from the airport, to provide an area wherein ATC can provide TCA control and services throughout critical maneuvering phases of flight operations in the terminal area. This proposal redefines several existing subareas which would enhance air traffic procedures and simplify visual flight rules (VFR) transient operations outside TCA airspace.

DATES: Comments must be received on or before October 27, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 89-AWA-10, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty W. Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 10591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWA-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contaned in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Centr, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Cicular No. 11-2A which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published Federal Aviation Regulation (FAR) Amendment 91-78 (35 FR 7782) which enabled the establishment of TCA's. On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Establishes a single-class TCA; (b) requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminates the helicopter exception from the minimum navigational equipment requirement.

The FAA published a final rule on June 21, 1988, which requires Mode C equipment when operating within 30 nautical miles of any designated TCA primary airport from the surface up to 10,000 feet MSL, except for operations by certain aircraft types specifically excluded (53 FR 23356).

On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule adopted continues to require a transponder for operation in each TCA.

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the types of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under VFR and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing TC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 24 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

Pre-NPRM Public Input

Airspace Meetings

Informal airspace meetings were held in the Seattle area on November 29, 30, and December 2, 1988. These meetings permitted local aviation interests and airspace users an opportunity to give their input on the proposed alteration of the Seattle TCA.

Over 100 written comments were received during the public comment period following the informal airspace meetings. These comments were from a congressional office, aviation organizations and services, helicopter and fixed-wing aircraft pilots, balloonists, sport parachutists, glider pilots, and a newspaper for aviation interests and private citizens.

The comments received addressed the FAA's proposed alteration as presented at the informal airspace meetings. Public comments, along with FAA findings and justifications, are summarized as follows:

1. Many commenters requested Boeing Field be excluded from the surface area of the TCA. The reasons given for this request are the expected delays departing/arriving Boeng Field caused from: (1) Increased contoller/pilot communications; (2) beacon-code assignments; (3) increased separation requirements; and (4) airspace saturation. Certain parties were concerned that some student pilots would opt to relocate because of the additional cost incurred from delays.

The FAA analyzed all comments concerning the design of the TCA around Boeing Field and excluded Boeing Field from its proposed alteration.

2. Many commenters opposed a 12,500 foot MSL ceiling. Commenters felt that if services were unavailable or not desired within the TCA, the option to overfly the ceiling of the TCA would be eliminated for most users.

The FAA adopted this suggestion and lowered the proposed ceiling to 10,000 feet MSL.

3. Some commenters felt that the TCA altitudes over Puget Sound were too low. Fixed winged and helicopter pilots favored altitudes that would allow operations over the area without TCA involvement.

The proposed TCA design has a 2,000-foot MSL floor directly east of, and within 4 nautical miles, of the Seattle-Tacoma International Airport, and a 3,000-foot floor outside of 4 nautical miles. This configuration would provide sufficient airspace below the TCA for nonparticipating aircraft in the Puget Sound area without compromising safety inside the TCA.

4. Several commenters suggested that the FAA raise the TCA floor overlaying the Auburn Airport. Commenters stated that sufficient airspace is not available for aircraft entering the traffic pattern. A comment from a hot air balloon club stated that a TCA floor of less than 3,000 feet MSL would restrict ballooning in the Auburn area.

The FAA agrees with these comments and will retain the 3,000 foot MSL floor in the Auburn Airport area in this NPRM.

5. Some comments received suggested the FAA avoid using VFR altitudes in the designation of the TCA floor. These altitudes would preclude the use of certain VFR altitudes in the affected areas.

This suggestion was adopted and is reflected in this NPRM.

6. Several comments were received requesting the FAA to raise the floor of the proposed alteration, east of Seattle-Tacoma International Airport, to provide sufficient airspace for aircraft not requesting TCA service.

In the proposal, the FAA raised a TCA segment beyond 9 nautical miles east of the Seattle-Tacoma International Airport to 6,000 feet MSL. This alteration would allow VFR aircraft ample airspace along the west slope of the Cascades. Two TCA segments, northeast and southeast of Seattle-Tacoma International Airport, were raised to 5,000 feet MSL. An area 18 nautical miles east of the Seattle-Tacoma International Airport was eliminated because of high terrain. The TCA floor was raised to 8,000 feet MSL, 20 nautical miles southeast of the Seattle-Tacoma International Airport, to accommodate a private airport's glider operations. However, the TCA floor will remain at 3,000 feet MSL, 23 nautical miles northeast of the Seattle-Tacoma International Airport. This area protects a major IFR route.

7. A parachuting club requested the TCA floor be raised to 8,000 feet MSL, 28 nautical miles south of the Seattle-Tacoma International Airport. This would provide sufficient airspace for jumps without TCA involvement.

The FAA finds that during periods of adverse weather or traffic saturation, it becomes necessary to extend the final approach segment of Runway 34. When this extension is required, the airspace in the vicinity of the parachuting club is affected from 6,000 feet MSL and above, thus precluding parachuting activity. Jump operations would, however, be available during favorable weather and lighter traffic periods.

8. Many commenters felt that visual landmarks should be used to define the TCA boundaries. Other commenters expressed concern over the use of more than one navigational aid (NAVAID) to define different segments in the FAA's "straw man" proposal.

The boundaries of the design proposed herein as defined by radials and distance measuring equipment (DME) distances from the Seattle very high frequency omni-directional radio range and tactical air navigational aid (VORTAC), prominent geographic landmarks, and lines of longitude that coincide with prominent geographical landmarks. Many of the radials and DME arcs contained in this proposal define the existing TCA.

9. Some commenters requested to delete V-287 from the TCA. Federal Airway V-287 provides a north/south routing west of the Seattle-Tacoma International Airport for aircraft not desiring TCA services.

Two of the four primary inbound and outbound routes for the Seattle area overlie segments of V-287. For this reason, the proposed design retains same airspace along V-287. However, based on user input, the proposed TCA floor in these areas would be raised to 8,000 feet MSL. This would provide altitudes of up to 6,500 feet MSL and 7,500 feet MSL for VFR flight along V-287 without TCA clearance.

10. Comments were received requesting a VFR corridor extending east/west over the Seattle-Tacoma International Airport where a clearance would not be required.

Presently, east/west flights are accommodated within the TCA with negligible delays. Air traffic control provides radar vectors and control techniques acooding to traffic demands in the area surrounding the Seattle-Tacoma International Airport. The FAA feels that the suggested corridor would not create a safer or more efficient environment.

11. Some commenters felt that extending the TCA outward to 30 nautical miles is not necessary.

The proposed design has areas that extend to 30 nautical miles over arrival gates or on final approach segments. These areas are needed to protect aircraft in critical stages of flight. However, the TCA floor in these areas is no lower than 6,000 feet MSL. This will allow VFR aircraft sufficient airspace below the TCA.

12. Many commenters feel that there is no need to modify the current Seattle TCA.

Since the TCA's implementation in 1974, traffic increases and operational conditions dictate a need to modify the current TCA. The present volume of traffic cannot be accommodated by the present TCA airspace. This proposal takes into consideration updated procedures and provides TCA airspace for all IFR operations requiring TCA protection, while providng airspace for VFR operations.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the TCA at Seattle, WA. The increase in annual enplaned passengers at the Seattle-Tacoma International Airport is 7,178,491 which dictates a need to alter the present TCA configuration. This alteration will better serve the users, as well as the FAA, by providing airspace configured to handle new procedures and the increased amount of operations. The FAA has determined that modifying the TCA at the Seattle-Tacoma International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in the terminal area. The proposed alteration is depicted on the attached chart.

Section 91.90 of part 91 of the Federal Aviation Regulations (14 CFR part 91) defines TCA's and prescribes operating rules for aircraft in airspace designated as a TCA. The TCA rule provides, in part, that prior to entering the TCA, any pilot arriving at any airport within the TCA or flying through the TCA must: (1) Obtain appropriate authorization from ATC; (2) comply with applicable procedures established by ATC for pilot training operations at an airport within a TCA; (3) hold at least a private pilot certificate; and (4) meet the requirements of § 61.95 of the Federal Aviation Regulations if the aircraft is operated by a student pilot.

Any aircraft arriving at any airport within a TCA or flying through a TCA must: have an operable VOR or TACAN receiver; have an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and be equipped with the applicable operating transponder and automatic altitude-reporting equipment specified in paragraph (a) of § 91.24 of the Federal Aviation Regulations, except as provided in paragraph (d) of that section. Unless otherwise authorized by ATC, all large, turbine-engine aircraft operating to or from a primary airport must be operated above the designated floors of a TCA. The pilot of any aircraft departing from an airport located within a TCA is required to receive a clearance from ATC prior to takeoff.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions, and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the TCA rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions, operating requirements, and specific airspace designations applicable to TCA's may be found in §§ 71.12, 71.401, and 71.403 of part 71 of the Federal Aviation Regulations (14 CFR part 71); and §§ 91.1 and 91.90 of part 91 of the Federal Aviation Regulations (14 CFR part 91).

The standard configuration of a TCA consists of three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles respectively. The vertical limits of the TCA are 12,500 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration proposed herein is the result of an extensive staff study conducted by the local FAA authority after obtaining public input from informal airspace meetings and coordinating with the FAA regional office. The FAA has determined that the proposed alteration of airspace for the Seattle TCA is consistent with TCA objectives. The proposed configuration considers the present terminal area flight operations and terrain as follows:

1. This alteration basically retains the structure of the existing inner-core area and that airspace overlying Boeing Field. Some airspace is added east and west of the Seattle-Tacoma International Airport. Additional airspace is required to protect the Runway 16 final approach course for aircraft transitioning to final approach visually or on radar vectors for an instrument approach. An extension of 12 miles is added to the north and south of the inner core area. The Puget Sound shoreline is used to depict the TCA boundary.
2. The intermediate area retains the 3,000-foot MSL floor of the existing TCA west of the Seattle-Tacoma International Airport. The TCA floor beyond 11 nautical miles is raised from 3,000 feet MSL to 6,000 feet MSL. This would provide an additional 3,000 feet for nonparticipating aircraft in the Bremerton and Port Orchard areas. A 3,000-foot MSL TCA floor is added to the area east of the Seattle-Tacoma International Airport to accommodate downwind traffic in the radar traffic pattern for the primary airport. This airspace is needed for aircraft transitioning to the final approach course from downwind and base legs. The intermediate area is defined by an 18-mile DME arc, radials of the Seattle VORTAC, and longitude lines.
3. The outer area, with floors varying from 5,000 to 8,000 feet MSL, provides airspace for aircraft transitioning from the en route to the terminal environment. Turbojet and turboprop aircraft would enter terminal airspace from four designated areas. These areas contain 8,000-foot MSL floors to provide airspace necessary for aircraft descending into the TCA. The outer area is designed for vectoring and sequencing aircraft for the final approach course, while preserving airspace below the TCA for nonparticipating aircraft.

The preceding summary of the proposed alteration of the TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at the Seattle-Tacoma International Airport. Air traffic control would provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is required for aircraft operations within that airspace. Modifying this TCA would greatly enhance the safety of flight within the congested airspace overlying the Seattle metropolitan area by facilitating the separation of controlled and uncontrolled flight operations. Section 71.403 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

Regulatory Evaluation Summary

The FAA is required to examine the potential benefits and costs of each proposed rulemaking action to ensure that the public is not burdened with rules where costs outweigh benefits. This section of the preamble evaluates both quantitatively and qualitatively, to the maximum possible extent, the potential costs and benefits expected to accrue from the proposed modification of the Seattle TCA.

Costs-Benefits Analysis

a. Costs

The FAA believes that there would be no costs associated with the implementation of this proposed rule either to the agency or to aircraft operators for the reasons discussed below.

In terms of the FAA, the proposed rule would not impose any additional administrative cost in terms of either personnel or equipment. The additional operations workload generated by the proposed rule would be absorbed by current personnel and equipment resources which are already in place at the Seattle TCA.

In terms of aircraft operators, the proposed rule would not impose any additional costs either in the form of avionics equipment or circumnavigation. The proposed rule would not adversely impact aircraft operators operating under instrument flight rules (IFR). Aircraft operators operating routinely under IFR conditions primarily consist of large air carrier, business jet, commuter, and air taxi operators. Thus, the proposed rule would potentially impact aircraft operators operating routinely under visual flight rules (VFR). Those aircraft operators operating routinely under VFR conditions primarily consist of small, general aviation (GA) (single-engine, piston) operators and other GA aircraft operators such as glider and balloon operators. Other airspace user groups operating within the proximity of the Seattle TCA would also be potentially impacted by the proposed rule. Such user groups would consist of sport parachutists and some student pilots.

Under the proposed rule, the TCA ceiling would be raised from 7,000 feet MSL to 10,000 feet MSL. Since the subject GA aircraft operators and user groups rarely, if ever, operate in airspace above 10,000 feet MSL, the focus of potential cost impact falls on the proposed expanded segments of the TCA floor. As a result of the proposed rule, expanded segments of the TCA floor would range from 5,000 feet to 8,000 feet MSL. While enhancing aviation safety, the proposed expanded segments of the TCA floor would be adopted with all due consideration to small GA airplane operators, glider pilots, and balloonists.

The proposal would allow such aircraft operators to circumnavigate the Seattle TCA in a manner that would not require much deviation from current flying practices. Thus, this proposal would permit such operators to operate their respective aircraft beneath the expanded segments of the TCA floor. This assessment also holds true for sport parachutists. The expanded segments of the proposed TCA floor would be adopted at 8,000 feet MSL to provide sufficient airspace for jumps on the part of sport parachutists without TCA involvement. The proposed rule would not have an adverse impact on student pilots because Boeing Field, where most flight instruction is conducted, would remain outside of the TCA.

b. Benefits

The proposed rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety would take the form of reduced casualty losses (namely, aviation fatalities and property damage) as a result of the lowered likelihood of midair collisions due to the increase in positive control airspace for the Seattle TCA.

The proposed expansion of the Seattle TCA would restrict more of the airspace to controlled aircraft operations from 7,000 feet to 10,000 feet MSL, and along the northern, southern, western, and eastern lateral boundaries. Due to the proactive nature of the proposed rule, the potential safety benefits are extremely difficult, if not impossible, to quantify in monetary terms. The proposed rule is proactive in the sense that the FAA is taking action to prevent a safety problem from occurring. In this case the symptom is increased complexity (or density) of aircraft operations in the vicinity of the present ceiling and lateral boundaries of the Seattle TCA. As the result of the increased complexity of aircraft operations, the controlled airspace is proposed to be expanded in the aforementioned areas of the TCA.

Up to now, safety has been maintained in the vicinity of the existing Seattle TCA in the face of steady growth in activity by such measures as traffic management and procedural changes. While the FAA believes that these measures will not be adequate in the future, they have been successful in the past as evidenced by a record of no midair collisions in the TCA. Without documented evidence of a midair collision in the Seattle TCA, estimating the probability of a potential occurrence in the absence of this proposal cannot be determined with a reliable degree of certainty. Despite this difficulty, the FAA believes that certain measures must be taken to maximize aviation safety. In the absence of this proposal, aviation safety in the vicinity of the TCA would be expected to become critical and lead to potentially catastrophic consequences.

Ordinarily, the potential safety benefits of the proposed rule would be an incremental reduction in the likelihood of all midair collisions caused by the proposed TCA modification as opposed to the existing TCA configuration. However, with the presence of the Mode C rule (and to some extent, the TCAS rule), the number of potential midair collisions avoided by this proposal is expected to be significantly lower. Nevertheless, this proposal is still expected to accrue benefits in terms of enhanced aviation safety, though on a much smaller scale. Thus, the potential safety benefits of this proposal and the Mode C and TCAS rules are considered to be inextricably linked.

In view of the estimated zero cost of compliance and enhanced aviation safety, the FAA firmly believes the proposed rule is cost-beneficial.

The regulatory evaluation that has been placed in the docket contains additional detailed information related to the costs and benefits that are expected to accrue from implementation of this proposed rule.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft.

Only those unscheduled aircraft operators without the capability to operate under IFR conditions would be impacted by the proposed rule. The FAA believes that all of the potentially impacted unscheduled aircraft operators are already equipped to operate under IFR conditions. This is because such operators fly regularly around airports where radar approach control services have been established. Therefore, the FAA believes this proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign).

Federalism Implications

This proposed regulation would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.403 [Amended]

2. Section 71.403 is amended as follows:

Seattle, WA [Revised]

Primary Airport. Seattle-Tacoma International Airport (lat. 47°27'57" N., long. 122°18'29" W.).

Boundaries. Based on Seattle VORTAC (SEA) (lat. 47°26'08" N., long. 122°18'30" W.) arcs, DME distances, radials, lines of longitude, and the Puget Sound shoreline.

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within an area bounded by a line beginning at the 2-mile DME on the SEA 012° radial to a point on the 4-mile arc of the SEA 007° radial, then counterclockwise along the 4-mile arc of the SEA 007° radial to the Puget Sound shoreline then south along the Puget Sound shoreline to the 2-mile arc of the SEA VORTAC then counterclockwise along the 2-mile arc of the SEA VORTAC to the SEA 192° radial extending to the 6-mile arc of the SEA 192° radial then counterclockwise along the 6-mile arc of the SEA VORTAC to the SEA 163° radial extending to the 2-mile arc of the SEA 192° radial then counterclockwise along the 2-mile arc of the Seattle VORTAC to the point of beginning.

Area B. That airspace extending upward from 1,100 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 4-mile DME point on the SEA 007° radial extending to the 6-mile arc of the SEA 007° radial then counterclockwise along the 6-mile arc of the SEA VORTAC to the SEA 342° radial to the 4-mile arc of the SEA 342° radial then clockwise along the 4-mile arc of the SEA VORTAC to the point of beginning.

Area C. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 6-mile DME on the SEA 192° radial to the 12-mile arc of the SEA 192° radial then counterclockwise along the 12-mile arc of the SEA VORTAC to the SEA 163° radial to the 6-mile arc of the SEA 163° radial then clockwise along the 6-mile arc of the SEA VORTAC to the point of beginning.

Area D. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 6-mile arc of the SEA 007° radial then counterclockwise along the 6-mile arc of the SEA VORTAC to the SEA 342° radial to the 12-mile arc of the SEA 342° radial then clockwise along the 12-mile arc of the SEA VORTAC of the SEA 007° radial to the point of beginning.

Area E. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 4-mile arc of the SEA 192° radial then clockwise along the 4-mile arc of the SEA VORTAC to the Puget Sound shoreline then south along the Puget Sound shoreline to the 2-mile arc of the SEA VORTAC counterclockwise along the 2-mile arc of the SEA VORTAC to the SEA 192° radial to the point of beginning.

Area F. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 4-mile DME on the SEA 342° radial and extending north on the 342° radial to the Puget Sound shoreline then south along the Puget Sound shoreline to the 4-mile arc of the SEA VORTAC then clockwise along the 4-mile arc of the SEA VORTAC to the point of beginning.

Area G. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 2-mile arc of the SEA 012° radial then clockwise along the 2-mile arc of the Seattle VORTAC to the SEA 163° radial to the 4-mile arc of the SEA 163° radial then counterclockwise along the 4-mile arc of the Seattle VORTAC to the SEA 022° radial to the 12-mile arc of the SEA 022° radial then counterclockwise along the 12-mile arc of the Seattle VORTAC to the SEA 007° radial to the 4-mile DME of the SEA 007° radial to the point of beginning.

Area H. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 322° radial then clockwise along the 18-mile arc of the Seattle VORTAC to the SEA 032° radial then southwest along the SEA 032° radial to a point at lat. 47°30'17" N., long. 122°06'20" W.; to lat 47°17'14" N., long. 122°06'20" W.; then southeast on the SEA 137° radial to the 18-mile arc of the SEA 137° radial then clockwise along the 18-mile arc of the Seattle VORTAC to the SEA 232° radial then northeast on the SEA 232° radial to a point at lat. 47°16'52" N., long. 122°32'10" W.; to lat. 47°37'56" N., long. 122°32'10" W.; to the point of beginning, excluding that airspace in the Areas A through G.

Area I. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 322° radial then clockwise along the 18-mile arc of the Seattle VORTAC to the SEA 032° radial extending to the 22-mile arc of the SEA 032° radial then counterclockwise along the 22-mile arc of the Seattle VORTAC to the SEA 322° radial to the point of beginning.

Area J. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 032° radial then clockwise along the 18-mile arc of the Seattle VORTAC to the SEA 052° radial to a point at lat. 47°32'34" N., long. 122°06'20" W.; to lat. 47°30'17" N., long. 122°06'20" W.; to the point of beginning.

Area K. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 117° radial then clockwise to the SEA 137° radial then northwest on the SEA 137° radial to a point at lat. 47°17'14" N., long. 122°06'20" W.; to lat. 47°21'55" N., long. 122°06'20" W.; then southeast on the SEA 117° radial to the point of beginning.

Area L. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 192° radial then counterclockwise along the 18-mile arc of the Seattle VORTAC to the SEA 163° radial extending to the 25-mile arc of the SEA 163° radial then clockwise along the 25-mile arc of the Seattle VORTAC to the SEA 192° radial to the point of beginning.

Area M. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 322° radial then counterclockwise along the 18-mile arc of the Seattle VORTAC to the SEA 232° radial then northeast on the SEA 232° radial to a point at lat. 47°16'52" N., long. 122°32'10" W.; to lat. 47°37'56" N., long. 122°32'10" W.; to the point of beginning.

Area N. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within in area bounded by a line beginning at the 18-mile arc of the SEA 052° radial then clockwise along the 18-mile arc of the Seattle VORTAC to the SEA 117° radial then northwest on the SEA 117° radial to a point at lat. 47°21'55" N., long. 122°06'20" W.; to lat. 47°32'34" N., long. 122°06'20" W.; then northeast on the SEA 052° radial to the point of beginning.

Area O. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 22-mile arc of the SEA 342° radial then clockwwise along the 22-mile arc of the Seattle VORTAC to the SEA 032° radial to the 30-mile arc of the SEA 032° radial then counterclockwise along the 30-mile arc of the Seattle VORTAC to the SEA 342° radial to the point of beginning.

Area P. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 232° radial then counterclockwise along the 18-mile arc of the Seattle VORTAC to the SEA 192° radial to the 25-mile arc of the SEA 192° radial then clockwise along the 25-mile arc of the Seattle VORTAC to the SEA 232° radial to the point of beginning.

Area Q. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 25-mile arc of the SEA 192° radial then counterclockwise along the 25-mile arc of the Seattle VORTAC to the SEA 163° radial to the 30-mile arc of the SEA 163° radial then clockwise along the 30-mile arc of the Seattle VORTAC to the SEA 192° radial to the point of beginning.

Area R. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 163° radial then counterclockwise along the 18-mile arc of the Seattle VORTAC to the SEA 137° radial to the 25-mile arc of the SEA 137° radial then clockwise along the 25-mile arc of the Seattle VORTAC to the SEA 163° radial to the point of beginning.

Area S. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 137° radial then counterclockwise along the 18-mile arc of the Seattle VORTAC to the SEA 117° radial to the 30-mile arc of the SEA 117° radial then clockwise along the 30-mile arc of the Seattle VORTAC to the SEA 137° radial to the point of beginning.

Area T. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 032° radial then clockwise along the 18-mile arc of the Seattle VORTAC to the SEA 052° radial to the 30-mile arc of the SEA 052° radial then counterclockwise along the 30-mile arc of the Seattle VORTAC to the SEA 032° radial to the point of beginning.

Area U. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 22-mile arc of the SEA 342° radial then counterclockwise along the 22-mile arc of the Seattle VORTAC to the SEA 322° radial to the 30-mile arc of the SEA 322° radial then clockwise along the 30-mile arc of the Seattle VORTAC to the SEA 342° radial to the point of beginning.

Area V. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 25-mile arc of the SEA 232° radial then counterclockwise along the 25-mile arc of the Seattle VORTAC to the SEA 219° radial extending to the 30-mile arc of the SEA 219° radial then clockwise along the 30-mile arc of the Seattle VORTAC to the SEA 232° radial to the point of beginning.

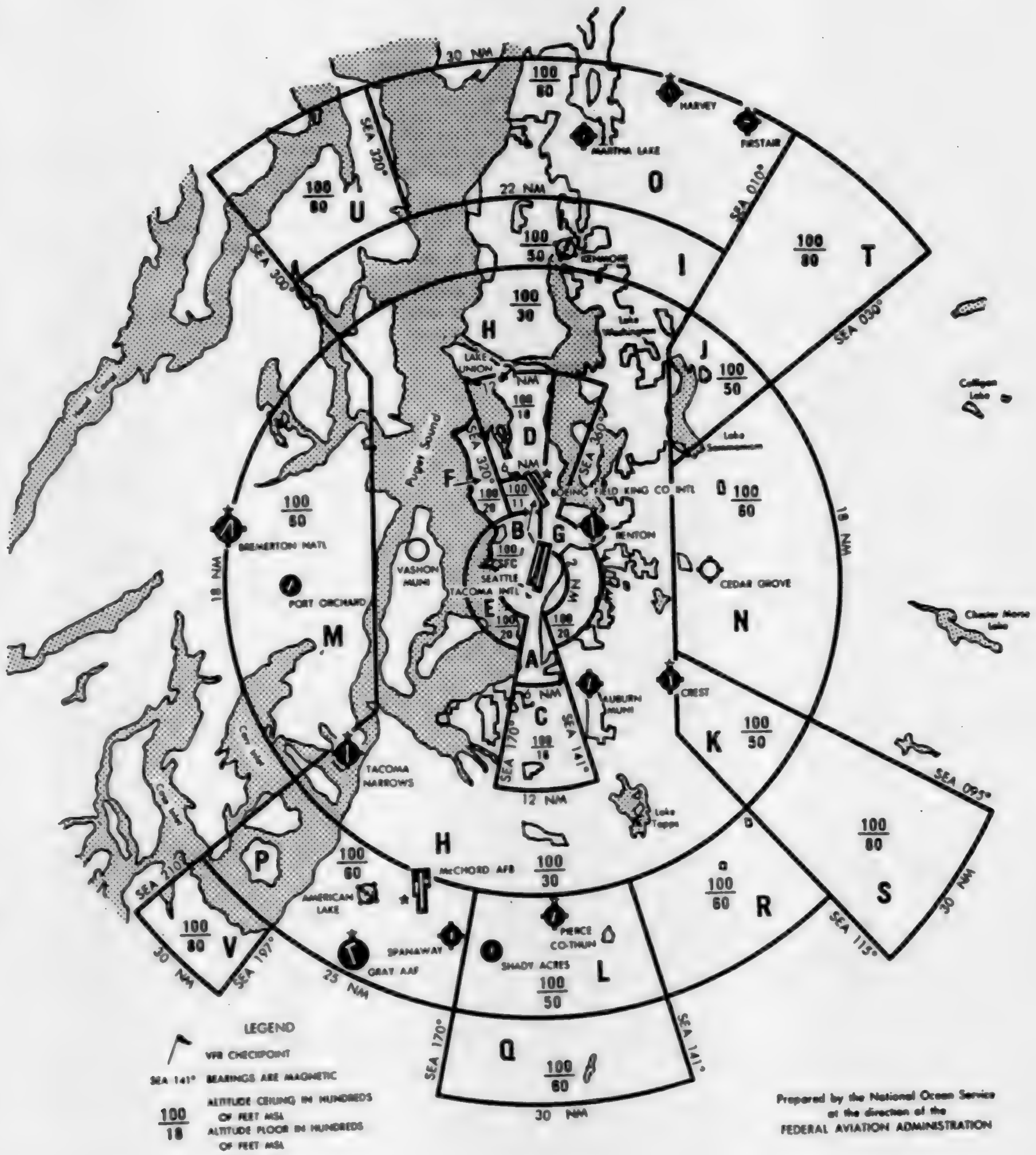
Issued in Washington, DC, on August 17, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

PROPOSED SEATTLE TACOMA
TERMINAL CONTROL AREA


30 NM
SEA 320°
SEA 300°
SEA 010°
SEA 030°
SEA 095°
SEA 115°
SEA 141°
SEA 170°
SEA 197°
SEA 213°
22 NM
18 NM
12 NM
6 NM
25 NM
HARVEY
FIRSTAIR
MARTHA LAKE
BOEING FIELD KING CO INTL
RENTON
CEDAR GROVE
CREST
AUBURN MUNI
BREMERTON NATL
PORT ORCHARD
VASHON MUNI
SEATTLE TACOMA INTL
TACOMA NARROWS
AMERICAN LAKE
McCHORD AFB
SPANAWAY
GRAY AAF
SHADY ACRES
PIERCE CO-THUN
Lake Union
Lake Washington
Lake Sammamish
Lake Tapps
Puget Sound
A B C D E F G H I J K L M N O P Q R S T U V
100/80
100/50
100/30
100/60
100/18
100/20
100/11
100/SFC
LEGEND
VFR CHECKPOINT
SEA 141° BEARINGS ARE MAGNETIC
100/18 ALTITUDE CEILING IN HUNDREDS OF FEET MSL
ALTITUDE FLOOR IN HUNDREDS OF FEET MSL

Prepared by the National Ocean Service
at the direction of the
FEDERAL AVIATION ADMINISTRATION

[FR Doc. 89-20175 Filed 8-25-89; 8:45 am]

BILLING CODE 4910-13-C

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federal register

Monday
August 28, 1989

Part III

Office of Management and Budget

Initial Sequester Report to the President and Congress for Fiscal Year 1990

OFFICE OF MANAGEMENT AND

OFFICE OF MANAGEMENT AND BUDGET

Initial Sequester Report to the President and Congress for Fiscal Year 1990

AGENCY: Office of Management and Budget.

ACTION: Report Transmittal.

SUMMARY: This notice transmits the Initial OMB Sequester Report to the President and Congress for Fiscal Year 1990 in accordance with the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99–177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Pub. L. 100–119).

Date: August 25, 1989.

Richard G. Darman,

Director.

BILLING CODE 3110-01-M

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

August 25, 1989

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Enclosed is the Initial OMB Sequester Report to the President and Congress for Fiscal Year 1990. It is being submitted to you today, August 25, 1989, pursuant to Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

Respectfully yours,

Richard G. Darman

Enclosure

IDENTICAL LETTERS SENT TO HONORABLE DAN QUAYLE,
HONORABLE THOMAS S. FOLEY

INITIAL OMB SEQUESTER REPORT TO THE PRESIDENT AND CONGRESS FOR FISCAL YEAR 1990

August 21, 1989

NOTE

Section 251(a)(2)(B) of the Balanced Budget and Emergency Deficit Control Act, as amended, requires that the initial OMB sequester report be submitted to the President and the Congress on August 25th. This report, issued August 21, 1989, will be resubmitted without change on August 25th, and will be published in the *Federal Register* pursuant to Section 251(b), in compliance with law.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

The following is the text of a letter transmitting the Initial OMB Sequester Report to the President and Congress for Fiscal Year 1990.

August 21, 1989

The President
The White House
Washington, DC 20500

Dear Mr. President:

Enclosed please find the *Initial OMB Sequester Report to the President and Congress for Fiscal Year 1990*. It has been prepared in accordance with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100–119).

The budget estimates contained in this report are based on economic and technical assumptions published by the Office of Management and Budget in the July 18th Mid-Session Review, and on laws enacted and final regulations promulgated as of August 15, 1989.

The report finds that, under current law, sequestration would be necessary in October in order to meet the Gramm-Rudman-Hollings deficit reduction target. Accordingly, an initial Presidential sequestration order has been prepared for issuance on August 25th. It would require the withholding of funds as of October 1st.

But sequestration remains avoidable. As you know, Congress and the Administration reached a Bipartisan Budget Agreement in April. If the Agreement were fully implemented, sequestration would not be necessary. Although there has been some progress toward its implementation, virtually none of the reconciliation legislation required to fulfill the terms of the Agreement has yet been enacted. As a result, this initial sequester report estimates the fiscal year 1990 deficit to be $16.2 billion above the $100 billion deficit target. If there were no change in law by the snapshot date of the final report, a final $16.2 billion sequester order would go into effect.

If, on the other hand, appropriations bills were enacted at levels consistent with the Agreement, and if (as the House intends) the military pay shift were not permitted, then the reconciliation process would have to produce net savings of at least $12.0 billion in order to avoid sequester. If appropriations bills were to exceed the Agreement levels (according to OMB scoring), the amount saved through reconciliation would have to be correspondingly higher in order to avoid sequester. The Congressional Budget Resolution calls for reconciliation savings of about $14 billion. Full implementation of the Budget Resolution should be sufficient to avoid sequester.

This report provides calculations of the amounts and percentages by which various budgetary resources would be reduced under current law—that is, under the assumption of a necessary $16.2 billion sequester. As required by law, the report includes projected budget baseline levels, economic assumptions, a discussion of the sequestration calculations, and comparisons with the estimates provided by the Director of the Congressional Budget Office in his report of August 21st. It also includes an assessment of the risk of sequester and an illustrative discussion of associated programmatic effects. The appendix lists sequestration reductions by agency and budget account.

IDENTICAL LETTERS SENT TO HONORABLE DAN QUAYLE, HONORABLE THOMAS S. FOLEY

The risk of sequester is greater than implied in the baseline deficit estimate taken by itself—as the report explains. But it remains my hope, and my cautiously optimistic expectation, that necessary legislation may be enacted prior to the snapshot date of the final report in order to avoid sequestration.

Respectfully yours,

Richard G. Darman
Director

Enclosure

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GENERAL NOTES

1. All years referred to are fiscal years unless otherwise noted.
2. Details in the tables and text may not add to totals because of rounding.
3. Unless otherwise noted, the source of all data in this report is the Office of Management and Budget.
4. Unless otherwise noted, "the Act" refers to the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100–119).

I. THE BASELINE DEFICIT

The Balanced Budget and Emergency Deficit Control Act of 1985, as amended, (commonly known as Gramm-Rudman-Hollings, or G-R-H) sets deficit targets for 1990 through 1993. The Act requires automatic reductions in selected programs (a sequester) to achieve these targets if they cannot be reached through the legislative process. The table below shows the deficit targets specified in the Act. Except in 1993, the Act allows for a $10 billion margin-of-error. Thus, there will be no sequester for 1990 unless the deficit in the final sequester report exceeds the sequester trigger level of $110 billion. However, if the 1990 G-R-H baseline deficit exceeds $110 billion, the Act requires a sequester sufficient to reduce the baseline deficit to the target level of $100 billion.

Deficit Targets

(In billions of dollars)

Fiscal Year	Target Deficit	Sequester Trigger
1990	100.0	110.0
1991	64.0	74.0
1992	28.0	38.0
1993	zero	zero

Under the Act, the Director of the Office of Management and Budget (OMB) is obliged to determine each year whether or not sequestration is necessary and, if so, the magnitude of the sequester. The Congressional Budget Office (CBO) is obliged to prepare independently its own sequestration reports. The CBO reports are transmitted to the Director of OMB and to Congress, and provide a basis for comparison against which Congress and others may assess the OMB reports. The OMB reports to the President and the Congress provide the basis for sequestration orders to be issued by the President. The timetable for the OMB and CBO reports and Presidential orders for calendar year 1989 is as follows:

Report or Order	Date
Snapshot date for initial OMB and CBO reports	August 15th
Initial CBO report	August 21st
Initial OMB report	August 25th
Initial Presidential order	August 25th
Revised CBO report	October 10th
Revised OMB report	October 16th
Final Presidential order	October 16th

OMB issued an estimate of the G-R-H baseline deficit in the Mid-Session Review of the Budget, which was published on July 18, 1989. Under the Act, subsequent G-R-H reports must use the same economic and technical assumptions as in the Mid-Session Review. CBO is issuing its initial sequestration report on August 21st. The next step in the G-R-H process is the issuance of this report. Both the initial OMB and CBO sequestration reports are based on laws enacted and regulations promulgated as final as of August 15th (the snapshot date).

As required by the Act, this report:

—estimates the 1990 G-R-H baseline deficit, using the economic and technical assumptions OMB used in the Mid-Session Review;

—calculates the sequester amounts required; and

—presents and explains significant differences between the estimates in this report and the estimates in the CBO report.

This report shows the G-R-H baseline deficit to be $116.2 billion, $16.2 billion above the $100 billion deficit target specified in the Act for 1990 and $6.2 billion above the level that would trigger a sequester. These estimates differ from those presented in the Mid-Session Review of the Budget primarily as a result of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act and the Disaster Assistance Act. Because these estimates indicate that, under current law, a sequester would be required for 1990, the President is required to issue an initial sequester order to withhold, beginning October 1st, funds necessary to reduce outlays by $16.2 billion. The initial order for 1990 will be issued on August 25, 1989, and become effective on October 1, 1989.

The final sequester report and final Presidential order for 1990 are to be issued on October 16, 1989. The final report will take into account additional measures enacted or promulgated by the snapshot date that affect the deficit estimates. If such additional measures bring the estimated deficit down below the "trigger" level ($110 billion), there will be no need for sequester.

As shown in Table 1, OMB's current 1990 G-R-H baseline estimate for receipts is $1,074.8 billion. Baseline outlays are estimated to total $1,191.0 billion.

Table 1.—G-R-H Baseline Totals for 1990

(In billions of dollars)

	Laws and regulations in effect as of—		
	January 1, 1989	July 10, 1989	August 15, 1989
Receipts	1,074.3	1,074.3	1,074.8
Outlays	1,201.5	1,202.4	1,191.0
Deficit	127.1	128.1	116.2

The estimates assume that current law for revenues and spending authority (including most entitlements) will continue unchanged, and that expiring provisions of law providing revenues and spending authority will terminate as scheduled, except as provided in the G-R-H Act.[1] Because no 1990 appropriations bills have been enacted, baseline estimates for discretionary spending accounts are based on the 1989 appropriations adjusted for inflation and pay costs. The baseline estimates also include the receipts and outlays of the off-budget social security trust funds, although social security benefits themselves are exempt from sequestration.

OMB's estimate of the baseline deficit is further affected by a technical spendout requirement specified in the G-R-H Act. The Act requires that in developing the G-R-H baseline the Director of OMB shall assume that the aggregate spendout rate (the ratio of new outlays to new budgetary resources) from sequesterable discretionary resources for defense programs not differ by more than one-half percentage point from the comparable rate contained in the sequester report submitted for the previous fiscal year. The Act applies the same requirement to nondefense programs. The estimates for nondefense programs meet this requirement. To meet the requirement for defense programs, however, a $4.1 billion downward adjustment of the estimated outlays from new budgetary resources is needed in order to bring the aggregate spendout rate within one-half a percentage point of the benchmark rate.

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[1] The G-R-H Act allows for continuation of expiring programs in the following cases: excise taxes dedicated to a trust fund (but not spending authority in that trust fund); Commodity Credit Corporation price support programs; contract authority for transportation trust funds; and authority to provide insurance through the Federal Housing Administration fund.

Estimates of the G-R-H baseline using current economic and technical assumptions but assuming laws and regulations in effect on January 1, 1989, produce a fiscal year 1990 deficit of $127.1 billion. Table 2 shows the impact on this estimated deficit of legislation enacted and final regulations promulgated since January. In total, these policy changes have decreased the baseline deficit by $10.9 billion.

The Dire Emergency Supplemental Appropriations Act of 1989 (Public Law 101–45) increased the 1990 baseline deficit by $0.9 billion. Other enacted legislation and final regulations decreased the baseline deficit by less than $50 million as of the Mid-Session Review. The Disaster Assistance Act of 1989 (Public Law 101–82) increased the baseline deficit by $0.9 billion. Other changes, including a final regulation for the veterans housing loan guarantee program, have decreased the baseline deficit by less than $50 million. Since the Mid-Session Review, the change in the estimated deficit is primarily the result of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101–73), which reduced the 1990 baseline deficit by $12.8 billion.

Table 2.—G-R-H Baseline Deficits for 1990—Based on Laws in Effect in January, July, and August

(In billions of dollars)

January Baseline Deficit	127.1
Legislation enacted between January 1st and July 10th:	
Supplemental Appropriations Act, 1989 (Public Law 101–45)	0.9
Other (net, including debt service)	0.1
Subtotal, legislation enacted January 1st–July 10th	0.9
July (Mid-Session Review) Baseline Deficit	128.1
Legislation enacted between July 10th and August 15th:	
Financial Institutions Reform, Recovery, and Enforcement Act, 1989 (Public Law 101–73):	
Federal Savings and Loan Insurance Corporation	–13.0
Federal Deposit Insurance Corporation	–0.8
Revenue changes	–0.5
Net interest	1.5
Subtotal, FIRREA	–12.8
Disaster Assistance Act, 1989 (Public Law 101–82)	0.9
Other (net, including debt service)	–*
Subtotal, legislation enacted July 10th–August 15th	–11.9
August Baseline Deficit	116.2
MEMORANDUM	
Net Deficit Reduction Achieved January 1st–August 15th	–11.0

*$50 million or less.

II. THE RISK OF SEQUESTER

The Prospect for Sequester

The gap between the baseline deficit of $116.2 billion and the sequester trigger of $110 billion may seem relatively small. In fact, however, the problem of avoiding sequester is greater than the $6.2 billion difference would suggest.

One reason is that enactment of the 11 nondefense appropriations bills, assuming they comply with the terms of the Bipartisan Budget Agreement (BBA), would result in a level of outlays $1.6 billion above the G-R-H baseline. Some of the bills also threaten to exceed the BBA limits. These threats include classifying discretionary expenditures (such as non-emergency firefighting costs) as mandatory expenditures. Based on OMB's assessment, the nondefense appropriations bills currently being considered by Congress would add another $1.0 billion to the G-R-H baseline.

Enactment of the defense program at the Bipartisan Budget Agreement level would result in outlays of about $1.3 billion more than assumed in the G-R-H baseline. Also, if Congress should reverse the decision of the Secretary of Defense to move the first pay date in fiscal year 1990, which falls on a weekend, to September 29th, the deficit would increase by an additional $2.9 billion. This would mean an increase of $4.2 billion above the G-R-H baseline deficit.

In total, therefore, enactment of the 13 appropriation bills could increase the G-R-H baseline deficit to $123.0 billion, $13.0 billion above the level that would require a sequester.

As Congress considers reconciliation and other legislation to implement the BBA, it should be aware that the magnitude of deficit reduction needed to avoid a sequester will not be $6 billion, but could be a figure in excess of $13 billion. The total amount of savings to be gained from current reconciliation instructions—if fully complied with—would be only about $14 billion. Clearly, the margin for error is very small—and the margin available for additional spending is nil.

The Consequences of Sequester

If a $16.2 billion sequester proves necessary, program reductions would be in amounts as noted in the Appendix. An illustrative sample of associated program effects is as follows:

- Defense Department—A sequester would reduce Defense budget authority to a level $4.4 billion less than the amount appropriated in 1989. This reduced level would be 4.4 percent below the 1989 total adjusted for inflation and even below the inflation-adjusted 1983 level. Active duty military personnel could be reduced by about 160,000, roughly equivalent to the combined manpower strength of an Army division, 25 ships, and 2 Air Force wings. Defense operations and maintenance accounts would also be severely affected. Operation and training rates would be cut, leading to a degradation of force readiness. Modernization programs would be delayed, and production costs would increase. There would also be a significant reduction in contractor employment. If a sequester were to occur in October, the President could submit an alternative plan that would propose protecting certain high-priority programs, including military personnel. If, however, such an alternative plan were accepted by Congress, it would lead to even deeper reductions in the remaining defense programs.
- Drug Enforcement Administration (DEA)—A sequester would reduce DEA's budget authority below the 1989 enacted level, and could undermine its ability to wage an aggressive war on drugs. An immediate personnel freeze of DEA agents and staff could be required. In addition, DEA could be forced to make 10 percent across-the-board cuts in drug enforcement programs, such as domestic marijuana eradication and State and local task force programs. Otherwise, to avoid cutting these drug enforcement programs, DEA could defer purchases and installation of radio equipment that permits secure communications between DEA agents, and reduce personnel transfers, thus hindering the improvement of DEA's operational capability.

- HIV/AIDS—A sequester would significantly hamper the Public Health Service's efforts to prevent HIV transmission and conduct research into therapies and vaccines. The Administration has requested a 24 percent increase in these activities; if funds were instead cut by more than 5 percent through a sequester, fewer promising therapies could be tested, fewer education and prevention programs could be supported, and fewer research initiatives to develop cures and therapies could be pursued.
- Federal Aviation Administration (FAA)—The impact of a sequester on FAA operations could include a furlough of up to three days per month of all FAA staff, including air traffic control and maintenance personnel. Other possibilities include delaying certain training initiatives, delaying routine maintenance of navigational and other equipment, and reducing the purchase of spare parts. For FAA capital programs, the cut could force FAA to restructure the National Airspace System Plan by foregoing certain contract options and renegotiating major contracts.
- Internal Revenue Service (IRS)—A sequester would reduce 1990 funding for the IRS below the 1989 enacted level of $5.2 billion. This cut could require the IRS to forego all its 1990 initiatives, including the $0.5 billion revenue initiative specified in the Bipartisan Budget Agreement. It could also force the IRS to lose approximately 4,700 current staff, resulting in additional revenue losses and up to 10 million fewer taxpayer assistance telephone calls answered. Even if the IRS were to curtail contracts substantially, many of which are in the data processing areas, 1990 initiatives would have to be deferred, and there would still be some reduction in current staffing and revenue losses.
- Education Department—Budget authority for Pell grants for needy college students would be reduced to $4.4 billion under a sequester. This amount is $246 million less than the G-R-H baseline, but more than $1 billion below what the Department estimates is necessary to fund fully the Pell grant program under current law with the current maximum grant level. A sequester would eliminate grants to about 1.0 million students and reduce awards to another 523,000.
- Environmental Protection Agency (EPA)—Several new EPA programs to address emerging issues such as pollution prevention and radon reduction could be delayed or cancelled under a sequester, and the implementation of new ocean dumping and medical waste legislation could be delayed. In addition, EPA's compliance and enforcement activities may be hampered.
- National Institutes of Health (NIH)—A sequester would impair the Federal Government's substantial commitment to pursuing new scientific opportunities and searching for new cures and therapies. A sequester could reduce by over 1,000 the number of NIH-supported research grants and cut by over 500 the number of scientists receiving research training.
- Coast Guard—A sequester could require the Coast Guard to ground aircraft used for critical drug interdiction activities, tie up vessels used for fisheries patrols, and curtail its capability to detect and respond to oil spills. In addition, there could be significant reductions in Coast Guard personnel or closings of essential Coast Guard facilities. Other possibilities include deferring training of Coast Guard personnel, delaying routine maintenance of Coast Guard shore facilities and vessels, and reducing the purchase of supplies and spare parts.

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IV. COMPOSITION OF G-R-H BASELINE OUTLAYS AND RESOURCES

III. ECONOMIC ASSUMPTIONS

The principal economic assumptions underlying the G-R-H baseline estimates for 1990 are shown in Table 3. The Act also requires the OMB Director to estimate the rate of real GNP growth for the last two quarters of fiscal year 1989 and for each quarter of fiscal year 1990. These estimates are shown in Table 4. As required by law, all these economic assumptions are the same as those used by OMB for its Mid-Session Review of the Budget.

Table 3.—Economic Assumptions

(Fiscal year 1990)

Gross National Product:	
Current dollars (in billions of dollars)	5,482.0
Percent change, year over year	6.7
Constant dollars (in billions of 1982 dollars)	4,179.7
Percent change, year over year	2.4
GNP Implicit Price Deflator (percent change, year over year)[1]	4.2
CPI-W (percent change, year over year)	4.4
Civilian Unemployment Rate (percent, fiscal year average)	5.4
Interest Rates (fiscal year average):	
91-day Treasury bills	7.1
10-year Treasury notes	7.8

[1] As required under the Act, the discretionary program inflation adjustment and pay raise costs are estimated using the increase in the GNP deflator (3.6 percent) from the economic assumptions presented in January. All other estimates in this report, however, use the economic assumptions presented in the Mid-Session Review of the Budget and shown in this table.

Table 4.—Real Economic Growth Rates by Quarter

(In percent, annual rates)

FY 1989			FY 1990			
Actual		Estimate	Estimates			
Jan.–Mar. 1989[1]	Apr.–June 1989[2]	July–Sept. 1989	Oct.–Dec. 1989	Jan.–Mar. 1990	Apr.–June 1990	July–Sept. 1990
4.4	2.2	2.2	2.1	2.2	2.5	2.4

[1] As reported by the Department of Commerce (June 22, 1989) and published in the Mid-Session Review of the Budget. Subsequently, the Department of Commerce revised the "actual" for January–March 1989 to 3.7 percent. Pursuant to the Act, OMB may not update the Mid-Session figure for purposes of estimating the G-R-H baseline.

[2] On July 27, 1989, the Department of Commerce reported an advance "actual" for April–June 1989 of 1.7 percent.

IV. COMPOSITION OF G-R-H BASELINE OUTLAYS AND RESOURCES SUBJECT TO SEQUESTER

For defense and nondefense programs combined, an estimated $765.5 billion in outlays, or 64 percent of total outlays, are associated with budgetary resources exempt from sequestration. The burden of sequestration falls on programs that comprise the remaining 36 percent of budget outlays. Of these outlays, defense programs account for 44 percent, special rule nondefense programs account for 29 percent, and other nondefense programs account for 26 percent.

Table 5 provides further detail on the G-R-H baseline outlay estimates for 1990. An estimated $187.6 billion of 1990 outlays for defense programs, or 65 percent of total defense outlays, are associated with budgetary resources subject to an across-the-board percentage reduction.

An estimated $237.9 billion of outlays for nondefense programs, or 26 percent of total nondefense outlays, are associated with sequesterable budgetary resources. About $125.3 billion of these outlays, or 14 percent of total nondefense outlays, are for programs with automatic spending increases and for certain special rule programs, the largest of which is medicare. The Act limits the extent of spending reductions for these programs. Of the total estimated 1990 nondefense outlays of $900.3 billion, an estimated $112.6 billion—about 13 percent of nondefense outlays—are associated with budgetary resources subject to an across-the-board percentage reduction.[2] An estimated $662.4 billion of nondefense outlays, or 74 percent of total nondefense outlays, are exempt from sequestration.

A sequester does not reduce outlays directly; rather, it permanently cancels budget authority and other authority to obligate and expend funds (except that special rules apply to amounts sequestered in special and trust funds). For defense programs, sequesterable budgetary resources consist of new budget authority provided for 1990 and unobligated balances of budget authority provided in previous years. For nondefense programs, the sequesterable budgetary resources are new budget authority; new direct loan obligations, commitments, or limitations; new guaranteed loan commitments or limitations; obligation limitations; and spending authority as defined in Section 401(c)(2) of the Congressional Budget Act of 1974. This definition of spending authority includes various mandatory and permanent appropriations, as well as Federal payments financed by offsetting collections that are credited to budget accounts.

The Act exempts a number of programs and activities of the Federal Government from the sequestration process. As shown in Table 5, the largest are social security benefits, net interest, certain low-income programs, most Federal retirement and disability benefits, veterans compensation and pensions, and regular State unemployment insurance benefits. Also exempt from sequestration are prior legal obligations of the Government in certain specified budget accounts. Outlays from obligated or unobligated balances of prior-year appropriations for nondefense programs are generally not subject to sequestration.

Federal administrative expenses for most otherwise exempt programs and activities, however, are sequesterable, including programs that are self-supporting. Although budgetary resources available for Federal pay are subject to sequestration, the Act provides that rates of pay for civilian employees (and rates of basic pay, basic subsistence allowances, and basic quarter allowances for members of the uniformed services), or any scheduled pay increases, may not be reduced pursuant to a sequestration order.

Certain programs and activities, while not exempt, are subject to special rules that have the effect of limiting the amount of the spending reduction. For example, the sequestration reduction for medicare, veterans medical care, and certain health programs (but not for the administrative expenses of these programs) is limited to two percent annually. In addition, the total amount of the automatic spending increases in three programs specified in the Act is sequesterable, but the program bases are exempt. Although the Federal share of extended unemployment benefits is sequesterable, if States act to increase their share by the amount of the reduction in the Federal share, total budget outlays, which include both the Federal and State shares, will not be changed by the sequestration.

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[2] The estimated $112.6 billion nondefense total subject to across-the-board reduction shown in Table 5 excludes $6.3 billion of 1991 outlays for Commodity Credit Corporation (CCC) that would also be subject to a 1990 sequester.

For credit programs, the measures governing sequesterable budgetary resources are direct loan obligations and guaranteed loan commitments. In the event of a sequester, the Act requires that credit limitations enacted in annual appropriations acts be reduced, and that *de facto* limitations be imposed on both types of new credit activity where there is no enacted limitation.

Table 5.—Composition of G-R-H Baseline Outlay Estimates for 1990

(Dollar amounts in billions)

	Estimate	Percent of Total
Defense programs: [1]		
Subject to across-the-board reduction	187.6	15.8
Exempt from sequestration [2]	103.1	8.7
Subtotal, defense programs	290.7	24.4
Nondefense programs:		
Subject to sequestration:		
Certain programs with automatic spending increases [3]	1.3	0.1
Certain special rule programs [4]	124.0	10.4
Subject to across-the-board reductions [5]	112.6	9.5
Subtotal, subject to sequestration	237.9	20.0
Exempt from sequestration:		
Social security	247.0	20.7
Federal retirement, disability, and workers compensation	66.6	5.6
Earned income tax credit	4.0	0.3
Low-income programs [6]	83.5	7.0
Veterans compensation and pensions	14.2	1.2
State unemployment benefits	15.1	1.3
Offsetting receipts and collections	–64.1	–5.4
Net interest	178.3	15.0
Other [7]	117.7	9.9
Subtotal, exempt from sequestration	562.4	55.6
Subtotal, nondefense programs	900.3	75.6
Total	1,191.0	100.0

[1] Function 050, excluding Federal Emergency Management Agency (FEMA) programs.

[2] Largely outlays from obligated balances.

[3] National Wool Act, special milk, and vocational rehabilitation programs.

[4] Guaranteed student loans, foster care and adoption assistance, medicare, veterans medical care, and other health programs.

[5] Excludes $6.3 billion in estimated 1991 outlays for CCC that would be subject to a 1990 sequester.

[6] Family support payments, child nutrition, medicaid, food stamps, SSI, and WIC.

[7] Outlays from prior-year appropriations, certain prior legal obligations, and other exempt programs.

V. SEQUESTRATION CALCULATIONS

This report indicates that, under current law, an outlay reduction of $16.2 billion, the difference between the current baseline deficit and the target of $100 billion, is required. The reductions are determined using the following steps, as shown in Table 6.

First, one-half of the required deficit reduction, $8.1 billion, is assigned to defense programs (budget accounts in the national defense function, 050, excluding the Federal Emergency Management Agency) and the other half to nondefense programs.

Second, the savings from eliminating automatic spending increases in three specific programs, which are listed in Table 7, are applied to the required reduction in outlays for nondefense programs. The amount of savings from eliminating these adjustments in 1990 is $48 million.

Third, the amount of outlay savings to be obtained from programs subject to other special sequestration rules, also listed in Table 7, is then calculated. The estimated savings from these special rule programs, $1.8 billion for 1990, are applied toward the required spending reductions in nondefense programs.

Table 6.—Sequestration Calculations for 1990

(Dollar amounts in billions)

	Estimate
Required deficit reduction	16.2
Defense programs: [1]	
Total required outlay reductions	8.1
Estimated outlays associated with across-the-board sequesterable budgetary resources	187.6
Uniform reduction percentage	4.3%
Nondefense programs:	
Total required outlay reductions	8.1
Estimated savings from automatic spending increases	*
Estimated savings from the application of special rules	1.8
Amount remaining to be obtained from uniform percentage reductions of budgetary resources	6.3
Estimated outlays associated with across-the-board sequesterable budgetary resources [2]	118.9
Uniform reduction percentage	5.3%

* $50 million or less.

[1] Function 050, excluding FEMA programs.

[2] Includes $6.3 billion in estimated 1991 outlays for the CCC and $3.5 billion in outlays from offsetting collections that are subject to a 1990 sequester.

The reductions in defense programs and remaining reductions in nondefense programs are applied to budgetary resources on a uniform percentage basis, computed separately for each category. The uniform reduction percentages are computed from outlay estimates. The remaining outlay savings to be achieved separately in defense and nondefense spending are divided by the estimated outlays associated with sequesterable budgetary resources in each category. The two resulting uniform reduction percentages for defense and nondefense are then applied separately to all of the remaining sequesterable budgetary resources (budget authority, credit authority, and other spending authority) in each category.

Under current estimates, the uniform percentage reduction is 5.3 percent for nondefense programs. For defense programs, the uniform percentage reduction is 4.3 percent. The Act specifies special

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calculations to achieve the uniform percentage reduction for child support enforcement (CSE). The Federal matching rate on most CSE expenditures would be reduced from 66.0 percent to 63.5 percent, and the rate for computer-related expenditures and genetic testing would be reduced from 90.0 percent to 84.0 percent. Nondefense savings from the across-the-board reductions also include $0.3 billion in 1991 outlay savings from the Commodity Credit Corporation (CCC). Under the Act, CCC outlay reductions in 1991 resulting from contract adjustments made in 1990 following a sequester are to be credited to the overall outlay reduction required in 1990.

Table 7.—Programs Subject to Special Sequestration Rules

(Outlay amounts in millions of dollars)

	Required Outlay Reductions	Scheduled Increase (percent)
Programs with Automatic Spending Increases Subject to Sequestration:		
National Wool Act [1]	—	—
Special milk program [2]	1	5.7
Vocational rehabilitation [3]	45	4.2
Total	46	
Other Programs Subject to Special Sequestration Rules:		
Guaranteed student loans	34	
Foster care and adoption assistance	4	
Health programs with sequester limited to 2 percent:		
Medicare	1,527	
Veterans medical care and other health programs	202	
Total	1,766	

[1] Payment increases are based on changes in the wool parity price. No automatic increase is projected for 1990.

[2] Benefits are indexed to the Producer Price Index for Fresh Processed Milk.

[3] The automatic spending increase for this program, as specified in the program's authorizing legislation, results in a 4.2 percent increase in funding for the State grant portion of the program.

Table 8.—G-R-H Pre- and Post-Sequester Baseline Estimates for 1990 by Function

(In billions of dollars)

Function	Baseline		Post-Sequester		Sequester Estimate	
	Budget Authority	Outlays	Budget Authority	Outlays	Budget Authority	Outlays
National defense [1]	307.6	291.1	294.4	283.0	13.3	8.1
International affairs	18.5	16.3	17.6	15.8	1.0	0.5
General science, space, and technology	13.3	13.6	12.6	13.2	0.7	0.4
Energy	6.1	4.1	5.8	3.8	0.3	0.3
Natural resources and environment	16.4	17.0	15.3	16.4	1.1	0.6
Agriculture [2]	22.7	18.8	22.2	18.2	0.5	0.6
Commerce and housing credit	18.7	12.9	18.6	12.7	0.2	0.3
Transportation	29.7	29.1	28.2	28.6	1.6	0.5
Community and regional development	6.8	6.8	6.5	6.7	0.3	0.1
Education, training, employment, and social services	37.9	38.2	36.2	37.5	1.8	0.7
Health	58.0	56.6	57.0	56.2	0.9	0.4
Medicare	121.8	99.7	120.2	98.0	1.5	1.7
Income security	184.0	146.5	183.2	146.1	0.8	0.4
Social security	313.7	249.2	313.7	249.1	0.0	0.1
Veterans benefits and services	30.6	29.2	30.3	28.9	0.4	0.3
Administration of justice	10.2	10.1	9.6	9.7	0.6	0.5
General government	10.1	10.2	9.6	9.7	0.5	0.5
Net Interest [3]	178.3	178.3	177.5	177.5	0.8	0.8
Allowances	0.0	0.0	0.0	0.0	0.0	0.0
Undistributed offsetting receipts	–36.7	–36.7	–36.7	–36.7	0.0	0.0
Total	1,347.7	1,191.0	1,321.6	1,174.4	25.1	16.6

[1] Defense estimates include the impact of the aggregate spendout rate adjustment required by the Act.

[2] Estimates exclude $6.3 billion of 1991 CCC budget authority and outlays that would be subject to a sequester of $0.3 billion in 1990.

[3] Estimates reflect the $0.8 billion debt service reduction that results from the sequester.

Table 9.—G-R-H Pre- and Post-Sequester Baseline Estimates for 1990 by Agency

(In billions of dollars)

Agency	Baseline		Post-Sequester		Sequester Estimate	
	Budget Authority	Outlays	Budget Authority	Outlays	Budget Authority	Outlays
Legislative Branch	2.2	2.2	2.1	2.1	0.1	0.1
The Judiciary	1.6	1.6	1.5	1.6	0.1	0.1
Executive Office of the President	0.1	0.1	0.1	0.1	*	*
Funds Appropriated to the President	11.6	11.3	10.9	11.0	0.7	0.3
Agriculture [1]	59.1	51.9	58.2	50.9	0.9	0.9
Commerce	2.9	2.9	2.8	2.8	0.2	0.1
Defense—Military [2]	298.7	282.3	285.8	274.4	12.9	7.8
Defense—Civil	38.5	24.8	38.3	24.7	0.2	0.1
Education	23.1	22.7	22.0	22.4	1.1	0.3
Energy	12.8	11.7	12.1	11.2	0.7	0.5
Health and Human Services, except Social Security	216.4	193.7	213.5	191.2	2.8	2.5
Health and Human Services, Social Security	308.4	243.9	308.4	243.9	0.0	0.1
Housing and Urban Development	15.6	21.6	14.9	21.5	0.7	0.1
Interior	5.6	5.5	5.3	5.3	0.4	0.3
Justice	6.7	6.5	6.3	6.3	0.4	0.3
Labor	33.1	24.5	32.8	24.3	0.3	0.2
State	4.1	3.7	4.0	3.6	0.2	0.1
Transportation	28.7	28.1	27.2	27.6	1.5	0.5
Treasury [3]	250.7	250.0	249.5	248.8	1.2	1.2
Veterans Affairs	30.5	29.2	30.1	28.9	0.4	0.3
Environmental Protection Agency	5.3	5.4	5.0	5.3	0.3	0.1
General Services Administration	0.1	0.2	0.1	0.2	*	*
National Aeronautics and Space Administration	11.2	11.5	10.6	11.2	0.6	0.4
Office of Personnel Management	54.8	34.4	54.6	34.4	0.2	*
Small Business Administration	0.5	0.2	0.5	0.1	*	*
Other independent agencies	23.6	19.2	23.2	18.8	0.5	0.4
Allowances	0.0	0.0	0.0	0.0	0.0	0.0
Undistributed offsetting receipts	–98.1	–98.1	–98.1	–98.1	0.0	0.0
Total	1,347.7	1,191.0	1,321.6	1,174.4	26.1	16.6

* $50 million or less.

[1] Estimates exclude $6.3 billion of 1991 CCC budget authority and outlays that would be subject to a sequester of $0.3 billion in 1990.

[2] Defense estimates include the impact of the aggregate spendout rate adjustment required by the Act.

[3] Estimates reflect the $0.8 billion debt service reduction that results from the sequester.

VI. COMPARISONS WITH CONGRESSIONAL BUDGET OFFICE ESTIMATES

CBO is issuing its initial sequester report on August 21st. As shown in Table 10, CBO estimates that the baseline deficit for 1990 is $141.5 billion, $25.4 billion above the OMB estimate of $116.2 billion. Under CBO assumptions, a sequester of $41.5 billion would be triggered if no further policy changes were made, while OMB estimates that a sequester of $16.2 billion would be required. This section provides the comparisons between OMB and CBO estimates that are required by the G-R-H Act.

Table 10.—Differences Between OMB and CBO G-R-H Baselines

(In billions of dollars)

	Outlays	Receipts	Deficit
OMB baseline	1,191.0	1,074.8	116.2
Differences:			
Economic assumptions:			
Level of GNP and incomes	—	–9.4	9.4
Interest rates	1.8	0.2	1.5
Discretionary program inflation:			
Defense	1.3	—	1.3
Nondefense	0.6	—	0.6
Cost-of-living adjustments	0.7	—	0.7
Debt service	0.8	—	0.8
Subtotal, economic	5.2	–9.1	14.3
Technical:			
Federal Savings and Loan Insurance Corporation	11.5	—	11.5
Defense:			
Transfers	0.9	—	0.9
Other	3.6	—	3.6
Absorption of 1989 nondefense pay raise	1.0	—	1.0
Farm price supports	–2.5	—	–2.5
Medicaid	–0.9	—	–0.9
Federal Housing Administration	–0.8	—	–0.8
Net interest	–0.8	—	–0.8
Other (including debt service)	0.5	5.7	–5.2
Subtotal, technical	12.5	5.7	6.8
G-R-H requirements:			
Defense spend-out adjustment	4.1	—	4.1
Debt service	0.2	—	0.2
Subtotal, G-R-H requirements	4.3	—	4.3
Total differences	22.0	–3.4	25.4
CBO baseline	1,213.0	1,071.4	141.5

Different economic assumptions account for $14.3 billion of the difference between OMB and CBO baseline deficit estimates. CBO forecasts slower real growth and higher interest and inflation rates than OMB. As a result, CBO estimates lower incomes and thus lower receipts ($9.4 billion), higher interest costs, and higher inflation adjustments for outlays. Technical estimating differences account for an additional $6.8 billion difference in the baseline deficit estimates, as discussed below. In addition, the adjustment for the aggregate defense spendout rate (discussed in the section on G-R-H baseline totals), which is required by law to be included in OMB baseline estimates, does not affect the CBO baseline; if OMB were not required to make this adjustment, the difference between OMB and CBO would narrow by $4.3 billion.

Technical differences include $5.7 billion higher baseline receipts under CBO assumptions, due to higher assumed levels of capital gains realizations that more than offset other technical differences, and $12.5 billion higher baseline outlays, of which $11.5 billion is attributable to outlays for savings and loans pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act. Specifically, this $11.5 billion outlay difference results from: (1) a CBO assumption that $5 billion of the $20 billion that the Administration expects to spend on insolvent savings and loan case resolution and on the replacement of high-rate deposits before the end of 1989 will slip into 1990, adding to 1990 outlays; (2) a CBO assumption that borrowing by the Resolution Funding Corporation (REFCORP) will not provide enough funds to deal with all case resolutions in 1990 and that, therefore, $7.5 billion of Resolution Trust Corporation promissory notes will be issued in 1990; and (3) other estimating differences (–$1.0 billion) relating to new asset liquidation proceeds, premium income required for guaranteeing REFCORP bond principal, and other technical assumptions.

For national defense, CBO estimates $4.5 billion more in outlays than OMB primarily because CBO assumes a faster spendout of new budgetary resources and the transfer of budget authority to faster-spending accounts. Both OMB and CBO assume the final pay date for 1989 will occur before the end of that fiscal year, rather than in 1990, as was assumed in January. The CBO estimate of nondefense pay is $1.0 billion higher than the OMB estimate, because OMB assumes that the January 1989 pay raise for Federal civilian employees was fully funded in 1989 appropriation bills, while CBO does not. This difference, and the differences between OMB and CBO estimates shown in Table 10 for defense transfers ($0.9 billion) and discretionary program inflation ($1.9 billion), will disappear once appropriations are enacted.

CBO estimates farm price support costs for 1990 to be $2.5 billion lower than OMB. This difference is due in part because of an assumption of no growth in Commodity Credit Corporation contingency funds, and in part because the CBO estimate takes into account a July crop report that was not available to be incorporated into the OMB estimates when they were originally prepared for the July 18th Mid-Session Review.

CBO's estimate of medicaid outlays is $0.9 billion lower than OMB's, primarily due to differences in estimating methodologies and assumptions about the number of eligible beneficiaries, utilization of medical services, and price factors. The CBO estimate of Federal Housing Administration outlays is $0.8 billion lower than the OMB estimate, due to differences in assumptions about program activity, such as the payment of mortgage-insurance claims. For net interest, there is an estimating difference between OMB and CBO regarding the maturity mix and seasonal distribution of Treasury borrowing. As a result, CBO's estimate of net interest is $0.8 billion below the OMB estimate.

The Act requires three comparisons of differences between OMB and CBO estimates. Table 11 shows, by type of sequesterable resource for defense and nondefense programs, the amount of budgetary resources that would be sequestered using the OMB estimate of the required outlay reductions and CBO's estimating methodology. Table 12 identifies differences between OMB and CBO estimates of the aggregate amount of resources to be sequestered by type of resource for defense and nondefense programs. Table 13 identifies differences for accounts where OMB and CBO estimates of sequesterable resources differ by $5 million or more. Explanations of these differences are presented in the footnotes, which appear at the end of the table.

Table 11.—Budgetary Resource Reductions Using CBO Assumptions

(In billions of dollars)

	Sequester Amount
Defense programs: [1]	
Budget authority	13.0
Unobligated balances	1.7
Nondefense programs:	
Budget authority	7.9
Budget authority—special rules	2.1
401C authority	1.7
401C authority—use of offsetting collections	0.1
401C authority—special rules	2.1
Other 401C authority (including obligation limitations)	0.6
Obligation limitation	1.3
Direct loan limitation	1.1
Direct loan floor	0.1
Loan guarantee limitation	13.8
Guaranteed loan floor	—
MEMORANDUM: Aggregate Outlay Reductions Required—$16.2 billion	

Source: Congressional Budget Office.

[1] Function 050, excluding FEMA programs.

Table 12.—Differences Between OMB and CBO Sequesterable Resources by Resource Type

(In millions of dollars)

DEFENSE:	
Budget authority subject to across-the-board reductions:	
CBO estimate	310,109
Difference:	
Operation and maintenance	−1,013
Military personnel	−976
Research, development, test, and evaluation	−109
Atomic energy defense activities	−69
Other	−44
Total, difference	−2,210
OMB estimate	307,899
Unobligated balances—defense:	
CBO estimate	39,586
Difference:	
Atomic energy defense activities	−387
OMB estimate	39,199
NONDEFENSE:	
Budget authority subject to across-the-board reductions:	
CBO estimate	167,562
Difference:	
Uranium supply and enrichment activities	−1,237
Conservation reserve program	−401
Departmental administration, Department of Energy	−237
Payments to states for AFDC work programs	−207
National forest system	−194
Subsidized housing programs (housing assistance)	−149
Reimbursement to the rural electrification and telephone revolving fund	−117
Veterans medical care	−110
Transfer of certain national forest fund receipts	−105
Other	−1,835
Total, difference	−4,590
OMB estimate	162,972
Budget authority—automatic spending increases:	
CBO and OMB estimate	61
Budget authority—special rules:	
CBO estimate	291
Difference	−5
OMB estimate	287
401(c) authority:	
CBO estimate	36,740
Difference	−1
OMB estimate	36,739
401(c) authority—offsetting collections:	
CBO estimate	2,089
Difference:	
Uranium supply and enrichment activities	1,326
Departmental administration, Department of Energy	229
Government Printing Office revolving fund	−66
Other	4
Total, difference	1,493
OMB estimate	3,582

Table 12.—Differences Between OMB and CBO Sequesterable Resources by Resource Type—Continued

(In millions of dollars)

401(c) authority—special rules: [1]	
CBO estimate	1,786
Difference:	
Federal supplementary medical insurance trust fund	−229
Other	−30
Total, difference	−259
OMB estimate	1,527
Obligation limitation:	
CBO estimate	25,946
Difference:	
Federal hospital insurance trust fund	298
Federal old-age and survivors insurance trust fund	−283
Federal-aid highways	−103
Other	17
Total, difference	−71
OMB estimate	26,875
Direct loan limitation:	
CBO estimate	21,224
Difference:	
Commodity Credit Corporation fund	−251
Disaster loan fund	−73
Other	−52
Total, difference	−376
OMB estimate	20,847
Direct loan floor:	
CBO and OMB estimate	2,053
Guaranteed loan limitation:	
CBO estimate	276,781
Difference:	
Guarantees of mortgage-backed securities	−5,942
Federal Housing Administration fund	−768
Agricultural credit insurance fund	−596
Rural development insurance fund	−210
Export-Import Bank	−82
Other	−37
Total, difference	−7,634
OMB estimate	269,147

[1] CBO calls this resource group "Obligation limitation—special rules."

Table 13.—Detailed List of Seqesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Legislative Branch					
Senate					
Salaries, officers and employees (01–05–0110–801–A)	Budget Authority	359,322	371,217	11,895	1
House of Representatives					
Salaries and expenses (01–10–0400–801–A)	Budget Authority	527,732	545,291	17,559	1
Government Printing Office					
Government Printing Office revolving fund (01–30–4505–808–A)	401(C) Authority—Off. Coll.	0	66,093	66,093	4
	Obligation limitation	38,383	0	–38,383	4
General Accounting Office					
Salaries and expenses (01–35–0107–801–A)	Budget Authority	362,354	373,519	11,165	1
The Judiciary					
Courts of Appeals, District Courts and other Svcs					
Salaries and expenses (02–25–0920–752–A)	Budget Authority	1,128,157	1,158,940	30,783	1
Funds Appropriated to the President					
International Security Assistance					
Economic support fund (04–09–1037–152–A)	Budget Authority	3,396,526	3,401,874	5,348	1,12
Foreign military sales credit (04–09–1082–152–A)	Budget Authority	4,426,569	4,460,751	34,182	1
Multilateral Assistance					
Contribution to the International Development Association (04–12–0073–151–A)	Budget Authority	1,030,820	1,038,780	7,960	1
Agency for International Development					
Operating expenses, Agency for International Development (04–14–1000–151–A)	Budget Authority	435,064	446,750	11,686	1,2
Functional development assistance program (04–14–1021–151–A)	Budget Authority	1,256,845	1,266,249	9,404	1
Military Sales Programs					
FMS interest buydown (04–37–8882–152–A)	401(C) Authority	0	270,000	270,000	3
Special Assistance for Central America					
Central American reconciliation assistance (04–55–1038–152–A)	Budget Authority	37,648	54,492	16,844	2
Department of Agriculture					
Agricultural Research Service					
Agricultural Research Service (05–18–1400–352–A)	Budget Authority	586,751	600,971	14,220	1
Foreign Assistance Programs					
Expenses, PL 480, foreign assistance programs, Agriculture (05–57–2274–151–A)	Budget Authority	984,193	996,049	11,856	1
	Obligation limitation	1,535,248	1,547,104	11,856	1
	Direct Loan Limitation	819,372	825,700	6,328	1
Agricultural Stabilization & Conservation Service					
Conservation reserve program (05–60–3319–302–A)	Budget Authority	1,202,000	1,602,604	400,604	5
Commodity Credit Corporation					
Commodity Credit Corporation Fund (05–66–4336–351–A)	401(C) Authority	6,455,574	6,538,000	82,426	5
	401(C) Authority	6,306,876	6,274,000	–32,876	5
	Direct Loan Limitation	10,000,000	10,251,000	251,000	5
	Guaranteed Loan Limitation	5,698,000	5,742,000	44,000	1
Rural Electrification Administration					
Reimbursement to the Rural elec. & tel. revolv. fund for int. (05–72–3101–271–A)	Budget Authority	238,800	356,004	117,204	4
Rural electrification and telephone revolving fund (05–72–4230–271–A)	Direct Loan Limitation	3,485,193	3,492,796	7,603	1
Farmers Home Administration					
Salaries and expenses (05–75–2001–452–A)	Budget Authority	432,349	446,539	14,190	1
Agricultural Credit Insurance Fund (05–75–4140–351–A)	Direct Loan Limitation	1,625,070	1,637,619	12,549	1
	Guaranteed Loan Limitation	2,875,418	3,471,414	595,996	1
Rural Housing Insurance Fund (Appr.) (05–75–4141–371–A)	Budget Authority	224,359	286,600	62,241	2
	401(C) Authority—Off. Coll.	23,828	17,000	–6,828	5
	Direct Loan Limitation	1,911,410	1,926,170	14,760	1
Rural Development Insurance Fund (Appr.) (05–75–4155–452–A)	Guaranteed Loan Limitation	99,145	308,711	209,566	1,2
Rural development loan fund (05–75–4233–452–A)	Budget Authority	12,970	0	–12,970	7
Soil Conservation Service					
Conservation operations (05–78–1000–302–A)	Budget Authority	485,417	501,048	15,631	1
Animal and Plant Health Inspection Service					
Salaries and expenses (05–79–1600–352–A)	Budget Authority	344,886	353,167	8,281	1

Table 13.—Detailed List of Seqesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Agricultural Marketing Service					
Funds for strengthening markets, income, and supply (section 3 (05–81–5209–605–A)	401(C) Authority	538,946	522,746	–16,200	5
Food Safety and Inspection Service					
Salaries and expenses (05–83–3700–554–A)	Budget Authority	423,123	436,157	13,034	1
Forest Service					
National forest system (05–96–1106–302–A)	Budget Authority	1,339,660	1,533,654	193,994	1,5
Transfer of certain national forest fund receipts (05–96–5220–302–A)	Budget Authority	0	104,681	104,681	8
Forest Service permanent appropriations (05–96–9921–806–A)	401(C) Authority	382,916	307,430	–75,486	5
Forest Service permanent appropriations (05–96–9922–302–A)	Budget Authority	0	21,129	21,129	2
Department of Commerce					
Bureau of the Census					
Periodic censuses and programs (06–07–0450–376–A)	Budget Authority	582,094	595,107	13,013	1
National Oceanic and Atmospheric Administration					
Operations, research, and facilities (06–48–1450–306–A)	Budget Authority	1,336,622	1,351,997	15,375	1
Department of Defense—Military					
Military Personnel					
Military personnel, Marine Corps (07–05–1105–051–A)	Budget Authority	5,739,538	5,812,518	72,980	1,2
Reserve personnel, Marine Corps (07–05–1108–051–A)	Budget Authority	317,761	312,670	–5,091	1
Reserve personnel, Navy (07–05–1405–051–A)	Budget Authority	1,602,458	1,575,460	–26,998	1
Military personnel, Navy (07–05–1453–051–A)	Budget Authority	19,082,524	19,394,887	312,363	1,2
Military personnel, Army (07–05–2010–051–A)	Budget Authority	24,622,436	24,962,507	340,071	1,2
National Guard personnel, Army (07–05–2060–051–A)	Budget Authority	3,321,918	3,264,156	–57,762	1
Reserve personnel, Army (07–05–2070–051–A)	Budget Authority	2,228,898	2,190,921	–37,977	1
Military personnel, Air Force (07–05–3500–051–A)	Budget Authority	20,187,312	20,595,184	407,872	1,2
Reserve personnel, Air Force (07–05–3700–051–A)	Budget Authority	660,074	649,564	–10,510	1
National Guard personnel, Air Force (07–05–3850–051–A)	Budget Authority	1,035,560	1,016,445	–19,115	1
Operation and Maintenance					
Operation and maintenance, Defense agencies (07–10–0100–051–A)	Budget Authority	7,934,339	8,054,745	120,406	1,2
Operation and maintenance, Marine Corps (07–10–1106–051–A)	Budget Authority	1,886,878	1,902,709	15,831	1,2
Operation and maintenance, Navy (07–10–1804–051–A)	Budget Authority	25,886,909	26,360,916	474,007	1,2
Operation and maintenance, Navy Reserve (07–10–1806–051–A)	Budget Authority	1,014,277	1,022,076	7,799	1
Operation and maintenance, Army (07–10–2020–051–A)	Budget Authority	23,199,905	23,348,989	149,084	1
Operation and maintenance, Army National Guard (07–10–2065–051–A)	Budget Authority	1,873,342	1,883,488	10,146	1
Operation and maintenance, Army Reserve (07–10–2080–051–A)	Budget Authority	827,031	832,120	5,089	1
Operation and maintenance, Air Force (07–10–3400–051–A)	Budget Authority	22,720,449	22,931,335	210,886	1,2
Operation and maintenance, Air Force Reserve (07–10–3740–051–A)	Budget Authority	1,075,435	1,081,486	6,051	1
Operation and maintenance, Air National Guard (07–10–3840–051–A)	Budget Authority	2,050,310	2,061,112	10,802	1
Procurement					
Procurement, Defense agencies (07–15–0300–051–A)	Budget Authority	1,253,767	1,233,541	–20,226	1,2
National Guard and Reserve Equipment (07–15–0350–051–A)	Budget Authority	1,179,798	1,188,908	9,110	1
Procurement, Marine Corps (07–15–1109–051–A)	Budget Authority	1,343,526	1,348,681	5,155	1,2
Aircraft procurement, Navy (07–15–1506–051–A)	Budget Authority	9,738,094	9,723,508	–14,586	1,2
Weapons procurement, Navy (07–15–1507–051–A)	Budget Authority	6,364,117	6,358,973	–5,144	1,2
Shipbuilding and conversion, Navy (07–15–1611–051–A)	Budget Authority	9,922,238	9,951,878	29,640	1,2
Other procurement, Navy (07–15–1810–051–A)	Budget Authority	5,020,224	4,828,908	–191,316	1,2
Aircraft procurement, Army (07–15–2031–051–A)	Budget Authority	2,986,568	2,998,147	11,579	1,2
Missile procurement, Army (07–15–2032–051–A)	Budget Authority	2,695,680	2,706,056	10,376	1,2
Procurement of weapons and tracked combat vehicles, Army (07–15–2033–051–A)	Budget Authority	2,932,246	2,944,449	12,203	1,2
Procurement of ammunition, Army (07–15–2034–051–A)	Budget Authority	2,085,670	2,093,424	7,754	1,2
Other procurement, Army (07–15–2035–051–A)	Budget Authority	4,846,357	4,864,989	18,632	1,2
Aircraft procurement, Air Force (07–15–3010–051–A)	Budget Authority	16,181,769	16,306,743	124,974	1
Missile procurement, Air Force (07–15–3020–051–A)	Budget Authority	7,476,482	7,433,693	–42,789	1,2
Other procurement, Air Force (07–15–3080–051–A)	Budget Authority	8,483,824	8,512,255	28,431	1,2
Research, Development, Test, and Evaluation					
Research, development, test, and evaluation, Defense agencies (07–20–0400–051–A)	Budget Authority	8,509,054	8,542,111	33,057	1,2
Research, development, test, and evaluation, Navy (07–20–1319–051–A)	Budget Authority	9,685,535	9,731,639	46,104	1,2

Table 13.—Detailed List of Seqesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Research, development, test, and evaluation, Army (07–20–2040–051–A)	Budget Authority	5,330,104	5,352,817	22,713	1,2
Research, development, test, and evaluation, Air Force (07–20–3600–051–A)	Budget Authority	15,322,591	15,328,372	5,781	1,2
Military Construction					
Military construction, Defense agencies (07–25–0500–051–A)	Budget Authority	703,996	689,024	−14,972	1,2
Military construction, Navy (07–25–1205–051–A)	Budget Authority	1,634,653	1,647,242	12,589	1
Military construction, Army (07–25–2050–051–A)	Budget Authority	1,188,484	1,197,423	8,939	1
Military construction, Air Force (07–25–3300–051–A)	Budget Authority	1,259,699	1,279,867	20,168	1,2
Family Housing					
Family housing, Army (07–30–0702–051–A)	Budget Authority	1,582,902	1,594,787	11,885	1
Family housing, Navy and Marine Corps (07–30–0703–051–A)	Budget Authority	827,806	834,199	6,393	1
Department of Defense—Civil					
Corps of Engineers—Civil					
Flood control, Mississippi River and tributaries (08–10–3112–301–A)	Budget Authority	351,161	358,132	6,971	1
Construction, general (08–10–3122–301–A)	Budget Authority	1,161,429	1,177,870	16,441	1
Operation and maintenance, general (08–10–3123–301–A)	Budget Authority	1,245,360	1,272,690	27,330	1
Department of Education					
Office of Elementary and Secondary Education					
Impact aid (18–10–0102–501–A)	Budget Authority	759,489	765,352	5,863	1
Compensatory education for the disadvantaged (18–10–0900–501–A)	Budget Authority	4,743,986	4,780,620	36,634	1
School improvement programs (18–10–1000–501–A)	Budget Authority	1,260,910	1,270,651	9,741	1
Office of Special Education & Rehabilitative Svcs.					
Education for the handicapped (18–20–0300–501–A)	Budget Authority	2,037,229	2,052,961	15,732	1
Special institutions for the handicapped (18–20–0604–501–C)	Budget Authority	21,053	0	−21,053	1,3
Special institutions for the handicapped (Gallaudet) (18–20–0604–502–C)	Budget Authority	47,321	68,902	21,581	1,3
Office of Vocational and Adult Education					
Vocational and adult education (18–30–0400–501–A)	Budget Authority	1,112,110	1,120,679	8,569	1
Office of Postsecondary Education					
Student financial assistance (18–40–0200–502–A)	Budget Authority	6,023,636	6,070,150	46,514	1
Departmental Management					
Salaries and expenses (Elementary, secondary and vocational ed.) (18–80–0800–501–A)	Budget Authority	20,780	0	−20,780	1,3
Salaries and expenses (Higher education) (18–80–0800–502–A)	Budget Authority	90,207	0	−90,207	1,3
Salaries and expenses (Research and general education aids) (18–80–0800–503–A)	Budget Authority	127,491	267,775	140,284	1,3
Salaries and expenses (Social services) (18–80–0800–506–A)	Budget Authority	22,484	0	−22,484	1,3
Department of Energy					
Atomic Energy Defense Activities					
Atomic energy defense activities (19–10–0220–053–A)	Budget Authority	8,392,954	8,461,995	69,041	1
	Unobligated Balances—Defense	85,000	471,675	386,675	10
Energy Programs					
Energy conservation (Energy conservation) (19–20–0215–272–A)	Budget Authority	326,810	389,580	62,770	4
General science and research activities (19–20–0222–251–A)	Budget Authority	955,341	962,805	7,464	1
Energy supply, R&D activities (19–20–0224–271–A)	Budget Authority	2,219,987	2,238,928	18,941	1
Uranium supply and enrichment activities (19–20–0226–271–A)	Budget Authority	0	1,238,989	1,238,989	4
	401(C) Authority—Off. Coll.	1,325,900	0	−1,325,900	4
Departmental Administration					
Departmental administration (Energy information, policy, & reg.) (19–90–0228–276–A)	Budget Authority	191,092	427,648	236,556	1,4
	401(C) Authority—Off. Coll.	228,715	0	−228,715	1,4
Department of Health and Human Services					
Food and Drug Administration					
Program expenses (09–10–0600–554–A)	Budget Authority	534,713	549,206	14,493	1
Health Resources and Services					
Health resources and services (health care services) (09–15–0350–551–A)	Budget Authority	979,060	988,062	9,002	1
Health resources and services (education and training) (09–15–0350–553–A)	Budget Authority	184,730	207,545	22,815	2

Table 13.—Detailed List of Seqesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Indian Health					
Tribal Health Administration (09–17–0390–551–A)	Budget Authority	150,143	59,975	−90,168	1,4
Centers for Disease Control					
Disease control (Health care services) (09–20–0943–551–A)	Budget Authority	893,294	904,998	11,704	1
National Institutes of Health					
National Cancer Institute (Health research) (09–25–0849–552–A)	Budget Authority	1,596,751	1,609,954	13,203	1
National Institute of General Medical Sciences (Health research) (09–25–0851–552–A)	Budget Authority	630,185	635,228	5,043	1
National Heart, Lung and Blood Institute (Health research) (09–25–0872–552–A)	Budget Authority	1,040,091	1,049,642	9,551	1
National Institute of Allergy & Infectious Diseases (Research) (09–25–0885–552–A)	Budget Authority	754,275	760,728	6,453	1
Alcohol,Drug Abuse, & Mental Health Administration					
Alcohol, drug abuse, and mental health (Health care services) (09–30–1361–551–A)	Budget Authority	1,150,798	1,161,831	11,033	1
Alcohol, drug abuse, and mental health (Health research) (09–30–1361–552–A)	Budget Authority	713,405	720,244	6,839	1
Health Care Financing Administration					
Federal supplementary medical insurance trust fund (09–38–8004–571–A)	Obligation limitation	1,253,515	1,169,435	−84,080	1
FSMI 2% split (G-R-H) (09–38–8004–571–S)	401(C) Authority—Spec. Rules	372,000	601,000	229,000	11
Federal hospital insurance trust fund (09–38–8005–571–A)	401(C) Authority	201,038	206,142	5,104	1
	Obligation limitation	1,294,998	997,458	−297,540	4
Federal supplementary medical insurance trust fund, catastro. (09–38–8184–571–S)	401(C) Authority—Spec. Rules	12,000	40,000	28,000	5
Social Security Administration					
Supplemental security income program (09–60–0406–609–A)	Budget Authority	824,117	851,398	27,281	5
Family Support Administration					
Family support payment to States (CSE) (09–70–1501–609–B)	Budget Authority	1,309,000	1,279,000	−30,000	6
Low income home energy assistance (09–70–1502–609–A)	Budget Authority	1,432,995	1,444,061	11,066	1
Interim assistance to States for legalization (09–70–1508–506–A)	401(C) Authority	870,000	895,000	25,000	6
Payments to states for AFDC work programs (09–70–1509–609–A)	Budget Authority	257,721	465,000	207,279	5
Human Development Services					
Human development services (09–80–1636–506–A)	Budget Authority	2,867,229	2,889,201	21,972	1
Health and Human Services Social Security					
Social Security					
Federal old-age and survivors insurance trust fund (16–05–8006–651–A)	Obligation limitation	1,362,950	1,645,738	282,788	1,7
Federal disability insurance trust fund (16–05–8007–651–A)	Obligation limitation	507,990	549,802	41,812	1,7
Department of Housing and Urban Development					
Housing Programs					
Subsidized housing programs (Housing assistance) (25–02–0164–604–A)	Budget Authority	7,342,406	7,490,960	148,554	1,3,12
Federal Housing Administration fund (25–02–4070–371–A)	Guaranteed Loan Limitation	99,456,000	100,224,000	768,000	5
Public and Indian Housing Programs					
Payments for operation of low income housing projects (25–03–0163–604–A)	Budget Authority	1,766,906	1,780,550	13,644	1
Government National Mortgage Association					
Guarantees of mortgage-backed securities (25–04–4238–371–A)	Guaranteed Loan Limitation	144,000,000	149,942,000	5,942,000	5
Community Planning and Development					
Community development grants (25–06–0162–451–A)	Budget Authority	2,745,400	2,766,600	21,200	1
Rehabilitation loan fund (25–06–4036–451–A)	Direct Loan Limitation	85,212	70,000	−15,212	12
Nehemiah housing opportunity program (25–06–8888–451–A)	Budget Authority	0	20,880	20,880	3
Management and Administration					
Salaries & expenses, incl. transfer of funds (Community dev.) (25–35–0143–451–A)	Budget Authority	174,745	180,425	5,680	1
Salaries & expenses, incl. transfer of funds (Public assist.) (25–35–0143–604–A)	Budget Authority	158,282	121,370	−36,912	9
Department of the Interior					
Bureau of Land Management					
Construction and access (10–04–1110–302–A)	Budget Authority	5,637	11,748	6,111	2
Miscellaneous permanent appropriations (10–04–9921–806–A)	401(C) Authority	122,954	81,291	−41,663	5

Table 13.—Detailed List of Seqesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Minerals Management Service					
Payments to states from receipts under Mineral Leasing Act (10–06–5003–806–A)	401(C) Authority	464,195	372,996	−91,199	5
Bureau of Reclamation					
Construction program (10–10–0684–301–A)	Budget Authority	739,098	745,800	6,702	1
Geological Survey					
Surveys, investigations and research (10–12–0804–306–A)	Budget Authority	469,491	483,490	13,999	1
Fish and Wildlife Service					
Resource management (10–18–1611–303–A)	Budget Authority	372,731	385,177	12,446	1
Construction (10–18–1612–303–A)	Budget Authority	33,007	49,798	16,791	1
Sport fish restoration (10–18–8151–303–A)	401(C) Authority	192,891	162,606	−30,285	5
National Park Service					
Operation of the national park system (10–24–1036–303–A)	Budget Authority	772,263	797,428	25,165	1
Construction (10–24–1039–303–A)	Budget Authority	164,984	206,874	41,890	1
Land acquisition (10–24–5035–303–A)	Budget Authority	45,301	65,532	20,231	1
Bureau of Indian Affairs					
Operation of Indian programs (Conservation and land management) (10–76–2100–302–A)	Budget Authority	152,845	163,386	10,541	1
Operation of Indian programs (Area and regional development) (10–76–2100–452–A)	Budget Authority	598,356	610,297	11,941	1
Operation of Indian programs (Elementary, secondary, & vo. ed.) (10–76–2100–501–A)	Budget Authority	279,275	284,411	5,136	1
Revolving fund for loans (10–76–4409–452–A)	401(C) Authority—Off. Coll.	11,070	0	−11,070	5
Miscellaneous permanent appropriations (Area and regional dev.) (10–76–9925–452–A)	401(C) Authority	50,359	55,929	5,570	5
Office of Territorial Affairs					
Administration of territories (10–82–0412–808–A)	Budget Authority	62,289	54,996	−7,293	8
Department of Justice					
Legal Activities					
Salaries and expenses, General legal activities (11–05–0128–752–A)	Budget Authority	256,929	263,514	6,585	1
Salaries and expenses, United States Attorneys (11–05–0322–752–A)	Budget Authority	479,917	493,644	13,727	1
Salaries and expenses, United States Marshals Service (11–05–0324–752–A)	Budget Authority	213,857	219,877	6,020	1
Assets forfeiture fund (11–05–5042–752–A)	401(C) Authority	237,729	262,044	24,315	8
Federal Bureau of Investigation					
Salaries and expenses (11–10–0200–751–A)	Budget Authority	1,500,638	1,542,715	42,077	1
Drug Enforcement Administration					
Salaries and expenses (11–12–1100–751–A)	Budget Authority	556,591	570,066	13,475	1
Immigration and Naturalization Service					
Salaries and expenses (11–15–1217–751–A)	Budget Authority	856,888	880,308	23,420	1
Federal Prison System					
Salaries and expenses (11–20–1060–753–A)	Budget Authority	991,658	1,016,225	24,567	1
Department of Labor					
Employment and Training Administration					
Training and employment services (12–05–0174–504–A)	Budget Authority	3,872,772	3,904,165	31,393	1
Federal unemployment benefits and allowances (12–05–0326–603–A)	Budget Authority	204,000	166,000	−38,000	5
Unemployment trust fund (Training and employment) (12–05–8042–504–A)	Obligation limitation	1,083,023	1,092,587	9,564	1
Unemployment trust fund (Unemployment compensation) (12–05–8042–603–A)	401(C) Authority	129,100	105,800	−23,300	5
	Obligation limitation	1,735,999	1,753,500	17,501	1
Employment Standards Administration					
Salaries and expenses (12–15–0105–505–A)	Budget Authority	221,051	227,211	6,160	1
Occupational Safety and Health Administration					
Salaries and expenses (12–18–0400–554–A)	Budget Authority	257,728	263,173	5,445	1
Mine Safety and Health Administration					
Salaries and expenses (12–19–1200–554–A)	Budget Authority	169,712	174,967	5,255	1
Departmental Management					
Salaries and expenses (12–25–0165–505–A)	Budget Authority	123,464	128,491	5,027	1

Table 13.—Detailed List of Seqesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Department of State					
Administration of Foreign Affairs					
Salaries and expenses (14–05–0113–153–A)	Budget Authority	1,860,119	1,905,326	45,207	1
Department of Transportation					
Federal Highway Administration					
Federal-aid highways (21–05–8083–401–A)	401(C) Authority	13,850,959	14,103,000	252,041	5
	Obligation limitation	12,432,000	12,535,000	103,000	1
Urban Mass Transportation Administration					
Formula grants (21–20–1129–401–A)	Budget Authority	1,662,780	1,675,620	12,840	1
Discretionary grants (21–20–8191–401–A)	Obligation limitation	1,181,000	1,190,180	9,180	1
Federal Aviation Administration					
Operations (21–25–1301–402–A)	Budget Authority	3,063,264	3,157,054	93,790	1
Trust fund share of FAA Operations (21–25–8104–402–A)	Budget Authority	493,001	506,593	13,592	1
Grants-in-aid for airports (Airport and airway trust fund) (21–25–8106–402–A)	Obligation limitation	1,450,400	1,461,600	11,200	1
Facilities and equipment (Airport and airway trust fund) (21–25–8107–402–A)	Budget Authority	1,434,361	1,446,948	12,587	1
Coast Guard					
Operating expenses (21–30–0201–403–A)	Budget Authority	2,029,694	2,077,465	47,771	1
Retired pay (Coast Guard) (21–30–0241–403–A)	Budget Authority	45,050	37,463	−7,587	1
Department of the Treasury					
Financial Management Service					
Payments to the Farm Credit System Financial Asst. Corp. (15–10–1850–351–A)	Budget Authority	70,793	0	−70,793	5,6
Bureau of Alcohol, Tobacco and Firearms					
Salaries and expenses (15–13–1000–751–A)	Budget Authority	251,319	258,565	7,246	1
United States Customs Service					
Salaries and expenses (15–15–0602–751–A)	Budget Authority	1,078,053	1,109,457	31,404	1
Customs forfeiture fund (15–15–5693–803–A)	401(C) Authority	35,000	20,000	−15,000	5
Internal Revenue Service					
Processing tax returns and executive direction (15–45–0912–803–A)	Budget Authority	1,812,395	1,845,424	33,029	1
Examinations and appeals (15–45–0913–803–A)	Budget Authority	2,017,419	2,093,626	76,207	1
Investigation, collection, and taxpayer service (15–45–0914–803–A)	Budget Authority	1,496,775	1,539,447	42,672	1
United States Secret Service					
Salaries and expenses (15–55–1408–751–A)	Budget Authority	372,551	382,330	9,779	1
Department of Veterans Affairs					
Veterans Benefits Administration					
Readjustment benefits (29–10–0137–702–A)	Budget Authority	241,926	212,119	−29,807	5
Burial benefits and miscellaneous assistance (29–10–0155–701–A)	Budget Authority	143,612	138,120	−5,492	5
Veterans Health Services and Research Administration					
Medical care (29–20–0160–703–A)	Budget Authority	845,845	955,770	109,925	1,4
Medical and prosthetic research (29–20–0161–703–A)	Budget Authority	219,827	225,584	5,757	1
Departmental Administration					
General operating expenses (29–30–0151–705–A)	Budget Authority	830,611	836,232	5,621	1,3
Office of the Inspector General (29–30–0170–705–A)	Budget Authority	0	21,982	21,982	1,3
Environmental Protection Agency					
Construction grants (20–00–0103–304–A)	Budget Authority	2,020,000	2,035,600	15,600	1
Abatement, control, and compliance (20–00–0108–304–A)	Budget Authority	745,847	751,289	5,442	1
Salaries and expenses (20–00–0200–304–A)	Budget Authority	849,682	873,110	23,428	1
Hazardous substance superfund (20–00–8145–304–A)	Budget Authority	1,462,021	1,476,778	14,757	1
National Aeronautics and Space Administration					
Research and program management (Space flight) (26–00–0103–253–A)	Budget Authority	960,860	987,730	26,870	1
Research & program management (Space science, applications, etc) (26–00–0103–254–A)	Budget Authority	625,862	643,884	18,022	1
Research and program management (Air transportation) (26–00–0103–402–A)	Budget Authority	345,027	353,792	8,765	1
Space Flight, Control, and Data Comm. (space flight) (26–00–0105–253–A)	Budget Authority	3,640,400	3,668,512	28,112	1
Research and development (Space flight) (26–00–0108–253–A)	Budget Authority	1,630,664	1,643,256	12,592	1

Table 13.—Detailed List of Seqesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Research and development (Space science, applications, etc) (26–00–0108–254–A)	Budget Authority	2,263,556	2,281,036	17,480	1
Small Business Administration					
Salaries and expenses (28–00–0100–376–A)	Budget Authority	338,790	243,659	–95,131	2
Disaster loan fund (28–00–4153–453–A)	Direct Loan Limitation	250,000	323,000	73,000	5
Business loan and investment fund (28–00–4154–376–A)	Budget Authority	84,952	94,000	9,048	5
	Direct Loan Limitation	84,952	94,000	9,048	5
	Guaranteed Loan Limitation	3,925,000	3,910,000	–15,000	1
Surety bond guarantees revolving fund (28–00–4156–376–A)	Guaranteed Loan Limitation	1,295,000	1,301,000	6,000	1
Other Independent Agencies					
District of Columbia					
Federal payment to the District of Columbia (30–45–1700–806–A)	Budget Authority	445,998	452,887	6,889	1
Equal Employment Opportunity Commission					
Salaries and expenses (30–46–0100–751–A)	Budget Authority	188,444	193,802	5,358	1
Export-Import Bank of the United States					
Export-Import Bank of the United States (30–48–4027–155–A)	Direct Loan Limitation	720,020	725,580	5,560	1
	Guaranteed Loan Limitation	10,567,200	10,648,800	81,600	1
Farm Credit Systems Financial Assistance Corporation					
Farm credit assistance Fund (30–54–4133–351–A)	401(C) Authority	635,000	500,000	–135,000	5
Financial assistance corporation trust fund (30–54–8202–351–A)	401(C) Authority	80,705	0	–80,705	5,6
National Science Foundation					
Research and related activities (31–45–0100–251–A)	Budget Authority	1,679,370	1,692,745	13,375	1
Nuclear Regulatory Commission					
Salaries and expenses (31–50–0200–276–A)	Budget Authority	437,000	446,277	9,277	1
Pennsylvania Avenue Development Corporation					
Land acquisition and development fund (32–08–4084–451–A)	401(C) Authority—Off. Coll.	3,000	10,000	7,000	5
Postal Service					
Payment to the Postal Service fund for nonfunded liabilities (32–10–1004–372–A)	Budget Authority	36,942	0	–36,942	3
Railroad Retirement Board					
Supplemental Annuity Pension Fund (32–20–8012–601–A)	401(C) Authority	114,908	0	–114,908	6
Smithsonian Institution					
Salaries and expenses (32–50–0100–503–A)	Budget Authority	220,282	226,568	6,286	1
United States Information Agency					
Salaries and expenses (33–22–0201–154–A)	Budget Authority	645,776	661,368	15,592	1

[1] Different adjustment factors for increased personnel costs and nonpay inflation.
[2] Different assumptions about enacted 1989 levels, including transfers.
[3] Different account structure.
[4] Different resource type classification.
[5] Different assumptions about resource levels under current law for mandatory programs.
[6] OMB classifies as sequesterable; CBO as exempt.
[7] OMB classifies as exempt, CBO as sequesterable.
[8] OMB error.
[9] CBO error.
[10] Technical estimating diferences for unobligated balances transferred from other accounts.
[11] Different assumptions regarding behavioral response of physicians to payment reductions.
[12] Different estimating techniques.

APPENDIX: SEQUESTERABLE BASELINE AND REDUCTIONS BY AGENCY AND BUDGET ACCOUNT

(Fiscal year 1990; in thousands of dollars)

Percentages Used:
- Nondefense, 5.3 percent
- Defense, 4.3 percent

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G-R-H Sequester Amounts

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Legislative Branch		
Senate		
Salaries, officers and employees (01-05-0110-801-A):		
Budget Authority	359,322	19,044
Outlays	343,871	18,225
House of Representatives		
Mileage of Members (01-10-0208-801-A):		
Budget Authority	218	12
Outlays	109	6
Salaries and expenses (01-10-0400-801-A):		
Budget Authority	527,732	27,970
Outlays	497,123	26,348
Congressional use of foreign currency, House of Representatives (01-10-0486-801-A):		
401(C) Authority	3,360	178
Outlays	3,360	178
Joint Items		
Capitol Guide Service (01-12-0170-801-A):		
Budget Authority	1,278	68
Outlays	1,148	61
Joint Committee on Printing (01-12-0180-801-A):		
Budget Authority	1,198	63
Outlays	1,098	58
Joint Economic Committee (01-12-0181-801-A):		
Budget Authority	3,483	185
Outlays	3,309	175
Joint Committee on Inaugural Ceremonies of 1989 (01-12-0186-801-A):		
Budget Authority	811	43
Outlays	811	43
Office of the Attending Physician (01-12-0425-801-A):		
Budget Authority	1,474	78
Outlays	1,474	78
Joint Committee on Taxation (01-12-0460-801-A):		
Budget Authority	4,539	241
Outlays	4,085	216
Capitol Police Board (01-12-0474-801-A):		
Budget Authority	55,356	2,934
Outlays	53,695	2,846
General expenses, Capitol police (01-12-0476-801-A):		
Budget Authority	1,965	104
Outlays	1,703	90
Statements of appropriations (01-12-0499-801-A):		
Budget Authority	21	1
Official mail costs (01-12-0825-801-A):		
Budget Authority	55,867	2,961
Outlays	55,867	2,961
Congressional Budget Office		
Salaries and expenses (01-14-0100-801-A):		
Budget Authority	19,157	1,015
Outlays	17,241	914
Architect of the Capitol		
Office of the Architect of the Capitol: Salaries (01-15-0100-801-A):		
Budget Authority	6,832	362
Outlays	6,491	344
Contingent expenses (01-15-0102-801-A):		
Budget Authority	104	6
Outlays	104	6
Capitol buildings (01-15-0105-801-A):		
Budget Authority	16,119	854
Outlays	12,105	642
Capitol grounds (01-15-0108-801-A):		
Budget Authority	3,936	209
Outlays	3,455	183
Senate office buildings (01-15-0123-801-A):		
Budget Authority	25,131	1,332
Outlays	20,833	1,104
House office buildings (01-15-0127-801-A):		
Budget Authority	30,154	1,598
Outlays	24,485	1,298
Capitol Power Plant (01-15-0133-801-A):		
Budget Authority	25,711	1,363
401(C) Authority—Off. Coll.	253	13
Outlays	18,370	974
Structural and mechanical care, Library buildings and grounds (01-15-0155-801-A):		
Budget Authority	7,825	415
Outlays	6,859	363
Library of Congress		
Salaries and expenses (01-25-0101-503-A):		
Budget Authority	154,506	8,189
401(C) Authority—Off. Coll.	5,060	268
Outlays	132,836	7,040
Copyright Office: Salaries and expenses (01-25-0102-376-A):		
Budget Authority	12,189	646
401(C) Authority—Off. Coll.	8,144	432
Outlays	19,601	1,039
Congressional Research Service: Salaries and expenses (01-25-0127-801-A):		
Budget Authority	46,689	2,475
Outlays	42,207	2,237
Books for the blind and physically handicapped: Salaries & exp (01-25-0141-503-A):		
Budget Authority	37,834	2,005
Outlays	15,512	822
National Film Preservation Board: Salaries & expenses (01-25-0143-503-A):		
Budget Authority	259	14
Outlays	259	14
Furniture and furnishings (01-25-0146-503-A):		
Budget Authority	3,505	186
Outlays	1,861	99
Gift and trust fund accounts (01-25-9971-503-A):		
Obligation limitation	328	17
Government Printing Office		
Office of Superintendent of Documents: Salaries and expenses (01-30-0201-808-A):		
Budget Authority	14,274	757
Outlays	9,277	492
Congressional printing and binding (01-30-0203-801-A):		
Budget Authority	74,592	3,953
Outlays	66,387	3,519
Government Printing Office revolving fund (01-30-4505-808-A):		
Obligation limitation	38,383	2,034
General Accounting Office		
Salaries and expenses (01-35-0107-801-A):		
Budget Authority	362,354	19,205
Outlays	329,010	17,438
United States Tax Court		
Salaries and expenses (01-40-0100-752-A):		
Budget Authority	30,563	1,620
Outlays	27,078	1,435
Tax Court independent counsel, U.S. Tax Court (01-40-5023-752-A):		
401(C) Authority	10	1
Outlays	10	1
Legislative Branch Boards and Commissions		
Commission on Security & Cooperation in Europe: Salaries & exp (01-45-0110-801-A):		
Budget Authority	775	41
Outlays	701	37
Botanic Garden: Salaries and expenses (01-45-0200-801-A):		
Budget Authority	2,633	140
Outlays	2,396	127
Copyright Royalty Tribunal: Salaries and expenses (01-45-0310-376-A):		
Budget Authority	128	7
Outlays	114	6
Biomedical Ethics: Salaries and expenses (01-45-0400-801-A):		
Budget Authority	251	13
Outlays	181	10
International conferences and contingencies: House, Senate exp (01-45-0500-801-A):		
401(C) Authority	340	18
Outlays	340	18
Commission on Railroad Retirement Reform (01-45-0850-801-A):		
Budget Authority	1,024	54
Outlays	311	16
National Commission on Children (01-45-1050-801-A):		
Budget Authority	823	44
Outlays	721	38
U.S. Bipartisan Commission on Comprehensive Health Care (01-45-1100-801-A):		
Budget Authority	1,077	57
Outlays	905	48
Office of Technology Assessment		
Salaries and expenses (01-80-0700-801-A):		
Budget Authority	18,691	991
Outlays	13,477	714
John C. Stennis Center for Public Service Training and Development		
Payment to John C. Stennis Center (01-80-1200-801-A):		
Budget Authority	7,770	412
Outlays	7,770	412
Total, Legislative Branch:		
Budget Authority	1,918,158	101,667
401(C) Authority	3,710	197
401(C) Authority—Off. Coll.	13,457	713
Obligation limitation	38,711	2,051
Outlays	1,748,359	92,665
The Judiciary		
Supreme Court of the United States		
Salaries and expenses (02-05-0100-752-A):		
Budget Authority	16,606	880
Outlays	11,807	626
Care of the building and grounds (02-05-0103-752-A):		
Budget Authority	2,219	118
Outlays	2,113	112

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
United States Court of Appeals for Federal Circuit		
Salaries and expenses (02-07-0510-752-A):		
Budget Authority	8,645	458
Outlays	8,044	426
United States Court of International Trade		
Salaries and expenses (02-15-0400-752-A):		
Budget Authority	8,327	441
Outlays	8,094	429
Courts of Appeals, District Courts and other Svcs		
Salaries and expenses (02-25-0920-752-A):		
Budget Authority	1,128,157	59,792
Outlays	1,112,767	58,977
Defender services (02-25-0923-752-A):		
Budget Authority	114,326	6,059
Outlays	43,330	2,296
Fees of jurors and commissioners (02-25-0925-752-A):		
Budget Authority	50,357	2,669
Outlays	42,648	2,260
Court security (02-25-0930-752-A):		
Budget Authority	42,921	2,275
Outlays	21,417	1,135
Registry administration (02-25-5101-752-A):		
401(C) Authority	21,000	1,113
Outlays	21,000	1,113
Administrative Office of the United States Courts		
Salaries and expenses (02-26-0927-752-A):		
Budget Authority	35,062	1,858
Outlays	31,977	1,695
Federal Judicial Center		
Salaries and expenses (02-30-0928-752-A):		
Budget Authority	11,654	618
Outlays	9,533	505
Judiciary Retirement Funds		
Payment to Judicial Officers' Retirement Fund (02-35-0941-752-A):		
Budget Authority	1,000	53
Outlays	1,000	53
Judicial Officers' Retirement Fund (02-35-8122-602-A):		
401(C) Authority	4,167	221
Outlays	4,167	221
Total, The Judiciary:		
Budget Authority	1,419,274	75,221
401(C) Authority	25,167	1,334
Outlays	1,317,897	69,848
Executive Office of the President		
The White House Office		
Salaries and expenses (03-10-0110-802-A):		
Budget Authority	29,138	1,544
Outlays	26,095	1,383
Executive Residence at the White House		
Operating expenses (03-20-0210-802-A):		
Budget Authority	5,949	315
401(C) Authority—Off. Coll.	1,471	78
Outlays	7,247	384
Official Residence of the Vice President		
Operating expenses (03-21-0211-802-A):		
Budget Authority	268	14
Outlays	115	6
Special Assistance to the President		
Salaries and expenses (03-22-1454-802-A):		
Budget Authority	2,290	121
Outlays	1,929	102
Council of Economic Advisers		
Salaries and expenses (03-28-1900-802-A):		
Budget Authority	2,909	154
Outlays	2,644	140
Council/Office on Environmental Quality		
Council on Environmental Quality & Off. of Environmental Quali (03-31-1453-802-A):		
Budget Authority	888	47
Outlays	799	42
Office of Policy Development		
Salaries and expenses (03-35-2200-802-A):		
Budget Authority	3,130	166
Outlays	2,883	153
National Security Council		
Salaries and expenses (03-38-2000-802-A):		
Budget Authority	5,316	282
Outlays	4,224	224
National Space Council		
Salaries and expenses (03-39-0020-802-A):		
Budget Authority	189	10
Outlays	132	7
National Critical Materials Council		
Salaries and expenses (03-41-0111-802-A):		
Budget Authority	234	12
Outlays	210	11
Office of Administration		
Salaries and expenses (03-42-0038-802-A):		
Budget Authority	17,519	928
Outlays	13,856	734
Office of Management and Budget		
Office of Federal Procurement Policy: Salaries and expenses (03-45-0201-802-A):		
Budget Authority	2,457	130
Outlays	1,905	101
Salaries and Expenses (03-45-0300-802-A):		
Budget Authority	41,349	2,191
Outlays	37,978	2,013
Office of National Drug Control Policy		
Salaries and Expenses (03-47-1457-802-A):		
Budget Authority	3,631	192
Outlays	2,723	144
Office of Science and Technology Policy		
Salaries and expenses (03-49-2600-802-A):		
Budget Authority	1,653	88
Outlays	992	53
Office of the United States Trade Representative		
Salaries and expenses (03-50-0400-802-A):		
Budget Authority	15,918	844
Outlays	13,847	734
Total, Executive Office of the President:		
Budget Authority	132,836	7,038
401(C) Authority—Off. Coll.	1,471	78
Outlays	117,579	6,231
Funds Appropriated to the President		
Unanticipated Needs		
Unanticipated needs (04-06-0037-802-A):		
Budget Authority	1,036	55
Outlays	995	53
Investment in Management Improvement		
Investment in Management Improvement (04-07-0061-802-B):		
Budget Authority	1,036	55
Outlays	777	41
International Security Assistance		
Peacekeeping operations (04-09-1032-152-A):		
Budget Authority	32,830	1,740
Outlays	22,653	1,201
Economic support fund (04-09-1037-152-A):		
Budget Authority	3,396,526	180,016
Outlays	1,863,174	98,748
Military assistance (04-09-1080-152-A):		
Budget Authority	485,480	25,730
Outlays	84,720	4,490
International military education and training (04-09-1081-152-A):		
Budget Authority	49,106	2,603
Outlays	24,553	1,301
Foreign military sales credit (04-09-1082-152-A):		
Budget Authority	4,426,569	234,608
Direct Loan Limitation	424,760	22,512
Outlays	1,853,063	98,212
Multilateral Assistance		
Contribution to the International Development Association (04-12-0073-151-A):		
Budget Authority	1,030,820	54,633
Contribution to the Asian Development Bank (04-12-0076-151-A):		
Budget Authority	157,878	8,368
Contribution to the International Bank for Reconstruction & De (04-12-0077-151-A):		
Budget Authority	51,801	2,745
Outlays	5,180	275
Contribution to the International Finance Corporation (04-12-0078-151-A):		
Budget Authority	5,068	269
Outlays	5,068	269
Contribution to the African Development Fund (04-12-0079-151-A):		
Budget Authority	108,780	5,765
Contribution to the African Development Bank (04-12-0082-151-A):		
Budget Authority	7,609	403
Outlays	7,609	403
International organizations and programs (04-12-1005-151-A):		
Budget Authority	234,255	12,416
Outlays	175,692	9,312

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Agency for International Development		
Operating expenses, Agency for International Development (04–14–1000–151–A):		
Budget Authority	435,064	23,058
Outlays	326,298	17,294
Operating expenses of the AID Office of Inspector General (04–14–1007–151–A):		
Budget Authority	29,632	1,570
Outlays	22,224	1,178
American schools and hospitals abroad (04–14–1013–151–A):		
Budget Authority	36,260	1,922
Outlays	11,603	615
Development fund for Africa (04–14–1014–151–A):		
Budget Authority	569,800	30,199
Outlays	84,900	4,500
Functional development assistance program (04–14–1021–151–A):		
Budget Authority	1,256,845	66,613
Outlays	121,732	6,452
International disaster assistance (04–14–1035–151–A):		
Budget Authority	29,006	1,537
Outlays	7,252	384
Housing and other credit guaranty programs (04–14–4340–151–A):		
401(C) Authority—Off. Coll.	7,035	373
Guaranteed Loan Limitation	129,500	6,864
Outlays	7,035	373
Private sector revolving fund (04–14–4341–151–A):		
Budget Authority	8,806	467
Direct Loan Limitation	12,432	659
Guaranteed Loan Limitation	51,800	2,745
Trade and Development Program		
Trade and development program (04–16–1001–151–A):		
Budget Authority	25,913	1,373
Outlays	5,364	284
Peace Corps		
Peace Corps (04–18–0100–151–A):		
Budget Authority	160,402	8,501
Outlays	130,888	6,937
Overseas Private Investment Corporation		
Overseas Private Investment Corporation (04–20–4030–151–A):		
401(C) Authority—Off. Coll.	12,504	663
Direct Loan Limitation	23,828	1,263
Guaranteed Loan Limitation	181,300	9,609
Outlays	14,416	764
Inter-American Foundation		
Inter-American Foundation (04–22–4031–151–A):		
Budget Authority	17,219	913
401(C) Authority—Off. Coll.	13,277	704
Outlays	18,512	981
African Development Foundation		
African Development Foundation (04–24–0700–151–A):		
Budget Authority	8,304	440
Outlays	4,484	238
Military Sales Programs		
Special defense acquisition fund (04–37–4116–155–A):		
Obligation limitation	245,392	13,006
Foreign military sales trust fund (04–37–8242–155–A):		
401(C) Authority—Off. Coll.	263,000	13,939
Outlays	263,000	13,939
Special Assistance for Central America		
Central American reconciliation assistance (04–55–1038–152–A):		
Budget Authority	37,648	1,995
Outlays	37,648	1,995
Total, Funds Appropriated to the President:		
Budget Authority	12,603,695	667,904
401(C) Authority—Off. Coll.	295,816	15,679
Obligation limitation	245,392	13,006
Direct Loan Limitation	461,020	24,434
Guaranteed Loan Limitation	362,600	19,218
Outlays	5,098,840	270,239
Department of Agriculture		
Office of the Secretary		
Office of the Secretary (05–03–0115–352–A):		
Budget Authority	6,214	329
Outlays	5,864	311
Gifts and bequests (05–03–8203–352–A):		
401(C) Authority	50	3
Outlays	50	3
Departmental Administration		
Rental payments and building operations (05–05–0117–352–A):		
Budget Authority	73,338	3,887
Outlays	63,648	3,373
Advisory committees (05–05–0118–352–A):		
Budget Authority	1,553	82
Outlays	1,069	58
Departmental administration (05–05–0120–352–A):		
Budget Authority	27,065	1,434
Outlays	22,505	1,193
Hazardous Waste Management (05–05–0500–304–A):		
Budget Authority	5,180	275
Outlays	5,095	270
Working capital fund (05–05–4609–352–A):		
Budget Authority	4,877	258
Outlays	3,576	190
Office of Governmental and Public Affairs		
Office of Governmental and Public Affairs (05–06–0130–352–A):		
Budget Authority	9,241	490
Outlays	7,125	378
Office of the Inspector General		
Office of the Inspector General (05–08–0900–352–A):		
Budget Authority	52,700	2,793
Outlays	47,232	2,503
Office of the General Counsel		
Office of the General Counsel (05–10–2300–352–A):		
Budget Authority	21,758	1,153
Outlays	19,817	1,050
Agricultural Research Service		
Agricultural Research Service (05–18–1400–352–A):		
Budget Authority	586,751	31,098
401(C) Authority—Off. Coll.	3,200	170
Outlays	472,601	25,048
Buildings and facilities (05–18–1401–352–A):		
Budget Authority	16,598	880
Outlays	2,490	132
Cooperative State Research Service		
Cooperative State Research Service (05–24–1500–352–A):		
Budget Authority	350,305	18,566
401(C) Authority	2,850	151
Outlays	201,298	10,669
Extension Service		
Extension Service (05–27–0502–352–A):		
Budget Authority	374,466	19,847
401(C) Authority—Off. Coll.	380	20
Outlays	282,353	14,965
National Agricultural Library		
National Agricultural Library (05–30–0300–352–A):		
Budget Authority	14,855	787
Outlays	11,082	587
National Agricultural Statistics Service		
Salaries and expenses (05–33–1801–352–A):		
Budget Authority	66,237	3,511
401(C) Authority—Off. Coll.	1,200	64
Outlays	58,826	3,118
Economic Research Service		
Salaries and expenses (05–36–1701–352–A):		
Budget Authority	51,493	2,729
Outlays	41,676	2,209
World Agricultural Outlook Board		
World agricultural outlook board (05–50–2100–352–A):		
Budget Authority	1,900	101
Outlays	1,516	80
Foreign Agricultural Service		
Foreign Agricultural Service (05–51–2900–352–A):		
Budget Authority	99,198	5,257
Outlays	59,519	3,154
Office of International Cooperation & Development		
Scientific activities overseas (05–53–1404–352–A):		
Budget Authority	1,036	55
Outlays	636	34
Salaries and expenses (05–53–3200–352–A):		
Budget Authority	5,539	294
Outlays	5,539	294
Foreign Assistance Programs		
Expenses, PL 480, foreign assistance programs, Agriculture (05–57–2274–151–A):		
Budget Authority	984,193	52,162
Obligation limitation	1,535,248	81,368
Direct Loan Limitation	819,372	43,427
Outlays	984,193	52,162

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Agricultural Stabilization & Conservation Service		
Salaries and expenses (05–60–3300–351–A):		
Budget Authority	395	21
401(C) Authority—Off. Coll.	23,591	1,250
Outlays	23,986	1,271
Dairy indemnity program (05–60–3314–351–A):		
Budget Authority	5	0
Outlays	5	0
Agricultural conservation program (05–60–3315–302–A):		
Budget Authority	183,305	9,715
Outlays	84,137	4,459
Emergency conservation program (05–60–3316–453–A):		
Budget Authority	5,180	275
Outlays	2,331	124
Colorado river basin salinity control program (05–60–3318–304–A):		
Budget Authority	5,648	299
Outlays	1,864	99
Conservation reserve program (05–60–3319–302–A):		
Budget Authority	1,202,000	63,706
Outlays	918,674	48,690
Water Bank program (05–60–3320–302–A):		
Budget Authority	9,324	494
Outlays	1,212	64
Forestry incentives program (05–60–3336–302–A):		
Budget Authority	12,894	683
Outlays	3,739	198
Federal Crop Insurance Corporation		
Administrative and operating expenses (05–63–2707–351–A):		
Budget Authority	209,539	11,106
Outlays	113,151	5,997
Commodity Credit Corporation		
Temp. stor. & distr. of CCC emgcy. food (05–66–3635–351–A):		
Budget Authority	171,800	9,105
Outlays	159,523	8,455
Commodity Credit Corporation Fund (05–66–4336–351–A):		
401(C) Authority	12,762,450	676,410
Direct Loan Limitation	10,000,000	530,000
Guaranteed Loan Limitation	5,698,000	301,994
Outlays	12,762,450	676,410
Rural Electrification Administration		
Salaries and expenses (05–72–3100–271–A):		
Budget Authority	32,659	1,731
Outlays	29,445	1,561
Reimbursement to the Rural elec. & tel. revolv. fund for int. (05–72–3101–271–A):		
Budget Authority	238,800	12,656
Outlays	238,800	12,656
Purchase of Rural Telephone Bank capital stock (05–72–3102–452–A):		
Budget Authority	29,744	1,576
Outlays	29,744	1,576
Rural communication development fund (05–72–4142–452–A):		
Budget Authority	1,499	79
Outlays	1,467	78
Rural electrification and telephone revolving fund (05–72–4230–271–A):		
Budget Authority	563	30
Direct Loan Limitation	3,485,193	184,715
Direct Loan Floor	1,869,739	99,096
Outlays	240,215	12,731
Rural telephone bank (05–72–4231–452–A):		
Direct Loan Limitation	218,119	11,560
Direct Loan Floor	183,419	9,721
Outlays	–20,485	–1,086
Farmers Home Administration		
Salaries and expenses (05–75–2001–452–A):		
Budget Authority	432,349	22,914
Outlays	396,344	21,006
Rural housing for domestic farm labor (05–75–2004–604–A):		
Budget Authority	9,855	522
Outlays	99	5
Mutual and self-help housing (05–75–2006–604–A):		
Budget Authority	8,288	439
Outlays	663	35
Very low income housing repair grants (05–75–2064–604–A):		
Budget Authority	12,950	686
Outlays	12,303	652
Rural development grant program (05–75–2065–452–A):		
Budget Authority	6,734	357
Outlays	6,397	339
Rural water and waste disposal grants (05–75–2066–452–A):		
Budget Authority	121,103	6,418
Outlays	4,844	257
Rural community fire protection grants (05–75–2067–452–A):		
Budget Authority	3,202	170
Outlays	1,441	76
Rural housing preservation grants (05–75–2070–604–A):		
Budget Authority	19,829	1,051
Outlays	1,190	63
Compensation for construction defects (05–75–2071–371–A):		
Budget Authority	518	27
Outlays	518	27
Agricultural Credit Insurance Fund (05–75–4140–351–A):		
Budget Authority	3,108	165
401(C) Authority—Off. Coll.	112,901	5,984
Direct Loan Limitation	1,625,070	86,129
Guaranteed Loan Limitation	2,875,418	152,397
Outlays	1,129,009	59,837
Rural Housing Insurance Fund (Appr.) (05–75–4141–371–A):		
Budget Authority	224,359	11,891
401(C) Authority—Off. Coll.	23,828	1,263
Obligation limitation	285,211	15,116
Direct Loan Limitation	1,911,410	101,305
Outlays	1,173,342	62,187
Rural Development Insurance Fund (Appr.) (05–75–4155–452–A):		
401(C) Authority—Off. Coll.	362	19
Direct Loan Limitation	444,009	23,532
Guaranteed Loan Limitation	99,145	5,255
Outlays	26,054	1,381
Self-help housing land development fund (05–75–4222–371–A):		
Direct Loan Limitation	518	27
Rural development loan fund (05–75–4233–452–A):		
Budget Authority	12,970	687
Direct Loan Limitation	14,504	769
Outlays	1,450	77
Soil Conservation Service		
Conservation operations (05–78–1000–302–A):		
Budget Authority	485,417	25,727
401(C) Authority—Off. Coll.	9,053	480
Outlays	455,730	24,154
Resource conservation and development (05–78–1010–302–A):		
Budget Authority	26,167	1,387
401(C) Authority—Off. Coll.	4,600	244
Outlays	24,776	1,313
Watershed planning (05–78–1068–301–B):		
Budget Authority	9,029	479
401(C) Authority—Off. Coll.	213	11
Outlays	7,979	423
River basin surveys and investigations (05–78–1068–301–C):		
Budget Authority	12,576	667
401(C) Authority—Off. Coll.	166	9
Outlays	11,988	635
Watershed and flood prevention operations (05–78–1068–301–D):		
Budget Authority	179,475	9,512
401(C) Authority—Off. Coll.	11,849	628
Outlays	115,662	6,130
Great plains conservation program (05–78–2268–302–A):		
Budget Authority	21,283	1,128
401(C) Authority—Off. Coll.	41	2
Outlays	9,127	484
Miscellaneous contributed funds (Water resources) (05–78–8210–301–A):		
401(C) Authority	460	24
Outlays	302	16
Miscellaneous contributed funds (Conservation and land mgmt.) (05–78–8210–302–A):		
401(C) Authority	100	5
Outlays	90	5
Animal and Plant Health Inspection Service		
Salaries and expenses (05–79–1600–352–A):		
Budget Authority	344,886	18,279
401(C) Authority—Off. Coll.	17,771	942
Outlays	315,469	16,720
Buildings and facilities (05–79–1601–352–A):		
Budget Authority	2,638	140
Outlays	728	39
Federal Grain Inspection Service		
Salaries and expenses (05–80–2400–352–A):		
Budget Authority	8,469	449
Outlays	7,495	397

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Inspection and weighing services (05–80–4050–352–A):		
401(C) Authority—Off. Coll.	36,856	1,953
Outlays	36,856	1,953
Agricultural Marketing Service		
Marketing services (05–81–2500–352–A):		
Budget Authority	34,806	1,845
401(C) Authority—Off. Coll.	37,278	1,976
Outlays	54,924	2,911
Payments to States and possessions (05–81–2501–352–A):		
Budget Authority	976	52
Outlays	156	8
Perishable Agricultural Commodities Act fund (05–81–5070–352–A):		
401(C) Authority	5,500	292
Outlays	4,131	219
Funds for strengthening markets, income, and supply (section 3 (05–81–5209–605–A):		
401(C) Authority	538,946	28,564
Outlays	116,691	6,185
Milk market orders assessment fund (05–81–8412–351–A):		
401(C) Authority—Off. Coll.	38,709	2,052
Outlays	38,709	2,052
Miscellaneous trust funds (05–81–9972–352–A):		
401(C) Authority	85,979	4,557
Outlays	55,673	2,951
Office of Transportation		
Office of Transportation (05–82–2800–352–A):		
Budget Authority	2,487	132
Outlays	2,067	110
Food Safety and Inspection Service		
Salaries and expenses (05–83–3700–554–A):		
Budget Authority	423,123	22,426
401(C) Authority—Off. Coll.	47,800	2,533
Outlays	437,919	23,210
Exp. & refunds, insp. & grading (05–83–8137–352–A):		
401(C) Authority	1,150	61
Outlays	986	52
Food and Nutrition Service		
Special milk program ASI (G-R-H) (05–84–3502–605–I):		
Budget Authority—ASI	392	392
Outlays	1,125	1,125
Food donations program (05–84–3503–605–A):		
Budget Authority	246,316	13,055
Outlays	212,480	11,261
Food stamp program (05–84–3505–605–A):		
Budget Authority	54,089	2,867
Outlays	20,955	1,111
Food program administration (05–84–3508–605–A):		
Budget Authority	93,147	4,937
Outlays	85,695	4,542
Supplemental feeding programs (05–84–3510–605–A):		
Budget Authority	3,000	159
Outlays	3,000	159
Child nutrition programs (05–84–3539–605–A):		
Budget Authority	4,135	219
Outlays	4,135	219
Human Nutrition Information Service		
Salaries and Expenses (05–88–3501–352–A):		
Budget Authority	9,177	486
Outlays	5,736	304
Packers and Stockyards Administration		
Packers and Stockyards Administration (05–90–2600–352–A):		
Budget Authority	9,987	529
Outlays	9,309	493
Agricultural Cooperative Service		
Salaries and expenses (05–92–3000–352–A):		
Budget Authority	4,855	257
Outlays	3,117	165
Forest Service		
Construction (05–96–1103–302–A):		
Budget Authority	234,561	12,432
401(C) Authority—Off. Coll.	2,835	150
Outlays	96,659	5,123
Forest research (05–96–1104–302–A):		
Budget Authority	143,657	7,614
401(C) Authority—Off. Coll.	1,262	67
Outlays	109,974	5,829
State and private forestry (05–96–1105–302–A):		
Budget Authority	89,970	4,768
401(C) Authority—Off. Coll.	4,358	231
Outlays	40,348	2,138
National forest system (05–96–1106–302–A):		
Budget Authority	1,339,660	71,002
Outlays	1,071,728	56,802
Land acquisition (05–96–5004–303–A):		
Budget Authority	66,549	3,527
Outlays	26,619	1,411
Range betterment fund (05–96–5207–302–A):		
Budget Authority	4,101	217
Outlays	2,993	159
Acquisition of lands for nat'l forests (05–96–5208–302–A):		
Budget Authority	1,002	53
Outlays	566	30
Acq. of lands to complete land exchanges (05–96–5216–302–A):		
Budget Authority	347	18
Outlays	288	15
Operations and maintenance of quarters (05–96–5219–302–A):		
401(C) Authority	5,852	310
Outlays	1,878	100
Cooperative work trust fund (05–96–8028–302–A):		
401(C) Authority	315,117	16,701
Outlays	129,173	6,846
Highway Construction: Mount St. Helens National Monument (05–96–8029–401–A):		
Budget Authority	5,558	295
Outlays	3,135	166
Gifts, donations, bequests for forest and rangeland research (05–[illegible]–8034–302–A):		
Budget Authority	30	2
Outlays	30	2
Reforestation trust fund (05–96–8046–302–A):		
401(C) Authority	30,000	1,590
Outlays	30,000	1,590
Other appropriations (05–96–9911–302–A):		
Budget Authority	37,482	1,987
Outlays	27,387	1,452
Forest Service permanent appropriations (05–96–9921–606–A):		
401(C) Authority	382,916	20,295
Outlays	362,320	19,203
Forest Service permanent appropriations (05–96–9922–302–A):		
401(C) Authority	140,747	7,460
Outlays	49,002	2,597
Total, Department of Agriculture:		
Budget Authority	9,612,072	509,438
Budget Authority—ASI	392	392
401(C) Authority	14,272,117	756,423
401(C) Authority—Off. Coll.	378,253	20,048
Obligation limitation	1,820,459	96,484
Direct Loan Limitation	18,518,195	981,464
Direct Loan Floor	2,053,158	108,817
Guaranteed Loan Limitation	8,672,563	459,646
Outlays	23,636,750	1,253,815
Department of Commerce		
General Administration		
Salaries and expenses (06–05–0120–376–A):		
Budget Authority	42,115	2,232
Outlays	40,346	2,138
Grants and loans administration (06–05–0125–452–A):		
Budget Authority	25,800	1,367
Outlays	22,652	1,201
Economic development assistance programs (06–05–2050–452–A):		
Budget Authority	188,581	9,995
Guaranteed Loan Limitation	194,250	10,295
Outlays	18,858	999
Bureau of the Census		
Salaries and expenses (06–07–0401–376–A):		
Budget Authority	100,174	5,309
401(C) Authority—Off. Coll.	8,000	424
Outlays	97,155	5,149
Periodic censuses and programs (06–07–0450–376–A):		
Budget Authority	582,094	30,851
Outlays	446,466	23,663
Economic and Statistical Analysis		
Salaries and expenses (06–08–1500–376–A):		
Budget Authority	34,322	1,819
401(C) Authority—Off. Coll.	395	21
Outlays	30,941	1,640
International Trade Administration		
Operations and administration (06–25–1250–376–A):		
Budget Authority	174,603	9,254
401(C) Authority—Off. Coll.	15,960	846
Outlays	139,055	7,370
Export Administration		
Operations and administration (06–30–0300–376–A):		
Budget Authority	41,819	2,216
Outlays	29,482	1,563

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Minority Business Development Agency		
Minority business development (06–40–0201–376–A):		
Budget Authority	41,225	2,185
Outlays	12,945	686
United States Travel and Tourism Administration		
Salaries and expenses (06–44–0700–376–A):		
Budget Authority	14,347	760
401(C) Authority—Off. Coll.	1,450	77
Outlays	12,210	647
National Oceanic and Atmospheric Administration		
Operations, research, and facilities (06–48–1450–306–A):		
Budget Authority	1,336,622	70,841
401(C) Authority—Off. Coll.	11,434	606
Outlays	927,753	49,171
Coastal energy impact fund (06–48–4315–452–A):		
401(C) Authority—Off. Coll.	5,200	276
Outlays	5,200	276
Federal ship financing fund, fishing vessels (06–48–4417–376–A):		
401(C) Authority—Off. Coll.	7,300	387
Guaranteed Loan Limitation	480,000	25,440
Outlays	7,300	387
Fishermen's contingency fund (06–48–5120–376–A):		
Budget Authority	745	39
Outlays	709	38
Foreign fishing observer fund (06–48–5122–376–A):		
Budget Authority	1,996	106
Outlays	1,918	102
Fisheries Promotional Fund (06–48–5124–376–A):		
Budget Authority	3,109	165
Outlays	1,713	91
Promote and develop fishery products and research (06–48–5139–376–A):		
401(C) Authority	3,350	178
Outlays	1,843	98
Aviation weather services program (06–48–8105–306–A):		
Budget Authority	29,751	1,577
Outlays	29,751	1,577
Patent and Trademark Office		
Salaries and expenses (06–51–1006–376–A):		
Budget Authority	113,518	6,016
401(C) Authority—Off. Coll.	180,032	9,542
Outlays	161,453	8,557
Technology Administration		
Information products and services (06–53–8546–376–A):		
401(C) Authority	50,000	2,650
Outlays	35,114	1,861
National Institute of Standards and Technology		
Scientific and technical research and services (06–55–0500–376–A):		
Budget Authority	164,030	8,694
Outlays	127,944	6,781
Working capital fund (06–55–4650–376–A):		
Budget Authority	1,563	83
Outlays	782	41
National Telecommunications and Information Admin.		
Salaries and expenses (06–60–0550–376–A):		
Budget Authority	14,210	753
Outlays	11,368	602
Public telecommunications facilities, planning and constructio (06–60–0551–503–A):		
Budget Authority	20,729	1,099
Outlays	2,405	127
Total, Department of Commerce:		
Budget Authority	2,931,353	155,361
401(C) Authority	53,350	2,828
401(C) Authority—Off. Coll.	229,771	12,179
Guaranteed Loan Limitation	674,250	35,735
Outlays	2,165,363	114,765
Department of Defense—Military		
Military Personnel		
Military personnel, Marine Corps (07–05–1105–051–A):		
Budget Authority	5,739,538	246,800
Outlays	5,513,400	237,076
Reserve personnel, Marine Corps (07–05–1108–051–A):		
Budget Authority	317,761	13,664
Outlays	292,340	12,571
Reserve personnel, Navy (07–05–1405–051–A):		
Budget Authority	1,602,458	68,906
Outlays	1,479,068	63,600
Military personnel, Navy (07–05–1453–051–A):		
Budget Authority	19,082,524	820,549
Outlays	18,311,590	787,398
Military personnel, Army (07–05–2010–051–A):		
Budget Authority	24,622,[illegible]	1,058,765
Outlays	23,339,607	1,003,603
National Guard personnel, Army (07–05–2060–051–A):		
Budget Authority	3,321,918	142,842
Outlays	3,007,000	129,301
Reserve personnel, Army (07–05–2070–051–A):		
Budget Authority	2,228,898	95,843
Outlays	2,039,664	87,706
Military personnel, Air Force (07–05–3500–051–A):		
Budget Authority	20,187,312	868,054
Outlays	19,387,894	833,679
Reserve personnel, Air Force (07–05–3700–051–A):		
Budget Authority	660,074	28,383
Outlays	616,509	26,510
National Guard personnel, Air Force (07–05–3850–051–A):		
Budget Authority	1,035,560	44,529
Outlays	981,400	42,200
Operation and Maintenance		
Operation and maintenance, Defense agencies (07–10–0100–051–A):		
Budget Authority	7,934,339	341,177
Outlays	6,553,763	281,812
Court of Military Appeals, Defense (07–10–0104–051–A):		
Budget Authority	3,651	157
Outlays	3,140	135
Drug Interdiction Defense (07–10–0105–051–A):		
Budget Authority	217,560	9,355
Outlays	97,902	4,210
Goodwill Games (07–10–0106–051–A):		
Budget Authority	5,180	223
Outlays	2,296	99
Foreign currency fluctuations, Defense (07–10–0801–051–A):		
Unobligated Balances—Defense	414,152	17,809
Humanitarian Assistance (07–10–0819–051–A):		
Budget Authority	10,360	445
Outlays	7,594	327
Operation and maintenance, Marine Corps (07–10–1106–051–A):		
Budget Authority	1,886,878	81,136
Outlays	1,317,041	56,633
Operation and maintenance, Marine Corps Reserve (07–10–1107–051–A):		
Budget Authority	80,380	3,456
Outlays	55,784	2,399
National Board for the Promotion of Rifle Practice, Army (07–10–1705–051–A):		
Budget Authority	4,467	192
Outlays	3,015	130
Operation and maintenance, Navy (07–10–1804–051–A):		
Budget Authority	25,886,909	1,113,137
Outlays	18,535,027	797,006
Operation and maintenance, Navy Reserve (07–10–1806–051–A):		
Budget Authority	1,014,277	43,614
Outlays	665,366	28,611
Operation and maintenance, Army (07–10–2020–051–A):		
Budget Authority	23,190,905	997,598
Outlays	18,211,925	783,113
Operation and maintenance, Army National Guard (07–10–2065–051–A):		
Budget Authority	1,873,342	80,554
Outlays	1,400,323	60,214
Operation and maintenance, Army Reserve (07–10–2080–051–A):		
Budget Authority	827,031	35,562
Outlays	595,462	25,605
Operation and maintenance, Air Force (07–10–3400–051–A):		
Budget Authority	22,720,449	976,979
Outlays	17,426,585	749,343
Operation and maintenance, Air Force Reserve (07–10–3740–051–A):		
Budget Authority	1,075,435	46,244
Outlays	861,424	37,041
Operation and maintenance, Air National Guard (07–10–3840–051–A):		
Budget Authority	2,050,310	88,163
Outlays	1,677,154	72,118
Procurement		
Procurement, Defense agencies (07–15–0300–051–A):		
Budget Authority	1,253,767	53,912
Unobligated Balances—Defense	349,815	15,042
Outlays	392,878	16,894
National Guard and Reserve Equipment (07–15–0350–051–A):		
Budget Authority	1,179,798	50,731
Unobligated Balances—Defense	442,388	19,023
Outlays	168,707	7,254

G-R-H Sequester Amounts—Continued

G-R-H Sequester Amounts—Continued

G-R-H Sequester Amounts—Continued

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Defense Production Act purchases (07–15–0360–051–A):		
Budget Authority	34,706	1,492
Unobligated Balances—Defense	45,850	1,972
Chemical agents and munitions destruction, Defense (07–15–0390–051–A):		
Budget Authority	185,952	7,996
Unobligated Balances—Defense	31,788	1,367
Outlays	77,302	3,324
Procurement, Marine Corps (07–15–1109–051–A):		
Budget Authority	1,343,526	57,772
Unobligated Balances—Defense	266,802	11,472
Outlays	317,235	13,641
Aircraft procurement, Navy (07–15–1506–051–A):		
Budget Authority	9,738,094	418,738
Unobligated Balances—Defense	1,865,544	80,218
Outlays	1,479,464	63,617
Weapons procurement, Navy (07–15–1507–051–A):		
Budget Authority	6,364,117	273,657
Unobligated Balances—Defense	2,295,631	98,712
Outlays	909,273	39,099
Shipbuilding and conversion, Navy (07–15–1611–051–A):		
Budget Authority	9,922,238	426,656
Unobligated Balances—Defense	9,802,211	421,495
Outlays	1,130,211	48,599
Other procurement, Navy (07–15–1810–051–A):		
Budget Authority	5,020,224	215,870
Unobligated Balances—Defense	1,804,590	77,597
Outlays	853,102	36,683
Aircraft procurement, Army (07–15–2031–051–A):		
Budget Authority	2,986,568	128,422
Unobligated Balances—Defense	555,538	23,888
Outlays	655,290	28,177
Missile procurement, Army (07–15–2032–051–A):		
Budget Authority	2,695,680	115,914
Unobligated Balances—Defense	779,755	33,529
Outlays	278,034	11,955
Procurement of weapons and tracked combat vehicles, Army (07–15–2033–051–A):		
Budget Authority	2,932,246	126,087
Unobligated Balances—Defense	1,303,644	56,057
Outlays	211,794	9,107
Procurement of ammunition, Army (07–15–2034–051–A):		
Budget Authority	2,085,670	89,684
Unobligated Balances—Defense	168,801	7,258
Outlays	721,430	31,021
Other procurement, Army (07–15–2035–051–A):		
Budget Authority	4,846,357	208,393
Unobligated Balances—Defense	1,602,125	68,891
Outlays	548,121	23,569
Aircraft procurement, Air Force (07–15–3010–051–A):		
Budget Authority	16,181,769	695,816
Unobligated Balances—Defense	6,053,661	260,307
Outlays	1,778,836	76,490
Missile procurement, Air Force (07–15–3020–051–A):		
Budget Authority	7,476,482	321,489
Unobligated Balances—Defense	2,758,717	118,625
Outlays	2,350,001	101,050
Other procurement, Air Force (07–15–3080–051–A):		
Budget Authority	8,483,824	364,804
Unobligated Balances—Defense	2,139,693	92,007
Outlays	5,832,310	250,789

Research, Development, Test, and Evaluation

Account Title	Sequester Base	Sequester Amount
Research, development, test, and evaluation, Defense agencies (07–20–0400–051–A):		
Budget Authority	8,509,054	365,889
Unobligated Balances—Defense	629,063	27,050
Outlays	4,666,835	200,674
Developmental test and evaluation, Defense (07–20–0450–051–A):		
Budget Authority	155,296	6,678
Unobligated Balances—Defense	34,398	1,479
Outlays	40,785	1,754
Operational test and evaluation, Defense (07–20–0460–051–A):		
Budget Authority	73,796	3,173
Unobligated Balances—Defense	20,694	890
Outlays	11,339	488
Research, development, test, and evaluation, Navy (07–20–1319–051–A):		
Budget Authority	9,685,535	416,478
Unobligated Balances—Defense	482,879	20,764
Outlays	5,643,470	242,669
Research, development, test, and evaluation, Army (07–20–2040–051–A):		
Budget Authority	5,330,104	229,194
Unobligated Balances—Defense	395,274	16,997
Outlays	3,085,980	132,697
Research, development, test, and evaluation, Air Force (07–20–3600–051–A):		
Budget Authority	15,322,591	658,871
Unobligated Balances—Defense	1,708,045	73,446
Outlays	9,068,814	389,959

Military Construction

Account Title	Sequester Base	Sequester Amount
Military construction, Defense agencies (07–25–0500–051–A):		
Budget Authority	703,996	30,272
Unobligated Balances—Defense	356,803	15,343
Outlays	194,126	8,347
Foreign currency fluctuations, construction (07–25–0803–051–A):		
Unobligated Balances—Defense	195,814	8,420
North Atlantic Treaty Organization infrastructure (07–25–0804–051–A):		
Budget Authority	509,712	21,918
Unobligated Balances—Defense	133,905	5,758
Military construction, Navy (07–25–1205–051–A):		
Budget Authority	1,634,653	70,290
Unobligated Balances—Defense	374,393	16,099
Outlays	478,153	20,561
Military construction, Naval Reserve (07–25–1235–051–A):		
Budget Authority	63,092	2,713
Unobligated Balances—Defense	10,927	470
Outlays	11,103	477
Military construction, Army (07–25–2050–051–A):		
Budget Authority	1,188,484	51,105
Unobligated Balances—Defense	437,348	18,806
Outlays	520,266	22,371
Military construction, Army National Guard (07–25–2085–051–A):		
Budget Authority	237,408	10,209
Unobligated Balances—Defense	44,743	1,924
Outlays	31,037	1,335
Military construction, Army Reserve (07–25–2086–051–A):		
Budget Authority	89,090	3,831
Unobligated Balances—Defense	21,950	944
Outlays	15,024	646
Military construction, Air Force (07–25–3300–051–A):		
Budget Authority	1,259,699	54,167
Unobligated Balances—Defense	649,510	27,929
Outlays	305,474	13,135
Military construction, Air Force Reserve (07–25–3730–051–A):		
Budget Authority	73,142	3,145
Unobligated Balances—Defense	23,702	1,019
Outlays	10,169	437
Military construction, Air National Guard (07–25–3830–051–A):		
Budget Authority	164,214	7,061
Unobligated Balances—Defense	53,309	2,292
Outlays	17,402	748

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Family Housing

Account Title	Sequester Base	Sequester Amount
Family housing, Army (07–30–0702–051–A):		
Budget Authority	1,582,902	68,065
Unobligated Balances—Defense	120,034	5,161
Outlays	1,046,060	44,981
Family housing, Navy and Marine Corps (07–30–0703–051–A):		
Budget Authority	827,806	35,596
Unobligated Balances—Defense	173,606	7,465
Outlays	360,663	15,508
Family housing, Air Force (07–30–0704–051–A):		
Budget Authority	954,037	41,024
Unobligated Balances—Defense	105,938	4,555
Outlays	567,253	24,392
Family housing, Defense agencies (07–30–0706–051–A):		
Budget Authority	21,445	922
Unobligated Balances—Defense	176	8
Outlays	13,568	583

Revolving and Management Funds

Account Title	Sequester Base	Sequester Amount
National Defense Stockpile transaction fund (07–40–4555–051–A):		
Budget Authority	34,706	1,492
Unobligated Balances—Defense	460,973	19,822
Navy stock fund (07–40–4911–051–A):		
Budget Authority	191,349	8,228
Outlays	63,145	2,715
Air Force stock fund (07–40–4921–051–A):		
Budget Authority	193,626	8,326
Outlays	63,897	2,748
Defense stock fund (07–40–4961–051–A):		
Budget Authority	25,900	1,114
Outlays	8,547	368
Army stock fund (07–40–4991–051–A):		
Budget Authority	302,408	13,004
Outlays	99,795	4,291

Allowances

Account Title	Sequester Base	Sequester Amount
GRH aggregate spendout rate requirement (07–45–9920–051–A):		
Outlays	–4,057,000	–174,451
Total, Department of Defense—Military:		
Budget Authority	299,454,029	12,876,523
Unobligated Balances—Defense	39,114,189	1,681,910
Outlays	182,352,165	7,841,142

Department of Defense—Civil

Cemeterial Expenses, Army

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (08–05–1805–705–A):		
Budget Authority	13,707	726
Outlays	10,225	542

Corps of Engineers—Civil

Account Title	Sequester Base	Sequester Amount
Flood control, Mississippi River and tributaries (08–10–3112–301–A):		
Budget Authority	351,161	18,612
401(C) Authority—Off. Coll.	195	10
Outlays	256,542	13,597
General investigations (08–10–3121–301–A):		
Budget Authority	148,386	7,864
Outlays	100,902	5,348
Construction, general (08–10–3122–301–A):		
Budget Authority	1,161,429	61,556
401(C) Authority—Off. Coll.	250	13
Outlays	464,731	24,631
Operation and maintenance, general (08–10–3123–301–A):		
Budget Authority	1,245,360	66,004
401(C) Authority—Off. Coll.	3,500	186
Outlays	1,012,241	53,649
Operation and maintenance, general (08–10–3123–303–A):		
Budget Authority	15,585	826
Outlays	15,586	826
General expenses (08–10–3124–301–A):		
Budget Authority	127,811	6,774
Outlays	102,248	5,419
Flood control and coastal emergencies (08–10–3125–301–A):		
Budget Authority	20,750	1,100
Regulatory Program (08–10–3126–301–A):		
Budget Authority	66,430	3,521
Outlays	63,108	3,345
Inland waterways trust fund (08–10–8861–301–A):		
Budget Authority	63,318	3,356
Outlays	63,318	3,356
Rivers and harbors contributed funds (08–10–8862–301–A):		
401(C) Authority	174,000	9,222
Outlays	59,101	3,132
Harbor maintenance trust fund (08–10–8863–301–A):		
Budget Authority	162,084	8,590
Outlays	162,084	8,590
Permanent appropriations (Water resources) (08–10–9921–301–A):		
401(C) Authority	7,000	371
Outlays	48	3
Permanent appropriations (08–10–9921–806–A):		
401(C) Authority	5,000	265

Soldiers' and Airmen's Home

Account Title	Sequester Base	Sequester Amount
Operation and maintenance (08–20–8931–705–A):		
Budget Authority	38,871	2,060
401(C) Authority—Off. Coll.	144	8
Outlays	34,012	1,803
Capital outlay (08–20–8932–705–A):		
Budget Authority	15,354	814
Outlays	5,374	285

Forest & Wildlife Conservation, Mil. Reservations

Account Title	Sequester Base	Sequester Amount
Wildlife conservation (08–30–5095–303–A):		
401(C) Authority	2,100	111
Outlays	1,400	74
Total, Department of Defense—Civil:		
Budget Authority	3,430,246	181,803
401(C) Authority	188,100	9,969
401(C) Authority—Off. Coll.	4,069	217
Outlays	2,350,920	124,600

Department of Education

Office of Elementary and Secondary Education

Account Title	Sequester Base	Sequester Amount
Indian education (18–10–0101–501–A):		
Budget Authority	74,149	3,930
Outlays	10,748	570
Impact aid (18–10–0102–501–A):		
Budget Authority	759,489	40,253
Outlays	604,356	32,031
Compensatory education for the disadvantaged (18–10–0900–501–A):		
Budget Authority	4,743,966	251,431
Outlays	569,278	30,172
School improvement programs (18–10–1000–501–A):		
Budget Authority	1,260,910	66,828
Outlays	151,310	8,019

Off. of Bilingual Ed. & Minority Languages Affairs

Account Title	Sequester Base	Sequester Amount
Bilingual, immigrant, and refugee education (18–15–1300–501–A):		
Budget Authority	204,500	10,838
Outlays	24,540	1,301

Office of Special Education & Rehabilitative Svcs.

Account Title	Sequester Base	Sequester Amount
Education for the handicapped (18–20–0300–501–A):		
Budget Authority	2,037,229	107,973
Outlays	251,471	13,328
Vocational rehabilitation (18–20–0301–506–A):		
Budget Authority	225,403	11,946
Outlays	173,560	9,199
Vocational rehab split for G-R-H: ASI (G-R-H) (18–20–0301–506–I):		
Budget Authority—ASI	60,400	60,400
Outlays	46,500	46,500
Special institutions for the handicapped (18–20–0604–501–C):		
Budget Authority	21,053	1,116
Outlays	19,790	1,049
Special institutions for the handicapped (APHB) (18–20–0604–501–D):		
Budget Authority	5,527	293
Outlays	5,527	293
Special institutions for the handicapped (NTID) (18–20–0604–502–B):		
Budget Authority	34,526	1,830
Outlays	34,526	1,830
Special institutions for the handicapped (Gallaudet) (18–20–0604–502–C):		
Budget Authority	47,321	2,508
Outlays	44,543	2,361

Office of Vocational and Adult Education

Account Title	Sequester Base	Sequester Amount
Vocational and adult education (18–30–0400–501–A):		
Budget Authority	1,112,110	58,942
401(C) Authority	7,148	379
Outlays	134,311	7,118

Office of Postsecondary Education

Account Title	Sequester Base	Sequester Amount
Student financial assistance (18–40–0200–502–A):		
Budget Authority	6,023,636	319,253
Outlays	1,448,201	76,755
Higher education (18–40–0201–502–A):		
Budget Authority	586,096	31,063
Outlays	86,922	4,607

G-R-H Sequester Amounts—Continued

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G-R-H Sequester Amounts—Continued

G-R-H Sequester Amounts—Continued

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Guaranteed student loans (18-40-0230-502-A):		
Budget Authority—Spec. Rules	42,170	42,170
Outlays	33,738	33,738
College housing and academic facilities loans (18-40-0242-502-A):		
Budget Authority	35,843	1,900
Direct Loan Limitation	30,707	1,627
Howard University (18-40-0803-502-A):		
Budget Authority	185,418	9,827
Outlays	176,981	9,380
College housing loans (18-40-4250-502-A):		
401(C) Authority—Off. Coll.	650	34
Outlays	650	34

Office of Educational Research and Improvement

Account Title	Sequester Base	Sequester Amount
Libraries (18-50-0104-803-A):		
Budget Authority	142,139	7,533
Outlays	50,149	2,658
Education research and statistics (18-50-1100-503-A):		
Budget Authority	81,015	4,294
Outlays	34,836	1,846

Departmental Management

Account Title	Sequester Base	Sequester Amount
Office for Civil Rights (18-80-0700-751-A):		
Budget Authority	43,468	2,304
Outlays	36,079	1,912
Salaries and expenses (Elementary, secondary and vocational ed.) (18-80-0800-501-A):		
Budget Authority	20,780	1,101
Outlays	17,248	914
Salaries and expenses (Higher education) (18-80-0800-502-A):		
Budget Authority	90,207	4,781
Outlays	74,872	3,968
Salaries and expenses (Research and general education aids) (18-80-0800-503-A):		
Budget Authority	127,491	6,757
Outlays	105,818	5,608
Salaries and expenses (Social services) (18-80-0800-506-A):		
Budget Authority	22,484	1,192
Outlays	18,662	989
Office of the Inspector General (18-80-1400-751-A):		
Budget Authority	19,430	1,030
Outlays	16,077	852
Total, Department of Education:		
Budget Authority	17,904,207	948,923
Budget Authority—ASI	60,400	60,400
Budget Authority—Spec. Rules	42,170	42,170
401(C) Authority	7,148	379
401(C) Authority—Off. Coll.	650	34
Direct Loan Limitation	30,707	1,627
Outlays	4,170,891	297,030

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Department of Energy

Atomic Energy Defense Activities

Account Title	Sequester Base	Sequester Amount
Atomic energy defense activities (19-10-0220-053-A):		
Budget Authority	8,392,954	360,897
Unobligated Balances—Defense	85,000	3,655
Outlays	8,258,331	226,022

Energy Programs

Account Title	Sequester Base	Sequester Amount
Geothermal resources development fund (19-20-0206-271-A):		
Budget Authority	78	4
Outlays	78	4
Federal Energy Regulatory Commission (19-20-0212-276-A):		
Budget Authority	113,427	6,012
Outlays	106,281	5,633
Fossil energy research and development (19-20-0213-271-A):		
Budget Authority	394,647	20,916
Outlays	157,859	8,367
Energy conservation (Energy conservation) (19-20-0215-272-A):		
Budget Authority	326,810	17,321
Outlays	3,698	196
Energy information administration (19-20-0216-276-A):		
Budget Authority	65,336	3,463
Outlays	42,469	2,251
Economic regulation (19-20-0217-276-A):		
Budget Authority	22,271	1,180
Outlays	14,031	744
Strategic petroleum reserve (19-20-0218-274-A):		
Budget Authority	179,737	9,526
Outlays	98,855	5,239
Naval petroleum and shale reserves (19-20-0219-271-A):		
Budget Authority	191,782	10,164
Outlays	102,028	5,407
General science and research activities (19-20-0222-251-A):		
Budget Authority	955,341	50,633
Outlays	650,598	34,482
Energy supply, R&D activities (19-20-0224-271-A):		
Budget Authority	2,219,987	117,659
Outlays	1,109,994	58,830
Uranium supply and enrichment activities (19-20-0226-271-A):		
401(C) Authority—Off. Coll.	1,325,900	70,273
Outlays	1,325,900	70,273
SPR petroleum (19-20-0233-274-A):		
Budget Authority	159,157	8,435
401(C) Authority	91,555	4,852
Outlays	203,826	10,803
Emergency preparedness (19-20-0234-274-A):		
Budget Authority	6,413	340
Outlays	5,130	272
Clean Coal Technology (19-20-0235-271-A):		
401(C) Authority	710,000	37,630
Outlays	25,650	1,359
Payments to states under Federal Power Act (19-20-5105-806-A):		
401(C) Authority	2,446	130
Nuclear waste disposal fund (19-20-5227-271-A):		
Budget Authority	377,068	19,985
Outlays	188,535	9,992

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Power Marketing Administration

Account Title	Sequester Base	Sequester Amount
Operation and maintenance, Southeastern Power Administration (19-50-0302-271-A):		
Budget Authority	932	49
Outlays	848	45
Operation and maintenance, Southwestern Power Administration (19-50-0303-271-A):		
Budget Authority	8,196	434
Outlays	4,713	250
Operation and maintenance, Alaska Power Administration (19-50-0304-271-A):		
Budget Authority	763	40
Outlays	366	19
Bonneville Power Administration fund (19-50-4045-271-A):		
401(C) Authority—Off. Coll.	45,800	2,427
Outlays	45,800	2,427
Colorado river basins power marketing fund, WAPA (19-50-4452-271-A):		
401(C) Authority—Off. Coll.	7,668	406
Outlays	7,668	406
Construction, rehabilitation, operation and maintenance, WAPA (19-50-5068-271-A):		
Budget Authority	41,376	2,193
Outlays	14,234	754

Departmental Administration

Account Title	Sequester Base	Sequester Amount
Departmental administration (Energy information, policy, & reg.) (19-60-0228-276-A):		
Budget Authority	191,092	10,128
401(C) Authority—Off. Coll.	228,715	12,122
Outlays	343,370	18,199
Total, Department of Energy:		
Budget Authority	13,847,367	639,379
401(C) Authority	804,001	42,612
401(C) Authority—Off. Coll.	1,608,083	85,228
Unobligated Balances—Defense	85,000	3,655
Outlays	9,708,261	461,974

Department of Health and Human Services

Food and Drug Administration

Account Title	Sequester Base	Sequester Amount
Program expenses (09-10-0600-554-A):		
Budget Authority	534,713	28,340
Outlays	427,770	22,672
Buildings and facilities (09-10-0603-554-A):		
Budget Authority	24,812	1,315
Outlays	2,977	158
Revolving fund for certification and other services (09-10-4309-554-A):		
401(C) Authority—Off. Coll.	3,216	170
Outlays	3,216	170

Health Resources and Services

Account Title	Sequester Base	Sequester Amount
Health resources and services (health care services) (09-15-0350-551-A):		
Budget Authority	979,060	51,890
401(C) Authority—Off. Coll.	365	19
Direct Loan Limitation	494	26
Outlays	590,141	31,277

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Health resources and services 2% split (G-R-H) (09-15-0350-551-G):		
Budget Authority—Spec. Rules	9,966	9,966
Outlays	6,009	6,009
Health resources and services (education and training) (09-15-0350-553-A):		
Budget Authority	184,730	9,791
Outlays	111,374	5,903

Indian Health

Account Title	Sequester Base	Sequester Amount
Tribal Health Administration (09-17-0390-551-A):		
Budget Authority	150,143	7,958
Outlays	126,036	6,680
Tribal and Federal Health Services 2% split (G-R-H) (09-17-0390-551-G):		
Budget Authority—Spec. Rules	18,197	18,197
Outlays	14,835	14,835
Indian health facilities 2% split (G-R-H) (09-17-0391-551-G):		
Budget Authority—Spec. Rules	1,233	1,233
Outlays	210	210

Centers for Disease Control

Account Title	Sequester Base	Sequester Amount
Disease control (Health care services) (09-20-0943-551-A):		
Budget Authority	893,294	47,345
Outlays	509,177	26,986
Disease control (Health research) (09-20-0943-552-A):		
Budget Authority	123,711	6,557
Outlays	70,515	3,737

National Institutes of Health

Account Title	Sequester Base	Sequester Amount
National Library of Medicine (Health research) (09-25-0807-552-A):		
Budget Authority	26,275	1,393
Outlays	16,291	863
National Library of Medicine (Education and training) (09-25-0807-553-A):		
Budget Authority	50,330	2,667
Outlays	31,205	1,654
John E. Fogarty International Center (09-25-0819-552-A):		
Budget Authority	16,404	869
Outlays	7,546	400
Buildings and facilities (09-25-0838-552-A):		
Budget Authority	39,878	2,114
Outlays	7,976	423
National Institute on Aging (Health research) (09-25-0843-552-A):		
Budget Authority	222,011	11,767
Outlays	67,713	3,589
National Institute on Aging (Education and training) (09-25-0843-553-A):		
Budget Authority	8,818	467
Outlays	2,672	142
Nat. Inst. Child Health and Human Development (Health research) (09-25-0844-552-A):		
Budget Authority	423,825	22,463
Outlays	130,423	6,912
Nat. Inst. Child Health and Human Development (Ed. & training) (09-25-0844-553-A):		
Budget Authority	17,200	912
Outlays	1,722	91
Office of the Director (Health research) (09-25-0846-552-A):		
Budget Authority	67,993	3,604
Outlays	41,476	2,198

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Office of the Director (Education and training) (09-25-0846-553-A):		
Budget Authority	7,063	374
Outlays	4,308	228
Research resources (Health research) (09-25-0848-552-A):		
Budget Authority	368,845	19,549
Outlays	204,709	10,850
Research resources (Education and training) (09-25-0848-553-A):		
Budget Authority	2,363	125
Outlays	142	8
National Cancer Institute (Health research) (09-25-0849-552-A):		
Budget Authority	1,596,751	84,628
Outlays	653,071	34,613
National Cancer Institute (Education and training) (09-25-0849-553-A):		
Budget Authority	34,425	1,825
Outlays	1,205	64
National Institute of General Medical Sciences (Health research) (09-25-0851-552-A):		
Budget Authority	630,185	33,400
Outlays	252,074	13,360
National Institute of General Medical Sciences (Ed. & training) (09-25-0851-553-A):		
Budget Authority	76,721	4,066
Outlays	30,688	1,626
National Institute of Environmental Health Sciences (Research) (09-25-0862-552-A):		
Budget Authority	222,033	11,768
Outlays	111,017	5,884
National Institute of Environmental Health Sciences (Ed.&train.) (09-25-0862-553-A):		
Budget Authority	9,714	515
Outlays	4,857	257
National Heart, Lung and Blood Institute (Health research) (09-25-0872-552-A):		
Budget Authority	1,040,091	55,125
Outlays	397,315	21,058
National Heart, Lung and Blood Institute (Education & training) (09-25-0872-553-A):		
Budget Authority	43,626	2,312
Outlays	1,745	92
National Institute of Dental Research (Health research) (09-25-0873-552-A):		
Budget Authority	129,663	6,872
Outlays	66,128	3,505
National Institute of Dental Research (Education and training) (09-25-0873-553-A):		
Budget Authority	5,926	314
Outlays	2,963	157
National Insti. of Diabetes, and Digestive and Kidney Diseases (09-25-0884-552-A):		
Budget Authority	557,904	29,569
Outlays	201,961	10,704
National Insti. of Diabetes, and Digestive and Kidney Diseases (09-25-0884-553-A):		
Budget Authority	22,101	1,171
Outlays	6,697	355
National Institute of Allergy & Infectious Diseases (Research) (09-25-0885-552-A):		
Budget Authority	754,275	39,977
Outlays	217,985	11,553
National Institute of Allergy & Infectious Diseases (Ed.&train.) (09-25-0885-553-A):		
Budget Authority	15,108	801
Outlays	2,266	120
National Institute of Neurological Disorders and Stroke (09-25-0886-552-A):		
Budget Authority	484,728	25,691
Outlays	185,598	9,837

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
National Institute of Neurological Disorders and Stroke (09-25-0886-553-A):		
Budget Authority	12,804	679
Outlays	3,662	194
National Eye Institute (Health research) (09-25-0887-552-A):		
Budget Authority	233,572	12,379
Outlays	78,486	4,160
National Eye Institute (Education and training) (09-25-0887-553-A):		
Budget Authority	6,235	330
Outlays	599	32
National Ins. of Arthritis and Musculoskeletal and Skin Diseas (09-25-0888-552-A):		
Budget Authority	159,753	8,467
Outlays	58,310	3,090
National Ins. of Arthritis and Musculoskeletal and Skin Diseas (09-25-0888-553-A):		
Budget Authority	6,009	318
Outlays	2,133	113
National Center for Nursing Research (09-25-0889-552-A):		
Budget Authority	26,239	1,391
Outlays	8,396	445
National Center for Nursing Research (09-25-0889-553-A):		
Budget Authority	3,955	210
Outlays	1,266	67
NID and Other Communication Disorders (09-25-0890-552-A):		
Budget Authority	87,208	4,622
Outlays	33,365	1,768
NID and Other Communication Disorders (09-25-0890-553-A):		
Budget Authority	2,501	133
Outlays	734	39

Alcohol,Drug Abuse, & Mental Health Administration

Account Title	Sequester Base	Sequester Amount
Federal subsidy for St. Elizabeths Hospital (09-30-1300-551-A):		
Budget Authority	24,566	1,302
Outlays	24,566	1,302
Alcohol, drug abuse, and mental health (Health care services) (09-30-1361-551-A):		
Budget Authority	1,150,798	60,992
Outlays	739,963	39,218
Alcohol, drug abuse, and mental health (Health research) (09-30-1361-552-A):		
Budget Authority	713,405	37,810
Outlays	627,103	33,236
Alcohol, drug abuse, and mental health (Education and training) (09-30-1361-553-A):		
Budget Authority	46,469	2,463
Outlays	36,711	1,946

Office of Assistant Secretary for Health

Account Title	Sequester Base	Sequester Amount
Public health service management (Health care services) (09-37-1101-551-A):		
Budget Authority	45,326	2,402
Outlays	30,368	1,610
Public health service management (Health research) (09-37-1101-552-A):		
Budget Authority	26,611	1,410
Outlays	20,314	1,077

Health Care Financing Administration

Account Title	Sequester Base	Sequester Amount
Program management (Health care services) (09-38-0511-551-A):		
Budget Authority	86,876	4,604
Outlays	76,852	4,073

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Program management (Health research) (09–38–0511–552–A):		
Budget Authority	10,236	542
Outlays	921	49
Health maintenance organization loan and loan guarantee fund (09–38–4420–551–A):		
Obligation limitation	5,000	265
Outlays	–5,000	–265
Federal supplementary medical insurance trust fund (09–38–8004–571–A):		
401(C) Authority	53,440	2,832
Obligation limitation	1,253,515	66,436
Outlays	1,131,526	59,971
FSMI 2% split (G-R-H) (09–38–8004–571–S):		
401(C) Authority—Spec. Rules	372,000	372,000
Outlays	372,000	372,000
Federal hospital insurance trust fund (09–38–8005–571–A):		
401(C) Authority	201,036	10,655
Obligation limitation	1,294,996	68,635
Outlays	1,076,319	57,045
FHI 2% split (G-R-H) (09–38–8005–571–S):		
401(C) Authority—Spec. Rules	1,140,000	1,140,000
Outlays	1,140,000	1,140,000
Federal Catastrophic drug insurance trust fund (09–38–8183–571–S):		
401(C) Authority—Spec. Rules	2,560	2,560
Outlays	2,560	2,560
Federal supplementary medical insurance trust fund, catastro. (09–38–8184–571–A):		
Obligation limitation	129,343	6,855
Outlays	156,770	8,309
Federal supplementary medical insurance trust fund, catastro. (09–38–8184–571–S):		
401(C) Authority—Spec. Rules	12,000	12,000
Outlays	12,000	12,000

Social Security Administration

Account Title	Sequester Base	Sequester Amount
Supplemental security income program (09–60–0406–609–A):		
Budget Authority	824,117	43,678
Outlays	824,117	43,678
Special benefits for disabled coal miners (09–60–0409–601–A):		
Budget Authority	6,966	369
Outlays	6,966	369

Family Support Administration

Account Title	Sequester Base	Sequester Amount
Program administration (09–70–1500–609–A):		
Budget Authority	84,862	4,498
401(C) Authority—Off. Coll.	450	24
Outlays	64,170	3,401
Family support payment to States (CSE) (09–70–1501–609–B):		
Budget Authority	1,309,000	69,377
Outlays	1,309,000	69,377
Low income home energy assistance (09–70–1502–609–A):		
Budget Authority	1,432,995	75,949
Outlays	1,304,025	69,113
Refugee and Entrant Assistance (09–70–1503–609–A):		
Budget Authority	396,121	20,994
Outlays	257,479	13,646
Community services block grant (09–70–1504–506–A):		
Budget Authority	394,300	20,898
Outlays	272,067	14,420
Work incentives (09–70–1505–504–A):		
Budget Authority	94,732	5,021
Outlays	89,048	4,720
Interim assistance to States for legalization (09–70–1508–506–A):		
401(C) Authority	870,000	46,110
Outlays	217,500	11,528
Payments to states for AFDC work programs (09–70–1509–609–A):		
Budget Authority	257,721	13,659
Outlays	257,721	13,659

Human Development Services

Account Title	Sequester Base	Sequester Amount
Social services block grant (09–80–1634–506–A):		
Budget Authority	2,700,000	143,100
Outlays	2,565,000	135,945
Human development services (09–80–1636–506–A):		
Budget Authority	2,667,229	141,363
Outlays	1,463,899	77,587
Payments to State for foster care and adoption assistance (09–80–1645–506–A):		
Budget Authority—Spec. Rules	5,132	5,132
Outlays	3,683	3,683

Departmental Management

Account Title	Sequester Base	Sequester Amount
General Departmental administration (09–90–0120–609–A):		
Budget Authority	70,202	3,721
Outlays	49,141	2,604
Policy research (09–90–0122–609–A):		
Budget Authority	8,136	431
Outlays	3,255	173
Office of the Inspector General (09–90–0128–609–A):		
Budget Authority	51,247	2,716
Outlays	38,435	2,037
Office for Civil Rights (09–90–0135–751–A):		
Budget Authority	16,680	884
Outlays	15,179	804
Office of Consumer Affairs (09–90–0137–506–A):		
Budget Authority	1,778	94
Outlays	1,422	75
Total, Department of Health and Human Services:		
Budget Authority	22,723,370	1,204,340
Budget Authority—Spec. Rules	34,528	34,528
401(C) Authority	1,124,478	59,597
401(C) Authority—Off. Coll.	4,031	213
401(C) Authority—Spec. Rules	1,526,560	1,526,560
Obligation limitation	2,682,856	142,191
Direct Loan Limitation	494	26
Outlays	18,866,046	2,470,038

Health and Human Services Social Security

Social Security

Account Title	Sequester Base	Sequester Amount
Federal old-age and survivors insurance trust fund (16–05–8006–651–A):		
Obligation limitation	1,362,950	72,236
Outlays	1,226,455	65,002
Federal disability insurance trust fund (16–05–8007–651–A):		
Obligation limitation	507,990	26,923
Outlays	417,433	22,124
Total, Health and Human Services Social Security:		
Obligation limitation	1,870,940	99,159
Outlays	1,643,888	87,126

Department of Housing and Urban Development

Housing Programs

Account Title	Sequester Base	Sequester Amount
Housing counseling assistance (25–02–0156–506–A):		
Budget Authority	3,626	192
Subsidized housing programs (Community development) (25–02–0164–451–A):		
Budget Authority	5,180	275
Subsidized housing programs (Housing assistance) (25–02–0164–604–A):		
Budget Authority	7,342,406	389,148
Outlays	88,109	4,670
Congregate services program (25–02–0178–604–A):		
Budget Authority	5,594	296
Transitional and supportive housing demonstration program (25–02–0188–604–A):		
Budget Authority	82,880	4,393
Rental housing assistance fund (25–02–4041–604–A):		
401(C) Authority—Off. Coll.	50,000	2,650
Outlays	50,000	2,650
Nonprofit sponsor assistance (25–02–4042–604–A):		
Direct Loan Limitation	995	53
Federal Housing Administration fund (25–02–4070–371–A):		
Obligation limitation	397,896	21,088
Direct Loan Limitation	107,071	5,675
Guaranteed Loan Limitation	99,456,000	5,271,168
Outlays	397,896	21,088
Housing for the elderly or handicapped fund (25–02–4115–371–A):		
Direct Loan Limitation	497,280	26,356
Interstate land sales (25–02–5270–376–A):		
401(C) Authority	600	32
Outlays	600	32
Manufactured home inspection and monitoring (25–02–5271–376–A):		
401(C) Authority	7,320	388
Outlays	6,337	336

Public and Indian Housing Programs

Account Title	Sequester Base	Sequester Amount
Payments for operation of low income housing projects (25–03–0163–604–A):		
Budget Authority	1,766,906	93,646
Outlays	812,777	43,077

Government National Mortgage Association

Account Title	Sequester Base	Sequester Amount
Guarantees of mortgage-backed securities (25–04–4238–371–A):		
401(C) Authority—Off. Coll.	5,588	296
Guaranteed Loan Limitation	144,000,000	7,632,000
Outlays	5,588	296

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Community Planning and Development

Account Title	Sequester Base	Sequester Amount
Community development grants (25–06–0162–451–A):		
Budget Authority	2,745,400	145,506
Guaranteed Loan Limitation	149,000	7,897
Outlays	109,816	5,820
Urban homesteading (25–06–0171–451–A):		
Budget Authority	13,675	725
Outlays	13,675	725
Emergency shelter grants program (25–06–0181–604–A):		
Budget Authority	48,174	2,553
Outlays	9,635	511
Rental rehabilitation grants (25–06–0182–451–A):		
Budget Authority	155,400	8,236
Rehabilitation loan fund (25–06–4036–451–A):		
401(C) Authority—Off. Coll.	12,700	673
Direct Loan Limitation	85,212	4,516
Outlays	12,700	673

Policy Development and Research

Account Title	Sequester Base	Sequester Amount
Research and technology (25–28–0108–451–A):		
Budget Authority	17,819	944
Outlays	5,340	283

Fair Housing and Equal Opportunity

Account Title	Sequester Base	Sequester Amount
Fair housing activities (25–29–0144–751–A):		
Budget Authority	10,360	549
Outlays	1,865	99

Management and Administration

Account Title	Sequester Base	Sequester Amount
Salaries & expenses, incl. transfer of funds (Community dev.) (25–35–0143–451–A):		
Budget Authority	174,745	9,261
Outlays	134,515	7,129
Salaries & expenses, incl. transfer of funds (Public assist.) (25–35–0143–604–A):		
Budget Authority	158,282	8,389
Outlays	121,878	6,460
Salaries & expenses, incl. transfer of funds (Federal law acts.) (25–35–0143–751–A):		
Budget Authority	15,507	822
Outlays	11,940	633
Total, Department of Housing and Urban Development:		
Budget Authority	12,545,954	664,935
401(C) Authority	7,920	420
401(C) Authority—Off. Coll.	68,288	3,619
Obligation limitation	397,896	21,088
Direct Loan Limitation	690,558	36,600
Guaranteed Loan Limitation	243,605,000	12,911,065
Outlays	1,782,671	94,482

Department of the Interior

Bureau of Land Management

Account Title	Sequester Base	Sequester Amount
Management of lands and resources (10–04–1109–302–A):		
Budget Authority	527,053	27,934
Outlays	420,007	22,260
Construction and access (10–04–1110–302–A):		
Budget Authority	5,637	299
Outlays	1,408	75
Payments in lieu of taxes (10–04–1114–806–A):		
Budget Authority	108,781	5,765
Outlays	108,619	5,757
Oregon and California grant lands (10–04–1116–302–A):		
Budget Authority	62,538	3,315
Outlays	46,277	2,453
Special acquisition of lands and minerals (10–04–1117–302–A):		
401(C) Authority	1,300	69
Service charges, deposits, and forfeitures (10–04–5017–302–A):		
Budget Authority	6,240	331
Outlays	5,485	291
Land acquisition (10–04–5033–302–A):		
Budget Authority	12,738	675
Outlays	6,317	335
Operation and maintenance of quarters (10–04–5048–302–A):		
401(C) Authority	250	13
Outlays	209	11
Range improvements (10–04–5132–302–A):		
Budget Authority	8,406	446
Outlays	5,313	282
Miscellaneous permanent appropriations (10–04–9921–302–A):		
401(C) Authority	7,000	371
Outlays	5,948	315
Miscellaneous permanent appropriations (10–04–9921–806–A):		
401(C) Authority	122,954	6,517
Outlays	122,954	6,517
Miscellaneous trust funds (10–04–9971–302–A):		
Budget Authority	100	5
401(C) Authority	600	32
Outlays	356	19

Minerals Management Service

Account Title	Sequester Base	Sequester Amount
Leasing and royalty management (10–06–1917–302–A):		
Budget Authority	177,756	9,421
Outlays	115,541	6,124
Payments to states from receipts under Mineral Leasing Act (10–06–5003–806–A):		
401(C) Authority	464,195	24,602
Outlays	464,195	24,602

Office of Surface Mining Reclamation & Enforcement

Account Title	Sequester Base	Sequester Amount
Regulation and technology (10–08–1801–302–A):		
Budget Authority	106,611	5,650
Outlays	62,154	3,294
Abandoned mine reclamation fund (10–08–5015–302–A):		
Budget Authority	200,265	10,614
Outlays	55,473	2,940

Bureau of Reclamation

Account Title	Sequester Base	Sequester Amount
Loan program (10–10–0667–301–A):		
Budget Authority	26,967	1,429
Direct Loan Limitation	28,766	1,525
Outlays	16,585	879
Construction program (10–10–0684–301–A):		
Budget Authority	739,098	39,172
401(C) Authority—Off. Coll.	4,000	212
Outlays	624,842	33,117
Lower Colorado River basin development fund (10–10–4079–301–A):		
401(C) Authority—Off. Coll.	95,456	5,059
Outlays	95,456	5,059
Upper Colorado River basin fund (10–10–4081–301–A):		
401(C) Authority—Off. Coll.	32,375	1,716
Outlays	32,375	1,716
Working capital fund (10–10–4524–301–A):		
Budget Authority	4,144	220
Outlays	3,315	176
Emergency fund (10–10–5043–301–A):		
Budget Authority	1,036	55
Outlays	627	33
General investigations (10–10–5060–301–A):		
Budget Authority	14,842	787
401(C) Authority—Off. Coll.	75	4
Outlays	9,633	511
Operation and maintenance (10–10–5064–301–A):		
Budget Authority	195,305	10,351
401(C) Authority—Off. Coll.	10,136	537
Outlays	161,888	8,580
General administrative expenses (10–10–5065–301–A):		
Budget Authority	50,339	2,668
Outlays	45,305	2,401
Colorado River Dam Fund, Boulder Canyon Project (10–10–5656–301–A):		
401(C) Authority	48,650	2,578
Outlays	27,877	1,477
Reclamation trust funds (10–10–8070–301–A):		
401(C) Authority	54,100	2,867
Outlays	43,280	2,294
Miscellaneous permanent appropriations (10–10–9922–806–A):		
401(C) Authority	282	15
Outlays	226	12

Geological Survey

Account Title	Sequester Base	Sequester Amount
Surveys, investigations and research (10–12–0804–306–A):		
Budget Authority	469,491	24,883
401(C) Authority	250	13
401(C) Authority—Off. Coll.	75,405	3,996
Outlays	521,421	27,635
Operation and maintenance of quarters (10–12–5055–306–A):		
401(C) Authority	75	4
Outlays	40	2

Bureau of Mines

Account Title	Sequester Base	Sequester Amount
Mines and minerals (10–14–0959–306–A):		
Budget Authority	165,878	8,792
Outlays	106,328	5,635
Helium fund (10–14–4053–306–A):		
401(C) Authority—Off. Coll.	3,453	183
Outlays	3,453	183

Fish and Wildlife Service

Account Title	Sequester Base	Sequester Amount
Resource management (10–18–1611–303–A):		
Budget Authority	372,731	19,755
401(C) Authority—Off. Coll.	5,776	306
Outlays	302,561	16,036
Construction (10–18–1612–303–A):		
Budget Authority	33,007	1,749
Outlays	6,601	350
Land acquisition (10–18–5020–303–A):		
Budget Authority	77,494	4,107
Outlays	34,812	1,845

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G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Operations and maintenance of quarters (10–18–5050–303–A):		
401(C) Authority	1,736	92
Outlays	478	25
National wildlife refuge fund (10–18–5091–806–A):		
Budget Authority	6,884	365
401(C) Authority	6,040	320
Outlays	8,811	467
Migratory bird conservation account (10–18–5137–303–A):		
401(C) Authority	30,600	1,622
Outlays	21,420	1,135
Sport fish restoration (10–18–8151–303–A):		
401(C) Authority	192,891	10,223
Outlays	57,867	3,067
Contributed funds (10–18–8216–303–A):		
401(C) Authority	4,165	221
Outlays	1,832	97
Miscellaneous permanent appropriations (10–18–9923–303–A):		
401(C) Authority	129,200	6,848
Outlays	38,760	2,054
National Park Service		
Operation of the national park system (10–24–1036–303–A):		
Budget Authority	772,283	40,930
401(C) Authority— Off. Coll.	2,800	148
Outlays	577,497	30,607
John F. Kennedy Center for the Performing Arts (10–24–1038–303–A):		
Budget Authority	5,392	286
Outlays	4,044	214
Construction (10–24–1039–303–A):		
Budget Authority	164,984	8,744
401(C) Authority— Off. Coll.	11,000	583
Outlays	35,748	1,895
National recreation and preservation (10–24–1042–303–A):		
Budget Authority	15,231	807
Outlays	11,423	605
Illinois & Michigan Canal National Heritage-Corridor Commissio (10–24–1043–303–A):		
Budget Authority	260	14
Outlays	130	7
Land acquisition (10–24–5035–303–A):		
Budget Authority	45,301	2,401
401(C) Authority	30,000	1,590
Outlays	30,582	1,621
Operations and maintenance of quarters (10–24–5049–303–A):		
401(C) Authority	8,632	457
Outlays	6,411	340
Historic preservation fund (10–24–5140–303–A):		
Budget Authority	31,598	1,675
Outlays	16,279	863
Miscellaneous permanent appropriations (10–24–9924–303–A):		
401(C) Authority	953	50
Outlays	136	7
Bureau of Indian Affairs		
Operation of Indian programs (Conservation and land management) (10–76–2100–302–A):		
Budget Authority	152,845	8,101
Outlays	116,168	6,157
Operation of Indian programs (Area and regional development) (10–76–2100–452–A):		
Budget Authority	598,356	31,713
401(C) Authority— Off. Coll.	4,000	212
Outlays	512,602	27,168
Operation of Indian programs (Elementary, secondary, & vo. ed.) (10–76–2100–501–A):		
Budget Authority	279,275	14,802
Outlays	237,384	12,581
Construction (10–76–2301–452–A):		
Budget Authority	98,336	5,212
Outlays	22,617	1,199
Revolving fund for loans (10–76–4409–452–A):		
401(C) Authority— Off. Coll.	11,070	587
Direct Loan Limitation	13,000	689
Outlays	24,070	1,276
Indian loan guaranty and insurance fund (10–76–4410–452–A):		
Budget Authority	3,481	185
Guaranteed Loan Limitation	45,000	2,385
Outlays	1,955	104
Operations and maintenance of quarters (10–76–5051–452–A):		
401(C) Authority	7,000	371
Outlays	5,000	265
Cooperative fund (Papago) (10–76–8366–452–A):		
401(C) Authority	1,232	65
Miscellaneous permanent appropriations (Area and regional dev.) (10–76–9925–452–A):		
401(C) Authority	50,359	2,669
Outlays	32,104	1,702
Miscellaneous permanent appropriations (10–76–9925–806–A):		
401(C) Authority	2,000	106
Outlays	1,275	68
Office of Territorial Affairs		
Administration of territories (10–82–0412–808–A):		
Budget Authority	62,289	3,301
Outlays	31,833	1,687
Trust Territory of the Pacific Islands (10–82–0414–808–A):		
Budget Authority	29,458	1,561
Outlays	26,218	1,390
Compact of free association (10–82–0415–808–A):		
Budget Authority	28,345	1,502
Outlays	28,345	1,502
Office of the Secretary		
Salaries and Expenses (10–84–0102–306–A):		
Budget Authority	51,127	2,710
Outlays	43,458	2,303
Construction management (10–84–0103–306–A):		
Budget Authority	1,873	99
Outlays	1,688	89
Oil spill emergency fund (10–84–0119–306–A):		
Budget Authority	7,563	401
Outlays	3,782	200
Office of the Solicitor		
Office of the Solicitor (10–86–0107–306–A):		
Budget Authority	25,756	1,365
Outlays	23,180	1,229
Office of Inspector General		
Office of Inspector General (10–88–0104–306–A):		
Budget Authority	19,563	1,037
Outlays	17,607	933
Total, Department of the Interior:		
Budget Authority	5,766,647	305,634
401(C) Authority	1,164,464	61,715
401(C) Authority— Off. Coll.	255,546	13,543
Direct Loan Limitation	41,766	2,214
Guaranteed Loan Limitation	45,000	2,385
Outlays	5,397,585	286,073
Department of Justice		
General Administration		
Salaries and expenses (11–03–0129–751–A):		
Budget Authority	89,521	4,745
Outlays	80,210	4,251
Office of the Inspector General (11–03–0328–751–A):		
Budget Authority	9,448	501
Outlays	8,465	449
Emergency drug funding (11–03–0331–751–A):		
Budget Authority	73,556	3,898
Outlays	21,016	1,114
United States Parole Commission		
Salaries and expenses (11–04–1061–751–A):		
Budget Authority	11,358	602
Outlays	9,769	518
Legal Activities		
Salaries and expenses, Foreign Claims Settlement Commission (11–05–0100–153–A):		
Budget Authority	492	26
Outlays	357	19
Salaries and expenses, General legal activities (11–05–0128–752–A):		
Budget Authority	256,929	13,617
Outlays	223,527	11,847
Fees and expenses of witnesses (11–05–0311–752–A):		
Budget Authority	54,082	2,866
Outlays	37,911	2,009
Salaries and expenses, Antitrust Division (11–05–0319–752–A):		
Budget Authority	46,834	2,482
Outlays	38,306	2,030
Salaries and expenses, United States Attorneys (11–05–0322–752–A):		
Budget Authority	479,917	25,436
Outlays	422,327	22,383
Salaries and expenses, United States Marshals Service (11–05–0324–752–A):		
Budget Authority	213,857	11,334
401(C) Authority— Off. Coll.	4,108	218
Outlays	196,579	10,419
Independent counsel (11–05–0327–752–A):		
401(C) Authority	6,000	318
Outlays	6,000	318
Salaries and expenses, Community Relations Service (11–05–0500–752–A):		
Budget Authority	28,923	1,533
Outlays	24,586	1,303
Support of United States prisoners (11–05–1020–752–A):		
Budget Authority	114,089	6,047
Outlays	68,454	3,628
Assets forfeiture fund (11–05–5042–752–A):		
Budget Authority	75,391	3,996
401(C) Authority	237,729	12,600
Outlays	125,248	6,638

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
United States trustees system fund (11–05–5073–752–A):		
Budget Authority	49,424	2,619
Outlays	44,481	2,357
Federal Bureau of Investigation		
Salaries and expenses (11–10–0200–751–A):		
Budget Authority	1,500,638	79,534
401(C) Authority— Off. Coll.	24,354	1,291
Outlays	1,224,865	64,918
Drug Enforcement Administration		
Salaries and expenses (11–12–1100–751–A):		
Budget Authority	556,591	29,499
401(C) Authority— Off. Coll.	1,500	80
Outlays	418,943	22,204
Immigration and Naturalization Service		
Salaries and expenses (11–15–1217–751–A):		
Budget Authority	856,888	45,415
401(C) Authority— Off. Coll.	3,817	202
Outlays	689,327	36,534
Immigration legalization (11–15–5086–751–A):		
401(C) Authority	54,792	2,904
Outlays	54,792	2,904
Immigration user fee (11–15–5087–751–A):		
401(C) Authority	105,000	5,565
Outlays	104,900	5,560
Immigration examinations fee (11–15–5088–751–A):		
401(C) Authority	54,000	2,862
Outlays	54,000	2,862
Federal Prison System		
Buildings and facilities (11–20–1003–753–A):		
Budget Authority	312,789	16,578
Outlays	28,696	1,521
National Institute of Corrections (11–20–1004–754–A):		
Budget Authority	9,957	528
Outlays	3,983	211
Salaries and expenses (11–20–1060–753–A):		
Budget Authority	991,658	52,558
401(C) Authority— Off. Coll.	12,746	676
Outlays	933,005	49,449
Federal Prison Industries, Incorporated (11–20–4500–753–A):		
Budget Authority	20,720	1,098
Obligation limitation	2,857	151
Outlays	23,577	1,250
Office of Justice Programs		
Justice assistance (11–21–0401–754–A):		
Budget Authority	335,006	17,755
Outlays	123,251	6,532
Crime Victims Fund (11–21–5041–754–A):		
401(C) Authority	125,000	6,625
Outlays	62,500	3,312
Total, Department of Justice:		
Budget Authority	6,088,068	322,667
401(C) Authority	582,521	30,874
401(C) Authority— Off. Coll.	46,525	2,467
Obligation limitation	2,857	151
Outlays	5,029,075	266,540
Department of Labor		
Employment and Training Administration		
Program administration (12–05–0172–504–A):		
Budget Authority	73,822	3,913
Outlays	58,423	3,096
Training and employment services (12–05–0174–504–A):		
Budget Authority	3,872,772	205,257
Outlays	149,102	7,902
Community service employment for older Americans (12–05–0175–504–A):		
Budget Authority	356,202	18,879
Outlays	65,339	3,463
State unemployment insurance and employment services (12–05–0179–504–A):		
Budget Authority	23,371	1,239
Outlays	5,575	295
Federal unemployment benefits and allowances (12–05–0326–504–A):		
Budget Authority	80,000	4,240
Outlays	24,000	1,272
Federal unemployment benefits and allowances (12–05–0326–603–A):		
Budget Authority	[illegible]	10,812
Outlays	[illegible]	10,812
Unemployment trust fund (Training and employment) (12–05–8042–504–A):		
Obligation limitation	1,083,023	57,400
Outlays	453,321	24,026
Unemployment trust fund (Unemployment compensation) (12–05–8042–603–A):		
401(C) Authority	129,100	6,842
Obligation limitation	1,735,999	92,008
Outlays	1,865,099	98,850
Labor-Management Services		
Salaries and expenses (12–10–0104–505–A):		
Budget Authority	75,218	3,987
Outlays	63,875	3,385
Pension Benefit Guaranty Corporation		
Pension Benefit Guaranty Corporation fund (12–12–4204–601–A):		
Obligation limitation	72,588	3,847
Outlays	72,588	3,847
Employment Standards Administration		
Salaries and expenses (12–15–0105–505–A):		
Budget Authority	221,051	11,716
401(C) Authority— Off. Coll.	1,500	80
Outlays	191,162	10,132
Black lung disability trust fund (12–15–8144–601–A):		
Budget Authority	58,743	3,113
Outlays	58,743	3,113
Special workers' compensation expenses (12–15–9971–601–A):		
Obligation limitation	539	29
Outlays	539	29
Occupational Safety and Health Administration		
Salaries and expenses (12–18–0400–554–A):		
Budget Authority	257,726	13,660
Outlays	230,073	12,194
Mine Safety and Health Administration		
Salaries and expenses (12–19–1200–554–A):		
Budget Authority	169,712	8,995
Outlays	153,912	8,157
Bureau of Labor Statistics		
Salaries and expenses (12–20–0200–505–A):		
Budget Authority	195,752	10,375
401(C) Authority— Off. Coll.	1,100	58
Outlays	167,606	8,883
Departmental Management		
Inspector General salaries and expenses (12–25–0106–505–A):		
Budget Authority	41,208	2,184
Outlays	35,875	1,901
Salaries and expenses (12–25–0165–505–A):		
Budget Authority	123,464	6,544
Outlays	101,981	5,405
Total, Department of Labor:		
Budget Authority	5,753,043	304,914
401(C) Authority	129,100	6,842
401(C) Authority— Off. Coll.	2,600	138
Obligation limitation	2,892,149	153,284
Outlays	3,901,215	206,762
Department of State		
Administration of Foreign Affairs		
Salaries and expenses (14–05–0113–153–A):		
Budget Authority	1,860,119	98,586
Outlays	1,469,494	77,883
Protection of foreign missions and officials (14–05–0520–153–A):		
Budget Authority	9,428	500
Outlays	3,809	202
Emergencies in the diplomatic and consular service (14–05–0522–153–A):		
Budget Authority	4,662	247
Direct Loan Limitation	626	33
Outlays	2,727	145
Payment to the American Institute in Taiwan (14–05–0523–153–A):		
Budget Authority	11,282	598
Outlays	8,337	442
Acquisition and maintenance of buildings abroad (14–05–0535–153–A):		
Budget Authority	248,932	13,193
Outlays	45,803	2,428
Representation allowances (14–05–0545–153–A):		
Budget Authority	4,755	252
Outlays	4,151	220
International Organizations and Conferences		
Contributions for international peacekeeping activities (14–10–1124–153–A):		
Budget Authority	30,044	1,592
Outlays	30,044	1,592
International conferences and contingencies (14–10–1125–153–A):		
Budget Authority	6,217	330
Outlays	4,228	224
Contributions to international organizations (14–10–1126–153–A):		
Budget Authority	503,434	26,682
401(C) Authority— Off. Coll.	40	2
Outlays	478,302	25,350

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G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
International Commissions		
Salaries and expenses, IBWC (14–15–1069–301–A):		
Budget Authority	10,707	567
Outlays	9,636	511
Construction, IBWC (14–15–1078–301–A):		
Budget Authority	3,285	174
Outlays	1,643	87
American sections, international commissions (14–15–1082–301–A):		
Budget Authority	4,489	238
Outlays	3,524	187
International fisheries commissions (14–15–1087–302–A):		
Budget Authority	10,928	579
Outlays	10,928	579
Other		
United States emergency refugee and migration assistance fund (14–25–0040–151–A):		
Budget Authority	51,800	2,745
Outlays	25,900	1,373
Anti-terrorism assistance (14–25–0114–152–A):		
Budget Authority	10,194	540
Outlays	8,156	432
Soviet-East European research and training (14–25–0118–153–A):		
Budget Authority	4,766	253
Outlays	4,766	253
Payment to the Asia Foundation (14–25–0525–154–A):		
Budget Authority	14,193	752
Outlays	14,193	752
International narcotics control (14–25–1022–151–A):		
Budget Authority	104,683	5,548
Outlays	31,405	1,664
Migration and refugee assistance (14–25–1143–151–A):		
Budget Authority	478,590	25,365
Outlays	335,013	17,756
U.S. bilateral science and technology agreements (14–25–1151–153–A):		
Budget Authority	2,072	110
Outlays	2,072	110
Fisherman's guaranty fund (14–25–5121–376–A):		
Budget Authority	1,787	95
Outlays	1,787	95
International Center, Washington, D.C. (14–25–5151–153–A):		
401(C) Authority	1,284	68
Outlays	1,223	65
Total, Department of State:		
Budget Authority	3,376,367	178,946
401(C) Authority	1,284	68
401(C) Authority—Off. Coll.	40	2
Direct Loan Limitation	628	33
Outlays	2,497,141	132,350
Department of Transportation		
Federal Highway Administration		
Access highways to public recreation areas on certain lakes (21–05–0503–401–A):		
Budget Authority	1,337	71
Outlays	267	14
Motor carrier safety (21–05–0552–401–A):		
Budget Authority	28,138	1,491
Outlays	24,480	1,297
Railroad-highway crossings demonstration projects (21–05–0557–401–A):		
Budget Authority	2,611	138
Outlays	522	28
Trust fund share of other highway programs (21–05–8009–401–A):		
Budget Authority	5,221	277
Outlays	1,044	55
Baltimore-Washington Parkway (21–05–8014–401–A):		
Budget Authority	13,287	704
Outlays	2,657	141
Highway safety research and development (21–05–8017–401–A):		
Budget Authority	6,299	334
Outlays	1,260	67
Highway-related safety grants (21–05–8019–401–A):		
401(C) Authority	10,000	530
Obligation limitation	9,744	516
Outlays	1,717	91
Motor carrier safety grants (21–05–8048–401–A):		
401(C) Authority	60,000	3,180
Obligation limitation	62,160	3,294
Outlays	23,960	1,270
Federal-aid highways (21–05–8083–401–A):		
401(C) Authority	13,850,959	734,101
Obligation limitation	12,432,000	658,896
Outlays	2,263,118	119,945
Right-of-way revolving fund (trust revolving fund) (21–05–8402–401–A):		
Direct Loan Limitation	47,850	2,536
Outlays	47,850	2,536
Miscellaneous appropriations (21–05–9911–401–A):		
Budget Authority	56,592	2,999
Outlays	11,319	600
Miscellaneous trust funds—Highway (21–05–9972–401–A):		
Budget Authority	65,395	3,466
Outlays	13,079	693
National Highway Traffic Safety Administration		
Operations and research (21–10–0650–401–A):		
Budget Authority	70,559	3,740
Outlays	43,988	2,331
Trust fund share of operations and research (21–10–8016–401–A):		
Budget Authority	31,950	1,693
Outlays	19,232	1,019
State and community highway safety grants (21–10–8020–401–A):		
401(C) Authority	126,000	6,678
Obligation limitation	130,536	6,918
Outlays	53,520	2,837
Federal Railroad Administration		
Northeast corridor improvement program (21–16–0123–401–A):		
Budget Authority	20,306	1,076
Outlays	4,061	215
Office of the Administrator (21–16–0700–401–A):		
Budget Authority	21,800	1,155
Outlays	20,710	1,098
Railroad safety (21–16–0702–401–A):		
Budget Authority	29,021	1,538
Outlays	23,217	1,230
Grants to National Railroad Passenger Corporation (21–16–0704–401–A):		
Budget Authority	605,024	32,066
Outlays	544,522	28,860
Freightline rehabilitation (21–16–0713–401–A):		
Budget Authority	6,216	329
Outlays	3,730	198
Railroad safety research and development (21–16–0745–401–A):		
Budget Authority	9,629	510
Outlays	5,777	306
Commuter rail service (21–16–0747–401–A):		
Budget Authority	4,662	247
Outlays	513	27
Urban Mass Transportation Administration		
Urban mass transportation fund, administrative expenses (21–20–1120–401–A):		
Budget Authority	33,255	1,763
Outlays	29,930	1,586
Research, training and human resources (21–20–1121–401–A):		
Budget Authority	10,360	549
Outlays	2,072	110
Interstate transfer grants (21–20–1127–401–A):		
Budget Authority	207,200	10,982
Outlays	4,144	220
Washington metro (21–20–1128–401–A):		
Budget Authority	174,048	9,225
Outlays	41,046	2,175
Formula grants (21–20–1129–401–A):		
Budget Authority	1,662,780	88,127
Outlays	544,502	28,859
Discretionary grants (21–20–8191–401–A):		
401(C) Authority	1,300,000	68,900
Obligation limitation	1,181,000	62,593
Outlays	59,050	3,130
Federal Aviation Administration		
Operations (21–25–1301–402–A):		
Budget Authority	3,063,264	162,353
401(C) Authority—Off. Coll.	14,650	776
Outlays	2,651,216	140,514
Headquarters administration (21–25–1302–402–A):		
Budget Authority	38,284	2,029
Outlays	33,690	1,786
Aircraft purchase loan guarantee program (21–25–1399–402–A):		
Budget Authority	150	8
Outlays	150	8
Trust fund share of FAA Operations (21–25–8104–402–A):		
Budget Authority	493,001	26,129
Outlays	493,001	26,129
Grants-in-aid for airports (Airport and airway trust fund) (21–25–8106–402–A):		
Budget Authority	104	6
401(C) Authority	1,700,000	90,100
Obligation limitation	1,450,400	76,871
Outlays	217,216	11,512
Facilities and equipment (Airport and airway trust fund) (21–25–8107–402–A):		
Budget Authority	1,434,361	76,021
401(C) Authority—Off. Coll.	45,327	2,402
Outlays	181,433	9,616
Research, engineering & development (Airport & airway trust fn (21–25–8108–402–A):		
Budget Authority	165,760	8,785
401(C) Authority—Off. Coll.	500	26
Outlays	102,056	5,409

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Coast Guard		
Operating expenses (21–30–0201–403–A):		
Budget Authority	2,029,694	107,574
401(C) Authority—Off. Coll.	5,181	275
Outlays	1,702,005	90,206
Acquisition, construction, and improvements (21–30–0240–403–A):		
Budget Authority	399,060	21,150
Outlays	43,897	2,327
Retired pay (Coast Guard) (21–30–0241–403–A):		
Budget Authority	45,050	2,388
Outlays	45,050	2,388
Reserve training (21–30–0242–403–A):		
Budget Authority	69,411	3,679
Outlays	60,823	3,224
Research, development, test, and evaluation (21–30–0243–403–A):		
Budget Authority	19,500	1,034
Outlays	6,669	353
Alteration of bridges (21–30–0244–403–A):		
Budget Authority	14,000	742
Outlays	1,700	90
Coast Guard shore facilities (21–30–0246–403–A):		
Budget Authority	52,111	2,762
Outlays	5,729	304
Offshore oil pollution compensation fund (21–30–5167–304–A):		
Obligation limitation	62,160	3,294
Pollution fund (21–30–5168–304–A):		
401(C) Authority	5,700	302
Outlays	1,760	93
Deepwater port liability fund (21–30–5170–304–A):		
Obligation limitation	51,800	2,745
Boat safety (21–30–8149–403–A):		
Budget Authority	62,160	3,294
Obligation limitation	31,080	1,647
Outlays	42,393	2,247
Maritime Administration		
Ready reserve force (21–35–1710–403–A):		
Budget Authority	114,740	6,081
Outlays	97,527	5,169
Operations and training (21–35–1750–403–A):		
Budget Authority	68,974	3,656
Outlays	58,628	3,107
Federal ship financing fund (21–35–4301–403–A):		
Obligation limitation	3,730	198
Outlays	3,544	188
Saint Lawrence Seaway Development Corporation		
Saint Lawrence Seaway Development Corporation (21–40–4089–403–A):		
401(C) Authority—Off. Coll.	1,000	53
Outlays	1,000	53
Operations and maintenance (21–40–8003–403–A):		
Budget Authority	11,573	613
Outlays	11,573	613
Office of the Inspector General		
Salaries and expenses (21–45–0130–407–A):		
Budget Authority	30,266	1,604
Outlays	26,150	1,386
Research and Special Programs Administration		
Research and special programs (21–50–0104–407–A):		
Budget Authority	15,409	817
Outlays	10,167	539
Pipeline safety (21–50–5172–407–A):		
Budget Authority	9,657	512
Outlays	9,173	486
Office of the Secretary		
Salaries and expenses (21–55–0102–407–A):		
Budget Authority	56,868	3,014
Outlays	50,498	2,676
Transportation planning, research, and development (21–55–0142–407–A):		
Budget Authority	5,825	309
Outlays	2,312	123
Payments to air carriers, DOT (21–55–0150–402–A):		
Budget Authority	32,738	1,735
Outlays	26,190	1,388
Working capital fund (21–55–4520–407–A):		
Budget Authority	3,315	176
Outlays	3,315	176
Total, Department of Transportation:		
Budget Authority	11,300,965	598,951
401(C) Authority	17,052,659	903,791
401(C) Authority—Off. Coll.	66,658	3,532
Obligation limitation	15,414,610	816,972
Direct Loan Limitation	47,850	2,536
Outlays	9,680,152	513,048
Department of the Treasury		
Departmental Offices		
Salaries and expenses (15–05–0101–803–A):		
Budget Authority	85,158	4,513
401(C) Authority—Off. Coll.	5,123	272
Outlays	78,785	4,176
Federal Law Enforcement Training Center		
Salaries and expenses (15–08–0104–751–A):		
Budget Authority	36,095	1,913
Outlays	32,486	1,722
Acquisitions, construction, improvements, & related expenses (15–08–0105–751–A):		
Budget Authority	20,720	1,098
Outlays	8,702	461
Financial Management Service		
Salaries and expenses (15–10–1801–803–A):		
Budget Authority	287,979	15,263
Outlays	244,763	12,973
Payments to the Farm Credit System Financial Asst. Corp. (15–10–1850–351–A):		
Budget Authority	70,793	3,752
Outlays	70,793	3,752
Saint Lawrence Seaway toll rebate program (15–10–8865–808–A):		
Budget Authority	11,086	588
Outlays	10,965	581
Bureau of Alcohol, Tobacco and Firearms		
Salaries and expenses (15–13–1000–751–A):		
Budget Authority	251,319	13,320
Outlays	226,187	11,988
United States Customs Service		
Salaries and expenses (15–15–0602–751–A):		
Budget Authority	1,078,053	57,137
401(C) Authority	116,584	6,179
Outlays	1,015,441	53,818
Operation and maintenance, air interdiction program (15–15–0604–751–A):		
Budget Authority	154,635	8,196
Outlays	85,049	4,508
Customs forfeiture fund (15–15–5693–803–A):		
Budget Authority	10,360	549
401(C) Authority	35,000	1,855
Outlays	45,360	2,404
Customs services at small airports (15–15–5694–808–A):		
Budget Authority	1,660	88
Outlays	1,660	88
Refunds, transfers and expenses, unclaimed and seized goods (15–15–8789–803–A):		
401(C) Authority	17,403	922
Outlays	17,403	922
Bureau of Engraving and Printing		
Bureau of Engraving and Printing fund (15–20–4502–803–A):		
401(C) Authority—Off. Coll.	333,809	17,692
Outlays	333,809	17,692
United States Mint		
Salaries and expenses (15–25–1616–803–A):		
Budget Authority	49,025	2,598
401(C) Authority—Off. Coll.	109,957	5,828
Outlays	141,775	7,514
Bureau of the Public Debt		
Administering the public debt (15–35–0560–803–A):		
Budget Authority	227,283	12,046
Outlays	183,872	9,745
Internal Revenue Service		
Salaries and expenses (15–45–0911–803–A):		
Budget Authority	90,704	4,807
Outlays	67,835	3,595
Processing tax returns and executive direction (15–45–0912–803–A):		
Budget Authority	1,812,395	96,057
Outlays	1,486,164	78,767
Examinations and appeals (15–45–0913–803–A):		
Budget Authority	2,017,419	106,923
Outlays	1,835,851	97,300
Investigation, collection, and taxpayer service (15–45–0914–803–A):		
Budget Authority	1,496,775	79,329
Outlays	1,347,097	71,396
Federal tax lien revolving fund (15–45–4413–803–A):		
401(C) Authority—Off. Coll.	8,451	448
Outlays	8,451	448
United States Secret Service		
Contribution for annuity benefits (15–55–1407–751–A):		
401(C) Authority	18,000	954
Outlays	18,000	954
Salaries and expenses (15–55–1408–751–A):		
Budget Authority	372,551	19,745
Outlays	316,668	16,783

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Total, Department of the Treasury:		
Budget Authority	8,074,010	427,922
401(C) Authority	186,987	9,910
401(C) Authority—Off. Coll.	457,340	24,240
Outlays	7,577,136	401,587

Department of Veterans Affairs

Veterans Benefits Administration

Account Title	Sequester Base	Sequester Amount
Readjustment benefits (29–10–0137–702–A):		
Budget Authority	241,926	12,822
Outlays	227,833	12,075
Burial benefits and miscellaneous assistance (29–10–0155–701–A):		
Budget Authority	143,612	7,611
Outlays	138,228	7,326
Direct loan revolving fund (29–10–4024–704–A):		
Direct Loan Limitation	1,000	53

Veterans Health Services and Research Administration

Account Title	Sequester Base	Sequester Amount
Grants to the Republic of the Philippines (29–20–0144–703–A):		
Budget Authority	518	27
Medical administration and miscellaneous operating expenses (29–20–0152–703–A):		
Budget Authority	49,942	2,647
Outlays	31,418	1,665
Medical care (29–20–0160–703–A):		
Budget Authority	845,845	44,830
Outlays	716,938	37,998
Medical care (29–20–0160–703–G):		
Budget Authority—Spec. Rules	210,020	210,020
401(C) Authority—Spec. Rules	406	406
Outlays	180,777	180,777
Medical and prosthetic research (29–20–0161–703–A):		
Budget Authority	219,827	11,651
Outlays	166,189	8,808
Medical center research organizations (29–20–4026–703–A):		
401(C) Authority—Off. Coll.	4,500	238
Outlays	4,500	238

Departmental Administration

Account Title	Sequester Base	Sequester Amount
Construction, major projects (29–30–0110–703–A):		
Budget Authority	370,929	19,659
Outlays	6,650	352
Construction, minor projects (29–30–0111–703–A):		
Budget Authority	100,956	5,351
Outlays	42,011	2,227
General operating expenses (29–30–0151–705–A):		
Budget Authority	830,611	44,022
Outlays	764,162	40,501
Grants for construction of state extended care facilities (29–30–0181–703–A):		
Budget Authority	43,512	2,306
Grants for the construction of State veterans cemeteries (29–30–0183–705–A):		
Budget Authority	9,324	494
Outlays	942	50
Parking garage revolving fund (29–30–4538–703–A):		
Budget Authority	26,936	1,428
Total, Department of Veterans Affairs:		
Budget Authority	2,883,938	152,848
Budget Authority—Spec. Rules	210,020	210,020
401(C) Authority—Off. Coll.	4,500	238
401(C) Authority—Spec. Rules	406	406
Direct Loan Limitation	1,000	53
Outlays	2,279,648	292,017

Environmental Protection Agency

Account Title	Sequester Base	Sequester Amount
Construction grants (20–00–0103–304–A):		
Budget Authority	2,020,000	107,060
Outlays	34,000	1,802
Research and development (Energy supply) (20–00–0107–271–A):		
Budget Authority	52,061	2,759
Outlays	18,221	966
Research and development (Pollution control and abatement) (20–00–0107–304–A):		
Budget Authority	157,729	8,360
Outlays	59,937	3,177
Abatement, control, and compliance (20–00–0108–304–A):		
Budget Authority	745,847	39,530
Outlays	332,493	17,622
Buildings and facilities (20–00–0110–304–A):		
Budget Authority	8,288	439
Outlays	1,445	77
Salaries and expenses (20–00–0200–304–A):		
Budget Authority	849,682	45,033
401(C) Authority—Off. Coll.	3,808	202
Outlays	734,534	38,930
Payment to the hazardous substance superfund (20–00–0250–304–A):		
Budget Authority	155,400	8,236
Registration and expedited processing revolving fund (20–00–4310–304–A):		
401(C) Authority—Off. Coll.	14,000	742
Outlays	14,000	742
Revolving fund for certification and other services (20–00–4311–304–A):		
401(C) Authority—Off. Coll.	1,200	64
Outlays	1,200	64
Hazardous substance superfund (20–00–8145–304–A):		
Budget Authority	1,462,021	77,487
401(C) Authority—Off. Coll.	13,200	700
Obligation limitation	198,101	10,499
Outlays	363,147	19,247
Leaking underground storage tank trust fund (20–00–8153–304–A):		
Budget Authority	51,839	2,747
Obligation limitation	5,219	277
Outlays	7,776	412
Total, Environmental Protection Agency:		
Budget Authority	5,502,867	291,651
401(C) Authority—Off. Coll.	32,208	1,708
Obligation limitation	203,320	10,776
Outlays	1,566,753	83,039

General Services Administration

Real Property Activities

Account Title	Sequester Base	Sequester Amount
Federal buildings fund (23–05–4542–804–A):		
401(C) Authority—Off. Coll.	4,900	260
Outlays	4,900	260

Personal Property Activities

Account Title	Sequester Base	Sequester Amount
Federal supply service (23–10–0116–804–A):		
Budget Authority	49,150	2,605
Outlays	31,800	1,685
Expenses of transportation audit contracts (23–10–5250–804–A):		
401(C) Authority	15,500	822
Outlays	15,214	806

Information Resources Management Service

Account Title	Sequester Base	Sequester Amount
Operating expenses, information resources management service (23–15–0900–804–A):		
Budget Authority	33,206	1,760
Outlays	21,684	1,149

Federal Property Resources Activities

Account Title	Sequester Base	Sequester Amount
Operating expenses, federal property resources service (General) (23–25–0533–804–A):		
Budget Authority	11,253	596
Outlays	7,247	384
Real property relocation (23–25–0535–804–A):		
Budget Authority	4,144	220
Outlays	2,172	115
Expenses, disposal of surplus real and related personal proper (23–25–5254–804–A):		
401(C) Authority	3,800	201
Outlays	2,865	152

General Activities

Account Title	Sequester Base	Sequester Amount
Allowances and office staff for former Presidents (23–30–0105–802–A):		
Budget Authority	1,073	57
Outlays	939	50
Expenses, presidential transition (23–30–0107–802–A):		
Budget Authority	4,921	261
Outlays	4,921	261
Office of Inspector General (23–30–0108–804–A):		
Budget Authority	26,094	1,383
Outlays	22,180	1,176
General management and administration, salaries and expenses (23–30–0110–804–A):		
Budget Authority	125,916	6,674
Outlays	86,127	4,565
Consumer information center fund (23–30–4549–376–A):		
Budget Authority	1,410	75
401(C) Authority—Off. Coll.	536	28
Outlays	74	4
Total, General Services Administration:		
Budget Authority	257,167	13,631
401(C) Authority	19,300	1,023
401(C) Authority—Off. Coll.	5,436	288
Outlays	200,123	10,607

National Aeronautics and Space Administration

Account Title	Sequester Base	Sequester Amount
Research and program management (Space flight) (26–00–0103–253–A):		
Budget Authority	960,860	50,926
401(C) Authority—Off. Coll.	5,000	265
Outlays	829,418	43,959
Research & program management (Space science, applications, etc) (26–00–0103–254–A):		
Budget Authority	625,862	33,171
Outlays	534,486	28,328

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Research & program management (Supporting space activities) (26–00–0103–255–A):		
Budget Authority	74,221	3,934
Outlays	63,311	3,355
Research and program management (Air transportation) (26–00–0103–402–A):		
Budget Authority	345,027	18,288
Outlays	294,653	15,617
Space Flight, Control, and Data Comm. (26–00–0105–250–A):		
401(C) Authority—Off. Coll.	8,368	444
Outlays	8,368	444
Space Flight, Control, and Data Comm. (space flight) (26–00–0105–253–A):		
Budget Authority	3,640,400	192,941
Outlays	2,566,482	136,024
Space Flight, Control, and Data Comm. (supporting act.) (26–00–0105–255–A):		
Budget Authority	815,962	43,246
401(C) Authority	47,935	2,541
Outlays	430,828	22,834
Construction of facilities (Space flight) (26–00–0107–253–A):		
Budget Authority	76,042	4,030
Outlays	4,943	262
Construction of facilities (Space science, applications, etc) (26–00–0107–254–A):		
Budget Authority	11,810	626
Outlays	768	41
Construction of facilities (Supporting space activities) (26–00–0107–255–A):		
Budget Authority	142,761	7,566
Outlays	9,279	492
Construction of facilities (Air transportation) (26–00–0107–402–A):		
Budget Authority	54,390	2,883
Outlays	3,535	187
Research and development (Space flight) (26–00–0108–253–A):		
Budget Authority	1,630,664	86,425
401(C) Authority—Off. Coll.	5,781	306
Outlays	788,499	41,790
Research and development (Space science, applications, etc) (26–00–0108–254–A):		
Budget Authority	2,263,556	119,968
Outlays	1,152,150	61,064
Research and development (Supporting space activities) (26–00–0108–255–A):		
Budget Authority	19,477	1,032
Outlays	12,522	664
Research and development (Air transportation) (26–00–0108–402–A):		
Budget Authority	450,556	23,879
Outlays	230,189	12,200
Science, Space and Technology Education Trust Fund (26–00–8978–503–A):		
401(C) Authority	1,000	53
Outlays	1,000	53
Total, National Aeronautics and Space Administration:		
Budget Authority	11,111,588	588,913
401(C) Authority	48,935	2,594
401(C) Authority—Off. Coll.	19,149	1,015
Outlays	6,930,431	367,314

Office of Personnel Management

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (27–00–0100–805–A):		
Budget Authority	112,620	5,969
Outlays	106,989	5,670
Government payment for annuitants, employees health benefits (27–00–0206–551–A):		
Budget Authority	3,780,169	200,349
Government payment for annuitants, employ. life insur. benefit (27–00–0500–602–A):		
Budget Authority	2,700	143
Outlays	2,100	111
Revolving fund (27–00–4571–805–A):		
401(C) Authority—Off. Coll.	1,167	62
Outlays	1,167	62
Civil service retirement and disability fund (27–00–8185–602–A):		
Obligation limitation	69,463	3,682
Outlays	69,463	3,682
Employees life insurance fund (27–00–8424–602–A):		
Obligation limitation	772	41
Outlays	772	41
Employees health benefits fund (27–00–8440–551–A):		
Obligation limitation	10,650	564
Outlays	10,650	564
Retired employees health benefits fund (27–00–8445–551–A):		
Obligation limitation	130	7
Outlays	130	7
Total, Office of Personnel Management:		
Budget Authority	3,895,489	206,461
401(C) Authority—Off. Coll.	1,167	62
Obligation limitation	81,015	4,294
Outlays	191,271	10,137

Small Business Administration

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (28–00–0100–376–A):		
Budget Authority	338,790	17,956
Outlays	304,911	16,160
Disaster loan fund (28–00–4153–453–A):		
Direct Loan Limitation	250,000	13,250
Business loan and investment fund (28–00–4154–376–A):		
Budget Authority	84,952	4,502
Direct Loan Limitation	84,952	4,502
Guaranteed Loan Limitation	3,925,000	208,025
Outlays	33,980	1,801
Surety bond guarantees revolving fund (28–00–4156–376–A):		
Guaranteed Loan Limitation	1,295,000	68,635
Total, Small Business Administration:		
Budget Authority	423,742	22,458
Direct Loan Limitation	334,952	17,752
Guaranteed Loan Limitation	5,220,000	276,660
Outlays	338,891	17,961

Other Independent Agencies

ACTION

Account Title	Sequester Base	Sequester Amount
Operating expenses (30–01–0103–506–A):		
Budget Authority	176,944	9,378
Outlays	107,226	5,683

Administrative Conference of the United States

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (30–02–1700–751–A):		
Budget Authority	1,945	103
Outlays	1,556	82

Advisory Committee on Federal Pay

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (30–05–1800–805–A):		
Budget Authority	213	11
Outlays	205	11

Advisory Council on Historic Preservation

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (30–10–2300–303–A):		
Budget Authority	1,855	98
Outlays	1,669	88

American Battle Monuments Commission

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (30–12–0100–705–A):		
Budget Authority	15,736	834
Outlays	13,376	709

Architectural & Transportation Barriers Compliance Board

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (30–14–3200–751–A):		
Budget Authority	1,970	104
Outlays	1,517	80

Arms Control and Disarmament Agency

Account Title	Sequester Base	Sequester Amount
Arms control and disarmament activities (30–17–0100–153–A):		
Budget Authority	32,294	1,712
Outlays	27,450	1,455

Barry Goldwater Scholarship Foundation

Account Title	Sequester Base	Sequester Amount
Barry Goldwater Scholarship and Excellence in Educ. Foundation (30–18–8281–502–A):		
401(C) Authority	3,840	204
Outlays	1,307	69

Board for International Broadcasting

Account Title	Sequester Base	Sequester Amount
Grants and expenses (30–19–1145–154–A):		
Budget Authority	202,052	10,709
Outlays	200,031	10,602
Israel Relay Station (30–19–1146–154–A):		
Budget Authority	34,188	1,812
Outlays	34,188	1,812

Commission of Fine Arts

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (30–32–2600–451–A):		
Budget Authority	495	26
Outlays	453	24
National capital arts and cultural affairs (30–32–2602–503–A):		
Budget Authority	5,180	275
Outlays	5,180	275

Commission on Civil Rights

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (30–35–1900–751–A):		
Budget Authority	5,910	313
Outlays	5,023	266

Committee for Purchase from the Blind & others

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (30–37–2000–505–A):		
Budget Authority	898	48
Outlays	808	43

Commodity Futures Trading Commission

Account Title	Sequester Base	Sequester Amount
Commodity Futures Trading Commission (30–38–1400–376–A):		
Budget Authority	36,224	1,920
Outlays	30,857	1,635

G-R-H Sequester Amounts—Continued

G-R-H Sequester Amounts—Continued

G-R-H Sequester Amounts—Continued

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Consumer Product Safety Commission		
Product safety (30–41–0100–554–A):		
Budget Authority	35,981	1,907
401(C) Authority— Off. Coll.	10	1
Outlays	30,594	1,621
Corporation for Public Broadcasting		
Public broadcasting fund (30–42–0151–503–A):		
401(C) Authority	232,648	12,330
Outlays	232,648	12,330
Court of Veterans Appeals		
Salaries and expenses (30–43–0300–705–A):		
Budget Authority	3,250	172
Outlays	2,762	146
District of Columbia		
Federal payment to the District of Columbia (30–45–1700–806–A):		
Budget Authority	445,996	23,638
Outlays	445,996	23,638
Federal payment to the District of Columbia (30–45–1700–806–B):		
Budget Authority	33,193	1,759
Outlays	33,193	1,759
Federal payment to the District of Columbia (30–45–1700–806–C):		
Budget Authority	53,945	2,859
Outlays	53,945	2,859
Federal payment to the District of Columbia (30–45–1700–806–D):		
Budget Authority	20,720	1,098
Outlays	20,720	1,098
Federal payment to the District of Columbia (30–45–1700–806–E):		
Budget Authority	3,419	181
Outlays	3,419	181
Equal Employment Opportunity Commission		
Salaries and expenses (30–46–0100–751–A):		
Budget Authority	188,444	9,988
Outlays	165,783	8,786
Export-Import Bank of the United States		
Export-Import Bank of the United States (30–48–4027–155–A):		
Budget Authority	113,960	6,040
Obligation limitation	21,280	1,128
Direct Loan Limitation	720,020	38,161
Guaranteed Loan Limitation	10,567,200	560,062
Outlays	57,682	3,057
Farm Credit Administration		
Revolving fund for administrative expenses (30–52–4131–351–A):		
Obligation limitation	36,513	1,935
Outlays	36,513	1,935
Farm Credit Systems Financial Assistance Corporation		
Farm credit assistance Fund (30–54–4133–351–A):		
401(C) Authority	635,000	33,655
Outlays	593,090	31,434

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Financial assistance corporation trust fund (30–54–8202–351–A):		
401(C) Authority	80,705	4,277
Federal Communications Commission		
Salaries and expenses (30–60–0100–376–A):		
Budget Authority	103,996	5,512
Outlays	97,756	5,181
Federal Election Commission		
Salaries and expenses (30–65–1600–808–A):		
Budget Authority	16,093	853
Outlays	14,484	768
Federal Emergency Management Agency		
Salaries and expenses (Defense-related activities) (30–67–0100–054–A):		
Budget Authority	71,706	3,800
Outlays	64,535	3,420
Salaries and expenses (Disaster relief and insurance) (30–67–0100–453–A):		
Budget Authority	71,513	3,790
Outlays	64,362	3,411
Emergency planning and assistance (Defense-related activities) (30–67–0101–054–A):		
Budget Authority	265,479	14,070
Outlays	146,013	7,739
Emergency planning and assistance (Community development) (30–67–0101–453–A):		
Budget Authority	27,128	1,438
Outlays	14,919	791
Emergency food and shelter (30–67–0103–605–A):		
Budget Authority	130,788	6,932
Outlays	130,788	6,932
Disaster relief (30–67–0104–453–A):		
Budget Authority	103,600	5,491
Outlays	41,440	2,196
National insurance development fund (30–67–4235–451–A):		
401(C) Authority	220	12
Outlays	220	12
Federal Labor Relations Authority		
Salaries and expenses (30–70–0100–805–A):		
Budget Authority	18,305	970
Outlays	15,261	809
Federal Maritime Commission		
Salaries and expenses (30–72–0100–403–A):		
Budget Authority	14,175	751
Outlays	12,758	676
Federal Mediation and Conciliation Service		
Salaries and expenses (30–76–0100–505–A):		
Budget Authority	26,931	1,427
Outlays	24,472	1,297
Federal Mine Safety and Health Review Commission		
Salaries and expenses (30–79–2800–554–A):		
Budget Authority	4,205	223
Outlays	3,901	207
Federal Trade Commission		
Salaries and expenses (30–84–0100–376–A):		
Budget Authority	69,111	3,663
Outlays	67,726	3,590

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Harry S Truman Scholarship Foundation		
Harry S Truman memorial scholarship trust fund (31–01–8296–502–A):		
Obligation limitation	3,061	162
Outlays	3,053	162
American Revolution Bicentennial Administration		
American Revolution Bicentennial Administration (31–02–1900–806–A):		
Budget Authority	4,937	262
Outlays	4,937	262
Christopher Columbus Quincentennary Jubilee Commission		
Salaries and expenses (31–03–0800–376–A):		
Budget Authority	221	12
Outlays	221	12
Gifts and donations (31–03–8095–376–A):		
401(C) Authority	29	2
Outlays	29	2
Commission on the Bicentennial of the U.S. Constitution		
Salaries and expenses (31–04–0054–808–A):		
Budget Authority	7,223	383
Outlays	5,728	304
Franklin Delano Roosevelt Memorial Commission		
Salaries and expenses (31–05–0700–808–A):		
Budget Authority	29	2
Outlays	29	2
Institute of American Indian and Alaska Native Culture and Arts Development		
Salaries and expenses (31–06–2900–502–A):		
Budget Authority	3,205	170
Outlays	3,205	170
Intelligence Community Staff		
Intelligence community staff (31–07–0400–054–A):		
Budget Authority	24,626	1,059
Outlays	16,007	688
Advisory Commission on Intergovernmental Relations		
Salaries and expenses (31–08–0100–808–A):		
Budget Authority	1,078	57
Outlays	769	41
Appalachian Regional Commission		
Appalachian regional development programs (31–09–0200–452–A):		
Budget Authority	114,720	6,080
Outlays	9,190	487
Delaware River Basin Commission		
Salaries and expenses (31–10–0100–301–A):		
Budget Authority	213	11
Outlays	199	11
Contribution to Delaware River Basin Commission (31–10–0102–301–A):		
Budget Authority	272	14
Outlays	272	14

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Interstate Commission on the Potomac River Basin		
Contribution to Interstate Commission on the Potomac River Bas (31–11–0446–304–A):		
Budget Authority	393	21
Outlays	393	21
Susquehanna River Basin Commission		
Salaries and expenses (31–12–0500–301–A):		
Budget Authority	200	11
Outlays	188	10
Contribution to Susquehanna River Basin Commission (31–12–0501–301–A):		
Budget Authority	271	14
Outlays	271	14
International Trade Commission		
Salaries and expenses (31–17–0100–153–A):		
Budget Authority	37,489	1,987
Outlays	33,494	1,775
Interstate Commerce Commission		
Salaries and expenses (31–19–0100–401–A):		
Budget Authority	44,999	2,385
Outlays	40,499	2,146
James Madison Memorial Fellowship Foundation		
James Madison Memorial Fellowship Trust Fund (31–20–8282–502–A):		
Obligation limitation	500	26
Outlays	500	26
Japan-United States Friendship Commission		
Japan-United States friendship trust fund (31–21–8025–154–A):		
Budget Authority	1,475	78
Outlays	1,350	72
Legal Services Corporation		
Payment to the Legal Services Corporation (31–22–0501–752–A):		
Budget Authority	319,663	16,942
Outlays	278,426	14,757
Marine Mammal Commission		
Salaries and expenses (31–23–2200–302–A):		
Budget Authority	1,000	53
Outlays	820	43
Merit Systems Protection Board		
Salaries and expenses (31–24–0100–805–A):		
Budget Authority	21,228	1,125
Outlays	19,137	1,014
Office of the Special Counsel (31–24–0101–805–A):		
Budget Authority	5,180	275
Outlays	4,267	226
National Archives and Records Administration		
Operating expenses (31–26–0300–804–A):		
Budget Authority	126,877	6,724
Outlays	98,710	5,232

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
National archives trust fund (31–26–8436–804–A):		
401(C) Authority— Off. Coll.	10,555	559
National Capital Planning Commission		
Salaries and expenses (31–28–2500–451–A):		
Budget Authority	3,091	164
Outlays	2,843	151
National Commission on Libraries & Info. Science		
Salaries and expenses (31–30–2700–503–A):		
Budget Authority	773	41
Outlays	619	33
White House conference on library and information services (31–30–2701–503–A):		
Budget Authority	1,818	96
Outlays	601	32
National Commission on Migrant Education		
Nat'l Commission on Migrant Education: Salaries and Expenses (31–31–0600–501–A):		
Budget Authority	2,047	108
Outlays	164	9
National Council on Disability		
Salaries and expenses (31–32–3500–506–A):		
Budget Authority	1,207	64
Outlays	925	49
National Endowment for the Arts		
National Endowment for the Arts: Grants and administration (31–35–0100–503–A):		
Budget Authority	175,287	9,290
Outlays	58,397	3,095
National Endowment for the Humanities		
National Endowment for the Humanities: Grants and administrati (31–36–0200–503–A):		
Budget Authority	158,613	8,406
Outlays	69,790	3,699
Institute of Museum Services		
Institute of Museum Services (31–37–0300–503–A):		
Budget Authority	23,078	1,223
Outlays	5,973	317
National Labor Relations Board		
Salaries and expenses (31–39–0100–505–A):		
Budget Authority	143,015	7,580
Outlays	134,577	7,133
National Mediation Board		
Salaries and expenses (31–40–2400–505–A):		
Budget Authority	6,755	358
Outlays	5,161	274
National Science Foundation		
Research and related activities (31–45–0100–251–A):		
Budget Authority	1,679,370	89,007
Outlays	836,326	44,325
Science and engineering education activities (31–45–0106–251–A):		
Budget Authority	177,156	9,389
Outlays	26,647	1,412
U.S. Antarctic program (31–45–0200–251–A):		
Budget Authority	135,716	7,193
Outlays	67,095	3,556

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
National Transportation Safety Board		
Salaries and expenses (31–47–0310–407–A):		
Budget Authority	26,450	1,402
Outlays	24,693	1,309
Neighborhood Reinvestment Corporation		
Payment to the Neighborhood Reinvestment Corporation (31–49–1300–451–A):		
Budget Authority	20,196	1,070
Outlays	20,196	1,070
Nuclear Regulatory Commission		
Salaries and expenses (31–50–0200–276–A):		
Budget Authority	437,000	23,161
Outlays	327,750	17,371
Occupational Safety and Health Review Commission		
Salaries and expenses (32–02–2100–554–A):		
Budget Authority	6,099	323
Outlays	5,596	297
Pennsylvania Avenue Development Corporation		
Salaries and expenses (32–08–0100–451–A):		
Budget Authority	2,433	129
Outlays	1,971	104
Public development (32–08–0102–451–A):		
Budget Authority	3,289	174
Outlays	2,467	131
Land acquisition and development fund (32–08–4084–451–A):		
401(C) Authority— Off. Coll.	3,000	159
Outlays	3,000	159
Postal Service		
Payment to the Postal Service fund (32–10–1001–372–A):		
Budget Authority	452,128	23,963
Outlays	452,128	23,963
Payment to the Postal Service fund for nonfunded liabilities (32–10–1004–372–A):		
Budget Authority	36,942	1,958
Postal Service (32–10–4020–372–A):		
Obligation limitation	1,097,124	58,148
Outlays	1,075,182	56,985
Railroad Retirement Board		
Railroad social security equivalent benefit account (32–20–8010–601–A):		
Obligation limitation	28,482	1,510
Outlays	28,482	1,510
Rail Industry Pension Fund (32–20–8011–601–A):		
Obligation limitation	34,055	1,805
Outlays	34,055	1,805
Supplemental Annuity Pension Fund (32–20–8012–601–A):		
401(C) Authority	114,908	6,090
Obligation limitation	2,283	121
Outlays	58,535	3,102
Securities and Exchange Commission		
Salaries and expenses (32–35–0100–376–A):		
Budget Authority	148,642	7,878
Outlays	129,982	6,889

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G-R-H Sequester Amounts—Continued G-R-H Sequester Amounts—Continued G-R-H Sequester Amounts—Continued

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Selective Service System		
Salaries and expenses (32–40–0400–054–A):		
Budget Authority	27,403	1,178
Outlays	22,498	967
Smithsonian Institution		
Salaries and expenses (32–50–0100–503–A):		
Budget Authority	220,282	11,675
Outlays	195,439	10,358
Construction and improvements, National Zoological Park (32–50–0129–503–A):		
Budget Authority	5,496	291
Outlays	2,473	131
Repair and restoration of buildings (32–50–0132–503–A):		
Budget Authority	21,481	1,138
Outlays	8,592	455
Construction (32–50–0133–503–A):		
Budget Authority	8,967	475
Outlays	3,587	190
Salaries and expenses, National Gallery of Art (32–50–0200–503–A):		
Budget Authority	39,601	2,099
Outlays	34,809	1,845
Repair, restoration and renovation of buildings (32–50–0201–503–A):		
Budget Authority	777	41
Outlays	453	24
Salaries and expenses, Woodrow Wilson International Center (32–50–0400–503–A):		
Budget Authority	4,410	234
Outlays	2,734	145
Payment to the endowment challenge fund (32–50–0401–503–A):		
Budget Authority	311	16
Outlays	155	8
Endowment challenge fund (32–50–8188–503–A):		
401(C) Authority	270	14
Outlays	270	14
Canal Zone biological area fund (32–50–8190–503–A):		
401(C) Authority	150	8
Outlays	150	8
Other Temporary Commissions		
State Justice Institute (33–02–0052–752–A):		
Budget Authority	11,383	603
Outlays	3,611	191
Commission on Agricultural Workers: Salaries and expenses (33–02–0057–352–A):		
Budget Authority	521	28
Outlays	469	25
Nat'l Comm. on Responsibilities for Financing P.S. Education (33–02–0400–502–A):		
Budget Authority	819	43
Outlays	773	41
Nuclear Waste Technical Review Board: Salaries and Expenses (33–02–0500–271–A):		
Budget Authority	3,108	165
Outlays	3,108	165
Office of the Nuclear Waste Negotiator: S & E (33–02–0700–271–A):		
Budget Authority	3,108	165
Outlays	3,108	165
Navajo and Hopi Indian Relocation Commission (33–02–1100–808–A):		
Budget Authority	28,330	1,501
Outlays	17,850	946
Interagency Council on the Homeless (33–02–1300–604–A):		
Budget Authority	1,143	61
Outlays	594	31
Comm. for the Study of Int. Mig. and Coop. Econ. Dev: S and E (33–02–1400–153–A):		
Budget Authority	1,341	71
Outlays	872	46
National Commission to Prevent Infant Mortality (33–02–1500–808–A):		
Budget Authority	677	36
Outlays	546	29
Intl Cultural and Trade Center Commission: Salaries and expens (33–02–1800–804–A):		
Budget Authority	866	46
Outlays	650	34
National Economic Commission, Salaries and Expenses (33–02–2100–802–A):		
Budget Authority	732	39
Outlays	732	39
Tennessee Valley Authority		
TVA fund (Energy supply) (33–16–4110–271–A):		
401(C) Authority—Off. Coll.	73,500	3,896
Outlays	73,500	3,896
TVA fund (Area and regional development) (33–16–4110–452–A):		
Budget Authority	107,429	5,694
Obligation limitation	1,500	80
Outlays	26,427	1,401
United States Holocaust Memorial Council		
Holocaust Memorial Council (33–19–3300–808–A):		
Budget Authority	2,335	124
Outlays	1,847	98
United States Information Agency		
Salaries and expenses (33–22–0201–154–A):		
Budget Authority	645,776	34,226
Outlays	523,079	27,723
East West Center (33–22–0202–154–A):		
Budget Authority	20,720	1,098
Outlays	20,720	1,098
Radio construction (33–22–0204–154–A):		
Budget Authority	67,340	3,569
Outlays	37,859	2,007
Radio broadcasting to Cuba (33–22–0208–154–A):		
Budget Authority	11,649	617
Outlays	9,086	482
Educational and cultural exchange program (33–22–0209–154–A):		
Budget Authority	155,441	8,238
Outlays	79,275	4,202
National Endowment for Democracy (33–22–0210–154–A):		
Budget Authority	16,369	868
Outlays	7,693	408
United States Institute of Peace		
United States Institute of Peace (33–24–1300–153–A):		
Budget Authority	7,184	381
Outlays	7,184	381
United States Sentencing Commission		
Salaries and expenses (33–31–0938–752–A):		
Budget Authority	5,398	286
Outlays	4,991	265
Total, Other Independent Agencies:		
Budget Authority	8,114,640	429,553
401(C) Authority	1,067,770	56,592
401(C) Authority—Off. Coll.	87,065	4,615
Obligation limitation	1,224,798	64,915
Direct Loan Limitation	720,020	38,161
Guaranteed Loan Limitation	10,567,200	560,062
Outlays	7,795,815	412,796
Total Government:		
Budget Authority	470,871,092	21,877,171
Budget Authority—ASI	60,792	60,792
Budget Authority—Spec. Rules	286,718	286,718
401(C) Authority	36,739,011	1,947,168
401(C) Authority—Off. Coll.	3,582,143	189,856
401(C) Authority—Spec. Rules	1,526,966	1,526,966
Obligation limitation	26,875,003	1,424,371
Direct Loan Limitation	20,847,188	1,104,900
Direct Loan Floor	2,053,158	108,817
Guaranteed Loan Limitation	269,146,613	14,264,771
Unobligated Balances—Defense	39,199,189	1,685,565
Outlays	308,364,666	16,184,186

[FR Doc. 89–20405 Filed 8–25–89; 11:45 am]

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federal register

Monday
August 28, 1989

Part IV

The President

Emergency Deficit Control Measures for Fiscal Year 1990

Initial Order of August 25, 1989

Federal Register

Presidential Documents

Federal Register
Vol. 54, No. 165
Monday, August 28, 1989

Presidential Documents

Title 3—

The President

Initial Order of August 25, 1989

Emergency Deficit Control Measures for Fiscal Year 1990

By the authority vested in me as President by the statutes of the United States of America, including section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law No. 99–177), as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law No. 100–119) (hereafter referred to as "the Act"), and in accordance with the report of the Director of the Office of Management and Budget issued August 25, 1989, pursuant to section 251(a)(2) of the Act, I hereby order, pursuant to section 252(a), that the following actions be taken effective October 1, 1989, to implement the sequestrations and reductions determined by the Director in that report:

(1) Each automatic spending increase that would, but for the provisions of the Act, take effect during fiscal year 1990 is suspended as provided in section 252. The programs with such automatic spending increases subject to reduction in this manner, specified by account title, are National Wool Act; Special milk program; and Vocational rehabilitation.

(2) The following are sequestered as provided in section 252: new budget authority; unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, as amended; and obligation limitations.

(3) For accounts making payments otherwise required by substantive law, the head of each Department or agency is directed to modify the calculation of each such payment to the extent necessary to reduce the estimate of total required payments for the fiscal year by the amount specified in the Director's report.

(4) For accounts making commitments for guaranteed loans and obligations for direct loans as authorized by substantive law, the head of each Department or agency is directed to reduce the level of such commitments or obligations to the extent necessary to conform to the limitations established by the Act and specified in the Director's determination of August 25, 1989.

(5) Each Department or agency head may, to the extent otherwise not prohibited by law, use existing authority to deobligate balances of budgetary resources as necessary to apply the required reduction or sequestration in as uniform a manner as possible for any person or other recipient entitled to payments under any formula-driven calculations specified in the substantive law. Deobligations may include budgetary obligations for which checks have not been issued or funds not otherwise disbursed (funds obligated but unexpended).

In accordance with section 252(a)(4)(A), amounts suspended or sequestered under this Order shall be withheld from obligation or expenditure pending the issuance of a final order under section 252(b).

If Congress acts to reduce the deficit projected in this report by $6.2 billion prior to the snapshot date for the Final Report of the Director, then a final order will be issued cancelling the sequester. If the deficit is reduced by a lesser amount, the final order will direct that funds be sequestered in accordance with section 252 of the Act.

This Order shall be reported to Congress and shall be published in the **Federal**

Reader Aids

Federal Register

This Order shall be reported to Congress and shall be published in the **Federal Register**.

Bush

THE WHITE HOUSE,
August 25, 1989.

[FR Doc. 89-20408
Filed 8-25-89; 11:29 am]
Billing code 3195-01-M

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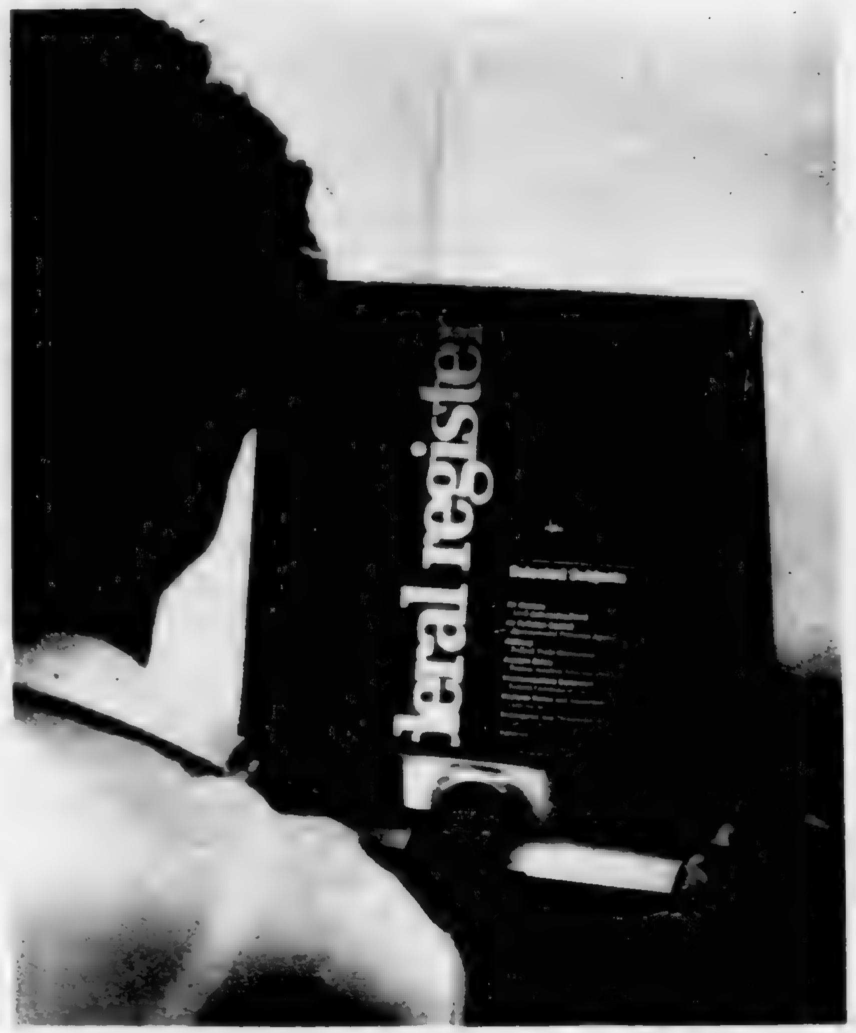

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Tuesday
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-146]

Mediterranean Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining an area in Los Angeles County in California because of the Mediterranean fruit fly and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective August 23, 1989. Consideration will be given only to comments received on or before October 30, 1989.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-146. Comments received may be inspected at Room 1141 of the South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart 301.78, "Mediterranean Fruit Fly" (referred to below as the regulations). These regulations quarantine a portion of Los Angeles County, California, because of the Mediterranean fruit fly and restrict the interstate movement of regulated articles from the quarantined area.

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), a unit within the U.S. Department of Agriculture (USDA), reveal that a portion of Los Angeles County, California, is infested with the Mediterranean fruit fly. Specifically, since July 20, 1989, a total of 40 Medfly adults and 40 larvae have been found within a 3-square-mile area of Los Angeles County. The Mediterranean fruit fly is not known to occur anywhere else in the United States, except in Hawaii.

In cooperation with APHIS, officials of State agencies of California have begun an intensive Mediterranean fruit fly eradication program in the quarantined area in California. Also, as explained below, California has taken action to restrict the intrastate movement of certain articles from the quarantined area to prevent the spread of the Mediterranean fruit fly within California. However, it is also necessary to restrict the interstate movement of certain articles from the quarantined area to prevent the spread of the Mediterranean fruit fly to noninfested areas in other states. Accordingly, to prevent the spread of the Mediterranean fruit fly, this document establishes Federal regulations, which are described below by section.

Restrictions on Interstate Movement of Regulated Articles (Section 301.78)

Section 301.78 prohibits any person from moving any regulated article interstate from any quarantined area except in accordance with conditions prescribed in the regulations. For informational purposes, a footnote (number 1) has been added to reference the authority of an employee to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply remedial measures to, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Definitions (Section 301.78-1)

Section 301.78-1 contains, for informational purposes, definitions of the following terms: "Administrator," "Animal and Plant Health Inspection Service," "Certificate," "Compliance Agreement," "Infestation," "Inspector," "Interstate," "Limited permit," "Mediterranean fruit fly," "Moved," "Person," "Quarantined Area," "Regulated article" and "State."

Regulated Articles (Section 301.78-2)

The regulations impose conditions on the interstate movement of those articles that present a significant risk of spreading Mediterranean fruit fly if moved without restrictions from quarantined areas into or through noninfested areas. These articles, which are designated as regulated articles, may not be moved interstate from quarantined areas except in accordance with conditions specified in §§ 301.78-4 through 301.78-10.

Section 301.78-2 designates as regulated articles a number of fruits, nuts, vegetables, and berries, and soil within the drip line of plants that produce the fruits, nuts, vegetables, or berries. Based on research and experience, the articles listed in § 301.78-2 (a) and (b) as regulated articles are articles that are likely to cause the spread of the Mediterranean fruit fly. In addition, § 301.78-2(c) allows designation of any other product, article, or means of conveyance as a regulated article if an inspector determines that it presents a risk of spreading the Mediterranean fruit fly and notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions in the regulations. This provision for "any other product, article, or means of conveyance" allows an inspector who discovers a risk of spreading Mediterranean fruit fly (e.g., a truck with Medfly pupae in cracks in the floorboards) to regulate the affected articles immediately, by informing the person in possession of the product, article, or means of conveyance that it is being regulated.

Fruits, nuts, vegetables, or berries that are canned, dried, or frozen below −17.8 °C. (0 °F.) are not included as regulated articles since the Mediterranean fruit fly could not survive under those conditions.

Quarantined Areas (Section 301.78–3)

As stated in § 301.78–3(a), it is necessary to quarantine areas in which the Mediterranean fruit fly has been found by an inspector, areas in which the Administrator has reason to believe the Mediterranean fruit fly is present, and areas the Administrator considers necessary to quarantine because of their inseparability for quarantine enforcement purposes from localities where Mediterranean fruit flies have been found.

Section 301.78–3(a) further provides that less than an entire state will be designated as a quarantined area only if the Administrator determines that (1) the state has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by our regulations with respect to the interstate movement of these articles; and (2) quarantining less than the entire state will prevent the interstate spread of the Mediterranean fruit fly. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire state as a quarantined area.

In accordance with these criteria, we are designating as a quarantined area an area in Los Angeles County in California. This area is as follows:

Los Angeles County: That portion of the county in the Elysian Park area bounded by a line drawn as follows: Beginning at the intersection of U.S. Highway 101 and Barham Boulevard; then northerly along this boulevard to its intersection with Forest Lawn Drive; then northeasterly along this drive to its intersection with State Highway 134; then easterly along this highway to its intersection with Interstate Highway 5; then southerly along Interstate Highway 5 to its intersection with Colorado Boulevard; then easterly along this boulevard to its intersection with Eagle Rock Boulevard; then southwesterly along Eagle Rock Boulevard to its intersection with York Boulevard; then southeasterly along York Boulevard to its intersection with Figueroa Street; then southwesterly along this street to its intersection with Avenue 60; then southeasterly along this avenue to its intersection with Monterey Road; then southerly along this road to its intersection with Huntington Drive North; then southwesterly along this drive to its intersection with Soto Street; then southwesterly along this street to its intersection with Whittier Boulevard; then westerly along this boulevard to its intersection with 6th Street; then northwesterly along this street to its intersection with Broadway; then southwesterly along Broadway to its intersection with Interstate Highway 10; then westerly along this highway to its intersection with Western Avenue; then north along this avenue to its intersection with Venice Boulevard; then westerly along this boulevard to its intersection with Crenshaw Boulevard; then northeasterly along this boulevard to its intersection with Olympic Boulevard; then westerly along this boulevard to its intersection with Highland Avenue; then northerly along this avenue to its intersection with U.S. Highway 101; then northwesterly along this highway to the point of beginning.

It is necessary to designate this portion of Los Angeles County as a quarantined area because it is an area in which the Mediterranean fruit fly has been found, or in which the Administrator has reason to believe the Mediterranean fruit fly is present, or an area necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where Mediterranean fruit fly has been found.

There does not appear to be any reason to designate any other quarantined areas in California other than those areas specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart.

Section 301.78–3(b) provides that the Administrator or an inspector may designate an area as a quarantined area temporarily without publication in the **Federal Register** if there is a basis for listing the area as a quarantined area under § 301.78–3(a) and if the owner or person in possession of the area to be quarantined is given written notice of this action. This is necessary in order to prevent spread of the Mediterranean fruit fly before restrictions can be published in the **Federal Register** concerning the interstate movement of regulated articles from the designated area.

Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas (Sections 301.78–4 Through 301.78–10)

Section 301.78–4

Section 301.78–4(a) requires regulated articles moved interstate from quarantined areas to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.78–5 and 301.78–8, unless moved as prescribed in § 301.78–4(b).

Section 301.78–4(b) allows a regulated article to move interstate without a certificate or limited permit if the article originates outside of a quarantined area, if it is moved through the quarantined area without stopping except for refueling or for traffic conditions such as traffic lights and stop signs, if it is shipped in an enclosed vehicle or is completely covered so as to prevent access by Mediterranean fruit flies, if the point of origin is indicated on the waybill, and if the enclosed vehicle or the enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

Also, § 301.78–4(c) allows the Department to move regulated articles interstate without a certificate or limited permit for experimental or scientific purposes. However, the regulated articles must be moved in accordance with a permit issued by the Administrator, under conditions that prevent the spread of Mediterranean fruit fly.

Section 301.78–4 contains a footnote to remind persons of other applicable domestic plant quarantine and regulation requirements that need to be met for interstate movement.

Section 301.78–5

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (e.g. the article is free of Mediterranean fruit fly), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when an inspector has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.78–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.78–5(a) provides that a certificate shall be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) is free of Mediterranean fruit fly, has been treated under direction of an inspector in accordance with § 301.78–10, or comes from a premises of origin free from Mediterranean fruit fly; (2) will be moved through the quarantined area in an enclosed vehicle or is completely covered to prevent access by Mediterranean fruit flies; (3) will be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), to prevent the spread of the Mediterranean fruit fly; and (4) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

A footnote explains that the Secretary of Agriculture may, pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 105dd), take emergency actions.

Section 301.78–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization or processing (such as juicing, freezing, canning, or drying), and that the movement will not result in the spread of Mediterranean fruit fly.

Section 301.78–5(c) allows any person who has entered into and is operating under a compliance agreement to execute a certificate or limited permit for the interstate movement of a regulated article after an inspector has made a determination that the article is eligible for a certificate or limited permit in accordance with § 301.78–5(a) or (b).

Also, § 301.78–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination by the inspector that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

Section 301.78–6

Section 301.78–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements can be entered into by any person engaged in growing, handling, or moving regulated articles who agrees in writing to comply with the provisions of Subpart 301.78. Compliance agreements are provided for the convenience of persons who are involved in shipments of regulated articles from quarantined areas; they are written to ensure that persons issuing certificates or limited permits are knowledgeable with respect to the requirements of Subpart 301.78 and have agreed to comply with them.

Section 301.78–6 also provides that an inspector supervising enforcement of a compliance agreement may cancel the agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact. This section contains a footnote to explain where compliance agreement forms can be obtained.

Sections 301.78–7, 301.78–8, and 301.78–9

Section 301.78–7 provides that any person who desires a certificate or limited permit to move regulated articles must, as far in advance of movement as possible (no less than 48 hours before the desired movement), request the services of an inspector to issue a certificate or limited permit. This provision ensures that persons desiring inspection services can obtain them before the intended movement date. A footnote is added for informational purposes to indicate how to contact the inspectors for inspection or how to obtain additional information from offices of the Animal and Plant Health Inspection Service.

Section 301.78–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill during the interstate movement. This provision is necessary for enforcement purposes.

Section 301.78–9 explains the APHIS policy that services of an inspector that are needed to comply with the provisions of the regulations in Subpart 301.78 are provided without cost during normal business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays), but that we will not be responsible for any other costs or charges.

Section 301.78–10

Section 301.78–10 identifies treatments for the Mediterranean fruit fly that are contained in the Plant Protection and Quarantine Treatment Manual. The Plant Protection and Quarantine Treatment Manual is incorporated by reference in the Code of Federal Regulations in 7 CFR Part 300. Research has determined that these treatments would be adequate to destroy the Mediterranean fruit fly. The treatment schedules for tomato, bell pepper and tomato, and soil in § 301.78–10 are as follows:

(a) *Tomato:* Fumigation with methyl bromide at normal atmosphere pressure with 32 g/m^3 for 3½ hours at 21 °C. (70 °F.) or above.

(b) *Bell pepper and tomato:* Heat the article by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of articles reaches 44.4 °C. (112 °F.) and maintain at 44.4 °C. (112 °F.) for 8¾ hours, then immediately cool.

Note—Commodities should be tested by the shipper to determine each commodity's tolerance to the treatment before commercial treatments are attempted.

(c) *Soil:* Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.78–2(a) of this subpart: Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip area with sufficient water to wet the soil to a depth of at least ½ inch. Both immersion and pour-on treatment procedures are also acceptable.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean fruit fly from spreading to noninfested areas of the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from a portion of Los Angeles County, California. Within the regulated area there are approximately 234 entities that would be affected, including 2 citrus processing plants, 1 farmers market, 25 nurseries, 1 community garden, 5 wholesale markets, and 200 retail fruit/produce vendors. Those entities affected represent less than 5 percent of the total of similar enterprises operating in the State of California.

Although these are small entities, they sell regulated articles primarily for local intrastate, not interstate, movement. The effect on those few persons who do move regulated articles interstate is minimized by the availability of various treatments, that in most cases will permit the interstate movement of regulated articles with very little additional cost. Also many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities would be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other states.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart-Mediterranean Fruit Fly" to read as follows:

Subpart—Mediterranean Fruit Fly

Sec.
301.78 Restrictions on interstate movement of regulated articles.
301.78–1 Definitions.
301.78–2 Regulated articles.
301.78–3 Quarantined areas.
301.78–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.78–5 Issuance and cancellation of certificates and limited permits.
301.78–6 Compliance agreement and cancellation.
301.78–7 Assembly and inspection of regulated articles.
301.78–8 Attachment and disposition of certificates and limited permits.
301.78–9 Costs and charges.
301.78–10 Treatments.

Subpart—Mediterranean Fruit Fly

§ 301.78 Restrictions on interstate movement of regulated articles.

No person shall move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

§ 301.78–1 Definitions.

In this subpart the following definitions apply:

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of Mediterranean fruit fly and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant to it.

Infestation. The presence of the Mediterranean fruit fly or the existence of circumstances that make it reasonable to believe that the Mediterranean fruit fly is present.

Inspector. Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document, in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.78–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

Mediterranean fruit fly. The insect known as Mediterranean fruit fly *Ceratitis capitata* (Wiedemann) in any stage of development.

Moved (Move, Movement). Shipped, offered for shipment, received for transportation, transported, carried, moved, or allowed to be moved.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Quarantined area. Any State, or any portion of a State, listed in § 301.78–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.78–3(b) of this subpart.

Regulated article. Any article listed in § 301.78–2 (a) or (b) of this subpart or otherwise designated as a regulated article in accordance with § 301.78–2(c) of this subpart.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory or possession of the United States.

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[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

§ 301.78–2 Regulated articles.

The following are regulated articles:

(a) The following fruits, nuts, vegetables and berries:

Almond with husk (*Prunus dulcis* (*P. amygdalus*))
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Avocado (*Persea americana*)
Black Myrobalan (*Terminalia cherbula*)
Cherries (sweet and sour) (*Prunus avium, P. cerasus*)
Citrus citron (*Citrus medica*)
Date (*Phoenix dactylifera*)
Fig (*Ficus carica*)
Grape (*Vitis* spp.)
Grapefruit (*Citrus paradisi*)
Guava (*Psidium guajava*)
Japanese persimmon (*Diospyros kaki*)
Japanese plum (*Prunus salicina*)
Kiwi (*Actinidia chinensis*)
Kumquat (*Fortunella japonica*)
Lemon (*Citrus limon*) (except smooth-skinned lemon of commerce that is cleaned and waxed)
Lime, sweet (*Citrus aurantiifolia*)
Loquat (*Eriobotrya japonica*)
Mandarin orange (*Citrus reticulata*) (tangerine)
Mango (*Mangifera indica*)
Mock orange (*Murraya exotica*)
Mountain apple (*Syzigium malaccense* (*Eugenia malaccensis*))
Natal plum (*Carissa macrocarpa*)
Nectarine (*Prunus persica* var. *nectarina*)
Olive (*Olea europea*)
Opuntia cactus (*Opuntia* spp.)
Orange, calamondin (*Citrus reticulata* x. *Fortunella*)
Orange, Chinese (*Fortunella japonica*)
Orange, king (*Citrus reticulata* x. *C. sinensis*)
Orange, sweet (*Citrus sinensis*)
Orange, Unshu (*Citrus reticulata* var. *Unshu*)
Papaya (*Carica papaya*)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Pepper (*Capsicum frutescens, C. annuum*)
Pineapple guava (*Feijoa sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Prune (*Prunus domestica*)
Pummelo (*Citrus grandis*)
Quince (*Cydonia oblonga*)
Rose apple (*Eugenia jambos*)
Sour orange (*Citrus aurantium*)
Spanish cherry (Brazilian plum) (*Eugenia dombeyi* (*E. brasiliensis*)
Strawberry guava (*Psidium cattleianum*)
Surinam cherry (*Eugenia uniflora*)
Tomato (pink and red ripe) (*Lycopersicon esculentum*)
Walnut with husk (*Juglans* spp.)
White sapote (*Casimiroa edulis*)
Yellow oleander (Bestill) (*Thevetia peruviana*)

Any fruits, nuts, vegetables, or berries that are canned or dried or frozen below −17.8 °C. (0 °F.) are not regulated articles.

(b) Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, or berries listed in paragraph (a) of this section.

(c) Any other product, article, or means of conveyance, not covered by paragraph (a) or (b) of this section, that presents a risk of spread of the Mediterranean fruit fly and an inspector notifies the person in possession of it that the product, article, or means of conveyance is subject to the restrictions of this subpart.

§ 301.78–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator shall list as a quarantined area in paragraph (c) of this section, each State, or each portion of a State, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the Mediterranean fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. The Administrator will give a copy of this regulation along with a written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation shall be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

California

Los Angeles County

That portion of the county in the Elysian Park area bounded by a line drawn as follows: Beginning at the intersection of U.S. Highway 101 and Barham Boulevard; then northerly along this boulevard to its intersection with Forest Lawn Drive; then northeasterly along this drive to its intersection with State Highway 134; then easterly along this highway to its intersection with Interstate Highway 5; then southerly along Interstate Highway 5 to its intersection with Colorado Boulevard; then easterly along this boulevard to its intersection with Eagle Rock Boulevard; then southwesterly along Eagle Rock Boulevard to its intersection with York Boulevard; then southeasterly along York Boulevard to its intersection with Figueroa Street; then southwesterly along this street to its intersection with Avenue 60; then southeasterly along this avenue to its intersection with Monterey Road; then southerly along this road to its intersection with Huntington Drive North; then southwesterly along this drive to its intersection with Soto Street; then southwesterly along this street to its intersection with Whittier Boulevard; then westerly along this boulevard to its intersection with 6th Street; then northwesterly along this street to its intersection with Broadway; then southwesterly along Broadway to its intersection with Interstate Highway 10; then westerly along this highway to its intersection with Western Avenue; then north along this avenue to its intersection with Venice Boulevard; then westerly along this boulevard to its intersection with Crenshaw Boulevard; then northeasterly along this boulevard to its intersection with Olympic Boulevard; then westerly along this boulevard to its intersection with Highland Avenue; then northerly along this avenue to its intersection with U.S. Highway 101; then northwesterly along this highway to the point of beginning.

§ 301.78–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area [2] only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.78–5 and 301.78–8 of this subpart;

(b) Without a certificate or limited permit, if:

(1) The regulated article originated outside of any quarantined area and is moved through (without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area, and

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[2] Requirements under all other applicable federal domestic plant quarantines and regulations must also be met.

(2) The point of origin of the regulated

(4) The regulated article is eligible for

limited permit has been withdrawn may

(2) The point of origin of the regulated article is indicated on the waybill and the enclosed vehicle or the enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

(c) Without a certificate or limited permit, if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Administrator to be adequate to prevent the spread of Mediterranean fruit fly; and,

(4) With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

§ 301.78–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate shall be issued by an inspector [3] for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.78–10 of this subpart; or

(ii) Based on inspection of the premises of origin, that the premises are free from the Mediterranean fruit fly; or

(iii) Based on inspection of the regulated article, that it is free of Mediterranean fruit fly; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit fly; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd),[4] to prevent the spread of the Mediterranean fruit fly; and

(4) The regulated article is eligible for unrestricted movement under all other federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector [5] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the Mediterranean fruit fly because life stages of the Mediterranean fruit fly will be destroyed by the specified handling, utilization, or processing;

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd),[6] to prevent the spread of the Mediterranean fruit fly; and

(3) The regulated article is eligible for interstate movement under all other federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has made the determination that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has made the determination that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within ten days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.78–6 Compliance agreement and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart.[7]

(b) Any compliance agreement may be cancelled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart or any conditions imposed pursuant to this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.78–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.78–5(c)), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector,[8] as far in advance of the desired interstate movement as possible (no less than 48 hours before the desired interstate movement).

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.78–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during the interstate movement, must be attached to the outside of the container containing the regulated article, attached to the regulated article itself if not in a container, or attached to the consignee's copy of the accompanying waybill: *Provided however,* That the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill only if the regulated article is sufficiently described on the certificate or limited permit, and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

§ 301.78–9 Costs and charges.

The services of the inspector during normal business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The United States Department of Agriculture will not be responsible for any other costs or charges.

§ 301.78–10 Treatments.

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy Mediterranean fruit fly can be used on regulated articles. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference." The following treatments can be used for tomato, bell pepper and tomato, and soil:

(a) *Tomato:* Fumigation with methyl bromide at normal atmospheric pressure with 32g/m^3 for 3½ hours at 21 °C. (70 °F.) or above.

(b) *Bell pepper and tomato:* Heat the article by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of article reaches 44.4 °C. (112 °F.) and maintain at 44.4 °C. (112 °F.) for 8¾ hours, then immediately cool.

Note: Commodities should be tested by the shipper to determine each commodity's tolerance to the treatment before commercial treatments are attempted.

(c) *Soil:* Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.78–2(a) of this subpart: Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip area with sufficient water to wet the soil to a depth of at least ½ inch. Both immersion and pour-on treatment procedures are also acceptable.

Done in Washington, DC, this 23rd day of August 1989.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–20322 Filed 8–28–89; 8:45 am]

BILLING CODE 3410–34–M

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[3] Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Administrator, c/o Domestic and Emergency Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

[4] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides that the Secretary of Agriculture may—under certain conditions—seize, quarantine, treat, destroy, or apply other remedial measures to articles that the Administrator has reason to believe are infested or infected by or contain plant pests.

[5] See footnote 3 to § 301.78–5(a).

[6] See footnote 4 to § 301.78–5(a)(3).

[7] Compliance agreement forms are available without charge from the Administrator, c/o Permits Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories

[8] See footnote 3 to § 301.78–5(a).

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV–89–035FR]

Raisins Produced From Grapes Grown in California; Increase in Compensation Rate for Handlers' Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases handlers' compensation for receiving, storing, fumigating, and handling reserve tonnage raisins acquired by handlers during a particular crop year and held for the account of the Raisin Adminstrative Committee (RAC) and also for reserve tonnage raisins held beyond the crop year of acquisition under the California raisin marketing order. Handlers' compensation for receiving, storing, fumigating, and handling reserve tonnage raisins will increase from $38.75 per ton to $40.00 per ton. Additional payment for storing, fumigating, and handling reserve tonnage raisins held beyond the crop year of acquisition will also be increased from $1.94 per ton to $2.00 per ton for each month of the three-month period ending November 30, and from $1.00 per ton to $1.03 per ton for each month of the next nine months. This action was recommended by the RAC, which is responsible for local administration of the order. The changes more closely reflect current industry costs.

EFFECTIVE DATE: August 29, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Order Adminisration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 382–1754.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989) both as amended, regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of producers and a minority of handlers of California raisins may be classified as small entities.

This final rule increases handlers' compensation under the California raisin marketing order. This action will increase the rates at which handlers are paid for receiving, storing, fumigating, and handling reserve tonnage raisins and also for reserve tonnage raisins held by handlers beyond the crop year of acquisition for the account of the RAC. Both of these changes were recommended by the RAC.

The marketing order authorizes, for the total annual California raisin crop, the establishment of final free and reserve percentages for volume regulation purposes. Raisins in the reserve percentage category must be held by handlers in a reserve pool on handlers' premises for the account of the RAC. Currently, for example, handlers are free to market 70 percent of the Natural (sun-dried) Seedless raisins they receive and must hold 30 percent in reserve.

This final rule will increase the compensation rate for receiving, storing, fumigating, and handling reserve tonnage raisins acquired by handlers during a particular crop year and held for the account of the RAC and for reserve tonnage raisins held by handlers beyond the crop year of acquisition for the account of the RAC. Since August 1, 1983, handlers have been compensated at a rate of $38.75 per ton for providing these services. Additional payment for reserve tonnage raisins held beyond the crop year of acquisition has been $1.94 per ton for each month of the three-month period ending November 30 and $1.00 per ton for each month of the next nine months.

The RAC conducted a survey among handlers on the cost of receiving, storing, fumigating, and handling the 1988–89 raisin reserve pool. The RAC determined that costs ranged from approximately $30.00 per ton to approximately $57.00 per ton. Therefore, the RAC recommended that the compensation rate be increased from $38.75 per ton to $40.00 per ton to more closely reflect increases in the costs for handlers to provide services on reserve pool raisins. In addition, the RAC recommended that payment to handlers for reserve held beyond the end of the crop year be increased proportionately. Therefore, additional payment for reserve tonnage raisins held beyond the crop year of acquisition will be increased from $1.94 per ton to $2.00 per ton for each month of the three-month period ending November 30 and from $1.00 per ton to $1.03 per ton for each month of the next nine months.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule (54 FR 29343) was published in the **Federal Register** on July 12, 1989, and public comments were invited for a period of 15 days, during which interested individuals had the opportunity to comment on the proposed requirement. No comments were received.

After consideration of all relevant matter presented, including the RAC's recommendation and other available information, it is found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

It is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). This action will relax restrictions on handlers by increasing the compensation rate for receiving, storing, fumigating, and handling reserve tonnage raisins acquired by handlers during a particular crop year and held for the account of the RAC and also for reserve tonnage raisins held beyond the crop year of acquisition. It should be effective as soon as possible since August 1 is the beginning of the 1989–90 crop year.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR part 989 is to be revised to read as follows:

Note [*This section will appear in the Code of Federal Regulations.*]

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

AUTHORITY: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

Subpart—Schedule of Payments

2. Paragraphs (a)(1) and (b) of § 989.401 are revised to read as follows:

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

(a) *Payment for crop year of acquisition*—(1) *Receiving, storing, fumigating, and handling.* Each handler shall be compensated at a rate of $40.00 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by the handler for the account of the Raisin Administrative Committee during all or any part of the same crop year.

(2) * * *

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.*

Additional payment for reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding such raisins for the account of the Committee on August 15 and the following September 1 shall be compensated for storing, handling and fumigating such raisins at the rate of $2.00 per ton per month, or any part thereof, for each month of the three-month period ending November 30, and $1.03 per ton per month, or any part thereof, for each month of the next nine months. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

* * * * *

Dated: August 24, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–20321 Filed 8–28–89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–AWP–8]

Revision of Los Alamitos, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the shape and dimensions of the Los Alamitos Control Zone where it adjoins the Long Beach, California Control Zone. Due to weather reporting and communications requirements when Los Alamitos is not activated, the control zone will not be under jurisdiction of Long Beach, California, but will revert to public use.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0433.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1989, the FAA proposed

to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Los Alamitos, CA, control zone (54 FR 15776). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The U.S. Army did not concur. They expressed concern due to the absence of controlled airspace for safety of flight below the 700 foot transition area for special flights occurring after Los Alamitos is closed when the control zone is not effective. Long Beach is unable to provide the necessary service to aircraft transiting this control zone. When Los Alamitos is not activated, the Los Alamitos control zone will revert to public use.

The Rule

This amendment to part 71 of the FAR revises the shape and lateral dimensions of the Los Alamitos Control Zone. Control jurisdiction of this control zone will no longer revert to Long Beach when Los Alamitos is not activated. Required are hourly and special weather observations during the times and dates a control zone is activated, taken on the airport upon which the control zone is designated. Long Beach is unable to provide the necessary service to aircraft transiting this control zone. When Los Alamitos is not activated, the Los Alamitos control zone will revert to public use.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (71 FR 171), is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Los Alamitos, CA [REVISED]

Within a 5-mile radius of Los Alamitos Armed Forces Reserve Center (lat. 33°47'30" N., long. 118°02'50" W). Excluding that portion within the Long Beach, CA, control zone, and excluding the portion within a 1-mile radius of Meadowlark Airport (alt. 33°43'08" N., long. 118°02'13" W). This control zone is effective from 0700 to 2200 hours local time daily, or during specific times and dates established in advance by a Notice to Airmen which will be continuously published in the *Airport/Facility Directory.*

Issued in Los Angeles, California, on July 28, 1989.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89–20270 Filed 8–28–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89–AWP–7]

Revision of Long Beach, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the shape and dimensions of the Long Beach Control Zone. Due to weather-reporting and communications requirements, this action eliminates the assumption of the Los Alamitos Control Zone by Long Beach when Los Alamitos is not activated.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0433.

SUPPLEMENTARY INFORMATION:

History

On May 19, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Long Beach, CA, control zone dimensions and eliminate the assumption of Los Alamitos control zone when Los Alamitos is not effective (54 FR 21629). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. The U.S. Army did not concur, expressing concern at the absence of controlled airspace for safety of flight below the 700 foot transition area for special flights occurring after Los Alamitos is closed when the control zone is not effective. Long Beach is unable to provide the necessary service to aircraft transiting the Los Alamitos Control Zone. For these reasons, when Los Alamitos is not activated, the Los Alamitos control zone will revert to public use.

The Rule

This amendment to Part 71 of the FAR revises the lateral dimensions of the Long Beach Control Zone. The assumption by Long Beach of the Los Alamitos Control Zone when Los Alamitos is not active is eliminated. Hourly and special weather reporting is required during the times and dates a control zone is designated, based on the airport upon which the control zone is designated. Long Beach is unable to provide the necessary service to aircraft transiting the Los Alamitos Control Zone. For these reasons, when Los Alamitos is not activated, the Los Alamitos control zone will revert to public use.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (71 FR 171), is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. § 71.171 is amended as follows:

Long Beach, CA [REVISED]

Within a 5-mile radius of Long Beach Municipal Airport (lat. 33°49′07″N., long. 118°09′04″W). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will, thereafter, be continuously published in the *Airport/Facility Directory*.

Issued in Los Angeles, California, on July 28, 1989.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89–20271 Filed 8–28–89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 88F–0024]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for an increase in the maximum level of mineral oil that may be used in certain repeated-use rubber articles intended for contact with food. This action is in response to a petition filed by Monsanto Chemical Co.

DATES: Effective August 29, 1989; written objections and requests for a hearing by September 28, 1989.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 1, 1988 (53 FR 6203), FDA announced that a food additive petition (FAP 8B4058) had been filed by Monsanto Chemical Co., 800 North Lindbergh Boulevard, St. Louis, MO 63166, proposing that § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) be amended to provide for an increase in the maximum level of mineral oil that may be used in certain repeated-use rubber articles intended for contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 177.2600(c)(4)(iv) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before September 28, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitite a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.2600 is amended in paragraph (c)(4)(iv) by revising the paragraph heading and the entry for "Mineral oil" to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(iv) *Plasticizers (total not to exceed 30 percent by weight of rubber product unless otherwise specified).*

* * * * *

Mineral oil; (1) In rubber articles complying with this section, not to exceed 30 percent by weight; (2) Alone or in combination with waxes, petroleum, total not to exceed 45 percent by weight of rubber articles that contain at least 20 percent by weight of ethylene-propylene copolymer elastomer complying with paragraph (c)(4)(i) of this section, in contact with foods of Types I, II, III, IV, VI, VII, VIII, and IX idenified in Table 1 of § 176.170(c) of this chapter.

* * * * *

Dated: August 6, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–20234 Filed 8–28–89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AA 62

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of administrative stay.

SUMMARY: On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the **Federal Register** on occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). In response to numerous public comments which indicated confusion about the hazard warning provisions of the newly revised Formaldehyde Standard, on December 16, 1988, OSHA announced an administrative stay of paragraphs (m)(1)(i) through (m)(4)(ii) for a period of nine months. OSHA also announced its intention to revoke paragraphs (m)(1)(i) through (m)(4)(ii) and invite comments on replacing them with the Hazard Communication Standard (29 CFR 1910.1200) or another equally protective alternative which would be less confusing to the public (53 FR 50198).

OSHA has not yet completed work on certain proposed amendments to the Hazard Communication Standard (see 53 FR 29822, 8/8/88). These amendments are relevant to the decision as to whether it would be appropriate to substitute the amended Hazard Communication Standard for stayed paragraph (m)(1)(i) through (m)(4)(ii) of the Formaldehyde Standard. Consequently OSHA is extending the stay an additional nine months and will consider further developments in the Hazard Communication rulemaking in determining what regulatory action to propose on formaldehyde. While this stay is in effect, affected employers must continue to comply with the provisions of OSHA's Hazard Communication Standard.

EFFECTIVE DATE: The administrative stay of 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) will be effective until June 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523–8151.

Authority and Signature

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210.

This action is taken pursuant to section 4(b), 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR part 1911.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

§ 1910.1048 [Stayed in part]

Therefore, 29 CFR 1910.1048 (m)(1)(i), through (m)(4)(ii) is stayed until June 13, 1990.

Signed at Washington, DC this 22nd day of August, 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 89–20245 Filed 8–28–89; 8:45 am]

BILLING CODE 4510-26-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal

CFR Correction

In title 29 of the Code of Federal Regulations, part 1927 to end, revised as of July 1, 1988, § 2676.13(b)(1), in the portion of paragraph (b)(1) which immediately follows the equation, some of the symbols were incorrectly displayed.

§ 2676.13 [Corrected]

On page 731, in the second column, paragraph (b)(1) is revised to read as follows:

(1) If the payment is not contingent on the survival of any person:

$$v^{0:n}=\left(\frac{1}{1+i_{k+1}}\right)^{j}\cdot\prod_{t=1}^{k}\frac{1}{1+i_{t}},$$

where $n = k + j$, k is an integer, $0 \leq j < 1$, $v^{0:0}= 1$, and i_t is the interest rate determined under § 2676.15 applicable to the year ending on the *k*th anniversary of the valuation date.

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 235, 240, 245, 248

Indorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This rule amends existing regulations governing the indorsement and payment of checks drawn on the United States Treasury and the processing of claims on Treasury checks. The changes are required by Title X of the Competitive Equality Banking Act of 1987 which: (1) Provides that Treasury may decline payment on a Treasury check unless it is negotiated within one year; (2) provides for the cancellation of Treasury checks outstanding after one year; and (3) decreases the time limit for claims on Treasury checks to be brought by or against the United States.

EFFECTIVE DATE: October 1, 1989.

ADDRESSES: Financial Management Service, Prince Georges Center II Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Joan Pesata, Director, Limited Payability Project, Financial Management Service, Room 816–C, Prince Georges Center II Building, 3700 East-West Highway, Hyattsville, Maryland 20782; telephone (301) 436–7172, (FTS) 436–7172.

SUPPLEMENTARY INFORMATION: On August 10, 1987, Congress enacted the Competitive Equality Banking Act of 1987 (CEBA), Public Law No. 100–86, 101 Stat. 552, 659. Title X of CEBA changed the laws governing the payment of checks drawn on the United States Treasury and the filing of claims on

account of Treasury checks. Formerly,

Such interagency matters will be

legend, or inadvertent lack thereof, does

provisional credit for the item to the

survivor(s) as payees of a check with

have not been paid and remain

account of Treasury checks. Formerly, Treasury checks were payable without limitation of time. Under CEBA, Treasury is not required to pay a Treasury check issued on or after the effective date of the legislation unless it is negotiated to a financial institution within 12 months after the date of issuance of the check. Treasury is not required to pay a Treasury check issued before the effective date of the legislation unless it is negotiated to a financial institution within 12 months after the effective date. Checks outstanding more than one year are to be cancelled.

Formerly, a claim on a paid Treasury check could be brought for 6 years from the date of payment. Under CEBA, any claim on account of a Treasury check is barred unless presented to the agency that authorized the issuance of the check within one year after the date of issuance. Claims on checks issued before the effective date of the legislation must be filed within one year after the effective date. CEBA reduces the period during which Treasury may reclaim the amount of a check which has been paid over a forged or unauthorized indorsement.

Section 1005 of Title X of CEBA authorizes the Secretary of the Treasury to prescribe rules, regulations and procedures as he deems necessary to implement the amendments made by sections 1002, 1003 and 1004, including the recertification of Treasury checks which have been cancelled or for which a claim has been asserted or barred. Sections 1002, 1003 and 1004 of Title X of CEBA were to be effective 6 months after enactment or on such later date as the Secretary of the Treasury prescribed. In the February 8, 1988, **Federal Register** (53 FR 3584), Treasury set October 1, 1989 as the effective date.

Pursuant to CEBA, in the March 13, 1989, **Federal Register** (54 FR 10366), Treasury issued a Proposed Rule to amend the regulations governing the payment of checks and check claims.

Response to Comments

Five comments were received from Federal agencies and fourteen comments were received from financial institutions or other organizations. Two agencies were concerned that the amendments will increase agency responsibilities for agency payments and agency collections. One effect of CEBA is to make agencies more responsible for the financial consequences of their programs. This effect is reflected in the amendments. Other agency comments involved interagency procedural relationships. Such interagency matters will be addressed in specific implementing instructions and Volume I, Part 4 of the Treasury Financial Manual.

Many financial institution comments expressed support for the rulemaking. Other comments addressed regulations unaffected by CEBA or the amendments. These remarks have been forwarded to appropriate Treasury offices. Several comments concerned the need for a strong public awareness campaign in conjunction with the publication of the final rule. Over the past two years, the Financial Management Service (FMS) has conducted a broad public awareness effort, targeting the major audiences affected. FMS has worked with Federal agencies and with organizations representing large segments of check recipients to enlist their assistance in educating payees and constituents. The awareness effort included liaison with Federal Reserve Banks (FRBs) and banking organizations to reach member financial institutions. In addition, a series of news articles is scheduled for publication in August and September 1989.

One financial institution requested reimbursement procedures when a check is received for deposit and funds are paid out after the one year negotiability period and no recourse is available to the depositor's account. The financial institution will be able to ascertain from the face of the check if a check is not properly payable pursuant to § 240.3. Financial institutions that accept checks which are not properly payable do so at their own risk.

One comment stated that the term "Commission" in §§ 240.4(a)(3) and 240.6(d) should be "Commissioner." The term was corrected to "Commissioner" in the above-cited sections of the final rule.

The following is a section by section discussion of the remaining comments made to specific sections of the final rule.

Section 240.3 Limitations on Payment

1. *Comment:* Several comments offered alternatives to the legend "Void After One Year." One comment suggested a specific placement and size of the legend.

Response: Available space on the check restricted the length of the legend, but "Void After One Year" is one of many legend variations in common use. CEBA does not require that a legend appear on the checks. In addition to the constructive notice in § 240.3, the legend will be actual notice to payees and indorsers of a general limitation on the payment and negotiability of Treasury checks. The regulations provide that the legend, or inadvertent lack thereof, does not limit, or otherwise affect, the rights of the Commissioner under the law. When new check stock is ordered, delivered, and used, the legend will appear printed on the blank check stock. Until existing check stock is depleted, the legend will be typed on the check stock at the same time that other fields of information are included.

2. *Comment:* One comment requested a definition of the 12 month negotiability period.

Response: The period of negotiability, which begins on the date of issuance printed on the check, extends for 12 months. The check must be negotiated within one year from the date printed on the check. For example, a check issued dated October 31, 1989, must be negotiated on, or before, October 30, 1990.

Section 240.4 Cancellation and Distribution of the Proceeds of Checks

1. *Comment:* One comment offered that the regulations should specify that cancellation applies to any check that has not been accepted for payment, or deposit, by a financial institution.

Response: The cancellation of a check that remains outstanding for more than twelve (12) months from the later of the date of issuance or October 1, 1989 will occur at the end of the fourteenth (14) month. Based on current FRBs processing time for Government checks, the time period between the negotiation and cancellation and distribution of proceeds allows for the processing of checks through the FRBs and Treasury's payment system.

2. *Comment:* One comment stated that § 240.4(b) should include a provision requiring Treasury to maintain records related to checks dated prior to October 1, 1989 that will be cancelled.

Response: Information on Treasury's record retention policy is included in § 245.7.

Section 240.6 Reclamation of Amounts of Paid Checks

1. *Comment:* One comment recommended that the term "date of payment" be defined for reclamations under this section.

Response: Section 240.6(d) states the time period for reclamations. The language of § 240.6(d) is specific to the governing statute and will remain unchanged. As described in the summary to the proposed rules, Treasury may reclaim within one year after the date of payment. For purposes of this section, Treasury considers the date of payment to be the date on which the Federal Reserve Bank gives

provisional credit for the item to the member bank or clearing bank.

2. *Comment:* One comment requested that, where multiple consecutive checks have been issued and fraudulently negotiated, Treasury should reclaim the proceeds from indorsers based on the age of the last check paid, rather than on the date of payment of each check.

Response: The language and intent of CEBA (31 U.S.C. 3712(a)(1)) is contrary to the recommendation. The reclamation period will not be extended on the basis described.

3. *Comment:* One comment stated that the term "provisional credit" used on section 240.6 is obsolete and should be replaced with "credit."

Response: "Provisional credit" appears in the summary and comment of the rule, but is not used in the text of the regulation. In the context of Treasury procedures, the term "provisional credit" accurately reflects the processing for payment of Treasury checks as set forth in § 240.9, whereby FRBs provide immediate credit subject to examination and credit by the United States Treasury.

4. *Comment:* One comment disagreed with the extension of the reclamation period for an additional 180 days beyond the one year period.

Response: The extended time for reclamation does not alter payee claim periods. Rather, CEBA provides the additional 180-day reclamation period in cases where a timely claim was filed under provisions of 31 U.S.C. 3702. The additional time allows for administrative processing and for the time necessary to obtain documentation supporting a forgery claim.

Section 240.9 Processing of Checks

1. *Comment:* One comment indicated that § 240.9(a)(2), appeared to have omitted the word "not".

Response: In the proposed rule the word "not" was inadvertently omitted from § 240.9(a)(2). A correction was published on May 18, 1989, at 54 FR 21527.

2. *Comment:* One comment requested that Treasury be required to return a certified true copy of the check when payment is refused.

Response: By agreement with the FRBs, when payment of a check is refused for the reason that it was negotiated more than 12 months after the date on which the check was issued, the original check will be returned through the line of endorsers.

Section 240.11 Indorsement by Payees

Comment: One comment disagreed with the change which places responsibility for the redesignation of survivor(s) as payees of a check with the agency, rather than with Treasury.

Response: The present language of § 240.10(f) will be retained in the final rule at § 240.11(f). Thus, the responsibility for redesignation of survivor(s) as payees of a check remains unchanged from present regulations.

Section 245.1 Introductory

Comment: One comment questioned Treasury's authority to issue regulations on the recertification of Treasury checks which have been cancelled or for which a claim has been asserted or barred.

Response: "Treasury may prescribe such rules, regulations, and procedures as the Secretary deems necessary to implement the amendments made by sections 1002, 1003, 1004, including the recertification of Treasury checks which have been cancelled or for which a claim has been asserted or barred." CEBA, Public Law No. 100–86, 101 stat. 552, 859.

Section 245.2 Definitions

Comment: One commenter stated that the definition of "replacement check" should be supplemented by a definition of "settlement check."

Response: Section 245.2(f) defines "replacement check" as "a check issued pursuant to the recertification of payment by a certifying official." This definition accurately reflects the implementation of CEBA and the process of recertifying Treasury checks and will remain unchanged.

Section 245.3 Time Limit for Check Claims

1. *Comment:* One comment suggested clarification of the fact that the new limitation on negotiability of Government checks does not affect the person's entitlement to payment. The commenter stated that they believe that § 245.3(a) and § 245.3(c) are contradictory.

Response: A claim on account of a Treasury check is distinct from a claim on the underlying obligation. The language of §§ 245.3(a) and 245.3(c) is consistent and accurately reflects the statutory language of CEBA.

2. *Comment:* One comment stated that the proposed mechanism for making a claim pursuant to section 245 does not appear to operate for checks which have been cancelled pursuant to § 240.4.

Response: Section 245.3(a) provides that any claim on account of a Treasury check must be presented to the agency that authorized the issuance of such check within one year after the date of issuance of the check or within one year after October 1, 1989, whichever is later. Section 240.4 provides that checks, that have not been paid and remain outstanding for more than 12 months, shall be cancelled either 12 months from October 1, 1989, pursuant to § 240.4(a), or no later than April 1, 1991, pursuant to § 240.4(b). The period for claims on account of a Treasury check will end before the cancellation period. The provisions do not present a conflict.

Section 245.5 Recertification.

1. *Comment:* Four commenters stated that implementation of section 245.5 should be delayed.

Response: Section 245.5 applies to Federal agencies and implements agency recertification under CEBA. By specific arrangement with the Treasury, where operational and system limitations compel a phased integration, agency responsibilities under recertification may be temporarily assisted by Treasury.

2. *Comment:* Two commenters stated that payee forgery claims should be settled by Treasury's use of the Check Forgery Insurance Fund.

Response: As the later enacted statute, specific to the issues of check claims, payments, and reclamations, the 1987 enactment of CEBA is the controlling law with respect to these issues. Regulatory amendments, issued under authority of CEBA, explicitly confirm and expand upon existing, longstanding, government-wide policies and processes for check payments and check claims.

Section 245.7 Check Status Inquiry

Comment: Five comments requested that Treasury reconsider the decision to return records to agencies after 18 months beyond a check's issue date.

Response: Section 245.7 has been amended to read, "The Commissioner will provide the status and a copy of the check if available, upon request, to the agency which authorized the issuance of the check."

Section 245.8 Receipt or Recovery of Original Check

Comment: One comment requested that the policy of returning checks to the Treasury continue rather than returning checks to the program agencies.

Response: The section reflects the relationship of the certifying agency to its constituents and the availability of detailed constituent records to the certifying agencies. By specific agreement, FMS Regional Financial Centers may temporarily assist agencies incapable of immediate implementation of this provision.

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Except as noted above, the Final Rule is the same as was published as a Proposed Rule in the Federal Register.

Regulatory Procedures

Executive Order 12291

The Treasury Department has determined that this regulation is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193, February 19, 1981). It is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable to this rule because it will not have a significant economic impact on a substantial number of small entities. The regulation will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The regulation is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1510-0058. The estimated average burden associated with the collection of information in this final rule is .167 hours per respondent or recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Management Service at the address previously specified and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for the Financial Management Service.

List of Subjects

31 CFR Part 235

Banks, Banking, Claims, Forgery.

31 CFR Part 240

Banks, Banking, Forgery.

31 CFR Part 245

Banks, Banking, Claims.

31 CFR Part 248

Banks, Banking, Claims, Foreign Banking.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, title 31, chapter II, subchapter A of the Code of Federal Regulations is amended as follows:

PART 235—ISSUANCE OF SETTLEMENT CHECKS FOR FORGED CHECKS DRAWN ON DESIGNATED DEPOSITARIES

1. The authority citation for Part 235 is revised to read as follows:

Authority: 31 U.S.C. 3343.

2. Part 235 is amended by revising the part heading as set forth above.

§ 235.1 [Amended]

3. Section 235.1 is amended by removing "drawn on the United States Treasury and."

§ 235.3 [Amended]

4. Section 235.3 is amended by removing "the Commissioner, Financial Management Service, with respect to a check drawn on the United States Treasury, or."

5. Section 235.6 is revised to read as follows:

§ 235.6 Implementing instructions.

Procedural instructions implementing these regulations will be issued by the Commissioner of the Financial Management Service in volume I, part 4 of the Treasury Financial Manual.

Parts 240 and 245 are revised to read as follows:

PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

General Provisions

Sec.
240.1 Scope of regulations.
240.2 Definitions.
240.3 Limitations on payment.
240.4 Cancellation and distribution of proceeds of checks.
240.5 Guaranty of indorsements.
240.6 Reclamation of amounts of paid checks.
240.7 Demand and protest.
240.8 Offset.
240.9 Processing of checks.
240.10 Release of original checks.

Indorsement of Checks

240.11 Indorsement by payees.
240.12 Checks issued to incompetent payees.
240.13 Checks issued to deceased payees.
240.14 Checks issued to minor payees in certain cases.
240.15 Powers of attorney.

Appendix A—Standard Forms for Power of Attorney and Their Application

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3328; 31 U.S.C. 3331; 31 U.S.C. 3343; 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3717; 332 U.S. 234 (1947); 318 U.S. 363 (1943).

General Provisions

§ 240.1 Scope of regulations.

The regulations in this part prescribe the requirements for indorsement and the conditions for payment of checks drawn on the United States Treasury. These regulations also establish procedures for collection of amounts due the United States Treasury because of payments on checks bearing forged or other unauthorized indorsements or other material defects or alterations.

§ 240.2 Definitions.

(a) *Certifying agency* means an agency for whom a Treasury disbursing officer or a non-Treasury disbursing officer makes payment in accordance with 31 U.S.C. 3325. The responsibilities of a certifying official are set forth at 31 U.S.C. 3528.

(b) *Check* or *Checks* means a check or checks drawn on the United States Treasury.

(c) *Check payment* means the amount paid to a presenting bank in accordance with § 240.9(a)(3) of this part.

(d) *Commissioner* means the Commissioner of the Financial Management Service, Department of the Treasury, 401 14th Street SW., Washington, DC 20227.

(e) *Days* means calendar days.

(f) *Financial institution* means any bank, savings bank, savings and loan association, Federal or State chartered credit union, or similar institution.

(g) *Item* means a reference in a monthly interest billing statement to a check for the amount of which Treasury has demanded refund from a presenting bank.

(h) *Monthly interest billing statement* means a statement prepared by Treasury and sent to a presenting bank which includes the following information regarding each outstanding demand for refund:

(1) The reclamation date;

(2) The reclamation number;

(3) Check identifying information; and

(4) The balance due, including interest.

(i) *Person* or *persons* means an individual or individuals, or an institution or institutions including all forms of financial institutions.

(j) *Presenting bank* means:

(1) A financial institution which, either directly or through a correspondent banking relationship, presents checks to and receives provisional credit from a Federal Reserve Bank; or

(2) A depositary which is authorized to charge checks directly to the General Account of the United States Treasury and present them to Treasury for payment through a designated Federal Reserve Bank.

(k) *Protest* means a presenting bank's written statement and any supporting documentation tending to prove that it is not liable for refund of the reclamation balance.

(l) *Reclamation* means a demand by Treasury for refund of the amount of a check payment.

(m) *Reclamation date* means the date on which a demand for refund was prepared. Normally, demands are sent to presenting banks within two working days of the reclamation date.

(n) *Treasury* means the United States Treasury.

(o) *U.S. securities* means securities of the United States and securities of Federal agencies and wholly or partially government-owned corporations for which the Treasury acts as the transfer agent.

(p) *Unauthorized indorsement* means:

(1) An indorsement made by a person other than the payee, except as authorized by and in accordance with § 204.5 and §§ 240.11 through 240.15;

(2) An indorsement by a financial institution under circumstances in which the financial institution breaches the guaranty required of it by 31 CFR 209.9(a) (*See*, 31 CFR 209.8); or

(3) A missing indorsement where the depositary bank had no authority to supply the indorsement.

§ 240.3 Limitations on payment.

(a) As a general rule,

(1) The Commissioner shall not be required to pay a Treasury check issued on or after October 1, 1989 unless it is negotiated to a financial institution within 12 months after the date on which the check was issued; and

(2) The Commissioner shall not be required to pay a Treasury check issued before October 1, 1989 unless it is negotiated to a financial institution no later than October 1, 1990.

(b) All checks drawn on the United States Treasury and issued on or after October 1, 1989 shall bear a legend, stating "Void After One Year." The legend is notice to payees and indorsers of a general limitation on the payment of Treasury checks. The legend, or the inadvertent lack thereof, does not limit, or otherwise affect, the rights of the Commissioner under the law.

(c) The Treasury shall have the usual right of a drawee to examine checks presented for payment and refuse payment of any checks. The Treasury shall have a reasonable time to make such examination.

(d) Checks shall be deemed to be paid by the United States Treasury only after first examination has been fully completed.

(e) If the Treasury is on notice of a question of law or fact about whether a Treasury check is properly payable when the check is presented for payment, the Commissioner may defer payment until the Comptroller General settles the question.

§ 240.4 Cancellation and distribution of proceeds of checks.

(a) *Checks issued on or after October 1, 1989.* (1) Any check issued on or after October 1, 1989 that has not been paid and remains outstanding for more than 12 months shall be cancelled by the Commissioner.

(2) The proceeds from checks cancelled pursuant to paragraph (a) of this section shall be returned to the agency which authorized the issuance of the check and credited to the appropriation or fund account initially charged for the payment.

(3) Beginning January 1, 1991, and monthly thereafter, the Commissioner shall provide to each agency that authorizes the issuance of Treasury checks a list of those checks issued for such agency which were cancelled during the preceding month pursuant to paragraph (a) of this section.

(b) *Checks issued before October 1, 1989.* (1) Any check issued before October 1, 1989 that has not been paid and remains outstanding for more than 12 months shall be cancelled by the Commissioner no later than April 1, 1991.

(2) The proceeds from checks cancelled pursuant to paragraph (b) of this section shall be applied as required by 31 U.S.C. 3334.

§ 240.5 Guaranty of indorsements.

The presenting bank and the indorsers of a check presented to the Treasury for payment are deemed to guarantee to the Treasury that all prior indorsements are genuine, whether or not an express guaranty is placed on the check. When the first indorsement has been made by one other than the payee personally, the presenting bank and the indorsers are deemed to guarantee the Treasury, in addition to other warranties, that the person who so indorsed had unqualified capacity and authority to indorse the check on behalf of the payee.

§ 240.6 Reclamation of amounts of paid checks.

(a) If, after a check has been paid by Treasury, it is found to:

(1) Bear a forged or unauthorized indorsement; or

(2) Contain any other material defect or alteration which was not discovered upon first examination, then, upon demand by the Treasury in accordance with the procedures specified in § 240.7 of this part, the presenting bank or other indorser shall refund the amount of the check payment.

(b) Interest on any unpaid item shall commence to accrue on the sixty-first day after the reclamation date. Interest shall be calculated at the rate set from time to time for purposes of 31 U.S.C. 323. Interest shall continue to accrue until the amount demanded is paid or the reclamation is abandoned by Treasury.

(c) In addition to its right to recover interest, Treasury shall have the right to recover such other applicable charges *(e.g.,* administrative collection costs, late payment penalties) as may be authorized or required by law.

(d) If the Treasury determines that a check has been paid over a forged or unauthorized indorsement, the Commissioner may reclaim the amount of the check from the presenting bank or any other indorser that breached its guarantee of indorsement prior to:

(1) The end of the one-year period beginning on the date of payment; or

(2) The expiration of the 180-day period beginning on the close of the period described in paragraph (d)(1) of this section if a timely claim under 31 U.S.C. 3702 is presented to the agency which authorized the issuance of the check.

§ 240.7 Demand and protest.

(a) For all reclamations an initial demand for refund of the amount of a check payment will be made by sending a "Request for Refund (Reclamation)," to the presenting bank or any other indorser. This Request shall advise the presenting bank of the amount demanded and the reason for the demand. Treasury will make follow-up demands by including each unpaid item on at least three monthly interest billing statements sent to the presenting bank. Monthly interest billing statements will identify any unpaid reclamation demands and will also show the amount of any accrued interest for each outstanding reclamation. Any discrepancies should be brought to Treasury's attention immediately at the address listed in paragraph (b) of this section. Monthly interest billing statements will contain or be accompanied by notice to the bank:

(1) That Treasury intends to collect the debt through administrative offset if the reclamation is not paid within 120 days of the reclamation date;

(2) That the bank has an opportunity to inspect and copy Treasury's records with respect to the reclamation;

(3) That the bank may, by filing a protest, request Treasury to review its decision that the bank is liable for the reclamation; and

(4) That the bank has an opportunity to enter into a written agreement with Treasury for the repayment of the amount of the reclamation. A request for a payment agreement must be accompanied by proof that satisfies the Treasury that the requesting bank is unable to repay the entire amount owed at the time that it is due.

(b) Requests for an appointment to inspect and copy Treasury's records with respect to a reclamation and requests to enter into repayment agreements should be sent in writing to: Department of the Treasury, Financial Management Service, Operations Division, Reclamation Branch, Room 700–D, 3700 East-West Highway, Hyattsville, MD 20782.

(c)(1) If a presenting bank wishes to contest its liability for the principal amount demanded, it shall send a protest, *i.e.*, a written statement and copies of all documentary evidence (*e.g.*, affidavits, account agreements, signature cards) and other written information raising a question of law or fact which, if resolved in the bank's favor, would show that the bank is not liable, to: Department of the Treasury, Financial Management Service, Operations Division, Reclamation Branch Room 700–D, 3700 East-West Highway, Hyattsville, MD 20782.

The Director, Operations Division, who has supervisory authority over the Reclamation Branch, or his authorized subordinate, shall consider and decide any protest properly submitted under this paragraph. Neither the Director, Operations Division, nor any of his subordinates, shall have any involvement in the process of making findings or demands under § 240.6(a). In order to be considered, and to be timely, a protest must be received not later than 90 days after the reclamation date. Treasury will refrain from collection in accordance with § 240.8 while a timely protest is being considered. Unresolved protested items will be appropriately annotated on the monthly interest billing statement.

(2) If Treasury accepts the protest, the presenting bank shall be notified in writing that efforts to collect the item and any accrued interest have been abandoned.

(3) If the evidence sent by the presenting bank does not satisfy Treasury that refund of the amount demanded is not required under § 240.6(a), Treasury will notify the presenting bank in writing of its decision that the bank is liable for the amount demanded and the reasons for its decision. If the presenting bank fails to send the amount demanded within 30 days of the date of Treasury's decision, Treasury shall proceed to collect the amount owed in accordance with § 240.8, provided that no offset shall be taken sooner than 120 days after the reclamation date.

(4) If an item, and/or accrued interest relating to that item remains unpaid for 90 days after the reclamation date and if there is no unresolved protest associated with the item, the monthly interest billing statement will be annotated with a notice that the presenting bank has until the next billing date to make payment on the item or be subject to offset thereon.

§ 240.8 Offset.

(a) If an item, and/or accrued interest relating to that item, remains unpaid for 120 days after the reclamation date and the presenting bank has been sent at least one monthly interest billing statement informing it that Treasury intends to collect that item by offset, Treasury may refer the matter to any Federal agency and request that agency to offset the indebtedness and other applicable charges against amounts otherwise owed by the Federal agency to the presenting bank. Monthly interest billing statements will be annotated to identify those specific items that are to be referred to an agency for offset.

(b) If a bank wishes to make payment on an item referred to an agency for offset, it should contact Treasury at the address listed in § 240.7(b) to reduce the possibility of a double collection. If an agency to which an indebtedness is referred in accordance with this paragraph is unable to effect offset in whole or in part, Treasury may then refer the debt to any other agency and request offset in accordance with this paragraph. Treasury designates each agency acting under this paragraph as its designee for the sole purpose of effecting offset. No such designee shall be liable to any party for any loss resulting from its action under this paragraph.

(c) If Treasury is unable to collect an amount owed by use of the offset described in paragraph (a) of this section, Treasury shall take such action against the presenting bank as may be necessary to protect the interests of the United States, including referral to the Department of Justice.

(d) If Treasury effects offset under this section and it is later determined that the presenting bank paid the amount of the reclamation and accrued interest thereon, or that a presenting bank which had timely filed a protest was not liable for the amount of the reclamation, Treasury shall promptly refund to the presenting bank the amount of its payment.

§ 240.9 Processing of checks.

(a) *Federal Reserve Banks.* (1) Federal Reserve Banks shall cash checks for Government disbursing officers when such checks are drawn by the disbursing officers to their own order. Payment of such checks shall not be refused except for alteration or counterfeiting of the check, or forged signature of the drawer.

(2) Federal Reserve Banks shall not be expected to cash Government checks presented directly to them by the general public.

(3) As a depository of public funds, each Federal Reserve Bank shall:

(i) Receive checks from its member banks, nonmember clearing banks, or other depositors, when indorsed by such banks or depositors who guarantee all prior indorsements thereon;

(ii) Give immediate credit therefore in accordance with their current Time Schedules and charge the amount of the checks cashed or otherwise received to the account of the Treasury, subject to examination and payment by the United States Treasury;

(iii) Forward payment records and copies of checks to Treasury; and

(iv) Release the original checks to a designated Federal Records Center upon notification from Treasury. The Treasury shall return to the forwarding Federal Reserve Bank a photocopy of any check the payment of which is refused upon first examination. Federal Reserve Banks shall give immediate credit therefor in the United States

Treasury's account, thereby reversing the previous charge to the account for such check. The Treasury authorizes each Federal Reserve Bank to release the original check to the endorser when payment is refused in accordance with § 240.3(a).

(b) *Depositaries outside of the mainland of the United States.* Banks outside of the mainland of the United States designated as depositaries of public money and permitted to charge checks to the General Account of the United States Treasury shall be governed by the operating instructions contained in the letter of authorization to them from Treasury and shall assume the obligations of presenting banks set forth in §§ 240.5 and 240.6. Checks charged to the General Account of the United States Treasury along with the supporting credit voucher shall be shipped to the Federal Reserve Bank of Richmond. The Treasury shall return to the presenting depositary bank a photocopy of any check the payment of which is refused upon first examination. The depositary bank shall give immediate credit therefor in the General Account of the United States Treasury, thereby reversing the previous charge to the Account for such check. Treasury authorizes the Federal Reserve Bank of Richmond to return to the presenting depositary bank the original check when payment is refused in accordance with § 240.3(a).

§ 240.10 Release of original checks.

An original check may be released to a responsible indorser upon receipt of a properly authorized request showing the reason it is required and that the request is in conformity with all applicable law including the Privacy Act.

Indorsement of Checks

§ 240.11 Indorsement by payees.

(a) *General requirements.* Checks shall be indorsed by the payee or payees named, or by another on behalf of such payees as set forth in this part.

(b) *Checks indorsed by the payee or payees named.* When a check is indorsed by the payee or payees named, the forms of indorsement shall conform to those recognized by general principles of law and commercial usage for negotiation, transfer or collection of negotiable instruments.

(c) *Checks indorsed by another on behalf of the named payee or payees*—(1) *Acceptable indorsement.* The only acceptable indorsement of a check by another on behalf of the named payee or payees (except when a check is indorsed by a financial institution under the payee's or payees' authorization) is one which indicates that the person indorsing is doing so on behalf of the named payee or payees. Such an acceptable indorsement shall include the signature of the indorser and sufficient wording to indicate that the indorser is indorsing on behalf of the named payee or payees, pursuant to authority expressly conferred by or under law or other regulation. An example would be: "John Jones by Mary Jones." This example states the minimum indication acceptable. However, §§ 240.12(a)(1), 240.13(a)(1), and 240.15(d) specify the addition of an indication in specified situations of the actual capacity in which the person other than the named payee is indorsing. Checks indorsed "for collection" or "for deposit only to the credit of the within named payee or payees," are acceptable without any signature. However, in the absence of a signature, the presenting bank will be deemed to guarantee its good title to such checks to all subsequent indorsers and to Treasury.

(2) *Unacceptable indorsement.* The indorsement by another on behalf of the named payee or payees, which consists of the name(s) of the payee(s), whether as purported signature(s) or otherwise, and *not* the signature of the person other than named payee or payees indorsing the check, regardless of the relationship between the indorser and the named payee or payees, will be rebuttably presumed to be a forgery and is unacceptable. The indorsement by a person who purports to indorse for the named payee(s) with an indorsement consisting of the name(s) of the payee(s), whether as purported signature(s) or otherwise, and the indorsing person's signature and no indication of the indorsing person's representative capacity, will create a rebuttable presumption that the indorsing person was not authorized to indorse for the named payee(s). In these circumstances it is the responsibility of the individual or institution accepting a check from a person other than the named payee(s) to determine that such person is authorized and has the capacity to indorse and negotiate the check. Evidence of the basis for such a determination may be required by the Treasury in the event of a dispute.

(d) *Indorsement of checks by a financial institution under the payee's authorization.* When a check is credited by a financial institution to the payee's account under the payee's or payees' authorization, the financial institution may use an indorsement substantially as follows: "Credit to the account of the within-named payee in accordance with the payee's or payees' instructions. XYZ." A financial institution using this form of indorsement will be deemed to guarantee to all subsequent indorsers and to the Treasury that it is acting as an attorney-in-fact for the payee or payees, under the payee's or payees' authorization, and that this authority is currently in force and has neither lapsed nor been revoked either in fact or by the death or incapacity of the payee or payees.

(e) *Indorsement of checks drawn in favor of financial institutions.* All checks drawn in favor of financial institutions, for credit to the accounts of persons designated payment so to be made, shall be indorsed in the name of the financial institutions as payee in the usual manner. Financial institutions receiving and indorsing such checks shall comply fully with Part 209 of this chapter.

(f) *Social Security benefit checks issued jointly to individuals of the same family.* A social security benefit check issued jointly to 2 or more individuals of the same family shall, upon the death of 1 of the joint payees prior to the negotiation of such check, be returned to the Social Security District Office or the Treasury Regional Financial Center. Payment of the check to the surviving payee or payees may be authorized by placing on the face of the check a stamped legend signed by an official of the Social Security Administration or the Treasury Regional Financial Center, redesignating such survivor or survivors as the payee or payees of the check. A check bearing such stamped legend, signed as herein prescribed, may be indorsed and negotiated by the person or persons named as if such check originally had been drawn payable to such person or persons.

§ 240.12 Checks issued to incompetent payees.

(a) *Classes of checks which may be indorsed by guardian or fiduciary.* Where the payee of a check of any class listed in § 240.13(a) has been declared incompetent:

(1) If a check is indorsed by a legal guardian or other fiduciary, such legal guardian or fiduciary shall include, as a part of the indorsement, an indication of the capacity in which the legal guardian or fiduciary is indorsing. An example would be: "John Jones by Mary Jones, guardian of John Jones." When a check indorsed in this fashion is presented for payment by a bank, it will be paid by the Treasury without submission to the Treasury of documentary proof of the authority of the guardian or other fiduciary, with the understanding that evidence of such claimed authority to

other than those shown under Standard Form

and any other entity to which a check

which authorized the issuance of the

indorse may be required by the Treasury in the event of a dispute.

(2) If a guardian has not been or will not be appointed, and if the check:

(i) Was issued in payment of goods and services, tax refunds or redemption of currency, it shall be forwarded for advice to the certifying agency; or

(ii) Was issued in payment of principal or interest on U.S. securities, it shall be forwarded to the Bureau of the Public Debt, Division of Loans and Currency, Washington, DC 20226, with a full explanation of the circumstances.

(b) *Classes of checks which may not be indorsed by guardian or fiduciary.* Where the payee of a check of any other class has been declared incompetent, the check shall not be indorsed by a guardian or other fiduciary. The check shall be returned to the Government agency which certified the payment, with information as to the incompetency of the payee and submission of documentary evidence showing the appointment of the guardian or other explanation in order that a replacement check, and others to be issued subsequently, may be drawn in favor of the guardian.

§ 240.13 Checks issued to deceased payees.

(a)(1) *Classes of checks which may be indorsed by an executor or administrator.* Checks issued for the classes of payments indicated below, the right to which under law does not terminate with the death of the payee, when indorsed by an executor or administrator, shall include, as part of the indorsement, an indication of the capacity in which the executor or administrator is indorsing. An example would be: "John Jones by Mary Jones, executor of the estate of John Jones." Such checks, when presented for payment by a bank, will be paid by the Treasury without the submission of documentary proof of the authority of the executor or administrator, with the understanding that evidence of such claimed authority to indorse may be required by the Treasury in the event of a dispute. The classes of payments to which this subsection refers are:

(i) Payments for the redemption of currencies or for principal or interest on U.S. securities;

(ii) Payments for tax refunds; and

(iii) Payments for goods and services.

(2) If an executor has not been appointed, persons claiming as owners shall return the checks for appropriate handling to the Government agency that certified the payment. If there is doubt as to whether the proceeds of the check or checks pass to the estate of the deceased payee, the checks shall be handled in accordance with paragraph (b) of this section.

(b) *Classes of checks which may not be indorsed by an executor or administrator.* Checks issued for classes of payment other than those specified in paragraph (a) of this section may not be negotiated after the death of the payee, but must be returned to the Government agency that certified the payment for determination whether, under applicable laws, payment is due and to whom it may be made.

§ 240.14 Checks issued to minor payees in certain cases.

Checks issued to minors in payment of principal or interest on U.S. securities may be indorsed by either parent with whom the minor resides, or, if the minor does not reside with either parent, by the person who furnishes his chief support. The parent or other person indorsing in behalf of the minor shall present with the check his signed statement giving the minor's age, stating that the payee either resides with the parent or receives his chief support from the person indorsing in his behalf, and that the proceeds of the checks will be used for the minor's benefit.

§ 240.15 Powers of attorney.

(a) *Specific powers of attorney.* Any check may be negotiated under a specific power of attorney executed after the issuance of the check and describing it in full.

(b) *General powers of attorney.* Checks issued for the following classes of payments may be negotiated under a general power of attorney in favor of an individual, financial institution or other entity:

(1) Payments for the redemption of currencies or for principal or interest on U.S. securities.

(2) Payments for tax refunds, but subject to the limitations concerning the mailing of Internal Revenue refund checks contained in 26 CFR 601.506(b).

(3) Payments for goods and services.

(c) *Special powers of attorney.* Under discussions of the Comptroller General of the United States, classes of checks other than those specified in paragraph (b) of this section may be negotiated under a special power of attorney which names a financial institution as attorney-in-fact, and recites that it is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person.

(d) *Proof of authority.* Checks indorsed by an attorney-in-fact shall include, as part of the indorsement, an indication of the capacity in which the attorney-in-fact is indorsing. An example would be: "John Jones by Paul Smith, attorney-in-fact for John Jones." Such checks when presented for payment by a bank, will be paid by the Treasury without the submission of documentary proof of the claimed authority, with the understanding that evidence of such claimed authority to indorse may be required by the Treasury in the event of a dispute.

(e) *Revocation of powers of attorney.* Powers of attorney are revoked by the death of the grantor and may also be revoked by notice from the grantor to the parties known, or reasonably expected, to be acting on the power of attorney. Notice of revocation to the Treasury will not ordinarily serve to revoke the power.

(f) *Acknowledgment of powers of attorney.* Where desirable or where required by foreign, state or local law, powers of attorney shall be acknowledged before a notary public or other officer authorized by law to administer oaths generally.

(g) *Seal or certificate of attesting officers.* Where acknowledgment of powers of attorney is desirable or required pursuant to paragraph (f) of this section, seals of attesting officers shall be impressed or stamped upon the power of attorney form, or the power of attorney shall be accompanied by a certificate from an appropriate official showing that the officer was in commission on the date of acknowledgment.

(h) *Forms.* Power of attorney forms issued under this part are listed in the appendix to this part. They may be obtained from the Financial Management Service, Property and Supply Section, Ardmore East Business Center, 3361–L 75th Avenue, Landover, MD 20785.

Appendix A—Standard Forms for Power of Attorney and Their Application

Standard Form 231. A general power of attorney on this form may be executed by an individual, firm, or sole owner, for checks drawn on the United States Treasury, in payment: (1) For redemption of currencies or for principal or interest on U.S. securities, (2) for tax refunds, and (3) for goods and services.

Standard Form 232. A specific power of attorney on this form, which must be executed after the issuance of the check, describing the check in full, may be used to authorize the indorsement of any class of check drawn on the United States Treasury.

Standard Form 233. A special power of attorney on this form naming a financial organization as attorney-in-fact and reciting that it is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person, may be used for classes of payments

other than those shown under Standard Form 231.

Standard Form 234–5. A general power of attorney may be executed by a corporation for the classes of payment listed under Standard Form 231.

Standard Form 236–7. A specific power of attorney may be executed on this form by a corporation to cover a specific check for any class of payment.

PART 245—CLAIMS ON ACCOUNT OF TREASURY CHECKS

Sec.
245.1 Introductory.
245.2 Definitions.
245.3 Time limit for check claims.
245.4 Advice of nonreceipt or loss.
245.5 Recertification of payment.
245.6 Claim by an indorser.
245.7 Check status inquiry.
245.8 Receipt or recovery of original check.
245.9 Procedural instructions.
245.10 Performance of functions of the Commissioner.

Authority: R.S. 3646, as amended; 31 U.S.C. 3328; 31 U.S.C. 3331

§ 245.1 Introductory.

This part governs the issuance of replacement checks for checks drawn on the United States Treasury, when

(a) The original check has been lost, stolen, destroyed or mutilated or defaced to such an extent that it is rendered non-negotiable;

(b) The original check has been negotiated and paid on a forged or unauthorized indorsement, and

(c) The original check has been cancelled pursuant to § 204.4 of this chapter.

§ 245.2 Definitions.

For purposes of this part:

(a) Agency means each authority of the United States for which the Treasury of the United States issues checks or for which checks drawn on the Treasury of the United States are issued.

(b) Check means a check drawn on the United States Treasury.

(c) Certifying Agency means an agency for whom a Treasury disbursing officer or a non-Treasury disbursing officer makes payment in accordance with 31 U.S.C. 3325. The responsibilities of a certifying official are set forth at 31 U.S.C. 3528.

(d) Commissioner means the Commissioner of the Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227.

(e) Person means an individual, a partnership, a corporation, a labor organization, a government or a subdivision or instrumentality thereof, and any other entity to which a check may be issued.

(f) Replacement check means a check issued pursuant to the recertification of payment by a certifying official.

(g) Secretary means the Secretary of the Treasury.

§ 245.3 Time limit for check claims.

(a) Any claim on account of a Treasury check must be presented to the agency that authorized the issuance of such check within one year after the date of issuance of the check or within one year after October 1, 1989, whichever is later.

(b) Any claim by an indorser under § 245.6 will be considered timely if presented to the Commissioner within one year after the date of issuance of the check or within one year after October 1, 1989, whichever is later.

(c) Nothing in this subsection affects the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued.

§ 245.4 Advice of nonreceipt or loss.

(a) In the event of the nonreceipt, loss or destruction of a check drawn on the United States Treasury, or the mutilation or defacement of such a check to an exent which renders it nonnegotiable, the claimant should immediately notify the agency that authorized the issuance of such check, describing the check, stating the purpose for which it was issued and giving, if possible, its date, amount, Treasury symbol and number.

(b) In cases involving mutiliated or defaced checks, the claimant should enclose the mutilated or defaced check with his communication to the agency.

§ 245.5 Recertification of payment.

Upon receipt of a claim concerning the nonreceipt, loss, destruction, mutilation or defacement of a check, or the cancellation of a check pursuant to § 240.4 of this chapter, the certifying agency may certify a new payment.

§ 245.6 Claim by an indorser.

When one or more Treasury checks are lost, stolen or destroyed in a single incident while in the possession of a person to whom the checks have been negotiated by the payee, and if the checks have not been paid, the Commissioner may issue a replacement check to the person to whom the checks had been negotiated.

§ 245.7 Check status inquiry.

The Commissioner will provide the status and a copy of the check if available, upon request, to the agency which authorized the issuance of the check.

§ 245.8 Receipt or recovery of original check.

(a) If the original check is received or recovered by the claimant after he has requested the agency to issue a replacement check, but before a replacement check has been received, he should immediately advise the agency and hold such check until receipt of instructions with respect to the negotiability of such check.

(b) If the original check is received or recovered by the claimant after a replacement check has been received by him, the original shall not be cashed, but shall be forwarded immediately to the agency that authorized the issuance of such check. Under no circumstances should both the original and replacement checks be cashed.

§ 245.9 Procedural instructions.

The Commissioner of the Financial Management Service may issue procedural instructions, implementing these regulations, in Volume I, Part 4 of the Treasury Financial Manual.

§ 245.10 Performance of functions of the Commissioner.

The Commissioner of the Financial Management Services may authorize any officer of the Treasury Department to perform any of his functions under this part and to redelegate such authority within such limits as the Commissioner may prescribe.

(Approved by the Office of Management and Budget under control number OMB No. 1510–0058)

PART 248—ISSUE OF SUBSTITUTES OF LOST, STOLEN, DESTROYED, MUTILATED AND DEFACED CHECKS OF THE UNITED STATES DRAWN ON ACCOUNTS MAINTAINED IN DEPOSITARY BANKS IN FOREIGN COUNTRIES OR UNITED STATES TERRITORIES OR POSSESSIONS

1. The authority citation for Part 248 is revised to read as follows:

Authority: 31 U.S.C. 3331.

2. Section 248.1 is revised to read as follows:

§ 248.1 Introductory.

This part governs the issuance of substitutes for checks of the United States drawn on United States dollar or foreign currency accounts, maintained with designated depositaries in foreign countries or territories or possessions of the United States. Checks of the United States drawn on such depositaries are hereafter referred to as "depositary checks."

§ 248.5 [Amended]

3. Section 248.5 is amended by removing "§ 368.4" and adding in its place "§ 248.4."

W.E. Douglas,

Commissioner.

[FR Doc. 89-20242 Filed 8-28-89; 8:45 am]

BILLING CODE 4810-36-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 89-064]

Safety and Security Zones; Temporary Rules

AGENCY: Coast Guard, DOT.

ACTION: Notice of Temporary Rules Issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between April 1, 1989 and June 30, 1989 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

ADDRESS: The complete text of any temporary regulation may be examined at, and is available on request from, Executive Secretary, Marine Safety Council (G-LRA-2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, Executive Secretary, Marine Safety Council at (202) 267-1477.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

Non-major safety zones, special local regulations, and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period April 1, 1989 through June 30, 1989 unless otherwise indicated.

Docket Number	Location	Type	Date
1-89-022	Arthur Kill between New York & New Jersey	Safety Zone	20 APR 89
1-89-017	New York Harbor, New York, NY	Safety Zone	29 APR 89
1-89-020	East River, New York, NY	Safety Zone	29 APR 89
1-89-031	Hudson River, New York, NY	Safety Zone	13 MAY 89
1-89-032	Norwich Harbor, Greenwich Harbor, CT	Safety Zone	19 MAY 89
1-89-044	Smith Creek, Arthur Kill, NJ	Safety Zone	21 MAY 89
1-89-042	Thames River, CT	Security Zone	24 MAY 89
1-89-028	Hempstead Harbor, North Hempstead, L.I., NY	Safety Zone	26 MAY 89
1-89-029	Coney Island Channel, NY	Safety Zone	27 MAY 89
1-89-030	East River, New York, NY	Safety Zone	28 MAY 89
1-89-046	Jersey City, Hackensack, Hackensack River, NJ	Safety Zone	29 MAY 89
1-89-033	Hudson River, Poughkeepsie, NY	Safety Zone	4 JUN 89
1-89-050	225th St. & Broadway, Harlem River, NY	Safety Zone	5 JUN 89
1-89-051	Port Newark, Newark Newark Bay, NJ	Safety Zone	9 JUN 89
1-89-034	Hudson River, Troy, NY	Safety Zone	10 JUN 89
1-89-43	Long Island Sound, CT	Special Local Regulation.	17 JUN 89
1-89-060	New York Harbor, NY	Security Zone	22 JUN 89
1-89-064	Atlantic Ocean, Branchport, NJ	Security Zone	23 JUN 89
1-89-036	Hudson River, New York, NY	Safety Zone	25 JUN 89
1-89-067	Stamford, CT	Safety Zone	30 JUN 89
2-89-02	Lower Mississippi River, Mile 52.5 to Mile 51.5	Special Local Regulation.	9 JUN 89
COTP Huntington, WV Reg. 89-01	Kanawha River, Mile 81.8 to Mile 82.5	Safety Zone	15 JAN 89
COTP Huntington, WV Reg. 89-02	Kanawha River, Mile 81.8 to Mile 82.5	Safety Zone	16 JAN 89
COTP Huntington, WV Reg. 89-03	Ohio River, Mile 327.5 to Mile 328.5	Security Zone	22 JUN 89
COTP Louisville, KY Reg. 89-01	Louisville, KY	Safety Zone	10 JAN 89
COTP Louisville, KY Reg. 89-02	Louisville, KY	Safety Zone	28 APR 89
COTP Louisville, KY Reg. 89-03	Louisville, KY	Safety Zone	30 APR 89
COTP Louisville, KY Reg. 89-04	Louisville, KY	Safety Zone	2 MAY 89
COTP Louisville, KY Reg. 89-05	Louisville, KY	Safety Zone	20 MAY 89
COTP Louisville, KY Reg. 89-06	Louisville, KY	Safety Zone	26 MAY 89
COTP Louisville, KY Reg. 89-08	Louisville, KY	Safety Zone	18 JUN 89
COTP Louisville, KY Reg. 89-07	Louisville, KY	Safety Zone	24 JUN 89
COTP Louisville, KY Reg. 89-14	Louisville, KY	Safety Zone	24 JUN 89

Docket Number	Location	Type	Date
COTP Memphis, TN Reg. 89-01	Mississippi River, Mile 734.8 to Mile 736.7 & Wolf River Chute, Mile 0.0 to Mile 1.0	Safety Zone	27 MAY 89
COTP Pittsburgh, PA Reg. 89-01	Ohio River, Mile 104.0 to Mile 106.0	Safety Zone	15 FEB 89
COTP Pittsburgh, PA Reg. 89-02	Ohio River, Mile 94.0 to Mile 95.0	Safety Zone	18 FEB 89
COTP Pittsburgh, PA Reg. 89-03	Monongahela River, Mile 38.5 to Mile 39.0	Safety Zone	30 MAY 89
COTP Pittsburgh, PA Reg. 89-05	Ohio River, Mile 114.0 to Mile 124.0	Safety Zone	12 JUN 89
COTP Pittsburgh, PA Reg. 89-04	Ohio River, Mile 42.7 to Mile 44.5	Safety Zone	25 JUN 89
COTP St. Louis, MO Reg. 88-19	St. Louis, MO, Upper Mississippi River, at the upper entrance to the Chain of Rocks Canal, Mile 194.0.	Safety Zone	10 DEC 88
COTP St. Louis, MO Reg. 88-20	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	12 DEC 88
COTP St. Louis, MO Reg. 88-21	St. Louis, MO, Upper Mississippi River, Mile 181.0 to Mile 184.0	Safety Zone	14 DEC 88
COTP St. Louis, MO Reg. 88-22	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	14 DEC 88
COTP St. Louis, MO Reg. 88-23	St. Louis, MO, Upper Mississippi River, Mile 158.8 to Mile 159.2	Safety Zone	14 DEC 88
COTP St. Louis, MO Reg. 88-24	St. Louis, MO, Upper Mississippi River, Mile 158.8 to Mile 159.2	Safety Zone	16 DEC 88
COTP St. Louis, MO Reg. 88-25	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 165.0	Safety Zone	16 DEC 88
COTP St. Louis, MO Reg. 88-26	St. Louis, MO, Upper Mississippi River, Mile 158.8 to Mile 159.2	Safety Zone	16 DEC 88
COTP St. Louis, MO Reg. 88-27	St. Louis, MO, Upper Mississippi River, Mile 125.0	Safety Zone	17 DEC 88
COTP St. Louis, MO Reg. 88-28	St. Louis, MO, Upper Mississippi River, Mile 170.5 to 171.5	Safety Zone	18 DEC 88
COTP St. Louis, MO Reg. 88-29	St. Louis, MO, Upper Mississippi River, Lock & Dam 26	Safety Zone	18 DEC 88
COTP St. Louis, MO Reg. 88-30	St. Louis, MO, Upper Mississippi River, Mile 183.2 to Mile 183.4	Safety Zone	21 DEC 88
COTP St. Louis, MO Reg. 88-31	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	22 DEC 88
COTP St. Louis, MO Reg. 88-32	St. Louis, MO, Upper Mississippi River, Mile 182.0 to Mile 184.0	Safety Zone	23 DEC 88
COTP St. Louis, MO Reg. 88-33	St. Louis, MO, Upper Mississippi River, Mile 182.0 to Mile 184.0	Safety Zone	26 DEC 88
COTP St. Louis, MO Reg. 89-01	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	6 JAN 89
COTP St. Louis, MO Reg. 89-02	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	10 JAN 89
COTP St. Louis, MO Reg. 89-03	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	11 JAN 89
COTP St. Louis, MO Reg. 89-04	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	26 JAN 89
COTP St. Louis, MO Reg. 89-05	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	7 FEB 89
COTP St. Louis, MO Reg. 89-06	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	8 FEB 89
5-89-16	Norfolk Harbor, Elizabeth River, Norfolk & Portsmouth, VA	Special Local Regulation.	1 APR 89
5-89-22	Elizabeth River, Norfolk & Portsmouth, VA	Special Local Regulation.	22 APR 89
5-89-29	Town Point Park, Elizabeth River, Norfolk, VA	Special Local Regulation.	10 MAY 89
5-89-33	Lower Chesapeake Bay, Community Beach, West Ocean View, Norfolk, VA	Special Local Regulation.	19 MAY 89
5-89-32	Choptank River, Denton, MD	Special Local Regulation.	20 MAY 89
5-89-36	Approaches to Annapolis Harbor, Spa Creek & Severn River, Annapolis, MD	Special Local Regulation.	27 MAY 89
5-89-40	Annapolis Harbor, Annapolis, MD	Special Local Regulation.	29 MAY 89
5-89-41	Norfolk Harbor, Elizabeth River, Norfolk & Portsmouth, VA	Special Local Regulation.	2 JUN 89
5-89-48	Inner Harbor, Baltimore, MD	Special Local Regulation.	9 JUN 89
5-89-42	Moon Channel Delaware River Trenton, NJ	Special Local Regulation.	16 JUN 89
5-89-53	East Channel, Northwest Harbor Patapsco River, Baltimore, MD	Special Local Regulation.	20 JUN 89
COTP Baltimore, MD Reg. 89-01	Craighill Entrance, Upper Chesapeake Bay	Safety Zone	26 APR 89
COTP Hampton Rds., VA Reg. 89-15	Chesapeake Bay, Off Fort Story, Virginia Beach, VA	Safety Zone	8 MAY 89
COTP Philadelphia, PA Reg. 89-05	Delaware River	Safety Zone	24 JUN 89
COTP Wilmington, NC Reg. 89-001	Bogue Sound & Beaufort Inlet, Morehead City, NC	Safety Zone	5 MAY 89
COTP Wilmington, NC Reg. 89-002	Onslow Bay & Onslow Beach, Camp Lejeune, NC	Safety Zone	15 MAY 89
7-89-001	St. Cloud, FL	Special Local Regulation.	9 APR 89
7-89-011	Fanny Key, Moser Channel Bridge, FL	Special Local Regulation.	29 APR 89
COTP P. Charleston, SC Reg. 89-023	Ashley River, Charleston, SC	Safety Zone	11 JUN 89
COTP Miami, FL Reg. 89-01	Atlantic Ocean Position 24 33' N, 081 37' W	Security Zone	18 APR 89
COTP Savannah, GA Reg. 89-017	Savannah River, Savannah, GA	Security Zone	12 MAY 89
COTP Savannah, GA Reg. 89-016	Savannah River	Safety Zone	14 MAY 89
COTP Tampa, FL Reg. 89-019	Gulf of Mexico, Fort Myers Beach, Estera Island, FL	Safety Zone	20 MAY 89
COTP Port Arthur, TX Reg. 89-02	Port of Beaumont, TX and Sabine Neches Waterway	Safety Zone	12 MAY 89
COTP Port Arthur, TX Reg. 89-04	Sabine Neches Waterway	Safety Zone	14 MAY 89
COTP Port Arthur, TX Reg. 89-03	Calcasieu, Ship Channel, Channel Light 62	Safety Zone	15 MAY 89
9-89-03	Lake Macatawa, Holland, MI	Special Local Regulation.	19 MAY 89
9-89-12	Lake Erie	Special Local Regulation.	26 MAY 89
9-89-06	Lake Erie, Cleveland, OH	Special Local Regulation.	17 JUN 89
9-89-17	Keweenaw Waterway, MI	Special Local Regulation.	17 JUN 89
COTP Chicago, IL Reg. 89-01	Lake Michigan waters offshore at Chicago Harbor, Burnham Park Harbor, & Chicago River, Chicago, IL.	Security Zone	24 APR 89
COTP Cleveland, OH Reg. 89-01	Cleveland Harbor, Lake Erie	Safety Zone	16 MAY 89
11-89-12	San Diego Channel, San Diego Bay, CA	Special Local Regulation.	29 MAY 89
COTP LA/LB, CA Reg. 89-04	Ports of Los Angeles/Long Beach, CA	Safety Zone	1 APR 89

Docket Number	Location	Type	Date
COTP LA/LB, CA Reg. 89-05	Ports of Los Angeles/Long Beach, CA	Safety Zone	5 JUN 89
COTP Puget Sound, Seattle, WA Reg. 89-01.	500 Yards Around Tugs RANGER/HUNTER/GERONIMO	Safety Zone	26 APR 89
13-89-05	Northern Lake Washington Seattle, WA	Special Local Regulation.	5 MAY 89
COTP Honolulu, HI Reg. 89-02	Mamala Bay, Oahu, HI	Safety Zone	8 MAY 89

Date: August 22, 1989.

Bruce P. Novak,

Executive Secretary, Marine Safety Council.

[FR Doc. 89-20247 Filed 8-28-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Editorial Amendment of List of Office of Management and Budget Approved Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's list of Office of Management and Budget approved information collection requirements contained in the Commission's Rules.

This action is necessary to comply with the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval.

EFFECTIVE DATE: August 29, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jerry Cowden, Office of Managing Director, (202) 632-7513.

SUPPLEMENTARY INFORMATION:

Order

Adopted: August 1, 1989.
Released: August 10, 1989.

1. Section 3507(f) of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3507(f), requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's information collection requirements. OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

3. This Order amends § 0.408 to remove listings of information collections which the Commission has eliminated or to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and § 0.231(d) of the Commission's rules. Since this amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

5. Accordingly, *it is ordered,* That § 0.408 of the rules is amended, effective on the date of publication in the Federal Register.

6. Persons having questions on this matter should contact Jerry Cowden at (202) 632-7513.

List of Subjects in 47 CFR Part 0

Reporting and recordkeeping requirements.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Part 0 of title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. In 47 CFR 0.408, paragraph (b) is amended by removing § 43.31 and its corresponding OMB control number 3060-0058.

3. In 47 CFR 0.408, paragraph (b) is further amended by adding the following sections and their corresponding OMB control numbers to read as follows:

§ 0.408 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

47 CFR part or section where identified and described	Current OMB Control No.
* * * *	*
2.948	3060-0396
* * * *	*
15.7	3060-0397
* * * *	*
15.117(g)(2)-(3)	3060-0398
* * * *	*
73.3523	3060-0427
73.3524	3060-0423
* * * *	*

[FR Doc. 89-20294 Filed 8-28-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-413, RM-6370]

Radio Broadcasting Services; Ringgold, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of James E. Price, *See* 53 FR 35337, September 13, 1988, this document allots Channel 229A to Ringgold, Georgia, as that community's second local FM service. Channel 229A can be allotted to Ringgold, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.3 kilometers (3.9 miles) west to avoid a shortspacing to Station WJLA(FM), Channel 228A, Ellijay, Georgia. The coordinates for this allotment are North Latitude 34-54-01 and West Longitude 85-10-37. With this action, this proceeding is terminated.

DATES: Effective October 10, 1989; the window period for filing applications will open on October 11, 1989, and close on November 9, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-413, adopted August 7, 1989, and released August 23, 1989. The full text of this Commission decision is available for inspection and copying during normal

business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—AMENDED

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is revised by adding Ringgold, Georgia, Channel 229A.

Karl A Kensington,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-20289 Filed 8-28-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 173

[Docket No. HM-166V; Amendment Nos. 171-103; 173-214]

RIN No. 2137-AB10

Hazardous Materials; Uranium Hexafluoride

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR) to permit the transport of uranium hexafluoride (UF_6) in certain packagings that do not meet the requirements of either the American National Standard N14.1-1987 (ANSI N14.1-1987) or the specification for Class DOT-106A multi-unit tank car tanks as required by 49 CFR 173.420, and to permit the transport of depleted UF_6 in packagings filled to a capacity not exceeding 62% by volume at 20 °C (68 °F). This action is necessary to permit the continued use of UF_6 packagings that have been demonstrated to be safe based on exemption experience data.

DATES: Effective date: September 28, 1989. However, compliance with the regulations as amended herein is authorized as of August 29, 1989.

FOR FURTHER INFORMATION CONTACT: Michael E. Wangler, Chief, Radioactive Materials Branch, Technical Division, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4545.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1987, RSPA published a notice of proposed rulemaking (Docket HM-166V, Notice No. 87-7) in the **Federal Register** (52 FR 25342) which proposed to amend the HMR to permit the transport of UF_6 in certain packagings. These packagings do not meet the requirements of either the American National Standard N14.1-1982 (ANSI N14.1-1982) or the specification for Class DOT-106A multi-unit tank car tanks, as required by § 173.420.

On April 6, 1988, RSPA published a notice (Notice 88-2; 53 FR 11320) containing supplemental proposals to update the regulatory reference of ANSI N14.1 to the 1987 edition and to revise § 173.420(a)(4) to permit the transport of depleted UF_6 in packagings filled to a capacity of 62% by volume. The supplemental proposal to reference the revised ANSI Standard N14.1-1987 rather than ANSI N14.1-1982 was based on the merits of comments received in response to Notice 87-7. Commenters to Notice 87-7 stated that unlike previous ANSI N14.1 standards, N14.1-1987 recognizes certain packagings currently in service, but not specifically covered by an ANSI N14 standard, as acceptable if the packagings are used within their original design limitations and are inspected, tested, and maintained to conform with ANSI N14.1-1987. Additionally. ANSI N14.1-1987 establishes several new packagings and the standards for those packagings.

The supplemental proposal to amend § 173.420(a)(4) to permit the transport of depleted UF_6 in packagings filled to a capacity not exceeding 62% by volume at 20 °C (68 °F) was based on a petition received from the Department of Energy (DOE). A filling limit of 62% of the volumetric capacity is allowed by ANSI N14.1-1987. The current filling limit of 61% of the volumetric capacity was derived from Table 1 of ANSI N14.1-1982.

Prior to issuing a final rule on Notice 88-7, RSPA published a related final rule on September 20, 1988 in the **Federal Register** under Docket HM-190 (52 FR 26548), which amended the requirements for the fabrication, modification and maintenance of the DOT 21PF-1 overpack used in the transport of UF_6 cylinders. In order to provide regulatory consistency between §§ 173.417 and 173.420 in HM-190, RSPA incorporated ANSI N14.1-1987 by reference in § 171.7(d)(4)(iii) and amended §§ 173.417 and 173.420 to remove references to the 1982 edition of ANSI N14.1. That final rule eliminated the need to address that particular issue in this document

RSPA received three comments in response to Notice 87-7 and three comments to the supplemental proposals which are discussed in this document. Two commenters questioned the acceptability of continuing to authorize the use of Class DOT-106A multi-unit tank car tanks. Section 173.420(a)(2)(ii) authorizes UF_6 to be transported in Class DOT-106A multi-unit tank car tanks conforming to §§ 179.300, 179.301 and 179.302. The Model 30A is the industry designation for the Class DOT-106A packaging used for the transport of UF_6. The commenters stated that no ANSI standard has established criteria for the design, fabrication, use, or cleaning of Model 30A packagings. The commenters further noted that the ANSI standards prescribe a Model 30B as a replacement packaging for the Model 30A. One commenter implied that RSPA apparently does not consider the Model 30A to be an acceptable packaging since it does not appear in the table specifying minimum wall thicknesses found in proposed § 173.420(a)(2)(iv)(D). The minimum wall thickness for the Class DOT-106A packagings is found in existing § 179.301 for an existing DOT specification packaging. Therefore, it is unnecessary to respecify its minimum wall thickness in the table.

Another commenter requested that, for purely informational purposes, RSPA include the following statement in § 173.420(a)(2)(iii): "The 30A cylinder is obsolete having been replaced by 30B. After December 31, 1992, the Department of Energy will no longer accept 30A cylinders for filling at their facilities." Through this comment, users of the Model 30A cylinder would be informed that the DOE will not be accepting the Model 30A at its facilities after the specified date.

The focus of this and the other comments on the suitability of the 30A cylinder relates to operational factors, particularly cleaning, rather than transportation safety concerns. RSPA knows of no significant safety problems resulting from use of Class DOT-106A packagings for transporting a number of different materials, including UF_6. Accordingly, RSPA finds no basis to restrict or discontinue the use of this packaging at this time for UF_6 transport. If additional information develops that supports its discontinuance, RSPA will consider further rulemaking in this area.

exceed 62% of the certified volumetric

RSPA is also denying the request that a statement be placed in § 173.420 concerning the acceptance of the Model 30A at DOE facilities because the statement is informational and not regulatory.

A commenter questioned the requirement found in existing § 173.420(a)(2)(ii) that Class DOT–106A packagings must meet the additional special commodity requirements in § 179.302. The commenter pointed out that there are no special commodity requirements in § 179.302 for UF_6 packagings. RSPA agrees with the commenter and the reference to § 179.302 is removed from § 173.420(a)(2)(ii) in this final rule.

Section 173.420(a)(2) contains the requirements on the design, fabrication and marking of cylinders. Section 173.420(b) provides that UF_6 packagings must be inspected, tested and marked in accordance with ANSI N14.1–1987. One commenter stated that the minimum wall thicknesses found in proposed subparagraph (a)(2)(iv)(D) should be placed in paragraph (b). RSPA disagrees with the commenter. The minimum wall thicknesses in proposed subparagraph (a)(2)(iv)(D) are for use as a design criteria for certain cylinders. The minimum wall thicknesses that must be met for continued use of a cylinder are found in ANSI N14.1–1987.

Paragraph 6.3.2 of ANSI N14.1–1987 provides that a cylinder whose wall thicknesses fall below the levels specified in that standard (which are actually the same as those contained in the § 173.420(a)(2)(iii)(D) table) is no longer authorized for use. These requirements for continued use of a cylinder are made applicable by § 173.420(b), which incorporates ANSI N14.1.

RSPA received two comments which were editorial in nature in response to the supplemental proposals. The commenters suggested that the word "may" be changed to "must" in § 173.420(a)(4) and that the word "certified" be added before the words "volumetric capacity" to be consistent with the ANSI N14.1 requirement that the manufacturer certify, in writing, the volumetric capacity of the cylinder. RSPA agrees with these commenters and their suggestions are adopted in this final rule.

Administrative Notices

RSPA has determined that this final rule (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 et seq.). A regulatory evaluation is available for review in the docket. I certify that this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on the States, on the Federal-State relationship or on the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications as defined in Executive Order 12612.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Regulatory Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Regulatory Agenda.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

49 CFR Part 173

Hazardous materials transportation. Packaging, Radioactive materials.

In consideration of the foregoing, 49 CFR Parts 171 and 173 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, and 1808; 49 CFR Part 1.

2. In § 171.7(d)(4), a new paragraph (iv) is added to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(iv) For purposes of § 173.420(a)(2) of this subchapter, previous editions of American National Standard N14.1 which are also incorporated are titled "Standard for Packaging of Uranium Hexafluoride for Transport," 1971 and 1982 editions

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

4. Section 173.420 is revised to read as follows:

§ 173.420 Uranium hexafluoride (fissile and low specific activity).

(a) In addition to any other applicable requirements of this subchapter, uranium hexafluoride, fissile or low specific activity, must be offered for transportation as follows:

(1) Before initial filling and during periodic inspection and test, packagings must be cleaned in accordance with American National Standard N14.1.

(2) Packagings must be designed, fabricated, inspected, tested and marked in accordance with—

(i) American National Standard N14.1 (1987, 1982 or 1971 edition) in effect at the time the packaging was manufactured;

(ii) Specifications for Class DOT–106A multi-unit tank car tanks (§§ 179.300 and 179.301 of this subchapter); or

(iii) Section VIII, Division I of the ASME Code, provided the packaging—

(A) Was manufactured on or before June 30, 1987;

(B) Conforms to the edition of the ASME Code in effect at the time the packaging was manufactured;

(C) Is used within its original design limitations; and

(D) Has shell and head thicknesses that have not decreased below the minimum value specified in the following table—

Packaging model	Minimum thickness millimeters (inches)
1S, 2S	1.58 (0.062)
5A, 5B, 8A	3.17 (0.125)
12A, 12B	4.76 (0.187)
30B	7.93 (0.312)
48A, F, X, and Y	12.70 (0.500)
48T, O, OM, OM Allied, HX, H, and G	6.35 (0.250)

(3) Uranium hexafluoride must be in solid form.

(4) The volume of solid uranium hexafluoride, except solid depleted uranium hexafluoride, at 20 °C (68 °F.) must not exceed 61% of the certified volumetric capacity of the packaging. The volume of solid depleted uranium hexafluoride at 20 °C (68 °F.) must not

exceed 62% of the certified volumetric capacity of the packaging.

(5) The pressure in the package at 20 °C (68 °F) must be less than 101.3 kPa (14.8 psia).

(b) Packagings of uranium hexafluoride must be periodically inspected, tested, marked and otherwise conform with the American National Standard N14.1–1987.

(c) Each repair to a packaging for uranium hexafluoride must be performed in accordance with American National Standard N14.1–1987.

Issued in Washington, DC on August 21, 1989 under authority delegated in 49 CFR Part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89–20056 Filed 8–28–89; 8:45am]

BILLING CODE 4910-60-M

Proposed Rules

Federal Register

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conform with the District of Columbia

unaffected in their applicability to DC

Authority: 5 U.S.C 6311; Section 630.303

Proposed Rules

Federal Register
Vol. 54, No. 166
Tuesday, August 29, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

Performance Awards in the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: OPM is issuing proposed regulations to require that Senior Executive Service (SES) Performance Review Boards be composed of a majority of career SES members when making recommendations on performance awards for career SES appointees. This action is necessary to assure that the composition of the Boards is the same for performance award purposes as it is when the Boards are making recommendations on performance appraisals of career appointees.

DATES: Comments will be considered if received no later than September 28, 1989.

ADDRESSES: Send or deliver written comments to the Director, Office of Executive Personnel, Office of Executive Administration, Office of Personnel Management, Room 6R48, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 632-4486.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 4314(c)(5), Senior Executive Service (SES) Performance Review Boards are specifically required to be composed of a majority of career SES members in the case of an appraisal of a career SES appointee, unless OPM determines that there exists an insufficient number of career appointees available to comply with the requirement. The requirement is reflected in § 430.307(d) of title 5 of the Code of Federal Regulations.

The basis for the requirement was stated in the Report of the Senate Committee on Governmental Affairs on the Civil Service Reform Act of 1978 as follows: "In this way persons who are knowledgeable and directly involved in the day-to-day responsibilities of Federal executives will have a large voice in judging their peers. Their status as career executives will protect the appraisal from being unduly influenced by political considerations." (Report No. 95-969, 95th Congress, 2d Session, p. 61.)

There is no similar, specific requirement in title 5, U.S. Code, when Performance Review Boards are making recommendations on performance awards for career SES appointees under 5 U.S.C. 5384(d). OPM has concluded, however, that in keeping with the spirit of the law, Performance Review Boards should also have a majority career membership when acting on performance awards. The only exception would be when OPM has determined under 5 CFR 430.307(d), which implements 5 U.S.C. 4314(c)(5), that there exists an insufficient number of career appointees available to comply with the requirement for majority career membership when the Boards are making recommendations on performance appraisals. It should be noted that OPM has not previously granted any waivers to the requirement regarding Board composition for performance appraisals.

The annual performance appraisal period for most agencies ends on September 30. Although OPM is aware of only one agency that currently is not in conformity with the proposed regulation, in order to assure that the proposed regulation is effective for this year's performance award recommendations for all of these agencies, the Director of OPM finds that good cause exists for shortening the comment period to 30 days.

E.O. 12291 Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it deals with the SES employees of the Federal Government.

List of Subjects in 5 CFR Part 534

Government employees, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is proposing to amend 5 CFR part 534 as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 5351, 5352, 5353, 5361, 5383, 5384, 5385, and 5541.

2. The heading for subpart D is revised and § 534.403(a) is revised to read as follows:

Subpart D—Pay and Performance Awards under the Senior Executive Service

§ 534.403 Performance awards.

(a) This section covers the payment of performance awards to career appointees in the Senior Executive Service (SES).

(1) To be eligible for an award, the appointee's most recent performance rating of record under part 430, subpart C, of this chapter must have been "Fully Successful" or higher.

(2) When making recommendations on performance awards, more than one-half of the membership of a Performance Review Board must be career SES appointees. The only exception is if OPM has determined under § 430.307(d) of this chapter that the Board does not have to have a majority of career members when making recommendations on performance appraisals of career appointees because there exists an insufficient number of career appointees.

* * * * *

[FR Doc. 89-20330 Filed 8-28-89; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 630

Absence and Leave; Coverage of DC Government Employees

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management published a proposal on February 27, 1985 (50 FR 7922), to amend its leave regulations in 5 CFR Part 630 to conform with the District of Columbia Comprehensive Merit Personnel System. Final regulations were never issued. The present proposed rule amends some of the same sections of those regulations, but limits the restriction on the applicability of the Federal leave law to DC government employees to that contained in 5 U.S.C. 6301(2)(B). That section defines "employee" for Federal leave purposes as "an individual first employed by the government of the District of Columbia before October 1, 1987."

DATES: Comments must be received on or before October 30, 1989.

ADDRESSES: Send or deliver comments to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, Office of Personnel Management, Room 7H30, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Frank Derby, (202) 632-5056.

SUPPLEMENTARY INFORMATION: When our earlier proposed regulations were published, it was our view that DC Law 2-139, which established the District of Columbia Comprehensive Merit Personnel System, ended title 5, U.S.C., leave coverage for DC government employees. However, subsequent opinions by the Comptroller General and the Department of Justice's Office of Legal Counsel (OLC) have clarified the effect of that DC statute. On September 30, 1986, the Comptroller General determined that annual and sick leave are transferable from the DC government to the Federal Government (B-214541). The Comptroller General did not agree that the DC statute had superseded Federal law regarding the transfer of leave by DC government employees. In a subsequent opinion dated October 15, 1987, the Justice Department's Office of Legal Counsel agreed that Federal law had not been superseded.

The Office of Personnel Management then asked the Office of Legal Counsel to rule on the question of lump-sum annual leave payments under 5 U.S.C. 5551 and 6306 to individuals moving to the DC government without a break in service. The question arose in the light of the new definition of "employee" established by section 207(c) of Public Law 99-335 (June 6, 1986), which amended 5 U.S.C. 6301(2)(B) to limit the definition of "employee" for Federal leave purposes to individuals "first employed by the government of the District of Columbia before October 1, 1987."

OLC's opinion of February 10, 1989, states that 5 U.S.C. 5551 and 6306 are unaffected in their applicability to DC government employees by the new definition of "employee." Therefore, under 5 U.S.C. 5551, individuals entering DC government service from Federal service without a break in service should have their leave transferred and are not entitled to a lump-sum annual leave payment. Under 5 U.S.C. 6306, lump-sum monies will have to be repaid if a separated DC government employee enters Federal service before the expiration of the time represented by the lump-sum payment.

The new definition of "employee," which excludes individuals first employed by the DC government on or after October 1, 1987, does, however, affect the transfer of leave for those individuals. Any leave earned by such individuals while employed by the DC government is outside of the Federal leave system. Therefore, there is no statutory or regulatory basis upon which to accept the transfer of that leave upon subsequent employment in the Federal service.

The proposed regulations are intended to clarify the coverage of the Federal annual and sick leave program with respect to former DC government employees. In addition, we are proposing to remove obsolete references in 5 CFR 630.202(b) and 630.502(b)(2) to the U.S. Postal System and the Regional Action Planning Commissions (established under 42 U.S.C. 3182 and abolished by Public Law 97-35). Additional guidance to Federal agencies on pay and leave entitlements in movements between the DC government and Federal agencies will be provided through the Federal Personnel Manual System.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.
Constance B. Newman,
Director.

Accordingly, OPM proposes to amend 5 CFR part 630 as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C 6311; Section 630.303 also issued under 5 U.S.C. 6133(a); Section 630.501 and subpart F also issued under E.O. 11228; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6325; subpart I also issued under 5 U.S.C. 6332 and Public Law 100-566; subpart J also issued under 5 U.S.C. 6362 and Public Law 100-566.

2. In § 630.202, paragraph (b) is revised to read as follows:

§ 630.202 Full biweekly pay period; leave earnings.

* * * * *

(b) *Part-time employees.* Hours in a pay status in excess of an agency's basic working hours in a pay period are disregarded in computing the leave earnings of a part-time employee

3. In § 630.502, paragraphs (b), (c), and (d)(1) are revised to read as follows:

§ 630.502 Sick leave recredit.

* * * * *

(b) Except as provided in paragraphs (c) and (d) of this section, an employee who is separated from the Federal Government or the government of the District of Columbia for other than retirement purposes is entitled to a recredit of sick leave if reemployed in the Federal Government within 3 years after separation is effected.

(c) An employee who is employed by the Appalachian Regional Commission established under 40 U.S.C. 101, App. A, within 4 calendar days after separation from the Federal Government is entitled to a recredit of sick leave if—

(1) Reemployed by the Federal Government within 6 months after separation from the Commission; and

(2) Employment with the Commission exceeded 2 years and 6 months without a break of more than 3 calendar days.

(d)(1) An employee who is separated from the Federal Government or the government of the District of Columbia to accompany a civilian or uniformed sponsor on official assignment to an overseas area is entitled to a recredit of sick leave within the time limit provided by paragraph (b) of this section or within no more than 2 years after he or she returns to the United States from an overseas area to which the sponsor was assigned, whichever is later, provided the individual—

(i) Was a family member of a Federal civilian employee or a member of a uniformed service who was assigned to an overseas area; and

(ii) Accompanied the civilian employee or uniformed sponsor on official assignment in the overseas area during the 3-year period specified in paragraph (b) of this section.

* * * * *

[FR Doc. 89-20332 Filed 8-28-89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV-AO-88-3; FV-88-109]

RIN 0581-AA29

Vidalia Onions Grown in Georgia; Final Decision and Referendum Order on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes the issuance of a marketing agreement and order for Vidalia onions. A marketing agreement and order are currently in effect on an interim basis. For the purposes of this document, the term "Vidalia onions" refers to onions grown in the designated production area, which consists of thirteen counties and portions of six other counties in southeastern Georgia. The interim order authorizes production and marketing research and promotion projects, including paid advertising, for Vidalia onions. The program is administered by a nine member industry committee consisting of eight growers, of whom at least four must also be handlers, and a public member. The program is financed by assessments levied on Vidalia onions. The program is administered by a nine member industry committee consisting of eight growers, of whom at least four must also be handlers, and a public member. The program is financed by assessments levied on Vidalia onion handlers. A primary objective of the program is to improve grower returns by strengthening consumer demand through various promotion activities and by reducing costs through production and marketing research. Vidalia onion producers will vote in a referendum to determine whether they favor issuance of the marketing order regulating the handling of Vidalia Onions grown in Georgia.

DATES: The referendum shall be conducted from September 13–15, 1989. The representative period for the purposes of the referendum herein ordered in July 31, 1988, to August 1, 1989.

FOR FURTHER INFORMATION CONTACT: John R. Toth or William G. Pimental, Fruit and Vegetable Division, USDA, AMS, P.O. Box 2276, Winter Haven, Florida 33883, telephone 813-229-4770; or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, D.C. 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued August 19, 1988, and published in the **Federal Register** on August 23, 1988 (53 FR 32054); Tentative Decision and Referendum Order and Opportunity to File Written Exceptions—Issued February 21, 1989, and published in the **Federal Register** on February 24, 1989 (54 FR 8160); Interim Order—Issued March 10, 1989, and published in the **Federal Register** on March 16, 1989 (54 FR 10972).

Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

This decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The tentative marketing agreement and interim order were formulated on the record of a public hearing held at the Toombs County Courthouse in Lyons, Georgia, on September 20–21, 1988. Notice of the hearing was published in the August 23, 1988, issue of the **Federal Register**. The notice set forth a proposed order submitted by a group of Vidalia onion producers and handlers known as FAVOR (Farmers Allied for the Vidalia Onion Referendum). The principal feature of the proposal was the authority to collect assessments from handlers of Vidalia onions grown in a designated part of Georgia to fund research and promotion activities.

Upon the basis of evidence introduced at the hearing and the record thereof, the Deputy Assistant Secretary for Marketing and Inspection Services on February 21, 1989, filed with the Hearing Clerk, U.S. Department of Agriculture, a Tentative Decision and Referendum Order, directing that a referendum be conducted during the period March 1–3, 1989, among producers of Vidalia onions to determine whether they favored issuance of the proposed interim marketing order. In the referendum, the marketing order was favored by more than two-thirds of the producers voting in the referendum and also by producers of more than two-thirds of the production represented in the referendum. The tentative marketing agreement was signed by handlers who, during the representative period, handled not less than 50 percent of the volume of Vidalia onions covered by the interim order. The tentative marketing agreement and interim marketing order were issued on March 10, 1989, and became effective upon publication in the **Federal Register** on March 16, 1989.

The Tentative Decision and Referendum Order also provided interested persons the opportunity to file written exceptions thereto by June 30, 1989. Four exceptions were received. Exceptions were filed by Congressman Lindsay Thomas, on behalf of a group of Vidalia onion producers; Mr. Frank M Grasberger, on behalf of the Farmers Allied for the Vidalia Onion Referendum (FAVOR); Mr. Terence J. Center, Associate Professor, College of Agriculture, University of Georgia; and T.M. "Mort" Ewing, President of the Georgia Farm Bureau Federation. These exceptions to the Tentative Decision are discussed and ruled upon in this document.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which would include handlers under this proposed order, are defined as those with gross annual revenues of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to regulated handlers. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are normally brought about through group action of essentially small entities acting on their own behalf. This, both the RFA and the Act have small entity orientation and compatibility.

There are approximately 160 handlers of Vidalia onions. During the 1987 season, commercial shipments totalled about 738,400 50-pound bags at an average f.o.b. price of $16.75 for a total value of about $12.4 million. An undetermined volume was also sold locally at roadside stands and through mail order operations. While there is a great variance in size of individual handler operations, almost all the handlers that would be regulated under this proposed order would qualify as small firms under the SBA's definition.

There are about 280 Vidalia onion growers in Georgia. The average acreage of onions grown is 27 acres, with the smallest farm being one-tenth of an acre and the largest farm having 600 acres of Vidalia onions. About 5 percent of the growers farm in excess of 100 acres, and almost 30 percent have less than 5 acres. The majority of these growers could be classified as small businesses.

Because most of the growers and handlers of Vidalia onions are small in size, they have been unable to individually finance the types of research and promotion efforts needed by the industry. The marketing order program provides a means for these small entities to pool their resources and work together to solve their common problems. Such action is necessary for this relatively small industry to remain profitable in the face of intense competition from larger industries.

The marketing order authorizes the collection of assessments from handlers of Vidalia onions grown in a designated part of Georgia. Assessment funds can be used to finance production research projects that could reduce costs by improving post-harvest handling techniques and reducing the occurrence of onion diseases. Assessment funds can also be used to strengthen demand and expand markets for Vidalia onions through marketing research and product promotion programs, including paid advertising. The order is administered by a committee composed of Vidalia onion producers and a public member nominated by growers and selected by the Secretary. Daily administration of the order is carried out by a staff hired by the Vidalia Onion Committee (committee). The order does not regulate the production of Vidalia onions and places no restrictions on the quality or quantity of Vidalia onions that may be handled.

The principal requirement of the order which affects handlers is the requirement that they pay assessments on fresh market shipments of Vidalia onions to fund research and promotion programs. Any assessment rate that may be established would be recommended by the committee to the Secretary for approval.

Acreage and supplies of Vidalia onions have risen dramatically in recent years, and the marketing order provides a means of halting the drop in grower returns experienced in past seasons. This could be achieved by strengthening demand and developing new markets for these increasing supplies through promotion of Vidalia onion. Also, costs could be reduced through research. Thus, the marketing order could be expected to have a positive impact on grower returns.

The order also imposes some reporting and recordkeeping requirements on handlers. The burden that is imposed with respect to these requirements is negligible. Most of the information that is reported to the committee is already compiled by handlers for other uses and is readily available. In compliance with the Office of Management and Budget (OMB) regulations (15 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements that are imposed by the interim final rule have been approved by the OMB and assigned OMB No. 0581-0160. The provisions contained in the interim final rule are the same as those proposed in this final decision. The currently approved requirements impose an estimated annual reporting burden of approximately one hour on each of the 160 handlers covered by the order and an estimated recordkeeping burden of about 15 minutes. Any additional reporting requirements that may be imposed under the order would not become effective prior to the OMB review. Such requirements would be evaluated against the potential benefits to be derived, and any added burden resulting from increased reporting would not be significant when compared to those anticipated benefits.

The Act requires that prior to the issuance of a marketing order, a referendum be conducted of affected producers to determine whether they favor issuance of th order. The ballot material that will be used in conducting the referendum has also been submitted to and approved by the OMB. It has been estimated that it will take an average of 10 minutes for each of the approximately 280 Vidalia onion growers to participate in the voluntary referendum balloting. Additionally, it has been estimated that it will take approximately five minutes for each of the 160 handlers to complete the marketing agreement.

In determining that the order would not have a significant economic impact on a substantial number of small entities, all of the issued discussed above were considered. The marketing order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the order would help strengthen demand for Vidalia onions grown in Georgia. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike. Accordingly, it is determined that the marketing order would not have a significant impact on small handlers or producers.

In accordance with Executive Order 12612, consideration has been given as to whether the marketing order has substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. To this end, notice of the hearing conducted to consider the establishment of a Federal marketing order program for Vidalia onions grown in Georgia was provided to the Governor of Georgia as well as to the State's Commissioner of Agriculture. One State official provided testimony at the hearing that concluded that the proposed Federal program would not conflict with any State statute, would not interfere with any State function, and would impose no burden on the State of Georgia, either financial or otherwise. It is therefore determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Findings and Conclusions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Tentative Decision set forth in the February 24, 1989, issue of the **Federal Register** (54 FR 8160), are hereby reaffirmed and adopted in this Decision subject to the following modifications to the findings and conclusions.

The findings and conclusions in material issue 3 of the Tentative Decision concerning the definition of the term "Vidalia onion" are amended by adding the following two paragraphs after the ninth paragraph of material issue 3 to read as follows:

Exceptions were filed by Mr. Frank M.

proposed order (Compliance), that no

which are applicable to the same

The agents of the Secretary to conduct

and provisions applicable to different

Sec.

Exceptions were filed by Mr. Frank M. Grasberger, Mr. Terence J. Centner, and T. M. "Mort" Ewing relating to the definition of the term "Vidalia onion". Each took exception to the use of other terms, such as "Georgia Vidalia Onions" and "Vidalia onions grown in Georgia" as being inconsistent with the term defined in the interim marketing order. Mr. Grasberger stated that, since § 955.5 of the interim marketing order defines "Vidalia onion" to mean only yellow granex onions and similar varieties that are grown in the designated production area in Georgia, the use of such terms as "Georgia Vidalia onion" is redundant. The exceptions further pointed out that these terms are misleading in that they imply that Vidalia onions can be grown in States other than Georgia, and that persons outside the production area could market their onions as Vidalia onions. The commentors contend that, on the contrary, "Vidalia onion" is recognized as a term that applies exclusively to onions grown in Southeastern Georgia. To support this contention, the commentors pointed to record evidence that shows the term "Vidalia onion" is a term recognized in the trade and therefore needs no further qualification as to the State of origin. Mr. Centner used as evidence to support his claim a letter from the National Onion Association which indicated that Vidalia onions refer only to onions grown in the Vidalia district of Georgia. Each exception recommended that all references to "Georgia Vidalia onions" or "Vidalia onions grown in Georgia" in the Tentative Decision be revised to read "Vidalia onions".

The Act provides that a marketing order be applicable to a defined commodity grown in a specified geographic area. References in the Tentative Decision to "Vidalia onions grown in Georgia" or "Georgia Vidalia onions" were intended to make it clear that the proposed marketing order would be limited in its applicability to a specified production area in the State of Georgia. These references are therefore appropriate for purposes of the proposed marketing order. Therefore, the exceptions with respect to material issue 3 are denied.

Based on the exceptions filed by Mr. Grasberger and Congressman Lindsay Thomas, the findings and conclusions of material issue 5(f) of the Tentative Decision concerning compliance are hereby amended by adding the following four paragraphs after the fourth paragraph of material issue 5(f) to read as follows:

Mr. Grasberger took exception to the lack of a provision in § 955.80 of the proposed order (Compliance), that no person located either inside or outside the production area may apply the term "Vidalia onion" or any other term using the word "Vidalia" to any container of onions unless the product meets the definition of Vidalia onions set forth in the marketing order. Mr. Grasberger contended that such provision is necessary to achieve the objectives of the marketing order program. He argued that limiting the use of "Vidalia onions" to those onions grown in the production area would contribute to the effectiveness of research and promotion activities conducted under the order, and would provide the trade and consumers with confidence that the onions they are purchasing as Vidalia onions are, in fact, Vidalias as defined in the order. Further, Mr. Grasberger stated that restricting the use of the term "Vidalia onion" under the marketing order would not constitute regulating the handling of, or prescribing labelling requirements for, onions produced outside the production area.

A similar exception was filed by Congressman Lindsay Thomas on behalf of a group of Vidalia onion producers. That exception contended that consumers are being deceived when they purchase onions labeled "Vidalia", and those onions are not the same as the true Vidalia onions grown in Georgia. The exception stated that section 11(c) of the Act, "Regional Application", provides the Secretary with the discretion to restrict the use of a term under a marketing order for the purpose of distinguishing a product grown in one area from similar products grown elsewhere to give due recognition to regional differences in production. The exception urged the use of such discretion to stop the widespread abuse of the term "Vidalia onion".

The interim marketing order was promulgated to provide authority for research and promotion programs funded by handler assessements. Proponents believed that a marketing order with such authority could improve grower returns by strengthening consumer demand for Vidalia onions. There is no authority in the Act to preclude the use of the term "Vidalia onions" by persons handling onions grown outside the area covered by the marketing order. The Tentative Decision concluded that the proponents' proposal to prevent the labelling of onions grown outside the production area as Vidalias was not consistent with the authority in the act and was therefore not included in the proposed order.

Section 11(c) of the Act states that "All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas." Section 11(c) does not provide the Secretary with the authority to specify the conditions under which onions not subject to regulation under a marketing order may be handled. For these reasons, the two exceptions filed with respect to material issue 5(f) are denied.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Tentative Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents entitled, respectively, "Order Regulating the Handling of Vidalia Onions Grown in Georgia" and "Marketing Agreement Regulating the Handling of Vidalia Onions Grown in Georgia." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, that this entire decision be published in the **Federal Register**. The provisions of the marketing agreement are identical to those contained in the order as hereby proposed by the annexed order which is published with this decision.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 et seq.) to determine whether the issuance of the annexed order regulating the handling of Vidalia onions grown in Georgia is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of Vidalia onions in the aforesaid production area.

The representative period for the conduct of such referendum is hereby determined to be July 31, 1988 to August 1, 1989.

The agents of the Secretary to conduct such referendum are hereby designated to be John R. Toth, Fruit and Vegetable Division, USDA, AMS, P.O. Box 2276, Winter Haven, Florida 33883, telephone 813–299–4770; and Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, USDA, AMS, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

List of Subjects in 7 CFR Part 955

Georgia, Marketing agreements and orders, Vidalia onions.

Dated: August 24, 1989.

John Frydenlund,

Acting Assistant Secretary, Marketing and Inspection Services.

Order Regulating the Handling of Vidalia Onions Grown in Georgia [1]

Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of Vidalia onions grown in Georgia.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order regulate the handling of Vidalia onions grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of Vidalia onions produced in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of Vidalia onions grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of Vidalia onions grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said marketing agreement and order, as follows:

The provisions of the tentative marketing agreement and interim order as contained in the tentative decision issued by the Deputy Assistant Secretary for Marketing and Inspection Services on February 21, 1989 and published in the **Federal Register** on February 24, 1989 (54 FR 8160), shall be and are the terms and provisions of this order and are set forth in full herein. Those sections identified with an asterisk (*) apply only to the marketing agreement and not to the marketing order.

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

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Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Definitions

§ 955.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture who has been delegated, or who may hereafter be delegated, the authority to act for the Secretary.

§ 955.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 955.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 955.4 Production area.

Production area means that part of the State of Georgia enclosed by the following boundaries: Beginning at a point in Laurens County where U.S. Highway 441 intersects Highway 16; thence continue southerly along U.S. Highway 441 to a point where it intersects the southern boundary of Laurens County; thence southwesterly along the border of Laurens County to a point where it intersects the county road known as Jay Bird Springs Road; thence southeasterly along Jay Bird Springs Road to a point where it intersects U.S. Highway 23; thence easterly to a point where U.S. Highway 23 intersects the western border of Telfair County; thence southwesterly following the western and southern border of Telfair County to a point where it intersects with Jeff Davis County; thence following the southern border of Jeff Davis County to a point where it intersects with the western

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[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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border of Bacon County; thence

§ 955.7 Handle.

years and shall begin as of September 16

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permit a voter to cast one vote for each

regard to nominations, select members

conditions with respect to Vidalia

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border of Bacon County; thence southerly and easterly along the border of Bacon County to a point where it intersects Georgia State Road 32; thence easterly along Georgia State Road 32 to Seaboard Coastline Railroad; thence northeasterly along the tracks of Seaboard Coastline Railroad to a point where they intersect Long County and Liberty County; thence northwesterly and northerly along the southwestern border of Liberty County to a point where the border of Liberty County intersects the southern border of Evans County; thence northeasterly along the eastern border of Evans County to the intersection of the Bulloch County border; thence northeasterly along the Bulloch County border to a point where it intersects with the Ogeechee River; thence northerly along the main channel of the Ogeechee River to a point where it intersects with the southeastern border of Screven County; thence northeasterly along the southeasterly border of Screven County to the main channel of the Savannah River; thence northerly along the main channel of the Savannah River to a point where the northwestern boundary of Hampton County, South Carolina intersects the Savannah River; thence due west to a point where State Road 24 intersects Brannen Bridge Road; thence westerly along Brannen Bridge Road to a point where it intersects with State Road 21; thence westerly along State Road 21 to the intersection of State Road 17; thence westerly along State Road 17 to the intersection of State Road 56 and southerly to the northern border of Emanuel County; thence westerly and southerly along the border of Emanuel County to a point where it intersects the Treutlen County border; thence southerly to a point where the Truetlen County border intersects Interstate Highway 16; thence westerly to the point of beginning in Laurens County.

§ 955.5 Vidalia onion.

Vidalia onion means all varieties of Allium cepa of the hybrid yellow granex, granex parentage or any other similar variety recommended by the committee and approved by the Secretary, that are grown in the production area.

§ 955.6 Handler.

Handler is synonymous with "shipper" and means any person (except a common or contract carrier of Vidalia onions owned by another person) who handles Vidalia onions, or causes Vidalia onions to be handled.

§ 955.7 Handle.

Handle or *ship* means to package, load, sell, transport, or in any other way to place Vidalia onions, or cause Vidalia onions to be placed, in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery of field-run Vidalia onions to a person within the production area for the purpose of having such Vidalia onions prepared for market.

§ 955.9 Producer.

Producer is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of Vidalia onions for market.

§ 955.10 Producer-Handler.

Producer-Handler means a producer who handles Vidalia onions.

§ 955.12 Committee.

Committee means the Vidalia Onion Committee, established pursuant to § 955.20.

§ 955.13 Fiscal period.

Fiscal period means the 12-month period beginning on September 16 and ending on September 15 of the next year or such other period that may be recommended by the committee and approved by the Secretary.

Committee

§ 955.20 Establishment and membership.

(a) There is hereby established a Vidalia Onion Committee, consisting of nine members, to administer the terms and provisions of this part. Eight members shall be producers, and one shall be a public member. At least four of the producer members shall be producer-handlers. Each member shall have an alternate who shall have the same qualifications as the member.

(b) Each member, other than the public member, shall be an individual who is, prior to selection and during such member's term of office, a resident of the production area and a grower or an officer or employee of a grower.

(c) The public member shall be a resident of the production area and shall have no direct financial interest in the commercial production, financing, buying, packing or marketing of Vidalia onions, except as a consumer, nor shall such person be a director, officer or employee of any firm so engaged.

§ 955.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for two years and shall begin as of September 16 or for such other period as the committee may recommend and the Secretary approve. The terms shall be determined so that approximately one-half of the total committee membership shall terminate each year. Members and alternates shall serve in such capacity during the term of office or portion thereof for which they are selected and until their respective successors are selected.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this part. As determined by lot drawn at the initial nomination meeting, one-fourth of the initial grower members and alternates shall serve for a one-year term, one-fourth shall serve for a two-year term, one-fourth shall serve for a three-year term, and one-fourth shall serve for a four-year term. The term of office for the initial public member and alternate shall be for two years.

(c) The consecutive terms of office of members shall be limited to three 2-year terms.

§ 955.22 Nominations.

(a) Initial members. For nominations to the initial committee, a meeting of producers shall be held by the Secretary.

(b) Successor members. (1) The committee shall hold or cause to be held not later than August 1 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers for the purpose of designating one nominee for each position as member and for each position as alternate member of the committee which is vacant, or which is about to become vacant.

(2) Nominations for members and alternates shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than August 15 of each year, or by such other date as may be specified by the Secretary.

(3) The Secretary may, upon recommendation of the committee, divide the production area into districts for the purpose of nominating committee members and their alternates.

(c) Only producers may participate in designating nominees to serve as committee members. Each producer is entitled to cast only one vote on behalf of such producer and such producer's agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote shall be construed to

permit a voter to cast one vote for each position to be filled.

(d) The producer members shall nominate the public member and alternate member at the first meeting following the selection of members for a new term of office. Nominations for the public member and alternate member shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than November 1, or such other date as may be specified by the Secretary.

§ 955.23 Selection.

From the nominations made pursuant to § 955.22 or from other qualified persons, the Secretary shall select members and alternate members of the committee.

§ 955.24 Acceptance.

Any person nominated to serve as a member or alternate member of the committee shall, prior to selection by the Secretary, qualify by filing a written acceptance indicating such person's willingness to serve in the position for which nominated.

§ 955.25 Alternates.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate during such member's absence or when designated to do so by such member. In the event both a member of the committee and that member's alternate are unable to attend a committee meeting, the member, the alternate, or the committee, in that order, may designate another alternate from the same district (if applicable) and the same group (producer or producer-handler) to serve in such member's stead. Only the public member's alternate is authorized to serve in the place and stead of the public member. In the event of the death, removal, resignation or disqualification of a member, that member's alternate shall serve until a successor to such member is selected.

§ 955.26 Vacancies.

To fill any vacancy occasioned by the failure of any person nominated as a member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member or alternate, a successor for the unexpired term may be selected by the Secretary from nominations made pursuant to § 955.22, or from other eligible persons.

§ 955.27 Failure to nominate.

If nominations are not made within the time and manner prescribed in § 955.22, the Secretary may, without regard to nominations, select members and alternates on the basis of the representation provided for in § 955.20.

§ 955.28 Procedure.

(a) Five members of the committee shall constitute a quorum, and five concurring votes shall be required to pass on any motion or approve any committee action.

(b) The committee may provide for meetings by telephone, telegraph, or other means of communication, and any vote cast orally at such meetings shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 955.29 Expenses.

Members and alternates shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part.

§ 955.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 955.31 Duties.

The committee shall have, among others, the following duties:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members or alternates, and to adopt such rules and regulations for the conduct of its business as it deems necessary;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary, to determine the compensation and define the duties of each person, and to protect the handling of committee funds;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to Vidalia onions;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee. Such minutes, books, and records shall be subject to examination at any time by the Secretary or the Secretary's authorized agent or representative. Minutes of each committee meeting shall be furnished promptly to the Secretary;

(g) Prior to the beginning of each fiscal period, to prepare and submit to the Secretary a budget of its projected income and expenses for such fiscal period, together with a report thereon and a recommendation as to the rate of assessment for such period;

(h) To cause its books to be audited by a Certified Public Accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. A copy of each report shall be furnished to the Secretary. A copy shall also be made available at the principal office of the committee for inspection by producers and handlers provided that confidential information shall be removed;

(i) To give the Secretary the same notice of meetings of the committee and its subcommittees as is given to its members.

Expenses and Assessments

§ 955.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by the committee for its maintenance and functioning, and enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in §§ 955.42 and 955.45.

§ 955.41 Budget.

At least 60 days prior to each fiscal period, or such date as may be specified by the Secretary, and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

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paid advertising, shall be subject to the

found that such provisions do not tend

§ 955.73 Effect of termination or

§ 955.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each person who first handles Vidalia onions shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations or other available information.

(c) At any time during, or subsequent to, a given fiscal period that committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the assessment rate. Such increase shall be applicable to all Vidalia onions which were handled during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions of this part are suspended or become inoperative.

(e) To provide funds for the administration of the provisions of this part during the initial fiscal period or the first part of a fiscal period when neither sufficient operating reserve funds nor sufficient revenue from assessments on the current season's shipments are available, the committee may accept payment of assessments in advance or may borrow money for such purposes.

(f) The committee may impose a late payment charge or an interest charge or both, on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

§ 955.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member or alternate of the committee, such person shall account for all receipts and disbursements and deliver all property and funds in such member's possession to the committee, pertaining to the committee's activities for which such person was responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

§ 955.44 Excess funds.

If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(a) The committee, with approval of the Secretary, may establish an operating reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established, except funds in the reserve shall not exceed the equivalent of approximately three fiscal periods' budgeted expenses. Such reserve funds may be used:

(1) To defray any expenses authorized under this part;

(2) To defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses;

(3) To cover deficits incurred during any fiscal period when assessment income is less than expenses;

(4) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and

(5) To cover necessary expenses of liquidation in the event of termination of this part.

Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate except that to the extent practicable, such funds shall be returned pro rata to the persons from whom funds were collected.

(b) If such excess is not retained in a reserve as provided in paragraph (a) of this section, each handler entitled to a proportionate refund of the excess assessments collected shall be credited at the end of a fiscal period with such refund against the operations of the following fiscal period unless such handler demands payment thereof, in which event such proportionate refund shall be paid.

§ 955.45 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 955.50. Such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

Research and Development

§ 955.50 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development and marketing promotion projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of Vidalia onions. Any such project for the promotion and advertising of Vidalia onions may utilize an identifying mark which shall be made available for use by all handlers in accordance with such terms and conditions as the committee, with the approval of the Secretary, may prescribe. The expense of such projects shall be paid from funds collected pursuant to § 955.42 or § 955.45.

(b) In recommending projects pursuant to this section, the committee shall give consideration to the following:

(1) The expected supply of Vidalia onions in relation to market requirements;

(2) The supply situation among competing areas and commodities;

(3) The anticipated benefits from such projects in relation to their costs;

(4) The need for marketing research with respect to any market development activity; and

(5) Other relevant factors.

(c) If the committee should conclude that a program of research and development should be undertaken, or continued, in any fiscal period, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to the funds to be obtained pursuant to § 955.42 or § 955.45;

(2) Its recommendations as to any research projects; and

(3) Its recommendations as to promotion activity and paid advertising.

(d) Upon conclusion of each activity, but at least annually, the committee shall summarize and report the results of such activity to the Secretary.

(e) All marketing promotion activity engaged in by the committee, including paid advertising, shall be subject to the following terms and conditions:

(1) No marketing promotion, including paid advertising, shall refer to any private brand, private trademark or private trade name;

(2) No promotion or advertising shall disparage the quality, use, value or sale of like or any other agricultural commodity or product, and no false or unwarranted claims shall be made in connection with the product; and

(3) No promotion or advertising shall be undertaken without reason to believe that returns to producers will be improved by such activity.

Reports and Recordkeeping

§ 955.60 Reports and recordkeeping.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not limited to, the following:

(1) The quantities of Vidalia onions received by a handler;

(2) The quantities disposed of by the handler;

(3) The date of each such disposition; and

(4) The identification of the carrier transporting such Vidalia onions.

(b) All such reports shall be held under appropriate protective classification and custody by duly appointed employees of the committee, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of an individual handler's identity or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the Vidalia onions received and disposed of by such handler as may be necessary to verify reports submitted to the committee pursuant to this section.

Miscellaneous Provisions

§ 955.71 Termination or suspension.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operations of any or all provisions of this part whenever it is found that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of Vidalia onions: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such Vidalia onions produced for market, but such termination shall be effective only if announced on or before June 15 of the then current fiscal period.

(d) Within six years of the effective date of this part, the Secretary shall conduct a continuance referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 955.72 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession, or under control, of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in said committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 955.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart;

(b) Release or extinguish any violation of this subpart or of any regulations issued under this subpart; or

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 955.80 Compliance.

No handler shall handle Vidalia onions except in conformity with the provisions of this part.

§ 955.81 Right of the Secretary.

The members of the committee (including successors and alternates) and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void except as to acts in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 955.82 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 955.83 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 955.85 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to

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exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 955.85 Personal liability.

No member or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 955.86 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 955.87 Amendments.

Amendments to this part may be proposed, from time to time, by the committee or by the Secretary.

Marketing Agreement

*§ 955.90 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

*§ 955.91 Additional parties.

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

*§ 955.92 Order with marketing agreement.

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of Vidalia onions in the same manner as is provided for in this agreement.

United States Department of Agriculture

Agricultural Marketing Service

Marketing Agreement Regulating the Handling of Vidalia Onions Grown in Georgia

OMB Approval No: 0581–0160

Expiration Date: 2/29/92

The parties hereto, in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and in accordance with the applicable rules of practice and procedure effective thereunder (7 CFR part 900) desire to enter into this agreement regulating the handling of Vidalia onions grown in Georgia; and each party hereto agrees that such handling shall, from the effective date of this marketing agreement, be in conformity to, and in compliance with, the provisions of said marketing agreement as hereby enacted.

The provisions of §§ 955.1–955.92, inclusive, of the order annexed to and made a part of the decision of the Secretary of Agriculture with respect to a proposed marketing agreement and order regulating the handling of Vidalia onions grown in Georgia, plus the following additional provisions shall be, and the same hereby are, the terms and conditions hereof; and the specified provisions of said annexed order are hereby incorporated into this marketing agreement as if set forth in full herein:

§ 955.90 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 955.91 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 955.92 Order with marketing agreement.

Each signatory handler requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of Vidalia onions in the same manner as is provided for in this agreement.

The undersigned hereby authorizes the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, to correct any typographical errors which may have been made in this marketing agreement.

In witness whereof, the contracting parties, acting under the provisions of the Act, for the purpose and subject to the limitations therein contained, and not otherwise, have hereto set their respective signatures and seals.

(Firm Name)____________________

By: (Signature)____________________[1]

(Mailing Address)________________

(Title)________

(Date of Execution)____________________

(Corporate Seal; if none, so state)

Public reporting burden for this collection of information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20503.

This information is required to determine voter eligibility and vote of Vidalia onion handlers. Falsification of information on this government document may result in a fine of not more than $10,000 or imprisonment for not more than five years or both (18 U.S.C. 1001).

(For use by incorporated handlers)

OMB Approval No: 0581–0160

Expiration Date: 2/29/92

Certificate of Resolution

(Corporation only)

At a duly convened meeting of the Board of Directors of ________________ held at ________________ on the ____ day of ________________ 1989, RESOLVED, That ________________________ shall become a party to the marketing agreement regulating the handling of Vidalia onions grown in Georgia, which was annexed to and made part of the decision of the Secretary of Agriculture, and it is further, RESOLVED, That

____

(Name)________

(Title)____________________

and

(Name)____________________

(Title)____________________ be, and the same hereby are, authorized and directed severally or jointly to sign, execute, and deliver counterparts of the said agreement to the Secretary of Agriculture.

I, ________________, Secretary of ________________ do hereby certify this is a true and correct copy of a resolution adopted at the above named meeting as said resolution appears in the minutes thereof.

(Signature)________________

(Address of Firm)____________________

(Corporate Seal; if none, so state)

[FR Doc. 89–20324 Filed 8–28–89; 8:45 am]

BILLING CODE 3410–02–M

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[1] If one of the contracting parties to this agreement is a corporation, my signature constitutes certification that I have the power granted to me by the Board of Directors to bind this corporation to the marketing agreement.

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 89–021P]

Imported Product; Withdrawal of Panama from the List of Countries Eligible for the Importation of Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to withdraw the country of Panama from the list of countries eligible for importation of their products of cattle, sheep, swine, and goats into the United States under the Federal Meat Inspection Act (FMIA). The FMIA requires that, in order for a country to be eligible to export meat products to the United States, the meat inspection system of the country must assure compliance with requirements that are "at least equal to" the requirements of the FMIA and regulations as applied to official establishments in the United States and their products. FSIS has determined that Panama has not certified that any plant met U.S. standards in 1988, that it has not conducted residue testing and therefore did not receive a residue certification in 1988, and that reliance cannot be placed upon the certifications required of Panamanian authorities under the FMIA. Because of the lack of current information and the failure of Panama to demonstrate its "equal to" status, the Administrator is proposing to withdraw the country of Panama from the list of countries eligible for importation of their meat products into the United States.

DATES: Comments must be received on or before October 30, 1989.

ADDRESS: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION, CONTACT: Dr. Lawrence Skinner, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6933.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule." It will not result in an annual effect of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. There are currently no domestic importers of Panamanian meat products.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601) because there are currently no domestic importers of Panamanian meat products.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to the docket number located in the heading of this document. All comments submitted in response to this proposal will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Pursuant to the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Secretary of Agriculture is responsible for administering the programs which are designed to ensure that meat and meat food products distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. The Administrator of FSIS has been delegated the authority to issue regulations and implement appropriate procedures to ensure compliance with the requirements of the FMIA. The regulations addressing imported meat are contained in 9 CFR Part 327. In these regulations, the Administrator has established procedures by which foreign countries desiring to export meat or meat products to the United States may become eligible to do so (9 CFR 327.2(a)(2)(iii)).

The Agriculture and Food Act of 1981 (Farm Bill) amended the FMIA to require that imported meat products meet the same inspection, sanitation, quality, species verification, and residue standards applied to domestically prepared product. The Farm Bill directed the Secretary to enforce its provisions through random inspections of imported product at port of entry for residues and species verification, and requires exporting countries to conduct random sampling and testing of internal organs and fat of carcasses at the point of slaughter in accordance with methods approved by the Secretary.

The Food Security Act of 1985 (Farm Bill, Pub. L. 99–198) amended the FMIA by requiring that each foreign country from which meat is offered for importation into the United States obtain a certification issued by the Secretary stating that the country maintains a program using reliable analytical methods to ensure compliance with the United States standards for residues in such meat, and further provides that no meat articles shall be permitted entry into the United States from a country for which the Secretary has not issued such a certification.

Regulations implementing the 1981 Farm Bill requirements were published in the **Federal Register** on February 10, 1983 (48 FR 6091). All countries eligible to export product to the United States were notified of the 1985 Farm Bill changes by letter dated July 13, 1987.

To continue to export meat to the United States, a country must demonstrate that it maintains, among other things, a residue program that meets United States standards. FSIS collects information to verify that the United States standards are being met. This information includes: Annual residue testing results, the findings of FSIS technical experts from on-site reviews, and results of port-of-entry reinspections. In March 1987, FSIS notified Panama that it had not demonstrated continued proficiency in residue testing and further specified the information that must be provided before initiating any plans to certify product for export to the United States. The response from Panama indicated that no residue testing was done in 1987 and 1988.

Panama did not certify that any plants met United States standards in 1988, and therefore, no on-site reviews of the inspection system in operation were made. On-site reviews of plants are normally confined to those certified to export to the United States. A portion of these reviews is devoted to obtaining information concerning random selection of residue samples at slaughter. In addition, residue testing laboratories are reviewed to determine if analytical methods meet United States standards. Since no plants were certified and no residue testing was

being conducted, FSIS was not able to

withdraw Panama from the list of

DATES: Comments must be received on

by submitting a request to the Manager,

PART 71—DESIGNATION OF FEDERAL

letters should refer to File No. S7–23–89.

being conducted, FSIS was not able to obtain current information. Therefore Panama did not receive a residue certification for 1988. This means that FSIS will not accept any plant certifications from Panama until it demonstrates that its residue program meets United States standards. Without certified plants, shipments of meat products to the United States cannot legally occur.

Although Panama had no plants certified, three consignments of meat product arrived at the port of New Orleans, Louisiana, in January, April and May, 1989, accompanied by a Panamanian meat inspection certificate stating that the meat was produced in certified plants and met United States standards. None of these consignments was accepted for entry. Following the January consignment, FSIS notified Panama that neither plant nor product certifications would be accepted until United States requirements were met. However, Panamanian officials have continued to certify product.

Section 327.4(a) (9 CFR 327.4(a)) requires that any fresh meat or fresh meat byproducts consigned to the United States from a foreign country be accompanied by a foreign meat inspection certificate (health certificate) certifying that the product therein described was derived from livestock which received ante-mortem and post-mortem veterinary inspections at the time of slaughter in certified plants.

Section 327.2(a)(4) (9 CFR 327.2(a)(4)) states that:

> * * * The listing of any foreign country under this section may be withdrawn whenever it shall be determined by the Administrator that the system of meat inspection maintained by such foreign country does not assure compliance with requirements at least equal to all * * * requirements of the Act and the regulations * * * as applied to official establishments in the United States; or that reliance cannot be placed upon certificates required * * * from authorities of such foreign country; or * * * for lack of current information concerning the system of meat inspection being maintained by such foreign country * * *.

Therefore, the Administrator of FSIS has determined that, in the absence of certified plants, residue testing, and current information about the operation of Panama's meat inspection system, Panama's "equal to" status has not been demonstrated; and, moreover, that reliance cannot be placed upon certificates required under the regulations (9 CFR Part 327) from the authorities of such foreign country.

Therefore, pursuant to § 327.2 of the Federal meat inspection regulations (9 CFR 327.2), FSIS is proposing to withdraw Panama from the list of countries from which cattle, sheep, swine, and goat products may be imported into the United States.

Proposed Rule

Accordingly, § 327.2 of the Federal meat inspection regulations would be amended as set forth below:

List of Subjects in 9 CFR Part 327

Imported products; Meat inspection.

PART 327—IMPORTED PRODUCTS

1. The authority citation for Part 327 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 436; 21 U.S.C. 71 et seq.

§ 327.2 [Amended]

2. Paragraph (b) of § 327.2 would be amended by removing the following country from the list of countries eligible for importation of products of cattle, sheep, swine, and goats into the United States:

Panama

Done at Washington, DC, on August 7, 1989.

Lester M. Crawford, DVM, PhD.,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89–20336 Filed 8–28–89; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–ASW–21]

Proposed Removal of Transition Area: Brackettville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area located at Brackettville, TX. The May 1, 1989, cancellation of the RNAV RWY 30 standard instrument approach procedures (SIAP) to the Los Medanos Ranch Airport has made this proposed action necessary. The intended effect of this proposal is to return to public use that protected airspace no longer required due to the cancellation of the SIAP serving the Los Medanos Ranch Airport. Coincident with this proposal would be the changing of the status of the Los Medanos Ranch Airport from instrument flight rules (IFR) to visual flight rules (VFR).

DATES: Comments must be received on or before October 20, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89–ASW–21, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASW–21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to remove the transition area located at Brackettville, TX. The May 1, 1989, cancellation of the RNAV RWY 30 SIAP serving the Los Medanos Ranch Airport has necessitated this proposed action. The intended effect of this proposal is to return to public use that protected airspace no longer required due to the cancellation of the RNAV RWY 30 SIAP. Coincident with this proposal would be the changing of the status of the Los Medanos Ranch Airport fror IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "a major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Brackettville, TX [Removed]

Issued in Forth Worth, TX on August 17, 1989.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 89–20209 Filed 8–28–89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 240, 249, 270, and 274

[Rel. Nos. 34–27148; 35–24942; IC–17112; File No. S7–23–89]

RIN 3235–AB14

Ownership Reports and Trading by Officers, Directors and Principal Security Holders

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: In response to comments received and upon further consideration, the Commission today is reproposing for comment amendments to its rules and forms, as well as related disclosure requirements for issuers, regarding the filing of ownership reports by officers, directors, and principal security holders, and the exemption of certain transactions by those persons from the short-swing profit recovery provisions of the Securities Exchange Act of 1934 and related provisions of the Investment Company Act of 1940 and the Public Utility Holding Company Act of 1935.

DATES: Comments should be received on or before November 1, 1989.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–23–89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington DC 20549.

FOR FURTHER INFORMATION CONTACT: Brian J. Lane, Special Counsel, or Brian J. Lynch, Attorney-Adviser, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, (202) 272–2589.

SUPPLEMENTARY INFORMATION: The Commission is republishing for comment proposed amendments to its rules promulgated under Section 16 [1] of the Securities Exchange Act of 1934 ("Exchange Act").[2] Every rule under Section 16 would be amended, deleted, or reorganized except for Rule 16e–1,[3] and several new Section 16 rules would be added. Further, Exchange Act Rule 12h–2 [4] would be deleted and Rule 30f–1 [5] under the Investment Company Act of 1940 ("Investment Company Act") [6] would be amended.

In addition, the Commission is reproposing new Item 405 of Regulation S–K [7] and new Form 5 as well as changes to Schedule 14A [8] and Forms 10–K,[9] 3,[10] 4,[11] and N–SAR.[12] While the rules are being reproposed in their entirety, this release focuses only on changes from the original proposals.[13]

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[2] 15 U.S.C. 78a *et seq.* (1982).

[3] 17 CFR 240.16e–1.

[4] 17 CFR 240.12h–2.

[5] 17 CFR 270.30f–1.

[6] 15 U.S.C. 80a–1 *et seq.* (1982).

[7] 17 CFR 229.10–229.802.

[8] 17 CFR 240.14a–101.

[9] 17 CFR 249.310.

[10] 17 CFR 249.103.

[11] 17 CFR 249.104.

[12] 17 CFR 274.101.

[13] Exchange Act Release No. 26333 (December 2, 1988) (53 FR 49997) ("1988 Release"). The comment period concluded on March 13, 1989. The comment letters and a summary of the letters may be inspected and copied at the Commission's Public Reference Room (File No. S7–26–88).

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I. Executive Summary

After reviewing the comments received on the initial proposed amendments to the rules promulgated under section 16 of the Exchange Act, the Commission is reproposing for comment the entire regulatory scheme with the following principal revisions:

- The definition of "officer" would be expanded to include specifically the principal financial officer, controller or principal accounting officer, as well as officers of the issuer's parent who perform policymaking functions for the issuer.
- Institutions engaged in holding securities for their clients in the ordinary course of business, eligible to file a Schedule 13G, would not include customer account holdings in determining ten percent beneficial owner status, and customer trust accounts would not be subject to section 16 as a result of the institution's insider status.
- Reporting of option exercises would be accelerated to the next required Form 4 or Form 5.
- Four different exemptions for intra-plan transactions would be added to Rule 16b–3(e) governing employee benefit plans.
- A three calendar day de minimis exemption from proxy disclosure of late filings would be added, but timeliness would be measured by receipt date at the Commission rather than mail date.
- Form 5 would be required from every person subject to section 26, except a person who conducted no transactions during the year that are reportable on Form 5 and has filed all required Forms 3, 4, and 5.
- An exemption from section 16 for insiders of Canadian issuers would be provided.

In addition, the revised proposed rules include other changes, discussed below. Apart from substantive changes, language in numerous revised proposed rules has been amended for purposes of clarity.

The reproposed rules continue to require that an issuer include in its annual proxy statement disclosure concerning delinquent filers. The Commission is particularly disappointed, given the publicity and concerns expressed, that its updated study reflects a continuing pattern of substantially delinquent filings.[14] This reinforces its conclusion that the proposed rules requiring proxy disclosure and the proposed legislation authorizing administrative proceedings including fines is necessary.

II. Background

Section 16 of the Exchange Act was designed both to provide the public with information on securities transactions and holdings of corporate officers, directors, and principal security holders, and to deter those individuals from profiting on short-term trading in the securities of their corporationswhile in possession of material, non-public information. Section 16 applies to every person who is directly or indirectly the beneficial owner of more than ten percent of any class of equity securities that is registered pursuant to section 12 of the Exchange Act ("ten percent holders"),[15] and to every director and officer of an issuer with a class of equity securities so registered. Officers, directors, and ten percent holders are referred to throughout this release as "insiders."[16]

Believing prompt publicity to be a potent weapon in the effort to curb the abuse of inside information, Congress enacted section 16(a),[17] which requires insiders to file public reports with respect to transactions in the equity securities of their corporations. In mandating reporting by insiders, Congress intended not only to discourage abuse of inside information and encourage voluntary maintenance of proper fiduciary standards by those in control of corporations, but also to give public investors information concerning purchases and sales by insiders, which might indicate such insiders' private opinions of the company's prospects.[18]

"For the purpose of preventing the unfair use of information which may have been obtained by [an insider] by reason of his relationship to the issuer," Congress enacted Section 16(b),[19] which provides for the automatic recovery of any profits made by an insider on securities purchased and sold within a six month period. Unlike other provisions applicable to insider trading, such as Sections 10(b), 14(e) and 21A of the Exchange Act,[20] Section 16 is a strict liability provision under which an insider's short-swing profits can be recovered regardless of whether that insider actually was in possession of material, nonpublic information.[21]

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[14] See Section VIII.A, *infra.*

[15] When referring to issuers registered under Section 12, this release includes closed-end investment companies subject to Section 30(f) of the Investment Company Act (15 U.S.C. 80a–29(f) (1982)) and public utility holding companies subject to Section 17 (a) and (b) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79, 79q (a), (b) (1982)).

[16] The insiders of a closed-end investment company also include the adviser, officers and directors of the adviser, and any affiliated person of the adviser. 15 U.S.C. 80a–2(a)(3); (a)(19) (1982).

[17] 15 U.S.C. 78p(a) (1982).

[18] H. Rep. No. 2383, 73d Cong., 2d Sess. 13, 24 (1934).

[19] 15 U.S.C. 78p(b)(1982).

[20] 25 U.S.C. 78j(b), 78n(e)(1982), 78u–1 (Supp. III 1985); *see* Rule 10b–5 (17 CFR 240.10b–5) and Rule 14e–3 (17 CFR 240.14e–3).

[21] Unlike other provisions of the Exchange Act, Section 16(b) is enforced by the issuer or by security holders bringing derivative actions on behalf of the issuer, rather than by the Commission or by security holders directly pursuing claims for damages.

Congress used this "automatic recovery provision [to] cut * * * through the formidable difficulties of proving intent and actual misuse of inside information that serve to hinder the effectiveness of traditional remedies against insider speculation."[22] The Commission was given specific rulemaking authority to exempt transactions as not comprehended within the purpose of the subsection. Traditionally, rules that exempt an insider from Section 16(b) short-swing profit liability have not provided an exemption for an insider from reporting under Section 16(a), while a reporting exemption has carried with it an exemption from Section 16(b).[23]

Section 16(c),[24] subject to a good faith delivery exception, prohibits the sale of any equity security of the issuer if the selling insider either (1) does not own the security, or (2) does not deliver it within 20 days after sale or mail it within five days. Section 16(d) [25] provides an exemption from Sections 16(b) and (c) for over-the-counter marketmaking activity and Section 16(e) [26] provides an exemption from Section 16(a) for specified foreign and domestic arbitrage transactions.

In the 1988 Release,[27] the Commission proposed a comprehensive revision of the rules under Section 16 to provide consistent treatment of insiders' securities transactions. After consideration of the 271 comment letters received in response to the 1988 Release, the Commission is reproposing for comment the entire regulatory scheme with modification of certain rules in response to comments ("revised proposed rules").[28] This release discusses only substantive changes from the proposed rules. Those wishing a more extensive explanation of the proposed rules that remain unchanged should consult the 1988 Release. In addition, much of the language of the rules initially proposed has been further revised for purposes of greater clarity, and the rules have been repositioned and renumbered for ease of reference. Two charts in Section X of this release compare the current and revised proposed rules.

III. Section 16(a) Reporting

A. Who Must Report

1. Officer

Under the amendments reproposed today, the definition of "officer" under Section 16 would be revised.[29] Although retaining the focus on executive duties contained in the initial proposal, the revised proposal would expand the class of officers subject to Section 16.[30] In addition to the executive officers covered in the definition originally proposed, the revised proposed rules would include principal financial officers, controllers or principal accounting officers,[31] and officers of an issuer's parent [32] who perform policy making functions for the issuer.

Of all the issues presented by the proposed rules, this received the most comment. Concern was voiced by a large number of commenters, particularly individuals, regarding potential narrowing of the officer definition. After weighing these concerns, the Commission continues to believe that title alone should not be determinative. Consistent with the statutory purpose, judicial decisions have focused on employees performing important executive duties. Most recently, the United States Court of Appeals for the Second Circuit endorsed this view of Section 16, holding that "it is the duties of an employee * * * rather than his corporate title which determine whether he is an officer subject to the short-swing trading restrictions of § 16(b) of the 1934 Act."[33] As long recognized by the Second Circuit, the term "officer" for Section 16 purposes

> includes, *inter alia,* a corporate employee performing important executive duties of such character that he would be likely, in discharging these duties, to obtain confidential information about the company's affairs that would aid him if he engaged in personal market transactions. It is immaterial how his functions are labelled.* * *[34]

To do otherwise would permit those with executive functions to avoid responsibility by foregoing title, and to subject those with officer titles, but no real executive responsibilities, to the draconian liability of Section 16.

Many companies already look to the executive officer definition in determining officer status for Section 16 purposes.[35] The revised proposed rules accommodate both the statutory purpose of Section 16 and the strict liability provisions of Section 16(b), which in the view of many commenters are excessively harsh, particularly in view of legal and regulatory developments since the enactment of Section 16. When the reporting and short-swing liability provisions of Section 16 were enacted, they were the only safeguards against the abuse of inside information. Today, the primary tools for prohibiting and remedying the misuse of inside information are the antifraud insider trading liability provisions under Rules 10b–5, 14e–3, and Section 21A of the Exchange Act.[36] Given the efficacy of these provisions, care should be taken to avoid broad-brush imposition of short-swing liability for transactions in which there is no misuse of inside information. Moreover, the liabilities that Section 16(b) can impose on perfectly legitimate transactions can unduly interfere with an insider's sale of securities necessitated by personal emergency.

2. Transactions While not an Officer or Director

Commenters expressed concern that disclosure of officer or director

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[22] S. Rep. No. 379, 88th Cong., 1st Sess. 9 (1963). It should be noted that Section 16 predated the development of the anti-fraud insider trading provisions of Sections 10(b) and 14(e).

[23] *See* current Rule 16a–10 (17 CFR 240.16a–10) and revised proposed Rule 16a–9.

[24] 15 U.S.C. 78p(c)(1982).

[25] 15 U.S.C. 78p(d)(1982).

[26] 15 U.S.C. 78p(e)(1982).

[27] *See* n.13, *supra.*

[28] As used in this release, the term "proposed rules" refers to the original proposals in the 1988 Release. The term "revised proposed rules" refers to the proposals contained in this release.

[29] The revised proposed rules would alphabetize the definitions for easier reference. The definition of "officer" would be relocated as revised proposed Rule 16a–1(f).

[30] The original proposal would have used the definition of executive officer in Rule 3b–7 (17 CFR 240.3b–7). Rule 3b–7 defines an executive officer as "president, any vice president. . . in charge of a principal business unit, division of (sic) function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant." It also includes officers of a subsidiary that perform policy making functions for the parent issuer.

[31] Principal financial officers and controllers or principal accounting officers also are required to sign an issuer's Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a *et seq.* (1982)) registration statements and annual reports filed on Form 10–K (17 CFR 249.310) under the Exchange Act.

[32] In the 1988 Release, comment was solicited regarding the inclusion of parent company executive officers. Commenters were supportive of this proposal, which would specifically address common corporate arrangements where parent management sets and effectuates policy for an issuer. Executive officers of subsidiaries performing policy making functions for the issuer also are included in the reproposed definition, as in Rule 3b–7 and the original proposal.

[33] *C.R.A. Realty* v. *Crotty,* [1988–1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,483 (2d Cir. 1989).

[34] *Colby* v. *Klune,* 178 F.2d 872, 873 (2d Cir. 1949).

[35] In a survey of 279 corporations, approximately 72 percent determined who was an officer for Section 16 purposes by applying the executive officer definition in Rule 3b–7, which currently governs proxy disclosure. *See* Romeo & Dye, *Section 16 Reporting Guide,* at p.49G (1989 Edition); *see also American Society of Corporate Secretaries Survey,* November 1988 (approximately one-third of the 840 corporations surveyed used the executive officer definition).

[36] *See* n.20, *supra.*

transactions before attaining insider

therefore subject to Section 16.[39] Once

initially proposed, both the institution

transactions are subject to short-swing profit liability.[47] This analysis is wholly

the insider's immediate family [54] members residing in the same

the standard of care owed by general partners in both general and limited transactions before attaining insider status is unnecessarily harsh in that it subjects those persons to liability, even though they may not have known at the time of the transactions that they would become officers or directors in the future. For example, an individual may acquire securities prior to becoming an insider without regard to the potential liabilities for subsequent sales; however, upon becoming an insider, the individual could incur liability from selling securities no matter what the need. Commenters argued, and the Commission is persuaded, that the extension of strict liability to these trades may not be warranted. Therefore, the Commission proposes to revise the proposed rule, so that transactions occurring prior to the date a person becomes an officer or director would not be subject to the reporting and liability provisions of Section 16.[37] Section 16 would continue to apply to transactions by officers and directors that take place within six months before the issuer's registration of a class of equity securities under Section 12 of the Exchange Act.[38] Insiders of private companies should be well aware of plans to register under Section 12 sufficiently in advance to take potential Section 16 responsibilities into account in buying and selling issuer securities.

Comment is solicited, however, as to whether it is preferable to subject all transactions conducted prior to achieving insider status to Section 16 or alternatively to subject pre-insider transactions to Section 16 when the person knows or has reason to know that he or she will become an officer or director. Comment is further solicited on whether an exemption for pre-insider trades should be an exemption from the short-swing profit recovery provisions of Section 16(b), but not from the reporting provisions of Section 16(a).

3. Beneficial Ownership

A large number of commenters requested clarification regarding the operation of the beneficial ownership concepts under the proposed rules. The term "beneficial owner," both as originally proposed and as reproposed, would have two applications: one to determine who is subject to Section 16 and another to determine what holdings and transactions must be reported and subject to short-swing profit recovery. The first application of beneficial owner in the revised proposed rules would be used solely to determine whether a person is a ten percent holder and therefore subject to Section 16.[39] Once the determination has been made that a person is an insider—whether an officer, director, or ten percent holder—the second definition of beneficial ownership, the pecuniary interest test, would be used, both for determining what holdings and transactions are reported under Section 16(a) and what transactions are subject to short-swing profit recovery under Section 16(b).[40]

a. *Determining Who is a Ten Percent Holder.* In determining who is a ten percent holder, the voting or investment control analysis of Section 13(d) of the Exchange Act, and the rules thereunder, would be used, as originally proposed.[41] Application of the revised proposed definition [42] would be straightforward; if a person is deemed a ten percent holder pursuant to Section 13(d), and the rules thereunder, the person would be deemed a ten percent holder under Section 16 and would be required to file a Form 3. Once ten percent holder status is determined, the pecuniary interest analysis would govern the securities holdings and transactions to be reported on Forms 3, 4, and 5.

Many commenters recommended an exception from the ten percent holder determination for customer accounts of institutions engaged in holding securities for their clients in the ordinary course of business, generally defined as those institutions currently eligible to file a Schedule 13G ("13G Institutions").[43] The Commission is persuaded that the rules as reproposed should contain such an exemption. Without an exemption, institutions that administer fiduciary accounts in the ordinary course of business would become subject to Section 16 if they exercised either voting power or investment power over these accounts that, when aggregated, held over ten percent of a Section 12 class of equity securities. Under the rules as initially proposed, both the institution and each individual fiduciary account could become subject to Section 16 reporting and liability.[44]

The revised proposals would exclude from the calculation of beneficial ownership of a 13G Institution those securities held in or for customer accounts in the ordinary course of business where the 13G Institution is a passive investor.[45] If the 13G Institution also held securities of the same class in another capacity, those securities would be counted for purposes of determining ten percent holder status. The proposed revision appears necessary to avoid undue interference with the day-to-day business of banks, brokers, dealers, investment advisers and other specified institutional fiduciaries and custodians. The ordinary course of business and passive investment intent conditions should minimize the potential for the institutions to use the aggregated holdings to exert control and gain access to inside information.

The Commission requests comment on the potential for abuse of the proposed exemption and specifically requests comment as to whether the revised proposed rules should be amended to treat a 13G Institution as an insider if it holds more than ten percent of an issuer's equity securities for a single customer or customers that would constitute a "group" under Rule 13d–2.[46] Further, if all accounts of a 13G Institution buy and sell issuer stock in unison it may be appropriate to treat each account as an insider. Comment is accordingly requested whether, as a condition to this exemption, the 13G Institution should be precluded from having one person, or one investment committee, make the investment decisions for each of the fiduciary accounts.

b. *Determining Beneficial Ownership for Reporting and Short-Swing Profit Liability.* Once it has been determined that a person is a ten percent holder, or that a person is otherwise subject to Section 16 as a director or officer, the pecuniary interest definition of beneficial owner determines what securities holdings and transactions must be reported and which transactions are subject to short-swing profit liability.[47] This analysis is wholly independent and separate from the analysis determining ten percent holder status.

Under the definition, as originally proposed and as reproposed, an insider beneficially owns all shares in which the insider holds a direct or indirect pecuniary interest.[48] Indirect pecuniary interest represents the insider's ability to profit from purchases and sales in securities held by family members, or through derivative securities, partnerships, corporations, trusts and "other arrangements."[49] An indirect pecuniary interest arising from "other arrangements" would include, among other things, any formal or informal agreement to share profits from transactions in a particular issuer's securities. For example, this would include parking arrangements [50] and specified interests in fee arrangements.[51]

Once all holdings involving a direct or indirect pecuniary interest have been ascertained, such holdings would be reported on the appropriate Form 3, 4, or 5. Insiders would not report beneficial ownership of securities in which they do not have a pecuniary interest, notwithstanding their authority to vote, acquire, or dispose of the securities.[52] If the right to vote or dispose of the securities, however, is separated from the security, the holder of the right may be deemed the beneficial owner of an equity security.[53]

The proposed rule defined several categories of indirect interests in securities that conveyed beneficial ownership for reporting and short-swing profit purposes. Changes have been made with respect to such provisions as follows.

i. Family Holdings. As initially proposed, the rules would have required automatic attribution of the holdings of the insider's immediate family [54] members residing in the same household. Commenters responding to this proposal objected to the automatic attribution feature, which would not have permitted an insider to rebut the presumption of beneficial ownership, and strongly disfavored the suggested alternative approach, which would have extended the concept of beneficial ownership to non-family members residing in the same household.

In response to commenters' concerns, the proposed treatment of family holdings would be revised to eliminate the mandated attribution feature and return to the current use of a rebuttable presumption.[55] The revised proposed rule [56] would create a rebuttable presumption that an insider is the beneficial owner of securities held by a member of the immediate family sharing the same residence. The Commission has been persuaded by commenters that the alternative approach is not appropriate because the control over non-family members' investments is likely to be limited, resulting in a substantial risk of inadvertent shortswing transactions. Nonetheless, where it can be demonstrated that a non-family member in the same household shares a pecuniary interest with the insider, the securities would be attributable to the insider.

ii. Partnership Holdings. As originally proposed, holdings of a general partnership would be attributed to the general partners.[57] As reproposed, this attribution principle would be extended to general partners of limited partnerships.[58] Commenters addressing the issue of attribution generally recommended attributing to general partners of limited partnerships the partnership's portfolio securities holdings [59] and transactions since (1) the standard of care owed by general partners in both general and limited partnerships is typically the same, (2) general partners of limited partnerships typically have a direct interest in the profits of a limited partnership, and (3) the opportunity for general partners to profit from short-swing speculation is no less in a limited partnership than in a general partnership. Accordingly, the revised proposed rule would attribute portfolio securities held by a limited partnership to its general partners for both reporting and short-swing profit liability purposes.

In addition, the revised proposed rule would specify that the extent of a general partner's pecuniary interest in either the general partnership's or the limited partnership's portfolio securities would be measured by the greater of the partner's proportional interest in (1) partnership profits, including profits attributed to any limited partnership interest and any other interest in profits that arise from the purchase and sale of the partnership's portfolio securities, or (2) the general partnership capital account.[60] This approach should reflect more accurately the general partner's pecuniary interest in the partnership's securities.[61]

Comment is solicited, however, on whether beneficial ownership should be determined solely by a general partner's percentage of profit with respect to transactions in the issuer's securities. Comment is further requested whether the rule should specify the means and timing for determining a general partner's profit interest or capital account. Specifically, should the general partner's profit interest or capital account be determined by the greater of the balance specified in the partnership agreement at the date of the subject transaction or as reported to the Internal Revenue Service prior to the subject transaction?

iii. Fee Arrangements. Several institutional commenters urged an exemption from the pecuniary interest

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[37] Current Rule 16a–1(d) (17 CFR 240.16a–1(d)); revised proposed Rule 16a–2(a).

[38] 15 U.S.C. 78l (1982).

[39] Revised proposed Rule 16a–1(a)(1).

[40] Revised proposed Rule 16a–1(a)(2).

[41] *See* Rule 13d–3 (17 CFR 240.13d–3).

[42] Revised proposed Rule 16a–1(a)(1).

[43] 17 CFR 240.13d–102. 13G Institutions would be defined as institutions currently identified in Rule 13d–1(b)(1) (17 CFR 240.13d–1 (b)(1)): brokers, dealers, banks, insurance companies, investment companies, investment advisers, employee benefit plans, pension or endowment funds, groups where all members are the foregoing types of entities, and parent companies of the foregoing, provided their non-13G subsidiaries hold one percent or less of the securities of the issuer in question. The Commission has proposed rules providing that Schedule 13G be made available to certain passive non-institutional investors. *See* Exchange Act Release No. 26598 (March 6, 1989) (54 FR 10552). Revised proposed Rule 16a–1(a)(1), however, is intended to apply to institutions only; the revised proposed Rule is premised on the potential interference the Rule otherwise would have upon the designated institutions' day-to-day affairs carried out in the ordinary course of business.

[44] Pursuant to proposed Rule 16a–5(a)(2) and revised proposed Rule 16a–8(b), trusts with insider trustees would themselves become insiders. *See* Section III.A.3.d. *infra.*

[45] One of the current conditions to the use of Schedule 13G is that eligible institutions not hold the securities with the purpose or effect of changing or influencing the control of the issuer. Rule 13d–1(b)(1)(i) (17 CFR 240.13d–1(b)(1)(i)). Under the revisions that have been proposed, this would continue to be the case.

[46] 17 CFR 240.13d–2.

[47] Revised proposed Rule 16a–1(a)(2).

[48] "Pecuniary interest" would be defined in revised proposed Rule 16a–1(a)(2)(i) to mean the opportunity to profit, directly or indirectly, from a transaction in the subject securities.

[49] Revised proposed Rule 16a–1(a)(2)(ii).

[50] "Parking" is a term used to describe arrangements, generally prohibited, whereby a person seeks to disguise his or her beneficial ownership by having another entity or person claim to be the beneficial owner.

[51] *See* Section III.A.3.b.iii, *infra.*

[52] Accordingly, a ten percent holder with no pecuniary interest in the securities would file a Form 3 stating that the amount of securities in which there was a pecuniary interest was zero. No Form 4 or 5 would be required as to those securities unless the ten percent holder acquired a pecuniary interest.

[53] *C.f.* Section III.A.3.b.iv, *infra.*

[54] "Immediate Family" would be defined in revised proposed Rule 16a–1(e) as any child, stepchild, grandchild, grandparent, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law and all adoptive relationships. The only substantive revision from that originally proposed is the addition of grandparents.

[55] *See* Exchange Act Release No. 18114 (Sept. 24, 1981) (46 FR 48147) ("Release No. 18114") Q.4: "Absent countervailing facts, it is expected that securities held by a spouse, minor children and other relatives who share the same home as the insider will be reported as being beneficially owned by the insider since such relationships ordinarily result in the insider obtaining benefits substantially equivalent to ownership."

[56] Revised proposed Rule 16a–1(a)(2)(ii)(A).

[57] Proposed Rule 16a–1(a)(2)(iii).

[58] Revised proposed Rule 16a–1(a)(2)(ii)(B).

[59] The term "portfolio securities" would be defined in revised proposed Rule 16a–1(a)(2)(iv).

[60] The capital account balance in a partnership generally represents the partner's initial investment in the partnership as adjusted by any future investment, distributions, or partnership allocations.

[61] Thus, under revised proposed Rule 16a–1(a)(2)(ii)(B), if a general partner's capital account represented a one percent interest in the partnership but the partnership agreement provided that the general partner would receive ten percent of the profits of the partnership after the first five years, the general partner would beneficially own one percent of the partnership's securities for the first five years and ten percent of the securities after the fifth year, even if the capital account remained equal to a one percent interest. The initial proposal would have attributed merely the partner's pro rata share of the partnership, without distinguishing between profit allocations or the capital account.

definition for management fees, even if

represents a sufficient interest that the

voting power over the corporation's

above, under the revised proposals,[75]

favor of a new exemption for on-going

responsible, however, for the accuracy

definition for management fees, even if those fees are performance related. In response to these commenters' remarks, the revised proposed rules [62] would provide that management and advisory fees would not represent a pecuniary interest in an issuer's securities where the established fee arrangement is based on the gains generated by a portfolio over a period of one year or more and securities of the issuer do not account for more than ten percent of the portfolio. A large percentage of an investment adviser's fee usually is derived from a percentage of the total assets under management, while a smaller portion of the total fee is earned as a result of the fund's performance relative to the Standard and Poor's 500 or some other relevant benchmark. Section 205 of the Investment Advisers Act of 1940 ("Advisers Act") [63] generally prohibits basing adviser fee arrangements on capital gains or capital appreciation generated in the portfolio.[64] Advisers Act Rule 205-3 [65] allows such a performance fee under specified conditions.[66] Since the customary fee received by an adviser usually is connected with the performance of a portfolio of securities over a period of one year or more,[67] the pecuniary interest in the profit from a single securities trade appears so remote that attribution of beneficial ownership for that trade would be inappropriate except where the securities of the issuer account for a significant portion of the portfolio. However, if an entity is awarded a fee based upon the gains from particular transactions, the fee would create a pecuniary interest in the securities transaction that would be subject to short-swing profit liability.

The Commission solicits comment on whether ten percent of a portfolio represents a sufficient interest that the profit generated from transactions in these securities is no longer remote: Should the percent be larger, such as 20 percent, or smaller, such as five percent, before attribution is appropriate?

iv. Dividends. The proposed treatment of pecuniary interest would be revised to exclude interests solely in dividends.[68] The right to dividends alone generally is too remote from the pecuniary interest derived from the purchase and sale of securities to be considered an interest subject to Section 16. This comports with the view of commenters who unanimously urged the exclusion of an interest in dividends alone from Section 16. However, any interest in dividends separated from a security, which is a separate security or traded as a separate right or security, would not be exempt. These interests, which may be treated as equity securities in their own right, present the same potential for speculative profit as the related equity security.

v. Corporate Holdings. Initially, the Commission did not propose a rule addressing a security holder's indirect pecuniary interest in corporate portfolio holdings in order to permit courts flexibility in applying Section 16 to situations where corporate holdings are involved. Those responding to the request for comment generally agreed with the Commission's position with respect to publicly-held entities, but urged the Commission to provide specific attribution provisions for closely-held corporations. These commenters expressed concern that an insider of a Section 12 issuer who also owned shares in a non-public corporation holding securities of that issuer could risk having a court determine that the insider is responsible for transactions carried out by the non-public corporation, even where the insider is not in control of that corporation and does not participate in investment decisions of the entity.

The revised proposed rules contain a non-exclusive safe harbor from attribution. Under the revised proposal, portfolio securities held by a non-public corporation [69] would not be attributed to an insider security holder of that corporation if the following conditions are met: (1) The person is not a control person of the entity; and (2) the person does not have or share investment or voting power over the corporation's portfolio securities. If the test is met, the corporation's securities would not be attributed to or effectively passed through to the insider equity security holder. The Commission is considering treating specified insurance companies and foreign issuers exempt from Section 12 of the Exchange Act as public companies for purposes of the proposed safe harbor.[70] Comment is solicited on whether this alternative would present an opportunity for abuse.

c. *Disclaiming Beneficial Ownership.* Given the change from mandated to presumed attribution,[71] the revised proposed rules would allow an insider to disclaim beneficial ownership of immediate family holdings. Where, however, beneficial ownership is otherwise mandated by a rule, an insider would not be permitted to disclaim beneficial ownership of equity securities.[72]

d. *Trusts and Trustees* i. Introduction. The revised proposed rules reflect two substantive changes from the original proposals in the trust area.[73] First, the revised proposals would exempt trusts from becoming subject to the provisions of Section 16 as a result of having an insider 13G Institution as a trustee. Second, the revised proposals would limit the exemption for trust remainder holders to those without investment control over the trust. There would be two other minor changes to remote interest provisions, discussed below.

ii. Exemption for 13G Institutions as Trustees. As originally proposed and as reproposed, the insider status of a trustee would be attributed to a trust that is not otherwise an insider because of the substantial potential for the trust to benefit from information obtained by the insider trustee.[74] As discussed

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[62] Revised proposed Rule 16a-1(a)(2)(ii)(C).

[63] 15 U.S.C. 80b-5 (1982).

[64] Section 205(b)(2) (15 U.S.C. 80b-5(b)(2)(1982)) permits certain performance fees, known as "fulcrum fees," if the fee is pursuant to an advisory contract with a registered investment company or with certain other persons, provided the contract relates to the investment of assets in excess of $1 million. Section 205(b)(3) (15 U.S.C. 80b-5(b)(3)(1982)) permits performance fees with respect to business development companies.

[65] 17 CFR 275.205-3.

[66] The conditions that must be met in order for the performance related fee to be permissible are, generally, that the client agreeing to the arrangement must meet certain net worth tests, the arrangement involves an arms-length contract, and that disclosure requirements are met, provided that the compensation is based upon net realized and unrealized gains over a period of at least one year. *Id.*

[67] Compensation is calculated after taking into consideration realized capital losses and unrealized capital depreciation netted against gains and unrealized capital appreciation in securities in the account over a period of one year or more.

[68] Revised proposed Rule 16a-1(a)(2)(ii)(D).

[69] Revised proposed Rule 16a-1(a)(2)(iii) would apply to corporations having no reporting obligations under Sections 13 and 15(d) of the Exchange Act, and to corporations having reporting obligations arising from registration of debt securities only.

[70] Section 12(g)(2)(G) of the Act (15 U.S.C. 78*l*(g)(2)(G) (1982)) and Rule 12g3-2(b) (17 CFR 240.12g3-2(b)) exempt specified insurance companies and foreign issuers from the registration requirements of Section 12(g) of the Act (15 U.S.C. 78*l*(g)(1982)) and the reporting requirements of Section 13 of the Act 15 U.S.C. 78m (1982)).

[71] *See* Section III.A.3.b.i., *supra.*

[72] Revised proposed Rule 16a-1(a)(4). This revised rule would not affect the ability of a person to disclaim beneficial ownership for purposes of Section 13(d) reporting. *See* Rule 13d-4 (17 CFR 240.13d-4).

[73] In addition to these substantive changes, all rules relating to trusts would be moved to revised proposed Rule 16a-8, with two exceptions. The exemption for remote interests would be moved to revised proposed Rule 16a-1(a)(5) and the 12 month exemption for fiduciaries would be moved to revised proposed Rule 16a-2 (d) and (e).

[74] Commenters did not object generally to the extension of an individual trustee's insider status to the trust or to the extension of a trust's insider status to an individual trustee. On the other hand,

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above, under the revised proposals,[75] 13G Institutions would not become ten percent holders as a result of their customer account holdings.

There may be situations, however, where a 13G Institution may otherwise be an insider, for example, where it holds ten percent for its own account. In such a case, under the proposed rules, each individual trust would become subject to Section 16. In response to this concern, the revised proposed rule would provide an exemption for all individual trusts administered by 13G Institutions, in the ordinary course of business, and where the 13G Institution was a passive investor.[76] Thus, just as customer accounts would not subject the 13G trustee to Section 16, neither should the 13G trustee subject customer accounts to Section 16. Comment is solicited as to whether there are opportunities for abuse by 13G Institutions, or reasons to subject trusts administered by 13G Institutions to Section 16.

iii. Remote Interests. The proposed rules would be modified in several respects. First, the revised proposed rules would exempt from the beneficial ownership determination remainder interests in trusts, provided the person with the remainder interest does not exercise and does not have the ability to exercise investment control over the trust.[77] Second, the Commission proposes to delete the current exemption for a business trust with over 25 beneficiaries because these entities operate similarly to a corporation and different treatment appears inappropriate.[78] They would be considered corporations for purposes of these rules. The final revision to the remote interest exemption would be the deletion of the exemption for securities held in pension or retirement plans in favor of a new exemption for on-going acquisitions in such a plan.[79]

B. How and When to Report

1. Option Exercises

Many commenters, particularly individual investors, voiced concern over deferred reporting of option exercises. Many investors stated that option exercises represented important indicia of an insider's private views of a company's prospects. One commenter noted that information concerning a sale of securities received upon the exercise of an option, considered profit taking, is viewed as less indicative of an insider's assessment of a company's prospects than other sales. Thus in order to be useful, transaction disclosure requires information as to whether the insider is profit taking or selling an investment.

The revised proposed rules would require insiders to report option exercises at the time they file their next required report, whether on Form 4 or Form 5.[80] This would permit investors evaluating transactions to make a judgment as to whether the securities sold represent option stock or investment stock. Since insiders otherwise would be required to file the report, there should be no significant burden in adding disclosure of the option exercise.

2. Form 5 Revisions

The revised rules incorporate four changes to the proposed annual statement on Form 5 in response to comment received. First, an insider would not be required to file a Form 5 if the person had reported all required holdings and transactions on Forms 3, 4, and 5, during or prior to the fiscal year for which the form is to be filed, and had no transactions requiring deferred reporting.[81] The issuer would continue to have to disclose all insiders who had not filed a required Form 5, but would be entitled to rely on a written representation from the insider that no Form 5 was required if the issuer retains the representation for at least two years.[82] The issuer would not be responsible, however, for the accuracy of the insiders' assertions.

The second change would involve the timing of the filing of Form 5. Originally, the Commission proposed that the Form 5 be filed within 30 days of the issuer's fiscal year end. Many commenters were concerned that this period was not long enough for insiders to learn their positions in various trusts and benefit plans, while other commenters cautioned against extending the deadline significantly since the issuer would need to receive the Forms 5 in time to comply with the proposed Item 405 proxy disclosure requirement. The revised proposed rules would extend the deadline from 30 days to 45 days.[83]

The third proposed change to Form 5 would be the deletion of the certification of compliance with Section 16(a).

An additional change is being proposed in an attempt to clarify the Form 5 filing requirement. The revised proposed rule would require a Form 5 from any person who was an insider at any time during the year. Comment is requested as to whether the rule should require that a person be an insider for a specified minimum period, such as three months or six months of the year. Further, comment is requested as to whether the Form 5 should be required from a person becoming an insider late in the fiscal year, but not from a person ceasing to be an insider.

3. Date of Filing

As proposed, Forms 3, 4, and 5 would have been deemed timely filed if mailed on the date due at the Commission. While those required to supply the information generally supported the proposal, those using the information did not. In light of the comment received, the Commission would revise the proposal to address both concerns. The revised proposed rules would eliminate the mailing date provision and require the filing of these forms by the date due at the Commission. However, given the concern underlying the initial proposal that mail delays might cause some insiders to be identified in proxy statements as non-complying persons, even where the form had been sent in a timely fashion, the proposed proxy disclosure requirement for late filers would be amended to permit the issuer to omit disclosure from the proxy statement if a form was provided to it within three calendar days of the required filing date.[84]

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most respondents objected to the concept of aggregating bank and professional trust company holdings, ascribing insider status to the trustee if such aggregate holdings exceed ten percent and ascribing insider status to the trusts that have a professional trustee who is deemed to be an insider because he or she administers trusts which, in the aggregate, hold over ten percent.

[75] *See* Section III.A.3.b., *supra.*

[76] Revised proposed Rule 16a-8(b).

[77] Revised proposed Rule 16a-1(a)(5)(i). A person with a remainder interest in a trust has an interest in a trust's securities upon the death of a prior beneficiary or expiration of the trust's term. If the ability to control investment decisions is present, the beneficial ownership interest would not be considered remote and the insider would be required to report his or her pecuniary interest in the remainder.

[78] Current Rule 16a-8(g). Many investment companies are structured as Massachusetts business trusts.

[79] Current Rule 16a-8(g)(3) and revised proposed Rule 16b-3(e)(4). *See* discussion in Section V.C., *infra.*

[80] Revised proposed Rule 16a-4(b). If the next required report is due in less than ten days, the reporting person may defer the option exercise disclosure to the following report; otherwise, for example, an insider might exercise an option on the sixth day of the month and a Form 4 disclosing a trade from the previous month would be due on the tenth, providing the insider with only four days to report the exercise.

[81] Revised proposed Rule 16a-3(f).

[82] Revised proposed Item 405(b) of Regulation S-K. *See* Section VIII.B, *infra.*

[83] Revised proposed Rule 16a-3(f).

[84] Revised proposed Item 405(b) of Regulation S-K. If a form is received by an issuer within three

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IV. Derivative Securities

Moreover, since there is a reportable

have a narrow scope, applying only to

purposes, unless issued pursuant to a

of-the-money derivative securities were

manner similar to the underlying stock,

IV. Derivative Securities

The rules, both as originally proposed and as reproposed, would deem derivative securities to be the same class of equity securities as the underlying security.[85] Thus, the proposed rules would expand liability for transactions in derivative securities, which would be matched with transactions in the underlying securities to yield possible short-swing profits. This is essential to the efficacy of the Section 16 regulatory scheme. The profit potential with derivative securities is the same as with the underlying security, or even greater because of the leverage opportunities. If derivative securities and underlying securities were not matched for purposes of Section 16(b) short-swing profit liability, there would be a substantial loophole in the Section 16 regulatory scheme that would provide an opportunity for abuse.

From an economic perspective, Section 16 should apply to any position the value of which depends on the value of the issuer's equity. Options, warrants and other derivative securities have this characteristic. Indeed, by purchasing put and call options with the appropriate characteristics an investor can replicate the cash flows that result from holding stock directly.[86]

When an insider exercises an option or converts a convertible security, the insider changes indirect ownership in the underlying securities to direct ownership. The insider realizes no profit at the time of exercise,[87] has not significantly altered the potential for profit, and has acquired no greater percentage of beneficial ownership. Whether an insider pays money to exercise or convert a security does not change the analysis. Economists commenting on the proposed treatment of options agreed with this analysis.[88] Moreover, since there is a reportable purchase of the derivative security at acquisition, the purchase at exercise or conversion generally would be exempt because there should not be two purchases involving the same security subject to Section 16(b) liability.

Put equivalent positions, as defined in the revised proposed rules,[89] would be subject to Section 16, as they provide the same opportunity to profit as call equivalent positions. Insiders knowing of news adverse to the issuer could profit through use of put equivalent positions just as insiders might use call equivalent positions to profit on the basis of positive news.

Commenters generally were supportive of the proposed scheme. As more fully discussed below, in response to various comments, the revised proposals incorporate the following major changes: (1) The definition of a derivative security would be revised to clarify when merger rights are excluded; (2) the definition of derivative securities would be narrowed to exclude a larger class of cash-only derivative securities; (3) the reporting of exempt exercises or conversions of derivative securities would be required on the next report due rather than on an annual basis; (4) the exemption from short-swing profit liability for exercises and conversions would be expanded to include out-of-the-money options where the exercise was necessary to comply with the serial exercise provisions of the Internal Revenue Code; and (5) the profit calculation provision would be revised.

A. Definition of Derivative Security

1. Exchange of Shares in a Merger

The initial proposal defined the term "derivative security," but provided four exclusions: (1) Pledged securities; (2) rights arising in connection with a merger; (3) specified cash only securities; and (4) broad-based index options and futures. Concern was expressed that the language of the second exclusion in the proposed definition was too broad and might be read to exclude all derivative securities in connection with a merger, such as privately negotiated options granted by an issuer or principal shareholder upon execution of a merger agreement (a "lock-up" option). This exclusion, taken from the current rules,[90] is intended to have a narrow scope, applying only to the exchange of securities pursuant to a merger agreement which otherwise might be viewed as the exercise of a "right," and therefore a derivative security.[91] Lock-up options and other similar arrangements, which have an existence independent of a merger agreement and otherwise resemble a call option, are not within the scope of the intended exclusion. As such, the Commission proposes to amend the exclusion by changing the clause "in connection with a merger" to "all security holders pro rata . . . as a result of a merger." [92] Thus, a right excluded from the definition is the right resulting from merger terms offered to all holders of that class of securities pro rata, rather than any right that might arise either in connection with or as a result of a merger.

2. Cash-Only Derivative Securities

The definition of derivative security proposed in the 1988 Release would have excluded only those cash-only derivative securities awarded pursuant to a benefit plan satisfying the requirements of Rule 16b–3.[93] Such securities would not be deemed equity securities. In response to the concerns of commenters, the revised proposed rule also would exclude from the definition of derivative securities cash-only derivative securities that have a fixed date of redemption, at least six months in the future, not subject to the discretion of any party.[94] For example, an issuer may award "phantom stock" to an insider that will be redeemed for cash exactly one year and one day after grant. This would not be deemed a derivative security or an equity security. The opportunity for abuse appears slight since the insider is at market risk for at least six months and has no discretion over the transaction.

B. Reporting of Exercises and Conversions

As discussed above, the revised proposed rules would require exercises of derivative securities to be reported on the next otherwise required report, either Form 4 or Form 5.[95]

C. Short-Swing Profit Liability

1. Acquisitions

Some commenters expressed concern that issuer grants of options would be deemed a purchase for Section 16(b)

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calendar days of the required filing date, the issuer may presume, for purposes of disclosure, that the form was filed timely with the Commission.

[85] This would essentially codify the holding in *Chemical Fund* v. *Xerox Corp.*, 377 F.2d 107 (2d Cir. 1967).

[86] The relationship underlying this duplication is known as the "put-call parity theorem." *See* Brealey and Myers, *Principles of Corporate Finance*, 474–475 (Third Edition). Call equivalent position is defined in revised proposed Rule 16a–1(b).

[87] The profit is realized at the time the underlying security is sold. For example, when an insider exercises a call option with an exercise price of $10 and a market price of $20 for the underlying security, there is no profit received until the insider sells the underlying stock for $20 per share. Alternatively, in the case of a standardized option, the insider could have realized his or her profit by selling the option, rather than exercising it.

[88] *See* Letters from Gregory S. Crespi, Senior Counsel Executive Office of the President's Council of Economic Advisors and H. Nejat Seyhun, Visiting Assistant Professor of Finance University of Chicago.

[89] Revised proposed Rule 16a–1(h).

[90] Current Rule 16a–6(a), Note 3 (17 CFR 240.16a–6(a)). The Note was added originally as a result of concern regarding a proposed change to that rule contained in Exchange Act Release No. 9396 (Nov. 24, 1971) (36 FR 22905).

[91] *See* Release No. 18114 Q.51.

[92] Revised proposed Rule 16a–1(c)(2).

[93] 17 CFR 240.16b–3.

[94] Revised proposed Rule 16a–1(c)(3).

[95] *See* Section III.B.1, *supra*.

purposes, unless issued pursuant to a Rule 16b–3 plan, since the proposed scheme would treat all acquisitions as purchases. They argued that option grants generally are beyond the control of insiders and are received without payment of cash. As such, they concluded that there is little opportunity for abuse, and a general exemption from Section 16(b) short-swing profit liability would be warranted.

Concern also was expressed that the absence of an exemption for issuer grants could create inadvertent short-swing transactions. An insider could sell stock and three months later receive a non-exempt stock option grant. The option grant would be deemed a purchase to be matched with the prior sale and a short-swing transaction would result. In essence, these commenters appear to be urging that the Commission delete all conditions to Rule 16b–3 and provide a blanket exemption for issuer option grants, which generally are awarded for compensatory purposes. The Commission is not prepared to provide such an exemption. Comment is requested, however, as to examples of non-compensatory issuer option grants given without consideration or value.

2. Exercises and Conversions

a. *Out-of-the-Money Securities.* The initial proposal would have exempted exercises of in-the-money and at-the-money derivative securities only.[96] If a derivative security is in-the-money, the value of the derivative security is generally more directly linked with the underlying stock than is the case with an out-of-the-money security. The opportunity for profit is different for out-of-the-money securities since they do not have a dollar-for-dollar direct relationship with the underlying securities.[97] Further, if exercises of out-of-the-money derivative securities were exempt, an insider might decide that qualifying for the exemption from Section 16(b) was more desirable than the ability to purchase the underlying stock at a better price in the open market, since stock acquired upon the exercise could be sold immediately, whereas stock acquired in the open market could not be sold for six months. There would be opportunities for abuse in such situations.

Commenters mentioned several reasons out-of-the-money call options are exercised that might justify an exemption: (1) to increase voting power; (2) to buy a large block of stock without affecting the market price; and (3) to comply with Section 422A of the Internal Revenue Code's [98] requirement to exercise options in the order they were granted ("serial exercise rule"). The third situation does not seem to present a significant opportunity for abuse. Whereas the serial exercise rule has been deleted for incentive stock options awarded after January 1, 1987, previously granted options remain subject to the rule. As such, the revised proposal would exempt exercises of out-of-the-money derivative securities where necessary to satisfy the serial exercise rule of the Internal Revenue Code.[99]

b. *Issuer Option Grants.* A few commenters expressed concern that many option grants would be exempt purchases under proposed Rule 16b–3 covering employee benefit plans. Where both the grant and exercise of a derivative security are exempt purchases, they contend, there will be no short-swing transaction when the insider sells the derivative security or underlying security, unless there is another independent purchase by the insider. Thus, the option could be granted, exercised, and the underlying securities sold, within six months without short-swing profit liability.[100] The Commission anticipated these concerns by proposing a six month holding period for options granted pursuant to a Rule 16b–3 plan.

Several commenters criticized the option holding period requirement, stating that there was no similar requirement for stock awarded under a plan complying with Rule 16b–3. They suggested that the treatment be the same and that the option holding period be deleted. Since the overall proposed scheme treats derivative securities in a manner similar to the underlying stock, consistent treatment appears to be warranted. Therefore, it would seem there should be a holding period for both stock and derivative securities or none at all. The revised proposed rules would require a six month holding period for employee benefit plan grants of either underlying securities or derivative securities.[101]

Comment is solicited as to whether the Commission should instead delete any holding period requirements in proposed Rule 16b–3, but amend the exemption for exercises and conversions to exclude derivative securities acquired pursuant to the Rule 16b–3 exemption from the proposed exemption for exercises and conversions. Comment also is requested as to whether there is a basis for distinguishing between options and stock with respect to the need for the proposed holding period.

c. *Derivative Securities with Fixed Exercise Price.* The exemption of exercises and conversions from Section 16(b) liability [102] would be reproposed with one language change. The revised proposed rule would make clear the Commission's intent to exempt exercises of only those derivative securities with fixed exercise or strike prices. Thus, the exercise of an option that by its terms has an exercise price of 90 percent of the market value on the date of exercise would not be exempt. Such an option would be considered to have a "floating" exercise price, warranting special treatment.

The foundation of the proposed scheme for derivative securities is that a person acquires an economic interest in the underlying security at the time the derivative security is acquired. The holder of a derivative security with a floating exercise price has limited economic interest and bears limited risk in a price fluctuation in the underlying security.[103] Therefore, holders of such securities would not be deemed to have purchased the underlying securities until the date of exercise.

3. Dispositions

a. *Determination of Profit.* The Commission proposed two alternative methods for determining the profit from transactions involving derivative securities. As a result of the comments, the Commission proposes to use a profit calculation based on an assumption that the insider purchased and sold the same security, but delete consideration of

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[96] When the exercise price for a derivative security is less than the current market price of the underlying security, the derivative security is "in-the-money." If the exercise price and market price are the same, the derivative security is "at-the-money." If the exercise price is greater than the market price, the derivative security is "out-of-the-money."

[97] Factors such as interest rates and volatility of the underlying stock may affect the increase in value of the underlying stock and may also affect the increase in value of the option, but in-the-money options generally closely follow the price movements of the underlying stock. *See generally* J. Cox, S. Ross, & M. Rubinstein, "Option Pricing: A Simplified Approach," *Journal of Financial Economics*, 229–263 (Sept. 1979); M. Brennan & E. Schwartz, "The Valuation of American Put Options," *Journal of Finance*, 449–462 (May 1977).

[98] I.R.C. 422A (26 U.S.C. 422A (1982)).

[99] Revised proposed Rule 16b–6(b).

[100] Current Rule 16b–3 does not contain a holding period that would prevent insiders from acquiring stock and selling it immediately.

[101] Revised proposed Rule 16b–3(c)(1)(ii).

[102] Revised proposed Rule 16b–6(b).

[103] *Cf.* n.86, *supra*.

factors such as interest rates and

issuer's securities.[104] The only change

rights to acquire the underlying security

subsequent prohibition on participation

"derivative security" and would not be

transaction would be reported on Form

factors such as interest rates and volatility of the underlying equity security. Such factors, although used by professional options traders in valuing standardized options, are likely to unduly confuse and complicate what otherwise should be a routine application. The revised proposed rule [104] would provide courts a choice between using the change in value of the underlying security or the change in value of one of the derivative securities involved in the transaction. The recovery, however, could not exceed the change in value of the underlying security.[105]

The Commission recognizes that problems could arise in determining profits involving different derivative securities if both securities did not exist as of the time of the relevant purchase and sale. Under these circumstances, profits would be calculated with reference to changes in the value of whichever derivative security existed at both points of the short-swing transaction. If neither derivative security existed at both points of the transaction, the court would look to the change in value of the underlying security.

The Commission also seeks comment as to whether it would be preferable to provide a specific formula that does not offer courts a choice between using changes in the value of two different derivative securities. In particular, one alternative might calculate profit as the greater change in value in the derivative securities bought and sold over the relevant time period, provided that the change in value does not exceed the change in value of the underlying security. A second alternative might calculate profit as the lesser change in value in the derivative securities bought and sold over the relevant time period, provided that the change in value does not exceed the change in value of the underlying security.

b. *Options in a Merger Context.* The current rules provide an exemption for dispositions of underlying stock acquired from an option exercise where the disposition is pursuant to a merger, consolidation, or reclassification of the issuer's securities.[106] The only change initially proposed was to narrow the exemption to options acquired under a plan satisfying Rule 16b–3.

Given the proposed exemption of all exercises of in-the-money and at-the-money options, insiders could exercise their options and deliver the underlying equity securities into the merger without creating a short-swing transaction; thus the Rule may no longer be necessary.[107] Its retention, rather than providing equal treatment for stock and options, may provide preferential treatment for option holders; stock acquired upon exercise of an option could be sold as part of a merger in an exempt manner, but other acquisitions of stock could not. The Commission has not proposed to change further Rule 16b–6(c), but requests comment as to whether it should be deleted.

4. Expirations

While the initial proposals addressed short-swing profits recoverable from an expiration of a short option position,[108] the expiration of a long option position was not addressed. The revised proposed rule would exempt dispositions by expiration of long derivative security positions, where no value is received from the expiration.[109] Expirations of short derivative security positions would not be exempted, since there is an opportunity for short-swing profit.[110]

D. Subscription Rights

The current rules [111] provide an exemption for sales of subscription rights to acquire the underlying security that meet four specified criteria: 1) the rights are acquired from the issuer without payment of consideration; 2) the rights expire within 45 days; 3) the rights are issued on a pro rata basis to all holders; and 4) the rights are registered under the Securities Act. This rule was not, and is not, proposed to be changed.[112]

Under the proposed scheme, a subscription right would be deemed a derivative security such that an acquisition of a subscription right could be matched with a sale of any equity security to find a short-swing transaction. As derivative securities, these rights could be exercised in an exempt manner, pursuant to revised proposed Rule 16b–6(b). While subscription rights are similar to issuer options, they generally are granted to a class of security holders, rather than a limited group of employees. Comment is solicited on whether the general nature of the distribution provides a sufficient safeguard against abuse that an exemption for all pro rata grants of subscription rights is not appropriate. Because this rule provides an exemption for the sale of a subscription right, rather than its acquisition, it would not prevent a grant of a subscription right from being matched with a prior sale, for short-swing profit liability. Comment is solicited whether there should be an exemption for acquisitions, rather than sales. Comment is requested further as to whether any special exemption for subscription rights is necessary.

V. Employee Benefit Plans

Both the current and proposed rules provide exemptions for specified transactions involving employee benefit plans. The Commission proposes revisions to the original proposals concerning employee benefit plans in order to remove the potential for an unwarranted chilling effect upon many benefit plans. The changes are described below.[113]

A. Disinterested Administration

Under the proposed rules, a disinterested administrator could not participate in any discretionary plan of the issuer for the year before the transaction and could not be eligible to participate in any discretionary plan for the three years subsequent to the transaction. Commenters indicated that a one year prior and one year

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[104] Revised proposed Rule 16b–6(d). The revised rule is based upon the originally proposed Alternative A.

[105] For example, on April 1st an insider purchases a warrant for $2 with an exercise price of $10 a share and a market price of the underlying security of $9 per share. On May 1st, the insider sells an option for $2 with an exercise price of $15 a share while the underlying security was $15 per share. The warrant purchased on April 1st was selling for $9 on May 1st. Thus, the profit would appear to be $7 per share. However, the maximum recovery would be $6 per share (representing the change in the underlying stock).

[106] Current Rule 16b–6(c) (17 CFR 240.16b–6(c)); revised proposed Rule 16b–6(c).

[107] Under the current rules, if an insider exercises an option, it is considered a purchase. Thus, absent Rule 16b–6(c), option holders would be unable to deliver the underlying equity securities into the merger for six months, without becoming subject to Section 16(b) liability. This would no longer be true under the proposals.

[108] Proposed Rule 16b–6(e); revised proposed Rule 16b–6(e).

[109] For example, an insider purchases a call option with an exercise price of $20 per share. At expiration, the underlying stock is selling for $15 per share, rendering the option worthless. The disposition of the option at expiration would be deemed an exempt sale.

[110] For example, an insider sells short, or writes, a call option with an exercise price of $30 per share. The insider receives a $3 per share premium for the option. At expiration, the underlying stock is selling for $15 per share, rendering the option worthless. Since the holder will not exercise the option at expiration, the insider would profit $3 per share, the amount of the premium received. See revised proposed Rule 16b–6(e).

[111] Current Rule 16b–11 (17 CFR 240.16b–11).

[112] Revised proposed Rule 16b–2.

[113] See also the discussions of issuer grants and six month holding periods for plan securities in Sections IV.C.1 and IV.C.2.b. *supra.*

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subsequent prohibition on participation in a discretionary plan should be a sufficient safeguard. The Commission has so revised the proposed rule.[114]

The proposed rules would have required a disinterested committee to exercise sole discretion in administering the plan. Commenters were concerned that the requirement might be interpreted to preclude other persons from performing ministerial functions such as bookkeeping. This was not intended and the revised proposed rule has been clarified.[115]

In response to comment received, the revised proposed rules would require all members of the committee to be disinterested, rather than a majority, and require that a committee be composed of at least two persons.[116]

In addition, the Commission has revised the proposed rules to permit interested directors to serve as administrators of plans that do not permit directors to participate. The current rule provides a similar opportunity but the proposed rules would have deleted it.[117] Different treatment for plans awarding securities to non-director officers is appropriate because there appears to be little opportunity for abuse where the participant has no ability to influence the administrator.

As an alternative to having a disinterested committee, the proposed rules provided that the disinterested administration requirement could be satisfied if insiders exercised no control or discretion in awarding securities under a plan where securities awards are determined automatically by application of a formula or standardized criteria,[118] but restricted formula amendments to once every six months. Commenters suggested that more amendments be permitted if made to comply with tax law changes and that job classifications and compensation levels be added to the list of standardized criteria. The revised proposed rule would incorporate each of these suggestions.[119]

B. Stock Appreciation Rights

Under the proposed rules, many SARs that can be settled in cash only would be excluded from the definition of "derivative security" and would not be viewed as equity securities.[120] Thus, they would be exempt from Section 16. SARs that are settled for stock would be treated as options. SARs that could have been settled in either cash or stock, but were settled in cash, would be treated as an exercise of an option and the simultaneous sale of the underlying stock.

Several commenters questioned the disparate treatment between SARs that may be settled in cash or stock and other forms of derivative securities. Under the proposed rules, SARs would have favored treatment over options because both the "purchase" at the time of exercise of the SAR and the "sale" upon receipt of cash would be exempt,[121] whereas a sale of stock received from an option exercise would not be exempt. A few commenters recommended that the distinction between the two be deleted.

The exemption for exercises in the proposed rules would resolve the concern that led to the Rule's adoption in 1976 [122] since the purchase portion of the constructive simultaneous purchase and sale upon exercise of SARs would be exempt so that long term profits would not be subject to short-swing profit recovery. Comment is solicited as to whether revised proposed Rule 16b–3(d) is unnecessary and therefore should be deleted.

C. Intra-plan Transactions

Many commenters were concerned that the proposed deletion of the intra-trust exemption for trusts holding less than 20 percent of the corpus [123] in issuer equity securities owned by insiders would have a chilling effect on the majority of tax qualified benefit plans. The revised proposed rules are intended to alleviate that concern by providing four limited exemptions suggested by commenters.[124] In each case, the insider's election to participate, the selection of an investment alternative and the intra-plan transaction would be exempt from Section 16(b). The election would not be reportable, but the intra-plan transaction would be reported on Form 5.

The first new proposal would exempt an irrevocable investment election made at least six months in advance of its effective date.[125] For example, an insider could elect within a thrift plan to move assets from a money market fund into company stock on March 1, if the "purchase" of company stock did not occur until September 1, at a price related to the market price on September 1. Thus, an insider would not be able to take advantage of inside information learned in February because the insider would be at market risk for six months. If the news were favorable, for example, it is assumed that the information would become public and the stock price would adjust accordingly in the ensuing six months. In this case, the election would not be the purchase or sale because no price was fixed. The purchase or sale would be deemed to occur on September 1, and would be reported accordingly.

The second new proposal would exempt investment elections, and the resulting transactions, made on specified dates that are at least six months apart.[126] For example, a plan could specify that participants could switch investment funds only on June 30th or December 31st. The participant could purchase or sell issuer securities on those dates in an exempt manner. Comment is requested, however, as to whether the alternative of using a pre-determined date or "window period" for conducting transactions would be an effective safeguard against abuse of inside information. Comment is requested also as to whether the specified date or "window period" is sufficient, in isolation, to warrant an exemption.[127] If pre-established dates for conducting transactions are a sufficient safeguard from abuse, comment is solicited as to whether this rule should adopt the same ten day "window period" approach of current Rule 16b–3(e).

The third new proposal would exempt elections by terminated or disabled employees to defer receipt of securities or cash from their plan account.[128] As

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[114] Revised proposed Rule 16b–3(c)(2).

[115] Revised proposed Rule 16b–3(b)(1)(i).

[116] *Id.* Current Rule 26b–3(b) (17 CFR 240.26b 3(b)) requires a committee of three or more persons, all of whom must be disinterested.

[117] Current Rule 16b–3(b)(2) (17 CFR 240.16b–3(b)(2)) would be incorporated partially into revised proposed Rule 16b–3(b)(1)(i).

[118] This is similar to current Rule 16b–3(b)(1)(iii) (17 CFR 240.16b–3(b)(l)(iii)).

[119] Revised proposed Rule 16b–3(b)(1)(ii).

[120] Revised proposed Rule 16a–1(c)(3).

[121] Revised proposed Rule 16b–3(d).

[122] Current Rule 16b–3(e) (17 CFR 240.16b–3(e)). Exchange Act Release No. 13097 (December 22, 1976) (42 FR 754).

[123] Current Rule 16a–8(b).

[124] Revised proposed Rule 16b–3(e). Although the revised proposed exemptions would be placed in revised proposed Rule 16b–3, plans not satisfying the disinterested administration conditions of Rule 16b–3(b) would be eligible to use the exemptions as well. The plan, however, would have to satisfy the definition of "plan" in revised proposed Rule 16b–3(c)(1).

[125] Revised proposed Rule 16b–3(e)(1).

[126] Revised proposed Rule 16b 3(e)(2).

[127] Current Rule 16b–3(e)(3)(iii) (17 CFR 240.16b–3(e)(3)(iii)), revised proposed Rule 16b–3(d)(3), uses a ten day "window period" as one safeguard in providing a safe harbor for cash exercises of SARs. The rule, however, has other safeguards to protect against abuse, such as a reporting requirement for issuers, a six month holding period, and compliance with other provisions of Rule 16b–3.

[128] Revised proposed Rule 16b–3(e)(3). Similar elections are protected under the current Rule 20b–

Continued

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should require that the plaintiff own

and reporting. Canadian issuers, unlike

VIII. Compliance With Section 16(a)

with the other intra-plan exemptions, the election would not be deemed a purchase or sale. Thus, for example, a retiring officer could elect to defer receipt of securities held by a retirement plan, or cash representing the value of the securities, without the election being deemed a purchase or sale until the securities or cash are received.[129] Many plans automatically distribute securities to participants upon termination, including retirement, while other plans may require terminated employees to sell their plan securities back to the issuer. Such automatic transactions might cause the terminated insider to engage inadvertently in a short-swing transaction. Under the revised proposal, an insider could defer the acquisition or sale to the issuer for six months to avoid a possible short-swing transaction. Comment is solicited on whether the revised proposal should exempt an insider's choice between stock or cash. Without an exemption, the receipt of cash would be treated as an exercise of an SAR.

The fourth new proposal would pertain to retirement and pension plans only and would exempt specifically a decision to participate or not participate in an on-going stock acquisition program, as well as the ultimate acquisition.[130] This exemption would be particularly advantageous to employees participating in an employee stock ownership plan ("ESOP" or "PAYSOP"). The exemption would require that the plan be open to all employees generally and that participants not be entitled to distributions until death, retirement, or termination unless the plan imposes significant penalties. This codifies current interpretive requirements.[131] In addition, the proposed rule would require that if participants cease participation, they may not elect to participate again for at least six months. This would limit the opportunity for abuse by limiting the ability to change their participation in a short term manner. Comment is solicited as to whether the rule also should require that an insider not cease participation for the six months after initiating participation and whether there should be dollar amount restrictions[132] upon a participant's decision to increase or decrease his or her contribution to the plan. Comment is solicited further on whether the restrictions on participation are sufficient safeguards against abuse.

D. Distributions

In response to commenter concerns, a new rule would exempt distributions from a plan where the acquisition of the securities distributed had been reported previously pursuant to Section 16(a).[133] Under the current rules, most intra-plan transactions are exempt from both reporting and short-swing liability. However, when securities are distributed from the plan, they are viewed as purchases by the participant.[134] While, under the current rules, most intra-plan transactions are not reportable, the proposed scheme would require reports for these transactions. Specified intra-plan transactions complying with revised proposed Rule 16b–3(e) would be reported annually on Form 5, while non-exempt transactions would be reported currently on Form 4. Thus, since the acquisition of the securities within a plan would have been reported previously, there would be merely a change in the form of ownership, rather than the substance of ownership.

The analysis is similar to that for derivative securities—just as an option holder has an indirect interest in the underlying security, insiders have indirect beneficial ownership of securities held in a plan. The distribution of securities from a plan is analogous to an exercise of an option in that the form of beneficial ownership is changed merely from an indirect to a direct interest. Distributions exempt pursuant to the revised proposed rule would be reported annually on Form 5.

This new rule, however, would not exempt distributions of securities that had not been reported prior to the distribution. For example, if an insider was the beneficiary of a trust where the trustee exercised investment discretion, the acquisition of stock without the prior approval of the insider beneficiary would be exempt from reporting and liability.[135] If the trustee were later to distribute the stock to the beneficiary, this would be a purchase by the insider, not eligible for exemption under revised proposed Rule 16b–3(f). The proposed scheme requires a predistribution reported purchase before the constructive purchase at distribution can be exempt. If a distribution is exempt because it represents merely a change in the form of ownership, from indirect to direct, there can be no exemption where an insider has not reported an indirect interest in the securities.

VI. Synopsis of Other Changes

Other changes are discussed in the order in which they would appear if the revised proposed amendments are adopted. Charts showing how the current rules would be restructured and comparing them to the revised proposed rules are included in Section X below.

A. Definition of Owner of any Security

For purposes of determining standing, the initial proposed rules defined "owner of any security of the issuer" as either a current beneficial owner of securities of the issuer at the time of filing the suit or a former beneficial owner who was compelled to dispose of the securities because of a business combination resulting in the issuer's becoming a non-public company. This was intended to address situations where the issuer becomes a subsidiary of another company, as well as situations involving leveraged buyouts and other forms of securities ownership redistribution.

In response to comment received, the Commission reproposes a more limited definition.[136] The revised proposed definition would extend standing only to former security holders who had filed suit before surrendering their securities. Comment is solicited whether a former security holder should be given a specified number of days after the merger, or after the filing of the Section 16(a) report disclosing the transaction, to institute suit (*e.g.*, 60 days). Comment is solicited further as to whether standing should be extended to security holders who have notified the issuer of a short-swing transaction, but are compelled to surrender their securities because of a business combination during the 60 days that the statute requires security holders to wait before instituting suit. To ensure that the plaintiff has a sufficient financial interest in the outcome to warrant an extension of standing, the Commission requests comment as to whether the rule should require that the plaintiff own securities of the surviving company.

B. Exemptive Rules under Section 16(b)

1. Bona Fide Gifts and Inheritance

The rules as originally proposed and as reproposed would exempt all acquisitions and dispositions as a result of bona fide gifts or the laws of descent because these transactions generally do not provide opportunities for speculative abuse.[137] One commenter was concerned that gifts to family members not sharing the same residence may provide opportunities for abuse.[138] While the rule is reproposed without change, comment is solicited as to whether the exemption should be narrowed to cover only gifts to parties other than immediate family members or only gifts to charitable institutions.

2. Exemption of Issuer Redemptions

The Commission proposes to revise the language in the current rule, without any substantive change, to clarify the limited circumstances where the exemption for issuer redemptions is available.[139] Comment is requested on whether this rule is a useful exemption or should be deleted.

3. Stock Splits and Stock Dividends

The original proposals specified that pro rata stock splits and stock dividends were exempt generally from Section 16(b), and therefore eligible for reporting on Form 5.[140] However, no rule was proposed explicitly exempting these transactions. The Commission is persuaded by the commenters' suggestions that an exemptive rule would be preferable. Accordingly, a new rule would exempt stock splits and stock dividends relating to the issuer's securities that are applicable to all holders of the class of equity securities.[141] Moreover, the Commission requests comment as to whether pro rata stock splits and dividends should be exempt from the reporting requirements as well.

4. *Canadian Issuers*

Under current rules, Canadian issuers are treated differently from all other foreign private issuers under the Exchange Act, principally with respect to use of Form 20–F [142] for registration and reporting. Canadian issuers, unlike other foreign issuers, currently are able to use Form 20–F only for registration and reporting obligations pursuant to Section 12(g) of the Exchange Act.[143] Securities of foreign issuers eligible to use Form 20–F are exempt from Section 16 of the Exchange Act.[144]

The Commission sees little reason to single out Canadian issuers for application of Section 16, and therefore proposes to provide an exemption from reporting, short-swing liability, and the short sale prohibition of Section 16(c)[145] for all insiders of Canadian issuers, not just those reporting because of Section 12(g) registration.[146]

VII. Revisions to Forms 3 and 4

Several commenters complained that the printing and spaces on the forms were too small. They suggested a series of two page forms so that insiders would have sufficient space for disclosures. In response, the Commission proposes non-substantive changes to Forms 3 and 4, as well as proposed Form 5, to improve the format. The instructions to the Forms also would be revised for clarity and consistency.

Persons have inquired of the staff whether a computer-generated form substantially identical to the Commission's printed form would be acceptable. The Commission would have no objection if the generated forms are substantially identical, printed on 8½"x11" paper and manually signed.[147]

The Commission proposes to amend Instruction 1(b) to Form 3 to achieve greater conformity with the statutory language of Section 16(a). Instruction 1(b) would be revised to make it clear that insiders of a new Section 12 registrant do not have ten days after effectiveness to file, but must file on or before effectiveness of the registration statement.

VIII. Compliance With Section 16(a)

A. Lack of Compliance with Section 16(a)

As stated in the 1988 Release, the Commission is concerned about the widespread lack of compliance with the reporting requirements under Section 16(a).[148] In response to the problem, the Commission proposed a four-part response: (1) Simplifying the reporting provisions to focus on timely reporting of those securities transactions that are more discretionary in nature and present a greater opportunity for abuse; (2) providing for annual reporting on Form 5 by insiders of their securities ownership and previously unreported transactions; (3) requiring annual disclosure by companies pursuant to proposed Item 405 of Regulation S–K regarding insiders who have failed to comply timely with the filing requirements within the past year; and (4) supporting legislation to provide fining authority for violations of Section 16(a).[149]

The Commission is particularly disappointed to find that notwithstanding the publicity and concerns expressed about the substantial delinquency in filings, there has not been a substantial improvement in compliance. In a recent study, the Commission found 36.7 percent of the transactions reported in calendar year 1988 were reported more than three days late. As of June 10, 1989, the delinquency rate was 34.7 percent for transactions reported in the first five months of 1989. This reinforces the Commission's conclusion that the proposed proxy disclosure and fines are necessary.

B. Revised Disclosure Requirements

The Commission is substantially revising proposed Item 405 of Regulation S–K. The Item would: (1) Make it clear that the disclosure requirements extend to any person who was an insider at any time during the issuer's fiscal year; (2) require separate disclosure of transactions reported late, forms filed late and failures to file; (3) provide that forms delivered to the issuer within three calendar days would be presumed timely filed for purposes of the disclosure requirement; and (4) provide

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3(d)(2) definition of "exercise of an option." Given the proposed treatment of option exercises and revised proposed Rule 16b–3(e), the definition would not be needed.

[129] This would be in accord with present staff interpretation. *See, e.g., TCI International, Inc.* (April 5, 1989) (exemption for election by participant to receive cash distribution of ESOP account at termination).

[130] Revised proposed Rule 16b–3(e)(4) would replace current Rule 16a–8(g)(3) (17 CFR 240.16a–8(g)(3)). Rule 16a–8(g)(3) was included in the 1988 proposals as Rule 16a–5(d)(2)(iii). As a result of the move from the Section 16(a) rules to the Section 16(b) rules, transactions exempted by this provision would have to be reported on Form 5.

[131] Current Rule 16a–8(g)(3); Release No. 18114 Q.71.

[132] For example, the Rule could provide a $10,000 limit on the amount of change per month, or require that no increase or decrease in participation shall exceed 50 percent of the current contribution.

[133] Revised proposed Rule 16b–3(f).

[134] *See* Release No. 18114 Q.64.

[135] Revised proposed Rule 16a–8(d)(1).

[136] Revised proposed Rule 16a–1(b).

[137] Revised proposed Rule 16b–5.

[138] Gifts to members of the immediate family sharing the same residence would be attributed back to the insider donor pursuant to revised proposed Rule 16a–1(a)(2)(ii)(A); thus no change in beneficial ownership would occur.

[139] Current Rule 16b–6 (17 CFR 240.16b–6); revised proposed Rule 16b–4.

[140] *See* 1988 Release, n.93 (53 FR 50005).

[141] Revised proposed Rule 16b–10.

[142] 17 CFR 249.220f.

[143] 15 U.S.C. 78*l*(g) (1982).

[144] Rule 3a12–3(b) (17 CFR 240.3a12–3(b)).

[145] Revised proposed Rule 16a–10.

[146] Insiders of Canadian issuers have reporting requirements similar to those imposed by Section 16(a). It should be noted that the Commission's proposal concerning multi-jurisdictional disclosure would provide that insiders of Canadian issuers need comply only with Canadian reporting requirements. *See* Exchange Act Release No. 27055 (July 6, 1989) (54 FR 32226). If the revised proposed exemption in this release is adopted, the proposal contained in the multi-jurisdictional release would be unnecessary.

[147] The Commission ultimately expects these forms to be filed in electronic format after implementation of its operational EDGAR system ("Electronic Data Gathering, Analysis and Retrieval").

[148] A Commission study found that over 40 percent of all transactions required to be reported during 1986–88 were filed more than three days late. *See* Release No. 26333, Section VIII.A. at 107–108 (53 FR 50017).

[149] *See* "Securities Law Enforcement Remedies Act of 1989," S. 647 and H.R. 975. This legislation would, *inter alia*, provide the Commission with fining authority for violations of section 16(a).

a safe harbor for issuers with respect to disclosure of insiders not filing a Form 5. An issuer would not be required to disclose the name of an insider failing to file a Form 5 where the issuer obtains a written representation form the insider that no Form 5 filing is required if the representation is retained for two years.[150] Comment is requested whether proxy statements or other filings containing disclosure of delinquent filers should reflect on the cover page or in the transmittal letter filed with the Commission that the document contains such disclosure.

IX. Transition to New System

If the revised proposed rules are adopted, provisions for a transition from the current rules to the revised proposed rules appear necessary in the areas of: (1) new reporting persons; (2) reporting of, and exemptions for, transactions involving derivative securities: (3) transactions exempt under current Rule 16b–3 and/or other current rules involving employee benefit plans; and (4) disclosure under revised proposed Item 405 of Regulation S–K.

Those who become reporting persons as a result of the new rules would be required to file a Form 3 on or before the effective date of the rules. To provide sufficient preparation time, the Commission would make the rules effective 45 days after adoption.

Derivative securities acquired prior to the effective date of the revised proposed rules would be subject to a special transition framework regarding reporting and liability. An insider would have to report beneficial ownership of these securities on the first Form 4 or Form 5 otherwise required to be filed after the effective date. These derivative securities would not be eligible for the exemptions provided by revised proposed Rule 16b–6 unless held at least six months, and either previously reported as owned or shown as disposed of in reporting the transaction for which the revised proposed Rule 16b–6 exemption is intended.

The Commission believes that registrants should have a reasonable opportunity to effect an orderly transition to the proposed regulatory scheme for employee benefit plans. Accordingly, there would be a 16-month phase-in period for employee benefit plans, during which time exemptions under the current rules would continue to be available. This period should provide registrants sufficient time to restructure their plans to take advantage of any available exemptions under the revised proposed rules an, if necessary, to seek shareholder approval at an annual meeting.

Disclosure of delinquent filings under revised proposed Item 405 of Regulation S–K would be required in proxy and information statements, Form 10–K and N–SAR reports for fiscal years ending more than six months after the effective date of the revised proposed rules. The disclosure would be required based on reports filed for the portion of the fiscal year after the effective date when insiders would be required to furnish copies of their filings to the issuer.

X. Charts Comparing Current and Revised Proposed Rules

A. The following chart lists the current rules and the corresponding revised proposed rules and indicates which rules would be changed substantively or reorganized. The proposed rule number in the original proposal is indicated in brackets where it differs from the revised proposed rule number.

Current Rule	Content	Revised Proposed Rule	Substantive Changes
12h–2	Offerings before 1967.	Deleted	Yes.
16a–1(a)	Forms 3 & 4.	16a–3(a)	No.
(b)	Filing another form 3.	16a–3(b)	No.
(c)	Copies to exchange.	16a–3(c)	No.
(d)	Pre-insider reporting.	16a–2(a)	Yes.
(e)	Post-insider reporting.	16a–2(b)	No.
16a–2(a)	10 percent holders.	16a–1(a)	Yes.
(b)	Derivative securities.	Deleted	Yes.
16a–3	Disclaimer	16a–1(a)(4)	Yes.
16a–4	Fiduciaries	16a–2(d)	Yes.
16a–5	Odd-lot dealers.	16a–5	No [16a-9].
16a–6	Derivative securities.	16a–4	Yes.
16a–7	Multiple filings.	16a–3(d)	No.
16a–8	Trusts	16a–8 &16a-1(a)(5).	Yes [16a-5].
16a–9	Small trades and gifts.	16a–6 & 16b–5.	Yes.
16a–10	Exemption from Section 16(b)..	No [16a-10].	
16a–11	DRIPs	16b–9	No.
16b–1	Investment companies.	16b–1(a)	No.
16b–2	Distributions	16a–7	Yes.
16b–3	Benefit plans.	16b–3	Yes.
(a)	Shareholder approval.	Deleted	Yes.
(b)	Disinterested administration.	16b–3(b)	Yes.
(c)	Plan limits	Deleted	Yes.
(d)	Definitions	16b–3(c)	Yes.
(e)	SARs	16b–3(d)	No.
16b–4	Utility holding companies.	16b–1(b)	No.
16b–5	Redemptions.	16b–4	Yes.
16b–6	Options	16b–6	Yes.
(a)	Holding period.	Deleted	Yes.
(b)	Formula	16b–6(d)	Yes.
(c)	Mergers	16b–6(c)	Yes.
(d)	Short sales	Deleted	Yes.
(e)	Burden of proof.	Deleted	Yes.
(f)	Prior judgments.	Deleted	Yes.
16b–7	Mergers	16b–7	No.
16b–8	Voting trusts.	16b–8	No.
16b–9	Conversions	16b–6(b)	Yes.
16b–10	Railroads	16b–1(c)	No.
16b–11	Subscription rights.	16b–2	No.
16c–1	Brokers	16c–1	No.
16c–2	Distributions	16c–2	Yes.
16c–3	When-issued securities.	16c–3	No.
16e–1	Arbitrage	16e–1	No.
30f–1	Investment companies.	30f–1	No.

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B. The following chart lists the revised proposed rules and the corresponding current rules, and indicates which current rules would be changed substantively or reorganized. Where the revised proposed rule number differs from the rule number as originally proposed, the originally proposed rule number is indicated in brackets.

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[150] A written response to an appropriate question on the annual questionnaire to insiders would satisfy the requirement.

Revised Proposed Rule	Content	Current rule	Substantive Changes
16a–1(a)(1–3)	Beneficial owner	None	N/A.
(a)(4)	Disclaimer	16a–3	Yes.
(a)(5)	Remote interests	16a–8(g)	Yes [16a–5(d)].
(b)	Call equivalent position	None	N/A [16a–1(d)].
(c)	Derivative securities	None	N/A.
(d)	Equity security of such issuer	None	N/A [16a–1(f)].
(e)	Immediate family	16a–8(e)	Yes [16a–1(b)].
(f)	Officer	None	N/A [16a–1(g)].
(g)	Owner of any security of the issuer	None	N/A [16a–1(h)].
(h)	Put equivalent position	None	N/A [16a–1(e)].
16a–2(a)	Pre-insider reporting	16a–1(d)	Yes.
(b)	Post-insider reporting	16a–1(e)	No.
(c)	Transaction creating 10 percent holder	None	N/A.
(d) & (e)	Fiduciaries	16a–4(a) & (b)	Yes [16a–5(b) & (c)].
16a–3(a)	Forms 3, 4 & 5	16a–1(a)	Yes.
(b)	Filing another form 3	16a–1(b)	No.
(c)	Copies to exchange	16a–1(c)	No.
(d)	Multiple filings	16a–7	No.
(e)	Copies to issuer	None	N/A.
(f)	Form 5	None	N/A.
(g)	Form 5 transactions	None	N/A [16a–3(f)].
16a–4	Derivative securities	16a–2(b)	Yes.
16a–5	Odd-lot dealers	16a–5	No [16a–9].
16a–6	Small acquisitions	16a–9	Yes.
16a–7	Distributions	16b–2	Yes.
16a–8(a)	Trust 10 percent holder	16a–8(c)	No [16a–5(a)(1)].
(b)	Insider trustee	None	N/A [16a–5(a)(2)].
(c)	Beneficial ownership	16a–8(a)	No [16a–5(a)(3)].
(d)	Attribution	16a–8(b)	Yes [16a–5(a)(4)].
(e)	Persons also subject to sections 16(b) & (c).	None	N/A [16a–5(a)(5)].
16a–9	Exemption from Section 16(b)	16a–10	No [16a–10].
16a–10	Canadian issuers	None	N/A.
16b–1(a)	Investment companies	16b–1	No.
(b)	Utility holding companies	16b–4	No.
(c)	Railroads	16b–10	No.
16b–2	Subscription rights	16b–11	No.
16b–3	Benefit plans	16b–3	Yes.
16b–3(a)	Exempt transactions	16b–3	Yes.
16b–3(b)	Disinterested administration	16b–3(b)	Yes.
(c)	Definitions and conditions	16b–3(d)	Yes.
(d)	SARs	16b–3(e)	No.
(e)	Intra-plan transactions	None	N/A.
(f)	Distributions	None	N/A.
16b–4	Redemptions	16b–5	Yes.
16b–5	Gifts and inheritance	16a–9(b)	Yes.
16b–6(a)	Derivative security purchase/sale	None	N/A.
(b)	Conversions/exercises	16b–9	Yes.
(c)	Mergers	16b–6(c)	Yes.
(d)	Profit formula	16b–6(b)	Yes.
(e)	Expiring short position profit	None	N/A.
16b–7	Mergers	16b–7	No.
16b–8	Voting trusts	16b–8	No.
16b–9	DRIPs	16a–11	Yes.
16b–10	Stock splits and dividends	None	N/A.
16c–1	Brokers	16c–1	No.
16c–2	Distributions	16c–2	Yes.
16c–3	When-issued securities	16c–3	No.
16c–4	Derivative securities short positions	None	N/A.
16d–1	Marketmakers	None	N/A.
30f–1	Investment companies	30f–1	No.

XI. Request for Comment

Any interested person wishing to submit written comments on: the proposed amendments and additions to Rules 16a–1 through 16c–3, Schedule 14A, Forms 10–K, 3 and 4; the addition of new Rule 16c–4, 16d–1 and new Form 5; the deletion of Rule 12h–2 under the Exchange Act; the addition of new Item 405 to Regulations S–K; and the proposed amendments to Rule 30f–1 and Form N–SAR under the Investment Company Act; as well as on other matters that might have an impact on the proposals contained herein, is requested to do so. In addition, the Commission requests comments on whether any further changes to the Section 16 rules are necessary or appropriate at this time. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act, Investment Company Act, or Public Utility Holding Company Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[151]

XII. Cost-Benefit Analysis

As in the 1988 Release, the Commission invites commenters to provide views and data as to the costs and benefits associated with the revised proposed rules. It appears to the Commission that the revised proposals

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[151] 15 U.S.C. 78w(a) (1982).

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would result in further savings by: (1) exempting them from all or part of the Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78,

representations, a copy of which shall definition of "beneficial owner" in paragraph (E) A person's proportional interest as would result in further savings by: (1) Requiring Form 5 filings from only those insiders conducting transactions reportable on Form 5; (2) removing the certification of compliance requirement of Form 5; (3) creating a de minimis three calendar day exemption from proxy disclosure of late filings; (4) providing an exemption for Schedule 13G Institutions from the ten percent holder determination; (5) expanding the exclusion for cash-only derivative securities; (6) specifically exempting stock splits and stock dividends; and (7) exempting insiders of Canadian issuers from Section 16.

The revised proposals may increase reporting, recordkeeping, and compliance requirements by: adding principal financial officers, controllers or principal accounting officers, and officers of a parent to the definition of "officer."

XIII. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the revised proposed amendments to Rules 16a–1 through 16c–3, Schedule 14A, Forms 10–K, 3 and 4; the addition of new Rules 16c–4, 16d–1, and a new Form 5; the deletion of Rule 12h–2 under the Exchange Act; as well as the addition of a new Item 405 to Regulation S–K. Also a subject of this analysis are revised proposed amendments to Rule 30f–1 and Form N–SAR under the Investment Company Act. The analysis notes that the revised proposed amendments are intended to help assure that persons meet their reporting obligations, assist the fair and effective operation of Section 16(b) by limiting the opportunities for abuse, and remove transactions that do not involve the potential for abuse from the scope of the rules. As discussed more fully in the analysis, many of the reporting persons that the revised proposed amendments would affect are small businesses or organizations, as defined by the Commission's rules.

It is expected that the overall effect of the proposed amendments would be to decrease significantly the impact of reporting, recordkeeping, and compliance requirements upon reporting persons subject to Section 16, although certain of the proposed amendments may increase such requirements, as noted in the analysis.

The analysis discusses several possible significant alternatives to the proposed amendments including, among others, establishing different compliance or reporting requirements for small businesses and organizations or exempting them from all or part of the proposed requirements. As discussed more fully in the analysis, implementing any of these alternatives either would be duplicative of the revised proposed amendments or would not be consistent with the Exchange Act, Investment Company Act, or Public Utility Holding Company Act.

Comments are encouraged on any aspect of the analysis. A copy of the analysis may be obtained by contacting Brian J. Lane or Brian J. Lynch, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

XIII. Statutory Basis

The amendments to the proxy rules, Form 10–K, Regulation S–K, and the Section 16 rules are being proposed by the Commission pursuant to Exchange Act Sections 3(a)(11),[152] 3(b),[153] 9(b),[154] 10(a),[155] 12(h),[156] 13(a),[157] 14,[158] 16, and 23(a). The amendments to Form N–SAR and Rule 30(f) are being proposed pursuant to Investment Company Act Sections 30 and 38.[159] As the Section 16 rules relate to the Investment Company Act and the Public Utility Holding Company Act, they are proposed pursuant to Investment Company Act Sections 30 and 38, and Public Utility Holding Company Act of 1935 Sections 17[160] and 20,[161] respectively.

List of Subjects in 17 CFR 229, 240, 249, 270, and 274

Reporting and recordkeeping requirements, and securities.

XIV. Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for Part 229 continues to read as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78o(d), 78w(a), unless otherwise noted.

2. § 229.405 is added to Subpart § 229.400 to read as follows:

§ 229.405 (Item 405) Compliance with Section 16(a) of the Exchange Act.

Every registrant having a class of equity securities registered pursuant to Section 12 of the Exchange Act (15 U.S.C. 78*l*), every closed-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a—1 *et seq.*) and every holding company registered pursuant to the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) shall:

(a) Describe briefly its procedures for assisting directors, officers, beneficial owners of more than ten percent of any class of equity securities of the registrant, and any other person subject to Section 16 of the Exchange Act because of the requirements of Section 30 of the Investment Company Act or of Section 17 of the Public Utility Holding Company Act ("reporting persons"), in complying with Section 16(a) of the Exchange Act; and

(b) Based upon a review of Forms 3 and 4 furnished to the registrant during and with respect to its most recent fiscal year and Forms 5 furnished to the registrant with respect to its most recent fiscal year, disclose the following:

(1) Identify each person who was a reporting person at any time during the fiscal year and failed to file on a timely basis reports required by Section 16(a) of the Exchange Act during that fiscal year or prior fiscal years.

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and the failure to file any required Section 16(a) report.

(c) With respect to the disclosure required by paragraph (b) of this Item:

(1) A form received by the registrant within three calendar days of the required filing date may be presumed to have been filed with the Commission by the required filing date.

(2) The registrant may rely on a written representation from the reporting person that no Form 5 is required if the registrant maintains for two years a file of such written representations, a copy of which shall be made available to the Commission or its staff upon request.

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[152] 15 U.S.C. 78c(a)(11) (1982).

[153] 15 U.S.C. 78c(b) (1982).

[154] 15 U.S.C. 78i(b) (1982).

[155] 15 U.S.C. 78j(a) (1982).

[156] 15 U.S.C. 78*l*(h) (1982).

[157] 15 U.S.C. 78m(a) (1982).

[158] 15 U.S.C. 78n (1982).

[159] 15 U.S.C. 80a–29, 80a–37 (1982).

[160] 15 U.S.C. 79q (1982).

[161] 15 U.S.C. 79t (1982).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w).

§ 240.12h—2 [Removed]

2. Section 240.12h–2 is removed.

3. By revising Item 7(b) of § 240.14a–101 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

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Item 7. Directors and executive officers.

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(b) The information required by Items 401, 404(a) and (c), and 405 of Regulation S–K (§ 229.401, § 229.404 and § 229.405 of this chapter).

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4. Sections 240.16a–1 through 240.16a–10 are revised and § 240.16a–11 is removed, and the undesignated center heading preceding them is republished to read as follows:

Reports of Directors, Officers, and Principal Shareholders

§ 240.16a–1 Definition of terms.

Terms defined in this Rule shall apply solely to Section 16 of the Act and the rules thereunder. These terms shall not be limited to Section 16(a) but shall apply to all subsections under Section 16.

(a) The term "beneficial owner" shall have the following applications:

(1) Solely for purposes of determining whether a person is a beneficial owner of more than ten percent of any class of equity securities registered pursuant to Section 12 of the Act, the term "beneficial owner" shall mean any person who is deemed a beneficial owner pursuant to the rules under Section 13(d) of the Act; *provided, however*, that an institution eligible to file a Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(b)(1) with respect to a class of equity securities is not deemed the beneficial owner of securities of such class that are held in fiduciary accounts.

Note: Pursuant to this Rule, a person deemed a beneficial owner of more than ten percent of any class of equity securities registered under Section 12 of the Act would file a Form 3, but the securities holdings disclosed on Form 3, and changes in beneficial ownership reported on subsequent Forms 4 or 5, would be determined by the definition of "beneficial owner" in paragraph (a)(2) of this Rule.

(2) Other than for purposes of determining whether a person is a beneficial owner of more than ten percent of any class of equity securities registered under Section 12 of the Act, the term "beneficial owner" shall mean any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares a direct or indirect pecuniary interest in the equity securities, subject to the following:

(i) The term "pecuniary interest" in any class of equity securities shall mean the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities.

(ii) The term "indirect pecuniary interest" in any class of equity securities shall include, but not be limited to:

(A) Securities held by members of a person's immediate family sharing the same household; *provided, however*, that the presumption of such beneficial ownership may be rebutted.

(B) A general partner's proportional interest in the portfolio securities held by a general or limited partnership. The general partner's proportional interest shall be the greater of:

(*1*) The general partner's share of the partnership's profits, including profits attributed to any limited partnership interests held by the general partner and any other interests in profits that arise from the purchase and sale of the partnership's portfolio securities; or

(*2*) The general partner's share of the partnership capital account, including the share attributable to any limited partnership interest held by the general partner.

(C) A fee received by any broker, dealer, bank, insurance company, investment company, investment adviser, investment manager, trustee or person or entity performing a similar function; *provided, however*, that no pecuniary interest shall be present where:

(*1*) The fee is based upon the gains from a portfolio if the amount of the fee is calculated based upon net capital gains and/or net capital appreciation generated from the portfolio or from the fiduciary's overall performance over a period of one year or more; and

(*2*) Equity securities of the issuer do not account for more than ten percent of the portfolio;

(D) A person's right to dividends separated from the underlying securities that is a separate security or trades separately. Otherwise, a right to dividends alone shall not represent a pecuniary interest in the securities;

(E) A person's proportional interest as beneficiary or settlor in the securities of a trust, as specified in § 240.16a–8; and

(F) A person's right to acquire equity securities through the exercise or conversion of any derivative security, whether or not presently exercisable.

(iii) A pecuniary interest shall not include a person's proportional interest in the portfolio securities held by a corporation in which the person owns securities, if:

(A) The corporation is subject to the reporting requirements of Section 13 or 15(d) of the Act as a result of registration of equity securities under the Securities Act of 1933 or Section 12 of the Act; or

(B) The person is not a control person of the corporation and does not have or share voting or investment power over that corporation's portfolio.

(iv) For purposes of this Rule, the term "portfolio securities" shall mean all securities owned by an entity other than securities of the entity.

(*3*) Where more than one person subject to Section 16 is deemed to be a beneficial owner of the same equity securities, all such persons must report as beneficial owners of the securities. In such cases, the amount of short-swing profit recoverable shall not be increased above the amount recoverable if there were only one beneficial owner.

(*4*) Any person filing a statement pursuant to Section 16(a) of the Act may state that the filing shall not be construed as an admission that such person is, for purposes of Section 16 of the Act, the beneficial owner of any equity securities covered by the statement, unless beneficial ownership is mandated by a rule under Section 16 of the Act. A person may rebut the presumption of beneficial ownership under § 240.16a–1(a)(2)(ii)(A).

(*5*) The following interests are deemed not to confer beneficial ownership for purposes of Section 16 of the Act:

(i) The remainder interest of a trust, provided that the person with the remainder interest has no power, directly or indirectly, to make purchase or sale decisions for the trust;

(ii) Interests in portfolio securities held by any holding company registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*); and

(iii) Interests in portfolio securities held by any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(b) The term "call equivalent position" shall mean a derivative security position that increases in value as the value of the underlying equity increases, including, but not limited to, a long convertible security, a long call option, and a short put option position.

(c) The term "derivative securities" shall mean any option, warrant, convertible security, stock appreciation right, or other similar right related to an equity security, but shall not include:

(1) The right of a pledgee of securities to sell the pledged securities;

(2) The right of all security holders of an issuer to receive securities pro rata, or the obligation to dispose of securities, as a result of a merger, exchange offer, or consolidation involving the issuer of the securities;

(3) Securities that either are awarded pursuant to an employee benefit plan satisfying the provisions of § 240.16b-3(b) or contain a fixed date of redemption at least six months after award, which can be exercised only for cash and permit no discretion to receive an equity security in lieu of cash; or

(4) Broad-based index options and broad-based index futures.

(d) The term "equity security of such issuer" shall mean any equity security or derivative security of or relating to an issuer, whether or not issued by that issuer.

(e) The term "immediate family" shall mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and shall include adoptive relationships.

(f) The term "officer" shall mean an issuer's president, principal financial officer, controller or principal accounting officer, any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the issuer. Officers of the issuer's parent(s) or subsidiaries shall be deemed officers of the issuer if they perform such policy-making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership.

(g) The term "owner of any security of the issuer" for purposes of Section 16(b) of the Act shall mean a beneficial owner of securities of the issuer at the time of filing a lawsuit under Section 16(b) of the Act. If as a result of a business combination of the issuer, a beneficial owner of any security of the issuer is required to surrender the securities due to such business combination, such person shall continue to be deemed a beneficial owner until resolution of the lawsuit if the suit was filed prior to the surrender of securities.

(h) The term "put equivalent position" shall mean a derivative security position that increases in value as the value of the underlying equity decreases, including, but not limited to, a long put option and a short call option position.

§ 240.16a-2 Persons and transactions subject to Section 16.

All directors, officers, and persons who are the beneficial owners of more than ten percent of any class of equity securities ("ten percent beneficial owner") registered pursuant to Section 12 of the Act shall be subject to the provisions of Section 16, subject to the following:

(a) Transactions conducted by a director or officer in the six months prior to the first transaction requiring the filing of a Form 4 (§ 249.104) shall be listed on such Form 4 and shall be subject to Section 16 of the Act only if the director or officer became subject to Section 16 solely as a result of the issuer registering a class of equity securities pursuant to Section 12 of the Act.

(b) Transactions conducted by a person who was a director or officer within six months after ceasing to be a director or officer shall be subject to Section 16 of the Act; *provided, however,* that no Form 4 need be filed for a transaction occurring at least six months after the latest transaction giving rise to a Form 4 filing requirement.

(c) The transaction that results in a person becoming a ten percent beneficial owner is not subject to Section 16 of the Act unless the person otherwise is subject to Section 16. A ten percent beneficial owner not otherwise subject to Section 16 must report only those transactions conducted while the beneficial owner of more than ten percent of a class of equity securities of the issuer registered pursuant to Section 12 of the Act.

(d) A fiduciary is exempt from the provisions of Section 16(a) under the Act for the 12 months following appointment and qualification, to the extent the fiduciary is acting as:

(1) Executor or administrator of the estate of a decedent;

(2) Guardian or member of a committee for an incompetent; or

(3) Receiver, trustee in bankruptcy, assignee for the benefit of creditors, conservator, liquidating agent, or other similar person duly authorized by law to administer the estate or assets of another person.

(e) After the 12 month period following appointment or qualification, a fiduciary previously exempt pursuant to paragraph (d) of this section shall become subject to Section 16 only where the estate or trust is a beneficial owner of more than ten percent of any class of equity security registered pursuant to Section 12 of the Act, or the fiduciary is otherwise subject to Section 16 of the Act.

§ 240.16a-3 Reporting transactions and holdings.

(a) Initial statements of beneficial ownership of equity securities required by Section 16(a) of the Act shall be filed on Form 3 (§ 249.103). Statements of changes in beneficial ownership required by that Section shall be filed on Form 4 (§ 249.104). Annual statements shall be filed on Form 5 (§ 249.105). All such statements shall be prepared and filed in accordance with the requirements of the applicable form.

(b) A person filing statements pursuant to Section 16(a) of the Act with respect to any class of equity securities registered pursuant to Section 12 of the Act need not file an additional statement on Form 3 (§ 249.103):

(1) When an additional class of equity securities of the same issuer becomes registered pursuant to section 12 of the Act; or

(2) When such person assumes a different or an additional relationship to the same issuer (for example, when an officer becomes a director).

(c) Any issuer that has equity securities listed on more than one national securities exchange may designate one such exchange as the only exchange with which reports pursuant to section 16(a) of the Act need be filed. Such designation shall be made in writing and shall be filed with the Commission and with each national securities exchange on which any equity security of the issuer is listed. The obligation to file with each national securities exchange on which any equity security of the issuer is listed shall be satisfied by filing with the designated exchange.

(d) Any person required to file a statement with respect to securities of a single issuer under both section 16(a) of the Act and either section 17(a) of the Public Utility Holding Company Act of 1935 or section 30(f) of the Investment Company Act of 1940 may file a single statement containing the required information, which will be deemed to be filed under both Acts.

(e) Any person required to file a statement under section 16(a) shall, not later than the time the statement is transmitted for filing, send or deliver a duplicate to the issuer's corporate secretary or other person designated by the issuer.

(f) A Form 5 shall be filed by every person who at any time during the fiscal year was subject to Section 16. The Form shall be filed within 45 days after the issuer's fiscal year end; *provided, however,* that no Form 5 shall be required where:

(1) There have been no transactions conducted that are required to be reported on Form 5; and

(2) All transactions and holdings that previously were required to be reported on Form 3, 4, or 5 have been reported as of the due date of the Form 5.

(g) All transactions shall be reported on Form 4, except that the following transactions shall be reported on Form 5:

(1) Small acquisitions as specified in § 240.16a-6(a) during the fiscal year, unless previously reported on Form 4;

(2) All transactions conducted during the fiscal year that were exempted by operation of any rule pursuant to section 16(b) of the Act, other than exercises and conversions of derivative securities exempted pursuant to § 240.16b-6(b), which shall be reported as specified in § 240.16a-4 (b) and (c); and

(3) Any occurrence or transaction during or prior to the fiscal year required to be reported on Form 3, 4, or 5 under section 16(a) of the Act that has not been reported as of the date by which the Form 5 is filed: *Provided, however,* That the required Form 3, 4, or 5 shall be appended to the Form 5.

§ 240.16a-4 Derivative securities.

(a) For purposes of section 16 of the Act, both derivative securities and the underlying securities to which they relate shall be deemed to be the same class of equity securities, except that they shall be reported separately.

(b) The exercise or conversion of a call equivalent position shall be reported on the next report, either Form 4 or 5, otherwise required after the date of exercise and shall be treated for reporting purposes as:

(1) A purchase of the underlying security; and

(2) A closing of the derivative security position.

(c) The exercise of a put equivalent position shall be reported on the next report, either Form 4 or 5, otherwise required after the date of exercise and shall be treated for reporting purposes as:

(1) A sale of the underlying security; and

(2) A closing of the derivative security position.

(d) If the next report otherwise required is due within fewer than ten days after an exercise or conversion, the exercise or conversion may be reported on the following required report.

Note: Under § 240.16b-6(b), a purchase or sale resulting from an exercise or conversion of a derivative security generally is exempt from section 16(b) of the Act.

§ 240.16a-5 Odd-lot dealers.

Securities purchased or sold by an odd-lot dealer in odd-lots as reasonably necessary to carry on odd-lot transactions, or in round lots to offset odd-lot transactions previously or simultaneously executed or reasonably anticipated in the usual course of business, shall be exempt from the provisions of section 16(a) of the Act with respect to participation by such odd-lot dealer in such transaction.

§ 240.16a-6 Small acquisitions.

(a) Any acquisition that does not exceed $10,000 in market value shall be reported on the next report otherwise required, either Form 4 or 5, subject to the following conditions:

(1) Total acquisitions of securities of the same class (including securities underlying derivative securities) within the prior six months do not exceed $10,000 in market value; and

(2) The person effecting the acquisition does not within six months thereafter effect any disposition, other than by a transaction exempt from section 16(b) of the Act.

(b) Should an acquisition no longer qualify for the reporting deferral in paragraph (a) of this section, all such acquisitions that have not yet been reported shall be reported on a Form 4 within ten days after the close of the calendar month in which the conditions of paragraph (a) of this section are no longer met.

(c) If the next report otherwise required is due within fewer than ten days after an acquisition subject to the Rule, the acquisition may be reported on the following required report.

§ 240.16a-7 Transactions effected in connection with a distribution.

(a) Any purchase and sale, or sale and purchase, of a security that is effected in connection with the distribution of a substantial block of securities shall be exempt from the provisions of section 16(a) of the Act, to the extent specified in this Rule, as not comprehended within the purposes of that section, subject to the following conditions:

(1) The person effecting the transaction is engaged in the business of distributing securities and is participating in good faith, in the ordinary course of such business, in the distribution of such block of securities; and

(2) The security involved in the transaction is:

(i) Part of such block of securities and is acquired by the person effecting the transaction, with a view to distribution thereof, from the issuer or other person on whose behalf such securities are being distributed or from a person who is participating in good faith in the distribution of such block of securities; or

(ii) A security purchased in good faith by or for the account of the person effecting the transaction for the purpose of stabilizing the market price of securities of the class being distributed or to cover an over-allotment or other short position created in connection with such distribution.

(b) Each person participating in the transaction must qualify on an individual basis for an exemption pursuant to this Rule.

§ 240.16a-8 Trusts.

(a) In the event that more than ten percent of any class of equity securities registered pursuant to Section 12 of the Act is held in a trust, both the trust and the trustee shall be subject to Section 16 of the Act. The trustee shall report on behalf of the trust. All transactions conducted by the trustee on its own behalf, rather than on behalf of the trust, shall be subject to Section 16 of the Act, and shall be separately reported by the trustee.

(b) In the event that a trustee is a person otherwise required to file reports with respect to securities of that issuer pursuant to § 240.16a-2, the trustee shall report separately on behalf of each trust in which the trustee exercises investment decision-making authority, and each such trust shall be subject to Section 16 of the Act: *Provided, however,* That this paragraph (b) shall not apply to an institution that in the ordinary course of business acts as trustee and is eligible to file a Schedule 13G (§ 240.13d-102) pursuant to § 240.13d-1(b)(1) with respect to that class of securities.

(c) In the event that either of the following conditions is met, beneficial ownership of the trust holdings will be attributable to a person specified in § 240.16a-2 instead of the trust:

(1) If a person specified in § 240.16a-2 is the trustee and at least one beneficiary of the trust is a member of the trustee's immediate family, all transactions of the trust will be attributed to the trustee and the trustee shall report all such transactions as

transactions of the trustee rather than as transactions of the trust.

(2) If a person specified in § 240.16a–2 is the beneficial owner of the securities as settlor of a trust and has the power to revoke the trust without obtaining the consent of the beneficiaries, all transactions of the trust will be attributed to the settlor and the settlor shall report the transactions of the trust as transactions of the settlor. These transactions need not be reported by the trustee.

(d) Trust transactions shall be attributable to the following parties, who will be required to report them, if subject to section 16(a) of the Act with respect to that issuer:

(1) Settlors as specified in paragraph (c)(2) of this section, and beneficiaries, in proportion to the beneficiary's pecuniary interest, unless the transaction was made without prior approval or direction of the settlor or the beneficiary; and

(2) The trust, unless the transaction was made at the direction of the settlor or beneficiary, or in a trust as specified in paragraph (c)(2) of this section.

(e) If a trust or other person becomes a reporting person pursuant to this Rule, it shall likewise be subject to Sections 16 (b) and (c) of the Act.

§ 240.16a–9 Exemptions under section 16(a).

Except as provided in § 240.16a–6, any transaction that has been or shall be exempted from the requirements of Section 16(a) of the Act shall, insofar as it is otherwise subject to the provisions of Section 16(b) of the Act, be likewise exempted from Section 16(b) of the Act.

§ 240.16a–10 Exemption for reporting persons of a Canadian issuer.

Securities transactions by reporting persons of a Canadian issuer with a class of equity securities registered under Section 12 of the Act shall be exempt from Section 16 of the Act.

5. Sections 240.16b–1 through 240.16b–10 are revised, § 240.16b–11 is removed, and the undesignated center heading preceding them is republished, as follows:

Exemption of Certain Transactions from Section 16(b)

§ 240.16b–1 Transactions approved by regulatory authority.

(a) Any purchase and sale, or sale and purchase, of a security shall be exempt from Section 16(b) of the Act, if the transaction is effected by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) and both the purchase and sale of such security have been exempted from the provisions of Section 17(a) (15 U.S.C. 80a–17(a)) of that Act by rule or order of the Commission.

(b) Any purchase and sale, or sale and purchase, of a security shall be exempt from the provisions of Section 16(b) of the Act if:

(1) The person effecting such transaction is either a holding company registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) or a subsidiary thereof; and

(2) Both the purchase and the sale of such security have been approved or permitted by the Commission pursuant to the applicable provisions of that Act or the rules and regulations thereunder.

(c) Any acquisition of securities made in exchange for other securities shall be exempt from the provisions of Section 16(b) of the Act if:

(1) The securities are acquired from the issuer;

(2) The person acquiring the securities is subject to one or more of the provisions of Part I of the Interstate Commerce Act;

(3) The person acquiring the securities is:

(i) Subject to an order of, or has accepted a condition imposed by, the Interstate Commerce Commission in an approval of a unification, merger or acquisition of control pursuant to 49 U.S.C. 11343–11347, requiring such person to dispose of all securities of the same class as those exchanged for the securities acquired; and

(ii) The issuance of the securities acquired by such person has been approved by the Interstate Commerce Commission pursuant to 49 U.S.C. 11301; and

(4) The person acquiring voting equity securities:

(i) Has transferred all voting rights on an unrestricted basis to one or more banks; and

(ii) Such transfer remains in effect until such securities are disposed of by such person.

§ 240.16b–2 Subscription rights.

(a) Any sale of a subscription right to acquire any subject security of the same issuer shall be exempt from the provisions of Section 16(b) of the Act if:

(1) Such subscription right is acquired, directly or indirectly, from the issuer without the payment of consideration;

(2) Such subscription right by its terms expires within 45 days after the issuance thereof;

(3) Such subscription right by its terms is issued on a pro rata basis to all holders of the beneficiary security of the issuer; and

(4) A registration statement under the Securities Act, of 1933 (15 U.S.C. 77a *et. seq.*) is in effect as to each subject security, or the terms of any exemption from such registration have been met in respect to each subject security.

(b) When used within this Rule the following terms shall have the meaning indicated:

(1) The term "subscription right" means any warrant or certificate evidencing a right to subscribe to or otherwise acquire an equity security.

(2) The term "beneficiary security" means a security registered pursuant to section 12 of the Act, the holders of which were granted a subscription right.

(3) The term "subject security" means a security that is the subject of a subscription right.

(c) Notwithstanding anything contained herein to the contrary, if a person purchases subscription rights for cash or other consideration within six months of a sale by such person of subscription rights, such sale shall not be exempt.

§ 240.16b–3 Employee Benefit Plans.

(a) *Exempt Transactions.* The following transactions by a director or officer shall be exempt from section 16(b) of the Act if they occur pursuant to a plan that satisfies the conditions of paragraphs (b) and (c) of this section:

(1) The grant or acquisition of an option, warrant, right, or shares of stock;

(2) The expiration, cancellation, or surrender to the issuer of a stock option or stock appreciation right without value received; and

(3) The surrender or delivery to the issuer of shares of its stock as payment for the exercise of an option, warrant or right with respect to shares of the same class.

(b) *Disinterested Administration.* (1) The plan shall satisfy one of the following conditions:

(i) The decisions concerning the plan shall be made solely by a committee of two or more directors, all of whom are disinterested persons: *Provided, however,* That the directors need not be disinterested persons if directors are not permitted to participate in the plan; or

(ii) The plan by its terms:

(A) Determines which officers and directors may be awarded grants;

(B) Determines the timing of the grants for all participants; and

(C) Determines the amount of securities to be granted to individual participants (which shall be governed by a formula or standardized criteria for participants, such as earnings of the issuer, value of the securities, years of service, job classification, compensation levels, etc.). The plan also must provide that no discretion concerning decisions regarding the plan shall be afforded to a person who is not a disinterested person; and that the requirements described in paragraph (b)(1)(ii) of this section shall not be amended more than once every six months, other than to comport with changes in the Internal Revenue Code or the rules thereunder.

(2) Compliance with this paragraph shall not be necessary with respect to any option or right granted, or other equity security acquired, prior to the date of the first registration of a class of equity security under section 12 of the Act.

(3) Plans that permit participation of persons other than those subject to section 16 of the Act need not comply with this paragraph as it relates to those other persons.

(c) *Definitions and Conditions.* Unless the context otherwise requires, all terms used in this Rule shall have the same meaning as in the Act, the General Rules and Regulations thereunder, or the Rules under section 16 of the Act. In addition, the following definitions and conditions apply:

(1) The term "plan" shall mean an option, bonus, appreciation, profit sharing, retirement, incentive, thrift, savings or similar plan that meets the following conditions with respect to participants subject to section 16 of the Act:

(i) The plan must be set forth in a written document describing the means or basis for determining the eligibility of individuals to participate and either the price at which the securities may be offered or the method by which the price or the amount of the award is to be determined;

(ii) The plan must provide, with respect to any equity security offered pursuant to the plan, that such equity security may not be sold for at least six months after acquisition, except in case of death or disability. The plan must provide further that a derivative security issued pursuant to the plan is not transferable other than by will or the laws of descent and distribution, that it is not exercisable for at least six months except in case of death or disability, and that it is exercisable during the plan participant's lifetime only by the participant or the participant's guardian or legal representative.

(2) The term "disinterested person" used in paragraph (b)(1) of this section shall mean an administrator of a plan who:

(i) During one year prior to the time of exercising discretion in administering the plan, has not been eligible for selection as a person to whom equity securities may be allocated or granted pursuant to the plan (or any other plan of the issuer or any of its affiliates) entitling the participants therein to acquire equity securities; and

(ii) Is not so eligible for one year after such exercise: *Provided, however,* That participation in a plan that satisfies the conditions of paragraph (b)(1)(ii) of this section does not disqualify a person from being disinterested if awards under the plan are not subject to the discretion of any person.

(d) *Cash Settlements of Stock Appreciation Rights.* Any transaction involving the exercise and cancellation of a stock appreciation right issued pursuant to a plan (whether or not the transaction also involves the related surrender and cancellation of a stock option), and the receipt of cash in complete or partial settlement of that right, shall be exempt from section 16(b) of the Act, as not comprehended within the purpose of that section, if the following conditions are met:

(1) *Information About the Issuer.*

(i) The issuer of the stock appreciation right has been subject to the reporting requirements of section 13(a) of the Act for at least a year prior to the transaction and has filed all reports and statements required to be filed pursuant to that section during that year.

(ii) The issuer of the stock appreciation right on a regular basis releases for publication quarterly and annual summary statements of sales and earnings. This condition shall be deemed satisfied if the specified financial data appears:

(A) on a wire service,

(B) in financial news service,

(C) in a newspaper of general circulation, or

(D) is otherwise made publicly available.

(2) *Administration of the Plan.* (i) The plan shall be administered in the manner specified in paragraph (b)(1) of this section.

(ii) The board of directors of the issuer or committee shall have sole discretion either:

(A) To determine the form in which payment of the right will be made (i.e., cash, securities, or any combination thereof), or

(B) To approve or disapprove the election of the participant to receive cash in full or partial settlement of the right. Such approval or disapproval may be given at any time after the election to which it relates.

(3) *Timing.* Any election by the participant to receive cash in full or partial settlement of the stock appreciation right, as well as any exercise by the participant of the stock appreciation right for such cash, shall be made during the period beginning on the third business day following the date of release of the financial data specified in paragraph (d)(1)(ii) of this section and ending on the twelfth business day following such date. This paragraph (d)(3) of this section, however, shall not apply to any exercise by the participant of a stock appreciation right for cash where the date of exercise is automatic or fixed in advance under the plan and is outside the control of the participant.

(e) *Intra-plan Transfers.* Both the election and resulting transactions within a plan shall be exempt from section 16(b) of the Act if they occur pursuant to a plan that satisfies the conditions of paragraph (c) of this section and one of the following conditions:

(1) The participant makes an irrevocable investment election at least six months in advance of the effective date of the transaction;

(2) The participant makes an investment election on a date specified by the plan at least six months after the previous investment election date specified by the plan;

(3) The participant makes an election to defer a distribution of securities or cash incident to the termination of employment or total and permanent disability, provided the securities are delivered six months or later after the date the election to defer is made; or

(4) The participant makes an election to participate or not participate in an on-going securities acquisition program within a pension or retirement plan where:

(i) The plan is open to all employees generally;

(ii) Participants are not entitled to receive a distribution until their death, retirement, or termination of employment unless significant penalties are imposed; and

(iii) If participants elect to cease participation, they may not elect to participate again for at least six months.

Note. Investment elections need not be reported. Resulting intra-plan transactions shall be reported on Form 5.

(f) *Distributions.* Distributions of equity securities from a plan satisfying the conditions of paragraphs (b) and (c) of this section to a participant shall be exempt from section 16(b) of the Act if the securities so distributed had been acquired by the plan for the benefit of the participant, and the acquisition by the plan had been disclosed previously by the participant pursuant to section 16(a) of the Act.

§ 240.16b–4 Issuer redemptions.

An officer's or director's acquisition of equity securities shall be exempt, provided the securities are acquired through an issuer redemption transaction where:

(a) The securities redeemed ("surrendered securities"):

(1) Represent equity securities of an issuer whose assets consist entirely of cash, government securities, and equity securities in the issuer redeeming the surrendered securities;

(2) Have a value equivalent to the equity securities acquired in the redemption; and

(3) Conferred upon the holder the right to receive the acquired equity securities without the payment of any consideration other than the security redeemed;

(b) The officer or director has not acquired or disposed of any surrendered securities during any six month period before or after the redemption transaction;

(c) The security acquired in the redemption transaction is not a derivative security; and

(d) The issuer of the securities acquired in the redemption has taken appropriate action to establish the relationship between its equity securities and the surrendered securities and to establish the issuer's right to redeem.

§ 240.16b–5 Bona fide gifts and inheritance.

Both acquisitions and dispositions of equity securities shall be exempt from the operation of section 16(b) of the Act if they are:

(a) Bona fide gifts; or

(b) Transfers of securities by will or the laws of descent and distribution.

§ 240.16b–6 Derivative securities.

(a) The establishment of or increase in a call equivalent position or liquidation of or decrease in a put equivalent position shall be deemed a purchase of the underlying security for purposes of section 16(b) of the Act, and the establishment of or increase in a put equivalent position or liquidation of or decrease in a call equivalent position shall be deemed a sale of the underlying securities for purposes of section 16(b) of the Act.

(b) The closing of a derivative security position as a result of its exercise or conversion shall be exempt from the operation of section 16(b) of the Act, and the acquisition of underlying securities at a fixed exercise price due to the exercise or conversion of a call equivalent position or the disposition of underlying securities due to the exercise of a put equivalent position shall be exempt from the operation of section 16(b) of the Act: *Provided, however,* That the acquisition of underlying securities from the exercise of an out-of-the-money option, warrant, or right shall not be exempt unless the exercise is necessary to comport with the serial exercise provisions of the Internal Revenue Code of 1986 (26 U.S.C. 422A).

(c) The disposition of a security received upon the exercise of a derivative security awarded pursuant to a plan satisfying § 240.26b–3(b) shall be exempt from the provisions of section 16(b) if the disposition is pursuant to a plan or agreement for merger or consolidation, or reclassification of the issuer's securities, or for the exchange of its securities for the securities of another person that has acquired its assets, or that is in control, as defined in section 368(c) of the Internal Revenue Code of 1986, of a person that has acquired its assets, where the terms of such plan or agreement are binding upon all security holders of the issuer except to the extent that dissenting security holders may be entitled, under statutory provisions or provisions contained in the certificate of incorporation, to receive the appraised or fair value of their holdings.

(d) In determining the short-swing profit recoverable pursuant to Section 16(b) of the Act from transactions involving the purchase and sale or sale and purchase of derivative and other securities, the following rules apply:

(1) Short-swing profits in transactions involving the purchase and sale or sale and purchase of derivative securities that have identical characteristics (*e.o.* purchases and sales of call options of the same strike price and expiration date, or purchases and sales of the same series of convertible debentures) shall be measured by the actual prices paid or received in the short-swing transactions.

(2) Short-swing profits in transactions involving the purchase and sale or sale and purchase of derivative securities having different characteristics (*e.g.*, the purchase of a call option and the sale of a convertible debenture) or derivative securities and underlying securities shall not exceed the difference in price of the underlying security on the date of purchase or sale and the date of sale or purchase. Such profits may be measured by calculating the short-swing profits that would have been realized had the subject transactions involved purchases and sales solely of the derivative security that was purchased or solely of the derivative security that was sold, valued as of the time of the matching purchase or sale, and calculated for the lesser of the number of ultimate underlying securities covered by the derivative security actually purchased or sold.

(e) Upon expiration of an option within six months of the writing of the option, any profit derived from writing the option shall be recoverable under Section 16(b) of the Act. The profit shall not exceed the premium received for writing the option. The disposition of a long derivative security position, as a result of expiration, shall be exempt from Section 16(b) of the Act where no value is received from the expiration.

§ 240.16b–7 Mergers, Reclassifications, and Consolidations.

(a) The following transactions shall be exempt from the provisions of Section 16(b):

(1) The acquisition or disposition of a security of a company pursuant to a merger or consolidation in exchange for a security of a company which, prior to said merger or consolidation, owned 85 percent or more of the equity securities of all other companies involved in the merger (or, in the case of a consolidation, owned 85 percent of the resulting company); or

(2) The acquisition or disposition of a security of a company, pursuant to a merger or consolidation, in exchange for a security of a company which, prior to said merger or consolidation, held over 85 percent of the combined assets of all the companies involved in the merger or consolidation, computed according to their book values prior to the merger or consolidation as determined by reference to their most recent available financial statements for a 12 month period prior to the merger or consolidation.

(b) A merger within the meaning of this Rule shall include the sale or purchase of substantially all the assets of one company by another in exchange for equity securities which are then distributed to the security holders of the company that sold its assets.

(c) Notwithstanding the foregoing, if an officer, director or beneficial owner of more than ten percent shall make any purchase of a security in any company involved in the merger or consolidation and any sale of a security in any other company involved in the merger or consolidation within any period of less than six months during which the merger or consolidation took place, the exemption provided by this Rule shall be unavailable.

§ 240.16b–8 Voting trusts.

Any acquisition or disposition of an equity security or certificate representing equity securities involved in the deposit or withdrawal from a

voting trust or deposit agreement shall be exempt from Section 16(b) of the Act if substantially all of the assets held under the voting trust or deposit agreement immediately after the deposit or immediately prior to the withdrawal consisted of equity securities of the same class as the security deposited or withdrawn: *Provided, however,* That this exemption shall not apply if within six months of the deposit or withdrawal there is a purchase or sale of an equity security of the class deposited and a sale or purchase of any certificate representing such equity security (other than the actual deposit or withdrawal).

§ 240.16b–9 Dividend or interest reinvestment plans.

Any acquisition of securities resulting from the reinvestment of dividends or interest shall be exempt from Section 16(b) of the Act if made pursuant to a plan, available on the same terms to all holders of that class of securities, providing for the regular reinvestment of such dividends or interest.

§ 240.16b–10 Stock splits and stock dividends.

The following transactions are exempt from Section 16(b) of the Act:

(a) Acquisition of equity securities as a result of a stock split of all securities of the same class; and

(b) Acquisition of equity securities as a result of a stock dividend applied pro rata to all holders of the securities of the same class.

6. Sections 240.16c–1 through 240.16c–3 are revised and §§ 240.16c–4 and 240.16d–1 and the undesignated center heading preceding § 240.16d–1 are added, to read as follows:

Exemption of Certain Transactions from Section 16(c)

§ 240.16c–1 Brokers.

Any transaction shall be exempt from Section 16(c) of the Act to the extent necessary to render lawful the execution by a broker of an order for an account in which the broker has no direct or indirect interest.

§ 240.16c–2 Transactions effected in connection with a distribution.

Any transaction shall be exempt from Section 16(c) of the Act to the extent necessary to render lawful any sale made by or on behalf of a dealer in connection with a distribution of a substantial block of securities, where the sale is represented by an over-allotment in which the dealer is participating as a member of an underwriting group, or the dealer or a person acting on his behalf intends in good faith to offset such sale with a security to be acquired by or on behalf of the dealer as a participant in an underwriting, selling, or soliciting-dealer group of which the dealer is a member at the time of the sale, whether or not the security to be acquired is subject to a prior offering to existing security holders or some other class of persons.

§ 240.16c–3 Exemption of sales of securities to be acquired.

(a) Whenever any person is entitled, incident to ownership of an issued security and without the payment of consideration, to receive another security "when issued" or "when distributed," the sale of the security to be acquired shall be exempt from the operation of Section 16(c), *Provided,* That:

(1) The sale is made subject to the same conditions as those attaching to the right of acquisition;

(2) Such person exercises reasonable diligence to deliver such security to the purchaser promptly after the right of acquisition matures; and

(3) Such person reports the sale on the appropriate form for reporting transactions by persons subject to Section 16(a).

(b) This Rule shall not exempt transactions involving both a sale of the issued security and a sale of a security "when issued" or "when distributed" if the combined transactions result in a sale of more securities than the aggregate of issued securities owned by the seller plus those to be received for the other security "when issued" or "when distributed."

§ 240.16c–4 Derivative securities.

Establishing or increasing a put equivalent position shall be exempt from Section 16(c) of the Act, so long as the securities underlying the put equivalent position do not exceed the amount of underlying securities otherwise owned.

Exemption for Market Makers

§ 240.16d–1 Market maker reporting.

Transactions exempt pursuant to Section 16(d) of the Act need not be reported on Form 3, 4 or 5.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 249 continues to read as follows:

Authority: Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.* * * *

2. By revising Item 10 of Form 10–K (§ 249.310) as set forth below:

Note.—The text of Form 10–K does not and this amendment will not appear in the Code of Federal Regulations.

§ 249.310 Form 10–K, annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

Part III

* * * * *

Item 10. Directors and Executive Officers of the Registrant.

Furnish the information required by Items 401 and 405 of Regulation S–K. (§ 229.401 and § 229.405 of this chapter).

* * * * *

3. By amending the description of Form 3 in § 249.103 by revising its first and eighth sentences to read as follows:

§ 249.103. Form 3, Initial statement of beneficial ownership of securities.

This form shall be filed pursuant to Rule 16a–3 (§ 240.16a–3 of this chapter) for initial statements of beneficial ownership of securities required to be filed pursuant to Section 16(a) of the Securities Exchange Act of 1934. * * * Social security account numbers, if furnished, will assist the Commission in differentiating among officers, directors and security holders whose own or issuer names are similar. * * *

4. By amending Form 3 (§ 249.103) to read as follows:

Note—The text of Form 3 does not and this amendment will not appear in the Code of Federal Regulations.

OMB Approval

OMB Number: 3235–0104
Estimated Burden Hours: 0.5
Expires: Pending Approval

Form 3—Initial Statement of Beneficial Ownership of Securities

Special Instructions for Completing Form 3

Under Sections 16(a) and 23(a) of the Securities Exchange Act of 1934; Sections 17(a) and 30(a) of the Public Utility Holding Company Act of 1935; and Sections 30(f) and 38 of the Investment Company Act of 1940, and the rules and regulations thereunder, the Commission is authorized to solicit the information required by this form from officers, directors and certain security holders of registered issuers.

Disclosure of the information specified in this form is mandatory, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of officers, directors and beneficial owners of registered issuers. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social security account numbers, if furnished, will assist the Commission in differentiating among officers, directors and security holders whose own or issuer names are similar.

Failure to disclose the information required by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violation of provisions of the Federal securities laws and rules promulgated thereunder.

General Instructions

1. *When and Where Statements are to Be Filed.*

(a) Within 10 days after the occurrence of any event that requires the filing of this form, other than the registration of securities under section 12 of the Act, three copies, at least one of which shall be manually signed, shall be filed with the Securities and Exchange Commission, 450 5th Street N.W., Washington, DC 20549. In the case of Section 12 registration, the form must be filed no later than the effective date of the registration statement. The events that require the filing of a statement on this form are set forth in Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 and Section 30(f) of the Investment Company Act of 1940 and the rules thereunder. The filing date is the date of receipt at the Commission. At the same time, one duplicate original of the statement shall be filed with each exchange on which any class of equity securities of the issuer is registered, unless the issuer has, in accordance with Rule 16a–3(c), designated a single exchange to receive such statements. One duplicate original also shall be sent to the issuer pursuant to Rule 16a–3(e).

(b) Acknowledgment of receipt of the statement by the Commission may be obtained by enclosing a self-addressed, stamped post card identifying the statement filed.

2. *Separate Statement for Each Issuer—Exception.*

A separate statement shall be filed with respect to the securities of each issuer, except that a single statement shall be filed with respect to the securities of a registered public utility holding company and of all of its subsidiary companies.

3. *Classes of Securities to Be Reported.*

(a) Information must be furnished as required by this form with respect to all classes of equity securities of the issuer, even though one or more of such classes may not be registered pursuant to section 12 of the Act.

(b) Information concerning derivative securities as defined by Rule 16a–1(c) (*e.g.*, options, warrants, convertible securities) must be reported on Table II.

(c) Persons reporting pursuant to Section 17(a) of the Public Utility Holding Company Act of 1935 shall include information as to their beneficial ownership of all classes of securities of the registered holding company and of all of its subsidiary companies.

(d) Persons reporting pursuant to Section 30(f) of the Investment Company Act of 1940 shall include information as to their beneficial ownership of all classes of securities of the registered closed-end investment company (other than "short-term paper" as defined in Section 2(a)(38) of the Investment Company Act).

4. *Statement Required Although No Securities are Owned.*

If any person required to file a statement on this form does not own any securities required to be reported, a statement shall be made on this form to report that fact.

5. *Reporting of Certain Holdings.*

(a) When two or more securities are owned as a unit and both are required to be reported, report each security separately and describe the unit relationship in the space provided for explanation on the form. If one or more of the securities comprising the unit is not required to be reported, the other security or securities shall be reported separately and the unit relationship described as indicated above.

(b) Securities owned indirectly shall be reported on separate lines from those owned directly and also from those owned through a different type of indirect ownership.

(c) In reporting the ownership of common stock that is convertible into another type of common stock, the stock should be listed on Table I with the number of shares or units subject to the conversion privilege and the conversion price per share or unit set forth in the explanation space. Other convertible securities shall be reported as derivative securities on Table II.

6. *Title of Securities.*

The title of securities in Column 1 of Table I and Columns 1 and 2 of Table II shall be stated as specifically as possible; for example, "Common Stock," "Class A Common Stock," "12% Convertible Preferred Stock," etc. Include the name of the issuer of the securities if it is a public utility holding company or a subsidiary thereof.

7. *Statement of Amounts of Securities.*

(a) In stating amounts of securities in Column 2 of Table I and Column 3 of Table II, give the number of securities, or if debt is required to be reported, give the face amount of the debt securities.

(b) Report only those securities of which the person is a beneficial owner as defined by Rule 16a–1(a)(2) (i.e., in which a pecuniary interest is present).

(c) In stating amounts of securities beneficially owned through a partnership, corporation, trust, or other entity, the reporting person shall indicate only the amount of securities representing the proportionate interest of the person in the transaction conducted by the partnership, corporation, trust, or other entity. Alternatively, at the option of the reporting person, the entire amount of the entity's interest may be reported. See Instruction 8(b) below.

8. *Type of Ownership of Securities.*

(a) The following securities shall be reported as owned directly: securities held in the name of the reporting person or in the name of a bank, broker, or nominee for the account of the reporting person; and securities held in joint tenancy, tenancy in common, tenancy by the entirety, or as community property.

(b) Securities that are beneficially owned, but that are not owned directly, *e.g.*, through a member of the reporting person's "immediate family" as defined in Rule 16a–1(e), shall be reported as indirectly owned; "beneficial owner" is defined in Rule 16a–1(a)(2). Securities holdings attributed to a reporting person as a result of the person's interest in a partnership, corporation, trust, or other entity also are considered to be owned indirectly.

(c) Beneficial ownership of the securities reported on this form may be disclaimed unless mandated by a rule under Section 16(a) of the Securities Exchange Act. See Rule 16a–1(a)(4).

9. *Type of Derivative Security.*

The type of derivative security owned shall be reported in Column 1 of Table II. If appropriate, state whether it represents a right to buy, a right to sell, an obligation to buy, or an obligation to sell, the underlying securities.

10. *Inclusion of Additional Information.*

A statement may include any additional information or explanation deemed relevant by the reporting person.

11. *Signature.*

(a) If the statement is filed for an individual, it shall be signed by the individual or specifically on behalf of the individual by a person authorized to sign for the individual. If signed on behalf of the individual by another person, the authority of such person to sign the statement shall be confirmed to the Commission in writing in an attachment to the statement or as soon as practicable as an amendment by the individual for whom the statement is filed, unless such a confirmation still in effect is on file with the Commission.

(b) If the statement is filed for a corporation, partnership, trust or other entity, the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement, and the capacity in which the individual signed set forth.

BILLING CODE 8010-01-M

OMB APPROVAL
OMB Number: 3235-0104 Expires: Pending Approval Estimated average burden hours per response..... 00.5

U.S. Securities and Exchange Commission
Washington, D.C.

FORM 3

INITIAL STATEMENT OF BENEFICIAL OWNERSHIP OF SECURITIES

Filed Pursuant to Section 16(a) of the Securities Exchange Act of 1934,
Section 17(a) of the Public Utility Holding Company Act of 1935,
or Section 30(f) of the Investment Company Act of 1940

(Please Print or Type)

1. Reporting Person: Name (Last, First, Middle)	Address	City	State	Zip Code
2. Issuer: Name	Address	City	State	Zip Code
3. Issuer State of Incorporation or Organization	4. IRS or Soc. Sec. Identifying Number of Reporting Person (Optional)	5. Relationship(s) of Reporting Person to Issuer (Check all which apply) ☐ Director ☐ Officer ☐ 10% Owner ☐ Other (Specify) ________		

6. Title of Officer/Director (e.g., President and Director," "Chief Financial Officer," etc.)	7. Date of Event Requiring Filing of this Statement Month / Day / Year	8. If an Amendment, give date of Statement to be Amended Month / Day / Year

Table I - Securities Beneficially Owned

Furnish the information required by the following table as to securities beneficially owned directly or indirectly by the reporting person. (Instructions 3, 4 and 5) Derivative securities of the issuer shall be reported on Table II.

1. Title of Securities Owned (Report different types of ownership on separate lines) (Instructions 5 and 6)	2. Amount of Securities Owned (Instruction 7)	3. Type of Ownership (D) - Direct (I) - Indirect (Instruction 8)	4. Nature of Indirect Ownership (e.g., "By Spouse," "By X Trust," "By Y Corporation," "By Self as Trustee for Children," etc.) (Instruction 8)

FORM 3 (continued)

Table II - Derivative Securities (e.g., options, warrants, SARs, convertible securities) Beneficially Owned
Furnish the information required by the following table as to all derivative securities of the issuer owned by the reporting person. (The term "derivative securities" is defined in Rule 16a-1(c).)
(Instructions 3 and 5)

1. Title and Type of Derivative Security (Report different types of ownership on separate lines) (Instructions 5, 6, 8 and 9)	2. Title of Securities Subject to Derivative Security (Instructions 5 and 6)	3. Amount of Securities Subject to Derivative Security (Instruction 7)	4. Exercise or Conversion Price of Derivative Security	5. Date Derivative Security Becomes Exercisable if not presently exercisable			6. Date of Expiration of Derivative Security			7. Type of Ownership (D) - Direct (I) - Indirect (Instruction 8)	8. Nature of Indirect Ownership (e.g., "By Spouse, "By X Trust," "By Y Corporation," "By Self as Trustee Children," etc.) (Instruction 8)
				Month	Day	Year	Month	Day	Year		

Explanation of responses in tables:

Date of Statement

Signature of Reporting Person (Instruction 11)

Note: If the space provided in any table is insufficient, use a continuation sheet which identifies the table and columns to which it relates.

BILLING CODE 8010-01-C

5. By amending the description of Form 4 in § 249.104) by revising its first, eighth and ninth sentences as set forth below.

§ 249.104 Form 4. Statement of changes in beneficial ownership of securities.

This form shall be filed pursuant to Rule 16a–3 (§ 240.16a–3 of this chapter) for statements of changes in beneficial ownership of securities required to be filed pursuant to Section 16(a) of the Securities Exchange Act of 1934. * * * Social security account numbers, if furnished, will assist the Commission in differentiating among officers, directors and security holders whose own or issuer names are similar. Failure to disclose the information requested by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violations of provisions of the Federal securities laws and rules promulgated thereunder.

6. By revising Form 4 (§ 249.104) to read as follows:

Note.—The text of Form 4 does not and this amendment will not appear in the Code of Federal Regulations.

OMB Approval

OMB Number:

Estimated Burden Hours: 0.5

Expires: Pending Approval

Form 4—Statement of Changes in Beneficial Ownership of Securities

Special Instructions for Completing Form 4

Under Sections 16(a) and 23(a) of the Securities Exchange Act of 1934; Sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935; and Sections 30(f) and 38 of the Investment Company Act of 1940, and the rules and regulations thereunder, the Commission is authorized to solicit the information required by this form from officers, directors and certain security holders of registered issuers.

Disclosure of the information specified in this form is mandatory, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of officers, directors and beneficial owners of registered issuers. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social security account numbers, if furnished, will assist the Commission in differentiating among officers, directors and security holders whose own or issuer names are similar.

Failure to disclose the information required by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violation of provisions of the Federal securities laws and rules promulgated thereunder.

General Instructions

1. *When and Where Statements Are To Be Filed.*

(a) On or before the 10th day after the end of the month in which any change in beneficial ownership has occurred, three copies of the statement on this form, at least one of which is manually signed, shall be filed with the Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549. The filing date is the date of receipt at the Commission. At the same time, one duplicate original of the statement shall be filed with each exchange on which any class of equity securities of the company is registered, unless the issuer has, in accordance with Rule 16a–3(c), designated a single exchange to receive such statements. One duplicate original also shall be sent to the issuer pursuant to Rule 16a–3(e).

(b) Acknowledgment of receipt of the statement by the Commission may be obtained by enclosing a self-addressed, stamped post card identifying the statement filed.

2. *Separate Statement for Each Issuer—Exception.*

A separate statement shall be filed with respect to the securities of each issuer, except that a single statement shall be filed with respect to the securities of a registered public utility holding company and all of its subsidiary companies.

3. *Classes of Securities To Be Reported.*

(a) Information must be furnished as required by this form with regard to all classes of equity securities of the issuer, even though one or more of such classes may not be registered pursuant to Section 12 of the Act.

(b) Information concerning derivative securities as defined by Rule 16a–1(c) (*e.g.*, options, warrants, convertible securities) must be reported on Table II.

(c) Persons reporting pursuant to Section 17(a) of the Public Utility Holding Company Act of 1935 shall include information required to be reported as to certain changes in the amount of securities beneficially owned, changes in the nature of beneficial ownership and the amount of their beneficial ownership at the end of the month of all classes of securities of the registered holding company and all of its subsidiary companies.

(d) Persons reporting pursuant to Section 30(f) of the Investment Company Act of 1940 shall include information required to be reported as to certain changes in the amount of securities beneficially owned, changes in the nature of beneficial ownership and the amount of their beneficial ownership at the end of the month of all classes of securities of the registered closed-end investment company (other than "short-term paper" as defined in Section 2(a)(38) of the Act).

4. *Transactions To Be Reported.*

(a) All transactions that result in a change of beneficial ownership in the issuer's securities shall be reported on this form, except those exempted transactions excluded from the reporting and liability provisions of Section 16 by operation of Rule 16a–5, 16a–7, 16a–8, or 16a–10 and the transactions listed in paragraph (b) below.

(b) The following transactions that result in a change of beneficial ownership shall be reported on Form 5 rather than this form: small acquisitions that are to be reported on a deferred basis pursuant to rule 16a–6(a) and transactions conducted during the issuer's fiscal year that were exempt from the provisions of Section 16(b) of the Exchange Act by operation of any rule pursuant to such section, except that if a Form 4 otherwise is required to be filed and prior to its filing there has been an exercise or conversion of a call equivalent position or a put equivalent position also exempt, it shall be reported on the Form 4 rather than on a Form 5 pursuant to Rule 16a–4.

(c) Every transaction shall be reported even though acquisitions and dispositions during the month are equal, or the change involves only the nature of ownership, such as a change from indirect ownership through a trust or corporation to direct ownership by the reporting person.

5. *Reporting of Certain Transactions and Holdings.*

(a) When a transaction relates to the acquisition or disposition of two or more securities as a unit or such a unit is beneficially owned at the end of a month and both are required to be reported, report each security separately and describe the unit relationship in the space provided for explanation. If one or more of the securities comprising the unit is not required to be reported, the other security or securities shall be reported separately and the unit relationship described as indicated above.

(b) Securities owned indirectly shall be reported on separate lines from those owned directly and also from those owned through a different type of indirect ownership.

(c) In reporting the acquisition, disposition or end of a month beneficial ownership of one class of common stock that is convertible into another type of common stock, the transaction should be listed on Table I with the number of shares or units subject to the conversion privilege and the conversion price per share or unit set forth in the explanation space. Other convertible securities shall be reported as derivative securities on Table II.

6. *Title of Securities.*

The title of securities in Column 1 of Table I and Columns 1 and 3 of Table II shall be stated as specifically as possible; for example, "Common stock," "Class A stock," "12% Convertible Preferred Stock," etc. Include the name of the issuer of the securities if it is a public utility holding company or a subsidiary thereof.

7. *Statement of Amounts of Securities.*

(a) In stating amounts of securities in Columns 3, 4 and 7 of Table I and Columns 4, 5, 6, 9 and 10 of Table II, give the number of securities, or if debt is required to be reported, give the face amount of the debt securities.

(b) Report only those equity securities of which the person is a beneficial owner as defined by Rule 16a–1(a)(2) (i.e., in which a pecuniary interest is present).

(c) In stating amounts of securities beneficially owned through a partnership, corporation, trust, or other entity, the reporting person shall indicate only the amount of securities representing the proportionate interest of the person in the transaction conducted by the partnership, corporation, trust, or other entity. Alternatively, at the option of the reporting person, the entire amount of the entity's interest may be reported. See Instruction 9(b) below.

8. *Purchase or Sale Price of Securities.*

(a) If any transaction reported involved a purchase or sale of securities for cash or obligation to pay cash, state in Column 6 of Table I or Column 8 of Table II the purchase price per share or unit, exclusive of brokerage commissions or other costs of execution. If the transaction was only partly for cash and partly for other consideration, state the amount of cash per share or unit and the nature of the other consideration. If the transaction did not involve cash, state the nature of the consideration given or received.

(b) When two or more securities are purchased or sold as a unit, the purchase or sale price of the unit shall be stated in Column 6 of Table I or Column 8 of Table II with respect to one of the securities and cross-referenced with respect to the other security or securities.

9. *Type of Ownership of Securities.*

(a) The following securities shall be reported as owned directly: securities held in the name of the reporting person or in the name of a bank, broker or nominee for the account of the reporting person; and securities held in joint tenancy, tenancy in common, tenancy by the entirety or as community property.

(b) Securities that are beneficially owned, but that are not owned directly, *e.g.* through a member of the reporting person's "immediate family" as that term is defined in Rule 16a 1(e), shall be reported as indirectly owned; "beneficial owner" is defined in Rule 16a—1(a)(2). Securities holdings attributed to a reporting person as a result of the interest of the person in a partnership, corporation, trust, or other entity also are considered to be owned indirectly.

(c) Beneficial ownership of the securit=es reported on this form may be disclaimed unless mandated by a rule under Section 16(a) of the Securities Exchange Act of 1934. See Rule 16a–1(a)(4).

10. *Type of Derivative Security.*

The type of derivative security owned shall be reported in Column 1 of Table II. If appropriate, state whether it represents a right to buy, a right to sell, an obligation to buy, or an obligation to sell, the underlying securities.

11. *Beneficial Ownership at End of Month.*

Beneficial ownership at the end of the month covered by the statement (Column 7 of Table I and Column 9 of Table II) shall be shown for all equity securities required to be reported even though there has been no change during the month in the aggregate ownership of securities of one or more classes or accounts. For example, a person reporting a transaction relating to common stock shall, in addition to providing all the information in Table I relating to such transaction, report the amount of preferred stock, convertible debentures, etc., owned at the end of the month. See Instruction 4 above as to when reports on this form are required.

12. *Inclusion of Additional Information.*

A statement may include any additional information or explanation deemed relevant by the person filing the statement.

13. *Signature.*"

(a) If the statement is filed for an individual, it shall be signed by the individual or specifically on behalf of the individual by a person authorized to sign for the individual. If signed on behalf of the individual by another person, the authority of such person to sign the statement shall be confirmed to the Commission in writing in an attachment to the statement or as soon as practicable in an amendment by the individual for whom the statement is filed, unless such a confirmation still in effect is on file with the Commission.

(b) If the statement is filed for a corporation, partnership, trust, etc., the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement, and the capacity in which the individual signed set forth.

BILLING CODE 8010-01-M

OMB APPROVAL
OMB Number: 3235-0287 Expires: Pending Approval Estimated average burden hours per response..... 00.5

U.S. Securities and Exchange Commission
Washington, D.C. 20549

FORM 4

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES
Filed Pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935, or Section 30(f) of the Investment Company Act of 1940

(Please Print or Type)

1. Reporting Person: Name (Last, First, Middle)	Address	City	State	Zip Code
2. Issuer: Name	Address	City	State	Zip Code
3. Issuer State of Incorporation or Organization	4. IRS or Soc. Sec. Identifying Number of Reporting Person (Optional)	5. Relationship(s) of Reporting Person to Company (Check all which apply) ☐ Director ☐ Officer ☐ 10% Owner ☐ Other (Specify) ______		

6. Title of Officer/Director (e.g., President and Director," "Chief Financial Officer," etc.)	7. Statement for Calendar Month	8. Date of Last Previous Statement	9. If an Amendment, give date of Statement to be Amended
	Month | Year	Month | Day | Year	Month | Day | Year

Table I - Securities Held, Bought, Sold, Or Otherwise Acquired or Disposed of
Furnish the information required to be reported on this form as to securities of the issuer bought or sold or otherwise acquired or disposed of by the reporting person during, or beneficially owned at the end of the month for which this statement is filed. (Instructions 4 and 5) Transactions involving derivative securities of the issuer shall be reported on Table II.

1. Title of Securities (Report Different Types of Ownership on Separate Lines) (Instrs. 2 and 6)	2. Date of Transaction (Give Trade Date of Market Transactions) (Instruction 4)			3. Amount of Securities Acquired (Instruction 7)	4. Amount of Securities Disposed of (Instruction 7)	5. Code for Character of Transaction Reported (See Codes Below)	6. Purchase or Sale Price Per Share or Unit (Instruction 8)	7. Amount of Securities Owned at End of Month (Instructions 7 and 11)	8. Type of Ownership (D) - Direct (I) - Indirect (Instruction 9)	9. Nature of Indirect Ownership (e.g., "By Spouse," "By X Trust," "By Y Corporation," "By Self as Trustee for Children," etc.)
	Month	Day	Year							

FORM 4 (continued)

Table II - Derivative Securities (e.g., options, warrants, SARs, convertible securities) Held, Bought, Sold or Otherwise Acquired or Disposed of
Furnish the information required to be reported on this form as to derivative securities of the issuer bought or sold or otherwise acquired or disposed of by the reporting person during, or beneficially owned at the end of the month for which this statement is filed (the term "derivative securities" is defined in Rule 16a-1(c)).
(Instructions 4 and 5)

1. Title and Type of of Derivative Security (Report Different Types of Ownership on Separate Lines) (Instrs. 6 and 10)	2. Date of Transaction (Give Trade Date of Market Transactions)			3. Title of Securities Subject to Derivative Security (Instr. 6)	4. Amount of Derivative Securities Acquired (Instr. 7)	5 Amount of Derivative Securities Disposed of (Instr. 7)	6. Amount of Securities Subject to Derivative Securities Acquired or Disposed of (Instr. 7)	7. Code for Character of Transaction, Reported (See codes below)	8. Purchase or Sale Price of Derivative Security (Instr. 8)
	Mo.	Day	Yr.						

Table II is continued on next page

FORM 4 (continued)

Table II - Derivative Securities (e.g., options, warrants, SARs, convertible securities) Held, Bought, Sold or Otherwise Acquired or Disposed of (continued)

9. Amount of Derivative Securities Owned at End of Month	10. Amount of Securities Subject to Derivative Securities Owned at End of Month	11. Purchase or Sale Price of Securities Subject to Derivative Security	12. Date Derivative Security Becomes Exercisable if not Presently Exercisable			13. Date of Expiration of Derivative Security			14. Type of Ownership (D) - Direct (I) - Indirect	15. Nature of Indirect Ownership (e.g., "By Spouse," "By X Trust," "By Y Corporation," By Self as Trustee for Children," etc.)
(Instrs. 7 and 11)	(Instr. 7)		Mo.	Day	Yr.	Mo.	Day	Yr	(Instr. 9)	

Form 4 is continued on next page

FORM 4 (continued)

Codes for Character of Transaction (Enter in Column 5 of Table I and Column 7 of Table II)

[P] - Open Market Purchase
[S] - Open Market Sale
[J] - Private Purchase
[K] - Private Sale

[X] - Acquired by Exercise of In-the-Money or At-the-Money Derivative Security/Rule 16b-6(b)
[D] - Disposed of by Exercise of In-the-Money or At-the-Money Derivative Security/Rule 16b-6(b)
[O] - Acquired by Exercise of Out-of-the-Money Derivative Security
[OO] - Disposed of by Exercise of Out-of-the-Money Derivative Security
[M] - Acquired by Conversion of Derivative Security/Rule 16b-6(b)

[N] - Disposed of by Conversion of Derivative Security/ Rule 16b-6(b)
[D] - Expiration of Derivative Security (if short position)
[T] - Other Acquisition (Specify)
[U] - Other Disposition (specify)

Explanation of responses in tables:

Date of Statement

Signature of Reporting Person (Instruction 13)

NOTE: If the space provided in any table is insufficient, use a continuation sheet which identifies the table and columns to which it relates.

BILLING CODE 8010-01-C

7. By adding § 249.105 to subpart B to read as follows:

§ 249.105 Form 5, annual statement of beneficial ownership of securities.

(a) This form shall be filed pursuant to Rule 16a–3 (§ 240.16a–3 of this chapter) for the annual statement of beneficial ownership of securities required to be filed pursuant to Section 16(a) of the Securities Exchange Act of 1934. Under Sections 16(a) and 23(a) of the Securities Exchange Act of 1934; Sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935; and Sections 30(f) and 38 of the Investment Company Act of 1940, and the rules and regulations thereunder, the Commission is authorized to solicit the information required by this form from officers, directors and certain security holders of registered issuers.

(b) Disclosure of the information specified in this form is mandatory, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of officers, directors and beneficial owners of registered companies. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

(c) Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social security account numbers, if furnished, will assist the Commission in differentiating among officers, directors and security holders whose own or issuer names are similar.

(d) Failure to disclose the information requested by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violation of provisions of the Federal securities laws and the rules promulgated thereunder.

8. By adding Form 5 (§ 249.105) to read as follows:

Note.—The text of Form 5 will not appear in the Code of Federal Regulations.

OMB Approval

OMB Number:
Estimated Burden Hours: 1.0
Expires: Pending Approval

Form 5—Annual Statement of Beneficial Ownership of Securities

Special Instructions for Completing Form 5

Under Sections 16(a) and 23(a) of the Securities Exchange Act of 1934; Sections 17(a) and 30(a) of the Public Utility Holding Company Act of 1935; and Sections 30(f) and 38 of the Investment Company Act of 1940, and the rules and regulations thereunder, the Commission is authorized to solicit the information required by this form from officers, directors and certain security holders of registered issuers.

Disclosure of the information specified in this form is mandatory, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of officers, directors and beneficial owners of registered issuers. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self- regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social security account numbers, if furnished, will assist the Commission in differentiating among officers, directors and security holders whose own or issuer names are similar.

Failure to disclose the information required by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violation of provisions of the Federal securities laws and the rules promulgated thereunder.

General Instructions

1. *When and Where Statements Are to Be Filed.*

(a) On or before the 45th day after the end of the issuer's fiscal year, three copies of the statement on this form, at least one of which is manually signed, shall be filed with the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. The filing date is the date of receipt at the Commission. At the same time, one duplicate original of the statement shall be filed with each exchange on which any class of equity securities of the issuer is registered, unless the issuer has in accordance with Rule 16a–3(c), designated a single exchange to receive such statements. One duplicate original also shall be sent to the issuer pursuant to Rule 16a–3(e).

(b) Acknowledgment of receipt of the statement by the Commission may be obtained by enclosing a self-addressed, stamped post card identifying the statement filed.

2. *Separate Statement for Each Issuer—Exception.*

A separate statement shall be filed with respect to the securities of each issuer, except that a single statement shall be filed with respect to the securities of a registered public utility holding company and all of its subsidiary companies.

3. *Classes of Securities To Be Reported.*

(a) Information must be furnished as required by this form with respect to all classes of equity securities of the issuer, even though one or more of such classes may not be registered pursuant to Section 12 of the Act.

(b) Information concerning derivative securities as defined by Rule 16a–1(c) (*e.g.*, options, warrants, convertible securities) must be reported on Table II.

(c) Persons reporting pursuant to Section 17(a) of the Public Utility Holding Company Act of 1935 shall include information required to be reported as to certain changes in the amount of securities beneficially owned, changes in the nature of beneficial ownership and the amount of their beneficial ownership at the end of the fiscal year of all classes of securities of the registered holding company and all of its subsidiary companies.

(d) Persons reporting pursuant to Section 30(f) of the Investment Company Act of 1940 shall include information as to transactions required to be reported as to certain changes in the amount of securities beneficially owned, changes in the nature of beneficial ownership and the amount of their beneficial ownership at the end of the fiscal year of all classes of securities of the registered closed-end investment company (other than "short-term paper" as defined in Section 2(a)(38) of the Act).

4. *Statement Required Only When Transactions Have Been Conducted.*

A statement on this form is required only when the reporting person has (1) conducted a transaction in the issuer's securities during the issuer's fiscal year that is reportable on Form 5 or (2) has failed to file a previously required Form 3, 4, or 5. (See Rule 16a–3(g)(3)).

5. *Transactions to Be Reported.*

(a) In accordance with Rule 16a–3(g)(2), all transactions in the issuer's securities conducted during the issuer's fiscal year that were exempted from Section 16(b) of the Exchange Act (by operation of rules promulgated pursuant to Section 16(b) of such Act) and, therefore, are to be reported on a deferred basis, shall be reported on this form unless, in the case of an exercise or conversion of a call or put equivalent position, previously reported pursuant to Rule 16a–4 on a Form 4. Small acquisitions that are to be reported on a deferred basis pursuant to Rule 16a–6(a) also shall be reported on this form unless previously reported.

(b) Any occurrence or transaction during or prior to the issuer's fiscal year required to be reported on Form 3 or 4 under Section 16(a) of the Act before the date of filing of this Form 5, but not so reported, shall be reported on this Form 5: *Provided, however,* That a completed Form 3 or 4 shall be appended to this Form 5.

(c) Transactions involving derivative securities shall be reported in Table II; all other transactions shall be reported in Table I.

6. *Reporting of Certain Transactions and Holdings.*

(a) When a transaction relates to the acquisition or disposition of two or more securities as a unit or such a unit is beneficially owned at the end of a fiscal year and both are required to be reported, report each security separately and describe the unit relationship in the space for comments below Table II. If one or more of the securities comprising the unit is not required to be reported, the other security or securities shall be reported separately and the unit relationship described as indicated above.

(b) Securities owned indirectly shall be reported on separate lines from those owned directly and also from those owned through a different type of indirect ownership.

(c) In reporting the acquisition, disposition or end of a fiscal year beneficial ownership of common stock that is convertible into another type of common stock, the transaction should be listed on Table I with the number of shares or units subject to the conversion privilege and the conversion price per share or unit set forth in the explanation space. Other convertible securities should be reported as derivative securities in Table II.

(d) If a derivative security is converted or exercised and the transaction has not been reported on Form 4, the transaction shall be reported on Table II and the acquisition or disposition of the underlying security shall be reported on Table I.

7. *Title of Securities.*

The title of securities in Column 1 of Table I and Columns 1 and 3 of Table II shall be stated as specifically as possible; for example, "Common stock," "Class A common stock," "12% Convertible Preferred Stock," etc. Include the name of the issuer of the securities if it is a public utility holding company or a subsidiary thereof.

8. *Statement of Amounts of Securities.*

(a) In stating amounts of securities in Columns 3, 4 and 7 of Table I and Columns 4, 5, 6, 9 and 10 of Table II, give the number of securities, or if debt is required to be reported, give the face amount of the debt securities.

(b) Report only those securities of which the person is a beneficial owner as defined by rule 16a–1(a)(2) (*i.e.*, in which a pecuniary interest is present).

(c) In stating amounts of securities beneficially owned through a partnership, corporation, trust, or other entity, the reporting person shall indicate only the amount of securities representing the proportionate interest of the person in the transaction or holdings of the partnership, corporation, trust, or other entity. Alternatively, at the option of the reporting person, the entire amount of the entity's interest may be reported. See Instruction 10(b) below.

9. *Purchase or Sale Price of Securities.*

(a) If any transaction reported on Table I or II involved a purchase or sale of securities for cash or obligation to pay cash, state in Column 6 of Table I or Column 8 of Table II the purchase price per share or unit, exclusive of brokerage commissions or other costs of execution. If the transaction was only partly for cash and partly for other consideration, state the amount of cash per share or other unit and the nature of the other consideration. If the transaction did not involve cash, state the nature of the consideration given or received.

(b) When two or more securities are purchased or sold as a unit, the purchase or sale price of the unit shall be stated in Column 6 of Table I or Column 8 of Table II with respect to one of the securities and cross-referenced with respect to the other security or securities.

10. *Type of Ownership of Securities.*

(a) The following securities shall be reported as owned directly: securities held in the name of the reporting person or in the name of a bank, broker, or nominee for the account of the reporting person; and securities held in joint tenancy, tenancy in common, tenancy by the entirety, or as community property.

(b) Securities that are beneficially owned, but that are not owned directly, *e.g.*, through a member of the reporting person's "immediate family" as that term is defined in Rule 16a–(1)(e), shall be reported as indirectly owned; "beneficial owner" is defined in Rule 16a–1(a)(2). Securities holdings attributed to a reporting person due to the person's interest in a partnership, corporation, trust, or other entity also are considered to be owned indirectly.

(c) Beneficial ownership of the securities reported on this form may be disclaimed unless mandated by a rule under Section 16(a) of the Securities Exchange Act of 1934. See Rule 16a–1(a)(4).

11. *Type of Derivative Security.*

The type of derivative security owned shall be reported in Column 1 of Table II. If appropriate, state whether it represents a right to buy, a right to sell, an obligation to buy, or an obligation to sell, the underlying securities.

12. *Beneficial Ownership at End of Fiscal Year.*

Beneficial ownership at the end of the fiscal year covered by the statement (Column 7 of Table I and Column 9 of Table II) shall be shown for all equity securities required to be reported even though there has been no change during the fiscal year in the aggregate ownership of securities of one or more classes or accounts. For example, a person reporting a transaction relating to common stock shall, in addition to providing all the information in Table I relating to such transaction, report the amount of preferred stock, convertible debentures, etc., owned at the end of the fiscal year. See Instruction 4 above as to when reports on this form are required.

13. *Inclusion of Additional Information.*

A statement may include any additional information or explanation deemed relevant by the person filing the statement.

14. *Signature.*

(a) If the statement is filed for an individual, it shall be signed by the individual or specifically on behalf of the individual by a person authorized to sign for the individual. If signed on behalf of the individual by another person, the authority of such person to sign the statement shall be confirmed to the Commission in writing in an attachment to the statement or as soon as practicable in an amendment by the individual for whom the statement is filed, unless such a confirmation still in effect is on file with the Commission.

(b) If the statement is filed for a corporation, partnership, trust, etc., the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement, and the capacity in which the individual signed set forth.

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OMB Number: 3235-0xxx Expires: Pending Approval Estimated average burden hours per response..... 1.00

U.S. Securities and Exchange Commission
Washington, D.C. 20549

FORM 5

Annual Statement of Beneficial Ownership of Securities
Filed Pursuant to Section 16(a) of the Securities Exchange Act of 1934,
Section 17(a) of the Public Utility Holding Company Act of 1935,
or Section 30(f) of the Investment Company Act of 1940

(Please Print or Type)

1. Name and Address of Reporting Person (Last, First, Middle)	2. Name and Address of Issuer Name	3. Issuer State of Incorporation or Organization	5. Relationship of Reporting Person to Issuer (Check all which apply) ☐ Director ☐ Officer ☐ 10% Owner ☐ Other (Specify)
Number and Street	Number and Street	4. IRS or Social Security Identifying Number of Reporting Person	
City, State, Zip Code	City, State, Zip Code		
6. Job Title of Officer/Director (e.g., President and Director, Chief Financial Officer, etc.)		7. Statement for Issuer's Fiscal Year Ending Month | Day | Year	8. If an Amendment, give date of Statement to be Amended Month | Day | Year

Table I - Securities Transactions Reported on a Deferred Basis and Beneficial Ownership
(Transactions Involving Derivative Securities of the Issuer Shall be Reported on Table II - Instructions 5 and 6)

1. Title of Securities (Report Different Types of Ownership on Separate Lines) (Instruction 7)	2. Date of Transaction (Give Market Transaction Trade Date or Stock Split or Dividend Record Date)			3. Amount of Securities Acquired (Instruction 8)	4. Amount of Securities Disposed of (Instruction 8)	5. Code for Character of Transaction Reported (See Codes Below)	6. Purchase or Sale Price Per Share or Unit (Instruction 9)	7. Amount of Securities Owned at End of Fiscal Year (Instructions 8 and 12)	8. Type of Ownership (D) - Direct (I) - Indirect (Instruction 10)	9. Nature of Indirect Ownership (e.g., "By Spouse," "By X Trust," "By Y Corporation," "By Self as Trustee for Children,"etc.)
	Month	Day	Year							

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FORM 5 (continued)

Table II - Derivative Securities (e.g., options, warrants, SARs, convertible securities) Transactions Reported on a Deferred Basis and Beneficial Ownership
(the term "Derivative Securities" is defined in Rule 16a-1(c))
(Instructions 5 and 6)

1. Title and type of Derivative Security (Report Different Types of Ownership on Separate Lines) (Instrs. 7 and 11)	2. Date of Transaction (Give Market Transaction Trade Date, or Stock Split or Dividend Record Date)			3. Title of Securities Subject to Derivative Security	4. Amount of Derivative Securities Acquired	5. Amount of Derivative Securities Disposed of	6. Amount of Securities Subject to Derivative Securities Acquired or Disposed of	7. Code for Character of Transaction Reported	8. Purchase or Sale Price of Derivative Security	9. Amount of Derivative Securities Owned at End of Fiscal Year	10. Amount of Securities Subject to Derivative Securities Owned at End of Fiscal Year	11. Purchase or Sale Price of Securities Subject to Derivative Security	12. Date Derivative Security Becomes Exercisable if not Presently Exercisable			13. Date of Expiration of Derivativ Security			14. Type of Ownership (D) - Direct (I) - Indirect	15. Nature of Indirect Ownership (e.g., "By Spouse," "By X Trust," "By Y Corporation," "By Self as Trustee for Children," etc.)
	Mo.	Day	Yr.	(Instr. 7)	(Instr. 8)	(Instr. 8)	(Instr. 8)	(See Codes Below)	(Instr. 9)	(Instrs. 8 and 12)	(Instr. 8)		Mo.	Day	Yr.	Mo.	Day	Yr.	(Instr. 10)	

Codes for Character of Transaction (Enter in Column 5 of Table I and Column 6 of Table II)

[Z] - Stock Split or Dividend/Rule 16b-10..................
[Y] - Reverse Stock Split/Rule 16b-10......................
[A] - Small Acquisition/Rule 16a-6.........................
[B] - Acquired Pursuant to Qualified Benefit Plan/Rule 16b-3................................
[K] - Issuer Redemption/Rule 16b-4.........................
[V] - Deposit or Withdrawal from Voting Trust or Deposit Agreement/Rule 16b-8.......................
[G] - Acquired by Bonafide Gift/Rule 16b-5................
[C] - Disposed of by Bonafide Gift.........................

[X] - Acquired by Exercise of In-the-Money or At-the-Money Derivative Security/Rule 16b-6(b)..........
[R] - Disposed of by Exercise of In-the-Money or At-the-Money Derivative Security/Rule 16b-6(b)........
[W] - Transfer by Will or the Laws of Descent and Distribution/Rule 16b-5..........................
[M] - Acquired by Conversion of Derivative Security/ Rule 16b-6(b)......................................
[N] - Disposed of by Conversion of Derivative Security/ Rule 16b-6(b)......................................

[Q] - Expiration of Derivative Security (if long position)/Rule 16b-6(e)........................
[I] - Acquisition or Disposition Pursuant to Merger or Consolidation/Rule 16b-7.................
[L] - Acquisition Pursuant to Reinvestment of Dividends or Interest/Rule 16b-9............
[T] - Other Acquisition (Specify)......................
[U] - Other Disposition (Specify)......................

Explanation of Responses in tables:

Date of Statement

Signature of Reporting Person (Instruction 14)

NOTE: If the space provided in any table is insufficient, use a continuation sheet which identifies the table and columns to which it relates.

BILLING CODE 8010-01-C

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80c–88; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1; unless otherwise noted.

2. Section 270.30f–1 is revised to read as follows:

§ 270.30f–1. Applicability of Section 16 of the Exchange Act to Section 30(f).

(a) The filing of any statement prescribed under Section 16(a) of the Securities Exchange Act of 1934 shall satisfy the corresponding requirements of Section 30(f) of the Investment Company Act of 1940.

(b) The rules under Section 16 of the Securities Exchange Act of 1934 shall apply to any duty, liability or prohibition imposed with respect to a transaction involving any security of a registered closed-end company under Section 30(f) of the Act.

(c) No statements need be filed pursuant to Section 30(f) of the Act by an affiliated person of an investment adviser in his or her capacity as such if such person is solely an employee, other than an officer, of such investment adviser.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 274 continues to read as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.* * * *

2. By amending the instruction to sub-item 77Q of Form N–SAR (§ 274.101) to read as follows:

Note.—The text of Form N–SAR is not and this amendment will not be in the Code of Federal Regulations.

Form N–SAR

* * * * *

Instructions to Specific Items

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Sub-Item 77Q: Exhibits.

* * * * *

(h) The information called for by Item 405 of Regulation S–K (17 CFR 229.405). Notwithstanding requirements in General Instruction A of this Form to file all items except items 80 through 85 semi-annually, registrants need complete this paragraph of the sub-item only once each year as an annual supplement to the form filed after the end of a registrant's fiscal year.

Dated: August 18, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–19900 Filed 8–28–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 89–20]

RIN 2125–AC35

Truck Size and Weight; National Network, Oregon

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA proposes to modify the National Network for commercial motor vehicles by adding and deleting certain routes in Oregon. The National Network was established by the final rule on truck size and weight published at 49 FR 23302 June 5, 1984. It is maintained under 23 CFR part 658, Appendix A, as amended. The additions and deletions have been requested by the State of Oregon based on an evaluation concerning 53-foot long semitrailers.

DATES: Comments on this docket must be received on or before September 28, 1989.

ADDRESS: Submit written, signed comments, to FHWA Docket No. 89–20, Federal Highway Administration, HCC–10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Torbik, Office of Planning, (202) 366–0233, Mr. Philip W. Blow, Office of Motor Carrier Information Management and Analysis, (202) 366–4036, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The designated National Network on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act (STAA) of 1982, Public Law 97–424, 96 Stat. 2097, may operate, was first established by the final rule (23 CFR part 658) published in the Federal Register at 49 FR 23302, June 5, 1984. Routes on the National Network are listed or described by category in Appendix A of the rule. Additional routes not on the network but available for STAA vehicles have also been identified at State request.

Procedures for the addition and deletion of routes are outlined in 23 CFR 658.11. A number of revisions to the National Network have been completed or initiated by the FHWA in separate rulemaking actions. One such revision was a final rule for the State of Oregon published on June 5, 1989, at 54 FR 23976. Revisions may also be initiated by the States, or by others through the States.

The Oregon Department of Transportation, as the Governor's designee, has requested the addition of two route segments and the deletion of fifteen route segments on the National network. The request was the result of State evaluations of National Network routes with respect to 53-foot long semitrailers. On January 29, 1988, the FHWA published a rule in 23 CFR part 658, Appendix B (53 FR 2597) which established a grandfathered semitrailer length of 53 feet in Oregon.

Prior to the final rule on semitrailer lengths, Oregon had accepted its National Network (NN) routes on the basis of accommodating an STAA-authorized semitrailer with a 48-foot maximum length. Several of the route segments contain sharp curves and narrow lane widths which the State considered only marginally able to accommodate a 48-foot semitrailer.

The State evaluations of federally- and/or State-designated routes considered safety, availability of alternative routes, and the effects on interstate commerce, local industry and the environment. The adequacy of the geometrics and the operational characteristics of the route segments were also analyzed. Special attention was given to the effect of off-tracking on horizontal curves and the resulting intrusion of 53-foot semitrailers into the opposing lane when negotiating the sharper curves. The reviews not only identified NN route segments with safety problems, but also other segments that could safely accommodate all STAA-authorized vehicles.

Federal authority is required for the segments proposed for addition to accommodate grandfathered semitrailers because State law applicable to roads not on the NN restricts truck tractors and semitrailers to an overall length limit of 65 feet. The State has noted that segments proposed for the deletion would continue to be available to other STAA-authorized vehicles under State law.

Additions

The State has proposed the addition of two routes segments to the National Network. The FHWA worked closely with the State during the review of each segment. Some of the specific factors considered were accident rates, traffic volumes, horizontal curvature, grades, lane width, shoulder width, sight distance and network connectivity.

The first segment is an 18.5-mile segment of OR 35 between Baseline Road near Mt. Hood and US 26 Government Camp. Designation of this segment will place the entire length of OR 35 between I–84 Hood River and US 26 Government Camp on the National Network. This addition will provide a connection between two routes presently on the National Network.

The second addition is 69.3 miles of OR 140 between OR 62 White City and US 97 Klamath Falls. The proposed addition will connect OR 62 and US 97 that are presently on the National Network.

The FHWA has reviewed the route segments and finds that they will support safe operation of STAA authorized vehicles and increase the service provided. The FHWA therefore proposes the segments be added to the NN.

Deletions

Ten segments to be deleted have similar geometric features that could, under certain conditions, adversely affect safety. The two most significant features are sharp horizontal curvature and narrow lane width. A typical example of the review performed on each of the ten segments is the 49.8-mile segment of US 20 between Newport and Philomath. The segment contains 38 miles of the two-lane roadway with lane widths less than 12 feet, and 9 miles with lane widths of 9 feet. There are 80 horizontal curves sharper than 6 degrees. Of these, 65 are too sharp for the grandfathered 53-foot semitrailer to remain within its travel lane. On ten of the curves, the vehicles will intrude more than 4 feet into the opposing lane. The maximum intrusion on the segment is 7 feet 6 inches. The other segments have similar geometrics and numerous significant intrusions into the opposing lane of traffic. The ten segments are:

US 20—49.8 miles between Newport and Philomath;
US 26—47.6 miles between Prineville and Mitchell;
US 197—46.4 miles between The Dalles and Maupin;
US 395—90.3 miles between Pendleton and Long Creek;
OR 47—24.6 miles between Forest Grove and McMinnville;
OR 51—8.7 miles between Monmouth and Salem;
OR 82—71.4 miles between LaGrande and Joseph;
OR 99—24.1 miles between Ashland and I–5 north of Central Point;
OR 206—40.7 miles between Wasco and Condon; and
OR 206/207—34.2 miles between Heppner and Kinzua Road.

It appears that the geometrics on each segment are not adequate to support the safe operation of the longer semitrailers because of significant intrusions into the opposite lane on numerous horizontal curves.

The next five segments were proposed for deletion because they serve no significant interstate commerce or National Network purpose. Two of the segments connect to the National Network at one end only and do not connect to any State designated network at the other end. The two segments are:

US 101—9.3 miles between Tillamook and Beaver and
OR 62—16.4 miles between White City and Trail.

The third segment is 35.1 miles of US 101 between Gold Beach and the California State line. Neither end of this segment connects to the National Network or to any State designated route.

The fourth and fifth segments are both relatively short segments of US 30 that function as I–84 business routes through the center of Cascade Locks and Pendleton. Both segments are accessible to all STAA authorized vehicles under the State's reasonable access policy. The fourth segment is 2.0 miles in length at Cascade Locks and the fifth segment is 6.6 miles in length at Pendleton. The proposed rule would also clarify the terminus or OR 11 which has been at I–84 rather than US 30 in Pendleton.

The FHWA is proposing deletion of the segments at this time to gain benefit of public comment.

Regulatory Impact

The FHWA has considered the impacts of this rulemaking and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 nor a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking would technically amend the June 5, 1984, the final rule by adding and deleting certain highway segments in accordance with statutory provisions. The impacts of the changes addressed in this rulemaking do not significantly alter the impacts fully considered in the original impact statement accompanying the June 5 rule. These segments represent a very small portion of the National Network, and the changes would have neglible impact on the prior system. Thus, no revised regulatory evaluation is needed. For the same reasons, and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action does not have a significant economic impact on a substantial number of small entities.

Federalism

The FHWA has considered the "federalism" implications of this action in accordance with the principles and policymaking criteria of E.O. 12612, *Federalism*, of October 26, 1987. The Final Rule is in response to an application by the State. There are no adverse impacts on the State or significant intrusions into State authority as a result of this rulemaking.

The regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Due to the limited subject matter of this document and the familiarity with the proposal by the interests in Oregon, a thirty (30) day public comment period is considered adequate.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor Carrier—size and weight.

Issued on: August 22, 1989.

Eugene R. McCormick,

Deputy Administrator.

In consideration of the foregoing, the FHWA proposes to amend chapter I of title 23, Code of Federal Regulations, by

amending Appendix A to part 658 for the State of Oregon to read as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97–424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. app. 2311, 2313, and 2316), as amended by Pub. L. 98–17, 97 Stat. 59, and Pub. L. 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix A to Part 658—(Amended)

2. Appendix A to Part 658 is amended for the State of Oregon by removing the following Posted Route Number entries:

Route	From	To
OR 11	US 30 Pendleton	WA State Line.
OR 35	Baseline Road MP 82.11.	I–84 Hood River.

and inserting in their places the following:

Route	From	To
OR 11	I–84 Pendleton	WA State Line.
OR 35	US 26 Government Camp.	I–84 Hood River.

3. Appendix A to Part 658 is amended for the State of Oregon by adding at the end of the Oregon listing the Posted Route Number entry:

Route	From	To
OR 140	OR 62 White City	US 97 Klamath Falls.

4. Appendix A to part 658 is amended for the State of Oregon by removing the Posted Route Number entries:

Route	From	To
US 20	US 101 Newport	ECL Sweet Home.
US 26	US 101 Cannon Beach Junction.	Mitchell.
US 30	In Cascade Locks	
US 30	I–84 W. of Pendleton.	I–84 E. of Pendleton.
US 101	CA State Line	Gold Beach.
US 101	MP 75.54 N. of Beaver.	WA State Line.
US 197	OR 216 Maupin	WA State Line.
US 395	Long Creek	Pendleton.
OR 47	OR 99W near McMinnville.	US 26 N. of Banks.
OR 51	OR 99W Monmouth	OR 22 near Eola.
OR 62	Medford	Trail.
OR 82	I–84 La Grande	Joseph.
OR 99	Ashland	Central Point.
OR 206	US 97 Wasco	OR 19 Condon.
OR 207	US 730 Cold Springs Jct.	MP 23.56 Kinzua Rd.

and inserting in place of US 20, US 26, US 101, US 197, OR 47, OR 62 and OR 207 the following, respectively:

Route	From	To
US 20	OR 34 Philomath	ECL Sweet Home.
US 26	US 101 Cannon Beach Junction.	OR 126 Prineville.
US 101	OR 6 Tillamook	WA State Line.
US 197	I–84, The Dalles	WA State Line.
OR 47	OR 8 Forrest Grove	US 26 N. of Banks.
OR 62	Medford	OR 140 White City.
OR 207	US 730 Cold Springs Jct.	OR 74 S. Int. Heppner.

[FR Doc. 89–20287 Filed 8–28–89; 8:45 am]

BILLING CODE 4910-22-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–366, RM–6824]

Radio Broadcasting Services; Knoxville, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Dominion Publishing, Inc., and Leighton Enterprises, Inc., requesting the substitution of Channel 221C3 for Channel 221A at Knoxville, Iowa, and the modification of their share-time Stations KTAV–FM and KRLS to specify the higher powered channel. Channel 221C3 can be allotted to Knoxville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 41–19–12 and West Longitude 93–05–42. In accordance with Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Knoxville or require that the petitioners demonstrate the availability of an additional equivalent channel for use by such parties.

DATES: Comments must be filed on or before October 16, 1989, and reply comments on or before October 31, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerry Miller, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel to petitioners).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–366, adopted August 7, 1989, and released August 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–20292 Filed 8–28–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–365, RM–6811]

Radio Broadcasting Services; Ottumwa, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Gillbro Communications Limited Partnership seeking the substitution of Channel 224C3 for Channel 224A at Ottumwa, Iowa, and the modification of its license

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for Station KTWA to specify the higher powered channel. Channel 224C3 can be allotted to Ottumwa in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.1 kilometers (5.0 miles) northwest to avoid a short-spacing to the pending application of Station KGRC, Channel 225C1, Hannibal, Missouri (BPH-880202IC) and to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 41–05–00 and West Longitude 92–27–30. In accordance with Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 224C3 at Ottumwa or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 16, 1989, and reply comments on or before October 31, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Vincent A. Pepper, Esq., Barbara R. Merlie, Esq., Pepper & Corazzini, 1776 K Street NW., Suite 200, Washington, DC 20006 (Counsel to Gillbro Communications).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–365, adopted August 7, 1989, and released August 23, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–20291 Filed 8–28–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–367, RM–6835]

Radio Broadcasting Services; Klondike, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Sandlapper Broadcasting, seeking the allotment of Channel 253A to Klondike, South Carolina, as its first local FM service. Petitioner should provide community data to show that Klondike is a community for allotment purposes. Channel 253A can be allotted to Klondike in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 33–41–27 and West Longitude 79–07–05.

DATES: Comments must be filed on or before October 16 1989, and reply comments on or before October 31 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Toni T. Rinehart, Sandlapper Broadcasting, 2557–E Mountain Lodge Circle, Birmingham, Alabama 35216 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–367, adopted August 7, 1989, and released August 23 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–20293 Filed 8–28–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–364, RM–6796]

Radio Broadcasting Services; Plantersville, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Carocom Media seeking the allotment of Channel 253A to Plantersville, South Carolina, as its first local FM service. The Commission seeks additional information to determine whether Plantersville is a community for allotment purposes. Channel 253A can be allotted to Plantersville with a site restriction of 5.6 kilometers (3.4 miles) east to avoid a short-spacing to Station WWKT–FM, Channel 252A, Kingstree, South Carolina. The coordinates for this allotment are North Latitude 33–33–08 and West Longitude 79–09–11.

DATES: Comments must be filed on or before October 16, 1989, and reply comments on or before October 31, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Pennington, III, Carocom Media, 5519 Rockingham Road-East, Greensboro, NC 27407 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–364, adopted August 7, 1989, and released August 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Divsion, Mass Media Bureau.

[FR Doc. 89–20290 Filed 8–28–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

RIN 0648–AC16

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan, three minority reports, and request for comments.

SUMMARY: NOA issues this notice that the Gulf of Mexico Fishery Management Council has submitted Amendment 1 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP) for Secretarial review and is requesting comments from the public.

DATE: Comments will be accepted until October 25, 1989.

ADDRESSES: Comments should be sent to William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702. Mark envelope, "Reef Fish Amendment 1." Copies of Amendment 1 may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared fishery management plan or amendment be submitted to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the document, immediately publish a notice of its availability for public review and comment. The Secretary will consider public comments in determining approvability of the document.

Amendment 1 proposes extensive changes in the reef fish management structure primarily to restore diminished spawning stocks to a level equivalent to 20 percent of the biomass that would be available in the absence of fishing mortality. Red snapper, the single most important species in the reef fish complex, is severely overfished and on the verge of collapse, while certain other species of snappers and some of the groupers apparently are overfished but to a lesser degree. Amendment 1 contains a definition of overfishing as required by the revised guidelines for fishery management plans.

Specific measures that are proposed in the amendment would: (1) Eliminate the current exemptions to the size limit for red snapper; (2) establish size limits for other major species; (3) establish bag limits for red snapper, certain other snappers, groupers, and amberjack; (4) establish commercial quotas for red snapper, deep-water groupers, and shallow-water groupers; (5) place areal restrictions on the use of longline and buoy gear; (6) specify procedures for adjusting the total allowable catch, size limits, bag limits, and other restrictive measures on an annual basis; (7) modify permitting and reporting requirements for reef fish fishermen; (8) reduce the number of allowable fish traps per vessel; (9) eliminate entanglement nets; and, (10) extend the "stressed area" by adding coastal waters off Louisiana and Texas. Other changes are also proposed.

Three minority reports object to: (1) The prohibition of the retention and sale of undersized fish in certain instances; (2) the bag limits being applied to shrimp vessels; (3) the geographical extension of stressed areas; (4) the maximum number of persons aboard charter and headboats to fish commercially; (5) the commercial quota on groupers; (6) the prohibition of entangling nets; or (7) the 20-inch minimum size limit for red grouper. Regulations proposed by the Council to implement Amendment 1 are scheduled to be filed by September 10, 1989 for publication.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 23, 1989.

David S. Crestin,

Deputy Director, Office of Fishery Conservation and Management.

[FR Doc. 89–20259 Filed 8–28–89; 4:41 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 166
Tuesday, August 29, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 25, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

- Animal and Plant Health Inspection Service
- Animal Welfare
- VS 18–1, 18–1A, 18–3, 18–5, 18–6, 18–9, 18–11, 18–19, 18–20, 18–23, 18–6A

Recordkeeping; On occasion; Weekly; Semi-annually; Annually State or local governments; businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 70,942 responses; 95,961 hours; not applicable under 3540(h)
Dr. R.L. Crawford (301) 436–7833

- National Agricultural Statistics Service

Supplemental Acreage Survey
On occasion; Annually
Farms; 300,140 responses; 85,930 hours; not applicable under 3504(h)
Larry Gambrell (202) 447–7737

New Collection

- Food and Nutrition Service

Evaluation of the Food Distribution Program on Indian Reservations (FDPIR)
One time only
Individuals or households; State or local governments; 955 responses; 1,079 hours; not applicable under 3504(h)
Fumiyo Hunter (703) 756–3115

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 89–20323 Filed 8–28–89; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Environmental Impact Statement for the Proposed Threemile Timber Sale, Medicine Bow National Forest, Carbon County, WY

AGENCY: Forest Service, USDA.

ACTION: Extension of time period for public review of the Draft Environmental Impact Statement.

SUMMARY: Notice of filing a draft environmental impact statement (DEIS) for the Threemile Timber Sale was published in the **Federal Register** Vol. 54 No. 129 on July 7, 1989. Comments were due on September 1, 1989. The period for commenting is now extended 45 days until October 15, 1989. The extension has been granted to provide time for parties to review and formulate comments on the DEIS. In addition to extending the period for comments, open house meetings are scheduled for September 19, 1989 from 3:00 pm to 7:00 pm and on September 23 from 9:00 a.m. to 1:00 pm. Both meetings will be at the Holiday Inn in Laramie, Wyoming in the Ivinson Room.

DATE: Comments on the DEIS must be received by October 15, 1989.

ADDRESSES: Send written comments to the District Ranger, 605 Skyline Drive, Laramie, WY 82070.

FOR FURTHER INFORMATION CONTACT: Gary Rorvig, Laramie District Engineer (307) 745–8971.

Dated: August 21, 1989.

Ron Olsen,
Acting Forest Supervisor.

[FR Doc. 89–20280 Filed 2–28–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic and Statistical Affairs

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic and Statistical Affairs Senior Executive Service (SES) Performance Appraisal System:

Frederick T. Knickerbocker
Joseph F. Caponio
Carol S. Carson
John E. Cremeans
Robert B. Ellert
Lucy A. Falcone
Susanne H. Howard
C. Louis Kincannon
Daniel B. Levine
Harry A. Scarr
Charles A. Waite
Katherine K. Wallman
Allan H. Young

Edward A. McCaw,
Executive Secretary, Economic and Statistical Affairs, Performance Review Board.

[FR Doc. 89–20285 Filed 8–28–89; 8:45 am]

BILLING CODE 3510–BS–M

Economic Development Administration

Senior Executive Service; Performance Review Board Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic Development Administration Senior Executive Service (SES) Performance Appraisal System:

Craig M. Smith
John E. Corrigan
Edward G. Jeep
Charles E. Oxley
George Muller
David Farber

Edward A. McCaw,
Executive Secretary, Economic Development Administration, Performance Review Board.

[FR Doc. 89–20284 Filed 8–28–89; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review of Final Affirmative Countervailing Duty Determination Respecting Fresh, Chilled and Frozen Pork from Canada made by International Trade Administration, Import Administration, which was filed by the Canadian Pork Council and its members with the United States Section of the Binational Secretariat on August 22, 1989.

SUMMARY: On August 22, 1989, the Canadian Port Council and its members filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final affirmative countervailing duty determination respecting fresh, chilled and frozen pork from Canada, Import Administration file number C–122–807, issued by the International Trade Administration, Import Administration and published in 54 **Federal Register** 30774 on July 24, 1989. The Binational Secretariat has assigned Case Number USA–89–1904–06 to this Request for Panel Review. In addition to the first Request for Panel Review, requests have also been filed by the Canadian Meat Council and its members, Canada Packers, Inc., the Government of the Province of Alberta and the Government of Canada.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with reveiw by independent binational panels. When a Request for Panel Review is filed, a panel will be established to act in place of national courts to expeditiously review the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(a) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on August 22, 1989, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

> (a) a Party or interested person may challenge the final determination n whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is September 21, 1989);
>
> (b) a Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is October 6, 1989); and
>
> (c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: August 23, 1989.

James R. Holbein,
Acting U.S. Secretary, FTA Binational Secretariat

[FR Doc. 89–20307 Filed 8–28–89; 8:45 am]

BILLING CODE 3510–DA–M

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants; Recovery Plans

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of availability and request for comments.

SUMMARY: The Draft Hawaiian Sea Turtle Recovery Plan is available for review by interested parties prior to final approval and adoption by National Marine Fisheries Service (NMFS). The plan was developed by the Hawaiian Sea Turtle Recovery Team which was appointed in late 1985 by NMFS to develop a Recovery Plan for listed sea turtles found in Hawaiian waters. Membership included biologists and resource managers from NMFS, U.S. Fish and Wildlife Service, State of Hawaii Department of Land and Natural Resources, and academia.

DATES: Comments on the draft recovery plan must be received on or before October 30, 1989.

ADDRESSES: Comments should be addressed to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry St., Terminal Island, CA 90731. Copies of the Draft Hawaiian Sea Turtle Recovery Plan are available upon request from James H. Lecky, Chief, Protected Species Management Branch, Southwest Region, National Marine Fisheries Service, 300 S. Ferry St. Terminal Island, CA 90731 or Eugene T. Nitta, Protected Species Management Branch, Pacific Area Office, Southwest Region National Marine Fisheries Service, 2570 Dole St., Honolulu, HI 96822–2396.

FOR FURTHER INFORMATION CONTACT: James H. Lecky or Eugene T. Nitta at the addresses above.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.) requires that the agencies responsible for listed species develop and implement recovery plans for the conservation and survival of threatened and endangered species, unless it is determined that such plans will not promote the conservation of the species. Accordingly, NMFS appointed an interagency Hawaiian Sea Turtle Recovery Team which developed a Draft Hawaiian Sea Turtle Recovery Plan. The Plan has been reviewed by many outside agencies and individuals for technical content. Priority needs for research that will support sound management actions for the conservation and enhancement of listed sea turtles in Hawaii and their habitat are outlined in the Draft Recovery Plan. Where research and/or management activities are ongoing, specific agencies have been identified as lead or cooperating agencies.

The Draft Recovery Plan ultimately is intended as a guide for those entities responsible for research, conservation, education and information, enforcement, and management to consider sea turtle

recovery issues in their operations or as

Insert: "Add 5810.10.0000—

recommendations with respect thereto,

recovery issues in their operations or as part of their priority activities in future agency actions. One of the 1988 amendments to the ESA required "* * * estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal." Funding and resource allocations are now included in the Draft Plan as an appendix.

Dated: August 23, 1989.

Morris M. Pallozzi,

Director, Office of Enforcement.

[FR Doc. 89-20263 Filed 8-28-89; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Senior Executive Service; Performance Review Board Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior Executive Service (SES) Performance Appraisal System:

Harold G. Kimball
Dennis R. Connors
Richard D. Parlow
William D. Gamble
Neal B. Seitz
Larry Eads
Robert J. Mayher
William F. Utlaut
Roger K. Salaman
Charles M. Rush
Robert J. Matheson
David Farber

Edward A. McCaw,

Executive Secretary, National Telecommunications and Information Administration, Performance Review Board.

[FR Doc. 89-20283 Filed 8-28-89; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile and Apparel Categories With Harmonized Tariff Schedule of the United States Annotated; Changes to the 1989 Correlation; Correction

August 23, 1989.

Beginning on page 27925 of the notice published in the **Federal Register** on July 3, 1989 (54 FR 27924), make the following changes for Category 229:

Line 1:
  Remove: "Delete 5810.10.0000"
  Insert: "Add 5810.10.0000—
    Embroidery in the piece, in strips or in motifs without visible ground"
Line 2:
  Remove: "Add 5810.10.0090—
    Embroidery without visible ground, other than labels and badges"
  Insert: "Delete 5810.10.0090"

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-20308 Filed 8-28-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

Meeting of National Council on Vocational Education

AGENCY: National Council on Vocational Education.

ACTION: Notice of Public Meeting of the National Council on Vocational Education.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: September 17, 1989—7:00 PM to 9:00 PM, September 18, 1989—9:30 AM to 4:00 PM.

ADDRESS: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.

Location: September 17, 1989—Chairman Farley's Suite, September 18, 1989—Ambassador Room, (202) 857-3388.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under Section 104 of the Vocational Education Amendments of 1968, Public Law 90-576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

Agenda: The proposed agenda will include:

September 17, 1989, Briefing and Updating of the Council Initiatives, Budget Report, Awards Report, Newsletter and Council materials, Briefing on the JTPA Amendments.

September 18, 1989, Discussions on the following: National Awareness Campaign, Occupational Competency, Annual Report, Reauthorization, Future Initiatives.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 330 C Street, SW., MES—Suite 4080, Washington, DC 20202-7580, (202) 732-1684.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 a.m. to 4:30 p.m.

Signed at Washington, DC, August 23, 1989

Joyce Winterton,

Executive Director.

[FR Doc. 89-20284 Filed 8-28-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to Humbug Mountain Research Laboratories

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15453 to Humbug Mountain Research Laboratories.

SCOPE: The funding for this grant will support the continuing research in the development of software for controlling the generation of the sound waves, the measurements and identification of the resonance frequencies, the upgrading of the electronic circuitry and laboratory testing to calibrate readings against measured particulate flows.

ELIGIBILITY: Based on acceptance of an unsolicited application, eligibility of this grant award is being limited to Humbug Mountain Research Laboratories, who has developed the technology, a method of using resonance shifts in sound waves as a mean of measuring quantities of solids, suspended in air or similar fluids, flowing through pipelines. The project is of high technical merit, representing an innovative technology which has a strong possibility of allowing for future reduction in the nation's energy consumption.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Calvin Lee, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director,

Contract Operations Division "B", Office of Procurement Operations".

[FR Doc. 89-20327 Filed 8-28-89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award Grant to Sanford & Russell, Inc.

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15436 to Sanford & Russell, Inc.

SCOPE: The funding for this grant will support the building and loop testing of six prototype drilling devices, which have the potential to prevent most blowouts in oil wells, thus saving oil from being wasted and preventing damage to the environment.

ELIGIBILITY: Based on acceptance of an unsolicited application, eligibility of this grant award is being limited to Sanford & Russell, Inc. who has high qualification in building, testing and analyzing tests results of prototype drilling devices. The project will allow Sanford & Russell, Inc. to test the drilling devices downhole with cooperating drilling companies. In addition, this is a project with a high technical merit, representing an innovative technology that has a strong possibility of adding to the national energy resources.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Calvin Lee, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

FR Doc. 89-20328 Filed 8-28-89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award Grant to Michael Gondouin, S-Cal Research Corporation

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15446.

SCOPE: The funding for this grant will support the conceptual engineering of a downhole catalytic converter which will be used to estimate the facilities for a specific location, the West Sak heavy oil reservoir on the north slope of Alaska.

ELIGIBILITY: Based on acceptance of an unsolicited application, eligibility of this grant award is being limited to Michael Gondouin, S-Cal Research Corporation, who has developed a process for recovering Viscous (Heavy) Oils from Deep Underground Formations and thereby has gained valuable experience in researching heavy oil exploration. This project will allow Michael Gondouin, S-Cal Research Corporation, to continue his research and improve upon the current technology that has the potential on a global scale to unlock the recovery of several trillion barrels of oil that is not economically recoverable now.

The term of this grant shall be for 24-months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Lisa Tillman, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contact Operations Division "B" Office of Procurement Operations.

[FR Doc. 89-20329 Filed 8-28-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-609-000 et al.]

Vermont Electric Power Company, Inc., et al.; Electric Rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Vermont Electric Power Company, Inc.

[Docket No. ER89-609-000]

August 18, 1989.

Take notice that on August 16, 1989, Vermont Electric Power Company, Inc. (VELCO) tendered for filing a revised Exhibit A (as to Citizens Utilities Company only) to VELCO Power Purchase Agreement, dated as of June 1, 1981, FERC Rate Schedule No. 234. The revised exhibit A authorizes VELCO to acquire energy for Citizens Utilities from Niagara Mohawk Corporation under the Agreement between Niagara Mohawk Corporation and VELCO, dated as of February 1, 1983, when such energy is available and when Citizens Utilities determines that it is economic.

VELCO proposes that the revision become effective on August 16, 1989. VELCO requests a waiver of the Commission's regulations to allow the filing to become effective as of that date. If the waiver is granted, VELCO states that there will be no adverse effect upon any of VELCO's customers. If the waiver is not granted, VELCO requests that the filing become effective on October 16, 1989, or on such other date as the Commission deems appropriate.

VELCO states that it has served the filing upon Citizens Utilities Company and upon the Vermont Public Service Board and the Vermont Department of Public Service.

Comment date: September 1, 1989, in accordance with the Standard Paragraph E at the end of this notice.

2. Amoco Corporation

[Docket No. QF89-305-000]

August 18, 1989.

On August 3, 1989, Amoco Corporation (Applicant), of Warrenville Road and Mill Street, Naperville, Illinois 60566, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Naperville, Illinois. The facility will consist of a combustion turbine generator and a heat recovery steam generator equipped with supplementary firing. Thermal energy recovered from the facility will be utilized for space heating and cooling and for research processes in the Amoco Research Center. The electric power production capacity of the facility will be 8,300 kW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin approximately January 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Blackstone Valley Electric Company

[Docket No. ER89-606-000]

August 18, 1989.

Take notice that on August 16, 1989, Blackstone Valley Electric Company (BVE) tendered for filing Supplement No. 1 to Rate Schedule No. 28 in the form of an Amended and Restated Interconnection Agreement between itself, Ocean State Power (OSP) and Ocean State Power II (OSP II). This Agreement provides for construction, ownership and payment for facilities to be built in order to interconnect the generating station of the Ocean State Power Projects (the Project) to BVE's transmission facilities (the Interconnection Facilities). The Agreement provides that, upon the commencement of commercial operation of the second unit, OSP shall pay one hundred (100) percent of the yearly cost of service for the Interconnection Facilities. Upon the commencement of commercial operation of the second unit, OSP and OSP II shall each pay fifty (50) percent of the yearly cost of service for the Interconnection Facilities. The Agreement does not constitute a rate increase.

Comment date: September 1, 1989, in accordance with Standard Paragraph E end of this notice.

4. Kentucky Utilities Company

[Docket No. ER89-610-000]

August 18, 1989.

Take notice that on August 17, 1989, Kentucky Utilities Company (KU) tendered for filing a new Agreement dated September 1, 1989 between KU and Big Rivers Electric Corporation (BR).

The new Agreement is intended to replace in its entirety the presently effective Agreement between KU and BR. The new Agreement contains proposed reciprocal Service Schedules for Emergency Energy, Economy Energy, Short-Term Power, Firm Power and Non Displacement Energy.

Copies of this filing have been sent to the Big Rivers Electric Corporation and the Kentucky Public Service Commission.

Comment date: September 5, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public insection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20253 Filed 8-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1957-003 Wisconsin]

Wisconsin Public Service Corp.; Availability of Environmental Assessment

August 22, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the existing Otter Rapids Hydroelectric Project located on the Wisconsin River near Eagle River in Vilas and Oneida Counties, Wisconsin and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that approval of a new license for the project, with appropriate enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20257 Filed 8-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1958-000 et al.]

Northwest Pipeline Corp., et al.; Natural gas certificate filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP89-1958-000]

August 18, 1989.

Take notice that on August 16, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1958-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Exxon Corporation (Exxon), a producer, under the blanket certificate issued in Docket No. CP86-578-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated February 10, 1988, as amended, under its Rate Schedule TI-1, it proposes to transport up to 200,000 MMBtu per day equivalent of natural gas for Exxon. Northwest states that it would transport the gas through its system from any transportation receipt point on its system to any transportation delivery point on its system, as defined in the December 5, 1988, amendment.

Northwest advises that service under § 284.223(a) commenced July 1, 1989, as reported in Docket No. ST89-4401 (filed August 4, 1989). Northwest further advises that it would transport 1,200 MMBtu on an average day and 438, MMBtu annually.

Comment Date: October 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corp. Enron Gas Processing Company and Enron NGL Processing Limited Partnership

[Docket Nos. CP61-132-001 and CP68-5-003]

August 18, 1989.

Take notice that on August 17, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), Enron Gas Processing Company (EGP), and Enron NGL Processing Limited Partnership (EPP), all at 1400 Smith Street, Houston, Texas 77002, together referred to as Applicants, filed in the above referenced dockets, pursuant to section 7(c) of the Natural Gas Act their application to amend the certificates of public convenience and necessity issued in Docket No. CP61-132, as amended, and CP68-5, as amended, authorizing the exchange of gas between Northern and EGP, to reflect EPP, the prospective successor to EGP, as the participant in the authorized exchanges with Northern, all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

Applicants indicate that by orders issued on August 31, 1987, and September 28, 1987, in Docket Nos. CP68-5-002 and CP61-132-001, respectively, Northern and EGP were authorized to exchange gas at the trilgates of EGP's hydrocarbon and ethane plants located at Bushton, Kansas, in order to permit EGP to reimburse Northern in kind for volumes lost in EGP's gas processing operations due to fuel and shrinkage.

EPG states that it plans to transfer its interest in such plants, subject to approval of the Securities and Exchange Commission, to EPP. Applicants indicate that to reflect the change of ownership they request that the certificates authorizing the exchanges be amended to reflect EPP rather EGP as the holder of the certificates with Northern. No other changes are proposed.

Comment date: September 8, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP89-1954-000]

August 21, 1989.

Take notice that on August 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1954-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of Transco Energy Marketing Company (TEMCO) under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport, on an interruptible basis, up to a maximum of 75,000 MMBtu of natural gas per day for TEMCO from receipt points located in Arkansas, Illinois, Indiana, Kentucky, Louisiana, offshore Louisiana, Ohio, Texas and offshore Texas to delivery points located in Louisiana. Texas Gas anticipates transporting, on an average day 75,000 MMBtu and an annual volume of 27,375,000 MMBtu.

Texas Gas states that the transportation of natural gas for TEMCO commenced July 1, 1989, as reported in ST89-4202-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Texas Gas in Docket No. CP88-686-000.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP89-1955-000]

August 21, 1989.

Take notice that on August 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1955-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for American Central Gas Marketing Company (American Central), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 100,000 MMBtu equivalent of natural gas for American Central, with an estimated average daily quantity of 50,000 MMBtu. It is stated that on an annual basis, American Central estimates a volume of 18,250,000 MMBtu equivalent of natural gas.

Texas Gas states that transportation service for American Central commenced July 1, 1989, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4203.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89-1965-000]

August 21, 1989.

Take notice that on August 16, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, filed in Docket No. CP89-1965-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service on behalf of Graham Energy Marketing Corporation (Graham) a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6, all as more fully set forth in the request which is one file with the Commission and open to public inspection.

United states that it proposes to transport 123,600 MMBtu on a peak day, 123,600 MMBtu on an average day, and 45,114,000 MMBtu on an annual basis of natural gas on behalf of Graham, and that service pursuant to § 284.223(a) of the Commission's Regulations commenced July 6, 1989, as reported in Docket No. ST89-4262.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP89-1956-000]

August 21, 1989.

Take notice that on August 16, 1989, Tennessee Gas Pipeline Company, (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1956-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations for authorization to provide a transportation service for General Refractories Company (General) under Applicant's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated June 5, 1989, it proposes to transport natural gas for General, from points of receipt located offshore Louisiana, offshore Texas, and the States of Louisiana, Mississippi, Texas, New York, and Alabama for redelivery to City of Grayson, Kentucky. The City of Grayson will deliver to the General plant.

The applicant further states that the maximum daily quantity is 3,000

dekatherms under the contract. Service

(2) Docket No. RP89-50-000 in which it

sales to transportation service. FGT

various meter upgrades. FGT states that

effected utilizing existing facilities and

178-001. In Docket No. CP88-178-001,

dekatherms under the contract. Service under § 284.223(a) commenced August 1, 1988, as reported in Docket No. ST89-4458.000 (filed August 14, 1989).

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Florida Gas Transmission Company

[Docket Nos. CP88-179-015, CP74-192-012, CP86-704-003]

August 21, 1989.

Take notice that on August 8, 1989,[1] Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket Nos. CP88-179-015, CP74-192-012, and CP86-704-003, (Docket No. CP88-179-015, *et al.*) an amendment to its pending applications in Docket Nos. CP88-179-012 *et al.*, (Phase II Settlement) and Docket No. CP88-179-013 (January 13th Amendment) pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity requesting (1) an allocation of existing capacity (Phase I capacity), an allocation of it proposed expended capacity (Phase II capacity) and (2) revisions to FGT's proposed construction of Phase II facilities all as more fully set forth in the amendment on file with the Commission and open to public inspection.

FGT states that on October 30, 1987, it submitted the Phase II Settlement[2] and a related amended certificate filing in Docket Nos. CP88-179-012, CP74-192-011 and CP86-704-002 which addressed two central issues: (1) the justification for the proposed facilities which would expand FGT's peak day capacity up to approximately 925,000 Mcf per day (Phase II expansion) and (2) the restructuring of contractual relationships with its customers in order to offer an expansion of its services.

Subsequently, FGT states that on January 13, 1989, that it filed the following four interrelated filings (1) the January 13th Amendment in which it proposed an allocation of Phase I capacity, nominations of annual volumetric entitlements to existing customers, to initiate new small services under proposed Rate Schedule SGS, and other revisions to its FERC Gas Tariff, (2) Docket No. RP89-50-000 in which it proposed a general cost of service rate increase pursuant to section 4(e) of the Natural Gas Act, (3) Docket No. CP89-555-000 in which it requested a blanket transportation certificate under the Commission's Order Nos. 436 and 500, and (4) Docket No. CP89-556-000 in which it requested a blanket certificate to make interruptible sales for resale to others. FGT asserted that these four filings were interrelated, and conditioned its willingness to accept the requested blanket transportation certificate in Docket No. CP89-555-000 on the approval of all four applications.[3]

FGT hereby amends its January 13th Amendment so as to request authorization to provide sales for resale service through its existing Phase I capacity under Rate Schedules G, I, and SGS at the levels of service which are summarized for each customer in Exhibit I to Docket No. CP88-179-015, *et al.* FGT also requests authorization to utilize its transmission facilities to effectuate deliveries of direct sales volumes through its existing Phase I capacity at the levels which are summarized for each direct customer in Exhibit I.

FGT hereby amends the Phase II Settlement and its proposals therein to provide sales for resale service through its proposed Phase II capacity under Rate Schedules G, SGS, and I at the levels of service which are summarized for each customer in Exhibit I to Docket No. CP88-179-015, *et al.* FGT also requests certificate authority to effectuate deliveries of direct sales volumes through its proposed Phase II capacity at the levels which are summarized for each direct customer in Exhibit I. FGT requests that such authority be pregranted so as to become effective upon the in-service date of the proposed Phase II facilities.

FGT states that it would provide firm transportation services under Rate Schedule FTS-1 for shippers pursuant to the blanket certificate FGT requested in Docket No. CP89-555-000. FGT notes that the levels of firm transportation services for firm shippers are also shown in Exhibit I of Docket No. CP88-179-015 *et al.* FGT further explains that the levels of transportation service reflect only incremental levels of firm service and not initial conversion from sales to transportation service. FGT explains that it would effectuate first year conversions which would be elected by the firm and preferred interruptible sales customers listed in Exhibit I pursuant to the proposed Section 16A of the General Terms and Conditions to FGT's FERC Gas Tariff, included in Exhibit P of the January 13th Amendment.

FGT requests authorization to modify the facilities which were proposed in the Phase II Settlement and the related certificate filing. FGT states that its facility modification would eliminate (1) approximately 114.3 miles of looping on delivery laterals in the State of Florida, (2) the 625 horsepower compressor unit a Station No. 33 on the existing Sarasota Lateral, (3) various meter station upgrades and (4) the construction of a new meter station for the delivery of volumes to FPL Energy Services Inc. FGT notes that Exhibit K in Docket No. CP88-179-015, *et al.* sets forth details on the construction and the related costs which FGT now proposes to construct. As shown in Exhibit K, FGT proposes to construct the following lateral lines: (1) Reedy Creek Lateral—6.4 miles of 6-inch line, (2) St. Petersburg Lateral—10.6 miles of 8-inch line, (3) Panama City/Port St. Joe Laterlas—0.1 mile of 6-inch line and 8.0 miles of 6-inch line (4) Lake City Lateral—7.1 miles of 4-inch line, (5) Port Everglades Lateral—5.4 miles and .9 mile of 16-inch and 18-inch line, (6) Marianna Lateral—3.1 miles of 4-inch line. FGT propose to modify its request to install 2,000 horsepower units at its mainline Compressor Station Nos. 3, 9, 10, 11, 14, 17, 18 and 20. FGT now proposes to install 2,400 horsepower units at each of these stations. FGT asserts that the addition of the 2,400 horsepower units would have a negligible impact on FGT's proposed Phase II design day capacity of 925,000 Mcf.

It is also noted that FGT's Exhibit K in Docket No. CP88-179-015 *et al.* summarizes the proposals for various meter station revisions. It is also noted in Exhibit K that upon Commission authorization FGT would still install an additional 4,000 horsepower of compression at each of its Compressor Station Nos. 12, 15, and 16, an additional 5,000 horsepower of compression at Compressor Station No. 19, and certain piping modification at Compressor Station No. 8.

FGT estimates that the total cost of construction for all of the proposed facilities, as modified above, would be $90,000,000. Further FGT estimates $21,251,900 would be for the construction of the lateral lines and various meter upgrades. FGT states that it is hereby withdrawing its request which was proposed as part of the Phase II Settlement to waive Section 14 of its General Terms and Conditions of its FERC Gas Tariff. Such waiver would have permitted FGT to treat the costs of constructing the delivery lateral expansions on a rolled-in basis for both accounting and rate purposes. Instead, FGT proposes herein to collect a contribution-in-aid of construction from customers receiving new or increased firm service through such facilities.

FGT states that it has contracted with Florida Power & Light Company (FPL) for firm transportation service under Rate Schedule T-4, which was proposed as part of the Phase II Settlement. Further, FGT states that the January 13th Amendment proposed that FPL would have the option to elect to cancel the gas transportation agreement underlying Rate Schedule T-4 and receive alternative service under the proposed Rate Schedule FTS-1. FGT indicates that it would make an additional filing to withdraw its request for authorization of Rate Schedule T-4 in the event FPL makes such election.

Comment date: September 11, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP89-1963-000]

August 21, 1989.

Take notice that on August 16, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1963-000 a request pursuant to Section 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Conoco, Inc. (Conoco), a marketer of natural gas acting as agent for E.I. Dupont de Nemours and Company, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 3,090 MMBtu equivalent of natural gas on a peak day, 3,090 MMBtu equivalent on an average day, and 1,127,850 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for Conoco's account at designated points on United's system in Louisiana and Mississippi and would deliver equivalent volumes at designated points on United's system in Louisiana and Alabama. It is asserted that the transportation service would be effected utilizing existing facilities and would not require any construction of additional facilities. It is explained that the transportation service commenced June 29, 1989, as reported in Docket No. ST89-4260.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Natural Gas Pipeline Company of America

[Docket No. CP89-1966-000]

August 21, 1989.

Take notice that on August 17, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-1966-000 a request pursuant to the notice procedure in Sections 157.205 and 284.223(b) of the Commission's Regulations for authorization to transport, on an interruptible basis, up to a maximum of 250,000 MMBtu (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for V.H.C. Gas Systems, L.P. (V.H.C.), a marketer of natural gas. The receipt points are located in New Mexico, Texas, Colorado, Oklahoma, Illinois, Louisiana, Nebraska, Arkansas, Kansas and Iowa and the delivery points are located in Texas, Louisiana, New Mexico, Illinois, Oklahoma, Missouri, Arkansas, Iowa, Kansas and Nebraska. Transportation would be performed under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural commenced the transportation of natural gas for V.H.C. on June 1, 1989 at Docket No. ST89-4492-000 for a one hundred and twenty (120) day period ending September 29, 1989, pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582-000. Natural proposes to continue this service in accordance with §§ 284.221 and 284.223(b).

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Indiana Ohio Pipeline Company

[Docket No. CP88-178-001]

August 21, 1989.

Take notice that on August 15, 1989, Indiana Ohio Pipeline Company (Indiana Ohio) P.O. Box 1642, Houston, Texas 77251-1642, filed a request with the Commission in Docket No. CP88-178-001. In Docket No. CP88-178-001, Indiana Ohio filed an application which requested, *inter alia*, Commission authorization to construct 110 miles of 20-inch pipeline from Panhandle Eastern Pipe Line Company's (Panhandle) to the pipeline facilities of Texas Eastern Transmission Corporation (TETCO) in Warren County, Ohio. Subsequently, Indiana Ohio has determined that a 30-inch pipeline would be economically and environmentally superior, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Indiana Ohio has requested authorization to install a 30-inch pipeline in lieu of the 20-inch pipeline initially proposed in the above referenced proceeding. Indiana Ohio states that the 200 MMcf/d design capacity of the pipeline will not be affected since the 30-inch line will not require construction of the approximately 6,000 horsepower compression originally proposed. Additionally, Indiana Ohio has made certain minor modifications to the route of its proposed pipeline.

Comment date: September 11, 1989, in accordance with Standard Paragraph F at the end of this notice.

11. Columbia Gas Transmission Corporation

[Docket No. CP89-1929-000]

August 21, 1989.

Take notice that on August 9, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314 filed in Docket No. CP89-1929-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Columbia to construct and operate 18,950 horsepower of compression and 66.0 miles of pipeline loop at a total estimated cost of $101 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to construct and operate the following facilities:

Facilities for November 1, 1990 Service

(1) A 4,000 HP unit addition to the existing Eagle Compressor Station located in Chester County, Pennsylvania.

(2) A 4,000 HP unit addition to the existing Lost River Compressor Station located in Hardy County, West Virginia.

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[1] The application was tendered for filing on July 31, 1989; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until August 8, 1989. § 385.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[2] It is noted that on February 22, 1988, (42 FERC ¶63,022) the presiding law judge issued an order certifying that the Phase II Settlement was uncontested. It is further noted that the Phase II Settlement and the related proposals therein are pending Commission.

[3] It is noted that the Commission's May 26, 1989, order in Docket Nos. CP88-179-013, CP89-555-000, CP89-556-000 and RP89-50-000 (47 FERC ¶ 61,280) consolidated the certificate filings into the ongoing formal hearing previously established for Docket No. RP89-50-000. It is further noted, that the Commission did not consolidate FGT's Phase II Settlement with the formal hearing proceeding set forth in Docket No. RP89-50-000, *et al.*

(3) Three 3,200 HP units at the existing Bickers Compressor Station site located in Greene County, Virginia.

(4) Approximately 8.4 miles of 24-inch pipeline loop located in Bedford and Fulton Counties, Pennsylvania.

(5) Approximately 3.7 miles of 24-inch pipeline loop located in Adams County, Pennsylvania.

(6) Approximately 7.7 miles of 36-inch pipeline loop located in Randolph County, West Virginia.

(7) Approximately 8.9 miles of 36-inch pipeline loop located in Randolph County, West Virginia.

(8) Approximately 11.2 miles of 26-inch pipeline loop located in Braxton, Webster, Lewis and Upshur Counties, West Virginia.[1]

(9) Approximately 3.1 miles of 36-inch pipeline loop located in Warren County, Virginia.

(10) Approximately 8.5 miles of 36-inch pipeline loop located in Kanawha and Clay Counties, West Virginia.

Facilities for November 1, 1991 Service

(11) Approximately 7.2 miles of 24-inch pipeline loop located in Fayette and Greene Counties, Pennsylvania.

(12) Approximately 7.3 miles of 24-inch pipeline loop located in Lancaster County, Pennsylvania.

(13) A 1,350 HP unit addition to the existing Gettysburg Compressor Station located in Adams County, Pennsylvania.

Columbia states that the facilities proposed will provide it with the capacity to provide 231,918 Dt/d of additional firm services for certain of its customers, as follows:

Class of service	Quantity (Dt/d)	
	11/1/90	11/1/91
Contract demand service (CDS):		
Commonwealth Gas Services, Inc. (East)	1,631	
Eastern Shore Natural Gas Co.	1,309	
Orange & Rockland Utilities, Inc.	23,000	
Virginia Natural Gas Co.	10,000	
Total CDS	35,940	
Firm transportation service (FTS):		
Allied-Signal, Inc.	15,000	
Bluefield Gas Company	1,540	
City of Charlottesville, VA	3,299	
City of Richmond, VA	5,120	
Commonwealth Gas Services, Inc. (East)	8,401	
Commonwealth Gas Services, Inc. (West) [1]	2,610	
Penn Fuel Gas, Inc.	1,777	
Roanoke Gas Co.	5,500	
South Jersey Gas Co.	10,022	
UGI Corporation	20,000	
Virginia Natural Gas Co.	11,140	
Washington Gas Light Co.	36,100	
Bethlehem Steel Company	15,500	
General Motors Corporation	4,500	
Total FTS	140,509	
Winter service (WS):		
Commonwealth Gas Services, Inc. (East)	9,499	
Eastern Shore Natural Gas Co.	6,832	
Total WS	16,331	
Firm storage service (FSS):		
City of Charlottesville, VA	800	1,450
City of Richmond, VA		4,729
Commonwealth Gas Services, Inc. (East)	6,522	
Commonwealth Gas Services, Inc. (West) [1]	143	
Delmarva Power & Light Co.	5,040	2,070
Eastern Shore Natural Gas Co.	800	200
Roanoke Gas Co.	2,107	1,777
South Jersey Gas Co.	5,400	2,100
Total FSS	28,812	12,326

[1] Effective July 1, 1989, Columbia Gas of Virginia, Inc. was merged into Commonwealth Gas Services, Inc. The service area of Columbia Gas of Virginia, Inc. will be operated by Commonwealth Gas Services, Inc. as Commonwealth Gas Services, Inc. (West).

Columbia states that the additional firm natural gas services are pursuant to and in implementation of the Stipulation and Agreement filed with the Commission in Docket No. RP86–168–000, *et al.*, on June 29, 1989, and the Commission has been requested to approve the Stipulation and Agreement to be effective November 1, 1989.

Comment date: September 11, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP89–1959–000]

August 21, 1989.

Take notice that on August 18, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251, filed in Docket No. CP89–1959–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform a firm transportation service for Arkla Energy Marketing Company (Arkla), under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation service agreement dated October 28, 1988, as amended by a letter agreement dated March 8, 1989, it proposes to receive up to 200,000 Mcf per day from Arkla at specified points located both onshore and offshore Louisiana, Texas, and Mississippi and redeliver equivalent volumes at specified points located in the states of Texas, Louisiana, Florida, Alabama, and Mississippi. United indicates that in the event of failure of deliveries to receipt or delivery points for firm service, Arkla may request authorized overrun transportation if, in United's sole judgment, the capacity of its system or part thereof would permit such receipt, transportation, and delivery without impairing the ability of United to meet its other delivery obligations. It is indicated that United would receive the overrun volumes at specified points located in Texas and in onshore and offshore Louisiana and redeliver the volumes at specified points located in the states of Alabama, Florida, Mississippi, and Louisiana. United estimates peak day, average day, and annual volumes of 206,000 million Btu, 206,000 million Btu, and 75,190,000 million Btu, respectively. It is indicated that on June 14, 1989, United initiated a 120-day transportation service for Arkla under § 284.223(a) as reported in Docket No. St89–4075–000.

United further states that no facilities need be constructed to implement the service. United states that the contract expires three years from the date of initial transportation. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule FTS.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP89–1961–000]

August 21, 1989.

Take notice that on August 18, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1961–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for PSI, Inc. (PSI), a marketer, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation service agreement dated March 14, 1989, as amended on May 9, 1989, it proposes to receive up to 150,600 Mcf per day from PSI at specified points located in the states of Texas, Mississippi, Alabama, Florida, as well in onshore and offshore Louisiana and redeliver equivalent volumes at specified points located in the states of Florida, Louisiana, Mississippi, and Alabama. United estimates peak day and average day volumes of 154,500 million Btu and annual volumes of 56,392,500 million Btu. It is indicated that on July 3, 1989, United initiated a 120-day transportation service for PSI under § 284.223(a) as reported in Docket No. ST89–4278–000.

United further states that no facilities need be constructed to implement the service. United states that the service would continue until terminated on 30 days written notice. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Great Lakes Gas Transmission Company

[Docket No. CP89–1898–000]

August 21, 1989.

Take notice that on August 2, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP89–1898–000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity to provide additional firm gas transportation service of 831,000 Mcf per day for TransCanada Pipe Lines Limited (TransCanada), and 43, 700 Mcf per day for ANR Pipeline Company (ANR), and to construct and operate facilities required to provide such service, all as more fullly set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Great Lakes states that the existing TransCanada-Great Lakes Gas Transportation Contract dated September 12, 1967, as amended, currently provides for firm transportation by Great Lakes of up to a maximum of 1,405,000 Mcf per day of volumes from a point of interconnection between the facilities of Great Lakes and TransCanada on the International Boundary at Emerson, Manitoba (Emerson Interconnection), to points on the International Boundary located at Sault Ste. Marie and St. Clair Interconnections. Great Lakes states that TransCanada has requested that the additional 831,000 Mcf per day be transported by Great Lakes from the Emerson Interconnection to the St. Clair Interconnection. To provide this service, an Amendatory Agreement dated July 28, 1989 (Amendment) has been executed by the parties, which provides for such increase to a total of 2,236,000 Mcf per day, which is expected to commence November 1, 1991. A second increase of 166,000 Mcf per day is expected to commence on November 1, 1992.

It is stated that ANR and Great Lakes have entered into a Transportation Service Agreement (ANR Service Agreement) dated July 28, 1989, under which Great Lakes has agreed to transport up to 43,700 Mcf per day on a firm basis, for ANR, from the Emerson Interconnection to an existing point of interconnection between the facilities of ANR and Great Lakes, located at Fortune Lake, Michigan (Fortune Lake Delivery Point). ANR has advised Great Lakes that it will receive these volumes into the ANR Pipeline system at Fortune Lake Delivery Point for alternate deliveries to the joint subsidiaries of Kamine Engineering and Mechanical Contracting, Inc. and the Besicorp Group, Inc. (Cogen Developers), who are constructing gas-fired cogeneration projects in South Glen Falls, South Corning, and Holtsville, New York.

Great Lakes states ANR will provide transportation of the subject volumes from the Fortune Lake Delivery Point to a proposed point of interconnection between the facilities of ANR and CNG Transmission Corporation (CNG) located at Lebanon, Ohio (Lebanon Delivery Point). The Cogen Developers are entering into arrangements with CNG and other entities for transportation of the volumes from the Lebanon Delivery Point to the sites for the cogeneration projects.

It states that the proposed service for ANR is expected to commence on November 1, 1991, with a daily firm contract quantity of 14,200 Mcf per day, which will be increased by 29,500 Mcf, to 43,700 Mcf, commencing on or about November 1, 1992.

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[1] This loop segment is being proposed solely to provide for increased reliability of service at the request of Columbia's eastern market customers. Such segment will complete the looping of the remaining single line section of Columbia's system between its interconnection with Columbia Gulf Transmission Company at the Kentucky-West Virginia State Line and Columbia's East Coast main line system north of Baltimore, Maryland.

Great Lakes further states that TransCanada and ANR have advised Great Lakes that their respective transportation arrangements are primarily required to satisfy the market needs of the U.S. Northeast. A substantial portion of the proposed services will be utilized in conjunction with the Iroquois, Champlain, and ANR-Lebanon projects, previously determined by the Commission to be discrete, its "Order Ruling on Discreetness of Additional Northeast Projects and Establishing Procedures", issued January 12, 1989, in Docket No. CP87-451-016, 46 FERC ¶ 61,012 (1989).

Great Lakes states that, in order to provide the proposed transportation services, Great Lakes proposes to construct and/or install (1) thirty-three loop sections, totalling 68.5 miles of 36-inch diameter pipe and 465.1 miles of 42-inch diameter pipe; (2) seven compressor units of 27,000 horsepower class rating (3) twenty-five aerodynamic assemblies and station piping modifications at various Great Lakes' compressor stations; (4) an addition to Great Lakes' existing meter station located at St. Clair, Michigan; and (5) one aftercooler at an existing compressor station, as more fully explained in the application.

The rate for transportation of the volumes for TransCanada will be the effective rate under rate schedule T-4 of the Original Volume No. 2 of Great Lakes' FERC Gas Tariff, applicable for deliveries at the St. Clair Interconnection. The rate for ANR will be determined from the components of the Base Tariff Rates of a comparable, long-term transportation arrangement, applicable to volumes being transported from the Emerson Interconnection to Great Lakes' central zone.

Comment date: September 11, 1989, in accordance with Standard Paragraph F at the end of this notice.

15. United Gas Pipe Line Company

[Docket No. CP89-1960-000]

August 21, 1989.

Take notice that on August 16, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1960-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Seagull Marketing Services (Seagull), a marketer, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation service agreement dated October 1, 1989, as amended on May 19, 1989, May 22, 1989, and June 15, 1989, it proposes to receive up to 500,000 Mcf per day from Seagull at specified points located in the states of Texas, Louisiana, Mississippi, Alabama, and Florida and redeliver equivalent volumes at specified points located in the states of Texas, Louisiana, Mississippi, and Alabama. United estimates peak day and average day volumes of 515,000 million Btu, and annual volumes of 187,975,000 million Btu. It is indicated that on June 29, 1989, United initiated a 120-day transporation service for Seagull under § 284.223(a) as reported in Docket No. ST89-4333-000.

United further states that no facilities need be constructed to implement the service. United states that the service would continue until terminated on 30 days written notice. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Eastern Shore Natural Gas Company

[Docket No. CP89-1024-001]

August 21, 1989

Take notice that on August 17, 1989, Eastern Shore Natural Gas Company (Eastern Shore), P.O. Box 615, Dover, Delaware 19903-0615, filed in Docket No. CP89-1024-001, as supplemented on August 17, 1989, a petition to amend Docket No. CP89-1024-000, which is currently pending before the Commission, so as to select Option A for the proposed 10-inch pipeline segment from just south of the C & D Canal to just south of Clayton, Delaware (Middletown Loop) as its final routing, to revise the length of the proposed Middletown Loop from 19.9 miles to 20.1 miles, revise its firm gas supply "mix" from Columbia Gas Transmission Corporation (Columbia), revise the increased service levels requested by certain of Eastern Shore's customers, provide a new storage service pursuant to a new rate schedule, Rate Schedule FSS, revise Exhibit K and revise the location of its proposed Dover Automatic Valve/Regulator Station within Dover, Delaware, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Eastern Shore states that in Docket No. CP89-1024-000, it proposed two alternate routes for the 10-inch pipeline segment referred to as the Middletown Loop. Eastern Shore states that it has determined that Option A (Railroad Route) presents the least environmental impact and is the least expensive alternative, therefore, Eastern Shore states that it is no longer considering Option B (Road Route) for the Middletown Loop.

Eastern Shore states that in Docket No. CP89-1024-000, the proposed length of the Middletown Loop was 19.9 miles. Due to environmental considerations, Eastern Shore now proposes to revise the length of the Middletown Loop 0.2 mile, thus making the total length of this segment 20.1 miles.

Eastern Shore states that in Docket No. CP89-1024-000, it proposed to increase contract demand and increase or decrease firm storage service to certain existing cutomers by seeking an increase of firm supply from Columbia in the form of contract demand service (CDS) and winter service (WS) in order to satisfy the proposed new customer demands on its system for the 1989-90 and 1990-91 winter seasons. Eastern Shore now states that because of intervening factors, it proposes to make certain revisions in its supply "mix" requested from Columbia. Eastern Shore states that Columbia's Offer of Settlement filed in Docket No. RP86-168-000, *et al.*, now gives Eastern Shore the option of a 30-day storage service under Rate Schedule FSS which would permit Eastern Shore to purchase and inject third-party gas into storage. Eastern Shore explains that because this new service is offered, Eastern Shore can now reduce its request for WS as well as its request for CDS service from Columbia. Eastern Shore states that by offsetting the reduction in WS service with service under Columbia's proposed FSS rate schedule Eastern Shore is still able to satisfy its customers' demands for increased service levels.

Eastern Shore states that on the basis of its FSS arrangement with Columbia, it proposes to implement a new 30-day firm storage service, rate Schedule CFSS, of its own for its customers. Eastern Shore states that the CFSS will consist of a demand charge and a commodity charge. It is stated that the CFSS demand charge is designed on the same basis as Eastern Shore's currently existing GSS, LSS, CWS and LGA demand rates. It is stated that an increment of $2.7752 per dekatherm, designed to recover the total costs allocated to jurisdictional storage services under the transmission function

after Phase I facilities is added to the corresponding Columbia rate. It is stated that an increment of $2.7752 per dekatherm, designed to recover the total costs allocated to jurisdictional storage services under the transmission function after Phase II facilities is added to the corresponding Columbia rate as shown below:

	CFSS rate schedule	Proposed Columbia rate/dt	Eastern Shore indicated rate/dt
Phase I	$3.462	$2.7752	$6.2372
Phase II	3.462	2.5490	6.0110

Eastern Shore states that the commodity rate will consist of a capacity charge, an injection charge and a withdrawal charge. Eastern Shore also states that such charges are designed to be equivalent to Columbia's corresponding rates as shown below:

CFSS rate schedule	Proposed Columbia rate/dt	Eastern Shore indicated rate/dt
Capacity	$0.0529	$0.0529
Injection	0.0046	0.0046
Withdrawal	0.0046	0.0046

In addition, Eastern Shore states that due to the revision of its gas supply "mix" from Columbia and Eastern Shore's proposed FSS storage service, certain customers of Eastern Shore have agreed to modify their original requests for service.

Eastern Shore also states that in order to eliminate the impact of its proposed Dover Automatic Valve/Regulator Station upon the residential community, Eastern Shore has decided to revise the location of the proposed station from a location near the intersection of Wyoming Ave. and New Burton Road in Dover, Delaware, to a location 0.6 mile north at the intersection of Bank Lane and West Street in Dover, Delaware. In addition, Eastern Shore states that it is revising Exhibit K of Docket No CP89-1024-000 concerning the installation of the Dover Station from $62,003 to $63,0003.

Comment date: September 5, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20254 Filed 8-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM89-17-20-000, TM89-16-20-001, TM89-14-20-001]

Algonquin Gas Transmission Co.; Proposed Change in FERC Gas Tariff

August 22, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 16, 1989, tendered for filing, to its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Proposed to be effective, August 1, 1989

Twenty-eighth Revised Sheet No. 205

Substitute Seventeenth Revised Sheet No. 214

Proposed to be effective, September 1, 1989

Thirty-fifth Revised Sheet No. 203

Algonquin states that pursuant to Section 7 of Rate Schedule F-2, it is filing Thirty-fifth Revised Sheet No. 203 to concurrently track rate changes made by its pipeline supplier CNG Transmission Corporation in the service underlying Algonquin's Rate Schedule F-2. Such changes decrease the demand charge by 81.5 cents per MMBtu while increasing the commodity charge by 2.00 cents per MMBtu.

Additionally, Algonquin states that it is filing Twenty-eighth Revised Sheet No. 205 for the sole purpose of bringing forward into a previously filed Sheet No. 205 the effect of the Commission's acceptance of Algonquin's filing in Docket Nos. CP84-654-023 and CP86-480-004 dated August 7, 1989. Such filing and acceptance reduces Algonquin's demand handling charge for Rate Schedule F-4 from $22.756 to $16.725, a reduction of $6.031 MMBtu.

Algonquin further states that it is filing Substitute Seventeenth Revised Sheet No. 214 (Rate Schedule SS-III) for the sole purpose of bringing forward the revised injection rate of 5.05 cents per MMBtu (a 0.02 cent reduction) which it filed for in Docket No. TM89-15-20-000 on July 31, 1989 into the previously filed and accepted Seventeenth Revised Sheet No. 214 (Docket No. TM89-14-20-000, July 21, 1989).

Algonquin notes that copies of this filing were served upon affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 29, 1989. Protest will be

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considered by the Commission in

the gas from a producer, Mitchell Energy

20503, telephone (202) 395-3785. Copies

Issue heading and Applicant(s)

Inc., 2100 M Street, NW., Washington,

NW., Room 10220. Interested parties

considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20258 Filed 8-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2179-003]

Merced Irrigation District; Extension of Time

August 22, 1989.

On August 18, 1989, Merced Irrigation District (MID) filed a motion for an extension of time to file a status report as required by Ordering Paragraph (B) of the Commission's Order on Rehearing issued May 26, 1989, in the above-docketed proceeding. In its motion, MID states that both MID and the U.S. Fish and Wildlife Service agree that additional time is needed to pursue negotiations and to satisfy the reporting requirements of the Commission's order.

Upon consideration, notice is hereby given that an extension of time for filing a status report is granted to and including October 23, 1989, in the above-docketed proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20256 Filed 8-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1514-000]

Mitco Pipeline Co.; Request for Declaratory Order and Motion To Vacate Certificates

August 21, 1989.

On May 30, 1989, Mitco Pipeline Company (Mitco) filed a motion to vacate certificates of public convenience and necessity previously issued to Mitco by the Federal Energy Regulatory Commission in 1981 and 1982 authorizing the construction and operation of an offshore pipeline and related facilities, on the ground that such facilities are exempt gathering facilities under section 1(b) of the Natural Gas Act. The motion will be processed as a petition for a declaratory order.

Mitco states that it uses the pipeline involved, which is 6 inches in diameter, only to transport casinghead gas for Transcontinental Gas Pipe Line Corporation (Transco). Mitco receives the gas from a producer, Mitchell Energy Corporation (Mitchell), on OCS Block 189, Galveston Area (Federal Domain), transports it 8.5 miles to Texas State Tract 214, and delivers it here to an intrastate pipeline owned by Seagull Pipeline Corporation (Seagull). Subsequent to Mitco's handling of the gas at this point, it is transported onshore by Seagull and delivered to Houston Pipe Line Company for ultimate delivery to Transco. Mitco states that Mitchell provides minor compression at Block 189 and all separation and dehydration functions at locations on Block 189 and also onshore, but that Mitco provides no compression or processing services.

Any person desiring to be heard or to protest Mitco's request should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, not later than 30 days following publication of this notice in the **Federal Register**. All protests will be considered by the Commission, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of Mitco's request are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20255 Filed 8-28-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

August 23, 1989

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0028.

Title: Application for Authorization in the Auxiliary Broadcast Services.

Form No.: FCC 313.

Action: Revision.

Respondents: State or local government, Business (including small business).

Frequency of Response: On occasion.

Estimated Annual Burden: 2,500 Responses, 5 hours each (average).

Needs and Uses: Filing is required to apply for remote pickup, aural microwave, television microwave, and other auxiliary broadcast stations. The data is used to determine if proposal meets statutory requirements, and to ensure that no interference will be caused to other authorized stations.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-20343 Filed 8-28-89; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for 1 new FM station and 2 new AM stations:

I.

Applicant	File No.	MM Docket No.
A. Northland Broadcasters, A Limited Partnership; Anchorage, Alaska.	BPH-851231MA	89-359
B. Knik Broadcasting Corporation; Anchorage, Alaska.	BPH-860102MG	
C. A.A. Radio Partnership, A Limited Partnership; Anchorage, Alaska.	BPH-860102MM	
D. Aleut Broadcasting, Inc.; Anchorage, Alaska.	BPH-851231MB (Dismissed Herein)	
E. Seward Radio, Ltd.; Anchorage, Alaska.	BPH-860102MF (Dismissed Herein)	
F. Abacus Broadcasting; Anchorage, Alaska.	BPH-860102MH (Dismissed Herein)	
G. Bobby Duffy; Anchorage, Alaska.	BPH-860102MI (Dismissed Herein)	
H. George P. Charles; Anchorage, Alaska.	BPH-860210MN (Previously Dismissed)	

Issue heading and Applicant(s)

1. Environmental, C
2. Air Hazard, B,C
3. Comparative, A,B,C
4. Ultimate, A,B,C

II.

Applicant	File No.	MM Docket No.
A. Childress Radio Company; Yadkinville, NC.	BP-870331BK	89-357
B. Triad Network, Inc.; Greensboro, NC.	BP-870928AA	
C. Greensboro Communications (Dismissed herein); Greensboro, NC.	BP- 870429AE	

Issue heading and applicants

1. 307(b), A, B
2. Contingent Comparative, A, B
3. Ultimate, A, B

III.

Applicant	File No.	MM Docket No.
A. Michael B. Glinter; Winston-Salem, NC.	BP-860331A0	89-356
B. Smith Mountain Lake Radio; Moneta, VA.	BP-860126AB	

Issue heading and applicants

1. Environmental Impact, A
2. 307(b), All Applicants
3. Contingent Comparative, All Applicants
4. Ultimate, All Applicants

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 Fed. Reg. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 89-20295 Filed 8-28-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: October 15-17, 1989.

Place: National Emergency Training Center, G Bldg., 2nd Floor Conference Room, Emmitsburg, MD 21727.

Time: October 15—2:00 p.m. to 5:00 p.m., October 16—8:30 a.m. to 5:00 p.m., October 17—8:30 a.m. to Agenda Completion.

Proposed Agenda: Old Business, New Business; Tour/Inspection of Facilities

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301-447-1123) on or before October 2, 1989.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: August 10, 1989.

Dave McLoughlin,

Director, Office of Training.

[FR Doc. 89-20306 Filed 8-28-89; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200279

Title: Port of Galveston Day Cruise Operating Agreement.

Parties: Board of Trustees of the Galveston Wharves (Port). Carter-Green-Redd, Inc., d/b/a, Pride Cruise Lines (Pride).

Synopsis: The Agreement provides that the Port will grant Pride the exclusive right to operate a Day Cruise Ship from the Port of Galveston for a term of five years. The Port will provide a berth, parking lot, passenger service terminal and related services at Pier 21. Pride will pay dockage at fifty percent of rates published in the Galveston Wharves Tariff Circular 4-D. Pride also guarantees the Port annually, a minimum fee of $500,000 or six percent of the minimum $59.00 ticket price, whichever is greater.

Agreement No.: 224-010807-004

Title: City of Long Beach Terminal Agreement.

Parties: City of Long Beach Maersk, Inc.

Synopsis: The Agreement assigns the use of a crane erected at Pier J. Berths 243 and 244, to Maersk, Inc., for a period ending June 30, 1998.

By order of the Federal Maritime Commission.

Dated: August 23, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-20238 Filed 8-28-89; 8:45 am]

BILLING Code 6730-01-M

FEDERAL RESERVE SYSTEM

BancFirst Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are

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considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 18, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *BancFirst Corp.*, Zanesville, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Zanesville, Zanesville, Ohio.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Pioneer Bancorp, Inc.*, Chicago, Illinois; to merge with River Associates Bancorp, Inc., River Gove, Illinois, and thereby indirectly acquire River Grove Bank and Trust Company River Grove, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Midland States Bancorp, Inc.*, Effingham, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Effingham State Bank, Effingham, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Fortune 44 Company*, Boulder, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Newberry Bancorp, Inc., Newberry, Michigan.

2. *Lincoln Holding Company*, Hankinson, North Dakota; to become a bank holding company by acquiring 95.07 percent of the voting shares of Lincoln State Bank, Hankinson, North Dakota.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *OMNIBANCORP*, Denver, Colorado; to acquire 100 percent of the voting shares of OMNIBANK Denver, Denver, Colorado.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Palm Desert Investments*, Indian Wells, California; to become a bank holding company by acquiring at least 25 percent of the voting shares of Palm Desert National Bank, Palm Desert, California.

Board of Governors of the Federal Reserve System, August 23, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-20277 Filed 8-28-89; 8:45 am]

BILLING CODE 6210-01-M

Gary D. Kilpatrick; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 12, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Gary D. Kilpatrick*, Boaz, Alabama, and Horace E. Kilpatrick, Opelika, Alabama; to each increase their total ownership to 26.80 percent of the voting shares of First Boaz BanCorporation, Boaz, Alabama, and thereby indirectly acquire First Bank of Boaz, Boaz, Alabama, as the result of a stock redemption.

2. *Henry J. Langsenkamp, III*, Ft. Lauderdale, Florida; to acquire an additional 7.08 percent of the voting shares of First Union Bancorp, Blairsville, Georgia, for a total of 13 percent, and thereby indirectly acquire First National Bank of Union County, Blairsville, Georgia.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ed Berrong*, Weatherford, Oklahoma; to acquire an additional 0.68 percent of the voting shares of First National Bancshares of Weatherford, Inc., Weatherford, Oklahoma, for a total of 16.34 percent, and thereby indirectly acquire First National Bank and Trust Company, Weatherford, Oklahoma.

2. *Karl Blade*, Miami, Oklahoma; to acquire 19.6 percent of the voting shares of Guaranty Bancorporation, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Guaranty National Bank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, August 23, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-20278 Filed 8-28-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 080789 AND 81689

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN NO.	Date terminated
Tsumura & Co., Minnetonka Corporation, FMG Holdings, Inc.	89-2229	08/07/89
Craig Corporation, Reading Company, Reading Company	89-2258	08/07/89
Peridot Holdings, Inc., The Dow Chemical Company, Essex Industrial Chemicals, Inc.	89-2242	08/07/89
S.A. Brewing Holdings Ltd., Nortek, Inc., Bradford-White Corporation	89-2371	08/07/89
Bardon Group PLC, Simeone Corporation, Simeone Corporation	89-2326	08/08/89
MEDIQ Incorporated, Franklin Investment Co., Inc., Franklin Investment Co., Inc.	89-2356	08/08/89
Kyocera Corporation, Blackstone Capital Partners L.P., Elco Corporation, Elco International K.K. et al.	89-2360	08/08/89
Kyocera Corporation, Wasserstein, Perella Partners, L. P., Elco Corporation, Elco International K.K. et al.	89-2361	08/08/89
Page Mill Holdings, L.P., Nelson Peltz, Rowe International, Inc.	89-2269	08/09/89
Cencom Cable Associates, Inc., Robert S. Howard, Falcon Communications, Falcon TV of Alhambra, et al.	89-2348	08/09/89
Cencom Cable Associates, Inc., Donald W. Reynolds, Falcon Communications, Falcon TV of Alhambra, et al.	89-2349	08/09/89
George N. Gillett, Jr., Doskocil Companies Incorporated, Wilson Foods Corporation, Wilson Intangible	89-2226	08/10/89
Henry L. Hillman, Kenetech Corporation, Kenetech Corporation	89-2363	08/10/89
Henry L. Hillman, Kenetech Corporation, Kenetech Corporation	89-2364	08/10/89
Berkshire Hathaway Inc., The Gillette Company, The Gillette Company	89-2379	08/10/89
The Henley Group, Inc., The Wheelabrator Group, Inc., Resco Holdings Inc.	89-2225	08/11/89
Audiofina, S.A., Newco-Joint Venture, Newco-Joint Venture	89-2268	08/11/89
Prime Motor Inns, Inc., New World Development Company Limited, RI Acquiring Corp.	89-2312	08/11/89
Procordia AB, Richard Gibian, Sr., American Candy Manufacturing Company, Inc.	89-2334	08/11/89
Marion Laboratories, Inc., The Dow Chemical Company, Merrill Dow Pharmaceuticals Inc.	89-2337	08/11/89
E.I. du Pont de Nemours and Company, Enerfin Partners I Limited Partnership, Enerfin Partners I Limited Partnership	89-2340	08/11/89
The Dow Chemical Company, Marion Laboratories, Inc., Marion Laboratories, Inc.	89-2341	08/11/89
The Dow Chemical Company, Marion Laboratories, Inc., Marion Laboratories, Inc.	89-2342	08/11/89
Anadarko Petroleum Corporation, Parker & Parsley Development Partners, L.P., Parker & Parsley Petroleum Company	89-2354	08/11/89
Time Warner Inc., Everett I. Mundy, Tele-Media Company of Southern Ohio	89-2372	08/11/89
Time Warner Inc., Robert E. Tudek, Tele-Media Company of Southern Ohio	89-2373	08/11/89
Time Warner Inc., Telemedia Company of Columbia, L.P., Telemedia Company of Columbia, L.P.	89-2377	08/11/89
The Stanley Works, Edward D. Priest, The Parker Group, Inc.	89-2378	08/11/89
PepsiCo, Inc., Mr. James J. Marks, Sr., Martime's Corporation and Colonel Sanders Kentucky	89-2381	08/11/89
Payment Services Company—U.S., McDonnell Douglas Corporation, TeleCheck Services, Inc., and TeleCheck Washington, Inc.	89-2383	08/11/89
Equity Holdings Limited, Robert S. Jepson, Jr., The Jepson Corporation	89-2384	08/11/89
MAPCO Inc., National Convenience Stores Incorporated, National Convenience Stores Incorporated	89-2387	08/11/89
Infotechnology, Inc., Hadron, Inc., Hadron, Inc.	89-2391	08/11/89
ASK Computer Systems, Inc., Chatham Trust, Data 3 Systems, Inc.	89-2406	08/11/89
Harlin Holdings Pty. Limited, Elders IXL Limited, Elders IXL Limited	89-2413	08/11/89
JWP Inc., Computer Applications Corporation, Computer Applications Corporation	89-2231	08/12/89
Tele-Communications, Inc., QVC Network, Inc., QVC Network, Inc.	89-2375	08/14/89
Salzgitter AG, Mr. Norman Blachford, H.L. Blachford, Inc.	89-2345	08/15/89
Saxon Oil Company, Angeles Corporation, Quinoco Oil & Gas, Inc. and Quinoco Resources, Inc.	89-2366	08/15/89
Albertson's, Inc., American Stores Company, Alpha Beta, Inc.	89-2330	08/17/89
Martin Marietta Corporation, First Chicago Corporation, Georgia Marble Aggregates Corporation	89-2352	08/17/89
Alfred Dee Hughes, Shawmut National Corporation, Shawmut First Mortgage Corp.	89-2464	08/17/89
McCown De Leeuw & Co., APL Corporation, Riviera Cabinets Inc. & Tennessee Cabinet Company, Inc.,	89-2306	08/16/89
Alco Standard Corporation, Inter-City Paper Company, Inter-City Paper Company	89-2327	08/16/89
Laws International Holdings Limited, Marcia and Lawrence Israel, Judy's, Inc.	89-2355	08/16/89
Stone Container Corporation, Stone Forest Industries, Inc., Stone Forest Industries, Inc.	89-2358	08/16/89
Kimco Development Corporation, Douglas A. Home and Brenda P. Home, Home Properties, Inc.	89-2390	08/16/89
Charles Nirenberg and Janet Nirenberg, Dairy Mart Convenience Stores, Inc., Dairy Mart Convenience Stores, Inc.	89-2405	08/16/89
Arthur M. Goldberg, Di Giorgio Corporation, Di Giorgio Corporation	89-2407	08/16/89
Meville Corporation, Channel Home Centers, Inc., Channel Home Centers, Inc.	89-2412	08/16/89
The Oklahoma Publishing Company, Cencom Cable Associates, Inc., Cencom Cable Television, Inc.	89-2415	08/16/89
John Hancock Mutual Life Insurance Company, Koll CM Associates, a California Limited Partnership, Koll CM Associates, a California Limited Partnership	89-2420	08/16/89
The Nomura Securities Co., Ltd., Saul P. Steinberg, Reliance Figueroa Associates	89-2423	08/16/89
Korean Air Lines Co., Lt., The Nomura Securities Co., Ltd., ELAH Property Corporation	89-2427	08/16/89
Vermont American Corporation; Clairson International Corporation, Clairson International Corporation	89-2428	08/16/89
Arvin Industries, Inc., TI Group plc, A.P. Amortiguadores SA	89-2441	08/16/89
UGI Corporation, R. S. Martin, Sr., West Florida LP Gas Company and Best L-P Gas, Inc.	89-2444	08/16/89
W.E.K. Beheer B.V., Marlis, S.A., three subsidiaries of Hachette Publishing, Inc.	89-2452	08/16/89
International Business Machines Corporation, Policy Management Systems Corporation, Policy Management Systems Corporation	89-2453	08/16/89
Chips and Technologies, Inc., Scientific Micro Systems, Inc., Scientific Micro Systems, Inc.	89-2463	08/16/89
H & R Block, Inc., MicroBilt Corporation, MicroBilt Corporation	89-2465	08/16/89
P. E. Sadler, H & R Block, Inc., H & R Block, Inc.	89-2467	08/16/89
James Crean plc., Theodore F. Twardzik, Ateeco, Inc.	89-2471	08/16/89
Nichirei Corporation, The Berelson Company, The Berelson Company	89-2473	08/16/89
Gerald W. Schwartz, Ralston Purina Company, Bremner, Inc.	89-2477	08/16/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 89-20296 Filed 8-28-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Small Business Participation in Targeted Industries

AGENCY: Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice invites public comments on the Department of Health and Human Services proposed initiatives that will expand small business participation in 10 industry categories pursuant to Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100–656.

DATES: Comments are due in writing on or before Sept. 28, 1989.

ADDRESSES: Interested parties should submit written comments to: Department of Health and Human Services, Office of Small and Disadvantaged Business Utilization, 200 Independence Avenue, SW., Humphrey Bldg., Room 517D, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clinkscales, Director, OSDBU, telephone (202) 245–7300.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (DHHS) has been designated as one of the nine procuring agencies to implement Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100–656. The program seeks to demonstrate whether the competitive capabilities of small business firms in certain industry groups will enable them to successfully compete on an unrestricted basis for Federal contracts. Additionally, the Program attempts to demonstrate whether the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Small Business Administration (SBA), will expand small business participation in selected industries that have historically been under-represented by small businesses despite an adquate number of small business sources.

The following are the selected industries which DHHS has targeted for participation in the program.

TARGETED INDUSTRY CATEGORIES FOR DHHS

Product service code	SIC Codes	Description
G004	8742	Counseling/training/social rehabilitation services.
J074	7629	Maintenance, repair and rebuilding of equipment (office machines, text processing system and visible record equipment).
K099	7699	Modification of equipment (miscellaneous).

TARGETED INDUSTRY CATEGORIES FOR DHHS—Continued

Product service code	SIC Codes	Description
Q201	8099	General health care services.
	8742	
R406	8742	Policy review/development services.
R497	7299	Personal services.
6505	2833 2834 2835 2836	Drugs and biologics.
7045	3572 3577 3579	ADP Supplies.
7110	5021	Office furniture.
7510	5112	Office supplies.

Initiatives for Departmental Enhancement of Small Business Participation in the Ten (10) Targeted Industry Categories

The following plan has been developed for expanding small business participation in the ten (10) targeted industry categories. This plan prescribes the efforts which the Department of Health and Human Services (DHHS) must undertake in the acquisition process. This will be the basis for a valid demonstration to determine if special management initiatives will enhance the participation of small businesses in selected industries.

—Broader distribution and utilization of DHHS' advanced procurement plans
—Issuance of sources sought announcements for small businesses
—Expand the utilization of 8(a) contracting mechanism
—Expand the utilization of small business set-asides
—Breakouts on selected acquisitions for small business participation
—Promote teaming and joint ventures by and among small businesses
—Expand outreach efforts to locate small businesses
—Optional inclusion of small purchase data
—Conduct training sessions for departmental contracting officials and small and disadvantaged utilization specialist
—Monitoring of goal attainment

Dated: August 24, 1989.

Richard Clinkscales,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 89–20319 Filed 8–28–89; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 86F–0352]

Betz Laboratories; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the petition filed by Betz Laboratories to provide for the safe use of a copolymer of methacrylic acid and acrylic acid as an active polymer in boiler water for use in contact with food. The previous filing notice is amended to indicate that Betz Laboratories no longer seeks to amend the regulations to use this copolymer as a boiler water additive in contact with food, but rather as a component of paper and paperboard in contact with aqueous and fatty foods.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 17, 1986 (51 FR 37074), FDA published a notice that a petition (FAP 6A3957) had been filed by Betz Laboratories, Somerton Rd., Trevose, PA 19047, proposing that § 173.310 *Boiler water additives* (21 CFR 173.310) be amended to provide for the safe use of a copolymer of methacrylic acid and acrylic acid as an active polymer in boiler water. Subsequently, Betz Laboratories amended the petition to indicate that they no longer were seeking to amend § 173.310 to include the use of this copolymer as a boiler water additive, but rather are proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of this copolymer of methacrylic acid and acrylic acid.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 18, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–20297 Filed 8–28–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89F–0331]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2,3,4,5-tetrachloro-6-cyanobenzoic acid, methyl ester reaction products with *p*-phenylenediamine and sodium methoxide as a colorant in all food-contact polymers.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4158) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposes to amend § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of 2,3,4,5-tetrachloro-6-cyanobenzoic acid, methyl ester reaction products with *p*-phenylenediamine and sodium methoxide as a colorant in all food-contact polymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: August 18, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–20298 Filed 8–28–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89C–0327]

Storz Ophthalmics, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Storz Ophthalmics, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of D&C Green No. 6 in polymethylmethacrylate used for the support haptics of intraocular lenses.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 9C0219) has been filed by Storz Ophthalmics, Inc., 1365 Hamlet Ave., Clearwater, FL 34616, proposing that § 74.3206 *D&C Green No. 6* (21 CFR 74.3206) of the color additive regulations be amended to provide for the safe use of D&C Green No. 6 in polymethylmethacrylate used for the support haptics of intraocular lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 18, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–20299 Filed 8–28–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89P–0329]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to H. P. Hood, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than November 27, 1989.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0119.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to H. P. Hood, Inc., 500 Rutherford Ave., Boston, MA 02129.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 0.75 percent, and (2) sufficient vitamin A palmitate is added to ensure that a 4-fluid-ounce serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calorie" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog."

The product complies with reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is a 50 percent or more reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 1,056,000 quarts of the test product. The product will be distributed in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

The test product is to be manufactured at H. P. Hood, Inc., 500 Rutherford Ave., Boston, MA 02129.

Each of the ingredients used in the

the parents or guardians of preschool or

Pedro Riparian National Conservation

DATE: Meeting will be held on Wednesday, September 27, 1989.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes

Dated: August 21, 1989.

William E. Ireland,

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than November 27, 1989.

Dated: August 23, 1989.

Fred S. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-20300 Filed 8-28-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-89-1943; FR-2467]

Public Housing Child Care Demonstration Program; Fund Availability, Fiscal Year 1989

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability: Extension of time to submit applications.

SUMMARY: On July 14, 1989, HUD published a Notice of Fund Availability (NOFA) soliciting applications for funding under the Public Housing Child Care Demonstration Program. Today's notice extends the application deadline to September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Annette Hancock, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5256, Washington, DC 20410. Telephone (202) 755-5585. (This is not a toll-free number). Copies of the NOFA, which contains instructions for submitting applications, are available upon written or telephone request. To ensure a prompt response, it is suggested that requests for the NOFA be made by telephone.

DATES: Applications for funding must be submitted by September 29, 1989.

SUPPLEMENTARY INFORMATION: On July 14, 1989, (54 FR 29840) HUD published a NOFA announcing the availability of $5 million for fiscal year 1989 for the Public Housing Child Care Demonstration Program under amended Section 222 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983). The demonstration is intended to provide grants to non-profit organizations to: (1) Assist in establishing child care facilities so that the parents or guardians of preschool or school-aged children may seek, retain or train for employment; and (2) determine the extent to which the availability of such child care services facilitates the employability of the parents or guardians of children residing in public housing. This notice also implements Section 1002 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). Section 1002 provides that the child care facilities under this demonstration program may be established not only in lower income housing projects (as provided by Section 117 of the Housing and Community Development Act of 1987), but also in facilities located near such projects.

The notice stated that applications were due by August 26, 1989. Today's notice extends the application deadline to September 29, 1989. This extension will permit eligible applicants adequate time to prepare quality applications in response to the notice.

Authority: Sec. 222 of the Housing and Urban-Rural Recovery Act of 1983, (12 U.S.C. 1701z-6 note); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 24, 1989.

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 89-20317 Filed 8-28-89; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-09-4351-08-SPCA]

Availability of Record of Decision for the San Pedro River Riparian Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management's Safford District, Arizona, announces the availability of the San Pedro River Riparian Management Plan as approved in the Record of Decision (ROD) signed on August 15, 1989. This ROD documents the approval of the plan described in the Final Environmental Impact Statement (EIS) for the San Pedro River Riparian Management Plan of June 1989.

The approved plan provides a framework to guide management decisions during the next 15 years on about 47,000 acres of public land in the upper San Pedro River Valley in Cochise County. These lands are part of the San Pedro Riparian National Conservation Area (NCA). The NCA contains additional lands that are being planned for in the Safford District Resource Management Plan, now in preparation.

The approved plan documents the kinds and levels of use permitted to maintain or improve the riparian ecosystem presently found in the area. The plan prohibits the use of vehicles off designated roads and provides for the development of a limited number of recreational facilities, as well as research and administrative facilities. A portion of the NCA is closed to the discharge of firearms.

ADDRESSES: Copies of the ROD are available from: Area Manager, San Simon Resource Area, Bureau of Land Management, 425 East 4th Street, Safford, Arizona 85546, telephone (602) 428-4040 or the San Pedro Project Office, Bureau of Land Management, Box 9853, RR 1, Huachuca City, Arizona 85616, telephone (602) 457-2265. Public reading copies will be available at these locations.

FOR FURTHER INFORMATION CONTACT: Vernon L. Saline, San Simon Area Manager, 425 East 4th Street, Safford, Arizona 85546, telephone (602) 428-4040.

Dated: August 15, 1989.

D. Dean Bibles,

Arizona State Director.

[FR Doc. 89-20281 Filed 8-28-89; 8:45 am]

BILLING CODE 4310-32-M

[NM-030-09-4320-14]

Las Cruces District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: The meeting will be held at the conference room of the A. B. Cox Visitor Center in the Organ Mountains east of Las Cruces, New Mexico. The purpose of the meeting is to review 8100 projects for FY 89 and FY 90, to review Range Improvement Program procedures, and review a range policy update.

The agenda is:

1. 10:00 a.m.: Opening remarks, approval of minutes.
2. 10:15 a.m.: 8100 Program Update, FY 89 Projects, FY 90 Projects.
3. 11:00 a.m.: Range Improvement Program Procedures.
4. 11:45 a.m.: Lunch.
5. 1:00 p.m.: Public Comment Period.
6. 1:15 p.m.: Range Policy Update.
7. 2:00 p.m.: Adjourn.

DATE: Meeting will be held on Wednesday, September 27, 1989.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, Las Cruces District, Bureau of Land Management, 1800 Marquess Street, Las Cruces, NM 88005 or at (505) 525-8228.

Dated: August 23, 1989

Tim Salt,

Mimbres RA, Area Manager.

[FR Doc. 89-20265 Filed 8-28-89; 8:45 am]

BILLING CODE 4310-FB-M

[NM-060-4351-90; NM NM 0283362]

Order Providing for Opening of Public Land; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 3 of the Recreation and Public Purposes Act of June 14, 1926 (42 U.S.C. 869), as amended by the Acts of June 4, 1954 (68 Stat. 173), and September 21, 1959 (73 Stat. 571), the following described patented land has reverted back to the United States, such reversion being evidenced by deed recorded on June 23, 1989, Eddy County, New Mexico:

New Mexico Principal Meridian, New Mexico

T. 17 S., R. 25 E.,
sec. 3, lots 3, 4, and S½NW¼.
The land described contains 160.54 acres.

Effective 9:00 a.m. on the date of publication of this notice, the above described land shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All applications received prior to 9:00 a.m. on the date of publication of this notice, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquiries concerning the land should be addressed to State Director, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87504.

Frank Splendoria,

Acting State Director.

[FR Doc. 89-20280 Filed 8-28-89; 8:45 am]

BILLING CODE 4310-FB-M

[ID-943-09-4214-11; I-010796]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that a 145.00 acre withdrawal for the Dixie Ranger Station Administrative Site and Pasture continue for an additional 50 years. The land is being used as an administrative site. This land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

EFFECTIVE DATE: Comments shall be received on or before November 27, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 3093 for the Dixie Ranger Station Administrative Site and Pasture be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following-described land.

Boise Meridian

T. 25 N., R. 8 E. (unsurveyed)
sec. 7, NW¼SE¼NE¼, S½SE¼NE¼, E½SE¼, E½E½NE¼SW¼SE¼ and E½SE¼SW¼SE¼;
sec. 8, NW¼NW¼SW¼;
sec. 18, E½NE¼NW¼NE¼, E½W½NE¼NW¼NE¼ and SE¼NW¼NE¼.
The area described contains 145.00 acres in Idaho County.

The withdrawal is essential for protection of substantial capital improvements on the administrative site. The withdrawal closed the land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: August 21, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89-20282 Filed 8-28-89; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

Development Operations Coordination Document; Corpus Christi Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 9534, Block 15, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Fresh Water City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 16, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executive of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Dated: August 18, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-20301 Filed 8-28-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 19, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by September 13, 1989.

Beth L. Savage,

Acting Chief of Registration, National Register.

ALASKA

Ketchikan Gateway Borough-Census Area

Gilmore Building, 326 Front St., Ketchikan, 8901415

ARKANSAS

Drew County

Veasey—DeArmond House, AR 81, 15 mi. N of Monticello, Lacey vicinity, 89001424

Franklin County

Shelton—Rich Farmstead, Rt. 3 W of AR 23 S of Ozark, Web City vicinity, 89001423

Hempstead County

Ward—Jackson House, 122 N. Louisiana, Hope, 89001421

INDIANA

Marion County

General Motors Buick Showroom Building, 1302 N. Meridian St., Indianapolis, 89001410

Monroe County

Bloomington City Hall, 122 S. Walnut St., Bloomington, 89001413

Rush County

Arnold, Dr. John, Farm, W of Glenwood, Rushville vicinity, 89001409

Harcourt, James F., House, Co. Rd. 500 W. at 750 S., Moscow vicinity, 89001412

Manche, Maurice W., Farmstead, Co. Rd. 900 W, Carthage vicinity, 89001411

Vanderburgh County

Lincolnshire Historic District, Roughly bounded by Lincoln, Bennighof, Bellemeade, Lodge, Washington, Harlan, E. Chandler, and College, Evansville, 89001426

Vigo County

Ohio Boulevard—Demming Park Historic District, Roughly Ohio Blvd. from 19th to Keane, Terre Haute, 89001425

KENTUCKY

Montgomery County

Northwest Residential District, Roughly AR 1991, N. Maysville St., W. Main St., Samuels Ave., High St., Antwerp Ave., Holt, Sycamore, and Sterling, Mt. Sterling, 89001422

LOUISIANA

Natchitoches Parish

Oakland Plantation (Boundary Increase), E of Natchez on LA 494, Natchez vicinity, 89001444

MICHIGAN

Midland County

Ball, Howard, House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 1411 W. St. Andrews, Midland, 89001432

Cavanagh, Joseph A., House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 415 W. Main, Midland, 89001434

Conner, Donald L., House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 2705 Manor, Midland, 89001439

Diehl, Oscar C., House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 919 E. Park, Midland, 89001436

Greene, George, House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 115 W. Sugnet, Midland, 89001441

Hanson, Alden, House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 1605 W. St. Andrews, Midland, 89001443

Heath, Sheldon, House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 1505 W. St. Andrews, Midland, 89001438

Lewis, F. W., House (Residential Architecture of Alden B. Dow in Midland 1933—1936 MPS), 2913 Manor, Midland, 89001435

MacCallum, Charles, House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 1227 W. Sugnet, Midland, 89001442

Pardee, James T., House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 812 W. Main St., Midland, 89001431

Stein, Earl, House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 209 Revere, Midland, 89001437

Whitman, John S., House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 2407 Manor, Midland, 89001440

MISSOURI

Randolph County

Burkholder—O'Keefe House, 605 S. Fifth St., Moberly, 89001414

NORTH CAROLINA

Bladen County

Trinity Methodist Church, Old Trinity Methodist Church, Elizabethtown, 89001419

Durham County

Unstead, Adolphus W., House, MC 1607, 0.5 mi. N of NC 1611, Bahama vicinity, 89001418

Rutherford County

Forest City Baptist Church, 301 W. Main St., Forest City, 89001417

UTAH

Sanpete County

Casino Theatre, 78 S. Main St., Gunnison, 89001416

WISCONSIN

Marathon County

Wausau Club, 309 McClellan St., Wausau, 89001420

[FR Doc. 89-20279 Filed 8-28-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-30146]

The May Department Stores Co. and Volume Shoe Corp.; Petition for Declaratory Order; Transportation Within Single State of Merchandise Imported by Water

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of a petition for declaratory order.

SUMMARY: Upon petition by The May Department Stores Company and its wholly owned subsidiary, Volume Shoe Corporation (May), the Commission has instituted a declaratory order proceeding. May seeks a finding that

inland transportation of merchandise imported from the Far East to California ports aboard regulated ocean carriers is in foreign commerce subject to our jurisdiction. The merchandise is briefly held in California warehouses and then tendered to Commission-regulated carriers for transportation to California destinations.

DATES: Persons interested in participating in this proceeding should so advise the Commission in writing by September 13, 1989. A list of interested parties will then be compiled and served. Petitioners will have 10 days from the service date of that list to serve each party on the list and the Commission with a copy of each of their comments. Other parties will then have 35 days from the service date of the service list to submit their comments to the Commission and to petitioners' representatives. Petitioners will have 50 days from the service date of the service list to reply.

ADDRESSES: Send and original and 10 copies of comments referring to No. MC-C-30146 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to petitioners' representatives: Mark J. Andrews, Mark D. Back, Suite 700, McPerson Building, 901 Fifteenth Street, NW., Washington, DC 20051-2301.

FOR FURTHER INFORMATION CONTACT: Andrew J. Nosacek, (202) 275-1712. Richard Felder, (202) 275-7691. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: August 22, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Chairman Gradison concurred.

Noreta R. McGee,

Secretary.

[FR Doc. 89-20326 Filed 8-28-89; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Applications to Consolidate, Merge, or Acquire Control

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as the finance application or any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Application(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notification of effectiveness of this decision-notice or the application of a non-complying applicant shall stand denied.

Findings

The finding for these applications are set forth at 49 CFR 1182.6.

MC-F-19478, filed July 28, 1989. GREYHOUND LINES, INC. (GLI) (Suite 2400, 901 Main Street, Dallas, TX 75202)—PURCHASE (PORTION)—UNITED LIMO, INC. (United Limo) (10844 McKinley Highway, P.O. Box 287, Osceola, IN 46561). Applicants' representatives: Fritz R. Kahn, William C. Evans, and Mark D. Back, Suite 700, 901 Fifteenth Street, NW, Washington, DC 20005-2301, attorneys for GLI. Robert B. Hebert, Suite 2300, One Indianapolis Square, Indianapolis, IN 46204, attorney for United Limo.

GLI and United Limo, motor common carriers of passengers, seek approval for a route sale in which GLI will acquire United Limo's operating authority in MC-150365 (Sub-No. 6), which authorizes regular-route authority between Milwaukee, WI, and O'Hare International Airport, at or near Chicago, IL. United Limo operates as a motor carrier of passengers in interstate commerce pursuant to MC-150365 and related subnumbers. United Limo holds interstate regular-route passenger authority in the States of IL, IN, MI, and WI, and irregular-route charter and special operations authority between points in the United States. In addition, United Limo holds intrastate authority in IN and MI.

GLI is a wholly owned subsidiary of noncarrier GLI Bus Operations Holding Company which, in turn, is a wholly owned subsidiary of noncarrier GLI Holding Company which, in turn, is controlled through stock ownership by Fred G. Currey, Craig R. Lentzsch, and Anthony P. Lannie, noncarrier individuals, of Dallas, TX. Certain affiliations of GLI with other carriers have been approved in other proceedings and would not be affected by this transaction. Common control of GLI with BusLease Contract Services, Inc. (MC-193190), Texas, New Mexico & Oklahoma Coaches, Inc. (MC-61120), and Vermont Transit Co., Inc. (MC-45626) was approved in MC-F-18260. Acquisition by GLI of the former 50 percent stock interest of Trailways Lines, Inc., in Continental Panhandle Lines, Inc. (MC-8742) was approved in MC-F-18505. Collectively, GLI and its affiliates currently hold and exercise, and will continue to hold and exercise, authority encompassing regular-route interstate and intrastate operations throughout the 48 contiguous States and DC, interstate charter and special operations in DC and every State except HI, and package express operations nationwide.

By decision served August 21, 1989, the Commission has granted applicant's petition for waiver of the otherwise applicable information requirements of Appendices A-6, A-7, B-4, C-2, C-5, and C-6 of the OP-F-44 application form.

Applicants have been granted temporary authority to lease the pertinent operating rights pending final disposition of the finance application.

Decided: August 22, 1989.

By the Commission, the Motor Carrier Board.

Noreta R. McGee,

Secretary.

[FR Doc. 89-20342 Filed 8-28-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Dubois, PA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 14, 1989, a proposed Consent Decree in *United States* v. *City of Dubois, Pennsylvania,* (W.D. Pa) Civil Action No. 89-182-J was lodged with the United States District Court for the Western District of Pennsylvania. The Consent Decree concerns violations of sections 309 (b) and (d) and section 402 of the Clean Water Act, 33 U.S.C. 1319 (b) and (d) and 1342. Defendant City of Dubois (the "City") has violated its National Pollutant Discharge Elimination System ("NPDES") permit by consistently exceeding its permit limits for biochemical oxygen demand, total suspended solids, and sporadically violating its effluent limitation for ammonia-nitrogen at its Publicly-Owned Sewage Treatment Plant ("POTW"). Also, the City consistently failed to analyze its wastewater samples correctly. The proposed Consent Decree requires defendant to remedy these violations through upgrade and expansion of the POTW. Further, the Decree requires the City to institute a quality assurance/quality control program to correct its water sampling deficiencies. The City is required to pay a civil penalty of $35,000 for its violations of the Clean Water Act and the Pennsylvania Clean Streams Act: $23,333 to the United States and $11,667 to the Commonwealth of Pennsylvania. The consent decree is backed by stipulated penalties and is consistent with EPA's guidelines and policies.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Dubois, Pennsylvania*, D.J. No. 90–5–1–1–3285.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Western District of Pennsylvania, 633 U.S. Post Office & Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219 and the U.S. Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. The Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–20302 Filed 8–28–89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; G&F Recycling and Salvage Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *G&F Recycling and Salvage Corp.*, 88 Civ. 2576, has been lodged with the United States District Court for the District of New Jersey on August 10, 1989. The proposed consent decree concerns failures to respond to an information request and a Compliance Order, each issued by the Environmental Protection Agency and relating to partial demolition and removal of asbestos from a building in Lodi, New Jersey. The proposed consent decree requires defendant to pay civil penalties and enjoins defendant from violating the Clean Air Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *G&F Recycling and Salvage Corp.*, D.J. Ref. 90–5–2–1–1231.

The proposed consent decree may be examined at the office of the United States Attorney and the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–20303 Filed 8–28–89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: Advances of Transportation and Subsistence Costs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA), Department of Labor, in the course of recent litigation (*Jean* v. *Department of Labor*, Civ. No. 89–0611–OG (D.D.C.)), has announced its interpretation of 20 CFR 655.102(b)(5)(i), dealing with advances of transportation and subsistence costs in the temporary alien agricultural labor certification program. The interpretation was set forth in a Declaration by the Director, U.S. Employment Service, which is published below for public information.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, Employment and Training Administration, Suite N–4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0165 (this is not a toll-free number.)

Signed at Washington, DC this 23 day of August, 1989.

Roberts T. Jones,

Assistant Secretary of labor.

Declaration of Robert A. Schaerfl

I, Robert A. Schaerfl, declare and state, upon information and belief, as follows:

1. I am the Director of the United States Employment Service, Employment and Training Administration ("USES"), United States Department of Labor ("DOL").

2. Plaintiffs have brought this action challenging the promulgation of a regulation by the U.S. Department of Labor concerning transportation and subsistence costs for farm workers under the temporary agricultural labor certification program. This interim final regulation, codified at 20 CFR 655.102(b)(5)(i), and issued by the DOL on June 1, 1987, 52 FR 20496, was issued pursuant to the temporary foreign agricultural worker program ("H–2A") established by the Immigration Reform and Control Act of 1986 ("IRCA"), 8 U.S.C. 1101(a)(15)(H)(ii)(a) and 1186.

3. The Director of USES, as the delegate of the Secretary of Labor,

pursuant to 20 CFR 655 *et seq.*, has the authority to construe and interpret the H–2A regulatory scheme to ensure that the domestic work force is protected from the admission of temporary alien workers. See, 20 CFR 655.0(c).

4. The plaintiffs have asserted that the regulation was promulgated in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. 701 and 706 and is contrary to the INA and IRCA. While the defendants maintains that the plaintiffs lack standing and that this case is not ripe for review, the defendants recognize that the regulation as currently written can be interpreted to weaken the protections available to domestic workers. Such an interpretation was not our intent.

5. Therefore, in order to resolve this matter without further litigation, the DOL hereby agrees to the following.

a. The current regulation dealing with transportation costs, codified at 20 CFR 655.102(b)(5)(i), states in relevant part:

> The employer shall advance transportation and subsistence costs (or otherwise provide them) to workers when it is the prevailing practice of non-H-2A agricultural employers in the occupation in the area to do so, or when such benefits are extended to H–2A workers.

b. The DOL agrees that the current regulation will be interpreted by the U.S. Department of Labor as if the language in the predecessor regulation, which was codified at 20 CFR 655.202(a) (1986), and which addressed the "indirect" advancement of transportation costs, had not been deleted. In particular, the current regulation shall be construed as if the following language from the earlier regulation was still present:

> For example, if the employer intends to advance transportation costs to foreign workers either directly or indirectly (by having them paid by the foreign government involved), the employer must offer to advance the transportation costs of U.S. workers.

c. The DOL further agrees that they will published an appropriate notice in the **Federal Register** announcing this decision within thirty days of the filing of this declaration in court.

6. Furthermore, DOL is currently considering the promulgation of a new regulation which would deal more extensively with the advance transportation question.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Dated: July 12, 1989.

Robert A. Schaerfl

Director, United States Employment Service, U.S. Department of Labor Employment and Training Administration.

[FR Doc. 89–20244 Filed 8–28–89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M–89–9–M]

Bunker Hill Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Bunker Hill Mining Company, P.O. Box 29, Kellogg, Idaho 83837 has filed a petition to modify the application of 30 CFR 56.19011 (drum flanges) to its Bunker Hill Mine (I.D. No. 10–00083) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that flanges on drums extend radially a minimum of 4 inches or three rope diameters beyond the last wrap, whichever is the lesser.

2. As an alternate method, petitioner proposes to suspend two adjustable threaded ⅝" rods with a ¼"×6"×30" curved plate, that will prevent the cable from jumping off the drum. The clearance between the plate and the drum flanges would be between 1⁄16" minimum to ½" maximum. The rope diameter is ¾".

3. In support of this request, petitioner states that the Orr Hoist was installed in 1954, and there has never been any incidents or any record of accidents of any type since installation.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1989. Copies of the petition are available for inspection at that address.

Dated: August 17, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–20337 Filed 8–28–89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M–89–122–C]

Big Bottom Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Big Bottom Coal Company, Inc., P.O. Box 682, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas adjacent mines; drilling of boreholes) to its Mine No. 1 (I.D. No. 15–12618) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 200 feet of any workings of an adjacent mine, a borehole or boreholes must be drilled to a distance of at least 20 feet in advance of the working face of such working place and must be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they must be drilled sufficiently close to each other to ensure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes must also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees.

2. As an alternate method, petitioner proposes to drill deep test holes, with centers every 25 feet, in lieu of 20-foot test drill holes with specific equipment and procedures as outlined in the petition.

3. In support of this request, petitioner states that—

(a) The long hole drill would be permissible and capable of drilling holes in excess of 400 feet;

(b) The test drilling would be performed away from the current working faces;

(c) The development of an 80-foot block would require a minimum of only six major machine moves rather than the 24 which are required by the standard;

(d) The proposed plan greatly reduces the miners' exposure to caught-by and struck-by accidents;

(e) Fewer people would be exposed to

monitoring devices shall be located so

Dated: Auguste 18, 1989.

resume until the methane level is lower

without hydraulics. Approximately 30–

Dated: August 17, 1989.

(e) Fewer people would be exposed to any potential hazards which might result if an adjacent mine works were penetrated; and

(f) The drill operators would be trained in machine set-up and use of the drill's thrust controls for guiding the drill steel, which would help to ensure that straight drill holes are maintained.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1989. Copies of the petition are available for inspection at that address.

Dated: August 17, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-20338 Filed 8-28-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-116-C]

Webster County Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Webster County Coal Corporation, P.O. Box 128, Clay, Kentucky 42404 has filed a petition to modify the appliction of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installational; minimum requirements) to its Dotiki Mine (I.D. No. 15-02132) located in Webster County, Kentucky. The petition is filed under section101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On April 20, 1989, petitioner was granted a modification of 30 CFR 75.1103-4(a) to install one sensor at every belt drive and belt conveyor tailpiece combination where a belt drive discharges onto a belt conveyor tailpiece, to install an early warning fire detection system, and to monitor the air with a carbon monoxide detection system (docket number M-88-68-C).

2. This petition concerns paragraphs 1(b), 1(C) and 3 of the Decision and Order (DO).

3. Paragraph 1(b) of the DO which states that the carbon monoxide monitoring devices shall be located so that the air is monitored at each belt drive and tailpiece and at intervals not to exceed 2,000 feet along each conveyor belt entry, except as provided in paragraph 1(c) or unless the District Manager requires additional carbon monoxide monitors to be installed as part of said plan to ensure the safety of the miners. When the air is coursed into adjacent return entry before crossing the belt tailpiece, the monitoring device shall be installed at the first crosscut outby the tailpiece on the same split of air.

Petitioner requests that outby the tailpiece be changed to outby the temporary stopping (across the belt).

4. Paragraph 1(c) of the DO lists several locations where only one low-level carbon monoxide sensor shall be required, and that it be installed not more than 100 feet inby the drive, belt take-up, and tailpiece on the same split of air.

Petitioner requests that inby the drive, belt take-up, and tailpiece on the same split of air be changed to inby (if the airflow is inby) or outby (if the airflow is outby), the drive, belt take-up and tailpiece on the same split of air.

5. Paragraph 3 of the DO states that the low-level carbon monoxide monitoring devices shall be capable of providing both visual and audible alarm signals.

Petitioner requests that at 10 ppm above the established ambient level, all persons shall be withdrawn to a safe area outby the working places be changed to the Approved Firefighting Plan shall be implemented and appropriate action shall be taken to determine the cause of the actuation.

6. Petitioner states that the proposed amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.1103-4(a) will improve the paragraphs addressed, and will provide no less than the same measure of protection for the miners.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1989. Copies of the petition are available for inspection at that address.

Dated: Augusta 18, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-20339 Filed 8-28-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-120-C]

Christian Energies Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Christian Energies Company, Inc., Route 1, Box 18, Williamsburg, Kentucky has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 3 (I.D. No. 15-16660) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, without hydraulics. Approximately 30-40% of the coal is hand loaded into a drag-type bucket. Approximately 20% of the time that the tractor is in use, it is used as a mantrip and supply vehicle.

4. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not

resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1989. Copies of the petition are available for inspection at that address.

Dated: August 17, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-20340 Filed 8-28-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-121-C]

Rebecca Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Rebecca Coal Company, HC 63 Box 668, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15-16611) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, without hydraulics. Approximately 30-40% of the coal is hand loaded into a drag-type bucket. Approximately 20% of the time that the tractor is in use, it is used as a mantrip and supply vehicle.

4. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia, 22203. All comments must be postmarked or received in that office on or before September 28, 1989. Copies of the petition are available for inspection at that address.

Dated: August 17, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-20341 Filed 8-28-89; 8:45 am]

BILLING CODE 4510-43-M

LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION

Announcement of Arkansas Public Hearing and Colleges and Universities Conference

Background

The Lower Mississippi Delta Development Commission was created by Public Law 100-460, signed on October 1, 1988. The purpose of the Commission is to identify and study the economic development, infrastructure, employment, transportation, resource development, education, health care, housing, and recreation needs of the Lower Mississippi Delta region by seeking and encouraging the participation of interested citizens, public officials, groups, agencies, and others in developing a 10-year plan that makes recommendations and establishes priorities to alleviate the needs identified. The Commission will make its report to Congress, the President, and the Governors of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee no later than May 14, 1990.

This notice announces the Arkansas public hearing and the Commission's Colleges and Universities Conference.

Public Hearing

Time: 7:15 p.m. to 11:30 p.m. September 5, 1989

Place: Phillips County Community College, Campus Drive, Helena, Arkansas, 72042

Status: Public oral and written testimony encouraged

Contact: Ann Sartwell, Telephone (901) 753-1400

Colleges and Universities Conference

Time: 4:00 p.m. to 7:00 p.m., September 7, 1989 8:15 a.m. to 4:00 p.m., September 8, 1989

Place: Fogelman Center, Memphis State University, Memphis, Tennessee 38152

Status: Registration Fee

Contact: Stan Hyland, Telephone (901) 753-1400

Wilbur F. Hawkins,

Executive Director.

[FR Doc. 89-20302 Filed 8-28-89; 8:45 am]

BILLING CODE 6820-GN-M

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results in the loss of the main condenser

Based upon the foregoing

The Need for the Proposed Action

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences, Subcommittee on Theory, Experimental, and Laboratory Astronomy; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences Subcommittee on Theory, Experimental, and Laboratory Astronomy.

Date and time: September 18 and 19, 1989 9 a.m.–5 p.m.

Place: National Science Foundation Room 1243.

Type of Meeting: September 18 and 19, 1989—Open.

Contact person: Dr. G. Siegfried Kutter, Program Director, Stars and Stellar Evolution, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357–7622).

Minutes: May be obtained from the contact person at the above address.

Purpose of committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF–funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Agenda: September 18 and 19.

Discussion of the scientific areas that show the greatest promise with regard to new breakthroughs in discovery and understanding of theory, experimental, and laboratory techniques in astronomy.

Discussion of activities and initiatives needed to address the scientific issues identified above.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–20272 Filed 8–28–89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committees for Astronomical Sciences; Subcommittee on Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences, Subcommittee on Education and Human Resources.

Date and Time: September 18, 19, and 20, 1989, 9:00 am–5:00 pm.

Place: International Room, Radisson-Seattle Hotel, 17001 Pacific Highway, Seattle, WA 98188.

Type of Meeting: September 18, 19, and 20, 1989, Open.

Contact Person: Dr. James P. Wright, Program Director, Cross-Directorate Programs, Division of Astronomical Sciences, Room 618, National Science Foundation, Washington, DC 20550 (202/357–7539).

Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: The Subcommittee will review manpower issues in astronomy and will also concern itself with addressing issues and programs that deal with efforts in bringing minorities, women, and the handicapped into scientific and engineering careers.

Agenda: September 18, 19, and 20.

Review and advise on the strategic issues and programs involving demand and supply of scientists, engineers, and technicians for ground-based atronomy research; involving education and training in the astronomical sciences, particularly at the undergraduate level; and to consider how to increase the participation of minorities, women, and the handicapped.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–20273 Filed 8–28–89; 8:45 am]

BILLING CODE 7555-01-M

Division of Earth Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Earth Sciences Proposal Review Panel.

Date: September 18–22, 1989.

Time: 8:00 a.m. to 6: p.m. each day.

Place: The National Science Foundation, Room 543, 1800 G. Street, NW, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Alan Gaines, Section Head, Division of Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550; Telephone: (202) 357–0501.

Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in Earth Sciences.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–20274 Filed 8–28–89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341; FERMI–2]

Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Signficant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for the operation of Fermi-2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) for the Reactor Protection System (RPS) to reflect design changes for the Reactor Protection System (RPS) scheduled to be completed during the upcoming refueling outage scheduled for September 1989. The design change will eliminate the Backup Manual Scram function and add further redundancy to the RPS capability to manually initiate a scram.

The proposed action is in accordance with the licensees' application for amendment dated May 10, 1989.

The Need for the Proposed Action

The proposed changes to the TS are required in order for the TS to include appropriate requirements for the as-modified RPS design.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The proposed revision would reflect design changes which are being made to eliminate the Backup Manual Scram (BUMS) feature. The BUMS feature when actuated causes a concurrent isolation for the Main Steam Isolation Valves (MSIV). This is understirable since the MSIV isolation

results in the loss of the main condenser as a heat sink. In place of the Bums feature, DEC is providing an additional channel in each RPS trip logic for the Manual Scram and Reactor Mode Switch features. These additional channels provide an alternative method to meet the regulatory and design requirements for manual scram redundancy. Therefore, the proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no signficant radiological impact and could result in the reduction of the radiological impacts.

With regard to potential nonradiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiologial environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Because the Commission has concluded that there is no signifiant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This would prevent the design modifications from being completed and would accordingly not alleviate the problems of the current BUMS design.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Fermi-2," dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a signficant effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on July 11, 1989 (54 FR 29117). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action, see the application for amendment dated April 3, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 23rd of August 1989.

For the Nuclear Regulatory Commission.

John O. Thoma,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20312 Filed 8–28–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–341; FERMI–2]

Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for the operation of Fermi-2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) relating to the Source Range Monitors (SRM) to permit core off-loading during the first refueling outage. The proposed amendment also increases the minimum signal-to-noise ratio required for a reduced SRM minimum count rate requirement and eliminates a related TS provision which is no longer needed.

The proposed action is in accordance with the licensees' application for amendment dated April 3, 1989.

The Need for the Proposed Action

The proposed changes to the TS are required in order to allow complete core off-loading and ensure adequate signal-to-noise ratio exists when the SRM minimum count rate requirement is reduced.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The proposed revision would permit complete core off-loading by eliminating the SRM minimum count rate requirements during the off-load process once the remaining fuel is configured such that SRM monitoring is no longer needed for safety. The SRM minimum count rate requirement may be reduced to 0.7 counts per second (cps) from 3.0 cps as long as a sufficient signal-to-noise ratio is present. The current requirement is a signal-to-noise ratio of 2; the proposal increases this required ratio to 20 to ensure that the assumptions regarding SRM measurement uncertainty remain satisfied at the reduced SRM levels. Therefore, the proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact and could result in the reduction of the radiological impacts.

With regard to potential nonradiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This would prevent core offloading and not provide appropriate TS provisions for reducing the SRM minimum count rate requirements.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Fermi-2," dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environment impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 1, 1989 (54 FR 31749). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action, see the application for amendment dated May 10, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 23rd of August 1989.

For the Nuclear Regulatory Commission.

John O. Thoma,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-20313 Filed 8-28-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al., San Onofre Nuclear Generating Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. NPF-10 and No. NPF-15 issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees) for operation of San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the following Technical Specifications (TS) to increase the interval for the 18-month surveillance tests to at least once per refueling interval, which is defined as 24 months, in support of the nominal 24-month fuel cycle:

a. TS 3.4.7.6, "Snubbers."

b. TS 3/4.10, "Special Test Exceptions." (Unit 2 only)

The Need for the Proposed Action

The proposed amendments are required to prevent unnecessary plant shutdowns to perform a surveillance test which cannot be performed during plant operation.

Environmental Impacts of the Proposed Action

For each of the proposed amendments, the licensees provided analyses to demonstrate the reliability of the systems. The staff reviewed the licensees' analyses and agrees that reliability of the systems would not be significantly degraded by extension of the surveillance intervals. Therefore, the staff has approved the proposed 24-month surveillance interval for these proposed changes.

As a result, the proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendments do not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendments do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notices of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action were published in the **Federal Register** on February 27, 1989 (54 FR 8250) and April 24, 1989 (54 FR 16438-D). No request for hearing or petition for leave to intervene was filed following these notices.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Units 2 and 3, dated April 1981 and its Errata dated June 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensees' request that supports the proposed amendments. The NRC staff did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for amendments dated May 19, 1988 and March 10, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 22nd day of August, 1989.

For the Nuclear Regulatory Commission.

Harry Rood,

Acting Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-20315 Filed 8-28-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445 and 50-446]

Texas Utilities Electrical Co., et al [1]; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Amendment No. 11 to Construction Permit No. CPPR-126 and Amendment No. 10 to Construction Permit No. CPPR-127 which would authorize the transfer of a 2⅛% ownership interest in the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, from Tex-La to TU Electric. The proposed amendments would delete Tex-La as an owner on the construction permits and increase TU Electric's aggregate ownership to 100%.[2]

Environmental Assessment

Identification of Proposed Action: The proposed action would reflect a transfer of ownership interest in CPSES, Units 1 and 2, from Tex-La to TU Electric. This transfer will in no way affect the design or construction of CPSES nor will it affect the responsibility for operation and control of the facility.

The deletion of Tex-La from the Comanche Peak construction permits and reallocation of Tex-La's 2⅛% ownership interest to TU Electric are in accordance with the agreement between Tex-La and TU Electric dated March 23, 1989, as described in TU Electric's request dated May 4, 1989.

The Need for the Proposed Action: The license conditions attached to the CPSES construction permit required TU Electric to offer ownership access to entities in a specified area of the state of Texas. As a result of the conditions, several smaller power systems purchased shares in the plant, including Tex-La. For a number of reasons, Tex-La now wishes to sell its 2⅛% interest in the CPSES back to TU Electric. On March 23, 1989, TU Electric and Tex-La entered into a settlement agreement that provides for the purchase by TU Electric of Tex-La's ownership interest in the CPSES and also terminates all pending litigation between the two parties in various District Court proceeding in Texas originating from Tex-La's participation in the CPSES.

The requests for amendments were submitted pursuant to 10 CFR 50.30 and 10 CFR 50.90 to properly reflect the change of ownership from Tex-La to TU Electric.

Environmental Impacts of Proposed Action: The proposed action is administrative in nature and involves only the transfer of an ownership interest from one entity to another entity which is already an owner and an applicant. This transfer will in no way affect the design or construction of CPSES, nor will it affect the responsibility for operation and control of the facility. The proposed action will not affect the principal architectural and engineering criteria and environmental protection commitments set forth in the construction permit application, as amended, nor will it change the impact associated with the construction or operation of the CPSES. It will not result in the reallocation of ownership interest from one owner to another. Therefore, the Commission has concluded that there is no environmental impact associated with the proposed action.

Alternative to the Proposed Action: The Commission has concluded that there are no measurable environmental impacts associated with the proposed action. The principal alternative would be for the Commission to deny the requested amendments. This would not reduce the environmental impacts of plant construction or operation.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to the proposed Comanche Peak Steam Electric Station Units 1 and 2, dated June 1974 or the Final Environmental Statement related to the operation of Comanche Peak Steam Electric Station, Units 1 and 2 (NUREG-0775), dated September 1981.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's request and applicable documents referenced therein that support the proposed amendments. The NRC did not consult other agencies or persons in preparing this assessment.

Finding of No Significant Impact

The staff has reviewed the proposed action relative to the requirements set forth in 10 CFR Part 51. Based upon the foregoing environmental assessment, the Commission concludes that there are no significant environmental impacts associated with the proposed action and that issuance of the proposed amendments will not have a significant effect on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, an environment impact statement need not be prepared for this action.

For further details with respect to this action, see the applicant's request for amendments dated May 4, 1989. This document is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room at the Somervell County Public Library on the Square, P.O. Box 1417, Glen Rose, Texas 76043. The staff's evaluation of the request will be published in a safety evalution associated with the amendments to the construction permits for Comanche Peak Steam Electric Station, Units 1 and 2, and will be available for inspection at the locations listed above.

Dated at Rockville, Maryland this 23rd day of August, 1989.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director Comanche Peak Project Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89-20311 Filed 8-28-89; 8:45 am]

BILLING CODE 7590-01-M

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[1] The current owners of the Comanche Peak Steam Electric Station are: Texas Utilities Electric Company (TU Electric), Tex-La Electric Cooperative of Texas, Inc. (Tex-La), and Texas Municipal Power Agency (TMPA). Transfer of ownership from TMPA to TU Electric was previously authorized by Amendment Nos. 9 and 8 to Construction Permits CPPR-126 and CPPR-127, respectively, for Comanche Peak, Units 1 and 2, on August 25, 1988 to take place in 10 installments as set forth in the agreement attached to the application for amendment dated March 4, 1988. At the completion thereof, TMPA will no longer retain any ownership interest.

[2] The aggregate ownership amount takes into consideration the presently incomplete transfer of 6.2% ownership interest from the TMPA to TU Electric.

[Docket No. 999-90003 General License EA 89-060]

Grand Haven Board of Light and Power; Order Imposing Civil Monetary Penalty

I

Grand Haven Board of Light and Power (licensee), Grand Haven, MI 49417, is authorized to possess and use density/thickness gauges containing byproduct material pursuant to the general license provisions of 10 CFR 31.5. Pursuant to this authority the licensee possessed six byproduct material (cesium-137 sealed sources) gauging devices at the J. B. Sims Generating Station.

II

A special inspection of the licensee's activities was conducted on February 22, 1989 in response to allegations received by the NRC Region III office concerning the inadequate storage of gauges containing byproduct material at the J. B. Sims Station. The inspection disclosed that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated May 3, 1989. The Notice states the nature of the violations, the provisions of the NRC requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated May 25, 1989. In its response the licensee admitted the violations and asked that the civil penalty be reduced.

III

After consideration of the licensee's response and the statements of fact and argument for reconsideration contained therein, the Deputy Executive Director for Nuclear Material Safety, Safeguards, and Operations Support has determined, as set forth in the Appendix to this Order, that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing, and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered* That:

The licensee pay a civil penalty in the amount of Five Hundred Dollars ($500) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Hearings and Enforcement, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland, this 21st day of August 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusions

On May 3, 1989, a Notice of Violations and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Grand Haven Board of Light and Power responded to the Notice on May 25, 1989. In its response, the licensee admitted the violations as set forth in the Notice, but requested reconsideration of the civil penalty based on statements concerning their corrective actions. The NRC's evaluation and conclusion regarding the licensee's request for reconsideration of the civil penalty are addressed below.

Summary of Licensee's Response

The licensee admitted the violations in the Notice. The licensee restated the corrective actions previously described in the NRC Inspection Report forwarded to them on March 16, 1989, and updated the implementation status of those corrective actions. The licensee also described in its May 25, 1989, letter some management controls its implemented to ensure long term correction of the violations. The licensee requested reconsideration of the civil penalty based on statements concerning initiation of corrective actions, followup of job responsibilities, and implementation of a preventative maintenance program to prevent recurrence of problems.

NRC Evaluation of Licensee's Response

In determining the amount of civil penalty for the identified violations, the NRC evaluated the six factors for escalation and mitigation outlined in 10 CFR, Part 2, Appendix C (1989) (Enforcement Policy). Our conclusion that the base civil penalty of Five Hundred Dollars ($500) should not be adjusted, was based on these six factors. The licensee focused its request for mitigation of the proposed civil penalty on the factor dealing with "Corrective Action to Prevent Recurrence." That factor recognizes that corrective actions are always required to meet regulatory requirements. In situations where the licensee acts promptly in taking very extensive corrective actions, including actions to prevent recurrence, the civil penalty may be mitigated 50 percent. In this case, while we recognize the final corrective actions appear adequate to prevent recurrence, the initial relocation of the gauges to a secure storage location was at the request (telephonic) of the NRC and the implementation of long term management controls to prevent recurrence occurred after discussion of the need for that type of control during the enforcement conference. Therefore, mitigation of the civil penalty, based on both the immediate and long term corrective actions taken, was not considered warranted.

NRC Conclusion

An adequate basis for mitigation of the civil penalty was not provided by the licensee based on its corrective actions. Consequently, the proposed civil penalty in the amount of $500 should be imposed.

[FR Doc. 89–20310 Filed 8–28–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–133]

Pacific Gas and Electric Co., Humboldt Bay Power Plant Unit No. 3; Exemption

I

Pacific Gas and Electric Company (the licensee) is the holder of Facility License No. DPR–7, which authorizes possession but not operation of Humboldt Bay Power Plant, Unit No. 3 (Humboldt Bay Unit 3). The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facility consists of a permanently shut down boiling water reactor and stored spent fuel located at the licensee's site in Humboldt County, California.

II

Section 50.54(w) of the Commission's regulations requires that each commercial power reactor licensee shall, by June 29, 1982, take reasonable steps to obtain on-site property damage insurance available at reasonable costs and on reasonable terms from private sources or to demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering the facility, provided, among other things, that "this insurance must have a minimum coverage limit for the reactor station site of either $1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less."

On May 28, 1982, the licensee filed a previous Request for Exemption from 10 CFR 50.54(w) to reduce the required minimum amount of primary property damage insurance to $100,000,000. In support of this request, the licensee indicated that Humbolt Bay Unit 3 had been shut down since July 1976 and was in cold shutdown condition. The licensee indicated that studies conducted by it and the NRC staff concluded that the unit presented no danger to the health and safety of the public. Further, the licensee was then

maintaining all-risk property damage insurance for Humboldt Bay Unit 3 in the amount of approximately $100,000,000. The licensee submitted that any additional insurance beyond that currently carried should not be required. In addition, the licensee stated that the annual premium for additional insurance would be an unnecessary burden on its ratepayers. That exemption request was granted on November 3, 1982 (54 FR 3168).

In its June 9, 1989 request the licensee asks for a further reduction in the required minimum property damage insurance from $100,000,000 to $63,160,000. Pursuant to 10 CFR 50.12(a) the Commission may grant exemptions from the requirements of the regulations which are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

III

Humboldt Bay Unit 3 has been shut down since July 2, 1976. In 1983, the licensee decided to decommission Humboldt Bay Unit 3 and subsequently submitted a proposed Decommissioning Plan, proposed Technical Specifications (TS) and an Environmental Report. The licensee proposed (1) to amend License No. DPR–7 to possess-but-not-operate status; (2) to delete certain license conditions related to seismic modifications required before the NRC would authorize a return to power operation; (3) to revise the TS to reflect the possess-but-not-operate status; (4) to decommission Humboldt Bay Unit 3 in accordance with the plan included with the submittal; and (5) to extend License No. DPR–7 for 15 additional years, to November 9, 2015, to be consistent with the Decommissioning Plan.

On July 16, 1985 License No. DPR–7 was amended to possess-but-not-operate status. Only July 19, 1988 License No. DPR–7 was amended to approve the Decommissioning Plan and the balance of items 1 through 5 above.

The licensee notes that all fuel has now been removed from the reactor (394 assemblies), all fuel is now stored in the on-site spent fuel pool, along with 54 incore fission chambers, and the unit is now functioning as a spent fuel storage facility. Plant operations are not limited to surveillance and monitoring activities, and continued treatment and purification of spent fuel pool water and water entering the plant as ground water in-leakage. The licensee also notes that the staff's previous evaluation of the spent fuel pool conducted that the probability of any credible means of achieving nuclear criticality was negligibly small.

The licensee explains that the requested insurance minimum of $63,160,000 is the combined book value of the nuclear unit (Humboldt Bay Unit 3, $10,294,000) and the two on-site fossil fuel units ($52,866,000). The licensee indicates that the difference in cost between insuring for $100,000,000 and the proposed $63,160,000 is about $94,000 per year, and that the additional cost is against the public interest as it is a needless expense.

The NRC staff agrees with the licensee that Humboldt Bay Unit 3 is functioning as a spent fuel storage facility, that the risk of criticality is negligibly small, and that the proposed minimum amount of property damage insurance is adequate. A previous Commission-sponsored review and analysis of the costs of clean-up and decontamination at reference non-reactor facilities following postulated accidents comparable to those for which Humboldt Bay Unit 3 is conceivably vulnerable (e.g., fire, explosion) concluded that recovery costs would be substantially less than the proposed insurance minimum (see NUREG/CR–3293). For example, costs of recovery from credible accidents at a mixed oxide plant and a uranium fuel fabrication plant are estimated to be no more than $4.6 million and $2.2 million, respectively, in 1981 dollars. Potential accident recovery costs at these facilities would be higher than at Humboldt Bay Unit 3. This is because the radioactive material is more dispersive and can lead to more widespread contamination than the aged spent fuel elements maintained under water in the spent fuel pool at Humboldt Bay Unit 3. The staff therefore concludes that the underlying purpose of 10 CFR 50.54(w) will still be achieved with a minimum property damage insurance amount of $63,160,000.

Based on the foregoing, and in accordance with 10 CFR 50.12(a) the staff concludes that the exemption from the requirements of 10 CFR 50.54(w) as discussed above, is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Furthermore, full compliance with 10 CFR 50.54(w) is not necessary to achieve the underlying purpose of the rule. Thus, special circumstances exist as described in § 50.12(a)(2)(ii), which the Commission has determined are sufficient to warrant the exemption.

Accordingly, the Commission hereby grants Pacific Gas and Electric Company the following exemption:

The licensee is exempt, until further Order of the Commission, from the requirement to carry primary property damage insurance coverage for Humboldt Bay Unit No. 3 in the full amount called for by 10 CFR 50.54(w)(1), provided that the licensee maintains such primary property damage insurance in an amount not less than $63,160,000.

IV

Pursuant to 10 CFR 51.32, the Commission previously determined that the granting of this Exemption would have no significant impact on the environment (54 FR 34266).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 22nd day of August 1989.

For the Nuclear Regulatory Commission.

John T. Greeves,

Deputy Director, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89–20314 Filed 8–28–89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Availability; Procurement Regulatory Activity Report

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Notice of availability of the Procurement Regulatory Activity Report.

SUMMARY: Subsections 25 (g) (1) and (2) of the Office of Federal Procurement Policy (OFPP) Act, as amended by Public Law 100–679, requires the Administrator for Federal Procurement Policy to publish a report within 6 months after the date of enactment and every 6 months thereafter relating to the development of procurement regulations to be issued.

Accordingly, the OFPP has prepared the first Procurement Regulatory Activity Report. This report is designed to satisfy all aspects of subsections 25(g) (1) and (2) of the OFPP Act which includes information on: The status of each regulation; a description of those regulations required by statute; a description of the methods by which public comment was sought; regulations, policies, procedures, and forms under review by the OFPP; whether the regulations have paperwork requirements; the progress made in promulgating and implementing the Federal Acquisition Regulation; and

such other matters as the Administrator determines would be useful.

ADDRESSES: Those persons interested in obtaining a copy of the Procurement Regulatory Activity Report, which is currently being printed, should contact the Executive Office of the President Publications Service, Room 2200, 725 17th Street, NW, Washington, DC, 20503, or phone (202) 395–7332.

Dated: August 23, 1989

David F. Baker,

Acting Deputy Administrator and Acting Administrator.

[FR Doc. 89–20261 Filed 8–28–89; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632–0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on July 31, 1989 (54 FR 31598). Individual authorities established or revoked under Schedule A, B, or C between July 1, 1989, and July 31, 1989, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A's for the month of July.

Schedule B

Department of the Navy

All civilian professor positions at the Marine Corps Command and Staff College. Effective July 27, 1989.

Schedule C

Department of the Air Force

One Secretary to the Vice President for National Security Affairs. Effective July 17, 1989.

One Staff Assistant to the Secretary of the Air Force. Effective July 28, 1989.

U.S. Department of Agriculture

One Confidential Assistant to the Administrator, Animal and Plant Health Inspection Services. Effective July 3, 1989.

One Confidential Assistant to the Administrator, Farmers Home Administration. Effective July 3, 1989.

One Confidential Assistant to the Chief, Soil Conservation Service. Effective July 3, 1989.

One Special Assistant to the General Counsel. Effective July 11, 1989.

One Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective July 18, 1989.

One Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective July 18, 1989.

One Private Secretary to the Assistant Secretary for Congressional Affairs. Effective July 18, 1989.

One Special Assistant to the Chief of Staff. Effective July 25, 1989.

One Confidential Assistant to the Administrator, Bureau of Farmers Home Administration. Effective July 28, 1989.

Department of Commerce

One Confidential Assistant to the Director, Office of Public Affairs. Effective July 3, 1989.

One Special Assistant to the General Counsel, National Oceanic and Atmospheric Administration. Effective July 11, 1989.

One Confidential Assistant to the Chief Economist. Effective July 24, 1989.

One Confidential Assistant to the Deputy Secretary for Basic Industries. Effective July 24, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for U.S. and Foreign Commercial Service. Effective July 26, 1989.

One Confidential Assistant to the Assistant Secretary for Import Administration. Effective July 26, 1989.

One Special Counsel to the General Counsel. Effective July 27, 1989.

One Confidential Assistant to the Under Secretary for International Trade. Effective July 27, 1989.

Department of Energy

One Staff Assistant to the Principal Deputy Assistant Secretary for Conservation and Renewable Energy. Effective July 5, 1989.

One Staff Assistant to the Chief of Staff to the Secretary. Effective July 11, 1989.

One Staff Assistant to the Assistant Secretary, Management and Administration. Effective July 11, 1989.

One Staff Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs. Effective July 13, 1989.

Two Staff Assistants to the Assistant Secretary for Nuclear Energy. Effective July 19, 1989.

One Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies. Effective July 24, 1989.

One Staff Assistant to the Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies. Effective July 25, 1989.

One Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies. Effective July 25, 1989.

Two Staff Assistants to the Deputy Under Secretary, Office of Policy, Planning and Analysis. Effective July 27, 1989.

One Staff Assistant to the Staff Assistant to the Secretary. Effective July 27, 1989.

One Staff Assistant to the Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies. Effective July 27, 1989.

One Staff Assistant to the Administrator, Economic Regulatory Administration. Effective July 27, 1989.

One Staff Assistant to the Executive Assistant to the Secretary. Effective July 28, 1989.

Two Staff Assistants to the Director, Office of Civilian Radioactive Waste Management. Effective July 28, 1989.

Department of Defense

One Confidential Assistant to the Assistant Secretary. Effective July 25, 1989.

Department of Education

One Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective July 6, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for Legislation. Effective July 6, 1989.

One Confidential Assistant to the Assistant Secretary for Postsecondary Education. Effective July 6, 1989.

One Special Assistant to the Assistant Secretary for Vocational and Adult Education. Effective July 6, 1989.

One Confidential Assistant to the Assistant to the Secretary. Effective July 11, 1989.

One Confidential Assistant to the Assistant Secretary for Educational Research and Improvement. Effective July 17, 1989.

One Staff Assistant to the Assistant Secretary for Educational Research and Improvement. Effective July 17, 1989.

One Special Assistant to the Assistant Secretary for Special Education and Rehabilitation Services. Effective July 25, 1989.

One Confidential Assistant to the Director, Public Affairs Service. Effective July 27, 1989.

One Special Assistant to the Deputy Under Secretary for Planning, Budget and Evaluation. Effective July 27, 1989.

Environmental Protection Agency

One Staff Assistant to the Administrator. Effective July 13, 1989.

One Special Assistant to the Administrator. Effective July 18, 1989.

One Staff Assistant to the Administrator. Effective July 29, 1989.

Federal Home Loan Bank Board

One Staff Assistant to the Executive Director of Public Affairs. Effective July 5, 1989.

General Services Administration

One Confidential Assistant to the Deputy Administrator. Effective July 3, 1989.

One Deputy Chief of Staff to the Chief of Staff. Effective July 3, 1989.

One Confidential Assistant to the Administrator. Effective July 11, 1989.

Department of Health and Human Services

One Special Assistant for Public Affairs to the Associated Commissioner for Public Affairs. Effective June 19, 1989. Note: this position should have appeared in the listing dated Monday, July 31, 1989; 54 FR 31598.

One Director, Office of Policy, Planning, and Legislation. Effective July 6, 1989.

One Special Assistant to the Deputy Assistant Secretary for Legislation (Health). Effective July 11, 1989.

One Special Assistant for Liaison to the Associate Commissioner for Legislative Affairs. Effective July 11, 1989.

One Confidential Assistant to the Associate Commissioner for Public Affairs. Effective July 13, 1989.

One Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation. Effective July 13, 1989.

One Staff Assistant to the Secretary. Effective July 13, 1989.

One Associate Administrator, Office of Communications, Family Support Division. Effective July 19, 1989.

One Special Initiatives Coordinator to the Secretary. Effective July 19, 1989.

One Special Assistant to the Associate Commissioner. Effective July 21, 1989.

One Private Sector Initiatives Coordinator to the Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion). Effective July 24, 1989.

One Executive Assistant to the Assistant Secretary for Health. Effective July 25, 1989.

One Special Assistant to the Director, Office of Community Services. Effective July 26, 1989.

One Deputy Director to the Director, Office of Community Services. Effective July 26, 1989.

One Special Assistant to the Secretary, Health and Human Services. Effective July 27, 1989.

One Director, Office of Public Affairs, to the Assistant Secretary for Human Development Services. Effective July 27, 1989.

One Special Assistant to the Assistant Secretary for Health. Effective July 27, 1989.

Department of Housing and Urban Development

One Confidential Assistant to the General Counsel. Effective June 26, 1989. Note: this position should have appeared in the listing dated Monday, July 31, 1989; 54 FR 31598.

One Special Assistant to the Assistant Secretary for Housing. Effective July 5, 1989.

One Special Assistant (Advance) to the Assistant Secretary for Public Affairs. Effective July 5, 1989.

One Associate Deputy General Counsel to the General Counsel. Effective July 6, 1989.

One Executive Assistant to the Assistant Secretary for Public and Indian Housing. Effective July 6, 1989.

One Special Assistant to the Under Secretary. Effective July 6, 1989.

One Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations. Effective July 6, 1989.

One Special Assistant to the Regional Administrator-Regional Housing Commissioner. Effective July 6, 1989.

One Executive Assistant to the Assistant Secretary for Legislation and Congressional Relations. Effective July 11, 1989.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective July 11, 1989.

One Staff Assistant to the Deputy Assistant Secretary for Program Policy Development and Evaluation. Effective July 13, 1989.

One Special Assistant to the Deputy Assistant for Single Family Housing. Effective July 18, 1989.

One Special Assistant to the Deputy Assistant Secretary for Public Affairs. Effective July 18, 1989.

One Special Assistant to the Assistant Secretary for Housing. Effective July 25, 1989.

One Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective July 28, 1989.

One Special Assistant to the Assistant Secretary for Community Planning and Development. Effective July 27, 1989.

One Special Assistant to the Secretary. Effective July 28, 1989.

One Special Assistant to the Regional Administrator-Regional Housing Commissioner (Region II, New York). Effective July 28, 1989.

Department of the Interior

One Staff Assistant for Intergovernmental Affairs to the Assistant to the Secretary and Director, External Affairs. Effective June 29, 1989. Note: this position should have appeared in the listing dated Monday, July 31, 1989; 54 FR 31598.

One Special Assistant to the Assistant Secretary for Indian Affairs. Effective July 7, 1989.

One Special Assistant to the Director, Bureau of Land Management. Effective July 13, 1989.

One Staff Assistant to the Director, Office of External Affairs, Bureau of Land Management. Effective July 25, 1989.

U.S. International Trade Commission

One Congressional Liaison to the Chairman. Effective July 28, 1989.

Department of Labor

One Special Assistant to the Assistant Secretary for Employment Standards. Effective July 3, 1989.

One Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective July 3, 1989.

One Confidential Assistant to the Deputy Secretary. Effective July 3, 1989.

One Confidential Assistant to the Assistant Secretary for Employment Standards. Effective July 3, 1989.

One Staff Assistant to the Deputy Under Secretary for International Labor Affairs. Effective July 3, 1989.

One Senior Legislative Officer to the Assistant Secretary for Congressional Affairs. Effective July 3, 1989.

One Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective July 3, 1989.

One Special Assistant to the Secretary. Effective July 3, 1989.

BEST COPY AVAILABLE

One Special Assistant to the Assistant

One Secretary (Stenography) to the

SECURITIES AND EXCHANGE

CSE's proposal is similar in many

sections (A), (B), and (C) below, of the

used with respect to IPs. The terms

One Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective July 5, 1989.

One Deputy Legislative Officer to the Assistant Secretary for Congressional Affairs. Effective July 17, 1989.

One Staff Assistant to the Secretary. Effective July 17, 1989.

One Senior Legislative Officer to the Assistant Secretary for Congressional Affairs. Effective July 21, 1989.

Office of Management and Budget

One Confidential Assistant to the Associate Director for Human Resources, Veterans and Labor. Effective July 5, 1989.

One Legislative Assistant to the Associate Director for Legislative Affairs. Effective July 28, 1989.

Office of National Drug Control Policy

One Special Assistant and White House Liaison (Executive Secretariat) to the Director. Effective July 17, 1989.

Office of Personnel Management

One Counselor to the Director. Effective July 3, 1989.

One Deputy Director for Congressional Relations to the Director, Office of Congressional Relations. Effective July 3, 1989.

One Confidential Assistant to the Director, Office of Executive Administration. Effective July 11, 1989.

One Confidential Assistant to the Director. Effective July 11, 1989.

One Special Assistant for Communications to the Director. Effective July 17, 1989.

Office of U.S. Trade Representative

One Deputy Assistant U.S. Trade Representative for Congressional Affairs. Effective July 11, 1989.

Small Business Administration

One Confidential Assistant to the Administrator. Effective July 6, 1989.

Department of State

One Staff Assistant to the Under Secretary for Management. Effective July 11, 1989.

One Member, Policy Planning Staff, to the Director, Policy Planning Staff. Effective July 17, 1989.

One Special Assistant to the Director, Policy Planning Staff. Effective July 25, 1989.

One Staff Assistant to the Special Assistant to the Under Secretary for Management. Effective July 25, 1989.

One Staff Assistant to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs. Effective July 28, 1989.

One Secretary (Stenography) to the Director, Policy Planning Staff. Effective July 28, 1989.

Department of the Treasury

One Deputy to the Treasurer of the United States. Effective July 3, 1989.

One Public Affairs Specialist to the Assistant Secretary, Public Affairs and Public Liaison. Effective July 6, 1989.

One Special Assistant for Policy Research to the Deputy Assistant Secretary, Corporate Finance. Effective July 19, 1989.

One Confidential Assistant to the Deputy Secretary. Effective July 19, 1989.

One Confidential Assistant to the Assistant Secertary, Legislative Affairs. Effective July 19, 1989.

One Special Assistant to the Assistant Secretary for Policy Management. Effective July 25, 1989.

One Special Assistant to the Assistant Secretary for International Affairs. Effective July 26, 1989.

One Special Assistant to the Deputy Assistant Secretary, Corporate Finance. Effective July 26, 1989.

Department of Transportation

One Staff Assistant to the Secretary. Effective July 26, 1989.

One Public Affairs Officer to the Administrator, Federal Railroad Administration. Effective July 28, 1989.

One Staff Assistant to the Assistant Secretary for Governmental Affairs. Effective July 28, 1989.

United States Information Agency

One Special Assistant to the Director, Private Sector Committees. Effective July 6, 1989.

United States Court

Two Trial Clerks to a Judge. Effective July 6, 1989.

Department of Veterans Affairs

One Director, Intergovernmental Affairs, to the Deputy Assistant Secretary for Veterans Liaison. Effective July 21, 1989.

One Special Assistant to the Assistant Secretary for Information Resources. Effective July 28, 1989.

Authority: 5 U.S.C. 3301, 3303; E.O. 10555, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 89–20331 Filed 8–28–89; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27156; File No. SR–CSE–88–5]

Self-Regulatory Organizations; Cincinnati Stock Exchange; Order Approving Proposed Rule Change Authorizing Establishment of a Signature Guarantee Program

August 21, 1989.

On August 16, 1988, the Cincinnati Stock Exchange ("CSE") filed a proposed rule change (File No. SR–CSE–88–5) under section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposal authorizes the CSE to establish and operate a signature guarantee card distribution program. The Commission published notice of the proposal in the **Federal Register** on February 22, 1989.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposal.

The proposal would authorize the CSE to establish and operate a signature guarantee [3] card distribution program. Under the program, CSE will distribute to transfer agents signature cards containing specimen signatures of individuals authorized to guarantee signatures on behalf of a CSE member. CSE also will notify transfer agents of updates it receives from its members and will provide transfer agents with new signature cards of new individuals authorized to guarantee signatures on behalf of a CSE member.

CSE believes the proposal rule change is consistent with the requirements of section 6b(5) of the Act. Specifically, CSE believes that the proposed will faster coordination with persons engaged in settling transactions in securities.

The Commission believes that the proposal is consistent with section 6(b)(5) of the Act in that it is designed to foster coordination with persons engaged in settling transactions in securities. Currently, CSE does not have a signature gurantee card distribution service and, thus, CSE members must distribute signature cards directly to more than 1200 transfer agents. The CSE's proposal is similar in many respects, to the signature card distribution service of other national securities exchanges.[4]

It is therefore ordered, Pursuant to section 19(b) of the Act, that the proposed rule change (File No. SR–CSE–88–5) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20252 Filed 8–28–89; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(a) (1988).

[2] *See* Securities Exchange Act Release No. 26544 (February 14, 1989), 54 FR 7657.

[3] Transfer agents generally require that the signature of the registered holder of a stock certificate be guaranteed before it can be accepted for cancellation and reissuance. Transfer agents, also require signature guarantors to provide specimen signatures for each individual authorized to issue guarantees on behalf of the financial institution.

[4] The New York Stock Exchange, American Stock Exchange, Midwest Stock Exchange and Philadelphia Stock Exchange offer signature guarantee card services to their members.

[Release No. 34–27157; File No. SR–OCC–89–10]

Proposed Rule Change by The Options Clearing Corporation; Provision for the Processing of Basket Trades

August 21, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on August 14, 1989, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

File No. SR–OCC–89–10 proposes Rules pursuant to which OCC would clear and facilitate the settlement of market baskets. The Chicago Board Options Exchange, Inc. ("CBOE") has proposed in File No. SR–CBOE–88–20 to trade market baskets based on two stock market indexes.

II. Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change General

The overall purpose of the proposed rule change is to provide for the clearance and to facilitate the settlement of market baskets. Unlike options and IPs, which are securities of which OCC is the issuer, market baskets are simply contracts for the purchase and sale of the stocks comprising the basket and are not separate securities. OCC's role is to clear the Exchange transactions that it accepts, reporting the resulting transactions in the individual underlying stocks for clearance through correspondent clearing corporations, as provided in the rules.

Amendments to Existing By-Laws

Proposed amendments to Article I, Section 1 of OCC's existing By-Laws are, for the most part, made to incorporate references to market baskets. The term "market basket" is defined in paragraph (mmmm).

Articles V, VI and VIII are amended to incorporate references to market baskets. Section 5 of Article VI is amended to provide for the Corporation's acceptance of market baskets. Section 5 conditions acceptance of market basket transactions on OCC's receiving all margin payments due in respect of the transaction on the business day following the trade date. Section 7 of Article VI is amended to describe the information as to which a Purchasing Clearing Member and a Writing Clearing Member must agree in a market basket transaction.

Article VIII is amended to reflect that OCC's Non-Equity Securities Clearing Fund will cover losses suffered by OCC if a Clearing Member should default on any obligation to OCC with respect to market baskets.

Proposed Article XIX of the By-Laws

A new Article XIX that addresses market baskets is added to OCC's By-Laws. The introduction to the Article makes clear that the By-Laws in Articles I–XI apply to market baskets, except where expressly modified or made inapplicable by Article XIX. The effect on other By-Laws of each By-Law section in Article XIX is stated in brackets at the end of that section.

Article XIX, Section 1, contains definitions applicable to market baskets. Most of the definitions parallel those used with respect to IPs. The terms "purchaser" and "seller" are used instead of "holder" and "writer" to reflect the fact that market baskets are simply contracts of sale and not securities conferring ongoing rights and obligations upon holders and writers. The term "aggregate basket value" in respect of a market basket is defined as the sum of the closing market prices of each of the securities underlying the market basket on the day the market basket was accepted by OCC.

Except for the purposes of calculating margin pursuant to Rule 602A, the terms "long position" and "short position" are not used with respect to market baskets. The reason is that an opening transaction in market baskets that is not offset by a closing transaction effected in the same account on the same day results only in settlement obligations in respect of the stocks in the basket and not in a "position" in the sense that the term is used elsewhere in OCC's By-Laws and Rules. (These settlement obligations are in turn netted across accounts, as described below with reference to Rule 2001, to obtain a net obligation to receive or deliver each of the stocks in the basket.)

Section 2 conditions the acceptance of a market basket transaction on OCC's receiving margin payments in respect of the transaction on the business day immediately following the trade date. OCC retains the authority to accept a market basket for which margin has not been paid by applying certain funds of the Clearing Member that may be available to apply to the payment of any unpaid margin.

Section 3 of Article XIX states the general obligations of purchasers and sellers of market baskets.

Section 4 provides that the identity and number of shares deliverable in settlement of a market basket shall be determined by the Exchange. Should a security comprising a market basket become ineligible for settlement through a correspondent clearing corporation or should delivery of such security become impossible, unlawful or unfairly burdensome, OCC may direct that delivery of such security shall not be required and shall make such adjustments, if any, in the trade price or aggregate basket value of the market basket as it deems to be fair and reasonable under the circumstances.

Section 5 provides that OCC shall rely on the reporting authority for the market prices of the underlying securities. In the event OCC does not receive a market price for one or more underlying securities, it may either fix the market price for such securities on the basis of most recent available market prices, or it may suspend settlement obligations with respect to either the affected securities or the affected class of market baskets.

Proposed Amendments to Existing Rules

References to market baskets are being inserted where appropriate in Rules 207, 401, 603, 605, 609, 913(a) and 913(f).

Margin for market baskets will be calculated utilizing OCC's current non-equity margin system. Rule 602A is therefore amended to accommodate market baskets. In addition, the Rule is amended to make certain other minor changes.

The definition of "premium margin" is expanded to include market baskets. The definition provides that market basket premium margin within a class will be calculated on a settlement date by settlement date basis. These premium margin quantities are algebraically combined with all other premium margin quantities relating to the same class group to determine the premium margin for the class group.

The definition of "marking price" is expanded to include market baskets. Parallel changes are made in the definition of "margin interval." The description of the calculation of margin in the firm and market-maker's and specialist's accounts is expanded to accommodate market baskets.

The proposed rule change deletes language stating that each Clearing Member's obligations in respect of delivery units of physical IPs shall be margined in the firm account, because this language is made redundant by the language added to Rule 1907, which is described below.

A subparagraph is proposed to be added to state that OCC will collect margin equal to the movement in the value of market baskets between the time of the trade establishing the position and the close of business on that date if the movement is against the position of the Clearing Member, and that OCC will also give margin credit equal to that same movement if the movement is to the benefit of the Clearing Member.

The formula set forth in Rule 1001 for calculating each Clearing Member's contribution to the Non-Equity Securities Clearing Fund is being amended to include market baskets. In calculating a clearing member's proportionate share pursuant to that Rule, OCC will use the daily average of the sum of the net number of market baskets purchased or sold in each account.

As is discussed below, the proposed rule change amends Rule 1605(b) regarding the netted settlement of foreign currency options and Rule 1907(b) regarding the netted settlement of IPs to be settled by delivery of stock.

Proposed Chapter XX of the Rules

A new Chapter XX that addresses market baskets is added to OCC's Rules. Proposed Rule 2001 provides that the settlement date shall be the fifth business day after the market basket transaction is accepted. OCC's Board of Directors retains the authority to extend or postpone any market basket settlement date.

Proposed Rule 2001(b) describes the settlement of market baskets and, by and large, parallels Rule 1907(b) for IPs. As in the case of exercised IPs and foreign currency options, settlements are netted across accounts to a single net obligation to deliver or receive. OCC will report the purchase and sale of the underlying securities to the designated clearing corporation of each Clearing Member as if such securities were traded at their closing prices on the day the market basket transaction was effected. Accordingly, settlement will require the purchaser to pay through the designated clearing corporation the aggregate basket value, which is equal to the sum of the closing prices of the underlying securities. Any difference between the aggregate basket value and the trade price will be settled through OCC's cash settlement system on the settlement date in accordance with Rule 2001.

The proposed rule governing the settlement of a market basket accepted by OCC prior to an "ex" date of an underlying security is similar to the comparable rule applicable to equity options. In the event a particular underlying security becomes ineligible for settlement through a correspondent clearing corporation, OCC may direct that delivery of such underlying security be effected on a broker-to-broker basis.

Rule 2001 states that the rights and obligations of each Clearing Member to deliver or receive stock against receipt or payment of the aggregate basket value shall be deemed to be in the Clearing Member's firm account. Parallel sentences are being added to Rule 1605(b) with respect to the netted rights and obligations of Clearing Members to effect settlement of foreign currency and Rule 1907(b) with respect to the netted rights and obligations of Clearing Members to effect settlement of IPs by delivery or receipt of stock. The purpose of these provisions is to make clear that OCC will treat these settlements as being in the firm account and therefore, in the event of a Clearing Member default, will be able to apply any proceeds from such settlements without regard to the restrictions imposed, for example, by Rule 1104 with respect to the disposition of proceeds arising from positions in a customers' account.

Proposed Rule 2002 describes the treatment of market baskets to which a suspended Clearing Member is a party and, for the most part, parallels Rule 1908 for IPs. OCC's margin system will create a margin credit in the event the market moves in favor of a Clearing Member's pending market basket settlement. Accordingly, a Clearing Member effecting a buy-in is required to pay OCC the excess, if any, of the aggregate basket value over the prices actually paid in respect of the buy-in. Similarly, a Clearing Member effecting a sell-out must pay OCC the excess, if any, of the prices received on the sell-out over the aggregate basket value. OCC will place any amount so received in the suspended Clearing Member's Liquidating Settlement Account.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR–OCC–89–10 in the caption above and should be submitted by September 19, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20251 Filed 8–28–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–17117; File No. 812–7293]

Mutual Benefit Life Insurance Co.; Application for Exemption

August 22, 1989.

Agency: Securities and Exchange Commission ("SEC" or "Commission").

Action: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Mutual Benefit Life Insurance Company ("Mutual Benefit"), Mutual Benefit Variable Contract Account—11 of the Mutual Benefit Life Insurance Company (the "Account"), and Directed Services, Inc. ("DSI").

Relevant 1940 Act Sections: Applicants seek an order to permit the deduction from the Account of mortality and expense risk charges under a deferred variable annuity and an immediate variable annuity certain contract, and a guaranteed death benefit charge under a deferred variable annuity contract.

Filing Date: The Application was filed on April 11, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this Application or ask to be notified if a hearing is ordered. Any request must be received by the Commission by 5:30 p.m. on September 18, 1989. Request a hearing in writing, giving the nature of your interest, the reasons for the request and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the Commission along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary to the Commission.

Addresses: The Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549; Applicants, c/o Directed Services, Inc., P.O. Box 5179 FDR Station, New York, New York 10150–5179.

For Further Information Contact: Wendell M. Faria, Staff Attorney, at (202) 272–3450 or Clifford E. Kirsch, Acting Assistant Director, at (202) 272–2061.

Supplementary Information: Following is a summary of the Application; the complete Application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Mutual Benefit is a mutual life insurance company organized in the State of New Jersey in 1845 and presently licensed to engage in the life insurance business in all 50 states and the District of Columbia. Administrative services for these Certificates are provided at The Golden Financial Group, Inc., Customer Service Center, P.O. Box 5179, FDR Station, New York, New York 10150–5179. The Account is a separate investment account of Mutual Benefit established to act as a funding vehicle for a deferred annuity contract (the "Deferred Annuity") and an annuity certain contract (the "Annuity Certain") (referred to collectively as the "Contracts").

2. The Account is divided into divisions. Each division will invest in shares of a designated Series of the Western Capital Specialty Managers Trust (the "Trust") which is an open-end management investment company. The Trust has become registered with the Commission as an open-end management investment company and had filed a registration statement on Form N–1A. The Trust is a series-type mutual fund that contains seven Series, each of which will pursue different investment objectives and policies.

3. Subject to certain restrictions, Certificate owners are permitted to allocate the accumulation value to or from the Guaranteed Interest Division of the general account. The Guaranteed Interest Division currently credits a minimum interest at the effective rate of 4% for the Deferred Annuity and 5% for the Annuity Certain per year, compounded daily. Mutual Benefit may declare excess interest to the Guaranteed Interest Division at its sole discretion which will be guaranteed for one certificate year.

4. Western Capital Variable Advisors Corp. will serve as Manager to the Trust and will appoint investment advisers to each Series of the Trust. Pursuant to a Distribution Agreement between Mutual Benefit and DSI, a wholly owned subsidiary of The Golden Financial Group, Inc. ("GFC"), DSI will enter into a sales agreement with Western Capital Financial Group, Inc. to solicit sales of the Cetificates through registered representatives who are licensed to sell securities and variables insurance products including variable annuities. The registered representatives will be appointed by Mutual Benefit to sell the Certificates.

5. The Certificates provide for the accumulation of values on a variable basis except to the extent that a portion of the accumulation value is allocated to the Guaranteed Interest Division of the general account. Payment of annuity benefits will be on a fixed or variable basis. The variable aspects of the Certificates differ significantly from the fixed aspects in that the Certificate owner and the Annuitant assume the risk of investment gain or loss under a Certificate rather than Mutual Benefit. A Certificate owner directs the allocation of premium payments and accumulation value to the Account.

6. The Certificates are currently intended to be used in connection with a retirement plan qualified under sections 408(a) and/or 408(b) of the Internal Revenue Code or a non-qualified plan.

7. The Deferred Annuity is a group flexible payment contract which provides for an initial purchase payment and for subsequent purchase payments if the Certificate owner so desires. There is, however, no obligation to make additional payments.

8. The Annuity Certain is a group immediate annuity which provides for payment of a single premium and allows for variable annuity payments to be made to the Annuitant.

9. Deferred loading at a maximum rate of 7% of each payment is deducted from each payment for purchase-related expenses. If the payment received at issue on one Certificate or several simultaneously purchased Certificates exceeds specified limits we may reduce this load. This charge is allocated to

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cover distribution expenses. All

regardless of how long each annuitant

lower hypothetical gross returns it

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with the Securities and Exchange

[Rel. No. IC–17118; 811–5409]

Series A and Series B shares of limited

cover distribution expenses. All deferred loading applicable to initial or additional purchase payments or single premium payments is imposed at the time of payment but is advanced to the divisions and recovered from the accumulation value in equal installments on the first and subsequent certificate processing dates following the receipt and acceptance of the payment over a period specified in the Certificates. If the Certificate owner surrenders a Certificate, any remaining deferred loading will be deducted. The Application states that for purposes of the sales load provisions of the 1940 Act, the deferred loading is a front-end sales load. This is because the amount of the sales load is deducted from payments when made but is advanced back to the division and recovered in installments. Applicants are not relying on Rule 6c–8 in connection with this charge.

10. Mutual Benefit makes a deduction from the accumulation value for premium or other state and local taxes as they are incurred. Currently, these charges range up to 3%.

11. In the Deferred Annuity an administrative charge of $40 will be deducted from the accumulation value of a Contract each year to reimburse Mutual Benefit for the anticipated actual cost of administration expenses relating to the Contract. The amount of the administrative charge may be changed by Mutual Benefit to meet the anticipated actual cost of administrative expenses relating to the Contract; however, the amount of the administrative charge is guaranteed not to exceed $80 annually.

12. At any time while a Certificate is in effect, part of or all of the values under a Certificate may be surrendered for cash payment, or alternatively, the values under the Certificates may be applied to annuity options available at the time of surrender.

13. The Certificates provide that a maximum mortality and expense risk charge equal to 0.002477% of the asset values in each division of the Account will be deducted on a daily basis (equivalent to an annual charge of 0.90%). For the Deferred Annuity, approximately 0.55% is allocated to the mortality risk and 0.35% is allocated to the expense risk. In the Annuity Certain, approximately 0.45% is allocated to the mortality risk and 0.45% is allocated to the expense risk. The mortality risk assumed by Mutual Benefit arises from its obligation to continue to make annuity payments under the Certificates or income plan provisions of the Certificates, determined in accordance with the guaranteed annuity tables and other provisions of the Certificate, regardless of how long each annuitant lives and regardless of how long all payees as a group live. The mortality risk under the Deferred Annuity is the risk that, after annuitization or upon selection of an annuity option with a life contingency, annuitants will possibly live longer than Mutual Benefit's actuarial projections indicate, resulting in higher than expected payments during the payout phase, since the payment options are guaranteed not to be less than the tables discussed in the Deferred Annuity. In the Annuity Certain, the mortality risk assumed by Mutual Benefit relates to the fact that, at all times, Mutual Benefit will offer the option to convert the Annuity Certain, which does not provide for payments based on life contingencies, to one or more annuity contracts that provide for payments based on life contingencies. The mortality risk assumed by Mutual Benefit is the risk that annuitants, or beneficiaries after the death of the annuitant, will choose one such option and will possibly live longer than Mutual Benefit's actuarial projections indicate, resulting in higher than expected payments during the payout phase, since any payment option is guaranteed not to be less than the tables discussed in the Annuity Certain. In addition, Mutual Benefit assumes a risk that the charges for the administrative expenses may not be adequate to cover such expenses.

14. The Deferred Annuity also provides for a guaranteed death benefit annually. This charge is an account charge imposed to compensate Mutual Benefit for the risk that the minimum guaranteed death benefit due under a Deferred Annuity when the annuitant dies during the accumulation phase may exceed the accumulation value which is the normal death benefit otherwise payable. The guaranteed death benefit is the accumulated value of the purchase payments paid minus the accumulated value of the partial withdrawals taken. The guaranteed death benefit charge for the Certificates is based on the amount of the guaranteed death benefit and is imposed at a rate of $0.60 per $1,000 of guaranteed death benefit per year. However, the Account may offer other variable annuity contracts in the future. These variable annuity contracts may charge up to $1.20 per $1,000 of guaranteed death benefit per year. The guaranteed death benefit charge is based on the amount of the guaranteed death benefit and is approximately equal to (assuming a hypothetical gross return of 5% annually) 0.06% of net assets. For higher hypothetical gross returns this charge, when expressed as an asset charge, would be less, while for lower hypothetical gross returns it would be more.

15. Applicants represent that they have reviewed publicly available information regarding the level of the mortality and expense risk and guaranteed death benefit charges under comparable variable annuity contracts currently being offered in the industry, taking into consideration such factors as current charge levels or annuity rate guarantees and the markets in which the Certificates will be offered. Based upon the foregoing, Applicants further represent that the Maximum charges under the Certificates are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

16. Mutual Benefit has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Certificates will benefit the Account and the Certificate owners. Mutual Benefit will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

17. Applicants further represent that the Account will invest only in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of the funds, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

Applicants' Conditions

Applicants agree that if the requested order is granted such order will be expressly conditioned on Applicants' compliance with the undertakings set forth above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20250 Filed 8–28–89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Order Granting Application To Strike From Listing and Registration; The New York Stock Exchange, Inc. (Western Savings and Loan Association, Permanent Reserve Guarantee Stock, $1.00 Par Value) File No. 1–0009

August 21, 1989.

The New York Stock Exchange, Inc. ("Exchange") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(c) promulgated thereunder to strike the above specified security from listing and registration thereon.

The reasons alleged for striking this security from listing and registration include the following:

In the opinion of the Exchange, the Common Stock of Western Savings and Loan Association ("Company") is no longer suitable for continued listing and dealings on the Exchange. Information supplied by the Company or taken from other sources believed by the Exchange to be reliable indicated that on June 16, 1989 the Federal Deposit Insurance Corporation announced that the Company had been placed in receivership and that the mutual association created to maintain the normal operations of the Company would not assume any obligations of the Company's stockholders. It was further stated that the Company had assets of $5.78 billion and total liabilities of $5.90 billion.

Exchange Rule 499.20, Subsection 9 (Reduction in Operating Assets and/or Scope of Operations) states the Exchange would normally give consideration to suspending or removing from the list a security of a company "when the operating assets have been or are to be substantially reduced such as by sale, lease, spin-off, distribution, discontinuance, abandonment, destruction, condemnation, seizure or expropriation, or the company has ceased to be an operating company or discontinued a substantial portion of its operations or business for any reason whatsoever, and whether or not any of the foregoing results from action by the company, related parties, or persons unrelated to the company."

The Commission, having considered the facts stated in the application and having due regard for the public interest and protection of investors, orders that said application be, and it hereby is, granted, effective at the opening of business on August 21, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–20320 Filed 8–28–89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–17115; 811–5409]

Prudential Guaranteed Adjustable Fund, L.P.; Application for Deregistration

August 21, 1989.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Prudential Guaranteed Adjustable Fund, L.P. ("Applicant").

Relevant 1940 Act Section: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application was filed on Form N–8F on August 10, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 14, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

Addresses: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20592.

For Further Information Contact: Patricia Copeland, Legal Technician, (202) 272–3009, or Karen L. Skidmore, Branch Chief, (202) 272–3023 (Office of Investment Company Regulation).

Supplementary Information: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a limited partnership under the laws of the state of Delaware. On December 3, 1987, Applicant registered as an open-end diversified management company under the 1940 Act. On that same date, Applicant filed a registration statement under the Securities Act of 1933 on Form N–1A with respect to an indefinite number of Series A and Series B shares of limited partnership interest. The registration statement never became effective and was withdrawn by Applicant on February 28, 1989. Applicant has never made a public offering.

2. On August 7, 1989, Applicant's General Partners adopted a resolution authorizing the deregistration of Applicant under the 1940 Act.

3. Aside from an annual Delaware tax which may become due and payable at the time Applicant files its certificates of cancellation in that state, Applicant has no debts or other liabilities which remain outstanding. In connection with the organization of Applicant as a limited partnership under Delaware law, an affiliated person of Applicant joined in the partnership agreement as an original limited partner, and such affiliated person might be deemed to be a securityholder of Applicant. Applicant states that it does not currently have any assets nor is it a party to any litigation or administrative proceeding, and it does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20249 Filed 8–28–89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–17114; 811–5776]

Strong U.S. Government Reserves, Inc.; Application for Deregistration

August 21, 1989.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Strong U.S. Government Reserves, Inc. ("Applicant").

Relevant 1940 Act Section: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application was filed on Form N–8F on July 10, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving Applicant with a

DEPARTMENT OF TRANSPORTATION

Dated: August 22, 1989.

Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 14, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

Addresses: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 100 Heritage Reserve, Menomonee Falls, Wisconsin 53051.

For Further Information Contact: Patricia Copeland, Legal Technician, (202) 272–3008, or Karen L. Skidmore, Branch Chief, (202) 272–3023 (Office of Investment Company Regulation).

Supplementary Information: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a corporation registered under the laws of the state of Wisconsin. On March 1, 1989, Applicant registered as an open-end diversified management investment company under the 1940 Act. On that same date Applicant filed a registration statement under the Securities Act of 1933 on Form N–1A with respect to an indefinite number of the Applicant's common stock, $.001 par value. The registration statement never became effective and was withdrawn by Applicant on July 21, 1989. Applicant has never made a public offering of its securities.

2. Applicant's investment adviser, Corneliuson Capital Management, Inc., paid all outstanding debts.

3. Applicant states that it does not currently have any shareholders, it does not have any assets, debts or liabilities, it is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20248 Filed 8–28–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89–065]

Towing Safety Advisory Committee; Meeting of Subcommittee

AGENCY: Coast Guard, Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92–463; U.S.C. App. I), notice is hereby given of a meeting of the following subcommittee of the Towing Safety Advisory Committee (TSAC). The subcommittee on Tug-Barge Construction, Certification and Operations will meet on September 25, 26, 27 and 28, 1989 in Room 2230, U.S. Department of Transportation, 400 7th Street SW., Washington, DC. The meeting is scheduled to begin at 9:30 a.m. and end at 4:00 p.m. each day. The agenda for the meeting follows:

1. Development of suggested improvements in the provisions of 46 CFR Part 151.

2. Evaluate the adequacy of current 46 CFR Part 31 inspection intervals for tank barges.

3. Evaluate the adequacy of U.S. Coast Guard policy regarding the application of "Rivers" structural rules for tank barges that regularly ply a "Lakes, Bays, and Sounds" route or an "Oceans" route within the boundary line.

4. Evaluate requiring a buckling analysis for existing barges with "Rivers" scantlings as a condition of continuing operation on "Lakes, Bays, and Sounds" or "Oceans" routes within the boundary line.

5. Evaluate requiring high level alarms in cargo tanks on tank barges to reduce the incidence of cargo tank overfilling and overpressurization.

6. Evaluate the progress in identifying problems confronting the towing industry that could result from a full conversion to 1969 Tonnage Convention tonnage. Consider information concerning tonnage thresholds and related matters that the Coast Guard obtained during public meetings.

Members of the public may present oral or written statements at the meeting. Additional information may be obtained from Mr. Gene Hummel, Executive Director of TSAC at U.S. Coast Guard, Headquarters, G–MP–2, Room 2414, 2100 Second Street SW., Washington, DC 20593–0001 or by calling (202) 267–1406.

Dated: August 22, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–20240 Filed 8–28–89; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Proposed Modification of Airport Improvement Program Grant Improvement

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Notice of Proposed Modification of Airport Improvement Program Grant Assurances.

SUMMARY: The FAA proposes to modify the standard grant assurances required of a sponsor receiving a grant under the Airport Improvement Program (AIP). This modification is necessary to allow FAA to bring up to date the list of Advisory Circulars included as standards without having to publish them in the Federal Register. It will also allow FAA to delete from the grant program two separate certifications presently required to be prepared by grant recipients by adding them to the standard set of assurances. These modifications will provide for new assurances in all grants issued under the Airport Improvement Program after October 1, 1989. The Secretary of Transportation is required to provide notice in the Federal Register and an opportunity for the public to comment upon proposals to modify assurances or to require any additional assurances under AIP pursuant to subsection 511(f) of the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223.

DATES: These proposed modifications to the Grant Assurances would be effective October 1, 1989. Comments must be submitted on or before September 28, 1989.

ADDRESS: Comments may be delivered or mailed to the Grants-in-Aid Division, APP–500, Room 618, FAA, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Benedict D. Castellano (Airports Program Specialist); Telephone (202) 267–8822.

SUPPLEMENTARY INFORMATION: The Secretary must receive certain assurances from the sponsor (applicant) under *The Airport and Airway*

Improvement Act of 1982, as amended by *The Airport and Airway Safety and Capacity Expansion Act of 1987*, Pub. L. 100–223. These assurances are submitted as part of the application for Federal assistance and are incorporated in all grant agreements by reference. The current assurances were published on February 3, 1988 (53 FR 3104) and amended on September 6, 1988 (53 FR 34361). As need dictates, these assurances must be amended from time to time to reflect new Federal requirements or to resolve problems arising in the grant program. Notice of such proposed changes are published in the Federal Register and an opportunity provided for comment by the public. The Federal Aviation Administration (FAA) is planning to modify the assurances currently being used in order to reflect some changes in the general requirements.

FAA uses three separate sets of standard assurances: one for airport sponsors (owners/operators); one for planning agency sponsors; and one for nonairport sponsors.

Assurance 1, *General Federal Requirements*, of all three sets of assurances is proposed to add the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D) to the list under Federal Legislation. Additionally, Assurance 36 of the Airport Sponsor Assurances, Assurance 13 of the Planning Agency Sponsor Assurances, and Assurance 22 of the Non-Airport Sponsor Assurances, entitled *Durg-Free Workplace*, are proposed which will serve as the certification required by sponsors to comply with the Drug-Free Workplace Act.

Assurance 34 of the Airport Sponsor Assurances, titled *Policies, Standards, and Specifications*, is proposed to delete the list of Advisory Circulars presently included. Instead of the Circulars being listed in the assurance, sponsors would be provided a dated listing, entitled the "Current FAA Advisory Circulars for AIP Projects." This listing would be updated periodically by FAA as advisory circulars are changed and updated. The FAA field office would provide copies of the latest list to sponsors at the preapplication stage and this list would be attached to the sponsor's application package to ensure that a sponsor is aware of current requirements. This list would be incorporated in the grant agreement through reference to the application.

Assurance 35 of the Airport Sponsor Assurances and Assurance 21 of the Nonairport Sponsor Assurances, entitled *Relocation and Real Property Acquisition*, are proposed. This assurance would eliminate the need for the current Relocation and Real Property Acquisition Assurances, FAA Form 5100–40, which is presently required of the sponsor as a separate assurance whenever there is a project which includes the acquisition of real property or the relocation of persons.

Airport Improvement Program Grant Assurances

1. The Airport Sponsor Assurances are proposed to be amended as follows:

a. Assurance No. C.1. is proposed to be amended to read as follows:

C. 1. General Federal Requirements

* * * * *

u. Drug-Free Workplace Act of 1988

b. By proposing to revise Assurance 34 to read:

34. Policies, Standards, and Specifications. It will carry out the project in accordance with the policies, standards, and specifications approved by the Secretary including, but not limited to the advisory circulars listed in the "Current FAA Advisory Circulars for AIP Projects," dated ________________ and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

c. By proposing to add Assurance 35 to read:

35. Relocation and Real Property Acquisition. (1) It will be guided in acquiring real property, to the greatest extent practicable under State Law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subparts D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement comparable replacement dwellings to displaced person in accordance with Subpart E of 49 CFR Part 24.

d. By proposing to add Assurance 36 to read:

36. Drug Free Work Place. It will provide a drug-free workplace at the site of work specified in the grant application in accordance with 49 CFR Part 29 by (1) publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the sponsor's workplace and specifying the actions that will be taken against its employees for violation of such prohibition; and (2) establishing a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace and any available drug counseling, rehabilitation, and employee assistance programs; (3) notifying the FAA within ten days after receiving notice of an employee criminal drug statute conviction for a violation occurring in the workplace, and (4) making a good faith effort to continue to maintain a drug-free workplace.

2. The Planning Agency Sponsors Assurances are proposed to be amended as follows:

a. Assurance No. C. 1. is proposed to be amended to read as follows:

C. 1. General Federal Requirements

* * * * *

i. Drug-Free Workplace Act of 1988

b. By proposing to add Assurance 13 to read:

13. Drug Free Work Place. It will provide a drug-free workplace at the site of work specified in the grant application in accordance with 49 CFR Part 29 by (1) publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the sponsor's workplace and specifying the actions that will be taken against its employees for violation of such prohibition; and (2) establishing a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace and any available drug counseling, rehabilitation, and employee assistance programs; (3) notifying the FAA within ten days after receiving notice of an employee criminal drug statute conviction for a violation occurring in the workplace, and (4) making a good faith effort to continue to maintain a drug-free workplace.

3. The Nonairport Sponsor Assurances are proposed to be amended as follows:

a. Assurance No. C.1. is proposed to be amended to read as follows:

C. 1. General Federal Requirements

* * * * *

u. Drug-Free Workplace Act of 1988

b. By proposing to add Assurance 21 to read:

21. Relocation and Real Property Acquisition. (1) It will be guided in acquiring real property, to the greatest extent practicable under State Law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subparts D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement comparable replacement dwellings to displaced person in accordance with Subpart E of 49 CFR Part 24.

c. By proposing to add Assurance 22 to read:

22. Drug Free Work Place. It will provide a drug-free workplace at the site of work specified in the grant application in accordance with 49 CFR Part 29 by (1)

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publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the sponsor's workplace and specifying the actions that will be taken against its employees for violation of such prohibition; and (2) establishing a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace and any available drug counseling, rehabilitation, and employee assistance programs; (3) notifying the FAA within ten days after receiving notice of an employee criminal drug statute conviction for a violation occurring in the workplace, and (4) making a good faith effort to continue to maintain a drug-free workplace.

Issued in Washington, DC, on August 22, 1989.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 89-20266 Filed 8-28-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORATION

General Aviation Compliance and Enforcement

AGENCY: Federal Aviation Administration (FAA)/DOT.

ACTION: Notice of open forums and request for comments.

SUMMARY: This notice announces FAA's intent to evaluate its General Aviation Compliance and Enforcement Program. The public can participate in this evaluation: (1) by attending and/or speaking at an open forum; or (2) by written comments.

The vehicle for this evaluation will be a System Safety and Efficiency Review (SSER), conducted by the Office of the Associate Administrator for Aviation Safety. Areas of review will include, but will not be limited to, sanction guidelines, FAA and industry/public attitudes, enforcement effectiveness, Surveillance Program, and the Accident Prevention Program.

DATE: Written comments should be received on or before November 15, 1989.

ADDRESS: Send all written comments to: Federal Aviation Administration, Association Administrator for Aviation Safety, Washington, DC 20591, Attention: ASQ-1.

Background

SSER's are comprehensive, interdisciplinary evaluations conducted under the leadership of the FAA's Associate Administrator for Aviation Safety. Teams consists of highly qualified technical representatives from FAA and other units of Government, and the aviation community. SSER's review specific issues in order to improve aviation safety and efficiency, and address air traffic control, flight standards, aircraft certification, airway facilities, civil aviation security and airport certification, plus the activities of airport operators, air carriers and others. The SSER of FAA's General Aviation Compliance and Enforcement Program will be conducted to determine its effectiveness in promoting safety in general aviation. This review will not involve an evaluation of the agency's enforcement policies for air carriers. All SSER's are preceded by listening sessions at which the aviation community and other interested persons and organizations are encouraged to present their views.

The review will be conducted in three phases: (1) data gathering and analysis; (2) listening sessions at various locations around the country; and (3) technical evaluation of specific compliance and enforcement issues, including those identified in listening sessions or in written comments.

Invitation to Participate

Interested parties and individuals are invited to participate in this SSER by submitting written comments to the address shown above, or by attending the listening sessions shown below. Speakers and written commenters are asked to identify issues which they believe should be examined in the SSER. Reservations or formal presentations are not necessary. Comments will be recorded, but no transcript will be produced. Dates, times and locations for the listening sessions are shown below:

Monday August 28, 1989 (7:30 p.m.), Long Beach Hyatt Regency, 200 South Pine Avenue, Long Beach, California.

Tuesday August 29, 1989 (7:30 p.m.), Best Western Airtel Plaza Hotel, 7277 Valjean Avenue, Van Nuys, California.

Thursday September 7, 1989 (7:00 p.m.), Park Marriott, 300 Bare Blvd., Parkridge, New Jersey.

Tuesday September 26, 1989 (7:30 p.m.), Ramada In—Southeast, 6101 East 87th St., Kansas City, Missouri.

Wednesday September 27, 1989 (7:30 p.m.), Sheraton North Shore Inn, 933 Skokie Blvd., Northbrook, Illinois.

Thursday September 28, 1989 (7:30 p.m.), Holiday Inn, 17040 South Halsted, Harvey, Illinois.

Thursday October 5 (10:00 a.m. to Noon), Georgia World Congress Center, Atlanta, Georgia.

Friday October 20, 1989 (11: a.m.-12:30 p.m.), Buena Vista Palace Hotel, Lake Buena Vista, Florida.

Charles H. Huettner,

Deputy Association Administrator for Aviation Safety.

[FR Doc. 89-20207 Filed 8-24-89; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-89-34]

Petition for Exemption; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for examption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requriements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither pubication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before September 18, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ———, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-2132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 22, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25210.
Petitioner: Air Transport Association of America.
Regulations Affected: 14 CFR 63.39(b) (1) and (2) and 121.425(a)(2)(i).
Description of Relief Sought: To extend Exemption No. 4901 that allows Part 121 certificate holders to train and check flight engineer candidates in the performance of the airplane preflight inspection using advanced pictorial means instead of the airplane. The exemption also permits Part 121 certificate holders and operators of Part 63 flight engineer schools to complete training and checking of flight engineer applicants in an appropriate simulator instead of taking that portion of the practical test in an airplane in flight. Exemption No. 4901 will expire on January 31, 1990.

Docket No.: 25971.
Petitioner: National Association of Flight Instructors.
Sections of the FAR Affected: 14 CFR 135.251.
Description of Relief Sought: To allow the petitioner's members to submit their anti-drug programs no later than July 1, 1991 (instead of April 15, 1990) and to begin implementation of the program no later than November 1, 1991.

Docket No.: 073CE.
Petitioner: Dornier Seastar Gmbh and Company.
Sections of the FAR Affected: 14 CFR 23.807(d)(1).
Description of Relief Sought: To allow the passenger entrance door of the Dornier Seastar to function as a non-floor-level emergency exit.

Docket No.: 074CE.
Petitioner: Dornier Seastar Gmbh and Company.
Sections of the FAR Affected: 14 CFR 23.807(d)(1)(i).
Description of Relief Sought: To allow petitioner an exemption from the requirement to have an emergency exit on the same side of the cabin as the passenger entrance door.

Docket No.: 21882.
Petitioner: China Airlines Limited.
Sections of the FAR Affected: 14 CFR 61.77 (a) and (b) and 63.23 (a) and (b).
Description of Relief Sought/Disposition: To extend Exemption No. 4849 that allows the issuance of U.S. special purpose pilot and flight engineer certificates to petitioner's airmen, without meeting the requirement that they hold a current foreign certificate or license issued by a foreign contracting state to the Convention on International Civil Aviation.
GRANT, August 14, 1989, Exemption No. 4849A.

Docket No.: 24540.
Petitioner: Union Camp Corporation.
Regulations Affected: 14 CFR 91.45.
Description of Relief Sought/Disposition: To extend Exemption No. 4468 that allows petitioner to perform ferry flights with one engine inoperative from time to time, as the necessity arises, without the requirement to obtain a ferry permit for each flight.
GRANT, August 16, 1989, Exemption No. 4468B.

Docket No.: 25733.
Petitioner: Helicopters, Unlimited.
Regulations Affected: 14 CFR 135.337(a)(5).
Description of Relief Sought/Disposition: To allow Mr. Bennie F. Harris to perform the duties of Flight Instructor and Check Airman for petitioner using a Class III Medical Certificate.
DENIAL, August 4, 1989, Exemption No. 5058.

Docket No.: 2577b.
Petitioner: Lynch Flying Service, Inc.
Regulations Affected: 14 CFR 43.3(g).
Description of Relief Sought/Disposition: To allow properly certificated and trained pilots employed by petitioner to remove and replace passenger seats and ambulatory stretcher and base assemblies in the Cessna 400 series aircraft operated by the peititioner.
PARTIAL GRANT, August 11, 1989, Exemption No. 5085.

Docket No.: 25869.
Peitioner: Air Berlin, Inc.
Sections of the FAR Affected: 14 CFR part 121, Appendix I.
Description of Relief Sought/Disposition: To allow petitioner to submit an anti-drug program to the FAA after the 240-day period after December 21, 1988, as required by Appendix I.
PARTIAL GRANT, August 15, 1989, Exemption No. 5086.

[FR Doc. 89-20268 Filed 8-28-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

International Revenue Service (IRS)

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on September 13 & 14, 1989. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:30 a.m. on Wednesday, September 13 and 8:30 a.m. on Thursday, September 14, 1989. The agenda will include the following topics:

Wednesday, September 13, 1989

Information Systems Development

Report on Registration of Commercial Preperers

Human Resources Traning

Complexity of Regulations and Issues

Thursday, September 14, 1989

Private Rulings Process

Ad Hoc Topics, Q & A

Note: Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Robert F. Hilgen, Assistant to the Senior Deputy Commissioner no later than September 6, 1989. Mr. Hilgen may be reached on (202) 566-4143 (not toll-free).

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, Internal Revenue Service, 1111 Constitution Avenue, NW., C:SD Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, (202) 566-4143 (Not toll-free).

Fred T. Goldberg, Jr.,

Commissioner.

[FR Doc. 89-20237 Filed 8-28-89; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

Summit First Federal Savings and Loan Association; Final Action, Denial of Conversion Application

Notice is hereby given that on August 9, 1989, the Director of the Office of Thrift Supervision denied the application of Summit First Federal Savings and Loan Association, Summit, Illinois ("Association"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion and acquisition of the Association by Rydan Financial Corporation, Summit, Illinois.

By The Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-20316 Filed 8-28-89; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. USIA is required to certify the eligibility of foreign citizen for J-1 visas so that they may visit the United States under one of USIA's Exchange-Visitor programs. USIA is requesting approval of the extension of a program OMB 3116-0008, which provides J-1 visas for Exchange-Visitor programs. Respondents will be required to respond only one time.

DATE: On or before September 28, 1989.

Copies: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Debbie Knox, United States Information Agency, to M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485-7503; and OMB review: Mr. Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Title: "Certificate of Eligibility for Exchange Visitor (J-1) Status."

Form Number: IAP-66.

Abstract: This information collection is intended to facilitate the efforts of an Exchange-Visitor sponsor, who sends the form to an individual abroad so that he or she may take it to the nearest American Consul to receive a J-1 visa.

Proposed Frequency of Responses:

No. of Respondents	200,000
Recordkeeping Hours	450
Total Annual Burden	60,450

Dated: August 22, 1989.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 89-20335 Filed 8-28-89; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination; Picasso and Braque: Pioneering Cubism

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Picasso and Braque: Pioneering Cubism" from the U.S.S.R. (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Museum of Modern Art in New York, New York beginning on or about September 20, 1989 to on or about January 16, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 23, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89-20334 Filed 8-28-89; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination; When All the World Was a Stage: Russian Constructivist Theatre Design

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "When All The World Was A Stage: Russian Constructivist Theatre Design" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign leaders. I also determine that the temporary exhibition or display of the listed exhibit objects at the J.B. Speed Art Museum in Louisville, Kentucky, beginning on or about September 12, 1989 to on or about October 22, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 23, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89-20333 Filed 8-28-89; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System Notice

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) is amending a system of records entitled "Administrator's Official Correspondence Records" (75VA001B) which is set forth on page 822 of the

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[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202-485-8827, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/485-8827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Federal Register publication "Privacy Act Issuances, 1987 Compilation, Volume V." The system is being amended to include magnetic disk as a method of storge.

This notice also corrects an administrative oversight in the initial publication which inadvertently omitted the paragraph "Categories of Individuals Covered by the System."

To reflect the elevation to Department level, the name of the system is changed to "Secretary's Official Correspondence Records". All references to "Veterans Administration" are changed to "Department of Veterans Affairs" and references to the "Administrator" are changed to "Secretary" throughout the notice. The full text of the notice is being republished.

These changes are adminstrative in nature, therefore, no public comment is required.

Approved: August 21, 1989.

Edward J. Derwinski,

Secretary.

Notice of Amendment to System of Records

The system identified as 75VA001B "Administrator's Official Correspondence Records" appearing on page 82 of the **Federal Register** publication "Privacy Act Issuances, 1987 Compilation, Volume V"" is revised as follows:

75VA001B

SYSTEM NAME:

Secretary's Official Correspondence Records.

SYSTEM LOCATION:

Records are maintained in the Office of the Secretary, Executive Secretariat (001B), VA Central Office, Washington, D.C. 20420 with copies located in various other offices throughout the Department of Veterans Affairs (VA) Central Office and field stations. (Address locations are listed in VA Appendix 1 at the end of this document.) The Office of Administration, Safety and Office Support Services (03) keeps records on magnetic media.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual citizens (veteran and nonveteran), VA employees, organizations, agencies of Federal, state and local governments, and public officials who have sent correspondence to VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) may include: (1) Names of individuals (e.g., private citizens, veterans, public officials, organizations); (2) writers' social security number and/or veterans' claim number; (3) inquires or correspondence sent to the Secretary of Veterans Affairs by individuals; (4) information pertinent to decisions or responses given by the Secretary, administration heads or staff office directors; and (5) copies of the decisions or responses of the Secretary, administration heads or staff office directors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, 210(C).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The records of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual.

2. Any information in this system from correspondence or inquiries sent to the Secretary of Veterans Affairs may be disclosed to Federal or state agencies at the request of the correspondent or inquirer in order for those agencies to help the correspondent with his or her problem. The information disclosed may include the name and address of the correspondent or inquirer and details concerning the nature of the problem specified in the correspondence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records of inquiries and correspondence are maintained on paper documents in individual file folders in the Office of the Secretary. Data files supporting the automated system are stored in a secured area on magnetic disk and tape.

RETRIEVABILITY:

Records are maintained in alphabetical order by last name of the individual correspondent. When appropriate, records are also filed alphabetically by name of member of Congress representing the correspondent. Access to the automated system is via terminals located in the secured area referred to in safeguards. Standard security precautions are used to prohibit access to only authorized personnel.

SAFEGUARDS:

Records are maintained in a manned room during working hours. During nonworking hours, there is limited access to the building with visitor control by security personnel, and the room where the records are kept is locked. Access to the records is only authorized to VA personnel on a need-to-know basis.

RETENTION AND DISPOSAL:

In the Office of the Secretary, records retrieved by last name of members of Congress are retained in the Secretary's Office for one current year than retired to inactive storage in VA and Federal Archives and Records Center for ten years. All other records in this system are retained in VA for five years then retired to the Washington National Records Center where they are retained for 20 years. Thereafter, they are offered to National Archives for accessioning. After five years automated files are maintained indefinitiely on a history file in the correspondence tracking system.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Secretary, Executive Secretariat (001B), VA Central Office, Washington, DC 20420.

NOTIFICATION PROCEDURE:

An indvidual who wishes to determine whether a record is being maintained by the Office of the Secretary (001B) under his or her name or other personal identifier or wants to determine the contents of such records should submit a written request or apply in person to Executive Secretariat (001B).

RECORD ACCESS PROCEDURES:

An individual who seeks access to or wishes to contest records maintained under his or her name or other personal identifier may write or call or visit the Executive Secretariat.

CONTESTING RECORDS PROCEDURES:

(See Record Access Procedures Above.)

RECORD SOURCE CATEGORIES:

Individuals (veterans and nonveterans), attorneys, employees, members of Congress, local and state officials and various private and public organizations.

[FR Doc. 89-20286 Filed 8-28-89; 8:45 am]

BILLING CODE 8320-01

Sunshine Act Meetings

Federal Register
Vol. 54, No. 166
Tuesday, August 29, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 31917.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 3:00 p.m., Tuesday, August 30, 1989.

CHANGE IN THE MEETING: The Commission has cancelled the closed meeting to discuss a rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, Deputy Secretary of the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 89-20471 Filed 8-25-89; 4:05 pm]

BILLING CODE

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:25 a.m. on Thursday, August 24, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) Matters relating to the failure of an insured bank; and (2) matters relating to the Corporation's liquidation activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman and Mr. Darrell W. Dochow, acting in the place and stead of Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 500, 17th Street, NW., Washington, DC.

Dated: August 25, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-20427 Filed 8-25-89; 12:39 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

* * * * *

"FEDERAL REGISTER" NUMBER: 89-19452.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 24, 1989, 10 a.m.

The following item was withdrawn from the above meeting:

Regulations: 11 CFR Parts 4 and 5—Notice of Proposed Rulemaking.

The following items were added to the above meeting:

Reconsideration of Draft Final Rules: 11 CFR § 100.7(b)(8), § 100.8(b)(9) and § 110.4(a)

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-20438 Filed 8-25-89; 2:32 pm]

BILLING CODE 6715-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 28, September 4, 11, and 18, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 28

There are no meetings scheduled for the Week of August 28.

Week of September 4—Tentative

There are no meetings scheduled for the Week of September 4.

Week of September 11—Tentative

Thursday, September 14

10 a.m.
Briefings on Status of NRC Technical Training Programs (Public Meeting)

2 p.m.
Briefing on Emerging Technical Issues (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 15

9 a.m.
Briefing on Status of Maintenance Initiatives and Schedule (Public Meeting)

Week of September 18—Tentative

Wednesday, September 20

10 a.m.
Briefing on EPRI Design Requirements Document for Advanced Light Water Reactors (Public Meeting)

Thursday, September 21

10 a.m.
Briefing on Study of Adequacy of Regulatory Oversight of Materials Under a General License (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492-1661.

Dated: August 24, 1989.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89-20456 Filed 8-25-89; 2:13 pm]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:07 a.m. on Thursday, August 24, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider (1) matters regarding the Corporation's corporate activities; and (2) matters relating to the resolution of certain depository institutions placed in conservatorship under the joint regulatory oversight program.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman and Mr. Darrell W. Dochow, acting in the place

in stead of Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: August 25, 1989.

Resolution Trust Corporation.

Robert E. Feldman,

Acting Executive Secretary.

6009-RTC

[FR Doc. 89-20426 Filed 8-25-89; 12:39 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register

Vol. 54, No. 164

Tuesday, August 29, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV-89-075]

Irish Potatoes Grown in Designated Areas in California and Oregon; Proposed Rule to Revise Handling Requirements for Certain Small Sized Potatoes and Establish Reporting Requirements for Shipments to Processors

Correction

In proposed rule document 89-19540 beginning on page 34522 in the issue of Monday, August 21, 1989, make the following correction:

On page 34522, in the second column, under DATES:, "September 20, 1990" should read "September 20, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ES89-32-000, et al]

Utilicorp United Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 89-18952 beginning on page 33268 in the issue of Monday, August 14, 1989, make the following correction:

On page 33270, in the first column, under 17. **Tucson Electric Power Co.**, the Docket No. should read, "[Docket No. ER89-471-000]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 85P-0584]

Cheeses: Amendment of Standards of Identity To Permit Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging and to Update the Formats of Several Standards

Correction

In rule document 89-18225 beginning on page 32050 in the issue of Friday, August 4, 1989, make the following corrections:

§ 133.108 [Corrected]

1. On page 32053, in the first column, in § 133.108(d)(2), in the fifth line, "appropriate" was misspelled.

§ 133.146 [Corrected]

2. On page 32056, in the second column, in § 133.146 (d)(3)(iii), at the end of the sixth line, remove "xx".

3. On the same page, in the same column, in § 133.146(d)(4)(i), remove the quotation marks at the end of the sentence.

§ 133.160 [Corrected]

4. On page 32057, in the first column, in § 133.160(a), in the last sentence, "diary" should read "dairy".

5. On the same page, in the second column, in § 133.160(d)(1), in the third line, remove the colon, and insert a comma.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASO-15]

Alteration of Jet Routes and Compulsory Reporting Points

Correction

In rule document 89-18124 beginning on page 31937 in the issue of Thursday, August 3, 1989, make the following correction:

§ 71.209 [Corrected]

On page 31938, in the second column, in § 71.209, "QUID [Amended]" should read "SQUID [Amended]".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 89-AEA-8]

Proposed Alteration of Jet Route J-8

Correction

In proposed rule document 89-18126 beginning on page 31967 in the issue of Thursday, August 3, 1989, make the following corrections:

On page 31968, in the second column, in § 75.100, "J-3 [Amended]" should read "J-8 [Amended]"; and under that heading, in the third line, "902" should read "092".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Compliance With Federal Requirements for Reporting Releases and Transporting Hazardous Materials; Joint Workshop With the Enviromental Protection Agency

Correction

In notice document 89-18991 beginning on page 33317 in the issue of Monday, August 14, 1989, make the following correction:

On page 33317, in the second column, under "DATE", in the second line, "October 24" should read "October 25".

BILLING CODE 1505-01-D

DEPARTMENT OF TREASURY

Office of the Assistant Secretary (Enforcement)

31 CFR Part 103

Proposed Amendment to the Bank Secrecy Act Regulations Relating to Identification Required to Purchase Bank Checks and Drafts, Cashier's Checks, Money Orders and Traveler's Checks

Correction

In proposed rule document 89-19701 beginning on page 34791 in the issue of Tuesday, August 22, 1989, make the following corrections:

1. On page 34791, in the second column, in the AGENCY line, "Department" should read "Departmental".

2. On the same page, in the same column, under FOR FURTHER INFORMATION CONTACT, in the first line, "Advisory" should read "Advisor".

3. On page 34792, in the 1st column, in the 9th complete paragraph, in the 13th line, "of" should read "a".

4. On page 34793, in the 2nd column, in the 3rd complete paragraph, in the 16th line, "that proposed" should read "that the proposed".

5. On page 34794, in the 1st column, in the 1st complete paragraph, in the 9th line, "care" should read "card"; in the 17th line, "filed" should read "files"; and in the 30th line, after "financial" add "institution's records or files. Treasury strongly".

6. On the same page, in the second column, in the first complete paragraph, in the fifth line, after "require" add "that of a nonaccountholder purchases one or more of these".

7. On the same page, in the 3rd column, in the 2nd complete paragraph, in the 24th line, "laundering" should read "launderer".

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August 29, 1989

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 56 et al.

Air Quality, Chemical Substances, and Respiratory Protection Standards; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 58, 70, 71, 72, 75 and 90

RIN 1219–AA48

Air Quality, Chemical Substances, and Respiratory Protection Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Mine Safety and Health Administration's existing standards for air quality and chemical substances at coal and metal/nonmetal mines. It contains permissible exposure limits for substances that may pose health hazards at these mines. In addition, the proposed rule contains revised requirements for exposure monitoring, carcinogens, and respiratory protection programs. These actions are part of the Agency's ongoing review of metal/nonmetal and coal mine safety and health standards to improve protection for miners.

DATES: Comments must be received on or before November 27, 1989.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances; MSHA; Room 631; Ballston Tower #3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey; Director, Office of Standards, Regulations, and Variances; MSHA; (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains information collection requirements in §§ 58/72.200, 58/72.401, 58/72.402, 58/72.403, 58/72.404, 58/72.405, 58/72.450, 58/72.500 and 58/72.550. These paperwork requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the proposed paperwork provisions should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for MSHA (see address at the end of this discussion). The respondents in each of the paperwork provisions would be mine operators. Each of the following public burden hour estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection information. In each instance, the resultant information collection would be used by MSHA to assess compliance with the proposed requirements.

Exposure monitoring records (§§ 58/72.200). These records are necessary for the mine operator to assess exposure trends, whether the limitations of respirators in use are being exceeded, and whether newly installed or modified controls have reduced exposures to the permissible limits. Recording and reviewing the data would alert operators and MSHA to exposure problems. The record could also satisfy the proposed notification of overexposure requirement. The public reporting burden for this collection of information is estimated to average 8 hours and 10 minutes per response.

Carcinogens (§§ 58/72.401, 58/72.402; 58/72.403, 58/72.404, 58/72.405, 58/72.450). Written procedures for working with class 1 carcinogens would allow the mine operator flexibility to address site-specific applications while ensuring that miners would have virtually no contact with the chemicals. Written decontamination, disposal and emergency procedures for class 2, 3 and 4 carcinogens and asbestos construction work are necessary so that miners can properly follow the procedures, and it can be ascertained that the procedures have been followed. A written medical surveillance program for specific carcinogens would ensure that proper medical evaluations are conducted. The written evaluations are needed to ensure that each miner assigned to a carcinogen area or exposed to a carcinogen as a result of an accident correctly follows any medical limitation determined by the medical examination. These records also help determine whether the miner has suffered a health impairment as a result of occupational exposure to a carcinogen. The written notice of transfer is necessary to ensure that the miner is adequately informed of the need for transfer. The public reporting burden for class 1 carcinogen procedures is estimated to average 40 hours per response. Written procedures for class 2, 3 and 4 carcinogens and asbestos construction work are estimated to take 4 hours per response. The written medical surveillance program is estimated to take 4 hours per response. Records of medical evaluations are estimated to average 1 hour and 30 minutes per response. Notices of transfer are estimated to average 10 minutes per response.

Respiratory protection program records (§§ 58/72.500 and 58/72.550). The mine operator would use the information to provide respiratory protection to miners when feasible engineering and administrative controls do not reduce exposures to permissible limits. Written operating procedures would ensure that miners are provided with proper equipment and follow appropriate use procedures. MSHA would use the information to determine compliance with the standard. Fit-test records are used to ensure that a respirator worn by an individual is properly fitted. Monthly inspections of emergency-use respirators are critical to ensure protection in the event of an emergency. A record of the latest inspection would enable the operator to determine the status of the equipment and when it would need to be inspected again. A written medical surveillance program would ensure that the proper medical evaluations are conducted. Records of the medical evaluations enable the operator to determine the specific medical or physical conditions that may limit respirator use by an individual. The written notice of transfer is necessary to ensure that the miner is adequately informed of the need for transfer. The public reporting burden for the standard operating procedures and medical surveillance program is estimated to average 8 hours per response. Monthly inspections and records of emergency-use respirators are estimated to average 2 minutes per response. Fit-test records are estimated to average 15 minutes per response. Records of medical evaluations are estimated to average 1 hour and 30 minutes per response. Notices of transfer are estimated to average 10 minutes per response.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to Patricia W. Silvey; Director, Office of Standards, Regulations, and Variances; MSHA; Room 631; Ballston Tower #3; 4015 Wilson Boulevard; Arlington, Virginia 22203 and to the Office of Information and Regulatory Affairs, Attention: Diana Rowen; Desk Officer for MSHA; Room 3001; Office of Management and Budget, Washington, DC 20503.

II. Rulemaking History and Organization of Standards

This proposed rule is part of MSHA's ongoing review of its coal and metal/nonmetal safety and health standards. On July 6, 1983 (48 FR 31171), MSHA published a notice in the **Federal Register** inviting public comment on a preproposal draft of revisions to air quality standards for metal/nonmetal mines. On November 19, 1985 (50 FR 47702), MSHA announced the

availability of a preproposal draft of revisions to the Agency's underground coal mine ventilation standards, including a revision of existing § 75.301–2, which addresses harmful quantities of noxious or poisonous gases. On January 27, 1988 (53 FR 2382), MSHA published the ventilation standards as a proposed rule. In that proposal, however, the Agency stated its intent to address exposure to harmful, noxious or poisonous gases separately rather than as part of the ventilation standards. MSHA did not publish a preproposal draft regarding similar air quality standards for surface coal mines and surface areas of underground coal mines. The preproposal drafts received numerous comments which are reflected in this proposal from mine operators, trade associations, labor groups, equipment manufacturers, and other interested parties.

This rulemaking would codify health standards for air quality, chemical substances, and respiratory protection in a new part 58 for metal/nonmetal mines and a new part 72 for coal mines. In the following discussion, the designation "58/72" indicates that a standard appears in both parts 58 and 72. The existing respirable coal mine dust standards in parts 70, 71, and 90 are unaffected by this proposed rule.

III. Nature of the Hazard

During the extraction and processing of ore, coal, and rock at mines, miners are exposed to many different hazardous substances. These substances may be inherent in the ore itself; additives used during milling or processing; chemicals used in cleaning, maintenance of equipment, or laboratory testing. The effect of these substances may range from allergic reactions to systemic toxicity. Some of them are capable of causing cancers, central and peripheral neuropathies, lung disease, liver and kidney damage, birth defects, and other systemic effects. In some instances, exposure to more than one substance may result in greater damage from a combined effect than from exposure to the individual substances. Some cause sensory irritation, which causes rhinitis, cough, sputum production, chest pain, wheezing and dyspnea. MSHA has identified all these health effects as causing a material impairment of health or functional capacity. The Agency believes that the health evidence forms a reasonable basis for proposing revisions to these levels. However, MSHA requests comment on this interpretation of material impairment of health or functional capacity.

In the final rule, MSHA will take all reasonable steps to establish exposure limits to hazardous chemicals to the extent necessary to protect miners from a material impairment of health or functional capacity. The Agency will take into account the probability and severity of harm; the likely benefits to miners; the strengths and weaknesses of the data; the economic impact, including feasibility, of reducing exposures; and the uncertainties of the assumptions used in each case. When appropriate, MSHA will quantify risks to miners in order to establish an exposure level that eliminates unacceptable risks. When quantification is not done, MSHA will assess the data in each case to reach a reasonable determination.

Hazardous substances may enter the body through the skin, the lungs, or the gastrointestinal tract. Some substances can be absorbed through the skin and cause systemic poisoning. Breathing hazardous substances can irritate or damage the upper respiratory tract and the lungs, or also lead to systemic poisoning. Ingestion of toxic materials can result in absorption of the materials in the digestive system and distribution throughout the body in the bloodstream. Contact with certain substances virtually through any route may cause cancer.

To prevent occupational illness and disease, health hazards must be recognized, evaluated, and controlled. This proposed rule would establish lists of hazardous substances that may adversely affect health and would require control of exposure to such substances. Where appropriate, MSHA would establish permissible exposure limits and delineate the methods and frequency of monitoring to evaluate exposure. The proposed rule would also revise requirements for respiratory protection programs for metal/nonmetal mines and establish similar requirements for coal mines. Compliance with these proposed standards would reduce occupational illness and disease among miners, potentially resulting in increased productivity and reduced medical and disability costs.

IV. Discussion of Proposed Rule

Sections 58/72.2 Definitions

The health standards would be preceded by a set of definitions that would apply specifically to them. The proposed defined terms are "access," "confined space," "designated representative," "permissible exposure limit" (PEL), "qualitative fit test," "quantitative fit test," "respirable dust," and "respirator protection factor." A PEL may be a "time-weighted average" (TWA), a "short-term exposure limit" (STEL), a "ceiling exposure limit" (C), or a "mixed exposure limit" (MEL). The "time-weighted average" is the average concentration of a substance that may not be exceeded over the course of a workday. The TWA for an 8-hour workday is listed in the table of permissible exposure limits. If the workday is longer than 8 hours, the TWA is adjusted by the length of the shift. The calculated average concentration of the airborne substance for the worker's shift would determine whether the permissible exposure limit has been exceeded. A time-weighted average allows exposures above the listed concentration, provided they are offset by exposures below the listed concentration during the workday. Some substances with a workday TWA may also have a 15-minute "short-term exposure limit." A STEL is the maximum time-weighted concentration to which workers can be exposed for a continuous period of up to 15 minutes. Other substances are so hazardous that they require a ceiling limit that must not be exceeded at any time, even for an instant. When airborne substances exhibit additive or synergistic effects on health, a mixed exposure limit is used to prevent potentially harmful effects. These concepts are addressed more fully below in the discussion of §§ 58/72.100, "Control of exposure to airborne substances."

In response to commenters, a definition for "confined space" would be added. The definition characterizes a confined space as an area that, by design, has restricted openings for entry and exit; is not intended for continuous occupancy; and has an atmosphere that could contain or produce dangerous air contaminants. Examples of confined spaces include storage tanks or processing vats that may be entered for cleaning or other maintenance. Hazardous gases and vapors as well as oxygen deficiency are among the hazards of confined spaces. The restricted area of confined spaces makes these hazards particularly acute should rescue measures be necessary.

The terms "qualitative fit test," "quantitative fit test," and "respirator protection factor" concern proper selection of respiratory protection and are discussed below in conjunction with §§ 58/72.500, "Respiratory protection program."

"Access" and "designated representative" define terms relating to miners' rights of access to their own exposure records.

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Sections 58/72.100 Control of Exposure to Airborne Substances

This proposed standard would address the hazards of exposure to potentially harmful substances generated by mining activity or used in the mining or milling process. MSHA would eliminate outdated incorporations by reference in the existing standards and establish the permissible exposure limits. In addition, the Agency would require the use of feasible engineering or administrative controls to reduce exposure to permissible levels, except under specific circumstances where respiratory protection could be used.

Section 101(a)(6)(A) of the Federal Mine Safety and Health Act of 1977 (Mine Act) states that MSHA's promulgation of health standards must:

> * * * [A]dequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

The Legislative history of the Mine Act states that:

> * * * [T]he Secretary's authority under this section includes not only the promulgation of standards covering individual substances, but also standards covering classes or groups of substances. The [Senate Committee on Human Resources] believes that ('generic') standards of this kind may often provide more effective protection to miners. In addition, the Committee believes that the overriding consideration in setting health standards dealing with toxic substances and harmful physical agents must be the protection of the health of miners." S. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977).

At this point in the rulemaking process, MSHA believes that the exposure limits adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its 1989–90 Threshold Limit Values (TLVs®) constitute a reasonable basis for this proposal in light of the statutory requirements. In addition to listing exposure limits for chemicals, mineral dusts, and carcinogens, the "TLV® Booklet" includes an explanation of how TLVs® are to be interpreted and applied. For example, the "TLV® Booklet" discusses time-weighted average limits, short-term limits, ceiling limits, excursion factors, "skin" notations, mixtures, nuisance particulates, simple asphyxiants, and carcinogens. Furthermore, the ACGIH list deals with a great many substances and families of substances in a generic approach consistent with the Agency's statutory mandate to provide the most effective protection to miners.

ACGIH is a widely recognized and respected non-governmental organization of industrial hygiene personnel from governmental and educational institutions. Since ACGIH was founded in 1938, it has concentrated on the technical aspects of worker protection. Each year ACGIH revises and updates its list of threshold limit values (TLVs®) for chemical substances. The ACGIH TLV® list is the largest list available of chemicals with recommended occupational exposure limits. When ACGIH proposes that a substance be added or deleted, or that its value be lowered or raised, the substance is placed for 2 years in the "Notice of Intended Changes" section of the "TLV® Booklet." The ACGIH membership and the public then have an opportunity to comment or offer evidence concerning the appropriate exposure level of the substance during those 2 years. All data received are then considered prior to the adoption of the TLV®. The evidence to support proposed levels is based on work site experience and data collected from human and animal studies.

The ACGIH "Documentation of the Threshold Limit Values" ("TLV® Documentation") contains a brief summary of supporting data for the substances and limits listed. It includes, among other things, the chemical formula for each substance, its threshold limit values (TLVs®), a description of the characteristics of the substance, and a bibliography of the literature that was used to set each TLV®. MSHA preliminarily believes that these efforts by ACGIH are consistent with the Agency's philosophy to use the best available scientific data for the development of appropriate exposure limits. For many years, Federal and state agencies, as well as other countries, have relied upon ACGIH limits as guides for regulatory limits governing worker health.

Indeed, MSHA's existing standards incorporate exposure limits from earlier ACGIH publications. Existing metal/nonmetal §§ 56/57.5001 incorporates by reference pages 1 through 54 of the 1973 edition of ACGIH's publication entitled "TLVs® Threshold Limit Values for Chemical Substances in Workroom Air Adopted by ACGIH for 1973" ("TLV® Booklet"). Existing coal § 75.301–2 establishes the "current" ACGIH TLVs® as the standard for noxious and harmful gas concentrations at underground coal mining operations, while § 71.700 references the 1972 ACGIH TLVs® as the standards for surface coal mines and surface work areas of underground coal mines.

Most of the permissible exposure limits in this proposal are based upon the 1989–90 ACGIH "TLV® Booklet." However, MSHA raises for comment other limits based upon the Occupational Safety and Health Administration's (OSHA) January 19, 1989, rulemaking updating its permissible exposure limits for general industry (54 FR 2332). In addition, the Agency raises for comment Recommended Exposure Limits (RELs) developed by the National Institute for Occupational Safety and Health (NIOSH).

OSHA relied heavily upon the already published and widely accepted ACGIH TLVs® and NIOSH RELs in selecting the PELs for its final rule. NIOSH recommended exposure limits are from criteria documents issued for general industry and not for mining. However, MSHA is soliciting comments on the appropriateness of these NIOSH RELs for mining. For those substances, as well as substances where MSHA's proposed PELs differ from those published by OSHA, MSHA is interested in toxicity data, including, where possible, a discussion of the health risks to miners, and feasibility and cost of compliance information. The following table lists differences between the OSHA PELs and this proposal. A "C" notation in the table indicates a ceiling limit.

TABLE 1—PERMISSIBLE EXPOSURE LIMITS DIFFERENCES

Substance	TWA		STEL	
	ppm	mg/m³	ppm	mg/m³
Common gases:				
Ammonia	25	18	35	27
OSHA	None	None	35	27
Carbon dioxide	5,000	9,000	30,000	54,000
OSHA	10,000	18,000	30,000	54,000

TABLE 1—PERMISSIBLE EXPOSURE LIMITS DIFFERENCES—Continued

Substance	TWA		STEL	
	ppm	mg/m³	ppm	mg/m³
Other substances:				
Acetic acid	10	25	15	37
OSHA	10	25	None	None
Acetonitrile—Skin notation				
OSHA—No skin notation				
Allyl glycidyl ether—Skin notation				
OSHA—No skin notation				
Aluminum:				
Metal		10		
OSHA		15 total dust		
OSHA		5 respirable dust		
Ammonium perfluorooctanoate		0.1		
OSHA—No PEL				
Ammonium sulfamate		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
Anisidine (o-,p-isomers)—Skin notation	0.1	0.5		
OSHA—No skin notation	None	0.5		
Benomyl	0.8	10		
OSHA	None	10 total dust		
OSHA		5 respirable dust		
Beryllium and compounds		0.002		
OSHA		0.002 C 0.025	0.005 (30-min)	
Bismuth telluride (undoped)		10		
OSHA		15 total dust		
OSHA		5 respirable dust		
Borates, tetra, sodium salts all forms		5		
OSHA		10		
Boron oxide		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
Cadmium and compounds—10 ug/m³ or 5 ug/m³:				
OSHA fume		0.1 C 0.3	Undergoing rulemaking by OSHA	
OSHA dust		0.2 C 0.6		
Captafol—Skin notation				
OSHA—No skin notation				
Carbon tetrachloride—Skin notation				
OSHA—No skin notation				
Catechol—No skin notation				
OSHA—No skin notation				
o-Chlorotoluene	50	250	75	375
OSHA	50	250	None	None
Chromium metal		0.5		
OSHA		1		
Clopidol		10		
OSHA		15 total dust		
OSHA		5 respirable dust		
Copper:				
Fume		0.2		
OSHA		0.1		
Cyanides, as CN—Skin notation				
OSHA—No skin notation				
DDT (Dichlorodiphenyl-trichloroethane)—No skin notation.				
OSHA—Skin notation				
Demeton—Skin	0.01	0.1		
OSHA	None	0.1		
2-N-Dibutylaminoethanol—Skin notation				
OSHA—No skin notation				
1,1-Dichloroethane	200	810	250	1,010
OSHA	100	400	None	None
Dichlorvos—Skin	0.1	1		
OSHA	None	1		
Diethylene triamine—Skin notation				
OSHA—No skin notation				
Dinitrobenzene (all isomers)—Skin	0.15	1		
OSHA—Skin	None	1		
Dipropylene glycol methyl ether—No skin notation				
OSHA—Skin notation				
Disulfoton—No Skin notation				
OSHA—Skin notation				
Epichlorohydrin—Skin	2	10		
OSHA—Skin	2	8		
Fluorine	1	2	2	4
OSHA	.1	.2	None	None

TABLE 1—PERMISSIBLE EXPOSURE LIMITS DIFFERENCES—Continued

Substance	TWA		STEL	
	ppm	mg/m³	ppm	mg/m³
Hexachlorobutadiene—Skin notation				
OSHA—No Skin notation				
Hexachloroethane—No skin notation				
OSHA—Skin notation				
Hydrogen cyanide—Skin	C 10	C 10		
OSHA—Skin			4.7	5
Hydrogen fluoride, as F	C 3	C 2.5		
OSHA	3		6	
Iron oxide fume (Fe_2O_3), as Fe		5		
OSHA		10 total particulate		
Isophorone	C 5	C 25		
OSHA	4	23		
Isophorone diisocyanate—Skin	0.005	0.045		
OSHA—Skin	0.005	0.02		
Magnesium oxide fume		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
Malathion—Skin		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
Mercury, as Hg Aryl and inorganic compounds		0.1		
OSHA		C 0.1		
Methoxychlor		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
Methyl n-amyl ketone	50	235		
OSHA	100	465		
Methyl ethyl ketone peroxide	C 0.2	C 1.5		
OSHA	C 0.7	C 5		
Molybdenum, as Mo insoluble compounds		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
Naled—Skin		3		
OSHA—No PEL				
Nitrapyrin		10		20
OSHA—No PEL				
p-Nitrochlorobenzene—Skin	0.1	.6		
OSHA	None	1		
Oil mist, mineral		5		10
OSHA		5		None
Ozone	C 0.1	C 0.2		
OSHA	0.1	0.2		
Phenyl ether vapor	1	7	2	14
OSHA	1	7	None	None
Phosphorus pentachloride	0.1	1		
OSHA	None	1		
Picloram		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
Propane	Simple asphyxiant			
OSHA	1,000	1,800		
Propyl alcohol—Skin notation				
OSHA—No skin notation				
Rhodium:				
Metal		1		
OSHA metal fume		0.1		
Insoluble compounds, as Rh		1		
OSHA		0.1		
Soluble compounds, as Rh		0.01		
OSHA		0.001		
Selenium hexafluoride, as Se	0.05	0.2		
OSHA		0.4		
Silicon carbide		5		
OSHA		10 total dust		
OSHA		5 respirable dust		
Silver, soluble compounds, as Ag		0.01		
OSHA—No PEL				
Temephos		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
TEPP—Skin	0.004	0.05		
OSHA	None	0.05		
Tetrachloronaphthalene—No skin notation				
OSHA—Skin notation				
Tetryl—No skin notation		1.5		
OSHA—Skin notation		0.1		
Thiram		1		
OSHA		5		

TABLE 1—PERMISSIBLE EXPOSURE LIMITS DIFFERENCES—Continued

Substance	TWA		STEL	
	ppm	mg/m³	ppm	mg/m³
Tin:				
Organic compounds, as Sn—Skin		0.1		0.2
OSHA		0.1		None
o-Toluidine—Skin	2	9		
OSHA	5	22		
Trichlorofluoromethane	C 1,000	C 5,600		
OSHA—No PEL				
Vinyl toluene	50	240	100	485
OSHA	100	480	100	485
Wood dust:				
Hard wood		1		
Soft wood		5		10
OSHA hard and soft wood		5		10
OSHA western red cedar		2.5		
Xylidine—Skin	0.5	2.5		
OSHA	2	10		

MSHA requests comments on the most appropriate PELs applicable to mining for these substances, particularly toxicity and feasibility information on both the OSHA and ACGIH limits. The Agency especially requests comments on silver, copper, and vanadium.

The metal/nonmetal preproposal draft also listed a number of new substances from the 1982 "TLV® Booklet" that are not in the existing standard. Some commenters objected and favored listing only substances found on mining property and which present a risk of a material impairment of health or functional capacity. This proposed rule includes those substances which the Agency has reason to believe, based upon the Agency's knowledge thus far, could pose this type of health risk to miners if found on mine property.

The metal/nonmetal preproposal draft also required, as the primary control, the use of feasible engineering or administrative controls to reduce exposure. Some commenters asked the Agency to define "feasible controls." The Mine Act requires the Secretary, when promulgating mandatory standards pertaining to toxic materials or harmful physical agents, base such standards upon:

> * * * [R]esearch, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the miner, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the mandatory health or safety standard promulgated shall be expressed in terms of objective criteria and of the performance desired. (Section 101(a)(6)(A)).

Thus the Mine Act requires that the Secretary, in promulgating a standard, attain the highest degree of health and safety protection for the miner, with feasibility as a consideration.

In relation to feasibility, the legislative history of the Mine Act states that:

> * * * This section further provides that "other considerations" in the setting of health standards are "the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws." While feasibility of the standard may be taken into consideration with respect to engineering controls, this factor should have a substantially less significant role. Thus, the Secretary may appropriately consider the state of the engineering art in industry at the time the standard is promulgated. However, as the circuit courts of appeals have recognized, occupational safety and health statutes should be viewed as 'technology-forcing' legislation, and a proposed health standard should not be rejected as infeasible when the necessary technology looms on today's horizon.' (*AFL–CIO* v. *Brennan*, 530 F.2d 109); (CA 3 1975) *Society of Plastics Industry* v. *OSHA*, 509 F.2d 1301 (CA 2), *cert. denied*, 427 U.S. 992 (1975).
>
> Similarly, information on the economic impact of a health standard which is provided to the Secretary of Labor at a hearing or during the public comment period, may be given weight by the Secretary. In adopting the language of [this section], the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure. S. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977).

Though the Mine Act and its Legislative History are not specific in defining feasibility, the courts have clarified the meaning of feasibility. The Supreme Court, in *American Textile Manufacturers' Institute* v. *Donovan* (OSHA Cotton Dust), 452 U.S. 490, 508–509 (1981), defines the word "feasible" as "capable of being done, executed, or effected."

Though the leading MSHA cases on feasibility are in the noise area, the Federal Mine Safety and Health Review Commission (Commission) gives a general definition of feasibility. Citing the OSHA *Cotton Dust* decision, the Commission concluded that a determination of the feasibility of engineering controls must include consideration of technological and economic factors. The existence of general technical knowledge relating to materials or methods which may be available or adaptable to a specific situation establishes technological feasibility. A control may be technologically feasible when "if through reasonable application of existing products, devices or work methods with human skills and abilities, a workable engineering control can be applied" to the source of the hazard. It need not be an "off-the-shelf" product, but "it must have a realistic basis in present capabilities" (*Secretary of Labor* v. *Callanan Industries, Inc.* (Noise), 5 FMSHRC 1900 (1983)). Industry must have at least conceived some industrial strategies or devices that are likely to be capable of meeting the permissible exposure limits, and the affected industries must be generally capable of adopting these measures. (*United Steelworkers of America, AFL–CIO–CLC* v. *Marshall* (OSHA Lead), 647 F.2d 1189 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 918 (1981)).

In a separate but consistent noise decision, the Commission ruled that an engineering control may also be feasible even though it fails to reduce exposure to permissible levels contained in the standard, as long as there is a signficant reduction in exposure. (*Todilto Exploration and Development Corporation* v. *Secretary of Labor,* 5 FMSHRC 1894 (1983)).

Consistent with case law, MSHA would consider three factors in determining whether engineering controls are feasible at a particular mine: first, the nature and extent of the overexposure; second, the demonstrated effectiveness of available technology; and third, whether the committed resources are wholly out of proportion to the expected results. Under the proposed rule, before a violation of the standard could be found, MSHA would have to determine that a worker has been overexposed; that administrative or engineering controls are feasible; and that the operator failed to install or maintain such controls. If these conditions are met, the operator would be issued a citation with an appropriate abatement date for installing feasible controls. A respiratory protection program would be required while controls are being installed. As long as worker exposure is reduced to or below the PEL, the mine operator has flexibility under the proposed rule to choose the engineering or administrative controls that best suit the mine's situation. If an operator needs assistance in selecting a control method, MSHA would make recommendations on how to reduce exposure, based upon demonstrated experience.

MSHA has considered the substances on the 1989–90 ACGIH "TLV® Booklet" to determine whether it would be appropriate to regulate them at mines. Although the majority of substances in the "TLV® Booklet" do not naturally occur in mining, they may be brought on mine property in the course of day-to-day operations. For this reason, MSHA is proposing to include most of the TLV® list in a table of permissible exposure limits (PEL Table). The Agency believes that the risks to miners posed by these substances results from the frequency or nature of their use, or the nature of their effects on the body. The list is also referenced by §§ 56/72.200, "Exposure monitoring." Other commenters suggested separate TLV® lists for each type of mining operation. However, given the diversity of the coal and metal/nonmetal mining industry, such an approach would be impractical. The Agency is in the process of gathering evidence for a generic final rule for improved health protection for miners. However, MSHA also solicits comments on substances that are not on the proposed list but may be found on mine property and may pose a hazard of material impairment of health or functional capacity.

Simple asphyxiants are listed in the PEL Table as they are identified in the 1989–90 "ACGIH TLV® Booklet." Because they pose a health hazard by displacing oxygen rather than by a toxic nature, the PEL Table references these substances to §§ 56/72.300 which specify the minimum allowable oxygen content in work area.

The PEL Table also lists those substances that are carcinogens on the basis of human and/or animal data. In addition to listing any applicable TLVs® for these substances, the table also references the specific precautions required by the carcinogen standards in Subpart C to alert mine operators that there are additional requirements for such substances because of their carcinogenic nature.

NIOSH maintains a "Registry of Toxic Effects of Chemical Substances" (RTECS). The purpose of the Registry is to provide basic information on the known toxic and biological effects of chemical substances to employees, employers, industrial hygienists, physicians, and anyone else with the need to know in order to assure proper and safe handling of chemicals. The Registry contains basic toxicity information and other data, such as synonyms, trade names, and Chemical Abstracts Service Registry (CAS) numbers. Each chemical in the Registry is assigned a unique identifier. MSHA has included the NIOSH RTECS numbers in its proposed permissible exposure limit tables as a reference aide for the mining community.

At the end of the preamble is a listing of the differences between the proposed rule and the existing rules. The tables include: (1) Substances that would be regulated for the first time by MSHA; (2) Changes and reductions of exposure limits for substances currently regulated by MSHA; (3) Changes and additions concerning short-term exposure limits; (4) Chemicals that would have a new skin notation; (5) Chemicals that would be deleted from existing regulations; (6) Skin notations that would be deleted from existing regulations; (7) Existing names that have been changed to new names in the proposed list; and (8) Substances that would be regulated as carcinogens for the first time. The following table summarizes these proposed changes:

TABLE 2.—SUMMARY OF PROPOSED CHANGES

Proposed change	Number of substances affected		
	Metal/nonmetal alone	Metal/nonmetal and coal	Coal alone
First time regulated	146	6	13
Changes in exposure limits to substances already regulated	136	7	7
Changes of STELs	223		
New skin notation	33		
Deletion of substances	19		
Deletion of skin notation	18		
New carcinogens	40	6	6

Time-Weighted Average (TWA)

The use of a time-weighted average (TWA) allows for excursions above the TWA limit, provided they are compensated by equivalent excursions below the TWA limit during the workday. The essential factor is that the TWA cannot be exceeded when exposures are averaged for the workday.

The TLVs® were developed for an 8-hour day and 40-hour workweek. Therefore, for 8-hour workdays or shorter, the formula given in §§ 56/72.100(a) is used. For workshifts longer than 8 hours, the TWA is adjusted downward proportionally to the hours worked as given in §§ 56/72.100(b). This adjusts the dose received by a miner to the same amount that would have been received in 8 hours at the TWA listed in the exposure limit tables.

It is critical in controlling exposure that a miner's entire workshift be sampled and controlled. In mining, workshifts greater than 8 hours are common. The shifts can range from 9-hour days up to dawn-to-dusk shifts in seasonal operations. If MSHA were to require that the TWA be applied only to 8-hour exposures, miners could be exposed for substantial periods of time to uncontrolled amounts of airborne contaminants.

The method proposed in §§ 56/72.100(b) is simple. The mine operator can easily calculate the TWA that applies to the length of the miner's workshift. With the use of this formula, the miner would only receive the same total dose that the miner would have received during a traditional 8-hour workday.

MSHA is aware that it does not directly address the complicated issues of biological half-life, clearance mechanisms, and recovery time. However, MSHA believes that the

method's simplicity and ease of use are important advantages. Upon review of the scientific literature, MSHA could not find any single adjustment method that was widely accepted. Some methods were so complicated that even professional industrial hygienists might have difficulty applying them. At this time, MSHA believes that this method, which relates the dose received by the miner to the amount allowed in an 8-hour workshift, inherently addresses such concerns as recovery time and clearance because of the lowered TWA. MSHA specifically requests comments on this method and its applicability to different chemicals, as well as the requirement for full-shift sampling. MSHA is also seeking comments on what action is appropriate for calculating exposures when miners work overtime, such as working two consecutive shifts or when more than 40 hours are worked in a 7-day period.

Ceiling Limits and Short-Term Exposure Limits (STELs)

While a time-weighted average is an adequate limit for most substances, there are certain chemical substances that are fast acting or highly irritating and have permissible exposure limits based upon such responses. Acute poisoning is one physiological hazard that could require setting a concentration limit not to be exceeded at any time—a ceiling limit. Ceiling limits are designated by a "C" in the PEL Table.

Under the proposed rule, any instantaneous or other applicable short-term sampling that indicates a concentration above the ceiling limit would constitute an overexposure. The concept of ceiling limits is currently incorporated by reference from the 1972 and 1973 "TLV® Booklets." Commenters suggested a reevaluation of the ceiling limit concept and reassignment of a value more closely associated with the NIOSH/OSHA immediately dangerous to life or health (IDLH) limit. However, the purpose of the ceiling limit is to provide protection from more serious health effects that could occur at levels far below those immediately dangerous to life or health.

The existing standard incorporates the ACGIH concept of excursion factors for all substances not having a ceiling value. These factors are used as multipliers of the TLV® to determine the maximum concentration to which a person may be exposed at any one point in time, within the range of limits of the TLV® and providing the time-weighted average does not exceed the TLV®. In 1973, ACGIH applied excursion factors to all substances, unless a short-term limit is specified by the Commonwealth of Pennsylvania Department of Health in its 1968 "Regulations Establishing Threshold Limit Values in Places of Employment" (Pennsylvania Rules and Regulations, Chapter Four, Article 432) or the American National Standards Institute (ANSI) document "Acceptable Concentrations." Some substances had both Pennsylvania and ANSI limits. In such cases, MSHA has enforced the more restrictive limit. The Agency is proposing to replace the concept of excursions with the concept of short-term exposure limits currently used by ACGIH.

Short-term exposure limits are assigned to certain substances that do not have a ceiling limit but whose short-term toxicological effects necessitate some limitation on excursions above the TWA. MSHA is proposing the concept set forth in the metal/nonmetal preproposal draft. A short-term exposure limit would be a limit that any 15-minute time-weighted average exposure could not exceed during the workday, even if the time-weighted average for the workday were within the time-weighted limit.

The ACGIH concept of STEL in the 1989–90 "TLV® Booklet" recommends that no more than four exposures at the STEL per day be permitted, with at least 60 minutes between each exposure period. The Agency is not proposing this aspect of the STEL concept because it is unlikely that exposures would equate precisely to the STEL without some risk of exceeding the STEL. Under the proposed rule, for purposes of determining whether a substance's STEL has been exceeded, any 15-minute time-weighted average would be compared to the STEL.

STELs are based upon toxicological data that indicate the levels at which workers can be exposed continuously for a short period of time without suffering irritation, chronic or irreversible tissue change, or narcosis (drowsiness) to the extent that accident proneness increases or ability for self-rescue is impaired. STELs have been determined primarily by effects associated with short-term exposures to either humans or animals.

Existing §§ 56/57.5001(c) require that miners be withdrawn from a metal or nonmetal mine where there is an overexposure to an airborne contaminant given a "C" (ceiling) designation. Under the proposed rule, mine operators would be required to take immediate corrective action if exposures exceed the ceiling or short-term exposure limits established by §§ 58/72.100(b). MSHA does not believe that this proposal would result in a reduction of protection afforded miners by the existing standard because operators would be required to reduce concentrations immediately to below the PEL in accordance with proposed §§ 58/72/100(e). If the corrective action would take even a short time, only persons provided with appropriate respiratory protection would be allowed to remain in the area. The required respiratory protection is addressed in proposed §§ 58/72.500. All other persons would have to be withdrawn from the area. The withdrawal requirement would also prompt the operator to practice accident preparedness and prevention.

Some Specific Substances

Asbestos. Regulations for asbestos exposure are included in this proposed rule. MSHA has reviewed the ACGIH TLVs® for the various forms of asbestos as well as OSHA's limit for asbestos and the nonasbestiforms of actinolite, tremolite, and anthophylite. Consistent with OSHA's asbestos standard, MSHA is proposing an exposure limit of 0.2 f/cc, utilizing MSHA's current method of identifying asbestos. However, based on the Agency's experience in mining, the asbestos proposal does not include the non-asbestiforms of actinolite, tremolite, and anthophyllite. These three minerals are not regulated currently by MSHA but would be covered under the proposed respirable mine dust standard. However, since they are regulated under the OSHA asbestos standard, the Agency requests submission of relevant data concerning what, if any, health risk they may pose in mining. Recently OSHA promulgated a STEL of 1 f/cc, and MSHA is requesting comment for its applicability to mining.

The Agency proposes to retain the criteria currently codified in §§ 56/57.5001(b) that fibers are to be greater than 5 microns in length as determined by membrane filter methods at 400–450 magnification (4 millimeters objective) phase contrast illumination. MSHA believes that this provides sufficient information to the mine operator while not inhibiting future sampling and analytical development. MSHA specifically requests comments on the appropriate methods of defining fibers and determining fiber concentration.

Asbestos mining and milling and vermiculite mining and milling where asbestos exceeds .1 percent in the ore or concentrate would also be covered by the requirements for class 4 carcinogens. Asbestos construction work would also have additional requirements. These requirements are discussed below in §§ 58/72.405.

Barite. The metal/nonmetal preproposal draft specified a limit for barite, a barium sulfate compound, of 0.5 mg/m^3, the same limit placed on other barium compounds. The ACGIH had established this limit primarily based on the toxicological data associated with the more soluble forms of barium, such as barium choloride and barium nitrate. In the 1989–90 "TLV® Booklet," ACGIH has taken into account the insolubility of barium sulfate and assigned a TLV® of 10 mg/m^3. MSHA is proposing this limit.

Benzene. MSHA is proposing the OSHA limit of a TWA of 1 ppm and a STEL of 5 ppm instead of the ACGIH recommended TWA of 10 ppm. MSHA believes that health data support the OSHA limit. This substance also would be regulated further under the proposed carcinogen standards, §§ 58/72.403.

Borates. MSHA's metal/nonmetal preproposal draft standard recommended permissible exposure limits for sodium tetraborate salts from the ACGIH 1982 TLV® Booklet (1 mg/m^3 for anhydrous and pentahydrate salts and 5 mg/m^3 for decahydrate salts). Prior to July 1982, these substances were regulated as unlisted nuisance dusts with a TLV® of 10 mg/m^3 (total dust). Subsequently, MSHA revised its nuisance dust policy, and these substances are not regulated currently.

In the 1989–90 "TLV® Booklet," borate salts are categorized in three forms: anhydrous, pentahydrate, and decahydrate. Each form is differentiated by the number of water molecules bound by the salt and has a specific exposure limit. Although each may be found in manufacturing processes, once exposed to changing atmospheric conditions, such as temperature or humidity, each substance may change to another hydrated form of the sodium tetraborate salt in question. The hygroscopic or water binding nature of the salts is variable. Therefore the borate salt that is present in an occupational environment and collected for analysis to compare to the appropriate standard may, during collection, storage, or analysis, change to one of the other hydrated types of borate salt.

MSHA does not know of a sampling and analytical technique that would distinguish the different exposure levels of the airborne borate salts in a mixed sample. Therefore the Agency proposes an inclusive sodium tetraborate salt PEL of 5 mg/m^3 (total dust), regardless of the state of hydration. MSHA requests information and analytical data for alternative PELs.

Cadmium and compounds. MSHA is proposing two alternative PELs for cadmium and its compounds: 10 μg/m^3 and 5 μg/m^3. The 10 $\mu\gamma / \mu^3$ limit is the ACGIH notice of intended changes for cadmium and compounds that is based on the prevention of both kidney effects and carcinogenic effects. MSHA is aware of data that have become available since ACGIH notice of intended changes that indicate that kidney lesions related to cadmium exposure are permanent and may be progressive. In view of this new information as well as the ongoing discussion in the scientific community concerning the carcinogenic risk from cadmium, MSHA is also considering whether a 5 μg/m^3 limit for cadmium and its compounds. MSHA solicits comment on the scientific data supporting either limit as well as information on the feasibility of achieving each limit.

Calcium oxide and calcium hydroxide. Some commenters stated that calcium oxide should be deleted from the PEL Table because they did not believe it to be a "toxic" substance. The existing standard for calcium oxide (CaO) is 5 mg/m^3 as listed in the 1973 "TLV® Booklet." Calcium oxide has been a part of the ACGIH TLV® listings since 1962, when the organization began its review of the substance's properties. From that time, ACGIH has continued to list calcium oxide with a limit of 5 mg/m^3. In 1976, ACGIH published its notice of intent to lower the TLV® of calcium oxide to 2 mg/m^3 and add calcium hydroxide (CaOH) to the list with a TLV® of 5 mg/m^3. This action was based upon the caustic properties exhibited by both substances and their associated irritant potential.

Calcium oxide is a hygroscopic compound that, when suspended in the atmosphere as dust, absorbs water to form calcium hydroxide. This occurs at different rates and affects different percentages of a calcium oxide dust cloud. MSHA is unaware of any sampling method that will selectively collect either calcium oxide or calcium hydroxide. In addition, MSHA is unaware of any sampling and storage method that will maintain the calcium oxide/calcium hydroxide ratio of a collected sample. MSHA solicits information on any analytical procedures that will differentiate between calcium oxide and calcium hydroxide. Therefore the Agency proposes a 5 mg/m^3 (total dust) limit for any combination of calcium oxide and calcium hydroxide, which would be applicable to both substances in order to address the hazard of their caustic properties. MSHA also requests information and analytical data for alternative PELs.

Carbon dioxide. The existing coal ventilation safety standard in § 75.301 requires that the air ventilating active workings in an underground coal mine must not contain more than 0.5 percent (5,000 ppm) carbon dioxide. The existing health standard for metal /nonmetal mines also sets a 5,000 ppm TWA for CO_2. MSHA is proposing the 1989–90 ACGIH values of 5000 ppm (time-weighted average) and 30,000 ppm (STEL) as the appropriate health limits to be applied to all mines. This would not affect the existing safety standard for underground coal mines. OSHA's recent PEL rulemaking set a general industry TWA of 10,000 and a STEL of 30,000. MSHA solicits comments on the appropriateness of the OSHA limit to mining.

Chromium (VI) compounds. MSHA's proposed PEL Table lists chromium (VI) compounds but does not subdivide them further as does ACGIH, because the exposure limits are the same for both "water-soluble" and "certain water insoluble" forms of chromium. In the proposed carcinogen standard §§ 58/72.403, MSHA includes those specific insoluble compounds of chromium (VI) for which there was separate TLV documentation of carcinogenicity (lead chromate and zinc chromate).

Coal exposures in metal/nonmetal mines. Two commenters recommended that the PEL for respirable coal dust containing less than 5 percent silica be deleted, stating that there are no coal dust exposures in metal and nonmetal mining. However, coal is used frequently as a fuel for firing kilns in the cement and perlite industries and at roasting operations such as nickel. As a result, exposure to coal dust occurs during car unloading, conveying and transferring, storage, and milling of the coal prior to use. MSHA would retain the current respirable coal dust PEL of 2 mg/m^3, if less than 5 percent quartz is present. For respirable dust fractions exceeding 5 percent quartz, MSHA proposes that the allowable concentration of respirable coal dust be calculated by dividing the percent of quartz into 10. This methodology is consistent with the respirable dust standards for coal mines in subpart B of 30 CFR parts 70 and 71, which remain unchanged.

Cotton dust and grain dust. MSHA intends to delete raw cotton dust from the current standard. Both raw cotton dust and grain dust (oat, wheat, and barley) are included in the 1989–90 ACGIH "TLV Booklet." However, because they relate specifically to industries other than mining, MSHA is

not including them in the proposed PEL list.

Ethylene glycol particulate. MSHA proposes to delete ethylene glycol particulate from the existing regulation, but ethylene glycol vapor would continue to be regulated. Ethylene glycol particulate would have been considered a nuisance particulate. The new mine dust standard of 5 mg/m^3 respirable dust would replace the current limit of 10 mg/m^3.

Ethylene glycol dinitrate and nitroglycerin. MSHA is proposing the new OSHA limits for ethylene glycol dinitrate (a 0.1 ppm STEL) and nitroglycerin (a 0.05 TWA and a 0.1 STEL). MSHA believes these limits are supported by data and address the type of exposure that occurs in mining. Individuals involved in blasting have short, intermittent contact with these chemicals throughout the shift.

Ethylene oxide. MSHA is proposing the OSHA limit of a TWA of 1 ppm and a STEL of 5 ppm. ACGIH recommends a TWA of 1 ppm, but no STEL. MSHA believes that health data support the OSHA limits. This substance also would be regulated further under the proposed carcinogen standards, §§ 58/72.403.

Graphite. MSHA is proposing a 2 mg/m^3 respirable dust limit for all forms of graphite. ACGIH is proposing a 2 mg/m^3 limit for all forms in its 1989–90 Notice of Intended Changes. NIOSH also recommends a 2 mg/m^3 respirable dust limit. MSHA has conducted a study for conversion factors for graphite in mining. MSHA's data indicate that the existing limit of 15 mpccf is approximately equivalent to 1.9 mg/m^3. MSHA believes that these data support a 2 mg/m^3 limit.

Kaolin. Several commenters objected to the placement of kaolin on the list of mineral dusts which included, among other substances, asbestos and silica. Although they did not object to the assigned exposure limit, they viewed the placement as a change in classification from that of "nuisance dust" in the 1973 ACGIH "TLV® Booklet." The proposed rule would respond to this concern by treating kaolin as a respirable mine dust. Respirable mine dusts are discussed below.

Lead. The PEL for lead in the metal/nonmetal preproposal draft was based on OSHA's lead standard. Many commenters stated that this was inappropriate because the OSHA limit for lead related to the health effects of exposure to lead oxide (PbO), and miners are exposed to lead sulfide (PbS), (galena), which is less soluble and therefore less biologically available. At this point, MSHA has insufficient data on the potential hazards and health effects of the separate lead compounds and therefore proposes to adopt ACGIH's limit of 0.15 mg/m^3 for inorganic lead compounds. The National Toxicology Program's Board of Scientific Counselors has recommended that lead oxide and lead sulfide be ranked a high priority for comparative acute toxicity studies. NIOSH nominated the chemicals in order to aid MSHA in developing standards. MSHA specifically solicits data and comments as to the appropriateness of regulating lead compounds (except lead sulfide) with a TWA of 50 μg/m^3 limit, as OSHA currently does, and regulating lead sulfide with a TWA of 0.15 mg/m^3.

Nitrogen dioxide. OSHA's recent rulemaking established a nitrogen dioxide (NO_2) PEL for general industry of 1 ppm as a 15-minute STEL based upon studies indicating an increased airway resistance cause by exposure to NO_2. NIOSH also has a REL of 1 ppm as a 15-minute STEL. ACGIH recommends a 3-ppm TWA and a 5-ppm STEL for NO_2. At both metal/nonmetal and coal mines, the current PEL for NO_2 is a TWA of 5 ppm. The Agency is continuing to review medical studies and other documentation to determine whether a PEL of 1 ppm as a 15-minute STEL or a 3-ppm TWA with a 5-ppm STEL would be appropriate for mining. MSHA has included both exposure limits for comment in this rulemaking. Comments should address the health basis for either limit and the feasibility and cost of meeting the limit in mining.

Phenyl-ether-diphenyl mixture. MSHA is deleting phenyl-ether-diphenyl mixture—TWA 1 ppm (7 mg/m^3)—from the existing standard. ACGIH does not list this limit in the 1989–90 TLV Booklet. Phenyl ether vapor would have a TWA of 1 ppm (7 mg/m^3) and biphenyl would have a TWA of 0.2 ppm. Exposure to a mixture of the compounds would be controlled by the additive formula which would result in a limit being equal to or less than the existing limit.

Polytetrafluoroethylene decomposition products. The proposal would delete polytetrafluoroethylene decomposition products from the regulations. ACGIH recommends sampling methods but lists no specific TLV®. ACGIH also states that the toxicity of these products remains to be determined but recommends that air concentrations be kept at minimal levels. Although operators are encouraged to follow ACGIH's recommended practice, MSHA does not believe that such recommendations provide sufficient information for the Agency to set an exposure limit.

Silica. The existing requirement for metal/nonmetal mines specifies that exposure to silica-containing respirable dust (quartz) must not exceed a TLV® calculated from the formula 10/(%SiO_2+2). The percentage of silica in the dust largely determines the amount of dust to which the miner can be exposed. The higher the silica content, the lower the amount of dust to which the miner can be exposed. The lower the silica content, the higher the permissible dust level.

Using the 1982 ACGIH "Notice of Intended Changes," MSHA's metal/nonmetal preproposal draft recommended a respirable quartz limit of 0.1 mg/m^3, eliminating the formula and measuring only the quantity of silica present. Now that ACGIH has finalized its approach, which appears in the 1989–90 "TLV® Booklet," MSHA is proposing the same exposure limit. This represents no substantive change in the existing silica exposure limit. Currently, using the respirable quartz formula for metal/nonmetal mines, the calculated limit for dust containing 100 percent quartz is 0.098 mg/m^3, which differs from the recommended limit of 0.1 mg/m^3 only because of the additive constant of 2 in the formula's denominator. The proposed limit does not represent a reevaluation of the toxicity of quartz but would conform the silica PEL to the format used for all other hazardous dusts and simplify the calculation of the PEL of mixtures containing quartz, cristobalite, and tridymite. Simplifying the TLVs® for all forms of crystalline silica provides for more uniform application of the silica PEL. In the current TLV® calculation, the factor of 2 tends to be unnecessarily more stringent where lower percentages of silica are present.

Talc. The preproposal draft set a 2 mg/m^3 respirable limit for talc containing no asbestos fibers. The Threshold Limit Value Discussion and Thirty-five Year Index with Recommendations (ACGIH, 1984) discusses the conversion from 15 million particles per cubic foot (mppcf), as collected by impinger, to the current TLV® of 2 milligrams per cubic meter (2 mg/m^3), as collected by the gravimetric method. This was first proposed by ACGIH in 1981. The 1989–90 "TLV® Booklet" lists only the 2 mg/m^3 respirable dust limit. Some commenters disagreed with this limit and questioned the conversion factor used by ACGIH. The majority of commenters felt that the ACGIH TLVs® should be adopted as the limits for exposure for miners because of their widespread acceptance in the mining community. MSHA agrees that the ACGIH TLV® for talc represents a technically sound integration of medical,

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epidemiological, toxicological, and industrial hygiene data and experience. MSHA accepts the original data for the 15 mppcf limit for talc. However, MSHA has conducted its own study of conversion factors and believes that Agency data are a more accurate evaluation of the conversion of mppcf to mg/m^3 for talc in the mining environment.

In 1983, MSHA conducted a study to determine the specific conversion factors for several minerals. One such conversion factor was determined for nonasbestiform talc dust based upon comparison of gravimetric dust samples with impinger samples. A previous study supported a factor of 6 for converting respirable mass concentrations to equivalent number concentrations. The 1983 study confirmed the earlier result. Statistical analysis of the combined data from both studies showed that the relationship of 6 mppcf to 1 mg/m^3 for nonasbestiform talc does not change. Therefore MSHA is proposing a 2.5 mg/m^3 respirable dust limit for talc based on a conversion factor of 6 applied to 15 mppcf. Asbestos exposure for talc containing asbestos fibers would be regulated by the asbestos provisions of this proposal.

Vanadium. MSHA is proposing the NIOSH recommended limits for vanadium (1 mg/m^3) and vanadium compounds (0.05 mg/m^3). Exposure to vanadium in mining occurs from a wide variety of vanadium compounds. Vanadium trioxide exposure can occur in uranium/vanadium circuits and has resulted in worker complaints of illness. Vanadium exposure can also occur in welding and cutting operations. MSHA believes that the NIOSH limits address the various forms of vanadium found in mining better than the ACGIH limit for vanadium pentoxide (dust and fume). MSHA specifically solicits comments on the exposure limits for vanadium compounds.

Vinyl chloride. MSHA is proposing the OSHA limit of a TWA of 1 ppm and a STEL of 5 ppm instead of the ACGIH recommended TWA of 5 ppm. MSHA believes that health data support the OSHA limits. This substance also would be regulated further under the proposed carcinogen standards, §§ 56/72.402.

Mixed Exposure Limits (MELs)

Occupational exposures frequently involve simultaneous exposures to more than one contaminant. An individual may be exposed to multiple contaminants contained in a single product or process, or to multiple contaminants from different sources.

In the metal/nonmetal preproposal draft, MSHA proposed a "target organ" designation system to address adverse health effects which can occur when there is exposure to two or more substances that affect the same body organ. Categories were established, which were further defined by subclassifications detailing specific organ sites or physiological disorders. A mixed exposure limit (MEL) would have applied to those substances having common target-organ designations.

Commenters opposed the target-organ approach as presented in the metal/nonmetal preproposal draft, stating that the Agency had oversimplified a complex issue. MSHA agrees and has abandoned this approach in the proposed rule. EPA in its "Proposed Guidelines for the Health Risk Assessment of Chemical Mixtures" states that no single approach can be recommended to assess the risk of multiple chemical exposures, because there is no validated method in the scientific community for generalization of mixed exposures. The majority of commenters recommended that MSHA use the ACGIH's comprehensive approach to mixed exposures. MSHA agrees with these commenters and is proposing to continue to use the ACGIH concept of threshold limits for mixtures for substances that act upon the same organ system. This formula is the same formula that OSHA uses in 29 CFR 1910.1000.

Information on organ system effects is readily available to mine operators. For example, under OSHA's hazard communication standard, non-mining employers must have material safety data sheets (MSDSs) and container labels to alert employees to the health hazards of hazardous chemicals used in general industry. Both MSDSs and labels warn of target organ effects. These chemicals include all substances listed in the most current ACGIH "TLV® Booklet." Therefore hazardous chemicals entering mine property are accompanied by MSDSs and container labels from which the mine operator should be able to determine quickly and effectively whether a miner could be exposed to substances that act upon the same organ system. On March 30, 1988 (53 FR 10257), MSHA issued an advance notice of proposed rulemaking for a hazard communication standard for the mining industry. The Agency expects to publish a proposed hazard communication standard later this year.

For substances inherent in the ore, mine operators themselves have the greatest knowledge of hazardous substances. In order to be competitive, most operators voluntarily provide material safety data sheets with their products. These sheets allow their general industry customers to address any hazards in their own training programs under OSHA's hazard communication standard, as well as State or local community right-to-know laws. In addition, there are low-cost booklets, such as NIOSH's "Pocket Guide to Chemical Hazards," which list the target organs for specific chemicals. This booklet has been provided to each of MSHA's metal/nonmetal mine inspectors, who can aid the operator if specific questions arise. The booklet is also available at MSHA's coal mine district offices.

It should be noted that mine operators would not have to conduct independent literature searches to determine target organ effects but rather would be expected to use information that is readily available.

Skin Absorption

MSHA proposes to continue regulation of airborne substances with a "skin" notation by requiring use of personal protection to prevent absorption of the substances through the skin. In addition, MSHA is proposing to add the "skin" notation to 33 new chemicals. MSHA would also delete the skin notation from 18 chemicals from which ACGIH has deleted the skin notation.

As in the existing standard, the skin designation would follow the particular substance on the TLV® list. While most exposures are through the respiratory route, substances with a "skin" designation increase the body burden by exposure through the cutaneous route (skin, mucous membranes, and eyes), either through airborne contact or more frequently by direct contact with the liquid or solid form of the substance.

Additional care should be exercised when encountering substances with a skin notation at airborne levels near or above the permissible limits, especially when relying upon respiratory protection to control exposure. The rate of absorption is thought to be a function of the concentration to which the skin is exposed and the total area of exposed skin. Skin absorption is a particular concern at high airborne concentrations, especially if a significant area of skin is exposed for a long period of time. The proposal would require such skin exposures to be minimized by covering exposed skin with personal protection when airborne concentrations exceed permissible exposure limits. This may involve wearing proper clothing, work gloves, or eyewear, as needed. In addition, the proposal would require prevention of direct contact with nonairborne forms (liquids or solids) of

these substances. Direct contact while handling these substances often presents the greatest degree of risk. A spill on the skin could result in an absorbed dose that could negate the protection offered by controlling airborne exposures to the PEL. This requirement would necessitate use of additional personal protection, such as impermeable aprons or gloves.

Nuisance Particulates (Nuisance Dusts)

MSHA's existing metal/nonmetal nuisance particulate (nuisance dust) standards, §§ 56/57.5001, establish exposure limits for airborne contaminants through incorporation by reference of the 1973 ACGIH TLVs® on pages 34, 35 and appendix E on page 53. Nuisance dust is a term that describes particulates containing less than 1 percent quartz and no excessive concentrations of a more toxic material. Where a toxic material is determined to be present, based on laboratory analysis, MSHA enforces the limit listed for that toxic substance.

ACGIH characterizes nuisance particulates as dusts that do not produce significant organic diseases or toxic effects when exposures are kept under reasonable control. ACGIH contrasts nuisance dusts to fibrogenic dusts that can cause scar tissue to form in the lungs. Nuisance dusts are distinguished from fibrogenci dusts on the basis of the absence of toxic impurities, primarily quartz content of less than one percent.

The 1973 "TLV® Booklet" lists some specific examples of nuisance dusts and sets a threshold limit value for these substances of 10 mg/m^3 total dust.

Alundum (Al_2O_3)
Calcium carbonate
Cellulose (paper fiber)
Portland Cement
Corundum (Al_2O_3)
Emery
Glass, fibrous or dust
Glycerin mist
Graphite (synthetic)
Gypsum
Kaolin
Limestone
Magnesite
Pentaerythritol
Plaster of Paris
Rouge
Silicon carbide
Starch
Sucrose
Tin oxide
Titanium dioxide
Vegetable oil mists (except castor, cashew nut, or similar irritant oils)

Prior to July 1982, MSHA also enforced the same limit for unlisted nuisance dusts at metal/nonmetal mines based on ACGIH recommendations. In July 1982, MSHA reviewed its enforcement policy for unlisted nuisance dusts. Because the standard did not explicitly identify unlisted substances, the Agency felt it may not have given adequate notice regarding its application to such substances. Therefore MSHA revised its enforcement policy to exclude unlisted substances from coverage.

In the metal/nonmetal preproposal draft, the Agency excluded nuisance dusts from its PEL list and requested that commenters submit data substantiating the nature of the hazard and the extent of health effects resulting from exposure to such substances. Also, in the preproposal draft, the Agency recommended that kaolin, tin oxide, glass (fibrous or dust), all currently regulated as nuisance particulates, be listed on the main PEL list. MSHA based this preliminary determination upon documentation which indicated that these substances warranted continued regulation.

As mentioned, under the proposed rule kaolin would not be listed as a specific substance but would be regulated under the respirable mine dust standard discussed below.

Tin oxide was listed separately in the preproposal draft and given a recommended full-shift exposure of 2 mg/m^3 total dust and a STEL of 4 mg/m^3 total dust. This recommendation was based upon the 1982 ACGIH "TLV® Booklet" which treated tin oxide as a toxic substance. Consistent with the 1989–90 "TLV® Booklet," MSHA is proposing a PEL of 2 mg/m^3 total dust for tin oxide. The STEL would be eliminated.

In response to MSHA's recommendation to eliminate the nuisance dust standard, many commenters suggested that MSHA would be reducing protection provided by existing standards, which the Mine Act specifically prohibits under section 101(a)(9). MSHA has reviewed available documentation and believes that a respirable mine dust standard would more appropriately address the hazards involved in mining than a nuisance dust standard. Therefore MSHA is proposing a respirable mine dust limit, while at the same time eliminating the current nuisance dust TLV®.

Respirable Mine Dust for Metal/Nonmetal Mines

The proposed rule contains a new concept for controlling exposure to respirable mine dust at metal/nonmetal mines. It would set a permissible exposure limit of 5 mg/m^3 for respirable mine dust in the PEL Table in § 58.100. "Respirable mine dust" is a new concept, although occupational exposure limits have included respirable dust limits for years. In brief, the term would include all ambient, airborne particulates capable of being inhaled into the lower respiratory tract. MSHA would sample for respirable mine dust by using a sampling device with the size-selection characteristics of a 10-mm nylon cyclone operated at a flow rate of 1.7 liters per minute, as indicated in the definitions preceding each subpart. This collection method parallels that used for respirable dust limits proposed by ACGIH.

The airborne particulates found in the mining environment are of variable composition and are not the pure substances normally referred to as "nuisance dusts." MSHA has reviewed the documentation cited below on the risks from inhalation of these particulates and believes that such inhalation may produce harmful health effects that should be regulated. The Agency believes that the concept of "respirable mine dust" appropriately addresses these hazards.

Almost all mine dust contains silica, which is by far the major cause of pneumoconiosis in metal/nonmetal miners. However, the composition of mine dust may also depend upon the minerals being produced, host rock, impurities found in the ore, coal, diesel particulates, oil mists, smoke, welding fumes, blasting products, and other contaminants. Sometimes mine dust will contain toxic components such as lead, arsenic, silica, trace elements or organic materials. Where sampling indicates that specific toxic contaminants are present, mine operators would have to control exposure in accordance with the substance-specific limits listed on the PEL Table and mixed exposure limits, in addition to the respirable dust limit. For example, if a mine dust contains beryllium and other substances, the total amount of respirable dust permitted would be 5 mg/m^3, but the beryllium could not exceed 0.002 mg/m^3. However, the maximum level of the mine dust would be limited by the respirable mine dust PEL to protect miners from the health risks discussed below.

MSHA is proposimg the respirable mine dust limit to protect against two respirable hazards associated with mining and mineral dusts—pulmonary alveolar proteinosis (PAP) and mixed dust fibrosis (MDF).

Pulmonary alveolar proteinosis has been associated with a variety of mineral dusts (refs. 1–8). Other dusts, such as wood dust and glass fiber, also have been linked to this syndrome (refs.

6, 9). The mechanism of this syndrome results from the abnormal accumulation of surfactant phospholipids and protein in the alveolar spaces. It was not recognized as a disease until 1958, when Samuel Rosen published the first article identifying it as such (ref. 2), and it is still not readily recognized (refs. 6, 18, 19). This is probably due in part to the lack of a clear definition of the disease. PAP often occurs in conjunction with other lung disorder, such as pulmonary fibrosis. The 1988 edition of "Pulmonary Disease and Disorders" states that:

> Pulmonary alveolar proteinosis in a disease of uncertain etiology that represents a disorder of lung surfactant homeostasis. It may not be due to a single specific etiologic insult. Treatment is supportive. It does not address the underlying etiologies or cellular pathophysiology of the disorder (ref. 1).

Until appropriate treatment was devised, many individuals with PAP died after a short course of disease, many less than a year after the onset of the disease. In Rosen's original paper, 8 out of 27 patients (30 percent) died, some only 3 months after the onset of the disease. An additional 8 out of 27 (30 percent) were reported to have not improved during the course of the study. The other cases showed some measure of improvement, but the improvement as reported by Rosen varied. However, the development of whole lung lavage, which mechanically removes the offending material by washing, has resulted in individuals surviving and recovering from the disease (refs. 1, 10–13).

The current theory, based in large part on animal data, is that PAP is a nonspecific lung response that can result from a sizeable exposure to any finely divided dust (refs. 3, 6, 8, 9, 14–17).

The case reports reviewed by MSHA have involved coal, tin, and uranium miners, as well as individuals exposed to cement, silica, bentonite, and alumina (refs. 2–5, 7). Most case reports of human PAP have simply stated that dust exposure was heavy and have not characterized the exact dust characteristics. However, one case involving alumina did characterize the dust in a lung biopsy as consisting of spheres less than 1 micron diameter. Other lung tissue biopsy data have indicated that 53 percent of the particles were less than 1 micron, 47 percent were 1 to 10 microns, and 0.4 percent were greater than 10 mg (ref. 20).

Data from animal studies indicate that dusts less than 5 microns in diameter can produce the disease in animals (refs. 8, 9, 14, 16, 17). Rats exposed to 50 mg/m^3 of Mt. St. Helens volcanic ash respirable dust developed alveolar proteinosis, as well as those rats exposed to 50 mg/m^3 quartz respirable dust. After 12 months, rats exposed to 5 mg/m^3 Mt. St. Helens volcanic ash had only minimal changes, consisting primarily of aggregates of dust-laden macrophages, and did not develop PAP (ref. 8). Animal studies involving quartz showed that exposure to 43 mg/m^3 quartz produced alveolar proteinosis but failed to produce silicosis over the time period studied (refs. 14, 15). The relationship between PAP and interstitial fibrosis is unclear. PAP may be found in conjunction with fibrosis, in which case it is called "secondary" PAP (ref. 1). Silicoiproteinosis is a common form of this secondary PAP (ref. 6). Some researchers believe that PAP may be an early stage in the development of fibrosis (ref. 21).

MSHA believes that a 5 mg/m^3 respirable dust limit will prevent miners from developing PAP from acute dust exposure.

Although silicosis and coal dust pneumoconiosis are the most common pneumoconioses found in mining, MSHA believes silicosis is not the only hazard attributable to inhalation of mine dusts. In a report on documentation on the relationship between lung function and coal dust exposure, one study states that analysis of lung function has improved in recent years, thereby increasing the clinical possibilities of examining the cause of occupational pulmonary diseases (ref. 22). The study cautions against overestimating the role of silica in such diseases and states that the toxicity of dust should not be based solely on whether they cause fibrogenic or silicotic effects. It concludes that nonsilicotic dust is also capable of producing permanent morphological changes in the bronchopulmonary system, possibly to an extent that precludes classification of such dusts as inert or innocuous.

Studies such as this indicate that dusts found in the mining environment, regardless of quartz content, can produce "mixed-dust pneumoconiosis" (MDP), also referred to as "mixed-dust fibrosis" (MDF), and therefore must be controlled in order to protect the health of miners. In addition, many of the dusts that are currently considered "nuisance dusts" fall into the category of MDF-producing dusts. MSHA believes that in order to adequately protect miners against MDF, the concentration of respirable mine dust to which workers can be exposed must be limited. The health effects of exposure to mine dusts may include pneumoconiosis, diffuse interstitial fibrosis, bronchitis, toxicity, and synergistic or potentiating effects of irritant gases. The degree of hazard presented depends upon the chemical composition of the dust, particle size, and the concentration of particles in the environment.

"Occupational Diseases—A Guide To Their Recognition" (Key *et al.*, Revised Edition, 1977) points out that the pathology of mixed-dust pneumoconiosis depends to a large extent upon the relative portion of free silica or quartz present in the airborne dust. Dusts with a quartz content of less than about 0.1 perent tend to cause development of small nodular areas in the lungs in almost direct proportion to the total amount of dust deposited, but little in the way of reticular or collagen fibrosis, and very little emphysema. The pathological lesions resemble those found in coal miners. On the other hand, dust in which the quartz content ranges from about 2 percent to about 18 or 20 percent of the total dust tends to produce lesions that more clearly resemble those seen in classical silicosis. Some examples of dust that contain almost no quartz are synthetic graphite, kaolin, talc, and iron oxide associated with welding.

Similar findings of fibrosis induced by mineral dusts of very low or no free silica content have been reported by other sources. These include animal studies and studies of mine workers (ref. 23), reports of cases of nepheline rock dust pneumoconiosis (refs. 24, 25), reports of pulmonary tissue reaction in animals and humans from barite dust (ref. 26), a literature review concerning pneumoconiosis from graphite (ref. 27), reports of pneumoconiosis in kaolin workers (ref. 28), reports of a 26-year radiographic follow-up of diatomite miners (ref. 29), and reports of disabling pneumoconiosis from limestone dust (ref. 30), and in Cornish china clay workers (ref. 31). However, these studies contain little exposure data; it is uncertain at which levels these workers were exposed.

These studies report fibrogenic lesions in both animals and humans from exposure to minerals of very low silica content. In the animal studies conducted, the fibrogenicity of various minerals was shown to vary from 25 to 50 percent of that of quartz. The quartz content of minerals used in these experiments ranged 0 to 76 percent. Of the 29 minerals used in the experiments, 13 had quartz contents of less than 1 percent and 5 were between 1 and 2.6 percent. Of these 18 minerals, most samples showed a fibrogenic reaction. A study by the Pneumoconiosis ResearchUnit Council for Scientific and Industrial Research at the South African Institute for Medical Research of 13,296

deceased miners indicates that 1.4 percent of the miners showed mixed-dust fibrosis (ref. 32). These miners worked in coal, gold, asbestos, platinum, tin, copper, iron, diamond, chrome, manganese, antimony, mica, and feldspar mines. The study concludes that there was no obvious relationship between the prevalence of MDF and the type of mine. Again, however, exposure data were poor.

MSHA believes that the 5 mg/m^3 respirable mine dust limit will prevent the development of PAP and MDP. However, the Agency requests comments on available documentation further demonstrating health hazards associated with inhalation of low silica mine dust and the appropriate means for regulating respirable mine dust, including any information suggesting a PEL.

One commenter suggested that a total dust standard would be more appropriate than a respirable dust standard because a respirable dust limit does not address exposures to the upper respiratory tract. At this time MSHA does not believe that health documentation supports a total dust standard for substances containing less than 1 percent quartz.

Another commenter suggested that salt, trona, and potash operations should be regulated under a nuisance dust standard. All three were regulated by MSHA as unlisted nuisance dusts prior to July 1982. Since that time, these three substances have not been regulated by MSHA. The proposed respirable mine dust PEL would apply to the respirable fraction of the airborne dust at all mines, including salt, trona, and potash.

Controls and Respirators

Existing metal/nonmetal standards §§ 56/57.5005 require mine operators to control harmful airborne substances, insofar as feasible, by prevention of contamination, removal by exhaust ventilation, or dilution with uncontaminated air. These standards also require use of respiratory protection when accepted engineering controls have not been developed, when unusual circumstances necessitate occasional entry into hazardous areas to perform maintenance or investigation, or while controls are being installed. Whenever respirators are required, operators must implement a respiratory protection program. The existing respiratory protection program requirements for metal/nonmetal mines are incorporated by reference from the American National Standard Institute's "American National Standards Practices for Respiratory Protection," ANSI Z88.2-1969.

Existing coal standard § 70.300 requires respirators to be made available to all miners underground when concentrations of respirable dust in excess of the applicable standard are known to exist. The standard specifically prohibits the substitution of the use of respirators for environmental control measures in the active workings.

The proposed rule would require mine operators to reduce worker exposure to airbone substances through feasible engineering or administrative controls. When appropriate controls do not reduce exposure to the PEL, they would have to be used to reduce exposure as low as feasible and be supplemented with respiratory protection. MSHA intends for operators to have 6 months from the date of publication of the final rule in the Federal Register to comply with the new standard through any combination of controls and respiratory protection. The Agency believes that the 6-month period from the date of publication would give operators reasonable opportunity to evaluate exposures and comply with any new limits with a combination of controls and a respiratory protection program. Within one year from the date of publication of the final rule in the **Federal Register**, operators would have to institute all feasible controls to meet permissible exposure levels. Respiratory protection would be required only as a supplement for controls. Given the present state of the art in mining technology, all operators can reasonably achieve the proposed limits within one year. On June 5, 1989, OSHA published a proposed rule addressing methods of compliance and the hierarchy of controls (54 FR 23991). As a result of this rulemaking, OSHA may change its hierarchy of controls, which is similar to that proposed by MSHA. MSHA requests public comment on what the hierarchy of controls should be for the mining industry and the period of time it should take to comply with a final rule.

Engineering controls reduce exposure by modifying the source of, or decreasing the concentration of, potentially harmful substances in the workplace. Examples of engineering controls are local exhaust ventilation, enclosures, barriers, or suppression methods that eliminate or reduce the dispersion of the substances. Exposures may also be controlled by substituting less hazardous materials in the process used. The most common method of engineering control in mining is ventilation. Local exhaust ventilation prevents exposure by capturing the contaminant at its source before it escapes into the work environment.

In mining, as well as in general industrial hygiene practice, the concept of engineering controls represents an integrated approach to controlling exposure. Generally the airbone contaminant has multiple sources in the workplace. For example, dust may be generated from drills, crushers, conveyors, baggers, and travel surfaces. In this situation, the engineering controls would probably include both general and local exhaust ventilation, suppression or dispersion controls, isolation, as well as housekeeping practices such as vacuuming or wet mopping instead of dry sweeping. This integrated approach allows the operator to optimize the controls that best fit the particular operation. Some operators may choose a more costly ventilation control system that collects dust in order to reduce or eliminate the need for manual cleanup, while others may opt for regular housekeeping of a work area.

In a recent report, the Congressional Office of Technology Assessment found that health professionals rank engineering controls as the priority means of controlling exposure, followed by administrative controls, with personal protective equipment as a last resort. If the primary control method involves the use of process containment, then such method can be supplemented by the availability of personal protective equipment. If respirators are the primary method of control, then the opportunity to provide supplemental protection is eliminated because the personal respiratory protection is already the final resource. Work practices frequently fall between engineering controls and respiratory protection ("Preventing Illness and Injury in the Workplace," Office of Technology Assessment, U.S. Congress, April 1985).

Engineering controls inherently provide more consistent and reliable protection than respirators because they do not depend upon constant human supervision or intervention to function, whereas respirator programs require continued administrative attention. Once engineering controls are installed and adequately maintained, they usually provide consistent and reliable protection to all workers. They do not depend, as do respirators, on maintaining an appropriate fit for every individual in order to provide protection. Also, monitoring devices can measure the amount of protection that engineering controls provide the worker, whereas it is difficult to make periodic measurements of a respirator's effectiveness. MSHA's experience indicates that, when respiratory protection has been used for long-term protection in mining, the effectiveness of such protection is difficult to maintain.

Administrative controls may be used as an alternative to engineering controls. Administrative controls are the reduction of time during which a worker is exposed to a hazardous substance. Such controls include use of work practices, personal work schedules, and production or operation schedules to reduce exposure. For example, a miner who would normally work 8 hours in an exposed environment could work only 4 hours in the exposed environment and be changed to a nonexposed work area while another person takes over the latter half of the job assignment in the exposed area. Few comments were received on the use of administrative controls. One of the greatest limitations to its use is in mines where jobs are usually well defined, making it difficult to reassign workers.

A respirator is a device worn by the individual miner and designed to protect that particular miner from inhaling the harmful airborne substances in the work area. Respirators are designed to protect against hazardous atmospheres ranging from irritation to atmospheres immediately dangerous to life and health (IDLH). The hazard may be caused by one or many substances, ranging from particulates to gases. Protection may be required intermittently or for long periods of time. While many types of respirators have been developed for various conditions, they are all limited in protection and application. Studies have indicated many limitations involving respirators. They include cartridge effectiveness, breathing resistance, medical effects, psychological problems and interaction with other safety equipment and work (refs. 33–52).

The primary disadvantage of using respirators is that they are less effective than engineering controls in most workplaces in mines. MSHA's experience regarding respiratory protection in mining supports this. Other research conducted in the workplace indicates that the protection provided by respirators is unequal, highly variable, and substantially lower than predicted from laboratory data as summarized in "Preventing Illness and Injury In The Workplace" by the Office of Technology Assessment. Moreover, the effectiveness of the respirator is dependent largely upon appropriate selection. A health hazard may be created if failure occurs in the protective capacity of the respirator against the airborne substances in the mine without the wearer's knowledge. Therefore respirators cannot achieve their full protective potential without a program that includes selection, fit testing, training, and maintenance, as well as an insistence that workers wear the respirators.

Until recently silica flour operations had difficulty complying with the silica standard with engineering controls. Because of the high silica content and size distribution at these operations, extensive engineering controls are needed which can be extremely expensive and complex to retrofit. Thus such controls have taken most operators years to install. Nevertheless, improved engineering technology has reduced the number of silica operations out of compliance. Presently the greatest noncompliance problem results from poor maintenance and cleanup procedures.

MSHA has 22 active silica flour operations. Since January 1, 1989, 22 citations have been issued at these operations due to overexposures to the silica PEL. For those operators that are out of compliance, most have poor housekeeping and maintenance procedures. In order to avoid overexposure to silica dust, strict adherence to procedures such as not dropping bags of the product and avoiding dry sweeping, along with daily pre-shift checks of dust collectors, would assure greater compliance. Most operators, even when the PEL is not exceeded, require workers to use respiratory protection, especially at bagging facilities.

Health data indicate that respirator use alone has been unsatisfactory and that the high ratio of silicosis is due to ineffective respiratory protection programs and failure to monitor (NIOSH HETA–79–104–107, 79–103–106). Clearly, respirators must be used with adequate respirator programs if they are to protect workers. Follow-up medical examinations showed that miners employed at these plants had an excessive prevalence of silicosis and development of complicated silicosis (PMF) within a relatively short time. In these reports, NIOSH stated:

> In conclusion, the very high prevalence of silicosis is due to the respirable size of the particles, the high free silica content of the dust, excessive respirable dust levels and ineffective respiratory protection (NIOSH HETA–79–104–107 and 79–103–106).

MSHA would continue to require that all feasible engineering or administrative controls be installed and supplemented with respiratory protection at silica flour mills. However, the proposed rule would require operator monitoring whenever respiratory protection is required to be used to provide assurance that the respirators are providing the necessary protection.

The most cited disadvantage of engineering controls is cost. The cost-effectiveness issue is raised primarily by operators concerned that they would be required to install controls that lower exposure levels, but not to compliance levels. When this occurs, respirators would be required in order to further reduce exposures to the permissible limit. Some operators believe that costs to install such engineering controls are wasted since they still have to resort to respirators. However, in such instances respirators supplement the protection provided by the engineering controls and do not function as the sole line of protection for the worker. In addition, it has been MSHA's experience that the type of respirator needed to protect workers in atmospheres without engineering controls would be more costly for operators and burdensome to workers than the type of respirators required to supplement engineering controls that have reduced exposure to as low as feasible.

In the metal/nonmetal preproposal draft, MSHA requested comments on the use of respirators as an alternative to, or in combination with, controls where respirator use could provide equivalent protection. MSHA asked for data on processes, operations or circumstances in which respirators could be as effective as controls in achieving health protection along with progress in respirator design and technology. MSHA also requested information on the health effects of respirator use in mines where engineering or administrative controls have not been feasible. The Agency received few comments and little verifying data. To date, MSHA's data indicate that engineering and administrative controls are more effective than respirators. However MSHA still solicits comments regarding this issue.

MSHA is seeking comment on the controls to be used for protection of miners. In particular, MSHA requests information that would help the Agency to focus on three primary policy considerations.

The first consideration is health protection. It has been postulated that there may be instances where respirators would provide protection to employees equivalent to engineering controls and that their routine use should be permitted.

The second consideration is that respirator technology and use practices have progressed significantly since initial adoption of MSHA's compliance

requirements in the 1970's. As a result of many of these advances, the consensus among some occupational health professionals concerning what constitutes a reasonable effective respirator program has changed. This point is demonstrated by the issuance of the American National Standards Institute (ANSI) Z–88.2–1980 standard entitled "Practices for Respiratory Protection," a revision of the 1969 ANSI standard. In addition, improved respiratory protection programs are currently being addressed in this rulemaking. Therefore it is possible that, in the presence of such programs, respirators could be capable of playing a more significant role in air contaminant protection than they do in the existing standards.

The third consideration is cost effectiveness. There may be instances where the cost of engineering controls would exceed the expected costs of respiratory protection and where the routine use of respirators may provide adequate employee protection. Should such instances exist, reasonable allowances for the use of respiratory protection should be made.

The question arises as to whether there are circumstances in the mining workplace where the protection afforded by respirators would be equal to the protection provided through implementation of engineering controls. In particular, the question arises as to whether there are circumstances where the costs of the respirator program would be less than those of engineering controls and yet equal protection would be afforded by either. Are there circumstances in which cost-effectiveness factors are a legitimate consideration in determining the acceptability of one exposure control method over another? Also, what workplace factors would have to be considered to evaluate the effectiveness of a control method before costs could be taken into account? MSHA seeks comment on how factors such as described below should be taken into account by MSHA or the employer in determining the acceptability of using either engineering controls or respirators. Workplace factors that may affect the performance and degree of protection provided by exposure control means may include: Number of exposed employees and number of employees with respirator-fit problems; severity of acute and chronic health effects; length and frequency of exposure; ability to measure and ensure the adequacy of exposure control; work rate; temperature and humidity of the workplace; ability to assess the probability of protection failure; detectability of control failure before harm; and the extent to which employees may be expected to wear respirators for any required period. It has been suggested that engineering controls are particularly preferred where health effects are more severe, where there are more lengthy and frequent periods of exposure; where respirator failure warning properties do not exist; where the work rate exertion level is greater; where significant respirator fit problems exist and where extreme temperature and humidity conditions exist. MSHA raises for comment the question as to how or if these workplace factors should be viewed in deciding whether engineering controls or respirators are more appropriate and, further, how these factors could be reflected in a final rule to define those circumstances where respirator use would provide appropriate protection and thus would be permitted under the rule. How would it be determined that employees would be provided with the desired degree of protection?

MSHA maintains its support for a continuance of its existing compliance method hierarchy but, as the preceding discussion indicates, is open to discussion of whether, under certain specific sets of circumstances, it may be appropriate to allow respirator use in lieu of feasible engineering controls, thus providing flexibility in determining the appropriate method of compliance. For example, MSHA seeks comment on a requirement to permit respirator use in lieu of feasible engineering controls in certain instances where the employer has submitted a comprehensive written respirator compliance program to the Agency. This compliance plan would be subject to MSHA approval and would be required to demonstrate to the agency that the use of respirators under the circumstances described would provide protection to the employee equivalent to that afforded if feasible engineering controls were implemented. MSHA believes, however, that this flexibility may not be appropriate where the substance involved is a carcinogen, has no identified dose-response threshold, continues to pose a significant risk at the PEL, has no respirator breakthrough warning properties, or if there are no means of determining the specific in-use effectiveness of the respirator. On the other hand, if the effectiveness of respirators can be monitored readily in some manner, such as by biological monitoring, it may be appropriate to permit their limited use. The Agency solicits comment on the issue of MSHA-approved respirator use. Views are sought on criteria that should be considered and met for respirator compliance program approval and on circumstances, as suggested above, under which respirator use should not be permitted in lieu of feasible engineering controls.

Some commenters stated that engineering controls are too costly, and MSHA should require only those engineering controls that are effective in reducing the exposure to the PEL. Other commenters suggested that MSHA allow operators to use respirators rather than engineering controls, especially when the controls may not reduce the exposure to the PEL. Though the proposed rule allows greater use of respiratory protection in most instances, MSHA believes that respirators should only be used as an interim method of protection since their effectiveness may be secondary to that of engineering and administrative controls. While in some instances a single engineering control may not reduce the exposure to the PEL, a combination of controls, such as local exhaust ventilation and good housekeeping, may bring the operator within compliance. The operator has the flexibility to choose those controls which would be the most effective in reducing the exposure. However, the cost of a total respirator program must be figured into the cost of respiratory protection, especially when making comparisons between engineering controls and respirators. Such long-term costs can exceed those associated with the long-term cost of effective engineering controls.

Some commenters stated that the primacy of engineering controls should be determined by: (1) The achievable reduction of the air contaminant; (2) the number of employees exposed; (3) the seriousness of the hazard; and (4) costs to operators. The proposed feasibility criteria responds to these comments. However, it must be noted that MSHA's statutory mandate requires MSHA to protect all miners, regardless of the number exposed.

One commenter stated that engineering controls should be required only when necessary to maintain exposure below the level of an immediately dangerous to life or health (IDLH) atmosphere. The commenter did not believe that engineering controls should be required if exposure is below the IDLH level, although above the PEL, when controls would not reduce exposure to the PEL. According to this commenter, such a requirement represents a wasteful use of resources with no accompanying benefit to employee health, since respiratory protection would still have to be worn. This commenter stated that the determination as to the extent of engineering controls and respirator usage should be based upon evaluation of the conditions by the operator's industrial hygienist. However, less than one percent of mines have industrial hygienists on staff to make such determinations. Moreover, the concentrations of contaminants below a level immediately dangerous to life or health, yet above the PEL, can cause serious harmful effects because the documented hazard is likely to result from exposure above the PEL. Respiratory protection for many contaminants in the range below the IDLH level, but well above the PEL, would require employees to wear supplied-air, self-contained respirators, or full-face gas masks. This type of respiratory protection is difficult to use routinely in the mining environment because of the type of work and the physical activity, mobility, and visual acuity needed. For example, the IDLH level for ammonia that is generally recognized by the industrial hygiene community is 500 ppm, while the TWA is 25 ppm. At levels above 300 ppm to the IDLH level, a gas mask would have to be used in order to protect the worker adequately. At this concentration, eye and respiratory tract distress would occur with respirator leakage or failure. For hydrochloric acid, the IDLH level is 100 ppm and the ceiling limit is 5 ppm. An exposure level above 50 ppm to the IDLH level would require a full-face cartridge respirator or gas mask. Exposure to these levels would be intolerable if failure or leakage were to occur.

A commenter suggested that the Agency allow respiratory protection in lieu of engineering and administrative controls for cleanup activities. The Agency presently believes that because cleanup activities are more routine than occasional and inherently cause high levels of contaminant concentration, they necessitate use of feasible engineering or administrative controls. However, comments are specifically requested on this issue.

Sections 58/72.610 Abrasive Blasting

Surface Mines and Surface Areas of Underground Mines

Existing metal/nonmetal §§ 56/57.5010 prohibit use of silica sand or other materials containing more than one percent free silica as an abrasive substance or in abrasive blasting cleaning operations at all surface mines and the surface of underground mines unless the user is protected with a full-flow respirator or equivalent. This proposed standard is not intended to be a comprehensive safety and health standard on abrasive blasting. It is meant to replace existing provisions. MSHA will continue to evaluate the need for additional rulemaking on abrasive blasting.

The term "full-flow" respiratory protection used in the existing standard would be deleted and replaced by "a supplied-air respirator approved for abrasive blasting." The proposed rule would not contain the specifications of the respirator that were included in the metal/nonmetal preproposal draft, because the description "supplied-air respirator approved for abrasive blasting" would require respiratory protection specifically approved under 30 CFR part 11 for abrasive blasting.

Currently MSHA does not explicitly regulate abrasive blasting at either the surface coal mines or surface worksites of underground coal mines. However, § 77.1710 requires protective clothing for protection against the impact of particles from such operations.

Under the proposed rule, at both coal and metal/nonmetal surface operations supplied-air respirators approved for abrasive blasting would have to be used when abrasive blasting is done with silica sand or other materials containing more than one percent quartz, unless the work is performed in a totally-enclosed device with the operator outside the device. Several types of abrasive-blasting booths are commercially available and can be used successfully without causing any exposure to the miner. Such booths would provide equivalent protection without the burden of abrasive-blasting respiratory protection.

Exposure to silica is the major health hazard in abrasive blasting. The Agency believes that the difficulty in ventilating this type of operation and the potential of contaminating mine air, which could expose many people to the respirable silica health hazard, create too great a health risk to allow the procedure underground.

Abrasive blasting is used primarily for cleaning equipment. Rebounding or ricocheting abrasive materials, caused by high velocity impact on the blasted surface, could penetrate normal personal protective equipment and expose the miner to serious hazards. Respirators approved for abrasive blasting would be required in part because they are designed to protect the wearer's head and neck against impact and abrasion from rebounding material, regardless of the abrasive material used. The respiratory protection also provides additional protection from potential exposure to toxic contaminants attached to the article being blasted that could become airborne as a result of the abrasive blasting.

Heavy respirable dust clouds are generated in the immediate vicinity of the abrasive-blasting operation because of the high-velocity impact and subsequent grinding of the abrasive materials along with other potential contaminants. Because the respirable fraction of airborne particulates is high, a much greater potential respiratory health risk occurs, thus necessitating restrictions on the activity. Abrasive-blasting sands may contain high concentrations of quartz, organic or inorganic abrasives, all of which pose a serious health hazard to exposed workers. Also, a hazard may result from high concentrations of the base metal that may be removed during blasting and from any surface coating. Miners may be exposed to lead-based paints and chemical contaminants from the surface of articles that are cleaned. Many operators reuse abrasives, which allows the concentration of metal dusts or other contaminants to accumulate. MSHA found that one slag abrasive used in industry contained significant quantities of lead, cobalt, and cadmium. Therefore operators should be aware of exposure risks when doing abrasive blasting.

One commenter stated that the requirement for "all exposed persons" to wear respiratory protection needed clarification because it could be interpreted too broadly. MSHA interprets "all exposed persons" to mean only those persons directly exposed to the abrasive-blasting operation by immediate location and involvement in the operation. The need for respiratory protection or other personal protection for incidental exposures, such as to workers passing nearby or working in an adjoining area, would be determined on a case-by-case basis through exposure monitoring or the observance of flying debris. Under normal circumstances, abrasive-blasting operations are isolated and would not expose other workers. When abrasive blasting cannot be isolated because of the nature of the task, then all persons exposed to flying debris or above the PEL must be protected.

Underground Areas of Underground Mines

Existing metal/nonmetal § 57.5016 prohibits operators from using silica sand or other materials containing more than 1 percent free silica as an abrasive substance in abrasive blasting operations underground. The proposed rule would retain this prohibition for metal/nonmetal mines due to the likelihood of inhalation of silica being carried throughout the mine by the ventilation system, thus exposing unprotected workers. MSHA does not explicitly regulate abrasive blasting underground at coal mines. However, § 75.1720 requires protective clothing for protection against the impact of particles from such operations. The proposal would explicitly prohibit the use underground of abrasives containing more than 1 percent silica at coal mines. There are substitute abrasives such as steel shot or artificial abrasives that have been used effectively for this type of activity underground.

If substitute abrasives are used and there would be no overexposure to substances on the PEL Table, MSHA would still require that abrasive-blasting protection be used at metal/nonmetal and coal mines according to §§ 56/57.15006, 75.1720 and 77.1710. Rebounding or ricocheting abrasive materials caused by high-velocity impact on the blasted surface provides ample opportunity for penetration of regular personal protective equipment. MSHA believes that the additional devices on abrasive-blasting respirators are necessary because they are designed to protect the wearer's head and neck against impact and abrasion from rebounding material.

Sections 58/72.620 and 72.630 Drill Dust Control

MSHA proposes no substantive changes to the existing §§ 56/57.5003 for drill dust control at metal/nonmetal mines. However, this standard would be a new requirement for surface coal mines. The Agency would require that drill holes be collared and drilled wet or that other effective dust-control measures be used when drilling non-water-soluble materials. Effective dust-control measures would also be required when drilling water-soluble materials.

At underground coal operations, the provisions contained in §§ 70.400 through 70.400–3 would be recodified as §§ 72.630. Existing § 70.400 would be amended in proposed § 72.630 to require that dust collectors be maintained in permissible operating condition when they are provided as a method of controlling dust. Because MSHA has enforced these standards as part of the existing respirable dust standard for underground coal mines, the Agency proposes to retain the existing provisions except for strengthening the maintenance requirement for dust collectors.

MSHA believes that a specific standard addressing the dust hazards of drilling continues to be warranted due to the likelihood of overexposure inherent in such drilling operations. In addition, basic and effective control technology is readily available. Most problems with this technology are usually the result of human failure rather than a breakdown in the controls; for example, when the equipment operator fails to turn on the water, water-holding tanks are not filled, or bags on dust collectors are not emptied when full. These failures are easily and quickly corrected, restoring the effectiveness of the dust-control system.

MSHA experience has shown that drilling without effective dust controls is highly likely to result in overexposures to the drill operator and other workers in the drilling area. Dust generated by drills underground can be carried throughout the mine by the ventilation system, creating contaminated air throughout the mine and exposing unprotected miners.

Pneumoconiosis began to receive increased attention toward the end of the last century as a result of the introduction of machine drills and the large quantity of dust they generate. Wet drilling as a dust-control measure has been in use as early as 1922. Wet drilling has long proven to be an inexpensive, practical and effective dust-control measure for drilling non-soluble materials. Effective dry-dust collectors are also readily available from several equipment manufacturers for drilling both water-soluble and non-water-soluble materials.

Sections 58/72.200 Exposure Monitoring

Section 103(c) of the Mine Act states that:

> The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall issue regulations requiring operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this Act. Such regulations shall provide miners or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each miner or former miner to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each operator shall promptly notify any miner who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable mandatory health or safety standard promulgated under section 101, or mandated under title II, and shall inform any miner who is being thus exposed of the corrective action being taken.

Existing §§ 56/57.5002 and 71.701 require metal and nonmetal mine operators to conduct dust, gas, mist, and fume surveys when necessary to determine the adequacy of controls. Existing §§ 71.701 (a) and (b) state that the Secretary will take air samples to determine concentrations of noxious or poisonous gases, dusts, fumes, mists, and vapors in surface installations and at surface worksites. Upon the Secretary's written notification to the coal operator, the operator must conduct any additional air-sampling tests and analyses as the Secretary may from time to time require in order to ensure compliance.

The proposed standard would address the following aspects of exposure monitoring: frequency, procedures, recordkeeping, access to records, observation of monitoring, and notification of overexposure.

Frequency

The proposed rule would require exposure monitoring under the following circumstances: When the operator has reason to believe that a change in production, process, materials, equipment, or engineering or administrative controls would increase a contaminant's concentration above the PEL listed on the PEL table; upon installation of controls that are used to reduce exposure to the PEL; and upon modification of existing controls that are used to reduce exposures to the PEL. The purpose of operator monitoring would be to evaluate the effectiveness of the controls. MSHA intends that mine operators monitor when existing controls are modified to bring exposures into compliance. It is not MSHA's intent to require monitoring when modifications are made for purposes other than reducing exposure; for example, replacing a fan. MSHA intends that the monitoring would continue until the concentration is at or below the PEL, as determined with 95-percent confidence. This would ensure that the operator has determined that affected miners' exposures are at or below the PEL with statistical certainty. Specifying only the confidence level allows the operator to choose from the full range of sampling and analytical options available. In choosing the sampling and analytical methods, the operator would be able to identify the number of samples as well as the concentration range needed to ensure that the permissible limits are not exceeded at a 95-percent confidence level. Although an operator using detector tubes would have a different strategy than an operator using a field electronic gas analyzer, both methods would be able to determine whether exposures are at or below the PEL at 95-percent confidence.

When production changes occur, there is a possibility of increasing the concentrations of airborne substances. Changes in the material being mined or processed can also increase airborne concentrations or introduce new substances unrecognized in previous sampling. However, at most mines exposure monitoring would be triggered only by major changes in production, processes, material, equipment, engineering or administrative controls. Minor changes are unlikely to alter exposure levels significantly and are not usually of concern except at operations where airborne concentrations already border on the PEL. Areas where exposure levels are well below the PEL would most likely remain so. In some instances, even major changes might not necessitate monitoring if the exposure levels were very low prior to the changes. The Agency intends for operators to exercise the standard of care that a reasonable operator would take to guard against an overexposure.

Under the proposed standard, a 3-month interval sampling program would be required when respirators must be worn in order to verify their adequacy. MSHA believes that the 3-month interval is adequate to detect potential increases in contaminant levels due to seasonal changes and provide information on trends that may be useful for contaminant-control strategies. Many commenters suggested that this provision would require all operators to sample every 3 months. However, MSHA intends that this requirement would apply only to those operations where respiratory protection is required by MSHA's standards. MSHA requests comments on the appropriateness of the frequency of exposure monitoring, especially with regard to the 3-month interval. Also, is it possible to devise a more performance-oriented approach that increases monitoring where exposures are highly variable and reduces monitoring where exposures are predictable? This monitoring requirement does not affect the existing respirable coal mine dust sampling provisions in §§ 70/71.201 and 90.201.

Some commenters stated that the monitoring standard would require operators to sample for all the substances on the PEL table. While operators would be responsible for knowing what substances are on their property, MSHA intends that they sample for those substances that have not been reduced to the PEL at the particular mine site or could increase to concentrations above the PEL due to change in production, process, materials, equipment, or controls. MSHA would expect monitoring for only those substances that are present at the particular mine site.

In the metal/nonmetal preproposal draft, MSHA included a provision requiring monitoring whenever persons exhibit signs or symptoms that could be attributable to workplace exposure to any substance in the PEL table. Because such signs and symptoms are not always attributable to workplace exposures, the Agency is not proposing this requirement.

Many commenters suggested that MSHA retain the existing performance standard rather than the more specific proposal. MSHA believes that the existing standards need further clarification. At this stage, the Agency believes that the proposed monitoring requirements are necessary to provide adequate guidance as to the Agency's intent and to provide appropriate health protection for miners.

Several commenters suggested an initial monitoring provision in order to determine if a person may be exposed to any of the substances in the PEL table. The proposed rule would require operators to sample whenever the PEL could be exceeded. The operator would have to identify those chemicals in the process that could exceed the PEL. It would not be necessary for the operator to sample for every chemical, only for those that could exceed the PEL. In addition, much of the initial monitoring would be done by MSHA as part of its enforcement sampling during required inspections (underground mines quarterly; surface mines semi-annually), as well as by State agencies and insurance carriers. This should be sufficient initial monitoring.

Sampling Procedure

The proposed rule would require monitoring samples to be representative of exposures during the workday. The mine operator would have the flexibility to conduct either personal or area sampling, as long as the sampling results accurately represent the exposure of each miner for whom the monitoring is required. Personal sampling does not require separate measurements for each miner exposed, as long as adequate sampling is done to allow the operator to determine each miner's exposure. For example, if a number of miners perform essentially the same job under the same conditions, even on different shifts, it would be sufficient to monitor those few miners expected to have the highest exposure to obtain data that are representative of the remaining exposed miners.

The proposed rule would require that the samples be collected and analyzed by appropriate instrumentation and methods. The instruments used to measure exposures would have to be maintained and calibrated. Accurate measurements of exposure can be obtained only when the instruments used are functioning properly and have been calibrated to the manufacturer's specifications. In addition, MSHA would require that the samples be collected and analyzed by persons trained or experienced in the procedures. Knowledgeable personnel help ensure that sampling will be representative of worker exposures. Several commenters suggested that MSHA specify the type of sampling equipment, methods, and analysis procedures to be used and that equipment used for sampling by MSHA and NIOSH be required. However, with the exception of respirable dusts, which are defined in part by the sampling method used, to place such specifications within the standard would restrict use of future improvements in monitoring technology. Upon request, MSHA will provide its sampling and analytical methods.

Recordkeeping for Exposure Monitoring

To implement the provisions of the Mine Act regarding records of employee exposure, MSHA is proposing that mine operators maintain a record or required monitoring. The mine operator would have to retain such records for 5 years.

Some commenters indicated that the 1-year record retention period in the metal/nonmetal preproposal draft was too short and should be consistent with OSHA's minimum 30-year retention period in 29 CFR 1910.20. These commenters believe that such records could be useful for epidemiological studies and compensation claims by workers. It is not the Agency's intent to establish a long-term inclusive exposure-record system for epidemiological purposes. Mine operators may voluntarily retain exposure records for a longer period. However, at this time, MSHA intends that the proposed 5-year retention period serve as a tool for analyzing the effectiveness of established controls and give an indication of seasonal or production trends associated with overexposure. If respirators are used, monitoring records also serve to determine whether the respirators are being used within their protection limitations. MSHA requests comments regarding the record-retention period, including any benefits of lengthening it, along with who should retain the record.

The proposed standard would require the mine operator to make monitoring records available to MSHA. MSHA intends to review these records during inspections in order to be alerted to problem areas of the mine. The operator could use this record to determine progress, over a period of time, toward implementation of controls that would keep exposure at or below the permissible exposure limit.

In order to reduce the operator's paperwork burden, this record may be used to inform the employee under the notification requirement of this standard. However, operators may use some other format of notice for miner notification, as long as the substance to which the person has been overexposed and the corrective action being taken are included.

The record must contain eight informational items that are necessary for determining an individual's exposure: The date of sampling; the name of miner or location of work area in which each sample was collected; substances sampled; the sampling and analytical method used; the duration of sample; the concentrations of each substance determined by sampling; the person conducting the sampling and analysis; and the corrective action being taken if exposure is above the PEL. MSHA believes that these items are the minimum requirements for an effective monitoring program. MSHA requests comment on whether the record should include the names of the miners for whom the exposure is representative and the utility of such information.

One commenter suggested that operators be required to record exposure for only those persons wearing a personal sampling device. The proposal does not reflect this comment since each affected miner's exposure must be recorded even though only a few representative personal samples have to be taken. Monitoring and exposure records provide essential information to persons affected by the contaminants by informing them of their own exposure and the corrective action being taken to eliminate or avoid future exposure.

Access to Exposure Records

Miners would have access to their records for examination and copying. Miners' representatives would have similar access to the records of all miners whom they represent. Miners could also designate other individuals or organizations to have access. Former employees would also have access to records of samples that reflect their exposure. These provisions are required by the Mine Act. The mine operator would have to provide copies of the records at the operator's expense.

Workers would have 5 years from the sampling date to examine and copy their exposure records. MSHA believes the 5-year record retention period gives each employee an adequate opportunity to obtain this information. Each designated representative of miners would also have the same time period to obtain monitoring results required by the proposed standard for those miners whom they represent.

Many commenters suggested that the Agency clarify these provisions to state that miners are entitled to access to records of their own exposure and representatives of miners are entitled only to records of miners whom they represent. The proposed rule reflects these recommendations. The Agency intends that miners and their representatives be given the opportunity to review and copy such records. MSHA does not intend that miners have access to records of all monitoring, only to records that reflect their own exposure.

Operators would be required to transfer all records required by this subpart to any successor operator. Where there is no successor operator, the proposed rule would require that operators notify affected miners of their rights of access at least 3 months prior to disposal of the records.

Observation of Monitoring

The proposed rule would require the mine operator to provide affected miners or their representatives with an opportunity to observe required monitoring. Commenters preferred that only representatives of miners be given the opportunity to observe monitoring. However, under the Mine Act both miners and their representatives may observe such monitoring. Commenters requested that the Agency clarify whether statutory "walkaround pay" would apply to such observance. Section 103(f) of the Mine Act requires "walkaround pay" when a representative of miners who is employed by the operator accompanies an MSHA inspector during an inspection of the mine. Section 103(f) does not authorize "walkaround pay" for time spent by a representative of miners observing an operator's monitoring program. Therefore, MSHA does not intend for "walkaround pay" to apply to this standard.

Notification of Overexposure

This provision would require mine operators to notify miners in writing within 15 days when a sample indicates that their exposure has exceeded a permissible exposure limit and what corrective action is being taken. MSHA believes that this time is adequate for the operator to perform the administrative tasks necessary to issue the notification.

Sections 58/72.300 Dangerous Atmospheres

This section would address the problem of entry into areas with dangerous atmospheres. During the last 10 years, 61 injuries and 1 fatality have occurred in metal/nonmetal mines and 13 injuries and 1 fatality have occurred in coal mines due to health hazards in confined spaces. The proposed standard would not apply to the special emergency conditions of underground rescue and recovery operations, which are addressed specifically in 30 CFR Part 49 for mine rescue teams.

Paragraph (a) would require testing for hazardous gases, vapors, and oxygen deficiency prior to entrance into areas that have the potential for very hazardous environmental conditions. These areas include abandoned areas underground; silos, vats, tanks and other confined spaces; and areas where there has been a release of contaminant that could cause an acute respiratory exposure that poses an immediate threat of loss of life, immediate or delayed irreversible adverse effects on health, or acute eye exposure that would prevent excape from a hazardous atmosphere (IDLH atmosphere). This testing, which could be for toxicity, flammability or other inherent hazards, would determine whether or not the atmoshere is safe to enter. In the metal/nonmetal preproposal draft, the testing requirement was included under the draft standard for exposure monitoring. MSHA would include this requirement under the dangerous atmospheres standard in the proposed rule to emphasize the importance of such testing under the specific circumstances listed.

In the preproposal draft, the Agency required operators to sample for "toxic gases" and oxygen deficiency prior to entering a confined space or previously sealed workings. Commenters objected to use of the term "toxic gases" and stated that it was ambiguous. The proposed rule uses the more generic term "hazardous gases." Certain gases, although not toxic in nature, can be asphyxiants by displacing oxygen or can be flammable or combustible. This condition can occur especially in areas where ventilation is poor. Area samples may be the most appropriate means of determining concentrations prior to entry into confined spaces or areas where there has been a liberation of any contaminant in sufficient quantities to create an IDLH atmosphere.

Commenters suggested that "confined space" be defined, and MSHA agrees that the term needs some explanation. The proposed rule defines "confined space" as areas having restricted means of entrance, unfavorable atmospheres, and which are not intended for continuous occupancy. The restricted nature of confined spaces makes the problem of harmful gases or oxygen deficiency particularly critical should rescue measures be necessary.

Another commenter stated that there were no circumstances in which oxygen deficiency would pose a hazard to persons at surface operations. MSHA's accident records show that oxygen-deficient atmospheres have occurred as a result of work activity in confined spaces such as bins, hoppers, tanks, conveyor tunnels, dust collectors, crushers, and grinding mills, all of which may be found at surface operations. These records include multiple fatalities in which the would-be rescuer succumbs to the same oxygen-deficient atmosphere as the original victim. In addition, MSHA's own data indicate that confined space accidents causing injuries and fatalities have occurred when painting inside a dragline bucket, entering into acid storage tanks, maintenance in dust collection devices, and welding in such areas as dryers, tanks, and chutes.

Paragraph (b) would require that all work areas contain at least 19.5 percent oxygen by volume. If the oxygen content of the air falls below that level, mine operators would be required to take immediate corrective action to restore the level to at least 19.5 percent. At most altitudes where people work, air normally contains about 20.9 percent oxygen; therefore, levels below 19.5 percent indicate that an oxygen-deficient atmosphere is developing that warrants attention. The corrective action needed may be as simple as increasing ventilation to an area. Both OSHA and the American National Standards Institute (ANSI) specify 19.5 volume percent oxygen as the level for determination of an oxygen-deficient atmosphere.

Existing §§ 57.5015 and 75.301 require that 19.5 volume percent oxygen be maintained in all active workings underground. The metal/nonmetal preproposal draft recommended that the same percentage of oxygen be maintained at "all active workings," including both surface and underground mines. Because of the potential presence for oxygen-deficient atmospheres in confined spaces, the Agency continues to believe that this standard is appropriate for both surface and underground mines, including surface coal operations and facilities.

If the oxygen content of the air falls below 19.5 percent, workers not wearing respiratory protection in accordance with §§ 58/72.500 would have to be withdrawn.

Oxygen deficiency results in a reduction of the oxygen supply to the blood and retardation of the oxidizing processes in the brain that leads to disturbances of the central nervous system. A sudden decrease of the oxygenation of the blood can lead to loss of consciousness within 1 minute without any warning symptoms. A gradual decrease in oxygen content may cause dizziness, tachypnoea, or tachycardia, followed by a gradual decrease of physical and mental capacities beginning with changes in the sensory and mental functions (vision, hearing, perceptions, memory, attention, and judgment). The speed of onset of these symptoms depends upon the magnitude of the oxygen deficiency. Both rapid or gradual decreases in oxygen conditions have caused fatalities and injuries in mining.

The oxygen level in an area may be reduced by consumption or displacement. In a confined space, combustion of flammable substances such as from welding or flame cutting, bacterial action, and chemical reaction (possibly the oxidation of metal or rusting) can all cause an oxygen-deficient atmosphere. Oxygen can also be displaced by another gas, either naturally, such as carbon dioxide, or by inert gases introduced through work activity, such as during welding.

Paragraph (c) would require operators to take precautions as specified in the standard when entering an oxygen-deficient atmosphere listed in the table or any of the potentially dangerous atmospheres listed in paragraph (a). Respiratory protection would be required. There would have to be at least one standby person outside the affected area with equipment capable of rescuing the other person without entering the area. If equipment for a one-person rescue is unavailable, a two-person rescue system capable of recovery of the affected person would be necessary. This practice is recommended in the International Labour Organization's "Encyclopedia of Occupational Health and Safety" (3rd Edition). Communications would also be required between the standby person and the persons entering or working in the hazarous atmosphere. Communication is necessary to recognize early distress and to have adequate time to rescue the exposed worker. The body positions that are assumed in a confined space could make it difficult for a standby rescuer to detect an unconscious person. Usually, voice communication would be sufficient. However, surrounding noise levels, obstructions, or distances between workers and standby persons are some circumstances that may require other types of communication, such as timed lights or buzzers. MSHA recognizes that these provisions may not address every possible precaution for confined spaces, such as permit systems. The Agency is developing an advance notice of proposed rulemaking on confined spaces. Currently, OSHA is in the process of revising its confined space standard, and MSHA will monitor that rulemaking closely.

Sections 58/72.401 through 58/72.450 Carcinogens

Existing metal-nonmetal standards in §§ 56/57.5001 and 56/57.5006 address exposure to 22 chemicals that MSHA considers to be carcinogens. Existing §§ 56/57.5001 incorporate by reference the 1973 ACGIH "TLV® Booklet" which lists 5 carcinogens with a TLV® and 12 carcinogens for which no TLV® has been assigned, but to which exposure must be controlled. Of those 17 carcinogens, MSHA further restricts the use of 11 of them at metal/nonmetal mines in existing §§ 56/57.5006. Sections 56/57.5006 list 16 chemicals (11 listed by ACGIH and 5 others) that cannot be used or stored except by competent persons under laboratory conditions approved by a nationally-recognized agency acceptable to the Secretary of Labor. Fourteen of these 16 "restricted use" chemicals were regulated by OSHA in 1974 as carcinogens. Through incorporations by reference of the ACGIH "TLV® Booklet," MSHA currently regulates exposure to 18 carcinogens at coal mines. At present, besides MSHA, the only Federal agencies that develop guidelines or regulations for carcinogen handling are NIOSH, OSHA, and the Environmental Protection Agency.

TABLE 13.—EXISTING METAL/NONMETAL RESTRICTED-USE CHEMICALS

2-Acetylaminofluorene
4-Aminodiphenyl
Benzidine
Carbon tetrachloride
bis(Chloromethyl) ether
3,3 Dichlorobenzidine
4-Dimethylaminoazobenzene*
Ethyleneimine

TABLE 13.—EXISTING METAL/NONMETAL RESTRICTED-USE CHEMICALS—Continued

Methyl-chloromethyl ether
4,4'-Methylene bis(2-chloroaniline)
α1-Naphthylamine
β-Naphthylamine
4-Nitrobiphenyl
N-Nitrosodimethylamine
Phenol*
β-Propiolactone

*Not carcinogens

The metal/nonmetal preproposal draft listed 15 chemicals that could be used only under restricted conditions approved by MSHA. The Agency used evidence of carcinogenicity and knowledge of their presence on mining property in developing the list. The preproposal draft did not include procedures for use of these chemicals but operators were to have Agency approval for such use. Appeal procedures were also included. Many commenters supported the concept of restricted-use procedures for certain chemicals but objected to the approval process, stating that it was too burdensome and could create long delays. Some commenters stated that laboratory use of these chemicals by "competent persons" should be excluded from the standard.

For this proposal, MSHA reviewed the known or suspected carcinogens adopted by ACGIH in the 1989–90 "TLV® Booklet" and the documentation on which ACGIH based its decision to list the substances. Among other sources of information, MSHA reviewed the regulatory actions of OSHA and other Federal agencies, as well as the "Fourth Annual Report on carcinogens," prepared by the National Toxicology Program of the U.S. Public Health Service and issued by the Secretary of Health and Human Services. The majority of the chemicals listed by ACGIH are also listed in the "Fourth Annual Report on Carcinogens" or are regulated by other agencies as carcinogens.

TABLE 4.—SOURCES LISTING CARCINOGENS IN PROPOSED RULE

Listed by ACGIH:
Acrylamide
Acrylonitrile
4-Aminodiphenyl
Antimony trioxide production
Arsenic trioxide production
Asbestos
Benzene
Benzidine
Benzo(a)pyrine
Beryllium and compounds
1,3-Butadiene

TABLE 4.—SOURCES LISTING CARCINOGENS IN PROPOSED RULE—Continued

Carbon tetrachloride
Chloroform
bis(Chloromethyl) ether
Chloromethyl methyl ether
Chromite ore processing (Chromate), as Cr
Chromium (VI) compounds, Cr (certain water insoluble)
Chrysene
Coal tar pitch volatiles, as benzene solubles
3,3'-Dichlorobenzidine
Dimethyl carbamoyl chloride
1,1-Dimethylhydrazine
Dimethyl sulfate
Ethyl acrylate
Ethylene dibromide
Ethylene oxide
Formaldehyde
Hexachlorobutadiene
Hexamethyl phosphoramide
Hydrazine
Lead chromate, as Cr
Methylene chloride
4,4'-Methylene bis(2-chloroaniline)
4,4'-Methylene dianiline
Methyl hydrazine
Methyl iodide
β-Naphthylamine
Nickel sulfide roasting, fume & dust, as Ni
4-Nitrodiphenyl
2-Nitropropane
N-Nitrosodimethylamine
N-Phenyl-β-naphthylamine
Phenylhydrazine
Propane sultone
β-Propiolactone
Propylene imine
o-Tolidine
o-Toluidine
p-Toluidine
Vinyl bromide
Vinyl chloride
Vinyl cyclohexene dioxide
Xylidine
Zinc chromates

Regulated by OSHA as Carcinogens:
2-Acetylaminofluorene
Acrylamide*
Acrylonitrile
4-Aminodiphenyl
Amitrole*
Arsenic, inorganic
Asbestos
Benzene
Beryllium and compounds
Carbon tetrachloride*
Chloroform*
bis(Chloromethyl) ether
Coal tar pitch volatiles
3,3'-Dichlorobenzidine
4-Dimethylaminoazobenzene
Dimethyl sulfate*
Ethyleneimine
Ethylene dichloride*
Ethylene oxide
Formaldehyde
4,4'-Methylene bis(2-chloroaniline)
α-Naphthylamine
β-Naphthylamine
2-Nitropropane*
4-Nitrodiphenyl
Perchloroethylene*
o-Toluidine*
p-Toluidine*
Vinyl bromide*
Vinyl chloride
Vinyl cyclohexene dioxide*

TABLE 4.—SOURCES LISTING CARCINOGENS IN PROPOSED RULE—Continued

*Carcinogenicity used to establish OSHA PEL; no separate standard.

Listed in the Fourth Annual Report on Carcinogens:
Acrylonitrile
4-Aminobiphenyl (4-Aminodiphenyl)
Arsenic, certain compounds (Arsenic trioxide)
Asbestos
Benzene
Benzidine
Benzo(a)pyrene
Beryllium and certain compounds
Carbon tetrachloride
Chloroform
bis(Chloromethyl) ether
Chromium, certain compounds
3,3'-Dichlorobenzidine
4-Dimethylaminobenzene
Dimethyl sulfate
Ethylene oxide
Formaldehyde
Hexamethyl phosphoramide
Hydrazine
4,4'-Methylene bis(2-chloroaniline)
4,4'-Methylene dianiline
Methyl iodide
2-Naphthylamine (β-Naphthylamine)
Nickel, certain nickel compounds (Nickel sulfide roasting)
2-Nitropropane
N-Nitrosodimethylamine
1,3-Propane sultone (Propane sultone)
β-Propiolactone
o-Toluidine
Vinyl chloride

MSHA is proposing additional requirements to control exposure to carcinogens beyond those required by §§ 58/72.100 because MSHA believes that carcinogens pose unique risks to exposed individuals. Although exposure to other toxic materials can result in death, as can cancer, the disease progress due to cancer has several significant, unique features that increase the hazard to exposed individuals.

Carcinogens alter the target cell's genome which causes the cancer cell to proliferate rapidly and invade healthy tissue. Although the cancer starts with a single cell, during the course of the disease the cancer grows to contain millions of cells. This constantly-increasing number of cells may localize in one area or spread throughout the body. All of the cancer cells must be removed or destroyed to cure the cancer or the number of cells significantly reduced to cause remission. On the other hand, a toxic material may destroy or injure a target cell, but the amount of injury is dependent upon the amount of toxin and not upon cell proliferation.

Typically, there is a long latency period between exposure to a carcinogenic chemical and the development of cancer. This latency period allows time for detection and intervention of the disease process.

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However, it also allows for exposure to other chemicals that may act as promoters or activators in the carcinogenic process. These exposures can increase the risk to the individual exposed to the carcinogen.

However, MSHA is aware that other chemicals pose life-threatening health risks that are as great as or greater than carcinogens and that some of these may be of more concern in mining. MSHA specifically solicits comments as to whether separate precautions should be required for chemicals that potentially cause cancer as opposed to chemicals that pose other potentially life-threatening risks.

The Agency is proposing a tiered approach to the regulation of these chemicals. The proposed standard delineates four classes of known or suspected carcinogens and separate provisions for asbestos construction work. One class would require MSHA approval prior to their use. The other three classes would have different requirements. MSHA is proposing separate provisions for asbestos construction work because the conditions of exposure and the necessary work practices to control that type of exposure are unique.

The tiered approach groups the carcinogenic chemicals and processes involving carcinogens according to their strength and toxicity, sources and potential routes of exposure. MSHA is proposing what it believes to be the necessary work practices for safely working with each class of carcinogens established by the tiering.

Class 1 carcinogens, addressed in §§ 58/72.401, are those that are brought onto mining property that have no assigned safe limit by any recognized agency, with one exception: bis(chloromethyl) ether. Chloromethyl methyl ether and bis(chloromethyl) ether are generally found simultaneously because bis(chloromethyl) ether often is produced as a by-product of chloromethyl methyl ether use. Therefore MSHA proposes to regulate both chemicals as class 1 carcinogens. Under the proposal, class 1 carcinogens would have to be controlled so that the miner would have virtually no contact with the carcinogen. Eleven of these carcinogens, including bis(chloromethyl) ether, are regulated by OSHA so that employees have no contact with the chemical. Along with other provisions, OSHA requires that employees be protected with the use of a closed isolated system that prevents exposure. Since these chemicals are likely to be used in procedures and operations other than those encountered in general industry, MSHA proposes to require prior approval for their use, rather than identifying specific control technology. This approach would allow flexibility to address new technology particular to mining while at the same time ensuring that the miner would have virtually no contact with the chemical. MSHA anticipates that there will be few operations that will choose to use these carcinogens over other alternative chemicals.

Class 2 and class 3 carcinogens are carcinogens brought onto mining property and which have been assigned PELs. Exposures to these carcinogens are controlled by their assigned PELs and additional requirements specified for each class. In addition, the other provisions of the proposed rule such as exposure monitoring, dangerous atmospheres, and respiratory protection would apply as appropriate.

The class 2 carcinogens addressed in §§ 58/72.402 consist of four chemicals that are currently regulated in metal/nonmetal §§ 56/57.5006: ethylenimine, β-propiolactone, carbon tetrachloride, 4-4′-methylene bis(2-chloroaniline), and one other chemical, vinyl chloride. As mentioned, under the existing MSHA standard the chemicals cannot be used or stored except by competent persons under laboratory conditions approved by a nationally-recognized agency. Under OSHA standards, no employee contact is allowed for ethylenimine and β-propiolactone. Under OSHA, this must be achieved primarily through the use of isolated systems, closed systems, and laboratory-type hoods, as well as restricted areas. For vinyl chloride, exposure is controlled through the use of PEL as well as establishment of restricted areas. Although process requirements are not specified, the OSHA standard does not allow any direct contact with liquid vinyl chloride. MSHA believes that similar engineering controls and restricted areas are necessary to control exposures to class 2 carcinogens in mines. MSHA's proposal specifies engineering and work practices to ensure that all routes of exposure would be controlled tightly. Since there is an exposure limit that can be used to determine the effectiveness of engineering controls for airborne exposure, MSHA does not believe it is necessary to require prior approval for the use of these chemcials.

Class 3 carcinogens addressed in §§ 58/72.403 are those that would be regulated to the PEL without specifying the technology required for their handling. If an overexposure is found, a restricted area would have to be established and additional work practices to control exposure would have to be implemented. This approach is consistent with the approach OSHA has taken for benzene, ethylene oxide, and formaldehyde. The proposal also includes requirements for labeling, monitoring and training, which are not dependent upon establishment of a restricted area. MSHA has included perchloroethylene and amitrole in this class based on the findings in the OSHA PEL rulemaking that these substances may increase the risk of cancer among exposed workers.

The class 4 carcinogens in §§ 58/72.404 are carcinogens that are mining processes, chemical processes, or chemicals for which the contribution of individual components toward the carcinogenic activity are not fully understood. The nature of the processes involved, as well as the type of exposure, requires different work practices than for the other classes of carcinogens.

Asbestos mining and milling, vermiculite mining and milling containing 1 percent asbestos in the ore or concentrate, and beryllium and cadmium (excluding welding) are all mining operations. Exposure to the carcinogenic material can occur from the initial recovery of the ore through the processing until bagging or shipping of the final product. Because the carcinogenic material is being recovered from the environment, there would be no area of the mine where contact with the carcinogen is not possible. Exposure could result from airborne dust, resuspension of dust from clothes, equipment, facilities, and ingestion of material from contaminated skin, food, and liquids. In addition, especially in regard to asbestos, the risk can spread to the employee's family if contaminated material is brought home.

Antimony trioxide production, arsenic trioxide production, chromite ore processing, and nickle sulfide roasting are processes that would not involve the entire mine but would involve a large part, if not all, of the milling process. The carcinogenic activity is associated with processes rather than a unique chemical form of the carcinogen.

MSHA has separated the class 4 carcinogens to require specific work practices that address the risks of mining and milling these carcinogens. MSHA specially solicits comments on this approach as well as on other approaches that may address the hazards posed.

The chemicals addressed in the proposed carcinogen standards are all substances listed in the 1988–89 ACGIH "TLV® Booklet" as known or suspected human carcinogens or have been regulated by MSHA and OSHA as carcinogens. The ACGIH documentation demonstrates that the substances have proven carcinogenic to humans or have induced cancer in animals under appropriate experimental conditions. The February 1985 policy statement of the Office of Science and Technology Policy established the following principles to be used by regulatory agencies in assessing cancer risks from chemicals:

> Decisions on the carcinogenicity of chemicals in humans should be based on considerations of relevant data, whether they are indicative of a positive or negative response, and should use sound biological and statistical principles. This weight of evidence approach should include consideration of all relevant factors and should give appropriate weight to each on a case by case basis * * *. Examples of the types of information that should be taken into account include:
>
> (a) Findings from long-term animal studies * * *;
>
> (b) Results from epidemiological studies * * *;
>
> (c) Results from *in vivo* and *in vitro* short term tests * * *;
>
> (d) Data from studies of mechanism, including factors such as structure-activity relationships, and known similarities and differences in metabolic and kinetic profiles for different species (50 FR 10378) * * *.

The proposed rule would cover the use of these chemicals in all situations, including use by competent persons in laboratories, as required by the existing standard. Workers in laboratories are exposed to these chemicals and face the same health risk as other exposed miners. Accidents and overexposures to chemicals have occurred in mine laboratories, resulting in both injuries and poisonings. This history of laboratory hazards is by no means unique to mining. Current industrial hygiene literature reports many instances of laboratory accidents. In some cases, these laboratory accidents have been included in the ACGIH documentation of the TLVs®. For these reasons, MSHA believes that the hazards of laboratory use of such chemicals should be regulated. However, the Agency believes that in many cases the current methods for laboratory use of these carcinogens would need only slight modification in order to meet the proposed standards for use.

Exposure to carcinogens must be controlled as any other substance listed in the PEL Table. If overexposures occur or can be anticipated, then exposure monitoring, feasible engineering controls, and respiratory protection would have to be implemented. However, worker rotation would not be allowed to meet the PEL.

Two chemicals currently regulated at metal/nonmetal mines as restricted-use chemicals, phenol and 4-dimethylaminobenzene, do not appear in this proposed carcinogen standard. MSHA would, however, regulate them at all mines according to their permissible exposure limits in the PEL Table and other applicable standards in the proposed rule. Phenol has never been shown by scientific data to be carcinogenic and was evidently included in the existing restricted-use standard primarily due to its PEL. The hazards posed to miners by phenol would be adequately addressed by the other standards in this proposal. The chemical "4-dimethylaminobenzene" is spelled incorrectly. Dimethylaminobenzene, commonly called xylidine, is not chemically written with the prefix "4" and it is not listed currently by ACGIH as a carcinogen. However, 4-dimethyl-amino*azo*benzene is a suspected human carcinogen, which is regulated by OSHA. The omission of the letters "azo" caused the confusion.

Sections 58/72.401 Class 1 Carcinogens

Proposed §§ 58/72.401 address carcinogens that present the greatest potential risk to workers involved in their use since there are no PELs to determine environmental exposures at which there would be no expected increase in cancer or mortality. These chemicals are also brought onto mining property. These are termed "class 1 carcinogens" in the proposal. With the exception of bis(chloromethyl) ether, these carcinogens have no specified TLV®, since ACGIH has been unable to determine a safe exposure limit. As mentioned, bis(chloromethyl) ether is generally found as a by-product of chloromethyl methyl ether use. Three other chemicals currently regulated by MSHA as restricted-use chemicals at metal/nonmetal mines are not addressed by ACGIH but are regulated by OSHA as carcinogens. These chemicals are α-naphthylamine, 2-acetylaminofluorene, and 4-dimethylaminoazobenzene. The "Fourth Annual Report on Carcinogens" also lists 2-acetylaminofluorene and 4-dimethylaminoazobenzene as carcinogens. MSHA proposes to continue regulating these chemicals, placing them with the class 1 carcinogens. This standard would require mine operators to have MSHA approval of their procedures prior to usage of these chemicals. Such procedures would have to specify the use of engineering controls, personal protection, and administrative measures that ensure virtually no contact with the chemicals. Administrative measures are not the same as administrative controls. Administrative measures are management efforts used to define work practices and to limit possible contamination. Administrative measures could include designating only one door as entry into the restricted area or only one path to move containers of carcinogens from the loading dock to the restricted area. Administrative controls (work rotation), on the other hand, reduce one individual's exposure by spreading the exposure among several workers. This would not be permitted for carcinogens. Although worker rotation may lower one individual's risk, it may place more individuals at risk or increase the risk of others. The term "virtually" is used to prevent the analytical problems encountered when measuring chemicals at extremely low concentrations, which are near the limits of detection and the sensitivity of analytical techniques. MSHA intends that exposure to these class 1 carcinogens be minimal. Because of the high risk posed by these chemicals and the unique situations where they would be used in mining, MSHA believes that MSHA approval would be necessary to allow flexibility for new mining technology while assuring adequate protection for the miners involved. MSHA recognizes that procedures may vary from operation to operation. However, the Agency expects equivalent protection to be provided to all workers involved in the use of these chemicals. Comments are requested on the approval procedures and their appropriateness for regulating class 1 carcinogens. In addition, the public is invited to comment on whether MSHA should allow the use of these substances on mining property.

Each class 1 carcinogen present in a concentration of greater than 0.1 percent by weight or volume would be subject to approved restricted-use procedures. The 0.1 percent threshold is consistent with general industrial hygiene practice. MSHA recognizes that benzo(a)pyrene and chrysene can be found as a constituent of diesel exhaust, and it is not the Agency's intent to regulate diesel exhaust under this standard. For this reason, only mixtures containing more than 0.1 percent commercially manufactured benzo(a)pyrene and chrysene would be addressed as class 1 carcinogens. Benzo(a)pyrene has been used as a laboratory reagent in mining. MSHA also recognizes that benzo(a)pyrene and chrysene may be found in coal tar pitch, but in this case exposure would be controlled through regulating coal tar pitch volatiles as a class 4 carcinogen under § 58.404.

MSHA approval of proposed procedures would be based on the Agency's knowledge of the hazard from exposure to the chemical. However, as new evidence becomes available about the hazard, the Agency would reassess an approval. If additional safeguards would be needed to protect miners exposed to the chemical, MSHA would notify the mine operator of the need to revise the approved procedures. Failure to make needed modifications within a reasonable period of time would result in revocation of the approval. A revocation action or disapproval of proposed procedures could be appealed to the Assistant Secretary of the Mine Safety and Health Administration. Consistent with the concept of participation by all parties in achieving a safe and healthful workplace, the proposal provides that a copy of the MSHA-approved procedures be available at the mine site for inspection by MSHA and examination by miners and their representatives.

Sections 58/72.402 Class 2 Carcinogens

Proposed §§ 58/72.402 address class 2 carcinogens. As mentioned, class 2 carcinogens consist of four chemicals that are currently regulated in metal-nonmetal §§ 56/57.5006: ethylenimine, β-propiolactone, carbon tetrachloride, 4,4′-methylene bis(2-chloroaniline), and one other chemical, vinyl chloride. MSHA proposes to specify use of engineering and work practices to ensure that all routes of exposure would be tightly controlled. MSHA believes that the exposure limits for these carcinogens can be used to determine the effectiveness of the engineering controls for airborne exposure. For this reason, MSHA is not requiring prior approval for the use of these chemicals.

The existing metal/nonmetal standards contain a conflict concerning carbon tetrachloride in §§ 56/57.20005 which prohibit the use of carbon tetrachloride, while §§ 56/57.5006 allow its use by competent persons under laboratory conditions. Under the existing standards, the Agency's intention was to ban carbon tetrachloride's use as a fire extinguishing agent and a common solvent, while permitting its use under restricted conditions. Carbon tetrachloride is currently used under restricted conditions approved by MSHA in mine laboratories for specific analytical and metallurgical procedures. The metal/nonmetal preproposal draft listed carbon tetrachloride as a restricted-use chemical to be used under conditions or procedures approved by MSHA. One commenter felt that permitting its use as a restricted chemical would be less protective than the existing standards. MSHA disagrees since the existing standards allow the use of carbon tetrachloride under conditions similar to the proposed rule. For these reasons, MSHA proposes to delete §§ 56/57.20005 which prohibit the use of carbon tetrachloride entirely and require that carbon tetrachloride be addressed as a class 2 carcinogen.

Sections 58/72.402 would require that a restricted area be established for class 2 carcinogens and exposures would have to be controlled according to §§ 58/72.100 if the contaminant has a listed PEL. The restricted area would limit the number of people exposed and prevent untrained workers from contaminating themselves and others. MSHA solicits comments on what methods may be necessary to identify individuals entering a restricted area in the event of an accidental leak, spill, or contamination. One option would be to require that a work log be kept.

Paragraph (b) would require that restricted areas be posted with signs stating the nature of the hazard and the procedures to be followed when entering and leaving the restricted areas. MSHA intends that any signs used would be compatible with any sign and labelling requirements in the Agency's hazard communication standard which is currently under development.

In paragraph (c), MSHA proposes to ban the storage and use of food, beverages, tobacco products, chewing products, and cosmetics in the restricted area to prevent ingestion and absorption of the restricted chemical. These products could become contaminated by contact with contaminated surfaces, gloves, and storage areas.

The requirements of paragraphs (d), (e), and (f) would prevent spreading a contaminant to areas outside the restricted area as a result of the process, material handling, or maintenance. Contamination of unrestricted areas could cause accidental exposure to unprotected workers. Contamination of the restricted area should also be minimized to prevent any unnecessary exposure to individuals handling the restricted chemicals. Therefore, paragraph (g) would require that the restricted chemicals be processed or used in a system that minimizes entry of the contaminant into the air.

Because these chemicals can be ingested, absorbed, or react with the skin, paragraphs (h), (i), (j), and (k) would require protection against skin and body contact with the restricted chemical. Carbon tetrachloride and 4,4′-methylene bis(2-chloraniline) have a "skin" notation that indicates that absorption through the skin can contribute significantly to the total body burden. Handwashing and showering reduce the risk of ingestion, absorption, or prolonged skin interaction for the miner and other individuals who may come in contact with the miner. At coal mines, bathing facilities are already required under other standards. These facilities could be used to meet paragraph (k). In addition, proper disposal or decontamination of clothing would prevent contamination of other areas and eliminate possible exposure of other workers.

Paragraph (l) would require that written decontamination, disposal, and emergency procedures be developed and operational. Properly planned and implemented decontamination procedures would help ensure that contamination of equipment could be contained within the restricted areas. The use of proper decontamination for individuals would prevent injury and illness from unplanned exposure. The ability to implement emergency procedures when needed would enable employees to handle emergency situations and minimize unnecessary exposure or contamination. Proper disposal of contaminated clothing and equipment would prevent contamination of other areas, thereby preventing exposure to unprotected miners.

Paragraph (m) would require the operator to conduct appropriate monitoring at least every 12 months to evaluate the effectiveness of control and decontamination procedures. Without evaluation, controls could deteriorate and the risk to the miners could increase significantly. Effective decontamination procedures are critical to controlling exposures.

Paragraph (n) would require that persons authorized to enter the restricted area, or who are involved in maintenance on contaminated equipment, decontamination, disposal, or emergency response, be trained prior to assignment and once every 12 months on the risks of applicable substances, decontamination, disposal and emergency procedures to be used. Miners can assist in controlling their exposure to carcinogens when they are fully advised of the hazards and methods to minimize exposure. MSHA intends that the training in the health risks be compatible with those that may be required under the Agency's future hazard communication standard.

Sections 58/72.403 Class 3 Carcinogens

Sections 58/72.403 address class 3 carcinogens that would be regulated to the PEL without specifying the technology required for their handling. As mentioned, overexposures would necessitate the establishment of a restricted area and the implementation of additional work practices to control exposures.

Concentrations of the chemicals exceeding 0.1 percent would require implementation of restricted-use procedures. However, restricted-use procedures for benzene and lead chromates and zinc chromates would be required when these substances exceed 5 percent in a product of formulation (liquids, solids, or gases).

Benzene is found in gasoline in volumes up to 5 percent, and MSHA does not intend to regulate exposure to gasoline by this standard. Benzene exposure resulting from gasoline vapors would be regulated by limiting exposure to the PEL under §§ 58/72.100. Mining exposure to gasoline containing benzene is characterized by short duration, intermittent exposure to gasoline vapors. Variable concentrations of airborne benzene primarily occur when fueling vehicles. MSHA believes that this type of exposure does not warrant inclusion under the proposed carcinogen standard.

Lead and zinc chromates are used as paint pigments. However, MSHA does not intend to restrict the use of paint. Lead and zinc chromate exposure resulting from paint would be regulated by limiting exposure to the PELs under §§ 58/72.100. MSHA believes that the exposure characteristics typical in painting operations in mining do not warrant inclusion in the restricted-use chemical standard.

Paragraph (a) requires that whenever a PEL or STEL overexposure is found, or when such overexposures may be anticipated to be above the PEL or the STEL, the operator would have to establish a restricted area. This restricted area would limit the number of people exposed, clearly identify the hazard area, and ensure that corrective work practices are initiated.

Paragraph (b) would require that restricted areas be posted with signs stating the nature of the hazard and the procedures to be followed when entering or leaving the restricted area. MSHA intends that any signs used would be compatible with signs and labels required by MSHA's forthcoming hazard communication proposal.

In paragraph (c), MSHA proposes to ban the storage and use of food, beverages, tobacco products, chewing products, and cosmetics to prevent ingestion and absorption of the chemical in the restricted area and in any area where these items may come into direct contact with the chemical.

The requirements of paragraphs (d), (e), and (f) would prevent spreading a contaminant to areas outside the restricted area as a result of the process, material handling, or maintenance. Contamination of unrestricted areas could cause accidental exposure to unprotected workers. Contamination of the restricted area should also be minimized to prevent any unnecessary exposure to individuals handling the restricted chemicals.

For emergency control activities and where direct contact with the carcinogen is possible, paragraphs (g), (h), and (i) would require protection against skin and body contact with the restricted chemical. Seventeen of the 29 chemicals listed have a "skin" designation which indicates that absorption through the skin is a significant exposure route for the body dose. Handwashing and showering reduce the risk of ingestion, absorption, or prolonged skin interaction for the miner and other individuals who may come in contact with the miner. At coal mines, bathing facilities are already required under other standards. These facilities could be used to meet the showering requirements of paragraph (i).

MSHA recognizes that high airborne concentrations of contaminants that can be absorbed through the skin (as indicated by a skin notation in the PEL table) may contribute significantly to the body burden by the skin absorption route. The preamble of the "TLV Booklet" states that:

> Little quantitative data are available describing absorption of vapors and gases through the skin. The rate of absorption is a function of the concentration to which the skin is exposed.
>
> Substances having a skin notation and a low TLV may present a problem at high airborne concentrations, particularly if a significant area of the skin is exposed for a long period of time. Protection of the respirator tract, while the rest of the body surface is exposed to a high concentration, may present such a situation. [p. 7].

MSHA believes that skin contact by airborne vapors and gases is also of particular concern, given the potential effects. MSHA specifically solicits comments on the appropriateness of requiring special clothing and daily showers when individuals are exposed to carcinogens with a skin notation in the PEL table at levels above the permissible exposure limit. MSHA also requests comment on whether such clothing and showers are appropriate for exposure to any carcinogen above the PEL to reduce potential exposures through ingestion and resuspension of contaminants.

Paragraph (j) would require that written documentation, disposal, and emergency procedures be developed and operational. Properly planned and implemented documentation procedures would help ensure that contamination of equipment could be contained. The use of proper documentation for individuals would prevent injury and illness from unplanned exposure. The ability to implement emergency procedures when needed would enable employees to handle emergency situations and minimize unnecessary exposure or contamination. Proper disposal of contaminated clothing and equipment would prevent contamination of other areas, thereby preventing exposure to unprotected miners.

Paragraph (k) would require the operator to conduct appropriate monitoring at least every 12 months to evaluate the effectiveness of controls and decontamination procedures. Without evaluation, control could deteriorate and the risk to the miners could increase significantly. Effective decontamination procedures are critical to controlling exposures.

Paragraph (l) would require that persons authorized to enter the restricted area or who are involved in maintenance on contaminated equipment, decontamination, disposal or emergency response, be trained prior to assignment and every 12 months on the risks of the applicable substances, decontamination, disposal and emergency procedures to be used. Miners can assist in controlling their exposure to carcinogens when they are fully advised of the hazard and methods to minimize exposure. MSHA intends that this training be compatible with training that may be required under MSHA's future hazard communication standard.

Sections 58/72.404 Class 4 Carcinogens

Sections 58/72.404 address known carcinogens that involve mining processes, chemical processes, or substances for which the contribution of individual components toward the carcinogenic activity is not clearly understood. Asbestos mining and milling and vermiculite mining and milling where asbestos is greater than 0.1 percent in the ore or concentrate are included. Chemicals used in mixtures of gases, liquids, or solids in concentrations exceeding those in the table of class 4 carcinogens would

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require implementation of these procedures. Because several of these processes are found only in metal/nonmetal mines, they do not appear on the class 4 carcinogen table for coal mines. By use of applicable PELs, the risks to individuals would be adequately controlled. Asbestos mining and milling and vermiculite mining and milling where asbestos is greater than 0.1 percent in the ore or concentrate involve mined commodities, and therefore no minimum percentage would be required. The carcinogenic potential of processes involving the manufacturing of chromite ore, nickel sulfide, arsenic and antimony trioxide is due to exposure from the process itself; therefore no minimum percentage of content is required.

Coal tar pitch would have to be present in a minimum concentration of 2 percent. The use of the 2 percent limit concentration would be the equivalent of a 0.1 percent limit on the polycyclic hydrocarbons contained in coal tar pitch volatiles. Many polycyclic hydrocarbons are carcinogens, and scientific evidence indicates that they may be responsible for the carcinogenic effects of coal tar pitch volatiles.

While beryllium and cadmium are used as agents in various metals commonly found in welding operations, it is not MSHA's intent to regulate welding processes by this carcinogen standard. MSHA believes that typical beryllium and cadmium exposures resulting from welding operations would be adequately controlled by enforcement of the beryllium and cadmium PELs under §§ 58/72.100.

Exposure of miners in arsenic trioxide production would be primarily controlled by § 58.404, but airborne exposure also would have to meet the limit for arsenic and soluble compounds in the PEL table. Similarly, antimony trioxide production would also have to meet the PEL for antimony trioxide.

MSHA has identified three types of asbestos exposure that occur in mining that warrant special requirements in addition to the feasible engineering controls, exposure monitoring, and respiratory protection requirements that apply whenever exposure exceeds the PEL or may be anticipated to exceed the PEL. Asbestos mining and milling and vermiculite mining and milling where asbestos exceeds 0.1 percent in the ore or concentrate are listed as class 4 carcinogens. Asbestos construction work would be regulated separately because of the nature of exposure and the type of work practices that are unique to that operation. The demolition and renovation of older facilities containing asbestos-insulated pipes and asbestos-containing material represent significant sources of exposures to miners at both coal and metal/nonmetal mines. These sources will continue to exist as long as older mine facilities are replaced or expanded.

MSHA believes that asbestos mining and milling and vermiculite mining and milling where asbestos exceeds 0.1 percent in the ore or concentrate represent a long-term risk of exposure to the miner because asbestos is a natural constituent of the ore. MSHA believes that the occurrence of asbestos in other commodities is sporadic in nature and does not represent a long-term risk to the miner. In addition, MSHA believes that the use of asbestos in underground coal mining applications could lead to only sporadic intermittent exposure. For example, asbestos continues to be used as a packing material to ensure the flame path integrity of specific types of cable entrances into explosion-proof electrical contactor enclosures on approved equipment. Other applications include use as gaskets in flame safety lamps. Control of these types of asbestos exposure to the PEL in such situations should provide adequate protection to the miners involved. MSHA specifically solicits comments on data regarding asbestos exposure and any additional provision necessary for these limited, intermittent exposures.

Paragraph (a) would restrict the access into contaminated areas to essential personnel. This would reduce the number of potentially exposed individuals and prevent untrained persons from contaminating themselves and others.

Paragraph (b) would require that restricted areas be posted with signs stating the nature of the hazard and the procedures to be followed when entering and leaving the restricted areas.

In paragraph (c), MSHA proposes to ban the storage and use of food, beverages, tobacco products, chewing products, and cosmetics in the restricted area to prevent ingestion and absorption of the restricted chemical. These products could become contaminated by contact with contaminated surfaces, gloves, and storage areas.

Because these chemicals can be ingested, absorbed, or react with the skin, paragraphs (d), (e), (f) and (g) would require protection against skin and body contact with the restricted chemical. In addition, proper disposal or decontamination of clothing would prevent contamination of other areas and eliminate possible exposure of unprotected workers.

Paragraph (h) requires that containers of class 4 carcinogens be clearly marked and their contents identified. MSHA intends that labels required by this standard would be consistent with labels required under any future hazard communication standard. This section would adequately warn miners of the potential hazard of the carcinogen and enable them to take proper action. However, MSHA recognizes that several of these carcinogens are processes involving ore. In these cases, paragraph (h) would not apply to materials contaminated by the carcinogen as is required for class 2 and class 3 carcinogens in §§ 58.402 and 58.403. Otherwise materials discarded from the mining process, such as tailings, would be included.

Paragraph (i) would require that written decontamination, disposal and emergency procedures be developed and operational. Properly planned and implemented decontamination and disposal procedures help assure that contamination of equipment and individuals could be contained within the restricted areas. The ability to quickly implement emergency procedures would enable employees to handle such situations and minimize unnecessary exposure or contamination.

Paragraph (j) would require that the operator conduct appropriate monitoring at least every 12 months to evaluate the effectiveness of control and decontamination procedures. Without evaluation, controls could deteriorate and the risk to the miners could increase significantly. It is also critical in controlling exposure that decontamination procedures continue to be effective.

Paragraph (k) would require that persons required to enter a restricted area or who are involved in decontamination, disposal, or emergency response be trained prior to initial assignment and at least annually on the risks of applicable substances, decontamination, disposal and emergency procedures to be used. Employees can assist in controlling their exposure to carcinogens when they are fully advised of the hazards and methods to minimize exposure. MSHA intends that the training on health risks be compatible with the requirements of the Agency's hazard communication standard, which is under development.

Section 58/72.405 Asbestos Construction Work

Asbestos construction work would be regulated under §§ 58/72.406 and be defined as construction work such as demolition or salvage of structures where asbestos is present; installation, removal, or encapsulation of asbestos and materials containing greater than

0.1 percent asbestos; spill and emergency cleanup of asbestos and material containing greater than 0.1 percent asbestos; transportation, disposal, storage or containment of asbestos or materials containing greater than 0.1 percent asbestos on the site or location at which construction activities are performed.

Paragraph (a) would require that operators designate a person to be responsible for the asbestos construction work who would have authority to take prompt corrective action to eliminate hazards. This person would have to have had comprehensive training on the hazards of asbestos and asbestos construction work, such as a course conducted by an EPA Asbestos Training Center, or be a certified industrial hygienist (C.I.H.) certified by the American Board of Industrial Hygiene, or be certified for asbestos construction work by a state program. This provision would ensure that a trained individual would be able to quickly correct any hazards. Asbestos construction work, unlike plant processes, usually is accomplished quickly, generally over a span of weeks. The exposure resulting from incorrectly handled and unrecognized hazards can be quite excessive. If the hazards are not quickly corrected, miners will be subject to exposures which will place them at increased risk.

Paragraph (b) would require that areas where asbestos construction work is being done be restricted to essential personnel. This would reduce the number of potentially exposed individuals and prevent untrained persons from contaminating themselves and others.

Paragraph (c) would require that the restricted area be posted with signs stating the nature of the hazard and the procedures to be followed when entering and leaving the restricted area.

MSHA proposes to ban the storage and use of food, beverages, tobacco products, chewing products and cosmetics in the restricted area in paragraph (d) to prevent ingestion of asbestos and other toxic material resulting from the construction work. These products could become contaminated by contact with contaminated surfaces, gloves, and storage areas.

Paragraphs (e), (f), and (g) would prevent exposure to asbestos through personal contamination. Proper disposal or decontamination of clothing would prevent contamination of other areas; regeneration of asbestos dust from the clothing, exposing the wearer; and eliminate possible exposure of unprotected workers.

Paragraph (h)(1) would require the mine operator to establish negative-pressure enclosures before beginning removal, demolition, or renovation operations, whenever feasible. This type of work generates large amounts of asbestos-contaminated dusts and materials. The use of negative-pressure enclosures is required to prevent contamination of non-restricted areas, thereby preventing exposure of unprotected persons.

Paragraph (h)(2) would allow the use of glove bags and wet methods instead of negative-pressure enclosures for small-scale, short-duration activities involving removal of asbestos-containing insulation on pipes, removal of entire and intact asbestos-insulated pipes or structures, and replacement of electrical conduits through or near asbestos-containing material. Under these circumstances, MSHA recognizes that currently available glove bags, in conjunction with wet methods, can prevent contamination in nonrestricted areas.

Paragraph (i) would require daily monitoring in the restricted area if the exposure exceeds the PEL or reasonably could be expected to exceed the PEL. This type of work generates large amounts of dust and debris, which can vary significantly as the work progresses. Daily monitoring is necessary to determine if the respiratory protection provided is adequate. When all workers within a restricted area are equipped with supplied-air respirators operated in the positive-pressure mode, daily monitoring would not be required because this type of respirator is adequate for all levels of exposure.

Paragraph (j) would require that written decontamination, disposal, and emergency procedures be developed and operational. Properly planned and implemented decontamination procedures would help ensure that contamination of equipment and individuals could be contained within the restricted areas. The ability to implement emergency procedures when needed would enable employees to handle emergency situations and minimize unnecessary exposure or contamination.

Paragraph (k) would require that persons authorized to enter the restricted area or who are involved in decontamination, disposal, or emergency response be trained prior to initial assignment and at least annually on the risks of applicable substances, decontamination and emergency procedures to be used. Miners can assist in controlling their exposure to carcinogens when they are fully advised of the hazards and methods to minimize exposure.

Paragraph (l) would require that MSHA be notified at least 20 days prior to commencement of asbestos construction work involving at least 80 linear meters (260 linear feet) of asbestos or asbestos-containing materials or at least 15 square meters (160 square feet) of asbestos or asbestos-containing materials. The provision parallels the mine operator's reporting requirements to the Environmental Protection Agency (EPA) under the National Emissions Standard for Hazardous Air Pollutants (NESHAPS), 40 CFR Part 61, Subpart M. MSHA does not intend that the notice be written. A telephone call to the local MSHA field or district office would satisfy this requirement. Because asbestos construction activities may be done quickly before MSHA's next regular inspection, this reporting requirement would enable MSHA to ensure proper compliance with the regulation as well as allow time for MSHA to provide suitable personal protection for the MSHA inspector who might become involved.

Paragraph (m) would require that containers of asbestos and materials containing greater than 0.1 percent asbestos be stored in a manner that prevents contamination of restricted and nonrestricted areas. Asbestos construction work typically generates large amounts of asbestos waste material. Through proper labeling, miners would be able to recognize the necessary procedures to follow to prevent exposure or contamination. Proper storage would prevent contamination of restricted and nonrestricted areas, thereby decreasing the risk of exposure to miners. Not all areas of a restricted area are contaminated or have the same level of contamination. Controlling contamination inside the restricted area provides protection through use of protective equipment and procedures. Preventing contamination outside the restricted area eliminates exposure of unprotected miners. The labels would be consistent with those required under any hazard communication standard developed by MSHA.

Paragraph (n) would require that equipment, material, or other items introduced or removed from the restricted areas not contaminate a nonrestricted area. Asbestos construction work typically requires the movement of large volumes of equipment to and from the restricted area. This provision would prevent contamination of other areas and

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Sections 58/72.450 Medical Surveillance Program

These sections would require operators to establish a written medical surveillance program that would offer miners who are or will be working with substances or processes listed in Table C–5 the option to be examined by a licensed physician. The medical examination would have to be conducted at a reasonable time and place. As required by the Mine Act, all costs of the medical examination, including the miner's time, would be paid by the mine operator. Section 101(a)(7) of the Mine Act provides in part, that:

> * * * [W]here appropriate, any such [health or safety] mandatory standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the operator at his cost, to miners exposed to such hazards in order to most effectively determine whether the health of such miners is adversely affected by such exposure. Where appropriate, the mandatory standard shall provide that where a determination is made that a miner may suffer material impairment of health or functional capacity by reason of exposure to the hazard covered by such mandatory standard, that miner shall be removed from such exposure and reassigned. Any miner transferred as a result of such exposure shall continue to receive compensation for such work at no less than the regular rate of pay for miners in the classification such miner held immediately prior to his transfer. In the event of the transfer of a miner pursuant to the preceding sentence, increases in wages of the transferred miner shall be based upon the new work classification.

The legislative history of the Mine Act states that the Secretary should:

> * * * [I]nclude in health standards, where appropriate, the requirement that miners be given periodic medical examinations. The [Senate] Committee intends that mine operator must bear the cost of providing such medical examinations or tests. Such medical examinations are intended to be for the benefit of miners, and are for the purpose of both testing the adequacy of the standard and testing whether the miner has been subjected to material impairment of health or functional capacity as a result of exposure to the substance or hazard. As such, the medical examinations are a key aspect of the health standards. To encourage miners to take such medical examinations, this section requires the Secretary to issue appropriate standards requiring that miners who, as a result of these examinations, are determined to have suffered material impairment of health or functional capacity as a result of exposures be reassigned to positions where they will not be so exposed; and they continue to receive compensation at no less than the regular rate for miners in the classification such miner held immediately prior to transfer. This "regular rate" is to include any subsequent salary increase received by miners in the classification each miners held immediately prior to transfer. These requirements would be enforced through the issuance of appropriate citations, orders and penalties under sections 105 and 108 [sections 104 and 105]. In addition, under section 106(c) [section 105(c)], it would be unlawful for an operator to discriminate against a miner who is the subject of medical examination and potential transfer under the provisions of a standard issued under this section. S. Rep. No. 95–181, 95th Cong., 1st Sess. 22–23 (1977).

MSHA believes that routine medical examinations may result in early detection and prevention of the development of serious or fatal illnesses for the carcinogens listed in Table C–5. The major goal of medical monitoring is to detect any evidence of biological change that suggests a premalignant phase or to detect a preclinical neoplasm in a stage at which appropriate therapy may decrease morbidity and mortality. While recognizing that medical surveillance may not change the final outcome in every case of cancer, MSHA believes that early detection could also provide increased longevity because of treatments resulting in temporary remission or delayed progression of disease.

Cancer treatment can involve surgery, radiation, and chemotherapy—either individually or in combination. Recent advances in chemotherapy have resulted in increased survival times as well as increased cures in a large variety of tumor types (refs. 53, 54, and 56). New drugs involving immunotherapy, such as interleukin–2, have been successfully used in curing some advanced cancer cases (ref. 55). Medical surveillance is necessary, because early detection increases the effectiveness of cancer treatment (refs. 54 and 56). Larger, bulkier tumors are less likely to be penetrated by chemotherapy agents than smaller tumors (ref. 56). In addition, intensive polychemotherapy alone or in combination with other treatments is more effective in patients with low tumor loads (ref. 56).

Table C–5 in §§ 58/72.450 represents MSHA's selection of carcinogens for which the Agency believes early detection of health problems would have some benefit, either in terms of longevity or outcome. The carcinogens listed in Table C–5 also have medical-surveillance requirements under OSHA. MSHA requests comment on the appropriateness of medical surveillance for the other carcinogens listed in this proposed standard. Issues that should be addressed include evidence of biological precursors for cancer caused by such chemicals, the specificity and accuracy of tests available for these precursors, the timing of the precursors following exposure, and the implications of any latency period for the timing of follow-up medical testing. MSHA is interested in situations where cancer screening has been beneficial and situations where it has not. Additionally, commenters should provide information and supporting data on the feasibility of expanding the scope of the provisions on medical surveillance and medical transfer to other chemicals such as lead, mercury, cadmium, and arsenic and the health benefits that would be obtained.

A medical examination by a licensed physician would have to be made available to a miner: (1) Before the miner could be assigned to work within a carcinogen on Table C–5, (2) once every 12 months, and (3) whenever the miner is exposed to these carcinogens as a result of an emergency.

MSHA recognizes that other agencies have recommended or required medical surveillance and linked its availability and frequency to criteria such as number of days per year, different exposure levels, age, contact with the chemical, and duration of employment. MSHA specifically requests comment on the appropriate criteria to be used when offering medical examinations to miners.

The operator would have to direct the examining physician to transmit examination results to the operator. In order to protect miners' medical records that are irrelevant for the medical examination required under this section, MSHA intends that the mine operator receive only information relevant to the miner's exposure to carcinogens on Table C–5. The operator would have to provide the examining physician with relevant job information in the operator's possession. All medical records would have to be retained by the operator for a period of the miner's employment plus 30 years. This is consistent with OSHA's record retention period for carcinogens. Miners, their designated representatives, and authorized representatives of the Secretary of Labor and the Secretary of Health and Human Services would have access to miners' medical records. In addition, operators would have to give miners copies of their medical records upon termination of employment.

Whenever an operator ceases to do business and there is a successor operator, the successor operator would have to continue to retain the medical records for the required period of this section. Where there is no successor

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operator, the mine operator would have to notify affected miners of their rights of access to records within 3 months prior to destroying such records.

Under the proposal, the mine operator would have to notify MSHA in writing of any miner requesting to transfer as a result of the physician's medical report indicating that the miner has developed cancer or any impairment of health or functional capacity due to exposure to a carcinogen listed in Table C–5. The notice would have to be sent to MSHA within 15 calendar days of receipt of the miner's request for transfer and include the miner's occupation, new assignment, and the date of transfer. The transfer would have to take place before the 21st calendar day following receipt by the operator of the miner's request.

The proposal would include statutory requirements regarding compensation protection for transferred miners. The miner would retain at least the previous hourly rate of pay and subsequently would receive actual increases applicable to the assigned work classification. For example, if a transferred miner previously had a $10.00 per hour job and is transferred to an $8.00 per hour job, the operator must continue to pay that miner at least $10.00 per hour. If the rate of pay at the new position is increased to $9.00 per hour, the operator must pay the transferred miner $11.00 per hour to protect the miner from loss in wages.

The Agency realizes that these provisions are not as detailed as medical surveillance and transfer rights under 30 CFR Part 90. However, the number of miners potentially affected by this provision would be very limited. MSHA requests comment on whether medical examinations and transfer under this section should be at each miner's option as in this proposal, or mandatory.

Sections 58/72.500 Respiratory Protection Program

Existing §§ 56/57.5005(b) requires metal/nonmetal operators to establish a respiratory protection program consistent with the American National Standards Institute "Practices for Respiratory Protection," ANSI Z88.2–1969, whenever respiratory protection is required. This ANSI document is incorporated by reference. The standard sets accepted practices for respirator users and provides information and guidance on the proper selection, use, and care of respirators.

In the metal/nonmetal preproposal draft, MSHA recommended deleting the incorporation by reference and including specific requirements in the standard, based on the latest edition of the ANSI standard, Z88.2–1980. The proposed rule would eliminate this incorporation by reference in the same manner.

When respirator use is required by an MSHA standard that relates to an exposure limit, including radiation protection, proposed §§ 58/72.500 would require operators to establish a respiratory protection program. In addition, MSHA proposes to revise existing coal § 70.300 to reference the proposed respiratory protection provisions. As a result, coal mine operators would be required to implement a respiratory protection program when respirators are required by any coal standard. Existing § 70.300 would be recodified as § 70.302, and similar wording would be included in parts 71 and 90 as § 71.302 and § 90.302. These three standards would strengthen the existing provisions concerning respiratory protection and further protect miners against hazardous levels of respirable coal dust. Changes concerning the referencing of respiratory equipment approvals under 30 CFR Part 11 would be made, and the Secretarial references would be deleted. MSHA would require respiratory equipment to be used, rather than merely provided, where exposures to excessive dust occur. Use of such equipment would also have to meet the requirements of proposed §§ 72.500. Existing §§ 70.300–1, 70.305, and 70.305–1 also would be replaced by proposed § 72.500.

In the proposed rule, MSHA has retained the principal requirements of the existing standard for metal/nonmetal mines by extracing the relevant portions of ANSI Z88.2–1980. The proposal contains requirements for selection, fit testing, use, maintenance and training. Mine operators would have flexibility to use methods for compliance that are best suited for their particular operators, provided that the basic requirements of the standard are met. The standard would not apply to voluntary use of respiratory protection, mine rescue team use which is covered by 30 CFR part 49, or self-rescuers designed for escape purposes covered by existing §§ 57.15030 and 75.1714.

Several commenters suggested that a more performance-oriented standard would allow development of a cost-effective respirator program and lessen the likelihood that the standard would become outdated by new technology. MSHA agrees that performance requirements for respiratory protection programs could allow a more rapid introduction of new technology into the workplace, creating a safer work environment and accommodating a greater variety of working conditions. Accordingly, the proposed standard identifies the minimum elements of an acceptable respiratory protection program. The written standard operating procedures (SOP) for an operation must describe how compliance is achieved for each required element. Standard operating procedures are required currently. The content of the standard operating procedures is dependent upon the respiratory protection needs of the mine and the type of respiratory protection used. Several commenters stated that SOPs need not be a summary of technological specification but should be tailored to responsibilities and types of respirators required for specific jobs. Other commenters stated that SOPs should address administration, respirator selection, training, fitting, issuance, maintenance, inspection, workplace surveillance, program evaluation, and approved or accepted equipment. MSHA believes that standard operating procedures addressing the proposed minimum elements would be sufficient.

Several commenters suggested that all persons who wear respirators should be covered by the respiratory protection program and not just those who would be required to wear respirators by MSHA standards. Repirators are frequently worn voluntarily by miners working in areas that meet the permissible exposure levels for airborne contaminants. These persons wear respirators for additional personal protection. While the Agency would encourage such wearers to continue to follow a respiratory protection program, MSHA does not intend for this standard to apply to voluntary use of respirators.

Paragraph (a) of the proposed standard would require that operators provide respirators approved under 30 CFR part 11 and that they be maintained in approved conditions. This would clarify what is meant by the existing requirement for "MSHA-approved respirators." Several commenters suggested that "approved or accepted by MSHA or NIOSH" would allow for the use of effective respirators for which no approval requirements currently exist. MSHA and NIOSH recognize the need for updating and improving portions of 30 CFR part 11, and NIOSH has proposed updated respirator approval standards on August 27, 1987 (52 FR 32402). MSHA is monitoring that rulemaking closely and will revise this rule as appropriate. However, MSHA believes that only those devices certified as approved by NIOSH should be permitted so that the effectiveness of the devices meet uniform test requirements and specifications. One commenter objected to the cross

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reference of 30 CFR part 11 and requested that part 11 requirements be included in the proposed standards. The part 11 provisions are provided for manufacturers or designers of respiratory devices who seek approval for a design model or product for a specific classification or application. The mine operator has no responsibility for filing applications for approval or testing respiratory devices; however the operator must provide approved respirators for use.

A few commenters requested that MSHA permit modifications that do not adversely affect respirator performance, including allowing the interchange of respirator parts from different manufacturers, except on self-contained breathing apparatus (SCBA). MSHA believes that any modifications to an approved respirator would negate that approval if the modification has not been tested and approved under 30 CFR part 11.

Paragraph (b) would require respirators to be selected according to the criteria in three tables in §§ 58/72.500, the manufacturer's limitations on the respirator, and the characteristics of the work environment, which includes the exposure levels, the period of time the respiratory protection will be worn, and the work activities of the employees. These tables indicate whether a respirator is permitted for use in oxygen-deficient atmospheres or in IDLH atmospheres, what maximum protection factors are, and what additional precautions must be taken when using certain respirators. The respirator protection factors in the tables would have to be used in conjunction with the manufacturer's limitations on the respirator to determine the concentrations of harmful atmospheres in which the respirator can be used. To determine the maximum concentration of the substance for a particular respirator application, the operator must use the manufacturer's limitations on the respirator, the respirator wearer's own protection factor as determined by quantitative fit testing, or the respiratory protection factor in the table, whichever is more stringent. Manufacturers place limitations on the filters, cartridges, and canisters used in air purifying respirators. If, for example, a manufacturer places a limitation on a particular cartridge or canister and the quantitative fit test indicates a protection factor of 100, that cartridge or canister could not be used in concentrations greater than the manufacturer's limitation. Several factors, including type and quantity of the sorbent, the toxic contaminant involved, and the concentration of the contaminant, can affect the service life of an air-purfying respirator. As a result, a manufacturer may place a more stringent limitation on a respirator cartridge than would be indicated by facepiece fit tests. These limitations are those of filters, cartridges, and canisters used in air-purifying respirators.

The tables in the proposed rule are much simpler than in the metal/nonmetal preproposal draft. The tables list the maximum assigned protection factor for the various respriators, as well as the basic minimum limiting criteria for use. MSHA believes that these new tables present selection criteria to the operator in a more understandable form.

Scientific data have shown that protection factors determined under laboratory conditions overestimate greatly the protection offered by respirators in the actual working environment. This may be due to many factors, including the following. Laboratory exercises do not mimic all the body movements done by workers in the actual workplace, nor do they match all the environmental conditions to which miners are exposed at work. The individual pulmonary characteristics of persons under various types of work loads also can cause variations in the protection factors. Fit testing of a respirator wearer only lasts a few minutes, but generally workers who wear required respiratory protection wear respirators for much longer periods of time. The testing methodology itself, such as the placement of a probe in a facepiece for quantitative testing, may affect the protection factors.

Because of the extensive data indicating the importance of these elements, MSHA has assigned maximum-use protection factors for the various types of respirators used in the mining environment. Operators by their choice of fit-testing methods may select the type of respiratory protection up to the maximum protection factors. However, MSHA believes that the majority of respiratory protection wearers will only need protection factors of 10. There will be a limited number of circumstances where protection factors greater than 10 would be needed. In these situations, the nature of the hazard is such that it is important that the person exposed is assigned respiratory protection that will provide the required protection under actual work conditions.

MSHA believes that closed-circuit self-contained breathing apparatus approved for mine rescue under 30 CFR part 11 would provide adequate protection for miners when used for IDLH and oxygen-deficient atmospheres, based on the Agency's experience with these apparatus. However, the Agency requests information of any situations where the higher protection factor would be inappropriate.

The selection table in the metal/nonmetal preproposal draft would have prevented the use of negative-pressure, closed-circuit self-contained breathing apparatus approved for mine rescue in oxygen-deficient and IDLH atmospheres. These respirators are currently used for mine rescue and recovery under 30 CFR part 49. Based on the Agency's experience with these types of apparatus, MSHA believes that they are appropriate for use in the hazardous atmospheres addressed by these standards and has included them in the respirator selection table.

To determine whether respirators remain in proper operating condition, paragraph (c) would require their inspection prior to use and after cleaning, sanitizing, and maintenance, including repair. Emergency-use respirators would have to be inspected monthly, with a record kept of the last inspection. These requirements do not differ for the existing standard for metal/nonmetal mines. Proper care and maintenance of respirators is an essential component of any respiratory protection program to prevent failure due to undetected or unrepaired defects or damage. Maintenance of supplied-air or self-contained breathing apparatus should include recharging cylinders, replacing chemical canisters, and checking integral components such as filters. If disposable-type respirators are damaged or defective, they would have to be replaced. These inspection requirements are derived from ANSI Z88.2–1980. However, the proposed rule would not require inspection of respirators after use. Inspection of respirators should detect any damage that must be repaired prior to reuse of the respirator. One commenter suggested that an inspection should be performed before cleaning and sanitizing. MSHA believes that this is unnecessary because any damage to a respirator that occurred prior to or during cleaning and sanitizing should be detected during the inspection when the respirator is reassembled.

The purpose of the proposed inspection after maintenance or cleaning and sanitizing is detection of damage or defects occurring in respirator units during these processes. Inspection prior to use provides a second, more cursory check to determine whether damage or contamination has been sustained during storage. The wearer would be the most likely person to inspect the respirator prior to use. MSHA intends this pre-use inspection to be a visual one in order to check for proper assembly and obvious damage or defects. This inspection should include checking to see that cartridges or canisters are inserted correctly, facepiece seals are not cracked or deteriorated, valves are present and functional, and all connections are tight. Because cleaning, sanitizing, and maintenance may involve dissassembly of the respirator, a more detailed inspection is needed. These inspections must be done by the person performing the tasks involved. During tasks that involve disassembly of a unit, it is important to inspect the reassembled parts for those that may be attached incorrectly, or only partially reattached. Inspection of the assembly of parts, as well as the parts themselves, is essential for maintaining respirators in proper operating condition. For example, use of an approved replacement valve for repairs is negated if the value is not seated correctly. Also, cross-threaded cartridges or canisters could render a respirator useless. Another problem that can occur in tasks involving disassembly is use of a wrong part, which may not work effectively. Many component parts, especially those for the same type of respirator, appear to be similar. When handling multiple models of respirators, it is essential to inspect the respirator to see that correct replacement parts have been used.

Monthly inspections of emergency-use respirators are critical to ensure the miner protection in the event of an accident. If this type of respiratory protection is not available and ready at all times, the miner cannot be guaranteed protection since there will be no time to correct and repair the equipment at the time of the emergency. A record of the latest inspection will enable the operator to determine when the equipment will need to be inspected again. This requirement represents no change from the existing standards for metal/nonmetal mines. The record is generally a tag placed on the equipment which has the date of inspection, the status of the equipment (pass/fail, ok, etc.), and the initials of the person conducting the inspection.

One commenter stated that MSHA should make it clear that the mine operator must do the cleaning, sanitizing, inspection, repair, and storage of respirators. Another commenter suggested the MSHA permit mine operators to issue respirators to the wearers and to have the wearers be responsible for the maintenance of their own respiratory protective equipment. The mine operator is ultimately responsible for administrative management of the respiratory protection program. However, the proposed rule would not prohibit the operator from delegating specific duties to trained miners or contracted services, as long as the requirements of the standard are met.

The preproposal draft included a provision for maintenance to be performed according to a schedule. Several commenters stated that this was too restrictive and could conflict with some maintenance programs under the existing provisions where wearers maintain their own respirators. MSHA agrees that scheduled maintenance is unnecessary if the proposed inspections are properly conducted and the respirators are maintained in approved condition.

Paragraph (d) would require that respirator wearers be supplied with a clean and sanitized respirator each day and that a respirator worn by one person be cleaned and sanitized before use by another person. The proposed rule would require emergency-use respirators to be cleaned and sanitized promptly after each use. This requirement has several purposes. Malfunction of a respirator can be caused by the interference of dirt or other contamination with internal working parts. This allows leakage and could result in exposure to a hazardous or IDLH atmosphere. Contamination on the facepiece can also allow leakage and exposure. Skin irritation or dermatitis can be caused by chemical contamination or soiling of a respirator facepiece. Use of unclear respirators can also lead to transfer of diseases or illness between wearers. Discomfort to the respirator wearer caused by contamination of the respirator may lead to the respirator's not being used. Respirators can be sanitized with a simple water and chlorine solution.

Emergency-use equipment must be ready to perform when needed. This type of respirator is usually provided for use in potentially dangerous atmospheres and must be maintained promptly and properly after each use, including cleaning and sanitizing, to ensure that it is effective when needed. The failure of this type of respirator, due to internal contamination, could compound the severity of an emergency situation by causing additional injury or death.

Several commenters stated that the language in the preproposal draft requiring that clean and sanitized respirators be provided "before each use" would require the mine operator to issue intermittent users a clean and sanitized respirator at the beginning of each intermittent wearing period. This, they stated, would be unnecessarily expensive and restrictive. Several commenters suggested wording similar to "respirators shall be cleaned often enough to remove contamination and maintain the function of the respirator." MSHA recognizes that intermittent respirator wearers are frequently in and out of mandatory respirator areas and that the supplied respirators may be used numerous times during a work shift. When this occurs throughout a full shift, respirators become dirty and contaminated from normal use and handling by the end of the shift. Therefore MSHA has proposed that clean and sanitized respirators be supplied each day, allowing the flexibility necessary for intermittent users. Daily issuance of clean and sanitized respirators is a reasonable schedule that would provide for needed maintenance. Disposable-type respirators that cannot be cleaned and sanitized would have to be replaced.

One commenter recommended a provision that would allow the operator an option of cleaning and sanitizing respirators after use by providing the facilities for the wearer to carry out this requirement. The proposed language would accommodate this option as well as other alternatives such as use of disposable-type respirators.

Paragraph (e) would require that respirators be stored in a manner that protects them from damage or contamination and that emergency-use respirators be accessible to persons who may need to use them. This requirement would prevent physical damage or contamination of the respirator that could cause the respirator to malfunction during use and allow the wearer to be overexposed. Some examples of damage or contamination are cuts or abrasions in the facepiece, dents or holes in canisters or cartridges, damage to seals due to improper placement, or from dust, chemicals, grease, or paints. Extreme heat or cold can also cause damage that could affect the proper function of a respirator. Damage or contamination can occur when respirators are stored in tool boxes, multiple-use storage lockers, lunch boxes, hung on walls, laid on tables, desks, counters, or any area where work actively could adversely affect the respirator. In determining whether respirators are properly stored, MSHA would consider whether there is opportunity for damage or

contamination to occur, or whether

conducting fit tests. Test agents, such as

with this type of respirator in the mining

half-face respirator for protection, while

when facial hair comes between the

rescue and respiratory devices, where

contamination to occur, or whether damage or contamination has occurred.

So that respirators are not subject to unauthorized access, one commenter submitted that "readily available" would be a more appropriate requirement than "accessible" for emergency-use respirator storage. MSHA agrees that emergency-use respirators need to be readily available and protected from unauthorized access but interprets "in a manner that protects them from contamination or damage" to include potential damage from unauthorized access. Unauthorized access can be prevented by storage in occupied areas such as control rooms, shops, rescue rooms, first-aid rooms, or warehouses.

Paragraph (f) would require that qualitative or quantitative respirator fit tests be conducted for respirators with tight-fitting facepieces. This would ensure that the facepiece fits the wearer and would minimize or eliminate the possibility of inward leakage of a hazardous substance.

The facepiece seal of a respirator must be adequate so that the wearer does not inhale the hazardous substance. If the fit is inadequate, air will move into the facepiece through the pathway of least resistance, leaking through the seal around the facepiece. This can occur even in positive-pressure apparatus if the fit is poor due to air turbulence in the facepiece which causes small eddies of negative pressure. Such leakage circumvents the protection that the respirator provides the wearer.

This provision would apply only to respirators with tight-fitting facepieces. Loose-fitting respirators, such as helmets or hoods, are designed so that their effectiveness is not dependent on fit. Mouthpiece respirators would not be covered because they do not have tight-fitting facepieces that would require fit testing.

MSHA recognizes that in the past qualitative fit tests were unreliable because of inadequate design and procedure. However, the Agency believes that there are simple and effective qualitative fit tests currently available that have been demonstrated for protection factors of 10. Because qualitative fit-testing procedures have not been validated adequately for fit factors greater than 10, any respirator, regardless of type, would be limited to a protection factor of 10 if the respirator wearer was qualitatively tested. Disposable respirators would be limited to a protection factor of 5.

In the metal/nonmetal preproposal draft, MSHA specified use of a series of test agents at 6-month intervals for conducting fit tests. Test agents, such as odorous vapors, are used to simulate potential invasion of a respirator by a hazardous substance. Many commenters felt that the standard should not specify the procedures to be used. MSHA concurs that the standard should be performance-oriented to allow the mine operator flexibility. However, based on MSHA experience, many operators will find that they will need different types of test agents for qualitative fit testing because of an individual's insensitivity to vapors or particulates such as isoamyl acetate, irritant smoke, or saccharin. To assist operators in conducting qualitative fit testing, MSHA is proposing a nonmandatory appendix of recommended procedures. MSHA solicits comment as to the need for mandatory protocols.

MSHA believes that the majority of respirator wearers will need only qualitative fit testing. For those few cases where qualitative fit testing would be inadequate, the operator would be required to conduct qualitative fit testing. Quantitative fit testing utilizes sensitive equipment to determine the ratio of the concentration of a test agent inside the respirator wearer's facepiece by a probe inserted inside the facepiece. The equipment simultaneously measures the concentration of the test agent in the test chamber and within the facepiece. By comparing these two concentrations, a protection factor can be determined. The sensitivity of the instrumentation allows for the determination of protection factors greater than 10.

However, because the fit testing is done in a laboratory environment which is unlike actual working conditions, the protection factor determined under testing conditions would have to be divided by 10 to attain the working protection up to the maximum-use protection factor listed in the selection tables. For quantitative fit testing, a minimum ratio of 100 must be obtained in order to be considered providing a satisfactory fit. This number of 100 is equivalent to the minimum level achieved by a qualitative fit test. The maximum-use protection factors listed in these tables are the highest that MSHA believes have been adequately verified for protection factors in the work environment. MSHA requests comments on these protection factors. MSHA intends to follow the NIOSH rulemaking closely to ensure that MSHA's final rule is consistent with the NIOSH certification program.

MSHA would restrict all negative-pressure SCBA to 50, except for those approved for closed-circuit demand respirators approved for mine rescue. Based upon the Agency's experience with this type of respirator in the mining work environment, MSHA believes that a higher protection factor for mining is warranted. SCBA approved for mine rescue would be assigned protection factors greater than 1000 for IDLH or unknown concentrations.

Many of the commenters stated that annual fit testing would be adequate to ensure that respirators still fit the individual. They also pointed out that ANSI Z88.2–1980 specifies annual testing. Commenters felt that annual fit testing could be done with the annual refresher training. MSHA agrees, and the proposed rule would require fit tests after the initial fit test at least once every 12 months.

Some commenters felt that negative-pressure and positive-pressure seal checks should be considered a qualitative fit test. Although such testing is adequate as a field test to check the seal of the facepiece known to fit a wearer prior to entering a hazardous atmosphere, it is inadequate as a selection test. This is consistent with ANSI Z88.2–1980, other federal regulatory agencies, and other fit-test protocols.

Paragraph (g) would require accurate records to be kept for 1 year from the latest fit test, or until the next fit test is recorded for each respirator wearer, regardless of how often the person actually wears the respirator. Matching the appropriate make, model, and size respirator to each wearer is essential for providing the necessary respiratory protection. These records would provide mine operators with a fit reference for each worker for any subsequent need for wearing respirators. The proposed rule would require that the record include the test date, the wearers name, and the specific make, model, and size of respirators for which there was a satisfactory fit. If quantitative fit tests are used, the protection factor determined by the testing also would be recorded. For a respirator to adequately protect the wearer, it must fit the wearer's facial size and contours. Because the face varies considerably from person to person, especially the critical areas of the nose and chin, even small groups of wearers might require multiple sizes and models of respirators to fit every member of the group. The more employees an operator has, the more likely a wider variety of respirators would be needed. These physiological variables are compounded when a mine site includes various working environments that would require different levels of respiratory protection. For example, some tasks may require a person to wear only a

half-face respirator for protection, while other tasks may require the same person to wear a full-face gas mask. That person's fit-test information would be specific for each type of respirator.

Fit-test records also determine when a person's required fit test is due. MSHA would require fit tests to be conducted once every 12 months because changes in body weight, facial wrinkles, scars, and the presence of dentures, would each affect the fit of a respirator.

For respirators with a tight-fitting facepiece, paragraph (h) would require that a negative- and positive-pressure sealing test or an equivalent qualitative sealing test be done prior to each use. This sealing test is essential prior to entry into hazardous atmospheres to ensure that the face-to-respirator seal does not leak, potentially allowing overexposure of the wearer. The existing standard requires that the facepiece fit be checked by the wearer each time the respirator is put on. ANSI Z88.2–1980 coninues to specify that facepiece seal be checked prior to each entry into a hazardous atmosphere.

When a wearer is donning a respirator, the straps of the respirator can be adjusted to various tensions and the facepiece can be fitted in different positions at the nose and chin. Incorrect positioning of a respirator can cause leakage and result in exposure to airborne substances.

Once a respirator has been shown to fit an individual by use of a qualitative or quantitative fit test, then there is reasonable assurance that an adequate face-to-respirator seal can be achieved. The positive- and negative-pressure seal tests are a field method to check that facepiece-to-face seal in the workplace reproduces the seal achieved when the fit testing was performed. In addition to checking the seal, these tests can be used to detect faulty parts of respirators such as torn, missing, or misthreaded cartridges. The negative and positive-pressure test checks different parts of the respirator such as inhalation and exhalation valves.

Several commenters were concerned that the metal/nonmetal preproposal draft would have precluded the use of disposable particulate respirators since a positive- and negative-pressure seal test cannot be performed with many of them. MSHA has included the wording "use of an equivalent qualitative sealing test" to allow for disposable respirators. The intent is not to duplicate the steps involved in conducting a fit test but rather to allow use of a test agent, such as banana oil or saccharin, to test the seal.

Paragraph (i) would prohibit use of respirators with tight-fitting facepieces when facial hair comes between the sealing surface of the respirator facepiece and the face. This provision is similar to the existing standard, but MSHA did not include this requirement in the metal-nonmetal preproposal draft. Test data, industrial use data, and MSHA's own fit-test data show the difficulty of obtaining a satisfactory seal when facial hair comes between the facepiece and face. This provision would be consistent with the guidelines in ANSI Z88.2–1980.

Paragraph (j) would require that respirator wearers, supervisors, and persons issuing or maintaining respirators be trained initially and then once every 12 months in the selection, use, and maintenance of respiratory devices. The proposed standard allows flexibility in the development of a proper training program according to the complexity of a site's needs. The trained worker should be able to demonstrate an acceptable level of familiarity and competence in performing the assigned duties and understand each element of the training program.

Training of individuals involved in a respirator protection program, whether the wearer, supervisor, issuer, or maintainer, is important for the success of the program. Trained wearers should know how to conduct proper sealing tests to detect leaks and be alert for contamination damage not detected in a before-use inspection. Trained persons responsible for maintenance, including cleaning or sanitizing, should know the importance of reassembling the internal parts of a respirator properly so that wrong replacement parts which could cause respirator malfunction are not substituted. Training helps ensure that proper respirators are selected and used, so that respirator failure or lack of protection due to improper filters or cartridges does not occur. A trained supervisor should know how to oversee proper use and maintenance of respirators.

Two commenters stated that the training requirements should be deleted since they are covered in 30 CFR part 48 "Training and Retraining of Miners." MSHA believes that for the most part the training requirements in Part 48 adequately would meet the respirator training requirements in this proposal. Consistent with the current requirements, if a respirator program is necessary, potential respirator wearers must receive initial training that encompasses all of the individual aspects necessary to protect them from the hazardous contaminant identified. Under 30 CFR 48.25(b)(2), training must include instruction and demonstration in the use, care, and maintenance of self-rescue and respiratory devices, where applicable. However, under the proposal, operators would have to provide separate respirator training in instances in which miners do not receive respirator training in Part 48 instruction.

Paragraph (k) would require that compressors or blowers used to provide respirable air be constructed and located to prevent entry of contaminated air into the air-supply system. The intent is to prevent the intake of air contaminated by external sources. This paragraph would also require that compressors be equipped with in-line air purifying sorbent beds or filters. One commenter suggested that when the quality of the intake air is adequate, non-oil-lubricated compressors specifically designed to supply breathing air should not be required to have in-line air-purifying sorbent beds. However, with such compressors, assurance of the quality of intake air would require continuous or frequent monitoring for the presence of a number of potential contaminants, such as organic particulate matter. This is unnecessary with an in-line purifier.

Paragraph (k) would also require that oil-lubricated compressors be equipped with a carbon-monoxide or high-temperature alarm. Internally, oil-lubricated compressors can produce carbon monoxide when overheated, necessitating a carbon-monoxide alarm or high-temperature alarm. Either alarm should be adequate to warn users of a potential problem for the supplied air user. In one nearly fatal mining accident, the high temperature alarm in a compressor was disconnected, resulting in a sand blaster's being poisoned by carbon monoxide. Several commenters suggested that all compressors should have carbon monoxide alarms. However, the potential for carbon monoxide contamination in non-oil-lubricated compressors from external sources, such as car exhaust, is far less likely than from oil-lubricated compressors where the compressor itself could be the source of carbon monoxide. Furthermore, the construction and location requirements of this provision make it unnecessary to require carbon monoxide alarms for non-oil-lubricated compressors.

Paragraph (l) would require that supplied air or oxygen used for respiration meet the requirements of 30 CFR part 11. It is essential that supplied, compressed air or oxygen is of the same quality as that used for the approval of the respirator. Some commenters expressed concern about the availability of supplied air or oxygen that would meet this requirement. The Agency

believes that supplied air or oxygen

to the individual respirator wearer. The

miner cannot do work where respirators

V. Executive Order 12291 and

include, wherever possible, compliance

airborne substances? What engineering

believes that supplied air or oxygen meeting the 30 CFR part 11 requirements is readily available through commercial gas suppliers.

Paragraph (m) would prohibit compressed oxygen from being used in atmosphere-supplying respirators or in open-circuit, self-contained breathing apparatus that have previously used compressed air. Compressed gaseous air may contain low concentrations of oil, even when it meets breathing quality criteria. If high-pressure oxygen passes through an oil-coated or grease-coated orifice, an explosion or fire could occur.

Section 58/72.550 Medical Surveillance Program

The proposed rule would require that mine operators establish a medical surveillance program in writing whereby a miner cannot be assigned to wear respiratory protection until it has been determined by a licensed physician that the miner is physically able to wear the respirator while performing the work. It is critical that miners be able to wear the respirator because each miner's job performance and actions may affect his or her own health and safety, as well as the health and safety of other miners. The operator would have to comply with any medical or physical limitations related to respirator use as determined by the physician. Medical evaluations are currently required at metal/nonmetal mines through the incorporation by reference of ANSI Z88.2–1969, "American National Standard for Respiratory Protection." As required by statute, all costs of medical examinations, including the employee's time, would have to be paid by the mine operator.

Medical examinations, as well as the other elements of the proposal, would apply only when respiratory protection is required by MSHA. It would not be required for voluntary use of respirators; however, in such instances MSHA would encourage operators to follow the elements of the proposed respiratory protection program.

In the proposal MSHA has specified only the types of information that the operator would have to provide to the examining physician. The Agency considers this information the minimum necessary to conduct a meaningful evaluation; it is consistent with the requirements in ANSI Z88.6–1984, "American National Standard for Respiratory Protection—Respirator Use—Physical Qualifications for Personnel." MSHA has not specified the physician's evaluation procedures because the Agency believes that a physical examination must be tailored to the individual respirator wearer. The physician who ultimately decides if an individual can wear respiratory protection is the person who can best determine the requirements of the exam. However, MSHA recognizes that some local physicians may not be familiar with this type of examination; therefore the Agency is proposing to include a nonmandatory appendix to assist such physicians. The appendix is consistent with ANSI Z88.6–1984.

Under the proposal, a person would have to be examined prior to using respiratory protection, at any time the wearer experiences difficulty breathing while being fitted or while using a respirator, and at intervals designated according to a frequency table based on the age of the wearer and working conditions. The proposed frequency table is derived from the "NIOSH Guide to Industrial Respiratory Protection" (1987) and ANSI Z88.6–1984. More frequent examinations with advancing age relate to the increased prevalence of most diseases in older people. More frequent examinations are also important for individuals doing strenuous work involving the use of SCBA.

MSHA believes that the majority of situations requiring respirator use could be remedied by other controls within a year. If the overexposure is such that the respirator must be worn on a long-term basis, it is critical that the wearer be examined periodically. A change in lung or heart function could severely affect the ability of the person to wear the assigned respiratory protection. The outcome of a periodic exam might require no change in respiratory protection, or it might require use of a respirator with a lower breathing resistance or less weight.

The proposed rule would require medical records from the licensed physician to be kept for 5 years. MSHA believes that this period of time is sufficient to determine if the wearer has experienced any medical changes from respirator usage. MSHA requests comment on the appropriate retention period of these medical records and any benefit a longer retention period would provide.

The proposed rule would require that miners who have been determined to be unable to wear a respirator, based upon the medical evaluation carried out under this subpart by a licensed physician, be transferred to an area of the mine where respiratory protection is not required.

The operator would have to notify MSHA in writing within 15 calendar days from receipt of the licensed physician's report indicating that the miner cannot do work where respirators are required. The notice would have to include the miner's occupation, new assignment, and the date of transfer, which must take place on or before the 21st calendar day following receipt by the operator of the licensed physician's report. Under this proposal, at any time an operator transfers a miner, the operator is required to assign the miner to an existing job at the same mine. The standard would provide miners the flexibility to transfer to a job at a different mine if agreed upon between the mine operator and the miner.

The proposal also includes compensation protection for transferred miners. The miner would retain at least the previsous hourly rate of pay and subsequently would receive actual increases applicable to the assigned work classification.

MSHA requests comment on the feasibility of expanding the scope of the provisions on medical surveillance and medical transfer for some workers exposed to carcinogens and respirator wearers. The Agency realizes that these provisions are not as extensive as medical surveillance and transfer rights of 30 CFR Part 90 miners. However, the number of miners that would be affected by this provision would be very limited. Small operators, such as those in sand and gravel, would have few operations that would not be controlled so that respirators would have to be used. Also, if a carcinogen would have to be used in a laboratory and a miner would elect to transfer, other positions would be available, such as crusher or dredge operator, which would have no exposure to the carcinogen.

Other Changes

Existing §§ 56/57.20014, "Prohibited areas for food and beverages," would be revised and renumbered as § 56.600. No such standard now exists for coal mines. This standard addresses the need to keep food and beverages out of toilet rooms or areas where they could become contaminated by hazardous substances. The same standard is proposed as § 72.600 for coal mines.

Existing § 70.300 would be revised as a new § 70.300 would be revised as a new § 70.302. The revised standard would require approved respiratory protecton to be provided and used by persons exposed to excessive levels of respirable dust. This provision would also be added to Parts 71 and 90 as new §§ 71.302 and 90.302.

V. Executive Order 12291 and Regulatory Flexibility Act

A. Summary of Costs and Benefits

Under Executive Order 12291, MSHA has prepared an initial analysis to identify potential costs and benefits associated with proposed changes to its standards for air quality, chemical substances, and respiratory protection standards in metal/nonmetal and coal mines. The Agency has incorporated this analysis into the initial regulatory flexibility analysis required by the Regulatory Flexibility Act. In this analysis, MSHA has determined that the proposed rule would not result in major cost increases nor have an incremental effect of $100 million or more on the economy.

The benefits of the proposed rule are the fatalities and illnesses that will be prevented at approximatley 15,600 mines with about 324,000 employees. MSHA estimates that a minimum of 880 cases of adverse health effects can be prevented in the mining industry. On an annual basis, the proposed rule will prevent 22 cases of adverse health effects. It will also prevent an average of about seven injuries that occur each year resulting from entry into confined spaces. These are considered conservative estimates because exposure data are not available for many of the chemicals whose permissible exposure levels are being reduced, and therefore quantitative estimates cannot be made. MSHA requests additional data to better describe the population at risk that will be affected by this proposed rule.

MSHA estimates that the incremental annual and annualized cost of complying with the proposed rule, assuming full compliance with the existing standards, is $11.28 million; $8.43 million for metal and nonmetal mines and $2.86 million for coal mines. Annual and annualized costs are $3.05 million at small metal and nonmetal mines and $1.80 million at small coal mines.

Specific mines in some cases may incur higher compliance costs than the norm. Mines with exposures to asbestos, for example, may incur greater than the average compliance costs due to extensive controls that are required. MSHA lacks information on the exact number of affected mines and the cost of controls and therefore cannot determine the economic impact for these unique situations. MSHA requests additional data to more accurately determine the economic impact of the proposed rule.

The Regulatory Flexibility Act requires that, in developing regulatory proposals, agencies evaluate and include, wherever possible, compliance alternatives that, minimize any adverse impact on small businesses. MSHA believes that, due to the size of the workforce, small mines are likely to have fewer workers performing tasks for longer periods of time than large mines; consequently, 8-hour time-weighted limits are less likely to be exceeded in small mines than in large mines. MSHA is uncertain of the impact on small mines resulting from exceeding short-term exposure limits because many STEL's have been eliminated.

B. Request for Additional Information

MSHA requests additional information to form a better basis for its final regulatory impact analysis. All information received will be carefully evaluated in developing the final rule. Of particular interest to MSHA is information concerning the following:

1. What is produced at the mine you work at or operate?
2. How many full-time employees work at this operation? Part-time employees?
3. How many areas such as silos, vats, tanks, and other types of confined spaces exist at the mine you work at or operate? How often, on the average, are these entered during a year?
4. Is the atmosphere in these confined spaces tested for suspected hazardous gases and vapors prior to entry? Describe the precautions taken prior to entry into confined spaces (for example, respiratory protection, rescue personnel, means of communicating to the persons at increased risk).
5. To what airborne substances are miners overexposed under the existing rule? How many miners are overexposed to each substance? If possible, provide data documenting these exposures.
6. How many cases of worker illness due to chemical exposures have been recognized in this mine? To what chemicals were they exposed? What were the circumstances of exposure? How was the illness detected? What steps were taken to remedy the overexposure?
7. What is currently being done to measure exposures to airborne contaminants, including asbestos and other carcinogens? What kind of equipment is being used to determine exposures? How often are measurements taken?
8. How often do overexposures to airborne contaminants occur (daily, weekly, monthly)? What is the duration of these overexposures (hours/day, days/week)?
9. What measures are currently being taken to minimize exposures to these airborne substances? What engineering controls would be required to reduce these overexposures to the levels identified in the existing rule? In the proposed rule? How much do these controls cost?
10. How often do asbestos overexposures occur at this mine (hourly, daily, weekly)? What is the duration of these overexposures (hours/day, days/week)? If possible, provide data documenting these exposures.
11. What controls are currently being done (for example, engineering controls, administrative procedures) to minimize exposures to asbestos? What engineering controls would be required to reduce overexposures to asbestos to the level identified in the existing rule? In the proposed rule? What do these controls cost?
12. How many miners are overexposed to the carcinogens listed in the proposal? How often do overexposures to these carcinogens occur (hourly, daily, weekly, monthly)? What is the duration of these overexposures (hours/day, days/week)? If possible, provide data documenting these exposures.
13. What controls are currently being done to minimize exposure to these carcinogens? What engineering controls would be required to reduce overexposures to these carcinogens to the levels identified in the existing rule? In the proposed rule? What do these controls cost?
14. How are areas where asbestos and other carcinogens are being used delineated from other areas? Are instructions informing employees of the procedures to be followed posted at these areas? Is food storage or consumption prohibited in these areas?
15. What types of protective clothing are miners wearing when working in areas where asbestos and other carcinogens are being used?
16. What types of precautions are being taken when leaving areas where asbestos and classes 1 through 4 carcinogens are being used (for example, appropriate disposal of contaminated clothing, hand and face washing, showering, etc.)?
17. What kind of training is conducted for employees working with asbestos and other carcinogens?
18. Are medical surveillance programs provided to employees overexposed to carcinogens; asbestos, in particular? To individuals required to wear respirators? What are the components of the medical surveillance program? What are their costs?
19. Are respiratory protection programs provided for miners

overexposed to carcinogens, including

20. Provide any compliance cost,

VI. Reference Tables

TABLE 5—SUBSTANCES THAT WOULD BE REGULATED FOR THE FIRST TIME UNDER THE PROPOSED RULE FOR BOTH METAL/NONMETAL

overexposed to carcinogens, including asbestos? To other airborne substances? What are the components of these programs and their costs?

20. Provide any compliance cost, exposure, and industry profile data as they relate to abrasive blasting and drill dust control.

VI. Reference Tables

The following tables list changes and additions, resulting from the proposed exposure limits.

TABLE 5—SUBSTANCES THAT WOULD BE REGULATED FOR THE FIRST TIME UNDER THE PROPOSED RULE FOR BOTH METAL/NONMETAL AND COAL MINES.

Acetylsalicylic acid	TWA		5 mg/m^3
Acrylic acid	TWA	3 ppm	6 mg/m^3
Amitrol	TWA		0.2 mg/m^3
Ammonium perfluorooctanoate	TWA		0.1 mg/m^3
Atrazine	TWA		5 mg/m^3
Barium sulfate	TWA		10 mg/m^3
Benomyl	TWA	0.8 ppm	10 mg/m^3
Benzo(a)pyrene (commercially manufactured)	Carcinogen		
bis(Chloromethyl) ether	TWA, Carcinogen	0.001 ppm	0.005 mg/m^3
Borates, tetra, sodium salts, all forms	TWA		5 mg/m^3
Bromacil	TWA	1 ppm	10 mg/m^3
Butyl acrylate	TWA	10 ppm	55 mg/m^3
n-Butyl lactate	TWA	5 ppm	25 mg/m^3
o-sec Butyl phenol	TWA	5 ppm	30 mg/m^3
Calcium cyanamide	TWA		0.5 mg/m^3
Caprolactam dust	TWA		1 mg/m^3
Captrolactam vapor	TWA	5 ppm	20 mg/m^3
Captafol	TWA		0.1 mg/m^3
Captan	TWA		5 mg/m^3
Carbofuran	TWA		0.1 mg/m^3
Carbon tetrabromide	TWA	0.1 ppm	1.4 mg/m^3
Carbonyl fluoride	TWA	2 ppm	5 mg/m^3
Catechol	TWA	50 ppm	20 mg/m^3
Cesium hydroxide	TWA		2 mg/m^3
Chloroacetone	Ceiling	1 ppm	4 mg/m^3
Chloroacetyl chloride	TWA	0.05 ppm	0.2 mg/m^3
Chlorodifluoromethane	TWA	1000 ppm	3,500 mg/m^3
Chloropentafluoroethane	TWA	1000 ppm	6,320 mg/m^3
o-Chlorostyrene	TWA	50 ppm	285 mg/m^3
o-Chlorotoluene	TWA	50 ppm	250 mg/m^3
Chloropyrifos	TWA		0.2 mg/m^3
Chromyl chloride	TWA	0.025 ppm	0.15 mg/m^3
Chrysene (commercially manufactured)	Carcinogen		
Clopidol	TWA		10 mg/m^3
Cobalt carbonyl	TWA		0.1 mg/m^3
Cobalt hydrocarbonyl, as Co	TWA		0.1 mg/m^3
Crufomate	TWA		5 mg/m^3
Cyanamide	TWA		2 mg/m^3
Cyanogen chloride	Ceiling	0.3 ppm	0.6 mg/m^3
Cyclohexylamine	TWA	10 ppm	40 mg/m^3
Cyclopentane	TWA	600 ppm	1,720 mg/m^3
Cyhexatin	TWA		5 mg/m^3
Dibutyl phenyl phosphate	TWA	0.3 ppm	3.5 mg/m^3
Dichloroacetylene	Ceiling	0.1 ppm	0.4 mg/m^3
Dichloropropene	TWA	1 ppm	5 mg/m^3
2,2-Dichloropropionic acid	TWA	1 ppm	6 mg/m^3
Dicrotophos	TWA		0.25 mg/m^3
Dicyclopentadiene	TWA	5 ppm	30 mg/m^3
Dicyclopentadienyl iron	TWA		10 mg/m^3
Diethanolamine	TWA	3 ppm	15 mg/m^3
Diethyl ketone	TWA	200 ppm	705 mg/m^3
Diethyl phthalate	TWA		5 mg/m^3
Dimethyl carbamoyl chloride	Carcinogen		
Dinitolmide	TWA		5 mg/m^3
Dipropyl ketone	TWA	50 ppm	235 mg/m^3
Disulfiram	TWA		2 mg/m^3
Disulfoton	TWA		0.1 mg/m^3
2,6-Di-tert-butyl-p-cresol	TWA		10 mg/m^3
Diuron	TWA		10 mg/m^3
Divinyl benzene	TWA	10 ppm	50 mg/m^3
Enflurane	TWA	75 ppm	575 mg/m^3
Ethion	TWA		0.4 mg/m^3
Ethylidene norbornene	Ceiling	5 ppm	25 mg/m^3
Fenamiphos	TWA		0.1 mg/m^3
Fensulfothion	TWA		0.1 mg/m^3
Fenthion	TWA		0.2 mg/m^3
Fonofos	TWA		0.1 mg/m^3
Formamide	TWA	10 ppm	15 mg/m^3
Glutaraldehyde	Ceiling	0.2 ppm	0.8 mg/m^3
Halothane	TWA	50 ppm	400 mg/m^3
Hexachlorobutadiene	TWA, Carcinogen	0.02 ppm	0.24 mg/m^3
Hexachlorocyclopentadiene	TWA	0.01 ppm	0.1 mg/m^3
Hexamethylene diisocyanate	TWA	0.005 ppm	0.035 mg/m^3
Hexamethyl phosphoramide	Carcinogen		

TABLE 5—SUBSTANCES THAT WOULD BE REGULATED FOR THE FIRST TIME UNDER THE PROPOSED RULE FOR BOTH METAL/NONMETAL AND COAL MINES.—Continued

Hexylene glycol	Ceiling	25 ppm	125 mg/m^3
Hydrogenated terphenyls	TWA	0.5 ppm	5 mg/m^3
2-Hydroxypropyl acrylate	TWA	0.5 ppm	3.0 mg/m^3
Iodoform	TWA	0.6 ppm	10 mg/m^3
Isooctyl alcohol	TWA	50 ppm	270 mg/m^3
Isophorone diisocyanate	TWA	0.005 ppm	0.045 mg/m^3
Isopropoxyethanol	TWA	25 ppm	105 mg/m^3
N-Isopropylaniline	TWA	2 ppm	10 mg/m^3
Manganese cyclopentadienyl tricarbonyl, as Mn	TWA		0.1 mg/m^3
Methacrylic acid	TWA	20 ppm	70 mg/m^3
Methomyl	TWA		2.5 mg/m^3
2-Methoxyethyl acetate	TWA	5 ppm	24 mg/m^3
4-Methoxyphenol	TWA		5 mg/m^3
4,4′-Methylene bis(2-chloroaniline)	TWA, Carcinogen	0.02 ppm	0.22 mg/m^3
Methylene bis(4-cyclohexylisocyanate)	Ceiling	0.005 ppm	0.055 mg/m^3
4,4′-Methylene dianiline	TWA, Carcinogen	0.1 ppm	0.8 mg/m^3
Methyl ethyl ketone peroxide	Ceiling	0.2 ppm	1.5 mg/m^3
Methyl isopropyl ketone	TWA	200 ppm	705 mg/m^3
Metribuzin	TWA		5 mg/m^3
Mica	TWA		3 mg/m^3 Respirable dust
Mineral wool fiber	TWA		10 mg/m^3
Monocroptophos	TWA		0.25 mg/m^3
Naphtha (coal tar)	TWA	100 ppm	400 mg/m^3
Nitrapyrin	TWA		10 mg/m^3
Nonane	TWA	200 ppm	1,050 mg/m^3
Paraffin wax fume	TWA		2 mg/m^3
Perlite	TWA		10 mg/m^3
N-Phenyl-β-naphthylamine	Carcinogen		
Phenyl mercaptan	TWA	0.5 ppm	2 mg/m^3
Phorate	TWA		0.05 mg/m^3
Phosphorus oxychloride	TWA	0.1 ppm	0.6 mg/m^3
m-Phthalodinitrile	TWA		5 mg/m^3
Picloram	TWA		10 mg/m^3
Piperazine dihydrochloride	TWA		5 mg/m^3
Platinum Metal	TWA		1 mg/m^3
Potassium hydroxide	Ceiling		2 mg/m^3
Propane sultone	Carcinogen		
Propionic acid	TWA	10 ppm	30 mg/m^3
Propoxure	TWA		0.5 mg/m^3
Propylene glycol dinitrate	TWA	0.05 ppm	0.3 mg/m^3
n-Propyl nitrate	TWA	25 ppm	105 mg/m^3
Resorcinol	TWA	10 ppm	45 mg/m^3
Sesone	TWA		10 mg/m^3
Silicon tetrahydride	TWA	5 ppm	7 mg/m^3
Silica, precipitated	TWA		10 mg/m^3
Soapstone	TWA	3 mg/m^3 respirable	6 mg/m^3 total
Sodium azide	Ceiling	0.1 ppm as NH_3	0.3 mg/m^3 as NaN_3
Sodium bisulfite	TWA		5 mg/m^3
Sodium metabisulfite	TWA		5 mg/m^3
Subtilisins (Proteolytic enzymes as 100% crystalline enzyme	Ceiling		0.00006 mg/m^3
Sulprofos	TWA		1 mg/m^3
Tetrasodium pyrophosphate	TWA		5 mg/m^3
4,4′-Thiobis(6-tert-butyl-m-cresol)	TWA		10 mg/m^3
Thioglycolic acid	TWA	1 ppm	4 mg/m^3
Thionyl chloride	Ceiling	1 ppm	5 mg/m^3
o-Tolidine	Carcinogen		
m-Toluidine	TWA	2 ppm	9 mg/m^3
p-Toluidine	TWA, Carcinogen	2 ppm	9 mg/m^3
Trichloroacetic acid	TWA	1 ppm	7 mg/m^3
1,2,4 Trichlorobenzene	Ceiling	5 ppm	40 mg/m^3
Trichlorofluoromethane	Ceiling	1000 ppm	5,600 mg/m^3
Trimellitic anhydride	TWA	0.005 ppm	0.04 mg/m^3
Trimethyl amine	TWA	10 ppm	24 mg/m^3
Trimethyl phosphate	TWA	2 ppm	10 mg/m^3
Triphenyl amine	TWA		5 mg/m^3
n-Valeraldehyde	TWA	50 ppm	175 mg/m^3
Vinyl cyclohexene dioxide	TWA, Carcinogen	10 ppm	60 mg/m^3
Vinylidene chloride	TWA	5 ppm	20 mg/m^3
VM&P Naphtha Welding fumes (not otherwise classified)	TWA	300 ppm	1,350 mg/m^3
Welding fumes (not otherwise classified)	TWA		5 mg/m^3
m-Xylene, α, α′-diamine	Ceiling		0.1 mg/m^3

TABLE 6.—NEW SUBSTANCES FOR COAL MINES ONLY.

Bismuth telluride	TWA		10 mg/m^3
Bismuth telluride (Se-doped)	TWA		5 mg/m^3
Diquat	TWA		0.05 mg/m^3

TABLE 6.—NEW SUBSTANCES FOR COAL MINES ONLY.—Continued

TABLE 8.—CHANGES OF TWA EXPOSURE LIMITS FOR SUBSTANCES CURRENTLY REGULATED AT METAL/NONMETAL AND COAL

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TABLE 6.—NEW SUBSTANCES FOR COAL MINES ONLY.—Continued

Germanium tetrahydride	TWA	0.2 ppm	0.6 mg/m^3
Hexafluoroacetone	TWA	0.1 ppm	0.7 mg/m^3
Lead, inorganic, dusts & fumes, Pb	TWA		0.15 mg/ ^{3}
Methyl acrylonitrile	TWA	1 ppm	3 mg/m^3
Methyl bromide	TWA	15 ppm	60 mg/m^3
Methyl isoamyl ketone	TWA	50 ppm	240 mg/m^3
Phenylphosphine	Ceiling	0.05 ppm	0.25 mg/m^3
Silicon	TWA		10 mg/m^3
Sulfur tetrafluoride	TWA	0.1 ppm	0.5 mg/m^3
Toluene	TWA	100 ppm	375 mg/m^3

TABLE 7.—SUBSTANCES THAT WOULD BE REGULATED FOR THE FIRST TIME FOR METAL/NONMETAL MINES ONLY. COAL MINES EITHER DO NOT HAVE THESE PROCESSES OR THE PARTICULATES WOULD BE REGULATED UNDER THE COAL MINE DUST STANDARDS.

Arsenic trioxide production		Carcinogen
Respirable mine dust	TWA	5 mg/m^3 respirable dust
Silica, gel	TWA	10 mg/m^3
Silica, precipitated	TWA	10 mg/m^3
Nickel sulfide roasting as Ni		1 mg/m^3
Tripoli	TWA	0.1 mg/m^3 of contained respirable quartz

TABLE 8.—CHANGES OF TWA EXPOSURE LIMITS FOR SUBSTANCES CURRENTLY REGULATED AT METAL/NONMETAL AND COAL MINES.

Chemical	Proposed PEL	Current PEL
Acetone	750 ppm, 1800 mg/m^3	1000 ppm, 2,400 mg/m^3
Acrylamide	0.03 mg/m^3	0.3 mg/m^3
Acrylonitrile	2 ppm, 4.5 mg/m^3	20 ppm, 45 mg/m^3
Aluminum metal and oxide	10 mg/m^3	
Aluminum pyro powders	5 mg/m^3	Alundum: 10 mg/m^3
Aluminum welding fumes	5 mg/m^3	
Aluminum soluble salts	2 mg/m^3	Corundum: 10 mg/m^3
Aluminum alkyls not otherwise classified	2 mg/m^3	
Aniline and homologues	2 ppm, 10 mg/m^3	5 ppm, 19 mg/m^3
Antimony trioxide production compounds, as As	Carcinogen, 0.2 mg/m^3	Compounds as As: 0.5 mg/m^3
		Calcium arsenate: 0.1 mg/m^3
Asbestos	0.2 f/cc	2 f/cc
Benzene	1 ppm	Ceiling 25 ppm, 80 mg/m^3
Boron tribromide	Ceiling 1 ppm, 10 mg/m^3	1 ppm, 10 mg/m^3
1,3 Butadiene	10 ppm, 22 mg/m^3	1000 ppm, 2200 mg/m^3
2-Butoxyethanol	25 ppm, 306 mg/m^3	50 ppm, 240 mg/m^3
n-Butyl alcohol	Ceiling 50 ppm, 150 mg/m^3	100 ppm, 300 mg/m^3
sec-Butyl alcohol	100 ppm, 305 mg/m^3	150 ppm, 450 mg/m^3
n-Butyl glycidyl ether	25 ppm, 135 mg/m^3	50 ppm, 170 mg/m^3
tert-Butyl chromate, as CrO$_3$	Ceiling 0.1 mg/m^3	0.1 mg/m^3
Cadmium and compounds	0.010 mg/m^3	Cadmium metal dust and soluble salts: 0.2 mg/m^3
	or 0.005 mg/m^3 carcinogen	Cadmium oxide fume as Cd: 0.1 mg/m^3
Calcium hydroxide and oxide forms	5 mg/m^3	Calcium oxide: 5 mg/m^3
Camphor, synthetic	2 mg/m^3	12 mg/m^3
Carbon monoxide	35 ppm, 40 mg/m^3	50 ppm, 55 mg/m^3
Carbon disulfide	4 ppm, 12 mg/m^3	20 ppm, 60 mg/m^3
Carbon tetrachloride	2 ppm, 12.6 mg/m^3	10 ppm, 65 mg/m^3
Chlorine	0.5 ppm, 1.5 mg/m^3	1 ppm, 3 mg/m^3
o-chlorobenzylidene malonitrile	Ceiling 0.05 ppm, 0.4 mg/m^3	0.05 ppm, 0.4 mg/m^3
Chloroform	2 ppm, 9.8 mg/m^3	50 ppm, 240 mg/m^1
1-chloro-1-nitropropane	2 ppm, 10 mg/m^3	20 ppm, 100 mg/m^3
β-Chloroprene	10 ppm, 35 mg/m^3	25 ppm, 90 mg/m^3
Chromite ore processing	0.05 mg/m^3	
Chromium metal	0.5 mg/m^3	
Chromium II compounds as Cr	0.5 mg/m^3	Chromic acid and chromates as CrO$_3$: 0.1 mgm^3
Chromium III compounds as Cr	0.5 mg/m^3	Chromium, sol. chromic; chromous salts as Cr: 0.5 mg/m^3
Chromium VI compounds as Cr	0.05 mg/m^3	Chromium metal and insoluble salts: 1 mg/m^3
Lead chromate as Cr	0.05 mg/m^3	
Zinc chromate as Cr	0.05 mg/m^3	
Cobalt, metal, fume and dust	0.05 mg/m^3	0.1 mg/m^3
Cyclohexanone	25 ppm, 100 mg/m^3	50 ppm, 200 mg/m^3
Dichlorodifluoromethane	10 ppm, 40 mg/m^3	1000 ppm, 4950 mg/m^3
1,1-Dichloroethane	200 ppm, 810 mg/m^3	200 ppm, 320 mg/m^3
1,1-Dichloro-1-nitroethane	2 ppm, 10 mg/m^3	Ceiling 10 ppm, 60 mg/m^3
Diatomaceous earth	6 mg/m^3	20 mg/m^3
Dimethylamine	10 ppm, 30 mg/m^3	25 ppm, 75 mg/m^3
Diglycidyl ether	0.1 ppm, 0.5 mg/m^3	Ceiling 0.5 ppm, 2.8 mg/m^3
Dimethyl sulfate	0.1 ppm, 0.5 mg/m^3 carcinogen	1 ppm, 5 mg/m^3
Dioxane	25 ppm, 90 mg/m^3	100 ppm, 360 mg/m^3
Epichlorohydrin	2 ppm, 10 mg/m^3	5 ppm, 19 mg/m^3
2-Ethoxyethanol	5 ppm, 19 mg/m^3	M/NM 100 ppm, 370 mg/m^3
		Coal 200 ppm, 740 mg/m^3
2-Ethoxyethanol acetate	5 ppm, 27 mg/m^3	100 ppm, 540 mg/m^3
Ethyl acrylate	5 ppm, 20 mg/m^3	25 ppm, 100 ppm

TABLE 8.—CHANGES OF TWA EXPOSURE LIMITS FOR SUBSTANCES CURRENTLY REGULATED AT METAL/NONMETAL AND COAL MINES.—Continued

Chemical	Proposed PEL	Current PEL
Ethylene chlorohydrin	Ceiling 1 ppm, 3 mg/m^3	5 ppm, 16 mg/m^3
Ethylene dibromide	Carinogen	M/NM 20 ppm, 145 mg/m^3
		Coal 25 ppm, 190 mg/m^3
Ethylene dichloride	10 ppm, 4 mg/m^3	50 ppm, 200 mg/m^3
Ethylene glycol	Ceiling 50 ppm, 125 mg/m^3	100 ppm, 260 mg/m^3
Ethylene glycol dinitrate	STEL 0.1 mg/m^3	0.2 ppm
Ethylene oxide	1 ppm, 2 mg/m^3	50 ppm, 90 mg/m^3
n-Ethylmorpholine	5 ppm, 23 mg/m^3	20 ppm, 94 mg/m^3
Ethyl silicate	10 ppm, 85 mg/m^3	100 ppm, 850 mg/m^3
Formaldehyde	1 ppm, 1.5 mg/m^3	Ceiling 2 ppm, 3 mg/m^3
Furfural	2 ppm, 8 mg/m^3	5 ppm, 20 mg/m^3
Gasoline	300 ppm	900 mg/m^3
		From additive limit of separate chemicals in gasoline
Gylcidol	25 ppm, 75 mg/m^3	50 ppm, 150 mg/m^3
Heptane (n-heptane)	400 ppm, 1,600 mg/m^3	500 ppm, 2,000 mg/m^3
Hexane		
n-hexane	50 ppm, 180 mg/m^3	n/Hexane: 500 ppm, 1800 mg/m^3
other isomers	500 ppm, 1800 mg/m^3	
Hydrogen bromide	Ceiling 3 ppm, 10 mg/m^3	3 ppm, 10 mg/m^3
Hydrogen cyanide	Ceiling 10 ppm, 10 mg/m^3	10 ppm, 11 mg/m^3
Hydrogen fluoride as F	Ceiling 3 ppm, 2.5 mg/m^3	3 ppm, 2 mg/m^3
Iron oxide fume Fe$_2$O^3 as Fe	5 mg/m^3	10 mg/m^3
Isobutyl alcohol	50 ppm, 150 mg/m^3	100 ppm, 300 mg/m^3
Isopropyl ether	500 ppm, 2100 mg/m^3	250 ppm, 1050 mg/m^3
Isophorone	Ceiling 5 ppm, 25 mg/m^3	25 ppm, 140 mg/m^3
Manganese as Mn, dust and compound	Ceiling 5 mg/m^3	Manganese, as Mn, Dust and compounds:
Manganese as Mn, fume	1 mg/m^3	Ceiling 5 mg/m^3
Mercury, as Hg—Alkyl compounds	0.01 mg/m^3	Mercury alkyl compounds: 0.01 mg/m^3
Mercury, as Hg—Vapor	0.05 mg/m^3	
Mercury, as Hg—Aryl and inorganic compounds	0.1 mg/m^3	Mercury all forms except alkyl 0.05 mg/m^3
Mesityl oxide	15 ppm, 60 mg/m^3	25 ppm, 100 mg/m^3
2-Methoxyethanol	5 ppm, 16 mg/m^3	25 ppm, 80 mg/m^3
Methyl-n-amyl ketone	50 ppm, 235 mg/m^3	100 ppm, 465 mg/m^3
Methyl n-butyl ketone	5 ppm, 20 mg/m^3	100 ppm, 410 mg/m^3
Methyl chloride	50 ppm, 105 mg/m^3	100 ppm, 210 mg/m^3
Methylcyclohexane	400 ppm, 1600 mg/m^3	500 ppm, 2000 mg/m^3
Methylene bisphenyl isocyanate	0.005 ppm, 0.055 mg/m^3	0.02 ppm, 0.2 mg/m^3
Methylene bromide	5 ppm, 20 mg/m^3	15 ppm, 60 mg/m^3
Methylene chloride	50 ppm, 175 mg/m^3	500 ppm, 1740 mg/m^3
Methyl iodide	2 ppm, 10 mg/m^3	5 ppm, 28 mg/m^3
Methyl isoamyl ketone	50 ppm, 240 mg/m^3	100 ppm, 475 mg/m^3
Methyl isobutyl ketone	50 ppm, 205 mg/m^3	100 ppm, 410 mg/m^3
Methyl silicate	1 ppm, 6 mg/m^3	Ceiling 5 ppm, 30 mg/m^3
α-Methyl styrene	50 ppm, 240 mg/m^3	100 ppm, 480 mg/m^3
n-Methyl aniline	0.5 ppm, 2 mg/m^3	2 ppm, 9 mg/m^3
Nickel—Metal	1 mg/m^3	Nickel, metal and soluble compounds as Ni 1 mg/m^3
Nickel soluble compound as Ni	0.1 mg/m^3	
p-Nitroaniline	3 mg/m^3	6 mg/m^3
p-Nitrochlorobenzene	0.1 ppm, 0.6 mg/m^3	1 mg/m^3
Nitroglycerin	0.05 ppm, 0.5 mg/m^3	0.2 ppm
Nitrogen dioxide	3 ppm (6 mg/m^3) or 1 ppm STEL	Ceiling 5 ppm, 9 mg/m^3
2-Nitropropane	10 ppm, 35 mg/m^3 carcinogen	25 ppm, 90 mg/m^3
Nitrotoluene	2 ppm, 11 mg/m^3	5 ppm, 30 mg/m^3
Nitrous oxide	50 ppm, 91 mg/m^3	Simple asphyxiant
Octane	300 ppm, 1,450 mg/m^3	400 ppm, 1900 mg/m^3
Oil mist	5 mg/m^3	Oil mist particulate 5 mg/m^3 and oil, mist, and vapor, additive effect of components
Oxygen difluoride	Ceiling 0.05 ppm, 0.1 mg/m^3	0.05 ppm, 0.1 mg/m^3
Paraquat, respirable sizes	0.1 mg/m^3	0.5 mg/m^3
Perchloroethylene	25 ppm, 170 mg/m^3 carcinogen	100 ppm, 670 mg/m^3
Phenyl glycidyl ether	1 ppm, 6 mg/m^3	10 ppm, 60 mg/m^3
Phosphorus trichloride	0.2 ppm, 1.5 mg/m^3	0.5 ppm, 3 mg/m^3
Phthalic anhydride	1 ppm, 6 mg/m^3	2 ppm, 12 mg/m^3
β-Propiolactone	0.5 ppm, 1.5 mg/m^3 carcinogen	Carcinogen no limit
Propylene oxide	20 ppm, 50 mg/m^3	100 ppm, 240 mg/m^3
Stoddard solvent	100 ppm, 525 mg/m^3	200 ppm, 1,150 mg/m^3
Styrene, monomer	50 ppm, 215 mg/m^3	100 ppm, 420 mg/m^3
Sulfur dioxide	2 ppm, 5 mg/m^3	5 ppm, 13 mg/m^3
Sulfur monochloride	Ceiling 1 ppm, 6 mg/m^3	1 ppm, 6 mg/m^3
Sulfur pentafluoride	Ceiling 0.01 ppm, 0.1 mg/m^3	0.025 ppm, 0.25 mg/m^3
Terphenyl	Ceiling 0.5 ppm, 5 mg/m^3	Ceiling 1 ppm, 9 mg/m^3
1,1,2,2-Tetrachloroethane	1 ppm, 7 mg/m^3	5 ppm, 35 mg/m^3
Tetraethyl lead, as Pb	0.075 mg/m^3	0.1 mg/m^3
Tetra methyl lead, as Pb	0.075 mg/m^3	0.15 mg/m^3
Thiram	1 mg/m^3	5 mg/m^3
Tin oxide	2 mg/m^3	10 mg/m^3
Toluene-2,4 diisocyanate	0.005 ppm, 0.04 mg/m^3	Ceiling 0.02 ppm, 0.14 mg/m^3
o-Toluidine	2 ppm, 9 mg/m^3	5 ppm, 22 mg/m^3

TABLE 8.—CHANGES OF TWA EXPOSURE LIMITS FOR SUBSTANCES CURRENTLY REGULATED AT METAL/NONMETAL AND COAL

TABLE 9—CHANGES OF SHORT-TERM EXPOSURE LIMITS FOR COAL AND METAL/NONMETAL MINES.—Continued

TABLE 8.—CHANGES OF TWA EXPOSURE LIMITS FOR SUBSTANCES CURRENTLY REGULATED AT METAL/NONMETAL AND COAL MINES.—Continued

Chemical	Proposed PEL	Current PEL
Tributyl phosphate	0.2 ppm, 2.5 mg/m^3	5 mg/m^3
Trichloroethylene	50 ppm, 270 mg/m^3	100 ppm, 535 mg/m^3
1,2,3 trichloropropane	10 ppm, 60 mg/m^3	50 ppm, 300 mg/m^3
Triethylamine	10 ppm, 40 mg/m^3	25 ppm, 100 mg/m^3
Trinitrotoluene	0.5 mg/m^3	1.5 mg/m^3
Vanadium dust	0.05 respirable dust	0.5 mg/m^3 total dust
Vinyl bromide	5 ppm, 10 mg/m^3	250 ppm, 1,100 mg/m^3
Vinyl chloride	1 ppm	250 ppm, 510 mg/m^3
Vinyl toluene	50 ppm, 240 mg/m^3	100 ppm, 480 mg/m^3
Wood dust hard woods	1 mg/m^3	Wood dust non-allergenic: 5 mg/m^3
Wood dust soft woods	5 mg/m^3	
Xylidine	0.5 ppm, 2.5 mg/m^3	5 ppm, 25 mg/m^3

TABLE 9—CHANGES OF SHORT-TERM EXPOSURE LIMITS FOR COAL AND METAL/NONMETAL MINES.

Chemical	Proposed STEL	Current STEL
Acetaldehyde	150 ppm, 270 mg/m^3	None.
Acetic acid	15 ppm, 37 mg/m^3	40 ppm (5 min) from Pennsylvania Rules.
Acetone	1,000 ppm, 2,400 mg/m^3	1,000 ppm (30 min) from Pennsylvania Rules.
Acetonitrile	60 ppm, 105 mg/m^3	None.
Acrolein	0.3 ppm, 0.8 mg/m^3	0.5 ppm (5 min) from Pennsylvania Rules.
Acrylonitrile	None	40 ppm (30 min) from Pennsylvania Rules.
Aldrin	None	1 mg/m^3 (30 min) from Pennsylvania Rules.
Allyl alcohol	4 ppm, 10 mg/m^3	5 ppm (30 min) from Pennsylvania Rules.
Allyl chloride	3 ppm, 2 mg/m^3	None.
Allyl glycidyl ether	10 ppm, 44 mg/m^3	10 ppm (5 min) from Pennsylvania Rules.
Allyl propyl disulfide	3 ppm, 18 mg/m^3	None.
Ammonia	35 ppm, 27 mg/m^3	100 ppm (30 min) from Pennsylvania Rules.
Ammonium chloride fume	20 mg/m^3	None.
Amyl acetate	None	200 ppm (30 min) from Pennsylvania Rules.
Aniline	None	50 ppm (30 min) from Pennsylvania Rules.
Asbestos	1 fiber/cc	10 fibers/cc (15 min) from Pennsylvania Rules.
Benzene	5 mg/m^3	75 ppm (30 min) from Pennsylvania Rules.
Benzoyl peroxide	None	10 mg/m^3 (15 min) from Pennsylvania Rules.
Beryllium	None	0.025 mg/m^3 (5 min) from Pennsylvania Rules.
Boron trifluoride	None	1 ppm (5 min) from Pennsylvania Rules.
Bromine	0.3 ppm, 2 mg/m^3	0.4 ppm (30 min) from Pennsylvania Rules.
2-Butoxyethanol	None	200 ppm (5 min) from Pennsylvania Rules.
n-Butyl acetate	200 ppm, 950 mg/m^3	300 ppm (30 min) from Pennsylvania Rules.
Butyl alcohol	None	150 ppm (30 min) from Pennsylvania Rules.
tert-Butyl alcohol	150 ppm, 450 mg/m^3	150 ppm (30 min) from Pennsylvania Rules.
Butylamine	None	5 ppm (5 min) from Pennsylvania Rules.
tert-Butyl chromate	None	5 mg/m^3 (5 min) from Pennsylvania Rules.
p-tert-Butyltoluene	20 ppm, 120 mg/m^3	None.
Cadmium oxide fume	None	0.3 mg/m^3 (30 min) from Pennsylvania Rules.
Calcium oxide	None	10 mg/m^3 (30 min) from Pennsylvania Rules.
Camphor	None	3 ppm (30 min) from Pennsylvania Rules.
Caprolactam		
Dust	3 mg/m^3	None.
Vapor	10 ppm, 40 mg/m^3	None.
Carbaryl	None	30 mg/m^3 (30 min) from Pennsylvania Rules.
Carbon dioxide	30,000 ppm, 54,000 mg/m^3.	None.
Carbon disulfide	12 ppm, 36 mg/m^3	100 ppm (30 min) from Pennsylvania Rules.
Carbon monoxide	200 ppm, 229 mg/m^3	400 ppm (15 min) from Pennsylvania Rules.
Carbon tetrabromide	0.3 ppm	None.
Carbon tetrachloride	None	25 ppm (30 min) from Pennsylvania Rules.
Carbonyl fluoride	5 ppm, 15 mg/m^3	None.
Chlordane	None	2 mg/m^3 (30 min) from Pennsylvania Rules.
Chlorinated camphene	1 mg/m^3	None.
Chlorine	1 ppm, 3 mg/m^3	3 ppm (5 min) from Pennsylvania Rules.
Chlorine dioxide	0.3 ppm, 0.9 mg/m^3	None.
Chlorine trifluoride	None	0.1 ppm (5 min) from Pennsylvania Rules.
Chloroacetaldehyde	None	1 ppm (5 min) from Pennsylvania Rules.
Chloroform	None	400 ppm (30 min) from Pennsylvania Rules.
o-Chlorostyrene	75 ppm, 430 mg/m^3	None.
o-Chlorotoluene	75 ppm, 375 mg/m^3	None.
Chlorpyrifos	0.6 mg/m^3	None.
Cobalt	None	0.5 mg/m^3 (30 min) from Pennsylvania Rules.
Copper fume	None	0.1 mg/m^3 (30 min) from Pennsylvania Rules.
Cyanide, as CN	None	5 mg/m^3 (30 min) from Pennsylvania Rules.
Cyclopentadiene	None	200 ppm (15 min) from Pennsylvania Rules.
Decaborane	0.15 ppm, 0.9 mg/m^3	None.
Demeton	None	0.5 mg/m^3 (30 min) from Pennsylvania Rules.
Dichlorvos	None	3 mg/m^3 (30 min) from Pennsylvania Rules.

TABLE 9—CHANGES OF SHORT-TERM EXPOSURE LIMITS FOR COAL AND METAL/NONMETAL MINES.—Continued

Chemical	Proposed STEL	Current STEL
Diacetone alcohol	None	150 ppm (30 min) from Pennsylvania Rules.
Dibutyl phosphate	2 ppm, 10 mg/m^3	None.
o-Dichlorobenzene	None	50 ppm (15 min) from Pennsylvania Rules.
p-Dichlorobenzene	110 ppm, 675 mg/m^3	None.
1,3-Dichloro-5,5-dimethylhydantoin	0.4 mg/m^3	0.5 mg/m^3 (15 min) from Pennsylvania Rules.
1,1-Dichloroethane	250 ppm, 1,010 mg/m^3	200 ppm (30 min) from Pennsylvania Rules.
Dichloroethyl ether	10 ppm, 60 mg/m^3	35 ppm (30 min) from Pennsylvania Rules.
1,1-Dichloro-1-nitroethane	None	10 ppm (30 min) from Pennsylvania Rules.
Dieldrin	None	1 mg/m^3 (30 min) from Pennsylvania Rules.
Dimethylamine	25 ppm	100 ppm (30 min) from Pennsylvania Rules.
Diglycidyl ether	None	0.5 ppm (5 min) from Pennsylvania Rules.
Diisobutyl ketone	None	50 ppm (30 min) from Pennsylvania Rules.
Dimethylamine	None	20 ppm (5 min) from Pennsylvania Rules.
N,N-Dimethylaniline	10 ppm, 50 mg/m^3	None.
Dinitro-o-cresol	None	1 mg/m^3 (30 min) from Pennsylvania Rules.
Dipropylene glycol methyl ether	150 ppm, 900 mg/m^3	None.
Di-sec-octyl phthalate	10 mg/m^3	None.
Endrin	None	0.5 mg/m^3 (30 min) from Pennsylvania Rules.
Epichlorhydrin	None	10 ppm (30 min) from Pennsylvania Rules.
EPN	None	2.5 mg/m^3 (30 min) from Pennsylvania Rules.
Ethanolamine	6 ppm, 15 mg/m^3	None.
2-Ethoxyethanol	None	300 ppm (30 min) from Pennsylvania Rules.
2-Ethyoxyethyl acetate	None	300 ppm (5 min) from Pennsylvania Rules.
Ethyl acetate	None	1,000 ppm (15 min) from Pennsylvania Rules.
Ethyl acrylate	15 ppm, 61 mg/m^3	50 ppm (15 min) from Pennsylvania Rules.
Ethyl alcohol	None	5,000 ppm (15 min) from Pennsylvania Rules.
Ethylamine	None	25 ppm (30 min) from Pennsylvania Rules.
Ethyl benzene	125 ppm, 545 mg/m^3	200 ppm (30 min) from Pennsylvania Rules.
Ethyl bromide	250 ppm, 1,110 mg/m^3	None.
Ethylenediamine	None	20 ppm (5 min) from Pennsylvania Rules.
Ethylene dichloride	2 ppm, 8 mg/m^3	200 ppm (30 min) from Pennsylvania Rules.
Ethylene glycol dinitrate	0.1 mg/m^3	0.2 ppm (30 min) from Pennsylvania Rules.
Ethylene oxide	5 ppm	200 ppm (30 min) from Pennsylvania Rules.
Ethyleneimine	None	5 ppm (30 min) from Pennsylvania Rules.
Ethyl ether	500 ppm, 1,500 mg/m^3	1,000 ppm (30 min) from Pennsylvania Rules.
N-Ethylmorpholine	None	20 ppm (15 min) from Pennsylvania Rules.
Ethyl silicate	None	200 ppm (30 min) from Pennsylvania Rules.
Ferrovanadium dust	3 mg/m^3	None.
Fluorides	None	10 mg/m^3 (30 min) from Pennsylvania Rules.
Fluorine	2 ppm	0.5 ppm (5 min) from Pennsylvania Rules.
Formaldehyde	2 ppm, 3 mg/m^3	5 ppm (5 min) from Pennsylvania Rules.
Formic acid	10 ppm, 18 mg/m^3	None.
Furfural	None	15 ppm (15 min) from Pennsylvania Rules.
Furfural alcohol	15 ppm, 60 mg/m^3	50 ppm (15 min) from Pennsylvania Rules.
Gasoline	500 ppm, 1,500 mg/m^3	500 ppm (30 min) from Pennsylvania Rules.
Glycidol	None	100 ppm (5 min) from Pennsylvania Rules.
Heptachlor	None	2 mg/m^3 (30 min) from Pennsylvania Rules.
Heptane	500 ppm, 2,000 mg/m^3	500 ppm (30 min) from Pennsylvania Rules.
Hexane (other than n-Hexane)	1,000 ppm, 3,600 mg/m^3	500 ppm (30 min) from Pennsylvania Rules.
Hydrazine	None	1 ppm (30 min) from Pennsylvania Rules.
Hydrogen bromide	None	5 ppm (5 min) from Pennsylvania Rules.
Hydrogen chloride	None	5 ppm (5 min) from Pennsylvania Rules.
Hydrogen cyanide	None	20 ppm (20 min) from Pennsylvania Rules.
Hydrogen fluoride	None	3 ppm (15 min) from Pennsylvania Rules.
Hydrogen sulfide	15 ppm, 21 mg/m^3	20 ppm (5 min) from Pennsylvania Rules.
Iodine	None	0.1 ppm (5 min) from Pennsylvania Rules.
Iron pentacarbonyl, as Fe	0.2 ppm, 1.6 mg/m^3	None.
Isoamyl alcohol	125 ppm, 450 mg/m^3	150 ppm (30 min) from Pennsylvania Rules.
Isoproyl acetate	310 ppm, 1,185 mg/m^3	None.
Isopropyl alcohol	500 ppm, 1,255 mg/m^3	None.
Isopropylaniline	10 ppm, 24 mg/m^3	None.
Isopropyl glycidyl ether	75 ppm, 360 mg/m^3	100 ppm (30 min) from Pennsylvania Rules.
Ketene	1.5 ppm, 3 mg/m^3	None.
Lindane	None	1 mg/m^3 (30 min) from Pennsylvania Rules.
Manganese		
Dust	None	5 mg/m^3 (30 min) from Pennsylvania Rules.
Fume	3 ppm	
Mercury (alkyl compounds)	0.03 ppm	None.
Mesityl oxide	25 ppm, 100 mg/m^3	None.
2-Methoxyethanol (Methyl cellosolve)	None	50 ppm (30 min) from Pennsylvania Rules.
2-Methoxyethyl acetate (ethylene glycol monomethyl ether acetate)	None	50 ppm (30 min) from Pennsylvania Rules.
Methyl acetate	250	400 ppm (5 min) from Pennsylvania Rules.
Methyl acetylene-propadiene mixture	1,250 ppm, 2,250 mg/m^3	None.
Methyl acrylate	None	25 ppm (30 min) from Pennsylvania Rules.
Methyl alcohol	250 ppm, 310 mg/m^3	None.
Methyl bromide	None	20 ppm (5 min) from Pennsylvania Rules.
Methyl n-butyl ketone (Hexanone)	None	200 ppm (30 min) from Pennsylvania Rules.
Methyl chloride	100 ppm, 205 mg/m^3	100 ppm (5 min) from Pennsylvania Rules.
Methyl chloroform	450 ppm, 2,450 mg/m^3	1,500 ppm (5 min) from Pennsylvania Rules.
Methyl 2-cyano-acrylate	4 ppm, 16 mg/m^3	None.

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TABLE 9—CHANGES OF SHORT-TERM EXPOSURE LIMITS FOR COAL AND METAL/NONMETAL MINES.—Continued

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TABLE 9—CHANGES OF SHORT-TERM EXPOSURE LIMITS FOR COAL AND METAL/NONMETAL MINES.—Continued

TABLE 9—CHANGES OF SHORT-TERM EXPOSURE LIMITS FOR COAL AND METAL/NONMETAL MINES.—Continued

Chemical	Proposed STEL	Current STEL
o-Methylcyclo-hexanone	75 ppm, 345 mg/m ^{3}	Now.
Methylene bisphenyl isocynate	None	0.25 mg/m ^{3} (5 min) from Pennsylvania Rules.
Methylene chloride	500 ppm, 1,740 mg/m ^{3}	1,000 ppm (30 min) from Pennsylvania Rules.
Methyl ethyl ketone	800 ppm	300 ppm (5 min) from Pennsylvania Rules.
Methyl formate	150 ppm, 375 mg/m ^{3}	None.
Methyl isobutyl carbinol	40 ppm, 165 mg/m ^{3}	None.
Methyl isobutyl ketone	75 ppm, 300 mg/m ^{3}	400 ppm (5 min) from Pennsylvania Rules.
Methyl mercaptan	None	20 ppm (5 min) from Pennsylvania Rules.
Methyl methacrylate	None	200 ppm (15 min) from Pennsylvania Rules.
Methyl propyl ketone	250 ppm, 875 mg/m ^{3}	None.
α-Methyl styrene	100 ppm, 485 mg/m ^{3}	100 ppm (30 min) from Pennsylvania Rules.
Morpholine	30 ppm, 105 mg/m ^{3}	20 ppm (15 min) from Pennsylvania Rules.
Mevinphos	0.03 ppm	0.5 ppm (30 min) from Pennsylvania Rules.
Naphthalene	15 ppm, 75 mg/m ^{3}	15 ppm (5 min) from Pennsylvania Rules.
Nickel carbonyl	None	0.04 ppm (5 min) from Pennsylvania Rules.
Nitrapyrin	20 mg/m ^{3}	None.
Nitric acid	4 ppm, 10 mg/m ^{3}	15 ppm (5 min) from Pennsylvania Rules.
Nitrobenzene	None	10 ppm (30 min) from Pennsylvania Rules.
Nitrogen dioxide	5 ppm (10 mg/m ^{3}) or 1 ppm (1.8 mg/m ^{3})	25 ppm (5 min) from Pennsylvania Rules.
Nitroglycerin	0.1 mg/m ^{3}	0.2 ppm (30 min) from Pennsylvania Rules.
Octachloro-naphthalene	0.3 mg/m ^{3}	None.
Octane	375 ppm, 1,800 mg/m ^{3}	500 ppm (30 min) from Pennsylvania Rules.
Oil mist, mineral	10 mg/m ^{3}	None.
Osmium tetroxide, as Os	0.0006 ppm, 0.006 mg/m ^{3}	None.
Oxalic acid	2 mg/m ^{3}	None.
Ozone	None	1 ppm (30 min) from Pennsylvania Rules.
Parathion	None	0.5 mg/m ^{3} (30 min) from Pennsylvania Rules.
Petaborane	0.015 ppm, 0.03 mg/m ^{3}	None.
Petane	750 ppm, 2,250 mg/m ^{3}	None.
Perchloroethylene	None	200 ppm (30 min) from Pennsylvania Rules.
Perchloryl fluoride	6 ppm, 28 mg/m ^{3}	None.
Phenyl ether vapor	2 ppm, 14 mg/m ^{3}	None.
Phenylhydrazine	10 ppm, 45 mg/m ^{3}	None.
Phorate	0.2 mg/m ^{3}	None.
Phosgene	None	1 ppm (5 min) from Pennsylvania Rules.
Phosphine	1 ppm, 1 mg/m ^{3}	1 ppm (30 min) from Pennsylvania Rules.
Phosphoric acid	3 mg/m ^{3}	None.
Phosphorus pentasulfide	3 mg/m ^{3}	None.
Phosphorus trichloride	0.5 ppm 3 mg/m ^{3}	None.
Phthalic anhydride	None	4 ppm (5 min) from Pennsylvania Rules.
Picloram	20 mg/m ^{3}	None.
Picric acid	0.3 mg/m ^{3}	None.
Propionic acid	15 ppm, 45 mg/m ^{3}	None.
n-Propyl acetate	250 ppm, 1,050 mg/m ^{3}	None.
Propyl alcohol	250 ppm, 625 mg/m ^{3}	400 ppm (30 min) from Pennsylvania Rules.
Propylene dichloride	110 ppm, 510 mg/m ^{3}	None.
Propylene glycol monomethyl ether	150 ppm, 540 mg/m ^{3}	None.
n-Propyl nitrate	40 ppm, 170 mg/m ^{3}	None.
Pyridine	None	10 ppm (30 min) from Pennsylvania Rules.
Resorcinol	20 ppm, 90 mg/m ^{3}	None.
Selenium compounds, as Se	None	0.3 mg/m ^{3} (30 min) from Pennsylvania Rules.
Sodium fluoroacetate	0.15 mg/m ^{3}	None.
Styrene, monomer	100 ppm, 425 mg/m ^{3}	100 ppm (5 min) from Pennsylvania Rules.
Sulfotep (TEDP)	None	1 ppm (30 min) from Pennsylvania Rules.
Sulfur dioxide	5 ppm, 10 mg/m ^{3}	20 ppm (5 min) from Pennsylvania Rules.
Sulfuric acid	None	3 mg/m ^{3} (5 min) from Pennsylvania Rules.
Sulfuryl fluoride	10 ppm, 40 mg/m ^{3}	None.
Tantalum	10 mg/m ^{3}	None.
TEPP	None	1 mg/m ^{3} (30 min) from Pennsylvania Rules.
1,1,2,2-Tetra-chloroethane	None	10 ppm (30 min) from Pennsylvania Rules.
Tetrahydrofuran	250 ppm, 735 mg/m ^{3}	500 ppm (30 min) from Pennsylvania Rules.
Tin (inorganic compounds)	None	5 mg/m ^{3} (30 min) from Pennsylvania Rules.
Tin (organic compounds)	0.2 mg/m ^{3}	None.
Toluene	150 ppm, 560 mg/m ^{3}	600 ppm (30 min) from Pennsylvania Rules.
Toluene-2,4-diisocyanate	0.02 ppm, 0.15 mg/m ^{3}	0.02 ppm (5 min) from Pennsylvania Rules.
Trichloroethylene	200 ppm, 1.080 mg/m ^{3}	200 ppm (30 min) from Pennsylvania Rules.
1,1,2-Trichloro-1,2,2-trifluoroethane	1,250 ppm, 9,500 mg/m ^{3}	None.
Triethylamine	15 ppm, 60 mg/m ^{3}	100 ppm (30 min) from Pennsylvania Rules.
Trimethylamine	15 ppm, 36 mg/m ^{3}	None.
2,4,6-Trinitro-toluene	None	5 mg/m ^{3} (30 min) from Pennsylvania Rules.
Tungsten, as W		
Insoluble compounds	10 mg/m ^{3}	None.
Soluble compounds	3 mg/m ^{3}	None.
Turpentine	None	200 ppm (30 min) from Pennsylvania Rules.
Uranium, as U		
Insoluble compounds	0.06 mg/m ^{3}	None.
Vanadium compounds	None	0.5 mg/m ^{3} (30 min) from Pennsylvania Rules (V_2O_5 dust/fume).
Vinyl acetate	20 ppm, 60 mg/m ^{3}	None.
Vinyl chloride	5 ppm	500 ppm (5 min) from Pennsylvania Rules.

TABLE 9—CHANGES OF SHORT-TERM EXPOSURE LIMITS FOR COAL AND METAL/NONMETAL MINES.—Continued

Chemical	Proposed STEL	Current STEL
Vinyl toluene	100 ppm	400 ppm (5 min) from Pennsylvania Rules.
Wood dust		
Soft wood	10 mg/m ^{3}	None.
Xylene (o-, m-, p-isomers)	150 ppm, 655 mg/m ^{3}	300 ppm (30 min) from Pennsylvania Rules.
Zinc oxide fume	10 mg/m ^{3}	10 mg/m ^{3} (30 min) from Pennsylvania Rules.
Zirconium compounds, as Zr	10 mg/m ^{3}	None.

TABLE 10—CHANGES IN CURRENT EXPOSURE LIMITS AT METAL/NONMENTAL MINES ONLY

Chemical	Proposed PEL	Current PEL
Butane	TWA 800 ppm, 1,900 mg/m ^{3}	500 ppm, 1,200 mg/m ^{3}
1,1-Dichloromethane	TWA 200 ppm, 810 mg/m ^{3}	TWA 200 ppm, 320 mg/m ^{3}
Silica fused	0.1 mg/m ^{3}	$\frac{10\ mg/m^3}{\%\ respirable\ quartz}$
Silica—quartz	0.1 mg/m ^{3}	$\frac{10\ mg/m^3}{\%\ respirable\ quartz+2}$
Talc (containing no asbestos)	TWA 2.5 mg/m ^{3}, respirable dust.	TWA 20 mppcf
Tridymite	0.05 mg/m ^{3}	One-half the value calculated from the formula for quartz.

TABLE 11—CHANGES AND REDUCTIONS OF EXPOSURE LIMITS FOR SUBSTANCES ALREADY REGULATED AT COAL MINES

Chemical	Proposed PEL	Current PEL
Acetaldehyde	TWA 100 ppm, (180 mg/m ^{3})	TWA 20.0 ppm, (360 mg/m ^{3})
Acetic anhydride	Ceiling 5 ppm, 20 mg/m ^{3}	TWA 5 ppm, 20 mg/m ^{3}
Ammonia	TWA 25 ppm, 18 mg/m ^{3}	50 ppm, 35 mg/m ^{3}
1,1-Dichloruethane	TWA 200 ppm, 810 mg/m ^{3}	100 ppm, 400 mg/m ^{3}
Dichloroethyl ether	TWA 5 ppm, (30 mg/m ^{3})	Ceiling 15 ppm, (90 mg/m ^{3})
Diisobutyl ketone	TWA 25 ppm, (250 mg/m ^{3})	TWA 50 ppm, (290 mg/m ^{3})
Fluorine	TWA 1 ppm, 2 mg/m ^{3}	TWA 0.1 ppm, 0.2 mg/m ^{3}
Furfuryl alcohol	TWA 10 ppm, (40 mg/m ^{3})	TWA 5 ppm, (20 mg/m ^{3})
Methyl cyclohexanol	TWA 50 ppm, (235 mg/m ^{3})	TWA 100 ppm, (470 mg/m ^{3})
Methyl cyclohexanone	TWA 50 ppm, (230 mg/m ^{3})	TWA 100 ppm, (460 mg/m ^{3})

TABLE 12.—CHEMICALS WHICH WOULD HAVE A NEW SKIN NOTATION—COAL AND METAL/NONMETAL MINES

Acetonitrile
Allyl glycidyl ether
n-Butyl alcohol
o-sec Butyl phenol
Captafol
Chlorpyrifos
Cyclohexanol
Cyclohexanone
DDT (Dichlorodiphenyl-trichloroethane)
Dichloropropene
Dicrotophos
Ethion
Fenamiphos
Fenthion
Furfural alcohol
Hexafluoroacetone
2-Hydroxypropyl acrylate
Isooctyl alcohol
Lindane
Manganese cyclopentadienyl tricarbonyl, as Mn
Mercury
2-Methoxyethyl acetate
Methyl alcohol
4,4'-Methylene bis(2-chloroaniline)
4,4'-Methylene dianiline
Phorate
Propyl alcohol
Thioglycolic acid
o-Tolidine
o-Toluidine

TABLE 12.—CHEMICALS WHICH WOULD HAVE A NEW SKIN NOTATION—COAL AND METAL/NONMETAL MINES—Continued

m-Toluidine
p-Toluidine
m-Xylene α,α'-diamine

TABLE 13.—CHEMICALS WHICH WILL BE DELETED FROM EXISTING REGULATIONS. NUISANCE DUSTS WOULD BE REGULATED UNDER RESPIRABLE DUST STANDARDS

Calcium carbonate—nuisance dust
Cellulose—nuisance dust
Cotton dust—TWA 1 mg/m ^{3}
Emery—nuisance dust
Ethylene glycol, particulate—10 mg/m ^{3}
Gypsum—nuisance dust
Kaolin—nuisance dust
Limestone—nuisance dust
Magnesite—nuisance dust
Marble—nuisance dust
Pentaerythritol—nuisance dust
Phenyl-ether-diphenyl mixture—1 ppm 7 mg/m ^{3}
Plaster of Paris—nuisance dust

TABLE 13.—CHEMICALS WHICH WILL BE DELETED FROM EXISTING REGULATIONS. NUISANCE DUSTS WOULD BE REGULATED UNDER RESPIRABLE DUST STANDARDS—Continued

Polytetrafluoroethylene decomposition products—no TLV/sampling method provided
Rouge—nuisance dust
Starch—nuisance dust
Sucrose—nuisance dust
Titanium dioxide—nuisance dust
Vegetable oil mists—nuisance dust

TABLE 14.—SKIN NOTATIONS THAT WOULD BE DELETED FROM EXISTING REGULATIONS FOR BOTH METAL/NONMETAL AND COAL MINES

Acetonitrile
Allyl glycidyl ether
n-Butyl alcohol
Cyclohexanol
Cyclohexanone
DDT (Dichlorodiphenyl-trichloroethane)
Diproylene glycol methyl ether
Furfuryl alcohol
Hexachloroethane

TABLE 14.—SKIN NOTATIONS THAT

TABLE 16.—SUBSTANCES WHICH WILL BE

DERIVATION TABLE—Continued

DISTRIBUTION TABLE—Continued

(Phospholipidosis)," *Chest*, 85:4:550-558,

Tockman., "Pneumoconiosis in Geogia

TABLE 14.—SKIN NOTATIONS THAT WOULD BE DELETED FROM EXISTING REGULATIONS FOR BOTH METAL/NONMETAL AND COAL MINES—Continued

Hexafluoroacetone
Lindane
Methyl alcohol
Methyl isobutyl carbinol
Paraquat
Propyl alcohol
o-Toluidine
1,2,3-Tricholopropane
Triorthocresyl phosphate

TABLE 15.—EXISTING NAMES THAT HAVE BEEN CHANGED TO A NEW NAME IN THE PROPOSED PEL TABLE

Abate—see Temephos
2-Butanone—see Methyl ethyl ketone
1,2-Dibromoethane—see Ethylene dibromide
Dibrom—see Naled
1,2-Dichlorethane—see Ethylene dichloride
Diphenyl—see Biphenyl
Ethylene glycol monomethyl ether acetate—see 2-Methoxyethyl acetate
Fluorotrichloromethane—see Trichlorofluoromethane
2-Hexanone—see Methyl-n-butyl ketone
2-Heptanone—see Methyl-n-amyl ketone
Hexone—see Methyl isobutyl ketone
Mevinphos—see Phosdrin
Monomethyl aniline—see N-Methyl aniline
Monomethyl hydrazine—see Methyl hydrazine
Napetha (coal tar)—see Rubber solvent
2-Pentanone—see Methyl propyl ketone
Phosdrin—see Mevinphos
Pival—see Pindone
RDX—see Cyclonite
TEDP—see Sulfotep

TABLE 16.—SUBSTANCES WHICH WILL BE REGULATED AS CARCINOGENS FOR THE FIRST TIME FOR METAL/NONMETAL AND COAL MINES

Acrylamide
Acrylonitrile
Amitrol
Asbestos
Benzene
Benzo (a) pyrene
Beryllium and compounds (except welding)
Cadmium and compounds (except welding)
1,3 Butadiene
Chloroform
Chrysene
1,1-Dimethylhydrazine
Dimethyl sulfate
Ethyl acrylate
Ethylene dibromide
Ethylene dichloride
Ethylene oxide
Formaldehyde
Hexachlorobutadiene
Hexamethyl phosphoramide
Hydrazine
Lead chromate
Methyl hydrazine
Methylene chloride
4,4'-Methylene dianiline
Methyl iodide
2-Nitropropane

TABLE 16.—SUBSTANCES WHICH WILL BE REGULATED AS CARCINOGENS FOR THE FIRST TIME FOR METAL/NONMETAL AND COAL MINES—Continued

Perchloroethylene
N-Phenyl-β-naphthylamine
Propane sultone
Phenylhydrazine
Propylene imine
o-Tolidine
o-Toluidine
p-Toluidine
Vinyl bromide
Vinyl chloride
Vinyl cyclohexene dioxide
Xylidine
Zinc chromate, as Cr

TABLE 17.—SUBSTANCES WHICH WILL BE REGULATED AS CARCINOGENS FOR THE FIRST TIME FOR COAL MINES

bis (Chloromethyl) ether
Carbon tetrachloride
Ethylenimine
α-Naphthylamine
4,4'-Methylene bis(2-chloroaniline)
4-Dimethylaminoazobenzene

TABLE 18.—SUBSTANCES WHICH WILL BE REGULATED AS CARCINOGENS FOR THE FIRST TIME FOR METAL/NONMETAL. THESE SUBSTANCES NOT PROPOSED FOR COAL MINES BECAUSE THEY ARE PROCESSES FOUND ONLY IN METAL/NONMETAL MINING

Asbestos mining and milling
Antimony trioxide production
Arsenic trioxide production
Chromite ore processing
Nickel sulfide roasting
Vermiculite mining and milling where asbestos is present in concentrations greater then 1 percent in ore or concentrate.

Derivation Table

The following derivation table lists the section number of each standard in the proposed rule and the section number of the existing standard from which it is derived.

DERIVATION TABLE

New section	Old section
58.1	New
58.2	New
58.100	56.5001 and introductory text to 58/57.5005 57.5001 and introductory text to 58/57.5005
58.200	56.5002 57.5002
58.300	56.5005(c) 57.5005(c)
58.401	56.5006 57.5006
58.402	56.5006 57.5006
58.403	New
58.404	New
58.405	New
58.450	New
58.500	56.5005 (a) & (b) 57.5005 (a) & (b)
58.550	56.5005(b) 57.5005(b)
58.600	56.20014 57.20014
58.610	56.5010 57.5010
58.620	56.5003 57.5003
70.302	70.300 70.300-1
71.302	New
72.1	New
72.2	New
72.100	70.305 71.700 75.301-2
72.200	71.701
72.300	New
72.400	New
72.500	70.300-1 70.305 70.305-1
72.600	New
72.610	New
72.620	New
72.630	70-400 70-400-1 70.400-2 70-400-3
90.302	New

Distribution Table

The following distribution table lists the section number of each existing standard and the section number of the proposed standards that contain revised provisions derived from the corresponding existing section.

DISTRIBUTION TABLE

Old section	New section
56.5001	58.100
56.5002	58.200
56.5003	58.620
56.5005 (a) & (b)	58.500
56.5005(c)	58.300
56.5006	58.401 58.402
56.5010	58.610
56.20014	58.600
57.5001	58.100
57.5002	58.200
57.5003	58.620
57.5005 (a) & (b)	58.500 58.550
57.5005(c)	58.300
57.5006	58.401 58.402
57.5010	58.610
57.20014	58.600
70.300	70.302
70.300-1	72.500
70.305	72.500
70.305-1	72.500

DISTRIBUTION TABLE—Continued

Old section	New section
70.400	70.630
70.400-1	70.630
70-400-2	70.630
70-400-3	70.630
71-700	72.100
71-701	72.200
75-301-2	72.100

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§ 58.5001 [Removed]

58.200 Exposure monitoring.

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List of Subjects in 30 CFR Parts 56, 57, 58, 70, 71, 72, 75, and 90

Mine safety and health, Chemicals, Hazardous substances, Recordkeeping and recording requirements.

Accordingly, it is proposed to amend chapter I of title 30, Code of Federal Regulations as set forth below.

Dated: August 16, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

PART 56—[AMENDED]

A. It is proposed to amend subpart D, 30 CFR part 56, as follows:

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

§ 56.5001 [Removed]

2. Section 56.5001 is removed.

§ 56.5002 [Removed]

3. Section 56.5002 is removed.

§ 56.5003 [Removed]

4. Section 56.5003 is removed.

§ 56.5005 [Removed]

5. Section 56.5005 is removed.

§ 56.5006 [Removed]

6. Section 56.5006 is removed.

§ 56.5010 [Removed]

7. Section 56.5010 is removed.

§ 56.0014 [Removed]

8. Section 56.0014 is removed.

9. The undesignated center heading "Air Quality" is removed.

PART 57—[AMENDED]

B. It is proposed to amend subpart D, 30 CFR part 57, as follows:

1. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

2. Section 57.5001 is removed.

§ 57.5002 [Removed]

3. Section 57.5002 is removed.

§ 57.5003 [Removed]

4. Section 57.5003 is removed.

§ 57.5005 [Removed]

5. Section 57.5005 is removed.

§ 57.5006 [Removed]

6. Section 57.5006 is removed.

§ 57.5010 [Removed]

7. Section 57.5010 is removed.

§ 57.20014 [Removed]

8. Section 57.20014 is removed.

9. The undesignated center headings "Air Quality—Surface and Underground" and the first heading "Air Quality—Underground Only" are removed.

C. It is proposed to add a new part 58 to subchapter N, 30 CFR chapter I to read as follows:

PART 58—HEALTH STANDARDS FOR AIR QUALITY, CHEMICAL SUBSTANCES, AND RESPIRATORY PROTECTION AT METAL/NONMETAL MINES

Subpart A—General

Sec.
58.1 Scope.
58.2 Definitions.

Subpart B—Air Quality

58.100 Control of exposure to airborne substances.
58.200 Exposure monitoring.
58.300 Dangerous atmospheres.

Subpart C—Carcinogens

58.401 Class 1 carcinogens.
58.402 Class 2 carcinogens.
58.403 Class 3 carcinogens.
58.404 Class 4 carcinogens.
58.405 Asbestos construction work.
58.450 Medical surveillance program.

Subpart D—Respiratory Protection

58.500 Respiratory protection program.
58.550 Medical surveillance program.

Subpart E—Miscellaneous

58.600 Prohibited areas for food and beverages.
58.610 Abrasive blasting.
58.620 Drill dust control.

Appendix A—Nonmandatory—Work Practices and Engineering Controls for Major Asbestos Removal, Renovation and Demolitions Operations

Appendix B—Nonmandatory—Medical Evaluation Procedures for Respirator Use

Appendix C—Nonmandatory—Fit Testing Protocols

Authority: 30 U.S.C. 811.

Subpart A—General

§ 58.1 Scope.

The health standards in this part apply to all metal and nonmetal mines.

§ 58.2 Definitions.

The following definitions apply to this part.

Access. The right to examine and copy records.

Confined space. A space that by design has restricted openings for entry and exit, an unfavorable atmosphere that could contain or produce dangerous air contaminants and is not intended for continuous occupancy.

Designated representative. Any individual or organization to whom a miner gives written authorization to exercise a right of access to records.

Permissible exposure limit (PEL). The time-weighted average (TWA), the short-term exposure limit (STEL), the ceiling exposure limit (ceiling) for an airborne substance, or the mixed exposure limit (MEL) for airborne substances.

Qualitative fit test. An assessment of the adequacy of respirator fit by determining whether an individual wearing the respirator can detect the odor, taste, or irritation of a contaminant introduced into the vicinity of the wearer's head.

Quantitative fit test. An assessment of the adequacy of respirator fit by numerically measuring concentrations of a test agent inside and outside the facepiece simultaneously. The ratio of

the two measurements is an index of leakage of the seal between the respirator facepiece and the wearer's face.

Respirable dust. The fraction of airborne dust passing a size-selector with the following characteristics:

Aerodynamic diameter (µm)	Percent passing selector
<2	90
2.5	75
3.5	50
5.0	25
10	0

For non-coal dust, this is airborne dust that MSHA collects by a sampling device with a 10-mm nylon cyclone operated at a flow rate of 1.7 liters per minute. For coal dust, this is airborne dust that MSHA collects by a sampling device with a 10-mm nylon cyclone operated at a flow rate of 2.0 liters per minute. The concentration of coal dust will be multiplied by the conversion factor of 1.38.

Respirator protection factor. A measure of the degree of protection provided by a respirator to the wearer.

Subpart B—Air Quality

§ 58.100 Control of exposure to airborne substances.

(a) *Time-weighted average (8 hours-[TWA$_8$].* For any workday, 8 hours or less in length, a miner's exposure to an airborne substance shall not exceed the time-weighted average listed in Table B-1. Exposure shall be calculated by the following formula:

$$\text{Exposure} = \frac{(C_1 \times T_1) + (C_2 \times T_2) + \ldots (C_n \times TC_n)}{8 \text{ hours}}$$

Where $C_1, C_2, \ldots C_n$ is the concentration of the airborne substance as measured by sample "1", sample "2", through the last sample, $T_1, T_2, \ldots T_n$ is the duration in minutes of the exposure at C_1, C_2, and any other C_n.

(b) *Time-weighted average (novel schedule)—TWAC$_{ns}$.* For workdays longer than 8 hours, full shift sampling shall be conducted and exposure calculated by the following formula:

$$\text{Exposure} = \frac{(C_1 \times T_1) + (C_2 \times T_2) + \ldots (Cn \times T_n)}{\text{Total Time}}$$

Where $C_1, C_2, \ldots C_n$ is the concentration of the airborne substance as measured by sample "1," sample "2," through the last sample, $T_1, T_2, \ldots T_n$ is the duration in minutes of the exposure at C_1, C_2, and any other C_n. The miners exposure to an airborne substance listed in Table B-1 shall not exceed the TWA_{ns} as calculated by the following formula:

TWA (Novel Schedule)=

$$\text{TWA (as listed in Table B-1} \times \frac{8 \text{ hours}}{\text{Total time sampled.}}$$

(c) *Short-term exposure limit (STEL) and ceiling limit (C).* A miner's exposure to an airborne substance shall not exceed the short-term exposure limit or ceiling limit (designated by "C") listed in Table B-1. The STEL is a 15-minute time-weighted exposure. If the concentration of an airborne substance exceeds the STEL or ceiling, the mine operator shall take immediate corrective action in accordance with paragraph (e) of this section.

(d) *Mixed exposure limit (MEL).* A miner's combined exposure to two or more airborne substances that act upon the same organ system shall not exceed 1.0 as determined by this formula:

$$\text{Exposure} = \frac{C_a}{PEL_a} + \frac{C_b}{PEL_b} + \ldots + \frac{C_n}{PEL_n}$$

"C" is the concentration of each substance. The MEL is the TWA_8, TWA_{ns}, short-term exposure limit, or ceiling for each substance. Time-weighted averages and short-term exposure limits are not to be mixed in computing exposure.

(e) *Means of control.* (1) The mine operator shall use feasible engineering or administrative controls to maintain exposure of all miners at or below the permissible exposure limits (PELs) in this section. When appropriate controls do not reduce exposure to the PEL, they shall be used to reduce exposure as low as feasible and supplemented with respiratory protection.

(2) The following factors shall be used to determine whether an engineering or administrative control is feasible:

(i) Nature and extent of the overexposure.

(ii) The demonstrated effectiveness of available technology.

(iii) Whether committed resources would be wholly out of proportion to the expected results.

(3) Respiratory protection shall be used when—

(i) The concentration of an airborne substance exceeds the PEL in areas where controls are being established;

(ii) Controls to reduce exposure to the PEL are not feasible; or

(iii) Occasional entry into hazardous atmospheres is required to perform maintenance, investigation, or emergency cleanup.

(f) *Skin absorption.* Whenever a miner could have contact with any airborne substance designated by "Skin" in Table B-1 at levels above the PEL, personal protection shall be provided and used to prevent absorption through the skin. Direct skin contract with these substances in a nonairborne form shall also be prevented through use of provided personal protection.

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Common gases:							
Ammonia—BO0875000	25	18	35	27			
Carbon dioxide—FF6400000	5,000	9,000	30,000	54,000			
Carbon monoxide—FG3500000	35	40	200	229			
Hydrogen sulfide—MX1225000	10	14	15	21			
Nitric oxide—QX0525000	25	30					
Nitrogen dioxide—QW9800000	3	6	5	10			
	or						
			1	1.8			
Sulfur dioxide—WS4550000	2	5	5	10			

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m^3	ppm	mg/m^3	ppm	mg/m^3	
Common dusts:							
Cristobalite—VV7325000		0.05, Respirable dust					
Quartz—VV7330000		0.1, Respirable dust					
Tridymite—VV7335000		0.05, Respirable dust					
Respirable mine dust		5, Respirable dust (PELs for substances in the respirable mine dust shall also be met).					
Acetaldehyde—AB1925000	100	180	150	270			
Acetic acid—AF1225000	10	25	15	37			
Acetic anhydride—AK1925000					5	20	
Acetone—AL3150000	750	1,800	1,000	2,400			
Acetonitrile—AL7700000	40	70	60	105			X
2-Acetylaminofluorene—AB9450000—Restricted use, see § 58.401.							
Acetylene—AO9600000—Simple asphyxiant, see § 58.300(b).							
Acetylene tetrabromide—KI8225000	1	14					
Acetylsalicylic acid—VO0700000		5					
Acrolein—AS1050000	0.1	0.25	0.3	0.8			
Acrylamide—AS3325000—Restricted use, see also § 58.403		0.03					X
Acrylic acid—AS4375000	2	6					
Acrylonitrile—AT5250000—Restricted use, see also § 58.403.	2	4.5					X
Aldrin—IO2100000		0.25					X
Allyl alcohol—BA5075000	2	5	4	10			X
Allyl chloride—UC7350000	1	3	2	6			
Allyl glycidyl ether—RR0875000	5	22	10	44			X
Allyl propyl disulfide—JO0350000	2	12	3	18			
Aluminum:							
Metal & Oxide		10					
Pyro powders		5					
Welding fumes		5					
Soluble salts		2					
Alkyls (not otherwise classified)		2					
4-Aminodiphenyl—DU8925000—Restricted use, see § 58.401.							X
2-Aminopyridine—US1575000	0.5	2					
Amitrole—XZ3850000—Restricted use, see also § 58.403		0.2					
Ammonium chloride fume—BP4550000		10		20			
Ammonium perfluorooctanoate—RH0782000		0.1					
Ammonium sulfamate—WO6125000		10					
n-Amyl acetate—AJ1925000	100	525					
sec-Amyl acetate—AJ2100000	125	650					
Aniline & homologues	2	8					X
Anisidine (o-,p-isomers)—BZ5410000, BZ5450000	0.1	0.5					X
Antimony and compounds (as Sb)		0.5					
Antimony trioxide Production (as Sb)—Restricted use, see also § 58.404.							
ANTU—YT9275000		0.3					
Argon—CF2300000—Simple asphyxiant, see § 58.300(b)							
Arsenic & soluble compounds (as As)		0.2					
Arsenic trioxide production—Restricted use, see § 58.404							
Arsine—CG6475000	0.05	0.2					
Asbestos [1]—Restricted use, see also §§ 58.404 and 58.405		.2 fiber/cc		1 fiber/cc			
Asphalt (petroleum) fumes—CI9900000		5					
Atrazine—XY5600000		5					
Azinphos-methyl—TE1925000		0.2					X
Barium, soluble compounds (as Ba)		0.5					
Barium sulfate—CR0600000		10					
Benomyl—DD6475000	0.8	10					
Benzene—CY1400000—Restricted use, see also § 58.403		1		5			
Benzidine—DC9625000—Restricted use, see also § 58.401							X
Benzoyl peroxide—DM8575000		5					
Benzo(a)pyrene—DJ3675000—Restricted use, see § 58.401							
Benzyl chloride—XS8925000	1	5					
Beryllium and compounds—Restricted use, see also § 58.404.		0.002					
Biphenyl—DU8050000	0.2	1					
Bismuth telluride, Undoped—EB3110000		10					
Bismuth telluride, Se-doped	5						
Borates, tetra, sodium salts all forms		5					
Boron oxide—ED7900000		10					
Boron tribromide—ED7400000					1	10	
Boron trifluoride—ED2275000					1	3	
Bromacil—YQ9100000	1	10					
Bromine—EF9100000	0.1	0.7	0.3	2			

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m^3	ppm	mg/m^3	ppm	mg/m^3	
Bromine pentafluoride—EF9350000	0.1	0.7					
Bromoform—PB5600000	0.5	5					X
1,3-Butadiene—EI9275000—Restricted use, see also § 58.403.	10	22					
Butane—EI4200000	800	1,900					
2-Butoxyethanol—KJ8575000	25	120					X
n-Butyl acetate—AF7350000	150	710	200	950			
sec-Butyl acetate—AF7380000	200	950					
tert-Butyl acetate—AF7400000	200	950					
Butyl acrylate—UD3150000	10	55					
n-Butyl alcohol—EO1400000					50	150	X
sec-Butyl alcohol—EO1750000	100	305					
tert-Butyl alcohol—EO1925000	100	300	150	450			
Butylamine—EO2975000					5	15	X
tert-Butyl chromate (as CRO$_3$)—GB2900000						0.1	X
n-Butyl glycidyl ether—TX4200000	25	135					
n-Butyl lactate—OD4025000	5	25					
Butyl mercaptan—EK6300000	0.5	1.5					
o-sec-Butylphenol—SJ8920000	5	30					X
p-tert-Butyltoluene—SX8400000	10	60	20	120			
Cadmium and compounds—Restricted use, see also § 58.404.		.010					
	or						
		.005					
Calcium cyanamide—GS6000000		0.5					
Calcium (hydroxide and oxide forms)—EW2800000, EW3100000.		5					
Camphor, synthetic—EX1225000		2					
Caprolactam—CM3675000:							
Dust		1		3			
Vapor	5	20	10	40			
Captafol—GW4905000		0.1					X
Captan—GW5075000		5					
Carbaryl—FC5950000		5					
Carbofuran—FB9450000		0.1					
Carbon black—FF5800000		3.5					
Carbon disulfide—FF6650000	4	12	12	36			X
Carbon tetrabromide—FG4725000	0.1	1.4	0.3				
Carbon tetrachloride—FG4900000—Restricted use, see also § 58.402.	2	12.6					X
Carbonyl fluoride—FG6125000	2	5	5	15			
Catechol—UX1050000	5	20					X
Cesium hydroxide—FK9800000		2					
Chlordane—PB9800000		0.5					X
Chlorinated camphene—XW5250000		0.5		1			X
Chlorinated diphenyl oxide—KO4200000		0.5					
Chlorine—FO2100000	0.5	1.5	1	3			
Chlorine dioxide—FO3000000	0.1	0.3	0.3	0.9			
Chlorine trifluoride—FO2800000					0.1	0.4	
Chloroacetaldehyde—AB2450000					1	3	
Chloroacetone—UC0700000							
α-Chloroacetophenone—AM6300000	0.05	0.3					
Chloroacetyl chloride—AO6475000	0.05	0.2					
Chlorobenzene—CZ0175000	75	350					
o-Chlorobenzylidene malononitrile—OO3675000					0.05	0.4	X
Chlorobromomethane—PA5250000	200	1,050					
Chlorodifluoromethane—PA6390000	1,000	3,500					
Chlorodiphenyl:							
(42% Chlorine)—TQ1356000	1						X
(54% Chlorine)—TQ1360000	0.5						X
Chloroform—FS9100000—Restricted use, see also § 58.403	2	9.8					
bis(Chloromethyl) ether—KN1575000—Restricted use, see also § 58.401.	0.001	0.005					
Chloromethyl methyl ether—KN6650000—Restricted use, see also § 58.401.							
1-Chloro-1-nitropropane—TX5075000	2	10					
Chloropentafluoroethane—KH7877500	1,000	6,320					
Chloropicrin—PB6300000	0.1	0.7					
β-Chloroprene—EI9625000	10	35					X
o-Chlorostyrene—WL4160000	50	285	75	430			
o-Chlorotoluene—XS9000000	50	250	75	375			
Chlorpyrifos—TF6300000		0.2		0.6			X
Chromite ore processing (as Cr)—Restricted use, see also § 58.404.		0.5					
Chromium metal—GB4200000		0.5					
Chromium (II) compounds (as Cr)—GB6260000		0.5					
Chromium (III) compounds (as Cr)—GB6261000		0.5					
Chromium (VI) compounds (as Cr)—GB6262000		0.05					
Chromyl chloride—GB5775000	0.025	0.15					

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Chrysene—GC0700000—Restricted use, see § 58.401							
Clopidol—UU7711500		10					
Coal dust—GF8281000—If >5% quartz, use 10 divided by % quartz.		2					
Coal tar pitch volatiles (as benzene solubles)—GF8655000—Restricted use, see also § 58.404.		0.2					
Cobalt metal, dust and fume (as Co)		0.05					
Cobalt carbonyl—GG0300000		0.1					
Cobalt hydrocarbonyl (as Co)—GG0900000		0.1					
Copper:							
Fume		0.2					
Dusts and mists (as Cu)		1					
Cresol (all isomers)—GO5950000	5	22					X
Crotonaldehyde—GP9499000	2	6					
Crufomate—TB3850000		5					
Cumene—GR8575000	50	245					X
Cyanamide—GS5950000		2					
Cyanides (as CN)		5					X
Cyanogen—GT1925000	10	20					
Cyanogen chloride—GT2275000					0.3	0.6	
Cyclohexane—GU6300000	300	1,050					
Cyclohexanol—GV7875000	50	200					X
Cyclohexanone—GW1050000	25	100					X
Cyclohexene—GW2500000	300	1,015					
Cyclohexylamine—GX0700000	10	40					
Cyclonite—XY9450000		1.5					X
Cyclopentadiene—GY1000000	75	200					
Cyclopentane—GY2390000	600	1,720					
Cyhexatin—WH8750000		5					
2,4-D—AG6825000		10					
DDT (Dichlorodiphenyl-trichloroethane)—KJ3325000		1					X
Decaborane—HD1400000	0.05	0.3	0.15	0.9			X
Demeton—TF3150000	0.01	0.1					X
Diacetone alcohol—SA9100000	50	240					
Diatomaceous earth (uncalcined)—HL8600000		6					
Diazinon—TF3325000		0.1					X
Diazomethane—PA7000000	0.2	0.4					
Diborane—HQ9275000	0.1	0.1					
2-N-Dibutylaminoethanol—KK3850000	2	14					X
Dibutyl phenyl phosphate—TB9620600	0.3	3.5					X
Dibutyl phosphate—TB9605000	1	5	2	10			
Dibutyl phthalate—TI0875000		5					
Dichloroacetylene—AP1080000					0.1	0.4	
o-Dichlorobenzene—CZ4500000					50	300	
p-Dichlorobenzene—CZ4550000	75	450	110	675			
3,3'-Dichlorobenzidine—DD0525000—Restricted use, see § 58.401.							X
Dichlorodifluoromethane—PA8200000	1,000	4,950					
1,3-Dichloro-5,5-dimethyl hydantoin—MU0700000		0.2		0.4			
1,1-Dichloroethane—KI0175000	200	810	250	1,010			
1,2-Dichloroethylene—KV9360000	200	790					
Dichloroethyl ether	5	30	10	60			X
Dichlorofluoromethane—PA8400000	10	40					
1,1-Dichloro-1-nitroethane—KI1050000	2	10					
Dichloropropene—UC8310000	1	5					X
2,2-Dichloropropionic acid—UF0690000	1	6					
Dichlorotetrafluoroethane—KI1101000	1,000	7,000					
Dichlorvos—TC0350000	0.1	1					X
Dicrotophos—TC6500000		0.25					X
Dicyclopentadiene—PC1050000	5	30					
Dicyclopentadienyl iron—LK0700000		10					
Dieldrin—IO1750000		0.25					X
Diethanolamine—KL2975000	3	15					
Diethylamine—HZ8750000	10	30	25	75			X
2-Diethylaminoethanol—KK5075000	10	50					X
Diethylene triamine—IE1225000	1	4					X
Diethyl ketone—SA8050000	200	705					
Diethyl phthalate—TI1050000		5					
Difluorodibromomethane—PA7525000	100	860					
Diglycidyl ether—KN2350000	0.1	0.5					
Diisobutyl ketone—MJ5775000	25	150					
Diisopropylamine—IM4025000	5	20					X
Dimethyl acetamide—AB7700000	10	35					X
Dimethylamine—IP8750000	10	18					
4-Dimethylaminoazobenzene—BX7350000—Restricted use, see § 58.401.							
N,N-Dimethylaniline—BX4725000	5	25	10	50			X

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Dimethyl carbamoyl chloride—FD4200000—Restricted use, see § 58.401.							
Dimethylformamide—LQ2100000	10	30					X
1,1-Dimethylhydrazine—MU2450000—Restricted use, see also § 58.403.	0.5	1					X
Dimethylphthalate—TI1575000		5					
Dimethyl sulfate—WS8225000—Restricted use, see also § 58.403.	0.1	0.5					X
Dinitolmide—XS4200000		5					
Dinitrobenzene (all isomers)	0.15	1					X
Dinitro-o-cresol—GO9625000		0.2					X
Dinitrotoluene		1.5					X
Dioxane—JG8225000	25	90					X
Dioxathion—TE3350000		0.2					X
Diphenylamine—JJ7800000		10					
Dipropylene glycol methyl ether—JM1575000	100	600	150	900			X
Dipropyl ketone—MJ5600000	50	235					
Diquat—JM5690000		0.5					
Di-sec-octyl phthalate—TI0350000		5		10			
Disulfiram—JO1225000		2					
Disulfoton—TD9275000		0.1					X
2,6-Di-tert-butyl-p-cresol—GO7875000		10					
Diuron—YS8925000		10					
Divinyl benzene—CZ9450000	10	50					
Endosulfan—RB9275000		0.1					X
Endrin—IO1575000		0.1					X
Enflurane—KN6800000	75	575					
Epichlorohydrin—TX4900000	2	8					X
EPN—TB1925000		0.5					X
Ethane—KH3800000—Simple asphyxiant, see § 58.300(b)							
Ethanolamine—KJ5775000	3	8	6	15			
Ethion—TE4550000		0.4					X
2-Ethoxyethanol—KK8050000	5	19					X
2-Ethoxyethyl acetate—KK8225000	5	27					X
Ethyl acetate—AH5425000	400	1,400					
Ethyl acrylate—AT0700000—Restricted use, see also § 58.403.	5	20	15	61			X
Ethyl alcohol—KQ6300000	1,000	1,900					
Ethylamine—KH2100000	10	18					
Ethyl amyl ketone—MJ7350000	25	130					
Ethyl benzene—DA0700000	100	435	125	545			
Ethyl bromide—KH6475000	200	890	250	1,110			
Ethyl butyl ketone—MJ5250000	50	230					
Ethyl chloride—KH7525000	1,000	2,600					
Ethylene—KU5340000—Simple asphyxiant, see § 58.300(b)							
Ethylene chlorohydrin—KK0875000					1	3	X
Ethylenediamine—KH8575000	10	25					
Ethylene dibromide—KH9275000—Restricted use, see also § 58.401.							X
Ethylene dichloride—KI0525000—Restricted use, see also § 58.403.	1	4	2	8			
Ethylene glycol, vapor—KW2975000					50	125	
Ethylene glycol dinitrate—KW5600000				0.1			X
Ethylene oxide—KX2450000—Restricted use, see also § 58.403.	1	2	5				
Ethylenimine—KX5075000—Restricted use, see also § 58.402.	0.5	1					X
Ethyl ether—KI5775000	400	1,200	500	1,500			
Ethyl formate—LQ8400000	100	300					
Ethylidene norbornene—RB9450000					5	25	
Ethyl mercaptan—KI9625000	0.5	1					
N-Ethylmorpholine—QE4025000	5	23					X
Ethyl silicate—VV9450000	10	85					
Fenamiphos—TB3675000		0.1					X
Fensulfothion—TF3850000		0.1					
Fenthion—TF9625000		0.2					X
Ferbam—NO8750000		10					
Ferrovanadium dust—LK2900000		1		3			
Fibrous glass dust—LK3651000		10					
Fluorides (as F)		2.5					
Fluorine—LM6475000	1	2	2				
Fonofos—TA5950000		0.1					X
Formaldehyde—LP8925000—Restricted use, see also § 58.403.	1	1.5	2	3			
Formamide—LQ0525000	10	15					X
Formic acid—LQ4900000	5	9	10	18			
Furfural—LT7000000	2	8					X
Furfuryl alcohol—LU9100000	10	40	15	60			X

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Gasoline—LX3300000	300	900	500	1,500			
Germanium tetrahydride—LY4900000	0.2	0.6					
Glutaraldehyde—MA2450000					0.2	0.8	
Glycerin (mist)—MA8050000		10					
Glycidol—UB4375000	25	75					
Graphite (all forms)—MD9659600		2, Respirable dust					
Hafnium—MG4600000		0.5					
Halothane—KH6550000	50	400					
Helium—MH6520000—Simple asphyxiant, see § 58.300(b)							
Heptachlor—PC0700000		0.5					X
Heptane (n-Heptane)—MI7700000	400	1,600	500	2,000			
Hexachlorobutadiene—EJ0700000—Restricted use, see also § 58.403.	0.02	0.24					X
Hexachlorocyclopentadiene—GY1225000	0.01	0.1					
Hexachloroethane—KI4025000	1	10					
Hexachloronaphthalene—QJ7350000		0.2					X
Hexafluoroacetone—UC2450000	0.1	0.7					X
Hexamethylene diisocynate—MO1740000	0.005	0.035					
Hexamethyl phosphoramide—TD0875000—Restricted use, see § 58.401.							X
Hexane:							
n-Hexane—MN9275000	50	180					
other isomers—MO3380000	500	1,800	1,000	3,600			
sec-Hexyl acetate—SA7525000	50	300					
Hexylene glycol—SA0810000					25	125	
Hydrazine—MU7175000—Restricted use, see also § 58.403	0.1	0.1					X
Hydrogen—MW8900000—Simple asphyxiant, see § 58.300(b).							
Hydrogenated terphenyls—WZ6535000	0.5	5					
Hydrogen bromide—MW3850000					3	10	
Hydrogen chloride—MW9610000, MW9620000					5	7	
Hydrogen cyanide—MW6825000					10	10	X
Hydrogen fluoride (as F)—MW7875000					3	2.5	
Hydrogen peroxide—MX0900000	1	1.4					
Hydrogen selenide (as Se)—MX1050000	0.05	0.2					
Hydroquinone—MX3500000		2					
2-Hydroxypropyl acrylate—AT1925000	0.5	3					X
Indene—NK8225000	10	45					
Indium & compounds (as In)		0.1					
Iodine—NN1575000					0.1	1	
Iodoform—PB7000000	0.6	10					
Iron oxide fume (Fe_2O_3) (as Fe)—NO7400000		5					
Iron pentacarbonyl (as Fe)—NO4900000	0.1	0.8	0.2	1.6			
Iron salts, soluble (as Fe)		1					
Isoamyl acetate—NS9800000	100	525					
Isoamyl alcohol—EL5425000	100	360	125	450			
Isobutyl acetate—AI4025000	150	700					
Isobutyl alcohol—NP9625000	50	150					
Isooctyl alcohol—NS7700000	50	270					X
Isophorone—GW7700000					5	25	
Isophorone diisocyanate—NQ9370000	0.005	0.045	0.02				X
Isopropoxyethanol—KL5075000	25	105					
Isopropyl acetate—AI4930000	250	950	310	1,185			
Isopropyl alcohol—NT8050000	400	980	500	1,225			
Isopropylamine—NT8400000	5	12	10	24			
N-Isopropylaniline—BY4200000	2	10					X
Isopropyl ether—TZ5425000	500	2,100					
Isopropyl glycidyl ether—TZ3500000	50	240	75	360			
Ketene—OA7700000	0.5	0.9	1.5	3			
Lead, inorganic, dusts and fumes (as Pb)		0.15					
Lead arsenate (as $Pb_3(AsO_4)_2$)—CG0990000		0.15					
Lead chromate (as Cr)—GB2975000—Restricted use, see also § 58.403.		0.05					
Lindane—GV4900000		0.5					X
Lithium hydride—OJ6300000		0.025					
L.P.G. (liquified petroleum gas)—SE7545000	1,000	1,800					
Magnesium oxide fume—OM3850000		10					
Malathion—WM8400000		10					X
Maleic anhydride—ON3675000	0.25	1					
Manganese (as Mn) Dust and compounds Fume		5					
		1		3			
Manganese cyclopentadienyl tricarbonyl (as Mn)—OO9720000.		0.1					X
Mercury (as Hg):							
Alkyl compounds	0.01		0.03				X
All forms except alkyl Vapor	0.05						X
Aryl and inorganic compounds	0.1						X
Mesityl oxide—SB4200000	15	60	25	100			

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Methacrylic acid—OZ2975000	20	70					X
Methane—PA1490000—Simple asphyxiant, see § 58.300(b)							
Methomyl—AK2975000		2.5					
Methoxychlor—KJ3675000		10					
2-Methoxyethanol—KL5775000	5	16					X
2-Methoxyethyl acetate—KL5950000	5	24					X
4-Methoxyphenol—SL7700000		5					
Methyl acetate—AI9100000	200	610	250	760			
Methyl acetylene—UK4250000	1,000	1,650					
Methyl acetylene-propadiene mixture (MAPP)—UK4920000	1,000	1,800	1,250	2,250			
Methyl acrylate—AT2800000	10	35					X
Methylacrylonitrile—UD1400000	1	3					X
Methylal—PA8750000	1,000	3,100					
Methyl alcohol—PC1400000	200	260	250	310			X
Methylamine—PF6300000	10	12					
Methyl n-amyl ketone—MJ5075000	50	235					
N-Methyl aniline—BY4550000	0.5	2					X
Methyl bromide—PA4900000	5	20					X
Methyl n-butyl ketone—MP1400000	5	20					
Methyl chloride—PA6300000	50	105	100	205			
Methyl chloroform—KJ2975000	350	1,900	450	2,450			
Methyl 2-cyanoacrylate—AS7000000	2	8	4	16			
Methylcyclohexane—GV6125000	400	1,600					
Methylcyclohexanol—GW0175000	50	235					
o-Methylcyclohexanone—GW1750000	50	230	75	345			X
2-Methylcyclopentadienyl manganese tricarbonyl (as Mn)—OP1450000.		0.2					X
Methyl demeton—TG1760000		0.5					X
Methylene bisphenyl isocyanate—NQ9350000	0.005	0.055					
Methylene chloride—PA8050000—Restricted use, see also § 58.403.	50	175	500	1,740			
4,4'-Methylene bis(2-chloroaniline)—CY1050000—Restricted use, see also § 58.402.	0.02	0.22					X
Methylene bis(4-cyclo-hexylisocyanate)—NQ9250000	0.005	0.055					
4,4'-Methylene dianiline—BY5425000—Restricted use, see also § 58.403.	0.1	0.8					X
Methyl ethyl ketone—EL6475000	200	590	300	885			
Methyl ethyl ketone peroxide—EL9450000					0.2	1.5	
Methyl formate—LQ8925000	100	250	150	375			
Methyl hydrazine—MV5600000—Restricted use, see also § 58.403.					0.5	0.35	X
Methyl iodide—PA9450000—Restricted use, see also § 58.403.	2	10					X
Methyl isoamyl ketone—MP3850000	50	240					
Methyl isobutyl carbinol—SA7350000	25	100	40	165			X
Methyl isobutyl ketone—SA9275000	50	205	75	300			
Methyl isocyanate—NQ9450000	0.02	0.05					X
Methyl isopropyl ketone—EL9100000	200	705					
Methyl mercaptan—PB4375000	0.5	1					
Methyl methacrylate—OZ5075000	100	410					
Methyl parathion—TG0175000		0.2					X
Methyl propyl ketone—SA7875000	200	700	250	875			
Methyl silicate—VV9800000	1	6					
α-Methyl styrene—WL5075300	50	240	100	485			
Metribuzin—XZ2990000		5					
Mevinphos—GQ5250000	0.01	0.1	0.03	0.3			X
Mica—VV8760000		3, Respirable dust					
Mineral wool fiber		10					
Molybdenum (as Mo):							
Soluble compounds		5					
Insoluble compounds		10					
Monocrotophos—TC4375000		0.25					
Morpholine—QD6475000	20	70	30	105			X
Naled—TB9450000		3					X
Naptha (Coal Tar)—DE3030000	100	400					
Naphthalene—QJ0525000		10	50	15	75		
α-Naphthylamine—QM1400000—Restricted use, see § 58.401.							
β-Naphthylamine—QM2100000—Restricted use, see § 58.401.							
Neon—QP4450000—Simple asphyxiant, see § 58.300(b)							
Nickel:							
Metal—QR5950000		1					
Soluble compounds (as Ni)		0.1					
Nickel carbonyl (as Ni)—QR6300000	0.001	0.007					
Nickel sulfide roasting, fume and dust (as Ni)—Restricted use, see § 58.404.		1					
Nicotine—QS2500000		0.5					X

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m^3	ppm	mg/m^3	ppm	mg/m^3	
Nitrapyrin—US7525000		10		20			
Nitric acid—QU5775000	2	5	4	10			
p-Nitroaniline—BY7000000		3					X
Nitrobenzene—DA6475000	1	5					X
p-Nitrochlorobenzene—CZ1050000	0.1	0.6					X
4-Nitrodiphenyl—DV5600000—Restricted use, see § 58.401							
Nitroethane—KI5600000	100	310					
Nitrogen—QW9700000—Simple asphyxiant, see § 58.300(b)							
Nitrogen trifluoride—QX1925000	10	29					
Nitroglycerin—QX2100000				0.1			X
Nitromethane—PA9800000	100	250					
1-Nitropropane—TZ5075000	25	90					
2-Nitropropane—TZ5250000—Restricted use, see also § 58.403.	10	35					
N-Nitrosodimethylamine—IQ0525000—Restricted use, see § 58.401.							X
Nitrotoluene (o-,m-,p-isomers)—XT3150000, XT2975000, XT3325000.	2	11					X
Nitrous oxide—QX1350000	50	91					
Nonane—RA6115000	200	1,050					
Octachloronaphthalene—QK0250000		0.1		0.3			X
Octane—RG8400000	300	1,450	375	1,800			
Oil mist, mineral—PY8030000		5		10			
Osmium tetroxide (as Os)—RN1140000	0.0002	0.002	0.0006	0.006			
Oxalic acid—RO2450000		1		2			
Oxygen difluoride—RS2100000					0.05	0.1	
Ozone—RS8225000					0.1	0.2	
Paraffin wax fume—RV0350000		2					
Paraquat, respirable dust—DW1960000		0.1					X
Parathion—TF4550000		0.1					X
Pentaborane—RY8925000	0.005	0.01	0.015	0.03			
Pentachloronaphthalene—QK0300000		0.5					X
Pentachlorophenol—SM6300000		0.5					X
Pentane—RZ9450000	600	1,800	750	2,250			
Perchloroethylene—KX3850000—Restricted use, see also § 58.403.	25	170					
Perchloromethyl mercaptan—PB0370000	0.1	0.8					
Perchloryl fluoride—SD1925000	3	14	6	28			
Perlite—SD5254000		10					
Phenol—SJ3325000	5	19					X
Phenothiazine—SN5075000		5					X
N-Phenyl-β-naphthylamine—QM4550000—Restricted use, see § 58.401.							
p-Phenylene diamine—SS8050000		0.1					X
Phenyl ether vapor—KN8970000	1	7	2	14			
Phenyl glycidyl ether—TZ3675000	1	6					
Phenylhydrazine—MV8925000—Restricted use, see also § 58.403.	5	20	10	45			X
Phenyl mercaptan—DC0525000	0.5	2					
Phenylphosphine—SZ2100000					0.05	0.25	
Phorate—TD9450000		0.05		0.2			X
Phosgene—SY5600000	0.1	0.4					
Phosphine—SY7525000	0.3	0.4	1	1			
Phosphoric acid—TB6300000		1		3			
Phosphorus (yellow)—TH3500000		0.1					
Phosphorus oxychloride—TH4897000	0.1	0.6					
Phosphorus pentachloride—TB6125000	0.1	1					
Phosphorus pentasulfide—TH4375000		1		3			
Phosphorus trichloride—TH3675000	0.2	1.5	0.5	3			
Phthalic anhydride—TI3150000	1	6					
m-Phthalodinitrile—CZ1900000		5					
Picloram—TJ7525000		10		20			
Picric acid—TJ7875000		0.1		0.3			X
Pindone—NK8300000		0.1					
Piperazine dihydrochloride—TL4025000		5					
Platinum:							
Metal—TP2160000—		1					
Soluable salts (as Pt)		0.002					
Portland cement—VV8770000		10					
Potassium hydroxide—TT2100000						2	
Propane—TX2275000—Simple asphyxiant, see § 58.300(b)							
Propane sultone—RP5425000—Restricted use, see § 58.401.							
Propargyl alcohol—UK5075000	1	2					X
β-Propiolactone—RQ7350000—Restricted use, see also § 58.402.	0.5	1.5					
Propionic acid—UE5950000	10	30					
Propoxur—FC3150000		0.5					

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m^3	ppm	mg/m^3	ppm	mg/m^3	
n-Propyl acetate—AJ3675000	200	840	250	1,050			
Propyl alcohol—UH8225000	200	500	250	625			
Propylene—UC6740000—Simple asphyxiant, see § 58.300(b).							
Propylene dichloride—TX9625000	75	350	110	510			
Propylene glycol dinitrate—TY6300000	0.05	0.3					X
Propylene glycol monomethyl ether	100	360	150	540			
Propylene imine—CM8050000—Restricted use, see also § 58.403.	2	5					X
Propylene oxide—TZ2975000	20	50					
n-Propyl nitrate—UK0350000	25	105	40	170			
Pyrethrum—UR4200000		5					
Pyridine—UR8400000	5	15					
Quinone—DK2625000	0.1	0.4					
Resorcinol—VG9625000	10	45	20	90			
Rhodium:							
Metal—VI9069000		1					
Insoluble compounds (as Rh)		1					
Soluble compounds (as Rh)		0.01					
Ronnel—TG0525000		10					
Rosin core solder pyrolysis products (as formaldehyde)		0.1					
Rotenone (commercial)—DJ2800000		5					
Rubber solvent—VL8047000	400	1,600					
Selenium compounds (as Se)		0.2					
Selenium hexafluoride (as Se)—VS9450000	0.5	0.2					
Sesone—KK4900000		10					
Silica, fused—VV7328000		0.1, Respirable dust					
Silica, gel—VV8850000		6					
Silica, precipitated—VV8850000		6					
Silicon—VW0400000		6					
Silicon carbide—VW0450000		6					
Silicon tetrahydride—VV1400000	5	7					
Silver:							
Metal, dust and fume		0.01					
Soluble compounds (as Ag)		0.01					
Soapstone—VV8780000:							
Respirable		3					
Total		6					
Sodium azide—VY8050000:							
as HN_3 vapor					0.1		X
as NaN_3						0.3	X
Sodium bisulfite—VZ2000000		5					
Sodium fluoracetate—AH9100000		0.5		0.15			X
Sodium hydroxide—WB4900000						2	
Sodium metabisulfite—UX8225000		5					
Stibine—WJ0700000	0.1	0.5					
Stoddard solvent—WJ8925000	100	525					
Strychnine—WL2275000		0.15					
Styrene, monomer—WL3675000	50	215	100	425			
Subtilisins (Proteolytic enzymes as 100% pure crystalline enzyme)—CO9450000, CO9550000.						0.00006	
Sulfotep—XN4375000		0.2					X
Sulfur hexafluoride—WS4900000	1,000	6,000					
Sulfuric acid—WS5600000		1		3			
Sulfur monochloride—WS4300000					1	6	
Sulfur pentafluoride—WS4480000					0.01	0.1	
Sulfur tetrafluoride—WT4800000					0.1	0.4	
Sulfuryl fluoride—WT5075000	5	20	10	40			
Sulprofos—TE4165000		1					
2,4,5-T—AJ8400000		10					
Talc (containing no asbestos fibers)—WW2710000		2.5, Respirable dust					
Talc (containing asbestos fibers)—WW2700000—Use asbestos PEL.							
Tantalum—WW5505000		5					
Tellurium and compounds (as Te)		0.1					
Tellurium hexafluoride (as Te)—WY2800000	0.02	0.2					
Temephos—TF6890000		10					
TEPP—UX6825000	0.004	0.05					X
Terphenyls—WZ6450000					0.5	5	
1,1,1,2-Tetrachloro-2,2-difluoroethane—KI1425000	500	4,170					
1,1,2,2-Tetrachloro-1,2-difluoroethane—KI1420000	500	4,170					
1,1,2,2-Tetrachloroethane—KI8575000	1	7					X
Tetrachloronaphthalene—QK3700000		2					X
Tetraethyl lead (as Pb)—TP4550000		0.075					X
Tetrahydrofuran—LU5950000	200	590	250	735			
Tetramethyl lead (as Pb)—TP4725000		0.075					X
Tetramethyl succinonitrile—WN4025000	0.5	3					X
Tetranitromethane—PB4025000	1	8					

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m^3	ppm	mg/m^3	ppm	mg/m^3	
Tetrasodium pyrophosphate—UX7350000		5					
Tetryl—BY6300000		1.5					
Thallium, soluble compounds (as T1)		0.1					X
4,4'-Thiobis(6-tert-butyl-m-cresol)—GP3150000		10					
Thioglycolic acid—AI5950000	1	4					X
Thionyl chloride—XM5150000					1	5	
Thiram—JO1400000		1					
Tin:							
Metal—XP7320000		2					
Oxide and inorganic compounds, except SnH$_4$ (as Sn)		2					
Organic compounds (as Sn)		0.1		0.2			X
o-Tolidine—DD1225000—Restricted use, see § 58.401							X
Toluene—XS5250000	100	375	150	560			
Toluene-2,4-diisocyanate—CZ6300000	0.005	0.04	0.02	0.15			
o-Toluidine—XU2975000—Restricted use, see also § 58.403	2	9					X
m-Toluidine—XU2800000	2	9					X
p-Toluidine—XU3150000—Restricted use, see also § 58.403	2	9					X
Tributyl phosphate—TC7700000	0.2	2.5					
Tricholoracetic acid—AJ7875000	1	7					
1,2,4-Trichlorobenzene—DC2100000					5	40	
1,1,2-Trichloroethane—KJ3150000	10	45					X
Trichloroethylene—KX4550000	50	270	200	1,080			
Trichlorofluoromethane—PB6125000					1,000	5,600	
Trichloronaphthalene—QK4025000		5					X
1,2,3-Trichloropropane—TZ9275000	10	60					X
1,1,2-Trichloro-1,2,2-trifluoroethane—KJ4000000	1,000	7,600	1,250	9,500			
Triethylamine—YE0175000	10	40	15	60			
Trifluorobromomethane—PA5425000	1,000	6,100					
Trimellitic anhydride—DC2050000	0.005	0.04					
Trimethylamine—PA0350000	10	24	15	36			
Trimethyl benzene—DC3220000	25	125					
Trimethyl phosphite—TH1400000	2	10					
2,4,6-Trinitrotoluene—XU0175000		0.5					X
Triorthocresyl phosphate—TD0350000		0.1					X
Triphenyl amine—YK2680000		5					
Triphenyl phosphate—TC8400000		3					
Tripoli—VV7336000		0.1 of contained respirable quartz.					
Tungsten (as W):							
Insoluble compounds		5		10			
Soluble compounds		1		3			
Turpentine—YO8400000	100	560					
Uranium (as U):							
Soluble compounds		0.05					
Insoluble compounds		0.2		0.6			
n-Valeraldehyde—YV3600000	50	175					
Vanadium metal and Vanadium carbide (as V)—YW1355000, YW1400000.		1					
Vanadium compounds (as V)						0.05	
Vinyl acetate—AK0875000	10	30	20	60			
Vinyl bromide—KU8400000—Restricted use, see also § 58.403.	5	20					
Vinyl chloride—KU9625000—Restricted use, see also § 58.402.	1		5				
Vinyl cyclohexene dioxide—RN8640000—Restricted use, see also § 58.403.	10	60					X
Vinylidene chloride—KV9275000	1	4					
Vinyl toluene—WL5075000	50	240	100	485			
VM & P Naphtha—OI6180000	300	1,350					
Warfarin—GN4550000		0.1					
Welding fumes not otherwise classified		5					
Wood dust—ZC9850000:							
Hard wood		1					
Soft wood		5		10			
Xylene (o-,m-,p-isomers)—ZE2450000, ZE2275000, ZE2625000.	100	435	150	655			
m-Xylene α,α'-diamine—PF8970000						0.1	X
Xylidine—ZE8575000—Restricted use, see also § 58.403	0.5	2.5					X
Yttrium—ZG2980000		1					
Zinc chloride fume—ZH1400000		1					
Zinc chromate (as Cr)—GB3290000, GB3300000—Restricted use, see also § 58.403.		0.01					
Zinc oxide fume—ZH4810000		5		10			
Zirconium compounds (as Zr)		5		10			

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[1] Fibers greater than 5 microns in length, as determined by the membrane filter method at 400–450 magnification (4 millimeter objective) phase contrast illumination. Asbestos is defined as chrysotile, amosite, crocidolite, anthophyllite asbestos, tremolite asbestos, and actinolite asbestos and any of these minerals that have been chemically treated or altered.

§ 58.200 Exposure monitoring.

(a) *Frequency.* For miners exposed to substances listed in Table B–1, the mine operator shall monitor their exposure—

(1) When the operator has reason to believe that a change in production, process, materials, equipment, or engineering or administrative controls would increase a substance's concentration above the PEL;

(2) Upon installation of controls;

(3) Upon modification of controls used to reduce exposure to the PEL; and

(4) At least once every 3 months if respirators are required to be worn because a substance's concentration is above the PEL.

(b) *Cessation of monitoring.* Monitoring required by paragraphs (a)(1), (a)(2), and (a)(3) of this section shall no longer be required when airborne concentrations are determined to be at or below the PEL with 95 percent confidence.

(c) *Monitoring procedures.* Monitoring samples shall be—

(1) Representative of the affected miners' exposures;

(2) Collected and analyzed by appropriate instrumentation and methods. Instruments used to measure exposures shall be maintained and calibrated; and

(3) Collected and analyzed by a person trained or experienced in the monitoring procedures.

(d) *Recordkeeping.* The mine operator shall record the results of required exposure monitoring and retain these records for 5 years. These records shall include the following:

(1) Date of sampling.

(2) Name of miner or location of work area where each sample was collected.

(3) Substances sampled.

(4) Sampling and analytical method used, including error factor.

(5) Time or duration of each sample.

(6) Concentrations of each substance determined by sampling.

(7) Names of persons conducting the sampling and analysis.

(8) The corrective action being taken if exposure exceeds the PEL.

(e) *Access to exposure records.* (1) Upon request, the mine operator shall ensure immediate access to exposure records to the following:

(i) Miners whose exposures are included in the records.

(ii) The miners' representative for miners whom they represent.

(iii) The miner's designated representative.

(iv) Authorized representatives of the Secretary of Labor or the Secretary of Health and Human Services.

(2) Former employees shall have access to their exposure records during the five-year retention period.

(3) A copy of the record shall be provided without cost to the miner or representative.

(4) Whenever a mine operator is ceasing to do business, the operator shall transfer all records subject to this section to the successor operator. The successor operator shall receive and maintain these records for the period required by this section. Whenever an operator is ceasing to do business and there is no successor operator to receive and maintain the records subject to this section, the operator shall notify the affected employees of their rights of access to records at least 3 months prior to disposal of the records.

(f) *Observation of monitoring.* The mine operator shall provide affected miners or their representatives with an opportunity to observe exposure monitoring required by this section.

(g) *Notification of overexposure.* When a sample indicates that a miner's exposure exceeds the PEL for any substance listed in Table B–1, the mine operator shall notify the miner in writing within 15 calendar days following receipt of sampling results of the overexposure and the corrective action being taken.

§ 58.300 Dangerous atmospheres.

(a) The atmosphere shall be tested for suspected hazardous gases and vapors and oxygen deficiency prior to entrance into any of the following areas:

(1) Silos, vats, tanks, and other confined spaces with atmospheres that could contain or produce dangerous levels of air contaminants.

(2) Areas where there has been a liberation of contaminants in sufficient quantities that could result in acute respiratory exposure that poses an immediate threat of loss of life, immediate or delayed irreversible adverse health effects, or acute eye exposure that would prevent escape from a hazardous atmosphere (IDLH atmosphere).

(b) Air in work areas shall contain at least 19.5 percent oxygen by volume. If the oxygen content of the air falls below 19.5 percent, all miners affected shall be withdrawn unless they are using respiratory protection in accordance with § 58.500, and immediate action shall be taken to restore the level to at least 19.5 percent.

(c) The following precautions shall be taken when entering a dangerous atmosphere in an area listed in paragraph (a) of this section or an oxygen-deficient atmosphere listed in paragraph (b) of this section:

(1) Respiratory protection shall be used in accordance with the respiratory protection program required by § 58.500.

(2) There shall be two standby persons outside the affected area with backup equipment and rescue capabilities, or one standby person with appropriate equipment outside the affected area who could rescue the other person without entering the area.

(3) Communication (visual, voice, signal-box, radio, or other means) shall be maintained with the persons exposed.

Subpart C—Carcinogens

§ 58.401 Class 1 carcinogens.

(a) Liquids, solids, or gases containing class 1 carcinogens in concentrations that exceed those listed in Table C–1 shall not be processed, used, handled, packaged, or stored except under restricted-use conditions and procedures approved by MSHA. At a minimum, the condition and procedures shall include specifications for the use of engineering controls, personal protection, and administrative measures that ensure virtually no contact with a class 1 carcinogen. The conditions and procedures shall also include emergency and decontamination procedures, monitoring and training requirements associated with the class 1 carcinogen. Exposure to class 1 carcinogens that have PELs on Table B–1 shall be further controlled in accordance with § 58.100 of this part. Rotation of workers shall not be used to comply with the PEL.

(b) *Approval procedures.* The mine operator shall submit proposed conditions or procedures for class 1 carcinogens for approval to the Administrator, Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(1) The Administrator shall approve or disapprove the operator's submission within 120 days from its receipt by MSHA. The Administrator shall notify the operator in writing of specific reasons for disapproval of any condition or procedures and provide the operator with an opportunity to discuss necessary changes.

(2) The operator shall notify the Administrator of any significant change or modification in conditions or procedures approved by MSHA.

(3) Approval of the conditions or procedures may be revoked if, based on new evidence unavailable at the time of approval, MSHA finds that they are inadequate to protect the health of miners. The Administrator shall notify the operator in writing or modifications

that must be made in order for the operator to retain use approval. The Administrator shall provide a reasonable opportunity to implement the changes before MSHA revokes the operator's approval.

(c) *Appeal procedures*. A decision by the Administrator to disapprove or revoke approval of any part of an operator's conditions or procedures may be appealed to the Assistant Secretary for Mine Safety and Health, 4015 Wilson Boulevard, Arlington, Virginia 22203. The appeal shall be submitted within 30 days of notification of the decision made by the Administrator. The Assistant Secretary shall provide a written determination to the operator within 30 days of receipt of the appeal.

(d) *Availability of approval*. The operator shall make a copy of the MSHA-approved conditions of procedures available at the mine site for inspection by MSHA and examination by miners and their representatives.

TABLE C–1.—CLASS 1 CARCINOGENS

Carcinogen	Concentration, percent (weight or volume)
2-Acetylaminofluorene	.1
4-Aminodiphenyl	.1
Benzidine	.1
Benzo(a)pyrene (commercially manufactured)	.1
bis(Chloromethyl) ether	.1
Chloromethyl methyl ether	.1
Chrysene (commercially manufactured)	.1
3,3'-Dichlorobenzidine	.1
4-Dimethylaminoazobenzene	.1
Dimethyl carbamoyl chloride	.1
Ethylene dibromide	.1
Hexamethyl phosphoramide	.1
α-Naphthylamine	.1
α-Naphthylamine	.1
4-Nitrodiphenyl	.1
N-Phenyl-β-naphthylamine	.1
Propane sultone	.1
o-Tolidine	.1

§ 58.402 Class 2 carcinogens.

Exposure to liquids, solids, or gases containing class 2 carcinogens in concentrations that exceed those listed in Table C–2 shall be controlled by implementation of the following requirements. Exposure to class 2 carcinogens that have PELs on Table B–1 shall also meet requirements of § 58.100 of this part. Rotation of workers shall not be used to comply with the PEL.

(a) The mine operator shall establish a restricted area where a class 2 carcinogen is processed, used, packaged, handled, or stored.

(b) Entrances to the restricted area shall be posted with signs stating the nature of the hazard. Appropriate instructions shall be posted informing persons of the procedures that must be followed when entering or leaving the restricted area.

(c) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area.

(d) The restricted area shall be controlled by engineering controls and administrative measures to prevent contamination of nonrestricted areas.

(e) The introduction or removal of any equipment, material, or other items to or from restricted areas shall be done in a manner that does not contaminate nonrestricted areas.

(f) Containers of class 2 carcinogens or materials contaminated by them shall be clearly marked and their contents identified. The containers shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(g) Class 2 carcinogens shall be processed or used in an isolated system, closed system, laboratory-type hood, or in any system that offers equivalent protection against entry of the substances into a restricted or nonrestricted area.

(h) At the beginning of each shift, prior to entering a restricted area, miners shall be provided with and wear clean, full-body protective clothing (such as smocks, coveralls, or long-sleeved shirts and pants), work shoes or shoe covers, gloves, and other appropriate personal protection.

(i) Prior to exiting a restricted area, miners shall remove and leave protection clothing and equipment at the point of exit. At the last exit of the day, miners shall place clothing and equipment in impervious containers at the point of exit for purposes of decontamination and disposal.

(j) Miners shall wash hands, forearms, face and neck at each exit from a restricted area close to the point of exit and before engaging in other activities.

(k) Miners shall shower after the last exit of the day.

(l) Written decontamination, disposal, and emergency procedures shall be developed and implemented for the restricted area and process.

(m) At least once every 12 months, the mine operator shall monitor to evaluate the continued effectiveness of controls and decontamination procedures, using appropriate instrumentation and methods.

(n) Prior to initial assignment and at least once every 12 months, miners required to enter the restricted area or who are involved in maintenance on contaminated equipment, decontamination, disposal, and emergency response shall receive training on the risks and hazards of the class 2 carcinogens being used and the decontamination and emergency procedures to be followed.

TABLE C–2.—CLASS 2 CARCINOGENS

	Concentration percent (weight or volume)
Carbon tetrachloride	.1
Ethylenimine	.1
4,4'-Methylene bis(2-chloroaniline)	.1
β-Propiolactone	.1
Vinyl chloride	.1

§ 58.403 Class 3 carcinogens.

Exposure to liquids, solids, or gases containing class 3 carcinogens in concentrations that exceed those listed in Table C–3 shall be controlled by implementation of the following requirements. Exposure to class 3 carcinogens that have PELs on Table B–1 shall also meet the requirements of § 58.100 of this part. Rotation of workers shall not be used to comply with the PEL.

(a) The mine operator shall establish a restricted area where a class 3 carcinogen is found to be above the PEL or STEL or may be anticipated to be above the PEL or STEL.

(b) Entrances to the restricted area shall be posted with signs stating the nature of the hazard. Appropriate instructions shall be posted informing persons of the procedures that must be followed when entering or leaving the restricted area.

(c) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area or in any area where these items may come into direct contact with the carcinogen.

(d) The restricted area shall be controlled by engineering and administrative measures.

(e) The introduction or removal of any equipment, material, or other items to or from restricted areas, or equipment, materials, or other items contaminated with the carcinogen, shall be done in a manner that does not contaminate nonrestricted areas.

(f) Containers of class 3 carcinogens or materials contaminated by them shall be clearly marked and their contents identified. The containers shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(g) For emergency control activities and where direct contact with the carcinogen is possible, miners shall be provided with wear clean, full-body protective clothing (such as smocks, coveralls, or long-sleeved shirts and pants), work shoes or shoe covers, gloves, and other appropriate personal protection.

(h) Prior to the end of the shift and after completion of emergency control activities or any work involving direct contact with the carcinogen, miners shall place protective clothing and equipment in impervious containers for purposes of decontamination and disposal.

(i) After completion of emergency control activities or any work involving direct contact with the carcinogen, miners shall wash hands, forearms, face and neck before engaging in other activities and shower at the end of the shift.

(j) Written decontamination, disposal, and emergency procedures shall be developed and implemented for the restricted area and process.

(k) At least once every 12 months, the mine operator shall monitor to evaluate the continued effectiveness of controls and decontamination procedures, using appropriate instrumentation and methods.

(l) Prior to initial assignment and at least once every 12 months, miners required to enter the restricted area or who are involved in maintenance on contaminated equipment, decontamination, disposal, and emergency response shall receive training on the risks and hazards of the class 3 carcinogens being used and the decontamination and emergency procedures to be followed.

TABLE C–3.—CLASS 3 CARCINOGENS

	Concentration percent (weight or volume)
Acrylamide	.1
Acrylonitrile	.1
Amitrole	.1
Benzene	5.0
1,3-Butadiene	.1
Chloroform	.1
1,1-Dimethylhydrazine	.1
Dimethyl sulfate	.1
Ethyl acrylate	.1
Ethylene dichloride	.1
Ethylene oxide	.1
Formaldehyde	.1
Hexachlorobutadiene	.1
Hydrazine	.1
Lead chromate	5.0
Methylene chloride	.1
4,4'-Methylene dianiline	.1
Methyl hydrazine	.1
Methyl iodide	.1
2-Nitropropane	.1
Perchloroethylene	.1
Phenylhydrazine	.1
Propylene imine	.1
o-Toluidine	.1
p-Toluidine	.1
Vinyl bromide	.1
Vinyl cyclohexene dioxide	.1
Xylidine	.1
Zinc chromate	5.0

§ 58.404 Class 4 carcinogens.

Exposure to liquids, solids, or gases containing class 4 carcinogens in concentrations exceeding those listed in Table C–4 or a process listed in Table C–4 shall be controlled by implementation of the following requirements. Exposure to class 4 carcinogens that have PELs on Table B–1 shall also meet the requirements of § 58.100 of this part. Rotation of workers shall not be used to comply with the PEL.

(a) The area where a class 4 carcinogen is processed, packaged, used, handled, or stored shall be restricted to essential personnel.

(b) Entrances to the restricted area shall be posted with signs stating the natue of the hazard. Appropriate instructions shall be posted informing miners of the procedures that must be followed when entering or leaving the restricted area.

(c) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area.

(d) At the beginning of each shift, prior to entering the restricted area, miners shall be provided with and wear clean, full-body protective clothing (such as smocks, coveralls, or long-sleeved shirts and pants), work shoes or shoe covers, gloves, and other appropriate personal protection.

(e) Prior to exiting a restricted area, miners shall remove and leave protective clothing and equipment at the point of exit. At the last exist of the day, miners shall place clothing and equipment in impervious containers at the point of exit for purposes of decontamination and disposal.

(f) Miners shall wash hands, forearms, face and neck at each exit from a restricted area close to the point of exit and before engaging in other activities.

(g) Miners shall shower upon the last exit of the day.

(h) Containers of class 4 carcinogens shall be clearly marked and their contents identified. The container shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(i) Written decontamination, disposal, and emergency procedures shall be developed and implemented for the restricted area and process.

(j) At least once every 12 months, the mine operator shall monitor to evaluate the continued effectiveness of controls and decontamination procedures, using appropriate instrumentation and methods.

(k) Prior to initial assignment and at least once every 12 months, miners required to enter the restricted area or who are involved in decontamination, disposal, and emergency response shall receive training on the risks and hazards of the class 4 carcinogens being used and the decontamination and emergency procedures to be followed.

TABLE C–4.—CLASS 4 CARCINOGENS

	Concentration, percent (weight or volume)
Asbestos mining and milling	
Antimony trioxide production	
Arsenic trioxide production	
Beryllium and compounds (except welding)	.1
Cadmium compounds (except welding)	.1
Chromite ore processing (Chromate) as Cr	
Coal tar pitch volatiles	2.0
Nickel sulfide roasting	
Vermiculite mining and milling where asbestos is present in concentrations greater than one percent in the ore or concentrate	

§ 58.405 Asbestos construction work.

Exposure to asbestos resulting from asbestos construction work shall be controlled by implementation of the following requirements. Exposure to asbestos in these situations shall also meet the requirements of § 58.100 of this part. Rotation of workers shall not be used to comply with the PEL. For purposes of this section, asbestos construction work means construction work such as demolition or salvage of structures where asbestos is present; installation, removal, or encapsulation of asbestos and materials containing greater than 0.1 percent asbestos; spill and emergency cleanup of asbestos and material containing greater than 0.1 percent asbestos; transportation, disposal, storage or containment of asbestos or materials containing greater than 0.1 percent asbestos on the site or location at which construction activities are performed.

(a) The operator shall designate a person to be responsible for the asbestos construction work who will have authority to take prompt corrective action to eliminate hazards. This person shall have had comprehensive training on the hazards of asbestos and asbestos construction work, such as a course conducted by an EPA Asbestos Training Center, or be a certified industrial hygienist (C.I.H.) certified by the American Board of Industrial Hygiene, or be certified for asbestos construction work by a state program.

(b) The area where asbestos construction work is being done shall be restricted to essential personnel.

(c) Entrances to the restricted area shall be posted with signs stating the nature of the hazard. Appropriate instructions shall be posted informing miners of the procedures that must be followed when entering or leaving the restricted area.

(d) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area.

(e) At the beginning of each shift, prior to entering a restricted area, miners shall be provided with and wear clean, full-body protective clothing (such as coveralls, or long-sleeved shirts and pants), work shoes or shoe covers, gloves, head covers, and other appropriate personal protection.

(f) Prior to exiting a restricted area, miners shall remove and leave protective clothing and equipment at the point of exit. At the last exit of the day, miners shall place clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal.

(g) Miners shall shower immediately after each exit.

(h)(1) Whenever feasible, the mine operator shall establish negative-pressure enclosures before beginning removal, demolition, or renovation operations.

(2) For small-scale, short-duration activities involving removal of asbestos-containing insulation on pipes, removal of entire and intact asbestos-insulated pipes or structures, and replacement of electrical conduits through or near asbestos-containing material, glove bags and wet methods may be used instead of negative-pressure enclosures.

(i) Daily monitoring shall be conducted in the restricted area if the exposure exceeds the PEL or could reasonably be expected to exceed the PEL. When all workers within a restricted area are equipped with supplied-air respirators operated in the positive-pressure mode, daily monitoring is not required.

(j) Written decontamination, disposal and emergency procedures shall be developed and implemented for the restricted area and process.

(k) Prior to initial assignment and at least once every 12 months, persons required to enter the restricted areas or who are involved in decontamination, disposal, and emergency response shall receive training on the risks and hazards of asbestos and asbestos construction work, as well as the decontamination, disposal, and emergency procedures to be followed.

(l) The mine operator shall notify MSHA at least 20 days prior to beginning asbestos construction work involving—

(1) At least 80 linear meters (260 linear feet) of asbestos or material containing greater than 0.1 percent asbestos on pipes; or

(2) At least 15 square meters (160 square feet) of asbestos or material containing greater than 0.1 percent asbestos on other facility components.

(m) Containers of asbestos and materials containing greater than 0.1 percent asbestos shall be clearly marked and their contents identified. The containers shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(n) The introduction or removal of any equipment, material, or other items to or from the restricted area shall be done in a manner that does not contaminate nonrestricted areas.

§ 58.450 Medical surveillance program.

(a) *Establishment.* The mine operator shall develop and implement a written medical surveillance program that shall make available medical examinations to miners who are working with or will be assigned to work with a chemical or process listed on Table C–5. The medical examination shall be provided at the operator's cost and at a reasonable time and place.

(b) *Medical examinations.* (1) Under the medical surveillance program, a medical examination by a licensed physician shall be made available to miners—

(i) Prior to initial assignment;

(ii) At least once every twelve months; and

(iii) At any time a miner is exposed to any carcinogen listed on Table C–5 as a result of an emergency.

(2) The operator shall provide the examining physician with the following information:

(i) The names of chemicals to be used.

(ii) Description of the work to be performed by the miner.

(iii) Duration and frequency of chemical usage.

(iv) Environmental conditions of the intended worksite.

(v) Type of personal protective equipment to be worn by the miner.

(vi) Relevant information from any previous medical examinations of the affected miner that is in the operator's possession.

(3) The mine operator shall require the physician to submit a written report of the miner's condition to the operator. The mine operator shall instruct the physician not to reveal orally, or in the written evaluation, any specific findings or diagnoses unrelated to the miner's exposure to carcinogens.

(4) The mine operator shall inform any miner who refuses to have the medical examination of the possible health consequences of such refusal and shall obtain a signed statement from the miner indicating that the miner understands the risk involved in the refusal to be examined.

(c) *Medical transfer.* (1) Upon notification from the physician that a miner's medical examination shows evidence that the miner has developed cancer or any material impairment of health of functional capacity due to occupational exposure to a carcinogen listed on Table C–5, the miner shall be given the option to work in an area of the mine where there is no exposure to the carcinogen. The operator shall notify the miner in writing of eligibility to exercise the option of medical transfer.

(2) When a miner requests to transfer, the mine operator shall notify the Administrator, Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 15 calendar days from receipt by the operator of the miner's request for transfer. The operator's notice to the Administrator shall include the miner's name, occupation and assignment of new duties including the scheduled date of transfer.

(3) When a miner elects to transfer, the transfer shall take place on or before the 21st calendar day following receipt by the operator of the miner's request. The mine operator shall transfer the miner to an existing position at the same mine. If the miner agrees in writing, the

operator may transfer the miner to a different mine.

(4) Any miner transferred under this section shall—

(i) Continue to receive compensation at no less than the regular rate of pay for a miner in the classification held by that miner immediately prior to the transfer.

(ii) Receive wage increases based upon the new work classification.

(d) *Recordkeeping.* (1) The mine operator shall maintain a record of the medical evaluation conducted for each miner. These records shall be kept for the duration of the miner's employment plus 30 years.

(2) Upon request, the operator shall give access to the miner's medical records required by this section to the miner or, with the miner's written consent, to the miner's designated representative. Access shall also be given to authorized representatives of the Secretary of Labor and the Secretary of the Department of Health and Human Services. Upon termination of employment, miners shall be given a copy of their medical evaluation records. Copies of the records shall be provided without cost.

(3) Whenever a mine operator is ceasing to do business, the operator shall transfer all records subject to this section to the successor operator. The successor operator shall receive and maintain these records for the period required by this section. Whenever an operator is ceasing to do business and there is no successor operator to receive and maintain the records, the operator shall notify all affected miners of their rights of access to records at least 3 months prior to disposal of the records.

Table C–5 Medical Evaluation Carcinogens

Asbestos mining and milling
Asbestos construction work
2-Acetylaminofluorene
Acrylonitrile
4-Aminodiphenyl
Arsenic trioxide production
Benzene (except gasoline
Benzidine
bis(Chloromethyl) ether
Chloromethyl methyl ether
3,3 Dichlorobenzidine
4-Dimethylaminoazobenzene
Ethylenimine
Ethylene oxide
Formaldehyde
α-Naphthylamine
β-Naphthylamine
4-Nitrodiphenyl
N-Nitrosodimethylamine
β-Propiolactone
Vermiculite mining and milling where
    asbestos is present in
    concentrations greater than one
    percent in the ore or concentrate
Vinyl chloride

Subpart D—Respiratory Protection

§ 58.500 Respiratory protection program

When respiratory protection is required by this part, written standard operating procedures shall be developed and implemented that include the requirements of this section.

(a) Only respirators approved under 30 CFR Part 11 shall be used. Respirators shall be maintained in approved condition.

(b) Respirators shall be selected according to the nature of the hazard, the criteria in Tables D–1, D–2 and D–3, the manufacturer's limitations on the respirator, and the characteristics of the work environment, which includes the exposure levels, the period of time the respiratory protection will be worn, and work activities of the employees.

(c) Respirators shall be inspected before each use and after cleaning, sanitizing, and maintenance. Emergency-use respirators shall be inspected monthly with a record kept of the last inspection.

(d) Respirator wearers shall be provided with a clean and sanitized respirator each day. Respirators shall be cleaned and sanitized prior to use by another person. Emergency-use respirators shall be cleaned and sanitized promptly after each use.

(e) Respirators shall be stored in a manner that protects them from damage or contamination. Respirators stored for emergency use shall be accessible to persons who may need to use them.

(f) For respirators with tight-fitting facepieces, a qualitative or quantitative respirator fit test that has been shown by scientific data to be capable of indicating the adequacy of the fit shall be conducted initially and at least once every 12 months thereafter. Respirators failing to provide a satisfactory fit shall not be used. For respirators fitted quantitatively, a minimum ratio of 100 must be obtained. The maximum assigned protection factor allowed for qualitatively-fitted respirators is 10, with the exception of disposable dust/mist respirators which is limited to 5. For respirators fitted quantitatively the assigned protection factor is one-tenth the measured ratio but no greater than the maximum assigned protection factor listed in Table D–2 and D–3.

(g) A record of the latest fit test for each respirator wearer shall be kept for 1 year or until the next fit test. The record shall include the date the fit test was made, the respirator wearer's name, and the make, model, and size of the respirators tested for which a satisfactory fit was obtained. When quantitative fit-testing is conducted, the protection factor assigned to each respirator wearer and tested respirator shall be included in the record.

(h) For respirators with tight-fitting facepieces, negative- and postive-pressure sealing tests or equivalent qualitative sealing tests shall be conducted prior to use. Respirators failing to provide a satisfactory seal shall not be used.

(i) Respirators shall not be used when facial hair comes between the sealing surface of the respirator facepiece and the face.

(j) Respirator wearers, supervisors, and persons issuing or maintaining respirators shall be trained initially and at least once every 12 months thereafter in the selection, use, and maintenance of respiratory devices. The mine operator and the person trained shall both certify that the training was conducted.

(k) When compressors or blowers are used to provide respirable air, they shall be constructed and located to prevent entry of contaminated air into the air supply system. Compressors shall be equipped with in-line air purifying sorbent beds or filters to ensure breathing air quality. Oil-lubricated compressors shall be equipped with a carbon monoxide or high-temperature alarm.

(l) When supplied air, compressed air, or oxygen is provided for respiration, it shall meet the requirements of 30 CFR part 11.

(m) Compressed oxygen shall not be used in atmosphere-supplying respirators or in open-circuit, self-contained breathing apparatus that have previously used compressed air.

TABLE D–1 OXYGEN-DEFICIENT ATMOSPHERES

Altitude (ft.)	Oxygen-deficient atmospheres	Oxygen-deficient IDLH atmospheres
0–3,000	19.5	16
3,001–4,000	19.5	16.4
4,001–5,000	19.5	17.1
5,001–6,000	19.5	17.8
6,001–7,000	19.5	18.5
7,001–8,000	19.5	19.3
Above 8,000 ft. to 14,000 ft.		19.5

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TABLE D-2 AIR-PURIFYING RESPIRATORS [1]

	Assigned maximum protection factor
Half Mask or Quarter Facepiece	10
Full Facepiece	50
Disposable, Dust/Mist	5
Powered Air-Purifying	
Tight-fitting full facepiece	250
Tight-fitting half mask [2]	50
Loose-fitting hood or helmet	25

[1] Air-purifying respirators may not be used in oxygen-deficient or IDLH atmospheres. Air-purifying respirators used for particulate protection against carcinogens shall be equipped with high-efficiency filters.

[2] Only full-facepiece respirators are to be used in contaminant concentrations that produce eye irritation.

TABLE D-3 ATMOSPHERE-SUPPLYING RESPIRATORS

	Assigned maximum protection factor
Supplied-Air Respirator (SAR): [1]	
Negative Pressure (demand):	
Half mask	10.
Full facepiece	50.
Continuous Flow:	
Hood or helmet	25
Half mask	50.
Full facepiece	250.
Pressure Demand:	
Half mask	1,000.
Full facepiece	1,000.
Combination Full Facepiece:	
Pressure Demand SAR with Auxiliary Self-Contained Air Supply	(2)
Self-Contained Breathing Apparatus (SCBA): [3]	
Demand (except for apparatus approved for mine rescue)	50.
Demand—approved for mine rescue	(2)
Pressure Demand	(2)

[1] Any atmosphere-supplying respirator may be used in an oxygen-deficient atmosphere where the oxygen content is below the level listed for an oxygen-deficient atmosphere but above the level listed for oxygen-deficient IDLH atmospheres in Table D-1.

[2] Only a full-facepiece pressure-demand SCBA, combination full-facepiece pressure-demand SAR with auxiliary self-contained air supply or SCBA approved for mine rescue may be used in unknown IDLH or oxygen-deficient IDLH atmospheres listed in Table D-1.

[3] Greater than 1,000, and IDLH, or unknown concentrations.

§ 58.550 Medical surveillance program.

(a) *Establishment.* The mine operator shall develop and implement a written medical surveillance program that shall require miners who are working, or will be assigned to work, in an area requiring respiratory protection to receive a medical examination. The medical examination shall be provided at the operator's cost and at a reasonable time and place.

(b) *Medical examinations.* (1) Under the medical surveillance program, miners shall be examined by a licensed physician—

(i) Prior to initial assignment;

(ii) At least once during the period listed in Table D-4; and

(iii) At any time the miner experiences difficulty breathing while being fitted for, or while using, a respirator.

(2) The operator shall provide the examining physician with the following information:

(i) The type of respiratory protection to be used.

(ii) Description of the work effort required.

(iii) Duration and frequency of usage.

(iv) The type of work performed, including any special responsibilities that could affect the safety of other miners, such as firefighting or rescue efforts.

(v) Any special environmental conditions, such as heat or work in confined spaces.

(vi) Relevant additional requirements for protective clothing and equipment.

(vii) Anticipated exposure levels.

(3) The mine operator shall require the physician to submit a written report of the miner's condition to the operator. The mine operator shall instruct the physician not to reveal orally, or in the written evaluation, any specific findings or diagnoses unrelated to the miner's respirator use.

(c) *Medical transfer.* (1) Upon notification from the physician that a miner's medical examination shows evidence that the miner is unable to wear a respirator, the miner shall be transferred to work in an area of the mine where respiratory protection is not required.

(2) When a miner must be transferred under this section, the mine operator shall notify the Administrator, Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 15 calendar days from receipt of the physician's evaluation, that a miner will be transferred. The operator's notice to the Administrator shall include the miner's name, occupation, and assignment of new duties, including the scheduled date of transfer.

(3) The miner's transfer shall be on or before the 21st calendar day following receipt of the physician's evaluation. The mine operator shall transfer the miner to an existing position at the same mine. If the miner agrees in writing, the operator may transfer the miner to a different mine.

(4) Any miner transferred under this section shall—

(i) Continue to receive compensation at no less than the regular rate of pay for a miner in the classification held by that miner immediately prior to the transfer.

(ii) Receive wage increases based upon the new work classification.

(d) *Recordkeeping.* (1) The mine operator shall maintain a record of the medical evaluation conducted for each miner. These records shall be kept by the operator for 5 years.

(2) Upon request, the operator shall give access to the miner's medical records required by this section to the miner or, with the miner's written consent, to the miner's designated representative. Access shall also be given to authorized representatives of the Secretary of Labor and the Secretary of the Department of Health and Human Services. Upon termination of employment, miners shall be given a copy of their medical evaluation records. Copies of records shall be provided without cost.

(3) Whenever a mine operator is ceasing to do business, the operator shall transfer all records subject to this section to the successor operator. The successor operator shall receive and maintain these records for the period required by this section. Whenever an operator is ceasing to do business and there is no successor operator to receive and maintain the records, the operator shall notify all affected miners of their rights of access to records at least 3 months prior to disposal of the records.

TABLE D-4.—FREQUENCY OF MEDICAL EXAMINATIONS FOR RESPIRATOR USE

	Worker age (years)		
	<35	35–45	>45
Most working conditions requiring respirators.	Every 5 years.	Every 2 years.	Annually.
Strenuous work conditions with SCBA.	Every 3 years.	Every 18 months.	Annually.

Subpart E—Miscellaneous

§ 58.600 Prohibited areas for food and beverages.

No one shall be allowed to consume or store food or beverages in a toilet room or in any area where the food or beverages could be contaminated by a hazardous substance.

§ 58.610 Abrasive blasting.

(a) *Surface areas.* When an abrasive blasting operation is performed and silica sand or other materials containing

more than 1 percent quartz are used as an abrasive substance, all exposed miners shall use supplied-air respirators approved for abrasive blasting in accordance with § 58.500 or the operation shall be performed in a totally enclosed device with the person outside the device.

(b) *Underground areas of underground mines.* Silica sand or other materials containing more than 1 percent quartz shall not be used as an abrasive substance in abrasive blasting.

§ 58.620 Drill dust control.

Holes shall be collared and drilled wet, or other effective dust-control measures shall be used when drilling non-water-soluble material. Effective dust-control measures shall be used when drilling water-soluble materials.

Appendix A—Nonmandatory—Work Practices and Engineering Controls for Major Asbestos Removal, Renovation, and Demolitions Operations

This is a nonmandatory appendix designed to provide guidelines to assist employers in complying with the requirements of § 58.405. Specifically, this appendix describes the equipment, methods, and procedures that should be used in major asbestos-removal projects conducted to abate a recognized asbestos hazard or in preparation for building renovation or demolition. These projects require the construction of negative-pressure temporary enclosures to contain the asbestos material and to prevent the exposure of bystanders and other workers at the worksite. Paragraph (h) of § 58.405 of the standard requires that, whenever feasible, the mine operator must establish negative-pressure enclosures before beginning asbestos-removal, demolition, or renovation operations. The operator should also be aware that, when conducting asbestos-removal projects, enclosures may be required under the National Emissions Standards for Hazardous Air Pollutants (NESHAPS), 40 CFR part 61, subpart M, or EPA regulations under the Clean Water Act.

Construction of a negative-pressure enclosure is a simple but time-consuming process that requires careful preparation and execution; however, if the procedures below are followed, contractors should be assured of achieving a temporary barricade that will protect workers and others outside the enclosure from exposure to asbestos and minimize to the extent possible the exposure of asbestos workers inside the barrier as well.

The equipment and materials required to construct these barriers are readily available and easily installed and used. In addition to an enclosure around the removal site, the standard requires that workers leave their work clothes at the point of exit and shower immediately after each exit. A recommended facility is described below. The steps in the process of preparing the asbestos-removal site, building the enclosures, constructing hygiene facilities, removing the asbestos-containing material, and restoring the site include:

(1) Planning the removal project;

(2) Procuring the necessary materials and equipment;

(3) Preparing the work area;

(4) Removing the asbestos-containing material;

(5) Cleaning the work area; and

(6) Disposing of the asbestos-containing waste.

Planning the Removal Project

The planning of an asbestos-removal project is critical to completing the project safely and cost-effectively. A written asbestos-removal plan should be prepared that describes the equipment and procedures that will be used throughout the project. The asbestos-abatement plan will aid not only in executing the project but also in complying with the reporting requirements of the USEPA asbestos regulations (40 CFR part 61, subpart M), which call for specific information such as a description of control methods and control equipment to be used and the disposal sites the contractor proposes to use to dispose of the asbestos-containing materials.

The asbestos-abatement plan should contain the following information:

- A physical description of the work area;
- A description of the approximate amount of material to be removed;
- A schedule for turning off and sealing existing ventilation systems;
- Personnel hygiene procedures;
- Labeling procedures;
- A description of personal protective equipment and clothing to be worn by workers;
- A description of the local exhaust ventilation systems to be used;
- A description of work practices to be observed by workers;
- A description of the methods to be used to remove the asbestos-containing material;
- The wetting agent to be used;
- A description of the sealant to be used at the end of the project;
- An air monitoring plan;
- A description of the method to be used to transport waste materials; and
- The location of the dump site.

Materials and Equipment Necessary for Asbestos Removal

Although individual asbestos-removal projects vary in terms of the equipment required to accomplish the removal of the material, some equipment and materials are common to most asbestos-removal operations. Equipment and materials that should be available at the beginning of each project are (1) rolls of polyethylene sheeting; (2) rolls of gray duct tape or clear plastic tape; (3) HEPA-filtered vacuum(s); (4) HEPA-filtered portable ventilation systems; (5) a wetting agent; (6) an airless sprayer; (7) a portable shower unit; (8) appropriate respirators; (9) disposable coveralls; (10) signs and labels; (11) preprinted disposal bags; and (12) a manometer or pressure gauge.

Rolls of Polyethylene Plastic and Tape. Rolls of polyethylene plastic (6 mil in thickness) should be available to construct the asbestos-removal enclosure and to seal windows, doors, ventilation systems, wall penetrations, and ceilings and floors in the work area. Gray duct tape or clear plastic tape should be used to seal the edges of the plastic and to seal any holes in the plastic enclosure. Polyethylene plastic sheeting can be purchased in rolls up to 20 feet in width and up to 100 feet in length.

HEPA-Filtered Vacuum. A HEPA-filtered vacuum is essential for cleaning the work area after the asbestos has been removed. Such vacuums are designed to be used with a HEPA (High-Efficiency Particulate Air) filter, which is capable of removing 99.97 percent of the asbestos particles from the air. Various sizes and capacities of HEPA vacuums are available. All of these models are portable, and all have long hoses capable of reaching out-of-the-way places, such as areas above ceiling tiles and behind pipes.

Exhaust Air Filtration System. A portable ventilation system is necessary to create a negative pressure within the asbestos-removal enclosure. Such units are equipped with a HEPA filter and are designed to exhaust and clean the air inside the enclosure before exhausting it to the outside of the enclosure. The number and capacity of units required to ventilate an enclosure depend on the size of the area to be ventilated.

Wetting Agents. Wetting agents (surfactants) are added to water (which is then called amended water) and used to soak asbestos-containing materials; amended water penetrates more effectively than plain water and permits more thorough soaking of the asbestos-containing materials. Wetting the asbestos-containing material reduces the number of fibers that will break free and become airborne when the asbestos-containing material is handled or otherwise disturbed. Asbestos-containing materials should be thoroughly soaked before removal is attempted; the dislodged material should feel spongy to the touch. Wetting agents are generally prepared by mixing 1 to 3 ounces of wetting agent to 5 gallons of water.

One type of asbestos, amosite, is relatively resistant to soaking, either with plain or amended water. The work practices of choice when working with amosite-containing material are to soak in the material as much as possible and then to bag it for disposal immediately after removal, so that the material has no time to dry and be ground into smaller particles that are more likely to liberate airborne asbestos.

In a very limited number of situations, it may not be possible to wet the asbestos-containing material before removing it. Examples of such rare situations are: (1) Removal of asbestos material from a "live" electrical box that was oversprayed with the material when the rest of the area was sprayed with asbestos-containing coating; and (2) removal of asbestos-containing insulation from a live steam pipe. In both of these situations, the preferred approach would be to turn off the electricity or steam, to permit wet removal methods to be used. However, where removal work must be performed during working hours (that is, when normal operations cannot be disrupted), the asbestos-containing material must be removed dry. Immediate bagging is then the only method of minimizing the amount of airborne asbestos generated.

Airless Sprayer. Airless sprayers are used to apply amended water to asbestos-containing materials. Airless sprayers allow the amended water to be applied in a fine spray that minimizes the release of asbestos fibers by reducing the impact of the spray on the materials to be removed. Airless sprayers are inexpensive and readily available.

Portable Shower. Unless the site has available a permanent shower facility that is contiguous to the removal area, a portable shower system is necessary to permit workers to clean themselves after exposure to asbestos and to remove any asbestos contamination from their hair and bodies. Taking a shower prevents workers from leaving the work area with asbestos on their clothes and thus prevents the spread of asbestos contamination to areas outside the asbestos-removal area. This measure also protects members of the families of asbestos workers from possible exposure to asbestos. Showers should be supplied with warm water and a drain. A shower water filtration system to filter asbestos fibers from the shower water is recommended. Portable shower units are readily available, inexpensive, and easy to install and transport.

Respirator. Workers involved in asbestos-removal projects should be provided with appropriate NIOSH-approved respirators. Selection of the appropriate respirator should be based on the concentration of asbestos fibers in the work area. If the concentration of asbestos fibers is unknown, workers should be provided with respirators that will provide protection against the highest concentration of asbestos fibers that can reasonably be expected to exist in the work area. For most work within an enclosure, workers should wear half-mask dual-filter cartridge respirators. Disposable face mask respirators (single-use) should not be used to protect employers from exposure to asbestos fibers.

Disposable Coveralls. Workers involved in asbestos-removal operations should be provided with disposable impervious coveralls that are equipped with head and foot covers. The coverall has a zipper front and elastic wrists and ankles.

Signs and Labels. Before work begins, a supply of signs to demarcate the entrance to the work area should be obtained. The required labels are also commercially available as press-on labels and preprinted on the 6-milpolyethylene plastic bags used to dispose of asbestos-containing waste material.

Preparing the Work Area

Preparation for constructing negative-pressure enclosures should begin with the removal of all movable objects from the work area (for example, desks, chair, rugs, and light fixtures) to ensure that these objects do not become contaminated. When movable objects are contaminated or suspected of being contaminated, they should be vacuumed with a HEPA vacuum and cleaned with amended water, unless they are made of material that will be damaged by the wetting agent; wiping with plain water is recommended in those cases where amended water will damage the object. Before the asbestos-removal work begins, objects that cannot be removed from the work area should be covered with a 6-mil thick polyethylene plastic sheeting that is securely taped with duct tape or plastic tape to achieve an airtight seal around the object.

Constructing the Enclosure

When all objects have either been removed from the work area or covered with plastic, all penetrations of the floor, walls, and ceiling should be sealed with 6-mil polyethylene plastic and tape to prevent airborne asbestos from escaping into areas outside the work area or from lodging in cracks around the penetrations. Penetrations that require sealing are typically found around electrical conduits, telephone wires, and water-supply and drain pipes. A single entrance to be used for access and egress to the work area should be selected, and all other doors and windows should be sealed with tape or be covered with 6-mil polyethylene plastic sheeting and securely taped. Covering windows and unnecessary doors with a layer of polyethylene before covering the walls provides a second layer of protection and saves time in installation because it reduces the number of edges that must be cut and taped. All other surfaces such as support columns, ledges, pipes, and other surfaces should also be covered with polyethylene plastic sheeting and taped before the walls themselves are completely covered with sheeting.

Next a thin layer of spray adhesive should be sprayed along the top of all walls surrounding the enclosed work area, close to the wall-ceiling interface, and a layer of polyethylene plastic sheeting should be stuck to this adhesive and taped. The entire inside surfaces of all wall areas are covered in this manner, and the sheeting over the walls is extended across the floor area until it meets in the center of the area, where it is taped to form a single layer of material encasing the entire room except for the ceiling. A final layer of plastic sheeting is then laid across the plastic-covered floor area and up the walls to a level of 2 feet or so; this layer provides a second protective layer of plastic sheeting over the floor, which can then be removed and disposed of easily after the asbestos-containing material that has dropped to the floor has been begged and removed.

Building Hygiene and Decontamination Facilities

The standard requires that personal protective equipment be left at the point of exit and the person shower immediately. In addition, the movement of equipment, material, and other items to and from the restricted area must be done in a manner that does not contaminate the restricted or nonrestricted areas. This is usually accomplished by the construction of hygiene and decontamination facilities that consist of—

(1) A clean change room;
(2) A shower; and
(3) An equipment room.

The clean change room is an area in which workers remove their street clothes and don their respirators and disposable protective clothing. The clean room should have hooks on the wall or be equipped with lockers for the storage of workers' clothing and personal articles. Extra disposable coveralls and towels can also be stored in the clean change room.

The shower should be contiguous with both the clean and dirty change rooms and should be used by all workers leaving the work area. The shower should also be used to clean asbestos-contaminated equipment and materials, such as the outside of asbestos waste bags and hand tools used in the removal process.

The equipment room (also called the dirty change room) is the area where workers remove their protective coveralls and where equipment that is to be used in the work area can be stored. The equipment room should be lined with 6-mil thick polyethylene plastic sheeting in the same way as was done in the work area enclosure. Two layers of 6-mil polyethylene plastic sheeting that are not taped together form a double flap or barrier between the equipment room and the work area and between the shower and the clean change room.

When feasible, the clean change room shower and equipment room should be contiguous and adjacent to the negative-pressure enclosure surrounding the removal area. In an overwhelming number of cases, hygiene facilities can be built contiguous to the negative-pressure enclosure. In some cases, however, hygiene facilities may have to be located on another floor of the building where removal of asbestos-containing materials is taking place. In these instances, the hygiene facilities can in effect be made to be contiguous to the work area by constructing a polyethylene plastic "tunnel" from the work area to the hygiene facilities. Such a tunnel can be made even in cases where the hygiene facilities are located several floors above or below the work area; the tunnel begins with a double-flap door at the enclosure, extends through the exit from the floor, continues down the necessary number of flights of stairs and goes through a double-flap entrance to the hygiene facilities which have been prepared as described above. The tunnel is constructed of 2-inch by 4-inch lumber or aluminum struts and covered with 6-mil thick polyethylene plastic sheeting.

In the rare instances when there is not enough space to permit any hygiene facilities to be built at the work site, workers should be directed to change into a clean disposable worksuit immediately after exiting the enclosure (without removing their respirators) and to proceed immediately to the shower.

The clean room, shower, and equipment room must be sealed completely to ensure that the sole source of air flow through these areas originates from uncontaminated areas outside the asbestos-removal, demolition, or renovation enclosure. The shower must be drained properly after each use to ensure that contaminated water is not released to uncontaminated areas. If waste is

inadvertently released, it should be cleaned up as soon as possible to prevent any asbestos in the water from drying and becoming airborne in areas outside the work area.

Establishing Negative Pressure Within the Enclosure

After construction of the enclosure is completed, ventilation systems should be installed to create a negative pressure within the enclosure with respect to the area outside the enclosure. Such ventilation systems must be equipped with HEPA filters to prevent the release of asbestos fibers to the environment outside the enclosure and should be operated 24 hours per day during the entire project until the final cleanup is completed and the results of final air samples are received from the laboratory. A sufficient amount of air should be exhausted to create a pressure of −0.02 inches of water within the enclosure with respect to the area outside the enclosure.

These ventilation systems should exhaust the HEPA-filtered clean air outside the building in which the asbestos removal, demolition, or renovation is taking place. If access to the outside is not available, the ventilation system can exhaust the HEPA-filtered asbestos-free air to an area within the building that is as far away as possible from the enclosure. Care should be taken to ensure that the clean air is released either to an asbestos-free area or in such a way as not to disturb any asbestos-containing materials.

A manometer or pressure gauge for measuring the negative pressure within the enclosure should be installed and should be monitored frequently throughout all work shifts during which asbestos removal, demolition, or renovation takes place. Several types of manometers and pressure gauges are available for this purpose.

All asbestos-removal, renovation, and demolition operations should have a program for monitoring the concentration of airborne asbestos and worker exposure to asbestos. Area samples should be collected inside the enclosure (approximately four samples for 5000 square feet of enclosure area). At least two samples should be collected outside the work area, one at the entrance to the clean change room and one at the exhaust of the portable ventilation system. In addition, several breathing-zone samples should be collected from those workers who can reasonably be expected to have the highest potential exposure to asbestos.

Removing Asbestos Materials

It is recommended that a competent person be designated to—

(1) Set up the enclosure;
(2) Ensure the integrity of the enclosure;
(3) Control entry to and exit from the enclosure;
(4) Supervise all exposure monitoring required;
(5) Ensure the use of personal protective clothing and equipment;
(6) Ensure that workers are trained in the use of engineering controls, work practices, and personal protective equipment;
(7) Ensure the use of hygiene facilities and the observance of proper decontamination procedures; and
(8) Ensure that engineering controls are functioning properly.

The competent person will generally be a Certified Industrial Hygienist, an industrial hygienist with training and experience in the handling of asbestos, or a person who has such training and experience as a result of on-the-job training and experience.

Ensuring the integrity of the enclosure is accomplished by inspecting the enclosure before asbestos-removal work begins and prior to each workshift throughout the entire period work is being conducted in the enclosure. The inspection should be conducted by locating all areas where air might escape from the enclosure; this is best accomplished by running a hand over all seams in the plastic enclosure to ensure that no seams are ripped and the tape is securely in place.

The competent person should also ensure that unauthorized personnel do not enter the enclosure and that all workers who enter the enclosure use the hygiene facilities and observe the proper decontamination procedures (described below).

Proper work practices are necessary during asbestos removal, demolition, and renovation to ensure that the concentration of asbestos fibers inside the enclosure remains as low as possible. One of the most important work practices is to wet the asbestos-containing material before it is disturbed. After the asbestos-containing material is thoroughly wetted, it should be removed by scraping (as in the case of sprayed-on or troweled-on ceiling material) or removed by cutting the metal bands or wire mesh that support the asbestos-containing material on boilers or pipes. Any residue that remains on the surface of the object from which asbestos is being removed should be wire-brushed and wet-wiped.

Bagging asbestos waste material promptly after its removal is another work practice control that is effective in reducing the airborne concentration of asbestos within the enclosure. Whenever possible, the asbestos should be removed and placed directly into bags for disposal rather than dropping the material to the floor and picking up all of the material when removal is complete. If a significant amount of time elapses between the time that the material is removed and the time it is bagged, the asbestos material is likely to dry out and generate asbestos-laden dust when it is disturbed by people working within the enclosure. Any asbestos-contaminated supplies and equipment that cannot be decontaminated should be disposed of in prelabeled bags; items in this category include plastic sheeting, disposable work clothing, respirator cartridges, and contaminated wash water.

A checklist is one of the most effective methods of ensuring adequate surveillance of the integrity of the asbestos-removal enclosure. Such a checklist is shown in Figure A–1. Filling out the checklist at the beginning of each shift in which asbestos removal is being performed will serve to document that all the necessary precautions will be taken during the asbestos-removal work. The checklist contains entries for ensuring that—

- The work area enclosure is complete;
- The negative-pressure system is in operation;
- Necessary signs and labels are used;
- Appropriate work practices are used;
- Necessary protective clothing and equipment are used; and
- Appropriate decontamination procedures are being followed.

Cleaning the Work Area

After all of the asbestos-containing material is removed and bagged, the entire work area should be cleaned until it is free of all visible asbestos dust. All surfaces from which asbestos has been removed should be cleaned by wire-brushing the surfaces, HEPA vacuuming these surfaces, and wiping them with amended water. The inside of the plastic enclosure should be vacuumed with a HEPA vacuum and wet-wiped until there is no visible dust in the enclosure. Particular attention should be given to small horizontal surfaces such as pipes, electrical conduits, lights, and support tracks for drop ceilings. All such surfaces should be free of visible dust before the final air samples are collected.

Additional sampling should be conducted inside the enclosure after the cleanup of the work area has been completed. Approximately four area samples should be collected for each 5000 square feet of enclosure area. The enclosure should not be dismantled until the final samples show asbestos concentrations of less than 0.1 f/cc. EPA recommends that a clearance level of 0.01 f/cc be achieved before cleanup is considered complete.

A clearance checklist is an effective method of ensuring that all surfaces are adequately cleaned and the enclosure is ready to be dismantled. Figure A–2 shows a checklist that can be used during the final inspection phase of asbestos abatement, removal, or renovation operations.

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Figure A-1 Checklist

Asbestos Removal, Renovation, and Demolition Checklist

Date: ____________________ Location: ____________________

Supervisor ____________________ Project # ____________________

Work Area (sq. ft.) ________

	Yes	No
I. Work site barrier		
Floor covered	___	___
Walls covered	___	___
Area ventilation off	___	___
All edges sealed	___	___
Penetration sealed	___	___
Entry curtains	___	___
II. Negative Air Pressure		
HEPA Vac ____ Ventilation system _____		
Constant Operation	___	___
Negative pressure achieved	___	___
III. Signs		
Work area entrance	___	___
Bags labeled	___	___
IV. Work Practices		
Removed material promptly bagged	___	___
Material worked wet	___	___
HEPA vacuum used	___	___
No smoking	___	___
No eating, drinking	___	___
Work area cleaned after completion	___	___
Personnel decontaminated each departure	___	___
V. Protective Equipment		
Disposable clothing use one time	___	___
Proper NIOSH-approved respirators	___	___
VI. Showers		
On site	___	___
Functioning	___	___
Soap and towels	___	___
Used by all personnel	___	___

BILLING CODE 4510-43-C

Figure A-2.—Clearance Checklist

Field Inspection or Asbestos Removal, Renovation, and Demolition Projects

Date: ____________________
Project: ____________________
Location: ____________________
Building: ____________________

CHECKLIST:

Residual dust on:	Yes	No
a. Floor	___	___
b. Horizontal surfaces	___	___
c. Pipes	___	___
d. Ventilation equipment	___	___
e. Ducts	___	___
f. Register	___	___
g. Lights	___	___

FIELD NOTES:

Record any problem encountered here.

____

____

____

FINAL AIR SAMPLE RESULTS: ____________________

____

____

Appendix B—Nonmandatory Medical Evaluation Procedures for Respirator Use

This appendix contains recommended elements that should be taken into account during the performance of the required medical evaluation for respirator use. These elements should be evaluated in taking the medical history and performing the medical examination. However, the specific nature of the medical evaluation and the extent of testing performed at left for the responsible physician to determine. This recommended list of elements to be considered is not meant to limit the physician to the testing procedures recommended. The examining physician is free to perform additional tests, if necessary, to determine a person's ability to wear a respirator.

(a) The medical history should include the following:

(1) Previously diagnosed diseases, particularly cardiovascular or respiratory diseases.

(2) Problems associated with breathing during normal work activities.

(3) Past problems with respirator use.

(4) Past and current usage of medication.

(5) Any known physical conditions that may interfere with respirator use.

(6) Previous occupations.

(7) Use of medications whose side effects might affect cardiopulmonary fitness.

(b) The medical examination should assess the following:

(1) Hearing ability. This should be sufficient to ensure communication and response to instructions and alarm systems.

(2) Pulmonary function testing including spirometry for FEV_1 and FVC. Presence and degree of restrictive or obstructive disease or perfusion disorders. In interpreting spirometry, if the FVC is less than 80 percent or the FEV_1 is less than 70 percent, restriction from respirator use should be considered.

(3) Cardiovascular system. Evidence of symptomatic coronary artery disease, significant arrhythmias, occurrence of frequent premature ventricular contraction (PVCs) with elevated pulse rates, or uncontrolled hypertension symptoms.

(4) Endocrine system. Conditions that may result in sudden loss of consciousness or response capability.

(5) Neurological system. Inability to perform coordinated movements and conditions affecting response and consciousness.

(6) Psychological condition. Claustrophobia, severe anxiety.

(7) Miscellaneous conditions specific to the work situation. Skin conditions where occlusive materials may result in symptoms or aggravation of a preexisting dermatitis.

(8) Exercise stress. For those workers who use a self-contained breathing apparatus or rebreather-type respirator under strenuous work conditions, or in emergencies, particularly in fire and rescue operations.

Appendix C—Nonmandatory Fit Testing Protocols

I. Isoamyl Acetate Protocol

(a) *Odor threshold screening.* The odor threshold screening test, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate.

(1) Three 1-liter glass jars with metal lids are required.

(2) Odor-free water (for example, distilled or spring water) at approximately 25 degrees C shall be used for the solutions.

(3) The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor-free water in a 1-liter jar and shaking for 30 seconds. A new solution shall be prepared at least weekly.

(4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

(5) The odor-test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor-free water using a clean dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for 2 to 3 minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only 1 day.

(6) A test blank shall be prepared in a third jar by adding 500 cc of odor-free water.

(7) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. Labels shall be placed on the lids so they can be periodically peeled, dried off and switched to maintain the integrity of the test.

(8) The following instruction shall be typed on a card and placed on the table in front of the two test jars (that is, 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

(9) The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

(10) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test shall not be performed.

(11) If the test subject correctly identifies the jar containing the odor-test solution, the test subject may proceed to respirator selection and fit testing.

(b) *Isoamyl acetate fit test.* (1) The fit-test chamber shall be similar to a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

(2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

(3) After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit-testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

(4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber. The tests shall include the following:

(i) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(ii) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution against hyperventilation.

(iii) Turning head side to side. Standing in place, the subject shall slowly turn the head from side to side between the extreme positions of each side. The head shall be held at each extreme momentarily so that the subject can inhale at each side.

(iv) Moving head up and down. Standing in place, the subject shall slowly move the head up and down. The subject shall be instructed to inhale in the up position (that is, when looking toward the ceiling).

(v) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(iv) Grimace. The test subject shall grimace by smiling or frowning.

(vii) Bending over. The test subject shall bend at the waist as if to touch the toes. Jogging in place shall be substituted for this exercise in those tests environments such as shroud-type QLFT units that prohibit bending at the waist.

(5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

(6) Allow 2 minutes for the IAA test concentration to stabilize before starting the fit-test exercises. This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of cooperation, and the purpose for the head exercises; or to demonstrate some of the exercises.

(7) If at any time during the test the subject detects the banana-like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

(8) If the test has failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber and again begin the procedure described in (4) (i) through (vii) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

(9) When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having the subject break the face seal and take a breath before exiting the chamber.

(10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the test area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration build-up in the test chamber during subsequent tests.

II. Saccharin Solution Aerosol Protocol

The saccharin solution aerosol QLFT protocol is the only currently available, validated test protocol for use with particulate disposable dust respirators not equipped with high-efficiency filters. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) *Taste threshold screening.* The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin.

(1) During threshold screening as well as during fit testing, subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches in diameter by 14 inches tall with at least the front portion clear and that allows free movements of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # FT 14 and # FT 15 combined, is adequate.

(2) The test enclosure shall have a ¾-inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

(3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe with the mouth wide open and the tongue extended.

(4) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit-test solution nebulizer.

(5) The threshold check solution consists of 0.83 grams of sodium saccharin USP in 1 cc of warm water. It can be prepared by putting 1 cc of the fit-test solution (see (b)(5) below) in 100 cc of distilled water.

(6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then released and allowed to fully expand.

(7) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tested.

(8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(10) The test conductor will take note of the number of squeezes required to solicit a taste response.

(11) If the saccharin is not tasted after 30 squeezes (step 10), the test subject may not perform the saccharin fit test.

(12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(13) Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

(14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every 14 hours.

(b) *Saccharin solution aerosol fit test procedure.* (1) The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

(2) The fit test uses the same enclosure described in (a) above.

(3) The test subject shall don the enclosure while wearing the respirator selected. Respirators shall be properly adjusted and equipped with particulate filters.

(4) A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit-test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening-test-solution nebulizer.

(5) The fit-test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

(6) As before, the test subject shall breathe through the wide open mouth with tongue extended.

(7) The nebulizer is inserted into the hole in the front of the enclosure and the fit-test solution is sprayed into the enclosure using the same number of squeezes required to elicit a taste response into the screening test.

(8) After generating the aerosol, the test subject shall be instructed to perform the following:

(i) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(ii) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution against hyperventilation.

(iii) Turning head side to side. Standing in place, the subject shall slowly turn the head from side to side between the extreme positions of each side. The head shall be held at each extreme momentarily so that subject can inhale at each side.

(iv) Moving head up and down. Standing in place, the subject shall slowly move the head up and down. The subject shall be instructed to inhale in the up position (that is, when looking toward the ceiling).

(v) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(vi) Grimace. The test subject shall grimace by smiling or frowning.

(vii) Bending over. The test subject shall bend at the waist as if to touch the toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud-type QLFT units that prohibit bending at the waist.

(9) Every 30 seconds the aerosol concentration shall be replenished using one-half the number of squeezes as initially.

(10) The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

(11) If the taste of saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

III. Irritant Fume Protocol

(a) *Screening procedures.* (1) The respirator to be tested shall be equipped with high-efficiency particulate air (HEPA) filters.

(2) The test subject shall be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with its characteristic odor and to determine if the individual is responsive to the smoke.

(b) *Irritant fume fit test procedures.* (1) Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5445, or equivalent. Attach one end of the smoke tube to a low-flow air pump set to deliver 200 milliliters per minute.

(2) Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

(3) The test conductor shall direct the stream of irritant smoke from the smoke tube towards the face seal area of the test subject. The test conductor shall begin at least 12 inches from the facepiece and gradually move to within 1 inch, moving around the whole perimeter of the mask. Alternatively, the test may be conducted in a tent as described in the isoamyl fit-test protocol. The irritant smoke should be introduced through a small hole in the tent until a light, visible concentration of irritant smoke is observed. Throughout the test, additional smoke should be introduced to maintain the concentration.

(4) The following exercises shall be performed by the test subject while the respirator seal is being challenged by the smoke:

(i) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(ii) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution against hyperventilation.

(iii) Turning head side to side. Standing in place, the subject shall slowly turn the head from side to side between the extreme positions of each side. The head shall be held at each extreme momentarily so that subject can inhale at each side.

(iv) Moving head up and down. Standing in place, the subject shall slowly move the head up and down. The subject shall be instructed to inhale in the up position (that is, when looking toward the ceiling).

(v) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(vi) Grimace. The test subject shall grimace by smiling or frowning.

(vii) Bending over. The test subject shall bend at the waist as if to touch the toes. Jogging in place shall be substituted for this exercise in those tests environments such as shroud-type QLFT units that prohibit bending at the waist.

(5) Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube once the respirator has been removed to determine whether the person reacts to the smoke. Failure to evoke a response shall void the fit test.

(6) The fit test shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agent.

PART 70—[AMENDED]

D. It is proposed to amend 30 CFR part 70 as follows:

1. The heading of part 70 is revised to read as follows: "Part 70—Health Standards—Underground Coal Mines".

2. The authority citation for Subpart D is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957 and 961.

§§ 70.300–70.305 [Removed]

3. Sections 70.300—70.305–1 are removed.

4. A new § 70.302 is added to subpart D to read as follows:

Subpart D—Respirable Dust Control Plans

§ 70.302 Respiratory protection; respirable dust.

Respiratory equipment approved for protection against respirable dust under 30 CFR part 11 shall be provided to and properly worn by all miners exposed to concentrations of respirable dust in excess of the levels required to be maintained under this part 70. Use of respirators shall not be substituted for environmental control measures in active workings. Use of respirators under this section shall be in accordance with Subpart D—Respiratory Protection of part 72 of this chapter.

§§ 70.400—70.400-3 (Subpart E) [Removed]

5. Subpart E, consisting of §§ 70.400 through 70.400–3, is removed.

PART 71—[AMENDED]

E. It is proposed to amend 30 CFR part 71 as follows:

1. The authority citation for part 71 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957, and 961.

2. The heading of part 71 is revised to read as follows: "Part 71—Health Standards—Surface Coal Mines and Surface Work Areas of Underground Coal Mines".

§ 71.700 [Removed]

3. Section 71.700 is removed.

§ 71.701 [Removed]

4. Section 71.701 is removed.

5. The authority citation for subpart D is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957, and 961.

6. A new § 71.302 is added to subpart D to read as follows:

Subpart D—Respirable Dust Control Plans

§ 71.302 Respiratory protection; respirable dust.

Respiratory equipment approved for protection against respirable dust under 30 CFR Part 11 shall be provided to and properly worn by all miners exposed to concentrations of respirable dust in excess of the levels required to be maintained under this Part 71. Use of respirators shall not be substituted for environmental control measures in active workings. Use of respirators under this section shall be in accordance with Subpart D—Respiratory Protection of part 72 of this chapter.

F. It is proposed to add a new part 72 to subchapter O 30 CFR chapter I to read as follows:

PART 72—HEALTH STANDARDS FOR AIR QUALITY, CHEMICAL SUBSTANCES, AND RESPIRATORY PROTECTION AT COAL MINES

Subpart A—General

Sec.
72.1 Scope.
72.2 Definitions.

Subpart B—Air Quality

72.100 Control of exposure to airborne substances.
72.200 Exposure monitoring.
72.300 Dangerous atmospheres.

Subpart C—Carcinogens

72.401 Class 1 carcinogens.
72.402 Class 2 carcinogens.
72.403 Class 3 carcinogens.
72.404 Class 4 carcinogens.
72.405 Asbestos construction work.
72.450 Medical surveillance program.

Subpart D—Respiratory Protection

72.500 Respiratory protection program.
72.550 Medical surveillance program.

Subpart E—Miscellaneous

72.600 Prohibited areas for food and beverages.
72.610 Abrasive blasting.
72.620 Drill dust control at surface mines and surface areas of underground mines.
72.630 Drill dust control at underground areas of underground mines.

Appendix A—Nonmandatory—Work Practices and Engineering Controls for Major Asbestos Removal, Renovation and Demolition Operations

Appendix B—Nonmandatory Medical Evaluation Procedures for Respirator Use

Appendix C—Nonmandatory—Fit Testing Protocols

Authority: 30 U.S.C. 811.

Subpart A—General

§ 72.1 Scope.

The health standards in this part apply to all coal mines.

§ 72.2 Definitions.

The following definitions apply to this part.

Access. The right to examine and copy records.

Confined space. A space that by design has restricted openings for entry and exit, an unfavorable atmosphere that could contain or produce dangerous air contaminants and is not intended for continuous occupancy.

Designated representative. Any individual or organization to whom a miner gives written authorization to exercise a right of access to records.

Permissible exposure limit (PEL). The time-weighted average (TWA), the short-term exposure limit (STEL), the ceiling exposure limit (ceiling) for an airborne substance, or the mixed exposure limit (MEL) for airborne substances.

Qualitative fit test. An assessment of the adequacy of respirator fit by determining whether an individual wearing the respirator can detect the odor, taste, or irritation of a contaminant introduced into the vicinity of the wearer's head.

Quantitative fit test. An assessment of the adequacy of respirator fit by numerically measuring concentrations of a test agent inside and outside the facepiece simultaneously. The ratio of the two measurements is an index of leakage of the seal between the respirator facepiece and the wearer's face.

Respirator protection factor. A measure of the degree of protection provided by a respirator to the wearer.

Subpart B—Air Quality

§ 72.100 Control of exposure to airborne substances.

(a) *Time-weighted average (8 hours)–[TWA$_8$].* For any workday, 8 hours or less in length, a miner's exposure to an airborne substance shall not exceed the time-weighted average listed in Table B-1. Exposure shall be calculated by the following formula:

$$\text{Exposure} = \frac{(C_1 \times T_1) + (C_2 \times T_2) + \ldots (C_n \times T_n)}{8 \text{ hours}}$$

Where $C_1, C_2, \ldots C_n$ is the concentration of the airborne substance as measured by sample "1", sample "2", through the last sample. $T_1, T_2, \ldots T_n$ is the duration in minutes of the exposure at C_1, C_2, and any other C_n.

(b) *Time-weighted average (novel schedule)–TWA_{ns}.* For workdays longer than 8 hours, full-shift sampling shall be conducted and exposure calculated by the following formula:

$$\text{Exposure} = \frac{(C_1 \times T_1) + (C_2 \times T_2) + \ldots (C_n \times T_n)}{\text{Total Time}}$$

Where $C_1, C_2, \ldots C_n$ is the concentration of the airborne substance as measured by sample "1", sample "2", through the last sample. $T_1, T_2, \ldots T_n$ is the duration in minutes of the exposure at C_1, C_2, and any other C_n. The miner's exposure to an airborne substance listed in Table B-1 shall not exceed the TWA_{ns} as calculated by the following formula:

TWA (Novel Schedule) =

$$\text{TWA (as listed in Table B-1)} \times \frac{8 \text{ hours}}{\text{total time sampled.}}$$

(c) *Short-term exposure limit (STEL) and ceiling limit (C).* A miner's exposure to an airborne substance shall not exceed the short-term exposure limit or ceiling limit (designated by "C") listed in Table B-1. The STEL is a 15-minute time-weighted exposure. If the concentration of a airborne substance exceeds the STEL or ceiling, the mine operator shall take immediate corrective action in accordance with paragraph (e) of this section.

(d) *Mixed exposure limit (MEL).* A miner's combined exposure to two or more airborne substances that act upon the same organ system shall not exceed 1.0 as determined by this formula:

$$\text{Exposure} = \frac{C_a}{PELG5_a} + \frac{C_b}{PEL_b} + \ldots + \frac{C_n}{PEL_n}$$

"C" is the concentration of each substance. The MEL is the TWA_s, TWA_{ns}, short-term exposure limit, or ceiling for each substance. Time-weighted averages and short-term exposure limits are not to be mixed in computing exposure.

(e) *Means of control.* (1) The mine operator shall use feasible engineering or administrative controls to maintain exposure of all miners at or below the permissible exposure limits (PELs) in this section. When appropriate controls do not reduce exposure to the PEL, they shall be used to reduce exposure as low as feasible and supplemented with respiratory protection.

(2) The following factors shall be used to determine whether an engineering or administrative control is feasible:

(i) Nature and extent of the overexposure.

(ii) The demonstrated effectiveness of available technology.

(iii) Whether committed resources would be wholly out of proportion to the expected results.

(3) Respiratory protection shall be used when—

(i) The concentration of an airborne substance exceeds the PEL is areas where controls are being established;

(ii) Controls to reduce exposure to the PEL are not feasible; or

(iii) Occasional entry into hazardous atmospheres is required to perform maintenance, investigation, or emergency cleanup.

(f) *Skin Absorption.* Whenever a miner could have contact with any airborne substance designated by "Skin" in Table B-1 at levels above the PEL, personal protection shall be provided and used to prevent absorption through the skin. Direct skin contact with these substances in a nonairborne form shall also be prevented through use of provided personal protection.

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Common gases:							
Ammonia—BO0875000	25	18	35	27			
Carbon dioxide—FF6400000	5,000	9,000	30,000	54,000			
Carbon monoxide—FG3500000	35	40	200	229			
Hydrogen sulfide—MX1225000	10	14	15	21			
Nitric oxide—QX0525000	25	30					
Nitrogen dioxide—QW9800000	3 or	6	5	10			
			1	1.8			
Sulfur dioxide—WS4550000	2	5	5	10			

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Silica dusts:							
Cristobalite—VV7325000	Use one-half the value determined through the quartz formula						
Quartz—VV7330000—See §§ 701.101, 71.101, and 90.101							
Tridymite—VV7335000	Use one-half the value determined through the quartz formula						
Other substances:							
Acetaldehyde—AB1925000	100	180	150	270			
Acetic acid—AF1225000	10	25	15	37			
Acetic anhydride—AK1925000					5	20	
Acetone—AL3150000	750	1,800	1,000	2,400			
Acetonitrile—AL7700000	40	70	60	105			X
2-Acetylaminofluorene—AB[illegible]450000—Restricted use, see § 72.401.							
Acetylene—AO9600000—Simple asphyxiant, see § 72.300(b).							
Acetylene tetrabromide—KI8225000	1	14					
Acetylsalicylic acid—VO0700000		5					
Acrolein—AS1050000	0.1	0.25	0.3	0.8			
Acrylamide—AS3325000—Restricted use, see also § 72.403.		0.03					X
Acrylic acid—AS4375000	2	6					
Acrylonitrile—AT5250000—Restricted use, see also § 72.403.	2	4.5					X
Aldrin—IO2100000		0.25					X
Allyl alcohol—BA5075000	2	5	4	10			X
Allyl chloride—UC7350000	1	3	2	6			
Allyl glycidyl ether—RR0875000	5	22	10	44			X
Allyl propyl disulfide—JO0350000	2	12	3	18			
Aluminum:							
Metal and Oxide		10					
Pyro powders		5					
Welding fumes		5					
Soluble salts		2					
Alkyls (not otherwise classified)		2					
4-Aminodiphenyl—DU8925000—Restricted use, see § 72.401.							X
2-Aminopyridine—US1575000	0.5	2					
Amitrole—XZ3850000—Restricted use, see also § 72.403		0.2					
Ammonium chloride fume—BP4550000		10		20			
Ammonium perfluorooctanoate—RH0782000		0.1					
Ammonium sulfamate—WO6125000		10					
n-Amyl acetate—AJ1925000	100	525					
sec-Amyl acetate—AJ2100000	125	650					
Aniline & homologues	2	8					X
Anisidine (o-,p-isomers)—BZ5410000, BZ5450000	0.1	0.5					X
Antimony & compounds (as Sb)		0.5					
ANTU—YT9275000		0.3					
Argon—CF2300000—Simple asphyxiant, see § 72.300(b)							
Arsenic & soluble compounds (as As)		0.2					
Arsine—CG6475000	0.05	0.2					
Asbestos [1]—Restricted use, see also § 72.405		.2 fiber/cc		1 fiber/cc			
Asphalt (petroleum) fumes—CI9900000		5					
Atrazine—XY5600000		5					
Azinphos-methyl—TE1925000		0.2					X
Barium, soluble compounds (as Ba)		0.5					
Barium sulfate—CR0600000		10					
Benomyl—DD6475000	0.8	10					
Benzene—CY1400000—Restricted use, see also § 72.403		1		5			
Benzidine—DC9625000—Restricted use, see § 72.401							X
Benzoyl peroxide—DM8575000		5					
Benzo(a)pyrene—DJ3675000—Restricted use, see § 72.401.							
Benzyl chloride—XS8925000	1	5					
Beryllium & compounds—Restricted use, see also § 72.404		0.002					
Biphenyl—DU8050000	0.2	1					
Bismuth telluride, Undoped—EB3110000		10					
Bismuth telluride, Se-doped	5						
Borates, tetra, sodium salts all forms		5					
Boron oxide—ED7900000		10					
Boron tribromide—ED7400000					1	10	
Boron trifluoride—ED2275000						1	3
Bromacil—YQ9100000	1	10					
Bromine—EF9100000	0.1	0.7	0.3	2			
Bromine pentafluoride—EF9350000	0.1	0.7					
Bromoform—PB5600000	0.5	5					X
1,3-Butadiene—EI9275000—Restricted use, see also § 72.403.	10	22					
Butane—EI4200000	800	1,900					
2-Butoxyethanol—KJ8575000	25	120					X

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m^3	ppm	mg/m^3	ppm	mg/m^3	
n-Butyl acetate—AF7350000	150	710	200	950			
sec-Butyl acetate—AF7380000	200	950					
tert-Butyl acetate—AF7400000	200	950					
Butyl acrylate—UD3150000	10	55					
n-Butyl alcohol—EO1400000					50	150	X
sec-Butyl alcohol—EO1750000	100	305					
tert-Butyl alcohol—EO1925000	100	300	150	450			
Butylamine—EO2975000					5	15	X
tert-Butyl chromate—(as CrO$_3$)—GB2900000						0.1	X
n-Butyl glycidyl ether—TX4200000	25	135					
n-Butyl lactate—OD4025000	5	25					
Butyl mercaptan—EK6300000	0.5	1.5					
o-sec-Butylphenol—SJ8920000	5	30					X
p-tert-Butyltoluene—SX8400000	10	60	20	120			
Cadmium and compounds—Restricted use, see also § 72.404.		.010					
Calcium cyanamide—GS6000000		0.5					
Calcium (hydroxide and oxide forms)—EW2800000, EW3100000.		5					
Camphor, synthetic—EX1225000		2					
Caprolactam—CM3675000:							
Dust		1		3			
Vapor	5	20	10	40			
Captafol—GW4905000		0.1					X
Captan—GW5075000		5					
Carbaryl—FC5950000		5					
Carbofuran—FB9450000		0.1					
Carbon black—FF5800000		3.5					
Carbon disulfide—FF6650000	4	12	12	36			X
Carbon tetrabromide—FG4725000	0.1	1.4	0.3				
Carbon tetrachloride—FG4900000—Restricted use, see also § 72.402.	2	12.6					X
Carbonyl fluoride—FG6125000	2	5	5	15			
Catechol—UX1050000	5	20					X
Cesium hydroxide—FK9800000		2					
Chlordane—PB9800000		0.5					X
Chlorinated camphene—XW5250000		0.5					X
Chlorinated diphenyl oxide—KO4200000		0.5					
Chlorine—FO2100000	0.5	1.5		3			
Chlorine dioxide—FO3000000	0.1	0.3	0.3	0.9			
Chlorine trifluoride—FO2800000					0.1	0.4	
Chloroacetaldehyde—AB2450000					1	3	
Chloroacetone—UC0700000							
αChloroacetophenone—AM6300000	0.05	0.3					
Chloroacetyl chloride—AO6475000	0.05	0.2					
Chlorobenzene—CZ0175000	75	350					
o-Chlorobenzylidene malononitrile—OO3675000					0.05	0.4	X
Chlorobromomethane—PA5250000	200	1,050					
Chlorodifluoromethane—PA6390000	1,000	3,500					
Chlorodiphenyl:							
(42% Chlorine)—TQ1356000	1						X
(54% Chlorine)—TQ1360000	0.5						X
Chloroform—FS9100000—Restricted use, see also § 72.403.	2	9.8					
bis(Chloromethyl) ether—KN1575000—Restricted use, see also § 72.401.	0.001	0.005					
Chloromethyl methyl ether—KN6650000—Restricted use, see also § 72.401.							
1-Chloro-1-nitropropane—TX5075000	2	10					
Chloropentafluoroethane—KH7877500	1,000	6,320					
Chloropicrin—PB6300000	0.1	0.7					
βChloroprene—EI9625000	10	35					X
o-Chlorostyrene—WL4160000	50	285	75	430			
o-Chlorotoluene—XS9000000	50	250	75	375			
Chloropyrifos—TF6300000		0.2		0.6			X
Chromium metal—GB4200000		0.5					
Chromium (II) compounds (as Cr)—GB6260000		0.5					
Chromium (III) compounds (as Cr)—GB6261000		0.5					
Chromium (VI) compounds (as Cr)—GB6262000		0.05					
Chromyl chloride—GB5775000	0.025	0.15					
Chrysene—GC0700000—Restricted use see § 72.401							
Clopidol—UU7711500		10					
Coal tar pitch volatiles (as benzene solubles)—GF8655000—Restricted use, see also § 72.404.		0.2					
Cobalt metal, dust & fume (as Co)		0.05					
Cobalt carbonyl—GG0300000		0.1					
Cobalt hydrocarbonyl (as Co)—GG0900000		0.1					

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m^3	ppm	mg/m^3	ppm	mg/m^3	
Copper:							
Fume		0.2					
Dusts & mists (as Cu)		1					
Cresol (all isomers)—GO59500000	5	22					X
Crotonaldehyde—GP9499000	2	6					
Crufomate—TB3850000		5					
Cumene—GR8575000	50	254					X
Cyanamide—GS5950000		2					
Cyanides (as CN)		5					X
Cyanogen—GT1925000	10	20					
Cyanogen chloride—GT2275000					0.3	0.6	
Cyclohexane—GU6300000	300	1,050					
Cyclohexanol—GV7875000	50	200					X
Cyclohexanone—GW1050000	25	100					X
Cyclohexene—GW2500000	300	1,015					
Cyclohexylamine—GX0700000	10	40					
Cyclonite—XY9450000		1.5					X
Cyclopentadiene—GY1000000	75	200					
Cyclopentane—GY2390000	600	1,720					
Cyhexatin—WH8750000		5					
2,4-D—AG6825000		10					
DDT (Dichlorodiphenyl-trichloroethane)—KJ3325000		1					X
Decaborane—HD1400000	0.05	0.3	0.15	0.9			X
Demeton—TF3150000	0.01	0.1					X
Diacetone alcohol—SA9100000	50	240					
Diatomaceous earth (uncalcined)—HL8600000		6					
Diazinon—TF3325000		0.1					X
Diazomethane—PA7000000	0.2	0.4					
Diborane—HQ9275000	0.1	0.1					
2-N-Dibutylaminoethanol—KK3850000	2	14					X
Dibutyl phenyl phosphate—TB9626600	0.3	3.5					X
Dibutyl phosphate—TB9605000	1	5	2	10			
Dibutyl phthalate—TI0875000		5					
Dichloroacetylene—AP1080000					0.1	0.4	
o-Dichlorobenzene—CZ4500000					50	300	
p-Dichlorobenzene—CZ4550000	75	450	110	675			
3,3'-Dichlorobenzidine—DD0525000—Restricted use, see § 72.401.							X
Dichlorodifluoromethane—PA8200000	1,000	4,950					
1,3-Dichloro-5,5-dimethyl hydantoin—MU0700000		0.2		0.4			
1,1-Dichloroethane—KI0175000	200	810	250	1,010			
1,2-Dichloroethylene—KV9360000	200	790					
Dichloroethyl ether	5	30	10	60			X
Dichlorofluoromethane—PA8400000	10	40					
1,1-Dichloro-1-nitroethane—KI1050000	2	10					
Dichloropropene—UC8310000	1	5					X
2,2-Dichloropropionic acid—UF0690000	1	6					
Dichlorotetrafluoroethane—KI1101000	1,000	7,000					
Dichlorvos—TC0350000	0.1	1					X
Dicrotophos—TC3850000		0.25					X
Dicyclopentadiene—PC1050000	5	30					
Dicyclopentadienyl iron—LK0700000		10					
Dieldrin—IO1750000		0.25					X
Diethanolamine—KL2975000	3	15					
Diethylamine—HZ8750000	10	30	25	75			X
2-Diethylaminoethanol—KK5075000	10	50					X
Diethylene triamine—IE1225000	1	4					X
Diethyl ketone—SA8050000	200	705					
Diethyl phthalate—TI1050000		5					
Difluorodibromomethane—PA7525000	100	860					
Diglycidyl ether—KN2350000	0.1	0.5					
Diisobutyl ketone—MJ5775000	25	150					
Diisopropylamine—IM4025000	5	20					X
Dimethyl acetamide—AB7700000	10	35					X
Dimethylamine—IP8750000	10	18					
4-Dimethylaminoazobenzene—BX7350000—Restricted use, see § 72.401.							
N,N-Dimethylaniline—BX4725000	5	25	10	50			X
Dimethyl carbamoyl chloride—FD4200000—Restricted use, see § 72.401.							
Dimethylformamide—LQ2100000	10	30					X
1,1-Dimethylhydrazine—MU2450000—Restricted use, see also § 72.403.	0.5	1					X
Dimethylphthalate—TI1575000		5					
Dimethyl sulfate—WS8225000—Restricted use, see also § 72.403.	0.1	0.5					X
Dinitolmide—XS4200000		5					
Dinitrobenzene (all isomers)	0.15	1					X

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Dinitro-o-cresol—GO9625000		0.2					X
Dinitrotoluene		1.5					X
Dioxane—JG8225000	25	90					X
Dioxathion—TE3350000		0.2					X
Diphenylamine—JJ7800000		10					
Dipropylene glycol methyl ether—JM1575000	100	600	150	900			X
Dipropyl ketone—MJ5600000	50	235					
Diquat—JM5690000		0.5					
Di-sec-octyl phthalate—TI0350000		5		10			
Disulfiram—JO1225000		2					
Disulfoton—TD9275000		0.1					X
2,6-Di-tert-butyl-p-cresol—GO7875000		10					
Diuron—YS8925000		10					
Divinyl benzene—CZ9450000	10	50					
Endosulfan—RB9275000		0.1					X
Endrin—IO1575000		0.1					X
Enflurane—KN6800000	75	575					
Epichlorohydrin—TX4900000	2	8					X
EPN—TB1925000		0.5					X
Ethane—KH3800000—Simple asphyxiant, see § 72.300(b)							
Ethanolamine—KJ5775000	3	8	6	15			
Ethion—TE4550000		0.4					X
2-Ethoxyethanol—KK8050000	5	19					X
2-Ethoxyethyl acetate—KK8225000	5	27					X
Ethyl acetate—AH5425000	400	1,400					
Ethyl acrylate—AT0700000—Restricted use, see also § 72.403.	5	20	15	61			X
Ethyl alcohol—KQ6300000	1,000	1,900					
Ethylamine—KH2100000	10	18					
Ethyl amyl ketone—MJ7350000	25	130					
Ethyl benzene—DA0700000	100	435	125	545			
Ethyl bromide—KH6475000	200	890	250	1,110			
Ethyl butyl ketone—MJ5250000	50	230					
Ethyl chloride—KH7525000	1,000	2,600					
Ethylene—KU5340000—Simple asphyxiant, see § 72.300(b).							
Ethylene chlorohydrin—KK0875000					1	3	X
Ethylenediamine—KH8575000	10	25					
Ethylene dibromide—KH9275000—Restricted use, see § 72.401.							X
Ethylene dichloride—KI0525000—Restricted use, see also § 72.403.	1	4	2	8			
Ethylene glycol, vapor—KW2975000					50	125	
Ethylene glycol dinitrate—KW5600000				0.1			X
Ethylene oxide—KX2450000—Restricted use, see also § 72.403.	1	2	5				
Ethylenimine—KX5075000—Restricted use, see also § 72.402.	0.5	1					X
Ethyl ether—KI5775000	400	1,200	500	1,500			
Ethyl formate—LQ8400000	100	300					
Ethylidene norbornene—RB9450000					5	25	
Ethyl mercaptan—KI9625000	0.5	1					
N-Ethylmorpholine—QE4025000	5	23					X
Ethyl silicate—VV9450000	10	85					
Fenamiphos—TB3675000		0.1					X
Fensulfothion—TF3850000		0.1					
Fenthion—TF9625000		0.2					X
Ferbam—NO8750000		10					
Ferrovanadium dust—LK2900000		1		3			
Fibrous glass dust—LK3651000		10					
Fluorides (as F)		2.5					
Fluorine—LM6475000	1	2	2				
Fonofos—TA5950000		0.1					X
Formaldehyde—LP8925000 Restricted use, see also § 72.403.	1	1.5	2	3			
Formamide—LQ0525000	10	15					X
Formic acid—LQ4900000	5	9	10	18			
Furfural—LT7000000	2	8					X
Furfuryl alcohol—LU9100000	10	40	15	60			X
Gasoline—LX3300000	300	900	500	1,500			
Germanium tetrahydride—LY4900000	0.2	0.6					
Glutaraldehyde—MA2450000					0.2	0.8	
Glycerin (mist)—MA8050000		10					
Glycidol—UB4375000	25	75					
Graphite (all forms)—MD9659600		2, Respirable dust					
Hafnium—MG4600000		0.5					
Halothane—KH6550000	50	400					
Helium—MH6520000—Simple asphyxiant, see § 72.300(b)							

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Heptachlor—PC0700000		0.5					X
Heptane (n-Heptane)—MI7700000	400	1,600	500	2,000			
Hexachlorobutadiene—EJ0700000—Restricted use, see also § 72.403.	0.02	0.24					X
Hexachlorocyclopentadiene—GY1225000	0.01	0.1					
Hexachloroethane—KI4025000	1	10					
Hexachloronaphthalene—QJ7350000		0.2					X
Hexafluoroacetone—UC2450000	0.1	0.7					X
Hexamethylene diisocynate—MO1740000	0.005	0.035					
Hexamethyl phosphoramide—TD0875000—Restricted use, see also § 72.401.							X
Hexane:							
n-Hexane—MN9275000	50	180					
other isomers—MO3860000	500	1,800	1,000	3,600			
sec-Hexyl acetate—SA7525000	50	300					
Hexylene glycol—SA0810000					25	125	
Hydrazine—MU7175000—Restricted use, see also § 72.403.	0.1	0.1					X
Hydrogen—MW8900000—Simple asphyxiant, see § 72.300(b).							
Hydrogenated terphenyls—WZ6535000	0.5	5					
Hydrogen bromide—MW3850000					3	10	
Hydrogen chloride—MW9610000, MW9620000					5	7	
Hydrogen cyanide—MW6825000					10	10	X
Hydrogen fluoride (as F)—MW7875000					3	2.5	
Hydrogen peroxide—MX0900000	1	1.4					
Hydrogen selenide (as Se)—MX1050000	0.05	0.2					
Hydroquinone—MX3500000		2					
2-Hydroxypropyl acrylate—AT1925000	0.5	3					X
Indene—NK8225000	10	45					
Indium & compounds (as In)		0.1					
Iodine—NN1575000					0.1	1	
Iodoform—PB7000000	0.6	10					
Iron oxide fume (Fe_2O_3) (as Fe)—NO7400000		5					
Iron pentacarbonyl (as Fe)—NO4900000	0.1	0.8	0.2	1.6			
Iron salts, soluble (as Fe)		1					
Isoamyl acetate—NS9800000	100	525					
Isoamyl alcohol—EL5425000	100	360	125	450			
Isobutyl acetate—AI4025000	150	700					
Isobutyl alcohol—NP9625000	50	150					
Isooctyl alcohol—NS7700000	50	270					X
Isophorone—GW7700000					5	25	
Isophorone diisocyanate—NQ9370000	0.005	0.045	0.02				X
Isopropoxyethanol—KL5075000	25	105					
Isopropyl acetate—AI4930000	250	950	310	1,185			
Isopropyl alcohol—NT8050000	400	980	500	1,225			
Isopropylamine—NT8400000	5	12	10	24			
N-Isopropylaniline—BY4200000	2	10					X
Isopropyl ether—TZ5425000	500	2,100					
Isopropyl glycidyl ether—TZ3500000	50	240	75	360			
Ketene—OA7700000	0.5	0.9	1.5	3			
Lead, inorganic, dusts & fumes (as Pb)		0.15					
Lead arsenate (as $Pb_3(AsO_4)_2$)—CG0990000		0.15					
Lead chromate (as Cr)—GB2975000—Restricted use, see also § 72.403.		0.05					
Lindane—GV4900000		0.5					X
Lithium hydride—OJ6300000		0.025					
L.P.G. (liquified petroleum gas)—SE7545000	1,000	1,800					
Magnesium oxide fume—OM3850000		10					
Malathion—WM8400000		10					X
Maleic anhydride—ON3675000	0.25	1					
Manganese (as Mn):							
Dust & compounds		5					
Fume		1		3			
Manganese cyclopentadienyl tricarbonyl (as Mn)—OO9720000.		0.1					X
Mercury (as Hg):							
Alkyl compounds	0.01		0.03				X
All forms except alkyl							
Vapor	0.05						X
Aryl & inorganic compounds	0.1						X
Mesityl oxide—SB4200000	15	60	25	100			
Methacrylic acid—OZ2975000	20	70					X
Methane—PA1490000—Simple asphyxiant, see § 72.300(b)							
Methomyl—AK2975000		2.5					
Methoxychlor—KJ3675000		10					
2-Methoxyethanol—KL5775000	5	16					X
2-Methoxyethyl acetate—KL5950000	5	24					X

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
4-Methoxyphenol—SL7700000		5					
Methyl acetate—AI9100000	200	610	250	760			
Methyl acetylene—UK4250000	1,000	1,650					
Methyl acetylene-propadiene mixture (MAPP)—UK4920000	1,000	1,800	1,250	2,250			
Methyl acrylate—AT2800000	10	35					X
Methylacrylonitrile—UD1400000	1	3					X
Methylal—PA8750000	1,000	3,100					
Methyl alcohol—PC1400000	200	260	250	310			X
Methylamine—PF6300000	10	12					
Methyl n-amyl ketone—MJ5075000	50	235					
N-Methyl aniline—BY4550000	0.5	2					X
Methyl bromide—PA4900000	5	20					X
Methyl n-butyl ketone—MP1400000	5	20					
Methyl chloride—PA6300000	50	105	100	205			
Methyl chloroform—KJ2975000	350	1,900	450	2,450			
Methyl 2-cyanoacrylate—AS7000000	2	8	4	16			
Methylcyclohexane—GV6125000	400	1,600					
Methylcyclohexanol—GW0175000	50	235					
o-Methylcyclohexanone—GW1750000	50	230	75	345			X
2-Methylcyclopentadienyl manganese tricarbonyl (as Mn)—OP1450000.		0.2					X
Methyl demeton—TG1760000		0.5					X
Methylene bisphenyl isocyanate—NQ9350000	0.005	0.055					
Methylene chloride—PA8050000—Restricted use, see also § 72.403.	50	175	500	1,740			
4,4'-Methylene bis(2-chloroaniline)—CY1050000—Restricted use, see also § 72.402.	0.02	0.22					X
Methylene bis(4-cyclo-hexylisocyanate)—NQ9250000	0.005	0.055					
4,4'-Methylene dianiline—BY5425000—Restricted use, see also § 72.403.	0.1	0.8					X
Methyl ethyl ketone—EL6475000	200	590	300	885			
Methyl ethyl ketone peroxide—EL9450000					0.2	1.5	
Methyl formate—LQ8925000	100	250	150	375			
Methyl hydrazine—MV5600000—Restricted use, see also § 72.403.					0.5	0.35	X
Methyl iodide—PA9450000—Restricted use, see also § 72.403.	2	10					X
Methyl isoamyl ketone—MP3850000	50	240					
Methyl isobutyl carbinol—SA350000	25	100	40	165			X
Methyl isobutyl ketone—SA9275000	50	205	75	300			
Methyl isocyanate—NQ9450000	0.02	0.05					X
Methyl isopropyl ketone—EL9100000	200	705					
Methyl mercaptan—PB4375000	0.5	1					
Methyl methacrylate—OZ5075000	100	410					
Methyl parathion—TG0175000		0.2					X
Methyl propyl ketone—SA7875000	200	700	250	875			
Methyl silicate—VV9800000	1	6					
α-Methyl styrene—WL5075300	50	240	100	485			
Metribuzin—XZ2990000		5					
Mevinphos—GQ5250000	0.01	0.1	0.03	0.3			X
Mica—VV8760000		3, Respirable dust					
Mineral wool fiber		10					
Molybdenum (as Mo):							
Soluble compounds		5					
Insoluble compounds		10					
Monocroptophos—TC4375000		0.25					
Morpholine—QD6475000	20	70	30	105			X
Naled—TB9450000		3					X
Naptha (Coal Tar—DE3030000	100	400					
Naphthalene—QJ05250000		10	50	15	75		
α-Naphthylamine—QM1400000—Restricted use, see § 72.401.							
β-Naphthylamine—QM2100000—Restricted use, see § 72.401.							
Neon—QP4450000—Simple asphyxiant, see § 72.300(b)							
Nickel:							
Metal—QR5950000		1					
Soluble compounds (as Ni)		0.1					
Nickel carbonyl (as Ni)—QR6300000	0.001	0.007					
Nicotine—QS2500000		0.5					X
Nitrapyrin—US7525000		10		20			
Nitric acid—QU5775000	2	5	4	10			
p-Nitroaniline—BY7000000		3					X
Nitrobenzene—DA6475000	1	5					X
p-Nitrochlorobenzene—CZ1050000	0.1	0.6					X
4-Nitrodiphenyl—DV5600000—Restricted use, see § 72.401.							
Nitroethane—KI5600000	100	310					

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Nitrogen—QW9700000—Simple asphyxiant, see § 72.300(b).							X
Nitrogen trifluoride—QX1925000	10	29					
Nitroglycerin—QX2100000				0.1			X
Nitromethane—PA9800000	100	250					
1-Nitropropane—TZ5075000	25	90					
2-Nitropropane—TZ5250000—Restricted use, see also § 72.403.	10	35					
N-Nitrosodimethylamine—IQ0525000—Restricted use, see § 72.401.							X
Nitrotoluene (o-,m-,p-isomers)—XT3150000, XT2975000, XT3325000.	2	11					X
Nitrous oxide—QX1350000	50	91					
Nonane—RA6115000	200	1,050					
Octachloronaphthalene—QK0250000		0.1		0.3			X
Octane—RG8400000	300	1,450	375	1,800			
Oil mist, mineral—PY8030000		5		10			
Osmium tetroxide (as Os)—RN1140000	0.0002	0.002	0.0006	0.006			
Oxalic acid—RO2450000		1		2			
Oxygen difluoride—RS2100000					0.05	0.1	
Ozone—RS8225000					0.1	0.2	
Paraffin wax fume—RV0350000		2					
Paraquat, respirable dust—DW1960000		0.1					X
Parathion—TF4550000		0.1					X
Pentaborane—RY8925000	0.005	0.01	0.015	0.03			
Pentachloronaphthalene—QK0300000		0.5					X
Pentachlorophenol—SM6300000		0.5					X
Pentane—RZ9450000	600	1,800	750	2,250			
Perchloroethylene—KX3850000—Restricted use, see also § 72.403.	25	170					
Perchloromethyl mercaptan—PB0370000	0.1	0.8					
Perchloryl fluoride—SD1925000	3	14	6	28			
Perlite—SD5254000		10					
Phenol—SJ3325000	5	19					X
Phenothiazine—SN5075000		5					X
N-Phenyl-β-naphthylamine—QM4550000—Restricted use, see § 72.401.							
p-Phenylene diamine—SS8050000		0.1					X
Phenyl ether vapor—KN8970000	1	7	2	14			
Phenyl glycidyl ether—TZ3675000	1	6					
Phenylhydrazine—MV8925000—Restricted use, see also § 72.403.	5	20	10	45			X
Phenyl mercaptan—DC0525000	0.5	2					
Phenylphosphine—SZ2100000					0.05	0.25	
Phorate—TD9450000		0.05		0.2			X
Phosgene—SY5600000	0.1	0.4					
Phosphine—SY7525000	0.3	0.4	1	1			
Phosphoric acid—TB6300000		1		3			
Phosphorus (yellow)—TH3500000		0.1					
Phosphorus oxychloride—TH4897000	0.1	0.6					
Phosphorus pentachloride—TB6125000	0.1	1					
Phosphorus pentasulfide—TH4375000		1		3			
Phosphorus trichloride—TH3675000	0.2	1.5	0.5	3			
Phthalic anhydride—TI3150000	1	6					
m-Phthalodinitrile—CZ1900000		5					
Picloram—TJ7525000		10		20			
Picric acid—TJ7875000		0.1		0.3			X
Pindone—NK6300000		0.1					
Piperazine dihydrochloride—TL4025000		5					
Platinum:							
Metal—TP2160000		1					
Soluble salts (as Pt)		0.002					
Portland cement—VV8770000		10					
Potassium hydroxide—TT2100000						2	
Propane—TX2275000—Simple asphyxiant, see § 72.300(b)							
Propane sultone—RP5425000—Restricted use, see § 72.401.							
Propargyl alcohol—UK5075000	1	2					X
β-Propiolactone—RQ7350000—Restricted use, see also § 72.402.	0.5	1.5					
Propionic acid—UE5950000	10	30					
Propoxur—FC3150000		0.5					
n-Propyl acetate—AJ3675000	200	840	250	1,050			
Propyl alcohol—UH8225000	200	500	250	625			
Propylene—UC6740000—Simple asphyxiant, see § 72.300(b).							
Propylene dichloride—TX9625000	75	350	110	510			
Propylene glycol dinitrate—TY6300000	0.05	0.3					X

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Propylene glycol monomethyl ether	100	360	150	540			
Propylene imine—CM8050000—Restricted use, see also § 72.403.	2	5					X
Propylene oxide—TZ2975000	20	50					
n-Propyl nitrate—UK0350000	25	105	40	170			
Pyrethrum—UR4200000		5					
Pyridine—UR8400000	5	15					
Quinone—DK2625000	0.1	0.4					
Resorcinol—VG9625000	10	45	20	90			
Rhodium:							
Metal—VI9069000		1					
Insoluble compounds (as Rh)		1					
Soluble compounds (as Rh)		0.01					
Ronnel—TG0525000		10					
Rosin core solder pyrolysis products (as formaldehyde)		0.1					
Rotenone (commercial)—DJ2800000		5					
Rubber solvent—VL8047000	400	1,600					
Selenium compounds (as Se)		0.2					
Selenium hexafluoride (as Se)—VS9450000	0.05	0.2					
Sesone—KK4900000		10					
Silicon—VW0400000		6					
Silicon carbide—VW0450000		6					
Silicon tetrahydride—VV1400000	5	7					
Silver:							
Metal, dust & fume		0.01					
Soluble compounds (as Ag)		0.01					
Soapstone—VV8780000							
Respirable		3					
Total		6					
Sodium azide—VY8050000							
as HN_3 vapor					0.1		X
as NaN_3						0.3	X
Sodium bisulfite—VZ2000000		5					
Sodium fluoracetate—AH9100000		0.05		0.15			X
Sodium hydroxide—WB4900000						2	
Sodium metabisulfite—UX8225000		5					
Stibine—WJ0700000	0.1	0.5					
Stoddard solvent—WJ8925000	100	525					
Strychnine—WL2275000		0.15					
Styrene, monomer—WL3675000	50	215	100	425			
Subtilisins (Proteolytic enzymes as 100% pure crystalline enzyme)—CO9450000, CO9550000.						0.00006	
Sulfotep—XN4375000		0.2					X
Sulfur hexafluoride—WS4900000	1,000	6,000					
Sulfuric acid—WS5600000		1		3			
Sulfur monochloride—WS4300000					1	6	
Sulfur pentafluoride—WS4480000					0.01	0.1	
Sulfur tetrafluoride—WT4800000					0.1	0.4	
Sulfuryl fluoride—WT5075000	5	20	10	40			
Sulprofos—TE4165000		1					
2,4,5-T—AJ8400000		10					
Talc (containing no asbestos fibers)—WW2710000		2.5, Respirable dust					
Talc (containing asbestos fibers)—WW2700000—Use asbestos PEL.							
Tantalum—WW5505000		5					
Tellurium & compounds (as Te)		0.1					
Tellurium hexafluoride (as Te)—WY2800000	0.02	0.2					
Temephos—TF6890000		10					
TEPP—UX6825000	0.004	0.05					X
Terphenyls—WZ6450000					0.5	5	
1,1,1,2-Tetrachloro-2,2-difluoroethane—KI1425000	500	4,170					
1,1,2,2-Tetrachloro-1,2-difluoroethane—KI1420000	500	4,170					
1,1,2,2-Tetrachloroethane—KI8575000	1	7					X
Tetrachloronaphthalene—QK3700000		2					X
Tetraethyl lead (as Pb)—TP4550000		0.075					X
Tetrahydrofuran—LU5950000	200	590	250	735			
Tetramethyl lead (as Pb)—TP4725000		0.075					X
Tetramethyl succinonitrile—WN4025000	0.5	3					X
Tetranitromethane—PB4025000	1	8					
Tetrasodium pyrophosphate—UX7350000		5					
Tetryl—BY6300000		1.5					
Thallium, soluble compounds (as Tl)		0.1					X
4,4'-Thiobis(6-tert-butyl-m-cresol)—GP3150000		10					
Thioglycolic acid—AI5950000	1	4					X
Thionyl chloride—XM5150000					1	5	
Thiram—JO1400000		1					
Tin							
Metal—XP7320000		2					

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Oxide & inorganic compounds, except SnH_4 (as Sn)		2					
Organic compounds (as Sn)		0.1		0.2			X
o-Tolidine—DD1225000—Restricted use, see § 72.401							X
Toluene—XS5250000	100	375	150	560			
Toluene-2,4-diisocyanate—CZ6300000	0.005	0.04	0.02	0.15			
o-Toluidine—XU2975000—Restricted use, see also § 72.403.	2	9					X
m-Toluidine—XU2800000	2	9					X
p-Toluidine—XU3150000—Restricted use, see also § 72.403.	2	9					X
Tributyl phosphate—TC7700000	0.2	2.5					
Trichloroacetic acid—AJ7875000	1	7					
1,2,4-Trichlorobenzene—DC2100000					5	40	
1,1,2-Trichloroethane—KJ3150000	10	45					X
Trichloroethylene—KX4550000	50	270	200	1,080			
Trichlorofluoromethane—PB6125000					1,000	5,600	
Trichloronaphthalene—QK4025000		5					X
1,2,3-Trichloropropane—TZ9275000	10	60					X
1,1,2-Trichloro-1,2,2-trifluoroethane—KJ4000000	1,000	7,600	1,250	9,500			
Triethylamine—YE0175000	10	40	15	60			
Trifluorobromomethane—PA5425000	1,000	6,100					
Trimellitic anhydride—DC2050000	0.005	0.04					
Trimethylamine—PA0350000	10	24	15	36			
Trimethyl benzene—DC3220000	25	125					
Trimethyl phosphite—TH1400000	2	10					
2,4,6-Trinitrotoluene—XU0175000		0.5					X
Triorthocresyl phosphate—TD0350000		0.1					X
Triphenyl amine—YK2680000		5					
Triphenyl phosphate—TC8400000		3					
Tungsten (as W)							
Insoluble compounds		5		10			
Soluble compounds		1		3			
Turpentine—YO8400000	100	560					
Uranium (as U)							
Soluble compounds		0.05					
Insoluble compounds		0.2		0.6			
n-Valeraldehyde—YV3600000	50	175					
Vanadium metal and vanadium carbide (as V)—YW1355000, YW1400000.		1					
Vanadium compounds (as V)						0.05	
Vinyl acetate—AK0875000	10	30	20	60			
Vinyl bromide—KU8400000—Restricted use, see also § 72.403.	5	20					
Vinyl chloride—KU9625000—Restricted use, see also § 72.402.	1		5				
Vinyl cyclohexene dioxide—RN8640000—Restricted use, see also § 72.403.	10	60					X
Vinylidene chloride—KV9275000	1	4					
Vinyl toluene—WL5075000	50	240	100	485			
VM & P Naphtha—OI6180000	300	1,350					
Warfarin—GN4550000		0.1					
Welding fumes not otherwise classified		5					
Wood dust—ZC9850000							
Hard wood		1					
Soft wood		5		10			
Xylene (o-,m-,p-isomers):							
ZE2450000, ZE2275000	100	435	150	655			
ZE2625000	100	435	150	655			
m-Zylene α,α'-diamine—PF8970000						0.1	X
Xylidine—ZE8575000—Restricted use, see also § 72.403	0.5	2.5					X
Yttrium—ZG2980000		1					
Zinc chloride fume—ZH1400000		1					
Zinc chromate (as Cr)—GB3290000, GB3300000—Restricted use, see also § 72.403.		0.01					
Zinc oxide fume—AH4810000		5		10			
Zirconium compounds (as Zr)		5		10			

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[1] Fibers greater than 5 microns in length, as determined by the membrane filter method at 400–450 magnification (4 millimeter objective) phase contrast illumination. Asbestos is defined as chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos and any of these minerals that have been chemically treated or altered.

§ 72.200 Exposure monitoring.

(a) *Frequency.* For miners exposed to substances listed in Table B-1, the mine operator shall monitor their exposure—

(1) When the operator has reason to believe that a change in production, process, materials, equipment, or engineering or administrative controls would increase a substance's concentration above the PEL;

(2) Upon installation of controls;

(3) Upon modification of controls used to reduce exposure to the PEL; and

(4) At least once every 3 three if respirators are required to be worn because a substance's concentration is about the PEL.

(b) *Cessation of monitoring.* Monitoring required by paragraphs (a)(1), (a)(2) and (a)(3) of this section shall no longer be required when airborne concentrations are determined to be at or below the PEL with 95 percent confidence.

(c) *Monitoring procedures.* Monitoring samples shall be—

(1) Representative of the affected miners' exposures;

(2) Collected and analyzed by appropriate instrumentation and methods. Instruments used to measure exposures shall be maintained and calibrated; and

(3) Collected and analyzed by a person trained or experienced in the monitoring procedures.

(d) *Recordkeeping.* The mine operator shall record the results of required exposure monitoring and retain these records for 5 years. These records shall include the following:

(1) Date of sampling.

(2) Name of miner or location of work area where each sample was collected.

(3) Substances sampled.

(4) Sampling and analytical method used, including error factor.

(5) Time or duration of each sample.

(6) Concentrations of each substance determined by sampling.

(7) Names of persons conducting the sampling and analysis.

(8) The corrective action being taken if exposure exceeds the PEL.

(e) *Access to exposure records.* (1) Upon request, the mine operator shall ensure immediate access to exposure records to the following:

(i) Miners whose exposures are included in the records.

(ii) The miners' representative for miners whom they represent.

(iii) The miner's designated representative.

(iv) Authorized representatives of the Secretary of Labor or the Secretary of Health and Human Services.

(2) Former employees shall have access to their exposure records during the 5-year retention period.

(3) A copy of the record shall be provided without cost to the miner or representative.

(4) Whenever a mine operator is ceasing to do business, the operator shall transfer all records subject to this section to the successor operator shall receive and maintain these records for the period required by this section. Whenever an operator is ceasing to do business and there is no successor operator to receive and maintain the records subject to this section, the operator shall notify the affected employees of their rights of access to records at least 3 months prior to disposal of the records.

(f) *Observation of monitoring.* The mine operator shall provide affected miners or their representatives with an opportunity to observe exposure monitoring required by this section.

(g) *Notification of overexposure.* When a sample indicates that a miner's exposure exceeds the PEL for any substance listed in Table B–1, the mine operator shall notify the miner in writing within 15 calendar days following receipt of sampling results of the overexposure and the corrective action being taken.

§ 72.300 Dangerous atmospheres.

(a) The atmosphere shall be tested for suspected hazardous gases and vapors and oxygen deficiency prior to entrance into any of the following areas:

(1) Silos, vats, tanks, and other confined spaces with atmospheres that could contain or produce dangerous levels of air contaminants.

(2) Areas where there has been a liberation of contaminants in sufficient quantities that could result in acute respiratory exposure that poses an immediate threat of loss of life, immediate or delayed irreversible adverse health effects, or acute eye exposure that would prevent escape from a hazardous atmosphere (IDLH atmosphere).

(b) Air in work areas shall contain at least 19.5 percent oxygen by volume. If the oxygen content of the air falls below 19.5 percent, all miners affected shall be withdrawn unless they are using respiratory protection in accordance with § 72.500, and immediate action shall be taken to restore the level to at least 19.5 percent.

(c) The following precautions shall be taken when entering a dangerous atmosphere in an area listed in paragraph (a) of this section or an oxygen-deficient atmosphere listed in paragraph (b) of this section:

(1) Respiratory protection shall be used in accordance with the respiratory protection program required by § 72.500.

(2) There shall be two standby persons outside the affected area with backup equipment and rescue capabilities, or one standby person with appropriate equipment outside the affected area who could rescue the other person without the affected area who could rescue the other person without entering the area.

(3) Communication (visual, voice, signal-box, radio or other means) shall be maintained with the persons exposed.

Subpart C—Carcinogens

§ 72.401 Class 1 carcinogens.

(a) Liquids, solids, or gases containing class 1 carcinogens in concentrations that exceed those listed in Table C–1 shall not be processed, used, handled, packaged, or stored except under restricted-use conditions and procedures approved by MSHA. At a minimum, the conditions and procedures shall include specifications for the use of engineering controls, personal protection, and administrative measures that ensure virtually no contact with a class 1 carcinogen. The conditions and procedures shall also include emergency and decontamination procedures, monitoring and training requirements associated with the class 1 carcinogen. Exposure to class 1 carcinogens that have PELs on Table B–1 shall be further controlled in accordance with § 72.100 of this part. Rotation of workers shall not be used to comply with the PEL.

(b) *Approval procedures.* The mine operator shall submit proposed conditions or procedures for class 1 carcinogens for approval to the Administrator, Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(1) The Administrator shall approve or disapprove the operator's submission within 120 days from its receipt by MSHA. The Administrator shall notify the operator in writing of specific reasons for disapproval of any condition or procedure and provide the operator with an opportunity to discuss necessary changes.

(2) The operator shall notify the Administrator of any significant change or modification in conditions or procedures approved by MSHA.

(3) Approval of the conditions or procedures may be revoked if, based on new evidence unavailable at the time of approval, MSHA finds that they are inadequate to protect the health of miners. The Administrator shall notify the operator in writing of modifications that must be made in order for the operator to retain use approval. The Administrator shall provide a reasonable opportunity to implement the changes before MSHA revokes the operator's approval.

(2) *Appeal procedures.* A decision by the Administrator to disapprove or revoke approval of any part of an operator's conditions or procedures may be appealed to the Assistant Secretary for Mine Safety and Health, 4015 Wilson

Boulevard, Arlington, Virginia 22203. The appeal shall be submitted within 30 days of notification of the decision made by the Administrator. The Assistent Secretary shall provide a written determination to the operator within 30 days of receipt of the appeal.

(3) *Availability of approval.* The operator shall make a copy of the MSHA-approved conditions or procedures available at the mine site for inspection by MSHA and examination by miners and their representatives.

TABLE C–1.—CLASS 1 CARCINOGENS

Carcinogen	Concentration, percent (weight or volume)
2-Acetylaminofluorene	.1
4-Aminodiphenyl	.1
Benzidine	.1
Benzo(a)pyrene (commercially manufactured)	.1
bis(Chloromethyl) ether	.1
Chloromethyl methyl ether	.1
Chrysene (commercially manufactured)	.1
3,3'-Dichlorobenzidine	.1
4-Dimethylaminoazobenzene	.1
Dimethyl carbamoyl chloride	.1
Ethylene dibromide	.1
Hexamethyl phosphoramide	.1
α-Naphthylamine	.1
β-Naphthylamine	.1
4-Nitrodiphenyl	.1
N-Nitrosodimethylamine	.1
N-Phenyl-β-naphthylamin	.1
Propane sultone	.1
o-Tolidine	.1

§ 72.402 Class 2 carcinogens.

Exposure to liquids, solids, or gases containing class 2 carcinogens in concentrations that exceed those listed in Table C–2 shall be controlled by implementation of the following requirements. Exposure to class 2 carcinogens that have PELs on Table B–1 shall also meet the requirements of § 72.100 of this part. Rotation of workers shall not be used to comply with the PEL.

(a) The mine operator shall establish a restricted area where a class 2 carcinogen is processed, used, packaged, handled, or stored.

(b) Entrances to the restricted area shall be posted with signs stating the nature of the hazard. Appropriate instructions shall be posted informing persons of the procedures that must be followed when entering or leaving the restricted area.

(c) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area.

(d) The restricted area shall be controlled by engineering controls and administrative measures to prevent contamination of nonrestricted areas.

(e) The introduction or removal of any equipment, material, or other items to or from restricted areas shall be done in a manner that does not contaminate nonrestricted areas.

(f) Containers of class 2 carcinogens or materials contaminated by them shall be clearly marked and their contents identified. The containers shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(g) Class 2 carcinogens shall be processed or used in an isolated system, closed system, laboratory-type hood, or in any system that offers equivalent protection against entry of the substances into a restricted or nonrestricted area.

(h) At the beginning of each shift, prior to entering a restricted area, miners shall be provided with and wear clean, full-body protective clothing (such as smocks, coveralls, or long-sleeved shirts and pants), work shoes or shoe covers, gloves, and other appropriate personal protection.

(i) Prior to exiting a restricted area, miners shall remove and leave protective clothing and equipment at the point of exit. At the last exit of the day, miners shall place clothing and equipment in impervious containers at the point of exit for purposes of decontamination and disposal.

(j) Miners shall wash hands, forearms, face and neck at each exit from a restricted area close to the point of exit and before engaging in other activities.

(k) Miners shall shower after the last exit of the day.

(l) Written decontamination, disposal, and emergency procedures shall be developed and implemented for the restricted area and process.

(m) At least once every 12 months, the mine operator shall monitor to evaluate the continued effectiveness of controls and decontamination procedures, using appropriate instrumentation and methods.

(n) Prior to initial assignment and at least once every 12 months, miners required to enter the restricted area or who are involved in maintenance on contaminated equipment, decontamination, disposal, and emergency response shall receive training on the risks and hazards of the class 2 carcinogens being used and the decontamination and emergency procedures to be followed.

TABLE C–2.—CLASS 2 CARCINOGENS

	Concentration, percent (weight or volume)
Carbon tetrachloride	.1
Ethylenimine	.1
4,4'-Methylene bis(2-chloroaniline)	.1
β-Propiolactone	.1
Vinyl chloride	.1

§ 72.403 Class 3 carcinogens.

Exposure to liquids, solids, or gases containing class 3 carcinogens in concentrations that exceed those listed in Table C–3 shall be controlled by implementation of the following requirements. Exposure to class 3 carcinogens that have PELs on Table B–1 shall also meet the requirements of § 72.100 of this part. Rotation of workers shall not be used to comply with the PEL.

(a) The mine operator shall establish a restricted area where a class 3 carcinogen is found to be above the PEL or STEL or may be anticipated to be above the PEL or STEL.

(b) Entrances to the restricted area shall be posted with signs stating the nature of the hazard. Appropriate instructions shall be posted informing persons of the procedures that must be followed when entering or leaving the restricted area.

(c) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area or in any area where these items may come into direct contact with the carcinogen.

(d) The restricted area shall be controlled by engineering and administrative measures.

(e) The introduction or removal of any equipment, material, or other items to or from restricted areas, or equipment materials, or other items contaminated with the carcinogen, shall be done in a manner that does not contaminate nonrestricted areas.

(f) Containers of class 3 carcinogens or materials contaminated by them shall be clearly marked and their contents identified. The containers shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(g) For emergency control activities and where direct contact with the carcinogen is possible, miners shall be provided with and wear clean, full-body protective clothing (such as smocks, coveralls, or long-sleeved shirts and

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pants), work shoes or shoe covers, gloves, and other appropriate personal protection.

(h) Prior to the end of the shift and after completion of emergency control activities or any work involving direct contact with the carcinogen, miners shall place protective clothing and equipment in impervious containers for purposes of decontamination and disposal.

(i) After completion of emergency control activities or any work involving direct contact with the carcinogen, miners shall wash hands, forearms, faces and neck before engaging in other activities and shower at the end of the shift.

(j) Written decontamination, disposal, and emergency procedures shall be developed and implemented for the restricted area and process.

(k) At least once every 12 months, the mine operator shall monitor to evaluate the continued effectiveness of controls and decontamination procedures, using appropriate instrumentation and methods.

(l) Prior to initial assignment and at least once every 12 months, miners required to enter the restricted area or who are involved in maintenance on contaminated equipment, decontamination, disposal, and emergency response shall receive training on the risks and hazards of the class 3 carcinogens being used and the decontamination and emergency procedures to be followed.

TABLE C-3.—CLASS 3 CARCINOGENS

	Concentration, percent (weight or volume)
Acrylamide	.1
Acrylonitrile	.1
Amitrole	.1
Benzene	5.0
1,3-Butadiene	.1
Chloroform	.1
1,1-Dimethylhydrazine	.1
Dimethyl sulfate	.1
Ethyl acrylate	.1
Ethylene dichloride	.1
Ethylene oxide	.1
Formaldehyde	.1
Hexachlorobutadiene	.1
Hydrazine	.1
Lead chromate	5.0
Methylene chloride	.1
4,4'-Methylene dianiline	.1
Methyl hydrazine	.1
Methyl iodide	.1
2-Nitropropene	.1
Perchloroethylene	.1
Phenylhydrazine	.1
Propylene imine	.1
o-Toluidine	.1
p-Toluidine	.1
Vinyl bromide	.1

TABLE C-3.—CLASS 3 CARCINOGENS—Continued

	Concentration, percent (weight or volume)
Vinyl cyclohexene dioxide	.1
Xylidine	.1
Zinc chromate	5.0

§ 72.404 Class 4 carcinogens.

Exposure to liquids, solids, or gases containing class 4 carcinogens in concentrations exceeding those listed in Table C-4 or a process listed in Table C-4 shall be controlled by implementation of the following requirements. Exposure to class 4 carcinogens that have PELs on Table B-1 shall also meet the requirements of § 72.100 of this part. Rotation of workers shall not be used to comply with te PEL.

(a) The area where a class 4 carcinogen is processed, packaged, used, handled, or stored shall be restricted to essential personnel.

(b) Entrances to the restricted area shall be posted with signs stating the nature of the hazard. Appropriate instructions shall be posted informing miners of the procedures that must be followed when entering or leaving the restricted area.

(c) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area.

(d) At the beginning of each shift, prior to entering the restricted area, miners shall be provided with and wear clean, full-body protective clothing (such as smocks, coveralls, or long-sleeved shirts and pants), work shoes or shoe covers, gloves, and other appropriate personal protection.

(e) Prior to exiting a restricted area, miners shall remove and leave protective clothing and equipment at the point of exit. At the last exit of the day, miners shall place clothing and equipment in impervious containers at the point of exit for purposes of decontamination and disposal.

(f) Miners shall wash hands, forearms, face and neck at each exit from a restricted area close to the point of exit and before engaging in other activities.

(g) Miners shall shower upon the last exit of the day.

(h) Containers of class 4 carcinogens shall be clearly marked and their contents identified. The containers shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(i) Written decontamination, disposal and emergency procedures shall be developed and implemented for the restricted area and process.

(j) At least once every 12 months, the mine operator shall monitor to evaluate the continued effectiveness of controls and decontamination procedures, using appropriate instrumentation and methods.

(k) Prior to initial assignment and at least once every 12 months, miners required to enter the restricted area or who are involved in decontamination, disposal, and emergency response shall receive training on the risks and hazards of the class 4 carcinogens being used and the decontamination and emergency procedures to be followed.

TABLE C-4.—CLASS 4 CARCINOGENS

	Concentration, percent (weight or volume)
Beryllium and compounds (except welding)	.1
Cadium and compounds (except welding)	.1
Coal tar pitch volatiles	2.0

§ 72.405 Asbestos construction work.

Exposure to asbestos resulting from asbestos construction shall be controlled by implementation of the following requirements. Exposure to asbestos in these situations shall also meet the requirements of § 72.100 of this part. Rotation of workers shall not be used to comply with the PEL. For purposes of this section, asbestos construction work means construction work such as demolition or salvage of structures where asbestos is present; installation, removal, or encapsulation of asbestos and materials containing greater than 0.1 percent asbestos; spill and emergency cleanup of asbestos and material containing greater than 0.1 percent asbestos; transportation, disposal, storage or containment of asbestos or materials containing greater than 0.1 percent asbestos on the site or location at which construction activities are performed.

(a) The operator shall designate a person to be responsible for the asbestos construction work who will have authority to take prompt corrective action to eliminate hazards. This person shall have had comprehensive training on the hazards of asbestos and asbestos construction work, such as a course conducted by an EPA Asbestos Training Center, or be a certified industrial hygienist (C.I.H.) certified by the

American Board of Industrial Hygiene, or be certified for asbestos construction work by a state program.

(b) The area where asbestos construction work is being done shall be restricted to essential personnel.

(c) Entrances to the restricted area shall be posted with signs stating the nature of the hazard. Appropriate instrucitons shall be posted informing miners of the procedures that must be followed when entering or leaving the restricted area.

(d) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area.

(e) At the beginning of each shift, prior to entering a restricted area, miners shall be provided with and wear clean, full-body protective clothing (such as converalls, or long-sleeved shirts and pants), work shoes or shoe covers, gloves, head covers, and other appropriate personal protection.

(f) Prior to existing a restricted area, miners shall remove and leave protective clothing and equipment at the point of exit. At the last exit of the day, miners shall place clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal.

(g) Miners shall shower immediately after each exit.

(h)(1) Whenever feasible, the miner operator shall establish negative-pressure enclosures before beginning removal, demolition, or renovation operations.

(2) For small-scale, short-duration activities involving removal of asbestos-containing insulation on pipes, removal of entire and intact asbestos-insulated pipes or structures, and replacement of electrical conduits through or near asbestos-containing material, glove bags and wet methods may be used instead of negative-pressure enclosures.

(i) Daily monitoring shall be conducted in the restricted area if the exposure exceeds the PEL or could reasonably be expected to exceed the PEL. When all workers within a restricted area are equipped with supplied-air respirators operated in the positive-pressure mode, daily monitoring is not required.

(j) Written decontamination, disposal and emergency procedures shall be developed and implemented for the restricted area and process.

(k) Prior to initial assignment and at least once every 12 months, persons required to enter the restricted areas or who are involved in decontamination, disposal, and emergency response shall receive training on the risks and hazards of asbestos and asbestos construction work, as well as the decontamination, disposal, and emergency procedures to be followed.

(l) The mine operator shall notify MSHA at least 20 days prior to beginning asbestos construction work involving—

(1) At least 80 linear meters (260 linear feet) of asbestos or material containing greater than 0.1 percent asbestos on pipes; or

(2) At least 15 square meters (160 square feet) of asbestos or material containing greater than 0.1 percent asbestos on other facility components.

(m) Containers of asbestos and materials containing greater than 0.1 percent asbestos shall be clearly marked and their contents identified. The containers shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(n) The introduction or removal of any equipment, material, or other items to or from the restricted area shall be done in a manner that does not contaminate nonrestricted areas.

§ 72.450 Medical surveillance program.

(a) *Establishment.* The mine operator shall develop and implement a written medical surveillance program that shall make available medical examinations to miners who are working with or will be assigned to work with a chemical or process listed on Table C-5. The medical examination shall be provided at the operator's cost and at a reasonable time and place.

(b) *Medical examinations.* (1) Under the medical surveillance program, a medical examination by a licensed physician shall be made available to miners—

(i) Prior to initial assignment;

(ii) At least once every 12 months; and

(iii) At any time a miner is exposed to any carcinogen listed on Table C-5 as a result of an emergency.

(2) The operator shall provide the examining physician with the following information:

(i) The names of chemicals to be used.

(ii) Description of the work to be performed by the miner.

(iii) Duration and frequency of chemical usage.

(iv) Environmental conditions of the intended worksite.

(v) Type of personal protective equipment to be worn by the miner.

(vi) Relevant information from any previous medical examinations of the affected miner that is in the operator's possession.

(3) The mine operator shall require the physician to submit a written report of the miner's condition to the operator. The mine operator shall instruct the physician not to reveal orally, or in the written evaluation, any specific findings or diagnoses unrelated to the miner's exposure to carcinogens.

(4) The mine operator shall inform any miner who refuses to have the medical examination of the possible health consequences of such refusal and shall obtain a signed statement from the miner indicating that the miner understands the risk involved in the refusal to be examined.

(c) *Medical transfer.* (1) Upon notification from the physician that a miner's medical examination shows evidence that the miner has developed cancer or any material impairment of health or functional capacity due to occupational exposure to a carcinogen listed on Table C-5, the miner shall be given the option to work in an area of the mine where there is no exposure to the carcinogen. The operator shall notify the miner in writing of eligibility to exercise the option of medical transfer.

(2) When a miner requests to transfer, the mine operator shall notify the Administrator, Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 15 calendar days from receipt by the operator of the miner's request for transfer. The operator's notice to the Administrator shall include the miner's name, occupation and assignment of new duties including the scheduled date of transfer.

(3) When a miner elects to transfer, the transfer shall take place on or before the 21st calendar day following receipt by the operator of the miner's request. The mine operator shall transfer the miner to an existing position at the same mine. If the miner agrees in writing, the operator may transfer the miner to a different mine.

(4) Any miner transferred under this section shall—

(i) Continue to receive compensation at no less than the regular rate of pay for a miner in the classification held by that miner immediately prior to the transfer.

(ii) Receive wage increases based upon the new work classification.

(d) *Recordkeeping.* (1) The mine operator shall maintain a record of the medical evaluation conducted for each miner. These records shall be kept for the duration of the miner's employment plus 30 years.

(2) Upon request, the operator shall give access to the miner's medical records required by this section to the miner or, with the miner's written consent, to the miner's designated representative. Access shall also be given to authorized representatives of

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the Secretary of Labor and the Secretary of the Department of Health and Human Services. Upon termination of employment, miners shall be given a copy of their medical evaluation records. Copies of records shall be provided without cost.

(3) Whenever a mine operator is ceasing to do business, the operator shall transfer all records subject to this section to the successor operator. The successor operator shall receive and maintain these records for the period required by this section. Whenever an operator is ceasing to do business and there is no successor operator to receive and maintain the records, the operator shall notify all affected miners of their rights of access to records at least 3 months prior to disposal of the records.

TABLE C-5.—MEDICAL EVALUATION CARCINOGENS

Asbestos mining and milling
Asbestos construction work
2-Acetylaminofluorene
Acrylonitrile
4-Aminodiphenyl
Arsenic trioxide production
Benzene (except gasoline)
Benzidine
bis (Chloromethyl) ether
Chloromethyl methyl ether
3,3 Dichlorobenzidine
4-Dimethylaminoazobenzene
Ethylenimine
Ethylene oxide
Formaldehyde
α-Naphthylamine
β-Naphthylamine
4-Nitrodiphenyl
N-Nitrosodimethylamine
β-Propiolactone
Vermiculite mining and milling where asbestos is present in concentrations greater than 1 percent in the ore or concentrate
Vinyl Chloride

Subpart D—Respiratory Protection

§ 72.500 Respiratory protection program.

When respiratory protection is required by this part, written standard operating procedures shall be developed and implemented that include the requirements of this section.

(a) Only respirators approved under 30 CFR Part 11 shall be used. Respirators shall be maintained in approved condition.

(b) Respirators shall be selected according to the nature of the hazard, the criteria in Tables D–1, D–2 and D–3, the manufacturer's limitations on the respirator, and the characteristics of the work environment, which includes the exposure levels, the period of time the respiratory protection will be worn, and work activities of the employees.

(c) Respirators shall be inspected before each use and after cleaning, sanitizing, and maintenance. Emergency-use respirators shall be inspected monthly with a record kept of the last inspection.

(d) Respirator wearers shall be provided with a clean and sanitized respirator each day. Respirators shall be cleaned and sanitized prior to use by another person. Emergency-use respirators shall be cleaned and sanitized promptly after each use.

(e) Respirators shall be stored in a manner that protects them from damage or contamination. Respirators stored for emergency use shall be accessible to persons who may need to use them.

(f) For respirators with tight-fitting facepieces, a qualitative or quantitative respirator fit test that has been shown by scientific data to be capable of indicating the adequacy of the fit shall be conducted initially and at least once every 12 months thereafter. Respirators failing to provide a satisfactory fit shall not be used. For respirators fitted quantitatively, a minimum ratio of 100 must be obtained. The maximum assigned protection factor allowed for qualitatively-fitted respirators is 10, with the exception of disposable dust/mist respirators which is limited to 5. For respirators fitted quantitatively the assigned protection factor is one-tenth the measured ratio but no greater than the maximum assigned protection factor listed in Tables D–2 and D–3.

(g) A record of the latest fit test for each respirator wearer shall be kept for 1 year or until the next fit test. The record shall include the date the fit test was made, the respirator wearer's name, and the make, model, and size of the respirators tested for which a satisfactory fit was obtained. When quantitative fit testing is conducted, the protection factor assigned to each respirator wearer and tested respirator shall be included in the record.

(h) For respirators with tight-fitting facepieces, negative- and positive-pressure sealing tests or equivalent qualitative sealing tests shall be conducted prior to use. Respirators failing to provide a satisfactory seal shall not be used.

(i) Respirators shall not be used when facial hair comes between the sealing surface of the respirator facepiece and the face.

(j) Respirator wearers, supervisors, and persons issuing or maintaining respirators shall be trained initially and at least once every 12 months thereafter in the selection, use, and maintenance of respiratory devices. The mine operator and the person trained shall both certify that the training was conducted.

(k) When compressors or blowers are used to provide respirable air, they shall be constructed and located to prevent entry of contaminated air into the air supply system. Compressors shall be equipped with in-line air purifying sorbent beds or filters to ensure breathing air quality. Oil-lubricated compressors shall be equipped with a carbon monoxide or high-temperature alarm.

(l) When supplied air, compressed air, or oxygen is provided for respiration, it shall meet the requirements of 30 CFR part 11.

(m) Compressed oxygen shall not be used in atmosphere-supplying respirators or in open-circuit, self-contained breathing apparatus that have previously used compressed air.

TABLE D-1.—OXYGEN-DEFICIENT ATMOSPHERES

Altitude (ft.)	Oxygen-deficient atmospheres	Oxygen-deficient IDLH atmospheres
0–3,000	19.5	16
3,001–4,000	19.5	16.4
4,001–5,000	19.5	17.1
5,001–6,000	19.5	17.8
6,001–7,000	19.5	18.5
7,001–8,000	19.5	19.3
Above 8,000 ft. to 14,000 ft.		19.5

TABLE D-2.—AIR-PURIFYING RESPIRATORS [1]

	Assigned maximum protection factor
Half mask or quarter facepiece	10
Full facepiece	50
Disposable, dust/mist	5
Powered air-purifying:	
Tight-fitting full facepiece	250
Tight-fitting half mask [2]	50
Loose-fitting hood or helmet	25

[1] Air-purifying respirators may not be used in oxygen-deficient or IDLH atmospheres. Air-purifying respirators used for particulate protection against carcinogens shall be equipped with high-efficiency filters.

[2] Only full-facepiece respirators are to be used in contaminant concentrations that produce eye irritation.

TABLE D-3.—ATMOSPHERE-SUPPLYING RESPIRATORS

	Assigned maximum protection factor
Supplied-Air Respirator (SAR) [1]	
Negative pressure (demand):	
Half mask	10
Full facepiece	50
Continuous flow:	
Hood or helmet	25
Half mask	50
Full facepiece	250
Pressure demand:	
Half mask	1,000
Full facepiece	1,000
Combination full facepiece: Pressure demand SAR with auxiliary self-contained air supply	Greater than 1,000, and IDLH, or unknown concentrations.
Self-Contained Breathing Apparatus (SCBA) [2]	
Demand (except for apparatus approved for mine rescue)	50
Demand—approved for mine rescue	Greater than 1,000, and IDLH, or unknown concentrations.
Pressure demand	Greater than 1,000 and IDLH or unknown concentrations.

[1] Any atmosphere-supplying respirator may be used in an oxygen-deficient atmosphere where the oxygen content is below the level listed for an oxygen-deficient atmosphere but above the level listed for oxygen-deficient IDLH atmospheres in Table D–1.

[2] Only a full-facepiece pressure-demand SCBA, combination full-facepiece pressure-demand SAR with auxiliary self-contained air supply or SCBA approved for mine rescue may be used in unknown IDLH or oxygen-deficient IDLH atmospheres listed in Table D–1.

§ 72.550 Medical surveillance program.

(a) *Establishment.* The mine operator shall develop and implement a written medical surveillance program that shall require miners who are or will be assigned to work in an area requiring respiratory protection to receive a medical examination. The medical examination shall be provided at the operator's cost and at a reasonable time and place.

(b) *Medical examinations.* (1) Under the medical surveillance program, miners shall be examined by a licensed physician—

(i) Prior to initial assignment;

(ii) At least once during the period listed in Table D–4; and

(iii) At any time the miner experiences difficulty breathing while being fitted for, or while using, a respirator.

(2) The operator shall provide the examining physician with the following information:

(i) The type of respiratory protection to be used.

(ii) Description of the work effort required.

(iii) Duration and frequency of usage.

(iv) The type of work performed, including any special responsibilities that could affect the safety of other miners, such as firefighting or rescue efforts.

(v) Any special environmental conditions, such as heat or work in confined spaces.

(vi) Relevant additional requirements for protective clothing and equipment.

(vii) Anticipated exposure levels.

(3) The mine operator shall require the physician to submit a written report of the miner's condition to the operator. The mine operator shall instruct the physician not to reveal orally, or in the written evaluation, any specific findings or diagnoses unrelated to the miner's respirator use.

(c) *Medical transfer.* (1) Upon notification from the physician that a miner's medical examination shows evidence that the miner is unable to wear a respirator, the miner shall be transferred to work in an area of the mine where respiratory protection is not required.

(2) When a miner must be transferred under this section, the mine operator shall notify the Administrator, Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 15 calendar days from receipt of the physician's evaluation, that a miner will be transferred. The operator's notice to the Administrator shall include the miner's name, occupation and assignment of new duties including the scheduled date of transfer.

(3) The miner's transfer shall be on or before the 21st calendar day following receipt of the physician's evaluation. The mine operator shall transfer the miner to an existing position at the same mine. If the miner agrees in writing, the operator may transfer the miner to a different mine.

(4) Any miner transferred under this section shall—

(i) Continue to receive compensation at no less than the regular rate of pay for a miner in the classification held by that miner immediately prior to the transfer.

(ii) Receive wage increases based upon the new work classification.

(d) *Recordkeeping.* (1) The mine operator shall maintain a record of the medical evaluation conducted for each miner. These records shall be kept by the operator for 5 years.

(2) Upon request, the operator shall give access to the miner's medical records required by this section to the miner or, with the miner's written consent, to the miner's designated representative. Access shall also be given to authorized representatives of the Secretary of Labor and the Secretary of the Department of Health and Human Services. Upon termination of employment, miners shall be given a copy of their medical evaluation records. Copies of records shall be provided without cost.

(3) Whenever a mine operator is ceasing to do business, the operator shall transfer all records subject to this section to the successor operator. The successor operator shall receive and maintain these records for the period required by this section. Whenever an operator is ceasing to do business and there is no successor operator to receive and maintain the records, the operator shall notify all affected miners of their rights of access to records at least 3 months prior to disposal of the records.

TABLE D-4.—FREQUENCY OF MEDICAL EXAMINATIONS FOR RESPIRATOR USE

	Worker age (years)		
	<35	35–45	>45
Most working conditions requiring respirators.	Every 5 years.	Every 2 years.	Annually.
Strenuous work conditions with SCBA.	Every 3 years.	Every 18 months.	Annually.

Subpart E—Miscellaneous

§ 72.600 Prohibited areas for food and beverages.

No one shall be allowed to consume or store food or beverages in a toilet room or in any area where the food or beverages could be contaminated by a hazardous substance.

§ 72.610 Abrasive Blasting.

(a) *Surface areas.* When an abrasive blasting operation is performed and silica sand or other materials containing more than 1 percent quartz are used as an abrasive substance, all exposed miners shall use supplied-air respirators approved for abrasive blasting in accordance with § 72.500 or the operation shall be performed in a totally enclosed device with the person outside the device.

(b) *Underground areas of underground mines.* Silica sand or other materials containing more than 1 percent quartz shall not be used as an abrasive substance in abrasive blasting.

§ 72.620 Drill dust control at surface mines and surface areas of underground mines.

Holes shall be collared and drilled wet, or other effective dust-control measures shall be used when drilling non-water-soluble material. Effective dust-control measures shall be used when drilling water-soluble materials.

§ 72.630 Drill dust control at underground areas of underground mines.

(a) Dust resulting from drilling in rock shall be controlled by use of permissible dust collectors, or by water, or water with a wetting agent, or by ventilation, or by any other method or device approved by the Secretary that is as effective in controlling the dust.

(b) *Dust collectors.* Dust collectors shall be maintained in permissible and operating condition. Dust collectors approved under Part 33—Dust Collectors for Use in Connection with Rock Drilling in Coal Mines of this title or under Bureau of Mines Schedule 25B are permissible dust collectors for the purpose of this section.

(c) *Water control.* Water used to control dust from drilling rock shall be applied through a hollow drill steel or stem or by the flooding of vertical drill holes in the floor.

(d) *Ventilation control.* To adequately control dust from drilling rock, the air current shall be so directed that the dust is readily dispersed and carried away from the drill operator or any other miners in the area.

Appendix A—Nonmandatory—Work Practices and Engineering Controls for Major Asbestos Removal, Renovation and Demolition Operations

This is a nonmandatory appendix designed to provide guidelines to assist employers in complying with the requirements of § 72.405. Specifically, this appendix describes the equipment, methods, and procedures that should be used in major asbestos-removal projects conducted to abate a recognized asbestos hazard or in preparation for building renovation or demolition. These projects require the construction of negative-pressure temporary enclosures to contain the asbestos material and to prevent the exposure of bystanders and other workers at the worksite. Paragraph (h) of § 72.405 of the standard requires that whenever feasible, the mine operator must establish negative-pressure enclosures before beginning asbestos removal, demolition, or renovation operations. The operator should also be aware that, when conducting asbestos-removal projects, enclosures may be required under the National Emissions Standards for Hazardous Air Pollutants (NESHAPS), 40 CFR part 61, subpart M, or EPA regulations under the Clean Water Act.

Construction of a negative-pressure enclosure is a simple but time-consuming process that requires careful preparation and execution; however, if the procedures below are followed, contractors should be assured of achieving a temporary barricade that will protect workers and others outside the enclosure from exposure to asbestos and minimize to the extent possible the exposure of asbestos workers inside the barrier as well.

The equipment and materials required to construct these barriers are readily available and easily installed and used. In addition to an enclosure around the removal site, the standard requires that workers leave their work clothes at the point of exit and shower immediately after each exit. A recommended facility is described below. The steps in the proces of preparing the asbestos-removal site, building the enclosures, constructing hygiene facilities, removing the asbestos-containing material, and restoring the site include:

(1) Planning the removal project;
(2) Procuring the necessary materials and equipment;
(3) Preparing the work area;
(4) Removing the asbestos-containing material;
(5) Cleaning the work area; and
(6) Disposing of the asbestos-containing waste.

Planning the Removal Project

The planning of an asbestos-removal project is critical to completing the project safely and cost-effectively. A written asbestos-removal plan should be prepared that describes the equipment and procedures that will be used throughout the project. The asbestos abatement plan will aid not only in executing the project but also in complying with the reporting requirements of the USEPA asbestos regulations (40 CFR Part 61, subpart M), which call for specific information such as a description of control methods and control equipment to be used and the disposal sites the contractor proposes to use to dispose of the asbestos-containing materials.

The asbestos abatement plan should contain the following information:

- A physical description of the work area;
- A description of the approximate amount of material to be removed;
- A schedule for turning off and sealing existing ventilation systems;
- Personnel hygiene procedures;
- Labeling procedures;
- A description of personal protective equipment and clothing to be worn by workers;
- A description of the local exhaust ventilation systems to be used;
- A description of work practices to be observed by workers;
- A description of the methods to be used to remove the asbestos-containing material;
- The wetting agent to be used;
- A description of the sealant to be used at the end of the project;
- An air-monitoring plan;
- A description of the method to be used to transport waste materials; and
- The location of the dump site.

Materials and Equipment Necessary for Asbestos Removal

Although individual asbestos-removal projects vary in terms of the equipment required to accomplish the removal of the material, some equipment and materials are common to most asbestos-removal operations. Equipment and materials that should be available at the beginning of each project are (1) rolls of polyethylene sheeting (2) rolls of gray duct tape or clear plastic tape; (3) HEPA-filtered vacuum(s); (4) HEPA-filtered portable ventilation systems; (5) a wetting agent; (6) an airless sprayer; (7) a portable shower unit; (8) appropriate respirators; (9) disposable coveralls; (10) signs and labels; (11) preprinted disposal bags; and (12) a manometer or pressure gauge.

Rolls of Polyethylene Plastic and Tape. Rolls of polyethylene plastic (6 mil in thickness) should be available to construct the asbestos-removal enclosure and to seal windows, doors, ventilation systems, wall penetrations, and ceilings and floors in the work area. Gray duct tape or clear plastic tape should be used to seal the edges of the plastic and to seal any holes in the plastic enclosure. Polyethylene plastic sheeting can be purchased in rolls up to 20 feet in width and up to 100 feet in length.

HEPA-Filtered Vacuum. A HEPA-filtered vacuum is essential for cleaning the work area after the asbestos has been removed. Such vacuums are designed to be used with a HEPA (High-Efficiency Particulate Air) filter, which is capable of removing 99.97 percent of the asbestos particles from the air. Various sizes and capacities of HEPA vacuums are available. All of these models are portable, and all have long hoses capable of reaching out-of-the-way places, such as areas above ceiling tiles and behind pipes.

Exhaust Air Filtration System. A portable ventilation system is necessary to create a negative pressure within the asbestos-removal enclosure. Such units are equipped with a HEPA filter and are designed to exhaust and clean the air inside the enclosure before exhausting it to the outside of the enclosure. The number and capacity of units required to ventilate an enclosure depend on the size of the area to be ventilated.

Wetting Agents. Wetting agents (surfactants) are added to water (which is then called amended water) and used to soak asbestos-containing materials; amended water penetrates more effectively than plain water and permits more thorough soaking of the asbestos-containing materials. Wetting the asbestos-containing material reduces the number of fibers that will break free and become airborne when the asbestos-containing material is handled or otherwise disturbed. Asbestos-containing materials should be thoroughly soaked before removal is attempted; the dislodged material should feel spongy to the touch. Wetting agents are generally prepared by mixing 1 to 3 ounces of wetting agent to 5 gallons of water.

One type of asbestos, amosite, is relatively resistant to soaking, either with plain or amended water. The work practices of choice when working with amosite-containing material are to soak in the material as much as possible and then to bag it for disposal immediately after removal, so that the material has no time to dry and be ground into smaller particles that are more likely to liberate airborne asbestos.

In a very limited number of situations, it may not be possible to wet the asbestos-containing material before removing it. Examples of such rare situations are: (1) Removal of asbestos material from a "live" electrical box that was over-sprayed with the material when the rest of the area was sprayed with asbestos-containing coating; and (2) removal of asbestos-containing insulation from a live steam pipe. In both of these situations, the preferred approach would be to turn off the electricity or steam, to permit wet-removal methods to be used. However, where removal work must be performed during working hours (that is, when normal operations cannot be disrupted), the asbestos-containing material must be removed dry. Immediate bagging is then the only method of minimizing the amount of airborne asbestos generated.

Airless Sprayer. Airless sprayers are used to apply amended water to asbestos-containing materials. Airless sprayers allow the amended water to be applied in a fine spray that minimizes the release of asbestos fibers by reducing the impact of the spray on the materials to be removed. Airless sprayers are inexpensive and readily available.

Portable Shower. Unless the site has available a permanent shower facility that is contiguous to the removal area, a portable shower system is necessary to permit workers to clean themselves after exposure to asbestos and to remove any asbestos contamination from their hair and bodies. Taking a shower prevents workers from leaving the work area with asbestos on their clothes and thus prevents the spread of asbestos contamination to areas outside the asbestos-removal area. This measure also protects members of the families of asbestos workers from possible exposure to asbestos. Showers should be supplied with warm water and a drain. A shower water filtration system to filter asbestos fibers from the shower water is recommended. Portable shower units are readily available, inexpensive, and easy to install and transport.

Respirator. Workers involved in asbestos-removal projects should be provided with appropriate NIOSH-approved respirators. Selection of the appropriate respirator should be based on the concentration of asbestos fibers in the work area. If the concentration of asbestos fibers is unknown, workers should be provided with respirators that will provide protection against the highest concentration of asbestos fibers that can reasonably be expected to exist in the work area. For most work within an enclosure, workers should wear half-mask dual-filter cartridge respirators. Disposable face mask respirators (single-use) should not be used to protect employees from exposure to asbestos fibers.

Disposable Coveralls. Workers involved in asbestos-removal operations should be provided with disposable impervious coverall that are equipped with head and foot covers. The coveralls has a zipper front and elastic wrists and ankles.

Signs and Labels. Before work begins, a supply of signs to demarcate the entrance to the work area should be obtained. The required labels are also commercially available as press-on labels and preprinted on the 6-milpolyethylene plastic bags used to dispose of asbestos-containing waste material.

Preparing the Work Area

Preparation for constructing negative-pressure enclosures should begin with the removal of all movable objects from the work area (for example, desks, chair, rugs, and light fixtures), to ensure that these objects do not become contaminated. When movable objects are contaminated or suspected of being contaminated, they should be vacuumed with a HEPA vacuum and cleaned with amended water, unless they are made of material that will be damaged by the wetting agent; wiping with plain water is recommended in those cases where amended water will damage the object. Before the asbestos-removal work begins, objects that cannot be removed from the work area should be covered with a 6-mil thick polyethylene plastic sheeting that is securely taped with duct tape or plastic tape to achieve an airtight seal around the object.

Constructing the Enclosure

When all objects have either been removed from the work area or covered with plastic, all penetrations of the floor, walls, and ceiling should be sealed with 6-mil polyethylene plastic and tape to prevent airborne asbestos from escaping into areas outside the work area or from lodging in cracks around the penetrations. Penetrations that require sealing are typically found around electrical conduits, telephone wires, and water-supply and drain pipes. A single entrance to be used for access and egress to the work area should be selected, and all other doors and windows should be sealed with tape or be covered with 6-mil polyethylene plastic sheeting and securely taped. Covering windows and unnecessary doors with a layer of polyethylene before covering the walls provides a second layer of protection and saves time in installation because it reduces the number of edges that must be cut and taped. All other surfaces such as support columns, ledges, pipes, and other surfaces should also be covered with polyethylene plastic sheeting and taped before the walls themselves are completely covered with sheeting.

Next a thin layer of spray adhesive should be sprayed along the top of all walls surrounding the enclosed work area, close to the wall-ceiling interface, and a layer of polyethylene plastic sheeting should be stuck to this adhesive and taped. The entire inside surfaces of all wall areas are covered in this manner, and the sheeting over the walls is extended across the floor area until it meets in the center of the area, where it is taped to form a single layer of material encasing the entire room except for the ceiling. A final layer of plastic sheeting is then laid across the plastic-covered floor area and up the walls to a level of 2 feet or so; this layer provides a second protective layer of plastic sheeting over the floor, which can then be removed and disposed of easily after the asbestos-containing material that has dropped to the floor has been bagged and removed.

Building Hygiene and Decontamination Facilities

The standard requires that personal protective equipment be left at the point of exit and the person shower immediately. In addition the movement of equipment, material, and other items to and from the restricted area must be done in a manner that does not contaminate the restricted or nonrestricted areas. This is usually accomplished by the construction of hygiene and decontamination facilities that consist of—

(1) A clean change room;
(2) A shower; and
(3) An equipment room.

The clean change room is an area in which workers remove their street clothes and don their respirators and disposable protective clothing. The clean room should have hooks on the wall or be equipped with lockers for the storage of workers' clothing and personal articles. Extra disposable coveralls and towels can also be stored in the clean change room.

The shower should be contiguous with both the clean and dirty change rooms and should be used by all workers leaving the work area. The shower should also be used to clean asbestos-contaminated equipment and materials, such as the outside of asbestos waste bags and hand tools used in the removal process.

The equipment room (also called the dirty change room) is the area where workers remove their protective coveralls and where equipment that is to be used in the work area can be stored. The equipment room should be lined with 6-mil thick polyethylene plastic sheeting in the same way as was done in the work-area enclosure. Two layers of 6-mil polyethylene plastic sheeting that are not taped together form a double flap or barrier between the equipment room and the work area and between the shower and the clean change room.

When feasible, the clean change room, shower, and equipment room should be contiguous and adjacent to the negative-pressure enclosure surrounding the removal area. In an overwhelming number of cases, hygiene facilities can be built contiguous to the negative-pressure enclosure. In some cases, however, hygiene facilities may have to be located on another floor of the building where removal of asbestos-containing materials is taking place. In these instances, the hygiene facilities can in effect be made to be contiguous to the work area by constructing a polyethylene plastic "tunnel" from the work area to the hygiene facilities. Such a tunnel can be made even in cases where the hygiene facilities are located several floors above or below the work area; the tunnel begins with a double-flap door at the enclosure, extends through the exit from the floor, continues down the necessary number of flights of stairs and goes through a double-flap entrance to the hygiene facilities which have been prepared as described above. The tunnel is constructed of 2-inch by 4-inch lumber or aluminum struts and covered with 6-mil thick polyethylene plastic sheeting.

In the rare instances when there is not enough space to permit any hygiene facilities to be built at the work site, workers should be directed to change into a clean disposable worksuit immediately after exiting the enclosure (without removing their respirators) and to proceed immediately to the shower.

The clean room, shower, and equipment room must be sealed completely to ensure that the sole source of air flow through these areas originates from uncontaminated areas outside the asbestos-removal, demolition, or renovation enclosure. The shower must be drained properly after each use to ensure that contaminated water is not released to uncontaminated areas. If waste is inadvertently released, it should be cleaned up as soon as possible to prevent any asbestos in the water from drying and becoming airborne in areas outside the work area.

Establishing Negative Pressure Within the Enclosure

After construction of the enclosure is completed, ventilation systems should be installed to create a negative pressure within the enclosure with respect to the area outside the enclosure. Such ventilation systems must be equipped with HEPA filters to prevent the release of asbestos fibers to the environment outside the enclosure and should be operated 24 hours per day during the entire project until the final cleanup is completed and the results of final air samples are received from the laboratory. A sufficient amount of air should be exhausted to create a pressure of −0.02 inches of water within the enclosure with respect to the area outside the enclosure.

These ventilation systems should exhaust the HEPA-filtered clean air outside the building in which the asbestos removal, demolition, or renovation is taking place. If access to the outside is not available, the ventilation system can exhaust the HEPA-filtered asbestos-free air to an area within the building that is as far away as possible from the enclosure. Care should be taken to ensure that the clean air is released either to an asbestos-free area or in such a way as not to disturb any asbestos-containing materials.

A manometer or pressure gauge for measuring the negative pressure within the enclosure should be installed and should be monitored frequently throughout all work shifts during which asbestos removal, demolition, or renovation takes place. Several types of manometers and pressure gauges are available for this purpose.

All asbestos-removal, renovation, and demolition operations should have a program for monitoring the concentration of airborne asbestos and worker exposure to asbestos. Area samples should be collected inside the enclosure (approximately four samples for 5000 square feet of enclosure area). At least two samples should be collected outside the work area, one at the entrance to the clean change room and one at the exhaust of the portable ventilation system. In addition, several breathing-zone samples should be collected from those workers who can reasonably be expected to have the highest potential exposure to asbestos. Removing Asbestos Materials.

It is recommended that a competent person be designated to—

(1) Set up the enclosure;

(2) Ensure the integrity of the enclosure;

(3) Control entry to and exit from the enclosure;

(4) Supervise all exposure monitoring required;

(5) Ensure the use of personal protective clothing and equipment;

(6) Ensure that workers are trained in the use of engineering controls, work practices, and personal protective equipment;

(7) Ensure the use of hygiene facilities and the observance of proper decontamination procedures; and

(8) Ensure that engineering controls are functioning properly.

The competent person will generally be a Certified Industrial Hygienist, an industrial hygienist with training and experience in the handling of asbestos, or a person who has such training and experience as a result of on-the-job training and experience.

Ensuring the integrity of the enclosure is accomplished by inspecting the enclosure before asbestos-removal work begins and prior to each workshift throughout the entire period work is being conducted in the enclosure. The inspection should be conducted by locating all areas where air might escape from the enclosure; this is best accomplished by running a hand over all seams in the plastic enclosure to ensure that no seams are ripped and the tape is securely in place.

The competent person should also ensure the unauthorized personnel do not enter the enclosure and that all workers who enter the enclosure use the hygiene facilities and observe the proper decontamination procedures (described below).

Proper work practices are necessary during asbestos removal, demolition, and renovation to ensure that the concentration of asbestos fibers inside the enclosure remains as low as possible. One of the most important work practices is to wet the asbestos-containing material before it is disturbed. After the asbestos-containing material is thoroughly wetted, it should be removed by scraping (as in the case of sprayed-on or troweled-on ceiling material) or removed by cutting the metal bands or wire mesh that support the asbestos-containing material on boilers or pipes. Any residues that remains on the surface of the object from which asbestos is being removed should be wire-brushed and wet-wiped.

Bagging asbestos waste material promptly after its removal is another work practice control that is effective in reducing the airborne concentration of asbestos within the enclosure. Whenever possible, the asbestos should be removed and placed directly into bags for disposal rather than dropping the material to the floor and picking up all of the material when removal is complete. If a significant amount of time elapses between the time that the material is removed and the time it is bagged, the asbestos material is likely to dry out and generate asbestos-laden dust when it is disturbed by people working within the enclosure. Any asbestos-contaminated supplies and equipment that cannot be contaminated should be disposed of in prelabeled bags; items in this category include plastic sheeting, disposable work clothing, respirator cartridges, and contaminated wash water.

A checklist is one of the most effective methods of ensuring adequate surveillance of the integrity of the asbestos-removal enclosure. Such a checklist is shown in Figure A–1. Filling out the checklist at the beginning of each shift in which asbestos removal is being performed will serve to document that all the necessary precautions will be taken during the asbestos-removal work. The checklist contains entries for ensuring that—

- The work area enclosure is complete;
- The negative-pressure system is in operation;
- Necessary signs and labels are used;
- Appropriate work practices are used;
- Necessary protective clothing and equipment are used; and
- Appropriate decontamination procedures are being followed.

Cleaning the Work Area

After all of the asbestos-containing material is removed and bagged, the entire work area should be cleaned until it is free of all visible asbestos dust. All surfaces from which asbestos has been removed should be cleaned by wire-brushing the surfaces, HEPA vacuuming these surfaces, and wiping them with amended water. The inside of the plastic enclosure should be vacuumed with a HEPA vacuum and wet-wiped until there is no visible dust in the enclosure. Particular attention should be given to small horizontal surfaces such as pipes, electrical conduits, lights, and support tracks for drop ceilings. All such surfaces should be free of visible dust before the final air samples are collected.

Additional sampling should be conducted inside the enclosure after the cleanup of the work area has been completed. Approximately four area samples should be collected for each 5,000 square feet of enclosure area. The enclosure should not be dismantled until the final samples show asbestos concentrations of less than 0.1 f/cc. EPA recommends that a clearance level of 0.01 f/cc be achieved before cleanup is considered complete.

A clearance checklist is an effective method of ensuring that all surfaces are adequately cleaned and the enclosure is ready to be dismantled. Figure A–2 shows a checklist that can be used during the final inspection phase of asbestos-abatement, removal, or renovation operations.

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Figure A-1 Checklist

Asbestos Removal, Renovation, and Demolition Checklist

Date: ____________________ Location: ________________

Supervisor ________________ Project # ________________

Work Area (sq. ft.) _______

	Yes	No
I. Work site barrier		
Floor covered	___	___
Walls covered	___	___
Area ventilation off	___	___
All edges sealed	___	___
Penetration sealed	___	___
Entry curtains	___	___
II. Negative Air Pressure		
HEPA Vac ____ Ventilation system _____		
Constant Operation	___	___
Negative pressure achieved	___	___
III. Signs		
Work area entrance	___	___
Bags labeled	___	___
IV. Work Practices		
Removed material promptly bagged	___	___
Material worked wet	___	___
HEPA vacuum used	___	___
No smoking	___	___
No eating, drinking	___	___
Work area cleaned after completion	___	___
Personnel decontaminated each departure	___	___
V. Protective Equipment		
Disposable clothing use one time	___	___
Proper NIOSH-approved respirators	___	___
VI. Showers		
On site	___	___
Functioning	___	___
Soap and towels	___	___
Used by all personnel	___	___

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FIGURE A-2.—CLEARANCE CHECKLIST

Field Inspection or Asbestos Removal, Renovation, and Demolition Projects

Date: __________
Project: __________
Location: __________
Building: __________

CHECKLIST:

Residual dust on:	Yes	No
a. Floor	____	____
b. Horizontal surfaces	____	____
c. Pipes	____	____
d. Ventilation equipment	____	____
e. Ducts	____	____
f. Register	____	____
g. Lights	____	____

FIELD NOTES:

Record any problem encountered here.

____

FINAL AIR SAMPLE RESULTS:

____

Appendix B—Nonmandatory Medical Evaluation Procedures for Respirator Use

This appendix contains recommended elements that should be taken into account during the performance of the required medical evaluation for respirator use. These elements should be evaluated in taking the medical history and performing the medical examination. However, the specific nature of the medical evaluation and the extent of testing performed are left for the responsible physician to determine. This recommended list of elements to be considered is not meant to limit the physician to the testing procedures recommended. The examining physician is free to perform additional tests, if necessary, to determine a person's ability to wear a respirator.

(a) The medical history should include the following:

(1) Previously diagnosed diseases, particularly cardiovascular or respiratory diseases.

(2) Problems associated with breathing during normal work activities.

(3) Past problems with respirator use.

(4) Past and current usage of medication.

(5) Any known physical conditions that may interfere with respirator use.

(6) Previous occupations.

(7) Use of medications whose side effects might affect cardiopulmonary fitness.

(b) The medical examination should assess the following:

(1) Hearing ability. This should be sufficient to ensure communication and response to instructions and alarm systems.

(2) Pulmonary function testing including spirometry for FEV_1 and FVC. Presence and degree of restrictive or obstructive disease or perfusion disorders. In interpreting spirometry, if the FVC is less than 80 percent or the FEV_1 is less than 70 percent, restriction from respirator use should be considered.

(3) Cardiovascular system. Evidence of symptomatic coronary artery disease, significant arrhythmias, occurrence of frequent premature ventricular contraction (PVCs) with elevated pulse rates or uncontrolled hypertension symptoms.

(4) Endocrine system. Conditions that may result in sudden loss of consciousness or response capability.

(5) Neurological system. Inability to perform coordinated movements and conditions affecting response and consciousness.

(6) Psychological condition. Claustrophobia, severe anxiety.

(7) Miscellaneous conditions specific to the work situation. Skin conditions where occlusive materials may result in symptoms or aggravation of a preexisting dermatitis.

(8) Exercise stress. For these workers who use a self-contained breathing apparatus or rebreather-type respirator under strenuous work conditions, or in emergencies, particularly in fire and rescue operations.

Appendix C—Nonmandatory Fit Testing Protocols

I. Isoamyl Acetate Protocol

(a) *Odor threshold screening.* The odor threshold screening test, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate.

(1) Three 1 liter glass jars with metal lids are required.

(2) Odor-free water (for example, distilled or spring water) at approximately 25 degrees C shall be used for the solutions.

(3) The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor-free water in a 1 liter jar and shaking for 30 seconds. A new solution shall be prepared at least weekly.

(4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

(5) The odor-test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor-free water using a clean dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for 2 to 3 minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only 1 day.

(6) A test blank shall be prepared in a third jar by adding 500 cc of odor-free water.

(7) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. Labels shall be placed on the lids so they can be periodically peeled, dried off and switched to maintain the integrity of the test.

(8) The following instruction shall be typed on a card and placed on the table in front of the two test jars (that is, 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

(9) The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

(10) If the test subject is unable to correctly identify the jar containing the odor-test solution, the IAA qualitative fit test shall not be performed.

(11) If the test subject correctly identifies the jar containing the odor-test solution, the test subject may proceed to respirator selection and fit testing.

(b) *Isoamyl acetate fit test.* (1) The fit-test chamber shall be similar to a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

(2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

(3) After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit-testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

(4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber. The tests shall include the following:

(i) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(ii) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution against hyperventilation.

(iii) Turning head side to side. Standing in place, the subject shall slowly turn the head from side to side between the extreme positions of each side. The head shall be held at each extreme momentarily so that the subject can inhale at each side.

(iv) Moving head up and down. Standing in place, the subject shall slowly move the head up and down. The subject shall be instructed to inhale in the up position (that is, when looking toward the ceiling).

(v) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(vi) Grimace. The test subject shall grimace by smiling or frowning.

(vii) Bending over. The test subject shall bend at the waist as if to touch the toes. Jogging in place shall be substituted for this exercise in those tests environments such as shroud-type QLFT units that prohibit bending at the waist.

(5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

(6) Allow 2 minutes for the IAA test concentration to stabilize before starting the fit-test exercises. This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of cooperation, and the purpose for the head exercises; or to demonstrate some of the exercises.

(7) If at any time during the test, the subject detects the banana-like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

(8) If the test has failed, the subject shall return to the selection room and remove the respirator, repeat the odor-sensitivity test, select and put on another respirator, return to the test chamber and again begin the procedure described in (4) (i) through (vii) above. The process continues until a respirator that fits well has been found. Should the odor-sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

(9) When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having the subject break the face seal and take a breath before exiting the chamber.

(10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the test area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration build-up in the test chamber during subsequent tests.

II. Saccharin Solution Aerosol Protocol

The saccharin solution aerosol QLFT protocol is the only currently available, validated test protocol for use with particulate disposable dust respirators not equipped with high-efficiency filters. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) *Taste threshold screening.* The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin.

(1) During threshold screening as well as during fit testing, subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches in diameter by 14 inches tall with at least the front portion clear and that allows free movements of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # FT 14 and # FT 15 combined, is adequate.

(2) The test enclosure shall have a ¾-inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

(3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe with the mouth wide open and the tongue extended.

(4) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit-test-solution nebulizer.

(5) The threshold check solution consists of 0.83 grams of sodium saccharin USP in 1 cc of warm water. It can be prepared by putting 1 cc of the fit-test solution (see (b)(5) below) in 100 cc of distilled water.

(6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then released and allowed to fully expand.

(7) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

(8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(10) The test conductor will take note of the number of squeezes required to solicit a taste response.

(11) If the saccharin is not tasted after 30 squeezes (step 10), the test subject may not perform the saccharin fit test.

(12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(13) Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in a the nebulizer body.

(14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours.

(b) *Saccharin solution aerosol fit test procedure.* (1) The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

(2) The fit test uses the same enclosure described in (a) above.

(3) The test subject shall don the enclosure while wearing the respirator selected. Respirators shall be properly adjusted and equipped with particulate filters.

(4) A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit-test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

(5) The fit-test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

(6) As before, the test subject shall breathe through the wide open mouth with tongue extended.

(7) The nebulizer is inserted into the hole in the front of the enclosure and the fit-test solution is sprayed into the enclosure using the same number of squeezes required to elicit a taste response in the screening test.

(8) After generating the aerosol, the test subject shall be instructed to perform the following:

(i) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(ii) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution against hyperventilation.

(iii) Turning head side to side. Standing in place, the subject shall slowly turn the head from side to side between the extreme positions of each side. The head shall be held at each extreme momentarily so that subject can inhale at each side.

(iv) Moving head up and down. Standing in place, the subject shall slowly move the head up and down. The subject shall be instructed to inhale in the up position (that is, when looking toward the ceiling).

(v) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(vi) Grimace. The test subject shall grimace by smiling or frowning.

(vii) Bending over. The test subject shall bend at the waist as if to touch the toes. Jogging in place shall be substituted for this exercise in those tests environments such as shroud-type QLFT units that prohibit bending at the waist.

(9) Every 30 seconds the aerosol concentration shall be replenished using one-half the number of squeezes as initially.

(10) The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

(11) If the taste of saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

III. Irritant Fume Protocol

(a) *Screening procedures.* (1) The respirator to be tested shall be equipped with high-efficiency particulate air (HEPA) filters.

(2) The test subject shall be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with its characteristic odor and to determine if the individual is responsive to the smoke.

(b) *Irritant fume fit-test procedures.* (1) Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5445, or equivalent. Attach one end of the smoke tube to a low-flow air pump set to deliver 200 milliliters per minute.

(2) Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

(3) The test conductor shall direct the stream of irritant smoke from the smoke tube towards the face seal area of the test subject. The test conductor shall begin at least 12 inches from the facepiece and gradually move to within 1 inch, moving around the whole perimeter of the mask. Alternatively, the test may be conducted in a tent as described in the isoamyl fit-test protocol. The irritant smoke should be introduced through a small hole in the tent until a light, visible concentration of irritant smoke is observed.

Throughout the test, additional smoke should be introduced to maintain the concentration.

(4) The following exercises shall be performed by the test subject while the respirator seal is being challenged by the smoke:

(i) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(ii) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution against hyperventilation.

(iii) Turning head side to side. Standing in place, the subject shall slowly turn the head from side to side between the extreme positions of each side. The head shall be held at each extreme momentarily so that subject can inhale at each side.

(iv) Moving head up and down. Standing in place, the subject shall slowly move the head up and down. The subject shall be instructed to inhale in the up position (that is, when looking toward the ceiling).

(v) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(vi) Grimace. The test subject shall grimace by smiling or frowning.

(vii) Bending over. The test subject shall bend at the waist as if to touch the toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud-type QLFT units that prohibit bending at the waist.

(5) Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube once the respirator has been removed to determine whether the person reacts to the smoke. Failure to evoke a response shall void the fit test.

(6) The fit test shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agent.

PART 75—[AMENDED]

G. It is proposed to amend 30 CFR part 75 as follows:

1. The authority citation for part 75 is revised to read as follows:

Authority: 30 U.S.C. 801–961.

§ 75.301–2 [Amended]

2. Section 75.301–2 is removed.

PART 90—[AMENDED]

H. It is proposed to amend 30 CFR part 90 as follows:

1. The authority citation for part 90 is revised to read as follows:

Authority: 30 U.S.C. 811 and 813(g).

2. A new § 90.302 is added to subpart D to read as follows:

§ 90.302 Respiratory protection; respirable dust.

Respiratory equipment approved for protection against respirable dust under 30 CFR part 11 shall be provided to and properly worn by all persons exposed to concentrations of respirable dust in excess of the levels required to be maintained under this part 90. Use of respirators shall not be substituted for environmental control measures in active workings. Use of respirators under this section shall be in accordance with Subpart D—Respiratory Protection of part 72 of this chapter.

[FR Doc. 89–19042 Filed 8–21–89; 8:45 am]

BILLING CODE 4510–43–M

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federal register

Tuesday
August 29, 1989

Part III

Department of the Interior

National Park Service

National Register of Historic Places; Annual Update of Properties Removed and Determined Eligible

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places Annual Update of Properties Removed and Determined Eligible

The National Register of Historic Places is the official list of the Nation's cultural resources worthy of preservation. Properties listed in the National Register include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture. Authorized under the National Historic Preservation Act of 1966, as amended (80 Stat. 915, 16 U.S.C. 470 et seq.), the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources. The National Register is administered by the National Park Service under the Secretary of the Interior.

It is the purpose of this notice, through publication of the information included herein, to apprise the public, as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties removed from the National Register and determined eligible for the National Register between October 1, 1987 and September 30, 1988.

A cumulative list of the more than 50,000 properties listed in the National Register is available through the American Association of State and Local History, 172 Second Avenue North, Nashville, TN 37201.

For more information contact the National Register at (202) 343–5726 or write to the National Register Reference Desk at the following address: US Department of the Interior, National Park Service, Interagency Resources Division, National Register of Historic Places, P.O. Box 37127, Washington, DC 20013–7127.

James M. Ridenour,

Director, National Park Service.

Dated: July 20, 1989.

Listed properties removed from the National Register.

ALASKA

Anchorage Borough-Census Area

Lathrop Building, 801 W. 4th Ave., Anchorage, 10/19/87, 84000629

ARIZONA

Maricopa County

Arizona Orange Association Packing House (Phoenix Commercial MRA), 520 W. Jackson, Phoenix, 4/08/88, 85002045

Coca Cola Bottling Works (Phoenix Commercial MRA), 347 W. Jefferson, Phoenix, 4/08/88, 85002053

Ellingson Building (Phoenix Commercial MRA), 19 E. Washington, Phoenix, 4/08/88, 85002055

Kloss, Rev. Daniel, House (Tempe MRA), 202 E. 6th St., Tempe, 4/08/88, 84000723

Ollerton House (Tempe MRA), 1004 S. Mill Ave., Tempe, 4/13/88, 84000735

Openshaw, Samuel, House (Tempe MRA), 104 W. 6th St., Tempe, 4/08/88 84000737

Winters Building-Craig Building (Phoenix Commercial MRA), 39 W. Adams, Phoenix, 4/08/88, 85002060

COLORADO

Rio Blanco County

Whiskey Creek Trestle, W of Rangely, Rangely vicinity, 11/25/87, 80000925

FLORIDA

Escambia County

BUCCANEER (schooner), Municipal Wharf, Pensacola, 2/17/88, 72000313

INDIANA

Monroe County

Princess Theatre Building (Boundary Decrease), 206 N. Walnut St., Bloomington, 11/13/87, 87000990

Vanderburgh County

Walnut Street School (Downtown Evansville MRA), Walnut and 9th Sts., Evansville, 11/13/87, 82000127

KENTUCKY

Boyd County

Poage, Edward, House (Ashland MRA), 1016 Winchester Ave., Ashland, 2/03/88, 79003554

Valdenar-Wheeler House (Ashland MRA), 2417 Winchester Ave., Ashland, 2/03/88, 79003563

Floyd County

Garfield Place, 2nd Ave., Prestonsburg, 2/03/88, 74000871

Henderson County

Douglass High School, 300 S. Alvasia St., Henderson, 2/03/88, 80001548

Hopkins County

Hamby Well Building, 120 S. Main St., Dawson Springs, 2/03/88, 72000534

Kenton County

Champion Ice Manufacturing and Cold Storage Company, 40 E. 2nd St., Covington, 2/03/88, 79001016

MICHIGAN

Calhoun County

Battle Creek Sanatarium, 197 N. Washington Ave., Battle Creek, 4/18/88, 78001402

Houghton County

Italian Hall, 7th and Elm Sts., Calumet, 4/18/88, 80001858

Wayne County

Woodward Ave. Baptist Church (Religious Structures of Woodward Ave. TR), 1464 Woodward Ave., Detroit, 4/18/88, 82002915

MINNESOTA

Blue Earth County

Jefferson, Adam, House (Blue Earth County MRA), Cleveland St., Mankato, 11/30/87, 80001948

Schmidt, Oscar, House (Blue Earth County MRA), 111 Park Ln., Mankato, 9/19/88, 80001955

Hennepin County

New Century Mill (Boundary Decrease), Oak and Fifth Sts., Minneapolis, 3/07/88, 88000457

Meeker County

West End Elevator, 4th St. and Atlantic Ave., Dassel, 11/30/87, 85000556

Olmsted County

Chicago Great Western Railroad Company Depot, 88 S. Park Ave. and 130 S. Park Ave., Rochester, 11/13/87, 80004287

Hotel Zumbro, 101 1st Ave., SW, Rochester, 3/28/88, 80002100

Otter Tail County

Page, Henry G., House, 219 N. Whitford St., Fergus Falls, 11/13/87, 75001004

Ramsey County

Smith Avenue High Bridge, Smith Ave., St. Paul, 3/28/88, 81000323

Steele County

Steele County Courthouse, 111 E. Main St., Owatonna, 11/30/87, 76001076

MISSISSIPPI

Claiborne County

Sacred Heart Roman Catholic Church, Grand Gulf Military Monument Park, Port Gibson vicinity, 11/23/87, 73002241

Jones County

Pinehurst Hotel, 318 5th Ave., Laurel, 10/01/87, 84002234

Lauderdale County

Dixie Gas Station (Meridian MRA), 2002 5th St., Meridian, 10/01/87, 79003389

Meyer-Loeb Building (Meridian MRA), 2100 4th St., Meridian, 10/01/87, 79003398

Marshall County

Malone House (Holly Springs MRA), 197 W. College Ave., Holly Springs, 5/25/88, 82003109

NEW YORK

Erie County

17–21 Emerson Place Row (Masten Neighborhood Rows TR), 17–21 Emerson Pl., Buffalo, 5/20/88, 86000669

NORTH CAROLINA

Mecklenburg County

Carolina Theater, 224–232 N. Tryon St., Charlotte, 6/22/88, 86001637

Trotter, Thomas, Building, 106 S. Tryon St., Charlotte, 2/01/88, 85001128

OREGON

Deschutes County

Shelvin-Hixon Mill Buildings, Riverside Blvd., Bend, 10/13/87, 78002284

Jackson County

Antelope Creek Bridge (Oregon Covered Bridges TR), NE of Medford, Medford vicinity, 4/18/88, 79002071

Lane County

Horse Creek Bridge (Oregon Covered Bridges TR), S of McKenzie Bridge, McKenzie Bridge vicinity, 6/27/88, 79002096

PENNSYLVANIA

Westmoreland County

Greene, Gen., Hotel, 24 W. Otterman St., Greensburg, 6/16/88, 80003646

SOUTH CAROLINA

Chester County

Chester Historic District (Boundary Decrease), Roughly along S side of Saluda St. and S of Gadsden St., Chester, 3/15/88, 88000456

SOUTH DAKOTA

Brookings County

Farmers Store, Main St., Bushnell, 2/23/88, 70002396

Minnehaha County

Blackstone Court Apartments, 303 W. 12th St., Sioux Falls, 1/12/88, 82003932

Turner County

I.O.O.F. Hall, Hurley Lodge No. 75, Center Ave., Hurley, 1/12/88, 82003944

TENNESSEE

Bedford County

Webb School, Junior Room, Off TN 82, Bell Buckle, 10/20/87, 73001751

Grundy County

Miner's Hall (Grundy County MRA), Jasper Rd., Tracy City, 5/23/88, 87000535

Hamilton County

News-Pound Building (Hunt, Reuben H., Buildings in Hamilton County TR), E. 11th St., Chattanooga, 5/23/88, 80003819

Loudon County

Carmichael Inn, Off U.S. 11, Loudon vicinity, 11/25/87, 70000612

TEXAS

Bexar County

Sullivan, Daniel J., Stable and Carriage House, 314 Fourth St., San Antonio, 3/16/88, 78002805

Fayette County

Buckner's Creek Bridge, 10 mi. N of Flatonia over Buckner's Creek, Flatonia vicinity, 4/21/88, 78002025

UTAH

Salt Lake County

Ferry Hall-Westminster College, 1840 S. 1300 East, Salt Lake City, 3/08/88, 83003951

Sevier County

Richfield Tithing Office (Tithing Offices and Granaries of the Mormon Church TR), 190 W. Center, Richfield, 3/08/88, 85000284

WASHINGTON

Grays Harbor County

Chow Chow Bridge (Historic Bridges/Tunnels in Washington State TR), Spans Quinault River, Taholah, 4/25/88, 82004218

King County

Enumclaw High School, 2222 Porter St., Enumclaw, 1/20/88, 84003488

Spokane County

Hyde Building and Annex, 611½ Riverside Ave., Spokane, 1/20/88, 78002776

WEST VIRGINIA

Wood County

Robb Apartments (Downtown Parkersburg MRA), 201 8th St., Parkersburg, 12/22/87, 82001783

West Central WV Community Action Assoc., Inc. (Downtown Parkersburg MRA), 804 Ann St., Parkersburg, 2/19/88, 82001794

Properties Determined Eligible for the National Register

The following properties were determined to be eligible in fiscal year 1988 for inclusion in the National Register of Historic Places. Most determinations of eligibility are made at the request of the concerned federal agency under the authority in section 2(b) and 1(3) of Executive Order 11593, and the National Historic Preservation Act of 1966, as amended, and on nominations for privately owned properties when the owner, or in the case of properties with multiple owners, a majority of owners, object to listing.

Historic properties that are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800. Before an agency of the federal government may undertake any project that may have an affect on such an eligible property, the Advisory Council on Historic Preservation will be given an opportunity to comment on the proposal.

Properties determined eligible for the National Register because of owner objections.

ALABAMA

Montgomery County

Swan, Samuel, House, 407 Adams Ave., Montgomery, 6/30/88, 88001342

CONNECTICUT

Hartford County

Barber, Martin, House (18th and 19th Century Brick Architecture of Windsor TR), 992 Windsor Ave., Windsor, 9/15/88, 88001472

Barber, Warren M., House (18th and 19th Century Brick Architecture of Windsor TR), 880 Windsor Ave., Windsor, 9/15/88, 88001473

Belden, Horace, House, 21 West St., Simsbury, 1/06/88, 80000096

Fairfield County

First Congregational Church (Downtown Stamford Ecclesiastical Complexes TR), Walton Pl., Stamford, 4/04/88, 88000543

Hartford County

House at 88 Maple Avenue (18th and 19th Century Brick Architecture of Windsor TR), 88 Maple Ave., Windsor, 9/15/88, 88001475

New London County

McCourt Site (Lower Connecticut River Valley Woodland Period Archaeological TR), Address Restricted, Lyme vicinity, 10/15/87, 87001953

Fairfield County

St. Basil's Preparatory School and Bishop's Residence (Downtown Stamford Ecclesiastical Complexes TR), 39 Clovelly Rd., Stamford, 12/24/87, 87002603

St. John's Roman Catholic Church (Downtown Stamford Ecclesiastical Complexes TR), 279 Atlantic St., Stamford, 12/24/87, 87002589

Hartford County

Wilson, Henry, Jr., House (18th and 19th Century Brick Architecture of Windsor TR), 253 Windsor Ave., Windsor, 9/15/88, 88001474

DELAWARE

New Castle County

Boulden, George, Farm, 2859 Frazer Rd., Newark vicinity, 1/25/88, 88000547

ILLINOIS

Iroquois County

Watseka Union Depot, W. Cherry St., Watseka, 6/16/88, 88003467

KENTUCKY

Greenup County

Greenup Christian Church (Greenup MRA), 611 Main St., Greenup, 1/27/88, 88000546

MARYLAND

Montgomery County

Silver Theatre and Shopping Center, 8533–8575 Georgia Ave, 8617–8623 Colesville Rd., and 951 Ellsworth Dr., Silver Spring, 6/30/88, 88003466

Waukesha County

MARYLAND

Timber Bridge over Cherry Creek (24MA795)

MASSACHUSETTS

Essex County

Merrimac Hat Company Mills, Merrimac St. at Bailey Pond, Amesbury, 10/30/87, 87002006

Barnstable County

Scudder, Josiah, Jr., House (Barnstable MRA), 880 Main St., Osterville, 11/10/87, 87002259

Swift, E. E. C., Store (Barnstable MRA), 699 Main St., Osterville, 10/08/87, 87001971

Suffolk County

Wesleyan Association Building, 32–38 Bromfield St., Boston, 4/01/88, 88000542

MISSISSIPPI

Monroe County

Coopwood, Capt. Thomas, House (Aberdeen MRA), 206 Thayer Ave., Aberdeen, 2/19/88, 88000492

Carroll County

Pine Bluff (22CR503), Address Restricted, Cruger vicinity, 7/11/88, 88001452

Monroe County

Pollard, Austin, House (Aberdeen MRA), 1000 Whitfield St., Aberdeen, 2/19/88, 88000494

MONTANA

Dawson County

Northern Pacific Underpass (Glendive MRA), Between S. Merrill and Anderson Ave., Billings, 2/03/88, 88000640

Lewis and Clark County

Saints Cyril and Methodius Church, 120 W. Riggs, East Helena, 4/14/88, 88000641

Ravalli County

Wanderer, Lawrence W., House (Hamilton MRA), 111 S. Sixth, Hamilton, 8/26/88, 88001286

NEVADA

Clark County

Hanson Hall (Properties Associated with the San Pedro, Los Angeles, and Salt Lake Railroad TR), 700 Dividend Dr., Las Vegas, 10/02/87, 87001890

Ice Plant (Properties Associated with the San Pedro, Los Angeles, and Salt Lake Railroad TR), 612 S. Main St., Las Vegas, 10/02/87, 87001891

Lincoln Hotel (Properties Associated with the San Pedro, Los Angeles, and Salt Lake Railroad TR), 307 S. Main St., Las Vegas, 10/02/87, 87001892

NEW JERSEY

Essex County

Immaculate Conception Church (Montclair MRA), N. Fullerton and Munn Sts., Montclair, 7/22/88, 88003043

Tiffany & Company Stationers and Silver and Gold Smiths, 792–820 Highland Ave., Newark, 12/09/87, 87002281

NEW MEXICO

McKinley County

Atchison, Topeka and Santa Fe Railway Depot (Downtown Gallup MRA), 201 E. Sixty-sixth Ave., Gallup, 8/08/88, 88001694

Grant County

Bloodgood, Clyde A., House (Mimbres Valley MRA), Noonday Canyon Rd., San Lorenzo vicinity, 5/16/88, 88000988

McGregor, Elizabeth and Alex, House (Mimbres Valley MRA), E of NM 61, San Lorenzo vicinity, 8/05/88, 88001698

NEW YORK

Nassau County

House at 162 Sixteeth Ave. (Sea Cliff Summer Resort TR), 162 Sixteenth Ave., Sea Cliff, 2/18/88, 88000497

Queens County

New York Architectural Terra Cotta Company Office Building, 42–10 Vernon Blvd., New York, 2/17/88, 88000539

Kings County

Thomson Meter Company Building, 100–110 Bridge St., Brooklyn, 6/22/88, 88001231

NORTH CAROLINA

Granville County

Paschall—Daniel House (Granville County MPS), Address Restricted, Oxford vicinity, 8/31/88, 88001263

OHIO

Franklin County

Beggs Building, 21 E. State St., Columbus, 2/22/88, 88000495

Mahoning County

Sebring, Frank, House, 385 W. Ohio Ave., Sebring, 1/22/88, 88000545

Cuyahoga County

St. John Cantius Church Complex, 2270–2290 Professor Ave., Cleveland, 9/21/88, 88001709

OKLAHOMA

Sequoyah County

Falling Cat Site (34S061), Address Restricted, Short vicinity, 8/15/88, 88001240

Le Flore County

Old Bokoshe School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR), NE of Bokoshe, Bokoshe vicinity, 9/08/88, 88001401

Pittsburg County

Scipio School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935—1943 TR), NW of McAlester, McAlester vicinity, 9/08/88, 88001416

Sequoyah County

Soybean East A Site (34SQ92), Address Restricted, Short vicinity, 8/16/88, 88001239

Waters, Bob, No. 1 Site (34SQ74), Address Restricted, Short vicinity, 8/16/88, 88001241

PENNSYLVANIA

Allegheny County

Hamilton School, Library Rd. near Hamilton Rd., Castle Shannon, 7/22/88, 88001450

PUERTO RICO

Mayaguez Municipality

Morales, Pardo, House, Calle Post No. 58, Mayaguez, 10/21/87, 87001998

Ponce Municipality

Riera—Toro House, Calle Marina No. 25, Ponce, 10/28/87, 87002067

TENNESSEE

Williamson County

David, James B., House (Williamson County MRA), Del Rio Pike, Franklin vicinity, 4/13/88, 88000589

Moore, Thomas, House (Williamson County MRA), Del Rio Pike, Franklin vicinity, 4/13/88, 88000588

Sayers, James J., House (Williamson County MRA), Splitlog Rd., Franklin vicinity, 4/13/88, 88000590

TEXAS

Collin County

House at 402 Wilcox (McKinney MPS), 402 Wilcox, McKinney, 1/29/88, 88000644

House at 408 Wilcox (McKinney MPS), 408 Wilcox, McKinney, 10/08/87, 87001972

UTAH

Weber County

Elmhurst Apartments (Three-Story Apartment Buildings in Ogden, 1908—1928 MPS), 2432 Van Buren Ave., Ogden, 12/31/87, 87002541

VIRGINIA

Richmond Independent City

Chesterman Place, 100 W. Franklin St., Richmond (Independent City), 10/27/87, 87001857

WASHINGTON

Thurston County

Ewald House (Thurston County MRA), 5829 Gull Harbor Dr. NE, Olympia vicinity, 6/23/88, 88003470

Rutledge, George Washington, House (Thurston County MRA), 13425 Littlerock Rd., Littlerock vicinity, 6/23/88, 88003469

Rutledge, Thomas, House and Barn (Thurston County MRA), 13425 Littlerock Rd. SW, Littlerock vicinity, 6/23/88, 88003468

WISCONSIN

Waukesha County

Chandler—Blair House, 1942 Madison St., Waukesha, 12/22/87, 87002542

Dane County

East Mifflin Street Historic District, 14—24 E. Mifflin St., Madison, 10/08/87, 87002200

Milwaukee County

Excelsior Masonic Temple, 2422 W. National Ave., Milwaukee, 2/25/88, 88000548

Waukesha County

Lepper, M.F., House (Menomonee Falls MRA), N88 W16598 Main St., Menomonee Falls, 9/21/88, 88001677

La Crosse County

Samuel's Cave, Address Restricted, Barre Mills vicinity, 1/06/88, 88003275

Waukesha County

St. Anthony's Catholic Church and Cemetery (Menomonee Falls MRA), N74 W13604 Appleton Ave., Menomonee Falls, 9/21/88, 88001675

St. James Catholic Church and Cemetery (Menomonee Falls MRA), W220 N6588 Town Line Rd., Menomonee Falls, 9/21/88, 88001683

St. Mary's Catholic Church (Menomonee Falls MRA), N89 W16297 Cleveland Ave., Menomonee Falls, 9/21/88, 88001680

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ARIZONA

Maricopa County

Stroud Building, 31—35 N. Central Ave., Phoenix, 2/10/88

CALIFORNIA

Alameda County

California Emigrant Trail, Off US 95, 20 mi. N of Fallon, Fallon vicinity, 9/16/88

San Diego County

US Naval Hospital, Balboa Park (Buildings 6, 11, 13 & 17), US Naval Hospital, Balboa Park, San Diego, 12/04/87

COLORADO

Boulder County

Howard Ditch (5 BL 1986), Address Restricted, Boulder vicinity, 12/18/87

HAWAII

Maui County

Kamoi Movie Theater, NE corner Ala Malama and Kamoi Sts., Kaunakakai, 2/19/88

IDAHO

Blaine County

Wood River Supply Building, 1st St. between Bullion and Croy Sts., Hailey, 6/24/88

Payette County

Payette Main Post Office, 915 Center Ave., Payette, 2/03/88

ILLINOIS

Cook County

Old Chicago Station, Between the Chicago River Turning Basin and the Monroe St. Harbor, Chicago, 3/30/88

INDIANA

Shelby County

House at 221 West Main Street, 221 W. Main St., Morristown, 1/27/88

MARYLAND

Anne Arundel County

Baltimore-Washington Parkway, MD 295 from US 50 to I–695, Greenbelt vicinity, 9/23/88

Smith Farm, 900 Smith Rd., Severn, 1/20/88

MICHIGAN

Wayne County

Building at 1551 Hart Street, 1551 Hart St., Detroit, 11/06/87

MISSISSIPPI

Bolivar County

Rock Levee Archeological Site (22B0637) (Lake Beulah Berm Project Archeological Sites), Address Restricted, Beulah vicinity, 10/29/87

MISSOURI

Daviess County

Lewis Mill Bridge, CR 570 1 mi. SW of MO 00, Jameson, 3/01/88

Greene County

Archeological Site Nos. 23GR539, 23GR600, and 23GR601, Address Restricted, Springfield vicinity, 7/25/88

Jasper County

Carthage Swimming Pool, Address not available, Carthage, 12/04/87

Olivia Apartments, 320 Moffet St., Joplin, 7/05/88

St. Louis Independent City

Archeological Site No. 23SL467, Address Restricted, St. Louis (Independent City) vicinity, 7/25/86

MONTANA

Blaine County

Sacred Heart Church, dDUS 2, 5 mi. E of Hwy. 66, Fort Belknap vicinity, 4/22/88

Custer County

Timber Bridge West of Miles City (24CR643) (Timber Bridges of Montana), W of Miles City over Cottonwood Creek, Mile City vicinity, 3/16/88

Dawson County

Timber Bridge Southwest of Glendive (24DW236) (Timber Bridges of Montana), 13 mi. SW of Glendive over irrigation canal, Glendive vicinity, 3/16/88

Fallon County

Timber Bridge South of Ismay (24FA231) (Timber Bridges of Montana), 3 mi. S of Ismay over Cottonwood Creek, Ismay vicinity, 3/16/88

Lincoln County

Swamp Creek, US 2, 12 mi. SE of Libby, Libby vicinity, 7/15/88

Madison County

Timber Bridge Northwest of Sheridan (24MA714) (Timber Bridges of Montana), 3 mi. NW of Sheridan over Wisconsin Creek, Sheridan vicinity, 3/16/88

Timber Bridge at Silver Star (24MA716) (Timber Bridges of Montana), MT 41 over irrigation ditch, Silver Star, 3/16/88

Timber Bridge over Cherry Creek (24MA795) (Timber Bridges of Montana), MT 41 over Cherry Creek, Silver Creek, 3/16/88

Phillips County

Timber Bridge at Malta (24PH2666) (Timber Bridges of Montana), Sixth Ave. over Dodson South Canal, Malta, 3/16/88

Ravalli County

Timber Bridge over Rye Creek (24RA91) (Timber Bridges of Montana), Over Rye Creek, City unavailable, 3/16/88

Timber Bridge South of Darby (24RA92) (Timber Bridges of Montana), 4 mi. S of Darby, Darby vicinity, 3/16/88

Richland County

Bridge 24RL169 (Main Canal Bridges of the Lower Yellowstone River), Over the Main Canal of the Lower Yellowstone, 1 mi. N of Crane, Crane vicinity, 6/23/88

Bridge 24RL170 (Main Canal Bridges of the Lower Yellowstone River), Over Main Canal of the Lower Yellowstone at W of Newlon, Newlon vicinity, 6/23/88

Bridge 24RL181 (Main Canal Bridges of the Lower Yellowstone River), Over Main Canal of the Lower Yellowstone, 3 mi. SW of Fairview, Fairview vicinity, 6/23/88

Bridge 24RL183 (Main Canal Bridges of the Lower Yellowstone River), Over Main Canal of the Lower Yellowstone, 2 mi. SW of Fairview, Fairview vicinity, 6/23/88

Teton County

Timber Bridge South of Chouteau (24TT121) (Timber Bridges of Montana), 4.9 mi. S of Chouteau, Chouteau vicinity, 3/16/88

Treasure County

Timber Bridge Southwest of Hysham (24TE44) (Timber Bridges of Montana), 3.5 mi. SW of Hysham over Buckingham Coulee, Hysham vicinity, 3/16/88

Wibaux County

Davis House, MT 7, Wibaux, 5/04/88

NEW HAMPSHIRE

Hillsborough County

Notre Dame Bridge, Over Merrimack River, Manchester, 1/07/88

NEW JERSEY

Burlington County

Evergreen Park, Pemberton—Brown's Mill Rd., New Lisbon vicinity, 7/18/88

NEW YORK

Genesee County

Batavia Archeological District, Address Restricted, Batavia vicinity, 10/04/87

Queens County

New York Architectural Terra Cotta Company Office Building, 42—10 Vernon Blvd., Queens, 2/17/88.

Washington County

Fort Edward Archeological Site, Address Restricted, Fort Edward vicinity, 10/05/87

NORTH DAKOTA

Cavalier County

US Post Office, Langdon, 323 Eighth Ave., Langdon, 1/13/88

Stark County

US Main Post Office, Dickinson, 15 First St. E, Dickinson, 1/13/88

RHODE ISLAND

Providence County

Chemical Building, Fields Point Sewage Treatment Plant (Providence Sewage Treatment System MPS), Ernest St., Providence, 3/07/88

Ernest Street Sewage Pumping Station (Providence Sewage Treatment System MPS), Ernest St. at Ellis St., Providence, 3/07/88

Reservoir Avenue Sewage Pumping Station (Providence Sewage Treatment System MPS), Reservoir Ave. and Pontiac Ave., Providence, 3/07/88

Return Sludge Pumping Station, Fields Point Sewage Treatment Plant (Providence Sewage Treatment System MPS), Ernest St., Providence, 3/07/88

Sludge Press House, Fields Point Sewage Treatment Plant (Providence Sewage Treatment System MPS), Ernest St., Providence, 3/07/88

Washington Park Sewage Pumping Station (Providence Sewage Treatment System MPS), Shipyard St., Providence, 3/07/88

Washington County

Hoskins Park Site (RI–1007), Address Restricted, North Kingstown vicinity, 11/06/87

South Wind Site (RI–10006), Address Restricted, North Kingstown vicinity, 11/06/87

TENNESSEE

Sevier County

Smoky Mountains Hiking Club Cabin, Greenbrier Cove in Great Smoky Mountains National Park, Gatlinburg vicinity, 4/26/88

VIRGINIA

Fairfax County

World War I Temporary Warehouses, Lowen Rd., Fort Belvoir, 8/02/88

WASHINGTON

Chelan County

Headwaters Site (45 CH 209), Address Restricted, Coles Corner vicinity, 11/10/87

Okanogan County

Archeological Site 450K189, Restricted address, Omak vicinity, 12/18/87

Properties removed from eligibility for the National Register

ARIZONA

Maricopa County

Miller, Curt, House, 116 W. 4th St., Tempe, 4/06/88

ILLINOIS

Livingston County

Vieley Bridge, over N. Fork of the Vermillion River, City unavailable, 10/09/87

IOWA

Webster County

Hawkeye Avenue Bridge, spans the Des Moines River, Fort Dodge, 10/19/87

KANSAS

Dickinson County

Enterprise Parker Truss Bridge, City unavailable, Enterprise, 8/10/88

Montgomery County

Parker Bridge, 1.5 mi. SE of Coffeyville, Coffeyville vicinity, 8/10/88

MARYLAND

Wicomico County

Sharptown Bridge, MD Rte. 313 over the Nanticoke River, City unavailable, 3/11/88

MISSOURI

Franklin County

Tegeler, John, Barn, Located on the S side of US 50 approx. 1 mi. E of Gerald, Gerald vicinity, 2/23/88

Pulaski County

Riddle Bridge, CR 98, St. Robert vicinity, 11/13/87

[FR Doc. 89–18063 Filed 8–28–89; 8:45 am]

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federal register

Tuesday
August 29, 1989

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 81

Provisional Listing of FD&C Red No. 3 in Cosmetics and Externally Applied Drugs and of Its Lakes in Food, Drugs, and Cosmetics; Postponement of Closing Date; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of FD&C Red No. 3 in Cosmetics and Externally Applied Drugs and of its Lakes in Food, Drugs, and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs and of the lakes of this color additive for use in coloring food, drugs, and cosmetics. The new closing date for the provisional listing of this color additive will be October 30, 1989. This postponement will permit the uninterrupted use of this color additive and its lakes while FDA prepares appropriate **Federal Register** documents to announce the agency's decision on the regulatory status of this color additive and its lakes.

DATES: Effective August 29, 1989; the new closing date for FD&C Red No. 3 and its lakes will be October 30, 1989.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: Under title II of the Color Additive Amendments of 1960 (the transitional provisions) (Pub. L. 86-618, sec. 203 (21 U.S.C. 376, note)), FDA is authorized to postpone the closing date of the provisional listing of a color additive. The standard for issuing such postponements is well established: "Such postponements must be consistent with the public health, and the Commissioner must judge that the scientific investigations are going forward in good faith and will be completed as soon as reasonably practicable." (*McIlwain* v. *Hayes*, 690 F. 2d 1041, 1047 (D.C. Cir. 1982) and *Public Citizen* v. *Young*, 831 F. 2d 1108, 1122 (D.C. Cir. 1987)).

In the **Federal Register** of August 30, 1988 (53 FR 33147), FDA proposed to postpone the closing date for FD&C Red No. 3. FDA proposed the postponement to allow the agency time to complete its evaluation of new data submitted by the Certified Color Manufacturers' Association (CCMA). The postponement was intended to allow the agency to complete its evaluation of the sale and use data on FD&C Red No. 3, to make a final decision with respect to the status of FD&C Red No. 3 under the color additive amendments, and to prepare the appropriate **Federal Register** documents for the regulation of this color additive. In the **Federal Register** of October 28, 1988 (53 FR 43685), FDA published a final rule to establish a closing date for FD&C Red No. 3 of June 30, 1989.

Thereafter, in the **Federal Register** of June 30, 1989 (54 FR 27646), FDA published a final rule postponing the June 30, 1989, closing date for the provisional listing of FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs and of the lakes of this color additive for use in coloring food, drugs, and cosmetics. That final rule established a new closing date of August 29, 1989. FDA postponed the June 30, 1989, closing date to August 29, 1989, to provide the agency with sufficient time to prepare the **Federal Register** documents setting forth the agency's decision on the regulatory status of the color additive and its lakes.

Due to the complexity of the issues to be addressed in resolving the regulatory status of FD&C Red No. 3 and its lakes, the agency needs additional time to finalize the **Federal Register** documents articulating the agency's decision. Accordingly, FDA is now postponing the closing date for FD&C Red No. 3 and its lakes to October 30, 1989, by publication of this final rule. Accordingly, the order set forth below would amend 21 CFR 81.1(a) and 81.27(d) to postpone the closing date to October 30, 1989, to provide sufficient time for the agency to take final action in this matter.

The agency believes that postponement of the closing date for the provisionally listed uses of FD&C Red No. 3 and its lakes is appropriate and consistent with the standard for issuing such postponements. In particular, FDA believes that the continued use of these color additives for an additional period not to exceed 60 days will not pose a hazard to the public health. To the extent that there are risks from the use of FD&C Red No. 3 and its lakes, these risks result from chronic exposure to the color additive. Thus, a postponement of the closing date of no more than 60 days will not have any measurable effect on the public health. In addition, the agency has completed its review of the scientific data and will complete the **Federal Register** documents announcing the agency's decision as soon as practicable. These actions represent the final steps of the agency's evaluation of the investigations on the safety of the provisionally listed uses of FD&C Red No. 3. Accordingly, this brief postponement of the closing date for FD&C Red No. 3 and its lakes is consistent with the standard articulated in *McIlwain* v. *Hayes*, supra, and *Public Citizen* v. *Young*, supra.

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has determined that extending the provisional listing of these color additives requires no change in the current industry practice concerning the manufacture or use of these ingredients.

Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities would derive from this action. Further, the economic effects of this final rule have been analyzed and it has been determined that it is not a major rule as defined in Executive Order 12291.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. Section 81.1 Provisional lists of color additives is amended in the table of paragraph (a) by revising the closing date, both places it appears, for the entry "FD&C Red No. 3" to read "October 30, 1989".

§ 81.27 [Amended]

3. Section 81.27 Conditions of provisional listing is amended in the table, appearing in the introductory text of paragraph (d), by revising the closing date for the entry "FD&C Red No. 3" to read "October 30, 1989".

Dated: August 25, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-20489 Filed 8-28-89; 10:39 am]

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federal register

Tuesday
August 29, 1989

Part V

Department of Energy

Office of the Secretary

Public Hearings to Solicit Views From Public Officials and the General Public on the Development of a National Energy Strategy; Notice

DEPARTMENT OF ENERGY

Office of the Secretary

Public Hearings to Solicit Views From Public Officials and the General Public on the Development of a National Energy Strategy

AGENCY: Office of the Secretary, DOE.

ACTION: Notice of Meetings to invite public officials and the general public to provide comments on the development of a National Energy Strategy.

SUMMARY: This is the fifth in a series of public hearings being conducted throughout the country by the Department of Energy soliciting comments from interested parties on a wide range of energy issues and recommended solutions.

DATES: The public hearing is scheduled for September 8, 1989, from 9:00 a.m. to 5:30 p.m., at the Kentucky Center for the Arts, 5 River Front Plaza, Louisville, Kentucky. Individuals interested in testifying at this hearing should contact William H. Hatch, Office of Policy, Planning and Analysis, Department of Energy at (202) 586-4767 no later than 4:00 p.m., Friday, September 1, 1989. Persons wishing to submit testimony for the record in conjunction with this hearing should forward written comments to William H. Hatch, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 7H-034, 1000 Independence Avenue SW., Washington, DC 20585. All testimony received will be compiled and made available to the public.

FOR FURTHER INFORMATION CONTACT: For further information, please write or call William H. Hatch, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 7H-034, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-4767.

Vito Stagliano,

Acting Deputy Under Secretary, Office of Policy, Planning and Analysis, U.S. Department of Energy.

[FR Doc. 89-20536 Filed 8-28-89; 11:20 am]

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CFR CHECKLIST

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[2] No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Vol. 54 No. 167

federal register

Wednesday
August 30, 1989

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV-89-058FR]

Pears, Plums and Peaches Grown in California; Modification of Pack Requirements for Plums for the 1989 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule which relaxed pack requirements established for California plums. The interim final rule authorized an additional container size for the 1989 season. The continued relaxation permits the shipment of plums packed in 24-pound as well as 28-pound net weight, loose-filled or tight-filled packages for the 1989 season. This smaller container provides handlers with additional marketing flexibility during the 1989 marketing year.

DATES: This final rule becomes effective August 30, 1989.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, F&V, AMS, Room 2525-S, P.O. Box 96456, Washington, D.C. 20090-6456; telephone (202) 475-3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 917 [7 CFR part 917], both as amended, regulating the handling of fresh pears, plums and peaches grown in California, hereinafter referred to as the order. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1, and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the FRA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatability.

There are approximately 390 handlers of plums subject to regulation under the order (7 CFR part 917), and there are approximately 1,500 producers in the regulated areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000. Small agricultural firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California plums may be classified as small entities.

Shipments of California plums are regulated by container and pack under Plum Regulation 17 [7 CFR 917.454]. Based on an interim final rule published in the **Federal Register** on June 9, 1989 (54 FR 24667), an additional container size was authorized for the 1989 season. That container holds 24 pounds, net weight, of plums. Interested persons were invited to submit comments to the interim final rule until July 10, 1989. Four comments were received favoring the interim rule from: Mr. Clifford A. Kemper, an attorney representing Gerawan Co., Inc., a plum producer/handler in Reedley, California; Mr. Dan J. Gerawan, of Gerawan Co., Inc., Mr. Jay Liotta, Head Produce Buyer for the Grand Union Company in Wayne, New Jersey; and Mr. James A. Moody, Coordinator of the Farmers Alliance for Improved Regulation, in Washington, D.C. No comments were received opposing the rule.

This final rule is based on information provided by the Plum Commodity Committee (committee) from comments received, and other available information.

Inspected shipments of California plums for the 1988 season totalled approximately 15,250,000 28-pound equivalent packages, and were marketed primarily in the fresh market. Inspected shipments of plums during the 1989 season are expected to total slightly more than 14 million 28-pound equivalent packages.

Paragraph (a)(5) of § 917.454 specifies that each package or container of loose-filled or tight-filled plums other than bulk bin containers, master containers of consumer packages, and individual consumer packages shall bear on one outside end in plain sight and in plain letters, the words "28 pounds net weight." Because these regulations do not change substantially from season to season, they have been issued on a continuing basis subject to amendment, modification, or suspension as approved by the Secretary.

In meetings on May 3, and May 24, 1989, the committee considered a request from a handler to test market plums packed in 24-pound net weight, volume-filled containers which were 5¾ inches deep. The handler indicated that a market existed for plums sold in these containers. The 28-pound net weight containers currently in use are generally 6½ inches deep. The 24-pound container is the same length and width as the larger container and is used for shipping plums packed in molded forms (tray-packs). According to the handler, an individual buyer preferred the smaller containers, volume filled, because the buyer could ripen and display the fruit without moving the fruit from packing to display containers. Thus, handling costs were reduced. The buyer also contended that, because some peaches and nectarines were packed in the smaller containers, similar use of smaller containers for plums enhanced the display of summer fruit in the buyer's stores and thus increased sales.

At both meetings, some committee members opposed the use of the smaller 24-pound net weight container because they believed such containers could cause confusion in the marketplace. They believed this would defeat the purpose of having one standard 28-pound net weight container. Also,

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previous research showed that less fruit

above for the 1989 season would not

Pursuant to 5 U.S.C. 553, it is also

"Notice of Expiration of Insurance," and

Federal action significantly affecting the

NATIONAL AERONAUTICS AND

previous research showed that less fruit bruising occurred in the 28-pound net weight container. In addition, some members believed that approval of this handler's request would set a precedent and could require approval of future requests for different net-weight containers. Further, it was indicated that the 5¾ inch deep containers would limit the handler to using smaller sized fruit because larger fruit would either not fit in the small container or would be bruised during packaging or shipment. Other members indicated that the request to market fruit in a 24-pound net weight container should be approved if sales of fruit could be increased. One member was of the opinion that the use of a 24-pound net weight container would not cause confusion in the marketplace. It was suggested that information on the 24-pound pack was needed from other retailers.

A representative of the handler who requested the use of the 24-pound net weight container attended the May 24, 1989, meeting of the committee, and a representative of the retailer who wished to purchase fruit in that container attended both the May 3 and 24, 1989 meetings. The handler indicated that the 24-pound net weight container would be used only in shipments to the one buyer. The handler further indicated that the quantity expected to be shipped would be approximately 1 percent of total industry plum shipments during the 1989 season. Thus, the handler and retailer both felt that there was little possibility of confusion in the marketplace caused by the use of another weight container. Most members agreed that additional marketing research on the 24-pound net weight container would be helpful in making a recommendation on the use of that shipping container in the future. The committee voted to authorize a study of the marketing effects of the smaller containers and of buyer interest before shipments were authorized. At both meetings, the committee voted to not recommend the use of the 24-pound net weight container.

The Department carefully considered the votes of the committee, the differing viewpoints of the individual committee members, and other information. The Department believed, and continues to believe, that handlers should be permitted to take advantage of marketing outlets which desire 24-pound net weight containers of plums during the 1989 season, while the committee conducts its study evaluating the effects of using such containers. Moreover, the Department believed that the limited use of the smaller container as discussed above for the 1989 season would not disrupt the market.

The Department also believes that continued approval of the 24-pound net weight container for the remainder of the 1989–90 season will not necessarily result in additional handler requests for different sized containers with net weights other than 24 and 28 pounds. The 1989 season is more than 50 percent completed and a proliferation of handler requests for other sized or weight containers has not resulted. The four commenters favoring relaxation of the container requirements agreed that the action would reduce handling costs, reduce bruising and shrinkage of the plums marketed, and not cause confusion in the marketplace. Mr. Moody further indicated that markets, handlers, sellers, and consumers would benefit from the widest possible diversity and choice of containers.

The interim final rule adopted the relaxed container requirements on an experimental basis for the 1989 season. Mr. Kemper requested that the relaxation be issued on a continuing basis. However, the Department believes that the committee should evaluate the market effects of and buyer interest in the 24-pound container and then decide if recommendation of such a relaxation is warranted on a continuing basis. Such evaluation by the committee should be conducted at the conclusion of the 1989 shipping season. Any positive recommendations, including recommendations that the regulation be effective on a continuing basis, will be considered at that time.

In view of the above, it is the Department's view that the continued application of this change in container requirements for the remainder of the 1989 season will provide additional marketing opportunities and should not disrupt the marketplace. Thus, the revision of paragraph (a)(5) of § 917.454, allowing the shipment of plums in 24-pound net weight, volume-filled containers for the 1989 marketing season should continue in effect.

Based on available information, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the committee's recommendation, the comments received, and other information, it is found that the modification of the container requirements, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Shipments of the 1989/90 plum crop are more than 50 percent complete; (2) this action gives handlers the opportunity to use a smaller net-weight container to meet buyer preferences for the remainder of the 1989 season; (3) this action adopts, without change, the interim final rule in effect since June 5, 1989 (54 FR 24668); and (4) no useful purpose would be served by delaying the effective date of the changed requirements.

List of Subjects in 7 CFR Part 917

California, Marketing agreements and orders, Peaches, Pears, Plums.

For the reasons set forth in the preamble, 7 CFR part 917 is amended as follows:

Note: This section will not appear in the *Code of Federal Regulations.*

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of 7 CFR part 917, published in the **Federal Register** on June 9, 1989 (54 FR 24667–24668), is adopted as a final rule.

Dated: August 25, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–20429 Filed 8–29–89; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1806

Elimination of Obsolete Insurance Expiration Notice Forms

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its Real Property Insurance regulation. FmHA recently appointed a taskforce to evaluate all of the Agency's forms and make recommendations for elimination of unnecessary and/or obsolete forms. Two of the forms recommended for elimination are Form FmHA 426–3, "Notice of Expiration of Insurance," and Form FmHA 426–7, "Insurance Binder." The intended effect of this action is to remove references to these forms in FmHA's regulations.

EFFECTIVE DATE: August 30, 1989.

FOR FURTHER INFORMATION CONTACT: Robin H. Peston, Loan Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5313, Washington, DC 20250. Telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and since this action has no impact on FmHA borrowers or other members of the public, it has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves internal agency management and publication for comment is unnecessary.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans (Section 502 Rural Housing Loans)
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10.416 Soil and Water Loans

Intergovernmental Consultation

This activity, for obvious reasons, is not listed in the Catalog of Federal Domestic Assistance. However, the following programs of which the activity is a part are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials:

10.405 Farm Labor Housing Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190), an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1806

Insurance, Loan programs—agriculture, Real property insurance, Rural areas.

Accordingly, FmHA amends Chapter XVIII, Title 7, Code of Federal Regulations is amended to read as follows:

PART 1806—INSURANCE

1. The authority citation for Part 1806 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Real Property Insurance

§ 1806.2 [Amended]

2. Section 1806.2(b)(4) is amended by removing the second sentence beginning with "Form FmHA 426–7."

3. Section 1806.4 is amended by revising the introductory text of paragraph (a)(2) to read as follows:

§ 1806.4 Examining and general servicing of insurance.

(a) * * *

(2) *Expiration Records and Notices.* After the insurance has been accepted, the expiration date will be inserted on Form FmHA 1905–1, "Management System Card—Individual," or Form FmHA 1905–6, "Management System Card—Individual (Rural Housing Only)," or Form FmHA 1905–10, "Management System Card—Association or Organization," or Form 1905–12, "Monthly Expirations," as provided in FmHA Instruction 1905–A for servicing the renewal of insurance.

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§ 1806.4 [Amended]

4. Section 1806.4(a)(2)(i) is amended by removing the last sentence beginning with "Form FmHA 426–3."

Exhibit B of Subpart A [Removed]

5. Exhibit B of Subpart A is removed.

Dated: July 19, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–20572 Filed 8–29–89; 8:45 am]

BILLING CODE 3410–07–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1232

RIN 2700—AA78

Care and Use of Animals in the Conduct of NASA Activities

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim final rule with request for comment.

SUMMARY: This rule establishes NASA policy, responsibilities, procedures, and authority for the care and use of vertebrate animal subjects in the conduct of NASA activities. The purpose is to assure the proper and humane care and use of animal subjects involved in NASA activities.

DATE: Effective: August 30, 1989. Comments must be submitted on or before October 30, 1989.

ADDRESS: Comments may be mailed to the Life Sciences Division, Code EB, NASA Headquarters, Washington, DC 20546. Comments received may be inspected in room 112, FB 10B, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Thora Halstead 202–453–1527.

SUPPLEMENTARY INFORMATION: Enactment of new laws with new and expanded provisions regulating the care and use of animal subjects in research, increased public awareness and concern for the care and use of animal subjects in research, and the unique environment of space in which some NASA research is conducted dictate that NASA develop a specific written policy with regard to the care and use of animal subjects in NASA facilities and NASA-sponsored research.

The policies described here have been created to develop a policy specific to NASA's unique needs and to be in concordance with provisions of the Animal Welfare Act, as amended (7 U.S.C. 2131 et seq.), as implemented in 9 CFR Subchapter A Parts 1, 2, 3, and 4, and also follow guidelines of the Public Health Service Policy on Humane Care and Use of Laboratory Animals, guidelines developed to ensure compliance with the animal welfare provisions of the Health Research Extension Act of 1985. Policy, procedures, authority, reporting requirements, and provisions for dealing with noncompliance are included in this rule.

This rule incorporates appropriate changes from comments received from the reviewing NASA Headquarters

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Office and NASA Field Installations and the Office of Protection from Research Risks, National Institutes of Health. Comments of interested persons with respect to implementation and interpretation of the relevant laws, rules, and guidelines and the implementation and management procedures described in this rule will be taken into consideration before taking final action on the rule.

This regulation does not constitute a major rule for the purpose of Executive Order 12291, and is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 1232

Animal welfare, Animal housing, Research facilities, Humane animal handling, Humane animal research, Institutional animal care and use committees, Adequate veterinary care.

Title 14 of the Code of Federal Regulations is amended by adding Part 1232 to read as follows:

PART 1232—CARE AND USE OF ANIMALS IN THE CONDUCT OF NASA ACTIVITIES

Sec.
1232.100 Scope.
1232.101 Applicability.
1232.102 Policy.
1232.103 Definitions.
1232.104 Implementation procedures by non-NASA institutions.
1232.105 Implementation procedures by NASA field installations.
1232.106 Management authority and responsibility.
1232.107 Sanctions.

Authority: 42 U.S.C. Sec. 2451; Pub. L. 89–544, as amended; 7 U.S.C. Sec. 2131; 39 U.S.C. Sec. 3001; 9 CFR Subchapter A Parts 1, 2, 3, and 4; and Pub. L. 99–158, Sec. 495.

§ 1232.100 Scope.

This rule establishes the policy, implementation procedures, and management authority and responsibility for the care and use of vertebrate animals (hereinafter referred to as "animal subjects") in the conduct of NASA activities.

§ 1232.101 Applicability.

This rule applies to NASA Headquarters and NASA field installations and will be followed in all activities using animal subjects that are supported by NASA, conducted in NASA facilities, aircraft, or spacecraft, or which involve NASA to any degree. All activities using animal subjects conducted under a contract, grant, cooperative agreement, memorandum of understanding, or joint endeavor agreement entered into by NASA and another Government agency, private entity, non-Federal public entity, or foreign entity are included within the scope of this rule.

§ 1232.102 Policy.

(a) It is NASA policy to require its laboratories and the institutions performing NASA-supported activities using animal subjects to comply with the Animal Welfare Act of 1966 (Pub. L. 89–544), as amended (Pub. L. 91–579, Pub. L. 94–279, and Pub. L. 99–198), 7 U.S.C. 2131 et seq., and 39 U.S.C. 3001, and with the regulations promulgated thereunder by the Secretary of Agriculture (9 CFR Subchapter A Parts 1, 2, 3, and 4) pertaining to the care, handling, and treatment of animal subjects held or used for research, testing, teaching, or other activities supported by the Federal government. Investigators shall follow the guidelines described in the National Institutes of Health (NIH) Publication No. 85–23 (Rev. 1985), "Guide for the Care and Use of Laboratory Animals" (the Guide) or subsequent revisions. Attention is called to the U.S. Government "Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training" on pp. 81–83 of the Guide. In order to implement these guidelines and principles, investigators will comply with the revised Public Health Service (PHS) Policy on Humane Care and Use of Laboratory Animals (hereinafter referred to as PHS Policy) effective November 1, 1986.[1]

(b) This rule authorizes NASA to have the same authority for NASA-supported programs as that delegated to PHS by the PHS Policy, including the functions and responsibilities of the Animal Care and Use Committees (ACUC's).

(c) All research supported by NASA that involves activities using animal subjects shall be conducted under protocols that conform to this rule and that are reviewed and approved as prescribed in this rule.

§ 1232.103 Definitions.

The following definitions of terms comply with the PHS Policy and apply to the conduct of all NASA activities related to the care and use of animal subjects.

(a) "Activity" includes research, testing of hardware for animal use, flight experimentation, and any other tasks involving the use of animal subjects.

(b) "Animal" is any live vertebrate animal.

(c) "Animal Care and Use Committee" (ACUC) is the committee established at each institution and NASA field installation involved in research with animal subjects. It is responsible for evaluating the care and use of animal subjects at the facility and for ensuring that the care and use of animal subjects at the facility is in compliance with this rule and PHS Policy.

(d) "Authorized NASA Official" is the Director, Life Sciences Division, NASA Headquarters, or designee, who is the NASA Administrator's representative and is responsible for all NASA activities involving animal subjects. This individual is responsible for implementation of the provisions of this rule and for ensuring that agency programs involving animal subjects comply fully with all applicable laws, regulations, and guidelines.

(e) "Field Installation Director" is the Director of a NASA Field Installation, or designee, who is the institutional official responsible for the care and use of animal subjects in research conducted at that field installation and for ensuring compliance with this rule at that field installation.

(f) "Investigator" is any person who uses or proposes to use live animal subjects in NASA-supported activities, e.g., receives funds, salaries, or support under a grant, award, agreement, contract, or direct employment by NASA, or the use of any NASA facilities, aircraft, or spacecraft for the purpose of carrying out research, tests, or experiments using animal subjects.

(g) "PHS Assurance" is a document prepared by an awardee institution assuring its compliance with PHS Policy.

(h) "Research of Flight Program Manager" is the NASA Headquarters manager of each program in which NASA has a manifest interest.

(i) "Supported" pertains to activities either funded in part or in whole by NASA or an approved activity that is not funded by NASA but that utilizes NASA facilities, including spacecraft and aircraft.

(j) "Veterinarian" is the NASA attending veterinarian, a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, has received training and/or experience in the care and management of the species being attended, and who has direct or delegated authority and responsibility for activities involving animal subjects at the NASA field installation.

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[1] Available from the Office of Protection from Research Risks (OPRR), National Institutes of Health, 9000 Rockville Pike, Bldg. 31, Room 5B59, Bethesda, MD 20892, Telephone 301–496–7005.

§ 1232.104 Implementation procedures by non-NASA institutions.

(a) Proposal Information. No animal subjects may be utilized unless a proposal justifying and describing their use is submitted to NASA for approval. The required proposal information is outlined in the PHS Policy (IV.D.1.a.-e.).

(b) Proposal Approval by the Institutional ACUC. Before a proposal for research involving the use of animal subjects will be considered for NASA support, the NASA Headquarters Research or Flight Program Manager must receive a statement that the research has been reviewed in accordance with the PHS Policy (IV.C.) and approved by the appropriate ACUC at the participating institution.

(c) Proposal Approval for Flight Experiments. In addition to the institution's ACUC review, activities involving animal subjects to be flown on NASA spacecraft will be subject to review and approval by the Ames Research Center (ARC) ACUC. The ARC ACUC will submit each evaluation report to the ARC Director who will transmit the report with his/her recommendation to the Authorized NASA Official, NASA Headquarters. Animal activities to be flown onboard NASA manned spacecraft may also be subject to review by the Human Research Policy and Procedures Committee (HRPPC) at the Johnson Space Center (JSC). Animal activities utilizing the facilities of any NASA field installation are also subject to approval of that field installation's ACUC (§ 1232.105(d)).

(d) Institutions with PHS Assurance on File. The institution, by an approved or provisionally acceptable Assurance on file at the NIH Office for Protection from Research Risks (OPRR), Department of Health and Human Services (HHS), assures NASA that it will comply with the PHS Policy. The Assurance file number must be included in the research proposal submitted to NASA.

(e) Institutions with no PHS Assurance on File. Proposals from institutions without an approved Assurance on file with the NIH OPRR will first be peer-reviewed for scientific merit. If the proposed research is deemed worthy of support, NASA will arrange for a special Assurance to be negotiated by the Director, Life Sciences Division, NASA Headquarters. The arrangements for a special Assurance review by NIH should be undertaken in consultation with the NASA representative to the Interagency Research Animal Committee (IRAC) and will be handled on a case-by-case basis.

(f) Foreign institutions must comply with the PHS Policy (see Section II Of PHS Policy) and this rule before being supported by NASA for any activities involving animal subjects.

§ 1232.105 Implementation procedures by NASA field installations.

(a) *Proposal Information.* The information required for proposals involving the use of animal subjects is identical to that described in § 1232.104(a).

(b) *Proposal Approval by the NASA ACUC.* Before a proposal for research involving the use of animal subjects will be considered for NASA support, the NASA Headquarters Research or Flight Program Manager must receive a statement that the research has been reviewed in accordance with PHS Policy (IV.C.) and approved by the ACUC at the appropriate field installation.

(c) *Proposal Approval for Flight Experiments.* In addition to the Field Installation ACUC review, activities involving animal subjects to be flown on NASA spacecraft will be subject to review and approval by the ARC ACUC. The ARC ACUC will submit each evalaution report to the ARC Director who will transmit the report with his/her recommendation to the Authorized NASA Official, NASA Headquarters. Animal activities to be flown onboard NASA manned spacecraft may also be subject to review by the HRPPC at JSC.

(d) *Approval for Use of Field Installation Facilities.* The NASA Field Installation ACUC will review and approve or disapprove those parts of proposals that call for the use of their facilities to conduct any activity involving animal subjects (e.g., Kennedy Space Center or ARC Dryden facilities used to support experiments using animal subjects). The ACUC will submit each evaluation report to the Field Installation Director who will transmit the report with his/her recommendation to the Authorized NASA Official, NASA Headquarters.

(e) *NASA Animal Care and Use Committees.* (1) The Director of each NASA Field installation that is involved in animal research activities will establish an ACUC to ensure compliance with the policies and provisions of this rule. The membership of the ACUC shall be in accordance with PHS Policy.

(2) The NASA Field Installation ACUC's will review and approve or disapprove all proposals using animal subjects. In accordance with the PHS Policy (IV.C.), the ACUC will submit each report to the Field Installation Director who will, upon request, transmit the report with his/her recommendation to the Authorized NASA Official, NASA Headquarters.

(3) NASA ACUC's have the authority to approve, disapprove, or require changes to be made in those components of proposals involving the care and use of animal subjects that are submitted by NASA investigators. All decisions shall be based on the response of a majority of a quorum of the members. A minority opinion including abstentions should be recorded; this record should include a justification for the opinion.

(4) The ACUC shall conduct continuing review of proposals at appropriate intervals as determined by the ACUC, but not less than once every 3 years.

(5) Proposals that have been approved by the ACUC may be subject to further appropriate review by the Authorized NASA Official, NASA Headquarters. However, the official may not approve those sections of a proposal related to the care and use of animal subjects if they have not been approved by the ACUC.

(6) Once experimental procedures are approved, no substantial changes can be made unless a formal request with appropriate justification for such a request is submitted to and approved by the appropriate ACUC. If the experiment involves exposure of the flight crew to the animal subjects, the HRPPC at JSC must review and approve the proposed modifications. Copies of ACUC approval of the proposed modifications shall be submitted to the Field Installation Director who will, upon request, transmit the report to the Authorized NASA Official, NASA Headquarters.

(7) Other functions of the field installation ACUC include:

(i) Reviewing at least once every 6 months the field installation's program for humane care and use of animals, using the Guide as a basis for evaluation;

(ii) Inspecting at least once every 6 months all of the field installation's animal facilities (including satellite facilities), using the Guide as a basis for evaluation;

(iii) Preparing reports of the ACUC evaluations conducted as required by § 1232.105 (e)(7)(i) and (ii), and submitting the reports to the Field Installation Director. (Note: the reports shall be updated at least once every 6 months upon completion of the required semiannual evaluations and shall be maintained by the field installation and made available to the Authorized NASA Official upon request. The reports must contain a description of the nature and extent of the field installation's adherence to the Guide and this rule and must identify specifically any departures from the provisions of the Guide and this rule, and must state the reasons for each departure. The reports must distinguish significant deficiencies from minor deficiencies. A significant deficiency is one which, consistent with PHS Policy, and, in the judgment of the ACUC and the Field Installation Director, is or may be a threat to the health or safety of the animals. If program or facility deficiencies are noted, the reports must contain a reasonable and specific plan and schedule for correcting each deficiency.)

(iv) Reviewing concerns involving the care and use of animals at the field installation;

(v) Making recommendations to the Field Installation Director regarding any aspect of the field installation's animal program, facilities, or personnel training.

(f) *NASA Assurances.* Each NASA field installation involved in activities using animal subjects must assure that its programs and facilities have been evaluated and accredited by the American Association for the Accreditation of Laboratory Animal Care (AAALAC). Written assurance of compliance with the provisions of the PHS Policy and this rule is also required from NASA field installations involved in animal activities before approval of any such activity. This Assurance should follow the sample PHS Assurance format shown on pages 19–28 of the PHS Policy and must be submitted by the Field Installation Director to the Authorized NASA Official. The Assurance is subject to renewal every 5 years.

(g) *Recordkeeping Requirements.* (1) Each NASA field installation involved in activities using animal subjects shall maintain:

(i) An Assurance of compliance with PHS Policy and this rule (§ 1232.105 (f));

(ii) Minutes of ACUC meetings, including records of attendance, activities of the committee, and committee deliberations;

(iii) Records of applications, proposals, and proposed significant changes in the care and use of animals and whether ACUC approval was given or withheld;

(iv) Records of semiannual ACUC reports and recommendations (including minority views) as forwarded to the Field Installation Director;

(v) Records of AAALAC accreditation; and

(vi) The Field Installation's Animal Users Guide and Animal Care Facility Management Manual. The Field Installation Animal Users Guide and Animal Care Facility Management Manual should be revised at appropriate intervals.

(2) All records shall be maintained for at least 3 years; records that relate directly to applications, proposals, and proposed significant changes in ongoing activities reviewed and approved by the ACUC shall be maintained for the duration of the activity and for an additional 3 years after completion of the activity. All records shall be furnished upon request to the Authorized NASA Official.

(h) *Reporting Requirements.* For each NASA field installation involved in activities using animal subjects:

(1) Statements of ACUC approval of research proposals, ACUC evaluation reports of flight experiment proposals and of experiment proposals utilizing field installation facilities, and the field installation's Assurance of compliance shall be submitted in the manner prescribed in § 1232.104 (c) and § 1232.105 (b) (c) (d) and (f).

(2) At least once every 12 months, the ACUC, through the Field Installation Director, shall report in writing to the Authorized NASA Official:

(i) Any change in the field installation's program or facilities that would affect the AAALAC accreditation status;

(ii) Any change in the description of the field installation's program for animal care and use;

(iii) Any changes in the ACUC membership;

(iv) Notice of the dates that the ACUC conducted its semiannual evaluations of the field installation's program and facilities and submitted the evaluations to the Field Installation Director;

(v) A statement that the field installation has no changes to report as specified in § 1232.105 (h) (2) (i) (ii) or (iii) of this rule, if there are no changes.

(3) The ACUC, through the Field Installation Director, shall promptly provide the Authorized NASA Official with a full explanation of the circumstances and actions taken with respect to:

(i) Any serious or continuing noncompliance with this rule and PHS Policy;

(ii) Any serious deviation from the provisions of the Guide; or

(iii) Any suspension of an activity by the ACUC.

(4) Reports filed under § 1232.105 (h) of this rule shall include any minority views filed by members of the ACUC.

(5) A copy of the U.S. Department of Agriculture (USDA) Annual Report will be furnished to the Authorized NASA Official.

§ 1232.106 Management authority and responsibility.

(a) *Authorized NASA Official.* The Authorized NASA Official is the NASA Administrator's representative and is responsible for all NASA activities involving animal subjects. This individual is responsible for implementation of the provisions of this rule and for ensuring that agency programs involving animal subjects comply fully with all applicable laws, regulations, and guidelines.

(b) *Field Installation Director.* The Field Installation Director is responsible for and has the authority to:

(1) Sign the field installation's Assurance, making a commitment on behalf of the field installation that the requirements of the PHS Policy and this rule will be met in all field installation activities involving animal subjects;

(2) Create and oversee the functioning of the field installation ACUC;

(3) Decide and administer sanctions in cases of noncompliance with this rule;

(4) Fulfill the reporting requirements assigned to this individual in § 1232.105 (h); and

(5) Sign the annual USDA report.

(c) *NASA Field Installation(s) ACUC Responsibility.* Each NASA Field Installation ACUC is responsible to its Field Installation Director for the activities described in § 1232.104(c) and § 1232.105 (b) (c) (d) (e) and (h).

(d) *Research or Flight Program Manager Responsibility.* The Research or Flight Program Manager is responsible for ascertaining the presence of the required PHS Assurance file number for proposals involving animal subjects received from non-NASA institutions, and a statement of ACUC review and approval of all NASA and non-NASA proposals involving animal subjects. No awards for activities involving animal subjects can be made without this documentation [see § 1232.104 (b) and (d) and § 1232.105(b)].

(e) *NASA Veterinarian(s) Responsibility.* NASA veterinarian(s) have direct or delegated authority and responsibility for activities involving animal subjects at their field installation. Such authority and responsibilities shall include recommending approval or disapproval of procedures involving animal subjects as a member of the ACUC, continual monitoring of these activities, surveillance of the health and condition of animal subjects, and reporting any observed deviations from approved procedures involving animal subjects to the Field Installation Director and the ACUC. In the case of deviation from

ACUC-approved practices or procedures, the veterinarian shall have the authority to immediately halt such procedures until they are reviewed and resolved by the ACUC. In cases of a conflict concerning animal usage by an investigator that cannot be resolved between him/her and the veterinarian, the matter may be brought to the attention of the Field Installation ACUC for review and recommendation for action as set forth in this rule. Whereas the performance of the veterinarian's duties can be delegated to other qualified individuals, the ultimate responsibility rests with the veterinarian. This responsibility extends not only to the Animal Care Facility (ACF), but also to other locations where animal subjects are used.

Other specific areas of responsibility and authority vested in the veterinarian are:

(1) *Entry of personnel into the ACF.* The veterinarian has the responsibility to develop access procedures to the ACF and submit them to the ACUC for approval.

(2) *Personnel Training.* The veterinarian will participate in the training of personnel in the handling of animal subjects and in specimen sampling procedures.

(3) *Animal Training.* The veterinarian will monitor all schedules and procedures involving the training and acclimation of animal subjects.

(4) *Surgery and Surgical Procedures.* The veterinarian will monitor all surgical procedures and verify that the principles of the Guide with regard to aseptic surgery are employed. Post-surgical recovery procedures are included. If necessary, training will be provided by the veterinarian to bring procedures conducted by investigators to the level of these standards.

(5) *Veterinary Medical and Engineering Procedures.* The veterinarian will monitor all veterinary medical and engineering procedures performed on animal subjects and verify their appropriateness. The veterinarian will actively participate in identifying and/or establishing the design requirements and adequacy of animal facilities for ground and spaceflight-related activities.

(f) *NASA Representative to the Interagency Research Animal Committee (IRAC).* The NASA representative to the IRAC will obtain information of all cases in which an institution's Assurance has been revoked by the PHS. The NASA IRAC representative will notify NASA ACUC's, Field Installation Directors, the Authorized NASA Official, and all Headquarters Research and Flight Program Managers so that they can determine which NASA awards involving the use of animal subjects are affected and can take appropriate sanctions.

§ 1232.107 Sanctions.

(a) *Non-NASA Institutions.* Principal investigators not employed by NASA whose activities are supported by NASA but whose activities using animal subjects are restricted to non-NASA facilities shall be subject to the control of their institution's ACUC and responsible institutional official. Notification of noncompliance with this rule shall be made either as described in § 1232.106(f) or by the non-NASA institution to the Director of the NASA Field Installation through which the activity has been supported and to the Authorized NASA Official. Any continued noncompliance may be caused for termination of funding or support.

(b) *NASA Field Installations.* (1) Inappropriate procedures on animal subjects by NASA principal investigators shall be halted by the NASA Field Installation Veterinarian or line management and brought to the attention of the ACUC if the issue cannot be immediately resolved. The ACUC will review the activity and report any noncompliance with this rule to the Field Installation Director. Principal investigators not employed by NASA, whose activities using animal subjects are performed in NASA facilities, aircraft, or spacecraft, are subject to similar action. Such noncompliance will be cause for sanctions. The principal investigator can contest, in writing, these decisions to the ACUC.

(2) The ACUC as the agent of the Field Installation Director may suspend an activity that it previously approved if it determines that the activity is not being conducted in accordance with applicable provisions of the Animal Welfare Act, the Guide, PHS Policy requirements, or this rule.

(3) Any suspension or termination of approval will include a statement of the reasons for the action and will be promptly reported to the principal investigator and the appropriate Field Installation Director. In the case of investigators from non-NASA institutions, notification should be sent to the investigator, the appropriate institution, and the Director of the Field Installation through which the activity has been supported. If the ACUC suspends an activity involving animal subjects, the Field Installation Director in consultation with the ACUC shall review the reasons for suspension, take appropriate corrective action, and report that action with a full explanation to the Authorized NASA Official, NASA Headquarters. If an ACUC recommends disapproval suspension, termination, or conditional approval of an activity, the principal investigator will be given the opportunity to ask for reconsideration of the decision in person and/or in writing to the appropriate NASA ACUC.

(4) If, after notification of the Field Installation Director and an opportunity for correction, such deficiencies or deviations remain uncorrected, the ACUC will notify (in writing) the Authorized NASA Official, NASA Headquarters, who is then responsible for all corrective action to be taken.

Richard H. Truly,

Administrator.

August 22, 1989.

[FR Doc. 89-20318 Filed 8-29-89; 8:45 am]

BILLING CODE 7510-01-M

RAILROAD RETIREMENT BOARD

20 CFR Ch. II

Appeals Procedures

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends 20 CFR Chapter II to remove the title "referee" wherever it appears and to add in its place the title "hearings officer", and to remove the title "referee's" wherever it appears and to add in its place the title "hearings officer's". This action is being taken as a result of a reclassification of positions, and should eliminate any confusion which could arise from the existence of the title "referee" in 20 CFR Chapter II, and the use of the amended title "hearings officer" in the Board's correspondence with the public.

EFFECTIVE DATE: This final rule is effective August 30, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS) 386–4513.

SUPPLEMENTARY INFORMATION: This amendment is being made to remove the title "referee", as that term is used throughout the Board's regulations, and to add the title "hearings officer" wherever it appears in 20 CFR Chapter II. The title change resulted from a reclassification of the referees' positions in the Board's Bureau of Hearings and Appeals. Since the term "referee" (and its possessive "referee's") appears in several sections of 20 CFR Chapter II,

some sections of which may not require

ADDRESSES: Written objections to the

time on or before September 29, 1989 file

irradiated in accordance with the

FDA has evaluated data in the

List of Subjects in 21 CFR Part 178

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some sections of which may not require amendment for any other purpose, this amendment is intended to eliminate any confusion which could arise on the part of the public. It should be noted, however, that for purposes of the Board's regulations, the terms "referee" and "hearings officer" (and their possessive tenses) may be considered synonymous; the use of one term n lieu of the other would have no legal effect.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore no regulatory impact analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601–611). For purposes of the collection of information within the meaning of the Paperwork Reduction Act of 1980, this nomenclature change will have no legal effect.

CHAPTER II—RAILROAD RETIREMENT BOARD

Under the authority provided in 45 U.S.C. 231f(b)(5) and 362(b), Chapter II, Title 20 of the Code of Federal Regulations is amended as follows:

1. Remove the title "referee" wherever it appears and add in its place the title "hearings officer".

2. Remove the title "referee's" wherever it appears and add in its place the title "hearings officer's".

Dated: August 23, 1989.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–20443 Filed 8–29–89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 89F–0427]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to raise the limitation on the maximum absorbed dose of radiation that may be used to produce molecular crosslinking of ethylene-vinyl acetate copolymers. This action is in response to a petition filed by Cryovac Division of W.R. Grace & Co.

DATES: Effective August 30, 1989; written objections and requests for a hearing by September 29, 1989.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Laura M. Tarantino, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of January 6, 1989 (54 FR 483), FDA announced that a food additive petition (FAP 9M4117) had been filed by Cryovac Division of W.R. Grace & Co., P.O. Box 464, Duncan, SC 29334, proposing that § 177.1350 *Ethylene-vinyl acetate copolymers* (21 CFR 177.1350) be amended by raising the limitation in paragraphs (d)(1) and (d)(3) on the maximum absorbed dose of radiation that may be used to produce molecular crosslinking of ethylene-vinyl acetate copolymers.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed increase in the permitted maximum absorbed dose of ionizing radiation from 8 to 15 megarads is safe, and that the regulations should be amended as set forth below. The agency is also revising the wording in § 177.1350 (d)(1), (d)(3), and (e)(1) to describe the permitted radiation dose by the Système International unit of measurement for absorbed dose of radiation (Gray), as well as by the previously used unit (rad).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before September 29, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1350 is amended by revising paragraphs (d)(1), (d)(3), and (e)(1) to read as follows:

§ 177.1350 Ethylene-vinyl acetate copolymers.

* * * * *

(d) * * *

(1) Electron beam source of ionizing radiation at a maximum energy of 3 million electron volts: Maximum absorbed dose not to exceed 150 kiloGray (15 megarads).

* * * * *

(3) The ethylene-vinyl acetate copolymer films may be further

irradiated in accordance with the provisions of paragraph (e)(1) of this section: *Provided,* That the total accumulated radiation dose from both electron beam and gamma ray radiation does not exceed 150 kiloGray (15 megarads).

(e) * * *

(1) Gamma photons emitted from a cobalt–60 sealed source in the dose range of 5–50 kiloGray (0.5–5.0 megarads).

* * * * *

Dated: August 18, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–20353 Filed 8–29–89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 178

[Docket No. 87F–0269]

Indirect Food Additives, Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 5-[(2,3-dihydro-6-methyl-2-oxo-1*H*-benzimidazol-5-yl)azo]-2,4,6(1*H*, 3*H*, 5*H*)-pyrimidinetrione as a colorant in all polymers. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective August 30, 1989; written objections and requests for a hearing by September 29, 1989.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of September 17, 1987 (52 FR 35143), FDA announced that a food additive petition (FAP 7B4016) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of 5-[(2,3-dihydro-6-methyl-2-oxo-1*H*-benzimidazol-5-yl)azo]-2,4,6(1*H*, 3*H*, 5*H*)-pyrimidinetrione as a colorant in all polymers.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulation in 21 CFR 178.3297 should be amended in paragraph (e) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before September 29, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3297 is amended in paragraph (e) by alphabetically adding a new entry in the table to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
5-[(2,3-Dihydro-6-methyl-2-oxo-1*H*-benzimidazol-5-yl)azo]-2,4,6(1*H*, 3*H*, 5*H*)-pyrimidinetrione (CAS Reg. No. 72102-84-2).	For use at levels not to exceed 1 percent by weight of polymers. The finished articles are to contact food only under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter.

* * * * *

Dated: August 18, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–20352 Filed 8–29–89; 8:45 am]

BILLING CODE 4160-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Designation of Texas Commission on Human Rights

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations on certified designated 706 agencies. Publication of this amendment effectuates the designation of the Texas Commission on Human Rights as a certified 706 Agency.

EFFECTIVE DATE: August 30, 1989.

FOR FURTHER INFORMATION CONTACT:

Festival. The event will be held on the

33 CFR Part 165

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33

ADDRESSES: Written objections may be

observable-effect level (NOEL) of 20

FOR FURTHER INFORMATION CONTACT: Valentina Jackson, Equal Employment Opportunity Commission, Office of Program Operations, Systemic Investigations and Individual Compliance Programs, State and Local Branch, 1801 L Street, NW., Room 8060, Washington, DC 20507, Telephone 202/663-4892.

SUPPLEMENTARY INFORMATION: The Commission has determined that the Texas Commission on Human Rights meets the eligibility criteria for certification of a designated 706 agency as established in 29 CFR § 1601.75(b). In accordance with 29 CFR § 1601.75(c), the Commission hereby amends the list of certified designated 706 agencies to include the Texas Commission. Publication of this amendment to § 1601.80 effectuates the designation of the following agency as a certified 706 agency: Texas Commission on Human Rights.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernment relations.

Accordingly, 29 CFR part 1601 is amended as follows:

PART 1601—[AMENDED]

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000 e to 2000 e–17.

§ 1601.80 [Amended]

2. Section 1601.80 is amended by adding the Texas Commission on Human Rights in alphabetical order.

Signed at Washington, DC this 22nd day of August, 1989, for the Commission.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 89–20378 Filed 8–29–89; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–89–82]

Special Local Regulations for Marine Events; Hampton Bay Days Festival; Hampton River, Hampton, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.508

SUMMARY: This notice implements 33 CFR 100.508 (53 FR 35089; September 9, 1988) for the Hampton Bay Days Festival. The event will be held on the Hampton River. The special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: The regulations in 33 CFR 100.508 are effective for the following periods: 3:30 p.m. to 8:30 p.m., September 8, 1989. 9:00 a.m. to 11:30 p.m., September 9, 1989. 12:00 Noon to 3:00 p.m., September 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information: The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations: Bay Days, Inc. submitted an application on June 12, 1989 to hold the Hampton Bay Days Festival on September 8, 9, and 10, 1989. The marine portion of the festival will consist of a parade of boats, water ski shows, and various type boat races. There will also be a fireworks display launched from within the regulated area. The regulations in 33 CFR 100.508 govern the activities of the Hampton Bay Days Festival held on the Hampton River, in and around downtown Hampton, Virginia. Implementation of 33 CFR 100.508 also implements as special anchorage areas the spectator anchorages designated in that section for use by vessels during the event. Vessels less than 20 meters long may anchor in these areas without displaying the anchor lights and shapes required by Inland Navigation Rule 30 (33 USC 2030(g)).

Since these regulations were specifically established to enhance the safety of the participants in and spectators of the marine portions of the Hampton Bay Days Festival the regulations are hereby implemented. This notice also will appear in the Fifth District Local Notice to Mariners.

Date: August 17, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89–20447 Filed 8–29–89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[Regulation 09–10]

COTP Los Angeles/Long Beach, CA; Safety Zone Regulations

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone of the navigable waters in the Ports of Los Angeles/Long Beach within a 1000 yard radius seaward of the breakwater around vessels in approximate position 33–43N, 118–12.5W for filming of the movie Hunt for Red October.

The zone is needed to protect boating traffic transiting the near by area. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 0800, 18 August 1989. It terminates at 2400, 2 September 1989.

FOR FURTHER INFORMATION CONTACT: Lt R.L. Booth at (213) 499–5580.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days after Federal Regulation publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential damage to the boating traffic transiting the near by area.

Drafting Information

The drafters of this regulation are Lt R.L. Booth, project officer for the Captain of the Port, and LCDR G.R. Wheatly, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will occur between 0800, 18 August 1989 and 2400, 2 September 1989. This safety zone is necessary to ensure the safety of boating traffic transiting the near by area.

List of Subjects in 33 CFR Part 165

Harbors Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5, 49 CFR 1.46.

2. A new § 165.T1199 is added to read as follows:

§ 165.T1199 Safety zone.

In the navigable waters in position 33–43N, 118–12.5W.

(a) *Location.* The following area is a safety zone: The navigable waters seaward of the breakwater within a 1000 yard radius of approximate position 33–43N, 118–12.5W around the vessels engaged in the filming of the movie The Hunt for Red October.

(b) *Effective Date:* This regulation becomes effective on 18 August 1989 at 0800. It terminates on 2 September 1989 at 2400.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no vessel may enter, remain in, or transit the Safety Zone without the permission of the Captain of the Port.

Dated: August 16, 1989.

C.T. Desmond,

Commander, U.S. Coast Guard, Captain Of The Port, Los Angeles/Long Beach.

[FR Doc. 89–20446 Filed 8–29–89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 186

[8F3629, 8F3678, 8H5555/R1036; FRL 3636-6]

Tolerances for 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety, calculated as parent, in or on the raw agricultural commodities (RACs) bulb vegetables at 1.0 part per million (ppm), and pome fruits at 0.2 ppm, and the animal feed commodity apple pomace (wet and dry) at 0.8 ppm. These regulations were requested by BASF Wyandotte Corp. and establish the maximum permissible level for residues of the herbicide in or on these RACs and the animal feed commodity.

EFFECTIVE DATE: August 30, 1989.

ADDRESSES: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 243, CM 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557–1800.

SUPPLEMENTARY INFORMATION: EPA issued notices in the Federal Register that announced that BASF Wyandotte Corp., P.O. Box 181, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposed amending 40 CFR 180.412 and 21 CFR Part 561 by establishing tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as parent) in or on the following RACs and animal feed commodity.

Pesticide/food additive petition number	Crops	Parts per million (ppm)	FEDERAL REGISTER citation
8F3629	Pome fruits.	0.2	May 25, 1988 (53 FR 18897)
8H5555	Dry pomace.	0.8	May 25, 1988 (53 FR 18897)
8F3678	Onions	1.0	Oct. 12, 1988
	Garlic	1.0	(53 FR 37983)

No comments were received in response to the notices of filing.

The Agency subsequently issued a notice, published in the Federal Register of June 29, 1988 (53 FR 24688), redesignating 21 CFR Part 561 as 40 CFR Part 186 and assigning this chemical as 40 CFR 186.2800. The petitioner subsequently revised Food Additive Petition No. 8H5555 and Pesticide Petition No. 8F3678 by submitting revised Section F's to reword dry pomace as apple pomace (wet and dry) and onions and garlic as bulb vegetables. Because there is no potential increase to humans from these revisions, no period of public comment is needed.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

1. Several acute toxicology studies placing technical sethoxydim in Toxicity Categories III and IV.

2. A subchronic feeding study in dogs fed dosages of 0, 2, 20, and 200 milligrams per kilogram of body weight per day (mg/kg bwt/day) with a no-observable-effect level (NOEL) of 20 mg/kg/day based on liver effects and nonspecific anemia at 200 mg/kg/day.

3. A 1-year feeding study with dogs fed dosages of 0, 8.86/9.41, 17.5/19.9, and 110/129 mg/kg/day (males/females) with a NOEL of 8.86/9.41 mg/kg (males/females) based on equivocal anemia in males at 17.5/19.9 mg/kg/day (males/females).

4. A 2-year chronic feeding/oncogenicity study with mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested (HDT)) and a systemic NOEL of 18 mg/kg/day based on nonneoplastic liver lesions at 54 mg/kg/day.

5. A 2-year chronic feeding/oncogenicity study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day.

6. A teratology study in rats fed dosages of 0, 40, 100, and 250 mg/kg/day with no teratogenic effects occurring at 250 mg/kg/day (HDT) and a maternal NOEL of 40 mg/kg/day based on significantly decreased adrenal weight at 100 mg/kg/day.

7. A teratology study in rabbits fed dosages of 0, 40, 160, and 480 mg/kg/day with a teratogenic NOEL of 160 mg/kg/day based on an increased number of a variety of random effects including skeletal and visceral abnormalties, reduced fetal weight, and changes in male/female ratios, considered due to extreme toxicity in dams and a maternal NOEL of 160 mg/kg/day based on severe weight loss, deaths, abortions, and reduction in the number of litters and viable fetuses at 480 mg/kg/day (HDT).

8. Mutagenic studies including a host-mediated assay (mouse) with *S. typhimurium*, negative at 2.5 grams (g)/kg/day of chemical, and recombinant assay and forward mutations in *B. subtilis*, *E. coli*, and *S. typhimurium* (all negative at concentrations of the chemical up to 100 percent).

The acceptable daily intake (ADI), based on a 1-year feeding study in dogs (NOEL = 8.86 mg/kg bwt/day) and using a hundredfold safety factor is calculated to be 0.09 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances is 0.19566 mg/kg/day. The current action will contribute 0.000293 mg/kg/day to the TMRC and will utilize 0.3 percent of the ADI. Published

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tolerances utilize 21.7 percent of the ADI.

Data lacking are a repeat of a rat primary hepatocyte unscheduled DNA synthesis assay on a hydroxylated plant metabolite of the parent compound. The company has been notified of this deficiency and has agreed to repeat the study.

The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residue is adequately understood for the purpose of establishing the tolerances. Adequate analytical methodology (gas chromatography using sulfur-specific flame photometric detection) is available for enforcement purposes. The method is listed in the *Pesticide Analytical Manual* (PAM II) as Method I. There are currently no actions pending against the registration of this chemical. Any secondary residues occurring in meat, milk, poultry, and eggs will be covered by existing tolerances on these commodities.

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Parts 180 and 186 will protect the public health. The tolerances are therefore established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950). (Sec. 408(b)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)).)

List of Subjects in 40 CFR Parts 180 and 186

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements, Animal feeds.

Dated: August 16, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In Part 180:

a. The authority citation for Part 180 is amended as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.412(a), by adding and alphabetically inserting entries for the following raw agricultural commodities, to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerance for residues.

* * * * *

Commodities	Parts per million
* * * *	*
Bulb vegetables	1.0
* * * *	*
Pome fruits	0.2
* * * *	*

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for Part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.2800, by adding and alphabetically inserting in the list of commodities the following entry, to read as follows:

§ 186.2800 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one.

* * * * *

Commodities	Parts per million
* * * *	*
Apple pomace, wet and dry	0.8
* * * *	*

[FR Doc. 89-20206 Filed 8-29-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM-201B; Amdt. No. 173-215]

RIN 2137-AB39

Shippers; Use of Tank Car Tanks with Localized Reductions in Shell Thickness

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; Further extension of effective date.

SUMMARY: RSPA is further extending the effective date of a final rule published in the **Federal Register** (54 FR 8336) on February 28, 1989, under Docket No. HM-201B, Amendment No. 173-208, from September 1, 1989 to January 1, 1990. This action is necessary to allow RSPA and the Federal Railroad Administration (FRA) more time to review several petitions for reconsideration which were received in response to the final rule.

EFFECTIVE DATES: January 1, 1990. However, compliance with Amendment No. 173-208 is authorized as of March 30, 1989.

FOR FURTHER INFORMATION CONTACT: Marilyn E. Morris, Standards Division (DHM-10), Office of Hazardous Materials Transportation, RSPA, DOT, 400 7th Street SW., Washington, DC 20590, (202) 366-4488.

SUPPLEMENTARY INFORMATION: On February 28, 1989, RSPA published a final rule (Docket No. HM-201B; Amdt. No. 173-208; 54 FR 8336) concerning the use of tank cars which have localized reductions in shell thickness due to repairs. RSPA has received 13 petitions for reconsideration as a result of that final rule. This action, which extends the effective date of the final rule, is necessary because RSPA finds it impracticable to take action and respond to certain issues discussed in the petitions within the 90 day period mentioned in 49 CFR 106.37(b) or within the period of the earlier time extension of effective date, published in the May 15, 1989 **Federal Register** (Docket HM-201B; Amdt. 173-211; 54 FR 20856), which extended the effective date from June 1, 1989, to September 1, 1989.

The extension of the effective date of Amendment Nos. 173-208 to January 1, 1990, will allow additional time for RSPA and FRA to consider and review the technical data made available by the petitioners following publication of the

final rule on February 28, 1989, examine the issues raised in the petitions for reconsideration and to prepare an appropriate response. In the interim, voluntary compliance with provisions of the final rule is authorized.

Issued in Washington, DC on August 25, 1989, under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator.

[FR Doc. 89-20428 Filed 8-29-89; 8:45 am]

BILLING CODE 4910-60-M

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR-6, Notice No. 23]

RIN 2130-AA43

Alcohol/Drug Regulations: Availability of Random Drug Testing Implementation Guidance

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of availability of guidance for submittal and implementation of random drug testing programs.

SUMMARY: FRA announces the availability of guidance for implementation of random drug testing requirements. The materials explain the criteria for review of random testing programs and include questions and answers relating to random testing. Individual copies are available on request from the Office of Safety, FRA.

ADDRESS: Office of Safety Enforcement (RRS-10), FRA, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. Sam Holley, Alcohol & Drug Program Manager (RRS-10), Office of Safety Enforcement, FRA, Washington, DC 20590 (Telephone: (202) 366-0501).

SUPPLEMENTARY INFORMATION: On November 21, 1988, FRA published in the **Federal Register** a final rule (53 FR 47102) making certain amendments to its regulations on control of alcohol and drug use in railroad operations (49 CFR Part 219). The amendments included requirements that railroads submit and implement random drug testing programs. On May 23, 1989, FRA published in the **Federal Register** a revised compliance schedule for the new requirements (54 FR 22284). The requirements pertinent to random drug testing may be summarized as follows:

Class I Freight Railroads	
Amtrak and commuter railroads:	
Programs due	Oct. 2, 1989.
Begin random testing	Jan. 16, 1990.
Class II Railroads	
Programs due	April 2, 1990.
Begin random testing	July 2, 1990.
Class III Railroads	
Programs due	July 2, 1990.
Begin random testing	Nov. 1, 1990.

Since issuance of the random drug testing requirements, FRA staff has assisted the railroads in identifying issues through industry meetings, informal contacts and distribution of a working paper. This communication has helped FRA and the railroads identify a number of formal and practical issues that railroads will need to address in their programs. FRA has now prepared guidance for preparation of random testing programs consisting of criteria for approval of random testing programs (describing the regulatory criteria and information that should be included in each program) and a set of questions and answers representative of those that have arisen since issuance of the regulatory requirements. Individual copies are available without charge from the address set forth above. Requesters should refer to "Random Drug Testing Implementation Guidance."

Issued in Washington, DC on August 24, 1989.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 89-20441 Filed 8-29-89; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

49 CFR Part 580

RIN 2127-AC42

[Docket No. 87-09; Notice 10]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule clarifies the responsibilities imposed on all parties in conjunction with the disclosure of odometer mileage information when transfering ownership of motor vehicles. It clarifies the definitions of transferor and transferee in situations where a person acts as an agent for the transferor or transferee. In addition, this rule requires a transferee to return to his transferor a signed copy of the odometer disclosure statement that he received from the transferor. This rule also provides that to be valid, title reassignment documents must be issued by a State. Finally, this rule expands the circumstances in which a secure power of attorney form issued by the State may be used to make the required odometer disclosure to include situations in which the title has been lost. The power of attorney would authorize the transferee to restate exactly the mileage on the title document on the transferor's behalf. When such vehicles are resold, this rule allows a transferee to use the same power of attorney form to authorize his transferor to sign the disclosure on the title document on behalf of the transfee.

DATES: The portion of § 580.4 concerning the power of attorney form, § 580.5(h), § 580.6(c) and §§ 580.13, 580.14, 580.15, and 580.16 are effective August 30, 1989. All other sections become effective September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Mattie Cohen, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

To implement the Truth in Mileage Act of 1986, Public Law 99-579, and to make some needed changes in the Federal odometer regulations, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27022 (1987). The agency received numerous comments on the NPRM representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies. Each of the comments was considered, and a final rule was published on August 5, 1988. 53 FR 29464 (1988).

The agency received seven petitions for reconsideration of the August 1988 final rule. These petitions requested that NHTSA reconsider the provisions of the final rule that: (1) Prohibit a person from signing the odometer disclosure statement as both the transferor and transferee in the same transaction; (2) define "transferor" and "transferee"; (3) define "secure printing process"; (4) concern the language included on the odometer disclosure statement; and (5) require dealers and distributors to retain, for five years, a fully completed and signed copy of every odometer disclosure statement, including the transferee's signature, that they issue and receive.

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In response to the petitions for reconsideration, NHTSA published two notices in the **Federal Register** on March 8, 1989. In granting certain aspects of those petitions, NHTSA issued an NPRM, 54 FR 9858 (1989), that proposed to clarify the definitions "transferor" and "transferee," require the transferee to retrun a completed disclosure statement to his transferor, and require that, to be valid, title reassignment documents must be issued by a State. Other aspects of the petitions for reconsideration were denied. 54 FR 9816 (1989).

While the petitions for reconsideration were pending before the agency, Congress enacted the Pipeline Safety Reauthorization Act of 1988 (PSRA), Public Law 100–561 (October 31, 1988). Section 401 of the PSRA, which amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act (MVICSA), 15 U.S.C. 1988(d)(1), authorizes the use of powers of attorney in connection with the required mileage disclosure under certain circumstances. The new law directs the agency to prescribe the form and content of the power of attorney/disclosure document and to establish reasonable conditions for its use by the transferor "consistent with this Act and the need to facilitate enforcement thereof." It also requires NHTSA's rule to provide for the retention of a copy of the power of attorney by the person exercising it and to ensure that the person granted the power of attorney completes the disclosure on the title consistent with the disclosure on the power of attorney form. Finally, the statute provides that the original power of attorney form must be submitted back to the state by the person exercising the power of attorney.

To implement these provisions, NHTSA issued an interim final rule/request for comments on March 8, 1989. 54 FR 9809 (1989). The interim final rule permits, in limited instances when the title is physically held by a lienholder, an individual to sign the odometer disclosure as both transferor and transferee through the use of a secure power of attorney form, issued by a State. When such vehicles are resold, the interim final rule allows a transferee to use the same power of attorney form to authorize his transferor to sign the disclosure on the title document on his behalf.

The March 1989 Notice of Proposed Rulemaking

Definitions

To clarify that the liability for issuing a false odometer disclosure statement could be placed on a person acting as an agent for the owner of the vehicle, in an NPRM, published on July 17, 1987, NHTSA proposed to amend the definition of "transferor" to include the agent of the transferor who transfers the ownership of another and the definition of "transferee" to include an agent of the transferee who accepts transfer of ownership in a motor vehicle. 52 FR 27023 (1987). The definitions were adopted as proposed. 53 FR 29464 (1988).

The National Auto Auction Association (NAAA) and the National Independent Automobile Dealers Association (NIADA) requested NHTSA to reconsider these definitions. NAAA and NIADA suggested that the definitions should be expressly limited to the principal or agent who signs the required disclosure on behalf of the owner. Because the suggestions of NAAA and NIADA were consistent with NHTSA's intention to clarify that the liability for issuing a false statement could be placed on the person acting as an agent for the owner of a vehicle, in the March 1989 NPRM we proposed to amend the portions of the definitions of transferor and transferee concerning the transferor's and transferee's agents. We proposed to define "transferor" to include the transferor's agent who signs any odometer disclosure statement on behalf of the transferor. Similarly, we proposed to define "transferee" to include the transferee's agent who signs any odometer disclosure statement on behalf of the transferee.

We have received four comments on the proposed changes to the definitions. The Delaware Department of Public Safety, Division of Motor Vehicles (Delaware), and the National Automobile Dealers Association (NADA) agree with the proposed definitions. The National Vehicle Leasing Association (NVLA) "urge(s) NHTSA to provide that only one transferor need provide an odometer disclosure statement to a transferee." Furthermore, NVLA requests that NHTSA amend the definitions to read "or" in lieu of "and" and to amend § 580.5(c), which requires "each" transferor to make a disclosure. The National Consumer Law Center (NCLC) recommends that the agency retain the definitions contained in the 1988 final rule. It believes that the proposed definitions create a "gaping loophole" and explains its position by reference to the following scenario:

> [A] manager of an incorporated dealership or auction engaged in making false disclosures need only have another employee such as an office clerk sign the disclosure statements to avoid liability. The manager could argue that he or she was not a transferor under the first part of the new definition because the manager had no "ownership." The manager would then argue that the second part of the definition also did not apply because while he or she was admittedly an agent and it had been proven that he or she was responsible for a false disclosure, the manager did not "sign" the disclosure statement.

Therefore, NCLC suggests that the definitions be amended to include any person who, as agent, "causes to be" made or signed an odometer disclosure statement.

To assist those involved in the transfers of vehicles to more fully understand the requirements of the law and the proposed definitions, in the preamble to the March 1989 NPRM, we addressed several different scenarios and explained which parties are transferors. As noted in the scenarios, the person who actually signs the disclosure statement may depend upon the relationship between the parties. It is not NHTSA's intention to require that the transferee receive multiple disclosure statements. Therefore, we have adopted NVLA's suggestion and amended § 580.5(c) to state that only one transferor need disclose the mileage to the transferee. However, we have not adopted NVLA's suggestion to amend the definitions to read in the disjunctive as opposed to the conjunctive. If more than one party is, in fact, the transferor, the relationship between the parties determines who issues the odometer disclosure statement.

We have not adopted the proposal of the NCLC. Sections 412 and 413 of the MVICSA, 15 U.S.C. 1990b and 1990c, include as persons covered by the requirements of that Act, a person who "causes to be done" any act. The manager who "caused" the other employee to sign the disclosure statement would be in violation of statute for causing the employee, as transferor or transferee, to violate another section of the MVICSA or NHTSA's regulations. Therefore, the regulatory definitions do not need to be expanded to protect against the scenario described by the NCLC, and the original purpose of the amended definition, to close "loopholes which have limited the Government's ability to prosecute certain violations of the odometer laws because of ambiguity in the definitions", 53 FR 29465 (1988), has been met.

Record Retention

In response to a petition for reconsideration of the August 1988 final rule submitted by the National Association of Fleet Administrators, Inc. (NAFA), in the March 1989 NPRM, we proposed to place a new requirement

upon a transferee. In addition to signing the disclosure and printing his or her name, the transferee would be required to return a copy of the signed odometer disclosure statement to his or her transferor. We anticipated that this provision would ensure that transferees who obtain the title from their long-distance transferors will return a copy of the completed disclosure statement to their transferors and that these long-distance transferors will thus be able to retain the signed odometer disclosure statement, as required by § 580.8(a).

Delaware, NADA, NAFA, and NVLA support this proposal. Because we received no comments in opposition to our proposal, it is adopted as proposed.

We note that, with regard to the transferee's obligation to return a completed odometer disclosure statement, NVLA also asserts that "it is vitally important that the regulation indicate that a transferor who has sent the odometer disclosure statement to the transferee, requested that the transferee sign the statement and return a copy to the transferor and informed the transferee of potential liability for failure to return the copy should be protected against having violated the regulation in the event that the transferee does not return the copy." Therefore, NLVA suggests that § 580.8, which concerns the dealers retention requirements, be amended.

NHTSA specifically considered and rejected a similar suggestion proposed by NAFA and the PHH Group, Inc. in their petitions for reconsideration of the August 1988 final rule. As noted in the preamble to the August 1988 final rule and the March 1989 NPRM which granted, in part, those petitions, we stated that pursuant to 15 U.S.C. 1990b, in exercising its enforcement discretion NHTSA must take into account the nature, circumstances, extent, and gravity of a violation and that we cannot provide a complete listing of the circumstances in which failure to retain the required documents will be excused. We continue to believe that it would be inappropriate to include, in the regulation, what constitutes a "good faith effort" to retain the completed odometer disclosure statement. NVLA requests that we do just that by adopting its suggestion and, therefore, its request is denied.

Security of Reassignment Documents

In the March 1989 NPRM, we proposed to amend § 580.4 concerning the security of reassignment documents. Specifically, we proposed to require that in addition to being set forth by a secure printing process, reassignment documents will not be valid unless they are issued by a State. Delaware and NADA support this proposal. The American Association of Motor Vehicle Administrators (AAMVA) states that this requirement is "consistent with the language of the 1988 amendment to the Truth in Mileage Act and NHTSA's final rule which requires that secure powers of attorney be issued by the jurisdictions." AAMVA notes that some States will phase out the use of separate reassignment forms and others may contract with third-party agents for printing, issuing, and controlling secure reassignment documents. No one has commented in opposition to the proposal, and it is adopted in this final rule.

Exemptions

After publication of the August 1988 final rule, NHTSA was asked whether the lessee of a vehicle having a gross vehicle weight rating (GVWR) of more than 16,000 pounds or of a vehicle that is ten years old or older must furnish to his lessor a written statement regarding the vehicle's mileage. Because the lessor, when transferring a vehicle with a GVWR of more than 16,000 pounds or a vehicle ten years old or older, is not required to give his transferee an odometer disclosure statement, we could see no reason to require a lessee of any of these types of vehicles, or of any vehicles that are not self-propelled, to give their lessor a written statement concerning the vehicle's mileage. Accordingly, NHTSA proposed to amend § 580.6 to exempt the lessees of certain vehicles from the odometer disclosure requirements of § 580.7. Likewise, NHTSA proposed to exempt the lessors of certain vehicles from the notification requirements of § 580.7. The agency received no comments on this proposal and, accordingly, it is adopted as proposed.

The March 1989 Interim Final Rule

Security of Powers of Attorney

The PSRA provides that "consistent with the purposes of this Act and the need to facilitate enforcement thereof," if a State permits their use, power of attorney forms shall be "set forth by means of a secure printing process (or other secure process)." To implement this requirement, the interim final rule revised § 580.4, which concerns the security of title documents and reassignment documents, to require power of attorney forms to meet the security critieria applicable to reassignment documents. The August 1988 Final Rule requires that reassignment documents be set forth by "a secure process," not necessarily the same secure process used to secure title documents. The Delaware DMV commented that secure forms will entail some costs to the States, but did not oppose the provision. This aspect of the interim final rule is retained in this final rule.

Signature of Same Person as Transferor and Transferee

Since the PSRA has the effect of allowing a person to sign an odometer disclosure statement on the title as both the transferor and transferee in specified cicumstances, the interim final rule amended § 580.5(h), which prohibited a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction. This amendment to § 580.5(h) permits a person to sign an odometer disclosure statement as both the transferor and transferee if the requirements of §§ 580.13 and 580.14, which NHTSA also added in the interim final rule, have been met. No commenters opposed this amendment and it is retained in the final rule.

Elements of the Power of Attorney Form

Under § 580.13 of the interim final rule, if permitted by State law, a transferor whose motor vehicle title document is physically held by a lienholder may give his transferee a power of attorney for the purpose of making the mileage disclosure on the title document. The power of attorney must be on part A of a secure form issued by a State and must contain a space for the transferor to disclose the mileage. The disclosure required to be made by the transferor to the transferee on the power of attorney form parallels the disclosure required to be made on the title by § 580.5. In addition, when such vehicles are resold, § 580.14 of the interim final rule provides that if State law permits, the subsequent purchaser may, on part B the same form, give his power of attorney to his transferor to acknowledge the transferor's mileage disclosure. The power of attorney must also contain a space in part B for the transferor to disclose the mileage. The disclosure required to be made by the transferor to the transferee on part B of the power of attorney form also parallels the disclosure requried to be made on the title by § 580.5.

Section 580.15 of the interim final rule provides that the power of attorney form must also contain a certification in part C of the form, to be completed by the person exercising the power of attorney, that he has reviewed the title and that no discrepancies exist. While the rule sets forth the information which must be

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disclosed, and the form must be separated in to parts A, B and C, each State is free to organize, in each part, the information required by the rule in any way it wishes. While the language of the required certification has been clarified, these aspects of the interim final rule are otherwise retained in this final rule.

Submission of Power of Attorney Form to the State

The PSRA provides that the "original [of the power of attorney form shall] be submitted back to the State by the person granted such power of attorney." In conformity with this requirement, and to ensure appropriate enforcement of the odometer disclosure requirements, § 580.13(f) of the interim final rule required the transferee to submit the original power of attorney form to the State that issued it with an application for title and the transferor's title. In the preamble, NHTSA identified two ways in which this might be accomplished. The transferee could submit the power of attorney form after selling the vehicle, with the old title and his purchaser's title application, provided his purchaser (and the State) permits him to apply for title on behalf of the purchaser. Alternatively, the transferee could apply for title in his own name and submit the secure power of attorney form and his transferor's title with that application.

NHTSA received several comments in opposition to this provision of the rule. These comments assert that when the subsequent purchaser is another dealer, particularly an out-of-state wholesale dealer, under the law of most states, the initial dealer (transferee) would have to adopt the second alternative and retitle vehicles in his own name. This so-called "retitling requirement," it is argued, is a misinterpretation of the statute and will "disrupt existing commercial practices" of dealers, who would otherwise reassign the old title but will now have to apply for a title themselves, and for the States, who will have to process increased numbers of title applications.

NHTSA agrees that some dealers will have to retitle in their own names, although NHTSA disagrees that it has misinterpreted the statute to "require" retitling. Rather, given our experience with State titling procedures, these appear to be the only viable methods to preserve the integrity of the paper trail and conform to the requirements of the statute.

Moreover, we do not agree that any retitling that becomes necessary will present a significant burden to dealers or to States. First, a majority of all vehicles taken in trade will not have to be retitled in the dealer's name. Second, and perhaps more important, retitling will not prevent cars from being promptly resold. In a majority of states, a vehicle may be sold without the title being present. Thus, standard commercial practice in many places has traditionally been for vehicles to be sold without the title present and for the title to "catch up" with the vehicle at a later point. Any retitling necessitated by this rule will not disturb this practice. The only difference is that the "new" title will be reassigned instead of the "old" title. At most it will add a small amount of time required for the title to "catch up" with the vehicle because dealers can often secure titles to vehicles in their own names within a day or two through existing dealer retitling arrangements with State departments of motor vehicles.

Even in the States that do require the title to be present before sale, retitling should not cause significant disruption of existing practices because dealers must already wait for the title to arrive from the lienholder, or for reissued titles to be sent from the State before they can resell vehicles. Any retitling in the dealer's name will only extend briefly the period the dealer must wait before he can resell. Thus, although there will be some retitling costs and some costs associated with delay, these costs will not be unduly burdensome. Further, in most instances, retitling will not interfere with the standard flow of commerce because vehicles will continue to be sold pending arrival of the title, as they have been in the past.

Commenters have suggested alternatives to the ones we have presented. However, these cannot be adopted because they would be inconsistent with the statute. For example, NIADA, NADA and the Iowa Department of Transportation each proposed that the dealer granted power of attorney not be required to submit the original power of attorney form back to the issuing State. They suggested that the dealer should, instead, be allowed to reassign title and the dealer/person next applying for title should be allowed to submit the form back to the issuing State. This proposal cannot be adopted because the PSRA clearly requires "the *original* [secure power of attorney form] to be submitted back to the State *by the person granted such power of attorney.*" (Emphasis added.)

Alternatively, NADA has suggested allowing the original power of attorney to be submitted with the application for title in the new titling State, whether or not that State was the issuing State. Under such an arrangement, NADA suggests that the persons granted the power of attorney could attach the original power of attorney to the old title and note or stamp "POA" in the reassignment block. There are several problems with this alternative. First, to do so would be in contravention of the statute. Not only would the dealer who exercised the power of attorney not be returning the form, but the form would not be going "back" to the issuing State. NADA has attempted to read the statute to allow for the return of the form to any State. However, we do not believe that the statutory language requiring the secure power of attorney form be issued by "the State" and "submitted back to the State" is susceptible of that interpretation. Rather, it is clear that Congress intended the secure power of attorney form to be returned to the same State that issued it by the person who was granted and exercised the power of attorney.

Moreover, submission of the power of attorney form to a State other than the one that had issued it would jeopardize the integrity of the paper trail. In contrast to the issuing State, another State would be less familiar with the forms, and therefore less likely to detect improperly completed or fraudulently submitted forms. Although certain information must be disclosed, and the power of attorney form must be organized into parts A, B, and C, each State is free to organize, in each part, the information required by the rule in any way it wishes. States may also add information or incorporate other things into the power of attorney forms. Allowing a State to receive another State's power of attorney forms would also interfere with the issuing State's ability to control the forms because the issuing State would not know whether, or to where, its forms were being returned.

It has also been suggested that the dealer be allowd to file the power of attorney form with the issuing State, either absent any other documentation or with a copy of the reassigned title that has been passed to a buyer. If the person granted power of attorney were not required to submit the power of attorney to the State with the application for title and the transferor's title, enforcement of the anti-fraud provisions of the law would be hampered. First, the integrity of the paper trail would be at risk because subsequent transferors could discard the power of attorney, forge a new one, and alter the mileage on the title. (We recognize that even with securely printed titles, some alterations have been, and may continue to be, undetected upon initial review by State Departments of Motor Vehicles.)

Additionally, the paper trail would be jeopardized if the person granted the power of attorney submitted only the power of attorney form and no title documents, particularly if the vehicle were sold to an out-of-state buyer. The title would be in one State and the power of attorney form in another; they could not easily be compared. This would create problems similar to those experienced with the current use of separate odometer statements.

Allowing the power of attorney form to be filed with the issuing State separately, even along with a copy of the reassigned original title, would also make retention of the form less likely. The States currently retain copies of all title applications and accompanying materials. Separately submitted documents are frequently disposed of by the States. Thus, if the power of attorney form is part of a title application package, a copy of the form, independent of the dealer and customer copies, will exist. Having this independent source of documentation will aid in enforcement, for although a dealer would face penalties for failure to retain the secure power of attorney form as required by § 580.8, an unscrupulous dealer might choose to face that penalty rather than risk retaining damaging paperwork. The State's records would provide the evidence to catch such an unscrupulous dealer. Further rulemaking on this issue might be appropriate if, in the future, it is determined that the States had adopted adequate methods to retain power of attorney forms submitted without title applications.

NADA has also suggested that "NHTSA also may want to consider a requirement that states which receive out-of-state power of attorney forms as part of title applications either return those forms to the states of issuance or, more reasonably, make copies available to the states of issuance upon request." This suggestion suffers from the same drawbacks as the other suggestions discussed above. First, any arrangement in which the power of attorney form is submitted to any State other than the issuing state, or is submitted to the issuing state by someone other than the person who exercised the power of attorney is inconsistent with the PSRA. Second, under this proposed arrangement, the record retention problem would continue to exist because the issuing state would be receiving the power of attorney form separately from any application for title. As discussed above, this represents an unjustified risk to enforcement.

Availability of Secure Powers of Attorney

Although the PSRA explicitly authorizes the use of powers of attorney to disclose odometer information only when the title is "physically held by a lienholder," during the floor debate in the House of Representatives, Rep. Dingell stated that he expected NHTSA to examine other situations in which the use of a power of attorney to disclose odometer information might be appropriate. *See* 134 Cong. Rec. H10080 (daily ed. Oct. 12, 1988). In response to this direction, NHTSA has considered other such instances. To facilitate commercial practices in situations where a power of attorney was used at the time the vehicle was sold to the dealer, the interim final rule authorized use of the same power of attorney form for the dealer's sale of the vehicle. Thus, § 580.14 permits, if allowed by State law, a transferee under these circumstances to give his power of attorney to his transferor (i.e., the dealer) for the purpose of reviewing title documents and any reassignment documents to determine whether there are any mileage discrepancies and, if there are no mileage discrepancies, to sign the title, acknowledging the disclosure. This power of attorney must include a disclosure from the transferor to the transferee that parallels the disclosure required to be made by the transferor to the transferee on the title document. In addition, the appointment of the transferor as the transferee's attorney-in-fact must be made on part B of the same secure power of attorney form, issued by the State, upon which the transferor was appointed the attorney-in-fact by his transferor pursuant to § 580.13. This enables purchasers to examine the previously issued power of attorney for mileage disclosure alterations, erasures or other marks, and to learn the name of the prior owner without the additional cost of a title search.

NADA and NIADA submitted comments (supported also by NAAA) criticizing the fact that the interim final rule does not allow for the use of secure powers of attorney in situations where the customer's title is not present because the customer has lost or misplaced the title. NADA and NIADA contend that this aspect of the interim final rule will cause a disruption to standard business practices because the title replacement process takes too long. When the title is replaced, it is usually mailed to the dealer, thereby requiring a return trip by the customer to make the disclosure. Moreover, even if the replacement title is mailed to the previous owner, after making the disclosure, he or she will either have to return to the dealer or send the title back to the dealer by mail. Further, NADA and NIADA maintain that the legislative history of the PSRA demonstrates Congress' intention that the use of secure powers of attorney be extended to cover lost title situations.

We do not agree that it was Congress' manifest intent that secure powers of attorney be available in lost title situations. Nevertheless, we have determined that the security of the power of attorney forms, combined with the control that the States plan to exercise over the forms, will serve to counteract the increased opportunity for fraud that will arise from allowing the use of powers of attorney in lost title situations. We are, therefore, adopting NADA's and NIADA's suggestion. This final rule allows, if State law permits, a secure power of attorney to be used for the purpose of odometer disclosure where the title is not present because it has been lost by the person to whom it was issued by the State. In order for a power of attorney to be used in the lost title situation, the transferee (i.e., the dealer) must apply for the duplicate title on behalf of the transferor. Under these conditions, the powers of attorney will be available to facilitate consumer vehicle sales transactions, but will not be available in other than consumer sales transactions where the risk of fraud is considerably greater. If experience demonstrates that this use of powers of attorney does lead to additional odometer fraud, we may decide to revise this expansion of authority.

NVLA submitted comments regarding another aspect of the limited availability of secure powers of attorney. NVLA expressed concern that, as written, the regulation prevents leasing companies, acting as transferors, from using powers of attorney to acknowledge for their purchasers the mileage disclosures they make, even when the leasing companies titles are held by their lienholders. The inability to use a power of attorney in this situation, NVLA argues, presents a problem because the "buyer may live a great distance from the lessor's place of business" and that the buyer would face a "significant hardship" in appearing to sign the lessor's disclosure on the title.

NVLA suggests that the rule be amended to permit the use of a secure power of attorney whenever the title is held by "a lienholder", rather than by the transferor's lienholder. Second, NVLA suggests allowing part B of the secure power of attorney form to be used, without the completion of part A.

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Under this proposal, part A would contain only the vehicle information when the form is used for the part B power of attorney only. Finally, NVLA suggests requiring the secure power of attorney form for which part A is not completed be returned to the State with an appliciation for title. These suggestions are not adopted. NVLA seems to misapprehend the intended use of secure powers of attorney under the rule. Further, the "solution" suggested by NVLA would not appear to remedy the perceived problem.

Use of a secure power of attorney was never intended in the situation where a leasing company (or other business) is seeking to sell a vehicle it owns; neither is such use necessary. The availability of a secure power of attorney is intended to facilitate consumer vehicle transactions. Often the consumer car owner is unable to present his title at the time of the sale of the vehicle because the title is held by the consumer's lienholder and the consumer cannot satisfy the lien by himself; the power of attorney arrangement enables the consumer to sell the vehicle to the dealer, who can pay off the lien, and allows the dealer to complete the required odometer disclosure on the title when the title arrives without bringing the consumer back into the transaction either through use of the mails or by having the consumer return to the dealership in person. The legislative history of the Pipeline Safety Reauthorization Act reinforces this intention: "The amendment * * * specifically refers to situations where a vehicle's title, because of financing, is held by a lienholder, such as a bank, and not the consumer. In such cases, the consumer cannot fill the mileage because he or she does not physically hold the title." (Remarks of Rep. Dingell, 134 Cong. Rec. H10079 (daily ed. Oct. 12, 1988)).

In the case of a leasing company, the leasing company would itself be paying off the lien, not the buyer. Thus, even if the title was not present at the time of sale, after the leasing company received the title from its lienholder, the company could make the disclosure, mail it to the buyer, have the buyer sign it and mail a copy back to the leasing company. Thus, no power of attorney is necessary.

Although nowhere explicitly stating so, NVLA seems concerned about the mailing of required paperwork. With the establishment in this final rule of penalties of the transferee's failure to return required paperwork, this concern should be ameliorated. Moreover, any problem presented by mailing titles would also occur when mailing the secure power of attorney form. Even under NVLA's proposal, in order for the buyer to see the leasing company's disclosure on the secure power of attorney form and to sign the power of attorney, either the buyer would have to appear at the lessor's place of business or the lessor would have to mail the form to the buyer and rely on the buyer to complete his portion of the form and mail it back. NVLA does not explain how this situation differs from having the buyer appear to sign the title, or mailing the title to the buyer, nor how the use of a power of attorney would be less burdensome. Moreover, even if NHTSA were to allow the use of secure powers of attorney where the leasing company's title was held by its lienholder, the "problem" NVLA complains of would still exist where the title was not being held by a lienholder, but by the leasing company itself. NVLA does not suggest that the use of a secure power of attorney be allowed where the leasing company already has the title to the vehicle it is selling.

In addition, NHTSA is concerned about the increased risk to enforcement resulting from extending the availability of powers of attorney to transactions like the ones outlined by NVLA. Any use of a power of attorney increases the possibility of fraud and entails some additional risk to enforcement efforts. NHTSA does not believe that the increased possibility for fraud is warranted in this situation, particularly because the use of a power of attorney in this situation would not significantly facilitate transactions that are otherwise impeded.

The Certification Requirement

To ensure that a person who exercises a power of attorney, whether under § 580.13 or both §§ 580.13 and 380.14, is fully aware of his obligations and his liability for any action that is inconsistent with the power of attorney, the interim final rule required, under § 580.15, that the person exercising the power of attorney complete, on part C of the secure power of attorney form issued by the State, a certification that he has "reviewed the title and any reassignment documents for mileage discrepancies and that no discrepancies exist." Pursuant to § 580.15(b), any mileage discrepancies would void the power of attorney.

NADA and NIADA have both objected to this certification requirement. Both groups have asserted that the requirement is neither required nor intended under the statute, and that NHTSA was, therefore, without authority to institute it. We disagree. Section 401 of the PSRA directs NHTSA to impose by rule "reasonable conditions" on the use of powers of attorney. Moreover, the statute provides that NHTSA's rules must be "consistent with the purposes of [the Cost Savings] Act and the need to facilitate enforcement thereof." The Truth in Mileage Act requries that the odometer disclosure appear on the title to enable consumers to see these disclosures on titles and the chain of ownership of the vehicle. The use of a power of attorney, although commercially useful, interferes with that aspect of the Truth in Mileage Act because, when using the secure power of attorney form, the dealer is the only person who actually gets to see the title. The certification requirement will facilitate enforcement, without imposing a significant burden on dealers, and is appropriate to carry out Congress' intention to protect the interests of consumers in connection with motor vehicle sales transactions.

Substantively, NADA's comments reflect a concern, shared by NIADA that "the certification provision * * * appears to impose a wholly new responsibility, that is, to review and attest to the validity of prior disclosures." It has never been NHTSA's intent that this certification requirement place new liabilities on dealers. Further, the dealers are not expected to verify or attest to the validity of prior disclosures. Rather, under the certification requirement, dealers must check the title and compare the disclosure on the power of attorney against the mileage on the title for discrepancies between the disclosures.

NADA points out that current common law and statutory duties already require the dealer to act in a lawful manner and that accepting and/or submitting to the State paperwork that contained discrepancies would currently subject the dealer to liability under the MVICSA and many State laws. We agree. The certification requirement is not intended to create liabilities beyond those already existing, but rather to discourage the dealer from passing on to his buyer a false disclosure received from his transferor on the secure power of attorney form, by encouraging the dealer to "look twice" before acting.

Upon reflection, we have concluded that the current language in part C of the power of attorney form requiring the dealer to certify that "there are no indications of mileage discrepancies" may not have clearly reflected our intent. Accordingly, we have decided to adopt, with minor modification, a proposal submitted by NADA and NIADA in their June 14, 1989, supplemental comments to change the language of the certification. This final rule amends § 580.15 to provide that a person who exercises a power of attorney under §§ 580.13 and 580.14 must complete a certification that he has disclosed the mileage on the title document consistent with the mileage disclosed to him on the power of attorney form and that he has examined the title and the mileage disclosure made on the title pursuant to the power of attorney is greater than the mileage previously stated on the title.

The certification we are requiring differs from the NADA/NIADA proposal in three minor respects. First, consistent with the terms of existing § 580.15 and the purposes of the certification requirement, part C will provide that the dealer has reviewed any reassignment documents that are attached to the title as well as the title itself. Second, we are requiring that the person exercising the power of attorney certify that the mileage he enters on the title "is higher" than the mileage already appearing on the title, rather than, as was proposed, "appears higher." The number entered on the title either will or will not be higher than the mileage disclosed on the power of attorney form; thus, "appears" is not appropriate. Finally, we are requiring the person exercising the power of attorney to make his certification "upon examination" of the title, rather than "upon normal visual examination." We consider the term "examination" in this context to be self-defining. Moreover, the term "normal" is vague and its use would only likely cause confusion among dealers as to what constitutes a "normal" examination.

We are aware that at least one State has begun printing secure power of attorney forms with a part C that contains the language of the certification required under the interim final rule. Since we view the amendments to part C made in this final rule as a clarification of our prior rule, rather than a substantive change, in order to avoid hardship to that State, and any others that may have already invested in secure power of attorney forms, NHTSA will construe the certification on those forms as carrying the same meaning as if they were worded as required under this final rule. However, to avoid any possible confusion, we urge those States to switch to the current language as soon as possible.

It has been suggested that the certification requirement is most fitting to the "second sale" situation where the subsequent purchaser's only link to the title will be the dealer. We think there is merit to this argument. Thus, in this final rule, we are amending § 580.15 to provide that the certification requirement will apply only when the dealer is exercising a power of attorney for both the "first sale" and "second sale" customers, as provided for in §§ 580.13 and 580.14. If the title is present at the time of the second sale, the purchaser will be able to review the title himself to assure that the mileage is entered in accordance with the initial transferor's power of attorney and is higher than the mileage appearing on the title and reassignment documents. (As a practical matter, the mileage entered by the dealer could never be lower than the mileage already on the title, since if the power of attorney set forth a lower mileage, it would void the power of attorney, and the dealer would not be authorized to sign the disclosure on behalf of the transferor.)

Section 580.15(b) of the interim final rule provides that any mileage discrepancies void the power of attorney. NADA and NIADA have suggested that "mistakes by a grantee" should not void the power of attorney. However, we continue to believe that this provision is vital; if the mileage appearing on the title (or reassignment documents) is greater than the mileage disclosed by the first sale transferor on the power of attorney form, or if the title disclosure does not exactly match the disclosure on the power of attorney, the power of attorney should not be used to pass on inaccurate information. It is immaterial whether the discrepancy occurs through design or mistake, or whether it is caused by the grantor, grantee, or someone else. The power of attorney is voided by the existence of a discrepancy, not by an action causing a discrepancy. For these reasons, the suggestion that grantee mistakes should not void the power of attorney is rejected.

Transferee Access to Previous Title and Power of Attorney Documents

Under § 580.14(h) of the interim final rule, if the transferee who is granted a power of attorney from his transferor applies for title in his own name, the transferee must show his purchaser, upon his purchaser's request, a copy of the previous owner's title, including the odometer disclosure completed on behalf of the previous owner, and a copy of the power of attorney form completed by the previous owner. Similarly, under § 580.14(g) of the interim final rule, if a second-sale purchaser decides not to appoint his transferor (i.e., the dealer) as his attorney-in-fact pursuant to § 580.14, the transferor must show his purchaser a copy of the previous owner's title and a copy of the power of attorney form completed by the previous owner. No one commented in opposition to these provisions and they are retained in the final rule. However, for organizational clarity, these provisions have been separated out of § 580.14, and appear, renumbered, as now §§ 580.16(a) and 580.16(b).

Record Retention

Section 401 of the PSRA requires NHTSA's rules to provide for the retention of the power of attorney form. The interim final rule amended § 580.8, which concerns odometer disclosure statement retention, by adding a new paragraph (c). Under this paragraph, motor vehicle dealers and distributors who are assigned a power of attorney by their transferors are required to retain, for five years, a photostat, carbon, or other facsimile copy of each power of attorney they receive. These documents must be retained at the primary place of business of the dealer or distributor in an order that is appropriate with business requirements and that permits systematic retrieval. This paragraph is consistent with the retention requirements of the August 1988 final rule that is applicable to dealers, distributors, and lessors. Like the August rule, the storage provision of this amendment is phrased broadly to include any media by which information may be stored, provided there is no loss of information. No one has commented in opposition to this retention requirement, and it is retained unchanged in this final rule.

Miscellaneous Matters

In addition to the matters discussed above, some minor changes to the language of §§ 580.13, 580.14, and 580.15 have been made. The purpose of these changes is merely to simplify or clarify the text of the rule. No alterations of rights or duties, except to the extent already discussed above, are intended.

AAMVA asked NHTSA to provide clarification on the use of secure powers of attorney in two situations. The first question presented is whether or not the power of attorney provisions apply to the practice of "floor planning." ("Floor planning" is a practice by which a financial institution will physically hold a title as security for financing, without formally filing or recording a security interest, on a vehicle offered for sale by a dealer.) This "floor planning" arrangement does not qualify for use of the power of attorney. The PSRA allows for the use of a secure power of attorney in cases where "a transferor to whom

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title to a motor vehicle has been issued by a State" does not have the title because the title is being physically held by the lienholder. Thus, because the dealer is not the person to whom the title was issued by the State, the dealer may not use a power of attorney form for purposes of mileage disclosure under these circumstances. Moreover, even in situations in which a dealer has retitled a vehicle in his own name prior to surrendering the title under a "floor planning" arrangement use of a power of attorney is not available, because the financial institution is not considered a lienholder because no formal lien has been filed and recorded with the State. Because NHTSA believes that the statutory language clearly enough settles this matter, adding qualifying language on "floor planning" to the final rule, as AAMVA has suggested, is not considered appropriate.

The second situation about which AAMVA is seeking clarification is where the lending institution that financed the vehicle's purchase is located in a state that requires the lienholder to hold the title as security, but the vehicle is registered in a different state, which allows the owner, rather than the lienholder to hold the title. Under the PSRA, the availability of secure powers of attorney is always subject to State permission. States that choose to make secure powers of attorney available for transactions in which a consumer's title is unavailable because it is held by an out-of-state lienholder may do so. In States that choose not to allow the use of a secure power of attorney, in some or all circumstances, a transferor not in possession of his or her title at the time of sale will have to return to the dealership to sign the title when it is received, or else complete the transaction by mail.

NAAA submitted comments concerning the implications of the general prohibition on the same person signing as transferor and transferee in the same transaction for auto auctions in so-called "chain-of-title" states. In most states, auto auctions are brokers between buyers and sellers, facilitating sales between interested parties. As part of the service auctions provide, many auctions regularly act as agents under a power of attorney for their sellers to complete the necessary paperwork accompanying the sale, including making the required odometer disclosure. In Arizona, California and Colorado, however, auctions have been required by law to appear in the "chain of title." In these states, NAAA notes, "auctions simultaneously take a reassignment from the seller and give a reassignment to the buyer", thereby appearing, however briefly, to own the vehicle. Hence, under the rule, in these states the seller must disclose the mileage to the auction and the auction must execute a separate disclosure to the buyer. Furthermore, the auction is prevented under § 580.6(h) from using the seller's power of attorney to make the disclosure for the seller to the auction and then signing the disclosure as transferee.

The NAAA has appealed to NHTSA to amend § 580.6 to include an exemption from the disclosure requirement for auctions which are required by State law to take reassignment from the seller and give it to the buyer, provided that the selling customer makes a disclosure to the buyer, who acknowledges it as required. NHTSA declines to adopt the suggestion of the NAAA. We understand NAAA's concerns; however, we consider the problem faced by auctions in the "chain-of-title" States essentially one to be worked out by those States and the affected auctions. We are concerned that a proliferation of exemptions to the regulatory requirements will inhibit enforcement of the statute. Therefore, NHTSA considers the creation of another category of exempted transferors inappropriate.

Finally, the Florida DMV expressed concern that the sample secure power of attorney form appearing at appendix E of the interim final rule does not empower the attorney-in-fact to actually transfer ownership of the vehicle, and that another form will be required. The sample form at appendix E represents only the minimum acceptable elements of a power of attorney for the purpose of mileage disclosure. Nothing in the interim final rule, or this final rule, prevents a State from including a space on the power of attorney form for a grant of power of attorney for the purpose of transferring title.

Federalism Assessment

In adopting the PSRA, Congress apparently found that limiting the use of powers of attorney in connection with mileage disclosure could cause an undue burden on dealers and consumers. To resolve the problem and alleviate the potential costs for dealers and consumers, the new law specifies that power of attorney may be used in certain circumstances, if otherwise permitted by State law. This final rule does not impose any requirements upon the States other than those imposed by the law. Nevertheless, this action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The States may decide not to allow the use of powers of attorney in connection with mileage disclosure and, therefore, would not be required to print conforming forms. Those States that choose to allow the use of powers of attorney will incur some costs from processing applications, maintaining records and issuing new titles resulting from the requirement that the power of attorney form be returned to the State along with a title application. However, as the States may decide not to allow the use of powers of attorney in connection with mileage disclosure, they would not be required to incur these costs. Additionally, while it is estimated that the final rule would result in additional costs to the States for printing secure title reassignment documents and power of attorney forms, the cost to each State is minimal and could easily be recouped from those who are applying for the forms.

Effective Date

Under section 553(d) of the Administrative Procedures Act, 5 U.S.C. 553(d), a substantive rule may become effective before thirty days after its publication where it relieves a restriction, or as otherwise provided for by the agency for good cause. The sections that are immediately effective are those dealing with powers of attorney. These sections, although subject to the alterations discussed herein, were already effective. Moreover, the substantive changes relieve restrictions on the use of powers of attorney and, therefore, may be made effective upon publication.

Regulatory Impacts

A. Costs and Benefits to Dealers, States, and Consumers

When it issued the interim final rule, NHTSA determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the Department of Transportation regulatory policies and procedures. The changes made in the interim final rule do not modify that determination. Similarly, we find that this rule is not significant. A preliminary regulatory evaluation of the impacts of the interim final rule was prepared and placed in Docket 87–09 Notice 9 at that time. A final regulatory evaluation of the impacts of this final rule has also been prepared and placed in the docket. Any interested person

may obtain a copy of these regulatory evaluations by writing to the NHTSA Docket Section, 400 Seventh Street SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–4949.

The August 1988 final rule requires that reassignments be securely printed or otherwise set forth by a secure process. This rule merely requires that these documents be issued by a State. NHTSA estimates the cost of producing secure reassignments to be $1,720,000 to States, dealers, and distributors. NHTSA estimates the costs of controlling reassignment forms to be $1,500,000 to the States. In addition, NHTSA estimates the costs of copying and mailing titles containing the odometer disclosure to be $900,000. With regard to secure powers of attorney, if all States choose to adopt secure powers of attorney systems, they would incur estimated initial development costs totalling $8,700,000 and estimated recurring annual costs of $6,800,000. The net costs to dealers are estimated to be between $7,600,000 and $12,400,000. Although NHTSA estimates that dealers and States will incur higher costs under this final rule than under the interim final rule, NHTSA also estimates that this final rule will result in greater costs savings for consumers than would have been achieved under the interim final rule.

B. Small Business Impacts

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. Small businesses (dealers) will need to spend the same time executing each form as large businesses (dealers). It is not possible to minimize this burden. However, since these small entities will make fewer sales than large businesses, they will spend less time on these forms. Furthermore, while the States may charge dealers for these secure power of attorney forms, the estimated cost of these documents is minimal. Accordingly, no regulatory flexibility analysis has been prepared.

C. Environmental Impacts

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment. Accordingly, an environmental impact statement has not been prepared.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) approved NHTSA's information collection requirements associated with the August 1988 rule that require consumers, dealers, distributors, lessors, and auction companies to disclose and/or retain odometer disclosure information. (OMB #2127–0047). The interim final rule expanded the scope of those information collection requirements, as that term is defined by OMB in 5 CFR part 1320, to include transferors who authorize their transferees to exactly restate the mileage disclosure on the title as they have disclosed it on a power of attorney form issued by the State. It also expanded the scope of the requirements to include transferees who use a secure power of attorney to authorize their transferors to review the title for discrepancies and acknowledge mileage disclosures on their behalf. Finally, the interim final rule expanded the scope of the information collection requirements to include dealers and distributors who retain a copy of the secure power of attorney form. NHTSA submitted the interim final rule to OMB for approval. However, while that approval was pending, NHTSA became aware that there were errors in that submission, as well as in the prior, approved submission. Therefore, NHTSA has submitted a revision to correct these errors. Finally, this rule has been submitted to OMB for its approval pursuant to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* Comments on the information collection requirements associated with this final rule should be submitted to Office of Management and Budget, Office of Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to OMB also be sent to the NHTSA rulemaking docket for this final rule.

In consideration of the foregoing, 49 CFR part 580 is amended as follows:

PART 580—[AMENDED]

1. The authority citation for part 580 continues to read as follows:

Authority: 15 U.S.C. 1988; delegations of authority at 49 CFR 1.50(f) and 501.8(e)(1).

2. In § 580.3, the definitions of "transferor" and "transferee" are revised to read as follows:

§ 580.3 Definitions.

* * * * *

Transferee means any person to whom ownership of a motor vehicle is transferred, by purchase, gift, or any means other than by the creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferee.

Transferor means any person who transfers his ownership of a motor vehicle by sale, gift, or any means other than by the creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferor.

3. Section 580.4 is revised to read as follows:

§ 580.4 Security of title documents and power of attorney forms.

Each title shall be set forth by means of a secure printing process or other secure process. In addition, power of attorney forms issued pursuant to §§ 580.13 and 580.14 and documents which are used to reassign the title shall be issued by the State and shall be set forth by a secure process.

4. Section 580.5 is amended by revising paragraphs (c), (f) and (h) to read as follows:

§ 580.5 Disclosure of odometer information.

* * * * *

(c) In connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign the title. This written disclosure must be signed by the transferor, including the printed name. In connection with the transfer of ownership of a motor vehicle in which more than one person is a transferor, only one transferor need sign the written disclosure. In addition to the signature and printed name of the transferor, the written disclosure must contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number.

* * * * *

(f) The transferee shall sign the disclosure statement, print his name, and return a copy to his transferor.

* * * * *

(h) No person shall sign an odometer disclosure statement as both the transferor and transferee in the same transaction, unless permitted by §§ 580.13 or 580.14.

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5. Section 580.6 is amended by revising the introductory text and paragraph (a) and by adding a paragraph (c) to read as follows:

§ 580.6 Exemptions.

Notwithstanding the requirements of §§ 580.5 and 580.7:

(a) A transferor or a lessee of any of the following motor vehicles need not disclose the vehicle's odometer mileage:

(1) A vehicle having a Gross Vehicle Weight Rating, as defined in § 571.3 of this title, of more than 16,000 pounds;

(2) A vehicle that is not self-propelled;

(3) A vehicle that is ten years old or older; or

(4) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

* * * * *

(c) A lessor of any of the vehicles listed in paragraph (a) of this section need not notify the lessee of any of these vehicles of the disclosure requirements of § 580.7.

6. Section 580.8 is amended by revising paragraph (c) to read as follows:

§ 580.8 Odometer disclosure statement retention.

* * * * *

(c) Dealers and distributors of motor vehicles who are granted a power of attorney by their transferor pursuant to § 580.13, or by their transferee pursuant to § 580.14, shall retain for five years a photostat, carbon, or other facsimile copy of each power of attorney that they receive. They shall retain all powers of attorney at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

7. Section 580.13 is revised to read as follows:

§ 580.13 Disclosure of odometer information by power of attorney.

(a) If the transferor's title is physically held by a lienholder, or if the transferor to whom the title was issued by the State has lost his title and the transferee obtains a duplicate title on behalf of the transferor, and if otherwise permitted by State law, the transferor may give a power of attorney to his transferee for the purpose of mileage disclosure. The power of attorney shall be on a form issued by the State to the transferee that is set forth by means of a secure printing process or other secure process, and shall contain, in part A, a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e) of this section. If a State permits the use of a power of attorney in the situation described in § 580.14(a), the form must also contain, in part B, a space for the information required to be disclosed under § 580.14, and, in part C, a space for the certification required to be made under § 580.15.

(b) In connection with the transfer of ownership of a motor vehicle, each transferor to whom a title was issued by the State whose title is physically held by a lienholder or whose title has been lost, and who elects to give his transferee a power of attorney for the purpose of mileage disclosure, must appoint the transferee his attorney-in-fact for the purpose of mileage disclosure and disclose the mileage on the power of attorney form issued by the State. This written disclosure must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model year, body type and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the Federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(d) In addition to the information provided under paragraphs (b) and (c) of this section:

(1) The transferor shall certify that to the best of his knowledge the odometer reading reflects the actual mileage; or

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by a calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, print his name, and return a copy of the power of attorney form to the transferor.

(f) Upon receipt of the transferor's title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the power of attorney form. The transferee shall submit the original power of attorney form to the State that issued it, with the application for new title and the transferor's title. If the mileage disclosed on the power of attorney form is higher than the mileage appearing on the title, the power of attorney is void and the dealer shall not complete the mileage disclosure on the title.

8. Section § 580.14 is revised to read as follows:

§ 580.14 Power of attorney to review title documents and acknowledge disclosure.

(a) In circumstances where part A of a secure power of attorney form has been used pursuant to § 580.13 of this part, and if otherwise permitted by State law, a transferee may give a power of attorney to his transferor to review the title and any reassignment documents for mileage discrepancies, and if no discrepancies are found, to acknowledge disclosure on the title. The power of attorney shall be on part B of the form referred to in § 580.13(a), which shall contain a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e) of this section and, in part C, a space for the certification required to be made under § 580.15.

(b) The power of attorney must include a mileage disclosure from the transferor to the transferee and must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model year, body type and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the Federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(d) In addition to the information provided under paragraphs (b) and (c) of this section:

(1) The transferor shall certify that to the best of his knowledge the odometer reading reflects the actual mileage;

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by a calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, and print his name.

(f) The transferor shall give a copy of the power of attorney form to his transferee.

9. Section 580.15, the section heading and paragraphs (a) and (b) are revised are to read as follows:

§ 580.15 Certification by person exercising powers of attorney.

(a) A person who exercises a power of attorney under both §§ 580.13 and 580.14 must complete a certification that he has disclosed on the title document the mileage as it was provided to him on the power of attorney form, and that upon examination of the title and any reassignment documents, the mileage disclosure he has made on the title pursuant to the power of attorney is greater than that previously stated on the title and reassignment documents. This certification shall be under part C of the same form as the powers of attorney executed under §§ 580.13 and 580.14 and shall include:

(1) The signature and printed name of the person exercising the power of attorney;

(2) The address of the person exercising the power of attorney; and

(3) The date of the certification.

(b) If the mileage reflected by the transferor on the power of attorney is less than that previously stated on the title and any reassignment documents, the power of attorney shall be void.

10. Section 580.16 is added to read as follows:

§ 580.16 Access of transferee to prior title and power of attorney documents.

(a) In circumstances in which a power of attorney has been used pursuant to § 580.13 of this part, if a subsequent transferee elects to return to is transferor to sign the disclosure on the title when the transferor obtains the title and does not give his transferor a power of attorney to review the title and reassignment documents, upon the transferee's request, the transferor shall show to the transferee a copy of the power of attorney that he received from his transferor.

(b) Upon request of a purchaser, a transferor who was granted a power of attorney by his transferor and who holds the title to the vehicle in his own name, must show to the purchaser the copy of the previous owner's title and the power of attorney form.

11. The warning and part C, Certification, of the sample power of attorney form in appendix E are amended to read as follows:

Appendix E—Power of Attorney Disclosure Form

Warning: This form may be used only when title is physically held by lienholder or has been lost. This form must be submitted to the state by the person exercising powers of attorney. Failure to do so may result in fines and/or imprisonment.

* * * * *

Part C. Certification (To Be Completed When parts A and B Have Been Used)

I, ________________, (person exercising above powers of attorney, Print), hereby certify that the mileage I have disclosed on the title document is consistent with that provided to me in the above power of attorney. Further, upon examination of the title and any reassignment documents for the vehicle described above, the mileage diclosure I have made on the title pursuant to the power of attorney is greater than that previously stated on the title and reassignment documents. This certification is not intended to create, nor does it create any new or additional liability under Federal or State law.

____

(Signature)

____

(Printed Name)

____

Address (Street)

(City) ______________ (State) ____ (ZIP Code) ________

Date ____________

Jeffrey Miller,

National Highway Traffic Safety, Acting Administrator.

[FR Doc. 89-20388 Filed 8-29-89; 8:57 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register

removed; the word "complete" is

procedures are tailored to educational

a. In paragraph (a), the abbreviation

Proposed Rules

Federal Register
Vol. 54, No. 167
Wednesday, August 30, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. 42; Doc. No. 7314S]

General Crop Insurance Regulations; Corn Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice for the purpose of withdrawing a Notice of Proposed Rulemaking (NPRM) amending the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 crop year, by revising and reissuing the Corn Endorsement (7 CFR § 401.111). FCIC has determined that insufficient time remains in which to publish a final rule revising and reissuing the Corn Endorsement.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: On Monday, January 23, 1989, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 53 FR 3040 which proposed to revise and reissue the Corn Endorsement under the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 crop year.

In order for the Corn Endorsement to be effective for the 1990 crop year, it would be necessary to publish a final rule by December 31, 1989. There is not sufficient time in which to publish such a final rule and to file these regulations in the service offices by the required date.

For the reasons stated above, FCIC has determined that the rule published at 53 FR 3040 is hereby withdrawn.

Done in Washington, DC on August 18, 1989.

John Marshall,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 89–20377 Filed 8–29–89; 8:45 am]

BILLING CODE 3410–08–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

Changes to NASA Grant and Cooperative Agreement Handbook

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Grant and Cooperative Agreement Handbook (GCAHB) is amended to (1) require General Counsel review of deviations to the Handbook, (2) clarify award instrument selection criteria, (3) provide coverage for program income, and (4) revise the patent rights requirements to conform to Department of Commerce regulations.

DATE: Comments are due not later than September 29, 1989.

ADDRESS: Comments should be addressed to: W. A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: W. A. Greene, Telephone: (202) 453–8923.

SUPPLEMENTARY INFORMATION:

Background

The GCAHB contains NASA regulations for the award and administration of grants and cooperative agreements, including NASA implementing instructions for applicable statutes, Executive Orders, OMB Circulars and other documents of general applicability. *Ad hoc* exceptions to these regulations, where suitably justified, may be granted by the Assistant Administrator for Procurement through the deviation process at 14 CFR 1260.106. Upon recommendation of the NASA Inspector General, legal review is added as a prerequisite for a deviation (Item 4). As the bulk of the requests for deviations deal with proper use of the grant instrument, the regulations describing the selection process have been clarified and modified to explicitly exercise the substantive authority of Public Law 97–258 to award grants and cooperative agreements for research (basic and applied) and research related efforts, such as conferences but excluding "travel grants" or "equipment grants," per se (Items 5–7). The provisions of OMB Circular A–110 on program income are implemented for use, if required, with grant-supported conferences (Items 15, 16a). The coverage on patent rights is simplified and revised for consistency with Federal Acquisition Circular (FAC) 84–46, issued May 8, 1989, which implements a Department of Commerce patent regulation that appeared in the **Federal Register** (52 FR 8552) of March 18, 1987 (Items 9, 16, 17), while administrative arrangements are clarified (Item 17, Exhibit G, paragraphs (f) (5) and (1)). Items 10 and 12–14 consist of internal NASA procedural changes, while Items 2, 3, 8, and 11 are minor corrections.

Impact

This proposed rule has been reviewed by the Office of Management and Budget (OMB) under the provisions of Executive Order 12291. NASA certifies that these changes will not have a significant economic affect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This proposed rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980, nor does it substantially modify requirements associated with current OMB approval numbers 2700–0045 and 2700–0048.

List of Subjects in 14 CFR Part 1260

Grants.

S. J. Evans,
Assistant Administrator for Procurement.

PART 1260—[AMENDED]

1. The authority citation for 14 CFR part 1260 continues to read as follows:

Authority: Pub. L. 97–258, 31 U.S.C. 6301 et seq.

Subpart 1260.1—General

§ 1260.103 [Amended]

2. In § 1260.103, in the first sentence, the phrase "NASA policy directives," is

removed; the word "complete" is removed, and the word "detailed" is added in its place.

§ 1260.105 [Amended]

3. In paragraph (d), the word "Notice" is removed, and the words "Information Circular" are added in its place.

§ 1260.106 [Amended]

4. Section 1260.106 is amended as set forth below:

a. Paragraph (a)(9) is added to read as follows:

(a) * * *

(9) Any other action described elsewhere in this Handbook as a deviation.

* * * * *

b. In paragraph (b), the period is removed after the word "representative", and the phrase "after review by Office of General Counsel." is added at the end of the paragraph.

c. In paragraph (c), introductory text, the phrase "reviewed by local counsel," is added between the words "be" and "signed".

§ 1260.109 [Amended]

5. In § 1260.109, paragraph (d) is added to read as follows:

* * * * *

(d) Grants and cooperative agreements shall not be used as legal instruments when the primary purpose of the award is to pay the costs of travel ("Travel Grant") or for the purchase of equipment or supplies ("Equipment Grant"). (This restriction does not preclude otherwise allowable expenditures for travel, equipment or supplies in support of awards made pursuant to para. 1260.203.)

Subpart 2—Basic Policies

§ 1260.201 [Amended]

6. Section 1260.201 is amended as set forth below:

a. In paragraph (a), introductory text, the phrase "required basic research" is removed, and the phrase "required research and research related activities" is added in its place.

b. In paragraph (a)(1), the word "basic" is removed.

§ 1260.203 [Amended]

7. Section 1260.203 is amended as set forth below:

a. In paragraph (a)(1), the sentence "Instrument selection will be made on the basis of this paragraph 203, rather than on direct local interpretation of Public Law 97–258." is removed, and the following is added in its place: "As a matter of policy, NASA's use of grants, grant regulations and administrative procedures are tailored to educational institutions. Therefore, instrument selection will be made on the basis of this para. 1260.203, which accommodates both statute and policy, rather than any additional local interpretation of Public Law 97–258."

b. In paragraph (a)(3), the following sentence is added at the end of the paragraph: "A proposed award which exhibits the general characteristics set forth in para. 1260.203(b)(1) meets the above-described statutory criteria for use of the grant instrument."

c. In paragraph (b) introductory text, the second sentence, beginning "Research grants * * *" and the third sentence, beginning "Any exceptions * * *" are removed, and the following text is added in their place: "Research grants and cooperative agreements may be awarded only to nonprofit institutions of higher education or to nonprofit organizations whose primary purpose is the conduct of scientific research to support research or research-related efforts. Conferences which clearly relate to and have potential for contributing to NASA research interests are considered to be research-related. Research in any academic discipline bearing on NASA research interests normally will qualify as research-related; however, advise of counsel should be sought in unusual situations (see § 1260.301(c)). Similarly, in instances where use of the grant instrument and organizational eligibility does not clearly require a deviation, but where unusual project activities or organizational attributes are evident, advice of local counsel should be obtained. "Travel Grants" or "Equipment Grants" are not authorized as research-related. Award of grants or cooperative agreements to types of organizations or for purposes other than set forth in this § 1260.203(b) requires a deviation (see § 1260.106)."

d. In paragraph (b)(1)(i), the semicolon is removed, a comma is added in its place, and the words "and attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques and advance the state of the art." are added to complete the sentence.

e. Paragraph (b)(1)(vii) is added to read as follows:

* * * * *

(b) * * *

(1) * * *

(vii) The effort is research or research-related.

§ 1260.204 [Amended]

8. Section 1260.204 is amended as set forth below:

a. In paragraph (a), the abbreviation "NPD" is revised to read "NMI".

b. In paragraph (b), the letter "E" is revised to read "EPM–20".

9. Section 1260.209 is revised to read as follows:

§ 1260.209 Property rights in inventions.

(a) The disposition of rights in inventions made by small business firms and nonprofit organizations under contracts, grants and cooperative agreements (including subcontracts thereunder) for the performance of experimental, developmental or research work funded in whole or in part by NASA is governed by Chapter 18 of Title 35, United States Code (Pub. L. 95–517, Pub. L. 98–620). The disposition of rights to inventions made by other than a small business firm or nonprofit organization under contracts, grants or cooperative agreements (including subcontracts thereunder) in the performance of experimental, developmental, research, design or engineering work for NASA is governed by section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457), and to the extent consistent with that law the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies dated February 18, 1983, and Section 1(b)(4) of Executive Order 12591, dated April 10, 1987. The implementation of the requirements of Chapter 18 of title 35, United States Code for grants and cooperative agreements is set forth in 37 CFR 401. The implementation of the National Aeronautics and Space Act of 1958, as amended, is set forth in NASA FAR Supplement 18–27.373 (48 CFR 1827.373).

(b) In accordance with paragraph (a) of this section, Exhibit G, which is the clause required by 37 CFR 401.414 customized for NASA pursuant to 37 CFR 401.5, shall be included in all grants and cooperative agreements entered into with a nonprofit organization under the Handbook unless either:

(1) The grantee is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government; or

(2) The grantee is not a nonprofit organization or an alternate provision is to be used in accordance with 37 CFR 401.3.

If the circumstances in paragraph(b)(1) of this section exist, the clause "INVENTION REPORTING AND RIGHTS—FOREIGN" in NASA FAR Supplement 18–52.227–85 (48 CFR 1852.227–85) (suitably tailored to

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identify the parties and the instrument) may be used as a special condition unless in consultation with installation Patent Counsel, a different provision would be more appropriate. A deviation is not required in this situation. If, in accordance with paragraph (b)(2) of this section, the grantee is not a nonprofit organization or an alternate provision is to be used, a deviation, including concurrence by installation Patent Counsel, is required.

(c) Reports required pursuant to § 1260.409(b) of this Handbook shall be submitted to the grants officer, with a copy to the installation Patent Counsel.

§ 1260.210 [Amended]

10. Section 1260.210 is revised to read as follows:

§ 1260.210 Debarment and suspension; and drug-free workplace.

Grants officers shall follow the procedures in NMI 5101.31, Delegation of Authority—Debarment and Suspension Under Grants, Cooperative Agreements and Other Nonprocurement Transactions; and Requirements for a Drug-Free Workplace (Grants), in implementation of 14 CFR 1265. Before making an award, the grants officer shall ensure that the participant's status has been verified (14 CFR 1265.505 (d) and (e)) and the certification requirements at 14 CFR 1265.510 and 14 CFR 1265.630 have been met. If the required certifications have not been submitted with the proposal, the grants officer shall obtain them before proceeding. However, NASA shall not require any particular form or format. Installations shall not impose local requirements for general submission of certifications with solicited or unsolicited proposals (except as may be otherwise authorized by this Handbook).

Subpart 3—Award of Grants and Cooperative Agreements

§ 1260.302 [Amended]

11. In § 1260.302 the words "no longer" are removed, and the word "not" is added in their place.

§ 1260.305 [Amended]

12. In § 1260.305, paragraph (b)(2), after the phrase "Third year $______," the sentence beginning "It is the responsibility * * *" is revised to read as follows:

> It is the responsibility of the awardee to request such continued support by submitting a brief proposal.

13. In § 1260.30, paragraph (a)(2) is revised to read as follows:

§ 1260.306 Numbering of instruments.

(a) * * *

(2) Sequential numbers for new Training (NGT) and Facilities (NGF) grants, if the award is otherwise authorized, are assigned by the Office of External Relations, Educational Affairs Division (Code XE).

* * * * *

14. Paragraph (b) is revised to read as follows:

§ 1260.307 Distribution of grants, cooperative agreements, and grant supplements.

* * * * *

(b) One copy, plus a copy of the grantee's proposal, will be furnished to the NASA Scientific and Technical Information Facility, P.O. Box 8757, BWI Airport, MD 21240. Attn: Acquisitions.

15. Section 1260.310 is added to read as follows.

§ 1260.310 Program income.

For conferences and awards in which there is high potential for the generation of income (other than royalties from patents or copyrights), the following special condition may be used (except with institutions participating in the Federal Demonstration Project):

PROGRAM INCOME (JUNE 1989)

> Program income shall be retained by the grantee and shall be * * *
>
> [Complete the sentence with one of the following phrases, as appropriate:
>
> * * * added to funds already committed to the project and used to further project objectives.
>
> * * * used to finance the non-Federal share of the program.
>
> * * * deducted from the total project costs in determining the net costs on which NASA's share of costs will be based.]

Subpart 4—Research Grant and Cooperative Agreement Provisions

§ 1260.420 [Amended]

16. Section 1260.420 is amended as set forth below:

a. In paragraph (b), the first item in the list of clauses is revised to read "INVENTION REPORTING AND RIGHTS—FOREIGN, prescribed at para. 1260.209(b)." and the following item is added at the end of the list of clauses:

PROGRAM INCOME, prescribed at para. 1260.310.

b. Para. (h) is added to read as follows:

(h) The following provision shall be appended, as a special condition, to all grants and cooperative agreements (pending revisions to para. 1260.409 and NASA Form 1463A, Provisions for Research Grants and Cooperative Agreements):

PATENT RIGHTS—CORRECT CITATIONS (JUNE 1989)

In the NASA Provisions for Research Grants and Cooperative Agreements (NASA Form 1463A), the correct statutory citations in the "Patent Rights—Retention by Grantee" provision are "Chapter 18 Title 35, United States Code (Pub. L. 96-517, Pub. L. 98-620)."

17. Exhibit G is revised to read as follows:

EXHIBIT G—PATENT RIGHTS—RETENTION BY THE GRANTEE (JUNE 1989)

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Subject Invention" means any invention of the Grantee conceived or first actually reduced to practice in the performance of work under this grant, provided that in the case of a variety of plant, the date of determination (as defined in section 4(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d), must also occur during the period of the grant performance.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a domestic small business concern as defined at Section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this Exhibit G, the size standards for small business concerns involved in Government procurement, and subcontracting at 13 C.F.R. 121.3-8 and 13 C.F.R. 121.3-12, respectively, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights. The Grantee may retain the entire right, title, and interest throughout the world to each Subject Invention subject to the provisions of this Exhibit G and 35 U.S.C. 203. With respect to any Subject Invention in which the Grantee retains title, the Federal Government shall have a nonexclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United

States the Subject Invention throughout the world.

(c) Invention Disclosure, Election of Title, and Filing of Patent Applications by Grantee.

(1) The Grantee will disclose each Subject Invention to NASA within 2 months after the inventor discloses it in writing to Grantee personnel responsible for patent matters. The disclosure to NASA shall be in the form of a written report and shall identify the grant under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to NASA, the Grantee will promptly notify NASA of the acceptance of any manuscript describing the invention for the publication or of any on sale or public use planned by the Grantee.

(2) The Grantee will elect in writing whether or not to retain title to any such invention by notifying NASA within 2 years of disclosure to NASA. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by NASA to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Grantee will file its initial patent application on a Subject Invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after publication, on sale, or public use. The Grantee will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of NASA, be granted.

(d) Conditions When the Government May Obtain Title. The Grantee will convey to NASA, upon written request, title to any Subject Invention:

(1) If the Grantee fails to disclose or elect the Subject Invention within the times specified in (c) above, or elects not to retain title; provided, that NASA may only request title within 60 days after learning of the failure of the Grantee to disclose or elect within the specified times.

(2) In those countries in which the Grantee fails to file patent applications within the times specified in paragraph (c) of this Exhibit G; provided, however, that if the Grantee has filed a patent application in a country after the times specified in paragraph (c) of this Exhibit G, but prior to its receipt of the written request of NASA, the Grantee shall continue to retain title in that country.

(3) In any country in which the Grantee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a Subject Invention.

(e) Minimum Rights to Grantee and Protection of Grantee Right to File.

(1) The Grantee will retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Grantee fails to disclose the Subject Invention within the times specified in paragraph (c) of this Exhibit G. The Grantee's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Grantee is a party and includes the right to grant sublicenses of the same scope to the extent the Grantee was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of NASA, except when transferred to the successor of that part of the Grantee's business to which the invention pertains.

(2) The Grantee's domestic license may be revoked or modified by NASA to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted in accordance with section 1245.210 of the NASA regulation, Licensing of NASA Inventions, 14 C.F.R. 1245.2. This license will not be revoked in that field of use or the geographical areas in which the Grantee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA to the extent the Grantee, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NASA will furnish the Grantee a written notice of its intention to revoke or modify the license, and the Grantee will be allowed 30 days (or such time as may be authorized by NASA for good cause shown by the Grantee) after the notice to show cause why the license should not be revoked or modified. The Grantee has the right to appeal, in accordance with 14 CFR 1245.210, any decision concerning the revocation or modification of the license.

(f) Grantee Action to Protect the Government's Interest.

(1) The Grantee agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Grantee elects to retain title, and (ii) convey title to NASA when requested under paragraph (d) of this Exhibit G, and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

(2) The Grantee agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Grantee each Subject Invention made under grant in order that the Grantee can comply with the disclosure provisions of paragraph (c) of this Exhibit G, and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights in the Subject Inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this Exhibit G. The Grantee shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Grantee will notify NASA of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Grantee agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This invention was made with Government support under (identify the grant) awarded by NASA. The Government has certain rights in this invention."

(5) The Grantee shall include a list of all Subject Inventions required to be disclosed during the preceding year in the renewal proposal or annual status report, and a complete list (or a negative statement) for the entire award period shall be included in the final report.

(g) *Subcontracts.* (1) The Grantee will include this Exhibit G, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor will retain all rights provided for the Grantee in this Exhibit G, and the Grantee will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Subject Inventions.

(2) The Grantee will include in all other subcontracts, regardless of tier, for experimental, developmental, research, design or engineering work the patent rights clause as required by NASA FAR Supplement 1827.373(b).

(3) In the case of subcontracts, at any tier, when the prime award with NASA was a contract (but not a grant or cooperative agreement), NASA, subcontractor, and the contractor agree that the mutual obligations of the parties created by this Exhibit G constitute a contract between the subcontractor and NASA with respect to those matters covered by this Exhibit G; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act

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in connection with proceedings under

Exhibit G has not been obtained or waived or

patent application, and a patent number and

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the proposed amendment by contacting

732.15. If the amendment is approved, it

Dated: August 17, 1989.

in connection with proceedings under paragraph (j) of this Exhibit G.

(h) *Reporting on utilization of subject inventions.* The Grantee agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Grantee, and such other data and information as NASA may reasonably specify. The Grantee also agrees to provide additional reports as may be requested by NASA in connection with any march-in proceeding undertaken by NASA in accordance with paragraph (j) of this Exhibit G. As required by 35 U.S.C. 202(c)(5), NASA agrees it will not disclose such information to persons outside the Government without permission of the Grantee.

(i) *Preference for United States industry.* Notwithstanding any other provision of this Exhibit G, the Grantee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by NASA upon a showing by the Grantee or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in Rights.* The Grantee agrees that with respect to any Subject Invention in which it has acquired title, NASA has the right in accordance with the procedures established by NASA which are consistent with 37 CFR 401.6, Exercise of March-in Rights, to require the Grantee, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Grantee, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if NASA determines that:

(1) Such action is necessary because the Grantee or assignee has not taken, or is not expected to take, within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Grantee, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations, and such requirements are not reasonably satisfied by the Grantee, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this Exhibit G has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement.

(k) *Special provisions for grants with nonprofit organizations.* If the Grantee is a nonprofit organization, it agrees that:

(1) Rights to a Subject Invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Grantee;

(2) The Grantee will share royalties collected on a Subject Invention with the inventor including NASA coinventors (when NASA deems it appropriate) when the Subject Invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Grantee with respect to Subject Inventions, after payment of expenses (including payments to inventors) incidental to the administration of Subject Inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Grantee determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Grantee is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Grantee. However, the Grantee agrees that the Secretary of Commerce may review the Grantee's licensing program and decisions regarding small business applicants, and the Grantee will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Grantee could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) *Communications.* A copy of all submissions or requests required by this Exhibit G, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the installation Patent Counsel in addition to any other submission requirements in the Grant provisions. If any reports contain information describing a "Subject Invention" for which the Grantee has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, for six months from the date of receipt, in order for a patent application to be filed, provided that the Grantee identify the information and the "Subject Invention" to which it relates at the time of submittal. If required by the grants officer, the Grantee shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any Subject Invention in any country in which the Grantee has applied for patents.

[FR Doc. 89–20163 Filed 8–29–89; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Kansas Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter, the "Kansas Plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. Sections 1201 *et seq.* The proposed amendment pertains to eligible lands and waters, project evaluation, rights of entry, liens, appraisals on private lands, project ranking and selection, organizational structure, and public participation.

This notice sets forth the times and locations that the Kansas Plan and proposed amendment to that plan are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., September 29, 1989. If requested, a public hearing on the proposed amendment will be held on September 24, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., on September 14, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below.

Copies of the Kansas Plan, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of

the proposed amendment by contacting OSMRE's Kansas City Field Office.

Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106, Telephone: (816) 374–6405

Kansas Department of Health and Environment, Mining Section, Bureau of Environmental Quality, Shirk Hall, 4th Floor, 1501 S. Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231–8615.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, at the address or telephone number listed in "ADDRESSES."

SUPPLEMENTARY INFORMATION:

I. Background

On February 1, 1982, the Secretary of the Interior conditionally approved the Kansas AMLR program. General background information, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas AMLR program can be found in the June 3, 1983, Federal Register (48 FR 24876).

II. Proposed Amendment

By letter dated June 29, 1989, and pursuant to SMCRA, Kansas submitted part of a proposed amendment to its plan (Administrative Record No. AML–KS–129). Kansas submitted the proposed amendment at its own initiative. Kansas proposes to rescind and replace portions of the regulations within Kansas Administrative Regulations (K.A.R.) at K.A.R. Chapter 47, Article 16. The regulations that Kansas proposes to amend are: K.A.R. 47–16–1, Eligible Lands and Waters; K.A.R. 47–16–2, Reclamation Project Evaluation; K.A.R. 47–16–4, Entry for Studies or Exploration; K.A.R. 47–16–5, Entry and Consent to Reclaim; K.A.R. 47–16–6, Liens; K.A.R. 47–16–7, Appraisals; and K.A.R. 47–16–8, Satisfaction of Liens.

By letter dated July 26, 1989, Kansas submitted, pursuant to SMCRA, the rest of a proposed amendment to its plan (Administrative Record No. AML–KS–135). Kansas proposes to revise State policies and procedures regarding project ranking and selection, organizational structure, and public participation in the AMLR program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is approved, it will become part of the Kansas AMLR Plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking, or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., c.d.t on September 14, 1989. The location and time of the hearing will be announced to those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will start on the specified date and will continue until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of such meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Abandoned Mine Land Reclamation Plans.

Dated: August 17, 1989.

Raymond L. Lowrie,

Assistant Director Western Field Operations.

[FR Doc. 89–20386 Filed 8–29–89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 157, 164

46 CFR Parts 35, 71, 72, 78, 91, 92, 97, 107, 108, 109, 167, 189, 190, and 196

[CGD 80–136]

RIN 2115–AA53

Maneuvering Performance Standards for U.S. Flag Vessels

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action withdraws an advance notice of proposed rulemaking published in the **Federal Register** on September 14, 1981 (46 FR 45651) and the supplemental advance notice of proposed rulemaking published in the **Federal Register** on July 17, 1984 (49 FR 28893). These proposals are associated with development of maneuvering performance standards for U.S. vessels.

After evaluation of a series of projects and unsuccessful attempts at the International Maritime Organization (IMO) to achieve maneuverability standards recognized internationally, the Coast Guard has concluded that maneuvering standards cannot be developed at the present time. Work in the area of maneuverability regulations will continue after generally accepted criteria have been established at the IMO.

DATES: The ANPRM is withdrawn as of August 30, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Volf Asinovsky, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. 20593–0001, Telephone: (202) 267–2987.

SUPPLEMENTARY INFORMATION:

Background

Maneuvering standards are needed for the ship design industry as well as for ship operators. Without such standards there is no guarantee that maneuvering performance will receive the consideration that the Coast Guard feels is necessary during design. In the design process, maneuverability may be sacrificed for reduction of design and construction costs. Also, due to a lack of maneuverability regulations, analysis of casualties involving rammings, groundings, and collisions seldom questions a vessel's maneuverability, but instead focuses on operator error.

On September 14, 1981 the Coast Guard published in the **Federal Register** (46 FR 45631) an Advance Notice of Proposed Rulemaking (ANPRM). This ANPRM solicited public comments and suggestions on a proposal to develop ship maneuvering performance standards and regulations for evaluation of maneuvering and stopping characteristics of new U.S. flag vessels. The ANPRM suggested a rating system for maneuverability and announced the Coast Guard's intention to develop a standard to address maneuverability of new U.S. vessels. The ANPRM offered neither criteria for the evaluation of maneuverability nor the numerical values of such criteria. The intent of the ANPRM was to solicit suggestions on the criteria and norms maneuverability from the maritime industry.

A Supplemental Advance Notice of Proposed Rulemaking (SANPRM) was published on July 17, 1984 (49 CFR 28893). The SANPRM informed the public that the Coast Guard intended to postpone the development of maneuverability regulations until the International Maritime Organization (IMO) developed recommendations on maneuvering standards. This approach was based on public comments and suggestions in response to the ANPRM of September 14, 1981. It took into account the IMO plan for the development of maneuvering standards.

Coordination of efforts with IMO is a logical approach. In doing so, the requirements applied to U.S. flag vessels would be similar to the requirements applied to the ships of other administrations.

At the time of the SANPRM, IMO had started work in the area of maneuverability standards. An Ad Hoc Working Group had been established at IMO for coordination of the maneuverability studies and "Draft Interim Guidelines for Estimating Maneuvering Performance in Ship Design" (dated 2 April 1984) had been developed. Because of these events, it was reasonable to anticipate that IMO would complete development of maneuvering standards in the near future.

In the years following publication of the SANPRM, the Coast Guard participated in and carefully tracked the developments associated with ship maneuverability at the IMO Ship Design and Equipment Subcommittee. However, development of ship maneuvering standards was not completed as originally anticipated. IMO has yet to agree on a basis for maneuvering standards.

Development of maneuverability criteria is a very complicated technical task which cannot be quickly accomplished. The difficulty in establishing international consensus criteria at IMO is a reflection of the problem's complexity.

Significant research is needed prior to determining the appropriate parameters of maneuverability to be considered in establishment of the criteria and determination of minimum acceptable values of these criteria for different vessel types. Therefore the Coast Guard has concluded that a rulemaking for maneuvering standards is premature.

Withdrawal

The proposed rules were considered "nonsignificant" under the Department of Transportation Order No. 2100.5 entitled "Policies and Procedures for Simplification, Analysis and Review of Regulations." There are no known adverse consequences associated with terminating the proposal.

For the reason stated above, this rulemaking is hereby withdrawn.

August 25, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–20452 Filed 8–29–89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3409/P84; FRL 3636–7]

Pesticide Tolerance for Terbufos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that the tolerance established for the combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity (RAC) bananas be converted to permanent status. This proposed regulation to establish a maximum permissible level for residues of the insecticide-nematicide in or on the commodity was requested by the American Cyanamide Co.

DATE: Comments, identified by the document control number [PP 6E409/P484], must be received on or before September 29, 1989.

ADDRESS: Written comments, identified by the document control number [PP 6E3409/P484], should be submitted to: Information Services Branch, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: William H. Miller, Product Manager (PM) 16, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 222, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2600.

SUPPLEMENTARY INFORMATION: EPA issued a rule in the **Federal Register** of April 27, 1988 (53 FR 15401), which announced its decision to establish a temporary tolerance for residues of the pesticide terbufos on bananas for a period extending to April 27, 1990. The Agency limted the period of time that the regulation was to be in effect because of the lack of a teratology study in a second species.

The American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, has submitted an amendment to pesticide petition (PP) 6E409 by submitting the missing teratology study and by requesting that EPA, pursuant to section 408(d)(1) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a permanent tolerance for the combined residues of the insecticide/nematicide terbufos (S-[[(1,1-dimethylethyl)thio]methy]-O,O-diethyl phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the RAC bananas at 0.025 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year dog feeding study with a lowest-observable-effect level (LOEL) of 0.015 milligram/kilogram/day (mg/kg/day) based on the inhibition of plasma cholinesterase activity.
2. A 4-week dog plasma cholinesterase study with a no-observable-effect level (NOEL) of 0.00125 mg/kg/day based on the inhibition of plasma cholinesterase activity.
3. A 1-year rat feeding study with a no-observable-effect level (NOEL) of 0.5 ppm (0.025 mg/kg) based on the inhibition of plasma and brain cholinesterase activity.
4. An 18-month mouse oncogenicity study with no oncogenic effects observed at dosage levels up to and including 12.0 ppm (1.8 mg/kg/day), which was the highest level tested.
5. A 2-year rat oncogenicity study with no oncogenic effects observed at doses up to and including 2.0 ppm (0.10 mg/kg/day).
6. A three-generation rat reproduction study with a NOEL of 0.25 ppm (0.0125 mg/kg) for reproductive effects.
7. A rat teratology study with a NOEL of 0.1 mg/kg/day for development toxicity.
8. A rabbit teratology study with a NOEL of 0.25 mg/kg/day for developmental toxicity.
9. An acute delayed neurotoxicity study in chickens, which was negative for neurotoxic effects under the conditions of the study (highest dose tested was 40 mg/kg).
10. Several mutagenicity tests which were all negative. These include a dominant lethal study in rats; an acute in vivo cytogenic assay in rats; an Ames test including metabolic activation; a DNA repair chromosomal aberration (CHO cells); CHO/GHPRT mutation assay; and a rat hepatocyte culture/DNA repair test.

Based on the plasma cholinesterase inhibition (ChE) NOEL as defined in a 4-week dog study (0.00125 mg/kg/day) and using a safety factor of 10, the acceptable daily intake (ADI) for humans is 0.000125 mg/kg/day.

The current established tolerances (including the tolerance for bananas) for residues of terbufos and its cholinesterase-inhibiting metabolites result in a theoretical maximum contribution (TMRC) of 0.000052 mg/kg/day and utilize 41.946 percent of the ADI. No feed items are involved; therefore, it is expected that no secondary residues in meat, milk, poultry, and eggs will result from the use of the pesticide on bananas.

The metabolism of the insecticide/nematicide is adequately understood, and an analytical method, gas chromatography with a flame photometric detector, is available in the *Pesticide Analytical Manual,* Vol. II (PAM II), for enforcement purposes.

There are no regulatory actions pending against continued registration of the insecticide, and no other considerations are involved in establishing the tolerance.

The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the above information and data, the Agency concludes that the establishment of the regulation would protect the public health. Therefore, it is proposed that 40 CFR 180.352 be amended as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 6E3409/P484]. All written comments filed in response to this petition will be available in the Program Management and Support Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 11, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.352 is amended in paragraph (a) by adding and alphabetically inserting an entry for bananas and by removing paragraph (b) and designating it "[Reserved]" to read as follows:

§ 180.352 Terbufos; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * *	*
Bananas	0.025
* * * *	*

(b) [Reserved]

[FR Doc. 89–20203 Filed 8–29–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 186

[OPP–300199; FRL–3635–1]

Captan; Proposed Revocation of Feed Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke the feed additive tolerance for residues of the fungicide captan on corn seed remaining after detreatment to reduce captan residues resulting from the intended use of captan as a seed protectant. This proposed action is being initiated by EPA because data required and requested by EPA to support the continuation of the feed additive regulation have not been submitted.

DATES: Written comments, identified by the document control number [OPP–300199], must be received on or before October 30, 1989.

ADDRESSES: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (H–7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as

"Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Registration Support Branch, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-1606.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 6, 1981 (46 FR 55091), EPA issued a final rule that established a feed additive regulation (21 CFR 561.65, subsequently recodified as 40 CFR 186.500 in the Federal Register of June 29, 1988 (53 FR 24666)) for residues of the fungicide captan on corn seed at 100 ppm, remaining after detreatment of corn seed to reduce pesticide residues resulting from the intended use of captan as a seed protectant. The establishment of this regulation allowed the sale and use of the detreated captan-treated corn seed, after washing or roasting to reduce captan residues, as a cattle or swine feed up to 14 days prior to slaughter.

In March 1986, EPA issued a Registration Standard which stated, among other things, that the Agency had reevaluated the use of treated seed corn for feed use for cattle and hogs and expected to take action, in approximately a year, to revoke the feed additive regulation that permits the feed use of detreated captan-treated seed corn, unless certain concerns were resolved, as follows:

1. Residue chemistry data were needed for detreated captan-treated corn seed which had been treated at maximum label dosage and held in storage for various time periods ranging from 3 to 18 months.

2. An acceptable method for informing corn seed treaters and corn seed distributors of acceptable methods for detreating captan-treated corn seed must be proposed.

3. An acceptable handling procedure for captan-treated seed corn (to be detreated) to assure that there are no other pesticides on the seed must be proposed.

The captan feed additive regulation does not identify permitted methods for detreating the captan-treated corn seed although the Federal Register notice which established this regulation mentioned washing and roasting, thereby implying that these were acceptable methods. However, the Agency has inadequate data to support either washing or roasting when the maximum registered dosage of captan has been applied, and has no acceptable residue data to support the roasting detreatment method at any dosage or period of storage.

The data required to support the feed additive regulation have not been submitted. Therefore, EPA now proposes to revoke the feed additive tolerance for residues of captan remaining in corn seed which has been treated with captan seed protectant and subsequently subjected to a detreatment process to remove excess residues. If residue data to fulfill the requirements of the Registration Standard are submitted during the comment period of this proposed rule, the Agency will review the data before taking final action.

Interested persons are invited to submit written comments on this proposal to revoke the feed additive tolerance listed in 40 CFR 186.500 for residues of captan in detreated corn seed. Comments must bear a notation indicating the document control number, [OPP-300198]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this proposal will be available for public inspection in Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 246, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to remove the existing authorization to use detreated captan-treated corn seed, with residues of captan not exceeding 100 ppm after detreatment to reduce such residues, as feed for cattle and hogs. Registrations of captan products do not expressly permit captan-treated seed corn to be detreated nor, after such detreatment, to be sold and/or used for cattle and hog feed; therefore, revocation of the feed additive regulation will have no effect on registered captan products or their labeling.

The primary economic impact expected from the revocation will be the cost to the seed industry of disposal of obsolete or excess captan-treated corn seed via some method other than pesticide detreatment and subsequent sale of the detreated corn seed for use as animal feed. Total seed corn sales currently represent about $1 billion annually. An increase in costs of $32 million, which represents the high estimate of possible increased costs, represents about 3 percent of the value of seed sales. If the seed industry absorbs these costs, a 3-percent reduction in total sales would be significant, but it would be unlikely to put any seed firm out of business. The seed corn industry has recently survived a decrease in total sales of about 15 percent, without any loss of seed firms, owing to the implementation of the 1985 Farm Bill, which took out of production about 15 percent of corn acres.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 186

Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 10, 1989.

Charles L. Elkins,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 186 be amended as follows:

PART 186—[AMENDED]

1. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 186.500 [Removed]

2. By removing § 186.500 *Captan.*

[FR Doc. 89-19975 Filed 8-29-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket 89-360; FCC 89-271]

Common Carrier Services; Uniform System of Accounts for Telecommunications Companies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to amend part 32 of its rules to incorporate the liability method of accounting for income taxes into the Uniform System of Accounts for Telecommunications Companies. This action will bring the method of accounting for income taxes in the System of Accounts in line with the generally accepted method of accounting for income taxes prescribed for the American business community.

DATES: Comments are due on or before September 18, 1989 and reply comments are due on or before October 3, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John T. Curry, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted August 4, 1989 and released August 18, 1989.

The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this Notice of Proposed Rulemaking may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

In this Notice of Proposed Rulemaking the Commission is proposing changes to Part 32 to incorporate the new accounting procedures for income taxes prescribed in Statement of Financial Accounting Standards No. 96 (SFAS-96) and to establish new accounts that would properly implement those procedures.

Currently, Part 32 of the Commission's rules requires carriers to use the generally accepted method of accounting for income taxes that was established by Accounting Principles Board Opinion No. 11, Accounting for Income Taxes (APB Opinion No. 11). APB Opinion No. 11 prescribed the deferral method of accounting for the tax effects of tax timing differences. Tax timing differences occur when items of revenue or expense are recognized in different accounting periods for tax return purposes than for book purposes. Under the deferral method, the effects of timing differences are determined initially on the basis of tax rates in effect at the time the differences originate, and are not adjusted for subsequent changes in tax rates.

In December 1987, the FASB promulgated SFAS-96, which superseded APB Opinion No. 11. SFAS-96 prescribes the liability method of accounting for income taxes. Under the liability method, business entities estimate the future tax liability or future tax benefit that will occur as a result of differing tax and book treatment of temporary differences. The term temporary difference, as it is used in SFAS-96, would include items previously described as timing differences pursuant to APB Opinion No. 11, as well as other items the tax effects of which have never been accounted for under the deferral method.

In implementing SFAS-96, it will be necessary to adjust deferred tax balances for several factors. The major adjustments will result from the recording of the effects of (1) timing differences previousy flowed through; (2) changes in the tax rate prescribed by the Tax Reform Act of 1986; and (3) basis differences caused by unamortized investment tax credit balances.

This Notice of Proposed Rulemaking tentatively concludes that the changes in income tax accounting required by SFAS-96 can be adopted for the telecommunications industry in such a way as to make tax accounts maintained for regulatory purposes comparable to those shown in published financial statements without any impact on revenue requirements, with one possible exception. This exception would be with respect to excess deferred taxes resulting from a tax rate change which are not protected by Section 203(e) of the Tax Reform Act of 1986. For the unprotected excess deferred taxes, this Notice of Proposed Rulemaking proposes to reduce tax expenses in the year of implementation since SFAS-96 requires excess deferred taxes to be reflected in income at the time of adoption.

To incorporate the liability method of accounting for income taxes prescribed by SFAS-96 into Part 32 of the Commission's rules, this Notice of Proposed Rulemaking would add four new accounts to the Uniform System of Accounts. The new accounts are Account 1437, Recoverable tax liabilities (a regulatory asset account); Account 4341, Net noncurrent deferred tax liability adjustments; Account 4361, Deferred regulatory liability (a regulatory liability account); and Account 7251, Deferred tax liability adjustments-net. These new accounts would be employed to reflect the adjustments to deferred tax balances that are necessary as a result of adopting SFAS-96.

Finally, the Commission proposes that these four accounts be excluded from the rate base and net income determinations for regulatory purposes except for the unprotected excess deferred taxes previously mentioned. This approach would avoid adding new complexities to the rate base and net income determinations and would not subject the new accounts to the Commission's joint cost or separations rules.

Paperwork Reduction Act

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed in the Act.

Regulatory Flexibility Act

We certify that the Regulatory Flexibility Act is not applicable to the rule changes we are proposing in this

§ 32.4340 Net noncurrent deferred

related to nonoperating temporary

DEPARTMENT OF THE INTERIOR

proceeding. In accordance with the provisions of Section 605 of that Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of this Notice in the Federal Register. As part of our analysis of the proposal described in this Order, however, this Commission has considered the impact of the proposal on small telephone companies, *i.e.*, those serving 50,000 or fewer access lines. The action proposed herein would have a beneficial economic impact on all such telephone companies because their tax accounts for regulatory purposes would be comparable to those shown in their published financial statements.

Ordering Clauses

Accordingly, *It is ordered*, That pursuant to sections 1, 4(i), 4(j), 201–205, 218, 220, and 403 of the Communications Act of 1934, as amended, 47 USC sections 151, 154(i), 154(j), 201–205, 218, 220 and 403 and section 553 of the Administrative Procedure Act, 5 USC Sec. 553, notice is hereby given of proposed amendments to part 32 of this Commission's Rules, 47 CFR part 32 as shown below. We hereby give notice that in reaching our decisions in this proceeding we will not necessarily be limited to the comments and reply comments that may be filed, and that we may utilize other information, analyses, and reports, provided that in each such case a copy of the material relied upon will be associated with the record of this proceeding.

It is further ordered, that interested persons may file comments on the specific proposals discussed in this *Notice* on or before September 18, 1989. Reply comments shall be filed on or before October 3, 1989. In accordance with the provisions of § 1.419 of this Commission's Rules and Regulations, 47 CFR Section 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the comments will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street, NW., Washington, DC.

It is further ordered, That the Secretary shall serve a copy of this Notice of Proposed Rulemaking on state regulatory commissions.

List of Subjects in 47 CFR Part 32

Reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

Rule Changes

Part 32, Chapter 1 of Title 47, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for part 32 would continue to read as follows:

Authority: Secs. 4(i), 4(j) and 220 as amended; 47 U.S.C. 154(i), 154(j), and 220 unless otherwise noted.

2. Section 32.22 would be amended by revising paragraphs (a), (d) and (f) and removing and reserving paragraph (c) to read as follows:

§ 32.22 Comprehensive interperiod tax allocation.

(a) Companies shall apply interperiod tax allocation (tax normalization) to all book/tax temporary differences which would be considered material for published financial report purposes. Furthermore, companies shall also apply interperiod tax allocation if any item or group of similar items when aggregated would yield debit or credit entries which exceed or would exceed 5 percent of the gross deferred income tax expense debits or credits during any calendar year over the life of the temporary difference. The tax effects of book/tax temporary differences shall be normalized and the deferrals shall be included in the following accounts:

4100 Net Current Deferred Operating Income Taxes
4110 Net Current Deferred Nonoperating Income Taxes
4340 Net Current Deferred Operating Income Taxes
4350 Net Noncurrent Deferred Nonoperating Income Taxes

* * * * *

(c) [Reserved]

(d) The records supporting the activity in the deferred income tax accounts shall be maintained in sufficient detail to identify the nature of the specific temporary differences giving rise to both the debits and credits to the individual accounts.

* * * * *

(f) The tax differentials to be normalized as indicated herein shall also encompass the additional effect of state and local income tax changes on Federal income taxes produced by the provision for deferred state and local income taxes for book/tax temproary differences related to such income taxes.

* * * * *

3. Section 32.103 would be amended to add account 1437 to the list of accounts to read as follows:

§ 32.103 Balance sheet accounts for other than regulated-fixed assets to be maintained.

BALANCE SHEET ACCOUNTS

Account title	Class A account	Class B account
* * *	*	*
Recoverable tax liabilities	1437	1437
* * *	*	*

4. Section 32.1437 would be added to read as follows:

§ 32.1437 Recoverable tax liabilities.

This account shall include amounts of probable future revenue for the recovery of future increases in taxes payable.

5. Section 32.4000 would be amended to add accounts 4341 and 4361 to the list of accounts and the introductory text of § 32.4000 is republished to read as follows:

§ 32.4000 Instructions for balance sheet accounts—liabilities and stockholders' equity.

Liabilities and Stockholders' Equity Accounts to be Maintained by Class A and Class B telephone companies:

Account title	Class A account	Class B account
* * *	*	*
Net noncurrent deferred tax liability adjustments	4341	4341
* * *	*	*
Deferred regulatory liability	4361	4361
* * *	*	*

6. Section 32.4100 paragraph (d) would be revised to read as follows:

§ 32.4100 Net Current deferred operating income taxes.

* * * * *

(d) The classifiation of deferred income taxes as current or noncurrent shall be based on the expected turnaround of the temporary difference.

* * * * *

7. Section 32.4110 paragraph (g) would be revised to read as follows:

§ 32.4110 Net current deferred nonoperating income taxes.

* * * * *

(g) The classification of deferred income taxes as current or noncurrent shall be based on the expected turnaround of the temporary differences.

* * * * *

8. Section 32.4340 paragraphs (a) and (d) would be revised to read as follows:

§ 32.4340 Net noncurrent deferred operating income taxes.

(a) This account shall include the balance of income tax expense related to noncurrent items for regulated operations which have been deferred to later periods as a result of comprehensive interperiod tax allocation related to temporary differnces that arise from regulated operations.

* * * * *

(d) The classification of deferred income taxes as current or noncurrent shall be based on the expected turnaround of the temporary difference.

* * * * *

9. Section 32.4341 would be added to read as follows:

§ 32.4341 Net noncurrent deferred tax liability adjustments.

(a) This account shall include the noncurrent portion of deferred income tax charges and credits pertaining to Accounts 1437, Recoverable Tax Liabilities, 4361 Deferred Regulatory Liability and 7521 Deferred Tax Liability Adjustments-Net.

(b) This account shall be used to record adjustments to the accumulated deferred tax liabilities recorded in Account 4100 for:

(1) Tax effects of temporary differences accounted for under the flow-through method or treated as permanent differences prior to January 1, 1989.

(2) Reclassifications attributable to changes in tax rates prior to January 1, 1989.

(3) The tax effects of carryforward net operating losses and carryforward investment tax credits expected to reduce future taxes payable that are reported in published financial statements.

(4) Reversals of the tax effects of carryforward net operating losses and carryforward investment tax credits previously recorded in this account at the time they become recognized as reductions in current taxable income and current taxes payable on tax returns.

10. Section 32.4350 paragraphs (a) and (g) would be revised to read as follows:

§ 32.4350 Net noncurrent deferred nonoperating income taxes.

(a) This account shall include the balance of income tax expense (Federal, state and local) that has been deferred to later periods as a result of comprehensive interperiod allocation related to nonoperating temporary differences.

* * * * *

(g) The classification of deferred income taxes as current or noncurrent shall be based on the expected turneround of the temporary difference.

* * * * *

11. Section 32.4361 would be added to read as follows:

§ 32.4361 Deferred regulatory liability.

This account shall include amounts of probable future revenue reductions attributable to future decreases in taxes payable. As reductions occur, amounts recorded in this account shall be reduced with a debit entry and a credit entry to Account 4341, Net Noncurrent Deferred tax Liability Adjustments.

12. Section 32.6999 paragraph (b) would be amended to add account 7251 to the other income accounts listing to read as follows:

§ 32.6999 General.

* * * * *

(b) Other Income Accounts Listing.

Account title	Class A account	Class B account
* * *	*	*
Deferred tax liability adjustments-net	7251	7251
* * *	*	*

13. Section 32.7251 would be added to read as follows:

§ 32.7251 Deferred tax liability adjustment—net.

(a) This account shall be credited to record the tax effects of carryforward net operating losses and carryforward investment tax credits expected to reduce future taxes payable that have been debited to Account 4341, Net Noncurrent Deferred Tax Liability Adjustments.

(b) This account shall be debited for reversals of the tax effects of carryforward net operating losses and carryforward investment tax credits expected to reduce future taxes payable that have been debited to Account 4341, Net Noncurrent Deferred Tax Liability Adjustments.

[FR Doc. 89–20064 Filed 8–29–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule To Determine the Pallid Sturgeon To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the pallid sturgeon (*Scaphirhynchus albus*) to be an endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. The pallid sturgeon is a large fish known only to occur in the Missouri River, the Mississippi River downstream of the Missouri River, and the lower Yellowstone River. The species is threatened through habitat modification and apparent lack of reproduction. Numbers of fish reported have declined dramatically in the last two decades. Past commercial utilization likely exceeded biological recruitment. Pollution may be a problem over much of its range, and significant hybridization has been documented. Listing would provide protection for preservation of the species. The Fish and Wildlife Service (Service) is requesting data and comments from interested parties on this proposal.

DATES: Comments from all interested parties must be received by October 30, 1989. Public hearing requests must be received by October 16, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Missouri River Coordinator, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, P.O. Box 986, Pierre, South Dakota 57501. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Kent D. Keenlyne, Missouri River Coordinator, at the above address, telephone (605) 224–8693.

SUPPLEMENTARY INFORMATION:

Background

The pallid sturgeon was first described by S.A. Forbes and R.E. Richardson in 1905 from nine specimens collected from the Mississippi River near Grafton, Illinois, in June 1904

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regulatory mechanisms do not presently

problems for the fish in this and other

habitat will be addressed through the

(Forbes and Richardson 19DS). Known locally as the white sturgeon, they named it *Parascaphirhynchus albus* and suggested it be considered as its own genus. Later classifications, however, placed it in the genus *Scaphirhynchus* where it has remained (Bailey and Cross 1954).

The pallid sturgeon has a flattened, shovel-shaped snout; long, slender, and completely armored caudal peduncle; and lacks a spiracle (Smith 1979). The principal features distinguishing the pallid sturgeon from the darker shovelnose sturgeon are the absence of bony plates on the belly, 24 or more anal fin rays, 37 or more dorsal fin rays, and inner barbels under the snout are much shorter than outer barbels with the inner barbels less than six times the length of the head (Pflieger 1975). As with other sturgeon, the mouth is toothless, protrusible, and far under the snout while the skeletal structure is primarily cartilaginous (Gilbraith et al. 1988). It is one of the largest fish found in the Missouri-Mississippi River drainage with specimens approaching 39 kilograms (85 pounds) being reported (Gilbraith et al. 1988).

Pallid sturgeons require large, turbid, free-flowing riverine habitat with rocky or sandy substrate (Gilbraith et al. 1988). They are well adapted to life on the bottom and inhabit areas of swifter water than does the related but smaller shovelnose sturgeon (Forbes and Richardson 1909; Carlson et al. 1985).

The range of the pallid sturgeon is primarily the Missouri River and the Mississippi River downstream of its junction with the Missouri River (Gilbraith et al. 1988). Sightings have been reported from the mouth of the Mississippi to the mouth of the Missouri (1,860 kilometers or 1,154 miles), from the mouth of the Missouri to Fort Benton, Montana (3,330 kilometers or 2,065 miles), and in the lower 320 kilometers (200 miles) of the Yellowstone River. Sightings have occasionally come from near the mouths of large tributaries to the Mississippi River (Big Sunflower River and the St. Francis River) and Missouri River (Kansas River and Platte River); however, these are rare and may be due to the fish utilizing unusual flow conditions (Cross 1967). The total length of its range is approximately 5,725 kilometers (3,550 miles) of river.

A review of the literature shows a sharp decline in pallid sturgeon observations over the range of the species and especially so in the Missouri River from Gavins Point Dam to the Fort Peck Dam. In the 1960's, 500 observations were made (i.e., an average of 50 per year); in the 1970's, 209 observations (i.e., an average of 21 per year); and in the 1980's, 56 observations (an average of about 6 per year) over the entire 5,725 kilometers (3,550 miles) of range. The decline of the species appears to correspond with expanded commercial harvest while, during the same time, recruitment began to fail. The decline, however, also follows the extensive developments of the 1950's and 1960's of the Missouri and Mississippi Rivers. Deacon et al. (1979), Kallemeyn (1983), and Gilbraith et al. (1988) all attribute the decline, either directly or indirectly, to habitat modification. Factors include physical blocking of normal movement patterns of the fish by construction of the big dams; alteration of water quality and temperature; alteration of flows which may affect reproduction, timing of reproduction, or food sources; alteration of previous spawning habitats; reduction of habitat diversity; and reduced productivity of the river systems.

Dr. Michael D. Zagata, on behalf of the National Audubon Society, petitioned the Service to list the pallid sturgeon as "threatened" in an April 17, 1978, letter. The Service responded that the petitioner did not supply sufficient substantial evidence of the threats to permit it to move directly on the petition and informed the petitioner that it was gathering status data on this and several other species. On December 30, 1982, the Service included the pallid sturgeon in a notice of review published in the **Federal Register** (47 FR 58456). This notice addressed vertebrate species that were currently under review for listing as endangered or threatened, and indicated that substantial information was available to support the biological appropriateness of proposing to list this species as endangered or threatened. On June 16, 1988, a petition was received by the Service from the Dakotah Chapter of the Sierra Club requesting that the pallid sturgeon be listed as an endangered species throughout its range. A positive finding on this petition was made in September 1988 and subsequently published by the Service in the February 23, 1989, **Federal Register** (54 FR 7813). This notice stated that the petition was accepted and that the Service had one year from the date that the petition was received to publish its findings in the **Federal Register**. This proposal constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the pallid sturgeon (*Scaphirhynchus albus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Alteration of habitat has been a major factor in the decline of this species. Approximately 51 percent of its range has been channelized, 28 percent impounded, and the remaining 21 percent affected by upstream impoundments and altered flow regimes. All of these factors have adversely affected the fish by blocking movements to spawning and/or feeding areas, destroying spawning areas, altering conditions or flows of potential remaining spawning areas, reducing food sources or the ability to obtain food, or altering remaining substrates and conditions necessary for the fish's survival. Of the approximately 5,725 kilometers (3,550 miles) of former habitat for the pallid, virtually all of it has been drastically modified in one manner or another.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Since it was not described as a separate species until 1905, many of the early reports of sturgeon catches during the heyday of commercial fishing in the late 1800's, during which time many of the sturgeon populations were severely reduced, likely grouped it with the lake or shovelnose sturgeon. During the early years of the upper Missouri reservoirs (1950's and 1960's), pallid sturgeon were relatively common and were harvested commercially in both South Dakota (Gasaway 1970) and North Dakota (Carufel 1953) where they were locally called "lake" sturgeon. During this same period, however, researchers began to notice that they were unable to find reproduction of the species, even though large adults were still present (Beckman and Elrod 1971; June 1976; and Walburg 1977). By 1988, 11 of the 13 states which represent its range had classified it as a species of concern under their various programs (Gilbraith et al. 1988).

The pallid sturgeon is considered a fine eating fish, and the roe is suitable for caviar. Its large size makes it a desirable trophy sport fish (Gilbraith et al. 1988).

C. *Disease or predation.* No information is available regarding diseases of the pallid sturgeon. We are not aware of specific disease or predation problems.

D. *The inadequacy of existing regulatory mechanisms.* Adequate

regulatory mechanisms do not presently exist to protect the fish and especially so when considering that most of its range constitutes interjurisdictional waters or is connected to interstate waters. The species is presently not classified under the State listing programs in Arkansas or Mississippi and presumably may be harvested. Kentucky still allows harvest of the species. Sturgeon over 16 pounds (presumed to be a pallid sturgeon if over that weight) must be released in Montana, and sturgeon over 36 inches long (presumed to be a pallid sturgeon if longer than that length) must be released in North Dakota.

Weight and length provisions, however, do not protect young or smaller pallid sturgeons. Pallid sturgeons must be released in Iowa, Kansas, Missouri, Nebraska, and South Dakota (Gilbraith et al. 1988).

E. *Other natural or manmade factors affecting its continued existence.* Although more information is needed, pollution is a likely threat to the species over much of its range. Various fish harvest and consumption advisories exist or have existed as a result of manmade pollution from near Kansas City, Missouri, to the mouth of the Mississippi, which represents about 45 percent of the pallid sturgeon's range. Like other sturgeons, the pallid sturgeon is an opportunistic feeder that feeds on aquatic insects, crustaceans, mollusks, annelids, eggs of other fish, and sometimes other fish. Although utilizing aquatic insects, the pallid is noted as having a high incidence of fish in its diet also (Cross 1967; Kallemeyn 1983; and Carlson et al. 1985). Being a bottom feeder of aquatic forms, one would expect it to be exposed to various pollutants, if present.

Inability to document pallid sturgeon reproduction in recent years has been previously noted. Gilbraith et al. (1988) indicate that there has been no documented reproduction in a decade.

Gilbraith et al. (1988) indicate that male pallids mature at age three or four years. In extensive sturgeon studies in the late 1970's, Carlson et al. (1985) found that hybridization had occurred between the pallid sturgeon in Missouri and the much more abundant shovelnose sturgeon. In two years of study (1978 and 1979), only 11 pallid sturgeon and 12 hybrids were found. The study area comprised approximately 25 percent of the entire range of the pallid sturgeon. The small number of pallids found, the low frequency of reproduction, and the apparent lack of recruitment in the species, plus the high rate of hybridization over a significant portion of its range portends serious problems for the fish in this and other areas as well if the same phenomenon has or is occurring elsewhere in similar habitat situations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the pallid sturgeon as an endangered species without critical habitat. The habitat of the species has been altered through damming, channelization, altered and/or degraded water quality, and altered flows to the detriment of the fish. Past harvest for commercial purposes may have surpassed replenishment capability. Commercial harvest of sturgeon may still pose a threat in certain areas of its range. Existing regulations are inadequate to protect the species from further decline. Pollution may be a serious threat over a significant portion of its range, and hybridization is a known threat. Threatened status is not appropriate because *Scaphirhynchus albus* is in danger of extinction throughout its range due to the apparent lack of recruitment of the species for over 15 years, and current habitat threats which have brought the species to this low level are not likely to be modified to benefit the species without protection under the Act. For reasons given below, critical habitat is not proposed.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently determinable or prudent for this species. Critical habitat cannot be determined at this time due to the paucity of information on the species life requisites and the wide dispersal of limited sighting records in recent years. Moreover, even if it could be determined, it may not be prudent to identify critical habitat to the public. As noted in Factor "B" of the "Summary of Factors Affecting the Species," the pallid sturgeon is a large sturgeon and might be sought by sport fishermen as a trophy specimen. Furthermore, sturgeon roe may be harvested as caviar. Publication of critical habitat maps and descriptions in the **Federal Register** could negatively impact the species by stimulating interest in the pallid sturgeon, making it more vulnerable to take, and increasing enforcement problems. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, the Service does not propose to determine critical habitat for the pallid sturgeon at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices.

Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Being found primarily in navigable waters of the United States and in areas of considerable Federal land ownership interests, consultation procedures could play a significant role in improving the welfare of the pallid sturgeon.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. With respect to *Scaphirhynchus albus*, it is anticipated that few, if any, trade permits would ever be sought or issued, since the species is not common in the wild and is unknown in cultivation for roe.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reason why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service. Such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal. Such requests must be made in writing and be addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited here is available upon request from the Missouri River Coordinator in Pierre, South Dakota (605/224-8693) (see Addresses above) or the Fish and Wildlife Enhancement Office, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/236-7398).

Author

The primary author of this proposed rule is Dr. Kent D. Keenlyne, Missouri River Coordinator (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 et seq.); Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Fishes, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
*	*	*	*	*	*	*	
Sturgeon/pallid	*Scaphirhynchus albus*	U.S.A. (AR, IA, IL, KS, KY, LA, MO, MS, MT, ND, NE, SD, TN).	Entire	E		NA	NA
*	*	*	*	*	*	*	

Dated: July 18, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-20307 Filed 8-29-89; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Lower Keys Rabbit and Threatened Status for the Squirrel Chimney Cave Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Lower Keys rabbit (*Sylvilagus palustris hefneri*) to be an endangered species and the Squirrel Chimney cave shrimp (*Palaemonetes cummingi*) to be a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). These species are found only in Florida. The Lower Keys rabbit is restricted to a few keys in Monroe County and is endangered by loss of wetlands to residential development. The Squirrel Chimney cave shrimp is restricted to one site in Alachua County, Florida. It is threatened by potential development. This proposal, if made final, would implement the protection and recovery provisions afforded by the Act for these species. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by October 30, 1989. Public hearing requests must be received by October 16, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

The Lower Keys rabbit (*Sylvilagus palustris hefneri*) is an island subspecies of the widespread marsh rabbit. The subspecies was described by Lazell in 1984, based on a specimen from Sugarloaf Key, Monroe County, Florida (Lazell 1984). The Lower Keys rabbit measures about 40 centimeters (16 inches) in total length and has brownish fur dorsally and gray fur ventrally. It differs from the marsh rabbit of peninsular Florida (*Sylvilagus palustris paludicola*) principally in skull characters.

In recent times, the Lower Keys rabbit was found on at least ten of the Lower Keys, but may now be extirpated from five of these. The rabbit does not occur east of the Seven Mile Bridge; it is replaced in the Upper Keys by the subspecies *Sylvilagus palustris paludicola*. The Lower Keys rabbit is restricted to marshes, ranging from saline to fresh water. Salt marshes in the area are typically vegetated with fringerush (*Fimbrystylis* sp.), buttonwood (*Conocarpus erectus*), cordgrass (*Spartina alterniflora*), saltwort (*Batis maritima*), glasswort (*Salicornia virginica*), sawgrass (*Cladium jamaicense*), and sea oxeye (*Borrichia frutescens*). Fresh water marshes support cattail (*Typha latifolia*), sedges (*Cyperus* sp.), and sawgrass. Marshes are very limited in the Lower Keys, since mangroves occupy many coastal areas and interior fresh water habitat is scarce. Known localities for the Lower Keys rabbit are on Federal (National Key Deer Refuge, Key West Naval Air Station), State (Florida Department of Transportation), and private lands. The primary cause of the decline of the Lower Keys rabbit is the filling of wetlands for residential, commercial, and military purposes.

The species was considered a category 2 species in the Service's notice of review published in the **Federal Register** of September 18, 1985 (50 FR 37958), and also in the notice of review published in the **Federal Register** of January 6, 1989 (54 FR 554), indicating that listing was possibly appropriate.

The Service was petitioned to list the Lower Keys rabbit as an endangered species by Ms. Joel Beardsley in a letter received April 17, 1985. Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982, requires that for any such listing petition containing substantial information, a finding be made within 12 months of receipt of the petition. The Service made a finding that the petition presented substantial information and that the requested action may be warranted on August 30, 1985 (50 FR 35272). Subsequent 1-year findings for 1986 (51 FR 29673; August 20, 1986), 1987 (53 FR 25512; July 7, 1988), and 1988 (53 FR 31723; August 19, 1988) were that the petition was warranted but precluded by other listing activities. In April 1989 the Service made a final finding, based on additional status survey information, that listing of the species was warranted. Publication of the present proposal implements that finding.

The Squirrel Chimney cave shrimp (*Palaemonetes cummingi*), a decapod crustacean of the family Palaemonidae, was described by Chase in 1954. It measures about 30 millimeters (1.2 inches) in total length and is transparent. The body and eyes are unpigmented, and the eyes are reduced in size in comparison to surface-dwelling species of *Palaemonetes*. The Squirrel Chimney cave shrimp (also known as the Florida cave shrimp) is restricted to Squirrel Chimney, a sinkhole near Gainesville, Alachua County, Florida. The site is privately owned. Squirrel Chimney is a small sinkhole which leads to a flooded cave system over 30 meters (100 feet) deep. Several other cave-dwelling invertebrates are found in Squirrel Chimney: McLane's cave crayfish (*Troglocambarus maclanei*), the light-fleeing crayfish (*Procambarus lucifugus*), the pallid cave crayfish (*Procambarus pallidus*) (a category 2 candidate for Federal listing), and Hobb's cave amphipod (*Crangonyx hobbsi*). The site supports one of the richest cave invertebrate faunas in the United States. In 1983, the site was proposed for recognition as a National Natural Landmark, but the National Park Service has not yet taken final action on the proposal.

The Squirrel Chimney cave shrimp is considered threatened by the Florida Committee on Rare and Endangered Plants and Animals, while the other four species are considered species of special concern. The Squirrel Chimney cave shrimp was classified a category 2 species in the Service's May 22, 1984, invertebrate review notice (49 FR 21664), and also in the animal notice of review published January 6, 1989 (54 FR 554). It is threatened by potential residential development and changes in land use.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Lower Keys rabbit (*Sylvilagus palustris hefneri*) and the

Squirrel Chimney cave shrimp (*Palaemonetes cummingi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* (1) Lower Keys rabbit—This species probably originally occurred in suitable habitat throughout the larger Lower Florida Keys. Lazell (1984) reported the rabbit from Lower Sugarloaf, Geiger, Saddlebunch, Boca Chica, and Big Pine Keys. He documented 13 sites from these keys (records in Florida Natural Areas Inventory, Tallahassee, Florida). Based on interviews with local residents, he believes that the species also formerly occurred on Cudjoe, Ramrod, Middle Torch, Big Torch, and Key West Keys, but has been extirpated at these sites (J.D. Lazell, The Conservation Agency, *in litt.*, 1985). Lazell (*in litt.* 1985) also provided a rough population estimate, based on pellet counts, of 259 remaining Lower Keys rabbits. Based on interviews with local residents, he believed that the Lower Keys rabbit had been locally common as recently as the 1950's.

The Refuge Manager of the Service's National Wildlife Refuge Complex in the Florida Keys (Key Deer, Key West, and Great White Heron) reviewed the annual reports of that station for information on the Lower Keys rabbit (*in litt.* 1986). The rabbit was known to be present on Refuge lands on Boca Chica, Saddlebunch, and Big Pine Keys, but not on the smaller, outer keys of these refuges. The species was not considered abundant, and was believed to be restricted to keys with available fresh water. Only a few rabbits have been seen since 1984. Howe (1988) surveyed Lazell's 13 sites, as well as additional areas, in a status survey funded by the Service and carried out by the Florida Game and Fresh Water Fish Commission. He found rabbits at 12 locations (one additional site was found following the conclusion of his survey), while they appear to have been extirpated from 4 or possibly 5 previously known sites (Howe, personal communication). Filling for development or road construction has resulted in the destruction of the rabbit's habitat at these sites. Only 6 of the 13 remaining known sites are secure from development. The species may also be extirpated from Saddlebunch Key, where most of the habitat has been destroyed. Howe estimates that 200–400 Lower Keys rabbits remain on Sugarloaf, Welles, Annette, Boca Chica, Big Pine, and Hopkins Keys in small, scattered populations.

(2) Squirrel Chimney cave shrimp—This species is known from only one sinkhole. Any detrimental change to the sinkhole or the underlying aquifer has the potential to adversely affect or even cause the extinction of the species. The property surrounding the sinkhole is currently oak hammock and pine plantation, but it may be developed for residential use (single-family houses) in the foreseeable future. The property is in an actively developing area on the outskirts of Gainesville. Septic tanks and the use of pesticides and herbicides associated with residential development have the potential to degrade water quality in the aquifer, and human activities in the vicinity of the sinkhole could damage the vegetation in and around the sink. Forestry practices have the potential to damage the sinkhole through erosion or pesticides. The current property owners intend to give The Nature Conservancy the first option to purchase the land around the sinkhole, but even if this site is acquired, the sinkhole will remain vulnerable to development in the near vicinity.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The Lower Keys rabbit was actively hunted in the past (Lazell 1985), but it is not known whether such activity continues. The current small population size and limited distribution of this animal would make any hunting a serious threat. The Squirrel Chimney cave shrimp is restricted to one small site that could be seriously damaged by a single act of vandalism.

C. *Disease or predation.* The Lower Keys rabbit is vulnerable to predation by feral house cats, which are common on the Lower Keys. Mammalian predators such as cats are not native to the Lower Keys, and wildlife there, as on many islands, may not be well adapted to withstanding such predation. Disease or predation are not known to be affecting the Squirrel Chimney cave shrimp.

D. *The inadequacy of existing regulatory mechanisms.* No existing regulatory mechanisms apply to the Lower Keys rabbit or the Squirrel Chimney cave shrimp.

E. *Other natural or manmade factors affecting its continued existance.* The Lower Keys rabbit occurs in small, disjunct populations which may persist only due to migration among colonies. The continuing urbanization of the Lower Keys makes such movements increasingly difficult. Other natural or manmade factors are not known to be affecting the Squirrel Chimney cave shrimp.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Lower Keys rabbit as an endangered species and the Squirrel Chimney cave shrimp as a threatened species. The Lower Keys rabbit is in danger of extinction throughout a significant portion, if not all, of its range. While not in immediate danger of extinction, the Squirrel Chimney cave shrimp is likely to become an endangered species in the foreseeable future.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Lower Keys rabbit or the Squirrel Chimney cave shrimp. Publication of critical habitat maps for the Lower Keys rabbit could result in hunting or poaching of this species in its few remaining sites. Federal agencies with Lower Keys rabbits on their properties have been notified. If the rabbit is listed as an endangered species, their activities will be subject to Section 7 of the Act, as discussed under "Available Conservation Measures."

The Squirrel Chimney cave shrimp is restricted to a single known locality that could easily be damaged by vandalism (see factor "B." above). The private landowners do not desire visitors at the site. No Federal activities are known or anticipated at the site.

Publication of critical habitat descriptions would make both species more vulnerable to take or vandalism. For the above reasons, the Service has concluded that designation of critical habitat is not prudent for the Lower Keys rabbit or the Squirrel Chimney cave shrimp. All involved parties and land owners will be notified of the location and the importance of protecting the habitat of these species. Protection will be addressed through the recovery process and through the Section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. For the Lower Keys rabbit, affected Federal agencies are the U.S Navy and the U.S. Army Corps of Engineers. The rabbit occurs on Key West Naval Air Station, and the Corps has jurisdiction over some of the wetlands used by the rabbit through its permitting authority pursuant to Section 404 of the Clean Water Act. The Navy currently anticipates no conflicts with its mission on Key West Naval Air Station. The Corps must now evaluate wetland permit applications for potential effects on the Lower Keys rabbit. If appropriate, the Corps must confer with the Service concerning the Lower Keys rabbit. Wetland permitting in some areas may become more restrictive.

No Federal agency involvement is anticipated for the Squirrel Chimney cave shrimp.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general trade prohibitions and exceptions that apply to endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or for special purposes consistent with the purposes of the Act.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data covering any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species;

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing to the Field Supervisor (see Addresses section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Chase, F.A., Jr. 1954. Two new subterranean shrimp (Decapoda:Caridea) from Florida and the West Indies, with a revised key to the American species. J. Wash. Acad. Sci. 44:318–324.

Howe, S.E. 1988. Lower Keys rabbit status survey. Final report of Florida Game and Fresh Water Fish Commission to Jacksonville Field Office of U.S. Fish and Wildlife Service under Cooperative Agreement 14-16-004-87-939. 10 pp.

Lazell, J.D., Jr. 1984. A new marsh rabbit (*Sylvilagus palustris*) from Florida's Lower Keys. J. Mamm. 65(1):26–33.

Author

The primary author of this proposed rule is Dr. Michael M. Bentzien (see Addresses section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under the groups indicated, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals:							
*	*	*	*	*	*	*	
Rabbit, Lower Keys	*Sylvilagus palustris hefneri*	U.S.A. (FL)	Entire	E	....	NA	NA
*	*	*	*	*	*	*	
Crustaceans:							
*	*	*	*	*	*	*	
Shrimp, Squirrel Chimney (=Florida) cave.	*Palaemonetes cummingi*	U.S.A. (FL)	NA	T	....	NA	NA
*	*	*	*	*	*	*	

Dated: July 18, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-20398 Filed 8-29-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the New England Fishery Management Council (Council) has submitted Amendment 3 (Amendment) to the Fishery Management Plan for Atlantic Sea Scallops (FMP) for review by the Secretary of Commerce. Written comments are invited from the public. Copies of Amendment 3 may be obtained from the address below.

DATE: Comments on the Amendment should be submitted on or before October 23, 1989.

ADDRESS: All comments should be sent to Richard Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Clearly mark the outside of the envelope "Comments on Amendment 3 to the Sea Scallop FMP."

Copies of the Amendment are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Resource Policy Analyst, (508) 281-9331.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review, approval and implementation. The Magnuson Act also requires that the Secretary, upon receiving the plan or amendment, immediately publish a notice of availability for public review and comment. The Secretary considers any public comments received in determining whether to approve the plan or amendment.

Amendment 3 would require all sea scallop dredge vessels, and all vessels landing more than 5 bushels (176.2 1) of sea scallops in the shell, to offload all fish (including sea scallops) within a 12-hour time window. In addition, the Amendment would require all other vessels landing more than 40 pounds (18.1 kg) of shucked scallops to offload all sea scallops within a specified offloading window. The proposed 12-hour offloading windows are as follows:

State of offloading	Period
ME, NH, NC, SC, GA & FL	7 a.m. to 7 p.m.
MA, RI & CT	5 a.m. to 5 p.m.
NY, NJ, DE, MD, VA & PA	6 a.m. to 6 p.m.

The purpose of this Amendment is to improve compliance with the meat-count/shell-height standards of the FMP by implementing a mandatory structure for the offloading of harvested sea scallops. Amendment 3 is also designed to enhance the efficiency and effectiveness of NMPS enforcement efforts in the Atlantic sea scallop fishery.

The windows cover different periods in different states where Atlantic sea scallops are offloaded, to accommodate industry practices, which vary by state. The windows would reduce by half the amount of time, during any day, within which scallops could lawfully be offloaded from any vessel subject to the offloading windows. Offloading outside an offloading window would constitute a separate violation of the regulations—regardless of the meat-count/shell-height measurements of the scallops being offloaded.

Regulations proposed by the Council to implement this Amendment are scheduled to be published within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 650

Fish, Fisheries.

Dated: August 24, 1989.

David S. Crestin,

Deputy Director, Office of Fishery Conservation and Management.

[FR Doc. 89-20395 Filed 8-25-89; 11:07 am]

BILLING CODE 3510-22-M

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50 CFR Part 651

RIN 0648-AC79

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the New England Fishery Management Council (Council) has submitted Amendment #3 (Amendment) to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) for review by the Secretary of Commerce. Written comments are invited from the public on the Amendment and associated documents.

DATE: Comments will be accepted until October 23, 1989.

ADDRESSES: All comments should be sent to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Clearly mark the outside of the envelope "Comments on Multispecies Amendment #3".

Copies of the Amendment, Environmental Assessment, and Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Resource Policy Analyst, 508-281-9252.

SUPPLEMENTARY INFORMATION: This amendment was prepared under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act)(16 U.S.C. 1801 *et seq.*). The Magnuson Act requires that a council-prepared fishery management plan or amendment be submitted to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the document, immediately publish a notice of its availability for public review and comment. This amendment proposes measures for managing the multispecies finfish fisheries in the Northwest Atlantic.

The purpose of the amendment is to enable the New England Fishery Management Council, its Multispecies Committee, NMFS, and other management agencies to respond in a timely manner to protect large concentrations of juvenile, sublegal, and spawning fish. Under this system, measures ranging from mesh size restrictions to limited closed areas could be implemented. This system is intended to: 1) Enhance age-at-entry controls to enable the FMP to achieve its objectives; 2) eliminate the need for the type of emergency actions which were most recently implemented in the Northeast Multispecies fishery; and 3) be able to respond to requests from the fishing industry for timely action in a way that improves the climate for cooperation and progress between the Council and the fishing industry.

Formal review by the Secretary began August 24, 1989, and proposed regulations for this amendment will be filed within 15 days for publication.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 24, 1989.

David S. Crestin,

Deputy Director, Office of Fishery Conservation and Management.

[FR Doc. 89-20394 Filed 8-25-89; 11:06 am]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 90761-9161]

RIN 0648-AC82

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes two changes to the regulations implementing the fishery management plan for Pacific coast groundfish fisheries in the exclusive economic zone (3-200 nautical miles) off the coasts of Washington, Oregon, and California. The first change would require certain commercially caught groundfish species to be sorted prior to the first weighing after offloading. The second change would prohibit possession of unauthorized fixed gear on a fishing vessel. These changes would improve efficiency in enforcing fishing restrictions.

DATE: Comments on this proposed rule are invited until September 29, 1989.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Bldg. 1, Seattle WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140; or Rodney R. McInnis at (213) 514-6202.

SUPPLEMENTARY INFORMATION: Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), a Fishery Management Plan for the Pacific Coast Groundfish Fishery off the coasts of Washington, Oregon, and California (FMP) was prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary). Implementing regulations are codified at Parts 620 and 663 for the domestic fishery and at Part 611 for the foreign fishery.

The Council requested two changes in the implementing regulations in order to facilitate enforcement. These changes are discussed below.

Sorting. Trip limits restrict the amount of a particular species or group of species that may be landed by a vessel from a single fishing trip. Trip limits frequently are used to prolong the fishery for certain species, thus providing a year-round supply of groundfish to the market. They also are used to minimize or prevent waste and biological stress for those species that would be unavoidably caught, and thus discarded, after a quota is reached. They have been applied to landings of Pacific ocean perch, widow rockfish, sablefish, the deepwater complex (sablefish, Dover sole, arrowtooth flounder, and thornyheads), yellowtail rockfish, and the more than 70 species of rockfish in the *Sebastes* complex.

State and Federal enforcement officials advised the Council that enforcement is difficult when species with trip limits are not sorted before weighing by the processor. The problem is particularly acute when there are large loads of mixed species, some with trip limits and some without. Enforcement officers at the scene of the unloading must estimate the poundage of each trip limit species to determine whether a violation has occurred. If, in the judgment of the officer, a violation has occurred, the processor's operation must be interrupted while each species with a trip limit is sorted and weighed. This can take 6 to 8 hours and result in a temporary shut-down of the plant's operations.

The proposal that sorting be required will not substantially increase direct or indirect costs on the fishery as a whole. Although some fishermen may find sorting to be an inconvenience, sorting helps fishermen determine when to stop fishing on a particular species and is the only way for both fishermen and enforcement agents to verify compliance with the regulations. Most fishermen already sort their catch at sea or as fish are offloaded from the vessel. Also, because processors pay different prices for different species, those species routinely are sorted according to market categories before they are weighed. Market categories often are designated for species with trip limits. The State of Washington already has a regulation requiring species with trip limits to be sorted. A Federal regulation requiring sorting would not change operating procedures for fishermen and processors in that state. The States of Oregon and California plan to institute state sorting requirements concurrent with implementation of the Federal regulation.

The Council agreed that a sorting requirement is necessary to enhance enforcement and compliance, and to reduce disruption of processing operations. However, the Council also concluded that it was unnecessary to require sorting of a total delivery smaller than 3,000 pounds. Most trip limits, or trip frequency limits (which restrict the number of landings a vessel may make in a given time period), have not been applied below a certain level, usually 3,000 pounds or less, depending on the species involved.

Prohibiting possession of unauthorized fishing gear. The Council also recommended prohibiting possession of unauthorized fixed gear on commercial fixed gear fishing vessels. Fixed gear includes set nets, traps or pots, longlines, or commercial vertical hook-and-line gear. The definitions and regulations concerning legal fixed gear are found at 50 CFR 663.2 and 663.26 and may be modified under 50 CFR 663.25.

Presently, there is no prohibition on carrying unauthorized fixed gear, such as pots without biodegradable panels and longlines without proper marking, aboard any fishing vessel. Pulling and checking gear on the grounds by enforcement agents is time-consuming and can disrupt fishing operations. The Council's proposal was intended to facilitate enforcement by allowing enforcement agents to inspect fixed gear at the dock rather than at sea. The Council recommended that trawl vessels be exempt from this prohibition because they sometimes retrieve derelict fixed gear that does not comply with the regulations at § 663.26. Trawlers that encounter and retrieve derelict fixed gear must be able to retain it for the purpose of returning it to shore for disposal, as required by Annex V of the International Convention for the Prevention of Pollution from Ships, 1973 (Annex V of MARPOL 73/78), which prohibits the at-sea disposal of fishing gear.

NMFS, in its review of the Council's recommendation, has discovered that the Council unintentionally overlooked the fact that its recommendation might be contradictory to Annex V with regard to fixed gear vessels that also occasionally become entangled with illegal, derelict fixed gear at sea. The Council's recommendation would prohibit possession of such gear by fixed gear vessels, whereas Annex V would necessitate bringing it to shore for disposal. Furthermore, the recommendation might appear to some to discriminate against fixed gear vessels because it does not prohibit the retention of illegal fixed gear aboard other types of commercial fishing vessels such as trawlers.

Therefore, to accomplish the intent of the Council's recommendation, NMFS has revised the proposal so that the possession of illegal fixed gear is prohibited onboard all commercial fishing vessels unless such gear is the gear of another vessel which has been retrieved at sea, in which case such gear must be made inoperable or be stowed in a manner not capable of being fished. Thus all commercial fishing vessels would be able to retain, for the purpose of disposal on shore, derelict fixed gear retrieved at sea, consistent with Annex V. NMFS also intends that any vessel bound for Alaska with fixed gear onboard be exempt from this prohibition, unless the vessel also fishes for groundfish off the coasts of Washington, Oregon, or California during the same trip.

This prohibition also would not apply to the possession of unauthorized trawl gear. Authorized trawl gear differs according to the area fished and type of fishing operation. For example, legal mesh size varies depending on the type of trawl gear used (midwater, bottom, or roller trawl), and, for roller trawls, the area fished. Furthermore, fishermen are permitted to use midwater, bottom, or roller trawls during the same fishing trip. Therefore, a prohibition against possession of unauthorized trawl gear would be difficult to enforce, and moreover, could disrupt normal fishing operations.

Classification

This proposed rule is published under authority of section 305(g) of the Magnuson Act, 16 U.S.C. 1855(g), and was prepared at the request of the Council. The Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Under Secretary, NOAA, before publishing a final rule, will take into account the data and comments received during the comment period.

The Assistant Administrator has determined that the proposed rule falls within a categorical exclusion from the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, under NOAA Directive 02-10, because it is routine (i.e., would not result in any significant change from the status quo) and because it has limited potential for effect on the human environment. A biological benefit would accrue from discouraging the use of unauthorized fixed gear because detection would be more likely with shoreside enforcement. In particular, pots without escape panels that are lost at sea continue fishing indefinitely. If use of such fixed gear is lessened, an unquantifiable benefit would result.

The Under Secretary has determined that it is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 603 *et seq.* While few costs are expected from the action, enforcement benefits and more efficient procedures would result from these regulations. The proposed sorting requirement involves direct or indirect costs to the industry. However, the incremental cost of this regulation would be small, because many fishermen already sort their catch according to market categories or to monitor compliance with trip limits, deliveries below 3,000 pounds would be exempt, and the State of Washington already requires sorting. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

This rule implements the FMP and amendments for which consistency determinations have previously been made under the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Foreign relations.

Dated: August 24, 1989.

James E. Douglas, Jr.,
Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

PARTS 663—PACIFIC COAST GROUNDFISH FISHERY

For the reasons set forth in the preamble, 50 CFR Part 663 is proposed to be amended as follows:

1. The authority citation for 50 CFR Parts 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.7, the introductory paragraph is revised to reference § 620.7, and paragraphs (l) and (m) are added as follows:

§ 663.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to:

* * * * *

(l) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, if the weight of the total delivery exceeds 3,000 pounds (round weight or round weight equivalent).

(m) Possess, deploy, haul, or carry onboard a fishing vessel subject to these regulations (50 CFR Part 663) a set net, trap or pot, longline, or commercial vertical hook-and-line that is not in compliance with the gear restrictions at § 663.26, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of Marpol 73/78).

[FR Doc. 89-20686 Filed 8-25-89; 11:05 am]

BILLING CODE 3510-22-M

Notices

Federal Register

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timber stand regeneration, and road

for this EIS, will make a decision

DEPARTMENT OF COMMERCE

Notices

Federal Register
Vol. 54, No. 167
Wednesday, August 30, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Mex Mountain Timber Sales, Clearwater National Forest, Idaho County, Idaho; Intent To Prepare an Environmental Impact Statement

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will analyze and disclose the environmental impacts of a proposal to harvest timber, regenerate harvested timber stands, reconstruct existing roads, and construct new roads in a portion of the Fish Creek drainage on the Lochsa Ranger District. The proposed action is located within a portion of the RARE II North Lochsa Face Roadless Area (#1307). An environmental impact statement will be prepared which will document the analysis. This EIS will tier to the Clearwater National Forest Land and Resource Managmeent Plan FEIS of September 1978, which provides overall guidance in achieving the desired future condition for the area. The primary purpose and goal of the proposed action is to help satisfy short-term demands for timber and maintain a continuous supply of timber for the future, while maintaining the high quality wildlife and fishery values of the study area.

To date, considerable scoping and analysis has been done in regard to the proposed action. During October of 1987, a letter of management intent was sent to the staff of the Clearwater National Forest, State agencies, the Nez Perce Indian Tribe, and other known local interest groups and individuals. Concurrently, notices were put in local and regional newspapers informing the public of the analysis, and seeking comment. In December 1988, an Interdisciplinary Team (IDT) was assigned to complete the analysis after receiving a number of comments during the initial scoping phase. In response to the identified issues and concerns, the IDT has so far described eight alternative management proposals for the study area. The Team has met with agencies and interest groups to explain the analysis process and the alternatives that have been developed. The Forest Service is now seeking further information and comments from Federal, State, local agencies, and other individuals or organizations who are interested in or affected by the proposed action. This additional input will be used in preparing the Draft EIS (DEIS). This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignficant issues or those which have been covered by a relevant previous enviromental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential enviromental effects of the alternatives.
6. Determination of potential cooperating agencies.

The agency invites written comments and suggestions on the issues and management opportunities for the area being analyzed.

DATE: Comments concerning the scope of the analysis should be received by September 31, 1989 to receive timely consideration in the preparation of the Draft EIS.

ADDRESS: Send written comments to Jon B. Bledsoe, District Ranger, Lochsa Ranger District, Rt. 1, Box 398, Kooskia, ID 83539.

FOR FURTHER INFORMATION CONTACT: Dennis Griffith, Mex Mountain Analysis Interdisciplinary Team Leader, or Jon B. Bledsoe, District Ranger, Lochsa Ranger District, Clearwater National Forest, (208–926–4275).

SUPPLEMENTARY INFORMATION: The analysis area in which the proposed management activities would occur consists of approximately 13,560 acreas of National Forest land in the northwest portion of the Fish Creek drainage on Lochsa Ranger District. The entire study area is located within the inventoried 113,662-acre North Lochsa Slope Roadless Area (#1307). The study area includes all or portions of: Sections 1, 2, 3, 4, and 10 of T.34N., R.7E.; Sections 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36 of T.35N., R7E.; and Sections 19, 30, and 31 of T.35N., R.8E., Boise Meridian.

The Land and Resource Management Plan for the Clearwater National Forest provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards, guidelines and management area direction.

The areas of proposed timber harvest, regeneration, and associated road construction and reconstruction activities within the Mex Mountain analysis area are located in Plan management areas A6, C8S, and M2.

Management area A6 consists of a ½-mile wide corridor on either side of the Lewis and Clark National Historic Trail and the Lolo Motorway, a primitive road constructed in the mid-1930's. These cultural resources have national and regional significance, and the management goal for the corridor is to protect the intrinsic values of these resources, while providing opportunities for recreational activities oriented to traveling over them, understanding and appreciating the routes as historic travel routes across the Bitterroot Mountain range.

Management area C8S consists of lands by high value fishery streams, productive timberland, and key big-game summer range. The management goal for this area is maintenance of high quality fishery and wildlife values, while producing timber from the productive forest land.

Management area M2 consists of riparian areas including perennial streams, lakes, wetlands, and floodplains. It also includes the land within 100 feet from their margins. The management goal for these areas is to maintain them under the principles of multiple use as areas of special consideration, distinctive values, and integrated with adjacent management areas to the extent that water and other riparian-dependent resources are protected.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative in which timber harvest, timber stand regeneration, and road construction/reconstruction activities would not be implemented. Other alternatives will examine various levels and locations of timber harvest,

timber stand regeneration, and road construction/reconstruction activity. The various mixes of timber and non-timber resources values of each alternative will also be examined.

Under the alternatives that the Interdisciplinary Team has described to this point, up to 9.2 million board feet (MMBF) of timber could be harvested on 460 acres. Such an action would require the construction of 3.6 miles of new road and the reconstruction of 9 miles of existing road.

The EIS will disclose the environmental effects of alternative ways of implementing the Forest Plan. The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will disclose the site specific mitigation measures and their effectiveness.

Public participation will be especially important at several points in the analysis. People are encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. However, two key time periods have been identified for receipt of formal comments on the analysis:

- Scoping period (now through September 31, 1989).
- Review of the Draft EIS in November 1989.

The U.S. Fish and Wildlife Service, Department of Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the U.S. Fish and Wildlife Service will review the EIS and Biological Assessment and, if necessary, render a formal Biological Opinion of the effects on threatened and endangered species, including the grizzly bear and gray wolf.

Since the proposed action could affect cultural resources either listed on or eligible for listing on the National Historic Register, the consultation process established in Title 36, Code of Federal Regulations, Part 800.4, will be followed during the analysis.

The DEIS is expected to be filed with the Environemental Protection Agency (EPA) and available for public review by November 15, 1989. At that time, the EPA will publish a Notice of Availability of the DEIS in the **Federal Register**. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in the final Environmenal Impact Statement (FEIS). The FEIS is scheduled to be completed by February, 1990. The Forest Service will respond in the FEIS to the comments received on the DEIS. The District Ranger for the Lochsa Ranger District, Clearwater National Forest, Jon B. Bledsoe, who is the reponsible official for this EIS, will make a decision regarding this proposal considering the comments, responses, environmental consequences discussed in the FEIS and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency published the notice of availability in the **Federal Register**. The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the enviromental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft enviromental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can be meaningfully consider them and respond to them in the final enviromental impact statment.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft enviromental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft enviromental statement or the merits of the alternatives formulated and discussed in the statement (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: August 10, 1989.

Jon B. Bledsoe,

District Ranger, Lochsa Ranger District, Clearwater National Forest.

[FR Doc. 89-20376 Filed 8-29-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Subcommittee on Export Administration of the President's Export Council; Closed Meeting

A closed meeting of the President's Export Council Subcommittee on Export Administration will be held Friday, September 15, 1989, 9 a.m. to 3 p.m., U.S. Department of Commerce, Herbert C. Hoover Building, Room 4830, 14th and Constitution Avenue NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

Executive Session: 9 a.m.–3 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of export for national security, foreign policy or short supply reasons under the Export Administration Amendments Act of 1979, as amended. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 27, 1987, pursuant to section 10 (d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Subcomittee, dealing with the classified materials listed in 5 U.S.C. 552b (c) (1) shall be exempt from the provisions relating to public meetings found in section 10 (a) (1) and (a) (3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC.

For further information, contact Betty Ferrell, (202) 377-2583.

Dated: August 23, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 20345 Filed 8-29-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[C-549-804]

Initiation of Countervailing Duty Investigation: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Thailand of carbon steel butt-weld pipe fittings (pipe fittings) as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination on or before October 27, 1989.

EFFECTIVE DATE: August 30, 1989.

FOR FURTHER INFORMATION CONTACT: Carole Showers or Margot Paijmans, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3217 and (202) 377–1442.

SUPPLEMENTARY INFORMATION:

The Petition

On August 3, 1989, we received a petition in proper form from the U.S. Butt-Weld Fittings Committee, filed on behalf of the U.S. industry producing carbon steel butt-weld pipe fittings. In compliance with the filing requirements of section 355.12 of the Commerce Regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 355.12), the petition alleges that manufacturers, producers, or exporters of pipe fittings in Thailand receive, directly or indirectly, certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, section 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioner is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product from Thailand materially injure, or threaten material injury to, a U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(E) of the Act and that it has filed the petition on behalf of the U.S. industry manufacturing the products that are subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

Initiation of Investigation

Under section 702 (c) of the Act, we must make a determination on whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that: (1) Alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on pipe fittings from Thailand and have found that it meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of pipe fittings in Thailand, as described in the "Scope of the Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before October 27, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is classified solely according to the appropriate HTS subheading(s). The HTS subheadings are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The product covered by this investigation is carbon steel butt-weld pipe fittings, having an inside diameter of less than 360 millimeters (fourteen inches), imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). The product is classified under subheading 7307.93.30 of the *Harmonized Tariff Schedule* (HTS) and were formerly classifiable under item 610.88.00 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Allegations of Bounties or Grants.

Petitioner lists a number of practices by the Government of Thailand which allegedly confer bounties or grants on manufacturers, producers, or exporters of pipe fittings in Thailand. We are initiating an investigation of the following programs:

- Export Packing Credits
- Tax Certificates for Exports
- Electricity Discount for Exporters
- Rediscount of Industrial Bills
- Export Processing Zones
- International Trade Promotion Fund
- Investment Promotion Act

— Section 28: Import Duty and Tax Exemption for Machinery
— Section 31: Income Tax Exemption
— Section 33: Goodwill and Royalties Tax Exemption
— Section 34: Tax Deduction for Dividends
— Section 36(1): Import Duty and Tax Exemption on Raw and Essential Materials
— Section 36(2): Import Duty and Tax Exemption on Imports for Re-export
— Section 36(3): Import Duty and Tax Exemption on Products for Export
— Section 36(4): Tax Deduction on Income Resulting from Increased Exports

This notice is published pursuant to section 702(c)(2) of the Act.

Dated: August 22, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–20346 Filed 8–29–89; 8:45 am]

BILLING CODE 3510-DS-M

Notice of Petitions by Producing Firms for Determinations of Eligibility to Apply for Trade Adjustment Assistance

Petitions have been accepted for filing on the dates indicated from the following firms: (1) Big Front Manufacturing, Inc., 360 South Los Angeles Street, Los Angeles, California 900013, producer of formal wear: shirts, slacks, vests, bowties, handkerchiefs, suspenders and cumberbands (February 1, 1989); (2) United Uphostery Corporation, 1321 North Kraemer Blvd., Anaheim, California 92806, producer of upholstered sofas, chairs and tables (February 3, 1989); (3) Steffmar Industries, Inc., 8320 San Fernando Road & Reed Street, Sun Valley, California 91352, producer of pallet racks, carts, dollys and shelving systems (February 6, 1989); (4) Quantachome Corporation, 5 Aerial Way, Syosset, New York 11791, producer of microscan (February 7, 1989); (5) D'Andrea Manufacturing Company, Inc., 900 Shames Drive, Westbury, New York 11590, producer of carrying cases for musical instruments and picks (February 7, 1989); (6) Mann Edge Tool Company, P.O. Box 351, Lewistown, Pennsylvania 17044, producer of axe heads, punch bars, sledge hammers, mauls and wedges (February 7, 1989); (7) Tracy-Luckey Company, Inc., 110 N. Hicks Street, P.O. Box 188, Harlem, Georgia 30814–0850, processor of pecans (February 8, 1989); (8) Dixie Brewing Company, Inc., 2401 Tulane Avenue, New Orleans, Louisiana 70119, producer of beer (February 9, 1989); (9) Man-Sew Corporation, 6108 Sherwin Drive, Port Richey, Florida 34668, producer of industrial sewing machines, attachments and parts (February 21, 1989); (10) Fenpro, Inc., 2601 NW. Market Street, Seattle, Washington 98107, producer of aluminum framed windows (February 21, 1989); (11) Marx Manufacturing Corporation, 7000 Monroe Boulevard, Taylor, Michigan 48180, producer of stamped, metal parts for automobile bodies, steering and axle mechanisms and engines (February 21, 1989); (12) J.V. Industries, Inc., 2050 Turner Road, S.E., Salem, Oregon 97302, producer of amusement rides (February 21, 1989); (13) Standard Cellulose & Novelty Company, Inc., 99–20 Atlantic Avenue, Ozone Park, New York 11416, producer of Christmas trees, Christmas and Easter grass, wreaths and garlands, wrapping paper and picnic chests (February 22, 1989); (14) Carl Falkenstein, Inc., 2717 North Howard Street, Philadelphia, Pennsylvania 19133, producer of lamp parts (February 24, 1989); (15) Champion Auto Generator Service, Inc., Grand and High Streets, Blackwood, New Jersey 08012, producer of auto alternators, generators, starters, solenoids and armatures (February 28, 1989); (16) Stinson Manufacturing Company, 555 Harriman, San Antonio, Texas 78204, producer of computer parts (February 28, 1989); (17) Tropicana Sportswear, Inc., 826 Queen Street, Honolulu, Hawaii 96813, producer of men's shirts and women's shirts, blouses and dresses (February 28, 1989); (18) Hoffman Precision Plastics, Inc., 500 Almonesson Road, Blackwood, New Jersey 08012, producer of plastic parts for computers, toys, houseware, insulators, outlets and other misc. plastic parts (March 2, 1989); (19) Polytex Fibers Corporation, 9341 Baythorne Drive, Houston, Texas 77041, producer of polypropylene bags (March 3, 1989); (20) Stanley Woolen Company, 140 Menden Street, Uxbridge, Massachusetts 01569, producer of wool fabric (March 6, 1989); (21) Elkhorn Plastic Products, 315 South Church Street, Elkhorn, Wisconsin 53121, producer of plastic covers for barbeque grills, vacum formed hard plastic and soft plastic shapes (March 6, 1989); (22) Simmons Machine Tool Company, 1700 North Broadway, Albany, New York 12204, producer of wheel borers, railroad presses, lathes, etc. (March 7, 1989); (23) Brenner Paper Products Company, Inc., 66–31 Otto Road, Glendale, New York 11385, producer of envelopes (March 7, 1989); (24) EBY Corporation, 430 H Street, Philadelphia, Pennsylvania 19124, producer of electronic connectors (March 8, 1989); (25) George's Greenhouses, Inc., RD 3, Box 150, Newark Valley, New York 13811, flower grower (March 9, 1989); (26) George Frost Company, Leominster Road, Shirley, Massachusetts 01464, producer of belts and suspenders (March 10, 1989); (27) Marine Electric RPD, Inc., 668 Pacific Street, Brooklyn, New York 11217, producer of monitoring and alarm systems, audio systems and power suppliers (March 10, 1989); (28) Oomphies, Inc., 5 Franklin Street, Lawrence, Massachusetts 01840, producer of casual shoes and slippers (March 13, 1989); (29) Ricks Industries, Inc., 7800 NW. 32nd Street, Miami, Florida 33122, producer of men's athletic wear and women's sportswear (March 13, 1989); (30) Micro Security Systems, Inc., 4750 Wiley Post Way #180, Salt Lake City, Utah 84116–2878, producer of security keys for computers (March 16, 1989); (31) Hermell Products, Inc., 23 Britton Drive, Bloomfield, Connecticut 06002, producer of stretch bandages, knitted stockinettes, cervical collars and foam cushions (March 17, 1989); (32) Twin City Technical Castings, Inc., 750 Pelham Boulevard, St. Paul, Minnesota 55114, producer of non-fereous metal castings (March 20, 1989); (33) Waltham Clock Company, 221 Crescent Street, Waltham, Massachusetts 02154, producer of aircraft clocks, feedback controls and DEC-medical equipment (March 22, 1989); (34) Fryburger Production Company, Inc., P.O. Box 362, Clay City, Illinois 62824, producer of crude oil (March 23, 1989); (35) Extex Garment Contractor, 407 East Pico Boulevard, Suite 803, Los Angeles, California 90015, producer of men's women's and children's shorts, skirts and shirts (March 24, 1989); (36) You & Me Naturally, Inc., 916 Kaamahu Street, Honolulu, Hawaii 96817, producer of women's dresses, skirts, blouses and pants (March 24, 1989); (37) Cornish Knitgoods Manufacturing Corporation, 121 Ingraham Street, Brooklyn, New York 11237, producer of women's sweaters and skirts (March 29, 1989); (38) Upholstery West, Inc., 245 West 6600 South, Midvale, Utah 84047, producer of upholstered automotive seats (March 31, 1989); (39) Hamtronics, Inc., 65 Moul Road, Hilton, New York 14468–9535, producer of two way radios (April 4, 1989); (40) Birchwood Manufacturing Company, 38 East Messenger Street, Rice Lake, Wisconsin 54868, producer of laminated wood golf club head blanks and hardwood veeners (April 5, 1989); (41) Glasway, Inc., 665 East Stony Road Lake Mills, Wisconsin 53551, producer of fiberglass pleasure boats (April 5, 1989); (42) M.H. Rhodes, Inc., 99 Thompson Road, Avon, Connecticut 06001, producer of timers and parking meters (April 6, 1989); (43) The Ullman Company, Inc., 250 Kennedy Drive, Hauppauge, New York 11788, producer of plastic dinnerware (April 6, 1989); (44) American Polarizers, Inc., 141 South 7th Street, Reading, Pennsylvania 19602, producer of clip on sunglasses, display screens, aircraft window screens and polarized film and graphics (April 6, 1989); (45) Santa Cruz Industries, 411 Swift Street, Santa Cruz, California 95060, producer of display units (April 6, 1989); (46) P-Craft Jewelry, 12 Dunham Street, Attleboro, Massachusetts 02703, producer of costume jewelry (April 7, 1989); (47) McCormick & Baxter Creosoting Co., 6900 North Edgewater Street, Portland, Oregon 97208, producer of treated poles and railroad ties (April 7, 1989); (48) Elchar Tool Specialist, Inc., 8857 Alexander Road, Batavia, New York 14020, producer of typewriter parts, electronic plugs, IUD's and wedding cake figurines (April 7, 1989); (49) Kay-Townes, Inc., P.O. Box 593, Rome, Georgia 30161, producer of T.V. antennas and amplifiers (April 10, 1989); (50) Carriage House Meat & Provision Company, Inc. 1131 Dayton Road, Ames, Iowa 50010, procesor of meat (April 10, 1989); (51) Monroe Timer Company, Inc.,

264 East Third Street, Mount Vernon,

York, producer of optical lenses and

sweaters and skirts (June 2, 1989); (84)

264 East Third Street, Mount Vernon, New York 10550, producer of automobile alarms, hood locks and parts and steering column collars (April 13, 1989); (52) Aetnacraft Industries, Inc., 69 Second Avenue, Brooklyn, New York 11215, producer of tubelar furniture frames and parts and display bases and parts (April 13, 1989); (53) Durham Manufacturing Co., Inc., P.O. Box 51, Ellaville, Georgia 31806, producer of dining room furniture, end tables, wall units and entertainment centers of wood (April 18, 1989); (54) Big Front Manufacturing, Inc., 360 South Los Angeles, Los Angeles, California 90013, producer of neckties, cummerbunds, handkerchiefs, shirts, vests, coats, skirts and slacks (April 14, 1989); (55) Milog, Inc., 9500 South 500 West #103, Sandy, Utah 84070, producer of computers for motor vehicles (April); (56) Fleet Line, Inc., 10950 S.W. Fifth Street, Unit 145, Beaverton, Oregon 97208, producer of container sealing machinery (May 1, 1989); (57) Personal Design Associates, 3015 South 300 West, Salt Lake City, Utah 84115, producer of picture frames and molding (May 2, 1989); (58) Rome Manufacturing Company, 208 East Second Avenue, P.O. Box 191, Rome, Georgia 30161, producer of men's pants (May 2, 1989); (59) Carleton Woolen Mills, Inc., P.O. Box 317, Winthrop, Maine 04364, producer of wool fabric (May 3, 1989); (60) Classic Elite Yarns, Inc., 12 Perkins Street, Lowell, Massachusetts 01854, producer of yarn (mohair and cotton blends) (May 5, 1989); (61) Victor-Balata Belting Company, 1118 South 25th Street, Easton, Pennsylvania 18042, producer of loop belting, vacuum hoses for swimming pools and air shafts, and machinery for the food industry (May 5, 1989); (62) Halifax Damask Mills, Inc., P.O. Box 1098, South Boston, Virginia 24592, producer of cotton damask tablecloths and napkins and woven cotton cloth (May 5, 1989); (63) Environmental Communications, Inc., 3150 Pullman Street, Costa Mesa, California 92626, producer of hybrid circuits and enclosures (May 8, 1989); (64) Durston Manufacturing Co., 1395 East Palomares Avenue, LaVerne, California 91750, producer of tool holders and racks, hand directed or controlled tools, non-electrical (May 8, 1989); (65) Lite Lab Corporation, 251 Elm Street, Buffalo, New York 14203, producer of lighting fixtures (May 8, 1989); (66) Electrografics International Corp., 1825 Stout Drive, Warminster, Pennsylvania 18974, producer of microlithographic equipment (May 8, 1989); (67) Triconic Laboratories, Inc., 7 Canal Street, Center Moriches, New York, producer of optical lenses and eyeglass frames (May 8, 1989); (68) The Mautner Company, Inc., 496 Nepperhan Avenue, Yonkers, New York 10701, producer of jewelry display cases and jewelry boxes (May 8, 1989); (69) Lewis Metal Stamping and Manufacturing Co., Inc., 333 Midland Avenue, Highland Park, Michigan 48203, producer of stamped metal brackets for automobile bodies and nonbody parts (May 8, 1989); (70) Northern Lights Enterprises, Inc., Andover Road, Wellsville, New York 14895, producer of candles (May 8, 1989); (71) City Tool & Die, Inc., of Lima, P.O. Box 1122, Lima, Ohio 45805, producer of stamped metal brackets for electric motors, air conditioning and refrigeration equipment and hot water heaters, automobile body parts, and other misc. stamped metal parts (May 10, 1989); (72) The Juvenile Shoe Corporation of America, P.O. Box 331, Aurora, Missouri 65605, producer of men's, women's & children's shoes (May 12, 1989); (73) Electro Physics Company, Inc., 3009 Central Avenue, Waukegan, Illinois 60085, producer of telephone monitoring systems and parts (May 12, 1989); (74) Brenner Paper Products Company, Inc., 66–31 Otts Road, Glendale, New York 11385, producer of envelopes (May 17, 1989); (75) Amtab Manufacturing Company, 1747 West Grand Avenue, Chicago, Illinois 60606, producer of folding wooden top tables with metal legs and fixed legs (May 18, 1989); (76) Cornish Knitgoods Manufacturing Corporation, 121 Ingraham Street, Brooklyn, New York 11237, producer of women's knit sweaters and skirts (May 18, 1989); (77) W.H. Autopilots, Inc., 655 NE. Northlake Place, Seattle, Washington, 98105, producer of autopilots (May 22, 1989); (78) Auto Accessories Manufacturing, Inc., P.O. Box 10044, New Liberia, Louisiana 70562, producer of arm and head rests for Volvos (May 24, 1989); (79) Slip-N-Snip, Inc., 1680 North 18th Avenue, Sweet Home, Oregon 97386, producer of scissors (May 24, 1989); (80) Proto Stamping Corporation, 811 Kaynyne Street, Redwood City, California 94063, producer of metal stamping parts for computers (May 30, 1989); (81) JBL International, Inc. (Paget Equipment Company Division), P.O. Box 369, Marshfield, Wisconsin 54449, producer of steel evaporator tanks and augers and conveyor belt platforms (June 1, 1989); (82) Tomco Manufacturing, Inc., 515 South Avenue E., Crowley, Louisiana 70526, producer of women's skirts, pants and shorts (June 2, 1989); (83) Beldoch Industries Corporation, 1411 Broadway, New York, New York 10018, producer of women's sweaters and skirts (June 2, 1989); (84) Rommark Handbags, Inc., C.P.O. Box 1130, Kingston, New York 12401, producer of handbags (June 2, 1989); (85) Jafan Corporation, 4627 East 50th Street, Vernon, California 90058, producer of wood office desks, credenzas, files and bookcases, beds, headboards, dressers, mirrors and nightstands (June 5, 1989); (86) Jacques deLoux, Inc., 220 N. Main Street, Sellersville, Pennsylvania 18960, producer of men's and women's sweaters (June 5, 1989); (87) San Diego Design, Inc., 9366 Abraham Way, Santee, California 92071, producer of cabinets and shelves of wood (June 6, 1989); (88) Brass Products Company, 3661 East Palmer, Detroit, Michigan 48211, producer of plug-type, shut-off values and cocks and threaded pipe fittings (June 6, 1989); (89) Farnsworth Woodworking, Inc., 9403 39th Avenue Court, S.W., Tacoma, Washington, 98499, producer of display cases (June 6, 1989); (90) Shaped Wire, Inc., 3655 East Illinois Avenue, St. Charles, Illinois 60174, producer of steel, aluminum and copper wire (June 7, 1989); (91) Concord, Inc., 2800 7th Avenue North, Fargo, North Dakota 58102, producer of pneumatic seekers and soil samplers (June 7, 1989); (92) Allegretti & Company, 9200 Mason Avenue, Chatsworth, California 91311, producer of trimmers, edgers, blowers, hedges and grinders (June 7, 1989); (93) Barnes/Sightmaster, Ltd., 6 Conduit Street, Lincoln, Rhode Island 02865, producer of dimensional fuses (June 8, 1989); (94) General Pneumatic Products Corporation, 11460 Dorsett Road, Maryland Heights, Missouri, 63043, producer of pneumatic rotary-type wrenches, sanders, grinders, hammers, drills and misc. pneumatic tools, accessories and parts (June 8, 1989); (95) L&S Products, Inc., 340 Jay Street, Coldwater, Michigan 49036, producer of garment display racks for retail stores (June 9, 1989); (96) Advance Lifts, Inc., 3537 Stern Avenue, St. Charles, Illinois 60174, producer of hydraulic scissors lifts (June 12, 1989); (97) Glomac Plastics, Inc., 432 North Franklin Street, Syracuse, New York 13204, producer of thermometer shells, keyboard for CRT's, trash cans and patio furniture of plastic (June 12, 1989); (98) Richards and West, Inc., 1255 University Avenue, Rochester, New York 14607, producer of rings, earrings and pendants (June 12, 1989); (99) T.K. Tool & Die, Inc., 2713 Kendall Road, Holly, New York 14470, producer of brackets, hinges, washers and gauges (June 12, 1989); (100) Auto Accessories, Inc., 3325 West Admiral Doyal Drive, New Iberia, Louisiana 70562, producer of arm rest and head rests (June 12, 1989);

(101) Hobe Cie, Ltd., 138 South Columbus Avenue, Mt. Vernon, New York 10553, producer of jewelry (June 12, 1989); (102) D.A.V. Corporation, 595 Berriman Street, Brooklyn, New York 11208, producer of laboratory counter tops, baking decks and electrical switching panels (June 12, 1989); (103) HBR Partnership, Ltd., 13915 South Main Street, Los Angeles, California 90061, producer of plumbing fixtures (June 13, 1989); (104) S&S Contract Furniture, Inc., Route 1, Box 173, Marquand, Missouri 63655, producer of wood furniture (June 15, 1989); (105) EPC Laboratories, Inc., 5 Electronics Avenue, Danvers, Massachusetts 01923, producer of graphic recorders, parts and consumables (June 19, 1989); (106) McCormick & Baxter Creosoting Company, 6900 North Edgewater Street, Portland, Oregon 97208, producer treated poles, railroad ties, etc. (June 20, 1989); (107) New England Manufacturing Company, Inc., 250 Canal Steet, Lawrence, Massachusetts 01840, producer of men's and women's raincoats and overcoats (June 22, 1989); (108) Enterprise Machine & Development Corporation, 100 Fernwood Avenue, New Castle, Delaware 19720, producer of air-texturing machines and air-jet manifolds (June 23, 1989); (109) Louisville Golf Company, Inc., 2801 Grassland Drive, Louisville, Kentucky 40299, producer of gold club wood turnings, and gold club heads (June 23, 1989); (110) Farr West Fashions, 294 Anna Street, Watsonville, California 95076, producer of women's sleepwear and underwear (June 23, 1989); (111) Burdett Apparel, Inc., 3550 South West Temple, Salt Lake City, Utah 84115, producer of men's, women's and children's cotton knit and woven tops, and men's and boy's swim trunks (June 26, 1989); (112) Visionetics Corporation, 57 Commerce Road, P.O. Box 5189, Brookfield, Connecticut 06804, producer of optical inspection systems (June 28, 1989); (113) Durkee-Atwood Company, 4079 Pepin Avenue, Red Wing, Minnesota 55066, producer of V-belts, automotive rubber belts, cellular and rubber sponges, rubber stripping and rubber radiator hoses (June 29, 1989); (114) Sterling Factories, Inc., 2250 Powell Avenue, Erie, Pennsylvania 16505, producer of aluminum railings and grilles (June 30, 1989); (115) Penaloza and Sons, Inc., 214 West Crockett, San Antonio, Texas 78205, producer of jewelry (July 3, 1989); (116) Electronic Interface Company, Inc., DBA Applied Engineering, 970 Lonus Street, San Jose, California 95126, producer of linear activators (July 6, 1989); (117) Western Leather Upholstering Co., Inc., 1535 Paloma Street, Los Angeles, California 90021, producer of office chairs (July 6, 1989); (118) Eaton Farm Products, Inc., Burbank Road, Sutton, Massachusetts 01527, producer of chocolate candy (July 6, 1989); (119) Oomphies, Inc., 5 Franklin Street, Lawrence, Massachusetts 01840, producer of casual shoes and slippers (July 6, 1989); (120) Polymers, Inc., P.O. Box 151, Middlebury, Vermont 05753, producer of synthetic fibers (July 7, 1989); (121) Vern's Machine Company, Inc., P.O. Box 63, Marion, New York 14505, producer of metal shafts and rollers (July 7, 1989); (122) Cordova, Inc., 42–08 College Point Boulevard, Flushing, New York 11352, producer of gold jewelry (July 7, 1989); (123) Victor-Balata Belting Company, 1118 South 25th Street, Easton, Pennsylvania 18042, producer of machinery belts and belting, industrial vacuuming hoses and food processing machinery (July 7, 1989); (124) Clinch Tite Corporation, P.O. Box 456, Sandy Lake, Pennsylvania 16145, producer of wood pallets (July 10, 1989); (125) CDA Manufacturing, Inc., 1005 Shoecraft Road, Webster, New York 14580, producer of blowers for permanent installation, retaining rings and coordinate machines (July 10, 1989); (126) Ketchum Manufacturing Company, Inc., 1928 E. River Drive, Lake Luzerne, New York 12846, producer of ID tags for livestock and poultry (July 10, 1989); (127) Manchester Manufacturers, Inc., P.O. Box 68, Manchester, Ohio 45144, producer of men's and women's trousers and sports accessories (July 14, 1989); (128) Quantum Data, 2111 Big Timber Road, Elgin, Illinois 60123, producer of color character generators and full graphic generators (July 17, 1989); (129) Griner Engineering, Inc., 2500 North Curry Pike, Bloomington, Indiana 48109, producer of turned parts for diesel automotive engines and gas turbines (July 18, 1989); (130) The Garron Corporation, 1820 East 48th Place, Los Angeles, California 90058, producer of women's skirts, shirts, tops and slacks (July 18, 1989); (131) Eastern Jewelry Manufacturing Company, Inc., 561 Broadway, New York, New York 10012, producer of precious and semi-precious jewelry (July 21, 1989).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Public Law 93–618), as amended. Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Certification Division, Officer of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Dated: August 24, 1989.

E.T. Baker,

Supervisory Eligibility Examiner, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 89–20392 Filed 8–29–89; 8:45 am]

BILLING CODE 3510-DR-M

University of California, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 89–161. *Applicant:* University of California, San Diego, CA 92121. *Instrument:* Stable Isotope Mass Spectrometer, Model Delta S. *Manufacturer:* Finnigan Corporation, West Germany. *Intended Use:* See notice at 54 FR 28458, July 6, 1989. *Reasons for this Decision:* The foreign instrument provides an automated multielement collector system with an internal precision of 0.006°/oo for CO_2 with a standard inlet.

Docket Number: 89–160. *Applicant:* Harvard University, Department of Earth and Planetary Sciences, Cambridge, MA 02138. *Instrument:* Mass Spectrometer, Model THQ. *Manufacturer:* Finnigan-MAT, West Germany. *Intended Use:* See notice at 54 FR 28458, July 6, 1989. *Reasons for this Decision:* The foreign instrument provides an automated multiple sample magazine (13 single, double or triple filament sample) and is capable of positive and negative ion counting.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no intrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-20347 Filed 8-29-89; 8:45 am]

BILLING CODE 3510-DS-M

University of California, San Diego; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-061. *Applicant:* University of California, San Diego, La Jolla, CA 92093. *Instrument:* Radio Direction Finder, Model R-7DH. *Manufacturer:* Orion Electronics, Ltd., Canada. *Intended Use:* See notice at 53 FR 1811, January 22, 1988.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign article provides RDF operation at the upper end of the HF band; selected 6-channel crystal frequency control and high azimuth resolution. National Oceanic and Atmospheric Administration advises in its memorandum dated March 31, 1988 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instruments which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-20348 Filed 8-29-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Preliminary Determination To Approve Two Amendments to the Alaska Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of preliminary approval of amendments.

LOCATION: Northwest Arctic Borough, Alaska Bering Straits Coastal Resource Service Area, Alaska.

SUMMARY: The Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) received a request from the Alaska Coastal Management Program (ACMP) to incorporate the Northwest Arctic Borough Coastal Management Program (NWABCMP) and the Bering Straits Coastal Resource Service Area Coastal Management Program (BSCMP) into the ACMP. The State's request was made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1455(g), and the regulations implementing the CZMA at 15 CFR 923.81. The NWABCMP and BSCMP create new coastal boundaries for the ACMP in their respective regions and establish goals and policies for activities taking place in the Northwest Arctic Borough and Bering Straits Coastal Resource Service Area. The NWABCMP and BSCMP follow the guidelines and standards for local program development set out in the ACMP. The NWABCMP will be administered by the Borough and the State. The BSCMP will be administered by the CRSA Board and the State.

The Director, OCRM, has reviewed the amendment requests and has made a preliminary determination that the ACMP will still constitute an approvable program and that the procedural requirements of section 306(c) of the CZMA have been met.

As both amendments were submitted at the same time and are similar in content and effect, a combined Environmental Assessment (EA) was prepared. The Director has determined that approval of the proposed changes does not constitute a major Federal action having a significant effect on the environment. Therefore, approval of the proposed amendments does not require an environmental impact statement pursuant to the National Environmental Policy Act of 1969, as amended. The Director's Preliminary Determination of Approvability, as well as the Finding of No Significant Impact (FONSI), and the EA are available at the address below.

Comments on the EA, FONSI, and the Preliminary Determination to approve the Alaska amendment request should be made within 30 days from the date of this notice. Address comments to: James P. Burgess, Chief, Coastal Programs Division, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue NW., Washington, DC 20235 (202) 673-5158.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: August 24, 1989.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 89-20409 Filed 8-29-89; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Action: Notice.

Title, Applicable Form, and Applicable OMB Control Number: Telecommunications Service Priority System—TSP Service Confirmation—Continuation; SF X031C; and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 90 minutes.

Frequency of Response: On Occasion.

Number of Respondents: 10.

Annual Burden Hours: 600.

Annual Responses: 400.

Needs and Uses: The Telecommunications Service Priority (TSP) System identifies leased telecommunications services vital to the National Security and Emergency Preparedness and provides the legal basis for vendor priority installation and restoration. Collected information is

used to make TSP assignments and maintain data base currency.

Affected Public: State or local governments, Businesses or other for-profit, Federal agencies or employees and Small business or organizations.

Frequency: Continuing.

Respondents Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: August 24, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-20355 Filed 8-29-89; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Action: Notice.

Title, Applicable Form, and Applicable OMB Control Number: Telecommunications Service Priority System—TSP Action Appeal; Standard Form X030; and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 10 hours.

Frequency of Response: On Occasion.

Number of Respondents: 5.

Annual Burden Hours: 50.

Annual Responses: 5.

Needs and Uses: The Telecommunications Service Priority (TSP) System identifies leased telecommunications services vital to the National Security and Emergency Preparedness and provides the legal basis for vendor priority installation and restoration. Collected information is used to make TSP assignments and maintain data base currency.

Affected Public: State or local governments, Businesses or other for-profit, Federal agencies or employees and Small business or organizations.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: August 24, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-20356 Filed 8-29-89; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Action: Notice.

Title, Applicable Form, and Applicable OMB Control Number: Telecommunications Service Priority System; Standard Form X028; and No. OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 5

Frequency of Response: On Occasion.

Number of Respondents: 4,000.

Annual Burden Hours: 100,000.

Annual Responses: 2,000.

Needs and Uses: The Telecommunications Service Priority (TSP) System identifies leased telecommunications services vital to the National Security and Emergency Preparedness and provides the legal basis for vendor priority installation and restoration. Collected information is used to make TSP assignments and maintain data base currency.

Affected Public: State or local governments, Businesses or other for-profit, Federal agencies or employees and Small business or organizations.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written commencts and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20523.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: August 24, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-20357 Filed 8-29-89; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Action: Notice.

Title, Applicable Form, and Applicable OMB Control Number: Telecommunications Service Priority System-TSP Service Confirmation; SF X032C; And No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 4 hours.

Frequency of Response: On Occasion.

Number of Respondents: 10.

Annual Burden Hours: 1,600.

Annual Responses: 400.

Needs and Uses: The Telecommunications Service Priority (TSP) System identifies leased telecommunications services vital to the National Security and Emergency Preparedness and provides the legal basis for vendor priority installation and restoration. Collected information is used to make TSP assignments and maintain data base currency.

Affected Public: State or local governments, Businesses or other for-profit, Federal agencies or employees and Small business or organizations.

Frequency: Continuing.

Respondents Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Officer Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: August 24, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

August 24, 1989

[FR Doc. 89–20358 Filed 8–29–89; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Action: Notice.

Title, Applicable Form, and Applicable OMB Control Number: Telecommunications Service Priority System-TSP Service Confirmation; SF OX29; and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 2 hours.

Frequency of Response: On Occasion.

Number of Respondents: 100.

Annual Burden Hours: 4,000.

Annual Responses: 2,000.

Needs and Uses: The Telecommunications Service Priority (TSP) System identifies leased telecommunications services vital to the National Security and Emergency Preparedness and provides the legal basis for vendor priority installation and restoration. Collected information is used to make TSP assignments and maintain data base currency.

Affected Public: State State or local governments, Businesses or other for-profit, Federal agencies or employees and Small business or organizations.

Frequency: Continuing.

Respondents Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Officer Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: August 24, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–20359 Filed 8–29–89; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Action: Notice.

Title, Applicable Form, and Applicable OMB Control Number: Telecommunications Service Priority System—TSP Service Confirmation; SF X031; and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 50 minutes.

Frequency of Response: On Occasion.

Number of Respondents: 100.

Annual Burden Hours: 1,666.

Annual Responses: 2,000.

Needs and Uses: The Telecommunications Service Priority (TSP) System identifies leased telecommunications services vital to the National Security and Emergency Preparedness and provides the legal basis for vendor priority installation and restoration. Collected information is used to make TSP assignments and maintain data base currency.

Affected Public: State or local governments, Businesses or other for-profit, Federal agencies or employees and Small business or organizations.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Officer Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: August 24, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–20360 Filed 8–29–89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award Grant to Gas Desulfurization Corp.

AGENCY: U.S. Department of Energy.

ACTION: Notice of Unsolicited Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15443 to Gas Desulfurization Corporation to assist in the development of an invention entitled "A Method for the Use of Oxygen in Vacancies in Lanthanide Oxides to Increase Their Utilization for Desulfurization of Hot Fuel Gases." The technology is a process for removing sulfidic sulfur from hot fuel gas.

Scope: This grant will aid in the performance of a series of experiments using doped and undoped cerium oxide in an existing reactor to determine the rate and amount of absorption and desorption of sulfur and the effect of many regeneration cycles on the nature of the cerium oxide sorbent. Current technology consists of zinc ferrite and mixed metal oxide processes, which have regeneration problems and do not reduce sulfide levels in fuel gases to the desired 1–5 ppm. When these levels are exceeded before burning, the resulting stack of gases, which are laden with sulfur dioxide, are expensive to clean up. The National Institute of Standards and Technology (NIST) report cities calculations by the Georgia Institute of Technology that hot gases cleanup saves about 7 percent of the energy content of the fuel gas as compared with low-temperature washing. If this technology has been used when a U-GAS gasifier was used to process 2540 tons of coal per day, the 7 percent would have resulted in 270,000 barrels of crude oil or 65,000 tons of coal being saved annually.

Eligibility: Based on acceptance of an unsolicited application eligibility of this award is being limited to Gas Desulfurization Corporation. Mr. Williams G. Wilson, the inventor, is president of Gas Desulfurization Corporation, and has a B.S. degree in metallurgical engineering and has over 40 years experience with molybdenum and lanthaide metals.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rosemarie H. Marshall, MA-453.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director Contract Operations, Division B Office of Procurement Operations.

[FR Doc. 89–20434 Filed 8–29–89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP89-213-001]

Federal Energy Regulatory Commission

Black Marlin Pipeline Co.; Notice of Filing

August 23, 1989.

Take Notice that on August 17, 1989, Black Marlin Pipeline Company (Black Marlin), tendered for filing to become a part of Black Marlin's F.E.R.C. Gas Tariff, Original Volume No. 1:

Substitute 2nd Revised Sheet No. 215A

Substitute 2nd Revised Sheet No. 222

Black Marlin is submitting the above mentioned tariff sheets to correct an error in a portion of § 10.2 *Notice of Interruption* that was transferred to the wrong tariff sheet.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before August 30, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–20363 Filed 8–29–89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2329-003 Maine]

Central Maine Power Co.; Availability of Environmental Assessment

August 23, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing (OHL) has reviewed the application requesting approval for nonproject use of lands and waters of the Wyman Hydroelectric Project on the Kennebec River. The staff has prepared an environmental assessment (EA) for the proposed action. In the EA, staff concludes that approval of the nonproject use of project lands and waters would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices, located at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89–20366 Filed 8–29–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-143-002]

Pacific Offshore Pipeline Co; Compliance Filing

August 23, 1989.

Take notice that on August 18, 1989, Pacific Offshore Pipeline Company (POPCO) filed certain revised tariff sheets to its FERC Gas Tariff, Original Volume 1, to be effective April 1, 1989.

Original Sheet No. 9
Original Sheet No. 10
Original Sheet No. 18
Original Sheet No. 18–A

POPCO states that this filing complies with the Letter Order of July 19, 1989.

POPCO states that a copy of this filing is being served on all parties of record in this proceeding and on all jurisdictional customers and the California Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before Aug. 30, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–20364 Filed 8–29–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TO89-3-28-001]

Panhandle Eastern Pipe Line Co.; Notice of Proposed Changes in FERC Gas Tariff

August 23, 1989.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 18, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Seventy-Third Revised Sheet No. 3–A

First Substitute Fiftieth Revised Sheet No. 3–B

The proposed effective date of these revised tariff sheets is September 1, 1989.

Panhandle states that on August 1, 1989 Panhandle filed with the Commission revised tariff sheets reflecting its quarterly PGA filing to be effective September 1, 1989 in the referenced docket. In that filing Panhandle stated that it had not reflected Trunkline Gas Company's (Trunkline) Interim Settlement Rates resulting from a Stipulation and Agreement in Docket No. RP88-180 which was pending Commission approval, but would make an appropriate filing should the Stipulation and Agreement become effective during the current period. On August 1, 1989, as further clarified by Letter Order dated August 10, 1989, the Commission accepted Trunkline's Interim Settlement Rates pursuant to the Stipulation and Agreement in Docket No. RP88-180. Therefore, these revised tariff sheets reflect utilization of Trunkline's revised demand charges pursuant to the aforementioned Stipulation and Agreement.

Panhandle states that copies of its filing have been served on all

BEST COPY AVAILABLE

jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 30, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20365 Filed 8-29-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-34-NG]

CMEX Energy, Inc.; Order Granting Authorization To Import and Export Natural Gas and Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization to Import and Export Natural Gas and Liquefied Natural Gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting CMEX Energy, Inc. (CMEX), blanket authorization to import and/or export natural gas and/or liquefied natural gas (LNG). The order, issued in FE Docket No. 89-34-NG, authorizes CMEX to import and/or export up to a total of 76 Bcf of natural gas and/or LNG over a two-year period beginning on the date of first delivery of imported or exported natural gas or LNG.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 24, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-20435 Filed 8-29-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-21-NG]

Indeck-Yerkes Energy Services, Inc., Conditional Order Granting a Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Conditional Order Granting Authorization to Import Natural Gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a conditional order granting a long-term authorization to import natural gas from Canada to Indeck-Yerkes Energy Services, Inc. (Indeck-Yerkes). The conditional order, issued in FE Docket No. 89-21-NG, authorizes Indeck-Yerkes to import 4.5 Bcf per year of Canadian natural gas over a 15-year term to fuel a cogeneration facility to be built in Tonawanda, New York.

Final approval of this import is conditioned on DOE's completion of its responsibilities under the National Environmental Policy Act of 1969 and its reexamination at the time of this conditional order.

A copy of this conditional order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 24, 1989

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-20431 Filed 8-29-89; 8:45 am]

BILLING CODE 6450-01-M

[Fe Docket No. 89-22-NG]

Indeck Energy Services of Oswego, Inc.; Conditional Order Granting a Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Conditional Order Granting Authorization to Import Natural Gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a conditional order granting a long-term authorization to import natural gas from Canada to Indeck Energy Services of Oswego, Inc. (Indeck-Oswego). The conditional order, issued in FE Docket No. 89-22-NG, authorizes Indeck-Oswego to import 4.5 Bcf per year of Canadian natural gas over a 15-year term to fuel a cogeneration facility to be built in Oswego, New York.

Final approval of this import is conditioned on DOE's completion of its responsibilities under the National Environmental Policy Act of 1969 and its reexamination at that time of this conditional order.

A copy of this conditional order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 24, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-20432 Filed 8-29-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-39-NG]

Northridge Petroleum Marketing, Inc., Application To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application for Long-term Authorization to Import Natural Gas from and Export Natural Gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 26, 1989, as amended on August 8, 1989, of an application filed by Northridge Petroleum Marketing, Inc. (Northridge), requesting authorization to import up to 15,000 Mcf per day of natural gas purchased or produced in the Provinces of Alberta, British Columbia or Saskatchewan, Canada, and to export back into Canada equivalent volumes of gas for a term of nine years commencing November 1, 1989, upon delivery and sale of the gas to Union Gas Limited (Union) in the Province of Ontario, Canada. Northridge proposes to use existing facilities only and asserts that none of the volumes intended for Union would be sold in the U.S. under this proposed arrangement.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegtion Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed no later than September 29, 1989.

FOR FURTHER INFORMATION:

Tom Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9590.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Northridge is a Canadian corporation engaged in the marketing of crude oil, natural gas, and refined products, and, through a Canadian affiliate, in the production of crude oil and natural gas. Although Northridge sells gas primarily to U.S. distribution companies and end-users, the applicant also is engaged in direct sales, as evidenced here, to markets in eastern Canada.

Under Northridge's proposed long-term import/export arrangement, the gas would be transported in Canada by TransCanada Pipelines Limited (TransCanada) to a point on the international border near Emerson, Manitoba, where TransCanada's facilities interconnect with those of Great Lakes Transmission Company (Great Lakes). Great Lakes would then transport the gas to its interconnection with Michigan Consolidated Gas Company (MichCon) at Belle River Mills, Michigan. MichCon, in turn, would transport the gas to existing U.S.-Canadian border interconnections for export back into Canada and delivery to Union. On August 8, 1989, Northridge amended its application to eliminate as a possible alternate export route an interconnection between MichCon and the proposed St. Clair pipeline. Northridge anticipates MichCon would transport the gas to an existing interconnection of the facilities of Great Lakes and TransCanada at St. Clair, Michigan, but requests authority to use any existing facilities.

According to Northridge, although there would be no sale in the U.S. of gas imported under the authority requested in this proceeding, Northridge may sell volumes not taken by Union to purchasers in the United States on a short-term, interruptible basis under separate authority, including blanket import authority granted Northridge Petroleum Marketing U.S., Inc., Northridge's wholly-owned U.S. subsidiary, in DOE/ERA Opinion and Order No. 212, issued December 23, 1987, in Docket No. 87-57-NG.

In support of its application, Northridge asserts that its proposal would encourage competition and diversity of supply in the North American natural gas market, thereby benefitting the public and conforming to DOE policy goals. The applicant notes that a major reason that the Great Lakes pipeline was built to ensure that Canada has access to its own gas, i.e., from sources in western Canada to markets in eastern Canada.

This application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. The decision on whether the proposed arrangement is in the public interest will be based upon matters deemed to be appropriate by FE, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. In addition, since the long-term arrangement being considered in this proceeding concerns sales of Canadian gas to Canadian customers, DOE's focus relates to the potential domestic impact of transporting the Canadian gas through the U.S. pipeline facilities. Parties that may oppose this application should address the foregoing matters in their comments. All parties should be aware that if the requested import/export is approved, the authorization would be conditioned on the filing of quarterly reports providing by each month the volumes imported and exported.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12472) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room EF-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t. September 29, 1989.

A decisional record on the application will be developed through responses to this notice by parties, including the parties used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are actual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northridge's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 24, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs Office of Fossil Energy.

[FR Doc. 89-20430 Filed 8-29-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-35-NG]

Potomac Energy Corp.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of energy gives notice that it has issued an order granting Potomac Energy Corporation (Potomac Energy) blanket authorization to import natural gas. The order issued in FE Docket No. 89-35-NG authorizes Potomac Energy to import up to 75 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 24, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs Office of Fossil Energy.

[FR Doc. 89-20433 Filed 8-29-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3637-1]

Battlefield Parkway Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), The Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the Battlefield Parkway Site, Port Oglethorpe, Georgia with the United States Department of Defense. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or consideraitons which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Investigation Support Assistant, Investigation and Cost Recovery Unit, Site Investigaiton and Support Branch, Waste Management Division, U.S. EPA, Region IV. 345 Courtland Street NE., Atlanta, GA 30365. (404) 347-5059.

Written comments may be submitted to the person above by 30 days from date of publication.

Dated: August 17, 1989.

Patrick M. Tobin,

Director, Waste Management Division, EPA Region IV.

[FR Doc. 89-20440 Filed 8-29-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59273A; FRL-3637-2]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-89-19. The test marketing conditions are described below.

EFFECTIVE DATE: August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Miriam G. Wiggins-Lewis, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-613, 401 M Street SW., Washington, DC 20460, (202) 382-2440.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-89-19. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-89-19. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments of each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-89-19

Date of Receipt: July 18, 1988.

Notice of Receipt: August 11, 1989 (54 FR 33071).

Applicant: Confidential.

Chemical: (G) Aminosilane.

Use: (G) Film Coating.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Six months, commencing on first day of manufacture.

Risk Assessment: EPA identified possible concerns for toxicity to aquatic organisms and for lung toxicity to workers; however, due to the low levels of environmental release and worker inhalation exposure, the test market substance will not present an unreasonable risk of injury to the environment or to human health.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 21, 1989.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 89-20439 Filed 8-29-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51738; FRL-3637-3]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1989 (48 FR 21722). This notice announces receipt of 40 such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89-914, October 18, 1989.
P 89-915, October 16, 1989.
P 89-916, October 18, 1989.
P 89-917, October 21, 1989.
P 89-918, 89-919, 89-920, 89-921, 89-922, 89-923, October 18, 1989.
P 89-924, 89-925, October 21, 1989.
P 89-927, October 18, 1989.
P 89-928, 89-929, 89-930, 89-931, 89-932, October 22, 1989.
P 89-933, 89-934, 89-935, October 23, 1989.
P 89-936, 89-937, 89-938, 89-939, 89-940, October 25, 1989.
P 89-941, 89-942, 89-943, October 28, 1989.
P 89-944, 89-945, 89-946, October 29, 1989.
P 89-947, 89-948, 89-949, 89-950, 89-951, October 30, 1989.
P 89-952, 89-953, 89-954, October 31, 1989.

Written comments by:

P 89-914, September 18, 1989.
P 89-915, September 16, 1989.
P 89-916, September 18, 1989.
P 89-917, September 21, 1989.
P 89-918, 89-919, 89-920, 89-921, 89-922, 89-923, September 18, 1989.
P 89-924, 89-925, September 21, 1989.
P 89-927, September 18, 1989.
P 89-928, 89-929, 89-930, 89-931, 89-932, September 22, 1989.
P 89-923– 89-934, 89-935, September 23, 1989.
P 89-936, 89-937, 89-938, 89-939, 89-940, September 25, 1989.
P 89-941, 89-942, 89-943, September 28, 1989.
P 89-944, 89-945, 89-946, September 29, 1989.
P 89-947, 89-948, 89-949, 89-950, 89-951, September 30, 1989.
P 89-952, 89-953, 89-954, October 1, 1989.

ADDRESS: Written comments, identified by the document control number "(OPTS-51738)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89-914

Importer. Ciby-Geigy Corporation.

Chemical. (G) Substituted pyrazol azo metal complex dye.

Use/Import. (S) Liquid and powder dye. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 89-915

Importer. Confidential.

Chemical. (G) Poly(styrene-co-acrylonitrile) resin.

Use/Import. (G) Adhesive. Import range: Confidential. *P 89-916*

Importer. Confidential.

Chemical. (S) Poly(oxy-1,2-ethanediyl), d-(carboxmethyl)-W-(2 togoctadecenyloxy)-,(2)- acid.

Use/Import. (B) Cosmetic cleansing formulations. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD > 5,000 mg/kg species (Rat).

P 89-917

Importer. Ilford Photo Corporation.

Chemical. (S) Glycine N,N-bis(2-bis(carboxymethyl) amino)ethyl dipotassium iron III salt.

Use/Import. (G) Cosmetic cleansing formulation. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat).

P 89-918

Manufacturer. Chem-Elast Coatings, Inc.

Chemical. (G) Aliphatic caprolactone urethane prepolymer.

Use/Production. (G) Polyruethane prepolymer crosslinking agent for polyols and amines used in the construction industry. Prod. range: Confidential.

P 89-919

Manufacturer. Confidential.

Chemical. (S) Polymer of isophorone disocyante, 2-hydroxyethy carylate, and silicone surfactant.

Use/Production. (S) Coating binder for industrial use. Prod. range: 1.200-4,000 kg/yr.

P 89-920

Importer. Confidential.

Chemical. (G) Modified bisphenol A polycarbonate.

Use/Import. (S) Thermoplastic article production. Import range: Confidential.

P 89-921

Importer. Confidential.

Chemical. (G) Modified polycarbonate.

Use/Import. (S) Thermoplastic article production. Import range: Confidential.

P 89-922

Importer. Confidential.

Chemical. (G) Alkyl methacrylate polymer.

Use/Import. (G) Coating materials. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Mutagenicity: negative.

P 89-923

Manufacturer. Confidential.
Chemical. (G) Partially fluorinated polyamic acid.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89-924

Manufacturer. Confidential.
Chemical. (G) Terpene hydrocarbon di(maleic anhydride) adduct.
Use/Production. (S) Curing agent for epoxy resins used in electrical applications with prolonged exposure to high temps. Prod. range: Confidential.

P 89-925

Importer. Ilford Photo Corporation.
Chemical. (S) Glycine N,N-bis(2-bis(carboxymethyl)amino)ethyl) dipotassium iron iii salt.
Use/Iport. (S) Oxiding agent in a photographic processing solution. Import range: 500–700–900 kg/yr.

P 89-927

Importer. Polysar Inc.
Chemical. (G) Substituted aromatic amide.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 89-928

Manufacturer. E.I. du Pont de Nemours and Co., Inc.
Chemical. (G) Ethylene copolymer.
Use/Production. (G) Plastics additive. Prod. range: Confidential.

P 89-929

Importer. Basf Corporation.
Chemical. (G) Polyester polyol.
Use/Import. (S) Polyurethane foam. Import range: Confidential.

P 89-930

Manufacturer. Basf Corporation.
Chemical. (G) Trisubstituted heteropolycyclic mixed salt.
Use/Production. (S) Paper dye. Prod. range: Confidential.

P 89-931

Manufacturer. Confidential.
Chemical. (G) Amine, reaction products with fatty polycarboxylic acid and dodecyl benzene sulfonic acid.
Use/Production. (S) Corrosion inhibitor for oil and gas wells. Prod. range: 50,000 kg/yr.
Toxicity Data. Skin irritation: moderate species (Rabbit). Mutagenicity: negative.

P 89-932

Manufacturer. Exxon Chemical Company.
Chemical. (G) Thio-amino hydrocarbons.
Use/Production. (S) Oilfield corrosion inhibitor. Prod. range: Confidential.
Toxicity Data. Skin irritation: moderate species (Rabbit). Mutagenicity: negative.

P 89-933

Manufacturer. Ciba-Geigy Corporation.
Chemical. (G) Cyanoalkyl amine.
Use/Production. (S) Hardener for protective coatings. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 89-934

Manufacturer. Confidential.
Chemical. (G) Dimer acids, polymer with a dicarboxylic acid, diamines and ethylenediamines.
Use/Production. (S) Hot melt adhesive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 15 g/kg species(Rat).

P 89-935

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted bis(quinazoline)dye.
Use/Import. (G) Dye for paper. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species(Rat). Eye irritation: None species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

P 89-936

Importer. Confidential.
Chemical. (G) Substituted naphthalene disulfonic acid.
Use/Import. (G) Colorant. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Eye irritation: Slight species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

P 89-937

Importer. Confidential.
Chemical. (G) Substituted naphthalene disulfonic acid.
Use/Import. (G) Colorant. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 species(Rat). Eye irritation: Slight species (Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

P 89-938

Importer. Confidential.
Chemical. (G) Substituted naphthalene disulfonic acid.
Use/Import. (G) Colorant. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Eye irritation: Slight species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

P 89-939

Manufacturer. Basf Structural Materials, Inc.-Quantum.
Chemical. (G) Epoxy bulk molding compound.
Use/Production. (S) Bulk molding compound. Prod. range: Confidential.

P 89-940

Importer. Confidential.
Chemical. (G) High heat styrene acrylonitrile polymer.
Use/Import. (S) Extrusion and injection molding of plastic articles. Import range: Confidential.

P 89-941

Importer. Confidential.
Chemical. (G) Poly(ethylene-ethyl acrylate-glycidyl ethacrylate).
Use/Import. (G) Impact modifier for plastic materials and more specifically pet and fillers. Import range: Confidential.

P 89-942

Manufacturer. Confidential.
Chemical. (G) Substituted triazinylaminophenyl azo substituted heterocycle, salt.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 89-943

Importer. Basf Corporation.
Chemical. (G) Diazo-substituted carbomonocyclic.
Use/Import. (S) Leather dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 5,000 mg/kg species(Rat). Inhalation toxicity: LC50 5.2 mg/1 species(Rat). Mutagenicity: Position. Skin sensitization: negative species(Guinea pig).

P 89-944

Importer. Basf Corporation.
Chemical. (G) Bis((pentasubstituted polycarbocyclicamino)disubstituted non heterocyclic amine)monocarbocyclic, sodium sale.
Use/Import. (S) Textile dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Eye irritation: Slight species(Rabbit). Skin irritation: slight species(Rabbit).

P 89-945

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Resin for industrial coatings. Prod. range: Confidential.

P 89-946

Manufacturer. Confidential.
Chemical. (G) Polyurethane acrylate.
Use/Production. (G) Printing ink resin. Prod. range: Confidential.

P 89-947

Importer. Hoechst Celanese Corporation.
Chemical. (G) Modified phenolic resin.
Use/Import. (S) Resin for lacquer (wire coating and packing inlets). Import range: 15,000–50,000 kg/yr.

P 89-948

Manufacturer. Confidential.
Chemical. (G) Isocyanate terminated urethane polymer.
Use/Production. (G) Urethane adhesive. Prod. range: Confidential.

P 89-949

Importer. Sherex Chemical Company, Inc.
Chemical. (G) Aromatic amidoamine.
Use/Import. (G) Epoxy curing agent. Import range: Confidential.

P 89-950

Importer. Sherex Chemical Company, Inc.
Chemical. (G) Fatty acid amidoamine.
Use/Import. (G) Epoxy curing agent. Import range: Confidential.

P 89-951

Manufacturer. Sherex Chemical Company, Inc.
Chemical. (G) Alkyl substituted propanenitrile.
Use/Production. (G) Intermediate for polyamine. Prod. range: Confidential.

P 89-952

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester polyurethane.
Use/Production. (S) Modifier for coatings, adhesives, and inks. Prod. range: Confidential.

P 89-953

Manufacturer. Confidential.
Chemical. (G) Polymer of hexanedioic acid, 1,3 benzenedicarboxylic acid, hexanediol, trimethylolpropane and a diisocyanate.
Use/Production. (G) Intermediate for product of polyurethane polymer. Prod. range: 100,000–200,000 kg/yr.

P 89-954

Manufacturer. Confidential.
Chemical. (G) Polyurethane/urea of hexanedioic acid 1,3 benzenedicarboxylic acid, hexanediol diisocyanate and mixed aliphatic amines.
Use/Production. (G) Component of a sizing compound. Prod. range: 175,000–350,000 kg/yr.

Dated: August 17, 1989.

Steven Newbury-Rinn,
Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-20438 Filed 8-29-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3636-9]

Proposed Determination To Restrict the Specification of Leonard Pond and Its Wetlands as Disposal Sites

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Regional Administrator of EPA's Region I proposes to restrict the filling of Leonard Pond and its surrounding wetlands in Agawam, Massachusetts because he believes it could have an unacceptable adverse effect on wildlife. Section 404(c) of the Clean Water Act authorizes EPA to prohibit or restrict filling of wetlands and other waters of the United States whenever it determines, after notice and opportunity for public hearing, that the discharge of dredged or fill materials into such an area would have an unacceptable adverse effect on municipal water supplies, shellfish beds, fishery areas, wildlife, or recreation areas. EPA seeks comment on several aspects of the Regional Administrator's proposed determination described below.

DATES: Any interested party may comment on this proposal and/or request that a public hearing be held. All comments should be received at the address listed below on or before October 16, 1989. Should EPA decide to hold a public hearing on this issue, it will be announced at least 30 days in advance and the deadline for comments will be extended to 15 days from the date of the hearing.

ADDRESSES: Comments should be sent to Virginia Laszewski, Wetland Protection Section, U.S. Environmental Protection Agency, WPS-1900, JFK Federal Building, Boston, MA 02203-1911. Comments submitted to EPA and the record supporting this proposed determination may be reviewed at the same address; reasonable charges may be made for reproduction.

FOR FURTHER INFORMATION CONTACT: Pamela Shields, at the above address or at (617) 565-4421.

SUPPLEMENTARY INFORMATION:

I. The 404(c) Process and Criteria

The Clean Water Act, 33 U.S.C. § 1251 *et seq.*, prohibits the discharge of pollutants, including dredged and fill material, into the waters of the United States (including wetlands) except in compliance with, among other things, section 404. Section 404 establishes a federal permit program to regulate the discharge of dredged or fill material subject to the requirements of environmental guidelines developed by EPA in conjunction with the Department of the Army.[1] The U.S. Army Corps of Engineers (Corps) may, except as provided in section 404(c), issue permits authorizing dredged and fill material discharges into waters and wetlands if they comply with, among other things, the 404(b)(1) guidelines. Section 404(c) authorizes EPA, after providing notice and opportunity for hearing, to prohibit or restrict the use of a site for disposal of dredged or fill material, where it determines that such use would have an unacceptable adverse effect on municipal water supplies, shellfish beds, fishery areas (including spawning and breeding areas), wildlife, or recreational areas. EPA can exercise 404(c) to "veto" a permit the Corps has decided to issue or, as here, to protect valuable aquatic areas in advance of any specific permit decision.

The regulations implementing 404(c) are published at 40 CFR 231 and define "unacceptable adverse effect" as:

> Impact on an aquatic or wetland ecosystem, which is likely to result in significant degradation of municipal water supplies (including surface or ground water) or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) guidelines (40 CFR part 230).

The 404(c) regulations also establish the procedures to be followed by EPA in exerting section 404(c) authority. Whenever the Regional Administrator believes that the filling of a site may have an unacceptable adverse effect on the values listed above, he may begin the process by notifying the Corps of Engineers and landowners that he intends to issue a proposed determination under section 404(c). Unless within 15 days the landowners or the Corps persuade(s) the Regional Administrator that unacceptable adverse impacts will not occur, the Regional Administrator publishes a notice in the Federal Register proposing to prohibit or restrict use of the site for the discharge of dredged or fill material and soliciting public comment on the action. Today's notice represents this step in the process.

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[1] The pertinent regulations, set forth at 40 CFR part 230 and often referred to as the section 404(b)(1) guidelines, contain several strong provisions which prohibit issuance of a permit for activities which would cause avoidable or significant impacts to wetlands.

Following close of the comment period (and the public hearing if one is held), the Regional Administrator decides either to withdraw the proposed determination or prepare a recommended determination. If he chooses the latter option, he then forwards it and the administrative record compiled in the Region to the Assistant Administrator for Water at EPA's headquarters for a final decision affirming, modifying or rescinding the recommended determination.

II. The Leonard Pond Site

Leonard Pond is located in Agawam, Massachusetts, west of and adjacent to South West Street, south of Johnson Corner, and roughly one mile north of Suffield, Connecticut. Approximately seven acres of palustrine scrub-shrub swamp, primarily to the north and south, and three acres of palustrine emergent marsh surround the six acre pond. A 33 acre tract of predominantly palustrine forested wetland drains into the pond from the north and west. Drainage also enters the pond via a long strip of forested wetland extending to the south for over a half mile. Water leaves the pond through an outlet into Still Brook.

The wetlands support diverse vegetation with over 70 plant species identified at the site. Red maple (*Acer rubrum*) dominates the canopy of the wooded swamps found throughout the area. Highbush blueberry (*Vaccinium corymbosum*), Northern arrowwood (*Viburnum recognitum*), and spicebush (*Lindera benzoin*) populate the understory of the wooded swamps while jewelweed (*Impatiens capensis*), skunk cabbage (*Symplocarpus foetidus*), and cinnamon, royal, and sensitive ferns (*Osmunda cinnamomea, O. regalis,* and *Onoclea sensibilis*) comprise some of the many species found in the herbaceous layer. Broad-leaved cattail (*Typha latifolia*) and members of the Cyperaceae and Juncaceae families dominate the emergent wetlands onsite. Scrub-shrub community dominants include buttonbush (*Cephalanthus occidentalis*), silky dogwood (*Cornus amomum*), steeplebush (*Spirea tomentosa*), and willows (*Salix* spp.).

The soils of the site are mostly poorly or very poorly drained. Shallow mucks, Scantic Variant silt loam, and Saco Variant silt loam constitute the bulk of the hydric soils present, as mapped in the Hampden County, Massachusetts Soil Conservation Service Soil Survey.

The Agawam Historical Society records indicate that while Leonard Pond was created or enhanced to provide water supply/power for a gristmill, the pond existed prior to 1869 and was known even then as a "wildlife and waterfowl stop-over." Present day surrounding land uses include residences on both sides of South West Street, tree farming primarily to the north, a large agricultural field/vegetable field to the west, a gas transmission right-or-way to the south, and undeveloped upland on Provin Mountain to the west. Heavily agricultural for most of the Town's history, much of the land in Agawam has reverted to forest or been developed for residential and commercial purposes.

A substantial body of scientific research has conclusively demonstrated that our nation's wetlands possess a wide range of biological, hydrological, and societal values; indeed, this is why the Clean Water Act's Section 404 program emphasizes their protection. Recent investigation by EPA and U.S. Fish and Wildlife Service staff combined with the work of others clearly shows the importance of the Leonard Pond wetlands to wildlife. Over 100 bird species have been observed in the area including waterfowl such as black, wood, ringnecked, and mallard ducks, green-winged teal, hooded and common mergansers, and great blue and green-backed herons. Raptors observed include red-tailed, red-shouldered, and broadwinged hawks, goshawk, osprey and turkey vultures. A panoply of migratory songbirds have been observed here also, including the northern yellowthroat, Louisiana waterthrush, and parula warbler. A wide range of mammals, reptiles, and amphibians probably use the site also. For example, red fox have been observed in the area. Sign of white-tailed deer, beaver, rabbit, raccoon, and muskrat have all been observed; coyote and spotted turtle (*Clemys guttata*), a "state rare" species listed by the Massachussetts Heritage Program, have been reported in the area.

The interspersion of vegetative cover types creates numerous "edge" habitats favored by wildlife. Surrounding uplands include hardwoods, old field, and agricultural areas which also enhance this edge effect for the adjacent wetlands. The high vegetation density throughout all the cover types of the site, and the presence of vertical sub-communities (e.g., canopy, sub-canopy, shrub, and herbaceous layers present in the red maple swamps) create structural heterogenity of the habitat for wildlife. These characteristics allow the site to support many types and numbers of wildlife. While bisected by an unpaved farm road on an east-west axis immediately north of the pond proper, the area has been minimally disturbed, other than by South West Street to the east. In summary, Leonard Pond and its wetlands represent outstanding wildlife habitat, a resource which continues to shrink in south-central Massachusetts with its long history of settlement and continuing urbanization.

These wetlands do more than provide habitat for wildlife. The area provides flood storage, although the extent of this function is uncertain. In addition, given the extensive herbaceous vegetation combined with irregular and braided stream channels through much of the swamp, these wetlands probably cleanse the water released to Still Brook downstream of the pond. This wetland function may be particularly important at the site in light of the application of fertilizers and pesticides that occurs in the surrounding agricultural and nursery areas. In addition, the pond supports a warm-water fishery likely including bass, pickerel and bluegill. Since the 19th century, townspeople and others have used the area for passive recreation, most notably birdwatching. Furthermore, the wetlands provide open space, an increasingly rare commodity in a landscape which continues to change as the region's population expands.

III. Impacts From Potential Filling Activities

For over a decade the Massachusetts Department of Public Works (DPW) has planned to upgrade and realign Massachusetts Route 57 through the town of Agawam. During the fall of 1985, meetings were held between the DPW, the Corps, the Fish and Wildlife Service and EPA to discuss DPW's proposed road alignment, which bisected the site from east to west. After receiving opinions from EPA, the Fish and Wildlife Service and the Corps that the road location did not comply with the 404(b)(1) guidelines, DPW delayed its section 404 permit application in order to investigate alternatives to reduce or avoid wetland impacts. At this time, EPA understands that DPW continues to evaluate at least one alternative in addition to its original proposal. This

alternative alignment considered by DPW would fill 2.21 acres of forested/scrub shrub wetlands at the northern end of the site. This 404(c) action would prohibit construction of both alignments as currently being considered by DPW.

While the original DPW proposal provided the impetus for this 404(c) action, EPA reasonably expects other development pressures to threaten the area eventually. Agawam has experienced significant growth during the past five years. For example, 102 building permits for new residential units were issued by the Town for 1981 and 1982. For the two year period 1986–1987, the Town issued 514 such permits. The areas surrounding Leonard Pond have not escaped this increased development. Moreover, should DPW proceed to relocate and upgrade Route 57 in the vicinity, it would increase the attractiveness of the site for residential and commercial development (e.g., the intersection with South West Street would be at grade). As noted above, surrounding land uses include residential development, agriculture and silviculture; any of these activities may encroach upon the wetlands in the future. In fact, a subdivision plan is on file with the town planning board for a portion of the contiguous wetlands north of Leonard Pond.

EPA believes that placing fill in this excellent aquatic habitat could have an unacceptable adverse effect on the environment by significantly and irreversibly diminishing the value of the area for wildlife. All wetland values would be destroyed under the footprint of the fill. Indirect impacts—disruption of drainage and flow patterns, reduction of edge habitat, introduction of contaminants—might also be severe. While the direct impacts of a fill generally increase with its size, even small fills can cause significant indirect impacts. In all likelihood, wetland vegetation and slow moving animals would perish under any fill. More mobile species would attempt to relocate in nearby habitats; however, if these habitats are at or near carrying capacity, the displaced animals probably would not survive. While the precise magnitude of the adverse impacts depends on the particular aspects of any given proposal, EPA believes nearly any filling would destroy valuable wetland habitat with a concomitant loss of wildlife value. Adverse impacts of filling woud be particularly intense in an area such as Leonard Pond because it has become an increasingly important refuge for wildlife as development consumes surrounding upland habitats. In addition to wildlife impacts, fill projects would degrade other wetland values as well. Fill in the wetland displaces water storage volume and could create or aggravate downstream flooding. Filling also reduces the wetlands' ability to maintain water quality while at the same time increasing the input of pollutants into the system. Loss of habitat and degradation of water quality could adversely affect the fish that use the pond and wetlands.

IV. Proposed Determination

The preamble to the section 404(c) regulations explains that one of the basic functions of section 404(c) is to police application of the section 404(b)(1) guidelines (see Part I above). In formulating this proposed determination, EPA has considered the purpose and key provisions of the section 404(b)(1) guidelines. Those sections which presume that wetland losses can be avoided for certain types of projects and which prohibit significant impacts to the aquatic environment are especially important in this case.

EPA proposes to restrict the extent of filling activities that may occur on the site. For purposes of this proposal, the site consists of Leonard Pond and its adjacent wetland within the following area: West of South West Street; north of the Teneco gas transmission line; east of Provin Mountain; and south of the dirt road that serves as the entrance to Boglisch and Sons nursery (because this road extends only part way to Provin Mountain, for purposes of this action the boundary will extend directly west from the end of this road to Provin Mountain). In addition, there are two small wetland areas that are located north of this boundary which are to be included as part of the site. The first is a red maple swamp directly north of this dirt road; the second is an emergent wetland area north of the irrigation pond just east of Provin Mountain.

We considered several factors in determining these boundaries. First, and most important, is the ecological value of these wetlands. All the wetlands within the boundary are integrally connected and provide valuable wildlife habitat. We have not included all hydrologically connected wetlands especially to the south and east, because to do so would encompass disturbed areas not as valuable for wildlife. In addition, we believe to expand this action significantly in these directions would make it administratively unwieldy and result in a complex and difficult to follow boundary for the public. We remain concerned about the wetlands not included within the proposed boundary; discharges of dredged and fill material in these areas would still require section 404 authorization and will be closely scrutinized by EPA.

The proposed restriction would, except as noted below, prevent the discharge of dredged or fill material into the Leonard Pond site for nonwater dependent purposes. A nonwater dependent fill project is one which does not require acess or proximity to water or wetlands to fulfill its basic purpose (e.g., housing, roadway, and most types of agriculture).

Water dependent activities (e.g., boat ramps, aquaculture projects) would not be prohibited by this proposal but may still require a section 404 permit from the Corps. Some water dependent activities may result in significant impacts or otherwise not comply with the section 404 requirements and, therefore, would be denied a permit. In addition, we recognize that some nonwater dependent fills may be sufficiently minor so as not to result in unacceptable impacts either individually or cumulatively. Therefore, this 404(c) action would not apply to discharges currently authorized by certain nationwide general permits issued by the Corps of Engineers. Specifically, this proposal would not affect the applicability of relevant nationwide permits 1–25 codified at 33 CFR 330.5(a).[8] These permits authorize, subject to certain restrictions and conditions, specific activities such as fish and wildlife harvesting devices, bank stabilization work, backfill and bedding for utility lines, and dredge and fill discharges which do not exceed 10 cubic yards. We propose, however, to override nationwide permits #21 and #26 at the site since these nationwide permits could, under certain circumstances, allow fills which would cause unacceptable adverse impacts.

EPA proposes this approach after considering the environmental values of the site, its sensitivity to disruption and the obvious harm most fill projects would cause. Moreover, our experience is that alternatives usually exist for nonwater dependent activities since, by definition, they do not have to be located in or near water. EPA believes, therefore, that such filling activities could have unacceptable adverse impacts on the aquatic ecosystem.

EPA believes this proposal would properly utilize the section 404(c) authority to prevent unacceptable

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[8] Specifically, nationwide permit numbers 3, 6, 7, 12–18, 20, 22, 23, and 25. Other nationwide permits authorize activities under section 10 of the Rivers and Harbors Act and do not appy to this site.

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adverse impacts from occurring at the Leonard Pond site. The types of activities proposed for restriction, nonwater dependent fill projects, as a class comprise the most environmentally destructive and the most frequently avoidable types of discharge. The 404(b)(1) guidelines contain a strong presumption against permitting such discharges. Moreover, in light of the outstanding value of the site for wildlife, nonwater dependent projects would likely violate the guidelines by causing or contributing to significant degradation. Therefore, by this proposal we intend to enforce the requirements of the section 404(b)(1) guidelines, a function envisioned by the section 404(c) regulations.

V. Solicitation of Comments

EPA solicits comments on all issues raised by this proposed determination. In particular, we are interested in receiving information pertaining to the environmental values of the Leonard Pond area and any current or proposed threats to these aquatic resources. We also are interested in receiving comments on the boundary of the 404(c) action and the activities affected (and not affected) by the proposal. Specifically, (1) whether placing dredged or fill material into Leonard Pond and its wetlands would have an unacceptable adverse effect on fish and wildlife habitat; (2) existence of any endangered or threatened species at the site; (3) cumulative impacts that may result from filling these wetlands; (4) whether the geographic limit of this action is reasonable and appropriate; (5) what, if any, type of filling activity could occur without individually or cumulatively causing unacceptable adverse impacts, and (6) whether the relocated Route 57, which would fill wetlands at the site, would cause significant loss or damage to wildlife.

Comments should be sent within 45 days from the date of publication of this **Federal Register** notice to the person listed above under **ADDRESSES**. If the Regional Administrator finds a significant degree of public interest in this announcement or that it would be otherwise in the public interest to hold a hearing, a hearing will be held. All comments received, as well as any hearing record will be fully considered by the Regional Administrator in making the decision to prepare a recommended determination to prohibit or restrict filling Leonard Pond and its wetlands or to withdraw this proposed determination.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 89-20441 Filed 8-29-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3637-4]

Proposed NPDES General Permits for the Oil and Gas Extraction Point Source Category, Onshore Subcategory—States of Louisiana, New Mexico, Oklahoma, and Texas

AGENCY: Environmental Protection Agency.

ACTION: Notice of Four Proposed NPDES General Permits.

SUMMARY: The Regional Administrator of Region 6 (the "Region") is today proposing to issue four National Pollutant Discharge Elimination System (NPDES) general permits for facilities in the Onshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subpart C). These proposed general permits implement the no discharge requirement of the Onshore Subcategory regulations for oil and gas facilities conducting exploration drilling, development drilling, well completion, production and well treatment operations. These proposed permits are being issued as a Best Professional Judgement (BPJ) determination of Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) levels of pollution control. These permits, when issued, will prohibit discharges from oil and gas facilities in the Onshore Subcategory located in the States of Louisiana, New Mexico, Oklahoma, and Texas.

All four permits are proposed in one notice to take advantage of permit language that is common to all four permits.

DATE: Comments must be received by October 16, 1989.

ADDRESS: Comments should be sent to the Regional Administrator Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell, Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733. Telephone: (214) 655-7190.

SUPPLEMENTARY INFORMATION:

Legal and Regulatory Authority

These general onshore permits have been prepared pursuant to sections 301(b) and 304(b) of the Clean Water Act. Section 301(b)(1) requires attainment of effluent limitations based on the application of "best practicable control technology currently available" (BPT) by July 1, 1977. Section 305(b) provides for the promulgation of regulations defining a technology as "best practicable control technology currently available" and specifies the factors to be considered in defining BPT. This effluent limitation has been promulgated for the oil and gas industry as the Oil and Gas Extraction Point Source Category, final and interim final Rules at 44 FR 22069 (April 13, 1979) and amended at 47 FR 31554 (July 21, 1982). The Federal Regulations governing the Onshore Subcategory are codified at 40 CFR Part 435, Subpart C.

The Environmental Protection Agency has issued a report entitled "Development Document for Interim Final Effluent Limitations Guidelines and Proposed New Source Performance Standards for the Oil and Gas Extraction Point Source Category" (41 FR 44942, October 13, 1976) which was prepared in support of the initial interim final BPT limitations promulgated in the Federal regulations cited above. This document discussed the oil and gas industry, available waste treatment technology and the results of the technical study which resulted in the limitations contained in the regulations (40 CFR Part 435). Additionally, a supplementary report on the possible economic impacts of the regulations was issued at that time.

Since publication of the interim final regulations, interested parties have submitted comments and new data for the consideration by the Agency. The promulgated regulations are based on the analyses of these comments and data. For the most part, the analysis merely clarified the interim final regulations. In applying the BPT limitations of these permits, the Region cannot estabish limitations less stringent than those already defined in the Federal regulations.

Many owners and operators of oil and gas facilities located in the Onshore Subcategory have applied for a NPDES permit; however, no such individual permits have been issued because priorities for NPDES permit issuance did not include these facilities. The permits proposed here will apply to all Onshore Subcategory oil and gas facilities

located in Louisiana, New Mexico, Oklahoma, and Texas whether or not an application has been previously filed with EPA. In effect, these permits implement the effluent guidelines for the Onshore Subcategory at 40 CFR 435.30, and thereby prohibit the discharge of any pollutants from these facilities into waters of the United States.

A permittee may request to be excluded from coverage of these permits by applying for an individual permit within 90 days after publication of these permits in the **Federal Register** (40 CFR 122.28(b)(2)(iii). In this case however the Region cannot foresee any case where the reasons cited by the owner or operator will be adequate to support a discharge since the Onshore Subcategory regulation has required no discharge for over 10 years. Applying for an individual permit does not authorize the discharge, and no discharges will be allowed after the effective date of this permit.

General Applicability

These proposed general permits apply to facilities in the Onshore Subcategory of the Oil and Gas Extraction Point Source Category within the States of Louisiana, New Mexico, Oklahoma, and Texas (as defined at 40 CFR Part 435.40 Subpart C and as amended at 47 FR, 31554 (July 21, 1982).

These permits do not apply to those facilities which are located inland from the inner boundary of the territorial seas in areas classified as Coastal as defined at 40 CFR 435.40 Subpart D and as amended at 47 FR, 31554. Likewise, these permits do not apply to "stripper" wells as defined at 40 CFR 435.60 and which are so classified before the effective date of these permits; nor do they apply to some exploration or producing facilities located west of the 98th meridian as defined at 40 CFR Part 435, Subpart E (Agricultural Wildlife Water Use Subcategory) which discharge potentially beneficial produced waters.

Facility location determines the applicable subcategory in 40 CFR Part 435, and pollutant discharges which are prohibited at the location of the facility may not be discharged at other locations.

Applicability Specified

Geographic Limits: These permits, based on Federal regulations, apply to the Onshore Subcategory as defined at 40 CFR 435.30. The Onshore Subcategory geographically also applies to an area that in part is also covered by the Coastal Subcategory as defined at 40 CFR 435.40, except as amended at 47 FR 31554 (July 21, 1982). The seaward boundaries of both subcategories are defined as the inner margin of the territorial seas and both extend inland with the inner or landward boundary of the Coastal Subcategory including any body of water landward of the territorial seas or any wetlands adjacent to such waters. The Coastal Subcategory is not geographically defined and, as promulgated, it applies to facilities operating in lakes, rivers, and streams. Oil and gas operations in the Coastal Subcategory are, on this basis, excluded from these permits; they will be regulated under separate general permits.

Onshore oil and gas operations located west of the 98th meridian in the states of New Mexico, Oklahoma or Texas and which qualify for coverage under 40 CFR 435.50 (Agricultural and Wildlife Water Use Subcategory) are likewise not included in these general onshore permits because the allowed use of produced waters for purposes defined in the subcategory requires evaluation of applicable water quality standards and criteria. Facilities in the Agricultural and Wildlife Water Use Subcategory will therefore be covered under separate general permits.

Location: Location of the oil and gas facility is determinate and discharges at other locations is prohibited. In taking this position, it is the Agency's intent that the location of the well head shall be the determining factor in defining within which subcategory a permittee is operating. It is also the Agency's intent that geographic location is also to determine the conditions under which discharges may or may not occur. Since discharges are meant to refer to the surface release of pollutants to waters of the United States, disposal by other methods approved by State Agencies, such as subsurface injection, is not prohibited by these permits.

Other Exemptions: "Stripper" wells as defined at 40 CFR 435.60, Subpart F, and which are classified as "stripper" prior to the date of this permit are not included in these general onshore permits. This subcategory, which applies to wells which produce 10 barrels of oil per day or a well with greater than 15,000 cubic feet of gas per barrel of oil per day, applies to single wells or fields wherein, as is the Agency's intention, production limits shall apply to an average expressed on a per well basis. See 44 FR 22073 (April 13, 1979).

Wells which become classified as "stripper" after the effective date of this permit are covered by this permit. Although no specific limitations have otherwise been promulgated for the Stripper Subcategory at this time, the proper classification of this source as a separate subcategory is regarded significant since it does exclude the source from other subcategories, allowing the establishment of more directly applicable limitations under section 402(a)(1) of the Clean Water Act. Effluent limitations regarding the Stripper Subcategory will be considered as separate general permits.

Consideration of Technology

These permits are based on the Agency's promulgated interim final effluent limitations which are based on the application of "best practicable control technology currently available" (BPT) for the Onshore Subcategory of the Oil and Gas Extraction point source Category. See 44 FR 22069 (April 13, 1979); 40 CFR Part 435, Subpart C. The Federal regulations applying to this subcategory incorporate terms based on comments received after publication of the interim final regulations and the Agency's stipulated agreements in litigation. In the absence of other guidelines for the onshore area, the Agency has taken the position that since the Federal regulations prohibit the discharge of pollutants from any source in the subcategory, that on the basis of best professional judgment (BPJ), the best conventional pollutant control technology (BCT) equals best available technology economically achievable (BAT) and that this equals the best practicable control technology (BPT) applied in the Onshore Subcategory. The no discharge limitation on onshore activities associated with the exploration and production of oil and gas is therefore in accord with the Federal regulations at 40 CFR Part 435, Subpart C, wherein the discharge of waste pollutants from any source related to oil and gas exploration and production activities in the Onshore Subcategory is prohibited. In applying the no discharge limitation in this permit, the Agency cannot establish limitations that are less stringent than those limitations defined in the Federal regulations.

Ultimate Disposal of Wastes

These proposed permits prohibit the direct discharge of pollutants to waters of the United States from oil and gas wells in the Onshore Subcategory and their appurtenant facilities, e.g., mud pits, reserve pits, oil/water separators. They do not, however, apply to the ultimate disposal of wastes derived from oil and gas activities. If such disposal involves a discharge a pollutants to waters of the United States, the disposal facility must obtain an individual NPDES permit prior to commencing the discharge. Generally, State permits are also required for such discharges.

Moreover, disposal of wastes from oil and gas operations through methods which do not involve discharges to waters of the United States, e.g., land farming, backfilling, subsurface injection, is also regulated by state agencies. Although other state agencies may also have jurisdiction, EPA suggests that parties desiring approval for such disposal methods contact the Louisiana Department of Environmental Quality (surface disposal), the Louisiana Department of Natural Resources (Subsurface disposal), the New Mexico Conservation Division, the Oklahoma Corporation Commission, or the Railroad Commission of the State of Texas, as appropriate.

Other Legal Requirements

State Certification: Section 301(b)(1)(C) of the Clean Water Act requires that NPDES permits contain conditions which ensure compliance with applicable State water quality standards or limitations. Under section 401(a)(1) of the Act, EPA may not issue a permit until the State grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. The proposed permits, in not allowing discharges into waters of the United States, is in conformity with existing Federal regulations.

The Endangered Species Act: The Endangered Species Act (ESA) and its implementing regulations (50 FR CFR Part 402) requires that each Federal Agency ensure that its actions, such as permit issuance, do not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of their critical habitats. In view of the fact that these permits will not allow discharges into the waters of the United States and are therefore unlikely to effect changes in the environment, EPA has concluded that their issuance is unlikely to adversely affect any of the listed species or their critical habitats. It is seeking concurrence in this determination from the U.S. Fish and Wildlife Service.

Economic Impact (Executive Order 12291): The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order. The economic and inflationary effects of the regulations (40 CFR Part 435) upon which this permit is based have been evaluated in accordance with Executive Orders 11821 and 12044.

The Paperwork Reduction Act: EPA has reviewed the requirements imposed on regulated facilities in these general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et. seq. The information collection requirements of these permits have been approved by the Office of Management and Budget in submissions made for the NPDES permit program under provision of the Clean Water Act.

The Regulatory Flexibility Act: EPA does not anticipate that these general permits will have a significant impact on the majority of the parties, including those with greater than and those with less than 500 employees, due to the fact that the no discharge limitations proposed are in effect in the form of existing State and Federal regulations.

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provisions of 5 U.S.C. 605(b) that these general NPDES permits will not have a significant impact on a substantial number of small entities. Moreover, the permits reduce a significant administrative burden of applying for individual permits, on regulated sources.

Date: August 22, 1989.

Robert E. Layton Jr.,

Regional Administrator, Region 6.

General NPDES Permit for the Oil and Gas Extraction Point Source Category, Onshore Subcategory

Permit No. LAG320000—State of Louisiana

Permit No. NMG320000—State of New Mexico

Permit No. OKG320000—State of Oklahoma

Permit No. TXG320000—State of Texas

This permit, issued under the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq; The "Act"), prohibits the discharge of pollutants from any onshore oil and gas wells and facilities as defined in 40 CFR Part 435, Subpart C (Onshore Subcategory) and modified at 47 FR, 31554, July 21, 1982. It does not apply to wells or facilities in the Agricultural and Wildlife Use Subcategory (as defined at 40 CFR 435, Subpart E). Likewise, it does not apply to existing wells which, at the time of permit issuance, fall within the Stripper Subcategory as defined at 40 CFR 435, Subpart F, but later wells in which production falls below 10 barrels per day shall remain subject to this permit. This permit also does not apply to those wells or appurtenant facilities whose well heads are located in any body of water or adjacent wetlands (as defined at 40 CFR 435, Subpart D).

To the extent that applicability of this permit is based on the geographical location of wells or facilities, the location of the wellhead shall be determinative, i.e., pollutant discharges which are prohibited at the location of the well head may not be discharged at other locations.

This permit prohibits the discharge of any pollutant from wells or facilities subject to its terms. Said pollutants include (but are not limited to):

Drilling Fluids
Drill Cuttings
Produced water
Produced sand
Deck and Rig Floor Drainage
Blowout Preventer fluid
Well Treatment Fluids

Further description of said pollutants, as well as monitoring, reporting, and other requirements are set forth in Parts I, II, and III of this permit.

This permit shall become effective when issued, and expire at midnight on (*five years after final permit effective date*).

Myron O. Knudson,

Director, Water Management Division EPA Region 6.

Part I

(Applicable to LAG320000, NMG 320000, OKG320000, TXG320000)

Section A. General Permit Coverage

General Permit Limits

(Applicable to LAG320000)

This permit prohibits discharges into waters of the United States as defined in 40 CFR Part 435. The disposal of waters and waste resulting from oil and gas exploration and producing activities in manners other than by discharges into waters of the United States are limited by the Department of Natural Resources, Office of Conservation of the State of Louisiana according to Amendment to Statewide Order No. 29–B and the water quality standards of the Louisiana Department of Environmental Quality (Louisiana Revised Statute, L.R.S. 30:1091–1096).

(Applicable to NMG320000)

This permit prohibits discharges into waters of the United States as defined in 40 CFR Part 435. The disposal of waters and waste resulting from oil and gas exploration and producing activities in manners other than by discharges into waters of the United States are otherwise limited by the New Mexico Oil Conservation Division (NMOCD) Rules 01 through 1304 and regulations of the State Oil and Gas Act (Sections 70–2–1– through 70–2–36 NMSA, 1978) and as may be amended, and the water quality standards of the New Mexico Health and Environment Department, Environmental Improvement Division,

Sections 1–100 to 3101 and as explained in Water Quality and Water Pollution Control in New Mexico (1988), and as may be amended.

(Applicable to OKG320000)

This permit prohibits discharges into waters of the United States as defined in 40 CFR Part 435. The disposal of waters and waste resulting from oil and gas exploration and producing activities in manners other than by discharges into waters of the United States are otherwise limited by the Oklahoma Corporation Commission according to Rules of Practice 1 through 26 (1988) and the water quality standards of the Oklahoma Water Resources Board, Water Quality Division, Sections 1 through 8 and as appended (1985) and as may be amended.

(Applicable to TXG320000)

This permit prohibits discharges into waters of the United States as defined in 40 CFR Part 435. The disposal of waters and waste resulting from oil and gas exploration and producing activities in manners other than by discharges into waters of the United States are otherwise limited by the Railroad Commission of the State of Texas according to Rules 79 through 85 (1987) and the water quality standards of the Texas Water Commission (12 TexReg 3642, 13 TexReg 1776).

Section B. NPDES Individual versus General Permit Applicability

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

1. The discharge(s) is a significant contributor of pollution;
2. The discharger is not in compliance with the conditions of this permit;
3. A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to point sources;
4. A Water Management Plan containing requirements applicable to such a point source is approved;
5. The point source(s) covered by this permit no longer:

   (a) involves the same or substantially similar types of operations,

   (b) is no longer limited to the same types of wastes,

   (c) requires the same effluent limitations or operating conditions, or

   (d) in the opinion of the Regional Administrator, is more appropriately controlled under an individual permit than under a general permit.

Operators required to apply for an individual permit shall be notified in writing by the Regional Administrator.

A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked. Upon revocation of the individuel permit, this general permit shall apply to the source.

Part II

(Applicable to LAG320000, NMG320000, OKG320000, TXG320000)

Section A. Effluent limitations and Monitoring Requirements, Onshore Subcategory

(Applicable to LAG320000)

The oil and gas exploration and production activities covered by this permit apply to the onshore area of the State of Louisiana as defined in Part I.

(Applicable to NMG320000)

The oil and gas exploration and production activities covered by this permit apply to the onshore area of the State of New Mexico as defined in Part I.

(Applicable to OKG320000)

The oil and gas exploration and production activities covered by this permit apply to the onshore area of the State of Oklahoma as defined in Part I.

(Applicable to TXG320000)

The oil and gas exploration and production activities covered by this permit apply to the onshore area of the State of Texas as defined in Part I.

1. Drilling Fluids

(a) Applicability

Permit conditions apply to all drilling fluids (muds), whether oil, mineral oil or water based, and include fluids adhering to drill cuttings, used as the result of activities associated with the exploration and the production of oil and gas.

(b) Prohibitions

The discharge of drilling fluids into waters of the United States is prohibited.

(Applicable to LAG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the State of Louisiana, Department of Natural Resources, Office of Conservation (Statewide Order 29–B) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

(Applicable to NMG320000)

Best management practices (BMP) shall be used in accordance with the rules and regulations of the New Mexico Oil Conservation Division (Rules and Regulations) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

(Applicable to OKG320000)

Best management practices (BMP) shall be used in accordance with the rules and regulations of the Oklahoma Corporation Commission, Oil and Gas Conservation Division (General Rules and Regulations, 1988) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

(Applicable to TXG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Railroad Commission of Texas (Statewide rules for Oil, Gas and Geothermal Operations, RRCT, 1987) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

2. Drill Cuttings

Special note: The permit prohibitions and limitations that apply to drilling fluids also apply to cuttings as well as to the fluids that adhere to them. Any permit condition that applies to the drilling fluid system therefore also applies to cuttings.

3. Produced water

(a) Applicability

This permit applies to all formation waters recovered during activities associated with the exploration and production of oil and gas, including those recovered during production tests.

(b) Prohibitions

The discharge of produced water or produced water associated with oil is prohibited.

(Applicable to LAG320000)

Produced water, whether from well drilling, production or workover operations, as well as waste waters from storage tanks, separators, saltwater or brine pits are prohibited from being discharged into waters of the United States. Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Louisiana Department of Natural Resources, Office of Conservation (Statewide Order 29–B) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

(Applicable to NMG320000)

Produced water, whether from well drilling, production or workover operations, as well as waste waters from storage tanks, separators, saltwater or brine pits are prohibited from being discharged into waters of the United States. Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the New mexico Oil Conservation Division (Rules and Regulations) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

(Applicable to OKG320000)

Produced water, whether from well drilling, production or workover operations, as well as waste waters from storage tanks, separators, saltwater or brine pits are prohibited from being discharged into waters of the United States. Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Oklahoma Corporation Commission, Oil and Gas Conservation Division (General Rules and Regulations, 1988) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

(Applicable to TXG320000)

Produced water, whether from well drilling, production or workover operations, as well as waste waters from storage tanks, separators, saltwater or brine pits are prohibited from being discharged into waters of the United States. Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Railroad Commission of Texas (Statewide Rules for Oil, Gas and Geothermal Operations, RRCT, 1987) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

4. Produced Sand

Special note: The prohibitions and limitation that apply to drill cuttings, drilling fluids, well completion fluids and fluids that adhere to cuttings also apply to produced sand.

5. Deck or Rig Floor Drainage

(a) Applicability

This permit applies to material or fluid spillage, including drilling muds (oil, mineral oil or water based), wash-down water, grease, waste oil, lubricants, or hydraulic fluids resulting from activities associated with the exploration and production of oil and gas.

(b) Prohibitions

The discharge of rig floor or deck drainage into waters of the United States is prohibited.

(Applicable to LAG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the State of Louisiana, Department of Natural Resources, Office of Conservation (Statewide Order 29–B) to ensure that rig floor or deck drainage will not discharge, seep or otherwise be released into waters of the United States.

(Applicable to NMG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the New Mexico Oil Conservation Division (Rules and Regulations) to ensure that rig floor or deck drainage will not discharge, seep or otherwise be released into waters of the United States.

(Applicable to OKG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Oklahoma Corporation Commission, Oil and Gas Conservation Division (General Rules and Regulations, 1988) to ensure that rig floor or deck drainage will not discharge, seep or otherwise be released into waters of the United States.

(Applicable to TXG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Railroad Commission of Texas (Statewide rules for Oil, Gas and Geothermal Operations, RRCT, 1987) to ensure that rig floor or deck drainage will not discharge, seep or otherwise be released into waters of the United States.

6. Blowout Preventer Fluid

(a) Applicability

This permit applies to all oil or hydraulic fluids used in blowout preventer mechanisms used in activities associated with the exploration and production of oil and gas.

(b) Prohibition

The discharge of blowout preventer fluids are prohibited.

7. Well Treatment Fluids, Completion Fluids, Workover Fluids

(a) Applicability

This permit applies to well treatment fluids, including well completion fluids, workover fluids well stimulation fluids or fluids resulting from well tests used in activities related to the exploration and production of oil and gas.

(b) Prohibition

The discharge of well treatment, completion, well testing and workover fluids, as well as discharges from production test, flare, completion or otherwise designated temporary storage pits, into waters of the United States is prohibited.

(Applicable to LAG320000)

Best management practices (BMP) shall be used in the disposal of these wastes shall be in accordance with the treatment and disposal criteria of the State of Louisiana, Department of Natural Resources, Office of Conservation (Statewide Order 29–B) to ensure that there will be no discharges into waters of the United States.

(Applicable to NMG320000)

Best management practices (BMP) shall be used in the disposal of these wastes shall be in accordance with the treatment and disposal criteria of the New Mexico Oil Conservation Division (Rules and Regulations) to ensure that there will be no discharges into waters of the United States.

(Applicable to OKG320000)

Best management practices (BMP) shall be used in the disposal of these wastes shall be in accordance with the treatment and disposal criteria of the Oklahoma Corporation Commission, Oil and Gas Conservation Division (General Rules and Regulations, 1988) to ensure that there will be no discharges into waters of the United States.

(Applicable to TXG320000)

Best management practices (BMP) shall be used in the disposal of these wastes shall be in accordance with the treatment and disposal criteria of the Railroad Commission of Texas (Statewide Rules for Oil, Gas and Geothermal Operations, RRCT, 1987) to ensure that there will be no discharges into waters of the United States.

Part III.

(Applicable to LAG320000, NMG320000, OKG320000, TXG320000)

Section A. General Conditions

1. Introduction. In accordance with the provisions of 40 CFR Part 122.41 et seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES permits set forth in the Clean Water Act, as amended (hereinafter known as the "Act") as well as ALL applicable CFR regulations.

2. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit non-compliance constitutes a violation of the Clean Water Act and is grounds for enforcement action and/or for requiring a permittee to apply for and obtain an individual NPDES permit.

3. Permit Flexibility. This permit may be modified, revoked and reissued, or terminated for cause, in accordance with 40 CFR 122.62–64. The filing for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

4. Property Rights. This permit does not convey any property rights of any sort, or any exclusive privileges nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

5. Duty to Provide Information. The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish the Regional Administrator, upon request, copies of records required to be kept by this permit.

6. Criminal and Civil Liability. Except as provided in permit conditions on "Bypassing" and "Upsets", nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act or applicable CFR regulations which avoids or effectively defeats the regulatory purpose of the Permit may subject the permittee to criminal enforcement pursuant to 18 Section 1001.

7. Oil and Hazardous Substance Liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee may be subject under Section 311 of the Act.

8. State Laws. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Clean Water Act.

9. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstances is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Section B. Proper Operation and Maintenance

1. Need to Halt or Reduce Not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed and used by the permittee to achieve compliance with the conditions of this permit. This provision requires the operation of backup or auxiliary facilities of similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

4. Bypass of Facilities.

(a) Definitions

(1) "Bypass" means the intentional diversion of waste streams from any portion of a facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to be inoperable, or substantial and permanent loss of natural resources than can reasonably be expected to occur in the absence of bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Notice

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part III.D.2.

(c) Prohibition of Bypass

(1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required by Part III.B.4.(b).

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet three conditions listed at Part III.B.4.(c)(1).

5. *Upset Conditions.* (a) Definition

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed facilities, inadequate facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effects of an Upset. An upset constitutes an affirmative defense of an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part III.B.5.b. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) Conditions necessary for a demonstration of upset. The permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Part III.D.2; and

(4) The permittee complied with Part III.B.2.

(d) Burden of Proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. *Removed Substances.* Solids, sludges, filler backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollution from such materials from entering waters of the United States.

Section C. Monitoring and Records

The permittee shall allow the Regional Administrator, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

1. Enter upon the permittee premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. *Anticipated Noncompliance.* The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

2. *Twenty-Four Hour Reporting.* The permittee shall report any noncompliance with this permit, bypass or upset. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or plans to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

3. *Other Information.* Where the permittee becomes aware that it failed to submit any relevant facts in any report to the Regional Administrator, it shall promptly submit such facts or information.

4. *Changes in Discharges of Toxic Substances.* The permittee shall notify the Regional Administrator as soon as it knows or has reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, or any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(1).

(b) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(2).

5. *Signatory Requirements.* All applications, reports, or information submitted to the Regional Administrator shall be signed and certified as follows:

(a) All permit applications shall be signed as follows:

(1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principle business function, or decision making functions for the corporation, or

(b) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(c) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively.

(d) For a municipality, State, Federal or other public agency. Either a principle executive office or ranking elected official. For purposes of this section, a principle executive officer of a Federal agency includes:

(1) The chief executive officer of the agency, or

(2) A senior executive officer having responsibility for the overall operations of a principle geographic unit of the agency.

(3) Alternatively, all reports required by the permit and other information requested by the Regional Administrator may be signed by a person described above or by a duly authorized representative only if:

(a) The authorization is made in writing by a person described above;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or oil field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either an individual or an individual occupying a named position; and

(3) The written authorization is submitted to the Regional Administrator.

(c) Certification. Any person signing a document under this section shall make the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for the gathering of the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

6. *Availability of Reports.* Except for applications, effluent data, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

Section E. Penalties for Violations of Permit Conditions

1. Criminal

(a) *Negligent Violations.* The Act provides that any person who negligently violates permit conditions implementing Section 301, 302, 306, 307, or 308 of the Act is subject to a fine of

not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(b) *Knowing Violations.* The Act provides that any person who knowingly violates permit conditions implementing Section 301, 302, 306, or 308 of the Act is subject to a fine of not less than $5,000 per day of violation nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(c) *Knowing Endangerment.* The Act provides that any person who knowingly violates permit conditions implementing Section 301, 302, 306, 307, or 308 of the Act and who knows at the time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(d) *False Statements.* The Act provides that any person who knowlingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring devise or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 per day, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such a person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both (See Section 309.c.4. of the Clean Water Act).

2. *Civil Penalties.* The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307 or 308 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

3. *Administrative Penalties.* The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

(a) Class I Penalty

Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

(b) Class II Penalty

Not to exceed $10,000 per day for each day during which the violations continues nor shall the maximum amount exceed $125,000.

Section F. Definitions

All definitions in Section 502 of the Act shall apply to this permit and are incorporated herein by reference. Unless otherwise specified in this permit, additional definitions words or phrases used in this permit are as follows:

1. "Act" means the Clean Water Act (33 U.S.C. 1251 et. seq.) as amended.

2. "Applicable effluent standards and limitations" means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

3. "Applicable water quality standards" means all water quality standards to which a discharge is subject under the Act and which have been (a) approved or permitted to remain in effect by the Administrator following submission to him/her, pursuant to Section 303(a) of the Act, or (b) promulgated by the Administrator pursuant to section 303(b) or 303(c) of the Act.

4. "Blowout preventer fluid" means a fluid used to actuate the hydraulic blow out preventer at the well site.

5. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

6. "Coastal" means any body of water landward from the inner margin of the territorial seas; the term includes marine waters located landward from the inner margin of the territorial seas as well as inland rivers, streams and lakes and any wetlands adjacent to such bodies of waters.

7. "Deck drainage" means all waste resulting form platform washings, runoff from curbs, gutters, and drains including spillage of drilling muds, waste from drip pans and rig floor wash down and fluids derived from wash areas.

8. "Drill cuttings" means particles generated by drilling into subsurface geologic formations and which are carried to the surface with the drilling fluids.

9. "Drilling fluid" means any fluid sent down-hole, including muds and any specialty products, from the time the well is begun until the final cessation of drilling.

10. "Environmental Protection Agency" means the U.S. Environmental Protection Agency.

11. "Formulation test fluids" means fluids brought up from wells as the result of testing the productivity of potentially economic oil or gas from geologic formations encountered during drilling.

12. "National Pollutant Discharge Elimination System" means the national program for issuing, revoking and reissuing, teminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 318, 402 and 405 of the Act.

13. "Produced sand" means particulate matter, sands, produced along with oil, gas and water during the production of oil and gas.

14. "Regional Administrator" means the Administrator of the U.S. Environmental Protection Agency, Region 6.

15. "Severe property damage" means substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of bypass. Severe property damage does not mean economic loss caused by delays in production.

16. "Territorial Seas" means the seas falling seaward of a line of ordinary low water along that portion of the coast which is in direct contact with the open ocean and the line marking the seaward limit of the inland waters, extending seaward a distance of 3 miles (CWA Section 502).

17. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

[FR Doc. 89-20437 Filed 8-29-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Louisiana; Amendment to Notice of a Major Disaster Declaration

[FEMA-835-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-835-DR), dated July 18, 1989, and related determinations.

DATE: August 23, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated July 16, 1989, is hereby amended to add the Public Assistance program and amend the parish designations as follows:

The parishes of Beauregard, Grant, Natchitoches, Vernon, Webster, and Winn for Public Assistance.

Sabine Parish for Individual Assistance and Public Assistance.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

[FR Doc. 89-20391 Filed 8-29-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200057-002

Title: Tampa Port Authority Lease Agreement

Parties: Tampa Port Authority and Garrison Stevedoring, Inc.

Synopsis: The Agreement permits Garrison Stevedoring, Inc. to assign, transfer and convey all its rights, titles and interest in and to its lease agreeement with Tampa Port Authority (Agreement No. 224-200057) to Tampa Bay International Terminals, Inc. Agreement No. 224-200057 authorizes the lease of approximately ten acres of waterfront property in Hillsborough County, Florida for use in connection with stevedoring and terminal operations.

Agreement No.: 224-200280

Title: Port of Seattle Terminal Agreement.

Parties: Port of Seattle and Clipper Navigation, Inc.

Synopsis: The Agreement provides for a 20 year lease of Pier 69, Port of Seattle for a passenger vessel service between Seattle and Victoria, B.C., Canada as well as to points other than Victoria. It also provides for the use of the facility for harbor tours and dinner excursions. Rental charges are based upon a square foot minimum and per passenger fees. The Agreement allows certain adjustments to the base rent and passenger charges.

By Order of the Federal Maritime Commission

Dated: August 25, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-20399 Filed 8-29-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-011213-009

Title: Spain-Italy/Puerto Rico Island Pool Agreement

Parties: Nordana Line AS Compania Trasatlantica Espanola, S.A. Sea-Land Service, Inc.

Synopsis: The proposed modification would delete Nordana Line AS as a party to the Agreement.

By Order of the Federal Maritime Commission.

Dated: August 24, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-20349 Filed 8-29-89; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate [Casualty] to Carnival Cruise Lines, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Carnival Cruise Lines, Inc., 5225 N.W. 87th Avenue, Miami, Florida 33166.

Vessel: Ecstasy

Dated: August 24, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-20369 Filed 8-29-89; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance) to Carnival Cruise Lines, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification for Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR part 540):

Carnival Cruise Lines, Inc., 5225 N.W. 87th Avenue, Miami, Florida 33166.

Vessel: Ecstasy.

Dated: August 24, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-20370 Filed 8-29-89; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89-777 (80 Stat. 1357, 1358)

and Federal Maritime Commission General Order 20, as amended (46 CFR part 540):

Renaissance Cruises Inc. and Yacht Ship Italy 2 s.r.l., 110 E. Broward Blvd., #1801 Fort Lauderdale, Florida 33301.

Vessels: Renaissance 1 and Renaissance 2.

Dated: August 25, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-20400 Filed 8-29-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First State Bancorp et al.; Formations of Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 20, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *First State Bancorp*, Howell New Jersey; to acquire 9.9 percent of the voting shares of First Washington State Bank, Washington Township, New Jersey, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F & M Financial Services Corporation*, Menomonee Falls, Wisconsin; to acquire 100 percent of the voting shares of St. Francis State Bank, St. Francis, Wisconsin.

2. *L.B.T. Bancorporation*, West Des Moines, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Liberty Bank & Trust, Lake Mills, Iowa.

Board of Governors of the Federal Reserve System, August 24, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-20369 Filed 8-29-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 13, 1989.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Klaus Peter Ulrich*, Kingwood, Texas, to acquire 5.15 percent of the common stock; Heinz Klinckwort, Calz Del Las Brujas, Mexico, to acquire 20.05 percent of the common stock; Inge. Ramon E. Beteta De Cou, Guadarajara, Mexico, to acquire 13.36 percent of the common stock; and Luis Mendez Jiminez, Prolongacion, Mexico, to acquire 56.48 percent of the common stock of Sun Belt Bancshares Corporation, Conroe, Texas, and thereby indirectly acquire National Bank of Conroe, Conroe, Texas.

Board of Governors of the Federal Reserve System, August 24, 1989.

Jennifer J. Johnson,

Associated Secretary of the Board.

[FR Doc. 89-20390 Filed 8-29-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89F-0335]

Mitsui Petrochemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mitsui Petrochemical Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for changes in certain specifications applicable to 4-methylpentene-1 copolymers for use in articles or components of articles intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4160) had been filed by Mitsui Petrochemical Industries, Ltd., Kasumigaseki Bldg., P.O. Box 90, 2-5 Kasumigaseki 3-chome, Chiyoda-KU, Tokyo 100, Japan, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for changes in the specifications applicable to 4-methylpentene-1 copolymers for use as articles or components of articles intended for use in contact with food. Changes in specifications in the table in § 177.1520(c), entry 3.3, would include

(1) Lowering the minimum acceptable melting point from 235 °C to 220 °C as determined by the American Society for Testing Material (ASTM) method 3418-82;

(2) Deleting the specification for maximum extractable fraction in *n*-hexane and maximum soluble fraction in xylene.; and

(3) Establishing a specification for minimum intrinsic viscosity of 1.0, as determined by ASTM method D1601-78.

The potential environmental impact of this section is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 18, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–20354 Filed 8–29–89; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Blood Products Advisory Committee

Date, time, and place. September 14 and 15, 1989, 8 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, September 14, 1989, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 4:30 p.m.; open committee discussion, September 15, 1989, 8:30 a.m. to 9:30 a.m.; closed committee deliberations, 9:30 a.m. to 10:30 a.m.; open committee discussions, 10:30 a.m. to 12 m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFB–400), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–496–4396.

General function of the committee. The committee reviews and evaluates available data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. On the morning of September 14, 1989, the committee will discuss donor education materials, maximum allowable limits for red cell loss in apheresis procedures, and anti-thrombin III, and in the afternoon the committee will discuss the report on *Trypanosoma cruzi* infection in blood donors and sit as a medical device panel to recommend premarket approval for one test kit for the detection of antibody to hepatitis B core antigen. On September 15, 1989, the committee will discuss the safety and indications for use of fluosol.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information relevant to: (a) Premarket approval for a test kit for the detection of antibody to hepatitis B core antigen; and (b) may discuss data pertaining to fluosol. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Orthopedic and Rehabilitation Devices Panel

Date, time, and place. September 22, 1989, 8 a.m., Ballroom, Gaithersburg Marriott Hotel, 620 Lake Forest Blvd., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 11:45 a.m.; closed presentation of data, 11:45 to 11:55 a.m.; open committee discussion, 1:30 p.m. to 2:50 p.m.; closed presentation of data, 2:50 p.m. to 3 p.m.; open committee discussion, 3:15 p.m. to 4:35 p.m.; closed presentation of data, 4:35 p.m. to 4:45 p.m.; Marie A. Schroeder, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1036.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or reviews, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 15, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for a diagnostic ultrasound device, a bone growth stimulator, an intra-articular prosthetic knee ligament, and an antibiotic bone cement.

Closed presentation of data. The committee may discuss trade secret and/or confidential commercial information regarding materials, design, and/or manufacturing information for the bone growth stimulator, the intra-articular prosthetic knee ligament, and the antibiotic bone cement. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. September 25, 1989, 8:30 a.m., Rm, 503A/529A. Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 a.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ)–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1205.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 11, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) for percutaneous transluminal coronary angioplasty catheters.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding the PMA's above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved

for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: August 26, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89–20562 Filed 8–29–89; 3:46 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-00-4120-10]

Powder River Regional Coal Team Activities: Public Meeting Announcement

ACTION: Public notice.

SUMMARY: The Powder River Regional Coal Team (RCT) will hold a public meeting on October 31, 1989, to (1) assess the need to resume Federal coal leasing in the Powder River Region; (2) develop a recommendation whether or not to totally or partially decertify the Powder River Coal Region and thereby allow for coal leasing on application in any regional areas that are decertified; and (3) review Federal coal management issues of regional concern. The full agenda and other details for this RCT meeting are set out below.

DATE: The RCT will meet at 8:30 a.m. on October 31, 1989.

ADDRESS: The RCT meeting will be held at the Holiday Inn of Sheridan, 1809 Sugarland Drive, Sheridan, Wyoming, 82801; telephone (307) 672–8931.

FOR FURTHER INFORMATION CONTACT: Don Brabson, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming, 82001; telephone (307) 772–2571 or (FTS) 328–2571.

SUPPLEMENTARY INFORMATION: One primary purpose of this meeting will be to develop a recommendation for the Secretary of the Interior on whether or not to partially or totally decertify the Powder River Coal Region. By **Federal Register** notice published February 9, 1989, the ramifications of regional

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decertification were explained and public comments were requested on partial decertification of the region by removing Musselshell, Yellowstone, and Golden Valley Counties, Montana from the region, or decertification of the entire region. Since then, the RCT has identified another partial decertification option which is the removal of all Montana counties from the region. In summary, any portion (i.e., a 3 county portion, all of the Montana portion, or the entirety) of the region which is decertified would become subject to coal leasing-by-application pursuant to 43 CFR 3425. Any coal leasing-by-application would be subject to RCT review, oversight, and guidance. Generally, coal lease applications can be processed to lease sale in approximately 1 year, whereas regional coal lease activity planning, which is now the current leasing mechanism for the region, necessitates approximately 3 years to result in a coal lease sale.

As of the publication of this notice, the RCT has received public comments on total decertification; decertification of Musselshell, Yellowstone, and Golden Valley Counties, Montana; and no decertification. Since decertification of all Montana Counties has been identified as a fourth decertification option, the RCT would like comments on this option as well. Accordingly, those commenters to the previous notice may wish to revise their comments to address total Montana decertification. Comments from additional parties are welcome on any of the four decertification options. By October 12, 1989, comments are to be received by the State Director (925), Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82001.

Public comments on the decertification will be reviewed by the RCT during the meeting of October 31, 1989. The public may acquire copies of those written comments received to date from Don Brabson at the above address and telephone number.

The RCT will also review the need for regional leasing. Provided that the RCT does not recommend total regional decertification and thereby make the regional leasing issue moot, the RCT will develop a recommendation to either continue to defer or resume regional coal lease activity planning. The primary basis for this recommendation will be current market conditions and limited recent leasing interest, as well as public inputs. Any party interested in providing input about the need for regional leasing may do so by writing to the State Director (925), Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82001, by October 12, 1989, or by addressing the RCT with his or her concerns about the meeting on October 31, 1989.

Another key RCT action which will occur during this meeting will be the RCT's guidance of the preparation of the Powder River Coal Region Round I Supplemental Final Environmental Impact Statement (EIS). This supplemental final EIS will be prepared based on public comments to the supplemental draft EIS, which was released for public review on July 18, 1989. The comment period on this supplement draft EIS closes on September 29, 1989. The RCT will review those public comments during this meeting in order to develop its guidance for the supplemental final EIS preparation. This supplemental final EIS will address the social, economic, and cultural impacts to the Northern Cheyenne and Crow Indian Reservations. It will serve as a means for the RCT to recommend for Secretarial consideration whether or not the Round I leases in Montana should have been sold in 1982, and if so, what mitigation measures of Indian Reservation impacts should be added to those leases. This supplemental final EIS and the RCT/Departmental review of Montana lease issuance and attendant Reservation mitigation is warranted in response to the May 18, 1985, decision of the U.S. District Court for the District of Montana and the *Northern Cheyenne Tribe vs. Hodel* litigation.

The meeting will also serve as a forum for public discussion on Federal coal management issues of regional concern. If appropriate, the RCT may develop additional regional coal management recommendations for Secretarial consideration.

Public input opportunities will be provided on all agenda items. The agenda for this meeting is as follows:

1. Introductions
2. Approval of Minutes of December 15, 1988, RCT Meeting
3. Regional Coal Activity Status
   a. Current production
   b. Preference Right Lease Applications
   c. Exchanges
   d. Other activity
4. Round I Montana Leases
   a. Status of development
   b. Draft Supplemental EIS comment review
   c. RCT guidance to Final Supplemental EIS preparation
5. Decertification Comments
   a. Review of written comments
   b. Hearing additional comments
6. RCT Decertification Recommendation
   a. No decertification
   b. Decertification of Musselshell, Yellowstone, and Golden Valley Counties, Montana
   c. Decertification of all of Montana
   d. Decertification of the entire region
7. Review of Market Conditions
8. Review of Historic Leasing Interests
9. Public Comments on Need for Regional Leasing
10. RCT Activity Planning Recommendation
   a. Resumption or deferral of activity planning
   b. Establish leasing schedule, if necessary
11. Other Regional Issues
12. Adjourn

David J. Walter,
Acting State Director.

[FR Doc. 89-20442 Filed 8-29-89; 8:45 am]

BILLING CODE 4310-22-M

[CO-030-09-4410-13-1784]

Montrose District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR Subpart 1784, that a meeting of the Montrose District Advisory Council will be held September 12 and 13, 1989 in Montrose, Colorado.

DATES: The meeting is scheduled for September 12 and 13, 1989.

ADDRESS: For further information contact Kate Kitchell, Bureau of Land Management (BLM), Montrose District Office, 2465 S. Townsend Avenue, Montrose, CO 81401; Telephone (303) 249-7791.

SUPPLEMENTARY INFORMATION: The Council will convene at the Montrose District Office at 9:00 a.m. September 12. Agenda items will include the following:

(1) Report of 1989 activities,

(2) Summary of upcoming programs,

(3) Updates on The Uncompahgre Basin and Gunnison Resource Management Plans,

(4) Reports on National Park Service studies of a new Anasazi National Monument and expansion of Black Canyon of the Gunnison National Monument.

On September 13, the Council will tour BLM lands being studies for inclusion in the expansion of the Black Canyon of the Gunnison National Monument. The tour will begin at 9:00 a.m. at the Montrose District Office.

District Advisory Council meetings are open to the public.

Dated: August 23, 1989.

Jerry Jones,
Acting District Manager.

[FR Doc. 89-20554 Filed 8-29-89; 8:45 am]

BILLING CODE 4310-JB-M

Realty Actions; Sales, Leases, etc: California

AGENCY: Bureau of Land Management, Interior.

ACTION: CA CA-23622, Correction of Notice of Realty Action; sale of public lands in Plumas County, California.

SUMMARY: In reference to case serial number CA CA 23622 in the **Federal Register** notice of July 27, 1989 (54 FR 31257), there was an error in the legal description in the 10 acres to be sold to the Portola Cemetery District under the R&PP Act as published. The correct legal description is as follows:

T.22N., R.14E., M.D.M, California
section 23, SWSESWSW, SESWSWSW;
section 26, NWNENWNW,
NENWNWNW;

ADDRESS: Eagle Lake Area Manager, Bureau of Land Management, 2545 Riverside Drive, Susanville, California 96130.

Richard H. Stark, Jr.,
Area Manager.

[FR Doc. 89-20383 Filed 8-29-89; 8:45 am]

BILLING CODE 4310-40-M

[CO-942-09-4730-12]

Colorado; Filing of Plats of Survey

August 21, 1989.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., August 21, 1989.

The plat representing the dependent resurvey of the south boundary, T. 34 N., R. 6 W., New Mexico Principal Meridian, Colorado, Group No. 861, was accepted August 1, 1989.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs and the Forest Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of certain sections, T. 3 N., R. 84 W., Sixth Principal Meridian, Colorado, Group No. 895, was accepted August 1, 1989.

This survey was executed to meet certain administrative needs of the Forest Service.

The protraction diagram of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., October 9, 1989.

Protraction Diagram No. 48, prepared to delineate the remaining unsurveyed public lands in T. 37 N., R. 2 E., New Mexico Principal Meridian, Colorado, was approved July 25, 1989.

This diagram was prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Darryl A. Wilson,
Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 89-20384 Filed 8-29-89; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: The Peregrine Fund, Inc., PRT-740611, Boise, ID

The applicant requests a permit to export nine captive hatched Mauritius kestrels (*Falco punctatus*) to the Mauritius Wildlife Appeal Fund, Port Louis, Mauritius, for release to the wild.

Applicant: Cincinnati Zoo, PRT-740910, Cincinnati, OH

The applicant requests a permit to sell in foreign commerce one captive-bred female snow leopard (*Panthera uncia*) from the Howletts and Port Lympne Zoo, England to Thrigby Hall Wildlife Gardens, England for the purpose of propagation and education.

Applicant: International Crane Foundation, PRT-740924, Baraboo, WI

The applicant requests a permit to import one captive-hatched male Manchurian crane (*Grus japonensis*) from the North of England Zoological Society, Caughall Road, Upton-by-Chester, United Kingdom, for captive propagation purposes.

Applicant: Paul Johnson, PRT-741076, Holmes Beach, FL

The applicant requests a permit to purchase captive-hatched female scarlet-chested parakeets (*Neophema splendida*) from Mr. Finest Van, Finest Bird Farm, Tulane, California, for the purpose of captive propagation.

Applicant: Louis R. Raimo, PRT-741079, E. Hanover, NJ

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) to be culled from the captive herd maintained by Mr. Faan Hartzer, Fairland, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Dr. Thomas Frank Harbin, Jr., PRT-741068, Manchester, TN

The applicant requests a permit to purchase captive-hatched Indian pythons (*Python molurus molurus*) from Herpetofauna, Inc., Ft. Myers, Florida, for captive breeding purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 432, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: August 24, 1989.

R. K. Robinson,
Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-20379 Filed 8-29-89; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

[FES 89-20]

Gulf of Mexico Region; Availability of the Final Environmental Impact Statement Regarding Proposed Central and Western Lease Sales 123 and 125

The Minerals Management Service has prepared a final Environmental Impact Statement (EIS) relating to proposed 1990 Outer Continental Shelf (OCS) oil and gas lease sales in the Central and Western Gulf of Mexico (GOM). The proposed Central Gulf Sale 123 will offer for lease approximately 30.3 million acres, and the Western Gulf Sale 125 will offer approximately 28.0 million acres. Single copies of the draft EIS can be obtained from the Minerals Management Service, Gulf of Mexico

Region, Attention: Public Information Office, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123. Copies of the final EIS will also be available for review by the public in the following libraries: Austin Public Library, 402 West Ninth Street, Austin, Texas; Houston Public Library, 500 McKinney Street, Houston, Texas; Dallas Public Library, 1513 Young Street, Dallas, Texas; Brazoria County Library, 410 Brazoport Boulevard, Freeport, Texas; LaRatama Library, 505 Mesquite Street, Corpus Christi, Texas; Texas Southmost College Library, 1825 May Street, Brownsville, Texas; Rosenburg Library, 2310 Sealy Street, Galveston, Texas; Texas State Library, 1200 Brazos Street, Austin, Texas; Texas A & M University, Evans Library, Spence and Lubbock Streets, College Station, Texas; University of Texas, Lydon B. Johnson School of Public Affairs Library, 2313 Red River Street, Austin, Texas; The University of Texas at Dallas Library, 2601 North Floyd Road, Richardson, Texas; Lamar University, Gray Library, Virginia Avenue, Beaumont, Texas; East Texas State University Library, 2600 Neal Street, Commerce, Texas; Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches, Texas; Unversity of Texas, 21st and Speedway Streets, Austin, Texas; University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin, Texas; Baylor University Library, 13125 Third Street, Waco, Texas; University of Texas at Arlington, 701 South Cooper Street, Arlington, Texas; University of Houston-University Park, 4800 Calhoun Boulevard, Houston Texas; University of Texas at El Paso, Wiggins Road and University Avenue, El Paso, Texas; Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene, Texas; Texas Tech University Library, 18th and Boston Street, Lubbock, Texas; University of Texas at San Antonio, John Peace Boulevard, San Antonio, Texas; Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans, Louisiana; Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston, Louisiana; New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana, Louisiana State Library, 760 Riverside Road, Baton Rouge, Louisiana, Lafayette Public Library, 301 W. Congress Street, Lafayette, Louisiana, Calcasieu Parish Library, 411 Pujo Street, Lake Charles, Louisiana; McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles, Louisiana; Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux, Louisiana; University of Southwestern Louisiana, Dupre Library, 302 East St. Mary Boulevard, Lafayette, Louisiana; LUMCON, Library, Star Route 541, Chauvin, Louisiana; Harrison County Library, 14th and 21st Avenues, Gulfport, Mississippi; Gulf Coast Research Lab., Gunter Library, 703 East Beach Drive, Ocean Springs, Mississippi; Auburn University at Montgomery, Library, Taylor Road, Montgomery, Alabama; University of Alabama Libraries, 809 University Boulevard East, Tuscaloosa, Alabama; Mobile Public Library, 701 Government Street, Mobile, Alabama; Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama; Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores, Alabama; Dauphin Island Sea Lab, Marine Environmental Science Consortium, Library, Bienville Boulevard, Dauphin Island, Alabama; University of South Alabama, University Boulevard, Mobile, Alabama; University of Florida Libraries, University Avenue, Gainesville, Florida; Florida A & M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee, Florida, Florida Atlantic University, Library, 20th Street, Boca Raton, Florida; University of Miami Library, 4600 Rickenbacker Causeway, Miami, Florida; University of Florida, Holland Law Center Library, Southwest 25th Street and 2nd Avenue, Gainesville, Florida; St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg, Florida; West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida; Florida Northwest Regional Library System, 25 West Government Street, Panama City, Florida; Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida; Lee County Library, 3355 Fowler Street, Fort Myers, Florida; Charlotte-Glades Regional Library System, 2280 NW Aaron Street, Port Charlotte, Florida; Tampa-Hillsborough County Public Library System, 900 North Ashley Street, Tampa, Florida; Key Largo Public Library, 99551 No. 3 Overseas Highway, Key Largo, Florida; Selby Public Library, 1001 Boulevard of the Arts, Sarasota, Florida; Monroe County Public Library, 700 Fleming Street, Key West, Florida.

Dated: August 23, 1989.

Carolita L. Kallaur,

Acting Associate Director for Offshore Minerals Management, Minerals Management Service.

Approved:

Jonathan P. Deason,

Director, Office of Environmental Project Review.

[FR Doc. 89-20444 Filed 8-29-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Concession Contract Negotiation; Bushkill Gulf Service Station

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Raymond A. Steele and Jean Q. Steele authorizing them to provide automobile service station facilities and services for the public at Bushkill Gulf Service Station, Delaware Water Gap National Recreation Area, Pennsylvania for a period of ten (10) years from January 1, 1990, through December 31, 1999.

EFFECTIVE DATE: September 29, 1989.

ADDRESS: Interested parties should contact the Chief, Concessions Management, Mid-Atlantic Region, 143 South Third Street, Philadelphia, Pennsylvania 19106, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1989, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: August 22, 1989.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 89-20401 Filed 8-29-89; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Determination of Valid Existing Rights Within the Wayne National Forest

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of reopening of record and invitation for interested parties to participate.

SUMMARY: OSM has decided to initiate reconsideration of OSM's December 23, 1988, determination that Belville Mining Company (Belville) has valid existing rights (VER) to surface mine coal on five tracts within the Wayne National Forest in Ohio. By this notice, OSM is inviting interested parties to participate in the proceeding and to submit relevant material on the matter. OSM intends to develop a complete administrative record, and will then render a final agency decision on whether Belville has VER.

DATES: OSM will accept written materials on all issues except those pertaining to the "McMullen tract" (as explained below) until 5:00 p.m. eastern time on September 29, 1989.

OSM will accept written materials on issues pertaining to the "McMullen tract" until 5:00 p.m. eastern time on September 14, 1989.

ADDRESSES: Hand deliver written materials to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131L, 1100 L Street, NW., Washington, DC or mail written materials to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131L, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240. Documents contained in the Administrative Record at the address identified are available for public review.

FOR FURTHER INFORMATION CONTACT: Dr. Annetta Cheek, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240, or telephone Dr. Cheek at (202) 343-5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: By letter dated December 23, 1988, the Office of Surface Mining Reclamation and Enforcement (OSM) notified Belville Mining Company (Belville) that, pursuant to Section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Belville had valid existing rights (VER) to conduct surface mining activities on five properties involving 5,440 acres of Federal land within the Wayne National Forest in Ohio. This decision reversed a December 3, 1986, determination by OSM that Belville's earlier submissions were insufficient to establish VER for the five properties in question. By letter dated August 15, 1988, Belville had asked OSM to reconsider its prior determination.

During the course of a review of recent OSM actions concerning VER, OSM has concluded that the administrative record of the past Belville VER determination was inadequate to determine whether the decision was correctly made. Accordingly, OSM has decided to reopen the matter and to suspend OSM's Belville VER determination of December 23, 1988. A letter has been sent to Belville specifying the reasons for OMS's reconsideration. W. Hord Tipton, OSM's Acting Deputy Director for Operations and Technical Services, has been directed to supervise the development of a sufficient administrative record capable of supporting a final determination as to whether Belville has VER.

Reconsideration will cover all five tracts, with expedited treatment to be given to the "McMullen tract," the 78-acre parcel for which permit application No. D0733-1 is currently pending with the Ohio state regulatory authority and for which the mineral reservation will expire in March 1990.

The effect of the decision to reopen the record is to stay the December 23, 1988, determination during the period of further consideration. Such a stay, which is effective immediately, is necessary to preserve the status quo by precluding surface disturbance in the Wayne National Forest, pending full agency consideration of the VER question. Reopening of this issue is not intended to reinstate OMS's December 3, 1986, decision which initially denied Belville's request for VER.

OSM will make a final decision on Belville's VER request as soon as is practicable following completion of the administrative record.

Dated: August 24, 1989.

Harry M. Snyder,

Director, OSM.

[FR Doc. 89-20367 Filed 8-29-89; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31491]

Federal Industries Ltd.; Control Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption

SUMMARY: The acquisition by Federal Industries Ltd., a noncarrier, Canadian holding company that controls a railroad and six motor carriers, of control of Tri-Line Expressways Ltd., a motor carrier, is exempt under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343, *et seq.*, subject to standard employee protection conditions.

DATES: The exemption will be effective on September 29, 1989. Petitions for stay must be filed by September 11, 1989. Petitions for reconsideration must be filed by September 19, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31491 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioners' representatives: John C. Kirtland and Eric L. Hirschhorn, Bishop, Cook, Purcell & Reynolds, 1400 L Street NW., Washington, DC 20005-3502.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721].

Decided: August 22, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-20361 Filed 8-29-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub 58X)]

The Atchison, Topeka and Santa Fe Railway Co.; Abandonment Exemption in Buchanan County, MO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by The Atchison, Topeka and Santa Fe Railway Company of 1.6 miles of rail line in Buchanan County, MO, subject to standard labor protective conditions and a salvage consultation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 3, 1989. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by September 11, 1989, petitions to stay must be filed by September 18, 1989, and petitions for reconsideration must be filed by September 28, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-52 (Sub-No. 58X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioner's representative: Michael W. Blaszak, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, of pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275-1721.].

Decided: August 22, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-20362 Filed 8-29-89; 8:45 am]

BILLING CODE 7035-01-M

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[1] *See Exempt. of Rail Line Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Extension of Announcement of Vacancies to September 30, 1989; Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his/her functions under ERISA, and to submit to the Secretary recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on Tuesday, November 14, 1989. The groups or fields represented are as follows: Accounting field, employee organizations, employers, insurance field, and the general public (pensioners).

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefits Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to the Secretary of Labor, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Recommendations must be delivered or mailed on or before September 30, 1989. Recommendations may be in the form of a letter, resolution, or petition, signed by the person making the recommendation, or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation shall identify the candidate by name, occupation or position, telephone number and address. It shall include a brief description of the candidate's qualifications and shall specify the group or field which he or she would represent for the purposes of section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, DC, this 25th day of August, 1989.

William E. Morrow,

Executive Secretary.

[FR Doc. 89-20404 Filed 8-29-89; 8:45 am]

BILLING CODE 4510-29-M

Pension and Welfare Benefits Administration

[Application Nos. D-2788, L-7834, et al.]

Proposed Exemptions; Ameritrust Company National Association, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension

and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Ameritrust Company National Association (Ameritrust) Located in Cleveland, Ohio

[Application Nos. D-7833 and L-7834]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (b)(2) or (b)(3) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(F) of the Code shall not apply to the proposed receipt of fees by Ameritrust from the Financial Reserves Fund (the Fund), an open-ended investment company for which Ameritrust performs services, in connection with the investment of funds through a daily automated sweep arrangement, of certain employee benefit trusts (the Keogh or Keoghs) sponsored by certain incorporated and unincorporated businesses. Ameritrust acts either: (1) As an investment manager, directed trustee, or custodian for the Keoghs or (2) as an agent for other banks affiliated with Ameritrust (the Affiliated Banks) which act as investment managers, trustees, or custodians for such Keoghs.[1]

Summary of Facts and Representations

1. Ameritrust, a subsidiary of Ameritrust Corporation, is a national banking association, located at 900 Euclid Avenue, Cleveland, Ohio, authorized to do business under the banking laws of the United States. Ameritrust has established a prototype Keogh plan which provides for rollovers of distributions received by individuals from qualified plans. The individuals adopt the Keoghs, roll over their distributions, and generally make additional contributions based on self employment income.

In addition, Ameritrust represents that it and the Affiliated Banks also act as discretionary trustees or investment managers of Keoghs in which common law employees participate and which are considered "employee benefit plans" for the purpose of coverage under Title I of the Act.

2. The individuals (the Account Holders) who adopt the Keoghs or those who participate in Keoghs adopted by employers have the right to direct the investment of the assets held therein. However, this right can be waived wherein Ameritrust assumes discretionary authority over the investment of Keogh assets. If accounts Holders do not waive the right to direct the investment of assets in the Keoghs, Ameritrust represents that it does not have discretionary control or responsibility with respect to the investment of the Keoghs' assets, nor does it render any investment advice with respect to these assets. With respect to such non-discretionary Keoghs, Ameritrust and the Affiliated Banks charge a custodial fee based on a range of .1% to .3% of the market value of the assets held in such Keoghs.

3. With respect to any of the Account Holders who waive the right to direct the investment of assets in the Keoghs, even if Ameritrust or the Affiliated Banks have discretionary responsibility and control over the assets of these Keoghs, such Account Holders still retain the right to direct the investment of cash accumulating in the Keoghs on a temporary basis. As to Keoghs for which such a waiver is in effect, Ameritrust charges a fee for its investment management services. The investment management fee is based on a range of .475% to .85% of the market value of the funds under management and includes the fee for custodial services, as well as, management services provided to the Keoghs over which Ameritrust or the Affiliated Banks have discretionary authority and control.

4. The Fund is a diversified open-end investment company established as a Massachusetts business trust and is designed to meet short-term investment requirements by providing for the investment of cash in a professionally managed portfolio of domestic money market instruments. Such short-term investments include certificates of deposit, banker's commercial paper, obligations issued by the government of the United States or any agency or instrumentality thereof, short-term (one-year or less) corporate obligations, and qualified repurchase agreements.

5. Fidelity Management and Research Company (FMR), located in Boston, Massachusetts, is the Fund's investment adviser and manager. Shares of the Fund are distributed by Fidelity Distribution Corporation (FDC), a subsidiary of FMR which is registered as a broker-dealer under the Securities Exchange Act of 1934. The applicant represents that neither FMR nor FDC is a fiduciary, as defined in section 3(21) of the Act, or an interested person, as defined in section 3(14) of the Act, with respect to any of the Keoghs. There is no ownership, connection, or affiliation, direct or indirect, between Ameritrust and FMR or FDC.

6. Ameritrust, however, is the administrator for the Fund and performs services for the Fund as custodian of Fund assets. Ameritrust acts also as the servicing agent with respect to transfers from the Fund and distribution of dividends to shareholders. For these services which it renders to the Fund, Ameritrust receives a monthly fee at an

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[1] For purposes of this proposed exemption the references made to provisions of Title I of the Act, unless otherwise specified, shall be deemed to include parallel provisions of the Code. In addition, the Department is providing no exemptive relief herein for those transactions covered by section 408(b)(2) of the Act and § 2550.408b-2 of the regulations.

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annual rate of .25% of the average daily net assets of the Fund. Ameritrust represents that it receives no other consideration or benefits from the Fund.

7. Shares of the Fund may be purchased or redeemed on a daily basis. A purchaser does not pay any sales charge or redemption fee to the Fund or Ameritrust upon purchase or redemption of Fund shares. Such prospective purchasers receive a prospectus from the Fund and are entitled to vote all Fund shares held by them.

8. The applicant represents that Keoghs for which Ameritrust or the Affiliated Banks exercise investment discretion cannot participate in Ameritrust's short term collective investment fund for retirement trusts (the STIF). The STIF is part of a collective investment fund established in accordance with 12 CFR section 9.18(a)(2). The STIF provides the primary vehicle for temporary investment and for a daily sweep for most employee benefit trusts held by Ameritrust or the Affiliated Banks acting as full-power trustee and/or investment manager. However, the applicant represents that the Keoghs cannot participate in the STIF, because the exemption from registration for sales of interests to employee benefit trusts under section 3(a)(2) of the Securities Act of 1933 is not available for sales of interests to the Keoghs.

Ameritrust has made available to the Keoghs an automated cash management system using a daily sweep into a General Motors Acceptance Corporation (GMAC) master note, a commercial paper investment. However, Ameritrust believes that the Fund provides a better cash management vehicle for the Keoghs. The GMAC note is an unsecured promissory note of the issuer. The Fund, by contrast, is a money market fund comprised of approximately fifty different issues of money market instruments.

Further, it is represented that use of the Fund as the sweep vehicle would enable the Keoghs to avoid the risk of future credit ratings reductions with General Motors. Also, General Motors limits the amount of participation it makes available, making participation potentially unavailable on some occasions. On the other hand, it is represented that the Fund provides unlimited participation for eligible accounts. If the exemption proposed herein is granted, Ameritrust intends to make the availability of the Fund known to the Account Holders of the Keoghs and let them choose their cash management vehicle.

9. Ameritrust represents that the decision to invest is made solely by the Account Holders of the Keoghs and Account Holders must sign an authorization letter which indicates that they have received and read the most recent prospectus of the Fund, are aware of the fee schedule, and authorize the use of the Fund for cash management in their Keoghs. Any of the Account Holders of Keoghs which elect to participate in the Fund will have cash in a Keogh automatically swept into the Fund, down to a zero balance, on a daily basis, in order to have all of the Keogh's funds invested at all times. However, Ameritrust has no discretion with respect to the timing within the day of the sweep either into or out of the Fund.

Once invested in the Fund, the Account Holder must notify Ameritrust or its Affiliated Banks in writing of its intention to withdraw from the Fund's automated cash management sweep. Ameritrust states that there is no penalty for withdrawing and withdrawals would be effective immediately upon receipt of the notice to withdraw. For the Keoghs' assets invested in the Fund, Ameritrust will continue to receive its standard custodial fees and will not offset such custodial fees against the amount it receives from the Fund. However, Ameritrust represents that it will receive no additional fee from the Keoghs as a result of this investment.

With respect to those Keoghs for which the Account Holders have waived the right to direct investments, Ameritrust will reduce its investment management fee (see paragraph no. 3, above) by offsetting an amount equal to an annual fee of .25% of assets managed with respect to Keoghs' assets invested in the Fund for the entire period of such investment. Accordingly, Ameritrust will reduce its management fee for the Keoghs by an amount equal to the fee it receives as a service provider to the Fund (see paragraph no. 6, above.)

10. The applicant states that any increases in fees paid to Ameritrust by the Fund would be disclosed in a new prospectus issued by the Fund and supplied to all Fund participants prior to additional sales and purchases. Ameritrust or its Affiliated Banks will also advise the participants in the Fund that withdrawals could be made at any time without penalty prior to the increase in fees. In addition, if Ameritrust's fee from the Fund were increased, Ameritrust would reduce by an additional corresponding amount its management fee charged to the Keoghs for which it provides investment management services.

11. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) The decision to invest in the Fund will be made for each of the Keoghs by the Account Holders only after a full disclosure of the fees received by Ameritrust; (b) the investment of the Keoghs assets in the Fund will enable those assets to be fully invested on a daily basis in a professionally managed money market fund; (c) the Fund is the best available means for Ameritrust to provide for the daily investment of all the assets of the Keoghs and the only available means provided for automated cash management into a diversified fund; and (d) Ameritrust will reduce its management fee from the Keoghs by an amount equal to the fee it receives as service provider to the Fund.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Franklyn W. Meyer Self-Directed Individual Retirement Account (IRA) Located in Danville, California

[Application No. D-8035]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash purchase by the IRA from Franklyn W. Meyer (Mr. Meyer), a disqualified person with respect to the IRA, of 1,075 shares (the Shares) of the Windsor Fund (the Fund); provided that the terms and conditions of the transaction are at least as favorable to the IRA as those obtainable in an arm's-length transaction between unrelated parties.[3]

Summary of Facts and Representations

1. The IRA is a self-directed IRA with Charles Schwab & Co. (Schwab) acting as trustee. As of September 30, 1988, the IRA held assets of $437,556.20.

2. Mr. Meyer desires that the IRA invest in the Fund and has requested an exemption to permit the IRA's cash purchase of the Shares in the Fund from his personal account. He represents that the exemption is necessary because the Fund's board of directors has restricted Schwab's purchase of the Fund, which restriction, in turn, prevents the IRA's direct purchase of shares from the Fund.

3. Mr. Meyer proposes to sell the Shares to the Plan at a price equivalent to the net asset value of the Shares at the close of business on the date of the transaction and submits that the current fair market value of the Shares is approximately $14,921 or $13.88 per Share. Mr. Meyer represents that the IRA will pay no fees or commissions in connection with its purchase of the Shares. Upon purchase by the IRA, the Shares will represent approximately 1% of the IRA's assets.

4. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria set forth in section 4975(c)(2) of the Code because: a) The transaction is a one-time purchase and will be consummated for cash; b) The Shares will represent only 1% of the IRA's investment portfolio; c) The IRA will pay a price equal to the net asset value of the Shares at the close of business on the date of the transaction; d) No commissions or fees will be paid by the IRA in connection with the transaction; and e) Mr. Meyer, the disqualified person with respect to the IRA, is the only participant to be affected by this transaction.

Notice to Interested Persons: Because Mr. Meyer is the sole participant in the IRA, the Department has determined that there is no need to distribute the notice of pendency of the proposed exemption to interested persons. Comments and requests for hearing must be received within 30 days of the date of publication in the **Federal Register** of this notice of proposed exemption.

For Further Information Contact: Mrs. B.S. Scott of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of August, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89–20403 Filed 8–29–89; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 89–74; Exemption Application No. D–7107 et al.]

Grant of Individual Exemptions; General American Life Insurance Company, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

General American Life Insurance Company (General American) Located in St. Louis, MO

[Prohibited Transaction Exemption 89–74; Application No. D–7107]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, shall not apply to: (1) The proposed amendment (the Amendment) to an annuity contract and Separate Account agreement entered into by General American and the Carpenters' Pension Trust Fund of St. Louis (the Plan) which will provide that General American will insure that, in the event of a foreclosure upon a mortgage loan note (Note) held by General American's Separate Account No. 3 (the Account), the Account will receive the unpaid principal balance, and any due and unpaid interest at the face rate of the note, and any advances and foreclosure costs with respect to that Note; and (2) the proposed purchase of residential real property or delinquent Notes by General American from the Account in accordance with the Amendment, provided that the terms and conditions of the transactions are at least as favorable to the Plan as those between unrelated parties would be.

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[3] Pursuant to the provisions contained in 29 CFR 2510.3–2(d), the IRA is not subject to Title I of the Act. However, the IRA is subject to Title II of the Act pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 14, 1989 at 54 FR 25355.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

ALTA Health Strategies, Inc. (ALTA) and ALTA Reinsurance Company (ALTA Re) Located in Salt Lake City, Utah

[Prohibited Transaction Exemption 89-75; Exemption Application No. D-7550]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the reinsurance of group health, life, and accidental death and dismemberment risks, and the receipt of premiums therefrom, by ALTA Re pursuant to reinsurance arrangements with Issuing Carriers in connection with stop-loss insurance contracts sold to employee welfare benefit plans for which ALTA serves as a third party administrator or provides brokerage services (the Plans), provided the following conditions are satisfied:

(1) The Plans pay no more than adequate consideration for the insurance contracts;

(2) The transactions covered by the proposed exemption will be offered as an option to be considered by the Plan fiduciary described in 2(d) below, only when each of the following conditions are satisfied: (a) The Plans for which the transactions are presented as an option have 100 or more participants; (b) ALTA concludes, on the basis of its analysis, that the stop-loss insurance arrangement covered by this exemption is consistent with the insurance needs of the Plans; (c) ALTA concludes that the proposed transactions would be less expensive than conventional stop-loss insurance offered by comparable primary insurers and reinsurers having the equivalent reserves and Best's ratings; further, ALTA will not offer this option unless it concludes that, based on a review of the available data concerning the insurance market, stop-loss insurance consistent with this exemption will, in fact, be more beneficial to the Plans than comparable coverage not subject to this exemption; (d) ALTA determines that, in accordance with the procedures described in (e), below, the decision to utilize the option covered by this exemption is being made by a fiduciary of the Plan who is independent of ALTA and ALTA Re, who is capable of making an independent decision, and who is sufficiently knowledgeable with respect to the Plan, and administrative, benefits, and funding matters related thereto, to make an informed decision concerning the option covered by this exemption; and (e) with respect to the determinations made by ALTA pursuant to (d), above, ALTA maintains a written procedure under which criteria are established for making such determinations. Pursuant to such procedure, each determination, and the basis therefore, shall be documented and, thereafter, approved by an officier of ALTA who was not involved in the presentation of the options to the Plan fiduciary. Such documentation shall, among other things, include: Written representations provided by the fiduciary or plan sponsor supporting such determinations, the qualifications of the fiduciary on which ALTA based its determination, and any other factors which ALTA took into account in making its determination, and the relevance of such factors. Such documentation shall be retained for a period of six years from the date that the transaction was entered into pursuant to this exemption. Similarly, a copy of the procedure shall be retained during any period for which documentation is required to be retained. Both the procedure and documentation shall be unconditionally available at ALTA's principal place of business for examination during working hours by any duly authorized employee or representative of the Department;

(3) ALTA provides to the fiduciary described in 2(d) above a complete description of all services, commissions, fees, contracts or arrangements and relationships between ALTA, ALTA Re and any other party, and will provide a complete description of the insurance arrangements offered by the direct insurers, and the fiduciary acknowledges in writing the receipt of such information and that the decision to select an option (including the proposed option) is a decision made in its fiduciary capacity;

(4) no commissions will be paid with respect to the reinsurance of the risks by ALTA Re;

(5) no single group of affiliated Plans will represent more than 5 percent of the total premiums written pursuant to the subject transactions;

(6) ALTA will follow its standard claims processing practices regarding any claims submitted with respect to Plans engaging in the subject transactions;

(7) ALTA will not offer any incentives to any of its employees with respect to the stop-loss option covered by the proposed exemption and in all cases the compensation paid with respect to employees or other persons acting on behalf of ALTA will be paid in the same manner regardless of the option selection;

(8) ALTA Re will comply with all applicable requirements of the law of its domiciliary state, Arizona, regarding its operations and reserves; and

(9) ALTA Re will be subject to a financial audit by the Arizona Department of Insurance no less frequently than once every three years.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 22, 1989 at 54 FR 26267.

Written Comments: The Department received one written comment which supported the granting of the proposed exemption. The Department has considered the entire record, including the written comment, and has determined to grant the exemption as proposed.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Extension of Prohibited Transaction Exemption (PTE) 82-184 for Certain Transactions Involving the Alaska Teamster-Employer Pension Plan (the Plan) Located in Anchorage, Alaska

[Prohibited Transaction Exemption 89-76; Exemption Application No. D-7797]

Extension of Exemption

The Department hereby extends, for a period of five years, a portion of PTE 82-184 (47 FR 52248, November 19, 1982). Authority to grant the extension of PTE 82-184 is given the Department under section 408(a) of the Act, section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Accordingly, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the sales of certain residential units (the Units) located near Palm Springs, California, by Desert Horizons, Inc. (Desert Horizons), a wholly owned corporation of the Plan, to parties in interest with respect to the Plan who are not fiduciaries (within the meaning of section 3(21)(A) of the Act), provided the following conditions are satisfied:

1(A) Before a Unit may be sold to a non-fiduciary party in interest, the terms and conditions of the prospective sale to that party in interest, including the price and Unit/lot number and type, shall be advertised in the *Desert Sun* newspaper. The advertisement also shall set forth the price and the terms and conditions of comparable Units sold at Desert Horizons within a reasonable time prior to a prospective sale. Additionally, the advertisement shall indicate that the Unit is available for purchase by all other non-party in interest members of the public at a price and on terms and conditions that are equal to the offer made by the party in interest.

(B) For thirty days from the publication of the advertisement described in paragraph 1(A), no sale of said Unit to the party in interest shall be consummated, even if such party offers more than the advertised price.

(C) During the period between publication and thirty days thereafter, if any non-party in interest member of the public agrees to match or better the price or terms and conditions advertised, that member (or those members) of the public shall have a right to purchase the Unit that supersedes the right of the party in interest. If, after a reasonable period of time subsequent to the thirty day period, the member or members of the public who have gained the prior right do not prove that they are ready, willing and able to consummate the purchase, the Unit may be sold to the party in interest at a price and on terms and conditions that are equal to or greater than the advertised price and its terms and conditions.

(D) If, after thirty days from the publication of the advertisement, no non-party in interest member of the public offers to purchase the Unit, the party in interest who made the offer cited in the advertisement shall become an eligible purchaser but only at the advertised price and its terms and conditions or at a price and on terms and conditions that are more favorable to Desert Horizons.

(E) All prospective purchasers shall complete a questionnaire indicating whether they are a party in interest with respect to the Plan.

(2) Prior to the execution of a contract for the sale of a residential Unit to a party in interest, A.N. Advisors (Advisors) and any successor independent fiduciary shall certify in writing that, based on all relevant market factors, the sales price and the terms and conditions for a Unit are not less than its fair market value. The written certification shall also state that: (A) the advertisement procedures set forth in paragraphs 1(A)-(E) have been met; and (B) the terms and conditions (including price) of such sale are at least as equal to those that the Plan could receive in a similar transaction with an unrelated party. In the event that Advisors resigns or is terminated, or a replacement is chosen after its contract expires, the Plan shall notify the Department's Office of Exemption Determinations of the name and qualifications of a prospective successor fiduciary and the reasons for the change. Solely for the purposes of continuing the effectiveness of this exemption, appointment of such successor independent fiduciary shall not be effective until the receipt by Desert Horizons of the Department's approval.

(3) The Plan and/or Desert Horizons shall maintain accurate records demonstrating compliance with the conditions of this exemption for all party in interest transactions. The Plan and/or Desert Horizons shall make available to the Department such records, including the written certification described in paragraph (2).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 4, 1989 at 54 FR 13586.

Effective Date: This extension of PTE 82-184 will expire five years from the date of the grant.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Complete General Construction Company Profit Sharing Plan (the Plan) Located in Columbus, Ohio

[Prohibited Transaction Exemption 89-77; Exemption Application No. D-7868]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash by the Plan of certain real property (the Real Property) to Complete General Construction Company, a party in interest with respect to the Plan, provided that the price paid be no less than the fair market value of the Real Property as of the date of sale, as determined by an independent and qualified appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 14, 1989 at 54 FR 25363.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Washington Mortgage Corporation (WMC) Located in Seattle, Washington

[Prohibited Transaction Exemption 89-78; Exemption Application Nos. D-7891 and D-7892]

Exemption

I. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to: 1) The sale, exchange or transfer between WMC and its affiliates and certain employee benefit plans (the Plans) of certain construction loans or participation interests therein to non-party in interest entities; and 2) the sale, exchange or transfer between WMC and its affiliates and the Plans of any construction or permanent loan made by a Plan to a party in interest, and the resulting extension of credit therefrom, provided that:

(a) The terms of the transactions are not less favorable to the Plans then the terms generally available in arm's-length transactions between unrelated parties;

(b) Such sales, exchanges or transfers are expressly approved by a Plan fiduciary independent of WMC and its affiliates who has authority to manage or control those Plan assets being invested in mortgages or participation interests therein;

(c) No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to WMC or any of its affiliates with regard to such sale, exchange or transfer;

(d) The decision to invest in a loan or a participation interest therein is not part of an arrangement under which a fiduciary of a Plan, acting with the knowledge of WMC or its affiliate, causes a transaction to be made with or for the benefit of a party in interest [as defined in section 3(14) of the Act] with respect to the Plan;

(e) At the time of its acquisition of a loan or participation therein, no Plan will have more than 25% of its assets invested in construction or permanent mortgages;

(f) WMC and its affiliates do not and will not act as fiduciaries with regard to any Plan investing in permanent and construction loans and interests therein which are the subject of this exemption; and

(g) WMC shall maintain or will cause to be maintained, for the duration of any loan or participation therein sold to a Plan pursuant to this exemption, such records as are necessary to determine whether the conditions of this exemption have been met. The records mentioned above must be unconditionally available at their customary location for examination for purposes reasonably related to protecting rights under the Plans, during normal business hours, by: Any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

II. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because WMC or any of its affiliates is deemed to be a party in interest with respect to a Plan by virtue of providing services to the Plan in connection with the subject loan transactions [or because it has a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act], solely because of the ownership of a loan participation interest therein as described in this exemption by such Plan.

III. Definitions

For purposes of this exemption,

(a) An "affiliate" of WMC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with WMC,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 22, 1989 at 54 FR 26273.

Temporary Nature of Exemption: This exemption will be effective only for those transactions entered into within five years of the date on which the Final Grant of this proposed exemption is published in the **Federal Register**.

For further information contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Electrical Workers Local Union No. 103, I.B.E.W., Health and Welfare Fund, Deferred Income Fund, Pension Fund, and Holiday, Vacation and Supplementary Unemployment Benefits Fund (collectively, the Funds) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 89–79; Exemption Application Nos. D–7893 through D–7896]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the proposed leasing of certain office space, to the Funds by the Local 103, I.B.E.W., Building Corporation, a corporation which is wholly-owned by the Local Union No. 103 of the International Brotherhood of Electrical Workers, AFL–CIO, a party in interest with respect of the Funds, provided that the terms of the transaction are at least as favorable to the Funds as the terms which would exist in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 3, 1989 at 54 FR 27963.

Effective date: The effective date of this exemption is July 14, 1988.

For further information contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Hunter and Associates Laboratory, Inc., Profit Based Retirement Plan and Trust (the Plan) Located in Reston, Virginia

[Prohibited Transaction Exemption 89–80; Exemption Application No. D–7906]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reasons of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan to Hunter Associates Laboratory, Inc., the sponsor of the Plan, of (1) the Plan's rights with respect to an unsatisfied judgment against the National Exchange Leasing Company, and (2) the Plan's rights as creditor in a loan to Government Financial Services, Inc., including any preferential payment refunds due from the Plan with respect thereto; provided that all terms of such transactions are not less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Monday, July 3, 1989 at 54 FR 27959.

For further information contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which amount other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material fact is and representations contained in each application accurately describes all

material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of August 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89–20402 Filed 8–29–89; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORPORATION

Request for Comments on a Grant Award to Single Parents United 'N Kids (SPUNK)

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LCS) announces its intention to award a one-time, non-recurring grant of $32,380 in fiscal year 1989 to Single Parents United 'N Kids (SPUNK). The purpose for making this grant is to provide training and technical assistance in child support matters. These services will be provided to client eligible persons residing in or near Los Angeles County, California.

DATE: All comments and recommendations must be received by the Office of Field Services of LSC on or before September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Victoria O'Brien, Counsel to the Director, or Charles T. Moses, Associate Director, Legal Services Corporation, Office of Field Services, 400 Virginia Ave., SW., Washington, DC 20024–2751, (202) 863–1837.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national independent organization charged with implementing the federally funded system of legal services for low-income people. It hereby announces its intention to award a grant in the amount of $32,380 to SUPPORT. The grantee will use this grant to provide training and technical assistance on child support matters to client eligible persons residing in or near Los Angeles County.

It is anticipated that the twelve month term of this grant will extend from September 30, 1989 to September 29, 1990.

Interested persons are invited to submit written comments and/or recommendations concerning the above to Victoria O'Brian or Charles T. Moses.

Dated: August 25, 1989.

Ellen J. Smead,

Acting Director, Office of Field Services.

[FR Doc. 89–20453 Filed 8–29–89; 8:45 am]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Co., et al., Shearon Harris Nuclear Power Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–63 to the Carolina Power & Light Company (CP&L or the licensee), for the Shearon Harris Nuclear Power Plant, Unit 1, located in Wake and Chatham Counties, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to fuel enrichment.

The proposed action is in accordance with the licensee's applications dated April 11 and July 26, 1989.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher enrichment fuel, and provides the flexibility of extending the fuel irradiation and permitting operation of longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical specifications. The proposed revisions would permit use of fuel enrichment with Uranium 235 in excess of 4.2 weight percent and up to 5.0 weight percent and the licensee would expect the fuel to be irradiated to levels above 33 gigawatt days per metric to (GWD/MT) but not to exceed 60 GWD/MT. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup and higher enrichment may slightly change the mix of fission products that might be released in the event of a serious accident but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transporation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transporation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988 and published in the **Federal Register** (53 FR 30355) on August 11, 1988. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c).

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement related to the operation of the Shearon Harris Nuclear Power Plant, Units 1 and 2," dated October 1983.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Plant, but will allow the inventory for

Dated at Rockville, Maryland this 23rd day

been foreseen by the licensee because

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated April 11 and supplement dated July 28, 1989, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Dated at Rockville, Maryland, this 22nd day of August 1989.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-20360 Filed 8-29-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Facility Operating License No. DPR-72 to the Florida Power Corporation (the licensee) for the Crystal River Unit 3 Nuclear Generating Plant located in Crystal River, Florida.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to fuel enrichment.

The proposed action is in accordance with the licensee's application dated December 23, 1988, as supplemented July 12, 1989.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher enrichment fuel. In addition, the proposed changes provide the flexibility of extending the fuel irradiation, thus allowing longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit use of fuel enriched with Uranium 235 in excess of 4 weight percent and up to 4.5 weight percent. The licensee would expect the fuel to be irradiated to levels above 33 gigawatt days per metric ton (GWD/MT), but not to exceed 60 GWD/MT. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR partr 20. They do no affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting form the use of higher enrichment fuel and extended irradiation are discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988 (53 FR 30355). As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c).

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Crystal River Unit 3 Generating Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant impact on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 23, 1988, as supplemented July 12, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC and at the Crystal River Public Library, 668 NW First Avenue, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 22nd day of August 1989.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-20361 Filed 8-29-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-390 and 50-391]

Environmental Assessment and Finding of No Significant Impact; Tennessee Valley Authority Watts Bar Nuclear Plant, Units 1 and 2

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a temporary exemption from the requirements of 10 CFR 70.51(d) to the Tennessee Valley Authority (the licensee) for Watts Bar Nuclear Plant, Units 1 and 2. The units are located at the licensee's plant site in Rhea County, Tennessee.

Environmental Assessment

Identification of Proposed Action: By application dated July 10, 1989, the licensee requested a temporary exemption to 10 CFR 70.51(d). The temporary exemption will maintain the requirement for an annual inventory of fuel stored at the Watts Bar Nuclear

Plant, but will allow the inventory for 1989 to be conducted at an interval of more than 12 months but not more than 15 months from the date of the inventory for 1988. The requirements of 10 CFR 50.71(d) specify that the annual inventories must be conducted at an interval of not more than 12 months.

The Need for the Proposed Action: The licensee is requesting a temporary exemption for 1989 from the annual physical inventory requirement in 10 CFR 70.51(d).

Pursuant to 10 CFR 70.51(d), the licensee conducted a physical inventory of the Watts Bar fuel by piece count and serial number verification in August 1988. The next scheduled inventory was to be conducted by August 9, 1989. In order to perform the inventory, removal of the spent fuel pit covers and the new fuel vault covers is required. However, the Auxiliary Building crane which is required to remove those covers was and is currently out of service. The spent fuel pool covers weigh approximately 5000 pounds each and the new fuel vault covers weigh approximately 6000 pounds each. This crane was not returned to service in time to conduct the physical inventory before the required date.

Environmental Impact of the Proposed Action: The proposed action is an administrative action only and will have no environmental impact.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Watts Bar Nuclear Plant, Units 1 and 2."

Agencies and Persons Consulted: The licensee initiated this temporary exemption action. The NRC staff is reviewing their request. No other agencies or persons were consulted.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed temporary exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not adversely affect the public health and safety nor common defense and security.

For further details with respect to this action, see the licensee's application dated July 10, 1989 which is available in the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland this 23rd day of August 1989.

For the Nuclear Regulatory Commission.

Suzanne Black,

Assistant Director for Project, TVA Projects Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89-20362 Filed 8-29-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440]

Cleveland Electric Illuminating Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-58, issued to the Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1 located in Lake County, Ohio.

The amendment would permit the use of functioning channels of the Traversing In-Core Probe (TIP) system to provide data when one or more of the TIP measurement locations are inaccessible or inoperable. Operable TIP measurement data would be substituted from symmetric core locations for use in Local Power Range Monitoring (LPRM) calibrations and thermal power monitoring.

The exigent circumstances related to this request are that the first indication of a problem with the TIP system occurred on August 11, 1989. Mechanical interference within the 'B' TIP unit indexing mechanism prevented taking traces on a channel. Subsequently, three other channels on that TIP unit also became inaccessible. Two of these four channels can be accessed by other TIP units, however, two remain inaccessible. The TIP mechanisms are located in the drywell and are inaccessible at power due to the high radiation levels. The next calibration of the LPRM detectors is due on September 18, 1989. Utilizing the 25 percent permissible extension of surveillance intervals would make the late date for this surveillance September 29, 1989. If the 'B' TIP indexing mechanism cannot be restored prior to this surveillance being due, it must be declared inoperable. Without the proposed change, the plant would be required to shut down when the above surveillance becomes overdue in late September. This problem could not have been foreseen by the licensee because TIP calibrations can only be performed after entry into power operation and no problems were identified with the TIP indexing mechanism during prior system testing. Three previous successful TIP core traverses were performing during the operating cycle prior to this failure. The licensees' amendment request was promptly submitted on August 23, 1989 and did not result in creation of the exigent circumstances.

The due date of this amendment request to avoid shutdown of the unit does not allow for a full 30-day notice in the Federal Register. The earliest publication date in the Federal Register of the notice for this proposed amendment is no earlier than August 30, 1989. Therefore, based on the above, the staff has determined that exigent circumstances exist with respect to this license amendment request.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensees have provided the following analysis of the above three factors:

> 1. The core monitoring methodology is based on symmetry of rod patterns and fuel loading. This is not changed, but extended to use a higher order of symmetry (octant symmetry) which exists with "type A" sequence rod patterns.
>
> This change does not change the fundamental process involved in calibrating neutron instrumentation (LPRMs), but requires that only the equipment associated with the TIP channels necessary for recalibrating LPRMs and for core monitoring functions be operable. The use of symmetric detectors to provide substitute data for inaccessible TIP channels does not compromise the ability of the process computer to accurately represent the spatial gamma flux distribution of the reactor core.
>
> This proposed change does not alter the basic method used to calculate power and exposure distributions and fuel thermal limits. The existing method for calculating core power and exposure distributions and

fuel thermal limits includes provisions for monitoring the gamma flux distribution with mirror or rotational symmetry. This proposed change includes provisions for using octant symmetry, which is both mirror and rotationally symmetrical.

This proposed change does not alter the basic method used to determine the appropriate constants with which to relate the readings of LPRMs to those of the TIPs or the basic method used to determine substitute values to be used by the process computer for LPRMs which have failed. The proposed change specifies the use of TIP data which is equivalent to that which would normally be used.

The calibration of LPRMs using symmetric string base distributions provide LPRM data within the normal uncertainty expected for calibration with all five machines operable. Consequently, this condition will not adversely affect core thermal limit calculations.

This proposed change does not alter the function, performance or operation of any safety system or safety related equipment. The restriction to "A" control rod sequences and the limitation on total TIP uncertainty ensures the readings from symmetric channels are equivalent.

Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The substitution of data into inaccessible TIP channels has no effect on any accident initiator, therefore this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This proposed change does not involve a significant reduction in a margin of safety because the implementation is restricted by the LCO to type A symmetric control rod patterns, and then only when the total TIP uncertainty has been demonstrated previously in the cycle to be within the value assumed in the General Electric reload licensing topical report—GESTAR II (8.7 percent).

The staff agrees with the licensees' analysis; accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice.

Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 29, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any persons whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention:

Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325–6000 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 23, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, Perry Public Library, 3753 Main Street, Perry, Ohio.

Dated at Rockville, Maryland, this 25th day of August 1989.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20602 Filed 8–29–89; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Nuclear Waste Technical Review Board; Meeting

Notice is hereby given that a meeting of the Nuclear Waste Technical Review Board will be held on Tuesday, September 12, 1989, from 9 a.m. to 5 p.m., and on Wednesday, September 23, 1989, from 8:30 a.m. to 2 p.m. in the Fairfax Room, Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, Arlington, VA 22202, telephone (703) 418–1234. Additionally, the first meeting of the Board's Environmental and Public Health Panel will be held on Thursday, September 14, 1989, from 9 a.m. to 4 p.m., in room 258, 2000 L Street NW., Washington, DC 20036.

The meeting on Tuesday, September 12, will be closed to the public in order for the Board to discuss matters solely related to the internal personnel rules and practices of the Board, and discuss information of a personnel nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The meeting on Wednesday, September 13, 1989, will include reports from the Board Panels on Containers and Transportation, Risk and Performance Analysis, and Structural Geology and Geoengineering. On Thursday, September 14, 1989, the Environmental and Public Health Panel will be briefed on environmental regulatory requirements, field activities, monitoring and mitigation, reclamation planning, status of site characterization permitting, repository EIS planning, and a review of regulatory requirements of 40 CFR part 191 draft standards. The public is invited to attend the meetings on September 13 and 14 only as observers. The meetings on these dates will be transcribed and procedures to obtain transcripts will be provided at the meeting. To ensure that adequate facilities are provided for public attendance, persons planning to attend the meetings should contact Helen Einersen on (202) 254–4792 by September 5, 1989, 4:30 p.m. (EST).

Further information on these meetings can be obtained from William W. Coons, Executive Director, Nuclear Waste Technical Review Board, 1111 18th Street NW., Suite 801, Washington, DC 20036, (202) 254–4792.

Dated: August 28, 1989.

William W. Coons,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 89–20555 Filed 8–29–89; 8:45 am]

BILLING CODE 6820-AM-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27169; File No. SR–Amex–89–12]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Associate Membership

On June 9, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Constitution to expand Associate Membership privileges to include access to the PER/AMOS system as well as to delete some outdated and unnecessary provisions.[3] Amendment No. 1, reflecting Exchange membership approval of the proposal, was filed on August 7, 1989.

The proposed rule change was noticed in Securities Exchange Act Release No. 26964 (June 23, 1989), 54 FR 28132 (July 5, 1989). No comments were received on the proposal.

The Amex has proposed that Associate Membership privileges be expanded to provide access to PER/AMOS. Associate Membership is one category of membership on the Exchange. This type of membership, which dates back to the early days of the Exchange, enables the Associate Member and his or her firm to send orders for execution directly to a Regular Member broker on the trading floor via the telephone line. An Associate Member may not transact business on the Floor itself, or exercise privileges enjoyed by other classes of members. Aside from telephone access to the Floor, an Associate Member's only privilege is that its own name may be given up as the clearing firm. The 169 current Associate Members have paid a one-time fee equal to 5% of the most recent price of a Regular Membership, and annual dues of $750.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] Amex's Post Execution Reporting Service ("PER") electronically routes market and marketable limit orders in equity securities of up to 2,000 shares to the applicable specialist post. Amex's Options Switching System ("AMOS") allows Amex members to route options market and marketable limit orders of up to 20 contracts directly to the applicable specialist's post.

Since December 1987, when the Board approved modifications to the Exchange's telephone access policy to permit non-members to establish direct telephone access to members' booths on the Floor,[4] Associate Members have had no significant membership advantage over non-members. This has led to the possibility that some Associate Members might discontinue their membership over time, reducing the number of broker-dealers with membership ties to the Exchange. In addition, several Associate Member firms have requested direct access to the Exchange's PER/AMOS electronics order routing system over the past year. The Exchange believes that if PER/AMOS were made accessible to Associate Members, this category of membership would continue to be viewed as an attractive alternative to Regular Membership, and that the Exchange would thus retain an important segment of the member firm community.

For these reasons, the Amex proposes that Associate Membership privileges be expanded to provide access to PER/AMOS. The enhanced Associate Membership would be similar to the New York Stock Exchange's ("NYSE") electronic access membership, which was created in 1978.[5] Existing Associate Members could obtain PER/AMOS privileges on payment of an annual fee, or maintain their current status. All new Associated Members would pay the one-time initiation fee, as well as an annual fee if they wished to access PER/AMOS. As now, Associate Memberships could not be sold or leased. The Board would have authority to extend Associate Member access to other electronic systems that may become available in the future.

The Amex proposes that the one-time initiation fee for Associate Membership remain at 5% of the most recent price of a Regular Membership, and that an annual fee be set yearly at 10% of the average price at which Regular Memberships have been sold for the prior twelve months.

The Amex also proposes to amend the Exchange Constitution to eliminate certain outdated provisions relating to Associate Members. The requirement that an Associate Member be actively engaged as a broker/dealer has been deleted since, as with other types of membership, this is a requirement imposed by the Act. The requirement that Associate Membership be cancelled on election to Regular Membership has been deleted as an unnecessary administrative burden on member firms. The posting requirement has been deleted, to be replaced by a provision in a proposed new Admission of Members section of the Exchange's rules, which has been submitted separately to the SEC for consideration.[6]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[7] The Commission believes that the proposal is consistent with the section 6(b)(5) requirement that "the rules of the exchange * * * perfect the mechanism of a free and open market." In this regard, the Commission believes that the proposal, by providing Associate Members with significant additional membership advantages, will help attract additional firms to the Amex's market. In particular, the Commission believes that providing Associate Members with access to PER/AMOS will allow the Amex to maintain or widen the number of such memberships, thus providing customers with additional firms through which orders in Amex securities can be routed. In addition, the Commission notes that the Amex's proposal is similar to the NYSE's electronic access membership, which was approved by the Commission in 1978.[8]

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: August 23, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-20410 Filed 8-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27159; Files No. SR-AMEX-89-21; SR-PHLX-89-45]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Philadelphia Stock Exchange, Inc.; Notice of Filings and Order Granting Accelerated Approval to Proposed Rule Changes Relating to Margin Requirements for Equity and Index Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 8, 1989, and August 7, 1989, respectively, the American Stock Exchange, Inc. ("AMEX") and Philadelphia Stock Exchange, Inc. ("PHLX") (collectively "Exchanges"), filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizations ("SROs"). The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to extend the current margin requirements for equity and index options until such time as the Commission approves subsequent proposed rule changes filed by the Exchanges pursuant to Section 19 of the Act in accordance with a joint options SRO margin monitoring program which is expected to be implemented in the future.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Changes

In its filing with the Commission, the SROs included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The SROs have prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

On May 17, 1988, the Commission approved proposals by the AMEX, PHLX and the other options SROs to amend their rules to increase customer

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[4] *See* File No. SR–Amex–87–33.

[5] *See* NYSE Constitution, Article II, Sec. 1(c): NYSE electronic access members are entitled to maintain electronic or telephonic access to (i) the floor facilities of a member or member organization, and (ii) the Designated Order Turnaround System of the NYSE, and (iii) such other automated trading systems of the NYSE as the Board may determine. See Release No. 34–14535 (March 7, 1978), 43 FR 10859, approving File No. SR–NYSE–77–21.

[6] *See* File No. Amex–89–15.

[7] 15 U.S.C. 78f (1982).

[8] *See* note 5, *supra*.

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30–3(a)(12) (1989).

margin requirements for equity and index options.[1] Specifically, the current customer margin requirements are as follows. For broad-based index options, the margin requirement is 100% of the option premium plus 15% of the underlying aggregate index value, less any out-of-the-money amount, with a minimum requirement of the option premium plus 10% of the underlying aggregate index value. For equity options and narrow-based index options, the requirement is 100% of the option premium plus 20% of the underlying product value, less any out-of-the-money amount, with a minimum requirement of the option premium plus 10% of the underlying product value.

The SROs propose to extend the current margin requirements for equity and index options until a routine margin monitoring program expected to be instituted by the options SROs is implemented.[2] The SROs believe that the proposed rule changes are consistent with Section 6(b)(5) of the Act because extending the current margin requirements until a routine margin monitoring program is implemented should assure both firms and investors reasonable financial protection, even if market volatility increases during this period, thereby promoting just and equitable principles of trade and protecting investors and the public interest.

(B) Self-Regulatory Organizations Statement on Burden on Competition

The SROs do not believe the proposed rule changes will impose a burden on competition.

(C) Self-Regulatory Organizations Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The SROs have requested that the proposed rule changes be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act so that the current margin levels can continue uninterrupted.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.[3] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) because extending the current margin requirements until a routine margin monitoring program is implemented will assure the financial protection of both firms and investors, even if market volatility increases during this period, thereby protecting investors and the public interest.[4]

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of the proposals in the **Federal Register** so that the increased margin requirements can continue uninterrupted. The Commission previously has solicited comments on the proposed margin levels on three separate occasions and has not received any negative comments. Moreover, the proposals extend margin levels that have been in place for over one year and prevents the margins from reverting back to levels that may be inconsistent with the routine margin monitoring program that is being developed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. Section 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filings also will be available for inspection and copying at the respective principal offices of the above-referenced self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by September 18, 1989.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule changes (AMEX–89–21 and PHLX–89–45) are approved, nunc pro tunc as of July 17, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: August 21, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-20411 Filed 8-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27168; File No. SR-NYSE-89-22]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Specifications and Content Outline for the Modified Series 7—UK Representatives Examination

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on August 10, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission, ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed specifications and a content outline for the Modified Series 7—United Kingdom ("UK") Representatives Examination administered by the Exchange.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these below and is set forth in Sections (A), (B), and (C) below.

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[1] Securities Exchange Act Release No. 25701 (May 17, 1988), 53 FR 20706, approving the margin increases for a six-month period. In Securities Exchange Act Release No. 26381 (December 21, 1988), 53 FR 52541, the margin requirements were extended for an additional three-month period. In Securities Exchange Act Release No. 26696 (April 4, 1989), 53 FR 14403, and Securities Exchange Act Release No. 26721 (April 12, 1989), 53 FR 16033, the margin requirements were extended until July 17, 1989.

[2] The SROs also have requested that this approval order be applied retroactively to July 17, 1989, to avoid any lapse in the applicability of the higher margin requirements.

[3] 15 U.S.C. 78f(b)(5) (1982).

[4] The Commission also approves the rule change retroactively to July 17, 1989 to avoid any lapse in the applicability of the increased margin requirements.

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30–3(a)(12) (1988).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange and The Securities Association ("TSA") of the United Kingdom have recently completed a joint study of respective qualification requirements for registered representatives in an effort to eliminate duplicative qualification requirements and facilitate cross-qualification of Exchange and TSA member firm personnel.

The Exchange and TSA have agreed that TSA's qualified registered representatives in good standing applying to become registered representatives with Exchange member organizations can satisfy the Exchange's examination requirement under Rule 345.15 by obtaining a passing score of 70% on an abbreviated version of the Series 7 Examination. Such persons will be required to take a special ninety (90) question examination dealing with U.S. securities laws, regulations, sales practices and special products drawn from the Series 7 to become registered with the Exchange. Consideration will also be given to the candidate's previous experience for the purpose of satisfying the Exchange's four-month training requirement pursuant to Rule 345.15.

U.S. Series 7 qualified registered representatives will be able to satisfy TSA qualification requirements by passing TSA's equivalent of the modified Series 7 examination or meeting an experience criterion, *i.e.*, U.S. registered persons with "continuous relevant experience" since January 1, 1987 will be exempt by TSA from the examination requirement. Those without such experience will have to take the U.K. test.

Those individuals passing the modified Series 7 examination will be eligible to sell all securities except municipal securities. Persons seeking municipal securities registration will be required to pass the standard Series 7 or the modified exam plus the Series 52.

The statutory basis for the proposed rule change is section 6(c)(3)(B) of the Act which requires the Exchange to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the specifications or content outline for the modified Series 7—UK Representatives Examination will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–89–22 and should be submitted by September 18, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 22, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20412 Filed 8–29–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–27167; File No. SR–CBOE–89–17]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Extension of Its Modified Trading System Pilot

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 3, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 8.13 to continue for two additional years its Modified Trading System ("MTS") pilot program. (Italic indicate additions; brackets indicate deletions.)

Rule 8.13 Modified Trading System

(a) From September 22, [1987] *1989* through September 22, [1989] *1991*, the Exchange will *continue the* pilot *of* a modified trading system. The pilot will be used, at the discretion of the Exchange, in any one or more of the option classes opened for trading at the Exchange after May 1, 1987. Option classes opened for trading prior to May 1, 1987, or replacements thereof, will not become a part of this pilot except to the extent authorized by a membership vote.

(b) through (d). No change.

* * * Interpretations and Policies .01 through .02. No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The MTS provides for the assignment of a designated primary market maker ("DPM") to specific option classes.

The DPM's functions are a cross between those of a specialist and those of a regular market maker. To date the CBOE has assigned a DPM in 31 option classes. The proposed rule filing is intended to extend the MTS pilot program for a maximum additional two years or until such lesser time when the pilot becomes permanent. While the pilot has been successful, the Exchange intends to implement changes to the pilot through subsequent filings. As such, the CBOE believes the two-year extension does not constitute a significant change and qualifies for accelerated approval in that it is an existing rule of the Exchange.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and in particular, the requirements of Section 6. Specifically, the CBOE believes the proposed rule is consistent with Section 6(b)(5) of the Act, which provides, among other things, that the rules of the Exchange are to be designed to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act so that the pilot program can continue without interruption.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with section 6(b)(5) because it will benefit investors and perfect the mechanism of a free and open market by continuing a pilot program designed to enhance the CBOE's overall marketmaking capabilities. In addition, the program has not been the subject of any complaints nor resulted in any performance or disciplinary action.

The Commission finds good cause for approving the proposed rule change prior to the thirteenth day after the date of publication of notice of filing thereof so that the pilot program can continue without interruption. In addition, the Commission previously has solicited comments on this pilot program and has not received any negative comments on its operation. Moreover, this program has operated effectively and generally has been well received.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspections and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 15, 1989.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[1] that the proposed rule change (SR–CBOE–89–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: August 22, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–20421 Filed 8–29–89; 8:45 am]

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 200.30–02–M

[Rel. No. 34–27163; File No. SR–MBS–89–3]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Trade Processing and Participation Standards

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 31, 1989, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Accounts and Account Groups. A new Rule 1 is added to Article II. Article II, Rule 1, Section 1, provides for the maintenance of separate Accounts for different types of transactions: (i) Trade-for-Trade Accounts for processing transactions through the Trade-for-Trade System only, (ii) SBO Accounts for processing transactions through the SBO System and the Trade-for-Trade System, (iii) Option Accounts for recording Option Contracts and (iv) such other types of Accounts as may be specified in the Procedures. Article II, Rule 1, Section 2, permits conversion of an SBO Account to a Trade-for-Trade Account and *vice versa* upon prior notice to the Corporation and cancellation of all transactions in the original Account and re-entry of the transactions in the new Account.

The former defined term "Non-Dealer" in Article I, Rule 1, has been deleted; for purposes of the Rules, a Participant is either a Broker or a Dealer. Under Article II, Rule 1, Section 1, Accounts of a Participant acting as a Broker on behalf of Participant Dealers (newly defined in Article I, Rule 1, as Broker Accounts) are maintained in a Broker Account Group, and Accounts of a Participant acting as a Dealer (newly defined in Article I, Rule 1, as Dealer Accounts) are maintained in a Dealer Account Group. If a Participant maintains two or more Account Groups, each Account Group will be treated separately for purposes of calculating Account maintenance fees, deposits to the Participants Fund and Market Margin Differential Deposits. However, under Article II, Rule 1, Section 1, a Participant with two or more Account Groups bears full responsibility for transactions in all of its Account

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Groups. See "Participants Fund Deposits," below.

Transactions by Brokers. The proposed Rule changes clarify the processing of transactions entered by Brokers acting on behalf of Participant Dealers, which previously were addressed only in Article II, Rule 3, Section 6, captioned "Substitution of Participants" (which is now deleted). Under Article II, Rule 3, Section 1, a transaction may be entered as a Broker Give-Up Trade (newly defined in Article I, Rule 1), with the Broker submitting pre-compared trade input on behalf of both the selling and the purchasing Dealers for which the Broker is acting. Pursuant to Article II, Rule 3, Section 3, all of such transactions are reflected in an Audit Report (newly defined in Article I, Rule 1) delivered to the Broker. Under Article II, Rule 3, Section 2, and Article II, Rule 6, in a Broker Give-Up Trade the Broker initially will be identified in Purchase and Sale Reports and Open Commitment Reports as the Original Contra-Side Participant of both Dealers on whose behalf it is acting. On a prescribed Broker Give-Up Date, the Dealers will be paired with one another. Pursuant to Article II, Rule 3, Section 3, the Dealers will receive a Broker Give-Up Report (newly defined in Article I, Rule 1) reflecting such pairing, while pursuant to Article II, Rule 3, Section 2, and Article II, Rule 6, the Dealers will receive new Purchase and Sale and Open Commitment Reports identifying them as the contra-side Participants.

Under Article II, Rule 3, Section 1, any Participant entering a transaction as a Broker Give-Up Trade warrants that it is authorized to do so by both the selling and the purchasing Dealers, and each such Dealer is liable as principal notwithstanding the temporary designation of the Broker as Original Contra-Side Participant. Article IV, Rule 4 is revised to make it clear that a Broker that enters a transaction other than as a Broker Give-Up Trade remains liable as principal.

The Rules continue to provide that the Purchase and Sale Report constitutes the sole confirmation of transactions between Original Contra-Side Participants that are processed by the Corporation. However, Article II, Rule 3, Section 4, is amended to make it clear that the Rules do not relieve a Broker of any obligation to confirm transactions effected by it on behalf of a Dealer.

Participants Fund Deposits. Currently, the Rules require each Participant to deposit in the Participants Fund a minimum of $10,000 in cash plus the amount of any Market Margin Differential computed by the Corporation. Under revised Article IV, Rule 1, a Participant is required to make a Basic Deposit (newly defined in Article I, Rule 1) of no less than $10,000 per Account and a Minimum Market Margin Differential Deposit (also newly defined in Article I, Rule 1) of $2,500,000 for each Account Group; provided that the Corporation's Board of Directors may, at its option, based on the recommendation of the Corporation's Risk Management Committee, increase the amount of either the Basic Deposit or the Minimum Market Margin Differential Deposit and exempt any Broker Account Group from the Minimum Market Margin Differential Deposit requirement. Under Article III, Rule 1, Section 12, if a Participant ceases to meet the financial requirements for participation, the Board of Directors may condition the Participant's continued participation on an increase in its minimum required deposits to the Participants Fund for any of its Account Groups.

Under Article IV, Rule 2, Section 4, the Basic Deposit must be made in cash. Minimum Market Margin Differential Deposits may be in the form of cash, approved securities or letters of credit. Article IV, Rule 2, Section 6, is amended to clarify a Participant's right to substitute securities, while Article IV, Rule 2, Section 7, is amended to clarify a Participant's right to substitute letters of credit, in each case upon prior notice to and approval by the Corporation. Article II, Rule 2, Section 5, is amended to provide for the distribution of investment income, less an amount to compensate the Corporation for its handling costs, only on cash deposits in excess of Basic Deposits.

Market Margin Differential Deposits. Article I, Rule 1, is amended to distinguish between the Market Margin Differential and the Market Margin Differential Deposit. The former is the amount calculated by the Corporation pursuant to Article IV, Rule 2, Section 1, while the latter is the amount a Participant is required to deposit to the Participants Fund pursuant to new Article IV, Rule 2, Section 2. Under Article IV, Rule 2, Section 2, the Market Margin Differential Deposit for any Account Group will be based on the net Market Margin Differential for all Accounts included in the Account Group, reduced by the amount of the Minimum Market Margin Differential Deposit to the Participants Fund with respect to that Account Group. Under Article IV, Rule 2, Section 2, if a Participant has more than one Account Group, any excess Market Margin Differential Deposit for one Account Group may, upon written request, be used to offset a deficiency in any other Account Group.

Article IV, Rule 2, Section 1, is amended to make it clear that Market Margin Differential is computed not only with respect to net long or net short positions in a particular Settlement Class, but also with respect to net zero positions, in which purchases have been offset by sales. Market Margin Differential with respect to net zero positions is equal to the net excess of original contract value of the Participant's purchases over original contract value of its sales.

Article I, Rule 1 provides new definitions for "Put Option Contract" and "Call Option Contract." Put Option Contracts or Call Option Contracts for Securities of the same typoe and coupon rate and having the same Expiration Date are referred to in Article I, Rule 1 by the new term "Option Class." The concept of Option Class is used in Article IV, Rule 2, Section 1 to clarify the computation of Margin Differential with respect to Option Contracts.

Under Article II, Rule 4, Section 6; Article III, Rule 3, Section 4; and Article IV, Rule 3 and 5, if the Corporation ceases to act for a Participant, or a Participant fails to discharge any liability to the Corporation for any Account Group, the Corporation may utilize the Participants Fund deposits with respect to any of the Participant's Account Groups to cover any losses or discharge any liability to the Corporation.

Under the Corporation's existing Rules, if the Corporation ceases to act for a Participant, the Corporation will use the Participant's contributions to the Participants Fund and the proceeds for liquidation of its open commitments for settlement to satisfy loss claims for SBO Contra-Side Participants and Original Contra-Side Participants. Revised Article III, Rule 3, Section 4, clarifies the Corporation's intenstion to use such funds first to satisfy the loss claims of SBO Contra-Side Participants which were not also Original Contra-Side Participants, assessing Original Contra-Side Participants to the extent that such funds are insufficient to cover the loss claims of such SBO Contra-Side Participants in full. Any remaining funds will be used to satisfy the loss claims of Original Contra-Side Participants, including SBO Contra-Side Participants which are also Original Contra-Side Participants.

SBO Transactions. The proposed Rule changes make a number of clarifications in, the operation of the SBO System. Currently, trades having a face value of less than $1,000,000 or not evenly divisible by $1,000,000 are said to be ineligible for settlement in the SBO System; such provisions in Article II, Rule 4, Section 1, will be replaced by reference to the Procedures, which in turn will refer to trades in amounts which do not satisfy the PSA Guidelines. To eliminate confusion with SBO Trades (the trades resulting from netting of a Participant's purchases and sales within a particular Settlement Class), "SBO-Destined Trade" is newly defined in Article I, Rule 1, to refer to a transaction intended for netting through the SBO System. The definition of "SBO Trade" in Article I, Rule 1, is modified to make it clear that a Participant's transactions in a particular Settlement Class may net to more than one Long or Short SBO Trade. Finally, in Article I, Rule 1, a former distinction in the definition of "Impending Settlement Date" between transactions in the SBO and Trade-for-Trade Systems has been eliminated; the term refers to any transaction with a Settlement Date scheduled to occur within the next 30 days.

The proposed Rule changes describe in greater detail the Corporation's current procedure for netting SBO-Destined Trades to produce SBO Trades. Under Article II, Rule 4, Section 2, each Participant's SBO-Destined Trades are netted by Settlement Class as follows:

(a) First, the Corporation creates Netted Positions (newly defined in Article I, Rule 1) by offsetting the Participant's purchases from and sales to each of its Original Contra-Side Participants.

(b) Second, to the extent that SBO-Destined Trades cannot be eliminated through Netted Positions, the Corporation creates Net-Out Positions (also newly defined in Article I, Rule 1) by offsetting the Participant's purchases form the sales to different Original Contra-Side Participants.

(c) Third, to the extent that SBO-Destined Trades cannot be eliminated through Netted or Net-Out Positions (i.e., remain Net Open Positions, as newly defined in Article I, Rule 1), the Corporation creates one or more SBO Trades between the Participant and another Participant, which may or may not have been its Original Contra-Side Participant.

The current Rules provide that SBO Trades are settled at the SBO Price determined by the Corporation. The proposed amendment to Article II, Rule 4, Section 2, provides more specifically that SBO Trades are settled at the Class Average Price (CAP) (newly defined in Article I, Rule 1), which is the average contract price of all SBO-Destined Trades in the Settlement Class.

Article II, Rule 4, Section 3, as proposed to be amended, expands and clarifies the Corporation's current method of computing the SBO Market Differential, which is redefined accordingly in Article I, Rule 1. The Corporation begins by computing a Firm Class Average Price (FCAP) (newly defined in Article I, Rule 1) for all of a Participant's sales to, or purchases from, a particular Original Contra-Side Participant. The FCAP is the average contract price of such sales or such purchases. The Participant's SBO Market Differential is equal to the sum of the following:

(a) For each of its Netted Positions, the difference (positive or negative) between the FCAPs for its purchases and the FCAPs for its sales; plus or minus

(b) For each of its Net-Out Positions, the difference (positive or negative) between the FCAPs for its purchases and the FCAPs for its sales; plus or minus

(c) For each of its Net Open Positions, the difference (positive or negative) between the Participant's FCAP for its purchase or sale transactions with the Original Contra-Side Participant and the CAP for its SBO Trade.

On the Settlement Date, a Participant with a negative SBO Market Differential is required to pay such negative amount to the Corporation, while a Participant with a positive SBO Market Differential is entitled to receive such positive amount from the Corporation.

Following clearance of an SBO Trade, Participants are required to submit to the Corporation an SBO Notification of Settlement. If only one Participant submits clearance information or the information submitted by both Participants does not compare, the proposed Rule changes provide in Article II, Rule 7, Section 2, for an SBO Pool Uncompared/Advisory Report (newly defined in Article I, Rule 1); the current Uncompared/Advisory Report, as redefined in Article I, Rule 1, will list only uncompared trade input.

The proposed Rule changes revise Article II, Rule 4, Sections 4 and 5, to make it clear that any Cash Adjustment (formerly referred to as the SBO Cash Adjustment) payable following clearance (including any Broker Adjustment payable by or to Dealers on whose behalf a Broker has acted) is based on the difference between the amortized value of Securities delivered and the Par Amount, rather than the amount reported to the Corporation.

Following clearance of an SBO Trade, new Article II, Rule 8, Section 2, provides that the Corporation will ascertian whether the delivery conformed with the PSA Guidelines. If not, the delivery will be reflected in an SBO Pool Reject Report (newly defined in Article I, Rule 1).

Procedures and PSA Guidelines. The current Rules contain detailed specifications for trade input (Article II, Rule 2, Section 1) and reconciliation of input discrepancies (Article II, Rule 2, Section 4); exercise of Option Contracts Article II, Rule 2, Section 1); settlement reporting (Article II, Rule 3, Section 2, and Article II, Rule 4, Section 2) and reconciliation of settlement discrepancies (Article II, Rule 6); good delivery (Article II, Rule 7, Sections 2 and 3); payment of, and due bills for, principal and interest (Article II, Rule 7, Sections 5 and 6); and reclamations (Article II, Rule 9). The proposed Rule changes replace such specifications with references to the Procedures and the PSA Guidelines. The current Rules also contian specific time frames for a variety of actions to be taken by Participants and the Corporation. The proposed Rule changes substitute references to times specified in the Procedures. These include Article II, Rule 3, Section 1 (submission of trade input), 2 (delivery of Purchase and Sele Report) and 5 (verification and correction of discrepancies in Purchase and Sale Reports); Article II, Rule 5 (furnishing of settlement information to original Contra-Side Participants in Trade-for-Trade transactions); and Article III, Rule 3, Section 4 (liquidation of open commitments of Participants for which the Corporation has ceased to act).

Participation Standards. Article III, Rule 1, Section 1, makes it clear that entities eligible for participation include not only broker-dealers registered under Section 15 of the Securities Exchange Act of 1934, but also government securities broker-dealers registered under Section 15C of the Act. Consistent with that change, Article III, Rule 1, Section 10, permits government securities broker-dealers to satisfy certain financial reporting obligations by submitting to the Corporation copies of their Form G–405 Reports on Finances and Operations to the Department of the Treasury.

Article III, Rule 1, Section 1, clarifies provisions relating to use of the net worth of a parent guarantor to satisfy the Corporation's net worth standards. Financial reporting requirements in Article III, Rule 1, Section 10, are expressly made applicable to parent guarantors. Article III, Rule 1, Section 8, is amended to require a Participant to submit, in addition to specifically enumerated financial reports, such other information pertaining to the financial condition of the Participant or its parent guarantor as the Corporation may reasonably request.

The Corporation's current practice of requiring Participants to respond to monthly "Audit Packages" is incoporated in new Article V, Rule 4, section 4, along with a reference to sanctions for failure to respond. The term "Audit Package" is newly defined in Article I, Rule 1, as a request for confirmation of Open Commitment Reports.

Miscellaneous Changes

Changes in Terminology. A number of definitions that formerly appeared in Article I, Rule 1, have been deleted as unnecessary, either because of simplification of the Rules (FHLMC Agreement, FHLMC Securities, FNMA Securities, GNMA Securities, Par Amount, Price, Principal and Interest Due Bill, Principal and Interest Payment Date, Reclamation, Record Date, Repurchase Agreement) or because of changes in trading practices in the mortgage-backed securities industry (Delayed-Delivery Contract, Graduated Payment Mortgage, Guaranteed Coupon, Par/Price Cap, Specified Transaction).

The proposed Rule changes also modify certain definitions previously used and add new definitions. The term "Settlement Date" has been redefined in Article I, Rule 1, to refer to the PSA-designated settlement date for SBO transactions and the date designated by the parties for Trade-for-Trade transactions. In some instances, the word "settlement" is replaced by the word "clearance"—defined in Article I, Rule 1, as the acutal settlement of a transaction as reported to the Corporation, which may occur on the PSA-designated Settlement Date or another date.

Finally, references to certian reports in Article I, Rule 1, have been changed to correspond to the exact titles given to such reports by the Corporation's computer system. These include the Notification of Settlement Summary (formerly referred to as the Notification of Settlement Report) and Uncompared/Advisory List (formerly referred to as the Uncompared/Advisory Report).

Additional Services. To accommodate possible future services, the term "Securities" has been expanded in Article I, Rule 1, to cover not only Mortgage-Backed Securities and Government Securities but also any other asset-backed securities designated by the Corporation as Eligible Securities. Under Article I, Rule 2, Eligible Securities are those determined by the Corporation to be eligible for comparison, recording, clearance or other services provided by the Corporation—not merely clearance through the SBO or Trade-for-Trade systems (which will be used only for transactions in Mortgage-Backed Securities). Conforming changes have been made throughout the Rules, including Article II, Rule 1, Section 1; Article II, Rule 2; Article II, Rule 3, Sections 2 and 6; Article II, Rule 6; Article II, Rule 8, Section 1; Article II, Rule 9; Article III, Rule 3, Sections 2 and 4; and Article V, Rule 7, Section 1. The Corporation does not currently propose to designate additional types of Securities as Eligible Securities; if and when it does so, the nature of the services provided with respect to such Securities will be specified by amendment to the Corporation's Rules and/or its Procedures.

Sale of Depository Division. The Corporation contemplates in the near future closing the sale of its Depository Division. Upon the closing of that sale, references to separate Clearing and Depository Divisions will be unnecessary. Accordingly, the terms "Clearing Division" and "Depository" have been deleted from Article I, Rule 1, and throughout the Rules. All references to the Clearing Division have been replaced with references to the Corporation. References to the MBSCC Clearing Division Pledgee Account in the Depository Division are also deleted from Article I, Rule 1, and Article IV, Rule 2, section 6, and a provision authorizing the Clearing Division to make available to the Depository Division any excess deposits a dual Participant may have made to the Participants Fund has been deleted from Article III, Rule 1, section 3.

Billing. Article V, Rule 2, section 3, is modified to codify the Corporation's recently implemented practice of billing, on behalf of the PSA, Participants which are members of the PSA for fees and charges imposed by the PSA.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements. Further statements are available in the file available at the Commission.

(A) Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

The proposed Rule changes are intended, among other things, to (1) provide for maintenance of separate Account Groups for Participants acting as Brokers or as Dealers, each containing separate Accounts for SBO transactions, Trade-for-Trade transactions, Option Contracts and other transactions; (2) clarify existing provisions and add new provisions relating to transactions of Participants acting as Brokers; (3) provide additional collateral security for performance of Participants' settlement obligations by increasing minimum required deposits to the Participants Fund; (4) clarify provisions relating to Market Margin Differential Deposits to the Participants Fund and application of the Participants Fund; (5) add further provisions relating to the processing of SBO transactions not included in the Corporation's prior Rule filing related to the SBO System (SR-MBS-88-19, filed November 23, 1988); (6) provide additional flexibility by relegating to the Procedures and PSA Guidelines certain matters previously addressed in detail in the Corporation's Rules; (7) clarify participation standards and financial reporting requirements; and (8) effect miscellaneous changes designed to conform terminology to current usage, to accommodate possible future services and to reflect the intended sale of the Corporation's Depository Division.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed Rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed Rule changes effecting substantive changes in the practice of the Corporation were described in an Administrative Bulletin to Clearing Division Participants dated November 22, 1988. Having received no comments, the Corporation redistributed the Administrative Bulletin on or about December 5, 1988. Again, no comments were received.

The Corporation announced in an Administrative Bulletin dated January 24, 1989 its intention to begin billing, on behalf of the PSA, Participants which are members of the PSA for charges and fees imposed by the PSA. No rerponses from Participants were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-MBS-89-3 and should be submitted by September 15, 1989.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.

Dated: August 22, 1989

Jonathan G. Katz,

Secretary.

[FR Doc. 89-20422 Filed 8-29-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27173; SR-MSE-89-7]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Clearing Corporation Relating to the Fee for Automated Customer Account Transfer Service Function, Transfer of Residual Credit Positions

August 23, 1989.

Pusuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 16, 1989 the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission the proposeed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Midwest Clearing Corporation ("MCC") proposes to institute a fee for its newly created Automated Customer Account Transfer Service ("ACATS") function, Transfer of Residual Credit Positions. The service will be priced at $0.12 per item entered into the MST System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change is designed to establish a fee for the Transfer of Residual Credit Positions, a service recently provided to MCC Participants through the ACATS system. This new function allows the delivering broker to initiate transfer of cash or securities which have been credited to an account after that account has been transferred via ACATS. (See SR-MCC-89-3)

The new fee is consistent with section a of the Securities Exchange Act of 1934 (the "Act") in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR-MCC-89-7 and should be submitted by September 20, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20416 Filed 8–29–89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34–27175; File No. SR–MSRB–89–4]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Professional Qualifications

On June 15, 1989, the Municipal Securities Rulemaking Board ("MSRB") submitted a proposed rule change (File No. SR–MSRB–89–4) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to revise examination specifications and a study outline for the Municipal Securities Representative Qualification Examination (Series 52).[1] The MSRB also requested that the Commission delay the effectiveness of the proposed rule change until January 1, 1990, in order to permit the Series 52 question bank to be updated to reflect the revised test specifications and study outline and to provide time for information concerning the revised study outline to be circulated to the industry.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 27016 (July 7, 1989), 54 FR 30488. The Commission received no comments on the proposal. This order approves the proposal.

In its filing with the Commission, the MSRB stated that specific subjects and questions have been updated from time to time in the series 52 examination to reflect changes in the municipal securities industry or in Board rules. At this time, however, the Board's Professional Qualifications Advisory Committee ("PQAC")[2] determined that a comprehensive review of the current study outline should be undertaken, both to ensure that the subject matter reflected current products and practices and to realign some of the topics for clarity. The Series 52 examination contains questions not only on municipal securities and the municipal markets, but also on U.S. Government, federal agency and money market instruments, government economic policy and behavior of interest rates, anjd applicable federal securities laws and regulations.

To achieve the PQAC's objective of the study outline reflecting current products and practices and ensuring clarity, some topics have been revised (*e.g.,* the section on "Revenue Bonds" was expanded and reformatted to reflect the increasing use of these bonds in the market). The most significant revision made to the current study outline concerns the topic of customer suitability. The current examination tests suitability indirectly by testing the components of suitability (*e.g.,* product knowledge, tax considerations, and Board rules). The revised study outline contains the topic "Customer Suitability Considerations" as a direct means to test suitability. This will be achieved by requiring the candidates to answer "application" questions by making suitability determinations with respect to a given customer's finance profile, investment objectives, tax status and similar information.

The examination specifications specify how the questions asked on each examination are to be allocated among the various topics. In general, the PQAC concluded that the allocation of questions in the current examination specificaitons are appropriate, although some changes were made to increase questions on some topics and to decrease the number in other topic areas. The revised question allocations to Part Two (U.S. Government, Federal Agencies, and Other Financial Instruments) reflects a realignment of the subject matter. The revised examination specifications have been filed under a separate letter dated June 14, 1989, requesting confidential treatment to Jonathan G. Katz, Secretary, SEC.

The revised examination will remain a three-hour, 100-question examination administered by the National Association of Securities Dealers, Inc. using Control Data Corporation's PLATO computer system.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. In particular, the Commission finds that the proposal is consistent with section 15B(b)(2)(A) which requires the MSRB to propose and adopt the rules that:

> provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security unless * * * such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors.

Section 15B(b)(2)(A) of the Act also provides that the Board may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the Board.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, the File No. SR–MSRB–89–04, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(12).

Dated: August 24, 1989.

Shirley E. Hollis,

Assistant Secretary.

FR Doc. 89–20419 Filed 8–29–89; 8:45 am]

BILLING CODE 8010-01-M

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[1] An application for confidential treatment of the revised examination specifications was filed with the Secretary of the Commission on June 14, 1989.

[2] The PQAC is composed of the Representative Examination Subcommittee and the principal Examination Subcommittee. The Subcommittees are composed of individuals with extensive experience in the securities industry. The committee members are employed by securities firms and bank dealers and come from diverse geographic locations.

[34–27172, SR–NSCC–89–12]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the National Securities Clearing Corporation Regarding a Modification of Automated Customer Account Transfer Service Rules

August 23, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 14, 1989, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by National Securities Clearing Corporation (NSCC). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a modification of NSCC's Automated Customer Account Transfer Service Rules to provide for the automated transfer of Fund/SERV eligible book share mutual fund assets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule filing is to enhance NSCC's Automated Customer Account Transfer Service (ACAT Service) in order to permit the automated transfer of book share mutual fund assets for mutual funds associated with NSCC Fund Members and Mutual Fund Processors (hereinafter referred to as "Eligible Shares"). The enhancement will occur in two phases.

Under Phase I, only Receiving and Delivering Members (as those terms are used in the ACAT rule) who request to be included will be permitted to transfer Eligible Shares in an automated format. To be eligible to participate both the Receiving and Delivering Members will be required to input data to NSCC in automated format. In addition, NSCC will create standing transfer instructions which will be used in the event the Receiving Member does not properly and timely submit transfer instructions to NSCC.

NSCC expects to implement Phase II sixty days after implementation of Phase I. In Phase II all Members will become eligible Receiving Members, but to be eligible they must continue to have automated input capabilities. Receiving Members will also be given the opportunity to provide NSCC with standing transfer instructions.

Currently mutual fund assets, for the purposes of the ACAT Service, are categorized by NSCC as non-CNS eligible. If mutual fund shares are to be transferred, the Delivering and Receiving Members are debited and credited respectively, on settlement day, for the value of the mutual fund assets (along with the debits and credits for the value of all other non-CNS eligible assets), while the actual transfer of the mutual fund shares occurs directly between the Receiving and Delivering Members outside the ACAT Service.

Under the proposed enhancement, if an eligible fund asset is held in book share form and the Delivering Member submits all asset details in automated format, the transfer will be processed through NSCC's Fund/SERV Service. Neither the Deliverer nor the Receiver will be required to be a Fund/SERV user in order for this to occur. If shares are held in physical form or if the shares are not Eligible Shares they will continue to be transferred directly between the Receiving and Delivering Members outside the ACAT Service.

In order for the automated transfer of Eligible Shares to occur Delivering Members will be required to: (1) Submit all customer account asset details in automated format and (2) submit certain additional asset details pertaining to the mutual fund shares. These details are: (1) The customer account number at the Mutual Fund, (2) whether the number was assigned by the Delivering Member or the Mutual Fund, (3) a Networking control indicator (if the account is a Networking Account), (4) whether the account is held in customer or street name, (5) whether the shares are physical or book shares[1] and (6) the registered representative's identity. If the asset details are submitted in paper format the entire account process will be pended, the Receiving and Delivering Members will be notified and the Deliverer will be required to re-submit the details in automated format. NSCC will report the mutual fund asset details along with the other account asset details, to the Receiving and Delivering Member. Eligible mutual fund shares which are held in book share form, will be set forth in a separate category on the asset detail report.

Currently, a Receiving Member must, within two business days of receipt of the asset detail report, accept the account, request the Delivering Member to make adjustments, or reject the account. Under the proposed rule change the Receiving Member will also be required to submit transfer instructions for those mutual fund shares to be processed through Fund/SERV. If a Receiving Member makes an adjustment to the account the Receiving Member will be allowed two additional business days to submit the transfer information. If the Receiving Member fails to submit the instructions by the required time, or submits them incorrectly, NSCC will provide pre-established (standing) transfer instructions to the Fund Member or Mutual Fund Processor.

Initially, the standing instructions will be derived by NSCC; eventually the Receiving Member will be able to establish his own standing transfer instructions. In the event the Receiving Member chooses not to provide standing instructions, the NSCC derived standing instructions will be used. A Registration Detail Report will be produced, advising Members of the transfer instructions received by the corporation, errors if any in such instructions and where no instructions were received, the standing instructions which will be sent to the Fund Member or Mutual Fund Processor. The Receiver will have the opportunity within the two business day time period to submit changes to this information prior to the instructions being submitted to the Fund Member or Mutual Fund Processor. The Delivering Member will continue to be debited on settlement day (as indicated on the ACATS Settlement Report) for the value of the Mutual fund asset and the Receiving Member will be credited with the value.

NSCC will transmit through Fund/SERV, to the Fund Member or Mutual Fund Processor, the transfer instructions and details of the Eligible Shares. The Fund Member or Mutual Fund Processor will be obligated to confirm or reject the data. Through ACATS, NSCC will notify the Receiving and Delivery Members, on a Statistics Report, of those items which have been confirmed or rejected and those to which there has not been a response. The Fund Member or Mutual Fund Processor will be reminded, on a daily basis, of the items which it has not confirmed or rejected. These pending items will be continually carried forward in the system. If the Member or Mutual Fund Processor rejects a Fund/SERV eligible book share mutual fund asset, NSCC, as part of the ACAT Service, will issue Receive and Deliver orders. The actual transfer of these rejected items will be required to be accomplished between the parties, outside the ACAT and Fund/SERV Services. On the day following the day a Fund Member or Mutual Fund Processor confirms Eligible Shares, NSCC will debit the Receiver and credit the Deliverer for the value of the assets as indicated on the Statistics Report. This reversing debit and credit entry will be separately set forth on the Member's settlement statement.

(b) The proposed rule change provides for the automated transfer of Fund/SERV eligible book share mutual funds as part of a transfer of a customer account from one brokerage firm to another. The rule change therefore, facilitates the prompt and accurate clearance and settlement of securities transactions and is consistent with the requirements of the 1934 Act and the rules and regulations thereunder applicable to NSCC.

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[1] If the Delivering Member indicates physical shares, then transfer will not occur in automated format, but as it does today.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule changes should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-NSCC-89-12 and should be submitted by September 20, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-20414 Filed 8-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27171 File No. SR-PSE-89-15]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Trading Privileges of Holders of Special Memberships

On June 6, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Act,[1] and Rule 19b-4 thereunder,[2] a proposed rule change to describe more clearly the trading privileges of holders of Special Memberships.

The proposed rule change was noticed in Securities Exchange Act Release No. 26961 (June 23, 1989), 54 FR 28140 (July 5, 1989). No comments were received by the Commission on the proposed rule change.

The PSE proposes to amend Rule IX, section 13, to describe more specifically the limitations on trading privileges accorded to holders of Special Memberships. Currently, under section 13, holders of Special Memberships issued by the Exchange are entitled to admission to the options trading floor and registration as a Market Maker or Floor Broker in options on the PSE Technology Index, Financial News Composite Index ("FNCI") and such other new products as the Board may determine to include.

The PSE proposes to add new language, in the form of Commentary .01 to section 13, to make clear that a market maker holding a special membership, while present on the options trading floor, may not place orders in option classes other than that for which the market maker is registered. In particular, Commentary .01 states that a market maker holding a special membership may bid, offer, purchase, write, and enter orders for his market maker account only in FNCI options series currently open for trading. The PSE has removed the reference to the PSE Technology Index in section 13 because that product is no longer traded. If a market maker holding a special membership wishes to place an order in an option class other than that for which he is registered, he must do so from off the floor. The market maker must identify the order as a customer order and any position established that was entered from off the floor will be placed in the market maker's investment account and subject to applicable customer margin. The PSE states that these specific procedures are designed to preclude any unfair competitive advantage over public orders.

The PSE proposes to add new Commentary .02 to section 13 that provides that floor brokers holding special memberships are limited to accepting and executing orders on option contracts on the FNCI.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6 [3] and the rules and regulations thereunder. Holders of special memberships are allowed to pay reduced fees in connection with the application for and acquisition or transfer of such memberships. In return, holders of special memberships are limited in the rights and privileges provided for regular members as set forth in the PSE Constitution. For example, a holder of a special membership is not entitled to vote at meetings of the Exchange, and is not eligible to be elected as a member of the Board of Governors. In addition, as described in this proposal, holders of special memberships are subject to certain limitations on the trading privileges associated with such memberships.

The Commission believes that the PSE's proposal, by more clearly delineating the limitations on trading privileges accorded to market makers and floor brokers holding special memberships, is an appropriate exercise of the Exchange's authority to create special classes of memberships. Such memberships are designed to enhance the ability of the Exchange to ensure fair and orderly markets. Accordingly, the proposal, by clarifying the rights of special memberships, is consistent with the protection of investors and the public interest pursuant to section 6(b)(5) of the Act.

Is therefore is ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] 15 U.S.C. 78f (1982).

[4] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: August 23, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-20413 Filed 8-29-89; 8:45 am]

BILLING CODE 8010-01-M

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[5] 17 CFR 200.30-3(a)(12) (1988).

[Rel. No. 34-27162; File No. SR-PSE-89-08]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Summary Sanctioning of Members by Floor Officials

On May 15, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to provide PSE Floor Officials with the authority to impose summary sanctions on PSE members by issuing floor citations.

The proposed rule change was published for comment in Securities Exchange Act Release No. 26901 (June 7, 1989), 54 FR 25522 (June 15, 1989). No comments were received on the proposed rule change.

Currently, floor citations are issued by a Floor Official to a member, member organization, or employee of a member organization when charged with an alleged violation of Exchange rules. The citation is then forwarded to Exchange staff for a complete investigation consisting of witness interviews, rule interpretation, documentary evidence evaluations, and other necessary research. After completion of the investigation, a memorandum is presented to the Options Floor Trading Committee ("Committee") for its evaluation and determination as to disposition of the matter. A finding of guilt results in the imposition of a fine in accordance with the Committee's "Recommended Fine Schedule."

In the current rule filing, the PSE proposes to simplify the floor citation process. Specifically, under the proposed rule change, Floor Officials will have the discretion, after the alleged occurrence of a violation, to conduct an immediate investigation and impose an automatic fine in accordance with the same fine schedule as employed by the Committee. The Exchange believes the proposed rule change will eliminate certain unnecessary and time-consuming procedures which exist in the processing of floor citations. In particular, the PSE believes that Floor Officials, due to their location on the trading floor, will have the ability to investigate and evaluate alleged violative conduct promptly, thereby allowing the Exchange to use its resources more effectively. Nevertheless, under the proposal, Floor Officials will retain the discretion to refer matters, particularly instances involving egregious or complicating factors, to the Committee for its evaluation and determination as to disposition.

The PSE, however, does not believe the expedited disciplinary procedures will compromise the due process rights of individuals that receive summary sanctions for the following reasons. First, similar to current PSE procedures, whereby a member may appeal the sanction imposed by the Committee, under the PSE proposal, a member may appeal the sanction imposed by Floor Officials pursuant to PSE Rule XX, Section 11.[3] Second, the proposal incorporates safeguards to prevent the arbitrary or capricious impositions of fines by floor officials.[4] Third, the Committee will receive a monthly report of the citations issued summarily for its review and discussion. Lastly, in order to protect against arbitrary or capricious determinations of sanction amounts, citing Floor Officials will follow a "Recommended Fine Schedule" when assessing fines.

The PSE also proposes to modify the "Recommended Fine Schedule" to increase by 100% the recommended fines for most trading violations. The Exchange believes that the increased sanctions will promote public confidence in the operations of the Exchange by discouraging violative conduct.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6.[5] Specifically, the Commission finds that simplifying the floor citation procedure and increasing the fine schedule is consistent with Sections 6(b)(6) and 6(b)(7) of the Act because violators of the Exchange's rules will be appropriately disciplined through a fair procedure. In particular, the Commission believes that the safeguards built into the summary sanction procedure (*i.e.*, the issuance of citations by two Floor Officials, the generation of monthly citation reports, the right to appeal summary sanctions, and the adherence to a "Recommend Fine Schedule") adequately ensure that the due process rights of PSE members are not diminished.

The rule violations subject to the Floor Citation Procedures solely concern floor procedure, and most are technical in nature. They include such violations as the failure of a member to time stamp an order, violation of conduct or dress standards, and improper execution of a cross transaction. Moreover, the floor citation plan proposed by the PSE is similar to plans adopted by other exchanges and approved by the Commission.[6] In addition, the PSE has filed a reporting plan for the Floor Citation violations under Section 19(d) of the Act and Rule 19d-1 thereunder. The procedures proposed by the PSE are consistent with Section 6(b)(5) of the Act in that they will make the disciplinary process for minor violations more timely and efficient while preserving the alleged violator's procedural rights. Finally, under the procedures Floor Officials retain the discretion to forward a violation to the Exchange Compliance Department if, for example, the violation was egregious or repetitive in nature.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [7] that the proposed rule change (SR-PSE-89-08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: August 22, 1989.

Sirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-20368 Filed 8-29-89; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(12) (1984).

[2] 17 CFR 240.19b-4 (1988).

[3] The Exchange has amended recently the appeal process to clarify the precise procedures by which floor citations are reviewed, and to facilitate the systematic, complete and orderly operation of the review proceedings. Among other things, the new procedures clarify the right of an applicant to request that their appeal of floor citations be reviewed via oral presentation or based on written documentation. *See* Securities Exchange Act Release No. 27110 (August 9, 1989).

[4] Specifically, the proposal requires the participation of two Floor Officials for the issuance of a citation and imposition of a fine. Also, the proposed rule change mandates that the citing Floor Officials confer with Exchange staff before issuing the citation and fine.

[5] 15 U.S.C. § 78f (1982).

[6] *See e.g.* Securities Exchange Act Release No. 21918 (April 3, 1985) 50 FR 14066 (April 9, 1985).

[7] U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1988).

[Rel. No. 34-27154; File No. SR-PSE-89-20]

Proposed Rule Change By the Pacific Stock Exchange Inc. Relating to Orders Entered From Off the Floor

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 8, 1989, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ITEM 1. *Text of the Proposed Rule Change*

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange"), proposes to delete Options Floor Procedure Advice ("OFPA") B–11 and amend Rule VI, Section 73, to incorporate the language of OFPA B–11 as a commentary. The purpose for the proposed changes is to work toward the eventual elimination of all Procedure Advices from the rules. (Brackets indicate language to be deleted, italics indicate new language.)

Sec. 73 A Market Maker is an individual who is registered with the Exchange for the purpose of making transactions as dealer-specialist on the Floor of the Exchange in accordance with the provisions of this Section. Registered Market Makers are designated as specialists on the Exchange for all purposes under the Securities Exchange Act of 1934 and the Rules and Regulations thereunder. Only transactions that are initiated on the Floor of the Exchange shall count as Market Maker transactions for the purposes of this Section.

Commentary: .01 *Market Makers and Floor Brokers effecting transactions as Market Makers are instructed that, except as specified below, only transactions that are initiated on the Floor of the Exchange by that person shall count as Market Maker transactions and be entitled to special margin treatment, pursuant to the net capital requirements of Rule 15c3–1 of the Securities Exchange Act of 1934 and Regulation T of the Board of Governors of the Federal Reserve System.*

Accordingly, any position established for the account of a Market Maker which has been "entered from off the floor" must be placed in the Market Maker's investment account and be subject to applicable customer margin.

Market Maker clearing firms are directed to instruct their respective trading desks to identify their order as entered from off the floor by placing a "C" after the Market Maker's number in the firm box on the ticket. Floor Brokers, when accepting an order by phone from a Market Maker, are similarly directed to identify that order in the above manner.

An exception to the above stated procedure exists when an order is marked GTC, as referred to in Rule I, Section 6(a) of the Rules of the Exchange. A Market Maker, while on the floor, may enter a GTC order with a Floor Broker and still receive special margin treatment, as described above. However, the order must be a limit order where the quantity cannot be increased or the limit changed. If the order is increased or the limit changed, the GTC order shall be handled as a new order, subject to the guidelines of an "order entered from off the floor," and shall not receive the special margin treatment. Likewise, limit orders to "buy and sell" in the same series, discretionary orders, and "market not-held" orders may not be handled on a GTC basis without being subject to the above provisions applicable to "orders entered from off the floor."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change deletes Options Floor Procedure Advice B–11, and incorporates the amended language into Rule VI, Section 73. The purpose for this change is to work toward the eventual elimination of all Procedure Advices from the rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (1) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change;

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 15, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 21, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-20423 Filed 8-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-21764; File No. SR-PHLX-89-16]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Specialist Allocation Restrictions Policy

I. Introduction

On March 23, 1989, the Philadelphia Stock Exchange, Inc. ("Exchange" or "PHLX") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] copies of a proposed rule change designed to impose allocation restrictions on a specialist unit that loses its registration in a specialty stock or options class as a result of an involuntary reallocation proceeding or a disciplinary proceeding.[3]

Notice of the filing of the proposed rule change together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26714, April 11, 1989) and by publication in the **Federal Register** (54 FR 15581, April 18, 1989). No comments were received in connection with the proposal.

II. Description of the Proposal

PHLX Rule 506 delineates the application process for an equity book or options class in connection with an allocation or reallocation proceeding by the Exchange's Allocation, Evaluation and Securities Committee ("Committee"). The Exchange is proposing to add suplementary material .01 to PHLX Rule 506. The proposed supplementary material provision would prohibit a specialist unit from applying for any new listings for a six (6) month period immediately following the reallocation of a unit's stock book or options class as a result of: (i) An involuntary reallocation proceeding, or (ii) a disciplinary proceeding. The proposal also would prohibit the affected specialist from applying for any new listings for a subsequent six (6) month period unless the Exchange is satisfied that adequate corrective actions have been undertaken by the specialist.

The proposed rule change is intended to complement the provisions of PHLX Rules 511 and 515. PHLX Rule 511(b) establishes the substantive criteria that the Committee may consider when making allocation or reallocation decisions, and authorizes the Committee to allocate or reallocate equity books and options classes based on the results of specialist evaluations conducted pursuant to PHLX Rule 515 and any other factors the Committee deems appropriate. Additionally, because PHLX Rule 511(b) provides that all allocations and reallocations are made on a temporary basis for a period of up to 60 days, during that 60-day period the Committee may conduct a special review pursuant to PHLX Rule 515(b) to determine whether or not reallocation proceedings should be commenced. PHLX Rule 511(c) allows the Exchange to conduct a special review of a specialist's performance and, if necessary, to institute proceedings to determine whether to remove and reallocate an equity book or options class if a specialist unit has performed below minimum standards.

Rule 515 and the supplementary material thereto delineate the format for specialist evaluations by the Exchange. Pursuant to PHLX Rule 515 supplementary material .01 and .02, if an equity or options specialist unit performed below minimum standards on a prior occasion, did not have a specialty stock or options class reallocated, and continues over the next year to demonstrate performance weakness, a mandatory Committee review will be commenced to determine whether to reallocate one or more securities.

With respect to disciplinary proceedings conducted under the Exchange's Disciplinary Rules, PHLX Rule 960.10 authorizes the Business Conduct Committee to discipline members adjudicated to have violated an Exchange rule by "expulsion, suspension, fine, censure, limitations or terminations as to activities, functions, operations or association with a member or member organization, or any other fitting sanction." The Business Conduct Committee's authority in this area includes the authority to reallocate a specialist's securities.[4]

These rules do not specifically restrict a specialist unit's ability to receive new allocations following the reassignment of a security due to a reallocation or disciplinary action. The Exchange contends that it is inappropriate for a specialist unit to obtain a new listing during a period of time immediately subsequent to its loss of a listing. The Committee probably would not award new books immediately following a specialist unit's loss of a listing pursuant to a reallocation or disciplinary proceeding, but the Exchange contends that the proposed rule change will strengthen existing PHLX allocation, evaluation and reallocation rules by codifying that result. The Exchange believes that implementation of the proposal will provide notice to specialists of definite repercussions for substandard performance of their specialist responsibilities or being subject to serious disciplinary findings.

The Exchange also notes that the proposed rule change would not operate as a permanent bar to obtaining new listings. Rather, the prohibition would extend for a sufficiently long duration to grant a specialist time to remedy the operational deficiencies which originally led to the reallocation of its specialty securities. In this regard, the Exchange further notes that a second six (6) month prohibition would be imposed only if the Exchange is not satisfied that adequate corrective actions of the deficiencies which initially gave rise to the removal of the unit's specialist books have been undertaken by the specialist.

After the initial six month allocation restriction period, the specialist unit will be permitted to apply for new listings during the following six months, but only if the unit satisfactorily demonstrates that it has undertaken adequate measures to address the circumstances surrounding the reallocation of a specialty security.[5] In the event that the Committee determines that the unit's corrective measures did not adequately address the circumstances surrounding the reassignment of the unit's specialty stock or options class, the unit would not be permitted to apply for new listings at that time.[6] A unit could, however, apply for another new listing at a later date during the second six month period; however, the submission of an application for a new listing would trigger an Exchange review of the unit's corrective measures. At the conclusion of the second six month restriction period, the specialist unit's eligibility to participate in the Exchange's allocation process would be fully restored.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] The proposal that is the subject of this approval order is similar to a New York Stock Exchange, Inc. ("NYSE") proposal recently approved by the Commission. See Securities Exchange Act Release No. 26487, January 24, 1989 (54 FR 4359, January 30, 1989) (Commission approval of File No. SR–NYSE–88–33).

[4] *See* PHLX By-Laws, § 10–9.

[5] The determination of whether a unit may apply for new listings during this second six month period will be made by the Committee for instances where securities have been reallocated pursuant to PHLX Rules 500 through 599. Where a specialist's securities have been reallocated pursuant to sanctions imposed by the Exchange's Business Conduct Committee under PHLX Rule 960.10, the Committee's determination will be made in consultation with the Business Conduct Committee. In making this determination, the Committee will have the discretion to consider, among other things, whether the unit hired additional manpower, including back office personnel, changes in the unit's professional staff, whether the unit implemented more stringent supervisory procedures, and its dealer participation rates in its specialty stock. *See* Letter from William W. Uchimoto, General Counsel, PHLX, to George E. Scargle, Staff Attorney, SEC, Division of Market Regulation, dated August 7, 1989.

The Exchange indicates that the new policy is designed to complement the Exchange's existing allocation, evaluation, and reallocation rules which provide standards to be considered by the Committee in awarding new allocations, but which do not specifically restrict a specialist unit's ability to receive new allocations following the reassignment of registration in a specialty stock or options class due to a disciplinary proceeding or performance improvement action. The Exchange further indicates that the policy is intended to specifically complement PHLX Rules 511 and 515, which, as discussed above, provide for the reallocation of one or more of a unit's equity books or options classes for substandard performance. As stated above, the Exchange believes that it would be inappropriate for a specialist unit to receive a new allocation during a period of time immediately following the loss of a listing pursuant to a disciplinary or reallocation proceeding.

The Exchange believes that the proposal is consistent with section 6(b) of the Act in that it will enhance its ability to ensure the fair allocation of securities to specialist units and to prevent the allocation of securities to specialist units whose performance is below acceptable standards. Further, the Exchange contends that for purposes of investor protection, the public interest and the maintenance of fair and orderly markets, it is consistent to impose temporary allocation restrictions on specialists who have had a security reallocated due to substandard performance and/or disciplinary actions.

III. Discussion and Conclusion

After careful consideration, the Commission believes that the Exchange's proposal to impose allocation restrictions on certain specialist units is consistent with the Act, and, therefore, has determined to approve the filing. In particular, the Commission believes, as the Exchange maintains, that a specialist unit whose performance leads to the reallocation of a security should not be allowed to participate in the allocation process until it demonstrates that its performance has improved. In this regard, the Commission believes that the initial six month allocation prohibition period should provide the unit with sufficient time to develop and implement the necessary corrective measures to rectify the deficiencies which led to the reassignment of a speciality security. The success of the unit's improvement initiatives during this period will determine whether it will be permitted to apply for new listings during the second six month period.[7]

Further, the allocation restriction policy will act as an incentive for improved specialist performance. Because the unit will be precluded from applying for new allocations during the allocation prohibition and conditionally prohibited for the following six months, the Commission believes that a unit will find it advantageous to avoid the consequences of a reallocation of an assigned security and subsequent imposition of the allocation restrictions by maintaining quality markets in its assigned securities as well as complying with Exchange rules and policies.

Under the proposal, the reallocation and subsequent imposition of the allocation restrictions is not a permanent impediment to a unit's future allocation success. In the event that a unit's specialty security is reallocated and the restriction period triggered, the unit has, as discussed above, six months to institute the necessary reforms to correct its deficiencies. The unit could only be restricted for an additional six month period if the Committee finds that the unit has not taken adequate steps to resolve the circumstances giving rise to the reallocation. Accordingly, at most, a unit could be precluded from applying for new allocations only for a twelve month period. The Commission does not believe a potential twelve month allocation bar for units that have had securities reallocated is too restrictive. Rather, we strongly believe it is consistent with investor protection, the public interest and the maintenance of fair and orderly markets to impose temporary allocation restrictions on specialists who have had a specialty security reallocated due to poor performance and/or disciplinary action.

Finally, the Commission believes that the safeguards provided for in the procedures governing performance improvement and disciplinary proceedings will ensure that a specialist unit subject to the allocation restrictions will receive proper notice and the opportunity to defend its performance prior to the imposition of the allocation restrictions. For the reasons noted above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) [8] of the Act, that the above mentioned proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: August 22, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-20420 Filed 8-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27151; File No. SR-PHLX-89-20]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Floor Procedure and Compliance With Market Surveillance Data Requests

On May 22, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to

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[6] Even if the Exchange allows a unit to apply for a new allocation during (and after) this second six month period, the unit's disciplinary history, which will include a record of both the allocation restriction and the circumstances surrounding the reallocation of the unit's security, will be provided to the Committee under existing Exchange allocation, evaluation and reallocation rules. See, e.g., PHLX Rules 508(d) and 511(b).

[7] In this regard, we note that the steps identified as factors that may be considered by the Exchange staff in reviewing a unit's improvement efforts should serve as guidelines for the unit to consider when developing its improvement initiatives. See note 5, *supra*.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3 (1989).

[1] 15 U.S.C. 78s(b)(12) (1984).

[2] 17 CFR 240.19b-4 (1988).

extend the PHLX's expedited disciplinary scheme for minor rule infractions to the Exchange's equity floor and impose fines on PHLX members and persons associated with PHLX members for failure to comply with data requests made by the Exchange's Market Surveillance Department.

The proposed rule change was published for comment in Securities Exchange Act Release No. 26899 (June 7, 1989), 54 FR 25528 (June 15, 1989). No comments were received on the proposed rule change.

In 1986, the Commission approved the adoption of PHLX Rule 970 that established an expedited disciplinary scheme for minor rule infractions.[3] Specifically, Rule 970 authorizes the PHLX to promulgate "Option Floor Procedure Advices ("Advices")" that describes minor rule infractions and permit the Exchange's Market Surveillance Department ("Surveillance") to impose fines (up to $2,500) for violations of these Advices according to pre-set fine schedules. The PHLX believes that the disciplinary scheme created by Rule 970 has worked well as: (1) Violators of Advices have been summarily cited for violations without the need of the Exchange's Business Conduct Committee to exercise its discretion on a case-by-case basis; and (2) violators of Advices have been treated uniformly and fairly because of the imposition of fines according to pre-set fine schedules.

By its terms, however, Rule 970 only authorizes the promulgation of "Option" Advices, and, therefore, only applies to infractions committed on the PHLX's equity option and currency option trading floors. Accordingly, the PHLX proposes to amend Rule 970 to extend the minor rule infraction plan to the equity trading floor because of its demonstrated efficiency and fairness on the PHLX's options trading floors.

Additionally, pursuant to the proposed expanded version of Rule 970, the PHLX proposes the adoption of two new identical floor procedure advices that would require PHLX members and persons associated with PHLX members to comply promptly with any request for information made by Surveillance in connection with any investigation within the Exchange's disciplinary jurisdiction.[4] In order to ensure compliance with such data requests, the Exchange also proposes to establish a fine schedule for violations of these Advices.[5] The Exchange believes the proposed Advices will expedite Surveillance investigations by enabling the Exchange to discipline quickly and effectively members who fail to respond in a timely fashion to Surveillance information requests.

The Commission finds that the proposed amendment to PHLX Rule 970 to permit the promulgation of Equity Floor Procedure Advices is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[6] Specifically, the Commission believes that the proposal is consistent with section 6(b)(1) of the Act because it will facilitate the enforcement by the Exchange of compliance with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange by PHLX members and persons associated with PHLX members.[7] The proposal will extend to minor equity violations a summary disciplinary procedure that has been fair and effective for minor options violations. The Commission also finds that the proposed amendment to Rule 970 is consistent with section 6(b)(6) of the Act because the penalties under the Equity Floor Procedure Advices are reasonable in relation to the infractions in question. Finally, the Commission finds that the floor procedure advice requiring members to comply promptly with information requests by Surveillance is consistent with the Act. As the Commission stated in approving a similar proposal by the New York Stock Exchange, "In order to effect its supervisory and compliance role over members and member organizations, it is necessary for the Exchange to have the ability to set timetables for the receipt of information, and the disciplinary authority to compel members to comply with such requests." [8]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR-PHLX-89-20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: August 18, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-20367 Filed 8-29-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 24, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Borden Chemicals and Plastics LP
  Common Stock, No Par Value (File No. 7-5300)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 15, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-20417 Filed 8-29-89; 8:45 am]

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[3] *See* Securities Act Release No. 23290 (June 4, 1986) 51 FR 21430 (June 12, 1986).

[4] Under the proposal, the procedures would be called Options Floor Procedure Advices F-8 and Equity Floor Procedure Advice EM-1.

[5] The PHLX amended the proposed fine schedule by letter dated August 3, 1989 from William W. Uchimoto, General Counsel, PHLX, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC. Specifically, the amendment provides that violations of the Advices will receive a $500 fine instead of a warning for the first occurrence of a violation.

[6] 15 U.S.C. 78f (1982).

[7] As with Option Floor Procedure Advices the Commission finds that the PHLX must file all proposed Equity Floor Procedure Advices with the Commission as proposed rule changes under Section 19(b) of the Act for its review and approval.

[8] *See* Securities Exchange Act Release No. 25763 (May 27, 1988) 53 FR 20925 (June 7, 1988) as 20929. The reasoning contained in that Release is incorporated in this Order.

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 C.F.R. 200.30-3(a)(12) (1986).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 24, 1989.

The above named national securities exchange has filed application with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges ("UTP") limited to odd-lot transactions [1] in the securities listed in the attached Exhibit A.

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.[2]

Interested persons are invited to submit on or before September 1, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

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[1] Odd-lot transactions normally involve orders of less than 100 shares unless otherwise designated by an exchange. See *e.g.*, MSE Rules, Article XXXI, Rules 1 and 2.

[2] The MSE has indicated that all the securities on which they are seeking to trade UTP for odd-lot transactions only are listed and registered on the American Stock Exchange, Inc.

File Nos.	Description	Par value
7-4836	AIFS, Inc., Common Stock	$.10
4837	ATI Medical, Inc., Common Stock	No
4838	Abiomed Inc., Common Stock	.01
4839	Advanced Medical Technologies, Common Stock	.01
4840	Alliance Bancorporation, Common Stock	.01
4841	AmeriHealth, Inc., Common Stock	.01
4842	American Bank of Connecticut, Common Stock	1.00
4843	American Exploration Company, Common Stock	.05
4844	American Shared Hospital Services, Common Stock	No
4845	American Southwest Mortgage Investment Corporation Common Stock	1.00
4846	Arizona Land Income Corporation, Common Stock	.10
4847	Arrow Automotive Industries, Inc., Common Stock	.10
4848	Atlantis Group, Inc., C1 A Common Stock	.10
4849	B & H Ocean Carriers Ltd., Common Stock	.01
4850	B. B. Real Estate Investment Corporation, Common Stock	.01
4851	Bank of San Francisco, Common Stock	No
4852	BankAtlantic Financial Corporation, Capital Stock	.01
4853	Barr Laboratories, Inc., Common Stock	.01
4854	Barrister Information Systems Corporation, Common Stock	.24
4855	Bayou Steel Corporation, Common Stock	.01
4856	Biotherapeutics Incorporated, Common Stock	.002
4857	Biscayne Holdings, Inc., Class A Common Stock	.01
4858	Buffton Corp., Common Stock	.05
4859	Burnham Pacific Properties, Inc., Common Stock	No
4860	CIM High Yield Securities, Shares of Beneficial Interest	No
4861	COM Systems, Inc., Common Stock	No
4862	CXR Telecom Corporation, Common Stock	.0033
4863	Catalina Lighting, Inc., Common Stock	.01
4864	Cavalier Homes, Inc., Common Stock	.10
4865	Central Pacific Corporation, Common Stock	No
4866	Cenvill Development Corp., C1 A Common Stock	.01
4867	Clear Channel Communications, Inc., Common Stock	.10
4868	Collins Industries, Inc., Common Stock	.10
4869	Comptek Research Inc., Common Stock	.02
4870	Compumat, Inc., Common Stock	.01
4871	Corcap Inc., Common Stock	.01
4872	Cypress Fund, Inc., Common Stock	.001
4873	Damon Creations, Common Stock	1.00
4874	Datametrics Corporation, Common Stock	.01
4875	Dataram Corporation, Common Stock	.01
4876	Daxor Corporation, Common Stock	.01
4877	De Laurentiis Entertainment Group, Inc., Common Stock	.01
4878	De Rose Industries, Inc., Common Stock	No
4879	Decorator Industries, Inc., Common Stock	.20
4880	Del Laboratories, Inc., Common Stock	1.00
4881	Designatronics Incorporated, Common Stock	.04
4882	Designcraft Industries, Inc., Common Stock	.02
4883	Devon Resources Investors, Units of Partnership Interest	.10
4884	Di Industries, Inc., Common Stock	.10
4885	Diagnostic/Retrieval Systems, Inc., C1 A Common Stock	.01
4886	Diagnostic/Retrieval Systems, Inc., Class B Common Stock	.01
4887	Dickenson Mines Limited, C1 A Common Stock	No
4888	Dickenson Mines Limited, C1 B Common Stock	No
4889	Diodes, Inc., Common Stock	.66⅔
4890	Divi Hotels N.V., Common Stock	1.00
4891	Donnelly Corporation, C1 A Common Stock	.10

File Nos.	Description	Par value
4892	Dreyfus California Municipal Income, Inc., Common Stock	.001
4893	Dreyfus Municipal Income, Inc., Common Stock	.001
4894	Dreyfus New York Municipal Income, Inc., Common Stock	.001
4895	Driver-Harris Co., Common Stock	.83⅓
4896	Ducommon Inc., Common Stock	2.00
4897	Duplex Produce, Inc., Common Stock	1.00
4898	EAC Industries, Inc., Common Stock	.10
4899	EECO Incorporated, Common Stock	1.00
4900	ENSR Corporation, Common Stock	.01
4901	ESI Industries, Inc., C1 A Common Stock	.10
4902	Eagle Clothes, Common Stock	1.00
4903	Eagle Financial Corp., Common Stock	.01
4904	Eastgroup Properties SBI, Shares of Beneficial Interest	1.00
4905	Ecology & Environment, Inc., Common Stock	.01
4906	Ehrlich Bober Financial Corp., Common Stock	1.00
4907	Eldorado Bancorp, Common Stock	1.25
4908	Electrosound Group Inc., Common Stock	.01
4909	Ellsworth Convertible Growth & Income Fund, Common Stock	No
4910	Empire of Carolina, Common Stock	.10
4911	Endevco, Inc., Common Stock	.10
4912	Energy Development Partners Ltd., Depositary Units	No
4913	Engex Inc., Common Stock	.10
4914	Enzo Biochem, Inc., Common Stock	.01
4915	Escagenetics Corporation, Common Stock	.0001
4916	Espey Manufacturing & Electronics, Inc., Common Stock	.33⅓
4917	Esquire Radio Electronics, Inc., Common Stock	.10
4918	Etz Lavud Limited Ordinary Shares 5.25 Israeli Pounds	0.85
4919	Everest & Jennings International, C1 A Common Stock	.01
4920	Everest & Jennings International, C1 B Common Stock	.01
4921	FPA Corp., Common Stock	1.00
4922	Fab Industries Inc., Common Stock	.20
4923	Falcon Cable Systems Co., Inc., Units	No
4924	Fidelity National Financial, Inc., Common Stock	No
4925	First Central Financial Corporation, Common Stock	.10
4926	First Connecticut Small Business Investment Co. (The)	No
4927	First Corp. Inc., C1 A Common Stock	1.00
4928	First Federal Bancorp, Common Stock	.01
4929	First National Corp., Common Stock	No
4930	First Republic Bancorp, Inc., Common Stock	.01
	First State Corporation, Common Stock	5.00
4931	FirstFed America, Inc., Common Stock	.01
4932	Fischer & Porter Co., Common Stock	1.00
4933	Flexible Bond Trust, Inc., Common Stock	.001
4934	Florida Rock Industries, Inc., Common Stock	.10
4935	Foodarama Supermarkets, Inc., Common Stock	1.00
4936	Franklin Holding Corp. (The) Common Stock	1.00
4937	Friedman Industries, Incorporated, Common Stock	1.00
4938	Frisch's Restaurants, Inc., Common Stock	No
4939	Frozen Food Express Industries, Inc., Common Stock	1.50
4940	GRI Corporation, Common Stock	No
4941	GTI Corporation, Common Stock	.04
4942	Gainsco, Inc., Common Stock	.10
4943	Garan Incorporated, Common Stock	1.00
4944	Gelman Sciences, Inc., Common Stock	.10
4945	Gemco National, Inc., Common Stock	.50
4946	General Automation, Inc., Common Stock	.10
4947	General Employment Enterprises, Inc., Common Stock	No
4948	General Microwave Corporation, Common Stock	.01
4949	Genisco Technology Corp., Common Stock	.50
4950	Genovese Drug Stores, Inc., Common Stock	1.00
4951	Geothermal Resources International, Inc., Common Stock	.50
4952	Gibson (C.R.), Common Stock	.10
4953	Glatfelter (P.H.) Company, Common Stock	.01
4954	Glenmore Distilleries Co., Common Stock	1.00
4955	Gorman-Rupp Company (The) Common Stock	No
4956	Graham-Field Health Products, Inc., Common Stock	.025
4957	Granges Exploration Ltd., Common Stock	No
4958	Graphic Technology, Common Stock	.67
4959	Greater Washington Investors, Inc., Common Stock	.10
4960	Greiner Engineering, Inc., Common Stock	.50
4961	Guardian Bancorp, Common Stock	No
4962	HAL, Inc., Common Stock	3.00
4963	HEICO Corporation, Common Stock	10⅔
4964	HMG/Courtland Properties, Inc., Common Stock	1.00
4965	HUBCO, Inc., Common Stock	No
4966	Halifax Engineering, Inc., Common Stock	.35
4967	Hampton Industries, Inc., Capital Stock	1.00
4968	Hampton Utilities Trust, Capital Shares	.01
4969	Harvey Group Inc. (The) Common Stock	1.00
4970	Hastings Manufacturing Co., Common Stock	2.00
4971	Health-Chem Corporation, Common Stock	.01
4972	Health-Mor Inc., Common Stock	1.00

File Nos.	Description	Par value
4973	Healthcare International, Inc., Class A Common Stock	.10
4974	Hein-Werner Corporation, Common Stock	1.00
4975	Heldor Industries, Inc., Common Stock	No
4976	Hershey Oil Corporation, Common Stock	.10
4977	Hinderliter Industries, Inc., Common Stock	.01
4978	Hofmann Industries, Inc., Common Stock	.25
4979	Holco Mortgage Acceptance Corporation I, Common Stock	.01
4980	Holly Corporation, Common Stock	.01
4981	Hooper Homes, Inc., Common Stock	.01
4982	Howe Richardson, Inc., Common Stock	.04
4983	Howell Industries, Inc., Common Stock	.01
4984	Howtek, Inc., Common Stock	No
4985	Hubbell (Harvey) Inc., Common Stock	.01
4986	Hudson General Corporation, Common Stock	5.00
4987	ICN Biomedicals, Inc., Common Stock	1.00
4988	INCSTAR Corporation, Common Stock	.01
4989	IPM Technology, Inc., Common Stock	.01
4990	IRT Corporation, Common Stock	.25
4991	ISI Systems, Inc., Common Stock	.10
4992	ISS International Service System, Inc., Common Stock	.01
4993	IVAX Corporation, Common Stock	.10
4994	Income Opportunity Realty Trust, Shares of Beneficial Interest	.10
4995	Instead Industries, Inc., Common Stock	No
4996	Inter-City Gas Corp., Common Stock	No
4997	Intermark, Inc., Common Stock	No
4998	International Income Property Inc., Common Stock	1.00
4999	International Power Machines Corp., Common Stock	.01
5000	International Proteins Corporation, Common Stock	.10
5001	International Recovery Corp., Common Stock	.16⅔
5002	Ionics Incorporated, Common Stock	.01
5003	Iroquois Brands, Ltd., Common Stock	1.00
5004	Iverson Technology Corporation, Class A Common Stock	1.00
5005	Jaclyn Inc., Common Stock	.01
5006	Jacobs Engineering Group, Inc., Common Stock	1.00
5007	Jetronic Industries, Inc., Common Stock	1.00
5008	Jewelmasters, Inc., Class A Common Stock	.10
5009	Johnson Products Co. Inc., Common Stock	.01
5010	Joule, Inc., Common Stock	.50
5011	Jumping-Jacks Shoes, Inc., Common Stock	.01
5012	K-V Pharmaceutical Company, Common Stock	.01
5013	KMW Systems Corporation, Common Stock	.25
5014	Kappa Networks, Inc., Common Stock	.10
5015	Keithley Instruments, Inc., Common Stock	No
5016	Kent Electronics Corporation, Common Stock	No
5017	Kenwin Shops, Inc., Common Stock	No
5018	Kerkhoff Industries, Inc., Common Stock	1.00
5019	Ketchum & Co., Inc., Common Stock	No
5020	Ketema, Inc., Common Stock	1.00
5021	Keystone Camera Products Corp., Common Stock	1.00
5022	Killearn Properties, Inc., Common Stock	.10
5023	Kleer-Vu Industries, Inc., Common Stock	.10
5024	Koala Technologies, Common Stock	.10
5025	LSB Industries, Inc., Common Stock	No
5026	LaBarge Inc., Common Stock	.10
5027	Lajolla Bancorp, Common Stock	.25
5028	Lancer Corporation, Common Stock	No
5029	Landmark Savings Association, Common Stock	.01
5030	Landsing Pacific Fund, Common Stock	1.00
5031	Lartzza Industries, Inc., Common Stock	.001
5032	Laurentian Capital Corporation, Common Stock	No
5033	Lawrence Insurance Group, Inc., Common Stock	.05
5034	Lazare Kaplan International, Inc., Common Stock	1.00
5035	Lillian Vernon Corporation, Common Stock	1.00
5036	Lincoln N.C. Realty Fund, Inc., Common Stock	.01
5037	Linpro Specified Properties, Shares of Beneficial Interest	.01
5038	Littlefield, Adams & Company, Common Stock	.01
5039	Lori Corporation (The), Common Stock	1.00
5040	Lumex, Inc., Common Stock	.01
5041	Luria (L.) & Son, Inc., Common Stock	.10
5042	Lydall, Inc., Common Stock	.01
5043	Lynch Corporation, Common Stock	3.33
5044	MEM Company, Inc., Common Stock	No
5045	MSA Realty Corp., Common Stock	.05
5046	MSR Exploration Ltd., Common Stock	1.00
5047	Maine Public Service Co., Common Stock	No
5048	Manufactured Homes, Inc., Common Stock	7.00
5049	Marlton Technologies, Inc., Common Stock	.50
5050	Mars Graphic Services, Inc., Common Stock	.10
5051	Matec Corp., Common Stock	No
5052	Materials Research Corporation, Common Stock	.05
5053	Matlack Systems, Common Stock	1.00
5054	McRae Industries, Inc., Class A Common Stock	1.00

File Nos.	Description	Par value
5055	McRae Industries, Inc., Class B Common Stock	1.00
5056	Medical Management America, Common Stock	.01
5057	Medical Properties, Inc., Common Stock	.01
5058	Medicore, Inc., Common Stock	.01
5059	Merchants Group, Inc., Common Stock	.01
5060	Merrimac Industries, Inc., Common Stock	.50
5061	Met-Pro Corporation, Common Stock	.10
5062	Metro Mobile CTS, Class B Common Stock	.10
5063	Metrobank, N.A., Common Stock	No
5064	Metropolitan Realty Corporation, Common Stock	.01
5065	Michaels Stores, Inc., Common Stock	.10
5066	Micron Products, Inc., Common Stock	.10
5067	Middleby Corporation, Common Stock	.01
5068	Midland Company (The), Common Stock	No
5069	Mission West Properties, Common Stock	No
5070	Moog, Inc., Class A Common Stock	1.00
5071	Moog, Inc., Class B Common Stock	1.00
5072	Morgan's Foods, Inc., Common Stock	No
5073	Mortgage Investments Plus, Inc., Common Stock	.01
5074	Mott's Supermarkets, Inc., Common Stock	1.00
5075	Mountain Medical Equipment, Inc., Common Stock	.10
5076	Muni Insured Fund, Inc., Common Stock	.10
5077	Munivest Fund, Inc., Common Stock	.10
5078	Myers Industries, Inc., Common Stock	No
5079	NCF Financial Corp., Common Stock	.01
5080	NECO Enterprises Inc., Common Stock	No
5081	NS Group, Inc., Common Stock	No
5082	Nantucket Industries, Inc., Common Stock	.10
5083	Nasta International, Inc., Common Stock	.01
5084	National Gas & Oil Co., Common Stock	1.00
5085	Nelson Holdings International Ltd., Common Stock	No
5086	New Line Cinema Corporation, Common Stock	.01
5087	Newcor, Inc., Common Stock	1.00
5088	Nichols (S.E.), Inc., Common Stock	.10
5089	Nichols Institute, Common Stock	.10
5090	North Canadian Oils, Ltd., Common Stock	No
5091	Nu Horizons Electronics, Inc., Common Stock	.01
5092	Nuclear Data, Inc., Common Stock	.50
5093	Numac Oil & Gas Ltd., Common Stock	No
5094	Nuveen New York Municipal Income Fund, Inc., Common Stock	.01
5095	O'Brien Energy Systems, Inc., Common Stock	.01
5096	O'Okiep Copper Co. Ltd., Common Stock	.10
5097	O'Sullivan Corp., Common Stock	1.00
5098	OEA, Inc., Common Stock	.10
5099	Odetics, Inc., Class A Common Stock	.10
5100	Odetics, Inc., Class B Common Stock	.10
5101	Ohio Art Company (The), Common Stock	1.00
5102	One Liberty Properties, Inc., Common Stock	1.00
5103	Oneita Industries Inc., Common Stock	.25
5104	Oppenheimer Industries, Inc., Common Stock	.10
5105	Oriole Homes Corp., Class A Common Stock	.10
5106	Oriole Homes Corp., Class B Common Stock	.10
5107	Oxford Energy Company (The), Common Stock	.01
5108	P. Leiner Nutrional Products Corp., Common Stock	1.00
5109	PEC Israel Economic Corp., Common Stock	1.00
5110	PLM International, Inc., Common Stock	.01
5111	PSE, Inc., Common Stock	.01
5112	Pantasote Inc., Common Stock	1.00
5113	Pauley Petroleum, Inc., Common Stock	1.00
5114	Paxar Corp., Common Stock	.10
5115	Pay-Fone Systems, Inc., Common Stock	.10
5116	Peerless Tube Co., Common Stock	1.33
5117	Penn Traffic Company (The), Common Stock	1.25
5118	Penobscot Shoe Co., Common Stock	1.00
5119	Penril Corporation, Common Stock	.01
5120	Perini Corporation, Common Stock	1.00
5121	Perini Investment Properties, Inc., Common Stock	1.00
5122	Peters (J.M.) Company, Inc., Common Stock	.10
5123	Petroleum Heat & Power Co., Inc., Common Stock	.10
5124	Pioneer Systems, Inc., Common Stock	.10
5125	Pitt-Des Moines Inc., Common Stock	No
5126	Pitts & West Virginia Railroad, SBI	No
5127	Pittway Corporation, Common Stock	.50
5128	Plymouth Rubber Company, Inc., Class A Common Stock	1.00
5129	Plymouth Rubber Company, Inc., Class B Common Stock	5.00
5130	Portage Industries Corporation, Common Stock	.01
5131	Prairie Oil Royalties Co. Ltd., Common Stock	No
5132	Pratt & Lambert, Inc., Common Stock	1.00
5133	Pratt Hotel Corporation, Common Stock	.01
5134	Precision Aerotech, Inc., Common Stock	.10
5135	Preferred Health Care Ltd., Common Stock	.01
5136	Presidential Realty Corp., Class A Common Stock	.10

File Nos.	Description	Par value
5137	Presidential Realty Corp., Class B Common Stock	.10
5138	Presidio Oil Company, Class A Common Stock	.10
5139	Presidio Oil Company, Class B Common Stock	.10
5140	Princeton Dignostic Laboratories of America, Inc. Common Stock	.01
5141	Princeton Dignostic Laboratories of American, Inc. Units	No
5142	Prism Entertainment Corporation, Common Stock	.01
5143	Pro-Med Capital, Inc., Common Stock	.01
5144	Professional Care, Inc., Common Stock	.02
5145	Property Capital Trust, Shares of Beneficial Interest	No
5146	Punta Gorda Isles, Inc., Common Stock	.10
5147	Quaker Fabric Corporation, Common Stock	.01
5148	Quebecor Inc., Class A Common Stock	No
5149	RB & W Corporation, Common Stock	1.00
5150	RMS International, Inc., Common Stock	.08
5151	Real Estate Securities Income Fund, Inc., Common Stock	.01
5152	Realty South Investors, Inc., Common Stock	.01
5153	Redlaw Industries, Inc., Common Stock	No
5154	Residential Mortgage Investments, Inc., Common Stock	.01
5155	Resort Income Investors, Inc., Common Stock	.01
5156	Riedel Environmental Technologies, Inc., Common	.01
5157	Rio Algom, Ltd., Common Stock	No
5158	Riser Foods, Inc., Common Stock	.01
5159	Riverbend International Corporation, Common Stock	.10
5160	Robert-Mark, Inc., Class A Common Stock	.10
5161	Rogers Corporation, Common Stock	1.00
5162	Ruddick Corp., Common Stock	1.00
5163	Rymac Mortgage Investment Corporation, Common Stock	.01
5164	SFM Corporation, Common Stock	1.00
5165	SIFCO Industries, Inc., Common Stock	1.00
5166	SJW Corp., Common Stock	6.25
5167	SPI Pharmaceuticals, Inc., Common Stock	.01
5168	Salem Corp., Common Stock	.50
5169	San Carlos Milling Co., Inc., Common Stock	[1] 16
5170	Sandy Corporation, Common Stock	.01
5171	Sanmark-Stardust Inc., Common Stock	.01
5172	Sbarro, Inc., Common Stock	.01
5173	Sceptre Resources Limited, Common Stock	No
5174	Schieb (Earl), Inc., Capital Stock	.01
5175	Schwab Safe Co., Common Stock	.50
5176	Science Management Corp., Common Stock	.10
5177	Scurry-Rainbow Oil Ltd., Common Stock	No
5178	Seaboard Corp., Common Stock	1.00
5179	Seaport Corporation, Common Stock	.50
5180	Selas Corp. of America, Common Stock	1.00
5181	Seligman & Associates Inc., Common Stock	.10
5182	Semtech Corporation, Common Stock	.01
5183	Servotronics, Inc., Common Stock	.20
5184	Shaer Shoe Corp., Common Stock	1.00
5185	Shelter Components Corporation, Common Stock	.01
5186	Sherwood Group, Inc., (The), Common Stock	.01
5187	Sierra Capital Realty IV Co., Common Stock	.001
5188	Sierra Capital Realty Trust VI, Common Stock	.01
5189	Sierra Capital Realty Trust VII Co., Common Stock	.001
5190	Sierracin Corp. (The) Company, Common Stock	1.00
5191	Sikes Corp., Class A Common Stock	.10
5192	Silvercrest Corporation, Common Stock	.10
5193	Skolniks, Inc., Common Stock	.001
5194	Sorg, Incorporated, Common Stock	1.00
5195	Southwest Bancorp, Common Stock	No
5196	Spartech Corporation, Common Stock	.75
5197	Speed-O-Paint Business Machines Corp., Common Stock	1.00
5198	Spelling Entertainment, Class A Common Stock	No
5199	Stage II Apparel Corp., Common Stock	.01
5200	Standard Shares, Inc., Common Stock	1.00
5201	Starrett Housing Corporation, Common Stock	1.00
5202	Sterling Capital Corp., Common Stock	1.00
5203	Stevens Graphics Corporation, Series A Common Stock	.10
5204	Stevens Graphics Corporation, Series B Common Stock	.10
5205	Struthers Wells Corp., Common Stock	1.00
5206	Sun City Industries, Inc., Common Stock	.10
5207	Sunbelt Nursery Group, Inc., Common Stock	.01
5208	Sunshine-Jr. Stores, Inc., Common Stock	.10
5209	Superior Industries International, Inc., Common Stock	.50
5210	Synalloy Corp. Common Stock	1.00
5211	T2 Medical, Inc., Common Stock	.01
5212	TEC Inc., Common Stock	.20
5213	TII Industries, Inc., Common Stock	01
5214	Tab Products Company, Common Stock	.01
5215	Tandy Brands, Inc., Common Stock	1.00
5216	Tasty Baking Company, Common Stock	.50
5217	Team, Inc., Common Stock	.30
5218	Tech/Ops Landaver, Inc., Common Stock	No

File Nos.	Description	Par value
5219	Tech/Ops Sevcon, Inc., Common Stock	No
5220	Technitrol, Inc., Common Stock	.125
5221	Technodyne, Inc., Common Stock	.05
5222	Tejon Ranch Co., Common Stock	.50
5223	TeleConcepts Corporation, Common Stock	.10
5224	Tenney Engineering, Inc., Common Stock	.10
5225	Thermo Environmental Corporation, Common Stock	.10
5226	Thermo Process Systems Inc., Common Stock	.10
5227	Thor Energy Resources, Inc., Common Stock	1.00
5228	Three D Departments, Inc., Class A Common Stock	.25
5229	Three D Departments, Inc., Class B Common Stock	.25
5230	Toffuti Brands, Inc., Common Stock	.01
5231	Torotel, Inc., Common Stock	.50
5232	Trans-Lux Corp., Common Stock	1.00
5233	Transcisco Industries, Inc., Class A Common Stock	.01
5234	Transcisco Industries, Inc., Class B Common Stock	.01
5235	Tranzonic Companies (The), Class B Common Stock	No
5236	Tranzonic Companies (The), Common Stock	No
5237	Tri-State Motor Transit Co. of Delaware, Common Stock	.66⅔
5238	Triangle Corporation (The), Common Stock	.50
5239	Triangle Home Products, Inc., Common Stock	.45
5240	Trust America Service Corp., Common Stock	.01
5241	Turner Corp, (The), Common Stock	1.00
5242	Two Pesos, Inc., Common Stock	.01
5243	UNO Restaurant Corporation, Common Stock	.01
5244	USP Real Estate Investment Trust Shares of Beneficial Interest	1.00
5245	Unicare Financial Corp., Common Stock	No
5246	Unimar Indonesian PTC, Units	No
5247	Union Valley Corporation, Common Stock	No
5248	United Capital Corp., Common Stock	.10
5249	United Foods, Inc., Class A Common Stock	1.00
5250	United Foods, Inc., Class B Common Stock	1.00
5251	United Medical Corporation, Common Stock	No
5252	United Video, Inc., Common Stock	.01
5253	Unitil Corp., Common Stock	No
5254	University Bank, National Association, Common Stock	.30
5255	VGC Corp., Class A Common Stock	.10
5256	VGC Corp., Class B Common Stock	.10
5257	VMS Hotel Investment Trust, Common Stock	No
5258	VMS Short Term Income Trust, Shares of Beneficial Interest	No
5259	VTX Electronics Corp., Common Stock	.10
5260	Vader Group, Inc., Common Stock	.10
5261	Valley Forge Corporation, Common Stock	.50
5262	Valley Resources, Inc., Common Stock	1.00
5263	Valspar Corp. (The), Common Stock	.50
5264	Van Kampen Merritt California Municipal Trust, Common Stock	.01
5265	Verit Industries, Common Stock	No
5266	Vermont American Corp., Class A Common Stock	1.00
5267	Vermont Research Corp., Common Stock	.50
5268	Versar, Inc., Common Stock	.01
5269	Viatech, Inc., Common Stock	.25
5270	Vicon Industries, Inc., Common Stock	.01
5271	Vintage Enterprises, Inc., Common Stock	.20
5272	Virco Manufacturing Corporation, Common Stock	.01
5273	Voplex Corporation, Common Stock	1.00
5274	Vulcan International Corp., Common Stock	No
5275	Vyquest, Inc., Common Stock	No
5276	Wang Laboratories, Inc., Class C Common Stock	.50
5277	Washington Post Company (The), Common Stock	1.00
5278	Watsco, Inc., Class A Common Stock	.50
5279	Watsco, Inc., Class B Common Stock	.50
5280	Weatherford International Inc., Common Stock	.10
5281	Wedco Technology Inc., Common Stock	.10
5282	Weiman Co. Inc., Common Stock	1.00
5283	Weldotron Corp., Common Stock	.05
5284	Wellco Enterprises, Inc., Common Stock	1.00
5285	Wells American Corporation, Common Stock	.02
5286	Wells-Gardner Electronics, Common Stock	1.00
5287	Wesco Financial Corporation, Common Stock	1.00
5288	Westair Holding, Inc., Common Stock	.01
5289	Westamerica Bancorporation, Common Stock	No
5290	Westbridge Capital Corporation, Common Stock	.10
5291	Westcorp, Inc., Common Stock	1.00
5292	Western Health Plans, Inc., Common Stock	No
5293	Western Investment Real Estate Trust, Shares of Beneficial Interest	No
5294	Wichita River Oil Corporation, Common Stock	No
5295	Wiener Enterprises, Inc., Common Stock	.100
5296	Winston Resources, Inc., Common Stock	.01
5297	Winthrop Insured Mortgage Investors II, Common Stock	No
5298	Wolf (Howard B.), Inc., Common Stock	.33⅓
5299	Yankee Companies, Inc. (The), Common Stock is selected	.10

[1] Phil. pesos.

[FR Doc. 89-20416 Filed 8-29-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-069]

New York Harbor Traffic Management Advisory Committee; Reestablishment

AGENCY: Coast Guard, DOT.

ACTION: Notice of renewal.

SUMMARY: The Secretary of Transportation has approved the reestablishment of the New York Harbor Traffic Management Advisory Committee. The purpose of this Committee is to advise the Coast Guard on matters relating to maritime traffic management and safety in the New York Harbor area.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander L. Brooks, USCG, Executive Secretary, New York Harbor Traffic Management Advisory Committee, Port Safety Office, Building 109, Governors Island, New York 10004, Phone (212) 668-7834.

This notice is issued under authority of the Federal Advisory Committee Act, Public Law 92-463, 5 U.S.C. App. 1.

Dated: August 25, 1989.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Naval Safety and Waterway Services.

[FR Doc. 89-20451 Filed 8-29-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-66]

National Offshore Safety Advisory Committee; Meeting of Subcommittee

AGENCY: Coast Guard, Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; U.S.C. App. I), notice is hereby given to a meeting of the Tonnage Study Subcommittee of the National Offshore Safety Advisory Committee (NOSAC).

1. The subcommittee on the Tonnage Study will meet on September 25, 1989, in the 29th floor McDermott Inc. meeting room, Bank of New Orleans Building, 1010 Common Street, New Orleans, Louisiana 70112.

The meeting is scheduled to begin at 10:00 a.m. on Monday, September 25 and end at 4:00 p.m.

The agenda for the meeting will be to evaluate the progress that the Tonnage Study Subcommittee has made in preparing input for a Congressionally mandated study of the impact of applying tonnages determined under the 1969 Tonnage Convention measurement system to laws of the U.S. that contain provisions based on tonnage. This input includes recommended levels to which tonnage thresholds should be raised so that additional vessels will not become subject to more stringent requirements if Congress decides sometime in the future that a complete conversion to the Tonnage Convention system is warranted.

Members of the public may present oral or written statements at the meeting. Additional information may be obtained from Mr. Gene Hammel, Executive Director of NOSAC at U.S. Coast Guard Headquarters, G-MP-2, Room 2414, 2100 Second Street SW., Washington, DC 20593-0001, or by calling (202) 267-1406.

Dated: August 21, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-20446 Filed 8-29-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-056]

Mid-Continent Loran-C Expansion Project Group Repetition Interval Selection

AGENCY: U.S. Coast Guard, DOT.

ACTION: Notice and request for comments.

SUMMARY: Notice is hereby given that the U.S. Coast Guard has tentatively selected Group Repetition Intervals (GRIs) for the Mid-Continent Loran-C Expansion Project. These GRIs are 82,900 microseconds for the North Central U.S. (NOCUS) chain and 96,100 microseconds for the South Central U.S. (SOCUS) chain. This action precedes the creation of two new Loran-C chains in the mid-continental area of the U.S.

DATES: Comments should be submitted by September 29, 1989.

ADDRESSES: Comments concerning this selection may be sent to: Commandant (G-NRN-2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: LTJG Roger Barnett, USCG—U.S. Coast Guard Headquarters, Radio-Aids Applications and Developments Branch at the above address; telephone 202/267-0298, (FTS) 267-0298.

SUPPLEMENTARY INFORMATION: The Mid-Continent Loran-C Expansion Project is a joint USCG/FAA project that closes the present gap in Loran-C coverage in the mid-continental area of the U.S.

This project will meet the requirements for aviation use of Loran-C in the FAA's National Airspace System. To close the gap in Loran-C coverage, the USCG is expanding the Great Lakes Loran-C chain and creating two new Loran-C chains. The Great Lakes chain will be expanded by adding Boise City, OK as the Zulu (Z) secondary. The two new Loran-C chains will be the North Central U.S. and the South Central U.S. chains. The first of these operational changes is anticipated by January 1991 and the expanded Loran-C coverage should be completed by 30 April 1991.

Information on the tentative selection of these GRIs has previously been provided to prospective Loran-C users by Local Notice to Mariners, published by the Coast Guard, and Notice to Airmen, published by the Federal Aviation Administration. No objections have been received. The purpose of this notice is to provide an opportunity for comment by other persons affected by the selection of Loran GRIs. Unless the GRIs are changed, no further **Federal Register** Notice will be published.

Dated: August 24, 1989.

J.W. Lockwood,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89-20449 Filed 8-29-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Railroad Administration

Petitions for Exemption or Waiver; Vermont Railway, et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that five railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs not more than 15 employees who are subject to the statute to seek an exemption from the 12-hour limitation.

Vermont Railway (VTR)

[FRA Waiver Petition Docket No. HS-89-4]

The VTR seeks this exemption so that it may permit certain employees to

remain on duty not more than 16 hours in any 24-hour period. The VTR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The VTR provides service on over 128 miles of track from a connection with the Central Vermont Railway at Burlington, Vermont to a connection with the Guilford Transportation Industries at White Creek, New York. In addition, this carrier interchanges cars with the Green Mountain and Clarendon & Pittsford Railroad at Rutland, Vermont.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Clarendon & Pittsford Railroad (CLP)

[FRA Waiver Petition Docket No. HS-89-5]

The CLP seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The CLP states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help the CLP's operation if it encountered unusual operating conditions or circumstances. The CLP provides freight service on over 24 miles of track between Rutland, Vermont and Whitehall, New York. A branch line is operated between Florence Junction and Florence, Vermont. Interchange is made with the Vermont Railway and the Green Mountain at Rutland, Vermont and with the Delaware and Hudson Railway at Whitehall.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Ohi-Rail Corporation (OHIC)

[FRW Waiver Petition Docket No. HS-89-6]

The OHIC seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The OHIC states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The OHIC provides service on over 38 miles of track between a connection with the Norfolk Southern at Hopedale, Ohio and a connection with Conrail at Minerva, Ohio.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Port Utilities Commission of Charleston (PUCC)

[FRA Waiver Petition Docket No. HS-89-7]

The PUCC seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PUCC states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The PUCC provides industrial switching service on over 1 mile of track in and around the Port of Charleston, South Carolina.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this waiver.

Port Terminal Railroad of South Carolina (PTRS)

[FRA Waiver Petition Docket No. HS-89-8]

The PTRS seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PTRS states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The PTRS provides industrial switching service on less than one mile of trackage at North Charleston, South Carolina.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS-87-20) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before October 16, 1989 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on August 21, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-20371 Filed 8-29-89; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 24, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0056.

Form Number: CF 19.

Type of Review: Extension.

Title: Protest.

Description: The CF 19, Protest, is filed by the importer, consignee, or the person paying any charge or exaction, filing any claim for drawback, or seeking entry or delivery with respect to merchandise which is the subject of the decision protested.

BEST COPY AVAILABLE

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 3,700.

Estimated Burden Hours Per Response/Recordkeeping: 1 hour, 20 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 23,432 hours.

Clearance Officer: Dennis Dore (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–20396 Filed 8–29–89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

August 24, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submissions(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0130.

Form Number: 1120S, Schedule D and Schedule K–1.

Type of Review: Revision.

Title: U.S. Income Tax Return for an S Corporation, Capital Gains and Losses and Built-In Gains, and Shareholder's Share of Income, Credits, Deductions, etc.—1989.

Description: Form 1120S, Schedule D (Form 1120S) and Schedule K–1 (Form 1120S) are used by an S Corporation to figure its tax liability; and income and other tax-related information to pass through to its shareholders. Schedule K–1 is used to report to shareholders their share of the corporation's income, deduction credits, etc. IRS uses the information to determine the correct tax for the S Corporation and its shareholders.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,259,920.

Estimated Burden Hours Per Response/Recordkeeping:

	1120S	Sched. D	Sched. K–1
Recordkeeping...	50 hrs, 30 mins.	8 hrs, 37 mins.	17 hrs, 36 mins.
Learning about the law or the form	20 hrs, 31 mins.	3 hrs, 50 mins.	10 hrs, 7 mins.
Preparing the form	36 hrs, 22 mins.	8 hrs, 47 mins.	14 hrs, 35 mins.
Copying, assembling, and sending the form to IRS	4 hrs, 1 min.	1 hr, 20 min.	1 hr, 4 min.

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 295,437,354 hours.

OMB Number: 1545–0148.

Form Number: 2758.

Type of Review: Revision.

Title: Application for Extension of Time to File Excise, Income, Information, Certain Other Returns.

Description: Internal Revenue Code section 6081 permits the Secretary to grant a reasonable extension of time for filing any return, declaration, statement, or other document. This form is used by U.S. partnerships, fiduciary, and certain organizations, to request an extension of time to file their returns. The information is used to determine whether the extension should be granted.

Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 156,600.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping: 3 hours, 50 minutes.

Learning about the law or the form: 1 hour, 18 minutes.

Preparing the form: 4 hours, 13 minutes.

Copying, assembling, and sending the form to IRS: 48 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 574,490 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–20373 Filed 8–29–89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submissions(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0085.

Form Number: IRS Form 1040A.

Type of Review: Resubmission.

Title: U.S. Individual Income Tax Return.

Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability and supplemental Medicare premium. The date is used to verify that the income reported on the form are correct and are also for statistics use.

Respondents: Individuals or households.

Estimated Number of Respondents: 18,334,000.

Estimated Burden Hours Per Response:

Recordkeeping: 1 hour, 21 minutes.

Learning about the law or the form: 2 hours, 13 minutes.

Preparing the form: 2 hours, 56 minutes.

Copying, assembling, and sending the form to IRS: 35 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 137,218,397 hours.

OMB Number: 1545–0975.

Form Number: IRS Form 1120–W.

Type of Review: Resubmission.

Title: Corporation Estimated Tax.

Description: Form 1120–W is used by corporations to figure estimated income tax liability and the amount of each installment payment. Form, 1120–W is a worksheet only. It is not to be filed with the Internal Revenue Service.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 900,000.

Estimated Burden Hours Per Response:

Recordkeeping: 27 hours, 52 minutes.

Learning about the law or the form: 1 hour, 40 minutes.

Preparing the form: 5 hours, 50 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 8,573,218 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–20374 Filed 8–29–89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 24, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0069.

Form Number: PD 5174–1, 5174–2, 5174–3, 5174–4, 5176–1, 5176–2, 5176–3, 5178, 5179, 5182, 5188, 5189 and 5201.

Type of Review: Reinstatement.

Title: Treasury Direct Forms.

Description. These forms are used by individuals/entities who wish to purchase Treasury bills, notes, and bonds and to maintain book-entry account with the Department of the Treasury. These forms are also used to support transactions dealing with TREASURY DIRECT system accounts.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 233,327.

Estimated Burden Hours Per Response: 10 minutes per form.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 38,731 hours.

OMB Number: 1545–0083.

Form Number: PD 5238.

Type of Review: Extension.

Title: Request for Redemption of U.S. Treasury Securities–State and Local Government Series One-Day Certificates of Indebtedness.

Description: This form is used to collect account redemption information from State and local Government entities wishing to redeem demand deposit U.S. Treasury securities–State and local Government Series. Information on the forms will be encoded to process redemptions of book-entry accounts on the records of the Bureau of Public Debt.

Respondents: State and local governments.

Estimated Number of Respondents: 30,000.

Estimated Burden Hours Per Response: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,000 hours.

Clearance Officer: Rita DeNagy (202) 447–1640, Bureau of the Public Debt, Room 137, BEP Annex, 300 13th Street SW., Washington, DC 20239–0001.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–20375 Filed 8–29–89; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

Entry/Entry Summary Required for Importation of Hong Kong Textiles; Change of Effective Date

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of change of effective date.

SUMMARY: Customs published a notice in the **Federal Register** (54 FR 13292) on March 31, 1989, stating that Customs was delaying implementation of the requirement that an entry/entry summary ("live" entry) be filed for all textiles and textile articles of Hong Kong origin which have a textile category number. The effective date set for the requirement in that notice was September 1, 1989. A determination has been made to delay the effective date of the requirement until January 1, 1990.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dick Crichton, Office of Trade Operations, (202) 566–9443 or Ilene Gilbert, Office of Trade Operations, (202) 566–6006.

SUPPLEMENTARY INFORMATION: On January 5, 1989, Customs published a document in the **Federal Register** (54 FR 349), stating that Customs will require the filing of an entry/entry summary ("live" entry) for all textiles and textile products which have a textile category number, effective February 1, 1989. A correction document for that notice was published in the **Federal Register** (54 FR 1844) on January 17, 1989. On February 1, 1989, Customs published a notice in the **Federal Register** (54 FR 3281), changing the effective date to April 1, 1989. Another notice of change was published in the **Federal Register** on March 31, 1989 (54 FR 13292) delaying the effective date of the entry/entry summary requirements for Hong Kong textiles and textile articles until September 1, 1989, when it was expected that a more modern environment would have been available to allow electronic filers an option to separate payment of duty from the filing of the entry summary documentation. A decision has been made by Customs to again delay the entry/entry summary requirements for Hong Kong textiles and textile products. The effective date of the requirement is now January 1, 1990. This document is a notice of the delayed effective date.

Dated: August 28, 1989.

Michael Schmitz,

Acting Commissioner of Customs.

[FR Doc. 89–20511 Filed 8–29–89; 8:45 am]

BILLING CODE 4820-02-M

Application for Recordation of Trade Name "TRIPLE FAT GOOSE"

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "TRIPLE FAT GOOSE", used by Turbo Sportswear, Inc., a corporation organized under the laws of the State of New Jersey, located at One Walnut Street, Perth Amboy, New Jersey 08862.

The application states that the trade name is used in connection with men's and boy's down filled outwear and active sportswear. The merchandise is manufactured in Korea.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or before October 30, 1989.

ADDRESS: Written comments should be addressed to U.S. Customs Service, Attention: Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue NW. (Room 2104), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Velma Taylor Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-5765).

Dated: August 23, 1989.

Marvin M. Amernick,

Chief, Value, Special Programs and Admissibility Branch.

[FR Doc. 89-20547 Filed 8-29-89; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

Tax on Certain Imported Substances; Notice of Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance under Notice 89-61, 1989-21 I.R.B. 25, of a petition requesting that polyethylene terephthalate be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89-61. This is not a determination that the list of taxable substances should be modified.

DATE: Written comments and requests for a public hearing relating to this petition must be delivered or mailed by October 30, 1989.

ADDRESS: Send comments and requests for a public hearing to the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 Attention: CC:CORP:T:R (Petition).

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). Telephone 202-566-4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on June 30, 1989. The petitioner is Eastman Chemicals Division, Eastman Kodak Company, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

Harmonized Tariff System number	3907.60.00
Schedule B number	3907.60.0000.5
Chemical Abstract Service number	25038-59-9

This substance is derived from the taxable chemicals *xylene* and *ethylene*. Polyethylene terephthalate (PET) is a polyester produced from terephthalic acid and ethylene glycol. Terephthalic acid is produced by the air oxidation of p-xylene, and ethylene glycol is produced by reaction of ethylene with oxygen and water.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{xylene}}{100\ C_6H_4(CH_3)_2} + \underset{\text{ethylene}}{101\ H_2C{:}CH_2} + \underset{\text{oxygen}}{350.5\ O_2} + \underset{\text{water}}{101\ H_2O} \rightarrow \underset{\text{PET}}{C_2H_6O_2(C_{10}H_8O_4)_{100}} + \underset{\text{water}}{400\ H_2O}$$

According to the petition, taxable chemicals constitute 50.8 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be *$8.30* per ton. This is based upon a conversion factor for xylene of 0.5507 and a conversion factor for ethylene of 0.1470.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-20350 Filed 8-29-89; 8:45 am]

BILLING CODE 4830-01-M

Tax on Certain Imported Substances; Notice of Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance under Notice 89-61, 1989-21 I.R.B. 25, of petitions requesting that linear alpha olefins and polyalphaolefins be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89-61. This is not a determination that the list of taxable substances should be modified.

DATE: Written comments and requests for a public hearing relating to this petition must be delivered or mailed by October 30, 1989.

ADDRESS: Send comments and requests for a public hearing to the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 Attention: CC:CORP:T:R (Petition).

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). Telephone 202-566-4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on July 11, 1989. The petitioner is Ethyl Corporation, a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Linear Alpha Olefins

Harmonized Tariff System number	2901.29.1010-9
Schedule B number	2901.29.1010-9
Chemical Abstract Service number	variable

This substance is derived from the taxable chemical ethylene. Linear alpha olefins are produced via the catalytic chain growth of ethylene.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{ethylene}}{n/2\ C_2H_4} \rightarrow \underset{\text{linear alpha olefin}}{C_nH_{2n}}$$

According to the petition, taxable chemicals constitute 100 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be *$4.87* per ton. This is based upon a conversion factor for ethylene of 1.00.

Polyalphaolefins

Harmonized Tariff System number	3902.90.0050-3
Schedule B number	3902.90.0050-3
Chemical Abstract Service number	variable

This substance is derived from the taxable chemical ethylene. Polyalphaolefins are produced by oligomerization of decene-1, a linear alpha olefin.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{ethylene}}{n/2\ C_2H_4} + \underset{\text{hydrogen}}{H_2} \rightarrow \underset{\text{polyalphaolefin}}{C_nH_{2n+2}}$$

According to the petition, taxable chemicals constitute 99.61 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be *$4.85* per ton. This is based upon a conversion factor for ethylene of 0.9961.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-20351 Filed 8-29-89; 8:45 am]

BILLING CODE 4830-01-M

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 167
Wednesday, August 30, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, September 12, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: The first two items are open to the public. The last five items are closed to the public under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Capsizing and Sinking of the U.S. Mobile Offshore Drilling Unit ROWAN GORILLA I, North Atlantic Ocean, December 15, 1988.
2. Reconsideration of Probable Cause: Midair Collision of SkyWest Airlines Metro II and Mooney M20, Kearns, Utah, January 15, 1987.
3. Opinion and Order: Administrator v. Janka and Newman, Dockets SE-8144 and SE-8159; disposition of the Admninistrator's appeal.
4. Opinion and Order: Administrator v. Godwin, Docket SE-8397; disposition of the respondent's appeal.
5. Opinion and Order: Administrator v. Hoag, Docket SE-8609; disposition of the appeals of both parties.
6. Opinion and Order: Administrator v. Sampson, Docket SE-8668; disposition of cross appeals.
7. Opinion and Order: Administrator v. Ruhn, Docket SE-9471; disposition of the Admninistrator's motion to dismiss.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

August 24, 1989.

[FR Doc. 89-20528 Filed 8-28-89; 8:45 am]

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federal register

Wednesday
August 30, 1989

Part II

Environmental Protection Agency

40 CFR Parts 302 and 355
Reportable Quantity Adjustments; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 302 and 355

[FRL-3535-3]

RIN 2050-AC14

Reportable Quantity Adjustments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to adjust reportable quantities (RQs) for 232 extremely hazardous substances (EHSs) proposed for designation as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). These substances were originally listed as EHSs pursuant to section 302 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) and were subsequently proposed for designation on January 23, 1989 (54 FR 3388). By adjusting the one-pound reporting triggers proposed under CERCLA section 102 and currently in effect under SARA section 304, EPA will reduce the reporting and response burdens on the regulated community and on Federal, State, and local governments, respectively. EPA also is proposing to adjust the RQs of 19 EHSs that are already listed as CERCLA hazardous substances but have RQs greater than their threshold planning quantities (TPQs). To adjust the RQs of these 251 substances, EPA is proposing to apply the methodology used to establish TPQs as part of the RQ adjustment methodology for those CERCLA hazardous substances meeting the EHS screening criteria.

DATES: Comments must be submitted on or before October 30, 1989.

ADDRESSES:

Comments: Comments should be submitted in triplicate to: Emergency Response Division, Attention: Superfund Docket Clerk, Docket Number 102 RQ-251EHS, Superfund Docket Room M2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Docket: Copies of materials relevant to this rulemaking are contained in Room M2427 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 1-202/382-3046. As provided in 40 CFR Part 2, a reasonable fee (the first 50 pages are free and each additional page costs $.20) may be charged for copying services.

Release Notification: The toll-free telephone number of the National Response Center is 1-800/424-8802; in the Washington, DC metropolitan area, the number is 1-202/267-2675.

FOR FURTHER INFORMATION CONTACT: Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (OS-210), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; or the RCRA/Superfund Hotline at 1-800/424-9346; in the Washington, DC metropolitan area at 1-202/382-3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
  A. Statutory Authority
  B. Background of this Rulemaking
II. Reportable Quantity Adjustments
  A. Introduction
  B. Summary of the Reportable Quantity Adjustment Methodology
  C. Substances for Which Adjusted RQs Are Being Proposed
III. Regulatory Analyses
  A. Executive Order 12291
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act

I. Introduction

A. Statutory Authority

Under section 102(b) of the Comprehensive Environmental Reponse, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96-510), 42 U.S.C. 9601 et seq., as amended, a reportable quantity (RQ) of one pound is established for releases of hazardous substances, except those for which RQs were established pursuant to section 311 of the Clean Water Act (CWA). Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the National Response Center (NRC) of the release.[1] In addition to this CERCLA reporting requirement, releases of hazardous substances in quantities equal to or greater than their RQs must be reported to State and local response authorities under section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499). Releases of SARA Title III extremely hazardous substances (EHSs) that are not CERCLA hazardous substances must be reported under section 304 of SARA if the quantity released equals or exceeds one pound. The U.S. Environmental Protection Agency (EPA or the Agency) is authorized under section 102(a) of CERCLA to adjust RQs for hazardous substances,

B. Background of This Rulemaking

On April 4, 1985, EPA published a final rule (50 FR 13456) to clarify procedures for reporting releases of CERCLA hazardous substances, to list 698 "hazardous substances" defined under section 101(14) of CERCLA, and to adjust RQs for 340 of the CERCLA hazardous substances.[2] The preamble to that final rule discussed the CERCLA notification provisions (including the persons required to notify the NRC of a release, the hazardous substances for which notification is required, the types of releases subject to the notification requirements, and the exemptions from these requirements), the proposed methodology used to adjust the RQs, and the RQ adjustments proposed under section 102 of CERCLA and under section 311 of the CWA.

The Agency subsequently promulgated final rules that clarify CERCLA section 103(a) reporting procedures and set RQ adjustments for nearly all hazardous substances.[3] In addition, the Agency has proposed rules (53 FR 12868, April 19, 1988; 53 FR 27268, July 19, 1988) to clarify both the reduced reporting requirements for continuous releases (see CERCLA section 103(f)) and the exemption from CERCLA reporting and liability requirements for federally permitted releases (see CERCLA sections 101(10), 103(a), and 107(j)).

In 1986 Congress enacted Title III of SARA, also known as the "Emergency Planning and Community Right-to-Know Act of 1986," which established both a framework for emergency planning at the State and local levels and extensive requirements for reporting of stored or released hazardous chemicals to allow the public access to such information in local communities. Under the authority of section 302 of SARA, EPA published a list of EHSs for purposes of emergency planning, using screening criteria described in a November 17, 1986 interim final rule (51 FR 41570) and an April 22, 1987 final rule (52 FR 13378). Reports of releases of CERCLA hazardous substances and EHSs must be made to the State emergency response commission (SERC) and to the local emergency planning committee (LEPC) pursuant to SARA section 304. The November 17, 1986 interim final rule and the April 22, 1987 final rule also established the methodology for determining threshold planning quantities (TPQs). If a TPQ of an EHS is present at a facility, the facility becomes subject to the emergency planning requirements of SARA sections 302 and 303.

The list of EHSs and TPQs published on April 22, 1987 contained 406 substances. In **Federal Register** notices published on December 17, 1987 (52 FR 48072, 48083) and February 25, 1988 (53 FR 5574), EPA delisted 40 EHSs that were found not to meet the acute toxicity listing criteria. The EHS list has been codified in 40 CFR Part 355.

EPA today proposes to adjust the RQs of 251 substances by amending Table 302.4 of 40 CFR 302.4 and Appendices A and B of 40 CFR Part 355. Of these 251 substances, 232 are EHSs that were proposed for designation as CERCLA hazardous substances under CERCLA section 102(a) on January 23, 1989 (54 FR 3388). The remaining 19 substances are EHSs that were already listed as CERCLA hazardous substances, but had RQs greater than their TPQs. EPA also proposes to apply the methodology used to establish TPQs as part of the RQ adjustment methodology for those substances meeting the EHS screening criteria.

The proposed methodology for adjusting RQs is discussed in Section II of this preamble. Section III provides a summary of the analyses supporting this proposed rule.

II. Reportable Quantity Adjustments

A. Introduction

In this rulemaking, the Agency proposes to adjust RQs based upon specific scientific and technical criteria that relate to the possibility of harm from the release of a hazardous substance in certain amounts.[4] The quantity released is but one factor considered by the government when assessing the need to respond to such a release. Other factors, assessed on a case-by-case basis, include but are not limited to: (1) The location of the release; (2) its proximity to drinking water supplies or other valuable resources; and (3) the likelihood of exposure or injury to nearby populations. The RQ adjustments proposed today, when finalized, will enable the Agency to focus its resources on those releases that are most likely to pose potential threats to public health or welfare or the environment. These adjustments will also relieve the regulated community and emergency response personnel from the burden of making and responding to reports of releases that are unlikely to pose such threats.

For 65 of the EHSs to be designated as CERCLA hazardous substances and 19 EHSs that are already CERCLA hazardous substances, the adjusted RQ obtained by considering the existing RQ adjustment criteria (described in Section II.B.1 of today's preamble) would be higher than the TPQ under SARA section 302 for the same substance. As a result, emergency planning would be required for an amount on the plant site which, if entirely released, would not require reporting to the NRC, the SERC, or the LEPC. Several commenters on EPA's November 17, 1986 interim final rule (51 FR 41570) on EHSs, TPQs, and reporting requirements expressed concern that some EHSs had CERCLA RQs that exceeded their TPQs. The Agency is therefore proposing to resolve these differences between RQs and TPQs by considering the TPQ adjustment methodology as part of the RQ adjustment methodology (as described in Section II.B.2 of today's preamble). In contrast to the RQ adjustment methodology, the TPQ methodology includes an exposure factor (e.g., the ability of a substance to disperse) and provides for the selection of the most sensitive species in measuring acute mammalian toxicity. Therefore, by taking into account the TPQ methodology in adjusting RQs for CERCLA hazardous substances, greater protection of public health and welfare and the environment could result.

B. Summary of the Reportable Quantity Adjustment Methodology

1. Primary and Secondary Criteria

The Agency has wide discretion under CERCLA in adjusting the statutory RQs for hazardous substances. Administrative feasibility and practicality are important considerations. The Agency's selected methodology for adjusting RQs begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. The intrinsic properties examined—called "primary criteria"— are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity.

The Agency ranks hazardous substances for each intrinsic property on a relative ranking scale, associating a specific range of values on each scale with a particular RQ level. The RQ levels of 1, 10, 100, 1000, and 5000 pounds were originally established pursuant to CWA section 311 (see 40 CFR Part 117 and 44 FR 50776, August 29, 1979).

Hazardous substances that fall within EPA's weight-of-evidence Groups A, B, or C (i.e., known, probable, or possible human carcinogens, respectively) are ranked and assigned RQs based on potential carcinogenicity. These substances also receive a potency classification of Group 1, 2, or 3, with Group 1 representing the potential carcinogens with the highest relative potencies. The weight-of-evidence and potency groups are combined using a matrix (see 54 FR 33421, August 14, 1989) to yield a relative hazard ranking for each substance. The resulting hazard rankings—"high," "medium," and "low"—correspond with RQ levels of 1, 10, and 100 pounds, respectively.

Each hazardous substance evaluated under the six primary criteria is assigned several tentative RQ values based on its particular properties as data allow. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

For a more detailed discussion of the five primary criteria other than potential carcinogenicity, see the preambles to the April 4, 1985 and September 29, 1986 final rules (50 FR 13456, Section V.D.1; 51 FR 34534) and the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volumes 1 and 2. For a more detailed discussion of the RQ adjustment methodology based on the primary criterion of potential carcinogenicity, see the preamble to the August 14, 1989 final rule (54 FR 33418) in which EPA adjusts the RQs of six hazardous substances and the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3. These documents are available for inspection at Room M2427, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

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[1] A release into the environment of a substance that is not listed as a CERCLA hazardous substance, but which rapidly forms a CERCLA hazardous substance upon release, is subject to the notification requirements of section 103. If the amount of the CERCLA hazardous substance formed as such a reaction product equals or exceeds the RQ for that substance, the release must be reported to the NRC.

[2] Twenty-nine additional substances have been listed under section 101(14). These substances are: waste streams F020, F021, F022, F023, F026, F027, and F028 under section 3001 of RCRA (50 FR 1978, January 14, 1985); waste streams K111, K112, K113, K114, K115, and K116, o-toluidine, and p-toluidine under section 3001 of RCRA (50 FR 42936, October 23, 1985); waste streams K117, K118, and K136 under section 3001 of RCRA (51 FR 5327, February 13, 1986); 2-ethoxyethanol under section 3001 of RCRA (51 FR 6537, February 25, 1986); waste streams K123, K124, K125, and K126 under section 3001 of RCRA (51 FR 37725, October 24, 1986); and waste streams K064, K065, K066, K088, K090, and K091 under section of 3001 of RCRA (53 FR 35412, September 13, 1988). On October 31, 1988, two hazardous substances (iron dextran and strontium sulfide) were deleted from the list of CERCLA hazardous substances (53 FR 43878 and 53 FR 43881). Currently there are 725 CERCLA hazardous substances. Based on a final rule published on August 14, 1989 (54 FR 33426), a third substance (ammonium thiosulfate) will be deleted from the CERCLA list effective October 13, 1989.

[3] 51 FR 34534, September 29, 1986; 54 FR 22524, May 24, 1989, 54 FR 33418, August 14, 1989; 54 FR 33426, August 14, 1989. Adjusted RQs have not yet been promulgated for methyl isocyanate, lead metal, certain lead compounds, and 11 waste streams (K002, K003, K005, K048, K049, K051, K061, K062, K069, K086, and K100) that may contain lead and lead compounds.

[4] RQs represent a determination only of possible or potential harm, not that releases of a particular amount of a hazardous substance necessarily will be harmful to the public health or welfare or the environment.

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes that are used as secondary RQ adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). These processes tend to reduce the relative potential for harm to the public health or welfare or the environment of many hazardous substance releases. If analysis indicates that an eligible hazardous substance degrades relative rapidly to a less harmful form by one or more of the BHP processes, its primary criteria RQ is raised one level on the basis of BHP.[5] If hazardous substances have primary criteria RQs already at the maximum assignable level or are found to be bioaccumulative, environmentally persistent, highly reactive (or otherwise unusually hazardous), or degradable to more hazardous products, they are not eligible for a one-level RQ increase on the basis of BHP. Furthermore, if available evidence shows that a hazardous substance degrades into a reaction product that is more hazardous than the original substance, the primary criteria are applied to the more hazardous product rather than to the original substance to determine the tentative RQ values for the original substance (51 FR 34534, September 29, 1986). For a more detailed discussion of the BHP criteria and their use in combination with the primary criteria, see the preamble to the April 4, 1985 final rule adjusting RQs (50 FR 13456, Sections V.C.1 and V.D.2) and the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 1, available for inspection at Room M2427, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

2. Threshold Planning Quantity Methodology

The proposed integration of the TPQ methodology as part of the RQ adjustment methodology involves the followng steps. First, the screening criteria used to identify EHSs (see Table 1, adapted from the preamble to the November 17, 1986 interim final rule, for screening cutoff values) are applied to all CERCLA hazardous substances. As with the TPQ methodology, acute mammalian toxicity data, based on the most sensitive species, are used to establish a level of concern for each hazardous substance that meets the screening criteria. In addition, the dispersion potential of each of these hazardous substances is assessed by considering its physical state and volatility. These two factors, level of concern and dispersion potential, are combined to produce an index value. The screened substances are then ranked according to the index value. Tentative RQs are obtained from this ranking (see Table 2). As shown in the table, the index value ranges used to assign TPQs are combined to match the RQ levels, where necessary.

TABLE 1.—SCREENING CRITERIA TO IDENTIFY EHSs

Route of exposure*	Acute toxicity measure**	Screening cutoff value
Inhalation	Median Lethal Concentration in Air (LC_{50})	Less than or equal to 0.5 milligrams per liter of air.
Dermal	Median Lethal Dose (LD_{50})	Less than or equal to 50 milligrams per kilogram of body weight.
Oral	Median Lethal Dose (LD_{50})	Less than or equal to 25 milligrams per kilogram of body weight.

* The route by which the test animals absorbed the chemical, i.e., by breathing it in air (inhalation), by absorbing it through the skin (dermal), or by ingestion (oral).

** LC_{50}: The concentration of the chemical in air at which 50 percent of the test animals dies. LD_{50}: The dose that killed 50 percent of the test animals. In the absence of LC_{50} or LD_{50} data, LC_{LO} or LD_{LO} data should be used. LC_{LO}: Lethal Concentraton Low, the lowest concentration in air at which any test animals dies. LD_{LO}: Lethal Dose Low, the lowest dose at which any test animals die.

TABLE 2—SCALES FOR ASSIGNING TPQs OR TENTATIVE RQs BASED ON THE TPQ ADJUSTMENT METHODOLOGY

TPQ (pounds)	Index value	Tentative RQ (pounds)
1	< 0.001	1
10	> 0.001 to < 0.01	10
100	> 0.01 to < 0.1*	100
500	> 0.1 to < 1*	100
1,000	> 1 to < 10	1,000
10,000	> 10**	5,000

* Because there is no 500 pound RQ level, these two index value ranges are combined to yield a single index value range (> 0.01 to < 1) equivalent to a tentative RQ of 100 pounds based on the TPQ adjustment methodology.

** Because RQs are not assigned at levels greater than 5,000 pounds, a hazardous substance with an index value equal to or greater than 10 is assigned a tentative RQ of 5,000 pounds based on the TPQ adjustment methodology.

Hazardous substances with the lowest index values (highest concern) are assigned tentative RQs equal to one pound. Hazardous substances with low index values are assigned tentative RQs of 10 pounds. Hazardous substances with moderate index values, i.e., those that have TPQs of 100 or 500 pounds, are assigned tentative RQs of 100 pounds. Hazardous substances with high index values are assigned tentative RQs of 1000 pounds, and those with the highest index values (TPQ=10,000 pounds) are assigned tentative RQs of 5000 pounds.

If the tentative RQ assigned in this way is lower than the primary and (if applicable) secondary criteria RQ, this tentative RQ using the TPQ methodology becomes the proposed RQ. EPA believes that the selection of the lower of the two numbers appropriately reflects a conservative and protective approach to setting RQs. This revised RQ adjustment process also will ensure that all substances will have TPQs equal to or greater than their RQs. For more detailed discussion of how the TPQ methodology is used as part of the RQ adjustment methodology, see the Technical Background Document to Support Adjustment of the Reportable Quantities of the Extremely Hazardous Substances Designated as CERCLA Hazardous Substances, Volume 5, available for inspection at Room M2427, U.S. Environmental Protection Agency,

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[5] The Agency does not adjust RQs beyond 100 pounds for potential carcinogens based on BHP. See the preamble to the August 14, 1989 final rule (54 FR 33426) in which EPA adjusts the RQs of 258 hazardous substances.

401 M Street SW, Washington, DC 20460.

3. Alternative Approaches Considered

In developing the proposed methodology, EPA considered a number of other approaches to addressing differences between RQs and TPQs, including: a no-action alternative; raising TPQs or lowering RQs for individual EHSs; and an extensive reevaluation or modification of the RQ and TPQ methodologies to create a unified methodology. Each of these alternatives had significant drawbacks and was rejected. If EPA did not undertake any action, the RQ/TPQ differences would not be resolved, concerns expressed by commenters on the November 17, 1986 interim final rule (51 FR 41570) would not be addressed, and the Agency would have failed to fulfill its commitment in the preamble to the April 22, 1987 final rule (52 FR 13378) to address these differences. Changing RQs or TPQs for individual EHSs could undercut the validity of the RQ and TPQ methodologies, and future changes would be required for any RQ/TPQ differences that result from additions of substances to the EHS list. Major revisions to the RQ and TPQ methodologies could involve a significant amount of time for development and implementation, which would create uncertainty in the regulated community. Such revisions would affect large numbers of EHSs and CERCLA hazardous substances in addition to those that have RQ/TPQ differences.

Under the methodology proposed today, the concern about RQ and TPQ differences can be addressed in a timely and straightforward manner, based on a sound technical rationale. EPA will fulfill its commitment to resolve this issue, and all current and future TPQ/RQ differences will be addressed. Under this proposed methodology, no adjustments to TPQs or the TPQ methodology are required; an additional step is simply included in the existing RQ adjustment methodology. That step, integration of the TPQ methodology, is an appropriate addition to the RQ methodology in light of recent public and Congressional concern about sudden, catastrophic releases of highly toxic substances, which led to the development of the EHS and TPQ program.

A further discussion of the alternatives considered by the Agency in formulating this proposal appears on pages 2–3 through 2–5 of Volume 5 of the Technical Background Document and in the "Options Paper to Address Reportable Quantity and Threshold Planning Quantity Differences," which are available in the rulemaking record.

C. Substances for Which Adjusted RQs Are Being Proposed

In applying the EHS screening criteria to CERCLA hazardous substances, 143 substances were identified, including nine that are not currently on the EHS list.[6] Of these 143 substances, 19 substances (all currently on the EHS list) would have their RQs lowered based on application of the proposed methodology.[7] In this rule, EPA proposes RQ adjustments for these 19 EHSs and for the 232 EHSs that have been proposed for designation as CERCLA hazardous substances.

The primary criteria bases for the 251 proposed adjusted RQ adjustments are as follows: 109 are based only on acute mammalian toxicity; 17 are based only on chronic toxicity; seven are based only on potential carcinogenicity; and four are based only on ignitability. Twenty-seven proposed RQ adjustments are based on more than one primary criterion. Two of the EHSs have their primary criteria RQs raised one level by applying BHP. Eighty-five proposed RQ adjustments are based only on application of the TPQ adjustment methodology.

The 232 EHSs proposed to be added to the list of CERCLA hazardous substances have proposed statutory RQs of one pound. EPA is proposing RQ adjustments that would raise the RQs for 225 of those 232 EHSs. Seven of the EHSs would have adjusted RQs proposed at one pound. Of the 19 EHSs that are currently on the list of hazardous substances, 17 have RQs proposed to be lowered one level. Two of the 19, benzal chloride and hydrochloric acid, have RQs proposed to be lowered two levels.[8] EPA considers the proposed RQs to be appropriate reporting triggers for releases of these substances, because of their potential hazards and concerns about their existing RQs. The proposed revisions to the RQ methodology address those concerns by taking into account alternative measures of adverse effects, as discussed in the Technical Background Document to Support Adjustment of the Reportable Quantities of the Extremely Hazardous Substances Designated as CERCLA Hazardous Substances, Volume 5, available for inspection at Room M2427, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

III. Summary of Supporting Analyses

A. Executive Order 12291

Executive Order (E.O.) 12291 requires that regulations be classified as major or nonmajor for purposes of review by the Office of Management and Budget (OMB). According to E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An economic analysis performed by the Agency, available for inspection at Room M2427, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, shows that today's proposed rule is nonmajor, because the rule will result in a cost savings of approximately $1.8 million annually. These cost savings reflect only those effects of the RQ adjustments that are: (1) readily quantifiable in dollars; and (2) associated with the release notification requirements under CERCLA section 103 and SARA section 304 (including the associated activities of recordkeeping, notification processing, monitoring, and response).

This proposed rule has been submitted to OMB as required by E.O. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." To determine whether a Regulatory Flexibility Analysis was necessary for today's proposed rule, a preliminary analysis was conducted using a computer model that simulated the typical operation of a small U.S. chemical company.

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[6] For the nine substances not on the EHS list, application of the proposed RQ adjustment methodology would not result in a change in the RQ.

[7] At present, Appendices A and B of 40 CFR Part 355 incorrectly show a TPQ of 10,000 pounds for one of these 19 substances, "Muscimol," CAS No. 2763–96–4. The correct TPQ is 500 or 10,000 pounds, depending on the physical form of the substance. On July 21, 1989, the Agency proposed to adjust this TPQ (54 FR 30700).

[8] At present, Appendices A and B of 40 CFR Part 355 incorrectly show an RQ of one pound for "Hydrogen Chloride (Gas Only)," CAS No. 7647–01–0. The correct RQ for this substance, however, is the one that applies to hydrochloric acid, shown in Table 302.4 of 40 CFR Part 302 as 5000 pounds. The RQ proposed today is 100 pounds.

The results of the simulation indicate that the upper-bound total cost of compliance to small firms is negligible. See the Economic Impact Analysis of Reportable Quantity Adjustments for the Extremely Hazardous Substances Designated as CERCLA Hazardous Substances, Volume V, available for inspection at Room M2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Therefore, because today's proposed rule is not expected to have a significant impact on small entities, EPA certifies that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Information Collection Request documents have been prepared by EPA (IRC No. 1049 and 1491) and copies may be obtained from Carl Koch, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or by calling 1–202/382–2739.

The public reporting burden for this collection of information is estimated to vary from 8 to 11 hours per response, with an average of 8.3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–233, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects

40 CFR Part 302

Air pollution control, Chemicals, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste Treatment and disposal, Water pollution control.

40 CFR Part 355

Air pollution control, Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Reportable quantity, Reporting and recordkeeping requirements, Superfund Amendments and Reauthorization Act, Threshold planning quantity.

Dated: August 2, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, it is proposed to amend title 40 chapter I of the Code of Federal Regulations as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

2. Section 302.4 is amended by adding the following entries in alphabetical order to Table 302.4 and in CASRN order to Appendix A to § 302.4 as set forth below. The note preceding Table 302.4 is revised to read as follows:

§ 302.4 Designation of hazardous substances.

* * * * *

Note: The numbers under the column headed "CASRN" are the Chemical Abstracts Service Registry Numbers for each hazardous substance. Other names by which each hazardous substance is identified in other statutes and their implementing regulations are provided in the "Regulatory Synonyms" column. The "Statutory RQ" column lists the RQs for hazardous substances established by section 102 of CERCLA. The "Statutory Code" column indicates the statutory source of hazardous substances defined in section 101(14) of CERLA or designated under section 102 of CERLA: "1" indicates that the statutory source is section 311(b)(4) of the Clean Water Act, "2" indicates that the source is section 307(a) of the Clean Water Act, "3" indicates that the source is section 112 of the Clean Air Act, "4" indicates that the source is RCRA section 3001, and "5a" indicates that the source is SARA section 302. The "RCRA Waste Number" column provides the waste identification numbers assigned to various substances by RCRA regulations. The column headed "Category" lists the code letters "X", "A", "B", "C", and "D", which are associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively. The "Pounds (kg)" column provides the reportable quantity for each hazardous substance in pounds and kilograms.

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous Substance	CASRN	Regulatory synonyms	Statutory			Proposed RQ		
			RQ	Code †	RCRA Waste Number	Category	Pounds	Kg
Acetone thiosemicarbazide	1752303		1	5a		B	100	45.4
Acrylyl chloride	814686		1	5a		B	100	45.4
Adiponitrile	111693		1	5a		C	1,000	454
Allylamine	107119		1	5a		B	100	45.4
Aminopterin	54626		1	5a		A	10	4.54
Amiton	78535		1	5a		B	100	45.4
Amiton oxalate	3734972		1	5a		B	100	45.4
Amphetamine	300629		1	5a		B	100	45.4
Aniline, 2,4,6-trimethyl-	88051		1	5a		B	100	45.4
Antimony petafluoride	7783702		1	5a		B	100	45.4
Antimycin A	1397940		1	5a		C	1,000	454
Arsine	7784421		1	5a		X	1	0.454
Azinphos-ethyl	2642719		1	5a		B	100	45.4
Benzenamine, 3-(trifluoromethyl)-	98168		1	5a		B	100	45.4
Benzenearsonic acid	98055		1	5a		A	10	4.54
Benzene, 1-(chloromethyl)-4-nitro-	100141		1	5a		B	100	45.4
Benzimidazole, 4,5-dichloro-2-(trifluoromethyl)-	3615212		1	5a		B	100	45.4
Benzyl cyanide	140294		1	5a		B	100	45.4

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory synonyms	Statutory			Proposed RQ		
			RQ	Code †	RCRA Waste Number	Category	Pounds	Kg
Bicyclo[2,2,1]heptane-2-carbonitrile, 5-chloro-6-(((methyl amino)carbonyl)oxy)m.	15271417		1	5a		B	100	45.4
Bis(chloromethyl) ketone	534076		1	5a		A	10	4.54
Bitoscanate	4044659		1	5a		B	100	45.4
Boron trichloride	10294345		1	5a		B	100	45.4
Boron trifluoride	7637072		1	5a		B	100	45.4
Boron trifluoride compound with methyl ether (1:1)	353424		1	5a		C	1,000	454
Bromadiolone	28772567		1	5a		B	100	45.4
Bromine	7726956		1	5a		B	100	45.4
Cadmium oxide	1306190		1	5a		A	10	4.54
Cadmium stearate	2223930		1	5a		A	10	4.54
Cantharidin	56257		1	5a		B	100	45.4
Carbachol chloride	51832		1	5a		B	100	45.4
Carbamic acid, methyl-, O-(((2,4-dimethyl-1,3-dithiolan-2-yl)methylene)amino)-.	26419738		1	5a		B	100	45.4
Carbophenothion	786196		1	5a		B	100	45.4
Chlorfenvinfos	470906		1	5a		B	100	45.4
Chlormephos	24934916		1	5a		B	100	45.4
Chlormequat chloride	999815		1	5a		B	100	45.4
Chloroacetic acid	79118		1	5a		B	100	45.4
Chloroethanol	107073		1	5a		B	100	45.4
Chloroethyl chloroformate	627112		1	5a		B	100	45.4
Chlorophacinone	3691358		1	5a		B	100	45.4
Chloroxuron	1982474		1	5a		B	100	45.4
Chlorthiophos	21923239		1	5a		B	100	45.4
Chromic chloride	10025737		1	5a		X	1	0.454
Cobalt carbonyl	10210681		1	5a		A	10	4.54
Cobalt, ((2,2'-(0,2-ethanediylbis (nitrilomethylidyne))bis(6-fluorophenolato))(2).	62207765		1	5a		B	100	45.4
Colchicine	64868		1	5a		A	10	4.54
Coumatetralyl	5836293		1	5a		B	100	45.4
Crimidine	535897		1	5a		B	100	45.4
Cyanogen iodide	506785		1	5a		C	1,000	454
Cyanophos	2636262		1	5a		C	1,000	454
Cyanuric fluoride	675149		1	5a		B	100	45.4
Cycloheximide	66819		1	5a		B	100	45.4
Cyclohexylamine	108918		1	5a		C	1,000	454
Decaborane(14)	17702419		1	5a		A	10	4.54
Demeton	8065483		1	5a		B	100	45.4
Demeton-S-methyl	919868		1	5a		B	100	45.4
Dialifor	10311849		1	5a		B	100	45.4
Diborane	19287457		1	5a		A	10	4.54
Dichloromethylphenylsilane	149746		1	5a		B	100	45.4
Dicrotophos	141662		1	5a		B	100	45.4
Diethyl chlorophosphate	814493		1	5a		B	100	45.4
Diethylcarbamazine citrate	1642542		1	5a		B	100	45.4
Digitoxin	71636		1	5a		B	100	45.4
Diglycidyl ether	2238075		1	5a		B	100	45.4
Digoxin	20830755		1	5a		A	10	4.54
Dimefox	115264		1	5a		B	100	45.4
Dimethyldichlorosilane	75785		1	5a		B	100	45.4
Dimethyl-p-phenylenediamine	99989		1	5a		X	1	0.454
Dimethyl phosphorochloridothioate	2524030		1	5a		B	100	45.4
Dimethyl sulfide	75183		1	5a		B	100	45.4
Dimetilan	644644		1	5a		B	100	45.4
Dinoterb	1420071		1	5a		B	100	45.4
Dioxathion	78342		1	5a		B	100	45.4
Diphacinone	82666		1	5a		A	10	4.54
Dithiazanine iodide	514738		1	5a		B	100	45.4
Emetine, dihydrochloride	316427		1	5a		X	1	0.454
Endothion	2778043		1	5a		B	100	45.4
EPN	2104645		1	5a		B	100	45.4
Ergocalciferol	50146		1	5a		B	100	45.4
Ergotamine tartrate	379793		1	5a		B	100	45.4
Ethanesulfonyl chloride, 2-chloro-	1622328		1	5a		B	100	45.4
Ethanol, 1,2-dichloro-, acetate	10140871		1	5a		B	100	45.4
Ethoprophos	13194484		1	5a		C	1,000	454
Ethylbis(2-chloroethyl)amine	538078		1	5a		B	100	45.4
Ethylene flurohydrin	371620		1	5a		A	10	4.54
Ethylthiocyanate	542905		1	5a		C	1,000	454
Fenamiphos	22224926		1	5a		A	10	4.54
Fenitrothion	122145		1	5a		B	100	45.4
Fensulfothion	115902		1	5a		B	100	45.4
Fluenetil	4301502		1	5a		B	100	45.4
Fluoroacetic acid	144490		1	5a		A	10	4.54
Fluoroacetyl chloride	359068		1	5a		A	10	4.54

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory synonyms	Statutory			Proposed RQ		
			RQ	Code †	RCRA Waste Number	Category	Pounds	Kg
Fluorouracil	51218		1	5a		B	100	45.4
Fonofos	944229		1	5a		B	100	45.4
Formaldehyde cyanohydrin	107164		1	5a		C	1,000	454
Formetanate hydrochloride	23422539		1	5a		B	100	45.4
Formothion	2540821		1	5a		A	10	4.54
Formparanate	17702577		1	5a		B	100	45.4
Fosthietan	21548323		1	5a		B	100	45.4
Fuberidazole	3878191		1	5a		B	100	45.4
Gallium trichloride	13450903		1	5a		B	100	45.4
Hexamethylenediamine, N,N'-dibutyl-	4835114		1	5a		B	100	45.4
Hydrogen peroxide (concentration >52%)	7722841		1	5a		C	1,000	454
Hydrogen selenide	7783075		1	5a		X	1	0.454
Hydroquinone	123319		1	5a		B	100	45.4
Iron, pentacarbonyl-	13463406		1	5a		A	10	4.54
Isobenzan	297789		1	5a		B	100	45.4
Isobutyronitrile	78820		1	5a		C	1,000	454
Isocyanic acid, 3,4-dichlorophenyl ester	102363		1	5a		B	100	45.4
Isophorone diisocyanate	4098719		1	5a		B	100	45.4
Isopropyl chloroformate	108236		1	5a		C	1,000	454
Isopropyl formate	625558		1	5a		B	100	45.4
Isopropylmethylpyrazolyl dimethylcarbamate	119380		1	5a		B	100	45.4
Lactonitrile	78977		1	5a		C	1,000	454
Leptophos	21609905		1	5a		B	100	45.4
Lewisite	541253		1	5a		A	10	4.54
Lithium hydride	7580678		1	5a		A	10	4.54
Manganese, tricarbonyl methylcyclopentadienyl	12108133		1	5a		B	100	45.4
Mechlorethamine	51752		1	5a		A	10	4.54
Mephosfolan	950107		1	5a		B	100	45.4
Mercuric acetate	1600277		1	5a		B	100	45.4
Mercuric chloride	7487947		1	5a		B	100	45.4
Mercuric oxide	21908532		1	5a		B	100	45.4
Methacrolein diacetate	10476956		1	5a		C	1,000	454
Methacrylic anhydride	750930		1	5a		B	100	45.4
Methacryloyl chloride	920467		1	5a		B	100	45.4
Methacryloyloxyethyl isocyanate	30674807		1	5a		B	100	45.4
Methamidophos	10265926		1	5a		B	100	45.4
Methanesulfonyl fluoride	558258		1	5a		B	100	45.4
Methidathion	950378		1	5a		B	100	45.4
Methoxyethylmercuric acetate	151382		1	5a		B	100	45.4
Methyl 2-chloroacrylate	80637		1	5a		B	100	45.4
Methyl disulfide	624920		1	5a		A	10	4.54
Methyl isothiocyanate	556616		1	5a		B	100	45.4
Methylmercuric dicyanamide	502396		1	5a		A	10	4.54
Methyl phenkapton	3735237		1	5a		B	100	45.4
Methyl phosphonic dichloride	676971		1	5a		B	100	45.4
Methyl thiocyanate	556649		1	5a		C	1,000	454
Methyltrichlorosilane	75796		1	5a		B	100	45.4
Methyl vinyl ketone	78944		1	5a		A	10	4.54
Metolcarb	1129415		1	5a		B	100	45.4
Monocrotophos	6923224		1	5a		A	10	4.54
Mustard gas	505602		1	5a		X	1	0.454
Nicotine sulfate	65305		1	5a		A	10	4.54
Nitrocyclohexane	1122607		1	5a		B	100	45.4
Norbormide	991424		1	5a		B	100	45.4
Organorhodium complex (PMN-82-147)	00		1	5a		A	10	4.54
Ouabain	630604		1	5a		B	100	45.4
Oxamyl	23135220		1	5a		B	100	45.4
Oxetane, 3,3-bis(chloromethyl)-	78717		1	5a		B	100	45.4
Oxydisulfoton	2497076		1	5a		B	100	45.4
Ozone	10028156		1	5a		A	10	4.54
Paraquat	1910425		1	5a		A	10	4.54
Paraquate methosulfate	2074502		1	5a		A	10	4.54
Pentaborane	19624227		1	5a		A	10	4.54
Pentadecylamine	2570265		1	5a		B	100	45.4
Peracetic acid	79210		1	5a		A	10	4.54
Phenol, 3-(1-methylethyl)-, methylcarbamate	64006		1	5a		B	100	45.4
Phenol, 2,2'-thiobis(4-chloro-6-methyl-phenol, 2,2'-thiobis (4-chloro-6-methyl)-.	4418660		1	5a		B	100	45.4
Phenol, 2,2'-thiobis(4-6-dichloro-	97187		1	5a		B	100	45.4
Phenoxarsine, 10,10'-oxydi	58366		1	5a		B	100	45.4
Phenylhydrazine hydrochloride	59881		1	5a		B	100	45.4
Phenylsilatrane	2097190		1	5a		B	100	45.4
Phosacetim	4104147		1	5a		B	100	45.4
Phosfolan	947024		1	5a		B	100	45.4
Phosmet	732116		1	5a		A	10	4.54
Phosphamidon	13171216		1	5a		B	100	45.4

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory synonyms	Statutory			Proposed RQ		
			RQ	Code †	RCRA Waste Number	Category	Pounds	Kg
Phosphonothioc acid, methyl-, S-(2-(bis(1-methylethyl)amino)ethyl O-ethyl ester.	50782699		1	5a		A	10	4.54
Phosphonothioc acid, methyl-,O-(4-nitrophenyl) O-phenyl ester.	2665307		1	5a		B	100	45.4
Phosphonothioc acid, methyl-,O-ethyl O-(4-(methylthio)phenyl) ester.	2703131		1	5a		A	10	4.54
Phosphoric acid, dimethyl 4-(methylthio)phenyl ester	3254635		1	5a		B	100	45.4
Phosphorothioic acid, O,O-dimethyl-S-(2-methylthio)ethyl ester.	2587908		1	5a		B	100	45.4
Phosphorus pentachloride	10026138		1	5a		B	100	45.4
Phosphorus pentoxide	1314563		1	5a		A	10	4.54
Physostigmine	57476		1	5a		B	100	45.4
Physostigmine, salicylate (1:1)	57647		1	5a		B	100	45.4
Picrotoxin	124878		1	5a		B	100	45.4
Piperidine	110894		1	5a		B	100	45.4
Piprotal	5281130		1	5a		B	100	45.4
Pirimifos-ethyl	23505411		1	5a		C	1,000	454
Promecarb	2631370		1	5a		B	100	45.4
Propargyl bromide	106967		1	5a		X	1	0.454
Propiolactone, beta-	57578		1	5a		A	10	4.54
Propiophenone, 4-amino	70699		1	5a		B	100	45.4
Propyl chloroformate	109615		1	5a		B	100	45.4
Prothoate	2275185		1	5a		B	100	45.4
Pyridine, 2-methyl-5-vinyl	140761		1	5a		B	100	45.4
Pyridine, 4-nitro-, 1-oxide	1124330		1	5a		B	100	45.4
Pyriminil	53558251		1	5a		B	100	45.4
Salcomine	14167181		1	5a		B	100	45.4
Sarin	107448		1	5a		A	10	4.54
Selenium oxychloride	7791233		1	5a		B	100	45.4
Semicarbazide hydrochloride	563417		1	5a		B	100	45.4
Silane, (4-aminobutyl)diethoxymethyl-	3037727		1	5a		C	1,000	454
Sodium cacodylate	124652		1	5a		B	100	45.4
Sodium pentachlorophenate	131522		1	5a		B	100	45.4
Sodium selenate	13410010		1	5a		B	100	45.4
Sodium tellurite	10102202		1	5a		B	100	45.4
Stannane, acetoxytriphenyl-	900958		1	5a		A	10	4.54
Strychnine, sulfate	60413		1	5a		B	100	45.4
Sulfoxide, 3-chloropropyl octyl	3569571		1	5a		B	100	45.4
Sulfur dioxide	7446095		1	5a		B	100	45.4
Sulfur tetrafluoride	7783600		1	5a		B	100	45.4
Sulfur trioxide	7446119		1	5a		B	100	45.4
Tabun	77816		1	5a		A	10	4.54
Tellurium	13494809		1	5a		B	100	45.4
Tellurium hexafluoride	7783804		1	5a		B	100	45.4
Terbufos	13071799		1	5a		B	100	45.4
Tetraethyltin	597648		1	5a		A	10	4.54
Tetramethyllead	75741		1	5a		B	100	45.4
Thallous malonate	2757188		1	5a		B	100	45.4
Thiocarbazide	2231574		1	5a		B	100	45.4
Thiourea, (2-methylphenyl)-	614788		1	5a		B	100	45.4
Titanium tetrachloride	7550450		1	5a		B	100	45.4
Trans-1,4-dichlorobutene	110576		1	5a		B	100	45.4
Triamiphos	1031476		1	5a		B	100	45.4
Triazofos	24017478		1	5a		B	100	45.4
Trichloroacetyl chloride	76028		1	5a		B	100	45.4
Trichloro(chloromethyl)silane	1558254		1	5a		A	10	4.54
Trichloro(dichlorophenyl)silane	27137855		1	5a		B	100	45.4
Trichloroethylsilane	115219		1	5a		B	100	45.4
Trichloronate	327980		1	5a		B	100	45.4
Trichlorophenylsilane	98135		1	5a		B	100	45.4
Triethoxysilane	998301		1	5a		B	100	45.4
Trimethylchlorosilane	75774		1	5a		C	1,000	454
Trimethylolpropane phosphite	824113		1	5a		B	100	45.4
Trimethyltin chloride	1066451		1	5a		B	100	45.4
Triphenyltin chloride	639587		1	5a		B	100	45.4
Tris(2-chloroethyl)amine	555771		1	5a		A	10	4.54
Valinomycin	2001958		1	5a		B	100	45.4
Warfarin sodium	129066		1	5a		A	10	4.54
Xylylene dichloride	28347139		1	5a		B	100	45.4
Zinc, dichloro(4,4-dimethyl-5((((methylamino) carbonyl)oxy)imino)pentanenitrile)-,(T-4)-.	58270089		1	5a		B	100	45.4

†—Indicates the statutory source as defined by 1, 2, 3, or 4 below:

1—indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4).

2—indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a).

3—indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA Section 112.

4—indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.

5a—indicates that the statutory source for designation of this hazardous substance is CERCLA Section 102(a).

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF EXTREMELY HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
0	Organorhodium complex (PMN-82-147).
50146	Ergocalciferol.
51218	Fluorouracil.
51752	Mechlorethamine.
51832	Carbachol chloride.
54626	Aminopterin.
56257	Cantharidin.
57476	Physostigmine.
57578	Propiolactone, beta-
57647	Physostigmine, salicylate (1:1)
58366	Phenoxarsine, 10, 10-oxydi.
59881	Phenylhydrazine hydrochloride.
60413	Strychnine, sulfate.
64006	Phenol, 3-(1-methylethyl)-, methylcarbamate.
64868	Colchicine.
65305	Nicotine sulfate.
66819	Cycloheximide.
70699	Propiophenone, 4-amino.
71636	Digitoxin.
75183	Dimethyl sulfide.
75741	Tetramethyllead.
75774	Trimethylchlorosilane.
75785	Dimethyldichlorosilane.
75796	Methyltrichlorosilane.
76028	Trichloroacetyl chloride.
77816	Tabun.
78342	Dioxathion.
78535	Amiton.
78717	Oxetane, 3,3-bis(chloromethyl)-.
78820	Isobutyronitrile.
78944	Methyl vinyl ketone.
78977	Lactonitrile.
79118	Chloroacetic acid.
79210	Peracetic acid.
80637	Methyl 2-chloroacrylate.
82666	Diphacinone.
88051	Aniline, 2,4,6-trimethyl-.
97187	Phenol, 2,2'-thiobis(4,6-dichloro-.
98055	Benzenearsonic acid.
98135	Trichlorophenylsilane.
98168	Benzenamine, 3-(trifluoromethyl)-.
99989	Dimethyl-p-phenylenediamine.
100141	Benzene, 1-(chloromethyl)-4-nitro-.
102363	Isocyanic acid, 3,4-dichlorophenyl ester.
106967	Propargyl bromide.
107073	Chloroethanol.
107119	Allylamine.
107164	Formaldehyde cyanohydrin.
107448	Sarin.
108236	Isopropyl chloroformate.
108918	Cyclohexylamine.
109615	Propyl chloroformate.
110576	Trans-1,4-dichlorobutene.
110894	Piperidine.
111693	Adiponitrile.
115219	Trichloroethylsilane.
115264	Dimefox.
115902	Fensulfothion.
119380	Isopropylmethylpyrazolyl dimethylcarbamate.
122145	Fenitrothion.
123319	Hydroquinone.
124652	Sodium cacodylate.
124878	Picrotoxin.
129066	Warfarin sodium.
131522	Sodium pentachlorophenate.
140294	Benzyl cyanide.
140761	Pyridine, 2-methyl-5-vinyl.
141662	Dicrotophos.
144490	Fluoroacetic acid.
149746	Dichloromethylphenylsilane.
151382	Methoxyethylmercuric acetate.
297789	Isobenzan.
300629	Amphetamine.
316427	Emetine, dihydrochloride.
327980	Trichloronate.
353424	Boron trifluoride compound with methyl ether (1:1).
359068	Fluoroacetyl chloride.
371620	Ethylene fluorohydrin.
379793	Ergotamine tartrate.
470906	Chlorfenvinfos.
502396	Methylmercuric dicyanamide.
505602	Mustard gas.
506785	Cyanogen iodide.
514738	Dithiazanine iodide.
534076	Bis(chloromethyl) ketone.
535897	Crimidine.
538078	Ethylbis(2-chloroethyl)amine.
541253	Lewisite.
542905	Ethylthiocyanate.
555771	Tris(2-chloroethyl)amine.
556616	Methyl isothiocyanate.
556649	Methyl thiocyanate.
558258	Methanesulfonyl fluoride.
563417	Semicarbazide hydrochloride.
597648	Tetraethyltin.
614788	Thiourea, (2-methylphenyl)-.
624920	Methyl disulfide.
625558	Isopropyl formate.
627112	Chloroethyl chloroformate.
630604	Ouabain.
639587	Triphenyltin chloride.
644644	Dimetilan.
675149	Cyanuric fluoride.
676971	Methyl phosphonic dichloride.
732116	Phosmet.
760930	Methacrylic anhydride.
786196	Carbophenothion.
814493	Diethyl chlorophosphate.
814686	Acrylyl chloride.
824113	Trimethylolpropane phosphite.
900958	Stannane, acetoxytriphenyl-.
919868	Demeton-S-methyl.
920467	Methacryloyl chloride.
944229	Fonofos.
947024	Phosfolan.
950107	Mephosfolan.
950378	Methidathion.
991424	Norbormide.
998301	Triethoxysilane.
999815	Chlormequat chloride.
1031476	Triamiphos.
1066451	Trimethyltin chloride.
1122607	Nitrocyclohexane.
1124330	Pyridine, 4-nitro-, 1-oxide.
1129415	Metolcarb.
1306190	Cadmium oxide.
1314563	Phosphorus pentoxide.
1397940	Antimycin A.
1420071	Dinoterb.
1558254	Trichloro(chloromethyl)silane.
1600277	Mercuric acetate.
1622328	Ethanesulfonyl chloride, 2-chloro-.
1642542	Diethylcarbamazine citrate.
1752303	Acetone thiosemicarbazide.
1910425	Paraquat.
1982474	Chloroxuron.
2001958	Valinomycin.
2074502	Paraquat methosulfate.
2097190	Phenylsilatrane.
2104645	EPN.
2223930	Cadmium stearate.
2231574	Thiocarbazide.
2238075	Diglycidyl ether.
2275185	Prothoate.
2497076	Oxydisulfoton.
2524030	Dimethyl phosphorochloridothioate.
2540821	Formothion.
2570265	Pentadecylamine.
2587908	Phosphorothioic acid, 0,0-dimethyl-S-(2-methylthio) ethyl ester.
2631370	Promecarb.
2636262	Cyanophos.
2642719	Azinphos-ethyl.
2665307	Phosphonothioc acid, methyl-,0-(4-nitrophenyl) 0-phenyl ester.
2703131	Phosphonothioic acid, methyl-,0-ethyl 0-(4-(methylthio)phenyl) ester.
2757188	Thallous malonate.
2778043	Endothion.
3037727	Silane, (4-aminobutyl)diethoxymethyl-.
3254635	Phosphoric acid, dimethyl 4-(methylthio)phenyl ester.
3569571	Sulfoxide, 3-chloropropyl octyl.
3615212	Benzimidazole, 4,5-dichloro-2-(trifluoromethyl)-.
3691358	Chlorophacinone.
3734972	Amiton oxalate.
3735237	Methyl phenkapton.
3878191	Fuberidazole.
4044659	Bitoscanate.
4098719	Isophorone diisocyanate.
4104147	Phosacetim.
4301502	Fluenetil.
4418660	Phenol, 2,2'-thiobis[4-chloro-6-methyl-phenol, 2,2'-thiobis (4-chloro-6-methyl)-.
4835114	Hexamethylenediamine, N,N'-dibutyl-.
5281130	Piprotal.
5836293	Coumatetralyl.
6923224	Monocrotophos.
7446095	Sulfur dioxide.
7446119	Sulfur trioxide.
7487947	Mercuric chloride.
7550450	Titanium tetrachloride.
7580678	Lithium hydride.
7637072	Boron trifluoride.
7722841	Hydrogen peroxide (concentration > 52%).
7726956	Bromine.
7783075	Hydrogen selenide.
7783600	Sulfur tetrafluoride.
7783702	Antimony pentafluoride.
7783804	Tellurium hexafluoride.
7784421	Arsine.
7791233	Selenium oxychloride.
8065483	Demeton.
10025737	Chromic chloride.
10026138	Phosphorus pentachloride.
10028156	Ozone.
10102202	Sodium tellurite.
10140871	Ethanol, 1,2-dichloro-, acetate.
10210681	Cobalt carbonyl.
10265926	Methamidophos.
10294345	Boron trichloride.
10311849	Dialifor.
10476956	Methacrolein diacetate.
12108133	Manganese, tricarbonyl methylcyclopentadienyl.
13071799	Terbufos.
13171216	Phosphamidon.
13194484	Ethoprophos.
13410010	Sodium selenate.
13450903	Gallium trichloride.
13463406	Iron, pentacarbonyl-.
13494809	Tellurium.
14167181	Salcomine.
15271417	Bicyclo[2,2,1]heptane-2-carbonitrile, 5-chloro-6-((((methylamino)carbonyl)oxy)im.
17702419	Decaborane(14).
17702577	Formparanate.
19287457	Diborane.
19624227	Pentaborane.
20830755	Digoxin.
21548323	Fosthietan.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF EXTREMELY HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
21609905	Leptophos.
21908532	Mercuric oxide.
21923239	Chlorthiophos.
22224926	Fenamiphos.
23135220	Oxamyl.
23422539	Formetanate hydrochloride.
23505411	Pirimifos-ethyl.
24017478	Triazofos.
24934916	Chlormephos.
26419738	Carbamic acid, methyl-, 0-(((2,4-dimethyl-1,3-dithiolan-2-yl)methylene)amino)-.
27137855	Trichloro(dichlorophenyl)silane.
28347139	Xylylene dichloride.
28772567	Bromadiolone.
30674807	Methacryloyloxyethyl isocyanate.
50782699	Phosphonothioc acid, methyl-, S-(2-bis(1-methylethyl)amino)ethyl 0-ethyl ester.
53558251	Pyriminil.
58270089	Zinc, dichloro(4,4-dimethyl-5((((methylamino)carbonyl)oxy)imino) pentanenitrile)-,(T-4)-.
62207765	Cobalt, ((2,2'-ethanediylbis (nitrilomethylidyne))bis(6-fluorophenolato))(2).

3. Section 302.4 is amended by revising the following entries to Table 302.4 as set forth below:

§ 302.4 Designation of Hazardous Substances.

* * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Proposed RQ	
			RQ	Code*	RCRA Waste Number	Category	Pounds (Kg)
*		* * *		*			
Acrylamide	79061	2-Propenamide	*1	4	U007	C	1,000 (454)
*		* * *		*			
5-(Aminomethyl)-3-isoxazolol	2763964	Muscimol 3(2H)-Isoxazolone, 5-(aminomethyl)	*1	4	P007	B	100 (45.4)
*		* * *		*			
4-Aminopyridine	504245	Pyridine, 4-amino-4-Pyridinamine	*1	4	P008	B	100 (45.4)
*		* * *		*			
Aniline	62533	Benzenamine	1,000	1,4	U012	C	1,000 (454)
*		* * *		*			
Benzal chloride	98873	Benzene, dichloromethyl-	*1	4	U017	B	100 (45.4)
*		* * *		*			
Benzenamine	62533	Aniline	1,000	1,4	U012	C	1,000 (454)
*		* * *		*			
Benzene, dichloromethyl-	98873	Benzal chloride	*1	4	U017	B	100 (45.4)
*		* * *		*			
Benzene, hydroxy-	108952	Phenol	1,000	1,2,4	U188	B	100 (45.4)
*		* * *		*			
Bromine cyanide	506683	Cyanogen bromide	*1	4	U246	B	100 (45.4)
*		* * *		*			
Carbonochloridic acid, methyl ester	79221	Methyl chlorocarbonate, Methyl chloroformate.	*1	4	U156	B	100 (45.4)
*		* * *		*			
Cyanogen bromide	506683	Bromine cyanide	*1	4	U246	B	100 (45.4)
*		* * *		*			
Dinoseb	88857	Phenol, 2,4-dinitro-6-(1-methylpropyl)-	*1	4	P020	B	100 (45.4)
*		* * *		*			
Hydrochloric acid	647010	Hydrogen chloride	5,000	1		B	100 (45.4)
*		* * *		*			
Hydrogen chloride	647010	Hydrochloric acid	5,000	1		B	100 (45.4)
*		* * *		*			
3(2H)-Isoxazolone, 5-(aminomethyl)-	2763964	Muscimol 5-(Aminomethyl)-3-isoxazolol	*1	4	P007	B	100 (45.4)
*		* * *		*			
Malononitrile	109773	Propanedinitrile	*1	4	U149	B	100 (45.4)
*		* * *		*			
Methacrylonitrile	126987	2-Propenenitrile, 2-methyl-	*1	4	U152	B	100 (45.4)
*		* * *		*			
Methyl chlorocarbonate	79221	Carbonochloridic acid, methyl ester Methyl chloroformate.	*1	43	U156	B	100 (45.4)
*		* * *		*			
Methyl chloroformate	79221	Carbonochloridic acid, methyl ester, methyl chlorocarbonate.	*1	4	U156	B	100 (45.4)
*		* * *		*			
Mexacarbate	315184		1,000	1		B	100 (45.4)
*		* * *		*			
Muscimol	2763964	3(2H)-Isoxazolone, 5-(aminomethyl)-5-(Aminomethyl)-3-isoxazolol.	*1	4	P007	B	100 (45.4)
*		* * *		*			
Nickel carbonyl	13463393	Nickel carbonyl Ni(CO)4, T-4)	*1	4	P073	X	1 (0.454)
*		* * *		*			
Nickel carbonyl Ni(CO)4, T-4)	13463393	Nickel carbonyl	*1	4	P073	X	1 (0.454)
*		* * *		*			
Phenol	108952	Benzene, hydroxy	1,000	1,2,4	U188	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Proposed RQ	
			RQ	Code*	RCRA Waste Number	Category	Pounds (Kg)
*		* * *		*			
Phenol, 2,4-dinitro-6-(1-methylpropyl)	88857	Dinoseb	*1	4	P020	B	100 (45.4)
*		* * *		*			
Phosphorous oxychloride	10025873		5,000	1		B	100 (45.4)
*		* * *		*			
Propanedinitrile	109773	Malononitrile	*1	4	U149	B	100 (45.4)
*		* * *		*			
2-Propenamide	79061	Acrylamide	*1	4	U007	C	1,000 (454)
*		* * *		*			
2-Propenenitrile, 2-methyl	126987	Methacrylonitrile	*1	4	U152	B	100 (45.4)
*		* * *		*			
Pyrene	129000		*1	2		C	1,000 (454)
*		* * *		*			
4-Pyridinamine	504245	Pyridine, 4-amino-4-Aminopyridine	*1	4	P008	B	100 (45.4)
*		* * *		*			
Pyridine, 4-amino-	504245	4-Aminopyridine, 4-Pyridinamine	*1	4	P008	B	100 (45.4)
*		* * *		*			
Sodium azide	26628228		*1	4	P105	B	100 (45.4)
*		* * *		*			
Vanadium(V) oxide	1314621	Vanadium pentoxide	1,000	1,4	P120	B	100 (45.4)
*		* * *		*			
Vanadium pentoxide	1314621	Vanadium(V) oxide	1,000	1,4	P120	B	100 (45.4)
*		* * *		*			
Vinyl acetate	108054	Vinyl acetate monomer	1,000	1		C	1,000 (454)
*		* * *		*			
Vinyl acetate monomer	108054	Vinyl acetate	1,000	1		C	1,000 (454)

*—Indicates the statutory source as defined by 1, 2, 3, or 4 below:
1—Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4).
2—Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a).
3—Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 112.
4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 3001.
5a—Indicates that the statutory source for designation of this hazardous substance is CERCLA Section 102(a).

PART 355—EMERGENCY PLANNING AND NOTIFICATION

4. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002 and 11048.

5. Part 355 is amended by revising the following entries to Appendices A and B.

APPENDIX A.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical Order]

CAS No.	Chemical Name	Notes	Proposed RQ (pounds)	Threshold planning quantity (pounds)
01752303	Acetone thiosemicarbazide	d	100	1,000/10,000
00079061	Acrylamide	i	1000	1,000/10,000
00814686	Acrylyl chloride	d, f	100	100
00111693	Adiponitrile	d, l	1000	1,000
00107119	Allylamine	d	100	500
00054626	Aminopterin	d	10	500/10,000
00078535	Amiton	d	100	500
03734972	Amiton oxalate	d	100	100/10,000
00300629	Amphetamine	d	100	1,000
00062533	Aniline	i	1000	1,000
00088051	Aniline, 2,4,6-trimethyl-	d	100	500
07783702	Antimony pentafluoride	d	100	500
01397940	Antimycin A	c, d	1000	1,000/10,000
07784421	Arsine	d	1	100
02642719	Azinphos-ethyl	d	100	100/10,000
00098873	Benzal chloride		100	500
00098166	Benzenamine, 3-(trifluoromethyl)-	d	100	500
00100141	Benzene, 1-(chloromethyl)-4-nitro-	d	100	500/10,000
00098055	Benzenearsonic acid	d	10	10/10,000
03615212	Benzimidazole, 4,5-dichloro-2-(trifluoromethyl)-	d, e	100	500/10,000
00140294	Benzyl cyanide	d, f	100	500
15271417	Bicyclo(2,2,1)heptane-2-carbonitrile, 5-chloro-6-((((methylamino) carbonyl)oxy)m.	d	100	500/10,000
00534076	Bis(chloromethyl)ketone	d	10	10/10,000
04044659	Bitoscanate	d	100	500/10,000
10294345	Boron trichloride	d	100	500

APPENDIX A.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical Name	Notes	Proposed RQ (pounds)	Threshold planning quantity (pounds)
07637072	Boron trifluoride	d	100	500
00353424	Boron trifluoride compound with methyl ether	d	1000	1,000
28772567	Bromadiolone	d	100	100/10,000
07726956	Bromine	d, i	100	500
01306190	Cadmium oxide	d	10	100/10,000
02223930	Cadmium stearate	c, d	10	1,000/10,000
00056257	Cantharidin	d	100	100/10,000
00051832	Carbachol chloride	d	100	500/10,000
26419738	Carbamic acid, methyl-, o-(((2,4-dimethyl-1,3-dithiolan-2-yl)methylene)amino)-.	d	100	100/10,000
00786196	Carbophenothion	d	100	500
24934916	Chlormephos	d	100	500
00999815	Chlormequat chloride	d, f	100	100/10,000
00079118	Chloroacetic acid	d	1100	100/10,000
00107073	Chloroethanol	d	100	500
00627112	Chloroethyl chloroformate	d	100	1,000
00470906	Chlorofenvinfos	d	100	500
03691358	Chlorophacinone	d	100	100/10,000
01982474	Chloroxuron	d	100	500/10,000
21923239	Chlorthiophos	d, f	100	500
10025737	Chromic chloride	d	1	1/10,000
10210681	Cobalt carbonyl	d, f	10	10/10,000
62207765	Cobalt, ((2,2'-(1,2-ethanediylbis (nitrilomethylidyne))bis(6-fluorophenolato))(2).	d	100	100/10,000
00064868	Colchicine	d, f	10	10/10,000
05836293	Coumatetralyl	d	100	500/10,000
00535897	Crimidine	d	100	100/10,000
00506785	Cyanogen iodide	d	1000	1,000/10,000
00506683	Cyanogen bromide		100	500/10,000
02636262	Cyanophos	d	1000	1,000
00675149	Cyanuric fluoride	d	100	100
00066819	Cycloheximide	d	100	100/10,000
00108918	Cyclohexylamine	d, i	1000	10,000
17702419	Decaborane(14)	d	10	500/10,000
08065483	Demeton	d	100	500
00919868	Demeton-S-methyl	d	100	500
10311849	Dialifor	d	100	100/10,000
19287457	Diborane	d	10	100
00110576	Trans-1,4-dichlorobutene	d	100	500
00149746	Dichloromethylphenylsilane	d	100	1,000
00141662	Dicrotophos	d	100	100
00814493	Diethyl chlorophosphate	d, f	100	500
01642542	Diethylcarbamazine citrate	d	100	100/10,000
00071636	Digitoxin	c, d	100	100/10,000
02238075	Diglycidyl ether	d	100	1,000
20830755	Digoxin	d, f	10	10/10,000
00115264	Dimefox	d	100	500
02524030	Dimethyl phosphorochloridothioate	d	100	500
00075785	Dimethyldichlorosilane	d, f	100	500
00099989	Dimethyl-p-phenylenediamine	d	1	10/10,000
00075183	Dimethyl sulfide	d	100	100
00644644	Dimetilan	d	100	500/10,000
00088857	Dinoseb	T	100	
01420071	Dinoterb	d	100	500/10,000
00078342	Dioxathion	d	100	500
00082666	Diphacinone	d	10	10/10,000
00514738	Dithiazanine iodide	d	100	500/10,000
00316427	Emetine, dihydrochloride	d, f	1	1/10,000
02778043	Endothion	d	100	500/10,000
02104645	EPN	d	100	100/10,000
00050146	Ergocalciferol	c, d	100	1,000/10,000
00379793	Ergotamine tartrate	d	100	500/10,000
01622328	Ethanesulfonyl chloride, 2-chloro-	d	100	500
01622328	Ethanesulfonyl chloride, 2-chloro-	d	100	500
10140871	Ethanol, 1,2-dichloro-, acetate	d	100	1,000
13194484	Ethoprophos	d	1000	1,000
00538078	Ethylbis(2-chloroethyl)amine	d, f	100	500
00371620	Ethylene fluorohydrin	c, d, f	10	10
00542905	Ethylthiocyanate	d	1000	10,000
22224926	Fenamiphos	d	10	10/10,000
00122145	Fenitrothion	d	100	500
00115902	Fensulfothion	d, f	100	500
04301502	Fluenetil	d	100	100/10,000
00144490	Fluoroacetic acid	d	10	10/10,000
00359068	Fluoroacetyl chloride	c, d	10	10
00051218	Fluorouracil	d	100	500/10,000

APPENDIX A.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical Name	Notes	Proposed RQ (pounds)	Threshold planning quantity (pounds)
00944229	Fonofos	d	100	500
00107164	Formaldehyde cyanohydrin	d, f	1000	1,000
23422539	Formetanate hydrochloride	d, f	100	500/10,000
02540821	Formothion	d	10	100
17702577	Formparante	d	100	100/10,000
21548323	Fosthietan	d	100	500
03878191	Fuberidazole	d	100	100/10,000
13450903	Gallium trichloride	d	100	500/10,000
04835114	Hexamethylenediamine, N,N'-dibutyl-	d	100	500
07647010	Hydrogen chloride	d, i	100	500
07722841	Hydrogen peroxide (concentration >52%)	d, i	1000	1,000
07783075	Hydrogen selenide	d	1	10
00123319	Hydroquinone	i	100	500/10,000
13463406	Iron, pentacarbonyl-	d	10	100
00297789	Isobenzan	d	100	100/10,000
00078820	Isobutyronitrile	d, f	1000	1,000
00102363	Isocyanic acid, 3,4-dichlorophenyl ester	d	100	500/10,000
04098719	Isophorone diisocyanate	b, d	100	100
00108236	Isopropyl chloroformate	d	1000	1,000
00625558	Isoprophyl formate	d	100	500
00119380	Isopropylmethylpyrazolyl dimethylcarbamate	d	100	500
00078977	Lactonitrile	d	1000	1,000
21609905	Leptophos	d	100	500/10,000
00541253	Lewisite	c, d, f	10	10
07580678	Lithium hydride	b, d	10	100
00109773	Malononitrile	T	100	
12108133	Manganese, tricarbonyl methylcyclopentadienyl	d, f	100	100
00051752	Mechlorethamine	c,d	10	10
00950107	Mephosfolan	d	100	500
01600277	Mercuric acetate	d	100	500/10,000
07487947	Mercuric chloride	d	100	500/10,000
21908532	Mercuric oxide	d	100	500/10,000
10476956	Methacrolein diacetate	d	1000	1,000
00760930	Methacrylic anhydride	d	100	500
00126987	Methacrylonitrile	i, T	100	
00920467	Methacryloyl chloride	d	100	100
30674807	Methacryloyloxyethyl isocyanate	d, f	100	100
10265926	Methamidophos	d	100	100/10,000
00558258	Methanesulfonyl fluoride	d	100	1,000
00950378	Methidathion	d	100	500/10,000
00151382	Methoxyethylmercuric acetate	d	100	500/10,000
00624920	Methyl disulfide	d	10	100
00556616	Methyl isothiocyanate	b, d	100	500
03735237	Methyl phenkapton	d	100	500
00676971	Methyl phosphonic dichloride	b, d	100	100
00080637	Methyl 2-chloroacrylate	d	100	500
00079221	Methyl chloroformate		100	500
00502396	Methylmercuric dicyanamide	d	10	500/10,000
00556649	Methyl thiocyanate	d	1000	10,000
00075796	Methyltrichlorosilane	d, f	100	500
00078944	Methyl vinyl ketone	d	10	10
01129415	Metolcarb	d	100	100/10,000
00315184	Mexacarbate		100	500/10,000
02763964	Muscimol	a, f	100	10,000
06923224	Monocrotophos	d	10	10/10,000
00505602	Mustard Gas	d, f	1	500
13463393	Nickel carbonyl		1	1
00065305	Nicotine sulfate	d	10	100/10,000
01122607	Nitrocyclohexane	d	100	500
00991424	Norbormide	d	100	100/10,000
00000000	Organorhodium complex (PMN-82-147)	d	10	10/10,000
00630604	Ouabain	c, d	100	100/10,000
23135220	Oxamyl	d	100	100/10,000
00078717	Oxetane, 3,3-bis(chloromethyl)-	i	100	500
02497076	Oxydisulfoton	d, f	100	500
10028156	Ozone	d	10	100
01910425	Paraquat	d	10	10/10,000
02074502	Paraquat methosulfate	d	10	10/10,000
19624227	Pentaborane	d	10	500
02570265	Pentadecylamine	d	100	100/10,000
00079210	Peracetic acid	d	10	500
00108952	Phenol		100	500/10,000
00097187	Phenol, 2,2'-thiobis(4,6-dichloro-	d	100	100/10,000
00064006	Phenol, 3-(1-methylethyl)-, methylcarbamate	d	100	500/10,000
04418660	Phenol, 2,2'-thiobis[4-chloro-6-methyl-	d	100	100/10,000
00058366	Phenoxarsine, 10, 10'-oxydi	d	100	500/10,000

APPENDIX A.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical Name	Notes	Proposed RQ (pounds)	Threshold planning quantity (pounds)
00059881	Phenylhydrazine hydrochloride	d	100	1,000/10,000
02097190	Phenylsilatrane	d, f	100	100/10,000
04104147	Phosacetim	d	100	100/10,000
00947024	Phosfolan	d	100	100/10,000
00732116	Phosmet	d	10	10/10,000
13171216	Phosphamidon	d	100	100
50782699	Phosphonothioc acid, methyl-, S-(2-(bis(1-methylethyl)amino)ethyl) O-ethyl ester.	d	10	100
02665307	Phosphonothioc acid, methyl-,O-(4-nitrophenyl) O-phenyl ester	d	100	500
02703131	Phosphonothioic acid, methyl-,O-ethyl O-(4-(methylthio)phenyl) ester	d	10	500
03254635	Phosphoric acid, dimethyl 4-(methylthio)phenyl ester	d	100	500
02587908	Phosphorothioic acid, O,O-dimethyl-S-(2-methylthio)ethyl ester	c, d, e	100	500
10025873	Phosphorus oxychloride		100	500
10026138	Phosphorus pentachloride	b, d	100	500
01314563	Phosphorus pentoxide	b, d	10	10
00057476	Physostigmine	d	100	100/10,000
00057647	Physostigmine, salicylate (1:1)	d	100	100/10,000
00124878	Picrotoxin	d	100	500/10,000
00110894	Piperidine	d	100	1,000
05281130	Piprotal	d	100	100/10,000
23505411	Pirimifos-ethyl	d	1000	1,000
02631370	Promecarb	d, f	100	500/10,000
00106967	Propargyl bromide	d	1	10
00057578	Propiolactone, beta-	d	10	500
00070699	Propiophenone, 4-amino	d, e	100	100/10,000
00109615	Propyl chloroformate	d	100	500
02275185	Prothoate	d	100	100/10,000
00129000	Pyrene	c	1000	1,000/10,000
00140761	Pyridine, 2-methyl-5-vinyl	d	100	500
01124330	Pyridine, 4-nitro-, 1-oxide	d	100	500/10,000
00504245	Pyridine, 4-Amino-	f	100	500/10,000
53558251	Pyriminil	d, f	100	100/10,000
14167181	Salcomine	d	100	500/10,000
00107448	Sarin	d, f	10	10
07791233	Selenium oxychloride	d	100	500
00563417	Semicarbazide hydrochloride	d	100	1,000/10,000
03037727	Silane, (4-aminobutyl)diethoxymethyl-	d	1000	1,000
26628228	Sodium azide	b	100	500
00124652	Sodium cacodylate	d	100	100/10,000
00131522	Sodium pentachlorophenate	d	100	100/10,000
13410010	Sodium selenate	d	100	100/10,000
10102202	Sodium tellurite	d	100	500/10,000
00900958	Stannane, acetoxytriphenyl-	d, e	10	500/10,000
00060413	Strychnine, sulfate	d	100	100/10,000
03569571	Sulfoxide, 3-chloropropyl octyl	d	100	500
07446095	Sulfur dioxide	d, i	100	500
07783600	Sulfur tetrafluoride	d	100	100
07446119	Sulfur trioxide	b, d	100	100
00077816	Tabun	c, d, f	10	10
13494809	Tellurium	d	100	500/10,000
07783804	Tellurium hexafluoride	d, h	100	100
13071799	Terbufos	d, f	100	100
00597648	Tetraethyltin	c, d	10	100
00075741	Tetramethyllead	c, d, i	100	100
02757188	Thallous malonate	c, d, f	100	100/10,000
02231574	Thiocarbazide	d	100	1,000/10,000
00614788	Thiourea, (2-methylphenyl)-	d	100	500/10,000
07550450	Titanium tetrachloride	d	100	100
01031476	Triamiphos	d	100	500/10,000
24017478	Triazofos	d	100	500
01558254	Trichloro(chloromethyl)silane	d	10	100
00076028	Trichloroacetyl chloride	d	100	500
27137855	Trichloro(dichlorophenyl)silane	d	100	500
00115219	Trichloroethylsilane	d, f	100	500
00327980	Trichloronate	d, h	100	500
00098135	Trichlorophenylsilane	d, f	100	500
00998301	Triethoxysilane	d	100	500
00075774	Trimethylchlorosilane	d	1000	1,000
00824113	Trimethylolpropane phosphite	d, f	100	100/10,000
01066451	Trimethyltin chloride	d	100	500/10,000
00639587	Triphenyltin chloride	d	100	500/10,000
00555771	Tris(2-chloroethyl)amine	d, f	10	100
02001958	Valinomycin	c, d	100	1,000/10,000
01314621	Vanadium(V) oxide		100	100/10,000
00108054	Vinyl acetate	i	1000	1,000
00129066	Warfarin sodium	d, f	10	100/10,000

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APPENDIX A.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical Name	Notes	Proposed RQ (pounds)	Threshold planning quantity (pounds)
28347139	Xylylene dichloride	d	100	100/10,000
58270089	Zinc, dichloro(4,4-dimethyl-5((((methylamino)carbonyl)oxy)imino)-pentanenitrile)-, (T-4)-.	d	100	100/10,000

Notes:

a—This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.

b—This material is a reactive solid. The TPQ does not default to 10,000 pounds for non-powder, non-molten, non-solution form.

c—The calculated TPQ changed after technical review as described in the technical support document.

d—Until the proposed RQs are finalized, reporting under SARA section 304(a)(2) must be done at the statutory level (see Table 302.4 in this proposed rule for these statutory RQs).

e—New chemicals added that were not part of the original list of 402 substances.

f—Revised TPQ based on new or re-evaluated toxicity data.

g—TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.

h—The TPQ was revised after proposal due to calculation error.

i—Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other chemicals").

APPENDIX B.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS Number Order]

CAS No.	Chemical name	Notes	Proposed RQ (pounds)	Threshold planning quantity (pounds)
00000000	Organorhodium complex (PMN-82-147)	d	10	10/10,000
00050146	Ergocalciferol	c, d	100	1,000/10,000
00051218	Fluorouracil	d	100	500/10,000
00051752	Mechlorethamine	c, d	10	10
00051832	Carbachol chloride	d	100	500/10,000
00054626	Aminopterin	d	10	500/10,000
00056257	Cantharidin	d	100	100/10,000
00057476	Physostigmine	d	100	100/10,000
00057578	Propiolactone, beta-	d	10	500
00057647	Physostigmine, salicylate (1:1)	d	100	100/10,000
00058366	Phenoxarsine, 10, 10'-oxydi	d	100	500/10,000
00059881	Phenylhydrazine hydrochloride	d	100	1,000/10,000
00060413	Strychnine, sulfate	d	100	100/10,000
00062533	Aniline	i	1000	1,000
00064006	Phenol, 3-(1-methylethyl)-, methylcarbamate	d	100	500/10,000
00064868	Colchicine	d, f	10	10/10,000
00065305	Nicotine sulfate	d	10	100/10,000
00066819	Cyclohexylamine	d	100	100/10,000
00070699	Propiophenone, 4-amino	d, e	100	100/10,000
00071636	Digitoxin	c, d	100	100/10,000
00075183	Dimethyl sulfide	d	100	100
00075741	Tetramethyllead	c, d, i	100	100
00075774	Trimethylchlorosilane	d	1000	1,000
00075785	Dimethyldichlorosilane	d, f	100	500
00075796	Methyltrichlorosilane	d, f	100	500
00076028	Trichloroacetyl chloride	d	100	500
00077816	Tabun	c, d, f	10	10
00078342	Dioxathion	d	100	500
00078535	Amiton	d	100	500
00078717	Oxetane, 3,3-bis(chloromethyl)-	i	100	500
00078820	Isobutyronitrile	d, f	1000	1,000
00078944	Methyl vinyl ketone	d	10	10
00078977	Lactonitrile	d	1000	1,000
00079061	Acrylamide	i	1000	1,000/10,000
00079118	Chloroacetic acid	d	100	100/10,000
00079210	Peracetic acid	d	10	500
00079221	Methyl chloroformate		100	500
00080637	Methyl 2-chloroacrylate	d	100	500
00082666	Diphacinone	d	10	10/10,000
00088051	Aniline, 2,4,6-trimethyl-	d	100	500
00088857	Dinoseb	T	100	
00097187	Phenol, 2,2'-thiobis(4,6-dichloro-	d	100	100/10,000
00098055	Benzenearsonic acid	d	10	10/10,000
00098135	Trichlorophenylsilane	d, f	100	500
00098168	Benzenamine, 3-(trifluoromethyl)-	d	100	500
00098873	Benzal chloride		100	500
00099989	Dimethyl-p-phenylenediamine	d	1	10/10,000
00100141	Benzene, 1-(chloromethyl)-4-nitro-	d	100	500/10,000
00102363	Isocyanic acid, 3,4-dichlorophenyl ester	d	100	500/10,000
00106967	Propargyl bromide	d	1	10
00107073	Chloroethanol	d	100	500
00107119	Allylamine	d	100	500

APPENDIX B.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Proposed RQ (pounds)	Threshold planning quantity (pounds)
00107164	Formaldehyde cyanohydrin	d, f	1000	1,000
00107448	Sarin	d, f	10	10
00108054	Vinyl acetate	i	1000	1,000
00108236	Isopropyl chloroformate	d	1000	1,000
00108918	Cyclohexylamine	d, i	1000	10,000
00108952	Phenol		100	500/10,000
00109615	Propyl chloroformate	d	100	500
00109773	Malononitrile	T	100	
00110576	Trans-1,4-dichlorobutene	d	100	500
00110894	Piperidine	d	100	1,000
00111693	Adiponitrile	d, i	1000	1,000
00115219	Trichloroethylsilane	d, f	100	500
00115264	Dimefox	d	100	500
00115902	Fensulfothion	d, f	100	500
00119380	Isopropylmethylpyrazolyl dimethylcarbamate	d	100	500
00122145	Fenitrothion	d	100	500
00123319	Hydroquinone	i	100	500/10,000
00124652	Sodium cacodylate	d	100	100/10,000
00124878	Picrotoxin	d	100	500/10,000
00126987	Methacrylonitrile	i, T	100	
00129000	Pyrene	c	1000	1,000/10,000
00129066	Warfarin sodium	d, f	10	100/10,000
00131522	Sodium pentachlorophenate	d	100	100/10,000
00140294	Benzyl cyanide	d, f	100	500
00140761	Pyridine, 2-methyl-5-vinyl	d	100	500
00141662	Dicrotophos	d	100	100
00144490	Fluoroacetic acid	d	10	10/10,000
00149746	Dichloromethylphenylsilane	d	100	1,000
00151382	Methoxyethylmercuric acetate	d	100	500/10,000
00297789	Isobenzan	d	100	100/10,000
00300629	Amphetamine	d	100	1,000
00315184	Mexacarbate		100	500/10,000
00316427	Emetine, dihydrochloride	d, f	1	1/10,000
00327980	Trichloronate	d, h	100	500
00353424	Boron trifluoride compound with methyl ether	d	1000	1,000
00359068	Fluoroacetyl chloride	c, d	10	10
00371620	Ethylene fluorohydrin	c, d, f	10	10
00379793	Ergotamine tartrate	d	100	500/10,000
00470906	Chlorofenvinfos	d	100	500
00502396	Methylmercuric dicyanamid	d	10	500/10,000
00504245	Pyridine, 4-Amino-	f	100	500/10,000
00505602	Mustard Gas	d, f	1	500
00506683	Cyanogen bromide		100	500/10,000
00506785	Cyanogen iodide	d	1000	1,000/10,000
00514738	Dithiazanine iodide	d	100	500/10,000
00534076	Bis(chloromethyl)ketone	d	10	10/10,000
00535897	Crimidine	d	100	100/10,000
00538078	Ethylbis(2-chloroethyl)amine	d, f	100	500
00541253	Lewisite	c, d, f	10	10
00542905	Ethylthiocyanate	d	1000	10,000
00555771	Tris(2-chloroethyl)amine	d, f	10	100
00556616	Methyl isothiocyanate	b, d	100	500
00556649	Methyl thiocyanate	d	1000	10,000
00558258	Methanesulfonyl fluoride	d	100	1,000
00563417	Semicarbazide hydrochloride	d	100	1,000/10,000
00597648	Tetraethyltin	c, d	10	100
00614788	Thiourea, (2-methlyphenyl)-	d	100	500/10,000
00624920	Methyl disulfide	d	10	100
00625558	Isopropyl formate	d	100	500
00627112	Chloroethyl chloroformate	d	100	1,000
00630604	Ouabain	c, d	100	100/10,000
00639587	Triphenyltin chloride	d	100	500/10,000
00644644	Dimetilan	d	100	500/10,000
00675149	Cyanuric fluoride	d	100	100
00676971	Methyl phosphonic dichlorid	b, d	100	100
00732116	Phosmet	d	10	10/10,000
00760930	Methacrylic anhydride	d	100	500
00786196	Carbophenothion	d	100	500
00814493	Diethyl chlorophosphate	d, f	100	500
00814686	Acrylyl chloride	d, f	100	100
00824113	Trimethylolpropane phosphite	d, f	100	100/10,000
00900958	Stannane, acetoxytriphenyl-	d, e	10	500/10,000
00919868	Demeton-S-methyl	d	100	500
00920467	Methacryloyl chloride	d	100	100
00944229	Fonofos	d	100	500
00947024	Phosfolan	d	100	100/10,000

APPENDIX B.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Proposed RQ (pounds)	Threshold planning quantity (pounds)
00950107	Mephosfolan	d	100	500
00950378	Methidathion	d	100	500/10,000
00991424	Norbormide	d	100	100/10,000
00998301	Triethoxysilane	d	100	500
00999815	Chlormequat chloride	d, f	100	100/10,000
01031476	Triamiphos	d	100	500/10,000
01066451	Trimethyltin chloride	d	100	500/10,000
01122607	Nitrocyclohexane	d	100	500
01124330	Pyridine, 4-nitro-, 1-oxide	d	100	500/10,000
01129415	Metolcarb	d	100	100/10,000
01306190	Cadmium oxide	d	10	100/10,000
01314563	Phosphorus pentoxide	b, d	10	10
01314621	Vanadium(v) oxide		100	100/10,000
01397940	Antimycin A	c, d	1000	1,000/10,000
01420071	Dinoterb	d	100	500/10,000
01558254	Trichloro(chloromethyl)silane	d	10	100
01600277	Mercuric acetate	d	100	500/10,000
01622328	Ethanesulfonyl chloride, 2-chloro-	d	100	500
01642542	Diethylcarbamazine citrate	d	100	100/10,000
01752303	Acetone thiosemicarbazide	d	100	1,000/10,000
01910425	Paraquat	d	10	10/10,000
01982474	Chloroxuron	d	100	500/10,000
02001958	Valinomycin	c, d	100	1,000/10,000
02074502	Paraquat methosulfate	d	10	10/10,000
02097190	Phenylsilatrane	d, f	100	100/10,000
02104645	EPN	d	100	100/10,000
02223930	Cadmium stearate	c, d	10	1,000/10,000
02231574	Thiocarbazide	d	100	1,000/10,000
02238075	Diglycidyl ether	d	100	1,000
02275185	Prothoate	d	100	100/10,000
02497076	Oxydisulfoton	d, f	100	500
02524030	Dimethyl phosphorochloridothioate	d	100	500
03540821	Formothion	d	10	100
02570265	Pentadecylamine	d	100	100/10,000
02587908	Phosphorothioic acid, O,O-dimethyl-S-(2-methylthio)ethyl ester	c, d, e	100	500
02631370	Promecarb	d, f	100	500/10,000
02636262	Cyanophos	d	1000	1,000
02642719	Azinphos-ethyl	d	100	100/10,000
02665307	Phosphonothioc acid, methyl-,O-(4-nitrophenyl) O-phenyl ester	d	100	500
02703131	Phosphonothioic acid, methyl-,O-ethyl O-(4-(methylthio)phenyl) ester	d	10	500
02757188	Thallous malonate	c, d, f	100	100/10,000
02763964	Muscimol	a, f	100	10,000
02778043	Endothion	d	100	500/10,000
03037727	Silane, (4-aminobutyl)diethoxymethyl-	d	1000	1,000
03254635	Phosphoric acid, dimethyl 4-(methylthio)phenyl ester	d	100	500
03569571	Sulfoxide, 3-chloropropyl octyl	d	100	500
03615212	Benzimidazole, 4,5-dichloro-2-(trifluoromethyl)-	d, e	100	500/10,000
03691358	Chlorophacinone	d	100	100/10,000
03734972	Amiton oxalate	d	100	100/10,000
03735237	Methyl phenkapton	d	100	500
03878191	Fuberidazole	d	100	100/10,000
04044659	Bitoscanate	d	100	500/10,000
04098719	Isophorone diisocyanate	b, d	100	100
04104147	Phosacetim	d	100	100/10,000
04301502	Fluenetil	d	100	100/10,000
04418660	Phenol, 2,2'-thiobis[4-chloro-6-methyl-	d	100	100/10,000
04835114	Hexamethylenediamine, N,N'-dibutyl-	d	100	500
05281130	Piprotal	d	100	100/10,000
05836293	Coumatetralyl	d	100	500/10,000
06923224	Monocrotophos	d	10	10/10,000
07446095	Sulfur dioxide	d, i	100	500
07446119	Sulfur trioxide	b, d	100	100
07487947	Mercuric chloride	d	100	500/10,000
07550450	Titanium tetrachloride	d	100	100
07580678	Lithium hydride	b, d	10	100
07637072	Boron trifluoride	d	100	500
07647010	Hydrogen chloride	d, i	100	500
07722841	Hydrogen peroxide (concentration >52%)	d, i	1000	1,000
07726956	Bromine	d, i	100	500
07783075	Hydrogen selenide	d	1	10
07783600	Sulfur tetrafluoride	d	100	100
07783702	Antimony pentafluoride	d	100	500
07783804	Tellurium hexafluoride	d, h	100	100
07784421	Arsine	d	1	100
07791233	Selenium oxychloride	d	100	500
08065483	Demeton	d	100	500

APPENDIX B.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Proposed RQ (pounds)	Threshold planning quantity (pounds)
10025737	Chromic chloride	d	1	1/10,000
10025873	Phosphorus oxychloride		100	500
10026138	Phosphorus pentachloride	b, d	100	500
10028156	Ozone	d	10	100
10102202	Sodium tellurite	d	100	500/10,000
10140871	Ethanol, 1,2-dichloro-, acetate	d	100	1,000
10210681	Cobalt carbonyl	d, f	10	10/10,000
10265926	Methamidophos	d	100	100/10,000
10294345	Boron trichloride	d	100	500
10311849	Dialifor	d	100	100/10,000
10476956	Methacrolein diacetate	d	1000	1,000
12108133	Manganese, tricarbonyl methylcyclopentadienyl	d, f	100	100
13071799	Terbufos	d, f	100	100
13171216	Phosphamidon	d	100	100
13194484	Ethoprophos	d	1000	1,000
13410010	Sodium selenate	d	100	100/10,000
13450903	Gallium trichloride	d	100	500/10,000
13463393	Nickel carbonyl		1	1
13463406	Iron, pentacarbonyl-	d	10	100
13494809	Tellurium	d	100	500/10,000
14167181	Salcomine	d	100	500/10,000
15271417	Bicyclo(2,2,1)heptane-2-carbonitrile, 5-chloro-6-((((methylamino)carbonyl)oxy)m.	d	100	500/10,000
17702419	Decaborane(14)	d	10	500/10,000
17702577	Formparanate	d	100	100/10,000
19287457	Diborane	d	10	100
19624227	Pentaborane	d	10	500
20830755	Digoxin	d, f	10	10/10,000
21548323	Fosthietan	d	100	500
21609905	Leptophos	d	100	500/10,000
21908532	Mercuric oxide	d	100	500/10,000
21923239	Chlorthiophos	d, f	100	500
22224926	Fenamiphos	d	10	10/10,000
23135220	Oxamyl	d	100	100/10,000
23422539	Formetanate hydrochloride	d, f	100	500/10,000
23505411	Pirimifos-ethyl	d	1000	1,000
24017478	Triazofos	d	100	500
24934916	Chlormephos	d	100	500
26419738	Carbamic acid, methyl-, O-((((2,4-dimethyl-1,3-dithiolan-2-yl)methylene)amino)-.	d	100	100/10,000
26628228	Sodium azide	b	100	500
27137855	Trichloro(dichlorophenyl)silane	d	100	500
28347139	Xylylene dichloride	d	100	100/10,000
28772567	Bromadiolone	d	100	100/10,000
30674807	Methacryloyloxyethyl isocyanate	d, f	100	100
50782699	Phosphonothioc acid, methyl-, S-(2-(bis(i-methylethyl)amino)ethyl) O-ethyl ester.	d	10	100
53558251	Pyriminil	d, f	100	100/10,000
58270089	Zinc, dichloro(4,4-dimethyl-5((((methylamino)carbonyl)oxy)imino) pentanenitrile)-, (T-4)-.	d	100	100/10,000
62207765	Cobalt, ((2,2'-(1,2-ethanediylbis (nitrilomethylidyne))bis(6-fluorophenolato))(2).	d	100	100/10,000

NOTES:

a—This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.

b—This material is a reactive solid. The TPQ does not default to 10,000 pounds for non-powder, non-molten, non-solution form.

c—The calculated TPQ changed after technical review as described in the technical support document.

d—Until the proposed RQs are finalized, reporting under SARA section 304(a)(2) must be done at the statutory level (see Table 302.4 in this proposed rule for these statutory RQs).

e—New chemicals added that were not part of the original list of 402 substances.

f—Revised TPQ based on new or re-evaluated toxicity data.

g—TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.

h—The TPQ was revised after proposal due to calculation error.

i—Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other chemicals").

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federal register

Wednesday
August 30, 1989

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20
Migratory Bird Hunting; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN-1018-AA24

Migratory Bird Hunting; Early Seasons, Bag and Possession Limits of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands

AGENCY: Fish and Wildliife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sea ducks in the Atlantic Flyway; experimental September duck seasons in identified States; experimental and special September Canada goose seasons in portions of identified States; sandhill cranes in the Central and Pacific Flyways; doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons during 1989–90. The taking of these migratory birds is prohibited unless hunting seasons are specifically provided. This rule will permit the hunting of these species within specified periods of time beginning as early as September 1, as has been the case in past years.

DATE: Effective on August 30, 1989.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC, telephone 703–358–1714.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 27, 1989, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (54 FR 12534) a proposal to amend 50 CFR part 20, with comment periods ending July 23, 1989, for early-season proposals, and August 28, 1989, for the late-season proposals. The March 27 document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under § 20.101 through 20.107, 20.109 and 20.110 of Subpart K. On June 6, 1989, the Service published in the **Federal Register** (54 FR 24290) a second document consisting of a supplemental proposed rulemaking dealing with both the early- and late-season frameworks. On July 13, 1989, the Service published for public comment in the **Federal Register** (54 FR 29640) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On August 11, 1989, the Service published a fourth document (54 FR 32975) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico and the Virgin Islands selected early-season hunting dates, hours, areas and limits for 1989–90. On August 16, 1989, the Service published the fifth document in the series (54 FR 33721) that deals specifically with proposed frameworks for the 1989–90 late-season migratory bird hunting regulations. The final rule described here is the sixth in a series of proposed, supplemental and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending Subpart K of 50 CFR part 20 to set hunting seasons, hours, areas and limits for mourning, white-winged and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules, woodcock; common snipe; sea ducks in the Atlantic Flyway; experimental September duck seasons in identified States; experimental and special September Canada goose seasons in portions of identified States; sandhill cranes in the Central and Pacific Flyways; doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons.

Nontoxic Shot Regulations

In the April 13, 1989, **Federal Register** (54 FR 14814), the Service published a final rule describing zones in which lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1989–90 season. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341).

Endangered Species Act Consideration

On June 22, 1989, the Division of Endangered Species and Habitat Conservation gave a biological opinion that the proposed actions were not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Division of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act.

In the **Federal Register** dated March 27, 1989 (54 FR 12534), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated August 11, 1989 (54 FR 32975).

Authorship

The primary author of this rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Byron K. Williams, Acting Chief.

Regulations Promulgation

After analysis of migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the early proposals (54 FR 12534, March 27, 1989; 54 FR 24290, June 6, 1989; and 54 FR 29640, July 13, 1989), the Service published in the **Federal Register** on August 11, 1989 (54 FR 32975) final early-season frameworks for the United States, including Alaska and Hawaii, and Puerto Rico and the Virgin Islands. Copies of the final frameworks were sent to the officials of the State conservation agencies and to conservation agency officials in Puerto Rico and the Virgin Islands who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas and limits specified in the frameworks.

The taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The following amendments will permit taking of the designated species within specified time periods beginning as early as September 1, as has been the case in past years.

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 27, June 6, and July 13, 1989, the Service established what it believed were the longest periods possible for public comment. In doing this the Serivce recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select their season dates, shooting hours, hunting areas and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) (Administrative Procedure Act), and these regulations will, therefore, take effect immediately upon publication.

Accordingly, with each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of Title 50, Chapter I, Subchapter B, Part 20, Subpart K, are amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting imports, Transportation, Wildlife.

PART 20—[AMENDED]

For these reasons set out in the preamble, Title 50, Chapter I, Subchapter B, Part 20, Subpart K, is amended as follows.

1. The authority citation for Part 20 is revised to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–718h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103–04.

Note: The following annual hunting regulations provided for by §§20.101 through 20.106 and 20.109 of 50 CFR Part 20 will not appear in Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

§ 20.101 Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands.

1. Subject to the applicable provisions of the preceding sections of this part, the open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits, and areas for hunting the species designated in this section are prescribed as follows:

(a) *Puerto Rico*

	Doves	Pigeons
Daily bag limit	10 singly or in the aggregate of all permitted species.	5
Possession limit.	10 singly or in the aggregate of all permitted species.	5
Season dates	September 2 to October 30, 1989.	
Shooting hours	One-half hour before sunrise to sunset daily.	

Restrictions: Only the following species of doves and pigeons may be hunted during the open season: Zenaida dove-Tortola cardosantera; white-winged dove—Tortola aliblanca o cubanita; mourning dove—Tortola rabilarga o rabiche; and scaly-naped pigeon—Paloma turca o torcaz.

Closed Areas

No season is prescribed for doves and pigeons on Mona Island, in the Municipality of Culebra and on Desecheo Island.

No season is prescribed in the El Verde Closure Area consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south of Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

No season is prescribed for doves and pigeons of any species in all of Cidra Municipality and in portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south of Highway 765 to Highway 763, south on Highway 763 to the Rio Guavata, west along the Rio Guavata to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning.

Check Commonwealth Regulations for Additional Restrictions

(b) *Puerto Rico*

	Ducks	Common moorhens (gallinules)	Common snipe
Daily bag limits	3	6	6
Possession limits	6	12	12
Season dates	November 4 to December 4, 1989 & February 3 to February 26, 1990.		
Shooting hours	One-half hour before sunrise until sunset daily.		

Restrictions: No season is prescribed for waterfowl in the Municipality of Culebra and on Desecheo Island. The season is closed on the ruddy duck *(Oxyura jamaicensis)*; Bahama pintail *(Anas bahamensis)*; West Indian whistling (tree) duck *(Dendrocygna arborea)*; fulvous whistling (tree) duck *(Dendrocygna bicolor)*; masked duck *Oxyura dominica)*; purple gallinule *(Porphyrula martinica)*; American coot *Fulica americana)*; and Caribbean coot *(Fulica carbaea)*.

Check Commonwealth Regulations for Additional Restrictions

Note: Local names for game bird: Ruddy duck *(Oxyura jamaicensis)*—Pato rojo (protected); purple gallinule *(Porphyrula martinica)*—Gallareta azul (protected); and Puerto Rican plain pigeon *Columba inornata wetmorei)*—Paloma sabanera (protected).

(c) *Virgin Islands*

	Zenaida dove	Scaly-naped pigeon	Ducks
Daily bag limits	10	5	3
Possession limits	10	5	6
Season dates:			
Zenaida dove and scaly-naped pigeon	September 1 through October 30, 1989.		
Ducks only	December 6, 1989, through January 29, 1990.		
Shooting hours	One half-hour before sunrise until sunset.		

Restrictions: Seasons are closed for ground or quail doves and pigeons (except scaly-naped pigeon) in the Virgin Islands. The season is closed on the ruddy duck *(Oxyura jamaicensis)*; White-cheeked pintail *(Anas bahamensis)*; West Indian whistling (tree) duck *(Dendrocygna arborea)*; fulvous whistling (tree) duck *(Dendrocygna bicolor)*; masked duck *(Oxyura dominica)*, and purple gallinule *(Porphyrula martinica)*.

Note: Local names for game birds: Zenaida dove—mountain dove; Bridled quail dove—Barbary dove, partridge (protected); Ground dove—stone dove, tobacco dove, rola, tortolita (protected); Scaly-naped pigeon—red-necked pigeon, scaled pigeon.

Check Commonwealth Regulations for Additional Restrictions

3. Section 20.102 is revised to read as follows:

§ 20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Shooting and hawking hours: One-half hour before sunrise to sunset daily.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Open Seasons	Ducks, Geese (including Brant), Cranes, and Snipe
Area	
State Game Mgmt. Units: 11–13 and 17–26.	Sept. 1–Dec. 16.
State Game Mgmt. Units: 5–7, 9, 14–16 & 10 (Unimak island only).	Sept. 1–Dec. 16.
State Game Mgmt. Units: 1–4.	Sept. 1–Dec. 16.
State Game Mgmt. Units: 8 and 10 (except Unimak Island).	Oct. 8–Jan. 22.

DAILY BAG AND POSSESSION LIMITS

Area	Ducks [1]	Geese [2]	Emperor Geese	Brant	Common Snipe	Sandhill Cranes
Units 11–13 and 17–26	8–24	6–12	Closed	2–4	8–16	Units 11–13 and 18–26, 3–6; unit 17, 2–4.
Units 5–7, 9, 14–16 and 10 (Unimak Island only)	6–18	6–12	Closed	2–4	8–16	2–4.
Units 1–4	5–15	6–12	Closed	2–4	8–16	2–4.
Unit 10 (except Unimak Island)	5–15	6–12	Closed	2–4	8–16	2–4.
Unit 8	5–15	6–12	Closed	2–4	8–16	2–4.

[1] In Units 1–26 (Statewide) the basic bag limits may include not more than 2 pintails daily and 6 pintails in possession, and 1 canvasback daily and 1 canvasback in possession. In addition to the basic daily bag and possession limits, a daily bag limit of 15 and a possession limit of 30 is permitted singly or in the aggregate of the following species: scoter, eider, oldsquaw, harlequin, and common and red-breasted mergansers.

[2] No more than 4 daily, or 8 in possession may be any combination of Canada and/or white-fronted geese, provided that: in Units 1–9 and 14–18, no more than 2 daily, or 4 in possession, may be white-fronted geese. In Units 5 and 6, the taking of Canada geese is only permitted from September 21 through December 16. In Units 8, 9(E), 10 (except Unimak Island) and 18, the taking of Canada geese is prohibited. In Unit 1(C), the taking of snow geese is prohibited. In Units 1–26 (Statewide) the taking of Aleutian and cackling Canada geese and emperor geese is prohibited.

Special Tundra Swan Season: In Unit 22 there will be an experimental tundra swan season from September 1 through October 30, 1989, with a limit of 1 swan per hunter per season. This season is by registration permit (300 only).

4. Section 20.103 is revised to read as follows:

§ 20.103 Seasons, limits, and shooting hours for mourning and white-winged doves and wild pigeons.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Mourning Doves—Eastern Management Unit.*

In Delaware, Florida, Georgia, Louisiana, Maryland, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia and West Virginia	
Daily bag limit	12
Possession limit	24
In Illinois, Indiana, Kentucky, Mississippi and Tennessee:	
Daily bag limit	15
Possession limit	30
In Alabama:	
North Zone	
Daily Bag Limit	15
Possession Limit	15
South Zone	
Daily Bag Limit	12
Possession Limit	12

Shooting and hawking hours: One-half hour before sunrise to sunset except as noted otherwise.

Alabama:	
North Zone: [1]	
12 noon to sunset.	Sept. 16.
½ hour before sunrise to sunset.	Sept. 17–Nov. 4 and Dec. 23–Jan. 1.
South Zone: [1]	
½ hour before sunrise to sunset.	Sept. 23–Sept. 24 and Oct. 14–Oct. 31.
12 noon to sunset.	Nov. 1–Dec. 10 and Dec. 23–Jan. 1.
Connecticut	Closed.
Delaware (12 noon to sanset).	Sept. 2–Sept. 23 and Oct. 16–Oct. 28 and Dec. 11–Jan. 13.
Florida (2):	
12 noon to sunset.	Oct. 7–Oct. 29.
½ hour before sunrise to sunset.	Nov. 11–Nov. 26 and Dec. 9–Jan. 7.
Georgia:	
North Zone (3)	
12 noon to sunset.	Sept. 2.
½ hour before sunrise to sunset.	Sept. 3–Oct. 1 and Nov 23–Nov. 26 and Dec. 11–Jan. 15.
South Zone (3)	
12 noon to sunset.	Sept. 23
½ hour before sunrise to sunset.	Sept. 24–Oct. 22 and Nov. 23–Nov. 26 and Dec. 11–Jan. 15.
Illinois (12 noon to sunset)	Sept. 1–Oct. 30.
Indiana:	
12 noon to sunset.	Sept. 1–Oct. 16.
½ hour before sunrise to sunset.	Nov. 10–Nov. 19 and Nov. 23–Nov. 26.
Kentucky:	
11 a.m. to sunset	Sept. 1–Sept. 30 and Oct. 7–Oct. 30.
sunrise to sunset	Dec. 1–Dec. 6.
Louisiana:	
12 noon to sunset.	Sept. 2–Sept. 3 and Oct. 14–Oct. 15 and Dec. 9–Dec. 10.
½ hour before sunrise to sunset.	Sept. 4–Sept. 10 and Oct. 16–Nov. 12 and Dec. 11–Jan. 8.
Maine	Closed.
Maryland:	
12 noon to sunset.	Sept. 1–Oct. 21.
½ hour before sunrise to sunset.	Nov. 11–Nov. 18 and Dec. 16–Dec. 28.
Massachusetts	Closed.
Michigan	Closed.
Mississippi	Sept. 2–Sept. 24 and Oct. 14–Oct. 28 and Dec. 24–Jan. 14.
New Hampshire	Closed.
New Jersey	Closed.
New York	Closed.
North Carolina	Sept. 2–Oct. 7 and Nov. 21–Nov. 25 and Dec. 16–Jan. 13.
Ohio	Closed.
Pennsylvania:	
12 noon to sunset.	Sept. 1–Oct. 14.
½ hour before sunrise to sunset.	Oct. 28–Nov. 18.
Rhode Island:	
12 noon to sunset.	Sept. 11–Sept. 24.
	Oct. 21–Nov. 25 and Dec. 27–Jan. 15.
South Carolina	Sept. 2–Oct. 7 and Nov. 18–Nov. 25 and Dec. 21–Jan. 15.
Tennessee:	
12 noon to sunset.	Sept. 1.
½ hour before sunrise to sunset.	Sept. 2–Sept. 30 and Oct. 7–Oct. 21 and Dec. 9–Dec. 23.
Vermont	Closed.
Virginia:	
12 noon to sunset.	Sept. 2–Nov. 4.
½ hour before sunrise to sunset.	Dec. 25–Dec. 30.
West Virginia:	
12 noon to sunset.	Sept. 1.
½ hour before sunrise to sunset.	Sept. 2–Oct. 14 and Dec. 19–Jan. 13.
Wisconsin	Closed.

[1] In Alabama, the South Zone is defined as: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: remainder of the State.

(2) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is 24 mourning and white-winged doves in the aggregate, of which not more than 8 may be white-winged doves.

(3) In Georgia, the North Zone is defined as that area lying north of a division line as follows: U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River; to the Ocmulgee River, thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County, south along the western border of Jeff Davis County, east along the southern border of Jeff Davis and Appling Counties, north along the eastern border of Appling County to the Altamaha River, east to the eastern border of Tattnall County; north along the eastern boundary of Tattnall County, north along the western border of Evans County to Candler County, east along the northern border of Evans County to Bulloch County, north along the western border of Bulloch County to Highway 301, then northeast along Highway 301 to the South Carolina line.

(b) *Mourning Doves—Central Management Unit.*

In Missouri:	
Daily bag limit	10
Possession limit	20
In Texas:	
Daily bag limit	12(3)
Possession limit	24(3)
In Arkansas, Colorado, Kansas, Nebraska, North Dakota, New Mexico, Oklahoma, South Dakota, Wyoming and Montana:	
Daily bag limit	15(1)
Possession limit	30(1)

Shooting and hawking hours: One-half hour before sunrise until sunset except as noted otherwise.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Arkansas	Sept 2–Sept. 24 & Oct. 7–Oct. 22 & Dec. 16–Jan. 5.
Colorado	Sept. 1–Oct. 30.
Iowa	Closed.
Kansas	Sept. 1–Oct. 30.
Minnesota	Closed.
Missouri	Sept. 1–Nov. 9.
Montana	Sept. 2–Oct. 11.
Nebraska	Sept. 1–Oct. 30.
New Mexico (1)	Sept. 1–Sept. 30 & Dec. 1–Dec. 30.
North Dakota	Sept. 1–Oct. 30.
Oklahoma	Sept. 1–Oct. 30.
South Dakota	Sept. 1–Oct. 20.
Texas: (2)(3)	
North Zone	Sept. 1–Nov.9.
Central Zone	Sept. 1–Oct. 30 & Jan. 6–Jan. 15.
South Zone (4)	Sept. 20–Nov. 18 & Jan. 6–Jan. 15.
Wyoming	Sept. 1–Oct. 15.

(1) In New Mexico, the daily bag limit is 15 and the possession limit is 30 white-winged end mourning doves, singly or in the aggregate of these species.

(2) In Texas, the three zones are North, South and Central as follows:

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Central Zone—That portion of the State lying between the North and South Zones. (3) In Texas, the daily bag limit is 12 mourning, white-winged and white-tipped doves in the aggregate, of which no more than 2 can be white-winged doves and 2 can be white-tipped doves; and the possession limit is 24, of which no more than 4 may be whitewings, and 4 may be whitetips, except during the special 4-day white-winged dove season in 2 portions of the Special White-winged Dove Area of the South Zone. In that portion north and west of Del Rio, the aggregate daily bag limit for doves is 10 daily, not to exceed 2 white-tipped doves, while south and east of Del Rio, the aggregate daily bag lmit for doves may not contain more than 5 mourning doves and 2 white-tipped doves. Possession limits are twice the daily bag limit. (4) In Texas, the mourning dove season in the Special White-winged Dove Area of the South Zone is Sept. 20–Nov. 14 and Jan. 6–Jan. 15.

(c) *Mourning Doves—Western Management Unit.*

In Arizona, California, Idaho, Nevada, Oregon, Washington and Utah:

Daily bag limit	10(1)(2)
Possession limit	20(1)(2)

Shooting and hawking hours: One-half hour before sunrise until sunset.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Arizona (1):	
½ hour before sunrise to noon.	Sept. 1–Sept. 10.
½ hour before sunrise to sunset.	Nov. 24–Jan. 12.
California (2)	Sept. 1-Sept. 15 & Nov. 11–Dec. 25.
Idaho	Sept. 1–Sept. 30.
Nevada (2)	Sept. 1–Sept. 30.
Oregon	Sept. 1–Sept. 30.
Utah	Sept. 1–Sept. 30.
Washington	Sept. 1–Sept. 15.

(1) In Arizona, during September 1 through 10, 1989, the daily bag limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 20 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves. During November 24, 1989, through January 12, 1990, the bag and possession limits are 10 and 20 mourning doves, respectively.

(2) In those counties of California (Imperial, Riverside, and San Bernardino) and Nevada (Clark and Nye) having a season on white-winged doves, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves, singly or in the aggregate of these species.

Hawaii Regulations. Subject to the applicable provisions of the preceding sections of this part, mourning doves may be taken in accordance with the State regulations.

(d) *White-winged Doves.* Shooting and hawking hours: One-half hour before sunrise until sunset except as noted otherwise.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in	Season dates	Limits	
		Bag	Poss.
Arizona (Statewide)	Sept. 1–Sept. 10	6(1)	12(1)
California: (2)			
Imperial, Riverside, and San Bernardino Counties	Sept. 1–Sept. 15 & Nov. 11–Dec. 25	10(2)	20(2)
Remainder of State	Closed		
Florida	See Mourning dove regulations		
Nevada: (2)			
Clark and Nye Counties	Sept. 1–Sept. 30	10(2)	20(2)
Remainder of State	Closed		
New Mexico (3)	Sept. 1–Sept. 30 & Dec. 1–Dec. 30	15(3)	30(3)
Texas: (4)(5)			
Area in South Zone	Sept. 2, 3, 9 and 10	10(5)	20(5)

Seasons in	Season dates	Limits	
		Bag	Poss.
Remainder of State	See Mourning dove regulations		

(1) In Arizona, during September 1 through 10 the daily bag limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 20 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves.

(2) In designated counties of California and Nevada, the daily bag limit is 10 and the possession limit is 20 white-winged and mourning doves, singly or on the aggregate of both species.

(3) In New Mexico, the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of both species.

(4) *Special White-Winged Dove Area in the South Zone*—That portion of State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico. (5) In Texas, the daily bag limit in the Special White-winged Dove Area during the special hunt is 10 white-winged, mourning and white-tipped doves in the aggregate of which no more than 5 may be mourning doves and 2 may be white-tipped doves in the portion south and east of Del Rio. In the portion of the area north and west of Del Rio, the aggregate daily bag limit is 10, of which no more than 2 may be white-tipped doves. Possession limit is twice the daily bag limit.

(e) *Band-tailed Pigeons.* Shooting and hawking hours: One-half hour before sunrise until sunset.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in	Season dates	Limits	
		Bag	Poss.
Arizona (1)	Oct. 13–Nov. 11	5	10
California:			
Alpine, Butte, Del Norte, Glen, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.	Sept. 30–Oct. 15	4	4
Remainder of State	Dec. 9–Dec. 24	4	4
Colorado:			
In all lands west of U.S. Interstate 25 and Small Game Management Units 128, 129, 133–136 and 140–142.	Sept. 1–Sept. 30	5	10
Nevada:			
Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral, and Storey Counties only.	Sept. 15–Sept. 30	4	4
New Mexico:			
North Zone (2)	Sept. 1–Sept. 20	5	10
South Zone (2)	Oct. 1–Oct. 20	5	10
Oregon	Sept. 15–Sept. 22	2	2
Utah	Sept. 1–Sept. 30	5	10
Washington	Sept. 16–Sept. 24	4	4

(1) In Arizona, each hunter must have a special bird permit stamp issued by the State.

(2) In New Mexico, the *North Zone* is defined as that area lying north and east of a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and then south along Interstate Highway 25 to the Texas State line. The *South Zone* is that area lying south and west of the North Zone.

5. Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

	Rails—		Woodcock	Common Snipe
	(Sora and Virginia)	(Clapper and King)		
Daily bag limit	25(1)	See footnote (2)	5(3)	8
Possession limit	25(1)	See footnote (2)	10(3)	16

	Rails—		Woodcock	Common Snipe
	(Sora and Virginia)	(Clapper and King)		
Shooting and Hawking Hours: One-half hour before sunrise until sunset daily on all species, except as noted otherwise.				
Check State Regulations for Additional restrictions, Including Area Descriptions.				
Seasons in the Atlantic Flyway:				
Connecticut	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Oct. 21–Dec. 4	Oct. 21–Dec. 4.
Delaware	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Nov. 20–Jan. 3	Nov. 20–Jan. 31.
Florida	Sept. 1–Nov. 9	Sept. 1–Nov. 1	Dec. 9–Jan. 22	Nov. 1–Feb. 15.
Georgia	Sept. 16–Nov. 24	Sept. 16–Nov. 24	Nov. 25–Jan. 8	Nov. 20–Feb. 26.
Maine	Sept. 1–Nov. 9	Closed	Oct. 2–Nov. 15	Sept. 1–Dec. 16.
Maryland	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Oct. 11–Nov. 24	Oct. 2–Nov. 24 and Nov. 27–Jan. 18.
Massachusetts	Sept. 1–Nov. 9	Closed	Oct. 10–Nov. 23	Sept. 1–Dec. 12.
New Hampshire	Closed	Closed	Oct. 1–Nov. 14	Sept. 15–Nov. 30.
New Jersey (4):				
North Zone	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Oct. 14–Nov. 14	Oct. 2–Jan. 16.
South Zone	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Nov. 11–Dec. 2 and Dec. 16–Dec. 28.	Oct. 2–Jan. 16.
New York (10)	Sept. 1–Nov. 9	Closed	Oct. 1–Nov. 14	Sept. 1–Dec. 16.
North Carolina	Sept. 2–Nov. 10	Sept. 2.–Nov. 10	Nov. 18–Jan. 1	Nov. 14–Feb. 28.
Pennsylvania	Sept. 1–Nov. 4	Closed	Oct. 21–Nov. 12	Oct. 21–Dec. 9.
Rhode Island	Sept. 11–Nov. 19	Sept. 11–Nov. 19	Oct. 21Dec. 1	Sept. 11–Dec. 1 and Dec. 11–Jan. 4.
South Carolina	Sept. 13–Nov. 16 and Dec. 10–Dec. 14.	Sept. 13–Nov. 16 and Dec. 10–Dec. 14.	Nov. 23–Dec. 9 and Dec. 24–Jan. 20.	Nov. 14–Feb. 28.
Vermont	Sept. 30–Dec. 8	Closed	Oct. 1–Nov. 14	Sept. 30–Dec. 8.
Virginia	Sept. 7–Nov. 15	Sept. 7–Nov. 15	Nov. 6–Dec 2 and Dec. 20–Jan. 6.	Oct. 17–Jan. 31.
West Virginia	Sept. 1–Nov. 9	Closed	Oct. 14–Nov. 27	Sept. 1–Dec. 16.
Seasons in the Mississippi Flyway:				
Alabama (11)	Nov. 11–Jan. 19	Nov. 11–Jan. 19	Nov. 28–Jan. 31	Nov. 14–Feb. 28.
Arkansas	Sept. 2–Nov. 10	Closed	Nov. 4–Dec. 10 and Jan. 6–Feb. 2.	.Nov. 11–Feb. 25.
Illinois	Sept. 2–Nov. 10	Closed	Oct. 1–Dec. 4	Sept. 2–Dec. 17.
Indiana	Sept. 1–Nov. 9	Closed	Sept. 16–Sept. 24 and Sept. 30–Nov. 24.	Sept. 1–Dec. 16.
Iowa (5)	Sept. 2–Nov. 10	Closed	Sept. 16–Nov. 19	Sept. 2–Dec. 17.
Kentucky	Deferred	Closed	Oct. 1–Dec. 4	Oct. 1–Dec. 4.
Louisiana	Nov. 18–Jan. 20	Nov. 18–Jan. 20	Dec. 9–Feb.11	Nov. 11–Feb. 25.
Michigan (6)	Sept. 15–Nov. 14	Closed	Sept. 15–Nov. 14	Sept. 15–Nov. 14.
Minnesota	Sept. 1–Nov. 4	Closed	Sept. 1–Nov. 4	Sept. 1–Nov. 4.
Mississippi	Oct. 14–Dec. 22	Oct. 14–Dec. 22	Dec. 26–Feb. 28	Nov. 14–Feb. 28.
Missouri	Sept. 1–Nov. 9	Closed	Oct. 15–Dec. 18	Sept. 1–Dec. 16.
Ohio	Sept. 1–Nov. 9	Closed	Sept. 22–Nov. 25	Sept. 1–Nov. 25 and Dec. 4–Dec. 23.
Tennessee	Deferred	Closed	Oct. 21–Nov. 25 and Feb. 1–Feb. 28.	Nov. 14–Feb. 28.
Wisconsin	Oct. 7–Nov. 19	Closed	Sept. 16–Nov. 19	Oct. 7–Nov. 19.
Seasons in the Central Flyway:				
Colorado (7)	Sept. 1–Nov. 9	Closed	Closed	Sept. 1–Dec. 2.
Kansas	Sept. 1–Nov. 9	Closed	Oct. 1–Dec. 4	Sept. 1–Dec. 16.
Montana (7)	Closed	Closed	Closed	Sept. 2–Dec. 3.
Nebraska (8)	Sept. 1–Nov. 9	Closed	Sept. 15–Nov. 18	Sept. 1–Dec. 15.
New Mexico (7)(12):				
North Zone	Oct. 8–Nov. 15 and Dec. 9–Dec. 20.	Closed	Closed	Oct. 8–Nov. 15 and Dec. 9–Dec. 20.
South Zone	Nov. 18–Jan. 7.	Closed	Closed	Nov. 18–Jan. 7.
North Dakota	Closed	Closed	Closed	Sept. 30–Nov. 26.
Oklahoma	Sept. 1–Nov. 9	Closed	Oct. 28–Dec. 31	Oct. 1–Jan. 15.
South Dakota (9)	Closed	Closed	Closed	Sept. 1–Oct. 31.
Texas	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Deferred	Deferred.
Wyoming(7)	Sept. 16–Nov. 24	Closed	Closed	Sept. 16–Dec. 31.
Seasons in the Pacific Flyway:				
Colorado (7)	Sept. 1–Nov. 9	Closed	Closed	Sept. 1–Dec. 2.
Montana (7)	Closed	Closed	Closed	Sept. 2–Dec. 3.
New Mexico (7)(12) and Nov. 25–Jan. 6.	Oct. 7–Oct. 22	Closed	Closed	Oct. 7–Oct. 22 and Nov. 25–Jan. 6.
Wyoming (7)	Sept. 16–Nov. 24	Closed	Closed	Sept. 16–Dec. 17.

NOTE.— No seasons are prescribed for woodcock. Snipe seasons have been deferred by all other States in the Pacific Flyway.

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(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.

(2) In addition to the limits on sora and Virginia rials, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession limit of 30 clapper and king rails, singly or in the aggregate of these two species.

(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

(4) For description of zones or management units within a State, see State regulations.

(5) In Iowa, rail limits are 15 daily and 25 in possession.

(6) See State regulations for listing of certain Great Lakes waters where the season is to open concurrently with the duck season.

(7) The Central Flyway portion consists of: *Colorado* and *Wyoming*—the area lying east of the Continental Divide; Montana—the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; *New Mexico*—the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific Flyway.

(8) In Nebraska, the rail limits are 10 daily and 20 in possession.

(9) In South Dakota, the snipe limits are 5 daily and 15 in possession.

(10) In New York, the seasons for rails (Sora and Virginia) and common snipe are statewide *except* in Long Island.

(11) In Alabama, the rail limits are 15 daily and 15 in possession.

(12) In New Mexico, the rail limits are 10 daily and 10 in possession.

Noted: Some States may select rail, woodcock, and snipe seasons at the time they select their duck seasons in August. Consult waterfowl regulations to be published later for information concerning these seasons.

6. Section 20.105 is amended by revising paragraphs (a) through (c) and by amending paragraph (d) to read as follows:

§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and common moorhens and purple gallinules.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Sea Ducks.* (1) An open season for taking scoter, eider and oldsquaw ducks is prescribed according to the following table during the period between September 15, 1989, and January 20, 1990, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and, in addition, in any tidal waters of any bay which are separated by at least one mile of open water from any shore, island and emergent vegetation in New Jersey, South Carolina and Georgia; and in any waters of the Atlantic Ocean and/or in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated and designated as special duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

(2) The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the regular season limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

(3) Shooting and hawking hours are one-half hour before sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Seasons in:	
Connecticut	Deferred.
Delaware	Sept. 23–Jan. 6.
Georgia	Nov. 23–Jan. 7.
Maine	Deferred.
Maryland	Oct. 6–Jan. 20.
Massachusetts	Deferred.
New Hampshire	Sept. 15–Dec. 30.
New Jersey	Oct. 2–Jan. 16.
New York (Long Island only).	Sept. 23–Jan. 7.
North Carolina	Deferred.
Rhode Island	Deferred.
South Carolina	Deferred.
Virginia	Deferred.

(4) Notwithstanding the provisions of this part 20, the shooting of *crippled* waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated and designated in their respective hunting regulations as being open to sea duck hunting.

Note: States with deferred seasons may select sea duck seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(b) *Teal.* The September teal season is suspended in 1989.

(c) *Common Moorhens and Purple Gallinules.*

Bag limit	15 singly or in the aggregate of the two species.
Possession limit	30 singly or in the aggregate of the two species.

Shooting and hawking hours: One-half hour before sunrise to sunset.

Check State Regulations for Additional Restrictions

Seasons in the Atlantic Flyway:	
Connecticut	Sept. 1–Nov. 9.
Delaware	Sept. 1–Nov. 9.
Florida (1)	Sept. 1–Nov. 9.
Georgia	Nov. 23–Nov. 26 & Dec. 13–Jan. 7.
Maine	Sept. 1–Nov. 9.
Maryland	Closed.
Massachusetts	Closed.
New Hampshire	Closed.
New Jersey (2)	Sept. 1–Nov. 9.
New York:	
Long Island	Closed.
Remainder of State.	Sept. 1–Nov. 9.
North Carolina	Sept. 2–Nov. 10.
Pennsylvania	Sept. 1–Nov. 4.
Rhode Island	Sept. 11–Nov. 19.
South Carolina	Sept. 13–Nov. 16 & Dec. 10–Dec. 14.
Vermont	Sept. 30–Dec. 8.
Virginia	Deferred.
West Virginia	Deferred.
Seasons in the Mississippi Flyway:	
Alabama (3)	Nov. 11–Jan. 19.
Arkansas	Sept. 2–Nov. 10.
Illinois	Closed.
Indiana	Sept. 1–Nov. 9.
Iowa	Closed.
Kentucky	Deferred.
Louisiana	Nov. 18–Jan. 20.
Michigan	Deferred.
Minnesota	Oct. 7–Nov. 5.
Mississippi	Oct. 14–Dec. 22.
Missouri	Closed.
Ohio	Sept. 1–Nov. 9.
Tennessee	Deferred.
Wisconsin	Oct. 7–Nov. 19.
Seasons in the Central Flyway:	
Colorado (4)	Closed.
Kansas	Closed.
Montana (4)	Closed.
Nebraska	Closed.
New Mexico (4)(5):	
North Zone	Oct. 8–Nov. 15 & Dec. 9–Dec. 20.
South Zone	Nov. 18–Jan. 7.
North Dakota	Closed.
Oklahoma	Sept. 1–Nov. 9.
South Dakota	Closed.
Texas	Sept. 1–Nov. 9.
Wyoming (4)	Closed.
Seasons in the Pacific Flyway:	
All States and portions thereof.	Deferred.

(1) The season in Florida applies to the common moorhen only. There is no open season on the purple gallinule in Florida.

(2) In New Jersey, the bag limit is 10 daily and 20 in possession.

(3) In Alabama, the bag limit is 15 daily and 15 in possession.

(4) Seasons apply to Central Flyway portion of State only.

(5) In New Mexico, the bag limit is 5 common moorhens daily and 10 in possession; there is no open season on the purple gallinule in New Mexico.

Note: States with deferred seasons may select gallinule seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(d) *Waterfowl and coots in Atlantic, Mississippi, Central and Pacific Flyways.*

Atlantic Flyway

Flywaywide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

* * * * *

	Season Dates	Limits	
		Bag	Possession
* * * * * * *			
Florida:			
Wood ducks	Sept. 23–Sept. 27	3	6
* * * * * * *			
North Carolina:			
Canada Geese	Sept. 1–Sept. 9	2	4
* * * * * * *			
Mississippi Flyway:			
* * * * * * *			
Illinois (1):			
Canada Geese	Sept. 1–Sept. 10	5	10
* * * * * * *			
Kentucky:			
Wood ducks	Sept. 6–Sept. 10	2	4
* * * * * * *			
Michigan (1):			
Canada Geese	Sept. 1–Sept. 10	3	6
* * * * * * *			
Minnesota (1)(2):			
Canada Geese	Sept. 1–Sept. 10	4	8
* * * * * * *			
Tennessee:			
Wood ducks	Sept. 9–Sept. 13	2	4
* * * * * * *			
Pacific Flyway:			
* * * * * * *			
Wyoming (1):			
Canada Geese	Sept. 2–Sept. 4	2 per season.	
* * * * * * *			

(1) Check State regulations for areas open to the hunting of Canada geese.

(2) In Minnesota, the bag and possession limits for Canada geese will be 2 and 4, respectively, in the Fergus Falls/Alexandria Zone and Southwest Border Zone.

* * * * *

7. Section 20.106 is revised to read as follows:

§ 20.106 Seasons, limits, and shooting hours for sandhill cranes.

Central Flyway: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes (unless otherwise noted), and with shooting hours from one-half hour before sunrise until sunset (unless otherwise noted) in the following areas for the dates indicated:

(a) In Colorado (the Central Flyway portion except the San Luis Valley and North Park) the inclusive dates are September 30 through November 26, 1989.

(b) In New Mexico (a) in the counties of Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt, the inclusive dates for the regular season are October 21, 1989, through January 21, 1990; (b) in the Middle Rio Grande Valley Hunt Area (described in State regulations) the inclusive dates for the experimental season are October 18 through October 24, and October 25 through October 30, 1989; and (c) in the Hatch-Deming Zone in the counties of Sierra, Luna, and Dona Ana the inclusive dates are January 5–January 7; January 12–January 14; January 19–January 21; and January 26–January 28, 1990.

Hunting in the experimental seasons is by State permit only, the daily bag limit is 3 sandhill cranes, the possession limit is 6 and the seasonal bag limit is 9, and shooting hours are sunrise to sunset.

(c) In Oklahoma (that portion west of I–35) the inclusive dates are October 21, 1989, through January 21, 1990.

(d) In Texas that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary the season has been deferred.

(e) In North Dakota (that portion west of U.S. Highway 281) the inclusive dates are September 9 through November 5, 1989.

(f) In South Dakota, the inclusive season dates are September 30 through November 5, 1989.

(g) In Montana (the Central Flyway portion except that area south of I-90 and west of the Bighorn River), the inclusive dates are September 30 through November 26, 1989.

(h) In Wyoming, in Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, the inclusive season dates are September 16 through November 12, 1989.

Each hunter participating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

Pacific Flyway

(a) In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season selection has been deferred.

(b) In Utah (Cache and Rich Counties), the season dates are September 2 through September 4 and September 9 through September 11. Hunting by State permit only. Season limit is 1 sandhill crane per hunter.

(c) In Wyoming's sandhill crane hunt areas: Hunting by State permit only.

Bear River area in Lincoln County—the season dates are September 2 through September 4, 1989. Season limits are 2 sandhill cranes per hunter.

Riverton-Boysen Unit in Fremont County (Central Flyway)—the season dates are September 9 through September 10, 1989. Season limits are 2 sandhill cranes per hunter.

Salt River (Star Valley) area in Lincoln County—the season dates are September 2 through September 4, 1989. Season limits are 2 sandhill cranes per hunter.

Eden-Farson Agricultural Project in Sweetwater and Sublette Counties—the season dates are September 2 through September 4, 1989. Season limits are 2 sandhill cranes per hunter.

8. Section 20.109 is revised to read as follows:

§ 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Daily bag limit	3 singly or in the aggregate unless otherwise restricted.
Possession limit	6 singly or in the aggregate unless otherwise restricted.

These limits apply during both regular hunting seasons and extended falconry seasons.

Hawking hours: One-half hour before sunrise until sunset daily unless otherwise restricted.

Check State Regulations for Additional Restrictions

Atlantic Flyway:	
Florida:	
Mourning doves and white-winged doves, moorhens and rails.	Sept. 23–Dec. 1.
Woodcock	Oct. 28–Dec. 10.
Snipe	Nov. 1–Feb. 15.
Common moorhens and rails.	Sept. 23–Dec. 1.
Georgia:	
Ducks, mergansers, coots, gallinules and sea ducks.	Nov. 14–Feb. 28.
Maryland:	
Mourning doves	Sept. 1–Oct. 21 & Nov. 3–Dec. 28.
Rails	Sept. 1–Dec. 16.
Woodcock	Oct. 5–Jan. 19.
Snipe	Oct. 2–Nov. 24 & Nov. 27–Jan. 18.
New Jersey:	
Ducks	Oct. 2–Jan. 6 & Mar. 1–Mar. 10.
Pennsylvania:	
Mourning doves	Sept. 1–Dec. 16.
Ducks and geese	Oct. 7–Jan. 7.
Virginia:	
Woodcock and snipe.	Oct. 17–Jan. 31.
Mourning doves and rails.	Sept. 1–Nov. 30 & Dec. 23–Jan. 7
Mississippi Flyway:	
Illinois:	
Ducks, mergansers, coots, mourning doves, woodcock and rails.	Sept. 1–Dec. 16.
Indiana:	
Mourning doves	Oct. 17–Nov. 9 & Jan. 1–Jan. 23.
Woodcock	Sept. 1–Sept. 15.
Iowa:	
Ducks, coots, and geese.	Sept. 1–Dec. 16.
Michigan:	
Snipe, rails and moorhens.	Sept. 1–Dec. 16.
Ducks and coots	Oct. 4–Jan. 18.
Minnesota:	
All migratory game birds.	Sept. 1–Dec. 16.
Missouri:	
Mourning doves	Sept. 1–Dec. 16.
Ohio:	
Rails, gallinules and moorhens.	Sept. 1–Nov. 9.
Snipe	Sept. 1–Nov. 25 & Dec. 4–Dec. 23.
Woodcock	Sept. 22–Nov. 25.
Wisconsin:	
Rails, woodcock, snipe, and gallinules.	Sept. 1–Dec. 16.
Ducks, mergansers, and coots.	Oct. 7–Jan. 21.
Central Flyway:	
Colorado:	
Ducks, mergansers and coots.	Sept. 1–Oct. 6 & Oct. 18–Nov. 3.
Montana: (1)	
Waterfowl and coots.	Sept. 16–Dec. 31.
Doves	Sept. 1.
Nebraska:	
Ducks, mergansers, coots and geese.	Sept. 1–Dec. 16.
New Mexico:	
Doves	Sept. 1–Nov. 5 & Nov. 21–Dec. 30.
Band-tailed pigeons.	Sept. 1–Nov. 30.
Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.	Oct. 14–Jan. 28.
Ducks, coots, moorhens and snipe:	
North Zone	Sept. 5–Dec. 20.
South Zone	Nov. 9–Feb. 23.
Canada and white-fronted geese.	Oct. 7–Jan. 21.
Snow, blue, and Ross' geese:	
Middle Rio Grande Valley.	Nov. 1–Feb. 15.
Remainder of State in Flyway.	Nov. 14–Feb. 28.
North Dakota:	
All legal migratory game species.	Sept. 1–Nov. 12.
Oklahoma:	
Duck, mergansers, and coots.	Oct. 7–Jan. 21.
Texas:	
Mourning doves (statewide).	Sept. 1–Nov. 20 & Jan. 1–Jan. 28.
Rails and gallinules.	Sept. 1–Nov. 20 & Jan. 1–Jan. 28.
White-winged doves.	Sept. 1–Nov. 20 & Jan. 1–Jan. 28.
Wyoming:	
Mourning doves	Sept. 1–Oct. 15.
Snipe and rails	Sept. 16–Nov. 24.
Pacific Flyway:	
Colorado:	
Ducks, mergansers and coots.	Sept. 23–Oct. 6 & Oct. 15–Nov. 17.

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Idaho:	
Waterfowl and doves.	Sept. 1–Oct. 8 & Mar. 1–Mar. 10.
Montana: (1)	
Waterfowl and coots.	Sept. 10–Dec. 31.
Doves	Sept. 1.
Nevada: (2)	
Ducks, mergansers, coots, moorhens and snipe.	Jan. 12–Feb. 28.
New Mexico:	
Doves	Sept. 1–Nov. 5 & Nov. 21–Dec. 30.
Band-tailed pigeons.	Sept. 1–Nov. 30.
Ducks, coots, moorhens and snipe:	
North Zone	Sept. 22–Jan. 6.
South Zone	Oct. 7–Jan. 21.
Canada and white-fronted geese.	Oct. 7–Jan. 21.
Snow, blue and Ross' geese.	Oct. 7–Jan. 21.
Oregon: (3)	
Doves and pigeons.	Sept. 1–Dec. 16.
Utah:	
Doves and pigeones.	Sept. 1–Dec. 16.
Wyoming:	
Mourning doves	Sept. 1–Oct. 15.
Snipe and rails	Sept. 10–Nov. 24.

Note: See waterfowl season footnotes for descriptions of zones. For some States, the extended falconry season dates also include general season dates.

(1) In Montana, the bag limit is 2 and the possession limit is 6.

(2) In Nevada, the bag limit is 2 and the possession limit is 4. Hawking hours are sunrise to sunset.

(3) In Oregon, no more than 1 pigeon daily in bag or possession.

Dated: August 23, 1989.

Richard N. Smith,

Acting Director.

[FR Doc. 89-20385 Filed 8-29-89; 8:45 am]

BILLING CODE 4310-55

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federal register

Wednesday
August 30, 1989

Part IV

Environmental Protection Agency

40 CFR Part 135

Requirements for Citizen Suits Under the Clean Water Act; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 135

[FRL-3429-9]

RIN 2640-AB50

Requirements for Citizen Suits Under the Clean Water Act

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Section 505 of the Clean Water Act (CWA) authorizes any person to sue an alleged violator of certain requirements of the CWA. The Water Quality Act of 1987 (WQA) amended CWA section 505 to require that the citizen plaintiff shall serve a copy of the complaint filed in such a suit on the Administrator and the Attorney General. The WQA also provides that no consent judgment shall be entered by the court to resolve such a suit prior to 45 days following the receipt of the proposed consent judgment by the Administrator and the Attorney General. EPA is today proposing regulations governing the manner in which parties in citizen suits must provide copies of filed complaints and proposed consent decrees under this new provision.

DATES: Comments on the proposed rule must be received by October 16, 1989.

ADDRESSES: Send comments to: David Drelich, Office of Enforcement and Compliance Monitoring, Water Division (LE–134W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Persons may inspect all comments and the record of this rulemaking at that address, in Room 3109 Mall, during normal Agency working hours.

FOR FURTHER INFORMATION CONTACT: David Drelich, (same address) (202) 382–2949.

SUPPLEMENTARY INFORMATION:

Section 505 of the Clean Water Act (CWA or the Act) (33 U.S.C. 1365) authorizes any person with an interest which is or may be adversely affected to commence a civil action against anyone alleged to be in violation of certain requirements of the CWA. CWA section 505(a)(1). No such action may be commenced under this citizen suit provision prior to 60 days after the citizen plaintiff has given notice to the Administrator (and others) of the alleged violations. Rules for providing the requisite notice of violation can be found at 40 CFR part 135.

Effective February 4, 1987, Congress amended the Act to require that citizen plaintiffs provide the federal government with copies of complaints filed under CWA 505(a)(1). In addition, the federal government must be provided with copies of proposed "consent judgments" by which the parties intend to resolve such citizen enforcement suits. See Public Law 100–4, February 4, 1987. Specifically, the Water Quality Act of 1987, section 504, amended CWA section 505 as follows:

Section 505(c) is amended by adding at the end thereof the following new paragraph:

> (3) PROTECTION OF INTERESTS OF UNITED STATES.—Whenever any action is brought under this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. No consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

Although CWA section 505(c)(3) (WQA section 504) is self-implementing, the Environmental Protection Agency (EPA or the Agency) is proposing to amend 40 CFR part 135 in order to clarify the statutory requirement and to ensure that the amendment will be implemented in a consistent way, and in accordance with the purpose of the statutory amendment.

The purpose of the statutory amendment is to facilitate the ability of the United States to monitor the quantity and nature of citizen enforcement activity under the Act. In addition, the purpose of the statutory amendment is to provide an opportunity for the United States to take appropriate action when its interests may be affected by citizen suit activity. However, the legislative history of WQA section 504 is clear that the United States' review and/or receipt of these complaints and proposed consent judgments in no way affects the United States' ability to bring a separate federal enforcement action on the same violations addressed by the citizen complaint or consent judgment to which the U.S. is not a party. Remarks of Sen. Chafee, Debate on S. 1128, June 12 and 13, 1985, reprinted in 2 A Legislative History of the Water Quality Act of 1987 1351 (1988). *See also U.S.* v. *Atlas Powder Co.*, 26 Env't Rep. Cas. (BNA) 1391 (1987).

Congress also passed another provision which affects citizen enforcement. Section 309(g) (also amended by the WQA, section 314) now provides that citizen enforcement actions for civil penalties for the same violations are generally precluded if the Administrator, the Secretary of the Army or the State has commenced and is diligently prosecuting an administrative penalty action under a State law comparable to section 309(g) or one of these authorities has issued a final order not subject to further judicial review and the violator has paid a penalty assessed under section 309(g) or comparable state law. Exceptions to these limits on citizen civil penalty actions are provided for circumstances in which (a) the citizen enforcement suit is filed prior to commencement of the government administrative penalty action, or (b) the citizen's sixty-day notice of violation is given in accordance with 40 CFR part 135 prior to the commencement of the government administrative penalty action, and the citizen enforcement action is filed before the 120th day after the date on which such notice is given. (The Agency's regulations and procedures implementing the new section 309(g) administrative penalty authorities were noticed at 52 FR 30671 (Aug. 17, 1987), and 52 FR 30730 (Aug. 17, 1987).)

Thus, citizen compliance with the statutory and regulatory requirements concerning service of notices of violation may have consequences as to whether or not a citizen penalty suit is barred by a government administrative penalty action. Furthermore, the timely filing of citizen complaints (after notices of violation) takes on added importance in light of the new administrative penalty provisions, and prompt service upon the federal government of such complaints is needed.

Existing procedures for notices of violations are not affected by this proposed rule. Note that today's proposed regulations are designated as part of "subpart A" of part 135. This is based on the changes in the rule governing notices of intent to sue under the Safe Drinking Water Act, which was published as a final rule at 54 FR 20770 (May 12, 1989).

Today's proposed rule is straightforward. Citizen plaintiffs are required to send copies of complaints to the Administrator, the Regional Administrator of the EPA Region in which the violations allegedly occurred, and the Attorney General of the United States. Proposed consent judgments must be sent via certified mail to the same persons. The court must be notified of the statutory requirement not to enter the proposed consent judgment prior to 45 days following receipt of the proposed settlement by the Administrator and the Attorney General.

Paperwork Reduction Act

EPA has not prepared an information collection request under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for the reporting requirements contained in this rule. EPA has received approximately nine notices of citizens suits under the CWA per month. The public reporting burden for individuals complying with this rule is estimated to average one hour or less. If the number of notices received by EPA substantially increases in succeeding years, EPA will prepare and solicit comment on an information collection request for today's rule, in accordance with 5 CFR 1320.14. In the meantime, any comments on the estimate of burden or any other aspect of the information collection requirements contained in this rule, including suggestions to reduce the burden, should be sent to: Chief, Information Policy Branch (PM–223), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Impact Analysis

The Administrator has determined that this is a minor regulation under the terms of E.O. 12291 and does not require a regulatory impact analysis.

Regulatory Flexibility Act

There are no significant impacts on small entities as defined under the Regulatory Flexibility Act.

This proposed regulation has been reviewed by the Office of Management and Budget.

List of Subjects in 40 CFR Part 135

Litigation notices, Service of intent to sue, Service of proposed settlement, water pollution control.

Dated: July 19, 1989.

William K. Reilly,
Administrator.

It is proposed that part 135 of Title 40 of the Code of Federal Regulations be amended as follows:

PART 135—[AMENDED]

1. The authority citation for part 135 is revised to read as follows:

Authority: Sec. 505, Clean Water Act, as amended 1987; Sec. 504, Pub. L. 100–4; 101 Stat. 7 (33 U.S.C. 1365).

2. Section 135.1 of subpart A is revised to read as follows:

§ 135.1 Purpose.

(a) Section 505(a)(1) of the Clean Water Act (hereinafter the Act) authorizes any person or persons having an interest which is or may be adversely affected to commence a civil action on his own behalf to enforce the Act or to enforce certain requirements promulgated pursuant to the Act. In addition, section 505(c)(3) of the Act provides that, for purposes of protecting the interests of the United States, whenever a citizen enforcement action is brought under Section 505(a)(1) of the Act in a court of the United States, the Plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. Section 505(c)(3) also provides that no consent judgment shall be entered in any citizen action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

(b) The purpose of this subpart is to prescribe procedures governing the giving of notice required by section 505(b) of the Act as a prerequisite to the commencing of such actions, and governing the service of complaints and proposed consent judgments as required by section 505(c)(3) of the Act.

4. Sections 135.4 and 135.5 are added to subpart A to read as follows:

§ 135.4 Service of complaints.

(a) A citizen plaintiff shall mail a copy of a complaint filed against an alleged violator under section 505(a)(1) of the Act to the Administrator of the Environmental Protection Agency, the Regional Administrator of the EPA Region in which the violations are alleged to have occurred, and the Attorney General of the United States.

(b) The copy so served shall be of a filed, date-stamped complaint, and shall indicate the assigned civil action number.

(c) A citizen plaintiff shall mail a copy of the complaint on the same date on which the plaintiff files the complaint with the court, or as expeditiously thereafter as practicable.

(d) If the alleged violator is a Federal agency, a citizen plaintiff must serve the complaint on the United States in accordance with relevant Federal law and court rules affecting service on defendants, in addition to complying with the service requirements of this subpart.

§ 135.5 Service of proposed consent judgment.

(a) Service of a copy of a proposed consent judgment, signed by all parties to the lawsuit, in a citizen enforcement suit filed against alleged violations under section 505(a)(1) of the Act, shall be accomplished by certified mail (return receipt requested) addressed to, or by personal service upon, the Administrator, Environmental Protection Agency, Washington, DC 20460, and the Attorney General, Department of Justice, Citizen Suit Coordinator, Room 2615, Washington, DC 20530. A copy of a proposed consent judgment shall also be mailed at the same time to the Regional Administrator of the EPA Region in which the violations were alleged to have occurred.

(b) When the proposed consent judgment is filed or lodged with the court, the parties shall notify the court:

(1) Of the statutory requirement that the consent judgment shall not be entered prior to 45 days following receipt by both the Administrator and the Attorney General of a copy of the consent judgment, and

(2) Of the date(s) on which the Administrator and the Attorney General received copies of the proposed consent judgment.

[FR Doc. 89–20436 Filed 8–29–89; 8:45 am]

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federal register

Wednesday
August 30, 1989

Part V

Department of Defense

Department of the Air Force

USAF Scientific Advisory Board; Meeting

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 28, 1989.

The USAF Scientific Advisory Board Munitions Systems Division Advisory Group has postponed the meeting previously scheduled for 30 Aug–1 Sep 89 until 14–15 Sep 1989 from 8:00 AM to 5:00 PM at Eglin AFB, Florida.

The purpose of this meeting is to review developments in the field of tactical missiles. This meeting will involve discussions of classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–20637 Filed 8–29–89; 11:04 am]

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Thursday
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Thursday
August 31, 1989

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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141, 143, 145, and 148

[T.D. 89-92]

Customs Regulations Amendments Changing the Maximum Amount for Informal Entries to $1250

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Under current Customs Regulations, a shipment must generally be valued at $1000 or less to qualify for informal entry procedures. This document amends various parts of the Customs Regulations to raise the $1000 ceiling to $1250.

Public Law 98–573, dated October 30, 1984, amended 19 U.S.C. 1498(a)(1) by granting the Secretary of the Treasury the authority to increase the informal entry limit from $250 to $1250. When the Customs Service originally implemented the statutory change in 1985, it decided to set the maximum for informal entry at $1000, reserving the option to raise the limit to the statutory maximum at a subsequent time. Customs has now determined that in order to devote its resources to higher priority, higher valued shipments, it is appropriate to raise the limit for informal entry to the statutory maximum.

DATE: These regulatory amendments are effective October 1, 1989.

FOR FURTHER INFORMATION CONTACT: *Operational Aspects*—Esther Mandelay, Office of Inspection and Control, (202) 566–8151; *Legal Aspects*—Norman King, Entry Rulings Branch, (202) 566–5856.

SUPPLEMENTARY INFORMATION:

Background

All merchandise which is imported into the customs territory of the United States is subject to entry and clearance procedures. Section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), provides that the "importer of record" of imported merchandise or his agent shall make entry by filing such documentation as is necessary to enable the Customs officer to determine whether the merchandise may be released from Customs custody and to ascertain properly the duties on the merchandise as well as whether other legal requirements are met. Part 142, Customs Regulations (19 CFR part 142), implements section 484, and prescribes procedures applicable to most Customs entry transactions. These procedures, known as formal entry procedures, generally require the filing of Customs forms as well as commercial documents pertaining to the transaction.

Section 498, Tariff Act of 1930, as originally enacted, authorized the Secretary to prescribe rules and regulations for, among other things, the declaration and entry of shipments the aggregate value of which did not exceed $250. Regulations setting forth procedures for such shipments were issued in subpart C of part 143, Customs Regulations (19 CFR part 143, subpart C), entitled "Informal Entries". Informal entry procedures are less burdensome than their formal counterparts. For example, with the assent of the district director of Customs, merchandise eligible for informal entry may be entered simply by means of a commercial invoice which contains a signed declaration by the importer.

Section 206 of Public Law 98–573, dated October 30, 1984, amended section 498, Tariff Act of 1930, as amended (19 U.S.C. 1498), by granting, with certain exceptions, the Secretary of the Treasury the authority to raise to $1250 the maximum amount for informal entry status. On July 23, 1985, Customs published a number of conforming amendments in the **Federal Register** (50 FR 29949), including one raising the limit for which informal entries could be filed. However, Customs raised the limit to only $1000 and preserved the option of raising the limit further until after it could evaluate the operational effect of this increase.

On December 16, 1987, Customs published a proposal in the **Federal Register** (52 FR 47729), to change the procedures for the clearance of cargo carried by express consignment operators or carriers. One purpose of that proposal, which was published as a final rule in the May 8, 1989, **Federal Register** (54 FR 19561), and was effective June 7, 1989, was to provide more expedited clearance procedures for processing of such cargo. In that document, the limit for which informal entry procedures could be used for cargo carried by express consignment operators or carriers was raised from $1000 to $1250.

On January 24, 1989, Customs published a proposal in the **Federal Register** (54 FR 3492), to increase the informal entry limit for all other entry filers from $1000 to $1250. In that proposal it was noted that the informal entry procedures were less burdensome to Customs and the importing public and that they should be uniformly set at the statutory limit for all importers.

Since publication of the proposed rule it was noted that the informal entry procedures in § 148.23(c), Customs Regulations (19 CFR 148.23(c)), related to the clearance of articles accompanying persons arriving in the United States and properly listed on their baggage declaration, were inadvertently omitted from the proposed rule. In order to conform that provision to the other informal entry provisions, an appropriate regulatory amendment is included herein. Inasmuch as this amendment merely conforms the cited provision to other related provisions which were specifically noted in the proposed rule and is procedural in nature, notice and public procedure are deemed unnecessary, pursuant to 5 U.S.C. 553(b)(B), and a delayed effective date relative thereto, is not required, pursuant to 5 U.S.C. 553(d)(3).

Analysis of Comments

Ten comments were received in response to the notice published in the **Federal Register** on January 24, 1989 (54 FR 3492). Eight of the commenters supported increasing the monetary limit for informal entries. Some of these commenters favored increasing the monetary limit to $2500 and introducing such change at the beginning of a calendar quarter. One of these commenters also noted that items covered by import alerts may not be subject to the same scrutiny under the change as they previously were. In addition, the two commenters that did not support the proposal, expressed

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paragraphs (c)(1) and (c)(2), and

the shipping safety fairway regulations

steep angle from their permitted surface concern that the change would increase Customs paperwork burden, would be contrary to the automation efforts of Customs and Customs brokers, and would weaken safeguards to assure compliance.

Based on our review of the comments, we note the following:

1. The suggestion to raise the informal entry monetary limit above $1,250 would require additional statutory authority.

2. The suggestion to introduce the change at the beginning of a calendar quarter, which would provide a clean break for data comparison purposes, has been incorporated herein.

3. We agree that the interception of commodities subject to import alerts is a matter of concern. We, however, do not believe that the increase in the informal entry monetary limit will alter the need for scrutiny regarding these matters. The import alert information can be placed in the Customs Automated Commercial System (ACS) which is currently being utilized by many entry filers for informal entry purposes. Also, district directors of Customs, as currently authorized, may require merchandise to be covered by a formal entry, with an appropriate bond, if deemed necessary for import admissibility enforcement purposes.

4. The extension of the informal entry provision will not conflict with automation efforts. Currently, many entry filers are using ACS to file informal entries. We are working toward further automation of the informal entry procedures. We believe this will result is greater reconciliation of entries and bills of lading/air waybills. Compliance safeguards would not be weakened since the enforcement cargo selectivity system for informal entries will provide a sound basis for Customs to deal with these areas. We previously noted in T.D. 86–143 and T.D. 89–53, when responding to similar comments, that audits and intensive examinations have been successful in insuring compliance with laws and regulations.

Determination

After carefully analyzing the comments received and further consideration of the matter, it has been determined to adopt the regulatory changes as proposed with the modifications noted.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that, if adopted, the proposed amendment will not have a significant impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

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Customs duties and inspection, Imports

19 CFR Part 143

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Customs duties and inspection, Imports, Postal service

19 CFR Part 148

Customs duties and inspection, Imports

Amendments

Parts 141, 143, 145 and 148 (19 CFR parts 141, 143, 145, and 148) are amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Subpart F is also issued under 19 U.S.C. 1481.

* * * * *

§ 141.82 [Amended]

2. Section 141.82 is amended by removing "$1000", where it appears in paragraph (d), and inserting in its place "$1250".

PART 143—CONSUMPTION, APPRAISEMENT AND INFORMAL ENTRIES

1. The general authority citation for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

§ 143.21 [Amended]

2. Section 143.21 is amended by removing "$1000", where it appears in paragraphs (a), (b), (c), (f), (g) and (l), and inserting in its place "$1250".

§ 143.22 [Amended]

3. Section 143.22 is amended by removing "$1000" and inserting in its place "$1250".

§ 143.23 [Amended]

4. Section 143.23 is amended by removing "$1000", where it appears in paragraph (d), and inserting in its place "$1250".

§ 143.29 [Amended]

5. Section 143.29 is amended by removing "$1000" where it appears in the introductory text to that section and paragraph (b) thereof and inserting in its place "$1250".

PART 145—MAIL IMPORTATIONS

1. The authority citation for part 145 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Section 145.12 also issued under 19 U.S.C. 1315, 1484, 1498;

* * * * *

Section 145.35 also issued under 19 U.S.C. 1498;

* * * * *

§ 145.12 [Amended]

2. Section 145.12 is amended by removing "$1000", where it appears in paragraphs (a)(2), (a)(3), (b) and (c), and inserting in its place $1250".

§ 145.35 [Amended]

3. Section 145.35 is amended by removing "$1000" and inserting in its place "$1250".

§ 145.41 [Amended]

4. Section 145.41 is amended by removing "$1000" and inserting in its place "$1250".

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority for part 148 continues to read as follows:

Authority: 19 U.S.C. 66, 1498, 1624. The provisions of this part, except for subpart C, are also issued under General Note 8, Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202.

§ 148.23 [Amended]

2. Section 148.23 is amended by removing "$1000", where it appears in

paragraphs (c)(1) and (c)(2), and inserting in its place "$1250".

William von Raab,

Commissioner of Customs.

Approved: August 25, 1989.

Salvator R. Martocha,

Assistant Secretary of the Treasury.

[FR Doc. 89–20532 Filed 8–30–89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 87–038]

RIN 2115–AC78

Port Access Routes; Approach to Freeport, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: This notice publishes the results of a Port Access Route Study to determine if the Freeport Harbor Anchorage Area should be modified to facilitate recovery of hydrocarbon reserves which lie within the fairway anchorage. The Report of Study concluded that the fairway anchorage is an integral and necessary part of the fairway system that provides safe access to the Port of Freeport and should not be changed.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jeffrey D. Irino, Project Officer, Eighth Coast Guard District at (504) 589–4686 or Margie G. Hegy, Project Manager, Coast Guard Headquarters at (202) 267–0415.

SUPPLEMENTARY INFORMATION: The Report of Study upon which this notice is based, is available for inspection and copying at the Marine Safety Council, U.S. Coast Guard Headquarters, Room 3600, 2100 Second Street SW., Washington, DC 20593–0001 or at the Eighth Coast Guard District office, Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396 between the hours of 8 a.m. and 3:30 p.m., Monday through Friday, except holidays.

Background

The Freeport Harbor Anchorage Area was established by the U.S. Army Corps of Engineers (COE) on October 25, 1968 (33 FR 15787). After the 1978 amendments to the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223) authorized the Coast Guard to designate necessary shipping safety fairways to provide safe access routes to U.S. ports, the Coast Guard adopted the shipping safety fairway regulations originally promulgated by the COE and placed them in 33 CFR part 166 (May 13, 1982, 47 FR 20580). On June 30, 1983 (48 FR 30108), the Coast Guard defined shipping safety fairways and fairway anchorages.

A shipping safety fairway is an area in which no fixed structures are permitted, and therefore may inhibit exploration and exploitation of mineral resources. A fairway anchorage is an anchorage area contiguous to and associated with a fairway, in which fixed structures may be permitted with a two-mile spacing limitation (33 CFR 166.100(c)(1)).

Regulatory History

Pursuant to the 1978 amendments to the PWSA, the Coast Guard undertook a port access route study of the potential traffic density and the need for safe access routes for vessels proceeding to or from U.S. ports.

The port access route study, which included the Freeport Harbor area, was opened on April 16, 1979 (44 FR 22543). The Notice of Study Results, published on October 8, 1981 at 46 FR 49969, recommended no change to the existing shipping safety fairway or fairway anchorage area in the approach to Freeport, TX.

On July 2, 1987 (52 FR 25039), the Coast Guard opened a port access route study of the Freeport area in response to a request from the Amoco Production Company (USA) to modify the existing Freeport Harbor Anchorage Area.

Amoco's Request

Amoco Production Company requested that 18.40 square miles of the southwestern section of the Freeport Harbor Anchorage Area be deleted. Amoco desires to drill a 14,000′ wildcat well within the southwestern section of the Freeport Harbor Anchorage Area. Federal regulations (33 CFR 166.200(c)(1)) prohibit Amoco from placing a structure in their preferred location because structures located within a fairway anchorage must be at least two nautical miles apart. The southwestern section of the fairway anchorage presently contains three production structures. With the requested modification, Amoco could obtain a drilling permit for their preferred location, State Tract 307L SE/4.

Amoco currently has a permit to drill the 14,000′ wildcat well from a location in the northeastern section of the fairway anchorage which meets the two-mile spacing requirement. This is not the preferred location because it will require Amoco to drill a directional well at a steep angle from their permitted surface location. Amoco feels that a directional hole will greatly increase their risk and significantly reduce their ability to successfully drill the well to its objective, as well as substantially increase the cost of the well. In light of this and the current economic climate, Amoco states they cannot justify the drilling of a well from the northeastern section.

The requested modification would open an area within the southwestern section of the fairway anchorage to exploration and production drilling without any spacing limitations. Amoco believes the adjustment is necessary and that present resource exploration and exploitation cannot be reasonably accommodated if the fairway anchorage is not changed. They believe the present estimated costs to directionally drill are not reasonable for oil and gas exploration in this immediate area.

Amoco suggested a specific alternative which would reconfigure, but not reduce the net size of, the Freeport Harbor Anchorage Area. They proposed that the 18.40 square miles of anchorage area deleted from the southwestern section be added to the northeastern section of the fairway anchorage.

Amoco contends that the requested modification would have a negligible effect, if any, on vessels seeking anchorage, because the southwestern section of the fairway anchorage is not presently used for anchoring. To support their contention, Amoco photographed the southwestern section of the fairway anchorage during the month of February 1988 and showed no ships anchored.

The Study

The port access route study area encompassed part of the present Freeport Harbor Safety Fairway, the existing and proposed Freeport Harbor Anchorage Areas, and part of adjacent safety fairways in the offshore approach to Freeport, Texas.

The port access route study involved contacts with other Federal agencies, state government officials, and representatives of a wide variety of interests in the area. Comments were specifically solicited from Federal, state and local agencies who have an interest in the accessability to Freeport Harbor or the development of offshore oil leases in the area.

Uses of the Area

The Port of Freeport is known as the Star of the Mid-Coast because it is the most accessible port in the Gulf Coast, only 45 minutes from deep water via three miles of soon to be completed 45-

foot deep channel. The Port has direct connections to all inland rail, barge, and highway transportation systems. The Intracoastal Waterway intersects the harbor less than one mile from dockside and provides barge access to all the major river ports of mid-America.

The Freeport Harbor Anchorage Area is located approximately 3 square miles outside of the entrance to Freeport Harbor. The anchorage area consists of two sections, one on each side of the Freeport Harbor Safety Fairway. The southwestern section of the anchorage area consists of 51.6 square miles and the northeastern section has approximately 59.7 square miles.

The southwestern section currently has three production platforms located within the inshore half. The northeastern section has no structures, but two oil companies have permits to build structures. Amoco has a permit to build a structure on the inshore side of the northeastern section.

The Freeport Harbor Anchorage Area is the only anchorage serving the Port. The next closest anchorage area is in Galveston, approximately 40 miles northeast.

Dow Chemical reported that over 270 vessels per year use the Freeport Harbor Anchorage Area, but did not specify which section. Phillips 66 Company reported anchoring fifty vessels per year in the northeastern section, as close to the sea buoy as possible. Amoco reported that Jahre Shipping anchored approximately 61 vessels in the northeastern section of the anchorage in 1986 and 1987.

U.S. Army Corps of Engineers (COE) Dredging Projects and Planned Port Improvements

Freeport Harbor is in competition with the ports of Houston, Texas City, and Galveston to the north and east, and the ports of Matagorda and Corpus Christi to the south and west. In order to stay competitive, both dredging and port improvement projects are planned.

The COE General Design Memorandum for Freeport Harbor provides for deepening, realigning and enlarging the main channels and turning basins from existing depths of 36-feet to depths of 45-feet, and deepening the existing Brazos Harbor side channel and turning basin from a project depth of 30-feet to a depth of 36-feet. The 45-foot project is funded and a 50-foot depth, as authorized by Congress, is being pursued.

In conjunction with the COE deepening project, harbor improvements are planned which will develop 2,000 acres of port space and provide 25 additional 1,000 foot berths.

Study Data

Vessel traffic density data for the port access route study area was obtained from the U.S. Army Corps of Engineers Center for Waterborne Commerce, New Orleans, LA, and the Brazos Pilots' Association. The Coast Guard also reviewed COE environmental studies of the area containing data on weather conditions, including wind and tidal information, and seasonal conditions.

Vessel statistics compiled by the COE show that over the ten year period 1976–1986, Freeport handled an average of 577 vessels per year with drafts greater than 19 feet. The Brazos Pilots' Association reported an average of 1,157 ship movements per year over the ten year period 1978–1988.

Public Comments

Comments were received from State agencies, oil companies, a pilots' association, marine associations, and various local authorities.

The State of Texas General Land Office supports Amoco's request because it will have a positive effect on the development of minerals owned by the State.

Although it would affect one of Tenneco's active leases, Tenneco Oil Exploration and Production has no objection to Amoco's request as it would not impose an undue hardship on planned operations.

The Apache Corporation and Santa Fe Minerals, Inc. submitted letters stating "no objection" to Amoco's request.

Phillips 66 has no objection to Amoco's request. They feel that vessel operations can continue with the addition of Amoco's platform in the southwestern section of the anchorage area, but state that "any additional platforms would certainly be cause for concern". Phillips 66 is opposed to a drilling platform on Amoco's lease block in the northeastern section of the fairway anchorage. In addition, Phillips 66 requested that the Coast Guard consider establishing a precautionary zone with a three-mile radius around the most seaward channel buoy.

Keystone Shipping Company indicated their support for increased safety margins through improved port facilities. They caution that, in this case, improved access routes must take into consideration anchorage areas and lightering areas. They recognize energy requirements but feel they "must take a back seat to safe navigation in and out of U.S. Gulf ports."

The Brazos Pilots' Association (State and Federal Pilots serving Freeport, Texas) oppose Amoco's request. They agree with Amoco that the southwestern section of the fairway anchorage is "drilled up" and that no more structures can be placed in this section without violating the two-mile spacing rule. The Pilots' feel that allowing even one more structure in the southwestern section would make it "useless and a virtual hazard to safe navigation. Prevailing current and winds make it imperative that areas adjacent to the fairways be kept uncluttered enough to allow safe navigation." Additionally, the Pilots requested that a precautionary zone be established around the seabuoy.

Cities Service Oil and Gas Corporation opposes Amoco's proposed relocation of the anchorage space because it would cover the greater part of their lease block 314, leased prior to the port access route study. The lease block is already partially covered by both the southwestern and northeastern sections of the fairway anchorage.

The Brazosport Economic Development Corporation, Port of Freeport, West Gulf Maritime Association, and Mobil Exploration and Producing U.S. Inc. are opposed to Amoco's request.

The Port of Freeport feels that the present anchorage areas are "marginally adequate" and once the 45-foot dredging project is complete, larger and less maneuverable vessels will be the norm. The Port of Freeport is "diametrically opposed" to changing the fairway anchorage to accommodate a drill rig, citing the future need for anchorage space and the continuing need for safe access to the Port.

The West Gulf Maritime Association refers to the southwestern section of the fairway anchorage as the "last safe haven" under prevailing wind conditions when mechanical problems force vessels into emergency procedures.

The Board of Navigation and Canal Commissioners of the Brazos River Harbor Navigation District and the Brazosport Chamber of Commerce passed resolutions requesting the Coast Guard to disapprove Amoco's request.

Discussion of Comments

The right of navigation is paramount in routing measures designated under the authority of the PWSA. The Coast Guard feels that the present fairway anchorage configuration allows for convenient, safe access to the Port. The study data indicates that larger, less maneuverable vessels and increased traffic will result when channel and harbor improvements are completed. With more ships entering the Port, it is expected that the southwestern section

of the fairway anchorage will have increased utility.

To promote a multiple use approach to offshore waters, the Coast Guard, as far as practicable, will try to minimize impacts on leases which were granted before a study is announced. Accordingly, Amoco's proposed alternative to relocate the 18.40 square miles of anchorage space from the southwestern section to the northeastern section of the fairway anchorage is not a viable alternative because it would place restrictions on the lease block owned by Cities Service Oil and Gas Corporation prior to the port access route study. The Coast Guard examined the study area to see if other locations were available to establish new anchorage areas without infringing upon existing leases. None are available at the present time due to existing structures and rights of current lease block owners.

The port access route study considered whether the requested modification of the fairway anchorage was necessary to recover potential hydrocarbon reserves which lie within the fairway anchorage. Amoco can access the resources, albeit at greater cost, from the northeastern section of the fairway anchorage via directional drilling. Therefore, modification of the fairway anchorage is not necessary because recovery of the resources is not precluded by the existing fairway anchorage boundaries and regulations.

As requested, consideration was given to establishing a precautionary zone around the channel buoy. The Coast Guard feels that at the present time there is sufficient space free from fixed navigational hazards for pilots to embark. Therefore, a precautionary zone is not needed at this time.

Findings

1. The Freeport Harbor Anchorage Area is an integral and necessary part of the fairway system that provides safe access to the Port of Freeport.
2. The number and size of vessels calling on Freeport is expected to increase when the dredging and port improvement projects are completed.
3. There are no acceptable alternative locations for designating new anchorage areas.
4. Amoco can access the resources from their lease block in the northeastern section without modifying the fairway anchorage.
5. Safety of navigation outweighs the additional costs associated with directional drilling from another lease block already owned by Amoco.
6. The Freeport Harbor Anchorage Area should remain as presently configured to meet the needs of navigation safety (See 33 CFR 166.200(d)(9)).

Conclusion

The Coast Guard has concluded that the fairway anchorage, as presently configured, is an essential element of the fairway system in the Port of Freeport and will not be modified as requested by Amoco.

Dated: August 25, 1989.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard, Office of Navigation Safety & Waterway Services.

[FR Doc. 89-20450 Filed 8-30-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AD90

Combined Ratings Table; Procedural Usage; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: The Department of Veterans Affairs (VA) is correcting previously published information concerning procedural usage of the Combined Ratings Table.

EFFECTIVE DATE: July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Charles A. Fountaine III, Chief, Directives Management Division (70Y731), Paperwork Management and Regulations Service, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, (202) 233–2073.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 28, 1989 (54 FR 27161), VA published its regulations to eliminate an ambiguity regarding the stage at which disability evaluations are to be rounded in determining the combined degree of disability. In that final regulation, the amendatory language was incorrectly stated and is corrected.

List of Subjects in 38 CFR Part 21

Handicapped, Pensions, Veterans.

Dated: August 28, 1989.

Charles A. Fountaine,

Chief, Directives Management Division.

For the foregoing reason, the Department of Veterans Affairs hereby corrects the amendatory language in FR 89–15238 in the issue of June 28, 1989, on page 27161, middle column, to read as follows:

PART 4—[AMENDED]

In 38 CFR part 4 SCHEDULE OF RATING DISABILITIES, § 4.25 is amended by revising the introductory text, and adding paragraphs (a) and (b) preceding Table I, to read as follows:

* * * * *

[FR Doc. 89-20663 Filed 8-30-89; 8:45 am]

BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246, Sub-No. 7]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services; 1989 Update

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is required by the regulations in 49 CFR 1002.3 to update user fees annually. The proposed 1989 user fees update was published on June 12, 1989 at 54 FR 24915. This final rule adopts those user fees.

In 1989, the Commission also conducted a cost study of various fee items to ensure that the fee for these items reflects current Commission costs for performing those services. Based on the review of the comments submitted in this proceeding, the Commission has decided to establish the 1989 filing fees for fee items (33)(ii), (38), (41), (55)(i–iii) and (64) at less than the fully distributed cost level. All other fees developed in the cost study are adopted here.

The Commission also adopts its proposal to establish the filing fee for Fee Item (60) and Fee Item (62)(i) complaint-type declaratory order at 10 percent of current costs and gradually to increase that fee by 10 percent each year until the fee reaches the fully distributed cost level.

The revised fee schedule is set forth below.

DATES: These rules are effective on September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, 202–275–7428. [TDD for Hearing Impaired: 202–275–1721.]

SUPPLEMENTARY INFORMATION: The Commission finds that the proposal to increase fees will not have a significant economic impact on a substantial number of small entities because the Commission's regulations provide for the waiver of filing fees when the required showing of financial hardship is established.

This decision will not have a significant impact upon the quality of the human environment or conservation of energy resources.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick-up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721].

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information and User fees.

Title 49 of the Code of Federal Regulation is amended as set forth below.

Decided: August 23, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips. Chairman Gradison commented with a separate expression.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

§ 1002.1 [Amended]

2. In § 1002.1, the dollar amount of "$18.00" in paragraph (b) is revised to read "$19.00."

3. In § 1002.1, the dollar amount of "$12.00" in paragraph (c) is revised to read "$13.00."

4. In § 1002.1, the table in paragraph (f)(6) is revised to read as follows:

§ 1002. Fees for records search, review, copying, certification, and related services.

* * * * *

(f) * * *

(6) * * *

Grade	Rate	Grade	Rate
GS–1	$5.55	GS–9	$12.95
GS–2	6.04	GS–10	14.26
GS–3	6.81	GS–11	15.67
GS–4	7.64	GS–12	18.78
GS–5	8.56	GS–13	22.33
GS–6	9.53	GS–14	26.39
GS–7	10.59	GS–15 & over	31.04
GS–8	11.72		

* * * * *

5. In § 1002.2, paragraph (d)(3) is revised to read as follows:

§ 1002.2 Filing fees.

* * * * *

(d) * * *

(3) Separate fees will be assessed for the filing of temporary operating authority applications as provided in paragraphs (f) (8), (9) and (10) of this section, regardless of whether such applications are related to an application for corresponding permanent operating authority. A separate fee will be assessed for the filing of an application for temporary authority to operate a motor or water carrier as provided in paragraph (f)(24) of this section regardless of whether such application is related to a corresponding transfer proceeding as provided for in paragraph (f)(25) of this section or a notice of exemption as provided for in paragraph (f)(27) of this section.

* * * * *

6. In § 1002.2, paragraph (f) is revised to read as follows:

* * * * *

(f) *Schedule of filing fees.*

Type of Proceedings	Fees
Part I: Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority	$200
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products	100
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.64	2,200
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plantsite, or the change of a highway name or number	40
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923	150
(6) An application to remove restriction or broaden unduly narrow authority under 49 CFR 1160.107–1160.114	250
(7) An application for authority to deviate from authorized regular route authority under 49 U.S.C. 10923(a)	100
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b)	100
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1)	70
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue	19
(11) Request for name change of carrier, broker, or household goods freight forwarder	8
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.4	60
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5)	60
(14) [Reserved]	
(15) A joint petition to substitute applicant in a pending operating rights proceeding	22
(16) [Reserved]	
Part II: Non-Rail Applications to Discontinue Transportation	
(17) A notice or petition to discontinue ferry service under 49 U.S.C. 10908	9,000
(18) A petition to discontinue motor carrier of passenger transportation in one state	1,000
(19) [Reserved]	
Part III: Non-Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(20) An application for the pooling or division of traffic	1,700
(21) An application involving the purchase, lease, consolidation, merger or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343	650
(22) An application for approval of a non-rail rate association agreement. 49 U.S.C. 10706	11,000
(23) An application for approval of an amendment to a non-rail rate association agreement	
(i) Significant amendment	1,800
(ii) Minor amendment	40
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349	200
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker's license or change of control of companies holding broker's license 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544	200
(26) An application for approval of a motor vehicle rental contract. 49 CFR 1057.41(d)	150
(27) A petition for exemption under 49 U.S.C. 11343(e)	200
(28)–(32) [Reserved]	
Part IV: Rail Applications for Operating Authority	
(33) (i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901	2,900
(i) Exempt transaction under 49 CFR 1150.31	1,000
(34) Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i)	3,500
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii)	2,000
(36)–(37) [Reserved]	
Part V: Rail Applications to Discontinue Transportation Services	
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act, bankrupt railroads or exempt abandonments under 49 CFR 1152.50)	3,000
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act	150
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40	750
(41) Exempt abandonments. 49 CFR 1152.50	1,500
(42) A notice or petition to discontinue passenger train service	9,000
(43) [Reserved]	
Part VI: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103	7,600
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342	4,100
(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343	
(i) Major transaction	148,200
(ii) Significant transaction	29,600
(iii) Minor transaction	2,500
(iv) Exempt transaction [49 CFR 1080.2(d)]	500
(v) Responsive application	2,500
(47) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343	
(i) Major transaction	148,200
(ii) Significant transaction	29,600
(iii) Minor transaction	2,500
(iv) Exempt transaction [49 CFR 1080.2(d)]	600
(v) Responsive application	2,500
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343	
(i) Major transaction	148,200
(ii) Significant transaction	29,600
(iii) Minor transaction	2,500
(iv) Exempt transaction [49 CFR 1080.2(d)]	600
(v) Responsive application	2,500
(49) An application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343	
(i) Major transaction	148,200
(ii) Significant transaction	29,600
(iii) Minor transaction	2,500
(iv) Exempt transaction [49 CFR 1080.2(d)]	600
(v) Responsive application	2,500
(50) An application for a determination of fact of competition 49 U.S.C. 11321 (a)(2) or (b)	29,600
(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	27,900
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706	
(i) Significant amendment	5,200
(ii) Minor amendment	40
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322	300
(54) (i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for competitive bidding requirements of *Ex Parte* No. 158, 49 CFR 1175. 49 U.S.C. 11301	1,300
(ii) An exempt transaction under 49 CFR 1175	600
(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505	
(i) Financial exemption petitions	2,500
(ii) Abandonment exemption petitions	2,000
(iii) Other exemption petitions	1,100
(56) An application for forced sale of bankrupt railroad lines. 49 CFR 1180.40–49, 45 U.S.C. 915	1,500
(57)–(59) [Reserved]	
Part VII: Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers or freight forwarders of household goods	500
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares or charges. 49 U.S.C. 10705(f)(1)(A)	3,500
(62) A petition for declaratory order	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding	600
(ii) All other petitions for declaratory order	1,100
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increases	6,100
(64) A petition for exemption from filing tariffs by bus carriers	200
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	2,800
(66) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate rail carriers. 49 U.S.C. 11501	1,000
(67) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate bus carriers. 49 U.S.C. 11501	1,700
(68)–(71) [Reserved]	
Part VIII: Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster)	450
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements	50
(74) The filing of tariffs, rate schedules and contracts including supplements	([1])
(75) Special docket applications from rail and water carriers. (There is no fee for requests involving sums of $25,000 or less)	60
(76) Informal complaint about rail rate application	200
(77) (i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BIPD)	3,000
(ii) An application for original qualification as self-insurer for cargo insurance	300
(78) A service fee for insurer, surety or self-insurer accepted certificate of insurance, surety bond other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of $10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity. (There is a $50 annual minimum; but the minimum does not apply to an instrument submitted in lieu of a broker surety bond)	([2])
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR 1057	300
(80) A petition for reinstatement of revoked operating authority	50
(81)–(82) [Reserved]	
(83) Petition for reinstatement of a dismissed operating rights application	300
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c)	([3])
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceedings	1,100
(86) Informal opinions about rate applications (all modes)	40
(87)–(95) [Reserved]	
Part IX: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	([4])
(97) Request for service list for proceedings	([5])
(98) Requests for copies of the one-percent carload waybill sample	100
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation	([6])
(100) Application fee for Interstate Commerce Commission Practitioners' Exam	70

[1] 8 per series transmitted.

[2] 10 per accepted certificate or other instrument submitted in lieu of a broker surety bond.

[3] 15 per document.

[4] 11 per delivery.

[5] 8 per list.

[6] 15 per movement verified.

[FR Doc. 89–20544 Filed 8–30–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

RIN 1018–AB25

Addition of Three National Wildlife Refuges to the Lists of Open Areas for Migratory Game Bird and Big Game Hunting, and One to the List for Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is adding three national wildlife refuges (NWRs) to the lists of open areas for migratory game bird and/or big game hunting, and one NWR to the list for sport fishing. The Service has determined that such uses will be compatible with and, in some cases, enhance the major purposes for which each refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with the principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities.

EFFECTIVE DATE: August 31, 1989.

FOR FURTHER INFORMATION CONTACT: Larry LaRochelle, Division of Refuges, MS 670–ARLSQ, U.S. Fish and Wildlife Service, 18th and C Streets NW., Washington, DC 20240; Telephone (703) 358–2036.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the major purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking opens three refuges to hunting and one to sport fishing.

On May 12, 1989, at 54 FR 20623, the Service published a proposed rule to open three NWRs to hunting and one to sport fishing. Department of the Interior policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, written comments received on the proposed rule are addressed in the following section.

Responses to Comments Received

Written comments on the proposed rule were received from 163 parties. Many categorically supported or opposed the proposed actions or hunting in general. Several comments were similar or identical to those received on previous proposed rulemakings opening refuges to hunting and/or fishing contending generically that hunting on refuges is illegal, not in the spirit for which refuges are created, violates the Endangered Species Act, or is not in compliance with the National Environmental Policy Act or various other laws or regulations. These issues have been addressed by the Service—see, *e.g.*, 51 FR 30655 of August 28, 1986, the final rule opening seven refuges to hunting and 11 to sport fishing, and the Service will not here repeat its responses given in that rulemaking, but is instead incorporating those responses here by this reference.

Substantive comments on issues not already addressed in hunting and fishing plans, Environmental Assessments or section 7 Endangered Species Act consultations (all of which were available for public review during the comment period) are responded to below:

The following seven issues concern the deer hunt at the Mason Neck NWR:

Issue: The general health of the deer herd is good and its numbers are not great enough to warrant a public hunt. However, if some animals must be killed, it should not be by public sport hunting but by professional archers or State or Service personnel.

Response: The general health of the deer herd is not good, as indicated by the professionally accepted indicator known as an abomasal parasite count (APC). The APC provides an index of the status of deer density with regard to the nutritional carrying capacity of their habitat. Normally, an APC of 500 is regarded as reflective of a deer population at its optimum carrying capacity and an APC of 1,500 indicates an overpopulation by a herd. The APC of 818 found in a 1986 survey of the Mason Neck NWR indicated the herd was approaching carrying capacity and could require control in two years. The results of an August 1988 survey set the APC at 1,288 indicating a herd that is at the upper level of its carrying capacity and should not be allowed to increase. Overall, the 1988 deer were not in good body condition, were of light weight for their age class and had low fat reserves. The development of a prominent browse line during the winter of 1987–88, a die-off of deer on the refuge and adjacent park lands in the spring of 1988, and spotlight surveys during the summer of 1988 are also all indicators of an overpopulation.

The biological carrying capacity of the refuge is estimated at 90–120 deer, the population is now estimated at 185–235 deer. As early as 1977 biologists noted severe deer browsing problems on tree seedlings at a time when the population was estimated at 167. Current information suggests that a mature forest consisting of a mixture of pines and hardwoods is the forest type preferred by nesting eagles. During 1980–86, eagles in the Chesapeake Bay area selected pine trees for their nests over 70% of the time. Without active forestry management and control of white-tailed deer browsing of seedlings and other understory, the refuges' pine forest will not be able to regenerate. Reducing the present deer population to its carrying capacity is expected to result in better seedling and young tree survival, especially of pines that should eventually provide roosting sites for eagles, and is therefore expected to be beneficial to the conservation of the bald eagle.

The Service recognizes sport hunting as an acceptable, traditional form of wildlife-oriented recreation that can also be used as a management tool to effectively manipulate wildlife population levels. The primary objective of refuge hunting programs is to provide the general public with a quality recreational experience and an opportunity to utilize a renewable resource; having professionals kill the animals would deny the public of that opportunity.

The Service endorses the generally held principle that hunting need not be allowed only when wildlife populations are so high that harvest is necessary to protect a species from the impacts of its own excessive numbers. To delay harvesting until populations reach maximum carry capacity risks habitat damage, disease, unnecessary suffering and population crashes. Game species in suitable habitat will produce harvestable surpluses which can be taken regularly without affecting desired population levels. Refuge hunting programs are monitored and, if necessary, adjusted to achieve desired populations.

The Service believes that the hunting plans and environmental assessments available for public review during the comment period contain adequate biological and management information to support its decisions to conduct the described hunts.

Issue: Sport hunting will reduce the number of deer naturally dying that are important carrion to eagles; this at a time when fish, another important eagle food source, are dying out in the refuge area. There is also a lead poisoning risk to eagles feeding on carcasses of deer killed by buckshot but not recovered by hunters.

Response: The Service has no evidence of eagles feeding on deer carrion at this refuge. Of the several hundred eagle nests of the Chesapeake Bay population examined for food remains from 1977 through 1986 there have been only two occurrences of deer, one from Dorchester County, Maryland, was tentatively identified as either white-tailed or sika deer, the other, from Saint Marys' County, Maryland was identified as white-tailed deer. The possibility of lead poisoning of eagles due to feeding on deer carrion from this hunt is highly unlikely. Therefore, opening Mason Neck NWR to deer hunting is not inconsistent with the conservation of bald eagles.

The Service is unaware of fish die-offs or declining populations in the area.

Issue: Refuge staff or the use of privately-owned 4 x 4 vehicles to recover deer from areas closed to the general public would add to disturbance and the hunt in general will create disturbance that will cause the eagles to abandon the area.

Response: Refuge staff, possibly with the assistance of designated hunters or their vehicles may, in rare cases, need to assist in recovering a deer from a difficult or closed area or for a handicapped hunter. In such instances, disturbance will be held to a minimum. Although access to the area where the archery hunt will be held will continue to be available only to researchers, guided tours and holders of special use permits in order to better protect the eagle nesting and natal area, trails in the gun hunt area have been open to the general public on a year-round basis since 1988 and will continue to be so opened except on hunting days.

Issue: Making the eagle nest location known to hunters will increase the potential for disturbance.

Response: The general location of the present eagle nest has been known to many people from maps and knowledgeable persons for some time without having resulted in intentional harassment. The nest area is protected by a closure to the general public some 4,000 feet in diameter and is so posted. Hunters will be made aware of the general location of the nest area in order to better avoid it.

Issue: The noise from firearms discharging during the hunt will violate the "special noise abatement policy for public lands in the greater Mason Neck Area."

Response: The Bald Eagle Recovery Team as well as the Service's Endangered Species Specialist have concluded that the hunt as planned will not negatively affect the bald eagle population. The referenced "policy" is in fact a simple, verbal agreement amongst the several public land managers in the area to limit, to the extent practical, primarily chain saw use during the December through March period. Therefore, there would be no violation of this agreement.

Issue: The hunt would occur at a time when migrating bald eagles are arriving to overwinter and when resident eagles are beginning breeding activities.

Response: Deliberate zoning constraints and time limitations have been incorporated into the hunt plan to minimize the potential for disturbance of the eagles. The eagle nesting area is located within the archery hunting zone, however, hunting would end about one month before the start of the nesting season. Both the eagle roosting and the nesting area will be closed to hunting.

Issue: Insufficient attention has been given to the effect of the hunt on other wildlife.

Response: Disturbance of other wildlife especially waterfowl and raptors is expected to be minimal because their prime habitat is closed to hunting or not likely to be frequented by deer hunters.

Issue: The Mason Neck and Trustom Pond NWR's should not be closed to the public during hunting season.

Response: The Service believes it is prudent to close the 52 acre hunting area at Trustom Pond NWR during the hunting season and the entire Mason Neck NWR for nine days to the general public during the gun hunting season in consideration of safety aspects and to avoid conflicts between hunters and the general public. However, the schedule for the Mason Neck NWR deer hunt has been designed so that hunting will be permitted only on weekdays when there is less use by the general public. The refuge will remain open to the general public except for the nine weekdays when gun hunting will occur.

Conformance With Statutory and Regulatory Authorities The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA)(16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460K) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any area within the Refuge System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the major purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary.

The Refuge Recreation Act gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this Act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of these permitted forms of recreation.

In accordance with the NWRSAA and the Refuge Recreation Act, the Secretary has determined that opening the refuges listed below to hunting and fishing is compatible and will not interfere with the primary purposes for which each was established, and that funds are available to administer the programs. The hunting and fishing programs will be within State and Federal (migratory game bird) regulatory frameworks. A discussion of the compatibility of the hunting and fishing programs with the purpose(s) for which each refuge was established and the availability of funding for each program, was discussed in the proposed rule, referenced above.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include

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small businesses, organizations or governmental jurisdictions.

It is estimated that opening these refuges to hunting and fishing will generate approximately 6,650 annual visits. Using data from the 1980 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, and the 1988 Economic Report of the President (Consumer Price Index), total annual receipts generated from purchases of food, transportation, hunting equipment, fishing gear, fees, and licenses associated with these programs are expected to be approximately $199,533, or substantially less than $100 million. In addition, since these estimated receipts will be spread over four states, the implementation of this rule should not have a significant economic impact on the overall economy, or a particular region, industry, or group of industries, or level of government.

With respect to small entities, this rule will have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. The openings will provide recreational opportunities and generate economic benefits that may not now exist, and will impose no new costs on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added cost to the Federal government of law enforcement, posting, etc., needed to implement activities under this rule will be considerably less than the income generated from the implementation of these hunting and/or sport fishing programs.

Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB as cited below:

Type of information collection	OMB Approval No.
Economic and public use permits	1018–0014

These regulations impose no new or additional reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" [FES 76–59] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the **Federal Register** on November 19, 1976 [41 FR 51131]. Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C), environmental assessments (EAs) were prepared for these refuge openings. Alternatives other than public sport hunting, including live trapping and relocation, introduction of predators, increased habitat management, chemical sterilization, population reduction by refuge staff, and no-action were considered and dismissed as not meeting refuge requirements. Based upon the EAs, the Service issued Findings of No Significant Impact with respect to the openings. Section 7 evaluations were prepared, where appropriate, pursuant to the Endangered Species Act. The Service has concluded that the opening of these refuges will not affect endangered or threatened species.

In view of the rapidly approaching hunting seasons, there is an immediate need to place these regulations into effect. It is Service policy to conduct hunting within the framework of State laws, regulations and seasons. To delay opening the refuges to hunting may cause confusion to the public, deny a benefit to the public and small related businesses and would not be in the best interest of the Service or the public. Thus the Department of the Interior concludes that good cause exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedures Act to make these regulations effective upon publication in the **Federal Register**.

Larry LaRochelle, Division of Refuges, U. S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects

50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

Accordingly, parts 32 and 33 of chapter I of title 50 of the Code of Federal Regulations are amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.11 is amended by adding Trustom Pond NWR, RI, alphabetically by State as follows:

§ 32.11 List of open areas; migratory game birds.

* * * * *

Rhode Island

Trustom Pond National Wildlife Refuge

* * * * *

3. Section 32.31 is amended by adding Quivera NWR, KS and Mason Neck NWR, VA alphabetically by State as follows:

§ 32.31 List of open areas; big game.

* * * * *

Kansas

* * * * *

Quivera National Wildlife Refuge

* * * * *

Virginia

Mason Neck National Wildlife Refuge

* * * * *

4. Section 32.41 is amended by revising the language following the chart to read as follows:

§ 32.41 [Amended]

* * * * *

The information requested in the application form is purely voluntary but failure to answer questions may jeopardize the eligibility of individuals to receive permits. Public reporting burden for the form is estimated to average six minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form.

These regulations impose no new or additional reporting or recordkeeping requirements that must be cleared by the Office of Management and Budget. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established.

PART 33—[AMENDED]

1. The authority citation for Part 33 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460K, 664, 668dd, 715i.

2. Section 33.2(e) is amended by revising the language following the chart to read as follows:

§ 33.2 [Amended]

* * * * *

The information requested in the application form is purely voluntary but failure to answer questions may jeopardize the eligibility of individuals to receive permits. Public reporting burden for the form is estimated to average six minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form.

These regulations impose no new or additional reporting or recordkeeping requirements that must be cleared by the Office of Management and Budget. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established.

* * * * *

3. Section 33.4 is amended by adding Lake Ophelia NWR, LA, alphabetically by State as follows:

§ 33.4 List of open areas; sport fishing.

* * * * *

Louisiana

* * * * *

Lake Ophelia National Wildlife Refuge

* * * * *

Dated: August 8, 1989.

John F. Turner,

Director, Fish and Wildlife Service.

[FR Doc. 89–20482 Filed 8–30–89; 8:45am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80990-9187]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NOAA amends the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) to reduce the area of the Tortugas shrimp sanctuary that is temporarily open to trawl fishing. This action is intended to prevent conflicts between fishermen operating mobile gear (trawls) and fixed gear (lobster traps) while still allowing trawl fishermen to harvest marketable-size shrimp from a small area of the Tortugas shrimp sanctuary and allowing trap fishermen to harvest spiny lobster from an area customarily available to them.

EFFECTIVE DATE: August 6, 1989, through November 3, 1989.

ADDRESSES: Copies of the environmental assessment may be obtained from Michael E. Justen, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3722.

SUPPLEMENTARY INFORMATION: The shrimp fishery is managed under the FMP and its implementing regulations at 50 CFR part 658, as provided by the Magnuson Fishery Conservation and Management Act (Magnuson Act). Under the FMP, the Director, Southeast Region, NMFS, (Regional Director) may modify by no more than 10 percent the geographical scope of the Tortugas shrimp sanctuary specified at § 658.22 after (1) consultation with the Gulf of Mexico Fishery Management Council (Council), (2) consideration of specified criteria, and (3) determination that benefits may be increased or adverse impacts decreased by the modification.

In accordance with these criteria, the Regional Director reduced the geographical scope of the Tortugas shrimp sanctuary by approximately 54 square nautical miles from November 4, 1988, through February 2, 1989 (53 FR 45270, November 9, 1988) and from May 22, 1989, through November 3, 1989 (54 FR 16123, April 21, 1989). The supporting rationale for the reductions was contained in the above cited rules and is not repeated here.

When the Council considered opening a portion of the Tortugas shrimp sanctuary to shrimp trawling, the probability of conflicts between mobile gear and fixed gear fishermen was unforeseen. In fact, public testimony before the Council in July of 1988 specifically indicated that traps were not fished in the portion of the sanctuary proposed to be opened. That testimony has proved to be incorrect.

Spiny lobster trap fishermen have traditionally set their gear in portions of the Tortugas shrimp sanctuary that are now open to trawling. Catch rates of lobster in those portions have been relatively high, particularly early in the spiny lobster season. The fishing season for spiny lobster reopens on August 6, 1989, and the soak period for traps begins one hour before sunrise on August 1. The deployment of traps in areas where trawling is permitted causes difficulties for trawlers and costly gear losses for trap fishermen.

The Council has found that the potential for conflicts and resultant loss of income based on these circumstances constitutes an emergency. The Secretary of Commerce (Secretary) concurs. Accordingly, the Secretary is promulgating this emergency interim rule to be effective for 90 days, as authorized by section 305(e)(3)(B) of the Magnuson Act.

To avoid conflicts and economic losses, the local shrimp and spiny lobster fishermen have agreed to a geographical separation of trawling and trap fishing. Shrimp trawlers have agreed to refrain from trawling in that portion of the previously opened Tortugas shrimp sanctuary east of 82°01′ W. longitude. In effect, the opened portion of the sanctuary would be reduced by approximately 33 square nautical miles. This emergency rule formalizes the local agreement among fishermen and announces it to shrimp fishermen not otherwise privy to it, such as trawl fishermen from other areas who may fish seasonally in the area of the Tortugas shrimp sanctuary. Without this rule, trap fishermen would be subject to gear losses if they set traps in the opened portion of the Tortugas shrimp sanctuary and would potentially have reduced catches if they refrained from setting gear in that formerly productive area.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the national standards and other provisions of the Magnuson Act and other applicable law.

The Assistant Administrator finds that notice and opportunity for public comment are impracticable and contrary to the public interest pursuant to section 553(b)(B) of the Administrative Procedure Act because of the necessity to prevent conflicts and to provide timely economic relief to spiny lobster trap fishermen. The Council received input for this rule from a significant portion of the fishermen, both trawl fishermen and trap fishermen, directly affected by this rule. The Assistant Administrator also finds for good cause, namely, to prevent conflicts and to provide necessary timely economic relief to spiny lobster trap fishermen, that it is not necessary to delay for 30 days the effective date of this rule pursuant to section 553(d)(3) of the Administrative Procedure Act.

Because of the emergency need for implementation of this rule on August 6, 1989, it is exempt from the normal review procedures of E.O. 12291, as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility

Act because it is issued without opportunity for prior public Comments.

NOAA prepared an Environmental Assessment (EA) for this rule and, based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule. Copies of the EA are available (see ADDRESS).

This rule does not contain a collection-of-information requirement and therefore is not subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Florida. This determination has been submitted for review by Florida under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 25, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 658 is amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 658.22, effective from August 6, 1989, through November 3, 1989, paragraph (b) is revised to read as follows:

§ 658.22 Tortugas shrimp sanctuary

* * * * *

(b) The provisions of paragraph (a) of this section notwithstanding, effective from August 6, 1989, through November 3, 1989, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: from point T at 24°47.8′ N. latitude, 82°01.0′ W. longitude (the intersection of 82°01.0′ W. longitude and the sanctuary boundary line from point F to point G) to point U at 24°43.83′ N. latitude, 82°01.0′ W. longitude (the intersection of 82°01.0′W. longitude and the line denoting the seaward of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition (March 21, 1987) of NOAA chart 11439, to point R at 24°44.7′ N. latitude, 82°10.0′W. longitude; thence north to point S at 24°44.7′ N. latitude, 82°10.0′ W. longitude; thence north to point S at 24°45.1′ N. latitude, 82°10.0′ W. longitude (the intersection of 82°10.0′ W. longitude and the sanctuary boundary line from point F to point G) (see Figure 2).

3. Effective from August 6, 1989, through November 3, 1989, Figure 1 is suspended and a new Figure 2 is added to read as follows:

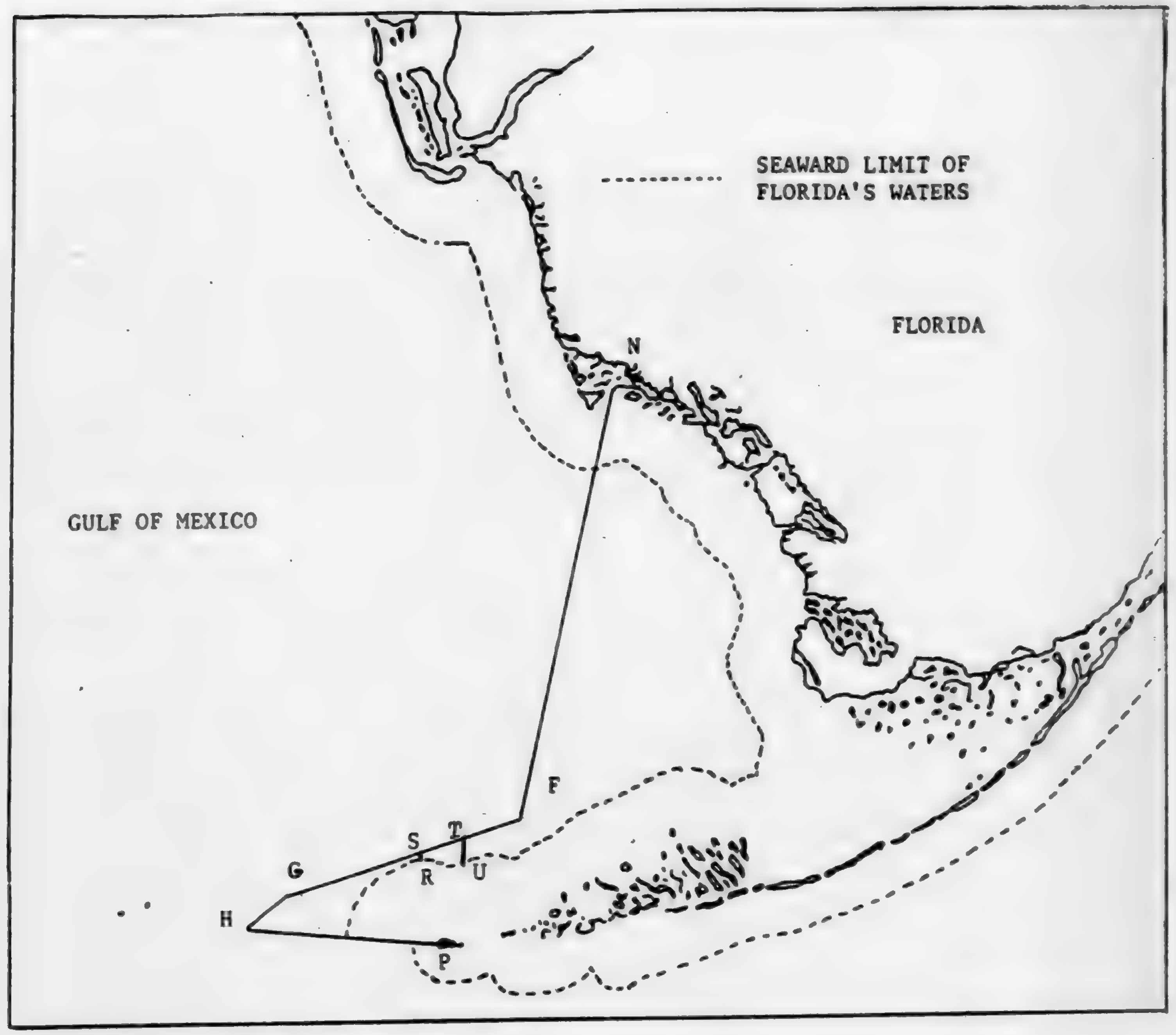

FIGURE 2. TORTUGAS SHRIMP SANCTUARY

[FR Doc. 89-20467 Filed 8-25-89; 4:59 pm]

BILLING CODE 3510-22-M

BEST COPY AVAILABLE

Proposed Rules

Federal Register
Vol. 54, No. 168
Thursday, August 31, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

Proposed Interpretive Rule Regarding the Transshipment and Transportation of Tuna Caught Outside the Exclusive Economic Zone

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed interpretive rule; solicitation of comments.

SUMMARY: Customs has received requests from certain parties that it reconsider its intepretation of rules relating to the transshipment and transportation of tuna. Specifically, these requestors asked Customs to determine whether the transportation of tune is, under various circumstances, within the meaning of "fisheries" as defined for purposes of vessel documentation in 46 U.S.C. 12101(a)(1). One requestor asked whether a foreign-flag vessel which catches tuna on the high seas outside the Exclusive Economic Zone (EEZ), transports them to a point within the EEZ but outside the U.S. territorial waters, and off-loads the tuna onto a U.S.-flag vessel has transported such fish within the meaning of section 12101(a)(1). A U.S. importer also requested a ruling on whether a foreign-flag vessel which catches tuna on the high seas outside the EEZ, transports the fish through the EEZ and U.S. territorial waters, and lands its fish in Guam, has transported the fish as defined in section 12101(a)(1).

Customs must determine whether a vessel not documented for the fisheries has engaged in the fisheries when it transports fish it caught on the high seas outside the EEZ through the EEZ and the territorial waters. A related issue is whether such a vessel may transport, through the EEZ and territorial waters, fish transferred to it on the high seas.

This document invites comments with respect to the operations of the above vessels as they pertain to engagement in the "fisheries," as defined in 46 U.S.C. 12101(a)(1).

DATE: Comments must be received on or before October 30, 1989.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Glen E. Vereb, Carrier Rulings Branch, Office of Regulations and Rulings (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

The Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (the Act) (Pub. L. 100-239; 101 Stat. 1778) amended 46 U.S.C. 12101(6) by changing the definition of "fisheries" set forth therein to include the "processing, storing, and transporting (except in foreign commerce)" of fish and related fishery resources in United States navigable waters and the Exclusive Economic Zone (EEZ), as well as the catching-related activities provided for in the former definition. Accordingly, the new definition of fisheries, now set forth in 46 U.S.C. 12101(a)(1) reads as follows:

> "fisheries" includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or in the exclusive economic zone.

The states primary purpose of the Act was to prohibit the reflagging of foreign-built processing vessels as vessels of the United States for operation in the domestic fisheries under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1811, *et seq.*) (FCMA). The Act was to further "the fundamental purposes of the [FCMA] by displacing foreign-built with domestically-built fishing industry vessels in U.S. fisheries." The Act was intented to "harmonize" or "reconcile" differences between fisheries and maritime law. In the House Report on this Act (H.R. Rep. No. 100-423, 100th Cong., 1st Sess. (1987) published at 1987 U.S.C.C.A.N. 3245), this was described as "the genesis of the legislation."

Section 12108(b) of Title 46 of the United States Code limits employment in the fisheries to a fishery-documented vessel, "[s]ubject to the laws of the United States regulating the fisheries * * *" Under 46 U.S.C. 12108(a), only a vessel eligible for documentation (*i.e.*, over five net tons and owned by a citizen) which was built in the United States may be documented for the fisheries.

The provision relating to the landing of fish in the United States in the Nicholson Act (46 U.S.C. App. 251(a)) has not been changed since its enactment in 1950. Under the Nicholson Act,

> no foreign-flag vessel shall land in a port of the United States its catch of fish taken on board such vessels on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products.

Since this prohibition is directed against *foreign-flag* vessels, a United States-flag, foreign-built vessel (which cannot be documented for the coastwise or fisheries trade) can land in the United States fish it has caught or received on the high seas without violating the Nicholson Act. Furthermore, Customs has held that the Nicholson Act does not apply to prohibit a foreign-flag vessel from landing in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, fish it has caught or taken on board on the high seas.

The facts as presented by the first petitioner are as follows: A Japanese fishing vessel longlines for yellow fin or big-eye tuna in international waters outside the 200-mile EEZ. Upon completing its fish-catching operations, the vessel travels toward Hawaii and unloads its tuna within the EEZ, but outside the three-mile United States territorial waters, on a United States-owned and documented vessel. The United States vessel is owned by a duly incorporated business in the State of Hawaii with 75 percent ownership by United States citizens and 25 percent ownership by foreigners. The vessel was built in the United States and its previous owners were all United States citizens. The United States vessel then unloads its cargo of tuna in Honolulu. Approximately 80 percent of the cargo is shiped by air to Japan. The remaining 20 percent is sold locally.

It is apparent that the transshipment to the United States vessel outside

United States territorial waters is not considered to be a "landing" of fish within the meaning of the Nicholson Act. The petitioners contend, however, that the use of a foreign-flag vessel to trasport fish from a point outside the EZZ to a point inside the EEZ, but outside United States territorial waters, is not an engagement in the "fisheries," for purposes of the vessel documentation requirements.

The facts as presented by the second requestor are as follows: Japanese and Taiwanese fishing vessels longline for yellow fin and big eye tuna in international waters outside the EEZ. Upon completing their fishing operations, the vessels land their catch in Guam and it is sold to American and foreign enterprises.

Customs has held that the Nicholson Act does not apply to prohibit a foreign-flag vessel from landing in Guam fish that vessel has caught or taken on board on the high seas. Customs must determine, however, whether the use of a foreign-flag vessel to transport fish it has caught outside the EEZ from a point outside the EEZ to Guam is an engagement in the fisheries for purposes of vessel documentation requirements.

Customs will also consider whether the following constitute an engagement in the fisheries: (1) The transportation through the EEZ and the territorial waters, by a vessel not documented for the fisheries, of fish caught on the high seas outside the EEZ by that vessel; (2) the transportation through the above described area, by a vessel not documented for the fisheries, of fish transshipped to that vessel on the high seas outside the EEZ; (3) the transportation, by a vessel not documented for the fisheries, of fish caught by that vessel on the high seas to a point in the EEZ where the fish are transshipped to vessel documented for the fisheries.

Comments

Before making a determination on these matters, Customs invites written comments from interested parties on the above issues. The requests for reinterpretation received by Customs, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 52) and Section 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC.

Drafting Information

The principal author of this document was Joseph J. DeSanctis, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael H. Lane

Acting Commissioner of Customs.

Approved: August 14, 1989.

John P. Simpson

Acting Assistant Secretary of the Treasury.

[FR Doc. 89-20533 Filed 8-30-89; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 134

Proposed Customs Regulations Amendment Relating to the Country of Origin Marking of Native American-Style Arts and Crafts

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: This document sets forth a proposed amendment to the Customs Regulations concerning the country of origin marking of arts and crafts which incorporate Native American design motifs, materials or construction. More permanent methods of marking are proposed than are currently required to prevent removal of country of origin markings after importation, but before sale to consumers, thereby preventing the articles from being deceptively or mistakenly offered and purchased as actual products produced by Native Americans. Comments from interested parties will be considered before a final rule is issued.

DATES: Comments must be received on or before October 2, 1989.

ADDRESSES: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Lorrie Rodbart, Value, Special Programs and Admissibility Branch, (202) 566-5765.

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires, subject to certain specified exceptions, that every article of foreign origin imported into the United States shall be permanently marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article will permit in a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Although 19 CFR 134.41(a) provides that the marking requirements are best met by marking worked into an article at the time of manufacture, the regulations generally permit any method of marking, including paper sticker labels, that will remain on the article during handling until it reaches the ultimate purchaser unless deliberately removed. See 19 CFR 134.41(b) and 134.44. Definite methods of marking specific articles are provided for in 19 CFR 134.43.

There have been various concerns that imported jewelry and arts and crafts which look like genuine Native American products are being deceptively or mistakenly offered for sale as actual products of Native Americans after deliberate removal of the required country of origin labels or other markings. These concerns were addressed in section 1907(c) of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418). That Act directs the Customs Service to prescribe and implement within one year regulations which require indelible and permanent country of origin marking, to the greatest extent possible, on all imported Native American-style jewelry and arts and crafts. New requirements concerning jewelry were set forth in a notice of proposed rulemaking published in the **Federal Register** on February 10, 1989 (54 FR 6418). That proposal would add a new paragraph (c) to § 134.43. This separate proposed regulation amendment concerning Native American-style arts and crafts proposes to add a paragraph (d) to require indelible country of origin marking on such arts and crafts by means of cutting, diesinking, engraving, stamping, or other equally permanent method.

Section 1907(c) of the Act requiring the implementation of regulations concerning country of origin marking of Native American-style arts and crafts resulted from a Senate floor amendment to the trade bill. In the discussion preceeding the adoption of that amendment, Senator Domenici, the amendment's sponsor, inserted into the Congressional Record the following statement which he said was designed to provide guidance to Customs in defining Native American handicrafts:

> The most appropriate definition of what is *genuine* Native American handicraft product

> (arts, crafts, and jewelry) is found in 25 CFR 308.3a (emphasis added). It reads as follows:
>
> "Objects produced by Indian craftsmen with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product."
>
> The regulations proposed by the U.S. Customs Service in 1988 contain appropriate descriptive information regarding Native American arts, crafts and jewelry.
>
> While it is clear that a detailed description of what these items look like is helpful to a Customs agent, such descriptions cannot be all encompassing. The thrust of the amendment is to ensure that consumers may distinguish between authentic Native American products and the look-alikes from around the world.
>
> The U.S. Customs Service is encouraged to coordinate with the Department of Interior, Bureau of Indian Affairs to ensure that the intent of this provision is carried out. 133 Cong. Rec. S9444 (daily ed. July 8, 1987).

The definition of a genuine Native American handicraft found in 25 CFR 308.3a is a combination of the producer of the product (Indian craftsmen) and the method of production (with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product). We do not find this definition to be instructive in defining "Native American-style arts and crafts" as that term is used in section 1907(c).

First, the thrust of section 1907(c) is to require indelible marking on imported goods which look like arts and crafts made by Native Americans but in fact were not produced by Native Americans. Second, unlike genuine Native American handicrafts which are by definition produced with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product, as the legislative history makes clear, imported articles which look like Native American arts and crafts may have been mass produced rather than handcrafted. Thus, neither portion of the definition regarding the producer of the product nor the method of production is applicable in identifying imported Native American-style arts and crafts.

Moreover, according to the U.S. Department of the Interior, Indian Arts and Crafts Board, the definition of Native American handicrafts purposely makes no mention of what genuine Native American handicrafts look like "because contemporary craftsmen necessarily develop new approaches to the use of traditional materials, adopt new materials, and they necessarily arrive at new finished products of these materials in expressing their changing culture." (Letter dated April 6, 1989, submitted to Customs regarding proposed Customs Regulations Amendment relating to country of origin marking of jewelry, published in the **Federal Register** on February 10, 1989).

Considering the purpose of section 1907(c), which is to ensure that consumers can distinguish between genuine Native American products and imported look-alikes, the proposed amendment merely defines Native American-style arts and crafts as: arts and crafts, such as pottery, rugs, blankets, kachina dolls, and baskets, which incorporate traditional Native American design motifs, materials or construction and therefore look like, and could possibly be mistaken for, arts and crafts made by Native Americans. While we recognize the fact that not all genuine Native American handicrafts incorporate "traditional" design motifs, materials or construction, we are of the opinion that the imports of Native American-style arts and crafts which consumers are likely to mistake for the genuine articles are likely to incorporate "traditional" design motifs, materials or construction.

In view of the requirement that regulations be in place by August 23, 1989, pursuant to section 1907(c) of the Act, comments are requested within 30 days of publication. Comment is particularly sought on the question of identification of Native-American arts and crafts.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulation amendment will not have a significant impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 134

Customs duties and inspection, Labeling, packaging and containers.

Proposed Amendment

It is proposed to amend Part 134, Customs Regulations (19 CFR part 134), as set forth below:

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. It is proposed to amend § 134.43 by reserving paragraph (c) and by adding a new paragraph (d) to read as follows:

§ 134.43 Methods of marking specific articles.

* * * * *

(c) [Reserved].

(d) *Native American-style arts and crafts.*—(1) *Definition.* Native American-style arts and crafts are arts and crafts, such as pottery, rugs, blankets, kachina dolls and baskets, which incorporate traditional Native American design motifs, materials or construction and therefore look like, and could possibly be mistaken for, arts and crafts made by Native Americans.

(2) *Method of Marking.* Except as provided for in 19 U.S.C. 1304(a)(3) and § 134.32 of this part, Native American-style arts and crafts must be indelibly marked with the country of origin by means of cutting, die-sinking, engraving, stamping, or some other equally permanent method. On textile articles, such as rugs and blankets, a sewn-in label is considered to be an equally permanent method. Less permanent methods of marking, such as adhesive labels, will only be accepted if, because of the nature of an article, it is technically or commercially infeasible to mark by a more permanent method.

William von Raab,

Commissioner of Customs.

Approved: August 25, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-20534 Filed 8-30-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 170 and 174

[CGD 82-004 and CGD 86-074]

RIN 2115-AA77

Offshore Supply Vessels Including Liftboats

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule, extension of comment period and notice of hearing.

SUMMARY: On May 9, 1989, the Coast Guard published in the **Federal Register** (54 FR 20006) a notice of proposed rulemaking to establish regulations governing new Offshore Supply Vessels (OSVs), including self elevating OSVs known in the industry as lifeboats. These rules would become Title 46 Code of Federal Regulations, Subchapter L. Subchapter L would contain rules for inspection and certification of new OSVs including requirements for construction, outfitting of lifesaving and fire protection equipment, machinery and electrical installations, and operations.

Because of requests for a public hearing from the Offshore Marine Service Association and the Chairman of the House of Representatives Subcommittee on Coast Guard and Navigation, a hearing on this proposal will be held and the deadline for receipt of comments is extended to December 6, 1989.

DATES: Comments on this notice must be received on or before December 6, 1989. The date of the public hearing is September 13, 1989, as explained in **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: Comments should be mailed to Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 82-004/CGD 86-074), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001. The comments and materials referenced in this notice will be available for examination and copying between 8 a.m. and 3 p.m., Monday through Friday, except holidays, at the Marine Safety Council, U.S. Coast Guard, Room 3600, 2100 Second Street, SW., Washington, DC 20593-0001. Comments may also be hand delivered to this address.

A public hearing on the proposed rules will be held at: Doubletree Hotel, 300 Canal Street, New Orleans, LA as explained under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: LCDR Michael M. Rosecrans, Office of Merchant Marine Safety, Security and Environmental Protection (G-MTH-4/13), Room 1304, U.S. Coast Guard Headquarters, Washington, DC 20593-0001, (202) 267-2997.

SUPPLEMENTARY INFORMATION:

Public Hearing

The Notice of Proposed Rulemaking published on May 9, 1989, stated that the Coast Guard did not plan to hold a public hearing on this rulemaking. The NPRM also stated that a hearing may be held if requested in writing by interested persons who could demonstrate that an opportunity to make an oral presentation would aid the rulemaking.

In a letter dated June 29, 1989, the Chairman of the House of Representatives Subcommittee on Coast Guard and Navigation requested that a public hearing on this proposal be held in New Orleans, LA to allow representatives of the shipbuilding industry and owners, operators and designers of OSVs to make oral presentations. Subsequently, the Offshore Marine Services Association, a group formed by and representing the interests of a large number of OSV owners, operators and shipbuilding concerns, made a similar request.

As a result of these requests and in order to give the public adequate opportunity to make oral presentations on the proposed rulemaking, the Coast Guard will hold a public hearing on the proposed rulemaking in New Orleans, LA, on Wednesday, September 13, 1989. The location will be: Doubletree Hotel, 300 Canal Street, New Orleans, LA. The hearing will begin at 10:00 a.m. and end at 5:00 p.m. or earlier if all speakers have been heard.

Interested persons are invited to participate in this hearing. Those wishing to make an oral statement should register by September 11, 1989. Oral statements by individuals without prior registration will be allowed only if time permits. The Coast Guard reserves the right to impose time limits on oral presentations. To register, write or call the Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 82-004/86-074), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001; telephone number (202) 267-1477.

Written Comments

The Notice of Proposed Rulemaking published on May 9, 1989 invited and encouraged interested persons to participate in this proposed rulemaking by submitting written comments, including views, data, or arguments, on the proposal by September 6, 1989. Because of the public hearing and to allow the public more time to evaluate the proposal, the deadline for receipt of comments is extended to December 6, 1989.

Persons submitting comments should include their names and addresses, identify this notice as CGD 82-004/CGD 86-074 and the specific section or paragraph of the proposal to which each comment applies, and include supporting documents or sufficient detail to indicate the reason for each comment. Both comments supporting or opposing specific proposed regulations are encouraged.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

Dated: August 25, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-20678 Filed 8-30-89; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 54, No. 168
Thursday, August 31, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Submission of Information Collection to OMB Under Paperwork Reduction Act

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Forest Service has submitted an information collection package to the Office of Management and Budget (OMB) for emergency clearance under 5 CFR 1320.18, concerning a specialty form (fee envelope) to be used at campgrounds on National Forest System lands nationwide. The agency and OMB solicit comments on this submission. The information collected on the specialty form is required by the Land and Water Conservation Fund Act of 1965.

ADDRESS: Refer to the proposal by name and send comments to: Larry Roberson, Clearance Officer, Office of Information Resource Management, USDA Room 404–W, USDA-Administration Building, Washington, DC 20250; and Gary Waxman, USDA Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bob Cron, Recreation Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 382–9408.

SUPPLEMENTARY INFORMATION: The Forest Service has submitted the proposal for collection of information to OMB for clearance as required by the Paperwork Reduction Act (44 U.S.C. 3501–3520). The Forest Service is requesting that OMB approve this submission by September 8 under the provisions of 5 CFR 1350.18, and that OMB waive its requirement of placing the burden statement (5 CFR 1320.21) on the envelope. Because of size limitations (6″ x 3-7/8″), it would not be practical to include such a paragraph.

The information collected on specialty form FS–2300–26, Recreation Fee Permit Envelope, is needed in order to comply with the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460*l*). The supporting statement explains the need for this collection by use of Form FS–2300–26, Recreation Fee Permit Envelope.

Form FS–2300–26, Recreation Fee Permit Envelope, with the text of the information collection, is set forth as Exhibit 1 at the end of this document.

SUPPORTING STATEMENT

Form FS–2300–26, Recreation Fee Permit Envelope

(1) The Forest Service collects recreation use fees at about 2,000 National Forest campgrounds as provided by section 4(b) of the Land and Water Conservation Fund Act (LWCF), as amended (16 U.S.C. 460*l*), and Forest Service regulations Admission Fees and Recreation Use Fees (36 CFR 291.9). The funds collected are to be used in preserving, developing, and assuring accessibility to quality outdoor recreation resources through Federal assistance to the states for planning, acquisition, and development of needed land and water areas and facilities and through Federal acquisition and development of certain lands and other areas.

In addition to providing for the collection of fees, section 4(h) of the LWCF provides that periodic reports indicating the number and location of fee collection areas, the number and location of potential fee collection areas, capacity and visitation information, the fees collected, and other pertinent data be coordinated and compiled regularly and transmitted to the Committees on Interior and Insular Affairs of the United States House of Representatives and the United States Senate by the National Park Service, Department of the Interior.

This information is compiled by the Forest Service for the National Park Service report and is also used for Forest Service managers to ensure that the appropriate fees are collected, to plan ways to meet public demands for campgrounds, and to inform users of opportunities to use National Forest campgrounds.

(2) Fee collection at most of the 2,000 campsites nationwide is accomplished through use of a self-service fee envelope (Exhibit 1) that is deposited in a secure collection box. The campground customer puts the fee in the envelope and completes eleven blocks of information.

When authorized Forest Service personnel empty the collection box, they check the information on the fee envelope (Exhibit 1) to ensure that the appropriate fee has been paid for occupancy of the location and length of stay.

Block 1 (Amount Enclosed) serves two purposes. It is the amount computed by the campground customer based on fee per day and length of stay. It also provides an audit function for Forest Service personnel. Significant variations between the actual amount in the envelope and the reported amount in Block 2 could be evidence of tampering.

Block 2 (Number of Days) is significant for campground customer and Forest Service personnel in computing the appropriate fee. This information is also compiled and analyzed for the National Park Service annual report to Congress under section 4(h) of the LWCF. Block 3 (Time and Date) is needed to ensure compliance with the 2:00 PM checkout time.

Block 4 (Vehicle License) and Block 5 (State) are used to collect information to comply with section 4(e) of the LWCF concerning the administration and enforcement of regulations for the collections of fees. Using the information in blocks 4 and 5, authorized persons may be able to identify persons who have violated fee collection regulations, and follow up in a manner provided by the LWCF and the regulations.

Block 7 (Camp Unit Number) is needed to identify locations of occupancy. Some fees vary because of additional services available at individual sites. It is also compiled and analyzed for the National Park Service annual report to Congress under Section 4(b) of the LWCF.

Block 9 (Other Charges) is needed for some campgrounds that charge an additional fee for extra vehicles or special services.

Block 10 identifies the campground user as Golden Age and Golden Access Passport holders who pay one-half the

established fee as provided for in Section 4(a) of the LWCF.

Block 11 (Departure Date) is needed to calculate the appropriate fees for each site and may be used by Forest Service managers for analysis of lengths of stay at certain geographic locations.

Block 3 (Date Purchased), Block 11 (Planned Departure Date), Block 8 (Number in Party), and Block 6 (Home Zip Code) provide information used to determine the recreation use of Forest Service fee campgrounds and the home area from which they travel. This information is used for Forest Service management of the National Forest recreation program and to report visitor use information required by the Land and Water Conservation Fund Act. The arrival date and departure date provide the number of days occupied. This information, multiplied by the number in the party, produces the total use of the site for that time period.

Block 6 (Home Zip Code) information is aggregated and used by the Forest Service to identify where campground users reside. The information is used for transportation planning, targeting communication of information, understanding elements of customer satisfaction, and for making management decisions about recreation opportunities to provide on the National Forests.

The Forest Service has chosen to use specialty form FS–2300–26, Recreation Fee Permit Envelope, to reduce the number of personnel at National Forest campgrounds and to reduce the need to collect the information in person.

Not collecting information on the fee envelope would necessitate personal contact with each campground user by Forest Service employees to determine fee compliance. We estimate that this would increase the cost of our fee collection system at the field level by 400%. Not collecting vehicle identification information on the fee envelope would prevent the completion of an undetermined number of law enforcement actions, add an undetermined cost to law enforcement efforts, and keep the Forest Service from complying with section 4(e) of the LWCF and Forest Service regulations at 36 CFR 291.9. Not collecting direct user information on the fee envelope would result in use of alternate methods such as car counters and in-person counts by Forest Service employees at an increased cost or reduction in accuracy of the data. Elimination of zip code information would result in poorer service to the campground users and greater difficulty in providing information they need.

(3) We know of no way today's technology could reduce the burden of this necessary information.

(4) We have reviewed other Forest Service recreation documents that request information. We do not have another document that requests information from campground users.

(5) Fee compliance information is specific to the current user. Historic recreation use information is available but does not provide the current use information required by section 4(h) of the LWCF, nor does it provide trend information for management use.

(6) The fee envelope information does not affect small businesses.

(7) Completing fee envelope information on a random sample basis would produce an acceptable accuracy for recreation use and customer residences. A sample collection would not, however, provide the needed information to insure that fees are properly paid, as provided by section 4(c) of the LWCF. Less frequent collection of fee envelope information would necessitate the individual on-site contacts or in-person fee collection described under Number 2.

(8) Forest Service collection of information on fee envelopes is consistent with 5 CFR 1320.6.

(9) Consultation with recreation users takes place during the forest planning and prior to individual project decisions. Individual campground users also express their views to Forest Service employees working at the recreation site. Our experience with the fee envelope is that users willingly complete the information.

Information collected on the fee envelope is site specific and thus not available from other agencies.

(10) The customer does not provide a name on the fee envelope. Information on the envelope is used for reporting recreation use, a statistic which is available to the public. Information on the envelope could be requested through Freedom of Information but should not be a threat to individual privacy.

(11) Form FS–2300–26, Recreation Fee Permit Envelope, requires no sensitive information concerning sexual habits, attitudes, religious beliefs, or other matters commonly considered private.

(12) Respondent cost is measured by time to complete the information on the envelope. See response to #13. No other cost is incurred.

Government Cost:

Envelopes: 2,000,000 @ $.02/envelope=	$40,000
Maintenance-dispensing boxes; collection-envelopes	90,000
Data analysis and aggregation	195,000
Overhead 15%	48,750
Estimated Annual Cost	$373,750

(13) About 2,000,000 fee envelopes would be completed each year. Some camping users are repeat visitors. Reading the directions, completing the information on the fee envelope, depositing the envelope and placing the receipt stub on the car dash takes an average of two minutes to complete. The burden is 60,000 hours.

(14) This is an increase of 60,000 hours since the Forest Service has not reported the burden before.

(15) Information about campground use is compiled nationwide in the form of recreation visitor days and recreation visits and transmitted to the National Park Service. The National Park Service publishes a Federal Recreation Fee Report annually as provided by Section 4(h) of the LWCF and transmits the report to the Committees on Interior and Insular Affairs of the United States House of Representatives and United States no later than March 31 each year.

Dated: August 25, 1989.

William L. Rice,

Deputy Chief for Administration.

BILLING CODE 3410-11-M

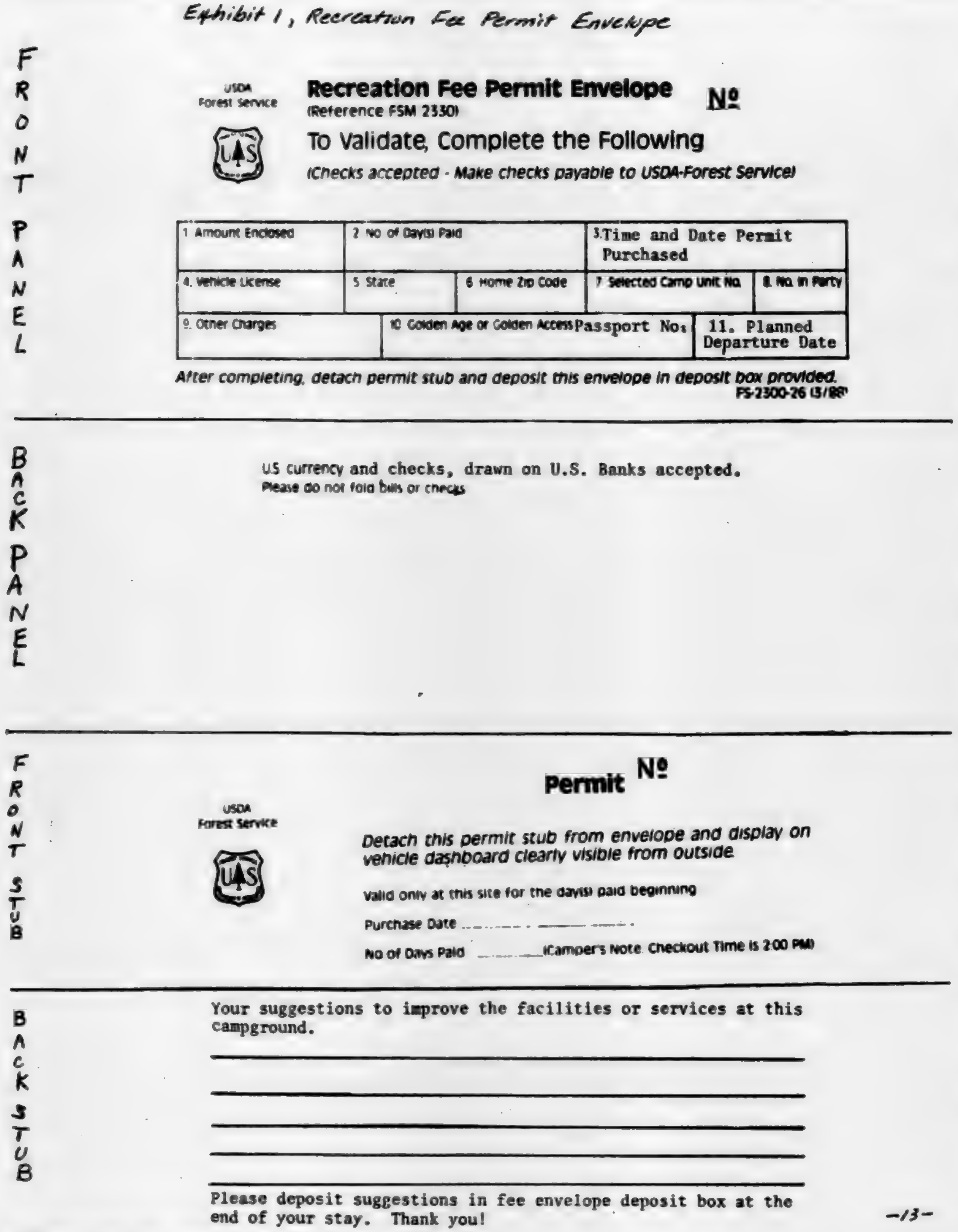

Exhibit 1, Recreation Fee Permit Envelope

FRONT PANEL

USDA
Forest Service

Recreation Fee Permit Envelope **№**
(Reference FSM 2330)

To Validate, Complete the Following

(Checks accepted - Make checks payable to USDA-Forest Service)

1 Amount Enclosed	2 No of Day(s) Paid	3.Time and Date Permit Purchased		
4. Vehicle License	5 State	6 Home Zip Code	7 Selected Camp Unit No.	8. No. in Party
9. Other Charges	10 Golden Age or Golden Access Passport No:	11. Planned Departure Date		

After completing, detach permit stub and deposit this envelope in deposit box provided.
FS-2300-26 (3/88)

BACK PANEL

US currency and checks, drawn on U.S. Banks accepted.
Please do not fold bills or checks

FRONT STUB

USDA
Forest Service

Permit **№**

Detach this permit stub from envelope and display on vehicle dashboard clearly visible from outside

Valid only at this site for the day(s) paid beginning

Purchase Date ______

No of Days Paid ______ (Camper's Note: Checkout Time is 2:00 PM)

BACK STUB

Your suggestions to improve the facilities or services at this campground.

______

______

______

______

______

Please deposit suggestions in fee envelope deposit box at the end of your stay. Thank you!

-13-

[FR Doc. 89-20556 Filed 8-30-89; 8:45 am]

BILLING CODE 3410-11-C

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Overseas Business Interest Questionnaire.

Form Numbers: Agency—ITA-471P, OMB—0625-0039.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1,000 respondents; 500 reporting hours.

Average Hours per Response: 30 minutes.

Needs and Uses: This collection allows U.S. firms participating in overseas trade events sponsored by the International Trade Administration/U.S. Department of Commerce an opportunity to specifically identify their marketing objective for that specific event as well as current marketing activities and status in the specific foreign markets where the event will take place. The U.S. and Foreign Commercial Service/ITA overseas posts use the information to schedule business appointments during the trade event, arrange "blue ribbon" calls on key agents or distributors identified by participants prior to an event, and to issue specific show invitations to appropriate prospective overseas business partners. It is critical to pre-arrange business appointments thus providing U.S. participants with a program of high caliber business appointments.

Affected Public: Businesses or other for profit; small businesses or orgnizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: August 25, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-20557 Filed 8-30-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: NATO ICB Bidders List Application.

Form Numbers: Agency—ITA-4023P, OMB—0625-0055.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 60 respondents; 60 reporting hours.

Average Hours for Response: 1 hour.

Needs and Uses: NATO international competitive bidding opportunities for infrastructure project contracts are open only to NATO countries' companies which have had their eligibility to bid certified by their respective governments. The U.S. Department of Commerce (USDOC) is the executive agency which certifies U.S. companies' eligibility. Companies are required to submit an application to the International Trade Administration/USDOC. ITA reviews the application for completeness and accuracy and determines a company's eligibility based on its financial viability, technical capability, and security clearances of the U.S. Department of Defense.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: August 25, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

FR Doc. 89-20558 Filed 8-30-89; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-549-502]

Partial Termination of Antidumping Duty Administrative Review: Circular Welded Carbon Steel Pipe and Tube from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On April 28, 1989, the Department of Commerce initiated an administrative review of the antidumping duty order on circular welded carbon steel pipe and tube from Thailand. The Department is now partially terminating this review.

Background: On April 28, 1989, the Department of Commerce published a notice of initiation of administrative review of the antidumping duty order on circular welded carbon steel pipe and tube from Thailand. This notice stated that we would review information submitted by the Thai Hong Steel Pipe Co., Ltd. ("Thai Hong"), the Thai Union Steel Pipe Co., Ltd. ("Thai Union"), and the Saha Thai Steel Pipe Co. Ltd. ("Saha Thai") for the period March 1, 1988 through February 28, 1989. Thai Hong and Thai Union subsequently withdrew their request for review on July 18, 1989. Accordingly, the Department is terminating this review with respect to Thai Hong and Thai Union but proceeding with the review with respect to Saha Thai.

EFFECTIVE DATE: August 31, 1989.

FOR FURTHER INFORMATION:
Contact Alain Letort or Stephen Jacques, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: 202/377-2667 (Letort) or 202/377-0180 (Jacques).

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended, 19 U.S.C. 1675(a)(1), and § 353.22(c)(5) of the Commerce Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22(c)(5)).

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-20456 Filed 8-30-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-810]

Postponement of Final Antidumping Duty Determination and Postponement of the Public Hearing: Mechanical Transfer Presses from Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from a respondent in the antidumping duty investigation to postpone the final determination, as permitted by section 735(a)(2)(A) of the Tariff Act of 1930, as amended.

Based on this request, we are postponing our final determination as to whether sales of mechanical transfer presses from Japan have occurred at less than fair value until not later than December 26, 1989. We are also postponing our public hearing in the investigation until November 3, 1989.

EFFECTIVE DATE: August 31, 1989.

FOR FURTHER INFORMATION CONTACT: James P. Maeder, Jr. at (202) 377-4929, V. Irene Darzenta at (202) 377-0186 or Mary S. Clapp at (202) 377-3965, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 18, 1989, we published a preliminary determination of sales at less than fair value of this merchandise. That notice stated that if the investigation proceeded normally, we would make our final determination by October 24, 1989.

On August 17, 1989, Komatsu, Ltd., a respondent which accounts for a significant proportion of exports of the subject merchandise to the United States, requested a postponement of the final determination in the antidumping duty investigation until the 135th day after the date upon which the preliminary determination was signed, pursuant to section 735(a)(2)(A) of the Act. Pursuant to § 353.20(b)(1) of the Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.38), if exporters who account for a significant proportion of exports of the subject merchandise under investigation request a postponement of the final determination following an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final antidumping duty determination until not later than December 26, 1989.

Public Comment: In accordance with 353.38 of the Department's regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on the preliminary determination in the antidumping duty investigation at 10:00 a.m. on November 3, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Ten copies of the business proprietary version and five copies of the public version of case briefs must be submitted to the Assistant Secretary by October 27, 1989. Ten copies of the business proprietary version and five copies of the public version of rebuttal briefs must be submitted to the Assistant Secretary by November 1, 1989.

An interested party may make an affirmative presentation at the public hearing only on arguments included in its case brief, and may make a rebuttal presentation only on arguments included in its rebuttal brief. Written arguments should be submitted in accordance with § 353.38 of the Commerce Department's regulations, and will be considered only if received within the time limits specified in this notice.

The U.S. International Trade Commission is being advised of this postponement in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Dated: August 24, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-20457 Filed 8-30-89; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of the Technology Applications Information System (TAIS)

AGENCY: Strategic Defense Initiative Organization, Office of Technology Applications, DoD.

ACTION: Notice.

SUMMARY: The Strategic Defense Initiative Organization Office of Technology Applications (SDIO/TNO) has developed the Technology Applications Information System (TAIS) to identify emerging Strategic Defense Initiative technologies with spinoff potential and expedite the transfer of these technologies. The SDIO TAIS is a data base which has recently been updated to include more than 1,100 unclassified, nonproprietary synopses of technology innovations available for review by the commercial sector, federal agencies, and researchers. The TAIS also contains descriptions of technological innovations and business opportunities originating from two SDIO programs: The Innovative Science and Technology Program and the Small Business Innovative Research Program. Any US citizen or corporation can access the TAIS by computer modem once a militarily critical technology data agreement has been completed and eligibility has been certified by the Defense Logistics Agency under provisions of DOD Directive 5230.25, Control of Unclassified Technical Data with Military or Space Application. Information regarding qualification and certification for access to militarily critical technology may be obtained by calling (800) DLA-DLSC. Information on use of the TAIS is available by calling SDIO/TNO at (202) 693-1563.

FOR FURTHER INFORMATION CONTACT: SDIO/TNO, Room 1E1023, The Pentagon, Washington, DC 20301-7100, (202) 693-1563.

Dated: August 25, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-20464 Filed 8-30-89; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement/Environmental Impact Report for the Sacramento Metropolitan Area, California Flood Control Investigation

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed action is a Feasibility Study of flood control measures in the Sacramento Metropolitan Area, California. The purpose of the action is to reduce potential flood damages caused by high flows during major storm events. The study will examine the feasibility of providing increased flood protection for the Sacramento Metropolitan Area. The study area includes developed areas along the Sacramento River and Yolo Bypass from the Fremont Weir downstream to an area just south of Freeport. Alternative improvements being studied are located in Sacramento and Yolo Counties. A Reconnaissance Report was prepared for this project in February 1989 that identified several acceptable alternatives to be carried into feasibility studies. A Feasibility Report will be prepared for this project. The Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) will accompany the Feasibility Report. This is a document jointly prepared by the Federal lead agency (Corps of Engineers) to comply with the National Environmental Policy Act and by the State lead agency (The Reclamation Board) to comply with the California Environmental Quality Act.

Scoping and Further Information Contact: Suggestions on the scope of coverage for environmental impact evaluations and related information should be provided in writing to the District Engineer, U.S. Army Corps of Engineers, Sacramento District, 650 Capitol Mall, Sacramento, California 95814-4794. Questions may be addressed to Mr. Mike Welsh, at telephone (916) 551-1861. Responses specifically related to the California Environmental Quality Act requirements for the DEIR may be directed to Ms. Analena Bronsen, The Reclamation Board, Department of Water Resources, P.O. Box 942836, Sacramento, California, 94236-001 (916) 322-3740.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The study will determine the feasibility of providing increased flood protection to the Sacramento Metropolitan Area. The Corps of Engineers will prepare a report on its findings to be submitted to the United States Congress.

2. Alternatives

Alternatives being considered in detail for feasibility studies consist of (a) No action, (b) Levee modification to provide higher levels of flood protection to the West Sacramento area, (c) Modification of the Sacramento Weir by removing the existing weir gates and lowering the weir crest, leaving the weir crest and removing the gates, or lowering the weir and maintaining the existing gated operation by modifying the gates.

3. Scoping Process

a. Close coordination will be maintained with Federal, State, local agencies, environmental organizations, concerned citizens, and other interested groups. This will be accomplished through public meetings and interagency coordination. A scoping notice will be mailed to the public in August 1989. A public workshop to identify issues of concern is tentatively scheduled for September 1989. A public meeting to discuss the draft Feasibility Report and DEIS/EIR is scheduled for August 1990. Through this Notice of Intent, all segments of the affected public and agencies are invited to participate.

b. An Environmental Information Paper was prepared for the Reconnaissance Report, dated February 1989. This effort identified the following as significant issues that will be discussed in depth in the DEIS/EIR: impacts to fish and wildlife resources; impacts to riparian, wetland, and upland vegetation; cultural resources, endangered species, and use changes; socio-economics; esthetic impacts and cumulative impacts.

c. The Reclamation Board of the State of California is the local non-Federal sponsor for this project. They are participating with the Corps of Engineers in the feasibility and environmental impact studies, and they would cost share in any improvements constructed as a result.

d. Significant review and consultation to be conducted during the preparation of the DEIS/EIR include coordination with the U.S. Fish and Wildlife Service under the Fish and Wildlife Coordination Act and Endangered Species Act, consultation with the State Historic Preservation Officer and Advisory Council on Historic Preservation under the National Historic Preservation Act, and coordination with the California Water Quality Control Board and Environmental Protection Agency on water quality issues under Section 404 of the Clean Water Act.

4. Availability

The DEIS/EIR is scheduled to be available for public review and comment in July 1990.

Dated: August 16, 1989.

Jack A. Le Cuyer,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89-20504 Filed 8-30-89; 8:45 am]

BILLING CODE 3710-GH-M

Department of the Army

Military Traffic Management Command; Military Personal Property Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 14 September 1989 at the Sheraton Crystal City Hotel, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP-M, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 5 September 1989.

Dated: August 17, 1989.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 89-20699 Filed 8-30-89; 9:01 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 89-29-NG]

Grand Valley Gas Co.; Order Granting Blanket Authorization To Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Grand Valley Gas Company (Grand Valley) blanket authorization to import natural gas from Canada. The order issued in FE Docket No. 89-29-NG authorizes Grand Valley to import up to 75 Bcf of Natural gas during a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056,

Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 25, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-20539 Filed 8-30-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-51-NG]

Harbert Energy Corp.; Application To Import Natural Gas From and Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from and export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 31, 1989, of an application filed by Harbert Energy Corporation (Harbert) for blanket authorization to import up to 100 Bcf, and to export up to 100 Bcf, respectively, of Canadian, Mexican and/or domestically produced natural gas for a term of two years, commencing on the date of first delivery. Harbert intends to utilize existing pipeline facilities for transportation of the volumes to be imported and exported, and indicates that it would submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than October 2, 1989.

FOR FURTHER INFORMATION:

Linda Silverman, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7249.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Harbert is a Texas corporation with its principal place of business in Houston, Texas. Harbert proposes to import or export natural gas either for its own account or as agent on behalf of both suppliers and purchasers, including local distribution companies, pipelines, and commercial and industrial end-users. According to the application, the authority requested by Harbert contemplates the following types of import and export transactions: (1) Importation of Canadian and Mexican natural gas for consumption in U.S. markets; (2) importation of Canadian natural gas for eventual return (via export) to Canadian markets; (3) exportation of domestically produced natural gas for consumption in Canadian and Mexican markets; and (4) exportation of domestically produced natural gas for eventual return (via import) to U.S. markets.

According to Harbert, the specific terms of each transaction would be negotiated on an individual basis, including price and volumes, to reflect market conditions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket import/export application is granted, the authorization may permit the import or export of the gas at any point of entry or exit on the international boundary where existing pipeline facilities are located.

Harbert requests that an authorization be granted on an expedited basis. A decision on Harbert's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.s.t., October 2, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete

understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Harbert's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 24, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-20540 Filed 8-30-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-52-NG]

Suncor Inc.; Application To Extend Blanket Authorization Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for extension of blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on August 3, 1989, of an application filed by Suncor Inc. (Suncor), requesting that blanket authority previously granted in DOE/ERA Opinion and Order No. 185 (Order 185), issued July 27, 1987 (DOE/ERA Docket No. 87-13-NG), be extended for two years beginning on January 1, 1990, the expiration of its current import authorization, through the period ending December 31, 1992. Suncor's existing blanket import authorization allows it to import up to a maximum of 36.5 Bcf of Canadian natural gas. Under the extension requested, Suncor would be authorized to import volumes not to exceed 27.38 Bcf of Canadian natural gas over a two-year period.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than October 2, 1989.

FOR FURTHER INFORMATION:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9394.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Suncor, a Canadian corporation with its principal office in Toronto, Canada, is an affiliate of Sun Company, Inc., of Randor, Pennsylvania, and Ontario Energy Resources Ltd., a corporation indirectly owned by the Province of Ontario, Canada. Under the proposed import arrangement, the natural gas to be imported would be owned or controlled by Suncor and would be sold on a short-term or spot-market basis to local distribution companies, natural gas marketers and industrial end-users in the midwestern United States. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. The proposed import would enter the United States at a point on the international boundary near Port of Morgan, Montana, and would be transported through the facilities of Northern Border Pipeline Company, Northern Natural Gas Company, Natural Gas Pipeline Company of America, and ANR Pipeline Company. No new facilities are required to transport the imported natural gas.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., October 2, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Suncor's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 24, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–20538 Filed 8–30–89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

TSCA Chemical Testing; Receipt of Test Data

[OPTS–44536; FRL 3637–6]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on C9 Aromatic Hydrocarbon Fraction (CAS Nos. 25550–14–5, 526–73–8, 108–67–8, and 95–63–6), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). This notice also announces the receipt of test data for 2, 6–dichloro–4–nitroaniline (CAS No. 99–30–9), submitted pursuant to a testing consent order under TSCA. Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testin~ conducting pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for C9 Aromatic Hydrocarbon Fraction was submitted by the American Petroleum Institute, on behalf of the manufacturers of the C9 Aromatic Hydrocarbon Fraction, pursuant to a test rule at 40 CFR 799.2175. It was received by EPA on August 14, 1989. The submission describes a 3–generation reproduction/fertility study in rats with C9 aromatic hydrocarbons. Reproductive effects testing is required by this test rule.

Test data for 2,6–dichloro–4–nitroaniline was submitted by the Synthetic Organic Chemical Manufacturers Association, Inc., (SOCMA), on behalf of the Upjohn Company, pursuant to a testing consent order at 40 CFR 799.5000. It was received by EPA on August 7, 1989. The submission describes the early life stage toxicity of 2,6–dichloro–4–nitrobenzenamine to rainbow trout (slamo gairdneri). Toxicity testing is required by this consent order.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44536). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: August 22, 1989.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89–20577 Filed 8–30–89; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Tuesday, September 19, 1989, from 9:30 a.m. to 12:00 noon. The meeting will be held at Eximbank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Financial Report, Congressional Matters, Reinvolving Financial Institutions, Tied Aid Credit Status, and other topics.

Public Participation: The meeting will be open to public participation; and the last 15 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8871, not later than September 18, 1989. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact, prior to September 14, 1989, the Office of the Secretary, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 566–8871 or TDD: (202) 535–3913.

FURTHER INFORMATION: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8871.

Joan P. Harris,

Corporate Secretary.

[FR Doc. 89–20503 Filed 8–30–89; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL RESERVE SYSTEM

Canadian Imperial Bank of Commerce, Toronto, Ontario, Canada; Proposal To Engage in Placement as Agent of Debt and Equity Securities

Canadian Imperial Bank of Commerce, Toronto, Ontario, Canada ("Canadian Imperial"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary Wood Gundy Corp., New York, New York ("Company"), to engage in the placement, as agent for issuers, of debt and equity securities.

Company is currently authorized to engage in providing various types of brokerage and investment and financial advisory services, as well as underwrite and deal in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks are authorized to underwrite and deal in under 12 U.S.C. 24 and 335.

Canadian Imperial has applied to engage in the placement, as agent for issuers, of all types of securities within the following limitations: (i) Company will act only as agent, without recourse, solely upon the order and for the account of clients, and will not assume any credit or market risk with respect to the securities privately placed; (ii) Company will remain a broker-dealer registered with the Securities and Exchange Commission and subject to the registration, record-keeping, reporting and other fiduciary standards of the Securities Exchange Act of 1934, as amended, and of the National Association of Securities Dealers, Inc.; (iii) Company will be maintained, and will hold itself out to the public, as a separate and distinct corporate entity with its own properties, assets, liabilities, books and records, will conduct its business separate from its affiliates, with its agreements with clients indicating that it is solely responsible for its contractual obligations and commitments, and will maintain offices separate from those of any bank or thrift subsidiary of Canadian Imperial or any U.S. branch or agency of Canadian Imperial; (iv) Company will comply with the provisions of the Securities Act with respect to each private placement of securities; (v) Company will place securities only with a limited number of financially sophisticated institutions and individuals, and will not offer securities to the general public or make any general solicitation or advertisement of the securities it privately places (Company will not engage in "best efforts" underwriting as part of the proposed activities); and (vi) Company will not purchase or repurchase for its own account any securities privately placed by the Company or inventory (whether overnight or otherwise) unsold portions of an issue; however, Company may, subject to the Board's approval of Canadian Imperial's pending application to underwrite and deal to a limited extent in debt and equity securities, purchase or repurchase for its own account any securities privately placed or inventory any unsold securities (gross revenues derived from the latter activities would be included in the gross revenues that Company derives from ineligible securities activities).

In addition, (viii) neither Canadian Imperial nor any of its subsidiaries will provide any letter of credit or other guarantee arrangement to support any securities placed by the Company; (viii) neither Canadian Imperial nor any of its subsidiaries will knowingly make loans to issuers of securities placed by the Company that are the functional equivalent of purchasing the securities for the account of Canadian Imperial or such subsidiary and Canadian Imperial and its subsidiaries will assure themselves, and maintain appropriate documentary records demonstrating, that any advances by them to an issuer of securities being placed by the Company are not used to repay such securities (or any interest or dividends thereon) or to cover any unsold portion of such securities (i.e., any credit extended to such issuers by Canadian Imperial or its subsidiaries will be under different terms, at different times and for different purposes than the securities being placed by the Company or will have substantial participation by unaffiliated lenders, and will contain terms no more favorable to persons who use the Company's private placement services than to persons who do not use such services); (ix) no U.S. bank, thrift or trust or investment advisory subsidiary of Canadian Imperial and no U.S. branch or agency of Canadian Imperial will purchase, as a trustee or in any other fiduciary capacity, for accounts over which it has investment discretion securities placed by the Company unless, in any such case, such purchase is specifically authorized under the instrument creating the fiduciary relationship, by court order, or by law of the jurisdiction under which the trust is administered; (x) no U.S. bank, thrift or trust or investment advisory subsidiary of Canadian Imperial and no U.S. branch or agency of Canadian Imperial will provide investment advice with respect to securities placed by the Company or will advertise or distribute sales literature concerning such securities and, where any bank or lending affiliate of the Company has a material lending relationship with an issuer of securities being placed by the Company, as required by the securities laws the Company will disclose the existence of that relationship to each purchaser of that issuer's securities and whether the proceeds of the issue will be used to repay outstanding debt to affiliates (such disclosure would describe the difference between Company and Canadian Imperial and Canadian Imperial's subsidiary banks); (xi) there will be no officer, director or employee interlocks between the Company and any of Canadian Imperial's U.S. bank or thrift subsidiaries or any U.S. branch or agency of Canadian Imperial; and (xii) no U.S. bank or thrift affiliate of Canadian Imperial and no U.S. branch or agency of Canadian Imperial shall disclose to the Company, nor shall the Company disclose to an affiliated U.S. bank or thrift or U.S. branch or agency of Canadian Imperial, any nonpubic customer information (including an evaluation of the creditworthiness of an issuer or other customer of that bank or thrift, or underwriting subsidiary) without the consent of that customer.

The Board has not previously determined that the proposed activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) of the Act, provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

Canadian Imperial contends that the proposed activities are closely related to banking because banks have provided such services for many years, and because such activities are operationally and functionally equivalent to many traditional commercial banking functions.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Canadian Imperial maintains that approval of the application can be expected to increase competitiveness of Company, particularly since the Company has special expertise in providing such services in the cross-border market between the United States and Canada.

Canadian Imperial contends that the proposed activities would not result in adverse effects as the potential conflicts of interest that might be said to arise are no different from those arising from the private placement activities approved by the Board in *Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 138 (1987). Canadian Imperial also states that any adverse effects are adequately addressed by the above proposed limitations as well as by the anti-fraud prohibitions of the Securities Act and the Securities Exchange Act of 1934, the NASD Rules of Fair Practice, the anti-tying provisions of the banking and antitrust laws, ERISA, and sections 23A and 23B of the Federal Reserve Act.

Canadian Imperial contends that the proposed activities do not raise an issue under section 20 of the Glass-Steagall Act (12 U.S.C. 377), relying on *Securities Industry Ass'n* v. *Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 107 S.Ct 3228 (1987). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than September, 1989.

Board of Governors of the Federal Reserve System, August 25, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–20488 Filed 8–30–89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Tabulation of Natality Vital Statistics Data by Race of Mother

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The National Center for Health Statistics, CDC, provides notice of a change in the tabulation of most natality data as derived from the birth certificate. Tabulations will be made according to race of the mother, rather than the race of the child, which had been assigned by an algorithm.

DATE: This change will be made beginning with reports involving data for the calendar year 1989.

FOR FURTHER INFORMATION CONTACT: John E. Patterson, Director, Division of Vital Statistics, National Center for Health Statistics, CDC, telephone: (301) 436–8951.

SUPPLEMENTARY INFORMATION:

Background

The National Center for Health Statistics (NCHS) has for many years tabulated natality data by the race of the child as determined through an algorithm based on the race of the parents, as reported on the live birth certificate. This is done as follows: When only one parent is white, the child is assigned the other parent's race or national origin. When neither parent is white, the child is assigned the father's race or national origin with one exception; if either parent is Hawaiian or part-Hawaiian, the child is assigned to Hawaiian. If race is missing for one parent, the child is assigned the race of the parent for whom race is given.

Ethnicity is coded and tabulated as a separate item in NCHS data systems. Beginning with data year 1978, when several States added an Hispanic origin item to their birth record, NCHS began to tabulate and publish natality data by the Hispanic origin of the mother.

Change

Beginning with data year 1989, NCHS will tabulate and report most natality data on the basis of the race of the mother. Criteria for reporting the race of the parents will be unchanged, and will continue to reflect the response of the informant (usually the mother). Natality data on Hispanic origin will continue to be tabulated according to the Hispanic origin of the mother.

Rationale

New procedures for tabulations are being instituted at this time in an effort to more accurately produce natality data by racial group. Several related events influenced this decision: Most important is the regular decennial revision of the certificates of live birth, which was implemented in most States in 1989. These certificates include many new items which are related to the mother, including alcohol and tobacco use, weight gain, medical risk factors, and complications of labor and/or delivery. It is appropriate to use the race of the mother in tabulating these items. Many of the other items that have been on the birth certificate since at least 1968 are also characteristics of the mother. These include age, education, the month that pregnancy prenatal care began, number of prenatal visits, marital status, and date of last live birth. With the 1989 revisions, most States will include an Hispanic origin item. The proposed change will provide for tabulation of both race and Hispanic origin according to the same procedures.

Over the years, the percent of births where parents were not of the same race has been increasing. In 1968, these births accounted for only 1.0 percent of births; by 1987 this had increased to 3.0 percent. In addition, the percent of births with father's race missing on the birth certificate has increased from 7.0 in 1968 to 13.3 in 1987. These births are already assigned the race of the mother on a de facto basis. Tabulation using the race of mother will provide for a more uniform approach.

Impact of Change

The effect of this change will be to increase the quality of the data on pregnancy outcome among minorities. For example, tabulations are now based on race of child and Hispanic origin of the mother. Health indicators such as low birth weight and use of prenatal care will be consistently related to maternal characteristics, rather than an arbitrary combination of maternal and paternal characteristics. These changes will be especially important for racial categories other than black or white. For example, the infant mortality rate (IMR) for American Indians based on race of child was 10.7 deaths per 1,000 live births in 1983. If race of mother had been used the IMR would have been 13.5. The latter rate is much closer to the rate obtained using NCHS' program of linking birth and infant death files (14.3), the results of which are not generally available as quickly as the standard vital statistics rates.

Implementation

The NCHS will take several steps to allow for continuity in analysis of data by race during this period. Key tabulations for 1989 and 1990, including all trend tables, will show data for both race of mother and race of child. This will provide a "bridge" so the effects of this change can be separated from real changes in the data. Public use data tapes for these years will continue to include the race of the mother, father, and child, continuing a series beginning with the 1968 data year. In 1991 and subsequent years, the tapes will include both race of mother and father so that users can continue to use the algorithm to derive race of child if they desire. In addition to the "bridge" data in trend tables of the regular publications, a special report will be prepared showing more information on the comparability of the two methods of tabulation. In trend studies every effort will be made to assist the reader in assessing the long-term impact of the change.

Dated: August 24, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89–20483 Filed 8–30–89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 89F-0338]

E.I. du Pont de Nemours and Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that E.I. du Pont de Nemours and Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of maleic anhydride grafted onto ethylene-vinyl acetate copolymers, and fumaric acid and maleic anhydride grafted onto certain olefin polymers for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4163) has been filed by E.I. du Pont de Nemours and Co., 1007 Market St., Wilmington, DE 19898, proposing that § 177.1350 *Ethylene-vinyl acetate copolymers* (21 CFR 177.1350) and § 177.1520 *Olefin polymers* (21 CFR 177.1520) of the food additive regulations be amended to provide for the safe use of fumaric acid and maleic anhydride grafted onto certain olefin polymers, and maleic anhydride grafted onto ethylene-vinly acetate copolymers for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 16, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–20491 Filed 8–30–89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89G–0316]

AVEBE America, Inc.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that AVEBE America, Inc., has filed a petition (GRASP 9G0353), proposing to affirm that maltodextrin derived from potato starch is generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Comments by October 30, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that AVEBE America, Inc., Princeton Corporate Center, 4 Independence Way, Princeton, NJ 08450, has filed a petition (GRASP 9G0353) proposing that maltodextrin derived from potato starch be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in 21 CFR 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before October 30, 1989, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday..

Dated: August 16, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–20490 Filed 8–30–89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, September 18–19, 1989, Building 31C, Conference Room 6, 6th Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland, 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Portions of the Board meeting and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

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Portions of the meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Subcommittee on Planning and Budget will be closed to the public as indicated below in accordance with the provisions set forth in section 552(c)(9)(B), title 5, U.S.C. and section 10(d) of Public Law 92–463, to discuss the status of the 1990 budget markup and the 1991 budget.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and rosters of the Board members, upon request.

Name of Committee: Subcommittee on Cancer Centers

Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, MD 20892 (301) 496–5515
Date of Meeting: September 17, 1989
Place of Meeting: Building 31C, Conference Room 7
Open: 6 p.m. to adjournment
Agenda: To discusss progress on the guidelines for comprehensive cancer centers and the 5-year plan for the Cancer Centers Program.

Name of Committee: Subcommittee on Planning and Budget

Executive Secretary: Judith Whalen, Building 31, Room 11A19, Bethesda, MD 20892 (301) 496–5515
Date of Meeting: September 17
Place of Meeting: Building 31C, Conference Room 8
Closed: 7:30 p.m. to 8 p.m.
Agenda: To discuss the status of the 1990 budget markup and 1991 budget
Open: 8 p.m. to adjournment
Agenda: To discuss the 1989–1990 Biennial Report of the NCAB.

Name of Committee: Working Group of the Subcommittee on Agenda

Executive Secretary: Dr. Paulette S. Gray, Westwood Building, Room 852, Bethesda, MD 20892 (301) 496–7173
Date of Meeting: September 18
Place of Meeting: Building 31A, Room 10A03
Open: 12:30 p.m.—Lunch Meeting
Agenda: To continue discussion of the format of NCAB meetings.

Name of Committee: Subcommittee on Special Actions for Grants

Executive Secretary: Mrs. Barbara S. Bynum, Building 31, Room 10A03, Bethesda, MD 20892 (301) 496–5147
Date of Meeting: September 18
Place of Meeting: Building 31C, Conference Room 6
Closed: 1:30 p.m. to adjournment
Agenda: Review and discussion of individual grant applications.

Name of Committee: AIDS Subcommittee

Executive Secretary: Joyce O'Shaughnessy, Building 31A, Room 11A23, Bethesda, MD 20892 (301) 496–3505
Date of Meeting: September 18
Place of Meeting: Building 31C, Conference Room 8
Open: Following NCAB
Agenda: Discussion of a review of the AIDS program.

Name of Committee: Subcommittee on Environmental Carcinogenesis

Executive Secretary: Dr. Richard Adamson, Building 31, Room 11A03, Bethesda, MD 20892 (301) 496–6618
Date of Meeting: September 18
Place of Meeting: Building 31C, Conference Room 7
Open: 6 p.m. to adjournment
Agenda: To review data on the hazard assessment of daminozide.

Name of Committee: National Cancer Advisory Board

Executive Secretary: Mrs. Barbara Bynum, Building 31, Room 10A03, Bethesda, MD 20892 (301) 496–5147
Date of Meeting: September 18–19
Place of Meeting: Building 31C, Conference Room 6
Open: September 18, 8:30 a.m. to recess, September 19, 8:00 a.m. to adjournment
Agenda: Reports on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; Subcommittee Reports; and New Business.

Catalog of Federal Domestic Assistance Progam Numbers: (13.392, Project grants in cancer construction; 13.393, Project grants in cancer cause and prevention; 13.394, Project grants in cancer detection and diagnosis; 13.395, Project grants in cancer treatment; 13.396, Project grants in cancer biology; 13.397, Project grants in cancer centers support; 13.398, Project grants in cancer research manpower; and 13.399, Project grants and contracts in cancer control)

Dated: August 21, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–20478 Filed 8–30–89; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; The National Advisory Eye Council; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, September 14, 1989, Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 9:00 a.m. until approximately 11:30 a.m. on Thursday, September 14. Following opening remarks by the Director, National Eye Institute, there will be presentations by the staff of the Institute concerning Institute programs and various research assistance mechanisms. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from approximately 11:30 a.m. until closing on September 14 for the review, discussions and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

The Vision Research Program Planning Subcommittee will meet on Friday, September 15, 1989, from 9:00 a.m. until noon, in Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland. Attendance by the public will be limited to space available.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9110, will provide a summary of meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases; 13.868, Anterior Segment Diseases Research; and 13.871, Strabismus, Amblyopia and Visual Processing; National Institutes of Health.)

Dated: August 21, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–20479 Filed 8–30–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption; Issuance

On 16 August 1989, the U.S. Fish & Wildlife Service Region One Regional Director's permit number 702631 was amended to include the desert tortoise [*Gopherus* =(*Scaptochelys,* =*Xerbates*) *agassizii*]. The 30-day public comment period, required by the Endangered Species Act was waived in accordance with section 10(c) of the Endangered Species Act. The Fish & Wildlife Service determined that an emergency affecting the health and life of specimens of endangered species existed, and no reasonable alternative was available to the applicant. The desert tortoise population is suffering from a respiratory virus. Valuable information needed to control the epidemic would have been lost, because animals being monitored in the wild were likely to begin hibernation before the 30-day comment period had elapsed and would not have been locatable for testing. These animals are scheduled to be recaptured and have blood samples drawn during the next 30 days.

Dated: August 25, 1989.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89–20548 Filed 8–30–89; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[(WY-920-08-4120-11); WYW117055]

Coal Exploration License; Cheyenne, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Invitation for Coal Exploration License.

SUMMARY: Powder River Coal Company hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Campbell County, Wyoming:

T. 41 N., R. 70 W., 6th P.M., WY, Sec. 8: Lots 4, 10, SW¼NW¼, Sec. 17: Lots 3, 6, 11, 14; Containing 280.14 acres.

All of the coal in the above land consists of unleased Federal coal, within the Powder River Basin known coal leasing area. The purpose of the exploration is to establish the thickness of the Wyo-Dak Anderson coal seam.

ADDRESSES: A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number WYW117055): Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82003; and Bureau of Land Management, 1701 East "E" Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in a newspaper once each week for two consecutive weeks beginning the week of August 28, 1989, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and to Powder River Coal Company no later than 30 days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Mr. Ronald J. Braig, Powder River Coal Company, Caller Box 3034, Gillette, Wyoming 82717 and the Bureau of Land Management, Wyoming State Office, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

The foregoing is published in the **Federal Register** pursuant to title 43 Code of Federal Regulations, § 3410.2–1(c)(1).

F. William Elkenberry,

State Director.

[FR Doc. 89–20553 Filed 8–30–89; 8:45 am]

BILLING CODE 4310–22–M

[WY-060-09-4111-16]

Environmental Assessment and Public Scoping on Production of Coal-Bed Methane; Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental assessment and conduct public scoping on production of coal-bed methane.

SUMMARY: The Buffalo Resource Area, Casper District is proposing to prepare an environmental assessment (EA) and conduct scoping on the drilling, completion and production of coal-bed methane in an area within the Powder River Basin. Information and concerns are requested on this development. The proposed area of consideration is in Johnson and Campbell Counties, Wyoming. The public is encouraged to present their ideas, information and concerns. All issues and concerns will be considered in preparation of the EA.

DATES: Scoping comments will be accepted through September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Information on the proposed coal-bed methane development may be obtained by visiting, writing, or calling the following office. Scoping comments and information may be sent to the same address. Glenn Bessinger, Area Manager, BLM, Buffalo Resource Area, 189 No. Cedar, Buffalo, Wyoming 82834, (307) 684–5586.

SUPPLEMENTARY INFORMATION: The actions to be analyzed in the EA include drilling, operating, and maintaining gas wells completed in Powder River Basin coal beds. Construction and operation of associated transportation systems will also be analyzed. The Powder River Basin has extensive coal deposits and the extent of recoverable reserves of methane is inknown at this point. Information obtained in response to this notice and news releases which are being issued will be used to determine the geographic extent of the EA.

The following issues and concerns have been identified to date:

—Effects of the surface discharge of large amounts (possibly 2000 barrels/day/well) of water produced with the methane gas
—Potential for effects on aquifers by the removal of large amounts of water
—Increases in surface disturbing activities caused by construction of well pads and transportation systems
—Potential for effects on the domestic water wells in or near coal-bearing formations

Applications for Permit to Drill (APD) on coal-bed methane projects will continue to be accepted and processed to the point of approval by the BLM, Buffalo Resource Area Office. The timing of their approval has not been decided yet. The three options listed below are being considered. Comments on these methods would be appreciated.

Each APD received after this notice will be processed, though approval will not be granted until it is determined that it is in conformance with the EA, once it is completed.

APDs will be reviewed to determine if cumulative impacts may occur through their approval. If a determination is made that cumulative impacts might occur then approval may be delayed on some applications until completion of the EA.

Continue to process each APD, but approve only those which applicant(s) can demonstrate that there is no cumulative relationship with existing or approved coal-bed methane wells.

Dated: August 24, 1989.

James Monroe,

District Manager.

[FR Doc. 89-20540 Filed 8-30-89; 8:45 am]

BILLING CODE 4310-22-M

[AZ-040-4333-09-SPCA]

Off-Road Vehicle Designation, Livestock Grazing Notice, and Establishment of Supplementary Rules for the San Pedro Riparian National Conservation Area, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decisions and establishment of supplementary rules.

Off-Road Vehicle Designation Decision

Notice is hereby given relating to the use of off-road vehicles (ORVs) on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR part 8340. The following described lands under the administration of the Bureau of Land Management are designated as limited to off-road vehicle use.

The 47,668 acres affected by this designation are in the San Pedro Riparian National Conservation Area (NCA) in the Safford District. This designation is the result of resource management decisions made in the San Pedro River Riparian Management Plan, June 1989.

During the development of the San Pedro Environmental Impact Statement (EIS), Congress passed legislation designating the EIS area plus additional acreage as the San Pedro Riparian National Conservation Area. The legislation was signed by the President on November 18, 1988. There are about 56,431 acres authorized in the NCA. There is a difference in the acreages in this ORV designation and in the NCA. These additional lands will receive planning, including ORV designation, in the Safford District Resource Management Plan, now in preparation.

Limited Designation

Use Limited to Designated Roads—Use is limited to designated roads on all 47,668 acres by licensed, motorized vehicles. Vehicle travel, including the use of mountain bikes, is permitted only on roads designated for such use by BLM. All designated roads will be signed and identified on maps and brochures of the area.

This ORV designation applies to all vehicles regardless of their purpose. Emergency and administrative vehicles are excluded from this designation.

These decisions are final, become effective upon publication in the **Federal Register**, and will remain in effect until rescinded or modified by the authorized officer. This designation is consistent with the language in the enabling legislation for the NCA. The documentation describing the impact of this designation is available for review at the offices listed below.

Livestock Grazing Notice

Livestock grazing is prohibited on the unleased acquired lands for a 15 year period. This announcement constitutes an official notice of livestock closure for the unleased acquired lands in the San Pedro Riparian National Conservation Area. Any unauthorized grazing use on these lands will constitute a violation and is subject to the impoundment provisions of 43 CFR 4150.

Establishment of Supplementary Rules

Summary

The purpose of these supplementary rules is to provide for the protection of persons, property, and public lands and resources. The San Pedro Riparian NCA is the area of consideration for the application of these supplementary rules. In addition to the regulations contained in 43 CFR 8365.2, the following supplementary rules will be applied to the NCA.

1. *Vehicle Use*—Licensed motorized and mechanized vehicles, including mountain bikes, are limited to designated roads. The use of unlicensed motorized vehicles is prohibited. All designated roads will be signed and identified on BLM maps and brochures available at parking areas and at BLM's administrative offices.

2. *Trapping*—Trapping is prohibited, except for health and public safety or administrative purposes as determined by BLM.

3. *Woodcutting*—Woodcutting is prohibited. Gathering of dead and down wood for use in campfires is permitted only for use in designated areas.

4. *Firearms Use*—Firearms discharge is permitted in the area north of Charleston Road and south of Arizona Highway 92 from September 1 to March 31 for the purpose of regulated hunting as authorized by the State of Arizona. The area between Charleston Road and Highway 92 is closed yearlong to either the immediate possession or discharge of firearms for the purpose of public safety. The discharge of firearms is also prohibited within 1/4 mile of developed facilities. Target shooting and "plinking" are prohibited.

Hunting is subject to all the rules and regulations of the Arizona Game and Fish Department. Bow hunting is permitted anywhere, in accordance with State regulations during established hunting periods, except within 1/4 mile of developed facilities.

5. *Length of Stay*—Persons may occupy any specific location within developed campgrounds or on public lands for a period of not more than seven (7) days within any period of 21 consecutive days unless otherwise authorized.

6. *Overnight Camping Outside Developed Campgrounds*—Overnight camping outside developed campgrounds is allowed only with a permit. Permits can be obtained at the NCA's administrative offices. Backcountry campers are required to pack out all trash. Campfires are allowed only in designated areas. Overnight camping and campfires are prohibited within identified research natural areas (RNAs).

7. *Pets*—Pets, including hunting dogs, must be leashed at all developed facilities and in other posted areas. Unleashed hunting dogs may only be used during the recognized hunting period in the areas open to firearms discharge.

8. *Horse Use*—The tethering or corralling of horses is prohibited at campgrounds and picnic areas unless facilities have specifically been provided for such use or unless otherwise authorized. Horse use will be allowed in all other areas.

9. *Closures*—Portions of the NCA may be temporarily closed to all or specific types of public use for the protection of natural and cultural resources or to provide for public safety. These areas will be signed and displayed on maps on the local area.

10. *Metal Detectors*—The use of metal detectors is prohibited to protect cultural resources in the NCA.

DATES: These rules will be in effect upon publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8365.1-6. The authority for establishing closures and restrictions is contained in 43 CFR 8364.1. These rules and restrictions were recommended and adopted through the San Pedro River Riparian Management Plan. These rules and restrictions will be available in the local offices having jurisdiction over the NCA.

ADDRESSES: For further information about the ORV designation or the

supplementary rules, contact either the Project Manager, Bureau of Land Management, San Pedro Riparian National Conservation Area, Box 9853, RR 1, Huachuca City, AZ 85616, telephone (602) 457-2265 or the Safford District Office, Bureau of Land Management, 425 East 4th Street, Safford, AZ 85546, telephone (602) 428-4040.

Dated: August 17, 1989.

Ray A. Brady,

District Manager.

[FR Doc. 89-20505 Filed 8-30-89; 8:45 am]

BILLING CODE 4310-32-M

[OR-030-09-4332-10: GP9-309]

Off-Road Vehicle Designations; Vale District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice given relating to restrictions of off-road motorized vehicle use on public lands.

SUMMARY: Notice is hereby given relating to the use of off-road vehicles on certain lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR part 8340.

The following lands under the administration of the Bureau of Land Management are changed from existing open designation and are hereby redesignated limited to designated roads and trails, in accordance with the Interim Management Policy and Guidelines for Lands under Wilderness Review.

The areas affected by the designations are managed by the Malheur Resource Area of the Vale District in Harney and Malheur Counties, Oregon.

These designations are published as final, and are in effect from the date of publication of this **Federal Register** Notice until such time that changes in resource management warrant modifications.

FOR FURTHER INFORMATION CONTACT: Bob Alward, Outdoor Recreation Planner, Bureau of Land Management, P.O. Box 700, Vale, Oregon 97918, telephone (503) 473-3144.

SUPPLEMENTARY INFORMATION:

Limited Designations—Fifteen Wilderness Study Areas (WSAs) comprising 269,280 acres will be managed in accordance with the nonimpairment criteria of the Wilderness Interim Management Policy which allows off-road vehicle use to continue in the same manner and degree on vehicular roads and ways where such use was occurring on October 21, 1976. This redesignation from open to limited affects approximately 89,600 acres of public land within 14 of these WSAs which were previously designated as open. Current limited and closed off-road designations are not affected by this action.

WSA No.	WSA Name	Acres
3-18	Castle Rock	495
3-27	Beaver Dam Creek	20,020
3-31	Camp Creek	3,940
3-32	Cottonwood Creek	1,375
3-33	Gold Creek	3,940
3-35	Sperry Creek	1,110
3-47	Cedar Mountain	3,920
3-53	Dry Creek	22,895
3-56	Dry Creek Buttes	1,370
3-59	Owyhee Breaks	5,245
3-73	Blue Canyon	8,435
3-75	Slocum Creek	320
3-77A	Honeycombs	14,450
3-77B	Wild Horse Basin	2,085
Total		89,600

The limited vehicle use designations will remain in effect until Congressional designation as wilderness of these lands or until review and any subsequent changes through the Bureau of Land Management's land use planning process. At any time, should actual or unforeseeable use levels cause the wilderness nonimpairment criteria to be violated, more restrictive designations may be made.

The designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the Vale District Manager. Information and maps of the above areas are available at the Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, telephone (503) 473-3144.

David P. Lodzinski,

Acting District Manager.

[FR Doc. 89-20506 Filed 8-30-89; 8:45 am]

BILLING CODE 4310-33-M

[CO-920-09-4111-15; COC44779]

Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease COC44779 for lands in Moffat County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from April 1, 1989, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective April 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Jesse Broskey of the Colorado State Office at (303) 236-1772.

Janet M. Budzilek,

Chief, Fluid Minerals Adjudication Section.

[FR Doc. 89-20552 Filed 8-30-89; 8:45 am]

BILLING CODE 4310-JB-M

[CA-050-43-7122-10-U041; CA 22674]

Realty Action; Noncompetitive Sale of Public Land in Siskiyou County

AGENCY: United States Department of Interior, Interior.

ACTION: Notice of realty action; noncompetitive sale of public land in Siskiyou County.

SUMMARY: The following public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 USC 1713), at not less than the estimated fair market value.

Mount Diablo Meridian

T. 41 N., R. 8 W.,
  Section 8: E½NE¼SE¼NW¼NW¼
  Containing approximately 1.43 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to Robert N. and Sigrid Burns, owners of contiguous land and improvements inadvertently located on this tract. It is has been determined that the subject parcel contains no known minerals values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

At least sixty days after publication of this notice, the subject parcel will be offered by direct sale to Robert N. and Sigrid Burns for the fair market value.

BEST COPY AVAILABLE

Failure to accept this offer of sale within 15 days shall constitute a waiver of this preference consideration. The lands would then be offered for competitive sale until sold pursuant to 43 CFR 2711.3–1 procedures. An appraisal for this tract will be available prior to sale in the Redding Bureau of Lands Management Office.

The patent, when issued, will contain reservations to the United States for ditches and canals, and will be subject to the following:

1. A right-of-way to Pacific Power and Light for a power line (SAC 046581).
2. A right-of-way to Siskiyou Telephone for telephone cable (CA 22711).

ADDRESS: Related information concerning specific conditions of the sale are available for review at the Redding Resource Area Office, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Redding Resource Area, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Patricia Cook, Realty Specialist, at the above address.

Mark T. Morse,
Area Manager.

[FR Doc. 89–20508 Filed 8–30–89; 8:45 am]
BILLING CODE 4310-40-M

[NM–060–4340–90]

Realty Action; Exchange of Public Lands for Private Lands; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—NM 77728; An Exchange of Public Land in Dona Ana, and Otero counties for Private Land in Eddy and Grant Counties, New Mexico.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Dona Ana County

T. 23 S., R. 3 E., NMPM,
  Sec. 19: lots 1 & 2, E½SE¼NW¼.

Otero County

T. 16 S., R. 10 E., NMPM,
  Sec. 5: NE¼SW¼, SE¼.

The above lands aggregate 278.47 acres, more or less. This is a continuation of the exchange process as provided for in the Memorandum of Understanding between the New Mexico State Office Bureau of Land Management and The Nature Conservancy dated September 19, 1988. In exchange for an equal value of some of the above lands, the United States proposes to acquire the following lands from The Nature Conservancy:

Grant County

T. 18 S., R. 21 W., NMPM,
  Sec. 11: E½, SE¼NW¼, NE¼SW¼;
  Sec. 12: NW¼, W½SW¼;
  Sec. 14: N½N½.

Eddy County

T. 25. S., R. 24 E., NMPM,
  Sec. 25: Those lands in the W½NW¼, less those lands north and west of that certain Eddy County Road 418 more particularly described by metes and bounds as recorded on May 27, 1987, in the Eddy County Clerks office in Book 289, page 1043.
  Sec. 26: Those portions of the E½ and E½W½, lying southerly and easterly of that certain Eddy County Road 418, to be more particularly described by a cadastral survey to be performed.
  Sec. 35: N½NE¼, SW¼NE¼, E½NW¼, SE¼.
T. 26 S., R. 24 E., NMPM,
  Sec. 2: W½NW¼, NW¼SW¼;
  Sec. 3: NE¼SE¼, S½SE¼;
  Sec. 10: NE¼NE¼.

The above lands aggregate 1729 acres, more or less.

DATES: Comments must be submitted on or before October 16, 1989.

ADDRESS: Comments should be sent to Bureau of Land Management, P.O. Box 1778, Carlsbad Resource Area, New Mexico 88220.

FOR FURTHER INFORMATION CONTACT: Area Manager, Carlsbad Resource Area or Alan E. Kraus at the address above or at (505) 887–6544.

SUPPLEMENTARY INFORMATION: The land to be transferred will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 USC 945.
2. Mineral resources that have potential for oil and gas, and geothermal and related right shall be reserved to the United States together with the right to prospect for, mine and remove the minerals.
3. All valid existing rights and reservations of record. The purpose of this exchange is to acquire lands along the Black River and the Apache Box. These lands have been identified through the BLM planning process as having significant riparian values for wildlife habitat and for having high public recreational potential. The Apache Box lands are adjacent to the Apache Box Wilderness Study Area (WSA) and therefore will enhance the protection and preservation of the WSA.

Publication of this Notice in the **Federal Register** will segregate the public land from all appropriations under the public land laws, including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of patent or 2 years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Any adverse comments will be evaluated and a decision issued by the appropriate authorized officer. In the absence of any objection, this realty action will become the final determination of the Department of the Interior.

Francis R. Cherry, Jr.,
District Manager.

[FR Doc. 89–20509 Filed 8–30–89; 8:45 am]
BILLING CODE 4310-FB-M

[WAOR 45087; OR–130–09–4212–13; GP9–278]

Realty Action: Exchange of Public Lands in Franklin County, Washington

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 13 N., R. 33 E.,
  Sec. 10, SW¼NW¼
T. 13 N., R. 34 E.,
  Sec. 24, W½SE¼;
  Sec. 26, NE¼NE¼, NW¼SW¼, N½NE¼SW¼, SW¼NE¼SW¼.
T. 14 N., R. 34 E.,
  Sec. 30, E½NW¼, SW¼SE¼;
  Sec. 32, NW¼, NE¼SW¼, N½SE¼, SE¼SE¼;
  Sec. 34, Lot 1, S½SW¼, SW¼SE¼.
T. 14 N., R. 35 E.,
  Sec. 12, NW¼SW¼;
  Sec. 20, E½NE¼, SE¼NW¼, SW¼SW¼;
  Sec. 30, Lots 1 and 2, NE¼NW¼, SE¼SE¼.
T. 14 N., R. 36 E.,
  Sec. 4, Lots 1 and 2;
  Sec. 6, Lots 3 and 4, SE¼SW¼;
  Sec. 24, NE¼NE¼.

The area described above aggregates approximately 1,428 (±) acres in Lincoln County, Washington.

In exchange for these lands, the Federal Government will acquire the following described private lands:

Willamette Meridian

T. 25 N., R. 31 E.,
  Sec. 12, N½, N½SW¼, N½N½S½SW¼, N½N½SE¼.
T. 26 N., R. 32 E.,
  Sec. 31, Lots 3 and 4, E½SW¼, SE¼;
  Sec. 32, Portions NW¼ lying west of Lincoln Co. Rd. No. 1613.

The area described above aggregates approximately 777 (±) acres in Lincoln County, Washington.

The purpose of the land exchange is to facilitate resource management opportunities in the Wilson Creek area as identified in the Spokane District's Resource Management Plan. The private lands being offered have very important values for recreation, fish and wildlife habitat, and watershed management. The public interest will be highly served by making this exchange.

The value of the lands to be exchanged is approximately equal. The exchange proponent will be required to make a small payment to equalize the values of the lands based upon the approved appraisal.

The exchange is subject to:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).
2. All other valid existing rights, including but not limited to any right-of-way, permit, or lease of record. All existing oil and gas leases will remain in effect until expiration.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws.

Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at the Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202.

For a period of 45 days, interested parties may submit comments to the Spokane District Manager at the above address. Any adverse comments will be reviewed by the State Director. In absence of any adverse comments, this realty action will become a final determination of the Department of the Interior.

Date of Issue: August 21, 1989.

Joseph K. Buesing,
District Manager.

[FR Doc. 89–20510 Filed 8–30–89; 8:45 am]
BILLING CODE 4310-33-M

[NM–030–09–4333–12]

Supplementary Rules for Designated Recreation Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Rules of conduct and supplemental rules.

SUMMARY: This notice amends the previous notices published in the **Federal Register**, December 15, 1988 (Volume 53, No. 241) and July 24, 1989 (Volume 54, No. 140) establishing Supplementary Rules for Designated Recreation Sites, Special Recreation Management Areas and Other Public Land in the Las Cruces District, New Mexico.

La Cueva And Aguirre Spring Recreation Sites (Organ Mountains Recreation Lands)

1. The entrance gate located in T. 23 S., R. 3 E., Section 2 on the Dripping Springs road (controlling access to La Cueva Recreation Site, A. B. Cox Visitor Center, and Dripping Springs) will be locked at 6:00 p.m. from October 1 through March 31, and at 8:00 p.m. from April through September 30. Authorized permittees and administrative access are exempt from this closure.
2. The two gates located in T. 22 S., R. 4 E., Section 20 on the Aguirre Spring access road (controlling access to the Aguirre Spring Campground) will be locked at 6:00 p.m. from October 1 through March 31, and at 8:00 p.m. from April 1 through September 30. Use of the campground will be limited to overnight campers after the gates are locked. Authorized permittees and administrative access are exempt from this closure.
3. Exceptions to the vehicle closure of roads in Upper Ice Canyon (from the A. B. Cox Visitor Center to Dripping Springs and along the powerline road) will include administrative access, authorized permittees, and handicapped or otherwise physically disabled persons who obtain prior authorization.

DATES: These rules will become effective August 31, 1989.

FOR FURTHER INFORMATION CONTACT: Scott Florence, Multi-Resource Staff Chief, Bureau of Land Management, Mimbres Resource Area, 1800 Marquess, Las Cruces, NM 88005, (505) 525–8228 (FTS 571–8350).

SUPPLEMENTARY INFORMATION: The authority for establishing supplementary rules is contained in 43 CFR 8365.1–6. The authority for establishing closures and restrictions is contained in 43 CFR 8364.1. These rules and closures have been recommended and adopted through development of resource management plans and recreation management plans. These rules and closures will be available in each local office having jurisdiction over the lands, sites, or facilities affected.

Dated: August 23, 1989.

H. James Fox,
District Manager.

[FR Doc. 89–20507 Filed 8–30–89; 8:45 am]
BILLING CODE 4310-FB-M

[UT–060–09–4410–08]

Proposed Resource Management Plan/Final Environmental Impact Statement; San Rafael Resource Area; Moab District, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of proposed resource management plan and final environmental impact statement.

SUMMARY: The proposed resource management plan and final environmental impact statement (RMP/EIS) for the San Rafael Resource Area, Moab District, Emery County, Utah and the Forest Planning Unit of the Sevier River Resource Area, Richfield District, Sevier County, Utah is available for distribution to the public, Federal, state and local agencies, and Indian tribes. The RMP will guide management of the public lands and resources in the San Rafael Resource Area and the Forest Planning Unit of the Sevier River Resource Area, Bureau of Land Management (BLM).

The RMP would provide comprehensive management for 1.5 million acres in Emery County and Sevier County, Utah. It would designate thirteen Areas of Critical Environmental Concern (ACECs). The EIS presents the RMP and six land use alternatives for management of the San Rafael Resource Area and Forest Planning Unit.

A 30-day protest period for the RMP will commence with publication of a Notice of Availability for the EIS in the **Federal Register** by the Environmental Protection Agency.

The RMP will be implemented after publication of a separate Record of Decision and Final RMP.

FOR FURTHER INFORMATION CONTACT: James Dryden, San Rafael Resource Area Manager, BLM, 900 North 700 East, Price, Utah 84501; (801) 637–4584.

SUPPLEMENTARY INFORMATION: The San Rafael RMP/EIS analyzes six alternatives and the RMP. Each plan provides management guidance for all relevant resource programs administered by the BLM within the planning area. Various combinations of special designations are analyzed under the alternatives.

Alternatives Analyzed

1. Alternative A (no action) presents the continuation of current management.
2. Alternative B emphasizes the production of mineral resources and livestock forage.
3. Alternative C emphasizes opportunities for nonmotorized recreation and management of wildlife habitat to allow wildlife population to attain prior stable numbers.
4. Alternative D emphasizes the protection of watershed values and maximum protection of cultural resources.
5. Alternative E emphasizes maximum access and opportunities for motorized recreation.
6. Alternative F provides for the protection of critical soils, scenic resources within the San Rafael Swell, crucial wildlife habitat; special management for certain vegetation and cultural resource values; continuation of livestock, wild horse and burros use; and making public lands available for production of mineral resources.
7. The RMP provides for protection and management of the resource values described in Alternative F with slightly greater emphasis placed on protecting critical soils, scenic resources within the San Rafael Swell and crucial wildlife habitat; and managing certain vegetative and cultural values. The RMP would designate thirteen ACECs. The special management designations are summarized in the accompanying table.

This action is announced pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, section 202(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 1610. The RMP is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5–2. Protests must be received by the Director of the BLM, 18th and C Streets NW., Washington, DC 20240, within 30 days after the date of publication of Notice of Availability for the final EIS in the **Federal Register** by the Environmental Protection Agency.

Dated: August 23, 1989.

W.R. Papworth,

Acting State Director.

PROPOSED ACEC DESIGNATIONS

Name	Public Land Acres	Critical Values Protected	Summary of Special Conditions on Surface Use
Big Flat Tops	2,640	Relict Plant Community	Closed to mineral entry and leasing; no grazing; closed to ORV use; managed as VRM Class I; excluded from rights-of-way; closed to disposal of mineral materials.
Bowknot Bend	1,830	Relict Plant Community	Closed to mineral entry and leasing; no grazing; closed to ORV use; managed as VRM Class I; excluded from rights-of-way; closed to disposal of mineral materials.
Copper Globe	220	Historical Resources	Closed to mineral entry and leasing; ORV use limited to designated roads and trails; excluded from rights-of-way; managed as VRM Class II; closed to disposal of mineral materials.
Dry Lake Archaeological District	16,990	Cultural Resources	ORV use limited to designated roads and trails.
Highway I–70 Scenic Corridor	50,650	Scenic Values	No surface occupancy; closed to disposal of mineral materials; ORV use limited to designated roads and trails; managed as VRM Class I.
Muddy Creek *	27,510	Scenic and Historical Values	No surface occupancy; closed to disposal of mineral materials; ORV use limited to designated roads and trails; managed as VRM Class I.
Pictographs	40	Cultural Resources	Closed to mineral entry and leasing; excluded from rights-of-way; no grazing; ORV use limited to designated roads and trails; closed to disposal of mineral materials.
San Rafael Canyon			
Lower	12,540	Scenic Values	Closed to mineral entry and leasing; excluded from rights-of-way; closed to ORV use; managed as VRM Class I; closed to disposal of mineral materials.
Middle	15,930	Scenic Values	Managed as VRM Class II; ORV use limited to designated roads and trails; no grazing.
Upper	5,950	Scenic Values	Closed to mineral entry and leasing; excluded from rights-of-way; closed to ORV use; managed as VRM Class I; closed to disposal of mineral materials.
San Rafael Reef			
North	43,400	Scenic and Vegetation Values	Closed to mineral entry and leasing; excluded from rights-of-way; ORV use limited to designated roads and trails; managed as VRM Class I; closed to disposal of mineral materials.
South	25,320	Scenic Values	No surface occupancy; closed to disposal of mineral materials; ORV use limited to designated roads and trails; managed as VRM Class I.
Segers	7,120	Scenic Values	No surface occupancy; closed to disposal of Hole mineral materials; ORV use limited to designated roads and trails; managed as VRM Class I.
Sids Mountain	61,870	Scenic Values	No surface occupancy; closed to disposal of mineral materials; ORV use limited to designated roads and trails; managed as VRM Class I.
Swasey Cabin	220	Historic Values	Closed to mineral entry and leasing; closed to disposal of mineral materials; excluded from rights-of-way; no grazing; ORV use limited to designated roads and trails; managed as VRM Class II.
Temple Mountain Historic District	2,580	Historic Values	ORV use limited to designated roads and trails.

* (includes Tomsich Butte Special Emphasis Area).

[FR Doc. 89–20462 Filed 8–30–89; 8:45 am]

BILLING CODE 4310-DQ-M

[ID-943-09-4214-11; IDI-14917 et al.]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that 170.37 acres of land withdrawn for two administrative sites and a recreation site continue for an additional 30 years based upon the anticipated remaining useful life of the associated improvements. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing under the proposal.

EFFECTIVE DATE: Comments should be received on or before November 29, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735.

The U.S. Forest Service proposes that the existing land withdrawals made by the Secretarial orders dated June 29, 1908 and January 28, 1908, and General Land Office order dated June 19, 1912, be continued for a period of 30 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as they affect the following described land:

Boise Meridian

(IDI–14917)

Soldier Creek Recreation Area,

T. 2 N., R. 14 E.
  Sec. 19, S½SE¼;
  Sec. 30, N½NE¼.

(IDI–25466)

Copper Basin Administrative Site

T. 6 N., R. 22 E. (unsurveyed),
  Sec. 33, metes and bounds description within SE¼NE¼.

(IDI–14944)

Fairview Administrative Site

T. 12 N., R. 26 E.,
  Sec. 27, metes and bounds description within SW¼SW¼.

The areas described aggregate 170.37 acres in Lemhi, Custer and Camas Counties.

The withdrawals are essential for protection of the recreation and administrative sites involved. The withdrawals closed the described land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: Augst 25, 1989.

William E. Ireland,

Chief, Realty Operations Section.

FR Doc. 89–20550 Filed 8–30–89; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-09-4214-11; IDI-3874]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that a 146.95 acre withdrawal for the Middle Fork Salmon River Scenic Area and two other recreation areas be continued for an additional 30 years. The land is still being used for recreation purposes. These lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing under the proposal.

EFFECTIVE DATE: Comments should be received on or before November 29, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 5207, for three recreation areas be continued for a period of 30 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following-described land:

Boise Meridian

Five Points Recreation Area

T. 2 N., R. 14 E.,
  Sec. 5, NE¼ of lot 3.

Worswick Hot Springs Recreation Area

T. 3 N., R. 14 E.,
  Sec. 28, W½NW¼SE¼, E½NE¼SW¼ and NW¼SW¼SE¼.

Middle Fork Salmon River Scenic Area

All of the designated Middle Fork Scenic River Area lying outside of Frank Church River of No Return Wilderness boundary in:

T. 14 N., R. 10 E. (unsurveyed),
  Sec. 19, metes and bounds description;
  Sec. 30, metes and bounds description.

The areas described aggregate 146.95 acres in Valley, Custer and Camas Counties.

The withdrawal is essential for protection of substantial capital improvements and recreation values. The withdrawal closed the described land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 25, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89–20551 Filed 8–30–89; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

Locations and Dates of Public Hearings Regarding the Draft Supplement to the Final Environmental Impact Statement for the Proposed 5-Year Outer Continental Shelf Oil and Gas Leasing Program for Mid-1987 to Mid-1992

On August 24, 1989, a Federal Register Notice 54 FR 35256 announced the

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availability of the draft Supplemental Environmental Impact Statement (SEIS) for the current 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program indicating that the exact dates, times, and locations of public hearings on the draft SEIS would be announced at a later date. The U.S. Court of Appeals for the District of Columbia ruled that the final EIS for the current 5-year program failed to adequately analyze the cumulative impacts of the current leasing program on migratory species. The SEIS supplements the previous analysis.

The purpose of these hearings is to receive specific comments on the adequacy of the draft SEIS and to provide the Secretary of the Interior with additional information from both public and private sectors to help evaluate fully the potential cumulative environmental effects of the current 5-year program on migratory species. This draft document pertains specifically to the current 5-year leasing program.

The public hearings are scheduled on the following dates and times at the following locations:

September 26, 1989, Portland, Oregon, Memorial Coliseum, Georgia Pacific Room, 1401 North Wheeler, 9 a.m. to 9 p.m., Contact: Mary Elaine Dunaway, (213) 894–4480
September 28, 1989, Sacramento, California, Beverly Garland Hotel, 1780 Tribute Road, 9 a.m. to 9 p.m., Contact: Mary Elaine Dunaway, (213) 894–4480
September 28, 1989, Anchorage, Alaska, Minerals Management Service, Sixth Floor Conference Room, 949 East 36th Avenue, 9 a.m. to 1 p.m., Contact: Michael Baffrey, (907) 261–4677.

The hearings in Portland, Oregon, and Sacramento, California, will recess from 12 noon until 1 p.m. and from 5:30 p.m. to 7 p.m.

Interested individuals, representatives of organizations, and public officials who wish to testify at the hearings are requested to contact the person listed above for the particular location at least 5 days prior to the hearing. Time limitations may make it necessary to limit the length of each oral presentation to 5 minutes or less. An oral statement may be supplemented, however, by a more complete written statement which should be submitted to the hearing officer at the time of the oral presentation. After the presentation of oral statements by those who have preregistered, if time is still available during the period of time listed for the hearings, other individuals will be given an opportunity to be heard.

Written comments on the draft SEIS including comments from individuals unable to present oral statements or to attend the hearings will be accepted until October 17, 1989. All written comments should be mailed to the Associate Director for Offshore Minerals Management, Minerals Management Service, Mail Stop 644, 381 Elden Street, Herndon, Virginia 22070. Specify on the envelope "5-Year Program draft SEIS." Both the oral and written statements will be given equal consideration. After all the public hearing testimony and written comments on the draft SEIS have been reviewed and analyzed, a final SEIS will be prepared.

Dated: August 25, 1989.

Carolita Kallaur,

Acting Associate Director for Offshore Minerals Management, Minerals Management Service.

[FR Doc. 89–20461 Filed 8–30–89; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31502]

The Garden City Northern Railway, Inc.—Acquisition and Operation Exemption—The Atchison, Topeka and Santa Fe Railway Co. and the Garden City, Gulf and Northern Railroad Co.; Corrected Notice of Exemption [1]

The Garden City Northern Railway, Inc. (GCN), a non-carrier, has filed a notice of exemption to acquire and operate approximately 30.59 miles of rail line located in Finney and Scott Counties, KS. The line, which extends between milepost 156.48 at or near Garden City and milepost 125.89 at or near Shallow Water, is presently owned by The Garden City, Gulf and Northern Railway Company and The Atchison, Topeka and Santa Fe Railway Company.

This transaction is related to a petition for exemption filed concurrently by Garden City Co-op, Inc. (Co-op), in Finance Docket No. 31503, *The Garden City Co-op, Inc.—Exemption from 49 U.S.C. 10746 and 11343.* That petition seeks an exemption from the requirements of 49 U.S.C. 11343 for Co-op to continue in control of GCN and from the provisions in 49 U.S.C. 10746, the "commodities clause". GCN expects to consummate this transaction upon Co-op receiving its exemption in Finance Docket No. 31203.

Any comments must be filed with the Commission and served on: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland, Emrich & Herman, 20 North Wacker Drive, Suite 3710, Chicago, IL 60606; and (2) Dennis W. Wilson, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604-2401.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 18, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–19985 Filed 8–30–89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Amoco Chemical Co., et al.

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *Amoco Chemical Company, et al.,* Civil Action No. 892734, was filed in the United States District Court for the Southern District of Texas on August 15, 1989, and, simultaneously, a consent decree was lodged with the Court in settlement of the allegations in the complaint. This consent decree settles the government's claims in the complaint pursuant to sections 104, 106 and 107 of CERCLA, 42 U.S.C. 9604, 9606, 9607, for injunctive relief to abate an imminent and substantial endangerment to the public health, welfare or the environment because of actual or threatened releases of hazardous substances from a facility, and for the recovery of response costs incurred by the United States with respect to a facility located southeast of Houston, Harris County, Texas, known as the "Brio Refining Site" (hereafter "the Site"). The complaint alleged, among other things, that the defendants are persons who by contract, agreement or otherwise arranged for disposal of hazardous substances at the industrial waste control Site or who arranged for transport of hazardous substances to the Site. The complaint further alleged that the United States has incurred and will continue to incur response costs in response to the release or threat of release of hazardous substances.

Under the terms of the proposed consent decree, the defendants agree to fund and implement a remedy at the Brio Refining Site which includes excavation and either acqueous-phase biological treatment or onsite incineration of affected materials and soils, dismantlement of the chemical process facility, tanks and drums, construction of a cap and cover for waste impoundments, installation of a package wastewater treatment plant or the routing of wastewater to a POTW, and long-term monitoring of air and groundwater in the vicinity of the Site. The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Amoco Chemical Company,* D.J. Ref. 90–11–2–325. The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

United States Attorney's Office

Contact: Chief, Civil Division, Office of the United States Attorney, U.S. Courthouse, 515 Rusk, Houston, Texas 77002, (713) 229–2600

EPA Region VI

Contact: Pamela Phillips, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 655–2120

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division; United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $7.10 payable to Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–20512 Filed 8–30–89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to CERCLA; The Craig Wrecking Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 21, 1989, a proposed consent decree in *United States* v. *The Craig Wrecking Corporation,* Civil Action No. C2–87–692 was lodged with the United States District Court for the Southern District of Ohio. The proposed consent decree resolves a judicial enforcement action brought by the United States against The Craig Wrecking Corporation and Stanley R. Craig for violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.,* relating to violations of regulations governing the removal of asbestos materials.

The proposed consent decree requires the defendants to pay the sum of seven hundred dollars ($700.00) to the United States Government as a civil penalty. The decree also orders these defendants not violate the asbestos removal violations in the future.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Craig Wrecking Corporation,* D.J. Ref. 90–5–2–1–1048.

The proposed consent decree may be examined at the office of the United States Attorney, 5th and Walnut Streets, 220 U.S. Post Office & Courthouse, Cincinnati, Ohio 45202.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–20513 Filed 8–30–89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to CERCLA; The Craig Wrecking Corp.

In accordance with Department policy 28 CFR 50.7, notice is hereby given that on August 21, 1989, a proposed consent decree in *United States* v. *The Craig Wrecking Corporation,* Civil Action No. C2–87–692 was lodged with the United States District Court for the Southern District of Ohio. The proposed consent decree resolves a judicial enforcement action brought by the United States against the City of Cincinnati and Frank Messer and Sons Wrecking Company for violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.,* relating to violations of regulations governing the removal of asbestos material.

The proposed consent decree requires the defendants to pay the sum of fourteen thousand dollars ($14,000.00) to the United States Government as a civil penalty. The decree also orders these defendants not violate the asbestos removal violations in the future.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Craig Wrecking Corporation,* D.J. Ref. 90–5–2–1–1048.

The proposed consent decree may be examined at the office of the United States Attorney, 5th and Walnut Streets, 220 U.S. Post Office & Courthouse, Cincinnati, Ohio 45202.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.20 (10 cents per page reproducton cost) payable to the Treasurer of the United States.

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[1] The Notice served and published August 1, 1989 (54 FR 31739) incorrectly cited the docket number of the directly-related exemption in Finance Docket No. 31503.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-20514 Filed 8-30-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Donna, TX

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on August 3, 1989, a Partial Consent Decree in *United States* v. *City of Donna, Texas*, Civil Action No. M-86-023, was lodged with the United States District Court for the Southern District of Texas, McAllen Division.

The Partial Consent Decree requires the Taormina Corporation and Taormina Company to pay a civil penalty of $60,000 to the United States, and to pay an additional amount of $42,000 to the City of Donna, Texas, to upgrade its publically owned treatment works.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *City of Donna, Texas*, D.J. Ref. 90-5-1-1-3022.

The Consent Decree may be examined at the office of the United States Attorney, Southern District of Texas, Courthouse & Federal Building, 515 Rusk Avenue, Houston, Texas 77002; at the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree can be obtained in person or by mail from the Department of Justice. In requesting a copy, please enclose a check in the amount of $.60 (10 cents per page reproducton cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-20515 Filed 8-30-89; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Clean Water Act Enforcement Action; Menominee, MI

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *City of Menominee*, Civil Action No. M88-107 (W.D. Michigan), has been lodged with the United States District Court for the Western District of Michigan. The United States' Complaint in the action alleged that the City of Menominee violated the Clean Water Act by discharging waste in excess of the effluent limitations in the City's National Pollutant Discharge Elimination System (NPDES) permit.

The Consent Decree requires the City of Menominee to take a number of specified measures to ensure compliance with the Clean Water Act, including terminating acceptance of wastewater from the Menominee Paper Company, and upgrading facilities at the City wastewater treatment plant. Compliance with final permit effluent limits is to be achieved no later than November 1, 1989. The City of Menominee is also required to pay a civil penalty of $105,000 to the United States.

The Department of Justice will receive for thirty (30) days from the publication date of this notice written comments relating to the judgment. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and refer to *United States* v. *City of Menominee*, Civil Action No. M88-107 (W.D. Michigan), DOJ No. 90-5-1-1-3158.

The proposed Consent Decree may be examined without charge at the office of the United States Attorney, Federal Building, 399 Federal Building, Grand Rapids, Michigan 49503; at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the Consent Decree may be requested in person or by mail from the Department of Justice, at the above address. A copying charge of $1.60 (10 cents per page reproduction cost) must be paid, by check or money order payable to the Treasurer of the United States, at the time of the request.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-20516 Filed 8-30-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Metro Wrecking Company, Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Metro Wrecking Company, Inc.*, Civil Action No. 88CV27962DT, has been lodged with the United States District Court for the Eastern District of Michigan. The complaint filed by the United States alleged that the defendant violated the Clean Air Act, 42 U.S.C. 7401 *et seq*, and the National Emission Standard for Hazardous Air Pollutants for asbestos (the "asbestos NESHAPs") by failing to give the required notice of demolition work involving asbestos removal and by violating Federal regulations governing the proper handling and disposal of materials containing friable asbestos.

The proposed Decree requires Defendant to achieve and maintain compliance with the Act and its implementing regulations by reporting its demolition activities to the appropriate local, state, and/or federal agencies, retaining accredited asbestos abatement contractors for all jobs requiring asbestos removal, and submitting to U.S. EPA specified information regarding demolition projects on which Defendant bids unsuccessfully. The proposed Consent Decree also requires Defendant to pay a civil penalty of $22,100 for its violations of the Act, and provides for substantial stipulated penalties in the event that Defendant fails to comply with any Decree requirements.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States* v. *Metro Wrecking Company, Inc.*, DJ Ref. No. 90-5-2-1-1205.

The proposed Consent Decree may be examined at the office of the United States Attorney, 817 Federal Building, 231 W. Lafayette, Detroit, Michigan, 48226, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Lands and Natural Resources Division of the Department of Justice, Room 1647(d), Ninth Street and Pennsylvania Avenue, NW., Washington

DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $1.80 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-20517 Filed 8-30-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Under Clean Water Act; Milford, OH

In accordance with Departmental policy, notice is hereby given that on August 24 , 1989, a proposed Consent Decree in *United States* v. *City of Milford, Ohio*, Case No. C-1-88-0623, was lodged with the United States District Court for the Sourthern District of Ohio. The proposed Consent Decree resolves an action alleging violations of the Clean Water Act and a National Pollutant Discharge Elimination System (NPDES) permit at the City of Milford, Ohio's publicly-owned treatment works ("POTW"), by requiring the City of Milford to take corrective measures necessary to bring it into compliance with the Act and its permit and to pay to the United States and the State of Ohio a total civil penalty in the amount of $70,000.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC. 20530, and should refer to *United States* v. *The City of Milford, Ohio*, D.J. reference #90-5-1-1-3180.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Ohio, 220 U.S. Post Office and Courthouse Building, 5th & Walnut Streets, Cincinnati, Ohio, the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.60 (26 pages at 10 cents per page) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-20518 Filed 8-30-89; 8:45am]

BILLING CODE 4410-01-M

Lodging of Proposed Consent Decree Under the Clean Water Act; Pine Bluff Waste-water Utility Commission and Arkansas

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on August 15, 1989, a proposed Consent Decree in *United States* v. *Pine Bluff Waste-water Utility Commission, and the State of Arkansas*, Civil Action No. PB-C-89-461 was lodged with the Eastern District of Arkansas, Pine Bluff Division. The complaint filed by the United States alleged several violations of the Clean Water Act by Pine Bluff Waste-water Utility Commission. The compliant sought to impose injunctive relief and civil penalties. The proposal Consent Decree imposes injunctive relief and civil penalties for past violations.

The Department of Justice will review for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States* v. *Pine Bluff Waste-water Utility Commission and the State of Arkansas*, Civil Action No. PB-C-89-461, (E.D. Ar.), D.J. #90-5-1-1-2798.

The proposed Consent Decree may be examined at the Clerk's Office of the United States District Court for the Eastern District of Arkansas, Pine Bluff Division, Room 3103, Post Office and U.S. Courthouse, 100 East Eight, Pine Bluff, Arkansas, 71601 and at the Region VI Office of the Environmental Protection Agency, Allied Bank Tower, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 2630, Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice at a cost of $.10 per page, for a total of $1.20.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-20519 Filed 8-30-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; R.E.A.G., et al

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 15, 1989 a proposed consent decree in *United States* v. *R.E.A.G. et al.*, Civil Action No B-87-24 (TFGD), was lodged with the United States District Court for the District of Connecticut. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 112 of the Clean Air Act, 42 U.S.C. 7412 and the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Asbestos, 40 CFR part 61, subpart M during the renovation of the former Beverly Theater in Bridgeport, Connecticut. The complaint alleged that defendant AA Building Wrecking Co., Inc. ("A"), as well as other defendants R.E.A.G., Cristwood Associates, Inc., and Northern Asbestos Abatement Co., Inc., violated the asbestos NESHAP during the building renovation. The complaint sought injunctive relief to require compliance with the asbestos NESHAP and civil penalties for past violations. The proposed consent decree involves only the claims against defendant AA. The consent decree requires AA's president to take asbestos training courses and AA to refrain from demolition or renovation activities involving asbestos. AA is also required to pay a civil penalty of $10,000 in settlement of the government's civil penalty claims. The consent decree only resolves the liability of AA and does not address the portions of the complaint against the other defendants.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *R.E.A.G. et al.*, D.J. Ref. 90-5-2-1-1076.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Connecticut, Room 309, Federal Building and Courthouse, 915 Lafayette Blvd., Bridgeport, CT. 06604 and at the Region I Office of the United States Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203–2211. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–20520 Filed 8–30–89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act; Wausau Chemical Co., et al.

In accordance with Departmental policy, notice is hereby given that on August 25, 1989, a proposed Consent Decree in *United States* v. *Wausau Chemical Company, et al.*, Case No. 87–C–919–C, was lodged with the United States District Court for the Western District of Wisconsin. The proposed Consent Decree provides for reimbursement by Wausau Energy Corporation to the United States of $5,000 in response costs incurred by the United States Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act at the Wausau Groundwater Contamination Site through January 5, 1985.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Wausau Chemical Company*, D.J. reference #90–11–2–286.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Wisconsin, 120 North Henry Street, Madison, Wisconsin 53703, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–20521 Filed 8–30–89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act of 1984; Development of a Computer-Aided Armor Design/Analysis System

Notice is hereby given that, on August 7, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act,") Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a party to its group research project regarding "The Development of a Computer-Aided Armor Design/Analysis System". The notification was filed for the purpose of invoking the Act's provision limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the SwRI advised that General Dynamics Land Systems Inc. (effective June 26, 1989) has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project.

On June 26, 1989, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 20, 1989, 54 FR 30481.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–20522 Filed 8–30–89; 8:45 am]

BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION

Grant Award to Nova University, Center for the Study of Law-Civil Law Clinic for the Expansion and Development of a Law School Civil Clinical Program

AGENCY: Legal Services Corporation.

ACTION: Announcement of a grant award.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award a grant in the amount of $47,825 to Nova University, Center for the Study of Law-Civil Law Clinic through the 1989–90 Law School Civil Clinical Program. The purpose of this grant is to render civil legal assistance to LSC-eligible clients who are also handicapped children. Pursuant to the Corporation's announcement of funding availability in Volume 54, No. 90, pages 20454 and 20455 of the **Federal Register** of May 11, 1989, a total of $1,053,591 will be awarded to nineteen applicants for funding, including Nova University, Center for the Study of Law. Announcement of the grant awards to the other applicants was published in the August 15, 1989 and the August 23, 1989 issues of the **Federal Register**.

This one-year grant is awarded pursuant to authority conferred by sections 1006(a)(1)(B) and 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of this Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATE: All comments and recommendations must be received by the Office of Field Services of the Legal Services Corporation on or before September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses, III, Associate Director, or Victoria O'Brien, Counsel to the Director, Legal Services Corporation, Office of Field Services, 400 Virginia Ave., SW., Washington, DC 20024–2751, telephone number: (202) 863–1837.

SUPPLEMENTARY INFORMATION: This grant is issued to support the provision of legal services to client-eligible, handicapped children residing in or near Fort Lauderdale, Florida. The grant is intended to assist these children with cases falling under Florida's Education for All Handicapped Children's Act, Public law 94–142. Through the Nova University clinical program, designed to

address this need, the Corporation educates law students to the legal problems of poor persons. This clinical experience encourages future lawyers to become interested in the provision of legal services to poor persons, acting either as legal aid attorneys or through *pro bono* or reduced fee efforts as members of the private bar.

Dated: August 28, 1989.

Ellen J. Smead,

Acting Director, Office of Field Services.

[FR Doc. 89–20681 Filed 8–30–89; 8:45 am]

BILLING CODE 7050-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by October 2, 1989. Permit applications may be inspected by interested parties at the Permit Office address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 17, 1989.

The applications received are as follows:

1. *Applicant:* Paul K. Dayton, Scripps Institution of Oceanography, La Jolla, CA 92093

Activity for Which Permit Requested: Enter site of Special Scientific interest (SSSI). The applicant proposes to enter SSSI No. 1., Cape Royds in order to conduct scientific diving operations at Horseshoe Bay. The objective of this project is to conduct surveys of the mud bottom habitat and collect water samples. The Adelie penguin rookery will not be entered.

Location: Cape Royds, Ross Island, Antarctica.

Dates: November—December 1990.

2. *Applicant:* Cornelius W. Sullivan, Department of Biological Sciences, University of Southern California, Los Angeles, CA 90089

Activity for Which Permit Requested: introduction of non-indigenous species into Antarctica. The applicant is conducting a study of photosynthetic energy transfer in ice algae. The study requires running parallel experiments using standard laboratory algal cultures. It is proposed to import three species of laboratory algal cultures to Antarctica for these experiments. The cultures will be used only in the laboratory and not introduced into the natural environment.

Location: McMurdo Station, Antarctica.

Dates: October—December 1989.

3. *Applicant:* Albert F. Bennett and Zoe A. Eppley., Ecology and Evolutionary Biology, University of California, Irvine, Irvine, CA 92717

Activity for Which Permit Requested: Taking. Enter site of special scientific interest. The applicants have received Antarctic Conservation Act permit 89–4 for a study of physiological adaptation of Antarctic birds to cold. They request permission to collect 45 sheathbill eggs (of the 75 previously permitted) from Harmony Point SSSI.

Location: Harmony Point SSSI, Nelson Island, Antarctica.

Dates: December 1989—January 1990.

Charles E. Myers,

Permit Office.

[FR Doc. 89–20523 Filed 8–30–89; 8:45 am]

BILLING CODE 7555-01-M

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On July 17, 1989, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued to the following individuals on August 22, 1989:

1. Zoe A. Eppley and Albert F. Bennett
2. William R. Fraser
3. Arthur L. DeVries
4. Gerald L. Kooyman
5. W. Zehnder and J. Claus
6. Mark D. Osadjan

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 89–20524 Filed 8–30–89; 8:45 am]

BILLING CODE 7555-01-M

Delegation of Award-Approval Authority From the National Science Board to the National Science Foundation Director

AGENCY: National Science Foundation.

ACTION: Notice of delegation of award-winning authority from the National Science Board to the Director of the National Science Foundation.

SUMMARY: This notice sets forth a delegation of authority from the National Science Board to the Director of the National Science Foundation that was adopted by the Board on August 18, 1989. This delegation is required by section 5(e)(1) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1864(e)(1)). It enables the Director to exercise the authority provided by section 11(c) of the NSF Act (42 U.S.C. 1870(c)) to enter into contracts, grants, and other arrangements for such scientific and engineering activities as the Foundation deems necessary for the purposes of the Act. Publication of this notice is required by section 5(e)(2) of the NSF Act (42 U.S.C. 1864(e)(2)).

DATE: This delegation of authority was effective on August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas Ubois, Executive Officer, National Science Board, National Science Foundation, Washington, DC

20550, 202–357–9582 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The following is the delegation:

(1) The Director of the National Science Foundation shall make no award involving a total commitment of more than six million dollars or more than one and one-half million dollars in any one year without the prior approval of the National Science Board, except for:

a. Any award for a new project or facility where the Board has approved a project development plan and budget and has not specifically required approval of the award; or

b. Any continuing project, facility, or logistics-support arrangement listed in the Exemption List attached to this resolution. Such Exemption List is to be compiled, at least annually, for each calendar year for NSB approval in November of the preceding calendar year.

(2) Paragraph (1)a. does not apply, however, if the award amounts would exceed the corresponding amounts specified in the budget accompanying the development plan by either: (1) More than eight percent times the number of full years since the initial award for that project or facility, or (ii) more than twenty-four percent.

(3) Except as provided in paragraphs (1) and (2) or by specific resolution of the National Science Board, the Board hereby delegates to the Director authority to make any award within the authority of the Foundation, consistent with the authority of the Board to approve the Foundation's programs.

(4) Except as provided in paragraph (2) or by specific resolution of the National Science Board, when the Board approves the award of a specific amount of funds, the Director may subsequently amend the award to commit additional sums, not to exceed ten percent of the amount specified, or to change the expiration date of the award.

(5) This resolution is effective for two years and supersedes and replaces the resolution of the National Science Board on this subject adopted in August 1987.

As stated in its final section, this delegation replaces an earlier one on the same subject. This delegation, like those preceding it, is a matter of internal agency management and therefore not subject to Executive Order 12291 of February 17, 1981 (3 CFR 1981 Comp., p. 127). Publication of this notice is required by section 5(e)(2) of the NSF Act (42 U.S.C. 1864(e)(2)), which was enacted by section 109(b) of the National Science Foundation Authorization Act, Fiscal Year 1986 (99 Stat. 889; Pub. L. 99–159).

Dated: August 23, 1989.

Thomas Ubois,

Executive Officer.

[FR Doc. 89–20525 Filed 8–30–89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Power Co.; Palisades Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–20 issued to the Consumers Power Company (the licensee), for operation of the Palisades Plant, located in Van Buren County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment involves revising the Palisades Plant Technical Specifications (TS) relating to containment integrity. Specifically, the proposed amendment, submitted by application dated September 15, 1988, and supplemented by letter dated June 23, 1989, would revise Technical Specification sections 1.4, 3.6.1, and 3.6.5, and would add a new section 4.5.6. The proposed amendment also would add a new Table 3.6.1 to identify all containment penetrations and isolation valves.

The Need for the Proposed Action

The changes proposed are needed to (1) allow for manual operation of certain containment isolation valves for the purpose of sampling the Safety Injection Tanks for boron while the reactor is at power, (2) provide consistency with the Standard Technical Specifications with respect to containment isolation valve requirements, and (3) reflect the present containment vent pathway.

Environmental Impacts of the Proposed Action

TS section 4.2, Table 4.2.1.5, Minimum Frequencies for Sampling Tests, requires monthly sampling of the Safety Injection Tanks for boron concentration. To obtain the required sample, it is necessary to open the manual isolation valves associated with the Safety Injection Tank drain line and route the flow to the sample tap at the Nuclear Steam Sampling System. However, the current TS section 3.6.1, Containment Integrity, does not allow the opening of manual containment isolation valves except when the plant is in the cold shutdown condition. The proposed amendment would allow these valves to be opened while the plant is operating for the purpose of obtaining the required sample. The potential impact of this change is that a release of radioactive material could occur while the valves are opened for sampling. For a release to occur, however, the following conditions would have to exist concurrently:

1. An accident which results in core damage and release of fission products to the reactor coolant,
2. A pathway for fission products to reach the environment from the reactor coolant via a failure of two check valves between the Reactor Coolant System and the Safety Injection Tank discharge piping, and
3. The required safety injection tank sampling in progress with the manual containment isolation valves open.

An alternate accident scenario for a release to occur would be the following conditions concurrently:

1. An accident which results in core damage and release of fission products to the containment from the reactor coolant,
2. A pathway for fission products to reach the environment from the containment via a failure of the Safety Injection Tank drain line so as to create communication of the containment atmosphere with the environment, and
3. The required safety injection tank sampling in progress with the manual containment isolation valves open.

The first alternative scenario is beyond the design basis for the plant in that two check valves must fail for the pathway to exist. The plant design basis is that only a single active or passive component is assumed to fail during the course of the accident.

The Final Safety Analysis Report offsite dose calculations are based on Standard Review Plan assumptions for the maximum hypothetical accident. Those assumptions do not consider failure of lines penetrating containment. Therefore, the alternate scenario for activity release discussed above, which would require such a line failure, is beyond the plant design basis.

The proposed amendment would change the definition of "Containment Integrity" to reflect the addition of Table 3.6.1 and TS section 4.5.2. Table 3.6.1 lists all containment penetrations and the penetration isolation requirements. TS section 4.5.2 adds surveillance requirements for the containment valves. Neither the definition change, the added table listing penetration

isolation requirements, nor the added surveillance requirements affect the installation or manner of operation of any plant equipment beyond permitting opening of the manual valves discussed above.

The Commission has completed its evaluation of the environmental impact of the proposed amendment and has determined that there would be no increase in any radiological plant effluents released offsite during normal (non-accident) operation.

The Commission has also determined that the probability of accidents has not been increased by the proposed changes, and that post-accident radiological releases would not be greater than determined previously. The proposed changes do not increase individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that this action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes to requirements with respect to the use of a facility component and a change to a surveillance requirement involves systems located within the restricted area as defined in 10 CFR part 20. The changes do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 20, 1989 (54 FR 25920). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility. Denial of the action would prevent sampling the safety injection tanks from outside the containment. Although an alternate sampling scheme is possible, entry into containment would be required and would result in substantially increased occupational radiation exposure.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement dated February 1978 related to operation of the Palisades Plant.

Agencies and Persons Contacted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the application for amendment dated September 15, 1988, and letter dated June 23, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 22nd day of August 1989.

For the Nuclear Regulatory Commission.

Albert De Agazio,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20496 Filed 8–30–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–341; Fermi–2]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for the operation of Fermi–2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) to clarify the requirements for operation with the Moisture Separator Reheater (MSR) out of service.

The proposed action is in accordance with the licensees' application for amendment dated January 27, 1988 as supplemented May 10, 1989.

The Need for the Proposed Action

The proposed changes to the TS are required in order to properly reflect the bases for operation with an MSR out-of-service. The Fermi–2 transient analyses take credit for the MSR being in service. However, the TS do not currently restrict operation with an MSR out-of-service.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The proposed revision would (1) modify TS 3/4.7.9 by specifying operating limitations of the MSR; (2) clarify that the limits in TS 3/4.2.3, Figure 3.2.3–1 (Curve B) apply to the operating scenario for the MSR out-of-service; and (3) provide an additional limitation (Curve C) to TS Figure 3.2.3–1 for the operating scenario of an inoperable main turbine bypass and MSR out-of-service. Therefore, the proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact and could result in the reduction of the radiological impacts.

With regard to potential nonradiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 5, 1988 (53 FR 11151). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This would not provide the needed limitations for operation with an MSR out-of-service.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Fermi–2," dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated January 27, 1988 as supplement May 10, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 24th day of August 1989.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20492 Filed 8–30–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–341; Fermi–2]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for the operation of Fermi–2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) for Primary Containment Isolation Valves by removing the Traversing Incore Probe (TIP) Purge System Primary Containment Isolation Valve from the TS.

The proposed action is in accordance with the licensees' application for amendment dated March 10, 1989.

The Need for the Proposed Action

The proposed changes to the TS are required in order to reflect the elimination of the TIP Purge System Primary Containment Isolation Valves from the plant design. The purge system is being modified to achieve compliance with General Design Criterion 56 of appendix A of 10 CFR 50.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The proposed revision would reflect the elimination of the TIP Purge System Primary Containment Isolation Valves and the sealing of the associated penetration with a qualified welded cap which will be leak tested per 10 CFR part 50, appendix J. This will reduce the probability of leakage during an accident from this potential leakage path. In addition, a reduction in occupational radiation exposure can be expected because of lower maintenance, inspection and testing requirements of the new design. Therefore, the proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any affluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact and could result in the reduction of the radiological impacts.

With regard to potential nonradiological impacts, the proposed changes to the TS involve systems located within the restricted areas as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 1, 1989 (54 FR 31750). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This would prevent the design modifications and thus prevent compliance with General Design Criterion 56.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Fermi–2," dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 10, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 24th of August 1989.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Acting Director, Project Directorate III–1, Division of Reactor Projects–III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20493 Filed 8–30–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–341; Fermi–2]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for the operation of Fermi–2 located in Monroe, County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) for Isolation Actuation Instrumentation. The table entries previously listed in a section entitled "Containment Isolation" are separated into two sections; one for Primary Containment and one for Secondary Containment isolation functions. Revisions to table entries, table notations and nomenclature are made to either more clearly reflect the plant configuration, remove duplication or ambiguity, or reflect the new sections of the table. Provisions have been included to allow routine testing of the Reactor Water Cleanup system without necessitating removal of the system from service. In addition, the definition of Channel Calibration is revised to better reflect standard industry practice.

The proposed action is in accordance with the licensees' application for amendment dated December 22, 1988.

The Need for the Proposed Action

The proposed changes to the TS are required in order to provide clearer, more usable TS requirements which more clearly reflect the plant configuration.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The proposed revision would separate the requirements currently grouped together under Table Sections entitled "Containment Isolation" into two sections; one for Primary Containment and one for Secondary Containment isolation functions. Table entries, table notations and nomenclature are revised to more clearly reflect the plant configuration, remove duplication or ambiguity or reflect the new table sections. These above changes are proposed to improve the ability of the plant operators to effectively use the TS and do not modify the intended isolation actuation instrumentation requirements. New provisions have been proposed to allow routine testing of the Reactor Water Cleanup System (RWCS) without necessitating removal of the RWCS from service provided other means of accomplishing the function under test is provided during the test period. This will reduce the probability of RWCS failure and subsequent potential radiological release due to cyclic fatigue from frequent RWCS shutdowns for testing. In addition, the definition of Channel Calibration is revised solely to better reflect standard industry practice by including specific provisions for channels with Resistance Temperature Detector or Thermocouple sensors. Therefore, the proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact and could result in the reduction of the radiological impacts.

With regard to potential nonradiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 26, 1989 (54 FR 29118). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This would not provide the safety benefits of clearer, more usable TS requirements or eliminate the potential cyclic fatigue of frequent RWCS shutdowns for testing.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Fermi–2," dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 22, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 24th day of August 1989.

For the Nuclear Regulatory Commission.

John O. Thoma,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20494 Filed 8–30–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–341; Fermi–2]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for the operation of Fermi–2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would

revise the Technical Specification (TS) to reflect the use of sodium pentaborate enriched with the Boron–10 isotope to meet the requirements of the Anticipated Transient Without Scram (ATWS) Rule, 10 CFR 50.62. The proposed change also corrects some inconsistencies between Action Statements in sections 3/4.1.5 and 3/4.8.4.5.

The proposed action is in accordance with the licensees' application for amendment dated May 11, 1989.

The Need for the Proposed Action

The proposed changes to the TS are required in order to meet the requirements of the Anticipated Transient Without Scram (ATWS) Rule, 10 CFR 50.62.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The proposed revision would reflect the use of sodium pentaborate enriched with the Boron–10 isotope to enhance the SLCS to meet the ATWS Rule, 10 CFR 50.62. The proposed revision would also modify the TS Actions and Surveillance Requirements to be consistent with the use of enriched Boron. The use of enriched Boron also reduces the required concentration of sodium pentaborate which causes the solution saturation temperature to decrease. This eliminates the need for supplemental heat tracing and the proposed TS reflect this by eliminating the requirements for heat tracing. Therefore, the proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact and could result in the reduction of the radiological impacts.

With regard to potential nonradiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 11, 1989 (54 FR 29118). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This would prevent compliance with the ATWS rule, 10 CFR 50.62.

Alternative use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Fermi-2," dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated May 11, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 24th day of August 1989.

For the Nuclear Regulatory Commission

Albert De Agazio,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20495 Filed 8–30–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–498]

Houston Lighting & Power Co., et al. South Texas Project, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. NPF–76, issued to Houston Lighting & Power Company, et al., (the licensee) for the South Texas Project, Unit 1, located at the licensee's site in Matagorda County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would make changes to the plant and the Final Safety Analysis Report regarding design changes to the Unit 1 core. The changes are the same as those resulting from a similar review for Unit 2, thus giving both plants a common licensing basis.

The proposed action is in accordance with the licensee's application for amendment dated June 1, 1989.

The Need for the Proposed Action

The proposed changes are necessary to describe the core and accompanying accident analysis for Cycle 2 for the South Texas Project, Unit 1 (STP–1).

Environmental Impacts of the Proposed Action

An assessment was made of the potential impact of the change on the radiological assessment of the design basis accidents (DBA's). The DBA which was most affected by the changes was the locked rotor. The thyroid dose changed from 0.73 rem to 1.04 at the Exclusion Zone Boundary (EZB) and 1.07 rem to 1.53 rem in the Low Population Zone (LPZ). Whole body doses changed from 0.029 rem to 0.038 rem at the EZB and from 0.018 rem to 0.022 in the LPZ. These changes are small and well within the 10 CFR part 100 limits of 25 rem for the EZB and 300 rem within the LPZ. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact. With regard to potential non-radiological impacts, the proposed change involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 13, 1989 (54 FR 25184). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (NUREG–171, August 1986) for the South Texas Project, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For information concerning this action, see the application of amendment dated June 1, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Dated at Rockville, Maryland this 22nd day of August 1989.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20501 Filed 8–30–89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Joint Subcommittees on Severe Accidents and Probabilistic Risk Assessment; Meeting

The ACRS Subcommittees on Severe Accidents and Probabilistic Risk Assessment will hold a joint meeting on September 19, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance

The agenda for the subject meeting shall be as follows:

Tuesday, September 19, 1989—8:30 a.m. until the conclusion of business.

The Subcommittees will discuss the second draft of NUREG–1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 22, 1989.

Richard Savio,

Acting Assistant Executive Director for Project Review.

[FR Doc. 89–20454 Filed 8–30–89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Severe Accidents; Meeting

The ACRS Subcommittee on Severe Accidents will hold a meeting on September 20, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 20, 1989—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the proposed Generic Letter by NRR, the NRC research program, and the NUMARC/EPRI, activities in the accident management area.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time alloted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 22, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–20455 Filed 8–30–89; 8:45 am]

BILLING CODE 7590-01-M

Annual License Fees for Fiscal Year 1990 for Power Reactor Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Notification of amount of fiscal year 1990 annual fees for nuclear power reactor operating licenses.

SUMMARY: The Nuclear Regulatory Commission is hereby publishing the amount of the annual fees to be assessed during fiscal year 1990 for nuclear power reactor operating licenses.

FOR FURTHER INFORMATION CONTACT: H. Lee Hiller, Deputy Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492–7351.

Background and Notice of Fees

On December 29, 1988, the Nuclear Regulatory Commission published a final rule which revised its fee schedules contained in 10 CFR parts 170 and 171. This regulation implemented the requirements of 5601 of the Omnibus Budget Reconciliation Act of 1987 as signed into law on December 22, 1987 (Pub. L. 100–203). The law requires the NRC to collect under 10 CFR parts 170 and 171, as well as other provisions of law, not less than 45 percent of the Commission's budget for each of fiscal years 1988 and 1989. Congress limited for 45 percent recovery provision to fiscal years 1988 and 1989 after which the NRC's authority to collect fees reverts back to the level of 33 percent of the budget. As of this date, the Congress has not amended the Public Law. Therefore, for fiscal year 1990, the law requires that approximately 33 percent of the budget be collected. Based on ongoing actions by the Congress, the NRC fully expects, however, that the law will be changed to a recovery level in excess of 33 percent. Because Congress has neither changed the law nor passed an appropriation for fiscal year 1990, the NRC, in accordance with 10 CFR 171.13, is publishing the amount of the annual fees for fiscal year 1990 based on the existing law of 33 percent of the President's budget of $475 million.

Notice is hereby given, pursuant to 10 CFR 171.13, that the annual fees to be assessed in fiscal year 1990 are those amounts shown in Table I below for each nuclear power operating license. When the Congress passes a final appropriation for fiscal year 1990, the annual fee will be revised and the effected licensees notified pursuant to 10 CFR 171.13.

TABLE I—ANNUAL FEES FOR OPERATING POWER REACTORS—FY 1990

	Containment type	Annual fee
Westinghouse Reactors		
1. Beaver Valley 1	PWR-Large Dry Containment.	$718,000
2. Beaver Valley 2	do	718,000
3. Braidwood 1	do	718,000
4. Braidwood 2	do	718,000
5. Byron 1	do	718,000
6. Byron 2	do	718,000
7. Callaway 1	do	718,000
8. Diablo Canyon 1	do	710,000
9. Diablo Canyon 2	do	710,000
10. Farley 1	do	718,000
11. Farley 2	do	718,000
12. Ginna	do	718,000
13. Haddam Neck	do	718,000
14. Harris 1	do	718,000
15. Indian Point 2	do	718,000
16. Indian Point 3	do	718,000
17. Kewaunee	do	718,000
18. Millstone 3	do	718,000
19. North Anna 1	do	718,000
20. North Anna 2	do	718,000
21. Point Beach 1	do	718,000
22. Point Beach 2	do	718,000
23. Prairie Island 1	do	718,000
24. Prairie Island 2	do	718,000
25. Robinson 2	do	718,000
26. Salem 1	do	718,000
27. Salem 2	do	718,000
28. San Onofre 1	do	710,000
29. Seabrook 1	do	718,000
30. South Texas 1	do	718,000
31. South Texas 2	do	718,000
32. Summer 1	do	718,000
33. Surry 1	do	718,000
34. Surry 2	do	718,000
35. Trojan	do	710,000
36. Turkey Point 3	do	718,000
37. Turkey Point 4	do	718,000
38. Vogtle 1	do	718,000
39. Vogtle 2	do	718,000
40. Wolf Creek 1	do	718,000
41. Zion 1	do	718,000
42. Zion 2	do	718,000
43. Catawba 1	PWR-Ice Condenser	735,000
44. Catawba 2	do	735,000
45. Cook 1	do	735,000
46. Cook 2	do	735,000
47. McGuire 1	do	735,000
48. McGuire 2	do	735,000
49. Sequoyah 1	do	735,000
50. Sequoyah 2	do	735,000
Combustion Engineering Reactors		
1. Arkansas 2	PWR-Large Dry Containment.	727,000
2. Calvert Cliffs 1	do	727,000
3. Calvert Cliffs 2	do	727,000
4. Ft. Calhoun 1	do	727,000
5. Maine Yankee	do	727,000
6. Millstone 2	do	727,000
7. Palisades	do	727,000
8. Palo Verde 1	do	718,000
9. Palo Verde 2	do	718,000
10. Palo Verde 3	do	718,000
11. San Onofre 2	do	718,000
12. San Onofre 3	do	718,000
13. St. Lucie 1	do	727,000
14. St. Lucie 2	do	727,000
15. Waterford 3	do	727,000
Babcock & Wilcox Reactors		
1. Arkansas 1	PWR-Large Dry Containment.	866,000
2. Crystal River 3	do	866,000
3. Davis Besse 1	do	866,000
4. Oconee 1	do	866,000
5. Oconee 2	do	866,000
6. Oconee 3	do	866,000
7. Rancho Seco 1	do	866,000
8. Three Mile Island 1.	do	866,000
General Electric Plants		
1. Browns Ferry 1	Mark I	742,000
2. Browns Ferry 2	do	742,000
3. Browns Ferry 3	do	742,000
4. Brunswick 1	do	742,000
5. Brunswick 2	do	742,000
6. Clinton 1	Mark III	759,000
7. Cooper	Mark I	742,000
8. Dresden 2	do	742,000
9. Dresden 3	do	742,000
10. Duane Arnold	do	742,000
11. Fermi 2	do	742,000
12. Fitzpatrick	do	742,000
13. Grand Gulf 1	Mark III	759,000
14. Hatch 1	Mark I	742,000
15. Hatch 2	do	742,000
16. Hope Creek 1	do	742,000
17. LaSalle 1	Mark II	743,000
18. LaSalle 2	do	743,000
19. Limerick 1	do	743,000
20. Limerick 2	do	743,000
21. Millstone 1	Mark I	742,000
22. Monticello	do	742,000
23. Nine Mile Point 1.	do	742,000
24. Nine Mile Point 2.	Mark II	743,000
25. Oyster Creek	Mark I	742,000
26. Peach Bottom 2	do	742,000
27. Peach Bottom 3	do	742,000
28. Perry 1	Mark III	759,000
29. Pilgrim 1	Mark I	742,000
30. Quad Cities 1	do	742,000
31. Quad Cities 2	do	742,000
32. River Bend 1	Mark III	759,000
33. Shoreham	Mark II	743,000
34. Susquehanna 1	do	743,000
35. Susquehanna 2	do	743,000
36. Vermont Yankee	Mark I	742,000
37. Washington Nuclear 2.	Mark II	743,000

The above fees are applicable beginning October 1, 1989 and will be collected in accordance with 10 CFR part 171. The analysis used for determining the annual fees is available in the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555, the Gelman Building.

Dated at Bethesda, MD, this 25th day of August 1989.

For the Nuclear Regulatory Commission.

Ronald M. Scroggins,

Controller.

[FR Doc. 89–20500 Filed 8–30–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–170; License No. R–84; EA 88–289]

Defense Nuclear Agency Armed Forces Radiobiology Research Institute (AFRRI); Order Imposing Civil Monetary Penalty

I

Defense Nuclear Agency, AFRRI, (licensee) is the holder of License No. 50–170 (license) issued by the Nuclear Regulatory Commission (Commission or NRC) which authorizes the licensee to possess and operate the reactor as a utilization facility at the designated location in Bethesda, Maryland. The license was issued on June 26, 1962.

II

An NRC safety inspection of the licensee's activities under the license was conducted on October 26–28 and November 7, 1988. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. Further, based on NRC review of the findings of the Area Director of the United States Department of Labor's (DOL) Wage & Hour Office in Baltimore, Maryland, the NRC also found that one of the licensee's former employees who raised certain safety concerns was discriminated against, in violation of another NRC requirement. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated March 22, 1988. The Notice stated the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. Two responses, dated May 4, 1989, to the Notice of Violations and Proposed Imposition of Civil Penalty, were received from the licensee denying one violation, denying portions of another violation, and requesting mitigation of the civil penalty.

III

Upon consideration of the licensee's response and the statement of facts, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support has determined that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It is Hereby Ordered That :

The licensee pay a civil penalty in the amount of Two Thousand Five Hundred Dollars ($2,500) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and Mailed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commisison, Attention: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region I.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be: (a) Whether the licensee was in violation of the Commission's requirements as set forth in Violation B.1.a, B.1.b, B.2, and D of the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and (b) whether, on the basis of the admitted and contested violations, this Order should be sustained.

Dated at Rockville, Maryland this 22nd day of August 1989.

For the Nuclear Regulatory Commission

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluation and Conclusions

On March 22, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during a routine NRC inspection and as a result of the NRC's review of the findings of the Area Director of the United States Department of Labor's (DOL) Wage & Hour Office in Baltimore, Maryland. The licensee responded to the Notice in two letters, dated May 4, 1988, and admits two of the violations in total (A and C); admits two of the five examples of one violation (B.3. and B.4.); denies three examples of that violation (B.1.a., B.1.b. and B.2); and denies one violation in total (D). The licensee also requests that the civil penalty not be imposed. The NRC's evaluation and conclusion regarding the licensee's response are as follows:

I. Restatement of Contested Violations

B. Technical Specification 6.3, Procedures, requires written procedures for certain activities (including the conduct of experiments that could affect the operation and safety of the reactor; checkout startup, standard operations, and securing the facility) to assure safe operation of the reactor.

1. Reactor Operations Procedures III, Maintenance Procedures, written pursuant to Technical Specification 6.3.1, requires that malfunctions are annotated in the Malfunction Logbook by the operator who discovered the deficiency.

Contrary to the above,

a. on July 28, 1988 and August 1, 1988, the Gas Stack Monitor (GSM) malfunctioned, but this malfunction was not recorded in the Malfunction Logbook; and

b. on June 3, 1987, the GSM pump was turned off due to an apparent malfunction (smell of smoke), but this condition was not recorded in the Malfunction Logbook.

2. Reactor Operation Procedure I, Conduct of experiments, written pursuant to Technical Specification 6.3, requires that a Reactor Use Request (RUR) be completed prior to conduct of an experiment prior to irradiation.

Contrary to the above, an experiment was conducted on October 8, 1985, and an RUR was not completed prior to irradiation.

D. 10 CFR 50.7 prohibits discrimination by a Commission licensee, or a contractor or subcontractor of a licensee, against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The protected activities are established in section 210 of the Energy Reorganization Act, and in general, are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

Contrary to the above, in October 1988, Angela Munno, a reactor operator for the Defense Nuclear Agency, was discriminated against by the licensee in that she was reassigned to duties outside the reactor area for engaging in protected activities consisting of her raising allegations of safety violations. These allegations were raised to facility management and were related to possible technical specification violations.

II. Summary of Licensee Reponse and NRC Evaluation

A. Concerning Licensee's Denial of example B.1.a

Summary of Licensee Response. In its response, the licensee asserts that no violation occurred on July 28, 1988 because the Reactor Logbook entries for that date contain no indication of a Gas Stack Monitor (GSM) malfunction and that normal GSM operation for July 26, 1988 was confirmed by review of the Daily Operational Startup and Shutdown Checklists. The licensee also contends that abnormal readings and a data dump caused by an electrical storm on the previous day (July 25, 1988), and which was discovered during testing on July 26, 1988, did not constitute a malfunction of the GSM requiring a recording in the Malfunction Log.

The licensee also states that no violation on August 1, 1988 because entries in the Reactor Operations Logbook for August 1, 1988 show no indication of a GSM malfunction and that only the GSM Printer had malfunctioned on Augeut 1, 1988 resulting in the inability of the operators to print the one hour historical report. The licensee contends that the notation on the relevant line of the Daily Operational Shutdown Checklist signifying "N/A" meant "not available" and that the unit otherwise properly performed on August 2, 1988 and thus, there was no malfunction on August 1, 1988 requiring a recording in the Malfunction Log.

NRC Evaluation. The absence of documentation of a malfunction of the GSM in the Reactor Logbook for July 26, or August 1, 1988 is insufficient to establish that the violation did not occur as stated. The NRC has concluded that a malfunction occurred based on abnormal readings in the GSM Historical Logbook which indicate an electrical upset and data dump on July 25, 1988 which was discovered on July 26, 1988. Although the data dump may have occurred as a result of the outside effect caused by the power loss from a storm, Reactor Operations Procedure III, para. 3, does not distinguish between malfunctions caused by external and internal conditions. Thus, a malfunction within the meaning of the procedure occurred on July 26, 1988 which required recording in the Malfunction Logbook.

With respect to the August 1, 1988 malfunction, the NRC considers the GSM printer to be an integral part of the GSM system and a printer malfunction is within the meaning of Reactor Operations Procedure III. Furthermore, others of the licensee's staff apparently considered the printed failure to be a malfunction within the meaning of the referenced procedure in that another operator recorded the malfunction the following day on August 2, 1988.

B. Concerning Licensee's Denial of Example B.1.b.

Summary of Licensee Response. The licensee states that the GSM was not turned off on June 3, 1987 because of a malfunction (smell of smoke) which would require a recording in the Malfunction Logbook. The licensee states that the GSM pump was turned off only because the pump noise level interfered with the conduct of a 9:00 a.m. meeting on the reactor deck and was restarted after the meeting. During the time the pump was shut down, no reactor runs were conducted.

NRC Evaluation. On June 3, 1987 AFRRI Reactor Facilities Director told the two NRC inspectors that the reason the GSM was shut down earlier on that date was because of a concern over the smell of smoke. Therefore, the NRC has concluded that this violation occurred as stated in the Notice.

C. Concerning Licensee's Denial of Example B.2.

Summary of Licensee Response. The licensee asserts that the reactor run, performed on October 8, 1988 was not an "experiment" requiring a Reactor Use Request (RUR). The licensee states the reactor run was one of a series made that day to modify a radiation environment that had been previously achieved but as to which precise core configurations were not known. Thus, the licensee maintains the reactor run constituted an example of a reactor test authorized by Technical Specification 6.4.2c, "Reactor Parameters Authorization," rather than an "experiment" requiring an RUR.

NRC Evaluation. Technical Specification 6.4.2c, "Reactor Parameters Authorization," authorizes routine measurement of reactor parameters, routine core measurements and other instrumentation and calibration checks to verify reactor outputs. In this instance, the reactor run involved the insertion of test cells into the reactor with no intention or purpose of obtaining routine reactor parameters. Instead, the reactor run was conducted in an effort to identify specific core configurations through which a slow neutron flux to produce a radiation environment could be produced that would kill the test cells. The NRC concludes that this reactor run can only be interpreted as an experiment requiring an RUR and is not a reactor test authorized by Technical Specification 6.4.2c.

D. Concerning Licensee's Denial of Violation D

Summary of Licensee Response. The licensee denies that it discriminated against an employee for engaging in protected activities (raising safety concerns) by reassigning the employee to duties outside the reactor area. The licensee asserts that upon initial receipt of the employee's allegations, an aggressive investigation of the concerns, which included attempts to obtain more specific information from the employee, was initiated and these attempts to gain further information led the employee to believe that she was being discriminated against.

The licensee states that the basis of the violation (Department of Labor investigation findings) was narrowly focused on the month prior to reassignment of the employee (September–October 1988) and failed to properly account for the actual reasons in the larger context for the employee's temporary reassignment which included a sequence of events involving the employee beginning in April 1988. The licensee maintains the employee's transfer from her duties as a Reactor Operator was not a consequence of her engaging in protected activity. Rather, it was the result of the stressful environment in the Operations Department created by deteriorating co-worker and supervisor-subordinate relationships between the employee and the remainder of the staff which had the potential to lead to unsafe reactor operations.

Furthermore, the licensee states that the employee's temporary removal was not proscribed within the definition of "discrimination" in the regulation since it had no effect on her "compensation, terms, conditions and privileges of employment." The licensee concludes that the reason for the reassignment action (reactor operational safety) fits an example of a "nonprohibited consideration" permits by 10 CFR 50.7(d).

NRC Evaluation. Notwithstanding the departmental stress and deteriorated relationships that may have existed within the Operations Department as a result of personnel conflicts between licensee management, staff, and the employee in question, based on the record established by the Area Director of DOL, the NRC concludes that the employee would not have been reassigned on October 13, 1988 had she not raised safety concerns relative to violations of requirements within the Operations Department. Further, the NRC agrees with the conclusions of the Department of Labor investigations that if the employee had recanted the allegations made on her performance appraisal, she would not have been removed and the subsequent management actions taken to support her removal would not have taken place. The Department of Labor Area Director determined that while the alleged personnel problems with the employee were said to be the basis for her removal, it was significant that the problems existed since April 1988, yet there was no management effort to formally pursue or consider her removal until immediately after the employee declined to recant her concerns in October 1988. He also found that the perceived detrimental impact on safe reactor operations as a result of the negative staff/employee relationship was only formally surfaced "after the fact" by management in an effort to support the removal.

In sum, the NRC does not dispute that there were tensions within the Operations Department between the employee and the remainder of the staff. However, the protracted period of time in which these personnel problems were said to exist during which time there was no formal management action against the employee, coupled with the employee's immediate transfer after the concerns were raised and management's "after the fact" attempt to justify the transfer, supports the conclusion that the employee was removed as a direct result of raising safety concerns. Such actions clearly carry a "chilling effect" on other employees who in the future may wish to raise safety concerns.

With respect to the assertion that the temporary removal of the employee was not discriminatory because it had no adverse affect on the "compensation, terms, conditions and privileges of employment," the NRC notes that the employee was employed as a reactor operator and to be removed to duties outside of the reactor area is clearly adverse to the terms and conditions for which she was hired. The removal of an individual from a skilled position to general duties unrelated to the individual's expertise is detrimental to her potential when compared to that of her peers. Further, because the NRC had concluded that the removal occurred because the employee was engaged in protected activities, rather than

for reactor operational safety reasons, the removal action does not constitute a "nonprohibited consideration" within the meaning of 10 CFR 50.7(d).

E. Concerning Licensee's Position That the Civil Penalty Should Not Be Imposed

Summary of Licensee Response. The licensee asserted in its May 4, 1989 response that a civil penalty should not be imposed since there are constitutional reasons which prohibit imposition of a civil penalty on AFRRI as another agency of the Federal Government. Further, the licensee states that the civil penalty may not be payable since there is a question under federal appropriations law as to whether an agency's appropriations are available to pay the penalty. The licensee implies that there has been some discrepancies in holdings by the Comptroller General in connection with this issue and therefore the disbursing or certifying official should obtain an advance decision from the Comptroller General under 31 U.S.C. § 3529. The licensee states that action will be taken to obtain such a decision. Lastly, the licensee asserts that, even as to the violations admitted, the problems actually present were not of environmental or safety significance and do not warrant imposition of a fine.

NRC Evaluation. The licensee withdrew its argument regarding the constitutionality of the imposition of civil penalties by the NRC on another agency of the Federal Government in a letter dated June 29, 1989. Regarding the question raised by the licensee as to whether its appropriations are available to pay the civil penalty, this provides no basis for the NRC not to follow the process established by the Atomic Energy Act (Section 234) and the Commission's regulations to issue an Order Imposing a Civil Monetary Penalty for violations by any person, defined to include other federal agencies, of applicable requirements. In addition, it should be noted that other agencies of the federal government licensed by the NRC have paid civil penalties for violations of NRC requirements. *See, e.g.,* letter from Gary D. Vest, Deputy Assistant Secretary of the Air Force (Environment, Safety and Occupational Health), to Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, NRC, dated June 30, 1989.

The NRC does not accept the licensee's assertion that the violations are not of environmental or safety significance. The violations represent weaknesses in the general conduct of facility operation. Although each of these violations, when reviewed individually, may not be significant, when reviewed in total, they reflect a breakdown in the licensee's program to control the conduct of operations. The NRC relies on its licensees to self-identify and correct potential problems before they can become a serious problem. The failure of the licensee to identify and correct the problems that led to the violations, and to ensure that individuals who identify safety concerns feel free to raise them to management without fear or reprisal, is a significant safety concern.

III. NRC Conclusion

For the reasons set forth above, the NRC has concluded that the violations occurred as stated in the Notice and mitigation or remission of the civil penalty is not warranted. Therefore, a civil penalty in the amount of $2,500 shouild be imposed.

[FR Doc. 89-20498 Filed 8-30-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322; License No. NPF-82]

Long Island Lighting Co.; Shoreham Nuclear Power Station Unit 1

Notice is hereby given that three Petitions have been received regarding the Shoreham Station. By Petition dated July 14, 1989, James P. McGranery, Jr., on behalf of the Shoreham-Wading River Central School District, requested that action be taken with regard to Shoreham Nuclear Power Station Unit 1. By Petition dated July 26, 1989, James P. McGranery, on behalf of Scientists and Engineers for Secure Energy, Inc. (SE2), requested that the same action be taken, on the same bases, as that which he requested in the Petition filed on behalf of the Shoreham-Wading River Central School District. Specifically, the Petitioner requests that the Executive Director for Operations issue an immediately effective order to Long Island Lighting Company to cease and desist from any and all activities related to the defueling and destaffing of the facility and return to the "*status quo ante*" pending further consideration by the Commission. The Petitioner further requests that such an order be accompanied by an announcement of the Commission's intention to fine the licensee a substantial amount per day for any violation or continuing violation of the Commission's orders.

As bases for his request, the Petitioner asserts that (1) the defueling of the core of the Shoreham Station involves an unreviewed safety question, because it is unnecessary and because the increased risk of accidents in the transfer of fuel to the spent fuel pool outweighs the slight additional margin of safety provided by the spent fuel pool, and, as such, requires prior Commission approval in accordance with 10 CFR 50.59; (2) the issuance of the full-power operating license for the facility was premised, among other things, on adequate staffing, and the licensee has now declared to the Commission its intention to willfully reduce staffing by about half, which would violate the basis of the issuance of its license and the licensee's prior commitments to the Commission; (3) the lack of maintenance activities at the facility is contrary to a March 1989 Operational Readiness Assessment Report; (4) the licensee's plan to substitute fossil-fuel-burning units for the Shoreham Station is a matter that may result in a significant increase in an adverse environmental impact previously evaluated in the Final Environmental Statement for the operating license and, as such, presents an unreviewed environmental question that requires prior Commission approval; (5) such an order would allow for a full environmental review pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality guidelines, and the Commission's regulations in 10 CFR part 51; and (6) the issuance of a license amendment authorizing decommissioning is a major Commission action significantly affecting the quality of the environment and requires an environmental impact statement or supplement to an environmental impact statement as specified in 10 CFR 51.20 (b)(5) and (b)(13).

In addition, by Petition dated August 4, 1989, Leonard Bickwit, Jr., on behalf of the Long Island Association, requested that action be taken with regard to Shoreham Nuclear Power Station, Unit 1. Specifically, the Petitioner requests that the Director, Office of Nuclear Reactor Regulation, issue an order to Long Island Lighting Company to suspend its "Minimum Posture" activities pending an investigation and an environmental review.

The above described requests are being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The Petitions have been referred to the Director of the Office of Nuclear Reactor Regulation (NRR). By letter dated July 20, 1989, the Petitioner's request of July 14, 1889 for immediate action was denied. As provided by § 2.206, appropriate action will be taken on the Petitions within a reasonable time.

Copies of the Petitions and the July 20 letter are available for public inspection at the Commission's Public Document Room at 2120 L Sreet NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 24th day of August 1989.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 89-20497 Filed 8-30-89; 8:45 am]

BILLING CODE 7590-01-M

BEST COPY AVAILABLE

[Docket No. 030-05980 et al., License No. 37-00030-02 et al.; EA 89-29]

Safety Light Corp. et al.; Order Modifying Licenses (Effective Immediately)

In the matter of: Safety Light Corp., United States Radium Corp., USR Industries, Inc., USR Lighting, Inc., USR Chemical, Inc., USR Metals, Inc., USR Natural Resources, Inc., Lime Ridge Industries, Inc., Metreal, Inc.; and all other successor corporations to either USR Industries or U.S. Radium Corp. (herein referred to as the Corporations)

[Docket Nos.: 030-05980, 030-05982, 030-5981, 030-08335, 030-08444; License Nos.: 37-00030-02, 37-00030-08, 37-00030-07E, 37-00030-09G, 37-00030-10G]

I

Safety Light Corporation (Safety Light) is the named licensee on Byproduct Material License Nos. 37-00030-02, 37-00030-08, 37-00030-07E, 37-00030-09G, and 37-00030-10G, issued by the Nuclear Regulatory Commission (NRC).

License No. 37-00030-02 authorizes the possession, storage, and use of any byproduct material for purposes of decontamination, cleanup, and disposal of equipment and facilities previously used for manufacturing, research and development in operations performed at the facility located at 4150-A Old Berwick Rd., Bloomsburg, PA (the Bloomsburg facility). License No. 37-00030-02 was originally issued on June 20, 1956 and was renewed on January 25, 1979. This license has been under timely renewal since February 29, 1984.

License No. 37-00030-08 authorizes the licensee to conduct research and development and to manufacture various devices containing tritium. License No. 37-00030-08 was originally issued on August 5, 1969, and was last renewed on January 6, 1983. This license has been under timely renewal since December 31, 1987. The above licenses permit use of material only at facilities at 4150-A Old Berwick Road, Bloomsburg, Pennsylvania.

License No. 37-00030-07E authorizes the distribution of timepieces, hands and dials to which luminous paint containing tritium has been applied, to persons exempt from NRC licensing pursuant to 10 CFR 30.15. License No. 37-00030-07E was originally issued on April 16, 1965 and was last renewed on May 27, 1986. This license expires on April 30, 1991.

License No. 37-00030-09G authorizes the distribution of luminous devices containing tritium to persons generally licensed pursuant to 10 CFR 31.5. License No. 37-00030-09G was originally issued on January 13, 1966 and was last renewed on October 24, 1983. This license has been under timely renewal since October 31, 1988.

License No. 37-00030-10G authorizes the distribution of sealed self-luminous sources to persons generally licensed pursuant to 10 CFR 31.7 License No. 37-00030-10G was originally issued on December 13, 1961 and was last renewed on April 22, 1985. This license expires on April 30, 1990.

II

The buildings, soil and groundwater at the Bloomsburg facility, collectively hereafter referred to as the Bloomsburg facility or facility, have become radioactively contaminated as a result of past operations at the facility. The known principal radionuclides contaminating the facility are tritium, strontium-90 (Sr-90), cesium-137 and radium-226. The levels of radioactivity exceed those that would permit unrestricted access to the facility. Tritium has also been detected off-site in the well of a nearby house. Although the tritium in that well is not yet above drinking water limits set by the U.S. Environmental Protective Agency, further off-set contamination is likely to occur over time due to the movement of groundwater and soil erosion. Pits at the facility contain unknown types and quantities of radioactive material that pose a potential threat to the health and safefy of employees and others at the facility.

III

To ensure that the Corporations would characterize the type and extent of radioactive contamination at the Bloomsburg facility, and plan and implement an orderly and timely decontamination of the facility, an Order Modifying Licenses (Effective Immediately) and Demand for Information was issued by the NRC on March 16, 1989 to the Corporations. This Order required the preparation of plans for site characterization and decontamination and specified, as part of the required site characterization plan, that "the plan shall specify the amount of funds that each of the Corporations is to provide for implementation of the plan" (section VII.B of the Order).

In two letters dated April 17, 1989, the Corporations filed answers to the March 16, 1989 Order. On June 2, 1989, after receiving an extension of time to comply with the requirement of the Order to submit a characterization plan for the site, the Corporations submitted a Joint Characterization Plan (JCP) prepared by IT Corporation for providing a radiological assessment of the Bloomsburg facility. The NRC reviewed the plan and found that it did not satisfy the terms of the Order in a number of significant respects, which were described in a letter from the NRC to the Corporations dated June 16, 1989. The NRC informed the Corporations that they were in apparent violation of the Order, and described the actions that might follow as a result of this failure to comply with the terms of the Order. Among the many apparent violations of the Order, the NRC noted in its June 16, 1989 letter that the Corporations had failed to specify funding as required by section VII.B of the Order.

The other apparent violations of the Order included: (1) The failure to describe a complete radiological and geohydrological survey of all facilities and of the surrounding surface and subsurface soil and groundwater to determine radionuclide concentrations and their lateral and depth profiles, as well as their movement in the groundwater; (2) the failure to provide for the characterization of the source of tritium contamination and for the radioactive source term, and for assessment of contaminant transport in the groundwater; (3) the failure to address the assessment of the extent to which lagoons and drainage canals are actively releasing contaminants to the environment; (4) the failure to address the characteristics of the sources of radiological contamination which may exist off-site, in general, or on the adjacent property, in particular; (5) the failure to address the assessment of the extent and rate of the off-site transport of contaminated groundwater; and (6) the failure to describe the actions that will be taken to determine whether Sr-90 and other radioactive nuclides besides tritium have also been transported off-site in groundwater.

Subsequently, the NRC held an Enforcement Conference with the Corporations on July 6, 1989. At that conference, the NRC informed the Corportions that the JCP failed to comply with the requirements of the March 16, 1989 Order. With respect to the financial aspects of the JCP, the Corporations made it clear that the JCP submitted on June 2, 1989, was intended to determine if there are any immediate health effects and reflected the Corporations' limited financial capability. The Corporations indicated that implementation of the June 2, 1989 JCP was estimated to cost $116,000 and that implementation of the characterization plan required by the Order would cost about $1,000,000. The Corporations reiterated their limited financial condition in a letter to the NRC dated July 14, 1989 and stated that

approximately $115,000 was the total amount of funds available for site characterization. The NRC has independently estimated the cost of implementation of the site characterization plan which meets the requirements of the March 16, 1989 Order and has determined that $1,000,000 (plus or minus 30%) is a reasonable estimate. Based upon information provided to the NRC by the Corporations, it appears that the net income of Safety Light Corporation is approximately $200,000 per year and USR Industries is presently running a deficit. Assets of USR Industries appear to be approximately $5,000,000, some of which may be encumbered. The President of USR Industries indicated a willingness to sell an interest in a building in Houston, Texas, to raise funds to accomplish the JCP proposed by the Corporations.

By letter dated August 10, 1989, the Corporations submitted a site characterization plan prepared by IT Corporation. The August 10th plan was stated to meet the intent of NRC's Order of March 16, 1989. While this plan described certain planning, implementation, reporting, scheduling, and quality assurance activities, the plan failed to provide any indications related to the funding to implement the plan, as required by the March 16, 1989 Order and as indicated previously in the NRC's letter dated June 16, 1989. By letter dated August 17, 1989, Safety Light Corporation certified that it committed to jointly fund the plan with USR Industries, et. al. up to a total of $115,000, of which Safety Light will fund fifty percent, with the balance required for implementation of the plan being sought from their insurance carriers. By certification dated August 18, 1989, USR Industries, Inc. and its wholly owned subsidiaries certified that they intend to fund the plan up to 50 percent of projected total costs of $115,000 and to the extent practicable seek the balance of funds from their respective insurance carriers. These certifications are inadequate to provide assurance that the require site characterization plan, which is estimated to cost approximately $1,000,000,000 will be funded. The continued failure to assure adequate funding to complete implementation of a site characterization plan which satisifies the March 16th Order is a significant concern to the NRC. The NRC's assessment of the technical adequacy of the plan will be described in future correspendence.

IV

The Corporations' failure to provide assurance of adequate funding to complete implementation of a satisfactory site characterization plan, the uncertainty regarding the nature and exent of contamination at the Bloomsburg facility, and the statements made by the Corporations' principal officers as to the limited financial resources available for site characterization, let alone decontamination, demonstrate that additional actions are immediately needed to protect public health and safety by assuring that sufficient resources are made available by the Corporations to initiate the site characterization and taken necessary immediate remedial action for any signfiicant health and safety problems. Based on the above, I have determined, pursuant to 10 CFR 2.204, that the public health, safety, and interest require that this Order be made immediately effective.

V

In view of the foregoing, and pursuant to sections 81, 161b, 161c, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR parts 30 and 32, It is Hereby Ordered, effective immediately, that license Nos. 37-00030-02, -08, 07E, -09G, and -10G are modified as follows:

A. The Corporations shall establish a trust pursuant to a trust agreement as specified below and, within 30 days of the date of this Order, shall submit an originally signed duplicate of the trust agreement to the Regional Administrator, NRC Region I (hereafter referred to as Regional Administrator);

B. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency;

C. The Corporations:

1. Shall make payments into the trust fund on or before the dates specified in the following schedule:

Date	*Deposit required*
October 2,1989	$50,000
November 1, 1989	50,000
December 1, 1989	50,000
January 2, 1990	50,000
February 1, 1990	100,000
March 1, 1990	100,000
April 2, 1990	100,000
May 1, 1990	100,000
June 1, 1990	100,000
July 2, 1990	100,000
August 1, 1990	100,000
September 4, 1990	100,000
Total	1,000,000

The Corporations shall be jointly and severally responsible for satisfying this payment schedule;

2. Shall, within 7 days of payment scheduled under section V.C.1 above, certify to the Regional Administrator, under oath or affirmation, that the payment has been made as required;

3. May accelerate payments into the trust fund or may deposit the full amount specified above at the time the fund is established. However, they must maintain the value of the fund at no less than the value that the fund would have if the payments were made as specified above;

4. Will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee, or a suspension or revocation of the authority of the trustee institution to act as trustee, and must establish a new trust that meets the requirements given below within 60 days after such an event.

D. The trust agreement shall provide that:

1. The Corporations shall be the Grantors of the trust;

2. The Grantors shall establish the trust to provide assurance that funds will be available to implement an NRC-approved plan to characterize the type and extent of the radioactive contamination at the Bloomsburg facility and to take immediate remedial action at any time such action is necessary;

3. The Grantors shall designate an identified individual, who is a responsible corporate officer, as the Grantors' authorized representative, and two alternates;

4. The Grantors or the Grantors' authorized representative shall, with written approval from the Regional Administrator, select a contractor to implement the site characterization plan, which contractor will be the beneficiary of the trust, and which may be replaced by the Grantors on reasonable notice, with written approval from the Regional Administrator;

5. The Grantors or the Grantors' authorized representative shall have the option of selecting one or more additional contractors to plan or implement remedial action at the facility, or both, with the written approval from the Regional Administrator, which contractors would be additional beneficiaries of the trust, and which may be replaced by the Grantors on reasonable notice, with

written approval from the Regional Administrator;

6. The Trustee shall make disbursements from the trust fund to the beneficiary or beneficiaries as the Grantors or the Grantors' authorized representative shall direct in writing, with written approval of the Regional Administrator for disbursements exceeding $5,000, or as the Regional Administrator shall direct in writing;

7. The Grantors' payments of principal into the trust fund shall consist of cash, but may also consist of short-term obligations of the United States government or other property as the Regional Administrator shall approve in writing;

8. The Trustee shall invest and reinvest the principal and income of the trust fund, including interest earned, and keep the trust fund invested, without distinction between principal and income, in accordance with the following provisions: the Trustee shall hold the trust fund in demand deposits that earn interest and are insured by an agency of the United States government or in short-term obligations of the United States government, provided, however, that the Trustee may hold cash awaiting investment or distribution for a reasonable time (approximately five working days) without liability for the payment of interest;

9. The Trustee shall: (1) Within seven days after the end of each month beginning with October 1989, provide to the Regional Administrator a summary of the disbursements made during the past month to include: the date of disbursement, amount of disbursement, party receiving disbursement, and purpose for or activity accomplished by disbursement; and (2) within seven days after the end of each quarter beginning October 2, 1989, furnish to the Regional Administrator a summary accounting statement of the trust fund for the past quarter, to include: amounts paid into the trust fund, disbursements from the trust fund, interest earned, and the current value of the trust fund;

10. The Trustee may resign, or the Grantors may replace the Trustee, but such resignation or replacement shall not be effective until (1) the Grantors notify the Regional Administrator in writing that the Grantors have appointed a successor trustee and that the successor trustee has accepted the appointment; (2) the successor trustee assumes administration of the trust;

11. The Trustee shall implement orders, requests, and instructions only if they are in writing and signed by either the Grantors or the Grantors' authorized representative, with a copy to the Regional Administrator, or if they are in writing and signed by the Regional Administrator;

12. The Trustee shall notify the Grantors and the Regional Administrator, by certified mail, within seven days following the expiration of the seven day period after each month following the establishment of the Trust, if no payment is received from the Grantors during that period;

13. The trust agreement may be amended by an instrument in writing executed by the Grantors and the Trustee, with the written approval of the Regional Administrator, or by the Trustee and the Regional Administrator if the Grantors cease to exist;

14. The Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantors, the Trustee and the Regional Administrator, or by the Trustee and the Regional Administrator if the Grantors cease to exist;

15. Wherever the trust agreement refers to the Regional Administrator, it shall also be deemed to refer to the Regional Administrator's designee or the NRC Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support or his designee.

E. Should the Corporations' total payments into the trust fund ($1,000,000) be insufficient to fund implementation of the site characterization plan or to take necessary immediate remedial action and the trust fund be exhausted, the Regional Administrator may, at his discretion, and in writing, require the Grantors to make additional payments totalling no more than $300,000 into the trust fund.

The Regional Administrator or the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, may, in writing, relax, rescind, or modify any provision of this Order upon the showing by the Corporations, in writing, of good cause. This authority includes, but is not limited to, the authority to extend deadlines and to permit the establishment of separate trust funds with good cause shown, so long as the Corporations otherwise satisfy the requirements of this Order.

VI

The Corporations or any person adversely affected by this Order may request a hearing within 20 days of the date of its issuance. Any answer to this Order or request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406. If a hearing is requested by the Corporations, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained. If a person other than the Corporations requests a hearing, that person shall set forth with particularly the manner in which the petitioner's interest is adversely effected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An answer to this Order or Request For Hearing shall not stay the immediate effectiveness of this Order. Upon the failure of the Corporations herein named to answer or request a hearing within the time specified, this Order shall be final without further proceedings.

Dated at Rockville, Maryland this 21st day of August 1989.

For the Nuclear Regulatory Commission

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 89-20499 Filed 8-30-89; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for Office of Management and Budget Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Application for Employee Annuity Under the Railroad Retirement Act
(2) *Form(s) submitted:* AA-1, AA-1d and G-204
(3) *OMB Number:* 3220-0002
(4) *Expiration date of current OMB clearance:* 04/30/90
(5) *Type of request:* Revision of a currently approved collection
(6) *Frequency of response:* On occasion
(7) *Respondents:* Individuals or households
(8) *Estimated annual number of respondents:* 16,700
(9) *Total annual responses:* 22,325
(10) *Average time per response:* .4837 hours
(11) *Total annual reporting hours:* 10,799
(12) *Collection description:* The RRA provides for payment of age, disability and supplemental annuities to qualified employees. The application and related forms obtain information about the applicant's family, work history, military service, disability benefits from other government agencies and public or private pensions. The information is used to determine entitlement to and amount of annuity applied for.

(1) *Collection title:* Application for Spouse Annuity Under the Railroad Retirement Act
(2) *Form(s) submitted:* AA-3
(3) *OMB Number:* 3220-0042
(4) *Expiration date of current OMB clearance:* 04/30/90
(5) *Type of request:* Revision of a currently approved collection
(6) *Frequency of response:* On occasion
(7) *Respondents:* Individuals or households
(8) *Estimated annual number of respondents:* 19,500
(9) *Total annual responses:* 19,500
(10) *Average time per response:* .4351 hours
(11) *Total annual reporting hours:* 8,484
(12) *Collection description:* The RRA provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the Act. The application will obtain information supporting the claim for benefits based on being a spouse of an annuitant. The information will be used for determining entitlement to and amount of annuity applied for.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Ronald J. Hodapp, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald J. Hodapp,

Director of Information Resources Management.

[FR Doc. 89-20527 Filed 8-30-89; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[34-27174; File No. SR-ICC-89-02]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Intermarket Clearing Corporation Relating to Delivery and Settlement of Treasury Bond Futures Contracts

August 24, 1989.

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b) (1), notice is hereby given that on August 15, 1989, The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is intended to facilitate the delivery and settlement of Treasury Bond Futures Contracts for which the New York Futures Exchange ("NYFE" or "Exchange") is the designated contract market. These contracts will be eligible for cross-margining.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change is intended to facilitate the delivery and settlement of on-the-run Treasury Bond Futures contracts for which the New York Futures Exchange ("NYFE" or "Exchange") is the designated contract market. Identical rules were submitted to the Commodity Futures Trading Commission ("CFTC"). The CFTC has approved ICC's rule changes in accordance with Regulation 1.41b of the Commodity Exchange Act.[1] Although this rule change relates primarily to ICC's futures clearing activities, this rule change is being submitted pursuant to section 19(b)(2) in that it is a product which ICC intends to make eligible for cross-margining.

Because the provisions of Chapter XIII are based in numerous respects upon other ICC rules that already have been reviewed and approved by the Securities and Exchange Commission, the discussion below focuses principally upon those aspects of the rules in Chapter XIII that differ significantly from other Rules of ICC.

Rule 1301 provides generally that the Rules in Chapter XIII are applicable to NYFE Treasury bond futures and that, except to the extent that specific rules in Chapter XIII shall govern, the provisions of all other Rules of ICC continue to apply. Rule 1302 sets forth certain definitions for purposes of Chapter XIII. The definition of the term "notice day," contained in Rule 1301(c), reflects the special provision for deliveries on the last day of the delivery month. As discussed in greater detail in connection with Rule 1307, any open short positions for which a delivery notice has not already been tendered must at that point be settled by delivery on the last business day of the delivery month. A delivery notice is superfluous in such circumstances and ICC will instead require deliveries to be made in accordance with the reports of positions it has already received from its Clearing Members. Rule 1305(a) accordingly provides that ICC will not accept notices calling for delivery on the last business day of the delivery month. For ease of reference, however, the Rules in Chapter XIII continue to employ the generally accepted terminology of "last notice day" to denote the date on which notices would otherwise be required to be submitted in respect of all remaining open positions and Rule 1301(c) so provides. The remaining defined terms are self-explanatory and conform to the substance of the proposed NYFE rules.

The proposed NYFE contract will trade on a quarterly cycle, with delivery taking place during the contract month on any business day during that month. In general, Clearing Members who intend to deliver on that contract must issue a notice of their intention to deliver two business days before the intended delivery date. (As noted above, an exception has been made for deliveries that are to be made on the last business day of the delivery month.) ICC will assign ("allocate") delivery notices on an oldest-open-long basis except on the last delivery day when ICC will net the long and short positions in the accounts of Clearing Members. Rules 1303–1310 implement these provisions.

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[1] *See*, letter from John C. Lawton, Associate Director, Division of Trading Markets, Commodity Futures Trading Commission to James C. Young, Assistant Secretary of the Intermarket Clearing Corporation, dated April 6, 1989 and attached to SR-ICC-89-02 as "Exhibit A."

Because deliveries will be allocated by ICC to the oldest open long and because there will be no netting of deliveries until the last business day of the delivery month, ICC will require all Clearing Members to report to ICC their total (gross) open long position in each account maintained by that Clearing Member with ICC. Under Rule 1303, these reports will be required to be submitted three business days before the first notice day through and including the last notice day of the delivery month. Because the timely submission of accurate reports is essential to the processing of delivery notices and assignments, Rule 1303 further provides that a Clearing Member will be subject to discipline if it fails timely to submit the required reports or if those reports are found to be substantially inaccurate.

Rule 1304 provides that the delivery date for Treasury bond futures will be the second business day after a selling Clearing Member (as defined in Rule 101(g)) has tendered a delivery notice to ICC in accordance with the provisions of Rule 1305. Taken together, Rules 1304 and 1305 implement proposed Exchange Rule 831 and provide that a selling Clearing Member may tender such a notice on any notice day other than the last notice day of the delivery month. Rule 1304(b) provides that ICC may advance or postpone any delivery date for Treasury bond futures contracts whenever such action is deemed by ICC to be necessary or desirable to meet unusual conditions. Similar provisions are contained elsewhere in ICC rules. See, e.g., Rule 1203(b) (foreign currency futures).

As noted above, Rule 1305 provides that a selling Clearing Member that intends to make delivery must tender a delivery notice to ICC two business days before the intended delivery date. That Rule further provides that notices that are not timely received will not be accepted by ICC and any notice tendered after that time will be null and void and of no force or effect unless validly tendered on a subsequent business day. Rule 1305(b) provides generally that a selling Clearing Member must issue a delivery notice for each of its accounts for which it intends to make delivery on the date specified in the notice. That Rule additionally specifies that a Clearing Member is not permitted to net deliveries in or between accounts of the Clearing Member except as provided in Rule 1307(g), which governs deliveries on the last business day of the delivery month.

Rule 1306 states the general obligation of a Clearing Member to cause all positions that remain open after the close of trading in a delivery month to be settled by: (i) Making or taking delivery or (ii) entering into an exchange of Treasury bond futures for Treasury bonds or comparable instruments in accordance with the rules of the Exchange ("an exchange for physicals" or "EFP"). ICC Rule 1306 corresponds to proposed NYFE Rule 830 and provides that notice of any exchange for physicals consummated after the close of trading must be received by ICC no later than 1:00 p.m. Chicago time (2:00 p.m. New York time) on the second business day after the last trading day in the delivery month.[2]

Rule 1307(a) sets for ICC's procedures for the assignment of delivery notices during the delivery month. As noted above, ICC will allocate delivery notices to Clearing Members on an oldest-open-long basis. Rule 1307 provides, however, that positions that are offset on the business day on which a delivery notice is received by ICC will not be subject to allocation as long as the offset of that position is reflected in the reports made by a Clearing Member to ICC in accordance with Rule 1303. Rule 1307(a) further provides that where the number of contracts to be delivered pursuant to the terms of delivery notices received by ICC on any business day is less than the number of open long positions established on a particular date, ICC will allocate those delivery notices on a pro rata basis to all Clearing Members having long positions established on that date. An Interpretation and Policy following Rule 1307 provides that where the converse situation is applicable (i.e., the number of contracts to be allocated equals or exceeds the number of "oldest open longs"), ICC will endeavor to match delivering and receiving Clearing Members so as to minimize the number of deliveries.

These procedures are unnecessary and inappropriate on the last delivery day because a Clearing Member that has long or short positions remaining open on that day will be required to settle those positions by making or taking delivery, as the case may be. As discussed above in connection with the definition of "notice day," ICC will not accept delivery notices on the last notice day. ICC will instead net deliveries in the accounts of Clearing Members and assign the obligation to make or take delivery on any remaining positions on the basis of the position reports submitted to ICC by its Clearing Members.

Specifically, Rule 1307(b) provides that ICC will determine at or before 7:00 a.m. Chicago time (8:00 a.m. New York time) the number of long and short Treasury bond futures contracts remaining open in each account of a Clearing Member: (i) For which a delivery notice has not been submitted by that Clearing Member to ICC (in respect of a short position) or (ii) as to which ICC has not already allocated a delivery notice received from a Clearing Member (in respect of a long position).[3] Having determined the remaining open and unallocated gross position in each account of its Clearing Members, ICC will net the settlement obligations of each Clearing Member in the firm account (and any non-customer account) of that Clearing Member and separately, in the customer accounts of the Clearing Member. Unlike other contracts cleared by ICC, such as the foreign currency contracts traded on the Philadelphia Board of Trade, ICC does not presently contemplate that it will net positions between the firm account of a Clearing Member and its customer accounts.[4]

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[2] Proposed NYFE Rule 830 provides that there is to be no trading in Treasury bond futures during the last seven business days of a delivery month and further provides that any EFP conducted after the close of trading must be submitted to ICC by no later than the fifth business day prior to the last business day of the delivery month. Thus, the time limit established by that Rule for the submission of EFP transactions—the fifth business day prior to the last business day of the delivery month—is equivalent to the second business day after the last trading day set forth in ICC Rule 1306.

[3] Because there is a two-day interval between the tender of a delivery notice to ICC and the obligation to make and take delivery on the contracts represented by that notice, there may be open positions in the account of a Clearing Member on the last notice day for which delivery notices have already been tendered to ICC or allocated by ICC to a Clearing Member. Any such contracts would be settled in the usual manner without regard to the last-day netting provisions of Rule 1307(b).

[4] ICC Rule 402 authorizes a Clearing Member to establish and maintain with ICC different types of accounts, including a "firm account," a "public customers' account," and various accounts for floor traders and others who, depending on their relationship to the Clearing Member, may appropriately be contained in a "proprietary trader's account," a "customer floor trader's account," a "combined floor traders' account," or an "off-floor trader's account." Rule 1307(b) provides that the firm (house) account of the Clearing Member is to be netted against any positions remaining open in any non-customer accounts of the

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Thus, any net long or short positions remaining open in either of those types of accounts will be settled by delivery in the same manner as any other position.

Rule 1307(c) describes the reports issued by ICC to facilitate the delivery process. Where deliveries are being made in the usual manner, ICC will issue to each Clearing Member a report, identifying for each Clearing Member: (i) The identity of the opposite Clearing Member with whom settlement is to be made; (ii) the accounts of the Clearing Member for which delivery is to be made or taken; (iii) the delivery date; (iv) the number of contracts for which delivery is being made; and (v) the settlement price of Treasury bond futures on the date the delivery notice was tendered to ICC or, in the case of deliveries remaining to be made on the last delivery day after the netting process required by Rule 1307(b) has been completed, the date on which a delivery notice was allocated in accordance with that Rule. Where, however, the positions of a Clearing Member have been netted in accordance with rule 1307(b)(2) or (b)(3), a report specifying the terms on which settlement by delivery is to be made is inappropriate. A provision to Rule 1307(c) therefore provides that ICC will in such a case issue a report reflecting the netting that has already been conducted in the accounts of the Clearing Member.

Rule 1308(a) provides that where a Clearing Member's settlement obligations have been netted as described above, those obligations will be deemed to be discharged on the last delivery day. This is similar to the treatment of netted foreign currency deliveries, which pursuant to the terms of Rule 1206, are deemed to be fully discharged at the time those contracts would otherwise have been settled by delivery. Rule 1308 also affords similar treatment to those situations in which a delivery notice tendered by a Clearing Member to ICC is allocated to that same Clearing Member because the Clearing Member is among the "oldest open longs."

Rule 1308(b) implements proposed NYFE Rule 830(f) and sets forth the information which must be included in the delivery instructions issued by a Clearing Member. These instructions, which must be issued by the Clearing Member prior to 2:00 p.m. Chicago time (3:00 p.m. New York time) on the business day on which open short positions have been allocated by ICC to the receiving Clearing Members (i.e., the day after the delivery notice was tendered to ICC), must include a description of the Treasury bonds that are to be delivered, an invoice for the delivery amount for each contract, the delivery date, the delivering Clearing Member's correspondent bank and account number at that bank, and such other information as ICC deems necessary. Rule 1308(c), in turn, requires the receiving Clearing Member to provide to the delivering Clearing Member by 3:00 p.m. Chicago time (4:00 p.m. New York time) on the same business day a Banking Notification containing the information necessary to complete delivery.

Rule 1308(d) corresponds to proposed NYFE Rule 830(j) and provides, in essence, that the delivering Clearing Member must have Treasury bonds in place at a correspondent bank (as defined in rule 1309) by no later than 10:00 a.m. Chicago time (11:00 a.m. New York time) on the delivery date. Delivery is to be made by book entry against payment of the delivery amount in Federal funds in accordance with the applicable procedures of the Department of the Treasury. Except as otherwise provided in paragraphs (f) and (g) of Rule 1308 (relating to banking holidays and failures of the "Fedwire" system), all deliveries must be completed by 1:00 p.m. Chicago time (2:00 p.m. New York time) on the delivery date.

Rule 1310 corresponds to the provisions of proposed NYFE Rules 822(c) and 830(g) and provides that the amount to be paid in settlement of a Treasury bond futures contracts is equal to the settlement price on the date: (i) The delivery notice has been tendered to ICC in accordance with Rule 1305 or (ii) on which outstanding delivery obligations are netted or allocated in accordance with Rule 1307(b) (in effect, the last notice day) multiplied by the price at which the Treasury bond with the same time to maturity or call and the same coupon rate as the issue to be delivered will yield 8%, as determined in accordance with bond tables disseminated by the Exchange. Under Rule 1310, interest accrues only through and including the delivery date so as to remove any incentive for a short Clearing Member to fail to make delivery.

Rules 1311–1313 relate to a Clearing Member's failure to make or take delivery and are similar to the provisions of existing ICC Rules 1209–1211. The principal difference is contained in ICC Rule 1311 which provides that in the event of the failure of a Clearing Member to deliver Treasury bonds, the receiving Clearing Member may wait up to 20 days before issuing a notice of its intention to buy in the undelivered Treasury bonds. These provisions parallel the rules of the Public Securities Association for failed deliveries of Treasury securities instruments in the cash market and also correspond closely to Rule 1400 of The Options Clearing Corporation ("OCC") relating to the failure to deliver on Treasury securities options issued and cleared by OCC.

As required by Commission Regulation 190.05(b), ICC Rule 1314 permits customers to make or take delivery in the event that the Clearing Member carrying their account has been adjudicated bankrupt or has filed a voluntary petition for bankruptcy at the time that any of the events specified in that Regulation have transpired. Rule 1314 is substantially similar to existing ICC Rule 1213 but makes allowance for the possibility that a delivery notice may have been tendered by a delivering Clearing Member or allocated to a receiving Clearing Member before the date of the entry of the order for relief.[5] A proviso makes clear that a customer electing to proceed under the provisions of this Rule must provide written notice of that election prior to the time that its Clearing Member would have been required to provide any notice or perform any act required by the ICC Rules governing such deliveries. The purpose of this provision is to ensure that non-defaulting Clearing Members who are receiving delivery from or making delivery to the customers of the bankrupt Clearing Member are not disadvantaged or exposed to financial loss by the failure of a customer to provide timely notice of its intentions in this regard. This provision also has the effect of making it impossible for a customer to take advantage of the

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Clearing Member, such as a proprietary floor trader's account. That Rule further specifies that the public customers' account is to be netted against all other accounts of the Clearing Member (i.e., any customer floor trader, combined floor trader, or off-floor trader accounts).

[5] These latter provisions are unnecessary in respect of foreign currency futures contracts because deliveries on those contracts are made only where positions have not been liquidated by the close of trading in the contract. Unlike the Treasury bond futures contract, delivery notices cannot be issued or allocated in currency futures prior to the last trading day and no provision corresponding to Regulation 190.05(b)(1)(ii) of the Commodity Exchange Act is necessary in that context.

fortuity of its Clearing Member's bankruptcy to extend any of the deadlines that would otherwise have been applicable to that customer absent the intervening bankruptcy.

Interpretations and Policies .01 to Rule 1308 clarifies the responsibilities of the parties in their efforts to comply with Regulation 1.42 of the Commodity Exchange Act. Regulation 1.42 directs the contract market to furnish, or cause to be furnished, certain information and delivery advices to the Commodity Futures Trading Commission ("CFTC") upon a special call from the CFTC or its designee. In practice, the information that is required by the CFTC in furtherance of its market surveillance program, which includes the quantity, maturity and yield of the instrument being delivered, is not contained in the program delivery notices issued by ICC. Instead, the information is included in delivery instructions issued by a short Clearing Member to a long Clearing Member that previously had been assigned a delivery notice by ICC. Since these instructions are handled solely by the delivering and the assigned Cleaning Member, ICC would have no knowledge of the contents of those instructions absent a failure to deliver or receive by either Clearing Member. Interpretation and Policy .01 clarifies that it is the Clearing Member's obligation to provide this information once the CFTC issues a special call for that information.

This provision also has the effect of making it impossible for a customer to take advantage of the fortuity of its Clearing Member's bankruptcy to extend any of the deadlines that would otherwise have been applicable to that customer absent the intervening bankruptcy.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934, as amended because it expands the products which would be eligible for cross-margining. Cross-margining of these positions would enhance the safety of the clearing system while providing lower clearing margin costs to ICC's Clearing Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were not and are not intended to be solicited with the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR–ICC–89–02 and should be submitted by September 21, 1989.

For the Commission by the Division of Market Regulation, pursuant to delgated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20469 Filed 8–30–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27177; File No. SR-NASD-89-24]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Definition of Direct Participation Programs in Schedule C to the By-Laws

The National Association of Securities Dealers, Inc. ("NASD") submitted on May 17, 1989, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to exclude from the definition of "direct participation programs" in part II, section 2(d)(ii) of Schedule C to the NASD By-Laws those programs that are quoted on the NASDAQ System or listed on a registered national securities exchange or for which an application for quotation or listing has been made.

Notice of the proposed rule change together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 27036, July 24, 1989) and by publication in the **Federal Register** (54 FR 30494, July 20, 1989). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: August 24, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20470 Filed 8–30–89; 8:45 am]

BILLING CODE 8010-01-M

[Rel No. IC–17119; 812-7288]

Keystone America Equity Income Fund, et al.; Application To Amend a Prior Order

August 24, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Keystone America Money Market Fund, Keystone America Tax Free Money Market Fund (together, "Money Market Funds"), Keystone America Equity Income Fund, Keystone America Fund of Growth Stocks, Keystone America Global Opportunities Fund, Keystone America Government Securities Fund ("KA Government"), Keystone America High Yield Bond Fund ("KA High Yield"), Keystone America Investment Grade Bond Fund, Keystone America Tax Free Income Fund (collectively, "Load Funds"), Keystone America Global Income Fund (formerly, International Heritage Fund) ("Global") and Keystone America Omega Fund, Inc. (formerly, Omega Fund, Inc.) ("Omega") (all of the above, "Keystone America Funds") and Keystone Distributors, Inc. ("KDI") (collectively, "Applicants"), on behalf of themselves and other registered open-end companies which may in the future become members of the Keystone America "group of investment companies," as defined in Investment Company Act Release No. 16504 (July 20, 1988) (together with the Keystone America Funds, "Keystone America Fund Group").

RELEVANT 1940 ACT SECTIONS: Amended exemptive order requested should be accompanied by proof of service on the Applicants in the form of affidavits or, for lawyers, certificates of service. Requests for notification of a hearing may be made by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicants, c/o Alan C. Porter, Esq., Sullivan & Worcester, 1025 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Cathey Baker (202) 272–3033 or Branch Chief Karen L. Skidmore (202) 272–3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee. One may obtain a copy by going to the SEC's Public Reference Branch or by telephoning the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Keystone America Funds are open-end management investment companies registered under the 1940 Act. Each is a Massachusetts business trust, with the exception of Omega, a Massachusetts corporation. Keystone Custodian Funds, Inc. ("Keystone") is investment adviser and manager of the Keystone America Funds and KDI, a wholly-owned subsidiary of Keystone, is principal underwriter.

2. Shares of the Money Market Funds are sold at their net asset value without an initial or deferred sales load, except that a CDSL may be assessed upon redemption of Money Market shares acquired by means of an exchange from a Load Fund to the extent under section 6(c) exempting the Applicants from sections 2(a)(32), 2(a)(35), 22(c), 22(d) of the 1940 Act and Rule 22c–1.

SUMMARY OF APPLICATION: Applicants seek an order amending the order issued in Investment Company Act Release No. 15684 (April 15, 1987) ("Prior Order"). The amended order would permit Global, Omega and future members of the Keystone America Fund Group, in accordance with the terms and conditions of the Prior Order and consistent with proposed Rule 6c–10, to waive an initial sales load on sales of certain shares, to assess a contingent deferred sales charge ("CDSL") on redemptions of certain shares, and to waive or credit amounts against the CDSL in certain instances. In addition, the amended order would provide exemptive relief permitting the Applicants (ii) to waive the initial sales load and the CDSL with respect to shares of Omega purchased after April 19, 1989 by shareholders of Omega of record as of May 1, 1987, and (iii) to waive the CDSL on redemptions of shares of Global and Omega outstanding on April 19, 1989.

FILING DATE: The application was filed on April 7, 1989, and amended on June 23, 1989 and July 21, 1989.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the SEC's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 18, 1989, and should state the nature of the requester's interest, the reason for the request, and the issues contested. Hearing requests also that the exchanged shares would have been subject to a CDSL at the time of redemption. The exchange privilege under the Prior Order is discussed below. Shares of each Load Fund are offered for sale at their net asset value plus a 2% initial sales load (2.04% of the net amount invested). The initial sales load is paid to KDI, which, in turn, normally pays the selling broker or dealer 4% of the offering price (4.08% of the net amount invested). Shares may also be purchased directly from KDI. In this event, KDI receives and retains the 2% initial sales load paid by the invester, but no payments are made to KDI with respect to such shares under the Distribution Plan described in item 3 below. The 2% initial sales load is waived on certain share sales, as described further below.

3. Each Load Fund has adopted a plan of distribution in accordance with Rule 12b–1 under the 1940 Act ("Distribution Plan") which provides that amounts may be expended daily at an annual rate of 0.75% of average daily net asset value to finance any activity which is principally intended to result in the sale of shares. Amounts paid to KDI under the Distribution Plan are used to pay others, such as brokers or dealers, a commission and/or (ii) maintenance fees.

4. The Prior Order permits the Applicants (other than Global, Omega and future members of the Keystone America Fund Group, as defined in this application) to waive an initial sales load on sales of certain shares, to assess a CDSL on certain redemptions of shares within four calendar years after their purchase, and to waive or credit amounts against the CDSL in certain instances. If imposed, the CDSL is 2% of the lesser of (i) the net asset value of the shares redeemed, or (ii) the net cost of such shares. Such amount is deducted from the redemption proceeds otherwise payable to the shareholder and is retained by KDI. In determining whether a CDSL is payable, shares not subject to the CDSL, as described in the following sentence, are redeemed first; thereafter, it is assumed that shares held the longest are the first to be redeemed. No CDSL is assessed when the shareholder redeems (i) shares representing amounts attributable to increases in the value of an account above the net cost of the investment due to increases in net asset value per share, (ii) certain shares with respect to which a commission is not paid upon issuance, including shares acquired by reinvestment of dividends and distributions, or (iii) shares held during more than four consecutive calendar years. In no event does any combination of the initial sales charge and the CDSL exceed applicable limitations imposed by the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD Rules"). Assets represented by redeemed shares are removed from the asset base on which the percentage charge paid under the Distribution Plan will be calculated.

5. Both the initial sales charge and the CDSL are waived with respect to shares sold to certain affiliated purchasers, employee benefit plans and banks which are eligible under the terms of the

Prior Order. In addition, the CDSL is waived on the redemption of shares (i) following the death or disability of a shareholder, (ii) a lump-sum distribution from a benefit plan qualified under the Employment Retirement Income Security Act of 1974 ("ERISA"), (iii) systematic withdrawals from ERISA plans if the shareholder is at least 59½ years old, (iv) involuntary redemptions of accounts having an aggregate net asset value of less than $1,000, or (v) systematic withdrawals under a systematic withdrawal plan of up to 1½% per month or 4½% per quarter of the shareholder's net investment. The Prior Order also permits a one-time only reinvestment privilege under which a shareholder may elect to make a reinvestment purchase with any part of the proceeds of a total or partial redemption of shares. The dollar amount of the deferred sales load previously deducted is credited and the initial sales load on the subsequent purchase is waived. The calendar year of the purchase of shares acquired by reinvestment, for purposes of any future deferred sales load, is deemed to be the year the redeemed shares were originally purchased. Such an election must be made within 30 days of the date of redemption and the shares purchased must be those of the fund whose shares were redeemed.

6. The Prior Order also permits the implementation of an exchange privilege pursuant to which shareholders of a Keystone America Fund may exchange their shares for shares of another Keystone America Fund on the basis of their respective net asset values without an initial sales load or CDSL. However, if the shares tendered for exchange have been held for fewer than four years and are still subject to a CDSL, the CDSL carries over to the shares acquired in the exchange transaction, and the calendar year of purchase for the acquired shares, for purposes of any future CDSL, is deemed to be the year the exchanged shares were originally purchased. A $5 charge is imposed for each exchange transaction.

7. Prior to April 19, 1989, Global and Omega were managed by International Heritage Corp. ("IH Corp.") and distributed by International Heritage Securities, Inc. ("IH Securities"). Keystone and IH Corp. entered into a Purchase and Sale Agreement dated December 16, 1988, under which IH Corp. agreed to sell to Keystone all of its assets relating to the business of providing investment management services to Global and Omega, subject to certain conditions, including shareholder approval of the proposals. Pursuant to such approvals, two portfolios of Global were merged, respectively, into KA Government and KA High Yield, and the names of Omega and Global, respectively, were changed to Keystone America Omega Fund, Inc. and Keystone America Global Income Fund. The reorganizations of the Global portfolios were completed on April 6, 1989. The distribution arrangements of KA Government and KA High Yield are being conducted in accordance with the terms and conditions of the Prior Order.

9. On April 19, 1989, Global and Omega became members of the Keystone America Funds and KDI replaced IH Securities as principal underwriter of Global and Omega. In addition, Global and Omega each adopted a plan of distribution in accordance with Rule 12b–1 under the 1940 Act identical in all material respects to the Distribution Plan of the Load Funds described in item 3 above.

10. The Applicants propose that Global, Omega and future members of the Keystone America Fund Group be permitted to waive the initial sales charge on sales of certain shares, to impose a CDSL on redemptions of certain shares, and to waive or credit amounts against the CDSL in certain circumstances, all in the same manner as the other Keystone America Funds under the Prior Order. In addition, the Applicants propose to waive the CDSL on redemptions of shares of Global and Omega outstanding on April 19, 1989. The Applicants also propose to waive the initial sales load and the CDSL with respect to Omega shares purchased after April 19, 1989 by shareholders of Omega of record as of May 1, 1987. Such persons became Omega shareholders when shares of Omega were distributed on a no-load basis. These shareholders have been given the right, which KDI has agreed to maintain, to reinvest in Omega shares without being subject to an initial sales load and to redeem shares of Omega without imposition of a deferred sales load. Shares of Global and Omega purchased after April 19, 1989 by shareholders of Global and by shareholders of Omega who became shareholders of record after May 1, 1987 will be subject to the 2% initial sales load and the CDSL. The Applicants will meet all the conditions of Rule 22d–1 in connection with any waivers of the initial sales load, as well as in connection with waivers of or credits against the CDSL. In each case, all waivers will be applied uniformly in a manner consistent with the provisions of Rule 22d–1.

11. The Applicants will offer the exchange privilege permitted by the Prior Order to shareholders of Global and Omega on the same basis. In implementing the exchange privilege with respect to Global and Omega, the Applicants will rely upon Rule 11a–3, as adopted by the Commission in Investment Company Act Release No. 17087 (August 3, 1989).

Applicants' Legal Analysis and Conclusions

1. The Prior Order was sought on behalf of the then existing Keystone America Funds and such other Keystone America funds as might be organized in the future. The Prior Order is not applicable to Global and Omega because they were organized prior to its issuance and were not members of the Keystone America Fund Group at that time. The Applicants submit that the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The Applicants acknowledge that they bear the burden of ensuring that the administration of the sales load, the CDSL and the exchange offer comply with the conditions set forth below. The Applicants further acknowledge that the granting of the requested order will not imply Commission approval, authorization or acquiescence in any particular level of payments that may be made pursuant to the Distribution Plan adopted by any member of the Keystone America Fund Group. The Boards of Trustees or Directors of the Keystone America Funds in their respective periodic 12b–1 reviews will consider, among other things, the revenues received by KDI as a result of imposition of the CDSL. The Boards of Trustees or Directors will also consider whether shareholders have paid, or are reasonably likely to pay, directly or indirectly, more for sales or promotional services or activities than the maximum sales charge that could have been imposed on shares of the Keystone America Funds at the time of purchase under the NASD Rules.

Applicants' Conditions

The Applicants agree that the following may be made conditions to the proposed relief:

1. The Applicants will comply with the provisions of Rule 11a–3, Investment Company Act Release No. 17087 (August 3, 1989), as adopted and as it may be modified in the future.

2. The Applicants will comply with Rule 12b–1, as adopted and as it may be modified in the future.

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3. The Applicants will comply with the provisions of proposed rule 6c–10, Investment Company Act Release No. 16169 (November 2, 1988), 53 FR 45275 (November 9, 1988), as such rule is currently proposed and as it may be further revised and/or adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20542 Filed 8–30–89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville, will hold a public meeting from 10:00 a.m. to 3:00 p.m., Wednesday, September 27, 1989, at the Executive Inn West, Drinkwater Room, Louisville, Kentucky, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present,

For further information, write or call William Federhofer, District Director, U.S. Small Business Administration, Louisville District Office, P.O. Box 3527, Louisville, Kentucky 40201, phone (502) 582–5971.

Dated: August 24, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–20475 Filed 8–30–89; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council; Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of St. Louis, will hold a public meeting at 9:00 a.m. on Wednesday, October 25, 1989, at the St. Louis District Office of the U.S. Small Business Administration, The Old Post Office, 815 Olive Street, Room 242, St. Louis, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert L. Andrews, District Director, U.S. Small Business Administration, 815 Olive Street, Room 242, St. Louis, Missouri, 63101, phone (314) 539–6600.

Dated: August 24, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–20476 Filed 8–30–89; 8:45 am]

BILLING CODE 8025-01-M

Temporary Disqualification of Certain Newly Legalized Aliens from Receiving Financial Assistance

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: On July 12, 1989, the Immigration and Naturalization Service published final regulations (INS rule) in the **Federal Register** (54 FR 29434) to implement the Immigration Reform and Control Act of 1986, Public Law 99–603, 100 Stat. 3359. With certain exceptions, such INS rule prescribes that newly legalized aliens are temporarily disqualified from receiving financial assistance under various Government programs. By this Notice, the Small Business Administration is implementing the INS rule.

EFFECTIVE DATE: October 2, 1989.

ADDRESS: Comments may be sent to Harry D. Kempler, Chief Counsel for Business Loans, Office of General Counsel, Small Business Administration, 1414 L Street, NW., Washington, DC 20416. Telephone (202) 653–6757.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 245A(h) of the Immigration and Nationality Act ("Act"), as amended aby section 201 of the Immigration Reform and Control Act of 1986, Public Law 99–603 ("IRCA"), aliens granted lawful temporary resident status pursuant to section 245A(a) ("legalization") are not eligible for a period of five years after such grant to receive a direct or guaranteed loan ("financial assistance") from the Small Business Administration (SBA) under section 7(a) of the Small Business Act. To reflect the IRCA provisions, the Immigration and Naturalization Service amended its regulations (8 CFR Part 245a) which were published in the **Federal Register** on July 12, 1989 (54 FR 29434).

Such temporary disqualification (for five years after being granted legalization) does not apply under IRCA to a Cuban or Haitian entrant as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96–422, 94 Stat. 1799, or to an alien who is an aged, blind or disabled person as defined in section 1614(a)(1) of the Social Security Act (42 USC 1382c).

A Cuban or Haitian entrant means any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided. The term also includes any other national of Cuba or Haiti who (1) was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act; or (2) is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or (3) has an application for asylum pending with the the Immigration and Naturalization Service.

Generally, the definition of an aged, blind or disabled person in section 1614(a)(1) of the Social Security Act is equivalent to the criteria of the SBA in determining eligibility for handicapped assistance.

SBA has developed a form of self-certification (SBA Form 1261A) which each applicant for a loan under section 7(a) of the Small Business Act will be required to fill out at the time of application in order to assist SBA to determine whether the applicant is temporarily disqualified for SBA financial assistance under section 7(a) of the Small Business Act because of legalization. This form will be included in SBA's normal application eligibility review process.

Dated: August 16, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–20477 Filed 8–30–89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09–0386]

First Commerce & Loan Limited Partnership; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given for the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1989)), by First Commerce & Loan Limited Partnership, (the Applicant), 2806 N. Camino Principal, Tucson, Arizona 85715 for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661. *et seq.*) and the Rules and Regulations.

The general partners, its officers and directors of the Applicant are as follows:

Name	Title
First Commerce and Loan, Inc., 2806 North Camino Principal, Tucson, AZ 85715.	Corporate General Partner.
Ross M. Horwitz, 2806 North Camino Principal, Tucson, AZ 85715.	Individual General Partner, SBA General Manager, President, Director, and sole stockholder of the Corporate General Partner.
Allen A. Abrahamson, 816 East Avenue, Bayhead, NJ 08742.	Director, Vice President of Finance.
Jeffrey W. Goldstein, 355 E. River Road, Tucson, AZ 85718.	Vice President of Marketing.
Stella Kollopoulos, 6001 E. Pima, #256, Tucson, AZ 85712.	Secretary-Treasurer.
Joe Acosta, 4869 E. Lafayette Blvd., Phoenix, AZ 85015.	Director.
John T. Emery, 110 Elsa Drive, Fullerton, CA 92635.	Director.
Warren S. Rustand, 5750 Santa Fe, Tucson, AZ 85715.	Director.
George W. Taylor, 1661 W. Hazelwood St., Phoenix, AZ 85015.	Director.
James V. Walther, 2217 S. Clayton, Denver, CO 80210.	Director.

There are 12 limited partners each owning less than ten percent of the total partnership interests.

The Applicant, a limited partnership' organized under the provisions of the State of Arizona Limited Partnership Act and duly qualified to do business in the State of Arizona, will begin operations with approximately $1,005,000 of paid-in capital and paid-in surplus to be obtained through a private placement. The applicant will conduct its activities primarily in the State of Arizona, and will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the general partners and the probability of successful operations of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC. 20416

A copy of this Notice will be published in a newspaper of general circulation in the Tucson, Arizona area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 22, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-20472 Filed 8-30-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5369]

Ibero-American Investors Corp.; Filing of an Application for Approval of a Conflict of Interest Transaction

Notice is hereby given that Ibero-American Investors Corporation (Ibero-American), 38 Scio Street, Rochester, New York, 14604, a Federal licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to section 312 of the Act and covered by § 107.903 of the SBA Rules and Regulations (the Regulations) governing Small Business Investment Companies (13 CFR 107.903 (1988)) for approval of a conflict of interest transaction falling within the scope of the above Sections of the Act and Regulations.

Subject to such approval, Ibero-American proposes to provide funds to Anita's International Travel, 52–54 Jay Street, Rochester, New York, for the purpose of establishing an independent travel agency in the city of Rochester, New York.

The proposed financing is brought within the purview of § 107.903(b)(1) of the SBA Rules and Regulations because Ms. Anita Alomar Lopez is the daughter of Mrs. Daisey Alomar-Hamza, President of the Board of Directors of Ibero-American Action league, a not-for-profit social organization that owns Ibero-American Investment Corporation. Mrs. Alomar-Hamza is considered to be an associate of Ibero-American as defined by § 107.3 of the Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice shall be published in accordance with section 107.903(e) of the Regulations, in a newspaper of general circulation in Rochester, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: August 21, 1989.

[FR Doc. 89-20473 Filed 8-30-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5381]

Western General Capital Corp.; Issuance of a Small Business Investment Company License

On February 14, 1989, a notice was published in the **Federal Register** (Vol. 54, FR6798) stating that an application has been filed by Western General Capital Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) for a license as a small business investment company.

Interested parties were given until close of business May 1, 1989, a submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-5381 on August 2, 1989, to Western General Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 24, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-20474 Filed 8-30-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1126]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511.

SUMMARY: To obtain a passport, a travel document attesting to one's identity and U.S. citizenship, a U.S. national must complete the passport application. The application is retained in the files of the Department of State and is consulted when a passport has been lost, in citizenship claims, as evidence in the prosecution of individuals making false statements, and to support a derivative claim to citizenship made by an applicant's children. The following summarizes the information collection proposals submitted to OMB:

1. Type of request—Extension.
Originating office—Bureau of Consular Affairs.
Title of information collection—Application for Passport/Registration.
Form Number—DSP-11.
Frequency—On occasion.
Respondents—Applicants for U.S. Passports.
Estimated number of respondents—4,000,000.
Average hours per response—7 minutes.
Total estimated burden hours—466,666.

2. Type of request—Extension.
Originating office—Bureau of Consular Affairs.
Title of information collection—Application for Passport by Mail.
Form number—DSP-82.
Frequency—On occasion.
Respondents—Applicants for U.S. Passports.
Estimated number of respondents—2,000,000.
Average hours per response—5 minutes.
Total estimated burdan hours—166,666.

Section 3504(h) of Public Law 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) John Harrigan (202) 395-7340.

Date: August 22, 1989.

Arthur W. Fort,

Assistant Secretary for Administration and Information Management.

[FR Doc. 89-20528 Filed 8-30-89; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice 1127]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511.

SUMMARY: Recipients of State Department publications are queried biennially to ascertain that addresses are correct and that they wish to continue receiving publications. It allows respondents to indicate the kinds of publications they prefer to receive and to prioritize their preferences. The following summarizes the information collection proposal submitted to OMB:

Type of request—Extension.
Originating office—Bureau of Public Affairs.
Title of information collection—Mailing List Notice.
Frequency—Biennial.
Respondents—Applicants for State Department publications.
Estimated number of respondents—3,750.
Average hours per response—7 minutes.
Total estimated burden hours—438.

Section 3504(h) of Public Law 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) John Harrigan (202) 395-7340.

Dated: August 22, 1989.

Arthur W. Fort,

Assistant Secretary for Administration and Information Management.

[FR Doc. 89-20529 Filed 8-30-89; 8:45 am]

BILLING CODE 4710-11-M

[Public Notice CM-8/1300]

Oceans and International Environmental and Scientific Affairs Advisory Committee; Partially Closed Meeting

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will meet at 10 a.m., Tuesday, September 19, 1989, in Room 7835, Department of State, 22nd and C Street, NW., Washington, DC.

At this meeting, officers responsible for Antarctic affairs in the Department of State will discuss the recently adopted Convention on the Regulation of Antarctic Mineral Resource Activities. Attention will center upon issues to be addressed in legislation necessary to implement the Convention and in the separate protocol on liability called for in the Convention. There will also be consideration of preparations for the Fifteenth Antarctic Treaty Consultative Meeting which will be held in Paris in October, 1989. Department officials will be prepared to discuss other key issues and problems involving the Antarctic in the context of current domestic and international developments. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussion according to the instructions of the Chairman. As access to the Department of State is controlled, persons wishing to attend the meeting should enter the Department through the Diplomatic ("C" Street) Entrance. Department officials will be at the Diplomatic Entrance to escort attendees.

The Antarctic Section of the Oceans and International Envrionmental and Scientific Affairs Advisory Committee will also meet on Monday, September 18, in Room 1406, Department of State, 22nd and C Street, NW. The purpose of these discussions will be to elicit views concerning the further development of United States policy regarding Antarctic resources, particularly Antarctic mineral resources. The Fifteenth Antarctic Treaty Consultative Meeting will also be discussed. The meeting will include classified briefings and examination and discussion of documents classified pursuant to Executive Order 12356. The disclosure of classified material and revelation of considerations which go into policy development would subtantially undermine and frustrate the U.S. position in future meetings and negotiations. Therefore, the meeting will not be open to the public, pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and 5 U.S.C. 552b (c)(9)(B).

Requests for further information on the meetings should be directed to R. Tucker Scully of OES/OA, Room 5801, Department of State. He may be reached by telephone on (202) 647-3262.

Frederick M. Bernthal,

Chairman.

[FR Doc. 89-20530 Filed 8-30-89; 8:45 am]

BILLING CODE 4710-09-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-79]

Initiation of Section 302 Investigation and Request for Public Comment: Procurement of Electronic Highway Toll Identification Systems by the Government of Norway

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302 of the Trade Act of 1974, as amended ("the Trade Act") regarding the Government of Norway's government procurement practices with respect to an electronic highway toll identification system for a highway surrounding Oslo, Norway. USTR invites written comments on the matter being investigated.

DATES: This investigation was initiated on August 25, 1989. Written comments from interested persons are due October 2, 1989.

ADDRESS: Office of the United States Trade Representative, Room 223, 600 17th St., NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Timothy Richards, Director of Information Industry Trade Policy, (202) 395–6160, Beverly Vaughan, Director, Government Procurement, (202) 395–3063, or Kenneth Freiberg, Associate General Counsel, (202) 395–7305.

SUPPLEMENTARY INFORMATION: On July 11, 1989, AMTECH Corporation, a Dallas-based manufacturer of electronic highway toll identification systems, filed a petition under section 302 of the Trade Act of 1974, as amended, regarding practices by the Government of Norway related to procurement of the electronic highway tollgate system surrounding Oslo. Specifically, Petitioner asserts that the actions of the Norwegian government, through its Ministry of Transport, in overturning a decision of the Oslo Toll Road Authority to award a contract to Petitioner and its Norwegian correspondent for the Oslo tollgate system violate Article III of the General Agreement on Tariffs and Trade (GATT), the GATT Agreement on Government Procurement (Procurement Code), and Article VIII of the U.S.-Norway Treaty of Friendship, Commerce and Navigation. AMTECH also alleges that the Norwegian Government's actions are unjustifiable, unreasonable or discriminatory and burden U.S. commerce.

After the petition was filed, according to Petitioner, the City of Oslo announced its intention to award the project to Petitioner and its Norwegian correspondent, but subsequently the Minister of Transportation withdrew authority from the Oslo Toll Road Authority for this procurement and gave that authority to a new entity. A further evaluation of bids will now be conducted on the basis of the original invitation to tender, but the new entity has been directed to consider six new criteria for evaluating the bids. A contract award is expected on or about September 15, 1989.

Investigation: On August 25, 1989, pursuant to section 302(a) of the Trade Act, the USTR initiated an investigation of the Norwegian government's procedures and practices with respect to this proposed procurement. The Office of the USTR also requested consultations with the Government of Norway, as required by section 303(a) of the Trade Act. In preparing for such consultations, USTR will seek information and advice from the petitioner and the appropriate committees established pursuant to section 135 of the Trade Act, as provided in section 303(a)(3) of that Act.

Public Comment: Interested persons are invited to submit written comments on the issues raised in the petition. Comments must be filed in accordance with the regulations at 15 CFR 2006.8 and are due by noon on October 2, 1989. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, Room 223, USTR, 600 17th Street, NW., Washington, DC 20506. Comments will be placed in a file (Docket 301–79) open to public inspection pursuant to 15 CFR 2006.12 (except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15).

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89–20467 Filed 8–30–89; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Townships of Robinson and Collier, Allegheny, County, PA

AGENCY: Federal Highway Administration, Transportation.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in the Townships of Robinson and Collier, Allegheny County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: George Catselis, District Engineer, Federal Highway Administration, 228 Walnut Street, P. O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone (717) 782–3410, or Henry M. Nutbrown, District Engineer, Pennsylvania Department of Transportation, Engineering District 11–0, Four Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania 15220, Telephone (412) 937–4638, or Herbert C. Higginbotham II, Director, Department of Engineering and Construction, County of Allegheny, 501 County Office Building, Forbes Avenue and Ross Street, Pittsburgh, Pennsylvania 15219, Telephone (412) 355–5902.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation and Allegheny County, will prepare an Environmental Impact Statement on a proposal for the reconstruction for safety and capacity of the existing two lane Campbell's Run Road. The project limits extend from T.R. 60 at the T.R. 60 Interchange with T.R. 22/30 east to the intersection of Campbell's Run Road with Baldwin Road for a total length of 3.7 miles in Robinson and Collier Townships

Functional, structural, operational, and physical deficiencies of existing Campbell's Run Road and significant land use and traffic changes—to date and proposed—dictate this action.

Project alternatives will be assessed at three levels: No-Build, Minimum-Build, and Optimum-Build. The "No-Build" alternate will address the Do-Nothing option, i.e. the maintenance of the existing two lane Campbell's Run Road, with the existing partial interchange with T.R. 22/30 (the Parkway West), to quantify existing and design year service levels and other functional, structural, operational and physical deficiencies. The "Minimum-Build" alternate(s) will address proposed work at a level necessary to meet minimum criteria to correct significant but not all deficiencies in the design year. The "Optimum-Build" alternate(s) will address proposed work at a level necessary to meet minimum to desirable criteria with limited, if any, substandard features to correct all deficiencies in the design year. No fewer than one variation of Minimum and Optimum-Build alternates will be developed.

The EIS will assess the alternatives and their environmental effects through detailed studies of socioeconomic resources, natural resources, and cultural resources, air quality, noise impacts, energy utilization, transportation, safety and utilities. The studies will be documented in Technical Basis Report(s) which will set forth methods and findings. The EIS will summarize those findings. The assessment will include community and agency coordination.

An Early Coordination Form describing the proposed action and studies, and soliciting comments will be forwarded to appropriate Federal, State, and Local agencies. Public and Agency Scoping Meetings will be held in the project area in the autumn 1989. In addition, future public plans displays and public meetings will be held, and a Public Hearing may be held. Public notice will be given for the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA, Pennsylvania Department of Transportation, or Allegheny County at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 23, 1989.

George L. Hannon,

Assistant Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 89–20531 Filed 8–30–89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. IP89–07; Notice 1]

Receipt of Petition for Determination of Inconsequential Noncompliance; Lagusa, Inc.

Keller and Heckman of Washington, DC, has petitioned on behalf of Lagusa, Inc. of Belcamp, Maryland, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.106, Federal Motor Vehicle Safety Standard (FMVSS) No. 106, *Brake Hoses*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraphs S7.3.9 and S7.2.1 (a) of Standard No. 106 respectively require that "an air brake hose assembly shall not rupture when exposed to hydrostatic pressure of 800 psi" and that each air brake hose be labeled with the symbol DOT, constituting a certification by the hose manufacturer that the hose conforms to all applicable motor vehicle safety standards. Lagusa imported approximately 100 European built motorcoaches equipped with air hoses that do not comply with the above mentioned paragraphs of Standard No. 106.

Lagusa supports its petition for inconsequential noncompliance for the following reasons:

1. Noncompliance with S7.3.9 is inconsequential as it relates to motor vehicle safety because the noncomplying air brake hoses meet, in all respects, the Deutsche Industrie Norm (DIN) standard, a state-of-the-art standard which, for many years, has provided a high level of safety in European motor vehicles.

2. The National Highway Traffic Safety Administration recognizes the Deutsche Industrie Norm as a standardization organization for purposes of certain U.S. Motor Vehicle Safety Standards, and should so recognize the DIN Standard for air brake hoses.

3. In its 13 years of manufacturing motorcoaches, there has never been an accident or a proven incident relating to failure or nonperformance of the air brake hoses on motorcoaches manufactured by Lagusa. The absence of such accidents or proven incidents is indicative of the safety of these air brake hoses.

4. The maximum air pressure regulated in the motorcoach air system is 120 psi. A situation which would create pressure of 639 psi, the lowest pressure at which any of the hoses burst, is highly unlikely. There are two safety features inherent in the system, a governor on a compressor and a safety valve. When 120 psi is reached, the air is exhausted to the outside, precluding the hose from bursting.

5. On February 26, 1974, the National Highway Traffic Safety Administration reduced the burst strength value from 900 psi to 800 psi for purposes of the burst strength test set forth at S7.3.9. In explaining the reduction, the NHTSA stated that "the burst strength value is reduced to 800 psi to accommodate nylon and thermoplastic tubing *while retaining a safety performance level five times that of normal operating conditions".* (emphasis added).

6. Lagusa submits that the 800 psi standard, as an across-the-board requirement, is unreasonable and fails to take into account different vehicle sizes and their attendant different braking system requirements, that it is unrealistically high where, as in this case, there are dual backup controls.

7. Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, provides at S5.1.2.2 that air compressor service reservoirs be capable of withstanding "an internal hydrostatic pressure of five times the compressor cutout pressure or 500 psi, whichever is greater for 10 minutes." As the pressure in the system is constant, there is an inherent inconsistency in requiring the reservoir to meet a 500 psi standard and the air brake hoses to meet a 800 psi standard.

8. The universe of Lagusa's noncomplying vehicles is limited. There are only 106 vehicles in the United States to which this noncompliance relates.

9. Lagusa has taken steps to ensure that all motorcoaches currently imported into the United States fully meet the requirements of Motor Vehicle Safety Standard No. 106. In fact, all motorcoaches entering the U.S. since March 1988 have fully complied with Motor Vehicle Safety Standard No. 106.

10. If the NHTSA finds that noncompliance with S7.3.9 is inconsequential, it must also find noncompliance with the labeling requirements set forth at S7.2.1(a) is inconsequential. That standard merely requires that the hoses be labeled with the DOT symbol to indicate they conform to alll applicable Motor Vehicle Safety Standards. Obviously, such labelling is and would be misleading if the hoses conformed to a standard other than the NHTSA's Motor Vehicle Safety Standard.

Interested persons are invited to submit written data, views and arguments on the petition of Lagusa, Inc. described above.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC., 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

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Comment closing date: October 2, 1989.

(Sec. 102, Pub. L. 93–492, 86 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on: August 25, 1989.

Ralph Hitchcock,

Acting Associate Administrator for Rulemaking.

[FR Doc. 89–20535 Filed 8–30–89; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Cultural Property Advisory Committee; Meeting

The Cultural Property Advisory Committee will conduct a meeting of the full Committee on September 13, 1989, at 9:30 a.m. e.d.t. The meeting will be by conference call and will be closed to the public. For further information contact the Cultural Property Advisory Committee staff at (202) 485–6612. The agenda for the meeting is as follows:

Wednesday, September 13

9:30 a.m. Closed to the public: Chairman will convene the meeting by telephone. There will be discussion, if necessary, of the Committee's report on its findings and recommendations with regard to Peru's request for U.S. import restrictions on certain archaeological material. The Committee will formally vote whether or not to recommend the imposition of U.S. import restrictions.

Since this meeting is concerned with the Committee's report to the Deputy Director of USIA and its recommendations regarding Peru's request, it will be closed to the public in accordance with 5 U.S.C. 552b, and 19 U.S.C. 2601 *et seq.* as amended. The meeting will be closed because it will involve information the premature disclosure of which would be likely to frustrate significantly implementation of proposed actions and policies. Disclosure of information at this time that identifies specific cultural property is likely to frustrate the possible imposition of import restrictions on such cultural property. The Committee will vote on its recommendations as to appropriate U.S. action regarding the emergency request from Peru under the terms of the Cultural Property Implementation Act. For the foregoing reasons the closing of the meeting is authorized under 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h).

Dated: August 25, 1989.

Eugene Kopp,

Deputy Director United States Information Agency.

Determination to Close the Meeting of the Cultural Property Advisory Committee September 13, 1989

Based on information provided to me by the Cultural Property Advisory Committee, I hereby determine that the meeting of the Committee on September 13 may be closed to the public.

The Committee has requested that its meeting be closed in accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h).

Dated: August 25, 1989.

Eugene Kopp,

Deputy Director United States Information Agency.

[FR Doc. 89–20480 Filed 8–30–89; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Career Development Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101, will be held in the Diamond A Room of the Radisson Suite Hotel, 315 Julia Street, New Orleans, LA, October 19 through 20, 1989, starting at 8 a.m., October 19. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Department of Veterans Affairs. The committee advises the Director, Medical Research Service, on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, and Senior Medical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8 a.m. to 8:30 a.m. on October 19, 1989, to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Department of Veterans Affairs Central Office, Washington, DC 20420 (202–233–2317) prior to October 10, 1989. The meeting will be closed from 8:30 a.m. to 5 p.m., on October 19, 8 a.m. to 3 p.m. on October 20, for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of Public Law 92–463 as amended, in accorance with subsection (c)(6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from David P. Thomas, Chief, Career Development Program, Medical Research Service (151J), Department of Veterans Affairs, Washington, DC 20420 (phone 202–233–2317).

Dated: August 24, 1989.

By direction of the Secretary:

Sylvia C. Long,

Committee Management Officer.

[FR Doc. 89–20484 Filed 8–30–89; 8:45 am]

BILLING CODE 8320-01-M

Medical Research Service Merit Review Boards; Meetings

The Veterans' Administration gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the meetings of the following Federal Advisory Committees.

Merit Review Board For	Date	Time	Location
Infectious Diseases	Sept. 14, 1989	8 a.m. to 5 p.m.	Houston.[1]
Do	Sept. 15, 1989	do	
Neurobiology	Sept. 18, 1989	do	Governor's House.[2]
Do	Sept. 19, 1989	do	
Do	Sept. 20, 1989	do	
Do	Sept. 21, 1989	do	
Alcoholism and Drugs Dependence	Sept. 20, 1989	do	Governor's House.
Hematology	Sept. 25, 1989	do	Do.
Immunology	Sept. 28, 1989	do	Do.
Do	Sept. 29, 1989	do	
Respiration	Oct. 1, 1989	2 p.m. to 10 p.m.	Radisson.[3]
Do	Oct. 2, 1989	8 a.m. to 5 p.m.	
Oncology	Oct. 2, 1989	8 a.m. to 5 p.m.	Radisson.
Do	Oct. 3, 1989	do	
Basic Sciences	Oct. 11, 1989	do	Do.
Do	Oct. 12, 1989	do	
Do	Oct. 13, 1989	do	
Surgery	Oct. 15, 1989	do	Atlanta.[4]
Nephrology	Oct. 16, 1989	do	Governor's House.
Do	Oct. 17, 1989	do	
Gastroenterology	Oct. 16, 1989	do	Radisson.
Do	Oct. 17, 1989	do	
Endocrinology	Oct. 19, 1989	do	Governor's House.
Do	Oct. 20, 1989	do	
Cardiovascular Studies	Oct. 23, 1989	do	Do.
Do	Oct. 24, 1989	do	
Mental Health and Behavorial Sciences	Oct. 23, 1989	do	Do.
Do	Oct. 24, 1989	do	

[1] Hyatt Regency Houston, In the Center of Downtown, 1200 Louisiana St., Houston, TX 77002.

[2] The Governor's House, Rhode Island Ave. at 17th St., NW., Washington, DC 20036.

[3] Radisson Park Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

[4] Hyatt Regency Atlanta, In Peace Tree Center, 265 Peach Tree St., NE., Atlanta, GA 30303.

These meetings will be for the purpose of evaluating the scientific merit or research conducted in each specialty by Veterans' Administration investigators working in Veterans' Administration Medical Centers and clinics.

The meetings will be open to the public up to the seating capacity for the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendation will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. Arlene E. Mitchell, Assistant Director for Scientific Review, Medical Research Service, Veterans' Administration, Washington, DC, (202) 233–5065 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: August 23, 1989.

By direction of the Secretary:

Sylvia C. Long,

Committee Management Officer.

[FR Doc. 89–20486 Filed 8–30–89; 8:45 am]

BILLING CODE 8320-01-M

Voluntary Service National Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that the annual meeting of the Department of Veterans Affairs Voluntary Service National Advisory Committee, comprised of 56 national voluntary organizations, will be held at the Red Lion Inn, Lloyd Center, Portland, Oregon, October 26 through October 29, 1989.

Registration of the conferees and orientation of new committee members will be held beginning at 1 p.m. on October 26, 1989. The committee will officially convene with the Opening Session at 9 a.m., October 27, 1989, and will conclude at 12 noon, October 29, 1989.

The purposes of the meeting are to instruct committee members and organization officials of the obligations they have accepted for volunteer recruitment, communications and program interpretation, and to seek the advice of the committee in further developing volunteer participation in the care and treatment of veteran patients throughout the Department's nationwide medical program.

For further information contact Mr. Edward F. Rose, Director, Voluntary Service (135), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 233–4110.

Dated: August 24, 1989.

By direction of the Secretary:

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89–20485 Filed 8–30–89; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 168
Thursday, August 31, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

Notice of Meeting

Notice is hereby given in accordance with section 552b of title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, September 7, 1989.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at the North Smithfield Annex Bldg., 575 Smithfield Rd., N. Smithfield, RI for the following reasons:

1. Treasurer's Report.
2. FY '89 budget adjustments and approval.
3. Report of the Chairman.
4. Report of the Executive Director.
5. Presentation and request for support for park plans from North Smithfield.
6. A South Pennine Region "Sister City" resolution.
7. Discussion and Adoption of the Cultural Heritage and Land Management Plan for the Blackstone River Valley National Heritage Corridor as provided in accordance with Public Law 99–647.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569. Telephone (508) 278–9400 or (508) 278–5124.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission, at the address below.

James Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 89–20668 Filed 8–29–89; 1:53 pm]

BILLING CODE 4310-70-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, September 5, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 29, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–20626 Filed 8–29–89; 10:11 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, September 6, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 29, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–20627 Filed 8–29–89; 10:11 am]

BILLING CODE 6210-01-M

UNITED STATES INSTITUTE OF PEACE

DATE: Thursday, and Friday, September 6 and 7, 1989.

TIME: 9:15 a.m. 5:30 p.m.

PLACE: The United States Institute of Peace, 1550 M Street, NW., ground floor (conference room).

STATUS: Open session—Thursday 9:15 a.m. to 5:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98–525).

AGENDA: (TENTATIVE): Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the Minutes of the Thirty-Fourth meeting of the Board. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457–1700.

Dated: August 29, 1989.

Bernice J. Carney,

Administrative Officer, The United States Institute of Peace.

[FR Doc. 89–20651 Filed 8–29–89; 12:43 pm]

BILLING CODE 3155-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, September 12, 1989, in Washington, D.C. The meeting is open to the public and will be held in the Benjamin Franklin Room at Postal Service Headquarters, 475 L'Enfant Plaza, SW. The Board will also meet at 1:00 p.m. on Monday, September 11, 1989, but as indicated in the following paragraph, the meeting is closed to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

At its meeting on August 14, 1989, the Board voted to close to public observation its meeting scheduled for September 11, 1989, to consider 1) the Postal Rate Commission Recommended Decision Upon Reconsideration in Docket No. MC88–2, Second-Class Eligibility, and 2) a contract award for outside audit services (See 54, FR 34639, August 21, 1989).

Agenda

Monday Session

September 11—1:00 p.m. (Closed)

1. Consideration of the Postal Rate Commission Recommended Decision Upon Reconsideration in Docket No. MC88–2, Mail Classification Schedule 1988, Second-Class Eligibility. (Mr. Heselton)
2. Consideration of Contract Award for Outside Audit Services. (Mr. Coppie)

Tuesday Session

September 12—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, August 14–15, 1989.
2. Remarks of the Postmaster General.
3. Postal Rate Commission FY 1990 Budget Request. (Chairman Robert Setrakian)
4. Future Technology in the Postal Service. (Karen T. Uemoto, Assistant Postmaster General, Technology Resource Department)
5. Review of Capital Investmenmt Program and FY 1990 Borrowing for Capital Investments. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
6. USPS Tentative FY 1991 Appropriations Request. (Mr. Coppie)
7. Review of Legislative Matters and Government Relations. (William T. Johnstone, Assistant Postmaster General, Government Relations Department)
8. Capital Investments: (Stanley W. Smith, Assistant Postmaster General, Facilities Department)
   a. Mail Processing Center, North Chicago, IL.
   b. Carol Stream, IL, GMF/VMF.
   c. Rancho Park Station, Los Angeles, CA.
9. Tentative Agenda for October 2–3, 1989, meeting in Norman, Oklahoma.

Note: Certification on reverse side of this page.

David F. Harris,

Secretary.

[FR Doc. 89–20670 Filed 8–29–89; 1:54 pm]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 54, No. 168
Thursday, August 31, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP89-114-003]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 89-19873, beginning on page 35234 in the issue of Thursday, August 24, 1989, make the following correction:

On page 35234, in the third column, in the heading, the "Docket No." should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Final Frameworks for Selecting Early Hunting Seasons on Certain Migratory Game Birds in the United States, Including Alaska, and Puerto Rico and the Virgin Islands, for the 1989-90 Season

Correction

In rule document 89-18857 beginning on page 32975 in the issue of Friday, August 11, 1989, make the following correction:

On page 32983, in the second column, under *Hunting Seasons*, in the 18th line, "is open" should read "is not open".

BILLING CODE 1505-01-D

THE PRESIDENT

PANAMA CANAL COMMISSION

35 CFR Parts 133 and 135

RIN 3207-AA04

Tolls for Use of Canal and Rules for Measurement of Vessels

Correction

In rule document 89-19784 beginning on page 35148 in the issue of Wednesday, August 23, 1989, make the following corrections:

§ 133.34 [Corrected]

1. On page 35148, in the third column, in § 133.34, in the 13th line, "marketing" should read "marking".

§ 135.352 [Corrected]

2. On page 35149, in the second column, in the 13th line, "portion" was misspelled.

BILLING CODE 1505-01-D

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federal register

Thursday
August 31, 1989

Part II

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 379

Projects With Industry; Final Regulations

BEST COPY AVAILABLE

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 379

RIN 1820-AA82

Projects With Industry

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations in part 379 governing the Projects with Industry (PWI) program by amending existing regulations, and by adding regulations in a new subpart F to implement requirements in sections 621(f) and 621(h) of the Rehabilitation Act (Act) as added by Public Law 99-506, the Rehabilitation Act Amendments of 1986. The 1986 statutory amendments require: that indicators of minimum compliance with program evaluation standards approved by the National Council on Disability be published in the **Federal Register**; that, beginning with fiscal year 1989, each PWI grantee report to the Secretary at the end of each project year the extent to which it is in compliance with the evaluation standards; that continuation funding be provided only to grantees who are carrying out the provisions of their approved grant application and who meet the evaluation standards; and that the Secretary give priority to unserved geographic areas and, beginning in fiscal year 1991, consider past project performance in making new grant awards.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Sandy DeSantis, Rehabilitation Services Administration, Mary E. Switzer Building, Room 3411, 330 C Street SW., Washington, DC 20202-2740. Telephone (202) 732-1333.

SUPPLEMENTARY INFORMATION:

Development of Evaluation Standards, Proposed Compliance Indicators, Performance Levels and Weights

In accordance with section 621(d) (1), (3) and (4) of the Act, PWI evaluation standards, based on statutory provisions and successful project practices, were developed by the Rehabilitation Services Administration (RSA) and approved by the National Council on Disability. The evaluation standards are published as an appendix to the regulations. As required by section 621(d)(2) of the Act, an evaluation of the PWI program, using the approved evaluation standards, was conducted in 1985. A report on the evaluation was forwarded to Congress in February 1986.

In the Rehabilitation Act Amendments of 1986, Congress added the requirement that the Secretary develop indicators of what constitutes minimum compliance with the evaluation standards. Proposed indicators were developed based on the PWI evaluation standards and the results of the national PWI program evaluation.

A proposed performance level was developed for each compliance indicator based upon analysis of grantee data, consideration of the data collected in the program evaluation in 1985, and the Department's views as to satisfactory grantee performance. A proposed weight was developed for each compliance indicator based on the Department's assessment of the relative importance of each indicator.

On February 14, 1989, the Secretary published a notice of proposed rulemaking (NPRM) containing proposed compliance indicators, performance levels, and weights in the **Federal Register** (54 FR 6808). For a detailed discussion of the development of the compliance indicators, the weights, and performance levels, please see the NPRM. The principal change in the final regulations is the adoption of performance ranges for each compliance indicator rather than a single performance level under which a project would receive either no points or full points, as proposed in the NPRM. This change is discussed in detail in the section of this preamble discussing comments and changes.

Adoption of Compliance Indicators, Performance Ranges and Points

The purpose of these regulations is to adopt compliance indicators, minimum performance levels, performance ranges, and points for each indicator to measure the effectiveness of individual projects in critical performance areas. The indicators will be used to evaluate performance to determine whether a grantee's application for continuation funding should be approved. As a measure of past performance, compliance with the indicators will also be a factor in making new awards beginning in fiscal year 1991.

A composite scoring system is adopted. This system allows a project that performs poorly on a few indicators to be eligible for continuation funding or a new award based on past performance if the project performs well on most of the indicators. The maximum possible composite score is 150 points. A grantee must achieve a composite score of at least 70 points to be in minimum compliance with the program evaluation standards.

A minimum performance level is established for each indicator. If a grantee fails to meet the minimum performance level for a particular indicator, the grantee will receive no points on that indicator. If a grantee meets or exceeds the minimum performance level for an indicator, the grantee will receive some points.

Three performance ranges are established for each compliance indicator. Each performance range represents a group of comparable performance levels. The three ranges represent progressively higher levels of performance. The higher the level of performance, the greater the number of points assigned to that range. A grantee will receive the number of points assigned to the performance range corresponding to the grantee's actual level of performance.

A grantee that meets only the lowest performance range on every indicator cannot accumulate sufficient points to meet the passing composite score necessary to be in minimum compliance with the evaluation standards.

Application of the Compliance Indicators

A grantee's performance is determined by the data it submits from the most recent complete project year. If a grantee does not meet the minimum composite score on the basis of the previous year's data, the regulations provide an additional opportunity for the grantee to demonstrate compliance with the standards by submitting data from the first six months of the current project year.

Because grant awards under this program are made near the end of the fiscal year with project periods that run concurrent with the following fiscal year, grantees will receive two years of funding before data are available for a complete project year. When a grantee's application is submitted for the third year of funding, i.e., the second continuation application, project data from the first year of funding must be submitted with that application.

The indicators, minimum performance levels, and performance ranges will be first applied to continuation grants funded from fiscal year 1990 appropriations, which will be awarded by September 30, 1990 and will cover the

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project year that begins October 1, 1990 and ends September 30, 1991. The awards will be based, in part, on grantee compliance with the standards as implemented by the indicators. The data used to measure performance will be the twelve months of data from the project year running from October 1, 1988 to September 30, 1989 or, if necessary, six months of data from October 1, 1989 through March 31, 1990.

Consideration of Prior Performance and Geographical Location

In making new awards, the regulations provide for giving priority to geographic areas among the States that are currently not served or are underserved by PWI projects and for consideration of past performance, if appropriate.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 32 parties submitted comments on the proposed regulations. The major issue raised in the comments was the objection to the "all or nothing" scoring approach to measuring performance and awarding points. Resolution of this issue resulted in changes to a number of sections of the regulations. Major issues are grouped according to subject. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Definitions

Comments: A few commenters requested definitions of "full-time," "severely disabled," "competitive employment," "placed," and "served." The commenters did not propose specific definitions for these terms. One commenter stated, however, that he assumed any regulatory definition of "placement" would still mean retention of a job for at least 60 days.

Discussion: The Secretary does not believe that definitions are needed for the terms "full-time" and "severely disabled." The term "full-time" was not used in the NPRM. It is, however, used in a definition of "competitive employment" added to the final regulations and refers to the standard 40-hour work week. A definition of "severely disabled" would be superfluous because PWI program regulations in 34 CFR 379.4 incorporate by cross reference terms that are defined in part 369, one of which is "individual with severe handicaps." This definition tracks the statutory definition of this term in section 7(15)(A) of the Rehabilitation Act.

The Secretary does, however, believe that definitions are needed for the terms "competitive employment," "person served," and "placement," which are used in many of the compliance indicators, in order to ensure that applicants and grantees uniformly understand the performance requirements contained in the compliance indicators and to ensure that data reported by grantees is consistent.

"Competitive employment," as the placement outcome under the PWI program, is defined to mean productive full-time or part-time work in business or industry at a rate of compensation at least equal to the applicable minimum wage. This definition is consistent with the statutory focus on private industry placements and with the statutory requirement that employers pay placed individuals at least the applicable minimum wage.

A definition of "person served" is also added to the final regulations. This term includes any individual who has completed the project's intake process, who has been approved for project services, and who has begun to receive services—during the project period—with the objective that those services will result in a competitive employment placement. This definition is consistent with the definition of "person served" that was included in the PWI data collection instrument and reporting instructions published in the **Federal Register** (Notice of Proposed Information Collection Request, 53 FR 22450, June 15, 1988; Notice of Information Collection Request, 53 FR 25105, July 1, 1988).

A definition of "placement" is also included in the final regulations. This term applies to any person served by a PWI project who has successfully completed training, who has obtained a competitive employment placement, and who has maintained that placement for at least 60 continuous days. The 60-day retention requirement is consistent with longstanding program interpretation of the term "placement" and with grantee understandings and practices. The published PWI data collection instrument and reporting instructions, previously referred to, also stipulated that a placement cannot be counted until the individual has held a job for at least 60 continuous days. The preamble to the NPRM specifically mentioned the published PWI data collection instrument and reporting instructions.

Changes: A change has been made in § 379.4 to add definitions for "competitive employment," "person served," and "placement."

Reporting Requirements

Comments: Commenters observed that the reporting process will count persons served during one year, but not placed until the next. They asked whether this "statistical warp" is acceptable. Other commenters objected that the timing of data submission does not end funding in a timely manner for unsatisfactory projects.

Discussion: The "statistical warp" referred to in the comment is common when programs such as PWI collect project data for each funding period and project services to individuals are provided that span two funding periods. Grantees, when projecting project performance, should take into consideration the possibility that some of the individuals that they serve in one funding period may not be placed into competitive employment until the next funding period. This time lag between services provision and placement is primarily a factor only during grant start-up periods when clients spend time in training before being placed into employment. After the start-up period, the movement of clients from training to competitive placements should be on a continuum, although movement may not coincide with the project year. The data collected for a project year is a "snapshot" of project performance and is not dependent on following a particular individual from project entry to exit.

The time lag between the collection of project year data and the application of that data to decisions for continuation funding is inevitable, given the timing of the grants process. If a full year of data is used, it must be data from the prior project year. The final regulations, however, provide an additional opportunity for grantees to meet the compliance indicators by using partial data from the current project year.

Changes: None.

Effective Date of Compliance Indicators

Comments: Several commenters objected to the compliance indicators taking effect in 1990. It was suggested that there should be at least a full year of experience under the final regulations before they are applied. Another commenter asked how the indicators will be applied to new applications in 1991 and how this will differ from continuation awards in 1990.

Discussion: The 1986 amendments to section 621 of the Act require grantees to begin to report data in fiscal year 1989 to be used for fiscal year 1990 continuation awards. As noted in the NPRM, existing grantees have been aware of the evaluation standards since 1985, the draft indicators since January of 1988, and the project performance areas since July 1988 when the Notice of Information Collection Request was published in the **Federal Register** (53 FR 25105). The NPRM published in February 1989 proposed weights and minimum performance levels for the indicators.

Adoption of performance ranges in the final regulations makes it easier for grantees to achieve the composite score necessary to be eligible for continued funding. In addition, any grantee who fails to meet the compliance indicators based on its 1989 data may submit data for the first six months of 1990 to show that its project performance has improved sufficiently to meet the compliance indicators. For these reasons, grantees are considered to have had ample notice and will have ample opportunity to meet the indicators.

Section 621(h)(3) provides that new grant awards shall be made on a competitive basis and shall include consideration of past performance, if appropriate. A grantee applying for continuation funding does not compete with other applicants; it need only adhere to the provisions in its original application and meet the evaluation standards, as implemented by the compliance indicators.

Changes: None.

Scoring System

Comments: Many of the commenters objected to the "all or nothing" scoring system proposed in the NPRM under which projects would receive full points for meeting or exceeding the minimum performance level and none for not meeting that level. They observed that this scoring system is opposed to the PWI philosophy that "diversity, flexibility, and creativeness is our strength"; that it leads to inequities; and that there is no incentive for projects to excel and no margin for project error. One commenter submitted a detailed proposal with suggested ranges with point scores for each range. This commenter took the proposed minimum performance level in the NPRM for each compliance indicator as a point of departure, gave points for effort in a range of performance below the proposed minimum performance level and points for superior performance in a range above the minimum performance level. One commenter suggested that the minimum composite score be raised to 80 points.

Discussion: The Secretary agrees that the use of performance ranges, rather than the "all or nothing" scoring system proposed in the NPRM, is a better way to measure grantee performance. The use of ranges is a more flexible and sensitive scoring system that recognizes different levels of grantee performance from the minimally acceptable to the superior. The use of ranges also allows grantees to meet the composite passing score, even though they may earn no or few points on some indicators, by performing well and earning many points on other indicators. By raising the maximum possible score from 100 to 150 points and lowering the minimum performance level to give points for effort, as suggested in the comments, the overall effect is that the passing composite score in the final regulations is slightly less stringent than that proposed in the NPRM.

Changes: A change in the scoring system has been made in the final regulations to provide for performance ranges with points assigned to each range. The minimum performance level for each indicator has been lowered slightly from the NPRM level. The maximum composite score has been raised from 100 to 150 points. The passing composite score has been changed from 60 points to 70 points.

Performance Levels

Comments: Some commenters suggested that the performance levels for certain compliance indicators be changed.

Discussion: The minimum performance levels proposed in the NPRM were reviewed in response to the comments. The Secretary agrees that performance ranges better reflect grantee effort. In developing the final regulations, consideration was given both to the performance level proposed in the NPRM and the performance ranges suggested in the comments.

Changes: Three performance ranges have been established for each compliance indicator. On each compliance indicator, the NPRM minimum performance level falls within range (2). The bottom performance level in range (1) is the minimum performance level. The minimum performance level has thus been reduced below that proposed in the NPRM.

Compliance Indicators for Persons Served

Comments: Several commenters suggested that compliance indicators measuring persons served should be deleted from the final regulations. The commenters believed that measuring particular types of persons served can be a disincentive to projects to serve other categories of individuals with disabilities. They indicated that the emphasis should be on project results rather than method.

Discussion: The final regulations, like the NPRM, reflect a greater emphasis on project results than on types of persons served; however, the Secretary believes that certain of the compliance indicators measuring persons served (the unemployed and severely disabled) should be retained. These compliance indicators provide an incentive for projects to serve difficult populations even if the percentage of these persons placed may be low. The points earned on these indicators may provide a partial offset for a grantee serving a difficult-to-place population if reduced points are earned on some of the outcome indicators.

Changes: None, with the exception of the compliance indicators covering persons receiving Social Security Insurance (SSI) or Social Security Disability Insurance (SSDI), which are discussed separately.

Serving Persons Who Have Been Unemployed for Six Months

Comments; Commenters argued that some credit should be given for serving persons unemployed less than six months and contended that the six-month time period would encourage "creaming" (selecting for project participation only those unemployed persons who meet this six months standard) or delay initiation of services. One commenter stated that the regulations should not consider persons in workshops, work-study, or having only summer work experience as employed persons. This commenter also suggested the regulations may discriminate against older workers versus youth in transition from school to work.

Discussion: The Secretary believes that separate emphasis needs to be placed on serving persons who have been unemployed for at least six months. The six-month time period was retained because the 1985 evaluation study of the PWI program established that persons in this group are the most difficult to place.

The PWI evaluation study also disclosed that persons with some work experience within six months of project entry were less difficult to place into competitive employment. In establishing the performance ranges for the compliance indicator measuring persons served who are unemployed at least six months and the compliance indicator measuring increased earnings, careful consideration was given to afford latitude for grantees serving significant populations of underemployed or temporarily employed persons such as

those in workshops, summer employment, transition, or work-study.

The Secretary does not believe that this indicator would encourage "creaming," delay services to individuals who have been employed within the six-month period prior to project entry, or impact adversely on projects serving older individuals with disabilities.

Changes: The minimum performance level for this indicator has been lowered from 60 percent to 50 percent, and three performance ranges have been established to award points for different levels of performance.

Serving and Placing SSI or SSDI Recipients

Comments: A number of commenters were concerned about establishing compliance indicators for particular transfer payment groups. Some rural grantees believed these two compliance indicators would present problems in geographic areas where there is no control over project referrals; others forsaw discrimination and manipulation problems, such as refusing services to a person not receiving SSI or SSDI benefits, or refusing services to a person until the person has been determined eligible for these benefits. There were also several suggestions that these compliance indicators be expanded to include other transfer payment groups.

Discussion: In developing the final regulations consideration was given initially either to expanding these two indicators to include other transfer payment groups, such as Aid to Families with Dependent Children (AFDC) and General Assistance (GA), or to changing these compliance indicators to focus on particular disability populations, such as persons with traumatic brain injury and long term mental illness, that the Secretary wishes to encourage grantees to serve.

Expansion to other transfer payment groups was rejected as administratively burdensome. Expansion to other disability groups not mentioned in the NPRM was not justified by the data. Also, the most difficult to place disability groups, which include SSI and SSDI recipients, are believed to already be covered by the compliance indicators on unemployed individuals. There was some concern, too, that grantees would not have data available in fiscal year 1989 if these compliance indicators were changed substantially or new performance areas were added.

After careful consideration, the Secretary has determined that it would be inappropriate in these regulations to single out particular transfer payment groups for special emphasis, particularly when these groups are subsumed under other indicators measuring types of persons served.

Changes: The two proposed compliance indicators on serving and placing SSI and SSDI recipients have been removed from the final regulations, and the points have been allotted to the compliance indicators that measure serving and placing persons unemployed for at least six months at the time of project entry.

Cost Per Placement

Comments: A number of commenters suggested that the cost was set too low, especially if a project's emphasis is on persons with severe disabilities. Other commenters suggested that since the Social Security Administration reimbursement for an individual who succeeds in a Substantial Gainful Activity (SGA) placement is approximately $7,000, the PWI cost per placement rate should be set accordingly. A commenter also cited a study regarding placement of individuals in supported employment as support for a higher cost per placement.

Discussion: A computer analysis was conducted to determine whether there was a correlation between serving individuals with severe disabilities and higher costs per placement. No measurable correlation was found.

The cost per placement for a person served by a PWI project includes the cost of services provided to the individual with the objective that those services will result in a placement in competitive employment plus the cost of any support services provided by the project during the mandatory 60-day placement retention period. Reimbursement for SGA is payment for the costs of training and support services for a placement for nine months. The costs referred to in the supported employment study were for a one-year placement. It is difficult to meaningfully compare these various costs.

It is acknowledged that a PWI grantee with a lengthy training and presupport program will incur higher costs, but it is believed that a grantee with this type of project can score high on other compliance indicators and offset a low score on this particular indicator. Moreover, the adoption of performance ranges does permit a grantee to achieve some points for average placement costs up to $1600 rather than the $1350 proposed in the NPRM.

Changes: The average cost per placement was raised to $1600.

General Comments

Comments: Several commenters observed that there was no proposed provision in the regulations for periodic review of performance levels. Others advised that the nature of some indicators, such as cost per placement, should be monitored and modified as necessary.

Discussion: The Secretary recognizes that some indicators may be influenced by outside factors. For instance, the indicator regarding change in earnings will probably be affected if the minimum wage is raised. The adoption of performance ranges rather than a single pass or fail score for each compliance indicator is expected to absorb some changes or fluctuations in project performance. Since this is the first application of this approach to measuring grantee performance and since performance levels were established based on available grantee data through 1988, the data submitted by projects for fiscal years 1989 and 1990 will be carefully reviewed to determine what, if any, changes to the performance levels may be necessary.

Changes: None.

Comments: A number of commenters mentioned that the diversity among PWI projects makes it difficult to develop uniform compliance indicators that fairly measure the performance of different types of projects.

Discussion: The scoring system adopted reflects a careful balancing of various factors through the use of a variety of compliance indicators and performance ranges. The scoring system, as simulated by a number of computer analyses of the available grantee performance data, is designed to enable diverse kinds of projects to achieve the composite score necessary to be eligible for continued funding by counterbalancing different indicators.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

List of Subjects in 34 CFR Part 379

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number: 84.128 Projects With Industry)

Dated: August 14, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends part 379 of Title 34 of the Code of Federal Regulations as follows:

PART 379—PROJECTS WITH INDUSTRY

1. The table of contents for part 379 is amended by adding a new subpart F and the authority citation is revised to read as follows:

Subpart F—What Requirements Must a Grantee Meet To Receive Continuation Funding?

379.50 What are the requirements for continuation funding?
379.51 What are the program compliance indicators?
379.52 How is grantee performance measured using the compliance indicators?
379.53 What are the weights, minimum performance levels, and performance ranges for each compliance indicator?

Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g, unless otherwise noted.

2. Section 379.4 is revised to read as follows:

§ 379.4 What definitions apply to this program?

(a) The definitions in 34 CFR part 369 apply to this program.

(b) The following definitions also apply to this program:

Competitive employment, as the placement outcome under this program, means productive full-time or part-time work in business or industry at a rate of compensation at least equal to the applicable minimum wage.

Person served means an individual for whom services by a PWI project have been initiated with the objective that those services will result in a placement in competitive employment.

Placement means the attainment of competitive employment by a person served by a PWI project who has successfully completed training and maintained employment for at least sixty continuous days.

(Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

§ 379.32 [Redesignated from § 379.31]

3. Section 379.31 is redesignated as § 379.32 and a new § 379.31 is added to read as follows:

§ 379.31 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria in § 379.30, the Secretary, in making awards under this program, considers—

(a) The geographical distribution of projects among the States and gives priority to geographic areas that are currently not served or are underserved by the Projects With Industry program; and

(b) Beginning with fiscal year 1991, the past performance of the applicant in carrying out a similar Project With Industry under previously awarded grants, as indicated by factors such as compliance with grant conditions, soundness of programmatic and financial management practices, and meeting the requirements of subpart F of this part.

(Authority: Secs. 621(h)(3) and 621(i) of the Act; 29 U.S.C. 795g(h)(3) and 795g(i))

4. Section § 379.46 is revised to read as follows:

§ 379.46 What are the reporting requirements?

(a) Beginning with fiscal year 1990, each application for continuation funding for the third or any subsequent year of a PWI grant must include data for the most recent complete project year in order for the Secretary to determine if the grantee has met the program compliance indicators established in subpart F of this part.

(b) If the data for the most recent complete project year provided under paragraph (a) of this section shows that a grantee has failed to achieve the minimum composite score required in § 379.52(f) to meet the program compliance indicators, the grantee may, at its option, submit data from the first six months of the current project year to demonstrate that its project performance has improved sufficiently to meet the minimum composite score.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: Section 621(f)(2) of the Act; 29 U.S.C. 795g(f)(2))

5. Part 379 is amended by adding a new subpart F, consisting of §§ 379.50 through 379.53, to read as follows:

Subpart F—What Requirements Must a Grantee Meet To Receive Continuation Funding?

§ 379.50 What are the requirements for continuation funding?

Beginning with fiscal year 1990, in order to receive a continuation award for the third or any subsequent year of a PWI grant a grantee shall adhere to the provisions of its approved application and shall receive a minimum composite score of at least 70 points on the program compliance indicators contained in § 379.53.

(Authority: Section 621(h)(4)(B) of the Act; 29 U.S.C. 795g(h)(4)(B))

§ 379.51 What are the program compliance indicators?

The program compliance indicators implement program evaluation standards, which are contained in an appendix to this part, by establishing minimum performance levels and performance ranges in essential project areas to measure the effectiveness of individual grantees.

(Authority: Secs. 621(d)(1) and 621(f)(1) of the Act; 29 U.S.C. 795g(d)(1) and 795g(f)(1))

§ 379.52 How is grantee performance measured using the compliance indicators?

(a) Each compliance indicator establishes a minimum performance level.

(b) Each compliance indicator also establishes three performance ranges with points assigned to each range. The higher the performance range, the greater the number of points assigned to that range.

(c) If a grantee does not achieve the minimum performance level for a compliance indicator, the grantee receives no points.

(d) If a grantee achieves or exceeds the minimum performance level, the grantee receives the points assigned to the particular performance range that corresponds to its actual level of performance.

(e) The maximum possible composite score that a grantee can receive is 150 points.

(f) A grantee must receive a composite score of at least 70 points to meet the evaluation standards and qualify for continuation funding.

(Authority: 621(h)(4)(B) of the Act; 29 U.S.C. 795g(h)(4)(B))

§ 379.53 What are the weights, minimum performance levels, and performance ranges for each compliance indicator?

(a) *Percent of persons served whose disabilities are severe.* (3–10 points) A minimum of 50 percent of persons served by the project are persons who have severe disabilities. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—3 points.
(2) 60 percent to 75 percent—7 points.
(3) 76 percent or more—10 points.

(b) *Percent of persons served who have been unemployed for at least six months at the time of project entry.* (5–15 points) A minimum of 50 percent of persons served by the project have been unemployed for at least six months at the time of project entry. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—5 points.
(2) 60 percent to 75 percent—10 points.
(3) 76 percent or more—15 points.

(c) *Cost per placement.* (8–25 points) The average cost per placement of persons served by the project does not exceed $1600.00. The performance ranges and the points assigned to each range are as follows:

(1) $1351 to $1600—8 points.
(2) $1000 to $1350—17 points.
(3) Less than $1000—25 points.

(d) *Projected cost per placement.* (5–15 points) The actual average cost per placement of persons served by the project does not exceed 140 percent of the projected average cost per placement in the grantee's application. The performance ranges and the points assigned to each range are as follows:

(1) 126 percent to 140 percent—5 points.
(2) 111 percent to 125 percent—10 points.
(3) 110 percent or less—15 points.

(e) *Placement rate.* (8–25 points) A minimum of 40 percent of persons served by the project are placed in competitive employment. The performance ranges and the points assigned to each range are as follows:

(1) 40 percent to 49 percent—8 points.
(2) 50 percent to 69 percent—17 points.
(3) 70 percent or more—25 points.

(f) *Projected placement rate.* (5–15 points) The actual number of persons served by the project that are placed into competitive employment is at least 50 percent of the number of persons that the grantee, in the grant application, projected would be placed. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 74 percent—5 points.
(2) 75 percent to 94 percent—10 points.
(3) 95 percent or more—15 points.

(g) *Change in earnings.* (7–20 points) The earnings of persons served by the project who are placed into competitive employment have increased by an average of at least $75.00 a week over earnings at project entry. The performance ranges and the points assigned to each range are as follows:

(1) $75 to $124—7 points.
(2) $125 to $199—14 points.
(3) $200 or more—20 points.

(h) *Percent placed who have severe disabilities.* (3–10 points) At least 50 percent of persons served by the project who are placed into competitive employment are persons who have severe disabilities. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—3 points.
(2) 60 percent to 75 percent—7 points.
(3) 76 percent or more—10 points.

(i) *Percent unemployed placed.* (5–15 points) At least 50 percent of persons served by the project who are placed into competitive employment are persons who were unemployed for at least six months at the time of project entry. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—5 points.
(2) 60 percent to 75 percent—10 points.
(3) 76 percent or more—15 points.

(j) *Summary chart of weights and performance ranges.* The following composite chart shows the weights assigned to the performance ranges for each compliance indicator.

Indicator	Performance ranges:		
	Range (1)	Range (2)	Range (3)
Persons with severe disabilities served	3	7	10
Unemployed served	5	10	15
Cost per placement	8	17	25
Projected cost per placement	5	10	15
Placement rate	8	17	25
Projected placement rate	5	10	15
Change in earnings	7	14	20
Percent placed who have severe disabilities	3	7	10
Percent unemployed placed	5	10	15
Total possible score	49	102	150

(Authority: Section 621(f)(1) of the Act; 29 U.S.C. 795g(f)(1))

6. An appendix is added to part 379 to read as follows:

Appendix to Part 379—Evaluation Standards

Standard 1: The primary objective of the project shall be to assist individuals with disabilities to obtain competitive employment. The activities carried out by the project shall support the accomplishment of this objective.

Standard 2: The project shall serve individuals with disabilities that impair their capacity to obtain competitive employment. In selecting persons to receive services, priority shall be given to individuals with severe disabilities.

Standard 3: The project shall ensure the provision of services that will assist in the placement of persons with disabilities.

Standard 4: Funds shall be used to achieve the project's primary objective at minimum cost to the federal government.

Standard 5: The project's advisory council shall provide policy guidance and assistance in the conduct of the project.

Standard 6: Working relationships, including partnerships, shall be established with agencies and organizations in order to expand the project's capacity to meet its objectives.

Standard 7: The project shall obtain positive results in assisting individuals with disabilities to obtain competitive employment.

[FR Doc. 89–20466 Filed 8–30–89; 8:45am]

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federal register

Thursday
August 31, 1989

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Roof, Face and Rib Support; Proposed Rule and Notice of Hearing

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA63

Safety Standards for Roof, Face and Rib Support

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule and notice of hearing.

SUMMARY: This proposed rule would revise two sections of the Mine Safety and Health Administration's (MSHA) underground roof support safety standards which were promulgated on January 27, 1988. These two standards, which address the quality of roof bolts and the removal of permanent roof supports, were challenged in the D.C. Circuit Court of Appeals. This proposal is being initiated because of the opinion of the Court in that case which would vacate the affected sections on February 15, 1990.

DATES: Written comments must be submitted on or before October 6, 1989.

A public hearing will be held at the Lexington Hilton Inn, 1938 Stanton Way, Lexington, Kentucky 40511 on October 19, 1989, beginning at 9 a.m. Requests to make oral presentations for the record should be submitted at least 5 days prior to the hearing. However, immediately before the hearing begins, any unallotted time will be made available to persons making late requests.

ADDRESS: Send written comments and requests to make oral presentations at the hearing to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Proposed Rule

MSHA is proposing revisions of two standards that were promulgated on January 27, 1988 (53 FR 2354). These safety standards address roof support in underground coal mines. These revisions are proposed under 30 U.S.C. 811.

On January 27, 1988 (53 FR 2354), MSHA published final rules revising its safety standards for roof, face and rib support in underground coal mines. This proposal affects existing 30 CFR 75.204 (a) and (b), which set out requirements for roof bolts, and 30 CFR 75.213, which sets out requirements for roof support removal.

On March 10, 1989, the U.S. Court of Appeals for the District of Columbia Circuit decided the case of *United Mine Workers of America (UMWA)* v. *Elizabeth H. Dole*, 870 F.2d 662. The Court held that MSHA's preamble discussion of two specific standards challenged by the UMWA did not fully address whether the new standards provided the same or greater level of safety protection as the prior standards. Therefore, the Court held the two standards invalid. On May 17, 1989, the Court of Appeals issued an order which will vacate 30 CFR 75.204 (a) and (b), and 75.213 on February 15, 1990.

In accordance with the May 17, 1989 court order, the Agency is proposing revisions that address the issues raised in litigation and take into account MSHA's statutory mandate contained in 30 U.S.C. 811(a)(9) which requires that new mandatory standards not reduce the protection provided to miners by existing mandatory standards. The relevant prior rules that should be used for purposes of comparison with these proposed rules are 30 CFR 75.200–6, 75.200–7(a)(1), 75.200–14, 75.204 and 75.204–1 (1987). The provisions of these prior rules are described elsewhere in this preamble.

The purpose of the public hearing is to receive relevant comment and to answer questions concerning the proposal. The hearing will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

The hearing will begin with an opening statement from MSHA. The public will then be given an opportunity to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of each hearing for rebuttal statements. A verbatim transcript of the proceeding will be taken and made a part of the rulemaking record. Copies of the hearing transcript will be available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until October 30, 1989.

Section-by-Section Discussion

Section 75.204 Roof Bolting

Paragraphs (a) and (b) of this standard address the quality of roof bolts and accessories that are installed in underground coal mines. Paragraphs (c) through (g) are not included in this rulemaking and were not at issue in the litigation.

The proposal has been updated to reflect technological advancements in the development of roof bolts and would provide improved protection to miners when compared to the prior rule. The proposal also updates the existing standard by referencing the most recent revision of the American Society for Testing Materials (ASTM) standard which was published in 1988.

Paragraph (a) would require the operator to obtain a certification from the manufacturer that roof bolts and accessories addressed in ASTM F432–88, "Standard Specification for Roof and Rock Bolts and Accessories," were manufactured in accordance with the ASTM standard. The certification would verify that the roof bolts and accessories were manufactured and tested in accordance with the ASTM standards. The ASTM standard for roof bolts and accessories is a consensus standard used throughout the United States for the design of such materials.

Requiring that the operator obtain a certification from the manufacturer would eliminate the concern that mine operators would need to have the same knowledge of ASTM standards as manufacturers. The proposal would require operators to have available for inspection a certification from the manufacturer that the roof bolts and accessories used at the mine meet the ASTM specifications. This approach is consistent with the industry practice of manufacturers routinely furnishing such certification to the mine operator when requested to do so in a contract or purchase order. In addition, ASTM F432–88 specifies that the manufacturer is to provide such a certification upon request. Interested persons may obtain ASTM F432–88 from the publisher, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. It may also be examined at any Coal Mine Safety and Health district or subdistrict office.

The prior rule, 30 CFR 75.200–7(a) (1987), stated that roof bolt assemblies should meet American National Standards Institute's (ANSI), "Specifications for Roof Bolting Materials in Coal Mines." This rule, which was published in 1970, referred to the ANSI document in existence at that time. The 1988 ASTM standard which is referenced in the proposed rule is a more comprehensive and updated document which reflects advances in roof bolt technology. Examples of such improvements are: A grade rating system for bearing plates; a color coding scheme used to identify the length of bolts; increased strength specifications for threaded parts; increased coverage of roof bolt accessories, i.e., hardened washers, reinforcement bars, and couplings; upgrade of the quality of steel used and specifications for chemical requirements of materials used in the manufacture of roof bolts and accessories; and standard test methods for manufacturers to assure that bolts and accessories meet performance specifications. As a result, the proposal would provide additional safety for miners, as compared to the prior rule.

Paragraph (b) of the proposal would allow the use of roof bolts and accessories not addressed in ASTM F432–88, provided that they are effective. The effectiveness of such bolts or accessories would be required to be demonstrated by their successful use in an area of a coal mine with similar strata opening dimensions and roof stresses, or by their effective use under controlled conditions in a representative area of the affected mine. Testing would be conducted in an area with conditions that are representative of those where the materials are expected to be used. Until testing demonstrates the effectiveness of the bolts or accessories proposed to be used, access to the area would be controlled to permit entry only by those persons necessary for the testing process.

MSHA proposed to add the phrase "approved by the District Manager" to clarify that all new roof bolts and accessories not addressed by the ASTM standard be approved for use through the roof control plan before they are permitted to be used as roof support at a mine. The prior rule, 30 CFR 75.200–12 (1987), called for test areas for new support materials but did not set out the performance that these materials would be required to meet. The proposal would improve the prior rule by specifying the performance of bolts and accessories that must be demonstrated before approval is granted.

Section 75.213 Roof Support Removal

This standard, which is derived from prior rules 30 CFR 75.204, 75.204–1 and 75.200–14, would set forth requirements for removing permanent roof supports. It would require taking certain precautions to minimize the hazards involved in the removal of roof supports and identify circumstances under which roof supports cannot be removed.

The proposed requirements would differ from the prior rules, which provided that operators who intend to recover roof supports include a plan for such recovery in the mine's approved roof control plan. Under the proposal, the criteria provisions in 30 CFR 75.200–14 (1987), which were considered by the District Manager when approving roof support recovery plans, would no longer be implemented through roof control plans. Instead, roof support removal would be separately addressed in the proposed standard. As a result, roof control plans would be less cumbersome and complex.

Paragraph (a) specifies that the removal of permanent roof supports be done either by persons experienced in this work or by persons under the supervision of a person, designated by the operator, who is experienced in removing roof supports. In addition the proposal would require persons performing roof support removal to have at least one year of underground mining experience. With this experience, miners performing roof support removal could be expected to be aware of the general hazards associated with underground mining.

The prior rule, 30 CFR 75.200–14(a) (1987), provided that "Recovery should only be done under the direct supervision of a mine foreman, assistant mine foreman, or section foreman." The prior rule also provided that experienced miners be assigned to recovery work but did not specify the amount of experience required. Under the prior rule, persons with a supervisory title could supervise roof support removal, even if they had no experience with this type of work. The proposal focuses directly on the support removal experience of the supervisor and the persons who perform roof support removal.

Paragraph (b) would require a person designated by the operator to examine roof conditions in the area where permanent supports are to be removed and specify which supports should be removed. The proposal would require these tasks to be completed before roof support removal is started. Testing roof conditions in these areas would determine whether it is safe to remove the supports.

Paragraph (c)(1) would require at least one row of temporary supports on not more than 5-foot centers or equivalent support to be installed prior to the removal of permanent supports. These supports would be required to be installed across the opening within 4 feet of the supports to be removed. If one row of temporary supports is not sufficient to assure safe removal, the standard would require additional supports to be installed across the opening.

The prior rule provided for two rows of temporary supports on not more than 4-foot centers wherever supports were to be removed. The proposal would recognize that supports on centers up to 5 feet can effectively prevent a roof fall from extending beyond where supports are being removed. This is consistent with MSHA's experience in applying previous criteria through the plan approval process. Likewise, the proposal retains the prior rule's compliance responsibility to install more support when conditions so require. For example, when one crossbar or a row of supports is being removed, one row of temporary supports is, in many mines, sufficient to prevent a roof fall from extending beyond the location where the supports are being removed. On the other hand, when multiple supports are being removed, two or more rows of supports may be necessary to control the roof. Likewise, where roof conditions are unstable, temporary supports may need to be closer together. This approach is consistent with MSHA's experience in approving plans for removing permanent roof supports.

Paragraph (c)(2) of the proposal would require a temporary support installed in accordance with § 75.213 to be installed as close as practicable to each roof bolt prior to its removal. This proposed requirement is consistent with the prior rule.

Paragraph (d) addresses the removal of temporary supports installed in accordance with § 75.213. The proposal would prohibit the removal of temporary supports unless they are removed from a location under permanent supports that have not been disturbed. In addition, two rows of temporary supports would be required to be maintained between the miners and the supports being removed. This provision is consistent with the prior rule, except that the prior rule provided for temporary supports to be placed on 4-foot centers. MSHA's experience with criteria applied in roof control plans has been that installation of temporary supports on a maximum of

5-foot centers has provided effective protection for miners during the removal of temporary supports. However, the District Manager could require, through the plan approval process, that temporary supports be set closer together depending on particular mining conditions.

Paragraph (e) would specify that each entrance to an area where roof supports have been removed be posted with a readily visible warning or a physical barrier installed to impede travel into the area. The prior rule provided for a barricade to be installed when recovery is completed or suspended for more than 3 days. The purpose of this standard is to provide a warning to persons approaching an area where the roof is hazardous. The Agency believes that this can be accomplished by either a visible warning or a physical barrier.

Paragraph (f) outlines the conditions under which removal of permanent roof supports is prohibited. Removal would be prohibited where roof bolt torque or tension measurements or the condition of conventional roof supports indicate excessive loading, where roof fractures are present, where there is any other indication that the roof is structurally weak, or where pillar recovery has been conducted. In these areas, any disturbance of the roof support may trigger a roof fall.

An exception is recognized by the proposal which would allow the removal of conventional supports if the persons involved in such removal are in a remote location under supported roof. For example, conventional supports could be removed through the use of cables pulled from a safe distance. The removal of conventional supports is sometimes necessary to induce roof falls, thereby reducing roof pressures from over-riding into active workings. However, the standard would prohibit the removal of roof bolts where any of the four conditions listed above are encountered.

The proposed exception for conventional supports was not specifically recognized in the prior rule. However, in the context of the mine plan approval process, this practice has been permitted and proved to be an effective measure for the protection of miners.

Paragraph (g) specifies that the provisions of this section do not apply when removing conventional support for starting crosscuts and pillar splits or lifts. Removal of supports in these situations does not present the same hazards. In addition, these situations are addressed by 30 CFR 75.202(c) and are required to be addressed in the roof control plan. However, the standard would require that roof conditions be determined before the supports are removed.

II. Executive Order 12291 and the Regulatory Flexibility Act

This proposed rule addresses two provisions published on January 27, 1988. MSHA has determined that the rule would not result in major cost increases nor have an incremental effect of $100 million or more on the economy. The Agency also determined that the proposed rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

III. Paperwork Reduction Act

There are no information collection requirements contained in this proposal.

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground mining, Roof, Face and rib support.

Dated: August 25, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Therefore, part 75, subchapter 0, chapter I, title 30 of the Code of Federal Regulations is proposed to be amended under 30 U.S.C. 811 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation to 30 CFR part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Section 75.204 (a) and (b) are revised to read as follows:

§ 75.204 Roof bolting.

(a) For roof bolts and accessories addressed in ASTM F432–88, "Standard Specification for Roof and Rock Bolts and Accessories", the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432–88; and

(2) Make this certification available to an authorized representative of the Secretary.

(b) Roof bolts and accessories not addressed in ASTM F432–88 may be used, provided that the use of such materials is approved by the District Manager based on—

(1) Demonstrations which show that the materials have successfully supported the roof in an area of a coal mine with similar strata, opening dimensions and roof stresses; or

(2) Tests that show the materials to be effective for supporting the roof in an area of the affected mine that has strata, opening dimensions and roof stresses similar to the area where the roof bolts are to be used. During the test process, access to the test area shall be limited to persons necessary to conduct the test.

* * * * *

3. Section 75.213 is revised to read as follows:

§ 75.213 Roof support removal.

(a)(1) All persons who perform the work of removing permanent roof supports shall be experienced in this work, or they shall be supervised by a person experienced in removing roof supports who is designated by the mine operator.

(2) Only persons with at least one year of underground mining experience shall perform permanent roof support removal work.

(b) Prior to the removal of permanent roof supports, a person designated by the mine operator shall examine the roof conditions in the area where the supports are to be removed and designate each support to be removed.

(c)(1) Prior to the removal of permanent supports, a row of temporary supports on no more than 5-foot centers or equivalent support shall be installed across the opening within 4 feet of the supports being removed. Additional supports shall be installed where necessary to assure safe removal.

(2) Prior to the removal of roof bolts, temporary support shall be installed as close as practicable to each roof bolt being removed.

(d) Temporary supports installed in accordance with this section shall not be removed unless—

(1) Removal is done remotely from under roof where the permanent supports have not been disturbed; and

(2) At least two rows of temporary supports, set across the opening on no more than 5-foot centers, are maintained between the miners and the unsupported area.

(e) Each entrance to an area where supports have been removed shall be posted with a readily visible warning or a physical barrier shall be installed to impede travel into the area.

(f) Except when conventional supports are removed by persons who are in a remote location under supported roof, permanent support shall not be removed where—

(1) Roof bolt torque or tension measurements or the condition of conventional support indicate excessive loading;

(2) Roof fractures are present;

(3) There is any other indication that the roof is structurally weak; or

(4) Pillar recovery has been conducted.

(g) Except for paragraph (b) of this section, the provisions of this section do not apply to removal of conventional supports for starting crosscuts and pillar splits or lifts.

[FR Doc. 89–20463 Filed 8–30–89; 8:45 am]

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Thursday
August 31, 1989

Part IV

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3
Animal Welfare; Final Rules

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 1

[Docket No 89–130]

RIN 0579–AA18

Animal Welfare; Definition of Terms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending part 1 of the Animal Welfare Act regulations in order to update, clarify, and expand the list of definitions of terms used in parts 2 and 3 of the regulations. These changes are necessary to assist the public in complying with the Animal Welfare regulations and to facilitate enforcement. Many of these changes are required by the amendments to the Animal Welfare Act (7 U.S.C. 2131, *et seq.*), enacted on December 23, 1985, and complement the final rule amending part 2 of the regulations. They also complement the standards set forth in part 3 of the regulations.

DATES: This final rule shall become effective October 30, 1989; however, the portions of the rule which concern or relate to information collection and recordkeeping will become effective October 30, 1989, upon approval by the Office of Management and Budget (OMB). The information collection requirements of this final rule have been submitted to OMB for review and approval. The Department has requested that OMB conclude its review no later than October 30, 1989. If any portion is disapproved, notice of disapproval will be published in the **Federal Register** prior to that date.

FOR FURTHER INFORMATION CONTACT: Dr. Dale F. Schwindaman, REAC, APHIS, USDA, Room 206, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6491.

SUPPLEMENTARY INFORMATION:

Background

This final rule amends 9 CFR part 1, entitled "Definition of Terms" which provides the definitions for the terms used in the regulations in 9 CFR part 2, and the standards in 9 CFR part 3 for the humane handling, care, treatment, and transportation of regulated animals used for research or exhibition purposes, sold as pets, or transported in commerce. The Definitions, Regulations, and Standards (the regulations) are established pursuant to the authority in the Animal Welfare Act, as amended (7 U.S.C. 2131, *et seq.*) (the Act). This law requires the Secretary to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, carriers, and intermediate handlers. The standards and regulations must include minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, and other matters specified in section 13 of the Act (7 U.S.C. 2143). The definitions contained in this final rule provide specific meanings for many important terms used in the regulations and standards.

Proposed Rules

In two documents published in the **Federal Register**, on March 31, 1987 (52 FR 10292–10298 and 52 FR 10298–10322, respectively), we proposed to revise parts 1 and 2 of the Animal Welfare regulations to comply with the 1985 amendments to the Act, and to expand, clarify, and revise the current regulations. At that time, we did not publish a proposed rule to amend the standards set forth in part 3 of the regulations.

We solicited comments concerning the proposals for a 60-day period ending June 1, 1987. The comment period was twice extended and ended on August 27, 1987. A total of 7,857 comments were timely received and considered. Many of the comments we received stated that it was difficult to comment upon the proposals to amend parts 1 and 2 of the regulations independently of our proposal to amend the standards in part 3. We have maintained that upon their publication as final rules, parts 1 and 2 of the regulations can be fully implemented with the existing standards in part 3. In response to the comments, we decided to respond to the points raised by the commenters, and to publish revised proposals to amend parts 1 and 2 along with our proposed rule to amend part 3, to assist the public in reviewing the proposed standards in part 3 and to afford the public an opportunity to comment on the interrelationship of the definitions and regulations in parts 1 and 2 with the proposed standards in part 3. Accordingly, on March 15, 1989, we published in the **Federal Register** three documents: Docket no. 88–013, a proposed rule to amend part 1—"Definition of Terms," (54 FR 10822–10835); docket no. 88–014, a proposed rule to amend part 2—"Regulations," (54 FR 10835–10897); and docket no. 87–004, a proposed rule to amend subparts A through D of part 3—"Standards," (54 FR 10897–10954).

The revised proposals published in March, 1989, were prepared with the benefit of the public's comments and reflected our thinking at that time of how best to carry out our statutory mandate and animal welfare objectives. Throughout this rule-making process, however, we have continued our consideration of alternative means to implement the complex regulatory scheme required by the Animal Welfare Act, as amended, and addressed by the commenters in response to our initial proposal. To fully address these issues, we continued our consultation in accordance with the requirements of the Act (7 U.S.C. 2145), with the U.S. Department of Health and Human Services (HHS) and members of the Interagency Research Animal Committee (IRAC), a committee comprising representatives of Federal agencies concerned with animal welfare. Together, we explored and evaluated different means of accomplishing our regulatory objectives. This final rule reflects our consideration of the comments we received in response to our initial proposal and those addressing the interrelationship of the definitions in part 1 with the regulations proposed for part 2 and the standards proposed for part 3. It also reflects our consultation with other Federal agencies. We believe parts 1 and 2 can now be readily implemented while we continue to review the public's comments and consider alternatives concerning the standards that should be included in part 3.

Public Comments

The revised proposal published March 15, 1989, solicited comments on the narrow issue of the interrelationship of the definitions and regulations in parts 1 and 2 of 9 CFR, chapter 1, subchapter A, with the standards we proposed in part 3, for the reasons explained above. Comments were solicited for a 60-day period, ending May 15, 1989. Comments that were postmarked or received by that date were considered in preparing this final rule. We solicited comments on the standards of part 3 for a 120-day period, ending July 13, 1989. Comments that were not timely for consideration in preparing final rules for parts 1 and 2 will be considered if they address the proposed standards or the regulations in general.

We received 5,582 comments that were timely for consideration in preparing final rules for parts 1 and 2. Many comments concerned the Animal Welfare regulations generally or conceptually. We considered those comments in preparing the final rules

because they address the Department's regulatory approach as a unit, and thereby implicate the interrelationship of parts 1, 2, and 3. Our response to those comments is set forth in the supplementary information accompanying the final rule to amend part 2, docket no. 89.131, published elsewhere in this issue of the **Federal Register**.

On the basis of the comments we received and our consultation with HHS and members of the IRAC, we determined that certain changes to the revised proposal are necessary and that certain terms should be added to clarify parts 2 and 3 of the regulations. Certain changes are also necessary to conform part 1 with the revisions we are making in the final rule to amend part 2 (*see* docket no. 89–131, published elsewhere in this issue of the **Federal Register**. We discuss below, in alphabetical order, each of the terms that is revised, replaced, or added as a result of the comments we received and our consultation with HHS and members of the IRAC. We also discuss those comments we received addressing the interrelationship of terms contained in part 1 with the proposals to amend parts 2 and 3 for which we have determined that no revision of the final rule is necessary. Comments addressing the interrelationship of the revised proposal to amend part 2—"Regulations" with the proposed standards in part 3 are addressed in companion docket no. 89–131, published elsewhere in this issue of the **Federal Register**. Comments on the regulatory impact analysis and the regulatory flexibility analysis prepared by the Department in accordance with Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), respectively, are also addressed in that document.

General

We received 480 comments (478 from members of the general public and 2 from members of the research or scientific community) expressing general support for the revised proposals to amend parts 1 and 2 and stating that the definitions in part 1 apply appropriately to part 3.

We are making two changes in the final rule for part 1 to reflect an internal agency reorganization within the Animal and Plant Health Inspection Service (APHIS) which created the Regulatory Enforcement and Animal Care organization unit (REAC). REAC is charged with responsibility for administering and enforcing the Animal Welfare Act and regulations for APHIS. Accordingly, the term "Deputy Administrator" is revised to mean "the Deputy Administrator for Regulatory Enforcement and Animal Care (REAC) or any other official to whom authority has been delegated to act in his stead." The term "Area Veterinarian in Charge" is replaced with "APHIS, REAC Sector Supervisor", however, the definition remains unchanged in the regulations. This change in designation reflects the Agency's internal reorganization and is nonsubstantive.

Animal; Exotic Animal; Wild Animal

Fifteen commenters (9 members of the general public and 6 members of the research or scientific community) stated that all animals should be regulated under the Act, including rats and mice, and 6 members of the research or scientific community commented that rats and mice should not be excluded from the regulations. In contrast, 10 members of the research or scientific community stated that all rodents should be excluded from the regulations.

As we stated in the supplementary information accompanying the revised proposal, we do have the authority to regulate rats and mice, though we have never included laboratory-bred rats and mice in the regulations (54 FR 10823). Wild rats and mice are covered by the regulations. We received numerous comments in response to the March 1987 proposal suggesting that we include rats and mice, and we are considering doing so. Development of regulations and standards applicable to rats and mice would be a lengthy endeavor, and we do not believe it is appropriate to delay promulgation of these final rules while we proceed with our consideration of this issue.

The statutory definition of "animal" specifically includes guinea pigs and hamsters, and we do not have the authority to remove these rodents from the regulations (7 U.S.C. 2132(g)). In order to clarify that rats and mice are the only rodents not covered by the regulations, we are revising the definition of "animal" in the final rule by specifying that the term excludes rats of the genus *Rattus* and mice of the genus *Mus* that have been bred for use in research. Rodents of other genera, such as kangaroo rats, are included within the definition.

We received 241 comments (67 from members of the general public, 172 from members of the research or scientific community, and 2 from dealers) requesting that we clarify when farm animals are covered by the regulations. One member of the general public and 3 members of the research or scientific community commented that the existing standards of 9 CFR part 3, subpart F, "Specifications for the Humane Handling, Care, Treatment and Transportation of Warmblooded Animals Other Than Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates, and Marine Mammals," should be applied to farm animals used or bred for biomedical research. In accordance with the Act, we have the authority to regulate farm animals when used for biomedical research and testing purposes. We do not have the authority to regulate farm animals under the Animal Welfare regulations when used or intended for use as food or fiber, or when used or intended for use in agricultural research, such as, improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber (7 U.S.C. 2132(g)). We are considering exercising our authority to enforce the regulations with respect to farm animals. If we determine to pursue this matter further, we will publish an advance notice of proposed rulemaking in the **Federal Register** soliciting public comments on whether the Agency should exercise this authority, and if so, what regulations and standards should apply.

Four members of the research or scientific community requested clarification as to whether the term "animal" includes free-living wild animals that are used in research. As set forth in the revised proposal, the term "animal" includes any warmblooded animal, other than those specifically excepted, that is being used, or is intended for use for research, teaching, testing, or experimentation (54 FR 10823–10824). Under the final rule amending part 2 (docket no. 89–131, published elsewhere in this issue of the **Federal Register**), research involving animals that are studied in their natural habitat without any invasive procedure and without harming or materially altering their behavior, is exempt from the Committee review and inspection requirements of 9 CFR part 2, subpart C.

One exhibitor opposed breaking down non-domestic animals into "wild animals" and "exotic animals". Both wild and exotic animals, as defined in the revised proposal, are covered by the regulations. We are including definitions of wild animals and exotic animals in the final rule to make it clear that certain exotic animals, now considered by many people to be domestic animals, are covered by the regulations. We are not revising these terms on the basis of this comment.

We received 236 comments (66 from members of the general public, 168 from members of the research or scientific community, and 2 from dealers) expressing agreement with the definition of "exotic animal" as set forth in the revised proposal. We had revised the definition from that initially proposed to exclude those animals specifically included in the definition of "animal", in response to the numerous comments we received. One member of the research or scientific community objected that the revised definition conflicts with the term "animal" when an exotic animal is used for exhibition purposes. The term "exotic animal", as well as "wild animal", is included in the regulations to make clear that all warmblooded animals (other than those specifically excluded) are covered by the regulations when used for research, teaching, testing, experimentation, exhibition, or as a pet. When the Act was first enacted in 1966, the term "animal" was defined as meaning "live dogs, cats, monkeys (nonhuman primate mammals), guinea pigs, hamsters, and rabbits." In 1970, Congress amended the Act to include other warm-blooded animals. By defining "exotic animal" as any animal not identified in the definition of "animal" that is of foreign origin or not native to the United States, the regulations make clear that exotic animals are covered by the regulations in addition to dogs, cats, nonhuman primates, guinea pigs, hamsters, and rabbits. The definition of "exotic animal" excludes the animals specifically identified in the Act because many species of these animals are now commonly found in the United States. Though originally of foreign origin, they are not considered to be exotic.

Animal Care and Use Procedure

We received 237 comments (66 from members of the general public, 169 from members of the research or scientific community, and 2 from dealers) stating that there is no need for an animal care and use procedure, and therefore the term should be deleted. We added the term "animal care and use procedure" or "ACUP" in the revised proposal in lieu of "protocol" to avoid any misunderstanding or implication that APHIS intends to become involved in the evaluation of the design, outlines, guidelines, and scientific merit of proposed research. The term "animal care and use procedure" was selected because it is descriptive of the areas with which we are concerned under the regulations, namely, how the research will treat or affect an animal, the condition of an animal, and the circumstances under which an animal is maintained.

As we describe in greater detail in the final rule to amend part 2 (docket no. 89–131, published elsewhere in this issue of the **Federal Register**), we have made certain changes in the regulations affecting research facilities in order to harmonize our requirements with those of the Public Health Service Policy on Humane Care and Use of Laboratory Animals (PHS Policy), wherever it is consistent with our statutory mandate to do so. As part of our harmonization efforts, we are replacing the term "animal care and use procedure" with the PHS Policy term, "activity." The term "activity" is defined to mean "those elements of research, testing, or teaching procedures that involve that care and use of animals." We consider this to be a nonsubstantive change.

Attending Veterinarian

Under the revised proposal, the term "attending veterinarian" would mean "a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education, or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, or has received equivalent formal education as determined by the Administrator; has received training and/or experience in the care and management of the species being attended; and who has direct or delegated authority for activities involving animals at a facility subject to the jurisdiction of the Secretary."

Two members of the research or scientific community objected to the requirement that the attending veterinarian have formal education in veterinary medicine. Rather, they felt that requiring equivalent formal education would be sufficient. We disagree with the commenters. Training in the sciences generally, or in medical or biological areas, would not ensure sufficient knowledge in the health, well-being, and care of animals. Veterinary medicine involves specialized knowledge and expertise that would not otherwise be acquired through non-veterinary training and education. Furthermore, we do not believe it would be practical for the Administrator to determine, on a case-by-case basis, whether someone is qualified to function as a veterinarian. Therefore, we are not making any change to this requirement in the final rule. The Administrator will consider equivalent formal education in veterinary medicine, as set forth in the revised proposal, so as not to exclude those graduates of foreign veterinary programs who do not have a certificate from the AVMA's Education Commission for Foreign Veterinary Graduates (*see* 54 FR 10824–10825).

We received 55 comments (5 from members of the general public, 14 from members of the research or scientific community, 2 from exhibitors, and 34 from dealers) stating that the requirement that the attending veterinarian have experience in the care and management of the species being attended would limit the pool of qualified veterinarians, and that experience with similar species should be sufficient. We disagree for the reasons set forth in the supplementary information accompanying the revised proposal (54 FR 10825). It is not our objective to severely limit the number of veterinarians who would be qualified to serve as attending veterinarians, and we do not believe that requiring some degree of familiarity with the animal being attended will do so. We proposed this requirement because different species have different requirements and needs that must be fulfilled in order to promote their health and well-being. For these reasons, we require that the attending veterinarian have training or experience in the care and management of the different species of animals being attended.

Two hundred fifty-five commenters (70 members of the general public, 183 members of the research or scientific community, and 2 dealers) objected to the requirement that attending veterinarians be responsible for "activities involving animals", as set forth in the revised proposal, rather than just the health of the animals. Under these regulations, the attending veterinarian is responsible for overseeing the care and use of animals and for ensuring that adequate veterinary care is provided. These responsibilities extend beyond the general health of an animal. They include personnel training and guidance in animal care matters, such as proper use of pain-relieving drugs, adequate pre-procedural and post-procedural care, and animal behavior and well-being. We are making no changes to the definition of "attending veterinarian" on the basis of these comments.

Commerce

Thirty-eight commenters (1 member of the general public, 2 members of the research or scientific community, 2 exhibitors, and 33 dealers) objected to Federal regulation of intrastate commerce. Twenty-two commenters (2 exhibitors and 20 dealers) objected to considering gifts or donations of animals as affecting commerce, and therefore requiring that the recipient be licensed as an exhibitor. Under the definition of "exhibitor" in this final rule, any person exhibiting any animals which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation is an exhibitor and must be licensed. The proposed definition of "commerce" is taken directly from the statute. Congress has defined "commerce" in the Act to mean "trade, traffic, transportation, or other commerce: (1) Between a place in a State and any place outside of such State, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia; (2) which affects trade, traffic, transportation, or other commerce described in paragraph (1), * * *" (7 U.S.C. 2132(c)). Animals received through donation or as a gift must be acquired and transported, and therefore, such gifts or donations affect commerce. The definition remains as proposed.

Committee

Two hundred thirty-six commenters stated that a research facility should be able to identify the Committee by whatever name it chooses. One member of the research or scientific community noted that the definition of "Committee" is appropriately addressed in part 2 and therefore need not be defined in part 1. As we stated in the supplementary information accompanying the revised proposal, we are not concerned with the name assigned to the Committee by a research facility. Rather, we are concerned that each research facility establish an administrative body in accordance with the definition of "Committee", as set forth in part 1, that is authorized to carry out the duties and reponsibilities assigned to it under the Act and the regulations. We refer to this body as the Institutional Animal Care and Use Committee to describe its areas of concern and for consistency with the PHS Policy, which similarly requires establishment of an Institutional Animal Care and Use Committee. The PHS Policy also notes that the term, Institutional Animal Care and Use Committee, is intended as a generic term for a committee whose function is to ensure appropriate and humane animal care and use. We are not making any changes in the final rule on the basis of the comments. We are making a change to allow a Doctor of Veterinary Medicine (DVM) to serve on the Committee instead of the attending veterinarian, if the research facility has more than one DVM, in accordance with the final rule to amend part 2 (*see* docket no 89–131, published elsewhere in this issue of the **Federal Register**).

Euthanasia

We are revising the definition of "euthanasia" based upon the comments we received and our ongoing discussions with members of the IRAC. In the revised proposal, the term "euthanasia" was defined as "the humane destruction of an animal accomplished by a method which produces instantaneous unconsciousness and immediate death without evidence of pain or distress, or a method that utilizes anesthesia produced by an agent which causes painless loss of consciousness and subsequent death." Thirty-five commenters (1 member of the general public, 7 members of the research or scientific community, 2 exhibitors, and 25 dealers) requested clarification of the word "immediate" as it appears in the proposed definition. Twenty-nine members of the research or scientific community stated that the definition should be consistent with the recommendations of the American Veterinary Medical Association Panel on Euthanasia. Two commenters (1 member of the general public and 1 member of the research or scientific community) suggested that the term be defined as "a quiet painless death", and 255 commenters (70 members of the general public, 183 members of the research or scientific community, and 2 dealers) suggested that the term be defined as "the humane destruction of an animal accomplished by a method which produces unconsciousness and death without evidence of pain or distress or a method that utilizes anesthesia produced by an agent which causes painless loss of consciousness and subsequent death." One commenter from the general public and 3 members of the research or scientific community suggested using the word "killed" in place of "destruction" in the definition.

Based upon these comments and our consultation with IRAC members, we have determined that the proposed definition of "euthanasia" is unnecessarily restrictive. Methods of euthanizing animals exist which induce rapidly occurring unconsciousness followed by subsequent death without evidence of pain or distress. The report of the AVMA Panel on Euthanasia lists numerous methods which, based upon information the Panel deems reliable, may be considered painless. We are therefore revising the definition to mean the humane destruction of an animal accomplished by a method that produces rapid unconsciousness and subsequent death without evidence of pain or distress, or a method that utilizes anesthesia produced by an agent that causes painless loss of consciousness and subsequent death. Methods of euthanasia that are consistent with this definition may be used. We believe that the definition as revised in the final rule fully addresses the commenters' concerns.

Housing Facility

The definition of "housing facility" in the revised proposal remained as originally proposed and has prompted concern among the commenters and members of the IRAC. The proposed definition would include any land, premises, shed, barn, building, trailer, or other structure or area housing or intended to house animals. Members of the IRAC stated that the proposed definition would be difficult to apply in field settings where animals are studied in their natural habitat. The National Science Foundation, a Federal agency that funds research conducted in field settings, expressed concern that it would not be feasible for research facilities to comply with many of the standards proposed in part 3 for housing facilities in such environments. In addition, 238 commenters (66 members of the general public, 170 members of the research or scientific community, and 2 dealers) requested clarification as to whether native habitats of free-living animals would be covered by the definition. Four members of the research or scientific community suggested that the definition be revised to exclude all field study sites where animals are not restrained for more than 12 hours before being released. Five members of the research or scientific community suggested that the definition exclude areas where animals are held for less than 24 hours. We also received four comments from the research or scientific community which stated that the proposed definition should be revised to clearly include all animal study areas. Two commenters, also from the research or scientific community, stated that animal study areas should only include survival surgery areas.

Upon further consideration of these suggestions, and for the reasons set forth in the supplementary information accompanying the final rule to amend part 2 (docket no. 89–131, published elsewhere in this issue of the **Federal Register**) we agree that a distinction should be made between research that is conducted under captive conditions and that which is conducted in the wild. A further distinction must also be made between studies conducted in the field on the basis of whether or not it involves an invasive procedure or change in the animals' behavior as part of the study. The final rules differentiate between studies of animals in their natural habitat which involve an invasive procedure, such as implanting a transponder, or which harm or alter the behavior of the animals, and field studies. Field studies are defined in this final rule to mean "any study conducted on free-living wild animals in their natural habitat, which does not involve an invasive procedure, and which does not harm or materially alter the behavior of the animals under study." Wildlife census studies and purely behavioral studies would be within the definition. Under part 2, subpart C of the final rule, field studies are exempt from Committee review and inspection.

Under § 2.31(c)(2) of the final rule, Committee inspection of a research facility's animal facilities as an agent of the research facility, including animal study areas, may not include animal areas involving free-living wild animals in their natural habitat. Such studies and areas must be maintained in compliance with the Animal Welfare regulations and standards, however.

We are also adding a definition of the term "study area" in response to the comments we received and to conform part 1 with the revised regulations set forth in the final rule to amend part 2. The term is defined as "any building, room, area, enclosure, or other containment outside of a core facility or centrally designated or managed area in which animals are housed for more than 12 hours." A study area is a type of housing facility. "Satellite facilities" under the PHS Policy are study areas, as that term is defined in this final rule. It also includes buildings or temporary structures set up at field sites where animals are maintained for more than 12 hours. We are not limiting the term to areas where survival surgery is conducted, contrary to the suggestion of two commenters, since the need to ensure animal welfare is not limited to surgical procedures.

Indoor Housing Facility

We received 236 comments (66 from members of the general public, 168 from members of the research or scientific community, and 2 from dealers) stating that the proposed requirement that an indoor housing facility be capable of maintaining humidity levels between 30 to 70 percent should be removed. Three commenters (1 member of the general public and 2 members of the research or scientific community) stated that the humidity control requirement should be clarified, and 1 member of the general public and 3 members of the research or scientific community stated that the humidity range provided in the definition should be revised to be between 40–60 percent.

Based upon our experience in administering the Act and the regulations, we believe an indoor housing facility must be capable of controlling the environment, including the temperature and humidity level, in which an animal is maintained in order to promote its health and well-being. The humidity level provided in the definition is consistent with the NIH Guide for the Care and Use of Laboratory Animals, and is appropriate for most warm-blooded animals. We believe this to be a reasonable requirement to impose upon persons who maintain animals in indoor housing facilities and that it is necessary for the welfare of the animals.

Institutional Official

We are adding a definition of the term "institutional official." In our revised proposal, we referred to the Chief Executive Officer of a research facility or a responsible institutional official with authority to bind the facility. We are replacing these terms with the single term "institutional official" in the final rule to amend part 2, to simplify the regulations and to make them consistent with the terminology used in the PHS Policy. We consider this to be a nonsubstantive change. Neither of the terms used in the revised proposal were defined in our proposals to amend part 1. We are adding a definition to facilitate understanding and compliance with the regulations. Under the final rule, "institutional official" means the individual at a research facility who is authorized to legally commit on behalf of the research facility that the requirements of 9 CFR parts 1, 2, and 3 will be met.

Isolation

Two members of the research or scientific community commented that the proposed definition of "isolation" would not be appropriate for open-sea floating pens for marine mammals. Use of such pens is generally not appropriate for the temporary isolation of marine mammals under part 3, subpart E for purposes of medical treatment or training. No change is made in the regulations on the basis of this comment.

Major Operative Experiment

We received 269 comments (74 from members of the general public, 193 from members of the research or scientific community, and 2 from dealers) objecting to the proposed definition of the term, "major operative experiment." The 1985 amendments to the Act prohibit the use of an animal in more than one major operative experiment from which it is allowed to recover, except under certain limited circumstances (7 U.S.C. 2143(a)(3) (D) and (E)). We are broadening this prohibition in the final rule to amend part 2 to apply to any major operative procedure, since an experiment could encompass a vast number of procedures

In the supplementary information accompanying the revised proposal, we stated that the potential for causing physical disability would be sufficient to consider an experiment to be within the proposed definition, and that we were not concerned with the intended effect of the principal investigator in performing the experiment. Upon further consideration of the comments we received, we have determined that determining whether a procedure is a major operative procedure can best be done retrospectively, rather than prospectively, and that doing so will satisfy the Act's prohibition against using the animal in a second major operative experiment. It is clear from a research proposal whether the research will involve surgical intervention that penetrates and exposes a body cavity. However, the permanent effects of a procedure can best be determined afterward. After a procedure is performed, the principal investigator and the Committee can determine whether it has produced a permanent impairment of the animal's physical or physiological functions. If it has, the animal cannot be used again for survival surgical purposes or for procedures generally considered to result in permanent impairment of the animal's functions. As four commenters stated, (1 member of the general public and 3 members of the research or scientific community) non-surgical procedures such as impact tests and severe burn studies are invasive and can result in permanent impairment. We are revising the definition in the final rule to mean "any surgical intervention that penetrates and exposes a body cavity or any procedure which produces permanent impairment of physical or physiological functions." The term "disability" is replaced in the definition with the term "impairment" to include any reduction in the animal's range or ability of functions.

Mobile or Traveling Housing Facility

Four commenters (1 member of the general public and 3 members of the research or scientific community) endorsed inclusion of an explicit definition of "mobile or traveling housing facility" in part 1. The

standards with which these facilities must comply when used to house dogs, cats, and nonhuman primates are contained in the proposal to amend part 3. (*See* docket no. 87–004, published in the **Federal Register** on March 15, 1989, 54 FR 10897–10954). We are considering comments on the proposed standards.

Outdoor Housing Facility

One dealer commented that the term "outdoor housing facility" should be revised to accommodate different types of outdoor primate housing enclosures and their temperature requirements. Specific housing facility requirements for nonhuman primates were proposed in docket no. 87–004, published in the **Federal Register** on March 15, 1989 for public comment (54 FR 10897–10954). Temperature requirements for indoor, outdoor, sheltered, and mobile housing facilities are addressed in that document. Some animals, such as dogs and cats can tolerate lower temperatures than nonhuman primates, and different species of nonhuman primates have different temperature requirements. Therefore, we do not believe it is appropriate to include specific requirements in the definition. Accordingly, no change is made in the final rule on the basis of this comment.

Painful Procedure

We received 240 comments (66 from members of the general public, 172 from members of the research or scientific community, and 2 from dealers) urging us to adopt the PHS Policy definition of a "painful procedure." As we stated in the supplementary information accompanying the revised proposal, the proposed definition is similar to and consistent with the PHS Policy, and we do not believe that any modification is needed.

Eleven commenters (2 members of the general public and 9 members of the research or scientific community) stated that the different species' perception of pain should be taken into consideration and that the attending veterinarian is qualified to determine whether a procedure should be considered painful. Under the Act, involvement by the attending veterinarian in planning a painful procedure is essential because of his or her expertise. To this extent, the commenters' view is incorporated in the regulations. One of the principal concerns of Congress underlying the 1985 amendments to the Act is the need to minimize pain and distress. In order to fulfill Congress's intent, we believe it is appropriate to define "painful procedure" in terms of human standards of pain, as does the PHS Policy, to ensure that all potentially painful practices are accorded the protections of the Act, such as those set forth in sections 13(a)(3)(C) and 13(b)(3)A). (7 U.S.C. 2143 (a)(3)(C) and 2143(b)(3)(A)). Four commenters (1 member of the general public and 3 members of the research or scientific community) endorsed using human standards of pain in defining the term.

Twenty-two members of the research or scientific community commented that when pain is relieved through anesthesia, a procedure should not be considered painful. The 1985 amendments to the Act refer repeatedly to the use of pain-relieving drugs and anesthetics in conducting painful procedures and practices (*See, e.g.*, 7 U.S.C. 2143(a)(3)(C)(ii) and 2143(e)(3)(B)). Therefore, under the Act, a procedure in which pain is relieved is still considered to be a painful procedure, and the provisions of the Act which address the conduct of painful procedures apply. We are not adopting the commenters' suggestion.

Pet Animal

We received 19 comments (2 from members of the general public, 3 from members of the research or scientific community, 2 from exhibitors, and 13 from dealers) stating that the definition of "pet animal" should include wild and exotic animals when they are used or sold as pets. These are specifically excluded, as explained in the supplementary information accompanying the revised proposal (54 FR 10829). Congress has exempted retail pet stores from the definition of "dealer" unless they sell animals to a research facility (7 U.S.C. 2132(f)(2)(i)) and therefore, they are not required to be licensed under the Act. We believe that Congress intended to limit this exclusion from the licensing requirements of the Act, and that only animals commonly sold as pets can properly be considered pet animals. In this manner, dealers would not be able to avoid the licensing requirements of the regulations by calling themselves retail pet stores. Excluding wild and exotic animals from the definition of pet animal is consistent with the Act and the definition of "retail pet store" included in this final rule. Accordingly, retail pet stores that sell exotic animals must be licensed under 9 CFR part 2, subpart A. We are not making any change in the definition of pet animal on the basis of this comment.

Positive Physical Contact

One member of the general public and 5 members of the research or scientific community commented that "positive physical contact" should be redefined to mean contact which is beneficial to the animal in the opinion of the attending veterinarian. We agree that attending veterinarians will be involved in assessing positive physical contact, as part of their responsibility for ensuring adequate veterinary care and providing for the animals' health and well-being. We are not making any changes to the definition in the final rule, however, so that all persons involved in the care and use of animals have a proper understanding of the term and their responsibilities under the regulations.

Primary Enclosure

Fourteen members of the research or scientific community stated that the term "primary enclosure" should be redefined to exclude any temporary enclosure used for less than 24 hours. We do not agree that it is appropriate to do so. Minimum requirements for the design, construction, and sanitation of primary enclosures and primary enclosures used for transporting animals are set forth in part 3 of the regulations. We are proposing to revise these requirements in accordance with the 1985 amendments to the Act and our experience in enforcing the Act. (*See* docket no. 87–004 published March 15, 1989, 54 FR 10897–10954). Based upon our experience, we believe that the same requirements are appropriate for any primary enclosure in which an animal is maintained, regardless of whether it is used on a short-term or long-term basis. Accordingly, we not making any changes in the definition of primary enclosure.

Principal Investigator

Four commenters from the research or scientific community suggested that the definition of "principal investigator" be revised to include proposed activities intended for use in teaching. Research conducted to instruct others is research nonetheless, and proposals to use animals in the course of teaching are the responsibility of the principal investigator. The proposed definition is consistent with the definition of research facility, which, in accordance with the Act, is defined to mean "any school * * * institution, organization, or person that uses or intends to use live animals in research, tests, or experiments * * *" (final rule § 1.1j). There is no separate reference to teaching. We are making one change in the definition to include any person associated with the research facility because it is common practice for persons who are not employees to be involved in research activities at such facilities. For these reasons, we do not

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believe that any change in the definition is necessary in the final rule.

Research Facility

Three commenters from the research or scientific community suggested revising the definition of "research facility" to mean, in the case of a corporation, any administrative unit reasonably designated by the corporation. We do not agree with the commenters proposed change. Under the registration requirements applicable to research facilities in the final rule, the corporation must register as the research facility, or a subsidiary of a corporation must register as the research facility unless it is under the direct control of the parent corporation. In developing the final rule to amend part 2 of the regulations (*see* docket no. 89–131, published elsewhere in this issue of the **Federal Register**), we determined that it is the responsibility of the research facility to ensure compliance with the regulations. We did so to ensure that animal welfare concerns are addressed at the highest level of corporate or administrative responsibility. In this manner, we are assured of an entity's commitment to promoting animal welfare and that it will take appropriate measures to require compliance by all employees. We do not consider it appropriate or advisable to reduce the level at which this responsibility rests.

Suggestions for Additional Definitions

A number of commenters stated that other terms used in the revised proposal to amend part 2 and the proposal to amend part 3 of the regulations, published in the **Federal Register** on March 15, 1989 (54 FR 10835–10897 and 10897–10954, respectively) should be defined for purposes of clarity. We do not believe it is necessary or appropriate to define these terms. In some cases, we believe it is sufficient to rely on ordinary usage and dictionary definitions. In others, we believe that the changes made to the regulations in the final rule to amend part 2 will resolve the commenters' concerns. (*See* docket no. 89–131, published elsewhere in this issue of the **Federal Register**). For the reasons set forth below, we are not adding any terms to the final rule to amend part 1 on the basis of these comments.

One dealer commented that the words "verbal abuse" in § 2.4 of the revised proposal, "Non-interference with APHIS officials" are not clearly defined. We believe that ordinary understanding of those words will suffice and that they need not be defined in the regulations.

One member of the general public stated that "survival surgery" as the term is used in part 2, should be defined. We believe that this term is commonly understood to mean any surgery from which the subject is reasonably expected to recover, and that no further definition is necessary.

One member of the research or scientific community suggested that we provide a definition of the term "natural environment" as used in § 2.35(b)(1)(iii) of the revised proposal to clarify whether outdoor environments altered by man would be considered natural environments. The final rule is revised to provide an exception from the requirement for Committee inspection for studies of free-living wild animals in their natural habitat (final rule § 2.31(c)(2)). We are also exempting field studies from the Committee review and inspection requirements of 9 CFR part 2, subpart C, and have defined that term to mean any study conducted on free-living wild animals in their natural habitat which does not involve an invasive procedure and which does not harm or materially alter the behavior of the animals. The term "natural habitat" necessarily excludes human intervention, and we do not believe further clarification is required.

We received 241 comments (67 from members of the general public, 172 from members of the research or scientific community, and 2 from dealers) suggesting that we provide a definition of the term "animal area" as used in the revised proposal to amend part 2 (docket no. 88–014, published in the **Federal Register** on March 15, 1989, 54 FR 10835–10897). The revisions made in the final rule obviate the need to define the term. The term "animal area" is used in the final regulations only with regard to free-living wild animals living in their natural habitat. We believe that common understanding of the term when used in this context is sufficient, and that further clarification is unnecessary.

Eight commenters (1 member of the general public, 4 members of the research or scientific community, and 3 dealers) stated that we should include a definition of the term "compatible group". It is used in the proposed rule to amend part 3—"Standards" in describing the social grouping requirements proposed for dogs, cats, and nonhuman primates (docket no. 87–004, published in the **Federal Register** on March 15, 1989, 54 FR 10897–10954). We believe that this term is commonly understood to refer to animals that co-exist peaceably and with a sense of well-being, without exhibiting aggressive or hostile behavior towards the other animals. Certain species behave hostilely towards others, or exhibit aggressive behavior which would be detrimental to the other animals. Within species, some animals may exhibit this type of behavior and would be a source of harmful stress to fellow members of the same species. These animals would not be considered compatible. We believe that the common understanding of this term is appropriate when applied to the proposed standards and that further definition is not necessary. We are not making any changes in the regulations on the basis of these comments.

Seven commenters (2 members of the general public, 4 members of the research or scientific community, and 1 dealer) requested that we define "full-spectrum lighting". Under the proposed rule to amend part 3—"Standards", full-spectrum lighting is required if artificial light is used to illuminate indoor, sheltered, and mobile housing facilities used to house nonhuman primates, and indoor and mobile housing facilities used to house dogs and cats (docket no. 87–004, published in the **Federal Register** on March 15, 1989, 54 FR 10897–10954). Under this proposed requirement, if artificial lighting is used it must provide a wide range of wavelengths, such as infra-red and ultraviolet, so that it approximates natural sunlight. We do not believe that further clarification is necessary while we consider the comments received and develop regulations addressing the lighting requirements to be included in part 3.

We received 238 comments (68 from members of the general public, 168 from members of the research or scientific community, and 2 from dealers) stating that the terms "exercise" for dogs and "psychological well-being" of nonhuman primates must be defined in the final rules before research facilities can develop procedures and systems which satisfy the regulations. Two members of the general public and 1 member of the research or scientific community stated that "socialization" of dogs should be defined in part 1, and 44 commenters (3 members of the general public, 40 members of the research or scientific community, and 1 dealer) stated that "psychological well-being" of nonhuman primates should be defined. Requirements for exercise for dogs and for an environment that is adequate to promote the psychological well-being of nonhuman primates are statutorily mandated by the 1985 amendments to the Act. Congress directed the Secretary of Agriculture to promulgate minimum requirements that would fulfill these

needs. We proposed minimum requirements in docket no. 87–004, published in the **Federal Register** on March 15, 1989, 54 FR 10897–10954, based upon our own expertise and the recommendations of advisory committees that we formed to address the Congressional directives. We are considering the comments we received concerning the proposal and are continuing to consult with HHS and members of the IRAC in formulating means of fulfilling our objectives. Through these efforts, we are re-evaluating our proposal and are continuing to explore alternative regulatory solutions that satisfy our mandate from Congress. We do not believe that it is necessary to provide definitions of these terms. Rather, by developing appropriate standards, we believe that upon promulgation of a final rule to amend part 3, all regulated entities will have adequate guidance in complying with the Act, Accordingly, we are not making any changes in the regulations on the basis of these comments.

One dealer suggested that we define "quarantine period" as it is used in the proposal to amend part 3—"Standards", subpart D, as any isolation period imposed by Federal, State, or local laws. The commenter further stated that the appropriate quarantine period for newly-imported nonhuman primates should be 90–120 days, subject to extension at the direction of the attending veterinarian. Quarantine requirements are imposed by Federal, State, and local law, as noted in the proposed regulations (proposed § 3.80(c)(2)(v)(A)). Further definition of the term "quarantine period" is therefore unwarranted.

Another dealer suggested that we define "quarantine" as it relates to cage size and exercise requirements for nonhuman primates that are caught in the wild and those that are bred in captivity. Cage size requirements for animals maintained under quarantine by dealers are set forth in the proposed rules (proposed § 3.80(c)(2)(v)(A)), and there is no requirement in the proposed regulations for release by dealers of quarantined animals for exercise. We do not believe that defining the term "quarantine" is necessary.

Statutory Authority for This Proposed Rule

This final rule is issued pursuant to the Animal Welfare Act (Act), as amended, 7 U.S.C. 2131–2157. Congress recently added significantly to the Secretary's responsibilities under the Act by amendments in the Food Security Act of 1985, Public Law No. 99–198, approved December 23, 1985. The declared policy of the Act is to ensure that animals intended for use in research facilities, as pets, or for exhibition purposes are provided humane care and treatment; to assure the humane treatment of animals during transportation; and to prevent the sale of stolen animals.

The Act mandates that the Secretary of Agriculture promulgate regulations and standards to govern the humane handling, care, treatment, and transportation of animals by dealers, exhibitors, research facilities, carriers, and intermediate handlers. To accomplish this, the Secretary must define certain key words used in the regulations and standards so that persons subject to the Act, regulations, and standards can comply with their requirements.

The Act itself defines some of the terms which appear in this rule. The Act also authorizes the Secretary to promulgate such rules, including additional definitions, as he deems necessary to effectuate the purposes of the Act.

Executive Order 12291 and Regulatory Flexibility Act

This final rule contains new and revised definitions of terms that complement regulatory changes for parts 2 and 3 of the Animal Welfare regulations. The general intent is to update, clarify, and expand the list of relevant definitions as required by the amendments to the Act. The Department has determined that no economic impacts would result from this action. Therefore, this final rule is not a "major rule" for the purposes of Executive Order 12291, under the criteria therein. In addition, the Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. It is anticipated that the economic impacts would result from final rules for part 2, "Animal Welfare Regulations," and part 3, "Standards." The regulatory impact analysis for part 2 of the regulations is included in the final rule for part 2, "Animal Welfare Regulations."

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

Paperwork Reduction Act

The information collection and recordkeeping provisions that are included in the final rules amending 9 CFR parts 1 and 2 have been submitted for approval to the Office of Management and Budget (OMB), in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) under control number 0579–0036, and upon approval, will become effective upon October 30, 1989. The Department has requested that OMB conclude its review no later than October 30, 1989.

The public reporting burden for this collection of information is estimated to average 0.96 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The public recordkeeping burden is estimated to average 4.0 annual hours per recordkeeper.

Send written comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Agriculture, Clearance Officer, OIRM, Room 404W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB Control No. 0579–0036), Washington, DC 20503.

List of Subjects in 9 CFR Part 1

Animal welfare, Animal housing, Dealers, Exhibitors, Research facilities, Humane animal handling.

We are amending 9 CFR part 1 as follows:

PART 1—DEFINITION OF TERMS

1. The authority citation for Part 1 is revised to read as follows:

Authority: 7 U.S.C. 2131–2157; 7 CFR 2.17, 2.51, and 371.2(g).

2. Section 1.1 is revised to read as follows:

§ 1.1 Definitions.

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

Act means the Act of August 24, 1966 (Pub. L. 89–544), (commonly known as the Laboratory Animal Welfare Act), as amended by the Act of December 24, 1970 (Pub. L. 91–579), (the Animal Welfare Act of 1970), the Act of April 22, 1976 (Pub. L. 94–279), (the Animal Welfare Act of 1976), and the Act of December 23, 1985 (Pub. L. 99–198), (the Food Security Act of 1985), and as it may be subsequently amended.

Activity means, for purposes of part 2, subpart C of this subchapter, those elements of research, testing, or teaching procedures that involve the care and use of animals.

Administrative unit means the organizational or management unit at the departmental level of a research facility.

Administrator means the Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other official of the Animal and Plant Health Inspection Service to whom authority has been delegated to act in his stead.

Ambient temperature means the air temperature surrounding the animal.

Animal means any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used, or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes: Birds, rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, and horses and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes.

Animal act means any performance of animals where such animals are trained to perform some behavior or action or are part of a show, performance, or exhibition.

APHIS means the Animal and Plant Health Inspection Service, United States Department of Agriculture.

APHIS official means any person employed by the Department who is authorized to perform a function under the Act and the regulations in 9 CFR parts 1, 2, and 3.

APHIS, REAC Sector Supervisor means a veterinarian or his designee, employed by APHIS, who is assigned by the Administrator to supervise and perform the official work of APHIS in a given State or States. As used in part 2 of this subchapter, the APHIS, REAC Sector Supervisor shall be deemed to be the person in charge of the official work of APHIS in the State in which the dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale has his principal place of business.

Attending veterinarian means a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education, or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, or has received equivalent formal education as determined by the Administrator; has received training and/or experience in the care and management of the species being attended; and who has direct or delegated authority for activities involving animals at a facility subject to the jurisdiction of the Secretary.

Business hours means a reasonable number of hours between 7 a.m. and 7 p.m., Monday through Friday, except for legal Federal holidays, each week of the year, during which inspections by APHIS may be made.

Business year means the 12-month period during which business is conducted, and may be either on a calendar or fiscal-year basis.

Carrier means the operator of any airline, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting any animals for hire.

Cat means any live or dead cat (Felis catus) or any cat-hybrid cross.

Class "A" licensee (breeder) means a person subject to the licensing requirements under part 2 and meeting the definition of a "dealer" (§ 1.1), and whose business involving animals consists only of animals that are bred and raised on the premises in a closed or stable colony and those animals acquired for the sole purpose of maintaining or enhancing the breeding colony.

Class "B" licensee means a person subject to the licensing requirements under part 2 and meeting the definition of a "dealer" (§ 1.1), and whose business includes the purchase and/or resale of any animal. This term includes brokers, and operators of an auction sale, as such individuals negotiate or arrange for the purchase, sale, or transport of animals in commerce. Such individuals do not usually take actual physical possession or control of the animals, and do not usually hold animals in any facilities. A class "B" licensee may also exhibit animals as a minor part of the business.

Class "C" licensee (exhibitor) means a person subject to the licensing requirements under part 2 and meeting the definition of an "exhibitor" (§ 1.1), and whose business involves the showing or displaying of animals to the public. A class "C" licensee may buy and sell animals as a minor part of the business in order to maintain or add to his animal collection.

Commerce means trade, traffic, transportation, or other commerce:

(1) Between a place in a State and any place outside of such State, including any foreign country, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia; or

(2) Which affects the commerce described in this part.

Committee means the Institutional Animal Care and Use Committee (IACUC) established under section 13(b) of the Act. It shall consist of at least three (3) members, one of whom is the attending veterinarian of the research facility and one of whom is not affiliated in any way with the facility other than as a member of the committee, however, if the research facility has more than one Doctor of Veterinary Medicine (DVM), another DVM with delegated program responsibility may serve. The research facility shall establish the Committee for the purpose of evaluating the care, treatment, housing, and use of animals, and for certifying compliance with the Act by the research facility.

Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section, unless such store sells any animals to a research facility, an exhibitor, or a dealer (wholesale); or any person who does not sell, or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats, during any calendar year.

Department means the U.S. Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Regulatory Enforcement and Animal Care (REAC) or any other official of REAC to whom

authority has been delegated to act in his stead.

Dog means any live or dead dog (*Canis familiaris*) or any dog-hybrid cross.

Dwarf hamster means any species of hamster such as the Chinese and Armenian species whose adult body size is substantially less than that attained by the Syrian or Golden species of hamsters.

Endangered species means those species defined in the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and as it may be subsequently amended.

Euthanasia means the humane destruction of an animal accomplished by a method that produces rapid unconsciousness and subsequent death without evidence of pain or distress, or a method that utilizes anesthesia produced by an agent that causes painless loss of consciousness and subsequent death

Exhibitor means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows and any other fairs or exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary.

Exotic animal means any animal not identified in the definition of "animal" provided in this part that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad. This term specifically includes animals such as, but not limited to, lions, tigers, leopards, elephants, camels, antelope, anteaters, kangaroos, and water buffalo, and species of foreign domestic cattle, such as Ankole, Gayal, and Yak.

Farm animal means any domestic species of cattle, sheep, swine, goats, llamas, or horses, which are normally and have historically, been kept and raised on farms in the United States, and used or intended for use as food or fiber, or for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. This term also includes animals such as rabbits, mink, and chinchilla, when they are used solely for purposes of meat or fur, and animals such as horses and llamas when used solely as work and pack animals.

Federal agency means an Executive agency as such term is defined in section 105 of title 5, United States Code, and with respect to any research facility means the agency from which the research facility receives a Federal award for the conduct of research, experimentation, or testing involving the use of animals.

Federal award means any mechanism (including a grant, award, loan, contract, or cooperative agreement) under which Federal funds are used to support the conduct of research, experimentation, or testing, involving the use of animals. The permit system established under the authorities of the Endangered Species Act, the Marine Mammal Protection Act, and the Migratory Bird Treaty Act, are not considered to be Federal awards under the Animal Welfare Act.

Federal research facility means each department, agency, or instrumentality of the United States which uses live animals for research or experimentation.

Field study means any study conducted on free-living wild animals in their natural habitat, which does not involve an invasive procedure, and which does not harm or materially alter the behavior of the animals under study.

Handling means petting, feeding, watering, cleaning, manipulating, loading, crating, shifting, transferring, immobilizing, restraining, treating, training, working and moving, or any similar activity with respect to any animal.

Housing facility means any land, premises, shed, barn, building, trailer, or other structure or area housing or intended to house animals.

Hybrid cross means an animal resulting from the crossbreeding between two different species or types of animals. Crosses between wild animal species, such as lions and tigers, are considered to be wild animals. Crosses between wild animal species and domestic animals, such as dogs and wolves or buffalo and domestic cattle, are considered to be domestic animals.

Impervious surface means a surface that does not permit the absorption of fluids. Such surfaces are those that can be thoroughly and repeatedly cleaned and disinfected, will not retain odors, and from which fluids bead up and run off or can be removed without their being absorbed into the surface material.

Indoor housing facility means any structure or building with environmental controls housing or intended to house animals and meeting the following three requirements:

(1) It must be capable of controlling the temperature within the building or structure within the limits set forth for that species of animal, of maintaining humidity levels of 30 to 70 percent and of rapidly eliminating odors from within the building; and

(2) It must be an enclosure created by the continuous connection of a roof, floor, and walls (a shed or barn set on top of the ground does not have a continuous connection between the walls and the ground unless a foundation and floor are provided); and

(3) It must have at least one door for entry and exit that can be opened and closed (any windows or openings which provide natural light must be covered with a transparent material such as glass or hard plastic).

Intermediate handler means any person, including a department, agency, or instrumentality of the United States or of any State or local government (other than a dealer, research facility, exhibitor, any person excluded from the definition of a dealer, research facility, or exhibitor, an operator of an auction sale, or a carrier), who is engaged in any business in which he receives custody of animals in connection with their transportation in commerce.

Inspector means any person employed by the Department who is authorized to perform a function under the Act and the regulations in 9 CFR parts 1, 2, and 3.

Institutional official means the individual at a research facility who is authorized to legally commit on behalf of the research facility that the requirements of 9 CFR parts 1, 2, and 3 will be met.

Isolation in regard to marine mammals means the physical separation of animals to prevent contact and a separate, noncommon, water circulation and filtration system for the isolated animals.

Licensed veterinarian means a person who has graduated from an accredited school of veterinary medicine or has received equivalent formal education as determined by the Administrator, and who has a valid license to practice veterinary medicine in some State.

Licensee means any person licensed according to the provisions of the Act and the regulations in part 2 of this subchapter.

Major operative procedure means any surgical intervention that penetrates and exposes a body cavity or any procedure which produces permanent impairment of physical or physiological functions.

Minimum horizontal dimension (MHD) means the diameter of a circular pool of water, or in the case of a square, rectangle, oblong, or other shape pool.

the diameter of the largest circle that can be inserted within the confines of such a pool of water.

Mobile or traveling housing facility means a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes.

Nonconditioned animals means animals which have not been subjected to special care and treatment for sufficient time to stabilize, and where necessary, to improve their health.

Nonhuman primate means any nonhuman member of the highest order of mammals including prosimians, monkeys, and apes.

Operator of an auction sale means any person who is engaged in operating an auction at which animals are purchased or sold in commerce.

Outdoor housing facility means any structure, building, land, or premise, housing or intended to house animals, which does not meet the definition of any other type of housing facility provided in the regulations, and in which temperatures cannot be controlled within set limits.

Painful procedure as applied to any animal means any procedure that would reasonably be expected to cause more than slight or momentary pain or distress in a human being to which that procedure was applied, that is, pain in excess of that caused by injections or other minor procedures.

Paralytic drug means a drug which causes partial or complete loss of muscle contraction and which has no anesthetic or analgesic properties, so that the animal cannot move, but is completely aware of its surroundings and can feel pain.

Person means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.

Pet animal means any animal that has commonly been kept as a pet in family households in the United States, such as dogs, cats, guinea pigs, rabbits, and hamsters. This term excludes exotic animals and wild animals.

Positive physical contact means petting, stroking, or other touching, which is beneficial to the well-being of the animal.

Primary conveyance means the main method of transportation used to convey an animal from origin to destination, such as a motor vehicle, plane, ship, or train.

Primary enclosure means any structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or tether. In the case of animals restrained by a tether (e.g., dogs on chains), it includes the shelter and the area within reach of the tether.

Principal investigator means an employee of a research facility, or other person associated with a research facility, responsible for a proposal to conduct research and for the design and implementation of research involving animals.

Quorum means a majority of the Committee members.

Random source means dogs and cats obtained from animal pounds or shelters, auction sales, or from any person who did not breed and raise them on his or her premises.

Registrant means any research facility, carrier, intermediate handler, or exhibitor not required to be licensed under section 3 of the Act, registered pursuant to the provisions of the Act and the regulations in part 2 of this subchapter.

Research facility means any school (except an elementary or secondary school), institution, organization, or person that uses or intends to use live animals in research, tests, or experiments, and that (1) purchases or transports live animals in commerce, or (2) receives funds under a grant, award, loan, or contract from a department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, or experiments: *Provided*, That the Administrator may exempt, by regulation, any such school, institution, organization, or person that does not use or intend to use live dogs or cats, except those schools, institutions, organizations, or persons, which use substantial numbers (as determined by the Administrator) of live animals the principal function of which schools, institutions, organizations, or persons, is biomedical research or testing, when in the judgment of the Administrator, any such exemption does not vitiate the purpose of the Act.

Retail pet store means any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and coldblooded species. Such definition excludes—

(1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes;

(2) Establishments or persons exhibiting, selling, or offering to exhibit or sell any wild or exotic or other nonpet species of warmblooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.;

(3) Any establishment or person selling warmblooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes; and

(4) Any establishment wholesaling any animals (except birds, rats and mice).

(5) Any establishment exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises.

Sanitize means to make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to health.

Secretary means the Secretary of Agriculture of the United States or his representative who shall be an employee of the Department.

Sheltered housing facility means a housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building.

Standards means the requirements with respect to the humane housing, exhibition, handling, care, treatment, temperature, and transportation of animals by dealers, exhibitors research facilities, carriers, intermediate handlers, and operators of auction sales as set forth in part 3 of this subchapter.

State means a State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

Study area means any building room, area, enclosure, or other containment outside of a core facility or centrally designated or managed area in which animals are housed for more than 12 hours.

Transporting device means an interim vehicle or device, other than man, used to transport an animal between the primary conveyance and the terminal facility or in and around the terminal facility of a carrier or intermediate handler.

Transporting vehicle means any truck, car, trailer, airplane, ship, or railroad car used for transporting animals.

Weaned means that an animal has become accustomed to take solid food and has so done, without nursing, for a period of at least 5 days.

Wild animal means any animal which is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States, its

territories, or possessions. This term includes, but is not limited to, animals such as: Deer, skunk, opossum, raccoon, mink, armadillo, coyote, squirrel, fox, wolf.

Wild state means living in its original, natural condition; not domesticated.

Zoo means any park, building, cage, enclosure, or other structure or premise in which a live animal or animals are kept for public exhibition or viewing, regardless of compensation.

Done in Washington, DC, this 25th day of August, 1989.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-20425 Filed 8-30-89; 8:45 am]

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DEPARTMENT OF AGRICULTURE

9 CFR Parts 2 and 3

[Docket No. 89-131]

RIN 0579-AA18

Animal Welfare

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare regulations contained in 9 CFR part 2, to comply with and implement the amendments to the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) ("Act") contained in Pub. L. 99-198, "The Food Security Act of 1985," enacted December 23, 1985, and to reflect our experience in administering the regulations. In addition to rewriting the regulations to facilitate compliance by making them easier to understand, we are adding a new subpart which pertains exclusively to research facilities, and which consolidates all of the regulations in part 2 applicable to research facilities. The revised regulations also provide requirements for registration and licensing under the Act, adequate veterinary care, handling, holding facilities, identification of animals, and recordkeeping. The revised regulations are necessary to clarify the responsibilities of regulated persons under the Act, as amended, and to promote animal welfare.

DATES: This final rule shall become effective October 30, 1989; however, the portions of the rule which concern or relate to information collection and recordkeeping will become effective October 30, 1989, upon approval by the Office of Management and Budget (OMB). The information collection requirements of this final rule have been submitted to OMB for review and approval. The Department has requested that OMB conclude its review no later than October 30, 1989. If any portion is disapproved, notice of disapproval will be published in the **Federal Register** prior to that date.

FOR FURTHER INFORMATION CONTACT: Dr. Dale F. Schwindaman, REAC, APHIS, USDA, Room 206, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6491.

SUPPLEMENTARY INFORMATION:

Background

This final rule revises the regulations contained in 9 CFR 2.1 through 2.130. It is the result of an intensive effort that began in 1985 when Congress amended the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) (the Act) in Public Law 99-198, "The Food Security Act of 1985," and directed the Secretary of Agriculture to promulgate regulations governing the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors, including requirements for exercise of dogs and a physical environment adequate to promote the psychological well-being of nonhuman primates. The final rule reflects APHIS's many years of experience in enforcing the Act and the Animal Welfare regulations. We considered many thousands of public comments in deciding upon the content of the final rule. Our ongoing consultation with the U.S. Department of Health and Human Services, as well as other Federal agencies concerned with animal welfare, also contributed significantly to determining how best to fulfill our statutory mandate.

Due to the length and complexity of this document, it is broken down into general headings and specific subheadings where appropriate, to assist the reader. The supplementary information begins with a brief history of this rule-making. Next we describe the changes we have made in the final rule, both in form and in content. These changes are based upon our reconsideration of the proposed regulations in light of the comments we received and our consultation with other Federal agencies. Part 2 has been reorganized, in part, in this final rule, so that all requirements imposed upon research facilities are contained in one subpart of the regulations. We then discuss, in detail, how the requirements imposed upon research facilities under the final rule differ substantively from the two previous proposals, and how they do not. We also describe other changes we are making to part 2 based upon our reconsideration of those provisions. Our response to the comments we received in response to the March 15, 1989 revised proposal follows. Lastly, we address the concerns raised in the public comment letters and by Federal agencies regarding our economic assessments of the cost of implementing the proposed regulations.

Proposed Rules

The Animal Welfare regulations are contained in Title 9 of the Code of Federal Regulations, chapter I, subchapter A—Animal Welfare, parts 1, 2, and 3 (the regulations). Part 1 provides definitions of the terms used in parts 2 and 3. Part 2 sets forth the administrative and institutional responsibilities of regulated persons under the Act, and part 3 provides specifications for the humane handling, care, treatment, and transportation of animals covered by the Act by regulated entities.

In two documents published in the **Federal Register**, on March 31, 1987 (52 FR 10292-10298 and 52 FR 10298-10322, respectively), we proposed to revise parts 1 and 2 of the Animal Welfare regulations. In addition to the definitions of terms, the proposed amendments pertained to licensing of dealers and exhibitors, and registration of intermediate handlers, research facilities, and carriers. The proposed regulations also set forth requirements applicable to all regulated entities for recordkeeping and identification of animals, holding periods and facilities, inspections, adequate veterinary care, and requirements for Institutional Animal Care and Use Committees as agents of the research facilities. These changes were proposed under the authority of the Animal Welfare Act, as amended by Congress in 1985. At that time, we did not publish a proposed rule to amend part 3—"Standards" of the regulations.

We solicited comments concerning the proposal for a 60-day period ending June 1, 1987. The comment period was twice extended and ended on August 27, 1987. A total of 7,857 comments were timely received and considered. Many of the comments we received stated that it was difficult to comment upon the proposals to amend parts 1 and 2 of the regulations independently of our proposal to amend the standards in part 3. We have maintained that upon their publication as final rules, parts 1 and 2 of the regulations can be fully implemented with the existing standards in part 3. In response to the comments, we decided to publish revised proposals to amend parts 1 and 2 along with our proposed rule to amend part 3, to assist the public in reviewing the proposed standards in part 3 and to afford the public an opportunity to comment on the interrelationship of the definitions and regulations in parts 1 and 2 with the proposed standards in part 3. Accordingly, on March 15, 1989, we published in the **Federal Register** three documents: Docket No. 88–013, a proposed rule to amend part 1—"Definition of Terms," (54 FR 10822–10835); Docket No. 88–014, a proposed rule to amend part 2—"Regulations," (54 FR 10835–10897); and Docket No. 87–004, a proposed rule to amend subparts A through D of part 3—"Standards," (54 FR 10897–10954).

The revised proposals published in March, 1989, were prepared with the benefit of the public's comments and reflected our thinking at that time of how best to carry out our statutory mandate and our animal welfare objectives. Throughout this rule-making process, however, we have continued our consideration of alternative means to implement the complex regulatory scheme required by the Animal Welfare Act, as amended, and addressed by the commenters in response to our initial proposal. Many of the comments we received in response to our initial proposal concerned the administrative and economic burdens that the regulations would impose on regulated persons. These concerns were repeated in many comments submitted for our consideration following publication of the March 15, 1989 revised proposal.

We also continued our consultation, in accordance with the requirements of the Act (7 U.S.C. 2145), with the U.S. Department of Health and Human Services (HHS) and members of the Interagency Research Animal Committee (IRAC), a committee comprising representatives of Federal agencies concerned with animal welfare. Together, we evaluated different means of reducing the administrative and recordkeeping burdens the proposed rules imposed upon regulated entities without sacrificing our underlying objectives. The regulatory and economic burdens imposed upon the regulated public in this final rule have been substantially reduced by harmonizing the requirements contained in part 2 for research institutions with those imposed upon the large number of research facilities receiving funding under the Health Research Extension Act of 1985, Public Law 99–158, wherever consistent with our statutory mandate.

We believe this final rule provides a responsible regulatory response to our statutory mandate. It reflects our consideration of the interrelationships between parts 1 and 2 and the standards in part 3 suggested to us in the comments we received. We believe parts 1 and 2 can now be readily implemented while we continue to review the public's comments and consider alternatives concerning the standards that should be included in part 3.

Reorganization of Part 2

The 1985 amendments to the Act affect all regulated entities. However, the most wide-ranging impact is on research facilities. As a result of the amendments, additional institutional responsibilities are imposed on the research community, including: The establishment of institutional animal committees with inspection and reporting duties; providing adequate veterinary care; training of personnel in animal care and treatment; and assurances that animal pain and distress are minimized and that alternatives to painful procedures are considered. Both of our proposals to amend part 2 contained a separate subpart C, applicable only to research facilities, which set forth the duties of the facilities' Institutional Animal Care and Use Committee (IACUC) and many institutional responsibilities. In addition, subpart B set forth the requirements and procedures for research facilities to register under the Act, and subpart D—"Attending Veterinarian and Adequate Veterinary Care," imposed specific requirements on research facilities regarding the provision of veterinary care, which were in addition to the requirements set forth for all licensed or registered entities. Other regulations in the proposed rules contained separate requirements for research facilities as well, such as requirements for identification of animals, recordkeeping, and holding periods.

We have determined that placing all of these requirements in one subpart of the regulations would assist research facilities in understanding their responsibilities under the regulations, and would therefore facilitate their compliance. Accordingly, subpart C is renamed, "Research facilities," in the final rule. It consists of all of the regulations in part 2 that are applicable to research facilities. References to research facilities that were contained in other subparts of part 2 in the revised proposal are removed. Although this results in some duplication in the regulations in cases where an identical provision applies to other regulated entities, we believe it is appropriate to consolidate the many research facility requirements in one discrete subpart to facilitate compliance.

The remaining subparts of part 2 remain substantially as proposed in the revised proposal for the reasons set forth in that document and as discussed below under the general headings, "Other changes to part 2" and "Public comments." Certain sections and paragraphs have been redesignated as a result of the reorganization of research facility requirements.

Subpart C—Research Facilities

Many of the regulations pertaining to research facilities in the revised proposal remain unchanged in the final rule except for their location in the rule and their numerical designation. Others were modified to harmonize them with the guidelines already in place at federally funded institutions, as suggested by many commenters and other Federal agencies. Those facilities comply with the guidelines set forth in the Public Health Service Policy on Humane Care and Use of Laboratory Animals (PHS Policy). The modified provisions, as well as those containing more significant departures from the 1987 and 1989 proposals, are discussed below, in the order in which they appear in the final rule.

The following chart provides the derivation of the sections contained in subpart C, paragraph by paragraph, to assist the reader. The sections and paragraphs listed under the heading, "Final rule" were derived either conceptually or specifically from the corresponding sections and paragraphs listed under the heading, "Revised proposed rule."

Derivation Table

Final rule	Revised proposed rule
§ 2.30(a)(1)	§ 2.25(a).
§ 2.30(a)(2)	§ 2.25(b).
§ 2.30(a)(3)	§ 2.25(c).
§ 2.30(b)	§ 2.26.
§ 2.30(c)(1)	§ 2.27(a).
§ 2.30(c)(1)(i)	§ 2.27(b)(1).
§ 2.30(c)(1)(ii)	§ 2.27(b)(2).
§ 2.31(a)	§ 2.35(a)(1), (4).
§ 2.31(b)(1)	§ 2.35(a)(2).
§ 2.31(b)(2)	§ 2.35(a)(3).
§ 2.31(b)(3)(i)	§ 2.35(a)(5)(i).
§ 2.31(b)(3)(ii)	§ 2.35(a)(5)(ii).
§ 2.31(b)(4)	§ 2.35(a)(6).
§ 2.31(c)(1)	
§ 2.31(c)(2)	§ 2.35(b)(1)(i), (ii), (iii).
§ 2.31(c)(3)	§ 2.35(b)(1)(i), (v), (b)(2)(i), (ii)(A).
§ 2.31(c)(4)	§ 2.30(j).
§ 2.31(c)(5)	
§ 2.31(c)(6)	§ 2.35(b)(3).
§ 2.31(c)(7)	
§ 2.31(c)(8)	§ 2.35(b)(3)(i).
§ 2.31(d)(1)	§§ 2.30(a)(4), 2.30(g), 2.35(b)(3)(i).
§ 2.31(d)(1)(i)	§ 2.35(b)(3)(ii)(A).
§ 2.31(d)(1)(ii)	§ 2.30(d), (e)(1).
§ 2.31(d)(1)(iii)	§ 2.30(e)(1)(ii).
§ 2.31(d)(1)(iv)(A)	§ 2.30(e)(3), (4).
§ 2.31(d)(1)(iv)(B)	§ 2.30(e)(2).
§ 2.31(d)(1)(iv)(C)	§ 2.30(e)(9).
§ 2.31(d)(1)(v)	
§ 2.31(d)(1)(vi)	§§ 2.30(a)(4), 2.40(c)(3).
§ 2.31(d)(1)(vii)	§§ 2.35(b)(3)(ii)(C), 2.40(d).
§ 2.31(d)(1)(viii)	§ 2.30(e)(6), (8).
§ 2.31(d)(1)(ix)	§§ 2.30(e)(6), 2.35(b)(3)(i), (ii)(C).
§ 2.31(d)(1)(x)	§§ 2.30(f), 2.35(b)(3)(ii)(D).
§ 2.31(d)(1)(x)(A)	§ 2.30(f)(1)(i).
§ 2.31(d)(1)(x)(B)	§ 2.30(f)(1)(iv), (v).
§ 2.31(d)(1)(x)(C)	§ 2.30(f)(1)(vi).
§ 2.31(d)(1)(xi)	§§ 1.1, 2.40(b).
§ 2.31(d)(2)	§ 2.35(b)(3)(i).
§ 2.31(d)(3)	
§ 2.31(d)(4)	§ 2.35(b)(2)(i)(D)(3).
§ 2.31(d)(5)	
§ 2.31(d)(6)	§ 2.35(b)(3)(i).
§ 2.31(d)(7)	
§ 2.31(d)(8)	
§ 2.31(e)(1)	§ 2.31
§ 2.31(e)(2)	§ 2.30(d).
§ 2.31(e)(3)	§ 1.1.
§ 2.31(e)(4)	§ 2.35(b)(3)(ii)(A), (E).
§ 2.31(e)(5)	§ 1 1.
§ 2.32(a)	§ 2.30(i)(1).
§ 2.32(b)	§ 2.30(i)(3).
§ 2.32(c)(1)	§ 2.30(i)(4)(i).
§ 2.32(c)(1)(i)	§ 2.30(i)(4)(v).
§ 2.32(c)(1)(ii)	§ 2.30(i)(4)(vii).
§ 2.32(c)(1)(iii)	§ 2.30(i)(4)(viii).
§ 2.32(c)(1)(iv)	§ 2.30(i)(4)(x).
§ 2.32(c)(2)	§ 2.30(i)(4)(ii).
§ 2.32(c)(3)	§ 2:30(i)(4)(ix).
§ 2.32(c)(4)	§ 2.30(i)(4)(iv).
§ 2.32(c)(5)	§ 2.30(i)(4)(iii).
§ 2.32(c)(5)(i)	§ 2.30(i)(4)(vii).
§ 2.32(c)(5)(ii)	§ 2.30(i)(4)(ii)
§ 2.32(c)(5)(iii)	§ 2.30(e)(1)(ii), (i)(4)(ii).
§ 2.32(c)(5)(iv)	§ 2.30(i)(4)(vi).
§ 2.33(a)	§ 2.40(a).
§ 2.33(a)(1)	§ 2.40(c).
§ 2.33(a)(2)	§§ 2.30, 2.40(e).
§ 2.33(a)(3)	§ 2.40(e)(1).
§ 2.33(b)(1)	§ 2.40(b).
§ 2.33(b)(2)	§ 2.40(c)(3)(iii), (d).
§ 2.33(b)(3)	§ 2.40(d).
§ 2.33(b)(4)	§ 2.40(c)(3)(iii).
§ 2.33(b)(5)	§ 2.40(c)(3)(iii).
§ 2.35(a)(1)	§ 2.35(b)(2)(i), (ii).
§ 2.35(a)(2)	§ 2.30(g).
§ 2.35(a)(3)	§ 2.35(b)(2)(i).
§ 2.35(b)	§ 2.76(a).
§ 2.35(b)(1)–(7)	§ 2.76(a)(1)–(7).
§ 2.35(c)(1)–(3)	§ 2.76(b)(1)–(3).
§ 2.35(d)(1)	§ 2.76(c)(1).
§ 2.35(d)(2)	§ 2.76(c)(2).
§ 2.35(e)	§ 2.76(d).
§ 2.35(f)	§§ 2.30(1), (m), 2.35(b)(2)(i), 2.81.
§ 2.36(a)	§ 2.31(a).
§ 2.36(b)(1)–(8)	§ 2.31(b)(1)–(8).
§ 2.37(a)	§ 2.30(k).
§ 2.38(a)	§ 2.125.
§ 2.38(b)(1)	§ 2.126(a).
§ 2.38(b)(2)	
§ 2.38(b)(3)	§ 2.126(b).
§ 2.38(c)	§ 2.127.
§ 2.38(d)	§ 2.128.
§ 2.38(e)	§ 2.129.
§ 2.38(f)	§ 2.131(a).
§ 2.38(g)(1)	§ 2.50(e)(1).
§ 2.38(g)(2)	§ 2.50(e)(2).
§ 2.38(g)(3)	§ 2.50(d).
§ 2.38(g)(4)	§ 2.51(a).
§ 2.38(g)(5)	§ 2.51(b).
§ 2.38(g)(6)	§§ 2.52(c), 2.53.
§ 2.38(g)(7)	§ 2.52.
§ 2.38(g)(8)	§ 2.54.
§ 2.38(g)(9)	§ 2.55(a).
§ 2.38(g)(10)	§ 2.55(b).
§ 2.38(g)(11)	§ 2.55(c).
§ 2.38(g)(12)	§ 2.55(d).
§ 2.38(h)	§ 2.79(a), (b), (d).
§ 2.38(i)	§ 2.102(b).
§ 2.38(j)	§ 2.101(c).
§ 2.38(k)(1)	§ 2.100.
§ 2.38(k)(2)	§ 2.132(d).
§ 2.38(k)(3)	§ 2.60.

Section 2.30 Registration

Section 2.30 of the final rule sets forth registration requirements and procedures for research facilities. Except for replacement of the term, "Area Veterinarian in Charge," with "APHIS, REAC Sector Supervisor," the registration requirements remain unchanged from the March 1989 proposal. This change reflects an internal agency reorganization within the Animal and Plant Health Inspection Service (APHIS) which created the Regulatory Enforcement and Animal Care organizational unit (REAC). REAC is charged with responsibility for administering and enforcing the Animal Welfare Act and regulations. This term is defined in the final rule to amend part 1—"Definition of Terms," a related document published elsewhere in this issue of the **Federal Register**.

Section 2.31 Institutional Animal Care and Use Committee (IACUC)

As explained in detail in the revised proposal, we received many comments from the research community expressing concern that the Institutional Animal Care and Use Committee (IACUC or Committee) and attending veterinarian were allocated too much responsibility and authority, so that they functioned, in effect, as enforcement agents for APHIS. In response to those comments, we revised the proposed rule by reorganizing the provisions of §§ 2.30 and 2.35 to clarify that the duties performed by the IACUC and the attending veterinarian to ensure compliance with the regulations are ultimately the responsibility of the research facility, and that the research facility must provide them with adequate authority to carry out their functions.

Despite these modifications, it has become evident to us, through our further consideration of the comments received and continued consultation with HHS, that research facilities should be accorded greater flexibility in determining how best to ensure compliance. Research facilities vary greatly in size, in the number of animals they handle, and in the number of personnel they employ. Due to these variations, rigid administrative requirements would be inappropriate for all research facilities, and they should be permitted to develop procedures that satisfy the requirements of the Act and correspond to their operations. We agree that a more flexible approach will achieve the Act's objectives at lower cost to research facilities, many of which already maintain internal review and reporting mechanisms, such as those required under the PHS Policy, than would be incurred under the revised proposal. The mechanisms employed must allow us to inspect for and verify compliance, however, as under the proposed rules. We have therefore modified the provisions regulating the manner in which a research facility, through its Committee, carries out its statutorily assigned duties so that research facilities have the necessary flexibility to develop internal procedures which are best suited for their particular needs. Research facilities are ultimately responsible for complying with the Act and regulations, and must ensure that the procedures they adopt, including those of the Committee, are an effective means of satisfying their obligations.

Changes reflecting greater flexibility, as well as other modifications to the Committee's functions, are explained in detail in this section, in the order in which they appear in the final rule. Due to the redesignation of sections and paragraphs in the final rule, we have included the source paragraph from which the final rule is derived, where appropriate, to assist the reader. The source section number refers to the corresponding provision in our initial proposal or the revised proposed rule of March 1989.

Committee Membership

Section 2.31(a) (revised proposal § 2.30(b)) of the final rule requires that the Chief Executive Officer of the research facility, rather than the "research facility" itself, as required in the proposed rule and revised proposal, appoint an Institutional Animal Care and Use Committee. This change is made to more accurately reflect the statutory language (7 U.S.C. 2143(b)(1)).

We are revising the requirement that the attending veterinarian for the facility be a member of the Committee. Section 2.33(a)(3) of the final rule requires that the attending veterinarian for the facility be a voting member of the Committee, except that facilities that employ more than one Doctor of Veterinary Medicine (DVM) may use another DVM with delegated program responsibility as the

DVM member of the Committee. Accordingly, § 2.31(b)(3)(i) of the final rule (revised proposal § 2.35(a)(5)(i)) is revised to provide that at least one member of the Committee shall be a Doctor of Veterinary Medicine with training or experience in laboratory animal science and medicine. This change continues to fully satisfy the provisions of the Act, as amended (7 U.S.C. 2143(b)(1)(A)), and is consistent with the PHS Policy. It may in fact be preferable at larger institutions where the attending veterinarian's clinical responsibilities are a full-time concern. At many larger institutions, the volume of animal subjects and animal sites under the Committee's purview results in the veterinarian member of the Committee filling an administrative, rather than clinical, role. We believe that a Doctor of Veterinary Medicine, other than the attending veterinarian, can be an appropriate representative for animal care and medical concerns as long as he or she has training or experience in laboratory animal science and medicine.

The final rule does not contain a requirement that the research facility maintain an up-to-date list of Committee members indicating their degrees, position, and qualifications. We had required that this information be maintained by the attending veterinarian and available to us for inspection (revised proposal § 2.35(a)(7)). This information is available to us through a variety of sources and through the Chief Executive Officer of the research facility who is responsible for appointing qualified members to the Committee. Therefore, this recordkeeping requirement can be removed without affecting the ready availability to us of this information.

Committee Functions

The final rule sets forth the functions that the Committee shall perform, "as an agent of the research facility" (final rule § 2.31(c)). We have added this language to allay the commenters' concerns that under the proposed rules, the Committee would operate as an enforcement agent for APHIS. It was never our intent that the Committee carry out APHIS's regulatory responsibilities. Rather, the Committee is intended to function in an oversight and clearing-house capacity to assist the facility in maintaining compliance with the Act and regulations. As stated in the supplementary information accompanying the revised proposal, it is "our intent that institutions act through [the Committee and attending veterinarian] while remaining ultimately responsible." (54 FR 10838)

1. *Semi-annual review and evaluation.* We are retaining the requirement in the final rule for Committee review and evaluation at least once every 6 months of activities involving animals (final rule §§ 2.31(c) (1) and (2)). The revised proposal would require, as part of the inspection of all animal study areas and facilities, that the Committee review "all practices and procedures involving pain to animals" and "the condition of all animals, in order to ensure compliance with the provisions of the Act to minimize pain and distress to the animals." (Revised proposal § 2.35(b)(1)(i) (A) and (B)). We have simplified the final rule by requiring that the Committee inspect all of the research facility's animal facilities, including animal study areas (*see* companion docket 89–130, published elsewhere in this issue of the **Federal Register** for the definition of "study area"), and that it review the facility's program for humane care and use of animals. The requirement that the Committee use title 9 of the Code of Federal Regulations, chapter I, subchapter A—Animal Welfare, as the basis for its inspection, is continued in the final rule. There is no need to specify that the twice yearly review include a review of painful procedures, since they are necessarily subsumed in the reviews of a facility's program for humane care and use of animals and of all animal facilities and study areas. Specific reference to painful procedures and the condition of animals was based upon the language of the Act and its emphasis on minimizing animal pain and distress (7 U.S.C. 2143(b)(3)). However, as all animal facilities and study areas must be inspected at least once every 6 months under the final rule, we believe this simplification of the regulations accomplishes the same result. In addition, the Committee's review every 6 months of the facility's program for humane care and use of animals will include review of provisions requiring that pain and distress are minimized, and Committee inspection will determine whether the activities are in compliance.

Revised proposal § 2.35(b)(1)(iii) would allow research facilities to apply to the Administrator for an exemption from the twice yearly Committee inspection requirements for animal study areas where the animals are studied in their natural environment and the study area prohibits easy access. Members of the IRAC stated that the requirement to apply for an exemption for field studies would be burdensome, and that as a practical matter, it would be impossible to hold field sites to the same regulatory standards and requirements as dedicated surgical facilities and laboratories.

We agree that it may be impractical and burdensome for research facilities to send their Committees to field sites to conduct inspections and observe subject animals in their natural habitat. In some instances, it may be impossible for the Committee members to observe the condition of the animals if the animals' instincts are to avoid being seen. The Animal Welfare Act, as amended, is primarily intended to promote the humane care and treatment of animals used in biomedical research under captive or laboratory conditions. Subject animals that are studied in their natural habitat would not require the same level of protection as captive animals. We are therefore providing in § 2.31(c)(2) of the final rule that research facilities may determine whether their Committee will inspect animal areas containing free-living wild animals in their natural habitat, and we are deleting the requirement that research facilities apply to the Administrator for an exemption (revised proposal § 2.35(b)(1)(iii)). We are exempting inspection of such areas in the regulations rather than requiring an application for an exemption. However, animals studied at field sites in research activities involving some form of surgical intervention or invasive procedure, or that harm or materially alter their behavior, must be conducted in accordance with the regulations, and the Committee must review any such proposed activity. Field studies, as defined in part 1 of the regulations (*see* companion docket No. 89–130, published elsewhere in this issue of the **Federal Register**), are exempt from Committee review.

Committee inspection reports must be submitted to the Institutional Official under the final rule (§ 2.31(c)(3)). The revised proposal would require that the Committee also provide a copy of its report to the administrative unit representative (revised proposal § 2.35(b)(2)(ii)(B)). The research facility is responsible for ensuring compliance with the regulations and for correcting deficiencies. For this reason, we are removing the proposed additional requirement in the final rule. The research facility is left to determine what additional administrative reporting steps are necessary for it to ensure compliance, and may include providing a copy of the Committee report to the administrative unit representative as part of its internal procedures.

In response to numerous comments we received following publication of the March 1987 proposal, we revised the proposed regulations to allow greater flexibility to Committees in performing the requisite twice yearly inspections. The revised proposal would allow subcommittees to perform inspections, as provided under the PHS Policy, however, we added the requirement that all inspections be completed within 30 days of commencing the first inspection.

After further consideration of those comments and further consultation with HHS, we have decided that even greater flexibility is warranted so that the Committee, as an agent of the facility, can determine the best means of conducting and completing the necessary evaluations, based upon the particular circumstances of the research facility. Some institutions maintain dozens or even hundreds of animal study areas and hundreds of animals. At those institutions, Committee responsibilities may require nearly all of the Committee members' time, even though membership on the Committee may be in addition to, and not instead of, their daily work responsibilities.

The Act specifies that semi-annual inspection is one of the principal formal actions required of the Committee. It also specifies that a quorum of the Committee is required for all such formal actions (7 U.S.C. 2143(b)(2)). We believe it is appropriate to allow the Committee to determine its own methodology and timetable for conducting inspections and reviews subject to the requirements of the Act. The Committee must conduct their inspections at least once every 6 months, however, and their reports will be subject to examination by APHIS upon inspection. In this manner, we will be able to determine whether the means selected by the Committee for the conduct of twice yearly evaluations meets the requirements of the statute and the regulations. The research facilities remain ultimately responsible for ensuring compliance with the statute and regulations, and, therefore, must ensure that their Committees are performing their statutory and regulatory duties properly.

In our revised proposal, we sought to satisfy the Act's requirements through the use of subcommittees which would present their findings to a quorum of the Committee for approval. In addition to allowing the IACUC to appoint subcommittees to conduct evaluations, under the terms of the final rule the Committee will also be permitted the option of inviting *ad hoc* consultants to assist in conducting evaluations. Committees may find that using consultants to assist them in fulfilling their responsibilities is beneficial where the consultants have particular knowledge or expertise not otherwise represented on the Committee.

As we noted above, the semi-annual inspection is a vital formal action of the Committee, and the Committee, as an agent for the research facility, is responsible for the conduct of the inspection and the contents of the report as provided in § 2.31(c)(3) of the final rule. A majority of Committee members must review and sign the report, and it must include any minority views. We believe the final rule provides the Committee with additional flexibility to determine the best means of satisfying the statutory requirement. We have modified the reporting requirements in the final rule to allow the Committee to update its report every 6 months (final rule § 2.31(c)(3)). This provision will prove useful for those activities that are ongoing and therefore are repeatedly inspected, and will relieve some of the reporting burden that would be imposed upon the Committee under the revised proposed rule.

The proposed rules would require that the Committee's inspection report contain certain information that is not specifically mandated by the Act. We are revising the reporting requirements in the final rule so that they satisfy both section 13(b)(4) of the Act (7 U.S.C. 2143(b)(4)) and the PHS Policy requirements. Institutions that perform federally funded research under the Health Research Extension Act are already subject to the Committee reporting requirements of the PHS Policy and therefore will not have increased reporting requirements.

The modifications we are making concerning the content of the Committee's report do not affect the substantive elements of the report that are critical for ensuring compliance with the regulations. Section 2.31(c)(3) of the final rule requires that the Committee report describe the nature and extent of the research facility's adherence to the regulations; identify specifically any departure from the regulations and state the reasons for each departure; distinguish significant deficiencies (those that are or may be a threat to the health or safety of the animals) from minor ones, and set forth a reasonable and specific plan and schedule, including dates, for correcting each deficiency. Failure to adhere to the plan and schedule for remedying significant deficiencies shall be reported in writing by the Committee to APHIS and to any Federal funding agency through the research facility's Institutional Official. As under the revised proposal (revised proposal § 2.35(b)(2)(i)(B)), the Committee's report must be signed by a majority of Committee members and must include any minority views of the Committee. We believe the report will be an effective tool for providing information to both the research facilities and to APHIS, and that providing uniformity in reporting requirements for institutions receiving Federal funding will reduce their administrative and reporting requirements.

We are removing the requirement contained in revised proposal § 2.35(b)(2)(i) that the Committee must file its inspection report within 10 business days of completing its inspection of all animal areas. Upon reconsideration of this requirement we have determined that it may not be practical or feasible at large institutions with many animal study areas or at research facilities having more than 3 Committee members, since it may not be possible for those facilities to consolidate all the required information into one report within 10 days. Furthermore, at many institutions the IACUC meets once each month to consider Committee business, and their scheduled meeting may not coincide with a rigid 10-day requirement. In the revised proposal of March 1989, we explained that the 10-day time period was desirable to ensure that inspection information is kept on file and current. The IACUC, as an agent of the facility, is responsible for the evaluation and report; however, research facilities are responsible for ensuring compliance with the Act and the regulations at all times, and for ensuring that the twice yearly evaluations are properly conducted. Accordingly, if upon inspection, we determine that a Committee has not conducted its evaluations and prepared evaluation reports as required by the regulations, we could allege, in an enforcement proceeding, that the research facility is in violation of the regulations. We believe that the provisions contained in the final rule concerning the Committee's reporting requirements will satisfy the statutory objectives and ensure compliance with the Act and regulations.

The proposed requirement for deficiency notification reports and the 30-day correction period are removed from the final rule. We received numerous comments objecting to this requirement, as originally proposed in the March 1987 proposal. Many commenters stated that a fixed 30-day correction period was inappropriate. We revised this requirement in the March

1989 revised proposal to require that notification of a deficiency be reported to the CEO or institutional official, since the research facility is responsible for assuring compliance, within 1 business day of discovery, and to clarify that the 30-day period runs from notification. We also added a 5-day notification period following expiration of the 30-day correction period for notifying APHIS and any Federal funding agency if the deficiency remained uncorrected. Finally, as under the PHS Policy, the revised proposal would allow the Committee to suspend an activity by withdrawing its approval due to noncompliance with an approved activity, formerly referred to as the animal care and use procedure or ACUP.

The rationale underlying the proposed requirements for prompt notification to the facility, the fixed 30-day correction period, and prompt notification to APHIS in the event of noncorrection, was to help ensure timely relief for animals found suffering due to noncompliance with the regulations. We have continued to explore alternative means of assuring that deficiencies are corrected within a reasonable and appropriate timeframe, and have pursued this issue with other Federal agencies concerned with animal welfare. Members of the IRAC were concerned that the 30-day correction period may not be uniformly appropriate for all deficiencies. They stated that the Committee, having observed the deficiency, is in the best position to determine the appropriate amount of time that should be allowed for correcting any deficiency found during an inspection. We agree with the IRAC suggestion and are revising the final rule to provide that the Committee shall set forth in its evaluation report a specific plan and schedule, with dates, for correcting deficiencies. We are maintaining the requirement that uncorrected significant deficiencies must be reported, in writing, to APHIS and funding Federal agencies; however, we are revising the regulations to allow the Committee 15 days to notify the Administrator and any funding Federal agency so that the Committee will have sufficient time to complete the necessary paperwork. We are also maintaining the Committee's authority to suspend an activity for noncompliance. Upon implementation, these provisions will provide an effective mechanism for ensuring that suffering animals are given prompt relief.

Research facilities will continue to be responsible for ensuring that corrective action is taken in a timely manner, in accordance with their responsibility for compliance with the Act and the regulations. Committee reports must be submitted to the Institutional Official under § 2.31(c)(3) of the final rule, and must be maintained by the research facility. They must also be available to APHIS upon request. This will allow us to review the timeframes set by the Committee for correcting deficiencies, and to determine whether they are reasonable and appropriate.

2. *Review and investigation of complaints.* We initially proposed in March 1987, that the Committee must establish a reporting procedure whereby laboratory or research facility personnel or employees could report violations of the Act or regulations, including problems, deviations, or deficiencies in animal care or use. We revised this requirement in § 2.30(j) of the March 1989 revised proposal by placing this responsibility on the research facilities, since they are ultimately responsible for compliance.

We are removing this requirement in the final rule, as explained in greater detail below, and are requiring that research facilities provide training to personnel in methods of reporting deficiencies (7 U.S.C. 2143(d)(4)). The requirement for this training is contained in § 2.32(c)(4) of the final regulations.

We are continuing to require that the Committee, as an agent of the research facility, review, and, if warranted, investigate concerns involving the care and use of animals at the research facility (final rule § 2.31(c)(4); revised proposal § 2.30(j)). We are expanding this requirement, however, to include review, and if warranted, investigation of complaints received from the public, in addition to those received from facility personnel and employees. In amending the Act, Congress acknowledged the importance of public concern for the care and treatment of laboratory animals (7 U.S.C. 2131). We believe that it is important and appropriate that research facilities be responsive to the public, and consider complaints made directly to a facility.

We are removing the requirement that the Committee prepare and file a formal report of these investigations at a central location at the research facility, as required by revised proposal § 2.30(j). The research facility must maintain documentation of the Committees' reviews and investigations conducted in response to complaints received in order to demonstrate its compliance with these regulations, however. In the final rule, the research facility may determine the form and method of such documentation.

3. *Recommendations.* We are adding to the final rule a provision that will require that the Committee make recommendations to the Institutional Offical regarding any aspect of the research facility's animal program, facilities, or personnel training, as part of the Committee's functions (final rule § 2.31(c)(5)). We believe it is appropriate to impose this responsibility upon the Committee, as an agent of the facility, since it conducts first-hand observation of the implementation of the research facility's animal care program. The research facility is responsible for implementing Committee recommendations in order to bring the facility into compliance with the Act and regulations.

4. *Review and approval of proposed activities.* Under the final rule, the Committee is authorized to review and approve, require modifications in, or withhold approval of those components of proposed activities involving animals that are related to the care and use of animals (final rule § 2.31(c)(6)) and significant changes to those activities (final rule § 2.31(c)(7)). These provisions incorporate the prohibition contained in revised proposal § 2.35(b)(3)(i) which states that "[n]o research, testing, or teaching involving warm-blooded animals covered by the Act performed by a facility's personnel at any location shall commence prior to approval of the [animal care and use procedure] of the research, testing, or teaching by the Committee * * *." The language of the final rule reflects that used in the PHS Policy in order to harmonize our mutual requirements, however its substantive import remains unchanged. As explained in greater detail in docket No. 89–130, part 1—"Definition of Terms," the term "activity" is used in the final rule instead of "animal care and use procedure" or "ACUP" to conform the term with that used in the PHS Policy.

Following our initial proposal, we received numerous comments objecting to the requirement for Committee review of animal care and use procedures as exceeding our statutory authority. For the reasons set forth in the supplementary information accompanying the revised proposal (54 FR 10848–10849), we continue to believe that ample statutory authority exists for requiring Committee review of all proposed activities for the care and use of animals, and that such review is necessary in order to fulfill the intent of the Act. Committee review and approval is also required under the PHS Policy for all research facilities receiving funds

under the Health Research Extension Act of 1985. We believe that this requirement should be uniformly applied to all research facilities, as Congress intended.

Our initial proposal of March 1987, would require Committee approval of all painful procedures. As part of the approval process, the Committee would be required to ensure that a proposed activity (referred to as a "protocol" in that document) contained provisions for acceptable and proper animal care, treatment, practices, methods, and use of pain-relieving drugs (initial proposal § 2.35(b)(3)(ii)). Committee approval would be conditioned on the "protocol" containing certain measures and precautions to minimize animal pain and distress unless scientifically necessary and justified in the proposal, and to assure adequate veterinary care. The Committee would be required to obtain written assurances from the principal investigator that alternative procedures were considered and that the experiment was not unnecessarily duplicative (initial proposal § 2.35(b)(3)(iii)–(v)).

The Committee would also be responsible under the initial proposal for the following: (1) Requiring that the principal investigator consult with the attending veterinarian in planning a painful procedure and during it; (2) requiring that the principal investigator provide for the use of pain-relieving drugs in accordance with the attending veterinarian's recommendations; (3) requiring that pre-surgical and post-surgical care be provided in accordance with the attending veterinarian's instructions and veterinary medical and nursing procedures; (4) requiring that all aseptic survival surgeries be performed under aseptic conditions by trained personnel; (5) prohibiting the use of paralytic drugs without anesthesia; and (6) prohibiting the withholding of pain-relieving drugs except when scientifically necessary and approved by the Committee and attending veterinarian. The Committee would have to assure that no animal would be used in more than one major operative experiment from which it was allowed to recover except as provided in the regulations. The Committee would allow exceptions to the Animal Welfare regulations when necessary for accomplishing the research design and explained in detail, in writing, by the principal investigator. (*See* initial proposal § 2.35(b)(3) (vi), (vii) and 2.35(c)).

In the March 1989 revised rule, we stated that many commenters objected that the regulations, as initially proposed, would place too much authority on the Committee and the attending veterinarian. In the supplementary information accompanying the revised proposal, we stated that the statute and the legislative history of the 1985 amendments to the Act supported our initial proposal to impose certain duties and responsibilities on the Committee and the attending veterinarian (54 FR 10845). We also noted our agreement with the commenters that the ultimate responsibility for those duties lies with the research institutions themselves. We revised the proposed rule accordingly, to place responsibility on the research facilities except where specifically reserved to the Committee or attending veterinarian by the Act.

We have continued our consideration of the allocation of authority and responsibilities under the Act. We persist in the view that the research facility is ultimately responsible for assuring that it is in compliance with the Act and regulations. As previously stated in this document, we believe that the Committee, as an agent for the facility, is best situated to carry out many of the research facility's responsibilities under the Act. The research facility must provide the Committee with sufficient authority to carry out the duties delegated to it under the regulations, in order to ensure that it is in compliance.

The final rule is revised to reflect that the Committee, as an agent of the research facility, shall review the animal care and use components of proposed activities to determine that they are in accordance with the regulations unless justification for a departure is presented by the principal investigator in writing (final rule § 2.31(d)). As previously discussed, field studies, as defined in Part 1 of the regulations (*see* companion docket No. 89–130, published elsewhere in this issue of the **Federal Register**) are exempt from Committee review. The requirements that would be imposed upon research facilities under the revised proposal when they engage in potentially painful procedures shall be carried out by the Committee in reviewing all proposed activities involving animals. Accordingly, revised proposal § 2.30(e)(10), requiring that each research facility that engages in any practice or procedure that might reasonably be expected to be a painful procedure establish a written policy to ensure compliance with those requirements, and § 2.30(f), requiring that each research facility establish a written policy which assures that no animal is used in more than one major operative experiment from which it is allowed to recover, are removed.

This modification to the final rule will allow research facilities greater flexibility in carrying out their responsibilities under the Act through their Committee, and will ensure that proposed activities are subjected to close scrutiny, as contemplated by the Act and the proposed regulations. The Committee can develop mechanisms for covering the various elements that must be addressed in conducting their review, however, Committee activities must be reflected in their records in accordance with § 2.35 of the final rule, and available for APHIS inspection. We have conformed the language of the final rule with that of the PHS Policy as it pertains to Committee review of proposed activities involving animals, as part of our effort to harmonize our mutual requirements.

We describe below the requirements that must be satisfied for the Committee to approve a proposed activity or a proposed significant change in an ongoing activity under § 2.31(d) of the final rule.

(a) Procedures involving animals must avoid or minimize discomfort, distress, and pain to the animals (final rule § 2.31(d)(1)(i)). Revised proposal § 2.35(b)(3)(ii)(A) would have required that functional or sensory impairment be minimized, in addition to animal pain and distress in order for the Committee to approve a proposed activity.

The term "discomfort" in the final rule includes a broad range of uncomfortable sensations, including functional or sensory impairment. We consider this modification to be a nonsubstantive conforming change.

(b) Alternatives to procedures that may cause more than momentary or slight pain or distress to the animals must have been considered, and the principal investigator must provide a narrative description, in writing, of the methods and sources that were used to determine that alternatives were not available. This requirement is derived from revised proposal § 2.30(d). In addition, revised proposal § 2.30(e)(1) would have required that the principal investigator provide written assurance to the Committee that alternative procedures were considered and found not suitable, and indicate what information sources were considered.

We have modified the requirement concerning consideration of alternative procedures to allow research facilities greater flexibility in devising internal procedures for their principal investigators to follow, which simplify their task of indicating what sources were consulted. The principal investigator must provide a written narrative of the sources consulted, such as biological abstracts, Index Medicus, the Current Research Information Service (CRIS), and the Animal Welfare Information Center that is operated by the National Agricultural Library. We believe that in fulfilling this requirement, Committee members will discuss these efforts with the principal investigator in reviewing the proposed activity. We also believe that consideration of alternatives will be discussed during Committee meetings where proposed activities are presented for approval, and made part of the meeting minutes. If the Committee determines that the written narrative prepared by the principal investigator provides adequate assurance that alternatives were considered, the Committee's meeting minutes need only reflect this determination. Committee meeting minutes will be available for APHIS inspection to determine whether alternatives were in fact discussed, and the written narrative of information sources consulted will be made part of the Committee's record. Research facilities will be held responsible if it is subsequently determined that an alternative procedure was available to accomplish the objectives of the proposed experiment. Therefore, the Committee, as an agent of the facility, must satisfy itself that alternatives were adequately considered. We believe that the Act's objectives will be satisfied through this Committee review process.

(c) Similarly, the principal investigator must provide written assurance that the proposed activities do not unnecessarily duplicate previous experiments (final rule § 2.31(d)(1)(iii)). Revised proposal § 2.30(e)(1)(ii) would have required that the written assurance indicate what information sources were consulted, what other procedures were considered, and what techniques will be used to minimize pain and discomfort to animals.

Under the final rule, research facilities are allowed flexibility in devising their own internal procedures for principal investigators to follow in preparing their written assurance. As stated above, we believe that the Committee will explore the efforts underlying the assurance with the principal investigator to determine whether a reasonable good faith effort was made by the principal investigator in determining that a proposed experiment is not unnecessarily duplicative. As is the case in determining whether alternative procedures were available, the Committee, as an agent of the facility, must be satisfied with the assurance. The assurance will be made part of the Committee record in accordance with § 2.35 of the final rule, as will Committee deliberations concerning the proposal, and are therefore available for APHIS inspection. Research facilities will be held responsible if it is subsequently determined that an experiment is unnecessarily duplicative and that a good faith review of available sources would have indicated as much.

(d) If a procedure may cause more than momentary or slight pain or distress to the animals, it must be performed with appropriate pain-relieving drugs, unless withholding of such drugs is justified for scientific reasons, in writing, and continues only for as long as necessary; the attending veterinarian or a designee shall be consulted in planning the proposed activity; and it must not include the use of paralytics without anesthesia.

These provisions are set forth in § 2.31(d)(1)(iv) of the final rule and, except as explained below, are nonsubstantive modifications of the revised proposal (revised proposal §§ 2.30(e) (3), (4); 2.30(e)(2); and 2.30(e)(9); and 2.35(b)(3)(ii)(E)) to conform the language of the final rule with that found in the PHS Policy and to reflect the Committee's review functions under the final rule. The use of appropriate pain-relieving drugs and requirement for consultation with the attending veterinarian will ensure that the drugs are administered in accordance with their accepted and established use. These responsibilities were assigned to the research facility under the revised proposal. As previously explained, we have reassigned these responsibilities to the Committee in the final rule, to carry out as an agent of the facility.

The revised proposal would specifically require that the research facility ensure that the attending veterinarian is allowed access to all animal and research areas at any time during actual research involving a potentially painful procedure (revised proposal § 2.30(e)(2)). This language does not appear in the final rule. The research facility is responsible under § 2.33 of the final rule for ensuring that adequate veterinary care is provided, and that the attending veterinarian has appropriate authority to ensure that adequate veterinary care is provided. This would necessarily require that the attending veterinarian have access to animal study areas in order for the research facility to ensure its responsibilities are satisfied. In addition, the attending veterinarian or his or her delegated representative may be the Doctor of Veterinary Medicine member of the Committee, and would be assured access to all animal study areas in that capacity.

(e) Animals that would otherwise experience severe or chronic pain or distress that cannot be relieved will be painlessly euthanized at the end of the procedure, or during the procedure, if appropriate. This requirement is added to the final rule to reduce animal suffering, pain, and distress.

(f) The living conditions of animals must be appropriate for their species, in accordance with the standards of part 3, and contribute to their health and comfort. The attending veterinarian or other trained, experienced scientist will direct proper housing, feeding, and nonmedical care. The revised proposal would require that the research facility ensure that animals are housed and cared for in accordance with the regulations in 9 CFR, chapter 1, subchapter A (revised proposal § 2.30(a)(4)). It also would require that any deviations from the regulations be fully explained by the principal investigator and approved by the Committee.

We are allowing someone other than the attending veterinarian to direct the housing, feeding, and nonmedical care of the animals as long as that individual has training and experience in the species being maintained or handled. We believe that such an individual is qualified to supervise nonmedical aspects of care. Medical care must be provided as necessary by a qualified veterinarian under final rule § 2.31(d)(1)(vii).

(g) Activities that involve surgery must include appropriate provision for pre-operative and post-operative care of animals in accordance with current established veterinary medical and nursing practices. This requirement modifies revised proposal § 2.30(e)(6) which would require that all pre-procedural, procedural, and post-procedural care be provided by personnel in accordance with the instructions of the attending veterinarian and established veterinary medical and nursing procedures. By not requiring the direct involvement of the attending veterinarian in all matters relating to medical care, research facilities are accorded greater flexibility under the final rule in providing care. However, they are responsible for ensuring that adequate veterinary care is provided. As modified, this requirement satisfies the statutory mandate that a doctor of veterinary medicine be consulted in planning any procedure that could cause pain to animals and that adequate veterinary care be provided (7 U.S.C. 2143(a)(3) (A) and (C)).

Section 2.31(d)(1)(ix) of the final rule modifies the requirement that would be imposed upon research facilities under revised proposal § 2.30(e)(7) (and upon the Committee, in part, in revised proposal § 2.35(b)(3)(ii)(B)) that survival surgeries be conducted only in facilities intended for that purpose, under aseptic conditions using aseptic techniques. Under the final rule, the requirement for a dedicated surgical area applies to major operative procedures conducted on animals other than rodents, however all survival surgery or operative procedures must be done under aseptic conditions using aseptic procedures. There is no statutory requirement that procedures be performed in dedicated surgical areas. However, we believe it is advisable to require such areas when surgical procedures are performed on larger animals to reduce the risk of infection. Surgeries performed on rodents typically require limited, contained work space, and therefore can be performed in non-dedicated areas using aseptic procedures and techniques. Requiring that surgical procedures performed on rodents be done under aseptic conditions, and that adequate veterinary care be provided, should be sufficient to protect those rodents that are covered by the Act from infections due to surgery. In addition, dedicated facilities are not required at field sites, however, all operative procedures must be performed under aseptic conditions using aseptic procedures.

(h) Personnel who conduct procedures on the species being maintained or studied must be appropriately qualified and trained in those procedures. This language modifies the requirements of revised proposal §§ 2.30(e)(6) and 2.30(e)(8). Under § 2.32 of the final rule, research facilities are responsible for ensuring that personnel are appropriately qualified. Section 2.33 requires that the facility's program of adequate veterinary care include pre- and post-procedural care in accordance with current established veterinary medical and nursing procedures. This change is intended to allow research facilities greater flexibility in accomplishing the same objective.

(i) No animal can be used in more than one major operative procedure from which it is allowed to recover unless justified, such as when required by or related to other surgical procedures, in writing, by the principal investigator; required as a routine veterinary procedure or to protect the health or well-being of the animal as determined by the attending veterinarian; or in other special circumstances as determined by the Administrator upon request. This requirement and the exceptions to it were contained in revised proposal §§ 2.30(f)(1) and 2.35(b)(3)(ii)(D), except that reference to endangered species or marine mammals and the provision that cost savings is not adequate justification for multiple use of animals are removed. Such concerns may be addressed to the Administrator as an element of the special circumstances which might justify multiple major operative procedures.

(j) The method of euthanasia that will be used in a proposed activity must be consistent with the definition set forth in part 1 of the regulations (*see* docket No. 89–130, published elsewhere in this issue of the **Federal Register**), unless a deviation is justified for scientific reasons, in writing, by the principal investigator. This provision is added to the final rule in order to ensure that only humane methods of euthanasia are utilized.

The revised proposal would have provided that the research facility require that the attending veterinarian provide training of personnel in the proper use of pain-relieving drugs in order to minimize pain and distress to animals (revised proposal § 2.30(e)(5)). This requirement does not appear in the final rule. However, we believe our objective is satisfied by requiring that the Committee, in reviewing a proposed activity, determine that appropriate pain-relieving drugs will be used unless scientifically justified in writing (final rule § 2.31(d)(1)(iv)) and that the personnel who will be conducting procedures on the animals are appropriately qualified and trained in those procedures (final rule § 2.31(d)(1)(x)).

As set forth above, § 2.31(d)(1) of the final rule continues, in modified form, the provision of revised proposal § 2.30(g) that exceptions to compliance with the regulations and standards contained in title 9 CFR, chapter I, subchapter A—Animal Welfare may be made by the research facility when necessary to accomplish the research design, specified in the proposal for the activity, explained in detail, and approved by the Committee. Under the final rule, the Committee as an agent of the facility, has responsibility for determining that a proposed activity is in accordance with 9 CFR, chapter I, subchapter A, unless an acceptable justification is presented. As under the revised proposal, the research facility must maintain, as part of its recordkeeping responsibilities under § 2.35 of the final rule, records of proposed activities. These records will therefore contain the written justification presented by the principal investigator for any departure from the regulations, and, in accordance with the final rule, must be available to APHIS inspectors. This will enable us to determine whether the facility is in compliance with this provision of the regulations and is allowing departures from the regulations only when properly justified and documented.

We are removing the requirement that a copy of all written reports detailing and explaining exceptions to the regulations be attached to the research facility's annual report. During our consultation with members of the IRAC, objections were raised to attaching copies of written reports to the annual report on the grounds that it is unduly burdensome and not required by the Act. Section 13(a)(7) of the Act requires that research facilities provide assurance to the Secretary that the facility is adhering to the standards and provide an explanation for any deviation. We proposed that a copy of the detailed report be attached to a research facility's annual report, in addition to being made available at the facility to APHIS inspectors, to assist us in determining whether a facility is in compliance with the Act and the regulations. It would also assist us in preparing our comprehensive annual report to Congress, as required under section 25 of the Act (7 U.S.C. 2155).

Upon reflection, we believe the IRAC comment has merit. Copies of the written reports are not necessary to fulfill the statutory requirement. Therefore, we are requiring in the annual report an assurance that the facility is adhering to the standards and regulations under the Act, and that it has required that exceptions be specified and explained by the principal investigator and approved by the Committee. We believe that requiring this assurance and inspecting Committee records at the research facility will reduce the paperwork and administrative burden that would be imposed upon those facilities under the revised proposal, and still fulfill the statutory directive of the Act. A summary of all written detailed reports of departures from the regulations, including a brief explanation of the departure and identification of the species and number of animals affected by the exception must be attached to the annual report (7 U.S.C. 2143(a)(7)(B)(iii)).

It must also include the numbers of animals used in painful procedures for which pain-relieving drugs were not used and an explanation for withholding the drugs. This information is necessary to enable us to determine whether a facility is in compliance with the regulations, to prepare our report to Congress, and to determine whether closer scrutiny of an approved exception or the Committee approval process itself is warranted. Requirements for the research facility's annual report are contained in § 2.36 of the final rule.

Our initial proposal of March 1987 would have required Committee approval of a proposed "protocol" that would cause more than short-term minor pain or distress before the procedure could commence. As explained in ample detail in the supplementary information accompanying the March 1989 revised proposal, we eliminated the proposed categories of animal use and determined that requiring Committee review and approval of all animal care and use procedures, consistent with the PHS Policy, was preferable. (*See* 54 FR 10865–10866). In further response to the comments we received, we revised the mechanism for accomplishing Committee review in order to relieve the heavy burden that would be imposed upon the Committee, by incorporating the PHS Policy approach of assigning ACUPs to individual Committee members for review and recommendation, unless a member requests in depth review by a quorum of the Committee. The revised proposal would require that the Committee member's recommendations be presented to the Committee for formal action by a quorum of its members, under authority of section 13(b)(2) of the Act (7 U.S.C. 2143(b)(2)).

During our consultation with members of the IRAC, concern was expressed that assembling a quorum of the Committee would delay or impede research, and in cases where immediate action would be required, such as a proposal to harvest vital organs from euthanized animals, would be impractical. It would also place a huge burden on Committee members at research facilities that conduct a great many activities, since Committee members would be responsible for official action on large numbers of proposals.

We have decided to retain the provisions of the revised proposal which allow proposed activities to be assigned to individual Committee members for review in order to allow greater flexibility in carrying out the Committee's review and approval responsibilities. Under the final rule, however, the reviewing member(s) of the Committee will also be authorized to approve or require modifications to proposed activities in order to secure approval. The reviewing member of the Committee may also request full Committee review. In addition, as under revised proposal § 2.35(b)(3)(i), any member of the Committee may request full Committee review of a proposal.

Our purpose in requiring Committee review of proposed activities involving animals, as stated in the supplementary information accompanying our initial proposal, is to ensure "that all possible steps have been taken to reduce or eliminate as much pain and distress as possible, and that the proper level of animal care and treatment has been planned for and carried out using acceptable practices and methods." (52 FR 10302). We believe that the final rule, as further revised, accomplishes this objective with less burden on Committee members.

Section 2.31(d)(2) of the final rule requires that each Committee member receive a list of proposed activities before they are reviewed, and that written descriptions of proposed activities involving animal care and use be available to all members for their consideration. As stated above, any member of the Committee can request full Committee review. In this manner, all of the Committee members participate in determining whether an individual member of the Committee may be authorized, as an agent of the Committee, to approve a proposed activity. If any Committee member determines that more in depth scrutiny of a proposed activity is necessary, approval may be granted only after review at a convened meeting of a quorum of the Committee. As an additional precaution, the final rule precludes the participation in the approval process of any member who has a conflicting interest in the proposed activity.

As with inspections, the final rule provides for the participation of invited consultants in reviewing proposed activities. Since publication of our initial proposal in March 1987, we have continued to consider the most effective means of carrying out Committee reviews so that they accomplish our stated objective, as set forth above. We can foresee instances where the Committee, composed of a minimum of 3 members, 1 of whom is not affiliated with the research facility and is intended to represent community interests, may not possess the requisite expertise to evaluate all of the complex issues presented by a proposal or to understand its implications for the animals' health and well-being. By allowing research facilities, through their Committees, to invite consultants to participate in the review process, we are providing research facilities with the authority they require to conduct meaningful reviews and thereby ensure the proper care, treatment, and use of animals.

Section 2.31(d)(4) provides the mechanism by which the Committee notifies the principal investigator and the research facility, in writing, of its decision to approve, withhold approval, or require modification of a proposed activity. Our proposals did not prescribe requirements for notification, although the research facility would be responsible if it allowed unapproved activities to proceed. We are supplementing our proposals by requiring written notification of the Committee's disposition of each proposed activity involving the care and use of animals. If the Committee determines to withhold approval, it must provide the principal investigator and the research facility with a written statement explaining its decision. The principal investigator then has the opportunity to respond to the Committee, either in person or in writing. On the basis of the response, the Committee may reconsider its decision.

Section 2.35(b)(1)(iv) of the revised proposal added a mechanism, in accordance with the PHS Policy, for the Committee to suspend or withdraw its approval of an activity involving pain to animals if the Committee determines upon inspection that the practice or procedure is not being conducted in accordance with the approved animal care and use procedure (ACUP) or the regulations. As explained in the supplementary information accompanying the revised proposal, withdrawal of approval means that the procedure or practice must cease, or the research facility will be considered to be in violation of the regulations (54 FR 10866). Accordingly, the revised proposal provided that the Committee must direct the CEO or institutional official to instruct the principal investigator to cease all noncomplying activities immediately.

Upon further consideration of this provision, we have determined that additional clarification of the Committee's role and the institution's responsibilities in this regard is necessary. The final rule is revised to clarify that the Committee may suspend an activity after a convened quorum of

the Committee has reviewed the matter and a majority of the quorum favors suspension. Suspending an activity that is in progress may require that the principal investigator discontinue an experiment and start the project over from the very beginning. This may be an exceedingly costly consequence, in terms of time and funds, and may require that the animals involved be destroyed or replaced. We believe that before such drastic action is taken, a quorum of the Committee should be presented with this decision. If immediate action is necessary, the Committee member who discovered the deficiency may request an emergency meeting. Under the final rule, the Committee, as agent of the research facility, rather than the CEO or Institutional Official, is authorized to direct cessation of noncomplying activities. In order to provide the Committee with this authority, which was previously reserved to the head of the facility, it is necessary in accordance with section 13(b)(2) of the Act to require a quorum of the Committee (7 U.S.C. 2143(b)(2)).

As under the revised proposal, we are requiring that the Institutional Official be apprised that by virtue of the suspended activity the facility had not been operating in compliance with the regulations. The Institutional Official must review the reasons for the suspension with the Committee and take appropriate corrective action in order to bring the facility back into compliance. The Institutional Official must report the corrective action taken to APHIS, and to any funding Federal agency (final rule § 2.31(d)(7)). This requirement carries out the directive of section 13(b)(4)(A)(ii) of the Act which requires that the Committee include, as part of its inspection report, any deficient conditions and any deviations of research practices from originally approved proposals that adversely affect animal welfare, any notification to the facility regarding such conditions, and any corrections made thereafter (7 U.S.C. 2143(b)(4)(A)(ii)), and does so in a manner that is consistent with the PHS Policy. This practice is therefore already in place at many research institutions.

In addition, we are adding a provision to allow officials of the research facility to further review activities approved by the Committee and significant changes to approved activities that are ongoing. Research facilities are ultimately responsible for ensuring compliance with the Act and regulations and are therefore responsible for the proper functioning of their Committees. Section 2.31(d)(8) of the final rule, consistent with the PHS Policy, specifically provides that Institutional Officials at research facilities may review Committee activities and determinations, however, they may not override or circumvent the Committee's decision on a proposed activity, including a decision on suspension.

We are adding a provision to the final rule to require that the Committee conduct continuing review of activities covered by the Animal Welfare regulations at appropriate intervals, and at least annually (final rule § 2.31(d)(5)). This review is in addition to the twice yearly evaluations required by final rule § 2.31(c) and is intended to provide current information to the research facility regarding all ongoing activities so that it can remain in compliance. Follow-up reviews of problematic conditions discovered during evaluations must be conducted, as determined necessary by the Committee.

Section 2.31(e) of the final rule identifies the information that must be provided by the principal investigator to the Committee as part of his or her proposal to conduct an activity involving animals. The revised proposal did not specifically list the information that must be provided to the Committee, however, it did specify the aspects of animal care and use the Committee must consider in evaluating a proposed care and use procedure. In order to perform its evaluation completely and properly, the Committee would need to consider this information. In order to provide guidance to principal investigators in the preparation of proposals and thereby facilitate implementation of the rule, we have identified in final rule § 2.31(e) the information that must, at a minimum, be included in a proposal submitted to the Committee.

Personnel Qualifications and Training

Section 2.30(i) of the revised proposal would require that each research facility provide for the training and continuing education of personnel involved with animal use, care, and treatment, and that the training be reviewed by the Committee and the attending veterinarian. It would also require that training be made available annually or as appropriate to individuals and their responsibilities, and that research facilities review the status of the training and qualifications of researchers who use animals at least once each year.

Although the Act places responsibility for training upon the research facility (7 U.S.C. 2143(d)), in considering the comments we received and in preparing the revised proposal, we determined that this responsibility could best be carried out through the attending veterinarian because of his or her expertise, and through Committee review (*See* 54 FR 10854–10855).

Based upon our ongoing consultation with HHS and members of the IRAC, as well as our continuing consideration of the comments we received, we have revised the final rule to place responsibility for training on the research facilities, and to let them determine the best means of satisfying their statutory obligations. Accordingly, § 2.32(a) of the final rule provides that it shall be the responsibility of the research facility to ensure that its personnel involved in animal care, use, and treatment are qualified to perform their duties, and that partial fulfillment of this responsibility shall be through providing training and instruction to those personnel.

The revised proposal would require that research facilities maintain a written policy ensuring that all personnel qualifications are reviewed annually. The review could be done separately or as part of another personnel review. The latter requirement was added in the revised proposal in response to the numerous comments we received objecting that a separate, annual review would be costly and impractical. It was also based upon our consultation with HHS, during which it was pointed out that many facilities have internal mechanisms for reviewing personnel qualifications and performance.

In the course of our further consultation with HHS and members of the IRAC following publication of the revised proposal, we recognized that because many, if not most, research activities last far longer than one year, it is more important that research facilities establish at the outset of the activity that the personnel involved in the care, use, and treatment of animals are properly qualified and trained to assure their humane care and treatment, and that the requirement of annual review would be unnecessary and burdensome in many instances. We are therefore revising the final rule to clarify that research facilities are responsible for ensuring that their personnel are properly trained and qualified. Accordingly, § 2.32(b) of the final rule requires that training and instruction be made available, and the qualifications of personnel reviewed, with sufficient frequency to fulfill the research facility's responsibilities to ensure its personnel are qualified and that it is in compliance with the regulations. Under this provision, facilities may establish their own internal means and procedures for assessing the training and qualifications of their personnel, as long as they ensure that their statutory responsibilities are satisfied. The requirement that research facilities maintain a written policy ensuring annual review of personnel is removed.

We have also removed the requirement that training be available for review by APHIS inspectors. Rather than looking at prepared training materials in order to determine whether personnel are qualified to perform their duties and are complying with the regulations, APHIS inspectors will be better able to assess and evaluate the qualifications of laboratory personnel by observing their performance in the course of APHIS inspections, and by determining, through observation and review of Committee records, that personnel are properly carrying out approved activities and are in compliance with the regulations.

We are continuing to require training in the areas listed in the revised proposal § 2.30(i)(4), except that we have removed the reference in paragraph (i)(4)(xi) to requiring other training, techniques, or procedures as the research facility or the Secretary may feel is necessary. The research facility has the authority to require additional training under § 2.32(a) of the final rule. If we identify other areas of training that should be included in the regulations, we will publish a document in the **Federal Register** proposing to do so. We are removing the requirement for training in the common or accepted use of pain-relieving drugs in those species for which the drug is not licensed, in order to conform our regulations with the requirements of the Food, Drug, and Cosmetic Act. Finally, we have made minor modifications in the description of the areas in which we require training, to conform our language more closely with that used in the PHS Policy. We consider these changes to be nonsubstantive.

We are removing reference to an established reporting procedure whereby laboratory or research facility employees can report violations of the Act or regulations. The final rule requires training in methods for reporting deficiencies in animal care and treatment. As part of this training, research institutions may choose to establish formal procedures for reporting violations, and we encourage them to do so. However, we do not believe it is necessary to prescribe such a procedure in the regulations.

Attending Veterinarian and Adequate Veterinary Care

We initially proposed in March 1987, that research facilities, as well as other regulated entities, establish and maintain written programs of adequate veterinary care and provide a copy annually to APHIS for our review (initial proposal § 2.40). The requirement that research facilities provide adequate veterinary care is statutorily mandated. Section 13(a)(2) of the Act directs the Secretary to promulgate standards to govern the humane handling, care, treatment, and transportation of animals, including minimum requirements for adequate veterinary care (7 U.S.C. 2143(a)(2)(A)). Section 13(a)(3)(A) further requires that adequate veterinary care include the appropriate use of pain-relieving drugs in painful procedures or euthanasia (7 U.S.C. 2143(a)(3)(A)).

Our objective in requiring a program of adequate veterinary care was to ensure that research facilities attend to the health needs of animals, including disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, euthanasia, and the appropriate use of pain-relieving drugs. Our objective in requiring that a written program be maintained was to provide a means of verifying that all aspects of veterinary care were covered by the facility's program, and to ensure upon inspection that research facilities were operating in compliance with their program requirements. We did not prescribe more precise requirements for addressing the areas that should be included in such a program, because, as we stated in the supplementary information accompanying the revised proposal, "[i]t is the responsibility of the dealer, exhibitor, or research facility to ensure that its program of veterinary care adequately covers those areas." (54 FR 10868)

In response to the March 1987 proposal, we received many comments critical of our requirement for a written program of veterinary care at facilities with full-time or staff attending veterinarians. As explained in the supplementary information accompanying the revised proposal, HHS suggested to us in the course of our consultation following publication of the 1987 proposal, that because institutions having a full-time attending veterinarian on staff would maintain written standard operating procedures covering their program of veterinary care, they should not be required to maintain a separate written program. They felt that this requirement would unnecessarily burden research facilities by requiring duplication of effort with no additional benefit to animal welfare. We agreed with their position in the March 1989 revised proposal, and modified our proposed requirements to provide that the written program could be incorporated within the facility's standard operating procedure or other document. APHIS inspectors could then examine it on the premises, rather than requiring a separate submission.

Upon further consideration of the proposed requirements, we have determined that research institutions that employ a full-time attending veterinarian to administer the facility's program of adequate veterinary care, need not present to us a written program of veterinary care. They must maintain a program of adequate veterinary care, however, and are responsible for ensuring that adequate veterinary care is provided to the animals. The research facility must accordingly provide the attending veterinarian with appropriate authority to carry out the facility's program of veterinary care. The program of adequate veterinary care must include having appropriate facilities, personnel, equipment, and services to comply with the Animal Welfare regulations; apppropriate methods to prevent, control, diagnose, and treat diseases and injuries, including emergency and weekend care; daily observation of all animals to assess their health and well-being; guidance by the attending veterinarian to personnel in animal care and use techniques, including the use of pain-relieving drugs and euthanasia; and adequate pre-procedural and post-procedural care. Upon inspection, APHIS inspectors will evaluate the appearance and condition of the animals as well as the facility, to determine whether the veterinary care program is adequate to ensure that proper care is being rendered, and whether the facility is in compliance with its program. Accordingly, we believe the revised language of § 2.33 in the final rule will achieve our objective of ensuring that proper veterinary care is provided to all animals.

Part-time attending veterinarians would be less likely to have the degree of oversight over compliance with the facility's program of adequate veterinary care that full-time attending veterinarians enjoy. For this reason, and for the reasons set forth in the supplementary information accompanying the March 1989 revised proposal, research facilities, as well as other regulated entities, that utilize an attending veterinarian on a part-time or consultant basis, are required to maintain a written program of adequate

veterinary care under the final rule. They must employ the attending veterinarian under formal, that is, contractual arrangements, that include regularly scheduled visits to the facility, to ensure that the program is properly implemented on an ongoing basis. The written program of adequate veterinary care should include such things as the facility's name and address; the attending veterinarian's name and address; provision for the different areas of care identified above as necessary for an adequate program of veterinary care; the system or method of euthanasia that will be employed and the personnel authorized to perform it; and the dated signature of the attending veterinarian and the Institutional Official. This document must be maintained by the facility and made available to APHIS inspectors in accordance with § 2.38(b) of the final rule.

We have modified the requirement for daily observation of animals to provide that someone other than the attending veterinarian may carry it out, provided that the research facility maintains a means of direct and frequent communication to the attending veterinarian so that care can be promptly provided. Such care should also include the humane disposal of sick, diseased, injured, lame, or blind animals, as would be required under revised proposal § 2.40(d), unless doing so is inconsistent with research purposes.

As explained under the subheading, "Committee membership," under the final rule, the attending veterinarian is not required to be a member of the Committee at those facilities employing more than one Doctor of Veterinary Medicine. A DVM with delegated program responsibility may also serve on the Committee, in accordance with the Act (7 U.S.C. 2143(b)(1)(A)).

Recordkeeping Requirements

Section 2.35 of the final rule consolidates the various recordkeeping requirements imposed upon research facilities in the revised proposal. Paragraph (a) requires that research facilities maintain Committee records, including minutes of Committee meetings, records of attendance, records of any Committee activities and deliberations, records of proposed activities involving animals and proposed significant changes in those activities, the Committee's disposition of the proposed activity, and the Committee's reports of reviews and evaluations prepared in accordance with § 2.31(c)(3) of the final rule. Any actions taken by a Committee member or subcommittee in carrying out their duties under this part must be recorded in writing and maintained by the research facility as a Committee record. This includes reviews and evaluations as required under § 2.31(c), reviews of proposed activities as required under § 2.31(d), and any action taken regarding an activity involving animals under § 2.31(d).

As under the revised proposal, research facilities are responsible for maintaining all such records, and must do so for at least 3 years (final rule § 2.35(f)). We have added a requirement that records that relate to an approved activity be maintained for the duration of the activity plus an additional 3 years after completion of the activity (final rule § 2.35(f)). This requirement replaces the provisions of revised proposal § 2.81, as they relate to research facilities, which would prohibit research facilities from destroying or disposing of records for a period of 1 year without the written consent of the Administrator, and require that facilities maintain records pertaining to an animal for at least 1 year after the animal is euthanized. All records and reports must be available for inspection and copying by authorized APHIS or funding Federal agency representatives as under revised proposal § 2.35(b)(2)(i), and must be retained pending completion of an investigation or proceeding under the Act.

The remaining requirements for recordkeeping set forth in § 2.35 of the final rule are taken directly from § 2.76 of the revised proposal without change for the reasons set forth in the supplementary information accompanying the initial proposal and the March 1989 revised proposal.

Annual Report

The requirements imposed upon research facilities in completing and submitting their annual report are set forth in § 2.36 of the final rule. We have made conforming changes to reflect changes in terminology from the revised proposal. The requirements remain substantially as proposed in the March 1989 revised proposal, except as indicated and explained below.

We are revising the requirement that an explanation detailing and explaining any deviation from the standards and regulations be attached to the annual report (revised proposal §§ 2.30(g) and 2.31(b)(3)) and the requirement that a detailed statement on the procedures producing pain or distress and explaining the reasons pain-relieving drugs were not used be attached to the annual report (revised proposal § 2.31(b)(7)). The Act requires that each research facility report annually that the provisions of the Act are being followed and that professionally acceptable standards are being followed during research or experimentation (7 U.S.C. 2143(a)(7)(A)). Section 13(a)(7)(B)(iii) of the Act further requires that research facilities provide, as part of their report, "an explanation for any deviation from the standards promulgated under this section." (7 U.S.C. 2143(a)(7)(B)(iii)). Upon reconsideration of our proposal, we have determined that requiring a summary and explanation of all exceptions to the regulations which indicates the number of animals, by species, that were affected by those exceptions, and requiring an explanation for the withholding of pain-relieving drugs in any painful procedure, will be sufficient to fulfill the requirements of the Act. If, based upon our review of the summaries attached to a facility's annual report, we determine that additional information is required in order to assess whether the facility is in compliance with the Act and regulations, we may request further documentation and detail. For this reason, and as explained above, under the heading, "Committee functions," we have revised the annual reporting requirements in the final rule to require a summary and brief explanation of all exceptions to the regulations, rather than a more detailed explanation.

We are removing the statement that would be required by the Chief Executive Officer or institutional official under revised proposal § 2.31(b)(9) regarding the authority of the Committee and the attending veterinarian to enter any animal or research area at any reasonable time in order to carry out their responsibilities, and that the facility complies with the Act, regulations, and standards. We received numerous comments in response to this requirement as proposed in our initial proposal of March 1987, objecting to it as redundant and unnecessary. In the supplementary information accompanying the revised proposal, we noted our general concurrence with the commenters' argument, however we felt an additional statement from the institutional official was warranted. Upon reconsideration, we agree with the commenters that the additional assurance does not provide any greater assurance of compliance, and that it may be removed. The research facility is responsible under the regulations for ensuring that the Committee and the attending veterinarian have sufficient authority to carry out their duties, therefore an assurance to that effect is subsumed in the assurances required under § 2 36(b)(1) that professionally acceptable standards governing the care, treatment, and use of animals were followed, and under § 2.36(b)(3) that the facility is adhering to the standards and regulations under the Act. Accordingly, this additional assurance is removed in the final rule.

We are also removing the provision set forth in the revised proposal which would require that the institutional official certify that each member of the Committee was given an opportunity to express concurrence or nonconcurrence with the report and to attach a minority report. This provision is not mandated by the Act. In the supplementary information accompanying the revised proposal, we stated that we felt it was important that all members of the Committee be afforded an opportunity to express a minority or nonconcurring view to the Department (54 FR 10860–10861). We are removing this provision from the final rule because section 13(b)(4)(A)(iii) of the Act and § 2.31(c)(3) of the final rule expressly provide a mechanism for Committee members to express minority views and it is therefore unnecessary to require additional minority opinions in the annual report. All minority views of Committee members must be included in the Committee's twice yearly evaluation reports and made available to APHIS inspectors upon inspection.

Miscellaneous

1. *Access and inspection of records and property.* We received many comments from the research community objecting to the provisions of proposed § 2.126 which would require research facilities, as well as other regulated entities, to permit APHIS representatives to enter facilities during business hours for inspection purposes and to take photographs to document their findings. As explained in the supplementary information accompanying the revised proposal, there is ample statutory authority for this provision (54 FR 10877). We believe it is essential for enforcement purposes that APHIS have access to research facilities at all reasonable times. Accordingly, we have made no substantive change in our regulations in this regard. However, we are mindful that, in amending the Act, Congress did not authorize the Secretary to interrupt the conduct of actual research or experimentation during inspections (7 U.S.C. 2143(a)(6)(A)(iii)), and APHIS inspections will be conducted in accordance with the statutory requirements.

2. *Inspection for missing animals.* We are removing the provision in the revised proposal which would allow research facilities to limit access of law enforcement officers searching for missing animals to those not undergoing actual research or experimentation. We believe the proposed limitation on the authority of law enforcement officers would be inappropriate.

3. *Confiscation and destruction of animals.* We are making one change in the regulations concerning confiscation and destruction of animals held by research facilities. Under the revised proposal, APHIS officials would have authority to attempt to notify the research facility that an animal is found suffering and that the situation must be corrected or the animal euthanized, when the animal "is no longer required" to carry out the research, test, or experiment for which it was utilized (revised proposal § 2.129(a)). Section 2.38(e)(1) of the final rule broadens this authority by including animals that are not in actual use. Under the final rule, an APHIS official can require that the situation be corrected or may confiscate an animal when he or she finds that it is suffering due to noncompliance with the regulations, even if the animal is being held for future use. We believe that this provision is necessary as a means of minimizing animal suffering resulting from a facility's failure to comply with the regulations.

4. *Handling.* The revised proposal continued the prohibition set forth in the initial proposal of March 1987 against food or water deprivation as a means of training, working, or handling animals (revised proposal § 2.131). This provision prompted comments from the research community stating that it was unnecessarily restrictive and would interfere with research. HHS suggested that such practices be addressed by the principal investigator and reviewed by the Committee. As explained in the supplementary information accompanying the revised proposal, we decided to retain the prohibition to prevent inhumane practices (54 FR 10879). During our ongoing consultation with HHS and members of the IRAC, members of the IRAC stated that short-term food or water deprivation has become an accepted practice in incentive-reward training systems utilized by the research community, as well as exhibitors, and that if done in accordance with reasonable and customary professional practices, is not inhumane. Rather, they stated that short-term deprivation more closely approximates animals' natural feeding patterns in the wild, where they must hunt or forage for food.

We agree that certain short-term food or water deprivation may be an effective and humane method of handling animals, however, it must be conducted with the approval of the research facility's Committee and monitored by the facility to ensure that it is reasonable and in accordance with professional practices.

Section 2.38(f)(2)(ii) of the final rule provides that short-term withholding of food or water is allowed when specified in a proposed activity and approved by the Committee. The animal care and use procedure specified in the proposal must include a description of the monitoring procedures that will be employed, to ensure the animal's welfare and compliance with the approved proposal. We believe that with these safeguards, short-term withholding of food or water will not endanger the animals or be inhumane.

5. *Compliance with standards.* We are revising the provision requiring compliance by research facilities with the regulations unless an exception to compliance has been specified and justified in the proposal to conduct an activity involving animals, and approved by the Committee. Section 2.100(a) of our initial proposal addressed the requirement for compliance by research facilities with the standards in part 3. We revised paragraph (a) in the March 1989 revised proposal by including § 2.131. Handling, in addition to the standards in part 3. This change was necessary because the regulations for handling are currently contained in part 3. Our proposals to amend part 2 have included uniform provisions for handling all the animals covered by the Act. Part 3 will now be amended by removing the separate provisions for handling found in the different subparts.

In the final rule, we have revised this provision by adding that exceptions to the regulations in subpart C—"Research Facilities," may also be made only when specified and justified in the proposal and approved by the Committee. This change merely restates § 2.31(d)(1) which requires that the animal care and use components of a proposed activity be in accordance with the Animal Welfare regulations unless acceptable justification for a departure is presented and approved by the Committee. We therefore consider this to be a nonsubstantive change.

Other Changes to Part 2

Section 2.27 Notification of Change of Operation

We are revising § 2.27(b) by removing the requirement that a registrant file an annual report. This change clarifies that registrants other than research facilities

are not required to submit annual reports.

Section 2.40 Attending Veterinarian and Adequate Veterinary Care

We are revising the requirements applicable to dealers and exhibitors concerning their attending veterinarian and program of adequate veterinary care. We are doing so for reasons similar to those explained under the heading, "Subpart C—Research Facilities, Attending Veterinarian and Adequate Veterinary Care." We initially proposed in March 1987, that dealers and exhibitors, in addition to research facilities, maintain written programs of adequate veterinary care and provide a copy annually to APHIS for our review. Dealers and exhibitors must comply with standards which require that they provide adequate veterinary care, in accordance with the Act (7 U.S.C. 2143(a)(2)(A)). We did not prescribe detailed program requirements for providing such care, other than that the program of veterinary care include disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, and euthanasia, because, as we stated in the supplementary information accompanying the revised proposal, "[i]t is the responsibility of the dealer, exhibitor, or research facility to ensure that its program of veterinary care adequately covers those areas." (54 FR 10868).

In response to our initial proposal, we received numerous comments objecting to the regulations concerning the written program of adequate veterinary care, and stating that they would not be appropriate for entities having a full-time attending veterinarian on staff. We agreed with the commenters in part, and in the revised proposal modified the regulations to provide that dealers, exhibitors, and research facilities having a full-time attending veterinarian need only have a written program of veterinary care available for APHIS inspection on the premises. The written program could be included in another document.

We have reconsidered those comments and have revised the final rule to require that dealers and exhibitors employ, under formal arrangements, an attending veterinarian who shall provide adequate veterinary care. If the attending veterinarian is a full-time employee, the program of veterinary care need not be written. As stated above, it is the responsibility of the dealer or exhibitor to ensure that adequate veterinary care is provided. If, upon inspection, we determine from the appearance and condition of the animals and premises that adequate veterinary care is not being provided, we will find the dealer or exhibitor in violation of the Act and the regulations.

If a dealer or exhibitor employs a part-time or consultant attending veterinarian, the final rule requires that the formal arrangements include a written program of adequate veterinary care and regularly scheduled visits to the dealer or exhibitor (final rule § 2.40(a)(1)). This is because part-time attending veterinarians would be less likely to maintain the degree of oversight over the provision of veterinary care that full-time attending veterinarians enjoy. Employees of the dealer or exhibitor would require the guidance of a written program, and dealers and exhibitors must ensure that their personnel comply with the program.

The written program of adequate veterinary care should include such things as the facility's name and address; the attending veterinarian's name and address; provision for the different areas of care identified in the regulations; the system or method of euthanasia that will be employed and the personnel authorized to perform it; and the dated signature of the attending veterinarian and a responsible official of the dealer or exhibitor.

As under the requirements applicable to research facilities, we are modifying the requirement for daily observation of animals to provide that someone other than the attending veterinarian may carry out the requirement as long as a mechanism of direct and frequent communication is in place to keep the attending veterinarian informed. The final rule also specifically requires the availability of emergency, weekend, and holiday care.

Because we are consolidating the requirements to provide veterinary care to all regulated animals in this section, we are removing the requirements for providing veterinary care set forth in 9 CFR part 3 of the regulations.

Section 2.131 Handling

We are revising the handling regulations to allow exhibitors to withhold food or water on a short-term basis only. As explained above under the heading "Subpart C—Research Facilities, Miscellaneous," short-term food or water deprivation has become an accepted practice in incentive-reward training systems used by exhibitors. We proposed to prohibit any such deprivation because of our concern that such methods of training can be cruel and inhumane. We agree with members of the IRAC, however, that if done in accordance with reasonable and customary professional practices, they are not inhumane. They may, in fact, more nearly approximate the animals' feeding patterns in nature. In order to ensure that deprivation is done on a short-term basis only, we are requiring that each animal receive by the end of each day, its normal daily intake of food and nutrition requirements, and that it is sufficient to meet the animals' dietary requirements.

Sections 3.111 and 3.135 of part 3—"Standards," subparts E and F provide handling requirements for marine mammals and warmblooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, and nonhuman primates respectively. Section 3.135 was included as part of part 3, subpart F, which was added when Congress amended the Act in 1970 to include all warmblooded animals used for research or exhibition purposes, or sold as pets. Section 3.111 was added in 1979 when standards covering marine mammals were added to part 3. Subparts A through D do not contain comparable provisions. As stated in the supplementary information accompanying the proposed rule for part 2, published March 31, 1987, 52 FR 10306, our experience has demonstrated the necessity for handling regulations to protect the welfare of all animals covered by the Act, and to enable the Department to better prosecute cases of inhumane handling and treatment. Accordingly, § 2.131 of the final rule provides handling regulations applicable to all animals covered by the Act. Sections 3.111 and 3.135 are removed from part 3.

Public Comments

The revised proposal published March 15, 1989, solicited comments on the narrow issue of the interrelationship of the definitions and regulations in parts 1 and 2 of 9 CFR, chapter I, subchapter A, with the standards we proposed in part 3. As explained in that document, we did so to allow the public an opportunity to comment on parts 1 and 2 where they are inextricably intertwined with part 3, since the proposed standards had not been presented for public comment in March 1987, and to give the public the benefit of our most current thinking on how to implement the 1985 amendments to the Act in preparing their comments on the proposed standards. This continuation of the rule-making process enabled us to consider further the comments we received in response to our initial proposal, to look at additional regulatory alternatives, and to continue our consultation with the U.S. Department of Health and Human

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Services and other Federal agencies interested in animal welfare, and to do so in light of the comments submitted on the interrelationship of the different parts of the regulations.

We solicited comments on the narrow interrelationship issue for a 60-day period, ending May 15, 1989. Comments that were postmarked or received by that date were considered in preparing this final rule. We solicited comments on the standards of part 3 for a 120-day period, ending July 13, 1989. Comments that were not timely for consideration in preparing final rules for parts 1 and 2 will be considered if they address the proposed standards or the regulations in general.

Five thousand five hundred eighty-two comments were timely received for consideration in preparing final rules for parts 1 and 2. Many comments concerned the Animal Welfare regulations generally or conceptually. We considered those comments in preparing this document since they address the Department's regulatory approach as a unit, and thereby implicate the interrelationship of parts 1, 2, and 3. Many comments went beyond the issue of the interrelationship of the three parts and duplicated previously stated concerns that the regulations, as proposed, would impose unnecessary additional administrative burdens upon research facilities and did not allow research facilities to utilize their existing internal procedures and lines of authority to accomplish our objectives. The comments also objected that many of the proposed recordkeeping and reporting requirements imposed upon regulated entities would be time consuming, costly, and unduly burdensome, without any corresponding benefit to animal welfare. Comments submitted by the research community continued to address the responsibilities and authority that would be imposed upon the Institutional Animal Care and Use Committee and the attending veterinarian under the revised proposal. These points were raised in response to our initial proposal of March 1987, and have had a profound and continuing impact on the development of alternative regulatory approaches. As such, they have been integrated into this final rule.

We address below the comments we received in response to the revised proposal of March 1989 concerning the interrelationship of parts 1, 2, and 3. Comments on the proposed definitions of terms as they apply to parts 2 and 3 are addressed in companion docket No. 89–130, published elsewhere in this issue of the **Federal Register**. Comments on the regulatory impact analysis and the regulatory flexibility analysis prepared by the Department in accordance with Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), respectively, are addressed separately at the conclusion of this supplementary information.

General Comments on the Interrelationship of the Regulations

We received 303 comments (293 from members of the general public, 9 from the research or scientific community, and 1 from a dealer) expressing general support for the revised proposal, although one commenter from the general public stated that subpart C—"Research Facilities" was poorly organized and redundant. Subpart C has been revised in the final rule to include all requirements applicable to research facilities. We describe those changes under the heading, "Subpart C—Research Facilities," elsewhere in this document. Twenty-six commenters (19 members of the general public, 5 members of the research or scientific community, and 2 dealers) supported an increased budget for animal welfare matters. Three hundred fourteen commenters (41 members of the general public, 244 members of the research or scientific community, and 29 dealers) expressed general opposition to more stringent regulations, and one dealer commented that the budget should be reduced.

We believe these final regulations carry out the mandate of Congress, as expressed in the 1985 amendments to the Animal Welfare Act, that regulated persons be required to establish and maintain internal procedures that ensure the humane care and use of animals, and that they demonstrate their compliance with the Act to the Department.

Six hundred sixty commenters (652 members of the general public and 8 members of the research or scientific community) urged that the revised proposed rules be published as final regulations no later than June 15, 1989. In a civil action filed by the Animal Legal Defense Fund against the Department, the Office of Management and Budget, and the U.S. Department of Health and Human Services, seeking the publication of final regulations on parts 1 and 2 without further delay, we represented to the court that USDA would make the necessary changes in parts 1 and 2 of the regulations in consideration of the public comments and in consultation with interested Federal agencies within 30 days following the close of the comment period. As promptly as practicable, USDA would submit the final rules to the **Federal Register** for publication. The enormous task of reviewing the large volume of comments we received in response to the March 1989 revised proposal, and the task of completing our consultation with HHS and other Federal agencies, have prevented us from publishing final rules on parts 1 and 2 by June 15, 1989.

In order to accommodate this timetable, and to achieve our objective of publishing final rules on parts 1 and 2 without further delay, we declined to extend the 60-day comment period, as some commenters requested. We received 614 comments (72 from members of the general public, 537 from members of the research or scientific community, 3 from exhibitors, and 2 from dealers) requesting that we reopen parts 1 and 2 for substantive comments. The primary impact of the changes made in the revised proposal was to reallocate responsibility for certain duties and obligations under the Act from the Committee and attending veterinarian at research facilities to the facility itself. These changes were made in response to the nearly 8,000 comments we received following the March 1987 proposal. We solicited additional comments on the issue of the interrelationship of the various parts of the regulations only, and did so in response to the comments we received following the March 1987 proposal. The additional changes we are making in this final rule reflect our further consideration of those comments as well as the comments we received on the interrelationship of the regulations. This final rule presents the Agency's response to the more than 13,000 comments we have received. We believe that final rules may now be promulgated without further delay.

Forty-two commenters (24 members of the general public, 17 members of the research or scientific community, and 1 dealer) wrote to express their opposition to the use of any animals in research. By way of contrast, 21 commenters (10 members of the general public and 11 members of the research or scientific community) wrote to express their support for the unrestricted use of animals in biomedical research, and 385 commenters (100 members of the general public, 283 members of the research or scientific community, and 2 dealers) expressed support for the responsible and caring use of animals in research when no scientifically valid alternative to animal use exists. We also received 739 comments (504 from members of the general public, 232 from members of the research of scientific community, and 3

from dealers) supporting provisions intended to reduce the suffering of laboratory animals. One member of the general public stated that laboratory animals should be relieved from any pain whatsoever.

In amending the Animal Welfare Act, Congress explicitly acknowledged that "the use of animals is instrumental in certain research and education for advancing knowledge of cures and treatment for diseases and injuries which afflict both humans and animals; * * *" (7 U.S.C. 2131). At the same time, however, Congress determined that alternative testing methods that do not require animals are being developed that are faster, less expensive, and more accurate, and that eliminating or minimizing unnecessary duplication of experiments on animals can result in more productive use of Federal funds (7 U.S.C. 2151). In response to public concern for laboratory animal care and treatment, the 1985 amendments to the Act imposed restrictions on the use of animals so that pain and distress will be minimized whenever possible, alternatives to painful procedures will be considered and unnecessary duplication of experiments avoided, withholding of pain-relieving drugs will be limited to when scientifically justified, and adequate veterinary care will be provided. The 1985 amendments also prohibit using an animal in more than one major operative experiment unless necessary for scientific purposes or under other special circumstances (7 U.S.C. 2143(a)). These final regulations reflect the determination of Congress that while biomedical research using animals is necessary, regulations to ensure that such research is conducted responsibly and humanely are also necessary.

We received 984 comments (159 from members of the general public, 823 from members of the research or scientific community, and 2 from dealers) objecting that the revised proposal exceeds the statutory authority provided by the Act, and that it does not comport with the Congressional intent underlying the 1985 amendments. Five members of the research or scientific community stated that the regulations as proposed go beyond ensuring the humane care and use of laboratory animals.

The March 1989 revised proposal points out, in precise detail, APHIS's statutory authority for the proposed regulatory amendments. It does so in response to the comments we received to the March 1987 proposal objecting that APHIS lacked statutory authority for many of the proposed changes. The revised proposal also demonstrated that the legislative history supports those changes. In this final rule, we have included specific references to our statutory authority, as we did in the supplementary information accompanying the revised proposal, to demonstrate that ample statutory authority for these final rules exists.

We received 476 comments (132 from members of the general public, 342 from members of the research or scientific community, and 2 from dealers) stating that the revised proposal consists of rigid engineering standards rather than performance standards, contrary to the directives of Executive Order 12498, which requires adherence to the policy guidelines established by the Presidential Task Force on Regulatory Relief. The Task Force expressed preference for performance-based or result-oriented regulatory standards, rather than precise engineering requirements, because the latter are generally considered cost-ineffective, especially when uniformly applied on a nationwide basis.

The regulations made final in this rule reflect our further consideration of the concerns raised by the commenters, and those expressed by other Federal agencies in the course of our consultation with them. Through the process of ongoing consultation with HHS and members of the IRAC, we explored additional regulatory alternatives that would allow regulated entities to develop internal procedures that accomplish our regulatory objectives. The flexibility allowed regulated persons under this final rule should allay the commenters' concern that we are imposing unnecessarily rigid engineering requirements at unwarranted expense. The final rule for part 2 imposes responsibility upon research facilities for ensuring compliance with the regulations and standards promulgated under the Animal Welfare Act. We will inspect those facilities and examine their records and reports to determine that they are fulfilling this responsibility.

Two hundred eighty commenters (74 members of the general public, 204 members of the research or scientific community, and 2 dealers) argued that the legislative history of the 1985 amendments to the Act indicates that APHIS's authority is limited to promulgating regulations that are consistent with the guidelines contained in the PHS Policy, issued by HHS pursuant to the Health Research Extension Act of 1985, and was not intended to result in significant cost increases for regulated entities. That Act directs the Secretary of HHS, through the Director of the National Institutes of Health (NIH), to establish guidelines for the proper care and treatment of animals used in biomedical and behavioral research, including the establishment of animal care committees. Those guidelines are contained in the PHS Policy on Humane Care and Use of Laboratory Animals (PHS Policy). Two hundred thirty-seven commenters (66 members of the general public, 169 members of the research or scientific community, and 2 dealers) further suggested that if HHS and APHIS remain unable to agree on the nature and scope of our statutory authority the Attorney General should be requested to resolve the dispute in accordance with Executive Order 12146.

Three hundred fifty commenters (75 members of the general public, 273 members of the research or scientific community, and 2 dealers) protested that the revised proposal would radically alter established PHS and NIH policies, and were not supported by scientific evidence to justify doing so. Five hundred eleven commenters (132 members of the general public, 377 members of the research or scientific community, and 2 dealers) recommended that we adopt the PHS Policy to reduce duplication and avoid inconsistency between the regulations and the Policy. Ten members of the research or scientific community urged that we reconsider allowing research facilities to comply with either the Animal Welfare regulations, the PHS Policy, Food and Drug Administration regulations, or the American Association for the Accreditation of Laboratory Animal Care (AAALAC) accreditation standards. We received 365 comments (85 from members of the general public, 278 from members of the research or scientific community, and 2 from dealers) objecting that we did not coordinate with the Secretary of HHS in issuing the revised proposal. Two hundred sixty-three commenters (70 members of the general public, 191 members of the research or scientific community, and 2 dealers) further suggested that APHIS does not have the technical competence to promulgate these rules.

The Animal Welfare Act was passed by Congress in 1966, long before the Health Research Extension Act of 1985 and the PHS Policy existed. The Act has been amended several times, most recently in 1985, to reflect public concern over the care and treatment of animals used in research, and maintained or handled by dealers, exhibitors, carriers, and intermediate handlers. Section 15(a) of the Act requires that the Secretary of Agriculture consult and cooperate with other Federal agencies in establishing standards, and consult with the Secretary of HHS before issuing regulations (7 U.S.C. 2145(a)). We have continued the consultation described in the supplementary information accompanying the revised proposal (54 FR 10837), in an effort to coordinate our requirements wherever it is consistent with our statutory mandate to do so. We believe that this final rule resolves all of the issues raised by HHS in response to our proposals to amend parts 1 and 2 of the regulations, and that it serves our mutual objectives of animal welfare.

Notwithstanding our desire to resolve our outstanding differences with HHS, we are mindful that Congress has entrusted the Department with responsibility for establishing minimum requirements to carry out its mandate, and for administering the Act because of our expertise in animal welfare matters. We are accountable to Congress and the public for doing so. By harmonizing our regulations with the HHS guidelines wherever doing so is consistent with the Act, we have developed final rules that allow those research facilities receiving funds under the Health Research Extension Act of 1985 to utilize their existing internal procedures where they satisfy the requirements of the Act. The modifications made in the final rule will also allow other research facilities greater flexibility in developing internal procedures which ensure that the objectives of the Act are satisfied. Modifications to the requirements imposed upon research facilities in the final rule are explained in detail under the heading, "subpart C—Research Facilities." Any outstanding differences remaining between the PHS Policy and these final rules are necessary to fulfill our statutory obligations, as directed by Congress.

We are not adopting the regulations of the Food and Drug Administration or the accreditation standards of AAALAC. Congress has mandated that we promulgate regulations implementing the Animal Welfare Act, and that we provide minimum standards for the humane care and use of laboratory animals. Standards or requirements promulgated by other agencies or associations do not accomplish our objective of ensuring compliance with certain minimum requirements. The PHS Policy and the AAALAC accreditation standards are guidelines for facilities that are either Federally funded or that desire accreditation status, respectively. We do not have the authority to enforce them. Furthermore, the 1985 amendments require specific minimum standards, such as exercise for dogs and psychological well-being of nonhuman primates, that have no counterpart in the regulations of other agencies. We believe it is desirable to administer and enforce one uniform body of regulations at all research facilities regulated by the Act. We considered the regulations and guidelines of other agencies and research associations in developing our earlier proposals and these final rules, and have attempted to harmonize our mutual requirements wherever it was consistent with our mandate to do so.

Three hundred thirty commenters (66 members of the general public, 262 members of the research or scientific community, and 2 dealers) repeated the comment that APHIS has failed to show a rational connection between the proposed rules and the Agency record. As we stated in the supplementary information accompanying the revised proposal, we have been charged with the responsibility of administering and enforcing the Animal Welfare Act, and implementing regulations, since the Act was enacted in 1966. The proposed amendments to the regulations and the regulations promulgated in this final rule reflect our many years of experience in implementing the Act. We have determined where additional regulatory requirements are needed to ensure the safeguards intended by the Act are provided and to promote animal welfare. We believe that, upon implementation, these final rules will assist us in enforcing the Act and in preventing circumvention of its requirements.

We received 396 comments (100 from members of the general public, 294 from members of the research or scientific community, and 2 from dealers) stating that we did not respond fully in the revised proposal to the comments submitted in response to the March 1987 proposal, and that we did not provide sufficient reasons for declining to make changes suggested by the commenters. We disagree. Many months were devoted to reviewing the nearly 8,000 comment letters received. All of the comments were carefully considered, and many changes were made as a result of those comments. The rationale underlying our decisions to revise the proposed regulations, or not to revise them to include suggested changes, is explained in great detail in nearly 60 **Federal Register** pages, in the supplementary information accompanying the revised proposals for parts 1 and 2 (see 54 FR 10822–10832 and 54 FR 10835–10882)

Two commenters (1 dealer and 1 exhibitor) stated that the revised proposal is written in a manner that makes it difficult to understand and to comment upon. One of our stated objectives in revising the regulations is to make them easier to understand, thereby increasing compliance and making them more effective. We believe that we have accomplished this objective in the final rules for parts 1 and 2. If, upon implementation of the regulations, we determine that further clarification is necessary, we will provide it in a document published in the **Federal Register**. No further changes are made in the final rule based upon this comment.

We received a number of different comments objecting to the regulations on the grounds that they will impede research in various ways. We received 643 comments (104 from members of the general public, 534 from members of the research or scientific community, and 2 from dealers) objecting that the regulations in the revised proposal would unduly burden research with excessive paperwork, in contravention of the Paperwork Reduction Act. One member of the general public and 3 commenters from the research or scientific community noted, however, that the March 1989 proposal was carefully drafted to avoid unnecessary paperwork. Through our ongoing consultation with HHS and members of the IRAC, we have determined that certain paperwork and reporting requirements presented in the revised proposal can be coordinated with those already required under the PHS Policy, thereby reducing any additional burden that would be imposed upon grantee institutions. Certain other reporting requirements have been modified in the final rule to require less specific detail than originally proposed, and will also reduce the paperwork burden imposed upon research facilities. With these changes, explained in detail under the heading, "subpart C—Research Facilities," we believe we have reduced the paperwork and reporting requirements to the minimum necessary to effectuate the Act, and still enable us to administer the Act by determining whether research facilities are in compliance. We believe these regulations, as modified will not impede research.

We received 547 comments (103 from members of the general public, 442 from members of the research or scientific community, and 2 from dealers) stating that the revised proposal would interfere with research due to its rigidity, by not allowing the flexibility

and innovations necessary for the optimal care and treatment of animals. The final rules have been modified to allow research facilities greater flexibility in developing internal procedures to ensure compliance with the regulations. Ample opportunity for innovative research existed under the proposed rules, and is maintained in the final rules. The regulations provide for departures from the standards and regulations if justified by the principal investigator and approved by the Committee (final rule § 2.31(d)(1)). Under this provision, the research facility, through its Committee, is responsible for approving and allowing any innovations in research that are justified as necessary for scientific purposes. We do not agree with the commenters and believe that their concerns will not materialize upon implementation of the final rules.

Throughout this rulemaking process, we have remained cognizant that the Act proscribes the Secretary from interfering with research design or the performance of actual research. Section 13(a)(6) of the Act provides that "[n]othing in [the] Act (i) except as provided in paragraph (7) of [subsection (a)] shall be construed as authorizing the Secretary to promulgate rules, regulations, or orders with regard to the design, outlines, or guidelines of actual research or experimentation by a research facility as determined by such facility; (ii) except as provided * * * shall be construed as authorizing the Secretary to promulgate rules, regulations, or orders with regard to the performance of actual research or experimentation by a research facility as determined by such research facility; * * *" (7 U.S.C. 2143(a)(6)(A)(i) and (ii)). The regulations being promulgated today are necessary to effectuate the intent of the Act that animals used in biomedical research be provided humane care and treatment. They do not prescribe or interfere with research design or procedures.

Some commenters (28 members of the general public and 17 members of the research or scientific community) were concerned that the proposed regulations would result in research being conducted overseas, due to the added burdens and expense imposed upon the research community, and 5 commenters from the research or scientific community cautioned that the regulations will permit our competitors to overtake and surpass the lead we have enjoyed in biotechnology. We do not believe a significant amount of research activities will be conducted in other countries rather than the United States as a result of these rules. We also do not perceive that Congress or HHS would provide Federal funds for research conducted abroad to avoid the requirements of the Animal Welfare regulations. Similar concerns were raised in 1966 and 1967 when the Animal Welfare Act was first enacted and regulations were promulgated to implement it. History has shown that these concerns were not borne out. To the contrary, tremendous advancements in human and animal health have been made possible through continued support for biomedical research. We are not making any changes in the regulations on the basis of these concerns.

Nor do we agree with the 83 commenters from the research or scientific community who stated that many of the proposed revisions could be used to eliminate animals from biomedical research altogether.

The 1985 amendments to the Act impose specific requirements upon research facilities, including provisions ensuring adequate veterinary care, proper use of pain-relieving drugs, consideration of alternatives to the use of animals and to painful procedures, exercise for dogs, and psychological well-being of nonhuman primates, and some costs will necessarily be associated with these changes. In enacting the amendments, Congress specifically found that the use of animals is instrumental in certain research and education (7 U.S.C. 2131(b)). Congress also determined that the benefit to society of providing for the humane care and use of animals in research justifies its attendant costs. We believe that these final rules effectuate the intent of Congress without imposing an unnecessary, unreasonable, or unjustified financial burden.

Twenty commenters (2 members of the general public and 18 members of the research or scientific community) expresed concern that the proposed regulations, as revised in the March 1989 proposal, would discourage young people from entering medical research fields. We disagree. The requirements of the Animal Welfare Act to reduce pain and distress to animals, to reduce unnecessary duplication of experiments, to encourage development of alternative methods of research, and to provide a more humane environment for animals used in biomedical research, will not discourage young people from entering the field of medical research. We believe that greater concern for the humane care and use of animals may in fact encourage new scientists and foster greater support for biomedical research throughout our society.

One hundred eighty-three commenters (6 members of the general public and 177 members of the research or scientific community) protested that many of the proposed revisions to the regulations appeared to be a direct reaction to a vocal minority in the animal rights movement, whose purpose is to eliminate the use of animals in research entirely. This is a misperception. As noted above, the Act specifically states that "the use of animals is instrumental in certain research and education for advancing knowledge of cures and treatment for diseases and injuries which afflict both humans and animals; * * *" (7 U.S.C. 2131(b)). In passing the 1985 amendments to the Act, Congress responded to the concerns of the American public regarding the use of animals in biomedical research, and stated that alternatives to the use of animals should be encouraged, and unnecessary duplication of experiments on animals avoided (7 U.S.C. 2131(b)). These final regulations reflect the mandate of Congress that while animal experimentation shall continue, humane methods of animal care and use be implemented by biomedical research institutions.

We received 419 comments (74 from members of the general public, 223 from members of the research or scientific community, and 2 from dealers) stating that research would be impeded if research protocols and records are made part of the public record and subject to Freedom of Information Act (FOIA) requests. The commenters were concerned that public availability of this information would divulge trade secrets and would subject researchers to harrassment. Forty-six commenters (5 members of the general public and 41 members of the research or scientific community) were concerned with terrorist acts against researchers and their families as a result of public disclosure under the FOIA. One member of the research or scientific community stated that such records should be made part of the public record.

The regulations, as revised in this final rule, require that a summary of exceptions to the standards and regulations be attached to the research facility's annual report (final rule § 2.36(b)(3)). Neither the research "protocol", nor the animal care and use procedure that will be followed in carrying out the research, is required in the annual report. APHIS inspectors are authorized to inspect such records under the Act, but there is no requirement in the final regulations that the records be submitted to and maintained by APHIS as a regular practice. Therefore, these records generally are not agency records available under the Freedom of Information Act. Furthermore, APHIS records of inspections (VS Form 18-8) and the annual reports submitted by research facilities list animal use sites at research facilities. They do not list researchers by name and address. We believe the commenters concerns are unwarranted, and that no further change is needed in the final rule.

Three hundred twenty-six commenters (93 members of the general public, 231 members of the research or scientific community, and 2 dealers) asserted that under the revised proposal, an adversarial relationship between veterinarians and researchers would result. We do not agree with this characterization. We revised our initial proposal to clarify areas of responsibility to avoid potential conflict, and to ensure that provision is made for proper veterinary care in the planning and conduct of animal care and use procedures. This allocation of authority by the research facility to the attending veterinarian is maintained in the final rule. Section 2.33(a)(2) requires that a facility's attending veterinarian be given appropriate authority to ensure that adequate veterinary care is provided, and to oversee animal care and use. These areas are within the expertise of doctors of veterinary medicine. In recognition of this fact, section 13(a)(3)(C) of the Act requires that a veterinarian be consulted in planning a potentially painful procedure (7 U.S.C. 2143(a)(3)(C)), and the final rule reflects this determination of Congress (final rule § 2.33). As we stated in the revised proposal, we do not regard this interaction as an impediment to research, but rather as a necessary ingredient of the research facilities' commitment to assuring animal welfare.

We received 269 comments (78 from members of the general public, 189 from members of the research or scientific community, and 2 from dealers) stating that the Secretary does not have the authority to establish committees with power to review or disapprove of research protocols for any reason, since this authority would deprive researchers of the scientific discretion necessary for the conduct of research. The revised proposal was explicitly clear that Committees would be authorized to review the animal care and use procedure to be employed in a proposed research activity, in accordance with the requirements of the Act, and that this authority did not extend to research "protocol" approval. It is the mandate of Congress that Committees assess animal care, treatment, and practices (7 U.S.C. 2143(b)(1)).

As we explained in detail in the supplementary information accompanying the revised proposal, it is necessary that Committees review the animal care and use procedures proposed to be followed in the conduct of research in order for a research facility to assure us that it is in compliance with the Act and regulations. This authority is limited to the animal care and use portion of a proposal to determine how the research will treat or affect an animal and its condition, and the circumstances under which the animal will be maintained. It does not extend to evaluating the design, outlines, guidelines, and scientific merit of proposed research (54 FR 10849). We have attempted to clarify this point further in the final rule, and put such concerns to rest, by stating that the Committee shall function as an agent of the research facility (final rule § 2.31(c)). In that capacity, the Committee shall review those components of proposed activities, or proposed changes in activities, related to the care and use of animals and determine that they are in accordance with the Animal Welfare regulations unless otherwise justified (final rule § 2.31(d)(1)).

We received 254 comments (70 from members of the general public, 182 from members of the research or scientific community, and 2 from dealers stating that APHIS's regulatory role should be limited to detecting deviations from approved activities, and should not extend to formulation of proposals. Upon implementation of the final rules, APHIS's role will be to administer and enforce the Animal Welfare Act and regulations to ensure compliance. The Act itself provides that certain procedures and safeguards must be followed in research involving potentially painful procedures in order to ensure the humane care and use of animals and that adequate veterinary care is provided (7 U.S.C. 2143(a)(3)). Our regulatory authority extends to ensuring that these procedures and safeguards are adequately addressed and adhered to. We repeat here, for the benefit of the commenters, that we acknowledge the limitation on our authority to promulgate rules, regulations, or orders with regard to the design, outlines, guidelines, or performance of actual research (7 U.S.C. 2143(a)(6)(A)).

Four hundred eighty-five commenters (68 members of the general public, 315 members of the research or scientific community, and 2 dealers) objected to the tone of our March 1989 regulatory proposals, stating that they imply that research (and researchers) is (are) unethical. We do not intend to imply any ethical judgments in these regulations. In amending the Act in 1985, Congress determined that "the use of animals is instrumental in certain research and education for advancing knowledge of cures and treatment for diseases and injuries which afflict both humans and animals; * * *" (7 U.S.C. 2131(b)). However, Congress also determined that certain measures must be prescribed and followed by research facilities to "help meet the public concern for laboratory animal care and treatment * * *" (7 U.S.C. 2131(b)). We are promulgating these regulations which govern the care, use, treatment, and handling of warm-blooded animals by research facilities and other entities, to carry out the mandate of Congress.

Comments on Specific Interrelationships Between Parts 2 and 3

We received 392 comments (95 from members of the general public, 295 from members of the research or scientific community, and 2 from dealers) stating that part 1 (Definition of terms) and part 2 (Regulations) of the regulations should not be made final without the final rule for part 3 (Standards), because they are interdependent. We also received 249 comments (68 from members of the general public, 177 from members of the research or scientific community, and 4 from dealers) stating that parts 1 and 2 should not become final without part 3 in order to be cost-effective.

We have considered the public's comments on the interrelationship of the regulations and standards and have revised the final rule accordingly. We believe that parts 1 and 2 of the regulations can be effectively implemented without further delay. Standards governing the humane handling, care, treatment, and transportation of the warm-blooded animals covered by the Act are contained in part 3 of the regulations. Although we are proposing to amend those standards, we believe that these final rules can now be implemented using the existing standards. Prompt implementation of these final rules will carry out many of the provisions for animal welfare mandated by Congress in amending the Act. No further delay is necessary to ensure that adequate veterinary care is provided to all animals under the Act and that pain-relieving drugs are used where appropriate.

Comments on the interrelationship of the terms contained in parts 2 and 3 of the regulations that are defined in part 1 are discussed in companion docket No. 89-130, published elsewhere in this issue of the **Federal Register**. In that document, we address comments suggesting that additional definitions or clarifications are necessary.

We received 480 comments (478 from members of the general public and 2 from members of the research or scientific community) expressing support for parts 1 and 2 as they relate to part 3.

Three dealers and one member of the general public requested that we clarify when an exhibitor should be registered under part 2, subpart B, or licensed, in accordance with subpart A and the term, "Class "C" licensee." Persons who meet the definition of the term "Exhibitor" provided in § 1.1 of the final rule must obtain a Class "C" license if their business involves the showing or displaying of animals to the public. Section 2.25 requires that all other exhibitors register in accordance with the requirements of subpart B of the final rule, unless they are exempt from the licensing requirements under section 3 of the Act. Section 3 exempts "any retail pet store or other person who derives less than a substantial portion of his income (as determined by the Secretary) from the breeding and raising of dogs or cats on his own premises and sells any such dog or cat to a dealer or research facility * * *" (7 U.S.C. 2133). We believe that the definitions provided in the final rule for "Exhibitor" and "Class "C" licensee" are clear, and that no further clarification of the registration regulations in subpart B are necessary.

One member of the research or scientific community requested that we clarify the Committee's responsibility regarding animals that are not covered by the Act. The Animal Welfare Act and regulations apply only to regulated animals. The term "animal" is defined in the final rule for part 1 for purposes of these regulations. The Committee has no responsibilities under these regulations for animals that are not covered by the Act.

We received several comments objecting to the requirement of revised proposal § 2.30(g) which would require that exceptions to the standards and regulations be permitted by research facilities only when necesary in order to accomplish the research design, specified in the proposed animal care and use procedure submitted to the Committee for approval, explained in detail, and approved by the Committee. Paragraph (g) provided that the principal investigator must first file a report with the Committee "explaining the areas of noncompliance in detail." Three commenters (1 member of the general public and 2 members of the research or scientific community) objected that requiring a detailed explanation of deviations or exceptions to compliance with the regulations and standards will delay research.

The Act requires that exceptions to the standards be allowed only when specified by research protocol (7 U.S.C. 2143(a)(3)(E)). Any such exceptions must be detailed and explained in the research facility's annual report and filed with the Committee (7 U.S.C. 2143(a)(3)(E)). It is the responsibility of the research facility to ensure that it is in compliance with the Act and regulations. In order to do so the final regulations provide that the Committee, as an agent of the research facility, shall review all proposed activities and proposed changes on ongoing activities, to determine whether they are in compliance, or whether an exception is justified. Under the final rule, the principal investigator must present an acceptable justification for the exception, in writing. A summary of all such exceptions must also be attached to the facility's annual report in accordance with the requirements of the Act (final rule § 2.36(b)(3)). We believe that the burden imposed upon principal investigators in explaining how their proposal departs from the regulations and standards, and justifying the proposed exception, is reasonable and necessary to keep the institution informed of research activities and in compliance with the Act. The final rule provides means by which the research facilities can ensure that Committee review is provided without undue delay. We do not believe that this requirement, as revised in the final rule, will delay research.

Four members of the research or scientific community objected to the term, "areas of noncompliance" and suggested that we refer to "scientifically justified exceptions to the standards" instead. As noted briefly above, and explained in greater detail under the heading, "subpart C—Research Facilities", § 2.31(d)(1) of the final rule is revised to require that the Committee review proposed activities to determine that the animal care and use components of those activities are in accordance with the regulations, "unless acceptable justification for a departure is presented; * * *" (final rule § 2.31(d)(1)). This language is consistent with the PHS Policy and is more appropriate, since an approved departure from the regulations would not be deemed a violation of the Act, as the term "noncompliance" may connote.

One member of the research or scientific community objected to considering scientifically necessary exceptions to the regulations as being areas of noncompliance or deviations which must be explained in detail by the principal investigator and included in a written report that is attached to the annual report. As noted above, the Act requires that exceptions to the standards be explained in a written report and included in the research facility's annual report (7 U.S.C. 2143(a)(3)(E)). Under the final rule, therefore, the research facility must assure that it has required "that exceptions to the standards and regulations be specified and explained by the principal invetigator and approved by the IACUC." (Final rule § 2.31(d)(3)). We are requiring that a "summary of all such exceptions * * *" be attached to the annual report (final rule § 2.36(b)(3)). The terms "areas of noncompliance" or "deviations" used in the revised proposal are referred to as "departures" from the regulations, or "exceptions" in the final rule, for the reason set forth immediately above. Therefore, scientifically necessary exceptions must be explained by the principal investigator and described, in writing, in the facility's annual report, contrary to the commenter's assertion.

Four commenters (2 members of the general public and 2 members of the research or scientific community) opposed the requirement that written reports of exceptions to the standards and regulations be attached to the annual report, as required under revised proposal § 2.30(g). This requirement is statutorily mandated, as set forth above, and is retained in the final rule (final rule § 2.31(d)(3)). We have modified it to require summaries of such exceptions, however, as explained in greater detail under the heading, "Subpart C—Research facilities", subheading, "Annual report."

We received 628 comments (619 from members of the general public and 9 from members of the research or scientific community) endorsing the requirements of revised proposal § 2.30(h), "Exercise for dogs and psychological well-being of nonhuman primates." It would require that "[t]he research facility shall establish, in consultation with the attending veterinarian, written procedures and systems for the exercise of dogs and for the psychological well-being of primates in accordance with the regulations and standards, and a record system documenting that such a procedure or system is being carried out." We also received 203 comments (198 from members of the general public, 4 from members of the research or scientific community, 1 from a dealer) supporting the requirement for documentation of the release of dogs for exercise (revised proposal § 2.30(h) and proposed § 3.07(d)), and 193 comments (189 members of the general public and 4 members of the research or scientific community) supporting the requirement for documentation of primate exercise and psychological well-being (revised proposal § 2.30(h) and proposed § 3.81(c)). Fourteen commenters (1 member of the general public and 13 members of the research or scientific community) opposed the requirement for written procedures and record systems, and 303 commenters (74 members of the general public, 227 members of the research or scientific community, and 2 dealers) stated that the requirements of revised proposal § 2.30(h), if included in the final rule, could not be met in the absence of the standards set forth in part 3. In addition, although the revised proposal made clear that the procedures may be included in the facility's standard operating procedure and need not be a separate document, members of the IRAC expressed concern in the course of our consultation, that the requirement for written procedures for the exercise of dogs and recordkeeping systems for documenting exercise would be administratively burdensome.

We proposed that recordkeeping systems be maintained to ensure compliance, since exercise could not otherwise be verified. We continue to endorse this approach, as stated in the supplementary information accompanying the revised proposal. However, requirements for exercise of dogs and for promoting the psychological well-being of nonhuman primates will, upon publication of a final rule, be set forth in subparts A and D of part 3 of the regulations. Until the proposed regulations for part 3 are published as a final rule, there are no such procedures and systems to record. We believe that making this requirement of part 2 final before the promulgation of standards for exercise and psychological well-being would be premature, confusing, and difficult to enforce. We are therefore removing from the final rule for part 2 the requirement that a record system documenting that a procedure or system for exercise of dogs and for the psychological well-being of nonhuman primates be established, pending promulgation of a final rule for part 3.

Three members of the research or scientific community commented that all Federal research facilities should be covered by the regulations. The Act provides that Federal research facilities shall establish Committees having the same composition and responsibilities required at nonfederal research facilities (7 U.S.C. 2143(c)). It also provides that Federal research facilities shall comply with the standards and requirements promulgated under Section 13 (a), (f), (g), and (h) of the Act (7 U.S.C. 2144). (This section reference appears in the Act as Section 13 (a), (g), (h), and (i) due to a drafting error which created two paragraphs designated as (f).) Although we do not exercise authority to inspect Federal research facilities, they must comply with the standards promulgated under the Act. The requirement that Federal facilities maintain Committees having the same composition, duties, and responsibilities required of other research facilities is contained in § 2.37 of the final rule.

Two members of the research or scientific community commented that pounds and shelters should be regulated under the Act. We do not have authority under the Act to regulate governmentally owned and operated pounds and shelters. We do regulate private or contract pounds and shelters, however, if they meet the definition of a dealer, as set forth in final rule § 1.1. Regulations governing their operations are set forth in § 2.132 of the final rule.

Two hundred forty-two commenters (67 members of the general public, 173 members of the research or scientific community, and 2 dealers) objected to the revised proposal arguing that there is no proof that large numbers of stolen animals end up at research facilities. Certain of the provisions in the regulations are intended to prevent this from occurring (*see, e.g.*, final rule §§ 2.38 (d), (j), (k), 2.60, 2.101)).

One of the original findings of Congress underlying enactment of the Animal Welfare Act in 1966 was the need "to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen." (7 U.S.C. 2131(b)). This is still a valid concern of Congress and the public, and therefore the Department. Regulations intended to prevent the sale of stolen animals to research facilities and the use by research facilities of stolen animals are therefore included in the final rule for part 2.

Public Comments on Regulatory Impact Analysis and Regulatory Flexibility Act Analysis

The anticipated economic impact of implementing the 1985 amendments to the Animal Welfare Act has generated much interest, discussion, and controversy. The Department conducted a regulatory impact analysis of the proposed rules as required by Executive Order 12291. The analysis determined that implementation of the proposed rules would have a cost impact in excess of $100 million on the economy, thus it would be a "major rule." The analysis of cost impacts was based on our best assessment; available information indicated that the costs to regulated establishments would amount to $207 million for annual operating expenditures and $876 million for capital investments.

We received 632 comments (3 from the research community, 2 from dealers, and 627 from the general public) noting that the regulatory impact analysis contained "overinflated" cost estimates. Only 1 of the comments from the general public provided detailed information of compliance costs for each new provision in the proposed rules. The rest of the comments contained a formatted statement indicating that costs in the analysis were "overinflated" and the proposed rules asked for nothing more than a well-run animal facility already provided for regulated animals.

We also received 270 comments (91 members of the general public, 177 members of the research or scientific community, and 2 dealers) noting that the cost estimates in the regulatory impact analysis were too low. Again, only 1 commenter from the research community provided detailed information and different compliance cost estimates of implementing the proposed rules. The commenter estimated that implementation of the proposed rules will cost regulated establishments more than $450 million annually plus a capital investment of at least $1.6 billion over the next several years.

In conducting the regulatory impact analysis, the Department decided early in the analysis that attempting to construct a coherent analytical framework to estimate potential compliance costs was inappropriate. Time and resources did not allow the traditional economic approach of conceptualizing and estimating an analytical framework. Also, a single framework would not have provided all useful answers to all questions on anticipated cost impacts because of the

complexity of factors being measured, the lack of statistical data sources, and the diversity of regulated establishments. Instead, the Department relied on several informational sources such as expert opinion from across the country, our inspection of regulated sites, and our own experience in administering the Animal Welfare regulations. The cost estimates represented best efforts by the Department and are not to be construed as exact estimates of compliance due to obvious limitations, as stated in the analysis.

However, we disagree with those commenters who stated that the potential costs on regulated establishments were "overinflated." The proposed rules contained many new animal welfare provisions required by the statute which are not presently prescribed in the existing regulations. Compliance with these new provisions will require regulated establishments to update their facilities and practices so that the level of humane care and treatment afforded to regulated animals will increase. The derivation of cost estimates provided by the commenter from the research community which doubled the cost estimates in the regulatory impact is also subject to data and analytical constraints. Furthermore, the commenter provided insufficient detail, methodology, and data to support its cost estimates. We believe that these cost estimates represent a "worst case" scenario of implementing the proposed rules.

Sixty-six commenters from the general public, 168 commenters from the research or scientific community, and 2 dealers stated that the regulatory impact analysis did not contain sufficient detail to explain the discrepancies between the Department's cost estimates (referenced above), and those submitted by a commenter from the research or scientific community. The regulatory analysis provides an internal mechanism for the Department to promulgate new rules or revise existing rules based on information which is available to the Department. It is impossible for the Department to compare its own findings in the regulatory analysis with those provided by a commenter after the proposed rules have been made public.

Four hundred ninety-two commenters (275 from the research or scientific community, 114 from the general public, and 3 dealers) stated that the proposed regulations would inflate the cost of animal research making it cost prohibitive. Two hundred sixty-one commenters (68 members of the general public, 168 members of the research or scientific community, and 25 dealers) also stated that the proposed rules will cost too much to implement and will put small dealers out of business. Two hundred forty-three commenters (66 members of the general public, 175 members of the research or scientific community, and 2 dealers) also stated that the proposed rules will cost too much and will put small researchers out of business. In addition, 70 commenters from the general public, 179 commenters from the research community, and 2 dealers were shocked that the Department discounted the impact of the proposed rules believing that no establishment would abandon the use of animals in biomedical research due to increased compliance costs. Most of these commenters also stated that the increased costs for animal research are important, and when coupled with the delay in research advances, would make the real costs staggering.

The regulatory review has indicated that a cost impact on animal research and small entities would occur. Moreover, the regulatory review has also indicated that the cost impact of the regulations result from the implementation of the new provisions in the 1985 amendments to the Animal Welfare Act. The Department has not discounted the potential economic effects of the proposed rules on biomedical research using animals as mere cost increases. We have acknowledged that the overall impact on biomedical research is difficult to assess. Whether biomedical research facilities would abandon the use of animals depends on the extent of compliance costs to be imposed on each facility. Biomedical research facilities vary extensively as to their research needs, operations, animal premises, and their inventory of regulated species.

In developing final rules, the Department has considered and will continue to consider regulations that will impose the least cost on regulated establishments within statutory goals. The Department does not consider the regulations to be imposing prohibitive costs on regulated establishments. Most facilities meeting or exceeding present compliance requirements may not be greatly impacted by the regulations, except for the new provisions as stated in the amendments.

Two hundred ninety-two commenters (72 members of the general public, 178 members of the research or scientific community, and 2 dealers) indicated that the Department has failed to do a cost-benefit analysis as required by Executive Order 12291. Ninety-three members of the general public, 301 members of the research or scientific community, and 2 dealers stated that the regulations provided no benefit to animals or improvements in animal care.

The general requirements for a regulatory impact analysis under Executive Order 12291 of proposed federal rules require that costs and benefits be identified and examined. They also require that regulatory objectives be chosen to maximize net benefits to society or involve the least cost to society. The regulatory analysis examined the presence of benefits to society and animals arising from the regulatory proposals and indicated that these benefits could not be properly quantified. In the absence of actual dollar figures for benefits, it was impossible to estimate the net potential benefits from the regulations.

The Department disagrees with the opinion that animals will not receive improved animal care or benefits under the proposed rules. There has been considerable scientific data and increased public opinion that supports the intent of Congress to increase the level of animal care and treatment afforded to animals in regulated establishments. Requirements that provide for better and enriched animal housing environments, appropriate veterinary care, procedures that minimize animal pain and discomfort, and alternatives to animal research are some of the factors which support the increased level of welfare and benefits to regulated animals.

Seventy-four commenters members of the general public, 172 members of the research or scientific community, and 2 dealers stated that the Department has failed to consider alternatives that will achieve statutory goals and involve the least cost to society. The Department disagrees with these commenters. In developing the proposed rules, the Department has sought comments and input from the regulated establishments, the general public, and interested Federal agencies. Previous proposals contain extensive discussion and explanation of alternative provisions for each new revision or change required by the amendments. The Department will also finalizes rules after all relevant factors are considered, including least costly alternatives, in achieving statutory goals.

Statutory Authority

This rule is issued pursuant to the Animal Welfare Act (Act), as amended, 7 U.S.C. 2131–2157. Congress recently added significantly to the Secretary's responsibilities under the Act, particularly with regard to the use of animals by research facilities, in the Food Security Act of 1985, Public Law No. 99–198, approved December 23, 1985. The declared policy of the Act is to ensure that animals intended for use in research facilities, as pets, or for exhibition purposes, are provided humane care and treatment; to assure the humane treatment of animals during transportation; and to prevent the sale of stolen animals.

The Act requires that animal dealers and exhibitors obtain a license from the Secretary, and that research facilities, carriers, and intermediate handlers register with the Secretary. The Act directs the Secretary to issue specific regulations concerning, *inter alia* recordkeeping, veterinary care, handling, transportation, identification of animals, and holding period requirements. In addition, the 1985 amendments require the Secretary to issue expanded regulations governing the use of animals in research facilities. Section 21 of the Act continues to authorize the Secretary to issue such regulations as he deems necessary to effectuate the purposes of the Act.

The recent amendments mandate that these regulations are to include standards for care, treatment, and practices in experimental procedures which will minimize pain and distress. The Secretary is to require that researchers consider alternatives to painful procedures and that, with regard to painful procedures, researchers must consult a veterinarian; use adequate tranquilizers, anesthetics, and analgesics; and provide for adequate pre- and post-surgical care. Moreover, exceptions to these standards may be made only when specified by research protocol and explained in a report mandated in the Act.

The Act also mandates that the Secretary issue regulations requiring research facilities to show and report that they are complying with the Act and that they are following professionally acceptable standards in the care and treatment of animals during research. The Act directs the Secretary to require each research facility to establish a committee to assess the facility's use and treatment of animals. The Act specifies the composition of the committee, including the requirement that each committee must be composed of at least three members and that each committee must have at least one member who is a veterinarian and at least one who represents the community interest in proper animal care. The Act mandates many of the committee's responsibilities, including that it inspect and report at least semi-annually on the condition and use of animals and report any violations of the standards. The Secretary is also to require each research facility to provide training for all personnel involved in animal care.

This rule contains regulations required by the 1985 amendments as well as modifications to existing regulations based on the Department's experience in administering the Act.

Executive Order 12291

The Department has examined the economic impact of this final rule in accordance with Executive Order 12291.

Amendments to the Animal Welfare Act require changes in the existing Animal Welfare regulations. The Department has finalized revisions to part 2 of the Animal Welfare regulations under its statutory authority. The final regulations for part 2 contain revisions and new requirements intended to improve the welfare of animals and the regulated public's understanding of the regulations, thereby increasing compliance and effectiveness. In developing these regulations, the Department has given full consideration to the input and comments received from regulated establishments, the general public, and interested Federal agencies to previous alternative regulatory proposals. These regulations are consistent with and do not contradict other Federal regulations, policies, or guidelines on laboratory animal care, use, and treatment practices.

The regulatory analysis focuses on the changes to part 2 of the Animal Welfare regulations required by the amendments. The analytical emphasis is on the incremental costs to be imposed on regulated establishments (research facilities, breeders, dealers, and exhibitors) when these regulations become effective. These compliance costs are attributed to the statute itself and are mainly due to new requirements for the establishment and maintenance of institutional animal care and use committees in research facilities, programs of adequate veterinary care, and the use of procedures to ensure that animal pain and distress are minimized.

Revisions to part 2 of the regulations will require Federal and nonfederal research facilities to spend between $43.5 and $132.8 million in capital expenditures to renovate, equip, replace, or construct aseptic surgical facilities, and provide for adequate pre-operative and post-operative care of animals. Only those facilities performing surgery on regulated species of animals will be affected. A range is provided because the Department is unaware of the degree to which research facilities currently comply with these standard veterinary procedures in the absence of specific regulations. The Department estimates $33 million in additional annual compliance costs for Federal and nonfederal research institutions to comply with the new regulations and requirements for the operation of the institutional animal care and use committees, increased responsibilities for attending veterinarians, and increased recordkeeping requirements. These costs represent additional costs for laboratory personnel and the need for additional personnel in research facilities.

Overall, the Department does not anticipate a significant economic impact from part 2 of the regulations on biomedical research, testing, and education, since current outlays are estimated to be in excess of $14 billion per year. In terms of annual compliance costs, the regulatory impact on biomedical research would account for far less than one percent (0.2%) of the aggregate annual outlays. However, there could be small, but important, implications and distributional effects associated with allocating additional funds or expenditures for compliance with the regulations.

Licensees (breeders, dealers, and exhibitors) would be required to spend an additional $0.6 million to comply with the revised requirements for licensing, animal identification, and adequate veterinary care. With the exception of increases in annual license fees, the additional cost of these new requirements are also attributed to the statute itself. These additional costs would not have any adverse effects on the ability of licensees to continue animal ventures and the implementation of the regulations will assist the Department by enhancing traceability of animals purchased, sold or transported. These costs could also be passed on to other regulated establishments or consumers who purchase their animals.

Other economic impacts that are examined but not quantified in this analysis include the benefits which would result from increased levels of humane care and treatment of animals used for research, testing, teaching, exhibition and business ventures. The main intent of the amendments and the regulations is to increase the welfare of animals. Direct benefits accrue to society based on perceptions of increased improvements in the manner in which animals would be cared for under the new regulations. Animal research will benefit from the avoidance of unnecessary duplication of animal

experiments or protocols, increased exchange of technical information, and the renewed emphasis on and interest in the use of scientifically and economically feasible alternatives to animal experimentation.

Based on the analysis of potential cost impacts, the Department has determined that implementing parts 1 and 2 of the regulations may constitute a "major rule." The estimated total additional compliance costs for part 2 of the regulations are treated together with the economic implications that part 3—"Standards" may have on regulated establishments. The amendments mandate changes in animal housing, environmental enrichments, and exercise and socialization of dogs. Available information indicates that the bulk of the regulatory impact will be due to new requirements for the exercise of dogs and a physical environment that promotes the psychological well-being of non-human primates, specific provisions required by the amendments. The Department considers the changes in all three parts of the Animal Welfare regulations will be a "major rule" based on anticipated cost increases in excess of $100 million for animal uses, care, and treatment. For that purpose, the Department has considered and will continue to examine least cost feasible alternatives, whenever appropriate and within statutory goals, in developing the final Animal Welfare regulations.

Regulatory Flexibility Act

The Department has analyzed the potential impact on small entities of this final rule for part 2 of the Animal Welfare regulations as required by the Regulatory Flexibility Act (Pub. L. 96-354).

Based upon our analysis, the Department determines that this final rule could affect all small regulated entities, primarily by increases in annual license fees, and identification requirements for dogs and cats. However, the economic impacts would not be significant. The greatest economic burden of this rule would be imposed on large regulated entities and large research facilities. It is anticipated that the largest economic impact on small entities would result from changes in part 3—"Standards." Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR part 3015, subpart V.)

Paperwork Reduction Act

The information collection and recordkeeping provisions that are included in the final rules amending 9 CFR parts 1 and 2 have been submitted for approval to the Office of Management and Budget (OMB), in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) under control number 0579–0036, and upon approval, will become effective upon October 30, 1989. The Department has requested that OMB conclude its review no later than October 30, 1989.

The public reporting burden for this collection of information is estimated to average 0.96 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The public recordkeeping burden is estimated to average 4.0 annual hours per recordkeeper.

Send written comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Agriculture, Clearance Officer, OIRM, Room 404W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB Control No. 0579–0036), Washington, DC 20503.

List of Subjects

9 CFR Part 2

Licensing, Registration, Identification of animals, Records, Institutional animal care and use committees and adequate veterinary care, Miscellaneous.

9 CFR Part 3

Animal welfare, Humane animal handling, Pets, Transportation.

Accordingly, based on the rationale set forth in the preamble, we are amending 9 CFR parts 2 and 3 as follows:

1. Part 2 is revised to read as follows:

PART 2—REGULATIONS

Subpart A—Licensing

Sec.
2.1 Requirements and application.
2.2 Acknowledgement of regulations and standards.
2.3 Demonstration of compliance with standards and regulations.
2.4 Non-interference with APHIS officials.
2.5 Duration of license and termination of license.
2.6 Annual license fees.
2.7 Annual report by licensees.
2.8 Notification of change of name, address, control, or ownership of business.
2.9 Officers, agents, and employees of licensees whose licenses have been suspended or revoked.
2.10 Licensees whose licenses have been suspended or revoked.
2.11 Denial of initial license application.

Subpart B—Registration

2.25 Requirements and procedures.
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Subpart C—Research Facilities

2.30 Registration.
2.31 Institutional Animal Care and Use Committee (IACUC).
2.32 Personnel qualifications.
2.33 Attending veterinarian and adequate veterinary care.
2.34 [Reserved]
2.35 Recordkeeping requirements.
2.36 Annual report.
2.37 Federal research facilities.
2.38 Miscellaneous.

Subpart D—Attending Veterinarian and Adequate Veterinary Care

2.40 Attending veterinarian and adequate veterinary care (dealers and exhibitors).

Subpart E—Identification of Animals

2.50 Time and method of identification.
2.51 Form of official tag.
2.52 How to obtain tags.
2.53 Use of tags.
2.54 Lost tags.
2.55 Removal and disposal of tags.

Subpart F—Stolen Animals

2.60 Prohibition on the purchase, sale, use, or transportation of stolen animals.

Subpart G—Records

2.75 Records: Dealers and exhibitors.
2.76 Records: Operators of auction sales and brokers.
2.77 Records: Carriers, and intermediate handlers.
2.78 Health certification and identification.
2.79 C.O.D. shipments.
2.80 Records, disposition.

Subpart H—Compliance With Standards and Holding Period

2.100 Compliance with standards.
2.101 Holding period.
2.102 Holding facility.

Subpart I—Miscellaneous

2.125 Information as to business; furnishing of same by dealers, exhibitors, operators of auction sales, intermediate handlers, and carriers.
2.126 Access and inspection of records and property.

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2.127 Publication of names of persons subject to the provisions of this part.
2.128 Inspection for missing animals.
2.129 Confiscation and destruction of animals.
2.130 Minimum age requirements.
2.131 Handling of animals.
2.132 Procurement of random source dogs and cats, dealers.

Authority: 7 U.S.C. 2131–2157; 2.17, 2.51, and 371.2(g).

Subpart A—Licensing

§ 2.1 Requirements and application.

(a)(1) Any person operating or desiring to operate as a dealer, exhibitor, or operator of an auction sale, except persons who are exempted from the licensing requirements under paragraph (a)(3) of this section, must have a valid license. A person must be 18 years of age or older to obtain a license. A person seeking a license shall apply on a form which will be furnished by the APHIS, REAC Sector Supervisor in the State in which that person operates or intends to operate. The applicant shall provide the information requested on the application form, including a valid mailing address through which the licensee or applicant can be reached at all times, and a valid premises address where animals, animal facilities, equipment, and records may be inspected for compliance. The applicant shall file the completed application form with the APHIS, REAC Sector Supervisor.

(2) If an applicant for a license or license renewal operates in more than one State, he or she shall apply in the State in which he or she has his or her principal place of business. All premises, facilities, or sites where such person operates or keeps animals shall be indicated on the application form or on a separate sheet attached to it. The completed application form, along with the application fee indicated in paragraph (d) of this section, and the annual license fee indicated in table 1 or 2 of § 2.6 shall be filed with the APHIS, REAC Sector Supervisor.

(3) The following persons are exempt from the licensing requirements under section 2 or section 3 of the Act:

(i) Retail pet stores which sell nondangerous, pet-type animals, such as dogs, cats, birds, rabbits, hamsters, guinea pigs, gophers, domestic ferrets, chinchilla, rats, and mice, for pets, at retail only: *Provided, That,* Anyone wholesaling any animals, selling any animals for research or exhibition, or selling any wild, exotic, or nonpet animals retail, must have a license;

(ii) Any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than $500 gross income from the sale of such animals to a research facility, an exhibitor, a dealer, or a pet store during any calendar year and is not otherwise required to obtain a license;

(iii) Any person who maintains a total of three (3) or fewer breeding female dogs and/or cats and who sells only the offspring of these dogs or cats, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license;

(iv) Any person who sells fewer than 25 dogs and/or cats per year which were born and raised on his or her premises, for research, teaching, or testing purposes or to any research facility and is not otherwise required to obtain a license. The sale of any dog or cat not born and raised on the premises for research purposes requires a license;

(v) Any person who arranges for transportation or transports animals solely for the purpose of breeding, exhibiting in purebred shows, boarding (not in association with commercial transportation), grooming, or medical treatment, and is not otherwise required to obtain a license;

(vi) Any person who buys, sells, transports, or negotiates the sale, purchase, or transportation of any animals used only for the purposes of food or fiber (including fur);

(vii) Any person who breeds and raises domestic pet animals for direct retail sales to another person for the buyer's own use and who buys no animals for resale and who sells no animals to a research facility, an exhibitor, a dealer, or a pet store (e.g., a purebred dog or cat fancier) and is not otherwise required to obtain a license;

(viii) Any person who buys animals solely for his or her own use or enjoyment and does not sell or exhibit animals, or is not otherwise required to obtain a license;

(b) Any person who sells fewer than 25 dogs or cats per year for research or teaching purposes and who is not otherwise required to obtain a license may obtain a voluntary license, provided the animals were born and raised on his or her premises. A voluntary licensee shall comply with the requirements for dealers set forth in this part and the Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats set forth in part 3 of this subchapter and shall agree in writing on a form furnished by APHIS to comply with all the requirements of the Act and this subchapter. Voluntary licenses will not be issued to any other persons. To obtain a voluntary license the applicant shall submit to the APHIS, REAC Sector Supervisor the application fee of $10 plus an annual license fee. The class of license issued and the fee for a voluntary license shall be that of a Class "A" licensee (breeder). Voluntary licenses will not be issued to any other persons or for any other class of license.

(c) No person shall have more than one license.

(d) A license will be issued to any applicant, except as provided in §§ 2.10 and 2.11, when the applicant:

(1) Has met the requirements of this section and of §§ 2.2 and 2.3; and

(2) Has paid the application fee of $10 and the annual license fee indicated in § 2.6 to the APHIS, REAC Sector Supervisor and the payment has cleared normal banking procedures.

(e)(1) On or before the expiration date of the license, a licensee who wishes a renewal shall submit to the APHIS, REAC Sector Supervisor a completed application form and the application fee of $10, plus the annual license fee indicated in § 2.6 by certified check, cashier's check, personal check, or money order. A voluntary licensee who wishes a renewal shall also submit the $10 application fee plus an annual license fee. An applicant whose check is returned by the bank will be charged a fee of $15 for each returned check. One returned check will be deemed nonpayment of fees and will result in denial of license. Payment of fees must then be made by certified check, cashier's check, or money order. An applicant will not be licensed until his or her payment has cleared normal banking procedures.

(2) The $10 application fee must also be paid if an applicant is applying for a changed class of license. The applicant may pay such fees by certified check, cashier's check, personal check, or money order. An applicant whose check is returned by a bank will be charged a fee of $15 for each returned check and will be required to pay all subsequent fees by certified check, money order, or cashier's check. A license will not be issued until payment has cleared normal banking procedures.

(f) The failure of any person to comply with any provision of the Act, or any of the provisions of the regulations or standards in this subchapter, shall constitute grounds for denial of a license; or for its suspension or revocation by the Secretary, as provided in the Act.

§ 2.2 Acknowledgment of regulations and standards.

APHIS will supply a copy of the applicable regulations and standards to the applicant with each request for a license application or renewal. The applicant shall acknowledge receipt of the regulations and standards and agree to comply with them by signing the application form before a license will be issued or renewed.

§ 2.3 Demonstration of compliance with standards and regulations.

(a) Each applicant must demonstrate that his or her premises and any animals, facilities, vehicles, equipment, or other premises used or intended for use in the business comply with the regulations and standards set forth in parts 2 and 3 of this subchapter. Each applicant for an initial license or license renewal must make his or her animals, premises, facilities, vehicles, equipment, other premises, and records available for inspection during business hours and at other times mutually agreeable to the applicant and APHIS, to ascertain the applicant's compliance with the standards and regulations.

(b) In the case of an application for an initial license, the applicant must demonstrate compliance with the regulations and standards, as required in paragraph (a) of this section, before APHIS will issue a license. If the applicant's animals, premises, facilities, vehicles, equipment, other premises, or records do not meet the requirements of this subchapter, APHIS will advise the applicant of existing deficiencies and the corrective measures that must be completed to come into compliance with the regulations and standards. The applicant will have two more chances to demonstrate his or her compliance with the regulations and standards through re-inspection by APHIS. If the applicant fails the third inspection he or she will forfeit the application fee and cannot re-apply for a license for a period of 6 months following the third inspection. Issuance of the license will be denied until the applicant demonstrates upon inspection that the animals, premises, facilities, vehicles, equipment, other premises and records are in compliance with all regulations and standards in this subchapter.

§ 2.4 Non-interference with APHIS officials.

A licensee or applicant for an initial license shall not interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official in the course of carrying out his or her duties.

§ 2.5 Duration of license and termination of license.

(a) A license issued under this part shall be valid and effective unless:

(1) The license has been revoked or suspended pursuant to section 19 of the Act.

(2) The license is voluntarily terminated upon request of the licensee, in writing, to the APHIS, REAC Sector Supervisor.

(3) The license has expired or been terminated under this part.

(4) The applicant has failed to pay the application fee and the annual license fee as required in §§ 2.1 and 2.6.

There will be no refund of fees if a license is terminated prior to its expiration date.

(b) Any person who is licensed must file an application for a license renewal and an annual report form (VS Form 18-3) as required by § 2.7, and pay the required fees, on or before the expiration date of the present license or the license shall expire and automatically terminate on its anniversary date. The licensee will be notified by certified mail at least 60 days prior to the expiration date of the license. Failure to comply with the annual reporting requirements, or to pay the required license fees prior to the expiration date of the license, shall result in automatic termination of such license on the anniversary date of the license.

(c) Licensees must accept delivery of registered mail or certified mail notice and provide the APHIS, REAC Sector Supervisor notice of their address in conformity with the requirements in § 2.1.

(d) Any person who seeks the reinstatement of a license that has been automatically terminated must follow the procedure applicable to new applicants for a license set forth in § 2.1.

(e) Licenses are issued to specific persons for specific premises and do not transfer upon change of ownership, nor are they valid at a different location.

(f) A license which is invalid under this part shall be surrendered to the APHIS, REAC Sector Supervisor. If the license cannot be found, the licensee shall provide a written statement so stating to the APHIS, REAC Sector Supervisor.

§ 2.6 Annual license fees.

(a) In addition to the application fee of $10 required to be paid upon the application for a license, license renewal, or changed class of license under § 2.1, each licensee shall submit to the APHIS, REAC Sector Supervisor the annual license fee prescribed in this section. Paragraph (b) of this section indicates the method used to calculate the appropriate fee. The amount of the fee is determined from Table 1 or 2 in paragraph (c) of this section.

(b)(1) Class "A" license. The annual license renewal fee for a Class "A" dealer shall be based on 50 percent of the total gross amount, expressed in dollars, derived from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale, by the dealer or applicant during his or her preceding business year (calendar or fiscal) in the case of a person who operated during such a year. If animals are leased, the lessor shall pay a fee based on 50 percent of any compensation received from the leased animals and the lessee shall pay a fee based upon the net compensation received from the leased animals, as indicated for dealers in Table 1 in paragraph (c) of this section.

(2) Class "B" license. The annual license renewal fee for a Class "B" dealer shall be established by calculating the total amount received from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale, during the preceding business year (calendar or fiscal) less the amount paid for the animals by the dealer or applicant. This net difference, exclusive of other costs, shall be the figure used to determine the license fee of a Class "B" dealer. If animals are leased, the lessor and lessee shall each pay a fee based on the net compensation received from the leased animals calculated from Table 1 in paragraph (c) of this section.

(3) The annual license renewal fee for a broker or operator of an auction sale shall be that of a class "B" dealer and shall be based on the total gross amount, expressed in dollars, derived from commissions or fees charged for the sale of animals, or for negotiating the sale of animals, by brokers or by the operator of an auction sale, to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, during the preceding business year (calendar or fiscal).

(4) In the case of a new applicant for a license as a dealer, broker or operator of an auction sale who did not operate during a preceding business year, the annual license fee will be based on the anticipated yearly dollar amount of business, as provided in paragraphs (b)(1), (2), and (3) of this section, derived from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale.

(5) The amount of the annual fee to be paid upon application for a class "C" license as an exhibitor under this section shall be based on the number of

animals which the exhibitor owned, held, or exhibited at the time the application is signed and dated or during the previous year, whichever is greater, and will be the amount listed in Table 2 in paragraph (c) of this section. Animals which are leased shall be included in the number of animals being held by both the lessor and the lessee when calculating the annual fee. An exhibitor shall pay his or her annual license fee on or before the expiration date of the license and the fee shall be based on the number of animals which the exhibitor is holding or has held during the year (both owned and leased).

(c) The license fee shall be computed in accordance with the following tables:

TABLE 1.—DEALERS, BROKERS AND OPERATORS OF AN AUCTION SALE CLASS "A" AND "B" LICENSE

Over	But Not Over	Fee
$0	$500	$30
500	2,000	60
2,000	10,000	120
10,000	25,000	225
25,000	50,000	350
50,000	100,000	475
100,000		750

TABLE 2.—EXHIBITORS—CLASS "C" LICENSE

Number of Animals	Fee
1 to 5	$30
6 to 25	75
26 to 50	175
51 to 500	225
501 and up	300

(d) If a person meets the licensing requirements for more than one class of license, he shall be required to obtain a license and pay the fee for the type business which is predominant for his operation, as determined by the Secretary.

(e) In any situation in which a licensee shall have demonstrated in writing to the satisfaction of the Secretary that he or she has good reason to believe that the dollar amount of his or her business for the forthcoming business year will be less than the previous business year, then his or her estimated dollar amount of business shall be used for computing the license fee for the forthcoming business year: *Provided, however,* That if the dollar amount upon which the license fee is based for that year does in fact exceed the amount estimated, the difference in amount of the fee paid and that which was due under paragraphs (b) and (c) of this section based upon the actual dollar business upon which the license fee is based, shall be payable in addition to the required annual license fee for the next subsequent year, on the anniversary date of his or her license as prescribed in this section.

§ 2.7 Annual report by licensees.

(a) Each year, within 30 days prior to the expiration date of his or her license, a licensee shall file with the APHIS, REAC Sector Supervisor an application for license renewal and annual report upon a form which the APHIS, REAC Sector Supervisor will furnish to him or her upon request.

(b) A person licensed as a dealer shall set forth in his or her license renewal application and annual report the dollar amount of business, from the sale of animals, upon which the license fee is based, directly or through an auction sale, to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, by the licensee during the preceding business year (calendar or fiscal), and any other information as may be required thereon.

(c) A licensed dealer who operates as a broker or an operator of an auction sale shall set forth in his or her license renewal application and annual report the total gross amount, expressed in dollars, derived from commissions or fees charged for the sale of animals by the licensee to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, during the preceding business year (calendar or fiscal), and any other information as may be required thereon.

(d) A person licensed as an exhibitor shall set forth in his or her license renewal application and annual report the number of animals owned, held, or exhibited by him or her, including those which are leased, during the previous year or at the time he signs and dates the report, whichever is greater.

§ 2.8 Notification of change of name, address, control, or ownership of business.

A licensee shall promptly notify the APHIS, REAC Sector Supervisor by certified mail of any change in the name, address, management, or substantial control or ownership of his business or operation, or of any additional sites, within 10 days of any change

§ 2.9 Officers, agents, and employees of licensees whose licenses have been suspended or revoked.

Any person who has been or is an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in the violation upon which the order of suspension or revocation was based will not be licensed within the period during which the order of suspension or revocation is in effect.

§ 2.10 Licensees whose licenses have been suspended or revoked.

(a) Any person whose license has been suspended for any reason shall not be licensed in his or her own name or in any other manner within the period during which the order of suspension is in effect. No partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, will be licensed during that period. Any person whose license has been suspended for any reason may apply to the APHIS, REAC Sector Supervisor, in writing, for reinstatement of his or her license.

(b) Any person whose license has been revoked shall not be licensed in his or her own name or in any other manner; nor will any partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, be licensed.

(c) Any person whose license has been suspended or revoked shall not buy, sell, transport, exhibit, or deliver for transportation, any animal during the period of suspension or revocation.

§ 2.11 Denial of initial license application.

(a) A license will not be issued to any applicant who:

(1) Has not complied with the requirements of §§ 2.1, 2.2, 2.3, and 2.4 and has not paid the fees indicated in § 2.6;

(2) Is not in compliance with any of the regulations or standards in this subchapter;

(3) Has had a license revoked or whose license is suspended, as set forth in § 2.10;

(4) Has been fined, sentenced to jail, or pled nolo contendere (no contest) under State or local cruelty to animal laws within 1 year of application, except that if no penalty is imposed as a result of the plea of nolo contendere the applicant may reapply immediately; or

(5) Has made any false or fraudulent statements, or provided any false or fraudulent records to the Department.

(b) An applicant whose license application has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied. The license denial shall remain in effect until the final legal decision has been rendered. Should the license denial be upheld, the applicant may again apply

for a license 1 year from the date of the final order denying the application.

(c) No partnership, firm, corporation, or other legal entity in which a person whose license application has been denied has a substantial interest, financial or otherwise, will be licensed within 1 year of the license denial.

Subpart B—Registration

§ 2.25 Requirements and procedures.

(a) Each carrier and intermediate handler, and each exhibitor not required to be licensed under section 3 of the Act and the regulations of this subchapter, shall register with the Secretary by completing and filing a properly executed form which will be furnished, upon request, by the APHIS, REAC Sector Supervisor. The registration form shall be filed with the APHIS, REAC Sector Supervisor for the State in which the registrant has his or her principal place of business, and shall be updated every 3 years by the completion and filing of a new registration form which will be provided by the APHIS, REAC Sector Supervisor.

(b) A subsidiary of a business corporation, rather than the parent corporation, will be registered as an exhibitor unless the subsidiary is under such direct control of the parent corporation that the Secretary determines that it is necessary that the parent corporation be registered to effectuate the purposes of the Act.

§ 2.26 Acknowledgment of regulations and standards.

APHIS will supply a copy of the regulations and standards in this subchapter with each registration form. The registrant shall acknowledge receipt of and shall agree to comply with the regulations and standards by signing a form provided for this purpose by APHIS, and by filing it with the APHIS, REAC Sector Supervisor.

§ 2.27 Notification of change of operation.

(a) A registrant shall notify the APHIS, REAC Sector Supervisor by certified mail of any change in the name, address, or ownership, or other change in operations affecting its status as an exhibitor, carrier, or intermediate handler, within 10 days after making such change.

(b)(1) A registrant which has not used, handled, or transported animals for a period of at least 2 years may be placed in an inactive status by making a written request to the APHIS, REAC Sector Supervisor A registrant shall notify the APHIS, REAC Sector Supervisor in writing at least 10 days before using, handling, or transporting animals again after being in an inactive status.

(2) A registrant which goes out of business or which ceases to function as a carrier, intermediate handler, or exhibitor, or which changes its method of operation so that it no longer uses, handles, or transports animals, and which does not plan to use, handle, or transport animals again at any time in the future, may have its registration canceled by making a written request to the APHIS, REAC Sector Supervisor. The former registrant is responsible for reregistering and demonstrating its compliance with the Act and regulations should it start using, handling, or transporting animals at any time after its registration is canceled.

Subpart C—Research Facilities

§ 2.30 Registration.

(a) *Requirements and procedures.* (1) Each research facility other than a Federal research facility, shall register with the Secretary by completing and filing a properly executed form which will be furnished, upon request, by the APHIS, REAC Sector Supervisor. The registration form shall be filed with the APHIS, REAC Sector Supervisor for the State in which the research facility has its principal place of business, and shall be updated every 3 years by the completion and filing of a new registration form which will be provided by the APHIS, REAC Sector Supervisor. Except as provided in paragraph (a)(2) of this section, where a school or department of a university or college uses or intends to use live animals for research, tests, experiments, or teaching, the university or college rather than the school or department will be considered the research facility and will be required to register with the Secretary. An official who has the legal authority to bind the parent organization shall sign the registration form.

(2) In any situation in which a school or department of a university or college demonstrates to the Secretary that it is a separate legal entity and its operations and administration are independent of those of the university or college, the school or department will be registered rather than the university or college.

(3) A subsidiary of a business corporation, rather than the parent corporation, will be registered as a research facility unless the subsidiary is under such direct control of the parent corporation that the Secretary determines that it is necessary that the parent corporation be registered to effectuate the purposes of the Act.

(b) *Acknowledgment of regulations and standards.* APHIS will supply a copy of the regulations and standards in this subchapter with each registration form. The research facility shall acknowledge receipt of and shall agree to comply with the regulations and standards by signing a form provided for this purpose by APHIS, and by filing it with the APHIS, REAC Sector Supervisor.

(c) *Notification of change of operation.* (1) A research facility shall notify the APHIS, REAC Sector Supervisor by certified mail of any change in the name, address, or ownership, or other change in operations affecting its status as a research facility, within 10 days after making such change.

(2) A research facility which has not used, handled, or transported animals for a period of at least 2 years may be placed in an inactive status by making a written request to the APHIS, REAC Sector Supervisor. A research facility shall file an annual report of its status (active or inactive). A research facility shall notify the APHIS, REAC Sector Supervisor in writing at least 10 days before using, handling, or transporting animals again after being in an inactive status.

(3) A research facility which goes out of business or which ceases to function as a research facility, or which changes its method of operation so that it no longer uses, handles, or transports animals, and which does not plan to use, handle, or transport animals at any time in the future, may have its registration canceled by making a written request to the APHIS, REAC Sector Supervisor. The research facility is responsible for reregistering and demonstrating its compliance with the Act and regulations should it start using, handling, or transporting animals at any time after its registration is canceled.

§ 2.31 Institutional Animal Care and Use Committee (IACUC).

(a) The Chief Executive Officer of the research facility shall appoint an Institutional Animal Care and Use Committee (IACUC), qualified through the experience and expertise of its members to assess the research facility's animal program, facilities, and procedures. Except as specifically authorized by law or these regulations, nothing in this part shall be deemed to permit the Committee or IACUC to prescribe methods or set standards for the design, performance, or conduct of actual research or experimentation by a research facility.

(b) IACUC Membership. (1) The members of each Committee shall be appointed by the Chief Executive Officer of the research facility;

(2) The Committee shall be composed of a Chairman and at least two additional members;

(3) Of the members of the Committee:

(i) At least one shall be a Doctor of Veterinary Medicine, with training or experience in laboratory animal science and medicine, who has direct or delegated program responsibility for activities involving animals at the research facility;

(ii) At least one shall not be affiliated in any way with the facility other than as a member of the Committee, and shall not be a member of the immediate family of a person who is affiliated with the facility. The Secretary intends that such person will provide representation for general community interests in the proper care and treatment of animals;

(4) If the Committee consists of more than three members, not more than three members shall be from the same administrative unit of the facility.

(c) IACUC Functions. With respect to activities involving animals, the IACUC, as an agent of the research facility, shall:

(1) Review, at least once every six months, the research facility's program for humane care and use of animals, using title 9, chapter I, subchapter A—Animal Welfare, as a basis for evaluation;

(2) Inspect, at least once every six months, all of the research facility's animal facilities, including animal study areas, using title 9, chapter I, subchapter A-Animal Welfare, as a basis for evaluation; *Provided, however,* That animal areas containing free-living wild animals in their natural habitat need not be included in such inspection;

(3) Prepare reports of its evaluations conducted as required by paragraphs (c) (1) and (2) of this section, and submit the reports to the Institutional Official of the research facility; *Provided, however,* That the IACUC may determine the best means of conducting evaluations of the research facility's programs and facilities; and *Provided, further,* That no Committee member wishing to participate in any evaluation conducted under this subpart may be excluded. The IACUC may use subcommittees composed of at least two Committee members and may invite *ad hoc* consultants to assist in conducting the evaluations, however, the IACUC remains responsible for the evaluations and reports as required by the Act and regulations. The reports shall be reviewed and signed by a majority of the IACUC members and must include any minority views. The reports shall be updated at least once every six months upon completion of the required semiannual evaluations and shall be maintained by the research facility and made available to APHIS and to officials of funding Federal agencies for inspection and copying upon request. The reports must contain a description of the nature and extent of the research facility's adherence to this subchapter, must identify specifically any departures from the provisions of title 9, chapter I, subchapter A—Animal Welfare, and must state the reasons for each departure. The reports must distinguish significant deficiencies from minor deficiencies. A significant deficiency is one which, with reference to Subchapter A, and, in the judgment of the IACUC and the Institutional Official, is or may be a threat to the health or safety of the animals. If program or facility deficiencies are noted, the reports must contain a reasonable and specific plan and schedule with dates for correcting each deficiency. Any failure to adhere to the plan and schedule that results in a significant deficiency remaining uncorrected shall be reported in writing within 15 business days by the IACUC, through the Institutional Official, to APHIS and any Federal agency funding that activity;

(4) Review, and, if warranted, investigate concerns involving the care and use of animals at the research facility resulting from public complaints received and from reports of noncompliance received from laboratory or research facility personnel or employees;

(5) Make recommendations to the Institutional Official regarding any aspect of the research facility's animal program, facilities, or personnel training;

(6) Review and approve, require modifications in (to secure approval), or withhold approval of those components of proposed activities related to the care and use of animals, as specified in paragraph (d) of this section;

(7) Review and approve, require modifications in (to secure approval), or withhold approval of proposed significant changes regarding the care and use of animals in ongoing activities; and

(8) Be authorized to suspend an activity involving animals in accordance with the specifications set forth in paragraph (d)(6) of this section.

(d) IACUC review of activities involving animals. (1) In order to approve proposed activities or proposed significant changes in ongoing activities, the IACUC shall conduct a review of those components of the activities related to the care and use of animals and determine that the proposed activities are in accordance with this subchapter unless acceptable justification for a departure is presented in writing; *Provided, however,* That field studies as defined in part 1 of this subchapter are exempt from this requirement. Further, the IACUC shall determine that the proposed activities or significant changes in ongoing activities meet the following requirements:

(i) Procedures involving animals will avoid or minimize discomfort, distress, and pain to the animals;

(ii) The principal investigator has considered alternatives to procedures that may cause more than momentary or slight pain or distress to the animals, and has provided a written narrative description of the methods and sources, *e.g.*, the Animal Welfare Information Center, used to determine that alternatives were not available;

(iii) The principal investigator has provided written assurance that the activities do not unnecessarily duplicate previous experiments;

(iv) Procedures that may cause more than momentary or slight pain or distress to the animals will:

(A) Be performed with appropriate sedatives, analgesics or anesthetics, unless withholding such agents is justified for scientific reasons, in writing, by the principal investigator and will continue for only the necessary period of time;

(B) Involve, in their planning, consultation with the attending veterinarian or his or her designee;

(C) Not include the use of paralytics without anesthesia;

(v) Animals that would otherwise experience severe or chronic pain or distress that cannot be relieved will be painlessly euthanized at the end of the procedure or, if appropriate, during the procedure;

(vi) The animals' living conditions will be appropriate for their species in accordance with part 3 of this subchapter, and contribute to their health and comfort. The housing, feeding, and nonmedical care of the animals will be directed by the attending veterinarian or other scientist trained and experienced in the proper care, handling, and use of the species being maintained or studied;

(vii) Medical care for animals will be available and provided as necessary by a qualified veterinarian;

(viii) Personnel conducting procedures on the species being maintained or studied will be appropriately qualified and trained in those procedures;

(ix) Activities that involve surgery include appropriate provision for pre-operative and post-operative care of the animals in accordance with established

veterinary medical and nursing practices. All survival surgery will be performed using aseptic procedures, including surgical gloves, masks, sterile instruments, and aseptic techniques. Major operative procedures on non-rodents will be conducted only in facilities intended for that purpose which shall be operated and maintained under aseptic conditions. Non-major operative procedures and all surgery on rodents do not require a dedicated facility, but must be performed using aseptic procedures. Operative procedures conducted at field sites need not be performed in dedicated facilities, but must be performed using aseptic procedures;

(x) No animal will be used in more than one major operative procedure from which it is allowed to recover, unless:

(A) Justified for scientific reasons by the principal investigator, in writing;

(B) Required as routine veterinary procedure or to protect the health or well-being of the animal as determined by the attending veterinarian; or

(C) In other special circumstances as determined by the Administrator on an individual basis. Written requests and supporting data should be sent to the Administrator, APHIS, USDA, 6505 Belcrest Road, Room 268, Hyattsville, MD 20782;

(xi) Methods of euthanasia used must be in accordance with the definition of the term set forth in 9 CFR part 1, § 1.1 of this subchapter, unless a deviation is justified for scientific reasons, in writing, by the investigator.

(2) Prior to IACUC review, each member of the Committee shall be provided with a list of proposed activities to be reviewed. Written descriptions of all proposed activities that involve the care and use of animals shall be available to all IACUC members, and any member of the IACUC may obtain, upon request, full Committee review of those activities. If full Committee review is not requested, at least one member of the IACUC, designated by the chairman and qualified to conduct the review, shall review those activities, and shall have the authority to approve, require modifications in (to secure approval), or request full Committee review of any of those activities. If full Committee review is requested for a proposed activity, approval of that activity may be granted only after review, at a convened meeting of a quorum of the IACUC, and with the approval vote of a majority of the quorum present. No member may participate in the IACUC review or approval of an activity in which that member has a conflicting interest (e.g., is personally involved in the activity), except to provide information requested by the IACUC, nor may a member who has a conflicting interest contribute to the constitution of a quorum;

(3) The IACUC may invite consultants to assist in the review of complex issues arising out of its review of proposed activities. Consultants may not approve or withhold approval of an activity, and may not vote with the IACUC unless they are also members of the IACUC;

(4) The IACUC shall notify principal investigators and the research facility in writing of its decision to approve or withhold approval of those activities related to the care and use of animals, or of modifications required to secure IACUC approval. If the IACUC decides to withhold approval of an activity, it shall include in its written notification a statement of the reasons for its decision and give the principal investigator an opportunity to respond in person or in writing. The IACUC may reconsider its decision, with documentation in Committee minutes, in light of the information provided by the principal investigator;

(5) The IACUC shall conduct continuing reviews of activities covered by this subchapter at appropriate intervals as determined by the IACUC, but not less than annually;

(6) The IACUC may suspend an activity that it previously approved if it determines that the activity is not being conducted in accordance with the description of that activity provided by the principal investigator and approved by the Committee. The IACUC may suspend an activity only after review of the matter at a convened meeting of a quorum of the IACUC and with the suspension vote of a majority of the quorum present;

(7) If the IACUC suspends an activity involving animals, the Institutional Official, in consultation with the IACUC, shall review the reasons for suspension, take appropriate corrective action, and report that action with a full explanation to APHIS and any Federal agency funding that activity; and

(8) Proposed activities and proposed significant changes in ongoing activities that have been approved by the IACUC may be subject to further appropriate review and approval by officials of the research facility. However, those officials may not approve an activity involving the care and use of animals if it has not been approved by the IACUC.

(e) A proposal to conduct an activity involving animals, or to make a significant change in an ongoing activity involving animals, must contain the following:

(1) Identification of the species and the approximate number of animals to be used;

(2) A rationale for involving animals, and for the appropriateness of the species and numbers of animals to be used;

(3) A complete description of the proposed use of the animals;

(4) A description of procedures designed to assure that discomfort and pain to animals will be limited to that which is unavoidable for the conduct of scientifically valuable research, including provision for the use of analgesic, anesthetic, and tranquilizing drugs where indicated and appropriate to minimize discomfort and pain to animals; and

(5) A description of any euthanasia method to be used.

§ 2.32 Personnel qualifications.

(a) It shall be the responsibility of the research facility to ensure that all scientists, research technicians, animal technicians, and other personnel involved in animal care, treatment, and use are qualified to perform their duties. This responsibility shall be fulfilled in part through the provision of training and instruction to those personnel.

(b) Training and instruction shall be made available, and the qualifications of personnel reviewed, with sufficient frequency to fulfill the research facility's responsibilities under this section and § 2.31.

(c) Training and instruction of personnel must include guidance in at least the following areas:

(1) Humane methods of animal maintenance and experimentation, including:

(i) The basic needs of each species of animal;

(ii) Proper handling and care for the various species of animals used by the facility;

(iii) Proper pre-procedural and post-procedural care of animals; and

(iv) Aseptic surgical methods and procedures;

(2) The concept, availability, and use of research or testing methods that limit the use of animals or minimize animal distress;

(3) Proper use of anesthetics, analgesics, and tranquilizers for any species of animals used by the facility;

(4) Methods whereby deficiencies in animal care and treatment are reported, including deficiencies in animal care and treatment reported by any employee of the facility. No facility employee, Committee member, or laboratory personnel shall be discriminated against or be subject to any reprisal for

reporting violations of any regulation or standards under the Act;

(5) Utilization of services (e.g., National Agricultural Library, National Library of Medicine) available to provide information:

(i) On appropriate methods of animal care and use;

(ii) On alternatives to the use of live animals in research;

(iii) That could prevent unintended and unnecessary duplication of research involving animals; and

(iv) Regarding the intent and requirements of the Act.

§ 2.33 Attending veterinarian and adequate veterinary care.

(a) Each research facility shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section:

(1) Each research facility shall employ an attending veterinarian under formal arrangements. In the case of a part-time attending veterinarian or consultant arrangements, the formal arrangements shall include a written program of veterinary care and regularly scheduled visits to the research facility;

(2) Each research facility shall assure that the attending veterinarian has appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use; and

(3) The attending veterinarian shall be a voting member of the IACUC; *Provided, however,* That a research facility with more than one Doctor of Veterinary Medicine (DVM) may appoint to the IACUC another DVM with delegated program responsibility for activities involving animals at the research facility.

(b) Each research facility shall establish and maintain programs of adequate veterinary care that include:

(1) The availability of appropriate facilities, personnel, equipment, and services to comply with the provisions of this subchapter;

(2) The use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care;

(3) Daily observation of all animals to assess their health and well-being; *Provided, however,* That daily observation of animals may be accomplished by someone other than the attending veterinarian; and *Provided, further,* That a mechanism of direct and frequent communication is required so that timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian;

(4) Guidance to principal investigators and other personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization, and euthanasia; and

(5) Adequate pre-procedural and post-procedural care in accordance with current established veterinary medical and nursing procedures.

§ 2.35 Recordkeeping requirements.

(a) The research facility shall maintain the following IACUC records:

(1) Minutes of IACUC meetings, including records of attendance, activities of the Committee, and Committee deliberations;

(2) Records of proposed activities involving animals and proposed significant changes in activities involving animals, and whether IACUC approval was given or withheld; and

(3) Records of semiannual IACUC reports and recommendations (including minority views), prepared in accordance with the requirements of § 2.31(c)(3) of this subpart, and forwarded to the Institutional Official.

(b) Every research facility shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning each live dog or cat purchased or otherwise acquired, owned, held, or otherwise in their possession or under their control, transported, euthanized, sold, or otherwise disposed of by the research facility. The records shall include any offspring born of any animal while in the research facility's possession or under its control:

(1) The name and address of the person from whom a dog or cat was purchased or otherwise acquired, whether or not the person is required to be licensed or registered under the Act;

(2) The USDA license or registration number of the person if he or she is licensed or registered under the Act;

(3) The vehicle license number and state, and the driver's license number and state of the person, if he or she is not licensed or registered under the Act;

(4) The date of acquisition of each dog or cat;

(5) The official USDA tag number or tattoo assigned to each dog or cat under § 2.38(g) of this subpart;

(6) A description of each dog or cat which shall include:

(i) The species and breed or type of animal;

(ii) The sex;

(iii) The date of birth or approximate age; and

(iv) The color and any distinctive markings;

(7) Any identification number or mark assigned to each dog or cat by the research facility.

(c) In addition to the information required to be kept and maintained by every research facility concerning each live dog or cat under paragraph (a) of this section, every research facility transporting, selling, or otherwise disposing of any live dog or cat to another person, shall make and maintain records or forms which fully and correctly disclose the following information:

(1) The name and address of the person to whom a live dog or cat is transported, sold, or otherwise disposed of;

(2) The date of transportation, sale, euthanasia, or other disposition of the animal; and

(3) The method of transportation, including the name of the initial carrier or intermediate handler, or if a privately owned vehicle is used to transport the dog or cat, the name of the owner of the privately owned vehicle.

(d)(1) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) and Record of Dogs and Cats on Hand (VS Form 18–5) are forms which may be used by research facilities to keep and maintain the information required by paragraph (b) of this section.

(2) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) and Record of Disposition of Dogs and Cats (VS Form 18–6) are forms which may be used by research facilities to keep and maintain the information required by paragraph (c) of this section.

(e) One copy of the record containing the information required by paragraphs (b) and (c) of this section shall accompany each shipment of any live dog or cat sold or otherwise disposed of by a research facility *Provided, however,* That information which indicates the source and date of acquisition of any dog or cat need not appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by paragraphs (b) and (c) of this section shall be retained by the research facility.

(f) All records and reports shall be maintained for at least three years. Records that relate directly to proposed activities and proposed significant changes in ongoing activities reviewed and approved by the IACUC shall be maintained for the duration of the activity and for an additional three years after completion of the activity.

All records shall be available for inspection and copying by authorized APHIS or funding Federal agency representatives at reasonable times. APHIS inspectors will maintain the confidentiality of the information and will not remove the materials from the research facilities' premises unless there has been an alleged violation, they are needed to investigate a possible violation, or for other enforcement purposes. Release of any such materials, including reports, summaries, and photographs that contain trade secrets or commercial or financial information that is privileged or confidential will be governed by applicable sections of the Freedom of Information Act. Whenever the Administrator notifies a research facility in writing that specified records shall be retained pending completion of an investigation or proceeding under the Act, the research facility shall hold those records until their disposition is authorized in writing by the Administrator.

§ 2.36 Annual report.

(a) The reporting facility shall be that segment of the research facility, or that department, agency, or instrumentality of the United States, that uses or intends to use live animals in research, tests, experiments, or for teaching. Each reporting facility shall submit an annual report to the APHIS, REAC Sector Supervisor for the State where the facility is located on or before December 1 of each calendar year. The report shall be signed and certified by the CEO or Institutional Official, and shall cover the previous Federal fiscal year.

(b) The annual report shall:

(1) Assure that professionally acceptable standards governing the care, treatment, and use of animals, including appropriate use of anesthetic, analgesic, and tranquilizing drugs, prior to, during, and following actual research, teaching, testing, surgery, or experimentation were followed by the research facility;

(2) Assure that each principal investigator has considered alternatives to painful procedures;

(3) Assure that the facility is adhering to the standards and regulations under the Act, and that it has required that exceptions to the standards and regulations be specified and explained by the principal investigator and approved by the IACUC. A summary of all such exceptions must be attached to the facility's annual report. In addition to identifying the IACUC-approved exceptions, this summary must include a brief explanation of the exceptions, as well as the species and number of animals affected;

(4) State the location of all facilities where animals were housed or used in actual research, testing, teaching, or experimentation, or held for these purposes;

(5) State the common names and the numbers of animals upon which teaching, research, experiments, or tests were conducted involving no pain, distress, or use of pain-relieving drugs. Routine procedures (e.g., injections, tattooing, blood sampling) should be reported with this group;

(6) State the common names and the numbers of animals upon which experiments, teaching, research, surgery, or tests were conducted involving accompanying pain or distress to the animals and for which appropriate anesthetic, analgesic, or tranquilizing drugs were used;

(7) State the common names and the numbers of animals upon which teaching, experiments, research, surgery, or tests were conducted involving accompanying pain or distress to the animals and for which the use of appropriate anesthetic, analgesic, or tranquilizing drugs would have adversely affected the procedures, results, or interpretation of the teaching, research, experiments, surgery, or tests. An explanation of the procedures producing pain or distress in these animals and the reasons such drugs were not used shall be attached to the annual report;

(8) State the common names and the numbers of animals being bred, conditioned, or held for use in teaching, testing, experiments, research, or surgery but not yet used for such purposes.

§ 2.37 Federal research facilities.

Each Federal research facility shall establish an Institutional Animal Care and Use Committee which shall have the same composition, duties, and responsibilities required of nonfederal research facilities by § 2.31 with the following exceptions:

(a) The Committee shall report deficiencies to the head of the Federal agency conducting the research rather than to APHIS; and

(b) The head of the Federal agency conducting the research shall be responsible for all corrective action to be taken at the facility and for the granting of all exceptions to inspection protocol.

§ 2.38 Miscellaneous.

(a) *Information as to business: furnishing of same by research facilities.* Each research facility shall furnish to any APHIS official any information concerning the business of the research facility which the APHIS official may request in connection with the enforcement of the provisions of the Act, the regulations, and the standards in this subchapter. The information shall be furnished within a reasonable time and as may be specified in the request for information.

(b) *Access and inspection of records and property.* (1) Each research facility shall, during business hours, allow APHIS officials:

(i) To enter its place of business;

(ii) To examine records required to be kept by the Act and the regulations in this part;

(iii) To make copies of the records;

(iv) To inspect the facilities, property, and animals, as the APHIS officials consider necessary to enforce the provisions of the Act, the regulations, and the standards in this subchapter; and

(v) To document, by the taking of photographs and other means, conditions and areas of noncompliance.

(2) The use of a room, table or other facilities necessary for the proper examination of the records and for inspection of the property or animals shall be extended to APHIS officials by the research facility.

(c) *Publication of names of research facilities subject to the provisions of this part.* APHIS will publish lists of research facilities registered in accordance with the provisions of this subpart in the **Federal Register**. The lists may be obtained upon request from the APHIS, REAC Sector Supervisor.

(d) *Inspection for missing animals.* Each research facility shall allow, upon request and during business hours, police or officers of other law enforcement agencies with general law enforcement authority (not those agencies whose duties are limited to enforcement of local animal regulations) to enter its place of business to inspect animals and records for the purpose of seeking animals that are missing, under the following conditions:

(1) The police or other law officer shall furnish to the research facility a written description of the missing animal and the name and address of its owner before making a search;

(2) The police or other law officer shall abide by all security measures required by the research facility to prevent the spread of disease, including the use of sterile clothing, footwear, and masks where required, or to prevent the escape of an animal.

(e) *Confiscation and destruction of animals.* (1) If an animal being held by a research facility is not being used to carry out research, testing, or experimentation, and is found by an APHIS official to be suffering as a result of the failure of the research facility to comply with any provision of the regulations or the standards set forth in this subchapter, the APHIS official shall make a reasonable effort to notify the research facility of the condition of the animal(s) and request that the condition be corrected and that adequate care be given to alleviate the animal's suffering or distress, or that the animal(s) be destroyed by euthanasia. In the event that the research facility refuses to comply with this request, the APHIS official may confiscate the animal(s) for care, treatment, or disposal as indicated in paragraph (e)(2) of this section, if, in the opinion of the Administrator, the circumstances indicate the animal's health is in danger.

(2) In the event that the APHIS official is unable to locate or notify the research facility as required in this section, the APHIS official shall contact a local police or other law officer to accompany him or her to the premises and shall provide for adequate care when necessary to alleviate the animal's suffering. If, in the opinion of the Administrator, the condition of the animal(s) cannot be corrected by this temporary care, the APHIS official shall confiscate the animal(s).

(3) Confiscated animals may be placed, by sale or donation, with other registrants or licensees that comply with the standards and regulations and can provide proper care, or they may be euthanized. The research facility from which the animals were confiscated shall bear all costs incurred in performing the placement or euthanasia activities authorized by this section.

(f) *Handling.* (1) Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.

(2)(i) Physical abuse shall not be used to train, work, or otherwise handle animals.

(ii) Deprivation of food or water shall not be used to train, work, or otherwise handle animals; *Provided, however:* That the short-term withholding of food or water from animals, when specified in an IACUC-approved activity that includes a description of monitoring procedures, is allowed by these regulations.

(g) *Identification of dogs and cats.* (1) All live dogs or cats, including those from any exempt source, delivered for transportation, transported, purchased or otherwise acquired, sold, or disposed of by a research facility, shall be identified at the time of such delivery for transportation, purchase, sale, disposal, or acquisition in one of the following ways:

(i) By the official tag or tattoo which was affixed to the animal at the time it was acquired by the research facility, as required by this section; or

(ii) By a tag, tattoo, or collar, applied to the live dog or cat by the research facility and which individually identifies the dog or cat by number.

(2) All official tag or tattoo numbers shall be correctly listed in the records of purchase, acquisition, disposal, or sale which shall be maintained in accordance with § 2.35.

(3) Unweaned puppies or kittens need not be individually identified while they are maintained as a litter with their dam in the same primary enclosure, provided the dam has been individually identified.

(4) The official tag shall be made of a durable alloy such as brass, bronze, or steel, or of a durable plastic. Aluminum of a sufficient thickness to assure the tag is durable and legible may also be used. The tag may be circular in shape and not less than 1¼ inches in diameter, or oblong and flat in shape and not less than 2 inches by ¾ inch, and riveted to an acceptable collar.

(5) Each tag shall have the following information embossed or stamped on so that it is easily readable:

(i) The letters "USDA";

(ii) Numbers identifying the State and dealer, exhibitor, or research facility (e.g., 39–AB); and

(iii) Numbers identifying the animal (e.g., 82488).

(6) Official tags shall be serially numbered and shall be applied to dogs or cats in the manner set forth in this section in as close to consecutive numerical order as possible. No tag number shall be used to identify more than one animal or shall be reused within a 5-year period.

(7) Research facilities may obtain, at their own expense, official tags from commercial tag manufacturers.[1] At the time the research facility is registered, the Department will assign identification letters and numbers to be used on the official tags.

(8) Each research facility shall be held accountable for all official tags acquired. In the event an official tag is lost from a dog or cat while in the possession of a research facility, the facility shall make a diligent effort to locate and reapply the tag to the proper animal. If the lost tag is not located, the research facility shall affix another official tag to the animal in the manner prescribed in this section and record the tag number on the official records.

(9) When a dog or cat wearing or identified by an official tag arrives at a research facility, the facility may continue to use that tag to identify the dog or cat or the tag may be replaced as indicated in paragraph (g)(1) of this section. All tags removed by a research facility shall be retained and disposed of as indicated in this section.

(10) Where a dog or cat to which is affixed or which is identified by an official tag is euthanized, or dies from other causes, the research facility shall remove and retain the tag for the required period, as set forth in paragraph (g)(11) of this section.

(11) All official tags removed and retained by a research facility shall be held until called for by an APHIS official or for a period of 1 year.

(12) When official tags are removed from animals for disposal, the tags must be disposed of so as to preclude their reuse for animal identification. No animal identification number shall be used within any 5-year period following its previous use.

(h) *Health certification.* (1) No research facility, including a Federal research facility, shall deliver to any intermediate handler or carrier for transportation, in commerce, or shall transport in commerce any dog, cat, or nonhuman primate unless the dog, cat, or nonhuman primate is accompanied by a health certificate executed and issued by a licensed veterinarian. The health certificate shall state that:

(i) The licensed vetarinarian inspected the dog, cat, or nonhuman primate on a specified date which shall not be more than 10 days prior to the delivery of the dog, cat, or nonhuman primate for transportation; and

(ii) When so inspected, the dog, cat, or nonhuman primate appeared to the licensed veterinarian to be free of any infectious disease or physical abnormality which would endanger the animal(s) or other animals or endangar public health.

(2) The Secretary may provide exceptions to the health certification requirement on an individual basis for animals shipped to a research facility for purposes of research, testing, or experimentation when the research facility requires animals not eligible for certification. Requests should be addressed to the Administrator, APHIS, USDA, Room 268, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

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[1] A list of the commercial manufacturers who produce these tags and are known to the Department may be obtained from the APHIS, REAC Sector Supervisor. Any manufacturer who desires to be included in the list should notify the Administrator.

(3) The U.S. Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) may be used for health certification by a licensed veterinarian as required by this section.

(i) *Holding of animals.* If any research facility obtains prior approval of the APHIS, REAC Sector Supervisor, it may arrange to have another person hold animals: *Provided,* That:

(1) The other person agrees, in writing, to comply with the regulations in this part and the standards in part 3 of this subchapter, and to allow inspection of the premises by an APHIS official during business hours;

(2) The animals remain under the total control and responsibility of the research facility; and

(3) The Institutional Official agrees, in writing, that the other person or premises is a recognized animal site under its research facility registration. Veterinary Services Form 18–9 shall be used for approval.

(j) *Holding period.* Research facilities that obtain dogs and cats from sources other than dealers, exhibitors, and exempt persons shall hold the animals for 5 full days, not including the day of acquisition, after acquiring the animal, excluding time in transit, before they may be used by the facility. Research facilities shall comply with the identification of animals requirements set forth in § 2.38(g) during this period.

(k) *Compliance with standards and prohibitions.* (1) Each research facility shall comply in all respects with the regulations set forth in subpart C of this part and the standards set forth in part 3 of this subchapter for the humane handling, care, treatment, housing, and transportation of animals; *Provided, however,* That exceptions to the standards in part 3 and the provisions of subpart C of this part may be made only when such exceptions are specified and justified in the proposal to conduct the activity and are approved by the IACUC.

(2) No person shall obtain live random source dogs or cats by use of false pretenses, misrepresentation, or deception.

(3) No person shall acquire, buy, sell, exhibit, use for research, transport, or offer for transportation, any stolen animal.

Subpart D—Attending Veterinarian and Adequate Veterinary Care

§ 2.40 Attending veterinarian and adequate veterinary care (dealers and exhibitors).

(a) Each dealer or exhibitor shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section.

(1) Each dealer and exhibitor shall employ an attending veterinarian under formal arrangements. In the case of a part-time attending veterinarian or consultant arrangements, the formal arrangements shall include a written program of veterinary care and regularly scheduled visits to the premises of the dealer or exhibitor; and

(2) Each dealer and exhibitor shall assure that the attending veterinarian has appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use.

(b) Each dealer or exhibitor shall establish and maintain programs of adequate veterinary care that include:

(1) The availability of appropriate facilities, personnel, equipment, and services to comply with the provisions of this subchapter;

(2) The use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care;

(3) Daily observation of all animals to assess their health and well-being; *Provided, however,* That daily observation of animals may be accomplished by someone other than the attending veterinarian; and *Provided, further,* That a mechanism of direct and frequent communication is required so that timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian;

(4) Adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization, and euthanasia; and

(5) Adequate pre-procedural and post-procedural care in accordance with established veterinary medical and nursing procedures.

Subpart E—Identification of Animals

§ 2.50 Time and method of identification.

(a) A class "A" dealer (breeder) shall identify all live dogs and cats on the premises as follows:

(1) All live dogs and cats held on the premises, purchased, or otherwise acquired, sold or otherwise disposed of, or removed from the premises for delivery to a research facility or exhibitor or to another dealer, or for sale, through an auction sale or to any person for use as a pet, shall be identified by an official tag of the type described in § 2.51 affixed to the animal's neck by means of a collar made of material generally considered acceptable to pet owners as a means of identifying their pet dogs or cats [2], or shall be identified by a distinctive and legible tattoo marking acceptable to and approved by the Administrator.

(2) Live puppies or kittens, less than 16 weeks of age, shall be identified by:

(i) An official tag as described in § 2.51;

(ii) A distinctive and legible tattoo marking approved by the Administrator; or

(iii) A plastic-type collar acceptable to the Administrator which has legibly placed thereon the information required for an official tag pursuant to § 2.51.

(b) A class "B" dealer shall identify all live dogs and cats under his or her control or on his or her premises as follows:

(1) When live dogs or cats are held, purchased, or otherwise acquired, they shall be immediately identified:

(i) By affixing to the animal's neck an official tag as set forth in § 2.51 by means of a collar made of material generally acceptable to pet owners as a means of identifying their pet dogs or cats [3]; or

(ii) By a distinctive and legible tattoo marking approved by the Administrator.

(2) If any live dog or cat is already identified by an official tag or tattoo which has been applied by another dealer or exhibitor, the dealer or exhibitor who purchases or otherwise acquires the animal may continue identifying the dog or cat by the previous identification number, or may replace the previous tag with his own official tag or approved tattoo. In either case, the class B dealer or class C exhibitor shall correctly list all old and new official tag numbers or tattoos in his or her records of purchase which shall be maintained in accordance with §§ 2.75 and 2.77. Any new official tag or tattoo number shall be used on all

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[2] In general, well fitted collars made of leather or plastic will be acceptable under this provision. The use of certain types of chains presently used by some dealers may also be deemed acceptable. APHIS will determine the acceptability of a material proposed for usage as collars from the standpoint of humane considerations on an individual basis in consultation with the dealer or exhibitor involved. The use of materials such as wire, elastic, or sharp metal that might cause discomfort or injury to the dogs or cats is not acceptable.

[3] See footnote 2 in § 2.50(a)(1).

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records of any subsequent sales by the dealer or exhibitor, of any dog or cat.

(3) Live puppies or kittens less than 16 weeks of age, shall be identified by:

(i) An official tag as described in § 2.51;

(ii) A distinctive and legible tattoo marking approved by the Administrator; or

(iii) A plastic-type collar acceptable to the Administrator which has legibly placed thereon the information required for an official tag pursuant to § 2.51.

(4) When any dealer has made a reasonable effort to affix an official tag to a cat, as set forth in paragraphs (a) and (b) of this section, and has been unable to do so, or when the cat exhibits serious distress from the attachment of a collar and tag, the dealer shall attach the collar and tag to the door of the primary enclosure containing the cat and take measures adequate to maintain the identity of the cat in relation to the tag. Each primary enclosure shall contain no more than one weaned cat without an affixed collar and official tag, unless the cats are identified by a distinctive and legible tattoo or plastic-type collar approved by the Administrator.

(c) A class "C" exhibitor shall identify all live dogs and cats under his or her control or on his or her premises, whether held, purchased, or otherwise acquired:

(1) As set forth in paragraph (b)(1) or (b)(3) of this section, or

(2) By identifying each dog or cat with:

(i) An official USDA sequentially numbered tag that is kept on the door of the animal's cage or run;

(ii) A record book containing each animal's tag number, a written description of each animal, the data required by § 2.75(a), and a clear photograph of each animal; and

(iii) A duplicate tag that accompanies each dog or cat whenever it leaves the compound or premises.

(d) Unweaned puppies or kittens need not be individually identified as required by paragraphs (a) and (b) of this section while they are maintained as a litter with their dam in the same primary enclosure, provided the dam has been individually identified.

(e)(1) All animals, except dogs and cats, delivered for transportation, transported, purchased, sold, or otherwise acquired or disposed of by any dealer or exhibitor shall be identified by the dealer or exhibitor at the time of delivery for transportation, purchase, sale, acquisition or disposal, as provided for in this paragraph and in records maintained as required in §§ 2.75 and 2.77.

(2) When one or more animals, other than dogs or cats, are confined in a primary enclosure, the animal(s) shall be identified by:

(i) A label attached to the primary enclosure which shall bear a description of the animals in the primary enclosure, including:

(A) The number of animals;

(B) The species of the animals;

(C) Any distinctive physical features of the animals; and

(D) Any identifying marks, tattoos, or tags attached to the animals;

(ii) Marking the primary enclosure with a painted or stenciled number which shall be recorded in the records of the dealer or exhibitor together with:

(A) A description of the animal(s);

(B) The species of the animal(s); and

(C) Any distinctive physical features of the animal(s); or

(iii) A tag or tattoo applied to each animal in the primary enclosure by the dealer or exhibitor which individually identifies each animal by description or number.

(3) When any animal, other than a dog or cat, is not confined in a primary enclosure, it shall be identified on a record, as required by § 2.75, which shall accompany the animal at the time it is delivered for transportation, transported, purchased, or sold, and shall be kept and maintained by the dealer or exhibitor as part of his or her records.

§ 2.51 Form of official tag.

(a) The official tag shall be made of a durable alloy such as brass, bronze, or steel, or of a durable plastic. Aluminum of a sufficient thickness to assure the tag is durable and legible may also be used. The tag shall be one of the following shapes:

(1) Circular in shape and not less than 1¼ inches in diameter, or

(2) Oblong and flat in shape, not less than 2 inches by ¾ inch and riveted to an acceptable collar.

(b) Each tag shall have the following information embossed or stamped on so that it is easily readable:

(1) The letters "USDA";

(2) Numbers identifying the State and dealer, exhibitor, or research facility (*e.g.*, 39–AB); and

(3) Numbers identifying the animal (*e.g.*, 82488).

(c) Official tags shall be serially numbered. No individual dealer or exhibitor shall use any identification tag number more than once within a 5-year period.

§ 2.52 How to obtain tags.

Dealers or exhibitors may obtain, at their own expense, official tags from commercial tag manufacturers.[4] At the time the dealer or exhibitor is issued a license or is registered, the Department will assign identification letters and numbers and inform them of the identification letters and numbers to be used on the official tags.

§ 2.53 Use of tags.

Official tags obtained by a dealer, exhibitor, or research facility, shall be applied to dogs or cats in the manner set forth in § 2.50 and in as close to consecutive numerical order as possible. No tag number shall be used to identify more than one animal. No number shall be repeated within a 5-year period.

§ 2.54 Lost tags.

Each dealer or exhibitor shall be held accountable for all official tags acquired. In the event an official tag is lost from a dog or cat while in the possession of a dealer or exhibitor, the dealer or exhibitor shall make a diligent effort to locate and reapply the tag to the proper animal. If the lost tag is not located, the dealer or exhibitor shall affix another official tag to the animal in the manner prescribed in § 2.50, and record the tag number on the official records.

§ 2.55 Removal and disposal of tags.

(a) Where a dog or cat to which is affixed or which is identified by an official tag is euthanized, or dies from other causes, the dealer or exhibitor shall remove and retain the tag for the required period, as set forth in paragraph (b) of this section.

(b) All official tags removed and retained by a dealer or exhibitor shall be held until called for by an APHIS official or for a period of 1 year.

(c) When official tags are removed from animals for disposal, the tags must be disposed of so as to preclude their reuse for animal identification. No animal identification number shall be used within any 5-year period following its previous use.

Subpart F—Stolen Animals

§ 2.60 Prohibition on the purchase, sale, use, or transportation of stolen animals.

No person shall buy, sell, exhibit, use for research, transport, or offer for transportation, any stolen animal.

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[4] A list of the commercial manufacturers who produce these tags and are known to the Department may be obtained from the APHIS, REAC Sector Supervisor. Any manufacturer who desires to be included in the list should notify the Administrator.

Subpart G—Records

§ 2.75 Records: Dealers and exhibitors.

(a)(1) Each dealer, other than operators of auction sales and brokers to whom animals are consigned, and each exhibitor shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning each dog or cat purchased or otherwise acquired, owned, held, or otherwise in his or her possession or under his or her control, or which is transported, euthanized, sold, or otherwise disposed of by that dealer or exhibitor. The records shall include any offspring born of any animal while in his or her possession or under his or her control.

(i) The name and address of the person from whom a dog or cat was purchased or otherwise acquired whether or not the person is required to be licensed or registered under the Act;

(ii) The USDA license or registration number of the person if he or she is licensed or registered under the Act;

(iii) The vehicle license number and state, and the driver's license number and state of the person, if he or she is not licensed or registered under the Act;

(iv) The name and address of the person to whom a dog or cat was sold or given and that person's license or registration number if he or she is licensed or registered under the Act;

(v) The date a dog or cat was acquired or disposed of, including by euthanasia;

(vi) The official USDA tag number or tattoo assigned to a dog or cat under §§ 2.50 and 2.54;

(vii) A description of each dog or cat which shall include:

(A) The species and breed or type;

(B) The sex;

(C) The date of birth or approximate age; and

(D) The color and any distinctive markings;

(viii) The method of transportation including the name of the initial carrier or intermediate handler or, if a privately owned vehicle is used to transport a dog or cat, the name of the owner of the privately owned vehicle;

(ix) The date and method of disposition of a dog or cat, e.g., sale, death, euthanasia, or donation.

(2) Record of Dogs and Cats on Hand (VS Form 18–5) and Record of Disposition of Dogs and Cats (VS Form 18–6) are forms which may be used by dealers and exhibitors to make, keep, and maintain the information required by paragraph (a)(1) of this section.

(3) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) may be used by dealers and exhibitors to make, keep, and maintain the information required by paragraph (a)(1) of this section and § 2.79.

(4) One copy of the record containing the information required by paragraph (a)(1) of this section shall accompany each shipment of any dog or cat purchased or otherwise acquired by a dealer or exhibitor. One copy of the record containing the information required by paragraph (a)(1) of this section shall accompany each shipment of any dog or cat sold or otherwise disposed of by a dealer or exhibitor: *Provided, however*, That information which indicates the source and date of acquisition of a dog or cat need not appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by paragraph (a)(1) of this section shall be retained by the dealer or exhibitor.

(b)(1) Every dealer other than operators of auction sales and brokers to whom animals are consigned, and exhibitor shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning animals other than dogs and cats, purchased or otherwise acquired, owned, held, leased, or otherwise in his or her possession or under his or her control, or which is transported, sold, euthanized, or otherwise disposed of by that dealer or exhibitor. The records shall include any offspring born of any animal while in his or her possession or under his or her control.

(i) The name and address of the person from whom the animals were purchased or otherwise acquired;

(ii) The USDA license or registration number of the person if he or she is licensed or registered under the Act;

(iii) The vehicle license number and state, and the driver's license number and state of the person, if he or she is not licensed or registered under the Act;

(iv) The name and address of the person to whom an animal was sold or given;

(v) The date of purchase, acquisition, sale, or disposal of the animal(s);

(vi) The species of the animal(s); and

(vii) The number of animals in the shipment.

(2) Record of Animals on Hand (other than dogs and cats) (VS Form 18–19) and Record of Acquisition, Disposition, or Transport of Animals (other than dogs and cats) (VS Form 18–20) are forms which may be used by dealers and exhibitors to keep and maintain the information required by paragraph (b)(1) of this section concerning animals other than dogs and cats except as provided in § 2.79.

(3) One copy of the record containing the information required by paragraph (b)(1) of this section shall accompany each shipment of any animal(s) other than a dog or cat purchased or otherwise acquired by a dealer or exhibitor. One copy of the record containing the information required by paragraph (b)(1) of this section shall accompany each shipment of any animal other than a dog or cat sold or otherwise disposed of by a dealer or exhibitor; *Provided, however*, That information which indicates the source and date of acquisition of any animal other than a dog or cat need not appear on the copy of the record accompanying the shipment. The dealer or exhibitor shall retain one copy of the record containing the information required by paragraph (b)(1) of this section.

§ 2.76 Records: Operators of auction sales and brokers.

(a) Every operator of an auction sale or broker shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning each animal consigned for auction or sold, whether or not a fee or commission is charged:

(1) The name and address of the person who owned or consigned the animal(s) for sale;

(2) The name and address of the buyer or consignee who received the animal;

(3) The USDA license or registration number of the person(s) selling, consigning, buying, or receiving the animals if he or she is licensed or registered under the Act;

(4) The vehicle license number and state, and the driver's license number and state of the person, if he or she is not licensed or registered under the Act;

(5) The date of the consignment;

(6) The official USDA tag number or tattoo assigned to the animal under §§ 2.50 and 2.54;

(7) A description of the animal which shall include:

(i) The species and breed or type of animal;

(ii) The sex of the animal; and

(iii) The date of birth or approximate age; and

(iv) The color and any distinctive markings;

(8) The auction sales number or records number assigned to the animal.

(b) One copy of the record containing the information required by paragraph (a) of this section shall be given to the consignor of each animal, one copy of the record shall be given to the purchaser of each animal: *Provided, however*, That information which indicates the source and date of

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consignment of any animal need not appear on the copy of the record given the purchaser of any animal. One copy of the record containing the information required by paragraph (a) of this section shall be retained by the operator of such auction sale, or broker, for each animal sold by the auction sale or broker.

§ 2.77 Records: Carriers and intermediate handlers.

(a) In connection with all live animals accepted for shipment on a C.O.D. basis or other arrangement or practice under which the cost of an animal or the transportation of an animal is to be paid and collected upon delivery of the animal to the consignee, the accepting carrier or intermediate handler, if any, shall keep and maintain a copy of the consignor's written guarantee for the payment of transportation charged for any animal not claimed as provided in § 2.80, including, where necessary, both the return transportation charges and an amount sufficient to reimburse the carrier for out-of-pocket expenses incurred for the care, feeding, and storage of the animal. The carrier or intermediate handler at destination shall also keep and maintain a copy of the shipping document containing the time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee, as provided in § 2.80.

(b) In connection with all live dogs, cats, or nonhuman primates delivered for transportation, in commerce, to any carrier or intermediate handler, by any dealer, research facility, exhibitor, operator of an auction sale, broker, or department, agency or instrumentality of the United States or of any state or local government, the accepting carrier or intermediate handler shall keep and maintain a copy of the health certification completed as required by § 2.79, tendered with each live dog, cat, or nonhuman primate.

§ 2.78 Health certification and identification.

(a) No dealer, exhibitor, operator of an auction sale, broker, or department, agency, or instrumentality of the United States or of any State or local government shall deliver to any intermediate handler or carrier for transportation, in commerce, or shall transport in commerce any dog, cat, or nonhuman primate unless the dog, cat, or nonhuman primate is accompanied by a health certificate executed and issued by a licensed veterinarian. The health certificate shall state that:

(1) The licensed veterinarian inspected the dog, cat, or nonhuman primate on a specified date which shall not be more than 10 days prior to the delivery of the dog, cat, or nonhuman primate for transportation; and

(2) when so inspected, the dog, cat, or nonhuman primate appeared to the licensed veterinarian to be free of any infectious disease or physical abnormality which would endanger the animal(s) or other animals or endanger public health.

(b) The Secretary may provide exceptions to the health certification requirement on an individual basis for animals shipped to a research facility for purposes of research, testing, or experimentation when the research facility requires animals not eligible for certification. Requests should be addressed to the Administrator, APHIS, USDA, Room 206, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(c) No intermediate handler or carrier to whom any live dog, cat, or nonhuman primate is delivered for transportation by any dealer, research facility, exhibitor, broker, operator of an auction sale, or department, agency, or instrumentality of the United States or any State or local government shall receive a live dog, cat, or nonhuman primate for transportation, in commerce, unless and until it is accompanied by a health certificate issued by a licensed veterinarian in accordance with paragraph (a) of this section, or an exemption issued by the Secretary in accordance with paragraph (b) of this section.

(d) The U.S. Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) may be used for health certification by a licensed veterinarian as required by this section.

§ 2.79 C.O.D. shipments.

(a) No carrier or intermediate handler shall accept any animal for transportation, in commerce, upon any C.O.D. or other basis where any money is to be paid and collected upon delivery of the animal to the consignee, unless the consignor guarantees in writing the payment of all transportation, including any return transportation, if the shipment is unclaimed or the consignee cannot be notified in accordance with paragraphs (b) and (c) of this section, including reimbursing the carrier or intermediate handler for all out-of-pocket expenses incurred for the care, feeding, and storage or housing of the animal.

(b) Any carrier or intermediate handler receiving an animal at a destination on a C.O.D. or other basis any money is to be paid and collected upon delivery of the animal to the consignee shall attempt to notify the consignee at least once every 6 hours for a period of 24 hours after arrival of the animal at the animal holding area of the terminal cargo facility. The carrier or intermediate handler shall record the time, date, and method of each attempted notification and the final notification to the consignee, and the name of the person notifying the consignee, on the shipping document and on the copy of the shipping document accompanying the C.O.D. shipment. If the consignee cannot be notified of the C.O.D. shipment within 24 hours after its arrival, the carrier or intermediate handler shall return the animal to the consignor, or to whomever the consignor has designated, on the next practical available transportation, in accordance with the written agreement required in paragraph (a) of this section and shall notify the consignor. Any carrier or intermediate handler which has notified a consignee of the arrival of a C.O.D. or other shipment of an animal, where any money is to be paid and collected upon delivery of the animal to the consignee, which is not claimed by the consignee within 48 hours from the time of notification, shall return the animal to the consignor, or to whomever the consignor has designated, on the next practical available transportation, in accordance with the written agreement required in paragraph (a) of this section and shall notify the consignor.

(c) It is the responsibility of any carrier or intermediate handler to hold, feed, and care for any animal accepted for transportation, in commerce, under a C.O.D. or other arrangement where any money is to be paid and collected upon delivery of the animal until the consignee accepts shipment at destination or until returned to the consignor or his or her designee should the consignee fail to accept delivery of the animal or if the consignee could not be notified as prescribed in paragraph (b) of this section.

(d) Nothing in this section shall be construed as prohibiting any carrier or intermediate handler from requiring any guarantee in addition to that required in paragraph (a) of this section for the payment of the cost of any transportation or out-of-pocket or other incidental expenses incurred in the transportation of any animal.

§ 2.80 Records, disposition.

(a) No dealer, exhibitor, broker, operator of an auction sale, carrier, or intermediate handler shall, for a period of 1 year, destroy or dispose of, without the consent in writing of the Administrator, any books, records, documents, or other papers required to be kept and maintained under this part.

(b) Unless otherwise specified, the records required to be kept and maintained under this part shall be held for 1 year after an animal is euthanized or disposed of and for any period in excess of one year as necessary to comply with any applicable Federal, State, or local law. Whenever the Administrator notifies a dealer, exhibitor, broker, operator of an auction sale, carrier, or intermediate handler in writing that specified records shall be retained pending completion of an investigation or proceeding under the Act, the dealer, exhibitor, broker, operator of an auction sale, carrier, or intermediate handler shall hold those records until their disposition is authorized by the Administrator.

Subpart H—Compliance With Standards and Holding Period

§ 2.100 Compliance with standards.

(a) Each dealer, exhibitor, operator of an auction sale, and intermediate handler shall comply in all respects with the regulations set forth in part 2 and the standards set forth in part 3 of this subchapter for the humane handling, care, treatment, housing, and transportation of animals.

(b) Each carrier shall comply in all respects with the regulations in part 2 and the standards in part 3 of this subchapter setting forth the conditions and requirements for the humane transportation of animals in commerce and their handling, care, and treatment in connection therewith.

§ 2.101 Holding period.

(a) Any live dog or cat acquired by a dealer [5] or exhibitor shall be held by him or her, under his or her supervision and control, for a period of not less than 5 full days, not including the day of acquisition, after acquiring the animal, excluding time in transit: *Provided, however*:

(1) That any live dog or cat acquired by a dealer or exhibitor from any private or contract animal pound or shelter shall be held by that dealer or exhibitor under his or her supervision and control for a period of not less than 10 full days, not including the day of acquisition, after acquiring the animal, excluding time in transit;

(2) Live dogs or cats which have completed a 5-day holding period with another dealer or exhibitor, or a 10-day holding period with another dealer or exhibitor if obtained from a private or contract shelter or pound, may be sold or otherwise disposed of by subsequent dealers or exhibitors after a minimum holding period of 24 hours by each subsequent dealer or exhibitor excluding time in transit;

(3) Any dog or cat suffering from disease, emaciation, or injury may be destroyed by euthanasia prior to the completion of the holding period required by this section; and

(4) Any live dog or cat, 120 days of age or less, that was obtained from the person that bred and raised such dog or cat, may be exempted from the 5-day holding requirement and may be disposed of by dealers or exhibitors after a minimum holding period of 24 hours, excluding time in transit. Each subsequent dealer or exhibitor must also hold each such dog or cat for a 24-hour period excluding time in transit.

(b) During the period in which any dog or cat is being held as required by this section, the dog or cat shall be unloaded from any means of conveyance in which it was received, for food, water, and rest, and shall be handled, cared for, and treated in accordance with the standards set forth in part 3, subpart A, of this subchapter and § 2.131.

§ 2.102 Holding facility.

(a) If any dealer or exhibitor obtains the prior approval of the APHIS, REAC Sector Supervisor, he may arrange to have another person hold animals for the required period provided for in paragraph (a) of § 2.101: *Provided*, That:

(1) The other person agrees ip writing to comply with the regulations in part 2 and the standards in part 3 of this subchapter and to allow inspection of his premises by an APHIS official during business hours; and

(2) The animals remain under the total control and responsibility of the dealer or exhibitor.

(3) Approval will not be given for a dealer or exhibitor holding a license as set forth in § 2.1 to have animals held for purposes of this section by another licensed dealer or exhibitor. Veterinary Services Form 18–9 shall be used for approval.

(b) If any intermediate handler obtains prior approval of the APHIS, REAC Sector Supervisor, it may arrange to have another person hold animals: *Provided*, That:

(1) The other person agrees in writing to comply with the regulations in part 2 and the standards in part 3 of this subchapter and to allow inspection of the premises by an APHIS official during business hours; and

(2) The animals remain under the total control and responsibility of the research facility or intermediate handler.

Subpart I—Miscellaneous

§ 2.125 Information as to business; furnishing of same by dealers, exhibitors, operators of auction sales, intermediate handlers, and carriers.

Each dealer, exhibitor, operator of an auction sale, intermediate handler, and carrier shall furnish to any APHIS official any information concerning the business of the dealer, exhibitor, operator of an auction sale, intermediate handler or carrier which the APHIS official may request in connection with the enforcement of the provisions of the Act, the regulations and the standards in this subchapter. The information shall be furnished within a reasonable time and as may be specified in the request for information.

§ 2.126 Access and inspection of records and property.

(a) Each dealer, exhibitor, intermediate handler, or carrier, shall, during business hours, allow APHIS officials:

(1) To enter its place of business;

(2) To examine records required to be kept by the Act and the regulations in this part;

(3) To make copies of the records;

(4) To inspect and photograph the facilities, property and animals, as the APHIS officials consider necessary to enforce the provisions of the Act, the regulations and the standards in this subchapter; and

(5) To document, by the taking of photographs and other means, conditions and areas of noncompliance.

(b) The use of a room, table, or other facilities necessary for the proper examination of the records and inspection of the property or animals shall be extended to APHIS officials by the dealer, exhibitor, intermediate handler or carrier.

§ 2.127 Publication of names of persons subject to the provisions of this part.

APHIS will publish lists of persons licensed or registered in accordance with the provisions of this part in the **Federal Register**. The lists may be obtained upon request from the APHIS, REAC Sector Supervisor.

§ 2.128 Inspection for missing animals.

Each dealer, exhibitor, intermediate handler and carrier shall allow, upon request and during business hours, police or officers of other law enforcement agencies with general law enforcement authority (not those agencies whose duties are limited to enforcement of local animal regulations) to enter his or her place of business to inspect animals and records for the purpose of seeking animals that are missing, under the following conditions:

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[5] An operator of an auction sale is not considered to have acquired a dog or cat which is sold through the auction sale.

(a) The police or other law officer shall furnish to the dealer, exhibitor, intermediate handler or carrier a written description of the missing animal and the name and address of its owner before making a search.

(b) The police or other law officer shall abide by all security measures required by the dealer, exhibitor, intermediate handler or carrier to prevent the spread of disease, including the use of sterile clothing, footwear, and masks where required, or to prevent the escape of an animal.

§ 2.129 Confiscation and destruction of animals.

(a) If an animal being held by a dealer, exhibitor, intermediate handler, or by a carrier is found by an APHIS official to be suffering as a result of the failure of the dealer, exhibitor, intermediate handler, or carrier to comply with any provision of the regulations or the standards set forth in this subchapter, the APHIS official shall make a reasonable effort to notify the dealer, exhibitor, intermediate handler, or carrier of the condition of the animal(s) and request that the condition be corrected and that adequate care be given to alleviate the animal's suffering or distress, or that the animal(s) be destroyed by euthanasia. In the event that the dealer, exhibitor, intermediate handler, or carrier refuses to comply with this request, the APHIS official may confiscate the animal(s) for care, treatment, or disposal as indicated in paragraph (b) of this section, if, in the opinion of the Administrator, the circumstances indicate the animal's health is in danger.

(b) In the event that the APHIS official is unable to locate or notify the dealer, exhibitor, intermediate handler, or carrier as required in this section, the APHIS official shall contact a local police or other law officer to accompany him to the premises and shall provide for adequate care when necessary to alleviate the animal's suffering. If in the opinion of the Administrator, the condition of the animal(s) cannot be corrected by this temporary care, the APHIS official shall confiscate the animals.

(c) Confiscated animals may be placed, by sale or donation, with other licensees or registrants which comply with the standards and regulations and can provide proper care, or they may be euthanized. The dealer, exhibitor, intermediate handler, or carrier from whom the animals were confiscated shall bear all costs incurred in performing the placement or euthanasia activities authorized by this section.

§ 2.130 Minimum age requirements.

No dog or cat shall be delivered by any person to any carrier or intermediate handler for transportation, in commerce, or shall be transported in commerce by any person, except to a registered research facility, unless such dog or cat is at least eight (8) weeks of age and has been weaned.

§ 2.131 Handling of animals.

(a)(1) Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.

(2)(i) Physical abuse shall not be used to train, work, or otherwise handle animals.

(ii) Deprivation of food or water shall not be used to train, work, or otherwise handle animals; *Provided, however,* That the short-term withholding of food or water from animals by exhibitors is allowed by these regulations as long as each of the animals affected receives its full dietary and nutrition requirements each day.

(b)(1) During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public.

(2) Performing animals shall be allowed a rest period between performances at least equal to the time for one performance.

(3) Young or immature animals shall not be exposed to rough or excessive public handling or exhibited for periods of time which would be detrimental to their health or well-being.

(4) Drugs, such as tranquilizers, shall not be used to facilitate, allow, or provide for public handling of the animals.

(c)(1) Animals shall be exhibited only for periods of time and under conditions consistent with their good health and well-being.

(2) A responsible, knowledgeable, and readily identifiable employee or attendant must be present at all times during periods of public contact.

(3) During public exhibition, dangerous animals such as lions, tigers, wolves, bears, or elephants must be under the direct control and supervision of a knowledgeable and experienced animal handler.

(4) If public feeding of animals is allowed, the food must be provided by the animal facility and shall be appropriate to the type of animal and its nutritional needs and diet.

§ 2.132 Procurement of random source dogs and cats, dealers.

(a) A class "B" dealer may obtain live random source dogs and cats only from:

(1) Other dealers who are licensed under the Act and in accordance with the regulations in part 2;

(2) State, county, or city owned and operated animal pounds or shelters; and

(3) A legal entity organized and operated under the laws of the State in which it is located as an animal pound or shelter, such as a humane shelter or contract pound.

(b) A class "B" dealer shall not obtain live random source dogs and cats from individuals who have not bred and raised the dogs and cats on their own premises.

(c) Live nonrandom source dogs and cats may be obtained from persons who have bred and raised the dogs and cats on their own premises, such as hobby breeders.

(d) No person shall obtain live random source dogs or cats by use of false pretenses, misrepresentation, or deception.

(e) Any dealer, exhibitor, research facility, carrier, or intermediate handler who also operates a private or contract animal pound or shelter shall comply with the following:

(1) The animal pound or shelter shall be located on premises that are physically separated from the licensed or registered facility. The animal housing facility of the pound or shelter shall not be adjacent to the licensed or registered facility.

(2) Accurate and complete records shall be separately maintained by the licensee or registrant and by the pound or shelter. The records shall be in accordance with §§ 2.75 and 2.76, unless the animals are lost or stray. If the animals are lost or stray, the pound or shelter records shall provide:

(i) An accurate description of the animal;

(ii) How, where, from whom, and when the dog or cat was obtained;

(iii) How long the dog or cat was held by the pound or shelter before being transferred to the dealer; and

(iv) The date the dog or cat was transferred to the dealer.

(3) Any dealer who obtains or acquires a live random source dog or cat from a private or contract pound or

shelter, including a pound or shelter he or she operates, shall hold the dog or cat for a period of at least 10 full days, not including the day of acquisition, excluding time in transit, after acquiring the animal, and otherwise in accordance with § 2.101.

PART 3—STANDARDS

1. The authority citation for part 3 is revised to read as follows:

Authority: 7 U.S.C. 2131–2156; 7 CFR 2.17, 2.51, and 371.2(d).

§ 3.10 [Removed and Reserved]

2. Subpart A is amended by removing and reserving § 3.10.

§ 3.34 [Removed and Reserved]

3. Subpart B is amended by removing and reserving § 3.34.

§ 3.59 [Removed and Reserved]

4. Subpart C is amended by removing and reserving § 3.59.

§ 3.84 [Removed and Reserved]

5. Subpart D is amended by removing and reserving § 3.84.

§ 3.110 [Amended]

6. Subpart E, § 3.110, paragraphs (a) through (c) are removed, and paragraphs (d) through (g) are redesignated respectively as paragraphs (a) through (d).

§ 3.111 [Removed and Reserved]

7. Subpart E is amended by removing and reserving § 3.111.

§§ 3.134 and 3.135 [Removed and Reserved]

8. Subpart F is amended by removing and reserving §§ 3.134 and 3.135.

Done in Washington, DC, this 25th day of August 1989.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–20424 Filed 8–30–89; 8:45 am]

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federal register

Thursday
August 31, 1989

Part V

Environmental Protection Agency

Asbestos-Containing Materials in Schools; EPA Approved Courses and Accredited Laboratories Under the Asbestos Hazard Emergency Response Act (AHERA); Notice

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62079; FRL 3638-2]

Asbestos-Containing Materials in Schools; EPA Approved Courses and Accredited Laboratories Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In section 206(c)(3) of Title II, the Administrator, in consultation with affected organizations, was directed to publish (and revise as necessary) a list of asbestos courses and tests in effect before the date of enactment of this title which qualify for equivalency treatment for interim accreditation purposes, and a list of asbestos courses and tests which the Administrator determines are consistent with the Model Plan and which will qualify a contractor for accreditation. In addition, under the amendment to TSCA Title II, section 206(f) was added which requires the Administrator to publish quarterly, beginning August 31, 1988, a list of EPA-approved asbestos training courses. The Administrator is also required to publish on a quarterly basis beginning August 31, 1988, a list of laboratories which have received accreditation from EPA. This **Federal Register** notice includes the cumulative eighth list of course approvals and a list that includes State accreditation programs that EPA has approved as meeting the requirements of the Model Plan. Additionally, this notice includes the most current list of accredited laboratories as of August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 382-3790, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 206 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2646, required EPA to develop a Model Contractor Accreditation Plan by April 20, 1987. The plan was issued on April 20, 1987, and was published in the **Federal Register** of April 30, 1987 (52 FR 15875), as Appendix C to Subpart E, 40 CFR Part 763.

To conduct asbestos-related work in schools, persons must receive accreditation in order to inspect school buildings for asbestos, develop management plans, and design or conduct response actions. Such persons can be accredited by States, which are required under Title II to adopt contractor accreditation plans at least as stringent as the EPA Model Plan, or by completing an EPA-approved training course and passing an examination for such course. The EPA Model Contractor Accreditation Plan establishes those areas of knowledge of asbestos inspection, management plan development, and response action technology that persons seeking accreditation must demonstrate and States must include in their accreditation programs.

In the **Federal Register** of October 30, 1987 (52 FR 41826), EPA promulgated a final "Asbestos-Containing Materials In Schools" rule (40 CFR Part 763, Subpart E) which required all local education agencies (LEAs) to identify asbestos-containing materials (ACM) in their school buildings and take appropriate actions to control the release of asbestos fibers. The LEAs are also required to describe their activities in management plans, which must be made available to the public and submitted to State governors. Under Title II, LEAs are required to use specially trained persons to conduct inspections for asbestos, develop the management plans, and design or conduct major actions to control asbestos. The new rule took effect on December 14, 1987.

The length of initial training courses for accreditation under the Model Plan varies by discipline. Briefly, inspectors must take a 3-day training course; management planners must take the inspection course plus an additional 2 days devoted to management planning; and abatement project designers are required to have at least 3 days of training. In addition, asbestos abatement contractors and supervisors must take a 4-day training course and asbestos abatement workers are required to take a 3-day training course. For all disciplines, persons seeking accreditation must also pass an examination and participate in annual re-training courses. A complete description of accreditation requirements can be found in the Model Accreditation Plan at 40 CFR Part 763, Subpart E, Appendix C.I.1.A through E.

In section 206(c)(3) of Title II, and as amended by section 206(f), the Administrator, in consultation with affected organizations, is directed to publish quarterly a list of asbestos courses and tests in effect before the date of enactment of this title which qualified for equivalency treatment for interim accreditation purposes, and a list of asbestos courses and tests which the Administrator determined were consistent with the Model Plan and which qualify a contractor for accreditation. In addition, the Agency has included in this notice the most current list of laboratories which have received interim accreditation from EPA or full accreditation from the National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards (NBS), for the analysis of bulk materials for asbestos by polarized light microscopy (PLM).

The **Federal Register** notice of October 30, 1987, included the initial list of course approvals. In addition, the list included State accreditation programs that EPA has approved as meeting the requirements of the Model Plan. The second **Federal Register** notice of February 10, 1988 (53 FR 3982), the third **Federal Register** notice of June 1, 1988 (53 FR 20066), the fourth **Federal Register** notice of August 31, 1988 (53 FR 33574), the fifth **Federal Register** notice of November 30, 1988 (53 FR 48424), the sixth **Federal Register** notice of February 28, 1989 (54 FR 8438), and the seventh **Federal Register** notice of May 31, 1989 (54 FR 23392), were cumulative listings of EPA course approvals and EPA approved State accreditation programs.

This **Federal Register** notice is divided into five units. Unit I discusses EPA approval of State accreditation programs. Unit II covers EPA approval of training courses. Unit III discusses EPA approval of training courses for interim accreditation. Unit IV provides the list of State accreditation programs and training courses approved by EPA as of April 1989. Unit V contains a listing of all laboratories under the EPA Interim Accreditation Program and the NIST accreditation program for laboratories that are conducting analysis of bulk samples of ACMs. Subsequent **Federal Register** notices will add other State programs and training courses as well as accredited laboratories to this eighth cumulative list.

I. EPA Approval of State Accreditation Programs

As discussed in the Model Plan, EPA is able to approve State accreditation programs that the Agency determines are at least as stringent as the Model Plan. In addition, the Agency is able to approve individual disciplines within a State's accreditation program. For example, a State that currently only has an accreditation requirement for inspectors can receive EPA approval for that discipline immediately rather than waiting to develop accreditation requirements for all disciplines in the Model Plan before seeking EPA approval. EPA can also approve State training programs that do not fully meet the Model Plan's requirements but do meet the requirements for interim accreditation.

As listed in Unit IV, Arkansas, Colorado, Delaware, Iowa, Kansas, Massachusetts, Michigan, Minnesota, New Jersey, North Dakota, Oregon, Rhode Island, South Dakota, Virginia, and Utah have received EPA full approval for two accreditation disciplines, abatement workers as well as contractors and supervisors, that are at least as stringent as the Model Plan. In addition, the States of Colorado, Iowa, Massachusetts, Michigan, North Dakota, Rhode Island, South Dakota, Utah, and Virginia have received full approval for their inspector/management planner and project designer disciplines. Any training courses in those disciplines approved by the aforementioned States are EPA-approved courses for purposes of accreditation. These training courses are EPA-approved courses for purposes of TSCA Title II in these States and in all States without an EPA-approved accreditation program for that discipline. Current lists of training courses approved by Arkansas, Massachusetts, Michigan, New Jersey, North Dakota, Oregon, Rhode Island, South Dakota, and Virginia are listed under Unit IV. Kansas, Michigan, and Minnesota do not have separate provider listings since the States have not independently approved any additional courses.

Each State accreditation program may have different requirements for State accreditation. For example, New Jersey requires participants of their courses to take the State exam. Therefore, those New Jersey-approved course sponsors who are contemplating presenting the training in another State must develop their own examination. They must also submit a detailed statement about the development of the course examination as required by the Model Plan to the Regional Asbestos Coordinator in their region for EPA approval.

EPA has also approved a number of State programs for purposes of providing interim accreditation for persons who have met the training and examination requirements of these State programs. Persons meeting such requirements in these States have completed a training course and examination similar to the Model Plan's requirements before December 14, 1987. However, these individuals must become fully accredited within the time period specified in the Model Plan.

States that have approval for interim accreditation purposes for abatement contractors, supervisors, and workers include Alaska and Washington. Illinois has approval for interim accreditation purposes for abatement workers only. Persons with interim accreditation in these States are eligible to conduct work during the time period specified in the Model Plan. *However*, these persons must eventually become fully accredited. In addition, these persons must take a complete EPA-approved course (see Unit II) or an EPA-approved State program's course for full accreditation. In most States, the complete course will have to be taken before autumn 1989. All States programs nationwide that do not fully meet the Model Plan's requirements must be upgraded within the time period specified in TSCA Title II to be at least as stringent as the Model Plan.

II. EPA Approval of Training Courses

A cumulative list of training courses approved by EPA is listed under Unit IV. The examinations for these approved courses under Unit IV have also been approved by EPA. EPA has three categories of course approval: full, contingent, and approved for interim accreditation. Courses approved for interim accreditation will be discussed in Unit III.

Full approval means EPA has reviewed and found acceptable the course's written submission seeking EPA approval and has conducted an on-site audit and determined that the training course meets or exceeds the Model Plan's training requirements for the relevant discipline.

Contingent approval means the Agency has reviewed the course's written submission seeking EPA approval and found the material to be acceptable (i.e., the written course materials meet the Model Plan's training course requirements). However, EPA has not yet conducted an on-site audit.

Successful completion of either a fully approved course or a contingently approved course provides full accreditation for course attendees. If EPA subsequently audits a contingently approved course and withdraws approval due to deficiencies discovered during the audit, future course offerings would no longer have EPA approval. However, withdrawal of EPA approval would not effect the accreditation of persons who took previously offered training courses, including the course audited by EPA.

EPA-approved training courses listed under Unit IV are approved on a national basis. EPA has organized Unit IV by EPA Region to assist the public in locating those training courses that are offered nearby. Training courses are listed in the Region where the training course is headquartered. Although several sponsors offer their courses in various locations throughout the United States, a large number of course sponsors provide most of their training within their own Region.

EPA-approved State accreditation programs have the authority to have more stringent accreditation requirements than the Model Plan. As a result, some EPA-approved training courses listed under Unit IV may not meet the requirements of a particular State's accreditation program. Sponsors of training courses and persons who have received accreditation or are seeking accreditation should contact individual States to check on accreditation requirements.

A number of training courses offered before EPA issued the Model Plan equaled or exceeded the subsequently issued Model Plan's training course requirements. These courses are listed under Unit IV as being fully approved. It should be noted that persons who have successfully completed these courses are fully accredited; they are not limited only to being accredited on an interim basis.

III. EPA Approval of Training Courses for Interim Accreditation

TSCA Title II enables EPA to permit persons to be accredited on an interim basis if they have attended previous EPA-approved asbestos training and have passed (or pass) an asbestos examination. As a result, the Agency has approved training courses offered previously for purposes of accrediting persons on an interim basis. Only those persons who have taken training courses since January 1, 1985, will be considered under these interim accreditation provisions. In addition, EPA will not grant interim accreditation to any person who takes an equivalent training course after the date on which the asbestos-in-schools rule took effect (i.e., December 14, 1987). This accreditation is interim since the person shall be considered accredited for only 1 year after the date on which the State where the person is employed establishes an accreditation program at least as stringent as the EPA Model Plan. If the State does not adopt an accreditation program within the time period required by Title II, persons with interim accreditation must become fully accredited within 1 year after the date the State was required to have established a program. These persons must take a complete EPA-approved course (see Unit II) or an EPA-approved State program's course for full accreditation. In most States, the complete course will have to be taken before autumn 1989.

Under the Model Plan, an equivalent training course for interim accreditation purposes is one that is essentially similar in length and content to the curriculum found in the Model Plan. In addition, an equivalent examination must be essentially similar to the examination requirements found in the Model Plan.

Persons who have taken equivalent courses in their discipline for purposes of interim accreditation, and can produce evidence that they have successfully completed the course by passing an examination, are accredited on an interim basis under TSCA Title II. Evidence of successful completion of a course would include a certificate or photo identification card that showed the person completed the training course on a certain date and passed the examination.

For persons who took one of the EPA-approved courses for interim accreditation listed under Unit IV, but did not take the course's examination, these persons may become accredited on an interim basis by passing an examination at an EPA-funded training center. These EPA-funded training centers are listed under Unit IV. Before taking the examination, persons must provide evidence to the EPA-funded center that they previously had taken one of the training courses listed under Unit IV that is approved by EPA for interim accreditation.

The New York City Department of Environmental Protection, Bureau of Air Resources has a training program for asbestos abatement workers and contractors/supervisors that does meet the requirements for EPA approval of training courses for interim accreditation (See Unit IV, Region II). As a result, persons who have met the training and examination requirements of the New York City Abatement Worker (i.e., "handler") or Contractor/Supervisor program between April 1, 1987 and December 14, 1987, are accredited as listed under Unit IV on an interim basis.

Courses approved by EPA as of April 1989 for interim accreditation are listed under Unit IV. Examinations offered by these courses also are approved for purposes of interim accreditation.

IV. List of EPA-Approved State Accreditation Programs and Training Courses

The eighth cumulative listing of EPA-approved State accreditation programs and training courses is listed in Unit IV. As discussed above, quarterly notifications of EPA approval of State accreditation programs and EPA approval of training courses will be published in subsequent **Federal Register** notices. The closing date for the acceptance of submissions to EPA for inclusion in this eighth notice was July 1989. Omission from this list does not imply disapproval by EPA, nor does the order of the courses reflect priority or quality. The format of the notification lists first the State accreditation programs approved by EPA, followed by EPA-approved training courses listed by Region. The name, address, phone number, and contact person is provided for each training provider followed by the courses and type of course approval (i.e., full, contingent, or for interim purposes). Unless otherwise specified by an alternative date, interim approvals are issued from January 1, 1985.

As of July 28, 1989, a total of 489 training providers are offering 887 EPA-approved training courses for accreditation under TSCA Title II. There are 396 asbestos abatement worker courses, 296 contractor/supervisor courses, 161 inspector/management planner courses, 14 inspector only courses, and 20 project designer courses. In addition, EPA has approved 475 refresher courses. Eighteen States have either interimly or fully approved State accreditation programs in one or more disciplines.

The EPA-funded model course for inspectors and management planners is available in final form. In addition, a previous EPA developed course for asbestos abatement contractors and supervisors has been revised and is available in final form for interested parties that plan to offer training courses. EPA anticipates that its model worker course will be available in autumn 1989. A fee for each course will be charged to cover the reproduction costs for the written and visual aid materials. Interested parties should contact the following firm to receive copies of the training courses: ATLIS Federal Services, Inc., EPA AHERA Program, 6011 Executive Blvd., Rockville, MD 20852, Phone number: (301) 468-1916.

The following is the cumulative list of EPA-approved State accreditation programs and training courses:

Approved State Accreditation Programs

(1)(a) *State:* Arkansas.

State Agency: Arkansas Dept. of Pollution Control and Ecology, Address: 8001 National Dr., P.O. Box 9583, Little Rock, AR 72209, Contact: Wilson Tolefree, Phone: (501) 562-7444.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 11/22/85).
Abatement Worker (full from 1/22/88).
Contractor/Supervisor (interim from 11/22/85).
Contractor/Supervisor (full from 1/22/88).

Arkansas Department of Pollution Control and Ecology, EPA-Approved Courses for Abatement Workers and Contractors/Supervisors

(i)(a) *Training Provider:* Arkansas Laborers Training Fund.

Address: 4501 West 61st St., Little Rock, AR 72209, Contact: W. Rudy Osborne, Phone: (501) 562-5502.

(b) *Approved Course:*

Abatement Worker (Certified 5/2/88).

(ii)(a) *Training Provider:* Asbestos Training & Employment, Inc.

Address: 809 East 11th St., Michigan City, IN 46360, Contact: Bruce H. Connell, Phone: (219) 874-7348.

(b) *Approved Courses:*

Abatement Worker (Certified 5/18/88).
Contractor/Supervisor (Certified 5/18/88).

(iii)(a) *Training Provider:* Critical Environmental Training, Inc.

Address: 5815 Gulf Freeway, Houston, TX 77023, Contact: Charles M. Flanders, Phone: (713) 921-6921.

(b) *Approved Courses:*

Abatement Worker (Certified 9/12/88).
Contractor/Supervisor (Certified 9/12/88).

(iv)(a) *Training Provider:* Environmental Institute.

Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Eva Clay, Phone: (404) 425-2000.

(b) *Approved Course:*

Contractor/Supervisor (Certified 10/7/88).

(v)(a) *Training Provider:* Environmental Technologies.

Address: P.O. Box 21243, Little Rock, AR 72221, Contact: Phyllis Moore, Phone: (501) 569-3518.

(b) *Approved Courses:*

Abatement Worker (Certified 3/16/88).
Contractor/Supervisor (Certified 3/16/88).

(vi)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: P.O. Box 307, Lawrence, KS 66044, Contact: Patrick Shrepf, Phone: (913) 749-2381.

(b) *Approved Courses:*

Abatement Worker (Certified 6/8/88).

Contractor/Supervisor (Certified 6/8/88).

(vii)(a) *Training Provider:* Professional Asbestos Training Service.

Address: P.O. Box 45233, Little Rock, AR 72214, Contact: Harold Lewis, Phone: (501) 562-1519.

(b) *Approved Courses:*

Abatement Worker (Certified 4/18/88).
Contractor/Supervisor (Certified 4/18/88).

(viii)(a) *Training Provider:* University of Arkansas.

Address: 521 South Razorback Rd., Fayettville, AR 72701, Contact: Greg Weeks, Phone: (501) 575-6175.

(b) *Approved Course:*

Abatement Worker (Certified 10/7/88).

(2)(a) *State:* Colorado.

State Agency: Colorado Dept. of Health, Address: 4210 East 11th Ave., Denver, CO 80220, Contact: David R. Ouimette, Phone: (303) 320-8333.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 7/8/89).
Contractor/Supervisor (full from 7/8/89).
Inspector/Management Planner (full from 7/8/89).
Project Designer (full from 7/8/89).

(3)(a) *State:* Delaware.

State Agency: Delaware Dept. of Administrative Services, Address: O'Neill Building, P.O. Box 1401, Dover, DE 19903, Contact: Robert Foster, Phone: (302) 736-5644.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 8/14/89).
Contractor/Supervisor (full from 8/14/89).

Delaware Department of Administrative Services, EPA-Approved Courses for Abatement Workers and Contractors/Supervisors

(i)(a) *Training Provider:* Delaware Technical & Community College Terry Campus.

Address: 1832 North Dupont Pkwy., Dover, DE 19901, Contact: David T. Stanley, Phone: (302) 736-5428.

(b) *Approved Courses:*

Abatement Worker (Certified 4/1/88).
Contractor/Supervisor (Certified 4/1/88).

(4)(a) *State:* Iowa.

State Agency: Iowa Dept. of Education School Facilities Administration & Accreditation, Address: Grimes State Office Bldg., Des Moines, IA 50319-0146, Contact: C. Milton Wilson, Phone: (515) 281-4743.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/30/87).
Contractor/Supervisor (full from 11/30/87).
Inspector (full from 11/30/87).
Inspector/Management Planner (full from 11/30/87).
Project Designer (full from 11/30/87).

Iowa Department of Education Administrative Finance School Plant Facilities, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspectors/Management Planners, and Project Designers

(i)(a) *Training Provider:* Iowa Environmental Services, Inc.

Address: 820 First St., Suite 200, West Des Moines, IA 50365, Contact: Glenn Sawyer, Phone: (515) 279-8042.

(b) *Approved Course:*

Abatement Worker (Certified 3/27/89).

(5)(a) *State:* Kansas.

State Agency: Kansas Dept. of Health and Environment Asbestos Control Section, Address: Forbes Field Building 740, Topeka, KS 66620-7430, Contact: Howard F. Saiger, Phone: (913) 296-1544.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 11/6/86).*
Abatement Worker (full from 12/16/87).*
Contractor/Supervisor (interim from 11/6/86).
Contractor/Supervisor (full from 12/16/87).

(6)(a) *State:* Massachusetts.

State Agency: Massachusetts Dept. of Labor & Industries; Division of Occupational Hygiene, Address: 1001 Watertown St., West Newton, MA 02165, Contact: Patricia Circone, Phone: (617) 727-3983.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 10/30/87).
Contractor/Supervisor (full from 10/30/87).
Inspector (full from 10/30/87).
Inspector/Management Planner (full from 10/30/87).
Project Designer (full from 10/30/87).

Massachusetts Department of Health, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspectors/Management Planners, and Project Designers

(i)(a) *Training Provider:* A & S Training School, Inc.

Address: 99 S. Cameron St., Harrisburg, PA 17101, Contact: William I. Roberts, Phone: (717) 257-1360.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 5/4/88).
Contractor/Supervisor Annual Review (Certified 5/4/89).

(ii)(a) *Training Provider:* Abatement Technical Corporation c/o Ecosystems, Inc.

Address: 5 North Meadow Rd., Medfield, MA 02052, Contact: Joseph C. Mohen, Phone: (609) 692-0883.

(b) *Approved Courses:*

Abatement Worker (Certified 4/28/88).
Contractor/Supervisor (Certified 4/28/88).
Inspector/Management Planner (Certified 4/28/88).
Project Designer (Certified 4/28/88).

(iii)(a) *Training Provider:* Asbestos Workers Union Local No. 6.

Address: 1725 Revere Beach Pkwy., Everett, MA 02149, Contact: James P. McCourt, Phone: (617) 387-2679.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/88).
Abatement Worker Annual Review (Certified 4/25/89).
Contractor/Supervisor (Certified 4/25/88).
Contractor/Supervisor Annual Review (Certified 4/25/89).

(iv)(a) *Training Provider:* Astoria Industries, Inc.

Address: 538 Stewart Ave., Brooklyn, NY 11222, Contact: Gary Dipaolo, Phone: (718) 387-0011.

(b) *Approved Course:*

Abatement Worker (Certified 4/8/88).

(v)(a) *Training Provider:* Astral Environmental Assoc.

Address: 3 Adams Lane, Westford, MA 01886, Contact: Dorothy Young, Phone: (508) 692-2070.

(b) *Approved Course:*

Abatement Worker (Certified 6/5/89).

(vi)(a) *Training Provider:* BCM Engineering.

Address: 12 Alfred St., Suite 300, Woburn, MA 01801, Contact: Pam Evans, Phone: (617) 935-7080.

(b) *Approved Courses:*

Abatement Worker (Certified 4/28/88).
Inspector/Management Planner (Certified 4/28/88).
Project Designer (Certified 4/28/88).

(vii)(a) *Training Provider:* Briggs Associates, Inc.

Address: 400 Hingham St., P.O. Box 389, Rockland, MA 02370, Contact: Paul Skorohod, Phone: (617) 871-6040.

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* Applies only to workers who have taken the Kansas Contractor/Supervisor course and passed the State's worker exam.

(b) *Approved Courses:*

Project Designer (Certified 1/10/88).

(viii)(a) *Training Provider:* Certified Engineering & Testing Co., Inc.

Address: 100 Grossman Dr., Braintree, MA 02184, Contact: Robert Thornburgh, Phone: (617) 848-0111.

(b) *Approved Courses:*

Abatement Worker (Certified 9/28/88).
Abatement Worker Annual Review (Certified 9/28/88).
Contractor/Supervisor (Certified 9/28/88).
Contractor/Supervisor Annual Review (Certified 9/28/88).
Inspector/Management Planner (Certified 9/28/88).
Inspector/Management Annual Review (Certified 9/28/88).
Project Designer (Certified 9/28/88).

(ix)(a) *Training Provider:* Con-Test, Inc.

Address: P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.

(b) *Approved Courses:*

Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/88).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Annual Review (Certified 2/25/89).
Project Designer (Certified 2/25/88).

(x)(a) *Training Provider:* Dennison Environmental, Inc.

Address: 35 Industrial Hwy., Woburn, MA 01880, Contact: Joan Ryan, Phone: (617) 932-9400.

(b) *Approved Courses:*

Abatement Worker (Certified 4/8/88).
Abatement Worker Annual Review (Certified 4/8/89).
Contractor/Supervisor (Certified 4/8/88).
Contractor/Supervisor Annual Review (Certified 4/8/89).
Inspector (Certified 4/8/88).
Inspector/Management Annual Review (Certified 4/8/89).
Project Designer (Certified 4/8/88).

(xi)(a) *Training Provider:* Environmental Training Corp.

Address: 100 Moody St., Suite 200, Ludlow, MA 01056, Contact: Ann Folta, Phone: (413) 589-1882.

(b) *Approved Courses:*

Abatement Worker (Certified 8/5/88).
Abatement Worker Annual Review (Certified 8/5/89).
Contractor/Supervisor (Certified 8/5/88).
Contractor/Supervisor Annual Review (Certified 8/5/89).
Project Designer (Certified 8/5/88).

(xii)(a) *Training Provider:* Environmental Training Services.

Address: 115 New Boston St., Woburn, MA 01801, Contact: Kenneth P. Martin, Jr., Phone: (617) 938-8082.

(b) *Approved Courses:*

Abatement Worker (Certified 4/8/88).
Abatement Worker Annual Review (Certified 4/8/89).
Contractor/Supervisor (Certified 4/8/88).
Contractor/Supervisor Annual Review (Certified 4/8/89).
Project Designer (Certified 4/8/88).
Project Designer Annual Review (Certified 4/8/89).

(xiii)(a) *Training Provider:* General Physics Corp.

Address: 6700 Alexander Bell Dr., Columbia, MD 21046, Contact: Andy Marsh, Phone: (301) 290-2300.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 9/6/88).
Contractor/Supervisor (Certified 9/6/88).
Contractor/Supervisor Annual Review (Certified 9/6/88).
Project Designer (Certified 9/6/88).

(xiv)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: P.O. Box 307, Lawrence, KS 66046, Contact: Alice Hart, Phone: (800) 346-2860.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/88).
Abatement Worker Annual Review (Certified 4/25/88).
Contractor/Supervisor (Certified 4/25/88).
Contractor/Supervisor Annual Review (Certified 4/25/88).
Inspector/Management Annual Review (Certified 4/25/88).
Inspector/Management Planner (Certified 4/25/88).
Project Designer (Certified 4/25/88).
Project Designer Annual Review (Certified 4/25/88).

(xv)(a) *Training Provider:* Harvard School of Public Health.

Address: 677 Huntington Ave., Boston, MA 02115, Contact: William A. Burgess, Phone: (617) 732-1171.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 2/25/88).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Annual Review (Certified 5/25/89).
Project Designer (Certified 2/25/88).
Project Designer Annual Review (Certified 5/25/89).

(xvi)(a) *Training Provider:* Hygeia, Inc.

Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: Cynthia Whalen, Phone: (617) 890-4999.

(b) *Approved Courses:*

Abatement Worker (Certified 8/5/88).
Contractor/Supervisor (Certified 8/5/88).
Project Designer (Certified 8/5/88).

(xvii)(a) *Training Provider:* Hygienetics, Inc.

Address: 150 Causeway St., Boston, MA 02114, Contact: Marybeth Carver, Phone: (617) 723-4664.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/89).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/89).
Project Designer (Certified 2/25/88).

(xviii)(a) *Training Provider:* Institute for Environmental Education.

Address: 208 West Cummings Pk., Woburn, MA 01801, Contact: Lisa Stammer, Phone: (617) 935-0664.

(b) *Approved Courses:*

Abatement Worker (Certified 4/28/88).
Abatement Worker Annual Review (Certified 5/26/89).
Contractor/Supervisor (Certified 4/28/88).
Contractor/Supervisor Annual Review (Certified 5/26/89).
Inspector/Management Annual Review (Certified 5/26/89).
Inspector/Management Planner (Certified 4/28/88).
Project Designer (Certified 4/28/88).

(xix)(a) *Training Provider:* JF Walton & Co.

Address: 301 Marginal St., P.O. Box 6120, Chelsea, MA 02150, Contact: Richard King, Phone: (617) 884-0350.

(b) *Approved Courses:*

Abatement Worker (Certified 3/28/88).
Abatement Worker Annual Review (Certified 3/28/89).

(xx)(a) *Training Provider:* Kaselaan & D'Angelo Associates.

Address: 500 Victory Rd., Suite 270, North Quincy, MA 02171, Contact: David Kaplan, Phone: (617) 472-1330.

(b) *Approved Courses:*

Abatement Worker (Certified 2/25/88).

Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/88).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/88).
Project Designer (Certified 2/25/88).

(xxi)(a) *Training Provider:* Mystic Air Quality Consultants.

Address: 1085 Buddington Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8903.

(b) *Approved Courses:*

Abatement Worker (Certified 1/11/89).
Contractor/Supervisor (Certified 1/11/89).
Contractor/Supervisor Annual Review (Certified 1/11/89).
Project Designer (Certified 1/11/89).

(xxii)(a) *Training Provider:* National Asbestos Training Center of Kansas.

Address: 6800 College Blvd., Overland Park, KS 66211, Contact: Lani Himegarner, Phone: (913) 491-0181.

(b) *Approved Courses:*

Abatement Worker (Certified 5/20/88).
Abatement Worker Annual Review (Certified 5/20/89).
Contractor/Supervisor (Certified 5/20/88).
Contractor/Supervisor Annual Review (Certified 5/20/89).

(xxiii)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).

Address: 1126 16th St., NW, Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887-1980.

(b) *Approved Courses:*

Abatement Worker (Certified 5/10/88).
Contractor/Supervisor (Certified 5/10/88).
Contractor/Supervisor Annual Review (Certified 5/10/89).

(xxiv)(a) *Training Provider:* New England Laborers Training Trust Fund.

Address: 37 East St., Hopkinton, MA 01748-2899, Contact: James Merloni, Jr., Phone: (617) 435-6316.

(b) *Approved Courses:*

Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/89).
Contractor/Supervisor Annual Review (Certified 8/8/89).

(xxv)(a) *Training Provider:* Northern Asbestos Abatement Co.

Address: 757 A Turnpike St., North Andover, MA 01845, Contact: J. William Vitta, Phone: (508) 681-8711.

(b) *Approved Courses:*

Abatement Worker (Certified 3/18/89).
Abatement Worker Annual Review (Certified 3/18/89).
Contractor/Supervisor (Certified 3/18/89).
Contractor/Supervisor Annual Review (Certified 3/18/89).
Project Designer (Certified 3/18/89).
Project Designer Annual Review (Certified 3/18/89).

(xxvi)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.

Address: 1304 Buckley Rd., Syracuse, NY 13221, Contact: Edwin Tifft, Phone: (315) 451-4700.

(b) *Approved Courses:*

Inspector/Management Planner (Certified 1/7/88).
Project Designer (Certified 1/7/88).

(xxvii)(a) *Training Provider:* Quality Control Services, Inc.

Address: 10 Lowell Junction Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (508) 475-0623.

(b) *Approved Courses:*

Abatement Worker (Certified 5/6/88).
Abatement Worker Annual Review (Certified 5/16/89).
Contractor/Supervisor (Certified 5/6/88).
Contractor/Supervisor Annual Review (Certified 5/16/89).

(xxviii)(a) *Training Provider:* Safety Council of Western Massachusetts.

Address: 90 Berkshire Ave., Springfield, MA 01109, Contact: Tate Berkan, Phone: (413) 737-7908.

(b) *Approved Courses:*

Abatement Worker (Certified 6/21/88).
Abatement Worker Annual Review (Certified 6/21/89).
Project Designer (Certified 6/21/88).
Project Designer Annual Review (Certified 6/21/89).

(xxix)(a) *Training Provider:* The Environmental Institute.

Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Bill Ewing, Phone: (404) 425-2000.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 10/28/88).
Contractor/Supervisor Annual Review (Certified 10/28/88).
Inspector/Management Planner (Certified 10/28/88).
Project Designer (Certified 10/28/88).

(xxx)(a) *Training Provider:* Tufts University Asbestos Information Center.

Address: 474 Boston Ave., Medford, MA 02155, Contact: Brenda Cole, Phone: (617) 381-3531.

(b) *Approved Courses:*

Abatement Worker (Certified 3/16/88).
Abatement Worker Annual Review (Certified 3/16/89).
Contractor/Supervisor (Certified 3/16/88).
Contractor/Supervisor Annual Review (Certified 3/16/89).
Inspector/Management Annual Review (Certified 3/16/89).
Inspector/Management Planner (Certified 3/16/88).
Project Designer (Certified 3/16/88).
Project Designer Annual Review (Certified 3/16/89).

(xxxi)(a) *Training Provider:* Universal Engineering Corp.

Address: 100 Boylston St., Boston, MA 02116, Contact: Janet Hester, Phone: (617) 542-8216.

(b) *Approved Courses:*

Project Designer (Certified 8/5/88).
Project Designer Annual Review (Certified 8/5/89).

(xxxii)(a) *Training Provider:* University of Massachusetts, Division of Environmental Health & Safety.

Address: N414 Morrill Science Center, Amherst, MA 01003, Contact: Donald Robinson, Phone: (413) 545-2682.

(b) *Approved Courses:*

Project Designer (Certified 10/3/88).
Project Designer Annual Review (Certified 10/3/88).

(xxxiii)(a) *Training Provider:* Weston-Atc, Inc.

Address: 1635 Pumphrey Ave., Auburn, AL 36830, Contact: Ron Thompson, Phone: (205) 826-6100.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 5/25/89).
Contractor/Supervisor Annual Review (Certified 5/25/89).
Inspector/Management Annual Review (Certified 5/25/89).
Inspector/Management Planner (Certified 5/25/89).
Project Designer (Certified 5/25/89).
Project Designer Annual Review (Certified 5/25/89).

(7)(a) *State:* Michigan.

State Agency: State of Michigan Dept. of Public Health, Address: 3500 North Logan, P.O. Box 30035, Lansing, MI 48909, Contact: Bill DeLiefde, Phone: (517) 335-8186.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 4/13/89).
Contractor/Supervisor (full from 4/13/89).
Inspector (full from 4/13/89).
Inspector/Management Planner (full from 4/13/89).
Project Designer (full from 4/13/89).

(8)(a) *State:* Minnesota.

State Agency: Minnesota Dept. of Health Section of Occupational Health, Address: 717 Southeast Delaware St., Minneapolis, MN 55440-9441, Contact: William A. Fetzner, Phone: (612) 623-5380.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 10/3/88).

Contractor/Supervisor (full from 10/3/88).

(9)(a) *State:* New Jersey.

State Agency: State of New Jersey Dept. of Health, Address: CN 360, Trenton, NJ 08625-0360, Contact: James A. Brownlee, Phone: (609) 984-2193.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 6/18/85).

Contractor/Supervisor (full from 6/18/85).

New Jersey Department of Health, EPA-Approved Courses for Abatement Workers and Contractors/Supervisors

*NOTE.—New Jersey approved course providers who present the training in another State must develop their own examination. They must also submit a detailed statement about the development of the course examination, as required by the Model Plan, to the Regional Asbestos Coordinator in their Region for EPA approval.

(i)(a) *Training Provider:* Alternative Ways.

Address: Barclay Pavillion, Suite 222 E, Rte. 70 E, Cherry Hill, NJ 08034, Contact: James Mitchell, Phone: (609) 795-1991.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/85).

Contractor/Supervisor (Certified 4/25/85).

(ii)(a) *Training Provider:* Asbestos Abatement Council, AWCI.

Address: 1600 Cameron St., Alexandria, VA 22314-2705, Contact: Carol Pacquin, Phone: (703) 684-2924.

(b) *Approved Courses:*

Abatement Worker (Certified 6/17/87).

Contractor/Supervisor (Certified 6/17/87).

(iii)(a) *Training Provider:* Asbestos Training Academy - NJ.

Address: 218 Cooper Center, Pennsauken, NJ 08109, Contact: Jean Bodman or Ron Rominski, Phone: (609) 488-9200.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/85).

Contractor/Supervisor (Certified 5/1/85).

(iv)(a) *Training Provider:* Asbestos Training Academy - NY.

Address: 315 West 38th St., 9th Fl., New York, NY 10018, Contact: R. Green or C. Hicks, Phone: (212) 971-0370.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/85).

Contractor/Supervisor (Certified 5/1/85).

(v)(a) *Training Provider:* Asbestos Training Institute- LVI, Inc.

Address: 64 South State St., South Hackensack, NJ 07606, Contact: Roger Bason, Phone: (201) 343-5133.

(b) *Approved Courses:*

Abatement Worker (Certified 3/4/87).

Contractor/Supervisor (Certified 3/4/87).

(vi)(a) *Training Provider:* BCM Eastern, Inc.

Address: One Plymouth Meeting Mall, Plymouth Meeting, PA 19462, Contact: Robert Ferguson, Phone: (215) 825-3800.

(b) *Approved Courses:*

Abatement Worker (Certified 6/7/87).

Contractor/Supervisor (Certified 6/7/87).

(vii)(a) *Training Provider:* Building Laborers of N.J. - Training Center.

Address: P.O. Box 163, Jamesburg, NJ 08831, Contact: Emmanuel Riggi, Phone: (201) 521-0200.

(b) *Approved Courses:*

Abatement Worker (Certified 7/19/85).

Contractor/Supervisor (Certified 7/19/85).

(viii)(a) *Training Provider:* Certified Abatement Technologies, Inc.

Address: 47 Midland Ave., Elmwood Park, NJ 07407, Contact: Daniel Curtin, Phone: (201) 796-9589.

(b) *Approved Courses:*

Abatement Worker (Certified 6/3/87).

Contractor/Supervisor (Certified 6/3/87).

(ix)(a) *Training Provider:* Drexel University.

Address: 32nd & Chestnut Sts., Philadelphia, PA 19104, Contact: Robert Ross or Jackie Saguin, Phone: (215) 895-2154.

(b) *Approved Courses:*

Abatement Worker (Certified 4/13/88).

Contractor/Supervisor (Certified 4/13/88).

(x)(a) *Training Provider:* E.I. DuPont DeNemours & Co.

Address: Chamber Works, Deepwater, NJ 08023, Contact: Charles Battle or Helen Giova, Phone: (609) 540-2434.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/86).

Contractor/Supervisor (Certified 5/1/86).

(xi)(a) *Training Provider:* IT Corporation.

Address: 336 West Anaheim St., Wilmington, CA 90744, Contact: Ron Freeman, Phone: (213) 830-1720.

(b) *Approved Courses:*

Abatement Worker (Certified 8/29/85).

Contractor/Supervisor (Certified 8/29/85).

(xii)(a) *Training Provider:* Kaselaan & D'Angelo Associates - NJ.

Address: 515 Grove St., Haddon Heights, NJ 08035, Contact: Steven L'Erorio, Phone: (609) 547-6500.

(b) *Approved Courses:*

Abatement Worker (Certified 5/8/85).

Contractor/Supervisor (Certified 5/8/85).

(xiii)(a) *Training Provider:* Local Union No. 14.

Address: 6513 Bustleton Ave., Philadelphia, PA 19149, Contact: James Aikens, Phone: (215) 533-0395.

(b) *Approved Courses:*

Abatement Worker (Certified 8/9/85).

Contractor/Supervisor (Certified 8/9/85).

(xiv)(a) *Training Provider:* Local Union No. 32.

Address: 870 Broadway, Newark, NJ 07104, Contact: Paul Ielmini, Phone: (201) 485-3628.

(b) *Approved Courses:*

Abatement Worker (Certified 5/8/87).

Contractor/Supervisor (Certified 5/8/87).

(xv)(a) *Training Provider:* Local Union No. 42.

Address: 1188 River Rd., New Castle, DE 19720, Contact: Robert Holden, Phone: (302) 328-4203.

(b) *Approved Courses:*

Abatement Worker (Certified 10/30/85).

Contractor/Supervisor (Certified 10/30/85).

(xvi)(a) *Training Provider:* Local Union No. 89.

Address: 2733 Nottingham Way, Trenton, NJ 08619, Contact: Charles DaBronzo, Phone: (609) 587-0092.

(b) *Approved Courses:*

Abatement Worker (Certified 5/13/86).

Contractor/Supervisor (Certified 5/13/86).

(xvii)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center UMDNJ.

Address: 675 Hoes Lane, Piscataway, NJ 08854, Contact: Lee Lausteen, Phone: (201) 463-4500.

(b) *Approved Courses:*

Abatement Worker (Certified 7/1/86).

Contractor/Supervisor (Certified 7/1/86).

(xviii)(a) *Training Provider:* National Asbestos Council (NAC) Training Dept.

Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: T. Laubenthal or V. Cornwell, Phone: (404) 633-2622.

(b) *Approved Courses:*

Abatement Worker (Certified 1/13/87).

Contractor/Supervisor (Certified 1/13/87).

(xix)(a) *Training Provider:* National Asbestos Training Institute.

Address: 1776 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris Adler or Lisa Criscuolo, Phone: (201) 918-0610.

(b) *Approved Courses:*

Abatement Worker (Certified 5/3/85).

Contractor/Supervisor (Certified 5/3/85).

(xx)(a) *Training Provider:* National Institute on Abatement Sciences and Technology.

Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607, Contact: Glenn Phillips, Phone: (800) 422-2836.

(b) *Approved Courses:*

Abatement Worker (Certified 1/16/88).

Contractor/Supervisor (Certified 1/16/88).

(xxi)(a) *Training Provider:* Northeastern Analytical.

Address: 4 Stow Rd., Marlton, NJ 08053, Contact: Michelle Dutkiewicz, Phone: (609) 985-8000.

(b) *Approved Courses:*

Abatement Worker (Certified 5/20/85).

Contractor/Supervisor (Certified 5/20/85).

(xxii)(a) *Training Provider:* Princeton Testing Laboratory.

Address: 3490 U.S. Rte. 1, Princeton, NJ 08540-3106, Contact: Charles Schneekloth, Phone: (609) 452-9050.

(b) *Approved Courses:*

Abatement Worker (Certified 5/8/85).

Contractor/Supervisor (Certified 5/8/85).

(xxiii)(a) *Training Provider:* Temple University.

Address: 12th & Norris St., Philadelphia, PA 19122, Contact: Melvin Benarde, Phone: (215) 787-6394.

(b) *Approved Courses:*

Abatement Worker (Certified 1/24/87).

Contractor/Supervisor (Certified 1/24/87).

(xxiv)(a) *Training Provider:* White Lung Association - NJ.

Address: 901 Broad St., 2nd Floor, Newark, NJ 07102, Contact: Myles O'Malley/Claire Anderson, Phone: (201) 824-2623.

(b) *Approved Courses:*

Abatement Worker (Certified 5/21/85).

Contractor/Supervisor (Certified 5/21/85).

(xxv)(a) *Training Provider:* White Lung Association - NY.

Address: 12 Warren St., 4th Floor, New York, NY 10007, Contact: Dan Manasia or Beth Garner, Phone: (212) 619-2270.

(b) *Approved Courses:*

Abatement Worker (Certified 5/21/85).

Contractor/Supervisor (Certified 5/21/85).

(xxvi)(a) *Training Provider:* Workers Institute for Safety & Health (WISH).

Address: 1126 16th St., NW, Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887-1980.

(b) *Approved Courses:*

Abatement Worker (Certified 3/31/89).

Contractor/Supervisor (Certified 3/31/89).

(10)(a) *State:* North Dakota.

State Agency: State Dept. of Health & Consolidated Laboratories, Address: 1200 Missouri Ave., Box 5520, Bismark, ND 58505, Contact: Ken Wangler, Phone: (701) 224-2348.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 4/21/89).

Contractor/Supervisor (full from 4/21/89).

Inspector (full from 4/21/89).

Inspector/Management Planner (full from 4/21/89).

Project Designer (full from 4/21/89).

North Dakota State Department of Health and Consolidated Laboratories, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspectors/Management Planners, and Project Designers

(i)(a) *Training Provider:* Midwest Asbestos Consultants, Inc.

Address: Box 1706, Fargo, ND 58107, Contact: Jerry Day, Phone: (701) 280-2286.

(b) *Approved Course:*

Abatement Worker (Certified 6/30/89).

(ii)(a) *Training Provider:* Survey Management and Design.

Address: R.R. 2 Box 85-B, Fargo, ND 58102, Contact: Dave Sohm, Phone: (701) 234-9556.

(b) *Approved Courses:*

Abatement Worker (Certified 6/13/89).

Contractor/Supervisor (Certified 6/13/89).

(iii)(a) *Training Provider:* University of North Dakota.

Address: University Station, Grand Forks, ND 58201, Contact: Dale Patrick, Phone: (701) 777-3341.

(b) *Approved Courses:*

Abatement Worker (Certified 6/13/89).

Contractor/Supervisor (Certified 6/13/89).

(11)(a) *State:* Oregon.

State Agency: State of Oregon Dept. of Environmental Quality, Address: 811 Southwest Sixth Ave., Portland, OR 97204, Contact: Wendy Simms, Phone: (503) 229-6414.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 9/23/88).

Contractor/Supervisor (full from 9/23/88).

Oregon Department of Environmental Quality, EPA-Approved Courses for Abatement Workers and Contractors/Supervisors

(i)(a) *Training Provider:* Asbestos Training Project Workplace Resources.

Address: P.O. Box 11053, Eugene, OR 97440, Contact: Wendy Wiles, Phone: (503) 345-7393.

(b) *Approved Courses:*

Abatement Worker (Certified 9/23/88).

Contractor/Supervisor (Certified 9/23/89).

(ii)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: 5319 Southwest Westgate, Suite 239, Portland, OR 97221, Contact: Peter Clark, Phone: (503) 292-9406.

(b) *Approved Course:*

Abatement Worker (Certified 2/28/88).

(iii)(a) *Training Provider:* Hazcon, Inc.

Address: 9500 Southwest Barbur, Portland, OR 97219, Contact: Tom Natsch, Phone: (503) 244-8045.

(b) *Approved Courses:*

Abatement Worker (Certified 9/23/88).

Contractor/Supervisor (Certified 9/23/88).

(iv)(a) *Training Provider:* Laborers/AGC Apprenticeship & Training Program.

Address: Route 5, Box 325A, Corvallis, OR 97330, Contact: Bill Duke, Phone: (503) 745-5513.

(b) *Approved Courses:*

Abatement Worker (Certified 9/23/88).

Contractor/Supervisor (Certified 9/23/88).

(v)(a) *Training Provider:* Marine & Environmental Testing, Inc.

Address: P.O. Box 1142, Beaverton, OR 97075, Contact: Martin Finkel, Phone: (503) 286-2950.

(b) *Approved Course:*

Abatement Worker (Certified 2/3/88).

(vi)(a) *Training Provider:* NAC Corporation.

Address: 1005 NW Galveston, Suite E, Band, OR 97701, Contact: Dale Schmidt, Phone: (503) 389-9727.

(b) *Approved Course:*

Abatement Worker (Certified 3/23/89).

(vii)(a) *Training Provider:* Northwest Envirocon, Inc.

Address: P.O. Box 169, Washougal, WA 98671, Contact: Cindi Rice, Phone: (206) 835-8576.

(b) *Approved Courses:*

Abatement Worker (Certified 2/14/88).
Contractor/Supervisor (Certified 2/14/88).

(12)(a) *State:* Rhode Island.

State Agency: State of Rhode Island & Providence Plantations, Department of Health, Address: 206 Cannon Bldg., 75 Davis St., Providence, RI 02908, Contact: James C. Hickey, Phone: (401) 277-3601.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 2/4/86).
Contractor/Supervisor (full from 2/4/86).

Rhode Island Department of Health, EPA-Approved Courses for Abatement Workers and Contractors/Supervisors

(i)(a) *Training Provider:* A & S Training School Inc.

Address: 99 S. Cameron St., Harrisburg, PA 17101, Contact: William I. Roberts, Phone: (717) 257-1360.

(b) *Approved Course:*

Contractor/Supervisor (Certified 3/31/89).

(ii)(a) *Training Provider:* Analytical Testing Services, Inc.

Address: 180 Weeden St., Pawtucket, RI 02860, Contact: Robert Weisberg, Phone: (401) 723-7978.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 2/10/86).
Contractor/Supervisor (Certified 2/10/86).
Contractor/Supervisor Annual Review (Certified 2/10/86).

(iii)(a) *Training Provider:* Center for Environmental Management-Tufts University.

Address: 474 Boston Ave., Medford, MA 02155, Contact: Brenda Cole, Phone: (617) 381-3531.

(b) *Approved Courses:*

Abatement Worker (Certified 7/1/86).
Abatement Worker Annual Review (Certified 3/31/89).
Contractor/Supervisor (Certified 7/1/86).
Contractor/Supervisor Annual Review (Certified 3/31/89).

(iv)(a) *Training Provider:* Community College of Rhode Island.

Address: 1762 Louisquisset Pk., Lincoln, RI 02865, Contact: Richard Tessler, Phone: (401) 333-7166.

(b) *Approved Courses:*

Abatement Worker (Certified 1/13/87).
Abatement Worker Annual Review (Certified 3/31/89).
Contractor/Supervisor Annual Review (Certified 3/31/89).

(v)(a) *Training Provider:* Con-Test Educational Center.

Address: 39 Spruce St., East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/86).
Abatement Worker Annual Review (Certified 2/8/89).
Contractor/Supervisor (Certified 3/1/86).
Contractor/Supervisor Annual Review (Certified 2/8/89).

(vi)(a) *Training Provider:* Dennison Environmental, Inc.

Address: 74 Commerce Way, Woburn, MA 01801, Contact: Joan Lion, Phone: (617) 932-9400.

(b) *Approved Courses:*

Abatement Worker (Certified 4/30/89).
Abatement Worker Annual Review (Certified 4/30/89).
Contractor/Supervisor (Certified 4/30/89).
Contractor/Supervisor Annual Review (Certified 4/30/89).

(vii)(a) *Training Provider:* Environmental Training Services.

Address: 115 New Boston St., Woburn, MA 01801, Contact: Ken Martin, Phone: (617) 938-6062.

(b) *Approved Courses:*

Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
Initial Supervisor 6-Hour Supplement (Certification Pending).

(viii)(a) *Training Provider:* Georgia Institute of Technology /GTRI.

Address: 151 6th St., Atlanta, GA 30332, Contact: Mark Demyanek, Phone: (404) 894-3806.

(b) *Approved Courses:*

Abatement Worker (Certified 7/22/88).
Abatement Worker Annual Review (Certified 2/14/89).
Contractor/Supervisor (Certified 7/22/88).
Contractor/Supervisor Annual Review (Certified 2/14/89).

(ix)(a) *Training Provider:* Harvard School of Public Health.

Address: 677 Huntington Ave., Boston, MA 02115, Contact: Louis DiBerardinis, Phone: (617) 732-1171.

(b) *Approved Courses:*

Abatement Worker (Certification Pending).
Contractor/Supervisor (Certification Pending).

(x)(a) *Training Provider:* Heat & Frost Insulation Union Local No. 6.

Address: 56 Roland St., Boston, MA 02129, Contact: Anthony Pistorino, Phone: (617) 625-6666.

(b) *Approved Courses:*

Abatement Worker (Certified 3/2/89).
Contractor/Supervisor (Certified 3/2/89).

(xi)(a) *Training Provider:* Hygeia, Inc.

Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: Cynthia Whalen, Phone: (617) 890-4999.

(b) *Approved Course:*

Abatement Worker (Certified 1/31/89).

(xii)(a) *Training Provider:* Hygientics, Inc.

Address: 150 Causeway St., Boston, MA 02114, Contact: Russell Matthews, Phone: (617) 723-4664.

(b) *Approved Courses:*

Abatement Worker (Certified 5/10/89).
Abatement Worker Annual Review (Certified 5/10/89).
Contractor/Supervisor (Certified 5/10/89).
Contractor/Supervisor Annual Review (Certified 5/10/89).

(xiii)(a) *Training Provider:* Institute for Environmental Education.

Address: 208 West Cummings Pk., Woburn, MA 01801, Contact: Lisa Stammer, Phone: (617) 935-7370.

(b) *Approved Courses:*

Abatement Worker (Certified 9/9/87).
Abatement Worker Annual Review (Certified 5/8/89).
Contractor/Supervisor (Certified 9/9/87).
Contractor/Supervisor Annual Review (Certified 5/8/89).

(xiv)(a) *Training Provider:* Mystic Air Quality Consultants.

Address: 1085 Buddington Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8903.

(b) *Approved Course:*

Contractor/Supervisor (Certified 1/31/89).

(xv)(a) *Training Provider:* NAACO.

Address: 799 Turnpike St., North Andover, MA 01845, Contact: Martin Levitt, Phone: (508) 681-6711.

(b) *Approved Courses:*

Abatement Worker (Certified 4/28/88).
Abatement Worker Annual Review (Certified 4/3/89).
Contractor/Supervisor (Certified 4/28/88).
Contractor/Supervisor Annual Review (Certified 4/3/89).
Initial Supervisor 6-Hour Supplement (Certified 4/3/89).

(xvi)(a) *Training Provider:* National Asbestos Council, (NAC) Training Dept.

Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Tom Laubenthal, Phone: (404) 633-2622.

(b) *Approved Course:*

Abatement Worker (Certified 9/5/86).

(xvii)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).

Address: 1126 16th St., NW, Washington, DC 20036, Contact: Mathew Gillen, Phone: (202) 887-1980.

(b) *Approved Courses:*

Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certified 1/31/89).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certified 1/31/89).

(xviii)(a) *Training Provider:* New England Laborers Training Trust Fund.

Address: 37 East St., Hopkinton, MA 01748, Contact: James Merloni, Phone: (508) 435-6316.

(b) *Approved Courses:*

Abatement Worker (Certified 7/1/88).
Abatement Worker Annual Review (Certified 2/15/89).
Contractor/Supervisor (Certified 7/1/88).
Contractor/Supervisor Annual Review (Certified 2/15/89).
Initial Supervisor 6-Hour Supplement (Certified 2/15/89).

(xix)(a) *Training Provider:* Quality Control Services, Inc.

Address: 10 Lowell Junction Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (508) 475-0623.

(b) *Approved Courses:*

Abatement Worker (Certified 4/27/88).
Abatement Worker Annual Review (Certified 3/10/89).
Contractor/Supervisor (Certified 4/27/88).
Contractor/Supervisor Annual Review (Certified 3/10/89).

(xx)(a) *Training Provider:* Robert F. Weisberg & Marie Stoeckel.

Address: 180 Weeden St., Pawtucket, RI 02860, Contact: Robert Weisberg, Phone: (401) 723-7978.

(b) *Approved Course:*

Initial Supervisor 6 Hour Supplement (Certified 1/24/89).

(xxi)(a) *Training Provider:* Safe Environment Corp.

Address: 100 Moody St., Suite 200, Ludlow, MA 01056, Contact: Anne Folta, Phone: (413) 289-1409.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certification Pending).

(xxii)(a) *Training Provider:* Workers Institute for Safety & Health.

Address: 1126 16th St., NW, Washington, DC 20036, Contact: Matthew Gillen, Phone: (202) 887-1980.

(b) *Approved Course:*

Abatement Worker (Certified 2/2/88).

(13)(a) *State:* South Dakota.

State Agency: Dept. of Water & Natural Resources Division of Air Quality & Solid Waste, Address: Joe Foss Building, 523 East Capitol St., Pierre, SD 57501, Contact: Tammy LeBeau, Phone: (605) 773-3153.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 9/15/88).
Contractor/Supervisor (full from 9/15/88).
Inspector/Management Planner (full from 9/15/88).
Project Designer (full from 9/15/88).

South Dakota Department of Water and Natural Resources, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspectors/Management Planners, and Project Designers

(i)(a) *Training Provider:* Black Hills Special Services Cooperative.

Address: Box 218, Sturgis, SD 57784, Contact: Jim Doolittle, Phone: (605) 347-4467.

(b) *Approved Courses:*

Abatement Worker (Certified 3/22/89).
Contractor/Supervisor (Certified 3/22/89).
Inspector/Management Planner (Certified 3/22/89).

(ii)(a) *Training Provider:* Enviro-safe Inc.

Address: P.O. Box 328, Wakonda, SD 57073, Contact: John Mathrol, Phone: (605) 267-2539.

(b) *Approved Courses:*

Abatement Worker (Certified 2/28/89).
Contractor/Supervisor (Certified 2/28/89).
Inspector/Management Planner (Certified 2/28/89).

(iii)(a) *Training Provider:* Fargo - Moorhead Carpenters Joint Apprenticeship & Training Committee.

Address: 3002 1st Ave., N., Fargo, ND 58102, Contact: Raymond Such, Phone: (701) 235-4981.

(b) *Approved Courses:*

Abatement Worker (Certified 4/20/89).
Contractor/Supervisor (Certified 4/20/89).

(iv)(a) *Training Provider:* Iowa Laborers Training Fund.

Address: 5806 Meredith Ave., Suite C, Des Moines, IA 50322, Contact: Jack Jones, Phone: (515) 270-8985.

(b) *Approved Course:*

Abatement Worker (Certified 3/22/88).

(v)(a) *Training Provider:* South Dakota State University College of Engineering.

Address: P.O. Box 2218, Brookings, SD 57007-0597, Contact: James Ceglian, Phone: (605) 688-4107.

(b) *Approved Courses:*

Abatement Worker (Certified 5/18/88).
Contractor/Supervisor (Certified 5/18/88).
Inspector/Management Planner (Certified 5/18/88).

(14)(a) *State:* Utah.

State Agency: Utah Dept. of Health Bureau of Air Quality, Address: 288 North 1460 West, P.O. Box 16690, Salt Lake City, UT 84116-0690, Contact: F. Burnell Cordner, Phone: (801) 538-6108.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 7/8/89).
Contractor/Supervisor (full from 7/8/89).
Inspector/Management Planner (full from 7/8/89).
Project Designer (full from 7/8/89).

Utah Bureau of Air Quality, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspectors/Management Planners, and Project Designers

(i)(a) *Training Provider:* R.S. Christiansen Asbestos Consultants, Inc.

Address: [illegible] Holladay Blvd., Salt Lake City, UT 84117, Contact: Stanley Christiansen, Phone: (801) 277-2323.

(b) *Approved Course:*

Abatement Worker Annual Review (Certified 7/28/89).

(15)(a) *State:* Virginia.

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State Agency: Commonwealth of Virginia Dept. of Commerce, Address: 3600 West Broad St., Richmond, VA 23230-4917, Contact: Peggy J. Wood, Phone: (804) 367-8585.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 7/1/88).
Contractor/Supervisor (full from 7/1/88).
Inspector/Management Planner (full from 7/1/88).
Project Designer (full from 7/1/88).

Virginia Department of Commerce, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspectors/Management Planners, and Project Designers

(i)(a) *Training Provider:* Alice Hamilton Occupational Health Center.

Address: 410 7th St., SE, 2nd Floor, Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.

(b) *Approved Courses:*

Abatement Worker (Certified 3/2/88).
Contractor/Supervisor (Certified 3/2/88).
Inspector/Management Planner (Certified 3/2/88).

(ii)(a) *Training Provider:* Asbestos Analytical Association.

Address: 3208-B George Washington Hwy., Portsmouth, VA 23704, Contact: Carol Holden, Phone: (804) 367-6939.

(b) *Approved Courses:*

Abatement Worker (Certified 7/27/88).
Contractor/Supervisor (Certified 7/27/88).
Inspector/Management Planner (Certified 7/27/88).

(iii)(a) *Training Provider:* Biospherics, Inc.

Address: 12051 Indian Creel Ct., Beltsville, MD 20705, Contact: Jean Fisher, Phone: (301) 369-3900.

(b) *Approved Courses:*

Abatement Worker (Certified 9/13/88).
Contractor/Supervisor (Certified 9/13/88).
Inspector/Management Planner (Certified 9/13/88).

(iv)(a) *Training Provider:* Briggs Assoc. Inc.

Address: 8325 Guilford Rd., Suite E, Columbia, MD 21046, Contact: J. Roos Voorhees, Phone: (301) 381-4434.

(b) *Approved Course:*

Abatement Worker (Certification Pending).

(v)(a) *Training Provider:* Critical Environmental.

Address: 5815 Gulf Freeway, Houston, TX 77023, Contact: Dr. Ronald F. Dodson, Phone: (713) 921-6921.

(b) *Approved Courses:*

Abatement Worker (Certification Pending).
Contractor/Supervisor (Certification Pending).
Inspector/Management Planner (Certification Pending).

(vi)(a) *Training Provider:* E.I. DuPont DeNemours & Co., Inc.

Address: Spruance Plant, P.O. Box 27001, Richmond, VA 23261, Contact: Clarence Mihal, Phone: (804) 743-2948.

(b) *Approved Courses:*

Abatement Worker (Certified 5/11/88).
Contractor/Supervisor (Certified 5/11/88).

(vii)(a) *Training Provider:* Environmental Specialties, Inc.

Address: P.O. Box 130, Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 458-1541.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/89).
Contractor/Supervisor (Certified 5/1/89).

(viii)(a) *Training Provider:* Fluor Daniel.

Address: The Daniel Bldg., 301 North Main St., Greenville, SC 29601, Contact: Rick Florence, Phone: (803) 298-2166.

(b) *Approved Courses:*

Abatement Worker (Certified 6/24/88).
Contractor/Supervisor (Certified 6/24/88).

(ix)(a) *Training Provider:* GST Company.

Address: 1341 Old Freedom Rd., Suite 3B, Mars, PA 16046, Contact: Norma Stanford, Phone: (412) 772-7488.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/89).
Contractor/Supervisor (Certified 6/1/89).

(x)(a) *Training Provider:* Georgia Tech Research Group.

Address: Georgia Tech Institute of Technology, Atlanta, GA 30332, Contact: Vicki H. Ainslie, Phone: (404) 895-3606.

(b) *Approved Course:*

Contractor/Supervisor (Certified 5/1/89).

(xi)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: 4840 West 15th St., P.O. Box 307, Lawrence, KS 66046, Contact: Steve Davis, Phone: (804) 270-7235.

(b) *Approved Courses:*

Abatement Worker (Certified 5/23/88).
Contractor/Supervisor (Certified 5/23/88).
Inspector (Certified 5/23/88).

(xii)(a) *Training Provider:* Hazard Abatement Consultants.

Address: 5 Breechwood Rd., Hampton, VA 23666, Contact: Thomas Priesman, Phone: (804) 825-0302.

(b) *Approved Course:*

Abatement Worker (Certified 6/1/89).

(xiii)(a) *Training Provider:* Ind-Tra-Co., Ltd.

Address: 18 South 22nd St., Richmond, VA 23223, Contact: Fred Breive, Phone: (804) 648-7836.

(b) *Approved Courses:*

Abatement Worker (Certified 3/7/88).
Contractor/Supervisor (Certified 3/7/88).
Inspector/Management Planner (Certified 3/7/88).

(xiv)(a) *Training Provider:* Industrial Training & Support Services.

Address: P.O. Box 498, Lightfoot, VA 23090, Contact: Virginia Graham, Phone: (804) 565-3308.

(b) *Approved Course:*

Abatement Worker (Certified 10/22/88).

(xv)(a) *Training Provider:* Institute for Environmental Education.

Address: 208 West Cummings Pk., Woburn, MA 01801, Contact: Lisa Stammer, Phone: (617) 935-0664.

(b) *Approved Courses:*

Abatement Worker (Certification Pending).
Contractor/Supervisor (Certification Pending).
Inspector (Certification Pending).

(xvi)(a) *Training Provider:* Jenkins Professionals Inc.

Address: 5502 Campbell Blvd., Suite F, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 529-3553.

(b) *Approved Course:*

Contractor/Supervisor (Certification Pending).

(xvii)(a) *Training Provider:* Laborers District Council of Virginia Training Trust Fund.

Address: 4191 Rochambeau Dr., Williamsburg, VA 23185, Contact: Roy Brightwell, Phone: (804) 564-6148.

(b) *Approved Course:*

Abatement Worker (Certified 8/8/88).

(xviii)(a) *Training Provider:* Marcus Environmental.

Address: 6345 Courthouse Rd., P.O. Box 227, Prince George, VA 23875, Contact: Marshall Marcus, Phone: (804) 733-1855.

(b) *Approved Courses:*

Abatement Worker (Certified 2/13/89).
Contractor/Supervisor (Certified 2/13/89).

(xix)(a) *Training Provider:* Maryland Center for Environmental Training-Charles County Community College.

Address: Mitchell Rd., P.O. Box 910, LaPlata, MD 20646-0910, Contact: Jake Bair, Phone: (301) 934-2251.

(b) *Approved Courses:*

Abatement Worker (Certified 5/19/89).
Contractor/Supervisor (Certified 5/19/89).

(xx)(a) *Training Provider:* Medical College of Virginia Dept. of Preventive Medicine.

Address: P.O. Box 212, Richmond, VA 23298, Contact: Leonard Vance, Phone: (804) 786-9785.

(b) *Approved Courses:*

Abatement Worker (Certified 2/8/87).
Contractor/Supervisor (Certified 2/8/87).
Inspector/Management Planner (Certified 2/8/87).

(xxi)(a) *Training Provider:* Metropolitan Laboratories.

Address: P.O. Box 8921, Norfolk, VA 23503, Contact: Ethel Holmes, Phone: (804) 583-9444.

(b) *Approved Courses:*

Abatement Worker (Certified 8/4/88).
Contractor/Supervisor (Certified 8/4/88).

(xxii)(a) *Training Provider:* Norfolk Shipbuilding & Dry Dock Co.

Address: P.O. Box 2100, Norfolk, VA 23501, Contact: Thomas Beacham, Phone: (804) 494-2940.

(b) *Approved Course:*

Abatement Worker (Certified 6/15/88).

(xxiii)(a) *Training Provider:* Old Dominion University.

Address: Office of Health Sciences, Norfolk, VA 23529, Contact: Shirley Glover, Phone: (804) 440-4256.

(b) *Approved Courses:*

Abatement Worker (Certified 6/8/88).
Contractor/Supervisor (Certified 6/8/88).
Inspector/Management Planner (Certified 6/8/88).

(xxiv)(a) *Training Provider:* Quality Specialties, Inc.

Address: 109 15th Ave., Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 748-9606.

(b) *Approved Course:*

Abatement Worker (Certified 5/3/88).

(xxv)(a) *Training Provider:* Roy F. Weston, Inc.

Address: 1635 Pumphrey Ave., Auburn, AL 36830, Contact: Dave Whittington, Phone: (205) 826-6100.

(b) *Approved Course:*

Inspector/Management Planner (Certified 6/1/89).

(xxvi)(a) *Training Provider:* S.G. Brown, Inc.

Address: 2701 Sonic Dr., Virginia Beach, VA 23334, Contact: George Torrence, Phone: (804) 468-0027.

(b) *Approved Course:*

Abatement Worker (Certified 8/10/88).

(xxvii)(a) *Training Provider:* The Francis L. Greenfield Institute.

Address: Route 6344, P.O. Box 217, Sterling, VA 22170, Contact: Bengamin Bostic, Phone: (703) 450-5950.

(b) *Approved Course:*

Abatement Worker (Certified 10/10/88).

(xxviii)(a) *Training Provider:* Tidewater Community College.

Address: VA Beach Campus, 1700 College Cresent, Virginia Beach, VA 23456, Contact: Sam Lamb, Phone: (804) 427-7198.

(b) *Approved Course:*

Abatement Worker (Certified 3/21/89).

(xxix)(a) *Training Provider:* University of Virginia National Asbestos Council Division of Continuing Education.

Address: 106 Midmont Lake, Charlottesville, VA 22903, Contact: Gregory Pels, Phone: (804) 924-7114.

(b) *Approved Course:*

Abatement Worker (Certified 3/7/88).

(xxx)(a) *Training Provider:* Waco, Inc.

Address: Highway 925, N, Waldorf, MD 20601, Contact: Wayne Cooper, Phone: (301) 843-2486.

(b) *Approved Courses:*

Abatement Worker (Certified 10/31/88).
Contractor/Supervisor (Certified 10/31/88).

(xxxi)(a) *Training Provider:* White Lung Association.

Address: 1114 Cathedral St., Baltimore, MD 21201, Contact: James Fite, Phone: (301) 289-3529.

(b) *Approved Course:*

Inspector/Management Planner (Certified 7/11/88).

EPA-Approved Training Courses

REGION I – Boston, MA

Regional Asbestos Coordinator: Joe DeCola, EPA, Region I, Air and Management Division (APT-2311), JFK Federal Building, Boston, MA 02203. (617) 565-3835, (FTS) 835-3835.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region I training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Con-Test, Inc.

Address: P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/2/87).
Abatement Worker Refresher Course (full from 11/22/88).
Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor Refresher Course (contingent from 10/2/87).
Contractor/Supervisor Refresher Course (full from 12/21/88).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (full from 2/1/89).

(2)(a) *Training Provider:* Ecosystems, Inc.

Address: 266 Mian St., Suite 19, Medfield, MA 02052, Contact: Richard Doyle, Phone: (617) 239-8181.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 10/5/87).

(3)(a) *Training Provider:* Enviromed Services, Inc.

Address: 25 Science Park, New Haven, CT 06511, Contact: Lawrence J. Cannon, Phone: (203) 786-5580.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/8/88).
Abatement Worker Refresher Course (contingent from 6/19/89).
Contractor/Supervisor (contingent from 2/23/89).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Inspector/Management Planner (contingent from 1/30/89).

(4)(a) *Training Provider:* Environmental Training Services.

Address: 12 Walnut Hill Park, P.O. Box 806, Woburn, MA 01801, Contact: Kenneth P. Martin, Phone: (617) 396-0348.

(b) *Approved Course:*

Abatement Worker (contingent from 4/22/88).

(5)(a) *Training Provider:* Hygientics, Inc.

Address: 150 Causeway St., Boston, MA 02114, Contact: John W. Cowdery, Phone: (617) 723-4864.

(b) *Approved Course:*

Inspector (contingent from 10/2/87).

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(6)(a) *Training Provider:* Industrial Health & Safety Consultants, Inc.

Address: 915 Bridgeport Ave., Shelton,
CT 06484, Contact: Angela D. Rath,
Phone: (203) 929-1131.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/15/89).
Abatement Worker Refresher Course (contingent from 6/19/89).
Contractor/Supervisor (contingent from 5/12/89).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).

(7)(a) *Training Provider:* Institute for Environmental Education.

Address: 208 West Cummings Park,
Woburn, MA 01801, Contact: Lisa
Stammer, Phone: (617) 935-7370.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/28/88).
Abatement Worker Refresher Course (full from 11/3/88).
Contractor/Supervisor (full from 9/18/87).
Contractor/Supervisor Refresher Course (full from 11/3/88).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (contingent from 10/31/88).
Project Designer (contingent from 2/28/89).

(8)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 33.

Address: 15 South Elm St., Wallingford,
CT 06492, Contact: Joseph V. Soli,
Phone: (203) 235-3547.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 7/27/88).

(9)(a) *Training Provider:* Maine Labor Group on Health, Inc.

Address: P.O. Box V, Augusta, ME
04330, Contact: Diana White, Phone:
(207) 622-7823.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/87).
Abatement Worker Refresher Course (contingent from 10/17/88).
Contractor/Supervisor (contingent from 5/18/87).
Contractor/Supervisor Refresher Course (full from 3/26/88).

(10)(a) *Training Provider:* New England Laborers Training Trust Fund.

Address: Route 97 & Murdock Rd., P.O.
Box 77, Pomfret Center, CT 06259,
Contact: Gennaro Lepore, Phone: (203)
974-1455.

(b) *Approved Course:*

Abatement Worker (contingent from 5/25/89).

(11)(a) *Training Provider:* New England Laborers Training Trust Fund.

Address: 37 East St., Hopkinton, MA
01748, Contact: Jim Merloni, Jr., Phone:
(617) 435-6316.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/5/87).
Abatement Worker Refresher Course (contingent from 5/20/88).

(12)(a) *Training Provider:* Radiation Safety Associates, Inc.

Address: P.O. Box 107, 10 Pendleton Dr.,
Hebron, CT 06248, Contact: Joseph T.
Althouse, Phone: (203) 228-0487.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 5/16/89).
Inspector/Management Planner (contingent from 5/16/89).

(13)(a) *Training Provider:* Tufts University Asbestos Information Center.

Address: 474 Boston Ave., Medford, MA
02155, Contact: Brenda Cole, Phone:
(617) 381-3531.

(b) *Approved Courses:*

Contractor/Supervisor (interim from 9/1/85 to 5/31/87).
Contractor/Supervisor (full from 6/1/87).
Inspector/Management Planner (full from 11/16/87).

EPA-Approved Training Courses

REGION II – Edison, NJ

Regional Asbestos Coordinator: Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 5, (MS-500), Edison, NJ 08837. (201) 321-6671, (FTS) 340-6671.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region II training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AAC Contracting, Inc.

Address: 243 Paul Rd., Rochester, NY
14624, Contact: Kevin T. Cannan,
Phone: (716) 328-7010.

(b) *Approved Course:*

Abatement Worker (contingent from 5/8/89).

(2)(a) *Training Provider:* ATC Environmental, Inc.

Address: 104 East 25th St., New York,
NY 10010, Contact: David V.
Chambers, Phone: (212) 353-8280.

(b) *Approved Courses:*

Abatement Worker (full from 11/7/88).
Contractor/Supervisor (full from 11/7/88).
Inspector/Management Planner (contingent from 6/5/88).
Inspector/Management Planner (full from 3/6/89).

(3)(a) *Training Provider:* Abatement Safety Training Institute.

Address: 323 West 39th St., New York,
NY 10018, Contact: Jay Sall, Phone:
(212) 629-6400.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/25/88).
Contractor/Supervisor (contingent from 10/25/88).
Inspector/Management Planner (contingent from 3/9/88).
Inspector/Management Planner (full from 3/21/88).
Inspector/Management Planner Refresher Course (contingent from 1/11/89).
Inspector/Management Planner Refresher Course (full from 1/30/89).

(4)(a) *Training Provider:* Adelaide Environmental Health Associates.

Address: 61 Front St., Binghamton, NY
13905-4705, Contact: William S.
Carter, Phone: (607) 722-6839.

(b) *Approved Course:*

Abatement Worker (contingent from 11/14/88).

(5)(a) *Training Provider:* Albany Environmental Technologies (A.E. Technologies).

Address: P.O. Box 1346, Schenectady,
NY 12301, Contact: Kevin Pilgrim,
Phone: (518) 374-4801.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/8/89).
Contractor/Supervisor (contingent from 6/8/89).

(6)(a) *Training Provider:* Albany-Schaharie-Schenectady BOCES.

Address: 47 Cornell Rd., Latham, NY
12110, Contact: Charlene Vespi,
Phone: (518) 786-3211.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/20/89).
Contractor/Supervisor (contingent from 7/20/89).

(7)(a) *Training Provider:* Allwash of Syracuse, Inc.

Address: P.O. Box 605, Syracuse, NY
13201, Contact: Ronald D. Roy, Phone:
(315) 454-4476.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/16/87).

Abatement Worker (full from 12/7/88).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 1/30/89).

(8)(a) *Training Provider:* Alternative Ways, Inc. Educational Services.

Address: Barclay Pavilion E, Suite 222,
Route 70, Cherry Hill, NJ 08034,
Contact: Linda A. Pardi, Phone: (609)
795-1991.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/11/88).
Contractor/Supervisor (contingent from 4/11/88).
Inspector/Management Planner (contingent from 4/22/88).
Inspector/Management Planner (full from 5/26/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).

(9)(a) *Training Provider:* Anderson International.

Address: RD 2, North Main Street
Extension, Jamestown, NY 14701,
Contact: Sally L. Gould, Phone: (716)
664-4028.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/29/88).
Contractor/Supervisor (contingent from 12/29/88).

(10)(a) *Training Provider:* Applied Respiratory Technology.

Address: P.O. Box 1132, Peekskill, NY
10566, Contact: Paul M. Madigan,
Phone: (914) 431-6421.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 11/28/88).
Abatement Worker Refresher Course (contingent from 10/19/88).
Contractor/Supervisor (contingent from 8/11/88).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/88).

(11)(a) *Training Provider:* Asbestos Control Management, Inc.

Address: 126 South Third St., Olean, NY
14760, Contact: Clar D. Anderson,
Phone: (716) 372-6393.

(b) *Approved Course:*

Abatement Worker (contingent from 5/5/89).

(12)(a) *Training Provider:* Asbestos Training Academy, Inc.

Address: 218 Cooper Center,
Pennsauken, NJ 08109, Contact:
Maryann Brady, Phone: (609) 488-9200.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/15/88).
Abatement Worker (full from 11/7/88).
Contractor/Supervisor (contingent from 9/15/88).
Contractor/Supervisor (full from 11/7/88).
Inspector (contingent from 4/27/89).

(13)(a) *Training Provider:* Asteco, Inc.

Address: P.O. Box 2204, Niagara
University, Niagara, NY 14109,
Contact: John Larson, Phone: (716)
297-5992.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/88).
Abatement Worker (full from 4/13/88).
Abatement Worker Refresher Course (contingent from 12/20/88).

(14)(a) *Training Provider:* Astoria Industries, Inc.

Address: 538 Stewart Ave., Brooklyn,
NY 11222, Contact: John Gajeski,
Phone: (718) 387-0011.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/8/88).
Abatement Worker (full from 4/18/88).
Inspector (contingent from 1/18/89).

(15)(a) *Training Provider:* BOCES-Schuyler, Chemung, Tioga Counties.

Address: 431 Philo Road, Elmira, NY
14903, Contact: L. Eugene Ferro,
Phone: (607) 739-3581.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/1/89).
Abatement Worker Refresher Course (contingent from 6/1/89).
Contractor/Supervisor (contingent from 6/1/89).
Contractor/Supervisor Refresher Course (contingent from 6/1/89).
Inspector/Management Planner Refresher Course (contingent from 6/1/89).

(16)(a) *Training Provider:* Board of Cooperative Education Services of Rensselaer & Green Counties New York.

Address: 1550 Schuurman Road,
Castleton, NY 12033, Contact: Paul
Bowler, Phone: (518) 732-7266.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 4/10/89).

(17)(a) *Training Provider:* Board of Cooperative Educational Services (BOCES) No. 3.

Address: 507 Deer Park Rd., Dix Hills,
NY 11746, Contact: Ciro Aiello, Phone:
(516) 667-6000 ext. 300.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/6/89).
Contractor/Supervisor (contingent from 2/6/89).

(18)(a) *Training Provider:* Board of Cooperative Educational Services-Suffolk County Boces 2, Adult Occup. & Continuing ED.

Address: 375 Locust Ave., Oakdale, NY
11769, Contact: Edward J. Milliken,
Phone: (516) 563-2954.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/27/89).
Abatement Worker Refresher Course (contingent from 6/16/89).
Contractor/Supervisor (contingent from 3/27/89).
Contractor/Supervisor Refresher Course (contingent from 6/16/89).

(19)(a) *Training Provider:* Board of Coopertive Education Services Facilities and Asbestos Planning.

Address: Brookview Rd., P.O. Box 26,
Brookview, NY 12026, Contact: Paul D.
Bowler, Phone: (518) 732-7266.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 4/10/89).

(20)(a) *Training Provider:* Branch Services, Inc.

Address: 1255 Lakeland Ave., Bohemia,
NY 11716, Contact: Luis Sanders,
Phone: (516) 563-7300.

(b) *Approved Course:*

Abatement Worker (contingent from 6/1/89).

(21)(a) *Training Provider:* Buffalo Laborers Training Fund.

Address: 481 Franklin St., Buffalo, NY
14202, Contact: Victor J. Sansanese,
Phone: (716) 884-7157.

(b) *Approved Course:*

Abatement Worker (contingent from 6/30/88).

(22)(a) *Training Provider:* Building Laborers Local Union No. 17.

Address: P.O. Box 252, Vails Gate, NY
12584, Contact: Victor P. Mandia,
Phone: (914) 562-1121.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

(23)(a) *Training Provider:* Calibrations, Inc.

Address: 802 Watervliet - Shaker Rd.,
Latham, NY 12110, Contact: James
Percent, Phone: (518) 318-1893.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/28/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 3/6/89).
Contractor/Supervisor (contingent from 9/28/88).

Contractor/Supervisor (full from 12/5/88).

Contractor/Supervisor Refresher Course (contingent from 3/6/89).

Inspector/Management Planner (contingent from 9/28/88).

Inspector/Management Planner Refresher Course (contingent from 3/6/89).

Project Designer (full from 5/23/88).

Project Designer Refresher Course (contingent from 3/6/89).

(24)(a) *Training Provider:* Cayuga-Onondaga BOCES.

Address: 234 South Street Rd., Auburn, NY 13021, Contact: Peter Pirnie, Phone: (315) 253-0361.

(b) *Approved Course:*

Abatement Worker (contingent from 6/17/88).

(25)(a) *Training Provider:* Comprehensive Analytical Group.

Address: 147 Midler Park Dr., Syracuse, NY 13206, Contact: Susan S. Graniero, Phone: (315) 432-0655.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/9/89).

Abatement Worker Refresher Course (contingent from 4/25/89).

Contractor/Supervisor (contingent from 3/29/89).

Contractor/Supervisor Refresher Course (contingent from 5/18/89).

(26)(a) *Training Provider:* Ecology & Environment, Inc.

Address: Buffalo Corporate Center, 368 Pleasantview Dr., Lancaster, NY 14086, Contact: Thomas G. Siener, Phone: (716) 684-8060.

(b) *Approved Course:*

Inspector/Management Planner Refresher Course (contingent from 4/7/89).

(27)(a) *Training Provider:* Education & Training Fund Laborers' Local No. 91.

Address: 2556 Seneca Ave., Niagra Falls, NY 14305, Contact: Joel Cicero, Phone: (716) 297-6001.

(b) *Approved Courses:*

Abatement Worker (full from 7/27/87).

Abatement Worker Refresher Course (contingent from 10/20/88).

Abatement Worker Refresher Course (full from 10/22/88).

(28)(a) *Training Provider:* Edward O. Watts & Associates.

Address: 1331 North Forest Rd., Suite 340, Buffalo, NY 14221, Contact: Edward O. Watts, Phone: (716) 688-4827.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/4/89).

Abatement Worker Refresher Course (contingent from 3/3/89).

Contractor/Supervisor (contingent from 7/12/89).

Contractor/Supervisor Refresher Course (contingent from 3/3/89).

(29)(a) *Training Provider:* Environmental Training, Inc.

Address: 681 Fulton St., Brooklyn, NY 11217, Contact: Nelson Helu, Phone: (718) 625-4300.

(b) *Approved Course:*

Abatement Worker (contingent from 4/25/88).

(30)(a) *Training Provider:* Hazardous Waste Management Corp. Training Center of Buffalo, New York.

Address: 3816 Union Rd., Buffalo, NY 14225-5301, Contact: Donald Larder, Phone: (716) 634-3000.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/31/88).

Contractor/Supervisor (contingent from 10/31/88).

(31)(a) *Training Provider:* Hudson Asbestos Training Institute.

Address: 609 Manhattan Ave., Brooklyn, NY 11222, Contact: Henry Kawiorski, Phone: (718) 383-2656.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/30/89).

Abatement Worker (full from 3/13/89).

Contractor/Supervisor (contingent from 1/30/89).

(32)(a) *Training Provider:* Hunter College Asbestos Training Center/United Brotherhood of Carpenters & Joiners of America.

Address: 425 East 25th St., New York, NY 10010, Contact: Jack Caravanos, Phone: (212) 481-7569.

(b) *Approved Courses:*

Abatement Worker (full from 7/1/88).

Abatement Worker Refresher Course (contingent from 6/20/89).

Contractor/Supervisor (full from 7/1/86).

Contractor/Supervisor Refresher Course (contingent from 6/20/89).

(33)(a) *Training Provider:* Hygeia Research & Training.

Address: P.O. Box 4506, Utica, NY 13501, Contact: Richard A. Gigliotti, Phone: (315) 732-8567.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/9/88).

Abatement Worker (full from 5/6/88).

Abatement Worker Refresher Course (contingent from 12/12/88).

Contractor/Supervisor (contingent from 1/26/89).

Contractor/Supervisor Refresher Course (contingent from 12/20/88).

(34)(a) *Training Provider:* Institute of Asbestos Awareness.

Address: 2 Heitz Pl., Hicksville, NY 11801, Contact: Henry R. Clegg, Phone: (516) 937-1600.

(b) *Approved Courses:*

Abatement Worker (full from 10/24/88).

Abatement Worker Refresher Course (contingent from 3/8/89).

Contractor/Supervisor (full from 10/24/88).

Contractor/Supervisor Refresher Course (contingent from 3/8/89).

Inspector/Management Planner (contingent from 9/28/88).

Inspector/Management Planner (full from 3/2/89).

Inspector/Management Planner Refresher Course (contingent from 3/8/89).

(35)(a) *Training Provider:* Institute of Asbestos Technology Corp.

Address: 5900 Butternut Dr., East Syracuse, NY 13057, Contact: Doreen E. Bianchi, Phone: (315) 437-1307.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/18/88).

Abatement Worker (full from 6/27/88).

Abatement Worker Refresher Course (contingent from 12/20/88).

Contractor/Supervisor (contingent from 4/7/89).

Contractor/Supervisor Refresher Course (contingent from 6/8/89).

(36)(a) *Training Provider:* Kaselaan & D'Angelo Associates, Inc.

Address: 220 Fifth Ave., New York, NY 10001, Contact: Lance Fredericks, Phone: (212) 216-6340.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/15/89).

Contractor/Supervisor (contingent from 3/27/89).

Inspector/Management Planner (contingent from 2/12/88).

Inspector/Management Planner (full from 3/7/88).

Inspector/Management Planner Refresher Course (full from 4/27/89).

(37)(a) *Training Provider:* Korean Asbestos Training Center.

Address: 46-12 Queens Blvd, Long Island City, NY 11104, Contact: Tchang S. Bahrk, Phone: (718) 361-6464.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/11/89).

Abatement Worker Refresher Course (contingent from 5/22/89).

Contractor/Supervisor (contingent from 5/11/89).

Contractor/Supervisor Refresher Course (contingent from 5/22/89).

(38)(a) *Training Provider:* Laborers Local Union No. 214 of Oswego New York & Vicinity Training & Education Fund.

Address: 23 Mitchell St., Oswego, NY 13126, Contact: John T. Shannon, Phone: (315) 343-8553.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/1/88).

Abatement Worker (full from 1/23/89).

Abatement Worker Refresher Course (contingent from 2/15/89).

(39)(a) *Training Provider:* Lozier Architects/Engineers.

Address: 600 Perinton Hills, Fairport, NY 14450, Contact: Dyke Conyne, Phone: (716) 223-7610.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/3/89).

Abatement Worker Refresher Course (contingent from 7/27/89).

(40)(a) *Training Provider:* McDonnell-Gamble Environmental Services, Inc.

Address: 444 Park Ave. S, 5th Fl., Suite 503, New York, NY 10016, Contact: Yelena Goodman, Phone: (212) 545-1122.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/15/88).

Abatement Worker (full from 12/5/88).

Contractor/Supervisor (contingent from 10/18/88).

Contractor/Supervisor (full from 12/5/88).

(41)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center UMDNJ Robert Wood Johnson Medical School.

Address: 675 Hoes Ln., Piscataway, NJ 08854-5635, Contact: Lee Laustsen, Phone: (201) 463-4500.

(b) *Approved Courses:*

Abatement Worker (full from 7/28/86).

Contractor/Supervisor (full from 7/28/86).

Inspector/Management Planner (full from 11/16/87).

Inspector/Management Planner Refresher Course (full from 11/16/88).

(42)(a) *Training Provider:* Monroe Community College of Rochester, New York.

Address: P.O. Box 9720, Rochester, NY 14623-0720, Contact: Dusty Swanger, Phone: (716) 272-9839.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/7/88).

Abatement Worker (full from 4/26/89).

(43)(a) *Training Provider:* National Asbestos Training Institute (NATI).

Address: 1776 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris L. Adler, Phone: (201) 918-0610.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 6/13/88).

Inspector/Management Planner (full from 4/17/89).

Inspector/Management Planner Refresher Course (contingent from 5/25/89).

(44)(a) *Training Provider:* National Institution on Abatement Science & Technology (NIAST).

Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607-1780, Contact: Glenn W. Phillips, Phone: (800) 422-2836.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/8/88).

(45)(a) *Training Provider:* New York University School of Continuing Education in Association with Warren & Panzer Engineers, P.C.

Address: 9 East 38th St., 9th Fl., New York, NY 10016, Contact: Charles Schwartz, Phone: (212) 545-0077.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/18/89).

Abatement Worker Refresher Course (contingent from 6/8/89).

Contractor/Supervisor (contingent from 5/18/89).

Contractor/Supervisor Refresher Course (contingent from 6/8/89).

Inspector/Management Planner (contingent from 5/18/89).

Inspector/Management Planner Refresher Course (contingent from 6/8/89).

Project Designer (contingent from 5/18/89).

Project Designer Refresher Course (contingent from 6/8/89).

(46)(a) *Training Provider:* Niagara County Community College.

Address: 160 Washburn St., Lockport, NY 14094, Contact: Eugene Zinni, Phone: (716) 731-3271.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/5/88).

Abatement Worker (full from 1/25/88).

Abatement Worker Refresher Course (contingent from 1/23/89).

Contractor/Supervisor (contingent from 1/5/88).

Contractor/Supervisor (full from 2/19/88).

Contractor/Supervisor Refresher Course (contingent from 2/8/89).

Inspector/Management Planner (contingent from 5/16/88).

Inspector/Management Planner (full from 12/5/88).

Inspector/Management Planner Refresher Course (contingent from 3/6/89).

(47)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.

Address: Box 4873, 1304 Buckley Rd., Syracuse, NY 13221, Contact: Edwin C. Tifft, Jr., Phone: (315) 451-4700.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/19/89).

Abatement Worker (full from 4/10/89).

Contractor/Supervisor (contingent from 1/19/89).

Contractor/Supervisor (full from 4/10/89).

Inspector/Management Planner (full from 10/27/88).

Inspector/Management Planner Refresher Course (contingent from 2/24/89).

(48)(a) *Training Provider:* Orange/Ulster BOCES Risk Management Dept.

Address: RD 2 Gibson Rd., Goshen, NY 10924, Contact: Arthur J. Lange, Phone: (914) 294-5431.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).

Contractor/Supervisor (contingent from 3/2/89).

(49)(a) *Training Provider:* P.A. Environmental Corp.

Address: 4240-24F Hutchinson River Pkwy. E, Bronx, NY 10475, Contact: Pichai Arjarasupun, Phone: (212) 379-6716.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/31/89).

Abatement Worker Refresher Course (contingent from 5/31/89).

Contractor/Supervisor (contingent from 5/31/89).

Contractor/Supervisor Refresher Course (contingent from 5/31/89).

(50)(a) *Training Provider:* Paradigm Environmental Services, Inc.

Address: 961 Lydell Ave., Building 2, Suite 8, Rochester, NY 14606, Contact: Marcia R. Cummings, Phone: (716) 647-2530.

(b) *Approved Course:*

Abatement Worker (contingent from 7/19/89).

(51)(a) *Training Provider:* Princeton Testing Laboratory, Inc.

Address: 3490 US Route 1, Princeton Service Center, Princeton, NJ 08543, Contact: Anne Coogan, Phone: (609) 452-9050.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/21/88).

(52)(a) *Training Provider:* R. J. Fletcher, Inc.

Address: P.O. Box 5021, Utica, NY 13505, Contact: Robert J. Fletcher, Phone: (315) 724-0141.

(b) *Approved Courses:*

Abatement Worker Refresher Course (contingent from 2/24/89).
Inspector/Management Planner Refresher Course (contingent from 2/24/89).

(53)(a) *Training Provider:* SUNY College of Technology at Farmingdale.

Address: Biology Department, Nathan Hale Hall, Farmingdale, NY 11735, Contact: Charles Erlanger, Phone: (516) 420-2000.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 4/24/89).
Inspector/Management Planner Refresher Course (contingent from 4/24/89).

(54)(a) *Training Provider:* Safe Air Environmental Group, Inc.

Address: P.O. Box 457, Depew, NY 14043, Contact: Reza Farrokh, Phone: (800) 634-7234.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/8/88).
Abatement Worker (full from 4/4/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 3/8/88).
Contractor/Supervisor (full from 4/4/88).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).

(55)(a) *Training Provider:* Schuyler-Chemung-Tioga Board of Cooperative Educational Services.

Address: 431 Philo Rd., Elmira, NY 14903, Contact: L. Eugene Ferro, Phone: (607) 739-3581.

(b) *Approved Course:*

Inspector/Management Planner Refresher Course (contingent from 1/11/89).

(56)(a) *Training Provider:* State University of New York at Buffalo.

Address: 127 Farber Hall, University of New York, Buffalo, NY 14214, Contact: Paul J. Kostyniak, Phone: (716) 831-2125.

(b) *Approved Courses:*

Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Inspector/Management Planner (contingent from 1/25/89).
Inspector/Management Planner Refresher Course (contingent from 2/2/89).

(57)(a) *Training Provider:* State of New Jersey Dept. of Health.

Address: CN 360, Trenton, NJ 08625, Contact: James A. Brownlee, Phone: (609) 984-2193.

(b) *Approved Course:*

Inspector/Management Planner Refresher Course (contingent from 3/28/89).

(58)(a) *Training Provider:* Testwell Craig Laboratories of Albany, Inc.

Address: 518 Clinton Ave., Albany, NY 12206, Contact: George W. Stowell, Phone: (518) 436-4114.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/21/88).
Abatement Worker (full from 1/24/89).
Contractor/Supervisor (contingent from 6/20/89).

(59)(a) *Training Provider:* Tri-Cities Laborers Training Program.

Address: 5 Lombard St., Schenectady, NY 12304, Contact: Joseph A. Zappone, Phone: (518) 370-3463.

(b) *Approved Courses:*

Abatement Worker (full from 3/21/88).
Abatement Worker Refresher Course (contingent from 10/28/88).
Abatement Worker Refresher Course (full from 2/2/89).

(60)(a) *Training Provider:* Union Occupational Health Center.

Address: 450 Grider St., Buffalo, NY 14215, Contact: Garath L. Tubbs, Phone: (716) 894-9366.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

(61)(a) *Training Provider:* Utilicom Corp.

Address: 7 Tobey Village Office Park, Pittsford, NY 14534, Contact: Dennis J. Money, Phone: (716) 381-8710.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/20/88).
Abatement Worker (full from 10/31/88).
Abatement Worker Refresher Course (contingent from 4/21/89).

(62)(a) *Training Provider:* Warren Mae Associates.

Address: RD 3, Box 390, Endicott, NY 13760, Contact: Janine C. Rogelstad, Phone: (607) 754-8366.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 1/4/89).
Abatement Worker Refresher Course (contingent from 3/2/89).

(63)(a) *Training Provider:* Western New York Council on Occupational Safety & Health (WNYCOSH).

Address: 450 Grider St., Buffalo, NY 14215, Contact: Jeanne Reilly, Phone: (716) 897-2110.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/28/87).
Abatement Worker (full from 1/24/88).

(64)(a) *Training Provider:* White Lung Association.

Address: 901 Broad St., Newark, NJ 07102, Contact: Mylers O' Malley, Phone: (201) 824-2023.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/19/89).
Contractor/Supervisor (contingent from 6/19/89).

(65)(a) *Training Provider:* White Lung Association - NY.

Address: 12 Warren St., 4th Fl., New York, NY 10007, Contact: Daniel Manassia, Phone: (212) 619-2270.

(b) *Approved Course:*

Inspector (contingent from 2/23/89).

EPA-Approved Training Courses

REGION III – Philadelphia, PA

Regional Asbestos Coordinator: Carole Dougherty, EPA, Region III (3HW-42), 841 Chestnut Bldg., Philadelphia, PA 19107. (215)597-3160, (FTS) 597-3160.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region III training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* A & S Training School, Inc.

Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: Anne Marie Sossong, Phone: (717) 257-1360.

(b) *Approved Courses:*

Abatement Worker (full from 5/20/85).
Contractor/Supervisor (full from 5/20/85).

(2)(a) *Training Provider:* Aerosol Monitoring & Analysis, Inc.

Address: 1341 Ashton Rd., Suite A, Hanover, MD 21076, Contact: D.R. Twilley, Phone: (301) 684-3327.

(b) *Approved Courses:*

Abatement Worker (full from 11/27/87).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (full from 11/27/87).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Inspector/Management Planner (contingent from 3/1/88).
Inspector/Management Planner (full from 3/31/88).

(3)(a) *Training Provider:* Alcam, Inc.

Address: 113 Poplar St., Box 213, Ambler, PA 19002, Contact: Albert Camburn, Phone: (215) 367-2791.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/26/89).
Contractor/Supervisor (contingent from 1/26/89).

(4)(a) *Training Provider:* Alice Hamilton Center for Occupational Health Center.

Address: 410 7th St., SE, 2nd Fl., Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/12/87).
Abatement Worker (full from 1/16/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (full from 1/16/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 3/9/88).
Inspector/Management Planner (full from 6/20/88).
Inspector/Management Planner Refresher Course (contingent from 3/2/89).

(5)(a) *Training Provider:* American Asbestos Training Institute, Inc.

Address: 2133 Arch St., Philadelphia, PA 19103, Contact: Allen Johnson, Phone: (215) 988-9710.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/16/89).
Contractor/Supervisor (contingent from 5/16/89).

(6)(a) *Training Provider:* American Monitoring & Engineering Services, Inc.

Address: 200 High Tower Boulevard, Suite 205, Pittsburgh, PA 15205, Contact: David J. Drummond, Phone: (412) 788-8300.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 7/21/89).

(7)(a) *Training Provider:* Apex Environmental, Inc.

Address: 7652 Standish Pl., Rockville, MD 20855, Contact: Dorothy Washlick, Phone: (301) 217-9200.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/89).
Contractor/Supervisor (contingent from 7/27/89).

(8)(a) *Training Provider:* Asbestos Abatement Council, AWCI.

Address: 1600 Cameron St., Alexandria, VA 22314-2705, Contact: Gene Fisher, Phone: (703) 684-2924.

(b) *Approved Courses:*

Abatement Worker (full from 6/17/87).
Contractor/Supervisor (full from 6/17/87).

(9)(a) *Training Provider:* Asbestos Analytical Association, Inc.

Address: 3208-B George Washington Hwy., Portsmouth, VA 23704, Contact: Carol A. Holden, Phone: (804) 397-0695.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/7/88).
Contractor/Supervisor (contingent from 10/7/88).

(10)(a) *Training Provider:* Asbestos Environmental Services of Maryland, Inc.

Address: P.O. Box 28, Timonium, MD 21093, Contact: Brian Stewart, Phone: (301) 584-1490.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).

(11)(a) *Training Provider:* Asbestos Workers Local Union No. 24.

Address: 6713 Ammendale Rd., Beltsville, MD 20705, Contact: Thomas Haun, Phone: (301) 937-7636.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/15/88).
Abatement Worker Refresher Course (contingent from 12/1/88).
Contractor/Supervisor (contingent from 12/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(12)(a) *Training Provider:* Biospherics, Inc.

Address: 12051 Indian Creek Ct., Beltsville, MD 20705, Contact: Marian Meiselman, Phone: (301) 369-3900.

(b) *Approved Courses:*

Abatement Worker (full from 10/1/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Abatement Worker Refresher Course (full from 10/31/88).
Contractor/Supervisor (full from 10/1/87).
Contractor/Supervisor Refresher Course (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (full from 10/31/88).
Inspector/Management Planner (contingent from 5/20/88).
Inspector/Management Planner (full from 8/15/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).
Inspector/Management Planner Refresher Course (full from 3/20/89).

(13)(a) *Training Provider:* Briggs Associates, Inc. Maryland.

Address: 8300 Guilford Rd., Suite E, Columbia, MD 21046, Contact: J. Ross Voorhees, Phone: (301) 381-4434.

(b) *Approved Course:*

Abatement Worker (contingent from 1/30/89).

(14)(a) *Training Provider:* Brujos Scientific, Inc.

Address: 505 Drury Ln., Baltimore, MD 21229, Contact: Robert Olcerst, Phone: (301) 566-0859.

(b) *Approved Courses:*

Abatement Worker (full from 11/21/88).
Contractor/Supervisor (contingent from 9/29/88).

(15)(a) *Training Provider:* Carpenters Joint Apprenticeship Committee of Western Pennsylvania.

Address: 495 Mansfield Ave., Pittsburgh, PA 15205, Contact: William Shehab, Phone: (412) 922-6200.

(b) *Approved Course:*

Abatement Worker (contingent from 12/1/88).

(16)(a) *Training Provider:* Center for Environmental & Occupational Training, Inc.

Address: 9 Orchard St., Pittsburgh, PA 15221, Contact: David Ginsburg, Phone: (412) 351-9101.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/15/88).
Abatement Worker (full from 12/8/88).
Abatement Worker Refresher Course (full from 1/19/89).
Contractor/Supervisor (contingent from 9/15/88).
Contractor/Supervisor (full from 12/8/88).
Contractor/Supervisor Refresher Course (full from 1/19/89).
Inspector/Management Planner (contingent from 3/1/89).
Inspector/Management Planner Refresher Course (contingent from 3/1/89).
Project Designer (contingent from 6/20/89).

(17)(a) *Training Provider:* Center for Hazardous Materials Research.

Address: University of Pittsburgh Applied, Research Center, 320 William Pitt Way, Pittsburgh, PA 15238, Contact: Steven T. Ostheim, Phone: (412) 826-5320.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/28/88).
Contractor/Supervisor (contingent from 11/28/88).

(18)(a) *Training Provider:* Charles County Community College.

Address: Mitchell Rd., Box 910, LaPlata, MD 20646-0910, Contact: Jake Bair, Phone: (301) 934-2251.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/26/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).

(19)(a) *Training Provider:* Commonwealth of Pennsylvania Dept. of Public Welfare.

Address: P.O. Box 2675, Harrisburg, PA 17120-0012, Contact: Gerald A. Donatucci, Phone: (717) 783-9543.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/3/88).
Abatement Worker (full from 11/15/88).

(20)(a) *Training Provider:* Delaware Technical & Community College Terry Campus.

Address: 1798 North DuPont Pkwy., P.O. Box 897, Dover, DE 19903, Contact: David Stanley, Phone: (302) 736-5428.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/20/88).
Abatement Worker Refresher Course (contingent from 3/1/88).
Contractor/Supervisor (contingent from 4/20/88).
Contractor/Supervisor Refresher Course (contingent from 3/1/89).

(21)(a) *Training Provider:* Dept. of the Environment, State of Maryland.

Address: 2500 Broening Hwy., Baltimore, MD 21224, Contact: Barbara Conrad, Phone: (301) 631-3847.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 4/14/89).

(22)(a) *Training Provider:* Drexel University, Office of Continuing Professional Education.

Address: 32nd & Chestnut Sts., Philadelphia, PA 19104, Contact: Robert Ross, Phone: (215) 895-2156.

(b) *Approved Courses:*

Abatement Worker (interim from 9/1/86 to 11/11/87).
Abatement Worker (full from 11/12/87).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (interim from 9/1/86 to 11/11/87).
Contractor/Supervisor (full from 11/12/87).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 3/8/88).
Inspector/Management Planner (full from 3/14/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).

(23)(a) *Training Provider:* Dynamac Corp.

Address: 11140 Rockville Pike, Rockville, MD 20852, Contact: Richard A. De Blasio, Phone: (301) 468-2500.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 3/2/89).
Inspector/Management Planner (contingent from 9/1/88).
Inspector/Management Planner Refresher Course (contingent from 6/26/89).

(24)(a) *Training Provider:* E.I. Dupont De Nemours & Co. Spruance Plant.

Address: P.O. Box 27001, Richmond, VA 23261, Contact: Clarence P. Mihal, Jr., Phone: (804) 743-2948.

(b) *Approved Course:*

Abatement Worker (contingent from 11/14/88).

(25)(a) *Training Provider:* Eagle Industrial Hygiene Association, Inc.

Address: 405 Masons Mill Rd., Huntingdon Valley, PA 19006, Contact: Stephen R. Bell, Phone: (215) 657-2261.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).
Abatement Worker (full from 7/14/89).
Contractor/Supervisor (contingent from 4/6/89).
Contractor/Supervisor (full from 7/14/89).
Inspector/Management Planner (contingent from 5/16/89).
Inspector/Management Planner Refresher Course (contingent from 7/20/89).

(26)(a) *Training Provider:* Eastern Environmental Services of the Northeast, Inc.

Address: RD 1, Route 309 North, P.O. Box B, Drums, PA 18222, Contact: Kenneth Skuba, Phone: (717) 788-4155.

(b) *Approved Courses:*

Abatement Worker (full from 9/8/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 8/11/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).

(27)(a) *Training Provider:* Environmental Education Associates.

Address: 28 West Main St., Plymouth, PA 18651, Contact: Harry H. West, Phone: (717) 779-4242.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/17/89).
Contractor/Supervisor (contingent from 5/17/89).
Inspector (contingent from 5/17/89).

(28)(a) *Training Provider:* Environmental Training & Consultants, Inc.

Address: 2 Bala Plaza, Suite 300, Bala Cynwyd, PA 19004, Contact: Linda L. Kershaw, Phone: (215) 667-4685.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).
Inspector/Management Planner (contingent from 4/6/89).

(29)(a) *Training Provider:* Environmental Training, Inc.

Address: 10 Industrial Hwy., Building N, Tinicum Industrial Park, Philadelphia, PA 19113, Contact: Gary D. Hyrne, Phone: (215) 521-5469.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/89).
Abatement Worker Refresher Course (contingent from 6/29/89).
Contractor/Supervisor (contingent from 3/1/89).
Contractor/Supervisor Refresher Course (contingent from 6/29/89).

(30)(a) *Training Provider:* Facilities Management Consultants, Inc.

Address: P.O. Box 309, Cecil, PA 15321, Contact: Edward Monaco, Phone: (412) 745-1770.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 10/18/88).
Contractor/Supervisor (full from 10/18/88).

(31)(a) *Training Provider:* GST Co.

Address: Freedom Professional Bldg., 1341 Old Freedom Rd., Suite 3B, Mars, PA 16046, Contact: Norma Stanford, Phone: (412) 772-7488.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/14/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 1/30/89).

Contractor/Supervisor (contingent from 11/14/88).
Contractor/Supervisor (full from 12/5/88).
Contractor/Supervisor Refresher Course (contingent from 1/30/89).
Inspector/Management Planner (contingent from 12/29/88).

(32)(a) *Training Provider:* Galson Technical Services, Inc.

Address: 5170 Campus Dr., Suite 200, Plymouth Meeting, PA 19462, Contact: Ernest L. Sweet, Phone: (215) 432-0506.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 6/17/88).

(33)(a) *Training Provider:* General Physics Corp.

Address: 6700 Alexander Bell Dr., Columbia, MD 21046, Contact: Andrew K. Marsh, Phone: (301) 290-2300.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).

(34)(a) *Training Provider:* Gerald T. Fenton, Inc.

Address: 3152 Bladensburg Rd., Washington, DC 20018, Contact: James R. Foster, Phone: (202) 269-2112.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor (contingent from 12/15/88).

(35)(a) *Training Provider:* Hazard Abatement Training Center.

Address: 101 East Lancaster Ave., Wayne, PA 19087, Contact: Robert Mautner, Phone: (215) 971-0630.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 4/12/88).

(36)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 2.

Address: 148 East Mall Plaza, Carnegie, PA 15106, Contact: Terry Larkin, Phone: (412) 276-3711.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/28/88).
Abatement Worker (full from 10/25/88).
Abatement Worker Refresher Course (contingent from 9/28/88).
Abatement Worker Refresher Course (full from 12/8/88).
Contractor/Supervisor (contingent from 9/28/88).
Contractor/Supervisor Refresher Course (contingent from 9/28/88).

(37)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 23.

Address: 42 Lynwood Dr., Rd. 4, Allentown, PA 18103, Contact: Joe Klocek, Phone: (717) 564-7563.

(b) *Approved Course:*

Abatement Worker (contingent from 10/20/88).

(38)(a) Training Provider: Ind. Trs. Co. Ltd. Address: 18 South 22nd St., Richmond, VA 23223-7024, Contact: Vera Barley, Phone: (804) 648-7836.

(b) Approved Courses:

Abatement Worker (full from 9/15/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Contractor/Supervisor (full from 9/15/87).
Inspector/Management Planner (full from 9/16/88).
Inspector/Management Planner Refresher Course (full from 3/1/89).

(39)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 38.

Address: 315 - 317 North Washigton St., Wilkes-Barre, PA 18703, Contact: Robert Hughes, Phone: (717) 829-0634.

(b) *Approved Course:*

Abatement Worker (contingent from 3/2/89).

(40)(a) *Training Provider:* Jenkins Professionals, Inc.

Address: 5022 Campbell Blvd., Suite F, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 529-3553.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/10/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 2/10/88).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).

(41)(a) *Training Provider:* Laborer's District Council of Eastern Pennsylvania.

Address: 2163 Berryhill St., Harrisburg, PA 17104, Contact: Gerald D. Temarantz, Phone: (717) 564-2707.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 1/30/89).
Abatement Worker Refresher Course (contingent from 5/17/89).

(42)(a) *Training Provider:* Laborers District Council Training Fund of Baltimore & Vicinity.

Address: 7400 Buttercup Rd., Sykesville, MD 21784, Contact: Robert Williams, Phone: (301) 549-1600.

(b) *Approved Course:*

Abatement Worker (contingent from 4/10/89).

(43)(a) *Training Provider:* Laborers District Council of Western Pennsylvania.

Address: 1101 Fifth Ave., Pittsburgh, PA 15219, Contact: Robert F. Ferrari, Phone: (412) 391-6533.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 10/31/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 6/17/88).
Contractor/Supervisor (full from 10/31/88).

(44)(a) *Training Provider:* Laborers District Council, Education Training Fund of Philadelphia & Vicinity.

Address: 500 Lancaster Ave., Exton, PA 19341, Contact: Jerry Roseman, Phone: (215) 836-1175.

(b) *Approved Courses:*

Abatement Worker (interim from 11/1/87 to 12/14/87).
Abatement Worker (contingent from 2/18/88).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).

(45)(a) *Training Provider:* Marcus Environmental.

Address: 6345 Courthouse Rd., P.O. Box 227, Prince George, VA 23875, Contact: Susan M. Wilcox, Phone: (804) 733-1655.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/26/89).
Contractor/Supervisor (contingent from 1/26/89).

(46)(a) *Training Provider:* Medical College of Virginia Virginia Commonwealth University Dept. of Preventive Medicine.

Address: P.O. Box 212, Richmond, VA 23298, Contact: Leonard Vance, Phone: (804) 786-9785.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor (full from 11/2/87).
Contractor/Supervisor Refresher Course (contingent from 8/12/88).
Inspector/Management Planner (full from 2/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).

(47)(a) *Training Provider:* National Association of Minority Contractors.

Address: 806 15th St., NW, Washington, DC 20012, Contact: Ralph C. Thomas, III, Phone: (202) 347-8259.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/19/89).
Contractor/Supervisor (contingent from 4/19/89).

(48)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).

Address: 1126 16th St., NW, Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887-1980.

(b) *Approved Courses:*

Abatement Worker (interim from 11/1/86 to 8/1/87).
Abatement Worker (contingent from 9/18/87).
Abatement Worker (full from 9/18/87).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (interim from 11/1/86 to 8/1/87).
Contractor/Supervisor (contingent from 9/18/87).
Contractor/Supervisor (full from 9/18/87).
Contractor/Supervisor Refresher Course (contingent from 5/18/89).
Inspector (contingent from 5/26/88).

(49)(a) *Training Provider:* Occupational Medical Center.

Address: 4451 Parliament Pl., Lanham, MD 20706, Contact: Ellen Kite, Phone: (301) 306-0632.

(b) *Approved Course:*

Abatement Worker (contingent from 9/28/88).

(50)(a) *Training Provider:* Old Dominion University Office of Continuing Education College of Health Services.

Address: 204 Old Science Building, Norfolk, VA 23529-0290, Contact: Shirley Glover, Phone: (804) 440-4256.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 7/27/88).

(51)(a) *Training Provider:* Oneil M. Banks, Inc.

Address: 336 South Main St., Bel Air, MD 21014, Contact: Oneil M. Banks, Phone: (301) 879-4676.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/5/88).
Abatement Worker (full from 2/20/89).
Contractor/Supervisor (contingent from 1/5/88).
Inspector (contingent from 3/14/88).

(52)(a) *Training Provider:* Paskal Environmental Services.

Address: 6010 Sonoma Rd., Bethesda, MD 20817, Contact: Steve Paskal, Phone: (301) 571-1507.

(b) *Approved Course:*

Abatement Worker (contingent from 4/28/88).

(53)(a) *Training Provider:* Philadelphia Electric Co.

Address: Barbados Training Center, Norristown, PA 19401, Contact: John J. Stankiewiez, Phone: (215) 270-8600.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/19/88).
Abatement Worker Refresher Course (contingent from 2/24/89).

(54)(a) *Training Provider:* Phoenix Safety Associates, Ltd.

Address: P.O. Box 545, Phoenixville, PA 19460, Contact: Janice Sharkey, Phone: (215) 935-1770.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 9/1/88).

(55)(a) *Training Provider:* Quality Specialities, Inc.

Address: P.O. Box 46, 109 South 15th Ave., Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 458-5855.

(b) *Approved Course:*

Abatement Worker (contingent from 8/8/88).

(56)(a) *Training Provider:* RCW Environmental Consulting & Training.

Address: 711 Shetland St., Rockville, MD 20851, Contact: Robert C. Wyatt, Phone: (301) 251-0291.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/1/89).
Contractor/Supervisor (contingent from 8/1/89).

(57)(a) *Training Provider:* Roofer Local No. 30/Roofing & Sheet Metal Contractors of Philadelphia & Vicinity Joint Apprentice Program.

Address: 433 Kelly Dr., Philadelphia, PA 19129, Contact: Richard Harvey, Phone: (215) 849-4800.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/21/89).
Contractor/Supervisor (contingent from 7/21/89).

(58)(a) *Training Provider:* S.G. Brown, Inc.

Address: 2701 Sonic Dr., Virginia Beach, VA 23456, Contact: Sandra A. Akers, Phone: (804) 468-0027.

(b) *Approved Course:*

Abatement Worker (contingent from 7/12/88).

(59)(a) *Training Provider:* STI, Inc.

Address: P.O. Box 1029, Aberdeen, MD 21001, Contact: Terry F. Carraway, Jr., Phone: (301) 575-7844.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/19/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 7/19/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 12/15/88).

(60)(a) *Training Provider:* STIC Corporation.

Address: Box 347, Wilkes-Barre, PA 18703, Contact: Ed Barrett, Phone: (717) 829-3614.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 4/7/89).

(61)(a) *Training Provider:* Safety Management Institute.

Address: P.O. Box 1844, Altoona, PA 16603, Contact: Christopher Tate, Phone: (814) 946-1221.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/6/88).
Abatement Worker (full from 8/8/88).
Abatement Worker Refresher Course (contingent from 2/8/89).
Contractor/Supervisor (contingent from 1/6/88).
Contractor/Supervisor (full from 8/8/88).
Contractor/Supervisor Refresher Course (contingent from 2/8/89).
Inspector/Management Planner (contingent from 2/4/88).
Inspector/Management Planner (full from 2/8/88).
Inspector/Management Planner Refresher Course (contingent from 2/8/89).

(62)(a) *Training Provider:* Schneider Engineers.

Address: 98 Vanadium Rd., Bridgeville, PA 15017, Contact: Amy Couch Shultz, Phone: (412) 221-1100.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/22/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 2/22/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Inspector/Management Planner (contingent from 2/22/89).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).

(63)(a) *Training Provider:* Temple University College of Engineering Asbestos Abatement Center.

Address: 12th & Norris Sts., Philadelphia, PA 19122, Contact: Lester Levin, Phone: (215) 787-6479.

(b) *Approved Courses:*

Abatement Worker (full from 10/21/87).
Contractor/Supervisor (contingent from 9/28/87).
Contractor/Supervisor (full from 10/1/87).
Inspector/Management Planner (full from 10/13/87).
Inspector/Management Planner Refresher Course (full from 12/19/88).
Project Designer (contingent from 3/20/89).

(64)(a) *Training Provider:* Tetra Services, Inc.

Address: Pleasant Valley Rd., P.O. Box 295A, Trafford, PA 15085, Contact: Dominic R. Medure, Phone: (412) 744-3377.

(b) *Approved Course:*

Abatement Worker (contingent from 4/20/89).

(65)(a) *Training Provider:* The Glaser Co.

Address: 200 Kanawha Ter., St. Albans, WV 25177, Contact: Stephen P. Glaser, Phone: (304) 722-2832.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).

(66)(a) *Training Provider:* The J.O.B.S. Company.

Address: P.O. Box 3763, Charleston, WV 25337, Contact: Ann Hyre, Phone: (304) 344-0046.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/25/89).
Contractor/Supervisor (contingent from 5/25/89).

(67)(a) *Training Provider:* Tracor Jitco, Inc.

Address: 1601 Research Blvd., Rockville, MD 20850, Contact: Daniel O. Chute, Phone: (301) 984-2718.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/4/89).
Contractor/Supervisor (contingent from 1/4/89).
Inspector/Management Planner (contingent from 1/4/89).

(68)(a) *Training Provider:* United Environmental Systems, Inc.

Address: 14 Stella Dr., Churchville, PA 18966, Contact: Michael Yaron, Phone: (215) 829-9454.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/3/88).
Contractor/Supervisor (contingent from 6/30/88).
Inspector/Management Planner (contingent from 7/8/88).

(69)(a) *Training Provider:* University of Pittsburgh Graduate School of Public Health.

Address: Dept. of Industrial Environmental, Health Sciences, Pittsburgh, PA 15261, Contact: Dietrich A. Weyel, Phone: (412) 624-3042.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/6/88).
Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 3/6/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).

(70)(a) *Training Provider:* Volz Environmental Services, Inc.

Address: 3010 William Pitt Way, Pittsburgh, PA 15238, Contact: Greg Ashman, Phone: (412) 826-3150.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/3/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 10/3/88).
Contractor/Supervisor (full from 1/23/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Inspector/Management Planner (contingent from 10/3/88).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).

(71)(a) *Training Provider:* Waco, Inc.

Address: Highway 925, N, P.O. Box 759, Waldorf, MD 20601, Contact: Wayne Cooper, Phone: (301) 843-2488.

(b) *Approved Courses:*

Abatement Worker (full from 9/15/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Contractor/Supervisor (full from 9/15/87).
Contractor/Supervisor Refresher Course (contingent from 3/1/89).
Inspector/Management Planner Refresher Course (contingent from 3/11/88).

(72)(a) *Training Provider:* West Virginia Laborers Training Trust Fund.

Address: One Monogalia St., Charleston, WV 25302, Contact: Wetzel Harvey, Phone: (304) 346-0581.

(b) *Approved Course:*

Abatement Worker (contingent from 8/29/88).

(73)(a) *Training Provider:* West Virginia University Extension Service.

Address: 704 Knapp Hall, P.O. Box 6031, Morgantown, WV 26506-6031, Contact: Robert L. Moore, Phone: (304) 293-4013.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/20/88).
Contractor/Supervisor (contingent from 10/20/88).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).
Inspector/Management Planner Refresher Course (full from 4/26/89).

(74)(a) *Training Provider:* White Lung Association.

Address: 1114 Cathedral St., Baltimore, MD 21201, Contact: James Fite, Phone: (301) 727-6029.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/18/88).
Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 2/23/89).
Contractor/Supervisor (contingent from 2/18/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 2/23/89).
Inspector/Management Planner (contingent from 1/4/88).
Inspector/Management Planner (full from 2/15/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).

(75)(a) *Training Provider:* William L. James Enterprises, Inc.

Address: P.O. Box 1478, Scranton, PA 18501-1478, Contact: William L. James, Phone: (717) 344-5830.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/20/88).
Contractor/Supervisor (contingent from 4/20/88).

EPA-Approved Training Courses

REGION IV – Atlanta, GA

Regional Asbestos Coordinator: Liz Wilde, EPA, Region IV, 345 Courtland St., NE, (4APT-PT), Atlanta, GA 30365. (404) 347-5014, (FTS) 257-5014.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IV training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* A.S.C. Consultants, Inc.

Address: P.O. Box 31, Waynesville, NC 28786, Contact: Terry LaDuke, Phone: (704) 452-3449.

(b) *Approved Course:*

Abatement Worker (contingent from 6/22/89).

(2)(a) *Training Provider:* AHP Research, Inc.

Address: 1502 Johnsons Ferry Rd., Atlanta, GA 30362, Contact: Dwight Brown, Phone: (404) 565-0061.

(b) *Approved Courses:*

Contractor/Supervisor Refresher Course (contingent from 1/6/89).
Inspector/Management Planner (interim from 5/28/86 to 12/13/87).
Inspector/Management Planner (full from 12/14/87).

(3)(a) *Training Provider:* ATEC Associates, Inc.

Address: 129 West Valley Ave., Birmingham, AL 35209-3691, Contact: W. David Yates, Phone: (205) 945-9224.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/14/89).
Contractor/Supervisor (contingent from 4/14/89).
Inspector/Management Planner (contingent from 4/14/89).

(4)(a) *Training Provider:* ATI Environmental Services.

Address: P.O. Box 3044, Louisville, KY 40201, Contact: Tim Ellis, Phone: (502) 589-5308.

(b) *Approved Courses:*

Abatement Worker (full from 1/12/88).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (full from 1/12/88).
Contractor/Supervisor Refresher Course (contingent from 2/21/89).

(5)(a) *Training Provider:* All Gulf Contractors, Inc.

Address: 3654 Halls Mill Rd., Mobile, AL 36693, Contact: Robert Pettie, Phone: (205) 665-5199.

(b) *Approved Course:*

Abatement Worker (contingent from 2/22/89).

(6)(a) *Training Provider:* American Environmental Safety Institute.

Address: P.O. Box 212116, Columbia, SC 29221-2116, Contact: Kim Cleveland, Phone: (803) 731-2986.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/29/89).
Abatement Worker Refresher Course (contingent from 12/16/88).
Contractor/Supervisor (full from 10/17/88).
Contractor/Supervisor Refresher Course (contingent from 12/16/88).
Inspector/Management Planner (full from 2/8/89).

(7)(a) *Training Provider:* Arch Training Services, Inc.

Address: Hotel Royal Plaza, P.O. Box 22203, Lake Buena Vista, FL 32830-2203, Contact: Arleen Folkes Goldberg, Phone: (407) 827-3985.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 3/2/89).
Inspector/Management Planner (contingent from 3/2/89).

(8)(a) *Training Provider:* Asbestos Abatement Associates, Inc.

Address: 1211 Boiling Springs Rd., Spartanburg, SC 29303, Contact: Otey Reynolds, Phone: (803) 582-1222.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/17/89).
Abatement Worker (full from 6/26/89).
Contractor/Supervisor (contingent from 3/7/89).

(9)(a) *Training Provider:* Asbestos Consultants, Inc.

Address: P.O. Box 9054, Greensboro, NC 27408, Contact: Thomas Petty, Phone: (919) 275-3907.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/9/88).

(10)(a) *Training Provider:* Asbestos Consulting & Training Systems.

Address: 903 Northwest 6th Ave., Ft. Lauderdale, FL 33311, Contact: James F. Stump, Phone: (305) 524-7208.

(b) *Approved Courses:*

Abatement Worker (full from 5/6/88).
Contractor/Supervisor (contingent from 2/22/89).

(11)(a) *Training Provider:* Asbestos Techincal Resource Center, Inc.

Address: P.O. Box 2755, Covington, GA 30209-2755, Contact: Timothy E. Fuller, Phone: (404) 361-9182.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/2/89).
Abatement Worker Refresher Course (full from 6/7/89).
Contractor/Supervisor (contingent from 6/2/89).
Contractor/Supervisor Refresher Course (full from 6/7/89).

(12)(a) *Training Provider:* Atlantic Environmental Consulting, Inc.

Address: 12200 Southwest 132 Ct., Miami, FL 33186, Contact: Stephan R. Schanamann, Phone: (305) 232-6364.

(b) *Approved Course:*

Abatement Worker (contingent from 8/11/88).

(13)(a) *Training Provider:* BCM Engineers, Inc.

Address: 108 St. Anthony St., P.O. Box 1784, Mobile, AL 36633, Contact: H. Conrad Freeman, Phone: (205) 433-3981.

(b) *Approved Courses:*

Inspector/Management Planner (full from 11/11/87).
Inspector/Management Planner Refresher Course (contingent from 11/10/88).
Project Designer (full from 12/8/87).
Project Designer Refresher Course (contingent from 5/4/89).

(14)(a) *Training Provider:* Betchel Construction, Inc.

Address: P.O. Box 3218, Florida City, FL 33034, Contact: R.C. Slover, Phone: (305) 246-6565.

(b) *Approved Course:*

Abatement Worker (contingent from 3/13/89).

(15)(a) *Training Provider:* Big Bend Abatement, Inc.

Address: 3542 West Orange Ave., Tallahassee, FL 32310, Contact: Robert Law, Phone: (904) 576-0130.

(b) *Approved Course:*

Abatement Worker (contingent from 4/28/89).

(16)(a) *Training Provider:* Briggs Associates Int'l. Inc.

Address: 4209 Vineland Rd., Suites J-9/10, Orlando, FL 32811, Contact: Jim McCulloch, Phone: (407) 422-3522.

(b) *Approved Course:*

Abatement Worker (contingent from 5/4/89).

(17)(a) *Training Provider:* CRU Incorporated.

Address: 13029 Middletown Industrial Blvd., Louisville, KY 40223, Contact: Donna Ringo, Phone: (502) 244-8844.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/1/89).
Contractor/Supervisor (contingent from 5/1/89).
Inspector/Management Planner (contingent from 5/26/89).

(18)(a) *Training Provider:* DPC General Contractors, Inc.

Address: 250 Arizona Ave., NE, Bldg. A, Atlanta, GA 30307, Contact: Glen Kahler, Phone: (404) 373-0561.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/5/88).
Abatement Worker (full from 5/9/88).

(19)(a) *Training Provider:* EEC, Inc.

Address: 2245 North Hills Dr., Suite J, Raleigh, NC 27612, Contact: Mike Shrimanker, Phone: (919) 782-8910.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/7/89).
Abatement Worker Refresher Course (contingent from 5/3/89).

(20)(a) *Training Provider:* ELB & Associates, Inc.

Address: 605 Eastowne Dr., Chapel Hill, NC 27514, Contact: Michael L. Cannon, Phone: (919) 493-4471.

(b) *Approved Course:*

Abatement Worker (contingent from 6/30/88).

(21)(a) *Training Provider:* Energy Support Services, Inc.

Address: P.O. Box 6098, Ashville, NC 28816, Contact: Edward T. Rochelle, Phone: (704) 258-8888.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/5/89).

(22)(a) *Training Provider:* Enpuricon Asbestos Management.

Address: 6308 - D Angus Dr., Raleigh, NC 27613, Contact: Terry E. Slate, Phone: (919) 781-0686.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/11/89).
Contractor/Supervisor (contingent from 2/6/89).

(23)(a) *Training Provider:* Enviro Science, Inc.

Address: 3509 Hayworth Dr., Raleigh, NC 26709, Contact: Reginald C. Jordan, Phone: (919) 782-6527.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 9/15/88).

(24)(a) *Training Provider:* Enviro-Tech.

Address: 550 Comet St., No. 16, P.O. Box 6752, Jacksonville, FL 32236, Contact: Rafael Abrev, Phone: (904) 384-0732.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/28/89).
Contractor/Supervisor (contingent from 7/11/89).

(25)(a) *Training Provider:* Environmental Aspecs, Inc.

Address: 1527 North Dale Mabry Hwy., Suite 105, Lutz, FL 33549-3010, Contact: Dennis L. Mast, Phone: (813) 948-1387.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/22/89).
Abatement Worker (full from 7/7/89).
Abatement Worker Refresher Course (contingent from 7/18/89).
Contractor/Supervisor (contingent from 4/14/89).
Inspector/Management Planner (contingent from 6/30/89).

(26)(a) *Training Provider:* Environmental Engineering Co., Inc.

Address: 500 Rivermont Rd., Columbia, SC 29210, Contact: Russell Richard, Phone: (803) 256-7846.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/17/89).
Contractor/Supervisor (contingent from 2/17/89).

(27)(a) *Training Provider:* Environmental Resources Group.

Address: 3845 Viscount, Memphis, TN 38118, Contact: Lee C. Thompson, Phone: (901) 795-0432.

(b) *Approved Course:*

Abatement Worker (contingent from 11/14/88).

(28)(a) *Training Provider:* Evans Environmental & Geological Science & Management, Inc.

Address: 2631 Southwest 27 St., Miami, FL 33133, Contact: Charles Evans, Phone: (305) 856-7458.

(b) *Approved Course:*

Abatement Worker (contingent from 1/31/89).

(29)(a) *Training Provider:* Fayetteville Technical Community College.

Address: P.O. Box 35236, Fayetteville, NC 28303, Contact: John McNeill, Phone: (919) 323-1961.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/1/89).
Contractor/Supervisor (contingent from 5/1/89).

(30)(a) *Training Provider:* Georgia Tech. Institute.

Address: O'Keefe Building, Room 029, Atlanta, GA 30332, Contact: Robert D. Schmitter, Phone: (404) 894-3806.

(b) *Approved Courses:*

Contractor/Supervisor (interim from 6/1/85 to 5/10/87).
Contractor/Supervisor (full from 5/11/87).
Contractor/Supervisor Refresher Course (contingent from 9/23/87).
Contractor/Supervisor Refresher Course (full from 7/7/88).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (contingent from 10/24/88).
Inspector/Management Planner Refresher Course (full from 11/29/88).
Project Designer (contingent from 6/1/88).
Project Designer (full from 6/7/88).
Project Designer Refresher Course (contingent from 1/31/89).
Project Designer Refresher Course (full from 3/22/89).

(31)(a) *Training Provider:* Great Barrier Insulation Co.

Address: Meador Warehouse, Western Dr., Mobile, AL 36607, Contact: Thomas Knotts, Phone: (205) 476-0350.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/13/88).
Abatement Worker (full from 4/4/89).
Abatement Worker Refresher Course (contingent from 3/30/89).

(32)(a) *Training Provider:* Harmon Engineering Associates.

Address: 1550 Pumphrey Ave., Auburn, AL 36830, Contact: Roger W. Thompson, Phone: (205) 821-9250.

(b) *Approved Course:*

Abatement Worker (contingent from 1/4/89).

(33)(a) *Training Provider:* Harrison Contracting, Inc.

Address: 3845 Viscount St., Suite 12, Memphis, TN 38118, Contact: Lee C. Thompson, Phone: (901) 795-0432.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 10/12/88).

(34)(a) *Training Provider:* Howard I. Henson Training Institute.

Address: 3592 Flat Shoals Rd., Decatur, GA 30034, Contact: Stephen Henson, Phone: (404) 243-5107.

(b) *Approved Course:*

Abatement Worker (full from 2/16/88).

(35)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 13.

Address: 145 East First St., Jacksonville, FL 32206, Contact: Tom Mallard, Phone: (904) 355-4881.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/23/89).
Abatement Worker Refresher Course (contingent from 1/23/89).
Contractor/Supervisor (contingent from 1/23/89).
Contractor/Supervisor (full from 4/24/89).

Contractor/Supervisor Refresher Course (contingent from 1/23/89).

(36)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 46.

Address: 7111 Wright Rd., Knoxville, TN 37931, Contact: John Wade, Phone: (615) 938-1274.

(b) *Approved Courses:*

Abatement Worker (full from 10/11/88).

Contractor/Supervisor (full from 1/9/89).

Contractor/Supervisor Refresher Course (contingent from 11/4/89).

Contractor/Supervisor Refresher Course (full from 1/9/89).

(37)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 48.

Address: 374 Maynard Terrace, SE, Suite 232, Atlanta, GA 30316, Contact: Timothy Fuller, Phone: (404) 373-8806.

(b) *Approved Courses:*

Abatement Worker (full from 5/4/88).

Contractor/Supervisor (full from 6/27/88).

Contractor/Supervisor Refresher Course (full from 11/2/88).

Inspector (contingent from 9/26/88).

Inspector (full from 9/28/88).

(38)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 60.

Address: 13000 Northwest 47th Ave., Miami, FL 33054, Contact: David Cleveland, Phone: (305) 681-6679.

(b) *Approved Courses:*

Abatement Worker (full from 11/15/88).

Contractor/Supervisor (full from 12/12/88).

(39)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 67.

Address: 7930 U.S. Hwy. 301 N, Tampa, FL 33637, Contact: Don Tucker, Phone: (813) 965-3067.

(b) *Approved Courses:*

Abatement Worker (full from 6/23/89).

Contractor/Supervisor (full from 11/29/88).

(40)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 72.

Address: 2513 Adams St., Wilmington, NC 28401, Contact: Mike Harrell, Phone: (919) 343-1730.

(b) *Approved Course:*

Abatement Worker (full from 8/10/88).

(41)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 78.

Address: 600 Main St., Gardendale, AL 35071, Contact: Bill Boothe, Phone: (205) 631-4640.

(b) *Approved Courses:*

Abatement Worker (full from 10/25/88).

Contractor/Supervisor Refresher Course (full from 5/17/89).

(42)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 86.

Address: 4822 Charlotte Ave., Nashville, TN 37209, Contact: Don Cundiff, Phone: (615) 297-7127.

(b) *Approved Courses:*

Abatement Worker (full from 7/10/89).

Contractor/Supervisor (full from 7/10/89).

(43)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 96.

Address: 811 East 66th St., Savannah, GA 31405, Contact: Robert G. Greene, Phone: (912) 352-0014.

(b) *Approved Courses:*

Abatement Worker (full from 7/26/88).

Contractor/Supervisor (full from 9/13/88).

(44)(a) *Training Provider:* LCI Training Institute.

Address: 1432 Jocasta Dr., Lexington, KY 40502-5320, Contact: John F. Summersett, Phone: (606) 273-8881.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/9/88).

Contractor/Supervisor (contingent from 6/9/88).

(45)(a) *Training Provider:* Laborers District Council of Southeast Florida.

Address: 799 Northwest 62nd St., Miami, FL 33510, Contact: Albert Houston, Phone: (305) 754-2659.

(b) *Approved Course:*

Abatement Worker (full from 3/15/88).

(46)(a) *Training Provider:* Lang Engineering of Florida, Inc.

Address: 5432 Commerce Park Blvd., Tampa, FL 33610, Contact: Robert Lang, Phone: (813) 622-6311.

(b) *Approved Course:*

Abatement Worker (contingent from 1/17/89).

(47)(a) *Training Provider:* Medical (Musc) University of South Carolina Dept. of Environmental Health.

Address: 171 Ashley Ave., Charleston, SC 29425, Contact: Jan Temple, Phone: (803) 792-5315.

(b) *Approved Courses:*

Abatement Worker (full from 12/19/88).

Abatement Worker Refresher Course (contingent from 2/2/89).

Contractor/Supervisor Refresher Course (contingent from 2/2/89).

Contractor/Supervisor Refresher Course (full from 5/3/89).

Inspector/Management Planner Refresher Course (contingent from 2/2/89).

Inspector/Management Planner Refresher Course (full from 5/2/88).

(48)(a) *Training Provider:* Mississippi State University Dept. of Continuing Education.

Address: Memorial Hall-Bar Ave., P.O. Drawer 5247, Mississippi State, MS 39762-5247, Contact: Margaret V. Naugle, Phone: (601) 325-2677.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).

Contractor/Supervisor (contingent from 7/19/88).

Contractor/Supervisor (full from 6/29/89).

Contractor/Supervisor Refresher Course (contingent from 5/26/89).

Inspector/Management Planner (full from 6/20/88).

Inspector/Management Planner Refresher Course (contingent from 5/26/89).

Project Designer (contingent from 12/15/88).

Project Designer Refresher Course (contingent from 5/26/89).

(49)(a) *Training Provider:* National Asbestos Council (NAC) Training Dept.

Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Zachary S. Cowan, III, Phone: (404) 633-2622.

(b) *Approved Courses:*

Abatement Worker (interim from 7/1/86 to 6/1/87).

Abatement Worker (full from 7/1/87).

Abatement Worker Refresher Course (contingent from 2/6/89).

(50)(a) *Training Provider:* National Monitoring Labs, Inc.

Address: 1400 North 46th St., Suite V-28, Tampa, FL 33613, Contact: Gil Rakshi, Phone: (800) 347-3414.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 4/14/89).

Contractor/Supervisor Refresher Course (contingent from 5/23/89).

Inspector/Management Planner (contingent from 4/14/89).

Inspector/Management Planner Refresher Course (contingent from 5/23/89).

(51)(a) *Training Provider:* PDR Engineers, Inc.

Address: 2000 Lindell Ave., Nashville, TN 37203, Contact: Ayaja K. Upephyaya, Phone: (615) 298-2065.

(b) *Approved Course:*

Inspector (contingent from 9/15/88).

(52)(a) *Training Provider:* Practical Environmental Training Institute.

Address: P.O. Box 28308, Charlotte, NC 28221-6308, Contact: Dianne Christenbery, Phone: (704) 598-9588.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/20/88).

Abatement Worker (full from 10/24/88).

Contractor/Supervisor (contingent from 1/17/89).

Contractor/Supervisor (full from 3/20/89).

(53)(a) *Training Provider:* Republic Industries, Inc.

Address: P.O. Box 5565, Station 1, Wilmington, NC 28403, Contact: Gerry Phelps, Phone: (919) 799-2664.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/23/89).

Contractor/Supervisor Refresher Course (contingent from 6/5/89).

(54)(a) *Training Provider:* Retra Services, Inc.

Address: 1730 U.S. Alt. 19 South, Suite H, Tarpon Springs, FL 34689, Contact: Phillip Paroff, Phone: (800) 548-5848.

(b) *Approved Courses:*

Abatement Worker (full from 1/24/89).

Abatement Worker Refresher Course (contingent from 12/29/88).

Abatement Worker Refresher Course (full from 1/24/89).

(55)(a) *Training Provider:* South Carolina Research & Training Center.

Address: 300 Gervais St., Annex III, Columbia, SC 29201, Contact: Jan Temple, Phone: (803) 737-2060.

(b) *Approved Courses:*

Contractor/Supervisor (full from 3/8/88).

Inspector/Management Planner (full from 3/1/88).

(56)(a) *Training Provider:* Southeast Asbestos Free Environments, Inc.

Address: 350 South Second Ave., P.O. Box 51267, Jacksonville Beach, FL 32250, Contact: Jim Ilardi, Phone: (904) 723-3568.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).

Contractor/Supervisor (contingent from 1/18/89).

(57)(a) *Training Provider:* Technical Abatement Service, Inc.

Address: 697 East Lemon St., Bartow, FL 33830, Contact: John W. Pery, Phone: (813) 533-0685.

(b) *Approved Course:*

Abatement Worker (contingent from 6/21/89).

(58)(a) *Training Provider:* Tennessee Environmental Services.

Address: 1604 Williamson Ct., Brentwood, TN 37027, Contact: Claire Badan, Phone: (615) 373-6792.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/26/89).

Contractor/Supervisor (contingent from 5/26/89).

(59)(a) *Training Provider:* The Environmental Institute.

Address: COBB Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067, Contact: Eva Clay, Phone: (404) 425-2000.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/10/87).

Abatement Worker (full from 5/2/88).

Contractor/Supervisor (contingent from 12/10/87).

Contractor/Supervisor (full from 2/1/88).

Contractor/Supervisor Refresher Course (full from 5/19/88).

Inspector/Management Planner (contingent from 12/10/87).

Inspector/Management Planner (full from 1/25/88).

Inspector/Management Planner Refresher Course (full from 11/8/88).

Project Designer (contingent from 2/5/88).

Project Designer (full from 2/9/88).

Project Designer Refresher Course (contingent from 4/17/89).

(60)(a) *Training Provider:* University of Alabama, Tuscaloosa College of Continuing Studies, Division of Envir. & Industrial Prog.

Address: P.O. Box 2967, Tuscaloosa, AL 35486-2967, Contact: William Weems, Phone: (205) 348-3033.

(b) *Approved Courses:*

Abatement Worker (full from 4/5/88).

Contractor/Supervisor (full from 12/14/87).

Inspector/Management Planner (full from 5/16/88).

(61)(a) *Training Provider:* University of Alabama-Birmingham Deep South Center.

Address: Birmingham, AL 35294, Contact: Elizabeth Lynch, Phone: (205) 934-7032.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 3/21/88).

Inspector/Management Planner (full from 3/21/88).

Inspector/Management Planner Refresher Course (contingent from 3/3/89).

(62)(a) *Training Provider:* University of Florida TREEO Center.

Address: 3900 Southwest 63rd Blvd., Gainesville, FL 32608, Contact: Peggy Cook-Holland, Phone: (904) 392-9470.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).

Contractor/Supervisor (interim from 2/9/87 to 4/30/87).

Contractor/Supervisor (full from 5/1/87).

Contractor/Supervisor Refresher Course (contingent from 1/17/89).

Inspector/Management Planner (interim from 1/27/87 to 12/14/87).

Inspector/Management Planner (contingent from 2/5/88).

Inspector/Management Planner (full from 2/15/88).

(63)(a) *Training Provider:* University of Kentucky, College of Engineering Continuing Education.

Address: 305 Slone Bldg., Lexington, KY 40506-0053, Contact: A.B. Broderson, Phone: (606) 257-4300.

(b) *Approved Courses:*

Abatement Worker Refresher Course (contingent from 3/30/89).

Contractor/Supervisor Refresher Course (contingent from 5/24/89).

Inspector Refresher Course (contingent from 3/3/89).

Inspector/Management Planner (full from 2/15/88).

(64)(a) *Training Provider:* University of North Carolina Occupational Safety & Health Educational Resource Center.

Address: 109 Conner Dr., Suite 1101, Chapel Hill, NC 27514, Contact: Ted Williams, Phone: (919) 962-2101.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 6/1/88).

Contractor/Supervisor (full from 6/6/88).

Contractor/Supervisor Refresher Course (contingent from 6/7/89).

Inspector/Management Planner (contingent from 11/9/87).

Inspector/Management Planner (full from 11/9/87).

Inspector/Management Planner Refresher Course (contingent from 12/15/88).

Project Designer (contingent from 5/2/89).

Project Designer Refresher Course (contingent from 6/22/89).

(65)(a) *Training Provider:* University of South Carolina School of Public Health c/o Azimuth Inc.

Address: 9229 University Blvd, Charleston, SC 29418, Contact: Betty Schnee, Phone: (803) 553-9458.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/9/88).

Contractor/Supervisor (contingent from 5/5/88).

Contractor/Supervisor Refresher Course (contingent from 5/24/89).

(66)(a) *Training Provider:* WESTON, INC.

Address: 1635 Pumphrey Ave., Auburn, AL 36830-4303, Contact: Ronald Thompson, Phone: (205) 826-6100.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/13/88).

Contractor/Supervisor (contingent from 10/13/88).

Contractor/Supervisor (full from 5/15/89).

Contractor/Supervisor Refresher Course (contingent from 1/31/89).

Inspector/Management Planner (contingent from 5/12/88).

Inspector/Management Planner Refresher Course (contingent from 12/15/88).

Project Designer (contingent from 8/23/88).

Project Designer Refresher Course (contingent from 1/31/89).

(67)(a) *Training Provider:* Westinghouse Environmental Geotechnical Services, Inc.

Address: 3100 Spring Forest Rd., Suite 118, P.O. Box 58069, Raleigh, NC 27658-8069, Contact: James R. Penland, Phone: (919) 872-2660.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/8/89).

Contractor/Supervisor (contingent from 7/18/89).

(68)(a) *Training Provider:* Williams & Associates, Inc. Environmental Training Center.

Address: 480 Tennessee St., Memphis, TN 38103, Contact: Ruth Williams, Phone: (901) 521-9030.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/18/88).

Abatement Worker (full from 4/18/88).

Abatement Worker Refresher Course (contingent from 5/1/89).

Contractor/Supervisor (contingent from 2/18/88).

Contractor/Supervisor (full from 4/18/88).

Contractor/Supervisor Refresher Course (contingent from 5/1/89).

EPA-Approved Training Courses

REGION V—Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA, Region V, 230 S. Dearborn St., (5-SPT-7), Chicago, IL 60604. (312) 886-6003, (FTS) 886-6003.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region V training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Abatement Training Institute, Inc.

Address: P.O. Box 28835, Columbus, OH 43228-0835, Contact: Steven Ritchie, Phone: (614) 267-0906.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/88).

Abatement Worker Refresher Course (contingent from 4/25/89).

(2)(a) *Training Provider:* Advanced Mechanical Insulation, Inc.

Address: 205 West Randolph St., Suite 1050, Chicago, IL 60606, Contact: Jeffery M. Bertrand, Phone: (312) 704-9494.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).

Contractor/Supervisor (contingent from 3/2/89).

(3)(a) *Training Provider:* Affiliated Environmental Services, Inc.

Address: 3808 Venice Rd., Sandusky, OH 44870, Contact: Jack Dauch, Phone: (419) 627-1976.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/14/88).

Abatement Worker (full from 10/24/88).

Abatement Worker Refresher Course (contingent from 2/2/89).

Contractor/Supervisor (contingent from 12/29/88).

Contractor/Supervisor (full from 2/27/89).

Contractor/Supervisor Refresher Course (contingent from 2/2/89).

Inspector/Management Planner (contingent from 5/30/89).

(4)(a) *Training Provider:* Alderink & Associates, Inc.

Address: 3221 Three Mile Rd., NW, Grand Rapids, MI 49504, Contact: Deborah C. Alderink, Phone: (616) 791-0730.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/15/88).

Abatement Worker (full from 9/6/88).

Abatement Worker Refresher Course (contingent from 9/1/88).

Abatement Worker Refresher Course (full from 9/6/88).

Contractor/Supervisor (contingent from 7/15/88).

Contractor/Supervisor (full from 9/19/88).

Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(5)(a) *Training Provider:* American Asbestos Institute, Inc. (Formerly Illinois Asbetos Council).

Address: Box 7477, Springfield, IL 62791, Contact: Donald G. Handy, Phone: (217) 523-8747.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/29/89).

Contractor/Supervisor (contingent from 3/29/89).

Inspector/Management Planner (contingent from 3/29/89).

(6)(a) *Training Provider:* American Environmental Institute.

Address: Main Campus, Plaza West, Cleveland, OH 44116, Contact: Gary P. Block, Phone: (216) 333-6225.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).

Abatement Worker Refresher Course (contingent from 12/8/88).

Contractor/Supervisor (contingent from 9/1/88).

Contractor/Supervisor Refresher Course (contingent from 12/8/88).

Inspector/Management Planner (contingent from 11/14/88).

(7)(a) *Training Provider:* American Industrial Hygiene Association.

Address: 475 Wolf Ledges Pkwy., Akron, OH 44311-1087, Contact: Mary Christ, Phone: (216) 762-7294.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 2/23/89).

(8)(a) *Training Provider:* Applied Environmental Sciences, Inc.

Address: Minneapolis Business & Technology, Center, 511 11th Ave. S, Minneapolis, MN 55415, Contact: Franklin H. Dickson, Phone: (612) 338-5558.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/30/88).

Abatement Worker Refresher Course (contingent from 3/16/89).

Contractor/Supervisor (contingent from 2/7/89).

Contractor/Supervisor Refresher Course (contingent from 3/16/89).

(9)(a) *Training Provider:* Aries Environmental Services, Ltd.

Address: 1550 Hubbard, Batavia, IL 60510, Contact: Dennis Cesarotti, Phone: (312) 879-3006.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/13/88).

Abatement Worker Refresher Course (contingent from 1/19/89).

(10)(a) *Training Provider:* Asbestos Abatement, Inc.

Address: 2420 N. Grand River, Lansing, MI 48906, Contact: Shawn O'Callaghan, Phone: (517) 323-0053.

(b) *Approved Course:*

Abatement Worker (contingent from 7/6/88).

(11)(a) *Training Provider:* Asbestos Consulting Group, Inc.

Address: P.O. Box 3157, La Crosse, WI 54602-3157, Contact: Larry Lienau, Phone: (608) 782-1070.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 7/12/88).

Inspector/Management Planner (contingent from 10/14/88).

(12)(a) *Training Provider:* Asbestos Management, Inc.

Address: 36700 South Huron, Suite 104, New Boston, MI 48164, Contact: LaDonna Shifco, Phone: (313) 961-6135.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).

Abatement Worker Refresher Course (contingent from 1/4/89).

Contractor/Supervisor (contingent from 8/18/87).

Inspector/Management Planner (contingent from 1/26/88).

Inspector/Management Planner (full from 2/1/88).

Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(13)(a) *Training Provider:* Asbestos Roofing Technology, Inc.

Address: P.O. Box 211, Lyons, IL 60534, Contact: Jay E. Refieuna, Phone: (312) 352-0400.

(b) *Approved Course:*

Abatement Worker (contingent from 4/13/89).

(14)(a) *Training Provider:* Asbestos Services, Inc.

Address: P.O. Box 141, Baroda, MI 49101, Contact: Dennis W. Calkins, Phone: (616) 422-2174.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).

Abatement Worker Refresher Course (contingent from 3/17/89).

Contractor/Supervisor (contingent from 8/12/88).

Contractor/Supervisor Refresher Course (contingent from 3/17/89).

(15)(a) *Training Provider:* Asbestos Technology & Training, Inc.

Address: 1188 Summit Ave., St. Paul, MN 55105, Contact: James D. Risimini, Phone: (612) 290-0342.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).

Abatement Worker Refresher Course (contingent from 2/7/89).

Contractor/Supervisor (contingent from 7/27/88).

Contractor/Supervisor Refresher Course (contingent from 2/7/89).

Inspector/Management Planner (contingent from 7/27/88).

Inspector/Management Planner Refresher Course (contingent from 2/7/89).

(16)(a) *Training Provider:* Asbestos Training & Employment, Inc. (ATEI).

Address: 809 East 11th St., Michigan City, IN 46360, Contact: Tom Dwyer, Phone: (219) 874-7348.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/15/88).

Abatement Worker (full from 5/18/88).

Abatement Worker Refresher Course (contingent from 12/11/88).

Contractor/Supervisor (contingent from 1/19/88).

Contractor/Supervisor (full from 6/20/88).

Contractor/Supervisor Refresher Course (contingent from 12/11/88).

Inspector/Management Planner (contingent from 5/13/88).

Inspector/Management Planner Refresher Course (contingent from 12/11/88).

(17)(a) *Training Provider:* Asbestos Workers Council.

Address: 1210 East McMillan St., Room 107, Cincinnati, OH 45206, Contact: Richard Black, Phone: (513) 221-5869.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

(18)(a) *Training Provider:* Astesco Laboratory, Inc.

Address: P.O. Box 517, Cloverdale, IN 46120, Contact: Donald R. Allen, Phone: (317) 795-4724.

(b) *Approved Courses:*

Abatement Worker (full from 10/31/88).

Abatement Worker Refresher Course (contingent from 2/7/89).

Contractor/Supervisor (contingent from 2/23/89).

Contractor/Supervisor Refresher Course (contingent from 2/23/89).

(19)(a) *Training Provider:* BDN Industrial Hygiene Consultants.

Address: 8105 Valleywood Lane, Portage, MI 49002, Contact: Keith Nichols, Phone: (616) 329-1237.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/88).

Contractor/Supervisor (contingent from 10/1/87).

Contractor/Supervisor Refresher Course (contingent from 9/15/88).

Inspector/Management Planner (contingent from 1/15/88).

Inspector/Management Planner (full from 2/15/88).

(20)(a) *Training Provider:* Ball State University.

Address: College of Sciences & Humanities-, Department of Natural Resources, Muncie, IN 47306, Contact: Thad Godish, Phone: (317) 285-5780.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/30/89).

(21)(a) *Training Provider:* Bems Engineering, Inc.

Address: 18600 Northville Rd., Suite 209, Northville, MI 48167, Contact: Eugene L. Kunz, Phone: (313) 348-9167.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 12/29/88).

Contractor/Supervisor Refresher Course (contingent from 12/29/88).

Inspector (contingent from 1/18/89).

Inspector/Management Planner Refresher Course (contingent from 1/4/89).

Project Designer (contingent from 3/2/89).

(22)(a) *Training Provider:* Bierlein Demolition Contractors, Inc.

Address: 2903 South Graham Rd., Saginaw, MI 48609-8078, Contact: Harry T. Dryer, Jr., Phone: (517) 781-1810.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/7/89).

Contractor/Supervisor (contingent from 2/7/89).

(23)(a) *Training Provider:* Boelter Associates, Inc.

Address: 8700 W Bryn Mawr Ave., South Tower, Suite 401, Chicago, IL 60631, Contact: Philip Ramos, Phone: (312) 380-1070.

(b) *Approved Course:*

Contractor/Supervisor Refresher Course (contingent from 5/22/89).

(24)(a) *Training Provider:* Bowling Green State University Environmental Health Program.

Address: 102 Health Center, Bowling Green, OH 43403-0280, Contact: Gary S. Silverman, Phone: (419) 372-7774.

(b) *Approved Course:*

Abatement Worker (contingent from 4/21/89).

(25)(a) *Training Provider:* Carnow, Conibear & Associates, Ltd.

Address: 333 West Wacker Dr., Suite 1400, Chicago, IL 60606, Contact: Victoria Musselman, Phone: (312) 782-4486.

(b) *Approved Course:*

Abatement Worker (full from 2/29/88).

(26)(a) *Training Provider:* Centin Corp.

Address: 6601 North Interchange Rd., Evansville, IN 47715, Contact: Dan Sanders, Phone: (812) 474-6220.

(b) *Approved Course:*

Abatement Worker (contingent from 3/30/89).

(27)(a) *Training Provider:* Charles J. Ogg and Associates.

Address: P.O. Box 815, Newburgh, IN 47629-0815, Contact: Charles J. Ogg, Phone: (812) 853-7607.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/29/88).

Contractor/Supervisor (contingent from 5/1/89).

(28)(a) *Training Provider:* Clayton Environmental Consultants, Inc.

Address: 22345 Roethel Dr., Novi, MI 48050, Contact: Michael Coffman, Phone: (313) 344-1770.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 1/26/88).

Inspector/Management Planner (full from 2/16/88).

(29)(a) *Training Provider:* Cleveland Environmental Services, Inc.

Address: P.O. Box 14643, Cincinnati, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-4143.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/89).

Contractor/Supervisor (contingent from 4/21/89).

(30)(a) *Training Provider:* Cleveland Wrecking Co.

Address: 1400 Harrison Ave., P.O. Box 145530, Cincinnati, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-1160.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/89).

Contractor/Supervisor (contingent from 1/18/89).

(31)(a) *Training Provider:* Columbus Paraprofessional Institute Battelle Columbus Division.

Address: 505 King Ave., Columbus, OH 43201-2693, Contact: John Simpkins, Phone: (614) 424-6424.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 4/4/88).

Inspector/Management Planner (full from 4/11/88).

Inspector/Management Planner Refresher Course (contingent from 11/30/88).

(32)(a) *Training Provider:* Construction & General Laborers Training Trust Fund.

Address: 400 East Ogden Ave., Westmont, IL 60559, Contact: Anthony Solano, Phone: (312) 323-8999.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/16/88).

Abatement Worker (full from 1/23/89).

Abatement Worker Refresher Course (contingent from 12/1/88).

(33)(a) *Training Provider:* D/E 3.

Address: 7471-H Tyler Blvd., Mentor, OH 44060, Contact: Harold N. Danto, Phone: (216) 942-4800.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/7/88).

Abatement Worker Refresher Course (contingent from 1/4/89).

(34)(a) *Training Provider:* Daniel J. Hartwig Associates, Inc.

Address: P.O. Box 31, Oregon, WI 53575-0031, Contact: Alice J. Seeliger, Phone: (608) 835-5781.

(b) *Approved Courses:*

Abatement Worker (full from 10/18/88).

Abatement Worker Refresher Course (contingent from 4/25/89).

Contractor/Supervisor (contingent from 4/11/89).

Contractor/Supervisor Refresher Course (contingent from 4/25/89).

Inspector/Management Planner (contingent from 2/9/88).

Inspector/Management Planner (full from 4/18/88).

Inspector/Management Planner Refresher Course (contingent from 2/23/89).

(35)(a) *Training Provider:* Darla Environmental, Inc.

Address: 1220 Richards St., Suite H, Joliet, IL 60433-2758, Contact: Salvador Garcia, Phone: (815) 722-5561.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/7/88).

Contractor/Supervisor (contingent from 10/7/88).

(36)(a) *Training Provider:* DeLisle Associates, Ltd.

Address: 6946 East North Ave., Kalamazoo, MI 49001, Contact: Mark A. DeLisle, Phone: (616) 385-1018.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/1/88).

Abatement Worker (full from 1/23/89).

Contractor/Supervisor (contingent from 10/5/87).

Contractor/Supervisor (full from 10/20/87).

Contractor/Supervisor Refresher Course (contingent from 9/1/88).

Inspector/Management Planner (contingent from 12/22/87).

Inspector/Management Planner (full from 1/27/88).

Inspector/Management Planner Refresher Course (contingent from 2/23/89).

(37)(a) *Training Provider:* Dore & Associates Contracting, Inc.

Address: 900 Harry S. Truman Pkwy., P.O. Box 146, Bay City, MI 48707, Contact: Joseph Goldring, Phone: (517) 684-8358.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/6/88).

Abatement Worker (full from 7/25/88).

Abatement Worker Refresher Course (contingent from 10/31/88).

Contractor/Supervisor (contingent from 10/31/88).

Contractor/Supervisor Refresher Course (contingent from 3/29/89).

(38)(a) *Training Provider:* Ecological Services, Inc.

Address: 107 Clay St., Tiffin, OH 44880-0715, Contact: Harish N. Pandhi, Phone: (419) 447-2514.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).

Abatement Worker Refresher Course (contingent from 3/7/89).

(39)(a) *Training Provider:* Environment Technology of Fort Wayne, Inc.

Address: 9208 Hessen Cassel Rd., Fort Wayne, IN 46816, Contact: Randy C. Aumsbaugh, Phone: (219) 447-3141.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/5/89).

Abatement Worker Refresher Course (contingent from 4/7/89).

(40)(a) *Training Provider:* Environmental & Occupational Consulting & Training, Inc.

Address: 3410 East Cork St., Kalamazoo, MI 49001, Contact: A. Clark Kahn, Phone: (616) 388-8099.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/89).

Abatement Worker Refresher Course (contingent from 3/7/89).

Contractor/Supervisor (contingent from 3/1/89).

Contractor/Supervisor Refresher Course (contingent from 3/7/89).

(41)(a) *Training Provider:* Environmental Abatement Systems, Inc.

Address: 6416 Ellsworth, Detroit, MI 48238, Contact: Farrell Davis, Phone: (313) 345-3154.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).

Contractor/Supervisor (contingent from 8/12/88).

(42)(a) *Training Provider:* Environmental Diversified Services, Inc.

Address: 24356 Sherwood, Center Line, MI 48015-1061, Contact: Michael D. Berg, Phone: (313) 757-4800.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/30/89).

Abatement Worker Refresher Course (contingent from 4/14/89).

Contractor/Supervisor (contingent from 3/30/89).

Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(43)(a) *Training Provider:* Environmental Mangement Consultants, Inc.

Address: 5201 Middle Mt. Vernon Rd., Evansville, IN 47712, Contact: Barbara S. Kramer, Phone: (812) 424-7768.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/9/89).

Contractor/Supervisor (contingent from 3/9/89).

(44)(a) *Training Provider:* Environmental Professionals, Inc.

Address: 1405 Newton St., Tallmadge, OH 44278, Contact: Edward C. Bruner, Phone: (216) 633-4435.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 2/2/88).

Contractor/Supervisor Refresher Course (contingent from 1/26/89).

(45)(a) *Training Provider:* Environmental Rehab, Inc.

Address: 700 Coronis Cir., Green Bay, WI 54304, Contact: Randy LaCrosse, Phone: (414) 337-0650.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/4/89).

Abatement Worker (full from 3/29/89).

(46)(a) *Training Provider:* Environmental Response Systems, Inc.

Address: 5319 Broadway Ave., Cleveland, OH 44127, Contact: Paul J. Stroud, Jr., Phone: (216) 883-1152.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 12/29/88).

(47)(a) *Training Provider:* Environmental Safety Training Services, Inc.

Address: 902 Mulberry St., Marshall, IL 62441, Contact: Dave Juelich, Phone: (217) 525-8181.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).

Abatement Worker Refresher Course (contingent from 1/17/89).

(48)(a) *Training Provider:* Environmental Technologies Co. (Formerly Lee Environmental Services, Inc.).

Address: 2727 Second Ave., Detroit, MI 48201, Contact: David W. McDowell, Phone: (313) 961-4230.

(b) *Approved Course:*

Abatement Worker (contingent from 3/17/89).

(49)(a) *Training Provider:* Environmental Training Institute.

Address: 4708 Angola Rd., Toledo, OH 43615, Contact: Dale Bruhl, Jr., Phone: (419) 382-9200.

(b) *Approved Course:*

Abatement Worker (contingent from 1/18/89).

(50)(a) *Training Provider:* Escor, Inc.

Address: 540 Frontage Rd., Suite 211, Northfield, IL 60093, Contact: R. Eric Zimmerman, Phone: (312) 501-2190.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).

Abatement Worker Refresher Course (contingent from 9/15/88).

Contractor/Supervisor (contingent from 8/12/88).

Contractor/Supervisor Refresher Course (contingent from 9/15/88).

Inspector/Management Planner (contingent from 8/12/88).

Inspector/Management Planner Refresher Course (contingent from 9/1/88).

(51)(a) *Training Provider:* Foley Occupational Health Consulting.

Address: 2490 North Reynolds Rd., Toledo, OH 43615, Contact: E.D. Foley, Jr., Phone: (419) 531-7190.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 2/4/88).

Contractor/Supervisor Refresher Course (contingent from 1/4/89).

(52)(a) *Training Provider:* G & H Contracting Associates, Ltd.

Address: 300 Acorn St., P.O. Box 49020, Plainwell, MI 49080, Contact: Jeffrey C. Gren, Phone: (616) 685-1606.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/7/88).

Abatement Worker (full from 11/7/88).

Contractor/Supervisor (contingent from 4/21/89).

(53)(a) *Training Provider:* Gandee & Associates, Inc.

Address: 4488 Mobile Dr., Columbus, OH 43220, Contact: Kurt Varga, Phone: (614) 459-8338.

(b) *Approved Courses:*

Abatement Worker (full from 1/17/89).

Contractor/Supervisor (contingent from 6/1/88).

Contractor/Supervisor (full from 8/29/88).

Contractor/Supervisor Refresher Course (contingent from 7/26/89).

Inspector/Management Planner (contingent from 3/3/89).

(54)(a) *Training Provider:* Hazard Management Group, Inc.

Address: P.O. Box 627, Ashtabula, OH 44004, Contact: Gabriel Demshar, Jr., Phone: (216) 992-1122.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/4/89).

Contractor/Supervisor (contingent from 1/4/89).

(55)(a) *Training Provider:* Hazardous Materials Institute, Inc.

Address: 1550 Old Henderson Road, Suite N-232, Columbus, OH 43222, Contact: Al Wilson, Phone: (614) 459-1105.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).

Abatement Worker Refresher Course (contingent from 9/15/88).

Contractor/Supervisor (contingent from 8/12/88).

Contractor/Supervisor Refresher Course (contingent from 9/15/88).

Inspector/Management Planner (contingent from 8/3/88).

Inspector/Management Planner Refresher Course (contingent from 9/15/88).

Project Designer (contingent from 10/14/88).

(56)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 17 Apprentice Training Center.

Address: 3850 South Racine Ave., Chicago, IL 60609, Contact: John P. Shine, Phone: (312) 247-1007.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/2/87).
Abatement Worker (full from 11/8/87).
Abatement Worker Refresher Course (contingent from 10/14/88).
Contractor/Supervisor (contingent from 3/21/88).
Contractor/Supervisor (full from 3/22/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(57)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 34.

Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee Houske, Phone: (612) 332-3216.

(b) *Approved Courses:*

Abatement Worker (full from 11/8/88).
Contractor/Supervisor (full from 11/8/88).

(58)(a) *Training Provider:* I.P.C. of Chicago.

Address: 4309 West Henderson, Chicago, IL 60641, Contact: Robert G. Cooley, Phone: (312) 718-7395.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/5/87).
Abatement Worker (full from 8/8/88).
Contractor/Supervisor (contingent from 2/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner Refresher Course (contingent from 2/7/89).

(59)(a) *Training Provider:* Illinois Environmental Institute.

Address: 8425 West 95th St., Hickory Hills, IL 60457, Contact: William T. Giova, Phone: (312) 839-9000.

(b) *Approved Course:*

Abatement Worker (contingent from 3/3/89).

(60)(a) *Training Provider:* Illinois Laborers' & Contractors Training Program.

Address: R.R. 3, Mount Sterling, IL 62353, Contact: Tony Romolo, Phone: (217) 773-2741.

(b) *Approved Courses:*

Abatement Worker (full from 12/15/85).
Abatement Worker Refresher Course (contingent from 9/1/88).
Contractor/Supervisor (contingent from 2/9/88).
Contractor/Supervisor (full from 3/14/88).
Contractor/Supervisor Refresher Course (contingent from 2/27/89).

(61)(a) *Training Provider:* Ilse Engineering, Inc.

Address: 7177 Arrowhead Rd., Duluth, MN 55811, Contact: John F. Ilse, Phone: (218) 729-6858.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(62)(a) *Training Provider:* Indiana Laborers Training Trust Fund.

Address: P.O. Box 758, Bedford, IN 47421, Contact: Richard Fassino, Phone: (812) 279-9751.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/87).
Abatement Worker (full from 2/22/88).
Abatement Worker Refresher Course (contingent from 10/7/88).
Contractor/Supervisor (contingent from 6/2/88).
Contractor/Supervisor (full from 8/15/88).
Contractor/Supervisor Refresher Course (contingent from 6/14/89).

(63)(a) *Training Provider:* Indianapolis Center for Advanced Research, Inc.

Address: 611 North Capitol Ave., Indianapolis, IN 46204, Contact: William Beranek, Jr., Phone: (317) 262-5027.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/13/88).
Abatement Worker (full from 1/10/89).
Abatement Worker Refresher Course (contingent from 12/27/88).
Contractor/Supervisor (contingent from 9/15/88).
Contractor/Supervisor (full from 1/10/89).
Contractor/Supervisor Refresher Course (contingent from 12/27/88).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 6/6/88).
Inspector/Management Planner Refresher Course (contingent from 12/6/88).

(64)(a) *Training Provider:* Industrial Environmental Consultants.

Address: 2875 Northwind, Suite 113, East Lansing, MI 48823, Contact: James C. Fox, Phone: (517) 332-7026.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/9/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 8/3/88).
Contractor/Supervisor (full from 1/23/89).
Contractor/Supervisor Refresher Course (contingent from 12/5/88).
Inspector/Management Planner (contingent from 3/1/88).

(65)(a) *Training Provider:* Institute for Environmental Assessment.

Address: 2829 Verndale Ave., Anoka, MN 55303, Contact: Bill Sloan, Phone: (612) 427-5310.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).
Inspector Refresher Course (contingent from 2/23/89).

(66)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 19.

Address: 9401 West Beloit Rd., No. 209, Milwaukee, WI 53227, Contact: Randall Gottsacker, Phone: (414) 321-2828.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/29/88).
Abatement Worker (full from 5/15/89).
Abatement Worker Refresher Course (contingent from 1/26/89).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 1/26/89).

(67)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 34.

Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee A. Houske, Phone: (612) 332-3216.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/8/88).
Contractor/Supervisor (contingent from 9/1/88).

(68)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers, Local Union No. 127.

Address: 2787 Pamela Dr., Green Bay, WI 54302, Contact: Michael A. Simons, Phone: (414) 468-5973.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 1/18/89).

(69)(a) *Training Provider:* JWP Enterprises, Ltd.

Address: 122 Water St., Baraboo, WI 53913, Contact: Stephen P. Jandrowski, Phone: (608) 356-2101.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/6/89).

Abatement Worker Refresher Course (contingent from 6/8/89).
Contractor/Supervisor (contingent from 6/6/89).
Contractor/Supervisor Refresher Course (contingent from 6/8/89).

(70)(a) *Training Provider:* Kemron Environmental Services, Inc.

Address: 32740 Northwestern Hwy., Farmington Hills, MI 48018, Contact: Sara A. Bassett, Phone: (313) 626-2426.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 5/13/88).
Contractor/Supervisor (full from 2/27/89).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner (contingent from 3/25/88).
Inspector/Management Planner Refresher Course (contingent from 1/4/89).

(71)(a) *Training Provider:* Lakeland Contractors, Inc.

Address: 7615-B St. Clair St., Mentor, OH 44060, Contact: Rex Harris, Phone: (216) 942-0006.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/4/89).
Abatement Worker Refresher Course (contingent from 4/11/89).

(72)(a) *Training Provider:* Lepi Enterprises, Inc.

Address: 917 Main St., Dresden, OH 43821, Contact: James R. Lepi, Phone: (614) 754-1162.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/6/88).
Abatement Worker Refresher Course (contingent from 4/25/89).

(73)(a) *Training Provider:* Lyle Training Institute.

Address: 41 South Grant, Columbus, OH 43215, Contact: Andrea D. Hamblin, Phone: (614) 224-8822.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/21/88).
Contractor/Supervisor (contingent from 3/7/89).
Inspector/Management Planner (contingent from 6/30/88).
Inspector/Management Planner Refresher Course (contingent from 3/16/89).

(74)(a) *Training Provider:* M.K. Moore & Sons, Inc.

Address: 5150 Wagoner-Ford Rd., Dayton, OH 45414, Contact: Catherine C. Buchanan, Phone: (513) 236-1812.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/31/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(75)(a) *Training Provider:* MacNeil Environmental, Inc.

Address: 799 Roosevelt Rd., Building 6, Glen Ellyn, IL 60137, Contact: James E. Viskocil, Phone: (312) 858-2092.

(b) *Approved Courses:*

Contractor/Supervisor Refresher Course (contingent from 7/6/89).
Inspector/Management Planner Refresher Course (contingent from 7/6/89).

(76)(a) *Training Provider:* Manage Right Asbestos Consultants.

Address: 314 West Genesee Ave., Saginaw, MI 48602, Contact: Mary Margaret Brown, Phone: (517) 753-9290.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/24/89).
Abatement Worker Refresher Course (contingent from 4/27/89).
Contractor/Supervisor (contingent from 4/7/89).

(77)(a) *Training Provider:* Mark A. Kriesemint, Ltd.

Address: P.O. Box 06198, Chicago, IL 60606-0198, Contact: Mark Kriesemint, Phone: (312) 463-0206.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

(78)(a) *Training Provider:* Metropolitan Detroit AFL-CIO Training Center.

Address: 14333 Prairie, Detroit, MI 48238, Contact: Richard M. King, Phone: (313) 863-1000.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).

(79)(a) *Training Provider:* Michigan Laborers Training Institute.

Address: 11155 South Beardslee Rd., Perry, MI 48872, Contact: Edwin H. McDonald, Phone: (517) 625-4919.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/9/88).
Abatement Worker (full from 5/2/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (contingent from 4/6/88).
Contractor/Supervisor (full from 5/6/88).
Contractor/Supervisor Refresher Course (contingent from 11/14/88).

(80)(a) *Training Provider:* Midwest Center for Occupational Health & Safety.

Address: 640 Jackson St., St. Paul, MN 55101, Contact: Ruth K. McIntyre, Phone: (612) 221-3992.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/16/88).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 5/23/88).
Inspector/Management Planner Refresher Course (contingent from 12/1/88).

(81)(a) *Training Provider:* Midwest Health Training.

Address: 3920 Central, Western Springs, IL 60558, Contact: H.C. Brown, Phone: (312) 246-9527.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/25/88).
Abatement Worker (full from 4/25/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 2/23/89).

(82)(a) *Training Provider:* Milwaukee Asbestos Information Center.

Address: 2224 South Kinnickinnic Ave., Milwaukee, WI 53207, Contact: Thomas R. Ortell, Phone: (414) 744-8100.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 2/23/89).
Contractor/Supervisor (contingent from 12/1/88).
Contractor/Supervisor Refresher Course (contingent from 2/23/89).
Inspector/Management Planner (contingent from 3/2/89).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

(83)(a) *Training Provider:* Moraine Valley Community College.

Address: 10900 South 88th Ave., Palos Hills, IL 60465, Contact: Richard Kukac, Phone: (312) 974-5733.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/7/89).

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Abatement Worker Refresher Course (contingent from 3/16/89).

Contractor/Supervisor (contingent from 8/12/88).

Contractor/Supervisor Refresher Course (contingent from 12/6/88).

Inspector/Management Planner (full from 2/9/88).

Inspector/Management Planner Refresher Course (contingent from 12/6/88).

(84)(a) *Training Provider:* National Asbestos Abatement Corp.

Address: 1198 Robert T. Longway Blvd., Flint, MI 48503, Contact: James S. Sheaffer, Phone: (313) 232-7100.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/7/89).

Abatement Worker (full from 4/18/89).

(85)(a) *Training Provider:* National Institute for Abatement Education.

Address: 5501 Williamsburg Way No. 305, Madison, WI 53719, Contact: Dean Laischow, Phone: (608) 271-7261.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/15/88).

Contractor/Supervisor (contingent from 7/15/88).

(86)(a) *Training Provider:* Northern Safety Consultants, Inc.

Address: 1406 Lincoln Ave., Marquette, MI 49855, Contact: Christopher M. Baker, Phone: (906) 228-5161.

(b) *Approved Courses:*

Abatement Worker (full from 5/31/88).

Contractor/Supervisor (full from 5/31/88).

Contractor/Supervisor Refresher Course (contingent from 10/7/88).

(87)(a) *Training Provider:* Northland Environmental Services, Inc.

Address: P.O. Box 909, Stevens Point, WI 54481, Contact: Bob Voborsky, Phone: (715) 341-6699.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/89).

Abatement Worker Refresher Course (contingent from 1/18/89).

Contractor/Supervisor (contingent from 1/18/89).

Contractor/Supervisor Refresher Course (contingent from 1/18/89).

(88)(a) *Training Provider:* Nova Environmental Services.

Address: Suite 420 Hazeltine Gates, 1107 Hazeltine Blvd., Chaska, MN 55318, Contact: Deborah S. Green, Phone: (612) 448-9393.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/24/87).

Abatement Worker Refresher Course (contingent from 4/13/89).

Contractor/Supervisor (contingent from 9/1/88).

Contractor/Supervisor Refresher Course (contingent from 4/13/89).

(89)(a) *Training Provider:* Nova Environmental, Inc.

Address: 5340 Plymouth Rd., Suite 210, Ann Arbor, MI 48105, Contact: Kary S. Amin, Phone: (313) 930-0995.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/13/88).

Abatement Worker (full from 3/27/89).

Contractor/Supervisor (contingent from 10/7/88).

Contractor/Supervisor (full from 3/27/89).

Contractor/Supervisor Refresher Course (contingent from 10/7/88).

Inspector/Management Planner (contingent from 10/7/88).

Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(90)(a) *Training Provider:* Ohio Asbestos Workers Council.

Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206, Contact: Larry Briley, Phone: (513) 221-5969.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 2/17/88).

Contractor/Supervisor (full from 5/12/88).

(91)(a) *Training Provider:* Ohio Laborers Training & Upgrading Trust Fund.

Address: 25721 Coshocton Rd., P.O. Box 218, Howard, OH 43028, Contact: John L. Railing, Phone: (614) 599-7915.

(b) *Approved Courses:*

Abatement Worker (full from 4/11/88).

Abatement Worker Refresher Course (contingent from 9/1/88).

Contractor/Supervisor (contingent from 7/27/88).

Contractor/Supervisor Refresher Course (contingent from 6/6/89).

(92)(a) *Training Provider:* Olive-Harvey College Skill Center.

Address: 10001 South Woodlawn Ave., Chicago, IL 60628, Contact: Verondo Tucker, Phone: (312) 660-4841.

(b) *Approved Course:*

Abatement Worker (contingent from 3/6/89).

(93)(a) *Training Provider:* Peoria Public Schools.

Address: 3202 North Wisconsin Ave., Peoria, IL 61603, Contact: Emil S. Steinseifer, Phone: (309) 672-6512.

(b) *Approved Course:*

Abatement Worker Refresher Course (contingent from 11/14/88).

(94)(a) *Training Provider:* Professional Asbestos Labor Services, Inc.

Address: 1501 Martin Luther King Dr., Gary, IN 46407, Contact: George Bradley, Phone: (219) 883-8541.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/18/88).

Abatement Worker Refresher Course (contingent from 12/5/88).

(95)(a) *Training Provider:* Professional Service Industries, Inc.

Address: 510 East 22nd St., Lombard, IL 60148, Contact: W.K. Swartzendruber, Phone: (312) 691-1490.

(b) *Approved Courses:*

Inspector Refresher Course (contingent from 4/11/89).

Inspector/Management Planner (contingent from 12/15/88).

Inspector/Management Planner (full from 4/27/89).

(96)(a) *Training Provider:* Randolph & Associates, Inc.

Address: 8901 North Industrial Rd., Peoria, IL 61615, Contact: Kirk E. Sweetland, Phone: (309) 692-4422.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 5/30/89).

Contractor/Supervisor Refresher Course (contingent from 6/9/89).

(97)(a) *Training Provider:* Rend Lake College.

Address: Department AAA, Ina, IL 62846, Contact: Fred Bruno, Phone: (618) 437-5321.

(b) *Approved Course:*

Abatement Worker (contingent from 3/29/89).

(98)(a) *Training Provider:* Risk Services, Inc.

Address: 26384 Ford Rd., Suite 200, Dearborn Heights, MI 48127, Contact: Michael J. Borsuck, Phone: (313) 565-5225.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/11/89).

Abatement Worker Refresher Course (contingent from 4/11/89).

Contractor/Supervisor (contingent from 4/11/89).

Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(99)(a) *Training Provider:* S.Z. Mansdorf & Associates, Inc.

Address: 2000 Chestnut Blvd., Cuyahoga Falls, OH 44223-1323, Contact: S.Z. Mansdorf, Phone: (216) 928-5434.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 1/15/88).

Contractor/Supervisor (full from 2/12/88).

Contractor/Supervisor Refresher Course (contingent from 1/19/89).

Inspector/Management Planner (contingent from 6/24/88).

Inspector/Management Planner Refresher Course (contingent from 1/26/89).

(100)(a) *Training Provider:* Safer Foundation.

Address: 571 West Jackson Blvd., Chicago, IL 60606, Contact: C. Bentley or P. Bergmann, Phone: (312) 922-2200.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/15/88).

Abatement Worker (full from 7/7/89).

(101)(a) *Training Provider:* Safety Training of Illinois.

Address: 1515 South Park, Springfield, IL 62704, Contact: S. David Farris, Phone: (217) 787-9091.

(b) *Approved Courses:*

Abatement Worker (full from 12/18/87).

Abatement Worker Refresher Course (contingent from 11/14/88).

(102)(a) *Training Provider:* Sear Corp.

Address: 8802 Bash St., Suite F, Indianapolis, IN 46256, Contact: Todd M. Strader, Phone: (317) 576-5845.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/3/89).

Abatement Worker (full from 7/7/89).

(103)(a) *Training Provider:* Seneca Asbestos Removal & Control, Inc.

Address: 76 Ashwood Rd., Tiffin, OH 44883, Contact: Roger Bakies, Phone: (419) 447-0202.

(b) *Approved Course:*

Abatement Worker (contingent from 4/21/89).

(104)(a) *Training Provider:* Sierra Analytical & Consulting Services, Inc.

Address: 307 North First St., Ann Arbor, MI 48103, Contact: David Nelson, Phone: (313) 662-1155.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/17/89).

Contractor/Supervisor (contingent from 1/26/89).

Contractor/Supervisor (full from 3/13/89).

(105)(a) *Training Provider:* South East Michigan Committee on Occupational Safety and Health (SEMCOSH).

Address: 1550 Howard St., Detroit, MI 48216, Contact: Barbara Boylan, Phone: (313) 961-3345.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/13/87).

Abatement Worker (full from 4/25/88).

Abatement Worker Refresher Course (contingent from 4/25/89).

(106)(a) *Training Provider:* Testing Engineers & Consultants, Inc.

Address: 1333 Rochester Rd., P.O. Box 249, Troy, MI 48099, Contact: Karl D. Agee, Phone: (313) 588-6200.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 5/9/88).

Inspector/Management Planner (full from 8/22/88).

Inspector/Management Planner Refresher Course (contingent from 3/30/89).

(107)(a) *Training Provider:* The Brand Companies.

Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Frank J. Barta, Phone: (312) 298-1200.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/4/89).

Abatement Worker (full from 5/1/89).

Abatement Worker Refresher Course (contingent from 6/8/89).

Contractor/Supervisor (contingent from 7/7/89).

(108)(a) *Training Provider:* The Clear Consortium.

Address: 127 North Dearborn St., Chicago, IL 60602, Contact: Lorenzo Higgins, Phone: (312) 368-0211.

(b) *Approved Course:*

Abatement Worker (contingent from 7/18/89).

(109)(a) *Training Provider:* The Environmental Institute.

Address: 314 South State Ave., Indianapolis, IN 46201, Contact: Cindy Witte, Phone: (317) 269-3618.

(b) *Approved Course:*

Abatement Worker Refresher Course (contingent from 12/22/88).

(110)(a) *Training Provider:* Thermico, Inc.

Address: 3405 Centennial Dr., P.O. Box 2151, Midland, MI 48641-2151, Contact: Kevin Otis, Phone: (517) 496-2927.

(b) *Approved Course:*

Abatement Worker (contingent from 4/7/89).

(111)(a) *Training Provider:* Tillotson Consulting & Training, Inc.

Address: 9332 Oakview, Portage, MI 49002, Contact: Michael R. Tillotson, Phone: (616) 323-2124.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/29/88).

Abatement Worker Refresher Course (contingent from 12/11/88).

Contractor/Supervisor (contingent from 12/29/88).

Contractor/Supervisor Refresher Course (contingent from 12/11/88).

Inspector/Management Planner (contingent from 12/29/88).

Inspector/Management Planner Refresher Course (contingent from 12/11/88).

(112)(a) *Training Provider:* Trust Thermal Systems.

Address: 10445 Wright Rd., Eagle, MI 48822, Contact: Thomas Lowe, Phone: (517) 626-6791.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/1/88).

Abatement Worker Refresher Course (contingent from 4/7/89).

Contractor/Supervisor (contingent from 3/30/89).

Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(113)(a) *Training Provider:* University of Cincinnati Medical Center Institute of Environmental Health Kettering Laboratory.

Address: 3223 Eden Ave., ML 056, Cincinnati, OH 45267-0056, Contact: Judy L. Jarrell, Phone: (513) 558-1730.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/14/88).

Abatement Worker (full from 11/15/88).

Abatement Worker Refresher Course (contingent from 7/11/89).

Contractor/Supervisor (full from 10/20/87).

Contractor/Supervisor Refresher Course (contingent from 10/7/88).

Inspector/Management Planner (full from 11/16/87).

Inspector/Management Planner Refresher Course (contingent from 12/1/88).

(114)(a) *Training Provider:* University of Illinois at Chicago M.A.I.C.

Address: 1440 West Washington, Chicago, IL 60607, Contact: John J. Gammuto, Phone: (312) 829-1277.

(b) *Approved Courses:*

Abatement Worker (interim from 10/1/87 to 12/14/87).

Abatement Worker (contingent from 10/2/87).

Abatement Worker (full from 4/5/88).

Abatement Worker Refresher Course (contingent from 11/14/88).

Contractor/Supervisor (full from 6/1/86).

Contractor/Supervisor Refresher Course (contingent from 1/18/89).

Inspector/Management Planner (contingent from 10/2/87).

Inspector/Management Planner (full from 10/21/87).

Inspector/Management Planner Refresher Course (full from 2/17/89).

(115)(a) *Training Provider:* University of Wisconsin.

Address: 422 Lowell Hall, 610 Langdon St., Madison, WI 53703, Contact: Neil DeClercq, Phone: (608) 262-2111.

(b) *Approved Courses:*

Abatement Worker (full from 12/7/87).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 2/2/88).
Contractor/Supervisor (full from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/88).
Inspector/Management Planner (contingent from 2/2/88).
Inspector/Management Planner (full from 2/22/88).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Project Designer (contingent from 9/15/88).
Project Designer Refresher Course (contingent from 3/3/89).

(116)(a) *Training Provider:* William E. Fink & Associates.

Address: 3695 Indian Run, Suite 5, Canfield, OH 44406, Contact: William E. Fink, Phone: (216) 533-6290.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 2/13/89).
Abatement Worker Refresher Course (contingent from 8/11/88).

(117)(a) *Training Provider:* Wisconsin Laborers Training Center.

Address: P.O. Box 150, Almond, WI 54909, Contact: Dean Jensen, Phone: (715) 366-8221.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/8/87).
Abatement Worker (full from 11/29/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (contingent from 11/21/88).
Contractor/Supervisor (full from 11/29/88).

(118)(a) *Training Provider:* Wonder Makers, Inc.

Address: 3101 Dermo St., Kalamazoo, MI 49008, Contact: Michael A. Pinto, Phone: (616) 382-4154.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/16/89).
Abatement Worker Refresher Course (contingent from 3/9/89).
Contractor/Supervisor (contingent from 3/16/89).
Contractor/Supervisor Refresher Course (contingent from 3/16/89).
Inspector/Management Planner (contingent from 4/21/89).
Inspector/Management Planner Refresher Course (contingent from 4/21/89).

EPA-Approved Training Courses

REGION VI – Dallas, TX

Regional Asbestos Coordinator: John West, 6T-PT, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 655-7244, (FTS) 255-7244.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VI training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AAR, Inc.

Address: P.O. Box 742648, Houston, TX 77274-2648, Contact: David S. Barnett, Phone: (713) 777-9205.

(b) *Approved Course:*

Abatement Worker (contingent from 1/26/89).

(2)(a) *Training Provider:* AC & C Systems Corp.

Address: 7801 North Robinson, Oklahoma City, OK 73116, Contact: Turner Stallings, Phone: (405) 842-9872.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/20/88).
Contractor/Supervisor (contingent from 10/26/88).

(3)(a) *Training Provider:* AEGIS Associates, Inc.

Address: 4868 Research Dr., San Antonio, TX 78240, Contact: John J. Gokelman, Phone: (512) 641-6320.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 5/25/89).
Inspector Refresher Course (contingent from 4/4/89).

(4)(a) *Training Provider:* Abateco, Inc.

Address: 10000 Old Katy Rd., Suite 200, Houston, TX 77055, Contact: W.D. Heimbrook, Phone: (713) 461-0692.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/14/88).
Abatement Worker Refresher Course (contingent from 3/17/89).

(5)(a) *Training Provider:* American Specialty Contractors, Inc.

Address: 8181 West Darryl Pkwy, Baton Rouge, LA 70898, Contact: Kurt Jones, Phone: (504) 926-0824.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/18/88).
Abatement Worker (full from 5/3/89).
Contractor/Supervisor (contingent from 11/18/88).
Contractor/Supervisor (full from 5/4/89).

(6)(a) *Training Provider:* Analytical Labs Training Center.

Address: 218 Market St., Baird, TX 79504, Contact: Bob Dye, Phone: (915) 854-1264.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/21/89).
Contractor/Supervisor (contingent from 4/21/89).

(7)(a) *Training Provider:* Asbestos Surveys & Training, Inc.

Address: 5959 Centralcrest, Houston, TX 77092, Contact: J.T. Stoneburger, Phone: (713) 681-2839.

(b) *Approved Course:*

Abatement Worker (full from 10/22/87).

(8)(a) *Training Provider:* Carpenters Apprenticeship Training School.

Address: 8505 Glen Vista, Houston, TX 77061, Contact: S.C. Strunk, Jr., Phone: (713) 641-1011.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/8/88).
Abatement Worker Refresher Course (contingent from 7/8/88).

(9)(a) *Training Provider:* Certified Asbestos Training Institute, Inc.

Address: 4202 Argentina Cir., Pasadena, TX 77504, Contact: Clyde O. Waters, Phone: (713) 487-3155.

(b) *Approved Course:*

Abatement Worker (contingent from 4/20/88).

(10)(a) *Training Provider:* Critical Environmental Training, Inc.

Address: 5815 Gulf Freeway, Houston, TX 77023, Contact: Ronald F. Dodson, Phone: (713) 921-8921.

(b) *Approved Courses:*

Abatement Worker (full from 4/14/88).
Abatement Worker Refresher Course (full from 10/27/88).
Contractor/Supervisor (full from 3/7/88).
Contractor/Supervisor Refresher Course (full from 10/27/88).
Inspector/Management Planner (contingent from 3/21/88).
Inspector/Management Planner (full from 4/15/88).
Inspector/Management Planner Refresher Course (full from 10/27/88).

(11)(a) *Training Provider:* Environmental Consultant Service.

Address: P.O. Box 596422, Dallas, TX 75257, Contact: Thomas Armstrong, Phone: (214) 638-3589.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/20/89).
Contractor/Supervisor (contingent from 4/20/89).
Inspector/Management Planner (contingent from 4/20/89).

(12)(a) *Training Provider:* Environmental Institute.

Address: P.O. Box 270278, Dallas, TX 75227, Contact: E. H. Hurst, Phone: (214) 553-8868.

(b) *Approved Courses:*

Contractor/Supervisor (full from 1/11/88).
Inspector/Management Planner (full from 1/25/88).

(13)(a) *Training Provider:* Environmental Monitoring Service, Inc. (EMS).

Address: 13008 Amarillo Ave., Austin, TX 78729, Contact: Rick Pruett, Phone: (512) 335-9116.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/88).
Contractor/Supervisor (contingent from 3/1/88).
Inspector/Management Planner (contingent from 4/19/89).

(14)(a) *Training Provider:* Field Sciences Institute.

Address: P.O. Box 4673, Santa Fe, NM 87502, Contact: Robert L. Edgar, Phone: (505) 988-4143.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 4/22/88).
Inspector/Management Planner (contingent from 4/22/88).

(15)(a) *Training Provider:* Fort Worth Independent School District.

Address: 3210 West Lancaster, Fort Worth, TX 76107, Contact: H.D. Duncan, Phone: (817) 336-8311.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 7/27/88).

(16)(a) *Training Provider:* GEBCO Associates, Inc.

Address: 1501 Norwood, Suite 142, Hurst, TX 76054-3638, Contact: Ed Kirch, Phone: (817) 268-4006.

(b) *Approved Courses:*

Abatement Worker (interim from 4/15/87 to 8/19/87).
Abatement Worker (full from 8/20/87).
Abatement Worker Refresher Course (contingent from 5/16/88).
Contractor/Supervisor (contingent from 3/15/88).
Contractor/Supervisor Refresher Course (contingent from 7/27/88).
Inspector/Management Planner (full from 3/7/88).
Inspector/Management Planner Refresher Course (contingent from 7/27/88).

(17)(a) *Training Provider:* Gary LaFrance Abatement Workers Training Program.

Address: 4802 Prestwick, Tyler, TX 75703, Contact: Gary G. LaFrance, Phone: (214) 581-8852.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/14/88).
Abatement Worker (full from 4/12/89).

(18)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 22.

Address: 3219 Pasadena Blvd., Pasadena, TX 77503, Contact: Robert M. Chadwick, Phone: (713) 473-0888.

(b) *Approved Courses:*

Abatement Worker (interim from 10/1/87 to 10/4/87).
Abatement Worker (contingent from 10/5/87).
Abatement Worker (full from 3/22/88).
Abatement Worker Refresher Course (contingent from 10/5/87).
Contractor/Supervisor (full from 8/27/88).

(19)(a) *Training Provider:* K & T Safety Service, Inc.

Address: 9888 Bissonnett, Houston, TX 77036, Contact: Kevin Clothier, Phone: (713) 988-9021.

(b) *Approved Course:*

Abatement Worker (contingent from 3/28/89).

(20)(a) *Training Provider:* Keers Environmental, Inc.

Address: P.O. Box 6646, Albuquerque, NM 86197, Contact: Robert W. Keers, Phone: (505) 888-9525.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 3/28/89).

(21)(a) *Training Provider:* Kiser Engineering, Inc.

Address: 211 North River St., Seguin, TX 78155, Contact: Nathan Kiser, Phone: (512) 372-2570.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/27/89).
Contractor/Supervisor (contingent from 3/29/89).

(22)(a) *Training Provider:* Lafayette Parish School Board Asbestos Training Program.

Address: P.O. Drawer 2158, Lafayette, LA 70502, Contact: Salvador E. Lango, Phone: (504) 687-3746.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/21/88).
Contractor/Supervisor (contingent from 7/21/88).

(23)(a) *Training Provider:* Lamar University, Hazardous Materials Program.

Address: P.O. Box 10008, Beaumont, TX 77710, Contact: Marion Foster, Phone: (409) 880-2369.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/19/88).
Abatement Worker (full from 4/26/89).
Contractor/Supervisor (contingent from 5/20/88).
Contractor/Supervisor Refresher Course (contingent from 10/24/88).

(24)(a) *Training Provider:* Law Engineering.

Address: 5500 Guhn Rd., Houston, TX 77040, Contact: Richard MacIntyre, Phone: (713) 939-7161.

(b) *Approved Course:*

Abatement Worker (contingent from 3/14/89).

(25)(a) *Training Provider:* Little-Tex Insulation Co., Inc.

Address: 911 North Frio St., San Antonio, TX 78207, Contact: Dan Juepe, Phone: (512) 222-8094.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/1/88).
Contractor/Supervisor (contingent from 8/1/88).

(26)(a) *Training Provider:* Louisiana Laborers Union-AGC Training Fund.

Address: P.O. Box 376, Livonia, LA 70755-0376, Contact: Jamie Peers, Phone: (504) 637-2311.

(b) *Approved Course:*

Abatement Worker (contingent from 7/15/88).

(27)(a) *Training Provider:* Louisiana State University Agricultural & Mechanical College.

Address: 361 Pleasant Hall, Baton Rouge, LA 70803-1520, Contact: George Smith, Phone: (504) 388-6621.

(b) *Approved Courses:*

Abatement Worker (full from 1/1/88).
Abatement Worker Refresher Course (contingent from 11/16/88).
Abatement Worker Refresher Course (full from 3/8/89).
Contractor/Supervisor (contingent from 10/6/87).

Contractor/Supervisor (full from 4/7/88).
Contractor/Supervisor Refresher Course (contingent from 11/16/88).
Contractor/Supervisor Refresher Course (full from 3/6/89).
Inspector/Management Planner (full from 1/18/88).
Inspector/Management Planner Refresher Course (full from 3/7/89).

(28)(a) *Training Provider:* MARTECH International, Inc.

Address: P.O. Box 460, Broussard, LA 70518-0460, Contact: Gary Lawley, Phone: (318) 364-3880.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/17/89).
Contractor/Supervisor (contingent from 1/17/89).

(29)(a) *Training Provider:* Maxim Engineers, Inc.

Address: 2342 Fabens, Dallas, TX 75229, Contact: Kyle B. Dotson, Phone: (214) 247-7575.

(b) *Approved Course:*

Abatement Worker (contingent from 1/6/89).

(30)(a) *Training Provider:* Meador-Wright & Associates, Inc.

Address: 5520 LBJ Freeway, Suite 204, Dallas, TX 75240, Contact: Paul Teel, Phone: (214) 788-1804.

(b) *Approved Course:*

Inspector (contingent from 7/27/88).

(31)(a) *Training Provider:* Moore-Norman Area Vocational Training School.

Address: 4701-12th Ave., NW, Norman, OK 73069, Contact: Frank Coulter, Phone: (405) 364-5763.

(b) *Approved Courses:*

Abatement Worker (full from 3/3/86).
Abatement Worker Refresher Course (contingent from 5/19/89).
Contractor/Supervisor (full from 3/3/86).
Contractor/Supervisor Refresher Course (contingent from 5/19/89).
Inspector/Management Planner (contingent from 1/25/88).
Inspector/Management Planner (full from 4/4/88).
Inspector/Management Planner Refresher Course (contingent from 5/19/89).

(32)(a) *Training Provider:* Nelson/Imel, Inc.

Address: 3900 Morrison Cir., Norman, OK 73072, Contact: Deborah Nelson, Phone: (405) 364-3278.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 11/16/88).

(33)(a) *Training Provider:* O'Connor McMahon, Inc.

Address: 1505 Luna Rd., Suite 114, Carrollton, TX 75006, Contact: James M. Walley, Phone: (214) 245-3300.

(b) *Approved Course:*

Abatement Worker (contingent from 7/27/88).

(34)(a) *Training Provider:* Occupational Safety Training Institute.

Address: 9000 West Bellfort, Suite 450, Houston, TX 77031, Contact: Eva Bonilla, Phone: (713) 270-6882.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 12/8/88).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor (full from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 12/8/88).
Inspector/Management Planner (contingent from 9/15/88).

(35)(a) *Training Provider:* Protechnics Environmental Services.

Address: 14760 Memorial Dr., Suite 105, Houston, TX 77079, Contact: Hugh Songster, Phone: (713) 496-9874.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/5/89).
Contractor/Supervisor (contingent from 6/22/89).

(36)(a) *Training Provider:* R & H Associates, Inc.

Address: P.O. Box 8948, Albuquerque, NM 87198, Contact: Floyd Rubi, Phone: (505) 275-1045.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/12/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 1/12/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Inspector/Management Planner (contingent from 1/12/89).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).

(37)(a) *Training Provider:* Region 6 Environmental Training.

Address: P.O. Box 180435, Austin, TX 78718-0435, Contact: Rick Orr, Phone: (512) 251-3403.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).

(38)(a) *Training Provider:* Safety & Health Research Institute.

Address: 500 One Gallery Tower, 13355 Noel Rd., P.O. Box 612245, Dallas, TX 75261, Contact: Ted Davis, Phone: (214) 851-3536.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/12/88).
Contractor/Supervisor (contingent from 9/12/88).
Inspector/Management Planner (contingent from 9/12/88).

(39)(a) *Training Provider:* Southeast Arkansas Education Services Cooperative.

Address: U.A.M. - Willard Hall, P.O. Box 3507, Monticello, AR 71655, Contact: Lloyd Crossley, Phone: (501) 367-6848.

(b) *Approved Course:*

Inspector/Management Planner Refresher Course (contingent from 4/11/89).

(40)(a) *Training Provider:* Southwest Environmental Institute.

Address: P.O. Box 295, Abileene, TX 79604, Contact: Tom Dye, Phone: (915) 691-0189.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Contractor/Supervisor (contingent from 10/20/88).

(41)(a) *Training Provider:* Texas Engineering Extension Service Building Codes Inspection Training Division.

Address: Texas A & M University System, College Station, TX 77843-8000, Contact: Richard Thompson, Phone: (409) 845-6682.

(b) *Approved Courses:*

Abatement Worker (full from 9/28/87).
Contractor/Supervisor (interim from 5/26/86 to 9/13/87).
Contractor/Supervisor (full from 9/14/87).
Contractor/Supervisor Refresher Course (full from 3/2/89).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (full from 3/1/89).

(42)(a) *Training Provider:* Tulane University, School of Public Health & Tropical Medicine, Dept of Environmental Health Sciences.

Address: 1430 Tulane Ave., New Orleans, LA 70112, Contact: Shau-Wong-Chang, Phone: (504) 588-5374.

(b) *Approved Courses:*

Contractor/Supervisor (interim from 3/17/87 to 9/14/87).
Contractor/Supervisor (full from 9/15/87).
Inspector/Management Planner (contingent from 5/20/88).

(43)(a) *Training Provider:* U.S. Analytical, Inc.

Address: P.O. Box 801, Abilene, TX 79604, Contact: Keith Davis, Phone: (915) 698-3293.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/13/89).
Contractor/Supervisor (contingent from 2/13/89).

(44)(a) *Training Provider:* University of Arkansas at Little Rock Biology Dept.

Address: 33rd & University, Little Rock, AR 72204, Contact: Phyllis Moore, Phone: (501) 569-3270.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 4/20/88).

(45)(a) *Training Provider:* University of Arkansas at Little Rock, Labor Education Program.

Address: 2801 South University, Little Rock, AR 72204, Contact: James E. Nickles, Phone: (501) 569-8483.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 9/14/88).
Inspector/Management Planner Refresher Course (contingent from 9/12/88).

(46)(a) *Training Provider:* University of Houston/McClelland Management Services, Inc.

Address: Houston, TX 77204-3901, Contact: Patricia Robinson, Phone: (713) 749-7358.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 5/5/89).

(47)(a) *Training Provider:* University of New Mexico The Environmental Training Center Division of Continuing Education.

Address: 1634 University Blvd. NE, Albuquerque, NM 87131, Contact: Rupert Trujillo, Phone: (505) 277-3751.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 6/16/85).

(48)(a) *Training Provider:* University of Texas at Arlington Civil Engineering Dept.

Address: Box 19308, Arlington, TX 76019, Contact: Vic Argento, Phone: (817) 273-3694.

(b) *Approved Courses:*

Contractor/Supervisor (full from 7/14/86).
Contractor/Supervisor Refresher Course (full from 9/26/88).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (full from 9/26/88).

(49)(a) *Training Provider:* Veltmann Engineering.

Address: 2802 Exeter, Midland, TX 79705, Contact: Clyde Veltmann, Phone: (915) 694-1145.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Contractor/Supervisor (contingent from 7/27/88).

(50)(a) *Training Provider:* Young Insulation Group of Amarillo, Inc.

Address: P.O. Box 5098, Amarillo, TX 79117, Contact: Dennis C. Clayton, Phone: (806) 372-4329.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 7/27/88).

EPA-Approved Training Courses

REGION VII – Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA, Region VII, 726 Minnesota Ave., Kansas City, KS 66101. (913) 236-2835, (FTS) 757-2835.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VII training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Abatement Project Training.

Address: P.O. Box 4372, Kansas City, KS 66104, Contact: Virginia Ireton, Phone: (913) 798-3440.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).
Abatement Worker (full from 4/27/89).
Abatement Worker Refresher Course (contingent from 3/27/89).
Abatement Worker Refresher Course (full from 4/29/89).
Contractor/Supervisor (contingent from 3/23/89).
Contractor/Supervisor Refresher Course (contingent from 6/21/89).

(2)(a) *Training Provider:* Aerostat Engineering Consultants, Inc.

Address: 2817 Atchison Ave., Lawrence, KS 66046, Contact: Joseph Stimac, Phone: (913) 749-4747.

(b) *Approved Courses:*

Abatement Worker (full from 5/9/88).
Abatement Worker Refresher Course (contingent from 3/3/89).
Abatement Worker Refresher Course (full from 3/16/89).
Contractor/Supervisor (full from 5/9/88).
Contractor/Supervisor Refresher Course (contingent from 3/3/89).
Contractor/Supervisor Refresher Course (full from 3/17/89).
Inspector/Management Planner (contingent from 3/14/88).
Inspector/Management Planner (full from 1/23/89).
Inspector/Management Planner Refresher Course (contingent from 1/13/89).
Inspector/Management Planner Refresher Course (full from 2/14/89).

(3)(a) *Training Provider:* American Asbestos Training Center, Ltd.

Address: 121 East Grand St., Monticello, IA 52310, Contact: Steve Intlekofer, Phone: (319) 465-5555.

(b) *Approved Courses:*

Abatement Worker (full from 6/27/88).
Abatement Worker Refresher Course (contingent from 6/23/89).
Abatement Worker Refresher Course (full from 6/26/89).
Contractor/Supervisor (full from 6/27/88).
Contractor/Supervisor Refresher Course (contingent from 6/23/89).
Contractor/Supervisor Refresher Course (full from 6/26/89).
Inspector/Management Planner (contingent from 10/26/88).
Inspector/Management Planner (full from 11/18/88).

(4)(a) *Training Provider:* Asbestos Consulting Testing (ACT).

Address: 14953 West 101st Ter., Lenexa, KS 66215, Contact: Jim Pickel, Phone: (913) 492-1337.

(b) *Approved Courses:*

Abatement Worker (full from 1/25/88).
Abatement Worker Refresher Course (full from 1/6/89).
Contractor/Supervisor (full from 1/25/88).
Contractor/Supervisor Refresher Course (full from 1/6/89).

(5)(a) *Training Provider:* CHART Services, Ltd.

Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322, Contact: Mary A. Finn, Phone: (515) 276-3642.

(b) *Approved Courses:*

Abatement Worker (full from 11/17/87).
Abatement Worker Refresher Course (full from 10/17/88).
Contractor/Supervisor (full from 11/17/87).

Contractor/Supervisor Refresher Course (full from 10/17/88).

Inspector/Management Planner (full from 2/22/88).

Inspector/Management Planner Refresher Course (full from 11/28/88).

(6)(a) *Training Provider:* Construction Industry Laborers Training Institute for Eastern Missouri.

Address: Route 1, Box 79 H, High Hill, MO 63350, Contact: Jerald A. Pelker, Phone: (314) 585-2391.

(b) *Approved Courses:*

Abatement Worker (full from 1/19/88).

Abatement Worker Refresher Course (contingent from 5/24/89).

Abatement Worker Refresher Course (full from 5/31/89).

(7)(a) *Training Provider:* Construction Laborers Building Corp.

Address: Box 34549, Omaha, NE 68134, Contact: Jack Budd, Phone: (402) 572-0828.

(b) *Approved Course:*

Abatement Worker (full from 11/2/87).

(8)(a) *Training Provider:* Educational Innovations.

Address: Route 1, Box 79A, Leeton, MO 64761, Contact: JoAnn Onwiler, Phone: (816) 653-4371.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/11/89).

Abatement Worker (full from 5/2/89).

Abatement Worker Refresher Course (contingent from 3/29/89).

Contractor/Supervisor (contingent from 4/11/89).

Contractor/Supervisor (full from 5/2/89).

Contractor/Supervisor Refresher Course (contingent from 3/29/89).

Project Designer Refresher Course (contingent from 6/21/89).

(9)(a) *Training Provider:* Enviro-Impact Inspections, Inc.

Address: 1515 North Warson, Suite 213, St. Louis, MO 63132, Contact: Denis Boles, Phone: (314) 426-0087.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/8/88).

Contractor/Supervisor (contingent from 3/8/88).

(10)(a) *Training Provider:* Environmental Salvage, Ltd.

Address: 25 South 15th St., Suite 6A, Council Bluffs, IA 51501, Contact: Tracey Coates, Phone: (712) 323-1836.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/12/89).

Abatement Worker (full from 2/16/89).

Contractor/Supervisor (contingent from 1/12/89).

Contractor/Supervisor (full from 2/16/89).

Contractor/Supervisor Refresher Course (contingent from 6/22/89).

(11)(a) *Training Provider:* Environmental Technology, Inc.

Address: 4315 Merriam Dr., Overland Park, KS 66203, Contact: Mike Franano, Phone: (913) 236-5040.

(b) *Approved Courses:*

Abatement Worker (full from 2/29/88).

Abatement Worker Refresher Course (contingent from 4/26/89).

(12)(a) *Training Provider:* Flint Hills Area Vocational-Technical School.

Address: 3301 West 18th Ave., Emporia, KS 66801, Contact: Jim Krueger, Phone: (316) 342-6404.

(b) *Approved Course:*

Abatement Worker (full from 3/7/88).

(13)(a) *Training Provider:* General Services Administration (GSA) Safety and Environmental Management Div.

Address: 1500 East Bannister Rd., Kansas City, MO 64131-3088, Contact: Sharon Kersey, Phone: (816) 926-5318.

(b) *Approved Courses:*

Inspector/Management Planner (full from 5/16/88).

Inspector/Management Planner Refresher Course (contingent from 7/18/89).

(14)(a) *Training Provider:* Greater Kansas City Laborers Training Trust Fund.

Address: 8944 Kaw Dr., Kansas City, KS 66111, Contact: James D. Barnett, Phone: (913) 441-6100.

(b) *Approved Courses:*

Abatement Worker (full from 2/1/88).

Abatement Worker Refresher Course (contingent from 6/19/89).

Contractor/Supervisor (full from 5/2/88).

Contractor/Supervisor Refresher Course (contingent from 6/19/89).

(15)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: 4840 West 15th St., Lawrence, KS 66046, Contact: Alice Hart, Phone: (800) 637-0129.

(b) *Approved Courses:*

Abatement Worker (full from 8/17/87).

Abatement Worker Refresher Course (contingent from 9/19/88).

Abatement Worker Refresher Course (full from 10/19/88).

Contractor/Supervisor (full from 8/17/87).

Contractor/Supervisor Refresher Course (contingent from 9/19/88).

Contractor/Supervisor Refresher Course (full from 10/20/88).

Inspector/Management Planner (full from 8/17/87).

Inspector/Management Planner Refresher Course (full from 9/19/88).

Project Designer (full from 8/17/87).

Project Designer Refresher Course (contingent from 9/19/88).

Project Designer Refresher Course (full from 12/20/88).

(16)(a) *Training Provider:* Hazard Control Training Enterprises, Inc.

Address: P.O. Box 20594, Wichita, KS 67208, Contact: Karen Alexander, Phone: (316) 778-1153.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/19/88).

Contractor/Supervisor (contingent from 10/19/88).

(17)(a) *Training Provider:* Hazardous Materials Training & Research Institute.

Address: 306 West River Dr., Davenport, IA 52801-1221, Contact: Kirk Birkdoll, Phone: (319) 322-5015.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/6/89).

Abatement Worker (full from 4/13/89).

Contractor/Supervisor (contingent from 6/8/89).

(18)(a) *Training Provider:* Insulators & Asbestos Workers Midwest States Health & Training Council.

Address: Rural Route 2, Wahoo, NE 68066, Contact: Ray Richmond, Phone: (402) 443-4810.

(b) *Approved Courses:*

Abatement Worker (full from 6/28/88).

Abatement Worker Refresher Course (contingent from 4/4/89).

Abatement Worker Refresher Course (full from 4/24/89).

Contractor/Supervisor (full from 6/28/88).

Contractor/Supervisor Refresher Course (contingent from 4/4/89).

Contractor/Supervisor Refresher Course (full from 4/24/89).

(19)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 1.

Address: 3325 Hollenberg Dr., St. Louis, MO 63044, Contact: James Hagen, Phone: (314) 291-7399.

(b) *Approved Courses:*

Abatement Worker (full from 6/6/88).

Abatement Worker Refresher Course (contingent from 6/30/89).

Abatement Worker Refresher Course (full from 6/30/89).

Contractor/Supervisor (contingent from 9/16/88).

Contractor/Supervisor (full from 9/16/88).

(20)(a) *Training Provider:* Iowa Dept. of Education.

Address: Grimes State Office Bldg., Des Moines, IA 50319, Contact: C. Milt Wilson, Phone: (515) 281-4743.

(b) *Approved Course:*

Inspector/Management Planner (full from 4/4/88).

(21)(a) *Training Provider:* Iowa Laborers District Council Training Fund.

Address: 5806 Meredith Dr., Des Moines, IA 50322, Contact: Jack G. Jones, Phone: (515) 270-6965.

(b) *Approved Courses:*

Abatement Worker (full from 2/22/88).

Contractor/Supervisor (contingent from 10/14/88).

(22)(a) *Training Provider:* Kansas Construction Laborers' Training Trust Fund.

Address: 2430 Marlatt Ave., Manhattan, KS 66502, Contact: Fred Tipton, Phone: (913) 539-7902.

(b) *Approved Courses:*

Abatement Worker (full from 1/5/88).

Abatement Worker Refresher Course (contingent from 6/19/89).

Contractor/Supervisor (full from 5/2/88).

Contractor/Supervisor Refresher Course (contingent from 6/19/89).

(23)(a) *Training Provider:* Living Word College.

Address: 2750 McKelvey Rd., St. Louis, MO 63043, Contact: Donald C. Femmer, Phone: (314) 291-2749.

(b) *Approved Course:*

Inspector/Management Planner (full from 4/18/88 to 5/6/88 only).

(24)(a) *Training Provider:* Maple Woods Community College.

Address: 10771 Ambassador Dr., Kansas City, MO 64153, Contact: James C. Lauer, Phone: (816) 891-6500.

(b) *Approved Courses:*

Abatement Worker (full from 2/1/88).

Abatement Worker Refresher Course (full from 1/13/89).

Contractor/Supervisor (full from 3/28/88).

Contractor/Supervisor Refresher Course (full from 1/13/89).

Inspector/Management Planner (contingent from 4/20/88).

Inspector/Management Planner (full from 5/2/88).

Inspector/Management Planner Refresher Course (contingent from 7/27/89).

(25)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc., (META).

Address: P.O. Box 1961, Lawrence, KS 66044, Contact: Brad Mayhew/Betty Fenstemaker, Phone: (800) 444-6382.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/5/87).

Abatement Worker (full from 10/20/87).

Abatement Worker Refresher Course (full from 11/14/88).

Contractor/Supervisor (contingent from 10/5/87).

Contractor/Supervisor (full from 10/20/87).

Contractor/Supervisor Refresher Course (full from 11/14/88).

Inspector/Management Planner (full from 8/8/88).

Inspector/Management Planner Refresher Course (full from 1/30/89).

(26)(a) *Training Provider:* Midwest Environmental Testing & Training, Inc.

Address: 635 Southwest 2nd St., Box 1029, Lee's Summit, MO 64063, Contact: Steve Minshall, Phone: (816) 525-6681.

(b) *Approved Courses:*

Abatement Worker (full from 5/9/88).

Abatement Worker Refresher Course (contingent from 4/28/89).

Contractor/Supervisor (full from 5/9/88).

Contractor/Supervisor Refresher Course (contingent from 4/28/89).

(27)(a) *Training Provider:* Miton, Inc.

Address: P.O. Box 1582, Branson, MO 65616, Contact: Tony Williams, Phone: (417) 335-6743.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/14/89).

Abatement Worker (full from 5/15/89).

Contractor/Supervisor (contingent from 4/14/89).

Contractor/Supervisor (full from 5/15/89).

Inspector/Management Planner (full from 3/14/88).

Inspector/Management Planner Refresher Course (contingent from 3/30/89).

Inspector/Management Planner Refresher Course (full from 4/3/89).

(28)(a) *Training Provider:* National Asbestos Training Center University of Kansas.

Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211, Contact: Lani Himegarner, Phone: (913) 491-0181.

(b) *Approved Courses:*

Abatement Worker (full from 7/27/87).

Abatement Worker Refresher Course (contingent from 10/5/88).

Contractor/Supervisor (interim from 6/1/85 to 7/26/87).

Contractor/Supervisor (full from 7/27/87).

Contractor/Supervisor Refresher Course (contingent from 10/5/88).

Contractor/Supervisor Refresher Course (full from 1/25/89).

Inspector/Management Planner (full from 10/26/87).

Inspector/Management Planner Refresher Course (contingent from 10/5/88).

Inspector/Management Planner Refresher Course (full from 1/25/89).

(29)(a) *Training Provider:* PSH, Inc.

Address: 410 Mansion House Center, St. Louis, MO 63102, Contact: Carol E. Hoag, Phone: (314) 275-7733.

(b) *Approved Courses:*

Abatement Worker (full from 11/28/88).

Contractor/Supervisor (full from 11/28/88).

Inspector/Management Planner (full from 6/23/88).

Inspector/Management Planner Refresher Course (contingent from 1/19/89).

Inspector/Management Planner Refresher Course (full from 3/2/89).

(30)(a) *Training Provider:* Performance Abatement Services, Inc.

Address: 14801 West 99th St., P.O. Box 19328, Lenexa, KS 66215, Contact: Robert Bornkessel, Phone: (913) 888-2423.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 7/6/89).

(31)(a) *Training Provider:* Roth Asbestos Consultants, Inc.

Address: 1900 West 47th Pl., Westwood, KS 66205, Contact: Donald J. Welsh, Phone: (913) 831-4795.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/9/89).

Abatement Worker (full from 3/13/89).

Abatement Worker Refresher Course (contingent from 6/15/89).

Contractor/Supervisor (contingent from 5/16/89).

Contractor/Supervisor Refresher Course (contingent from 7/18/89).

Inspector/Management Planner Refresher Course (contingent from 1/18/89).

Inspector/Management Planner Refresher Course (full from 1/23/89).

(32)(a) *Training Provider:* Ryckmans Emergency Action Consulting Team (REACT).

Address: 2208 Welsch Industrial Ct., St. Louis, MO 63146, Contact: D. W. Ryckman, Phone: (314) 569-0991.

(b) *Approved Courses:*

Abatement Worker (full from 7/26/88).

Abatement Worker Refresher Course (contingent from 4/26/89).

Contractor/Supervisor (full from 7/26/88).

Contractor/Supervisor Refresher Course (contingent from 4/26/89).

EPA-Approved Training Courses

REGION VIII – Denver, CO

Regional Asbestos Coordinator: David Combs, (8AT-TS), EPA, Region VIII, 1 Denver Place, 999-18th St., Suite 500, Denver, CO 80202-2413. (303) 293-1744, (FTS) 564-1744.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VIII training courses and contact points for each, are as follows.

(1)(a) *Training Provider:* Acme Asbestos Removal.

Address: 9101 Pearl St., Thornton, CO 80229, Contact: Eugene Aragan, Phone: (303) 450-5026.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/26/89).
Abatement Worker Refresher Course (contingent from 5/31/89).

(2)(a) *Training Provider:* Asbestos Training & Supply.

Address: 504 Saddle Dr., Cheyenne, WY 82009, Contact: F. Gerald Blackwell, Phone: (307) 634-6858.

(b) *Approved Course:*

Abatement Worker (contingent from 5/2/89).

(3)(a) *Training Provider:* Chen-Northern, Inc.

Address: 600 South 25th St., P.O. Box 30615, Billings, MT 59107, Contact: Kathleen A. Smit, Phone: (406) 248-9161.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/1/87).
Abatement Worker (full from 12/8/87).
Abatement Worker Refresher Course (contingent from 2/16/88).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 5/31/89).

(4)(a) *Training Provider:* Colorado Carpenters Statewide Joint Apprenticeship Educational & Training Committee.

Address: 4290 Holly St., Denver, CO 80216, Contact: Stephen L. Sanford, Phone: (303) 393-6060.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).
Abatement Worker (full from 12/19/88).

(5)(a) *Training Provider:* Colorado Laborers' & Contractors' Education & Training Fund.

Address: 10505 Havana, Brighton, CO 80601, Contact: James Zancanaro, Phone: (303) 287-3116.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/16/89).
Abatement Worker (full from 2/16/89).

(6)(a) *Training Provider:* Colorado State University Dept. of Industrial Sciences, Office of Research, Development & Training.

Address: Fort Collins, CO 80523, Contact: Birgit Wolff, Phone: (303) 491-1551.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/23/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 3/14/88).
Inspector/Management Planner (full from 5/23/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).

(7)(a) *Training Provider:* Colorado Training Institute.

Address: 1210 East Colfax, Suite 306, Denver, CO 80218, Contact: Mike Schluterbusch, Phone: (303) 860-0574.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/31/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).

(8)(a) *Training Provider:* Energy Insulation, Inc. (EII).

Address: P.O. Box 1996, Casper, WY 82602, Contact: David K. Fox, Phone: (307) 473-1247.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/18/88).
Abatement Worker (full from 6/22/88).

(9)(a) *Training Provider:* Envir-o-tech.

Address: 300 Moore Ln., Billings, MT 59102, Contact: Leonard Cranford, Phone: (800) 225-4899.

(b) *Approved Course:*

Abatement Worker (full from 7/6/88).

(10)(a) *Training Provider:* Front Range Community College.

Address: 3645 West 112 Ave., Westminster, CO 80030, Contact: Gwen Burton, Phone: (303) 466-8811.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/28/89).
Abatement Worker (full from 4/7/89).
Abatement Worker Refresher Course (contingent from 2/28/89).
Contractor/Supervisor (contingent from 2/28/89).
Contractor/Supervisor (full from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/28/89).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner Refresher Course (contingent from 2/28/89).

(11)(a) *Training Provider:* HWS Technologies, Inc.

Address: 9101 East Kenyon Ave., Suite 1600, Denver, CO 80237, Contact: William C. Oleskevich, Phone: (303) 771-6866.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/28/89).
Abatement Worker (full from 4/7/89).
Abatement Worker Refresher Course (contingent from 2/28/89).
Abatement Worker Refresher Course (full from 6/29/89).
Contractor/Supervisor (contingent from 2/28/89).
Contractor/Supervisor (full from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/28/89).
Contractor/Supervisor Refresher Course (full from 6/29/89).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner Refresher Course (contingent from 2/28/89).
Inspector/Management Planner Refresher Course (full from 6/29/89).

(12)(a) *Training Provider:* Hager Laboratories, Inc.

Address: 11234 East Caley Ave., Unit A, Englewood, CO 80111, Contact: Charles Metzger, Phone: (303) 790-2727.

(b) *Approved Courses:*

Abatement Worker (full from 3/28/88).
Abatement Worker Refresher Course (contingent from 10/7/88).
Abatement Worker Refresher Course (full from 4/26/89).
Contractor/Supervisor (full from 3/28/88).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).

Contractor/Supervisor Refresher Course (full from 1/25/89).
Inspector/Management Planner (contingent from 4/20/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 10/7/88).
Inspector/Management Planner Refresher Course (full from 4/26/89).

(13)(a) *Training Provider:* Industrial Health, Inc. (IHI).

Address: 640 East Wilmington Ave., Salt Lake City, UT 84106, Contact: Donald E. Marano, Phone: (801) 466-2223.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/4/89).
Contractor/Supervisor (contingent from 4/22/88).
Contractor/Supervisor Refresher Course (contingent from 4/24/89).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner (full from 4/17/89).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (full from 1/6/89).
Project Designer Refresher Course (contingent from 4/24/89).

(14)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 28.

Address: 360 Acoma St., Suite 216, Denver, CO 80223, Contact: Chet Graham, Phone: (303) 778-8602.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/28/89).
Abatement Worker (full from 4/28/89).

(15)(a) *Training Provider:* Major Safety, Inc.

Address: 1510 Ayr St., Suite 200, Lakewood, CO 80215, Contact: Tom Major, Phone: (303) 424-7874.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/28/88).
Abatement Worker (full from 9/15/88).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 1/20/89).
Contractor/Supervisor (full from 9/12/89).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).
Inspector/Management Planner (contingent from 1/2/88).
Inspector/Management Planner (full from 3/27/89).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Project Designer (contingent from 1/28/88).
Project Designer Refresher Course (contingent from 1/18/89).

(16)(a) *Training Provider:* Midwest Asbestos Consultants, Inc. (MAC).

Address: Box 1708, Fargo, ND 58107, Contact: Jerry Day, Phone: (701) 280-2286.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 5/23/89).

(17)(a) *Training Provider:* Misers Inspection & Training, Inc.

Address: 1600 South Cherokee St., Denver, CO 80223, Contact: Michael E. DiRito, Phone: (303) 761-8860.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 7/5/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Abatement Worker Refresher Course (full from 1/27/89).
Contractor/Supervisor (contingent from 6/17/88).
Contractor/Supervisor (full from 7/5/88).
Contractor/Supervisor Refresher Course (contingent from 11/14/88).
Contractor/Supervisor Refresher Course (full from 1/27/89).

(18)(a) *Training Provider:* NATEC International, Inc.

Address: 2761 West Oxford Ave., No. 7, Englewood, CO 80110, Contact: Ron Sandlin, Phone: (303) 781-0422.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/15/88).
Inspector/Management Planner (contingent from 6/2/89).

(19)(a) *Training Provider:* National Education Program for Asbestos (NEPA).

Address: 2863 West 8750 S, West Jordan, UT 84088, Contact: Mark A. Kirk, Phone: (801) 565-1400.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/6/89).
Contractor/Supervisor (contingent from 3/6/89).

(20)(a) *Training Provider:* Power Masters, Inc.

Address: 13205 South State St., Draper, UT 84020, Contact: Debora Bastian, Phone: (801) 571-9321.

(b) *Approved Course:*

Abatement Worker (contingent from 6/13/88).

(21)(a) *Training Provider:* Precision Safety & Services, Inc.

Address: 1245 Windemaker Ln., Colorado Springs, CO 80907, Contact: James R. Maples, Jr., Phone: (719) 593-8596.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 11/2/88).

(22)(a) *Training Provider:* R.S. Christiansen Asbestos Consultant.

Address: 4980 Holladay Blvd., Salt Lake City, UT 84117, Contact: R.S. Christiansen, Phone: (801) 277-2323.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/29/88).
Abatement Worker (full from 12/7/88).

(23)(a) *Training Provider:* South Dakota State University College of Engineering.

Address: Box 2218, Brookings, SD 57007-0597, Contact: James Ceglian, Phone: (605) 688-4101.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 5/18/88).
Inspector/Management Planner (contingent from 5/18/88).

(24)(a) *Training Provider:* Survey Management & Design (SMD).

Address: RR 2, Box 85-B, Fargo, ND 58102, Contact: David A. Sohm, Phone: (701) 234-9556.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 3/2/89).
Contractor/Supervisor (full from 5/2/89).

(25)(a) *Training Provider:* University of Utah, Rocky Mountain Center for Occupational & Environmental Health.

Address: Dept. of Family & Preventive Medicine, Building 512, Salt Lake City, UT 84112, Contact: Jeffery S. Lee, Phone: (801) 581-8719.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/27/88).
Contractor/Supervisor (contingent from 6/1/87).
Contractor/Supervisor (full from 6/1/87).
Contractor/Supervisor Refresher Course (contingent from 6/7/88).
Contractor/Supervisor Refresher Course (full from 11/13/88).
Inspector/Management Planner (contingent from 12/23/87).
Inspector/Management Planner (full from 2/8/88).

Inspector/Management Planner Refresher Course (contingent from 12/9/88).
Inspector/Management Planner Refresher Course (full from 12/14/88).

EPA-Approved Training Courses

REGION IX – San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, (A-4-2), EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974-7290, (FTS) 454-7290.

List of Asbestos Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IX training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Asbestos C.T.I.

Address: P.O. Box 228, Mokelumne Hill, CA 95245, Contact: Lee Hess, Phone: (209) 286-1249.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 10/31/88).
Inspector (contingent from 3/21/89).

(2)(a) *Training Provider:* Asbestos Workers Abatement Training Program of Southern California.

Address: 1669 East Lincoln Ave., Orange, CA 92655-1929, Contact: James Riley, Phone: (714) 921-8110.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/27/88).
Contractor/Supervisor (contingent from 1/26/89).

(3)(a) *Training Provider:* Carpenters No. 46 Northern California Counties J.A.T.C. & T.B.

Address: 2350 Santa Rita Rd., Pleasanton, CA 94566-4190, Contact: Hugh Johnson, Phone: (415) 462-9640.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 12/1/88).

(4)(a) *Training Provider:* Center for Accelerated Learning.

Address: 400 Buck Ave., Suite G, Vacaville, CA 95688, Contact: David Esparza, Phone: (707) 446-7996.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/1/88).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/88).
Inspector/Management Planner (contingent from 6/30/88).

(5)(a) *Training Provider:* DWC Consulting Co., Inc.

Address: 1250 Pine St., Suite 307, Walnut Creek, CA 94596, Contact: Dan Weathers, Phone: (415) 933-9066.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/3/89).
Contractor/Supervisor (contingent from 4/3/89).
Inspector/Management Planner (contingent from 4/3/89).

(6)(a) *Training Provider:* Dan Napier & Associates.

Address: 15342 Hawthorne Blvd., Suite 207, P.O. Box 1540, Lawndale, CA 90260-6440, Contact: Dan Napier, Phone: (213) 644-1924.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/88).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 3/27/89).
Contractor/Supervisor Refresher Course (contingent from 1/16/89).
Inspector/Management Planner (contingent from 4/3/89).
Inspector/Management Planner Refresher Course (contingent from 3/30/89).
Project Designer Refresher Course (contingent from 3/30/89).

(7)(a) *Training Provider:* Diagnostic Engineering, Inc.

Address: 90 East Foothill Blvd., Arcadia, CA 91006, Contact: Alan M. Lamson, Phone: (818) 447-5218.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/27/88).
Contractor/Supervisor (contingent from 6/27/88).
Inspector/Management Planner (contingent from 6/27/88).
Inspector/Management Planner Refresher Course (contingent from 4/18/89).
Project Designer (contingent from 12/1/88).

(8)(a) *Training Provider:* EnviroMD, Inc.

Address: 3443 East Fort Lowell Rd., Tucson, AZ 85716, Contact: Rose Rubio, Phone: (602) 881-1000.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 1/17/88).
Inspector/Management Planner (contingent from 11/14/88).

(9)(a) *Training Provider:* Environmental Control Industries.

Address: 5720 Shattuck Ave., Oakland, CA 94609, Contact: Richard McGlothlin, Phone: (415) 655-5855.

(b) *Approved Course:*

Abatement Worker (contingent from 12/1/88).

(10)(a) *Training Provider:* Environmental Sciences, Inc.

Address: 105 E. Speedway, Tucson, AZ 85705, Contact: Dale Keyes, Phone: (602) 792-0097.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 9/29/87).
Inspector/Management Planner (full from 10/5/87).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(11)(a) *Training Provider:* Excel Environmental, Inc.

Address: 739 Allston Way, Berkeley, CA 94710, Contact: Otis Wong, Phone: (415) 548-4300.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/28/87).
Abatement Worker Refresher Course (contingent from 12/1/88).
Contractor/Supervisor (contingent from 6/3/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(12)(a) *Training Provider:* Hawaii Laborers Training School.

Address: P.O. Box 457, Aiea, HI 96701, Contact: Norman Jimeno, Phone: (808) 486-6161.

(b) *Approved Course:*

Abatement Worker (contingent from 5/27/88).

(13)(a) *Training Provider:* Insulators & Asbestos Industry of Northern California & Local Union No. 16 Asbestos Training Fund.

Address: 2033 Clement Ave., Building 31, Room 112, Alameda, CA 94501, Contact: Hans D. Siebert, Phone: (415) 865-2292.

(b) *Approved Course:*

Abatement Worker (contingent from 5/27/88).

(14)(a) *Training Provider:* International Technology Corp.

Address: 336 West Anaheim St., Wilmington, CA 90748, Contact: Keith Soebe, Phone: (213) 830-1781.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/24/87).
Abatement Worker Refresher Course (contingent from 3/29/89).

Contractor/Supervisor (contingent from 4/15/88).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).

(15)(a) *Training Provider:* KELLCO Training Institute.

Address: 44814 Osgood Rd., Fremont, CA 94539, Contact: Charles W. Kellogg, Phone: (415) 659-9751.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/1/88).
Contractor/Supervisor (contingent from 7/20/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/88).
Inspector/Management Planner (contingent from 3/21/89).
Inspector/Management Planner Refresher Course (contingent from 3/16/89).

(16)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Northern California.

Address: 21321 San Ramon Valley Blvd., San Ramon, CA 94583, Contact: Monte R. Strother, Phone: (415) 828-2513.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/13/88).
Abatement Worker Refresher Course (contingent from 12/15/88).

(17)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Southern California.

Address: P.O. Box 76, Anza, CA 92306, Contact: Mary Lacy, Phone: (714) 763-4341.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 12/15/88).

(18)(a) *Training Provider:* Lehr Training Institute.

Address: 1431 Warner Ave., Tustin, CA 92680, Contact: Susan Patnode, Phone: (714) 259-1575.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/16/88).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (contingent from 2/16/88).
Contractor/Supervisor Refresher Course (contingent from 2/21/89).
Inspector/Management Planner (contingent from 10/31/88).
Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(19)(a) *Training Provider:* National Abatement Technology Employment Center (NATEC).

Address: 12552 Knott St., Suite 8, Garden Grove, CA 92643, Contact: Ronald Sandlin, Phone: (714) 894-7577.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/30/87).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (contingent from 12/30/87).
Contractor/Supervisor Refresher Course (contingent from 11/14/88).

(20)(a) *Training Provider:* National Institute for Asbestos & Hazardous Waste Training.

Address: 1019 West Manchester Blvd., Inglewood, CA 90301, Contact: Jim McFarland, Phone: (213) 645-4516.

(b) *Approved Courses:*

Abatement Worker (full from 12/7/87).
Abatement Worker Refresher Course (contingent from 10/19/88).
Contractor/Supervisor (full from 12/7/87).
Contractor/Supervisor Refresher Course (contingent from 10/19/88).
Inspector/Management Planner (contingent from 6/30/88).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(21)(a) *Training Provider:* Naval Civil Engineering Laboratory.

Address: Port Hueneme, CA 93043-5003, Contact: Susan C. Tianen, Phone: (805) 982-5409.

(b) *Approved Course:*

Inspector (contingent from 4/6/89).

(22)(a) *Training Provider:* Occupational Training Institute, Inc.

Address: 5 Civic Center, Suite 225, Newport Beach, CA 92660, Contact: David K. Herdman, Phone: (714) 721-9578.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/21/89).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (contingent from 2/21/89).
Contractor/Supervisor Refresher Course (contingent from 2/21/89).
Inspector/Management Planner (contingent from 2/21/89).
Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(23)(a) *Training Provider:* Pacific Asbestos Information Center U.C. Extension.

Address: 2223 Fulton St., Berkeley, CA 94720, Contact: Debra Dobbin, Phone: (415) 643-7143.

(b) *Approved Courses:*

Contractor/Supervisor (full from 2/2/87).
Contractor/Supervisor Refresher Course (contingent from 10/19/88).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (contingent from 10/19/88).

(24)(a) *Training Provider:* Salem Kroeger, Inc.

Address: 106 Church St., Roseville, CA 95678, Contact: Owen C. Tilley, Phone: (916) 784-7222.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/30/89).
Abatement Worker Refresher Course (contingent from 4/3/89).
Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/3/89).
Inspector Refresher Course (contingent from 4/3/89).

(25)(a) *Training Provider:* San Diego County Construction Laborers Training & Retraining Trust.

Address: 4161 Home Ave., Second Fl., San Diego, CA 92105, Contact: Bob White, Phone: (619) 263-6941.

(b) *Approved Course:*

Abatement Worker (contingent from 3/21/89).

(26)(a) *Training Provider:* San Diego County District Council of Carpenters.

Address: 4665 Mercury St., San Diego, CA 92111, Contact: Otis Kunz, Phone: (619) 571-8977.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/30/89).
Contractor/Supervisor (contingent from 10/31/88).

(27)(a) *Training Provider:* The Asbestos Institute.

Address: 2701 East Camelback, Suite 381, Phoenix, AZ 85016, Contact: William T. Cavness, Phone: (602) 381-0896.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 10/31/88).
Contractor/Supervisor (contingent from 6/13/88).
Contractor/Supervisor Refresher Course (contingent from 3/9/89).
Inspector/Management Planner (contingent from 6/17/88).
Inspector/Management Planner Refresher Course (contingent from 6/16/88).

(28)(a) *Training Provider:* University Associates, Ltd.

Address: 2425-A North Huachuca Dr., Tucson, AZ 85745, Contact: Carolyn Coker, Phone: (602) 624-9366.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 12/1/88).

(29)(a) *Training Provider:* University of Southern California Institute of Safety & Systems Management.

Address: University Gardens, 3500 South Figueroa St., Suite 202, Los Angeles, CA 90007, Contact: James O. Pierce, Phone: (213) 743-6523.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 8/2/88).
Inspector/Management Planner (full from 2/15/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

EPA-Approved Training Courses

REGION X – Seattle, WA

Regional Asbestos Coordinator: Walter Jasper, EPA, Region X, 1200 Sixth Ave. (8T-083), Seattle, WA 98101. (206) 442-4762, (FTS) 399-2870.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region X training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Asbestos Services International.

Address: 12360 Southwest Butner Rd., Portland, OR 97225-5818, Contact: Robert E. Hasting, Phone: (503) 644-0246.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 8/23/88).
Inspector/Management Planner (full from 7/17/89).
Inspector/Management Planner Refresher Course (contingent from 10/31/88).
Inspector/Management Planner Refresher Course (full from 1/20/89).
Project Designer (contingent from 10/31/88).
Project Designer (full from 1/17/89).

(2)(a) *Training Provider:* Certified Industrial Hygiene Services, Inc.

Address: 911 Western Ave., Suite 206, Seattle, WA 98104, Contact: Dorothy Stansel, Phone: (206) 622-1096.

(b) *Approved Course:*

Inspector (contingent from 3/25/88).

(3)(a) *Training Provider:* Engineering Continuing Education University of Washington.

Address: GG-13, Seattle, WA 98195, Contact: Susan G. Stone, Phone: (206) 543-5539.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 1/26/88).
Inspector/Management Planner (full from 2/8/88).

(4)(a) *Training Provider:* Environmental Health Sciences Lake Washington Vo-Tech.

Address: 11605 132nd Ave., NE, Kirkland, WA 98034, Contact: Dave Rodewald, Phone: (206) 828-5643.

(b) *Approved Courses:*

Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 1/14/89).
Inspector/Management Planner Refresher Course (full from 1/27/89).

(5)(a) *Training Provider:* Environmental Management, Inc.

Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Kenneth Johnson, Phone: (907) 272-8056.

(b) *Approved Course:*

Inspector/Management Planner (full from 4/18/88).

(6)(a) *Training Provider:* Hazcon, Inc.

Address: 5950 6th Ave., S, Suite 216, Seattle, WA 98108, Contact: Mike Krause, Phone: (206) 763-7364.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 3/1/88).
Inspector/Management Planner (full from 4/4/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 1/30/89).

(7)(a) *Training Provider:* Heavey Engineers, Inc.

Address: 113 Russell St., P.O. Box 632, Stevenson, WA 98648-0632, Contact: Daniel Evans, Phone: (509) 427-8936.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 4/13/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 3/10/89).

(8)(a) *Training Provider:* NAC Corporation/Northwest Asbestos Consultants.

Address: 1005 Northwest Galveston, Suite E, Bend, OR 97701, Contact: Dale Schmidt, Phone: (503) 389-9727.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 4/25/89).
Inspector/Management Planner Refresher Course (full from 7/24/89).

(9)(a) *Training Provider:* Northwest Envirocon, Inc.

Address: 4020 Southeast International Way, Suite C-106, Milwaukie, OR 97222, Contact: Shiela Wanta, Phone: (503) 659-8899.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 4/13/88).
Inspector/Management Planner (full from 5/2/88).

(10)(a) *Training Provider:* PBS Environmental Building Consultants, Inc.

Address: 1220 SouthWest Morrison, Portland, OR 97205, Contact: Stephen Smiley, Phone: (503) 248-1939.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 2/4/88).
Inspector/Management Planner (full from 3/14/88).
Inspector/Management Planner Refresher Course (contingent from 3/14/89).
Inspector/Management Planner Refresher Course (full from 6/30/89).
Project Designer (contingent from 6/9/89).
Project Designer (full from 6/19/89).

(11)(a) *Training Provider:* South East Regional Resource Center, Inc.

Address: 210 Ferry Way, Suite 200, Juneau, AK 99801, Contact: William Suss, Phone: (907) 586-6806.

(b) *Approved Course:*

Inspector/Management Planner Refresher Course (contingent from 4/18/89).

(12)(a) *Training Provider:* Specialized Environmental Consulting, Inc.

Address: P.O. Box 363, Wauna, WA 98395, Contact: Raymond Donahue, Phone: (206) 857-3222.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 3/7/89).
Inspector/Management Planner Refresher Course (full from 3/20/89).

(13)(a) *Training Provider:* University of Alaska, Mining & Petroleum Training Services.

Address: 155 Smith Way, Suite 104, Soldotna, AK 99669, Contact: Dennis D. Steffy, Phone: (907) 262-2789.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 2/16/88).
Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 1/14/89).

(14)(a) *Training Provider:* Washington Association of Maintenance & Operations Administrators, WAMOA.

Address: 12037 Northeast Fifth, Bellevue, WA 98005, Contact: Colin MacRae, Phone: (206) 455-6054.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 4/25/89).
Inspector/Management Planner Refresher Course (full from 7/24/89).

V. List of Accredited Polarized Light Microscopy (PLM) Laboratories

A. Background

Section 206(d) of Title II requires EPA to provide for the development of an accreditation program through the NIST for laboratories conducting analysis of bulk samples of ACMs. NIST began initial evaluations of enrolled laboratories in October 1988 and has accredited approximately 456 PLM laboratories. NIST will continue to accredit laboratories on a regular basis. To provide LEAs with a source of accredited laboratories until NIST completes its laboratory evaluations, EPA established the "Interim Asbestos Bulk Sample Analysis Quality Assurance Program." EPA announced the program in the Federal Register of September 30, 1987 (52 FR 33470).

The following listing includes *commercial* and *noncommercial* laboratories which have successfully participated in the April 1988 round of the EPA Interim Asbestos Bulk Sample Analysis Quality Assurance Program and have extended their interim EPA accreditation beyond its expiration date of January 12, 1989, by fully enrolling in the NIST program by the stated deadline of September 30, 1988. This listing also highlights laboratories accredited by NIST as of July 1989. These laboratories are denoted by "NIST" following the laboratory name. Since NIST continues to accredit laboratories on a regular basis, some new NIST-accredited laboratories may not be included in this listing. LEA's should contact NIST at (301) 975-4016 to verify the accredited status of the laboratory.

B. Transition from EPA to NIST Accredited Laboratories

The laboratories included in this listing have completed final application to NIST for enrollment in the National Voluntary Laboratory Accreditation Program (NVLAP) for PLM laboratories. These laboratories have extended their EPA-accredited status. NIST may at any point in the laboratory review determine that the laboratory is deficient and request EPA to remove the interim EPA accreditation based on a laboratory site visit and/or proficiency testing. If a laboratory is found to be deficient in any part of the evaluation, NIST will not accredit the laboratory until the corrections have been made. NIST will also notify EPA of the deficiencies, and EPA will withdraw interim EPA accreditation.

LEAs may determine the current *EPA accreditation* status of laboratories in this listing by contacting the laboratory and the local EPA Regional Asbestos Coordinator (RAC). This listing of laboratories may be consulted as a source of local laboratories; however, since NIST has begun its evaluations, the list could change prior to the next published listing of accredited laboratories. Additional copies of this listing are available by calling (202) 544-1404.

NOTE: This listing is amended to include two additional listings of noncommercial laboratories. The first includes noncommercial laboratories not included on EPA listings from August 31, 1988 through January 12, 1989. These laboratories maintained interim EPA accreditation from the April 1988 round of EPA testing through the expiration of the interim EPA accreditation on January 12, 1989. The second listing includes noncommercial laboratories with interim EPA accreditation extended beyond the expiration date of January 12, 1989.

EPA Accredited Commercial PLM Laboratories

REGION I – Boston, MA

Regional Asbestos Coordinator: Joe DeCola, EPA, Region I, Air and Management Division (APT-2311), JFK Federal Building, Boston, MA 02203. (617) 565-3835, (FTS) 835-3835.

(1) *Laboratory:* Aetna Life & Casualty (NIST), Engineering Department W1SE.

Address: 575 Pigeon Hill Rd., Windsor, CT 06095, Contact: Ethel Patricio, Phone: (203) 683-6384.

(2) *Laboratory:* Air Quality Consultants (NIST).

Address: 406 Libbey Pkwy., Weymouth, MA 02189, Contact: John E. O'Malley, Phone: (617) 337-7320.

(3) *Laboratory:* Allied Engineering, Inc. (NIST).

Address: 11 Columbia St., Augusta, ME 04330, Contact: Gary Bates, Phone: (207) 623-9299.

(4) *Laboratory:* Analytical Testing Services (NIST).

Address: 180 Weeden St., Pawtucket, RI 02860-1804, Contact: Robert F. Weisberg, Phone: (401) 723-7978.

(5) *Laboratory:* Applied Occupational Health Systems, (NIST).

Address: 29 River Rd., Suite 18, Concord, NH 03301, Contact: Richard R. Kretovich, Phone: (603) 228-3610.

(6) *Laboratory:* Balsam Environmental Consultants, Inc. (NIST).

Address: 225 Western Ave., Augusta, ME 04330, Contact: Weldon Bosworth, Phone: (603) 893-0616.

(7) *Laboratory:* Balsam Environmental Consultants, Inc., (NIST).

Address: 59 Stiles Rd., Salem, NH 03079, Contact: Tara E. Smith, Phone: (603) 893-0616.

(8) *Laboratory:* Barnes and Jarnis, Inc.

Address: 216 Tremont St., Boston, MA 02116, Contact: Stephen Venuti, Phone: (617) 542-8521.

(9) *Laboratory:* Briggs Associates, Inc. (NIST).

Address: 400 Hingham St., Rockland, MA 02370, Contact: James Litrides, Phone: (617) 871-6040.

(10) *Laboratory:* Brooks Laboratories, Inc. (NIST).

Address: 44 Codfish Ln., Weston, CT 06883, Contact: Margaret Y. Brooks, Phone: (203) 226-6970.

(11) *Laboratory:* CON-TEST, Inc. (NIST).

Address: 39 Spruce St., East Longmeadow, MA 01028, Contact: Thomas E. Veratti, Phone: (413) 525-1198.

(12) *Laboratory:* CT State Dept. of Health Lab (NIST).

Address: P.O. Box 1689, Hartford, CT 06101, Contact: Janet B. Kapish, Phone: (203) 566-5626.

(13) *Laboratory:* Certified Engineering & Testing Co., Inc. (NIST).

Address: 25 Mathewson Dr., Weymouth, MA 02189, Contact: Glenn Sylvester, Phone: (617) 337-7867.

(14) *Laboratory:* Certified Engineering & Testing Co., Inc. of Rhode Island (NIST).

Address: 490 Smith St., Providence, RI 02908, Contact: Maria Stoeckel, Phone: (401) 831-9090.

(15) *Laboratory:* Chem Scope, Inc. (NIST).

(9) *Laboratory:* American Testing

(22) *Laboratory:* Bulava

Address: 4 Westchester Plaza, Elmsford,

Address: P.O. Box 389, Fair Haven Station, New Haven, CT 06513, Contact: Ronald D. Arena, Phone: (203) 468-0055.

(16) *Laboratory:* Covino Environmental Consultants, Inc., (NIST).

Address: 12 Walnut Hill Pk., Woburn, MA 01801, Contact: Samuel J. Covino, Jr., Phone: (617) 933-2555.

(17) *Laboratory:* Dennison Environmental, Inc. (NIST).

Address: 35 Industrial Pkwy., Woburn, MA 01801, Contact: James E. Dennison, Phone: (617) 932-9400.

(18) *Laboratory:* EHL (NIST), Division of Cigna Corp.

Address: 94 Murphy Rd., Hartford, CT 06114, Contact: Jim Kenny, Phone: (203) 522-3814.

(19) *Laboratory:* ESA Laboratories (NIST).

Address: 43 Wiggins Ave., Bedford, MA 01730, Contact: Reg Griffin, Phone: (617) 275-0100.

(20) *Laboratory:* Eastern Analytical Laboratories, Inc.

Address: 149 Rangeway Rd., North Billerica, MA 01862, Contact: Drew Killius, Phone: (617) 272-5212.

(21) *Laboratory:* Enviro Research.

Address: 141 Prestige Park Rd., East Hartford, CT 06108, Contact: Arthur C. Cosmas, Phone: (203) 289-6493.

(22) *Laboratory:* Enviro-Lab, Inc. (NIST).

Address: 154 Grove St., Chicopee, MA 01020, Contact: Peter R. Tuttle, Phone: (413) 592-0030.

(23) *Laboratory:* Enviromed Services, Inc. (NIST).

Address: 25 Science Pk., New Haven, CT 06511, Contact: William G. Oldman, Phone: (203) 786-5580.

(24) *Laboratory:* Environmental Associates, Inc.

Address: 1222 Fairfield Ave., Bridgeport, CT 06605, Contact: Ralph B. Wiech, Phone: (203) 368-6064.

(25) *Laboratory:* Hub Testing Laboratory.

Address: 95 Beaver St., Waltham, MA 02154, Contact: Fred Boyle, Phone: (617) 893-8330.

(26) *Laboratory:* Hunter Environmental Sciences, Inc.

Address: P.O. Box 284, Lincoln, MA 01773, Contact: W. Bruce Hunter, Phone: (617) 259-0800.

(27) *Laboratory:* Hygeia, Inc. (NIST).

Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: John R. Pilling, Phone: (617) 647-9475.

(28) *Laboratory:* Hygenix, Inc.

Address: 40 Hoyt St., Stamford, CT 06905, Contact: Robert C. Brown, Phone: (203) 324-2222.

(29) *Laboratory:* Hygienetics Analytical Services, Inc., (NIST).

Address: 150 Causeway St., Boston, MA 02114, Contact: Jack Yee, Sr., Phone: (617) 723-4664.

(30) *Laboratory:* Industrial Hygiene/New England.

Address: P.O. Box 947, Kennebunk, ME 04043, Contact: Thomas F. Hatch, Phone: (207) 985-6110.

(31) *Laboratory:* MMR, Inc. (NIST).

Address: P.O. Box 810, 241 West Boylston St., West Boylston, MA 01583, Contact: Donald Pellegrino, Phone: (617) 835-6262.

(32) *Laboratory:* Massachusetts Institute of Technology, Industrial Hygiene Office.

Address: 77 Massachusetts Ave., Rm. 20C-204, Cambridge, MA 02139, Contact: Bonnie L. Weeks, Phone: (617) 253-2596.

(33) *Laboratory:* New Hampshire Div. of Public, Health (NIST), Public Health Laboratory.

Address: 6 Hazen Dr., Concord, NH 03301, Contact: Richard Krepovich, Phone: (603) 271-4657.

(34) *Laboratory:* Northeast Environmental Testing Lab., Inc.

Address: 51 Sockanossett Crossroads, Cranston, RI 02910, Contact: Carmine J. Spinella, Phone: (401) 785-1720.

(35) *Laboratory:* Northeast Test Consultants (NIST).

Address: 587 Spring St., Westbrook, ME 04092, Contact: Stephen Broadhead, Phone: (207) 854-3939.

(36) *Laboratory:* Norwich Laboratories, Inc. (NIST).

Address: 750 North Pleasant St., Amherst, MA 01002, Contact: Nina Inchardi, Phone: (413) 549-6884.

(37) *Laboratory:* R.I. Analytical Laboratories Inc., (NIST).

Address: 1040 Mineral Spring Ave., North Providence, RI 02904, Contact: Anthony E. Perrotti, Phone: (401) 725-4190.

(38) *Laboratory:* Shelburne Laboratories, Inc. (NIST).

Address: 74 Ethan Allen Dr., P.O. Box 9479, South Burlington, VT 05403, Contact: Robert J. Emerson, Phone: (802) 658-5798.

(39) *Laboratory:* TRC Environmental Consultants, Inc., (NIST).

Address: 800 Connecticut Blvd., East Hartford, CT 06108, Contact: Paul Hunt, Phone: (203) 289-8631.

(40) *Laboratory:* Testwell Craig Labs of Connecticut, Inc. (NIST).

Address: 25 Henry St., Bethel, CT 06801, Contact: Richard Speciale, Phone: (203) 743-7281.

(41) *Laboratory:* The Hartford Steam Boiler I & I Co., (NIST), Environmental Services Laboratory.

Address: One State St., Hartford, CT 06102, Contact: Floyd B. Parsons, Jr., Phone: (203) 722-5476.

(42) *Laboratory:* Travelers Insurance-Engr. Lab.

Address: 248 Constitution Plaza, Hartford, CT 06183, Contact: Amita Sanghvi, Phone: (203) 277-7533.

EPA Accredited Commercial PLM Laboratories

REGION II – Edison, NJ

Regional Asbestos Coordinator: Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 5, (MS-500), Edison, NJ 08837. (201) 321-6671, (FTS) 340-6671.

(1) *Laboratory:* ASBESCO, Inc. (NIST).

Address: 961 Lydell Ave., Bldg. 2, Suite 8, Rochester, NY 14606, Contact: Dmitry Tsimberov, Phone: (716) 647-2530.

(2) *Laboratory:* ASTECO, Inc. (NIST).

Address: P.O. Box 2204, Niagara University, NY 14109, Contact: Fred Smith, Phone: (716) 297-5992.

(3) *Laboratory:* ATC Environmental, Inc. (NIST).

Address: 104 East 25th St., New York, NY 10010, Contact: Robert Adamson, Phone: (212) 353-8280.

(4) *Laboratory:* Adelaide Environmental Health, Associates.

Address: 61 Front St., Binghamton, NY 13905-4705, Contact: Brian Donnelly, Phone: (607) 722-6839.

(5) *Laboratory:* Adelaide Environmental Health, Associates.

Address: 845 North Broadway, Suite 200, White Plains, NY 10601, Contact: Ernest Coon, Phone: (914) 949-3109.

(6) *Laboratory:* Adirondack Environmental Services, (NIST).

Address: 298 Riverside Ave., P.O. Box 265, Rensselaer, NY 12144, Contact: Thomas Hare, Phone: (518) 434-4546.

(7) *Laboratory:* Alternative Ways, Inc./AEM, Inc.

Address: P.O. Box 1147, 100 Essex Rd., Bellmawr, NJ 08031, Contact: John Luxford, Phone: (609) 933-3300.

(8) *Laboratory:* Ambient Labs, Inc. (NIST).

Address: 119 West 23rd St., New York, NY 10011, Contact: William A. Esposito, Phone: (212) 962-4242.

(9) *Laboratory:* American Testing Labs, Inc. (NIST).

Address: P.O. Box 102, Bronx, NY 10471, Contact: George Kan, Phone: (212) 796-4761.

(10) *Laboratory:* Applied Environmental Technology, Inc., (NIST).

Address: 316 Cooper Center, Pennsauken, NJ 08109, Contact: Willard Kingsley, Phone: (609) 488-9200.

(11) *Laboratory:* Applied Geo Services, Inc. (NIST).

Address: 41 Union Square W, Suite 1125, New York, NY 10003, Contact: Jeffrey A. Forgang, Phone: (212) 633-1113.

(12) *Laboratory:* Asbesto-Tech.

Address: 140-30 Elgar Pl., Suite 30-B, Bronx, NY 10475, Contact: Solomon Mate, Phone: (212) 671-5266.

(13) *Laboratory:* Asbestos Consultancy Service, Inc., Holiday Bldg.

Address: 121 State Highway 36, West Long Branch, NJ 07764, Contact: George Forrest, Phone: (201) 571-1400.

(14) *Laboratory:* Assessment Technologies, Inc.

Address: 323 West 39th St., New York, NY 10018, Contact: Richard W. Holmes, Phone: (212) 564-8222.

(15) *Laboratory:* Astech, Inc.

Address: 317 West Milton Ave., Rahway, NJ 07065, Contact: Michael Matarazzo, Phone: (201) 396-4455.

(16) *Laboratory:* Atlantic Environmental, Inc. (NIST).

Address: 2 East Blackwell St., Suite 24, Dover, NJ 07801, Contact: Robert Sheriff, Phone: (201) 366-4660.

(17) *Laboratory:* Barnes & Jarnis, Inc.

Address: 373 Park Ave. S, 11th Fl., New York, NY 10016-8865, Contact: Jay Holmes, Phone: (212) 532-6433.

(18) *Laboratory:* Brad Associates (NIST).

Address: 1 Rosanne Ct., Lake Ronkonkoma, NY 11779, Contact: Benito P. San Pedro, Phone: (516) 467-4539.

(19) *Laboratory:* Briggs Associates, Inc. (NIST).

Address: 361 Hanover St., Portsmouth, NJ 03801, Contact: Janice Smith, Phone: (603) 431-2870.

(20) *Laboratory:* Buck Engineering & Environmental, Laboratory (NIST).

Address: 100 Tompkins St., Courtland, NY 13045, Contact: John H. Buck, Phone: (607) 753-3403.

(21) *Laboratory:* Buffalo Testing Labs., Inc. (NIST).

Address: 902 Kenmore Ave., Buffalo, NY 14216, Contact: Edward J. Kris, Phone: (716) 873-2302.

(22) *Laboratory:* Bulava Environmental, Inc. (NIST).

Address: 13 Hunt Club Rd., Belle Mead, NJ 08502, Contact: Edward J. Bulava, Phone: (201) 874-6207.

(23) *Laboratory:* CS Environmental Laboratory, Inc.

Address: 5854 Butternut Dr., East Syracuse, NY 13057, Contact: Ida J. Bennett, Phone: (315) 446-8795.

(24) *Laboratory:* Calibrations (NIST).

Address: P.O. Box 11266, Albany, NY 12211, Contact: Sascha Percent, Phone: (518) 786-1865.

(25) *Laboratory:* Certified Engineering & Testing Co. of, Upstate New York, Inc. (NIST).

Address: 284 Genesee St., Utica, NY 13502, Contact: Mark S. Evans, Phone: (315) 732-3626.

(26) *Laboratory:* Chenango Environmental Laboratory, Inc. (NIST).

Address: 350 State St., Binghamton, NY 13901, Contact: Tim Sayers, Phone: (607) 723-8175.

(27) *Laboratory:* Chopra-Lee Laboratory (NIST).

Address: 1741 Baseline Rd., Grand Island, NY 14072, Contact: Raj Chopra, Phone: (716) 733-6748.

(28) *Laboratory:* Clayton Environmental Consultants, Inc. (NIST).

Address: 160 Fieldcrest Ave., Raritan Center, Edison, NJ 08837, Contact: Kirit H. Vora, Phone: (201) 225-6040.

(29) *Laboratory:* Comprehensive Analytical Group (NIST).

Address: 147 Midler Park Dr., P.O. Box 254, Syracuse, NY 13206, Contact: Jeffrey Berry, Phone: (315) 432-0855.

(30) *Laboratory:* Corning Eng. Environmental Services, (NIST), Corning Glass Works.

Address: One Malcolm Ave., Teterboro, NJ 07608, Contact: John C. Walton, Phone: (201) 393-5647.

(31) *Laboratory:* Dames & Moore.

Address: 12 Commerce Dr., Cranford, NJ 07016-1101, Contact: Margaret Lynch, Phone: (201) 272-8300.

(32) *Laboratory:* Detail Associates, Inc. (NIST).

Address: 300 Grand Ave., Engelwood, NJ 07631, Contact: Stephen A. Jaraczewski, Phone: (201) 569-6708.

(33) *Laboratory:* ENTEK Environmental & Tech. Services, Rennselaer Technology Park.

Address: 125 DeFreest Dr., Troy, NY 12180, Contact: Arthur N. Rohl, Phone: (518) 283-9200.

(34) *Laboratory:* Eastern Analytical Services, Inc., (NIST).

Address: 4 Westchester Plaza, Elmsford, NY 10523-1601, Contact: Paul Stascavage, Phone: (914) 592-6360.

(35) *Laboratory:* Ecology & Environment, Inc.

Address: 4285 Genesee St., Buffalo, NY 14225, Contact: Gary Hahn, Phone: (716) 631-0360.

(36) *Laboratory:* Electron-Microscopy Service, Laboratories, Inc. (NIST).

Address: 106 Haddon Ave., Westmont, NJ 08108, Contact: Peter Frasca, Phone: (609) 858-4800.

(37) *Laboratory:* Enviro-Probe, Inc.

Address: 17 Heritage Dr., Edison, NJ 08820, Contact: Ved P. Kukreja, Phone: (201) 769-0274.

(38) *Laboratory:* Enviro-Probe, Inc.

Address: 2917 Bruckner Blvd., Bronx, NY 10461, Contact: Ved P. Kukreja, Phone: (212) 863-0045.

(39) *Laboratory:* Environmental Health Protection, Consultants, Inc.

Address: 601 East Chapel Ave., Cherry Hill, NJ 08034, Contact: Joseph E. Wilson, Phone: (609) 795-3890.

(40) *Laboratory:* Environmental Management Systems, Inc., (NIST).

Address: 14 Sarafian Rd., New Paltz, NY 12561, Contact: Martin S. Rutstein, Phone: (914) 255-1034.

(41) *Laboratory:* Environmental Monitoring & Consulting, Services.

Address: P.O. Box 872, Somerville, NJ 08876, Contact: Joel Russell, Phone: (201) 249-3005.

(42) *Laboratory:* Exxon Biomedical Sciences, Inc. (NIST), IH Analytical Laboratory.

Address: Mettlers Rd.: CN2350, East Millstone, NJ 08875-2350, Contact: John E. Stillman, Phone: (201) 873-6033.

(43) *Laboratory:* Friends Laboratory, Inc. (NIST).

Address: 446 Broad St., Waverly, NY 14892-1445, Contact: Douglas Friend, Phone: (607) 565-2893.

(44) *Laboratory:* Galson Technical Services (NIST).

Address: 6601 Kirkville Rd., East Syracuse, NY 13057, Contact: Eva Galson, Phone: (315) 432-0506.

(45) *Laboratory:* Glomar Corp.

Address: 29-09 Queens Plaza N., Long Island City, NY 11101, Contact: Richard J. Deliberto, Phone: (718) 786-6660.

(46) *Laboratory:* Hall-Kimbrell Environmental Services.

Address: 129-09 26th Ave., Flushing, NY 11354-1166, Contact: John F. Cesario, Phone: (718) 445-9090.

(47) *Laboratory:* Hazardous Waste Engineering, Consultants, Inc. (NIST).

Address: 47 Hudson St., Ossining, NY 10562, Contact: Marco Pedone, Phone: (914) 762-9000.

(48) *Laboratory:* Hillman Environmental Co.

Address: 1089 Cedar Ave., Union, NJ 07083, Contact: Joseph P. Hillman, Phone: (201) 686-3335.

(49) *Laboratory:* Hygeia, Inc. (NIST).

Address: 276 Fifth Ave., Suite 503, New York, NY 10001, Contact: Marianne Thorpe, Phone: (212) 545-7822.

(50) *Laboratory:* Independent Asbestos Labs, Inc. (NIST).

Address: 5900 Butternut Dr., East Syracuse, NY 13057, Contact: Fred Terracina, Phone: (315) 437-1122.

(51) *Laboratory:* Independent Testing & Consultation, Inc.

Address: P.O. Box 539, Holmdel, NJ 07733, Contact: Anthony Matthews, Phone: (201) 583-2538.

(52) *Laboratory:* Industrial Testing Laboratories (NIST).

Address: 50 Madison Ave., New York, NY 10010, Contact: Kenneth J. Kohlhof, Phone: (212) 685-6788.

(53) *Laboratory:* International Asbestos Testing, Laboratories (IATL) (NIST).

Address: 36 North Pine Ave., Maple Shade, NJ 08052, Contact: Emil M. Ondra, Phone: (609) 779-7792.

(54) *Laboratory:* Kaselaan & D'Angelo Associates, Inc.

Address: P.O. Box 165, Haddonfield, NJ 08033, Contact: James J. Weitzman, Phone: (609) 547-6500.

(55) *Laboratory:* Kemron Environmental Services (NIST).

Address: 755 New York Ave., Huntington, NY 11743, Contact: Joseph Mannetta, Phone: (516) 427-0950.

(56) *Laboratory:* Laboratories for Environmental Testing.

Address: P.O. Box 8361, Long Island City, NY 11101, Contact: Michael A. Martucci, Phone: (718) 786-5583.

(57) *Laboratory:* Laboratory Testing Services, Inc., (NIST).

Address: 75 Urban Ave., Westbury, NY 11590, Contact: Kevin Tunulty, Phone: (516) 334-7770.

(58) *Laboratory:* Lozier Laboratories (NIST).

Address: 23 North Main St., Fairport, NY 14450, Contact: Alan J. Laffin, Phone: (716) 223-7610.

(59) *Laboratory:* Microscopy Research Laboratories, Inc.

Address: 1187 Highway 28, P.O. Box 5115, North Branch, NJ 08876, Contact: Edwin R. Levin, Phone: (201) 526-9192.

(60) *Laboratory:* Moby II (NIST).

Address: 1615 9th Ave., Bohemia, NY 11716, Contact: John Pedneault, Phone: (516) 467-8477.

(61) *Laboratory:* Monroe Monitoring & Analysis (NIST).

Address: 215 Alexander St., Rochester, NY 14607, Contact: Herbert Dohr, Phone: (716) 546-8580.

(62) *Laboratory:* National Testing Laboratories, Inc., (NIST).

Address: 27-14 39th Ave., Long Island City, NY 11101, Contact: Allen Ross, Phone: (718) 784-2828.

(63) *Laboratory:* Northeastern Analytical Corp. (NIST).

Address: Evesham Corporation Center, 4 East Stow Rd., Unit 10, Marlton, NJ 08053, Contact: William Harris, Phone: (609) 651-1441.

(64) *Laboratory:* O'Brien & Gere Engineers, Inc. (NIST).

Address: Box 4873, 1304 Buckley Rd., Syracuse, NY 13221, Contact: Swiatoslav W. Kaczmar, Phone: (315) 451-4700.

(65) *Laboratory:* PMK Eng. & Testing, Inc. (NIST).

Address: 516 Bloy St., Hillside, NJ 07205, Contact: James Ferris, Phone: (201) 686-0044.

(66) *Laboratory:* Pedneault Associates, Inc. (NIST).

Address: 1615 9th Ave., Bohemia, NY 11716, Contact: John Pedneault, Phone: (516) 467-8477.

(67) *Laboratory:* Phoenix Safety Associates, Ltd.

Address: 35 West 31st St., New York, NY 10001, Contact: Nina Amarando, Phone: (212) 268-0800.

(68) *Laboratory:* Powell Environmental Services, Inc., (NIST).

Address: Suite 9A, Camp Meeting Grounds, Delanco, NJ 08075, Contact: Michael D. Moschella, Phone: (609) 764-8886.

(69) *Laboratory:* Princeton Testing Laboratory (NIST).

Address: P.O. Box 3108, Princeton, NJ 08540, Contact: David Kichula, Phone: (609) 452-9050.

(70) *Laboratory:* Professional Service Ind., Inc. (NIST).

Address: 423A New Karner Rd., Albany, NY 12205, Contact: Mark Wysin, Phone: (518) 452-6977.

(71) *Laboratory:* Public Service Testing Laboratories, Inc.

Address: 37-31 57th St., Woodside, NY 11377, Contact: Stephen DiMartino, Phone: (718) 476-9202.

(72) *Laboratory:* R-C-G BOCES Risk Management Services, Lab (NIST).

Address: Brookview Rd., P.O. Box 28, Brookview, NY 12026, Contact: Paul Bowles, Phone: (518) 732-7280.

(73) *Laboratory:* Suffolk County Public & Env. Health, Lab. (NIST).

Address: Veterans Memorial Hwy., Building 77, Hauppauge, NY 11788, Contact: Ronald Huttie, Phone: (516) 360-5528.

(74) *Laboratory:* TAKA Asbestos Analytical Services, (NIST).

Address: P.O. Box 298, Greenlawn, NY 11740, Contact: Thomas A. Kubic, Phone: (516) 261-2117.

(75) *Laboratory:* TAKA Asbestos Analytical Services, Inc. (NIST), Environmental Testing.

Address: 324 Larkfield Rd., East Northport, NY 11731, Contact: Thomas Kubic, Phone: (516) 261-2117.

(76) *Laboratory:* Testwell Craig Lab, Inc. (NIST).

Address: 47 Hudson St., Ossining, NY 15062, Contact: Marco J. Pedone, Phone: (914) 762-9600.

(77) *Laboratory:* Testwell Craig Laboratories of Albany, Inc. (NIST).

Address: 518 Clinton Ave., Albany, NY 12208, Contact: Stanley P. Purzycki, Phone: (518) 436-4114.

(78) *Laboratory:* Testwell Craig Laboratories, Inc., (NIST).

Address: 50 Passaic Ave., Fairfield, NJ 07006, Contact: Marco J. Pedone, Phone: (201) 882-8377.

(79) *Laboratory:* Testwell Craig Peters, Inc. (NIST).

Address: 127 Seeley Rd., Syracuse, NY 13224, Contact: Walter Peters, Phone: (315) 446-0008.

(80) *Laboratory:* Testwell Craig Testing Laboratories, (NIST).

Address: 565 East Jarding Hwy., Mays Landing, NJ 08330, Contact: Joseph Gigliotti, Phone: (609) 625-1700.

(81) *Laboratory:* U.S. Testing Company, Inc., Environmental Sciences Division (NIST).

Address: 1415 Park Ave., Hoboken, NJ 07030, Contact: Ellen McCabe Noyes, Phone: (201) 792-2400.

EPA Accredited Commercial PLM Laboratories

REGION III – Philadelphia, PA

Regional Asbestos Coordinator: Carole Dougherty, EPA, Region III (3HW-42), 841 Chestnut Bldg., Philadelphia, PA 19107. (215)597-3160, (FTS) 597-3160.

(1) *Laboratory:* A.F. Meyer & Associates, Inc. (NIST).

Address: 6849 Old Dominion Dr., Suite 228, McLean, VA 22101, Contact: John Shockley, Jr., Phone: (703) 734-9093.

(2) *Laboratory:* AGX, Inc. (NIST).

Address: Freedom Professional Bldg., 1341 Old Freedom Rd., Suite 3B, Mars, PA 16046, Contact: Kimberly Allison, Phone: (412) 776-1905.

(3) *Laboratory:* AMA Analytical Services (NIST).

Address: 4475 Forbes Blvd., Lanham, MD 20706, Contact: Bruce Lippy, Phone: (800) 459-2640.

(4) *Laboratory:* ASBESTECH Division.

Address: P.O. Box 98, Dunbar, WV 25064, Contact: John Richard Hart, Phone: (304) 766-6224.

(5) *Laboratory:* ATEC Associates, Inc. (NIST), Industrial Hygiene Division.

Address: 8989 Herrmann Dr., Columbia, MD 21045-8780, Contact: Paul A. Esposito, Phone: (301) 381-0232.

(6) *Laboratory:* ATEC Associates of Virginia, Inc., (NIST).

Address: 2551 Eltham Ave., Suite Z, Norfolk, VA 23513, Contact: Richard A. Vogel, Jr., Phone: (804) 857-6765.

(7) *Laboratory:* Academy of IRM, Inc.

Address: 1600 Winchester Rd., Annapolis, MD 21401, Contact: Bobby E. Leonard, Phone: (301) 757-6503.

(8) *Laboratory:* Accredited Environmental Technologies, Inc. (NIST).

Address: 28 North Pennell Rd., Lima, PA 19037, Contact: Jack Carney, Phone: (215) 891-0114.

(9) *Laboratory:* Advanced Analytical Laboratories, Inc.

Address: 30th & North Church St., Hazelton, PA 18201, Contact: Thomas Martinelli, Phone: (717) 455-5115.

(10) *Laboratory:* Air Quality Analysis Associates (NIST).

Address: 1337 Perry Ave., Morgantown, WV 26505, Contact: John T. Jankovic, Phone: (304) 599-0023.

(11) *Laboratory:* Allegheny Asbestos Analysis, Inc., (NIST).

Address: 300 Mt. Lebanon Blvd., Suite 2217, Pittsburgh, PA 15234, Contact: Tammy Nagel, Phone: (412) 563-3744.

(12) *Laboratory:* Allegheny Mountain Research (NIST), Occupational Health Division.

Address: RD 1, Box 243A, Berlin, PA 15530-9546, Contact: Victor Kawchak, Phone: (814) 267-4404.

(13) *Laboratory:* Altest Environmental Labs (NIST).

Address: 28 West Main St., Plymouth, PA 18651, Contact: Frank Egenski, Phone: (717) 779-5377.

(14) *Laboratory:* American Medical Laboratories, Inc., (NIST).

Address: 11091 Main St., Fairfax, VA 22030, Contact: Fred Grunder, Phone: (703) 691-9100.

(15) *Laboratory:* American Medical Laboratories, Inc., (NIST).

Address: 2000 Bremo Rd., Suite 204, Richmond, VA 23226, Contact: Robert Murphy, Phone: (703) 691-9100.

(16) *Laboratory:* Analytics (NIST).

Address: P.O. Box 25249, Richmond, VA 23260, Contact: James Calpin, Phone: (804) 353-8973.

(17) *Laboratory:* Analytics Laboratory, Inc. (NIST), Subs. of Roche Biomedical, Laboratories Inc.

Address: 205 South Whiting St., Suite 405, Alexandria, VA 22304, Contact: Eugene Buie, Phone: (703) 751-3803.

(18) *Laboratory:* Analytics Laboratory, Inc. (NIST), Subs. of Roche Biomedical, Laboratories, Inc.

Address: 4625 Pembroke Lake Cir., Virginia Beach, VA 23455, Contact: Christie Buie, Phone: (804) 499-5050.

(19) *Laboratory:* Apex Environmental, Inc. (NIST).

Address: 7652 Standish Pl., Rockville, MD 20855, Contact: Frank G. Fitzpatrick, Phone: (301) 217-9200.

(20) *Laboratory:* Applied Environmental Health & Safety, Inc.

Address: Reston International Center, 11800 Sunrise Valley Dr., Suite 1230, Reston, VA 22091, Contact: Jana Ambrose, Phone: (703) 648-0822.

(21) *Laboratory:* Asbestos Testing, Inc., Industrial Hygienist.

Address: 5207 Noyes Ave., Charleston, WV 25304, Contact: John S. Ferrell, Phone: (304) 925-6795.

(22) *Laboratory:* BCM Engineers, Inc. (NIST).

Address: 5777 Baum Blvd., Pittsburg, PA 15206, Contact: David Nicoles, Phone: (412) 361-6000.

(23) *Laboratory:* BCM Lab Division (NIST).

Address: One Plymouth Meeting, Plymouth Meeting, PA 19462, Contact: John J. Tobin, Phone: (215) 825-3800.

(24) *Laboratory:* Batta Environmental Associates (NIST).

Address: P.O. Box 9722, Newark, DE 19711-9722, Contact: Steve Cahill, Phone: (302) 737-3376.

(25) *Laboratory:* Biospherics, Inc. (NIST).

Address: 12051 Indian Creek Ct., Beltsville, MD 20705, Contact: Len Burelli, Phone: (301) 369-3900.

(26) *Laboratory:* Blue Ridge Analytical (NIST).

Address: 202 Bishop Rd., Blacksburg, VA 24060, Contact: David Violette, Phone: (703) 951-9283.

(27) *Laboratory:* Briggs Associates, Inc. (NIST).

Address: 8300 Guilford Rd., Suite E, Columbia, MD 21046, Contact: J. Ross Voorhees, Phone: (301) 381-4434.

(28) *Laboratory:* Brujos Scientific, Inc.

Address: 505 Drury Ln., Baltimore, MD 21229, Contact: Robert Olcerst, Phone: (301) 566-0859.

(29) *Laboratory:* Camtech, Inc.

Address: McKnight-Ivory Bldg., 4550 McKnight Rd., Suite 202, Pittsburgh, PA 15237, Contact: Michael A. Campbell, Phone: (412) 931-1210.

(30) *Laboratory:* Commonwealth Laboratory, Inc.

Address: 1761 Huffman St., P.O. Box 1428, Harrisonburg, VA 22801, Contact: Edwin Cox, III, Phone: (804) 648-8358.

(31) *Laboratory:* Cumberland Analytical Labs., Inc., (NIST).

Address: 56 North Second St., Chambersburg, PA 17201, Contact: D. R. Richner, Jr., Phone: (717) 263-5943.

(32) *Laboratory:* Eagle Industrial Hygiene Association, Incorporated (NIST).

Address: 405 Masons Mill Rd., Huntingdon, PA 19006, Contact: Keith Crawford, Phone: (215) 657-2261.

(33) *Laboratory:* Enviro Dynamics, Inc., Occupational & Environmental Health, Consultants.

Address: 520 North Washington, Suite 300, Falls Church, VA 22046, Contact: Margaret Klekner, Phone: (703) 237-4237.

(34) *Laboratory:* Environmental Laboratories, Inc.

Address: 9211 Burge Ave., Richmond, VA 23237, Contact: Terry W. Hall, Phone: (804) 271-3440.

(35) *Laboratory:* Environmental Management Group, Inc.

Address: 9841 Broken Land Pkwy., Suite 117, Columbia, MD 21046, Contact: Patrick Thomas Connor, Phone: (301) 290-7078.

(36) *Laboratory:* FREE-COL Laboratories (NIST).

Address: Cotton Rd., P.O. Box 557, Meadville, PA 16335-0557, Contact: J. Richard Wohler, Phone: (814) 724-8242.

(37) *Laboratory:* Galson Technical Services, Inc. (NIST).

Address: 5170 Campus Dr., Suite 200, Plymouth Meeting, PA 19462, Contact: Debbie Field, Phone: (215) 834-7288.

(38) *Laboratory:* Gannett Fleming, Environmental Laboratory (NIST).

Address: 208 Senate Ave., Camp Hill, PA 17011, Contact: David W. Lane, Phone: (717) 763-7211.

(39) *Laboratory:* Geo-Environmental Services, Inc., (NIST), Maryland Division.

Address: 444 North Frederick Ave., Suite L148, Gaithersburg, MD 20877-2432, Contact: John T. Razzolini, Phone: (301) 353-0338.

(40) *Laboratory:* I-TEM, Ltd. (NIST).

Address: North Lake Commerce Center, 12850 Middlebrook Rd., P.O. Box 1060, Germantown, MD 20874, Contact: Jorge Rangel, Phone: (301) 353-0585.

(41) *Laboratory:* Industrial Hygiene & Occup. Med Lab, A Division of American Medical Lab., Inc.

Address: 11081 Main St., Fairfax, VA 22030, Contact: Jan Turner or Fred Grunder, Phone: (703) 691-9100.

(42) *Laboratory:* Interscience Research.

Address: 2614 Wyoming Ave., Norfolk, VA 23513, Contact: Joseph H. Guth, Phone: (804) 853-8813.

(43) *Laboratory:* JACA Corporation.

Address: 550 Pinetown Rd., Fort Washington, PA 19034, Contact: Gary Lester, Phone: (215) 643-5466.

(44) *Laboratory:* Lancaster Laboratories, Inc. (NIST).

Address: 2425 New Holland Ave., Lancaster, PA 17601, Contact: Barbara J. Weaver, Phone: (717) 656-2301.

(45) *Laboratory:* Lehigh Valley Analytics, Inc. (NIST).

Address: 60 West Broad St., Bethlehem, PA 18018, Contact: Barbara J. Davies, Phone: (215) 866-4434.

(46) *Laboratory:* MDS Laboratories (NIST).

Address: 4418 Pottsville Pike, Reading, PA 19605, Contact: Fred Usbeck, Phone: (215) 921-9191.

(47) *Laboratory:* Marine Chemist Service, Inc. (NIST).

Address: 11850 Tug Boat Ln., Newport News, VA 23606, Contact: Colleen Becker, Phone: (804) 873-0933.

(48) *Laboratory:* Medlab, Inc. (NIST).

Address: P.O. Box 2045, Wilmington, DE 19899, Contact: Sevag Sinanian, Phone: (302) 984-5764.

(49) *Laboratory:* Microlore, Inc.

Address: 2201A 22nd St., Nitro, WV 25143, Contact: Jon C. Pauley, Phone: (304) 343-2382.

(50) *Laboratory:* Mountaineer Testing Labs., Inc.

Address: P.O. Box 767, 425 North Jefferson, Lewisburg, WV 24901, Contact: Rob Dillon, Phone: (304) 645-7114.

(51) *Laboratory:* Occupational Medical Center Lab (NIST).

Address: 4451 Parliament Pl., Lanham, MD 20706, Contact: Christopher Beza, Phone: (301) 306-0632.

(52) *Laboratory:* Oneil M. Banks, Inc.

Address: 330 South Main St., Bel Air, MD 21014, Contact: Michelle L. Evans, Phone: (301) 879-4676.

(53) *Laboratory:* Pacific Environmental Services, Inc., (NIST).

Address: 11440 Isaac Newton Sq., Suite 205, Reston, VA 22090, Contact: John Mazur, Phone: (703) 471-8383.

(54) *Laboratory:* Paleozoic Hydrocarbon Industries, Asbestos Lab Division of PHI (NIST).

Address: 132 Oakwood Rd., Charleston, WV 25314, Contact: S. M. Spencer, Jr., Phone: (304) 342-6424.

(55) *Laboratory:* Peach Laboratories.

Address: P.O. Box 338, 5465 Route 8, Gibsonia, PA 15044, Contact: John M. Lang, Phone: (412) 443-9244.

(56) *Laboratory:* Penn Environmental Health.

Address: 301 South Lang Ave., Pittsburgh, PA 15208, Contact: Abbas Labbauf, Phone: (412) 241-5130.

(57) *Laboratory:* Pennrun Corporation.

Address: 150 William Pitt Way, Pittsburgh, PA 15238, Contact: Valerie McDonald, Phone: (412) 826-5304.

(58) *Laboratory:* Professional Service Ind., Inc. (NIST), Pittsburgh Testing Lab Division.

Address: 850 Poplar St., Pittsburgh, PA 15220, Contact: Bruce Erdner, Phone: (412) 922-4000.

(59) *Laboratory:* R.J. Lee Group (NIST).

Address: 350 Hochberg Rd., Monroeville, PA 15146, Contact: Willian. H. Powers, Phone: (412) 325-1776.

(60) *Laboratory:* R.J. Lee Group (NIST).

Address: 10306 Battleview Pkwy., Manassas, VA 22110, Contact: Tom Dagenhart, Phone: (703) 368-7880.

(61) *Laboratory:* SSI Environmental Consultants (NIST).

Address: Expressway Pk., Gulf Lab Rd. - Harmarville, Pittsburgh, PA 15238, Contact: George M. Beck, Phone: (412) 828-9210.

(62) *Laboratory:* Schneider Laboratories, Inc. (NIST).

Address: 1427 West Main St., Richmond, VA 23220-4829, Contact: Richard F. Schneider, Phone: (804) 353-6778.

(63) *Laboratory:* Scientific & Environmental Analytical, Svcs, Inc. (SEAS) (NIST).

Address: 202 Bishop Rd., Blacksburg, VA 23220, Contact: David Violette, Phone: (703) 951-9283.

(64) *Laboratory:* Spotts, Stevens, & McCoy (NIST).

Address: 345 North Wyomissing Blvd., Wyomissing, PA 19610, Contact: Spencer R. Watts, Phone: (215) 376-6581.

(65) *Laboratory:* Structure Probe, Inc.

Address: 535 East Gay St., West Chester, PA 19380, Contact: Kim Royer, Phone: (215) 436-5400.

(66) *Laboratory:* Tracor Jitco, Inc. (NIST), Asbestos Technology Center.

Address: 1601 Research Blvd., Rockville, MD 20850, Contact: Michael L. Edwards, Phone: (301) 984-2722.

(67) *Laboratory:* Versar, Inc. (NIST).

Address: 6850 Versar Center, Springfield, VA 22151, Contact: Robert Maxfield, Phone: (703) 642-6755.

(68) *Laboratory:* Volz Environmental Services (NIST).

Address: 3610 William Pitt Way, Pittsburgh, PA 15238, Contact: George J. Skarupa, Phone: (412) 826-3150.

(69) *Laboratory:* Washington Analytical Lab of VA, Inc., (Mobile Unit).

Address: 4238 Lafayette Center Dr., Chantilly, VA 22021, Contact: Hugh Granger, Phone: (703) 631-6870.

(70) *Laboratory:* Washington Analytical Laboratory, Inc., (NIST).

Address: 4238 Lafayette Center Dr., Chantilly, VA 22021, Contact: R. Hugh Granger, Phone: (703) 631-6868.

(71) *Laboratory:* Wright Lab Services, Inc. (NIST).

Address: 34 Dogwood Ln., Middletown, PA 17057, Contact: Francine Walker, Phone: (717) 944-5541.

EPA Accredited Commercial PLM Laboratories

REGION IV—Atlanta, GA

Regional Asbestos Coordinator: Liz Wilde, EPA, Region IV, 345 Courtland St., NE, (4APT-PT), Atlanta, GA 30365. (404) 347-5014, (FTS) 257-5014.

(1) *Laboratory:* ATEC Associates, Inc. (NIST).

Address: 129 West Valley Ave., Birmingham, AL 35209, Contact: David Yates, Phone: (205) 945-9224.

(2) *Laboratory:* ATEC Associates, Inc. (NIST).

Address: 4645 Rosselle St., Jacksonville, FL 32205, Contact: Benton E. Laughlin, Phone: (904) 387-6404.

(3) *Laboratory:* ATEC Associates, Inc. (NIST).

Address: 2990 Northwest 40 St., Miami, FL 33142, Contact: Michael H. Straube, Phone: (305) 633-2700.

(4) *Laboratory:* ATEC Associates, Inc. (NIST), Environmental Services Division.

Address: 1300 Williams Dr., Marietta, GA 30066-6299, Contact: Dwayne Cheatom, Phone: (404) 427-9456.

(5) *Laboratory:* ATEC Environmental Consultants (NIST).

Address: 1535 North Cogswell St., Suite A-4, Rockledge, FL 32955, Contact: Harry L. Capadeno, Jr., Phone: (407) 631-6551.

(6) *Laboratory:* Advanced Industrial Hygiene Services, Inc. (NIST).

Address: 2131 Southwest 2nd Ave., Miami, FL 33129, Contact: Bruce Marchette, Phone: (305) 854-7554.

(7) *Laboratory:* American Microscopy Laboratory (NIST).

Address: 29 Heritage Hills, Tuscaloosa, AL 35406, Contact: M. A. Beg, Phone: (205) 345-2555.

(8) *Laboratory:* Analytical & Forensic Associates, (NIST).

Address: 1913 Capri Dr., Huntsville, AL 35811, Contact: John Kilbourne, Phone: (205) 533-3188.

(9) *Laboratory:* Analytical Management, Inc. (NIST).

Address: P.O. Box 11279, Lexington, KY 40574, Contact: David H. McRae, Phone: (606) 231-6511.

(10) *Laboratory:* Applied Environmental Technology, Inc.

Address: P.O. Box 421, Marietta, GA 30061, Contact: James B. Glass, Phone: (404) 425-1115.

(11) *Laboratory:* Applied Environmental Testing Lab, Inc. (NIST).

Address: 680 Thoronton Way, Suite 202, Lithia Springs, GA 30057, Contact: Ali A. Hassani Pak, Phone: (404) 948-4919.

(12) *Laboratory:* Applied Technical Services.

Address: 1190 Atlanta Industrial Dr., Marietta, GA 30066, Contact: Laurel V. Waters, Phone: (404) 423-1400.

(13) *Laboratory:* Asbestos Analysis and Information, Service (NIST).

Address: P.O. Box 837, Fair Oaks, NC 27524, Contact: Stephen H. Westbrook, Phone: (919) 894-7718.

(14) *Laboratory:* Azimuth, Inc. (NIST).

Address: P.O. Box 71904, Charleston, SC 29415-1904, Contact: Charles B. Stoyle, Phone: (803) 553-9456.

(15) *Laboratory:* BCM Engineers, Inc. (NIST).

Address: 104 St. Francis St., Suite 400, Mobile, AL 36633, Contact: Sheri Sims, Phone: (205) 433-0517.

(16) *Laboratory:* Bonner Analytical Testing Co. (NIST).

Address: Rt. 14, Box 508, Hattiesburg, MS 39402, Contact: Michael Bonner, Phone: (601) 264-2854.

(17) *Laboratory:* Briggs Associates, Inc. (NIST).

Address: 4401 Vineland Rd., Suite A9, Orlando, FL 32811, Contact: William Newman, Phone: (407) 422-3522.

(18) *Laboratory:* CRU, Inc. (NIST).

Address: P.O. Box 24467, Louisville, KY 40224, Contact: Donna M. Ringo, Phone: (502) 426-8860.

(19) *Laboratory:* Carolina Environmental (NIST).

Address: P.O. Box 37549, Raleigh, NC 27627, Contact: John D. Koenigs, Phone: (919) 859-0477.

(20) *Laboratory:* Cavin Analytical Consultants (NIST).

Address: 2165-k West Park Ct., Stone Mountain, GA 30087-3547, Contact: Donald K. Cavin, Phone: (404) 498-8295.

(21) *Laboratory:* Certified Engineering and Testing, Co., Inc. (NIST).

Address: 2600 Poplar Ave., Memphis, TN 38112, Contact: Amy Ginsberg, Phone: (901) 458-6660.

(22) *Laboratory:* Chem-Ray (NIST).

Address: P.O. Box 821, Florence, AL 35631, Contact: James D. Ray, Phone: (205) 776-4345.

(23) *Laboratory:* Chemalytics (NIST).

Address: 300 Doctors Bldg., 33 East Seventh St., Covington, KY 41011, Contact: Kenneth P. Reed, Phone: (606) 431-6234.

(24) *Laboratory:* Clayton Environmental Consultants, Inc. (NIST).

Address: 400 Chastain Center Blvd., NW, Suite 490, Kennesaw, GA 30144, Contact: Owen Crankshaw, Phone: (404) 499-7500.

(25) *Laboratory:* Davis & Floyd, Inc. (NIST).

Address: P.O. Drawer 428, Greenwood, SC 29648, Contact: William J. Day, Phone: (803) 229-5211.

(26) *Laboratory:* EEC, Inc. (NIST).

Address: 2245 North Hills Dr., Suite J, Raleigh, NC 27612, Contact: Mike Scrimanker, Phone: (919) 782-8912.

(27) *Laboratory:* EEC, Inc. (NIST).

Address: P.O. Box 11847, Columbia, SC 29211, Contact: Daniel A. Smith, Phone: (803) 256-7846.

(28) *Laboratory:* EMSL, Inc. (NIST).

Address: 1990 Peachtree St., NW, Suite 305, Atlanta, GA 30309, Contact: John Scarano, Phone: (404) 858-4800.

(29) *Laboratory:* Ecosafe, Inc. (NIST).

Address: 1713 Chapel Hill Rd., Durham, NC 27707, Contact: Steven L. Goode, Phone: (919) 493-2612.

(30) *Laboratory:* Enviro-Chem, Inc. (NIST).

Address: 762 Downtowner Loop W., Mobile, AL 36609, Contact: Charles Smilie, Phone: (205) 344-7711.

(31) *Laboratory:* EnviroSciences, Inc. (NIST).

Address: Montgomery Bldg., Suite 705, P.O. Box 5804, Spartanburg, SC 29304, Contact: Andrew G. Schauder, Phone: (803) 585-4900.

(32) *Laboratory:* Environmental Analytical Labs (NIST).

Address: Cobb Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067, Contact: Jeremy A. Armstrong, Phone: (404) 425-9901.

(33) *Laboratory:* Environmental Health Laboratory (EHL), (NIST), Cigna Loss Control Services.

Address: 3920 Arkwright Rd., Macon, GA 31213, Contact: Jeanne Gibbs, Phone: (912) 471-4544.

(34) *Laboratory:* Environmental Materials Consultants.

Address: P.O. Box 100361, 2217 10th Ct. S., Suite 200, Birmingham, AL 35210, Contact: William E. Hogg, Phone: (205) 933-0400.

(35) *Laboratory:* Environmental Protection Systems, Inc.

Address: 7215 Pine Forest Rd., Pensacola, FL 32506, Contact: James R. Burkhalter, Phone: (904) 944-6901.

(36) *Laboratory:* Environmental Protection Systems, Inc., (NIST).

Address: P.O. Box 20382, Jackson, MS 39209, Contact: Corbin McGriff, Phone: (601) 922-8242.

(37) *Laboratory:* Enviropact.

Address: 4790 Northwest 157th St. Hialeah, Miami, FL 33142, Contact: Greta Mackenzie, Phone: (305) 620-1700.

(38) *Laboratory:* Enviropact Services, Inc.

Address: 5180 113th Ave., N, Clearwater, FL 34620-4835, Contact: Michael T. Osinski, Phone: (813) 577-9663.

(39) *Laboratory:* Envirosciences, Inc. (NIST).

Address: 3810-F Merton Dr., Raleigh, NC 27609, Contact: E. R. Childress, Phone: (919) 782-1487.

(40) *Laboratory:* Evans Environmental & Geological, Science and Management, Inc.

Address: 2631 Southwest 27th St., Coconut Grove, FL 33133, Contact:

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Charles C. Evans, Phone: (305) 858-7458.

(41) *Laboratory:* Fiber Lab, Inc. (NIST).

Address: P.O. Box 36728, Birmingham, AL 35236, Contact: Suzanne Wdowiak, Phone: (205) 822-6544.

(42) *Laboratory:* GSC Environmental Laboratories, Inc., (NIST).

Address: 1824 Bi Wylds Rd., Augusta, GA 30909, Contact: William J. Horning, Phone: (404) 737-0185.

(43) *Laboratory:* Geo-Environmental Services, Inc., (NIST).

Address: 141 West Wieuca Rd., Suite 200A, Atlanta, GA 30342, Contact: Susan Harper, Phone: (404) 257-9303.

(44) *Laboratory:* Harmon Engineering Associates, Inc., (NIST).

Address: 1550 Pumphrey Ave., Auburn, AL 36830-4399, Contact: Roger Thompson, Phone: (205) 821-9250.

(45) *Laboratory:* Health & Hygiene, Inc. (NIST).

Address: 4605-E Dundas Dr., Greensboro, NC 27407, Contact: Sharon P. Lonon, Phone: (919) 854-2303.

(46) *Laboratory:* Hunter Services, Inc.

Address: P.O. Box 1703, Gainesville, FL 32602-1703, Contact: John J. Mousa, Phone: (904) 332-3318.

(47) *Laboratory:* International Abatement Management, Inc. (NIST).

Address: 550 North Reo St., Suite 300, Tampa, FL 33609, Contact: Robert B. Greene, Phone: (813) 287-5100.

(48) *Laboratory:* KNL Laboratory Services (NIST).

Address: P.O. Box 1633, Tampa, FL 33601, Contact: Garrett J. McGibbon, Phone: (813) 229-2879.

(49) *Laboratory:* Larron Laboratory.

Address: 711 Broadway, Mayfield, KY 42066, Contact: Daniel Roth, Phone: (502) 247-6982.

(50) *Laboratory:* Laseter and Associates, Inc.

Address: P.O. Box 176, Collierville, TN 38107, Contact: Kenneth Laseter, Phone: (901) 853-0400.

(51) *Laboratory:* Law Associates, Inc. (NIST).

Address: 1386 Mayson St., Atlanta, GA 30324, Contact: Greg Lewars, Phone: (404) 892-3200.

(52) *Laboratory:* Law Engineering (NIST).

Address: 4919 West Laurel St., P.O. Box 24183, Tampa, FL 33623, Contact: Susan K. Gossett, Phone: (813) 879-0750.

(53) *Laboratory:* Law Engineering Testing Co. (NIST).

Address: 501 Minuet Ln., P.O. Box 11297, Charlotte, NC 28220, Contact: R. Glenn Craig, Phone: (704) 523-2022.

(54) *Laboratory:* Law Engineering, Inc. (NIST).

Address: 3608 7th Ct., S, P.O. Box 10244, Birmingham, AL 35202, Contact: R. Michael Hamilton, Phone: (205) 252-9901.

(55) *Laboratory:* Materials Analytical Services, Inc., (NIST).

Address: 3597 Parkway Ln., Suite 250, Norcross, GA 30092, Contact: William Longo, Phone: (404) 448-3200.

(56) *Laboratory:* McCrone Environmental Services, Inc., (NIST).

Address: 1412 Oakbrook Dr., Suite 100, Norcross, GA 30093, Contact: Harriotte A. Hurley, Phone: (404) 368-9600.

(57) *Laboratory:* Metro Services Laboratory (NIST), Asbestos Control Division.

Address: 6309 Fern Valley Pass, Louisville, KY 40228, Contact: J. Daniel Cooper, Phone: (502) 964-0865.

(58) *Laboratory:* Micro Analytical Laboratories, Inc., (NIST).

Address: 3618 Northwest 97th Blvd., Gainesville, FL 32606, Contact: Robert Longo, Phone: (904) 332-1701.

(59) *Laboratory:* Micro-methods, Inc. (NIST).

Address: 6500 Sunplex, Ocean Springs, MS 39564, Contact: Thomas J. Wilson, Phone: (601) 875-6420.

(60) *Laboratory:* Northrop Services, Inc. (NIST).

Address: P.O. Box 12313, RTP, NC 27709-2313, Contact: James A. Jahnke, Phone: (919) 549-0611.

(61) *Laboratory:* Pace Laboratories, Inc. (NIST).

Address: 5460 Beaumont Center Blvd., Tampa, FL 33634, Contact: Timothy M. Odell, Phone: (813) 884-8268.

(62) *Laboratory:* Pensacola P.O.C. , Inc. (NIST).

Address: 109 South 2nd St., Pensacola, FL 32507, Contact: Barbara Sviglin, Phone: (904) 456-4406.

(63) *Laboratory:* Phoenix Environmental Labs, Division of P.D.R. Engineers, Inc.

Address: 2000 Lindell Ave., Nashville, TN 37203, Contact: A.K. Upadhyaya, Phone: (615) 298-2065.

(64) *Laboratory:* Professional Contract Services, Inc., (NIST).

Address: P.O. Box 2605, Opelika, AL 36803-2605, Contact: Marsha Schnurrenberger, Phone: (205) 749-2636.

(65) *Laboratory:* Professional Service Ind., Inc. (NIST), PTL/Arribas Division.

Address: 3901 Northwest 29th Ave., Miami, FL 33142, Contact: Mary E. Hamel, Phone: (305) 633-7555.

(66) *Laboratory:* Quality Analytical Services, Inc., (NIST).

Address: 703 West Johnson St., Raleigh, NC 27603, Contact: Eloise Sheats, Phone: (919) 839-0757.

(67) *Laboratory:* R3 Enterprises.

Address: 630 Edgewater Club Rd., Wilmington, NC 28405, Contact: Richard Spivey, Phone: (919) 686-0242.

(68) *Laboratory:* Roberts Environmental Services (NIST), MAKO Office Complex.

Address: Highway 24 E., Swansboro, NC 28584, Contact: H. Dan Roberts, Phone: (919) 393-6565.

(69) *Laboratory:* S&ME Industrial Technologies, Inc.

Address: 5909 Breckenridge Pkwy., Suite B, Tampa, FL 33610, Contact: John J. Henderson, Phone: (813) 623-2436.

(70) *Laboratory:* S&ME Industrial Technologies, Inc., (NIST).

Address: 3980 Dekalb Technology Pkwy., Suite 700, Atlanta, GA 30340, Contact: Clint Gilbert, Phone: (404) 452-1911.

(71) *Laboratory:* S&ME Industrial Technologies, Inc., (NIST).

Address: 840 Low Country Blvd., Mt. Pleasant, SC 29464, Contact: Nina G. Marshtein, Phone: (803) 884-0005.

(72) *Laboratory:* Safety Underwriters Laboratory (NIST).

Address: P.O. Box 20094, Birmingham, AL 35216, Contact: Rebecca Hicks, Phone: (205) 822-3727.

(73) *Laboratory:* Schweiger and Associates (NIST).

Address: 2022 Powers Ferry Rd., Suite 180, 4M, Marietta, GA 30339, Contact: Patrick J. Schweiger, Phone: (404) 988-9250.

(74) *Laboratory:* Soil & Material Engineers (NIST).

Address: 9800-D Southern Pines Blvd., P.O. Box 7668, Charlotte, NC 28217, Contact: Terry Liles, Phone: (704) 523-8910.

(75) *Laboratory:* Southeastern Marine Chemists, Inc., (NIST), Southeastern Chemists' Laboratories.

Address: P.O. Box 8917, Jacksonville, FL 32239, Contact: Joseph W. Newton, Phone: (904) 725-2040.

(76) *Laboratory:* Specialized Assays (NIST).

Address: 210 12th Ave., S., P.O. Box 25110, Nashville, TN 37202, Contact: Kay Williams-Smith, Phone: (615) 255-5786.

(77) *Laboratory:* TEI Environmental, Inc. (NIST).

Address: 308A Pomona Dr., Greensboro, NC 27407, Contact: James Buchanan, Phone: (919) 852-0318.

(78) *Laboratory:* TTL, Inc. (NIST).

Address: 3516 Greensboro Ave., P.O. Box 1094, Tuscaloosa, AL 35403, Contact: Jack E. Davis, Phone: (205) 345-0816.

(79) *Laboratory:* Testwell Craig Laboratories of, Florida, Inc. (NIST).

Address: 7104 Northwest 51st St., Miami, FL 33166, Contact: Robert Schuler, Phone: (305) 593-0561.

(80) *Laboratory:* Thornton Laboratories, Inc. (NIST).

Address: 1145 East Cass St., Tampa, FL 33602, Contact: Laure Taylor, Phone: (813) 223-9702.

(81) *Laboratory:* Weston-ATC, Inc. (NIST).

Address: 1635 Pumphrey Ave., Auburn, AL 36830-4303, Contact: Leonard Nelms, Phone: (205) 826-6100.

(82) *Laboratory:* Weston-ATC Mobile Facility (NIST).

Address: 1635 Pumphrey Ave., Auburn, AL 36830, Contact: Leonard H. Nelms, Phone: (205) 826-6100.

EPA Accredited Commercial PLM Laboratories

REGION V – Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA, Region V, 230 S. Dearborn St., (5-SPT-7), Chicago, IL 60604. (312) 886-6003, (FTS) 886-6003.

(1) *Laboratory:* ABS Environmental Labs, Inc. (NIST).

Address: 605 Brookside, Frankfurt, IL 60423, Contact: Arlene B. Smith, Phone: (815) 469-4464.

(2) *Laboratory:* ALEX (NIST).

Address: 485 Frontage Rd., Burr Ridge, IL 60521, Contact: Erol Roth, Phone: (312) 789-6060.

(3) *Laboratory:* ATEC Associates, Inc. (NIST).

Address: 1501 East Main St., Griffith, IN 46319, Contact: Roger S. Berkowitz, Phone: (219) 924-6690.

(4) *Laboratory:* ATEC Associates, Inc. (NIST).

Address: 5150 East 65th St, Indianapolis, IN 46220-4871, Contact: Richard A. Gehlbach, Phone: (317) 849-4990.

(5) *Laboratory:* Affiliated Environmental Services, Inc. (NIST).

Address: 3806 Venice Rd., Sandusky, OH 44870, Contact: Don Dauch, Phone: (419) 627-1974.

(6) *Laboratory:* Air Quality Testing (NIST).

Address: 236 South Washington St., Naperville, IL 60540, Contact: J.D. Stubblefield, Phone: (312) 969-4010.

(7) *Laboratory:* Air Quality Testing, Inc. (NIST).

Address: 1630 Fifth Ave., Suite 541, Moline, IL 61265, Contact: Gerald Hofferth, Phone: (309) 762-1998.

(8) *Laboratory:* Aires Environmental Services.

Address: 1550 Hubbard, Batavia, IL 60510, Contact: Cynthia Darling, Phone: (312) 879-3006.

(9) *Laboratory:* AirTech Associates, Inc. (NIST).

Address: 4100 Madison, Lower Level, Suite 4, Hillside, IL 60162, Contact: Mark Watka or Anne Czechorski, Phone: (312) 547-8117.

(10) *Laboratory:* Alderink & Associates, Inc. (NIST).

Address: 3221 3 Mile Rd., Grand Rapids, MI 49504, Contact: Carol J. Paxhia, Phone: (616) 791-0730.

(11) *Laboratory:* Alloway Testing (NIST).

Address: 1325 North Cole St., Lima, OH 45801-3415, Contact: John R. Hoffman, Phone: (419) 223-1362.

(12) *Laboratory:* American Analytical Laboratories, (NIST).

Address: 100 Lincoln St., Akron, OH 44308, Contact: Richard E. Moore, Phone: (216) 535-1300.

(13) *Laboratory:* Anesbestics Co. (NIST).

Address: 7206 West 90th Pl., Bridgeview, IL 60455, Contact: Gary Kentgen, Phone: (312) 598-2921.

(14) *Laboratory:* Applied Environmental Sciences, Inc., (NIST).

Address: 511 11th Ave. S, Box 220, Minneapolis, MN 55415, Contact: Patrick DiBartolomeo, Phone: (612) 339-5559.

(15) *Laboratory:* Asbestos Compliance Technology, Inc., (NIST).

Address: 5353 Tacoma Ave., Indianapolis, IN 46220, Contact: Virgil J. Konopinski, Phone: (317) 257-5096.

(16) *Laboratory:* Asbestos Compliance Technology, Inc., (NIST).

Address: 4015 Cherry St., Cincinnati, OH 45223, Contact: Tina Schmalz, Phone: (513) 542-4040.

(17) *Laboratory:* Asbestos Control Methods, Inc. (NIST).

Address: 2010 South Carboy Rd., Mount Prospect, IL 60056, Contact: Jeffrey Camplin, Phone: (312) 437-7999.

(18) *Laboratory:* Asbestos Management, Inc. (NIST).

Address: 36700 South Huron St., Suite 104, New Boston, MI 48164, Contact: D. Rex Bleeker, Phone: (313) 961-6135.

(19) *Laboratory:* BCA Laboratory (NIST).

Address: 1102 South Main, Bloomington, IL 61701, Contact: Kurt Benckendorf, Phone: (309) 828-7772.

(20) *Laboratory:* BDN Industrial Hygiene Consultants.

Address: 8105 Valleywood Ln., Portage, MI 49002, Contact: Scott McFarland, Phone: (616) 329-1237.

(21) *Laboratory:* Badger Labs. & Eng. Co., Inc.

Address: 1110 South Oneida St., Appleton, WI 54915, Contact: Stephen C. Taylor, Phone: (414) 739-9213.

(22) *Laboratory:* Beling Consultants, Inc. (NIST).

Address: 1001-16th St., Moline, IL 61265, Contact: Jeffrey A. Wasson, Phone: (309) 757-9800.

(23) *Laboratory:* Bowser-Morner Testing Laboratories, Inc.

Address: 420 Davis Ave., P.O. Box 51, Dayton, OH 45403, Contact: Mark A. Bingman, Phone: (513) 253-8805.

(24) *Laboratory:* Braun Environmental Laboratories, (NIST).

Address: 6800 South Country Rd. 18, P.O. Box 35108, Minneapolis, MN 55435-0108, Contact: Lisa A. Fournelle-Smestad, Phone: (612) 941-5600.

(25) *Laboratory:* Bruce Menkel & Associates, Inc. (NIST).

Address: 235 Industrial Dr., P.O. Box 159, Franklin, OH 45005, Contact: Bruce Menkel, Phone: (513) 746-9300.

(26) *Laboratory:* C.G. Technologies, Inc. (NIST).

Address: 585 Science Dr., Suite B, Madison, WI 53711, Contact: Carol Gannon, Phone: (608) 238-7611.

(27) *Laboratory:* CAE Asbestos (NIST).

Address: 207 North Woodwork Ln., Palatine, IL 60067, Contact: Paul A. Evansky, Jr., Phone: (312) 991-3300.

(28) *Laboratory:* CENCON (CNA Insurance) (NIST).

Address: 333 South Wabash - 3W, Chicago, IL 60604, Contact: Ellen Janka, Phone: (312) 822-6093.

(29) *Laboratory:* Carnow, Conibear and Associates, Ltd., (NIST).

Address: 333 West Wacker Dr., 14th Fl., Chicago, IL 60606, Contact: Steve Wolf, Phone: (312) 782-4486.

(30) *Laboratory:* Chem-Bio Corporation (NIST).

Address: 140 East Ryan Rd., Oak Creek, WI 53154, Contact: Robert F. Lipo, Phone: (414) 764-7870.

(31) *Laboratory:* Clayton Environmental Consultants, Inc. (NIST).

Address: 22345 Roethel Dr., Novi, MI 48050, Contact: Bob Lieckfield, Phone: (313) 344-1770.

(32) *Laboratory:* Cole Associates, Inc. (NIST).

Address: 2211 East Jefferson Blvd., South Bend, IN 46615, Contact: Lawrence W. Grauvogel, Phone: (219) 236-4400.

(33) *Laboratory:* Daily Analytical Laboratories (NIST).

Address: 1621 West Candletree Dr., Peoria, IL 61614, Contact: Susan J. Naschert, Phone: (309) 692-5252.

(34) *Laboratory:* Daniel J. Hartwig Associates, Inc., Director, Industrial Hygiene Services.

Address: P.O. Box 31, Oregon, WI 53575, Contact: David T. Killough, Phone: (608) 835-5781.

(35) *Laboratory:* DataChem, Inc. (NIST).

Address: 4388 Glendale-Milford Rd., Cincinnati, OH 45242, Contact: Charles L. Geraci, Phone: (513) 733-5336.

(36) *Laboratory:* DeLisle Consulting & Laboratories, Inc. (NIST).

Address: 6946 East North Ave., Kalamazoo, MI 49001, Contact: Brad Shook, Phone: (616) 343-9698.

(37) *Laboratory:* DeYor Laboratories, Inc. (NIST).

Address: P.O. Box 3949, 7655 Market St., Suite 2500, Youngstown, OH 44512, Contact: Joseph K. Samuels, Phone: (216) 758-5788.

(38) *Laboratory:* EIS Environmental Engineers, Inc., (NIST).

Address: 1701 North Ironwood Dr., South Bend, IN 46635, Contact: H. Stephen Nye, Phone: (219) 277-5715.

(39) *Laboratory:* ERT Testing Services, Inc. (NIST).

Address: D.O.H. Professional Bldg., 211 Glendale, Suite 425, Highland Park, MI 48203, Contact: Rose M. Grier, Phone: (313) 865-0600.

(40) *Laboratory:* Electro Analytical, Inc. (NIST).

Address: 7118 Industrial Park Blvd., Mentor, OH 44060-5377, Contact: Mitchell E. Fadem, Phone: (216) 951-3514.

(41) *Laboratory:* Environmental Analytical Labs (NIST).

Address: 314 South State Ave., Indianapolis, IN 46201, Contact: David W. Hogue, Phone: (317) 269-3618.

(42) *Laboratory:* Environmental Consultants, Inc. (NIST).

Address: 1916 North 12th St., Toledo, OH 43624, Contact: Donald Dick, Phone: (419) 241-7127.

(43) *Laboratory:* Environmental Enterprises, Inc., (NIST).

Address: 10147 Springfield Pike, Cincinnati, OH 45215, Contact: Wayne L. Collier, Phone: (513) 772-2818.

(44) *Laboratory:* Environmental Evaluation & Laboratory, Services, Inc. (NIST).

Address: 225 Parsons St., P.O. Box 1665, Kalamazoo, MI 49005, Contact: A. Clark Kahn, III, Phone: (616) 388-8099.

(45) *Laboratory:* Environmental Services, Inc.

Address: 1403 Sunset Ter., Western Springs, IL 60558, Contact: Nicholas Malone, Phone: (312) 246-2040.

(46) *Laboratory:* Esstek, Inc. (NIST).

Address: 17960 Englewood Dr., Middleburg Heights, OH 44130, Contact: Scott F. Linville, Phone: (216) 826-4220.

(47) *Laboratory:* Fay Goldblatt Laboratories, Inc., (NIST).

Address: 2111 Parkview Ct., Wilmette, IL 60091, Contact: Fay Goldblatt, Phone: (800) 356-0269.

(48) *Laboratory:* Fibertec, Inc.

Address: 808 West Lake Lansing Rd., Suite 206, East Lansing, MI 48823, Contact: Matthew H. Frisch, Phone: (517) 351-0345.

(49) *Laboratory:* Gabriel Laboratories, Inc. (NIST).

Address: 1421 North Elston Ave., Chicago, IL 60622, Contact: Chris Rollins, Phone: (312) 486-2123.

(50) *Laboratory:* Gelles Laboratories (NIST).

Address: 2836 Fisher Rd., Columbus, OH 43204, Contact: S.H. Gelles, Phone: (614) 276-2957.

(51) *Laboratory:* Hayden Environmental Group, Inc., (NIST).

Address: 6015 Manning Rd., Miamisburg, OH 45342, Contact: Davia Robinson, Phone: (513) 866-5906.

(52) *Laboratory:* Hazardous Materials Management, Inc.

Address: 2517 Seiferth Rd., Madison, WI 53716, Contact: David Lawrence, Phone: (608) 221-4027.

(53) *Laboratory:* Howard Laboratories, Inc.

Address: 3601 South Dixie Dr., Dayton, OH 45439, Contact: Jackie Webster, Phone: (513) 294-6856.

(54) *Laboratory:* IHI Kemron Environmental Services, (NIST).

Address: 32740 North Western Hwy., Farmington Hills, MI 48018, Contact: Charles O'Bryan, Phone: (313) 626-2426.

(55) *Laboratory:* IIT Research Institute.

Address: 10 West 35th St., Chicago, IL 60616, Contact: Jean Graf, Phone: (312) 567-4286.

(56) *Laboratory:* ITL/Bascor (NIST).

Address: 5960 North Milwaukee Ave., Chicago, IL 60646, Contact: Joby H. Burman, Phone: (312) 792-2454.

(57) *Laboratory:* Industrial Environmental Consultants, (NIST).

Address: 1760 East Grand River, East Lansing, MI 48823, Contact: Teresa Kenyon, Phone: (517) 351-4002.

(58) *Laboratory:* Institute for Environmental Assessment, (NIST).

Address: 2829 Verndale Ave., Anoka, MN 55303, Contact: Richard T. Cox, Phone: (612) 427-5310.

(59) *Laboratory:* John Mathes & Assoc., Inc. (NIST).

Address: 210 West Sand Bank Rd., P.O. Box 330, Columbia, IL 62236-0330, Contact: David H. Ward, Phone: (618) 281-7173.

(60) *Laboratory:* Lyle Laboratories.

Address: 1327 King Ave., Columbus, OH 43212, Contact: Tom Eggers, Phone: (614) 488-1022.

(61) *Laboratory:* Martin Marietta Energy Systems, Inc.

Address: Portsmouth Gaseous Diffusion Plant, P.O. Box 628, Piketon, OH 45661, Contact: David Boyd, Phone: (614) 289-2331.

(62) *Laboratory:* Materials Testing Consultants, Inc.

Address: 693 Plymouth NE, Grand Rapids, MI 49505, Contact: Judson N. Sorensen, Phone: (616) 456-5469.

(63) *Laboratory:* Micro Air, Inc./Mobile Lab (NIST).

Address: 7132 Lakeview Pkwy. West Dr., Indianapolis, IN 46268, Contact: Harold Eitzen, Phone: (317) 293-1533.

(64) *Laboratory:* Microbac Laboratories, Inc., Seaway Industrial Laboratory, Subsidiary.

Address: 542-544 Conkey St., Hammond, IN 46324, Contact: Karen A. Erny, Phone: (219) 932-1770.

(65) *Laboratory:* Micro-Fiber Laboratories, Inc. (NIST).

Address: 635 Landwehr Rd., Northbrook, IL 60062, Contact: Phillip G. Pekron, Phone: (312) 498-4127.

(66) *Laboratory:* MicroView Consulting (NIST).

Address: 416 East Catawba Ave., Akron, OH 44301, Contact: Frank S. Karl, Phone: (216) 773-8330.

(67) *Laboratory:* Monarch Analytical Laboratories, Inc., (NIST).

Address: P.O. Box 2990, Toledo, OH 43606, Contact: Ronald J. Plenzler, Phone: (419) 535-1780.

(68) *Laboratory:* NATLSCO K-2.

Address: Rte. 22 & Kemper Dr., Long Grove, IL 60049, Contact: Joan Wronski, Phone: (312) 540-2488.

(69) *Laboratory:* National Petrographic Services, (NIST).

Address: 4484 Willowbrook Rd., Columbus, OH 43220, Contact: Bonnie Awan, Phone: (614) 459-7360.

(70) *Laboratory:* Northern Indiana Public Services, Company.

Address: 501 Bailly Station Rd., Performance Services- Central Lab, Chesterton, IN 46304, Contact: Steven L. Barnes, Phone: (219) 787-7205.

(71) *Laboratory:* Northland Environmental Services, Inc., (NIST).

Address: P.O. Box 909, Stevens Point, WI 54481, Contact: Robert C. Voborsky, Phone: (715) 341-9699.

(72) *Laboratory:* Nova Environmental Services, Inc., (NIST).

Address: 1107 Hazeltine Blvd., Suite 420, Hazeltine Gates, Chaska, MN 55318, Contact: Steven B. Cummings, Phone: (612) 448-9393.

(73) *Laboratory:* Ohio Department of Health, Division of Laboratories.

Address: 1571 Perry St., Box 2568, Columbus, OH 43266-0068, Contact: Elizabeth Clark, Phone: (614) 421-1078.

(74) *Laboratory:* P.A.T. Services (NIST).

Address: 508 NE Monroe, Peoria, IL 61603, Contact: Cheryl McGuinnis, Phone: (309) 673-5919.

(75) *Laboratory:* PEI Associates, Inc. (NIST).

Address: 11499 Chester Rd., Cincinnati, OH 45246, Contact: Craig Caldwell, Phone: (513) 782-4700.

(76) *Laboratory:* Pace Laboratories, Inc. (NIST).

Address: 1710 Douglas Dr., N., Minneapolis, MN 55422, Contact: Tom L. Haverson, Phone: (612) 544-5543.

(77) *Laboratory:* Parkland Labs (NIST).

Address: 2935 ClearLake Ave., Springfield, IL 62702, Contact: Harry Stowers, Phone: (217) 525-2935.

(78) *Laboratory:* Particle Data Laboratories, Ltd.

Address: 115 Hahn St., Elmhurst, IL 60126, Contact: Ron Sturm, Phone: (312) 832-5658.

(79) *Laboratory:* Pro-Ac Asbestos Services.

Address: 5736 Tri-County Hwy., Sardinia, OH 45171, Contact: Fred Schmalz, Phone: (513) 542-8708.

(80) *Laboratory:* RCM Laboratories (NIST).

Address: 4137 Blanchan, Brookfield, IL 60513, Contact: Collen Rifke, Phone: (312) 485-8600.

(81) *Laboratory:* Randolph & Associates, Inc. (NIST).

Address: 5440 North Cumberland Ave., Suite 111, Chicago, IL 60656, Contact: Bruce Stockmeier, Phone: (312) 693-6030.

(82) *Laboratory:* Randolph & Associates, Inc. (NIST).

Address: 6901 North Industrial Rd., Peoria, IL 61615, Contact: Kirk Sweetland, Phone: (309) 692-4422.

(83) *Laboratory:* Reed City Hopsital (NIST).

Address: 7665 Patterson Rd., P.O. Box 75, Reed City, MI 49677, Contact: James T. Reardon, Phone: (616) 832-3271.

(84) *Laboratory:* Ricerca, Inc. (NIST).

Address: 7528 Auburn Rd, P.O. Box 1000, Painesville, OH 44077-1000, Contact: William O. Butler, Phone: (216) 357-3300.

(85) *Laboratory:* S.E.A., Inc. (NIST).

Address: 7349 Worthington-Galena Rd., Columbus, OH 43085, Contact: Jami J. St. Clair, Phone: (614) 888-4160.

(86) *Laboratory:* Sea Earth & Air Environmental, Consultants, Inc. (NIST).

Address: 5787 North Lincoln Ave., Chicago, IL 60659, Contact: Barbera Carr, Phone: (312) 878-8337.

(87) *Laboratory:* Shaw Environmental Analytical, Laboratory.

Address: P.O. Box 608559, Chicago, IL 60660, Contact: Michael Shaw, Phone: (312) 973-4447.

(88) *Laboratory:* Sierra Analytical & Consulting, Services, Inc. (NIST).

Address: 307 N. 1st St., Ann Arbor, MI 48103, Contact: Dave Nelson, Phone: (313) 662-1155.

(89) *Laboratory:* Stat Analysis Corporation (NIST).

Address: 2201 West Campbell Park Dr., Chicago, IL 60612-3501, Contact: David E. Schwartz, Phone: (312) 733-0551.

(90) *Laboratory:* Stilson Laboratories, Inc. (NIST).

Address: 170 North High St., Columbus, OH 43215, Contact: W. Martin Bell, Phone: (614) 228-4385.

(91) *Laboratory:* Suburban Environmental Consultants, Ltd. (NIST).

Address: 18031 Dixie Hwy., Homewood, IL 60430, Contact: Henry G. Gooday, Jr., Phone: (312) 335-1808.

(92) *Laboratory:* TEM, Inc. (NIST).

Address: 443 Duane St., Glen Ellyn, IL 60137, Contact: James Tuinenga, Phone: (312) 790-0880.

(93) *Laboratory:* Testing Engineers & Consultants, Inc., (NIST).

Address: 933 West Jolly Rd., Lansing, MI 48909, Contact: James Hollenbeck, Phone: (517) 887-0628.

(94) *Laboratory:* Testing Engineers & Consultants, Inc., (NIST).

Address: 3816 Carpenter Rd., Pittsfield Township, MI 48197, Contact: Dawn Brennan, Phone: (313) 971-0030.

(95) *Laboratory:* Testing Engineers and Consultants, Inc. (NIST).

Address: P.O. Box 249, 1333 Rochester Rd., Troy, MI 48099, Contact: Scott Chandler, Phone: (313) 588-6200.

(96) *Laboratory:* Thermo Analytical, Inc. (NIST).

Address: 7314 West 90th St., Bridgeview, IL 60455, Contact: Frank P. DeFranza, Phone: (312) 430-1112.

(97) *Laboratory:* Tremco (NIST).

Address: 10701 Shaker Blvd., Cleveland, OH 44104, Contact: Charles J. Kalocz1, Phone: (216) 292-5000.

(98) *Laboratory:* Tri-State Laboratories, Dept. of Environmental Services, (NIST).

Address: 19 East Front St., Youngstown, OH 44503, Contact: Bari Lateef, Phone: (216) 746-8800.

(99) *Laboratory:* Twin City Testing Corporation (NIST).

Address: 662 Cromwell Ave., St. Paul, MN 55114, Contact: Wallace J. Nosek, Jr., Phone: (612) 645-3601.

(100) *Laboratory:* United Analytical Services, Inc., (NIST).

Address: 4410 West Roosevelt Rd., Suite 101, Hillside, IL 60162, Contact: Patrick Fosnacht, Phone: (312) 449-0070.

(101) *Laboratory:* Wadsworth/Alert Laboratories (NIST).

Address: P.O. Box 31454, Cleveland, OH 44131, Contact: Douglas R. Allenson, Phone: (216) 642-9151.

(102) *Laboratory:* Walker & Ward (NIST).

Address: 9119 Formington Dr., P.O. Box 12015, Evansville, IN 47712, Contact: Roger Ward, Phone: (812) 985-7677.

(103) *Laboratory:* Wausau Insurance Companies, Environmental Health Laboratory, (NIST).

Address: 2000 Westwood Dr., Wausau, WI 54401, Contact: Thomas Stavros, Phone: (715) 842-6810.

(104) *Laboratory:* Wisconsin Occupational Health Labs, (NIST).

Address: 979 Jonathon Dr., Madison, WI 53711, Contact: Richard Zimmerman, Phone: (608) 263-8807.

(105) *Laboratory:* Zimmerlin Consulting Group (NIST).

Address: 3420 East 96th St., Suite A, Indianapolis, IN 46240, Contact: Daniel J. Smith, Phone: (317) 574-0848.

(106) *Laboratory:* Zimmerlin Consulting Group (NIST).

Address: 3972 Brown Park Dr., Suite D, P.O. Box 357, Hilliard, OH 43026-0357, Contact: William Zimmerlin, Phone: (614) 876-1153.

EPA Accredited Commercial PLM Laboratories

REGION VI – Dallas, TX

Regional Asbestos Coordinator: John West, 6T-PT, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733. (214) 655-7244, (FTS) 255-7244.

(1) *Laboratory:* A & B Environmental Services, Inc.

Address: 15371 Woodforest Blvd., Channelview, TX 77530, Contact: Ram Ramakrishnan, Phone: (713) 457-6608.

(2) *Laboratory:* ACI & Associates (NIST).

Address: 2100 Road to Six Flags E., Arlington, TX 76011, Contact: Michael J. Lee, Phone: (817) 265-7535.

(3) *Laboratory:* ATEC Associates, Inc. (NIST).

Address: 11356 Mathis Ave., Dallas, TX 75299-3157, Contact: Stephen D. Brandt, Phone: (214) 556-2204.

(4) *Laboratory:* Acadiana Research Laboratories, University of Southwestern Louisiana.

Address: P.O. Box 44210, Lafayette, LA 70504, Contact: Davy L. Bernard, Phone: (318) 231-6184.

(5) *Laboratory:* Aegis Associates - El Paso (NIST).

Address: 1280 Hawkins, Suite 120, El Paso, TX 79925, Contact: Fred Oriti, Phone: (915) 592-6556.

(6) *Laboratory:* Aegis Associates, Inc. (NIST).

Address: 44 East Ave., Suite 100/Suite 202, Austin, TX 78701-4334, Contact: Dianne Herrera, Phone: (512) 474-8789.

(7) *Laboratory:* Aer-Aqua Lab, Inc./ Accredited, Industrial Hygienists, Inc. (NIST).

Address: P.O. Box 6152, Pasadena, TX 77506, Contact: Mary Heisel, Phone: (713) 477-6101.

(8) *Laboratory:* Allied Environmental Services, Inc.

Address: 16023 I-10 E., No. 9, Channelview, TX 77530, Contact: Subba V. Gogineni, Phone: (713) 452-5897.

(9) *Laboratory:* Analytical Labs.

Address: 1010 Los Lomas NE, Albuquerque, NM 87106, Contact: Bob Dye, Phone: (505) 242-3845.

(10) *Laboratory:* Analytical Labs.

Address: 218 Market St., Baird, TX 79504, Contact: Bob Dye, Phone: (915) 854-1284.

(11) *Laboratory:* Arkansas Department of Health (NIST).

Address: 4815 West Markham St., Little Rock, AR 72205, Contact: Stan Faulk, Phone: (501) 661-2389.

(12) *Laboratory:* Assaigai Analytical Laboratories, (NIST).

Address: 7300 Jefferson, NE, Albuquerque, NM 87109, Contact: Dean Dupree, Phone: (505) 345-8964.

(13) *Laboratory:* Building Environmental Systems, Inc., (NIST).

Address: 3501 North MacArthur, Suite 400B, Irving, TX 75062, Contact: Amy L. Smith, Phone: (214) 257-0787.

(14) *Laboratory:* Central Analytical Laboratories, Inc., (NIST).

Address: 2800 Marietta Ave., Kenner, LA 70062, Contact: David R. Lasater, Phone: (504) 469-3511.

(15) *Laboratory:* Chemtex Environmental Laboratory.

Address: 1747 7th Ave., Port Arthur, TX 77642, Contact: C.N. Reddy, Phone: (409) 983-4575.

(16) *Laboratory:* Continental Technical Services, Environmental Health Division.

Address: 9742 Skillman, Dallas, TX 75243, Contact: Carolyn Vercell, Phone: (214) 343-2025.

(17) *Laboratory:* Diversified Environmental, Technologies, Inc. (NIST).

Address: 132 West Main, Norman, OK 73069, Contact: Dan Tutt, Phone: (405) 360-7929.

(18) *Laboratory:* E.O.S. Environmental (NIST).

Address: 1450 Empire Central, Suite 116, Dallas, TX 75247, Contact: Thomas J. Palet, Phone: (214) 631-0682.

(19) *Laboratory:* EEG, Inc. (NIST).

Address: 220A North Knoxville, Russellville, AR 72801, Contact: Anne Woker, Phone: (501) 968-6767.

(20) *Laboratory:* EIRA, Inc.

Address: 161 James Dr. W., St. Rose, LA 70087, Contact: Margaret Metcalf, Phone: (504) 469-0333.

(21) *Laboratory:* ERG Consultants, Inc. (NIST).

Address: 3019 Alvin Devane, No. 220, Austin, TX 78741, Contact: Kevin Selby, Phone: (817) 444-5804.

(22) *Laboratory:* Earth Tech, Inc.

Address: R.R. 4, Box 4, Wagoner, OK 74467, Contact: Daryl L. Lessin, Phone: (918) 485-4910.

(23) *Laboratory:* East Texas Testing Laboratory, Inc., (NIST).

Address: 1717 East Erwin, Tyler, TX 75702, Contact: Gary G. LaFrance, Phone: (214) 595-4421.

(24) *Laboratory:* Environmental Analysis, Inc.

Address: Rte. 1, Box 12, Plainview, AR 72857, Contact: Jimmy Cunningham, Phone: (501) 272-4241.

(25) *Laboratory:* Environmental Analytical Consultants.

Address: 432 North Anthony St., New Orleans, LA 70119, Contact: Michael J. Landry, Phone: (504) 482-1717.

(26) *Laboratory:* Environmental Consultants, Inc.

Address: P.O. Box 17867, Shreveport, LA 71138-0867, Contact: Rhonda L. Dillingham, Phone: (318) 687-3771.

(27) *Laboratory:* Environmental Management.

Address: 414 West California, Ruston, LA 71270, Contact: Kevin Thigpen, Phone: (318) 251-9101.

(28) *Laboratory:* Environmental Monitoring Service, Inc.

Address: 13008 Amarillo Ave., Austin, TX 78729, Contact: Rick Pruet, Phone: (512) 335-9116.

(29) *Laboratory:* Environmental Research Institute, Inc., (NIST).

Address: P.O. Box 2024, Tyler, TX 75710, Contact: Thomas R. McKee, Phone: (214) 877-9314.

(30) *Laboratory:* Environmental Services Co., Inc., (NIST).

Address: 13715 West Markham, Little Rock, AR 72211, Contact: James Brown, Phone: (501) 221-2565.

(31) *Laboratory:* Envirotest, Inc. (NIST).

Address: P.O. Box 42812-414, Houston, TX 77042, Contact: Daniel J. Gerhardt, Phone: (713) 782-4101.

(32) *Laboratory:* Geo-Environmental Services, Inc., (NIST), Austin Office.

Address: 3801 North Lamar, Suite 185E, Austin, TX 78752, Contact: John Johnson, Phone: (512) 454-5222.

(33) *Laboratory:* Gerald Garrett & Associates, Inc.

Address: 2720 Stemmons Frwy., Suite 805 S., Dallas, TX 75207, Contact: J. W. Knuckles, Phone: (214) 688-4457.

(34) *Laboratory:* Hanby Analytical Laboratories, Inc./, Mobile Unit (NIST).

Address: 4400 South Wayside St., Suite 107, Houston, TX 77087, Contact: John D. Hanby, Phone: (713) 649-4500.

(35) *Laboratory:* Huey, Martin, & Associates.

Address: 5613 Bruyninckx Rd., Alexandria, LA 71303, Contact: Ben F. Martin, Phone: (318) 473-6431.

(36) *Laboratory:* IHST.

Address: 6709 Parkside Ct., Arlington, TX 76016, Contact: Larry Liukonen, Phone: (817) 572-6336.

(37) *Laboratory:* Kemron Environmental Services (NIST).

Address: 16550 Highland Rd., Baton Rouge, LA 70810, Contact: Thomas Bauckham, Phone: (504) 293-8650.

(38) *Laboratory:* Kiser Engineering, Inc. (NIST).

Address: 211 North River St., Sequin, TX 78155, Contact: Rick Kirkpatrick, Phone: (800) 426-2102.

(39) *Laboratory:* Law Engineering Testing Co. (NIST).

Address: 5500 Guhn Rd., Houston, TX 77040, Contact: C. H. Byrd, Phone: (713) 939-7161.

(40) *Laboratory:* Loflin Environmental Services, Inc.

Address: 701 Bradfield, Houston, TX 77060, Contact: James A. Murray, Phone: (713) 931-9316.

(41) *Laboratory:* Marshall Environmental Management, (NIST).

Address: 3801 Northwest 63rd St., Suite 162, Oklahoma City, OK 73116, Contact: Charles L. Marshall, Phone: (405) 842-3415.

(42) *Laboratory:* Martin Marietta Manned Space Systems, Quality Evaluation Laboratory.

Address: P.O. Box 29304, New Orleans, LA 70189, Contact: Reginald G. Salloum, Phone: (504) 257-1766.

(43) *Laboratory:* Maxim Engineers, Inc. (NIST).

Address: 11601 North Lamar, Austin, TX 78753, Contact: Fernando Yepez, Phone: (512) 837-8851.

(44) *Laboratory:* Maxim Engineers, Inc. (NIST).

Address: 2342 Fabens, P.O. Box 59902, Dallas, TX 75229, Contact: Steve Moody, Phone: (214) 247-7575.

(45) *Laboratory:* McClelland Management Services (NIST).

Address: 6100 Hillcroft, Suite 220, Houston, TX 77081, Contact: Jaye R. Stanley, Phone: (713) 995-9000.

(46) *Laboratory:* McKee Environmental Health Services.

Address: 11114 Sage Park, Houston, TX 77089, Contact: Ron McKee, Phone: (713) 481-3501.

(47) *Laboratory:* Microanalysis Laboratory, Inc. (NIST).

Address: 8499 Greenville Ave., Suite 201, Dallas, TX 75231, Contact: Carolyn Jones, Phone: (214) 340-0890.

(48) *Laboratory:* NUS Corporation (NIST).

Address: 900 Gemini, Houston, TX 77058, Contact: John W. McCormick, Phone: (713) 488-1810.

(49) *Laboratory:* National Asbestos Consultants Inc.

Address: 4619 North Santa Fe, Oklahoma City, OK 73118, Contact: Jerry Bowerman, Phone: (405) 528-6224.

(50) *Laboratory:* New Mexico State University (NIST), Electron Microscope Laboratory.

Address: Box 3EML, Las Cruces, NM 88003, Contact: Joseph LaPointe, Phone: (505) 646-3734.

(51) *Laboratory:* North American Analytical Labs (NIST).

Address: 4405 Crawford St., Abilene, TX 79605, Contact: Gene Walker, Phone: (915) 691-0172.

(52) *Laboratory:* Occupational Hygiene, (NIST).

Address: P.O. Box 181769, Dallas, TX 75218, Contact: Virginia Wheeler, Phone: (214) 324-3813.

(53) *Laboratory:* Occupational Safety & Health, Consultants, Inc. (NIST).

Address: 208 North Armstrong, Bixby, OK 74008, Contact: Jeffrey Jenkins, Phone: (918) 366-4834.

(54) *Laboratory:* Oklahoma State Department of Health, Special Hazard Division (NIST).

Address: P.O. Box 53551, Oklahoma City, OK 73152, Contact: John M. Feero, Phone: (405) 271-5221.

(55) *Laboratory:* Oxford Environmental Corp.

Address: 3224 26th St., Metairie, LA 70002, Contact: J. Robert Paterek, Phone: (504) 391-0795.

(56) *Laboratory:* P.E.I. Microanalysis Laboratory D/FW, (NIST).

Address: P.O. Box 612383 (Trailer No. 12), D/FW Airport, TX 75261, Contact: Neal Sizemore, Phone: (214) 574-1700.

(57) *Laboratory:* Precision Testing Labs, Inc. (NIST).

Address: 624 Northwest 5th St., Suite 2, Moore, OK 73160, Contact: Ferry Doyle, Phone: (405) 793-1468.

(58) *Laboratory:* Professional Laboratories.

Address: 1105 13th St., Lubbock, TX 79401, Contact: Craig Tannahill, Phone: (806) 747-5681.

(59) *Laboratory:* Raba-Kistner Consultants, Inc. (NIST).

Address: P.O. Box 690287, San Antonio, TX 78269-0287, Contact: Frank B. Schweitzer, Phone: (512) 699-9090.

(60) *Laboratory:* Regional Testing Lab, Inc. (NIST).

Address: 318 West Chestnut, Suite 204, Denison, TX 75020, Contact: Cliff Wood, Phone: (214) 463-6668.

(61) *Laboratory:* Southwestern Laboratories, Inc.

Address: 2575 Lone Star Dr., Dallas, TX 75212, Contact: Lawrence M. Thompson, Phone: (214) 631-2700.

(62) *Laboratory:* Southwestern Laboratories, Inc., EES Division.

Address: P.O. Box 8768, Houston, TX 77249, Contact: Phillip Yokley, Phone: (713) 692-9151.

(63) *Laboratory:* Southwestern Public Service Co. (NIST), Systems Laboratory.

Address: P.O. Box 1261, Amarillo, TX 79170, Contact: Ronald H. Dutton, Phone: (806) 378-2121.

(64) *Laboratory:* Standard Testing & Eng. Co.

Address: 660 Distributors Row, Harahan, LA 70123, Contact: Robert E. Jones, Phone: (504) 734-8378.

(65) *Laboratory:* Standard Testing and Engineering Co.

Address: 3400 North Lincoln Blvd., Oklahoma City, OK 73105, Contact: Cheri Marcham, Phone: (405) 528-0541.

(66) *Laboratory:* Stanley Engineering Inc. & Alpha, Analytical Labs, Inc.

Address: 2700 Northwest 39th St., Oklahoma City, OK 73112, Contact: Keith L. Stanley, Phone: (405) 948-6505.

(67) *Laboratory:* Sunbelt Associates, Inc. (NIST).

Address: 6961 Mayo Rd., New Orleans, LA 70126, Contact: Gary C. Allen, Phone: (504) 242-5026.

(68) *Laboratory:* Technology Serving People, Inc. (NIST).

Address: 5373 West Alabama, Suite 450, Houston, TX 77056, Contact: Bill Hurt, Phone: (713) 621-9067.

(69) *Laboratory:* Texas Department of Health (NIST), Asbestos Abatement Branch.

Address: 1100 West 49th St., Austin, TX 78756-3199, Contact: Joel H. Smith, Phone: (512) 458-7255.

(70) *Laboratory:* Texas Research Institute (NIST), Environmental Division.

Address: 9063 Bee Cave Rd., Austin, TX 78733, Contact: Gary Rolls, Phone: (512) 263-2101.

(71) *Laboratory:* The Hartford Steam Boiler Laboratory, (NIST), Inspection & Insurance Co.

Address: 1100 North Post Oak No. 30, Suite 300, Houston, TX 77055, Contact: Diana Spence, Phone: (713) 578-7300.

(72) *Laboratory:* University of Texas, Health Center, (NIST) Dept. of Cell Biology &, Environmental Sciences.

Address: P.O. Box 2003, Tyler, TX 75710, Contact: Ronald Dodson, Phone: (214) 877-7554.

(73) *Laboratory:* Waldemar S. Nelso & Co., Inc. (NIST).

Address: 1200 St. Charles Ave., New Orleans, LA 70130, Contact: Laura E. Yager, Phone: (504) 523-5281.

(74) *Laboratory:* Weintritt Testing Laboratories, Inc., (NIST).

Address: 305 Andrew Guidry Rd., P.O. Box 30162, Lafayette, LA 70593, Contact: Richard G. Tietz, Phone: (318) 981-1500.

(75) *Laboratory:* West-Paine Laboratories, Inc.

Address: 7979 G.S.R.I. Ave., Baton Rouge, LA 70820, Contact: Jonny H. Vickers, Phone: (504) 769-4900.

EPA Accredited Commercial PLM Laboratories

REGION VII – Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA, Region VII, 726 Minnesota Ave., Kansas City, KS 66101. (913) 236-2835, (FTS) 757-2835.

(1) *Laboratory:* ACM Labs, Inc.

Address: 304 North Main, P.O. Box 2073, Fairfield, IA 52556, Contact: David Fleshman, Phone: (515) 472-7402.

(2) *Laboratory:* ALERT Analytical Laboratories (NIST).

Address: 1900 West 47th Pl., No. 302, Westwood, KS 66205, Contact: Kevin Santee, Phone: (913) 831-4795.

(3) *Laboratory:* Ames Environmental (NIST).

Address: 3910 Lincoln Way, Ames, IA 50010, Contact: David Fairchild, Phone: (515) 292-3400.

(4) *Laboratory:* Asbestos Consulting & Testing (NIST).

Address: 15001 West 101st Ter., Lenexa, KS 66215, Contact: Jim A. Pickel, Phone: (913) 492-1337.

(5) *Laboratory:* Baird Scientific (NIST).

Address: P.O. Box 842, Carthage, MO 64836, Contact: Gary Baird, Phone: (417) 358-5567.

(6) *Laboratory:* CHART Services, Ltd. (NIST).

Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322, Contact: Mary A. Finn, Phone: (515) 276-3642.

(7) *Laboratory:* CHART Services, Ltd. (NIST)

Address: 12816 West 92nd Ter., Suite 118, P.O. Box 16, Shawnee, KS 66216, Contact: Bernie Hemlick, Phone: (913) 268-0715.

(8) *Laboratory:* CHART Services, Ltd. (NIST).

Address: 7912 Davenport St., Omaha, NE 68114, Contact: Carmen Riegel, Phone: (402) 393-0155.

(9) *Laboratory:* Certified Environmental Management, Inc. (NIST).

Address: P.O. Box 504, Salina, KS 67402-0504, Contact: Brenda A. Tolson, Phone: (913) 536-8315.

(10) *Laboratory:* Hall-Kimbrell Environmental Services, Inc. (NIST).

Address: 4840 West 15th St., Lawrence, KS 66046, Contact: W. David Kimbrell, Phone: (913) 749-2381.

(11) *Laboratory:* IPRSS Asbestos Analysis Labs, Inc., (NIST).

Address: 503 Main St., Belton, MO 64012, Contact: George S. McDowell, Phone: (816) 331-0002.

(12) *Laboratory:* Industrial Testing Laboratories, Inc., (NIST).

Address: 2350 7th Blvd., St. Louis, MO 63104, Contact: William J. Lowry, Phone: (314) 771-7111.

(13) *Laboratory:* Larron Laboratory.

Address: 529 Broadway, Cape Girardeau, MO 63701, Contact: David J. Roth, Phone: (314) 334-8910.

(14) *Laboratory:* Mayhew Environmental Training Assoc., (META).

Address: 901 Kentucky, Suite 305A, Lawrence, KS 66044, Contact: Robert G. Williams, Phone: (913) 842-6382.

(15) *Laboratory:* Microscopic Analysis, Inc. (NIST).

Address: 989 Gardenview Office Pkwy., St. Louis, MO 63141, Contact: Douglas N. Nimmo, Phone: (314) 993-2212.

(16) *Laboratory:* Midwestern Testing Labs, Inc. (NIST).

Address: P.O. Box 1657, Fairfield, IA 52556, Contact: Dennis Greenley, Phone: (515) 472-1861.

(17) *Laboratory:* Nebraska Testing Laboratories, Inc.

Address: 4123 South 67th St., Omaha, NE 68117-1066, Contact: Lynn A. Knudtson, Phone: (402) 331-4453.

(18) *Laboratory:* Net Midwest Inc., Cedar Falls Division, (NIST).

Address: 704 Enterprise Dr., Cedar Falls, IA 50613, Contact: Michael McGee, Phone: (319) 277-2401.

(19) *Laboratory:* Pace Laboratories, Inc. (NIST).

Address: 2005 West 103rd Ter. (B), Leawood, KS 66206, Contact: Don Wright, Phone: (913) 341-7800.

(20) *Laboratory:* The University of Iowa (NIST), University Hygienic Laboratory.

Address: Iowa City, IA 52242, Contact: I. A. Schwabbauer, Phone: (319) 335-4500.

(21) *Laboratory:* University of Missouri - Kansas City, (NIST).

Address: Chemistry Dept., Kansas City, MO 64110, Contact: Dr. Peter F. Lott, Phone: (816) 276-2289.

EPA Accredited Commercial PLM Laboratories

REGION VIII – Denver, CO

Regional Asbestos Coordinator: David Combs, (8AT-TS), EPA, Region VIII, 1 Denver Place, 999-18th St., Suite 500, Denver, CO 80202-2413. (303) 293-1744, (FTS) 564-1744.

(1) *Laboratory:* ATC Environmental, Inc. (NIST).

Address: 1515 East Tenth St., Sioux Falls, SD 57103, Contact: Donald Bock, Phone: (605) 338-0555.

(2) *Laboratory:* Amoco Oil Company Mandan Refinery, (NIST).

Address: Mandan Avenue & Old Red Trail, Mandan, ND 58554, Contact: Jerifer Romsaas, Phone: (701) 667-2463.

(3) *Laboratory:* Analytica, Inc. (NIST).

Address: 5930 McIntyre St., Golden, CO 80403, Contact: Daniel M. Benecke, Phone: (303) 279-2583.

(4) *Laboratory:* Bison Engineering/Research (NIST).

Address: P.O. Box 1703, Helena, MT 59624, Contact: Patricia E. Groll, Phone: (406) 442-5768.

(5) *Laboratory:* Colorado State University Department, of Environmental Health (NIST).

Address: B120 Microbiology Bldg., Fort Collins, CO 80523, Contact: Roy C. Warbington, Phone: (303) 491-6729.

(6) *Laboratory:* DCM Science Laboratory (NIST).

Address: 12975 West 24th Pl., Golden, CO 80401, Contact: Donna C. Mefford, Phone: (303) 237-0110.

(7) *Laboratory:* Datachem, Inc. (NIST).

Address: 960 West LeVoy Dr., Salt Lake City, UT 84123, Contact: Lance Eggenberger, Phone: (801) 266-7700.

(8) *Laboratory:* Dixon Information, Inc. (NIST).

Address: 78 West 2400 S., Salt Lake City, UT 84115, Contact: Willard C. Dixon, Phone: (801) 486-0800.

(9) *Laboratory:* Esstek, Inc. (NIST).

Address: 11435 West 46th Ave., Wheat Ridge, CO 80033-2101, Contact: Robert Cordova, Phone: (303) 425-7098.

(10) *Laboratory:* HTI Laboratories & Industrial, Consultants.

Address: 1806 Main Ave., Fargo, ND 58103, Contact: Constance S. Hodny, Phone: (701) 232-1399.

(11) *Laboratory:* HTI Laboratories & Industrial, Consultants, Inc.

Address: 6436 South Recline Cir., Engelwood, CO 80111, Contact: Constance S. Hodny, Phone: (303) 773-9616.

(12) *Laboratory:* HTI Laboratories & Industrial, Consultants, Inc. (Mobile Lab).

Address: Box 6192, Fargo, ND 58109, Contact: Constance S. Hodny, Phone: (701) 237-9750.

(13) *Laboratory:* Hager Laboratories, Inc.

Address: 11234 East Caley Ave., Englewood, CO 80111, Contact: Patricia Manning, Phone: (303) 790-2727.

(14) *Laboratory:* Northern Engineering & Testing, Inc., (NIST).

Address: 600 South 25th St., Billings, MT 59107, Contact: Kathleen Smit, Phone: (406) 248-9161.

(15) *Laboratory:* Occupational Health Technologies, Inc.

Address: 171 University Cir., Pueblo, CO 81005, Contact: Thomas F. Antonson, Phone: (719) 566-0422.

(16) *Laboratory:* Professional Service Ind., Inc. (NIST), Pittsburgh Testing Lab. Div.

Address: 2955 Southwest Temple St., Salt Lake City, UT 84115, Contact: Herb Ritzman, Phone: (801) 484-6627.

(17) *Laboratory:* Sathe Analytical Lab., Inc.

Address: P.O. Box 1527, Williston, ND 58801, Contact: Neal Falk, Phone: (701) 572-3632.

(18) *Laboratory:* Survey, Management, and Design.

Address: P.O. Box 6021, Fargo, ND 58109, Contact: Peter L. Mehl, Phone: (701) 234-9556.

EPA Accredited Commercial PLM Laboratories

REGION IX – San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, (A-4-2), EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974-7290, (FTS) 454-7290.

(1) *Laboratory:* ACCULAB Environmental Services (NIST).

Address: 3700 Lakeville Hwy., Petaluma, CA 94952, Contact: Olivia Alejandro, Phone: (707) 778-4160.

(2) *Laboratory:* ASBESTECH (NIST).

Address: 6801 Fair Oaks Blvd., Suite H, Carmichael, CA 95608, Contact: Tommy G. Conlon, Phone: (916) 481-8902.

(3) *Laboratory:* Analytical Research Laboratories, Inc.

Address: 160 Taylor St., P.O. Box 2360, Monrovia, CA 91016, Contact: D.W. Kohlenberger, Phone: (818) 357-3247.

(4) *Laboratory:* Applied Petrography, Inc. (NIST).

Address: 8520 Sorenson Ave., Suite E, Santa Fe Springs, CA 90670, Contact: Joanna Deane, Phone: (213) 945-3468.

(5) *Laboratory:* Asbestest, Inc.

Address: 1550 Dell Ave., Suite E, Campbell, CA 95008, Contact: Robert M. Kumagai, Phone: (408) 374-3360.

(6) *Laboratory:* Asbestos Detection Co., Inc. (NIST).

Address: 12755 Brookhurst St., Suite 206, Garden Grove, CA 92640, Contact: Richard L. Frauenberger, Phone: (714) 530-1922.

(7) *Laboratory:* Asbestos Management Services, Inc.

Address: 14829 Proctor Ave., Industry, CA 91746, Contact: Joseph Johnson, Phone: (818) 961-4303.

(8) *Laboratory:* Associated Safety Consultants (NIST).

Address: 13363 Saticoy St., No. 204, North Hollywood, CA 91605, Contact: Dan Flaherty, Phone: (818) 503-0471.

(9) *Laboratory:* BSE Labs, Inc. (NIST).

Address: 50 East Foothill Blvd., Arcadia, CA 91006, Contact: Gustavo Delgado, Phone: (818) 445-4127.

(10) *Laboratory:* California Water Labs (NIST).

Address: 1430 Carpenter Ln., Modesto, CA 95352, Contact: Gloria Poling, Phone: (209) 527-4050.

(11) *Laboratory:* Cam Lab (NIST).

Address: 9525 Slauson Ave., Pico Rivera, CA 90660, Contact: Michael R. Tiffany, Phone: (213) 942-8666.

(12) *Laboratory:* Certified Engineering & Testing Co., Inc. (NIST).

Address: 725 Greenwich St., No. 204, San Francisco, CA 94133, Contact: Cabe Silverhame, Phone: (415) 986-6872.

(13) *Laboratory:* Certified Testing Laboratories, Inc.

Address: 2905 East Century Blvd., South Gate, CA 90280, Contact: Stuart E. Salot, Phone: (213) 564-2641.

(14) *Laboratory:* Clark Geological Services (NIST).

Address: 3479 Edison Way, Fremont, CA 94538, Contact: Joyce Lucas-Clark, Phone: (415) 659-1784.

(15) *Laboratory:* Clayton Environmental Consultants, Inc. (NIST).

Address: 1252 Quarry Ln., Pleasanton, CA 94566, Contact: Warren C. Steele, Phone: (415) 426-2600.

(16) *Laboratory:* Dan Napier & Associates (NIST).

Address: 15342 Hawthorne Blvd., Suite 207, P.O. Box 1540, Lawndale, CA 90260-6440, Contact: Dan Napier, Phone: (213) 644-1924.

(17) *Laboratory:* Dyer Laboratories, Inc. (NIST).

Address: 2531 West 237th St., No. 121, Torrance, CA 90505, Contact: D.L. Dyer, Phone: (213) 530-3322.

(18) *Laboratory:* E & A Env'l Service, Inc. (NIST).

Address: 15943 Clark Ave., Bellflower, CA 90706, Contact: Ebbiteanga Abili, Phone: (213) 925-5060.

(19) *Laboratory:* EMS Laboratories (NIST).

Address: 211 Pasadena Ave., South Pasadena, CA 91030-2919, Contact: Bernadine M. Kolk, Phone: (213) 257-2002.

(20) *Laboratory:* EnvironMETeo Services, Inc. (EMET), (NIST).

Address: 94-463 Ukee St., Suite A, Waipahu, HI 96797, Contact: Clifford How, Phone: (808) 671-8383.

(21) *Laboratory:* Environmental Innorations (NIST).

Address: 675 Hegenberger Rd., Suite 110, Oakland, CA 94621, Contact: Kip Fout, Phone: (415) 632-0104.

(22) *Laboratory:* Esstek (NIST).

Address: 3045 Teagarden St., San Lenadro, CA 94577, Contact: Bob Cordova, Phone: (303) 425-0013.

(23) *Laboratory:* Esstek, Inc. (NIST).

Address: 9041-17 Dice Rd., Santa Fe Springs, CA 90670, Contact: Al Fahrenbruch, Phone: (213) 944-2520.

(24) *Laboratory:* Eureka Laboratories, Inc. (NIST).

Address: 3401 La Grande Blvd., Sacramento, CA 95823, Contact: Steven K. Leung, Phone: (916) 428-1193.

(25) *Laboratory:* Fiberquant, Inc. (NIST).

Address: 4624-B South 35th St., Phoenix, AZ 85040, Contact: Larry Pierce, Phone: (602) 276-6138.

(26) *Laboratory:* Forensic Analytical Specialities, Inc., (NIST).

Address: 3777 Depot Rd., Suite 408, Hayward, CA 94545, Contact: Stephen A. Shaffer, Phone: (415) 887-8828.

(27) *Laboratory:* Gemeni Petrographic Investigations.

Address: P.O. Box 2127, Novato, CA 94948, Contact: Peter A. Almendinger, Phone: (415) 892-9016.

(28) *Laboratory:* HECO Safety Division (NIST), Industrial Hygiene Section.

Address: 820 Ward Ave., Honolulu, HI 96813, Contact: Joana Teba, Phone: (808) 548-7386.

(29) *Laboratory:* Hall-Kimbrell Environmental Services.

Address: 2615 South King St., Suite 2A, Honolulu, HI 96826, Contact: S. Gil Cobb, Phone: (913) 749-2381.

(30) *Laboratory:* Hall-Kimbrell Environmental Services, (NIST).

Address: 646 South Brea Canyon Rd., Walnut, CA 91789, Contact: Joel K. Davidson, Phone: (714) 594-3232.

(31) *Laboratory:* Hanlon Laboratories (NIST).

Address: 8801 Folsom Blvd., Suite 145, Sacramento, CA 95826, Contact: Victoria Nabavi, Phone: (916) 386-2153.

(32) *Laboratory:* Health Sciences Associates (NIST).

Address: 10771 Noel St., Los Alamitos, CA 90720, Contact: Kathy S. Jones, Phone: (714) 220-3922.

(33) *Laboratory:* IT Corporation-Cerritos (NIST).

Address: 17605 Fabrica Way, Cerritos, CA 90701, Contact: Mary Hammons, Phone: (213) 921-9831.

(34) *Laboratory:* J.M. Cohen, Inc. (NIST).

Address: 155 Bovet Rd., Suite 300, San Mateo, CA 94402, Contact: Joel Cohen, Phone: (415) 349-9737.

(35) *Laboratory:* Kellco Asbestos Analytical Services, (NIST).

Address: P.O. Box 1339, Freemont, CA 94538, Contact: Bonnie Lee Kellogg, Phone: (415) 659-9751.

(36) *Laboratory:* Kellco Services, Inc. (NIST).

Address: 8421 Auburn Ave., Citrus Heights, CA 95610, Contact: Duane Graves, Phone: (916) 722-7997.

(37) *Laboratory:* Kemron Environmental Services (NIST).

Address: 14340 Bolsa Chica, Suite C, Westminster, CA 92683, Contact: Humphrey Laurent, Phone: (714) 373-1194.

(38) *Laboratory:* McClara Laboratory, Asbestos Control Division.

Address: 1231 Gary Way, Carmichael, CA 95608, Contact: Michael McClara, Phone: (916) 489-9202.

(39) *Laboratory:* McCrone Environmental Services, Inc., (NIST).

Address: 120 Newport Center Dr., Suite 240, Newport Beach, CA 92660, Contact: William Millar, Phone: (714) 759-6619.

(40) *Laboratory:* Med-Tox Associates, Inc. (NIST).

Address: 1229 Morena Blvd., San Diego, CA 92110, Contact: Thomas Vernon Dagenhart, Phone: (619) 276-6843.

(41) *Laboratory:* Microanalytical Services, Inc. (NIST).

Address: 201 South Lake Ave., Suite 402, Pasadena, CA 91101, Contact: Nancy Carraway, Phone: (818) 356-7400.

(42) *Laboratory:* Microprobe (NIST).

Address: 5104 East Burns, Tucson, AZ 85711, Contact: James R. Kessler, Phone: (602) 745-1189.

(43) *Laboratory:* National Asbestos Labs, Inc. (NIST).

Address: 2235 Polvorosa Ave., Suite 220, San Leandro, CA 94577, Contact: Kevin Smith, Phone: (415) 357-9555.

(44) *Laboratory:* PACE Laboratories (NIST).

Address: 11 Digital Dr., Novato, CA 94949, Contact: Keith Hunter, Phone: (415) 883-6100.

(45) *Laboratory:* Particle Diagnostics, Inc. (NIST).

Address: 1274 Morena Blvd., San Diego, CA 92109, Contact: Dan Baxter, Phone: (619) 276-2200.

(46) *Laboratory:* Precision Micro-Analysis (NIST).

Address: 5665 Power Inn Rd., Suite 102, Sacramento, CA 95824, Contact: J. Benjamin Smith, Phone: (916) 381-0694.

(47) *Laboratory:* R.J. Lee Group, Inc. (NIST).

Address: 2424 6th St., Berkeley, CA 94710, Contact: Jesse E. Fisher, Phone: (415) 486-8319.

(48) *Laboratory:* Radiation Detection Co.

Address: 162 Wolfe Rd., P.O. Box 1414, Sunnyvale, CA 94088, Contact: Susan Gagner, Phone: (408) 735-8700.

(49) *Laboratory:* Salt River Project (NIST).

Address: 600 East Curry Rd., Tempe, AZ 85281, Contact: William Powell, Phone: (602) 236-8024.

(50) *Laboratory:* Santa Rita Analytical.

Address: 5055 East Broadway, Suite D-208, Tucson, AZ 85711, Contact: James C. Faas, Phone: (602) 790-4491.

(51) *Laboratory:* Schwein/Christensen Eng., Ltd. (NIST).

Address: 3397 Mt. Diablo Blvd., Suite E, Lafayette, CA 94549, Contact: Conrad Christensen, Phone: (415) 284-3311:

(52) *Laboratory:* Smith-Emery Co., Environmental/Chemical Dept.

Address: 781 East Washington Blvd., Los Angeles, CA 90021, Contact: Jack C. Carmody, Phone: (213) 749-3411.

(53) *Laboratory:* Southwest Hazard Control, Inc. (NIST).

Address: 5400 West Massingdle Rd., Tucson, AZ 85743, Contact: Gerald J. Karches, Phone: (602) 744-1060.

(54) *Laboratory:* Sunshine Environmental Laboratory.

Address: 2681 Lincoln Rd., Las Vegas, NV 89115, Contact: Nathan M. Lencioni, Phone: (702) 452-3952.

(55) *Laboratory:* TEM Analytics, Inc.

Address: 3433 East Fort Lowell, Suite 105, Tucson, AZ 85716, Contact: Sandra Beyarano, Phone: (602) 795-7000.

(56) *Laboratory:* TMA/NORCAL Corporation (NIST).

Address: 2030 Wright Ave., Richmond, CA 94804, Contact: Rosemary Sliney, Phone: (415) 235-2633.

(57) *Laboratory:* Toxscan (NIST), Control Lab.

Address: 42 Hangar Way, Watsonville, CA 95076, Contact: Frank Shields, Phone: (408) 724-4522.

(58) *Laboratory:* Truesdale Laboratories, Inc.

Address: 14201 Franklin Ave., Tustin, CA 92680, Contact: Karl Schiller, Phone: (714) 730-6239.

(59) *Laboratory:* United States Testing, Inc. EST-West.

Address: 3491 Kurtz St., P.O. Box 80985, San Diego, CA 92110, Contact: Craig Sobotka, Phone: (619) 222-0544.

(60) *Laboratory:* Unitek Environmental Consultants, Inc., (NIST).

Address: 2889 Mokumoa St., Honolulu, HI 96819, Contact: Irene Enoki, Phone: (808) 834-1444.

(61) *Laboratory:* University Associates, Ltd. (NIST).

Address: 2425-A North Huachuaca Dr., Tucson, AZ 85745, Contact: Frank Mendoza, Phone: (602) 624-9366.

(62) *Laboratory:* University Associates, Ltd. (NIST).

Address: 2725 Congress St., Suite 2A, San Diego, CA 92110, Contact: Frank Mendoza, Phone: (619) 294-7200

(63) *Laboratory:* Van Houten Consultants, Inc.

Address: P.O. Box 2659, Novato, CA 94948, Contact: Gregory P. Arnold, Phone: (415) 897-6805.

(64) *Laboratory:* Western Technologies, Inc.

Address: 3737 East Broadway Rd., P.O. Box 21387, Phoenix, AZ 85036, Contact: Denice Miller, Phone: (602) 437-3737.

EPA Accredited Commercial PLM Laboratories

REGION X -- Seattle, WA

Regional Asbestos Coordinator: Walter Jasper, EPA, Region X, 1200 Sixth Ave. (8T-083), Seattle, WA 98101. (206) 442-4762, (FTS) 399-2870.

(1) *Laboratory:* AM TEST, Inc. (NIST).

Address: 14603 Northeast 87th St., Redmond, WA 98052, Contact: John T. Dailey, Phone: (206) 885-1664.

(2) *Laboratory:* Asbestos Microscopy, Inc.

Address: 10463 Northeast Fourth Plain Rd., Vancouver, WA 98662, Contact: Paul Carlson, Phone: (206) 256-6455.

(3) *Laboratory:* Cascade Analytical Service.

Address: 3640 South Cedar St., Suite O, Tacoma, WA 98409, Contact: Juin B. J. TeVrucht, Phone: (206) 472-6909.

(4) *Laboratory:* Coffey Laboratories, Inc.

Address: 4914 Northeast 122nd Ave., Portland, OR 97230, Contact: Fredrick C. Colley, Phone: (503) 254-1794.

(5) *Laboratory:* Eastwood Testing Laboratory, Inc.

Address: 7325 Southeast 133rd Pl., Portland, OR 97236, Contact: Misko Maynard, Phone: (503) 761-0922.

(6) *Laboratory:* Environmental Consulting Services, Inc. (NIST).

Address: 1259 Willamette St., Eugene, OR 97401, Contact: Richard W. Carlin, Phone: (503) 345-6790.

(7) *Laboratory:* Environmental Consulting Services, Inc. (NIST).

Address: 3601 Northwest Yeon, Suite 134, Portland, OR 97210, Contact: Sheila Monroe, Phone: (503) 227-7210.

(8) *Laboratory:* Eastek, Inc. (NIST).

Address: 12822 Gateway Dr., Seattle, WA 98168, Contact: Richard C. Thompson, Phone: (303) 425-0013.

(9) *Laboratory:* Frandon Enterprises, Inc.

Address: 511-North 48th, Seattle, WA 98103, Contact: Donald M. Wallace, Phone: (206) 633-2341.

(10) *Laboratory:* HAZCON, Inc. (NIST).

Address: 9500 Southwest Barbur Rd., Suite 100, Portland, OR 97219, Contact: Gerald Liddell, Phone: (503) 244-0045.

(11) *Laboratory:* HAZCON, Inc. (NIST).

Address: 5950 6th Ave. S, Suite 216, Seattle, WA 98108, Contact: Masood Hashmi, Phone: (206) 763-7364.

(12) *Laboratory:* HAZTOX, Inc. (NIST).

Address: 820 North Linder Rd., Meridian, ID 83642, Contact: Wayne Dorband or Robin Schmidt, Phone: (208) 888-7121.

(13) *Laboratory:* Hanford Environmental Health, Foundation NHS, Inc. (NIST).

Address: 2950 C George Washington Way, Richland, WA 99352, Contact: Maureen Hamilton, Phone: (509) 376-6980.

(14) *Laboratory:* Hanford Environmental Health, Foundation NHS, Inc. (NIST).

Address: 805 Goethals Dr., Richland, WA 99352, Contact: Maureen Hamilton, Phone: (509) 376-6980.

(15) *Laboratory:* Hunter Services, Inc. (NIST).

Address: 1205 East Int'l. Airport Rd., Suite 100, Anchorage, AK 99518, Contact: Doug Jones, Phone: (907) 561-3055.

(16) *Laboratory:* M & M Environmental, Inc. (NIST).

Address: 3902 North 34th St., Tacoma, WA 98407, Contact: Mike Reid, Phone: (206) 572-2772.

(17) *Laboratory:* Marine & Environmental Testing, Inc., (NIST).

Address: P.O. Box 1142, Beaverton, OR 97075, Contact: Martin H. Finkel, Phone: (503) 286-2955.

(18) *Laboratory:* Microlab Northwest (NIST).

Address: 7609 140th Pl., NE, Redmond, WA 98052, Contact: Russel Crutcher, Phone: (206) 885-9419.

(19) *Laboratory:* Northern Testing Laboratories, Inc.

Address: 600 University Plaza W, Suite A, Fairbanks, AK 99709, Contact: Linda J. Hendershot, Phone: (907) 479-3115.

(20) *Laboratory:* Northwest Asbestos Consultants (NIST).

Address: 1005 Northwest Galveston, Suite E, Bend, OR 97701, Contact: Dale A. Schmidt, Phone: (503) 389-9727.

(21) *Laboratory:* Oregon Analytical Laboratory (NIST).

Address: 14655 Southwest Old Schools Ferry Rd., Beaverton, OR 97007, Contact: Howard Boorse, Phone: (503) 644-5300.

(22) *Laboratory:* Professional Service Ind., Inc. (NIST).

Address: 700 West 58th St., Anchorage, AK 99518-1632, Contact: John Buzdor, Phone: (907) 561-2400.

(23) *Laboratory:* Professional Service Ind., Inc. (NIST).

Address: 611 Southeast Harrison St., Portland, OR 97214, Contact: Judy Grant, Phone: (503) 232-2183.

(24) *Laboratory:* Quest Environmental Inc.

Address: 709 West Int'l. Airport Rd., Suite 100, Anchorage, AK 99518, Contact: John Johnston, Phone: (907) 563-0050.

(25) *Laboratory:* Taylor Laboratories, Inc.

Address: 724A Siginaka Way, Sitka, AK 99835, Contact: Lawrence Taylor, Jr., Phone: (907) 747-6364.

(26) *Laboratory:* Terra Test Analytical Labs, Inc.

Address: 1003 Main St., Suite 2, Summer, WA 98390, Contact: Pedro G. Armenta, Phone: (206) 863-5404.

(27) *Laboratory:* Weyerhaeuser Co., Safety & Health Service Laboratory.

Address: 32901 32nd Dr., S., Federal Way, WA 98003, Contact: Christopher Kirk, Phone: (206) 924-6639.

EPA Accredited Commercial PLM Laboratories

Non-Domestic PLM Laboratories

(1) *Laboratory:* Pinchin Harris Holland Associates, Ltd. (NIST).

Address: No. 200-1285 West Pender St., Vancouver, BC, V6E 4B1, Canada, Contact: Geoffrey A. Clark, Phone: (604) 669-5979.

(2) *Laboratory:* Chatfield Technical Consulting, Ltd., (NIST).

Address: 2071 Dickson Rd., Mississauga, Ontario, Canada L5B 1YB, Contact: Eric Chatfield, Phone: (416) 896-7611.

(3) *Laboratory:* McMaster Laboratory (NIST), Occupational Health Laboratory.

Address: 1200 Main St., W., Hamilton, Ontario, Canada L8N 3Z5, Contact: Dave K. Varma, Phone: (416) 525-9140.

(4) *Laboratory:* Ontario Research Foundation, Sheridan Park Research Comm.

Address: Mississauga, Ontario, Canada L5K 1B3, Contact: Irina Sherman, Phone: (416) 822-4111.

(5) *Laboratory:* Okinawa Eng. Analysis Ctr. Co., Ltd.

Address: 777 Ojana, Ginowan, Okinawa, Japan 901-22, Contact: Fuminori Nishime, Phone: (098) 897-0810.

EPA Accredited Non-Commercial PLM Laboratories

REGION I -- Boston, MA

Regional Asbestos Coordinator: Joe DeCola, EPA, Region I, Air and Management Division (APT-2311), JFK

Federal Building, Boston, MA 02203. (617) 565-3835, (FTS) 835-3835.

(1) *Laboratory:* Division of Occupational Hygiene, Asbestos Commission.

Address: 1001 Watertown St., West Newton, MA 02165, Contact: Frank Kramarz, Phone: (617) 727-3983.

(2) *Laboratory:* Environmental Health and Safety, Harvard University.

Address: 46 Oxford St., Cambridge, MA 02138, Contact: Quality Control Manager, Phone: (617) 495-2090.

(3) *Laboratory:* Olin Corp. (NIST), Environmental Hygiene Laboratory.

Address: 91 Shelton Ave., P.O. Box 30-9643, New Haven, CT 06511, Contact: James P. Dawson, Phone: (203) 789-5613.

(4) *Laboratory:* State of Maine, Department of Human, Services, Public Health Laboratory.

Address: 221 State St., Augusta, ME 04333, Contact: Thomas Dwyer, Phone: (207) 289-2727.

EPA Accredited Non-Commercial PLM Laboratories

REGION II – Edison, NJ

Regional Asbestos Coordinator: Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 5, (MS-500), Edison, NJ 08837. (201) 321-6671, (FTS) 340-6671.

(1) *Laboratory:* Hess Oil Virgin Islands Corp. (NIST).

Address: P.O. Box 127, Kingshill, St. Croix, VI 00850, Contact: John L. Edgley, Phone: (809) 778-4314.

EPA Accredited Non-Commercial PLM Laboratories

REGION III – Philadelphia, PA

Regional Asbestos Coordinator: Carole Dougherty, EPA, Region III (3HW-42), 841 Chestnut Bldg., Philadelphia, PA 19107. (215)597-3160, (FTS) 597-3160.

(1) *Laboratory:* Aluminum Company of America, Environmental Health Laboratory (NIST).

Address: ALCOA Technical Center, ALCOA Center, PA 15069, Contact: Richard A. Milito, Phone: (412) 339-0651.

(2) *Laboratory:* Maryland Dept. of Health, Laboratories Adm. - AQL (NIST).

Address: 201 West Preston St., Room 6D1, Baltimore, MD 21203, Contact: Delores E. Willis, Phone: (301) 225-6212.

(3) *Laboratory:* National Institute of Health, Safety Support Section.

Address: Building 13, Room 3K04, Bethesda, MD 20205, Contact: Randolph K. Larsen, Phone: (301) 496-3457.

(4) *Laboratory:* Pennsylvania Department of, Environmental Resources (NIST).

Address: Bureau of Laboratories, P.O. Box 1467, 3rd & Reily St., Harrisburg, PA 17120, Contact: Paul E. Baker, Phone: (717) 787-4669.

(5) *Laboratory:* U.S. Army Environmental Hygiene Agency, RICD MAB.

Address: Building E2100, Aberdeen Proving Ground, Edgewood, MD 21010-5422, Contact: John W. Courts, Phone: (301) 671-2819.

EPA Accredited Non-Commercial PLM Laboratories

REGION IV – Atlanta, GA

Regional Asbestos Coordinator: Liz Wilde, EPA, Region IV, 345 Courtland St., NE, (4APT-PT), Atlanta, GA 30365. (404) 347-5014, (FTS) 257-5014.

(1) *Laboratory:* Alabama Power Company.

Address: P.O. Box 2641, Birmingham, AL 35291, Contact: W. Steve Hill, Phone: (205) 664-6061.

(2) *Laboratory:* EG&G Florida, Occupational Medicine & Environmental, Health Services.

Address: P.O. Box 21296, Kennedy Space Center, FL 32815, Contact: Patricia L. Colomore, Phone: (407) 867-3629.

(3) *Laboratory:* GTRI Microscopy Research Lab (NIST).

Address: 151 Sixth St., O'Keefe Bldg., Atlanta, GA 30057, Contact: Toni Hurley, Phone: (404) 894-3606.

(4) *Laboratory:* The University of Alabama, Office of Health & Safety.

Address: 12 Thomas Cir., P.O. Box 6095, University, AL 35486, Contact: Hal Barrett, Phone: (205) 348-5905.

(5) *Laboratory:* Western Kentucky University, Electron Microscopy Facility.

Address: Dept. of Biology, Bowling Green, KY 42101, Contact: J. Rodney McCurry, Phone: (502) 745-5993.

EPA Accredited Non-Commercial PLM Laboratories

REGION V – Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA, Region V, 230 S. Dearborn St., (5-SPT-7), Chicago, IL 60604. (312) 886-6003, (FTS) 886-6003.

(1) *Laboratory:* Chicago Board of Education.

Address: 6600 South Komensky, Chicago, IL 60652, Contact: Henry G. Gooday, Jr., Phone: (312) 890-7865.

(2) *Laboratory:* Commonwealth Edison/SMAD.

Address: 1319 South First Ave., Maywood, IL 60153, Contact: Richard R. Dlesk, Phone: (312) 450-5435.

(3) *Laboratory:* General Motors, GM Technical Center.

Address: Res. Adm. Bldg. 3-229, Warren, MI 48090, Contact: Donald J. Hart, Phone: (313) 986-1056.

(4) *Laboratory:* Illinois Dept. of Public Health, Springfield Laboratory.

Address: 134 9th St., Springfield, IL 62701, Contact: James B. Hundley, Phone: (217) 782-6562.

(5) *Laboratory:* Indiana State Board of Health, Industrial Hygiene Laboratory.

Address: 1330 West Michigan St., Indianapolis, IN 46206, Contact: John Ruyack, Phone: (317) 633-0692.

(6) *Laboratory:* State of Illinois Department of Public, Health, Toxicology Laboratory.

Address: 2121 West Taylor St., Chicago, IL 60612-4285, Contact: Dietmar Grohlich, Phone: (312) 693-4766.

(7) *Laboratory:* West Allis Memorial Hospital (NIST), Industrial Toxicology Laboratory.

Address: 8901 West Lincoln Ave., West Allis, WI 53227, Contact: Leon A. Saryan, Phone: (414) 546-6313.

EPA Accredited Non-Commercial PLM Laboratories

REGION VI – Dallas, TX

Regional Asbestos Coordinator: John West, 6T-PT, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733. (214) 655-7244, (FTS) 255-7244.

(1) *Laboratory:* Duncan Public Schools (NIST).

Address: 1706 Spruce, P.O. Box 1546, Duncan, OK 73533, Contact: Ron Murray, Phone: (405) 255-4725.

(2) *Laboratory:* Jimmie Ann Bolton (NIST).

Address: P.O. Box 49079, Austin, TX 78765, Contact: Jimmie Ann Bolton, Phone: (512) 471-3511.

(3) *Laboratory:* Texaco Chemical Co. (NIST), Neches Plant.

Address: P.O. Box 847, Port Neches, TX 77651, Contact: Janet E. Wiiki, Phone: (409) 722-8381.

(4) *Laboratory:* U.S. Air Force.

Address: OEHL/SA, Brooks AFB, TX 73235, Contact: Jerry F. Thomas, Phone: (512) 536-2158.

(5) *Laboratory:* Univ. of Texas Health Center at Tyler, Dept. of Cell Biology &, Environmental Science.

Address: P.O. Box 2003, Tyler, TX 75710, Contact: Ronald F. Dodson, Phone: (214) 877-3541.

EPA Accredited Non-Commercial PLM Laboratories

REGION VIII – Denver, CO

Regional Asbestos Coordinator: David Combs, (8AT-TS), EPA, Region VIII, 1 Denver Place, 999-18th St., Suite 500, Denver, CO 80202-2413. (303) 293-1744, (FTS) 564-1744.

(1) *Laboratory:* AMOCO Oil Co. (NIST), Mandan Refinery.

Address: Mandan Ave., P.O. Box 5000, Mandan, ND 58554, Contact: Donald K. Litchfield, Phone: (701) 667-2463.

(2) *Laboratory:* EPA-NEIC.

Address: P.O. Box 25227, Bldg. 53, DFC, Denver, CO 80225, Contact: Douglas Kendall, Phone: (303) 236-5132.

(3) *Laboratory:* Public Service Co. of Colorado (NIST).

Address: Hampden Park West, Bldg. 5H, 1500 West Hampden, Englewood, CO 80110, Contact: Richard K. Price, Phone: (303) 797-4226.

EPA Accredited Non-Commercial PLM Laboratories

REGION IX – San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, (A-4-2), EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974-7290, (FTS) 454-7290.

(1) *Laboratory:* Clark County School District, Safety & Health Specialist.

Address: 4260 Eucalylptus Annex, Las Vegas, NV 89121, Contact: Nathan M. Lencioni, Phone: (702) 799-5011.

(2) *Laboratory:* Pacific Gas & Electric Co., Dept. of Engineering Research.

Address: 3400 Crow Canyon Rd., San Ramon, CA 94583, Contact: Lansing W. Wong, Phone: (415) 820-2000.

(3) *Laboratory:* Riverside County Health Department, Laboratory.

Address: 5888 Mission Blvd., Rubidoux, CA 92509, Contact: Andrew Morita, Phone: (714) 784-1860.

(4) *Laboratory:* SCAQMD Laboratory (NIST).

Address: 9150 Flair Dr., El Monte, CA 91731, Contact: Joan Niertit, Phone: (818) 572-6200.

EPA Accredited Through 1/12/89 Only Amended Non-Commercial Laboratories

REGION II – Edison, NJ

Regional Asbestos Coordinator: Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 5, (MS-500), Edison, NJ 08837. (201) 321-6671, (FTS) 340-6671.

(1) *Laboratory:* Albert Einstein College of Medicine, of Yeshiva University.

Address: 1300 Morris Park Ave., Bronx, NY 10461, Contact: Ralph Ciano, IH, Phone: (212) 430-4150.

(2) *Laboratory:* Astoria Chemical Laboratory.

Address: Con Edison, Bldg., 20th Ave. & 31st St., Astoria, NY 11105, Contact: Hubert Gordon, Phone: (718) 204-4137.

(3) *Laboratory:* City of New York, Dept. of Health, Bureau of Laboratories.

Address: 455 First Ave., New York, NY 10016, Contact: Gabriel Carbone, Phone: (212) 340-4571.

(4) *Laboratory:* Columbia Univ. in the City of NY, Environmental Health & Safety.

Address: 744 Southwest Mudd Bldg., 520 West 120th St., New York, NY 10027, Contact: Edward Olmsted, Phone: (914) 424-4077.

(5) *Laboratory:* Exxon Company, U.S.A.

Address: P.O. Box 222, Linden, NJ 07036, Contact: Michael P. Gerrity, Phone: (201) 474-7344.

(6) *Laboratory:* Merck & Company, Inc.

Address: P.O. Box 2000, Rahway, NJ 07065, Contact: Mansor A. Khan, Phone: (201) 594-4000.

(7) *Laboratory:* Monroe County Environmental Health.

Address: 435 East Henrietta Rd., Rochester, NY 14620, Contact: Richard Burton, Phone: (716) 271-4617.

(8) *Laboratory:* New Jersey State Health Dept., Div. of Environmental Laboratories, CN360.

Address: Trenton, NJ 08625, Contact: Dr. S. Shahied, Phone: (201) 594-4000.

(9) *Laboratory:* New York State Dept. of Health, Div. of Laboratories & Research.

Address: Empire State Plaza, Albany, NY 12201, Contact: James S. Webber, Phone: (518) 474-7958.

(10) *Laboratory:* New York Telephone, Environmental Health Group.

Address: 1095 Avenue of the Americas 2533, Room 1104, New York, NY 10036, Contact: V. Hardman, Phone: (212) 395-1660.

(11) *Laboratory:* The City of NY Dept. of Sanitation.

Address: 51 Chambers St., Suite 1113, New York, NY 10007, Contact: Thomas McMahon, Phone: (212) 566-0242.

(12) *Laboratory:* USAF Regional Medical Center.

Address: Wiesbaden/SGB, USAF, APO New York, NY 09220-5300, Contact: R.B. Graham, Phone: Not Available.

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REGION III – Philadelphia, PA

Regional Asbestos Coordinator: Carole Dougherty, EPA, Region III (3HW-42), 841 Chestnut Bldg., Philadelphia, PA 19107. (215)597-3160, (FTS) 597-3160.

(1) *Laboratory:* Central Operating Company.

Address: Philip Sporn Plant, P.O. Box 389, New Haven, WV 25265-0389, Contact: Robert G. Workman, Phone: (304) 882-3213.

(2) *Laboratory:* Dept. of Health & Human Services, PHS CDC NIOSH DROS EIB.

Address: 944 Chestnut Ridge Rd., Morgantown, WV 26505, Contact: Jerry L. Clere, Phone: (304) 291-4205.

(3) *Laboratory:* NEPMU No. 2.

Address: Naval Station, Bldg. X336, Norfolk, VA 23511-6288, Contact: Officer in Charge, Phone: (804) 444-1547.

(4) *Laboratory:* US Army MEDDAC.

Address: HSXH-PVNTMED-IHS, Fort Eustis, VA 23604-5548, Contact: Commander, Phone: (804) 878-2231.

(5) *Laboratory:* Union Camp Corporation, Fine Paper Division.

Address: P.O. Box 178, Franklin, VA 23851, Contact: John D. Wood, Phone: (804) 569-4830.

EPA Accredited Through 1/12/89 Only Amended Non-Commercial Laboratories

REGION IV – Atlanta, GA

Regional Asbestos Coordinator: Liz Wilde, EPA, Region IV, 345 Courtland St., NE, (4APT-PT), Atlanta, GA 30365. (404) 347-5014, (FTS) 257-5014.

(1) *Laboratory:* Michelin Tire Corporation, G-US O.

Address: P.O. Box 2846, Greenville, SC 29602, Contact: Alan M. Goldstein, Phone: (803) 277-9300.

(2) *Laboratory:* Naval Hospital, Industrail Hygiene Division.

Address: Code 407.2, Charleston, SC 29408-6900, Contact: Ken Warren, Phone: (803) 743-6600.

(3) *Laboratory:* North Carolina Div. of Health Services, Occupational Health Laboratory.

Address: P.O. Box 28047, Raleigh, NC 27611, Contact: John Neal, Phone: (919) 733-7308.

(4) *Laboratory:* Oak Ridge National Laboratory.

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Address: P.O. Box X, Oak Ridge, TN 37831, Contact: Brain A. Jerome, Phone: (615) 574-6167.

(5) *Laboratory:* South Carolina Department of Health.

Address: P.O. Box 2202, Columbia, SC 29202, Contact: Gene Slice, Phone: (803) 758-4702.

(6) *Laboratory:* South Carolina Dept. of Health &. Environmental Control.

Address: P.O. Box 2202, Columbia, SC 29202, Contact: Maryanne Jones, Phone: (803) 758-4942.

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REGION V – Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA, Region V, 230 S. Dearborn St., (5-SPT-7), Chicago, IL 60604. (312) 886-6003, (FTS) 886-6003.

(1) *Laboratory:* Battelle, Columbus Division.

Address: 505 King Ave., Columbus, OH 43201-2693, Contact: Julius S. Ogden, Phone: (614) 424-6424.

(2) *Laboratory:* MEAD, World Headquarter.

Address: Courthouse Plaza NW, Dayton, OH 45463, Contact: Jerry L. Fair, Phone: (513) 222-6323.

(3) *Laboratory:* Minnesota Department of Health.

Address: 717 Southeast Delware St., P.O. Box 9441, Minneapolis, MN 55440, Contact: Steven Ring, Phone: (612) 623-5579.

(4) *Laboratory:* Minnesota Pollution Control Agency, Division of Air Quality.

Address: 520 Lafayette Rd., St. Paul, MN 55155, Contact: Dennis P. Fenlon, Phone: (612) 296-9382.

(5) *Laboratory:* Minnesota Power.

Address: Clay Boswell Southeast Station, P.O. Box 128, Cohasset, MN 55721, Contact: Margie A. Milczarek-Ritte, Phone: (218) 328-5711.

(6) *Laboratory:* Ohio Edison Co., Central Chemical Laboratory.

Address: 2955 W. Market St., Akron, OH 44313, Contact: Michael Roxbury, Phone: (216) 384-5100.

(7) *Laboratory:* Regional Air Pollution Control Agency.

Address: 451 W. Third St., P.O. Box 972, Dayton, OH 45402, Contact: Bruno Maier, Phone: (513) 225-5945.

(8) *Laboratory:* The Ohio State University.

Address: 1875 Millikin Rd., Columbus, OH 43210-1283, Contact: E. Robert Malone, Phone: (614) 292-2455.

(9) *Laboratory:* The Upjohn Company.

Address: 7171 Portage Rd., Kalamazoo, MI 49001, Contact: R. Bruce Binns, Phone: (616) 323-6530.

(10) *Laboratory:* Thomas Blair.

Address: 8094 South Park, Garrettsville, OH 44231, Contact: Thomas Blair, Phone: (216) 527-2460.

(11) *Laboratory:* U.S. Army Corps of Engineers.

Address: 5851 Mariemont Ave., P.O. Box 27168, Cincinnati, OH 45227, Contact: Terry Stransky, Phone: (513) 527-6201.

(12) *Laboratory:* Wayne County Health Department, Air Pollution Control Division.

Address: 2211 East Jefferson, Detroit, MI 48207, Contact: Peter O. Warner, Phone: (313) 567-4100.

EPA Accredited Through 1/12/89 Only Amended Non-Commercial Laboratories

REGION VI – Dallas, TX

Regional Asbestos Coordinator: John West, 6T-PT, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733. (214) 655-7244, (FTS) 255-7244.

(1) *Laboratory:* Chaqctaw/Nicoma Park Pub. School.

Address: P.O. Box 659, Choctaw, OK 73020, Contact: Keith Crutchfield, Phone: (405) 769-9853.

(2) *Laboratory:* City Public Service, Environmental Lab.

Address: P.O. Box 1771, San Antonio, TX 78296, Contact: Clarence F. Ciomperli, Phone: (512) 227-3211.

(3) *Laboratory:* City of Houston Health &. Human Services Dept. of Air Quality.

Address: 7511 Park Place Blvd., Houston, TX 77087, Contact: Wayne A. Theiss, Phone: (713) 640-4218.

(4) *Laboratory:* El Paso City-County, Health District.

Address: 222 S. Campbell St., El Paso, TX 79901, Contact: Rene Hernandez, Phone: (915) 541-4989.

(5) *Laboratory:* Kelsey-Seybold Clinic, PA, NASA-Johnson Space Center.

Address: Houston, TX 77058, Contact: Cyril D. Anderson, Phone: (713) 483-4111.

(6) *Laboratory:* LA Air Quality Division, Microanalysis Hgwy.

Address: 11720 Airline Hwy., Baton Rouge, LA 70816, Contact: Debra E. Bendily, Phone: (504) 922-0909.

(7) *Laboratory:* Los Alamos National Laboratory, Research & Development Section.

Address: Box 1663 HSE-5, MSK486, Los Alamos, NM 87545, Contact: Lawrence W. Ortiz, Phone: (505) 667-5231.

(8) *Laboratory:* Merichem Company.

Address: 1914 Haden Rd., Houston, TX 77015-6498, Contact: Rex Reid, Phone: (713) 455-1311.

(9) *Laboratory:* State of NM Scientific Laboratory Div.

Address: 700 Camino De Salud NE, Albuquerque, NM 87106, Contact: Dr. Curtis B. Coleman, Phone: (505) 841-2510.

(10) *Laboratory:* Tulsa City-County Health Dept., Pollution Control Div.-Air Qual.

Address: 4616 East 15th St., Tulsa, OK 74112, Contact: Rene J. Koesler, Phone: (918) 744-1000.

(11) *Laboratory:* University of New Orleans, Dept. of Geology & Geophysics.

Address: Lakefront, New Orleans, LA 70148, Contact: Dr. Gary C. Allen, Phone: (504) 286-6798.

EPA Accredited Through 1/12/89 Only Amended Non-Commercial Laboratories

REGION VII – Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA, Region VII, 726 Minnesota Ave., Kansas City, KS 66101. (913) 236-2835, (FTS) 757-2835.

(1) *Laboratory:* KDHE-Laboratory Services.

Address: Building 740- Forbes Field, Topeka, KS 66620, Contact: Ronald F. Hammerschmidt, Phone: (913) 862-9360.

(2) *Laboratory:* MRD Laboratory.

Address: 420 S. 18th St., Omaha, NE 68102-2586, Contact: R.K. Schlenker, Phone: Not Available.

(3) *Laboratory:* Missouri Dept. of Soc. Svcs.

Address: 307 West McCarty St., Jefferson City, MO 65101, Contact: Dr. R.H. Gnaedinger, Phone: (314) 751-3179.

(4) *Laboratory:* Nebraska Public Power District.

Address: Sheldon Station, P.O. Box 88, Hallman, NE 68368, Contact: Gene J. Cook, Phone: (402) 787-2555.

(5) *Laboratory:* Nebraska Public Power District.

Address: Gerald Gentleman Station, P.O. Box 68, Sutherland, NE 69165, Contact: John E. James, Phone: (308) 389-2441.

(6) *Laboratory:* Spingfield-Greene County Health Dept.

Address: 227 East Chestnut Expwy., Springfield, MO 65802-3881, Contact: Ronald Boyer, Phone: (417) 864-1662.

(7) *Laboratory:* State of Nebraska, Health Laboratories.

Address: P.O. Box 2755, Lincoln, NE 68502-0755, Contact: John Blosser, Phone: (402) 471-2122.

(8) *Laboratory:* U.S. Dept. of Agriculture, National Animal Disease Center.

Address: P.O. Box 70, Ames, IA 50010, Contact: Mark T. Jenson, Phone: (515) 239-8344.

EPA Accredited Through 1/12/89 Only Amended Non-Commercial Laboratories

REGION IX – San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, (A-4-2), EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974-7290, (FTS) 454-7290.

(1) *Laboratory:* California Department of Health, Services Air & Industrial Hygiene, Laboratory.

Address: 2151 Berkeley Way, Berkeley, CA 94704, Contact: Miles Imada, Phone: (415) 540-2803.

(2) *Laboratory:* California Department of Health, Services Southern CA Laboratory.

Address: 1449 W. Temple St., Room 101, Los Angeles, CA 90026, Contact: James T. Ganotes, Phone: (213) 620-4109.

(3) *Laboratory:* Co. of LA, Dept. of Hlth. Svcs.

Address: 2615 South Grand Ave., Room 607, Los Angeles, CA 90007, Contact: Marcus Look, Phone: (213) 744-3223.

(4) *Laboratory:* International Business Machines, Inc., Industrial Hygiene 840/0121.

Address: 5600 Cottle Rd., San Jose, CA 95193, Contact: Peggy F. Kivel, Phone: (408) 256-5391.

(5) *Laboratory:* NASCO.

Address: Harbor Dr. & 28th St., P.O. Box 85278 MS 27, San Diego, CA 92138, Contact: Terry Thedell, Phone: (619) 544-7544.

(6) *Laboratory:* NAV MED CLIN.

Address: IH LAB-BLDG. 14, NAS NI, San Diego, CA 92135, Contact: Robert J. Holland, Phone: (619) 437-7975.

EPA Accredited Through 1/12/89 Only Amended Non-Commercial Laboratories

REGION X – Seattle, WA

Regional Asbestos Coordinator: Walter Jasper, EPA, Region X, 1200 Sixth Ave. (8T-083), Seattle, WA 98101. (206) 442-4762, (FTS) 399-2870.

(1) *Laboratory:* Certified Industrial Hyg. Technologist.

Address: P.O. Box 36, Clinton, WA 98236, Contact: Arlene Stebbins, Phone: (206) 543-9711.

(2) *Laboratory:* Environmental Quality Labs &. Applied Research.

Address: 1712 Southwest 11th Ave., Portland, OR 97201, Contact: Kenneth C. McDonald, Phone: (503) 229-5696.

(3) *Laboratory:* Ketchikan Pulp Company.

Address: P.O. Box 6600, Ketchikan, AK 99901, Contact: Steven Eilertson, Phone: (907) 225-2151.

(4) *Laboratory:* NRF Chemistry.

Address: Naval Reactors Facility, Box 2068, Idaho Falls, ID 83403-2068, Contact: C.W. Borror, Phone: (208) 526-0111.

(5) *Laboratory:* Occupational Health Labs.

Address: 1400 Southwest 5th, Room 1007, Portland, OR 97201, Contact: Marija Janko, Phone: (503) 229-6286.

(6) *Laboratory:* Pabst Brewing Company.

Address: P.O. Box 36, Clinton, WA 98236, Contact: Ada E. Moore, Phone: (206) 754-5000.

(7) *Laboratory:* Spokane County Air Pollution, Control Authority.

Address: West 1101 College, Room 230, Spokane, WA 99201, Contact: Ronald J. Edgar, Phone: (509) 456-4727.

(8) *Laboratory:* The Boeing Company.

Address: P.O. Box 3707, MS 8H-08, Seattle, WA 98124-2207, Contact: Mason Campbell, Phone: (206) 773-1481.

EPA Accredited Through 1/12/89 Only Amended Non-Commercial Laboratories

Non-Domestic PLM Laboratories

(1) *Laboratory:* Albeta Workers' Health, Safety &. Compensation.

Address: 10158-103 St., 2nd Floor, Edmonton, Alberta, Contact: Larry Serbin, Phone: (403) 427-7989.

(2) *Laboratory:* Health & Welfare Canada, Occ. Hlth. Unit--Med. Svcs. Branch.

Address: Du Chardon St., Tunney's Pasture, Ottawa, Ontario, Contact: Charles Moore, Phone: (613) 957-8456.

(3) *Laboratory:* Monsanto Canada, Inc., Industrial Hygiene Chemist.

Address: 425, rue St-Patrick, LaSalle, Quebec, Contact: Enzo Sgrignuoli, Phone: (514) 366-4850.

(4) *Laboratory:* Ontario Hydro, Safety Svcs. Dept.

Address: 757 McKay Rd., Pickering, Ontario, Contact: S. Libich, Phone: (416) 683-7516.

EPA Extended Interim Accredited Amended Non-Commercial Laboratories

REGION II – Edison, NJ

Regional Asbestos Coordinator: Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 5, (MS-500), Edison, NJ 08837. (201) 321-6671, (FTS) 340-6671.

(1) *Laboratory:* City of New York, Dept. of Gen. Svc., Lab Division of Muncipal Supplies.

Address: 480 Canal St., New York, NY 10013, Contact: A.D. Pacifico, Phone: (212) 925-5326.

(2) *Laboratory:* Co. of Suffolk, Dept. of Health Svcs., Office of the Medical Examiner.

Address: Suffolk County Office Bldg., Hauppauge, NY 11788, Contact: William F. Boehler, Phone: (516) 360-5555.

(3) *Laboratory:* Hoffman La Roche, Inc., Industrial Hygiene Lab.

Address: 340 Kingsland St., Bldg. 103, Rm. 219, Nutley, NJ 07110, Contact: Jake Dounato, Phone: (201) 235-3246.

(4) *Laboratory:* Nassau County Dept. of Health, Division of Laboratories & Research.

Address: 209 Main St., Hempstead, NY 11550, Contact: William Boehler, Phone: (516) 483-9158.

EPA Extended Interim Accredited Amended Non-Commercial Laboratories

REGION IV – Atlanta, GA

Regional Asbestos Coordinator: Liz Wilde, EPA, Region IV, 345 Courtland St., NE, (4APT-PT), Atlanta, GA 30365. (404) 347-5014, (FTS) 257-5014.

(1) *Laboratory:* Division of Lab Svcs.

Address: 1522 Cherokee Trail, Knoxville, TN 37920, Contact: Edward McCrary, Phone: (615) 546-9221.

(2) *Laboratory:* E.I. Dupont DeNemours & Co., Cape Fear Plant (NIST).

Address: P.O. Box 2042, Wilmington, NC 28402, Contact: W.M. Tedder, Phone: (919) 371-4257.

(3) *Laboratory:* Schneider Services International, (NIST).

Address: MS-340, Arnold AFB, TN 37389, Contact: Doug Hite, Phone: (615) 454-3000.

(4) *Laboratory:* TN Dept. of Public Health, Jackson Branch Lab.

Address: 295 Summar Dr., Jackson, TN 38302-0849, Contact: Wm. Jordon English, Phone: (901) 424-9200.

EPA Extended Interim Accredited Amended Non-Commercial Laboratories

REGION V – Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA, Region V, 230 S. Dearborn St., (5-SPT-7), Chicago, IL 60604. (312) 886-6003, (FTS) 886-6003.

(1) *Laboratory:* City of Toledo Environmental Services, Agency.

Address: 28 Main St., Toledo, OH 43605, Contact: Rick Uscilowski, Phone: (419) 693-0358.

(2) *Laboratory:* Martin Marietta Energy Systems, Inc.

Address: P.O. Box 628, Piketon, OH 45661, Contact: David Boyd, Phone: (614) 897-5793.

(3) *Laboratory:* NIOSH (NIST).

Address: MS R-2 4676 Columbia Pkwy., Cincinnati, OH 45226, Contact: Peter Eller, Phone: (513) 841-4321.

EPA Extended Interim Accredited Amended Non-Commercial Laboratories

REGION VI – Dallas, TX

Regional Asbestos Coordinator: John West, 6T-PT, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733. (214) 655-7244, (FTS) 255-7244.

(1) *Laboratory:* ERT.

Address: 300 Richmond Ave., Houston, TX 77098, Contact: Sandra Bialas, Phone: (713) 520-9900.

(2) *Laboratory:* Phillips Petroleum IH Lab.

Address: 267 Petroleum Lab, Bartlesville, OK 74004, Contact: Wanda Waugh, Phone: (918) 661-3848.

(3) *Laboratory:* Shell Development Co. IH Lab.

Address: P.O. Box 1380, Houston, TX 77251-1380, Contact: Donald H. Morman, Phone: (713) 493-7267.

(4) *Laboratory:* Southwest Research Institute.

Address: 6220 Culebra Rd., P.O. Box Drawer 28510, San Antonio, TX 78284, Contact: Jac Harding, Phone: (512) 684-5111.

(5) *Laboratory:* Technology Serving People, Inc.

Address: 5373 West Alabama, Suite 400, Houston, TX 77056, Contact: Janet Opre, Phone: (713) 621-9067.

EPA Extended Interim Accredited Amended Non-Commercial Laboratories

REGION VII – Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA, Region VII, 726 Minnesota Ave., Kansas City, KS 66101. (913) 236-2835, (FTS) 757-2835.

(1) *Laboratory:* St. Louis County Health Dept., Environmental Health Labs.

Address: 801 South Brentwood Blvd., Clayton, MO 63105, Contact: Wayne Black, Phone: (314) 854-6830.

(2) *Laboratory:* The University of Kansas.

Address: Facilities Operations Office of, Director, Lawrence, KS 66045, Contact: Thomas Anderson, Phone: (913) 864-4770.

(3) *Laboratory:* Univ. of Missouri - Kansas City.

Address: Dept. of Chemistry, Kansas City, MO 64110, Contact: Peter Lott, Phone: (816) 276-1555.

(4) *Laboratory:* Veterans Admin. (10BA5).

Address: 11124 South Towne Sq., St. Louis, MO 63123, Contact: Vince Llacer, Phone: (314) 892-7227.

EPA Extended Interim Accredited Amended Non-Commercial Laboratories

REGION IX – San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, (A-4-2), EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974-7290, (FTS) 454-7290.

(1) *Laboratory:* Aerojet Strategic Propulsion Co., Water Quality Control Lab. (NIST).

Address: P.O. Box 15699C, Sacramento, CA 95813, Contact: Jimmy Suarr, Phone: (916) 355-4000.

(2) *Laboratory:* Aerojet Tech Systems Company, Non-Metallics Testing Laboratory, (NIST).

Address: P.O. Box 13222, Dept. 9415, Sacramento, CA 95813, Contact: Jeanne Fischer, Phone: (916) 355-2786.

(3) *Laboratory:* Arizona Dept. of Health Svcs., State Lab.

Address: 1520 West Adams, Phoenix, AZ 85007, Contact: Thomas S. Davis, Phone: (602) 255-1186.

(4) *Laboratory:* Co. of Orange, Hlth. Care Agency.

Address: 1729 West 17th St., Bldg. 40, Santa Ana, CA 92706, Contact: J.R. Greenwood, Phone: (714) 834-8365.

(5) *Laboratory:* County of San Diego, Department of Health Services.

Address: P.O. Box 85261, San Diego, CA 92138-5261, Contact: Larry G. Marshall, Phone: (619) 236-4717.

(6) *Laboratory:* LA Unified School District, Employee Safety Section.

Address: 1425 South San Pedro St., Room 215, Los Angeles, CA 90015, Contact: Jeffrey Franklin, Phone: (213) 742-7371.

(7) *Laboratory:* Northrop Corp.

Address: One Northrop Ave., Dept. 1600/65, Hawthorne, CA 90250, Contact: Gary Sarkisian, Phone: (213) 970-2000.

(8) *Laboratory:* Timothy B. Hemming, City of LA, Dept. of Water & Power, (NIST).

Address: 1630 North Main St., Bldg. 7, Box 111, Los Angeles, CA 90051-0100, Contact: Timothy B. Hemming, Phone: (213) 481-6891.

EPA Extended Interim Accredited Amended Non-Commercial Laboratories

REGION X – Seattle, WA

Regional Asbestos Coordinator: Walter Jasper, EPA, Region X, 1200 Sixth Ave. (6T-083), Seattle, WA 98101. (206) 442-4762, (FTS) 399-2870.

(1) *Laboratory:* EG & G Idaho, Inc., Environmental Support & Compliance.

Address: P.O. Box 1625, Idaho Falls, ID 83415, Contact: Timothy J. MacDonald, Phone: (208) 526-2360.

(2) *Laboratory:* Puget Sound Naval Shipyard (NIST).

Address: Code 134.1 Bldg. 456, Bremerton, WA 98314, Contact: C. Laubach, Supervisor, Phone: (206) 476-8900.

(3) *Laboratory:* Washington Department of Ecology.

Address: P.O. Box 346, Manchester, WA 98353-0346, Contact: Susan Davis, Phone: (206) 895-4740.

Dated: August 28, 1989.

Michael Shapiro,

Acting Director, Office of Toxic Substances.

[FR Doc. 89-20575 Filed 8-30-89; 8:45 am]

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Thursday
August 31, 1989

Part VI

Environmental Protection Agency

Asbestos in Commercial and Public Buildings; Notice of Public Meetings

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62080; FRL-3638-1]

Asbestos in Public and Commercial Buildings; Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: EPA will hold two public meetings in September 1989 on the issue of asbestos in public and commercial buildings. The purpose of these meetings will be to inform interested individuals about the progress of ongoing policy dialogue meetings on asbestos in public and commercial buildings and to provide an opportunity for these individuals to comment on the issues and recommendations being considered by the policy dialogue group.

DATES: The meetings are scheduled as follows:

1. September 6, 1989, 9 a.m. to 12:30 p.m., Kansas City, Missouri.
2. September 7, 1989, 9 a.m. to 12:30 p.m., San Francisco, California.

ADDRESSES: The meetings will be held at the following locations:

1. Kansas City—Hyatt Regency at Crown Center, 2345 McGee St., Kansas City, Missouri.
2. San Francisco—Holiday Inn Golden Gateway, 1500 Van Ness Ave., San Francisco, California.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

To help determine the most appropriate response to take with respect to the issue of asbestos in public and commercial buildings, EPA has begun a policy dialogue with representatives from all groups which have a major interest in this issue. These groups include building owners, building workers, mortgage bankers, asbestos contractors and consultants, asbestos manufacturers, real estate interests, and insurance companies. Also included among the dialogue participants are representatives from the various Federal, State, and local organizations which have responsibility for the development and implementation of asbestos policies. In all, the dialogue group is comprised of approximately 35 invited participants and 12 invited observers. The Conservation Foundation is convening and facilitating this policy dialogue at EPA's request.

After an initial public meeting on May 3, 1989, three policy dialogue meetings have been held this summer in Washington, DC. The dates of these meetings were July 17, July 27–28, and August 22–23. Two additional dialogue meetings have been scheduled for October 3–4 and October 31, 1989. To date, the meetings have addressed the following four issue areas identified in the public meeting on May 3:

1. *Right-to-know* (i.e., the obligation of building owners to inspect their buildings for asbestos and notify their occupants of the results).
2. *Asbestos management options* (i.e., deciding how to manage building materials that are identified as asbestos-containing).
3. *Accreditation/training* (i.e., how to upgrade the quality of asbestos abatement personnel).
4. *Improperly performed removals* (i.e., how to ensure that asbestos removal work is performed properly).

In addition to the policy dialogue meetings described above, EPA plans to gain broader public involvement in the dialogue process by holding two additional public meetings in September 1989 (see above **DATES** unit) on the issue of asbestos in public and commercial buildings. The meetings in Kansas City and San Francisco on September 6 and September 7, respectively, are scheduled between the third and fourth policy dialogue meetings. The purpose of these two public meetings will be to inform interested individuals about the progress of the dialogue process and to provide them with an opportunity to comment on the issues being considered in the dialogue meetings. EPA believes that the comments made at these two meetings will be very useful to the dialogue group as it prepares for its final meetings.

II. Participants

All interested individuals and groups are invited to attend and to participate in the public meetings noted above in the **DATES** section.

Dated: August 25, 1989.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 89-20576 Filed 8-30-89; 8:45 am]

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Part VII

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Test Procedures for Refrigerators, Refrigerator-Freezers and Freezers; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS–RM–80–118]

Energy Conservation Program for Consumer Products; Test Procedures for Refrigerators, Refrigerator-Freezers and Freezers

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) hereby amends the test procedures for refrigerators, refrigerator-freezers, and freezers. Test procedures are one part of the energy conservation program for consumer products established pursuant to the Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA), the National Appliance Energy Conservation Act of 1987 (NAECA), and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988). Among other program elements, the legislation requires that standard methods of testing be prescribed for covered products.

The purpose of today's final rule is to amend the test procedures for rating refrigerators, refrigerator-freezers and freezers with innovative features, such as variable defrost controls (VDC), dual compressor systems, and the quick freeze control.

EFFECTIVE DATE: February 27, 1990.

FOR FURTHER INFORMATION CONTACT:

Douglass S. Abramson, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station, CE–132, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station, GC–12, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Energy published a notice of proposed rulemaking in the **Federal Register** on September 26, 1988, to amend the test procedures for refrigerators, refrigerator-freezers, and freezers. 53 FR 37416. DOE proposed to establish test methods for these products that have innovative design features such as variable defrost controls, dual compressor systems, and quick freezing controls. The proposal presented the various developments in the manufacture of refrigerators, refrigerator-freezers and freezers which have occurred since DOE last amended the test procedures on August 10, 1982. 47 FR 34517. The Department held a public hearing in Washington, DC, on November 7, 1988, and provided a 60 day comment period ending November 25, 1988.

Today's rule expands the coverage of the test procedures by establishing test procedures for variable defrost control refrigerator-freezers and freezers; dual compressor refrigerator-freezers; and freezers with the quick freeze option. The waivers granted to manufacturers by DOE for variable defrost controls will terminate on the effective date of today's rule.

II. Discussion

In response to the September 26, 1988, proposal, DOE received comments from manufacturers of refrigerators, refrigerator-freezers, and freezers. The issues raised by the comments are discussed below:

1. Variable Defrost Controls

The Whirlpool Corporation (Whirlpool) offered alternative values for the proposed limits for compressor "on" times CT_L and CT_M (CT_L is the least compressor "on" time between defrosts and CT_M is the maximum compressor "on" time between defrosts). Whirlpool stated that CT_L at 12 hours is too optimistic and that a value of eight hours would be more appropriate. Furthermore, Whirlpool maintained that the limit of CT_M at 84 hours is too pessimistic and should be raised to 144 hours. (Whirlpool, No. 10, at 2 and Testimony, at 10)[1]. The Admiral Company (Admiral) supported the DOE method for calculating the compressor "on" time (CT). Admiral recommended that DOE also establish $CT_L = 12$ and $CT_M = 84$, as the default values [2] for demand defrost systems which do not have set values assigned in the algorithm [3] used to determine the CT value between defrosts. (Admiral, No. 12, at 1).

The National Institute of Standards and Technology (NIST) analyzed the comments on appropriate levels for CT_L and CT_M. The results of this effort were presented to DOE in a letter report dated December 20, 1988. NIST recommended that changes in the language establishing CT_L and CT_M be made as follows:

CT_L be less than or equal to 12 hours

CT_M be less than or equal to 84 hours

This new language would allow manufacturers to use any value of CT_L as long as it was less than 12 hours. However, it still would limit CT_M to being no longer than 84 hours.

The Department proposed values (12, 84) as the least or quickest and the longest times between defrosts, respectively, provide a calculated CT value of 38.18 hours. Whirlpool's suggested limits (8, 144) provide a CT of 32.72 hours. Using only the lowest limit (8, 84) equals 28.96 hours. Using the highest maximum limits (12, 144) provides a CT of 45 hours. Although these values appear to differ by large amounts, it is important to note that the defrost energy is only seven percent of the annual energy consumption and the difference in CT values results in only a one percent change in annual energy consumption.

DOE believes that the one percent variance in energy consumption should allow for the adjustibility of CT_L, the lower limit, and CT_M, the maximum limit for determining CT values. In evaluating the limits for CT_L and CT_M DOE has also considered the consumer benefit of variable defrost controls, i.e., the energy savings from eliminating unnecessary defrosts. Therefore, DOE is adopting a range for CT_L, such that CT_L is greater than or equal to six hours and less than or equal to twelve hours ($6 < CT_L < 12$ hours). Although, an upper limit for CT can shift, DOE considers Whirlpool's recommendation of 144 hours for CT_L, or a defrost once every 12 days as excessive. To provide a better maximum value, DOE has increased CT_M from 84 to 96 hours, making CT_M less than or equal to 96 hours ($CT_L < CT_M < 96$).

In response to the comments from Admiral, DOE is including in today's final rule the default values of $CT_L = CT_M = 84$ hours for use by manufacturers that have demand defrost systems with no assigned values for CT_L and CT_M.

Whirlpool also commented on the stringency of the confidence limits for the optional test for variable defrost controls, stating that even an error of 10 percent would only result in a 0.7 percent change in the energy consumption. (Whirlpool, No. 10, at 2). Admiral agreed with the optional test method but urged that DOE adopt the Association of Home Appliance Manufacturers (AHAM) definition of a basic model to reduce the burden of testing.

DOE agrees with Whirlpool's statement and has, therefore, reduced the stringency limit from 95 percent confidence to 90 percent. The concept of a basic model is well-defined in the Act and the Code of Federal Regulations. Therefore, DOE is not revising the definition of a basic model.

2. Dual Compressor System Refrigerator-Freezers

The Sub Zero Company (Sub Zero) provided comments concerning the test procedures for dual compressor refrigerator-freezers. Sub Zero manufactures dual compressor system refrigerator-freezers equipped with only one automatic defrost system, for the freezer section. Sub Zero argued that the test procedures only evaluate refrigerator-freezers with dual compressors and dual automatic defrost systems. (Sub Zero, No.11, at 1; and Testimony, at 18).

Admiral expressed concern that the calculation of dual compressor system energy consumption as proposed would result in incorrect estimates. Admiral agreed with using the two-part method in section 4.1.2.1. However, Admiral believed that part 1 (normal operation without a defrost) should measure total energy and individual system energy consumption. Also, Admiral maintained that components such as fan motors, anti-sweat heaters, etc., should be assigned to a particular system and be included in the energy consumption for that system. (Admiral, No. 12, at 2). Admiral stated further that the second part of the test (defrost energy consumption) be performed separately for each system. Admiral recommended that DOE provide clearly for testing dual compressor systems equipped with a variable defrost control, recommending that the same method used to determine CT for single compressor systems be used for dual compressor systems with VDC. (Admiral, No. 12, at 4).

DOE has adopted language in today's final rule so that the test procedures distinguish between dual compressor refrigerator-freezers with dual or single automatic defrost systems. Furthermore, DOE has reviewed the calculation method for dual compressor systems and incorporated Admiral's suggestion to identify system components for split testing. The Department however, disagrees with Admiral on the need to measure the systems separately for the first part of the test procedures. Since the first part of the test measures all energy consumed for normal operation, without defrost, it is DOE's opinion that the test measurements desired by Admiral would be burdensome and unnecessary. The measurement of the individual system components is of interest to the manufacturer and DOE for the evaluation of design options and system performance but the requirements of the test procedures are met without these measurements.

III. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974, a copy of the September 26, 1988, notice of proposed rulemaking was submitted to the Administrator of the Environmental Protection Agency (EPA) for his comments concerning the impact of the proposal on the quality of the environment. The EPA, in its letter of January 18, 1989, supported the goals of this rulemaking and had no comments to offer concerning the specific test procedures.

Since test procedures under the energy conservation program for consumer products will be used only to standardize the measurement of energy usage and will not affect the quality or distribution of energy usage, prescribing test procedures will not result in any environmental impacts. DOE, therefore, has determined that prescribing test procedures under the energy conservation program for consumer products clearly is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Consequently, neither an Environmental Statement nor an Environmental Assessment is required for the final rule.

IV. Review Under Executive Order 12291

The final rule has been reviewed in accordance with Executive Order 12291 which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules." The Executive Order defines "major rule" as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The final rule amends already existing test procedures based in part on AHAM HRF–1–1979 for refrigerators, refrigerator-freezers, and freezers. DOE has determined that any burden imposed on any person, industry, or government entity by the amendment of extant procedures, based in part on commercial standards, is not sufficient to bring the final rule within the definition of "major rule."

V. Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96–354 (5 U.S.C. 601–612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement (which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." DOE certified in the notice of proposed rulemaking, and does so again, that the rule, which affects manufacturers of refrigerators, refrigerator-freezers, and freezers, will not have significant economic impact, but rather simply improves the test procedures. Therefore, DOE certifies that the final rule, as promulgated, will not have a "significant economic impact on a substantial number of small entities."

VI. "Takings" Assessment Review

Executive Order 12630 (53 FR 8859, March 18, 1988) directs that, in proposing a regulation, an agency conduct a "takings" review. Such a review is intended to assist agencies in avoiding unnecessary takings and help such agencies account for those takings that are necessitated by statutory mandate.

For purposes of the Order:

"Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that required

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[1] Comments on the September 26, 1988, proposal were assigned docket numbers and are numbered consecutively beginning with No. 10. Comments presented at the November 7, 1988, public hearing are identified as Testimony.

[2] Default values are those values used in an equation or procedure when no specified value has been selected.

[3] Algorithm-A mathematical rule or procedure for solving a problem.

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dedications or exactions from owners of private property.

It appears that there are three parts of the appliance standards program that could conceivably be viewed as having "takings implications." These are testing (certification) requirements, the impacts of standard levels, and possible DOE testing of products for validation.

This rulemaking is concerned with the first part, namely testing. The Department believes that such a requirement does not constitute a "taking" of private property. The establishment of test procedures involves no exchange of property. Manufacturers maintain control of the property for all intents and purposes.

Therefore, the Department believes that the requirement of testing and the establishment of test procedures as part of the appliance standards program do not represent a "taking" under the provision of E.O. 12630.

VII. Federalism Assessment Review

Executive Order 12612 requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then E.O. 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The Department has concluded that the provisions of this final rule do not require a Federalism assessment for the purpose of E.O. 12612. The amendment of existing test procedures to incorporate methods of rating innovative designs for refrigerators, refrigerator-freezers, and freezers has no substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government.

List of Subjects in 10 CFR 430

Administrative practice and procedure, Energy conservation, Household appliances.

In consideration of the foregoing, The Department of Energy amends part 430 of chapter II of title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, DC, August 18, 1989.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: Energy Policy and Conservation Act, Title III, part B, as amended by National Energy Conservation Policy Act, title IV, part 2, and National Appliance Energy Conservation Act of 1987, and by the National Appliance Energy Conservation Amendments of 1988, (42 U.S.C. 6291–6309).

2. Subpart B of part 430 is amended by adding sections 1.11, 3.3, 4.1.2.2, 4.1.2.3, 4.1.2.4, 5.2.1.3, 5.2.1.4, and 5.2.1.5 and adding a sentence at the end of sections 2.1, 3.2, 4.1.2, and 5.1.2 to Appendix A1 as follows:

Appendix A1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers

* * * * *

1.11 "Variable defrost control" means a long-time automatic defrost system (except the 14-hour defrost qualification does not apply) where successive defrost cycles are determined by an operating condition variable or variables other than solely compressor operating time. This includes any electrical or mechanical device. Demand defrost is a type of variable defrost control.

* * * * *

2.1 * * * The ambient temperature shall be 80±2°F dry bulb and 67±1°F wet bulb during the stabilization period and during the test period when the unit is tested in accordance with section 3.3.

* * * * *

3.2 * * * Variable defrost control models: 5°F (−15°C) freezer compartment temperature and 38±2°F fresh food compartment temperature during steady-state conditions with no door-openings. If both settings cannot be obtained, then test with the fresh food compartment temperature at 38±2°F and the freezer compartment as close to 5°F as possible.

3.3 Variable defrost control optional test. After a steady-state condition is achieved, the optional test requires door-openings for 12±2 seconds every 60 minutes on the fresh food compartment door and a simultaneous 12±2 second freezer compartment door-opening occurring every 4th time, to obtain 24 fresh food and six freezer compartment door-openings per 24-hour period. The first freezer door-opening shall be simultaneous with the fourth fresh food door-opening. The doors are to be opened 60° to 90° with an average velocity for the leading edge of the door of approximately 2 ft./sec. Prior to the initiation of the door-opening sequence, the refrigerator defrost control mechanism may be re-initiated in order to minimize the test duration.

* * * * *

4.1.2 * * * If the model being tested has a variable defrost control, the provisions of section 4.1.2.2 or 4.1.2.3 shall apply. If the model has a dual compressor system the provisions of 4.1.2.4 shall apply.

* * * * *

4.1.2.2 Variable defrost control. If the model being tested has a variable defrost control system, the test shall consist of three parts. Two parts shall be the same as the test for long-time automatic defrost (section 4.1.2.1). The third part is the optional test to determine the time between defrosts (section 5.2.1.3). The third part is used by manufacturers that choose not to accept the default value of F of 0.20, to calculate CT.

4.1.2.3 Variable defrost control optional test. After steady-state conditions with no door openings are achieved in accordance with section 3.3 above, the test is continued using the above daily door-opening sequence until stabilized operation is achieved. Stabilization is defined as a minimum of three consecutive defrost cycles with times between defrosts that will allow the calculation of a Mean Time Between Defrosts (MTBD1) that satisfies the statistical relationship of 90 percent confidence. The test is repeated on at least one more unit of the model and until the Mean Time Between Defrosts for the multiple unit tests (MTBD2) satisfies the statistical relationship. If the time between defrosts is greater than 96 hours (compressor "on" time) and this defrost period can be repeated on a second unit, the test may be terminated at 96 hours (CT) and the absolute time value used for MTBD for each unit.

4.1.2.4 Dual compressor systems with automatic defrost. If the model being tested has separate compressor systems for the refrigerator and freezer sections, each with its own automatic defrost system, then the two-part method in 4.1.2.1 shall be used. The second part of the method will be conducted separately for each automatic defrost system. The auxiliary components (fan motors, anti-sweat heaters, etc.) will be identified for each system and the energy consumption measured during each test.

* * * * *

5.1.2 * * * For models equipped with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in 4.1.2.2 above.

5.2.1.3 Variable defrost control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

ET=(1440×EP1/T1)+(EP2−(EP1×T2/T1))×(12/CT) where 1440 is defined in 5.2.1.1 and EP1, EP2, T1, T2 and 12 are defined in 5.2.1.2.

$CT=CT_L \times CT_M/(F \times (CT_M-CT_L)+CT_L)$

CT_L=least or shortest time between defrosts in tenths of an hour (greater than or equal to six but less than or equal to 12 hours)

CT_M=maximum time between defrost cycles in tenths of an hour (greater than CT_L but not more than 96 hours)

F=ratio of per day energy consumption in excess of the least energy and the maximum difference in per day energy consumption and is equal to

$F = (1/CT - 1/CT_M)/(1/CT_L - 1/CT_M = (ET-ET_L)/ET_M - ET_L)$ or 0.20 in lieu of testing to find CT.

ET_L = least electrical energy used (kilowatt hours)

ET_M=maximum electrical energy used (kilowatt hours). For demand defrost models with no values for CT_L and CT_M in the algorithm the default values of 12 and 84 shall be used, respectively.

5.2.1.4 Optional test method for variable defrost controls.

CT = MTBD×0.5

where:

MTBD = mean time between defrosts

$$MTBD = \frac{\Sigma X}{N}$$

where:

X=in time between defrost cycles

N=number of defrost cycles

5.2.1.5 Dual compressor systems with dual automatic defrost. The two-part test method in section 4.1.2.2 must be used, the energy consumption in kilowatt per day shall be calculated equivalent to:

$ET=(1440 \times EP1/T1) + (EP2_F - (EP_F \times T2/T1)) \times 12/CT_F + (EP2_R - (EP_R \times T3/T1)) \times 12/CT_R$

Where 1440, EP1, T1, EP2, 12, and CT are defined in 5.2.1.2

EP_F = energy expended in kilowatt-hours during the second part of the test for the freezer system by the freezer system.

$EP2_F$ = total energy expended during the second part of the test for the freezer system.

EP_R = energy expended in kilowatt-hours during the second part of the test for the refrigerator system by the refrigerator system.

$EP2_R$ = total energy expended during the second part of the test for the refrigerator system.

T2 and T3 = length of time in minutes of the second test part for the freezer and refrigerator systems respectively.

CT_F = compressor "on" time between freezer defrosts (tenths of an hour).

CT_R = compressor "on" time between refrigerator defrosts (tenths of an hour).

* * * * *

3. Subpart B of part 430 is amended by adding sections 1.10, 1.11, 3.3, 4.1.2.2, 4.1.2.3, 5.2.1.3, and 5.2.1.4 and adding a sentence to the end of sections 2.1, 2.2, 3.1, 3.2, 4.1.2, and 5.1.2 to Appendix B1 as follows:

Appendix B1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers

* * * * *

1.10 "Variable defrost control" means a long-time automatic defrost system (except the 14-hour defrost qualification does not apply) where successive defrost cycles are determined by an operating condition variable or variables other than solely compressor operating time. This includes any electrical or mechanical device. Demand defrost is a type of variable defrost control.

1.11 "Quick freeze" means an optional feature on freezers which is initiated manually and shut off manually. It bypasses the thermostat control and places the compressor in a steady-state operating condition until it is shut off.

* * * * *

2.1 * * * The ambient temperature shall be 80±2°F dry bulb and 67°F wet bulb during the stabilization period and during the test period when the unit is tested in accordance with section 3.3.

2.2 * * * The quick freeze option shall be switched off unless specified.

* * * * *

3.1 * * * If the model has the quick freeze option, it is to be used to bypass the temperature control.

3.2 * * * Variable defrost control models shall achieve 0±2°F during the steady-state conditions prior to the optional test with no door openings.

3.3 Variable defrost control optional test. After a steady-state condition is achieved, the door-opening sequence is initiated with an 18±2 second freezer door-opening occurring every eight hours to obtain three door-openings per 24-hour period. The first freezer door-opening shall occur at the initiation of the test period. The door(s) are to be opened 60 to 90° with an average velocity for the leading edge of the door of approximately two feet per second. Prior to the initiation of the door-opening sequence, the freezer defrost control mechanism may be re-initiated in order to minimize the test duration.

* * * * *

4.1.2 * * * If the model being tested has a variable defrost control the provisions of 4.1.2.2. shall apply.

* * * * *

4.1.2.2 Variable defrost control. If the model being tested has a variable defrost control system, the test shall consist of three parts. Two parts shall be the same as the test for long-time automatic defrost in accordance with section 4.1.2.1 above. The third part is the optional test to determine the time between defrosts (5.2.1.3). The third part is used by manufacturers that choose not to accept the default value of F of 0.20, to calculate CT.

4.1.2.3 Variable defrost control optional test. After steady-state conditions with no door-openings are achieved in accordance with section 3.3 above, the test is continued using the above daily door-opening sequence until stabilized operation is achieved. Stabilization is defined as a minimum of three consecutive defrost cycles with times between defrost that will allow the calculation of a Mean Time Between Defrosts (MTBD1) that satisfies the statistical relationship of 90 percent confidence. The test is repeated on at least one more unit of the model and until the Mean Time Between Defrosts for the multiple unit test (MTBD2) satisfies the statistical relationship. If the time between defrosts is greater than 96 hours (compressor "on" time) and this defrost period can be repeated on a second unit, the test may be terminated at 96 hours (CT) and the absolute time value used for MTBD for each unit.

* * * * *

5.1.2 * * * For models equipped with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in 4.1.2.2.

5.2.1.3 Variable defrost control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

ET=(1440 x EP1/T1) + (EP2 − (EP1 x T2/T1) x (12/CT) where 1440 is defined in 5.2.1.1 and EP1, EP2, T1, T2 and 12 are defined in 5.2.1.2.

$CT=(CT_L \times CT_M)/(F\times (CT_M - CT_L) + CT_L)$

where:

CT_L=least or shortest time between defrost in tenths of an hour (greater than or equal to 6 hours but less than or equal to 12 hours, $6 < {}_L < 12$)

CT_M=maximum time between defrost cycles in tenths of an hour (greater than CT_L but not more than 96 hours, $CT_L < CT_M < 96$)

F=ratio of per day energy consumption in excess of the least energy and the maximum difference in per day energy consumption and is equal to

$F=(1/CT - 1/CT_M)/(1/CT_L - 1/CT_M) = (ET - ET_L)/(ET_M - ET_L)$ or 0.20 in lieu of testing to find CT

ET_L=least electrical energy consumed, in kilowatt hours

ET_M=maximum electrical energy consumed, in kilowatt hours

For demand defrost models with no values for CT_L and CT_M in the algorithm the default values of 12 and 84 shall be used, respectively.

5.2.1.4 Variable defrost control optional test. Perform the optional test for variable defrost control models to find CT.

CT=MTBD x 0.5

MTBD=mean time between defrost

$$MTBD = \frac{\Sigma X}{N}$$

X=time between defrost cycles

N=number of defrost cycles

* * * * *

[FR Doc. 89–20537 Filed 8–30–89; 8:45 am]

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Thursday
August 31, 1989

Part VIII

Department of the Interior

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Proposed Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AB23

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends rules governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS) to address sulphur exploration, development, and production operations with more specificity. Sulphur operations are currently addressed through rules applicable to oil, gas, and sulphur and through OCS Order No. 10, Sulphur Drilling Procedures, issued by the Gulf of Mexico (GOM) OCS Region. The proposed rule applies to all OCS Regions and creates a new Subpart P entitled "Sulphur Operations."

DATES: Comments must be hand delivered or postmarked no later than October 30, 1989.

ADDRESSES: Written comments must be mailed or hand delivered to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 646; Herndon, Virginia 22070; Attention: Gerald D. Rhodes.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, telephone (703) 787–1600 or (FTS) 393–1600.

SUPPLEMENTARY INFORMATION: The Minerals Management Service (MMS) issued a notice of proposed rulemaking on March 18, 1986 (51 FR 9316), to consolidate, update, and restructure rules governing oil, gas, and sulphur operations in the OCS. Two of the comments received in response to the proposed rule suggested a need for requirements which would specifically address sulphur operations in the OCS. One of the commenters suggested specific provisions which should be included in rules governing sulphur operations, and the other recommended that rules governing sulphur operations be subject to public comment prior to publication of the final rule.

Sulphur leasehold activities in the OCS are currently managed by requiring compliance with the regulations in 30 CFR part 250, OCS Order No. 10 for the GOM Region, and review of Exploration and Development and Production Plans on a case-by-case basis. While this approach has been an effective means of providing for safety in operations and protection of the environment, MMS now proposes to issue rules which address sulphur operations with more specificity. The proposed rule, published March 1986, would have rescinded OCS Order No. 10 and relied entirely on the revised provisions of 30 CFR Part 250. It was subsequently determined that OCS Order No. 10 should remain in effect during the development of a revised Subpart P of 30 CFR Part 250 to address sulphur exploration, development, and production operations with more specificity.

Description of Proposed Rule

The following summarizes the main changes being proposed:

1. The definition of exploration in § 250.2, Definitions, in subpart A, would be modified to incorporate sulphur exploration.
2. The requirements in § 250.10, Suspension of production or other operations, in subpart A, would be changed to add criteria for the suspension of sulphur production.
3. A provision would be added in § 250.14, Reinjection and subsurface storage of gas, in subpart A, to insure that gas is not reinjected or stored in a cap rock of a salt dome that is known to contain sulphur.
4. In subpart C, two sections, Oil spill contingency plans (§ 25.42) and Training and drills (§ 250.43), would be amended to specify that sulphur operations are included in the scope of these requirements.
5. In subpart M, a new paragraph would be added to § 250.194, Model unit agreements, to provide for modification of the model unit agreements to cover the authorization of sulphur operations.
6. A new subpart P, Sulphur Operations, would be added to 30 CFR part 250. The requirements of that subpart would be applicable to all activities conducted under a sulphur lease. The requirements of subpart P of 30 CFR part 250 would include development and production of other minerals used in the exploration for or production of sulphur. The proposed regulations would not authorize a lessee to produce other minerals (e.g., salt) if the lessee is not otherwise authorized to do so.
7. General provisions are included in subpart P to provide a performance standard, specific definitions pertaining to sulphur operations, and requirements for equipment movement, operations in a hydrogen sulfide (H_2S) environment, welding and burning, electrical equipment, structures on fixed platforms, diesel engine shutdown devices, traveling block safety devices, and field rules.
8. The sulphur operators would continue to be required to comply with subparts A, B, C, G, I, J, M, N, and O. Sulphur operators would also be required to comply with those provisions of subparts D, E, F, H, K, and L that are referenced in subpart P.
9. Subpart P includes requirements pertaining to sulphur drilling operations (§§ 250.260 through 250.274). These requirements generally are similar to requirements for oil and gas operations and have been included in subpart P to the extent necessary to recognize the difference between oil and gas drilling operations and sulphur drilling operations.
10. Subpart P includes requirements pertaining to well-completion and well-workover operations (§§ 250.280 through 250.286). These requirements generally parallel the requirements pertaining to oil and gas in subparts E and F and have been included in subpart P to the extent necessary to recognize the difference between oil and gas well-completion and well-workover operations and sulphur well-completion and well-workover operations.
11. Subpart P includes requirements for production of sulphur (§§ 250.290 through 250.297). These requirements address safety in sulphur production as well as production rates, accurate production measurement, and site security. The subject of production measurement would be addressed on a case-by-case basis by requiring the lessee to submit a proposed measurement system to the Regional Supervisor for approval.

Comments are requested concerning the rules being proposed to address sulphur operations. Comments are specifically requested with regard to the provisions which would require workers involved in drilling operations to receive the same training as for oil and gas operations while workers engaged in well-completions, well-workovers, and production operations would be required to be trained to meet more general training requirements (e.g., proposed §§ 250.281 and 250.294). Are more specific requirements needed for training of well-completion, well-workover, and production workers?

Comments and recommendations are also invited that discuss:

1. Specific differences between sulphur well-drilling operations and oil and gas well-drilling operations and the way in which MMS's regulations should handle those differences;
2. The fact that H_2S is present in sulphur-bearing formations and the procedures that the sulphur industry has developed to protect its personnel from H_2S; and
3. The differences between the use of casing strings in sulphur wells and the use of casing strings in oil and gas wells, together with a discussion of the casing requirements appropriate for wells used in the production of sulphur.

Portions of proposed subpart P are specifically applicable to drilling operations or to well-completion and well-workover operations. One commenter had stated that the break between these operations is not as distinct as for oil and gas. Should drilling requirements and well-completion and well-workover requirements be combined and have fewer differences?

The main effect of the creation of subpart P is to more clearly identify requirements for sulphur operations. In the absence of the creation of subpart P, the requirements are already in place but require interpretation to see how requirements used primarily for oil and gas operations apply to sulphur operations. Accordingly, this proposed rule is not expected to cause an increase in costs or prices to consumers, other industries, or Government entities.

Executive Order 12291

The Department of the Interior (DOI) has determined that this document does not constitute a major rule under Executive Order 12291 because it will not result in a cost impact of more than $100 million annually. A decision to relocate and establish sulphur regulations in this new subpart P resulted from the recent revision and consolidation of all offshore operating rules. Most of the provisions of this rule were previously located in other subparts of part 250 pertaining to oil, gas, and sulphur operations and do not represent new or added requirements. Therefore, a Regulatory Impact Analysis is not required.

Executive Order 12630

The DOI certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Taking Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

National Environmental Policy Act

The MMS has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The DOI has also determined that this document will not have a significant economic effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical complexities and financial resources necessary to conduct such activities.

Paperwork Reduction

The collections of information contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval under 44 U.S.C. 3501 *et seq.* The collection of this information will continue to be required under existing authorizations for collections of information required by other subparts of 30 CFR Part 250 until its collection under Subpart P has been approved by OMB.

Public reporting burden for this collection of information is estimated to average 6.9 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Bureau Clearance Officer, Minerals Management Service, Mail Stop 632, 381 Elden Street, Herndon, Virginia 22070, and the Office of Management and Budget, Paperwork Reduction Project (1010–xxxx), Washington, DC 20503.

Authors

The principal authors of this proposed rule are John D. Borne, John V. Mirabella and Mary B. McDonald.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporated by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: March 15, 1989.

Thomas Gernhofer,

Acting Director, Minerals Management Service.

For the reasons set forth in the preamble, it is proposed that OCS Order No. 10, Sulphur Drilling Procedures, issued by the GOM Region be rescinded and that part 250 of title 30 of the Code of Federal Regulations be amended as follows:

1. OCS Order No. 10, Sulphur Drilling Procedures, issued by the Gulf of Mexico OCS Region, is rescinded.

PART 250—[AMENDED]

2. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 204, Public Law 95–372, 92 Stat. 629 (43 U.S.C. 1334).

3. Section 250.0 is amended by adding paragraph (x) to read as follows:

§ 250.0 Authority for information collection.

* * * * *

(x) The information collection requirements in Subpart P, Sulphur Operations, have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance no. ______ The information is collected to inform MMS about sulphur exploration and development operations in the OCS. The information concerns activities to discover, define, develop, produce, store, measure, and transport sulphur and is used to assure that leasehold operations comply with statutory requirements provided for operational safety and environmental protection and will result in proper and timely operations on OCS sulphur leases. The requirement to respond is mandatory in accordance with 43 U.S.C. 1334.

4. Section 250.2 is amended to revise the definition of exploration as follows:

§ 250.2 Definitions.

* * * * *

Exploration means the process of searching for minerals, including:

(1) Geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals;

(2) Any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery that is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production; and

(3) Any drilling for sulphur, including the drilling of a well which indicates that a sulphur deposit is present and the drilling of additional delineation wells needed to outline the sulphur deposit and enable the lessee to determine whether to proceed with development and production operations.

* * * * *

5. Section 250.10 is amended to redesignate paragraph (d) as paragraph (d)(1) and to add a new paragraph (d)(2) to read as follows:

§ 250.10 Suspension of production or other operations.

* * * * *

(d) * * *

(2) For sulphur operations, a suspension of production pursuant to paragraph (a)(1), (a)(2), or (a)(3) of this section may not be issued unless a deposit on the lease for which the suspension is requested has been drilled and determined to be producible in paying quantities in accordance with 30 CFR 250.253.

6. Section 250.14 is amended to add a new paragraph (f) to read as follows:

§ 250.14 Reinjection and subsurface storage of gas.

* * * * *

(f) Reinjection or storage of gas will not be approved when the gas is to be injected into the cap rock of a salt dome known to contain a sulphur deposit.

7. Section 250.32(a) is revised to read as follows:

§ 250.32 Well location and spacing.

(a) The Regional Supervisor is authorized to approve well location and spacing programs necessary for exploration and development of a leased sulphur deposit or fluid hydrocarbon reservoir giving consideration to, among other factors, the location of drilling units and platforms, area extent and thickness of the sulphur deposit, geological and other reservoir characteristics, number of wells that can be economically drilled, protection of correlative rights, minimization of risk to the environment, and unreasonable interference with other uses of the OCS. Well location and spacing programs shall be determined independently for each leased sulphur deposit or reservoir in a manner which will locate wells in the optimum position for the most effective production of sulphur or reservoir fluids and avoid the drilling of unnecessary wells.

* * * * *

8. In § 250.34, paragraph (b)(5) and (b)(8)(i)(B) are revised; paragraphs (b)(9) through (b)(15) are redesignated as paragraphs (b)(11) through (b)(17); and new paragraphs (b)(9) and (b)(10) are added to read as follows:

§ 250.34 Development and production plan.

* * * * *

(b) * * *

(5)(i) A description of technology and reservoir engineering practices intended to increase the ultimate recovery of oil and gas; i.e., secondary, tertiary, or other enhanced recovery practices, or

(ii) A description of technology and recovery practices and procedures intended to assure optimum recovery of sulphur,

* * * * *

(8) * * *

(i) * * *

(B) The means proposed for transportation of oil, gas, and sulphur to shore; the routes to be followed by each mode of transportation; and the estimated quantities of oil, gas, and sulphur to be moved along such routes.

* * * * *

(9) For sulphur operations, the degree of subsidence that is expected at various stages of production, and measures that will be taken to assure safety and protection of the environment. Special attention shall be given to the effects of subsidence on fixed structures and pipelines.

(10) For sulphur operations, a discussion of the potential toxic or thermal effects on the environment caused by the discharge of bleed water, including a description of the measures that will be taken into account to mitigate these impacts.

* * * * *

10. In § 250.40 the introductory text of paragraph (a) is revised to read as follows:

§ 250.40 Pollution prevention.

(a) During the exploration, development, production, and transportation of oil and gas or sulphur, the lessee shall take measures to prevent unauthorized discharge of pollutants into the offshore waters. The lessee shall not create conditions which will pose unreasonable risk to public health, life, property, aquatic life, wildlife, recreation, navigation, commercial fishing, or other uses of the ocean.

* * * * *

11. In § 250.42, the first sentence in the introductory paragraph is revised to read as follows:

§ 250.42 Oil spill contingency plans.

Lessees conducting oil, gas, oil and gas, or sulphur operations in the OCS shall submit an Oil Spill Contingency Plan (OSCP) for approval by the Regional Supervisor with or prior to submitting an Exploration Plan or a Development and Production Plan. * * *

* * * * *

12. In § 250.43, the first sentence in paragraph (a) is revised to read as follows:

§ 250.43 Training and drills.

(a) Lessees conducting oil, gas, oil and gas, or sulphur operations in the OCS shall ensure that the oil spill response team is provided with hands-on training classes at least annually in the deployment and operation of the pollution control equipment to which they are assigned. * * *

* * * * *

13. The titles to subparts D, E, F, H, K, and L of Part 250 are revised to read as follows:

Subpart D—Oil and Gas Drilling Operations

Subpart E—Oil and Gas Well-Completion Operations

Subpart F—Oil and Gas Well-Workover Operations

Subpart H—Oil and Gas Production Safety Systems

Subpart K—Oil and Gas Production Rates

Subpart L—Oil and Gas Production Measurement, Surface Commingling, and Security

14. In § 250.154 paragraph (b)(1) is redesignated as paragraph (b)(1)(i) and republished, and a new paragraph (b)(1)(ii) is added to read as follows:

§ 250.154 Safety equipment requirements for DOI pipelines.

* * * * *

(b)(1)(i) Incoming pipelines to a platform shall be equipped with a flow safety valve (FSV).

(ii) For sulphur operations, incoming pipelines delivering gas to the power plant platform may be equipped with high- and low-pressure sensors (PSHL) which activate audible and visual alarms in lieu of requirements in paragraph (b)(1)(i) of this section. The PSHL shall be set at 15 percent above and below the normal operating pressure range.

* * * * *

15. In § 250.190 paragraph (c) is revised to read as follows:

§ 250.190 Authority and requirements for unitization.

* * * * *

(c) A unit area shall include the minimum number of leases or portion of leases required to permit one or more mineral reservoirs or potential hydrocarbon accumulations to be served by a minimum number of platforms, facility installations, and wells necessary for the efficient exploration for, or development and production of oil, gas, sulphur, and salt.

* * * * *

16. Section 250.194 is amended to add a paragraph (c) to read as follows:

§ 250.194 Model unit agreements.

* * * * *

(c) Model unit agreement for sulphur operations. Lessees conducting sulphur operations shall modify the model unit agreements found in paragraphs (a) and (b) of this section as appropriate for use with sulphur operations. Proposed unit agreements shall be submitted to MMS in accordance with § 250.192 or § 250.193 of this part.

17. Subpart P of Part 250 is revised to read as follows:

Subpart P—Sulphur Operations

Sec.	
250.250	Performance standard.
250.251	Definitions.
250.252	Applicability.
250.253	Determination of sulphur deposit.
250.254	General requirements.
250.260	Drilling requirements.
250.261	Control of wells.
250.262	Field rules.
250.263	Well casing and cementing.
250.264	Pressure testing of casing.
250.265	Blowout preventer systems and system components.
250.266	Blowout preventer systems tests, actuations, inspections, and maintenance.
250.267	Well-control drills.
250.268	Diverter systems.
250.269	Mud program.
250.270	Security of wells.
250.271	Supervision, surveillance, and training.
250.272	Applications for permit to drill.
250.273	Sundry notices and reports on wells.
250.274	Well records.
250.280	Well-completion and well-workover requirements.
250.281	Crew instructions.
250.282	Approvals and reporting of well-completion and well-workover operations.
250.283	Well-control fluids, equipment, and operations.
250.284	Blowout prevention equipment.
250.285	Blowout preventer system testing, records, and drills.
250.286	Tubing and wellhead equipment.
250.290	Production requirements.
250.291	Design, installation, and operation of surface production safety systems.
Sec.	
250.292	Additional production system requirements.
250.293	Safety-system testing and records.
250.294	Safety device training.
250.295	Production rates.
250.296	Production measurement.
250.297	Site security.

Subpart P—Sulphur Operations

§ 250.250 Performance standard.

Operations to discover, develop, and produce sulphur in the OCS shall be in accordance with an approved Exploration Plan or Development and Production Plan and shall be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the OCS including any mineral deposits (in areas leased or not leased), the national security or defense, and the marine, coastal, or human environment.

§ 250.251 Definitions.

Terms used in this subpart shall have the meanings as defined below:

Bleedwater means a mixture of mine water or booster water and connate water that is produced by a bleedwell.

Bleedwell means a well drilled into a producing sulphur deposit that is used to control the mine pressure generated by the injection of mine water.

Brine means the water containing dissolved salt obtained from a brine well by circulating water into and out of a cavity in the salt core of a salt dome.

Brine well means a well drilled through cap rock into the core at a salt dome for the purpose of producing brine.

Cap rock means the rock formation, a body of limestone, anhydride, and/or gypsum, overlying a salt dome.

Sulphur deposit means a formation of rock which contains elemental sulphur.

Sulphur production rate means the number of long tons of sulphur produced during a certain period of time, usually per day.

§ 250.252 Applicability.

(a) The requirements of this subpart P are applicable to all exploration, development, and production operations under an OCS sulphur lease. Sulphur operations include all activities conducted under a lease for the purpose of discovery or delineation of a sulphur deposit and for the development and production of elemental sulphur. Sulphur operations also include activities conducted for related purposes. Activities conducted for related purposes include, but are not limited to, production of other minerals for use in the exploration for or the development and production of sulphur. The lessee must have obtained the right to produce and use these other minerals in its sulphur operations.

(b) Lessees conducting sulphur operations in the OCS shall comply with the requirements of the applicable provisions of subparts A, B, C, G, I, J, M, N, and O of this part.

(c) Lessees conducting sulphur operations in the OCS are also required to comply with the requirement in the applicable provisions of subparts D, E, F, H, K, and L of this part where such provisions specifically are referenced in this subpart.

§ 250.253 Determination of sulphur deposit.

(a) Upon receipt of a written request from the lessee, the District Supervisor will determine whether a sulphur deposit exists in paying quantities (sulphur quantities sufficient to yield a return in excess of the costs, after completion of the wells, of producing minerals at the wellheads).

(b) The following shall be considered collectively as reliable evidence that a sulphur deposit is capable of producing in paying quantities:

(1) Core analyses which indicate the presence of a producible sulphur deposit (including an assay of elemental sulphur);

(2) An estimate of the amount of recoverable sulphur in long tons over a specified period of time; and

(3) Contour map of the cap rock together with isopach map showing the areal extent and estimated thickness of the sulphur deposit.

§ 250.254 General requirements.

Sulphur lessees shall comply with requirements of this section when conducting well-drilling, well-completion, well-workover, or production operations.

(a) *Equipment movement.* The movement of well-drilling, well-completion, or well-workover rigs and related equipment on and off an offshore platform, or from one well to another well on the same offshore platform, including rigging up and rigging down, shall be conducted in a safe manner.

(b) *Hydrogen sulfide (H_2S).* When drilling, well-completion, well-workover, or production operation is being conducted on a well in zones known to contain H_2S or in zones where the presence of H_2S is unknown (as defined in 30 CFR 250.67 of this part), the lessee shall take appropriate precautions to protect life and property especially during operations such as dismantling wellhead equipment and flow lines and circulating the well. The lessee shall comply with the requirements in § 250.67

of this part as well as the requirements of this subpart.

(c) *Welding and burning practices and procedures.* All welding, burning, and hot-tapping activities involved in drilling, well-completion, or well-workover operations shall be conducted with well-maintained equipment, trained personnel, and appropriate procedures in order to minimize the danger to life and property according to the specific requirements in § 250.52 of this part.

(d) *Electrical requirements.* All electrical equipment and systems involved in drilling, well-completion, well-workover, and production operations shall be designed, installed, equipped, protected, operated, and maintained so as to minimize the danger to life and property in accordance with the requirements of § 250.53 of this part.

(e) *Structures on fixed OCS platforms.* Derricks, masts, substructures and related equipment shall be selected, designed, installed, used, and maintained so as to be adequate for the potential loads and conditions of loading that may be encountered during the operations. Prior to moving a well-drilling, well-completion, or well-workover rig or associated equipment onto a platform, the lessee shall determine the structural capability of the platform to safely support the equipment and operations taking into consideration the corrosion protection, platform age, and previous stresses.

(f) *Traveling-block safety device.* After 1 year following the effective date of these regulations, all units being used for drilling, well-completion, or well-workover operations that have both a traveling block and a crown block shall be equipped with a safety device which is designed to prevent the traveling block from striking the crown block. The device shall be checked for proper operation weekly and after each drill-line slipping operation. The results of the operational check shall be entered in the operations log.

§ 250.260 Drilling requirements.

(a) Lessees of OCS sulphur leases shall conduct drilling operations in accordance with §§ 250.260 through 250.274 of this subpart and with other requirements of this part as appropriate.

(b) *Fitness of drilling unit.*

(1) Drilling units shall be capable of withstanding the oceanographic and meteorological conditions for the proposed season and location of operations.

(2) Prior to commencing operation, drilling units shall be made available for a complete inspection by the District Supervisor.

(3) The lessee shall provide information and data on the fitness of the drilling unit to perform the proposed drilling operation. The information shall be submitted with, or prior to, the submission of Form MMS–331C, Application for Permit to Drill (APD), in accordance with § 250.272 of this subpart. After a drilling unit has been approved by an MMS district office, the information required in this paragraph need not be resubmitted unless required by the District Supervisor or there are changes in the equipment that affect the rated capacity of the unit.

(c) *Oceanographic, meteorological, and drilling unit performance data.* Where oceanographic, meteorological, and drilling unit performance data are not otherwise readily available, lessees shall collect and report such data upon request to the District Supervisor. The type of information to be collected and reported will be determined by the District Supervisor in the interests of safety in the conduct of operations and the structural integrity of the drilling unit.

(d) *Foundation requirements.* When the lessee fails to provide sufficient information pursuant to §§ 250.33 and 250.34 of this part to support a determination that the seafloor is capable of supporting a specific bottom-founded drilling unit under the site-specific soil and oceanographic conditions, the District Supervisor may require that additional surveys and soil borings be performed and the results be submitted for review and evaluation by the District Supervisor before approval is granted for commencing drilling operations.

(e) *Tests, surveys, and samples.* (1) Lessees shall drill and take cores through the objective interval to determine the presence, quality, and quantity of sulphur in the cap rock and the outline of the commercial sulphur deposit.

(2) Inclinational surveys shall be obtained on all vertical wells at intervals not exceeding 1,000 feet during the normal course of drilling. Directional surveys giving both inclination and azimuth shall be obtained on all directionally drilled wells at intervals not exceeding 500 feet during the normal course of drilling and at intervals not exceeding 200 feet in all planned angle-change portions of the borehole.

(3) Directional surveys giving both inclination and azimuth shall be obtained on both vertically and directionally drilled wells at intervals not exceeding 500 feet prior to or upon setting a string of casing, or production liner, and at total depth. Composite directional surveys shall be prepared with the interval shown from the bottom of the conductor casing. In calculating all surveys, a correction from the true north to Universal-Transverse-Mercator-Grid-north or Lambert-Grid-north shall be made after making the magnetic-to-true-north correction. A composite dipmeter directional survey or a composite measurement-while-drilling (MWD) directional survey will be acceptable as fulfilling the applicable requirements of this paragraph.

(4) Wells are classified as vertical if the calculated average of inclination readings weighted by the respective interval lengths between readings from surface to drilled depth does not exceed 3 degrees from the vertical. When the calculated average inclination readings weighted by the length of the respective interval between readings from the surface to drilled depth exceeds 3 degrees, the well is classified as directional.

(5) At the request of a holder of an adjoining lease, the Regional Supervisor may, for the protection of correlative rights, furnish a copy of the directional survey to that leaseholder.

(f) *Fixed drilling platforms.* Applications for installation of fixed drilling platforms or structures including artificial islands shall be submitted in accordance with the provisions of subpart I, Platforms and Structures, of this part. Mobile drilling units which have their jacking equipment removed or have been otherwise immobilized are classified as fixed drilling platforms.

(g) *Crane Operations.* Cranes installed on fixed drilling platforms shall be operated and maintained in accordance with the provisions of American Petroleum Institute (API) Recommended Practice (RP) for Operation and Maintenance of Offshore Cranes (API RP 2D) to ensure the safety of facility operations. Records of inspection, testing, maintenance, and crane operators qualified in accordance with the provisions of API RP 2D shall be kept by the lessee at the lessee's field office nearest the OCS facility for a period of 2 years.

(h) *Diesel engine air intakes.* No later than 1 year from the effective date of these regulations, diesel-engine air intakes shall be equipped with a device to shut down the diesel engine in the event of runaway. Diesel engines which are continuously attended shall be equipped with either remote-operated manual or automatic shutdown devices. Diesel engines which are not continuously attended shall be equipped with automatic shutdown devices.

§ 250.261 Control of wells.

The lessee shall take necessary precautions to keep its wells under control at all times. Operations shall be conducted in a safe and workmanlike manner. The lessee shall utilize the best available and safest drilling technology and state-of-the-art methods to evaluate and minimize the potential for the well to flow and kick if gas is present in the upper formations above cap rock. The lessee shall utilize personnel who are trained and competent and shall utilize and maintain equipment and materials necessary to assure the safety and protection of personnel, equipment, natural resources, and the environment.

§ 250.262 Field rules.

When geological and engineering information in a field enables a District Supervisor to determine specific operating requirements, field rules may be established for drilling, well-completion, or well-workover on the District Supervisor's initiative or in response to a request from a lessee, such rules may modify the specific requirements of this subpart. After field rules have been established, operations in the field shall be conducted in accordance with such rules and other requirements of this subpart. Field rules may be amended or canceled for cause at any time upon the initiative of the District Supervisor or upon the request of a lessee.

§ 250.263 Well casing and cementing.

(a) *General requirements.*

(1) For the purpose of this subpart, the several casing strings in order of normal installation are:

(i) Drive or structural,

(ii) Conductor,

(iii) Cap rock casing,

(iv) Bobtail cap rock casing (required when the cap rock casing does not penetrate into the cap rock),

(v) Second cap rock casing (brine wells), and

(vi) Production liner.

(2) The lessee shall case and cement all wells with a sufficient number of strings of casing in a manner necessary to prevent release of fluids from any stratum through the wellbore (directly or indirectly) into the sea; protect freshwater aquifers from contamination; support unconsolidated sediments; and otherwise provide a means of control of the formation pressures and fluids. Cement composition, placement techniques, and waiting time shall be designed and conducted so that the cement in place behind the bottom 500 feet of casing or total length of annular cement fill, if less, attains a minimum compressive strength of 100 pounds per square inch (psi).

(3) The lessee shall install casing designed to withstand the anticipated stresses imposed by tensile, compressive, and buckling loads; burst and collapse pressures; thermal effects; and combinations thereof. Safety factors in the casing program design shall be of sufficient magnitude to provide well control during drilling and to assure safe operations for the life of the well.

(4) In cases where cement has filled the annular space back to the mud line, the cement may be washed out or displaced to a depth not exceeding the depth of the structural casing shoe to facilitate casing removal upon well abandonment if the District Supervisor determines that subsurface protection against damage to freshwater aquifers and against damage caused by adverse loads, pressures, and fluid flows is not jeopardized.

(5) If there are indications of inadequate cementing (such as lost returns, cement channeling, or mechanical failure of equipment), the lessee shall evaluate the adequacy of the cementing operations by pressure testing the casing shoe. If the test indicates inadequate cementing, the lessee shall initiate remedial action as approved by the District Supervisor. For cap rock casing, the test for adequacy of cementing shall be the pressure testing of the annulus between the cap rock and the conductor casings. The pressure shall not exceed 70 percent of the burst pressure of the conductor casing or 70 percent of the collapse pressure of the cap rock casing.

(b) *Drive of structural casing.* This casing shall be set by driving, jetting, or drilling to a minimum depth of 100 feet below the mud line or such other depth, as may be required or approved by the District Supervisor, in order to support unconsolidated deposits and to provide hole stability for initial drilling operations. If this portion of the hole is drilled, a quantity of cement sufficient to fill the annular space back to the mud line shall be used.

(c) *Conductor and cap rock casing setting and cementing requirements.* (1) Conductor and cap rock casing setting depths. Conductor and cap rock casing design and setting depths shall be based upon relevant engineering and geologic factors including the presence or absence of hydrocarbons, potential hazards, and water depths. The proposed casing setting depths may be varied, subject to District Supervisor approval, to permit the casing to be set in a competent formation or through formations determined desirable to be insolated from the wellbore by casing for safer drilling operations. However, the conductor casing shall be set immediately prior to drilling into formations known to contain oil or gas or, if unknown, upon encountering such formations. Upon encountering unexpected formation pressures, the lessee shall submit a revised casing program to the District Supervisor for approval.

(2) Conductor casing cementing requirements. Conductor casing shall be cemented with a quantity of cement that fills the calculated annular space back to the mud line. Cement fill shall be verified by the observation of cement returns. In the event that observation of cement returns is not feasible, additional quantities of cement shall be used to assure fill to the mud line.

(3) Cap rock casing cementing requirements. Cap rock casing shall be cemented with a quantity of cement that fills the calculated annular space to at least 200 feet inside the conductor casing. When geologic conditions such as near surface fractures and faulting exist, cap rock casing shall be cemented with a quantity of cement that fills the calculated annular space to the mud line, unless otherwise approved by the District Supervisor. In brine wells, the second cap rock casing shall be cemented with a quantity of cement that fills the calculated annular space to at least 200 feet above the setting depth of the first cap rock casing.

(d) *Bobtail cap rock casing setting and cementing requirements.* (1) Bobtail cap rock casing shall be set on or just in cap rock and lapped a minimum of 100 feet into the previous casing string.

(2) Sufficient cement shall be used to fill the annular space to the top of the bobtail cap rock casing.

(e) *Production liner setting and cementing requirements.* (1) Production liners for sulphur wells and bleedwells shall be set in cap rock at or above the bottom of the open hole (hole that is open in cap rock, below the bottom of the cap rock casing) and lapped into the previous casing string or to the surface. For brine wells, the liner shall be set in salt and lapped into the previous casing string or to the surface.

(2) The production liner is not required to be cemented.

§ 250.264 Pressure testing of casing.

(a) Prior to drilling the plug after cementing, all casing strings, except the drive or structural casing and production liner, shall be pressure tested. The conductor casing shall be tested to at least 200 psi. All casing strings below the conductor casing (except the production liner) shall be tested to 500 psi or 0.22 psi/ft, whichever is greater. If the pressure declines more than 10 percent in 30 minutes or if there is another indication of a leak, the casing shall be recemented, repaired, or an additional casing string run and the casing tested again. The above procedures shall be repeated until a satisfactory test is obtained. All casing pressure tests shall be recorded in the driller's report.

(b) After cementing any string of casing other than structural, drilling shall not be resumed until there has been a time lapse of at least 8 hours under pressure for the conductor casing string or 12 hours under pressure for all other casing strings. Cement is considered under pressure if one or more float valves are shown to be holding the cement in place or when other means of holding pressure are used.

§ 250.265 Blowout preventer systems and system components.

(a) *General.* The blowout preventer (BOP) systems and system components shall be designed, installed, used, maintained, and tested to assure well control.

(b) *BOP stacks.* The BOP stacks shall consist of an annular preventer and the number of ram-type preventers as specified under paragraphs (e) and (f) of this section. The pipe rams shall be of proper size to fit the drill pipe in use.

(c) *Working pressure.* The working-pressure rating of any BOP shall exceed the surface pressure to which it may be anticipated to be subjected.

(d) *BOP equipment.* All BOP systems shall be equipped and provided with the following:

(1) An accumulator system that provides sufficient capacity to supply 1.5 times the volume necessary to close and hold closed all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure, without assistance from a charging system. No later than 6 months from the effective date of these regulations, accumulator regulators supplied by rig air and without a secondary source of pneumatic supply shall be equipped with manual overrides or alternately other devices provided to ensure capability of hydraulic operations if rig air is lost.

(2) An automatic backup to the accumulator system. The backup shall be supplied by a power source independent from the power source to the primary accumulator system and possess sufficient capability to close the BOP and hold it closed.

(3) At least one operable remote BOP control station in addition to the one on the drilling floor. This control station shall be in a readily accessible location away from the drilling floor.

(4) A drilling spool with side outlets, if side outlets are not provided in the body of the BOP stack, to provide for separate kill and choke lines.

(5) A choke line and a kill line each equipped with two full-opening valves. At least one of the valves on the choke line and one valve on the kill line shall be remotely controlled, except that a check valve may be installed on the kill line in lieu of the remotely controlled valve provided that two readily accessible manual valves are in place, and the check valve is placed between the manual valve and the pump.

(6) A fill-up line above the uppermost preventer.

(7) A choke manifold designed with consideration of anticipated pressures to which it may be subjected, method of well control to be employed, surrounding environment, and corrosiveness, volume, and abrasiveness of fluids. The choke manifold shall also meet the following requirements:

(i) Manifold and choke equipment subject to well and/or pump pressure shall have a rated working pressure at least as great as the rated working pressure of the ram-type BOP's or as otherwise approved by the District Supervisor;

(ii) All components of the choke manifold system shall be protected from freezing by heating, draining, or filling with proper fluids; and

(iii) When buffer tanks are installed downstream of the choke assemblies for the purpose of manifolding the bleed lines together, isolation valves shall be installed on each line.

(8) Valves, pipes, flexible steel hoses, and other fittings upstream of, and including, the choke manifold with a pressure rating at least as great as the rated working pressure of the ram-type BOP's unless otherwise approved by the District Supervisor.

(9) A wellhead assembly with a rated working pressure that exceeds the pressure to which it might be subjected.

(10) The following system components:

(i) A kelly cock (an essentially full-opening valve) installed below the swivel and a similar valve of such design that it can be run through the BOP stack installed at the bottom of the kelly. A wrench to fit each valve shall be stored in a location readily accessible to the drilling crew;

(ii) An inside BOP and an essentially full-opening, drill-string safety valve in the open position on the rig floor at all times while drilling operations are being conducted. These valves shall be maintained on the rig floor to fit all connections that are in the drill string. A wrench to fit the drill-string safety value shall be stored in a location readily accessible to the drilling crew;

(iii) A safety valve available on the rig floor assembled with the proper connection to fit the casing string being run in the hole; and

(iv) Locking devices installed on the ram-type preventers.

(e) *BOP requirements.* Prior to drilling below cap rock casing, a BOP system shall be installed consisting of at least three remote-controlled, hydraulically operated BOP's including at least one equipped with pipe rams, one with blind rams, and one annular type.

(f) *Tapered drill-string operations.* Prior to commencing tapered drill-string operations, the BOP stack shall be equipped with conventional and/or variable-bore pipe rams to provide either of the following:

(1) One set of variable bore rams capable of sealing around both sizes in the string and one set of blind rams, or

(2) One set of pipe rams capable of sealing around the larger size string, provided that blind-shear ram capability is present, and crossover subs to the larger size pipe are readily available on the rig floor.

§ 250.266 Blowout preventer systems tests, actuations, inspections, and maintenance.

(a) Prior to conducting high-pressure tests, all BOP systems shall be tested to a low pressure of 200 to 300 psi.

(b) Ram-type BOP's and the choke manifold shall be pressure tested with water to rated working pressure or as otherwise approved by the District Supervisor. Annular type BOP's shall be pressure tested with water to 70 percent of rated working pressure or as otherwise approved by the District Supervisor.

(c) In conjunction with the weekly pressure test of BOP systems required in paragraph (d) of this section, the choke manifold valves, upper and lower kelly cocks, and drill-string safety valves shall be pressure tested to pipe-ram test pressures. Safety valves with proper casing connections shall be actuated prior to running casing.

(d) BOP system shall be pressure tested as follows:

(1) When installed;

(2) Before drilling out each string of casing or before continuing operations in cases where cement is not drilled out;

(3) At least once each week, but not exceeding 7 days between pressure tests, alternating between control stations. If either control system is not functional, further drilling operations shall be suspended until that system becomes operable. A period of more than 7 days between BOP tests is allowed when there is a stuck drill pipe or there are pressure control operations and remedial efforts are being performed, provided that the pressure tests are conducted as soon as possible and before normal operations resume. The reason for postponing pressure testing shall be entered into the driller's report. Pressure testing shall be performed at intervals to allow each drilling crew to operate the equipment. The weekly pressure test is not required for blind and blind-shear rams;

(4) Blind and blind-shear rams shall be actuated at least once every 7 days. Closing pressure on the blind and blind-shear rams greater than necessary to indicate proper operation of the rams is not required;

(5) Variable bore-pipe rams shall be pressure tested against all sizes of pipe in use, excluding drill collars and bottom-hole tools; and

(6) Following the disconnection or repair of any well-pressure containment seal in the wellhead/BOP stack assembly but limited to the affected component.

(e) All BOP systems shall be inspected and maintained to assure that the equipment will function properly. The BOP systems shall be visually inspected at least once each day. The manufacturer's recommended inspection and maintenance procedures are acceptable as guidelines in complying with this requirement.

(f) The results of all pressure tests, actuations, and inspections of the BOP system and system components shall be recorded in the driller's report.

§ 250.267 Well-control drills.

Well-control drills shall be conducted for each drilling crew in accordance with the requirements set forth in § 250.58 of this part or as approved by the District Supervisor.

250.268 Diverter systems.

(a) When drilling a conductor hole and cap rock hole, all drilling units shall be equipped with a diverter system consisting of a diverter sealing element, diverter lines, and control systems. The diverter system shall be designed, installed, and maintained so as to divert gases, water, mud, and other materials away from the facilities and personnel.

(b) No later than 1 year from the effective date of these regulations, diverter systems shall be in compliance with the requirements of this section. The requirements applicable to diverters which were in effect immediately prior to the effective date of these regulations shall remain in effect until the diverter systems are in compliance with the requirements of this section.

(c) The diverter system shall be equipped with remote-control valves in the flow lines that can be operated from at least one remote-control station in addition to the one on the drilling floor. Any valve used in a diverter system shall be full-opening. No manual or butterfly valves shall be installed in any part of a diverter system. There shall be a minimum number of turns in the vent line(s) downstream of the spool outlet flange, and the radius of curvature of turns shall be as larger as practicable. Flexible hose may be used for diversion lines instead of rigid pipe if the flexible hose has integral end couplings. The entire diverter system shall be firmly anchored and supported to prevent whipping and vibrations. All diverter control instruments and lines shall be protected from physical damage from thrown and falling objects.

(d) For drilling operations conducted with a surface wellhead configuration, the following shall apply:

(1) If the diverter system utilizes only one spool outlet, branch lines shall be installed to provide downwind diversion capability, and

(2) No spool outlet or diverter line internal diameter shall be less than 10 inches, except that dual spool outlets are acceptable if each outlet has a minimum internal diameter of 8 inches and that both outlets are piped to overboard lines and that each line downstream of the changeover nipple at the spool has a minimum internal diameter of 10 inches.

(e) The diverter sealing element and diverter valves shall be pressure tested to a minimum of 200 psi when nippled upon conduction casing. No more than 7 days shall elapse between subsequent pressure tests. The diverter sealing element, diverter valves, and diverter control systems (including the remote) shall be actuation tested, and the diverter lines shall be tested for flow prior to spudding and thereafter at least once each 24-hour period alternating between control stations. All test results shall be recorded in the driller's report.

§ 250.269 Mud program.

(a) The quantities, characteristics, use, and testing of drilling mud and the related drilling procedures shall be designed and implemented to prevent the loss of well control.

(b) The lessee shall comply with requirements concerning mud control, mud test and monitoring equipment, mud quantities, and safety precautions in enclosed mud handling areas as prescribed in § 250.60(b), (c) (d), and (e) of this part, except that the installation of an operable degasser in the mud system as required in § 250.60(b)(8) is not required for sulphur operations.

§ 250.270 Security of wells.

A downhole-safety device such as a cement plug, bridge plug, or packer shall be timely installed when drilling operations are interrupted by events such as those which force evacuation of the drilling crew, prevent station keeping, or require repairs to major drilling unit or well-control equipment. The use of blind-sheer rams or pipe rams and an inside BOP may be approved by the District Supervisor in lieu of the above requirements if cap rock casing has been set.

§ 250.271 Supervision, surveillance, and training.

(a) The lessee shall provide onsite supervision of drilling operations at all times.

(b) From the time drilling operations are initiated and until the well is completed or abandoned, a member of the drilling crew or the toolpusher shall maintain rig-floor surveillance continuously, unless the well is secured with BOP's, bridge plugs, packers, or cement plugs.

(c) Lessee and drilling contractor personnel shall be trained and qualified in accordance with the provisions of Subpart O of this part, and MMS Training Standard MMSS-OCS-T 1, Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations. Records of specific training which lessee and drilling contractor personnel have successfully completed, the dates of completion, and the names and dates of the courses shall be maintained at the drill site.

§ 250.272 Applications for permit to drill.

(a) Prior to commencing the drilling of a well under an approved Exploration Plan, Development and Production Plan, or Development Operations Coordination Document, the lessee shall file a Form MMS-331C, APD, with the District Supervisor for approval. Prior to commencing operations, written approval from the District Supervisor must be received by the lessee unless oral approval has been given.

(b) An APD shall include rated capacities of the proposed drilling unit and of major drilling equipment. After a drilling unit has been approved for use in an MMS district, the information need not be resubmitted unless required by the District Supervisor or there are changes in the equipment that affect the rated capacity of the unit.

(c) An APD shall include a fully completed Form MMS–331C and the following:

(1) A plat, drawn to a scale of 2,000 feet to the inch, showing the surface and subsurface location of the well to be drilled and of all the wells previously drilled in the vicinity from which information is available. For development wells on a lease, the previously drilled wells in the vicinity need not be shown on the plat. Locations shall be indicated in feet from the nearest block line;

(2) The design criteria considered for the well and for well control, including the following:

(i) Pore pressure;

(ii) Formation fracture gradients;

(iii) Potential lost circulation zones;

(iv) Mud weights;

(v) Casing setting depths;

(vi) Anticipated surface pressure (which for purposes of this section are defined as the pressure which can reasonably be expected to be exerted upon a casing string and its related wellhead equipment). In the calculation of anticipated surface pressure, the lessee shall take into account the drilling, completion, and producing conditions. The lessee shall consider mud densities to be used below various casing strings, fracture gradients of the exposed formations, casing setting depths, total well depth, formation fluid type, and other pertinent conditions. Considerations for calculating anticipated surface pressure may vary for each segment of the well. The lessee shall include as a part of the statement of anticipated surface pressure the calculations used to determine this pressure during the drilling phase and the completion phase, including the anticipated surface pressure used for production string design; and

(vii) If a shallow hazards site survey is conducted, the lessee shall submit with or prior to the submittal of the APD, two copies of a summary report describing the geological and manmade conditions present. The lessee shall also submit two copies of the site maps and data records identified in the survey strategy.

(3) A BOP equipment program including the following:

(i) The pressure rating of BOP equipment,

(ii) A schematic drawing of the diverter system to be used (plan and elevation views) showing spool outlet internal diameter(s); diverter line lengths and diameters, burst strengths, and radius of curvature at each turn; valve type, size, working-pressure rating, and location; the control instrumentation logic; and the operating procedure to be used by personnel, and

(iii) A schematic drawing of the BOP stack showing the inside diameter of the BOP stack and the number of annular, pipe ram, variable-bore pipe ram, blind ram, and blind-shear ram preventers.

(4) A casing program including the following:

(i) Casing size, weight, grade, type of connection and setting depth, and

(ii) Casing design safety factors for tension, collapse, and burst with the assumptions made to arrive at these values.

(5) The drilling prognosis including the following:

(i) Estimated coring intervals,

(ii) Estimated depths to the top of significant marker formations, and

(iii) Estimated depths at which encounters with fresh water, sulphur, oil, gas, or abnormally pressured water are expected.

(6) A cementing program including type and amount of cement in cubic feet to be used for each casing string;

(7) A mud program including the minimum quantities of mud and mud materials, including weight materials, to be kept at the site;

(8) A directional survey program for directionally drilled wells;

(9) An H_2S Contingency Plan, if applicable, and not submitted previously; and

(10) Such other information as may be required by the District Supervisor.

(d) Public information copies of the APD shall be submitted in accordance with § 250.17 of this part.

§ 250.273 Sundry notices and reports on wells.

(a) Notices of the lessee's intention to change plans, make changes in major drilling equipment, deepen or plug back a well, or engage in similar activities and subsequent reports pertaining to such operations shall be submitted to the District Supervisor on Form MMS–331, Sundry Notices and Reports on Wells. Prior to commencing operations, written approval must be received from the District Supervisor unless oral approval is obtained pursuant to § 250.6 of this part.

(b) The Form MMS–331 submittal shall contain a detailed statement of the proposed work that will materially change the approved APD. Information submitted shall include the present state of the well including the production liner and last string of casing, the well depth and production zone, and the well's capability to produce. Within 30 days after completion of the work, a subsequent detailed report of all the work done and the results obtained shall be submitted.

(c) Public information copies of Form MMS–331 shall be submitted in accordance with § 250.17 of this part.

§ 250.274 Well records.

(a) Complete and accurate records for each well and all well operations shall be retained for a period of 2 years at the lessee's field office nearest the OCS facility or at other locations conveniently available to the District Supervisor. The records shall contain a description of any significant malfunction or problem; all the formations penetrated; the content and character of sulphur in each formation if cored and analyzed; the kind, weight, size, grade, and setting depth of casing; all well logs and surveys run in the wellbore; and all other information required by the District Supervisor in the interests of resource evaluation, prevention of waste, conservation of natural resources, protection of correlative rights, safety, and environmental protection.

(b) When drilling operations are suspended, or temporarily prohibited, under the provisions of § 250.10 of this part, the lessee shall, within 30 days after termination of the suspension or temporary prohibition or within 30 days after the completion of any activities related to the suspension or prohibition, transmit to the District Supervisor duplicate copies of the records of all activities related to and conducted during the suspension or temporary prohibition on, or attached to, Form MMS–330, Well (Re)Completion Report, or Form MMS–331, Sundry Notices and Reports on Wells, as appropriate.

(c) Upon request by the Regional or District Supervisor, the lessee shall furnish the following:

(1) Copies of the records of any of the well operations specified in paragraph (a) of this section;

(2) Copies of the driller's daily report at a frequency as determined by the District Supervisor. Items to be reported include spud dates, casing setting depths, cement quantities, casing characteristics, mud weights, lost returns, and any unusual activities; and

(3) Legible, exact copies of reports on cementing, acidizing, analyses of cores, testing, or other similar services.

(d) As soon as available, the lessee shall transmit copies of logs and charts developed by well-logging operations, directional-well surveys, and core analyses. Composite logs of multiple runs and directional-well surveys shall be transmitted to the District Supervisor

in duplicate as soon as available but not later than 30 days after completion of such operations for each well.

(e) If the District Supervisor determines that circumstances warrant, the lessee shall submit any other reports and records of operations in the manner and form prescribed by the District Supervisor.

§ 250.280 Well-completion and well-workover requirements.

(a) Lessees shall conduct well-completion and well-workover operations in sulphur wells, bleedwells, and brine wells in accordance with §§ 250.280 through 250.286 of this part and other provisions of this part as appropriate (see §§ 250.71 and 250.91 of this part for the definition of well-completion and well-workover operations).

(b) Well-completion and well-workover operations shall be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the OCS including any mineral deposits (in areas leased and not leased), the national security or defense, or the marine, coastal, or human environment.

§ 250.281 Crew instructions.

Prior to engaging in well-completion or well-workover operations, crew member's shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded and available for MMS review.

§ 250.282 Approvals and reporting of well-completion and well-workover operations.

(a) No well-completion or well-workover operation shall begin until the lessee receives written approval from the District Supervisor. Approval for such operations shall be requested on Form MMS–331. Approvals by the District Supervisor shall be based upon a determination that the operations will be conducted in a manner to protect against harm or damage to life, property, natural resources of the OCS, including any mineral deposits, the national security or defense, or the marine, coastal, or human environment.

(b) The following information shall be submitted with Form MMS–331 (or with Form MMS–331C):

(1) A brief description of the well-completion or well-workover procedures to be followed;

(2) When changes in existing subsurface equipment are proposed, a well schematic drawing showing the equipment; and

(3) Where the well is in zones known to contain H_2S or zones where the presence of H_2S is unknown, a description of the safety precautions to be implemented.

(c)(1) Within 30 days after completion, Form MMS–330, including a schematic of the tubing and the results of any well tests, shall be submitted to the District Supervisor.

(2) Within 30 days after completing the well-workover operation, except routine operations, Form MMS–331 shall be submitted to the District Supervisor and shall include the results of any well tests and a new schematic if any subsurface equipment has been changed.

§ 250.283 Well-control fluids, equipment, and operations.

(a) Well-control fluids, equipment, and operations shall be designed, utilized, maintained, and/or tested as necessary to control the well in foreseeable conditions and circumstances, including subfreezing conditions. The well shall be continuously monitored during well-completion and well-workover operations and shall not be left unattended at any time unless the well is shut in and secured;

(b) The following well-control fluid equipment shall be installed, maintained, and utilized:

(1) A fill-up line above the uppermost BOP,

(2) A well-control fluid-volume measuring device for determining fluid volumes when filling the hole on trips, and

(3) A recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

(c) When coming out of the hole with drill pipe or a workover string, the annulus shall be filled with well-control fluid before the change in fluid level decreases the hydrostatic pressure 75 psi or every stands of drill pipe or workover string, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and the equivalent well-control fluid volume shall be calculated and posted near the operator's station. A mechanical, volumetric, or electronic device for measuring the amount of well-control fluid required to fill the hole shall be utilized.

§ 250.284 Blowout prevention equipment.

(a) The BOP system and system components and related well-control equipment shall be designed, used, maintained, and tested in a manner necessary to assure well control in foreseeable conditions and circumstances, including subfreezing conditions. The working pressure of the BOP system and system components shall equal or exceed the expected surface pressure to which they may be subjected.

(b) The minimum BOP stack for well-completion operations or for well-workover operations with the tree removed shall consist of the following:

(1) Three remote-controlled, hydraulically operated preventers including at least one equipped with pipe rams, one with blind rams, and one annular type.

(2) When a tapered string is used, the minimum BOP stack shall consist of either of the following:

(i) An annular preventer, one set of variable bore rams capable of sealing around both sides in the string, and one set of blind rams; or

(ii) An annular preventer, one set of pipe rams capable of sealing around the larger size string, a preventer equipped with blind-shear rams, and a crossover sub to the larger size pipe that shall be readily available on the rig floor.

(c) The BOP systems for well-completion operations, or for well-workover operations with the tree removed, shall be equipped with the following:

(1) An accumulator system that provides sufficient capacity to supply 1.5 times the volume necessary to close and hold closed all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure without assistance from a charging system. No later than 6 months from the effective date of these regulations, accumulator regulators supplied by rig air and without a secondary source of pneumatic supply shall be equipped with manual overrides or alternately other devices provided to ensure capability of hydraulic operations if rig air is lost;

(2) An automatic backup to the accumulator system. The backup shall be supplied by a power source independent from the power source to the primary accumulator system and possess sufficient capacity to close all BOP's and hold them closed;

(3) Locking devices for the pipe-ram preventers;

(4) At least one remote BOP-control station and one BOP-control station on the rig floor; and

(3) A choke line and a kill line each equipped with two full-opening valves and a choke manifold. One of the choke-line valves and one of the kill line valves shall be remotely controlled except that a check valve may be installed on the kill line in lieu of the remotely controlled valve provided that two readily accessible manual valves are in place, and the check valve is placed between the manual valve and the pump.

(d) The minimum BOP-stack components for well-workover operations with the tree in place and performed through the wellhead inside of the sulphur line using small diameter jointed pipe (usually ¾ inch to 1¼ inch) as a work string; i.e., small-tubing operations, shall consist of the following:

(1) Two sets of pipe rams, and

(2) One set of blind rams.

(e) An essentially full-opening, work-string safety valve shall be maintained on the rig floor at all times during well-completion operations. A wrench to fit the work-string safety valve shall be readily available. Proper connections shall be readily available for inserting a safety valve in the work string.

§ 250.285 Blowout preventer system testing, records, and drills.

(a) Prior to conducting high-pressure tests, all BOP systems shall be tested to a low pressure of 200 to 300 psi.

(b) Ram-type BOP's and the choke manifold shall be pressure tested with water to a rated working pressure or as otherwise approved by the District Supervisor. Annular type BOP's shall be pressure tested with water to 70 percent of rated working pressure or as otherwise approved by the District Supervisor.

(c) In conjunction with the weekly pressure test of BOP systems required in paragraph (d) of this section, the choke manifold valves, upper and lower kelly cocks, and drill-string safety valves shall be pressure tested to pipe-ram test pressures. Safety valves with proper casing connections shall be actuated prior to running casing.

(d) BOP system shall be pressure tested as follows:

(1) When installed;

(2) Before drilling out each string of casing or before continuing operations in cases where cement is not drilled out;

(3) At least once each week, but not exceeding 7 days between pressure tests, alternating between control stations. If either control system is not functional, further drilling operations shall be suspended until that system becomes operable. A period of more than 7 days between BOP tests is allowed when there is a stuck drill pipe or there are pressure control operations, and remedial efforts are being performed, provided that the pressure tests are conducted as soon as possible and before normal operations resume. The reason for postponing pressure testing shall be entered into the driller's report. Pressure testing shall be performed at intervals to allow each drilling crew to operate the equipment. The weekly pressure test is not required for blind and blind-shear rams;

(4) Blind and blind-shear rams shall be actuated at least once every 7 days. Closing pressure on the blind and blind-shear rams greater than necessary to indicate proper operation of the rams is not required;

(5) Variable bore-pipe rams shall be pressure tested against all sizes of pipe in use, excluding drill collars and bottom-hole tools; and

(6) Following the disconnection or repair of any well-pressure containment seal in the wellhead/BOP stack assembly but limited to the affected component.

(e) All personnel engaged in well-completion operations shall participate in a weekly BOP drill to familiarize crew members with appropriate safety measures.

(f) The times, dates, and results of BOP tests, actuations, and crew drills shall be recorded in the operations log.

§ 250.286 Tubing and wellhead equipment.

(a) No tubing string shall be placed into service or continue to be used unless such tubing string has the necessary strength and pressure integrity and is otherwise suitable for its intended use.

(b) Wellhead, tree, and related equipment shall be designed, installed, tested, used, and maintained so as to achieve and maintain pressure control.

§ 250.290 Production requirements.

(a) Lessee shall conduct sulphur production operations in compliance with the approved Development and Production Plan, requirements of §§ 250.290 through 250.297 of this subpart, and requirements of this part, as appropriate.

(b) Production safety equipment shall be designed, installed, used, maintained, and tested in a manner to assure the safety and protection of the human, marine, and coastal environments.

§ 250.291 Design, installation, and operation of surface production safety systems.

(a) *General.* All production facilities shall be designed, installed, and maintained in a manner which provides for efficiency and safety of operations and protection of the environment.

(b) Hydrocarbon handling vessels shall be protected with a basic and ancillary surface safety system designed, analyzed, installed, tested, and maintained in operating condition in accordance with the provisions of API Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms (API RP 14C). If processing components are to be utilized, other than those for which Safety Analysis Checklists are included in API RP 14C, the analysis technique and documentation specified therein shall be utilized to determine the effects and requirements of these components upon the safety system.

(c) *Approval of safety-systems design and installation features.* Prior to installation, the lessee shall submit a production safety system application, in duplicate, to the District Supervisor for approval. The application shall include information relative to the proposed design and installation features. Information concerning approved design and installation features shall be maintained by the lessee at the lessee's offshore field office nearest the OCS facility or other location conveniently available to the District Supervisor. All approvals are subject to field verification. The application shall include the following:

(1) A schematic flow diagram showing size, capacity, design, working pressure of separators, storage tanks, compressor pumps, metering devices, and other sulphur or hydrocarbon-handling vessels;

(2) A schematic flow diagram (API RP 14C, Figure E1) and the related Safety Analysis Function Evaluation chart (API RP 14C, subsection 4.3c);

(3) A schematic piping diagram showing the size and maximum allowable working pressures as determined in accordance with API RP 14E, Design and Installation of Offshore Production Platform Piping Systems;

(4) Electrical system information including the following:

(i) A plan of each platform deck, outlining all hazardous areas classified in accordance with API RP 500B, Recommended Practice for Classification of Locations for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms, and outlining areas in which potential ignition sources are to be installed;

(ii) All significant hydrocarbon sources and a description of the type of decking, ceiling, walls (e.g., grating or solid), and firewalls; and

(iii) Elementary electrical schematic of any platform safety shutdown system with a functional legend.

(5) Certification that the design for the mechanical and electrical systems to be installed were approved by registered professional engineers. After these systems are installed, the lessee shall submit a statement to the District Supervisor certifying that new installations conform to the approved designs of this subpart; and

(6) Design and schematics of the installation and maintenance of all fire- and gas-detection systems including the following:

(i) Type, location, and number of detection heads;

(ii) Type and kind of alarm, including emergency equipment to be activated;

(iii) Method used for detection;

(iv) Method and frequency of calibration; and

(v) A functional block diagram of the detection system, including the electric power supply.

§ 250.292 Additional production system requirements.

(a) *General.* Lessees shall comply with the following fuel gas handling safety system requirements (some of which are in addition to these contained in API RP 14C, incorporated by reference in § 250.122(b)).

(b) *Design, installation, and operation of additional fuel gas handling safety systems.* (1) Pressure and fired vessels shall be designed, fabricated, code stamped, and maintained in accordance with applicable provisions of Section I, IV, and VIII of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code.

(i) Pressure relief valves shall be designed, installed, and maintained in accordance with applicable provisions of Sections I, IV, and VIII of the ASME Boiler and Pressure Vessel Code. The relief valves shall conform to the valve-sizing and pressure-relieving requirements specified in these documents; however, the relief valves shall be set no higher than the maximum-allowable working pressure of the vessel. All relief valves and vents shall be piped in such a way as to prevent fluid from striking personnel or ignition sources.

(ii) The lessee shall use pressure recorders to establish the operating pressure ranges of pressure vessels in order to establish the pressure-sensor settings. Pressure-recording charts used to determine operating pressure ranges shall be maintained by the lessee for a period of 2 years at the lessee's field office nearest the OCS facility or at another location conveniently available to the District Supervisor. The high-pressure sensor shall be set no higher than 15 percent or 5 psi, whichever is greater, above the highest operating pressure of the vessel. This setting shall also be set sufficiently below (5 percent or 5 psi, whichever is greater) the relief valve's set pressure to assure that the high-pressure sensor sounds an alarm before the relief valve starts relieving. The low-pressure sensor shall sound an alarm no lower than 15 percent or 5 psi, whichever is greater, below the lowest pressure in the operating range.

(2) *Engine exhaust.* Engine exhausts shall be equipped to comply with the insulation and personnel protection requirements of API RP 14C, section 4.2c(4). Exhaust piping from diesel engines shall be equipped with spark arresters.

(3) *Firefighting systems.* Firefighting systems shall conform to subsection 5.2, Fire Water Systems, of API RP 14G, Fire Prevention and Control on Open Type Offshore Production Platforms, and shall be subject to the approval of the District Supervisor. Additional requirements shall apply as follows:

(i) A firewater system consisting of rigid pipe with firehose stations shall be installed. The firewater system shall be installed to provide needed protection, especially in areas where fuel handling equipment is located. A fixed waterspray system shall be installed in enclosed well-bay areas where hydrocarbon vapors may accumulate;

(ii) Fuel or power for firewater pump drivers shall be available for at least 30 minutes of run time during platform shut-in time. If necessary, an alternate fuel or power supply shall be installed to provide for this pump-operating time unless an alternate firefighting system has been approved by the District Supervisor;

(iii) A firefighting system using chemicals may be used in lieu of a water system if the District Supervisor determines that the use of a chemical system provides equivalent fire-protection control; and

(iv) A diagram of the firefighting system showing the location of all firefighting equipment shall be posted in a prominent place on the facility or structure.

(4) *Fire- and gas-detection system.* (i) Fire (flame, heat, or smoke) sensors shall be installed in all enclosed classified areas. Gas sensors shall be installed in all inadequately ventilated, enclosed classified areas. Adequate ventilation is defined as ventilation which is sufficient to prevent accumulation of a significant quantities of vapor-air mixture in concentrations over 25 percent of the lower explosive limit. One approved method of providing adequate ventilation is a change of air volume each 5 minutes or 1 cubic foot of air-volume flow per minute per square foot of solid floor area, whichever is greater. Enclosed areas (e.g., buildings, living quarters, or doghouses) are defined as those areas confined on more than four of their six possible sides by walls, floors, or ceilings more restrictive to air flow than grating or fixed open louvers and of sufficient size to allow entry of personnel. A classified area is any area classified Class I, Group D, Division 1 or 2, following the guidelines of API Recommended Practice 500B.

(ii) All detection systems shall be capable of continuous monitoring. Fire-detection systems and portions of combustible gas-detection systems related to the higher gas concentration levels shall be of the manual-reset type. Combustible gas-detection systems related to the lower gas-concentration level may be of the automatic-reset type.

(iii) A fuel-gas odorant or an automatic gas-detection and alarm system is required in enclosed, continuously manned areas of the facility which are provided with fuel gas. Living quarters and doghouses not containing a gas source and not located in a classified area do not require a gas detection system.

(iv) The District Supervisor may require the installation and maintenance of a gas detector or alarm in any potentially hazardous area.

(v) Fire- and gas-detection systems shall be an approved type, designed and installed in accordance with API RP 14C, API RP 14G, and API RP 14F, Design and Installation of Electrical Systems for Offshore Production Platforms.

(c) *General platform operations.* Safety devices shall not be bypassed or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing procedures. Only the minimum number of safety devices shall be taken out of service. Personnel shall monitor the bypassed or blocked out functions until the safety devices are placed back in service. Any safety device which is temporarily out of service shall be flagged by the person taking such device out of service.

§ 250.293 Safety-system testing and records.

(a) *Inspection and testing.* The safety-system devices shall be successfully inspected and tested by the lessee at the interval specified below or more frequently if operating conditions warrant. Testing shall be in accordance with API RP 14C, Appendix D, and the following:

(1) Relief valves on the natural gas feed system for power plant operations such as pressure safety valves shall be inspected and tested for operation at least once every 12 months. These valves shall be either bench tested or equipped to permit testing with an external pressure source.

(2) The following safety devices shall be inspected and tested at least once each calendar month but at no time shall more than 6 weeks elapse between tests:

(i) All pressure safety high or pressure safety low, and

(ii) All level safety high and level safety low controls.

(3) All pumps for firewater systems shall be inspected and operated weekly.

(4) All fire- (flame, heat, or smoke) and gas-detection systems shall be inspected and tested for operation and recalibrated every 3 months provided that testing can be performed in a nondestructive manner.

(5) Prior to the commencement of production, the lessee shall notify the District Supervisor when the lessee is ready to conduct a preproduction test and inspection of the safety system. The lessee shall also notify the District Supervisor upon commencement of production in order that a complete inspection may be conducted.

(b) *Records.* The lessee shall maintain records for a period of 2 years for each safety device installed. These records shall be maintained by the lessee at the lessee's field office nearest the OCS facility or other locations conveniently available to the District Supervisor. These records shall be available for MMS review. The records shall show the present status and history of each safety device, including dates and details of installation, removal, inspection, testing, repairing, adjustments, and reinstallation.

§ 250.294 Safety device training.

Prior to engaging in production operations on a lease and periodically thereafter, personnel installing, inspecting, testing, and maintaining safety devices shall be instructed in the safety requirements of the operations to be performed; possible hazards to be encountered; and general safety considerations to be taken to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded and available for MMS review.

§ 250.295 Production rates.

Each sulphur deposit shall be produced at rates that will provide economic development and depletion of the deposit in a manner that would maximize the ultimate recovery of sulphur.

§ 250.296 Production measurement.

(a) *General.* Measurement equipment and security procedures shall be designed, installed, used, maintained, and tested so as to accurately and completely measure the sulphur produced on a lease for purposes of royalty determination.

(b) *Application and approval.* The lessee shall not commence production of sulphur until the Regional Supervisor has approved the method of measurement. The request for approval of the method of measurement shall contain sufficient information to demonstrate to the satisfaction of the Regional Supervisor that the method of measurement meets the requirements of paragraph (a) of this section.

§ 250.297 Site security.

(a) All locations where sulphur is produced, measured, or stored shall be operated and maintained to ensure against the loss or theft of produced sulphur and to assure accurate and complete measurement of produced sulphur for royalty purposes.

(b) Evidence of mishandling of produced sulphur from an offshore lease, or tampering or falsifying any measurement of production for an offshore lease, shall be reported to the Regional Supervisor as soon as possible but no later than the next business day after discovery of the mishandling.

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August 31, 1989

Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

Title I Property Improvement and Manufactured Home Loans; Final Rule

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to finance furniture in their conventional losses being sustained by both lenders hazard insurance proceeds for multiple

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-89-1397; FR-2370]

RIN 2502-AE15

Title I Property Improvement and Manufactured Home Loans; Miscellaneous Amendments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends various sections in the regulations governing the property improvement and manufactured home loan insurance programs under title I, section 2 of the National Housing Act. This rule makes substantive changes in provisions relating to the financing of furniture in connection with manufactured home loans, the manner in which the Department assesses and collects insurance premiums on manufactured home loans, the maximum amount of an unsecured property improvement loan, and the certification requirements for manufactured home sites. The rule also clarifies some provisions in the title I regulations, corrects typographical errors, and makes necessary editorial changes.

EFFECTIVE DATE: October 9, 1989.

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Director, Title I Insurance Division, Room 9158, 451 Seventh Street SW., Washington, DC 20410. Telephone number (202) 755-6880. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: A proposed rule was published at 53 FR 30697 on August 15, 1988, and interested persons were invited to submit comments regarding the rule. The original deadline for the receipt of comments was September 29, 1988; it was extended to October 31, 1988 at the request of several interested parties. Comments were received, either directly or through attorneys and U.S. Senators and Representatives, from more than 50 respondents, including financial institutions, manufactured home manufacturers and dealers, manufactured home insurers and insurance agents, and industry trade associations. In addition, title I program officials and Department legal counsel met with representatives of an insurance company at their request, to discuss casualty and single-interest insurance policies for manufactured homes. The written and oral comments from these respondents have been carefully considered and evaluated, and some of the respondents' recommendations have been adopted, either in whole or in part, in the final rule.

The proposed rule contained substantive changes in the title I regulations to prohibit title I manufactured home loan proceeds from being used for the purchase of furniture; to reduce the number of years of hazard insurance coverage that may be financed with title I manufactured home loan proceeds and to change the amount of hazard insurance coverage required for manufactured homes financed with loans insured under title I; to change the manner in which the Department assesses and collects insurance premium charges in connection with manufactured home loans, allowing the Department to collect a greater portion of the insurance premium charge for each loan in the early years of the loan, and eliminating such charge in the later years of the loan; to increase the maximum amount of an unsecured property improvement loan from $2,500 to $5,000; and to simplify manufactured home site certification requirements.

The Department also proposed to make changes in the title I regulations to clarify that: (a) Late charges prescribed in the title I regulations may be assessed by the lender unless applicable State law prescribes standards more beneficial to the borrower, but may not be assessed if interest on the loan is charged on a daily basis; (b) appurtenances to the manufactured home may be financed with the proceeds of a manufactured home purchase loan only with the approval of the Secretary, and subject to the lender obtaining a first lien on such appurtenances as well as on the manufactured home, its furnishings, equipment, and accessories; (c) certain fees and charges that cannot he financed would be permitted to be paid by the lender; (d) proofs of claim would not have to be filed by lenders in certain bankruptcy or probate proceedings, and lenders would be required to take all steps necessary to protect the interest of the note holder in any such proceeding until a title I insurance claim is paid by the Department; (e) appraisals of repossessed manufactured homes would be required to reflect the retail value of comparable homes in the geographic area where the repossession occurred; and (f) premiums for hazard insurance on a foreclosed or repossessed manufactured home financed with a combination home and lot loan would be eligible for inclusion as part of the lender's title I insurance claim.

The Department further proposed to correct some typographical and grammatical errors.

Financing of Furniture

Section 201.10 of the title I regulations limits the amount of furniture that may be financed with the proceeds of a manufactured home loan, as follows: Loan proceeds may include an amount equal to the wholesale (base) price of any furniture package supplied by the manufacturer, subject to a maximum amount not to exceed the lesser of $2,000 or 10 percent of the wholesale (base) price of the home.

The Department proposed to amend the title I regulations so that the proceeds of manufactured home loans may no longer be used for the purchase of furniture. This change was proposed because, as noted in the preamble to the proposed rule, the Department estimates that furniture adds 7 to 13 percent ($1,500) to $2,500) to the retail price of the average manufactured home financed with a loan insured under title I. In most instances of borrower default, the furniture is in poor condition or has been removed before the lender repossesses the home. In such cases, the furniture, which is part of the loan security, has little or no value and both lenders and the Department lose a great deal of money. Faced with these losses, the Department has concluded that the proceeds of manufactured home loans should no longer be used for the purchase of furniture.

Twenty comments specifically addressed the Department's proposal to eliminate the financing of furniture with the proceeds of manufactured home loans. All 20 respondents expressed opposition to the proposal. Although several stated that they understood the Department's reasons for proposing this change, they expressed the opinion that the benefits of allowing first-time buyers to purchase furniture with loan proceeds outweighed the effects on HUD as a credit insurer.

The main theme of the comments was that promulgation of this change in the regulations will adversely affect many first-time home buyers, because it will require them to obtain furniture elsewhere and pay for it over a two- or three-year period, thus greatly increasing their monthly payments during the early years of the loan when the risks of default are highest. Some respondents also expressed the view that this proposal would, if promulgated, make the title I program less competitive, since lenders will continue

to finance furniture in their conventional loans. However, another commenter stated that the ability to finance furniture may be a key reason why borrowers have used the title I program; this suggests that perhaps the title I program has been insuring a disproportionate share of the homes financed with furniture.

Several commenters pointed out that the purchase of furniture with a manufactured home is not a universal practice; it seems to be the prevailing pattern with single-section homed sold in the East and South, from Virginia to Texas, but is not the usual practice in the West. Multisection homes in all parts of the country are typically sold without furniture, and in the last seven years there has been a very rapid increase in the percentage of multisection homes being produced (from 22 percent of all homes in 1982 to more than 42 percent currently). Thus, it appears that the financing or furniture with the proceeds of manufactured home loans is not as widespread a practice as most of the commenters have asserted.

One commenter furnished the Department with the results of a nationwide survey of manufactured home owners conducted in 1987. The survey showed that, of the 18,442 owners of manufactured homes who responded, 49 percent had previously lived in site-built homes, 20 percent had lived in a different manufactured home, and 18 percent had rented an apartment or townhouse, while only 13 percent had lived with parents or relatives or had other living arrangements where they might not have needed to purchase furniture. The survey also showed that, of 1,335 recent purchasers of manufactured homes, 92 percent had previously lived in situations that would indicate that they owned furniture when they purchased their homes. Moreover, when asked about the advantages of manufactured home living, only eight percent of those surveyed viewed the ability to purchase a furnished home as an advantage. The Department's conclusion from these survey results is that a high percentage of manufactured home owners had furniture before moving into their present homes and had no real need to purchase (and finance) furniture supplied by the home manufacturers.

The Department believes that prohibiting the financing of furniture with title I manufactured home loan proceeds will not have a deleterious effect on sales of manufactured homes or on the use of the title I program, but it will help to reduce the size of claim losses being sustained by both lenders and the Department. The Department recognizes that some borrowers who need furniture will obtain separate financing to purchase it, generally at higher interest rates and for much shorter loan terms; however, this situation is no different from purchasing an automobile or making any other major installment purchase after the manufactured home loan is obtained. Any major installment purchase has the potential for increasing the risk of default on the manufactured home loan obligation.

In recognition of this potential for increased risk, the Department expects that lenders will take steps to ascertain whether the borrower is planning to purchase furniture and, if so, whether the purchase is to be financed. When the financing of furniture is anticipated, estimated monthly installment payments for furniture should be included as "Other Recurring Charges" in accordance with § 201.22(b) of the regulations in calculating whether the borrower's income will be adequate to meet the manufactured home loan payments.

Accordingly, the Department hereby amends the title I regulations to eliminate the financing of furniture with the proceeds of title I manufactured home loans as follows: In §§ 201.2(p), (kk)(2), and (*11*), 201.10(b)(1), and 201.26(b)(4)(iii)(C), (b)(6)(i) and (b)(7)(ii), all references to furniture as part of the loan transaction are deleted, and in § 201.21(b)(3), a statement that the proceeds of a manufactured home loan shall not be used to purchase furniture is added. The definition of "furniture" in § 201.2(k) is retained to inform program participants as to which items are eligible and which are not eligible for financing with the proceeds of the loan.

Hazard Insurance and Secured Interest Protection Insurance

Section 201.25(b)(2)(ii) of the title I regulations allows manufactured home purchase loans and combination loans to include the cost of premiums paid by the borrower for comprehensive and extended hazard insurance and vendor's single-interest insurance coverage for three years. The Department proposed to reduce the number of years of hazard insurance coverage that could be financed with the proceeds of a title I manufactured home loan from three years to one year.

Twenty-six comments on this proposal were received. Almost all were against the proposed change, but there was some recognition of the Department's view that security for the entire loan is diminished by financing hazard insurance proceeds for multiple years.

Although the Department continues to believe that the financing of more than one year of hazard insurance coverage is not warranted, this matter will be given further study, and therefore the Department will not amend § 201.25(b)(2)(ii) to reduce the number of years of hazard insurance premiums that may be financed with title I loan proceeds at this time. If the Department decides to make this change at some future date, it will be accomplished by subsequent rulemaking.

The Department had also proposed to amend § 201.25(b)(2)(ii) as it relates to vendor's single-interest insurance premiums, in the belief that these are one-time charges. The Department has since learned that, unlike such insurance for other types of consumer loans, this coverage is provided as part of the hazard insurance policy, and the premium is paid by the borrower in the same manner as the hazard insurance premium. There was only one comment on this issue, which indicated that the Department seemed to be discouraging the purchase of this type of insurance. This is not the case, and in light of the information obtained by the Department with regard to this type of insurance, the Department will not change the substance of § 201.25(b)(2)(ii) concerning vendor's single-interest insurance at this time.

The Department further proposed to amend § 201.25(b)(2)(ii) by changing the term "vendor's single-interest insurance" to "single-interest insurance" in the belief that "vendor's single-interest insurance" is a misnomer, as this insurance protects the secured creditor rather than the vendor. A copy of an owner's policy given to the Department describes such insurance as secured interest protection coverage, and shows the lineholder as the beneficiary. The term "secured interest protection" appears to be a more accurate term than either "vendor's single-interest insurance" or "single-interest insurance," and therefore § 201.25(b)(2)(ii) is amended by substituting "secured interest protection" for "vendor's single-interest".

A proposed amendment to § 201.55(b)(1)(ii) would include benefits of secured interest protection insurance as a post-default receipt to be deducted from the unpaid loan balance in calculating title I claims. The one comment received by the Department concerning secured interest protection insurance did not object, and therefore

§ 201.55(b)(1)(ii) is amended accordingly.

Another proposal relating to hazard insurance was to amend § 201.28(b) of the title I regulations by changing the requirement that the borrower obtain and maintain hazard insurance on a manufactured home financed with a title I insured loan "in an amount at least equal to the unpaid balance of the loan or the actual cash value of the home, or home and lot in combination, whichever is lesser" to "an amount equal to the unpaid loan balance." The only comment on this proposal was from a manufactured home lender, who stated that borrowers may not be able to obtain stated value insurance on the home in some States. The commenter suggested that hazard insurance be required in an amount equal to the unpaid balance of the loan, or to the actual cash value of the home in those States in which stated value insurance is not otherwise obtainable. The Department agrees with that suggestion, and § 201.28(b) is amended to require that hazard insurance coverage on a manufactured home be maintained in an amount at least equal to the unpaid loan balance, except that the amount of coverage shall be not less than the actual cash value of the home where State law precludes a higher amount.

Loan Insurance Charges

The Department proposed to amend § 201.31 to (a) reduce the rate of the annual insurance charge for a manufactured home loan from 0.54 percent to 0.50 percent of the loan amount for the term of the loan; (b) change the system of collecting the loan insurance charge for a manufactured home loan so as to collect more of the charge in the early years of the loan and less in the later years, as distinguished from the present method of collecting the insurance charge in equal annual installments; and (c) clarify that the late charges that can be assessed are in fact penalty charges and interest due from the lender when loan insurance charges are not paid in a timely manner.

Thirteen respondents commented on this proposal. None of them were in favor of that part of the proposal relating to accelerated collection of the insurance charge. Their principal objection, collectively, was that the proposal would increase the lender's cost for loan insurance, which would mean that title I loans would be less profitable, or they would have to increase their interest rates to cover increased insurance charges. However, several respondents acknowledged that some acceleration in the collection of loan insurance charges was warranted in light of the claim losses in recent years.

Several commenters expressed concern that the Department's actuarial study seemed to rely heavily upon claims data that reflected the economic depression in the "oil patch" states of Texas, Oklahoma, and Louisiana, rather than considering the long-term performance of the title I manufactured home loan portfolio. Another commenter incorrectly stated that the actuarial study was based upon "a sample of loans originated between late 1982 and 1986." In fact, the actuarial study utilized data on loan survivorship, claims, and non-claim terminations for 15-year loans originated between 1973 and 1986. While information on loans that had terminated prior to September 1982 had been lost, the analysis did consider all 15-year loans for which insurance was still in force as of that time, as well as all 15-year loans from then until the end of 1986. Thus, the actuarial study did take into account the performance of loans in the title I portfolio over a long span of time, using the best data available. The Department believes that the data base was adequate to justify the proposed changes in the way that insurance charges will be collected; an independent actuarial consultant who reviewed the Department's study confirmed this.

One commenter expressed the opinion that the actuarial study had failed to make appropriate adjustments for the proposals to eliminate the financing of furniture and multi-year hazard insurance policies. Although the study report might have been clearer on this point, the authors of the study did take these proposals into account by revising the loss ratio used in the study downward from 25 percent to 22.5 percent. As a result of this change, the insurance charges to be collected on a 15-year loan were reduced by 0.25 percent of the loan amount in years 5, 6, and 8.

Another commenter questioned whether the $104 million underwriting loss for the 1984–1986 period that is mentioned in the preamble to the proposed rule included any debt recovery by HUD from defaulted borrowers. As the preamble to the proposed rule states, $104 million was the amount by which manufactured home claims exceeded loan insurance charges during those years. If debt recovery had been included, total losses for this period would still have been $92.5 million. It is important to point out that debt recovery was taken into account in the actuarial study.

Two respondents commented that the average life of a 15-year manufactured home loan is about seven years, and that accelerated collection of the loan insurance charges will mean that a lender will pay a total charge of 6.25 percent on this "average" loan, compared with 3.78 percent under the current method of collecting a level insurance charge of 0.54 percent of the loan amount for each year that the insurance is in force. While this statement is true, it does not seem to be relevant to the issue at hand, other than to point out that loans which terminate early will pay higher insurance charges than at present. Conversely, on 15-year loans that reach maturity, total charges will be slightly less (7.5 percent under the proposal; 8.1 percent under the current regulation).

One of these respondents also suggested that the Department consider a sliding scale of insurance charges, based on the loss experience of each lender. The Department has considered the possibility of relating insurance charges to lender performance, but has concluded that it would be very difficult to administer in an equitable manner. In addition, the use of the loan insurance charge to penalize certain lenders would limit the availability of title I loans in some areas of the country. The Department believes that lender performance is more effectively controlled through better claims review and increased monitoring.

Another respondent suggested that lenders be allowed to include the first year's loan insurance charge in the loan amount, with subsequent annual installments to be met through monthly payments by the borrowers into escrow accounts. The respondent indicated that, with this approach, interest rates on title I loans could be reduced by 0.50 to 0.75 percent. Even though borrowers would be paying loan insurance premiums as separate charges, lower interest would reduce the borrowers' monthly payments for principal and interest over the terms of their loans.

Section 201.31(f) of the regulations now permits the lender to pass the loan insurance charge on to the borrower, provided that it is fully disclosed to the borrower. The regulations do not currently provide for any portion of the loan insurance charge to be financed; however, the Department believes that the respondent's suggestion has some merit and will consider, as part of a future rulemaking, amending § 201.25(b) to permit the first year's insurance charge to be included in the loan amount, provided that the insurance charges for the second and subsequent

years are fully disclosed to the borrower and collected from the borrower on a monthly basis.

One commenter objected to the provision in § 201.31(b)(3) of the proposed rule, which enunciates the Department's longstanding policy that all loan insurance charges are considered earned when paid. The commenter stated that it is unfair to charge an insurance premium for any time period after a loan is prepaid, since there is no further insurance risk to the Department. In response, it is noted that the lender presently has no obligation to report to the Department when a loan is prepaid. Instead, the lender waits until the next annual billing for insurance charges before notifying the Department that the loan was prepaid. The Department accepts the lender's certification that the loan was prepaid, and no further insurance charges for the loan are billed. The Department has determined that instituting a separate reporting procedure for prepaid loans would not be cost-beneficial for either lenders or HUD, and therefore finds no reason to change the present policy.

Finally, one respondent expressed concern about the limited time available for lenders to manually reconcile their monthly statements of loan insurance charges before incurring a penalty charge under § 201.31(c). The respondent suggested that this problem would be eliminated if a computer tape billing could be furnished to lenders. Given the large number of lenders with limited title I loan activity, computer tape billing does not appear to be cost-effective; however, the Department is exploring ways to expedite the mailing of the monthly statements so as to give lenders more time to reconcile their statements and make timely insurance charge payments.

In summary, the Department believes that the proposed changes to the manner in which manufactured home loan insurance charges are collected are very important to the success of the program, notwithstanding the objections, and therefore § 201.31 is amended as set forth in the proposed rule.

Maximum Amount of an Unsecured Property Improvement Loan

The Department proposed to amend § 201.24(a) (1) and (2) so as to permit an increase in the amount of an unsecured property improvement loan from $2,500 to $5,000. The Department received six comments on this proposal; two comments were favorable and four were not. The primary objection to the change was a collective belief that defaults would increase if loans up to $5,000 are not secured. Another reason for objection was an inability to sell unsecured loans in the secondary market.

Section 201.24 specifies the maximum amount for a property improvement loan that may be insured under title I without security. The Department has never prohibited lenders from obtaining security on loans less than the amount set forth in § 201.24, and under this proposal there would still be no prohibition on obtaining security for loans that are below the ceiling. One lender stated that this proposal would require it to offer unsecured loans up to $5,000 because of the competition, even if it desired to obtain security on loans of lesser amounts. While this may be the case, competition is a function of the market, rather than of Government regulation.

One commenter pointed out that interest on a secured loan is generally tax-deductible, whereas interest on an unsecured loan may or may not be. The tax deductibility of interest on a loan secured by a mortgage or deed of trust is a selling point that lenders may use to obtain security on loans that are less than the ceiling on unsecured loans.

For the reasons set forth in the preamble to the proposed rule, § 201.24(a) (1) and (2) are amended by changing $2,500 to $5,000.

Manufactured Home Site Certification Requirements

The Department proposed to amend § 201.21(e)(3) of the title I regulations to require certifications of site suitability for leased home sites in manufactured home parks from the appropriate State or local government officials, such as local planning or building officials or public health officials, rather than from State or local authorities which license manufactured home parks. The Department proposed to amend this provision further by eliminating the requirement that the park comply with minimum standards on site location, storm drainage and landscaping.

The Department also proposed to amend § 201.21(e)(4) to change the required certification that the site is zoned to permit the placement of a manufactured home to a more general statement that the site complies with local zoning ordinances and regulations, if any. In addition, the Department proposed to eliminate the requirement that minimum storm drainage standards be met and substitute a more general certification that any other minimum local standards and requirements for site suitability are met. A certification from a registered civil engineer would be required only when local standards for water supply and sewage disposal are not established or enforced.

Three comments were received with regard to these proposed changes. All were favorable, but indicated that the Department was not going far enough in simplifying the site certification requirements. Two commenters recommended that the regulations permit the use of a photocopy of a State or local license that requires periodic inspections by government officials, if the required certifications cannot be obtained from State or local authorities. The Department has determined that the language in §§ 201.21(e) (3) and (4), as set forth in the proposed rule, would permit the lender to accept a State or local license, building permit, or occupancy permit that is based upon a site inspection to assure compliance with minimum site development standards, without requiring a separate certification.

Another commenter recommended that the borrower be permitted to certify that the site complies with zoning requirements, or that a representative of the lender be allowed to review the site placement and sign the site certifications. However, the Department believes that borrowers and lenders' representatives are not qualified to make the necessary certifications. Accordingly, §§ 201.21(e) (3) and (4) are amended as indicated in the proposed rule.

Clarifying and editorial changes made by this rule relate to the following matters:

Late Charges

The Department proposed to amend § 201.15 to clarify both the requirements for the billing of late charges and the application of State law in regard to late charges, as well as by adding a requirement that late charges, if imposed, must be paid by the borrower and may not be deducted from the borrower's monthly payment for principal and interest. Two respondents commented on this proposal.

One respondent stated that if HUD is requiring that lenders must have been paid all late charges as a prerequisite to filing claims, rather than merely having billed borrowers and attempted to collect such charges, the changes are misguided. The Department's intention was to require only that evidence be provided of those late charges that have been paid, since the lender cannot compel the borrower to pay these charges. Therefore, the Department is revising the third sentence of § 201.15(a) to make this clear.

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The second respondent stated a belief that prohibiting late charges on a daily interest loan would be a mistake, as late charges have more impact in encouraging timely payment by borrowers. In addition, the respondent stated that late charges help defray the additional collection expenses that occur with late payments. The Department believes that the accrual of additional interest on the unpaid principal after the due date for a payment provides a sufficient incentive for borrowers to avoid late payment; thus, late charges are not warranted when daily interest notes are used. Accordingly, § 201.15 is amended to read as set forth in the proposed rule, except for the change noted in the previous paragraph.

Appurtenances to Manufactured Homes

The Department proposed to amend §§ 201.10(b), 201.21(b)(4), and 201.24(b) to provide, respectively, that (a) the cost of appurtenances may be included in the maximum amount of a manufactured home purchase loan under the conditions set forth in a Notice published at 51 FR 9785 and 9780, March 21, 1986; (b) manufactured home purchase loan proceeds may be used for the purchase, construction or installation of appurtenances; and (c) any appurtenance that is financed with the proceeds of a manufactured home purchase loan must be secured by a first lien.

Two comments were received concerning this proposal. Both respondents agreed with the proposal, one of them indicating that HUD was simply placing into regulatory form its current practice on the financing of appurtenances, as stated in the Notice published on March 21, 1986. Accordingly, §§ 201.10(b), 201.21(b)(4), and 201.24(b) are amended as set forth in the proposed rule.

Fees and Charges Which Cannot Be Financed

The Department proposed to amend § 201.25(c) to clarify that certain fees and charges that are incurred by the lender but cannot be financed with loan proceeds may be paid by the lender as a cost of doing business and do not have to be collected from the borrower. Two comments were received concerning this proposal. Both commenters objected to the proposal, expressing the opinion that the borrower should continue to pay these costs in cash at the time of loan closing.

The Department wants to make it clear that this amendment would not mandate that lenders pay such fees as a cost of doing business; it would merely permit them to do so at their option. The Department is clarifying this section further by deleting the phrase "Except for any discount points to be paid by a dealer to a lender under § 201.13," as § 201.23 already excludes such discount points from the borrower's initial payment. Section 201.25(c) is therefore amended as set forth in the proposed rule and in the preceding sentence.

Proofs of Claim in Bankruptcy and Probate

The Department proposed to amend § 201.42 to require lenders to take all steps necessary to protect the interests of the creditor with regard to loans assigned to the United States until the Secretary has paid the claims. The Department further proposed to amend this section to exempt "no-asset" bankruptcy cases from the requirement for filing proofs of claim.

One comment was received concerning the amendment of § 201.42. The respondent objected to the proposed requirement that the lender continue to be responsible for a bankruptcy or probate proceeding after filing an insurance claim with HUD, as the lender has no further interest in the loan after the assignment is recorded. The Department disagrees with this position. Section 201.54(d) of the title I regulations requires that, when filing a title I claim, the lender must assign its entire interest in the note and in any security held. However, this assignment of the note and security instrument is, in a sense, a conditional assignment, as there is no consideration for the assignment until the claim is paid. There is also the possibility that the claim will be denied and the note and security interest reassigned to the lender. Furthermore, from a logistical standpoint, until a claim is paid, the Department has no way to keep track of documents not included in the claim file, such as those that might relate to a bankruptcy or probate proceeding.

The Department does not believe it is an onerous requirement for lenders to continue to monitor such cases, and even file necessary papers, subsequent to assignment of the note to HUD but prior to payment of the claim. Accordingly, § 201.42 is amended as set forth in the proposed rule.

Appraisals of Repossessed Manufactured Homes

The Department proposed to amend the second sentence of § 201.51(b)(3) to explicitly state that the appraisal must be based upon the retail value of comparable manufactured homes in the same geographic area where the repossession occurred. One comment was received objecting to this proposal. The respondent claimed that the proposal was misguided if it would permit only an appraisal in the same geographic area where the repossession occurs. In response, the Department wants to make it clear that the amendment to § 201.51(b)(3) requires only that the lender obtain an appraisal in the same area as the repossession. It does not prevent the lender from moving the home to another location and obtaining another appraisal, if that would result in a better resale price. However, as stated in the preamble to the proposed rule, our concern is with homes being moved for the purpose of obtaining a lower appraisal, thereby increasing the Department's claim exposure.

One means of minimizing this type of program abuse is to require that an appraisal be obtained in the same geographic area where the home was repossessed before moving it to another geographic area. Accordingly, the Department amends § 201.51(b)(3) as set forth in the proposed rule, except that the first word has been changed from "the" to "this" to avoid any implication that a lender is precluded from obtaining additional appraisals when warranted.

Hazard Insurance in Combination Loan Claims

The Department proposed to amend § 201.55(b) by redesignating § 201.55(b)(5)(iii) as § 201.55(b)(5)(iv) and adding a new § 201.55(b)(5)(iii) to allow an insurance claim on a combination home and lot loan to include the cost of hazard insurance on the home, prorated to the date of disposition of the property. No comments were received concerning this proposed amendment, and the Department amends § 201.55(b)(5) as stated herein.

Corrections

The proposed rule noted that the Department proposed to make corrections to §§ 201.13 and 201.51(a)(2). The corrections to § 201.13, changing an "of" to "for", and § 201.51(a)(2)(iv), changing a reference from "§ 201.55(b)" to "§ 201.55(a)", have been made in a separate rule containing other technical changes, which was published at 54 FR 10536 on March 14, 1989. This rule does, however, amend § 201.51(a)(2) with regard to default on the Title I obligation and any senior obligation as discussed in the preamble to the proposed rule.

Applicability of Amendments

Amendments in this rule that are applicable to all loans, regardless of when they have been or will be reported for insurance, are the changes to §§ 201.10 (item #4), 201.15 (item #5), 201.21(b)(4) (item #6), 201.24(b) (item #7), 201.25(c) (item #8), 201.31(c) (item #11), 201.42 (item #12), 201.51 (item #13), 201.55 (items #14 and #15). Amendments that are applicable to loans for which loan applications are approved on or after the effective date of this rule are the changes to §§ 201.2 (item #2), 201.10 (item #3), 201.21(b)(3) and (e)(3) and (4) (item #6), 201.24(a) (item #7), 201.25(b)(2) (item #8), 201.26 (item #9), 201.28 (item #10). Amendments to §§ 201.31(a) and (b) (item #11) are applicable to loans for which the date of disbursement is on or after the effective date of the rule.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m. weekdays) in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The proposed rule contained a certification, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities because the majority of financial institutions participating in the title I program are larger depository institutions and none of the proposed changes pose undue burdens for small entities seeking to conduct title I loan transactions. Several commenters, most of whom are manufactured home dealers claiming to be small businessmen, disagreed with this certification.

These commenters all objected to the Department's claim that the rule will not have an impact on small businesses because they believe that they will lose sales as a result of the changes concerning the financing of furniture and hazard insurance premiums. The Department believes that any impact of lost sales resulting from these changes will not be significant for a substantial number of entities. In *Mid-Tex Electric Cooperative, Inc.* v. *Federal Energy Regulatory Comm.*, 773 F. 2d 327 (D. C. Cir., 1985), the court held that Congress did not intend to require that agencies consider every indirect effect that regulation might have on small businesses in any stratum of the national economy. In addition, the thrust of the Regulatory Flexibility Act is a requirement upon agencies to consider alternative regulatory schemes for regulating small businesses vis-a-vis those for regulating large businesses. This rule does not contain regulatory provisions susceptible to alternative regulatory schemes.

Accordingly, the undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Regulatory Agenda

This rule was listed as item number 949 in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708) under Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

Specifically, the requirements of this rule are directed to lenders, and do not impinge upon the relationship between the Federal government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves requirements for property improvement and manufactured home loans insured by the Department. Any effect on the family would likely be indirect and insignificant.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;
14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures; and
14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans

List of Subjects in 24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Mobile homes, Manufactured homes and lots, Reporting and recordkeeping requirements.

Accordingly, 24 CFR Part 201 is amended as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for 24 CFR Part 201 continues to read as follows:

Authority: Sec. 2, National Housing Act (12 U.S.C. 1703); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 201.2 is amended by revising paragraphs (p), (kk)(2), and (*ll*) to read as follows:

§ 201.2 Definitions.

* * * * *

(p) "Manufacturer's invoice" means a document issued by a manufacturer and provided with a manufactured home to a retail dealer which separately details the wholesale (base) prices at the factory for specific models or series of manufactured homes, itemized options (large appliances, built-in items and equipment), and specific specialty items, plus actual itemized charges for freight (including any rental of wheels and axles) from the factory to the dealer's lot or the homesite and for any sales taxes to be paid by the dealer. The invoice may recite such prices and charges on an itemized basis or by stating an aggregate price or charge, as appropriate, for each category. The manufacturer shall certify in the invoice as follows:

> The undersigned certifies under applicable criminal and civil penalties for fraud and misrepresentation that: (1) the wholesale (base) prices for the manufactured home, itemized options, and specialty items as detailed, the charges for freight and dealer-paid sales taxes, and all other statements in this invoice are true and accurate; (2) all such prices reflect the actual dealer costs at the factory, as quoted in the applicable current manufacturer's wholesale (base) price list; and (3) except for any payments of volume incentives or special benefits related to this transaction, all such prices and charges exclude any costs of—and the manufacturer will make no payments to or for the benefit of the dealer and/or home purchaser concerning—trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than a nominal value of $10 which will inure to the benefit of the dealer and/or home purchaser at any date.

* * * * *

(kk) * * *

(2) Whether or not available on an optional basis do not increase or decrease the wholesale (base) prices for the sale of a specific home, itemized options, or specialty items, or the charges for freight and dealer-paid sales taxes as detailed in the manufacturer's invoice for a specific sale to a retail dealer;

* * * * *

(ll) "Wholesale (base) price list" means the price list(s), as periodically amended, which are published and distributed by a home manufacturer to all retail dealers in a given marketing area, quoting the actual wholesale (base) prices at the factory for specific models or series of manufactured homes, itemized options, and specialty items offered for sale to such dealers during a specified period of time. The wholesale (base) prices may include the manufacturer's projected costs of providing volume incentives and special benefits related to sales to dealers during the period. All such wholesale (base) prices shall exclude any costs of trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than a nominal value of $10 which will inure to the benefit of a dealer and/or home purchaser at any date. Each price list and amendment shall be retained by the manufacturer for a minimum period of six years from the date of publication so as to be available to HUD and other Federal agencies upon request.

* * * * *

§ 201.10 [Amended]

3. Section 201.10 is amended by removing paragraph (b)(1)(ii) and redesignating paragraphs (b)(1)(iii) through (vi) as paragraphs (b)(1)(ii) through (v).

4. Section 201.10 is amended further by adding a new paragraph (b)(1)(vi) to read as follows:

§ 201.10 Loan amounts.

* * * * *

(b) * * *

(1) * * *

(vi) The actual cost of the borrower of a garage, carport, patio or other comparable appurtenance to the manufactured home, as stated in the retail purchase contract and as approved by the Secretary;

* * * * *

5. Section 201.15 is revised to read as follows:

§ 201.15 Late charges to borrowers.

(a) *Imposition of late charge.* The note may provide for imposition of a late charge unless precluded by State law. The late charge may be imposed only for installments of principal and interest which are in arrears for the greater of 15 calendar days or the number of days required by applicable State law before such a charge may be imposed. Late charges must be billed to the borrower or reflected in the payment coupon, and evidence of any late charges that have been paid must be in the loan file if an insurance claim is made.

(b) *Amount of late charge.* The late charge shall not exceed the lesser of five percent of each installment of principal and interest, up to a maximum of $10 per installment for any property improvement loan and $15 per installment for any manufactured home loan, or the maximum amount permitted by applicable State law.

(c) *Method of payment.* Payment of any late charge cannot be deducted from the monthly payment for principal and interest, but must be an additional charge to the borrower.

(d) *Daily interest in lieu of late charges.* In lieu of late charges, the note may provide for interest to accrue on installments in arrears on a daily basis at the interest rate in the note.

6. Section 201.21 is amended by revising paragraphs (b)(3) and (4) and paragraphs (e)(3) and (4) to read as follows:

§ 201.21 Manufactured home loan eligibility.

* * * * *

(b) * * *

(3) The proceeds of a manufactured home loan shall not be used to purchase furniture.

(4) The proceeds of a manufactured home purchase loan may be used for the purchase, construction or installation of a garage, carport, patio or other comparable appurtenance to the manufactured home, as stated in the retail purchase contract and as approved by the Secretary. The proceeds of a combination loan may be used for the purchase, construction or installation of a permanent foundation, garage, carport, patio or other comparable appurtenance to the manufactured home.

* * * * *

(e) * * *

(3) When the manufactured home is to be placed on a leased site in a manufactured home park, the lender shall obtain certifications from the appropriate State or local government officials that the park complies with minimum standards relating to vehicular access, water supply, sewage disposal, utility connections, and other aspects of park development. Where minimum State and local standards for park development are not established or enforced, the lender shall obtain a certification from a registered civil engineer that the park meets minimum standards for park development prescribed by the Secretary.

(4) When the manufactured home is to be placed on an individual manufactured home lot or other site owned or leased by the borrower (or on an Indian land site under paragraph (e)(1) of this section), the lender shall obtain certifications from the appropriate local government officials that:

(i) The site complies with local zoning ordinances and regulations, if any;

(ii) Adequate vehicular access from a public right-of-way is available to the site;

(iii) Adequate water supply and sewage disposal facilities are available to or on the site; and

(iv) Any other minimum local standards and requirements for site suitability are met. Where minimum local standards for water supply and sewage disposal are not established or enforced, the lender shall obtain a certification from a registered civil engineer that the site meets minimum standards for water supply and sewage disposal prescribed by the Secretary.

7. Section 201.24 is amended by revising the first sentence of paragraph (a)(1), paragraph (a)(2), and the first sentence of paragraph (b) to read as follows:

§ 201.24 Security requirements.

(a) *Property improvement loans.* (1) Any property improvement loan in excess of $5,000 shall be secured by a recorded lien on the improved property. * * *

(2) Any property improvement loan for $5,000 or less (other than a manufactured home improvement loan) shall be similarly secured if, including such loan, the total amount of all title I property improvement loans obtained by the borrower is more than $5,000.

(b) *Manufactured home loans.* Any manufactured home loan shall be secured by a recorded lien on the home (or lot or home and lot, as appropriate), its furnishings, equipment, accessories, and appurtenances. * * *

* * * * *

8. Section 201.25 is amended by revising paragraph (b)(2)(ii) and the introductory text of paragraph (c) to read as follows:

§ 201.25 Charges to borrower to obtain loan.

* * * * *

(b) * * *

(2) * * *

(ii) Premiums paid by the borrower for comprehensive and extended hazard insurance and secured interest protection coverage for the first three years, including premiums for flood insurance, where applicable;

* * * * *

(c) *Fees and charges which may not be financed.* The following fees and charges incurred by the lender in connection with a loan insured under this part may be collected from the borrower in the initial payment, but may not be included in the loan amount or otherwise financed or advanced by the dealer, the manufacturer, if any, or any other party to the loan transaction:

* * * * *

9. Section 201.26 is amended by revising paragraph (b)(4)(iii)(C), the first sentence of paragraph (b)(6)(i), and paragraph (b)(7)(ii) to read as follows:

§ 201.26 Conditions for loan disbursement.

* * * * *

(b) * * *

(4) * * *

(iii) * * *

(C) The dealer has performed the inspection and tests required under § 201.21(c)(3) and, as installed or erected on the homesite, the manufactured home has sustained no structural damage or other defects, and all plumbing, mechanical and electrical systems are fully operational; and

* * * * *

(6) * * *

(i) In the absence of information to the contrary, the lender may accept and rely upon a certification by the dealer or seller under applicable criminal and civil penalties for fraud and misrepresentation that the manufactured home, any options (large applicances, built-in items and equipment), and any specialty items included in the purchase price of the home or to be financed with loan proceeds have been delivered to and properly installed or erected on the site, and any other work to be accomplished at the site and financed with loan proceeds has been completed. * * *

* * * * *

(7) * * *

(ii) The manufactured home, any options, and any specialty items included in the purchase price of the home or to be financed with loan proceeds have been delivered and completed;

* * * * *

10. Section 201.28 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 201.28 Flood and hazard insurance, and Coastal Barriers properties.

* * * * *

(b) *Hazard insurance.* * * * Such insurance shall be maintained by the borrower for the full term of the loan or until the property is repossessed or foreclosed by the lender, and in an amount at least equal to the unpaid balance of the loan, except that the amount of insurance coverage shall be not less that the actual cash value of the home where State law precludes a higher amount. * * *

* * * * *

11. Section 201.31 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 201.31 Insurance charge.

(a) *Insurance charge.* For each eligible property improvement loan and manufactured home loan reported and acknowledged for insurance, the lender shall pay to the Secretary an insurance charge equal to 0.50 percent of the loan amount, multiplied by the number of years of the loan term. The insurance charge shall be paid in the manner prescribed in paragraph (b) of this section; however, no charge shall be made for a period of 14 days or less, and a charge for a full month shall be made for a period of more than 14 days. There shall be no abatement or refund of an insurance charge except as provided in paragraph (e) of this section.

(b) *Payment of insurance charge.* (1) For any loan having a maturity of 25 months or less, payment of the entire insurance charge prescribed in paragraph (a) of this section is due on the 25th calendar day after the date the Secretary acknowledges the loan report.

(2) For any loan having a maturity in excess of 25 months, payment of the insurance charge shall be made in annual installments, with the first installment due on the 25th calendar day after the date the Secretary acknowledges the loan report, and the second and succeeding installments due on the 25th calendar day after the date of billing by the Secretary. Annual installments shall be paid according to the following schedule:

(i) For any property improvement loan having a maturity in excess of 25 months, payment shall be made in annual installments of 0.50 percent of the loan amount until the insurance charge is paid.

(ii) For any manufactured home loan having a maturity in excess of 25 months but not more than 144 months, payment shall be made in annual installments of 1.00 percent of the loan amount for the first three years of the loan term, 0.75 percent of the loan amount for the next two years, and 0.50 percent of the loan amount for all succeeding years until the insurance charge is paid.

(iii) For any manufactured home loan having a maturity in excess of 144 months but not more than 192 months, payment shall be made in annual installments of 1.00 percent of the loan amount for the first four years of the loan term, 0.75 percent of the loan amount for the next three years, and 0.50 percent of the loan amount for all succeeding years until the insurance charge is paid.

(iv) For any manufactured home loan having a maturity in excess of 192 months, payment shall be made in annual installments of 1.00 percent of the loan amount for the first five years of the loan term, 0.75 percent of the loan amount for the next four years, and 0.50 percent of the loan amount for all succeeding years until the insurance charge is paid.

(3) All insurance charges are considered earned when paid.

(c) *Penalty charge and interest.* Insurance charges not received from the lender by the due date specified in paragraph (b) of this section shall be assessed a penalty charge of four percent of the amount of the payment. Insurance charges received from the lender more than 30 days after the due date specified in paragraph (b) of this section shall also be assessed daily interest at the current United States Treasury value of funds rate, as published periodically in the Federal Register. However, no penalty charge or daily interest shall be assessed if the Secretary fails to acknowledge receipt of the loan report or fails to issue a proper billing to the lender for the insurance charges.

* * * * *

12. Section 201.42 is revised to read as follows:

§ 201.42 Bankruptcy, insolvency or death of borrower.

(a) *Bankruptcy or insolvency.* The lender shall file a proof of claim with the court having jurisdiction when the lender has timely information that a borrower is involved in bankruptcy or insolvency proceedings, except that a proof of claim need not be filed if the court notifies the lender that the borrower has no assets and a proof of claim should not be filed. The notice of bankruptcy and a copy of the proof of claim (or the notice from the court that a proof of claim is not required) shall be retained in the loan file.

(b) *Death of a borrower.* The lender shall file a proof of claim with the court having jurisdiction when the lender has timely information that a borrower is deceased, unless the lender determines that there will not be a probate proceeding. A copy of the proof of claim (or documentation as to why a proof of claim was not filed) shall be retained in the loan file.

(c) *Responsibility of the lender after insurance claim is filed.* After the Secretary pays an insurance claim, the Secretary will notify the bankruptcy or probate court, as appropriate, that the loan has been assigned to the United States and will request substitution as the party to whom the claim is owed. Until the insurance claim is paid, the lender shall take all steps necessary to protect the interests of the holder of the note in any bankruptcy or probate proceeding.

13. Section 201.51 is amended by revising the introductory text of paragraph (a)(2) and the second sentence of paragraph (b)(3) to read as follows:

§ 201.51 Proceeding against the loan security.

(a) * * *

(2) If a lender holds one or more mortgages or other security instruments senior to a secured property improvement loan, and the borrower defaults on both the senior security instrument and the property improvement loan, the lender may proceed against the secured property under the senior security instrument and later submit a claim under its title I contract of insurance only if:

* * * * *

(b) * * *

(3) * * * This appraisal should reflect the retail value of comparable manufactured homes in similar condition and in the same geographic area where the repossession occurred, as listed in a current value rating publication accepted to the Secretary. * * *

14. Section 201.55 is amended by removing "and" from paragraph (b)(5)(ii) and by redesignating paragraph (b)(5)(iii) as paragraph (b)(5)(iv).

15. Section 201.55 is further amended by revising paragraph (b)(1)(ii) and by adding a new paragraph (b)(5)(iii) to read as follows:

§ 201.55 Calculation of insurance claim payment.

* * * * *

(b) * * *

(1) * * *

(ii) All amounts to which the lender is entitled after the date of default from any source relating to the property, including but not limited to such items as rent, other income, recourse recovery against the dealer, hazard insurance benefits, secured interest protection insurance benefits, and rebates on prepaid insurance premiums; and

* * * * *

(5) * * *

(iii) Premiums for hazard insurance on the manufactured home, prorated to the date of disposition of the property; and

* * * * *

Dated: August 25, 1989.

Ronald A. Rosenfeld,

Acting Assistant Secretary for Housing–Federal Housing Commissioner.

[FR Doc. 89–20546 Filed 8–30–89; 8:45 am]

BILLING CODE 4210-27-M

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federal register

Thursday
August 31, 1989

Part X

The President

Proclamation 6014—World War II Remembrance Week, 1989

Federal Register
Vol. 54, No. 168
Thursday, August 31, 1989

Presidential Documents

Title 3—

The President

Proclamation 6014 of August 29, 1989

World War II Remembrance Week, 1989

By the President of the United States of America

A Proclamation

Fifty years ago, on September 1, 1939, the proud nation of Poland was invaded by forces from Nazi Germany, marking the end of its independence and the beginning of World War II. Poland suffered a second devastating blow 16 days later, when Soviet forces invaded from the East. In a secret protocol to the Molotov-Ribbentrop Pact signed the previous month, Nazi Germany and the Soviet Union had plotted the conquest and partition of Poland and the Baltic States.

While many of the events that took place during the fateful month of September 1939 and the 6 turbulent years that followed might seem remote today, it is our duty—to future generations and to those who bravely defended the cause of freedom—to remember them. By recalling these events, we remind ourselves that real and lasting peace can be won only when the rights and dignity of all human beings are cherished and protected.

During World War II, the United States and its allies were engaged in nothing less than a life-and-death struggle for the fate of millions of people. Totalitarian regimes in Germany, Italy, and Japan—intent on regional hegemony and even world domination—posed a threat to all free and sovereign nations. The imperialist aims and racist policies of the government of Nazi Germany and some of its allies resulted in the deaths of millions of innocent men, women, and children—including six million Jews. By the end of the 6-year-long war, more than 15 million combatants and 24 million noncombatants had been killed. Many of these casualties occurred among the people of the U.S.S.R., whose sacrifices were instrumental in securing the Allied victory. The enormous costs of this fight against tyranny can never be forgotten.

Today, the principles that motivated the Western Allies during World War II continue to demonstrate their undeniable appeal. The history of the Federal Republic of Germany is now a moving testament to the power of democratic ideas, the wisdom of West Germany's post-war leaders, and the talent and resilience of the German people. Today the Federal Republic is among America's closest allies, and a champion of human rights, democracy, and freedom.

The people of Eastern Europe have continued to struggle for freedom and their right to self-determination. With courage and persistence the Polish and Hungarian people have begun a democratic transition in their countries.

The United States welcomes positive changes in Poland and Hungary—and in the Soviet Union itself. Nevertheless, we realize that the goals fought for during World War II have not been fully won. We stand with those peoples who continue to struggle for representative government and complete and lasting guarantees of their God-given rights. We look to a Europe whole and free.

Today, as we recall the grave events of September 1, 1939, and the years of bitter conflict that followed, let us pause to salute our Nation's veterans, the hundreds of thousands of Americans who gave their lives, and the millions of civilians who rallied to support the cause of freedom. Their courage and selflessness—reflected day after day in acts of great personal sacrifice—led the way to victory. Let us also rededicate ourselves to promoting freedom and respect for human rights around the world, for they are the only sure foundation for lasting peace.

To commemorate the 50th anniversary of the outbreak of World War II, the Congress, by House Joint Resolution 221, has designated the week beginning September 1, 1989, as "World War II Remembrance Week" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate the week beginning September 1, 1989, as World War II Remembrance Week. I ask all Americans to join in remembering and reflecting upon this conflict, which changed forever the history of mankind. I also call upon government officials and private organizations to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

Gy Bush

[FR Doc. 89-20771
Filed 8-30-89; 10:41 am]
Billing code 3195-01-M

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federal register

Thursday
August 31, 1989

Part XI

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 565
Panamanian Transactions Regulations; Final Rule

DEPARTMENT OF THE TREASURY

issued with respect to a foreign affairs

Name	Position

Name	Agency	Name	Agency	Name	Agency

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 565

Panamanian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Treasury Department is amending the Panamanian Transactions Regulations to add a new appendix B to the end thereof containing the names of individuals who the Director of the Office of Foreign Assets Control has determined are acting or purporting to act directly or indirectly on behalf of the Noriega/Solis regime in Panama.

EFFECTIVE DATE: August 31, 1989.

FOR FURTHER INFORMATION: Contact William B. Hoffman, Chief Counsel, Tel.: (202) 376–0408, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 376–0236, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The Panamanian Transactions Regulations, 31 CFR part 565 (the "Regulations"), were issued by the Treasury Department to implement Executive Order No. 12635 of April 8, 1988 (53 FR 12134, April 12, 1988), in which the President declared a national emergency with respect to Panama, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and ordered specific measures against the Noriega/Solis regime in Panama.

This rule adds appendix B to part 565 to establish a list of individuals whom the Director of the Office of Foreign Assets Control has determined to be acting or purporting to act on behalf of the Noriega/Solis regime in Pamana, pursuant to § 565.304(a)(4) of the Regulations. The individual regime officials included in appendix B are subject to the prohibitions on transfers to the Noriega/Solis regime from the United States (Regulations, § 565.202) and from U.S. persons and their controlled Panamanian entities in Panama (Regulations, § 565.203).

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 565

Panama, Transfers of assets, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 565 is amended as follows:

PART 565—PANAMANIAN TRANSACTIONS REGULATIONS

1. The "Authority" citation for part 565 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12635, 53 FR 12134 (April 12, 1988).

2. The last sentence of paragraph (a)(4) of § 565.304 is revised to read as follows: "Such determinations shall be published from time to time in an appendix B to this part, but shall be binding prior to such publication upon any person receiving actual notice thereof.

3. Appendix B to part 565—Persons and organizations acting on behalf of the Noriega/Solis Regime is added to the end of part 565 to read as follows:

Appendix B—Persons and Organizations Acting on Behalf of the Noriega/Solis Regime

I. Officials of the Panamanian Defense Forces and Other Officials of the Noriega/Solis Regime

Name	Position
Ritter D., Jorge Eduardo	Foreign Minister
Tejada, Norberta	Vice Minister
Goodin, Orville K.	Minister of Finance
Hooper de Galvez, Otilia	Vice Minister
Martinez, Elmo	Minister of Commerce
Alquero, Leopoldo	Vice Minister
Gonzalez J., Gustavo Ramon.	Minister of Planning and Economic Policy
Paney, Jorge	Vice Minister
Chiari de Leon, Rodolfo	Minister of Justice
Bernal G., Targidio A.	Vice Minister
Ayala Walker, Darien	Minister of Agriculture
Gonzalez, Luis	Vice Minister
Martans V., Cesar S.	Minister of Labor and Welfare
Collado, Victor M.	Vice Minister
Bultron Moscoso, Rene	Minister of Public Works
Marquinez Bristand, Arturo.	Vice Minister
Bernal Y., Juan Bosco	Minister of Education
Herrera, Maritza	Vice Minister
Pitty V., Nander A.	Minister of the Presidency
Valderrama, Augusto	Vice Minister
Bermudez A., Ricardo	Minister of Housing
Cajar, Adsiner R.	Vice Minister
Esquivel, Jose Renan	Minister of Health
Reyes, Eduardo	Vice Minister
Villalaz B., Carlos A.	Attorney General
Anguizola, Rolando	Deputy Attorney General

A. Members of Strategic Military Council

Lt. Col. Moises Correa
Lt. Col. Nivaldo Madrinan
Maj. Pascual Gonzalez
Lt. Col. Armando Palacios Gondola
Maj. Daniel Delgado
Maj. Jose Trujillo
Lt. Col. Luiz Cordoba
Maj. Rafael Cedeno
Maj. Federico Olechea
Maj. Humberto Melara
Maj. Francisco Porras
Capt. Jesus George Balma
Capt. Marcos Castillo
Capt. Nicasio Lorenzo Drake
Capt. Luis Quiel
Capt. Severino Mejia
Capt. Mario Del Cid

B. Officials of Autonomous Agencies

Name	Agency
Saenz, Rosendo	Abattoir Nacional (National Slaughterhouse)
Cajar, Adsinar	Air Panama
Benedetti, Giovanna	Archivos Nacionales (National Archives)
Mirones Pinzon, Virgilio	Autoridad Portuaria Nacional (National Port Authority)
Navas, Teodoro	Autoridad Portuaria Nacional (National Port Authority) Deputy Administrator
Purcait, Azail	Banco de Desarrollo Agropecuario (Agricultural Development Bank)
Marin, Eduardo	Banco de Desarrollo Agropecuario (Agricultural Development Bank)
Amado, Marta	Banco Hipotecario Nacional (National Mortgage Bank)
Ortega, Ricardo	Banco Hipotecario Nacional (National Mortgage Bank)
Bermudez, Ricardo	Banco Hipotecario Nacional (National Mortgage Bank)
Caballero, Nelson M	Banco Hipotecario Nacional (National Mortgage Bank)
Arosemena, Rafael	Banco Nacional de Panama (Panama National Bank)
Melo, Arturo	Banco Nacional de Panama (Panama National Bank)
Amado, David	Banco Nacional de Panama (Panama National Bank)
Altamirano, Jorge	Banco Nacional de Panama (Panama National Bank)
Hanono, Teofilo	Banco Nacional de Panama (Panama National Bank)
Mangravita, Fortunato	Banco Nacional de Panama (Panama National Bank)
Conte Porras, Jorge	Direccion Nacional de Patrimonio Cultural (Office of Cultural Preservation)
Diaz, Ricardo	Bingos Nacionales (National Bingoes)
Sanchez, Agustin	Bingos Nacionales (National Bingoes)
Abadia, Aristides D	Bolsa Internacional de Valores de Panama, S.A. (Panama International Stock Exchange)
Simone, Jaime	Caja de Ahorras (Savings Bank)
Aboud, Alfredo	Caja de Ahorras (Savings Bank)
Correa Lopez, Pedro	Caja de Ahorras (Savings Bank)
Sanchez, Francisco C	Caja de Seguro Social (Social Security)
Fuentes, Sergio	Caja de Seguro Social (Social Security)
Harris, Julio	Casinos Nacionales (National Casinos)
Rodriguez, Luis A	Casinos Nacionales (National Casinos)
Tunon, Alberto Luis	Corporacion Bayano (Bayano Cement)
de Garcia, Marina B	Corporacion Bayano (Bayano Cement)
Miranda, Alvaro	Citricos de Chiriqui (Chiriqui Citric Plant)
Castillo, Eleuterio	Citricos de Chiriqui (Chiriqui Citric Plant)
Purcait, Azael	Comision Bancaria Nacional (National Bank Commission) President
de Diego, Mario	Comision Bancaria Nacional (National Bank Commission) Executive Secretary
Rodriguez, Francisco	Controloria (Comptroller's Office)
Julio V., Abdiel F.	Controloria (Comptroller's Office)
Vernaza, Alejandro	Corporacion Azucarera la Victoria (La Victoria Sugar Mill)
de Gariner, Aida Batista	Corporacion Financiera Nacional (National Financing Corporation)
Fernandez Jaen, Dario	Direccion General para el Desarrollo de la Comunidad (Community Development Administration)
Thompson, Enrique	Direccion General para el Desarrollo de la Comunidad (Community Development Administration)
Gonzalez de la Barrera, Dario.	Direccion Metropolitana de Aseo (Office for City Cleanliness)
Coto P., Melvin	Direccion Metropolitana de Aseo (Office for City Cleanliness)
de Morgado, Angela	Direccion del Nino y de la Familia (Office of the Child and the Family)
Gonzalez de Leon, Pascual.	Direccion de Aeronautica Civil (Office for Civil Aviation)
Valesquez, Alberto	Direccion de Aeronautica Civil (Office for Civil Aviation)
Rodriguez, Lazaro	Direccion de Catastro (Office for Property Value)
Dutari, Carlos	Direccion de Catastro (Office for Property Value)
Mosquera, Severino Mejia.	Direccion Ejecutivo para Asuntos del Tratado (Executive Office for Treaty Affairs)
Moreno, Roberto	Direccion de Cedulacion (Office for Identity Cards)
Davis, Julio	Direccion de Ingenieria Municipal (Office for Municipal Engineering)
Amado Jaen, Humberto	Direccion de Saneamiento Ambiental (Office for Environmental Health)
Gregorio Ramos, Virgilio	Direccion General de Aduanas (Customs Service)
de Cal, Efigenia	Direccion General de Correos y Telecommunicionas (Office of Mail and Telecommunications)
Tello, Antonio	Direccion General de Correos y Telecomunicaciones (Office for Mail and Telecommunications)
Torrijos R., Hugo	Direccion General de Consular y Naves (SECNAVES) (Office of Consular and Shipping Affairs)
Arias, Alcida Alfredo	Direccion General de Consular y Naves (SECNAVES) (Office of Consular and Shipping Affairs)
Villareal, Amilcar	Direccion General de Estadistica y Censo (Statistics and Census Bureau)
Levy, Ricardo Salvador	Direccion General de Ingresos (Internal Revenue Service)
Padilla, Petra	Direccion General de Ingresos (Internal Revenue Service)
Batista, Luis	Direccion General de Servicios Postales (Postal Service)
Tunon, Gilberto	Instituto Nacional de Formacion Professional (INAFORP) (Director National Institute for Vocational Training)
Nunez, Aminta	Direccion Nacional de Patrimonio Historico (Office of Historic Heritage)
del Rosario, Armando	Direccion Nacional de Patrimonio Historico (Office of Historic Heritage)
Lam, Ubaldo E	Direccion Nacional de Proteccion Civil (Office of Civil Protection)
Justiniani, Modesto	Direccion Nacional de Registro Publico (Office of Public Registry)
de Lopez, Mayra	Direccion Nacional de Registro Publico (Office of Public Registry)
Perez Silva, Juan Gabriel	Ferrocarril Nacional de Panama (National Railroad)
Cardona Mas, Antonio	Hipodromo Presidente Remon (Race Tracks)
Orillac, Carlos, Jr	Instituto de Acueductos Y Alcantarilla dos Nacionales (IDAAN) (Institute for Aquaducts and Sewers)
Cedeno, Jorge E	Instituto de Acueductos Y Alcantarilla dos Nacionales (IDAAN) (Institute for Aquaducts and Sewers)
Noriega, Tomas	Instituto de Investigacion Agropecuaria (IDIAP) (Institute for Agricultural Research)
Colamarco, Benjamin	Instituto para la Formacion y Aprovechamiento de Recursos Humanos (IFARHU) (Institute for Development of Human Resources)
Seona, Rosa Raquel	Instituto para la Formacion y Aprovechamiento de Recursos Humanos (IFARHU) (Institute for Development of Human Resources)
Castrellon, Rafael	Instituto de Mercadeo Agropecuario (IMA) (Institute for Agricultural Marketing)
Franco, Jorge E	Instituto de Mercadeo Agropecuario (IMA) (Institute for Agricultural Marketing)
Pitti Serano, Mario Luis	Instituto Nacional de Cultura (INAC) (Institute for Culture)
Modesto Jaen, Angel	Instituto Nacional de Deportes (INDE) (Institute for Sports)
Carrion, Sara S	Instituto Nacional de Deportes (INDE) (Institute for Sports)
Montenegro, Cesar	Instituto Nacional de Recursos Naturales Renovables (INRENARE) (Institute for Renewable Natural Resources)

Name	Agency
Ramirez, Carlos	Instituto Nacional de Recursos Naturales Renovables (INRENARE) (Institute for Renewable Natural Resources)
Blanco, Luis E	Instituto Nacional de Telecommunicaciones (INTEL) (National Telecommunication Institute)
Arosemena, Pedro J	Instituto Nacional de Telecommunicaciones (INTEL) (National Telecommunication Institute)
Dominguez, Bernardo	Instituto Panamena de Turisano (IPAT) (Institute for Tourism)
Arango, Mayra	Instituto Panamena de Turisano (IPAT) (Institute for Tourism)
Plicat, Luis Carlos	Instituto Panamena de Turisano (IPAT) (Institute for Tourism)
Barletta, Luis	Instituto Panamena de Comercio Exterior (IPCE) (Institute for Foreign Commerce)
Ortega Vieto, Rubin D	Instituto Panamena de Comercio Exterior (IPCE) (Institute for Foreign Commerce)
Lay, Victor	Instituto Panamena de Comercio Exterior (IPCE) (Institute for Foreign Commerce)
de Ortiz, Elvia Miranda	Instituto Panameno de Rehabilitacion Especial (IPHE) (Institute for Special Rehabilitation)
de Diaz, Josefina	Instituto Panameno de Rehabilitacion Especial (IPHE) (Institute for Special Rehabilitation)
Herrera, Ovigildo	Instituto de Recursos Hidraulicos y Electrificacion (IRHE) (Institute for Electric Power)
Lara, Dagoberto	Instituto de Seguro Agropecuario (Institute for Agricultural Insurance)
Prado, Magdaleno Javier	Instituto de Seguro Agropecuario (Institute for Agricultural Insurance)
Abrego, Jorge	Junta Nacional de Censura (National Censorship Board)
Villa de Flores, Ana	Loteria Nacional de Beneficencia (National Lottery)
de Martinez, Lidia	Loteria Nacional de Beneficencia (National Lottery)
de Castillo, Belgica	Migracion y Naturalizacion (Office for Immigration and Naturalization)
Cerrud, Diomedes	Migracion y Naturalizacion (Office for Immigration and Naturalization)
Estrada Carlos	Oficina de Regulacion de Precios (Price Control Office)
Sanjur, Olmedo	Procurador General de la Administracion (Solicitor General)
Barsallo, Jose Fidel	Region Metropolitana de Salud (Metropolitan Region of Health)
Castro, Nils	Sistema Nacional de Informacion (SNI) (National Information System)
Mirones, Victor	Sistema Nacional de Informacion (SNI) (National Information System)
Vargas, Hugo	Superintendencia de Seguros y Reaseguros (MICI) (Office for Insurance and Reinsurance)
Rodriguez de Arazuz, Antonia	Tribunal Superior de Trabajo (Superior Labor Court)
Fuentes, Pedro J	Tribunal Superior de Trabajo (Superior Labor Court)
Troyano, Jose A	Tribunal Tutelarde Menoces (Juvenile Court)
Ademas, Abdiel	Universidad de Panama (University of Panama)
Remon, Veyra	Comite Ejectivo, Junta Directiva de la Zona Libre de Colon (Executive Committee of the Board of Directors of the Colon Free Zone)
Elter, Ramona	Comite Ejectivo, Junta Directiva de la Zona Libre de Colon (Executive Committee of the Board of Directors of the Colon Free Zone)
Waked, Ahmed	Comite Ejectivo, Junta Directiva de la Zona Libre de Colon (Executive Committee of the Board of Directors of the Colon Free Zone)
Duque, Carlos	Comite Ejectivo, Junta Directiva de la Zona Libre de Colon (Executive Committee of the Board of Directors of the Colon Free Zone)
Chocron, Gaston	Comite Ejectivo, Junta Directiva de la Zona Libre de Colon (Executive Committee of the Board of Directors of the Colon Free Zone)
Kitras, Constantino	Comite Ejectivo, Junta Directiva de la Zona Libre de Colon (Executive Committee of the Board of Directors of the Colon Free Zone)

II. Persons and Organizations in the Private Sector

[Reserved]

Dated: August 17, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 24, 1989.

Michael L. Williams,

Acting Assistant Secretary (Enforcement).

[FR Doc. 89-20755 Filed 8-30-89; 12:29 pm]

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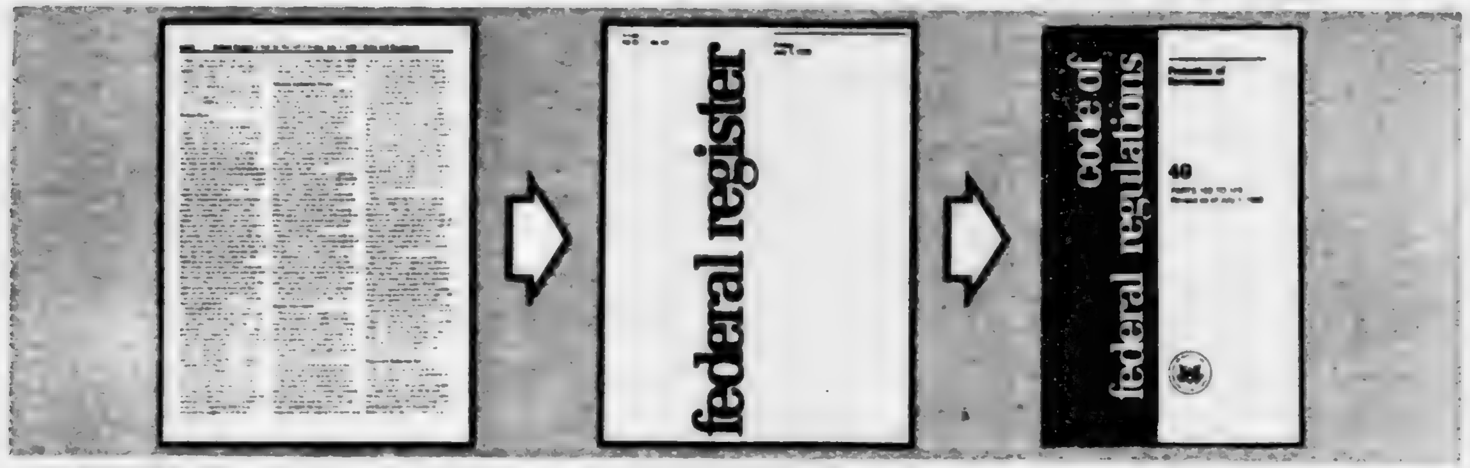

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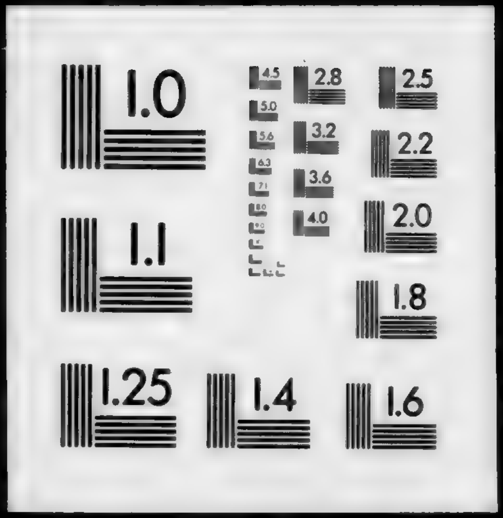
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Rules and Regulations

Federal Register
Vol. 54, No. 169
Friday, September 1, 1989

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 210a

[INS No. 1201-89]

RIN 1115-AB05

Admission or Adjustment of Status of Replenishment Agricultural Workers

AGENCY: Immigration and Naturalization Service; Justice.

ACTION: Interim rule with request for comments and extension of comment date.

SUMMARY: This interim rule amends portions of the existing Part 210a of 8 CFR and sets forth the criteria and procedures to be used to register aliens as a condition precedent to admission or adjustment of the status of replenishment agricultural workers (RAW) for temporary residence under this section. This interim rule also sets forth procedures for expedited interviews of aliens, selected at random, to file petitions for RAW status early in fiscal year 1990. This rule is necessary to ensure that there is a sufficient and timely supply of labor to harvest perishable crops in the United States. The comment date on the interim rule published earlier on this subject is also extended.

DATES: Effective date: This rule is effective September 1, 1989. Comments on this interim rule and the previous interim rule published at 54 FR 29875 (July 17, 1989) must be received on or before October 2, 1989.

ADDRESSES: Written comments should be mailed in triplicate to the deputy Assistant Commissioner, Special Agricultural Worker Programs (SAW), Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, or delivered to room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Worker Programs (SAW), 202-786-3658.

SUPPLEMENTARY INFORMATION: On July 17, 1989, an interim rule with request for comments was published in the Federal Register at 54 FR 29875. This enabled the Service to take action to implement the RAW program while affording the public an opportunity to provide further comment on changes which were incorporated into the interim rule. The comment period expired on August 16, 1989. The Service received 11 comments, representing the views of employer and farmworker advocacy organizations, members of Congress, and individuals.

The Service is hereby amending the July 17, 1989 interim final rule in response to comments received and to clarify certain provisions which pertain only to policies and procedures in effect during the registration period. The reason for this procedure is to promptly make significant changes to the registration process which begins September 1, 1989, while allowing more time for the Service to consider other suggested changes and for additional public comment.

Comments Received

Disqualification for Illegal Entry After November 30, 1988

One commentor stated that by eliminating anyone who has entered the United States after November 30, 1988, we are creating many hardships and proposed a more current illegal entry cut-off date. Another commentor opposes the change in the cut-off date from November 6, 1986 to November 30, 1988 since any attempt to allow an alien who entered after the earlier date to file for RAW status distorts the Congressional intent to limit those eligible for amnesty as part of the overall scheme to stop illegal immigration. The Service will not change this provision. The November 30, 1988 cut off date was proposed to coincide with the deadline for filing an application as a Special Agricultural Worker (SAW) and the institution of employer sanctions on agricultural employers and is a reasonable date based on the intent of IRCA.

Priority Consideration

One commentor stated that priority consideration should not be given to registrants who are currently in the United States since this provision rewards aliens who are illegally in the United States and punishes those aliens who have complied with the law and returned home. Some commentors recommended that registration of aliens overseas be conducted only in the event there are not sufficient registrants living in the United States. Other commentors supported the existing regulations. The Service believes that if overseas registration were not concurrent with registration in the United States, some aliens might seek to enter the United States illegally solely to register. This provision will not be changed.

Family Preference

Section 210a.2(c)(1) provides preference in selection to immediate family members of aliens who have filed an application under IRCA which has been approved. Many commentors stated that since there are significant numbers of applications filed under sections 210 and 245A of IRCA which have not been decided by the Service, it would be fairer if preference in selection was extended to registrants whose relatives' applications were still pending a decision. The Service has adopted this recommendation and has amended § 210a.2(c)(1) and related §§ 210a.1(d) and 210a.7(c) accordingly. The petition of a registrant selected on this basis will be processed, but a final decision will not be made until the relative's IRCA application is adjudicated.

Bilingual Forms

One commentor noting the prohibitive cost of printing forms and instructions in many languages suggested that they be printed only in English, reasoning that printing forms in only English and Spanish unfairly discriminates against other applicants. During the SAW program, 84% of all applications were received from Spanish speaking applicants. While the Service recognizes it cannot print forms in all languages, it is reasonable to provide instructions in the primary language of a larger portion of the expected RAW registrants. The instruction booklets for both the registration and petition forms will be in

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both English and Spanish. The forms themselves will be in English.

Minimum Age for Registration

It has been pointed out that the July 17 interim final rule was not clear as to whether persons who did not meet the minimum eligibility criteria because they were too young were returned to the pool of registrants or held in suspense until their birth date. Section 210a.3(a) has been clarified on this point. Registrants must be eighteen (18) years of age to be selected. Registrants who are under age must remain in the pool of registrants until they have turned eighteen (18) years of age. Another commentor supports the Service's decision to maintain the minimum age of eligible workers at 18 since it will ensure the protection of minors.

Registration Process

Several commentors suggested that because of the potentially large numbers of registrants and the uncertainty about a shortage number, there be a staggered registration process to avoid the frustration of registrants who might never be selected. The Service has no way to know how many people will register or what the shortage number will be in this and future years. In the proposed rule of March 3, 1989 the Service had proposed a registration process for fiscal year 1990 only with varying eligibility criteria, based on the size of the shortage number. The Service was persuaded by commentors who urged that a single registration be held for all eligible registrants. Furthermore, conducting more than one registration involves additional costs and expenditure of time and resources that would not otherwise be necessary. This provision will not change.

One commenter agreed that there should be no appeal in the registration process.

Registration Period

Section 210a.3(b) provides for a registration to be held during the period beginning September 1, 1989 and ending October 31, 1989. Most commentors are concerned that the sixty (60) day registration period does not allow enough time for aliens to register, especially since the opportunity to petition for RAW status during the life of the program is limited to aliens who register during this period. The Service agrees and wishes to afford aliens a longer period of time in which to register. Accordingly, the Service will extend the registration period for an additional month to end on November 30, 1989.

Overseas Registration by Qualified Designated Entities (QDE's)

Two commentors criticized the process of using QDE's for overseas registration, believing it discriminates against non-Mexican applicants, since there is no QDE in any other country. As an alternative, commentors propose that registration be conducted through United States Consulates. There is at present no QDE operating outside the United States. Several QDE's have indicated interest in operating in different countries and at least one is planning to locate in Mexico and one in Jamaica. It is not necessary for a QDE to have a physical presence in a country since it can distribute registration cards by mail. Also, requests for registration cards from aliens overseas received by the Service will be referred to QDE's. The Service continues to believe that overseas registration through QDE's will offer a fair opportunity for eligible aliens to register.

One commentor brought to the Service's attention that although the preamble to the July 17, 1989, interim rule stated that aliens residing outside the United States could obtain registration forms and information only through participating QDEs, the body of the regulation did not provide this authority. Section 210a.3(c) has been modified to add this provision.

Several QDEs expressed concern for the return of registration cards to the Service because of problems with mail service in some countries and asked that the Service consider alternative methods for return of registration cards by participating QDEs conducting overseas registration. Section 210a.3(d)(1) has been amended to permit modification of these provisions on a case by case basis upon approval of a written request submitted to the Service by a QDE.

Obtaining I–807 Registration Cards

Several commentors urged the Service to make registration cards available through as many outlets as possible, including QDE's and the post office. The Service had adopted this suggestion and will make cards available through nonparticipating QDE's, farmworker and grower organizations, non-profit organizations and public agencies.

Registration Fee

One commentor supports the requirement of a registration fee and urges an increase in the fee to cover the cost of the new toll-free services that the INS will provide. Since the fee was proposed to cover the costs of registration, including the toll-free services, the fee will remain the same.

Expedited Filing of Petition for RAW Status

Section 210a.5(i). The expedited petition process requires that, upon receipt of the invitation to petition, selected registrants must appear for interview with the petition fee and certain documents immediately and must file the remainder of the petition package within 60 days. Commentors were concerned that the expedited procedure described in the July 17 interim rule did not compel the prompt appearance of an alien and might, therefore, be ineffective in achieving its stated purpose of expediting issuance of employment authorization to apparently eligible petitioners. The Service agrees and has re-written this provision to require that expedited petitioners must, like all other petitioners, return a completed petition to the Service within 60 days of receiving the invitation to petition. The invitation to petition will advise the alien to appear at a Service office as soon as possible with the necessary documents and $175.00 petition fee. If the expedited petitioner fails to appear for interview within 60 days, the invitation to petition is withdrawn and another registrant will be selected and invited to petition. If the interview is conducted and fee taken within the 60 days, but the petitioner fails to complete the petition within that period, a Notice of Intent to Deny will be issued.

The Service wishes to note that the Statute requires the adjustment or admission of RAWs during the fiscal year for which a shortage number is established. Because of this, all processing on all petitions, including appeals, must be completed during that fiscal year. It is essential, therefore, for the Service to prescribe reasonable filing deadlines for petitions and related materials.

Confidentiality

Section 201a.6(g). In the confidentiality provision, as written, information in RAW records may be used to prosecute or deport a person who is the subject of an outstanding arrest warrant. By outstanding arrest warrant, the Service means that a warrant for the arrest of a person has been issued by a court of law in a criminal case. Therefore, the interim rule has been clarified to reflect that records related to a RAW may be released if the person is the subject of an outstanding criminal arrest warrant.

One commentor recommended that certain alien farmworkers presently incarcerated should be released and allowed to apply under section 210a if they wish. The Service wishes to note that all eligible aliens, including those presently in custody can register for RAW status.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

The information collection requirements contained in this rule have been cleared by Office of Management and Budget under the provisions of the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 210a

Aliens, Temporary resident status, Reporting and recordkeeping requirements, Permanent resident status.

Accordingly, part 210a of chapter I of title 8 of the Code of Federal Regulations is amended to read as follows:

PART 210A—[AMENDED]

1. The authority citation for part 210a continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

§ 210a.1 [Amended]

2. In § 210a.1, paragraph (d) is amended by removing the term "which has been approved" where it appears at the end of the paragraph.

§ 210a.2 [Amended]

3. In § 210a.2, paragraph (c)(1) is amended to add the phrase "or is pending" immediately following the word "approved" where it appears at the end of the first sentence.

§ 210a.3 [Amended]

4. In § 210a.3, paragraph (a) is amended by removing the word "invited" from the last sentence and inserting in its place, the word "selected".

5. In § 210a.3, paragraph (b) is amended by removing the date "October 31, 1989" and inserting in its place, the date "November 30, 1989".

6. In § 210a.3, paragraph (c) is amended to add two new sentences at the end of the paragraph to read as follows: "Persons residing outside the United States can obtain a registration card only from a participating QDE. Non-participating QDEs, farmworker and grower organizations, non-profit community groups and public agencies may also receive cards for distribution to aliens within the United States upon approval of a request to the Regional Commissioner of the Service having jurisdiction over the area of the proposed distribution."

7. In § 210a.3, paragraph (d)(1) is amended to add two new sentences at the end of the paragraph to read as follows: "Participating QDEs operating overseas may be exempted from the requirement to use regular mail when forwarding cards of aliens registered overseas. An alternate means of delivery may be approved by the Service upon written request from the QDE."

§ 210a.5 [Revised]

8. In § 210a.5, paragraph (i) (1), (3), (4), (5), and (6) are revised to read as follows:

§ 210a.5 Petition for temporary resident status.

* * * * *

(i) * * *

(1) The Service will mail a petition package to the address supplied on the registration form, accompanied by a letter which invites the registrant to petition and to appear as soon as possible at any Service office listed on an attachment to the letter. The registrant must appear with the invitation letter, completed I–905 petition, two ADIT photographs, correct fee, proof of identity, age, and proof of family relationship to an IRCA legalized alien, if claimed at registration.

* * * * *

(3) The petitioner must return the fingerprint card, 1 ADIT photograph, any waiver(s) of ground(s) of excludability required, and the results of the required medical examination on Form I–693, to the Service in the envelope provided with the petition package within sixty (60) days from the date of the invitation to petition. Petition materials received by the Service after sixty (60) days will be returned to the petitioner unprocessed.

(4) If all required documentation and evidence is provided to the Service within the sixty (60) day period beginning with the date of the invitation to petition, the petitioner will be informed in writing of the Service's decision regarding the petition. If the petition is approved, the petitioner will be instructed to return to a Service office to exchange Form I–688A for a Temporary Resident Card (Form I–688). If the petition is denied, the petitioner will be informed in writing of his or her appeal rights and procedures to be followed in accordance with § 210a.7(g) of this part.

(5) An alien who fails to appear for the interview within 60 days of the date of the invitation to petition will lose this opportunity to petition, but may be selected at random again. Petition materials received by the Service after sixty (60) days will be returned to the petitioner unprocessed.

(6) Petitioners who timely file their petitions, but who fail to return requested documentation within the sixty (60) days allowed, will be issued a Notice of Intent to Deny for failure to pursue their petition for temporary residence.

§ 210a.6 [Amended]

9. In § 210a.6, paragraph (g) is amended by inserting the word "criminal" after the word "outstanding" and before the word "arrest".

§ 210a.7 [Amended]

10. In § 210a.7, paragraph (c), is amended in the first sentence by inserting the phrase "or a claim to IRCA family preference is made and the relative's IRCA application is pending," after the word "processing," and before the word "may".

Dated: August 25, 1989.

James L. Buck,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 89-20573 Filed 8-31-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-15-AD; Amdt. 39-6312]

Airworthiness Directives; Beech 65, 70, 80, 90, 99, 100, 200, 300 and 1900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises and reissues Airworthiness Directive (AD) 87-22-01, Amendment 39-5748 applicable to certain Beech 65, 70, 80, 90, 99, 100, 200, 300, and 1900 Series airplanes, which requires inspection of the nose landing gear fork assembly. The FAA has determined that an improved replacement part is available. This revision deletes these inspections if this new, improved part is installed on the airplane.

EFFECTIVE DATE: September 30, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beech Service Bulletin No. 2102, Revision I, dated April 1987, Revision II, dated April 1988, or Revision III, dated Juna 1989, applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Services, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE–120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: AD 87–22–01, Amendment 39–5748 (52 FR 45449; November 30, 1987), requires repetitive inspections for fatigue cracks in the nose landing gear fork on certain Beech 65, 70, 80, 90, 99, 100, 200, 300, and 1900 Series airplanes. Forks of welded tubular construction have been found cracked beyond acceptable limits and the replacement parts have also been susceptible to cracking. An improved fork, of forged solid construction, has been developed by Beech and has been satisfactorily fatigue tested. The improved fork is less susceptible to fatigue cracking than the welded tubular fork and the improved fork is currently being installed on production airplanes. This AD revision permits the installation of the improved fork and also eliminates the required recurring inspections if the improved fork is installed. Since the condition addressed by AD 87–22–01 is likely to exist in Beech 65, 70, 80, 90, 99, 100, 200, 300, and 1900 Series airplanes not incorporating the new design nose gear fork, the revision retains the existing requirement for repetitive inspection for cracks in the nose gear fork of all affected airplanes which do not have the new design fork installed. Without this revision to the AD, numerous grants of equivalent means of compliance would continue to be necessary, at expense to the FAA and public alike. Therefore, the FAA has determined that this revision should immediately be made available to the public. Also, the improved part enhances safety, compared to repetitive inspections of the old style fork. In view of the above, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days. The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of 14 CFR part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising and reissuing AD 87–22–01, Amendment 39–5748 (52 FR 45449; November 30, 1987) to read as follows:

Beech: Applies to Models 65, 65–80, A65, A65–8200, 70, 65–A80, 65–A80–8800, 65–B80, 65–88, 65–90, 65–A90, 65–A90–1, 65–A90–2, 65–A90–3, 65–A90–4 and B90 (all serial numbers (S/N)); C90 and C90A (S/N LJ–502 through LJ–1190); E90, H90, F90, 100, A100, B100, 99, 99A, A99A, B99 and C99 (all S/N); 200 and B200 (S/N BB–2 through BB–1314); 200C, 200CT, 200T, A200, A200C, A200CT, B200C, B200CT and B200T (all S/N); 300 (S/N FA–1 through FA–166 and FF–1 through FF–19); 1900 (all S/N); 1900C (S/N UB–1 through UB–74 and UC–1 through UC–78) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the nose landing gear (NLG) fork due to undetected fatigue cracking, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS for airplanes in the 65 Series, 70 Series, 80 Series, 99 Series and 1900 Series, and 150 hours TIS for airplanes in the 90 Series, 100 Series, 200 Series and 300 Series, inspect the NLG fork using fluorescent penetrant method in accordance with the instructions in part II of Beech Service Bulletin No. 2102, revision I, dated May 1987, or Revision II dated April 1988, or revision III, dated June 1989.

Note 1: Inspection for slippage of the NLG fork collar on the strut tube per part I of the Service Bulletin is recommended but not required by this AD.

(1) If no cracks are found, the airplane may be returned to service.

(2) If a crack is detected at the tip of the weld, is not more than 0.75 inches in length, and does not branch out into the unwelded tube wall (See figure 1 or figure 2 as applicable), thereafter at intervals not to exceed 25 hours TIS, inspect the NLG fork per paragraph (a) above until replacement with a serviceable part. The replacement part is immediately subject to the conditions of this AD, except as provided by paragraph (b), below.

(3) If a crack is detected that exceeds the limits of paragraph (a)(2), prior to further flight replace the NLG fork with a serviceable part. The replacement part is immediately subject to the conditions of this AD, except as provided by paragraph (b) below.

(b) The repetitive inspections of this AD are no longer required if an improved nose landing gear fork Kit No. 101–830–1S (except 1900 Series) or Kit No. 144–8015–1S (for 1900 Series) is installed.

(c) Airplanes may be flown in accordance with FAR 21.187 to a location where this AD can be accomplished.

(d) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone 316–946–4400.

Note 2: The request should be forwarded through an FAA Maintenance Inspector, who

may add comments and then send it to the Manager, Wichita Aircraft Certification Office, at the above address. All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas, 67201–0085; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment revises AD 87–22–01, Amendment 39–5748.

This amendment becomes effective on September 30, 1989.

Issued in Kansas City, Missouri, on August 23, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

BILLING CODE 4910-13-M

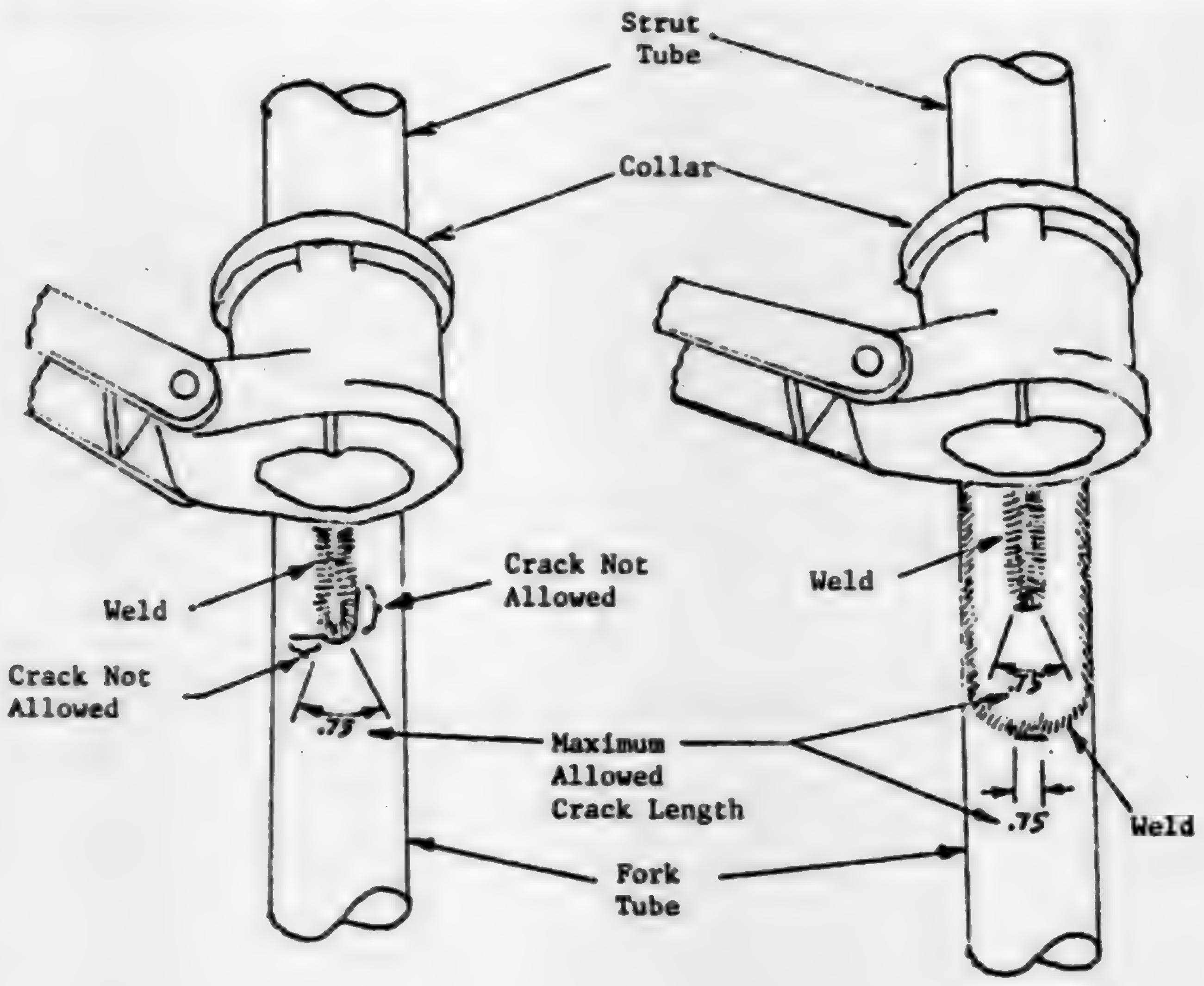

FIGURE 1 FIGURE 2

Left Side Views of Nosegear Fork Assembly
Two Original Configurations Affected by this AD

[FR Doc. 89-20610 Filed 8-31-89; 8:45 am]
BILLING CODE 4910-13-C

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14 CFR Part 39

[Docket No. 89-CE-09-AD; Amdt. 39-6316]

Airworthiness Directives; Beech 200 and 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Beech 200 and 300 Series airplanes, which supersedes AD 87-17-05R1, Amendment No. 39-5847, and mandates repetitive inspections and repair as required of wing fuel bay upper skin panels. The FAA has determined that the repairs and replacement panels specified in AD 87-17-05R1 are ineffective. The actions adopted herein will preclude structural weakening of these panels due to corrosion.

DATES: *Effective Date:* October 3, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beech Service Bulletin No. 2040, Rev II, dated December, 1988, and Beech Service Instructions No. C-12-0094, Rev II, dated January, 1989, applicable to this AD, may be obtained from the Beech Aircraft Corporation, Commercial Services, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 681-7111. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-09-AD, Room 1558, 601 East 12 Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE-120W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring inspection of the wing fuel bay upper skin panels for debonding, and repair or replacement as necessary on certain Beech 200 and 300 Series airplanes was published in the **Federal Register** on April 19, 1989 (54 FR 15772). The proposal resulted from the determination that the actions specified in AD 87-17-05R1 are inadequate. AD 87-17-01R1, Amendment No. 39-5847, was published in the **Federal Register** on February 17, 1988 (53 FR 4604). AD 87-17-05R1 requires repetitive inspections and repair if necessary, of a debond condition of the wing upper skin panels in the area bounded by the fuselage, nacelle, front spar, and rear spar on certain Beech 200 and 300 series airplanes. The area in question is a one piece, all aluminum, bonded honeycomb sandwich, which serves as the fuel bay upper cover as well as a load carrying structural member. The debonding results when moisture leaks into the honeycomb via blind fasteners (rivets) in the outer face sheet of the panel. The moisture in turn, causes corrosion to form inside the honeycomb, which attacks the face sheet bonds. Without corrective maintenance, the debonding can progress to a point where safe flight is jeopardized. If no debonding is detected, AD 87-17-05R1 requires sealing of all blind fasteners (rivets) per Beech Service Bulletin No. 2040, Rev I (or Service Instructions No. C-12-0094, Rev I, for military airplanes) which involves an external application of a sealant. If debonding is detected, the AD specifies repair by Beech Kit No. 101-4032-1S or -3S, after which the inspections continue and as an alternative, the debonded panel may be replaced by a new panel, part number (P/N) 101-120108-603 or -604, after which the inspections are no longer required.

In the 16 months since AD 87-17-05R1 was issued, the FAA has determined that the present method of sealing is not always effective in keeping moisture out of the honeycomb core, and that Beech Kits No. 101-4032-1S and -3S have been discontinued by the manufacturer. The FAA has also been advised that at least seven of the replacement panels, P/N 101-120108-603 or -604, have been debonded in service. As a result, Beech revised the service information to provide an improved method, Kit No. 101-4048-1S, for sealing the blind rivets, and expanded the inspections to include the new replacement panels.

Temporary Repair Procedure No. SRV.001 is also described in Revision II to the service bulletin. This repair method is specified for use for up to one year from the time of modification in cases where immediate panel replacement is not feasible or desirable. However, a panel which has been previously rebonded using Kit No. 101-4032-1S or -3S may not be repaired again using Kit No. 101-4048-1S. Partial replacement panels, which may be used in lieu of the complete panels, P/N 101-120108-603 or -604, are also referenced in the revised service information as follows:

Description	Number	Wing
Kit	01-4045-1S	Left
Repair procedure	SRV.002	Left
Repair procedure	SRV.018	Right

Regardless of whether a debonded panel is replaced or repaired, the manufacturer recommends that the repetitive inspections continue. In view of the above, the FAA has determined that AD 87-17-05R1 is no longer adequate and should be superseded.

Since the condition described is likely to exist or develop in other Beech 200 and 300 series airplanes of the same design, the FAA proposed a superseding AD which would require repetitive inspections and, if necessary, temporary repair or replacement of all wing fuel bay upper skin panels in accordance with Beech Service Bulletin No. 2040, Rev II, dated December, 1988, or Beech Service Instructions No. C-12-0094, Rev II, dated January, 1989, as appropriate. Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change, except for minor editorial changes and corrections. The FAA has determined that this regulation involves 995 airplanes at an approximate initial and annual cost of $416 and $234, respectively, for each airplane, or a total fleet cost of $415,000 initially plus $233,000 annually. Warranty reimbursement is offered by Beech for a limited time for the cost of rivet sealing (Kit 101-4048-1S) and any repairs or panel replacements needed. The total cost of complying with the AD is less than $100 million, the threshold amount for a significant rule. The cost of compliance with the AD is so small that the expense of compliance will not be a significant impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this AD does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Regional Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of 14 CFR part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 87–17–05R1, Amendment 39–5847, with the following new AD:

Beech: Applies to Models 200, B200, 200C, B200C, 200CT, B200CT, 200T, B200T, A200, A200C, A200CT, and 300 (all serial numbers) airplanes equipped with wing fuel bay upper skin panels made with bonded (honeycomb sandwich) construction, certificated in any category.

Compliance: Required as indicated unless previously accomplished.

To assure the continued structural integrity of the wing fuel bay upper skin panels, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, check the airplane records or inspect the wing fuel bay upper skin panels (hereafter called "skin panels") for possible bonded (honeycomb sandwich) construction. Airplanes in the serial number range of BB–2 thru BB–613 were manufactured with a skin-and-stringer construction and are not affected by this AD unless bonded wing fuel bay upper skin panels were installed after manufacture. If the airplane has bonded skin panels, accomplish the following in accordance with Beech Service Bulletin No. 2040, Rev II, dated December, 1988 (for civil registered airplanes), or Beech Service Instructions No. C–12–0094, Rev II, dated January, 1989 (for military airplanes), as applicable:

(1) If the skin panels are bonded and have blind rivets as shown in the shaded portions of Fig. 1 in the service bulletin, inspect the skin panels for debonding within the next 150 hours time-in-service (TIS) or 6 calendar months, whichever occurs first.

(i) If the skin panel has been previously repaired, per Beech Kit No. 101–4032–1S or 101–4032–3S,

(a) and there is debonding, prior to further flight remove and replace the skin panel and reinspect for debonding at 18 month intervals thereafter.

(b) and there is no debonding, prior to further flight reseal the blind rivets per instructions in Beech Kit 101–4048–1S and reinspect the skin panel for debonding within 6 calendar months, again within another 12 calendar months, and at 18 calendar month intervals thereafter.

(ii) If the skin panel has not been previously repaired,

(a) and there is debonding, either:

(1) prior to further flight remove and replace the skin panel and reinspect for debonding at 18 calendar month intervals thereafter, or

(2) prior to further flight install a temporary repair per Beech Repair Procedure No. SRV.001 which can be used for no longer than 12 calendar months from the time of modification, at which time remove the temporarily repaired panel and replace with a serviceable panel. Reinspect for debonding at 18 calendar month intervals thereafter.

(b) and there is no debonding, prior to further flight reseal the blind rivets and reinspect the skin panel for debonding within 6 calendar months, again within another 12 calendar months, and at 18 calendar month intervals thereafter.

(2) If the skin panels are bonded and do not have blind rivets as shown in the shaded portion of Fig. 1 in the service bulletin, inspect for debonding within the next 600 hours TIS or 18 calendar months, whichever occurs first.

Note 1: The following airplanes were manufactured with bonded skin panels without rivets: Models B200 (above serial number BB–1238), B200C (above serial numbers BL–127), B200CT (above serial numbers BN–4), B200T (above serial numbers BT–30), 300 (above serial numbers FA–81 and all FF–serial numbers).

(i) If there is debonding, either:

(a) prior to further flight remove and replace the skin panel and reinspect for debonding at 18 calendar month intervals thereafter, or

(b) prior to further flight install a temporary repair per Beech Repair Procedure No. SRV.001, which can be used for no longer than 12 calendar months from the time of modification, at which time remove the temporarily repaired panel and replace with a serviceable panel. Reinspect for debonding at 18 calendar month intervals thereafter.

(ii) If there is no debonding, reinspect for debonding at 18 calendar month intervals thereafter.

(3) The following are approved replacement skin panels:

Note 2: These panels are bonded and do not have rivets.

(i) Complete replacement panels are Part Nos. 101–120108–603 (L.H.) and 101–120108–004 (R.H.).

(ii) Kit No. 101–4045–1S and Repair Procedure No. SRV.002 each define a partial replacement panel (L.H. only).

(iii) Repair Procedure No. SRV.018 defines a partial replacement panel (R.H. only).

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(c) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4400.

Note 3: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office, at the above address.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, Wichita, Kansas 67201–0085; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 87–17–05R1, Amendment 39–5847.

This amendment becomes effective on October 3, 1989.

Issued in Kansas City, Missouri, on August 24, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–20612 Filed 8–31–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–164–AD; Amdt. 39–6315]

Airworthiness Directives: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes equipped with a cabin partition wall-mounted flight attendant seat, which requires replacement of the partition upper mounting bolts. This amendment is prompted by reports of loose or missing upper mounting bolts, which are required to structurally secure the partition. This condition, if not corrected, could result in the partition falling over, injuring the flight attendant, and/or blocking an emergency exit and preventing its use during an emergency evacuation.

DATE EFFECTIVE: September 19, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Pliny Brestel, Airframe Branch, ANM–120S; telephone (206) 431–1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seatle, Washington 98168.

SUPPLEMENTARY INFORMATION: The manufacturer advised the FAA of an incident involving a Model 767 series airplane in which a cabin partition with a wall-mounted flight attendant seat, which was occupied, came loose at the upper attachment and fell over. The flight attendant was not injured. Investigation revealed that three of the four upper mounting bolts were missing and the fourth bolt had stripped out. Further, the bolts were too short to engage the self-locking feature of the mating hardware. The upper attachment requires the presence of these bolts to structurally secure the partition. Failure of the bolts to hold the petition could result in injury to a flight attendant, and/or blocking of an emergency exit.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–25A0135, dated July 6, 1989, which describes the procedures for the replacement of the upper mounting bolts in cabin partitions having a wall-mounted flight attendant seat.

Since this condition is likely to exist on other airplanes of this same type design, this AD requires replacement of the upper mounting bolts in cabin partitions having a wall-mounted flight attendant seat, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, as listed in Boeing Alert Service Bulletin 767–25A0135, dated July 6, 1989, certificated in any category. Compliance required within 30 days after the effective date of this AD, unless previously accomplished.

To ensure structural integrity of cabin partitions with a wall-mounted flight attendant seat, accomplish the following:

A. Replace the upper mounting bolts of cabin partitions, in accordance with Boeing Alert Service Bulletin 767–25A0135, dated July 6, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 23, 1989.

This amendment becomes effective on September 19, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–20613 Filed 8–31–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–153–AD; Amdt. 39–6314]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–8–100 and –300 series airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to de Havilland Model DHC–8–100 series airplanes, which currently requires an inspection of the fire bottle squib wiring on the engine fire extinguishing system to determine proper installation, and correction of the installation, if necessary. That action was prompted by reports of the connectors on fire bottle squibs found incorrectly installed on airplanes in service. This condition, if not corrected, could result in a fire bottle being discharged into the wrong nacelle. This amendment expands the applicability of the existing AD to include additional airplanes, and requires the installation of a modification that will prevent displacement and improper connection of the wiring.

EFFECTIVE DATE: September 19, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garatt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the New York Aircraft Certification Office, Engine and Propeller Directorate, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Richard P. Fiesel, Propulsion Branch, New York Aircraft Certification Office, ANE–174, Engine and Propeller Directorate, 181 South Franklin Avenue, Room 202, Valley Stream New York 11581; telephone (516) 791–7421.

SUPPLEMENTARY INFORMATION: On February 28, 1989, the FAA issued telegraphic AD T89–05–51, applicable to de Havilland Model DHC–8–100 series airplanes, to require a one-time inspection of the fire bottle squib wiring on the engine fire extinguishing system to determine proper installation, and correction of the installation, if necessary. That action was prompted by reports of the connectors on fire bottle squibs found incorrectly installed on airplanes in service. This condition, if not corrected, could result in a fire bottle being discharged into the wrong nacelle.

Since issuance of that telegraphic AD, the FAA has received eight reports of connectors on the fire bottle squibs of the engine fire extinguishing system found incorrectly installed (cross connected). An additional report indicated that, during a wiring check conducted on apparently properly identified and installed fire extinguisher bottles, wires were found that had been mis-terminated within the connector.

De Havilland has developed a modification consisting of the installation of a lanyard between each fire extinguisher squib connector and adjacent structure to minimize the potential for displacement and prevent improper connection. De Havilland Service Bulletin 8–26–9, dated March 23, 1989, describes procedures for installation of this modification, Modification Number 8/1336, "Fire Protection—Fire Extinguisher Squib Electrical Connector Positioning." Transport Canada, which is the airworthiness authority for Canada, has issued an airworthiness directive requiring installation of this modification.

De Havilland has also issued Alert Service Bulletin A8–26–8, dated March 20, 1989, which describes procedures for an inspection to verify proper fire bottle squib wiring in the engine fire extinguishing system. This service bulletin clarifies the inspection procedures described in Alert Service Bulletin A8–26–7, dated February 20, 1989, which was referenced in the existing AD.

Additionally, since issuance of the telegraphic AD, the FAA has type certificated the de Havilland Model DHC–8–300 series airplane for operation in the United States. The design of the engine fire extinguishing system wiring on airplane Serial Numbers 001 through 149 of that model is similar to that of the Model DHC–8–100 series airplanes; therefore, those airplanes would be subject to the same unsafe condition addressed by the existing AD. Beginning with Serial Number 150, Model DHC–8–300 series airplanes were modified in production to include Modification Number 8/1336, described above. (Currently, there are no Model DHC–8–300 series airplanes registered in the United States.)

These airplane models are manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this situation is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes telegraphic AD T89–05–51 to require a wiring continuity check of the fire bottle squib wiring on all affected airplanes, regardless of connector identification, and correction of the installation, if necessary; expand the applicability to include Model DHC–8–300 series airplanes; and require installation of Modification Number 8/1336, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it it not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepered and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 countinues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding telegraphic AD T89–05–51, issued February 28, 1989, with the following new airworthiness directive:

Boeing of Canada, Ltd., de Havilland Division: Applies to Model DHC–8–100 series airplanes, and Model DHC–8–300 series airplanes, serial numbers 001 through 149, certificated in any category. Compliance required as indicated, unless previouly accomplished.

To ensure that the engine fire extinguishing system bottle squibs are connected to the proper actuating switch, accomplish the following:

A. Within the next 70 hours time-in-service after the effective date of this AD, perform an inspection to verify proper installation of the fire bottle squib wiring in the engine fire extinguishing system, in accordance with the Accomplishment Instructions of de Havilland Alert Service Bulletin A8–26–8, dated March 20, 1989. If the connector identification

sleeves are difficult to read or are damaged, or if it has not been confirmed that the installation is correct, prior to further flight, correct the wiring installation and verify proper wiring in accordance with the service bulletin.

Note: Airplanes on which this inspection and/or repair has previously been performed, as required by paragraphs A. and B. of Telegraphic AD T89–05–51, in accordance with Items 1 through 26 of de Havilland Alert Service Bulletin A8–26–7, dated February 24, 1989, are considered to have complied with the requirements of this paragraph.

B. Within the next 120 hours time-in-service or 30 days after the effective date of this AD, whichever occurs first, install de Havilland Modification Number 8/1336, "Fire Protection—Fire Extinguisher Squib Electrical Connector Positioning," in accordance with the Accomplishment Instructions of de Havilland Service Bulletin 8–26–9, dated March 23, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then sent it to the Manager, New York Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garatt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the New York Aircraft Certification Office, Engine and Propeller Directorate, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

The amendment supersedes Telegraphic AD T89–05–51, issued February 28, 1989.

This amendment becomes effective September 19, 1989.

Issued in Seattle, Washington, on August, 23, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89–20614 Filed 8–31–89; 8:45am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87–ASW–39; Amdt. 39–6313]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm GmbH (MBB) Model BO–105 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires inspection and repair or replacement, as necessary, of main rotor pitch links on MBB Model BO–105 series helicopters. This amendment is needed to clarify that the daily check of the main rotor pitch link control rods for binding in the bearings may be conducted by either a mechanic or a pilot.

DATES: *Effective Date:* September 28, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information (Alert Service Bulletin No. ASB–BO–105–10–103) may be obtained from the MBB Helicopter Corporation, P.O. Box 2349, West Chester, Pennsylvania 19380. These documents may also be examined at the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. John Varoli, Manager, Aircraft Certification Service Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone number 513.38.30; or Mr. J.H. Major, Rotorcraft Directorate, FAA, Rotorcraft Standards Staff, ASW–110, Fort Worth, Texas 76193–0111, telephone (817) 624–5117.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39–5795 (52 FR 46991; December 11, 1987), AD 87–26–02, which currently requires inspection of the main rotor pitch links for freedom of bearing operation and for cracks, and repair or replacement, as necessary, on MBB Model BO–105 series helicopters. Amendment 39–5795 does not expressly allow pilots to conduct the daily checks of the main rotor pitch links for binding in the bearings. That was not intended by the FAA in issuing the rule. Therefore, the FAA is amending Amendment 39–5795 to make it clear that pilots, as well as mechanics, may conduct the checks of the main rotor pitch links for binding as described in paragraph (a)(1) of AD 87–26–02 on MBB Model B–105 series helicopters. Individual operators have petitioned and received approval under paragraph (f) to allow pilots to conduct the checks. This change to the rule will permit other operators to exercise the same privilege.

Since this amendment provides a clarification only, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is clarifying in nature and imposes no further cost. Therefore, I certify that this action: (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

PART 39—AIRWORTHINESS DIRECTIVE

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of 14 CFR part 39 of the FAR as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 3154(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 30–5795 (52 FR 46991; December 11, 1987), AD 87–26–02, by revising paragraph (a)(1) to read as follows:

Messerschmitt-Bolkow-Blohm (MMB): Applies to Model BO–105 series helicopters, certificated in any category, equipped with main rotor blade rotating control rod ends, P/N's 105–13141.01 and 105–13142.01.

* * * * *

(a) * * *

(1) Check the bearings on each control rod by rotating the rod about its longitudinal axis by hand. This check may be conducted by the pilot and must be recorded in accordance with § 43.9.

Note: The pilot, when complying, must make appropriate entries and the record must be maintained per § 91.173 or § 135.439.

* * * * *

This amendment becomes effective September 26, 1989.

This amendment amends Amendment 39–5795 (52 FR 46991; December 11, 1987), AD 87–26–02.

Issued in Fort Worth, Texas, on August 22, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–20611 Filed 8–31–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–ANE–45; Amdt. 39–6275]

Airworthiness Directives; Pratt & Whitney Canada (PWC) PW115/118/118A and PW120/120A/121 Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain PW115/118/118A and PW120/120A/121 turboprop engines by individual telegrams. The AD establishes a reduced low cycle fatigue (LCF) life limit on certain high pressure turbine (HPT) components. The AD is needed to prevent LCF cracking of the affected components which could lead to an uncontained engine failure.

DATES: *Effective:* September 22, 1989, as to all persons except those persons to whom it was made immediately effective by telegraphic AD (TAD) No. T88–26–51, issued December 28, 1988, which contained this amendment.

Compliance: As indicated in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of September 22, 1989.

ADDRESSES: The applicable engine manufacturer's service bulletins (SB) may be obtained from Pratt & Whitney Canada, 1000 Marie Victorin, Longueuil, Quebec, Canada J4G 1A1, or may be examined at the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Diane M. Cook, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7082.

SUPPLEMENTARY INFORMATION: On December 28, 1988, TAD T88–26–51 was issued and made effective immediately to all known U.S. owners and operators of certain PW115/118/118A and PW120/120A/121 turboprop engines.

The TAD reduced the LCF life limit for the HPT front cover, Part Numbers (P/N's) 3035181 and 3104285–01; the HPT rear cover, P/N's 3035182 and 3104285–01; and the HPT disk, P/N 3035711, installed in certain PW115/118/118A and PW120/120A/121 turboprop engines. The FAA has determined that these HPT components accumulate fatigue damage at a faster rate than originally predicted.

An investigation of a cracked HPT disk revealed higher than predicted thermal stresses. Re-evaluation of the LCF life analysis with recalibrated cooling air data surrounding the HPT rotor indicated that engines incorporating the cooling air nozzle housing assembly (ANH), P/N 3106642–01, and the HPT stubshaft, P/N 3104413–01, have a lower cyclic life on certain HPT components than engines incorporating ANH, P/N 3106642–02, and HPT stubshaft, P/N 3104413–03. The allowable cyclic life on certain HPT components installed in engines incorporating ANH, P/N 3106642–01, and HPT stubshaft, P/N 3104413–01, must be reduced by a factor of one-third. The hourly life limit is unchanged. PWC SB 20002, Revision 4, dated November 21, 1988, has reduced the cyclic life of these HPT components installed in engines incorporating ANH, P/N 3106642–01, and the HPT stubshaft, P/N 3104413–01, by adjusting the flight count factor (FCF) from 1.0 to 1.5. However, when these HPT components are installed in an engine incorporating ANH, P/N 3106642–02, and the HPT stubshaft, P/N 3104413–03, in accordance with PWC SB 20133, dated September 14, 1987, the FCF is 1.0. For those HPT components which have accumulated cycles with both engine nozzle configurations, the new total accumulated cycles are determined by applying the appropriate FCF in accordance with the procedures defined in PWC SB 20002, Revision 4, dated November 21, 1988.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegrams, issued December 28, 1988, to all known U.S. owners and operators of certain PW115/118/118A, and PW120/120A/121 turboprop engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration (FAA) amends 14 CFR Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney Canada: Applies to Pratt & Whitney Canada (PWC) PW115/118/118A turboprop engines prior to Serial Number (S/N) PCE 115033, and PW120/120A/121 turboprop engines prior to S/N PCE 120174.

Compliance is required as indicated, unless already accomplished.

To prevent an uncontained engine failure resulting from low cycle fatigue failure of certain high pressure turbine (HPT) components, accomplish the following:

(a) Determine upon receipt of this AD the cyclic life accumulated on the HPT front cover, HPT rear cover, and HPT disk, in accordance with PWC Service Bulletin (SB) 20002, Revision 4, dated November 21, 1988, paragraph 2.D.(1), as follows:

(1) For engines which have not incorporated PWC SB 20133, dated September 14, 1987, calculate the total cyclic life accumulated using a flight count factor (FCF) of 1.5 in accordance with the formula found in PWC SB 20002, Revision 4, paragraph 2.D.(1)

(2) For engines which have not incorporated PWC SB 20133, dated September 14, 1987, calculate the total cyclic life accumulated prior to the incorporation of PWC SB 20133 using an FCF of 1.5, plus the total cycles accumulated after the incorporation of PWC SB 20133 using an FCF of 1.0, in accordance with the note in PWC SB 20002, Revision 4, paragraph 2.D.(1)

(b) Remove from service and replace with a serviceable part within 25 cycles in service (CIS) from the receipt of this AD, those HPT front covers, HPT rear covers, or HPT disks which have accumulated 14,975 CIS or greater upon recepit of this AD, as calculated in accordance with paragraph (a)(1) or (a)(2) of this AD.

(c) Remove from service and replace with a serviceable part at or prior to accumulating 15,000 CIS, those HPT front covers, HPT rear covers, or HPT disks which have accumulated less than 14,975 CIS upon receipt of this AD, as calculated in accordance with paragraph (a)(1) or (a)(2) of this AD.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustment to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The determination of the cyclic life accumulated on the HPT front cover, HPT rear cover, and HPT disk shall be accomplished in accordance with PWC SB 20002, Revision 4, dated November 21, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street, Room 8301, Washington, DC 20591.

This amendment becomes effective September 22, 1989, as to all persons except those persons to whom it was made immediately effective by TAD T88–26–51, issued December 28, 1988, which contained this amendment.

Issued in Burlington, Massachusetts, on July 13, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89–20607 Filed 8–31–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–ANE–23; Amdt. 39–6308]

Airworthiness Directives; Teledyne Continental Motors (TCM) Model TSIO–520BE Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain TCM Model TSIO–520BE engines by individual priority letter AD 89–14–01. The AD requires repetitive checks of the crankshaft end play, a one-time check of the thru-bolt torque, and repetitive inspections of the number two crankshaft bearing. The AD is needed to prevent possible shifting of the crankshaft bearing which could result in total loss of engine power.

DATES: *Effective:* September 22, 1989, as to all persons except those to whom it was made immediately effective by priority letter AD 89–14–01, issued June 30, 1989, which contained this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 22, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Propulsion Branch, ACE–140A, Atlanta Aircraft Certification Office, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION: On June 30, 1989, priority letter AD 89–14–01 was issued and made effective immediately as to all known U.S. owners and operators of certain TCM Model TSIO–520–BE engines. The AD requires repetitive checks of the end play, a one-time check of the thru-bolt torque, and repetitive inspections of the number two crankshaft bearing. There have been several occurrences where the crankshaft bearings have shifted on the subject engines and contacted the crankshaft fillet radius. This may result in crankshaft failures if not detected by TCM prescribed inspections. One such failure has occurred since the issuance of AD 87–26–08. The reason for this bearing shift is not completely understood. It is suspected that the bearing shift occurs because of inadequate crush of the bearings in the crankcase halves during the original torquing of the thru-bolts using a suspect lubricant. Believing that bearing shift could be detected, AD 87–26–08 was issued requiring a one-time thru-bolt torque check. There have been service difficulties since issuance of AD 87–26–08 and TCM issued SB M89–11 requiring another thru-bolt torque check. The FAA did not issue an AD for TCM SB M89–11 because there was no technical proof that the additional thru-bolt torque check would correct the problem. There

BEST COPY AVAILABLE

have been 75 torque checks conducted in accordance with TCM SB M89–11 and 5 suspect engines have been removed from service. A recent check of a TSIO–520–BE engine installed in a PA46–310P airplane at the Piper facility confirmed that the thru-bolt torque check is not adequate. This airplane/engine had 75 hours time-in-service since SB M89–11 had been successfully completed when it was discovered that the bearing had shifted. Subsequent investigation has confirmed that SB M89–11 is not adequate. A visual inspection is the only positive way to insure there is no bearing shift. The investigation also showed that the bearing shift had occurred at the number two main bearing position in all known cases. AD action was necessary to prevent possible shifting of the crankshaft bearing which can result in total loss of engine power.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters issued June 30, 1989, as to all known U.S. owners and operators of certain TCM Model TSIO–520BE engines. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Teledyne Continental Motors (TCM): Applies to TCM Model TSIO–520BE engines (Serial Numbers 528001 through 528037) certificated in any category. Engines which have had the crankcase split and inspected and new bearings installed, since the accomplishment of AD 87–26–08, are exempt from the requirements of this AD.

Compliance required as indicated, unless already accomplished.

To prevent the possible loss of engine power, accomplish the following:

(a) Prior to further flight and at intervals not to exceed 25 hours time-in-service, accomplish the crankshaft end play check in accordance with Section A of TCM Service Bulletin (SB) M89–14, dated June 29, 1989. If the crankshaft has no end play, the engine must be removed from service.

(b) Prior to further flight, accomplish the thru-bolt torque check in accordance with Section B of TCM SB M89–14, dated June 29, 1989. If the force required to rotate the propeller is not within the range specified or if the force required to rotate the propeller after retorquing has changed from the previous value by more than 3 pounds or if the crankshaft has no end play, the engine must be removed from service.

(c) Prior to further flight and at intervals not to exceed 200 hours time-in-service, accomplish the visual inspection of the number two crankcase main bearing in accordance with Section C of TCM SB M89–14, dated June 29, 1989. If there is any indication of bearing shift within the crankcase or crankshaft fillet/bearing contact or mismatch of bearing halves at the case split line, the engine must be removed from service.

(d) The repetitive checks and inspections required by paragraphs (a) and (c) of this priority letter AD may be discontinued when the crankcase has been split and inspected and new bearings are installed.

(e) Make appropriate log book entry showing compliance with this AD and record results of crankshaft end play and pounds required to rotate propeller.

(f) Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations 21.197 and 21.199 to a base where this AD can be accomplished.

(g) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Atlanta Aircraft Certification Office, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349, may approve an equivalent means of compliance or an adjustment of the compliance time schedule specified in this AD, which provides an equivalent level of safety.

The checks and inspections shall be done in accordance with TCM SB M89–14, dated June 29, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street, Room 8301, Washington, DC 20591.

This amendment becomes effective on September 22, 1989, as to all persons except those persons to whom it was made immediately effective by priority letter AD No. 89–14–01, issued June 30, 1989, which contained this amendment.

Issued in Burlington, Massachusetts, on August 10, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89–20606 Filed 8–31–89; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Part 221

[Docket No. 43343; Notice No. 89–15]

RIN 2105–AB00

Electronic Filing of Tariffs

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Amendment to preamble of final rule and Dismissal of Petition for reconsideration.

SUMMARY: The Department is providing notice of a change in its internal procedures relating to the "downloading" of electronic records submitted daily to the "Official DOT Tariff Database" under its rule on Electronic Filing of Tariffs. The Department is also dismissing a Petition for Reconsideration filed by ABC International in response to that rule.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas G. Moore, Chief, Tariffs Division, Office of International Aviation, P–44, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–2414.

SUPPLEMENTARY INFORMATION:

Change in the Downloading Function

On January 19, 1989, we published a final rule (54 FR 2067), permitting the international airlines to file their passenger fare tariffs with DOT electronically. In discussing the various measures we were undertaking to ensure the integrity of the data, we noted our intent to record (download) onto Departmental computers *all* daily data transactions submitted by the filers. We would then compare these downloaded records with the daily records furnished by the filer on a machine-readable tape or other mutually acceptable electronic media to the Department under the rule.

On July 17, 1989, we began receiving electronic passenger fare filings on an experimental basis. We have now determined that we can successfully ensure the integrity of the submitted tariff data without daily downloading of all filings. On the basis of our experiment, we have determined that by downloading five percent of the daily filings on a systematic sample, with a random start each day, *i.e.,* based on a table of random filing advice numbers, we can ensure the integrity and accuracy of the "Official DOT Tariff Database" to a degree of reliability substantially equivalent to that which we had contemplated in formulating the final rule. This five percent random sample constitutes a sufficient base for comparison purposes and will allow us to quickly detect any discrepancies in the data being submitted. In the event there are any discrepancies we will take immediate corrective measures. We will implement this change in internal procedures upon the effective data of this notice. Of course, should the need arise, we could institute daily downloading of all filings.

Petition for Reconsideration

On February 8, 1989, ABC International filed a petition for reconsideration of our final rule. ABC's petition essentially restates its comment submitted in response to our Notice of Proposed Rulemaking (53 FR 25615, July 8, 1988), *i.e.,* that the filer should be required to make available to any user or any other interested person, on a reasonable, non-discriminatory basis keyed to added costs, the "raw tariff data" used to produce the tariff information appearing on a video display screen. It claims that the rule is inconsistent because it requires that subscription prices for remote access to the on-line tariff database not exceed the reasonable added cost of providing that service, but does not apply the same requirement to copies of machine-readable raw tariff data.

On February 13, 1989, the Airline Tariff Publishing Company (ATPCO) submitted a letter to Mr. Neil Eisner, the Department's Assistant General Counsel for Regulation and Enforcement, requesting rejection of ABC's petition on the grounds that the Department's Rules of Practice do not provide for the relief sought by ABC. We agree. ABC in its petition relies on 14 CFR sections 302.18 and 302.37 in support of its request. Our review of these sections discloses that ABC's reliance on them is misplaced. We note in any event that ABC's petition has raised no issues not already before us at the time we adopted our final rule, and that in the final rule we fully responded to ABC's concerns.

Accordingly, we dismiss the Petition for Reconsideration filed by ABC International in Docket 43343.

This notice is being issued under the authority delegated to the Assistant Secretary for Policy and International Affairs contained in 49 CFR 1.56(j)(2)(ii).

Issued in Washington, DC, on August 28, 1989.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–20643 Filed 8–31–89; 8:45 am]

BILLING CODE 4910–62–M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 207

Panel Review Under Article 1904 of the United States-Canada Free-Trade Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Revised interim rules and request for comment.

SUMMARY: Title IV of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Public Law No. 100–449 (September 28, 1988) ("FTA Act") addresses binational panel review of United States antidumping and countervailing duty final determinations involving Canadian products and for requests for panel review of Canadian antidumping and countervailing duty final determinations involving products from the United States. Title IV implements chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement"). As authorized by section 405(d) of the FTA Act, these regulations are intended to implement certain administrative procedures required by Article 1904 of the Agreement and the FTA Act.

DATES: These revised interim rules take effect on September 1, 1989. Written comments must be received not later than October 31, 1989.

ADDRESS: A signed original and fourteen (14) copies of each set of comments, along with a cover letter addressed to Kenneth R. Mason, Secretary, should be sent to the U.S. International Trade Commission, Office of the Secretary, 500 E Street SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., 202–252–1105, Elizabeth C. Hafner, Esq., 202–252–1113 or Laurie B. Horvitz, Esq., 202–252–1107. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION:

Background

Chapter 19 of the Agreement establishes a mechanism resolving disputes between the United States and Canada with respect to antidumping and countervailing duty cases. The central feature of the mechanism is the replacement of domestic judicial review of determinations in antidumping and countervailing duty cases involving imports from the other country with review by binational panels. The United States and Canada will continue to apply their own national antidumping and countervailing duty laws to goods imported from the other country. In such cases, binational panels acting in place of national courts will expeditiously review final determinations under these laws to decide whether they are consistent with the antidumping or countervailing duty law of the country that made the determination. These determinations include final determinations by the Department of Commerce ("Commerce") and the U.S. International Trade Commission ("Commission") under title VII of the Tariff Act of 1930, as amended.

The Agreement provides that only the two governments may invoke the panel review process; however, the government of the United States will automatically trigger panel review in response to a timely request from any person who otherwise could have challenged the determination in court. Counsel for the participants will argue their positions before the panel, as they would before a court. Each panel will consist of two panelists chosen from a United States roster, two panelists chosen from a Canadian roster, and a fifth United States or Canadian panelist chosen by agreement or by lot. The Agreement also requires that the United States and Canada protect sensitive business information against unlawful disclosure in the panel review process.

The Agreement further provides for review of a panel decision by an extraordinary challenge committee ("committee") when either the United States government or the Canadian government alleges that a panelist materially violated the rules of conduct, or that the panel seriously departed from a fundamental procedural rule or exceeded its powers, authority or jurisdiction. The Committee will consist of three members, all of whom will be sitting or retired United States or Canadian judges, with at least one member from each country.

The administrative operations of panel and extraordinary challenge committee proceedings will be carried out by a Secretariat. The Secretariat will consist of a United States Secretary, located in Washington, DC and a Canadian Secretary located in the National Capital Region of Canada. By Executive Order, the United States Secretary will be located in the Department of Commerce.

Section 405 of the FTA Act establishes an interagency group, chaired by the United States Trade Representative, which will be responsible for preparing the United States rosters of potential panelists and potential committee members, and for evaluating whether the United States should seek extraordinary challenge committee reviews.

Title IV of the FTA Act amends U.S. law to implement chapter 19 of the Agreement by limiting judicial review in cases involving Canadian merchandise, establishing procedures whereby private parties may appeal for binational panel review, providing organizational structure for administering U.S. responsibilities under chapter 19, and making other conforming amendments to U.S. law. Section 405(d) of the FTA Act authorizes the Commission to issue regulations to implement chapter 19 of the Agreement.

The procedures for binational panels have been implemented through Rules of Procedure issued jointly by the United States and Canada (53 FR 53212, Dec. 30, 1988). These regulations are intended to implement certain administrative procedures required by chapter 19 of the Agreement involving administrative responsibilities of the Commission that continue during and after panel review. Specifically, the regulations address release of business proprietary and privileged information under protective order during a panel review, and sanctions for violations of the provisions of such protective orders. The regulations complement and should be used in conjunction with, the Rules of Procedure.

The Commission published its original interim-final rules on December 30, 1988 (53 FR 53248). Those rules became effective on January 1, 1989. The comment period ended on March 1, 1989. No public comments were received. The rules were, however, reexamined internally, and changes have been made to reflect concerns that arose during this internal review. Significant changes are discussed in the explanation that follows.

This revised interim rule is exempt from the requirements of section 553 of the Administrative Procedure Act (5 U.S.C. 553), because it implements chapter 19 of the Agreement and thus relates to a foreign affairs function of the United States.

The Commission has determined that this rule does not constitute a major rule for the purposes of Executive Order 12291 (46 FR 13193, Feb. 17, 1981), because it does not meet the criteria described in section 1(b) of the EO. Moreover, because this rule concerns a foreign affairs function of the United States, it is not a rule within the meaning of section 1(a) of the EO.

The Regulatory Flexibility Act does not apply to this rule because it does not affect a large number of small entities, and because the rule was not required by section 553 of the Administrative Procedure Act or by any other law to be promulgated as a revised interim rule before issuance as a final rule. Nonetheless, the Commission, in its discretion, has decided to issue a revised interim rule, in order to solicit comments that the Commission believes may be helpful in determining the content of the final rules.

Explanation of Revised Interim Rules

Section 207.90

This section provides the scope of Subpart G, which is to implement Article 1904 of the Agreement.

Section 207.91

This section provides definitions of terms used in Subpart G. Three definitions have been added by these rules. For purposes of § 207.93, the terms "clerical person", "counsel" and "professional" have been defined. These definitions simplify references in that section to counsel and professionals. In addition, they clarify who may apply for our retain access to proprietary information during panel review.

Section 207.92

There are two types of documents that put the Commission on notice that an antidumping or countervailing duty final determination involving Canadian products may be subject to review. These documents are a Notice to Commence Judicial Review ("Notice") and a Request for Panel Review ("Request"). The Tariff Act of 1930 ("Tariff Act"), as amended by section 401 of the FTA Act, provides that Commerce, in consultation with the Commission, shall by regulation prescribe the form, manner and style of Notices and Requests. 19 U.S.C. 1516a(g)(3)(B) and (8)(A). The relevant regulations will be contained in part 358 of Title 19 of the Code of Federal Regulations, which part will contain Commerce's regulations for implementation of Article 1904 of the Agreement. Section 207.92 of the Commission's regulations refers to Commerce's regulations for the requirements for Notices and Requests.

Section 207.93

The Tariff Act, as amended by section 403 of the FTA Act, provides for certain persons to have access to business proprietary information contained in the Commission's administrative record before the panel, but only if these persons obtain a protective order issued by the Commission. Section 207.93

implements this provision. The persons who are eligible for access upon the filing of an application for protective order and the issuance of such an order are: The panelists and committee members, and any non-clerical staff whom they employ; counsel for participants in the panel review and for interested persons who plan to become participants, and their non-clerical staff; professionals under the direction and control of counsel; the Secretaries of the Canadian and United States sections of the Secretariat and their staffs; and United States government officials, or their delegates, who are members of the interagency group designated to consider whether the United States should seek to convene an extraordinary challenge committee. The persons who have access to proprietary information without protective orders are: The participant that submitted the information; that participant's counsel; and officials and employees of the Commission who are directly involved in the panel review or were involved in the underlying administrative proceeding.

Subsection (b) outlines the procedures for applying for a protective order. Panelists, committee members, non-clerical staff of panelists and committee members, counsel, professionals under the direction and control of counsel, the Secretaries and their staffs, and designated U.S. government employees must apply for a protective order in order to receive access. Clericals, such as law clerks, paralegals, and secretaries, who are employed by panelists, committee members, counsel, professionals, or designated U.S. government employees, will not need to submit protective order applications but, under paragraph (b)(5), will have access to the proprietary information at issue under the terms of a protective order issued to the person who employs them.

Paragraph (b)(6) explains that a counsel or a professional who was granted access to proprietary information pursuant to an administrative protective order issued during the underlying Commission proceedings that permits him or her to retain the information during panel review will become subject to additional terms applicable during panel review if he or she retains the information for more than 15 days after a First Request for Panel Review is filed with the Secretariat. Thus, such persons may retain the proprietary information, but under the same terms and subject to the same sanctions as those who have been issued a new protective order following the commencement of the panel review process. This provision in the revised interim rule changes the original interim rule by subjecting persons to the additional requirements of this Subrule at an earlier stage in the panel process. Paragraph (b)(6) also provides for the service of the original protective order and application on persons on the service list maintained by the Commission Secretary during the administrative proceedings, the Commission, the Secretariat, and such other persons as are required to be served with protective orders for proprietary information by the Rules of Procedure.

Subsection (c) requires that, upon the application for a protective order by a panelist, a committee member, the non-clerical staff of a panelist or committee member, a Secretary, any member of the Secretariat staff, or a designated member of the interagency group, the Commission shall issue a protective order.

Subsection (d) provides for the Commission's consideration of protective order applications filed by counsel and professionals. Any objections to an application for a protective order to counsel or professionals must be filed with the Commission within ten days of the date of filing of the application and shall state the reasons why the application should not be granted. The Commission must grant or deny the application within thirty (30) days after receipt of the application. This 30 day requirement was added to these rules to reflect the Commission's duties under the Rules of Procedure.

Subsection (e) requires the Commission to retain in a public file copies of protective orders governed by this subpart, whether issued during the administrative proceeding or during the panel review process. The original interim rules required that persons who are granted new protective orders during a panel review serve those protective orders on the Secretariat and participants. This requirement has been deleted from the revised interim rules because it unnecessarily duplicates service requirements set forth in the Rules of Procedure.

Subsection (f) provides for Commission revocation or modification of a protective order, with upon motion or *sua sponte*. The revised regulations contain an added requirement that the Commission notify the Secretariat of any action to revoke or modify an outstanding protective order in the course of an ongoing panel review.

Section 207.94

This section deals with the release of documents containing privileged information under protective order. The administrative record under review may contain documents for which the Commission claims attorney-client, attorney work product, or government pre-decisional privileges. One reason for classifying documents as privileged is to permit a free and frank exchange between attorney and client, and within an agency. Candor between the Commission and its employees should be encouraged, but could be constrained by the risk of disclosure to a judge or panelist who subsequently reviews the ultimate administrative decision, particularly if the document contains recommendations at odds with that decision. The Court of International Trade, in reviewing Commission determinations under title VII, has not permitted litigants to have access to privileged portions of the record. Both Annex 1901.2 of the Agreement and the Statement of Administrative Action for implementation of the FTA Act specifically contemplate that the Rules of Procedure would make provision for the treatment of privileged information.

Under the Rules of Procedure for binational panel review under Article 1904 of the Agreement, the Commission will not include privileged documents in the copies of the administrative record that are transmitted to the Secretariat for the panel's use, although any documents for which privilege is claimed will be listed in the index of the record. If there are any challenges to the privilege claim, the panel will first examine the affidavits in support of the claim of privilege to determine whether there is a question as to the validity of the claim or if the privilege is qualified and whether the claim meets the criteria generally applied by the federal courts. If the affidavits are not dispositive, then the panelists will select from among themselves two lawyers, one from Canada and one from the United States, to examine in camera and under protective order any document at issue. Only if the two representatives cannot agree whether or not the document should be released under protective order will the decision be referred to the full panel. At that point, the full panel will review the document, in camera, and under protective order, to decide whether to disclose the document under protective order for use in the panel review.

The Rules of Procedure provide that at each stage of consideration of documents containing privileged information, those documents will be protected by protective orders. In accordance with the process prescribed by the Rules of Procedure, the regulation at § 207.94 provides the mechanics of applications for and issuance of protective orders for privileged information subject to panel review. This regulation provides for the issuance of such protective orders if appropriate under the regulations. The revised regulations permit the Commission to issue protective orders to access to privileged information to the U.S. and Canadian Secretaries and their staffs. Such persons may, in certain circumstances, need access in order to perform their Secretariat functions. The revised regulations have omitted provisions requiring the filing of protective orders issued under this section with the Secretariat. These provisions in the original interim rules unnecessarily duplicated requirements set forth in the Rules of Procedure.

Section 207.100–207.120

The Tariff Act, as amended by section 403(c) of the FTA Act, declares it unlawful for any person to violate, or to induce the violation of, any provision of a protective order issued during panel or committee review. The Commission is authorized to impose sanctions against any person who is found by the Commission to have violated or induced violation of the terms of a protective order issued by the Commission for FTA purposes. These sanctions may include a civil penalty of up to $100,000 for each violation, and other administrative sanctions, including but not limited to debarment from practice before the Commission, as the Commission determines to be appropriate. 19 U.S.C. 1677f(d)(4). Before imposing such sanctions, the Commission must provide notice and an opportunity for a hearing in accordance with section 554 of title 5 of the U.S. Code. *Id.* Any person against whom sanctions are imposed may appeal the Commission's determination to the U.S. Court of International Trade. *Id.* at (d)(5).The Commission may file an action in that court to enforce sanctions assessed. *Id.* at (d)(6).

The regulations contained in §§ 207.100–207.120 address the Commission's procedures for imposing sanctions against persons who have violated, or induced violation of, the provisions of a protective order issued during panel and committee proceedings. For the purposes of the sanctions regulations the term "person", as defined in § 207.91 (the definition section for this subpart), means not only an individual, but also any entity such as a partnership, corporation, association or organization.

In deciding whether to initiate sanctions proceedings and whether to impose sanctions, the Commission will interpret the legislative prohibition against violation or inducement of a violation in a manner that best carries out the spirit of the legislation. Thus, a disclosure can be unintentional and still constitute a violation for which sanctions could be imposed. For example, the failure to delete proprietary information from the public version of a brief or the disclosure of proprietary information during a public hearing would constitute violations, and could subject the responsible person to sanctions, even if the disclosure was unintentional. However, the Commission would not generally view conduct permitting disclosure to a customs official at the U.S./Canada border, i.e., transmitting documents containing proprietary information with knowledge that they may be inspected at the border as sanctionable. Similarly, the Commission would not generally consider a failure to report such a disclosure to be a violation of a protective order.

Nor is actual disclosure of protective proprietary information necessary to support assessment of sanctions. For example, the provisions of a protective order could be deemed violated by carelessness in handling the protected information, as evidenced by loss of the information or by failure to follow the procedures required by the protective order for safeguarding proprietary information. Likewise, sanctions could be assessed for failure to supervise properly the handling of the protected information.

Initiation of a violation is not a necessary element of inducement. This point is expressly stated in the revised regulations at § 207.100(c). A person who has accepted information knowing it is being disclosed in violation of a protective order will be regarded as having induced violation of the provisions of the protective order. For example, if counsel for a client breaches a protective order by relaying a competitor's protected proprietary information to the client, and the client accepts the information, having reason to know that counsel's action is in breach of the protective order, the client could be subject to sanctions for inducing violation of the protective order provisions.

The exmaples contained in the above discussion are intended to serve as guidelines, and do not represent an exhaustive list of circumstances under which the Commission could determine that a person has violated or induced violation of the provisions of a protective order.

Section 207.100

This regulation lists types of sanctions that can be imposed upon a person who is found to have violated or induced the violation of any provision of a protective order. The sanctions include those specifically mentioned in the FTA Act, i.e., civil penalties of up to $100,000 for each violation and debarment from practice before the Commission, as well as some other sanctions that the Commission believes constitute other appropriate administrative sanctions. Also tracking the statutory language, the regulation notes that each day of a continuing violation constitutes a separate violation for the purposes of assessing civil penalties. Sanctions may be imposed against persons other than the one who violated the protective order, such as the firm, partner, associate, employee, employer, or client of that person.

Section 207.101

This regulation sets out the procedures for setting in motion an inquiry into an allegation of violation. Any person who has information indicating that there has been a violation shall report the information to the Commission Secretary. Any such information should be reported immediately upon learning of the possible violation. Upon receipt of the information, the Commission may forward it to the Commission's Office of Unfair Import Investigations ("OUII"). OUII will then conduct an inquiry to determine whether there is reasonable cause to believe that a person or persons have violated or induced the violation of any provisions of a protective order.

Subsection (c) has been amended to provide OUII with the assistance of an administrative law judge if necessary to aid in the obtaining of information during the inquiry stage. The Commission does not anticipate that this procedure will often be necessary, but has, however, provided for the assistance of an administrative law judge in those rare instances where a discovery order may be needed.

Section 207.102

Upon completion of the inquiry, OUII may conclude (1) that there is reasonable cause to believe that there has been a violation or inducement to violate the terms of a protective order; or (2) that there has been no violation or

inducement of violation; or (3) that there is a reasonable cause to believe that there has been an actionable violation, but that the responsible person is outside the Commission's jurisdiction but within the jurisdiction of Canada. If OUII concludes that there has been no violation or inducement of violation, the file will be closed, unless otherwise ordered by the Commission. If OUII reaches another of the possible conclusions, this regulation requires that OUII make a recommendation to the Commission based upon that conclusion. The Commission may take appropriate action regarding the initiation of sanctions proceedings, including rejecting, approving, or approving and amending any recommendation made by OUII.

If the Commission determines that initiation of sanctions proceedings is appropriate, the Commission will direct the Commission Secretary to issue a "change letter" as defined in § 207.103. Issuance of the charging letter will initiate proceedings before a Commission administrative law judge.

If appropriate, the Commission will take the necessary steps to request the authorized agency of Canada to initiate proceedings under Canadian law on the basis of an alleged violation of the protective order. It will be appropriate to take such steps if it is determined that (1) the charged party, while not subject to any of the sanctions set forth under § 207.100, could be subject to sanctions imposed by the authorized agency of Canada; or (2) an authorized agency of Canada would otherwise be the more appropriate forum for the initiation of a proceeding.

The revised regulation addresses a concern that was raised regarding notification to the person whose proprietary information has allegedly been disclosed. This regulation now provides that, at the initiation stage, the Commission may make a determination as to whether it is appropriate to notify the person whose proprietary information allegedly has been disclosed. In some cases, such person will have already received constructive notice of a possible unauthorized disclosure, by virtue of questioning by OUII during its inquiry. In other cases, the person who submitted the proprietary information to the Commission may be unaware of a possible unauthorized disclosure, or of the nature or extent of any disclosure. The Commission will review each case individually to determine whether public policy considerations suggest that it is appropriate to provide the person who submitted the proprietary information with notice about initiation of sanctions proceedings or about particular factual allegations pertinent to the proceedings. In making this determination, the Commission will weigh factors such as the consequences to the submitter of the proprietary information, the impact upon the Commission's future ability to obtain proprietary information, the potential for disruption of an ongoing panel review, and the general need to uphold the integrity of the binational panel process.

Because an inquiry into, and a proceeding involving, an alleged breach of a protective order is a sensitive subject that could harm a person's reputation, the Commission has endeavored to provide to the extent consistent with public policy considerations for confidentiality at the various stages of sanctions proceedings. References to confidentiality occur in several of these sanctions regulations. The Commission is concerned about avoiding the detrimental effects on the reputations of persons that may arise from publicity relating to allegations of protective order violations, and about the impact upon the binational panel process of unsubstantiated allegations against panelists, committee members or the Secretariat staff. At the same time, the Commission recognizes that some disclosures concerning the proceedings and underlying allegations and facts are necessary to the gathering of evidence or otherwise appropriate for public policy reasons. Accordingly, these regulations are designed to allow the Office of Unfair Import Investigations, charged parties and the administrative law judges to develop means in particular cases for accommodating these competing concerns.

At the inquiry stage, the Commission expects that the need for confidentiality will be respected, but must remain consistent with the need to gather information in order to conduct an adequate inquiry. Subsection (d) of § 207.102 reflects this concern, by providing that all aspects of the inquiry will be kept confidential, except as needed to gather relevant evidence, or as the Commission may otherwise direct for public policy reasons. The Office of Unfair Import Investigations in the conduct of its inquiry preliminary to its recommendations to the Commission will endeavor to keep the nature of the allegations and facts gathered confidential. The Office shall not, however, regard this instruction as so restrictive as to limit its investigative efforts insofar as disclosure of such allegations or facts may be necessary for the obtaining of information.

Section 207.103

A person against whom sanctions are proposed will be notified in a charging letter, which will include the allegations, proposed sanctions, and procedures for challenging imposition of sanctions. In order to protect the charged party's privacy, the charging letter will be served in a double envelope, with the inner envelope marked for opening by the addressee only. For good cause, the administrative law judge may amend the charging letter at any time, but an amendment that adds an additional charged party must be approved by the Commission. Nothing in this regulation precludes the Office of Unfair Import Investigations from seeking a separate charging letter to initiate separate proceedings against another person whom it believes should be charged with a violation under this Subpart.

Consistent with state bar disciplinary proceedings and judicial contempt proceedings, the person whose information is alleged to have been released is not a party to the proceedings. The interest being vindicated is that of the Commission in ensuring that all provisions of its protective orders are honored.

Section 207.104

This regulation sets forth the filing time, form and content for a response to a charging letter. If the Commission issues a charging letter, it will transmit the letter confidentially to the charged party and provide for notice of the proceedings to become public pending the charged party's submission of a response to the charging letter. If the charged party desires that confidentiality restrictions be placed on the proceedings, the charged party must so state in the response to the charging letter.

Section 207.105

This regulation addresses the Commission's confidentiality concerns with respect to the actual sanctions proceedings. The provisions of the regulation are twofold. First, with respect to proprietary and certain privileged information that is necessary for the defense of the allegations, counsel for the charged party may be granted access to this information under protective order. The only privileged information that can be released under this section is privileged information the disclosure of which is the subject of the sanctions proceedings.

Second, upon the request (in the response to the charging letter) of any charged party, the proceedings will be kept confidential to the extent practical and permitted by law. If a request for confidentiality appears in the response, the administrative law judge shall enter an order to maintain the confidentiality of information relating to allegations of violation of a protective order to the extent practicable consistent with the needs of the parties in conducting the proceedings. The regulations leave the form of such an order to the sound discretion of the administrative law judges, who may for example take into account whether certain facts are particularly sensitive to the charged party and who shall assure that confidentiality orders do not unnecessarily impede efforts to conduct discovery or to gather relevant information.

Section 207.106

Interim measures may be imposed by the Commission if necessary. For example, a person whom the Commission has reason to believe is continuing to unlawfully disclose protected proprietary information may still have access to proprietary information pursuant to an outstanding protective order. In order to curtail possible further unlawful disclosure by that person, the Commission may determine that it is necessary to revoke the outstanding protective order without waiting for the completion of the sanctions proceedings, by which time irreparable damage may have been caused by continued disclosure of proprietary information.

As another example, in some circumstances it may be appropriate not to make efforts to maintain the confidentiality of allegations and facts concerning alleged protective order violations or to allow some disclosures of such allegations that would otherwise not be permitted. For instance, in some cases it may be possible that the inquiry or discovery has not required OUII to contact the company whose proprietary information allegedly has been disclosed unlawfully, or that OUII has not had to notify the company of details about the allegations. Nevertheless, the alleged disclosure may be such that it could lead to such serious consequences that prevention or mitigation of harm to the company whose information has been put at risk may outweigh the interests of confidentiality. The regulations specify that disclosure of information that would otherwise be kept confidential during the proceedings is among the interim measures that the administrative law judge may recommend to the Commission.

Notice and an opportunity to respond will be provided to a party against whom interim measures are proposed. The administrative law judge will issue a recommended determination (RD) as expeditiously as possible, generally within twenty days of the filing of the motion. The Commission will review the RD and issue its determination on interim measures usually within twenty days from issuance of the RD. Interim measures may be revoked at any time.

Section 207.107

This regulation sets forth the requirements for motions and responses to motions.

Section 207.108

This regulation provides for a preliminary conference to consider such matters as a discovery schedule and the confidentiality of the proceedings.

Section 207.109

This regulation provides for discovery under such terms as the administrative law judge may order. Voluntary discovery is encouraged.

A party desiring to depose or obtain nonprivileged documents from a Commission employee can file a motion requesting the administrative law judge to recommend that the Commission direct that employee to testify or produce the requested materials. A party desiring to depose or obtain nonprivileged information from an employee of another U.S. agency or of a Canadian agency, can file a motion requesting the administration law judge to recommend that the Commission seek the testimony or production of requested material from that person.

Section 207.110

This regulation provides for issuance of a subpoena by the administrative law judge, upon the application of a party. Subpoenas issued under this subpart will be enforced by the Commission. The authority to issue and enforce subpoenas for these proceedings is provided by section 403(c) of the FTA Act. If a party files a motion for enforcement of a subpoena, the regulation provides for the administrative law judge to recommend to the Commission in favor of or against enforcement. In the recommendation, the administrative law judges must address each of the criteria necessary for enforcement of an administrative subpoena, as established by relevant case law.

Section 207.111

This regulation provides for a prehearing conference.

Section 207.112

Under this regulation, an opportunity for a hearing must be provided for all sanctions proceedings. Consistent with the legislative mandate of the Tariff Act as amended by section 403(c) of the FTA Act, the administrative law judge is directed to conduct a hearing that complies with section 554 of the Administrative Protective Act.

Section 207.113

This regulation defines the administrative record for sanctions proceedings.

Section 207.114

Within the time frame established by this regulation, the administrative law judge will issue an initial determination, which contains his findings and conclusions necessary to the factual and legal issues presented. In the usual case, the initial determination will be issued within ninety days of issuance of the charging letter. If the judge determines that the case is complicated, he may issue his initial determination within 120 days of the charging letter.

The Commission anticipates that the deadlines set out in this regulation can be met in most sanctions proceedings. If necessary, however, the administrative law judge may request the Commission to extend the time for issuance of an initial determination when discovery has been delayed as a result of the Commission's efforts to compel an employee or official of another United States agency, or of a Canadian agency, to respond to a deposition, or as a result of the Commission's efforts to enforce a subpoena, or when more time is needed to assure a complete record or to avoid manifest injustice.

Subsection (c) has been added to address burden of proof. The original interim rules did not specify the burden of proof to be applied in the sanctions proceedings. The revised rule adopts the burden of proof requirement that would apply under existing case law. Under this regulation, there must be a showing of clear and convincing evidence to support a finding of violation or inducement of violation.

In the typical administrative case, the party bringing the action must prove its allegations only by a "preponderance of the evidence." *See Collins Securities Corp.* v. *Securities and Exchange Commission*, 562 F.2d 820, 823 (D.C. Cir. 1977); *Securities and Exchange Commission* v. *Savoy Industries*, 587 F.2d 1149 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 913 (1979). On the other end of the spectrum, in criminal cases the interests of the defendant are so great

that the state must prove the guilt of the accused "beyond a reasonable doubt." *SSIH Equipment S.A.* v. *U.S. International Trade Commission*, 718 F.2d 365, 380 (Fed. Cir. 1983) (additional views of Nies, J.). The courts also have developed an intermediate standard generally governing administrative or civil cases in which the defendant is accused of fraud or other quasi-criminal wrongdoing, and therefore stands at risk of having his reputation tarnished; in these cases, the courts usually have applied a "clear and convincing evidence" standard. *SSIH Equipment S.A.*, 718 F.2d at 380–81. *See Collins Securities Corp.* and cases cited therein, 562 F.2d 824 & n. 27; *Klein* v. *Peterson*, 866 F.2d 412 (Fed. Cir. 1989).

The sanctions proceedings set out in these regulations fall within the category of civil or administrative cases which could affect the charged party's reputation or ability to practice his profession. Accordingly, the regulations impose a "clear and convincing" standard. Application of a "clear and convincing evidence" burden will require a higher degree of proof than "preponderance of the evidence," but by a somewhat lesser degree of proof than "beyond a reasonable doubt." *See Collins Securities Corp.*, 562 F.2d at 824.

Section 207.115

A party may request the Commission to review the administrative law judge's initial determination by filing a petition for review within fourteen days after the date the initial determination is served upon the charged party. This regulation sets out the requirements for such petition and any response. The Commission will rule on the petition within forty-five days of the date the initial determination is served. The revised regulations have added a provision to this section providing that no person can obtain judicial review of an initial determination imposing sanctions without first filing a petition for Commission review. This change is consistent with the general administrative law principle that a party may be required to exhaust its administrative remedies before seeking judicial review of an agency's determination.

Section 207.116

Absent a petition for review, the Commission may decide *sua sponte* to review an initial determination. This regulation provides for such review when at least one of the participating Commissioners votes for ordering review *sua sponte* within forty-five days of the date the initial determination is served.

Section 207.117

On review, the parties may present argument only on the issues for which review has been ordered. The Commission may take any appropriate action in reviewing the initial determination, including remand.

Section 207.118

In panel review proceedings in which a final antidumping or countervailing duty determination issued by the Commission is being challenged, the Commission will be represented by the Commission's General Counsel. In the usual case, three attorneys from the General Counsel's Office will participate in the representation of the Commission before the panel—the General Counsel; the Assistant General Counsel for Litigation; and a staff attorney. In some instances, a sanctions proceeding will be initiated while the panel review for which the protective order was issued is still pending. If a participant, counsel for a participant, or a panelist involved in an ongoing panel review is charged with breaching a protective order issued during that panel review, the outcome of the sanctions proceeding, as well as the issuance of interim measures (such as revocation of the protective order) during the sanctions proceeding, could affect the ongoing panel review. In order to avoid the appearance of impropriety in such instances, the General Counsel and any other attorneys in the General Counsel's office who are participating in the panel review will not play a role in advising the Commission in matters regarding the relevant sanctions proceedings. Nor will the Assistant Counsel for title VII cases or any other attorney who participated in the underlying administrative proceedings advise the Commission in sanctions proceedings involving breach of a protective order involving on ongoing panel review of the Commission's determination in those proceedings. In such instances, the Assistant General Counsel for Section 337 investigations, who will have played no role in the panel review or underlying investigation, will serve as Acting General Counsel for the purpose of advising the Commission in regard to the sanctions proceedings, and will work with General Counsel staff attorneys who have not so participated.

Section 207.119

This regulation provides for the filing of a petition for reconsideration of a Commission determination. Any such petition must be filed within fourteen days after service of the determination. No responses will be accepted unless requested by the Commission, but the Commission will not grant a petition for reconsideration without first providing an opportunity for response.

Section 207.120

If the Commission's final determination, after the period for reconsideration has run, is that public sanctions are to be imposed, the Commission will publish such determination in the **Federal Register**. The Commission will also notify whichever departments and agencies of the Canadian and United States governments are likely to have an interest in the matter, for example, the U.S. Commerce Department and the U.S. Trade Representative.

The original interim rules prohibited interlocutory appeals. We have deleted this prohibition from the revised rules. The appropriateness of certifying a particular question for interlocutory appeal will be left to the discretion of the administrative law judge. The Commission will have the discretion to grant or deny a request for review of a question that has been so certified.

List of Subjects in 19 CFR Part 207

Administrative practice and procedure, Antidumping, Canada, Countervailing duty, Imports, Trade agreements.

For the reasons set forth in the preamble, 19 CFR part 207, Subpart G is revised to read as follows:

SUBPART G—IMPLEMENTING REGULATIONS FOR THE UNITED STATES-CANADA FREE-TRADE AGREEMENT

Sec.
207.90 Scope.
207.91 Definitions.
207.92 Procedures for commencing review of final determinations.
207.93 Protection of proprietary information during panel and committee proceedings.
207.94 Protection of privileged information during panel and committee proceedings.

Procedures for imposing sanctions for violation of the provisions of a protective order issued during panel and committee proceedings

207.100 Sanctions.
207.101 Reporting of violation and commencement of investigation.
207.102 Initiation of proceedings.
207.103 Charging letter.
207.104 Response to charging letter.
207.105 Confidentiality.
207.106 Interim measures.
207.107 Motions.
207.108 Preliminary conference.
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207.111 Prehearing conference.
207.112 Hearings.
207.113 The record.
207.114 Initial determination.
207.115 Petition for review.
207.116 Commission review on its own motion.
207.117 Review by Commission.
207.118 Role of the General Counsel in advising the Commission.
207.119 Reconsideration.
207.120 Public notice of sanctions.

Subpart G—Implementing Regulations for the United States-Free Trade Agreement

Authority: Sec. 777 of the Tariff Act of 1930, as amended; secs. 403, 405(d) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (102 Stat. 1851, Pub. L. No. 100–449, Sept. 28, 1988); 19 U.S.C. § 1335.

§ 207.90 Scope.

This subpart sets forth the procedures and regulations for implementation of Article 1904 of the United States-Canada Free Trade Agreement under the Tariff Act of 1930, as amended by Title IV of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 1516a and 1677f). These regulations are authorized by section 405(d) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 and 19 U.S.C. 1335.

§ 207.91 Definitions.

As used in this subpart—

Administrative Law Judge means the United States Government employee appointed under section 3105 of Title 5 of the United States Code to conduct proceedings under this part in accordance with sections 556 and 557 of the United States Code;

Agreement means the Free Trade Agreement between Canada and the United States of America entered into between the Government of Canada and the Government of the United States of America and signed on January 2, 1988;

Article 1904 Rules means the Rules of Procedure for Article 1904 Binational Panel Reviews adopted by the United States of America and Canada pursuant to the agreement;

Canadian Secretary means the Secretary of the Canadian section of the Secretariat and includes any person authorized to act on his behalf;

Charged party means, for the purposes of § 207.100, a person who is charged by the United States International Trade Commission with violating or inducing violation of a provision of a protective order;

Clerical person means, for purposes of § 207.93, a person who provides support services to a panelist, committee member, counsel, professional, or member of the interagency group appointed by the United States Trade Representative. This definition includes, but is not limited to, secretaries, paralegals, and law clerks.

Commission means the United States International Trade Commission;

Commission Secretary means the Secretary to the Commission;

Complaint means the complaint referred to in the Article 1904 Rules;

Counsel means, for purposes of § 207.93, persons described in the definition of "counsel of record" in Rule 3 of the Article 1904 Rules, and counsel for an interested person who plans to file a timely Complaint or Notice of Appearance in the panel review.

Date of Service means, for the purposes of § 207.100 only, the day a document is deposited in the mail or delivered in person;

Days means calendar days, except that a deadline which falls on a weekend or United States federal holiday shall be extended to the next working day;

Extraordinary challenge committee means the committee established pursuant to Annex 1904.13 of the Agreement and section 407 of the FTA Act to review decisions of a panel or conduct of a panelist;

Final determination, for the purposes of § 207.92, shall have the meaning assigned to the term "final determination" by Article 1911 of the agreement;

FTA Act means the United States-Canada Free-Trade Implementation Act of 1988, Pub. L. No. 100–449 (Sept. 28, 1988);

Investigative attorney means the attorney(s) designated by the Office of Unfair Import Investigations to engage in inquiries and investigatory activities with respect to investigations and proceedings under § 1907.100 of title 19 of the Code of Federal Regulations;

Notice of Appearance means the notice of appearance provided for by the Article 1904 Rules;

Panel review means review of a final determination pursuant to chapter 19 of the Agreement, including review by an extraordinary challenge committee;

Parties means, for the purposes of §§ 207.100–207.120, the investigative attorney and the persons charged in an action under §§ 207.100–207.120 of this subpart;

Person means, for the purposes of §§ 207.100–207.120, an individual, partnership, corporation, association, organization, or other entity;

Privileged information means all information as to which the Commission claims privilege or has reserved a claim of privilege in accordance with Article 1904.14 of the Agreement and the Article 1904 Rules;

Professional means, for purposes of § 207.93, an accountant, economist, engineer, or other non-legal specialist who is acting on behalf of a participant in a panel review or an interested person who plans to become a participant, and who is under the direction and control of counsel for that participant or interested person.

Proprietary information means all information designated or treated by the United States International Trade Commission as confidential or business proprietary under 19 U.S.C. 1677f and 19 CFR 201.6.

Protective Order means a protective order issued by the Commission;

Secretariat means the Secretariat established pursuant to Article 1909 of the Agreement and includes the Secretariat sections located in both Canada and the United States.

United States Secretary means the Secretary of the United States section of the Secretariat and includes any person authorized to act on his behalf;

Except as otherwise provided in this subpart, the definitions set forth in the Article 1904 Rules are applicable to this Subpart and to any protective orders issued pursuant to this Subpart.

§ 207.92 Procedures for commencing review of final determinations.

(a) *Notice of Intent to Commence Judicial Review.* A Notice of Intent to Commence Judicial Review shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Department of Commerce in its regulations at 19 CFR part 356.

(b) *Request for Panel Review.* A Request for Panel Review shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Department of Commerce in its regulations at 19 CFR part 356.

§ 207.93 Protection of Proprietary Information During Panel and Committee Proceedings.

(a) *Persons Authorized to Receive Proprietary Information Under Protective Order.* The following persons may be authorized by the Commission to receive access to proprietary information if they comply with these regulations and such other conditions imposed upon them by the Commission:

(1) The members of a binational panel or an extraordinary challenge committee, and their non-clerical staffs;

(2) Counsel, as defined in § 207.91, provided that the counsel do not participate in competitive decision-making activity for the person represented or for any person that would gain a competitive advantage through knowledge of the proprietary information sought;

(3) Professionals, as defined in § 207.91, provided that they do not participate in competitive decision-making activity for the person represented or for any person that would gain a competitive advantage through knowledge of the proprietary information sought;

(4) Clerical persons, as defined in § 207.91, who are employed or retained by and under the direction and control of a person described in (a) (1), (2), (3) or (6) who has been issued a protective order, if such clerical persons:

(i) Are not involved in the competitive decision-making, or the support functions for the competitive decision-making, of a participant to the proceeding or of any person that would gain a competitive advantage through knowledge of the proprietary information sought, and

(ii) Have agreed to be bound by the terms set forth in the application for protective order of the person who retains or employs him or her;

(5) The Secretaries of the United States and Canadian sections of the Secretariat and persons retained or employed by the Secretaries, including court reporters hired by the Secretariat to transcribe panel reviews;

(6) Such persons who the United States Trade Representative informs the Commission require access to proprietary information solely for the purpose of evaluating whether the United States should seek an extraordinary challenge committee review of a panel decision or of the conduct of a panelist during panel review.

(b) *Procedures for Obtaining Access to Proprietary Information under Protective Order.*—(1) *Persons Who Must File An Application for Release Under Protective Order.*

In order to be permitted access to proprietary information in the administrative record of a determination under review by a panel, all persons described in paragraphs (a) (1), (2), (3), (5) or (6), unless described in (b)(6) of this section, shall file an original and six (6) copies of an application for release under protective order with the Commission Secretary.

(2) *Contents of Applications for Release Under Protective Order.* (i) The Commission Secretary shall adopt from time to time forms for submitting requests for release pursuant to protective order that incorporate the terms of this rule.

(ii) Such forms shall require the applicant for release of proprietary information under protective order to submit a personal sworn statement that, in addition to such other conditions as the Commission Secretary may require, the applicant will:

(A) Not disclose any proprietary information obtained under protective order to any person other than

(*1*) Personnel of the Commission involved in the particular panel review in which the proprietary information is part of the administrative record,

(*2*) The person from whom the information was obtained,

(*3*) A person who is authorized to have access to the same proprietary information pursuant to a Commission protective order, and

(*4*) A clerical person retained or employed by and under the direction and control of a person described in (a) (1), (2), (3), or (6) who has been issued a protective order if such clerical person

(*i*) Is not involved in the competitive decision-making, or the support functions for the competitive decision-making, of a participant to the proceeding or of any person that would gain a competitive advantage through knowledge of the proprietary information sought, and

(*ii*) Has agreed to be bound by the terms set forth in the application for protective order of the person who retains or employs him or her.

(B) Not use any of the proprietary information released under protective order for purposes other than the particular proceedings under Article 1904 of the Agreement;

(C) Upon completion of the panel review, or at such other date as may be determined by the Commission,

(*1*) If a person described in § 207.93(a)(1), return to the United States Secretary or certify to the Commission Secretary the destruction of; or

(*2*) If a person described in § 207.93(a) (2), (3), (5) or (6), return to the Commission or certify to the Commission the destruction of

all documents released under the protective order, and all other materials, such as notes or charts, based on or containing any proprietary information released under the protective order;

(D) Update factual representations made in his or her application for protective order to the extent and in the manner required by the terms of the protective order issued granting that application; and

(E) Acknowledge that the person becomes subject to the provisions of section 403(c) of the FTA Act and 19 CFR 207.100 as well as (except for persons described in § 207.93(a)(6)), section 77.26 of Canada's Special Import Measures Act, as amended, with respect to the imposition of sanctions for violation of the protective order.

(3) *Timing of Applications.* The United States and Canadian Secretaries and any person retained or employed by them may file an application at any time. Any panelist, or committee member, or member of their non-clerical staffs, counsel, or professional, may file an application for disclosure under protective order after a Notice of Request for Panel Review has been filed with the Secretariat. A person described in § 207.93(a)(6) may file an application when the United States Trade Representative notifies the Commission that such person requires access to the proprietary information.

(4) *Service of Applications.* (i) If a person described in paragraphs (a) (1), (2), or (3) files an application for a protective order before the date on which notices of appearance must be filed in the panel review, such person shall concurrently serve one (1) copy of such application upon each person listed on the service list maintained by the Commission during the administrative proceeding and on such other persons as are required by the Article 1904 Rules to be served by the applicant. If the application is filed after the deadline for notices of appearance, such person shall serve the application upon each person who files a complaint or notice of appearance in the panel review and on such other persons as are required by the Article 1904 Rules to be served by the applicant.

(ii) *Method of Service.* Service of an application may be effected by

(A) personal service, or

(B) sending a copy of the document by facsimile, Express Mail, or expedited courier service.

(5) *Release to Clerical Staff of Panelists, Committee Members, Counsel, Professionals, and designated U.S. Government Employees.* A clerical person described in § 207.93(a)(4) may be provided with access to proprietary information disclosed under protective order to the person who employs or retains him or her, if such clerical person has agreed to the terms of the protective order issued to the person who employs or retains him or her, by signing and dating a completed copy of the application for protective order of the person who employs or retains him or her where indicated in that application.

The person to whom the protective order has been issued shall file the signed and dated application with the Commission Secretary in accordance with paragraph (b)(1).

(6) *Persons who Retain Access to Proprietary Information under a Protective Order Issued during the Administrative Proceeding.* (i) If counsel or a professional has been granted access in an administrative proceeding to proprietary information under a protective order that contains a provision governing continued access to that information during panel review, and that counsel or professional retains the proprietary information more than fifteen (15) days after a First Request for Panel Review is filed with the Secretariat, that counsel or professional, and his or her clerical persons with access on or after that date, becomes immediately subject to the terms and conditions of protective orders issued pursuant to this Subpart, including provisions regarding sanctions for violations thereof.

(ii) Any person described in paragraph (b)(6)(i) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall:

(A) File four (4) copies of the original application, all existing updates to that application, and the protective order with the United States Secretary; and

(B) Serve seven (7) copies of the protective order, and all existing updates upon the Commission.

(iii) Any person described in paragraph (b)(6)(i) of this section who updates his or her application during the pendency of a panel review shall immediately:

(A) File an original and six (6) copies of the updates with the Commission;

(B) Serve a copy of such updates upon all participants in the panel review; and

(C) File four (4) copies of the updates with the United States Secretary.

(c) *Issuance of Protective Orders to Panelists, Committee Members, non-clerical staffs of Panelists or Committee Members, Secretariat staffs, and designated U.S. Government Employees.* (1) The Commission shall, within thirty (30) days of receipt of the application issue a protective order permitting the release of proprietary information to a person described in §§ 207.93(a) (1), (5) or (6), who has filed an application for protective order under this Subpart.

(2) A panelist shall be issued two (2) copies of any protective order authorizing access to proprietary information. The panelist shall sign both copies of the order and return one (1) to the Commission.

(d) *Issuance of Protective Orders to Counsel and Professionals.*—(1) *Opportunity to object.* The Commission shall not rule on an application filed by a person described in § 207.93(a) (2) or (3) until ten (10) days after the request is filed unless there is a compelling need to rule more expeditiously. Unless the Commission has indicated otherwise, any person may file an objection to the application within seven (7) days of the application's filing date. Any such objection shall state the specific reasons why the application should not be granted. One (1) copy of the objection shall be served on the applicant and on all persons who were served with the application. Service shall be by facsimile, Express Mail or by an expedited courier service. Any reply to an objection will be considered if it is filed before the Commission renders a decision.

(2) *Approval of the Application.* If appropriate, the Commission shall, within thirty (30) days of the receipt of the application, issue a protective order permitting the release of proprietary information to the applicant.

(3) *Denial of the Application.* If the Commission denies an application, it shall, within thirty (30) days of the receipt of the application, issue a letter notifying the applicant of its decision and the reasons therefor.

(e) *Retention of Protective Orders.* The Commission Secretary shall retain, in a public file, copies of applications granted, including any updates thereto, and protective orders issued under this section, and of any protective orders filed in accordance with paragraph (b)(6)(ii) of this section.

(f) *Filing and Service of Updates To Granted Applications.* Any person described in § 207.93(a) (1), (2), or (3) who has been issued a protective order under section 207.93 (c) or (d) shall

(1) File an original and six (6) copies of any submissions updating his or her application for protective order with the Commission Secretary;

(2) Serve such updates upon all participants in the panel review; and

(3) File four (4) copies of such updates with the United States Secretary.

(g) *Modification or Revocation of Protective Orders.* (1) If any person believes that changed conditions of fact or law, or the public interest, may require that a protective order effective under this section be modified or revoked, in whole or in part, such person may file with the Commission a request for such relief. The Commission may consider such action *sua sponte.* The request shall state the changes desired and the changed circumstances warranting such action, and shall include materials and arguments in support thereof. Unless the request is self-initiated, the person filing the request shall serve a copy of the request upon the person to whom the protective order was issued.

(2) Upon receiving a request, the Commission shall either

(i) Provisionally accept the request or

(ii) Reject the request.

The Commission shall treat a self-initiated action as a provisionally accepted request. Any person may file a response to the request within twenty (20) days after the request is filed unless the Commission issues a notice indicating otherwise. After consideration of the request and any responses thereto, the Commission shall take such action as it deems appropriate. If the Commission takes any action that revokes or modifies an outstanding protective order in the course of an ongoing panel review, the Commission Secretary shall immediately notify the Secretariat of such action.

(3) If a request filed under this paragraph alleges that a person is violating the terms of a protective order, the Commission may, in addition to, or in lieu of, provisional acceptance or rejection under the subparagraph, treat the request as a report of violation under § 207.101 of this subpart.

§ 207.94 Protection of Privileged Information During Panel and Committee Proceedings.

(a) *Persons Who May Apply for Access to Privileged Information Under Protective Order.* (1) *Panelists.* If a panel determines that, pursuant to the Article 1904 Rules, *in camera* examination of a document containing privileged information in the administrative record of a final determination that is under panel review is necessary in order for the panel to determine whether the information should be disclosed under a Protective Order for Privileged Information, the Commission shall, upon application, issue two (2) copies of the protective order authorizing the release of the privileged information to the authorized panelists. Panelists shall sign both copies of the Protective Order for Privileged Information and return one (1) to the Commission.

(2) *Persons Designated by the Panel.* Any counsel for a participant, professional under the direction and control of a counsel for a participant, or member of a panelist's non-clerical staff, may file with the Commission an application for release under Protective Order for Privileged Information with the Commission if a decision is made in accordance with the Article 1904 Rules that disclosure to that person of a document containing privileged information is appropriate. Upon such application, the Commission shall issue a Protective Order for Privileged Information.

(3) *Secretariat Staff.* If a decision is made in accordance with the Article 1904 Rules that disclosure of a document containing privileged information is appropriate, the Secretaries of the United States and Canadian sections of the Secretariat and persons retained or employed by the Secretaries may file with the Commission an application for release under Protective Order for Privileged Information with the Commission. Upon such application, the Commission shall issue the Protective Order.

(4) *Designated Officers or Employees of the United States Government.* If, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information and the privileged information related to issues which affect a decision whether to request an Extraordinary Challenge Committee, the Commission shall, upon application, issue a Protective Order for Privileged Information and release such privileged information to those officials of the United States government designated by the United States Trade Representative as being necessary for the evaluation of whether the United States should, pursuant to the Agreement, convene an extraordinary challenge committee.

(5) *Members of an Extraordinary Challenge Committee.* Upon application, the Commission shall issue a Protective Order for Privileged Information to members of an extraordinary challenge committee authorizing the release of privileged information that:

(i) Is part of the extraordinary challenge committee record, as defined in the Rules of Procedure for Article 1904 Extraordinary Challenge Committees; and

(ii) Was covered under a Protective Order for Privileged Information issued by the Commission during panel review.

(6) *Clerical Persons.* Clerical persons, such as paralegals, law clerks, and secretaries, who are retained or employed by and under the direction and control of a person described in § 207.94(a) (1), (2), (4), or (5) who has been issued a Protective Order for Privileged Information, may obtain access to privileged information if such clerical persons have agreed to be bound by the terms set forth in the application for Protective Order of the person who employs or retains him or her.

(b) *Contents of Applications for Release Under Protective Order for Privileged Information.* (1) The Commission Secretary shall adopt from time to time forms for submitting requests for release pursuant to a Protective Order for Privileged Information that incorporate the terms of this rule.

(2) Such forms shall require the applicant for release of privileged information under Protective Order for Privileged Information to submit a personal sworn statement stating, in addition to such other conditions as the Secretary of the Commission may require, that the applicant will:

(i) Not disclose any privileged information obtained under Protective Order to any person other than

(A) Personnel of the Commission involved in the particular panel review in which the privileged information is part of the record;

(B) A person who been issued a similar Protective Order for Privileged Information concerning the privileged information at issue; and

(C) A clerical person, such as a paralegal, law clerk, or secretary, employed or retained by and under the direction and control of a person described in § 207.94(a) (1), (2), (4) or (5) who has been issued a Protective Order for Privileged Information, if such clerical person has agreed to be bound by the terms set forth in the application for Protective Order for Privileged Information of the person who employs or retains him or her by signing and dating the completed application of that person where indicated in that application.

(ii) Use such information solely for the purposes of proceedings under Article 1904 of the Agreement;

(iii) Upon completion of panel review, or at such other date as may be determined by the Commission,

(A) If a person described in § 207.93(a)(1), return to the United States Secretary or certify to the United States Secretary the destruction of; or

(B) If a person described in § 207.93(a) (2), (3), (5) or (6), return to the Commission or certify to the Commission the destruction of

all documents released under the protective order, and all other materials, such as notes or charts, based on or containing the privileged information released under the protective order;

(iv) Acknowledge that sanctions, under section 403(c) of the FTA Act and 19 CFR 207.100, as well as, unless a person described in § 207.94(a)(4), under § 77.26 of Canada's Special Import Measures Act, as amended, may be imposed for violation of the Protective Order.

Procedures for Imposing Sanctions for Violation of the Provisions of a Protective Order Issued During Panel and Committee Proceedings.

§ 207.100 Sanctions.

(a) A person who is determined under this Subpart to have violated or induced the violation of any provision of a protective order issued pursuant to this Subpart, may be subject to one or more of the following sanctions:

(1) A civil penalty not to exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate violation;

(2) Debarment from practice in any capacity before the Commission for a designated time period following publication of a determination that the protective order has been breached;

(3) Denial of further access to proprietary or privileged information covered by the breached protective order or to proprietary information in future Commission proceedings;

(4) An official reprimand by the Commission;

(5) In the case of an attorney, accountant, or other professional, referral of the facts underlying the violation to the ethics panel or other disciplinary body of the appropriate professional association or licensing authority;

(6) When appropriate, referral of the facts underlying the violation to the United States Trade Representative or his designees, or to another government agency; and

(7) Any other administrative sanctions as the Commission determines to be appropriate.

(b) The partners, associates, employer, and employees of any person who has violated or induced the violation of any provision of a protective order issued pursuant to this subpart, may be subject to any sanctions included in paragraph (a) of this section as the Commission determines to be appropriate.

(c) For the purposes of this subpart, inducement includes the willing acceptance of proprietary or privileged information knowing that such information was obtained in breach of a protective order.

§ 207.101 Reporting of violation and commencement of investigation.

(a) Any person who has information indicating that the terms of a protective order have been violated shall immediately report all pertinent facts relating thereto to the Commission Secretary.

(b) Upon receipt of this information, the Commission Secretary shall record the information and assign an investigation number, and shall then forward all information he or she has received to the Office of Unfair Import Investigations.

(c) As expeditiously as possible, the Office of Unfair Import Inestigations shall conduct an inquiry to determine whether there is reasonable cause to believe that a person or persons have violated any provision of a protective order. At any time, the Office of Unfair Import Investigations may request that the Commission assign an administrative law judge to oversee the inquiry.

(d) At the conclusion of the inquiry, the Office of Unfair Import Investigations shall assess whether or not the available information is sufficient to provide reasonable cause to believe that a person or persons have violated or induced violation of the provisions of a protective order.

§ 207.102 Initiation of proceedings.

(a) Upon completion of the inquiry,

(1) If the Office of Unfair Import Investigations concludes that there is not reasonable cause to believe that a person or persons have violated or induced violation of the provisions of a protective order,

(i) The Office of Unfair Import Investigations shall submit a report to the Commission; and

(ii) Unless the Commission directs otherwise, the file shall be closed and returned to the Commission Secretary.

(2) If the Office of Unfair Import Investigations concludes that there is reasonable cause to believe that a person or persons have violated or induced violation of the provisions of a protective order, the Office of Unfair Import Investigations shall

(i) Make a recommendation to the Commission regarding whether and to what extent it is appropriate to notify the person whose proprietary information may have been compromised; and

(ii) Submit a report and recommendation to the Commission regarding whether to initiate sanctions proceedings or take other appropriate action.

(b) The Commission may make any appropriate determination regarding the initiation of sanctions proceedings, including rejecting, approving, or approving and amending any recommendation made by OUII.

(c) If the Commission determines that it is appropriate to issue a charging letter, the Commission Secretary shall initiate a proceeding under this Subpart by issuing a charging letter as set forth in § 207.103.

(d) If the Commission determines that it is appropriate to initiate proceedings, but that the party to be charged is beyond the jurisdiction of the Commission and within the jurisdiction of Canada, or that for other reasons an authorized agency of Canada would be the more appropriate forum for initation of a proceeding, the Commission shall take the necessary steps for issuance of a letter requesting the authorized agency of Canada to initiate proceedings under Canadian law on the basis of an alleged violation of the protective order.

(e) The Commission may make any determination regarding notification about the alleged breach and the relevant underlying facts to the person who submitted the proprietary information that allegedly has been disclosed. A determination by the Commission on this subject does not foreclose the administrative law judge from redetermining at any time during the hearing whether notification to the compromised party is appropriate.

(f) If the Commission determines that it is not appropriate to issue a charging letter or to refer the facts to the authorized agency of Canada, the file shall be closed and returned to the Commission Secretary, unless the Commission directs otherwise.

(g) Confidentiality. Except as deemed reasonably necessary by the Office of Unfair Import Investigations to gather relevant information and to protect the interests of the person who submitted the proprietary information, all aspects of the inquiry shall remain confidential, unless otherwise ordered by the Commission. Except as the Commission may otherwise order, the Commission Secretary shall maintain all closed investigatory files in confidence to the extent permitted by law, and shall destroy any documentary evidence containing allegations of breach for which no proceeding is initiated one year after the file is closed.

§ 207.103 Charging letter.

(a) *Contents of charging letter.* Each charged party shall be served by the Commission with a copy of a charging letter and any accompanying motion for interim measures, as provided for in § 207.106. The charging letter shall include:

(1) Allegations that the provisions of a protective order have been violated and the basis thereof;

(2) A citation to § 207.100 of this subpart, for a listing of sanctions that may be imposed for breach of a protective order;

(3) A statement that a proceeding has been initiated and that an APA hearing will be held before an administirative law judge;

(4) A statement that, the charged party or his counsel may request the issuance of an appropriate administrative protective order to obtain access to the information upon which the charge is based;

(5) A statement that charged party has a right to retain counsel at the charged party's own expense for purposes of representation; and

(6) A statement that the charged party has the right to request in the response described in § 207.104 of this subpart that the proceedings remain confidential to the extent practicable.

(b) *Service of charging letter.* (1) The charging letter shall be served in a double envelope. The inner envelope shall indicate that it is to be opened only by the addressee. Service of a charging letter shall be made by one of the following methods:

(i) Mailing a copy by registered or certified mail addressed to the charged party at the party's last known permanent address; or

(ii) Personal service; or

(iii) Any other method acceptable under Rule 4 of the Federal Rules of Civil Procedure.

(2) Service shall be evidenced by a certificate of service signed by the person making such service.

(c) *Confidentiality of charging letter.* Prior to entry of an order by the administrative law judge under § 207.105, the charging letter will be confidential and disclosed only to necessary Commission staff and the charged parties.

(d) *Amendment of charging letter.* (1) At any time after proceedings have been initiated, the investigative attorney may move for leave to amend or withdraw the charging letter.

(2) *Amendment to include additional parties.* If the administrative law judge determines that the charging letter should be amended to include additional parties, he shall issue a recommended determination to that effect. The Commission shall review the recommended determination, and issue a determination granting or denying the motion to amend the charging letter to include additional parties.

(3) *Other amendments.* Upon motion, the administrative law judge may grant leave to amend the charging letter for good cause shown upon such conditions

as are necessary to avoid prejudicing the public interest and the rights of the originally-charged parties or parties added to the charging letter.

(4) Any amended charging letter shall be served upon all charged parties in the form and manner set forth in paragraphs (a) and (b) of this section.

§ 207.104 Response to charging letter.

(a) *Time for filing.* A charged party shall have twenty (20) days from the date of service of the charging letter within which to file a written response to the allegations made in the charging letter unless otherwise ordered by the administrative law judge.

(b) *Form and content.* Each response shall be under oath and signed by the charged party or its duly authorized officer, attorney, or agent, with the name, address, and telephone number of the same. Each charged party shall respond to each allegation in the charging letter, and may set forth a concise statement of the facts constituting each ground of defense. There shall be a specific admission or denial of each fact alleged in the charging letter, or if the charged party is without knowledge of any such fact, a statement to that effect.

(c) *Request for confidentiality.* The response shall contain a statement as to whether the charged party seeks an order to maintain the confidentiality of all or part of the proceedings to the extent practicable, pursuant to § 207.105 of this subpart.

§ 207.105 Confidentiality.

(a) *Protection of proprietary and privileged information.* As necessary for the preparation of a defense, counsel for the charged party may be granted access in these proceedings to proprietary information or to the privileged information the disclosure of which is the subject of the proceedings. Any such access shall be under protective order consistent with the provisions of this subpart.

(b) *Confidentiality of proceedings.* Upon the request of any charged party pursuant to § 207.106 of this subpart, the administrative law judge will issue an appropriate confidentiality order. This order will provide for the confidentiality, to the extent practicable and permitted by law, of information relating to allegations of violations of a protective order, consistent with public policy considerations and the needs of the parties in conducting of the sanctions proceedings. The order will provide that all proceedings under this provision shall be kept confidential within the terms of the order except to the extent incorporated into a published final decision of the Commission. Any confidential information not disclosed in such decision will remain protected.

§ 207.106 Interim Measures.

(a) At any time after proceedings are initiated, the administrative law judge, upon motion by the investigative attorney, or on his or her own initiative, may issue a recommended determination to revoke the allegedly-violated protective order, to disclose information about the proceedings that would otherwise be kept confidential, or to take other appropriate interim measures.

(b) Before issuing a determination recommending interim sanctions, the administrative law judge shall afford a party against whom such measures are proposed the opportunity to oppose the motion for interim sanctions. The administrative law judge will notify the parties of the determination on interim measures as expeditiously as possible, usually within no more than twenty (20) days from the date the motion was filed.

(c) The Commission shall review any recommended determination regarding the imposition of interim measures, and within twenty (20) days from issuance of the recommended determination, or within such other time as the Commission may order, the Commission shall issue its determination regarding interim measures. The Commission may impose any appropriate interim measures.

(d) The administrative law judge may at any time recommend to the Commission that interim measures be revoked. Within ten (10) days after issuance of any such recommendation, or within such other time as the Commission may order, the Commission shall rule on such recommendation.

(e) If the Commission takes interim measures that revoke or modify an outstanding protective order issued in the course of an ongoing panel review, the Commission Secretary shall immediately notify the Secretariat of these measures. If any such measures are revoked, the Commission Secretary shall immediately notify the Secretariat of such change.

§ 207.107 Motions.

(a) *Presentation and disposition.* (1) After issuance of the charging letter and while part of the proceeding is pending before the administrative law judge, all motions relating to that part of the proceeding shall be addressed to the administrative law judge. If no administrative law judge has yet been assigned, all motions shall be addressed to the Chief Administrative Law Judge.

(2) While part of a proceeding is pending before the Commission, all motions relating to that part of the proceeding shall be addressed to the Chairman of the Commission. All written motions shall be filed with the Commission Secretary and served upon all parties.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) *Responses.* Any response to a motion shall be filed within ten (10) days after service of the motions, or within such longer or shorter time as may be designated by the administrative law judge or the Commission. The moving party shall have no right to reply, except as permitted by the administrative law judge or the Commission.

(d) *Service.* All motions, responses, replies, briefs, petitions, and other documents filed in sanctions proceedings under this subpart shall be served by the party filing the document upon each other party. Service shall be made upon counsel for the party unless the administrative law judge or the Commission orders otherwise.

§ 207.108 Preliminary Conference.

As soon as practicable after the response to the charging letter is filed, unless the administrative law judge determines that such a conference is not necessary, the administrative law judge shall direct counsel or other representatives for the parties to meet with him at a preliminary conference. At such conference, he shall consider the issuance of such orders as he deems necessary for the conduct of the proceedings. Such orders may include, as appropriate under these regulations, the establishment of a discovery schedule or the issuance of an order, if requested, to provide for maintaining the confidentiality of the proceedings pursuant to § 207.105(b) of this subpart.

§ 207.109 Discovery.

(a) *Discovery methods.* All parties may obtain discovery under such terms and limitations as the administrative law judge may order. Discovery may be by one or more of the following methods:

(1) Depositions upon oral examination or written questions. The attendance of witnesses at a deposition may be compelled by subpoena as provided in § 207.110 of this subpart;
(2) Written interrogatories;
(3) Production of documents or things for inspection and other purposes; and
(4) Requests for admissions.

If a party or any officer or agent of a party fails to comply with a discovery order, the administrative law judge may take such action as he deems reasonable and appropriate, including the issuance of evidentiary sanctions or deeming the respondent to be in default.

(b) *Depositions of nonparty officers or employees of the United States or Canadian governments.*—(1) *Depositions of Commission officers or employees.* A party desiring to take the deposition of an officer or employee of the Commission (other than a member of the Office of Unfair Import Investigations or of the Office of the Administrative Law Judges), or to obtain nonprivileged documents or other physical exhibits in the custody, control, and possession of such officer or employee, may file a written motion requesting the administrative law judge to recommend that the Commission direct that officer or employee to testify or produce the requested materials.

(2) *Depositions of officers or employees of other United States agencies, or of the Canadian government.* A party desiring to take the deposition of an officer or employee of another agency, or of the Canadian government, or to obtain nonprivileged documents or other physical exhibits in the custody, control, and possession of such officer or employee, may file a written motion requesting the administrative law judge to recommend that the Commission seek the testimony or production of requested material from the officer or employee.

§ 207.110 Subpoenas.

(a) *Application for issuance of a subpoena.* Except as provided in § 207.109(b) of this subpart, an application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge. The application shall be made in writing, and shall specify the material to be produced as precisely as possible, showing the relevancy of the material and the reasonableness of the scope of the subpoena. The application shall be ruled upon by the administrative law judge.

(b) *Enforcement of a subpoena.* A motion for enforcement of a subpoena shall be made to the administrative law judge. Upon consideration of the motion and any response thereto, the administrative law judge shall recommend to the Commission in favor of or against enforcement. The administrative law judge's recommendation shall provide the basis therefor, and shall address each of the criteria necessary for enforcement of an administrative subpoena. After consideration of the administrative law judge's recommendation, the Commission shall determine whether initiation of enforcement proceedings is appropriate.

(c) *Application for subpoena grounded upon the Freedom of Information Act.* No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge or the Commission.

§ 207.111 Prehearing conference.

The administrative law judge may direct counsel or other representatives for the parties to meet with him to consider any or all of the following:

(a) Simplification and clarification of the issues;

(b) Scope of the hearing;

(c) Stipulations and admissions of either fact or the content and authenticity of documents;

(d) Disclosure of the names of witnesses and the exchange of documents or other physical evidence that will be introduced in the course of the hearing; and

(e) Such other matters as may aid in the orderly and expeditious disposition of the proceedings.

§ 207.112 Hearings.

(a) *Purpose of and scheduling of hearings.* An opportunity for a hearing before an administrative law judge shall be provided for each action initiated under this subpart. The purpose of such hearing shall be to take evidence and hear argument in order to determine whether a party has violated or induced violation of the provisions of a protective order, and if so, what sanctions are appropriate. Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place, continuing until completed unless otherwise ordered by the administrative law judge.

(b) *Joinder or consolidation.* If sanctions are proposed against more than one party or if violations of more than one protective order are alleged, the administrative law judge may order such joinder or consolidation as may tend to avoid unnecessary costs or delay.

(c) *Compliance with Administrative Procedure Act.* The administrative law judge shall conduct a hearing that complies with the requirements of section 554 of title 5 of the United States Code.

§ 207.113 The Record.

(a) *Definition of the record.* The record shall consist of—

(1) All pleadings, the charging letter and response thereto, motions and responses, and other documents and exhibits properly filed with the Commission Secretary;

(2) All orders, notices, and the recommended or initial determinations of the administrative law judge;

(3) Orders, notices, and any final determination of the Commission;

(4) Hearing transcripts, and evidence admitted at the hearing; and

(5) Any other items certified into the record by the administrative law judge.

(b) *Certification of the record.* The record shall be certified to the Commission by the administrative law judge upon his filing of the initial determination.

§ 207.114 Initial determination.

(a) *Time for filing of initial determination.* (1) Except as may otherwise be ordered by the Commission, within ninety (90) days, or within 120 days in a complicated case, of the date of issuance of the charging letter, the administrative law judge shall certify the record to the Commission and shall file with the Commission an initial determination as to whether each charged party has violated or induced violation of the provisions of a protective order, and as to appropriate sanctions. Any party may request the administrative law judge to treat the proceeding as a complicated case requiring 120 days for completion.

(2) The administrative law judge may request the Commission to extend the time period for issuance of the initial determination as for good cause shown.

(b) *Contents of the initial determination.* The initial determination shall include the following:

(1) An opinion stating findings and conclusions necessary for the disposition of all material issues of fact, law, or discretion, and the reasons or bases therefor.

(2) A statement that the initial determination shall become the determination of the Commission unless a party files a petition for review of the determination pursuant to § 207.115 or the Commission pursuant to § 207.116 orders on its own motion a review of the initial determination or certain issues therein.

(c) *Burden of proof.* A finding that a charged party violated or induced the violation of the terms of a protective order shall be supported by clear and convincing evidence. The administrative law judge may impose any appropriate sanctions if clear and convincing evidence supports a finding that the charged party violated or induced the violation of the terms of a protective order.

(d) *Effect of initial determination.* The initial determination shall become the determination of the Commission forty-five (45) days after the date of service of the initial determination, unless the Commission within such time orders review of the initial determination or certain issues therein pursuant to §§ 207.115 or 207.116 or by order shall have changed the effective date of the initial determination. In the event an initial determination becomes the determination of the Commission, the parties shall be notified thereof by the Commission Secretary.

§ 207.115 Petition for review.

(a) *The petition and responses.* (1) Any party may request a review by the Commission of the initial determination by filing with the Commission Secretary a petition for review, except that a party who has defaulted may not petition for review of any issue regarding which the party is in default.

(2) Any person who wishes to obtain judicial review pursuant to section 403(c) of the FTA Act must first seek review by the Commission in accordance with the procedures set forth in this regulation governing petitions for review.

(3) Any petition for review must be filed within fourteen (14) days after service of the initial determination on the charged party. The petition shall:

(i) Identify the party seeking review;

(ii) Specify the issues upon which review is sought, including a statement as to whether review is sought of the initial determination regarding the existence of a violation, or of the initial determination regarding sanctions;

(iii) Set forth a concise statement of the relevant law or material facts necessary for consideration of the stated issues; and

(iv) Present a concise argument setting forth the reasons why review is necessary or appropriate.

(4) Any issue not raised in the petition for review filed under this section will be deemed to have been abandoned and may be disregarded by the Commission in determining whether to review, and in reviewing, an initial determination.

(5) Any party may file a response to the petition within seven (7) days after service of the petition, except that a party who has defaulted may not file a response to any issue regarding which the party is in default.

(b) *Grant or denial of review.* (1) The Commission shall decide whether to grant a petition for review, in whole or in part, within forty-five (45) days of the service of the initial determination on the parties, or by such other time as the Commission may order.

(2) The Commission shall base its decision whether to grant a petition for review upon the petition and response thereto, without oral argument or further written submissions, unless the Commission shall order otherwise.

(3) The Commission shall grant a petition for review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for the filing of briefs and oral argument if deemed appropriate by the Commission. The notice that the Commission has granted the petition shall be served by the Commission Secretary on all parties.

§ 207.116 Commission review on its own motion.

Within forty-five (45) days of the date of service of the initial determination, the Commission on its own initiative may order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review.

§ 207.117 Review by Commission.

On review, the parties may not present argument on any issue that is not set forth in the notice of review. On review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge. The Commission may make any findings or conclusions that in its judgment are proper based on the record in the proceeding.

§ 207.118 Role of the General Counsel in Advising the Commission.

When the allegedly-violated protective order was issued in connection with a panel review that was not completed as of the date the charging letter was issued, and in other appropriate circumstances, the General Counsel and any other Commission attorneys who have participated in the panel review, shall not participate in advising the Commission as to the sanctions proceedings brought under this subpart. In such cases, the Assistant General Counsel for Section 337 Investigations, who shall have had no role in the panel review or underlying investigation, shall be designated Acting General Counsel.

§ 207.119 Reconsideration.

(a) *Petition for reconsideration.* Within fourteen (14) days after service of a Commission determination, any party may file with the Commission a petition for reconsideration, setting forth the relief desired and the grounds in support thereof. Any petition filed under this section must be confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the petitioner had no opportunity to submit arguments.

(b) *Disposition of petition for reconsideration.*

The Commission shall grant or deny the petition for reconsideration. No response to a petition for reconsideration will be received unless requested by the Commission, but a petition for reconsideration will not be granted in the absence of such a request. If the motion to reconsider is granted, the Commission may affirm, set aside, or modify its determination, including any action ordered by it to be taken thereunder. When appropriate, the Commission may order the administrative law judge to take additional evidence.

§ 207.120 Public notice of sanctions.

If the final Commission decision is that there has been a violation of a protective order, and that public sanctions are to be imposed, notice of the decision will be published in the **Federal Register** and forwarded to the Secretariat. Such publication will occur no sooner than fourteen (14) days after issuance of a final decision or after any petition for reconsideration has been denied. The Commission Secretary shall also serve notice of the Commission decision upon such departments and agencies of the United States and Canadian governments as the Commission deems appropriate.

Issued: August 23, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–20460 Filed 8–31–89; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1364-89]

Delegation of Authority to the Assistant Attorneys General for the Criminal and Civil Rights Division

AGENCY: Office of the Attorney General.

ACTION: Final Rule.

SUMMARY: This order amends 28 CFR part O to delegate the Attorney General's authority under 18 U.S.C. 245, which protects individuals against civil rights violations, to the Assistant Attorneys General for the Criminal and Civil Rights Divisions. This order will revise the Code of Federal Regulations so that it accurately reflects the current rules.

EFFECTIVE DATE: August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Carol A. Williams, Special Counsel, Office of Legal Counsel, telephone: 202-633-3865. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This regulation will amend title 28 of the Code of Federal Regulations to reflect an internal Department of Justice delegation of authority. This is not a major rule within the meaning of Exec. Order No. 12291. This will not have an impact on a significant number of small businesses. 5 U.S.C. 901.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies).

By the authority vested in me including 28 U.S.C. 509, 510, and 5 U.S.C. 301, subparts J and K of part O of title 28 of the Code of Federal Regulations are amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303, 3101; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 1989b, 2001-2017p; Pub. L. No. 91-513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.50 is amended by adding a new paragraph (k) to read as follows:

§ 0.50 [AMENDED]

* * * * *

(k) Upon request, certifications under 18 U.S.C. 245.

3. Section 0.55 is amended by adding a new paragraph (t) to read as follows:

§ 0.55 [AMENDED]

* * * * *

(t) Upon request, certifications under 18 U.S.C. 245.

Dated: August 21, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89-20304 Filed 8-31-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 51, 52, 83, 170, 262, and 355

Removal of Parts

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes 32 CFR Parts 51, 52, 83, 170, 262, and 355. These parts are canceled and no longer valid. This final rule is published to ensure that the documents listed are removed from the Code of Federal Regulations.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. L. M. Bynum, Correspondence and Directives Directorate, Washington, DC 20301-1155, telephone 202-4111.

SUPPLEMENTARY INFORMATION:

List of Subjects

32 CFR Part 51

Civil rights; Education; Equal employment opportunity; Miliary personnel.

32 CFR Part 52

Military personnel.

32 CFR Part 83

Armed forces; Elementary and secondary education; Students.

32 CFR Part 170

Armed forces; Government procurement.

32 CFR Part 262

Armed forces reserves; Federal buildings and facilities; Grant programs-National defense.

32 CFR Part 355

Organization and functions (Government agencies).

PARTS 51, 52, 83, 170, 262, and 355—[REMOVED]

Accordingly, under the authority of 10 U.S.C. 131, Title 32, Chapter I, is amended by removing Parts 51, 52, 83, 170, 262, and 355.

Dated: August 28, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-20509 Filed 8-31-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 65

[COTP Tampa Regulation 89-35]

Safety Zone Regulations; Headwaters of Crystal River FL., Kings Bay, Crystal Bay

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone near the headwaters of the Crystal River. Kings Bay, Crystal Bay and their adjoining waters are a safety zone. All boating traffic transiting these waters must proceed at "idle speed." This safety zone becomes effective at 6:00 p.m. Friday, 1 September 1989 and expires at 6:00 a.m. Tuesday, 5 September 1989.

This regulation is needed to reduce the hazards to boaters and their vessels associated with the heavy traffic anticipated in the area.

EFFECTIVE DATE: These regulations become effective at 6:00 p.m. Friday, 1 September 1989. It terminates at 6:00 a.m. Tuesday, 5 September 1989.

FOR FURTHER INFORMATION CONTACT: LT P.J. MacDonald (813) 228-2194.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent possible damage to the boaters and their vessels involved.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Drafting Information

The drafters of this regulation are LT P.J. MacDonald, Project Officer for the Captain of the Port Tampa, and LCDR Dickman, Project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

The circumstances requiring this regulation will begin on 1 September 1989 at 6:00 p.m. The regulation is needed to protect boaters and vessel traffic from the hazards of the high vessel traffic anticipated in the area.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5, 49 CFR 1.46.

2. A new § 165.T07035 is added to read as follows:

§ 165.T07035 Safety Zone: Sarasota Bay and Gulf of Mexico, Sarasota, FL

(a) *Location,* The following area is a safety zone: The headwaters of the Crystal River, Kings Bay, Crystal Bay and their adjoining waters.

(b) *Effective date:* This regulation becomes effective at 6:00 p.m. 1 September 1989. It terminates at 6:00 a.m. on 5 September 1989.

(c) *Regulations:* In accordance with the general regulations in 165.23 of this part, all vessel traffic transiting the established safety zone must proceed at "Idle Speed".

Dated: August 25, 1989.

H.D. Jacoby,

Captain, U.S. Coast Guard, Captain of the Port, Tampa, FL.

[FR Doc. 89-20628 Filed 8-31-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD8-89-05]

Drawbridge Operation Regulations; Inner Harbor Navigation Canal, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the new Danziger bridge over the Inner Harbor Navigation Canal, mile 3.1, in New Orleans, Orleans Parish, Louisiana, by permitting the draw to open on at least four hours advance notice from 8 p.m. to 7 a.m. This change is in addition to the present regulation for the bridge. This change is being made because of the infrequent requests for openings of the draw during the prescribed advance notice period. This action will relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 30 March 1989, the Coast Guard published a proposed rule (54 FR 13080) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 6 April 1989. In each notice interested parties were given until 15 May 1989 to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and Commander J. A. Unzicker, project attorney.

Discussion of Comments

Five letters of comment were received in response to public notification of the proposed rule change. The Federal Emergency Management Agency, Western Towing Company, and Navios Ship Agencies, Inc. each offered no objection to the proposed rule. Two letters of concern were received. Johnson Maritime Services (Gulf), Inc., and the New Orleans Steamship Association each expressed concern about the economic impact on deep draft traffic caused by delayed bridge openings. The Louisiana Department of Transportation and Development answered the concern to the respondent's satisfaction. Therefore in the absence of any objection to the proposed rule as published in (54 FR 13080) on 30 March 1989, the final rule is unchanged from the proposed rule.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that very few vessels now pass the bridge during the advance notice period of 8 p.m. to 7 a.m. For that period, the bridge opens about one time every three days. When the need arises, the vessels involved can reasonably give four hours advance notice for a bridge opening during that period by placing a collect call to the bridge owner at anytime. Mariners requiring the bridge opening are repeat users and scheduling their arrival at the bridge at the appointed time should involve little or no additional expense to them. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

The advance notice for opening of the draw can be given by placing a collect call at anytime to the LDOTD in Bridge City, Louisiana, telephone (504) 436-9100. From afloat, this contact may be made by radiotelephone through a public coast station.

The LDOTD recognizes that there may be an unusual occasion to open the bridge on less than four hours notice for an emergency, or to operate the bridge on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

2. Section 117.458 is revised to read as follows:

§ 117.458 Inner Harbor Navigation Canal, New Orleans.

(a) The draw of the US90 (Danziger) bridge, mile 3.1, shall open on signal;

except that, from 8 p.m. to 7 a.m. the draw shall open on signal if at least four hours notice is given, and the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday.

(b) The draw of the Leon C. Simon Blvd. (Seabrook) bridge, mile 4.6, shall open on signal; except that, from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday, the draw need not be opened.

Dated: August 21, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 89-20680 Filed 8-31-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3638-4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final Rulemaking.

SUMMARY: In a November 16, 1988, notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Ohio State Implementation Plan (SIP) for ozone. This revision is a relaxation of the reasonably available control technology (RACT) requirement for volatile organic compounds (VOC), for the Paper Products Company (PPC) roll coating line. This facility is located in Hamilton County, Ohio, an area designated as nonattainment for ozone.

In today's Final Rulemaking, USEPA is disapproving this SIP revision because (1) it has not been demonstrated that it is technically or economically infeasible for PPC to meet the existing RACT limit, and (2) the State has not shown that this variance is consistent with an approvable attainment demonstration for the Cincinnati area.

EFFECTIVE DATE: This final rulemaking becomes effective on October 2, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, Columbus, Ohio 43266-0149.

A copy of today's revision to the Ohio SIP is available for inspection.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan Air and Radiation Branch (5AR-26) U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On July 16, 1986, the Ohio Environmental Protection Agency (OEPA) submitted a proposed SIP revision consisting of a relaxation of RACT requirements for a roll coating line at PPC, located in Hamilton County, Ohio. The roll coating line produces paperboard used in the food industry. The proposed revision includes the following conditions:

1. The source shall not apply more than 10 gallons of coatings in any 1 day.
2. PPC must keep monthly records for all coating material used by the source.
3. PPC must submit annual reports on source emissions.

The variance contains no limits on total emissions or emission rates.

On October 2, 1986, USEPA notified OEPA that the July 16, 1986, submittal was deficient (see USEPA's September 15, 1986, technical support document (TSD)). The OEPA did not respond to USEPA's October 2, 1986, letter.

I. Current VOC SIP

Under the existing federally approved SIP, each roll coating line is subject to the control requirements contained in OAC Rule 3745-21-09(F), and the compliance schedule contained in OAC Rule 3745-21-04(C)(5). These rules require PPC to meet a limit of 2.9 pounds of VOC per gallon of coating, excluding water, by April 1, 1982. USEPA approved these rules as meeting the RACT requirements of the Clean Air Act (CAA) on October 31, 1980 (45 FR 72122), and June 29, 1982 (45 FR 28097).

II. Deficiencies in the RACT Relaxation

An exemption from the VOC regulations for this source constitutes a site-specific relaxation of RACT (i.e., a source-specific redefinition of RACT). In order for such a relaxation to be approved by USEPA PPC must demonstrate that compliance with the applicable limit is technically or economically infeasible.

III. Proposed SIP Revision

In a November 16, 1988, (53 FR 46097) notice of proposed rulemaking, USEPA proposed to disapprove PPC's relaxation of RACT for VOC involving its roll coating line. On December 16, 1988, the OEPA submitted comments to USEPA.

OEPA's Comment

OEPA asked that the revision be reviewed under the "five percent equivalency" policy based on the following:

> Based on a maximum allowed daily usage of 10 gallons of coatings, the maximum daily emission would be 60 pounds of VOC (coating with 6.0 pounds of VOC per gallon and 10 percent solids by volume, as reported by the company). The related allowable daily emission would be 11.4 pounds of VOC (based on 81 percent control, USEPA's presumptive RACT for add-on control). An exemption for this site would increase the daily allowable emission by 48.6 pounds of VOC (22.0 kilograms of VOC). This represents a 2.8 percent increase in allowable daily VOC emission during 1982 for the paper coating category within the ozone SIP for Cincinnati. The paper coating category for Hamilton County has a total daily allowable emission of 537 kilograms, as reported in that SIP and in a letter of December 23, 1986, to Steve Rothblatt, Chief, Air and Radiation Branch Region V, USEPA. However, the seven-county demonstration area of the Cincinnati ozone SIP has a total daily allowable emission of 799 kilograms for paper coating during 1982.

USEPA's Response

The 5 percent equivalency policy is intended to be used to justify a different cutoff for applicability on a category-wide basis. It *cannot* be used to justify a site-specific relaxation of RACT.

Conclusion

USEPA is disapproving this SIP revision for PPC because (1) it has not been demonstrated that it is technically or economically infeasible for PPC to meet the RACT limit, and (2) the State has not shown that this variance is consistence with an approvable attainment demonstration for the Cincinnati area.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Ozone, Hydrocarbon, Carbon monoxide, Intergovernmental offices.

Authority: 42 U.S.C. 7401-7642.

Dated: August 14, 1989.

Valdas V. Adamkus,

Regional Administrator.

Title 40 of the Code of the Federal Regulation, chapter 1, part 52, is amended as follow:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1885 is amended by adding paragraph (q) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(q) Disapproval—On July 16, 1986, the Ohio Environmental Protection Agency submitted a proposed relaxation of reasonably available control technology (RACT) requirements for a roll coating line at Paper Products Company (PPC), located in Hamilton County, Ohio. The roll coating line produces paperboard used in the food industry. The proposed relaxation of RACT included the following conditions:

(1) The source shall not apply more than 10 gallons of coatings in any 1 day.

(2) PPC must keep monthly records for all coating material used by the source.

(3) PPC must submit annual reports on source emissions.

The variance contains no limits on emissions or emission rates.

[FR Doc. 89-20640 Filed 8-31-89; 8:45 am]

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40 CFR Part 52

[FRL-3636-5, KY-030]

Approval and Promulgation of Implementation Plans, Kentucky; State Regulation for Prevention of Significant Deterioration (PSD) and Visibility New Source Review in Attainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action EPA is finalizing approval of revisions to the Kentucky State Implementation Plan (SIP) which were submitted to EPA on February 20, 1986. This action was proposed on March 17, 1987 (52 FR 8311). These revisions include a regulation for prevention of significant deterioration (PSD), a visibility monitoring strategy, and regulations for visibility new source review in attainment areas. This approval of Kentucky's PSD regulation will give the Natural Resources and Environmental Protection Cabinet (NREPC) full authority to implement and enforce the current PSD program in Kentucky. PSD requirements for particular matter (PM_{10}) are not included in this action. Kentucky's PSD requirements for PM_{10} were recently submitted to EPA and will be acted on in a separate **Federal Register** Notice.

The principal effect of the new visibility protection regulations will be to require the State to consider visibility impacts when reviewing permit applications for new major sources and major modifications in attainment areas which could affect visibility in federal Class I areas.

DATE: This rule will become effective on October 2, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Natural Resources and Environmental Protection Cabinet, Division of Air Pollution Control, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Pamela Adams of the EPA Region IV Air Programs Branch at the above address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Following a December 30, 1985, public hearing in conformity with 40 CFR 51.102 (old 51.4), the Commonwealth of Kentucky's Natural Resources and Environmental Protection Cabinet (NREPC) adopted regulation changes involving PSD and visibility and submitted them to EPA on February 20, 1986, for approval as implementation plan revisions. EPA proposed to approve the revisions on March 17, 1987 (52 FR 8311). This notice finalizes that approval. Comments received from the National Park Service are addressed below in the section entitled *Visibility Monitoring Strategy.*

PSD: On December 5, 1974, EPA published regulations for PSD under the 1970 version of the Clean Air Act. These regulations established a program for protecting areas with air quality better than the National Ambient Air Quality Standards (NAAQS). The Clean Air Act Amendments of 1977 changed the 1970 Act and EPA's regulations in many respects, particularly with regard to PSD. In addition to mandating certain changes to EPA's PSD regulations immediately, the new Clean Air Act, in Sections 160-169, contains comprehensive new PSD requirements. These new requirements are to be incorporated by states into their implementation plans.

On June 19, 1978 (43 FR 26380), and August 7, 1980 (45 FR 52676), EPA promulgated regulations that contain requirements that states must follow when preparing State Implementation Plan (SIP) revisions that meet the new PSD requirements.

On December 21, 1982 (47 FR 56882), EPA proposed approval of a previous version of Kentucky's regulation for Prevention of Significant Deterioration.

Natural Resources and Environmental Protection Cabinet (NREPC) adopted regulation changes involving PSD and visibility and submitted them to EPA on February 20, 1986, for approval as implementation plan revisions. EPA proposed to approve the revisions on March 17, 1987 (52 FR 8311). This notice finalizes that approval. Comments received from the National Park Service are addressed below in the section entitled *Visibility Monitoring Strategy.*

In adopting the Clean Air Act, Congress designated EPA as the agency primarily responsible for interpreting the statutory provisions and overseeing their implementation by the states. EPA must approve state programs that meet the requirements of 40 CFR part 51. Conversely, EPA cannot approve programs that do not meet those requirements. However, the requirements of the Act and 40 CFR Part 51 for New Source Review (NSR), including those for PSD, stack heights/dispersion techniques, and visibility, are by nature very complex and dynamic. It would be administratively impracticable to include all statutory interpretations in the EPA regulations and the SIPs of the various states, or to amend the regulations and SIPs every time EPA interprets the statute or regulations or issues guidance regarding the proper implementation of the NSR program. Morever, the Act does not require EPA to do so. Rather, action by EPA to

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approve these NSR-related regulations and narrative as part of the Kentucky SIP has the effect of requiring the State to follow EPA's current and future interpretations of the Act's provisions and regulations, as well as EPA's operating policies and guidance (but only to the extent that such policies are intended to guide the implementation of approval state NSR programs).

Similarly, EPA approval also has the effect of superceding any interpretations or policies that the State might otherwise follow to the extent they are at variance with EPA's interpretations and applicable policies. Of course, any fundamental changes in the administration of NSR would have to be accomplished through amendments to the regulations in 40 CFR Part 51 and subsequent SIP revisions. Following today's approval of these revisions to the NSR requirements of the Kentucky SIP, EPA will continue to oversee implementation of this important program by reviewing and commenting upon proposed permits as appropriate. Specifically, EPA will comment upon proposed permits that do not implement the letter of the law, as well as EPA's statutory and regulatory interpretations and applicable guidance. If a final permit is issued which still does not reflect consideration of the relevant factors, EPA may deem the permit inadequate for purposes of implementing the requirements of the Act and Kentucky's SIP, and may consider enforcement action under Sections 113 and 167 of the Act to address the permit deficiency.

PSD: On December 5, 1974, EPA published regulations for PSD under the 1970 version of the Clean Air Act. These regulations established a program for protecting areas with air quality better than the National Ambient Air Quality Standards (NAAQS). The Clean Air Act Amendments of 1977 changed the 1970 Act and EPA's regulations in many respects, particularly with regard to PSD. In addition to mandating certain changes to EPA's PSD regulations immediately, the new Clean Air Act, in Sections 160–169, contains comprehensive new PSD requirements. These new requirements are to be incorporated by states into their implementation plans.

On June 19, 1978 (43 FR 26380), and August 7, 1980 (45 FR 52676), EPA promulgated regulations that contain requirements that states must follow when preparing State Implementation Plan (SIP) revisions that meet the new PSD requirements.

On December 21, 1982 (47 FR 56882), EPA proposed approval of a previous version of Kentucky's regulation for Prevention of Significant Deterioration (401 KAR 51:017). This proposal will not be finalized because of the amount of time that has passed (4 years) and because the regulations proposed for approval are superseded by the revised regulations proposed for approval in the March 17, 1987, **Federal Register** and finalized in this notice. These revisions to Kentucky's regulations were made primarily to respond to EPA requirements stated in the original proposal. EPA reviewed the revised regulations and found them to meet the requirements of 40 CFR 51.166 (old 51.24), except as noted in the March 17, 1987, proposal notice. The conditions mentioned in that notice are discussed below. EPA is today finalizing approval of 401 KAR 51:017 as part of the Kentucky SIP.

As stated in the proposal notice of March 17, 1987, EPA's final approval of Kentucky's PSD regulation was to be contingent upon the removal from Kentucky's regulations of the volatile organic compound (VOC) definition contained in their general definitions. For PSD purposes this definition improperly exempted compounds of low vapor pressure. Kentucky amended this definition to remove its applicability to the PSD and new source review (NSR) regulations, 401 KAR 51:017 and 401 KAR 51:052. This amended definition became effective for the Commonwealth of Kentucky on December 2, 1986. This regulatory amendment was submitted to EPA by letter of December 29, 1986.

EPA is taking no action on 51:017, Section 20, which allows rescission of State PSD permits issued under earlier versions of the State PSD regulations, because those regulations were never a part of the federally approved SIP. Sources holding these permits also hold a federal PSD permit if the sources are subject to federal PSD requirements. Rescission of those federal permits, if appropriate, may be accomplished through the procedures of 40 CFR 52.21. Federal PSD permits will not be affected by Section 20. Conversely, EPA's inaction will not affect Kentucky's ability to rescind state permits where appropriate.

The March 17, 1987, **Federal Register** notice made final approval of Kentucky's PSD regulation contingent upon Kentucky's removing the second sentence of 51:017 section 8(3). This sentence could be interpreted as exempting PSD sources from PSD review if they agree to nonattainment review. Kentucky did not intend that interpretation and deleted that sentence in an amendment submitted to EPA in the previously mentioned December 29, 1986, letter. The amended version of 51:017 became effective for the Commonwealth of Kentucky on December 2, 1986.

Kentucky's regulation adopts the definition of "stationary source" which was promulgated on June 25, 1982 (47 FR 27554), by EPA. This definition excludes all vessel emissions from the definition for purposes of determining if the source is major. On January 17, 1984, the Court of Appeals for the District of Columbia Circuit overturned and remanded to EPA for further consideration this portion of EPA's new source review regulations. EPA has not yet completed its reconsideration of how vessel emissions are to be treated. Although vessel emissions are an insignificant part of Kentucky's emission inventory, approval of Kentucky's PSD regulations was made contingent upon Kentucky's written commitment to revise their PSD regulation to incorporate revised vessel emission provisions as soon as EPA changes 40 CFR 51.166 (old 51.24). Kentucky stated this commitment in an October 17, 1986, letter to EPA.

In the **Federal Register** of July 8, 1985 (50 FR 27892), EPA published final regulations to implement section 123 of the Clean Air Act, which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. These regulations limit the amount of stack height or dispersion credit a source can claim while setting its emission limitations. The dispersion techniques include the use of stack heights greater than 65 meters and the use of other techniques to increase the dispersion of emissions rather than reduce the emissions of a source. Kentucky committed to reviewing all sources under EPA's new stack height regulations. Kentucky has since promulgated a new regulation for stack heights effective June 10, 1986, to require the use of good engineering practice stack height in determining emission limitations for all sources in Kentucky. This regulation, 401 KAR 50:042, was submitted to EPA by letter of March 23, 1987, and was designed to satisfy the requirements of EPA's regulations. Final approval of this regulation was published in the September 4, 1987, **Federal Register** (52 FR 33592).

The EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration.

These are:

1. Grandfathering pre-October 11, 1983 within-formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)];
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and
3. Grandfathering pre-1979 use of the refined H + 1.5L formula [40 CFR 51.100(ii)(2)].

Under the Prevention of Significant Deterioration program, Kentucky will be issuing permits and establishing emission limitations that may be affected by the court-ordered reconsideration of the stack height regulations promulgated on July 8, 1985 (50 FR 27892). For this reason, the EPA has required that the State include the following caveat in all potentially affected permit approvals until the EPA completes its reconsideration of remanded portions of the regulations and promulgates any necessary revisions:

> In approving this permit, the Kentucky Division for Air Quality has determined that the application complies with the applicable provisions of the stack height regulations as revised by the EPA on July 8, 1985 (50 FR 27892). Portions of the regulations have been remanded by a panel of the U.S. Court of Appeals for the D.C. Circuit in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). Consequently, this permit may be subject to modification if and when the EPA revises the regulations in response to the court decision. This may result in revised emission limitations or may affect other actions taken by the source owners or operators.

Kentucky has made an enforceable commitment to include this caveat in all affected permits by letter dated May 11, 1988. This commitment is being incorporated into the Code of Federal Regulations for the State of Kentucky as part of EPA's approval action.

On September 9, 1986, EPA revised the requirements for air quality modeling procedures to be used in processing PSD permits (51 FR 32176). The Kentucky regulations were adopted before that date and did not incorporate that change. Therefore, Kentucky committed to adopting these changes to its regulations prior to nine months after approval of these PSD regulations by EPA. Kentucky committed to using the new modeling procedures in processing PSD permits in the interim. Kentucky has met these commitments by incorporating the revised version of the "Guideline on Air Quality Models" by reference in 401 KAR 50:015, Documents Incorporated by Reference. This revised version of 401 KAR 50:015 became effective for the Commonwealth of Kentucky on February 10, 1987. The other regulations which require the use of the modeling guideline, including 401 KAR 51:017, refer to 401 KAR 50:015, and thus the revised version of the guideline. The amended version of 401 KAR 50:015 was submitted to EPA on March 23, 1987. EPA proposed approval of this amended version of 401 KAR 50:015 on October 16, 1987 (52 FR 38481). EPA promulgated Supplement A to the "Guideline on Air Quality Models (revised)" (1986), EPA 450/2–78–027R on January 6, 1988 (53 FR 392). Kentucky submitted its Prevention of Significant Deterioration regulation, 401 KAR 51:017, prior to that date. Kentucky has recently incorporated Supplement A into the State's regulations. This incorporation of Supplement A became state-effective in Kentucky on October 26, 1988. The revised version of 401 KAR 50:015 incorporating Supplement A by reference is expected to be submitted to EPA in the near future.

Action is being deferred on section 12(e) regarding ozone monitoring data. This section references 401 KAR 51:052 which is not currently a part of the federally approved State Implementation Plan (SIP). Section 12(e) will be approved at a later date provided that 401 KAR 51:052 is approved.

References are made in Kentucky's State regulations to 40 CFR 51.18, Review of new sources and modifications, and 40 CFR 51.24, Prevention of Significant Deterioration. EPA's 40 CFR Part 51 regulations were recodified in the November 7, 1986 **Federal Register**. Therefore, EPA will interpret former Part 51 citations such as 51.18 and 51.24 as referring to the new citations in Part 51 as codified in the November 7, 1986, **Federal Register** notice (51 FR 40656).

EPA directly issued federal PSD permits to all new PSD sources in Kentucky between 1974 and 1980. Since that time, Kentucky has issued PSD permits pursuant to a delegation from EPA. For enforcement purposes, EPA must retain in the Kentucky SIP the EPA PSD regulations of 40 CFR 52.21 as they apply to those sources. As is the case presently, Kentucky will retain delegation of authority to enforce the Federal PSD permits issued by EPA between 1974 and 1980 and the PSD permits issued by Kentucky under delegation of authority.

Visibility

On December 2, 1980, EPA promulgated visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 et seq. These regulations required that the 36 states listed in section 51.300(b)(2) accomplish the following: (1) develop a program to assess and remedy visibility impairment from new and existing sources, (2) develop a long-term (10 to 15 years) strategy to assure progress toward the national goal, (3) develop a visibility monitoring strategy to collect information on visibility conditions, and (4) consider any "integral vistas" (important views of landmarks or panoramas that extend outside the boundaries of the Class I area and are considered by the Federal Land Managers (FLM's) to be critical to the visitor's enjoyment of the Class I area) in all aspects of visibility protection. These visibility regulations only address a type of visibility impairment which can be traced to a single source or small group of sources known as reasonably attributable impairment or "plume blight." EPA deferred action on the regulation of widespread homogeneous haze (referred to as regional haze) and urban plumes due to scientific and technical limitations in visibility monitoring techniques and modeling methods (see 45 FR 80085 col. 3).

In December 1982, environmental groups filed a citizen's suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility SIPs for the 35 states that had failed to submit SIPs to EPA (EDF vs. Gorsuch, No. C 82–6850 RPA (N.D. Cal.)). The State of Alaska had submitted a SIP which was approved on July 5, 1983, at 48 FR 30623. EPA and the plaintiffs negotiated a settlement agreement for the remaining states which the court approved by order on April 20, 1984. EPA announced the details of the settlement agreement at 49 FR 20647 (May 16, 1984).

The first part of the settlement agreement required Kentucky to develop visibility new source review and visibility monitoring provisions to meet the requirements of 40 CFR 51.305 and 51.307 and submit those provisions to EPA by May 6, 1985. The first part of the settlement agreement further required EPA to approve the state submittal or to promulgate a Federal Implementation Plan (FIP) by January 6, 1986. Since Kentucky had not yet submitted a final visibility SIP, EPA promulgated a federal program for Kentucky to meet the requirements of 51.305 and 51.307 on February 13, 1986 (51 FR 5504). The federal program, which is covered by the federal visibility monitoring strategy (§ 52.26) and visibility NSR program (§ 52.27 and 52.28), was promulgated as part of the Kentucky SIP.

Kentucky has now submitted its "Plan for Visibility Protection in Class I

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Areas" for EPA's approval. In accordance with the first part of the settlement agreement, this plan satisfies the visibility requirements of 40 CFR 51.305 and 51.307 (a) and (d). A visibility monitoring strategy satisfies the requirements of 40 CFR 51.305, and regulations for visibility new source review in attainment areas satisfy the requirements of 51.307 (a) and (d). Although Kentucky has revised Regulation 401 KAR 51.052 (New Source Review in Nonattainment Areas) to satisfy the requirements of 40 CFR 51.307 (b) and (c), such revisions are not being acted on in this notice. Such revisions are not pending at EPA for approval at this time. Therefore, this **Federal Register** notice partially removes the federal promulgation of February 13, 1986, and approves Kentucky's visibility plan in place of the parts removed.

The second part of the settlement agreement required EPA to determine the adequacy of the SIPs to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307) and long-term strategies (§ 51.306). The settlement agreement required EPA to propose and promulgate FIPs on a specified schedule to remedy any deficiencies. The original deadlines for promulgating the FIPs were renegotiated and extended by a court order on September 9, 1986. The order provided that a state could avoid federal promulgation if it submitted a SIP to address the part 2 (remaining visibility provisions) requirements by August 31, 1987.

The part 2 visibility provisions are spelled out in § 51.302(c) (General Plan Requirements) and require that the SIPs include the following: (1) An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal, (2) emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources, (3) provisions to protect integral vistas identified pursuant to § 51.304, (4) provisions to address any existing impairment certified by the FLM, and (5) a long-term (10–15 year) strategy for making progress toward the national goal pursuant to § 51.306. Kentucky submitted its plans to satisfy the part 2 visibility requirements on August 31, 1987. EPA approved such plan on July 12, 1988 (53 FR 26253).

Visibility Narrative SIP

The new narrative section states that Kentucky's visibility goal is to "prevent any future impairment of visibility in Federal Class I areas which results from man-made air pollution." This is consistent with EPA's national goal of preventing any future and remedying any existing visibility impairment in mandatory Class I areas. Kentucky has only one mandatory Class I area, the Mammoth Cave National Park. No visibility impairment has been identified in this Class I area. The narrative visibility SIP also identifies the cause of visibility impairment, outlines the State's permitting procedures as they pertain to visibility new source review, and describes the State's visibility monitoring strategy.

Kentucky's "Visibility SIP" is composed of two main parts. First, it describes the State's visibility new source review regulations. Second, it describes Kentucky's visibility monitoring strategy.

Visibility New Source Review

Kentucky has revised its Prevention of Significant Deterioration rule (401 KAR 51:017) to include notification procedures and review requirements for assessing potential visibility impacts of new major sources proposed to be located in attainment areas.

These regulations also allow the State to require monitoring of visibility in the Class I area near the proposed new facility or modification. These revisions meet the requirements of 40 CFR 51.307 for visibility new source review in attainment areas and include the necessary visibility definitions contained in 40 CFR 51.301.

Kentucky has revised its provisions for new source review in attainment areas to make it incumbent upon the State to:

- Notify the Federal Land Manager (FLM) within 30 days of receiving a permit application;
- Notify the FLM within 30 days of receiving advance notification of a permit application;
- Notify the FLM 60 days prior to any public hearing on the permit;
- Consider comments from the FLM received up to 30 days after the FLM has been notified;
- Include a visibility impairment analysis in the notification to the FLM;
- Require sources to monitor;
- Deny permits in cases where State agrees with the FLM that visibility impairment would occur; and
- Provide an explanation of nonconcurrence in the notice of public hearing or give notice as to where the explanation may be obtained if the State disagrees with the FLM that visibility impairment would occur.

Visibility Monitoring Strategy

The State's monitoring strategy will be to use data from the human observations that are made by the National Weather Service at the Bowling Green-Warren County Airport in Bowling Green, Kentucky. The airport is approximately twenty-five air miles southwest of Mammoth Cave National Park.

Observers at the airport obtain visibility readings every hour of the day and make determinations as to whether haze is present. Any visibility monitoring required by the State in a Class I area will be approved by the Federal Land Manager. Data will be used to provide background data and to determine if there are any long-term visibility trends. Throughout the development of Kentucky's "Visibility SIP," the staff of the Kentucky Division of Air Pollution Control coordinated their efforts closely with the National Park Service (NPS) park, regional, and headquarters personnel. The National Park Service stated in its comments on EPA's proposed approval that the State provided several opportunities for input and was very responsive to the NPS concerns. Relevant to the State's expressed interest in establishing a visibility monitorng station in Mammoth Cave National Park, preliminary field work was conducted by the State and the NPS to find a suitable location for such a station, but resource constraints have been precluding implementation of the monitoring site according to the NPS. Consequently, Kentucky's visibility SIP indicates that EPA's support would be necessary before Kentucky could seriously consider this undertaking. The NPS encourages EPA to provide whatever assistance may be available to help the State carry out this part of their plan.

Further details pertaining to these regulation changes are contained in the Technical Support Document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

Final Action

EPA has found Kentucky's regulation for prevention of significnt deterioration, visibility monitoring program, and provisions for visibility new source review in attainment areas to meet the requirements contained in 40 CFR 51.166 (old 51.24), 51.305, and 51.307 (a) and (d). EPA is therefore finalizing approval of Kentucky's regulations for prevention of significant deterioration, visibility monitoring strategy, and visibility new source review in attainment area regulations as submitted on February 20, 1986. Furthermore, EPA is partially removing the part 1 federal visibility plan which was promulgated for Kentucky on February 13, 1986, at 51 FR 5504.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 31, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations.

Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the **Federal Register** on July 1, 1982.

Dated August 22, 1989.

William K. Reilly,
Administrator.

Part 52 of chapter I, title 40, of the Code of Federal Regulations, is amended as follows:

Subpart S—Kentucky

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.920 is amended by adding paragraph (c)(46) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(46) Kentucky regulation 401 KAR 51:017, Prevention of significant deterioration of air quality, and Kentucky's State Implementation Plan Revision for the Protection of Visibility for the Commonwealth of Kentucky pursuant to 40 CFR part 51, subpart P, submitted on February 20, 1986, by the Kentucky Natural Resources and Environmental Protection Cabinet.

(i) *Incorporation by reference.* (A) Kentucky regulation 401 KAR 51:017, Prevention of significant deterioration of air quality, which became State-effective on February 4, 1986.

(ii) *Other material.* (A) Kentucky's State Implementation Revision for the Protection of Visibility for the Commonwealth of Kentucky, pursuant to 40 CFR part 51, subpart P, which became State-effective on February 4, 1986.

3. Section 52.931 is amended by removing paragraph (a), revising and redesignating paragraphs (b) and (c) as (a) and (b) respectively, and by adding a new paragraph (c) to read as follows:

§ 52.931 Significant deterioration of air quality.

(a) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 (b) through (w) are hereby incorporated and made a part of the applicable state plan for the State of Kentucky only as they apply to permits issued pursuant to § 52.21 prior to final approval of Kentucky's Regulation for Prevention of Significant Deterioration (PSD), Visibility Monitoring, and Visibility New Source Review in Attainment Areas. The provisions of § 52.21 (b) through (w) are rescinded for permits issued after final approval of Kentucky's Regulation for Prevention of Significant Deterioration (PSD), Visibility Monitoring, and Visibility New Source Review in Attainment Areas.

(b) The Commonwealth of Kentucky has committed to revising the state's regulations accordingly when EPA amends the federal vessel emissions provisions contained in 40 CFR 51.166. In a letter dated October 17, 1986, Kentucky stated:

> As requested, the Division of Air Pollution Control hereby commits to changing the definition of "building, structure, facility, or installation," and any other applicable definitions, when the issue of vessel emissions is resolved at the federal level, and after the federal regulation, 40 CFR 51.24, is amended.

(d) In a letter dated May 3, 1988, EPA informed Kentucky that the following caveat must be included in all potentially affected permits due to a decision of the U.S. Court of Appeals for the District of Columbia Circuit (*NRDC* v. *Thomas*, 838 F.2d 1224):

> In approving this permit, the Kentucky Division for Air Quality has determined that the application complies with the applicable provisions of the stack height regulations as revised by the EPA on July 8, 1985 (50 FR 27892). Portions of the regulations have been remanded by a panel of the U.S. Court of Appeals for the D.C. Circuit in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). Consequently, this permit may be subject to modification if and when the EPA revises the regulation in response to the court decision. This may result in revised emission limitations or may affect other actions taken by the source owners or operators.

Kentucky responded with a letter dated May 11, 1988, stating in part:

> This is in response to your letter dated May 3, 1988 * * *. As requested by your letter, the Kentucky Division for Air Quality agrees to include the condition set forth in your letter, in all potentially affected permits issued under regulation 401 KAR 51:017 or 401 KAR 51:052. Therefore, we request that you consider this letter as our commitment that the required caveat will be included in all potentially affected permits * * *.

4. Section 52.936 is revised to read as follows:

§ 52.936 Visibility protection.

(a) The requirements of Section 169A of the Clean Air Act are not met because the plan does not include approvable procedures meeting the requirements of 40 CFR 51.307 (b) and (c) for protection of visibility in mandatory Class I Federal areas from sources in nonattainment areas.

(b) Regulations for visibility monitoring and new source review. The provisions of § 52.28 are hereby incorporated and made part of the applicable plan for the State of Kentucky.

[FR Doc. 20639 Filed 8–31–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 790

[OPTS–46019; FRL 3637–5]

Procedures Governing Testing Consent Agreements and Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is amending the procedural rule in 40 CFR part 790 for manufacturers and processors of chemical substances and mixtures (chemicals) performing testing pursuant to section 4 of the Toxic Substances Control Act (TSCA) by modifying and clarifying the EPA procedures for reviewing and approving or denying modifications to test standards and test schedules. This includes stating that EPA will normally: (1) Require submission of requests to extend test schedules at least 30 days before the reporting deadline; (2) limit extensions to no longer than a period of time equal to the in-life portion of the test plus 60 days, but not to exceed 1 year; and (3) grant extensions of longer than 1 year without notice and comment rulemaking only if the delay is due to unforeseen circumstances such as a demonstrated lack of laboratory availability or of a suitable test substance. By this amendment, EPA intends to reduce delays in developing required health and environmental effects test data and reduce the paperwork burden for EPA and test sponsors. This amendment also requires that all exemption applications

include the CAS number of the chemical to which the application applies.

DATES: Effective on October 31, 1989. Submit written comments on or before October 2, 1989.

ADDRESSES: Submit written comments, identified by the docket number (OPTS-46019), in triplicate to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

All submitted public comments on this interim final rule will be available for public inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Introduction

Since 1987, EPA has promulgated over 20 test rules and consent orders that require test sponsors to perform health, environmental, and/or chemical fate tests according to specified test standards. In response to these rules and consent orders, test sponsors have submitted over 75 applications for modifying test standards or extending reporting deadlines. EPA has found that the time and effort needed to respond to these applications, especially those requiring notice and comment, has been far greater than expected. These amendments should decrease the number of applications for modification submitted by test sponsors and reduce the number of modifications that will require notice and comment.

EPA believes that these amendments make only procedural changes and do not impose any substantive requirements on manufacturers or processors subject to TSCA section 4(a) test rules and consent orders. However, EPA is inviting comment on these amendments and if these comments result in a need for changes to the interim final rule, EPA will modify this rule as appropriate. EPA will take all comments into consideration when promulgating a final rule on the procedures governing testing consent agreements and test rules.

II. Amendments

A. Modifications To Test Standards and Test Schedules

These amendments make several changes in the process that should result in test sponsors submitting fewer applications and will give EPA more flexibility in processing these applications in a timely manner.

Test sponsors should submit an application to modify a test standard only if they wish to modify one or more of the mandatory testing conditions or requirements in a test standard. The only mandatory requirements in a test standard are the "shall statements". There are few of these statements in most test standards, and they usually refer to the test species, route of exposure, length of test, minimum criteria for test acceptance, and minimum reporting requirements. If the testing laboratory selected by the test sponsor does not follow all of these "shall statements", the test sponsor may be held in violation of the rule or consent order.

Test sponsors are not required to adhere to the non-mandatory testing conditions in the test standard; i.e., the "should statements". These statements provide guidance on how to perform a test and need not be precisely followed by the test laboratory if they have a procedure they believe is better or equally acceptable.

If a test sponsor or test laboratory wants EPA to provide guidance or to clarify non-mandatory testing requirements (i.e., "should statements") they should directly contact the EPA project manager for that test rule or consent order. If the project manager is not known, the test sponsor should submit the request for guidance to the Public Docket for that rule or consent order.

The current procedural rule, in 40 CFR 790.55, lists four specific modifications of test standards or schedules that EPA considers "major". These modifications either significantly affect the scope of testing or significantly change the test schedule. Currently, EPA seeks public comment before approving any such modification. Through experience gained in handling modification requests, EPA now recognizes a need to refine the criteria that allow EPA to approve certain modifications without first seeking public comment.

Upon publication of this amendment, EPA may approve modifications to a test standard without first seeking public comment if EPA determines that the successful completion or achievement of a requirement or test condition (i.e., "shall statement") by the test laboratory is not technically feasible for that particular test chemical without modification.

With this amendment, EPA will have the authority to approve, without first obtaining public comments, a requested test schedule extension for up to 12 months instead of 6 months as currently allowed. EPA will, on a case-by-case basis, also have the latitude to approve extensions that exceed 12 months without first seeking public comment if EPA concludes that the delay is not the fault of the test sponsor and is due to unforeseen circumstances. Examples would include a demonstrated lack of test laboratory availability, a lack of availability of a suitable test substance (e.g., a 14-C labeled test organisms, or the unexpected failure of a long-term test near the end of the test.

EPA believes that this limited change in the types of circumstances for approving test standard and test schedule modifications without notice and comment is necessary to ensure the efficient and timely implementation of test rules and consent orders. Without the latitude to approve such modifications by letter, EPA would have to wait for notice and comment rulemaking before granting the modification, resulting in a delay of testing that would be much longer than if EPA granted the request by letter. EPA approval of test schedule extensions without seeking notice and comment, even if they exceed 12 months, should result in test results being submitted to EPA in a more timely manner. EPA believes this more flexible approach will benefit all parties.

B. Timing of Submission of Applications for Test Standard and Test Schedule Modifications

On several occasions, test sponsors have submitted applications for test schedule extensions just before the deadline for submission of the final report. These extension requests frequently did not contain factually documented reasons for the extension and usually suggested that the test sponsor was not closely monitoring the test laboratory.

Test sponsors should submit all applications for test schedule modifications as soon after they first realize that the test reporting deadline, as specified in the rule or consent order, cannot be met. Test sponsors should submit all extension requests at least 60 days before the reporting deadline to allow EPA sufficient time to evaluate the application and make a reasonable decision.

Unless there are extenuating circumstances, EPA does not intend to approve extension requests that are not submitted at least 30 days before the reporting deadline and do not include a sound rationale why the delay in testing could not have been avoided. The maximum time that EPA will grant for an extension will normally equal the period of time required to perform the in-life or on-test portion of the test plus 60 days, but not to exceed 1 year.

EPA has found that the time periods specified in test rules and consent orders for specific tests are more than adequate for the successful completion of each test. This includes time for the test sponsor to select and contract with a test laboratory, develop the analytical methods if needed, perform the preliminary and definitive testing, and prepare and submit a final report. Under most circumstances, an additional extension of time equal to the in-life portion of the test plus 60 days is sufficient to overcome typical testing problems or to repeat the test if necessary.

Once EPA has granted an extension to a specific reporting deadline, normally no additional extension will be granted for the same test. Most of the tests required in test rules and consent orders are routine tests that have been successfully completed at many testing laboratories.

C. Content of Exemption Applications

This amendment requires that all exemption applications submitted by manufacturers and processors include the CAS number of the chemical subject to the rule if a CAS number has been assigned.

D. Other Amendments

To clarify the procedural rule, EPA is making several minor changes to it. These include: (1) Stating that all study plan amendments must be sent to the Office of Compliance Monitoring; (2) requiring that test sponsors include in the study protocol submitted with the study plan the rationale for combining two or more test protocols into one test protocol; (3) requiring that the reporting dates in the study plan be within the deadlines specified in the rule or consent agreement; and (4) making it clear that EPA does not routinely review, at the time of submission, the protocols submitted with the study plan to determine if the protocols comply with the EPA test standards specified in the rule or consent agreement; this is the responsibility of the test sponsor

III. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this procedural rule change is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.* Pub. L. 96-354, September 19, 1980), EPA is certifying that this procedural rule change will not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they would experience only very minor costs, if any, in securing exemption from testing requirements; and (3) small businesses are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this interim final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned an OMB control number of 2070-0033.

These changes in the procedural rule for implementation of section 4 of TSCA are expected to have a negligible effect on the public reporting burden. To the extent that the clearer guidance and criteria provided by these changes reduces the number of applications for test standard and test schedule modifications submitted by test sponsors, the reporting burden will be reached.

List of Subjects in 40 CFR Part 790

Chemicals, Environmental protection, Hazardous substances, Testing, Laboratories, Reporting and recordkeeping requirements.

Dated: August 21, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR, Part 790 is amended as follows:

PART 790—[AMENDED]

1. The authority citation for part 790 continues to read as follows:

Authority: 15 U.S.C. 2603.

2. In § 790.40, by revising the introductory text of paragraph (b)(1) to read as follows:

§ 790.40 Promulgation of test rules.

* * * * *

(b) * * *

(1) Under single-phase test rule development, EPA will promulgate a test rule in part 799 of this chapter through a notice and comment rulemaking which specifies the following:

* * * * *

3. In § 790.50, by revising paragraphs (a)(2), (b)(1), and (c)(1) (v) and (vi), and by adding paragraph (e) to read as follows:

§ 790.50 Submission of study plans.

(a) * * *

(2) Persons who notify EPA of their intent to conduct tests in compliance with the requirements of a Phase I test rule as described in § 790.40(b)(2) must submit the proposed study plans for those tests on or before 90 days after the effective date of the Phase I rule; or, for processors complying with the notice described in § 790.48(b)(2), 90 days after the publication date of that notice; or 60 days after the date manufacture or processing begins as described in § 790.45(d), as appropriate, to the address in § 790.5(b).

* * * * *

(b) * * *

(1) EPA may grant requests for additional time for the development of study plans on a case-by-case basis. Requests for additional time for study plan development must be made in writing to the Director, Office of Compliance Monitoring at the address in § 790.5(d). Each extension request must state why EPA should grant the extension.

* * * * *

(c) * * *

(1) * * *

(v) Study protocol, including the rationale for any combination of test protocols; the rationale for species/strain selection; dose selection (and supporting data); route(s) or method(s) of exposure; description of diet to be used and its source; including nutrients and contaminants and their concentrations; for *in vitro* test systems, a description of culture medium and its source; and a summary of expected spontaneous chronic diseases (including tumors), genealogy, and life span.

(vi) Schedule for initiation and completion of each short-term test and of each major phase of long-term tests; dates for submission of interim progress and final reports to EPA that are within the reporting deadlines specified by EPA In the final test rule.

* * * * *

(e) *Amendments to study plans.* Test sponsors shall submit all amendments to study plans to the Director, Office of Compliance Monitoring at the address in § 790.5(d).

4. In § 790.55, by revising paragraphs (a), (b)(3) and (b)(4)(iv), and by adding paragraph (d) to read as follows:

§ 790.55 Modification of test standards or schedules during conduct of test.

(a) *Application.* Any test sponsor who wishes to modify the test schedule or the mandatory testing conditions or requirements (i.e., "shall statements") in the test standard for any test required by a test rule must submit an application in accordance with this paragraph. Application for modification must be made in writing to the Director, Office of Compliance Monitoring at the address in § 790.5(d), or by phone with written confirmation to follow within 10 working days. Applications must include an appropriate explanation and rationale for the modification. Where a test sponsor requests EPA to provide guidance or to clarify a non-mandatory testing requirement (i.e., "should statements") in a test standard, the test sponsor should submit these requests to EPA at the address in § 790.5(b).

(b) * * *

(3) Where, in EPA's judgment, the requested modification of a test standard or schedule would significantly alter the scope of the test or significantly change the schedule for completing the test, EPA will publish a notice in the **Federal Register** requesting comment on the proposed modification. However, EPA will approve a requested modification of a test standard under paragraph (b)(3) of this section without first seeking public comment if EPA believes that an immediate modification to the test standard is necessary to preserve the accuracy or validity of an ongoing test. EPA may also modify a testing requirement or test condition in a test standard if EPA determines that the completion or achievement of this requirement or condition is not technically feasible. EPA may approve a test schedule extension under paragraph (b)(3) of this section without first seeking public comment if EPA determines, on a case-by-case basis, that a delay of over 12 months is not the fault of the test sponsor and is the result of unforeseen circumstances such as a lack of laboratory availability, lack of availability of suitable test substance (e.g., 14–C labelled test substance), lack of availability of healthy test organisms, or the unexpected failure of a long-term test. EPA will publish an annual notice in the **Federal Register** announcing the approval of any test standard modifications and test schedule extensions under paragraph (b)(3) of this section and provide a brief rationale of why the modification was granted.

(4) * * *

(iv) Except as provided in paragraph (b)(3) of this section, extend the final reporting deadline more than 12 months from the date specified in the final rule.

* * * * *

(d) *Timing.* (1) Test sponsors should submit all applications for test schedule modifications at least 60 days before the reporting deadline for the test in question.

(2) EPA will not normally approve any test schedule extensions submitted less than 30 days before the reporting deadline for the test in question.

(3) Except as provided in paragraph (b)(3) of this section, EPA may grant extensions for up to 1 year but will normally limit extensions to a period of time equal to the in-life portion of the test plus 60 days.

(4) EPA will normally approve only one deadline extension for each test.

(5) Test sponsors should submit requests for test standard modifications as soon as they determine that the test cannot be successfully completed according to the test standard specified in the rule.

5. In § 790.60, by revising paragraph (a)(8) to read as follows:

§ 790.60 Contents of consent agreements.

(a) * * *

(8) Schedules with reasonable deadlines for submitting interim progress and/or final reports to EPA.

* * * * *

6. In § 790.62, by revising paragraphs (a), (b)(9), and (c)(1), and by adding paragraph (c)(4) to read as follows:

§ 790.62 Submission of study plans and conduct of testing.

(a) *Timing of submission.* The principal sponsor of testing conducted pursuant to a consent agreement shall submit a study plan no later than 45 days prior to the initiation of testing.

(b) * * *

(9) Study protocol, including the rationale for any combination of test protocols; the rationale for species/strain selection; dose selection (and supporting data); route(s) or method(s) of exposure; description of diet to be used and its source, including nutrients and contaminants and their concentrations; for *in vitro* test systems, a description of culture medium and its source; and a summary of expected spontaneous chronic diseases (including tumors), genealogy, and life span.

* * * * *

(c) * * *

(1) Upon receipt of a study plan, EPA will review it to determine whether it complies with paragraph (b) of this section. If EPA determines that the study plan does not comply with paragraph (b) of this section, EPA will notify the submitter that the plan is incomplete and will identify the deficiencies and the steps necessary to complete the plan. It is the responsibility of the test sponsor to review the study protocols to determine if they comply with all the mandatory testing conditions and requirements in the test standards (i.e., "shall statements").

* * * * *

(4) The test sponsor shall submit any amendments to study plans to the Director, Office of Compliance Monitoring at the address specified in § 790.5(d).

7. In § 790.68, by revising paragraphs (b)(1), (b)(2)(iii), and (b)(iv)(D), and adding paragraph (c) to read as follows:

§ 790.68 Modification of consent agreements.

* * * * *

(b) * * *

(1) Any test sponsor who wishes to modify the test standard or schedule for any test required under a consent order must submit an application in accordance with this paragraph. Application for modification must be made in writing to the Director, Office of Compliance Monitoring at the address in § 790.5(d) or by phone, with written confirmation to follow within 10 working days. Applications must include an appropriate explanation of why the modification is necessary. EPA will consider only those applications that request modifications to mandatory testing conditions or requirements (i.e., "shall statements" in the consent order). Where a test sponsor requests EPA to provide guidance or to clarify a non-mandatory testing requirement (i.e., "should statements"), the test sponsor should submit these requests to EPA at the address in § 790.5(b).

(2) * * *

(iii) Where, in EPA's judgment, the requested modification of a test standard or schedule would significantly alter the scope of the test or significantly change the schedule for completing the test, EPA will publish a notice in the **Federal Register** requesting comment on the proposed modification. However, EPA will approve a requested modification of a test standard under paragraph (b)(2)(iii) of this section without first seeking public comment if EPA believes that an immediate modification to the test standard is

necessary to preserve the accuracy or validity of an ongoing test. EPA also may modify a testing requirement or test condition in a test standard if EPA determines that the completion or achievement of this requirement or condition is not technically feasible. EPA may approve a requested modification of a test schedule under paragraph (b)(2)(iii) of this section without first seeking public comment if EPA determines, on a case-by-case basis, that a delay of over 12 months is not the fault of the test sponsor and is due to unforeseen circumstances such as a lack of laboratory availability, lack of availability of suitable test substance (e.g., 14–C labelled test substance), lack of availability of healthy test organisms, or the unexpected failure of a long-term test. EPA will publish an annual notice in the **Federal Register** announcing the approval of any test standard modifications and test scheduled extensions under paragraph (b)(2)(iii) of this section, and provide a brief rationale of why the modification was granted.

(iv) * * *

(D) Except as provided in paragraph (b)(2)(iii) of this section, extend the final reporting deadline more than 12 months from the date specified in the consent order.

(c) *Timing.* (1) Test sponsors should submit all applications for test schedule modifications at least 60 days before the reporting deadline for the test in question.

(2) EPA will not normally approve any test schedule extensions submitted less than 30 days before the reporting deadline for the test in question.

(3) Except as provided in paragraph (b)(2)(iii) of this section, EPA may grant extensions as shown necessary for up to 1 year but will normally limit extensions to a period of time equal to the in-life portion of the test plus 60 days.

(4) EPA will normally approve only one deadline extension for each test.

(5) Test sponsors should submit requests for test standard modifications as soon as they determine that the test cannot be successfully completed according to the test standard specified in the consent order.

8. In § 790.82, by revising paragraph (a) to read as follows:

§ 790.82 Content of exemption application.

* * * * *

(a) The identity of the test rule, the chemical identity, and the CAS No. of the test substance on which the application is based.

* * * * *

[FR Doc. 89–20580 Filed 8–31–89; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 56 and 164

[CGD 86–035]

RIN 2115–AC32

Prohibition of Asbestos-Containing Construction Materials

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the approval specification for noncombustible materials to delete references to asbestos as an acceptable noncombustible material for the construction of merchant vessels, and to update the list of designated testing laboratories for noncombustible materials. It is also deleting references to asbestos gaskets from the regulations on piping systems. The Coast Guard no longer issues approvals for asbestos-containing structural fire protection materials, and does not permit the use of such materials in merchant vessel construction. The action taken under this docket makes the regulations consistent with established Coast Guard practice.

EFFECTIVE DATE: October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Klaus Wahle, Office of Marine Safety, Security, and Environmental Protection, (202) 267–1444.

SUPPLEMENTARY INFORMATION: Coast Guard regulations require the construction of sections of certain types of commercial vessels to be of approved structural fire protection materials. The materials approval specifications are contained in subchapter Q of title 46 CFR. Materials which have complied with the applicable provisions of these specifications are issued Certificates of Approval.

Traditionally, many materials approved for fire protection purposes have contained asbestos. As the health hazards of asbestos became known, manufacturers of structural fire protection materials switched from producing asbestos-containing materials to asbestos-free substitutes. Now, no asbestos-containing materials are used.

A notice of proposed rulemaking was published in the **Federal Register** on December 1, 1988 (53 FR 48556), inviting comments for 45 days ending January 17, 1989. No comments were received during the comment period.

The approval specification for noncombustible materials, 46 CFR 164.009, is being revised to formally remove references to asbestos as an acceptable structural fire protection material. Additionally, this rulemaking updates the list of designated laboratories contained in § 164.009–1.

The Coast Guard is also revising 46 CFR 56.25–15, to delete reference to asbestos-metallic gaskets for high temperature or high pressure piping systems. The notice of proposed rulemaking had proposed deletion of asbestos-metallic gaskets, leaving only metal as suitable gasket material.

After the closing of the public comment period a comment was received indicating that suitable asbestos-free nonmetallic gaskets are now commercially available. In order to enable the industry to avail itself of the widest possible source of gaskets, the regulations have been revised to permit either metallic or suitable asbestos-free nonmetallic gaskets for high temperature and high pressure pipe.

Drafting information

The principal persons involved in drafting this proposal are: Mr. Klaus Wahle, Project Manager, and Lieutenant Commander Don. M. Wrye, Project Attorney, Office of Chief Counsel.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). References to asbestos and asbestos-containing materials as acceptable for use in vessel construction and as gasket material are simply being deleted, and the list of designated testing laboratories for noncombustible materials updated. Since the use of asbestos is now obsolete, and asbestos-free substitutes are readily available, the economic impact on vessel construction or replacement of gaskets has been found to be minimal. Because the economic impact of this rulemaking is expected to be so minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations do not contain any information collection or recordkeeping requirements.

Environmental Analysis

These regulations have been thoroughly reviewed by the Coast Guard and have been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2. of Commandant Instruction (COMDTINST) M16475.1B.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 56

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 164

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, Chapter I of Title 46, Code of Federal Regulations is amended as follows:

PART 56—PIPING SYSTEMS AND APPURTENANCES

1. The authority citation for part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5515; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. In § 56.25–15, paragraphs (b) and (c) are revised to read as follows:

§ 56.25–15 Gaskets (reproduces 108.4).

* * * * *

(b) Only metallic and suitable asbestos-free nonmetallic gaskets may be used on flat or raised face flanges if the expected normal operating pressure exceeds 720 pounds per square inch or the operating temperature exceeds 750 °F.

(c) The use of metal and nonmetallic gaskets is not limited as to pressure provided the gasket materials are suitable for the maximum fluid temperatures.

PART 164—MATERIALS

3. The authority citation for part 164 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

4. In § 164.009–1, paragraph (b) is revised to read as follows:

§ 164.009–1 General.

* * * * *

(b) The test and measurements described in this subpart are conducted by a laboratory designated by the Commandant. The following laboratories are so designated:

Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062
Dantest, National Institute for Testing and Verification, Amager Boulevard 115, DK 2300 Copenhagen S., Denmark

§ 164.009–3 [Removed]

5. Section 164.009–3 is removed.

§ 164.009–5 [Redesignated as § 164.009–3]

6. Section 164.009–5 is redesignated as § 164.009–3 and revised to read as follows:

§ 164.009–3 Noncombustible materials not requiring specific approval.

The following noncombustible materials may be used in merchant vessel construction though not specifically approved under this subpart:

(a) Sheet glass, block glass, clay, ceramics, and uncoated fibers.

(b) All metals, except magnesium and magnesium alloys.

(c) Portland cement, gypsum, and magnesite concretes having aggregates of only sand, gravel, expanded vermiculite, expanded or vesicular slags, diatomaceous silica, perlite, or pumice.

(d) Woven, knitted or needle punched glass fabric containing no additives other than lubricants not exceeding 2.5 percent.

Dated: August 10, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–20679 Filed 8–31–89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–603; RM–6455]

Radio Broadcasting Services; Hot Springs Village, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allows FM Channel 225A to Hot Springs Village, Arkansas, as that community's first local broadcast service, in response to a petition for rule making filed on behalf of Caddo Broadcasting. See 54 FR 4862, January 31, 1989. Coordinates utilized for Channel 225A at Hot Springs Village are 34–40–19 and 92–59–55. With this action, the proceeding is terminated.

DATES: Effective October 10, 1989; The window period for filing applications on Channel 225A at Hot Springs Village, Arkansas, will open on October 11, 1989, and close on November 9, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–603, adopted August 7, 1989, and released November 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 40, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Arkansas, by adding Hot Springs Village, Channel 225A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch Policy and Rules Division Mass Media Bureau.

[FR Doc. 89–20565 Filed 8–31–89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 169
Friday, September 1, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–CE–12–AD]

Airworthiness Directives; Beech 90 and 100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD) applicable to certain Beech Models 65–90, 65–A90, 65–A90–1, 65–A90–2, 65–A90–3, 65–A90–4, B90, C90, C90A, E90, 100, A100, and B100 airplanes which would supersede AD 87–23–09 and AD 70–25–04. The superseded AD's currently require repetitive inspections of the wing main spar lower cap and associated structure. This amendment would incorporate those portions of the superseded AD's which remain valid, and would correct certain minor editorial errors.

DATES: Comments must be received on or before October 16, 1989.

ADDRESSES: Beech Structural Inspection and Repair Manual (SIRM) P/N 98–39006, Revision A4, dated May 1, 1987, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085. Aviadesign Engineering Order E.O. B–8001, Issue 3, dated May 30, 1985, may be obtained from Western Aircraft Maintenance, 4444 Aeronca Street, Boise, Idaho 83705. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–CE–12–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, Holidays excepted.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE–120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–CE–12–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 87–23–09, Amendment No. 39–5765, published in the **Federal Register** on November 12, 1987 (52 FR 43318), requires inspection of the wing main spar lower cap and attach fittings for fatigue cracks. When this AD was promulgated, certain serial numbers of the Beech Model 65–90 were omitted from the effectivity because the airplanes were already being repetitively inspected per AD 70–25–04, Amendment No. 39–1332, published in the **Federal Register** on November 12, 1971 (36 FR 21668). For reasons discussed below, AD 70–25–04 is considered obsolete. It relies on an outdated Beech Service Instruction (No. 0394–018) for inspection criteria. These improved criteria are now available in the Beech Structural Inspection and Repair Manual (SIRM). Certain portions of the SIRM have been made mandatory by AD 87–23–09 for all 90 Series airplanes except Serials LJ–1 through LJ–67. The SIRM inspections are known to be effective in that at least 20 cracked wing spar components have been found by these inspections since September, 1983, out of the entire fleet of approximately 1550 airplanes. These inspections have been performed by Beech-trained personnel using state-of-the-art methods. This contrasts against the inspection methods in AD 70–25–04, which have found no cracks since September, 1979, in the fleet of 67 airplanes, applying the outdated inspection criteria and not necessarily utilizing Beech-trained personnel. Additional cause for requiring improved inspections on these 67 airplanes is that the wing lower forward attach fittings are not as durable as the improved fittings on airplanes having serial numbers LJ–68 and higher. The likelihood of cracks occurring in the attach fittings of these 67 airplanes is probably higher than for the remaining fleet. The likelihood of spar cap cracks would be about the same as for the remaining fleet. Since the remaining fleet is already protected by AD 87–23–09, the first 67 airplanes should be offered the same protection.

Another deficiency of AD 70–25–04 is that it calls for inspection of the wing skin adjacent to the attach fitting for cracks, and requires further inspections only if skin cracks are found. Since skin cracks are not an indicator of, and in fact are not related to, the condition of the attach fitting or spar cap, the straight-forward fitting and spar cap inspection methods in the SIRM are much preferred.

Based on the above discussion, it is proposed that AD's 87–23–09 and 70–25–04 be superseded by a new AD which follows the inspection requirements of AD 87–23–09. Also, the mailing address on the reporting form included in AD 87–23–09 would be changed and an omission in paragraph (e) of AD 87–23–09 will be corrected by adding a reference to Beech Wing Modification Kit No. 100-4007-1S.

Since the condition described in likely to exist or develop in other Beech 90 Series Airplanes of the same design, the proposed AD would require inspection of the wing main spar structure in accordance with the Beech SIRM. The FAA has determined there are approximately 1617 airplanes affected by the proposed AD. The cost of inspecting these airplanes in accordance with the proposed AD is estimated to be the same as already required by AD's 87–23–09 and 70–25–04. Therefore, the proposed revision has no economic impact on the private sector.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism duplications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) Is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of 14 CFR part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By superseding AD 87–23–09 Amendment Number 39–5765 and AD 70–25–04, Amendment Number 39–1332 with the following new AD:

Beech: Applies to Models 65–90 and 65–A90 (S/N LJ–1 thru LJ–317); 65–A90–1, 65–A90–2, 65–A90–3, 65–A90–4, B90, C90 (all S/N); C90A (S/N LJ–1063 thru LJ–1087, except LJ–1085); E90, 100, A100 and B100 (all S/N) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To detect possible fatigue cracking of the wing main spar lower cap and associated structure, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS), after the effective date of this AD, or upon accumulating 3000 hours TIS, whichever occurs later, unless previously accomplished per Ad 87–23–09, Amendment 39–5765, or AD 70–25–04, Amendment 39–1332, and thereafter at intervals not to exceed 1000 hours TIS (except as provided in paragraph (b) below) after the initial inspection, inspect the wing lower forward spar attach fittings, center section and outboard wing spar caps adjacent to the attach fittings by visual, fluorescent penetrant and eddy current methods as specified in the applicable section of Beech Structural Inspection and Repair Manual (SIRM), P/N 98–39006, Revision A4, dated May 1, 1987. The inspection must be performed by personnel specifically trained by Beech Aircraft Corporation.

Note 1. Beech offers a two-day training course free of charge to qualified personnel who have prior knowledge of eddy current inspection techniques. A listing of Beech Corporate maintenance facilities may be obtained from the sources contained in paragraph (h) of this AD. A listing of other facilities employing qualified inspectors is not available.

(b) At each inspection required by paragraph (a) above, inspect any reinforcing strap installed per Supplemental Type Certificate (STC) SA1178CE or SA1583CE for proper tension and condition in accordance with Aviadesign Engineering Order E.O. B–8001, Issue 3, dated May 30, 1985. Correct any discrepancy prior to further flight. For airplanes so equipped and inspected, the repetitive inspection interval of 1000 hours TIS in paragraph (a) above may be extended to 3000 hours TIS.

(c) If any crack is found in a main spar lower cap or fitting, prior to further flight repair or replace the defective part using the instructions and limitations specified in the Beech SIRM or other FAA approved instructions provided by Beech Aircraft Corporation.

(d) Within one week after completion of any inspection required by paragraph (a) or (b) of this AD, complete the reporting form included with this AD as Figure 1 and mail it to the address shown thereon (Reporting approved by the Office of Management and Budget under OMB No. 2120–0056).

(e) The initial and repetitive inspections specified in this AD are no longer required when the airplane is modified by Beech Wing Modification Kit No. 90–4077–1S or 100–4007–1S.

(f) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(g) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4400.

Note 2: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office, at the above address.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, Wichita, Kansas 67201–0085, or Western Aircraft Maintenance, 4444 Aeronca Street, Boise, Idaho 83705, or examined at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 87–23–09, Amendment 39–5765, and Ad 70–25–04, Amendment 39–1332.

Issued in Kansas City, Missouri, on August 23, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate Aircraft Certification Service.

Figure 1

Reporting Form

Airplane Model No. ______

Airplane Serial No. ______

Date of inspection per this AD ______

Airframe total hours time-in-service ______

Were any fatigue cracks found?

No ______

Yes ______

If "Yes" was checked above, complete the following:

Location of crack ______

______

Was crack removable by reaming or grinding?

No ______

Yes ______

Additional Comments ______ ______

______

Mailing Address:
FAA, Wichita ACO
Airframe Branch, Room 100
1801 Airport Road
Wichita, KS 67209

[FR Doc. 89–20617 Filed 8–31–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Document No. 89–CE–18–AD]

Airworthiness Directives; Beech 65–80 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Beech Models 65, 65–80, 65–A80 and 65–B80 airplanes, which would supersede AD 70–25–01, Amendment 39–1609. The FAA has determined that improved inspection criteria is available that will enhance the effectiveness of the required inspections. The proposed AD incorporates this new criteria.

DATES: Comments must be received on or before October 16, 1989.

ADDRESSES: Beech Structural Inspection and Repair Manual (SIRM) P/N 98–39006, Revision A4, dated May 1, 1987, applicable to this AD, may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085. Aviadesign Engineering Order E.O. B–8001, Issue 3, dated May 30, 1985, may be obtained from Western Aircraft Maintenance, 4444 Aeronca Street, Boise, Idaho 83705. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–CE–18–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE–120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–CE–18–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 70–25–01, Amendment 39–1609, published in the **Federal Register** on March 22, 1973 (38 FR 7451), requires inspections for fatigue cracking of the wing main spar lower cap and attach fittings on certain Beech 65–80 Series airplanes. AD 70–25–01 relies on an obsolete Beech Service Instruction (No. 0393–018) for the inspection criteria. Improved criteria are now available in the Beech Structural Inspection and Repair Manual (SIRM). The SIRM methods have been available for Beech 90 and 100 Series airplanes since September 1986, and are known to be effective. The criteria in AD 70–25–01 has also been used for the 90 Series airplanes, and have been found not to be as effective as the SIRM methods. Therefore, the FAA has determined that the methods in the SIRM should be used in lieu of the AD 70–25–01 criteria. In addition, AD 70–25–01 currently calls for inspections of the wing skin adjacent to the attach fitting for cracks, and requires further inspections only if skin cracks are found. The FAA has determined that skin cracks are not an indicator of, and in fact are not related to, the condition of the attach fitting or spar cap and that the straight-forward fitting and spar cap inspection methods specified in the SIRM should be utilized.

Therefore, the FAA proposes to supersede AD 70–25–01 with a new AD based on the SIRM inspection methods. The proposed AD is similar to that in effect for the Beech 90 and 100 Series, except for the training requirements for inspection personnel. The need for special training is not warranted by the service history for the 65–80 Series as it is for the 90 and 100 Series since only five cracked wing attach fittings have been found throughout the history of the 65–80 Series and no spar cap cracks have been found. AD 70–25–01 is effective at 3,000 hours time-in-service (TIS) for Models 65–80 and 65–A80 airplanes, and at 5,000 hours TIS for Models 65 and 65–B80 airplanes. The same effectivity is proposed in the superseding AD. The inspection interval in AD 70–25–01 is 500 hours TIS, decreasing to 300 hours TIS if skin cracks appear. A 1,000 hour TIS inspection interval is proposed for the superseding AD, and skin crack inspections are not included. As in the case of the AD on the Beech 90 and 100 Series, the inspection interval is lengthened to 3,000 hours TIS if a reinforcing strap is installed per STC SA1583CE and maintained with proper tension. The supersedure is therefore relaxatory.

Since the condition described is likely to exist or develop in other Beech 65–80 Series airplanes of the same design, the proposed AD would require inspections of the wing main spar structure in accordance with the Beech SIRM. The FAA has determined there are approximately 739 airplanes affected by the proposed AD. The cost of inspecting these airplanes in accordance with the proposed AD is estimated to be less than that required by AD 70–25–01. Therefore, the proposed revision has no additional economic impact on the private sector.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subparts in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 70–25–01, Amendment Number 39–1609, with the following new AD:

Beech: Applies to Models 65 (serial numbers (S/N) L–1, L–2, L–6, LF–7 through LF–76, and LC–1 through LC–180); 65–80 and 65–A80 (S/N LD–1 through LD–244); 65–A80 (S/N LD–245 through LD–269) when Beech Modification Kit No. 80–4004–1 or –3 is installed; and 65–B80 (all S/N) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To detect possible fatigue cracking of the wing main spar lower cap and associated structure, accomplish the following:

(a) Within 200 hours time-in-service (TIS) after the effective date of this AD, or upon accomplishing 3000 hours TIS on Models 65–80 and 65–A80 airplanes, or upon accumulating 5000 hours TIS on Models 65 and 65–B80 airplanes, whichever occurs later, and thereafter at intervals not to exceed 1000 hours TIS (except as provided in paragraph (b) below) after the initial inspection, inspect the wing lower forward spar attach fittings, center section and outboard wing spar caps adjacent to the attach fittings by visual, fluorescent penetrant and eddy current methods as specified in the applicable section of Beech Structural Inspection and Repair Manual (SIRM), P/N 98–39006, Revision A4, dated May 1, 1987.

Note 1: Beech offers a two-day training course free of charge to qualified personnel who have prior knowledge of eddy current inspection techniques. A listing of Beech Corporate maintenance facilities may be obtained from the sources identified in paragraph (f) of this AD. A listing of other facilities employing qualified inspectors is not available.

(b) At each inspection required by paragraph (a) above, inspect any reinforcing strap installed per Supplemental Type Certificate (STC) SA1583CE for proper tension and condition in accordance with Aviadesign Engineering Order E.O. B–8001, Issue 3, dated May 30, 1985. Correct any discrepancy prior to further flight. For airplanes equipped with STC SA1583CE and inspected in accordance with paragraph (a) above, the repetitive inspection interval of 1000 hours TIS in paragraph (a) above may be extended to 3000 hours TIS.

(c) If any crack is found in a main spar lower cap or fitting, prior to further flight repair or replace the defective part using the instructions and limitations specified in the SIRM or other FAA approved instructions provided by Beech Aircraft Corporation.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4400.

Note 2: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office, at the above address. All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; or Western Aircraft Maintenance, 4444 Aeronca Street, Boise, Idaho 83705; or these documents may be examined at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 70–25–01, Amendment 39–1609.

Issued in Kansas City, Missouri on August 23, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–20618 Filed 8–31–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89–NM–161–AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all de Havilland Model DHC–7 series airplanes, which would require a visual inspection for loose rivets, low frequency ultrasonic inspection for disbonding of unriveted stringers on fuselage skins, and repair, if necessary. This proposal is prompted by a recent report of disbonding found during routine inspection in a waffle doubler/belly skin. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

DATES: Comments must be received no later than October 23, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–161–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Airframe Branch, ANE–172; telephone (516) 791–6220. Mailing Address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–167–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Transport Canada, which is the airworthiness authority of Canada, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on de Havilland Model DHC–7 series airplanes. There has been a recent report of disbonding found during a routine inspection in a waffle doubler/belly skin. The disbonding is not attributed to prior damage and is currently under investigation by the manufacturer. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

Boeing of Canada, Ltd., de Havilland Division, has issued Service Bulletin 7–53–33, Revision A, dated June 9, 1989, which describes procedures for a visual inspection for loose rivets and low frequency ultrasonic testing to check for disbonding of unriveted stringers on fuselage skins, between the flight compartment bulkhead and the passenger door/emergency exit areas, and repair, if necessary. Transport Canada has classified this service bulletin as mandatory, and has issued Airworthiness Directive No CF–89–07 addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a visual inspection for loose rivets and low frequency ultrasonic testing to check for disbonding of unriveted stringers on fuselage skins, and repair, if necessary, in accordance with the service bulletin previously described. In addition, operators would be required to submit a report of their inspection findings to the FAA, Transport Canada, and the manufacturer.

This is considered to be interim action. The manufacturer is currently attempting to determine the extent and nature of the addressed damage, and is developing an appropriate repetitive inspection schedule and/or modification that will preclude the need for repetitive inspections. Once these are developed, the FAA may consider further rulemaking to revise this AD to require additional necessary actions.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

It is estimated that 42 airplanes of U.S. registry would be affected by this AD, that it would take approximately 36 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $60,480.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, LTD., De Havilland Division: Applies to all Model DHC–7 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage and subsequent decompression of the airplane, accomplish the following:

A. Within 30 days after the effective date of this AD, perform the following inspections and repair, in accordance with de Havilland Service Bulletin 7–53–33, Revision A, dated June 9, 1989:

1. Perform a low frequency ultrasonic inspection for disbonding of the fuselage belly skin doublers, between fuselage stations X248.00 and X535.25 below stringer 20 left and right, in accordance with Inspection Part A of the service bulletin.

2. Visually inspect for looseness or working of the rivets in the vertical skin joints, at fuselage stations X535.25 and X576.25 below stringer 20, left and right.

3. Visually inspect for looseness or working of the rivets in the fuselage skin joints at station X630.00 around the complete periphery of the fuselage, above and below the passenger and emergency exit doors.

4. Visually inspect for looseness or working of the rivets in the skin longitudinal joint between fuselage stations X424.00 to X484.00 along stringer 20, left and right. Pay particular attention to the lower line of rivets.

5. Repair all loose rivets prior to further flight, in a manner approved by the Manager, New York Aircraft Certification Office, ANE–170, FAA, New England Region.

6. Repair all disbonding prior to further flight, in accordance with the service bulletin.

B. Within 90 days after the effective date of this AD:

1. Perform a low frequency ultrasonic inspection for disbonding of the fuselage left and right sidewall skin doublers, between fuselage stations X248.00 and X596.75, between stringer 20 and 10, in accordance with de Havilland Service Bulletin 7–53–33, Revision A, dated June 9, 1989.

2. Repair any disbonding prior to further flight, in accordance with the service bulletin.

C. Within 150 days after the effective date of this AD:

1. Perform a low frequency ultrasonic inspection for disbonding of the fuselage roof skin doublers between fuselage stations X248.00 and X630.00, between stringer 10, left and right, in accordance with de Havilland Service Bulletin 7–53–33, Revision A., dated June 9, 1989.

2. Repair any disbonding prior to further flight, in accordance with the service bulletin.

D. Within 3 days after accomplishing each of the inspections required by paragraphs A., B., and C., above, report all findings, positive or negative, to the Director, Airworthiness Branch, Transport Canada, Ottawa, Canada; to the manufacturer, Boeing of Canada, Ltd., de Havilland Division, in accordance with de Havilland Service Bulletin 7–53–33, Revision A, dated June 9, 1989; and to the FAA, Manager, New York Aircraft Certification Office, ANE–170, New England Region.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE–170, FAA, New England Region.

NOTE: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, New York Aircraft Certification Office, ANE–170.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York.

Issued in Seattle, Washington, on August 23, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-20615 Filed 8-31-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-154-AD]

Airworthiness Directives; Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to Fokker Model F-27 Series Airplanes, which currently requires a one-time inspection of both the right and left upper nacelle brace struts, and replacement of struts if the struts are found with self-tapping screws. This action would expand the applicability of the existing AD to include additional affected airplanes. This proposal is prompted by discovery of brace struts with self-tapping screws on an airplane which was not included in the existing AD. This condition, if not corrected, could result in engine separation and subsequent structural damage to the airplane aft of the engine.

DATES: Comments must be received no later than October 23, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-154-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Standardization Branch, ANM-103; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-address, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-154-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On February 6, 1989, the FAA issued AD 89-04-06, Amendment 39-6143 (54 FR 6642; dated February 14, 1989), to require inspection of both the right and left upper nacelle brace struts in accordance with Fokker Service Bulletin F27/54-44, dated July 7, 1988. If any brace strut is found with a self-tapping screw, the brace strut is to be replaced prior to the accumulation of 30,000 landings on the strut, or within the next 500 landings after the AD effective date of the AD (March 28, 1989), whichever occurs later.

That action was prompted by a report of a broken upper nacelle brace strut on Model F-27 which apparently failed due to fatigue cracking that initiated at the hole of a self-tapping screw. The broken brace strut was found to deviate from the production configuration by not having a welded washer with a screw at both ends of the brace strut tube. This condition, if not corrected, could result in engine separation and subsequent structural damage to the airplane aft of the engine.

Since issuance of that AD, brace struts with self-tapping screws were discovered on an airplane which was not included in the applicability of the existing AD (or the effectivity of the applicable service bulletin).

Fokker has now issued Service Bulletin F27/54-44, Revision 1, dated May 19, 1989, which includes Model F-27 airplanes, Serial Numbers 10308 through 10340, and 10342 through 10360, in its effectivity. The RLD has classified this revised service bulletin as mandatory, and has issued Netherlands Airworthiness Directive BLA No. 88-44, Issue 2, dated June 16, 1989.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would expand the applicability of AD 89-04-06 to include all affected U.S.-registered airplanes, and reflect Revision 1 of the service bulletin in the requirements of the AD. This action would ensure, for all U.S.-registered airplanes, that a one-time inspection of the right and left upper-nacelle struts, and replacement of struts if found with self-tapping screws, is accomplished in accordance with the service bulletin previously described.

It is estimated that 1 additional airplane of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $160.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6143 (54 FR 6642; dated February 14, 1989), AD 89-04-06, as follows:

Fokker: Applies to Model F-27 series airplanes, Serial Numbers 10102 through 10307, 10308 through 10340, and 10342 through 10360, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent engine separation and subsequent structural damage to the airplane aft of the engine, accomplish the following:

A. For airplanes listed in Fokker Service Bulletin F27/54-44, dated July 7, 1988: Within 60 days after March 28, 1989 (the effective date of AD 89-04-06, Amendment 39-6143), inspect both the right and left upper nacelle brace struts, in accordance with Fokker Service Bulletin F27/54-44, dated July 7, 1988. If any brace strut is found with a self-tapping screw, prior to the accumulation of 30,000 landings on the strut, or within the next 500 landings from May 27, 1989, whichever occurs later, replace the brace strut in accordance with the referenced service bulletin.

B. For airplanes Serial Numbers 10308 through 10340 and 10342 through 10360: Within 60 days after the effective date of this amendment, inspect both the right and left upper nacelle brace struts, in accordance with Fokker Service Bulletin F27/54-44, Revision 1, dated May 19, 1989. If any brace strut is found with a self-tapping screw, prior to the accumulation of 30,000 landings on the strut, or within the next 500 landings after the effective date of this amendment, whichever occurs later, replace the brace strut in accordance with the referenced service bulletin.

C. An alternate means of compliance of adjustment of the compliance time, which provides an acceptable level of sefety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manfacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 23, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-20616 Filed 8-31-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ASW-10]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369 Series Helicopters (Including the YOH-6A and OH-6A)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would require a one-time inspection of engine-to-transmission driveshaft couplings and removal and replacement with airworthy parts, if necessary, on MDHC Model 369 series helicopters. The proposed AD is needed to prevent failure of engine-to-transmission couplings which could result in loss of control of the helicopter.

DATES: Comments must be received on or before October 16, 1989.

ADDRESSES: Comments on the proposed may be mailed in duplicate to: Regional Rules Docket, FAA, Office of the Assistant Chief Counsel, Fort Worth, Texas 76193-0007, or delivered in duplicate to 4400 Blue Mound Road, Room 158, Building 3B, of the Regional Rules Docket at the above address. Comments must be marked: Docket No. 89-ASW-10. Comments may be inspected at the above location in Room 158 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The applicable service information may be obtained from: McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Attention: Publications Department, MS543/D214, Mesa, Arizona 85205, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Roy McKinnon, Aerospace Engineer, ANM-143L, FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425, telephone (213) 988-5247.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the FAA before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket

Number 89–ASW–10. The postcard will be date/time stamped and returned to the commenter.

There have been reports of cracks in the spline area of the engine-to-transmission driveshaft coupling, Part Number (P/N) 369H5660, which may lead to failure of the part on MDHC 369 series helicopters. Failure of this part could result in engine overspeed and loss of power to the main rotor transmission resulting in an unplanned autorotation. Since this condition is likely to exist or develop on other helicopters of the same type design, the proposed AD would require a one-time inspection and replacement of parts, as necessary, to assure no couplings, serial numbers 5200 through 5309, are installed on MDHC Model 369 series helicopters.

The regulations proposed herein would not have a direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves approximately 1,000 helicopters with an approximate cost of only $80 per helicopter. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of 14 CFR part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

McDonnell Douglas Helicopter Company (MDHC): Applies to Model 369 series helicopters (including Models YOH–6A and OH–6A) certificated in any category.

Compliance required as indicated, unless already accomplished.

To prevent possible failure of the engine-to-transmission driveshaft coupling, which could result in loss of control of the helicopter, accomplish the following:

(a) Within the next 25 hours' time in service or within 120 days after the effective date of the AD, whichever occurs first, inspect the couplings, MDHC Part Number (P/N) 369H5660, to determine serial numbers.

(b) Replace any couplings, P/N 369H5660, which have serial numbers in the range from 5200 through 5309, with airworthy parts.

(c) Record compliance with paragraph (a) of this AD in the AD compliance record and in the maintenance record of the helicopter log book. Record the serial numbers of any deficient couplings found during compliance with this AD.

NOTE: MDHC Service Information Notices HN–216, DN–157, EN–47, FN–35, dated April 5, 1989, pertain to this subject.

(d) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the requirements of this AD may be accomplished.

(e) An alternate method of compliance or adjustment of the compliance time which provides an equivalent level of safety, may be used if approved by the Manager, Los Angeles Aircraft Certification Office, ANM–100L, FAA, 3229 East Spring Street, Long Beach, California 90806–2425. Note: Unairworthy couplings removed from service and in spares inventory should be marked unairworthy. Unairworthy couplings should be purged from spares inventory in accordance with MDHC SIN HN–216, DN–157, EN–47, FN–35, dated April 5, 1989.

Issued in Fort Worth, Texas, on August 22, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–20609 Filed 8–31–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 109

[Docket No. 89N–0014]

RIN 0905–AC91

Lead From Ceramic Pitchers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 90 days the period for submitting comments on its proposal to establish a regulatory limit for ceramic food-service pitchers, excluding creamers, that would limit the leaching of lead from the glazes and decorations on the food-contact surface of these pitchers to no more than 0.1 microgram per milliliter (µg/mL) of test solution and to consider all decorative ceramicware that appears to be suitable for food use to be for food use unless it is otherwise conspicuously and permanently marked or made unsuitable for food by drilling a hole in the food-contact surface. In addition, the agency is reopening for 180 days the period for submitting comments on the need to decrease leachable lead from other ceramicware and appropriate measures for achieving any needed decrease. FDA is reopening the comment period in response to request from the Coalition for Safe Ceramicware, the European Economic Community, and the Italian Embassy.

DATES: Comments by November 30, 1989, for ceramic pitchers and decorative ceramicware and by February 28, 1990, for all other issues.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Terry C. Troxell, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C St. SE., Washington, DC 20204, 202–485–0229.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 1, 1989 (54 FR 23485), FDA issued a proposed rule that would limit the amount of leachable lead from the glazes and decorations on the food-contact suface of ceramic food-service pitchers, excluding creamers, to no more than 0.1 µg/mL of test solution. The agency proposed this action based on recent toxicology and epidemiology studies on lead which have shown adverse effects in children, including deficits in intelligence and reduced stature, at lead exposure levels that were once thought not to be associated with adverse effects.

The agency further proposed to establish a regulation that would provide that all decorative or ornamental ceramicware that appears to be suitable for food use (i.e., is capable of holding food and may be asumed by the consumer to be for food use) will be deemed to be intended for food use and will be regulated as such unless it is otherwise conspicuously and

permanently marked, "Not for Food Use—May Poison Food," or a hole is bored through the potential food-contact suface of the decorative ceramicware to make it unsuitable for food use.

Finally, the agency requested comments on a variety of concerns regarding lead, including lead toxicity and the provisional tolerable intake range; the leachability of and exposure to lead from a variety of ceramicware under various conditions; the lowest leachable lead levels routinely attainable for various types of ceramicware; the impact of the proposed regulations; and the availability of alternative lead-free glazes and decorations including the leachability of potentially toxic substances from these glazes.

FDA received a request for a 180-day extension of the comment period from a group of ceramicware corporations and associations. They stated that this additional time is needed to address the issues raised and to provide information solicited by FDA in its proposal. They stated that gathering this information will involve complicated, time-consuming research by a number of parties that will take longer to complete than the time originally set aside for comments. FDA also received a request for a 30-day extension from an international federation and for a 77-day extension from a foreign embassy.

Because of the nature of the health concerns regarding lead, the agency believes that there should be no unnecessary delay in establishing an appropriate regulatory limit for ceramic pitchers or for ensuring that decorative ceramicware that is not intended for food use in appropriately identified. However, because of the difficult issues involved, FDA recognizes the need for some additional time to respond. Therefore, the agency is reopening the comment period for 90 days, until November 30, 1989 to respond to the proposal on a reduced limit for leachable lead in pitchers and on the proposed requirements for decorative ceramicware that appears suitable for food use. This will allow sufficient time to respond without causing unnecessary delays.

In addition, FDA believes that good cause has been shown that additional time is needed to gather information on the other aspects of this notice and is reopening for 180 days, until February 28, 1990, the period for interested persons to submit comments regarding the other issues on lead in ceramicware described in the notice.

Interested persons may, on or before November 30, 1989, submit to the Dockets Management Branch (address above) written comments regarding the proposed limits for lead in food-service pitchers excluding creamers and the proposed requirements for decorative ceramicware, and by February 28, 1990, comments on all other issues of lead in ceramicware. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 28, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–20634 Filed 8–31–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

[Notice No. 688]

Commerce in Explosives

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend 27 CFR 55.211 to require that the placards required by the Department of Transportation during transportation of blasting agents be in place on all facilities used to store blasting agents.

DATE: Written comments must be received by October 31, 1989.

ADDRESSES: Send written comments to: Chief, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 189, Washington, DC 20044–0189, ATTN: Notice No. 688.

FOR FURTHER INFORMATION CONTACT: Daniel E. Crowley, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 789–3029. .

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms (ATF) is concerned that emergency response personnel be made aware of the contents of the vehicles and other facilities used to store blasting agents. While blasting agents are among the least sensitive explosives in common use, they, like all explosives, will sometimes explode when involved in a fire. Displaying the Department of Transportation (DOT) placards, which are required during over the road transportation, will identify the contents of these vehicles and other facilities and direct the emergency responders to the proper guide in the DOT "Emergency Response Guidebook". The explosives industry safety position on signs in areas where explosives are stored is that any sign be located so that a bullet passing through the sign will not strike a magazine. The Bureau supports this position where the magazines to be protected contain bullet sensitive explosive materials. Having the placards displayed will not increase the hazard to the general public from this stored explosive material since blasting agents are not sensitive to bullet impact. Thus, a bullet fired by chance at the placard and striking the contents of the magazine will not initiate an explosion of the blasting agent contents. Rather, the public and response team members will be better protected by the DOT guidebook recommended restriction of access and required evacuation of the fire scene area where blasting agents are involved in a fire.

Based on the above, ATF is proposing to amend the regulations at 27 CFR 55.211 to require that the DOT placards be displayed on magazines storing blasting agents.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determiined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal, because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significiant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested persons. Comments received on or before the closing date wil be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC.

Drafting Information

The principal author of this notice of proposed rulemaking is Daniel E. Crowley, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 55

Administrative practice and procedure, Authority delegation, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forefeitures, Transportation, and Warehouses.

Authority and Issuance

PART 55—COMMERCE IN EXPLOSIVES

Par. 1 The authority citation for Part 55 continues to read as follows:

Authority: 18 U.S.C. 847.

Par. 2 Section 55.211 is amended by adding a new paragraph (a)(5) to read as follows:

* * * * *

§ 55.211 Construction of type 5 magazines.

(a) * * *

(5) *Placards.* The placards required by Department of Transportation regulation at 49 CFR Part 172, Chapter F for the transportation of blasting agents shall be displayed on all magazines.

* * * * *

Signed: August 1, 1989.

Stephen E. Higgins,

Director.

Approved: August 14, 1989.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 89–20578 Filed 8–31–89; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9E3706/P489; FRL 3637-7]

Pesticide Tolerance for Metolachlor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues (free and bound) of the herbicide metolacholor and its metabolites in or on the raw agricultural commodity Cubanelle peppers. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 9E3706/P489], must be received on or before October 2, 1989.

ADDRESS: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H–7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiement Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 9E3706 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of Puerto Rico.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for combined residues (free and bound) of the herbicide metolachlor (2-chloro-*N*-(2-ethyly-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acteamide) and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the recent compound, in or on the raw agricultural commodity Cubanelle peppers at 0.1 part per million (ppm).

The petitioner proposed that use on this commodity be limited to Puerto Rico based on the geograhical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons

seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The data considered in support of the tolerance include:

1. A 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (12.5 milligrams (mg)/kilogram (kg)).
2. A 6-month dog feeding study with a NOEL of 100 ppm (2.5 mg/kg).
3. A rat teratology study with no maternal, teratogenic, or fetotoxic effects at all levels tested (0, 60, 180, and 360 mg/kg/day).
4. A rabbit teratology study with a NOEL for maternal effects at 120 mg/kg and no teratogenic of fetotoxic effects at all levels tested (0, 36, 120, 360 mg/kg/day).
5. A 2-year oncogenicity study in mice with no observed oncogenic potential under the conditions of the study at 30, 1,000 and 3,000 ppm (highest dose level equivalent to 428 mg/kg); and a repeated mouse oncognenicity study with no observed oncognic potential under the conditions of the study and a systemic NOEL of 1,000 ppm at the same dose levels as the original study.
6. A two-generation rat reproduction study with a reproductive NOEL of 300 ppm (15 mg/kg) and a lowest effect level (LEL) of 1,000 ppm (50 mg/kg).
7. Mutagencity studies including: A mouse dominant-lethal study, negative for mutagenic effects; a mouse lymphoma mutation assay, not a mutagen in both presence and absence of metabolic activator; two DMA damage/repair assays (in fibroblasts and in rat hepatocytes), both negative; an Ames assay, negative for mutagenic effects; and a Chinese hamster micronucleus assay with no evidence of mutagenicity at dosage levels tested (0, 1, 250, 2,500 and 5,000 mg/kg).
8. A 2-year chronic feeding/oncogencity study (IBT validated) in the rat conducted at dietary doses of 0, 30, 300 and 3,000 ppm with a statistically significant increase in primary liver neoplasms in females at the high dose (3,000 ppm).
9. A repeated 2-year chronic feeding/oncogenicity study in the rat conducted at the same dietary doses as the original study with a systemic NOEL of 300 ppm (15 mg/kg), a systemic LEL of 3,000 ppm (testicular atrophy) and a statistically significant increased incidence of neoplastic liver nodules and proliferative hepatic lesions in females in the high-dose group of 3,000 ppm.

The Agency has concluded that the available data constitute limited evidence for carinogenicity of metolachlor. Metolachlor has been tentatively classified as a Category C carcinogen (limited evidence of carinogencity in animals) based on the following considerations:

1. The oncogenic responses observed in rats were confined to the high-dose females at one site (liver).
2. The proliferative liver lesions observed in rats were primarily benign (neoplastic nodules in 6 of 60 animals) rather than hepatocellular carcinomas (1 of 60 animals). There was no apparent difference in the time-to-occurrence of the lesions (almost all liver tumors were observed at terminal sacrifice).
3. Metolachlor was not oncogenic to mice under the conditions of the 2-year mouse oncogenicity studies.
4. An Ames mutagenicity assay and a dominant-lethal study were negative for mutagenic effects.

An ancogenic risk assessment for metalochlor has been completed by the Agency based on the available information. The potential oncogenic risk from dietary exposure resulting from existing uses of metalochlor is calculated at 2×10−6. The dietary risk assessment is based on a potency estimator (Q^*) of 2.1×10−3 (mg/kg/day)−1 and dietary exposure as calculated by the theoretical maximum residue contribution (TMRC) for established tolerances (0.001167 mg/kg/day).

Tolerances have previously been established for residues of metolachlor ranging from 0.02 ppm in meat, milk, poultry, and eggs to 30.0 ppm in peanut forage and hay. Tolerances have also been established for residues of metolachlor on both chili and tabasco peppers at 0.5 ppm. Based on the rat chronic feeding study with a NOEL of 300 ppm (15 mg/kg/day) for nononcogenic effects and using a 100-fold safety factor, the acceptable daily intake (ADI) is 0.15 mg/kg/day. The theoretical maximal residue contribution (TMRC) for existing tolerances is 0.001167 mg/kg/day. The proposed use will contribute an additional 0.000001 mg/kg/day (0.09 percent increase). Published tolerances utilize 0.78 percent of the ADI. The proposed use of metolachlor on Cubanelle peppers poses a negligible, incremental increase since tolerances are already established on chili and tabasco peppers. The Agency concludes that the amount of the pesticide added to the diet from the proposed use will not significantly increase dietary exposure. Thus the tolerance established by the proposed rule is considered to pose a negligible incremental risk.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography with an electrolytic detector specific for nitrogen, is available for enforcement purposes. Analytical enforcement methods are currently available in the *Pesticide Analytical Manual* (PAM), Volume II. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency and the fact that Cubanelle peppers are not considered an animal feed commodity, the tolerance established by amending 40 CFR 180.368 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9E3706/P489]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities,

BEST COPY AVAILABLE

Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 22, 1989.

Juanita Wills,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.368, by revising the introductory texts of paragraphs (a), (b), and (c) to specify the regulated combined residue as "free and bound" and by amending the table in paragraph (c) by adding and alphabetically inserting the raw agricultural commodity Cubanelle peppers, to read as follows:

§ 180.368 Metolachlor; tolerances for residues.

(a) Tolerances are established for the combined residues (free and bound) of the herbicide metolachlor (2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-Methoxy-1-methylethyl)acetamide) and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the raw agricultural commodities.

* * * * *

(b) Tolerances are established for indirect or inadvertent combined residues (free and bound) of the herbicide metolachlor (2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)-acetamide) and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the following raw agricultural commodities when present therein as a result of the application of metolachlor to growing crops listed in paragraph (a) of this section to read as follows:

* * * * *

(c) Tolerances with regional registration as defined in § 180.1(n) are established for the combined residues (free and bound) of the herbicide metolachlor (2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide) and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl]amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the following raw agricultural commodities:

Commodities	Parts per million
* * *	* *
Peppers, Cubanelle	0.1
* * *	* *

[FR Doc. 89-20579 Filed 8-31-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 4E3048/P490; FRL 3637-6]

Pesticide Tolerance for Oxamyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the insecticide/nematicide oxamyl in or on the raw agricultural commodity non-bell peppers and that the oxamyl tolerance expression be modified to include the oxime metabolite. The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 4E3048/P490], must be received on or before October 2, 1989.

ADDRESS: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2310.

SUPPLEMENTARY INFORMATION:

The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 4E3048 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Arizona, Georgia, Louisiana, North Carolina, and Puerto Rico.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, proposed the establishment of a tolerance for residues of the insecticide/nematicide oxamyl (methyl *N'*, *N'*-dimethyl-*N*-[(methylcarbamoyl)oxy]-1-thiooxamimidate) in or on the raw agricultural commodity peppers at 3.0 parts per million (ppm). The petition was later revised to propose a residue level of 5.0 ppm in or on non-bell peppers. Tolerances are currently established at 3.0 ppm in or on bell peppers.

The Agency has determined that the tolerance expression for oxamyl in 40 CFR 180.303 should reflect the sum of the residues of the insecticide oxamyl (methyl *N'*,*N'*-dimethyl-*N*-[(methylcarbamoyl)oxy]-1-thiooxamimidate and its oxime metabolite *N'*,*N'*-dimethyl-*N*-hydroxy-1-thiooxamimidate calculated as oxamyl.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year rat feeding/oncogenicity study with a systemic no-observed-effect level (NOEL) of 2.5 milligrams (mg)/kilogram (kg) or 50 ppm and no evidence of oncogenicity at 150 ppm (highest dose tested). A repeat rat study has been requested since the available study does not meet guidline requirements.

2. A 2-year mouse feeding/oncogenicity study with a systemic NOEL of 25 ppm and no evidence of oncogenicity at all levels tested (0, 25, 50, and 75 ppm).

3. A rabbit teratology study with a NOEL for developmental toxicity of 4 mg/kg/day or greater.

4. Mutagenicity studies including: Ames assay, chromosomal aberration, HGPRT, and DNA repair were all negative.

Toxicological data for oxamyl which are lacking but considered desirable include a chronic feeding/oncogenicity study in rats, a chronic feeding study in dogs, a three-generation reproduction study, a rat teratology, and a general metabolism study.

The preliminary limiting dose (PLD), based on the 2-year rat feeding study NOEL of 50 ppm (2.5 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.025 mg/kg of body weight (bw)/day. A PLD is set when the available data are insufficient to establish an acceptable daily intake (ADI) or a provisional acceptable daily intake (PADI). A PLD provides an exposure level of relatively low concern and will be replaced with an ADI once an acceptable chronic feeding study is available.

The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.013229 mg/kg/day. The current action will result in a negligible increase in the TMRC of 0.000052 mg/kg/day (0.4 percent). Published tolerances utilize 52.9 percent of the PLD; the current action will utilize an additional 0.2 percent of the PLD.

The nature of the residues is adequately understood, and an adequate analytical method, gas-liquid chromatography using a flame photometric detector, is available in the *Pesticide Analytical Manual*, Vol. II (PAM II), for enforcement purposes. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.303 would protect the public health. No secondary residues in meat, milk, poultry, or eggs are expected since peppers are not considered a livestock feed commodity. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E3048/P490]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12292.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 18, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.303, the introductory text is revised by modifying the tolerance expression to include the oxamyl metabolite, and the table is amended by adding and alphabetically inserting the raw agricultural commodity non-bell peppers, to read as follows:

§ 180.303 Oxamyl; tolerances for residues.

Tolerances are established for the sum of residues of the insecticide oxamyl (methyl *N'*,*N'*-dimethyl-*N*-[(methylcarbamoyl)-oxy]-1-thiooxamimidate and its oxime metabolite *N'*,*N'*-dimethyl-*N*-hydroxyl-thiooxamimidate) calculated as oxamyl in or on the following raw agricultural commodities:

Commodities	Parts per million
* * *	* *
Peppers, non-bell	5.0
* * *	* *

[FR Doc. 89-20581 Filed 8-31-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300204; FRL-3637-9]

Pome Fruits Group; Expansion of Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR 180.34(f)(9)(xi) be amended to include mayhaws in the subject pome fruits group. This proposed amendment, which will expand and redefine the definition of pome fruits group, was submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [OPP-300204], must be received on or before October 2, 1989.

ADDRESS: By mail, submit written comments to: Public Information Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M ST., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: Dr. Jerry J. Baron, Associate Coordinator, Interregional Research Project No. 4 (IR–4), New Jersey Agriculture Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted this request to EPA on behalf of the IR–4 Project.

IR–4 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose that 40 CFR 180.34(f)(9)(xi) be amended by adding *Crataegus aestivalis*, and *C. opaca* (mayhaws) to the subject "pome fruits group," thereby expanding its definition. It has further been recommended by the Agency that *Crataegus rufula* (mayhaw) also be included in this grouping. Therefore, the entire proposal is that 40 CFR 180.34(f)(9)(xi) be amended by adding and alphabetically inserting "mayhaws (*Crataegus aestivalis, C. opaca,* and *C. rufula*)" to the subject "pome fruits group."

This amendment is requested in order to clarify and update the relationship between the subject "pome fruits group" and the specific raw agricultural commodities defined therein.

The IR–4 supports the portion of the request concerning *Crataegus aestivalis* and *C. opaca* by pointing out that "pome fruits group" should be precisely defined to include mayhaws, (*C. aestivalis* and *C. opaca*). The Agency further concludes that the mayhaw species *C. rufula* should also be included in this definition, since this species, as well as *C. aestivalis* and *C. opaca* produce fruits of potential commercial importance.

Mayhaws (*Crataegus aestivalis, C. opaca,* and *C. rufula*), as well as the other members of the pome fruits group, belong to the botanical subfamily Maloideae of the family Rosaceae. In addition, they have characteristics similar to the subject pome fruits group. Mayhaw is a small tree with ornamental characteristics which is planted commercially, in low wet acidic soils from North Carolina to Florida and west to Texas. The plant produces small apple-like fruits (8 to 19 millimeters in diameter) that are used for the production of jellies, marmalades, butter, preserves, and other processed commodities as well as feed for the wildlife.

Mayhaw is susceptible to many insects and diseases which affect other members of the pome fruits group, including plum curculio, aphids, flat-headed apple borer, white flies, weevils, quince rust, and fire blight.

The Agency agrees that these raw agricultural commodities are botanically and culturally similar and should be included in the pome fruits crop group for pesticide tolerance purposes. This revision will expand the tolerances and exemptions established for residues of pesticide chemicals in or on the subject "pome fruits group" to include the specific raw agricultural commodity mayhaws. Based on the information considered by the Agency, it is concluded that the regulation established by amending 40 CFR 180.34(f)(9)(xi) would protect the public health. Therefore, it is proposed that 40 CFR 180.34(f)(9)(xi) be amended as set forth below.

Interested persons are invited to submit written comments on the proposed amendment. Comments must bear a notation indicating the document control number, [OPP–300204]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural Commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 18, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.34 [Amended]

2. Section 180.34 *Tests on the amount of residue remaining* is amended in paragraph (f)(9)(xi) by adding and alphabetically inserting in the entry "pome fruits group" the raw agricultural commodity "mayhaws (*Crataegus aestivalis, C. opaca,* and *C. rufula*);".

[FR Doc. 89–20682 Filed 8–31–89; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Regulations Under Section 504 of the Rehabilitation Act of 1973, Nondiscrimination on Basis of Handicap in Federally Assisted Programs and Activities

AGENCY: Institute of Museum Services, NFAH.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Institute of Museum Services issues regulations under section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of handicap in Federally assisted programs of IMS).

DATE: Comments must be received on or before October 30, 1989.

ADDRESSES: Comments should be addressed to Mamie Bittner, Public Information Officer, Institute of Museum Services, Room 510, 1100 Pennsylvania Ave. NW., Washington, DC 20506 (786–0536). Comments will be available for public inspection at the above address from 9:00 a.m. to 5:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Public Information Officer, Institute of Museum Services, Room 510, 1100 Pennsylvania Ave., NW., Washington, DC 20506, (202) 786–0536 (Voice) or (202) 786–0136 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

1. General Background.

The Museum Services Act ("the Act"), which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended on December 4, 1980.

The purpose of the Act is stated in section 202, 20 U.S.C. 961, as follows:

> It is the purpose of [the Museum Services Act] to encourage and assist museums in their educational role in conjunction with formal systems of elementary, secondary, post-secondary education and with programs of nonformal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage; and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board (Board) and a Director. IMS is an independent agency placed in the National Foundation on the Arts and Humanities (National Foundation). Public Law 97–100, December 23, 1981; Public Law 97–394, December 30, 1982.

The act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public, and providing educational programs to the public. During fiscal year 1987 IMS provides four types of grant assistance to museums: (1) General operating support; (2) conservation assistance; (3) museum assessment assistance; and (4) assistance to professional museum organizations.

2. Need for the Regulations.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, provides in pertinent part:

> No otherwise qualified individuals with handicaps in the United States, as defined in section 706(7) of [Title 29], shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. * * *

Prior regulations of IMS have specified the applicability of section 504 to programs of assistance administered by IMS. *Compare* 43 CFR 1180.44, F.R. 27733 (June 17, 1983) with former 45 CFR 84.17, 45 FR 53419 (Aug. 11, 1980). *See also* 45 FR 53415 (Aug. 11, 1980). Thus, formulation by the Board of rules regarding the applicability of section 504 does not establish a new statutory requirement for IMS recipients. Prior to the transfer of IMS to the National Foundation, regulations of the Education Department (of which IMS was then a part) governed the operation of section 504 as it related to programs of IMS. With the transfer of IMS to the National Foundation it is necessary to establish regulations governing the administration of section 504 as it pertains to these programs in the context of the status of IMS as an agency within the National Foundation.

In 1986 IMS issued regulations under section 504 relating to the enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the Institute itself. 45 CFR part 1181. These regulations implement section 119 of the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978 and apply to all programs or activities conducted by the agency. 45 CFR 1181.102. It is now appropriate for IMS to issue revised regulations pertaining to nondiscrimination on the basis of handicap in federally assisted programs carried out by museums or other recipients under the Museum Services Act through grants or other financial assistance provided by IMS.

3. Description.

A purpose for the transfer of IMS to the National Foundation was to improve coordination of the policies of IMS with those of other agencies in the National Foundation. The Board has determined that, in formulating regulations under section 504, it would be consistent with this purpose for IMS to look to analogous rules adopted by the National Endowment for the Humanities (NEH), which is also an agency within the National Foundation. A number of reasons support this determination.

(1) By inter-agency agreement, IMS looks to NEH for administrative services with respect to section 504 matters. Making the NEH regulations applicable to IMS programs will facilitate a more efficient administration of section 504 to meet the needs of handicapped visitors to museums served by IMS.

(2) The Board desires to minimize the degree to which museums assisted both by IMS and by the Endowments, as well as members of the affected target population, must look to different sets of regulations to govern the same cross-cutting issue.

(3) The NEH regulations have been developed in light of particular questions which cultural institutions face in achieving compliance with section 504.

(4) Many museums which participate in programs administered by IMS are presumably familiar with the NEH regulations under section 504 and thus will more readily understand their responsibilities under its provisions.

For these reasons the Board determined to make applicable to IMS programs the NEH regulations under section 504 which are found in 45 CFR part 1170, 46 FR 55697 (Nov. 12, 1981).

Part 1170 was issued by NEH in 1981 and was based on the regulation for federally assisted programs issued by the Department of Health, Education, and Welfare (HEW) in 1977 (42 FR 22676) and later transferred to the Department of Health and Human Services (45 CFR part 84). Since 1977 a number of significant court opinions have been issued interpreting section 504 and the regulations implementing it. Because of this developing case law, regulations implementing section 504 in federally conducted programs issued in recent years by the IMS and more than 40 other agencies explicitly provide, unlike part 1170, that, in communicating with individuals with handicaps and ensuring that a program or activity is accessible, the Federal agency is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of the program or activity or in undue financial and administrative burdens (45 CFR 1181.150(a), 1181.160(d) (IMS); *see also, e.g.,* 28 CFR 39.150(a), 39.160(d) (Department of Justice); 45 CFR 1153.150(a), 1153.160(d) (NEA); 45 CFR 1175.150(a), 1175.160(d) (NEH). These provisions which were recently upheld in *Department of Justice Handicapped Employees Association* v. Meese, No. 84–5645 (E.D. Pa., Oct. 9, 1987), are based on the Supreme Court's ruling in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 and the HEW regulation implementing it do not require actions that would have such effects. These provisions are also supported by *Alexander* v. *Choate*, 469 U.S. 287 (1985), in which the Court noted that section 504 and its implementing regulations at the time require "reasonable adjustments in the nature of the benefit offered * * * to assure meaningful access" (469 U.S. at 301 n. 21), but do not require " 'changes;' 'adjustments;' 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration[s] in the nature of a program.' " *Id.* at n. 20 (citations omitted). Thus, although the NEH regulation that IMS proposes to adopt does not include the language found in the more recently issued regulations for federally conducted programs, it does not provide recipients, by virtue of judicial interpretation, the same fundamental alteration/undue burdens defenses. [*See e.g., Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F. 2d 490 (1st Cir., 1983); *Dopico* v. *Goldschmidt*, 687 F. 2d 644 (2d. Cir. 1982);] *American Public Transit Association* v. *Lewis*, 655 F. 2d 1272 (D.C. Cir., 1981).

Numerous section 504 regulations for federally conducted programs, including the final rule issued by the Advisory Council on Historic Preservation also contain a clarification of the requirements of the statute as applied to historic preservation programs (36 CFR 812.150 (a)(2), (b)(2) (Advisory Council on Historic Preservation)); *see also, e.g.,* 45 CFR 1153.150 (a)(2), (b)(2) (NEA); 45 CFR 2104.150 (a)(2), (b)(2) (Commission of Fine Arts)). In order to avoid a possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against individuals with handicaps on the other, these regulations provide that in historic preservation programs the agency is not required to take any action that would result in a substantial impairment of significant historic features of an historic property (*i.e.,* a property that is listed or eligible for listing in the National Register of Historic Places or designated as historic under a statute of the appropriate State or local government body). Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself, the regulations require the agency to give priority to methods of providing program accessibility that permit individuals with handicaps to have physical access to the historic property. When such access cannot be provided, however, the regulations permit the agency to adopt alternative methods for providing program accessibility. Such methods include using audio-visual materials to depict those portions of an historic property that cannot otherwise be made accessible, assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible, or adopting other innovative methods. IMS will follow this approach in applying 45 CFR Part 1170 to programs that have preservation of historic properties as a primary purpose.

4. Executive Order 12291.

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are classified as nonmajor because they do not meet the criteria for major regulations established in the order.

5. Regulatory Flexibility Act Certification.

The Director certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. To the extent that these proposed regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, they will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision.

6. Invitation to Comment.

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 60th day after publication of this document will be considered in developing the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 510, 1100 Pennsylvania Avenue NW., Washington, DC, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday of each week except Federal holidays.

7. List of Subjects in 45 CFR Part 1180.

Blind; Buildings; Civil Rights; Employment; Equal employment opportunity; Equal educational opportunity; Handicapped; Historic places; Historic preservation; Museums; National boards.

Lois Burke Shepard,
Director Institute of Museum Services.

PART 1180—[AMENDED]

The Institute of Museum Services proposes to amend Subchapter E of Chapter XI of Title 45 of the Code of Federal Regulations as follows:

1. The authority citation for part 1180 is revised to read as follows:

Authority: 20 U.S.C. 961–968; Pub. L. 97–100, 95 Stat. 1414; Pub. L. 97–394, 96 Stat. 1994; 29 U.S.C. 794.

2. Part 1180 is amended by revising S 1180.44 to read as follows:

§ 1180.44 Federal statutes and regulations on nondiscrimination.

(a) Each grantee shall comply with the following statutes:

Subject	Statute
Discrimination on the basis of race, color or national origin	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4). 2000d–4).
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101) et seq.
(b)–(c) [reserved]	

(d) *Regulations under section 504 of the Rehabilitation Act of 1973.*

The Institute applies the regulations in 45 CFR part 1170, issued by the National Endowment for the Humanities and relating to nondiscrimination on the basis of handicap in federally assisted programs and activities, in determining the compliance of museums with section 504 of the Rehabilitation Act of 1973 as it applies to recipients of Federal financial assistance from the Institute. These regulations apply to each program or activity that receives such assistance. In applying these regulations, references to the "Endowment" or the "agency" shall be deemed to be references to the Institute and references to the "Chairman" shall be deemed to be references to the Director.

[FR Doc. 89–20465 Filed 8–31–89; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 620, 672, and 675

[Docket No. 90690–9190]

RIN 0648–AC72

Foreign Fishing; General Provisions for Domestic Fisheries; Groundfish of the Gulf of Alaska, Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) proposes a rule that would implement Amendment 13 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 18 to the FMP for Groundfish of the Gulf of Alaska (GOA). These regulations would implement the following measures specific to both Amendments 13 and 18: (1) Specific seasons would be deleted from the FMPs and all future seasons would be established by regulatory amendment; (2) a comprehensive data collection program would be implemented, which would consist of augmented recordkeeping and reporting requirements and a mandatory observer program; and (3) the Secretary's authority to separate or combine species within the target species category would be clarified. Proposed regulations specific to Amendment 13 would (1) close an area in the vicinity of the Walrus Islands to fishing for groundfish and (2) allocate fixed percentages of the allowable harvest amount of sablefish to trawl gear and fixed gear. Proposed regulations specific to Amendment 18 would: (1) Establish Shelikof Strait area as a management district; (2) Close areas around Kodiak Island to bottom trawl gear; and (3) Establish for one year interim Pacific halibut prohibited species catch limits for fixed gear and trawl gear. This action is necessary to promote management and conservation of groundfish and other fish resources. It is intended to further the goals and objectives contained in both fishery management plans that govern these fisheries.

DATE: Comments are invited until October 12, 1989.

ADDRESS: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the same address. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg or Susan J. Salveson (Fishery Management Biologists, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the GOA and BSAI areas are managed by the Secretary according to FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fishery at 50 CFR Part 611 and for the U.S. fishery at 50 CFR Parts 672 and 675. General regulations that also pertain to the U.S. fishery are implemented at 50 CFR Part 620.

The Council annually solicits management proposals from the public and state and Federal agencies. The Council set a deadline of October 1, 1988 for receiving proposals for inclusion in Amendments 13 and 18. At its meeting on January 18–20, 1989, the Council reviewed the proposals that were received. It selected three measures that would amend both FMPs, two measures to specifically amend the GOA FMP and three measures to specifically amend the BSAI FMP for further consideration. The Council's GOA and BSAI Plan Teams prepared draft EA/RIR/IRFAs to discuss and analyze the need for the proposals under each FMP under guidance of the National Environmental Policy Act of 1969, Executive Order 12291, and NOAA policy. The Council reviewed these documents at its meeting on April 10–14, 1989 and decided to send the analyses to the interested public for review. These documents are dated May 3, 1989. A June 12, 1989 supplement to the EA/RIR/IRFA was prepared by the Council staff.

At its June 20–23, 1989, meeting, the Council considered the testimony and recommendations of its Advisory Panel (AP), Scientific and Statistical Committee (SSC), Plan Teams, fishing industry representatives and the general public on each amendment proposal and the EA/RIR/IRFA documents. It then approved the following measures for inclusion into Amendments 13 and 18 for review by the Secretary under § 304(b) of the Magnuson Act:

Measures specific to both Amendment 13 and 18:

(1) Specifications for fishing seasons would be deleted from the FMPs and all future season changes would be implemented by regulatory amendment.

(2) A comprehensive fishery data collection program would be implemented, which would consist of:

A. augmented recordkeeping and reporting requirements; and

B. a mandatory observer program.

(3) The Secretary's authority to separate or combine species within the target species category would be clarified.

Measures specific to Amendment 13:

(1) An area in the vicinity of the Walrus Islands would be closed to fishing for groundfish.

(2) Sablefish would be allocated to fixed gear and trawl gear.

Measures specific to Amendment 18:

(1) Shelikof Strait District would be established as a management district.

(2) Areas around Kodiak Island would be closed to trawling.

(3) Interim Pacific halibut prohibited species catch limits for fixed gear and trawl gear would be established for 1990.

A description of, and the reasons for, each measure are as follows:

1. Delete Specific Seasons From the FMPs

Currently, fishing season opening and closing dates are established in the FMPs. All seasons are specified in both FMPs to be the January 1–December 31 fishing year, except for the GOA hook-and-line season for sablefish, for which the season starting date is established by the FMP to be April 1. Since the FMPs establish the seasons, they can be changed only by amendments to the FMPs, a procedure that normally takes about a year to implement. As domestic fisheries have matured, the need to change seasons to meet fishery needs has necessitated a more timely procedure to implement fishing seasons.

Under this measure, specifications for fishing seasons would be deleted from the FMPs but would be retained in regulations implementing the FMPs. The purpose of this measure is to establish a mechanism, regulatory amendment, for timely changing of seasons. The Council recommends that future season changes be proposed and implemented by the Secretary in consultation with the Council. Since the Secretary must consider whether a regulatory amendment is consistent with the Magnuson Act and other applicable law, appropriate analyses would accompany future regulatory amendments. Regulatory amendments would be published in the **Federal Register** for public review and comment.

The Council proposes to remove specific references to seasons from the BSAI and GOA FMPs, and proposes any future changes in fishing seasons be implemented by regulatory amendments. Such future changes would be considered on a case-by-case basis and would be implemented only if they are consistent with the criteria specified in the FMP, the Magnuson Act, and other applicable law.

2. Comprehensive Data Collection Program

The comprehensive data gathering program considered below for the BSAI and GOA groundfish fisheries consists of two parts:

(A) Recordkeeping and reporting requirements; and

(B) A mandatory observer program.

The purpose of the comprehensive data collection program is to provide the Council and NMFS with adequate and reliable fishery data on which to (1) base inseason and inter-season management decisions; (2) efficiently carry out their resource management responsibilities; and (3) measure fishery performance against existing and proposed management measures. Historically, the NMFS' Foreign Fisheries Observer program has been the primary source for these data. Foreign groundfish operations have been curtailed in recent years with the rapid expansion of the domestic groundfish industry. As a result, fishery managers have lost access to much of the resource and fishery performance data that were formerly gathered from the foreign fishery.

Alaskan groundfish harvests by U.S. fishermen grew from 8,600 mt in 1979 to over 2.2 million mt in 1988. Domestic trawlers fishing in joint ventures with foreign processors were responsible for most of the initial growth in the U.S. groundfish industry. In 1988, however, catches from vessels involved in wholly domestic operations comprised over a third of the total groundfish harvest off Alaska. In 1989, domestic operations are expected to take about 80 percent of the groundfish harvest. The rapid expansion in the wholly domestic fishery coupled with the lack of a comprehensive domestic observer program and inconsistent, inadequate, or unenforceable reporting requirements has placed new demands on management and enforcement agencies, at a time of limited management resources. The growing contentiousness of fishery management issues, including resource allocation among competing domestic user groups, compels managers to take steps to regain some of the fishery information previously gathered from foreign fleets, and requires reliable catch, resource, and economic information when evaluating potential management measures.

The need for fishery managers to consider reliable biological, economic, and other fishery performance information is explicit in the management goals and objectives established by the Council, and are required by the Magnuson Act, Executive Order 12291, the Regulatory Flexibility Act, and other applicable law. These requirements mandate, for example, that concise biological and economic analyses be completed to assess all relevant effects of proposed changes in management measures. These requirements place specific burdens upon the Council and NMFS to consider the biological, economic, and social implications of, not only the preferred alternative, but of all reasonable options available to them. Attainment of this level of assessment is highly dependent upon the quality and timeliness of the biological and economic data available for analysis.

These data are not currently collected in sufficient detail, nor on an adequately consistent basis, to provide guidance to decision makers in the increasingly complex circumstances which prevail in the groundfish fisheries off Alaska. The cost of making decisions based on inadequate information is no longer borne by foreign fisheries. Rather, it is imposed on the domestic groundfish industry. Such costs can adversely affect the viability of the domestic groundfish industry in the very competitive world groundfish markets. The lack of adequate information also results in the fishery management decision making process being less objective, more political, and potentially less equitable. This can decrease the credibility of the fishery management process and result in an unnecessarily costly and less effective management system.

The Council, therefore, proposes a comprehensive fishery data collection program that augments recordkeeping and reporting requirements and mandates observer coverage. Fishery information would be compiled and maintained by NMFS in a fisheries information database that would be accessed by fishery managers and used (1) for inseason enforcement and catch verification; (2) to evaluate existing and proposed management measures; and (3) as a secondary index for stock assessment.

A description of the proposed measures for (A) augmented recordkeeping and reporting requirements and (B) the mandatory observer program follows:

(A) Recordkeeping and Reporting Requirements

Existing regulations do not allow adequate catch, effort, and economic data to be collected from the fishing industry. The changes in recordkeeping and reporting requirements discussed below are intended to reduce this problem with respect to information for which the industry is the best or only source. In general terms, this information includes the following: 1) Fishing effort, 2) retained groundfish catch, 3) discard amounts, 4) fish products, 5) employment, 6) costs, and 7) product value.

Changes in Recordkeeping Requirements

Each catcher/processor, mothership processor, and shoreside processor utilizing groundfish harvested off Alaska would be required to maintain a daily cumulative production log (DCPL).

Each vessel 5 net tons and larger that harvests groundfish off Alaska would be required to maintain a daily fishing log (DFL).

Each shoreside processor would be required to maintain a product transfer log similar to that currently required of at-sea processors.

Changes in Reporting Requirements

Each processor required to maintain a product transfer log would be required to submit to NMFS a weekly summary of their transfer log entries for each week in which transfers occurred.

The weekly catch report in round weight for each at-sea processor would be replaced with a weekly production report in product weight.

Each shoreside processor would also be required to submit a weekly production report in product weight.

Each processor and catcher vessel required to maintain a DCPL and/or DFL would be required to submit quarterly to NMFS a copy of their DCPL and/or DFL records.

Each processor (i.e., at-sea and shoreside) or its parent company would be required to submit annually a monthly product value report (MPVR) that would summarize sales in quantity and value by species and product form.

The NMFS will provide logbooks to the industry. Logbooks will be printed on 2-part carbonless paper so that vessel operators and plant owners can simply tear out copies of their daily logs when making their quarterly submissions to NMFS.

To lessen the cost to the industry of meeting the recordkeeping and reporting requirements, logbooks have been designed so that each sector of the industry receives a logbook form tailored to meet its specific needs. For example, a logbook will be made available to catcher/processor vessels that: (1) May be used for meeting the requirements for both the daily cumulative production log and the daily fishing log; and (2) will provide the information required in the weekly production report.

The recordkeeping programs developed for the groundfish industry have also been designed to compliment reporting requirements and would consolidate, to the extent practicable, other recordkeeping requirements to lessen the paperwork burden on vessel and processor operators. For example, the proposed marine mammal logbook program contains recordkeeping requirements (54 FR 258321, June 19, 1989) mandated by recent amendments to the Marine Mammal Protection Act of 1972 (MMPA) that have been incorporated into the groundfish logbook program.

Most of the information specified in the recordkeeping requirements is currently maintained by the industry for internal business reasons. To minimize the recordkeeping costs associated with fishery management requirements, the logbooks are designed to provide a convenient form to enter information that serves both the business needs of those who maintain them and the reporting requirements being proposed.

Species product amounts recorded in the DCPL and product transfer log are expected to be accurate to the nearest 0.1 mt (220 lbs). Because enforcement personnel are mainly interested in preventing intentional gross under logging of valuable groundfish species, some enforcement discretion will be necessary when encountering minor discrepancies between reported and observed product weights.

Examples of the logbook forms and associated report forms are presented as an Appendix to this notice. These forms have been developed to collect the type of information needed by fishery managers to respond to the concerns and problems addressed above. In addition to this information, additional data on gear specifications, crew size, and vessel specifications and activity are discussed below. The Secretary is inviting comments from the industry and the public concerning the practicality and advisability of providing this data and may consider requiring the submission of this data depending on the comments received. The specifics of the proposed changes in the recordkeeping and reporting requirements are included in the following discussions of the individual logs and reports.

Daily Cumulative Production Log (DCPL)

Catcher/processors, mothership processors, and shoreside processors would be required to maintain a daily cumulative production log (DCPL). The log would include daily, weekly, and year to date production information. The logs would remain on the vessels or at the processing plants during the fishing year and for as long after the fishing year as species products recorded in the DCPL are retained. These logs would be made available to observers and enforcement officers. Copies of the DCPLs would be submitted to NMFS on a quarterly basis to allow for timely data entry and analyses.

The processors' DCPL records would be used by enforcement officers to assist in verifying information reported in the weekly production reports. It would also assist processors in preparing their weekly production reports.

Daily Fishing Log (DFL)

Each vessel 5 net tons or larger harvesting groundfish off Alaska would be required to maintain a daily fishing log (DFL). The DFL would include: 1) Vessel and gear specifications; 2) individual haul or set information; 3) daily information on discards; and 4) information on daily vessel activity.

Vessel and gear specifications would include such information as the reporting area where the vessel is conducting fishing activities, crew size, and type of gear used. For hook-and-line and pot gear, information would be collected on the average number of hooks or pots per skate, size of hooks used, and average length of skates. Specific trawl information would include size of net opening, codend mesh size, and average speed of tow.

The Secretary is considering additional reporting requirements, not specified in the proposed rule, concerning gear specifications. Additionally, the crew size information may be required to be further specified according to the number of the crew involved in fishing activities and the number involved in processing activities. Finally, additional vessel specifications such as engine power may be required. Comments are requested with respect to these additional reporting requirements.

The individual haul information would include the date, time, location, sea depth, trawl depth, duration of haul or soak time, number of units of gear fished for fixed gear vessels, i.e., those using hook-and-line and pot gear, and estimated haul weight of total catch. The discard information would be for groundfish and for prohibited species. The estimated daily discards of halibut, crab, and salmon would be reported in numbers and by species if possible. All other species discard estimates would be reported by weight (0.1 mt). Fishing vessels delivering to groundfish processors would be required to provide their discard estimates to the processors so that the processors can report these discards in their weekly production reports.

The fishing effort information would be used for inseason enforcement and for biological and economic evaluations of existing and proposed fishery management measures. The former would consist primarily of activities associated with verifying information reported in weekly production reports.

Discard data would be used to obtain information relating to total fishing mortality resulting from groundfish operations. Although a comprehensive observer program would provide groundfish and prohibited species discard information from a significant portion of the industry, all catcher vessels and processors would be required to record discard information. In addition to total mortality estimates, this information would be used to derive estimates of bias resulting from intentional or unintentional misreporting of data, or from collection of non-representative data.

The Secretary is considering additional requirements not specified in the proposed rule. The vessel operators may be required to record vessel time (to the nearest hour) spent on the following activities: (1) Searching for fish; (2) fishing; (3) time in transit to a fishing area; and (4) down time. This information could be used to evaluate fishing effort and associated costs in economic analyses of fishery performance. The Secretary requests comments on the practicality of these requirements relative to the increased burden imposed should they be implemented.

The logs would remain on the vessels until the end of the fishing year and would be made available to both at-sea and shoreside observers and to enforcement officers. Mothership processor vessels would be required to make the daily fishing log information for its catcher vessels available to an at-sea observer. At-sea and shoreside observers would collect the effort data and use other information in the logs to assist in meeting their data collection responsibilities. The discard information maintained in the logs would assist those responsible for completing the weekly production reports which include estimates of discards.

Copies of the DFLs would be submitted to NMPS on a quarterly basis. As mentioned above, this information, along with that recorded in the DCPLs, would be maintained in a NMPS database that would be accessed to evaluate existing and proposed management measures.

Product Transfer Logs

Shoreside processors would be required to maintain a product transfer log similar to that currently required of at-sea processors. This log would be used to record all shipments or receipts of product by species and product type, the name of the company or person transporting the product, the date of shipment (or receipt), and the destination of the product.

This information is necessary to verify the accuracy of reported groundfish catches received by a processor. Verification of groundfish catches received by shoreside processors also requires that DCPLs and product transfer logs be made available for comparison to actual inventories.

Weekly Transfer Report

Each processor required to maintain a transfer log would be required to submit to NMFS copies of the transfer log entries for each week in which transfers occurred. Current regulations require only catcher/processors and mothership vessels to submit summary product transfer information. This information assists enforcement officers in verifying reported catch, and would be compared with on board transfer logs, DCPLs, and product inventory to verify the amount of retained product reported in the weekly production reports.

Weekly Production Report

The weekly catch report now required of catcher/processor and mothership vessels would be changed to a weekly product report, and a similar weekly product report would also be required of shoreside processors. It would summarize (1) total estimated catch weight or receipt; (2) weekly production by species and product form; and (3) estimated discards of prohibited species and other species.

For catcher/processor and mothership vessels, the principal change is that they would report product weight rather than round weight. This simplifies reporting, because product weights are maintained for business purposes. It also eliminates any inconsistencies that can occur when standard conversion factors by species and product form are not used to estimate round weight equivalents of product weight.

NMPS would prepare a list of standard product recovery rates prior to the beginning of a fishing year. A notice of availability of these rates would be published in the **Federal Register** and comments would be invited. Any changes to these rates made as a result of comments received would be submitted to the industry in a news release. Any changes in these rates during a fishing year would be accomplished by the same procedure. These rates may be adjusted based on observer data or industry input. This requirement will contribute to better enforcement and more accurate catch reporting by removing any incentive to vessel operators to manipulate product conversion rates in order to "stretch" quotas of valuable groundfish species.

Shoreside processors currently submit groundfish landings information on State of Alaska fish tickets. These processors would also submit weekly production reports for the following reasons: (1) Fish tickets do not collect discard information on prohibited species; (2) the landed groundfish product reported on fish tickets often differs from the product type placed in inventory by the processor, which is a situation that can frustrate attempts by enforcement personnel to verify reported landings with product inventory; and (3) fish tickets are not easily modified to reflect changes in Federal reporting requirements that are necessary to account for species by species quota management.

Species discard information is currently required on the weekly catch report. This information would continue to be required in the weekly production report for the same reason it is included in the proposed daily fishing log. That is, to account for total fishing mortality. Mothership processors and shoreside processors would be expected to collect and report at-sea discard information from the fishing vessels that deliver groundfish to them and also report their own discards of landed fish.

Monthly Product Value Report (MPVR)

Each catcher/processor, mothership processor, and shoreside processor or its parent company would complete a monthly product value report (MPVR) for any month during which groundfish harvested off Alaska were sold. The report would consist of quantity and product value data summarized by species and product form for all sales transactions for the calendar month. The report would be submitted to NMPS annually, at the conclusion of the fishing year. By providing monthly information on an annual basis, valuable data on seasonal price fluctuations would be obtained without placing domestic processors in a position of disclosing sensitive proprietary information during the fishing season.

Exvessel product value data are often reported on fish tickets for fishing vessels delivering to shoreside processors. Typically, an exvessel transaction does not occur when catcher/processor or mothership vessels off-load their product; and there are no exvessel prices and values to be reported on a fish ticket at the time it must be submitted. Therefore, an alternative mechanism is required to collect price and value data for this important and rapidly growing component of the groundfish fishery. To have comparable data from shoreside processors, extension of this requirement to all processors is necessary.

This information would be used in monitoring the economic performance of the groundfish fisheries and in conducting economic analyses of existing and proposed management measures. The requirements for such activities were discussed earlier.

The Council recommends that the above recordkeeping and reporting requirements be implemented so that adequate fishery information may be collected from the groundfish industry.

Other Changes in Reporting Requirements

In addition to the above changes in recordkeeping and reporting requirements that were adopted by the Council at its June 1989 meeting, the Secretary is proposing the following two changes to existing reporting requirements:

(1) Place the responsibility of submitting Alaska State fish tickets with groundfish buyers, including shoreside and floating processors, although the responsibility for the accuracy and completeness of the fish ticket would remain with the catcher vessel. This proposal recognizes the existing practice whereby buyers submit fish tickets on behalf of the fishermen and would make the Federal reporting requirement for fish ticket submission the same as State regulations (5 AAC 30.130. Reports Required of Processors, Buyers, and Fishermen.) Compliance with submission requirements is more practical to enforce if the party that collects the fish tickets is made responsible for timely submissions.

(2) Extend Federal reporting requirements to processors that receive

from fishing vessels that have been issued a Federal groundfish permit, groundfish harvested from State waters. Existing regulations do not require these processors to submit weekly catch reports or product transfer reports for groundfish harvested from State waters. Inseason monitoring and catch verification of groundfish receipts by these vessels relies only on State fish ticket information which is often less timely than weekly catch reports and does not allow for verification of catch receipts to the extent that logbooks and weekly production reports would. Excluding these processors from Federal reporting requirements undermines the intent of Amendment 17 to the Gulf FMP and Amendment 12 to the Bering Sea FMP (54 FR 18519, May 1, 1989) that extended Federal reporting requirements under §§ 672.5 (a) and 675.5 (a) to mothership processors that operate outside of the EEZ and process groundfish harvested from the EEZ. The proposal to extend Federal reporting requirements to all floating groundfish processors operating within the State waters recognizes the need of Federal managers to be able to account for total fishing mortality for inseason monitoring of quotas. In order to do this, Federal reporting requirements need to be extended to those mothership processors that take Federally managed groundfish from State waters.

In 1989, only 1 mothership processor has operated within the State waters, but most of the groundfish received by this vessel were reportedly harvested from the EEZ. Although the problem addressed by this proposal does not appear to be an issue at this time, it is desirable to implement the proposed extension of Federal recordkeeping and reporting requirements to close this potential loophole in Federal regulations. Mothership vessels operating within State waters during 1988 and 1989 were included in the analysis presented in the EA/RIR/IRFA prepared for Amendments 13 and 18 that examined the potential burden to the groundfish industry to comply with proposed recordkeeping and reporting requirements.

(B) Mandatory observer program.

Observers will be a uniformly trained group of scientists whose objectives are data gathering. They will be stationed aboard vessels and at shorebased processing plants to gather data according to a statistically-sound sampling plan of fishing and processing activities in the industry to provide data that cannot be accurately reported by fishermen or are too burdensome for them to collect during their normal operations. The observer program is intended to augment the industry recordkeeping and reporting system. Observers will perform multiple duties including: estimating haul weight, sampling for species composition, estimating product recovery rates, estimating discards and catch of prohibited species (PSCs), collecting biological data and specimens, and collecting data on the operation and characteristics of the vessel and fishing effort.

The need for observer coverage is directly related to the desired quality and reliability of the data collected from the fishing industry. Two principal reasons for observer coverage are:

(1) *To reduce the chance of bias in the data.*

Some fishery data, such as haul weight, amount of discards (e.g. undersized fish, undesired species, undesired quality), and amount of PSCs (e.g. Pacific halibut, king crab, and Tanner crabs), have a greater potential for bias than other data such as landed catch. Bias can result from intentional or unintentional misreporting of data or collecting non-representative data. Deliberate under-reporting of PSCs to stay under a PSC cap and therefore prolong a fishery opening is an example of intentional misreporting of data. Underreporting or over-reporting of discards, because the importance of such data collection is secondary to catching and processing target species, is an example of unintentional misreporting of data. Nonrepresentative data may be gathered if a fishing crew aboard a vessel collects sound data on PSCs in one area (e.g. because catch is small and there is time to collect such data) but not in another (e.g. because catch is large and there is not time to collect data).

(2) *To relieve industry from the burden of collecting data.*

Collection of data not normally gathered by fishermen or processors might be an inordinate burden if fishermen and processors were required to collect such data. For example, samples used to provide age data on some species are not normally collected in the prosecution of a fishery. Even collecting data on amounts of discard and PSC divert fishermen and processors from their primary responsibilities. In addition, gathering certain kinds of data may require specialized training, which could be an added burden if such training were required of industry.

Examples of data which, for one or both of these reasons, are best collected by onboard or onshore observers include:

- Mortality rates for non-landed catch—e.g. PSC and discards.
- Species composition data—to determine species co-occurrence and interactions.
- Size/length and age composition data—to determine year class strength and as input data for age-structured cohort analyses models.
- Fish stomach samples—to determine predator-prey relationships.
- Marine mammal interactions.
- Biological specimens and tag placement or recovery—to provide information for selected objectives, such as migration.
- Processing gear and techniques.
- Product recovery rates.

To provide a comprehensive sampling of the industry's activities over a wide geographical area and time period, the observer deployment will be devised so as to achieve a "statistically reliable" sampling of the fleet's fishing and processing activities.

The Council, with wide industry support, recognizes the importance of at-sea and shore-side observers to obtain the above information. The Council, therefore, recommends that the Secretary, in consultation with the Council, implement a mandatory observer program, according to an Observer Plan that the Council will develop in coordination with the industry. The Secretary recognizes that at this time the scope of the mandatory observer program is not fully developed. Should the Secretary approve this amendment, additional details need to be worked out in relation to requirements for marine mammal observers that are being imposed in compliance with the amended Marine Mammal Protection Act, and coordinated with NMFS with respect to the training needs and deployment.

3. Clarification Of The Secretary's Authority.

Under this measure, current authority in the BSAI and GOA FMPs and implementing regulations would be clarified to indicate that the Council is able to recommend total allowable catches (TACs) for (1) additional target species within the "target species" category for purposes of managing smaller stock components, or (2) fewer target species within the "target species" category for purposes of managing larger stock components. This action is necessary, because both FMPs are vague with respect to the Council's existing authority. The Council would continue to use the framework procedure that is now in place for establishing the annual TACs. The need to clarify the Council's authority on establishing TAC amounts within the target species category is as follows.

Four categories of species and species groups are now specified in the FMPs. They are: Target species, "other species", prohibited species, and non-specified species. For each of these categories, species and species groups are listed, as shown below.

Area	Target	"Other"	Prohibited	Non-specified
GOA & BSAI species.	Pollock Pacific cod. Sablefish Other rockfish.	Sculpins Sharks Skates Eulachon Smelts Octopus Capelin	Halibut Salmon Steelhead. Herring King crab. Tanner crab.	Species or groups of no economic value. Records not required
BSAI only	Arrowtooth flounder. Greenland turbot. Yellowfin sole. Rock sole. Atka mackerel. Pacific ocean perch. Squid. Other flatfish.			
GOA only.	Pelagic shelf rockfish. Thornyhead rockfish. Demersal shelf rockfish.	Flatfish	Atka mackerel. Squid	

Each January 1–December 31 fishing year, the Council recommends TACs and apportionments thereof among DAP, JVP, TALFF, and reserves for each of the above target species and the "other species" category. Subject to his approval, the Secretary implements the new TACs and apportionments. These actions are provided for by a procedure summarized below and set forth in the FMPs and implementing regulations, and are normally accomplished within a four-month (September–December) time frame.

Under this procedure, the Council recommends to the Secretary at its September meeting of each year preliminary specifications for TACs and apportionments thereof for each of the target species and the "other species" category. The Secretary publishes these recommendations in the **Federal Register** and invites public comments for 30 days. The Council, at its December meeting, reviews comments received and other available information and recommends to the Secretary initial specifications and apportionments thereof for the new fishing year Subject to Secretarial approval, these recommendations are then published in the **Federal Register** for purposes of managing the groundfish fisheries during the new fishing year.

Prior to 1988, the Council had split some of the target species groups into individual species and had established separate TACs for the individual species during the process of developing TACs for the upcoming fishing year. Reasons for establishing TACs for additional target species included fostering management of smaller components of the groundfish stocks to prevent overharvesting any one component. Examples of these actions in the BSAI included: (1) Splitting the "other flatfish" group into "other flatfish" and turbot; and (2) splitting the turbot group into arrowtooth flounder and Greenland turbot. Examples in the GOA included splitting "other rockfish" into pelagic shelf rockfish, slope rockfish, and demersal shelf rockfish. The Council took these actions in previous years after being advised by NOAA General Counsel that the Secretary is authorized under the FMPs to split species groups within the four discrete categories without amending the FMPs. NOAA General Counsel also advised, however, that moving species or species groups among the four categories, for example redesignating a target species as a prohibited species, would require an FMP amendment.

Nonetheless, the Council recommended that a TAC for rock sole be split from the "other flatfish" TAC as part of a 1988 amendment package to the BSAI FMP. The Secretary implemented this measure as Amendment 12 to the FMP. This process of using an FMP amendment to split a species from a target species group by FMP amendment is inconsistent with previous Council actions listed above, whereby the Council simply incorporated such changes during the development of initial TAC amounts. Furthermore, measures addressed under the amendment process take approximately one year to become effective, whereas the development and implementation of TAC amounts for an upcoming fishing year take about four months.

The Council recommends that the FMPs and regulations be amended to clarify the appropriate procedure. The Council proposes to amend the framework procedure contained in the FMPs and in the implementing regulations to clarify the procedure.

4. Walrus Islands Fishing Area Closure

Under this measure, portions of the Bering Sea subarea shoreward of twelve miles from islands named "the Twins" and "Round Island" and also Cape Peirce would be closed to fishing for groundfish from April 1 through September 30 of 1990 and 1991. The purpose of this measure is to restrict fishing activity in areas used as haul-out sites by walrus for a two-year period, during which effects of noise from fishing operations on walrus behavior can be better determined. In 1987 and 1988 the number of walrus hauled out on Round Island (Walrus Islands State Game Sanctuary) and at Cape Peirce (Togiak National Wildlife Refuge) declined by more than 50 percent, coincident with the initiation of fishing for yellowfin sole in the same area of northern Bristol Bay. State officials on Round Island reported frequent, loud noise on the island for the first time in 1987; these sounds emanated from yellowfin sole fishing vessels that were present. Various management actions near Round Island have been taken over the past several years to maintain or reduce levels of potential disturbance to walrus from other human related activities (e.g., from tourism and other fisheries such as salmon, herring, etc.).

Conclusive data establishing a direct cause and effect relationship between the sounds generated by the yellowfin sole fishery and the decline in walrus numbers are not available. However, Federal and State agencies, Native groups, and conservation organizations are concerned that these sounds are likely disturbing walrus to the point of adversely affecting their use of beaches in the region for hauling out. The Council believes that circumstantial evidence is sufficiently compelling to warrant corrective measures. Accordingly, the Council has recommended that no fishing for groundfish be allowed seaward of these haul-out sites during periods of peak walrus utilization, April 1 through September 30, for both the 1990 and 1991 fishing years. After that time, the Council may recommend further action with respect to protecting these areas as a management response intended to protect walrus. The Council proposes that these identified areas be closed to fishing for the prescribed period. The Secretary, however, notes that similar closures are not yet imposed by the State of Alaska within the adjacent State waters. Without complementary action by the State, the Council's recommendation would likely be diminished. Also, since this measure "sunsets" in two years, the time that this measure would be in effect may be too short to determine its success. The Secretary particularly requests comment on these two issues.

5. Sablefish Allocations

Under this measure, respective sablefish TACs in the Bering Sea and in the Aleutian Island subareas would be allocated to users of trawl gear and fixed gear in the following proportions:

Bering Sea subarea: trawl gear—50 percent and fixed gear—50 percent; and
Aleutian Islands subarea: trawl gear—25 percent and fixed gear—75 percent.

The purpose of this measure is to allocate shares of sablefish to the separate gear types such that each would be monitored independently of the other. Fisheries by the separate gear types could then be closed separately, which would, therefore, prevent one gear type from harvesting amounts of sablefish that the other gear type might have depended upon. Since the collective users of each gear type would have a set percentage of the sablefish TAC, they would be able to make more accurate business decisions as to how much sablefish they could depend on for harvest. The need to establish separate quotas by gear types in the BSAI became apparent in 1988 for the first time as a result of an inseason management action implemented by the Secretary.

In 1988, the Secretary determined that the sablefish TAC was insufficient to accommodate both a directed and bycatch harvest in the Bering Sea subarea. The Secretary, therefore, closed the Bering Sea subarea sablefish directed fishery on June 11, prior to the attainment of TAC (53 FR 22328, June 15, 1988). The Secretary took this action, because the attainment of the sablefish TAC would otherwise have required the Secretary to either close the groundfish fisheries that take sablefish as bycatch or prohibit retention of sablefish bycatch for the remainder of the year. The former would have imposed a substantial cost on the groundfish industry in terms of foregone catch and earnings and the latter would have resulted in substantial waste and potentially unaccounted for fishing mortality. In 1989 it was determined that the entire initial TAC was needed to support the bycatch needs of other directed groundfish fisheries.

The Magnuson Act requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery. While the NMFS action can be justified in these terms, the effect of this action was perceived to be a *de facto* allocation of sablefish to the non-directed fisheries, which are primarily trawl fisheries.

Trawl fisheries take the largest amount of the total groundfish harvest of all the gear types. Since some amounts of sablefish are caught as bycatch in the trawl fisheries, a disproportionate share of sablefish could be taken in the trawl fisheries, depending on the percentage used to define directed fishing for sablefish. In 1988, 20 percent was used to define directed fishing, which meant that even though the Secretary had closed the directed sablefish fishery, all vessels including those using trawl gear could still have caught amounts of sablefish less than 20 percent of the total amounts of groundfish on board. Since large amounts of other groundfish species, for example pollock and flounder had already been caught, trawl fishermen could target on sablefish, albeit illegally, with the result that the amount of sablefish would still be less than 20 percent of their total catch. Such action could rapidly consume the sablefish TAC and leave little or no amounts of sablefish for fixed gear users.

Amendment proposals requesting the Council to consider the allocation issue were submitted by representatives of both the trawl and fixed gear sectors of the industry. Given that the total TAC for sablefish in the Bering Sea will be harvested whether or not a directed fishery exists, the concern is not with the level of the sablefish TAC, but rather with its gear/mode allocation between fixed and trawl gear. Trawlers have typically been identified with the bycatch of sablefish, especially in the pollock, Pacific cod, Greenland turbot, and Pacific ocean perch fisheries. Users of hook-and-line gear have accounted for the majority of the directed sablefish catch. However, hook-and-line fisheries targeting on Pacific cod and Greenland turbot also take sablefish as bycatch.

For most of the 1989 fishing year, an emergency rule has redefined sablefish directing fishing to mean fishing that results in the retention of sablefish of 1 percent or more of the total amounts of fish and fish products on board, except Greenland turbot and Pacific ocean perch, plus 10 percent of the amounts of Greenland turbot and Pacific ocean perch. Thus, fishermen using trawl gear would have a much reduced incentive to top off their loads with sablefish when the allowable amount of sablefish on board might only be less than 1 percent of the total amount of groundfish. In fact, in the Bering Sea subarea where sablefish is only a bycatch fishery, the total amount of sablefish that has been harvested as of the June 20–23, 1989 Council meeting was less than 15 percent of the TAC. If trawl vessels do not harvest a disproportionate share of the sablefish TAC as a result of the percentage used to define sablefish directed fishing, more sablefish would be available to fixed gear users.

The Council, upon reviewing the status of the 1988 and 1989 sablefish catches in the BSAI and upon reviewing public testimony and the EA/RIR/IRFA, has recommended that the Secretary implement this sablefish allocation measure. At this time, the Secretary is publishing this measure to gain public comment and to review the result of the analyses supporting this measure. Prior to the conclusion of the time allocated to him under the Magnuson Act, he will determine whether this measure meets the test of the national standards contained in the Magnuson Act as well as standards in other applicable law.

6. Shelikof Strait District

Under this measure, an area known as Shelikof Strait in the Gulf of Alaska and presently part of the Central Regulatory Area would be established as a management district for purposes of managing harvests of pollock. Provisions for regulating the harvest of pollock from the Shelikof Strait District are needed to protect the spawning stock. During the last decade, a significant portion of the Gulf of Alaska pollock stock has spawned in the Shelikof Strait region. These large spawning concentrations became the target of a commercially important fishery. The best available information on the condition of the Gulf of Alaska pollock stock indicates that the stock has experienced a significant decline. If the pollock stock remains at a low level of abundance, it may be necessary to adopt strict conservation measures to protect the spawning stock. One type of conservation measure would be to regulate the harvest of pollock in the Shelikof Strait area. To implement this type of regulation a new Shelikof Strait management region must be defined.

Total biomass estimates for the Gulf of Alaska pollock stock are derived from hydroacoustic and bottom trawl survey data collected by the Northwest and Alaska Fisheries Center (NWAFC).

Hydroacoustic surveys were conducted in 1981, and annually since 1983. The annual hydroacoustic surveys were conducted in Shelikof Strait and focused on aggregations of pollock while they were in spawning condition (March–April). Since few pollock were believed to be present outside of Shelikof Strait during this time, the information obtained from the hydroacoustic surveys was thought to represent most of the pollock biomass occurring in the Western/Central Regulatory Area. Bottom trawl surveys of the entire Western and Central regions of the Gulf of Alaska were conducted in 1984 and 1987 during the summer (May–September). The bottom trawl survey data provides information on the distribution and abundance of pollock during their summer feeding period.

Recent estimates of pollock biomass in the Gulf of Alaska show biomass peaked in 1981 and declined rapidly in subsequent years. The 1988 hydroacoustic survey in Shelikof Strait produced a biomass estimate that was the lowest on record. The low biomass is attributed to poor recruitment of the 1984 and 1985 year classes. Information obtained from the 1987 triennial bottom trawl survey also showed a decline in pollock biomass between 1984 and 1987; however, the decline in biomass was not as large as the hydroacoustic survey suggested. Because the 1987 bottom trawl biomass estimate was substantially higher than the 1988 hydroacoustic survey estimate, the premise that hydroacoustic surveys in Shelikof Strait provide the best estimates of pollock abundance for the entire Western/Central Regulatory Area is being questioned.

Because of the apparent decline in pollock biomass, the Council recommended a limited quota for the Shelikof Strait region in 1989. The limited quota was imposed as a conservation measure to protect pollock, which in past years has been harvested in Shelikof Strait to obtain roe from mature female pollock. The Secretary concurred with the Council's recommendation and adjusted the TAC under the inseason management authority contained in § 672.22 such that no more than 6,250 mt of pollock may be harvested in Shelikof Strait. The Secretary requested that fishermen use "621" as the statistical area for purposes of reporting Shelikof Strait pollock harvests on catch reports required under § 672.5.

The Council, therefore, recommends that a separate Shelikof Strait district be established to provide a mechanism for monitoring the amount of pollock harvested from Shelikof Strait in future years. The Council proposes that the FMP be amended to establish the Shelikof Strait District to provide the necessary regulatory basis for managing pollock, including regulations to require reporting as is the current practice in other management areas.

The coordinates defining the proposed Shelikof Strait district are listed at § 672.2 of this rulemaking. In order to maintain the time series of historical catches based on International North Pacific Fisheries Commission (INPFC) statistical areas, two statistical areas, numbered 621 and 631, are proposed. The two reporting areas would be divided at 154° W. longitude, which would be consistent with the current reporting procedures used in the NWAFC observer database and the Pacific Fisheries Information Network (PacFIN) database.

7. Kodiak Island Trawl Area Closures

Under this measure, Type I and Type II closed areas of the EEZ now in effect through December 31, 1989 would be extended until December 31, 1992. Type I areas are closed to bottom trawling year-round. Type II areas are closed to bottom trawling from February 15 to June 15. These closures were implemented as part of Amendment 15 to the FMP for reasons that remain unchanged from those contained in the final rule implementing that amendment (49 FR 7868, March 13, 1987). The purpose of this measure is to extend protection to severely depressed king crab stocks for another three years in the vicinity of Kodiak Island where king crab are caught incidentally as bycatch in the bottom trawl fisheries.

This bycatch control measure was developed by the Council to provide an environment conducive to the recovery of king crab stocks around the island at a time of developing groundfish bottom trawl fisheries. This measure afforded protection to king crab in some areas during their molting or soft-shell period while in other areas it protected crab from bottom trawls year-round. The current expiration date of December 31, 1989, was selected under Amendment 15 to necessitate a review of the status of the crab stocks, and determine whether these measures are effective and should be continued.

The Type I and Type II areas of the EEZ continue to protect about 85 percent of the Kodiak Island king crab resource from bottom trawls during their softshell period and also protect 70 percent of the king crab resource year-round. These closures still provide bottom trawl fishing opportunities geographically close to established processing and support facilities. These measures are still considered vital if the king crab stocks are to recover in this area.

Either of these two types of areas could be expanded by a third type of closed area, referred to as a "Type III" area. The Type III expansion would be the result of what is referred to by the Council as a "recruitment event", which is the appearance of female king crab in sufficient numbers that indicate that the rebuilding schedule for king crab is effective and that further protection of female and prerecruit king crab is warranted to bolster the rebuilding success. Type III closure areas would protect juvenile king crab in areas which have been noted as important rearing areas or migratory pathways and would increase the probability of a king crab population recovery.

The Council has coordinated this measure with Kodiak area fishing representatives. Insufficient time has passed since its implementation in 1986 to determine the extent of improvement for king crab stocks, but biologists and the Kodiak area fishing industry generally believe that king crab stocks will continue to improve under this measure, albeit improvement is expected to be slow. The Council proposes this measure.

8. Interim Pacific Halibut Prohibited Species Catch Limits

Under this measure, interim prohibited species catch (PSC) limits would be established in the Gulf of Alaska for fixed gear and for trawl gear for the 1990 fishing year only. Fixed gear, which includes hook-and-line gear and pot gear would be allocated 750 mt. Trawl gear would be allocated 2,000 mt. The purpose of this measure is to allocate specific amounts of halibut PSCs to the two gear types for the 1990 fishing year so that PSC amounts and closures for the two gear types are independent of each other. During 1990, the Council intends to develop a regulatory amendment that would prohibit further fishing by hook-and-line gear fishermen as well as trawl fishermen if they were to reach a PSC limit, but retain after 1990 the framework procedures currently used to establish PSC limits, which are set forth in paragraph 672.20(f) in 50 CFR Part 672.

The incidental catch of halibut is a major bycatch management issue in the Gulf of Alaska. Halibut are distributed throughout the Gulf of Alaska and are taken as bycatch by all gear groups, including hook-and-line, pot, and trawl gear. In 1985, the Council adopted Amendment 14 to the GOA FMP, which

included a halibut bycatch management regime. The amendment established the halibut PSC framework procedure whereby the Secretary, in consultation with the Council, could manage halibut bycatch. The amendment intended, for example, that halibut PSC limits could be allocated to separate gear groups, including trawl and fixed gear. If either gear group reached its share of the halibut PSC allocation, just that gear group would be prohibited from further fishing. The regulations at § 672.20(f), however, that implemented the PSC framework procedure resulted in significantly less flexibility. Under the regulations, even though all catches of halibut are counted against the halibut PSC, only bottom trawling is prohibited if the halibut PSC is reached.

Under this regime, the Council has managed the incidental catch of halibut in the Gulf by annually determining a halibut PSC mortality limit. Since 1985, the Council has set the PSC limit at 2,000 mt. Industry representatives for trawl gear users have repeatedly testified that the way halibut are counted against the PSC is unfair when only trawl gear is affected. The Council recommended at its June 1989 meeting that the regulations be amended such that hook-and-line and pot gear would be closed independently of trawl gear. Establishing annual PSCs that would be allocated to fixed gear and trawl gear would continue to be accomplished through the framework procedure. A regulatory amendment to allow the Secretary to close fixed gear users independently of trawl gear will be the subject of future proposed rulemaking.

Industry representatives testified that PSC limits of 2,000 mt for trawl gear and 750 mt for fixed gear should be set for the 1990 fishing year. The Council, therefore, recommends that these limits be implemented, but that after 1990, the existing framework procedure for setting annual PSC limits would supercede these fixed limits. The Council intends that if the aggregated bycatch of halibut caught by hook-and-line or pot gear reaches 750 mt, further fishing by those gear types would be prohibited. The Council further intends that if the bycatch caught by trawl gear reaches 2,000 mt, further fishing with bottom trawl gear would be prohibited. The Council proposes to set halibut PSC limits of 750 mt for fixed gear and 2,000 mt for trawl gear for the 1990 fishing year only.

9. Examples of Forms

The following forms are provided as examples of forms that may be used in implementing the proposed rule. These forms will not appear in the Code of Federal Regulations.

BILLING CODE 3510-22-M

CATCHER/PROCESSOR DAILY CUMULATIVE PRODUCTION LOG

Crew Size	
Fishing	
Processing	
Other	
Total	

PAGE	YEAR-MON-DAY	VESSEL NAME/ADF&G #	FEDERAL STATISTICAL AREA	GEAR TYPE	OPERATOR

TRAWL OR SET NO.	SET TIME	SET POSITION	SEA DEPTH	TRAWL DEPTH	HAULING TIME	HAULING POSITION	HAUL OR SET DURATION	NUMBER OF SKATES OR POTS	NUMBER OF HOOKS OR POTS PER SKATE	ESTIMATED CATCH WEIGHT (MT)
TOTAL										

DISCARDED SPECIES

SPECIES											
DAILY DISCARD AMOUNT											

RETAINED PRODUCT INFORMATION

SPECIES/ PRODUCT TYPE[1]											
BALANCE FORWARD											
DAILY TOTAL											
CUMULATIVE TOTAL FOR WEEK											

1/ Refer to instructions for product type codes

MOTHERSHIP VESSEL CATCH RECEIPT AND DAILY CUMULATIVE PRODUCTION LOG

	Crew Size
Processing	
Other	
Total.	

PAGE	YEAR-MON-DAY	VESSEL NAME	FEDERAL STATISTICAL AREA	GEAR TYPE	OPERATOR

CODEND NO.	RECEIPT TIME	RECEIPT POSITION	VESSEL NAME	ADF&G VESSEL NO.	ESTIMATED CATCH RECEIPT WEIGHT (MT)

DISCARDED SPECIES

SPECIES											
DISCARD AMOUNT											

RETAINED PRODUCT INFORMATION

SPECIES/ PRODUCT TYPE[1]											
BALANCE FORWARD											
DAILY TOTAL											
CUMULATIVE TOTAL FOR WEEK											

1/Refer to instructions for product type codes

SHORESIDE PROCESSOR CATCH RECEIPT AND DAILY CUMULATIVE PRODUCTION LOG

PAGE	YEAR-MON-DAY	PLANT NAME/AK ST.PROC.CODE	FEDERAL STATISTICAL AREA	GEAR TYPE	EMPLOYMENT Processing: ____ Other :

FISH TICKET NUMBER	VESSEL NAME	ADF&G VESSEL NO.	RECEIPT TIME	ESTIMATED CATCH RECEIPT WEIGHT (MT)

DISCARDED SPECIES

SPECIES											
DAILY DISCARDS											

RETAINED PRODUCT INFORMATION

SPECIES/ PRODUCT TYPE[1]											
BALANCE FORWARD											
DAILY TOTAL											
CUMULATIVE TOTAL FOR WEEK											

1/ Refer to instructions for product type codes

CATCHER VESSEL DAILY FISHING EFFORT LOG

PAGE	YEAR-MON-DAY	VESSEL NAME/ADG&G #	FEDERAL STATISTICAL AREA	GEAR TYPE	OPERATOR	CREW SIZE

TRAWL OR SET NO.	SET TIME	SET POSITION	SEA DEPTH	TRAWL DEPTH	HAULING TIME	HAULING POSITION	HAUL OR SET DURATION	NUMBER OF SKATES OR POTS	NUMBER OF HOOKS OR POTS PER SKATE	ESTIMATED CATCH WEIGHT (MT)
TOTAL										

DISCARDED SPECIES

SPECIES											
DAILY DISCARD AMOUNT											

ALASKA GROUNDFISH

SHORESIDE PROCESSOR PRODUCT TRANSFER LOG

National Marine Fisheries Service
P.O. Box 21668, Juneau, AK 99802
Telex: RCA 45-377 NMFS AKR JNU
Rapicom: 907-586-7131
Telephone: 907-586-7229

Page #	
Receive	
Shipment	

Representative Phone Number Fax or Telex Number

Plant Name Plant location Alaska State Processor Code

A. Name of other agent involved in transfer (if a vessel, list port of landing in Part C, below).

B. Date and Time of Product Transfer

Start: Date__________ Time__________(GMT)

Finish: Date__________ Time__________(GMT)

C. Intended designation of agent receiving product (including port of landing of vessel receiving product transfer):

D. Products and quantities offloaded:

SPECIES	PRODUCT CODE	NO. OF CARTONS	*CARTON WT. KG OR LBS	TOTAL WT. (MT)	SPECIES	PRODUCT CODE	NO. OF CARTONS	*CARTON WT. KG OR LBS	TOTAL WT. (MT)

ALASKA GROUNDFISH

FLOATING PROCESSOR PRODUCT TRANSFER/OFFLOADING LOG

National Marine Fisheries Service
P.O. Box 21668, Juneau, AK 99802
Telex: RCA 45-377 NMFS AKR JNU
Rapicom: 907-586-7131
Telephone: 907-586-7229

Page #	
Receive	
Offload	

Representative Phone Number Fax or Telex Number

Vessel Name Federal Permit Number Call Sign

A. Other vessel involved in transfer (if landed, list port of landing):

Name of other vessel Federal Permit Number Call Sign

B. Date and Time of Product Transfer

Start: Date__________ Time__________(GMT)

Finish: Date__________ Time__________(GMT)

C. Position Transfered

Latitude:_________N Longitude:_________W,E

D. Intended port of landing of vessel receiving product:

E. Products and quantities offloaded:

SPECIES	PRODUCT CODE	NO. OF CARTONS	*CARTON WT. KG OR LBS	TOTAL WT. (MT)	SPECIES	PRODUCT CODE	NO. OF CARTONS	*CARTON WT. KG OR LBS	TOTAL WT. (MT)

BEST COPY AVAILABLE

ALASKA GROUNDFISH PROCESSOR WEEKLY PRODUCTION REPORT

Representative Phone number Fax or Telex number

Vessel name (or plant name) Federal permit number (for shoreside plant, Alaska State Processor Code) Call sign

Reporting period (indicate fishing week ending on Saturday) Gear type (one per page)

	THIS SECTION FOR RETAINED AND PROCESSED CATCH						THIS SECTION FOR DISCARDED SPECIES		
	Federal statistical area: Days fished or received fish: Total estimated catch weight/receipt:			Federal statistical area: Days fished or received fish: Total estimated catch weight/receipt:			Allocated species	Prohibited species	
Species	Prod type / Prod wt	Prod type / Prod wt	Prod type / Prod wt	Prod type / Prod wt	Prod type / Prod wt	Prod type / Prod wt	Amount (0.1 mt) / Stat. area	Species name	Stat. area / Amount (0.1mt or nos)
Pollock	/	/	/	/	/	/	/		/
Pacific cod	/	/	/	/	/	/	/		/
Sablefish	/	/	/	/	/	/	/		/
Yellowfin sole	/	/	/	/	/	/	/		/
Greenland turbot	/	/	/	/	/	/	/		/
Arrowtooth flounder	/	/	/	/	/	/	/		/
Rock sole	/	/	/	/	/	/	/		/
Other flatfish	/	/	/	/	/	/	/		/
POP complex (BSA)	/	/	/	/	/	/	/		/
Other rockfish (BSA)	/	/	/	/	/	/	/		/
Slope rockfish (GOA)	/	/	/	/	/	/	/		/
Pelagic shelf rockfish (GOA)	/	/	/	/	/	/	/		/
Demersal shelf rockfish (GOA)	/	/	/	/	/	/	/		/
Thornyhead	/	/	/	/	/	/	/		/
Atka mackerel	/	/	/	/	/	/	/		/
Squid	/	/	/	/	/	/	/		/
Other groundfish	/	/	/	/	/	/	/		/

1/ Refer to regulations for definition of species/species groups
2/ Refer to instructions for product type codes.
3/ Product weights should be reported to the nearest 0.1 metric ton (220 lbs.)

National Marine Fisheries Service
P.O. Box 21668, Juneau, AK 99802
Telex: RCA 45-377 NMFS AKR JNU

ALASKA GROUNDFISH PROCESSOR MONTHLY PRODUCT VALUE REPORT

Representative Phone Number Fax or Telex Number

Vessel Name(s) / Plant Name(s)

Federal Permit Number(s) / Alaska State Processor Number(s): Month and Year:

Species	Product type	Product size or grade	Product wt	Product value	Product type	Product size or grade	Product wt	Product value	Product type	Product size or grade	Product wt	Product value
Pollock												
Pacific Cod												
Sablefish												
Yellowfin sole												
Greenland turbot												
Arrowtooth flounder												
Rock sole												
Other flatfish												
POP Complex (BSA)												
Other rockfish (BSA)												
Slope rockfish (BSA)												
Pelagic shelf rockfish (GOA)												
Demersal shelf rockfish (GOA)												
Thornyhead												
Atka mackerel												
Squid												

CONFIDENTIAL

MARINE MAMMAL LOG

If you intend to fish in 1991 and want to renew your exemption certificate, please check this box. ☐

Exemption No. : ____________ CG Documentation No. : ____________ State Vessel Registration No. : ____________

A Complete Set of Instructions are included on the Back of this Form.

This form must be kept current and available for inspection.
The form must be filled out each day you fish, whether or not you interact with a marine mammal.
Submit completed forms to your Regional Office at any time, however, all report forms must be received no later than December 31.

					GEAR INTERACTIONS			DETERRENCE FROM GEAR OR CATCH					LOSS DUE TO MARINE MAMMAL	
DATE	HOURS FISHED	FISHERY CODES	AREA FISHED	MARINE MAMMAL SPECIES CODES	TOTAL NO. INVOLVED	NO. INJURED	NO. KILLED	TOTAL NO. HARASSED	NO. INJURED	NO. KILLED	METHOD	EFFECTIVE Y or N	FISH LOST Y or N	GEAR LOST Y or N

BILLING CODE 3510-22-C

OMB Number : 0648-0225
Expiration Date : 06/30/92

Classification

This proposed rule is published under section 304(a)(1)(C) of the Magnuson Act as amended by Pub. L. 99-659, which requires the Secretary to publish regulations proposed by the Council within 15 days of receipt of the fishery management plan amendment and regulations. At this time the Secretary has not determined that the amendments these regulations would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making these determinations, will take into account the data and comments received during the comment period.

The Council prepared an environmental assessment (EA) for these amendments and concluded that a significant impact on the environment will not occur as a result of this rule. A copy of the EA may be obtained from the Council at the address above and comments on it are requested.

The Under Secretary for Oceans and Atmosphere (Under Secretary) determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/IRFA prepared by the Council. A copy of the EA/RIR/IRFA may be obtained from the Council at the address above.

The Under Secretary concludes that this proposed rule, if adopted, would have significant effects on small entities. These effects have been discussed in the EA/RIR/IRFA, a copy of which may be obtained from the Council at the address above.

The Under Secretary determined that this proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act. This collection of information requirement has been submitted to the Office of Management and Budget for approval. Most of the information collected under the proposed recordkeeping and reporting requirements is effort, production and value information normally maintained by the groundfish vessel operators and processing plant owners for their own internal business purposes. Public recordkeeping and reporting burden for this collection of information is limited to the amount of time necessary for vessel operators and processor plant owners to transfer this information to the required logbook or report and to submit this information to the NMFS. The additional burden is estimated to average 30 to 36 hours per year (about 10 to 13 minutes per day) for floating processors, 24 hours per year (less than 20 minutes per day) for shoreside processing plants, and 5.5 hours per year (about 10 minutes per day) for vessels harvesting groundfish. These estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The proposed rule (§ 672.5(c)(1)(ii) and § 675.5(c)(1)(ii)) makes a minor change to an existing regulation that requires catcher/processors and mothership processors to submit checkin/checkout reports to NMFS, Alaska Region. The burden associated with this regulation averages less than 10 minutes per response and is approved under OMB No. 0648-0213. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden to the NMFS at the address above, and to the Office of Information and Regulatory Affairs, Office of Management of Budget, Washington, DC 20503 (Attn. NOAA Desk Officer).

The Council determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 611, 620, 672, and 675

Fisheries, Fishing vessels, Reporting and recordkeeping.

Dated: August 25, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 C.F.R. Parts 611, 620, 672, and 675 are proposed to be amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 611.92, paragraph (c)(2)(i) is revised to read as follows:

§ 611.92 Groundfish of the Gulf of Alaska.

* * * * *

(c) * * *

(2) * * *

(i) The catch and retention of the amount of any groundfish in the Gulf of Alaska for which a nation has an allocation is permitted during fishing seasons specified at 50 CFR 672.23, except in the following circumstances:

* * * * *

3. In § 611.93, paragraph (b)(3)(i) is revised and paragraph (c) is amended by redesignating paragraphs (c)(2) through (c)(4) as (c)(3) through (c)(5) and adding a new paragraph (c)(2) to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(3) * * *

(i) The catch and retention of the amount of any groundfish in the Bering Sea and Aleutian Islands management area for which a nation has an allocation is permitted during fishing seasons specified at 50 CFR 675.23, except in the following circumstances:

* * * * *

(c) * * *

(2) *Fishing.* No fishing is allowed in that part of the Bering Sea Subarea shoreward of a line on which each point is 12 miles from the baseline used to measure the Territorial Sea around islands named Round Island and The Twins as shown on National Oceanic Survey Chart INT 500, and around Cape Pierce (160°10′ W. longitude, 58°40′ N. latitude) during April 1 through September 30 of each of the 1990 and 1991 fishing years.

* * * * *

PART 620—GENERAL PROVISIONS FOR DOMESTIC FISHERIES

4. The authority citation for Part 620 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. Section 620.3 is amended by revising paragraph (d) as follows:

§ 620.3 Relation to other laws.

* * * * *

(d) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth at Parts 216 and 229 of this title.

* * * * *

PART 672—GROUNDFISH OF THE GULF OF ALASKA

6. The authority citation for Part 672 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

7. In § 672.2, the definition of the *Shelikof Strait District* is added and the definition of *Statistical area* is revised to read as follows:

* * * * *

Shelikof Strait district means all waters of the EEZ enclosed by a line connecting the following points in the order listed:

BILLING CODE 3510-22-M

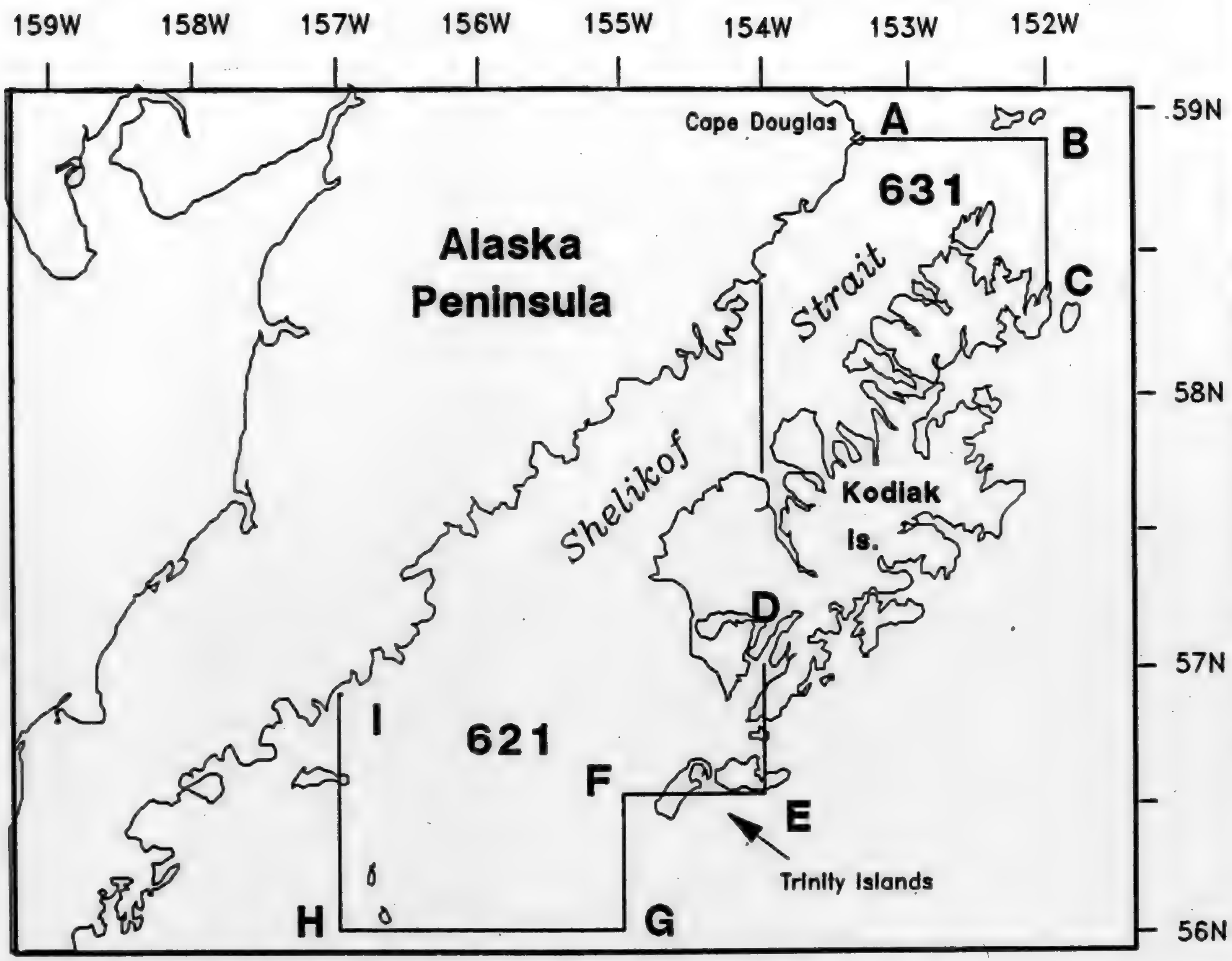
159W
158W
157W
156W
155W
154W
153W
152W
59N
58N
57N
56N
Cape Douglas
A
B
C
631
Alaska Peninsula
Strait
Shelikof
Kodiak Is.
D
I
621
F
E
Trinity Islands
H
G

Figure 1. Boundaries of the Shelikof Strait District in the Gulf of Alaska

BILLING CODE 3510-22-C

Reference point	N. lat.	W. long.	Description
A	58°51′ N.	153°15′ W.	Cape Douglas
B	58°51′ N.	152°00′ W..	then south to the intersection of 152°00′ W. with Afognak Island, then counter clockwise around the western shorelines of Afognak, Kodiak, and Raspberry Islands to
D	57°00′ N.	154°00′ W.	Alitak Bay then south to
E	56°30′ N.	154°00′ W.	then west through Trinity Islands to
F	56°30′ N.	155°00′ W.	then south to
G	56°00′ N.	156°00′ W.	then west to
H	56°00′ N.	157°00′ W.	then north to
I			intersection of 157°00′ W. with the Alaska Peninsula.

* * *

Statistical area means any one of the nine statistical areas of the EEZ in the Gulf of Alaska defined as follows:

(1) Statistical Area 61—between 170°00′ and 159°00′ W. longitudes;

(2) Statistical Area 62—between 159°00′ and 154°00′ W. longitudes;

(3) Statistical Area 620—Shelikof Strait district as defined by this paragraph.

(4) Statistical Area 621—that part of the Shelikof Strait District between 157°00′ and 154°00′ W. longitudes.

(5) Statistical Area 631—that part of the Shelikof Strait District between 154°00′ and 152°00′ W. longitudes.

(6) Statistical Area 63—between 154°00′ and 147°00′ W. longitude;

(7) Statistical Area 64—between 147°00′ and 140°00′ W. longitudes;

(8) Statistical Area 65—east of 137°00′ W. longitude and north of 54°30′ N. latitude;

(9) Statistical Area 68—between 140°00′ and 137°00′ W. longitudes.

8. Section 672.3 is amended by revising paragraph (b) as follows:

§ 672.3 Relation to other laws.

* * * * *

(b) For regulations governing foreign fishing for groundfish in the Gulf of Alaska, see 50 CFR 611.92; for those governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands, see 50 CFR 611.93. For regulations governing fishing for groundfish in the Bering Sea and Aleutian Islands by vessels of the United States, see 50 CFR Part 675; for those governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals, see 50 CFR 216.24 and 50 CFR 229. For regulations governing fishing for Pacific halibut by vessels of the United States, see 50 CFR 301.

9. In § 672.5 paragraph (a) is revised; paragraph (b) is retitled and redesignated as paragraph (d), paragraph (c) is redesignated as paragraph (e), and new paragraphs (b) and (c) are added to read as follows:

§ 672.5 Recordkeeping and reporting.

(a) *Reporting areas and general requirements.*—(1) *Reporting areas.* (i) A reporting area for a groundfish species, species group, or prohibited species consists of the relevant Gulf of Alaska statistical area specified under paragraphs (a)(1) (ii) and (iii) of this section and, in addition to the State waters described in the relevant statistical area, all State waters between the shore and any inshore boundary of that statistical area.

(ii) With respect to any groundfish species, other than pollock, any groundfish species group or any prohibited species, the relevant Gulf of Alaska statistical areas include each of the following statistical areas described in section 672.2: 61, 62, 63, 64, 65, and 68.

(iii) With respect to pollock, the relevant Gulf of Alaska statistical areas include each of the following statistical areas: 61, 62, 621, 631, 64, 65, 68, and that portion of 63 outside of 621 and 631.

(2) *General requirements.* All fishing vessels issued a Federal groundfish fishing permit under § 672.4 of this part and all catcher/processors, mothership processor vessels, and shoreside processing plants that receive groundfish from vessels regulated under this part must comply with the recordkeeping and reporting requirements set forth under this section.

(b) *Logbooks.* The operator of any catcher vessel larger than 5 net tons or of any catcher/processor vessel or mothership processor vessel, or the owner of any shoreside processing plant that harvests or processes groundfish from any reporting area in the Gulf of Alaska described in Section 672.5, must meet the following recordkeeping requirements:

(1) *General.* The operator of each catcher vessel, catcher/processor vessel, and mothership processor vessel, and the owner of each shoreside processing plant must maintain timely and accurate records required by this section.

(i) The operator of each catcher vessel, catcher/processor vessel, and mothership processor vessel, and the owner of each shoreside processing plant must maintain all required records in English, based on Alaska Local Time (ALT) unless otherwise specified in the regulations, and make the original copy of the records immediately available for inspection upon the request of an authorized officer or observer.

(ii) For any fishing year, the operator of each catcher vessel, catcher/processor vessel, and mothership vessel, and the owner of each shoreside processing plant must retain the original copy of all required records on board the vessel, or for shoreside plants, within the processing facility, until the end of the fishing year or for as long after the fishing year as fish or fish products recorded in logbooks are retained onboard a vessel or at a processing facility.

(iii) The operator of each catcher vessel, catcher/processor vessel, and mothership vessel, and the owner of each shoreside processing plant must use the logbook prescribed and provided by the Regional Director. The logs shall be maintained in accordance with these regulations and the instructions attached to the issued logs.

(iv) Recordkeeping required under paragraphs (b)(2)(ii), (b)(3)(ii), and (b)(4)(i) of this section must be in indelible ink with corrections to be accomplished by lining out and rewriting so that the original entry remains legible. Original pages in issued logs shall not be removed from the log.

(2) *Daily fishing logbook.* (i) The operator of each catcher/processor and catcher vessel harvesting groundfish from any reporting area in the Gulf of Alaska must maintain onboard a daily fishing log of the effort and catch information of the vessel as described in paragraph (b)(2)(ii) of this section. Daily effort entries are required for each day the vessel conducts fishing operations. Daily entries are not required for those days when the fishing vessel stays in port. A separate page in the daily fishing logbook must be used for each day's fishing activity. If fishing activity is conducted in more than one Gulf of Alaska reporting area during any day, a separate page in the daily fishing logbook must also be used for each reporting area. Catcher/processor vessels will be provided with daily fishing logbooks that also record the daily production information required under paragraph (b)(3) of this section.

(ii) Contents. (A) The daily fishing log must record the following effort information on a daily basis:

(1) A consecutive page number beginning with the first day of the fishing year that the vessel started fishing operations and continuing throughout the log for the remainder of the fishing year;

(2) The date;

(3) The catcher vessel's name and ADF&G vessel number;

(4) The reporting area in which the catcher vessel is conducting fishing activity;

(5) The gear type;

(6) For hook and line and pot gear, the average number of hooks or pots per skate, size of hooks used, and average length of skates;

(7) For trawl gear, the size of net opening, codend mesh size, and average speed of tow;

(8) The vessel operator's signature;

(9) Crew size;

(10) Daily discard amounts of each groundfish species or species group to at least the nearest tenth of a metric ton (0.1 mt) round weight, and daily discard amounts of each prohibited species listed under section 672.20(e) by number, except for discard amounts of herring, which should be reported by round weight (0.1 mt).

(B) The following information must be recorded for each haul or set, as appropriate to the gear type employed:

(1) The consecutive trawl or set number, beginning with the first trawl or set of the fishing year;

(2) The time the gear was set (ALT);

(3) The set position in geographical coordinates;

(4) The sea depth;

(5) The trawl depth;

(6) The hauling time;

(7) The haul position in geographical coordinates;

(8) The duration of the set;

(9) The number of pots or skates;

(10) The estimated total weight of the catch for the trawl or set, to at least the nearest metric ton round weight.

(11) Marine mammal log form required under 50 CFR Part 229.

(iii) Maintenance of the daily fishing log. Entries in the daily fishing log as to trawl or set number, time, position, and estimated catch weight shall be updated within two hours of the hauling time. All other entries in the daily fishing log shall be updated within 12 hours of the end of the day (ALT) on which the trawl or set occurred.

(iv) Upon each delivery or landing, species discard amounts must be provided to the processor receiving the vessel's catch so that such amounts may be reported under the requirements set forth at paragraphs (c)(1)(iii)(J) and (c)(1)(iii)(K) of this section.

(v) Submission of daily fishing logs. Each vessel operator must submit a copy of the daily fishing log on a quarterly basis to the Northwest and Alaska Fishery Center, National Marine Fisheries Service, Sand Point Way NE Bldg. 4, Seattle, Washington 98115. Copies of the DFL must be submitted by May 1, August 1, November 1, and February 1 for the previous quarter's fishing activity.

(3) *Daily cumulative production log* (DCPL). (i) The operator of each catcher/processor vessel, and mothership processor vessel, and the owner of each shoreside processor that processes groundfish from any reporting area in the Gulf of Alaska must maintain on the processing vessel or within the processing facility a daily cumulative production log of catch receipt (if applicable), species discard, and retained groundfish product information as described in paragraph (b)(3)(ii) of this Section. Daily log entries are required for each day the vessel or facility receives or processes groundfish. A separate page in the daily fishing logbook must be used for each day's fishing activity. If fishing activity is conducted in more than one reporting area during any day, a separate page in the daily fishing logbook must also be used for each reporting area. For the purpose of logbook entries, a week is defined as the period from Sunday through Saturday.

(ii) Contents. (A) The DCPL must record the following information on a daily basis:

(1) A consecutive page number beginning with the first day of the fishing year the vessel started operations and continuing throughout the log for the remainder of the fishing year;

(2) The date;

(3) The vessel or plant name and ADF&G vessel number or Alaska State Processor Code, whichever is applicable;

(4) The reporting area from which the groundfish catch receipt was harvested;

(5) The gear type used to harvest the groundfish catch receipt;

(6) The vessel operator's or plant owner's signature;

(7) Information on crew size or number of employees;

(8) Daily discard amounts by a processor of each groundfish species or species group to at least the nearest tenth of a metric ton (0.1 mt) round weight, and, for each prohibited species listed under paragraph 672.20(e), daily discard amounts by number, except for discard amounts of herring, which should be reported by round weight (0.1 mt).

(9) For each species or species group for which a total allowable catch (TAC) has been specified by the Secretary under Section 672.20 of this part, and product produced during the day:

(*i*) The product by species code and product type;

(*ii*) The balance forward of species product amounts produced during a week to the nearest tenth of a metric ton (0.1 mt). (At the beginning of each week, the balance forward for species product amounts for that week will be zero).

(*iii*) The daily total product produced by species and product type to the nearest tenth of a metric ton (0.1 mt);

(*iv*) The cumulative weekly total product aboard by species and product type to the nearest tenth of a metric ton (0.1 mt).

(B) The following information must be recorded for each catch receipt:

(1) For each set or codend received by mothership processor vessels;

(*i*) A consecutive catch receipt or codend number for the day;

(*ii*) The catch receipt time;

(*iii*) The catch receipt position;

(*iv*) The name of the delivering vessel;

(*v*) The delivery vessel's Federal groundfish permit number or ADF&G vessel number;

(*vi*) Estimated catch receipt weight to at least the nearest metric ton round weight.

(*vii*) Marine mammal interaction information required under 50 CFR part 229.

(2) For each groundfish landing received by shoreside processors from catcher vessels:

(i) State of Alaska fish ticket number;

(*ii*) The name of the delivering vessel;

(*iii*) The delivery vessel's ADF&G vessel number or federal groundfish permit number;

(*iv*) The catch receipt time (ALT);

(*v*) Estimated catch receipt weight to at least the nearest metric ton round weight.

(iii) Daily maintenance of the DCPL. Entries in the DCPL as to codend or fish ticket number, receipt time, position, estimated catch receipt weight, and delivering vessel's name shall be updated within two hours of the receipt time. All other entries in the DCPL shall be updated within 12 hours of the end of the day (ALT) on which the trawl, set, receipt, or production occurred. Product shall be logged on the day processed regardless of the day of catch or receipt. Entries for product weights must be based on the number of production units (pans, cartons, blocks, trays, cans, bags, or individually frozen fish) and the average weight of the production unit, with reasonable allowance for water added. Allowance for water added cannot exceed five percent of the gross unit weight. Product unit weights must be based on the total actual net weight of the product as determined by representative samples.

(iv) Submission of DCPL's. Each processing vessel operator or plant owner must submit a copy of the DCPL on a quarterly basis to the Northwest and Alaska Fishery Center, National Marine Fisheries Service, Sand Point Way NE Bldg. 4, Seattle, Washington 98115. Copies of the DCPL must be submitted by May 1, August 1, November 1, and February 1 for the previous quarter's processing activity.

(4) *Product transfer logbooks.* The operator of each catcher/processor vessel and mothership processor vessel, and the owner of each shoreside processor plant must record, in a separate transfer log, each offloading, shipment or receipt of any processed fishery product, including quantities transferred or off-loaded outside the EEZ, within any states' territorial waters, or within the internal waters of any state or at any shoreside facility.

(i) Contents. The transfer log must record the following information:

(A) A consecutive page number beginning with the first transfer or shipment of groundfish product in a fishing year and continuing throughout the log for the remainder of the fishing year;

(B) Whether the product transfer reflects a product receipt or shipment/offloading;

(C) Company representative's name, telephone number, and Fax or telex number;

(D) Vessel or plant name, plant location, Federal permit number or Alaska State processor code number, and radio call sign of vessel if applicable;

(E) The name of the other vessel (including Federal permit number and call sign) shipping agent, or commercial facility (including location) involved in the transfer or shipment;

(F) The time and date (ALT) and, if applicable, vessel location (in geographic coordinates, or if within a port, the name of the port) at which the transfer or shipment began and was completed;

(G) The intended destination of the carrier or vessel receiving product;

(H) For each product type by species or species group, the total net product weight transferred or shipped to the nearest one-tenth of a metric ton (0.1 mt), an estimated net weight in kilograms or pounds of product per carton, and the total number of cartons of product transferred or shipped.

(ii) Submission of transfer logs. Copies of transfer logs for each weekly period, Sunday through Saturday, ALT, must be submitted to the Regional Director within one week following the week ending date through such means as the Regional Director will prescribe. Submission of product transfer logs is only required if product transfer activity occurred during that weekly period.

(c) *Other recordkeeping and reporting requirements*—(1) *Catcher/processor vessels, mothership processor vessels, and shoreside processor plants.* The operator or owner of any vessel or shoreside processor of the United States who processes groundfish caught in the EEZ from any reporting area in the Gulf of Alaska must, in addition to the requirements of paragraphs (a) and (b) of this section, comply with the following requirements:

(i) State of Alaska Fish Tickets—(A) The operator of any mothership processor vessel, catcher/processor vessel, or the owner of any shoreside processing facility that harvests or receives groundfish harvested from any reporting area in the Gulf of Alaska or internal waters of the State of Alaska, will be responsible for the submission to ADF&G of an accurately completed State of Alaska fish ticket or an equivalent document containing all of the information required on an Alaska fish ticket. U.S. catcher vessels delivering to U.S. processors must provide to the processor information necessary for accurate completion of the fish ticket. Operators of catcher vessels to which a permit has been issued under § 672.4 of this part and who do not deliver to a catcher/processor vessel, mothership processor vessel, or shoreside processing facility are responsible for their own submission of fish tickets. Fish tickets are not required for groundfish sold or delivered to a foreign processing vessel which has a permit under § 611.92 or § 611.93 of this title.

(1) When to submit fish tickets.

(i) Shoreside processors. Owners of shoreside processing facilities must prepare and submit State of Alaska fish tickets required under paragraph (c)(1)(i) of this section to ADF&G within one week after fish are landed.

(ii) Catcher/processor vessels and mothership processor vessels. Operators of processing vessels must prepare and submit State of Alaska fish tickets required under paragraph (c)(1)(i) of this section to ADF&G within one week after returning to port. A document equivalent to a State of Alaska fish ticket may be submitted if groundfish product is landed outside of Alaska.

(iii) Catcher vessels. Operators of catcher vessels to which a permit has been issued under § 672.4 of this part and who do not deliver to a vessel at sea or to a shoreside processing facility must submit the fish ticket required under (c)(1)(i) of this section within one week after fish are landed.

(B) Address. Mail or deliver State of Alaska fish tickets to the ADF&G office located nearest to the area of groundfish purchase, or send these documents to the Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, P.O. Box 3–2000, Juneau, Alaska 99802.

(ii) Alaska groundfish check-in report. The operator of any catcher/processor and/or mothership processor vessel must notify the Regional Director before starting and upon stopping fishing for or receiving groundfish from any reporting area in the Gulf of Alaska. Notification will be through such means as the Regional Director will prescribe, and will consist of the vessel's name, permit number (if applicable), radio call sign, date and hour (ALT) of when fishing for or receiving groundfish will begin or cease, and the latitude and longitude of such activity.

(iii) Weekly production report. After a receipt of groundfish by a shoreside plant and continuing for the rest of the year, or after notification of starting fishing by a vessel under paragraph (c)(1)(ii) of this section and continuing until that vessel's entire catch or cargo of fish has been off-loaded, the operator of that vessel or plant owner must submit a weekly product report, including reports of zero tons caught or received, for each weekly period, Sunday through Saturday, ALT, and each portion of such a weekly period. The weekly product report must be received by the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe. This report must contain the following information:

(A) Submitter's name, telephone number, and Fax or telex number;

(B) Name of vessel or plant and radio call sign of vessel;

(C) Federal permit number or Alaska State processor code, which ever is applicable;

(D) The ending date (Saturday) of the reporting period;

(E) Gear type used to harvest groundfish catch or catch receipt;

(F) The reporting area(s) from which each retained species or species group product was caught during the reporting period;

(G) Number of days fished or during which fish were received;

(H) The total estimated catch weight or catch receipt for each reporting area;

(I) The product type and total product weight produced during the weekly reporting period for each species or species group for which a total allowable catch (TAC) has been specified by the Secretary under Section 672.20 of this part;

(J) The amount of each groundfish species or species group discarded during the reporting period, including discard amounts provided to processors under paragraph (b)(2)(iv). Discard amounts should be reported in round weight to the nearest metric ton.

(K) The amount of each prohibited species discarded during the reporting period, including prohibited species discard amounts provided to processors under paragraph (b)(2)(iv). Discard amounts of each prohibited species listed under paragraph 672.20(e) must be reported by number, except for herring, which should be reported by round weight (0.1 mt).

(iv) Alaska groundfish processor monthly product value report. Each groundfish processor or its parent company must complete a monthly product value report for any month during which groundfish harvested from any of Gulf of Alaska reporting area were sold. Monthly product value reports must be submitted annually to the Northwest and Alaska Fishery Center, National Marine Fisheries Service, Sand Point Way NE Bldg. 4, Seattle, Washington 98115. The monthly product value reports must be received by NMFS no later than March 1 for the previous fishing year. These reports must include the following information:

(A) Name of the representative for the vessel, plant or company, telephone number, and Fax or telex number;

(B) Name of vessel(s) or plant(s);

(C) Federal permit number or Alaska State processor code, which ever is applicable;

(D) Month and year;

(E) For each species or species group for which product was sold during the month, the product type(s); Product size(s) or grade(s); product weight(s) to the nearest tenth of a metric ton (0.1 mt); and product value(s).

(d) *Groundfish utilization surveys.*

* * * * *

10. Section 672.7 is amended by adding paragraph (d) as follows:

§ 672.7 Prohibitions.

* * * * *

(d) Fish for groundfish except in compliance with the terms of an observer plan as provided by § 672.27 of this part.

* * * * *

11. In § 672.20, paragraph (a)(2) is revised, paragraph (f)(2) is suspended from January 1, 1990 through December 31, 1990, and new paragraph (f)(3) is added from January 1, 1990, through December 31, 1990, to read as follows:

§ 672.20 General limitations.

(a) * * *

(2) *Total Allowable Catch (TAC).* The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will specify the annual TAC for each calendar year for each target species and the "other species" category, and will apportion the TACs among DAP, JVP, TALFF, and reserves. TACs in the target species category may be split or combined for purposes of establishing new TACs with apportionments thereof under paragraph (c)(1) of this section.

* * * * *

(f) * * *

(3) Pacific halibut PSC limits. (i) PSC limits of 2,000 mt for trawl gear and 750 mt for hook-and-line and pot gear, combined are established. Each share is allocated to DAP and to JVP in proportion to the specified DAP and JVP amount of groundfish apportionment.

(ii) Trawl gear. If during the year, the Regional Director determines that the catch of halibut by vessels using trawl gear and delivering their catch to foreign vessels (JVP vessels) or vessels using trawl gear and delivering their catch to U.S. fish processors (DAP vessels) will reach their proportional share of 2,000 mt of halibut provided for under paragraph (f)(3)(i) of this section, the Regional Director will publish a notice in the Federal Register prohibiting fishing with trawl gear other than pelagic trawl gear for the rest of the year by DAP or JVP vessels in the area to which the PSC limit applies.

(iii) Hook-and-line and pot gear. If during the year, the Regional Director determines that the catch of halibut by vessels using hook-and-line and vessels using pot gear and delivering their catch to foreign vessels (JVP vessels) or vessels using hook-and-line and vessels using pot gear and delivering their catch to U.S. fish processors (DAP vessels) will reach their proportional share of 750 mt of halibut provided for under paragraph (f)(3)(i) of this section, the Regional Director will publish a notice in the **Federal Register** prohibiting fishing with hook-and-line or pot gear for the rest of the year by DAP or JVP vessels in the area to which the PSC limit applies.

12. Section 672.23 is revised to read as follows:

§ 672.23 Seasons.

(a) Fishing for groundfish during the January 1-December 31 fishing year in the statistical areas defined at § 672.2 is authorized from January 1 through December 31, subject to the other provisions of this part, except as provided in paragraph (b) of this section.

(b) Fishing for sablefish is authorized with hook-and-line gear from 12:00 noon Alaska local time on April 1 through December 31, subject to other provisions of this part.

13. In § 672.24, paragraph (c) is revised to read as follows:

§ 672.24 Gear limitations.

* * * * *

(c) *Trawls other than pelagic trawls.* (1) No person may trawl in waters of the EEZ within the following areas in the vicinity of Kodiak Island (see Figure 2, Area Type I) from a vessel having any trawl other than a pelagic trawl either attached or on board:

(i) *Alitak Flats and Towers Areas:* All water of Alitak Flats and the Towers Areas enclosed by a line connecting the following seven points in the order listed:

Reference point	N. lat.	W. long.	Land description
a	56°59'4"	154°31'1"	Low Cape.
b	57°00'0"	155°00'0"	
c	56°17'0"	155°00'0"	
d	56°17'0"	153°52'0"	
e	56°33'5"	153°52'0"	Cape Sitkinak
f	56°54'5"	153°32'5"	East point of Two-headed Island
g	56°56'0"	153°35'5"	Kodiak Island, thence, along the coastline of Kodiak Island until intersection of
a	56°59'4"	154°31'1"	Low Cape

(ii) *Marmot Flats Area:* All water enclosed by a line connecting the following five points in the clockwise order listed:

Reference point	N. lat.	W. long.	Land description
a	58°00'0"	152°30'0"	
b	58°00'0"	151°47'0"	
c	57°37'0"	151°47'0"	
d	57°37'0"	152°10'1"	Cape Chiniak, thence, along the coastline of Kodiak Island to
e	57°54'5"	152°30'0"	North Cape.
a	58°00'0"	152°30'0"	

(2) From February 15 to June 15, no person may trawl in waters of the EEZ within the following areas in the vicinity of Kodiak Island (see Figure 2, Area Type II) from a vessel having any trawl other than a pelagic trawl either attached or on board:

(i) *Chirikof Island Area:* All waters surrounding Chirikof Island enclosed by a line connecting the following four points in the counter clockwise order listed:

Reference point	N. lat.	W. long.
a	56°07'0"	155°13'0"
b	56°07'0"	156°00'0"
c	55°41'0"	156°00'0"
d	55°41'0"	155°13'0"
a	56°07'0"	155°13'0"

(ii) *Barnabas Area:* All waters enclosed by a line connecting the following six points in the counter clockwise order listed:

Reference point	N. lat.	W. long.	Land description
a	57°00'0"	153°18'0"	Black Point
b	56°56'0"	153°09'0"	
c	57°22'0"	152°18'5"	South Tip of Ugak Island
d	57°23'5"	152°17'5"	North Tip of Ugak Island
e	57°25'3"	152°20'0"	Narrow Cape, thence, along the coastline of Kodiak Island to
f	57°04'2"	153°30'0"	Cape Kasick to
a	57°00'0"	153°18'0"	Black Point, incl. inshore waters

(3) (i) *Type III Areas.* Nothwithstanding the gear restrictions in paragraphs (c)(1) and (c)(2) of this section, the Secretary, in consultation with the Council, may classify the following additional Type III as a Type I area under paragraph (c)(1) of this section or as a Type II area under paragraph (c)(2) of this section and close the expanded areas to further fishing as described by paragraph (c)(1) or (c)(2) by procedures in paragraph (c)(3)(ii) of this section:

(A) Outer Marmot Bay: All waters bounded by lines connecting the following coordinates in the order listed:

N. lat.	W. long.
58°00'00"	151°55'40"
58°02'30"	151°55'40"
58°02'30"	151°47'00"
58°04'53"	151°47'00"
58°04'53"	151°35'25"
57°57'40"	151°35'25"
57°57'40"	151°47'00"
58°00'00"	151°47'00"
58°00'00"	151°55'40"

(B) Outer Barnabas Area: All waters bounded by lines connecting the following coordinates in the order listed:

N. lat.	W. long.	Land description
57°14'30"	152°37'50"	
57°10'00"	152°25'30"	
57°02'32"	152°35'02"	
57°04'25"	152°54'15"	Then following the three mile limit line to
57°13'00"	152°49'25"	Then following the three mile limit line to
57°14'30"	152°37'50"	

(C) Horse's Head Area: All waters bounded by lines connecting the following coordinates in the order listed:

N. lat.	W. long.	Land description
56°49'55"	153°36'30"	
56°34'35"	153°05'37"	
56°28'35"	153°05'37"	
56°28'35"	153°52'05"	Then following the three mile limit line to
56°49'55"	153°36'30"	

(D) Outer Chirikof Area: All waters bounded by lines connecting the following coordinates in the order listed:

N. lat.	W. long.
56°16'45"	155°39'00"
56°16'45"	155°11'45"
55°41'00"	155°13'00"
56°07'10"	155°13'00"
56°07'10"	155°39'00"
56°16'45"	155°39'00"

(ii) Procedure. No expansion of Type I or Type II areas by the additional Type III areas described at paragraph (c)(3)(i) of this section will take effect until the Secretary has published the proposed expansion in the **Federal Register** for public comment for a period of thirty (30) days before it is made final.

(4) Each person using a trawl to fish in any area limited to pelagic trawling under paragraphs (c)(1) and (c)(2) of this section must maintain in working order on that trawl a properly functioning, recording net-sonde device, and must retain all net-sonde recordings aboard the fishing vessel during the fishing year.

(5) No person using a trawl to fish in any area limited to pelagic trawling under paragraphs (c)(1) and (c)(2) of this section will allow the footrope of that trawl to be in contact with the seabed for more than 10 percent of the period of any tow, as indicated by the net-sonde device.

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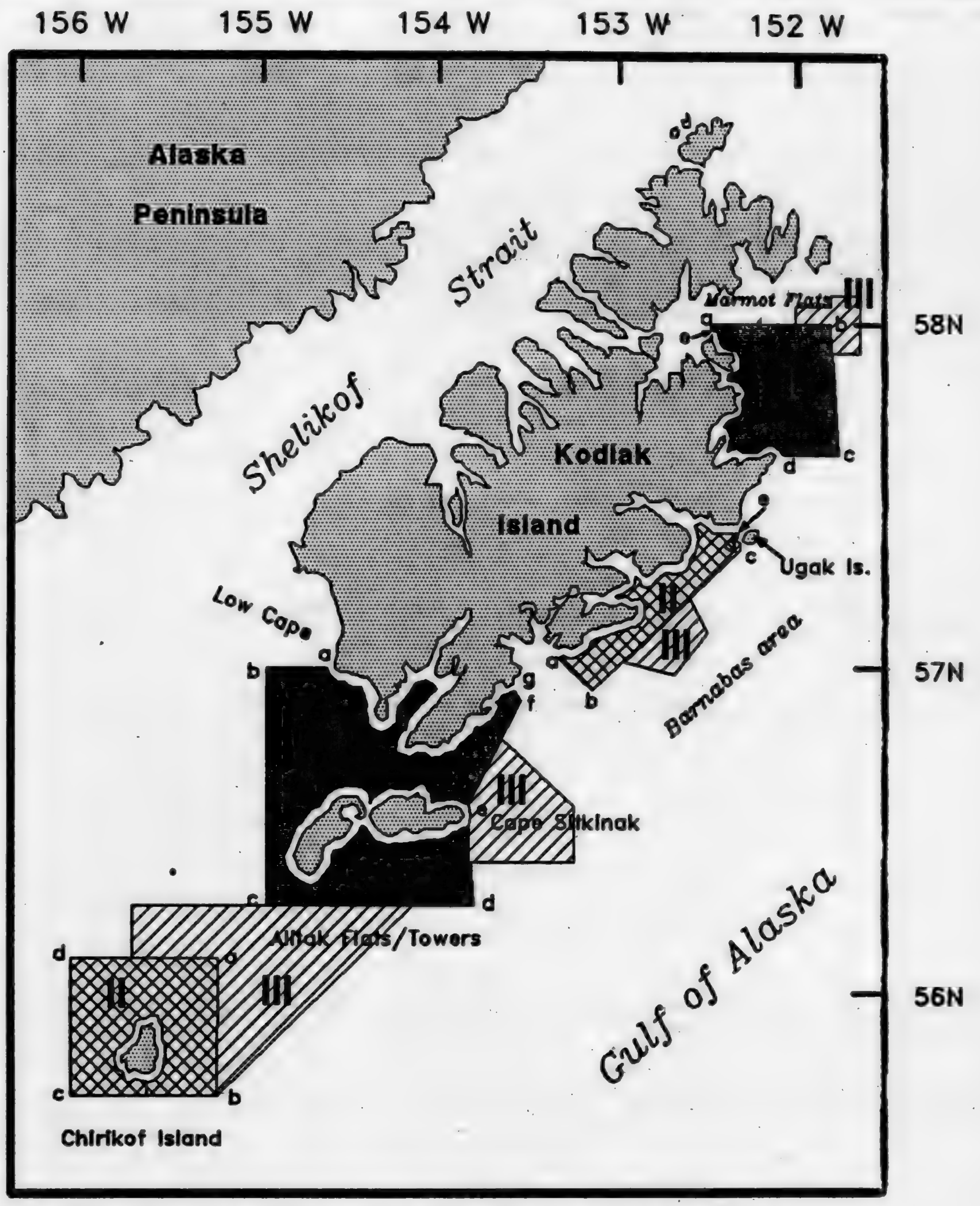

Figure 2. Areas around Kodiak Island closed to trawling except with pelagic trawls. TYPE I areas are closed year round. TYPE II areas are closed February 15 to June 15. TYPE III areas are pending. See section 672.24, Gear Limitations, for coordinate descriptions.

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14. Section 672.27 is revised to read as follows:

§ 672.27 Observers.

All fishing vessels subject to this part must comply with terms contained in an observer plan that has been prepared by the Secretary in consultation with the Council for purposes of providing data useful in management of the groundfish fishery, unless specifically exempt from such compliance by the observer plan.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

15. The authority citation for part 675 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

16. Section 675.3 is amended by revising paragraph (b) as follows:

§ 675.3 Relation to other laws.

* * * * *

(b) For regulations governing foreign fishing for groundfish in the Gulf of Alaska, see 50 CFR 611.92. For regulations governing foreign fishing in the Bering Sea and Aleutians Islands area, see 50 CFR 611.93. For regulations concerning the conservation of halibut, see part 301 of this chapter. For regulations governing fishing for groundfish in the Gulf of Alaska by vessels of the United States, see part 672 of this chapter; and for those governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals, see 50 CFR 216.24 and 50 CFR part 229.

* * * * *

17. In § 675.5, paragraph (a) is revised, paragraph (b) is retitled and redesignated as paragraph (d), and new paragraphs (b) and (c) are added to read as follows:

§ 675.5 Recordkeeping and reporting.

(a) *Reporting areas and general requirements*—(1) *Reporting areas.* A BSAI reporting area for a groundfish species, species group, or prohibited species consists of the relevant statistical area described in § 675.2 and, in addition to the State waters described in the relevant statistical area, all State waters between the shore and any inshore boundary of that statistical area.

(2) *General requirements.* All fishing vessels issued a Federal groundfish fishing permit under § 675.4 of this part and all catcher/processors, mothership processor vessels, and shoreside processing plants that receive groundfish from vessels regulated under this part, must comply with the recordkeeping and reporting requirements set forth under this section.

(b) *Logbooks.* The operator of any catcher vessel larger than 5 net tons or of any catcher/processor vessel or mothership processor vessel, or the owner of any shoreside processing plant that harvests or processes groundfish from any BSAI reporting area must meet the following recordkeeping requirements:

(1) *General.* The operator of each catcher vessel, catcher/processor vessel, and mothership processor vessel, and the owner of each shoreside processing plant must maintain timely and accurate records required by this section.

(i) The operator of each catcher vessel, catcher/processor vessel, and mothership processor vessel, and the owner of each shoreside processing plant must maintain all required records in English, based on Alaska Local Time (ALT) unless otherwise specified in the regulations, and make the original copy of the records immediately available for inspection upon the request of an authorized officer or observer.

(ii) For any fishing year, the operator of each catcher vessel, catcher/processor vessel, and mothership vessel, and the owner of each shoreside processing plant must retain the original copy of all required records on board the vessel, or for shoreside plants, within the processing facility, until the end of the fishing year or for as long after the fishing year as fish or fish products recorded in logbooks are retained onboard a vessel or at a processing facility.

(iii) The operator of each catcher vessel, catcher/processor vessel, and mothership vessel, and the owner of each shoreside processing plant must use the logbook prescribed and provided by the Regional Director. The logs shall be maintained in accordance with these regulations and the instructions attached to the issued logs.

(iv) Recordkeeping required under paragraphs (b)(2)(ii), (b)(3)(ii), and (b)(4)(i) of this section must be in indelible ink with corrections to be accomplished by lining out and rewriting so that the original entry remains legible. Original pages in issued logs shall not be removed from the log.

(2) *Daily fishing logbook.* (i) The operator of each catcher/processor and catcher vessel harvesting groundfish from any BSAI reporting area must maintain onboard a daily fishing log of the effort and catch information of the vessel as described in paragraph (b)(2)(ii) of this section. Daily effort entries are required for each day the vessel conducts fishing operations. Daily entries are not required for those days when the fishing vessel stays in port. A separate page in the daily fishing logbook must be used for each day's fishing activity. If fishing activity is conducted in more than one BSAI reporting area during the day, a separate page in the daily fishing logbook must also be used for each reporting area. Catcher/processor vessels will be provided with daily fishing logbooks that also record the daily production information required under paragraph (b)(3) of this section.

(ii) Contents. (A) The daily fishing log must record the following effort information on a daily basis:

(1) A consecutive page number beginning with the first day of the fishing year that the vessel started fishing operations and continuing throughout the log for the remainder of the fishing year;

(2) The date;

(3) The catcher vessel's name and ADF&G vessel number;

(4) The BSAI reporting area in which the catcher vessel is conducting fishing activity;

(5) The gear type;

(6) For hook and line and pot gear, the average number of hooks or pots per skate, size of hooks used, and average length of skates;

(7) For trawl gear, the size of net opening, codend mesh size, and average speed of tow;

(8) The vessel operator's signature;

(9) Crew size;

(10) Daily discard amounts of each groundfish species or species group to at least the nearest tenth of a metric ton (0.1 mt) round weight, and daily discard amounts of each prohibited species by number, except for discard amounts of herring, which should be reported by round weight (0.1 mt).

(B) The following information must be recorded for each haul or set, as appropriate to the gear type employed:

(1) The consecutive trawl or set number, beginning with the first trawl or set of the fishing year;

(2) The time the gear was set (ALT);

(3) The set position in geographical coordinates;

(4) The sea depth;

(5) The trawl depth;

(6) The hauling time;

(7) The haul position in geographical coordinates;

(8) The duration of the set;

(9) The number of pots or skates;

(10) The estimated total weight of the catch for the trawl or set, to at least the nearest metric ton round weight.

(11) Marine mammal log form required under 50 CFR part 229.

(iii) Maintenance of the daily fishing log. Entries in the daily fishing log as to trawl or set number, time, position, and estimated catch weight shall be updated within two hours of the hauling time. All other entries in the daily fishing log shall be updated within 12 hours of the end of the day (ALT) on which the trawl or set occurred.

(iv) Upon each delivery or landing, species discard amounts must be provided to the processor receiving the vessel's catch so that such amounts may be reported under the requirements set forth at paragraphs (c)(1)(iii)(J) and (c)(1)(iii)(K) of this section.

(v) Submission of daily fishing logs. Each vessel operator must submit a copy of the daily fishing log on a quarterly basis to the Northwest and Alaska Fishery Center, National Marine Fisheries Service, Sand Point Way NE Bldg. 4, Seattle, Washington 98115. Copies of the DFL must be submitted by May 1, August l, November l, and February l for the previous quarter's fishing activity.

(3) *Daily cumulative production log (DCPL).* (i) The operator of each catcher/processor vessel, and mothership processor vessel, and the owner of each shoreside processor that processes groundfish from any BSAI reporting area must maintain on the processing vessel or within the processing facility a daily cumulative production log of catch receipt (if applicable), species discard, and retained groundfish product information as described in paragraph (b)(3)(ii) of this Section. Daily log entries are required for each day the vessel or facility receives or processes groundfish. A separate page in the daily fishing logbook must be used for each day's fishing activity. If fishing activity is conducted in more than one BSAI reporting area during the day, a separate page in the daily fishing logbook must also be used for each reporting area. For the purpose of logbook entries, a week is defined as the period from Sunday through Saturday.

(ii) Contents. (A) The DCPL must record the following information on a daily basis:

(1) A consecutive page number beginning with the first day of the fishing year the vessel started operations and continuing throughout the log for the remainder of the fishing year;

(2) The date;

(3) The vessel or plant name and ADF&G vessel number or Alaska State Processor Code, whichever is applicable;

(4) The BSAI reporting area from which the groundfish catch receipt was harvested;

(5) The gear type used to harvest the groundfish catch receipt;

(6) The vessel operator's or plant owner's signature;

(7) Information on crew size or number of employees;

(8) Daily discard amounts by a processor of each groundfish species or species group to at least the nearest tenth of a metric ton (0.1 mt) round weight, and, for each prohibited species listed under paragraph 675.20(c), daily discard amounts by number, except for discard amounts of herring, which should be reported by round weight (0.1 mt).

(9) For each species or species group for which a total allowable catch (TAC) has been specified by the Secretary under Section 675.20 of this part, and product produced during the day:

(*i*) The product by species code and product type;

(*ii*) The balance forward of species product amounts produced during a week to the nearest tenth of a metric ton (0.1 mt). (At the beginning of each week, the balance forward for species product amounts for that week will be zero).

(*iii*) The daily total product produced by species and product type to the nearest tenth of a metric ton (0.1 mt);

(*iv*) The cumulative weekly total product aboard by species and product type to the nearest tenth of a metric ton (0.1 mt).

(B) The following information must be recorded for each catch receipt:

(1) For each set or codend received by mothership processor vessels;

(*i*) A consecutive catch receipt or codend number for the day;

(*ii*) The catch receipt time;

(*iii*) The catch receipt position;

(*iv*) The name of the delivering vessel;

(*v*) The delivery vessel's Federal groundfish permit number or ADF&G vessel number;

(*vi*) Estimated catch receipt weight to at least the nearest metric ton round weight.

(*vii*) Marine mammal interaction information required under 50 CFR part 229.

(2) For each groundfish landing received by shoreside processors from catcher vessels:

(*i*) State of Alaska fish ticket number;

(*ii*) The name of the delivering vessel;

(*iii*) The delivery vessel's ADF&G vessel number or federal groundfish permit number;

(*iv*) The catch receipt time (ALT);

(*v*) Estimated catch receipt weight to at least the nearest metric ton round weight.

(iii) Daily maintenance of the DCPL. Entries in the DCPL as to codend or fish ticket number, receipt time, position, estimated catch receipt weight and delivering vessel's name shall be updated within two hours of the receipt time. All other entries in the DCPL shall be updated within 12 hours of the end of the day (ALT) on which the trawl, set, receipt, or production occurred. Product shall be logged on the day processed regardless of the day of catch or receipt. Entries for product weights must be based on the number of production units (pans, cartons, blocks, trays, cans, bags, or individually frozen fish) and the average weight of the production unit, with reasonable allowance for water added. Allowance for water added cannot exceed five percent of the gross unit weight. Product unit weights must be based on the total actual net weight of the product as determined by representative samples.

(iv) Submission of DCPL's. Each processing vessel operator or plant owner must submit a copy of the DCPL on a quarterly basis to the Northwest and Alaska Fishery Center, National Marine Fisheries Service, Sand Point Way NE Bldg. 4, Seattle, Washington 98115. Copies of the DCPL must be submitted by May 1, August l, November 1, and February l for the previous quarter's processing activity.

(4) *Product transfer logbooks.* The operator of each catcher/processor vessel and mothership processor vessel, and the owner of each shoreside processor plant must record, in a separate transfer log, each offloading, shipment or receipt of any processed fishery product harvested from any BSAI reporting area, including quantities transferred or off-loaded outside the EEZ, within any state's territorial waters, or within the internal waters of any state or at any shoreside facility.

(i) Contents. The transfer log must record the following information:

(A) A consecutive page number beginning with the first transfer or shipment of groundfish product in a fishing year and continuing throughout the log for the remainder of the fishing year;

(B) Whether the product transfer reflects a product receipt or shipment/offloading;

(C) Company representative's name, telephone number, and Fax or telex number;

(D) Vessel or plant name, plant location, Federal permit number or Alaska State processor code number, and radio call sign of vessel if applicable;

(E) The name of the other vessel (including Federal permit number and call sign) shipping agent, or commercial facility (including location) involved in the transfer or shipment;

(F) The time and date (ALT) and, if applicable, vessel location (in geographic coordinates, or if within a port, the name of the port) at which the transfer or shipment began and was completed;

(G) The intended destination of the carrier or vessel receiving product;

(H) For each product type by species or species group, the total net product weight transferred or shipped to the nearest one-tenth of a metric ton (0.1 mt), an estimated net weight in kilograms or pounds of product per carton, and the total number of cartons of product transferred or shipped.

(ii) Submission of transfer logs. Copies of transfer logs for each weekly period, Sunday through Saturday, ALT, must be submitted to the Regional Director within one week following the week ending date through such means as the Regional Director will prescribe. Submission of product transfer logs is only required if product transfer activity occurred during that weekly period.

(c) *Other recordkeeping and reporting requirements.*— (1) *Catcher/processor vessels, mothership processor vessels, and shoreside processor plants.* The operator or owner of any vessel or shoreside processor of the United States who processes groundfish harvested from any BSAI reporting area must, in addition to the requirements of paragraphs (a) and (b) of this section, comply with the following requirements:

(i) State of Alaska Fish Tickets—(A) The operator of any mothership processor vessel, catcher/processor vessel, or the owner of any shoreside processing facility that harvests or receives groundfish harvested from any BSAI reporting area or internal waters of the State of Alaska, will be responsible for the submission to ADF&G of an accurately completed State of Alaska fish ticket or an equivalent document containing all of the information required on an Alaska fish ticket. U.S. catcher vessels delivering to U.S. processors must provide to the processor information necessary for accurate completion of the fish ticket. Operators of catcher vessels to which a permit has been issued under § 675.4 of this part and who do not deliver to a catcher/processor vessel, mothership processor vessel, or shoreside processing facility are responsible for their own submission of fish tickets. Fish tickets are not required for groundfish sold or delivered to a foreign processing vessel which has a permit under § 611.92 or § 611.93 of this title.

(1) When to submit fish tickets.

(i) Shoreside processors. Owners of shoreside processing facilities must prepare and submit State of Alaska fish tickets required under paragraph (c)(1)(i) of this section to ADF&G within one week after fish are landed.

(ii) Catcher/processor vessels and mothership processor vessels. Operators of processing vessels must prepare and submit State of Alaska fish tickets required under paragraph (c)(1)(i) of this section to ADF&G within one week after returning to port. A document equivalent to a State of Alaska fish ticket may be submitted if groundfish product is landed outside of Alaska.

(iii) Catcher vessels. Operators of catcher vessels to which a permit has been issued under § 675.4 of this part and who do not deliver to a vessel at sea or to a shoreside processing facility must submit the fish ticket required under (c)(1)(i) of this section within one week after fish are landed.

(B) Address. Mail or deliver State of Alaska fish tickets to the ADF&G office located nearest to the area of groundfish purchase, or send these documents to the Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, P.O. Box 3–2000, Juneau, Alaska 99802.

(ii) Alaska groundfish check-in report. The operator of any catcher/processor and/or mothership processor vessel must notify the Regional Director before starting and upon stopping fishing for or receiving groundfish from any BSAI reporting area. Notification will be through such means as the Regional Director will prescribe, and will consist of the vessel's name, permit number (if applicable), radio call sign, date and hour (ALT) of when fishing for or receiving groundfish will begin or cease, and the latitude and longitude of such activity.

(iii) Weekly production report. After a receipt of groundfish by a shoreside plant and continuing for the rest of the year, or after notification of starting fishing by a vessel under paragraph (c)(1)(ii) of this section and continuing until that vessel's entire catch or cargo of fish has been off-loaded, the operator of that vessel or plant owner must submit a weekly product report, including reports of zero tons caught or received, for each weekly period, Sunday through Saturday, ALT, and each portion of such a weekly period. The weekly product report must be received by the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe. This report must contain the following information:

(A) Submitter's name, telephone number, and Fax or telex number;

(B) Name of vessel or plant and radio call sign of vessel;

(C) Federal permit number or Alaska State processor code, which ever is applicable;

(D) The ending date (Saturday) of the reporting period;

(E) Gear type used to harvest groundfish catch or catch receipt;

(F) The BSAI reporting area(s) from which each retained species or species group product was caught during the reporting period;

(G) Number of days fished or during which fish were received;

(H) The total estimated catch weight or catch receipt for each BSAI reporting area;

(I) The product type and total product weight produced during the weekly reporting period for each species or species group for which a total allowable catch (TAC) has been specified by the Secretary under § 675.20 of this part;

(J) The amount of each groundfish species or species group discarded during the reporting period, including discard amounts provided to processors under paragraph (b)(2)(iv). Discard amounts should be reported in round weight to the nearest metric ton.

(K) The amount of each prohibited species discarded during the reporting period, including prohibited species discard amounts provided to processors under paragraph (b)(2)(iv). Discard amount of each prohibited species listed under paragraph 675.20(c) must be reported by number, except for herring, which should be reported by round weight (0.1 mt).

(iv) Alaska groundfish processor monthly product value report. Each groundfish processor or its parent company must complete a monthly product value report for any month during which groundfish harvested from any BSAI reporting area were sold. Monthly product value reports must be submitted annually to the Northwest and Alaska Fishery Center, National Marine Fisheries Service, Sand Point Way NE Bldg. 4, Seattle, Washington 98115. The monthly product value reports must be received by NMFS no later than March 1 for the previous fishing year. These reports must include the following information:

(A) Name of the representative for the vessel, plant or company, telephone number, and Fax or telex number;

(B) Name of vessel(s) or plant(s);

(C) Federal permit number or Alaska State processor code, which ever is applicable;

(D) Month and year;

(E) For each species or species group for which product was sold during the month, the product type(s); Product size(s) or grade(s); product weight(s) to the nearest tenth of a metric ton (0.1 mt); and product value(s).

(d) *Domestic Groundfish utilization surveys.*

* * * * *

18. Section 675.7 is amended by adding paragraph (d) as follows:

§ 675.7 General prohibitions.

* * * * *

(d) Fish for groundfish except in compliance with the terms of an observer plan as provided by § 675.25 of this part.

19. In § 675.20, paragraph (a)(2) is revised to read as follows:

§ 675.20 General limitations.

(a) * * *

(2) *Total Allowable Catch (TAC).* The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will specify the annual TAC for each calendar year for each target species and the "other species" category, and will apportion the TACs among DAP, JVP, TALFF, and reserves. TACs in the target species category may be split or combined for purposes of establishing new TACs with apportionments thereof under paragraph (b) of this section. The sum of the TACs so specified must be within the OY range of 1.4–2.0 million mt for target species and the "other species" category.

* * * * *

21. In § 675.22, paragraph (f) is added to read as follows:

§ 675.22 Time and area closures.

* * * * *

(f) No fishing is allowed in that part of the Bering Sea Subarea shoreward of a line on which each point is 12 miles from the base line used to measure the Territorial Sea around islands named Round Island and The Twins as shown on National Oceanic Survey Chart INT 500, and around Cape Peirce (160°10′ W. longitude, 58°40′ N. latitude) during April 1 through September 30 of each of the 1990 and 1991 fishing years.

22. § 675.23 is added as follows:

§ 675.23 Seasons.

Fishing for groundfish during the January 1–December 31 fishing year in the Federal statistical areas defined at § 675.2 of this part is authorized from January 1 through December 31, subject to other provisions of this part.

23. Section 675.24 is added to read as follows:

§ 675.24 Gear Allocations.

Vessels using gear types other than those specified by paragraphs (a) and (b) of this section, must treat sablefish as a prohibited species.

(a) In the Bering Sea Subarea, defined at § 675.2 of this part, hook-and-line and pot gear may be used to take no more than 50 percent of the TAC for sablefish; trawl gear may be used to take no more than 50 percent of the TAC for sablefish.

(b) In the Aleutian Islands Subarea, defined at § 675.2 of this part, hook-and-line and pot gear may be used to take no more than 75 percent of the TAC for sablefish; trawl gear may be used to take no more than 25 percent of the TAC for sablefish.

24. Section 675.25 is added to read as follows:

§ 675.25 Observers.

All fishing vessels subject to this part must comply with terms contained in an observer plan that has been prepared by the Secretary in consultation with the Council for purposes of providing data useful in management of the groundfish fishery, unless specifically exempt from such compliance by the observer plan.

[FR Doc. 89–20445 Filed 8–28–89; 3:28 pm]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 54, No. 169

Friday, September 1, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of the Fostoria (OH) Agency and the States of Louisiana (LA) and North Carolina (NC)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Robert B. Whitta dba Fostoria Grain Inspection (Fostoria), Louisiana Department of Agriculture and Forestry (Louisiana), and North Carolina Department of Agriculture (North Carolina) as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: October 1, 1989.

ADDRESS: James. R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Fostoria's, Louisiana's, and North Carolina's designations terminate on September 30, 1989, and requested applications for official agency designation to provide official services within specified geographic areas in the April 3, 1989, **Federal Register** (54 FR 13394). Applications were to be postmarked by May 3, 1989. Fostoria, Louisiana, and North Carolina were the only applicants for designation in their area, and each applied for designation renewal in the entire area currently assigned to that agency. The Service announced the applicant names in the June 1, 1989, **Federal Register** (54 FR 23498) and requested comments on the applicants for designation. Comments were to be postmarked by July 17, 1989. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Fostoria, Louisiana, and North Carolina are able to provide official services in the geographic areas for which the Service is renewing their designations. Effective October 1, 1989, and terminating September 30, 1992, Fostoria and North Carolina are designated to provide official inspection functions, and Louisiana is designated to provide official inspection and Class X or Y weighing functions, in their specified geographic areas, as previously described in the April 3 **Federal Register.**

Interested persons may obtain official services by contacting the agencies at the following telephone numbers: Fostoria at (419) 435-3804, Louisiana at (318) 772-0151, and North Carolina at (919) 733-7577.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: August 16, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89-20596 Filed 8-31-89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Alva (OK) and Schaal (IA) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Thomas Oller dba Alva Grain Inspection Department (Alva) and Lewis D. Schaal dba D.R. Schaal Agency (Schaal).

DATE: Comments must be postmarked on or before October 16, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows:

TO: Lewis Lebakken
TLX: 7607351, ANS: FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the July 3, 1989, **Federal Register** (54 FR 27907). Applications were to be postmarked by August 2, 1989. Alva and Schaal were the only applicants for designation in those areas, and each applied for the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: August 16, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89-20597 Filed 8-31-89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants to Provide Official Service in the Geographic Area Currently Assigned to the Columbus (OH) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of an agency will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agency. The official agency is Columbus Grain Inspection, Inc. (Columbus).

DATE: Applications must be postmarked on or before October 2, 1989.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Columbus, located at 348 E. Franklin, Circleville, OH 43113, was designated under the Act as official agency on March 1, 1987, to provide official inspection functions.

The official agency's designation terminates on February 28, 1990. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Columbus, in the State of Ohio, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by U.S. Route 30 east to State Route 154; State Route 154 east to the Ohio-Pennsylvania State line;

Bounded on the East and South by the Ohio-Pennsylvania State line south to the Ohio River; the Ohio River south-southwest to the western Scioto County line; and

Bounded on the West by the western Scioto County line north to State Route 73; State Route 73 northwest to U.S. Route 22; U.S. Route 22 west to U.S. Route 68; U.S. Route 68 north to Clark County; the northern Clark County line west to State Route 560; State Route 560 north to State Route 296; State Route 296 west to Interstate 75; Interstate 75 north to State Route 47; State Route 47 northeast to U.S. Route 68; U.S. Route 68 north to U.S. Route 30.

Interested parties, including Columbus, are hereby given opportunitiy to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning March 1, 1990, and ending February 28, 1993. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: August 16, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89-20598 Filed 8-31-89; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Chikamin Timber Sale in the Wenatchee National Forest, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service will prepare an environmental impact statement (EIS) for the Chikamin timber sale and other related site specific projects, such as, construction of roads and trails, establishment a Spotted Owl Habitat Area (SOHA), and fisheries and watershed improvements in the vicinity of the Chikamin Creek drainage. The drainage is located approximately 40 air miles northwest of Wenatchee, Washington in Chelan County. Part of the proposed timber sale and road construction are within the Rock Creek roadless area. These management activities would be administered by the Lake Wenatchee Ranger District of the Wenatchee National Forest. This EIS will tier to the Chelan Planning Unit, final EIS (1976) which provides the overall guidance for management of the area. Currently, the Final EIS for the Wenatchee National Forest Land and Resource Management Plan (L&RMP) is scheduled for completion in September, 1989. When this plan is complete it will supersede the direction contained in the Chelan Planning Unit. The agency invites written comment and suggestions on this proposed project and related activities and the scope of this analysis. In addition, the agency give notice of the full environmental analysis and decision making process that will occur on this proposed project so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the management and scope of this project analysis must be received by November 1, 1989.

ADDRESS: Submit written comments and suggestions concerning the management of the area to Sonny O'Neal, Forest Supervisor, 301 Yakima Street, Wenatchee, Washington 98801 or George Pozzuto, District Ranger, Lake Wenatchee Ranger District, 22976 State Highway 207, Leavenworth, Washington 98826.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Jim Furlong, Project Team Leader, Lake Wenatchee Ranger District, Wenatchee National

Forest, 22976 State Highway 207, Leavenworth, WA 98826. Phone: (509) 763–3103.

SUPPLEMENTARY INFORMATION: The purpose and goals for the proposed project are to (1) help satisfy short-term demands for timber, and maintain a continuous supply of timber in the future; (2) create a desired future forested condition through the implementation of sound silvicultural management prescriptions; (3) improve the areas trail system to better serve recreational activities such as hiking, horseback riding, off-road vehicle use, snowmobiling, and cross-country skiing; and (4) provide protection to the Northern Spotted Owl by establishment of a SOHA..

The decision to be made is what, if any, timber harvest and other integrated resource projects will be undertaken within the next 2 to 5 years.

Sonny J. O'Neal, Forest Supervisor, Wenatchee National Forest is the responsible official.

The Forest Service also serves notice that the agency is seeking information and comments from Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the draft EIS. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

A range of alternatives will be considered. One of these will be the "no-action" alternative in which the roadless character of the Rock Creek roadless area would be maintained and timber harvest and associated road building would be deferred. Other alternatives will examine timber harvest and road construction in different locations and varied cutting methods and timber management intensities as well as variable SOHA, trail system, watershed and fisheries improvement project locations to achieve the purpose of the proposed action.

The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. This will include an analysis of the effects of alternatives on the roadless character of the area affected. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation will be important during the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 1, 1990. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewer may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environment Policy Act at 40 CFR 1503.3 in addressing these points.).

After the 45 day comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by April 1980. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under 36 CFR Part 217.

Dated: August 23, 1989.

Sonny J. O'Neal,

Forest Supervisor.

[FR Doc. 89–20646 Filed 8–31–89; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administrtation

Posted Stockyards; Foister Auction & Sales Co. et al.

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the lifestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below.

Facility no., name, and location of stockyard	Date of posting
GA-201 Foister Auction & Sales Co., Baconton, Georgia.	Nov. 7, 1988.
LA-140 Miller Livestock Market-DeRidder Branch, DeRidder, Louisiana.	Nov. 4, 1988.
ME-105 Clark Livestock Sales, Inc., Skowhegan, Maine.	Aug. 25, 1985.
MN-185 Twin Cities Horse Sales, Cannon Falls, Minnesota.	Dec. 16, 1988.
MN-186 Northern Minnesota Cattle Yards, Hines, Minnesota.	Nov. 2, 1988.
PA-152 Kish Valley Dairy Sales, Belleville, Pennsylvania.	Sept. 8, 1986.
TN-165 Apison Livestock Auction Sales, Apison, Tennessee.	Nov. 3, 1988.
WI-140 Great Northern Investments, Fond du Lac, Wisconsin.	June 23, 1986.

Done at Washington, DC this 28th day of August 1989

Harold W. Davis,

Director, Livestock Marketing Division, Packers and Stockyards Administration.

[FR Doc. 89–20657 Filed 8–31–89; 8:45 am]

BILLING CODE 3410-KD-M

Deposting of Stockyards; Decker & Feller Livestock Auction Inc., et al.

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., name and location of stockyard	Date of posting
IL-113 Decker and Feller Livestock Auction, Inc., Cissna Park, Illinois.	Nov. 18, 1959.
IN-144 Producers Marketing Association, Inc., Terre Haute, Indiana.	Apr. 27, 1959.
IA-158 Grinnell Livestock Exchange, Inc., Grinnell, Iowa.	May 20, 1959.
LA-114 DeRidder Livestock Commission Co., DeRidder, Louisiana.	June 11, 1957.
MD-104 Cumberland Stockyards, Inc., Cumberland, Maryland.	Oct. 28, 1959.
MD-115 Baltimore Livestock Exchange, Inc., West Friendship, Maryland.	July 14, 1955.
MT-114 Northern Pacific Stockyards, Missoula, Montana.	Mar. 25, 1941.
NJ-104 Jaeger Livestock Auction Market, Sussex, New Jersey.	Dec. 22, 1959.
NC-107 Brite and Tatum Livestock Company, Inc., Elizabeth City, North Carolina.	May 8, 1961.
NC-158 Howell Stables and Producers Livestock Exchange, Elizabeth, North Carolina.	Nov. 15, 1979.
NC-159 Stegall's Livestock and Auction Barn, Concord, North Carolina.	Apr. 8, 1968.
OH-119 Producers Livestock Association, Findlay, Ohio.	June 1, 1959.
TN-120 Jackson County Commission Company, Gainesboro, Tennessee.	May 11, 1959.
VA-132 Roanoke Livestock Market, Inc., Roanoke, Virginia.	Mar. 11, 1959.
WV-110 Moundsville Livestock Auction Co., Moundsville, West Virginia.	Nov. 6, 1959.

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly deposting a stockyard which is no longer within the definition of the term contained in the Act.

The foregoing is in the nature of a change relieving a restriction and may be made effective in less than 30 days after publication in the **Federal Register.** This notice shall become effective upon publication in the **Federal Register.**

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 *et seq.*).

Done at Washington, DC, this 28th day of August 1989.

Harold W. Davis,

Director, Livestock Marketing Division, Packers and Stockyards Administration.

[FR Doc. 89–20658 Filed 8–31–89; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Frequency Management Advisory Council; Open Meeting

AGENCY: National Telecommunications and Information Administration.

ACTION: Notice of Open Meeting, Frequency Management Advisory Council.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 4:30 p.m. on September 22, 1989, in Room 1605 at the United States Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington DC. (Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue.).

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) ITU Plenipotentiary Conference Report

(2) Radio Frequency Radiation Exposure Issues.

(3) Policy Implications for Spectrum Use in the 1990's.

(4) Comprehensive Spectrum Management and Use Policy Review

The meeting will be open to public observations. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before September 15, 1989. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquires may be addressed to the Executive Secretary, FMAC, Mr. Michael W. Allen, National Telecommunications and Information Administration, Room 4099, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C. 20230, telephone 202–377–0805.

Dated: August 21, 1989.

Michael W. Allen,

Executive Secretary, FMAC, National Telecommunications and Information Administration.

[FR Doc. 89–20630 Filed 8–31–89; 8:45 am]

BILLING CODE 3510-60-M

COMMISSION ON RAILROAD RETIREMENT REFORM

Meeting

Summary: The Commission on Railroad Retirement Reform ("the Commission") will hold a meeting on Tuesday, September 12, 1989. The Commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, enacted December 22, 1987.

Date, Time, and Place: September 12, 1989, 9:30 a.m.–3 p.m., Association of American Railroads, 50 F Street, NW., Washington, DC (4th Floor Conference Center).

Agenda: The opening meeting will include the discussion of railroad

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industry employment trends and the review of contract work in the railroad industry.

For Additional information: Contact Maureen Kiser, 202–254–3223, Commission on Railroad Retirement Reform, 1111 18th Street, NW., Washington, DC 20036.

Supplementary Information: See Federal Register, volume 54 FR, No. 40, Thursday, March 2, 1989, Page 8850.

Kenneth J. Zoll,

Executive Director.

[FR Doc. 89–20600 Filed 8–31–89; 8:45 am]

BILLING CODE [illegible]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment and Amendment of Import Limits and Amendment of Group Coverages for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Indonesia

August 28, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and amending import limits and amending group coverages.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 635–9400. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During negotiations held August 2–4, 1989 between the Governments of the United States and Indonesia, agreement was reached, effected by a Memorandum of Understanding (MOU) dated August 4, 1989, to amend their current bilateral textile agreement. A formal exchange of notes will follow.

The MOU, among other things, establishes new levels for newly merged Categories 334/335, 336/636 and 351/651. These levels include adjustments for handicraft products, as provided for under the terms of the agreement.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 27864, published on June 30, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the Memorandum of Understanding of August 4, 1989, but are designed to assist only in the implementation of certain of their provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreement

August 28, 1989

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive of June 23, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the period which began on July 1, 1989 and extends through June 30, 1990.

Effective on September 5, 1989, you are directed to amend the directive of June 23, 1989 to eliminate the current Group I limit. All charges for Group I shall remain at the category levels. Also, you are directed to move Category 336 from Group I to Group II and Categories 627, 628, 629 and 651 from Group II to Group I. All charges made to the limits for Categories 336 in Group I and 651 in Group II shall be charged to the limits for Categories 336/636 in Group II and 351/651 in Group I, respectively. All charges in Group II for Categories 627, 628 and 629 shall be charged to the limit for Categories 625/626/627/628/629 in Group I.

The June 23, 1989 directive is amended further to include new and amended limits for the following categories:

Category	New and Amended Limits[1]
Levels in Group I:	
334/335	126,245 dozen.
351/651	267,881 dozen.
625/626/627/628/629	15,950,000 square meters.
Group II:	
200, 201, 218, 220, 222–227, 229, 237, 239, 300, 301, 330, 332, 333, 336/636, 342/642, 345, 349, 350, 352–354, 359, 360–363, 369–D,[2] 369–0,[3] 400–444 447–469, 600, 603, 604–0[4], 606, 607, 611, 618, 619/620, 621, 622, 624, 630, 631–634, 643, 644, 649, 650, 652–654, 659, 665, 666, 669, 670, 831–836, 838, 839, 840, 842–847, 850–852, 858 and 859, as a group.	65,817,022 square meters equivalent.
Sublevels in Group II:	
336/636	348,783 dozen.
611	8,560,294 square meters.
619/620	4,500,000 square meters.
634	45,154 dozen.
647	231,291 dozen.

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[1] The limits have not been adjusted to account for any imports exported after June 30, 1989.

[2] In Category 369–D, only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] In Category 369–0, all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 in Category 369–D; and 6307.10.2005 in Category 369–S.

[4] In Category 604–0, all HTS numbers except 5509.32.0000 in Category 604–A.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–20629 Filed 8–31–89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 a commodity and a military resale commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 2, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703)557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity, military resale commodity and services listed below from workshops for the blind or other severely handicapped. It is proposed to add the following commodity, military resale commodity and services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodity

Folder, File 7530–00–990–8884
  (Requirements for Belle Mead, New Jersey Supply Facility only)

Military Resale Item No. and Name

No. 929 Mop, Stick, Foam/Nonwoven

Services

- Commissary Shelf Stocking and Custodial
  - Fort Bragg & Malonee Village, Fayetteville, North Carolina
- Janitorial/Custodial
  - Kirkwood U.S. Army Reserve Center, Wilmington, Delaware
  - New Castle U.S. Army Reserve Center, New Castle, Delaware
- Janitorial/Custodial at the following Dallas, Texas locations:
  - Earle Cabell Federal Building and U.S. Courthouse, 1100 Commerce Street
  - Federal Building, 1114 Commerce Street
  - Griffin Street Auto Park, 404 Griffin Street
- Packaging of Solicitations
  - Little Rock District, U.S. Army Corps of Engineers, Little Rock, Arkansas

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–20659 Filed 8–31–89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Advisory Committee on the Air Force History Program; Meeting

The Advisory Committee on the Air Force History Program will hold a meeting on 27 September 1989 from 8:30 a.m. to 4:00 p.m. and 28 September 1989 from 8:30 a.m. to 12:00 noon at Bolling AFB, DC, Building 5681, Office of Air Force History's Second Floor Conference Room. The purpose of this meeting is to examine the mission, scope, progress, and productivity of the Air Force History Program and to make recommendations thereon for the consideration of the Secretary of the Air Force. The meeting will be open to the public. Topics to be discussed include: organization and personnel, current status of historical projects, and the status of the field history program.

For further information contact Major Michael L. Wolfert, Executive Officer, Office of Air Force History, Bolling AFB, DC 20332–6098, telephone (202) 767–5764.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–20631 Filed 8–31–89; 8:45 am]

BILLING CODE 3910-01-M

Intent To Grant Exclusive Patent License to Daychem Laboratories Inc.

Pursuant to the provisions of Part 841.14 of Title 32, Code of Federal Regulations (32 CFR 841, May 17, 1985), the Department of the Air Force announces its intention to grant to Daychem Laboratories, Inc. of Fairborn, Ohio a corporation of the State of Ohio, a royalty bearing exclusive license under United States Patent Application, Serial No. 241–645, entitled "Thermoplastic Aromatic Benzoxazole Polymers and Method of Synthesis," filed September 8, 1988 by Bruce A. Reinhardt.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed in writing to the addressee set forth below within 60 days from the publication of this notice.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC. 20324–1000, telephone number 202–475–1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–20632 Filed 8–31–89; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before October 2, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryalnd Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the

requests are available from Margaret Webster at the address specified above.

Dated: August 28, 1989.

George Sotos,

Acting Director, for Office of Information Resources Management.

Office of Planning, Budget, and Evaluation

Type of Review: New.

Title: Design for a Study of Chapter 1 Services in Secondary Schools.

Frequency: One time.

Affected Public: State or local governments.

Reporting Burden:

Responses: 240. Burden Hours: 160.

Recordkeeping Burden:

Recordkeepers: 0. Burden Hours: 0.

Abstract: The purpose of this study is to provide the Department with detailed information of chapter 1 programs in secondary schools and to examine existing dropout rates or prevention programs that might serve as models for administering chapter 1 services.

Office of Planning, Budget, and Evaluation

Type of Review: New.

Title: Study of Programs for Retaining the Benefits of Early Childhood Education for Disadvantaged Children.

Frequency: One time.

Affected Public: State or local governments.

Reporting Burden:

Responses: 2,494. Burden Hours: 1,491.

Recordkeeping Burden:

Recordkeepers: 0. Burden Hours: 0.

Abstract: The purpose of this study is to determine the extent of transition programs designed to improve the school performance of disadvantaged children. Data will identify and describe transition programs in public schools and develop criteria for exemplary programs.

Type of Review: New.

Title: Study of Drug-Free Schools and Community Act.

Frequency: One time.

Affected Public: Individuals or households; State or local governments; businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Reporting Burden:

Responses: 2842.

Burden Hours: 2899.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This study will collect information about State, school district, and community practices in planning, administering, implementing, and evaluating State and local programs funded under the Drug-Free Schools and Communities Act, as amended. The Department will use this information to assess the accomplishments of project goals and objectives and to aid in effective program management.

Type of Review: New.

Title: State Survey of Chapter 1 Programs.

Frequency: One time.

Affected Public: State or local governments.

Reporting Burden:

Responses: 53.

Burden Hours: 106.0.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: The purpose of this survey is to provide the Department with detailed information on state implementation of Chapter 1 provisions. The Department will use this information to determine how states and school districts are responding to the new provisions and identify states which have taken exemplary or innovative actions.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Extension.

Title: Application for Grants Under the Transition Program for Refugee Children.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden:

Responses: 52.

Burden Hours: 7,944.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This application will be used by State educational agencies to apply for grants under the Transitional Program for Refugee Children. The Department uses the data collected to determine the amount of the grant award based on the number of eligible refugee children enrolled in a States's public and private elementary and secondary schools.

Office of Educational Research and Improvement

Type of Review: New.

Title: National Program for Mathematics and Science Education.

Frequency: Annually.

Affected Public: State or local governments; Non-profit institutions.

Reporting Burden:

Responses: 200.

Burden Hours: 4,800.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This form will be used by State agencies to apply for funding under the National Program for Mathematics and Science. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Extension.

Title: Application for the Drug Prevention Program of the Fund for the Improvement of Postsecondary Education.

Frequency: Annually.

Affected Public: Institutions of higher education; Non-profit organizations.

Reporting Burden:

Responses: 600.

Burden Hours: 12,600.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This form will be used by institutions of higher education and non-profit organizations to apply for funding under the Drug Prevention Program. The Department uses the information to make grant awards.

[FR Doc. 89-20583 Filed 8-31-89; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 15 and 16, 1989.

TIME: September 15: 9:00 A.M.–12:15 A.M.; 12:15–1:15 P.M., closed; 1:15 P.M.-Adjournment, open. September 16: 8:30 A.M.–3:30 P.M., open.

ADDRESS: Hyatt Regency Hotel (on Capitol Hill), 400 New Jersey Avenue NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Roy Truby, National Assessment Governing Board, U.S. Department of Education, Mary E. Switzer Building, Room 4060, Washington, DC 20202–7583, Telephone: (202) 732–1834.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board

is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 21988 (Pub. L. 100297); (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Education Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The National Assessment Governing Board will meet in Washington, DC on September 15 and 16, 1989. The Board will meet from 9:00 A.M. until completion of business on September 15, 1989 and from 8:30 A.M. to 3:30 P.M. on September 16, 1989.

The proposed agenda of the open portion of the meeting includes reports by subcommittees on writing, analysis, and reporting and dissemination. There will also be a discussion of the pros and cons of state by state comparisons, a progress report on goal setting, discussion on reading issues related to public hearings and consensus solicitations, an update of the National Assessment of Educational Progress program including a review of the current contract, a review of the role of the National Governor's Association in goal setting, and a working dinner discussing the Board's role in the Department. On September 16, the open portion will be a continuation of the subcommittee reports.

On September 15, 1989, from 12:15 P.M. to 1:15 P.M., a portion of the meeting will be closed to the public. The closed portion of the meeting will be closed under the authority of 10(d) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and under exemption 9(B) of the Government in the Sunshine Act (5 U.S.C. 552b(c). During the closed portion of the meeting, there will be review of a grantee's draft trend report prior to its formal release by the Department. The draft report is still undergoing technical review and analysis and there is a significant possibility that the data may be incorrect or incomplete. Disclosure of this information is likely to disclose information, the premature disclosure of which would likely to significantly frustrate implementation of proposed agency action. Such matters are protected by 5 U.S.C. 552b(c)(9)(B).

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 522b will be available to the public within fourteen days of the meeting. Records are kept of all Board proceedings, and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Mary E. Switzer Building, 330 C Street SW., Room 4060, Washington, DC 20202–7583 from 8:30 A.M. to 5:00 P.M., Monday through Friday.

Dated: August 29, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-20602 Filed 8-31-89; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of open meeting.

SUMMARY: The National Assessment Governing Board, U.S. Department of Education, is announcing four public hearings. These hearings will be held as part of the Board's consensus-building process which will lead to specific recommendations for the reading assessment goals for the 1992 National Assessment of Educational Progress. The hearings will provide interested individuals and organizations with the opportunity to present oral and/or written views to the Board. The hearings will focus on goal statements for grades 4, 8, and 12, the model grades for these ages. These hearings are being conducted pursuant to Public Law 100-297, section 6(E) which states that "Each learning area assessment shall have goal statements devised through a national consensus approach, providing for active participation of teachers, curriculum specialists, local school administrators, parents and concerned members of the general public." The results of these hearings are particularly important because they will form the framework of the assessment for both the national sample (at all age/grade levels), and the state representative sample (at grade 4 only).

DATES: The dates of the four public hearings are as follows:

September 27, 1989: Dallas, Texas
October 11, 1989: Trenton, New Jersey
October 26, 1989: Los Angeles, California
November 3, 1989: Atlanta, Georgia

The hearings will begin at 12:00 Noon and adjourn at 8:00 P.M. There will be a 15-minute recess from 4:00 to 4:15. If necessary it may be possible to extend the ending time beyond 8:00 P.M. Persons desiring to present oral statements at the hearing shall submit a notice of intent to appear, postmarked no fewer than fourteen (14) days prior to the scheduled meeting date. Scheduling of oral presentations cannot be guaranteed for notices of intent to appear that are not received on time.

Notices of intent to present oral statements shall be mailed to: National Assessment Governing Board, Mary E. Switzer Building, Suite 4060, 330 C Street, SW., Washington, DC 20202–7583, Attention: Public Hearings.

ADDRESSES: The locations of the four public hearings are as follows:

Dallas: Richland College Campus, Performance Hall, Dallas, Texas
Trenton: Trenton Board of Education, Board Room, 108 North Clinton Avenue, Trenton, New Jersey 08609
Los Angeles: Los Angeles County Board of Education, County Office Room, 9300 East Imperial Highway, Downey, California 90242–2890
Atlanta: Southern Regional Education Board, Georgia Tech Campus, 592 Tenth Street, NW., Atlanta, Georgia 30318–5790

Written Statements: Written statements may be submitted for the public record in lieu of oral testimony through November 3, 1989. These statements should be sent directly to the Board (see address given above) in the following format:

I. Issues and Questions Addressed

Identify the issue(s) and question(s) to which the testimony is directed. For example, "age 9/grade 4 reading goals,"or "state curriculum in reading."

II. Summary

Briefly summarize the major points and recommendations presented in the testimony.

III. Discussion

The narrative should provide information, points of view, and recommendations that will enable the Board to consider all factors relevant to the question(s) the testimony addresses.

Respondents are encouraged to limit this section of their written statements to five (5) pages. The discussion may be appended with documents of any length providing further explanation.

Written statements presented at the hearings will be accepted and incorporated into the public record. All written statements should follow the above format, as far as this is possible.

Hearings, objectives, and procedures

The Board seeks participation in the hearings from a wide spectrum of individuals and organizations. Speakers will be scheduled, to the extent feasible, to provide a broad but balanced number of viewpoints and to reflect a variety of interests.

The goal of the hearing is to provide for maximum input and guidance from teachers, curriculum specialists, local school administrators, parents and concerned members of the general public. Accordingly, the hearings will include a very brief introduction by National Assessment Governing Board members, with the great majority of each day devoted to presentations by scheduled speakers.

As listed in the **DATES** and **ADDRESSES** sections above, speakers wishing to present statements shall file notices of intent. To assist the Board in appropriately scheduling speakers, the written notice of intent to present oral testimony should include the following information:

(1) Name, address, and telephone number of each person to appear;

(2) Affiliation (if any);

(3) A brief statement of the issues and/or concerns that will be addressed; and

(4) whether a written statement will be submitted for the record.

Individuals who do not register in advance will be permitted to register and speak at the meeting in order of registration, if time permits. Speakers should plan to limit their total remarks to no more than 5 minutes. While it is anticipated that all persons desiring to do so will have an opportunity to speak, time limits may not allow this to occur. The Board will make the final determination on selection and scheduling of speakers.

However, all written statements presented at the hearings will be accepted and incorporated into the public record. Written statements submitted in lieu of oral testimony should be received by November 3, 1989 in order to be incorporated into the public record. Written statements received after that date will be accepted; however, inclusion in the public record cannot be guaranteed.

A member of the Board will preside at each of the four hearings. The proceedings will be audiotaped. The hearings will also be signed for the hearing-impaired, and a bilingual speaker (Spanish-English) will be available on site.

Additional information

Individuals wishing more information on a specific hearing should contact either the Board offices in Washington, DC, at (202) 732–7885, or one of the following contact persons at the nearest Regional offices:

For Dallas, contact Ms. Clydene Thomas, (214) 767–3628
For Trenton, contact Mike Hatam, (212) 264–7006
For Los Angeles, contact Ms. Pearlie Herbert, (415) 556–4571
For Atlanta, contact Ms. Frances Hyatt, (404) 331–0550

Next steps

The Board plans to analyze all comments received in response to this announcement. A report of the public outcomes of these public hearings will be available to the public upon request after January 1, 1990.

The results of the public comments will be used by the National Assessment Governing Board, in conjunction with all other solicited written testimony, and formal consensus-building activities, to establish the goal statements and test specifications for the 1992 reading assessment of the National Assessment of Educational Progress.

Records are kept of all Board proceedings, and are available for public inspection at U.S. Department of Education, National Assessment Governing Board, Mary E. Switzer Building, 330 C Street, SW., Room 4060, Washington, DC 20202–7583, from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Date: August 29, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–20683 Filed 8–31–89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Solicitation of Comments From the General Public on the Environmental Restoration and Waste Management Five-Year Plan

AGENCY: Office of the Secretary, DOE.

ACTION: Notice of availability of the Environmental Restoration and Waste Management Five-Year Plan for the general public review and comment.

SUMMARY: As stated publicly on numerous occasions, and as testified to before the Congress, the Department of Energy has been preparing the Environmental Restoration and Waste Management Five-Year Plan to establish a departmentwide agenda for environmental cleanup and compliance against which overall progress can be measured. The Five-Year Plan has now been completed. The Plan encompasses three discrete compliance-related activity areas: Corrective Activities, Environmental Restoration, and Waste Management Operations, and includes budget projections through fiscal year 1995. The Department is making available for interested groups and individuals the Environmental Restoration and Waste Management Five-Year Plan for review and comment. The comment period will be approximately 90 days beginning on (date of publication) and extending through November 30, 1989. All comments will be considered in the preparation of the updated plan (1992–1996) which will be available for review and comment in May 1990.

DATE: Comments will be accepted through November 30, 1989.

ADDRESSES: Persons requiring copies of the Plan should submit their requests to Mr. R.P. Whitfield, Office of Defense Waste and Transportation Management, DP–12, Attn: Five-Year Plan, Department of Energy, Washington, DC 20545 or call (301) 353–3555. Written comments should be addressed to Mr. Whitfield at the same address.

FOR FURTHER INFORMATION CONTACT: Mr. R.P. Whitfield on (303) 353–3555.

Leo P. Duffy,

Special Assistant to the Secretary of Coordination of DOE Waste Management.

[FR Doc. 89–20672 Filed 8–31–89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket No. PP–85A]

Application by Westmin Resources, Inc. for Re-issuance of Presidential Permit PP–85 to Westmin Mines, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application by Westmin Resources, Inc. for re-issuance of Presidential Permit PP–85 to Westmin Mines, Inc.

SUMMARY: Westmin Resources, Limited (Westmin), on behalf of its wholly-owned subsidiary Westmin Resources, Inc. (WRI), has applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for the re-issuance of Presidential Permit PP–85 to Westmin Mines, Inc. (WMI), a new U.S. corporation, which is indirectly controlled by Westmin. Presidential Permit PP–85 authorizes WRI to construct, connect, operate and maintain a 35-kilovolt electric transmission line at the international border between the U.S. and Canada. The purpose of the transmission line and the conditions imposed upon WRI by the permit will not be affected by the re-issuance of the permit.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Office of Fuels Programs, (FE–52), Office of Fossil Energy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5935.
Lise Courtney M. Howe, Office of General Counsel, (GC–41), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2900.

SUPPLEMENTARY INFORMATION: On July 17, 1987, Westmin, a Canadian corporation, applied to the DOE, under Executive Order 10485, as amended, for a Presidential permit to construct a 35-kilovolt transmission line which would cross the U.S. international border from British Columbia, Canada, pass through the State of Alaska, and re-enter British Colubmia at a second point on the U.S. international border. This application is contained in Docket No. PP–85. Westmin proposed to use the facilities to transmit electric energy from an existing powerplant located in Stewart, British Columbia, to a mine developed by Westmin in British Columbia, about 10 miles north of Hyder, Alaska. The transmission facilities would not connect with any existing U.S. transmission lines and no electric energy would flow to or from any U.S. electric utility as a result of this project.

Subsequent to filing the application, Westmin requested that, if a Presidential permit were granted, it be issued to Westmin Resources, Inc., Westmin's wholly-owned subsidiary incorporated in Colorado. On October 5, 1988, Presidential Permit PP–85 was issued to WRI.

On July 19, 1989, Westmin applied to the Office of Fuels Programs to have Presidential Permit PP–85 re-issued in the name of Westmin Mines, Inc. WMI is a newly formed Idaho corporation and a wholly-owned subsidiary of Westmin. Westmin has established WMI and has requested re-issuance of the permit to WMI in order to facilitate a reorganization of the Westmin group of companies. Westmin is prohibited by Article 9 of the permit from transferring the Presidential permit to another entity, except in the event of involuntary transfer of the facilities by the operation law. Accordingly, Westmin is applying for the re-issuance of the permit to WMI.

Any person desiring to be heard or to protest this application to re-issue Presidential Permit PP–85 should file a petition to intervene or protest with the Office of Fuels Programs, Room 3H–087, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with § 385.211 or § 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed on or before (30 days after publication of this notice). An additional copy of such petitions to intervene or protests also should be filed with:

Raymond O. Hampton, Corporate Secretary, Westmin Mines, Inc., 904–1055 Dunsmuir Street, P.O. Box 49066, The Bentall Centre, Vancouver, British Columbia, Canada V7X 1C4, (604) 681–2253.
Stephen D. Wortley, Lang, Michener, Lawrence & Shaw, 2500–595 Burrard Street, P.O. Box 49200, Vancouver, British Columbia, Canada V7X 1L1, (604) 689–9111.

Protests and comments will be considered by the DOE under 18 CFR 385.211 in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

Copies of this application will be made available, upon request, for public inspection and copying at the DOE's Freedom of Information Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 28, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–20673 Filed 8–31–89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice 89–8: Health Effects Research

AGENCY: Department of Energy, (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (OER), U.S. Department of Energy (DOE) announces its interest in receiving applications for Special Research Grants in support of the Human Genome Initiative. This initiative is a coordinated multidisciplinary research effort aimed at developing creative, innovative resources and technologies which will lead to a detailed understanding of the human genome at the molecular level. Several research goals are encompassed in this Notice: (1) Research will be supported to develop technologies and resources necessary for the physical mapping of human chromosomes, i.e., establishing the original linear order of DNA fragments. This includes development of improved automated systems for analysis of DNA fragments and clones, and better means of obtaining DNA as purified chromosomes or chromosome fragments; (2) Research will be supported for the development of innovative and cost-effective technologies leading to rapid and accurate large scale DNA sequencing. This includes non-gel techniques and direct imaging approaches; (3) Research will be supported to develop data management systems, data structures, retrieval schemes, user interfaces and advanced database theory to support DNA mapping and sequencing. Also desired are improved algorithms and hardware for analyzing DNA sequences, including identification of homologies, regulatory sites, and protein coding regions.

DATES: To permit timely consideration for award in Fiscal Year 1990, formal applications submitted in response to this Notice should be received by the Division of Acquisition and Assistance Management by December 15, 1989.

ADDRESS: Formal applications referencing Program Notice 89–8 should be forwarded to: U.S. Department of

Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER-64, Room G-236, Washington, DC 20545, ATTN: Program Notice 89-8.

PREAPPLICATIONS AND FURTHER INFORMATION: Before preparing a formal application, potential applicants should submit a brief preapplication in accordance with 10 CFR 600.10(d)(2) which consists of two to three pages of narrative describing research objectives. These will be reviewed relative to the scope and the research needs of the DOE human genome program. Preapplications are due on September 22, 1989, and should be sent to the following address: Dr. Benjamin J. Barnhart, Office of Health and Environmental Research, ER-72 (GTN), Washington, DC 20545, (301) 353-5037. A response which is based on these preapplications and which discusses the potential program relevance of a formal application will be communicated by October 6, 1989. Telephone and telefax numbers are requested.

SUPPLEMENTARY INFORMATION: It is anticipated that approximately $2M will be available for grant awards during FY 1990. Based on past experience, this year funding of awards is expected, subject to the availability of future funds. Information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures may be found at 10 CFR part 605. The Office of Energy Research (ER), as part of its grant regulations, requires at 10 CFR 605.11(b) that any grantee funded by ER and performing research that involves recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules; May 7, 1986" (51 FR 16957, May 7, 1986). Application kits and copies of 10 CFR part 605 are available from the U.S. Department of Energy, Division of Acquisition and Assistance Management (see above address). Telephone requests may be made by calling (301) 353-5037. Instructions for preparation of an application are included in the application kit. The Catalog of Federal Domestic Assistance number for this program is 81.049.

Issued in Washington, DC on August 23, 1989.

D. D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 89-20674 Filed 8-31-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-613-000, et al.]

Kansas City Power & Light Company, et al.; Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Kansas City Power & Light Company

[Docket No. ER89-613-000]

August 22, 1989.

Take notice that on August 18, 1989, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 1 to Municipal Participation Agreement, between KCPL and the City of Osawatomie, Kansas dated July 13, 1989. KCPL states that the Amendatory Agreement provides for an extension of the contract term and a modified rate design for firm power service.

KCPL requests an effective date of August 1, 1989, and therefore requests waiver of the Commission's notice requirements.

Comment date: September 5, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company Boston Edison Company

[Docket No. ER89-612-000]

August 22, 1989.

Take notice that on August 18, 1989, New England Power Company (NEP) and Boston Edison Company (BECO) submitted for filing amendments to the AC Facilities Support Agreements among the two companies and the participants in Phase II of the New England Power Pool/Hydro-Quebec interconnection. NEP and BECO state that these amendments provide for the initial rate of return on equity, 14% and 13.75% respectively, to be included in the support calculations under these Agreements.

According to the companies, the AC transmission facilities are estimated to be in-service by November 1, 1989. The companies request that the proposed amendments be made effective October 16, 1989 but that billing be deferred until commercial operation of the facilities.

Comment date: September 5, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Public Service Company

[Docket No. ER89-614-000

August 22, 1989.

Take notice that on August 18, 1989, Central Illinois Public Service Company (CIPS) tendered for filing a new Interconnection Agreement dated July 1, 1989, between CIPS and Indiana Municipal Power Agency (IMPA).

The new Interconnection Agreement provides for coordinated interconnection operation including the interchange of Power and Energy under Service Schedule A, Seasonal Power, Service Schedule B, Short Term Power, Service Schedule C, Maintenance Power, Service Schedule D, Emergency Energy, Service Schedule E, Interchange Energy, and Service Schedule F, Term Energy.

Copies of this filing have been sent to Indiana Municipal Power Agency, Inc. and the Illinois Commerce Commission.

Comment date: September 5, 1989, in accordance with Standard Paragraph E end of this notice.

4. Gulf Power Company

[Docket No. ER89-619-000]

August 24, 1989.

Take notice that on August 21, 1989, Gulf Power Company filed a revised sheet to its FERC Electric Tariff which would allow the Company to recover the costs associated with the buy-out of long term fuel supply agreements through the fuel cost adjustment clause. This clause is applicable to the sale of electric energy to Gulf's territorial wholesale customers. Gulf has requested, pursuant to § 385.207 of FERC regulations, a waiver of and/or deviation from the provisions of § 35.14, including but not restricted to paragraphs (a)(6) and (a)(9) of that section, as provided for by paragraph (10) of § 35.14. This waiver, if granted, would allow the tariff revision as proposed by Gulf and would continue to result in lower fuel adjustment charges to its wholesale customers. This tariff revision is proposed to become effective on January 1, 1987; and Gulf has requested waiver of the Commission's notice requirements in order to allow such an effective date.

Gulf's wholesale customers have been furnished with a copy of the proposed tariff revisions and each of the affected wholesale customers has consented to the proposed tariff change by executing letters of consent.

Comment date: September 7, 1989, in accordance with Standard Paragraph E end of this notice.

5. Washington Water Power Company

[Docket No. ER89-615-000]

August 24, 1989.

Take notice that on August 8, 1989, Washington Water Power Company (WWP) submitted for filing its annual rate revision under WWP's 15-year agreement with Puget Sound Power & Light Company. WWP requests waiver of the Commission's notice requirements in order to permit an effective date of April 1, 1989.

Comment date: September 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Docket No. ER89-616-000]

August 24, 1989.

Take notice that on August 14, 1989, Arizona Public Service Company ("APS" or "Company") tendered for filing amendments affecting estimated contract demands or maximum demands in the following FPC/FERC Electric Service Rate Schedules:

FPC/FERC No.	Customer	Revised exhibit
56	Wellton-Mohawk	Exhibit B.
59	APA	Exhibit B.
65	CRIIP	Exhibit A.
66	SCIIP	Exhibit A.
74	Wickenburg	Exhibit B.
120	Southern California Edison.	Exhibit B.
126	ED-6	Exhibit "II".
128	ED-7	Exhibit "II".
140	ED-8	Exhibit "II".
141	AID	Exhibit "II".
142	McMullen Valley	Exhibit "II".
143	Tonopah	Exhibit "II".
149	Citizens Utility Company.	Exhibit B.
153	Harquahala	Exhibit "II".
155	Buckeye	Exhibit "II".
158	Roosevelt	Exhibit "II".
161	PTUA	Exhibit B.
170	Wickenburg	Exhibit A.

No changes from the currently effective Wholesale Power or Transmission ("Wheeling") rate levels are proposed herein. No new facilities are required to provide these services.

A copy of this filing has been served on the above customers, the California Public Utilities Commission and the Arizona Corporation Commission.

Comment date: September 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Georgia Power Company

[Docket No. ER89-618-000]

August 24, 1989.

Take notice that on August 22, 1989, Georgia Power Company ("Georgia Power") tendered for filing a Coordination Services Agreement (the "Agreement") dated as of August 21, 1989, between Georgia Power and Oglethorpe Power Corporation (An Electric Membership Generation & Transmission Corporation) ("OPC").

Georgia Power states that the Agreement has been executed to facilitate a power purchase by OPC from Big Rivers Corporation. Georgia Power seeks waiver of the Commission's notice requirements and seeks an effective date of August 21, 1989. The Agreement will terminate on May 31, 1992.

Comment date: September 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. The Washington Water Power Company

[Docket No. ER89-617-000]

August 24, 1989.

Take notice that on August 21, 1989, The Washington Water Company (Washington) tendered for filing its revised Index of Purchasers under Washington's FERC Electric Tariff Original Volume No. 3 (Tariff 3). The revision incorporates the addition of new nonfirm Service Agreements with Arizona Public Service; British Columbia Power Export Corporation; Chelan County Public Utility District #1; Cowlitz County Public Utility District; Deseret Generation & Transmission Co-operative; Eugene Water & Electric Board; Grant County Public Utility District #2; Nevada Power Company; Pend Oreille County Public Utility District #1; Public Service Company of New Mexico; Salt River Project; City of Santa Clara; Utah Municipal Power Systems; Western Area Power Administration; and West Kootenay Power, Limited.

WWP requests that the effective date as indicated on the Index of Purchasers be assigned by the Commission.

Washington states that copies of the filing have been sent to parties to Washington's Tariff 3 Service Agreements.

Comment date: September 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power and Light Company

[Docket No. EL89-48-000]

August 24, 1989.

Take notice that on August 22, 1989, Wisconsin Power and Light Company (WPL), in accordance with § 385.207 of the Commission's Regulations, filed a petition for a declaratory order on the propriety of recording coal reserve payments in Account 501 and recovering those costs through its fuel adjustment clause. WPL states that its fuel costs include payments made to a coal supplier under a coal reserve provision of a coal supply contract. WPL believes that these amounts are properly recordable in Account 501 and therefore properly recoverable through the fuel adjustment clause. In the event that the Commission finds WPL's proposal improper, WPL requests a waiver of the Commission's fuel clause regulations in accordance with §§ 35.14(a)(10) and 385.207. WPL requests an effective date of August 1, 1989.

Comment date: September 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20585 Filed 8-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1971-000, et al.]

Trunkline Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP89-1971-000]

August 21, 1989.

Take notice that on August 16, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1971-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Natural Gas Clearinghouse, Inc. (NGC), a marketer, under the blanket certificate issued in Docket No. CP86-586-000, pursuant to

Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated June 1, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for NGC. Trunkline states that it would transport the gas received from Anadarko at East Cameron 359, offshore Louisiana, and Mesa at Vermillion Block 348, offshore Louisiana, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas, less fuel and unaccounted for line loss, to Stingray Subsea at East Cameron 338, offshore Louisiana, and Panhandle Subsea at Vermillion Block 340, offshore Louisiana.

Trunkline advises that service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89-4460-000. Trunkline further advises that it would transport 5,000 dt on an average day and 1,825,000 dt annually.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line

[Docket No. CP89-1975-000]

August 22, 1989.

Take notice that on August 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1975-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Phillips 66 Natural Gas Company (Phillips), a producer, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated June 13, 1989, under its Rate Schedule PT, it proposes to transport up to 300,000 dekatherms (dt) per day equivalent of natural gas for Phillips. Panhandle states that it would transport the gas from various receipt points in Colorado, Kansas, Oklahoma and Texas, and deliver such gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas.

Panhandle advises that service under § 284.223(a) commenced July 1, 1989, as reported in Docket No. ST89-4429-000. Panhandle further advises that it would transport 300,000 dt on an average day and 109,500,000 dt annually.

Comment date: October 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP89-1964-000]

August 22, 1989.

Take notice that on August 16, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1964-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis under its blanket certificate Docket No. CP88-6-000, a maximum of 36,000 MMBtu on behalf of Air Products and Chemicals, Inc. (Air Products), an end user, all as more fully set forth in the request on file with the Commission and open to public inspection.

United States that service commenced July 1, 1989, under § 284.223 (a) of the Commission Regulations, as reported in Docket No. ST89-4276 and estimates the volumes transported to be 36,000 MMBtu per day on peak day and average day, and 13,156,250 MMBtu on an annual basis.

United also indicates that no new facilities are to be constructed.

Comment date: October 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP89-1962-000]

August 22, 1989.

Take notice that on August 16, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77152-1478, filed in Docket No. CP89-1171-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Marathon Oil Company (Marathon), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is one file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 151,583 MMBtu per day for Marathon. United states that construction of facilities would not be required to provide the proposed service.

United further states that the maximum day, average day, and annual transportation volumes would be approximately 151,583 MMBtu, 151,583, MMBtu, and 55,327,795 MMBtu, respectively.

United advises that service under § 284.223(a) commenced July 10, 1989, as reported in Docket No. ST89-4277.

Comment date: October 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Colorado Interstate Gas Company

[Docket No. CP89-1970-000]

August 23, 1989.

Take notice that on August 18, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1970-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phillips Pipe Line Company (Phillips), an end user, under its blanket authorization issued in Docket No. CP86-589-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG would perform the proposed firm transportation service for Phillips, pursuant to a firm transportation service agreement dated July 1, 1989. The transportation agreement is effective until the earlier of June 30, 1990, or the date CIG receives authority to, or is required to, abandon service rendered pursuant to its blanket transportation certificate in Docket No. CP89-569-000, *et al.* CIG proposes to transport up to 200 Mcf of natural gas on a peak and average day; and on an annual basis 73,000 Mcf of natural gas for Phillips. CIG proposes to receive the subject gas at an existing point of receipt located in sec. 24 T. 18N., R. 108 W., Sweetwater County, Wyoming and redeliver the gas, less fuel gas and lost and unaccounted-for gas, for the account of Phillips in sec. 33 T. 22 S., R. 60 W., Pueblo County, Colorado. CIG avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. CIG commenced such self-implementing service on July 1, 1989, as reported in Docket No. ST89-4244-000.

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. ANR Storage Company

[Docket No. CP89-1953-000]

August 23, 1989.

Take notice that on August 15, 1989, ANR Storage Company (ANRS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1953-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing new storage services pursuant to two new rate schedules, Rate Schedules FS (Firm Storage Service) and IS (Interruptible Storage Service) to be incorporated in a new ANRS Original Volume No. 1 FERC Gas Tariff, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANRS states that the proposed Rate Schedule FS provides for firm winter storage service. It is stated that for the period November 1 through March 31 (winter period), the storage demand withdrawal quantity cannot be greater than 1/60 of the maximum storage quantity nor can it be less than 1/126 of the maximum storage quantity. It is also stated that for the period April 1 through October 31 (summer period), the maximum daily injection quantity is 1/200 of the maximum storage quantity. It is further stated that the storage demand withdrawal quantity and maximum storage quantity would be specified in the FS service agreement. ANRS states that injection and withdrawal quantities above the maximum contract entitlements would be accepted on a best efforts basis.

ANRS states that the charge for FS service would consist of a maximum FS deliverability reservation rate of $2.063 per dekatherm per month and a maximum FS capacity reservation rate of $.452 per dekatherm. It is stated that fuel would consist of 1.3 percent for injection and 0.2 percent for withdrawal which must be provided in kind by the customer. ANRS states that Rate Schedule FS would be available to all customers on a first-come, first-served basis.

ANRS states that Rate Schedule IS provides for an interruptible storage service that ANRS would make available from time to time if it has storage capacity available after providing for firm obligations. It is explained that subject to ANRS' best efforts to withdraw gas, the maximum daily withdrawal quantity, during the summer period, is 1/30 of the customer's working storage gas as of the last day of the prior month and, during the winter period, is 1/100 of the customer's working storage gas at the end of the preceding summer period. It is also explained that subject to ANRS' best efforts to inject gas, the maximum daily injection quantity is 1/60 of the customer's maximum storage quantity. It is stated that ANRS may, if storage capacity is needed to meet its firm obligations, require customer, upon forty-eight hours notice, to withdraw all IS working storage gas within forty-five days. ANRS states that any working storage gas remaining at the end of such forty-five day period would be retained by ANRS.

ANRS states that the charge for IS service would consist of a maximum monthly storage commodity rate of 5.1 cents per dekatherm of monthly average working storage gas. It is stated that fuel would consist of 1.3 percent for injection and 0.2 percent for withdrawal which must be provided in kind by the customer. It is stated that Rate Schedule IS would be available to all customers on a first-come, first-served basis.

ANRS states that each customer would be responsible for arranging all necessary transportation to and from the point of injection/withdrawal. It is stated that such point is located at the interconnection of ANRS' facilities with the facility of Great Lakes Gas Transmission Company in Crawford County, Michigan.

ANRS requests authority to provide service under the above described rate schedules for interested customers, on a self-implementing basis, with pregranted abandonment, without further authorization by the Commission. ANRS also requests authority to discount rates between the maximum and minimum rates requested.

Comment date: September 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

7. Great Lakes Gas Transmission

[Docket No. CP89-1947-000]

August 23, 1989.

Take notice that on August 14, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP89-1947-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to transport natural gas, on an interruptible basis, for the account of MichCon Trading Company (Shipper), until November 1, 1994, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that Shipper has requested that Great Lakes transport up to 200,000 Mcf per day for the account of Shipper, from a point on the International Border between the United States and Canada, at Emerson, Manitoba (Emerson), where the facilities of Great Lakes interconnect with the facilities of TransCanada PipeLines Limited, to existing points of interconnection between the facilities of Great Lakes and Michigan Consolidated Gas Company located within the State of Michigan at Crystal Falls, Rapid River, Sault Ste. Marie, Mackinaw City, Pellston, Boyne City, Petoskey, Gaylord and Belle River Mills. Great Lakes also states that the subject Canadian natural gas would be purchased by Shipper and sold to end users in the State of Michigan. Great Lakes indicates that Shipper and Great Lakes have entered into a Transportation Service Agreement, dated June 8, 1989 (Service Agreement), which would implement these arrangements. Great Lakes further indicates that the Service Agreement provides for a term ending November 1, 1994.

Great Lakes states that the Service Agreement provides for a rate for the transportation service, to delivery points in Great Lakes' Central Zone which is equal to the 100 percent load factor rate, as determined from the demand and commodity components utilized in the transportation component of existing Rate Schedule CQ-2 of Great Lakes' FERC Gas Tariff, under which volumes of natural gas are also transported from Emerson to Great Lakes' Central Zone.

Great Lakes also states that the Service Agreement provides for a rate for the transportation service to delivery points located in Great Lakes' Eastern Zone which is equal to the 100 percent load factor rate as determined from the demand and commodity components utilized in Rate Schedule T-4 of Great Lakes' FERC Gas Tariff, under which volumes of natural gas are also transported from Emerson to Great Lakes' Eastern Zone. Great Lakes indicates that no new facilities would be required to provide either of the proposed services.

Comment date: September 13, 1989, in accordance with Standard Paragraph F at the end of the notice.

8. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1974-000]

August 23, 1989.

Take notice that on August 21, 1989, Panhandle Eastern Pipe Line Company, (Panhandle) P.O. Box 1642, Houston, Texas, 77251-1642 filed in Docket No.

CP89-1974-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Levinson Partners Corporation (Levinson), under its blanket authorization issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for Levinson, a shipper and producer of natural gas, pursuant to a transportation agreement for interruptible service under Rate Schedule PT dated June 21, 1989 (Contract No. P-PLT-2865). The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter until terminated by either party upon at least 30 days' prior notice to the other party. Panhandle proposes to transport on a peak day up to 750 dekatherm equivalent; on an average day up to 450 dekatherm equivalent; and on an annual basis 164,250 dekatherm equivalent of natural gas for Levinson. Panhandle proposes to receive the subject gas from Tom Federal 1, North Creston 1, and Windy Hill 1 in Carbon County, Wyoming. Panhandle would then transport and redeliver subject gas, less used and unaccounted for line loss, to Western Transmission in Carbon County, Wyoming. Panhandle proposes to charge the then effective, applicable rates and charges under its PT rate schedule. Panhandle avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on July 11, 1989, as reported in Docket No. ST89-4437-000.

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Texas Gas Transmission Corporation

[Docket No. CP89-1979-000]

August 23, 1989.

Take notice that on August 21, 1979, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1979-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas for Ladd Gas Marketing, Inc. (Ladd), a marketer of natural gas, which has identified the end-user of the gas as Western Kentucky Gas Company, under Texas Gas' blanket certificate issued in Docket No. CP88-666-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commisison and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis, up to 120,000 MMBtu equivalent on a peak day, 72,000 MMBtu equivalent on an average day and 43,800,000 MMBtu equivalent on an annual basis for Ladd. It is stated that Texas Gas would receive the gas for Ladd's account at various points on Texas Gas' system in Texas, Louisiana, offshore Texas, offshore Louisiana, Illinois, Arkansas, Indiana, and Kentucky, and would deliver equivalent volumes at various points on Texas Gas' system in Kentucky. It is asserted that existing facilities would be used for the transportation service and that no construction of additional facilities would be required. It is explained that the transportation service commenced July 15, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4319.

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Texas Eastern Transmission Corporation

[Docket No. CP87-92-006]

August 23, 1989.

Take notice that on August 22, 1989, Texas Eastern Transmission Corporation, (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP87-92-006 a petition to amend the Certificate of Public Convenience and Necessity, pursuant to Section 7(c) of the Natural Gas Act, issued on June 7, 1989 in this proceeding to substitute an electric motor prime mover in lieu of the gas turbine authorized at Applicant's Sarahsville Compressor Station 19, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that by *Order Issuing Certificates* issued June 7, 1989,[1] (Order) Applicant[2] was authorized, *inter alia* to construct and operate in 1989 and 1990 its Capacity Restoration Program consisting of (1) 281.24 miles of 8 to 42-inch pipeline and 32,000 Horsepower of additional compression, in Ohio, West Virginia, Pennsylvania and New Jersey, (2) the removal of 215 miles of 20 and 24-inch pipeline, (3) and the placement into idle service of 344.73 miles of 20 and 24-inch pipeline. Applicant states that it accepted the certificate on June 9, 1989, and that construction activities were commenced June 15, 1989.

Applicant further states that the Order authorized Applicant to construct and Operate, in 1990, a 11,000 HP gas turbine driven compressor at its existing Compressor Station 19, near Sarahsville, Ohio, and provided that the proposed gas turbine compressor be relocated and certain noise control procedures be approved and implemented to satisfy the recommendations of the Environmental Assessment.

Applicant states that the existing units at Station 19 consist of four electric motor compressor packages totaling 6500 HP, and that in consideration of the Environmental Assessment recommendations, Applicant investigated the feasibility of substituting an electric motor as the prime mover for the proposed compressor which could be installed adjacent to the existing units. Applicant states that its investigation showed that the electric motor, as the prime mover, would reduce or eliminate the environmental impacts.

Comment date: September 13, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. Viking Gas Transmission Company

[Docket No. CP88-206-005]

August 23, 1989.

Take notice that on August 15, 1989, Viking Gas Company (Viking), P.O. Box 2511, Houston, Texas 77252, filed an application pursuant to Section 7(c) of the Natural Gas Act for an amended certificate authorizing an extension of the winter season transportation service provided thereunder to Northern States Power Company (NSP), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Viking states that the order issued in Docket No. CP88-206-000, as amended, authorizes the transportation of up to 30,800 dt equivalent of natural gas per day on a firm basis during the winter season (November to March) for NSP for a term ending the earlier of October 31, 1989, or the date that Viking accepts a blanket certificate under § 284.221 of the Commission's Regulations. It is asserted that Viking requests an extension of the term of the firm seasonal transportation service for an additional year to coincide with the term agreed on in Rate Schedule T-9, or in the alternative Viking seeks to extend this winter service for one year. It is indicated that the extension of the term is required in order for NSP to maintain its long-term gas supplies and to meet the firm gas requirements of residential and commercial customers located on Viking's system during the winter heating season.

Comment date: September 13, 1989, in accordance with the first of Standard Paragraph F at the end of this notice.

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[1] *Texas Eastern Transmission Corporation, et al.*, Docket Nos. CP87-5-003, *et al.*, *Order Issuing Certificates.*

[2] CNG Transmission Corporation was a joint applicant with Applicant for a portion of the 1990 facilities, but is not involved in or affected by the facilities subject of this Petition.

12. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1976-000]

August 23, 1989.

Take notice that on May 23, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1976-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Gastrak Corporation (Gastrak), a marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Pursuant to a gas transportation agreement dated June 16, 1989, Panhandle requests authority to transport up to 161,500 Dt. of natural gas per day, on an interruptible basis, on behalf of Gastrak. Panhandle states that the agreement provides for it to receive gas from various existing points of receipts along its system and to redeliver the gas, less fuel used and unaccounted for line loss, to Central Illinois Public Service Company at existing points of delivery in various counties of Illinois. Gastrak has informed Panhandle that it expects to have the full 161,500 Dt. transported on an average day and, based thereon, estimates that the annual transportation quantity would be 58,947,500 Dt. Panhandle advises that the transportation service commenced on July 14, 1989, as reported in Docket No. ST89-4438, pursuant to § 284.223 of the Commission's Regulations.

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP89-1967-000]

August 23, 1989.

Take notice that on August 17, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1967-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Feagan Gathering Company (Feagan), under the blanket certificate issued in Docket No. CP86-435-000 pursuant to Section 7 of the Natural Gas Act, all or more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes up to 18,000 MMBtu of natural gas per day for Feagan, on a peak day, 13,500 MMBtu on an average day and 2,180,000 MMBtu annually, under Rate Schedule IT-1. This service was reported to the Commission in Docket No. ST89-4405-000. Northern further states that construction of facilities will not be required to provide the proposed service.

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Northwest Pipeline Corporation

[Docket No. CP89-1972-000]

August 23, 1989.

Take notice that on August 18, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1972-000 an application pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Exxon Corporation (Exxon), a producer of natural gas, pursuant to Northwest's blanket transportation certificate issued by Commission order on January 19, 1988, in Docket No. CP86-578-000, All as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states it will receive the gas at various system supply wells in Lincoln, Sublette and Sweetwater Counties, Wyoming, for transportation and delivery, for the account of Exxon, to the Opal Plant in Lincoln County, Wyoming and to the Black Canyon Line in Sublette County, Wyoming.

Northwest proposes to transport daily up to 20,000 MMBtu equivalent of gas on a peak day, 5,000 MMBtu equivalent of gas on an average day and approximately 1,809,000 MMBtu equivalent of gas annually. Northeast states the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on July 1, 1989, pursuant to a transportation agreement dated September 26, 1988, as amended September 26, 1988. Northwest notified the Commission of the commencement of the transportation service in Docket No. ST89-4402-000 on August 4, 1989.

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. United Gas Pipe Line Company

[Docket No. CP89-1968-000]

August 23, 1989.

Take notice that on August 17, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1968-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service on behalf of Texaco Gas Marketing (Texaco), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it would transport a maximum daily quantity of 103,000 MMBtu for Texaco pursuant to an Interruptible Gas Transportation Agreement, dated July 25, 1987, as amended June 23, 1989, between United and Texaco. United further states that it would receive the natural gas at existing points of receipt in the states of Louisiana and Texas and would redeliver the natural gas at existing points of delivery in the states of Louisiana, Texas and Mississippi. United indicates that the estimated average day and annual quantities to be transported would be 103,000 MMBtu and 37,595,000 MMBtu, respectively.

United states that it commenced the transportation of natural gas for Texaco on July 18, 1989, as reported in Docket No ST89-4310, for a 120-day period pursuant to § 284.223(a) of the

Commission's Regulations (18 CFR 284.223(a)).

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Columbia Gulf Transmission

[Docket No. CP89-1969-000]

August 23, 1989.

Take notice that on August 17, 1989, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama, Houston, Texas 77027, filed in Docket No. CP89-1969-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport, on an interruptible basis, on behalf of Exxon Corporation (Exxon), a marketer of natural gas, under Columbia's blanket certificate issued in Docket No. CP86-239-000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that the volume anticipated to be transported on a peak day is a maximum of 75,000 MMBtu, on an average day up to 9,000 MMBtu, and approximately 3,285,000 MMBtu on an annual basis.

It is also stated that Columbia Gulf proposes to receive the gas in St. Mary, Iberia, Cameron and Jefferson Parishes, Louisiana and from West Cameron Block 630A, Offshore Louisiana and proposes to redeliver the gas for Exxon to points in Vermillon, St. Mary, Acadia and Terrebonne Parishes, Louisiana. Columbia Gulf states that this service commenced on July 7, 1989, as reported in Docket No. ST89-4431-000, pursuant to Section 284.223(a) of the Commission's Regulations.

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Texas Gas Transmission Corporation

[Docket No. CP89-1977-000]

August 23, 1989.

Take notice that on August 21, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1977-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Ladd Gas Marketing Inc. (Ladd Marketing), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis, up to 300,000 MMBtu per day for Ladd Marketing. Texas Gas states that facilities required to be constructed would be installed, owned, and operated as specified in Exhibits B and C of the transportation agreement.

Texas Gas further states that the maximum day, average day, and annual transportation volumes would be approximately 300,000 MMBtu, 180,000 MMBtu and 109,500,000 MMBtu respectively.

Texas Gas advises that service under § 284.223(a) commenced July 14, 1989, as reported in Docket No. ST89-4320.

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1937-000]

August 24, 1989.

Take notice that on August 10, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1937-000 a request pursuant to Sections 7(b) and 16 of the Natural Gas Act for permission and approval to abandon, partially, certain sales service to the Philadelphia Gas Works (PGW), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that on November 11, 1970, it entered into a service agreement with PGW providing for the sale for resale of a maximum daily quantity of 159,625 Mcf of natural gas per day under Transco's Rate Schedule CD-3. Transco further states that the Commission authorized such service to PGW by order issued in Docket No. CP70-193-000.

Transco indicates that on December 1, 1987, PGW converted, pursuant to § 284.10 of the Commission's Regulations, a total of 23,944 Mcf of natural gas per day of its firm entitlement under the service agreement to firm transportation under Transco's Rate Schedule FT. Transco states PGW's current Rate Schedule CD-3 firm sales entitlement is 135,681 Mcf of natural gas per day. Transco indicates that on April 1, 1989, PGW converted, pursuant to § 284.10 of the Commission's Regulations, an additional 5,042 Mcf of natural gas per day of its firm entitlement under the service agreement to firm transportation under Transco's Rate Schedule FT. Transco states further that in the instant application, it seeks authorization to partially abandon PGW's present firm sales entitlement pursuant to Rate Schedule CD-3 by a total quantity of 5,042 Mcf of natural gas per day, resulting in a revised Rate Schedule CD-3 firm sales entitlement of 130,639 Mcf of natural gas per day for PGW.

Comment date: September 14, 1989, in accordance with Standard Paragraph F at the end of the notice.

19. Northwest Pipeline Corporation

[Docket No. CP89-1961-000]

August 24, 1989

Take notice that on August 21, 1989, Northwest Pipeline Company (Northwest) filed in Docket No. CP89-1961-000 a request pursuant to §§ 157.205 and 284.233 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP86-578-000 on behalf of Coastal Gas Marketing Company (Coastal), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest indicates that service commenced July 14, 1989, as reported in Docket No. ST89-4427-000 and estimates the volumes transported to be 200,000 MMBtu per day on a peak day, 800 MMBTU on a average day plus, 292,000 MMBtu on an annual basis for Coastal.

Northwest states that no new facilities are to be constructed.

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Northwest Pipeline Corporation

[Docket No. CP89-1957-000]

August 24, 1989

Take notice that on August 22, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1957-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transporation service for Conoco Inc. (Conoco), a producer, under the blanket certificate issued in Docket No. CP86-578-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated November 1, 1988, as amended December 5, 1988, under its Rate Schedule TI-1, it proposes to transport up to 30,000 MMBtu per day equivalent of natural gas for Conoco. Northwest states that it would transport the gas through its system from any transportation receipt point on its system to any transportation delivery point on its system, as defined in the December 5, 1988, amendment.

Northwest advises that service under Section 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89-4421 (filed August 7, 1989). Northwest further advises that it would transport 3,300 MMBtu on an average day and 1,200,000 MMBtu annually.

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. Northern Natural Gas Company, a Division of Enron Corp

[Docket No. CP89-1951-000]

August 24, 1989

Take notice that on August 15, 1989, Northern Natural Gas Company, (Northern), Division of Enron Corp., filed in the above referenced docket, pursuant to Sections 4 and 7(c) of the Natural Gas Act and Parts 154 and 157 of the commission's Regulations under the Natural Gas Act (18 CFR 157.14), its application for a certificate of public convenience and necessity authorizing the implementation of a gas inventory charge (GIC) on an interim basis, pursuant to the tariff sheets submitted therewith.

Specifically, Northern requests authorization to establish and implement a demand-based interim GIC, which it states is generally patterned after the provisions of the "Competitive Price Concept" described in the Commission's Notice of Proposed Policy Statement in Docket No. PL89-1-000. Northern asserts that it has made certain changes in its proposal which will: (1) Reduce the rate Northern's customers would otherwise pay, (2) provide a means for customers to mitigate the amoung billed by Northern, and (3) generally adapt The Commission's proposed guidelines to Northern's specific business operations.

The interim GIC Northern proposes herein would impose a monthly inventory charge of $4.60 per MMBtu on each unit of firm sales entitlement of the purchaser (adjusted for storage injections). The GIC would apply to all of Northern's buyers under its firm sales rate schedules. Northern proposes to implement the interim GIC on October 1, 1989, and proposes that such charge remain in effect for a two-year period until October 1, 1991 unless earlier terminated in the event Northern is issued a satisfactory certificate in Docket No. CP89-1227 or receives approval to implement a permanent or long-term GIC. Northern also proposes to provide for certain performance credits for volumes purchased.

Northern proposes to continue its current practice of announcing in advance the monthly price for its system supply gas. Northern states that it will calculate a composite competitive price for spot gas sales delivered into the main line of five major interstate pipeline companies in the Mid-Continent Area, plus a transportation and fuel component, and other applicable surcharges (such as ACA, GRI, and TOP charges). Northern's proposal requires that its announced system supply price be within or below a 4 percent tolerance of such competitive price.

Northern does not propose to provide any additional conversion rights to its buyers. Northern proposes to suspend certain portions of its current PGA mechanism during the effective period of the interim GIC and to direct bill or refund any PGA account 191 balances as of August 31, 1989. Northern proposes to reconcile all of its gas supply costs and sales and GIC revenues and make refunds, together with interest, within one year of the termination of the interim GIC, if revenues exceed cost.

Comment date: September 14, 1989, in accordance with Standard Paragraph F at the end of this notice.

22. Texas Gas Transmission Corporation

[Docket No. CP89-1978-000]

August 24, 1989.

Take notice that on August 21, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1978-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natual Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Natural Gas Clearinghouse, Inc. (NGC) under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 300,000 MMBtu of natural gas equivalent on behalf of NGC pursuant to a gas transportation agreement dated November 18, 1988, between Texas Gas and NGC. Texas Gas would receive the gas at various existing points of receipt on its system in offshore Texas and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at an existing delivery point in offshore Texas.

Texas Gas further states that the estimated average daily and annual quantities would be 50,000 MMBtu and 18,240,000 MMBtu, respectively. Service under § 284.223(a) commenced on July 8, 1989, as reported in Docket No. ST89-4204-000, it is stated.

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1973-000]

August 24, 1989.

Take notice that on August 21, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No, CP89-1973-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport gas on an interruptible basis for Transco Energy Marketing Company (TEMCO) under its blanket certificate issued in Docket No. CP88-328-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that it would receive the gas for TEMCO at various existing points of receipt in offshore Louisiana, Louisiana, offshore Texas, Texas, Alabama, Georgia, Pennsylvania and New Jersey, and would redeliver the gas at various existing delivery points located in Louisiana.

Transco further states that the maximum daily, average daily and annual quantities that it would transport for TEMCO would be 175,500 dt equivalent of natural gas, 175,500 dt equivalent of natural gas and 64,057,500 dt equivalent of natural gas, respectively.

Transco indicated that in a filing made with the Commission in Docket No. ST89-4441, it reported that transportation service for TEMCO commenced on July 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1938-000]

August 24, 1989.

Take notice that on August 10, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–1938–000 a request pursuant to Sections 7(b) and 16 of the Natural Gas Act for permission and approval to abandon, partially, certain sales service to the City of Laurens, South Carolina (Laurens), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that on November 13, 1970, it entered into a service agreement with Laurens providing for the sale for resale of a maximum daily quantity of 7,840 Mcf of natural gas per day under Transco's Rate Schedule CD–2. Transco further states that the Commission authorized such service to Laurens by order issued in Docket No. CP70–193–000.

Transco indicates that on April 1, 1989, Laurens converted, pursuant to § 284.10 of the Commission's Regulations, 1,176 Mcf of natural gas per day of its firm entitlement under the service agreement to firm transportation under Transco's Rate Schedule FT. Transco states that in the instant application, it seeks authorization to partially abandon Laurens's present firm sales entitlement pursuant to Rate Schedule CD–2 by a total quantity of 1,176 Mcf of natural gas per day, resulting in a revised Rate Schedule CD–2 firm sales entitlement of 6,664 Mcf of natural gas per day for Laurens.

Comment date: September 14, 1989, in accordance with Standard Paragraph F at the end of this notice.

25. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–1936–000]

August 24, 1989.

Take notice that on August 10, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–1936–000 a request pursuant to Sections 7(b) and 16 of the Natural Gas Act for permission and approval to abandon, partially, certain sales service to the City of Danville, Virginia (Danville), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that on November 12, 1970, it entered into a service agreement with Danville providing for the sale for resale of a maximum daily quantity of 26,000 Mcf of natural gas per day under Transco's Rate Schedule CD–2. Transco further states that the Commission authorized such service to Danville by order issued in Docket No. CP70–193–000.

Transco indicates that on April 1, 1989, Danville converted, pursuant to § 284.10 of the Commission's Regulations, a total of 4,000 Mcf of natural gas per day of its firm entitlement under the service agreement to firm transportation under Transco's Rate Schedule CD–2. Transco states that in the instant application, it seeks authorization to partially abandon Danville's present firm sales entitlement pursuant to Rate Schedule CD–2 by a total quantity of 2,000 Mcf of natural gas per day, resulting in a revised Rate Schedule CD–2 firm sales entitlement of 22,000 Mcf of natural gas per day for Danville.

Comment date: September 14, 1989, in accordance with Standard Paragraph F at the end of the notice.

26. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–1935–000]

August 24, 1989.

Take notice that on August 10, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–1935–000 a request pursuant to Sections 7(b) and 16 of the Natural Gas Act for permission and approval to abandon, partially, certain sales service to Philadelphia Electric Company (PECO), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that on January 1, 1989, it entered into a service agreement with PECO providing for the sale for resale of 88,692 Mcf of natural gas per day under Transco's Rate Schedule CD–3. Transco further states that the Commission authorized such service to PECO by order issued in Docket No. CP70–193–000.

Transco indicates that on April 1, 1989, PECO converted, pursuant to Section 284.10 of the Commission's Regulations, 14,162 Mcf of natural gas per day of its firm entitlement under the service agreement to firm transportation under Transco's Rate Schedule FT. Transco states that in the instant application, it seeks authorization to partially abandon PECO's present firm sales entitlement pursuant to Rate Schedule CD–3 by a total quantity of 14,162 Mcf of natural gas per day, resulting in a revised Rate Schedule CD–3 firm sales entitlement of 74,530 Mcf of natural gas per day for PECO.

Comment date: September 14, 1989, in accordance with Standard Paragraph F at the end of the notice.

27. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–1933–000]

August 24, 1989.

Take notice that on August 10, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–1933–000 a request pursuant to Sections 7(b) and 16 of the Natural Gas Act for permission and approval to abandon, partially, certain sales service to the Pennsylvania Gas and Water Company (PG&W), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that on November 5, 1970, it entered into a service agreement with PG&W providing for the sale for resale of 46,900 Mcf of natural gas per day under Transco's Rate Schedule CD–3. Transco further states that the Commission authorized such service to PG&W by order issued in Docket No. CP70–193–000.

Transco indicates that on April 1, 1989, PG&W converted, pursuant to § 284.10 of the Commission's Regulations, a total of 12,000 Mcf of natural gas per day of its firm entitlement under the service agreement to firm transportation under Transco's Rate Schedule FT. Transco states that in the instant application, it seeks authorization to partially abandon PG&W's present firm sales entitlement pursuant to Rate Schedule CD–3 by a total quantity of 12,000 Mcf of natural gas per day, resulting in a revised Rate Schedule CD–3 firm sales entitlement of 34,900 Mcf of natural gas per day for PG&W.

Comment date: September 14, 1989, in accordance with Standard Paragraph F at the end of this notice.

28. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–1939–000]

August 24, 1989.

Take notice that on August 10, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–1939–000 a request pursuant to Sections 7(b) and 16 of the Natural Gas Act for permission and approval to abandon, partially, certain sales service to Fort Hill Natural Gas Authority (Fort Hill), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that on November 5, 1970, it entered into a service agreement

with Fort Hill providing for the sale for resale of a maximum daily quantity of 11,900 Mcf of natural gas per day under Transco's Rate Schedule CD–2. Transco further states that the Commission authorized such service to Fort Hill by order issued in Docket No. CP70–193–000.

Transco indicates that on April 1, 1989, Fort Hill converted, pursuant to § 284.10 of the Commission's Regulations, 1,785 Mcf of natural gas per day of its firm entitlement under the service agreement to firm transportation under Transco's Rate Schedule FT. Transco states that in the instant application, it seeks authorization to partially abandon Fort Hill's present firm sales entitlement pursuant to Rate Schedule CD–2 by a total quantity of 1,785 Mcf of natural gas per day, resulting in a revised Rate Schedule CD–2 firm sales entitlement of 10,115 Mcf of natural gas per day for Fort Hill.

Comment date: September 14, 1989, in accordance with Standard Paragraph F at the end of this notice.

29. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–1934–000]

August 24, 1989.

Take notice that on August 10, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–1934–000 a request pursuant to sections 7(b) and 16 of the Natural Gas Act for permission and approval to abandon, partially, certain sales service to the Delmarva Power and Light Company (Delmarva), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that on November 5, 1970, it entered into a service agreement with Delmarva providing for the sale for resale of 54,800 Mcf of natural gas per day under Transco's Rate Schedule CD–3. Transco further states that the Commission authorized such service to Delmarva by order issued in Docket No. CP70–193–000.

Transco indicates that on October 1, 1988, Delmarva converted, pursuant to § 284.10 of the Commission's Regulations, a total of 8,220 Mcf of natural gas per day of its firm entitlement under the service agreement to firm transportation under Transco's Rate Schedule FT. Transco states Delmarva's current Rate Schedule CD–3 firm sales entitlement is 46,580 Mcf of natural gas per day. Transco indicates that on April 1, 1989, Delmarva converted, pursuant to § 284.10 of the Commission's Regulations, an additional 8,220 Mcf of natural gas per day of its firm entitlement under the service agreement to firm transportation under Transco's Rate Schedule FT. Transco states further that in the instant application, it seeks authorization to partially abandon Delmarva's present firm sales entitlement pursuant to Rate Schedule CD–3 by a total quantity of 8,220 of natural gas per day, resulting in a revised Rate Schedule CD–3 firm sales entitlement of 38,360 Mcf of natural gas per day for Delmarva.

Comment date: September 14, 1989, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission's, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 158.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–20566 Filed 8–31–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF88–262–002]

Everett Energy Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

August 25, 1989.

On August 16, 1989, Everett Energy Corporation (Applicant), of 236 North Falmouth Highway, North Falmouth, Massachusetts 02556, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the City of Everett, Massachusetts. The facility will consist of two combustion turbine generating units, two waste heat recovery boilers and a steam turbine generating unit. Thermal energy recovered from the facility will be sold to Exxon Company, USA for heating its asphalt and heavy fuel oil tanks, and tracing pipelines. The net electric power production capacity of the facility will be 89.6 MW. The primary energy source will be natural gas. The facility is scheduled to be installed and in operation by December 1, 1991.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20587 Filed 8-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF89-325-000]

Metropolitan Knox Solid Waste Authority, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

August 25, 1989.

On August 16, 1989, The Metropolitan Knox Solid Waste Authority, Inc. (Applicant), of 1211 Wray Street, Knoxville, Tennessee 37917 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Knoxville, Tennessee. The facility will consist of two (2) mass burn combustors, and associated boilers and steam turbine generators. The maximum electric power production capacity will be 30.3 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas will be used for start-ups and shutdowns. The facility is scheduled to begin operation in August 1992.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20588 Filed 8-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-678-003]

Northeastern Power Co., Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

August 25, 1989.

On August 18, 1989, Northeastern Power Company (Applicant) of 200 South Broad Street, Philadelphia, Pennsylvania 19102 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Kline Township, Schuylkill County, Pennsylvania. The facility is a 50 MW, net culm, silt, and coal fired plant. The application for recertification requests a change in ownership. Applicant states that the legal title to the facility will be transferred by the Applicant on or about October 1989, to The Connecticut National Bank, a national banking association, not in its individual capacity but solely as Owner Trustee under the Trust Agreement dated as of September 15, 1988 between Chrysler Capital Corporation, as the Owner Participant, and the Owner Trustee. The Owner Trustee will lease the facility to the Applicant pursuant to a lease agreement.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20589 Filed 8-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-10-51-000]

Great Lakes Gas Transmission Co.; Granting Late Intervention

August 25, 1989.

Motions to intervene in the above-captioned proceeding were due on June 29, 1989. A motion to intervene out of time was filed on July 14, 1989, by Northern Minnesota Utilities. No answers in opposition to the motion were filed.

The movant appears to have a legitimate interest under the law that is not adequately represented by other parties. It is in the public interest to allow the movant to appear in this proceeding. Accordingly, good cause exists for granting the late intervention.

Pursuant to § 375.302 of the Commission's Regulations (18 CFR 375.302 (1988)), the movant is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Natural Gas Act, 15 U.S.C. 717-171(w). Participation of the late intervenor shall be limited to matters set forth in its motion to intervene. The admission of the late intervenor shall not be construed as recognition by the Commission that the intervenor might be aggrieved by any order entered in this proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20591 Filed 8-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

August 25, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on August 21, 1989, tendered for filing Second Revised Sheet No. 57(iv) to its FERC Gas Tariff, First Revised Volume No. 1.

Second Revised Sheet No. 57(iv) reflects the new ACA rate to be charged per the Annual Charges Adjustment Clause provisions established by the Commission in Order No. 472, issued on

May 29, 1987. The new ACA rate to be charged by Great Lakes is per FERC notice given on July 14, 1989 and is to be effective October 1, 1989.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 1, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20592 Filed 8-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3865-031]

Guadalupe-Blanco River Authority; Rejecting Appeal

August 25, 1989.

On July 14, 1989, Guadalupe-Blanco River Authority, licensee for the Canyon Dam Hydro Project No. 3865, filed a revised Exhibit A in compliance with Article 304 of its license issued December 4, 1986, [1] and ordering paragraph (c) of the order approving as-built exhibits issued May 18, 1989. [2] The revised Exhibit A describes the constructed configuration of the licensed project works. By order issued August 11, 1989, [3] the Director, Division of Project Compliance and Administration (Director), approved the revised Exhibit A.

On August 23, 1989, Canyon Lake Area Citizens Association (CLACA), an intervenor in the license proceeding, filed an appeal of the Director's August 11, 1989 order. The Commission has ruled that it will not entertain appeals of non-material post-license compliance orders. Accordingly, CLACA's appeal of the Director's August 11, 1989 order is dismissed.[4]

Lois D. Cashell,

Secretary.

[FR Doc. 89-20593 Filed 8-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-14-010—TA89-1-45-007—TQ89-1-45-006]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

August 25, 1989.

Take notice that on August 21, 1989, Inter-City Minnesota Pipelines, Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing a revised tariff sheet to Original Volume 2 of its FERC Gas Tariff to be effective December 1, 1988.

Original Volume No. 2

Substitute First Revised Fifth Revised Sheet No. 12

Inter-City states that this sheet corrects typographical errors discovered in the sheet filed on August 10, 1989. Those sheets were filed in compliance with the Commission orders issued in these dockets.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before September 1, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons who are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20594 Filed 8-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-35-000]

West Texas Gas, Inc.; Filing

August 25, 1989.

Take notice that on August 22, 1989, West Texas Gas, Inc. (WTG) filed Sixteenth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective October 1, 1989. Sixteenth Revised Sheet No. 3a and the accompanying explanatory schedules constitute WTG's annual PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1987)). All such motions or protests should be filed on or before September 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20595 Filed 8-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2737-009, et al.]

Conoco Inc., et al.; Applications for Termination or Amendment of Certificates [1]

August 25, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 14, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but

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[1] 37 FERC ¶ 61,200 (1986), *reh'g denied*, 42 FERC ¶ 61,079 (1988).

[2] 47 FERC ¶ 62,158 (1989).

[3] 48 FERC ¶ 62,114 (1989).

[4] *See, e.g.*, Northwest Power Company, Inc., 43 FERC ¶ 61,001 (1988); Goose Creek Hydro Associates, 40 FERC ¶ 61,279 (1987); Kings River Conservation District, 36 FERC ¶ 61,365 (1986). Furthermore, CLACA's status as an intervenor in the licensing proceeding for Project No. 3865 does not carry over to post-license filings. Therefore, CLACA's appeal, not preceded or accompanied by an intervention petition, cannot be entertained in any event. *See* Kings River, *supra*, and Delmar Wagner, 41 FERC ¶ 61,011 (1987).

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and date filed	Applicant	Purchaser and Location	Description
G-2737-009, D, Aug. 9, 1989	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	Williams Natural Gas Company, West Panhandle Field, Gray County, Texas.	Assigned 7-1-89 to Caldwell Production Company, Inc.
G-2737-010, D, Aug. 9, 1989	Conoco Inc	Williams Natural Gas Company, West Panhandle Field, Carson County, Texas.	Assigned 7-1-89 to G.H. Ranch, Inc.
G-6355-002, D, July 19, 1989	do	El Paso Natural Gas Company, Arrowhead Field, Lea County, New Mexico.	Assigned 2-1-86 to Marathon Oil Company.
G-6355-003, D, July 19, 1989	do	do	Assigned 7-1-89 to Lewis B. Burleson.
CI67-1650-003, D, July 18, 1989	do	Panhandle Eastern Pipe Line Company, South Peek Field, Roger Mills County, Oklahoma.	Assigned 6-1-89 to Kenneth W. Cory.
CI70-124-000, D, July 19, 1989	do	Colorado Interstate Gas Company, Higgins Field, Sweetwater County, Wyoming.	Assigned 1-1-88 to Kaiser-Francis Oil Company.
CI89-496-000 (G-3984), D, Aug. 4, 1989	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Tennessee Gas Pipeline Company, Mustang Island Field, Nueces County, Texas.	Assigned 12-1-88 to Bristol Resources 1987-1 Acquisition Program.
CI89-499-000 (CI77-370), D, Aug. 4, 1989	Union Oil Company of California, P.O. Box 7600, Los Angeles, CA 90051.	El Paso Natural Gas Company, Burton Flats Field, Eddy County, New Mexico.	Assigned 4-1-89 to OXY USA Inc.
CI89-508-000 (CI69-1310), D, Aug. 11, 1989.	Oryx Energy Company, P.O. Box 2880, Dallas, TX 75221-2880.	Natural Gas Pipeline Company of America, Arena Roja Field, Lea County, New Mexico.	Assigned 1-1-89 to Healtz Energy Management, Inc.
CI89-509-000 (CI64-981), D, Aug. 11, 1989.	Oryx Energy Company	Northern Natural Gas Company, N.E. Dower Field, Lipscomb County, Texas.	Assigned 5-1-89 to Strat Lan Exploration Company.
CI89-510-000 (CI82-284-000), D, Aug. 10, 1989.	Diamond Shamrock, Offshore Partners, Limited Partnership, 717 North Harwood St., Dallas, Texas 75201.	Trunkline Gas Company, Block A-542 High Island Area, South Addition, Offshore Texas.	Assigned 6-30-89 to Hall-Houston Oil Company.
CI89-511-000 (CI82-306-002), D, Aug. 10, 1989.	Diamond Shamrock, Offshore Partners, Limited Partnership.	Trunkline Gas Company, Block A-542 High Island Area, South Addition, Offshore Texas.	Assigned 6-30-89 to Hall-Houston Oil Company.
CI89-512-000 (CI82-298-001), D, Aug. 10, 1989.	do	do	Do.
CI89-513-000 (CI80-214-000), D, Aug. 10, 1989.	do	do	Do.
CI89-514-000 (CI78-1215), D, Aug. 14, 1989.	Mobil Producing Texas & New Mexico Inc., 12450 Greenspoint Drive, Houston, TX 77060-1991.	El Paso Natural Gas Company, Angel Ranch Field, Eddy County, New Mexico.	Assigned 2-1-88 to Asher Resources.

Filing code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 89-20690 Filed 8-31-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OOP-100067; FRL-3638-8]

Syracuse Research Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Syracuse Research Corporation (SRC) has been awarded a contract to perform work for the EPA Office of Environmental Criteria and Assessment and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SRC consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), respectively. This action will enable SRC to fulfill the obligations of the contract and this notice serves to notify affected persons.

DATE: Syracuse Research Corporation will be given access to this information no sooner than September 6, 1989.

FOR FURTHER INFORMATION CONTACT: By mail: Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212 CM#2, 1921 Jefferson Davis Highway, Arlingotn, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: This notice is to amend the list of chemicals that appeared in a **Federal Register** notice of January 13, 1988 (53 FR 794). The pesticide chemicals listed below are in addition to those mentioned in the above **Federal Register**. SRC will be preparing and updating environmental effects documents, including aquatic toxicity and environmental fate and transport. Other chemicals may be included in SRC's work later in this contract. Readers may contact the person named above in approximately 1 year to learn if chemicals other than those on this list and the original listing of January 13, 1988, will be involved in this contract. Atrazine, Carbaryl, Formaldehyde, Malathion, Methoxychlor.

The Office of Environmental Criteria and Assessment and the Office of Pesticide Programs have jointly determined that Contract No. 68-C3-3521, involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), the contract with SRC prohibits use of the information for any purpose other than the purposes specified in the contract, prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected businesses, and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SRC has previously submitted for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Environmental Criteria and Assessment. All information supplied to SRC by EPA for use in connection with this contract will be returned to EPA when SRC has completed its work.

Dated: August 18, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-20664 Filed 8-31-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3638-3]

Woody's Tire Fire Site: Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), The Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the Woody's Tire Fire Site, Gastonia, North Carolina with Mr. Charles J. Woody. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or consideration which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Investigation Support Assistant, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, (404) 347-5059.

Written comments may be submitted to the person above by 30 days from date of publication.

Dated: August 22, 1989.

Patrick M. Tobin,

Director, Waste Management Division, EPA Region IV.

[FR Doc. 89-20638 Filed 8-31-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3638-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 14, 1989 through August 18, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15007).

Draft EISs

ERP No. DS-AFS-G65042-00, Rating LO, Ouachita National Forest, Amended Land and Resource Management Plan, Updated and Additional Information with emphasis on the Issue of Even-Age and Uneven-Age Management, Implementation, Garland, Logan, Hot Spring, Montgomery, Howard, Perry, Pike, Polk, Saline, Scott, Sebastian and Yell Cos., AR and Leflore and McCurtain Cos., OK

Summary: EPA has no objections to the proposed action as described.

ERP No. D-COE-B36065-MA, Rating EO2, Saugus River and Tributaries Flood Damage Reduction Plan, Implementation, Lynn, Malden, Revere and Saugus Communities, Essex, Middlesex and Suffolk Counties, MA.

Summary: EPA believes the proposed project does not comply with Section 404(b)(1) of the Clean Water Act, because the placement of fill in Lynn Harbor can be avoided. In addition, this project may not comply with EPA's antidegradation policy (40 CFR 131.12) which mandates that existing water uses and the level of water quality necessary to protect existing uses be maintained and protected. Finally, the extent of both wetland and floodplain which may be affected must be better documented.

ERP No. D-FHW-D40720-VA, Rating EO2, VA-31/James River Crossing Improvement, VA-10 to VA-5, Funding, Section 10 and 404 Permits, Coast Guard Permits, Surry, James City and Charles City Counties, VA.

Summary: EPA has rated Alternatives A, B, C, and D EO-2, due to the dredging and disposal of kepone contaminated river sediment and the high potential for secondary development. The improved ferry and No Build Alternative were rated EC-2 due to the poor level of service predicted for the ferry system and the related socio-economic impacts.

ERP No. D-FHW-G40124-OK, Rating LO, East 71st Street South Reconstruction, South Lewis Avenue to South Memorial Drive, Funding, City and County of Tulsa, OK.

Summary: EPA has no objections to the proposed action as described.

Final EISs

ERP No. F-BLM-L61158-ID, Jacks Creek Wilderness Study Areas, Wilderness Designation, Owyhee County, ID.

BEST COPY AVAILABLE

Summary: Review of the final EIS has been completed and the project found to be satisfactory.

ERP No. F–SWF–B65001–00, New England Atlantic Salmon Restoration Activities 1989–2021, Implementation, Connecticut, Pawcatuck, Merrimack, Saco, Union, Androscoggin, Kennebec, Penobscot, St. Croix, Meduxnekeag and Aroostook Rivers, CT, RI, MA, NH, VT and ME.

Summary: EPA has no objections to the proposed Atlantic Salmon restoration effort. EPA's concerns regarding the draft EIS have been satisfactorily resolved.

Regulations

ERP No. R–FEM–A86231–00, 44 CFR Part 206; Disaster Assistance; Robert T. Stafford Disaster Relief and Emergency Assistance Act; Implementation (54 FR 22162).

Summary: Review of the final EIS has been completed and the project found to be satisfactory.

Dated: August 29, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89–20675 Filed 8–31–89; 8:45 am]

BILLING CODE 6560-50-M

[ER–FRL–3636–8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5076 or (202) 382–5073. Availability of Environmental Impact Statements Filed August 21, 1989 Through August 25, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890240, Final, BLM, UT, San Rafael Resource Area, Sevier River Resource Area, Forest Planning Unit and Henry Mountain Resource Area, Management Plan, Implementation, Emery, Sevier and Wayne Counties, UT, Due: October 2, 1989, Contact: Jim Dryden (801) 637–4584.

EIS No. 890241, Final, FHW, NC, East Charlotte Outer Loop Construction, US 74/ Independence Boulevard near NC–3180 to I–85 near the US 29 Connector, Funding and 404 Permit, Mecklenburg County, NC, Due: October 2, 1989, Contact: Kenneth L. Bellamy (919) 790–2859.

EIS No. 890242, Final, BOP, CO, Florence Federal Correctional Institution Complex, Construction and Operation, Fremont County, CO, Due: October 2, 1989, Contact: William J. Patrick (202) 272–6871.

EIS No. 890243, Final, MMS, MXG, LA, AL, TX, MS, Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Lease Sales Nos. 123 and 125, Offshore AL, MS, TX, and LA, Due: October 2, 1989, Contact: Ken Havran (703) 787–1671.

Amended Notices

EIS No. 890173, Draft, AFS, ID, Valbois Destination Resort Village, Special Permit and Land Use/Resource Management Plans Amendments, Cascade Lake, Boise National Forest, Valley County, ID, Due: September 13, 1989, Contact: Greg Spangenberg (208) 364–4104. Published FR 6–30–89—Review period extended.

EIS No. 890176, Draft, AFS, WY, Threemile Area Timber Sale and Road Construction, Medicine Bow National Forest Land and Resource Management Plan, Medicine Bow National Forest, Carbon Country, WY, Due: October 15, 1989, Contact: Gary Rorvig (307) 745–8971. Published FR–7–7–89—Review period extended.

Dated: August 29, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89–20676 Filed 8–31–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

August 24, 1989.

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3520).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0395

Title: Sections 43.21 and 43.22, Automated Reporting and Management Information System (ARMIS)

Action: Revision

Respondents: Businesses

Frequency of Response: Quarterly and annually

Estimated Annual Burden: 1,050 responses; 265,650 hours; 253 hours average burden per response

Needs and Uses: This automated reporting system is needed to administer the Commission's accounting, jurisdictional separation, access charge, and joint cost rules and to analyze revenue requirements and rates of return. It collects financial and operating data form all Tier 1 and those Class A local exchange carriers with annual revenues over $100 million.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 89–20567 Filed 8–31–89; 8:45 am]

BILLING CODE 6712-01-M

[GEN Docket No. 89–549; DA 89–711]

North Central and North East Texas Public Safety Plan

AGENCY: Federal Communications Commission..

ACTION: Notice.

SUMMARY: The FCC is accepting the North Central and North East Texas Area's (Region 40's) plan for public safety. By accepting this plan, the FCC enables the licensing of the 821–824/866–869 MHz spectrum for public safety to begin. The North Central and East Texas Region is the second of the 55 regions in the National Plan to be accepted.

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554, (202) 632–6497.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, adopted June 22, 1989, released July 7, 1989, accepting the North Central and North East Texas Area's Plan for Public Safety. The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of the Order may also be purchased from the Commission's copy contractor, International Transcription Service, (20) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Order

The Chief, Private Radio Bureau and the Chief Engineer have accepted the regional public safety plan for the North

Central and North East Texas Region, Region 40. The Region 40 plan is the second of its kind to be accepted and it represents the culmination of the efforts of the many public safety organizations that participated in its development.

The Bureaus recognized the effort that went into preparing the Region 40 Plan and commended the Planning Committee for its work. They stated that Region 40 presented a challenge in terms of diversity and population concentration. They noted that Region 40, which includes 42 counties, is unique in that most of its population (78 percent) is concentrated in the Dallas/Fort Worth area. The Region 40 Plan represents a careful balance of the public safety and special emergency mobile communications needs throughout the area and will result in efficient use of the 800 MHz Public Safety radio spectrum.

In 1987, the Commission established policies and rules for a National Plan for public safety services to ensure that the new six megahertz of public safety spectrum (821–824/866–869 MHz) be used effectively and efficiently for important public safety functions. The Commission established 55 regions and instructed each region to develop a plan for use of the newly allocated spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in the area. After each plan is completed and approved by its regional planning committee, it must be submitted to the Chief, Private Radio Bureau, and the Chief Engineer. After the two Bureau Chiefs have formally accepted a plan, the individual public safety entities can begin applying for licensing in the new 800 MHz spectrum.

The Bureaus found that the Region 40 Plan conforms with the National Public Safety Plan and includes all the necessary elements specified in the 1987 Report and Order. Specifically, the plan includes a summary of the major elements of the plan, including usage guidelines, frequency reassigment, common channel implementation, encryption, use of long-range and cellular communications, application evaluation and appeal procedures. In a general description of how the spectrum is to be allotted among the various eligible users within the region, the Plan explains that the new channels have been initially assigned on a county-by-county basis, correlated to population with a minimum of two frequencies per county. The Regional Planning Committee used this approach to conserve spectrum and create more efficient frequency assignments. The Plan offers a detailed description of how the plan puts the spectrum to the best possible use by requiring system design with minimum coverage areas, by assigning frequencies so that maximum frequency reuse and offset channel use may be made and by using trunking technology.

The Bureaus noted that the seven adjacent regions, Oklahoma (34), Arkansas (4), Louisiana (18), Houston (51), Austin (49), El Paso (50), and Lubbock (52), not being as far along in their planning process, may require future coordination with Region 40. Therefore, the Bureaus accepted the Region 40 Plan subject to future coordination with its adjacent regions.

Upon release of the full text of the Order, the individual public safety entities in Region 40 may begin applying for licensing in the 821–824/866–869 MHz bands.

Action by the Chief, Private Radio Bureau and the Chief Engineer, June 22, 1989, by Order (DA 89–711).

Ordering Clauses

It is ordered that the North Central and North East Texas Area Plan for Public Safety *is accepted,* subject to amendments contained in the Order.

It is further ordered that this proceeding *is terminated.*

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 89–20566 Filed 8–31–89; 8:45 am]

BILLING CODE 6712-01-M

Report No. 1792

Petitions for Reconsideration of Actions in Rule Making Proceedings

August 28, 1989

Petitions for reconsideration have been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202–857–3800). Oppositions to these petitions must be filed within 15 days of the date of public notice of the petitions in the **Federal Register**. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Charleston, South Carolina). (RM–6954) Number of Petitions Received: 1

Subject: Amendment of Parts 15 and 76 Relating to Terminal Devices Connected to Cable Television Systems. (Gen Docket No. 85–301) Number of Petitions Received: 1

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Perry, Cross City, Holiday, Avon Park, Sarasota and Live Oak, Florida; Thomasville, Georgia) (MM Docket No. 87–455, RM's 5899, 6223, 6224, 6225 and 6226) Number of Petitions Received: 1

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast (Tallahassee, Quincy, Perry and Gretna, Florida and Thomasville, Georgia) (MM Docket Nos. 87–486 and 87–455, RM's 5938, 5899, 6225, 6242, 6223, 6278, 6224 and 6226) Number of Petitions Received: 3

Subject: Height and Power Increases in the public Land Mobile Radio Service. (CC Docket No. 88–135) Numbers of Petitions Received: 4

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Jupiter and White City, Florida) (MM Docket No. 88–306, RM's 6280 and 6531) Number of Petitions Received: 1

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Mt. Morris and Savanna, Illinois, Belle Plaine, Maquoketa, Webster City and Winterset, Iowa) (MM Docket No. 88–369, RM's 6282, 6453 and 6580) Number of Petitions Received: 1

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–20568 Filed 8–31–89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–826–DR]

Alaska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–826–DR), dated May 10, 1989, and related determinations.

DATE: August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Alaska, dated May 10, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 10, 1989:

The communities of Chevak and Mountain Village for Public Assistance.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

[FR Doc. 89–20645 Filed 8–31–89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010839–004.

Title: Port of Seattle Terminal Agreement.

Parties:

Port of Seattle

American President Line, Ltd. (APL)

Synopsis: The Agreement provides for the substitution of three 20/40 foot, 50 ton capacity crane spreader beams with three new 20/40/45 foot, 50 ton capacity crane spreader beams. It also provides for the amortization of a portion of the cost differential by APL.

Agreement No.: 224–200281.

Title: City of New York Terminal Agreement.

Parties:

The City of New York Department of Ports International Trade & Commerce

Continental Terminals, Inc. (Continental)

Synopsis: The Agreement provides Continental with a ten-year lease of the 39th Street Pier and adjoining area, Brooklyn, New York, to be used for stevedoring and warehousing of cocoa and cocoa products. The Agreement provides for the payment of annual rent, wharfage and dockage fees. The Agreement may be renewed for two additional five-year periods.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: August 29, 1989.

[FR Doc. 89–20621 Filed 8–31–89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011220–001.

Title: Bermuda Discussion Agreement.

Parties: Bermuda Container Line Ltd. Lloyd (Bermuda) Line Ltd.

Synopsis: The proposed modification would delete the requirement that each party give notice of any agreement or consensus not adhered to.

By Order of the Federal Maritime Commission.

Dated: August 28, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–20571 Filed 8–31–89; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 89–18]

Gulf Container Line (GCL), BV v. Port of Houston Authority Filing of Complaint and Assignment

Notice is given that a complaint filed by Gulf Container Line (GCL), B.V. ("Complainant") against Port of Houston Authority ("Respondent") was served August 28, 1989. Complainant alleges that Respondent engaged in violations of sections 10(d)(1), 10(d)(3), 10(b)(11) and 10(b)(12) of the Shipping Act of 1984, 46 U.S.C. app. 1709(d)(1), (d)(3), (b)(11), and (b)(12) in regard to its "reefer monitoring" practices at the Barbours Cut Terminal within the Port of Houston.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by August 28, 1990, and the final decision of the Commission shall be issued by December 28, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 89–20572 Filed 8–31–89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2540
Name: Almac Shipping Co. (California), Inc.
Address: 9620 LaCienega Blvd., Inglewood, CA 90301
Date Revoked: June 30, 1989
Reason: Failed to maintain a valid surety bond

License Number: 2042
Name: William L. Bliss d.b.a. OSC International
Address: P.O. Box 24525, Houston, TX 77229–4525
Date Revoked: July 14, 1989
Reason: Failed to maintain a valid surety bond

License Number: 426
Name: Ambrosio Shipping Co., Inc.
Address: 145–32–157 Street, Jamaica, NY 11434
Date Revoked: August 8, 1989
Reason: Surrendered license voluntarily

License Number: 904
Name: James E. Fox & Co., Inc.
Address: One World Trade Center, Suite 1933, New York, NY 10048
Date Revoked: August 9, 1989
Reason: Failed to maintain a valid surety bond

License Number: 2904
Name: Emarc International Freight Forwarder, Inc.
Address: 2476 So. Shore Drive, Lake Park, FL 33410
Date Revoked: August 12, 1989
Reason: Failed to maintain a valid surety bond

License Number: 2090
Name: Jerome T. Greitzer d.b.a. Greitzer Brokers
Address: 6775 Custom House Plaza, #A, San Diego, CA 92073
Date Revoked: August 14, 1989
Reason: Surrendered license voluntarily

License Number: 2511
Name: All-My Services Corp.
Address: P.O. Box 52–3434, Miami, FL 33152
Date Revoked: August 19, 1989
Reason: Failed to maintain a valid surety bond

License Number: 2426
Name: Shigehiro Uchida d.b.a. Jupiter Forwarding Company
Address: P.O. Box 6759, Torrance, CA 90504
Date Revoked: August 21, 1989
Reason: Surrendered license voluntarily

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 89–20570 Filed 8–31–89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Time and Date: September 26, 1989, 8:30 a.m–5 p.m.; September 27, 1989, 8:30 a.m.–1 p.m.

Place: Conference Room 207, Centers for Disease Control 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters to be Discussed: The Committee will discuss draft recommendations for statements on viral hepatitis, measles, and influenze; the National Vaccine Program; rabies; H. influenzae type b; and will consider other matters of relevance among the Committee's objectives. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Cheryl Counts, Staff Specialist, Centers for Disease Control (1–B46), 1600 Clifton Road NE., Mailstop A20, Atlanta, Georgia 30333, Telephone: FTS: 236–3851; Commercial: (404) 639–3851.

Dated: August 28, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–20622 Filed 8–31–89; 8:45 am]

BILLING CODE 4160-18-M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following package was submited to OMB:

(For a copy of the package below, call the FSA Reports Clearance Officer on 202 252–5598.)

Request for Approval of Information Collection Requirements Contained in Regulations (P.L. 100–485) Sections 121 and 122 of the Family Support Act. The information prescribed in the information collection is used to ensure that state IV–D agencies collect and maintain information so that child support services are effectively and expeditiously provided. Respondents will be state agencies involved in child support activities.

Number of Respondents: 54, Frequency of Response: 100,374.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 461,682 hours.

OMB Desk Clearance Officer: Justin Kopca.

Written comments and recommendations for the new information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: August 20, 1989.

Naomi B. Marr,

Associate Administrator Office of Management and Information Systems, FSA.

[FR Doc. 89–20407 Filed 8–3–89; 8:45 am]

BILLING CODE 4150-04-M

Forms Submitted to Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following is the package submitted to OMB since the last publication on August 25, 1989.

(Call the Reports Clearance Officer on 202–252–5598 for copies of package).

Uniform Statistical Report—FSA-104—NEW—This report is needed to meet the requirements in the Family Support Act. The information will be used to aid in the development of performance standards and to ensure that sections 402(g)(1)(A) and 402(a)(43) of the Social Security Act are being effectively implemented. Respondents: State or local governments; Number of Respondents: 51; Frequency of Response: Quarterly; Average Burden per Response: 50 hours; Estimated Annual Burden: 10,200 hours.

OMB Desk Clearance Officer: Justin Kopca.

Consideration will be given to comments and suggestions received within 60 days of publication. Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: August 20, 1989.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems.

[FR Doc. 89–20406 Filed 8–31–89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 88D–0386]

Advisory Opinion and Compliance Policy Guide; Drug Product Entries in Periodic Publications; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an advisory opinion on drug entries in *Monthly Prescribing Reference* and of Compliance Policy Guide (CPG) 7132b.17, "Drug Product Entries in Periodic Publications." The advisory opinion sets forth FDA's rationale for determining that the drug product entries in *Monthly Prescribing Reference* are not "advertisements" or "labeling" under the Federal Food, Drug, and Cosmetic Act (the act). The CPG establishes general factors FDA will use for determining whether drug product entries in periodic publications such as *Monthly Prescribing Reference* are "advertisements" or "labeling." The advisory opinion and CPG 7132b.17 do not limit the agency's enforcement discretion on whether to initiate regulatory action after an evaluation of all relevant facts.

ADDRESSES: The advisory opinion on drug entries in *Monthly Prescribing Reference* and CPG 7132b.17, "Drug Product Entries in Periodic Publications" may be ordered as one unit from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161.

Orders must reference NTIS order number PD 89–226344 and include payment of $10.95 for a copy of the documents. Payment may be made by check, money order, charge card (American Express, Visa, or Mastercard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650. The advisory opinion (Docket No. 86A–0246/AP) and CPG 7132b.17 are available for public examination in the Docket Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steven H. Unger, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857–1706, 301–295–8046.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of the advisory opinion and companion CPG 7132b.17. The advisory opinion was requested on behalf of Prescribing Reference, Inc., the publisher of *Monthly Prescribing Reference*. The request was submitted to FDA under 21 CFR 10.85 of the administrative practices and procedures regulations and was assigned Docket No. 86A–0246/AP. FDA's advisory opinion sets forth the agency's rationale for determining that drug product entries in the periodic publication *Monthly Prescribing Reference* are not "labeling" under section 201(m) of the act (21 U.S.C. 321(m)) or "advertisements" under section 502(n) of the act (21 U.S.C. 352(n)). CPG 7132b.17 establishes the agency's general policy regarding the regulation of drug product entries in periodic publications intended for distribution to physicians and other health professionals.

This notice is issued under 21 CFR 10.85 and 10.90.

Dated: August 15, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–20561 Filed 8–31–89; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

National Advisory Committee on Rural Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1989:

Name: National Advisory Committee on Rural Health.

Date and Time: September 25–27, 1989, 8:30 a.m.

Place: The Columbia Inn, Wincopin Circle, Columbia, Maryland 21044.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care service in rural areas.

Agenda: The meeting will include a welcome and opening remarks from the Chairman; a legislative update; a report of the National Library of Medicine's rural outreach study. The Committee will split into the three Work Groups (Health Services Delivery; Health Personnel; and Health Care Financing) for working sessions (rooms to be determined). Reports of the Work Groups' deliberations and considerations of any proposed recommendations for the Report to the Secretary. There will be brief segments for public comment, twice each day.

Persons interested in providing brief public comments should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Service Administration, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835, for more specific information. Callers were asked to consider the option of preparing written statements which will be circulated to the whole Committee, or particular Work Groups if requested, prior to the meeting. Work Groups are particularly interested in receiving specific proposals for recommendations the Committee should make to the Secretary.

Anyone requiring information regarding the subject Council should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Service Administration, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Agenda items are subject to change as priorities dictate.

Date: August 28, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–20635 Filed 8–31–89; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Dental Research; Hearing To Obtain Comments From Organizations Regarding the NIDR "Long-Range Research Plan for the 1990s"

The National Institute of Dental Research (NIDR) has developed a draft of its "Long-Range Research Plan for the 1990s." Before the document is finalized, the NIDR will hold a hearing to obtain comments from organizations having a direct and immediate interest in the subject. The meeting will be convened on September 27, 1989, in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland from 9:00 a.m. to 11:45 a.m.

The meeting will be open to the public. Attendance will be limited to space available.

All organizations interested in presenting testimony should contact Dr.

James Lipton, Chief, Planning and Evaluation Section, Office of Planning, Evaluation, and Communications, NIDR, NIH, Room 2C–36, Building 31, 9000 Rockville Pike, Bethesda, MD 20892 (telephone 301/496–6705). Copies of the draft document will be made available to representatives of organizations prior to the meetings.

Dated: August 24, 1989.

William F. Raub,

Acting Director, NIH.

[FR Doc. 89–20662 Filed 8–31–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2040]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extention, reinstatement, or revision of an informantion collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 28, 1989.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Conveyance (Acquisition) and Disposition Information Collections Contained in Handbook 4310.5 Entitled "Property Disposition Handbook, One-to-Four Family Properties".

Office: Housing.

Description of the Need for the Information and its Proposed Use: HUD will use the information from the forms to complete, rent, renovate, modernize, insure, or sell for cash or credit, properties in the Single Family inventory.

Form Number: HUD–9516, 9516A, 9519, 9519A, 9556, 9544, 9548.

Respondents: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–9516	500		180		1		90,000
HUD–9516A	500		180		.50		45,000
HUD–9519	500		180		.50		45,000
HUD–9515A	500		360		.50		90,000
HUD–9556	200,000		1		.05		10,000
HUD–9544	100		1		.25		25
HUD–9548	15,000		10		.50		75,000

Total Estimated Burden Hours: 355,025.

Status: Extension.

Contact: Art Orton, HUD (202) 755–5740, John Allison, OMB, (202) 395–6880.

Date: August 28, 1989.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Annual Contributions for Operating Subsidies—Performance Funding System; Modification to the Performance Funding System.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed use: PHAs will be required to base their estimates of investment income on the projected Treasury Bill estimated rate and their average cash balance. A year-end adjustment to this estimate will be required to reflect the actual cash balances and Treasury Bill rate for the year.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
Estimating and Reporting	1,900		1		2		3,800
Recordkeeping	1,900		1		14		26,600

Total Estimated Burden Hours: 30,400.

Status: Reinstatement.

Contact: John Comerford, HUD, (202) 426–1872, John Allison, OMB, (202) 395–6880.

Date: August 28, 1989.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Housing Voucher—Housing Voucher Program, Request for Lease Approval.

Office: Housing.

Description of the need for the Information and its Proposed Use: The Housing Voucher will indicate the family's responsibilities under the Housing Voucher Program. The Request for Lease Approval will be signed by the owner and the tenant and submitted to the PHA when the family finds a unit suitable for their needs. It will also be used to schedule the unit inspection.

Form Number: HUD–52646, 52517A.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–52646	100,000		1		.08		8,000
HUD–52517A	300,000		1		.08		24,000

Total Estimated Burden Hours: 32,000.

Status: Reinstatement.

Contact: Gwen Carter, HUD (202) 755–6477, John Allison, OMB, (202) 395–6880.

Date: August 28, 1989.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Weekly Opinion Poll of Mortgage Market Conditions.

Office: Housing.

Description of the need for the Information and its Proposed Use: HUD will use this information collection to comply with regulatory responsibilities concerning mortgage market conditions and to set maximum interest rates on certain FHA programs. The respondents are large mortgage companies.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: Weekly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	30		52		.1		156

Total Estimated Burden Hours: 156.

Status: Extension.

Contact: John Dickie, HUD, (202) 755–7270, John Allison, OMB, (202) 395–6880.

Date: August 28, 1989.

[FR Doc. 89–20564 Filed 8–31–89; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–89–1917; FR–2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined to be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: September 1, 1989.

ADDRESS: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755–9075; TDD number for the hearing- and speech-impaired (202) 426–0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Date: August 25, 1989.

Ronald A. Rosenfeld,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89–20545 Filed 8–31–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Intent To Prepare an Environmental Impact Statement; Raven Management Plan, California Desert Conservation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management, in cooperation with the U.S. Fish and Wildlife Service, California Department of Fish and Game, and other agencies, will prepare an Environmental Impact Statement (EIS) reviewing alternative measures to manage ravens (*Corvus corax*) in the California Desert Conservation Area. Raven management has been proposed to reduce excessive raven predation on juvenile desert tortoises (*Xerobates Agassizzii*). The EIS will examine both lethal and nonlethal methods to control ravens in portions of the Mojave, Sonoran, and Colorado deserts of California. The goal of the management program is to increase recruitment rates of juvenile desert tortoises into adult age-classes.

Management measures that will be reviewed in the EIS include but are not limited to restricting nesting and perching sites, reducing availability of food sources, and selectively killing ravens using a combination of shooting and poisoning. The public is invited to participate in this process beginning with the identification of environmental issues.

DATE: Comments relating to the identification of environmental issues will be accepted up to 30 days from date of this publication.

ADDRESS: Send comments to the Bureau of Land Management, California Desert District Office, 1695 Spruce Street, Riverside, California 92507, Attn: Raven EIS.

FOR FUTHER INFORMATION CONTACT: Ted Rado, BLM California Desert District Office, (714) 351–6402.

SUPPLEMENTARY INFORMATION: The preliminary issues for the EIS include the following: (1) effects of raven control actions on other wildlife species; (2) identification of raven control areas; (3) measures to reduce food availability to ravens at landfills and sewage ponds; (4) means to limit raven nesting, perching, and roosting opportunities in areas of high tortoise predation; (5) mitigating program effects to other wildlife species; and (6) monitoring effectiveness of program actions. .

A public scoping meeting will be held at the Howard Johnson Lodge, 1199 University Avenue, Riverside, California, on September 15, 1989, between 10:00 a.m. and 12:00 p.m., in the Oakwood Room. No additional public meetings are planned prior to the release of the draft EIS. Both written and oral comments on the draft EIS will be accepted after its release. Notice of public meetings will be given in local papers and the **Federal Register.**

Dated: August 29, 1989.

Wesley T. Chambers,

Acting District Manager.

[FR Doc. 89–20714 Filed 8–31–89; 8:45 am]

BILLING CODE 4310–40–M

[CA–010–09–3110–CAPL; Casefile No. CACA 25679]

Realty Action; Exchange of Public and Private Lands in Los Angeles and San Luis Obispo Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—CACA 25679.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 USC 1716):

San Bernardino Meridian, California

T. 4 N., R. 17 W.

Sec. 2 S½ NE¼ SE¼ SE¼ SW¼

Containing 1.25 acres of public land.

In exchange for these lands, the United States will acquire an equal value of lands within the Carrizo Plain Natural Area from The Nature Conservancy, a private, nonprofit organization.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire a portion of the non-federal lands within the Carrizo Plain Natural Area. This Natural Area would promote the conservation of threatened and endangered species and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna.

The ultimate goal of the Bureau of Land Management is to acquire approximately 155,000 acres within the Natural Area. A secondary purpose of the exchange is to consolidate the Bureau lands and reduce the number of scattered, isolated Bureau parcels that are difficult for the Bureau to manage. The public interest will be well served by completing the exchange.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and mining laws. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register,** whichever occurs first.

After the exchange is completed, The Nature Conservancy plans to offer the former BLM land for sale to the Newhall Land and Farming Company, the surrounding landowner.

The exchange will be on an equal value basis. Acreage of the private land will be adjusted to approximate equal values. Full equalization of value will be achieved by future exchanges under a pooling agreement with The Nature Conservancy.

Land transferred from the United States will retain the following reservations:

1. A right-of-way for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (43 USC 945).

2. All oil and gas subject to disposal under the general mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861–4236.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the Area Manager, Caliente Resource Area Office, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: August 16, 1989.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 89–19954 8–31–89; 8:45 am]

BILLING CODE 4310–40–M

[ID–943–09–4214–11; IDI–011698, IDI–764]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that two withdrawals for recreation and historic sites, consisting of 270.00 acres, be continued for an additional 20 years. The lands are still being used as recreation and historic sites. These lands will remain closed to surface entry and mining, but have been and will remain open to mineral leasing.

DATES: Comments should be received on or before November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735. The U.S. Forest Service proposes that the existing land withdrawals, made by Public Land Order Nos. 3220 and 4251 for recreation and historic sites, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as they affect the following described land:

Boise Meridian

(IDI–011898)

Jerry Johnson Hot Springs
T. 36 N., R. 13 E.
  Sec. 17, SW¼SW¼NW¼
  Sec. 18, NW¼NE¼SE¼, SE¼SE¼SE¼.
T. 36 N., R. 13 E.
  Sec. 7, E½NE¼SE¼, SW¼NE¼SW¼, NE¼SW¼SW¼, N½SE¼SW¼, SE¼SE¼SW¼ and SW¼SW¼SE¼.
  Sec. 18, W½SW¼NE¼NE¼, W½NE¼NW¼NE¼, SE¼NE¼NW¼NE¼, E½NW¼NW¼NE¼, NW¼NW¼NW¼NE¼, N½SE¼NW¼NE¼, SE¼SE¼NW¼NE¼, NW¼SE¼NE¼ and SW¼SE¼NE¼.
Colgate Warm Springs Recreation Area
T. 36 N., R. 12 E.
  Sec. 15, SE¼NW¼NE¼, N½NE¼SW¼NE¼, W½SW¼NE¼NE¼ and NW¼NW¼SE¼NE¼.
Cedar Grove Campground (Devoto Memorial Cedar Grove)
T. 37 N., R. 14 E.
  Sec. 22, S½NE¼NE¼NE¼, SE¼NE¼NE¼ and N½NE¼SE¼NE¼.
Powell Campground and Lochsa Public Service Site
T. 37 N., R. 14 E.
  Sec. 32, NE¼NE¼ and E½NW¼NE¼.

(IDI–764)

Moose City Gravesite
T. 40 N., R. 11 E.
  Sec. 29, NE¼NW¼NW¼.

The areas described aggregate 270.00 acres in Clearwater and Idaho Counties.

The withdrawals are essential for protection of substantial capital improvements on the recreation sites and historic values in the Moose City Gravesite. The withdrawals closed the lands to surface entry and mining, but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: August 23, 1989.

William E. Ireland,

Chief Realty Operations Section.

[FR Doc. 89–20569 Filed 8–31–89; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

North Rim Visitor Facilities Development Concept Plan; Grand Canyon National Park, Arizona; Intent to Prepare a Supplemental Environmental Impact Statement

SUMMARY: In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, the National Park Service, Grand Canyon National Park, is preparing a supplemental environmental impact statement, to the 1976 Final Master Plan and Environmental Impact Statement for Grand Canyon National Park, to assess the impacts of providing additional visitor facilities at the North Rim of Grand Canyon National Park. This supplement to the 1976 Master Plan will evaluate various alternatives including no action; provision of a 100 unit lodge at the North Rim Inn campground area along with expansion of the existing campground, provison of a visitor contact center, and improvement of traffic flow and removal of parking from the immediate front of the Grand Canyon Lodge; placing the proposed lodge in the Upper Transept Canyon area with the North Rim Inn area left to overnight camping; renovation of the existing cabins in the North Rim Inn area for visitor use; and development of the proposed overnight facilities outside the park. An environmental assessment evaluating placing the new lodge in the North Rim Inn Area along with no action and Upper Transept Canyon alternatives was circulated for public review in March, 1988.

The responsible official is Stanley Albright, Regional Director, Western Regional Office. The draft supplemental environmental statement is expected to be completed and available for public review by the end of 1989, and the final supplemental environmental impact statement and Record of Decision expected to be completed from five to six months after issuance of the draft statement.

Comments on the preparation of this environmental statement are invited and should be received no later than thirty (30) days from the date of publication of this Notice in the **Federal Register**. These comments and requests for further information should be addressed to: Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023, Telephone No. (602) 638–7888.

Dated: August 21, 1989.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 89–20669 Filed 8–31–89; 89:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Proposed Resources Management Plan for Elephant Butte and Caballo Reservoirs and Percha and Leasburg Diversion Dam Reservations, New Mexico

AGENCY: Bureau of Reclamation.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Bureau of Reclamation (Reclamation) proposes to prepare a draft environmental impact statement (DEIS) on the proposed Resources Management Plan (RMP) for Elephant Butte and Caballo Reservoirs and Percha and Leasburg Diversion Dam Reservations, New Mexico. The purpose of the proposed plan is to produce a written management document that will be used as a guide by Reclamation and other involved agency personnel in the allocation of resources and permitting appropriate uses of land and water. The plan will address: multiple uses, Reclamation's operation and maintenance on the Rio Grande below San Marcial, New Mexico, and other agency management functions as delegated through agreements with Reclamation. The DEIS will present an analysis of the impacts of various alternative management practices associated with the use of land and water resources at the four locations.

Reclamation will conduct scoping meetings via "open house" formats to inform the public about the management areas and the RMP process, and to have the public assist in scoping issues to be addressed in the RMP and the DEIS.

DATES: The scoping meetings will be held on September 18, 19, 20, and 21, 1989.

ADDRESSES: The scoping meeting open houses will be held at the following four locations and times:

September 18, 5:00 p.m. to 8:00 p.m., El Paso Center—Juarez Room, One Civic Center Plaza, El Paso, Texas;
September 19, 5:00 p.m. to 8:00 p.m., Corbett Center, New Mexico State University, Las Cruces, New Mexico;
September 20, 5:00 p.m. to 8:00 p.m., Truth or Consequences Convention Center, corner of McAdoo and Daniels, Truth or Consequences, New Mexico;
September 21, 5:00 p.m. to 8:00 p.m., Tampico-Cozumel Room, Holiday Inn, San Francisco Road NE., Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Shrader, Chief, Land and Environmental Branch, Rio Grande Project, U.S. Bureau of Reclamation, Federal Building (B–318), 700 East San Antonio, El Paso, Texas 79901; Telephone: (915) 534–6316; or Mr. Harold Sersland, Upper Colorado Regional Environmental Officer, U.S. Bureau of Reclamation, 125 South State Street, Salt Lake City, Utah 84138, Telephone: (801) 524–5580.

SUPPLEMENTARY INFORMATION: Reclamation has three NEPA documents that address operation and maintenance activities on the Rio Grande in New Mexico. The documents are: (1) 1977 Final Environmental Impact Statement, Operation and Maintenance Program for the Rio Grande—Velarde to Caballo Dam—Rio Grande and Middle Rio Grande Projects; (2) 1982 Final Environmental Assessment and Finding of No Significant Impact, Rio Grande Conveyance Rehabilitation, Operation and Maintenance Program, Elephant Butte Reservoir, New Mexico; and (3) 1985 Final Environmental Assessment and Finding of No Significant Impact, Rio Grande Channel Restoration, Operation and Maintenance Program, Elephant Butte Dam to Caballo Reservoir, Sierra County, New Mexico.

After the scoping meetings, the public will have an additional opportunity to comment individually and/or through a focus group composed or representatives of principal users and interest groups.

Anyone interested in more information concerning the study or who has suggestions as to significant environmental issues should contact Mr. Shrader or Mr. Sersland at the above addresses.

The DEIS is expected to be completed and available for review and comment by the end of 1991.

Dated: August 28, 1989.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 89–20623 Filed 8–31–89; 8:45 am]

BILLING CODE 4310–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on the list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics
Survey of displaced workers
CPS 1
Other—one-time survey, to be conducted as a special supplement to the January 1990 Current Population Survey.
Individuals or households
Survey universe is 57,000 household;
Respondents burden is estimated at approximately 1,450 hours;
Supplement will utilize available space on regular CPS questionnaire.

The Current Population Survey (CPS) is the monthly household survey that provides the basis data on the labor force, total employment, and unemployment. The special CPS supplement on displaced workers, proposed for January 1990, would provide data on the persons who lost jobs over the 1985–89 period due to plant closing, companies going out of business, or layoffs from which they were not recalled. A similar survey was conducted in January 1988 (1220–0104).

Extension

Employment Standards Administration
OFCCP Complaint Form
1215–0131; CC–4
On occasion
Individuals or households; 1,750 respondents; 2,030 total hours; 1.16 hrs. per response; 1 form.

These complaint forms are prepared by individuals who allege illegal discrimination by federal contractors under any of the three programs administered by OFCCP. These forms are received by OFCCP, reviewed for coverage, and where appropriate, assigned for investigation.

Extension

Employment and Training Administration

Quarterly Narrative Reports for Test Development Program
1205–0220
Quarterly
20 Respondents; 128 total hours; 1–5 hrs per respondent; no forms.

The Employment Service Reimbursable Grant, pursuant to Section 7(c) of the Wagner-Peyser Act, as amended, is one overall grant to the States to fund special responsibilities of the Secretary of Labor not specifically authorized under Sections 7 (a) & (b) of the Act, such as Test Development.

Signed at Washington, DC this 25th day of August, 1989.

Theresa O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 89–20656 Filed 8–31–89; 8:45 am]

BILLING CODE 4510–24–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted constructon projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3504, Washington, DC 20210.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I:

MD89–22, VA89–57, VA89–58, VA89–59, VA89–61, VA89–63, VA89–65

Volume II:

LA89–8, OH–34

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia, DC89–2 (Jan. 6, 1989)	p. 77. pp. 78–82.
Maryland:	
MD89–3 (Jan. 6, 1989)	p. 421. p. 422.
MD89–22 (Jan. 6, 1989)	p. 456i. pp. 456i–465j.
New York:	
NY89–4 (Jan. 6, 1989)	p. 709. p. 712.
NY89–5 (Jan. 6, 1989)	p. 717. p. 719.
NY89–10 (Jan. 6, 1989)	p. 769. p. 771.
NY89–11 (Jan. 6, 1989)	p. 781. pp. 782–783.
NY89–12 (Jan. 6, 1989)	p. 789. pp. 791–792.
NY89–15 (Jan. 6, 1989)	p. 811. pp. 812–813.
NY89–19 (Jan. 6, 1989)	p. 836c. pp. 836c–836h.
Virginia:	
VA89–5 (Jan. 6, 1989)	p. 1133. pp. 1134–1136.
VA89–12 (Jan. 6, 1989)	p. 1153. p. 1154.
VA89–15 (Jan. 6, 1989)	p. 1163. p. 1164.
VA89–25 (Jan. 6, 1989)	p. 1188a. p. 1188b.
VA89–27 (Jan. 6, 1989)	p. 1188g. p. 1188h.
VA89–28 (Jan. 6, 1989)	p. 1188i. p. 1188j.
VA89–29 (Jan. 6, 1989)	p. 1188k. p. 1188l.
VA89–44 (Jan. 6, 1989)	p. 1188qq. p. 1188rr.
VA89–46 (Jan. 6, 1989)	p. 1188uu. p. 1188vv.
VA89–47 (Jan. 6, 1989)	p. 1188ww. p. 1188xx.
VA89–50 (Jan. 6, 1989)	p. 1188ccc. p. 1188ddd.
VA89–51 (Jan. 6, 1989)	p. 1188eee. p. 1188fff.
VA89–55 (Jan. 6, 1989)	p. 1188mmm. p. 1188nnn.
VA89–57 (Jan. 6, 1989)	p. 1188sss. p. 1188ttt.
VA89–58 (Jan. 6, 1989)	p. 1188uuu. p. 1188vvv.
VA89–59 (Jan. 6, 1989)	p. 1188www. p. 1188xxx.
VA89–61 (Jan. 6, 1989)	p. 1188yyy. p. 1188zzz. p. 1188zzz–1. p. 1188zzz–2.
VA89–63 (Jan. 6, 1989)	p. 1188zzz–3. p. 1188zzz–4.
VA89–65 (Jan. 6, 1989)	p. 1188zzz–5. p. 1188zzz–6.

Volume II

Iowa, IA89–6 (Jan. 6, 1989)	p. 51. pp. 52–54.
Louisiana:	
LA89–5 (Jan. 6, 1989)	p. 397. p. 398.
LA89–8 (Jan. 6, 1989)	p. 426a. p. 426a–426b.
Minnesota:	
MN89–7 (Jan. 6, 1989)	p. 567. pp. 568–586.
MN89–15 (Jan. 6, 1989)	p. 617. pp. 618–626b.
New Mexico, NM89–1 (Jan. 6, 1989)	p. 743. pp. 744–760.
Ohio, OH89–34 (Jan. 6, 1989)	p. 912a. pp. 912a–912b.
Wisconsin:	
WI89–7 (Jan. 6, 1989)	p. 1161. p. 1162.
WI89–8 (Jan. 6, 1989)	p. 1165. pp. 1166–1167. pp. 1170–1171. pp. 1176–1177.
WI89–10 (Jan. 6, 1989)	p. 1187. pp. 1188–1194.

Volume III

Washington:	
WA89–1 (Jan. 6, 1989)	p. 363. pp. 364–369. pp. 373–374. pp. 376–377.
WA89–2 (Jan. 6, 1989)	p. 389. pp. 390–391. pp. 394–395.
WA89–3 (Jan. 6, 1989)	p. 401. pp. 402–408.
WA89–7 (Jan. 6, 1989)	p. 417. p. 418.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January (1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 25th day of August 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89–20636 Filed 8–31–89; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 211(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 11, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below not later than (10 days after public). September 11, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 21st day of August 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Alsten Co., Inc. (Workers)	Jersey City, NJ	8/21/89	7/11/89	23,283	Jewelry Boxes.
Calgon Corp. (OCAWIU)	Hawthorne, NJ	8/21/89	8/8/89	23,284	Chemicals.
Celsius Energy Co. (Workers)	Salt Lake City, UT	8/21/89	7/30/89	23,285	Oil & Gas.
Circuline Fabrics, Inc. (Company)	Brooklyn, NY	8/21/89	8/5/89	23,286	Men's & Ladies' Sweaters.
Drilling Mud Disposal (Workers)	Midland, TX	8/21/89	8/11/89	23,287	Mud Collectors.
Electro-Design (UAW)	Ferndale, MI	8/21/89	8/8/89	23,288	Wire Harness.
G.E. Lighting (Workers)	Troy, MI	8/21/89	8/9/89	23,289	Light Bulbs.
GNB/Pacific Dunlop (IBEW)	Dunmore, PA	8/21/89	8/10/89	23,290	Batteries.
General Electric, Co., Motor Business Dept. (UE)	Decatur, IN	8/21/89	8/9/89	23,291	Fractional Motors.
Grant Oil Tubular Corp. (Company)	Houston, TX	8/21/89	8/3/89	23,292	Steel Pipes.
Harris Graphics Corp. (IAMAW)	Pawcatuck, CT	8/21/89	8/7/89	23,293	Printing Presses
Knapp Shoe (Barber Div.) (Workers)	Lewiston, ME	8/21/89	8/9/89	23,294	Boots & Shoes.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Mobil Exploration & Producing Houston Div. (Workers).	Houston, TX	8/21/89	8/8/89	23,295	Oil & Gas.
Niki-Lu (Workers)	Hialeah, FL	8/21/89	8/9/89	23,296	Ladies' Sportswear.
Ottenheimer & Co. (Workers)	Vichy, MO	8/21/89	8/8/89	23,297	Lab Uniforms.
PPG Industries, Inc. Glass Research Center (Workers).	Pittsburgh, PA	8/21/89	8/8/89	23,298	Glass.
Pony Industries, Inc. (Workers)	Miami, FL	8/21/89	8/7/89	23,299	Aluminum Extrusions.
Sharidge, Inc. (Workers)	Ira, TX	8/21/89	8/8/89	23,300	Oil & Gas.
Sherwood Medical Co. (Workers)	Tucson, AZ	8/21/89	8/14/89	23,301	Medical Products.
Teledyne Exploration (Company and Workers)	Metairie, LA	8/21/89	7/26/89	23,302	Oil & Gas.
Teledyne Exploration (Company and Workers)	Houston, TX	8/21/89	7/28/89	23,303	Oil & Gas.
Texas Eastern Corp. (Company)	Houston, TX	8/21/89	8/7/89	23,304	Oil & Gas.

[FR Doc. 89-20654 Filed 8-31-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,584]

Kellwood Company Lonoke, AR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Kellwood Company, Lonoke, Arkansas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-22,584; Kellwood Company, Lonoke, Arkansas (August 21, 1989)

Signed at Washington, DC, this 24th day of August 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-20653 Filed 8-31-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-123-C]

Chapperal Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Chapperal Coal Corporation, 441 Marion Branch Road, Pikeville, Kentucky 41501, has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its No. 2 Mine (I.D. No. 15-08256) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of a fire within each belt flight.

2. As an alternate method, petitioner proposes to install a carbon monoxide (CO) system in lieu of a point-type system. The CO system would provide identification of a fire within an area rather than within each belt flight.

3. In support of this request petitioner states that—

(a) A CO sensor would be installed at every belt drive and at intervals not to exceed 2,000 feet along the belts. The CO sensors would be capable of giving an early warning of a fire automatically. An audible an visual signal would be activated should the CO concentration reach 10 parts per million (ppm) above ambient level;

(b) The CO systems would upon activation provide an effective warning signal at a manned location on the surface where there is two-way communication. The CO sensor would be capable of identifying any activated sensor. All persons, except those required to investigate and take appropriate action in the event of a fire in the belt entry, would be immediately withdrawn to a safe area;

(c) If the CO system is affected by a power interruption or other malfunction, the belt conveyors would continue to operate only if a qualified person would monitor for CO with a suitable instrument at each section loading point in the malfunctioning sensor;

(d) Each CO sensor would be visually examined at least once each week during production periods to ensure proper functioning. The monitoring system would be calibrated with known concentrations of CO and gas every six weeks; and

(e) The primary intake would be separated from the belt conveyor entry with permanent stoppings.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 2, 1989. Copies of the petition are available for inspection at that address.

Dated: August 24, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-20655 Filed 8-31-89; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Pension Portability of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., Friday, September 22, 1989, In Room N-3437, U.S. Department of Labor Building, Third and Contitution Avenue, NW., Washington, DC 20210.

This eight member group was formed by the Advisory Council to study issues relating to Pension Portability for employee welfare plans covered by ERISA.

Since enactment of ERISA in 1974, a viable resolution has not been found to the issue of short fall in pension entitlement from private sector defined Benefit Plans, due to breaks in employment throughout the normal working career. The lack of a workable "portability" concept to tie together deferred vested benefits and non-vested periods of service erodes ultimate retirement income for millions of employees who have worked an entire career for a series of employers in the same industry or different industries.

The purpose of the Pension Portability Work Group is to evaluate the alternatives to resolving this gap in the evolving National Retirment Income Policy and report its findings to the full ERISA Advisory Council.

The agenda for the first meeting will include the following:

I. Introduction of Work Group members
II. Chairperson's Opening Remarks
III. Discussion of Prior Portability Studies in Recent Proposed Legislation, and Current Administration Position on Issue
IV. Discussion of Scope of Study and Time Schedule of Findings
V. Establishing Dates of Future Meetings
VI. Public Witnesses Testimony
VII. Ajournment

The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before September 20, 1989 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. oral presentations wil be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 20, 1989.

Signed at Washington, DC this 28th day of August, 1989.

William E. Morrow,

Executive Secretary ERISA Advisory Council.

[FR Doc. 89-20652 Filed 8-31-89; 8:45am]

BILLING CODE 4510-29-M

LIBRARY OF CONGRESS

National Film Preservation Board; Public Meeting

AGENCY: Library of Congress, National Film Preservation Board.

ACTION: Notice of public meeting.

This notice is issued pursuant to Public Law 100-446, The National Film Preservation Act of 1988, 2 U.S.C. 178, by Dr. James H. Billington, the Librarian of Congress, to inform the public that the next meeting of the National Film Preservation Board will be held in Washington, DC at the Library of Congress on September 26, 1989 at 2 p.m. in the Jefferson Building, Whittall Pavilion (ground floor). The building is located at the corner of Independence Avenue and First Street, SE.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8350.

Dated: August 28, 1989.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 89-20671 Filed 8-31-89; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89-59)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Life Sciences Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee.

DATES: September 18, 1989, 9 a.m. to 5:15 p.m.; September 19, 1989, 8:30 a.m. to 2 p.m.

ADDRESSES: Holiday Inn Capitol, Lewis Room, 550 C Street SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald J. White, Code EB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1470).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Life Sciences Subcommittee provides advice to the Life Sciences Division concerning all of its programs in the space life sciences. The Subcommittee will meet to discuss the Life Sciences budget status, issues, implications for strategic planning, and activities of the SSAAC and the Aerospace Medicine Advisory Committee (AMAC). The Subcommittee is chaired by Dr. Francis J. Haddy and is composed of 17 members. The meeting will be closed on Tuesday, September 19, from 10:30 a.m. to 11:45 a.m. to discuss and evaluate qualifications of candidates being considered for membership on the Subcommittee. Such discussions would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the capacity of the room (approximately 45 including Subcommittee members).

Type of Meeting: Open—except for a closed session as noted in the agenda below.

Agenda:

Monday, September 18.

9 a.m.—Introduction and Chairman's Remarks.

9:15 a.m.—NASA and OSSA Status and Implications for Life Sciences.

10:15 a.m.—Life Sciences Budget Status, Issues, and Implications for Strategic Planning.

1:30 p.m.—Activities of the Space Science and Applications Advisory Committee (SSAAC) and the Aerospace Medicine Advisory Committee (AMAC).

2:15 p.m.—Life Sciences Division Reports.

5:15 p.m.—Adjourn.

Tuesday, September 19.

8:30 a.m.—Discussion of Committee Tasks and Functions.

10:30 a.m.—Closed Session.

1 p.m.—Committee Strategy and Actions.

2 p.m.—Adjourn.

Dated: August 25, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-20624 Filed 8-31-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Meeting

Name: Committee on Equal Opportunties in Science and Engineering.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Dates: October 18, 19, 20, 1989.

Times/Rooms: October 18: Subcommittee on Persons with Disabilities 9:00 a.m.—12:00 p.m., Room 540.

October 18: Subcommittee on Minorities 1:30 p.m.—4:30 p.m., Room 540.

October 19: Full Committee Meeting 9:00 a.m.—5:00 p.m., Room 540.

October 20: Subcommittee on Women 9:00 a.m.—12:00 p.m.

Type of Meeting: Open.

Contact: Mary M. Kohlerman, Executive Secretary of the CEOSE, National Science Foundation, Room 635. Telephone Number: 202–357–7066.

Purpose of Meeting: To provide advice to the Foundation on policies and activities to encourage full participation of groups currently underrepresented in scientific, engineering, professional and technical fields.

Minutes: May be obtained from the Executive Secretary at the above address.

Agenda: To review progress by the subcommittees, become familiar with successful intervention programs, and to meet with the Director and other NSF staff.

M. Rebecca Winkler,

Committee Management Officer.

8–29–89

[FR Doc. 89–20684 Filed 8–31–89; 8:45 am]

BILLING CODE 7555–01–M

Instructional Materials Development Panel Meeting

The National Science Foundation announces the following meeting:

Name: Instructional Materials Development Panel Meeting.

Date and Time: September 22, 1989, from 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 1800 G. St. NW., Washington, DC 20550. Room #1242.

Type of Meeting: Closed Meeting.

Contact Person: Alice J. Moses, National Science Foundation, 1800 G. St. NW., Washington, DC 20550, Instructional Materials Development, Room 635–A Phone (202) 357–7066.

Minutes: May be obtained from the Contract persons at the above address.

Purpose of Meeting: To attend Instructional Materials Development Panel and provide advice and recommendations concerning K–12 Math. Science and Technology education.

Agenda: To review end evaluate Instructional Materials Development proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety confidential including nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: August 29, 1989.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 89–20625 Filed 8–31–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Individual Plant Examination

AGENCY: Nuclear Regulatory Commission.

ACTION: Initation of the Individual Plant Examination for Severe Accident Vulnerabilities.

SUMMARY: This notice announces the availability of NUREG–1335, "Individual Plant Examination: Submittal Guidance," and initiation of the Individual Plant Examination (IPE) process. In accordance with Generic Letter No. 88–20, licensees are requested to submit within 60 days of this notice, their proposed programs for completing their IPEs. The proposed programs should be submitted to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555 and should:

1. Identify the method and approach selected for performing the IPE,
2. Describe the method to be used, if it has not been previously submitted for staff review (the description may be referenced), and
3. Identify the milestones and schedules for performing the IPE and submitting the results to the NRC.

A copy of the IPE submittal guidance (NUREG–1335) is available for inspection and/or copying in the NRC Public Document Room, 2120 L Street NW., Lower Level of the Gelman Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John H. Flack, Office of Nuclear Regularory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3979.

Dated in Rockville, Maryland this 28th day of August, 1989.

For the Nuclear Regulatory Commission.

R. Wayne Houston,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 89–20648 Filed 8–31–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–07099]

The Applied Radiant Energy Corp.; Issuance of Director's Decision Under 10 CFR Section 2.206

[License No. 45–11406–01]

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has taken action with regard to a Petition for action under 10 CFR 2.206 received from Ms. Kristen Albrecht, Research Coordinator, National Coalition to Stop Food Irradiation, dated March 23, 1989, with respect to The Applied Radiant Energy Corporation (ARECO). The Petitioner requested that a proceeding be instituted to suspend the use of cesium-137 sealed sources at the ARECO facility.

The Director of the Office of Nuclear Material Safety and Safeguards has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision under 10 CFR 2.206," (DD–89–6) which is available for public inspection in the Commission's Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC 20555. A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR Section 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland this 24th day of August, 1989.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89–20649 Filed 8–31–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–353]

Limerick Generating Station, Unit No. 2 Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF–85 to the Philadelphia Electric Company, (the licensee) which authorizes operation of the Limerick Generating Station, Unit No. 2 (the facility), by Philadelphia Electric Company at reactor core power levels of 3293 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan.

The Limerick Generating Station, Unit No. 2, is a boiling water nuclear reactor located on the licensee's site in Montgomery and Chester Counties, Pennsylvania on the banks of the Schuylkill River approximately 1.7 miles southeast of the city limits of Pottstown, Pennsylvania and 21 miles northwest of the city limits of Philadelphia, Pennsylvania.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on August 21, 1981 (46 FR 42557 through 42558).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemptions included in this license will have no significant impact on the environment (54 FR 15851), (54 FR 24607) and (54 FR 33298).

For Further details in respect to this action, see (1) Facility Operating License NPF-85 complete with Technical Specifications and the Environmental Protection Plan; (2) the final report of the Advisory Committee on Reactor Safeguards, dated May 11, 1989; (3) the Commission's Safety Evaluation Report, dated August 1983 (NUREG-0991), Supplements 1 through 9; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; (6) the Final Environmental Statement dated April 1984 (NUREG-0974); (7) the Atomic Safety and Licensing Board Decision, LBP–85–25, dated July 22, 1985; (8) the Commission's Order dated July 7, 1989, and (9) the Commission's Memorandum and Order dated August 25, 1989.

These items are available for public inspection at the Commission's Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC 20555, and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania, 19464. A copy of Facility Operating License NPF–85 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II. Copies of the Safety Evaluation Report and its Supplements 1 through 9 (NUREG–0991) and the Final Environmental Statement (NUREG–0974) may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 25th day of August 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

FR Doc. 89–20647 Filed 8–31–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and 5 CFR part 1320, we are announcing submission of our request to OMB for approval to extend the OMB clearance on the "Applicant's Statement of Selective Service Registration Status" which Federal job applicants must complete for agencies prior to appointment. Unless extended, use of the statement must terminate on October 31, 1989. By law, 5 U.S.C. 3328, agencies may not appoint non-registrants. Since the law is permanent, executive agencies will have a continuing need to obtain and review the information applicants provide in the statements to determine whether they have registered. (The text of the statement is published in our regulations on the Selective Service registration requirement at 5 CFR part 300, subpart G.) For jobs at OPM, we estimate about 500 applicants complete the statement annually. At .02 hours per statement, the public reporting burden is 10 hours. Governmentwide, we estimate about 150,000 applicants complete the statement, for a total public reporting burden of 3,000 hours. For copies of the statement, call Grace W. Butler, on (202) 632–0259.

COMMENT DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESS: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415.

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3201, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, (202) 653–9407.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 89–20650 Filed 8–31–89; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Docket No. A89–14; Order No. 841]

Flomot, Texas 79234 (G.D. Pope, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued August 29, 1989.

Before Commissioners; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc, III; Patti Birge Tyson.

Docket Number: A89–14

Name of Affected Post Office: Flomot, Texas 79234

Name(s) of Petitioner(s): G.D. Pope

Type of Determination: Consolidation

Date of Filing of Appeal Papers: August 24, 1989

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on Postal Service employees [39 U.S.C. 404(b)(2)(B)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before September 8, 1989.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appendix

August 14, 1989: Filing of petition.

August 29, 1989: Notice and order of filing of appeal.

September 18, 1989: Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

September 28, 1989: Petitioners' participant statement or initial brief [*see* 39 CFR 3001.115(a) and (b)].

October 18, 1989: Postal service answering brief [*see* 39 CFR 3001.115(c)].

November 2, 1989: Petitioners' reply brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

November 9, 1989: Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

December 11, 1989: Expiration of 120-day decisional schedule [*see* 39 CFR 404(b)(5)].

[FR Doc. 89–20666 Filed 8–31–89; 8:45 am]

BILLING CODE 7710-FW-M

[Docket No. A89–13; Order No. 840]

Swan Lake, Mississippi 38958 (William Gay Flautt, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. Sec. 404(b)(5)

Issued August 29, 1989

Before Commissioners: Henry R. Folsom, Vice-Chairman; John W. Crutcher; W. H. "Trey" LeBlanc III; Patti Birge Tyson.

Docket Number: A89–13

Name of Affected Post Office: Swan Lake, Mississippi 38958

Name(s) of Petitioner(s): William Gay Flautt

Type of Determination: Consolidation

Date of Filing of Appeal Papers: August 17, 1989

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)]
2. Economic savings [39 U.S.C. 404(b)(2)(D)]

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before September 1, 1989.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

August 17, 1989: Filing of Petition

August 28, 1989: Notice and Order of Filing of Appeal

September 11, 1989: Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)]

September 21, 1989: Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)]

October 11, 1989: Postal Service Answering Brief [*see* 39 CFR 3001.115(c)]

October 26, 1989: Petitioner's Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)]

November 2, 1989: Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116]

December 15, 1989: Expiration of 120-day decisional schedule [*see* 39 U.S.C. § 404(b)(5)]

[FR Doc. 89–20667 Filed 8–31–89; 8:45 am]

BILLING CODE 7710-FW-M

DEPARTMENT OF STATE

[Public Notice CM–8/1301]

Secretary of State's Advisory Committee on Private International Law; Study Group on International Trade Documentation; Meeting

The Study Group on International Trade Documentation will hold its second meeting at 10:00 a.m. on Monday, September 18, 1989 in New York at the Fordham University School of Law, Faculty Reading Room, 140 West 62d Street, New York, NY. The Study Group carries out its functions as part of the Secretary of State's Advisory Committee on Private International Law.

The meeting agenda will include (a) possible U.S. positions on the scope and content of a proposed model law on international letters of credit to be prepared by the United Nations Commission on International Trade Law (UNCITRAL) and (b) a review of proposed final rules on guarantees to be issued by the International Chamber of Commerce.

The meeting will cover the impact of the proposed rules on letter of credit law in the United States, and will cover other issues for possible inclusion in a model national law such as non-documentary conditions, defenses, party autonomy and jurisdiction. The Study Group will take into account recent studies on Articles 5 of the Uniform Commerical Code.

Information on the UNCITRAL project and the proposed ICC rules are set forth in several Reports prepared by the UNCITRAL Secretariat on Stand-By Letters of Credit and Guarantees—United Nations Docs. A/CN.9/301, March 21, 1988; A/CN.9/WG.II/WP.63, September 16, 1988, and A/CN.9/316, December 12, 1988. Copies of the Reports and the proposed final uniform ICC Rules may be requested by writing Harold S. Burman at the Office of the Legal Adviser, L/PIL, Room 402, 2100 "K" Street NW., Washington DC 20037-7180, by FAX to (202) 632–5283, or by calling direct to (202) 653–9852.

Members of the general public may attend the meeting up to the capacity of the meeting room. As access to the meeting room is controlled, the office indicated above should be notified not later than Wednesday, September 13, 1989 of the name, affiliation, address and phone number of persons wishing to attend. For additional information, please contact the office indicated above.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 89–20604 Filed 8–31–89; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 25, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each aplication. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46459

Date filed: August 21, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1989.

Description:

Joint Application of Midway Airlines, Inc., Eastern Air Lines, Inc., and Continental Airlines, Inc. request the Department to approve, pursuant to section 401(a) and 401(h) of the Act, and Subpart Q of the Regulations requests (a) the amendment of two route certicates of Eastern and Continental so as to delete their Philadephia-Toronto/Montreal nonstop authority and (b) the transfer of such foreign route authority to an new certificate issued in the name of "Midway Airlines, Inc."

Docket No. 46463

Date Filed: August 23, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 1, 1989.

Description:

Application of Continental Airlines, Inc., pursuant to Order 89–8–8, requests a certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail between Honolulu, Hawaii, on the one hand, and Tokyo, Japan on the other.

Docket No. 46466

Date Filed: August 24, 1989.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 1, 1989.

Description:

Application of Hawaiian Airlines, Inc. pursuant to Order 89–8–8, requests a certificate of public convenience and necessity to authorize non-stop scheduled foreign air transportation of persons, property and mail between Honolulu, Hawaii and Nagoya, Japan.

Docket No. 46463

Date Filed: August 25, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 1, 1989.

Description:

Application of Trans World Airlines, Inc. pursuant to Order 89–8–8 and Section 401 of the Act applies for a certificate of public convenience and necessity to permit TWA to provide air transportation services between Honolulu, Hawaii, on the one hand, and Tokyo-Japan, on the other.

Docket No. 46266

Date Filed: August 21, 1989

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 18, 1989.

Description:

Fourth Amended Application of Servicios De Transportes Aereos Fueguinos, S. A., pursuant to Section 402 and the Act and Subpart Q of the Regulations requests that it be granted a foreign air carrier permit.

Docket No. 46472

Date Filed: August 25, 1989

Due Date for Answers, Conforming Applications, or Motion of Modify Scope: September 22, 1989.

Description:

Application of USAir, Inc. pursuant to section 401 of the Act and Subpart Q of the Act applies for a certificate of public convenience and necessity so as to authorize nonstop air service between Baltimore/Washington, on the one hand, and Ottawa, Ontario, and Montreal, Quebec, Canada, on the other hand.

Docket No. 45390

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 19, 1989.

Description:

Amendment No. 1 to the Application of Alaska Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations requests that it be issued a certificate of public convenience and necessity authorizing Alaska to engage in scheduled foreign air transportation betwen Anchorage and Nome, Alaska and Magadan, Khabarovsk and Provideniya, U.S.S.R.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89–20642 Filed 8–31–89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Life Preservers; Availability of Technical Standard

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The draft TSO–C13f prescribes the minimum performance standards that life preservers must meet in order to be identified with the TSO marking "TSO–C13f."

DATE: Comments must identify the TSO file number and be received on or before October 30, 1989.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, File No. TSO–C13f, Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591

OR DELIVER COMMENTS TO: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interest persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

TSO–C13f is essentially identical to TSO–C13e except for the establishment of the new infant-small child category for life preservers and the deletion of the current infant category. The infant-small child category life preserver is for use by persons weighing up to 35 pounds and must prevent contact of the wearer's upper torso (i.e., from the waist up) with the water. For the establishment of the new life preserver category, changes are made in paragraph (b)(2) of the TSO and in the following paragraphs of Appendix 1, "Federal Aviation Administration Standard for Life Preservers," of the TSO: Paragraphs 2, 4.1.4.1, 4.1.4.3, 4.1.5, 4.1.8, 4.19, 4.1.10, 4.1.11, 4.1.12.2, 4.1.12,3, 4.2.2, and 5.7. Paragraph (d), Previously Approved Equipment, is revised to incorporate a change previously announced in the March 3, 1988, **Federal Register**. An editorial change is made in paragraph (e)(2) of the TSO.

How To Obtain Copies

A copy of the proposed draft TSO may be obtained by contacting the person under "For Further Information Contact." Federal Test Method Standard No. 191A may be examined at any FAA Aircraft Certification Office, and may be obtained (or purchased) from the General Services Administration, Business Service Center, Region 3, 7th and D Streets, SW., Washington, DC 20407.

Issued in Washington, DC, on August 28, 1989.

John K. McGrath,

Acting Manager, Aircraft Engineering Division Aircraft Certification Service.

[FR Doc. 89–20620 Filed 8–31–89; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP 88–04, Notice 2]

Chrysler Corp., Withdrawal of Petition for Determination of Inconsequential Noncompliance

On October 26, 1988, Chrysler Corporation of Detroit, Michigan, petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.100, Federal Motor Vehicle Safety Standard No. 100, "Controls and Displays." Chrysler had failed to provide horn symbols on more than 120,000 1988 Plymouth Horizon and Dodge Omni passenger cars. The basis of the petition was that the noncompliance was inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on December 14, 1988, and an opportunity afforded for comment (53 FR 50348). Subsequently, Chrysler informed the agency that it would perform notification and remedial action by notifying all owners of the affected vehicles of the horn location, and urge that the notification be placed in the operator's manual for reference by future drivers. It asked NHTSA to "void" its inconsequentiality petition. NHTSA interprets this as a request for withdrawal of the petition, and therefore the agency will take no further action on it.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 29, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89–20601 Filed 8–31–89; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. EX89–4; Notice 1]

Isis Imports Ltd.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Isis Imports, Ltd., of San Francisco, Calif., has petitioned for a temporary exemption from the passive restraint requirements of Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems*. The basis of the petition is that compliance would cause substantial economic hardship.

This notice of receipt of the petition is published in accordance with the regulations of the National Highway Traffic Safety Administration (49 CFR part 555) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

The brand of motor vehicle for which exemption is requested is the Morgan open car, or convertible. The British manufacturer of the Morgan has not offered its vehicle for sale in the United States since the early days of the Federal motor vehicle safety standards. In recent years, however, a small number of Morgan cars have been sold in the United States by Isis Imports. They differ from their British counterparts, not only in modifications necessary for compliance with the Federal motor vehicle safety standards, but also in their engines, which are propane fueled. Isis imports as motor vehicle equipment the individual components of the Morgan other than the engine, assembles them in the United States, adds the propane engine, and as the manufacturer of the vehicle, certifies its conformance to all applicable Federal safety and bumper standards. This has been a long-standing practice, and acceptable to NHTSA. In contrast to this is the practice of concern to NHTSA (see 54 FR 17775) in which all parts necessary to the vehicle, including its engine, are imported separately as motor vehicle equipment for subsequent assembly, in an attempt to avoid importation bond and NHTSA compliance procedures applicable to fully assembled nonconforming motor vehicles. The vehicle assembled by Isis in the U.S. is deemed sufficiently different from the one produced by Morgan in Britain that Isis may be regarded as its manufacturer, not its converter, even though the brand names are the same.

Isis assembled 11 Morgans for sale in the U.S. in the 12-month period preceding the filing of its petition. It argues that compliance with the passive restraint requirements of Standard No. 208 will cause it substantial economic hardship, and that it has in good faith attempted to comply with the standard. It asks for a 3-year exemption from the requirements, during which time it will continue to provide protection through its current three-point lap-shoulder belt system.

Preliminary, NHTSA notes that the passive restraint requirements have become effective for 100% of passenger car production, as of September 1, 1989, through a 3-year phase-in period during which convertibles such as petitioner's car, were exempted from compliance. On March 30, 1987, the agency published a notice announcing that it had reexamined the question of automatic restraint requirements for convertibles, and that it had concluded that it was reasonable and practicable for convertibles to meet these requirements as of September 1, 1989 (52 FR 10122). Two comments for reconsideration of the requirement were filed, one by Isis. It commented that the necessary automatic restraint components would not be available through its normal commercial channels until a considerable period of time after the major manufacturers' vehicles were equipped with automatic restraints. The agency denied these petitions on April

27, 1988 (53 FR 15087), on the basis that insufficient evidence had been submitted to show that automatic restraint systems could not be installed in vehicles that were not originally equipped with such systems. The denial was published approximately 16 months before the effective date of September 1, 1989.

In the 15 months since the denial, Isis has pursued several avenues of compliance, discussed in greater detail in its petition. Its initial interest was acquisition of an air bag system, but it found insufficient information available in the U.S. as to whether Chrysler's system would be suitable for its car. Because NHTSA's notice of denial had mentioned the automatic restraint system on Alfa Romeo convertibles as a viable and practicable method of compliance, Morgan on behalf of Isis contacted Autoliv, "U.K. agents for the Electrolux 2-point motorized belt system used in the Alfa." Although Autoliv submitted a proposal for installation of the Alfa system, it expressed reservations about the space available for its installation and the maintenance of rail form and reliability with vehicle movement over uneven surfaces. Morgan had contacted the Motor Industry Research Association (MIRA), which submitted a proposal late in March 1989, for development of an airbag system. In July 1989 the development costs of such a system were judged too high to be feasible, and MIRA's efforts then turned towards an automatic belt restraint system. Petitioner believes it can financially meet the MIRA development costs spread over a 3-year period, whereas a more immediate compliance (18 months) through the Autoliv system could not be amortized through a retail price increase in a volume of 11 cars without creating substantial financial hardship. Petitioner had a net loss exceeding $63,000 in 1988, and a cumulative net loss exceeding $60,000 for its last four tax years.

New car sales generate 90% of the petitioner's income, so that a denial of the petition would force it "to cease doing business". Sales of spare parts and service would be inadequate to fund development of a passive restraint system without new car sales. Isis argues that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act, because its vehicles contribute to the alternative fuel industry. Continued availability of the Morgan will help to maintain the existing diversity of motor vehicles in the United States. The small number of vehicles likely to be covered by the exemption, and the limited use that is made of them as second or third vehicles will have an immaterial effect upon motor vehicle safety.

Interested persons are invited to comment on the petition of Isis described above. Comments should refer to the docket number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The petition and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will be considered to the extent practicable. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 2, 1989.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8

Issued on: August 25, 1989.

Ralph J. Hitchcock,

Acting Associate Administrator for Rulemaking.

[FR Doc. 89–20602 Filed 8–31–89; 8:45 am]

BILLING CODE 4910-59-M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement for South Oak Cliff Corridor Transit Improvements in Dallas, TX

AGENCY: Urban Mass Transportation Administration, USDOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Urban Mass Transportation Administration (UMTA) and Dallas Area Rapid Transit (DART) are undertaking the preparation of an Environmental Impact Statement (EIS) for transit improvements in the South Oak Cliff Corridor of Dallas. The EIS is being prepared in conformance with 40 CFR Parts 1500–1508, Council on Environmental Quality, *Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969 (as amended);* and 49 CFR Part 622, Urban Mass Transportation Administration, *Environmental Impact and Related Procedures.* In addition, in conformance with the Urban Mass Transportation Act and UMTA policy, the Draft EIS will be prepared in conjunction with an Alternatives Analysis, and the Final EIS in conjunction with Preliminary Engineering.

FOR FURTHER INFORMATION CONTACT:

Ms. Peggy Crist, UMTA Region VI, 819 Taylor Street, Suite 9A–32, Fort Worth, Texas 76102; telephone (817) 334–3787,

or

Mr. Doug Allen, Dallas Area Rapid Transit, 601 Pacific Avenue, Dallas, Texas 75202; telephone (214) 658–6297

SUPPLEMENTARY INFORMATION:

Scoping

Members of the public and affected Federal, State of Texas, and local agencies are invited to comment on all aspects of the study scope. Comments on the appropriateness of the alternatives and impact issues listed in this notice are encouraged. Specific suggestions on additional alternatives to be examined and issues to be addressed are welcome and will be given serious consideration in developing the final study scope.

Additional information on the EIS process, alternatives, and environmental impact issues to be addressed by the study is contained in a "Scoping Information" document. Copies have been sent to affected Federal, State and local government agencies and interested parties on record, and are available from the DART contact listed above.

Scoping meetings will be held on the dates, times, and places indicated below.

Day/date/time and location:

1. Monday, September 18, 1989, 7:00 p.m.—Rodger Q. Mills Elementary School Auditorium, 1515 Lynn Haven
2. Tuesday, September 19, 1989, 7:00 p.m.—B.F. Darrell Intermediate School, 4730 S. Lancaster Road
3. Thursday, September 21, 1989, 3:00 p.m.—DART Board Room, 7th Floor, 601 Pacific Avenue
4. Monday, September 25, 1989, 6:30 p.m.—Sears Community Room, 1409 S. Lamar Street

These meetings are not formal public hearings. Public hearings will be held after the Draft EIS is completed. DART staff will be present to describe project alternatives, answer questions and receive comments.

Scoping comments may be made either orally at the scoping meetings or in writing up to ten (10) days after the last meeting. General comments are welcome at any time throughout the study.

BEST COPY AVAILABLE

Statement of the Problem

Within the South Oak Cliff Corridor, local bus service on surface streets is the only transit service currently available for a population that:

- Is heavily dependent on transit. In the South Oak Cliff Corridor, there is greater use per capita of the existing DART bus system than in any other corridor in the City of Dallas.
- Has a low number of nearby job opportunities relative to the City of Dallas as a whole, and therefore South Oak Cliff workers travel farther to work than the average Dallas worker.
- Must use congested Trinity River crossings and congested Dallas Central Business District (CBD) streets and highways to reach their jobs and other attractions in a majority of cases.

Improved transit services will reduce travel times and thus increase the availability of opportunities for South Oak Cliff residents elsewhere in the DART Service Area, including job, education, medical, shopping, and cultural opportunities. Improved transit service will also provide opportunities for economic development in the Corrdior.

Corridor Description

The South Oak Cliff Corridor is a major travel corridor entirely within the Dallas city limits. The Corridor encompasses the Dallas CBD and that portion of southern Dallas bounded by U.S. 67 (R.L. Thornton Freeway and Marvn D. Love Freeway) on the west, the Dallas CBD on the north, I–45 (Julius Schepps Freeway) on the east, and the DART Service Area boundary which is generally along I–635 (Lyndon B. Johnson Freeway), on the south.

Linear public utility and railroad rights-of-way passing through the Corridor provide opportunities for new transit guideway without the high cost of tunneling or the disruption of assembling a new right-of-way in an urbanized area.

Alternatives

Transportation alternatives proposed for consideration in the Corridor are as follows:

- *No-Build.* Maintenance of transit service at levels commensurate with growth in the Corridor, including implementation of already programmed transportation improvements.
- *Transportation System Management (TSM) Alternative.* Enhanced bus service and facilities improvements without investing in a new fixed guideway. Improvements include rationalization of bus routes and frequencies, high occupancy vehicle (HOV) lanes on existing streets, signal timing improvements, bus park-and-ride and transfer centers and other low cost bus improvements.
- *Light Rail Transit (LRT) Alternative.* Standard light rail transit (LRT) with grade separations where warranted, stations with rider amenities, and standard 150–180 passenger capacity vehicles.

LRT Alignment Alternatives

Various DART LRT alignment studies during 1987 and 1988 suggest that the analysis should focus outside the Dallas CBD on an alignment that leaves the Dallas Railroad Right-of-Way District near I–30 (R.L. Thornton Freeway) and continues southeast along the Atchison, Topeka & Santa Fe Railroad Company (ATSF RR) City Branch right-of-way. This alignment then curves southwest and crosses the Trinity River adjacent to the ATSF RR right-of-way. South of the Trinity River, the alignment turns south off the ATSF RR right-of-way, and follows a high-tension power line right-of-way to Illinois Avenue. The alignment parallels Denley Drive, and then crosses Illinois Avenue and runs along the east side of Lancaster Road; near Ledbetter Drive it crosses to the west side of Lancaster Road and ends at Camp Wisdom Road (called Simpson Stuart Road on the east side of Lancaster Road).

This alignment is basically the alignment shown in DART's August 1986 Service Plan. It also reflects a preferred Trinity River crossing (Service Plan crossing) that was selected by the DART Board on September 8, 1987 following a 1987 Trinity River crossing refinement study and public hearings. It reflects a preferred alignment (East Lancaster) south of Illinois Avenue that was selected by the DART Board on May 10, 1988 following a 1988 study of an alignment south of Illinois Avenue. DART will reevaluate this alignment in the EIS.

Within the Dallas CBD, the 1989 System Plan suggests that the solution should focus on a surface Transitway Mall along Pacific Avenue and Bryan Street with improved pedestrian spaces and maintenance of necessary local building access for parking and deliveries. DART proposes to further evaluate this alignment in the EIS, as well as a surface treatment along Griffin Street to Elm Street to Harwood Street to Bryan Street. The Pacific/Bryan alignment crosses R.L. Thornton Freeway at the ATSF RR City Branch bridge and bends west to enter the railroad right-of-way behind Union Station. It then turns onto Pacific Avenue within the West End Historic District. It turns onto Bryan Street at its intersection with Pacific Avenue. This segment is generally at grade. For the South Oak Cliff AA/DEIS, the project ends in the vicinity of the North Central Expressway. DART has future plans to connect a locally funded North Central Corridor rapid transit line to the Transitway Mall at this point.

The Griffin/Elm/Harwood/Bryan alternative crosses R.L. Thornton Freeway just south of Griffin Street and bends north to follow Griffin Street. The number of traffic lanes on Griffin would be reduced to accommodate the transit tracks.

The alignment turns east at Elm Street. It continues on Elm Street as a Transitway Mall. At Harwood Street the alignment turns north and follows one side of the Harwood Street right-of-way. The alignment then turns east onto Bryan Street and continues as a Transitway Mall. It ends in the vicinity of the North Central Expressway where it would connect to the locally funded North Central Corridor transit line.

Comments are welcome and encouraged on the appropriateness of the alternatives listed above. Specific suggestions for additional alignment alternatives are also encouraged. All comments and suggestions will be given serious consideration in the compilation of a final set of alternatives for analysis.

Potential Impacts for Analysis

The potential impact issues proposed for analysis are:

- Transportation service changes, including transit cost, service, and patronage changes, and financial implications; the effect on traffic movement and railroad operations.
- Community impacts, including land use changes and zoning compatibility, neighborhood disruption, local and regional economic change, aesthetics, and utility relocation.
- Cultural resource impacts, including effects on historic, archeological, and park resources.
- Natural resource impacts, including air quality, noise and vibration, removal of preexisting hazardous waste, and effects on water resources and quality, natural features, and ecosystems.

The proposed impact assessment and its evaluation criteria will take into account both positive and negative impacts, direct and indirect impacts, short-term (construction) and long-term impacts, and site-specific and corridor-wide impacts. Evaluation criteria will be consistent with the applicable Federal, State of Texas, and local standards, criteria, regulations, and policies. Mitigation measures will be explored for any adverse impacts that are identified as part of the analysis.

Comments are welcome and encouraged on the completeness of the list of issues to be addressed. Descriptions of site-specific issues also are encouraged. The planned on-going public involvement program also will provide numerous opportunities for the presentation of additional site-specific issues as the alternatives are detailed and their analysis progresses.

Issued on: August 25, 1989

Lee Waddleton,

Midwestern Area Director.

[FR Doc. 89–20641 Filed 8–31–89; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Dept. Circular—Public Debt Series—No. 24–89]

Treasury Notes, Series AD–1991

Washington, August 23, 1989.

The Secretary announced on August 22, 1989, that the interest rate on the notes designated Series AD–1991, described in Department Circular—Public Debt Series—No. 24–89 dated August 17, 1989, will be 8¼ percent. Interest on the notes will be payable at the rate of 8¼ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89–20559 Filed 8–31–89; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Dept., Circular—Public Debt Series—No. 25–89]

Treasury Notes, Series L–1994

Washington, August 24, 1989.

The Secretary announced on August 23, 1989, that the interest rate on the notes designated Series L–1994, described in Department Circular—Public Debt Series—No. 25–89 dated August 17, 1989, will be 8¼ percent. Interest on the notes will be payable at the rate of 8¼ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89–20560 Filed 8–31–89; 8:45 am]

BILLING CODE 4810-40-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Investment Policy Advisory Committee Services Policy Advisory Committee; Meetings and Determination of Closing of Meetings

The meetings of the Investment Policy Advisory Committee to be held September 13, 1989 from 7:45 a.m. to 9:00 a.m., in Geneva, Switzerland, the Services Policy Advisory Committee to be held September 25, 1989 from 9:30 a.m. to 11:30 a.m., in Washington, DC, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Additional information can be obtained by contacting Yvonne Beeler, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 89–20663 Filed 8–31–89; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 169
Friday, September 1, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION:

NOTICE OF AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, September 5, 1989, to consider a memorandum and resolution proposing the adoption of final amendments to part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments, in response to the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, would: (1) Extend the Corporation's assessment procedures to cover savings associations, and (2) provide a mechanism for funding the Financing Corporation ("FICO") through the end of 1989.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation at (202) 898–3813.

Dated: August 29, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–20710 Filed 8–29–89; 4:55 pm]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 am—September 6, 1989.

PLACE: Hearing Room One—1100 L Street, N.W., Washington, D.C. 20573–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Investigation of Shipping Practices—Martyn Merritt, AMG Service, Inc., Oasis Express Line, Javelin Line, Trans Africa Line, Coast Container Line, Buccaneer Line and Union Exportadora Lines.

2. Docket No. 87–24—Foreign-to-Foreign Agreements—Exemption—Petitions for Reconsideration.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 89–20709 Filed 8–29–89; 4:55 pm]

BILLING CODE 6730-01-M

U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

White House Conference Advisory Committee

DATE AND TIME: Sept. 20 and 21, 1989.

PLACE: Embassy Suites Hotel, 1250 22nd Street, NW, Wine Room, Washington, DC 20037.

STATUS:

Sept. 20, 1989, 1:30 p.m.–9:00 p.m., Open
Sept. 21, 1989, 9:00 p.m.–3:30 p.m., Open

MATTERS TO BE DISCUSSED:

Comments by Secretary of Education—Lauro F. Cavazos
White House Conference on Library and Information Services (WHCLIS)
Advisory Committee
Subcommittee Reports:
- —WHCLIS Resources
- —WHCLIS Structure
- —Preconference Activities
- —Public Relations and Awareness
- —Public and Private Sector Liaisons
- —Delegate Selection

Compliance regarding ethical conduct and conflicts of interest
Propose logo
Executive Director search
Report on WHCLIST meeting
Report on State support package
Consider a planning project on objectives and goals of WHCLIS
Statistics for WHCLIS
Public Comment
WHCLIS newsletter
Report on responses to the Governor's letter
Consider having exhibitors at WHCLIS conference
Internal administrative items

Persons appearing before, or submitting only written statements to, the Advisory Committee are asked to hand over to the Committee prior to presenting testimony, 50 copies of their prepared statement. This will insure that ample copies are available for the members of the Advisory Committee, the attending press and the observers.

Special provisions will be made for handicapped individuals by contacting John W.A. Parsons 1 (202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: John W.A. Parsons, White House Conference, Special Assistant, 1111 18th Street, NW, Suite 302, Washington, DC 20036, 1 (202) 254–3100.

Dates: August 29, 1989.

John W.A. Parsons,

White House Conference Special Assistant.

White House Conference Advisory Committee—Meeting Agenda

September 20 & 21, 1989

Embassy Suites Hotel—Wine Room, 1250 22nd Street, NW., Washington, D.C. 20037

1:30–1:35

Welcome—Introduction of Advisory Committee, Members, and Guests

1:35–1:55

Comments by Secretary of Education—Lauro F. Cavazos

1:55–2:00

Approval of August 31, 1989 minutes

2:00–2:20

Subcommittee Reports: WHCLIS Resources
—Chairman, Mahoney

2:20–2:50

WHCLIS Structure
—Chairman, Richard Akeryod, Jr.
Review of report submitted on August 3, 1989

2:50–3:10

Preconference Activities
—Chairman, James C. Roberts

3:30–3:50

Public and Private Sector Liaisons
—Chairman, Joseph Fitzsimmons

3:50–4:00

Break

4:00–4:30

Delegate Selection
—Chairman, Bill Asp

4:30–5:00

Presentation of information on ethical conduct and conflicts of interest—Joan DeLise
From Dept. of Ed., Office of General Counsel

5:00–5:45

Individual ID pictures, card preparation for WHCAC
Exhibit of proposed logo & stationary
Exhibit of proposed design for calling cards for WHCAC members and Staff

5:45–6:15

Break before working dinner

6:15–7:45

Working Dinner
- —Discussion—Logo
- —Discussion—Stationery
- —Discussion-Calling card

7:45–8:00

Presentation of status of Executive Director search and screening and status of WHCLIS staffing

8:00–8:30

Report on WHCLIST Aug. 17–19, 1989 Meeting in Portland, Oregon by Ed Gleaves

8:30–9:00

Report on agreements with the Federal support for the States and Territories by Frank Stevens

9:00

Adjourn

Thursday, Sept. 21, 1989

9:00–9:40

Presentation of role of statistics related to WHCLIS—John Lorenz & Larry LaMoure

9:40–10:00

Consider sole-source procurement for purpose of a planning project on objectives and goals of WHCLIS

10:00–10:10

Break

10:10–11:00

Guests, written comments, questions, and dialogue

11:00–11:10

Should WHCLIS consider a monthly newsletter; Distribution of newsletter
- (a) State Librarians
- (b) Members of WHCLIST
- (c) Governor's letter distribution list

11:10–11:25

Report on responses of Governor's letter of August 25, 1989

11:25–12:00

Consideration of commerical venders for profit as exhibitors at WHCLIS. Should WHCLIS encourage planning consultants to plan and run exhibits?

12:00–1:30

Working lunch
- (a) Report by individual WHCAC members on State activities regarding WHCLIS

1:30–1:40

Report on new WHCLIS staff's space and phone service

1:40–1:50

Progress on WHCAC and procedures manual

1:50–2:10

Break

2:10–2:40

Status report on administrative items
- (a) Appointment affidavit forms
- (b) Confidential Statement of Employment and Financial Interest (ED form EP3)
- (c) Signature of form on Ethical Conduct
- (d) Travel forms
- (e) Other additional forms by John W.A. Parsons, White House Conference Special Assistant

2:40–3:00

Old business

3:00–3:20

New business

3:20–3:30

WHCAC—Chairman's summary remarks, Daniel H. Carter

3:30

Set next meeting date and adjourn

[FR Doc. 89–20707 Filed 8–29–89; 4:21 pm]

BILLING CODE 7527-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Thursday, September 7, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Central Liquidity Facility Lines of Credit for FY 1990. Closed pursuant to exemptions (4) and (9)(A)(ii).
3. Appeal of Regional Director's Approval of FOM Amendment. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Appeal of Regional Director's Decision on Merger Bid. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Administrative Action under Sections 116 and 208 of the FCU Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
6. Administrative Actions under Section 206 of the FCU Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
7. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89–20760 Filed 8–30–89; 8:45 am]

BILLING CODE 7535-01-M

RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on September 7, 1989, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Moving Expense Reimbursement.

(2) Regulations—Parts 202 and 301. Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.

(3) Regulations—Part 203, Employees Under the Act.

(4) Regulations—Part 212, Military Service.

(5) Regulations—Part 216, Eligibility for an Annuity.

(6) Regulations—Part 255, Recovery of Overpayments.

Portion Closed to the Public

(A) Appeal from Referee's Denial of Disability Annuity, Kenneth R. Finnission.

(B) Appeal of Nonwaiver of Overpayment, Charles Motkowski.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 386–4920.

Dated: August 29, 1989.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–20749 Filed 8–30–89; 2:33 pm]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 5, 1989.

A closed meeting will be held on Wednesday, September 6, 1989, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (4), (8), (9)(i), and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, September 6, 1989, at 2:30 p.m., will be:

Regulatory matter regarding financial institution.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive action.

Institution of administrative proceedings of an enforcement nature.

Discussion of enforcement matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Hirsch at (202) 272–2100.

Dated: August 29, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20620 Filed 8–30–89; 3:49 pm]

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federal register

Friday
September 1, 1989

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System for Fiscal Year 1990 Rates; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BPD-630-F]

RIN 0938-AE02

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1990 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are revising the Medicare inpatient hospital prospective payment system to implement necessary changes arising from legislation and our continuing experience with the system. In addition, in the addendum to this final rule, we describe changes in the amounts and factors necessary to determine prospective payment rates for Medicare inpatient hospital services. In general, these changes are applicable to discharges occurring on or after October 1, 1989. We also set forth the rate-of-increase limits for hospitals and hospital units excluded from the prospective payment system.

EFFECTIVE DATE: This final rule is effective on October 1, 1989, except for 42 CFR 412.116, which is effective September 1, 1989.

FOR FURTHER INFORMATION CONTACT:

John Eppinger—Cancer Hospitals (301) 966–4516.

Linda McKenna—Interim Payment for Usually Long Lengths of Stay (301) 966–4530.

Barbara Wynn—All Other Issues (301) 966–4529.

ADDRESSES: To obtain individual copies of this document, contact the following:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

The charge for individual copies is $1.50 for each issue or for each group of pages as actually bound, payable by check or money order to the Superintendent of Documents.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), a system of payment for acute care inpatient hospital stays under Medicare Part A (Hospital Insurance) based on prospectively-set rates was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the inpatient hospital prospective payment system are located in 42 CFR part 412.

B. Summary of the Provisions of the Proposed Rule

On May 8, 1989, we published a proposed rule (54 FR 19636) which set forth changes to the prospective payment system that would be effective for the seventh year of operation of that system, that is, beginning on October 1, 1989. Following is a summary of the major changes we proposed to make to the system:

- As required by section 1886(d)(4)(C) of the Act, we proposed to adjust the DRG classifications and weighting factors for Federal fiscal year (FY) 1990.
- We proposed to update the wage index by basing it entirely on 1984 wage data. In addition, we proposed to make adjustments to the wage data to reflect the provisions of section 1886(d)(8)(C) of the Act, as enacted by section 8403(a) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647).
- We discussed several current provisions of the regulations in 42 CFR part 412 and set forth certain proposed changes concerning—
  - —Annual publication of prospective payment rates;
  - —Payment for burn outlier cases;
  - —Payments to sole community hospitals;
  - —Beneficiary access to care in rural areas;
  - —Payments to cancer hospitals;
  - —Rural referral center criteria;
  - —Payment for disproportionate share hospitals; and
  - —Payment for the indirect costs of medical education.
- In the addendum to the proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 1990 prospective payment rates. We also proposed new target rate percentages for determining the rate-of-increase limits for FY 1990 for hospitals and hospital units excluded from the prospective payment system.
- As required by sections 1886(e)(4) and (e)(5) of the Act, in Appendix C of the proposed rule we provided our recommendation of the appropriate percentage change for FY 1990 in the—

—Large urban, other urban, and rural average standardized amounts for inpatient hospital services paid for under the prospective payment system; and

—Target rate-of-increase limits to the allowable operating costs of inpatient hospital services furnished by hospitals and hospital units excluded from the prospective payment system.

- In addition, the proposed rule discussed in detail the March 1, 1989 recommendations made by the Prospective Payment Assessment Commission (ProPAC). ProPAC is directed by section 1886(d)(4)(D) of the Act to make recommendations to the Secretary with respect to adjustments to the DRG classifications and weighting factors and to report to Congress with respect to its evaluation of any adjustments made by the Secretary.

ProPAC is also directed, by the provisions of sections 1886(e)(2) and (e)(3) of the Act, to make recommendations to the Secretary on the appropriate percentage change factor to be used in updating the average standardized amounts beginning with FY 1986 and thereafter. We printed ProPAC's report, which includes its recommendations, as appendix D to the proposed rule (54 FR 1975).

C. Number and Types of Public Comments

A total of 288 items of correspondence containing comments on the proposed rule were received timely. Approximately one-half of the letters we received were protesting the inappropriateness of the current DRG classification and weighting factors for electrophysiologic studies and automatic implantable cardioverter defibrillator implant procedures. Of the remaining letters, the main areas of concern addressed by the commenters were—

- The 1.35 percent reduction in the DRG weights to account for a portion of the increase in the case-mix index between FY 1986 and FY 1988;
- The proposal to base the wage index on 1984 data only; and
- The revisions made to the wage index for rural counties whose hospitals are deemed urban. The contents of the proposed rule, the public comments, and our responses to those comments are discussed throughout this document in the appropriate sections.

There are four general comments that we are responding to here rather than in the more issue-specific areas below.

Comment: We received one comment expressing concern that HCFA has made no provision for increased costs of care in hospitals and hospital units excluded from the prospective system resulting from the enactment of the catastrophic coverage provisions. The

commenter noted that there should be an adjustment to the target rate to cover increases in the cost per discharge resulting from this legislation.

Response: As we stated on the proposed rule (54 FR 19636), we made revisions to the regulations in the September 30, 1988 final rule to address changes resulting from enactment of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360). Those revisions included adjustments to the prospective payment system, and the rate of increase ceiling for hospitals and units excluded from the prospective payment system, to take into consideration the reduction in payments to hospitals by Medicare beneficiaries resulting from the elimination of the day limitation on Medicare inpatient hospital services (section 101 of Pub. L. 100–360). Although these changes were final, we allowed a 60-day period for public comment since the changes had not previously been published as proposed. We are developing a final rule that responds to the comments we received.

Comment: One commenter suggested that our proposed changes neglect to address the problems of rural hospitals.

Response: The financial viability of rural hospitals and ensuring access to health care by rural beneficiaries is a matter of highest concern at HCFA. It should be noted that in the proposed rule we strongly urged a higher update factor for rural hospitals (54 FR 19748). We also proposed to ease the requirements and streamline the review process for qualifying as a sole community hospital, as well as liberalizing the requirements for regaining sole community hospital status when a hospital has opted to give up that status (54 FR 19649). We also solicited comments as to how our policies could be changed or improved to assure "essential access" to health care. Finally, we noted in the proposed rule that we are studying long term refinements including the possibility of eliminating separate urban and rural payment rates and revising the payment methodology for sole community hospitals (54 FR 19651).

We believe that these regulatory revisions and the studies we are undertaking demonstrate our commitment to examining the problems of rural hospitals and making appropriate policy changes to the prospective payment system. We reiterate that we believe that changes in Medicare policy alone are not sufficient to assure essential access to rural health care. A viable and effective rural health policy must involve Federal, State and local governments, and private insurers.

Comment: We received one comment noting that the proposed rule did not address payments for capital expenditures. The commenter recommended that payment for capital be set at 100 percent for FY 1990.

Response: We are required by section 1886(g)(1)(A) of the Act to include payment for capital-related costs as part of the prospective payment system for cost reporting periods beginning on or after October 1, 1991. We plan to publish a notice of proposed rulemaking concerning this requirement, which would outline our proposals and request public comment, and to publish a final rule timely. With respect to capital payment for FY 1990, there is no provision in current law for a reduction in payments; however, the Department's budget proposal for FY 1990 contains a provision that would reduce payments for inpatient hospital capital-related costs by 25 percent.

Comment: One commenter was concerned that the proposed rule did not address the treatment of malpractice costs in FY 1990. HCFA has stated, in a HCFA ruling (HCFAR 89–1) issued on January 26, 1989, that the recent court rulings of Georgetown I and Georgetown II also apply to the treatment of Medicare malpractice costs. HCFAR 89–1 states that the cost of malpractice premiums will be included in base year costs to determine hospital-specific rates for the base period. HCFAR 89–1 also states that future costs of malpractice will be included in hospital administrative and general (A&G) costs. The current hospital cost reporting form 2552 still includes worksheet D–8, which calculates malpractice premiums based on a risk portion and an A&G portion. Since HCFA has stated this method is no longer applicable, the commenter believes that HCFA must detail the treatment of malpractice costs in FY 1990.

The commenter recommends that HCFA publish its policy on changes in the treatment of malpractice costs prior to the final rule on prospective payment system for FY 1990 and allow hospitals adequate time for comment.

Response: In *Bowen* v. *Georgetown University Hospital, et al.*, 57 U.S.L.W. 4057 (U.S. Dec. 12, 1989) (Georgetown I), the Court found that the Secretary was not authorized to issue a retroactively effective rule. It is HCFA's Ruling, in HCFAR 89–1, that the Court's decision in Georgetown I controls appeals challenging the 1979 malpractice rule or the 1986 malpractice rule for cost reporting periods beginning before May 1, 1986, provided that these appeals satisfy jurisdictional requirements and that the hospital did not accept the May 11, 1988 "HHS Settlement Offer—Medicare Malpractice Insurance Costs Litigation" or otherwise settle. Qualifying hospitals will be reimbursed for their malpractice insurance premiums under the utilization reimbursement method in effect prior to the 1979 or 1986 malpractice rules.

It is also HCFA's Ruling that the District of Columbia Circuit Court's decision in *Georgetown University Hospital, et al.* v. *Bowen*, Nos. 88–5028 and 88–5040 (D.C. Cir. Nov. 15, 1988) (Georgetown II) controls pending malpractice insurance cost reimbursement claims under the pre-1979 utilization method for a hospital that did not accept the May 11, 1988 "HHS Settlement Offer—Medicare Malpractice Insurance Costs Litigation." That is, for qualifying hospitals, application of the pre–1979 method to the hospital's malpractice premiums in its prospective payment system base year is applicable to its hospital-specific rate throughout the prospective payment system transition period.

Because Georgetown I affects only the Secretary's authority to issue retroactive rules, prospective application of the 1986 malpractice rule (51 FR 11142) for cost reporting periods beginning on or after May 1, 1986, is unaffected by the Court's decision. HCFAR 89–1 does not state, nor was it intended to imply, that the ruling applies to the prospective application of the 1986 rule. Therefore, the current hospital cost reporting forms properly incorporate the methodology to calculate reimbursement for malpractice premiums based on a risk portion and an administrative portion, as provided by the 1986 rule.

II. Changes to DRG Classifications and Weighting Factors

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the national average of resources used to treat all Medicare cases. Thus, cases in a DRG with a weight of 2.0 would, on average, require twice as many resources as the average Medicare case.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and weighting factors annually beginning with discharges occurring in FY 1988. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The changes to the DRG classification system and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 1989 are discussed below.

B. Reclassification of DRGs

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to four additional diagnoses, and any procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnostic and procedure information is expressed by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). The intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment.

Currently, there are 477 DRGs in 23 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

Principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis, age, and presence or absence of complications or comorbidities (hereafter CC) only. Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not done in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

We proposed to make some changes to the DRG classification system on the basis of problems identified over the past year. These proposed changes and the comments we received concerning them as well as our responses are set forth below. In addition to comments related to each of the specific proposed DRG classification changes, we received some general comments, as follows:

Comment: One commenter indicated that HCFA should have made available to the public at the same time the proposed rule was published the proposed GROUPER and the maps used to change the FY 1988 diagnosis and procedure codes into their FY 1990 equivalents. The commenter would like this procedure to be followed in future years, also.

Response: Time does not permit us to make the proposed GROUPER available concurrent with proposed rule. We base our proposed changes on analysis of MEDPAR data received through December of the previous year in conjunction with medical consultation. Once the data are available, there is not sufficient time to perform the analysis, make the changes to the GROUPER, and then create a new GROUPER available for public purchase by the publication date of the proposed rule. Changes are not made to the GROUPER until shortly before publication of the final rule; that is, after all comments have been considered and further analysis has been made based on additional data received through June of the current year.

We believe it is possible for readers who have the current GROUPER and the MEDPAR data to develop the proposed GROUPER from the changes and methodology described in the proposed rule and to perform the review and confirm HCFA's projection, as the commenter desires. Thus, we believe that publishing the proposed GROUPER is not necessary to enable the public to comment on the significant issues related to DRG classification as set forth in the proposed rule.

With regard to the mapping of the FY 1988 cases into their FY 1990 equivalents, we do not as a matter of policy publish all the material because of the limited interest this material would have for the majority of readers and because of the voluminous amounts of information this would involve. However, this information is available to the public upon request. In addition, the MEDPAR file that was prepared for public release in conjunction with the proposed rule includes in each case its FY 1988 DRG and its proposed FY 1990 DRG assignments.

Comment: One vendor of computer software requested modifications to the GROUPER software. The commenter believe the GROUPER should indicate invalid procedure codes in addition to invalid principal diagnosis codes as a means of detecting mapping errors. In addition, the commenter stated that mapped codes are not usually submitted to a validation routine on the GROUPER or the MCE, and, therefore, a detection ability needs to be added.

Response: Mapping makes diagnosis and procedure codes that change in status (that is, new codes or codes that became obsolete or were revised) equivalent across GROUPER versions. Mapping is designed by a team of technical analysts, programmers, physicians, nurses, and medical records administrators. The GROUPER program does not judge the validity of a code; in mapping, the code is renamed so that the case is assigned to the proper DRG in each GROUPER version. Since both diagnosis and procedure codes and GROUPER logic may change annually, the GROUPER software must be redesigned each year based on patient care information.

The GROUPER overrides an invalid procedure or diagnosis code in many cases by ignoring the invalid code in favor of a coexisting valid code. This can be used to detect incorrect mapping even in an earlier GROUPER version.

The commenter's belief that mapped codes are not subjected to validation is incorrect. As part of reclassification and recalibration, we test the GROUPER, by analyzing a sample of MEDPAR cases that contain these mapped codes in order to make sure that the cases are being assigned to the intended DRG.

2. MDC 4: Diseases and Disorders of the Respiratory System

We have received a number of requests from hospitals and other organizations for the expansion of DRG 474 (Respiratory System Diagnosis with Tracheostomy) and DRG 475 (Respiratory System Diagnosis with Ventilator Support) to include principal diagnoses from any MDC when ventilator support is used. In addition, we have received reports of problems experienced by hospitals in the coding and billing of those cases in MDC 4 involving ventilator support.

Beginning with discharges occurring on or after October 1, 1987, cases with a principal diagnosis in MDC 4 and one of the tracheostomy procedure codes (31.1 (Temporary tracheostomy), 31.21 (Mediastinal tracheostomy), or 31.29 (Other permanent tracheostomy)) were assigned to the new DRG 474. Cases involving mechanical ventilation through endotracheal intubation were assigned to the medical DRG 475. DRG 475 included cases presenting a principal diagnosis assigned to MDC 4 and showing non-OR procedure codes 93.92 (Other mechanical assistance to respiration) and 96.04 (Insertion of endotracheal tube). Beginning with discharges occurring on or after October 1, 1988, the title for procedure code 93.92 was revised to "Other mechanical ventilation" and "Continuous positive airway pressure" was assigned a unique procedure code (93.90).

Currently, DRG 475 is assigned to cases with a respiratory system principal diagnosis when neither a temporary tracheostomy nor any operating room procedure is performed and both procedure code 96.04 and 93.92 or 93.90 are performed. The majority of cases involving surgery for respiratory diagnoses are routinely intubated endotracheally, if only on a prophylactic basis. This procedure is considered a part of the surgery and is not normally coded. Assuming that the hospital charges for the procedure, even when it is not coded, the weighting factors for surgical DRGs already account for the resources involved in intubating patients. Thus, DRG 475 was intended to account only for those cases for which there is no surgical procedure and the intubation will be likely to be of longer duration.

The American Association for Respiratory Care, the American College of Chest Physicians, the National Association of Medical Directors of Respiratory Care (NAMDRC), ProPAC, and numerous other commenters have expressed general support for the creation of DRGs 474 and 475. In addition, many commenters at that time encouraged the expansion of the DRGs to include patients with other than respiratory diagnoses. We stated that we would continue our research in this area, including analysis of superior means of identifying ventilator cases and ways to address this issue in postsurgical cases or for patients with nonrespiratory diagnoses.

We advised the medical community of our intent to target DRGs 474 and 475 for medical review by the Peer Review Organizations (PROs) to ensure that use of the diagnoses and procedures that result in assignment of cases to these DRGs was reasonable and appropriate. In fact, we were not aware of the extent of the problems experienced by hospitals until they were revealed by PRO review. In retrospect, we believe that we should have described in greater detail the situations in which these two new procedure-based DRGs would be assigned. In originally describing these DRGs, we did not reiterate that the necessary procedures had to be performed when the patient was an inpatient of the hospital submitting the bill.

Some hospital staffs believe that the GROUPER logic for DRGs 474 and 475 should be applied whenever prolonged ventilation is involved, regardless of where the intubation or tracheostomy was performed. This is a logical argument, since a hospital will very likely use as many resources in treating a ventilator patient who was intubated or received a tracheostomy in an ambulance or in another hospital's emergency room. Many hospitals requested a waiver of the rules governing billing and payment for inpatient and outpatient services under both parts A and B of Medicare. In the current situation, the stay in a second hospital will not be assigned DRG 474 or 475, respectively, since the procedures necessary for this assignment are not performed on an inpatient of that hospital and, thus, cannot be coded on the hospital's bill.

At least one of the situations that governed the development of these DRGs has changed since October 1987, and we proposed to revise DRG 475 to address the problems that hospitals have experienced with transfer and emergency room patients. As we stated above, procedure code 93.92 was revised beginning with discharges occurring on or after October 1, 1988 to "Other mechanical ventilation." More significant is the fact that continuous positive airway pressure was reclassified to its own code, 93.90, at that time. Since procedure code 93.92 now refers to other mechanical ventilation, we proposed to revise DRG 475 to remove the requirement of the coding of the insertion of an endotracheal tube. This would mean that cases would be assigned to DRG 475 when a ventilator patient with a principal diagnosis in MDC 4 is intubated elsewhere and no tracheostomy or operating room procedure is performed during the stay at the hospital. When a patient is admitted with an established tracheostomy, the receiving hospital would be paid under DRG 475 if the principal diagnosis is classified in MDC 4, the patient receives mechanical ventilation, and no operating room procedures were performed during the stay in the receiving hospital.

We recognize that ventilator cases in other MDCs tend to be more resource intensive than other cases within the same DRG. There is, however, no agreement as to the mechanism to be used in classifying them. Although NAMDRC has recommended that there be one ventilator DRG for all MDCs with a weight somewhere between that of DRGs 474 and 475, we are concerned that a single ventilator DRG for all MDCs may not be appropriate unless it is based upon an objective measure of the ventilator time involved, independent of the procedures performed.

Studies by the Yale DRG Refinement Project and by Health Systems International (HSI) under its contract with HCFA have both constructed models with DRGs for tracheostomies involving other than MDC 4 cases. We intend to analyze the impact these alternative models would have on the DRG classification system.

Comment: Several commenters expressed support for our proposal to remove the requirement that 96.04 (Insertion of endotracheal tube) must be coded with procedure code 93.92 (Other mechanical ventilation) for a case to be assigned to DRG 475 (Respiratory System Diagnosis with Ventilator Support). One commenter mentioned the need to evaluate whether the payment rate for DRG 475 is adequate for cases involving ventilator patients admitted with an established tracheostomy. However, ProPAC commented that its analysis indicated that the resource costs of the receiving hospital for patients transferred with a tracheostomy were similar to those for transfer cases involving mechanical ventilation without a tracheostomy.

Response: We will continue to monitor DRG 475 to evaluate the impact on the DRG of both removing the requirement that procedure code 96.04 be coded with procedure code 93.92 and of assigning patients admitted with an established tracheostomy to this DRG. However, we note that the information needed to assign those ventilator patients who were admitted with an established tracheostomy to a different DRG than ventilator patients who were intubated in an ambulance or at another hospital (that is, patients without a tracheostomy) is not available from the inpatient bill. This is because the procedures necessary to make this distinction were not performed during the hospital admission in question and, thus, cannot be coded on the hospital's bill. The bills for both sets of patients will show procedure code 93.92 only.

Comment: We received several comments concerning whether the length of time patients spend on a ventilator should be measured and taken into account in the DRG classification of ventilator patients. Several commenters expressed support for the modification of the existing ventilator procedure codes or development of new codes and DRGs that would reflect the length of ventilator time. However, other commenters opposed adding another digit to the ventilator procedure codes to identify the length of time spent on a ventilator in the belief that it would defeat the purpose of coding classification. That is, these commenters suggested that other data set fields should be used for furnishing this information because a disease classification system cannot provide details of treatment. One commenter suggested that if a length of time indicator is used, the length of time should be defined as the time period from the beginning of ventilation to the final cessation, regardless of any breaks for short periods of time.

Response: The ICD-9-CM Coordination and Maintenance Committee, which has the responsibility for maintaining and updating the ICD-9-CM codes, discussed this issue at its latest meeting, which was held August 10 and 11, 1989. A decision will be made on this issue before next year's ICD-9-CM coding changes are made. Interested parties are encouraged to submit their comments to the Committee at the address below before December 31, 1989.

Comment: Several commenters expressed their opinion that DRGs 474 and 475 should be expanded to include ventilator cases outside MDC 4 because ventilator cases in other MDCs tend to be more resource intensive than other cases in the same DRG. One commenter was concerned that the expansion of DRGs 474 and 475 might be delayed if it were linked to implementation of the recommendations of the Yale DRG Refinement Project.

Response: As indicated in the proposed rule (54 FR 19639), we recognize that ventilator cases in other MDCs tend to be more resource intensive than other cases within the same DRG and we intend to analyze the impact that alternative models for assigning ventilator cases would have on the DRG classification system. This was not, however, an analysis we could complete in time to consider changes in the classification of ventilator cases in FY 1990.

Although one alternative was developed as part of the Yale DRG Refinement Project, it could be implemented independently of the other DRG refinements recommended in the Yale study. Similarly, implementation of other DRG refinements recommended by the Yale study would not necessitate the adoption of the Yale model for ventilator cases should our analysis determine that a different model would be more appropriate.

Comment: One commenter incorrectly interpreted our proposed policy to mean that a ventilator patient who is transferred or intubated elsewhere would still be assigned to DRG 475 if a tracheostomy were performed at the receiving hospital.

Response: The proposed change addressed the situation where a patient in MDC 4 could not be assigned to a DRG 475 because only procedure code 93.92 (Other mechanical assistance ventilation) was shown on the bill. It does not affect the classification of patients in MDC 4 undergoing a tracheostomy at the receiving hospital since these patients would have one of the tracheostomy procedure codes shown on the bill and would continue to be assigned to DRG 474 as before.

As stated in the proposed rule, the receiving hospital would be paid under DRG 475 when a patient is transported with an established tracheostomy or was intubated elsewhere, the principal diagnosis is classified in MDC 4, the patient receives mechanical ventilation, and no operating procedures were performed during the stay in the receiving hospital. We included the criterion that no operating procedures be performed during the stay because patients on mechanical ventilation who receive an operating room procedure are not assigned to DRG 475. We did not intend to imply that those patients who received a temporary tracheostomy, which is a nonoperating room procedure, would also be assigned to DRG 475. Cases with a principal diagnosis in MDC 4 and one of the tracheostomy procedure codes (31.1, 31.21, or 31.29) will continue to be assigned to DRG 474. We also wish to clarify that cases with code 93.90 (Continuous positive airway pressure) will no longer be assigned to DRG 475 unless the patient also received 93.92 during the stay.

3. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the particular principal diagnosis is assigned. It is therefore necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of groups of procedures from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive procedure group.

Because the relative resource intensity of procedure groups can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of procedures coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

The surgical hierarchy is based upon procedure groups. Consequently, in many cases, hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive procedure groups, therefore, involves weighting each DRG for frequency to determine the average resources for each procedure group. For example, assume procedure group A includes DRGs 1 and 2 and procedure group B includes DRGs 3, 4, and 5, and that the weighting factor for DRG 1 is higher than that for DRG 3, but the weights for DRGs 4 and 5 are higher than the weight for DRG 2. To determine the surgical hierarchy, we would weight the weighting factor of each DRG by frequency to determine average resource consumption for the group of procedures and order the procedure groups from that with the highest to that with the lowest average resource utilization, with the exception of "other (OR) procedures."

The "other OR procedures" group is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs regardless of the fact that the weighting factor for the DRG or DRGs in that procedure group may be higher than that for other procedure groups in the MDC. The "other OR procedures" group is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnosis. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

Based on the preliminary recalibration of the DRGs, we proposed to modify the surgical hierarchy as set forth below. As discussed below in section II.C. of this preamble, the final recalibrated weights are somewhat different from those proposed since they are based on more complete data. Consequently, we have further revised the hierarchy in this final rule as described below.

We proposed to revise the surgical hierarchy for MDC 5 (Diseases and Disorders of the Circulatory System) and MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue) as follows:

a. In MDC 5, we proposed to reorder Cardiac Pacemaker Replacement and/or Revision (DRGs 117 and 118) [1] above Vascular Procedures Except Major Reconstruction Without Pump (DRG 112).

b. In MDC 8, we proposed to reorder Biopsies (DRG 216) above Back and Neck Procedures (DRGs 214 and 215); and we proposed to reorder Arthroscopy (DRG 232) above Major Shoulder/Elbow Procedures or Other Upper Extremity Procedures With CC (DRG 223).

We received no comments concerning the proposed reordering within the surgical hierarchy of MDC 5 and we are making this change as proposed. We did, however, receive one comment on another issue concerning MDC 5 as well as two other comments, one on our proposed reordering of the surgical hierarchy of MDC 8 and one general comment.

Comment: One commenter noted that there were no changes in the number of cases shown on Tables 7A and 7B for DRGs that would be affected by a surgical hierarchy change. The commenter questioned whether the surgical hierarchy changes were reflected in the case counts and relative weights published in the proposed rule.

Response: The surgical hierarchy changes in the proposed rule are based on our preliminary recalibration of the DRG weights. We are not able to test the effects of the revisions and to reflect them in the proposed relative weights due to the unavailability of revised GROUPER software at the time of publication. Rather, in performing analysis of the surgical hierarchies, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification and then recalibrate the weights. The weighting factor for each procedure group then serves as our best estimate of relative resource use for that procedure group. We test the proposed surgical hierarchy changes after the revised GROUPER is received and reflect the final changes to the surgical hierarchy in the DRG relative weights published in the final rule.

Comment: We received a number of comments questioning the appropriateness of the proposed reordering of DRG 216 above DRGs 214 and 215. The commenters believe that biopsies are less resource intensive than many of the procedures in DRGs 214 and 215.

Response: Although biopsy procedures may be less resource intensive than many of the surgical procedures in DRGs 214 and 215, we proposed the surgical hierarchy change because our data indicated cases requiring a biopsy are more resource intensive than cases in DRGs 214 and 215. Prior to making the surgical hierarchy change, the average standardized charges for cases in DRG 216 were $700 more than the average standardized charges for cases in DRGs 214 and 215. After reordering the surgical hierarchy, the difference increases to $1,245. We are making the surgical hierarchy change as proposed so that cases with multiple procedures will be assigned to the higher-weighted DRG; however, we will review the MDC 8 surgical hierarchy again next year.

Comment: We received two comments indicating that the change in the surgical hierarchy order for MDC 5 that was made in the September 30, 1988 final rule (53 FR 38485) and was effective October 1, 1988 has resulted in disputes between PROs and hospital medical records administrators as to the proper sequence for surgical procedures on the Medicare bill. This change was to reorder DRG 108 (Other Cardiothoracic or Vascular Procedures With Pump) above DRGs 106 and 107 (Coronary Bypass). The commenters requested that the surgical hierarchy change be reversed. We received two related comments expressing concern over the limited number of procedure codes that can be shown on the Medicare bill.

Response: The problem identified with DRGs 106 and 108 stems from the procedure code sequencing when more than three cardiac procedures are performed, including codes 36.10 through 36.19 (Coronary bypass graft). Although more than three procedures may be performed on the patient, only three may be reported on the bill and the DRG assignment and payment are based on the three reported procedures. For example, a patient may have had a coronary bypass graft, but the claim may show only code 37.61 (Pulsation balloon), code 37.21 (Cardiac catheterization), and code 39.61 (extracorporeal circulation). In this situation, the case would be assigned to the higher-weighted DRG 108 instead of DRG 106 or 107.

If there are a greater number of procedures performed than can be listed on the claim, our coding guidelines require that the procedure be reported based on the follow hierarchy:

—Procedures that relate to the principal diagnosis and that affect DRG assignment.
—Other procedures that affect DRG assignment.
—Other procedures which are listed in the ICD-9-CM (Volume 3, Procedures) between code numbers 01.01 and 86.99 which are performed in the operating room.

Based on the coding guidelines, we would normally expect to see the coronary bypass procedure coded on the claim. Although the ICD-9-CM lists code 39.61 as a "code also" peripheral procedure to the coronary bypass procedures, the GROUPER logic for DRGs 106 and 107 does not require the coding of the pump for DRG assignment. However, the FY 1989 surgical hierarchy change has created an incentive to leave the bypass procedure off the bill to allow room for 39.61 and other procedures that will result in the case being assigned to the higher-weighted DRG 108. This is a particular problem when a DRG software package is used that contains a resequencing function that will search for codes following the DRG logic trees found in the DRG Definitions Manual. Since the hierarchy change, when procedure codes entered by the hospital's medical records department include codes assigned to DRG 108, the programs will check for code 39.61 (Extracorporeal circulation) before assigning the case to a DRG ranked lower in the hierarchy. Frequently, the procedure codes that are assigned to DRG 108 are incidental to a coronary bypass procedure. In this regard, it is important for users of these packages to be aware of the capabilities of their system and ensure that the sequence of the procedures established by the medical records coder and the attesting physician is the sequence that is ultimately reported on the claim form.

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[1] A single title combined with two DRG numbers is used to signify pairs, the first DRG of which is cases with CC and the second of which is cases without CC. If a third number is included, it represents cases of patients who are age 0–17.

We are aware of the difficulties that have developed in the coding and billing of these DRGs since the surgical hierarchy was changed. We are also concerned over the continued loss of data on the incidence of coronary bypass surgery in conjunction with the cardiothoracic and vascular procedures classified in DRG 108 as well as the loss of clinical coherence as increasingly more coronary bypass cases are assigned to DRG 108. However, we do not believe it would be appropriate to reverse the surgical hierarchy. We made the surgical hierarchy change in FY 1989 because the relative resource intensity of the cases assigned to DRG 108 had increased relative to the weighted average of those cases containing the procedure codes necessary for assignment to DRG 106 or 107. The pre-FY 1989 surgical hierarchy no longer resulted in the assignment of cases involving multiple procedure codes to the DRG associated with the most resource intensive procedure group. The FY 1988 data indicate the DRG 108 cases are still more resource intensive. The average standardized charges for cases in DRG 108, based on the current surgical hierarchy, are $3,400 higher than the weighted average standardized charges for cases in DRGs 106 and 107. We intend to re-examine this problem as part of our analytic agenda for FY 1991.

Finally, we believe that it would be advantageous to include more fields on the Medicare claim form to allow the hospital to enter both additional diagnoses and procedure codes. We plan to approach the National Uniform Bill Committee this year to request that they revise the Uniform Bill at the next available opportunity. This recommendation will, of course, be subject to the approval of the other members of the committee.

Since we published the proposed rule, we have received a revised GROUPER program and a more complete 1988 Medicare provider analysis and review (MEDPAR) file, and we were able to test the proposed surgical hierarchy changes. Test results indicated that two changes are necessary.

We regrouped the MDC 8 DRGs using the two proposed hierarchy changes to determine whether the standardized charges involved would continue to exceed that of the DRGs that are currently ranked above them in the hierarchy. We found that our proposal to reorder DRG 232 (Arthroscopy) produced anomalous results. We found that the number of patients classified in DRG 232 would increase seven-fold when the procedure group was moved up in the hierarchy. This result indicates that arthroscopy is more frequently performed in conjunction with a procedure from one of the groups for DRGs 221 and 222 (Knee Procedures), DRGs 226 and 227 (Soft Tissue Procedures), DRGs 230 and 231 (Local Incision and Removal of Internal Fixation Devices), and DRG 228 (Major Thumb or Joint Procedures or Other Hand or Wrist Procedures with CC) than it is performed by itself.

The fact that DRG 232 would pick up so many cases in and of itself is not troubling. However, the reassignment of so many cases results in a weighting factor that no longer supports the proposed surgical hierarchy change. The cases in the FY 1988 MEDPAR that would be assigned to DRG 232 if we changed the order as proposed would have an average standardized charge that would move the DRG back to its current ranking on the surgical hierarchy. It appears that the average Medicare beneficiary who undergoes arthroscopic surgery is often in an advanced stage of degenerative bone or joint disease, resulting in consistently high charges in those cases that do not include other MDC 8 surgeries. The data show that in the situation where arthroscopy is one of multiple procedures performed, the resource intensity of the case is not as high as when arthroscopy is the only procedure performed. Based on these results, we have decided not to implement the proposed reordering of DRG 232.

However, we found from analysis of the revised GROUPER program that another change in MDC 8 surgical hierarchy is necessary due to the revision of the arthroplasty codes and the assignment of the following ICD–9–CM procedure codes to DRG 209 effective October 1, 1989. Currently, all procedures involving shoulder arthroplasty and elbow arthroplasty are assigned to DRG 223 (Major Shoulder/Elbow Procedures or Other Upper Extremity Procedures With CC). With the code revisions, code 81.80 (Total shoulder replacement), 81.81 (Partial shoulder replacement), and 81.84 (Total elbow replacement) will be assigned to DRG 209 (Major Joint and Limb Reattachment Procedures). Consequently, the charges remaining in the cases classified in DRG 223, representing the less complicated arthroplasties, fell to a rank below DRG 231 (Local Excision and Removal of Internal Fixation Devices, Except Hip and Femur). As a result, we are revising the hierarchy in MDC 8 to reorder DRG 223 below DRG 231 and above DRG 228.

Based on these changes, the final MDC 8 surgical hierarchy is as follows:

Bilateral or Multiple Major Joint Procedures of the Lower Extremity (DRG 471)
Wound Debridement and Skin Graft Except Hand (DRG 217)
Major Joint and Limb Reattachment Procedures (DRG 209)
Hip and Femur Porcedures Except Major Joint (DRGs 210, 211, and 212)
Amputations (DRG 213)
Biopsies (DRG 216)
Back and Neck Procedures (DRGs 214 and 215)
Lower Extremity and Humerus Procedures Except Hip, Foot, Femur (DRGs 218, 219 and 220)
Knee Procedures (DRGs 221 and 222)
Soft Tissue Procedures (DRGs 226 and 227)
Local Excision and Removal of Internal Fixation Devices of Hip and Femur (DRG 230)
Local Excision and Removal of Internal Fixation Devices Except Hip and Femur (DRG 231)
Major Shoulder/Elbow Procedures or Other Upper Extremity Procedures With CC (DRG 223)
Major Thumb or Joint Procedures or Other Hand or Wrist Procedures With CC (DRG 228)
Arthroscopy (DRG 232)
Foot Procedures (DRG 225)
Shoulder, Elbow or Forearm Procedures Except Major Joint Procedures Without CC (DRG 224)
Hand or Wrist Procedures Except Major Joint Procedures Without CC (DRG 229)
Other Musculoskeletal System and Connective Tissue OR Procedures (DRGs 233 and 234)

4. Refinement of Complications and Comorbidities List

There is a standard list of diagnoses that are considered complications and comorbidities (CCs). This list was developed by physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. A substantial CC, in turn, is defined as a condition that, because of its presence with a specific principal diagnosis, would cause an increase in length of stay by at least one day for at least 75 percent of the patients.

Based upon analysis by our medical consultants, we proposed to eliminate the following minor cardiac block and dysrhythmia diagnoses from the CC list:

426.10 Atrioventrical block, not otherwise specified (NOS)
426.11 Atrioventrical block, 1st degree

426.12 Atrioventrical block—Mobitz (type) II
426.13 Atrioventrical block, 2nd degree, not elsewhere classified (NEC)
426.2 Left bundle branch hemiblock
426.3 Left bundle branch block NEC
426.4 Right bundle branch block
426.50 Right bundle branch block NOS
426.51 Right bundle branch block and left posterior fascicular block
426.52 Right bundle branch block and left anterior fascicular block
426.53 Bilateral bundle branch block NEC

Each of these procedures would no longer be considered a CC for any principal diagnosis.

Comment: A number of comments were received recommending retention of some or all of the codes in the CC list or supporting deletion of all of the codes as proposed. One commenter suggested deleting an additional code, 426.9 (Conduction disorder, unspecified). The commenter believes the diagnosis to be rather nonspecific except for interventricular conduction delay (in the alphabetical list of the ICD–9–CM), which is not a significant cardiac defect. In the tabular list (of the ICD–9–CM), however, there are two conditions the commenter believes to be highly significant and suggested interventricular conduction defect may best be reclassified to another ICD–9–CM code.

Response: After further discussion with medical consultants, we agree with several commenters that there may be added risk with diagnosis codes 426.12, 426.13, and 426.53. The remaining codes represent clinical conditions of lesser significance to the patient with acute myocardial infarction, they may or may not be related to the acute myocardial infarction, and they should not cause difficulty in the majority of cases. Therefore, they do not represent comorbidities that can be expected to significantly change resource utilization needs or length of stay. The following is the final list of minor cardiac block and dysrhythmia diagnoses that are deleted from the CC list:

426.10 Atrioventrical block, not otherwise specified (NOS)
426.11 Atrioventrical block, 1st degree
426.2 Left bundle branch hemiblock
426.3 Left bundle branch block, not elsewhere classified (NEC)
426.4 Right bundle branch block
426.50 Right bundle branch block NOS
426.51 Right bundle branch block and left posterior fascicular block
426.52 Right bundle branch block and left anterior fascicular block

We appreciate the commenter's suggestions concerning 426.9, but since we did not propose to eliminate 426.9, we do not believe it would be appropriate to act on the suggestion at this time. We recommend that the commenter submit it to the ICD–9–CM Coordination and Maintenance Committee for consideration (see address below in section II.B.6. of this preamble).

We proposed a limited revision of the CC Exclusion List, which includes corrections of errors in the existing list, addition of a number of excluded CCs, and the deletion of a number of excluded CCs.

Table 6f in section IV of the addendum to the proposed rule contained the proposed additions to the CC Exclusions List that would be effective for discharges occurring on or after October 1, 1989. The table shows the principal diagnoses with proposed changes to the excluded CCs. Each of these principal diagnoses was shown with an asterisk and the additions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis. The indented diagnosis would not be recognized by the GROUPER as a valid CC for the asterisked principal diagnosis beginning with discharges on or after October 1, 1989.

In the proposed rule, many four-digit diagnosis codes on the master CC list were included on Table 6d (Expanded Diagnosis Codes That Are No Longer Accepted In GROUPER) since they have been replaced by two or more five-digit diagnosis codes. Since the five-digit definitions provide greater specificity in classifying the diagnoses, some of the new codes will no longer describe a CC or will describe a CC in a four-digit category that was not previously on the CC list.

Example

*25060
34501
34510
34511

The four-digit diagnosis code 3450 (Generalized nonconvulsive epilepsy) was not on the master CC list while 3451 (Generalized convulsive epilepsy) was on the list. Code 3451 was excluded as a CC for the principal diagnosis 25060 (Diabetes with neurological manifestations, adult or unspecified onset) for discharges occurring on or after October 1, 1988. Beginning with discharges on or after October 1, 1989, the ICD–9–CM adds a fifth digit designating whether or not intractable epilepsy is involved. The four-digit diagnosis codes are eliminated wherever they occurred on the Exclusion List. Both of the five-digit codes 34510 and 34511 are added to the Exclusion List in place of 3451. Even though the code 3450 was not considered a CC, 34501 (Generalized convulsive epilepsy with intractable epilepsy) is considered a CC and is added to the master list. Code 34501 will be excluded as a CC for the principal diagnosis 25060.

Comment: Several commenters suggested that codes from the Excludes Note, as set forth in the ICD–9–CM, for diagnosis code 496 (Chronic obstructive pulmonary disease) be added to the CC Exclusions List to improve coding consistency and accuracy.

Response: While we encourage efforts to ensure correct coding and consistent use of ICD–9–CM principles, we do not see the CC Exclusion List as the most appropriate vehicle to ensure this consistency. Furthermore, of the codes mentioned in the Excludes Notes, only two have payment implications and one of these will be changed as of October 1, 1989. However, we understand the commenter's point and as we do more extensive work on the CC list, we will consider ICD–9–CM coding conventions.

Comment: One commenter wanted to know if code 493.20 (Chronic obstructive asthma) will be considered as a comorbid condition and requested clarification regarding the combination of codes 493.90 (Asthma unspecified) and 492 (Emphysema), asking if it becomes part of 493.20.

Response: Diagnostic code 493.20 will be considered as a complication or comorbid condition and will be added to the CC list. The question as to how to code the combination of asthma and emphysema is answered in the final ICD–9–CM coding Addendum for October 1, 1989. Each diagnosis should be coded separately, as they are now.

The only CCs that we proposed to delete from the CC Exclusions List are those deleted diagnosis codes in Table 6d that are currently on the CC list and those diagnosis listed above that we proposed to delete from the main CC list. As proposed, the following diagnoses codes from Table 6d should be deleted from the CC list and wherever they appear on the CC Exclusions List: 345.1; 403.0; 404.0; 410.0–410.9; 411.8; 996.6; and 996.7. For the convenience of the reader, we have included a complete list of the deletions in Table 6g of the addendum to this final rule.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $84.95 and on microfiche for $18.50. These prices include $3.00 for shipping and handling. A request for the FY 1988 CC Exclusions List, which should include the identification accession number (PB) 88–133970, should be made to the following address:

National Technical Information Service,
United States Department of Commerce, Springfield, Virginia 22161; or by calling (703) 487–4650.

Users should be aware of the fact that both the revisions in Tables 6d and 6e of the September 30, 1988 final rule and those in Table 6f and 6g of this document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 1989. (We do not intend to update the listing available from NTIS to reflect these or any future revisions.)

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List is available from Health Systems International (HSI). HSI, under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Sixth Revision is available for $195.00, which includes $15.00 for shipping and handling. The Sixth Revision of this manual includes the changes in this document. This manual may be obtained by writing HSI at: 100 Broadway, New Haven, Connecticut 06511; or by calling (203) 562–2101.

5. Review of Procedure Codes in DRGs 468 and 477

Each year, we review cases assigned to DRG 468 (Unrelated Operating Room Procedures) in order to determine whether, in conjunction with certain principal diagnoses, there are certain procedures performed that are not currently included in the surgical hierarchy for the MDC in which the diagnosis falls. In FY 1989, this review resulted in the addition of two new DRGs: DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis) and DRG 477 (Non-Extensive OR Procedure Unrelated to Principal Diagnosis). For a detailed discussion of the changes, see the September 30, 1988 final rule (53 FR 38487).

Since DRG 468 is reserved for those cases in which none of the OR procedures is related to the principal diagnosis, it is intended to capture atypical medical cases, that is, those cases not occurring with sufficient frequency to represent a distinct recognizable clinical group. DRGs 476 and 477 are assigned to specific subsets of these codes. DRG 476 is assigned to those discharges in which one of the following prostatic procedures is performed that is unrelated to the principal diagnosis:

60.2—Transurethral prostatectomy
60.61—Local excision of lesion of prostate
60.69—Prostatectomy NEC
60.94—Control of postoperative hemorrhage of prostate

DRG 477 is assigned to those discharges in which the only procedure performed is a nonextensive procedure that is unrelated to the principal diagnosis. In Table 6c in section IV of the addendum to the September 30, 1988 final rule, we listed the ICD–9–CM procedure codes for all of the procedures we consider nonextensive procedures if performed with an unrelated principal diagnosis. These cases are grouped in DRG 477.

Because of the addition of DRG 477, we conducted this year's review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases with each procedure. Our medical consultants then identified those procedures occurring in conjunction with certain diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. On the basis of this review, we proposed two DRG classification changes in order to reduce unnecessary assignment of cases to DRG 477.

In MDC 14 (Pregnancy, Childbirth and Puerperium), we proposed to add two procedure codes to the operating room procedures in DRG 374 (Vaginal Delivery With Sterilization and/or D&C). Currently these procedures, when combined with a principal diagnosis in MDC 14 such as 665.41 (High vaginal laceration), group to DRG 477. The two procedure codes to be added to DRG 374 are procedure codes 69.09 (Other dilation and curettage) and 69.52 (Aspiration curettage following delivery or abortion).

Comment: Several commenters objected to the addition of procedure code 69.09 (Other dilation and curettage) to DRG 374. The commenters noted that this procedure code should not be used with DRG 374 because there is a specific procedure code (69.02) for D&C following delivery. Since it would be inappropriate to use 69.09 to indicate a D&C following delivery, the procedure code should not be added to DRG 374.

Response: We agree with the commenters that procedure code 69.09 should not be used to code a D&C following delivery and that the correct code would be 69.02. However, the purpose of including 69.09 in DRG 374 is to address those occasions when this procedure code is nevertheless used with a principal diagnosis assigned to DRG 374. These cases currently group to DRG 477 (Non-Extensive OR Procedure Unrelated to Principal Diagnosis); they more appropriately belong in DRG 374 because 69.09 is not an unrelated procedure. Therefore, we are including procedure code 69.09 in DRG 374.

Comment: We have received several complaints that when splenectomy (codes 41.5 or 41.43) is performed for Felty's syndrome, which is an appropriate procedure for this syndrome, it inappropriately groups to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis).

Response: We agree with the commenters that this is an incorrect grouping and have assigned procedure codes 41.5 and 41.43 to MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue) in order to group to the appropriate DRGs 233 and 234 (Other Musculoskeletal System and Connective Tissue OR Procedure).

6. Changes to the ICD–9–CM Coding System.

As discussed above in section II.B.1. of this preamble, ICD–9–CM is a coding system for the reporting of diagnostic information and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee charged with the mission of maintaining and updating the ICD–9–CM. This includes approving new coding changes, developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee is co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has responsibility for the ICD–9–CM diagnoses codes included in Volumes 1 and 2—Diseases: Tabular List and Diseases: Alphabetic Index, while HCFA has responsibility for the ICD–9–CM procedure codes included in Volume 3—Procedures: Tabular List and Alphabetic Index.

The Committee encourages participation in the above process by major health-related organizations. In this regard, the Committee holds public meetings for discussion of educational

issues and proposed coding changes. These meetings provide an opportunity for input into coding matters from representatives of recognized organizations in the coding fields, such as the American Medical Record Association, the American Hospital Association, and the Commission on Professional and Hospital Activities, as well as physicians, medical record administrators, and other members of the public. Considering the opinions expressed at the public meetings, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes at public meetings held on April 14, 1988, July 21–22, 1988, and December 1, 1988 and finalized the coding changes after consideration of comments received at the meetings and in writing in the 30 days following the December 1, 1988 meeting. The initial meeting for consideration of coding issues for resolution in FY 1990 was held on April 4, 1989 and a second meeting was held August 10–11, 1989. Copies of the minutes of these meetings may be obtained by writing to the co-chairpersons representing NCHS and HCFA. We encourage commenters to address suggestions on coding issues involving diagnosis codes to:

Ms. Sue Meads, R.R.A, Co-Chairperson,
ICD–9–CM Coordination and Maintenance Committee, NCHS, Rm 2–19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

Questions and comments concerning the procedure codes should be addressed to:

Ms. Patricia E. Brooks, R.R.A., Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, HCFA, Office of Coverage Policy, Rm 1–J–2 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

The additional new ICD–9–CM codes that have been approved will become effective October 1, 1989. The new ICD–9–CM codes are listed, along with their DRG classifications, in Tables 6a, 6b, and 6c in section IV of the addendum.

Further, the ICD–9–CM diagnosis codes shown on Table 6d will be expanded to categories requiring a fifth digit for valid diagnosis code assignment. Thus, these diagnosis codes will not be recognized by GROUPER 7 beginning with discharges occurring on or after October 1, 1989. The corresponding five-digit codes are shown in Table 6a. Finally, the ICD–9–CM procedure codes shown in Table 6e will be deleted. These codes were vacated because of the new and revised codes established by the Committee and will be reserved for future refinements of the ICD–9–CM.

Comment: Several commenters noted errors in Tables 6a, 6b, 6c, 6d, and 6e as set forth in section IV of the addendum to the proposed rule (54 FR 19709–19712). Specifically mentioned was the assignment of procedure codes 77.56 (Repair of hammer toe) and 77.57 (Repair of claw toe) to DRG 63 (Other Ear, Nose, Mouth and Throat OR Procedures).

Response: We have revised Tables 6a, 6b, 6c, 6d, and 6e to reflect the correct spelling, additions, deletions, and DRG assignments. Tables 6a, 6b, 6c, 6d, and 6e should now be correct as set forth in section IV of the addendum to this final rule.

Comment: One commenter asked which of the new diagnosis codes from Table 6a would be added to the CC list.

Response: We have revised Table 6a as set forth in section IV of the addendum to this final rule to add a yes/no column for CCS that will indicate for each of the new diagnoses listed whether or not it is considered a CC.

Comment: Two commenters questioned the assignment of procedure codes 81.57 (Replacement of joint of foot or toe), 81.72 (Arthroplasty of metacarpophalangeal and interphalangeal joint without implant), 81.74 (Arthroplasty of carpocarpal or carpometacarpal joint with implant), and 81.75 (Arthroplasty of carpocarpal or carpometacarpal joint without implant) to DRGs 7 and 8 (Peripheral and Cranial Nerve and Other Nervous System Procedures).

Response: Code 81.57 was incorrectly shown as assigned to DRGs 7 and 8 due to an error in Table 6b in the proposed rule (54 FR 19711). This has been corrected and now is shown assigned to DRG 225 (Foot Procedures) and DRGs 442 and 443 (Other OR Procedures for Injuries) in Table 6b. Codes 81.72, 81.74, and 81.75 are assigned to DRGs 7 and 8 because joint surgery may be performed in a neurologically deficient and unstable hand.

Comment: Three commenters questioned the assignment of code 996.73 (Other complications due to renal dialysis device, implant and graft) to DRGs 144 and 145 (Other Circulatory System Diagnoses). They recommended that it group to DRGs 331, 332, and 333 (Other Kidney and Urinary Tract Diagnoses) because this is a complication of a vascular prosthetic device that is a renal dialysis device.

Response: Code 996.73 is a general category of diagnoses including vascular implants or grafts that may be associated with many different medical conditions. We find no medical or coding rationale for further DRG differentiation. Code 996.73 will remain assigned to DRG 144 and 145.

Comment: Several commenters supported the new ICD–9–CM codes for intractable epilepsy as a separate diagnosis and the new codes for procedures performed in the diagnosis of people with intractable epilepsy. They stated that by differentiating between intractable epilepsy and routine epilepsy, the new diagnosis codes recognize the varying severity of epilepsy. The commenters also pointed out that these new diagnosis codes will provide the first opportunity to identify this group of patients and to distinguish between routine epilepsy admissions and the far more resource intensive admissions for intractable epilepsy. They recommended that we recognize the far higher cost of intractable epilepsy cases and establish more appropriate payment than exists under the current DRGs. The commenters also expressed concern that insufficient Medicare payments may limit access to needed diagnostic procedures and treatment.

Response: We appreciate the input from these commenters and their support for the new diagnosis codes (345.00 through 345.91) and procedure codes (88.10 and 89.19), as well as their concern and request for further refinements in the classification and payment of intractable epilepsy cases. With these new codes, we will be able to collect and evaluate data concerning resource requirements for patients with intactable epilepsy compared to patients with routine epilepsy and to determine whether any additional classification changes should be proposed.

Comment: One hospital raised a question about the use of the new diagnosis code 411.81 (Acute ischemic heart disease without myocardial infarction) in the case of those patients who had an embolism or occlusion (diagnosed by EKG) but were so successfully treated with tissue plasminogen activator (TPA) or a similar pharmacologic preparation that no infarction resulted.

Response: Clarification of the new diagnosis code 411.81 resolves this issue. This code is for acute ischemic heart disease without myocardial infarction and includes coronary occlusion from embolus or clot formation resulting in ischemia but not infarction.

If a myocardial infarction is diagnosed either by clinical picture, EKG, or enzymes, it qualifies as an acute myocardial infarction and is assigned to category 410 (fourth and fifth digits are required). The new diagnosis code 411.81 is reserved for those cases in which no myocardial infarction occurs. In cases in which the EKG indicates occlusion with ischemia but without definitive signs of infarction, this patient would be classified under the new diagnosis code 411.81 (Acute ischemic heart disease without myocardial infarction). If TPA were administered, in the absence of a myocardial infarction, 411.81 would be the correct code.

However, if the patient is diagnosed as having an acute myocardial infarction, the case is coded in the 410 category, even if TPA is administered and restores perfusion in the occluded coronary artery.

Comment: Two commenters supported the new diagnosis codes for acute myocardial infarction and the proposed DRG reassignment for myocardial infarction subsequent episode of care cases to DRGs 132 and 133. However, both commenters expressed concern that the FY 1990 DRG weights for DRGs 121 and 122 (Circulatory Disorders with Acute Myocardial Infarction, Discharged Alive) would be too low for acute cases because they are based on all cases currently assigned to these DRGs. The commenters suggested that an adjustment be made in the weights for DRGs 121 and 122 to reflect the reassignment of less resource-intensive cases to DRG 132 and 133. If the weights are not adjusted, one of the commenters suggested leaving the less resource-intensive cases in DRGs 121 and 122 until the DRG reassignment could be reflected in recalibration.

Response: Effective with discharges on or after October 1, 1989, we are requiring the use of a new fifth digit subclassification within the ICD-9-CM category 410 (Acute myocardial infarction). This subclassification distinguishes an initial episode of care from a subsequent episode of care. A fifth digit of "1" (initial episode of care) is used to designate the acute phase of care regardless of the location of treatment. It includes cases that are transferred for care and treatment within the acute phase of care. Any subsequent episode of care for another myocardial infarction is also assigned a fifth digit of "1." All of these cases will be assigned, as they have been in the past, to one of the myocardial infarction DRGs 121, 122, or 123 (or, in the case with pacemaker implantation, DRG 115).

A fifth digit of "2" is used to designate observation, treatment, or evaluation of myocardial infarction within 8 weeks of onset, but following the acute phase, or in the healing state in which the episode of care may be for related or unrelated conditions. All of these cases will be assigned to one of the atherosclerosis DRGs (132 or 133) if acute myocardial infarction, subsequent episode of care is identified as the principal diagnosis. Our reasons for assigning these cases to the atherosclerosis DRG rather than to a myocardial infarction DRG relate to two of the basic characteristics of the DRG patient classification system. First, each DRG should contain cases with a similar pattern of resource intensity and, second, each DRG should contain cases that are similar from a clinical perspective. We note that cases that would require surgical procedures upon readmission or cases that are readmitted with a complication of myocardial infarction would group to a different MDC 5 DRG.

Without the creation of a new fifth digit subclassification, we would have continued to be unable to distinguish the resource-intensive, clinically-coherent group of patients admitted to the hospital with an acute myocardial infarction from less resource-intensive and clinically-different group of patients who are not suffering an acute myocardial infarction but who are readmitted to the hospital within 8 weeks of a myocardial infarction. Until now, according to ICD-9-CM coding convention, various cases of chronic ischemic heart disease (for example, coronary atherosclerosis) have been classified as acute myocardial infarctions if they occur within 8 weeks of the date of a previous infarction. Thus, cases of acute myocardial infarction have been classified with cases that are not acute myocardial infarctions. This coding convention was developed and is appropriate for mortality reporting purposes but is inappropriate for morbidity reporting purposes. In addition to the problems this coding convention has created for the DRG classification system, it has also distorted the statistical data in the United States concerning the incidence of myocardial infarction.

We believe these problems will be solved by the use of the fifth digit subclassification. However, until the new diagnosis codes are reflected in our MEDPAR data, we are unable to distinguish between the acute and nonacute cases for purposes of recalibration. Thus, as the commenters noted, relative weights for DRGs 121 and 122 are based on the resource requirements for both the high-cost acute myocardial infarction cases and the less resource-intensive nonacute cases that will be paid under DRGs 132 and 133 in FY 1990. The reassignment of the lower cost cases from DRGs 121 and 122 will not be reflected in the DRG weights until FY 1992, when FY 1990 data will be used in recalibration.

We have not adopted either of the commenters suggested alternatives because they are not consistent with our general policy on reclassification and recalibration. When ICD-9-CM diagnosis codes that affect DRG assignment are added, revised, or deleted, we try to take these changes into account in recalibration. To the extent possible, we convert the existing codes into their equivalents under the revised code definitions so that cases including these codes will be classified in their new DRG assignments before recalibration. When we are unable to determine how cases will be coded under the revised definitions, our policy is to leave the cases in their current DRG assignment for recalibration purposes only. We still assign the codes to the appropriate DRG for payment purposes. Because we are unable to predict which cases will no longer be assigned to DRGs 121 and 122 in FY 1990, we have left all acute myocardial infarction cases in DRGs 121 and 122 in recalibrating the weights. In addition, since we cannot predict which cases will no longer be assigned to DRGs 121 and 122 in FY 1990, we have no basis for determining an appropriate adjustment to the DRG weights for DRGs 121 and 122 to reflect the new DRG assignments.

We believe it would be inappropriate to continue assigning the nonacute cases to DRGs 121 and 122 for payment purposes until FY 1992 because it would result in continued excessive payments for the nonacute cases without improving the payment accuracy for the acute cases in DRGs 121 and 122.

Finally, we note that to the extent DRG reclassification and recalibration contribute to a lower case-mix index value in FY 1990 than we projected in normalization, this effect would be taken into account in any future adjustment for the aggregate effects of the FY 1990 GROUPER changes and recalibration on changes in the case-mix index.

Comment: One commenter expressed opposition to our decision to assign cases involving the readmission of patients within 8 weeks of a myocardial infarction to one of the atherosclerosis DRG (132 or 133) rather than to one of the myocardial infarction DRG (121, 122, or 123). The commenter claims that Medicare patients who have had myocardial infarctions can be expected to have increased admissions in the first four weeks following infarction because of complications. The commenter asserted that the resources required to care for this group of patients increases because of the recent myocardial infarction and, thus, these cases should be assigned to one of the myocardial infarction DRGs.

Response: We acknowledge that some Medicare patients are at risk of complications in the first few weeks after a myocardial infarction. We believe that the commenter may have misinterpreted the proposed rule in which we indicated in Table 6a that the new codes for myocardial infarction, subsequent episode of care would be assigned to one of the atherosclerosis DRGs (132 or 133). The GROUPER will only assign these cases to DRG 132 or 133 if myocardial infarction subsequent episode of care is listed as the principal diagnosis. If the patient is admitted with a complication of myocardial infarction, then the complication would be listed as the principal diagnosis and the patient would be assigned to a DRG other than 132 or 133. It should be noted that we have created two new diagnosis codes (429.71 (Acquired cardiac septal defect) and 429.79 (Other certain sequelae of myocardial infarction, not elsewhere classified)) to allow for accurate reporting of complications of myocardial infarction. These codes are assigned to DRG 124, 144, or 145.

Comment: Several commenters opposed the addition of the new procedure codes specific to alcohol and drug detoxification and rehabilitation (94.61 through 94.69) to DRG 433 (Alcohol/Drug Abuse or Dependence, Left Against Medical Advice). These commenters noted that adding these new procedure codes to DRG 433 was unnecessary because the presence or absence of these procedure codes would not affect assignment to DRG 433.

Response: We agree with the commenters that it is unnecessary to add procedure codes 94.61 through 94.69 to DRG 433. A case in which the patient was discharged from the hospital against medical advice will group to DRG 433 regardless of whether detoxification or rehabilitation has been provided. Therefore, we are not adding procedure codes 94.61 through 94.69 to DRG 433. In addition, we are not adding procedures codes 94.62 (Alcohol detoxification), 94.65 (Drug detoxification), or 94.68 (Combined alcohol and drug detoxification) to the GROUPER logic for DRG 434 or 435. Detoxification procedures should be coded only if provided, but are not required for grouping to DRG 434 or 435. Rehabilitation procedure codes are required for DRG 436; both rehabilitation and detoxification codes are required for DRG 437.

7. Other Issues

a. *Cochlear Implants.* In the September 30, 1988 final rule (53 FR 38476), we agreed to reevaluate the placement of cochlear implant discharges in DRG 49 (Major Head and Neck Procedures) based upon billing data from FY 1988. While cochlear implant cases may not be clinically coherent with other discharges assigned to DRG 49, the FY 1988 Medicare data still do not indicate there would be a material difference in the weighting factors if a separate DRG were created for cochlear implants.

Comment: Several commenters expressed concern that the classification of cochlear implant cases to DRG 49 is inappropriate in terms of both clinical coherency and resource intensity and could limit the availability of cochlear implants to Medicare beneficiaries. One commenter suggested that there are several causes for the low average charges in the MEDPAR data. First, the data reflect the less expensive single-channel device that is no longer manufactured and, as a result, understate the cost of the multi-channel device. Second, the commenter noted that the cost of the device is 84 percent of the charges and maintains that this creates an "expensive device bias" that provides hospitals with little incentive to control the nondevice related expenses and makes cochlear implant procedures not clinically coherent with the other procedures in DRG 49. Finally, the commenter has analyzed the FY 1988 MEDPAR file and alleges that 25 percent of the cases coded as cochlear implants do not reflect the cost of the cochlear implant device. The commenter believes that procedure code 20.96 (Unspecified cochlear implants) has been misused and should be eliminated.

Response: We have re-examined the most recent FY 1988 MEDPAR file and continue to believe that it would not be appropriate to establish a separate DRG for cochlear implant procedures at this time. As indicated in the proposed rule (54 FR 19642), the 113 cases coded as cochlear implants constitute only two percent of the total discharges in DRG 49. Moreover, if we were to remove the cochlear implant cases from DRG 49 and establish a separate DRG based on the FY 1988 MEDPAR data, the weighting factor for cochlear implants would be less than the factor for DRG 49.

We examined the effect the removal of procedure code 20.96 (Implantation or replacement of cochlear prosthetic device NOS) and 20.97 (Single-channel device) would have on the average charges for DRG 49 cases and for cochlear implant cases. We determined that the removal of either or both of these two procedure codes would have no significant impact of the weighting factor for DRG 49. Further, the average charge for cases coded with procedure code 20.98 (Multi-channel device) is less than the average charge for DRG 49 cases. With regard to the commenter's concern that the average charges may be understated because 25 percent of the cases coded as cochlear implants do not reflect the cost of the cochlear implant device, we can only assume that what a hospital submits as its charges on each bill are in fact the actual total charges for the case. A hospital is under no obligation to show charges equal to or greater than its costs for the services.

Finally, we recognize that some hospitals may be experiencing problems with the coding of cochlear implant cases. As an educational effort to encourage proper use of the cochlear implant codes, we are asking the American Hospital Association to address this issue in their coding publication "Coding Clinic for ICD-9-CM". In addition, we will furnish all Peer Review Organizations with a copy of this document for their consideration in reviewing the proper coding and DRG assignment of cases.

b. *Expansion of the List of DRGs Partitioned by Complications and Comorbidities (CCs).* In the September 30, 1988 final rule (53 FR 38491), we agreed to reevaluate the importance of CCs in DRGs not currently partitioned by the presence or absence of CCs. We have funded a number of studies in recent years designed to evaluate and improve the measurement of hospital case mix. In one recently completed study, Yale University has developed a refined DRG system that differentiates patients within each DRG based on whether they had catastrophic, major, moderate, or minor or no CCs.

The DRG refinement model produces significant improvements in predicting resource use and does not represent a radical departure from the current structure of the DRGs nor does it require the collection of any additional data. Although the results of this study appear promising, we are unable to implement the refined DRG system at this time since the appropriateness of the expanded DRGs has not been confirmed. Also, we need to analyze whether adoption of the refined DRG system would require other conforming changes to the payment system (that is, reestimation of the indirect medical education adjustment factor and the disproportionate share adjustment factor and reevaluation of the need for separate urban and rural rates) in order to mitigate a potentially large redistribution of Medicare payments across different categories of hospitals. We intend to reevaluate the importance of CCs in the nonpaired DRGs as part of our analysis of the Yale study results.

Comment: One commenter requested information on how many DRGs are defined in the "Refined Yale GROUPER" and its possible use for FY 1991.

Response: Under the Refined Yale GROUPER (the Yale model), a patient is first assigned to an MDC based on his or her principal diagnosis code. Then, if the patient had a temporary tracheostomy (except for patients assigned to MDC 3 or MDC 15) or died within 2 days of admission (medical patients only), the case is assigned to a tracheostomy or early death group. The MDCs in the Yale model are identical to the MDCs defined GROUPER 6 (effective October 1, 1988).

A patient not classified as "temporary tracheostomy" or "early death" is assigned to one of 317 subgroups (referred to as ADRGs) based on his or her principal diagnosis (medical hospitalization) or major procedure performed (surgical hospitalization). Finally, patients in each of the medical and surgical ADRGs are divided into final groups (RDRGs) based on classes of additional diagnoses. The classes for medical cases represent subsets of additional diagnoses on the GROUPER 6 comorbidities and complications (CCs) list to indicate a major, moderate, and minor or no effect on resource use. Surgical classes represent those cases with a catastrophic, major, moderate, or minor or no effect on resource use. Patients with no additional diagnoses are assigned to the class with minor or no effect on resource use.

This assignment algorithm applies to all MDCs except MDC 3 and MDC 15. In MDC 3 (Diseases and Disorders of the Ear, Nose and Throat), only medical patients can be assigned to the initial tracheostomy group. In MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period), a model specific to neonates was developed. Excluding MDC 15, there are a total of 1,126 refined DRGs: 167 medical ADRGs with three classes; 145 surgical ADRGs with four classes; 22 early death groups; 22 temporary tracheostomy groups; and one group for discharges with ADRGs 468, 469, 470, 476, and 477.

We are continuing to evaluate the Yale recommendations and to assess the most appropriate DRG groupings as part of our ongoing research concerning potential methodologies for incorporating severity measures into the prospective payment system. We have no plans to implement the Yale model in FY 1991. However, it is possible that selected aspects of the system (for example, the method for assigning ventilator patients) could be implemented independently of the rest of the Yale model if our analysis indicates that they are the preferred models for classification.

c. *Limb Salvage Surgery.* In the September 30, 1988 final rule (53 FR 38483), we stated that we had become involved in a broad analysis of the classification of certain major cardiovascular procedures that could potentially result in the restructuring of DRG 108 (Other Cardiothoracic or Vascular Procedures With Pump), DRG 109 (Other Cardiothoracic Procedures Without Pump), DRGs 110 and 111 (Major Reconstructive Vascular Procedures Without Pump), and DRG 112 (Vascular Procedures Except Major Reconstruction Without Pump). This analysis evolved from our ongoing DRG refinement analysis.

The problem that has been observed is that the DRG system provides the same payment to hospitals for patients who require an arterial reconstruction for intermittent claudication as it does for those patients who require the same kind of operation for limb threatening ischemia (that is, for gangrene, a nonhealing ischemic ulcer, or severe ischemic rest pain).

Based on our review of these cases, we have not determined if this problem can be solved through a change in the GROUPER logic. Since the same surgical procedure is performed for each group, it is impossible to differentiate on that basis alone.

It appears from all the data we have analyzed thus far that we are dealing with different quantities that legitimately fall under virtually identical categories in the ICD–9–CM. Different surgeons are performing the same basic procedures on patients who fall at the opposite ends of the range in severity of the manifestations of peripheral vascular disease. The GROUPER program can assign only the codes listed on the billing record, and the distinguishing secondary diagnoses of gangrene and decubitus ulcers are perhaps not shown as often as they actually occur. As long as the procedures involved are found to be medically appropriate, it would be contrary to one of the basic premises of the prospective payment system to create expensive and inexpensive subcategories of cases exhibiting similar ICD–9–CM coding.

Therefore, although we will continue to examine this issue, we did not propose to make any changes to DRGs 108 through 112.

Comment: Several commenters expressed concern that continued inadequate payment for limb salvage cases could limit the availability of the procedure and create incentives to perform amputation. One commenter recommended that cases in DRG 110 (Major Reconstructive Vascular Procedure Without Pump With CC) be differentiated based on whether there is a gangrenous lesion that could lead to amputation of the limb. This change would not require modification of the procedure codes.

Response: We will continue to analyze the cases in DRG 110 with attention to the classification change suggested by the commenter.

d. *Reassignment of Patients with Guillain-Barre Syndrome.* Guillain-Barre syndrome is a postinfectious polyneuropathy in which patients may require plasmapheresis, ventilation assistance, and long intensive-care stays. Guillain-Barre syndrome discharges have been assigned to DRGs 18 and 19 (Cranial and Peripheral Nerve Disorders). ProPAC believes that the classification of Guillain-Barre syndrome cases into DRGs 18 and 19 is inappropriate in terms of resource use; that is, the average resource use associated with Guillain-Barre syndrome cases is higher than the resource use for average cases in DRGs 18 and 19. In its recommendation 13, ProPAC recommended that the Secretary reassign patients with Guillain-Barre syndrome from DRGs 18 and 19 to DRG 20 (Nervous System Infection Except Viral Meningitis) and DRG 34 (Other Disorders of Nervous System With CC); alternatively, a new DRG could be established.

As we stated in the proposed rule, we are unable to evaluate the appropriateness of a classification change for Guillain-Barre syndrome patients without further analysis of the FY 1988 MEDPAR data. Moreover, the issue of whether reclassification to DRGs 20 and 34 would be clinically consistent warrants further examination. We will examine this issue as part of our ongoing DRG refinement analyses.

Comment: ProPAC expressed concern that, given the magnitude of differences between costs for Guillain-Barre cases and other cases with cranial and peripheral nerve disorders in DRGs 18 and 19 (Cranial and Peripheral Nerve Disorders) found in its analysis of FY 1987 MEDPAR data, it was unclear why HCFA feels analysis of FY 1988 data is required before a classification change can be proposed. ProPAC believes that the prospective payment system must be sufficiently flexible to correct payment inequities in a timely fashion.

Response: When possible payment inequities are brought to our attention, we try to analyze and respond in a timely fashion. However, ProPAC's recommendation concerning alternative classification methods for Guillain-Barre cases was not presented to us until March 1, 1989. This did not provide adequate time to investigate the issue thoroughly and to analyze the appropriateness of the alternative classifications suggested by ProPAC before publication of the proposed DRG changes and relative weights.

While we appreciate and welcome ProPAC's analyses of DRG classification issues, ProPAC's studies do not relieve us of our responsibility to analyze the data and other evidence that would support a classification change and to determine the impact the change would have on the affected DRGs.

Our review of the FY 1988 MEDPAR data since publication of the proposed rule confirms ProPAC's finding that Guillain-Barre cases are more resource intensive than other cases within the same DRG. As we indicated in the proposed rule, we will examine the issue of the appropriate DRG classification for these cases as part of our ongoing DRG refinement analyses.

e. *Electrophysiological studies.* In the September 30, 1988 final rule, we discussed our inability to determine whether electrophysiologic (EP) studies should be treated as OR procedures in order to have an effect on DRG assignment. (53 FR 38488.) We stated that the FY 1987 MEDPAR data indicated that the incidence of EP studies was too small to warrant differential payment. We encouraged hospitals to code EP studies on their billing forms so that we might conduct a more thorough analysis of this procedure.

Comment: The American College of Cardiology, a number of cardiologists and electrophysiologists, and a major health industry manufacturer objected to the continued treatment of procedure code 37.26 (Cardiac electrophysiologic stimulation and recording studies) as a non-OR procedure since this would mean that this procedure would continue to have no effect on DRG assignment.

A majority of the commenters believe that EP studies should be treated as either a cardiac catheterization or an OR procedure for the purpose of DRG assignment. Although generally performed in a catheterization laboratory or radiology suite rather than in an operating room, EP studies involve significant levels of time and resources in managing patients with potentially life-threatening cardiac arrhythmias. Multiple drug testing in cases that do not ultimately involve surgery can involve stays of over 2 weeks in length.

Response: EP studies and cardiac mapping were previously identified temporarily under procedure code 37.29 (Other diagnostic procedures on the Heart) long with HIS Bundle until October 1, 1988 when the distinct ICD–9–CM procedure code for EP studies became effective. EP studies have been used since the early 1980's to determine the appropriate antifibrillation agent to be prescribed for patients with inducible cardiac arrhythmias. In the absence of verifiable data under the temporary code, we reasoned that the cost of EP studies should have already been reflected in the relative weights of both the medical and surgical DRGs in which such cases had been classified.

In our analysis of this issue as presented in the September 30, 1988 final rule, we concluded that the number of cases available for review from the FY 1987 MEDPAR file was too small to warrant differential payment and that there are sufficient numbers of other cases to average out payments (53 FR 38489). To the extent that EP studies occurred much more frequently than our data suggested, we encouraged hospitals to record these codes on their billing forms so that we might conduct a more thorough analysis of these procedures in the future. At that time, however, we believed in was inappropriate to construct a new DRG or to test EP studies as an OR procedure.

We now have been able to analyze the bill data for a portion of FY 1989 for DRGs showing procedure code 37.26. We believe it supports the comparability of EP studies to cardiac catherization procedures in terms of resource use and time required. Based on this analysis and the concurrence of our medical staff, we are making a number of changes in the DRG assignment of procedure code 37.26 for discharge occurring on or after October 1, 1989.

We found code 37.26 in 1.0 percent of the available FY 1989 data for DRGs 138 and 139. Although this is not a great increase, we believe that it is significant that over 80 percent of the codes were shown in medical DRGs. (We would not necessarily expect to find EP studies coded on surgical bills because in the limited space available, there are procedure codes that are much more likely to be coded if performed because, unlike EP studies, these other codes may affect DRG assignment.)

Therefore, based on public comment and our analyses, in MDC 5, DRGs 104 and 108, we are adding 37.26 to the listing of nonoperating room procedures. In DRGs 108 and 112, we are adding 37.26 as a nonoperating room procedure. This HSI Definitions Manual will show this as: Or, NON-OPERATING ROOM PROCEDURE, 3726 Cardiac electrophysiologic stimulation and recording studies. (The code will be shown in the short description.)

We have determined from our discussions with a manufacturer of the automatic implantable cardioverter defibrillator (AICD) that the EP studies performed during the implantation, revision, or replacement of an AICD is considered to be a part of the procedure and thus would not be coded in addition to the AICD procedure codes (37.94–37.98). The HCFA representatives on the ICD–9–CM Coordination and Maintenance Committee and the Editorial Advisory Board of AHA's "Coding Clinic" intend to publish information to clarify the use of this code in its new classification.

f. *Automatic Implanted Cardioverter Defibrillator (AICD).*

Comment: The manufacturer of the automatic implanted cardioverter defibrillator (AICD) system currently available recommended three specific changes in the DRG assignment of the AICD procedure codes as follows:

- Cases in which a patient undergoes initial AICD system implantation and EP testing should be classified into DRG 104 (Cardiac Value Procedure With Pump and With Cardiac Catherter).
- When a total AICD system is implanted in two stages on different days in the same hospitalization (that is, the lead system is implanted on one day and the AICD device is implanted on a subsequent day), the case should be assigned to DRG 104.
- AICD replacement cases should be moved from DRG 120 (Other Circulatory System OR Procedures) and be reassigned to DRG 109 (Other Cardiothoracic Procedures Without Pump).

The commenter submitted a contractor study that concluded that the average standardized charges for AICD replacement cases are understated in the FY 1987 MEDPAR file. Based on a survey of physicians and hospitals that perform this procedure that analyzed the 167 AICD replacement cases in the FY 1987 MEDPAR file, the contractor found that—

- 31 percent of the cases were from hospitals that had never purchased an AICD device, which implies that the ICD–9–CM coding shown on the claim is not correct;
- 6 percent of the cases were not AICD replacements but nevertheless

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were from hospitals that purchased and implanted AICD devices; and

- 8 percent of the cases were from hospitals that undercharged or never charged for the device.

We also received a large number of comments from physicians and organizations that made the same recommendations.

Response: We agree that when a patient undergoes complete baseline EP testing to determine the proper treatment of their cardiac arrhythmias ultimately receives a defibrillator implant in the same admission, that discharge should be assigned to DRG 104. Accordingly, as discussed above, we have added EP testing as a nonoperating room procedure to DRG 104.

In response to the suggestion concerning AICD systems that are implanted during two separate operations on different days in the same hospital stay, we had not previously classified these cases in DRGs 104 and 105 for two reasons. We did not have data for either the separate initial implant or replacement of a defibrillator device and leads in our data base. Additionally, our medical staff and consultants were not convinced that this technique of separate operations is widely practiced. Thus, the ICD–9–CM procedure codes 37.95 (Implantation of automatic cardioverter/defibrillator lead(s) only) and 37.96 (Implantation of cardioverter/defibrillator pulse generator only) are assigned to DRG 120 (Other Circulatory System OR Procedures). Code 37.95 is currently included on the Medicare Code Editor (MCE) list of noncovered OR procedures.

It is our understanding that medical records administrators would not generally substitute code 37.94 (Implantation or replacement of automatic cardioverter/defibrillator, total system [AICD]) for the two separate procedures because it would not represent the events involved in the patient's treatment. We have not previously found cases with the two initial implant codes nor have we found the two replacement codes (37.97 and 37.98) in combination in prior data bases. However, the FY 1988 MEDPAR data include one case with a two-stage initial implant and three cases with a two-stage replacement.

Even though it seems to be rare in the Medicare population, we agree that if an entire system is implanted or replaced in separate stages of the same admission, it should be assigned to DRG 104 or DRG 105. Therefore, we are removing code 37.95 from the MCE noncovered procedure edit and adding the following code pairs to the OR procedure list for DRGs 104 and 105:

37.95 and 37.96
37.97 and 37.98

With regard to the classification of replacement or insertion of AICD leads or pulse generator alone, we continue to believe that placement in DRG 120 is appropriate for these procedures. Our analysis of the FY 1988 MEDPAR data for DRG 120 indicates that the standardized charges for cases with the code for replacement of an AICD lead or pulse generator alone is more than $3,000 lower than the standardized charge for the DRG. In addition, the standardized charge for the DRG is $14,250 compared to the $15,000 minimum cost estimated in the contractor's study for an AICD replacement case in FY 1987 (based on the cost of the device and a 2-day hospital stay). Even allowing for inflation, the estimated cost for the replacement cases is well within the variation in charges for DRG 120.

The commenter's recommendation to reassign the AICD replacement cases to DRG 109 is based on comparing the average weight for DRG 109 with an imputed weight for the AICD replacement cases based on the cases in the study with the average charges in excess of $15,000 and imputed charges for those cases in which the hospital implanted the device but undercharged or or did not charge for the device. The imputed charges were based on the cost of the device plus a 14 percent markup. We do not believe it is appropriate to make DRG classification changes using imputed charges in this manner. We can only assume that what the hospital submits as its charges on each bill are in fact the actual total charges. A hospital is not under any obligation to show charges equal to or greater than its costs for services.

Finally, we share the commenter's concern that the procedure codes for AICD replacement should be properly used. Therefore, we will furnish the information provided by the commenter about potential improper coding to the PRO's for their review.

g. *Tissue Plasminogen Activator (TPA).*

Comment: A commenter expressed concern that the recalibration process does not account adequately for the costs incurred by hospitals in using tissue plasminogen activator (TPA). The commenter requested an adjustment in the weights to ensure that the use of TPA is adequately reflected and recommended further analysis of the DRG classification for patients with acute myocardial infarctions to ensure that the DRGs consist of homogenous groupings based on clinical and cost criteria.

Response: As indicated in the September 30, 1988 rule 53 FR 38491), we believe that the update factors provided for in section 1886(b)(3)(B)(i) of the Act and the annual recalibration process provide sufficient recognition of the cost of TPA. Since the recalibration process uses actul charges, hospital resources directly associated with TPA in FY 1988 were used in the calculation of the DRG weights. In this regard, the costs of the drug may be offset by shorter hospital stays.

With regard to the DRG classification of patients with acute myocardial infarctions, we note the change we are making that is effective for discharges on or after October 1, 1989 to assign the less resource-intensive patients who are not suffering an acute myocardial infarction but who are readmitted to the hospital within 8 weeks of a myocardial infarction to one of the atherosclerosis DRGs (DRG 132 or 133) should improve the clinical homogeneity of the acute myocardial infarction DRGs (DRGs 121, 122 and 123). As data reflecting this change become available, we will review the appropriateness of the DRG assignments as part of our ongoing review of the DRG classification system.

h. *MDC 8: Diseases and Disorders of the Musculoskeletal System and Connective Tissue.*

Comment: We received one comment concerning DRG 209 (Major Joint and Limb Reattachment Procedures) and DRG 471 (Bilateral or Multiple Major Joint Procedures of Lower Extremity). The commenter asserted that, in terms of weighting and classification, the prospective payment system has not kept pace with technological advancements connected with these two DRGs. The commenter stated that there are two variations in joint replacement surgery that are more costly than the average joint replacement surgery case: one that involves the use of a porous-coated prosthesis and the other is revision joint replacement surgery. The commenter recommended that we analyze our data to determine whether they support the addition of a new DRG for porous-coated joint replacement surgery and a new DRG for revision joint replacement surgery.

Response: The commenter raises a new issue concerning DRGs 209 and 471 that was not discussed in the proposed rule. With regard to the variations in joint replacement surgery described by the commenter, several coding changes have been made (see Tables 6b and 6c as set forth in the addendum to this final rule) that will be effective for procedures performed on or after October 1, 1989. Basically, the codes no longer differentiate between procedures in which cement is used and those in which it is not. However, new codes were added and revisions to existing codes were made to better identify and separate revision joint replacement surgery cases from initial joint replacement surgery cases. We will evaluate the effect of these coding changes on DRG assignment and weights after data reflecting these changes become available.

i. *Autologous Bone Marrow Transplantation.*

Comment: One commenter addressed the methodology for classifying autologous bone marrow transplants and the payment levels of DRG 394 (Other OR Procedures of the Blood and Blood Forming Organs), DRG 400 (Lymphoma and Leukemia with Major OR Procedure), DRG 406 (Myeloproliferative Disorder or Poorly Differential Neoplasm With Major OR Procedure with CC), and DRG 407 (Myeloproliferative Disorder or Poorly Differential Neoplasm With Major OR Procedure without CC) in which most autologous bone marrow transplant cases would be assigned. The commenter submitted its study of operating costs and Medicare payments for autologous bone marrow transplants. The findings of this study suggest there is a significant classification problem with autologous bone marrow transplant cases with the existing DRGs and that this problem results in very significant losses to hospitals.

The commenter pointed out that because there is no unique DRG for bone marrow transplants, these cases are placed in the same DRGs as much less resource intensive cases, and as a result of averaging, the bone marrow transplant cases will be underpaid. The commenter stated that the difference between costs and the low Medicare payment level provides significant disincentives for hospitals to perform autologous bone marrow transplants for Medicare patients. The commenter expressed concern that hospitals that perform autologous bone marrow transplants could be forced to shift costs to other programs or payers and that access to bone marrow transplants might be reduced for Medicare patients due to inadequate payment policies.

Response: The commenter has raised an issue that was not discussed in the proposed rule. Medicare began coverage for autologous bone marrow transplants on April 28, 1989. Our methodology for classifying and determining the weight for bone marrow transplants cases is the same as the methodology for all other nonorgan transplant cases. (The Medicare manual issuances (Medicare Hospital Manual Transmittal No. 586, published in June 1989 and Medicare Intermediary Manual Transmittal No. 1426, published in May 1989) that announced our coverage of autologous bone marow transplants contained some errors concerning payment for these bone marrow transplants. We incorrectly stated that bone marrow acquisition costs are paid on a reasonable cost basis; however, this is incorrect as this cost is included in the prospective payment amount. Also, physician services are billed under Part B at 80 percent of the reasonable charge as determined by the Medicare carrier (rather than 100 percent as stated in the manual issuances).)

Bone marrow transplants cases will be assigned to existing DRGs until data on Medicare patient experience is developed that indicate that a separate DRG would improve both clinical coherence and homogeneity with respect to resource use for a new DRG. Since coverage of the procedure was established only in April 1989, limited data will be available for analysis in the coming year. However, we will review the available data and, in doing so, we will take into account the commenter's findings.

j. *GROUPER E codes.*

Comment: One commenter recommended that the GROUPER be modified so that E codes, which are used to classify external causes of injury and poisoning, will not affect DRG assignment of cases in MDC 15 (Newborns and Other Neonates with Conditions Originating in Perinatal Period). The commenter pointed out that cases in MDC 15 with E codes are assigned to DRG 390 (Neonates with Other Significant Problems) and recommends that the GROUPER be modified to eliminate this problem even though this is not a major problem for Medicare's population since the GROUPER is used by payors other than Medicare.

Response; We agree that the GROUPER should not assign MDC 15 cases with an E code to DRG 390. We will address this problem in next year's GROUPER changes; that is, the DRG reclassification changes effective for FY 1991.

k. *Thoracoabdominal Aortic Aneruysm (TAAA) Repair.*

Comment: A commenter expressed concern that the level of resources associated with TAAA was not properly recognized by the current DRG classification system. The commenter noted that the September 30, 1988 final rule (53 FR 38483) had indicated that we would continue to review the classification of this procedure but that we had not addressed the issue in the May 8, 1989 proposed rule. The commenter suggested that the prospective payment system, which operates on the law of averages, discourages specialization even though there is no evidence that high-volume hospitals have lower complication and mortality rates.

Response: Currently, TAAA repairs are classified in DRG 108 (Other Cardiothoracic or Vascular Procedures with Pump) and DRG 109 (Other Cardiothoracic Procedures without Pump). During FY 1988, there were 69 cases in DRG 108, the same number as in FY 1987. During FY 1988, there were 293 cases in DRG 109, an increase of approximately seven percent over the number of cases in FY 1987. TAAA repairs account for approximately two percent of all cases in these DRGs. Further, analysis of the coefficient of variation for TAAA repairs shows a much higher variable in charges within the TAAA cases than within DRGs 108 and 109.

As we noted in the September 30, 1988 final rule (53 FR 38483), we are not generally persuaded that such small numbers warrant special treatment in the context of a system built on averages. While analysis indicates that cases with TAAA procedures appear to consume more resources than the average case in DRGs 108 and 109, there is no evidence that providers of these services are suffering a financial hardship as a result of performing these services.

l. *Percutaneous Transluminal Coronary Angioplasty (PTCA).* In the course of analyzing the DRG logic for DRGs 106, 107, and 108 (see discussion on surgical hierarchy for MDC 5 in section II.B.3., above), we noted a problem with the assignment of percutaneous transluminal coronary angioplasty (PTCA) (procedure codes 35.96 through 36.05). PTCA involves the insertion of a catheter in the arm or leg that is passed into the vessels that supply the heart muscle. Although PTCA is comparable clinically in resource intensity to other cardiac catheterization procedures, it is not listed as a cardiac catheterization in DRG 106 (Coronary Bypass With Cardiac Catheterization). As a result, if PTCA is performed but the patient still requires coronary bypass surgery (and does not receive another cardiac catheterization procedure), the case will be assigned to the lower-weighted DRG 107 (Coronary Bypass without Cardiac Catheterization). Even though we did not propose a change in the PTCA assignment, we are assigning PTCA as a cardiac catheterization procedure to DRG 106 in this final rule. The title "Non-Operating Room Procedures" is being changed to "Cardiac Catheterization Procedures" in the GROUPER definitions for DRG 106. Given the comparability of PTCA with other cardiac catheterization procedures, we believe it would be inappropriate to delay implementation of this change for another year. We note that only a small number of cases will be affected by this change.

C. Recalibration of DRG Weights

One of the basic issues in recalibration is the choice of a data base that allows us to construct DRG relative weights that most accurately reflect current relative resource use. Since FY 1986, the DRG weights have been based on charge data. The latest recalibration, which was published as a part of FY 1989 prospective payment final rule, used hospital charge information from the FY 1987 MEDPAR file. For a discussion of the options we considered and the reasons we chose to use charge data beginning in FY 1986, we refer the reader to the rules published on June 10, 1985 (50 FR 24372) and September 3, 1985 (50 FR 35652).

We proposed to use the same basic methodology for the FY 1990 recalibration as we did for FY 1989. That is, we recalibrated the weights based on charge data for Medicare discharges. However, we used the most current charge information available, the FY 1988 MEDPAR file, rather than the FY 1987 MEDPAR file. The MEDPAR file is based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The proposed recalibrated DRG relative weights were constructed from FY 1988 MEDPAR data received by HCFA through December 1988 from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. That MEDPAR file included data for approximately 9.7 million Medicare discharges (erroneously indicated as 9.5 million in the proposed rule). The MEDPAR file updated through June 1989 includes data for approximately 10 million Medicare discharges and this is the file used to calculate the weights set forth in Table 5 of the addendum to this final rule.

The methodology used to calculate the DRG weights from the FY 1988 MEDPAR file is as follows:

- All the claims were regrouped using the revised DRG classifications discussed above in section II.B. of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education costs, disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers using the same criterion as was used in computing the current weights. That is, all cases outside of 3.0 standard deviations from the mean of the log distribution of charges per case for each DRG were eliminated.
- The average charge for each DRG was then recomputed excluding the statistical outliers and divided by the national average standardized charge per case to determine the weighting factor.
- We established the weighting factor for heart transplants (DRG 103) in a manner consistent with the methodology for all other DRGs except that the heart transplant cases that were used to establish the weight were limited to those Medicare-approved heart transplant centers that have cases in the FY 1988 MEDPAR file.
- Kidney acquisition costs continue to be paid on a reasonable cost basis but, unlike other excluded costs, kidney acquisition costs are concentrated in a single DRG (DRG 302, Kidney Transplant). For this reason, it was necessary to make an adjustment to prevent the relative weight for DRG 302 from including the effect of kidney acquisition costs, since these costs are paid separately from the prospective payment rate. Kidney acquisition charges were subtracted from the total charges for each case involving a kidney transplant prior to computing the average charge for the DRG and prior to eliminating statistical outliers.
- Heart acquisition costs, like kidney acquisition costs, continue to be paid on a reasonable cost basis and are similarly concentrated in a single DRG (DRG 103, Heart Transplant). Accordingly, for the heart transplant cases in the updated MEDPAR file used for recalibration, we subtracted from the total charges of each case an estimate of heart acquisition charges prior to computing the average charge for the DRG and prior to eliminating statistical outliers, identical to the adjustment we make for removing kidney acquisition charges from cases in DRG 302. For additional information about the methodology for estimating heart acquisition costs, see the September 1, 1987 final rule at 52 FR 33037. In the proposed rule, we indicated that if adequate heart acquisition charge data were available from the bills used to determine the final DRG weights, we would use the actual heart acquisition charges in establishing the final FY 1990 weight for DRG 103. Our analysis indicates there were 110 cases in DRG 103 in the updated MEDPAR file. However, only eight of these cases had heart acquisition charges shown on the bill. Given the discrepancy between the total number of cases in the DRG and the number of cases with heart acquisition charges, we have decided to continue to estimate heart acquisition charges rather than to use the limited charge data reported on the MEDPAR file.

When we recalibrated the DRG weights for FY 1986, FY 1988, and FY 1989, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. In FY 1989, there were 35 DRGs that contained fewer than 10 cases. We proposed to use that some case threshold in recalibrating the DRG weights for FY 1990. In the FY 1989 recalibration, we computed the weight for the 35 low-volume DRGs by adjusting the original weights of these DRGs by the percent change in the weight of the average case in the remaining DRGs. We proposed to use this same methodology for the FY 1990 recalibration. Using the FY 1988 MEDPAR data set, there are 27 DRGs that contain fewer than 10 cases.

ProPAC, in its March 1, 1988 report, had recommended that the DRG weights be recalibrated annually on the basis of costs rather than charges. However, ProPAC indicated concern about the Medicare cost-finding methods for estimating costs because the limitations of the Medicare cost report data may in some cases produce imprecise DRG weights. In the May 27, 1988 proposed rule, we indicated that we would examine the feasibility of adopting cost-based DRG weights (53 FR 19507).

Accordingly, we contracted with the Rand Corporation to evaluate both methodologies to determine which provided the better measure of resource consumption across DRGs. While there were noted differences in the recalibration results using each methodology (that is, charge-based weights resulted in higher weights for surgical DRGs and lower weights for medical DRGs, on average, relative to cost-based weights), Rand found no conclusive evidence favoring one methodology over the other. We continue to believe that the

disadvantages associated with charge-based weights are compensated for by the fact that, for purposes of recalibration, charge data are available on a more timely basis than cost data. For example, for the recalibrated weights for FY 1990, we are using FY 1988 Medicare billing data from the MEDPAR file. However, we have yet to obtain a full file of FY 1987 Medicare cost reports. Thus, any cost data we were to use for recalibration would be at least 1 year and perhaps as much as 2 years older than the most recent available charge data.

In addition, since costs are not accumulated on an individual case basis, DRG by DRG, it is necessary even in developing cost-based weights to link ancillary charge data from the claims file to cost report data as part of the process of estimating the average costs of cases in each DRG. In an attempt to make more timely estimates of costs, ProPAC also proposed in its March 1, 1988 report that the latest cost report data be used in conjunction with the most recent patient bills. However, as noted in the Rand study, this mismatch of data might cause distortions in estimating costs because it assumes that per diem costs rise uniformly across hospitals and that cost-to-charge ratios remain constant over time. In order to maintain consistency and to determine relative resource use accurately, we believe that charge data for the same period as the cost data should be used in cost-based recalibration. Therefore, if we were to recalibrate on the basis of costs, both the charge and cost data that would be used would be significantly older than the most recently available charge data.

We believe that using old data is inappropriate, particularly given the rapid advances in medical technology and resulting changes in treatment patterns. We further believe that it is in the best interest of the hospitals and Medicare beneficiaries that the resource use associated with these major new medical advances be reflected in the DRG weights as soon as possible. This can be accomplished by the use of charge-based weights computed on an annual recalibration schedule. We are concerned that use of cost-based weights would significantly delay recognition of new technologies or greatly complicate the recalibration process by necessitating a number of special adjustments to take such new technologies into account. Therefore, absent conclusive evidence that cost-based DRG weights provide a better measure of resource consumption across DRGs, we proposed to continue using charges as the basis for recalibrating the DRG relative weights.

The purpose of making changes in the DRG classifications and weights is to reflect changes in the relative resource costs across DRGs. Thus, the changes are intended to affect the relative distribution of payments across DRGs and should not affect aggregate payments to hospitals under the prospective payment system. Each time we have recalibrated (beginning with the first recalibration in FY 1986), we have normalized the new weights by an adjustment factor intended to ensure that recalibration by itself neither increases nor decreases projected total payments under the prospective payment system. With normalization, the average case weight after recalibration equals the average case weight prior to normalization for the same set of cases.

The case-mix index is a measurement of the average DRG weight for a given set of cases. In theory, any changes in the average case-mix index value for Medicare cases after recalibration and implementation of the new GROUPER and corresponding DRG weights should be attributable to an increase in the complexity of cases that are treated or to coding changes. However, our analysis indicates that the case-mix index value for FY 1988 cases is higher when those cases are processed with the FY 1988 GROUPER than when the same cases are processed with the FY 1986 GROUPER. This demonstrates that changes we made to the GROUPER program between FY 1986 and FY 1988 inflated the case-mix index and, therefore, program expenditures.

Several changes were introduced into the GROUPER 4 program used to pay for discharges in FY 1987. These changes, which are discussed in detail in a June 3, 1986 final notice on changes to the DRG classification system (51 FR 20192) and the September 3, 1986 final rule (51 FR 31476), included the following:

- Creation of a new DRG for extensive burns with a burn-related operating procedure.
- Elimination of age considerations from the criteria for classification of two pairs of DRGs in MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue).

Changes that were made in the GROUPER 5 program used to pay for discharges in FY 1988 are discussed in detail in a September 1, 1987 final notice on changes to the DRG classification system (52 FR 33143). The most significant of these changes were—

- Creation within MDC 4 (Diseases and Disorders of the Respiratory System) of two new DRGs for tracheostomy and mechanical ventilator cases;
- Reconfiguration of the alcohol and drug DRGs;
- Elimination of age over 69 as a criterion for classification in all of the pairs of DRGs in which age over 69 and/or CC was a factor; and
- Changes to the CC list.

We analyzed the changes in the case-mix index between FY 1986 and FY 1988 because the FY 1986 cases were used to recalibrate the DRG weights in the GROUPER 5 program, which, in turn, was used to pay the FY 1988 cases that are being used to recalibrate the FY 1990 weights that will be used with GROUPER 7. To the extent that the DRG classification changes and relative weights contributed to the increase in the case-mix index, an adjustment should be made to the FY 1990 weights in order not to build the inflated FY 1988 case weights permanently into the average case weight values.

Our analysis indicated that there was a total increase in the case-mix index of 6.4 percent between FY 1986 and FY 1988, as follows:

CASE-MIX INDEX CHANGE—FYS 1986–1988

Fiscal year	Number of discharges	GROUPER version	Case-Mix index [1]	Percent increase over FY 1986
1986	8,842,953	3	1.2045	....
1987	9,501,374	4	1.2367	2.7
1988	9,142,064	5	1.2824	6.4

[1] Index values reflect GROUPER version and MEDPAR data set appropriate to each year.

We analyzed the case-mix change in order to determine what portion of the increase was attributable to changes made in the GROUPER program from FY 1986 to FY 1988.

To evaluate this question, in the proposed rule, we used each of the three GROUPER programs to process and classify the bills from the FY 1988 MEDPAR. In order to process the FY 1988 cases through the earlier GROUPER versions, FY 1988 diagnostic and surgical codes were remapped into their FY 1987 equivalents prior to being processed with GROUPER 4. These codes were then remapped into their FY 1986 equivalents prior to being processed with GROUPER 3. Since the same FY 1988 cases were processed through each of the GROUPER versions, we assumed that any differences in the average case-mix index values between the three GROUPER versions are attributable to recalibration and the changes in the GROUPER program.

We found that the FY 1988 case-mix index value was 1.35 percent greater when the cases were processed using GROUPER 5 than when using GROUPER 3, as shown below:

EFFECT OF GROUPER VERSION ON FY 1988 CASE-MIX INDEX

	FY 1988 discharges	Case-Mix index [1]	Percent difference from GROUPER 3
GROUPER 3	9,142,064	1.2553	
GROUPER 4	9,142,064	1.2596	.34
GROUPER 5	9,142,061	1.2724	1.35

[1] Represents FY 1988 MEDPAR run through each GROUPER version.

Based on this analysis, we concluded that, of the total increase in the case-mix index value from FY 1986 to FY 1988 (that is, 6.4 percent), 1.35 percent was the result of recalibration and changes made to the GROUPER program.

In normalization, we compare the average case weight before recalibration (for FY 1990, this is determined by mapping the FY 1988 claims into their FY 1989 equivalents and processing them through GROUPER 6) to the average case weight after reclassification and recalibration. Based on the above analysis, we proposed to reduce the average case weight by 1.35 percent. Without this adjustment, we would build into the FY 1990 weights an inflated average case-weight value. We did not propose to recover the excess payments that have already been made based on the inflated weights; however, it would be inappropriate to continue to pay based on these weights. Therefore, we proposed to normalize the FY 1990 weights by an adjustment factor so that the average GROUPER 7 case weight after recalibration is equal to the average GROUPER 6 case weight prior to recalibration reduced by 1.35 percent.

We received many comments from the public on the adjustment to the DRG weights, as well as many comments on DRG recalibration in general. The specific comments and our responses follow.

Comment: Many commenters supported our policy of using charge data to recalibrate the DRG weighting factors. However, several commenters stated that we should use cost data in lieu of charges when recalibrating the DRG weights.

Response: We addressed the issue of recalibration based on cost data versus charge data in detail in the May 27, 1988 proposed rule (53 FR 19507) and the September 30, 1988 final rule (53 FR 38492). We continue to believe that while, in principle, recalibration based on cost data is preferable for calculating DRG weights, in fact, there is no choice but to rely heavily on charges. The reason is that ancillary "costs" are just ancillary charges adjusted by cost-to-charge ratios. Since both "cost" and "charge" weights are very dependent on the charge data, the co-called "cost" weights are subject to many of the same limitations as the "charge" weights. Charge data, unadjusted by cost report data on cost-to-charge ratios, only lag a year behind the current fiscal year; however, cost data lag at least 1 year and up to 2 years behind the latest available charge data. Although we are attempting to accelerate the process for submitting and reviewing cost report data, there is an inherent limitation in this process in that cost reports cannot be submitted until after the end of a cost reporting period. We continue to be concerned that using older cost data would delay the recognition of new technologies and changes in medical practice patterns.

Finally, we are sensitive to the criticism expressed by some that cost-based weights are more compressed than charge-based weights, so that the use of charges tends to favor more costly, high technology services, which are more often furnished in urban hospitals. Nevertheless, we believe that the advantages of timely charge data outweigh the disadvantages discussed above that are inherent in the use of cost data.

Comment: One commenter opposed the lower relative weight for DRGs 336 and 337 (Transurethral prostatectomy) as set forth in the proposed rule. In addition to the commenter's opposition to the overall 1.35 percent reduction (included in a separate comment and response, below), the commenter believes that any reduction in the weight of these DRGs would only increase the amount of the underpayment to hospitals for these two DRGs. The commenter provided copies of an audit of 11 Medicare and seven non-Medicare transurethral prostatectomy cases discharged within a 3-month period during FY 1989. The commenter compares the hospital's charges to the wage-adjusted DRG payment that the hospital received with no adjustment for teaching costs or the additional cost of treating a disproportionate share of low-income patients.

Response: The commenter has expressed a basic misconception that a hospital's charges for services are comparable to the amount of Medicare prospective payment system payments to the hospital. The Medicare program has never paid on the basis of charges for inpatient services (except that, under the reasonable cost payment system, allowable costs could not exceed the hospital's charges). Moreover, the prospective payment system payment does not include capital and other pass-through costs. Therefore, an accurate comparison cannot be made between a hospital's charges for a case and the Medicare payment in order to determine the amount that payment exceeded or fell short of the cost of treating that

case. For example, we adjusted the average of the charge amounts presented by the commenter by the appropriate Statewide urban cost-to-charge ratio as set forth in Table 8 of the addendum to the September 30, 1988 final rule (53 FR 38628). The adjusted average amounts were very close to the applicable DRG payment amounts cited by the commenter.

With respect to the commenter's concern regarding adequate payment for transurethral prostatectomy cases under the prospective payment system, we must reiterate that the prospective payment system is not designed so that the payment received covers the full cost of every discharge. A hospital's payment may be greater than its costs for some DRGs and less than its costs for other DRGs. While the Medicare prospective payment amount may not cover the complete cost of care for some cases that develop complications or involve more severe illnesses or multiple procedures, there are likely to be many cases in which the Medicare payment exceeds the cost of treating the patient, and the excess payments received in these cases should offset these higher cost cases. Thus, the prospective payment system is intended to provide an incentive for hospitals to manage their operations more efficiently by evaluating those areas where increased efficiencies can be instituted without adversely affecting the quality of care and by treating a mix of cases so that payment in excess of cost on one DRG will offset costs in excess of payment of another DRG.

Comment: We received a large number of comments questioning our authority to impose an across-the board reduction in the DRG weights in order to correct for increases in the case-mix index resulting from changes in the DRG classification system and recalibration. Many commenters stated that the update factor is the traditional vehicle for incorporating coding effects into the prospective payment system and suggested that HCFA was, in effect, making an adjustment for case-mix increase twice; once in the weights and again in the update recommendation. The commenters also noted that since Congress has eliminated HCFA's discretion in setting the update factor, the decision to reduce the DRG weights by 1.35 percent is HCFA's attempt to circumvent congressional intent.

Response: We believe that the reduction in the DRG weights is necessary in order to maintain budget neutrality, and that we have the authority to make appropriate adjustments to the DRG weights to ensure that any changes in the DRG classifications and weights do not affect aggregate payments to hospitals under the prospective payment system. Section 1886(d)(4)(A) of the Act requires the Secretary to establish a classification system for measuring relative resource consumption using diagnosis-related groups and a methodology for classifying specific inpatient hospital discharges within these groups. Section 1886(d)(4)(C) of the Act requires that these classification and weighting factors be adjusted annually beginning in FY 1988 "to reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources."

Since changes in the DRG classifications and weighting factors are intended to account for "relative" changes in resource consumption across DRGs, we believe it is implicit that any reclassification or recalibration, or both, of the DRGs should not influence aggregate payments to hospitals. Changes in the DRG classification system and the DRG weights are intended only to redistribute prospective payments among cases and should not increase or decrease total payments. Without the reduction in the DRG weights, we would build the inflated DRG weights resulting from changes in the classification system and recalibration into the FY 1990 prospective payment system payments.

With regard to those commenters who stated that the update factor is the vehicle that should be used to account for the effect of changes in the case-mix index on aggregate payment levels, we disagree with respect to the effects of reclassification and recalibration changes. When the increase in the case-mix index is directly related to reclassification and recalibration of the DRG system, we believe it is more appropriate for the adjustment to be made in the DRG weights as an integral part of the recalibration process. We note that our update recommendation does not include this increase as a factor of consideration.

Comment: A few commenters expressed concern that a reduction in all DRG weights would have a greater effect on hospitals with a low case-mix index value than those with higher values. At least one commenter believes that .0135 would be subtracted from each DRG weight.

Response: We are implementing an across-the-board percentage reduction in the DRG weights. The impact of this reduction will fall equally on all hospitals as a percentage reduction in their average case weight and will not be proportionately greater for hospitals with low case-mix index values.

Comment: Several commenters argued that the 1.35 percent reduction is inappropriate because GROUPER changes are made to better account for actual resource use on very costly cases and that an increase in the average case-mix index value across GROUPER versions should be an expected result. Other commenters expressed concern that the methodology used to arrive at the 1.35 percent reduction appears to discount changes in case mix, either real or related to coding, that could not be identified and measured with GROUPER 3. Once commenter suggested that some of the case-mix increase may reflect the ability of the GROUPER improvements to capture some of the increase within DRG complexity. This commenter argues that this increase represents a real increase in patient resource requirements that justifies an increase in hospital payments.

Response: The purpose of the GROUPER changes is to improve the way past cases are classified to measure relative resource consummption in establishing the DRG weights and the way current cases are classified for payment purposes. In the year in which the change are made, they are intended to be budget neutral; that is, the payments in that year should be no more or no less than the payments would have been without the changes. We proposed the 1.35 percent reduction in DRG weights because our analysis indicated that of the total increase in the case-mix index value between FY 1986 and FY 1988 (that is, 6.4 percent), 1.35 percent (about one-fifth of the total increase) resulted from the GROUPER changes and recalibration in those years. No adjustment in the DRG weights was proposed for the remaining increase in total case-mix.

To the extent the classification changes capture differences in relative resource consumption that were not previously measured (such as increases in DRG complexity) and as the frequency of the more resource-intensive cases increases relative to the frequency of the less resource-intensive cases in subsequent years, we agree that there is a change in case mix. The portion of the change in the case mix that is real (that is, that does not result from coding improvements) represents an increase in resource requirements that should be recognized by increased payments in the subsequent years. However, the actual resource requirements for a set of cases does not change merely because the cases are processed through different GROUPER versions. Consequently, for the year in which the GROUPER refinements are initially effective, the average case weight should be the same when the cases are processed through the old and the new GROUPER versions.

In the proposed rule, we based the 1.35 percent reduction in the DRG weights on a comparison of the average FY 1988 case-mix index value with the average case-mix index value for the FY 1988 cases processed through GROUPER 3. We used only FY 1988 cases paid under the prospective payment system. Upon further analysis, we have decided to make two changes in our methodology. First, we have used data from all hospitals subject to the prospective payment system and short-term acute care hospitals in the waiver States in order to be consistent with the data set used to recalibrate and normalize the DRG weights. Second, we have concluded that the method we used in the proposed rule does not give appropriate recognition to changes in the distribution and resource intensity of FY 1987 cases in determining the overall adjustment for case-mix increases occurring between FY 1986 and FY 1988. To take these changes into account, we have determined the case-mix adjustment in this final rule by using two steps. First, we processed FY 1987 MEDPAR data (cases that were paid using GROUPER 4) through GROUPER 3 and computed a case-mix index value. The difference between the actual FY 1987 case-mix index value and the case-mix index value for the FY 1987 cases using GROUPER 3 represents the change in case mix attributable to the GROUPER 4 classification changes. We determined there was a .29 percent increase in the case-mix index between GROUPER 3 and GROUPER 4 using the FY 1987 cases. Next, we processed FY 1988 data through GROUPER 4 and computed an average case-mix index value. The FY 1988 case-mix index value was .93 percent higher than the case-mix index value for the FY 1988 cases processed through GROUPER 4. The combined increase was 1.22 percent. Based on this analysis, in this final rule, we have reduced the FY 1990 weights to remove the 1.22 percent increase in the average case weight attributable to GROUPER changes and recalibration between FY 1986 and FY 1988. We make this reduction by multiplying the FY 1990 weights after normalization by .9879 (1 divided by 1.0122). The results of our analysis are shown below:

EFFECT OF GROUPER VERSION ON FY 1988 CASE-MIX INDEX VALUE

	Number of FY discharges	GROUPER 3 case-mix index	GROUPER 4 case-mix index	GROUPER 5 case-mix index	Percent difference between GROUPER versions
1987	9,753,095	1.2354	1.2390		.29
1988	9,983,903		1.2691	1.2609	.93
					1.22

If we had made no change in methodology between the proposed rule and the final rule, but merely used updated FY 1988 data, the reduction would have remained at 1.35 percent.

Comment: Several commenters noted that the GROUPER changes result in a better classification system and suggested that the case-mix index value and payments that results from GROUPERS 3 and 4 were inappropriately low because these enhancements were not reflected in those GROUPERS. These commenters suggested that it is inappropriate to assume that the GROUPER 5 weights are inflated; instead, it is just as likely that the GROUPER 3 weights were deflated.

Response: The relative weights distribute payments across DRGs and should not influence aggregate payment levels. Although the new GROUPER contains improvements in the classification system and updated weights, these changes do not affect the actual resource requirements of the cases to be processed with the GROUPER and the average case weight should remain the same. If there is a change, it means that implementation of the new GROUPER was not budget neutral. Thus, the issue is not whether the GROUPER 5 weights were inflated or the GROUPER 3 weights were deflated relative to an appropriate payment level. Rather, the issue is whether the GROUPER 5 average case weight is inflated relative to what the average case weight would be if the GROUPER revisions were implemented in a budget neutral manner.

Comment: One commenter expressed concern that HCFA attributes increases in the average case-mix index value to coding changes and suggested that no major changes have occurred in coding practices in the last three years. Therefore, it is inappropriate for HCFA to attribute increases in the case mix index value to coding changes without conducting actual reviews of coding to substantiate this claim. Another commenter noted that the upward shift in the measured case-mix index value between the two GROUPERS fails to isolate the effect of coding changes and could as readily be observed even if no DRG classifications were changed as long as the relative costliness of DRGs in the two GROUPERS is not identical. One commenter submitted an analysis concluding that changes in the average case-mix index value could be the result of three factors: real change in patient mix and improvements in the DRG system; changes in coding result in apparent or nominal changes in case mix; and changes in the relative cost structure of the DRGs. The commenter indicated that real changes in case mix cannot be distinguished from changes in case mix that are the result of coding practices and concluded that, since HCFA cannot demonstrate that the increase in case mix is not real, the reduction in the DRG weights should not be made.

Response: In the proposed rule, we indicated that we were making the reduction in the DRG weights because our analysis indicated that changes made to the GROUPER program and recalibration, coupled with changes in hospital reporting practices made in response to those changes, inflated the case-mix index value and, therefore, program expenditures. Unfortunately, our mention of changes in hospital coding practices has confused the underlying problem the reduction in DRG weights is to address; that is, for whatever reason, the changes in GROUPER versions and relative weights between FYs 1986 and 1988 artificially inflated the FY 1988 case-mix index value and a reduction is needed in the DRG weights in order not to build the

inflated values into future prospective payment amounts.

As several commenters noted, the reason the case-mix index value for the FY 1988 cases is higher than it would have been if the GROUPER changes had not been made is because there was a change in the distribution of cases across DRGs between the cases used to determine the GROUPER 4 and GROUPER 5 relative weights and the FY 1988 cases. Relatively more cases fell into higher-weighted DRGs in FYs 1987 and 1988 than had been projected when the GROUPER 4 and GROUPER 5 relative weights were established. To some extent, the change in distribution represents a real change in resource requirements between, for example, the FY 1986 cases used in the GROUPER 5 recalibration and the FY 1988 cases paid using GROUPER 5.

The remainder of the change in distribution represents only a nominal change in the resource requirements between the two sets of cases. For example, one of the GROUPER 5 changes was to eliminate age 70 or over as a factor that would automatically classify a case into the "with CC" (complications or comorbidities) DRG of a paired DRG. We projected the impact of this change in establishing the GROUPER 5 relative weights based on the CCs coded on the FY 1986 bills. A case previously assigned to the "with CC" DRG on the basis of age was reclassified to the "without CC" DRG if no CCs were shown on the bill. In FY 1988, a higher percentage of cases in the paired DRGs had CCs shown on their bills than had been projected on the basis of the FY 1986 bills. In part, more CCs were shown because there was a real change in the percentage of patients with CCs; however, more CCs were also shown because coding of CCs had not been required under the prior GROUPER versions in order for a patient age 70 or older to be classified in the "with CC" DRG. The latter cases represent only a nominal change in resource requirements since the CCs existed but had not been coded in FY 1986. It was this type of change that prompted the reference in the proposed rule to changes in reporting practices contributing to the inflated case-mix index value.

For purposes of establishing the FY 1990 DRG weights, we do not believe it is necessary to determine how much of the change in distribution of cases was real and how much was nominal. This determination is not relevant to the basic issue of whether implementation of the new GROUPER versions and relative weights was budget neutral. There is no change in the actual resource requirements of the FY 1988 cases when they are processed through GROUPER 4 or when the FY 1987 cases are processed through GROUPER 3. Any measured differences in the case-mix index must be attributable to the GROUPER changes and recalibrations made in those years.

Comment: One commenter maintained that with the refinements in the new GROUPER, we should expect some changes in distribution of cases and that the appropriate test for budget neutrality is the changes in the data base on which the GROUPER is developed rather than a comparison based on two different GROUPERs. Other commenters argued that our proposal to reduce the DRG weights represents a break with our historical policy of making DRG reclassification and recalibration budget neutral. Some commenters contended that the reduction is solely a budget strategy and not a methodological improvement.

Response: When we make the DRG classification changes and recalibrate the DRG weights to reflect changes in the relative resource intensity across DRGs, we normalize the new DRG weights by an adjustment factor intended to ensure that implementation of the new GROUPER version and DRG weights will be budget neutral. With normalization, the average case weight after making the GROUPER changes and recalibrating the weights equals the average case weight for the same set of cases before making any changes. We use the most recent data available to estimate the average case weight used in normalization. Nevertheless, there is a 2-year lag between the data used to establish the new DRG weights and the year the new weights are effective. For example, we used FY 1986 data to establish the FY 1988 DRG weights. Since normalization is based on the distribution of cases from 2 years earlier, the resulting factor is an estimate of the adjustment needed to ensure that the GROUPER changes and recalibration achieve budget neutrality. There is no assurance that actual expenditures will not be affected by the changes. The appropriate test for determining whether budget neutrality is actually achieved is to compare the average case weight for the actual cases processed during the year the new DRG weights were effective with the average case weight for the same set of cases using the GROUPER and DRG weights in effect in the prior year. This comparison determines what the normalization factor would have been had the actual data needed to ensure budget neutrality had been available at the time the new DRG weights were established. We believe that this refinement is needed to assure, at the very least, that any changes in the case-mix index resulting from GROUPER versions are not built into future prospective payment amounts. Therefore, the reduction is entirely consistent with our policy of making GROUPER changes and recalibration budget neutral.

Comment: One commenter argued that since HCFA is required by law to recalibrate annually, the argument that FY 1988 payments would have been lower if the GROUPER in effect in FY 1986 had still been in place for FY 1988 is irrelevant. The commenter further notes that HCFA could not have continued to use the FY 1986 reclassifications without rescinding the FY 1987 reclassifications and concluded that, at the very least, HCFA should not have compared the case-mix index value for FY 1988 cases using the FY 1986 GROUPER, but rather with the case-mix index value obtained with the FY 1987 GROUPER.

Response: We do not believe the commenter's assertion is correct. We recognize that we are required to make appropriate DRG classification changes and recalibrate annually and have not suggested otherwise. However, the GROUPER changes and changes due to recalibration should be budget neutral. The test for whether the effect of the GROUPER revisions is budget neutral is whether the case-mix index value for FY 1988 cases is the same as it would have been in the absence of those revisions.

The reduction in DRG weights is based on the changes in the case-mix index value between FYs 1986 and 1988. We chose this time period because the FY 1986 cases were used to recalibrate the DRG weights in the GROUPER 5 program, which, in turn, was used to pay the FY 1988 cases that are being used to establish the FY 1990 DRG weights. In the proposed rule, we compared the actual case-mix index value for the FY 1988 cases with the case-mix index value for these cases processed with the FY 1986 GROUPER. The 1.22 percent reduction in the final rule is based on the combined differences in the average case-mix index values between the actual FY 1988 case-mix index value and the case-mix index value for the FY 1988 cases processed with the FY 1987 GROUPER and between the actual FY 1987 case-mix index value and the case-mix index value for the FY 1987 cases processed with the FY 1986 GROUPER.

Comment: One commenter asked why the FY 1988 claims were not processed through GROUPER 6 and GROUPER 7 and noted that there were changes made to these GROUPERs that may also have affected the case mix. Since GROUPER 7 will be used to pay the FY 1990 claims, the commenter suggested that normalization should be based on GROUPER 7 rather than the GROUPER that was used to pay the claims in FY 1988.

Response: The commenter appears to be confusing the normalization process with the methodology for arriving at the proposed 1.35 percent reduction (1.22 percent in this final rule). In normalizing the FY 1990 weights, we processed the FY 1988 claims through GROUPER 6 and GROUPER 7. The GROUPER 7 weights after recalibration are adjusted so that the average GROUPER 7 case weight equals the average case weight for the FY 1988 cases processed through GROUPER 6. This average case weight is then reduced to remove the inflated amounts attributable to GROUPER changes and recalibration between FY 1986 and FY 1988.

Comment: One commenter noted a difference between the number of cases used for the case-mix index comparison (9,142,064) and the 9.7 million cases shown in Table 7. The commenter suggested that each of the references to the 1988 MEDPAR data should have been identified with the date of the update and an indication of which data had been excluded.

Response: In the proposed rule, we used FY 1988 MEDPAR data received through December 1988. In establishing the proposed relative weights, we used discharge data from all hospitals subject to the prospective payment system and short-term acute care hospitals in the waiver States. In the case-mix comparison, we included only those hospitals that were subject to the prospective payment system.

To establish the final DRG relative weights set forth in this document, we are using FY 1988 MEDPAR data received through June 1989. The number of cases used for this purpose total 9,983,359, including 81,534 statistical outlier cases and 159 cases in low-volume DRGs that were eliminated for purposes of recalibration. The statistical outlier cases are included in normalization and both statistical outlier cases and low-volume DRG cases are included in Table 7.

The 1.22 percent reduction to the DRG weights is based on analysis of both FY 1987 MEDPAR data received through June 1988 and the FY 1988 MEDPAR data received through June 1989. In this final rule, we have included data from all hospitals subject to the prospective payment system and short-term acute care hospitals in the waiver States in order to be consistent with the data set used to recalibrate and normalize the DRG weights. There were 9,753,095 cases in FY 1987 and 9,983,903 in FY 1988 data. Slightly more FY 1988 cases (544) were used in this analysis than in recalibration because some claims could not be associated with the hospital-specific data required to standardize the charges on the bill. If we had limited the data set to prospective payment system hospitals only, as we did in the proposed rule, the resulting reduction factor would have been 1.24 percent.

Comment: One commenter questioned whether the validity of our assumption that application of the case-mix index to different GROUPERs using the same data should result in the same average case weight. The commenter suggested several factors that could account for the difference in the case-mix index value among GROUPERs using the same data:

- A difference in the crosswalk codes used to map and to remap the data.
- Errors in remapping the diagnosis and procedure codes.
- Differences in the CCs that would be recognized in the GROUPER versions.
- A different distribution of cases grouping to each DRG across years.

Response: If a new GROUPER version is implemented in a budget-neutral manner, by definition, the average case weight for the cases processed using the new DRG version and weights should be the same as the average case weight for the same cases processed with the earlier GROUPER version and weights.

We believe that the first three factors the commenter has suggested would have an immaterial effect on the average case weight difference between GROUPER versions. For example, a difference in the crosswalk codes to map the FY 1986 codes into their FY 1988 equivalents for purposes of establishing the GROUPER 5 weights and the crosswalk codes to remap the FY 1988 codes into their FY 1987 equivalents for purposes of the analysis is not relevant. The issue was not whether the same crosswalks were used to map and to remap the data but rather whether the remapping was appropriately done. The remapping was based on "A Conversion Table of New ICD–9–CM Codes" by Robert Seaman, published in "Coding Clinic", Second Quarter 1988. This information and an explanation on how 12 surgical codes that remap into more than 1 code were handled in the analysis were provided during the comment period to individuals who requested information on this aspect of our analysis. We received no public comments claiming that our remapping was incorrect.

The commenter correctly pointed out a problem with the CC Exclusions List (one of the GROUPER 5 changes), under which certain diagnoses included in the standard list of complications and comorbidities are not considered a valid CC in combination with a particular principal diagnosis. As a result, a FY 1988 bill in one of the affected DRGs would not necessarily contain any GROUPER 4 CCs that are not also CCs in GROUPER 5. When this bill is crosswalked back to GROUPER 4, it may not contain any GROUPER 4 CCs and would group to the lower-weighted DRG for the principal diagnosis "without CC." Although this situation could occur, we believe it would happen fairly infrequently and, for several reasons, should not have a significant effect on the results of our analysis. First, this issue relates only to the portion of the analysis concerning the remapping of FY 1988 cases from GROUPER 5 to GROUPER 4 since the CC would still be coded on the FY 1987 cases. Second, the potential situation would be limited to cases falling into one of the 115 DRG pairs. Third, most cases classified "with CC" in GROUPER 4 were because the patient was age 70 or over. This information would still appear on the FY 1988 bill and would still result in the patient being remapped into the "with CC" DRG. Finally, our analysis indicates that the percentage of CC cases within the paired DRGS using FY 1988 cases processed through GROUPER 4 (85.7 percent) is slightly higher than the percentage of CC cases within the paired DRGs using FY 1987 cases processed through GROUPER 4. Thus, it would appear that only an insignificant number of cases might have been dropped as CCs in the remapping.

The change in the relative distribution of cases between GROUPER 3 and GROUPER 5 partially explains the 6.4 percent increase in the case-mix index. However, the reduction in the weights that we proposed is not intended to account for the changes in the relative distribution of cases because it uses the same set of cases, FY 1988, in both GROUPERs.

Comment: Several commenters noted that the reduction in the DRG weights will have a differential impact on those hospitals that have not had any increase in case mix attributable to the GROUPER changes and recalibration. One commenter noted that the causes for the increase are not spread equally across all DRGs or across all hospitals. Another commenter suggested that it

would be more appropriate to make the reduction on a hospital-specific basis based on each hospital's actual experience.

Response: We recognize that the DRG changes and recalibration in GROUPER 4 and GROUPER 5 affected the case-mix index value for some hospitals more than for others. However, the DRG weights reflect the national experience with regard to the relative resource requirements of Medicare cases. Any changes in the DRG weights are based on national average data and must apply across all classes of hospitals. To do otherwise would require establishing separate sets of weights by classes of hospitals. We believe this is neither feasible nor desirable.

Comment: One commenter expressed concern that tables equivalent to Tables 7A and 7B (length of stay tables for GROUPERs 6 and 7) were not published in the proposed rule for GROUPER 3, GROUPER 4, and GROUPER 5. The commenter suggested that these tables were needed to verify the results of HCFA's analysis. The commenter recommended that any reduction in weights be delayed until HCFA publishes these tables and the actual codes and computer procedures used to remap the codes for GROUPER 5 to GROUPER 4 and for GROUPER 4 to GROUPER 3 as well as the original codes used to map from GROUPER 3 to GROUPER 4 and from GROUPER 4 to GROUPER 5. Another commenter stated that the proposed reduction in the DRG weights represented a major departure from previous policy and the commenter indicated that more detailed information should be made available for public review and comment. One commenter believes that documentation that is adequate to evaluate the calculation of the reduction was not made available and suggested that the entire data set be submitted for a qualified, independent audit and statistical analysis.

Response: We do not publish all the material used in preparation of our proposals because of the voluminous amounts of information that would have to be published and because these data would be of limited interest to most readers. However, we agree that relevant data and information should be made available to the public. For this reason, in the proposed rule, we set up a process for expediting data requests (54 FR 19657; May 8, 1989). Thus, information relating to our study was made available during the public comment period. This information continues to be available on request.

With respect to submitting study data for an independent audit and analysis, we do not believe such an action is necessary because we receive independent analysis through the public comment process.

III. Changes to the Hospital Wage Index

A. Background

Section 1886(d)(2)(C)(ii) of the Act required, as a part of the process of developing separate urban and rural standardized amounts for FY 1984, that we standardize the average cost per case of each hospital for differences in area wage levels. Section 1886(d)(2)(H) of the Act required that the standardized urban and rural amounts be adjusted for area variations in hospital wage levels as part of the methodology for determining prospective payments to hospitals for FY 1984. To fulfill both requirements, we constructed an index that reflects average hospital wages in each urban or rural area as a percentage of the national average hospital wage.

For purposes of determining the prospective payments to hospitals in FY 1984 and 1985, we constructed the wage index using calendar year 1981 hospital wage and employment data obtained from the Bureau of Labor Statistics (BLS) ES 202 Employment, Wages and Contributions file for hospital workers. Beginning with discharges occurring on or after May 1, 1986, we have been using a hospital wage index based on HCFA surveys of hospital wage and salary data as well as data on paid hours in hospitals. The methodology used to compute the first HCFA wage index was set forth in detail in the September 3, 1985 final rule (50 FR 35661).

For discharges occurring on or after May 1, 1986 and before September 30, 1987, the wage index was based on wage data from calendar year 1982. For discharges occurring on or after October 1, 1987 and before September 30, 1988, the wage index was based on an equal blend of calendar year 1982 and 1984 wage data.

In the September 30, 1988 final rule, we continued to use the blended wage index based on 1982 and 1984 data for determining prospective payments to hospitals in FY 1989. However, we did make some changes to the index because of the enactment of section 4005(a) of the Omnibus Reconciliation Act of 1987 (Pub. L. 100–203), which added a new section 1886(d)(8)(B) to the Act, as discussed below in section III.C. of this preamble.

B. Updating the Wage Index Data

For discharges occurring in FY 1990, we proposed to base the wage index solely on 1984 wage data. Previously, we had proposed to base the wage index for FY 1989 solely on 1984 wage data (in the May 27, 1988 proposed rule (53 FR 19506)). However, as a result of a number of revisions to the 1984 wage data that were made between the May 27, 1988 proposed rule and the September 30, 1988 final rule, the national average hourly wage increased slightly, thereby reducing the wage index values for areas not affected by the changes. Therefore, given our concern about the negative impact on aggregate payments to hospitals, we decided to postpone adoption of a wage index based solely on the 1984 wage data. Our current analysis indicates that moving from a blended wage index to one based solely on 1984 data does not have a significant impact on aggregate prospective payments.

As discussed below in section III.D. of this preamble, we indicated that we are conducting a survey to collect wage data for the FY 1991 update to the wage index.

Comment: Several commenters indicated that, even though it would result in using older data, we should continue to use the blended wage index based on 1982 and 1984 wage data until the wage index based on data from the new wage survey Form 2561 is available for use. Many of these commenters believed that the 1984 wage data contain numerous errors as evidenced by HCFA's continuous actions to make corrections to these data. However, there were several commenters who believed that using the 1984 wage survey data represents an improvement over the current blended wage index.

Response: While it is true that we continue to accept corrections to the 1984 wage survey data, we believe that the 1984 wage data are generally accurate. The 1984 wage survey was completed by 99.5 percent of all hospitals subject to the prospective payment system, while only 92.5 percent of hospitals responded to the 1982 survey. We have resolved each correction that has come to our attention and we have revised the wage index prospectively.

In addition, over 67 percent of the 1984 wage surveys were audited, while the final 1982 data came from the hospital directly and were not audited. We believe that the fact that corrections have been made to the 1984 data should not be construed as an indication that the 1984 data are less valid; we have made corrections to the 1982 wage data as well. We believe that the 1984 wage data represent the latest and most complete and accurate data currently available for constructing the hospital wage index. Given the criticisms we have received concerning the use of old data, we do not believe it is appropriate to continue to use 1982 wage data in constructing the wage index.

We note that recent corrections have resulted in relatively small changes to the wage index values for most affected Metropolitan Statistical Areas (MSAs) and rural areas. As a matter of fact, several corrections resulted in no change or a change to only the third or fourth decimal place of the wage index value for the affected area.

Comment: Several commenters suggested that the wage index based solely on 1984 data should be adjusted so that implementation of the wage index does not result in any reduction to total aggregate prospective payments (that is, changes to the wage index should be budget neutral). One of these commenters believes that any change made to the prospective payment system should be budget neutral except for provisions that Congress has specifically indicated should result in an increase or decrease in payments. Another commenter cited language in the Conference Committee Report that accompanied Pub. L. 100–203, which states, "The conferees intend that the Secretary implement any update of the wage index in a budget neutral manner." (H.R. Rep. No. 495, 100th Cong., 1st Sess. 526 (1988).)

Response: While it is true that implementation of the new wage index does have the effect of reducing Medicare payments by an estimated 0.1 percent, we are not making a budget neutrality adjustment to the revised wage index for several reasons. First, we consider 0.1 percent to be insignificant in terms of total program payments made to hospitals under the system. In addition, the 0.1 percent reduction results not only from the implementation of a wage index based solely on 1984 data but also from the wage data corrections. If the original wage data had been reported accurately, implementation of the new wage index would have less impact on program outlays.

Finally, since the implementation of the prospective payment system, we have made other changes to the hospital wage index without making a budget neutrality adjustment. Historically, these changes have both decreased and increased the total Medicare prospective payment to hospitals. For example, when we implemented the wage index for FY 1988 (that is, the 1982/1984 blended wage index), we estimated that the total Medicare prospective payments would increase by 0.1 percent, but we made no budget neutrality adjustment.

The conference committee language cited by one commenter accompanied changes made by Congress in section 4004 of Pub. L. 100–203. Section 4004(a) of Pub. L. 100–203 amended section 1886(d)(3)(E) of the Act to require the Secretary to update the hospital wage index no later than October 1, 1990 (and at least every 36 months thereafter) based on a survey of wages and wage-related costs in prospective payment hospitals. We interpret the committee report language as applying to changes to the wage index beginning in FY 1991. We are conducting a new wage survey and intend to implement a new wage index based on this survey in FY 1991 in a budget neutral manner.

Comment: One commenter indicated that in duplicating HCFA's construction of the wage index, several methodological shortcomings were discovered. Although the changes recommended by the commenter would have little impact in terms of aggregate Medicare payments, they could have a significant impact on the affected wage areas. Specifically, the commenter indicated that the data base contains data from hospitals that reported wages and hours over a period of time of less than or greater than 12 months. It was suggested that the short and long reporting periods be eliminated from the data base. Alternatively, the wages and hours reported for these short periods should be weighted to reflect a full 12-month period. The commenter also noted that HCFA has inflated the wages reported to a common date (August 31, 1985) using the year end data of the cost reporting period. The commenter suggested that if HCFA continues to use short and long reporting periods, the inflator used should be determined and calculated based on the midpoint of the reporting period. Finally, the commenter pointed out that the wages reported from hospitals with reporting years ending after August 31, 1985 were not deflated to the date, and some hospitals were identified as having a September 30, 1985 year end but were eliminated even though it represented a 13-month cost reporting period.

Response: We agree that it would be preferable for the wage index methodology to provide for special handling of hospitals with short or long cost reporting periods. However, because of the limited number of hospitals in certain MSAs upon which we can base the wage index values, we cannot, for purposes of determining the wage index values for these MSAs, eliminate these hospitals' data. Therefore, we have not accepted the commenter's recommendation to eliminate these short or long reporting periods. Furthermore, we agree with the commenter that a short reporting period (that is, 1 to 6 months) may not be representative of hospital's average wage levels. Therefore, we do not believe it would be appropriate to weight the wages and hours in a short reporting period to reflect a full 12-month period. We will, however, continue to analyze this issue in conjunction with the construction of the FY 1991 wage index from the new survey data.

We agree with the commenter's suggestion that the inflation factor should be applied to the hospital's data based on the reporting period's midpoint rather than its year end. This calculation will not affect most hospitals' data as a full year was reported and the inflation factor for these hospitals will be the same. In addition, because of this change, data from hospitals whose first year prospective payment system cost reporting period ended after August 31, 1985, will be deflated to the common point. We have also made corrections to the 1984 data for any reporting period data errors, including first year prospective payment system cost reporting periods ending September 30, 1985.

Comment: A few commenters suggested that a regional wage index be developed to replace the current wage index which is based on MSAs. The commenters believe that this type of wage index would be more accurate and fairer to rural hospitals that are near urban areas and must compete in the same labor markets.

Response: The MSA/NECMA definitions as established by the Office of Management and Budget are widely accepted and are used by many Federal programs to account for and recognize economic and population differences among urban areas. We do not believe that a regional wage index would account for wage differences experienced by areas that are geographically close to one another. We believe that a regional wage index would ignore the sometimes large variations that often exist within regions. We intend to examine the issue of labor market areas in conjunction with the development of the FY 1991 wage index.

C. Revisions to the Wage Index for Rural Counties Whose Hospitals Are Deemed Urban

Under section 1886(d)(8)(B) of the Act, for discharges occurring on or after October 1, 1988, hospitals in certain rural counties adjacent to one or more Metropolitan Statistical Areas (MSAs)

are considered to be located in one of the adjacent MSAs if certain standards are met. Because of this provision, as a part of the September 30, 1988 final rule, we reclassified the wage data for those rural areas as if the hospitals in those areas were located in the adjacent MSAs and recomputed the wage index values for the affected MSAs and rural areas.

Because inclusion of the wage data from rural hospitals that are considered to be located in an adjacent MSA under section 1886(d)(8)(B) of the Act resulted in the reduction of the wage index values of several MSAs and rural areas, Congress enacted section 8403(a) of Pub. L. 100–647. Under that provision, which added a new section 1886(d)(8)(C) to the Act, if the inclusion of wage data from rural hospitals now considered to be located in an urban area results in a reduction of the wage value for the affected MSA or rural area, then the wage index values for those affected areas must be recomputed as if section 1886(d)(8)(B) of the Act had not been enacted. The wage index value for those rural counties with hospitals that were deemed urban and that are affected by this recomputation must be calculated separately. This provision is effective for discharges occurring on or after October 1, 1989 and before October 1, 1991.

Therefore, we proposed to calculate the wage index for FY 1990 in the following manner with respect to the geographic classification of hospitals:

- MSAs whose wage index values are reduced because of the inclusion of wage data from hospitals in adjacent rural counties that have been deemed to be located in the MSAs would have their wage index values recalculated as if section 1886(d)(8)(B) of the Act had never been enacted; that is, data from the rural hospitals would be excluded in calculating these MSAs' wage index values.
- Each county whose hospitals have been deemed to be located in such an MSA would have its own unique wage index value, that is, a wage index value calculated on a county-specific basis.
- Rural areas whose wage index values are reduced by the exclusion of wage data from hospitals that have been deemed to be located in adjacent MSAs would have their wage index recalculated as if those hospitals were not deemed to be urban. In this case, the wage data for hospitals located in the rural counties that have been deemed urban would be included in two wage areas, that is, both the affected rural area and the county-specific wage area for the deemed hospitals. Those rural areas whose wage index values are increased by the exclusion of the wage data for those hospitals that have been deemed urban would retain the increased wage index value.

Using 1984 data, the proposed wage index value for every MSA in which rural hospitals have been deemed to be located was lower than it would have been if those hospitals had not been included. Therefore, the proposed wage index value for the MSA was computed without including data from the deemed rural hospitals and the proposed wage index value was computed on a county-specific basis for every rural county whose hospitals have been deemed to be urban. As proposed, there were seven rural areas that had their wage index value recalculated to include the hospitals that have been deemed urban. Since we have traditionally designated the urban and rural wage index as Tables 4a and 4b, as set forth in the addendum to this document, in the proposed rule, we designated this new county-specific set of wage index values as Table 4c.

Comment: We received a large number of comments suggesting that our proposal to implement section 1886(d)(8)(C) of the Act does not reflect the intent of Congress. Specifically, the commenters pointed out that in many counties whose hospitals were redesignated as urban under the provisions of section 1886(d)(8)(B) of the Act, our proposal to implement a county-specific wage index resulted in those hospitals receiving total prospective payments significantly lower than what they had received following implementation of section 1886(d)(8)(B) of the Act in FY 1989 because those hospitals would be subject to a lower wage index value. Many hospitals would have a wage index value lower than the Statewide rural wage index value. Commenters also noted that because of the low county-specific wage index value, in some cases, hospitals redesignated as urban would receive lower payments than when previously designated as rural. The commenters believe that Congress did not intend to reduce the wage index value applicable to these hospitals below what they had received when they were designated as rural hospitals.

The commenters offered several alternative approaches to rectify this situation. Some commenters suggested that the wage index value for hospitals in those counties redesignated as urban should not be allowed to fall below the Statewide rural wage index value. Alternatively, commenters suggested that the wage index value for these counties be calculated as the highest of the wage index value for the MSA to which they are deemed to belong, the county-specific wage index value, or the Statewide rural wage index value. Finally, other commenters suggested that we calculate the wage index value of the counties whose hospitals were deemed urban according to the provisions of section 1886(d)(8)(B) of the Act as added by section 4005(a) of Pub. L. 100–203, but calculate, the wage index values for the MSA and rural areas affected according to the provisions of section 1886(d)(8) of the Act as amended by section 8403(a) of Pub. L. 100–647. In this way, the hospitals deemed to be urban retain the benefit of a higher wage index value without affecting the values of the affected MSAs and rural areas. One commenter believes that we could use our general "exceptions and adjustments" authority in section 1886(d)(5)(C)(iii) of the Act to make any adjustment for the affected counties.

Reponse: Section 1886(d)(8)(C) of the Act is very specific as to how wage areas must be treated and does not give us discretion with regard to redesignated counties whose hospital wage index values are lower than the Statewide rural wage index value that would have applied to them absent this new provision. Given the specificity of the law, we believe this provision should be implemented as legislated by Congress.

With respect to Congressional intent, we find no evidence that Congress specifically intended to exempt from a county-specific wage index those redesignated counties whose hospitals have wage index values that are lower than the Statewide rural wage index value. The conference report notes only that the Secretary is expected to develop alternatives to minimize the impact of section 1886(d)(8)(C) of the Act on those hospitals, to be included in a report to Congress required under section 8403(b) of Pub. L. 100–647. (H.R. Rep No. 1104, 100th Cong., 2d Sess. 276 (1989).) If Congress had intended to exclude those counties from a county-specific wage index, we believe that the legislation would have been drafted accordingly.

With respect to the suggestion that the Secretary use the exceptions and adjustment authority as provided by section 1886(d)(5)(C)(iii) of the Act, we do not agree that it would be appropriate at this time to use this authority. Although we recognize that hospitals in certain counties will be disadvantaged by this provision during FY 1990 to the extent that they will receive a lower wage index value than if they had continued to be paid as rural hospitals subject to the Statewide rural wage index value, these same hospitals received the greatest increases in payments during FY 1989 when they were paid on the basis of the wage index of the MSA to which they were deemed under the provisions of section 1886(d)(8)(B) of the Act. It is clear that Congress was aware of the impact this provision would have on redesignated hospitals. As noted above, if Congress had intended a different application of this provision, we believe that the law would have provided for it. Therefore, we do not believe it would be appropriate to use our exceptions authority and that section 1886(d)(8)(C) of the Act should be implemented as written.

Comment: Several hospitals that are located in rural counties and are now deemed urban and, therefore, have their own county-specific wage index values, suggested that the new county-specific wage index values are lower than the Statewide rural area values because the wage data for their hospitals are incorrect.

Response: Any hospital that believes that there is an error in its 1984 wage data may request that we make a correction. However, before a correction is made, the hospital must provide adequate documentation supporting a data correction to its fiscal intermediary. After verifying the documentation, the intermediary will submit the request along with a recommendation to HCFA's central office. If the correction is appropriate, HCFA will notify the regional office of the revised wage index value to be implemented effective for discharges occurring on or after the date the regional office is notified of the change. In accordance with our longstanding policy, changes to the wage index are implemented on a prospective basis only. (See our discussion on this issue in the September 30, 1988 final rule (53 FR 38496).)

D. Future Updates to the Hospital Wage Index

Section 1886(d)(3)(E) of the Act (as amended by section 4004(a) of Pub. L. 100–203) requires that wage indexes that are applied to the labor-related portion of the national average standardized amounts of the prospective payment system be updated not later than October 1, 1990 and at least every 36 months thereafter. This section further provides that the Secretary base the update on a survey of the wages and wage-related costs of hospitals in the United States that participate in the prospective payment system. The survey must measure, to the extent feasible, the earnings and paid hours of employment by occupational category and must exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services.

To accomplish this task, we developed two wage index survey forms. The first form (Form A) requested data similar to past surveys, with a few noted exceptions. In addition to the total wages and hours collected in past surveys, Form A also asked for data relative to the salary and hours associated with direct patient-care contracted labor, home office, and fringe benefits. Form A excluded salary and hours associated with the skilled nursing facilities and other related cost centers. The second form (Form B), in addition to the data requested on Form A, requested data relative to several occupational categories.

Before initiating the new hospital wage survey, the proposed forms (A & B) were submitted for prior consultation to various hospital industry representatives, including the major hospital associations, as well as to the fiscal intermediaries. We solicited comments on both forms, including the feasibility of obtaining accurate data. The comments we received suggested that most hospitals would be unable to accurately provide data by occupational categories at this time. As a result of the comments on these two forms, we have modified Form A, now referred to as HCFA–2561.

The HCFA–2561 is currently being used to collect data for the FY 1991 update to the wage index as required by section 1886(d)(3)(E) of the Act. However, before implementing this updated wage index or reaching decisions in the future on the collection of data by occupational categories and incorporating future wage survey forms into the hospital cost report, we are interested in receiving input from the public. Therefore, in the proposed rule, we solicited comments on the following issues:

- Should the wage index include data on contracted labor? For purposes of the wage index survey, contracted labor has been defined as direct patient-care contract labor such as registry nurses. Should the definition be expanded to include contracted services indirectly related to patient-care, such as billing or housekeeping services?
- What portion, if any, of home-office salaries and hours should be added to the wages and hours incurred solely by the hospital?
- Which fringe benefits, if any, should be included in computing the wage index? How should they be valued?
- Would hospitals be capable of providing and identifying verifiable salaries and hours by occupational categories? What occupational groupings would be appropriate?
- If occupational data were collected, what formula or methodology should be used in calculating an occupational-mix index? How would the methodology reflect the varying personnel and hiring decisions made by hospitals, that is, one hospital may hire registered nurses for patient-care whereas another hospital in the same geographic area may employ licensed practical nurses instead?
- Should the HCFA–2561 be incorporated into the hospital report in order to obtain wage data on a regular basis? What level of hospital-specific wage data should be available to the public, including other hospitals? Can the occupational category data be retrieved by adding new schedules to the hospital cost report?

In order to give the public ample time to thoroughly evaluate the six issues listed above, we stated in the proposed rule that we will accept comments on these issues up to September 30, 1989. Comments on these six issues should be submitted to the following address:

Health Care Financing Administration, Office of Reimbursement Policy, Division of Hospital Payment Policy, Attn: Wage Index Issues, 1–H–1 East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

Because of the extended time for public comment, we have not responded in this final rule to any comments received in response to the proposed rule concerning future updates to the wage index. We plan to respond to these comments in the proposed rule concerning the FY 1991 changes to the prospective payment system.

IV. Other Decisions and Changes to the Regulations

A. Annual Publication of Prospective Payment Rates (Section 412.8)

The September 1, 1983 final rule (47 FR 39819) added a provision to the regulations stating that when prospective payment rates are not published by September 1 before the beginning of the Federal fiscal year in which the rates would apply, the rates in effect on September 1 of the year in question will apply unchanged for the following Federal fiscal year. This provision in § 412.8(b)(4) has been superseded by changes to the statute.

Specifically, section 1886(b)(3)(B) of the Act, as amended by section 9109(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) and section 4002 of Pub. L. 100–203, specifies the update factors for prospective payment hospitals beginning in FY 1986 and each year thereafter. Because the law sets the rates for each Federal fiscal year, which are effective October 1 of each year, the provisions of § 412.8(b)(4) no longer conform to the law. Therefore, we proposed to delete this section.

Comment: We received a few comments regarding our proposal to delete the provision of § 412.8(b)(4) from the regulations. It was suggested that these regulations not be deleted but rather revised to state that in the event that revised prospective payment rates are not published by September 1, then the rates in the succeeding fiscal year will be the rates as of September 1, increased by the most recent hospital market basket forecast.

Response: We believe that it is unnecessary to include such a provision in the regulation. Section 1886(b)(3)(B) of the Act, as amended by section 9109(b) of Pub. L. 99–272 and section 4002 of Pub. L. 100–203, specifies the update factors for prospective payment hospitals, which for FY 1990 and each subsequent year is equal to the market basket percentage increase. Section 1886(b)(3)(B)(iii) of the Act defines the market basket percentage increase as the percentage, as estimated by the Secretary before the beginning of the applicable fiscal year, by which the cost of the mix of goods and services comprising routine, ancillary, and special care unit inpatient hospital services will exceed the cost of these goods and services for the preceding fiscal year.

We believe that we are required by the law to use the most recent hospital market basket forecast in making this estimate. In the absence of a published rate, the prospective payment rates will increase as of the succeeding fiscal year by an amount equal to the most recent forecasted increase in the hospital market basket, as prescribed by law.

In addition, since the update factors for prospective payment hospitals are set by law, the legislatively mandated factors would automatically be applied to the rates regardless of whether a notice was published timely. Given the fact that the update factors are subject to change annually based on recommendations submitted to Congress by the Department and ProPAC (sections 1886(e)(4) and 1886(e)(3)(A) of the Act, respectively), the market basket increase may not be the update factor prescribed by Congress for any given fiscal year. Therefore, since the law would take precedence over any regulations we may publish, we do not believe it is necessary to stipulate the update factor that would be applied to the rates if a notice of new rates is not published timely.

B. Burn Outliers (Section 412.84)

Section 4008(d)(1)(A) of Pub. L. 100–203 changed the marginal cost factor to 90 percent for day and cost outliers in DRGs related to burn cases. This provision was effective for discharges occurring on or after April 1, 1988 and expires as of October 1, 1989. We proposed to retain the marginal cost factor for cost outliers at 90 percent; however, we proposed to reduce the marginal cost factor for day outlier cases to 60 percent effective for discharges occurring on or after October 1, 1989 (that is, the same marginal cost factor as other DRGs). Therefore, we proposed to amend § 412.84 accordingly.

In the September 30, 1988 final rule (53 FR 38505), we indicated that ProPAC had issued a report that addressed outlier payments for burn cases and that we would review ProPAC's findings and recommendations to determine if changes in the burn outlier policy may be appropriate for FY 1990.

ProPAC's report indicated that increased outlier payments may only be appropriate for those cases treated in specialized burn centers and units. However, recognizing that no clear criteria currently exist to classify such centers, ProPAC postponed making specific recommendations pending further evaluation. While we recognize ProPAC's concern that outlier cases result in a more serious impact on specialized burn centers and units than to general hospitals treating burn cases, we generally do not believe it appropriate to create a new class of hospital (that is, burn hospitals and burn units) simply for purposes of targeting outlier payments.

As an interim measure, ProPAC recommended that burn cases be paid cost outliers only, based on a 90 percent marginal cost factor. In addition, ProPAC believes that the outlier payment pool for burn cases should be maintained at 19 percent of total payment for burn cases. This 19 percent figure represents the impact on burn outlier payments of increasing the marginal cost factor from 60 percent to 90 percent. ProPAC also recommended separate outlier thresholds for burn cases be established in order to maintain the 19 percent outlier payment pool.

While ProPAC's recommendation may target more burn outlier payments to specialized burn treatment centers, there is currently no statutory authority to eliminate day outlier payments. However, we agree that the 90 percent marginal cost factor may not be appropriate for less severe burn cases. Therefore, we believe it would be appropriate to reduce the marginal cost factor from 90 percent to 60 percent for day only outliers associated with burn cases since these generally represent less resource-intensive cases. Thus, as proposed, exceptionally costly day outliers, that is, those that meet both the day and cost outlier thresholds, would be paid the greater of 60 percent of the per diem Federal rate for each day beyond the length of stay threshold or 90 percent of the difference between adjusted charges and the cost thresholds.

Comment: Several commenters were concerned about our proposal to reduce the marginal cost factor for burn day outlier cases from 90 to 60 percent. One commenter stated that the reduction should be accomplished gradually over several years to give the affected hospitals time to adjust to the payment changes. Another commenter believes that lowering the marginal cost factor for day outliers to the same factor as all other day outliers reintroduces financial risk for hospitals that treat these cases and promotes the delivery of services in more costly settings. Also, this commenter states that the fact that HCFA is changing the policy so soon after its implementation (that is, April 1, 1988) violates the fundamental principle of the prospective payment system that the system is designed to assure hospital managers of predictability of rates and regulations.

Response: Our data show that specialized burn units generally receive more costly burn outliers cases that tend to be more resource intensive. General hospitals, on the other hand, mainly treat the less severe burn cases that may qualify as day outliers. We believe our proposed policy most closely achieves the policy goals of targeting outlier payments for the most costly burn cases, while at the same time maintaining outlier payments at approximately the same percentage of total payments for burn cases. We note that ProPAC supports this policy as an improvement over current law since it reduces the financial risk associated with treating burn cases at specialized centers.

With regard to the comment on violation of the principles of the prospective payment system, we note that the marginal cost factor for burn outliers was revised to 90 percent as of April 1, 1988 because we were required to do so by the provisions of section 4008(d)(1)(A) of Pub. L. 100–203. This provision expires as of October 1, 1989. Thus, we believe that a change in outlier policy for burn cases should have been anticipated by hospitals treating these cases. We are retaining the 90 percent factor for cost outliers. However, absent this policy, the marginal cost factor for both day and cost burn outliers would have reverted to the factor used for all other outliers, that is, 60 and 75 percent, respectively.

C. Payments to Sole Community Hospitals (Section 412–92)

Section 1886(d)(5)(C)(ii) of the Act provides special payment protections under the prospective payment system to sole community hospitals (SCHs). The statute defines an SCH as a hospital that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to Medicare beneficiaries. The regulations that set forth the criteria that a hospital must meet to be classified as an SCH are at § 412.92(a). To be classified as an SCH, a hospital must either have been designated as an SCH prior to the beginning of the prospective payment system or meet one of the following requirements:

- It must be located more than 50 miles from other like hospitals.
- It must be located between 25 and 50 miles from other hospitals, and it must—
  - —Serve at least 75 percent of inpatients in its service area;
  - —Be isolated by local topography or extreme weather conditions for one month of each year; or
  - —Have fewer than 50 beds and would qualify on the basis of market share except that some patients seek specialized care unavailable at the hospital.
- It must be located between 15 and 25 miles from other hospitals and isolated by local topography or extreme weather for one month of each year.

SCHs are paid a blended rate based on 75 percent of the hospital-specific rate and 25 percent of the Federal regional rate. An SCH is eligible for a payment adjustment if, for reasons beyond its control, it experiences a decline in volume of greater than five percent compared to its preceding cost reporting period. (This adjustment is also available to a hospital that could qualify as an SCH but chooses not to be paid as an SCH.) In addition, an SCH is eligible for an adjustment to its hospital-specific rate if it adds new services or facilities. SCHs are also exempt from the percentage reductions in reasonable cost payments for capital-related costs, as provided in section 1886(g)(3) of the Act.

In the September 30, 1988 final rule (53 FR 38513), we noted, in response to several ProPAC recommendations concerning SCHs, that our analysis of the SCH provisions is an on-going process. We also noted that we would continue to study whether our criteria are appropriate for determining which hospitals are the sole source of care for Medicare beneficiaries and whether sufficient protections are in place to assure beneficiary access to inpatient hospital services in rural areas.

Our analysis indicates that some SCHs would receive higher Medicare payments if they were to forego SCH status and be paid at the national rate. We believe those SCHs may be reluctant to give up their status because they may have difficulty requalifying if circumstances change to make SCH status more favorable in the future.

With this concern in mind, we proposed a revision to § 412.92(b)(4)(iii). That section currently states that if a hospital cancels its classification as an SCH, it may not apply for reclassification as an SCH unless all hospitals within 50 miles of it have closed. Because we believe this provision is restrictive and may prevent some existing SCHs from relinquishing their status even though it might be financially advantageous for them to do so, we proposed elimination of the hospital-closure-within-50-miles provision in § 412.92(b)(4)(iii). Instead, we proposed that, if a hospital cancels its status as an SCH, it may requalify for classification as an SCH only after 1 full year has passed since the cancellation was effective and only if the hospital meets the criteria for qualification that are in effect at the time it reapplies.

Section 1886(d)(5)(C)(ii) of the Act provides for reasonable compensation for significant increases in operating costs resulting from the addition of new services or facilities. Although a similar provision was originally proposed by regulation, Congress explicitly provided for the payment adjustment for new inpatient facilities or services in section 9111(a) of Pub. L. 99–272, which amended section 1886(d)(5)(C)(ii) of the Act. The payment adjustment was established effective with cost reporting periods beginning on or after October 1, 1983 and before October 1, 1989 as a temporary measure until a permanent payment methodology could be developed to recognize significant distortions in operating costs resulting from the addition of new services or facilities. The regulations implementing the payment adjustment are at § 412.92(g).

To date, there has been no legislative change to establish a different payment methodology to provide reasonable compensation for significant cost increases resulting from the addition of new services or facilities. In view of the expiration of the statutory provision explicitly providing for this payment adjustment, we proposed to extend indefinitely by regulation the provisions at § 412.92(g) in order not to disadvantage any SCH that experiences a significant increase in operating costs resulting from new inpatient services or facilities.

Currently, if a hospital wishes to receive a payment adjustment because it experienced a significant volume decrease, it must submit a request for the adjustment to its intermediary along with documentation demonstrating the size of the decrease in discharges and explaining the circumstances giving rise to the decline in discharges and how they were beyond the hospital's control. The hospital must also furnish evidence of the actions it took to control costs in the face of the circumstances cited and the resulting decline in discharges. The intermediary reviews and analyzes the documentation and then forwards the documentation along with its analysis and recommendation on approval to HCFA. HCFA determines the volume adjustment within 180 days from the date it receives the hospital's request and all other necessary information from the intermediary.

In an effort to streamline and expedite this process, we proposed that this determination process be decentralized and handled entirely by the intermediaries. We believe that there is now sufficient experience reviewing hospitals' applications for volume adjustments for intermediaries to make these determinations. We also proposed to revise § 412.92(e)(3) to make this change. We proposed that the intermediaries use the same criteria for review that are currently in place in § 412.92(e). For further discussion of this process, see the September 1, 1983 final rule (48 FR 39786), the June 10, 1987 proposed rule (52 FR 22090), and the September 30, 1987 final rule (53 FR 38510).

We are preparing manual instructions for the intermediaries concerning the determinations of volume adjustments. We proposed that any requests for a volume adjustment that intermediaries have not submitted to HCFA by

September 30, 1989 be processed for a final determination by the intermediaries.

With the deterioration in the financial condition of many rural hospitals, our ability to define appropriately those hospitals that represent the sole source of care reasonably available to Medicare beneficiaries has become increasingly important. In this regard, our criteria for SCH designation have remained largely unchanged since the beginning of the prospective payment system. The regulations reflect an assumption that any hospital located more than 50 miles from the nearest like hospital is the sole source of care reasonably available; conversely, it is assumed that a hospital located within 25 miles of a like hospital would not be the sole source of care reasonably available unless weather conditions make other hospitals inaccessible at least one month per year.

For hospitals located between 25 and 50 miles of another hospital, a market test or a measure of extremes in topography or weather conditions is used to determine whether the hospital qualifies for SCH designation. As clarified in the September 30, 1988 final rule (53 FR 38510), a hospital located between 25 and 50 miles of a like hospital may qualify as an SCH if, during the cost reporting period ending before it applies for SCH status, it admitted at least 75 percent of all the hospitalized residents or 75 percent of all the Medicare beneficiaries who were admitted to any like hospital located within the larger of the requesting hospital's service area or a 50 mile radius. A hospital's service area is the area from which a hospital draws at least 75 percent of its inpatients or a service area defined by a health systems agency. Thus, while a hospital located between 25 and 50 miles of the nearest like hospital cannot be presumed to be or not to be an SCH, it can demonstrate by the size of its market share that it serves as the sole source of inpatient services reasonably available. Also, if a hospital located between 25 and 50 miles of the nearest like hospital has fewer than 50 beds, it can be deemed to meet the market share criterion if its intermediary certifies that the hospital would have met this criterion were it not for the fact that some Medicare beneficiaries or residents of the hospital's service area were forced to seek care outside the service area due to the unavailability of certain specialty services at the hospital with fewer than 50 beds.

An analysis performed by Systemetrics under contract to ProPAC found that there is an interrelationship between the definition of market area and market share. Generally speaking, the more broadly a hospital's market area is defined, the lower the hospital's market share percentage will be. Further, the greater the distance to the nearest neighbor hospital, the more broadly the market area is defined. One result of the relationship between market share and distance to the nearest hospital is that only a small percentage of the hospitals located more than 50 miles from another hospital would meet the market test. Moreover, the proportion of facilities meeting the 75 percent market test is smaller for those 35 to 39 miles from their nearest neighbor than for those isolated by 25 to 34 miles.

We have concluded from our analysis of the Systemetrics data that the current market share test is inappropriate for hospitals that are located more than 35 miles from a like hospital. The market area for these hospitals, as currently defined, is sufficiently broad to make the 75 percent market share standard unreasonable. The Systemetrics data show only nine percent of hospitals between 35 and 49 miles from another hospital had a market share greater than 75 percent even though the estimated travel time between two hospitals located 35 miles apart would be 45 minutes on the average.

We considered modifying the SCH criteria for hospitals located 35 to 50 miles from a like hospital by narrowing the definition of market area or relaxing the 75 percent market share standard for these hospitals, or implementing both of these changes. We rejected this approach for several reasons. First, we believe that the SCH criteria are already too complicated and that increasing the complexity by adding unique criteria for hospitals located between 35 to 50 miles would be undesirable. Second, given the worsening financial condition of many rural hospitals, we do not believe it would be appropriate to delay changing the criteria until the analyses that would be needed to develop appropriate modifications in the market share test are completed. Finally, considering that the average travel time between two hospitals 35 miles apart is 45 minutes, we believe it is reasonable to assume that a hospital more than 35 miles from a like hospital is the sole source of care reasonably available to Medicare beneficiaries. Therefore, effective October 1, 1989, we proposed to modify our SCH criteria as set forth at § 412.92(a)(1) and (2) to eliminate the market share test for hospitals located more than 35 miles from a like hospital.

We also invited comment on how the SCH criteria might be improved or simplified. In this regard, we stated that we are continuing to analyze whether modifications should be made in the market share test for hospitals located between 25 to 35 miles from a like hospital.

We believe the Systemetrics data confirm the appropriateness of our standard that a hospital located within 25 miles of a like hospital would not be the sole source of care reasonably available unless topography or weather conditions make other hospitals inaccessible at least 1 month per year. The data show that only one percent of hospitals within 25 miles of another hospital provide at least 75 percent of the inpatient services received by Medicare beneficiaries residing within their service area. However, concern has been expressed regarding our criteria in § 412.92(a)(2) and (3), which define isolation of hospitals due to local topography or periods of prolonged severe weather. Under current policy, we require that a hospital must document its inaccessibility for 30 consecutive days in each of the past 3 years in order to qualify as an SCH on this basis (see 48 FR 39781, September 1, 1983). The documentation must be substantiated by an outside source, for example, the State Highway Department or a local public safety official.

In the proposed rule, we stated that we are also considering modifying this policy to require the hospital to document its inaccessibility for 30 nonconsecutive days in 2 out of the last 3 years. We also solicited comments regarding whether this standard would be appropriate.

Comment: Many commenters wrote concerning our suggested changes in the SCH qualifying criteria. All approved of our proposal to eliminate the market share test for hospitals more than 35 miles from the nearest hospital. However, many commenters offered various alternatives to our criteria as follows: One commenter suggested that we abolish the current criteria and reinstate the guidelines that were in effect prior to the implementation of the prospective payment system. Another commenter suggested that we abolish distance as a measure and rely solely on whether a hospital meets the 75 percent market share standard. One commenter believes that SCH status should be granted to a hospital if it provides services that are not available from any other hospital within a 35-mile radius while another believes that we should consider travel time instead of mileage in determining SCH status.

Response: While we appreciate all of the commenters suggestions, we do not believe we can implement any of them at this time. For reasons discussed in detail in the January 3, 1984, final rule (48 FR 271), we replaced the discretionary SCH criteria we used prior to the implementation of the prospective payment system with more objective numerical standards. The current standards incorporate the principles of the criteria that were in effect prior to the implementation of the prospective payment system while at the same time ensuring consistency in classifying hospitals as SCHs. Moreover, the market share test is an operational measure of the variables that influence patients in their decision to seek care at a particular hospital. That is, a hospital's market share will increase if travel or weather conditions curtail access to another hospital, or if physicians admit patients primarily to that particular hospital. If patients commonly use other hospitals for services, we conclude that those alternative hospitals are accessible to them, and that they are not limited to obtaining care at only one hospital.

We chose not to use physician admitting practices as a separate variable because they are included within market share. Physician admitting practices are a major determinant of market share, so using market share as a criteria does include consideration of physician admitting practices. Also, we chose not to use availability of public transportation as a separate criteria because it is included within the market share criteria, and because public mass transit systems are not a common method of transportation for patients receiving inpatient services.

In response to other commenters, we do not believe we should limit our review of SCH qualifications solely to travel time or to the provision of specialty services not available from any other hospital within a 35-mile radius. As we have noted previously, travel time as a measure is subject to many variables such as traffic congestion, road conditions, and time of day. For instance, what might be a 15-minute trip under ideal conditions could be a substantially longer trip on wet or snowy roads or in heavy traffic. Specific travel conditions would have to be defined and each hospital's application reviewed against these specific conditions in order to achieve consistency and equity in the decision process. Since such specific conditions would be extremely difficult to define and more difficult to measure objectively, we do not believe travel time is as valid a measure as road miles.

Neither do we believe that provision of specialty services not offered by any other hospital within 35 miles should be the sole measure of an SCH. Not only would "specialty" services have to be specifically defined, but measures of the need for and use of such services would have to be established. Furthermore, we do not believe the SCH provision was enacted to protect hospitals providing unique specialty services. Rather, we believe its intent was to ensure Medicare beneficiary access to care ordinarily found in general community hospitals.

With regard to the commenter who suggested that we drop mileage as a criterion and consider only whether the hospital treats at least 75 percent of the patients admitted to a hospital within its service area, we do not believe this suggestion is equitable. As we noted in the proposed rule (54 FR 19650), the data gathered by Systemetrics in its study of rural hospitals and SCH criteria show that the more isolated a hospital is, the greater the chance that it does not meet the 75 percent market share test. Thus, a large number of truly isolated hospitals could not qualify for SCH status. In addition, only 3.3 percent of all rural hospitals meet the 75 percent market share test (before adjustment for specialized care obtained outside the service area of rural hospitals with fewer than 50 beds). Thus, this commenter's suggestion could result in only 89 hospitals nationwide meeting the proposed standard. We do not believe that such a restrictive standard would protect Medicare beneficiaries' access to care or would be in the best interest of the rural hospitals.

Finally, although we are not implementing any of the commenters' suggestions at this time, we will keep them all in mind as we continue to review the SCH qualifying criteria in conjunction with the comments we received on beneficiary access to care in rural areas.

Comment: One commenter suggested numerous revisions to our qualifying criteria ranging from redefining the service area as the smaller of a 35-mile radius from the hospital or the area from which a hospital draws at least 50 percent of its patients. The commenter proposed that we lower the market share test from 75 percent to 60 percent and that we lower from 35 miles to 25 miles the distance from another hospital as the presumptive proof of SCH status. The stated goal of all of these revisions was not only to assure reasonable access for Medicare beneficiaries, but also to improve financial benefits to rural hospitals.

Response: We do not agree with the premise for the commenter's suggestions. All of them would liberalize the SCH provisions beyond what we believe was Congressional intent in establishing this provision. For instance, granting SCH status to any hospital more than 25 miles from any other hospital would mean that a beneficiary located between the two hospitals would be no more than 12.5 miles from a hospital; we do not believe such a short distance reflects an accessibility problem.

Redefining the service area as the commenter suggested would result in a significant increase in the number of rural hospitals qualifying as SCHs and would include some hospitals that we believe do not represent the sole source of care reasonably available to Medicare beneficiaries. If a significant portion of the residents in a hospital's service area seek care from other hospitals, this indicates that alternative sources of inpatient care are reasonably available.

Although we are not accepting any of the commenter's specific suggestions at this time, we have concluded that the geographic area considered in the market share test is too broad. Under current policy, a hospital may qualify as an SCH if it admitted at least 75 percent of all the hospitalized residents or 75 percent of all the Medicare beneficiaries who were admitted to any like hospitals located within the larger of the requesting hospital's service area or a 50-mile radius. Consistent with our decision to eliminate the market share test for hospitals located more than 35 miles from a like hospital, we are narrowing the geographic area to take into account admissions to like hospitals located within the larger of the requesting hospital's service area or a 35-mile radius. To implement this policy, we are revising § 412.92(a)(2)(i) and (b)(1)(ii)(B). Moreover, we will continue to analyze whether modification in the SCH definitions are needed to ensure reasonable access to care. However, to the extent that rural hospitals require financial assistance and protection from closure, we believe these objectives should be accomplished in alternative ways—not by so liberalizing the SCH criteria that a large percentage of the rural hospitals would qualify as SCHs. We acknowledged that we stated in the proposed rule (54 FR 19651) that the improvements we proposed in the SCH qualifying criteria were made in recognition of the difficulties facing rural hospitals; however, we believe there is a limit to the extent to which these difficulties should be resolved through the SCH provisions and even through the Medicare program.

We again acknowledge that we are keenly aware of the problems facing isolated rural hospitals and the potential consequences for Medicare beneficiaries should large numbers of these hospitals close. However, as we noted in the proposed rule as a part of our discussion on beneficiary access to care in rural areas (54 FR 19651), "A policy involving changes to the Medicare program alone would not be sufficient to assure essential access to rural health care. A viable and effective rural health care policy must involve Federal, State and local governments, and private insurers." As discussed below in section IV. D. of this preamble, we are continuing to receive comments solicited on this subject and will give all reasonable suggestions serious consideration.

Comment: Only two commenters responded to our proposal to liberalize the provision regarding road closing due to inaccessibility. Both favored our proposal, but believe it did not go far enough. That is, one commenter believes that the determination of accessibility should be arrived at by agreement between the State Highway Department and the hospital. The other commenter believes that while a highway department may consider a road passable, it might be highly inadvisable for a Medicare beneficiary to be driving on such roads.

Response: We are disappointed that our request for comment from interested parties did not generate greater response, and we appreciate the commenters who did address this issue. Neither, however, offered specific suggestions that can be implemented on a nationwide basis. We believe a determination of inaccessibility must be made by a disinterested party such as a State Highway Department and not by the affected hospital. This would be the only way to ensure consistency and impartiality.

Similarly, we agree that while it may be more difficult for aged Medicare beneficiaries to negotiate slippery roads, we do not know how this distinction can be made objectively. Differences in age and driving experience and skill are determining factors usually employed in deciding whether to attempt travel under difficult conditions. We know of no objective standards that can be implemented to measure such factors on an equitable basis. Therefore, we are not adopting the commenters' suggestions. However, we are modifying our policy to permit a hospital to qualify if it can demonstrate its inaccessibility for 30 nonconsecutive days in 2 out of the last 3 years before it applies. To clarify this point, we are revising § 412.92(a)(3).

Comment: All the comments we received on our proposal to transfer final processing of the SCH volume adjustment requests to the fiscal intermediaries were favorable. However, several commenters pointed out that we had not discussed hospital appeal rights following this transfer. They also urged HCFA review of the intermediary determinations to ensure timeliness, accuracy, and consistency. One commenter suggested that the current 180-day processing time be reduced to 90 days.

Response: We agree with the commenters' suggestions regarding appeal rights and HCFA oversight of intermediary determinations and we inadvertently neglected to mention these issues in our proposed rule.

Hospitals will retain the same appeal rights of intermediary determinations as they had of HCFA determinations. That is, if a hospital is dissatisfied with the intermediary's final determination, it may request a hearing before the provider Reimbursement Review Board as outlined at § 405.1836. Similarly, although we did not discuss in the proposed rule that we would maintain ongoing review of the intermediaries processing of hospitals' requests, these reviews will be conducted to ensure timeliness, accuracy, and consistency.

With regard to the commenter's suggestions that the alloted 180-day processing time for SCH applications be reduced from 180 to 90 days, we do not believe it is appropriate to impose such a short time frame on the intermediaries at this time. Certainly, we expect the intermediaries to process a hospital's request as rapidly as possible. However, we also recognize that because of other priorities and ongoing workloads, it may not always be possible for the intermediary to complete processing within a 90-day time frame. Therefore, while we are not adopting the commenter's suggestions, we are urging intermediaries to give these requests for volume adjustments a high priority and to process them as rapidly as possible.

Comment: Although we did not propose any changes in the payment methodology used to pay SCHs, we received three comments on this issue. One commenter pointed out that the current payment adjustment provides no incentive for a hospital to become an SCH. Two commenters stated that continuing to base SCH payments on the original base year costs does not adequately reflect current costs.

Response: We are aware that there are many hospitals that are entitled to the SCH adjustment but that have chosen not to apply for it because they receive greater payment under the prospective payment system using the fully national payment rates than they would as an SCH. However, as we have noted in the past, the current methodology is established by law. Therefore, we do not have the authority to alter this method.

We also recognize that, in some instances, it might be advantageous for a hospital to change its SCH status from time to time; that is, in some years, the national payment rates might be greater than the amount a hospital would receive as an SCH and, in other years, the opposite might be true. For this reason, we are relaxing the previous restriction on permitting a hospital to requalify for SCH status once it has relinquished its SCH designation.

Comment: One commenter requested that we clarify which qualifying criteria would be in effect if the criteria change between the time a hospital files for SCH status and the time a final determination is made on its application. The commenter also stated that if the later criteria are more favorable to the hospital, HCFA should permit the hospital to withdraw its application and refile it for consideration under the later criteria.

Response: Generally, a hospital's application will be considered using the criteria in effect at the time it submits its application to its intermediary. However, we agree with the commenter that if revisions to the regulations become effective prior to the HCFA regional office's issuing a final decision on the application, and if the hospital believes the revised criteria are more favorable to it or simplify its documentation requirements, the hospital may request that a determination be based on the later and more favorable criteria.

D. Beneficiary Access to Care in Rural Areas

The nation's rural health care system is undergoing a difficult period of transition in response to several complex factors including changing practice patterns, evolving delivery systems, regional economic change, facility conversion, declining admissions, patient mobility, and demographic change. These factors, coupled with the incentives for efficiency offered by Medicare's prospective payment system, present increasing pressures on the rural health care delivery system.

The challenge facing rural providers, State and local governments, Medicare, and other third-party insurers is to adopt policies that acknowledge the variety of factors affecting the long-term financial viability of rural providers and assure essential access to health care for rural residents.

As a long term initiative, we are evaluating whether refinements to the prospective payment system would be appropriate to improve our payment policy for rural hospitals. This evaluation includes—

- An assessment of whether the special payment protections for SCHs are adequate to provide beneficiaries with continued access to quality care;
- Examination of whether it would be appropriate to establish separate outlier thresholds for cases in urban and rural hospitals; and
- Research to replace the separate urban and rural rates with a single rate adjusted for severity and other factors that explain differential hospital cost experience.

Although we believe that it is important to implement appropriate Medicare payment policies for rural hospitals, we note that the critical issue facing the nation is assuring continued access to health care for all rural residents. Medicare payments account for 34 percent of rural hospitals' total revenues. Other revenue sources, such as Medicaid, private insurance, and self-pay, make up the remaining 66 percent of revenues. A policy involving changes to the Medicare program alone would not be sufficient to assure essential access to rural health care. A viable and effective rural health care policy must involve Federal, State and local governments, and private insurers.

To assist the Department in examining the many important issues affecting this principle of assuring "essential access", in the proposed rule, we requested comments on the following:

- How should the existing SCH policy be reformed and targeted to protect beneficiaries in rural areas with "essential access" problems?
- What are an appropriate operational definitions of "essential access" (for example, distance, market share, patient mobility, transportation, weather, or types of essential services provided)?
- What roles should Federal and State government play in identifying "essential access" facilities?
- Should the Federal government and States ensure that Medicaid payment policies acknowledge the need to assure "essential access" to care for beneficiaries in rural areas and, if so, how?
- Should States take actions to encourage third-party payors to acknowledge the need to assure "essential access" to care for rural residents?
- How can the rural transition grant program (authorized by section 4005(e) of Pub. L. 100–203) be targeted to specifically assist "essential access" facilities in planning, coordination, service delivery modification, and conversion efforts?
- How can the Fedral government best coordinate rural health policy with those of the State governments?

In order to give the public ample time to respond to the issues raised regarding "essential access" to health care by rural residents, the proposed rule stated that we would accept comments on these issues up to September 30, 1989. Comments on these issues should be submitted to the following address: Health Care Financing Administration, Office of Reimbursement Policy, Division of Hospital Payment Policy, Attn: Rural Access Issues, 1–H–1 East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

As stated in the proposed rule, because these issues are not directly related to the Medicare prospective payment system, we are not responding to these comments in this final rule. However, we will take them into consideration as we develop a Departmental rural health policy designed to assure essential access to health care in rural areas.

E. Cancer Hospitals (Section 412.94)

Section 1886(d)(5)(C)(iii) of the Act authorizes special treatment for hospitals involved extensively in treatment for and research on cancer. In our regulations at § 412.94(a), we set forth the criteria a hospital must meet to be considered a cancer hospital. In § 412.94(b), we provide that, during its first cost reporting period subject to the prospective payment system, a qualifying cancer hospital may elect to be reimbursed on a reasonable cost basis, subject to the rate of increase limit. We have received inquiries concerning whether the provisions of sections 1815(e)(1) and 1886(g)(3) of the Act, which apply generally to prospective payment hospitals and not to hospitals excluded from the prospective payment system that receive payment on a reasonable cost basis, apply to these cancer hospitals since they are paid on a reasonable cost basis rather than on the basis of a prospective payment rate.

Section 1815(e)(1) of the Act provides that, effective with claims received on or after July 1, 1987, certain requesting prospective payment hospitals will receive payment for Medicare services on a periodic interim payment (PIP) basis. Under PIP, payment is based on the estimated annual payments for care provided to Medicare patients, and equal biweekly payments are made to hospitals without regard to the submission of individual bills. However, an end-of-year settlement in made once all bills for the year have been submitted and processed. Generally, under the provisions of section 1815(e)(1) of the Act and the regulations that implement it, § 412.116, an otherwise qualifying prospective payment hospital receives PIP only if its intermediary fails to make prompt payment of the hospital's bills, or if the hospital previously qualified as a hospital serving a disproportionate share of low-income patients or as a small rural hospital. Hospitals that are not "subsection (d) hospitals," as well as other providers such as skilled nursing facilities and home health agencies, continue to be eligible for PIP if they meet the other qualifying conditions.

Section 1886(g)(3) of the Act requires, effective October 1, 1986, specified reductions in the amount of payment for capital-related costs of inpatient hospital services of all prospective payment hospitals except sole community hospitals. This provision is set forth in regulation at § 412.113.

Except for sole community hospitals as provided in section 1886(g)(3)(B) of the Act, sections 1815(e)(1) and 1886(g)(3) of the Act apply to all subsection (d) hospitals and subsection (d) Puerto Rico hospitals (as defined in sections 1886(d) (1)(B) and (9)(A) of the Act, respectively). The authority in section 1886(d)(5)(C)(iii) of the Act that permits special treatment under the prospective payment system for a cancer hospital does not alter that hospital's status as a subsection (d) hospital (that is, a prospective payment hospital). Therefore, there is no legislative authority for exempting cancer hospitals from the provisions of sections 1815(e)(1) and 1886(g)(3) of the Act merely because they are paid on the same basis as hospitals excluded from the prospective payment system (that is, on a reasonable cost basis).

We have recently advised the HCFA regional offices to direct fiscal intermediaries that have not already done so to begin applying the provisions of §§ 412.113 and 412.116 to cancer hospitals receiving payments under § 412.94. The intermediaries were directed to apply the provisions of §412.113 retroactively, beginning with

portions of cost reporting periods occurring during FY 1987 as required by section 1886(g)(3) of the Act. However, the provisions of § 412.116 can not be applied retroactively due to the nature of PIP. Therefore, we directed the intermediaries to terminate current PIP payments to cancer hospitals that do not qualify to receive PIP under the provisions of § 412.116(b)(1) (i), (ii), or (iii). As with other prospective payment hospitals that no longer receive PIP, these cancer hospitals that have their PIP payments terminated will receive payments for inpatient operating costs related to care of Medicare patients on the basis of submitted bills rather than receiving equal biweekly payments.

Accordingly, we proposed to revise § 412.94(b) to clarify that cancer hospitals receiving payment on a reasonable cost basis retain their status as subsection (d) hospitals and are subject to all other regulations governing hospitals subject to the prospective payment system.

Comment: One commenter believes that Congress' intent was to remove PIP and to reduce capital payments only for hospitals subject to the prospective payment system and that such application was not intended to apply to cancer hospitals that qualify for reasonable cost reimbursement under the provisions of § 412.94. The commenter also noted that most Medicare intermediaries continued PIP and unreduced capital payments to the eight cancer hospitals that qualify for reasonable cost reimbursement and that such action is consistent with the intent of Congress.

Several commenters recognized that our clarification of the regulations at § 412.94 is consistent with the statute. However, they recommended that any cancer hospitals currently receiving PIP should continue to receive PIP. The commenters believe that continuation of PIP would prevent operational disruptions in these hospitals and, given the small number of cancer hospitals, would have only a minimal cost impact on the Medicare program.

Finally, one commenter requested that the preamble address whether qualifying cancer hospitals are exempt from the methodology regarding private room differential and from reasonable compensation equivalent (RCE) limits on physician Part A services, computations that are applicable to hospitals subject to the rate of increase limits under section 1886 (a) and (b) of the Act but not to hospitals paid under the prospective payment system.

Response: We believe, as some commenters agreed, that the statute requires application of the PIP provision and capital reduction provision applicable to prospective payment hospitals to qualifying cancer hospitals since they are also prospective payment hospitals. Therefore, we are required to apply these provisions to cancer hospitals. We believe that we cannot grant an exception to these provisions for the subject cancer hospitals, including, with regard to the PIP provision, cancer hospitals currently receiving PIP. The fact that some intermediaries did not properly apply the PIP and capital reduction provisions to the cancer hospitals is the reason that we are clarifying the regulation.

Section 412.94(b)(1) provides that qualifying cancer hospitals are to be paid on a reasonable cost basis under 42 CFR part 413. The methodology regarding the private room cost differential is set forth in § 413.53. Therefore, the regulations regarding the private room cost differential are applicable to cancer hospitals paid under reasonable cost reimbursement. The RCE limits are included in the regulations at § 405.482. Although the RCE limits are not included in part 413, they are an integral part of the applicable reasonable cost regulations. The latter regulations were formerly codified as subpart D of Part 405. When the prospective payment regulations now in Part 412 were recodified on March 29, 1985, all the reasonable cost regulations, including the RCE limits, were in subpart D. When the reasonable cost regulations were recodified as part 413 on September 30, 1986, certain regulations pertaining to teaching hospitals and provider-based physicians were not so recodified but remained in subpart D. However, the reference to the reasonable cost regulations in § 412.94 was changed from "subpart D of part 405" to "part 413". (See 51 FR 34793 (September 30, 1986).) Although not all the reasonable cost regulations were included in this new designation as they had been by the former designation, there was no intent to change their applicability. As we stated at the time, "In no instance do we intend any of the amendments to affect the substance of the Medicare rules." (51 FR 34790.) Thus, the applicability of the RCE limits to cancer hospitals did not change. They remain an integral part of determining payment for physican Part A services to a hospital that is paid on a reasonable cost basis. For § 412.94 cancer hospitals, payment is made under the reasonable cost regulations in part 413 and elsewhere and not under the prospective payment provisions of part 412. Therefore, these limits are applicable in determining the reasonable cost reimbursement for cancer hospitals. We have revised § 412.94(b)(1) to refer to the reasonable cost provisions of both subparts D and E of part 405.

F. Rural Referral Centers (Section 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a referral center (that is, payment is based on the other urban payment rate rather than the rural payment rate), One of the criteria under which a rural hospital may qualify as a referral center is to have 275 or more beds available for use.

A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (number of discharges and case-mix index) and at least one of three optional criteria (medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, currently a hospital is classified as a rural referral center if its—

- Case-mix index is equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (We note that the number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining referral center status. In determining the proposed national and regional case-mix index values, we followed the same methodology we used in the November 24, 1986 final rule, as set forth in regulations at § 412.96(c)(1)(ii). Therefore, the proposed national case-mix index value includes all urban hospitals nationwide and the proposed regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.118).

These values are based on discharges occurring during FY 1988 (October 1,

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1987 through September 30, 1988) and include bills posted to HCFA's records through December 1988. Therefore, in addition to meeting other criteria, we proposed that to qualify for or to retain rural referral center status for cost reporting periods beginning on or after October 1, 1989, a hospital's case-mix index value for FY 1988 would have to be at least—

- 1.2187; or
- Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.118) calculated by HCFA for the census region in which the hospital is located as indicated in the table below.

	Region	Case-mix index value
1.	New England (CT, ME, MA, NH, RI, VT)	1.1596
2.	Middle Atlantic (PA, NJ, NY)	1.1596
3.	South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.2107
4.	East North Central (IL, IN, MI, OH, WI)	1.1644
5.	East South Central (AL, KY, MS, TN,)	1.1598
6.	West North Central (IA, KS, MN, MO, NB, ND, SD)	1.1742
7.	West South Central (AR, LA, OK, TX)	1.2082
8.	Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.2379
9.	Pacific (AK, CA, HI, OR, WA)	1.2272

Based on the latest data available (through June 1989), the final national case-mix index value is 1.2205 and the median case-mix index values by region are set forth in the table below.

	Region	Case-mix index value
1.	New England (CT, ME, MA, NH, RI, VT)	1.1681
2.	Middle Atlantic (PA, NJ, NY)	1.1591
3.	South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.2122
4.	East North Central (IL, IN, MI, OH, WI)	1.1555
5.	East South Central (AL, KY, MS, TN)	1.1615
6.	West North Central (IA, KS, MN, MO, NB, ND, SD)	1.1741
7.	West South Central (AR, LA, OK, TX)	1.2094
8.	Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.2402
9.	Pacific (AK, CA, HI, OR, WA)	1.2432

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing the FY 1988 case-mix index values in Table 3c in section IV of the addendum to this final rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(i)(II) of the Act, the national standard is set at 5,000 discharges. However, we proposed to update the regional standards, which are based on discharges for urban hospitals during the fourth year of the prospective payment system (that is, October 1, 1986 through September 30, 1987), which is the latest year for which we have complete discharge data available.

Therefore, in addition to meeting other criteria, we proposed that to qualify for or to retain rural referral center status for cost reporting periods beginning on or after October 1, 1989, a hospital's number of discharges for its cost reporting period that began during FY 1988 would have to be at least—

- 5,000; or
- Equal to the median number of discharges for urban hospitals in the census region in which the hospital is located as indicated in the table below.

	Region	Number of discharges
1.	New England (CT, ME, MA, NH, RI, VT)	6749
2.	Middle Atlantic (PA, NJ, NY)	8138
3.	South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	6451
4.	East North Central (IL, IN, MI, OH, WI)	7850
5.	East South Central (AL, KY, MS, TN)	6113
6.	West North Central (IA, KS, MN, MO, NB, ND, SD)	5832
7.	West South Central (AR, LA, OK, TX)	4526
8.	Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	7403
9.	Pacific (AK, CA, HI, OR, WA)	4927

Based on the latest discharge data available, the final median number of discharges by census region are set forth in the table below.

	Region	Number of discharges
1.	New England (CT, ME, MA, NH, RI, VT)	6599
2.	Middle Atlantic (PA, NJ, NY)	7750
3.	South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	6326
4.	East North Central (IL, IN, MI, OH, WI)	7257
5.	East South Central (AL, KY, MS, TN)	5841
6.	West North Central (IA, KS, MN, MO, NB, ND, SD)	5683
7.	West South Central (AR, LA, OK, TX)	4586
8.	Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	7203
9.	Pacific (AK, CA, HI, OR, WA)	5296

We again note that to qualify for or to retain rural referral center status for cost reporting periods beginning on or after October 1, 1989, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1988 would have to be at least 3,000.

3. Retention of Referral Center Status

In the August 31, 1984 final rule, we announced that we were instituting a periodic review of the status of hospitals that qualified for a payment adjustment as referral centers (49 FR 34746). That final rule stated that this review would allow us to determine if these hospitals continued to meet the criteria for referral center status. The final rule stated that we would grant referral center status to a hospital for a 3-year period. At the end of the 3 years, we would evaluate a hospital's performance in meeting the criteria for qualifying as a referral center. A hospital would have been required to meet the criteria for at least 2 of those 3 years. If it did, the hospital would retain its referral center status for another 3-year period. If the hospital did not meet the criteria for at least 2 of the 3 years, the hospital's status as a referral center would end with the last day of the third cost reporting period for which it received the referral center payment adjustment.

Before we were able to implement this review, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) was enacted on October 21, 1986. Section 9302(d)(2) of Pub. L. 99–509 stated that any hospital that was classified as a rural referral center on the date of the enactment of that law will continue to be classified as a referral center for cost reporting periods beginning on or after October 1, 1986 and before October 1, 1989. Thus, any hospital that was classified as a referral center as of October 21, 1986 (the date of enactment of Pub. L. 99–509) is guaranteed this status through its cost reporting period beginning before October 1, 1989

We believe it is important that the rural referral center benefit be available only to those hospitals that continue to be in compliance with the statutory criteria for designation. Therefore, with the expiration of the requirement of section 9302(d)(2) of Pub. L. 99–509 on October 1, 1989, we proposed to implement essentially the same retention criteria and methodology specified in § 412.96(f) that we had developed prior to the enactment of Pub. L. 99–509 with one variation. These previous criteria and methodology were discussed in the June 10, 1985 proposed rule (50 FR 24380) and the September 3, 1985 final rule (50 FR 35676).

Basically, to retain status as a referral center, a hospital must meet the criteria for classification as a referral center specified in § 412.96(b) or (c) for at least 2 of the 3 years after it qualifies as a referral center or it must qualify on the basis of the requirements for the current year. A hospital may meet the specific criteria in either paragraph for individual years during the 3-year period or the current year. For example, a hospital may meet the two mandatory requirements in § 412.96(c)(1) (case-mix index) and (c)(2) (number of discharges) and the optional criterion in paragraph (c)(3) (medical staff) during the first year. During the second and third year, the hospital may meet the criteria under § 412.96(b)(1) (rural location and appropriate bed size).

A hospital must meet all of the criteria within any section of the regulations in order to meet the retention criteria for a given year. That is, it must meet all of the criteria of § 412.96(b)(1) or § 412.96(b)(2) or § 412.96(c). For example, if a hospital meets the case-mix index standards in § 412.96(b)(2) in years 1 and 3 and the number of discharge standards in years 2 and 3, it would not meet the retention criteria. All of the standards must be met in the same year.

When we begin implementation of the provisions of § 412.96(f), some hospitals will have been classified as referral centers for more than 3 years without having been reviewed for continuing compliance with the referral center criteria. We proposed that the review process be limited to the hospital's compliance during the last 3 years. Thus, if a hospital meets the criteria for at least 2 of the last 3 years or for the current year, it would retain its status for another 3 years. No hospital would be subject to a review until the end of its third full cost reporting period as a referral center. Therefore, those hospitals that first qualified as referral centers as of April 1, 1988 by virtue of having at lest 275 beds will not be subject to review until the end of their their full cost reporting period as a referral center.

In the past few years, there have been several changes in the methodology used to set the case-mix index and the number of discharges criteria. We have constructed the following chart and example to aid hospitals that qualify as referral centers under the criteria in § 412.96(c) in projecting whether they will retain their status as a referral center.

Under § 412.96(f), to qualify for a 3-year extension effective with cost reporting periods beginning in FY 1990, a hospital must meet the mandatory criteria in § 412.96(c) for FY 1990 or it must meet the criteria for 2 of the last 3 years as follows.

For the cost reporting period beginning during FY	Use hospital's case-mix index for FY	Use the discharges for the hospital's cost reporting period beginning during FY	Use numerical standards as published in the Federal Register on
1990	1988	1988	Sept. 1, 1989.
1989	1987	1987	Sept. 30, 1988.
1988	1986	1986	Sept. 1, 1987.
1987	1985	1985	Nov. 24, 1986 and Aug. 24, 1987.

Example: A hospital with a cost reporting period beginning July 1 qualified as a referral center effective July 1, 1985. The hospital has fewer than 275 beds. Its status as a referral center is protected through the end of its cost reporting period beginning July 1, 1989. To determine if the hospital should retain its status as a referral center for an additional 3-year period, we would review its compliance with the applicable criteria for its cost reporting periods beginning July 1, 1987, July 1, 1988, July 1, 1989, and July 1, 1990. The hospital must meet the criteria either for its cost reporting beginning July 1, 1990 or for two out of the three past periods. For example, to be found to have met the criteria at § 412.96(c)(2) for its cost reporting period beginning July 1, 1988, the hospital's case-mix index value during FY 1986 must have equaled or exceeded the lower of the national or the appropriate regional standard as published in the September 1, 1987 final rule. The hospital's total number of discharges during its cost reporting year beginning July 1, 1986 must have equaled or exceeded 5000 or the regional standard as published in the September 1, 1987 final rule.

For those hospitals that seek to retain referral center status by meeting the criteria of § 412.96(b)(1) and (b)(1)(ii) (that is, rural location and appropriate bed size (500 or more beds for discharges occurring before April 1, 1988 and 275 or more beds thereafter)), we would look at the number of beds shown for indirect medical education purposes (as defined at § 412.118(b)) on the hospital's cost report for the appropriate year. As discussed above, we would consider only full cost reporting periods beginning on or after April 1, 1988 when determining a hospital's status under § 412.96(b)(1)(ii). This definition varies from the bed size criterion used to determine a hospital's initial status as a referral center because we believe it is important for a hospital to demonstrate that it has maintained at least 275 beds throughout its entire cost reporting period, not just for a particular portion of the year.

In the proposed rule, we projected that 25 percent of hospitals currently designated as rural referral centers will not meet the retention criteria. We are revising this figure to 19 percent based on more current data. Our projection is based on comparison of the existing rural referral centers' actual case-mix index values and number of discharges to the lower of the national or regional standards for the applicable years. Approximately 80 percent of the hospitals we project will not retain their status did not meet the proposed case-mix index criterion for qualifying as a rural referral center in FY 1990; based on MEDPAR data processed through December 31, 1988, the average case-mix index value for the hospitals not meeting the case-mix index criterion is six percent lower than the applicable criterion. Approximately 40 percent of the hospitals that we project will not retain status failed to meet the discharge standards. Twenty-five percent met neither the discharge nor the case-mix index criterion for FY 1990 or for 2 out of the last 3 years.

We received many comments concerning the various aspects of payment to rural referral centers. These comments and our response follow.

Comment: Several commenters suggested revisions in the manner in which we set the national and regional case-mix index criteria. That is, some believed that the case-mix index criteria should be based on the mean case-mix index of urban hospitals rather than on the median which we now use. One commenter suggested that we establish a hospital's average case-mix index value over a 3-year period and compare it to the average case-mix index value of urban hospitals for the same 3-year period. One commenter suggested that we develop "proper" case-mix index criteria, but did not elaborate further. Finally, one commenter stated that establishing the case-mix index criterion standards at the median was unfair since it means that a rural hospital must maintain a case-mix index value higher than 50 percent of all urban hospitals.

Response: Section 9302(d)(1) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) amended section 1886(d)(5)(C)(i) of the Act to statutorily establish case-mix index, annual number of discharges, and "any other criteria established by the Secretary" as one method under which a rural hospital can qualify as a rural referral center. Section 1886(d)(5)(C)(i)(II) of the Act specifically requires that a rural hospital have "a case mix equal to or greater than the *median* case mix for hospitals (other than hospitals with approved teaching programs) located in an urban area in the same region * * *" (emphasis added). Thus, we believe we are prohibited by law from implementing any of the suggestions offered.

We believe the current methodology is an equitable measure of the complexity of the cases treated by a hospital. As we have noted in previous discussions, Congress intended that the rural referral center adjustment be granted only to large facilities that treat "patients who require an intensity of resources beyond the capabilities of general community hospitals." (120 Cong. Rec. S3224–3226 (daily ed. March 17, 1983).) Congress also described referral centers as "large, technologically sophisticated hospitals * * * which are characterized by high case mix indices, diverse geographical patient origin, and numerous multidisciplinary medical education programs." (129 Cong. Rec. S3224–3226 (daily ed. March 17, 1983).) Thus, we believe Congress intended that qualification as a rural referral center be limited to those rural hospitals that can demonstrate through maintenance of high case-mix index values that they are truly providing highly specialized and intensive care.

In addition to the fact that the law requires that we establish the qualifying standards using the median case-mix index value of urban hospitals, we also believe the median is the appropriate measure. Means can be skewed by extremes either at the upper or lower ends. The median is less likely to be significantly altered by such extremes.

Finally, section 1886(d)(5)(C)(i)(I) of the Act, as originally added by section 2311(a) of the Deficit Reduction Act 1984 (Pub. L. 98–369), specifically states that certain operating characteristics of rural referral centers should be similar to those of a typical urban hospital located in the same census region. We believe the median more accurately reflects the typical urban hospital than would the mean. For these reasons, we do not believe it is unreasonable to expect rural hospitals seeking rural referral center status to meet a standard that exceeds that of 50 percent of the urban hospitals.

Comment: Although we did receive one favorable comment, many commenters disagreed with our proposal to implement triennial reviews of approved rural referral centers. Commenters' alternative suggestions to our proposal included extension of the grandfathering provision for 3 to 5 years, eliminating the reviews altogether, or delaying implementation of the review until proposed legislation that would extend the grandfathering provision has been acted upon.

Response: We continue to believe that it is equitable and reasonable to review periodically approved rural referral centers' compliance with the criteria in the statute and regulations to ensure that only those hospitals that are truly functioning as rural referral centers receive the special adjustment. Some hospitals qualified as rural referral centers based on their case-mix index values and number of discharges from 1981 and have not met the criteria since that time. We do not believe it is fair to the remaining rural hospitals to continue to recognize these hospitals as rural referral centers. Thus, we do not agree with the commenters who suggested either not doing the reviews at all or delaying them for several years.

We have compared data from the two groups of rural referral centers (those projected to retain their status and those projected to lose their status) to rural hospitals that are not referral centers and to hospitals located in other urban areas. These data show that the hospitals projected to retain referral center status do, in fact, bear a marked similarity to hospitals in other urban areas in comparison of both case-mix index values and numbers of discharges. Similarly, the statistics of rural referral centers projected to lose their status more closely resemble those of all other rural hospitals. For example, the rural hospitals retaining referral center status had an average case-mix index value of 1.2289 compared to an average case-mix index value of 1.2753 for hospitals in other urban areas; discharges averaged 8,165 and 8,009, respectively. The rural referral centers projected to lose their status had an average case-mix index value of 1.1275 and discharges of 5,412, which, while above the averages of 1.0739 and 1,753 for all other rural hospitals, are still enough lower than the statistics of other urban hospitals to illustrate their dissimilarity. In addition, we compared the FY 1987 average cost per case of rural referral centers projected to retain their status ($3,192) to the average cost per case of other urban hospitals ($3,967). The average cost per case for the referral centers projected to lose their status was $2,898 while that of all other rural hospitals was $2,462.

We believe that all of these data demonstrate that those rural referral centers that we project will lose their status more closely resemble other rural hospitals than they do other urban hospitals. We believe these data support reimplementation of the periodic reviews of rural referral center and the retention of only those hospitals that continue to meet the qualifying critiera.

With regard to proposed legislation that would extend the grandfathering provision, we cannot set policy or delay implementing regulatory provisions based on pending legislation that may be enacted in any one of several forms or may not be enacted at all. If legislation that has an impact on our policy concerning rural referral centers if enacted, we will comply with it as rapidly as possible.

Comment: One commenter suggested that the criteria to retain rural referral center status should be limited to case-mix index and referrals only and should not include number of discharges. Another commenter stated that the 5,000 national discharge standard that must be met to qualify for rural referral status is arbitrary and irrelevant in view of declining hospital utilization. A third commenter requested that we publish the specific number of Medicare discharges by hospital as we do case-mix index values, so that these numbers can be reviewed for accuracy.

Response: As noted above, section 1886(d)(5)(C)(i)(II) of the Act requires that we consider a rural hospital's annual number of total discharges along with its case-mix index value (as well as optional criteria as determined by the Secretary) in classifying rural hospitals as rural referral centers under this section. Specifically, that section of the Act requires that a hospital have "at least 5,000 discharges a year or, if less, the median number of discharges in urban hospitals in the region in which the hospital is located . . ." (We note that this section also provides that rural osteopathic hospitals must have 3,000 annual discharges.)

Thus, the fact that a hospital must maintain a specific number of discharges annually is not only a

statutory requirement, but the national level of 5,000 is also set by law, as is the requirement that the regional standards must be determined based on the median number of discharged from urban hospital in the same census region. Therefore, we do not have the authority to eliminate discharges as a standard or to alter the national number required. In addition, we believe it is reasonable to require a hospital to meet the same standards to retain rural referral center status as must be met to acquire that status during any given year.

It should also be noted that the 5,000 discharges standard is lower than the median number of discharges from eight of the nine census regions. In some regions, it is significantly lower (by more than 2,750 discharges annually in census region 2). In addition, data taken from hospital cost reports for cost reporting periods beginning during FYs 1987 and 1988 show that, on a national basis, although the median number of discharges from rural hospitals declined from 1,451 in 1987 to 1,403 in 1988, the median number of discharges from urban hospitals actually increased from 6,314 in 1987 to 6,335 in 1988. In view of these statistics, we believe the 5,000 total discharges standard is quite reasonable. Therefore, we are not adopting the commenters' suggestions.

Regarding the suggestion that we publish the annual number of Medicare discharges for verification purposes, we are uncertain how such information would benefit hospitals seeking rural referral center status. A hospital's total annual discharges are considered in determining its qualification as a rural referral center—not just its Medicare discharges. That number is obtained from the hospital's cost report for the appropriate year; the number of Medicare discharges is not a consideration in determining rural referral center status.

Although annual Medicare discharges may be obtained from central office records, we do not believe the number alone is of significance for hospitals in determining rural referral center status. In addition, since, for purposes of qualifying as a rural referral center, a hospital's discharges are determined based on each hospital's cost reporting year, it would be an administrative expense for HCFA to provide Medicare discharge information based on each hospital's cost reporting period. Therefore, we are not adopting the commenter's suggestion.

Comment: We received one comment suggesting that since the change in the rural referral center policy will have an impact on payments to hospitals, it should be implemented in a budget-neutral fashion.

Response: It has not been our practice to make budget neutrality adjustments to reflect increases or decreases in aggregate payments due to changes in hospital status for special payment provisions except when we have been required to do so by the statute. For example, although we made a budget neutrality adjustment as required by section 9302(d)(3) of Pub. L. 99–509 when the rural referral center case-mix index criterion was revised to exclude teaching hospitals effective for cost reporting periods beginning on or after October 1, 1986, we did not make subsequent adjustments to the payment rates for additional payments made to newly qualifying referral centers after that date and before the bed-size criterion was lowered effective April 1, 1988 by section 1886(d)(5)(C)(i)(I) of the Act. Therefore, we do not believe we should adjust the rates when hospitals no longer qualify. We have also taken this position for disproportionate share hospitals which must qualify annually for additional payments under the disproportionate share hospital provision.

Moreover, we believe a budget neutrality adjustment would be premature. Our projection of how many hospitals will not retain referral center status is based on available information; for example, we have used FY 1987 discharges in our estimate. We will not actually know how many hospitals lose their rural referral center status until the retention status determination is made by the Regional Office. This determination will include consideration of the hospitals' FY 1988 discharges. Also, affected hospitals will not lose their rural referral center status until the beginning of their next cost reporting period, which in many cases will be well into the next Federal fiscal year.

G. Disproportionate Share Adjustment (Section 412.106)

Section 8401 of Pub. L. 100–647 amended section 1886(d)(5)(F)(i) of the Act to extend payment of the disproportionate share adjustment through discharges that occur before October 1, 1995. Prior to enactment of Pub. L. 100–203, the payment adjustment for disproportionate share hospitals was to be made only through discharges occurring before October 1, 1990. We proposed to revise § 412.106(b)(1) and (b)(2) to conform our regulations with this statutory provision. We received no comments on this provision. Therefore, we are adopting our changes as proposed. However, we are taking this opportunity to clarify the regulations at § 412.106, which deal with the adjustment for disproportionate share hospitals. These revisions are not intended to revise the regulations (except for the change required by section 1886(d)(5)(F)(i) of the Act described above), but are merely designed to make the regulations easier to read and understand.

H. Indirect Medical Education Costs (Section 412.118)

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that operate medical education programs receive an additional payment for the indirect costs of medical education. The regulations governing the calculation of this additional payment are set forth at § 412.118. Each hospital's additional indirect medical education payment is determined by multiplying the hospital's total DRG revenue by the applicable education adjustment factor.

Section 4003(a) of Pub. L. 100–203 revised section 1886(d)(5)(B)(ii) of the Act to reduce the education adjustment factor used to determine the indirect medical education payment for approximately 8.1 percent to approximately 7.7 percent for discharges occurring on or after October 1, 1988 and before October 1, 1990. Section 8401 of Pub. L. 100–647 extended the applicability of this education adjustment factor through discharges occurring before October 1, 1995. We note that the education adjustment factor is an approximation because the adjustment factor is applied on a curvilinear or variable basis. An adjustment made on a curvilinear basis reflects a nonlinear cost relationship; that is, each absolute increment in a hospital's ratio of interns and residents to beds does not result in an equal proportional increase in costs.

For discharges occurring on or after October 1, 1988 and before October 1, 1995, the indirect medical education factor equals the following:

$$1.89 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.405} - 1\right]$$

For discharges occurring on or after October 1, 1995, the indirect medical education factor equals the following:

$$1.43 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.5795} - 1\right]$$

We proposed to amend § 412.118 (c) and (d) to implement the provisions of amended section 1886(d)(5)(B)(ii) of the Act. We received no comments on these changes; therefore, they are adopted as proposed.

I. Interim Payment Provision for Hospitals with Unusually Long Lengths of Stay (Section 412.116)

On August 15, 1986, we published a final rule, effective for discharges occurring on or after July 1, 1987, which provided for the elimination of the PIP method of payment for all hospitals (51 FR 29386) except for services furnished by rural hospitals with fewer than 100 beds. Under PIP, a hospital is paid on an interim basis for services furnished to beneficiaries. These interim payments are based on the hospital's projected annual costs (for hospitals excluded from the prospective payment system) or payments under the prospective payment system for Medicare patients and are made in equal biweekly payments to the hospital without regard to the submission of individual bills. Any overestimation or underestimation of the hospital's actual costs or total prospective payments to the extent not adjusted during the year is adjusted at the time of cost report settlement.

Because prospective payments are based on discharge information and, therefore, cannot be made until after discharge, in the August 15, 1986 final rule, we included a provision for special interim payments for unusually long lengths of stay in prospective payment hospitals no longer receiving PIP. Under that provision, a hospital was permitted to request an interim payment if a Medicare beneficiary's stay exceeded 30 days. The amount of the interim payment was equal to the hospital's Federal rate per discharge multiplied by the appropriate DRG weighting factor. Only one interim payment per discharge was permitted. The amount of the interim payment was to be deducted from the final payment determined following the patient's discharge. No such provision was made for hospitals excluded from the prospective payment system since payment to these hospitals is not made on a per discharge basis and they have the option of submitting interim bills during an unusually long stay.

The provisions of the August 15, 1986 final rule were effectively invalidated by section 9311(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), which added section 1815(e) of the Act to set forth specifically the circumstances under which PIP is available for services furnished by hospitals and other providers. Generally, inpatient hospital services furnished by hospitals excluded from the prospective payment system, as well as skilled nursing facility services, home health services, and hospice care, may be paid on a PIP basis. With certain exceptions, inpatient hospital services furnished by prospective payment hospitals are not eligible for payment on a PIP basis. Subsequently, we published a final rule with comment period on January 21, 1988 (53 FR 1621) which, in addition to implementing the provisions of section 1815(e) of the Act, eliminated the provision allowing a special interim payment for long stay cases set forth in the August 15, 1986 final rule.

In response to the January 21, 1988 final rule, we received a number of comments objecting to the elimination of the provision for special interim payments for unusually long lengths of stay. These commenters cited that we had originally provided for the special interim payments in order to alleviate the cash flow problems that certain hospitals might encounter after they no longer received PIP. The commenters indicated that a cash flow shortage continues to be a problem for a hospital that cannot receive any Medicare payment for a patient who has been in the hospital for an unusually long time. Some commenters believed that the problem was more acute for small hospitals or for rural hospitals, but all believed that not receiving an interim payment for a long-stay patient represented a hardship to the hospital. Others commented that the problem is exacerbated by the fact that the number of patients remaining in their hospitals awaiting skilled nursing facility (SNF) placement is increasing due to the shortage of beds in Medicare-participating SNFs in their areas.

In addition to the hardships raised by the commenters, the enactment on July 1, 1988 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) has had an adverse impact on prospective payment hospitals with unusually long lengths of stay. Before enactment of Pub. L. 100–360, a beneficiary was entitled to 90 days of inpatient hospital services during each spell of illness. In addition, a beneficiary could draw from a lifetime reserve of 60 days if that beneficiary's inpatient hospital days exceeded 90 days in a spell of illness. However, under section 1812(a)(1) of the Act, as amended by section 101(b) of Pub. L. 100–360, essentially unlimited inpatient hospital days are available for Medicare beneficiaries effective with services furnished on or after January 1, 1989. Therefore, effective January 1, 1989, in extremely long stay cases, Medicare payment for benefits that previously would have been exhausted will continue to accrue until discharge.

In light of the comments discussed above and the changes made by Pub. L. 100–360, we have reconsidered our position with respect to providing some form of special interim payment to prospective payment hospitals for long stays. We are revising the regulations at § 412.116 to state that hospitals subject to the prospective payment system that are not on PIP may request a special interim payment after a patient has been in the hospital at least 60 covered days and may request additional interim payments thereafter at intervals of at least 60 days. We believe that this

policy represents a reasonable and equitable solution for those hospitals that, with respect to extremely long stay cases, have been adversely affected by the elimination of PIP.

The amount of the initial interim payment will be equal to the rate for the DRG that results from applying the GROUPER classification to the diagnosis, procedures, and other pertinent information that is reported on the initial interim bill. The payment for the initial interim bill will be determined as if the bill were the final bill. That is, the intermediary will pay the hospital based on the DRG determined for the bill plus any outlier payments as of the date of the last day for which services have been billed. Subsequent interim bills, including the final bill, will be processed as adjustment bills, with payment determined as if the bill were the final bill. Generally, the adjusted payment from subsequent bills will result from outlier payments accruing since the previous bill. These special interim payments are effective [date of publication] for all qualifying current and subsequent inpatient hospital admissions.

As we stated above, this change to our payment policy is made primarily in response to the comments received on the January 21, 1988 final rule with respect to the special interim payments issue. We have made our final determination on this issue and are publishing it at this time because we believe it to be of paramount importance to the hospital industry as well as in the best interest of the public to issue as soon as possible. The other comments submitted in response to the January 21 final rule will be addressed in a separate document to be published in the future.

V. Other ProPAC Recommendations

As required by law, we reviewed the March 1, 1989 report submitted by ProPAC and gave its recommendations careful consideration in conjunction with the proposals set forth in the proposed rule. We also responded to the individual recommendations in the proposed rule. The comments we received on our treatment of the ProPAC recommendations are set forth below along with our responses to those comments. However, if we received no comments from the public concerning a ProPAC recommendation or our response to that recommendation, we have not repeated the recommendation and response in the discussion below. Recommendations 1 through 7 concerning the update factors are discussed in Appendix B of this document. Recommendation 13 concerning reassignment of patients with Guillain-Barre syndrome is discussed in section II.B. of this preamble.

A. Adjustments to the Prospective Payment System Payment Formula

Indirect Medical Education Adjustment (Recommendation 8)

Recommendation: The Secretary should seek legislation to reduce the indirect medical education adjustment from 7.7 percent to 6.6 percent for FY 1990. This reduction should be implemented in a budget neutral fashion with the savings returned to all hospitals through corresponding increases in the standardized amounts. ProPAC estimates that the indirect medical education adjustment should be 4.4 percent. However, concern about implementing such a large reduction led ProPAC to recommend that only one-third of the total reduction be implemented this year. ProPAC also recommends that further reductions should be made only after review of costs and analysis of impact.

Response in the Proposed Rule: We agree that the current indirect medical education adjustment paid to teaching hospitals is excessive and should be reduced. We believe that the adjustment should be reduced to 4.05 percent for each 10 percent increment in the intern and resident-to-bed ratio applied on a curvilinear basis. That figure represents our estimate of the actual impact of the indirect costs of teaching activity on hospital costs. We note that this figure does not differ significantly from the ProPAC estimate, which is 4.4 percent for each 10 percent increment in the ratio of interns and residents-to-beds.

Our analyses indicate that teaching hospitals have had favorable Medicare operating margins under the prospective payment system. Hospitals, on average, experienced operating margins of 5.3 percent during FY 1987. Teaching hospitals, on the average, experienced higher Medicare operating margins. Teaching hospitals with an intern and resident-to-bed ratio of less than 25 percent had Medicare operating margins of 7.6 percent during FY 1987; teaching hospitals with greater than a 25 percent intern and resident-to-bed ratio had Medicare operating margins of 13.6 percent on average during FY 1987.

We believe that teaching hospitals have fared exceptionally well under the prospective payment system and are able to absorb a reduction in the indirect medical education adjustment. Therefore, while we recognize that a change in the adjustment from 7.7 percent to 4.05 percent is sizeable, we do not believe that gradually reducing the adjustment, as ProPAC has recommended, is justified. Moreover, in view of the budgetary constraints, we believe it would be inappropriate to pay in excess of the estimate of the actual indirect costs of teaching activity. Further, because we believe payments to other hospitals are adequate, we believe that the change in the indirect medical education adjustment formula should not be implemented in a budget neutral fashion.

Comment: Several commenters objected to our recommendation concerning the adjustment factor for indirect medical education. Some commenters urged that we accept ProPAC's recommendation for a phased-in reduction of the adjustment, that is, for FY 1990, from 7.7 to 6.6 percent. Others objected to any reduction in the adjustment.

Response: We want to note that we did not propose to reduce the adjustment for indirect medical education in the proposed rule. Since the current adjustment is required by section 1886(d)(5)(B)(ii) of the Act, any change to the formula would require legislation. In the proposed rule, we were responding to a recommendation submitted by ProPAC that the Secretary seek legislation to reduce the adjustment formula. We responded that we concurred with ProPAC that the current formula results in an adjustment that is excessive and indicated that we believe the adjustment should be reduced from the current 7.7 percent to 4.05 percent (54 FR 19655).

We based our recommendation on the results of a 1985 study conducted by the Congressional Budget Office (CBO) that shows that the average cost per Medicare discharge increases by 4.05 percent for each 10 percent increase in the intern-to-bed ratio. A more recent study conducted by CBO ("Setting Medicare's Indirect Teaching Adjustment for Hospitals," May 1989) found that, depending on the model used, the adjustment factor could range from a low of 3.5 percent to a high of 5.2 percent. In addition, a study by the General Accounting Office (GAO) (as well as the ProPAC study) confirms that the current adjustment is excessive. (GAO Report No. HRD–89–33, January 5, 1989, "Medicare Indirect Medical Education Payments Are Too High.") GAO used several different models to estimate the effect of teaching programs on Medicare inpatient operating costs per discharge. Depending on the model used in the analysis, GAO estimated that the teaching effect on the Medicare cost per discharge ranges from 3.73

percent to 6.51 percent. The model that includes the Medicare payment variables, outlier cases, and bed size estimates the teaching effect at 4.05 percent.

B. Quality of Care

Evaluation of PRO Review of Quality of Care (Recommendation 14)

Recommendation: The Secretary should evaluate the impact of the PROs on quality of care. Intensified analysis of the PRO findings and validation of the PRO quality review process should be included in the evaluation. The validity, reliability, and efficiency of the PRO quality screens should receive special emphasis in the evaluation. In addition, the Secretary should continue to develop, test, and implement more sophisticated methods of inpatient and outpatient quality review. The Secretary should also develop additional mechanisms to identify and evaluate quality of care beyond the immediate period of hospitalization, placing more emphasis on outcomes of care.

Response in the Proposed Rule: We agree with the recommendation for evaluation of the impact of PROs on quality of care. We have the following two mechanisms in place that evaluate a PRO's application of quality screens:

- An independent contractor, the so-called "SuperPRO" (currently Systemetrics, Inc.), validates the determinations made by a PRO specifically to identify quality issues that should have been addressed by the PRO using generic screening criteria. This review is a rereview of the medical records originally examined by the PRO. Whenever discrepancies arise, the PRO is given an opportunity to rebut the SuperPRO's findings. The final SuperPRO decisions are used as educational tools for PROs. HCFA also reviews these decisions to identify areas in which corrective action is needed. During the PRO contract negotiations, SuperPRO findings, including those related to generic quality screens, will be considered in the PRO evaluation process.
- The Peer Review Organization Monitoring Protocol and Tracking System (PROMPTS) monitors the PROs performance in the area of quality of care. PROMPTS involves regional office rereview of PRO clinical decisions, including generic screen failures. If the regional office disagreements with a PRO's decisions exceeds a specific threshold, the PRO must submit a corrective action plan. These corrective actions are then monitored by HCFA, and subsequent SuperPRO findings are closely examined to monitor a PRO's performance. We routinely analyze those areas where the disagreement rate exceeds the threshold and require the PRO to take additional corrective action, if necessary. Additionally, the PRO's performance in this activity is considered in the PRO evaluation process.

SuperPRO and PROMPTS are essential parts of the PRO evaluation process and are used to carefully monitor and evaluate the validity, reliability, and efficiency of PRO application of quality screens. HCFA agrees with ProPAC's recommendation that the Secretary should continue to develop, test, and implement more sophisticated methods of inpatient and outpatient quality review.

Additionally, we are developing methodology for the PROs to use in proposing pilot projects in each of these areas. For example, we will be looking at proposals under which the PROs would review the quality of care in physicians' offices and in other outpatient settings. The pilot studies would be designed to track the patient across all settings in which care is received to assess health longitudinally. We also will be planning pilot projects under which PRO review will be lessened in hospitals whose performance appears superior, as judged by such things as consistently lower than expected risk-adjusted mortality and rehospitalization rates. This will help us to determine whether patient outcomes in these hospitals differ significantly from those where the normal PRO review process is in place.

Comment: One commenter disagreed with our assertion that our existing PRO review activities are sufficient. The commenter noted that these activities represent simply administrative tools used in the administration of the program and that it is time to undertake a thorough, independent review of the impact of PROs on quality of care for Medicare beneficiaries.

Response: We do not agree that all of the activities we cited are mere evaluative tools and, thus, simply administrative mechanisms used in the proper and efficient administration of the program. We are, however, about to begin a demonstration to review services furnished by physicians in various settings (ranging from inpatient hospital services to those furnished in physicians' offices). This review, which will include reviews of beneficiaries who have been hospitalized, will enable us to discern the outcomes experienced by beneficiaries.

In addition, we have begun a project, which collects abstracted clinical data, to detect deteriorations of improvements in the medical treatment of Medicare beneficiaries. These may be measured by changes from year to year in the incidence of interventions such as hospitalization or by diagnostic or therapeutic interventions in the ambulatory setting and in the outcomes of such interventions as measured by mortality, morbidity, disability, and expenditures. To establish a baseline measure of health and functional statutes, we are considering developing a registry that will contain assessments of the condition of the Medicare beneficiary at the time of entry and at appropriate intervals thereafter. Such information will permit more effective evaluation of trends by taking into account the variations in the initial condition of the beneficiary.

The data generated from these and other pilot projects will allow us to refine goals and objectives for the program based upon outcome measurements. While this also could be considered part of good program administration, we view it as an assessment of the program's overall impact. Any other measurement activity would require baseline comparative data, which are not currently available.

C. Ambulatory Surgery Payment

1. Medicare Payment for Hospital Outpatient Surgery (Recommendation 16)

Recommendation: Beginning in FY 1990, Medicare payment for the facility component of hospital outpatient surgery including capital should be entirely prospective. Separate rates should be established for each of the six groups proposed for payment of services furnished in ambulatory surgery centers (ASCs). The rate for FY 1990 should be based on a blend of hospital-specific costs, average hospital costs, and the rate paid to freestanding ASCs. The rate should be updated annually.

The level of the prospective rates should be the same in FY 1990 as they would have been under current policy. Payments should be adjusted to reflect differences in area wages. These changes in hospital outpatient surgery payment policy should apply to the list of ASC-approved procedures only; other Medicare payment provisions should continue for all other procedures. ProPAC does not recommend special treatment of eye and ear specialty hospitals.

Response in the Proposed Rule: We agree with ProPAC's objective to develop a prospective payment system for hospital outpatient ambulatory surgical services. However, we do not agree with the approach ProPAC has recommended. As we stated in our interim report to Congress last year on this subject, a prospective payment system for hospital outpatient ambulatory surgical services should be based on two basic principles. First, Medicare program outlays should be no greater under a hospital outpatient prospective payment system than under the current system. Second, the prospective payment system should create a level playing field between ASC and hospital outpatient departments; that is, any difference between hospital-based payments and ASC payments should be based on justifiable differences in cost.

We plan to continue studying different approaches to incorporate hospital outpatient surgical services into a prospective payment system that is based on the principles stated above. Thus, we recommend no further changes to the hospital outpatient ambulatory surgical payment system at this time.

Comment: We received one comment, which was from ProPAC. While ProPAC basically agrees with the premise of our response in the proposed rule, it continues to recommend an interim prospective payment system for hospital outpatient surgeries. In addition, ProPAC recommended an investigation of ways to improve data from ASCs.

Response: We continue to believe we should not support any changes in Medicare payment policy for hospital outpatient surgical procedures at this time. Instead, we will continue in our efforts to develop a fully prospective payment system for all hospital outpatient services as mandated by section 1135(d) of the Act, as enacted by section 9343(f) of Pub. L. 99–509.

ProPAC's comment stated that ProPAC agreed with us that an outpatient prospective payment system should recognize justifiable differences in costs of furnishing services between hospital outpatient departments and ASCs. However, while ProPAC identified several factors that would account for the cost difference, ProPAC stated that the effect on costs in not understood and proposed that the interim system give "less prominence" to the freestanding ASC rates in establishing the outpatient rates. In this regard, since Congress mandated that any such differences in costs between ASCs and hospital outpatient departments be taken into account in establishing a prospective system (section 1135(d) of the Act), we do not believe a prospective payment system should be implemented. In addition, ProPAC's concern regarding data constraints with respect to ASC rates further justifies our position to make no changes at the present time.

Our recommendation is based on the fact that we do not have sufficient data at this time to assess the impact the proposed changes would have on beneficiaries, hospitals, and the Medicare program. We are only just beginning to receive the first cost reports reflecting the current payment system for ambulatory surgical procedures in hospitals. In addition, various studies are now being conducted that should provide valuable data when completed. We believe a move from the current system to a new system on a temporary basis would be very disruptive to the industry, and implementing the system would place a significant strain on our current resources, particularly in such a short period of time as the ProPAC's proposal would require. Therefore, we continue to recommend no further changes at this time.

2. Beneficiary Liability for Hospital Outpatient Surgery (Recommendation 17)

Recommendation: The Secretary should modify the methodology used to determine Medicare Part B coinsurance for certain ambulatory surgery services performed in hospital outpatient departments. Currently, beneficiary coinsurance is based on hospital submitted charges. ProPAC believes that beneficiary coinsurance should be limited to 20 percent of the payment amount allowed by Medicare. The Medicare program should bear the costs of the change.

Response in the Proposed Rule: As was stated in our response to Recommendation 16, we oppose making any changes to the present payment system for ambulatory surgical services. Therefore, we would be unable to implement this ProPAC recommendation for the present time.

In addition, the present system pays in the aggregate for surgery performed in a hospital outpatient setting based on the lesser of cost or charges or a blend of a hospital-specific amount and the ASC payment amount. Because the system is based on payments in the aggregate, calculated upon retroactive settlement, it is not possible to determine the actual payment amount based on individual bills, as would be necessary to implement ProPAC's proposal. Therefore, we believe that no changes should be made at this time.

Comment: In its comments on the proposed rule, ProPAC reiterated its position that the Medicare program should assume responsibility for 80 percent of the payment amount. ProPAC recommended that the method for calculating part B coinsurance for hospital outpatient surgery be modified.

Response: As we stated above, we recommend no change to the present payment system. This being the case, ProPAC's recommendation, which is based on a fully prospective payment system, would not apply under the present system. Under the present system, Medicare payment is not determined on an individual beneficiary basis but is made in the aggregate for all ASC beneficiary services furnished during the cost reporting period. Therefore, we will give this recommendation consideration after a prospective payment system for all outpatient services is in place.

VI. Other Required Information

A. Effective Dates

The effective date of this final rule (including the addendum and appendixes) is October 1, 1989. However, the changes we are making to § 412.116 concerning special interim payments to hospitals not receiving PIP for unusually long lengths of stay are effective on September 1, 1989.

B. Waiver of 30-Day Delay in the Effective Date

We ordinarily provide for a 30-day delay in the effective date of a substantive final rule. However, if adherence to this procedure would be impractical, unnecessary, or contrary to public interest, we may waive the delay in the effective date. As discussed in detail in section IV.I. of this preamble, on January 21, 1988, we published a final rule with comment period that set forth, in part, the circumstances under which a prospective payment hospital could receive PIP payments for the services it furnishes. That rule implemented the provisions of section 9311(a) of Pub. L. 99–509, which effectively invalidated an August 15, 1986 final rule in which we had eliminated PIP for all hospitals except small rural hospitals.

Although the August 15, 1986 final rule had provided for a special interim payment to prospective payment hospitals not receiving PIP for unusually long stays, we did not make that same provision in the January 21, 1988 final rule. However, in this final rule, after consideration of the comments we received in response to the January 21, 1988 final rule concerning the special interim payment and because of the elimination of a day limitation on hospital inpatient services by section 101(b) of Pub. L. 100–360, we have decided to restore the special interim payment to prospective payment hospitals not receiving PIP.

We have made this change effective on September 1, 1989, for all current qualifying inpatient hospitals admissions. If we were to provide a 30-day delay in the effective date of these changes, hospitals experiencing these unusually long stays would be required to wait another 30 days before requesting a special interim payment and thus be deprived of the benefits of this change. Thus, a 30-day delay in effective date would be contrary to public interest. For these reasons, we find good cause to waive the normal 30-day delay in effective date for the changes made to § 412.116.

C. Paperwork Reduction Act

This final rule does not impose information collection requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

D. List of Subjects in 42 CFR Part 412

Health facilities, Medicare.

42 CFR part 412 is amended as set forth below:

Chapter IV—Health Care Financing Administration, Department of Health and Human Services

Subchapter B—Medicare Programs

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a–1, 1395g(e), 1395hh, and 1395ww).

Subpart A—General Provisions

B. Subpart A is amended as follows:

§ 412.8 [Amended]

In § 412.8, paragraph (b)(4) is removed.

Subpart F—Payment for Outliers

C. Subpart F is amended as follows:

§ 412.84 [Amended]

In § 412.84(k), the phrase "and before October 1, 1989" is removed, and the cross reference to "paragraph (i)" is revised to read "paragraph (j)."

Subpart G—Special Treatment of Certain Facilities

D. Subpart G is amended as follows:

1. In § 412.92, the introductory text of paragraph (a) is republished; in paragraph (a)(1), the introductory text of paragraph (a)(2), and paragraph (a)(2)(i), the number "50" is revised to read "35"; paragraph (a)(3) is revised; in paragraph (b)(1)(ii)(B), the number "50" is revised to read "35"; paragraph (b)(4)(iii) is revised; in the introductory text of paragraph (e)(3) and paragraph (e)(3)(i), the term "HCFA" is revised to read "the intermediary"; paragraph (e)(3)(ii) is revised; in paragraph (e)(3)(iii), the term "HCFA" is revised to read "the intermediary"; and, in paragraph (g)(6), the phrase, "beginning before October 1, 1989" is removed. The changes read as follows:

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(a) *Criteria for classification as a sole community hospital.* HCFA classifies a hospital as a sole community hospital if it is located in a rural area (as defined in § 412.62(f)), and meets one of the following conditions: * * *

(3) The hospital is located between 15 and 25 miles from other like hospitals but because of local topography or periods of prolonged severe weather conditions, the other like hospitals are inaccessible for at least 30 days in each 2 out of 3 years.

(b) *Classification procedures.* * * *

(4) *Cancellation of classification.* * * *

(iii) If a hospital requests that its sole community hospital classification be cancelled, it may not be reclassified as a sole community hospital unless it meets the following conditions:

(A) At least one full year has passed since the effective date of its cancellation.

(B) The hospital meets the qualifying criteria set forth in paragraph (a) of this section in effect at the time it reapplies.

* * * * *

(e) *Additional payments to sole community hospitals experiencing a significant volume decrease.* * * *

(3) * * *

(ii) The intermediary makes its determination within 180 days from the date it receives the hospital's request and all other necessary information.

* * * * *

2. In § 412.94, paragraph (b)(1) is revised and a new paragraph (b)(4) is added to read as follows:

§ 412.94 Special treatment: Cancer hospitals.

* * * * *

(b) *Payment.* (1) A hospital meeting the criteria in paragraph (a) of this section may elect, during its first cost reporting period subject to the prospective payment system, to be paid on a reasonable cost basis under part 413 of this chapter (and under other regulations governing reasonable cost in subparts D and E of part 405 of this chapter), and subject to the rate of increase limit under § 413.40 of this chapter.

* * * * *

(4) A hospital that elects reasonable cost reimbusement is otherwise subject to the prospective payment system with respect to hospital inpatient services, as provided in § 412.20. The provisions in §§ 412.113 and 412.116 concerning payment for capital-related costs and method of payment for inpatient hospital services, respectively, are applicable to such a hospital.

3. In § 412.96, paragraph (f) is revised to read as follows:

§ 412.96 Special treatment: Referral centers.

* * * * *

(f) *HCFA review of referral center status.*—(1) *General rule.* The status of each hospital that is receiving a referral center adjustment is reviewed by the HCFA regional office every 3 years to determine if the hospital continues to meet the applicable criteria.

(2) *Retention criteria.* To retain referral center status, a hospital must meet the applicable criteria—

(i) In at least 2 of the last 3 years; or

(ii) For the current year.

(3) *Cancellation of referral center status.* If a hospital does not meet either of the retention criterion in paragraph (f)(2) of this section and no longer qualifies for a referral center adjustment, HCFA discontinues the adjustment beginning on the first day of the hospital's next cost reporting period.

* * * * *

4. Section 412.106 is revised to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

(a) *General considerations.* (1) The factors considered in determining whether a hospital qualifies for a payment adjustment include the number of beds, the number of patient days, and the hospital's location.

(i) The number of beds in a hospital is determined in accordance with § 412.118(b).

(ii) The number of patient days includes only those days attributable to areas of the hospital that are subject to the prospective payment system and excludes all others.

(iii) The hospital's location, in an urban or rural area, is determined in

accordance with the definitions in § 412.62(f).

(2) The payment adjustment is applied to the hospital's total DRG revenues.

(i) A hospital's total DRG revenues are determined on the basis of DRG-adjusted prospective payment rates or, for transition period payments, on the basis of the Federal portion of the hospital's payment rates.

(ii) For purposes of this section, total DRG revenues include outlier payments under Subpart F of this part, but exclude additional payments made under this subpart or under § 412.118 for indirect medical education costs.

(b) *Determination of a hospital's disproportionate patient percentage*—(1) *General rule.*

A hospital's disproportionate patient percentage is determined by adding the results of two computations and expressing that sum as a percentage.

(2) *First computation: Federal fiscal year.* For each month of the Federal fiscal year in which the hospital's cost reporting period begins, HCFA—

(i) Determined the number of covered patient days that—

(A) Are associated with discharges occurring during each month; and

(B) Are furnished to patients who during that month were entitled to both Medicare Part A and SSI, excluding those patients who received only State supplementation;

(ii) Adds the results for the whole period; and

(iii) Divides the number determined under paragraph (b)(2)(ii) of this section by the total number of patient days that—

(A) Are associated with discharges that occur during that period; and

(B) Are furnished to patients entitled to Medicare Part A.

(3) *First computation: Cost reporting period.* If a hospital prefers that HCFA use its cost reporting period instead of the Federal fiscal year, it must furnish its intermediary, in machine-readable format as prescribed by HCFA, data on its Medicare part A patients for its cost reporting period.

(4) *Second computation.* The fiscal intermediary determines, for the hospital's cost reporting period, the number of patient days furnished to patients entitled to Medicaid but not to Medicare part A, and divides that number by the total number of patient days in that same period.

(5) *Disproportionate patient percentage.* The intermediary adds the results of the first computation made under either paragraph (b)(2) or (b)(3) of this section and the second computation made under paragraph (b)(4) of this section and expresses that sum as a percentage. This is the hospital's disproportionate patient percentage, and is used in paragraph (c) of this section.

(c) *Criteria for classification.* A hospital is classified as a "disproportionate share" hospital under any of the following circumstances:

(1) The hospital's disproportionate patient percentage, as determined under paragraph (b)(5) of this section, is at least equal to one of the following:

(i) 15 percent, if the hospital is located in an urban area and has 100 or more beds, or is located in a rural area and has 500 or more beds.

(ii) 40 percent, if the hospital is located in an urban area and has fewer than 100 beds.

(iii) 45 percent, if the hospital is located in a rural area and has fewer than 500 beds.

(2) The hospital is located in an urban area, has 100 or more beds, and can demonstrate that, during its cost reporting period, more than 30 percent of its net inpatient care revenues are derived from State and local government payments for care furnished to indigent patients.

(d) *Payment adjustment*—(1) *Method of adjustment.* If a hospital serves a disproportionate number of low-income patients, its total DRG revenues are increased by an adjustment factor as specified in paragraph (d)(3) of this section.

(2) *Effective dates for payment adjustment.* Payment adjustment under this section is effective for discharges that occur on or after May 1, 1986 (October 1, 1988 for rural hospitals with 500 or more beds) and before October 1, 1995.

(3) *Payment adjustment factors.* (i) If the hospital meets the criteria of paragraph (c)(1)(i) of this section, the payment adjustment factor is 2.5 percent, plus one-half the difference between the hospital's disproportionate patient percentage and 15 percent.

(ii) If the hospital meets the criteria of paragraph (c)(1)(ii) of this section, the payment adjustment factor is 5 percent

(iii) If the hospital meets the criteria of paragraph (c)(1)(iii) of this section, the payment adjustment factor is 4 percent

(iv) If the hospital meets the criteria of paragraph (c)(2) of this section, the payment adjustment factor is 25 percent.

Subpart H—Payments to Hospitals Under the Prospective Payment System

E. Subpart H is amended as follows:

1. In § 412.116, paragraphs (d) and (e) are redesignated as paragraph (e) and (f), respectively, and a new paragraph (d) is added to read as follows:

§ 412.116 Method of payment.

* * * * *

(d) *Special interim payment for unusually long lengths of stay.*—(1) *First interim payment.* A hospital that is not receiving periodic interim payments under paragraph (b) of this section may request an interim payment after a Medicare beneficiary has been in the hospital at least 60 days. Payment for the interim bill is determined as if the bill were a final discharge bill and includes any outlier payment determined as of the last day for which services have been billed.

(2) *Additional interim payments.* A hospital may request additional interim payments at intervals of at least 60 days after the date of the first interim bill submitted under paragraph (d)(1) of this section. Payment for these additional interim bills, as well as the final bill, is determined as if the bill were the final bill with appropriate adjustments made to the payment amount to reflect any previous interim payment made under the provisions of this paragraph (d).

* * * * *

§ 412.118 [Amended]

2. In § 412.118, in paragraphs (c)(1), (c)(2), (d)(1), and (d)(2), the phrase "October 1, 1990" is revised to read "October 1, 1995".

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: August 15, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: August 25, 1989.

Louis W. Sullivan,

Secretary.

Editorial Note: The following addendum and appendixes will not appear in the Code of Federal Regulations.

ADDENDUM—SCHEDULE OF STANDARDIZED AMOUNTS EFFECTIVE WITH DISCHARGES ON OR AFTER OCTOBER 1, 1989 AND UPDATE FACTORS AND TARGET RATE PERCENTAGES EFFECTIVE WITH COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1989

I. Summary and Background

In this addendum, we are making changes in the amounts and factors for determining prospective payment rates for Medicare inpatient hospital services. We are also setting forth new target rate percentages for determining the rate-of-increase limits (target amounts) for hospitals and hospital units excluded from the prospective payment system.

For hospital cost reporting periods beginning on or after October 1, 1989, except for sole community hospitals and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be comprised of 100 percent of the Federal rate. Except for hospitals affected by the regional floor, the Federal rate is based on 100 percent of the national rate.

Sole community hospitals are to be paid on the basis of a rate per discharge composed of 75 percent of the hospital-specific rate and 25 percent of the applicable Federal regional rate (section 1886(d)(5)(C)(ii) of the Act). Hospitals in Puerto Rico are paid on the basis of a rate per discharge composed of 75 percent of a Puerto Rico rate and 25 percent of a national rate (section 1886(d)(9)(A) of the Act). Hospitals affected by the regional floor are paid on the basis of 85 percent of the Federal national rate and 15 percent of the Federal regional rate.

As discussed below in section II, we are making changes in the determination of the prospective payment rates. The changes, to be applied prospectively, will affect the calculation of the Federal rates. Section III sets forth our changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to the final rule are presented at the end of this addendum in section IV.

II. Changes to Prospective Payment Rates for Hospitals for FY 1990

The basic methodology for determining prospective payment rates is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below we discuss the manner in which we are changing some of the factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes, once issued as final, will be effective with discharges occurring on or after October 1, 1989. As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and weighting factors for discharges in FY 1990.

In summary, the standardized amounts set forth in Tables 1a, 1b, and 1c of section IV of this addendum were—

- Adjusted to ensure budget neutrality as provided in section 1886(d)(8)(D) of the Act;
- Adjusted by the revised urban and rural outlier offsets; and
- Updated by 5.5 percent (that is, the market basket percentage increase).

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the interim final rule, published September 1, 1983 (48 FR 39763), contains a detailed explanation of how base-year cost data were established in the initial development of standard amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required that Medicare target amounts be determined for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs or, for Puerto Rico, adjusted target amounts, from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886 (d)(2)(C) and (d)(9)(B)(ii) of the Act required that the updated base-year per discharge costs and, for Puerto Rico, the updated target amounts, respectively, be standardized in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Since all adjustments for variation in hospital operating costs or target amounts have already been accounted for consistent with the construction of the standardized amounts, no revision was made at the hospital level for those factors. That is, the adjustments for differences in case mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients reflected in the FY 1990 standardized amounts are identical to those reflected in the current (FY 1989) standardized amounts.

2. Computing Urban and Rural Averages Within Geographic Areas

In determining the prospective payment rates for FY 1984, section 1886(d)(2)(D) of the Act required that the average standardized amounts be determined for hospitals located in urban and rural areas of the nine census divisions and the nation. Under section 1886(d)(9)(B)(iii) of the Act, the average standardized amount per discharge for FY 1988 must be determined for hospitals located in urban and rural areas in Puerto Rico.

For FY 1990, except for hospitals in Puerto Rico and those hospitals that are affected by the regional floor, the Federal rates will be comprised of 100 percent of the national rate (section 1886(d)(1)(A)(iii) of the Act). The Federal rate for hospitals affected by the regional floor is based on 85 percent of the national rate and 15 percent of the regional rate. Section 1886(d)(5)(C)(ii) of the Act specifies that a sole community hospital's Federal rate is based on 100 percent of the regional rate. Hospitals in Puerto Rico are paid a blend of 75 percent of the applicable Puerto Rico standardized amount and 25 percent of a national standardized payment amount.

Section 4002(c)(1) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended section 1886(d)(3) of the Act to require the Secretary to compute three average standardized amounts for discharges occurring in a fiscal year beginning on or after October 1, 1987: one for hospitals located in rural areas; one for hospitals located in large urban areas; and one for hospitals located in other urban areas. Section 4002(b) of Pub. L. 100–203 amended section 1886(d)(2)(D) of the Act to define a "large urban area" as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Pub. L. 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Under that section as now amended, urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas."

Based on 1987 population estimates published by the Bureau of the Census, the current 46 large urban areas continue to meet the criteria to be defined as large urban areas for FY 1990. A list of those areas was set forth in a notice published on April 5, 1988 at 53 FR 11138. In addition, these areas are identified by an asterisk in Tables 4a and 4c as set forth in section IV of this addendum. No additional areas were identified. Therefore, we are making no change in these areas for purposes of this final rule.

Table 1a contains the three national standardized amounts that would be applicable to most hospitals. Table 1b sets forth the 27 regional standardized amounts that would be applicable to sole community hospitals and to hospitals subject to the regional floor. Under section 1886(d)(9)(A)(ii) of the Act, the national standardized payment amount applicable to hospitals in Puerto Rico consists of the discharge-weighted average of the national rural standardized amount, the national large urban standardized amount, and the national other urban standardized amount (as set forth in Table 1a). The national average standardized amount for Puerto Rico is set forth in Table 1c. This table also includes the three standardized amounts that would be applicable to most hospitals in Puerto Rico.

The methodology for computing the national average standardized amounts is identical to the methodology for determining the regional amounts.

We stated in the addendum to the proposed rule that the Office of Management and Budget (OMB) may announce revised listings of the Metropolitan Statistical Area (MSA) and NECMA designations that are used in calculating the standardized amounts. We noted that if OMB makes the announcement before we issue the final rule, we would list the revised MSA/NECMA designations in the addendum to the final rule. Consistent with Medicare policy and our regulations at § 412.63(b)(4), any changes in designation are effective for discharges occurring on or after October 1, 1989.

Since publication of the proposed rule, OMB has announced a new MSA, Jamestown-Dunkirk, NY, which comprises the county of Chatauqua and has Jamestown and Dunkirk as its central cities. We have incorporated this change in the final wage index set forth in Tables 4a, 4b, and 4c in the addendum to this final rule.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A) of the Act, we are updating the large urban, other urban, and rural average standardized amounts and the hospital-specific rate (which applies only to sole community hospitals) using the applicable percentage increase specified in section 1886(b)(3)(B)(i) of the Act. The percentage increase to be applied is mandated under that section of the law as the estimated percentage increase in the hospital market basket for hospitals located in all areas. The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecasted hospital market basket increase and, thus, the applicable percentage increase for FY 1990 is 5.5 percent.

The 5.8 percent market basket rate of increase set forth in the proposed rule was based on the February 1989 hospital input price forecasts. However, the August 1989 forecasts indicate a decline in the projected FY 1990 hospital market basket index for the February forecasts. The components of the market basket in which the most significant changes have occurred between the two forecasts include pharmaceuticals, which increased by 0.1 percent, and malpractice insurance, which decreased by 0.3 percent. We note that the decrease in the malpractice insurance forecast occurred because the hospital insurance industry is experiencing a deceleration in malpractice insurance premium increases. Malpractice insurance premiums are now forecasted to increase at a lower rate (three to four percent) than in the February forecast. We also note that the forecast for the main component of the hospital market basket, wages and salaries, remained essentially unchanged from the previous forecast.

Although the update factor for FY 1990 is set by law, we were required by section 1886(e)(3)(B) of the Act to report to Congress no later than March 1, 1989 on our initial recommendation of update factors for FY 1990 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we published this report as appendix B of the proposed rule. Our final recommendation on the update factors (which is required by sections 1886 (e)(4) and (e)(5)(A) of the Act) is set forth as appendix B of this final rule.

Comment: One commenter stated that the hospital market basket does not accurately reflect the true economic expenses incurred by hospitals since nonhospital wages are included in the labor component of the market basket.

Response: The rebased hospital market basket was established in FY 1987, and we have not proposed any changes to the market basket forecasting methodology for FY 1990. The methodology we used to forecast the market basket inflation for FY 1990 is consistent with that outlined in the September 3, 1986 final rule (51 FR 31461). We do not believe it is appropriate to make changes to specific market basket components without also examining all of the other components of the market basket. While changing the proxy measures used in the wage component of the market basket mey result in a higher inflation forecast for that component, it is also possible that further analysis of the appropriateness of the forecasting measures used in the other components of the market basket could result in lower forecasts being developed. Therefore, we do not believe it is appropriate to adopt changes to various components of the market basket and that any revisions should be made only in conjunction with a complete rebasing of the market basket. Absent rebasing, we believe it is important that the model we use in developing the market basket forecasts be carried forward over a period of years so that forecasts will be consistent from year to year.

We agree that the issue of appropriate wage proxies warrants further consideration. We are planning to include a rebased hospital market basket as a part of the proposed rule concerning changes in the inpatient hospital prospective payment system for FY 1991. We will consider options for revising the market basket components as part of that process.

4. Other Adjustments to the Average Standardized Amounts

a. *Indirect Medical Education.* Section 1886(d)(3)(C)(ii) of the Act provides that, effective for discharges occurring on or after October 1, 1986, the average standardized amounts be further reduced, taking into consideration the effects of the standardization for indirect medical education costs as described in section II.A.1. of this addendum. The required adjustment is to ensure that the program savings that would be achieved through standardizing for indirect medical education on one basis and computing indirect medical education payments on another basis are preserved.

The first such adjustment was implemented for the standardized amounts effective October 1, 1986. (See the September 3, 1986 final rule (51 FR 31521).) Since section 1886(d)(3)(C)(ii) of the Act, as amended by section 4003(a)(2) of Pub. L. 100–203, required a revision of the adjustment due to the reduction of the adjustment factor for computing indirect medical education payments effective October 1, 1988, we made a further adjustment to the standardized amounts effective October 1, 1988 to achieve the incremental savings that resulted from that reduction in indirect medical education payments. See the September 30, 1988 final rule (53 FR 38539) for the factors used to make this adjustment. Since there has been no change in the indirect medical education factor for FY 1990, we are not proposing to make any further adjustment to the standardized amounts for FY 1990.

b. *Rural Hospitals Deemed to be Urban.* Section 1886(d)(8)(B) of the Act provides that certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. Section 1886(d)(8)(C) of the Act, as added by section 8403(a) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647), specifies that if the wage index values applicable to MSAs that are now deemed to include certain rural hospitals and to the rural areas in which those hospitals are actually located were reduced because of the provisions of section 1886(d)(8)(B) of the Act, those wage index values must be recalculated as if that section had not been enacted. A separate wage index value is calculated for each of the affected counties (that is, those rural counties whose hospitals are deemed urban).

Section 1886(d)(8)(D) of the Act specifies two payment conditions that must be met. First, the FY 1990 urban standardized amounts are to be adjusted so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8)(B) and (C) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. That is, the additional payments to those rural hospitals that have been deemed urban must be financed through a reduction in the urban standardized amounts. Second, the rural standardized amounts are to be adjusted to ensure that aggregate payments to rural hospitals not affected by these provisions neither increase nor decrease as a result of implementation of these provisions. That is, aggregate payments to those rural hospitals that have not been deemed urban should not change as a result of these provisions. The following budget neutrality adjustment factors were applied to the proposed standardized amounts: Urban—.99943; Rural—1.00030.

After further analysis of the effect of payments to rural hospitals as a result of the implementation of section 1886(d)(8)(C) of the Act, we noted inaccuracies in our computation of the proposed budget neutrality adjustment applicable to rural hospitals.

The provisions of section 1886(d)(8)(C) of the Act essentially restore the wage index values for those rural areas negatively impacted by the redesignation of certain rural hospitals previously included in the computation of those areas' rural wage index values. Thus, with implementation of this section, there is no effect on aggregate payments to those rural hospitals. However, hospitals in rural areas that experienced increases in their wage index values when the affected counties were redesignated under section 1886(d)(8)(B) of the Act are allowed to retain those higher values. The net effect of the enactment of sections 1886(d)(8)(B) and (C) of the Act is to increase aggregate payments to rural hospitals over those prior to implementation of these provisions. Therefore, in order to achieve budget neutrality, a decrease in the rural rates would be required to offset the additional payments to rural hospitals whose wage index values have increased. Through an oversight in the methodology used in developing the proposed budget neutrality factor, the rural rates were not adjusted to meet this requirement.

In addition, we incorrectly included rural referral centers not located in redesignated counties with rural hospitals. Since rural referral centers are paid the other urban rate, their payments were reduced by the budget neutrality factor applied to the urban rates. In effect, the methodology we used to calculate the proposed budget neutrality factor applicable to the rural rates would have compensated other rural hospitals for a reduction in payments that they will not incur. Therefore, rural referral centers not located in redesignated counties have been included with urban hospitals for the purpose of the budget neutrality computation. This methodological change has a negligible effect on rural referral centers.

The following adjustment factors were applied to the final standardized amounts: Urban—.99940; Rural—.99925.

c. *Outliers.* Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(3)(B) of the Act correspondingly requires that the urban and rural standardized amounts, respectively, be separately reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments for hospitals located in urban areas and those located in rural areas. Section 1886(d)(9)(B)(iv) of the Act requires that the urban and rural standardized amounts be reduced by the proportion of estimated total payments made to hospitals in Puerto Rico attributable to estimated outlier payments.

Consequently, instead of a uniform reduction factor applying equally to all the standardized amounts, there are two separate reduction factors, one applicable to the urban national and regional standardized amounts and the other applicable to the rural national and regional standardized amounts. Furthermore, sections 1886(d)(5)(A)(iv) and 1886(d)(9)(i) of the Act direct that outlier payments may not be less than five percent nor more than six percent of total payments projected to be made based on the prospective payment rates in any year.

In the September 30, 1988 final rule, we set the outlier thresholds so as to result in estimated outlier payments (prior to consideration of the additional covered days that will result from the elimination of a day limitation on Medicare inpatient hospital services under section 101 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360)) equal to 5.1 percent of total prospective payments. We also set the same outlier thresholds and offsets for the Puerto Rico prospective payment standardized amounts as we had for hospitals located outside Puerto Rico. Because certain changes we made to the outlier policy were not effective until November 1, 1988, we had two sets of outlier thresholds for FY 1989. For discharges on or after October 1, 1988 and before November 1, 1988, the day outlier threshold is the geometric mean length of stay for each DRG plus the lesser of 22 days or 2.0 standard deviations and the cost outlier threshold is the greater of 2.0 times the prospective payment rate for the DRG or $23,750. For discharges on or after November 1, 1988, the day outlier threshold is the geometric mean length of stay for each DRG plus the lesser of 24 days or 3.0 standard deviations and the cost outlier threshold is the greater of 2.0 times the prospective payment rate for the DRG or $28,000. The outlier adjustments for FY 1989 were .9437 for the urban rates and .9777 for the rural rates.

We proposed to continue to set the outlier thresholds so as to result in estimated outlier payments equal to 5.1 percent of total prospective payments. Therefore, for FY 1990, we proposed to set the day outlier threshold at the geometric mean length of stay for each DRG plus the lesser of 27 days or 3.0 standard deviations and the cost outlier threshold at the greater of 2.0 times the prospective payment rate for the DRG or $32,000.

The proposed outlier adjustment factors for FY 1990 were as follows: Urban—.943688; Rural—.977956.

In this final rule, we have continued to set the outlier thresholds so as to result in estimated outlier payments equal to 5.1 percent of total prospective payments. Therefore, for FY 1990, the day outlier threshold is the geometric mean length of stay for each DRG plus the lesser of 28 days or 3.0 standard deviations and the cost outlier threshold at the greater of 2.0 times the prospective payment rate for the DRG or $34,000.

The final outlier adjustment factors for FY 1990 are as follows: Outlier Reduction Factors—Urban—.9436; Rural—.9782.

The 5.1 percent projection of outlier payments is based on covered days in the FY 1988 MEDPAR file and does not reflect the increase in outlier payments that will occur in FY 1990 as a result of the elimination of the day limitation on Medicare inpatient hospital services under section 101 of Pub. L. 100–360. Based on FY 1988 data currently available regarding noncovered days of hospital care furnished to Medicare beneficiaries under the benefit structure in effect prior to the effective date of Pub. L. 100–360, we estimate that outlier payment for the additional days of covered care will be about 1.3 percent of total DRG payments. By making an average 5.1 percent offset to the standardized amount in 1990 instead of the 6.4 percent that will actually be paid, we are ensuring that the additional benefits from Pub. L. 100–360 are financed out of additional Federal monies rather than through the updated standardized amounts and outlier funds. For a more detailed explanation of this adjustment made to account for the effect of section 101 of Pub. L. 100–360, see the September 30, 1988 final rule (53 FR 38519). In that rule, we requested comments on the methodology we were using to take the effects of section 101 of Pub. L. 100–360 into account. We are developing a final rule to respond to the comments received from the public; however, we are using the same methodology in FY 1990 as was used to make the adjustment in FY 1989.

Table 8 of section IV of this addendum updates the Statewide average cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. Effective October 1, 1989, these Statewide average ratios replace the ratios published in the September 30, 1988 final rule (53 FR 38628). These average ratios will be used to calculate cost outlier payments for those hospitals for which the intermediary computes cost-to-charge ratios lower than 0.36 or greater than 1.23. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. These revised parameters will be applied to all updates to hospital-specific cost-to-charge ratios based on cost report settlements occurring during FY 1990.

Comment: Several commenters objected to the current outlier thresholds and the split between cases paid using the cost outlier methodology and cases paid using the day outlier methodology. One commenter urged that we alter our outlier policy to favor cost outliers. Another commenter suggested that we favor day outliers.

Response: As we noted in the September 30, 1988 final rule (53 FR 38504), the 60 percent cost and 40 percent day outlier split results from the methodology used to pay the outlier cases and not on the threshold criteria. The percentage of payments for day outliers under the current outlier policy has increased relative to those under the policy in effect prior to FY 1989 since high cost day outlier cases are now paid using the cost outlier methodology. Further, we believe that the current outlier policy is still relatively new (it was implemented on November 1, 1988), and that more data are needed to analyze its impact. We will analyze these data as we receive them and reexamine our outlier policy if any adverse effects are detected.

The outlier thresholds essentially maintain the current outlier payment split with 34 percent of cases being paid using the cost outlier methodology and 66 percent using the day outlier methodology. We note that 14 percent of total outlier cases would meet the day outlier threshold but would be paid using the cost outlier methodology because it yields the higher payment. Our simulation of FY 1990 outlier payments based on FY 1988 Medicare provider analysis and review file (MEDPAR) data indicates that the percentage of cases that qualify as day outliers is about 80 percent.

The cases qualifying as day outliers are expected to receive 84 percent of outlier payments in FY 1990. An estimated 20 percent of outlier cases would be cost-only outlier cases, which are expected to receive about 16 percent of outlier payments. The following table illustrates this finding in greater detail:

Type of outlier	Percentage of outlier cases	Percentage of outlier payments
Meets day threshold only	56	28.3
Meets day and cost thresholds, paid using day methodology	10	17.9
Meets day and cost thresholds, paid using day methodology	14	37.8
Subtotal—All cases meeting day threshold	80	84
Meets cost threshold only	20	16
Total	100	100

Comment: Several commenters suggested that the size of the outlier payment pool be increased from 5.1 percent to the legal maximum of 6 percent so that the outlier thresholds could be lowered. Other commenters wanted to maintain the 5.1 percent pool. Still other commenters, while in favor of an increase in the outlier pool, suggested that it be done with no corresponding additional offsets to the prospective payment rates.

Response: Increasing the size of the outlier pool to six percent in order to reduce the outlier thresholds would increase the number of outlier cases, but it would also proportionately reduce the basic payment for all cases. In addition, as we have noted in previous prospective payment rules (most recently at 53 FR 38505; September 30, 1988), our research indicates that increasing the outlier pool to six percent would cause only a marginal decrease in the risk faced by hospitals under the prospective payment system. We continue to believe that it is desirable at this time to maintain a smaller outlier pool than the maximum six percent because it allows proportionately greater payment for typical cases.

If we were to increase the outlier pool from 5.1 percent to 6 percent without making a corresponding adjustment to the payment rates, we would be adding program funds to the prospective payment system above and beyond the update factor and, in doing so, would violate the restriction that outlier thresholds be set so as to ensure equality between outlier offsets and projected outlier payment, as required under the current law. Section 1886(d)(3)(B) of the Act mandates that outlier payments be financed out of the total payments made under the prospective payment system. Therefore, any increase in the amount of outlier payments will necessarily reduce funds available for typical cases.

Comment: A few commenters suggested that in fiscal years in which outlier payments have fallen short of the outlier reserve, these undisbursed funds should be paid to the hospitals.

Response: We have responded to similar comments in the September 3, 1986 final rule (52 FR 31525), the September 1, 1987 final rule (52 FR 33048), and the September 30, 1988 final rule (53 FR 38508). We are required by section 1886(d)(5)(A) of the Act to estimate, using the most recent data available, what the level of the outlier thresholds should be in order to yield the proper total amount of outlier payments. We believe we have consistently met our statutory obligation to ensure that the rate offsets used to finance outlier payments were equal to the estimated proportion of total prospective payments for outliers. We have used the most recent Medicare discharge data available to estimate total prospective payments and outlier payments as a percentage thereof. This is necessarily a prospective process and the resulting estimate may be inaccurate based on later data. We do not believe that payment or recoupment of outlier monies based on retrospective adjustments to the thresholds would be appropriate.

Although we overestimated the outlier pool in the first years of the prospective payment system and thus underestimated outlier payments, this has not been the case for the last few years. Based on the most recent billing data, we estimate that in FY 1988 outlier payments represented 6.7 percent of total prospective payment system payments which is 1.7 percent higher than the 5.0 percent outlier pool established for that year. We believe this discrepancy between outlier payments and the outlier pool resulted from the fact that the outlier thresholds established for FY 1988 assumed a 2.7 percent update to the prospective payment rates. However, this update was in effect for only 132 days of FY 1988 and was subsequently revised by the provisions of sections 4002 of Pub. L. 100–203. For FY 1989, we estimate that outlier payments will represent approximately 5.9 percent of total prospective payment system payments and will exceed the outlier pool of 5.1 percent by about 0.8 percent. If we were to make retroactive adjustments for incorrect outlier pool estimates as the commenters suggested, we would now be making reductions in prospective payments.

B. Adjustments for Area Wage Levels and Cost-of-Living

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that will be made by the intermediaries in determining the prospective payment rates as described in section II.D. of this addendum. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Tables 1a, 1b, and 1c, as set forth in this addendum, contain the actual labor-related and nonlabor-related shares that will be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico.

1. Adjustment for Area Wage Levels

Sections 1886(d)(2)(H) and 1886(d)(9)(C)(iv) of the Act require that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble to this final rule, we discuss certain revisions we are making to the wage index. This index is set forth in Tables 4a, 4b, and 4c of this addendum

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(C)(iv) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken account of in the adjustment for area wages above. For FY 1990, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii will be made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.15

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Weighting Factors

As discussed in section II of the preamble to this final rule, we have developed a classification system for all hospital discharges, sorting them into DRGs, and have developed weighting factors for each DRG that are intended to reflect the resource utilization of cases in each DRG relative to that of the average Medicare case.

Table 5 of section IV of this addendum contains the weighting factors that we will use for discharges occurring in FY 1990. These factors have been recalibrated as explained in section II.C. of the preamble to this final rule.

D. Calculation of Prospective Payment Rates for FY 1990

General Formula for Calculation of Prospective Payment Rates for FY 1990

Prospective Payment Rate for all hospitals located outside Puerto Rico except sole community hospitals = Federal Portion

Prospective Payment Rate for Sole Community Hospitals = 75 percent of the hospital-specific portion + 25 percent of Federal portion

Prospective Payment Rate for Puerto Rico Hospitals = 75 percent of the Puerto Rico rate + 25 percent of a discharge-weighted average of the large urban, other urban, and rural national rates

1. Federal Portion

For discharges on or after October 1, 1989 and before October 1, 1990, except for sole community hospitals and hospitals located in Puerto Rico, the hospital's rate is comprised exclusively of the Federal rate. The Federal rate is comprised of 100 percent of the Federal national rate except for those hospitals located in Census regions that have a regional rate that is higher than the national rate. The Federal rate for these hospitals equals 85 percent of the Federal national rate and 15 percent of the Federal regional rate. For discharges occurring on or after October 1, 1989 and before October 1, 1990, rural hospitals in regions I, II, III, and IV and urban and large urban hospitals in regions I, IV, and VI are affected by the regional floor. For sole community hospitals, the 25 percent Federal portion is based entirely on the Federal regional rate. The Federal rates are determined as follows:

Step 1—Select the appropriate regional or national adjusted standardized amount considering the type of hospital and designation of the hospital as large urban, other urban, or rural (see Tables 1a and 1b, section IV of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4a, 4b, and 4c, section IV of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Sum the amount from step 2 and the nonlabor portion of the standardized amount (adjusted if appropropriate under step 3).

Step 5—Multiply the final amount from step 4 by the weighting factor corresponding to the appropriate DRG (see Table 5, section IV of this addendum).

Step 6—For sole community hospitals, multiply the result in step 5 by 25 percent. The result is the Federal portion of the FY 1990 prospective payment for a given discharge for a sole community hospital.

2. Hospital-Specific Portion (Applicable Only to Sole Community Hospitals)

The hospital-specific portion of the prospective payment rate is based on a hospital's historical cost experience. For the first cost reporting period under prospective payment, a hospital-specific rate was calculated for each hospital, derived generally from the following formula:

$$\frac{\text{Base year costs per discharge}}{\text{1981 case-mix index}} \times \text{update factor} = \text{Hospital-specific rate}$$

For sole community hospitals, the hospital-specific portion equals 75 percent of the hospital-specific rate for all cost reporting periods beginning on or after October 1, 1983. For each subsequent cost reporting period, the hospital-specific portion is derived as follows:

Hospital-Specific Rate × Update Factor × DRG Weight × .75.

For a more detailed discussion of the hospital-specific portion, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772).

a. *Updating the Hospital-Specific Rates for FY 1990 Cost Reporting Periods.* For cost reporting periods beginning on or after October 1, 1989, we are increasing the hospital-specific rates by 5.5 percent (the market basket percentage increase) for hospitals located in all areas. As required by section 1886(b)(3)(B) of the Act, this is the same percentage increase by which we are increasing the Federal rates for FY 1990.

b. *Calculation of Hospital-Specific Portion.* For sole community hospital cost reporting periods beginning on or after October 1, 1989 and before October 1, 1990, the hospital-specific portion of a hospital's payment for a given discharge is calculated by—

Step 1—Multiplying the hospital's hospital-specific rate for the preceding cost reporting period by the applicable update factor (that is, 5.5 percent);

Step 2—Multiplying the amount resulting from Step 1 by the specific DRG weighting factor applicable to the discharge; and

Step 3—Multiplying the result in step 2 by 75 percent. (The result is the hospital-specific portion of the FY 1990 prospective payment for a given discharge for a sole community hospital. The prospective payment rate is the sum of this amount and the 25 percent Federal portion, which is based entirely on the Federal regional rate.)

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1989 and Before October 1, 1990

a. *Puerto Rico Rate.* Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban, other urban, or rural designation of the hospital (see Table 1c, section IV of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate wage index (see Tables 4a and 4b, section IV of the addendum).

Step 3—Sum the amount from step 2 and the nonlabor portion of the standardized amount.

Step 4—Multiply the result in step 3 by 75 percent.

Step 5—Multiply the amount from step 3 by the weighting factor corresponding to the appropriate DRG weight (see Table 5, section IV of the addendum).

b. *National Rate.* The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1c, section IV of the addendum) by the appropriate wage index.

Step 2—Sum the amount from step 1 and the nonlabor portion of the national average standardized amount.

Step 3—Multiply the result in step 2 by 25 percent.

Step 4—Multiply the amount from step 3 by the weighting factor corresponding to the appropriate DRG weight (see Table 5, section IV of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Target Rate Percentages for Hospitals and Hospital Units Excluded From the Prospective Payment System

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience, trended forward by the applicable update factors. This target amount is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

A hospital that has inpatient operating costs per discharge in excess of its target amount would be paid no more than that amount. However, a hospital that has inpatient operating costs less than its target amount would be paid its cost plus the lower of (1) 50 percent of the difference between the inpatient operating cost per discharge and the target amount, or (2) 5 percent of the target amount.

Each hospital's target amount is adjusted annually, before the beginning of its cost reporting period, by an applicable target rate percentage. For cost reporting periods beginning on or after October 1, 1989 and before October 1, 1990, section 1886(b)(3)(B)(ii) of the Act provides that the applicable percentage increase is the market basket percentage increase. In order to determine a hospital's target amount for its cost reporting period beginning in FY 1990, the hospital's target amount for its reporting period that began in FY 1989 is increased by the market basket percentage for FY 1990. The most recent forecasted hospital market basket increase for FY 1990 is 5.5 percent. Therefore, the applicable percentage increase is also 5.5 percent.

Comment: We received one comment urging us to develop a separate market basket index for rehabilitation facilities.

Response: We agree that the development of a separate market basket for rehabilitation hospitals should be explored further. We are currently working with the National Association of Rehabilitation Facilities to develop data sources for constructing a market basket specific to those facilities. We intend to conduct an indepth analysis of this issue in conjunction with our overall rebasing of the hospital market basket for FY 1991 to determine whether separate market baskets should be established for hospitals and hospital units excluded from the prospective payment system.

IV. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this addendum. For purposes of this proposed rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1a, 1b, 1c, 3C, 4a, 4b, 4c, 5, 6a, 6b, 6c, 6d, 6e, 6f, 7A, 7B, and 8 are presented below. The tables are as follows:

Table 1a—National Adjusted Standardized Amounts, Labor/Nonlabor
Table 1b—Regional Adjusted Standardized Amounts, Labor/Nonlabor
Table 1c—Adjusted Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1988
Table 4a—Wage Index for Urban Areas
Table 4b—Wage Index for Rural Areas
Table 4c—Wage Index for Rural Counties Whose Hospitals are Deemed Urban
Table 5—List of Diagnoses Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Length of Stay Outlier Cutoff Points Used in the Prospective Payment System
Table 6a—New Diagnosis Codes
Table 6b—New Procedure Codes
Table 6c—Revised Procedure Code Titles and Inclusion Terms that Affect DRG Assignment
Table 6d—Expanded Diagnoses Codes That Are No Longer Accepted in GROUPER
Table 6e—Deleted Procedure Codes
Table 6f—Additions to the CC Exclusions List
Table 6g—Deletions To the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 88 MEDPAR Update 06/89 GROUPER V6.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 88 MEDPAR Update 06/89 GROUPER V7.0
Table 8—Statewide Average Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted)

TABLE 1A.—NATIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large Urban		Other Urban		Rural	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2505.03	887.26	2480.65	878.83	2339.06	647.83

TABLE 1B.—REGIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

	Large Urban		Other Urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2630.56	926.19	2604.96	917.16	2592.78	768.52
2. Middle Atlantic (PA, NJ, NY)	2363.35	878.90	2340.33	870.34	2483.11	726.53
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2522.75	809.79	2498.16	801.90	2373.67	629.99
4. East North Central (IL, IN, MI, OH, WI)	2660.91	958.11	2635.00	948.78	2403.67	700.19
5. East South Central (AL, KY, MS, TN)	2421.18	733.25	2397.60	726.11	2352.54	587.47
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2523.45	873.01	2498.88	864.51	2286.58	627.63
7. West South Central (AR, LA, OK, TX)	2508.92	804.31	2484.49	796.47	2192.92	577.20
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2419.44	862.26	2395.88	853.87	2229.43	668.21
9. Pacific (AK, CA, HI, OR, WA)	2354.23	984.11	2331.30	974.52	2156.83	747.88

TABLE 1C.—ADJUSTED STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large Urban		Other Urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	2225.10	398.06	2203.46	394.19	1563.45	289.41
National	2454.17	823.55				

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 1 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
010001	01.3323	010059	00.9487	010121	01.1169	030003	01.2704	030072	00.8331
010004	00.9950	010060	00.9816	010122	00.9712	030004	00.9037	030073	01.1578
010005	01.2027	010061	01.0002	010123	01.2478	030006	01.3852	030074	00.9466
010006	01.2029	010062	01.0249	010124	01.2483	030007	01.1920	030075	00.8694
010007	00.9665	010064	01.4782	010125	01.0647	030008	01.6144	030076	00.8608
010008	00.9981	010065	01.1163	010126	01.0286	030009	01.2465	030077	00.9068
010009	01.0968	010066	00.8811	010127	01.3304	030010	01.3638	030078	01.0305
010010	00.9472	010067	00.8548	010128	00.9550	030011	01.2561	030079	00.7869
010011	01.3067	010068	01.1429	010129	01.0173	030012	01.1499	030080	01.4609
010012	01.2941	010069	01.1148	010130	01.0799	030013	01.1675	030081	01.0101
010015	01.1440	010070	01.2452	010131	01.2956	030014	01.3308	030082	01.0429
010016	01.1381	010072	01.1122	010134	00.8999	030016	01.1547	030083	01.2082
010018	00.9354	010073	01.0224	010136	01.0222	030017	01.2642	030084	01.0401
010019	01.1179	010074	01.0678	010137	01.2616	030018	01.4289	030085	01.0858
010020	01.0774	010075	01.1002	010138	00.9836	030019	01.1468	030086	01.1655
010021	01.2682	010078	01.2298	010139	01.4340	030020	01.3560	030087	01.2580
010022	00.9900	010079	01.1617	010142	00.9163	030022	01.3105	030088	01.2418
010023	01.2103	010080	00.9319	010143	01.1192	030023	01.1931	030089	01.1867
010024	01.2850	010081	01.5270	010144	01.2137	030024	01.4137	030091	01.0034
010025	01.2184	010083	01.0309	010145	01.2502	030025	01.2559	030092	01.2154
010026	00.9205	010084	01.3202	010146	01.1272	030027	01.0454	030093	01.2969
010027	01.0227	010085	01.2900	010148	00.9764	030030	01.5223	040001	01.0658
010028	01.0693	010086	01.0433	010149	01.3305	030033	01.2807	040002	01.0568
010029	01.3459	010087	01.2980	010150	01.0084	030034	01.2289	040003	00.9788
010030	01.0154	010089	01.0266	010152	01.2252	030035	01.1515	040004	01.2534
010031	01.2219	010090	01.3369	010153	00.8755	030036	01.1710	040005	01.0782
010032	00.9136	010091	01.0691	020001	01.4165	030037	01.6439	040006	00.9873
010033	01.6912	010092	01.3239	020002	01.1255	030038	01.4410	040007	01.4103
010034	01.1207	010094	01.1733	020004	01.0266	030040	01.0100	040008	01.0481
010035	01.1346	010095	00.9791	020005	00.8443	030041	00.9195	040010	01.1605
010036	01.0855	010096	00.9393	020006	01.1086	030043	01.0353	040011	00.8855
010038	01.0836	010097	01.0640	020007	00.8032	030044	01.0714	040013	00.9818
010039	01.5540	010098	01.0919	020008	01.0057	030046	01.0241	040014	01.1547
010040	01.2011	010099	00.9978	020009	00.8053	030047	00.9949	040015	01.2037
010041	00.7688	010100	01.1851	020010	00.8651	030049	01.0155	040016	01.3656
010043	00.9754	010101	01.0949	020011	00.9442	030051	01.2005	040017	01.2014
010044	00.9591	010102	00.9106	020012	01.3460	030054	00.9302	040018	01.1118
010045	01.0499	010103	01.4882	020013	00.8616	030055	01.1130	040019	01.2844
010046	01.2305	010104	01.5130	020014	01.0133	030057	01.2363	040020	01.3728
010047	00.9099	010108	01.1613	020017	01.2517	030059	01.4239	040021	01.0304
010049	01.0494	010109	01.0118	020018	00.9737	030060	01.2124	040022	01.4068
010050	00.9496	010110	00.8958	020019	00.9448	030061	01.3825	040024	00.9534
010051	00.9060	010112	01.0857	020020	00.9095	030062	01.2465	040025	00.9466
010052	01.0256	010113	01.3594	020021	00.8813	030063	01.1479	040026	01.2818
010053	00.9664	010114	01.2432	020024	01.0042	030064	01.4152	040027	01.1728
010054	01.1528	010115	00.9556	020025	00.9763	030065	01.3409	040028	01.0402
010055	01.2482	010117	00.9720	020026	01.3079	030067	01.0160	040029	01.1021
010056	01.1818	010118	01.1612	020027	00.9558	030068	01.0702	040030	00.9560
010057	01.1238	010119	01.1722	030001	01.2345	030069	01.1806	040031	00.9606
010058	01.0439	010120	00.9866	030002	01.4918	030071	00.9573	040032	00.9892

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
040033	00.8320	040109	01.1715	050053	01.2667	050112	01.3611	050174	01.5085
040035	00.9659	040114	01.6633	050054	01.2050	050113	01.1816	050175	01.2407
040036	01.1931	040115	01.0539	050055	01.1775	050114	01.4370	050177	01.3390
040037	01.0256	040116	01.2860	050056	01.2183	050115	01.3957	050179	01.2359
040039	00.9707	040118	01.0794	050057	01.3002	050116	01.3887	050180	01.4013
040040	00.9566	040119	01.1330	050058	01.3415	050117	01.2485	050181	01.2994
040041	01.1646	040122	01.0917	050060	01.3375	050118	01.1957	050183	01.2308
040042	01.2529	040123	00.9324	050061	01.2148	050121	01.1545	050186	01.3316
040043	01.1359	040124	01.1237	050063	01.3475	050122	01.4456	050187	00.8493
040044	00.8909	040126	00.9591	050065	01.4082	050124	01.2544	050188	01.3599
040045	00.9935	040130	01.0407	050066	01.2220	050125	01.2117	050189	00.9819
040047	00.9991	040131	00.9356	050067	01.1936	050126	01.2724	050190	01.0776
040048	01.1068	050002	01.1776	050068	01.1379	050127	01.2327	050191	01.3909
040050	01.0814	050004	01.1621	050069	01.4281	050128	01.4218	050192	01.0402
040051	00.9551	050006	01.2805	050070	01.2173	050129	01.4913	050193	01.3601
040053	01.0292	050007	01.3889	050071	01.1713	050131	01.2813	050194	01.2582
040054	01.0842	050008	01.4204	050072	01.2311	050132	01.2139	050195	01.3237
040055	01.2690	050009	01.4131	050073	01.1822	050133	01.1724	050196	01.2372
040058	00.9403	050011	01.1089	050074	00.9901	050134	01.1953	050197	01.7021
040060	01.0255	050013	02.1054	050075	01.2112	050135	01.4505	050199	01.2073
040062	01.1716	050014	01.1139	050076	01.4465	050136	01.2158	050201	01.1302
040063	01.3196	050015	01.2796	050077	01.4250	050137	01.1724	050202	01.2521
040064	00.9950	050016	01.1361	050078	01.1858	050138	01.4734	050204	01.3816
040066	00.9439	050017	01.6417	050079	01.3671	050139	01.2123	050205	01.1552
040067	01.0079	050018	01.2035	050080	01.1961	050140	01.2120	050207	01.1730
040069	01.0313	050019	00.9333	050081	01.5075	050141	01.0951	050208	01.2112
040070	00.8963	050021	01.2466	050082	01.3328	050143	01.2402	050211	01.2672
040071	01.2298	050022	01.3733	050084	01.4191	050144	01.3536	050212	01.0680
040072	01.0790	050024	01.2360	050086	01.0974	050145	01.2184	050213	01.2401
040074	01.1025	050025	01.5264	050087	01.3770	050146	01.3138	050214	01.3467
040075	01.1303	050026	01.5395	050088	01.0238	050147	00.7311	050215	01.4169
040076	00.9550	050028	01.2169	050089	01.3133	050148	01.1158	050217	01.1309
040077	00.9430	050029	01.2380	050090	01.2518	050149	01.2074	050219	01.4075
040078	01.1990	050030	01.2198	050091	01.1467	050150	01.2319	050220	01.2704
040080	01.0379	050032	01.1496	050092	01.1207	050151	01.1974	050221	01.4419
040081	00.9393	050033	01.3292	050093	01.4737	050152	01.3162	050222	01.3179
040082	01.1100	050034	01.2101	050095	01.0860	050153	01.5095	050224	01.3899
040084	01.0485	050036	01.5081	050096	01.1578	050154	01.2789	050225	01.2465
040085	01.0839	050038	01.2358	050097	01.2757	050155	01.2010	050226	01.4238
040088	01.1150	050039	01.5030	050099	01.3823	050158	01.4183	050228	01.2762
040090	00.9635	050040	01.1392	050100	01.6447	050159	01.2560	050229	01.2674
040091	01.1012	050041	01.1686	050101	01.3418	050161	01.6589	050230	01.3148
040093	00.9821	050042	01.2183	050102	01.2789	050164	01.3748	050231	01.4466
040095	00.9836	050043	01.5241	050103	01.4707	050166	01.2522	050232	01.6377
040098	01.1448	050045	01.1593	050104	01.3281	050167	01.3309	050233	01.2011
040100	01.0919	050046	01.2102	050107	01.3261	050168	01.5003	050234	01.2492
040105	01.0293	050047	01.5210	050108	01.3474	050169	01.3919	050235	01.3653
040106	01.0299	050049	01.2847	050109	01.9286	050170	01.3612	050236	01.2371
040107	01.0517	050051	01.2033	050110	01.1024	050172	01.2056	050238	01.3057
040108	00.9163	050052	01.0887	050111	01.2126	050173	01.3680	050239	01.3413

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 3 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050240	01.3202	050312	01.5705	050390	01.2672	050459	01.2627	050549	01.5589
050241	01.1389	050313	01.1354	050391	01.2063	050464	01.8591	050550	01.2948
050242	01.3376	050315	01.3660	050392	00.9536	050467	01.2440	050551	01.3315
050243	01.2718	050317	01.2180	050393	01.3994	050468	01.3703	050552	01.1358
050245	01.5305	050319	01.2822	050394	01.3550	050469	01.0002	050557	01.2629
050248	01.1409	050320	01.1880	050395	01.1764	050470	01.1106	050559	01.3571
050251	01.0904	050324	01.6757	050396	01.4074	050471	01.6345	050560	01.1554
050253	01.1636	050325	01.2480	050397	01.0896	050473	01.2555	050561	01.0867
050254	01.1849	050326	01.3226	050401	01.2496	050476	01.2700	050564	01.1760
050256	01.5249	050327	01.5281	050404	01.1114	050477	01.2198	050565	01.1695
050257	01.3900	050328	01.2604	050406	00.9931	050478	01.1014	050566	01.0233
050258	01.3555	050329	01.2649	050407	01.1009	050481	01.3763	050567	01.4045
050260	01.0264	050331	01.2935	050410	01.0763	050482	00.9946	050568	01.2793
050261	01.1584	050333	01.0614	050411	01.2518	050483	01.3371	050569	01.2311
050262	01.5046	050334	01.3374	050413	01.2645	050485	01.5009	050570	01.5418
050263	01.2880	050335	01.2094	050414	01.2364	050486	01.5445	050571	01.3946
050264	01.3297	050336	01.3042	050417	01.1824	050488	01.2218	050573	01.4029
050267	01.4365	050337	01.1419	050418	01.1499	050489	01.1813	050575	01.0758
050268	01.2128	050342	01.2927	050419	01.1236	050491	01.3113	050577	01.2635
050269	01.2008	050343	01.1000	050420	01.3588	050492	01.2859	050578	01.1792
050270	01.3023	050345	01.3190	050421	01.2591	050494	01.1497	050579	01.3711
050272	01.1716	050348	01.3281	050423	01.0708	050496	01.6004	050580	01.1685
050273	00.5383	050349	01.0648	050424	01.5802	050497	00.9453	050581	01.3241
050274	00.8668	050350	01.3383	050425	01.1837	050498	01.1855	050582	01.7626
050276	01.0592	050351	01.4574	050426	01.2516	050502	01.6882	050584	01.2916
050277	01.2897	050352	01.2660	050427	00.8654	050503	01.4061	050585	01.2555
050278	01.3571	050353	01.5929	050430	00.9336	050506	01.2944	050586	01.2546
050279	01.1661	050355	00.8626	050431	01.1358	050510	01.2169	050587	01.2538
050280	01.2476	050357	01.6695	050432	01.3550	050512	01.1563	050588	01.2000
050281	01.2653	050359	01.0390	050433	01.0406	050515	01.2695	050589	01.3303
050282	01.2085	050360	01.2458	050434	01.1195	050516	01.3468	050590	01.3097
050283	01.2939	050362	00.8809	050435	01.1210	050517	01.1700	050591	01.2169
050286	01.0267	050363	01.2572	050436	01.0664	050522	01.3286	050592	01.2807
050289	01.6285	050366	01.1786	050438	01.3959	050523	01.1061	050593	01.2334
050290	01.3796	050367	01.2271	050440	01.1207	050526	01.2280	050594	01.9675
050291	01.1535	050369	01.2694	050441	01.6051	050527	01.3061	050597	01.2060
050292	01.1568	050371	00.9115	050442	01.1915	050528	01.1636	050598	01.2525
050293	00.9616	050372	01.0993	050443	00.9151	050530	01.2270	050599	01.3897
050295	01.3257	050373	01.1240	050444	01.1932	050531	01.1301	050601	01.1702
050296	01.1438	050376	01.2832	050446	00.8684	050534	01.3056	050603	01.3977
050298	01.1764	050377	01.0249	050447	01.3334	050535	01.3673	050604	01.3144
050299	01.2965	050378	01.1356	050448	01.0276	050537	01.1842	050605	00.6955
050300	01.2769	050379	01.0526	050449	01.2472	050539	01.2330	050607	01.1649
050301	01.2664	050380	01.5331	050450	01.1238	050541	01.4234	050608	01.1540
050302	01.2239	050381	01.0564	050451	01.0228	050542	01.1133	050609	01.2445
050305	01.3562	050382	01.3035	050454	01.6454	050543	01.2705	050613	01.0349
050307	01.3439	050383	01.3060	050455	01.5289	050544	01.2536	050615	01.2331
050308	01.4972	050385	01.2393	050456	01.3871	050545	00.8263	050616	01.1646
050309	01.2798	050387	00.9814	050457	01.4931	050546	01.0182	050618	01.1683
050310	01.1281	050388	00.8678	050458	01.1370	050547	00.8851	050619	01.3171

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 4 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050622	01.2039	060016	01.1405	060074	00.9814	070036	01.2075	100034	01.3796
050623	01.2593	060017	01.2663	060075	01.2020	080001	01.4167	100035	01.3137
050624	01.1636	060018	01.1005	060076	01.3171	080002	01.1621	100036	01.2926
050625	01.3732	060019	01.5768	060077	01.1313	080003	01.2409	100038	01.4751
050630	01.0698	060020	01.3971	060083	00.6641	080004	01.2112	100039	01.3690
050633	01.2121	060022	01.4887	060085	00.9996	080005	01.1285	100040	01.4422
050635	01.3172	060023	01.3197	060087	01.2402	080006	01.1417	100042	01.2027
050636	01.2470	060024	01.4661	060088	01.1281	080007	01.1623	100043	01.2608
050637	01.2542	060026	01.3739	060090	00.9943	090001	01.3475	100044	01.2920
050638	00.9128	060027	01.2248	060092	00.7056	090002	01.1424	100045	01.2845
050641	01.0489	060028	01.3560	060093	01.0628	090003	01.3856	100046	01.2418
050643	00.9224	060029	00.9838	060096	01.0669	090004	01.4704	100047	01.1914
050644	01.2566	060030	01.2319	060098	01.2286	090005	01.2595	100048	00.9625
050649	01.2976	060031	01.3005	060099	00.8974	090006	01.2390	100049	01.2867
050650	01.2482	060032	01.3356	060100	01.0883	090007	01.1040	100050	01.1072
050651	01.2548	060033	01.2009	060101	01.5103	090008	01.2189	100051	01.1543
050655	01.1354	060034	01.2374	070001	01.7319	090009	01.2033	100052	01.2479
050660	01.1302	060035	01.2236	070002	01.5746	090010	01.0127	100053	01.1222
050661	00.9277	060036	01.1387	070003	01.2008	090011	01.5682	100054	01.3627
050662	00.8358	060037	01.0182	070004	01.2247	100001	01.3081	100055	01.2602
050663	01.2305	060038	01.1751	070005	01.2908	100002	01.3529	100056	01.2719
050666	00.9763	060039	01.1178	070006	01.2351	100004	01.1037	100057	01.2531
050667	01.2022	060041	01.0042	070007	01.2556	100005	01.0268	100059	01.4902
050668	01.2687	060042	00.9410	070008	01.1477	100006	01.4398	100060	01.4978
050669	00.9473	060043	01.0353	070009	01.2556	100007	01.7469	100061	01.3168
050670	00.8219	060044	01.1843	070010	01.4827	100008	01.5556	100062	01.3162
050671	00.9506	060045	01.0147	070011	01.2703	100009	01.3546	100063	01.2653
050672	00.6719	060046	01.1166	070012	01.2015	100010	01.2835	100065	01.0732
050674	01.1615	060047	01.0551	070013	01.2353	100011	00.9283	100067	01.3068
050675	01.2284	060049	01.1052	070014	01.1263	100012	01.3405	100068	01.2261
050676	00.9595	060050	01.1550	070015	01.2552	100013	00.7921	100069	01.3026
050677	01.2103	060051	01.3318	070016	01.2666	100014	01.1470	100070	01.3341
050678	01.1890	060052	00.9367	070017	01.3511	100015	01.2539	100071	01.2785
050679	01.1342	060053	00.8630	070018	01.1637	100016	01.0029	100072	01.1712
050680	01.1308	060054	01.2174	070019	01.1997	100017	01.3505	100073	01.5936
050681	00.8187	060056	00.9159	070020	01.3604	100018	01.3391	100074	01.2238
060001	01.3818	060057	01.3100	070021	01.2239	100019	01.4188	100075	01.5735
060003	01.1073	060058	00.8522	070022	01.6855	100020	01.2500	100076	01.2325
060004	01.0924	060060	01.0320	070023	01.2006	100021	01.2203	100077	01.2384
060005	01.4978	060062	00.9602	070024	01.1766	100022	01.4570	100078	01.1762
060006	01.1427	060063	01.1085	070025	01.5334	100023	01.3249	100079	01.2804
060007	01.1620	060064	01.2970	070026	01.2631	100024	01.1615	100080	01.4212
060008	01.1729	060065	01.2267	070027	01.2048	100025	01.4592	100081	01.1194
060009	01.2728	060066	01.0242	070028	01.3755	100026	01.3692	100082	01.3717
060010	01.5160	060067	01.0008	070029	01.2852	100027	00.9261	100083	01.1813
060011	01.1930	060068	01.1922	070030	01.1871	100028	01.2216	100084	01.3215
060012	01.3814	060070	01.1793	070031	01.2584	100029	01.2659	100085	01.1913
060013	01.2418	060071	01.2041	070033	01.1819	100030	01.0543	100086	01.2335
060014	01.4544	060072	00.9641	070034	01.2484	100032	01.3129	100087	01.6093
060015	01.3360	060073	00.8913	070035	01.2778	100033	01.3391	100088	01.3112

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 5 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
100089	01.2439	100156	01.0944	100223	01.3460	110005	01.1732	110064	01.2078
100090	01.1896	100157	01.3857	100224	01.1711	110006	01.2111	110065	01.0960
100092	01.1733	100159	01.0178	100225	01.2321	110007	01.3954	110066	01.2316
100093	01.3042	100160	01.1457	100226	01.1986	110008	01.1121	110069	01.1053
100098	01.0037	100161	01.3286	100227	01.0166	110009	01.0712	110070	00.9464
100099	01.2204	100162	01.2517	100228	01.1859	110010	01.0228	110071	00.9615
100100	01.1461	100164	00.9849	100229	01.3845	110011	01.1335	110072	00.9561
100102	01.1519	100165	00.9450	100230	01.2001	110013	01.0559	110073	01.0337
100103	00.9794	100166	01.3317	100231	01.4925	110014	01.1320	110074	01.2220
100105	01.2324	100167	01.2741	100232	01.1499	110015	01.0518	110075	01.1637
100106	01.1244	100168	01.2830	100234	01.2961	110016	01.1883	110076	01.2738
100107	01.2240	100169	01.5782	100235	01.2867	110017	00.9315	110077	01.0044
100108	01.0494	100170	01.1995	100236	01.3131	110018	01.1184	110078	01.4402
100109	01.2134	100172	01.2472	100237	01.7622	110020	01.1538	110079	01.0813
100110	01.3730	100173	01.2385	100238	01.3587	110023	01.1261	110080	01.1207
100112	00.9891	100174	01.4601	100239	01.3820	110024	01.2554	110081	01.0295
100113	01.5920	100175	01.1159	100240	00.7356	110025	01.2102	110082	01.7406
100114	01.2705	100176	01.7405	100241	00.9674	110026	01.0975	110083	01.2816
100115	01.2038	100177	01.3244	100242	01.2099	110027	01.0260	110085	01.1082
100117	01.1613	100179	01.4842	100243	01.2818	110028	01.3476	110086	01.1476
100118	01.1380	100180	01.3986	100244	01.2665	110029	01.2086	110087	01.1889
100120	01.2392	100181	01.1260	100246	01.2416	110030	01.1779	110088	00.8405
100121	01.1391	100183	01.2472	100248	01.4695	110031	01.1156	110089	01.1224
100122	01.3256	100185	01.0834	100249	01.2495	110032	01.1496	110091	01.2271
100124	01.3132	100186	01.3342	100252	01.2221	110033	01.2253	110092	01.1214
100125	01.1170	100187	01.2626	100253	01.2101	110034	01.2584	110093	01.0873
100126	01.3190	100189	01.2874	100254	01.2383	110035	01.1853	110094	01.0021
100127	01.4047	100191	01.2812	100255	01.2815	110036	01.5010	110095	01.2340
100128	02.1617	100194	01.2502	100256	01.3105	110037	01.1423	110096	01.0874
100129	01.2448	100195	01.2166	100258	01.4676	110038	01.1976	110097	01.0672
100130	01.2279	100196	01.2432	100259	01.2021	110039	01.1862	110098	00.9585
100131	01.2374	100199	01.2923	100260	01.2029	110040	00.9308	110099	00.8753
100132	01.3200	100200	01.2576	100262	01.2740	110041	01.1520	110100	01.0797
100134	00.9980	100203	01.2147	100263	01.2812	110042	01.0275	110101	00.9882
100135	01.4539	100204	01.4530	100264	01.3137	110043	01.4242	110103	00.9207
100137	01.1887	100206	01.2493	100265	01.2057	110044	01.0848	110104	01.0751
100138	00.9750	100207	01.3008	100266	01.1590	110045	01.0387	110105	01.1182
100139	01.1920	100208	01.3680	100267	01.2893	110046	01.1974	110107	01.4814
100140	01.1074	100209	01.3296	100268	01.2541	110048	01.1226	110108	00.9165
100142	01.0621	100210	01.3821	100269	01.2838	110049	00.9970	110109	00.9809
100143	01.0878	100211	01.2647	100270	00.8978	110050	01.0291	110111	00.9862
100144	01.0567	100212	01.3431	100271	01.4304	110051	00.9425	110112	00.8507
100145	01.2209	100213	01.3531	100273	01.0613	110052	00.8838	110113	00.9734
100146	01.0778	100214	01.3612	100275	01.1831	110054	01.1561	110114	01.0637
100147	01.0816	100217	01.1275	100276	01.2629	110055	00.9327	110115	01.3655
100149	01.1969	100218	01.0052	100277	01.0925	110056	00.9176	110117	01.0048
100150	01.2322	100219	01.3094	110001	01.1374	110059	01.1303	110118	00.8882
100151	01.6278	100220	01.6395	110002	01.2156	110061	00.9585	110120	01.0583
100152	01.1647	100221	01.6737	110003	01.1628	110062	00.9536	110121	00.9764
100154	01.3412	100222	01.2097	110004	01.2498	110063	01.0487	110122	01.1868

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
110123	00.8745	110187	01.0233	130017	00.9754	140027	01.1092	140087	01.2897
110124	01.0393	110188	01.2568	130018	01.3787	140029	01.2832	140088	01.5152
110125	01.0999	110189	01.0161	130019	01.1779	140030	01.3906	140089	01.1496
110127	00.9806	110190	01.0129	130021	01.0496	140031	01.0089	140090	01.2504
110128	01.1808	110191	01.2181	130022	01.2045	140032	01.1313	140091	01.3312
110129	01.3635	110192	01.2943	130024	01.1797	140033	01.2334	140093	01.1268
110130	01.0226	110193	01.0680	130025	00.9421	140034	01.1257	140094	01.2148
110131	00.9912	110194	00.9779	130026	01.1153	140035	01.0939	140095	01.3271
110132	01.1240	110195	01.0813	130027	00.9102	140036	01.0600	140097	01.0384
110133	00.9595	110196	01.7760	130028	01.1908	140037	01.0635	140098	01.2374
110134	00.8827	110198	01.2093	130029	01.0941	140038	01.0574	140099	01.1658
110135	01.0693	110200	01.4930	130030	00.9289	140039	01.0218	140100	01.2988
110136	01.1520	110201	01.2007	130031	01.0850	140040	01.1966	140101	01.1206
110140	00.9177	110202	01.0971	130034	00.9419	140041	01.0774	140102	01.0333
110141	00.9055	110203	00.9245	130035	01.0200	140042	01.0201	140103	01.1318
110142	01.1410	120001	01.5139	130036	01.1239	140043	01.1459	140104	01.1219
110143	01.2268	120002	01.0688	130037	01.2699	140045	01.0284	140105	01.2377
110144	01.2089	120003	01.0359	130038	00.9141	140046	01.1760	140107	00.9407
110146	00.8978	120004	01.2497	130039	01.1704	140047	01.0717	140108	01.1796
110149	01.0617	120005	01.1064	130040	01.0435	140048	01.1362	140109	00.9982
110150	01.1385	120006	01.1524	130043	01.0553	140049	01.2649	140110	01.1909
110151	01.0673	120007	01.5483	130044	00.9923	140051	01.1652	140112	01.1140
110152	00.9400	120008	01.0258	130045	00.9332	140052	01.1962	140113	01.4154
110153	01.0090	120009	00.9398	130048	00.9655	140053	01.5275	140114	01.1634
110154	01.0013	120010	01.4299	130049	01.2546	140054	01.3123	140115	01.1161
110155	01.0030	120011	01.2936	130050	00.8292	140055	01.0316	140116	01.2436
110156	00.9295	120012	01.0193	130051	01.0348	140058	01.0919	140117	01.1080
110157	01.1218	120014	01.1583	130054	00.8680	140059	01.0570	140118	01.3837
110161	01.2386	120015	00.7445	130056	00.9445	140061	01.1326	140119	01.4677
110162	00.8419	120016	01.0369	140001	01.2619	140062	01.2366	140120	01.1572
110163	01.2471	120018	00.8889	140002	01.2172	140063	01.2274	140121	00.9916
110164	01.2923	120019	01.0576	140003	00.9700	140064	01.2057	140122	01.2372
110165	01.1484	120021	00.8066	140004	01.0438	140065	01.2450	140123	01.1768
110166	01.2733	120022	01.4404	140005	00.8700	140066	01.1762	140124	01.1655
110168	01.3265	120024	00.9279	140007	01.1638	140067	01.5003	140125	01.2039
110169	00.7007	130001	00.9894	140008	01.2520	140068	01.2388	140126	01.4429
110170	00.8625	130002	01.3457	140010	01.3290	140069	01.0033	140127	01.1387
110171	01.1997	130003	01.2452	140011	01.0415	140070	01.3295	140128	01.0037
110172	01.0970	130005	01.2783	140012	01.2528	140072	01.1431	140129	01.0456
110174	00.9878	130006	01.5777	140013	01.2947	140074	01.0552	140130	01.1386
110175	00.9733	130007	01.3880	140014	00.9629	140075	01.2679	140132	01.3266
110176	01.1061	130008	00.8477	140015	01.1706	140077	01.0028	140133	01.2773
110177	01.3598	130009	01.0276	140016	00.9750	140079	01.2017	140134	00.7201
110178	01.0517	130010	01.0029	140017	01.2783	140080	01.5753	140135	01.1716
110179	01.1482	130011	01.3069	140018	01.3234	140081	01.0725	140136	01.1604
110181	01.0276	130012	00.8885	140019	00.9343	140082	01.2008	140137	01.0093
110183	01.1131	130013	01.1866	140023	01.1502	140083	01.1541	140138	01.1553
110184	01.1043	130014	01.2652	140024	00.9592	140084	01.2090	140139	01.0701
110185	01.0876	130015	01.0356	140025	01.0834	140085	01.1476	140140	01.0423
110186	01.0973	130016	00.9315	140026	01.1246	140086	01.0875	140141	01.0130

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
140142	01.0802	140205	01.0514	140289	01.2813	150045	01.1115	150100	01.4401
140143	01.0918	140206	01.1136	140290	01.2406	150046	01.3000	150101	01.0568
140144	01.0673	140207	01.2694	140291	01.2068	150047	01.4407	150102	01.0228
140145	01.1338	140208	01.3550	140292	01.2086	150048	01.2009	150103	00.9702
140146	00.9707	140209	01.3590	140293	00.9544	150049	01.0371	150104	01.1051
140147	01.0433	140210	00.9900	140294	01.0770	150050	01.1488	150105	01.1199
140148	01.4121	140211	01.1115	140295	01.1845	150051	01.2389	150106	01.0041
140150	01.2948	140212	01.1173	140297	01.3566	150052	01.0681	150109	01.2781
140151	01.0141	140213	01.1976	140298	01.5425	150053	00.9896	150110	00.9234
140152	01.0630	140215	01.1436	140299	01.0504	150054	01.0629	150111	01.0895
140154	01.1661	140217	01.2758	150001	01.1416	150056	01.5471	150112	01.1270
140155	01.1605	140218	01.0193	150002	01.2113	150057	02.2538	150113	01.1644
140156	01.2705	140219	01.2290	150003	01.4579	150058	01.3688	150114	01.0195
140158	01.2424	140220	01.0665	150004	01.2250	150059	01.0951	150115	01.2071
140159	01.2075	140223	01.3670	150005	01.2054	150060	01.1439	150122	01.0914
140160	01.2541	140224	01.2897	150006	01.1954	150061	01.1804	150123	00.9859
140161	00.9858	140226	00.8907	150007	01.1567	150062	00.9987	150124	01.1465
140162	01.1582	140228	01.5444	150008	01.2566	150063	01.1600	150125	01.2780
140164	01.2299	140229	01.0605	150009	01.2299	150064	01.0574	150126	01.6379
140165	01.0385	140230	00.9730	150010	01.0770	150065	01.1173	150127	01.1784
140166	01.1486	140231	01.2704	150011	01.2175	150066	01.1019	150128	01.1321
140167	01.1462	140232	01.0175	150012	01.4152	150067	00.9460	150129	01.1848
140168	01.0538	140233	01.4068	150013	01.0232	150069	01.2039	150130	01.1750
140170	01.0214	140234	01.2104	150014	01.2490	150070	01.0091	150132	01.3131
140171	00.9384	140235	01.0237	150015	01.1202	150071	01.2236	150133	01.2285
140172	01.4158	140236	01.0312	150017	01.4539	150072	01.2508	150134	01.3121
140173	00.9744	140239	01.4310	150018	01.1798	150073	01.0510	150135	00.9137
140174	01.2443	140240	01.1835	150019	01.2287	150074	01.3928	150136	00.9726
140176	01.1747	140241	00.8900	150020	01.0245	150075	01.2148	160001	01.1394
140177	01.1543	140242	01.3237	150021	01.4465	150076	01.0215	160002	01.3235
140179	01.2453	140243	01.1024	150022	01.1249	150077	01.0801	160003	01.0385
140180	01.3092	140245	01.0052	150023	01.2796	150078	01.0446	160005	01.1167
140181	01.1988	140246	01.0430	150024	01.1734	150079	01.0440	160007	01.0611
140182	01.2882	140247	00.9893	150025	01.3747	150081	01.0869	160008	01.1018
140184	01.1180	140249	00.8511	150026	01.1428	150082	01.3369	160009	01.0812
140185	01.2514	140250	01.2501	150027	01.0700	150083	00.8258	160012	01.0877
140186	01.1467	140251	01.2631	150029	01.1116	150084	01.5644	160013	01.1887
140187	01.3236	140252	01.2545	150030	01.1008	150085	00.9349	160014	00.9880
140188	00.9930	140253	01.2860	150031	00.9636	150086	01.1986	160016	01.2178
140189	01.1346	140258	01.3148	150032	01.6046	150088	01.1709	160018	00.9710
140190	01.0328	140261	01.1773	150033	01.4836	150089	01.1925	160020	01.0810
140191	01.1875	140271	01.0906	150034	01.2257	150090	01.3068	160021	01.0422
140192	01.1133	140273	01.1163	150035	01.1607	150091	01.0717	160023	01.1328
140193	00.9786	140275	01.1285	150036	01.0454	150092	01.1462	160024	01.1971
140197	01.2954	140276	01.7978	150037	01.2065	150094	00.9975	160025	01.5356
140199	01.0895	140280	01.1424	150038	01.1562	150095	01.0432	160026	01.1423
140200	01.3632	140281	01.3882	150039	01.0045	150096	01.0144	160027	01.1162
140202	01.1750	140285	01.1326	150042	01.2090	150097	01.0393	160028	01.1353
140203	01.1069	140286	01.1486	150043	01.1420	150098	01.0641	160029	01.2220
140204	01.1826	140288	01.4706	150044	01.1997	150099	01.2590	160030	01.2547

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
160031	01.0491	160083	01.3769	160146	01.2681	170051	01.0571	170109	01.1114
160032	01.0491	160085	01.1991	160147	01.2597	170052	01.1265	170110	00.9382
160033	01.2409	160086	00.9906	160151	01.1181	170053	00.9988	170112	00.9919
160034	01.0115	160088	01.0530	160152	00.9973	170054	01.2209	170113	01.0817
160035	00.9870	160089	01.1468	160153	01.4817	170055	01.0197	170114	01.0634
160036	01.2011	160090	01.0134	170001	01.1830	170056	00.9736	170115	01.0886
160037	01.0598	160091	01.1783	170002	01.3194	170057	01.0530	170116	01.1520
160038	01.2264	160092	01.0282	170003	01.0996	170058	01.0787	170117	00.9610
160039	01.0236	160093	00.9438	170004	01.0865	170060	00.9722	170119	00.9825
160040	01.2300	160094	01.0873	170005	00.9049	170061	01.0274	170120	01.2023
160041	01.0804	160095	01.1214	170006	01.1377	170062	00.9727	170121	00.7789
160043	00.9813	160097	01.2719	170007	01.1288	170063	00.9240	170122	01.7018
160044	01.2776	160098	01.1109	170008	00.9760	170064	01.0121	170123	01.4024
160045	01.4535	160099	01.0962	170009	01.1357	170066	00.9782	170124	01.0691
160046	01.0685	160101	01.1685	170010	01.1159	170067	01.0992	170125	00.8854
160047	01.3144	160102	01.2797	170011	01.2218	170068	01.1595	170126	00.9186
160048	01.0635	160103	00.9054	170012	01.4133	170069	00.9744	170128	00.9879
160049	00.9087	160104	01.1440	170013	01.2618	170070	00.9669	170131	01.1582
160050	01.0112	160106	01.1348	170014	01.0788	170072	00.9600	170133	01.1917
160051	01.1898	160107	01.0580	170015	01.1098	170073	01.1564	170134	00.9813
160052	01.0815	160108	01.1785	170016	01.4723	170074	01.1275	170137	01.1487
160053	01.1159	160109	00.9980	170017	01.1404	170075	00.8709	170138	01.1873
160054	01.0026	160110	01.3949	170018	01.0176	170076	01.1685	170139	01.0653
160055	01.0276	160111	01.1509	170019	01.2514	170077	00.9513	170140	01.0227
160056	01.0425	160112	01.2228	170020	01.1670	170079	00.9272	170142	01.2397
160057	01.2249	160113	01.0794	170021	01.0350	170080	01.0134	170143	01.1534
160058	01.5278	160114	01.0196	170022	01.1168	170081	01.1675	170144	01.3442
160059	01.1840	160115	01.0545	170023	01.2920	170082	00.9302	170145	01.1969
160060	01.0334	160116	01.0616	170024	01.1328	170084	00.9284	170146	01.2524
160061	01.0859	160117	01.3334	170025	01.1099	170085	01.0548	170147	01.1728
160062	01.0822	160118	01.0966	170026	01.0553	170086	01.4636	170148	01.2664
160063	01.1555	160119	00.8666	170027	01.0961	170087	01.3156	170150	01.0662
160064	01.2402	160120	00.9798	170030	01.0331	170088	01.0575	170151	01.0116
160065	01.0829	160122	01.1818	170031	00.9749	170089	00.8971	170152	00.9568
160066	01.1127	160123	01.1194	170032	01.1183	170090	00.9560	170159	00.9357
160067	01.1947	160124	01.2245	170033	01.1941	170092	01.0121	170160	00.8982
160068	00.9619	160126	01.1374	170034	00.9462	170093	01.0464	170164	01.0647
160069	01.2606	160129	01.0884	170035	00.9587	170094	01.0130	170166	01.0784
160070	00.9757	160130	01.1351	170036	01.0132	170095	01.0892	170168	00.9479
160071	01.1363	160131	01.1795	170037	01.1613	170097	00.9163	170170	01.1873
160072	01.0736	160132	01.2312	170038	01.0249	170098	01.0609	170171	01.1785
160073	00.9434	160133	01.1827	170039	01.0385	170099	01.1514	170172	00.9506
160074	01.1974	160134	00.9581	170040	01.3623	170100	00.9458	170173	01.0687
160075	01.0566	160135	00.8906	170041	01.0730	170101	01.1518	170174	00.9140
160076	00.9213	160138	01.0599	170043	01.0297	170102	00.9858	170175	01.1650
160077	00.9795	160140	01.0753	170044	01.2684	170103	01.2094	170176	01.3500
160079	01.2346	160141	00.9636	170045	01.0721	170104	01.3310	180001	01.1154
160080	01.0700	160142	01.0755	170046	00.9005	170105	01.0647	180002	01.0290
160081	01.0930	160143	01.0173	170049	01.2467	170106	01.0453	180004	01.1162
160082	01.5047	160145	01.0079	170050	01.2862	170108	01.0704	180005	01.0443

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
180006	00.8822	180062	00.9000	180138	01.2151	190071	01.0313	190144	01.1286
180007	01.3173	180063	01.0098	180139	00.9772	190073	00.6197	190145	00.9860
180009	01.0909	180064	01.0453	190001	01.0588	190075	01.2048	190146	01.4029
180010	01.5725	180065	00.9601	190002	01.4557	190077	00.9387	190147	00.9949
180011	01.0579	180066	01.0515	190003	01.2700	190078	01.1899	190148	00.8727
180012	01.1487	180067	01.4854	190004	01.2029	190079	01.1229	190149	01.0240
180013	01.2270	180069	01.0397	190005	01.2223	190081	00.9569	190151	01.1646
180014	01.4665	180070	01.1252	190006	01.1096	190083	00.8979	190152	01.2660
180015	01.1582	180072	01.1844	190007	01.0036	190086	01.2241	190155	01.0330
180016	01.1799	180075	00.9271	190008	01.3926	190088	01.1343	190156	00.8790
180017	01.2423	180078	00.9570	190009	01.0358	190089	01.1535	190157	00.9404
180018	01.1600	180079	00.9813	190010	01.0956	190090	01.1601	190158	01.1730
180019	01.1252	180080	01.1449	190011	01.0474	190092	01.1436	190160	01.0468
180020	01.0390	180081	01.2098	190012	01.0562	190095	00.9942	190161	01.0704
180021	00.9212	180085	01.2200	190013	01.1913	190098	01.3143	190162	01.2575
180023	00.8430	180087	00.9840	190014	00.9800	190099	01.1468	190164	01.0981
180024	00.9986	180088	01.5113	190015	01.2286	190101	00.9177	190165	00.9765
180025	01.1551	180092	01.0265	190017	01.1905	190102	01.3258	190166	00.8840
180026	01.0665	180093	01.2926	190018	01.1989	190103	00.9519	190167	01.3134
180027	01.0522	180094	00.9724	190019	01.3979	190106	01.1548	190169	00.9581
180028	00.9395	180095	01.1607	190020	01.1180	190109	01.0407	190170	00.9979
180029	01.1668	180099	01.0019	190023	00.9554	190110	00.9731	190173	01.2558
180030	00.9833	180100	01.1512	190025	01.2138	190111	01.3695	190175	01.1546
180031	01.0255	180101	01.1935	190026	01.2637	190112	01.2577	190176	01.4076
180032	00.9109	180102	01.2758	190027	01.3151	190113	01.1312	190177	01.2477
180033	01.0705	180103	01.4695	190029	01.1405	190114	00.9452	190178	00.9381
180034	01.0283	180104	01.3050	190033	00.9227	190115	01.2183	190179	00.9657
180035	01.2347	180105	00.8041	190034	01.2170	190116	01.2351	190180	01.0247
180036	01.0623	180106	00.8847	190035	01.3032	190117	01.0285	190182	01.1084
180037	01.2276	180108	00.8955	190036	01.4464	190118	01.0502	190183	01.0623
180038	01.1832	180115	01.0028	190037	01.0406	190119	00.9864	190184	00.9296
180040	01.6375	180116	01.2327	190039	01.4367	190120	00.9702	190185	01.1671
180041	00.8689	180117	01.0351	190040	01.3997	190122	01.1856	190186	00.9908
180042	00.8854	180118	00.8506	190041	01.3468	190124	01.3630	190187	00.9015
180043	01.0240	180120	00.9322	190043	01.0883	190125	01.2327	190188	01.0306
180044	01.0056	180121	01.0908	190044	01.0493	190127	01.2051	190189	01.1133
180045	01.1154	180122	00.9992	190045	01.2060	190128	00.9072	190190	01.0706
180046	01.0007	180123	01.2387	190046	01.4027	190130	01.0297	190191	01.1343
180047	01.0037	180124	01.2868	190047	01.1211	190131	01.1397	190193	01.2029
180048	01.0880	180125	00.9502	190048	01.0405	190132	01.0806	190194	01.1250
180049	01.1546	180126	01.0266	190049	01.0604	190133	01.0274	190195	01.0321
180050	01.2401	180127	01.1047	190050	01.0699	190134	00.8758	190196	00.8783
180051	01.1989	180128	01.1214	190053	01.1687	190135	01.3510	190197	01.2284
180053	00.9250	180129	00.9810	190054	01.2660	190136	01.0098	190198	01.0978
180054	01.0597	180130	01.2892	190058	00.9711	190137	01.0198	190199	01.3892
180055	01.0026	180132	01.2297	190059	01.0172	190138	00.8341	190200	01.3126
180056	01.0988	180133	01.1865	190060	01.1493	190139	01.2885	190201	01.0620
180058	00.9058	180134	01.0701	190064	01.3665	190140	00.9851	190202	01.1932
180059	00.9523	180136	01.2497	190065	01.4354	190141	00.9410	190203	01.4573
180060	00.9458	180137	01.4364	190067	00.8838	190142	00.9225	190204	01.2961

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
190205	01.2154	210003	01.2041	210058	01.6963	220063	01.1271	220129	01.0463
190206	01.4488	210004	01.1856	210059	01.2091	220064	01.1993	220131	01.0848
190207	01.1243	210005	01.2410	220001	01.0894	220065	01.1352	220133	00.7639
190208	00.8410	210006	01.0407	220002	01.3685	220066	01.2907	220135	01.1004
200001	01.2956	210007	01.3999	220003	01.0589	220067	01.1925	220153	00.9977
200002	01.0803	210008	01.1645	220004	01.1933	220068	00.6145	220154	00.9326
200003	00.9526	210009	01.3731	220005	01.7524	220070	01.1266	220156	01.1535
200005	00.8999	210010	01.1508	220006	01.2251	220071	01.6295	220162	01.0970
200006	01.2472	210011	01.2211	220008	01.1856	220073	01.2250	220163	01.7825
200007	00.9944	210012	01.1876	220009	01.1220	220074	01.0916	220171	01.3210
200008	01.2120	210013	01.2696	220010	01.1781	220075	00.7357	230001	01.1484
200009	01.5584	210015	01.2053	220011	01.1952	220076	01.2065	230002	01.1439
200012	01.0702	210016	01.4904	220012	01.2365	220077	01.5401	230003	01.1764
200013	01.1315	210017	01.1413	220015	01.1704	220079	01.1513	230004	01.5003
200015	01.2198	210018	01.2303	220016	01.1857	220080	01.1981	230005	01.1799
200016	01.1158	210019	01.2781	220017	01.2339	220081	00.9137	230006	01.0449
200017	01.2254	210021	01.1693	220019	01.1597	220082	01.2325	230007	01.0424
200018	01.1319	210022	01.1686	220020	01.0966	220083	01.1739	230012	01.0893
200019	01.2459	210023	01.1487	220021	01.1638	220084	01.2176	230013	01.2375
200020	01.0846	210024	01.1988	220022	01.0535	220086	01.5125	230014	01.1250
200021	01.1455	210025	01.1045	220023	01.2132	220088	01.4589	230015	01.1288
200023	00.9166	210026	01.1990	220024	01.2178	220089	01.2636	230017	01.3891
200024	01.1667	210027	01.2123	220025	01.0914	220090	01.1480	230019	01.2618
200025	01.1771	210028	01.0843	220026	01.2320	220092	01.1786	230020	01.2597
200026	01.0181	210029	01.3254	220028	01.2332	220094	01.1946	230021	01.2107
200027	01.0993	210030	01.0657	220029	01.1272	220095	01.0863	230022	01.2157
200028	01.0217	210031	01.5727	220030	01.0643	220097	01.1228	230023	01.4729
200031	01.1887	210032	01.0726	220031	01.5993	220098	01.1681	230024	01.4416
200032	01.2919	210033	01.0926	220033	01.2143	220099	01.1148	230027	01.1031
200033	01.5908	210034	01.1557	220034	01.0699	220100	01.2896	230029	01.3649
200034	01.2410	210035	01.1360	220035	01.1483	220101	01.2653	230030	01.2258
200037	01.1466	210036	01.1869	220036	01.4257	220102	00.7716	230031	01.3476
200038	01.0481	210037	01.1617	220038	01.1960	220104	01.1418	230032	01.7267
200039	01.2650	210038	01.2131	220040	01.2245	220105	01.1067	230034	01.0586
200040	01.0777	210039	01.0847	220041	01.0992	220106	01.1262	230035	01.1124
200041	01.1426	210040	01.3033	220042	01.1151	220107	01.0811	230036	01.2473
200043	00.8462	210043	01.1605	220045	01.1521	220108	01.1054	230037	00.9760
200044	01.1189	210044	01.1583	220046	01.2773	220110	01.7772	230038	01.5167
200047	01.0143	210045	01.0571	220048	01.1912	220111	01.1656	230039	01.2807
200049	01.0682	210046	01.0756	220049	01.1737	220114	01.0735	230040	01.2118
200050	01.1620	210047	01.1680	220050	01.0097	220115	01.327[illegible]	230041	01.0944
200051	00.9944	210048	01.1378	220051	01.1832	220116	01.7063	230042	01.1206
200052	01.0863	210049	01.1912	220052	01.2188	220117	00.9755	230043	00.7616
200055	01.1034	210050	00.6727	220053	01.2270	220118	01.7607	230044	02.2960
200058	00.7741	210051	01.2062	220055	01.1770	220119	01.2585	230046	01.5724
200062	01.0092	210052	00.8868	220057	01.2476	220120	01.0228	230047	01.1819
200063	01.2194	210054	01.2059	220058	01.0760	220121	01.1060	230051	01.0140
200066	01.2235	210055	01.1665	220060	01.1254	220123	00.9660	230052	00.5004
210001	01.2439	210056	01.3251	220061	01.2464	220126	01.2458	230053	01.3593
210002	01.5459	210057	01.1381	220062	01.0120	220128	01.1638	230054	01.4047

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
230055	01.0954	230117	01.7576	230181	01.0443	230273	01.3125	240057	01.6040
230056	00.9836	230118	01.1963	230184	01.0618	230275	01.0995	240058	00.9494
230058	01.0956	230119	01.0749	230186	01.0428	230276	00.6868	240059	01.1073
230059	01.4062	230120	01.0767	230187	00.9695	230277	01.1199	240061	01.4398
230060	01.1136	230121	01.1401	230188	01.0988	240001	01.3670	240062	01.1046
230062	01.1000	230122	01.2599	230189	00.9550	240002	01.5274	240063	01.3529
230063	01.1930	230124	01.0674	230190	01.0681	240003	01.1662	240064	01.2343
230065	01.2420	230125	01.3085	230191	00.9144	240004	01.3926	240065	01.0160
230066	01.1651	230128	01.3377	230193	01.2800	240005	00.9498	240066	01.1826
230067	00.7144	230129	01.7785	230194	01.1860	240006	01.2972	240069	01.1179
230068	01.3264	230130	01.3703	230195	01.3029	240007	01.0425	240071	01.0801
230069	01.1155	230132	01.2694	230197	01.2396	240008	01.0385	240072	00.9897
230070	01.3053	230133	01.1763	230199	01.2055	240009	01.1232	240073	00.9722
230071	00.6673	230134	01.0516	230201	01.1043	240010	01.8396	240074	01.0013
230072	01.1201	230135	01.2460	230204	01.2917	240011	01.0428	240075	01.1787
230075	01.2539	230137	01.1077	230205	01.2330	240013	01.1298	240076	01.1198
230076	01.1415	230138	00.8733	230207	01.1710	240014	01.0838	240077	00.9802
230077	01.7574	230140	01.0999	230208	01.2603	240016	01.2604	240078	01.3305
230078	01.0825	230141	01.4146	230211	00.9552	240017	01.1821	240079	01.1436
230080	01.1817	230142	01.1548	230212	01.0251	240018	01.2200	240080	01.3569
230081	01.1169	230143	01.3385	230213	01.0119	240019	01.4872	240081	01.2028
230082	01.1564	230144	01.1805	230216	01.3133	240020	01.1860	240082	01.3057
230084	01.0395	230145	01.1808	230217	01.2730	240021	00.9939	240083	01.1684
230085	01.0948	230146	01.1845	230219	00.9027	240022	01.0313	240084	01.2638
230086	01.0318	230147	01.2642	230221	01.2411	240023	01.0254	240085	00.9170
230087	01.1045	230149	01.1482	230222	01.2021	240025	01.2862	240086	01.1239
230089	01.2799	230150	01.5696	230223	01.2882	240026	01.3236	240087	01.1926
230090	01.4326	230151	01.3513	230224	01.0872	240027	01.0598	240088	01.4173
230092	01.2767	230153	01.1942	230225	01.0319	240028	01.1894	240089	00.9598
230093	01.1347	230154	01.1114	230227	01.2163	240029	01.1545	240090	01.0692
230095	01.0810	230155	01.0295	230228	01.2585	240030	01.2960	240091	01.0723
230096	01.1043	230156	01.5113	230230	01.2835	240031	00.9293	240093	01.2947
230097	01.2554	230157	01.2645	230232	01.0369	240033	00.8306	240094	01.0434
230098	01.2083	230158	00.9684	230235	01.0277	240036	01.2799	240096	01.0709
230099	01.1173	230159	01.2578	230236	01.2794	240037	01.0034	240097	01.1411
230100	01.1029	230161	01.1880	230237	01.2039	240038	01.3056	240098	00.9346
230101	01.1057	230162	00.9861	230239	01.0967	240040	01.1092	240099	01.1463
230102	01.1982	230163	00.9437	230241	01.0972	240041	01.1398	240100	01.2099
230103	01.0671	230165	01.5701	230244	01.2758	240043	01.1439	240101	01.1675
230104	01.3915	230167	01.2092	230253	01.1008	240044	01.0755	240102	00.9537
230105	01.4191	230169	01.2130	230254	01.1904	240045	00.9907	240103	01.1468
230106	01.0605	230171	01.1895	230256	01.0806	240046	01.2668	240104	01.2139
230107	01.0302	230172	01.0934	230257	00.9777	240047	01.2754	240105	00.9201
230108	01.1270	230173	01.1681	230259	01.0991	240048	01.2490	240106	01.2271
230110	01.1940	230174	01.1716	230264	01.2189	240049	01.6048	240107	01.0318
230111	01.0071	230175	00.9602	230265	01.0108	240050	01.0628	240108	01.0412
230113	00.9683	230176	01.1130	230266	01.2566	240051	00.9497	240109	01.0505
230114	00.8589	230178	01.0964	230269	01.2283	240052	01.2328	240110	01.0476
230115	00.9262	230179	00.9550	230270	01.2020	240053	01.4172	240111	00.9839
230116	00.8698	230180	01.1016	230271	02.2639	240056	01.3214	240112	01.0694

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 12 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
240114	01.0467	240172	01.0652	250037	00.9556	250100	01.1637	260016	01.1020
240115	01.2308	240173	01.0630	250038	00.8645	250101	00.8906	260017	01.2775
240116	00.9791	240175	00.7999	250039	01.0037	250102	01.3812	260018	00.9877
240117	01.2106	240176	00.8914	250040	01.1035	250104	01.2098	260019	01.0379
240118	00.9722	240179	01.0460	250042	01.0990	250105	00.9585	260020	01.4176
240119	00.9282	240180	00.9391	250043	00.8879	250107	00.9062	260021	01.2230
240121	00.9187	240183	01.1668	250044	01.0065	250109	00.9612	260022	01.4091
240122	01.0723	240184	00.9863	250045	01.1037	250110	00.9216	260023	01.3000
240123	01.0558	240187	01.1465	250046	00.9832	250111	00.8421	260024	01.0812
240124	01.0347	240192	01.0696	250047	00.9154	250112	00.9931	260025	01.1807
240125	00.9985	240193	00.9419	250048	01.2514	250113	01.0023	260026	01.0381
240127	01.0015	240196	01.4155	250049	00.8886	250114	00.8673	260027	01.3967
240128	01.0860	240200	00.9228	250050	01.0879	250117	01.0068	260029	01.2052
240129	00.8928	240201	01.0748	250051	00.9330	250118	01.0498	260030	01.1744
240130	01.0214	240205	00.8532	250057	01.0724	250119	00.9650	260031	01.4053
240131	01.1856	240206	00.8990	250058	01.1308	250120	00.9759	260032	01.4638
240132	01.2136	240207	01.1778	250059	00.9974	250121	00.9793	260033	01.3407
240133	01.1796	240210	01.2887	250060	00.8446	250122	01.2053	260034	01.0371
240134	01.1563	250001	01.3808	250061	00.9994	250123	01.1410	260035	00.9975
240135	00.9003	250002	00.8896	250062	00.9482	250124	00.9062	260036	01.0716
240136	00.9770	250003	00.9490	250063	00.8951	250125	01.0824	260037	01.2658
240137	01.1120	250004	01.3244	250065	00.9982	250126	01.0144	260039	01.2144
240138	00.8462	250005	00.9580	250066	00.9279	250127	00.8654	260040	01.4228
240139	01.0202	250006	00.9914	250067	01.0870	250128	01.0252	260041	00.9710
240140	00.8270	250007	01.1214	250068	00.8595	250129	01.0524	260042	01.1834
240141	00.9528	250008	00.8730	250069	01.1867	250131	00.9976	260044	01.1720
240142	01.1080	250009	01.0857	250071	01.0213	250132	01.0906	260047	01.1860
240143	01.0761	250010	01.0175	250072	01.1471	250133	00.8240	260048	01.1583
240144	01.0258	250012	00.9592	250073	00.9366	250134	01.0515	260049	00.9507
240145	01.0808	250014	01.1362	250075	00.9196	250136	00.8113	260050	01.0352
240146	01.0028	250015	01.0110	250076	00.9252	250137	00.9043	260051	01.0702
240148	00.9133	250016	00.8832	250077	00.9839	250138	01.0222	260052	01.1468
240150	01.0321	250017	00.9173	250078	01.2721	250139	00.9424	260053	01.0684
240152	01.0496	250018	00.9533	250079	00.8424	250140	00.8285	260054	01.2758
240153	00.9800	250019	01.2459	250081	01.1195	250141	01.0266	260055	01.1076
240154	01.0122	250020	00.9580	250082	01.1345	260001	01.4589	260057	01.1716
240155	01.0116	250021	00.9246	250083	00.9045	260002	01.3391	260058	01.2230
240156	01.1273	250023	00.8811	250084	01.1159	260003	01.0516	260059	00.9716
240157	01.0952	250024	00.9447	250085	00.9619	260004	01.0523	260061	01.1344
240158	01.1434	250025	01.0577	250086	01.0453	260005	01.2179	260062	01.1421
240160	00.9795	250026	00.8543	250088	01.0483	260006	01.2818	260063	01.2006
240161	01.0583	250027	00.9231	250089	01.0233	260007	01.1638	260064	01.2900
240162	01.1388	250029	00.8903	250091	00.9572	260008	01.2590	260065	01.4109
240163	00.9595	250030	00.9184	250093	01.1505	260009	01.1722	260066	01.0168
240165	00.8820	250031	01.1550	250094	01.1677	260010	01.2130	260067	01.0452
240166	01.0588	250032	01.1833	250095	01.0669	260011	01.2887	260068	01.7477
240167	00.8933	250033	00.9449	250096	01.1525	260012	00.9590	260070	01.1221
240169	00.9798	250034	01.3063	250097	01.1120	260013	01.1531	260073	00.9905
240170	01.1096	250035	00.8840	250098	00.9073	260014	01.4968	260074	01.1130
240171	01.1122	250036	00.9591	250099	01.1287	260015	01.0477	260077	01.2713

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
260078	01.1478	260159	01.0595	270029	01.0162	280015	01.0826	280076	00.9971
260079	01.0391	260160	01.1328	270030	00.9879	280017	01.2023	280077	01.3052
260080	01.1307	260162	01.1691	270031	00.9193	280018	00.9900	280078	01.0287
260081	01.4223	260163	01.1598	270032	01.1296	280020	01.4110	280079	00.9473
260082	01.1716	260164	01.0963	270033	00.9151	280021	01.3452	280080	01.0138
260085	01.4059	260165	01.0408	270035	01.0278	280022	01.0366	280081	01.3519
260086	01.0603	260166	01.1672	270036	00.9497	280023	01.3247	280082	00.9065
260088	01.0580	260171	00.8579	270039	01.0250	280024	00.8971	280083	01.0288
260089	01.1016	260172	01.1014	270040	01.0932	280025	01.0475	280084	00.9719
260090	01.3212	260173	01.1337	270041	00.9235	280026	01.0422	280085	01.3827
260091	01.5353	260175	01.1530	270042	01.3576	280028	00.9274	280088	01.4088
260092	01.0232	260176	01.4218	270043	00.7848	280029	01.0182	280089	00.9747
260093	00.9616	260177	01.3079	270044	00.9965	280030	01.5147	280090	01.0190
260094	01.0761	260178	01.3458	270046	00.9241	280031	01.1076	280091	01.0645
260095	01.3211	260179	01.4513	270047	00.8360	280032	01.1613	280092	00.9186
260096	01.3407	260180	01.4805	270048	00.9979	280033	00.9770	280093	00.9818
260097	01.2305	260182	01.0764	270049	01.2776	280034	01.2669	280094	00.9443
260100	01.1946	260183	01.2778	270050	00.9361	280035	01.0536	280097	00.8394
260102	01.0954	260186	01.1007	270051	01.1107	280037	01.0347	280098	01.0127
260103	01.2923	260188	01.1741	270052	00.8992	280038	01.1077	280101	00.9728
260104	01.4356	260189	01.0060	270053	00.7984	280039	01.0614	280102	00.9478
260105	01.7345	260190	01.1254	270055	00.7839	280040	01.4763	280103	00.9296
260107	01.3030	260191	01.2138	270057	01.1722	280041	01.0189	280104	01.0288
260108	01.6014	260192	00.7763	270058	00.9562	280042	01.1376	280105	01.1509
260109	00.9193	260193	01.1530	270059	00.9312	280043	00.8696	280106	01.0647
260110	01.4090	260195	01.0400	270060	00.8683	280045	01.0566	280107	01.2198
260111	01.0895	260197	01.1335	270063	00.9684	280046	01.0472	280108	01.0431
260112	01.3273	260198	01.3028	270067	00.9068	280047	01.1740	280109	00.9487
260113	01.1637	260200	01.0874	270068	00.9168	280048	01.1706	280110	01.0547
260115	01.1792	270001	00.8084	270071	00.9423	280049	01.0808	280111	01.1756
260116	01.0948	270002	01.1818	270072	00.8826	280050	01.0127	280114	00.9631
260118	01.2306	270003	01.0800	270073	01.0557	280051	01.0228	280115	01.0939
260119	01.1949	270004	01.6627	270074	00.9069	280052	01.1421	280117	01.1933
260120	01.2251	270006	01.0243	270075	00.8853	280054	01.2085	280118	01.1561
260122	01.1324	270007	00.8804	270076	00.8877	280055	00.9553	280119	00.8622
260123	00.9803	270008	00.8758	270079	00.9333	280056	01.1515	280122	00.8463
260127	01.0254	270009	00.9772	270080	01.0864	280057	01.0289	280123	01.4823
260128	01.0288	270011	01.1112	270081	00.9846	280058	01.0972	290001	01.3874
260129	01.0576	270012	01.3462	270082	00.8880	280060	01.3318	290002	01.0181
260131	01.2662	270013	01.1921	270083	01.0575	280061	01.2929	290003	01.5365
260134	01.0929	270014	01.4081	280001	01.1952	280062	01.1520	290005	01.2161
260137	01.1957	270016	00.8881	280003	01.6710	280064	01.0847	290006	01.0105
260138	01.5735	270017	01.2501	280004	01.1648	280065	01.2578	290007	01.4616
260141	01.7542	270019	00.8790	280005	01.3737	280066	01.1352	290008	01.2743
260142	01.2060	270021	01.0982	280009	01.3359	280068	00.9455	290009	01.3332
260143	01.3448	270023	01.3284	280010	01.1528	280070	00.8637	290010	01.0801
260146	00.9981	270024	00.9275	280011	01.0470	280071	00.9293	290011	01.0840
260147	01.0412	270026	00.9289	280012	01.2721	280073	01.0014	290012	01.1762
260148	00.8987	270027	01.0366	280013	01.4889	280074	01.1116	290013	00.9867
260158	01.0927	270028	01.0208	280014	01.0872	280075	01.1280	290014	00.9341

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 14 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
290015	00.9222	310014	01.4531	310072	01.1955	320019	01.2551	330023	01.2492
290016	01.1301	310015	01.3034	310073	01.1892	320021	01.5682	330024	01.5195
290018	00.9539	310016	01.1491	310074	01.2488	320022	01.2553	330025	01.0636
290019	01.1376	310017	01.2792	310075	01.1930	320023	01.0761	330027	01.3510
290020	01.0059	310018	01.1003	310076	01.2694	320030	01.0099	330028	01.1991
290021	01.5100	310019	01.4919	310077	01.5041	320031	00.9275	330029	01.1801
290022	01.5704	310020	01.1816	310078	01.2687	320032	00.9740	330030	01.1688
290027	01.0682	310021	01.1942	310081	01.1580	320033	01.1553	330033	01.3094
290029	00.9645	310022	01.2130	310083	01.2001	320035	00.9493	330034	01.2151
290031	00.9334	310024	01.2146	310084	01.1788	320037	01.2222	330036	01.0494
290032	01.3114	310025	01.1210	310085	01.2090	320038	01.1546	330037	01.1369
290033	01.1030	310026	01.1950	310086	01.2112	320046	01.0156	330038	01.1697
300001	01.2204	310027	01.1982	310087	01.1822	320048	01.0841	330039	01.0648
300002	01.0389	310028	01.1352	310088	01.2124	320053	00.9857	330041	01.3450
300003	01.6213	310029	01.6802	310090	01.2125	320056	00.8418	330043	01.1559
300005	01.3309	310031	02.0595	310091	01.1838	320057	00.9843	330044	01.2177
300006	01.0718	310032	01.0081	310092	01.2393	320058	00.8156	330045	01.2490
300007	01.1151	310033	01.1895	310093	01.0692	320059	00.9849	330046	01.4671
300008	01.2121	310034	01.1524	310094	01.1251	320060	01.0082	330047	01.2483
300009	01.1714	310036	01.1994	310096	01.4261	320061	01.0500	330048	01.2002
300010	01.2810	310037	01.2146	310105	01.1658	320062	00.8837	330049	01.3425
300011	01.2339	310038	01.4703	310108	01.1663	320063	01.2401	330052	01.3469
300012	01.2550	310039	01.1922	310110	01.1404	320065	01.1450	330053	01.0956
300013	01.2149	310040	01.0910	310111	01.2272	320067	00.9036	330055	01.2853
300014	01.2192	310041	01.2274	310112	01.1115	320068	01.0216	330056	01.2892
300015	01.0905	310042	01.1073	310113	01.2000	320069	01.0889	330057	01.3535
300016	01.1808	310043	01.2097	310115	01.1740	320070	00.8825	330058	01.2194
300017	01.2002	310044	01.2240	310116	01.2088	320072	01.7165	330059	01.3837
300018	01.1475	310045	01.0699	310118	01.1754	320074	01.0761	330061	01.2696
300019	01.1393	310047	01.2653	310119	01.2491	320076	01.1381	330062	01.1211
300020	01.1599	310048	01.1803	310120	01.0928	320077	00.8570	330064	01.2862
300021	01.1907	310049	01.2413	310121	01.0085	330001	01.1465	330065	01.2498
300022	01.1438	310050	01.1673	310515	00.8235	330002	01.3256	330066	01.1535
300023	01.2864	310051	01.2946	310529	01.8632	330003	01.2904	330067	01.3113
300024	01.2121	310052	01.2035	310534	01.1804	330004	01.2399	330072	01.2314
300028	01.1184	310054	01.2501	320001	01.3186	330005	01.4460	330073	01.1591
300029	01.2640	310056	01.2026	320002	01.2043	330006	01.3434	330074	01.1693
300033	01.0411	310057	01.2494	320003	01.2486	330007	01.2020	330075	01.0217
300034	01.4569	310058	01.0990	320004	01.1172	330008	01.1708	330076	01.1811
310001	01.4478	310059	00.9008	320005	01.2050	330009	01.0988	330078	01.3192
310002	01.6868	310060	01.1801	320006	01.1651	330010	01.1964	330079	01.1705
310003	01.1532	310061	01.1361	320009	01.2425	330011	01.1458	330080	01.1777
310005	01.1548	310062	01.1246	320010	01.2359	330012	01.4634	330082	01.2271
310006	01.1380	310063	01.2690	320011	00.9934	330013	01.8216	330084	01.0297
310008	01.2200	310064	01.2047	320012	00.9950	330014	01.2317	330085	01.3223
310009	01.1401	310067	01.1934	320013	00.9925	330015	01.2986	330086	01.1819
310010	01.2103	310068	01.1960	320014	00.8806	330016	01.0421	330088	01.1634
310011	01.2154	310069	01.0753	320016	01.0747	330019	01.2607	330090	01.5462
310012	01.2769	310070	01.2250	320017	01.1747	330020	01.0071	330091	01.1932
310013	01.2617	310071	01.1866	320018	01.2142	330022	01.0139	330092	01.0858

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 15 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
330094	01.2719	330167	01.3600	330231	01.1357	330316	01.2978	340010	01.3177
330095	01.2271	330168	01.0525	330232	01.1975	330320	01.1645	340011	01.1068
330096	01.0896	330169	01.2012	330233	01.3152	330327	00.9587	340012	01.0685
330097	01.1953	330171	01.2762	330234	01.7221	330331	01.1551	340013	01.2343
330100	00.5967	330174	00.9846	330235	01.1848	330332	01.1379	340014	01.4451
330101	01.4460	330175	01.0689	330236	01.3259	330333	01.1906	340015	01.2415
330102	01.1908	330176	00.8862	330238	01.1078	330335	01.1618	340016	01.1898
330103	01.1858	330177	01.1210	330239	01.1584	330336	01.1487	340017	01.1909
330104	01.2783	330179	00.9525	330240	01.1430	330338	01.1139	340018	01.1899
330106	01.5460	330180	01.2849	330241	01.6745	330339	01.0191	340019	01.1235
330107	01.1467	330181	01.2526	330242	01.2722	330340	01.0798	340020	01.2056
330108	01.2839	330182	02.0728	330244	00.9910	330350	01.6104	340021	01.2942
330110	00.9945	330183	01.3233	330245	01.2049	330351	01.1020	340022	01.1426
330111	01.1512	330184	01.2514	330246	01.1933	330353	01.1701	340023	01.2903
330114	00.9971	330185	01.1377	330247	00.5682	330354	01.0681	340024	01.2224
330115	01.1777	330186	01.1316	330249	01.1939	330357	01.2427	340025	01.1187
330116	00.9573	330188	01.1544	330250	01.1897	330359	01.0263	340026	01.0012
330118	01.4698	330189	00.8132	330252	00.9576	330362	00.6089	340027	01.1494
330119	01.2953	330191	01.2470	330254	00.9763	330363	00.7558	340028	01.3159
330120	01.6218	330193	01.3260	330257	01.0250	330366	00.7092	340030	01.6488
330121	01.0448	330194	01.4025	330258	01.2630	330367	00.6320	340031	01.0472
330122	01.1830	330195	01.4417	330259	01.1936	330368	00.6981	340032	01.3302
330125	01.5712	330196	01.2553	330261	01.2144	330369	00.7100	340034	01.2800
330126	01.1313	330197	01.0464	330263	01.0924	330371	00.7562	340035	01.0812
330127	01.2209	330198	01.2341	330264	01.1420	330372	01.2251	340036	01.1235
330128	01.2076	330199	01.1842	330265	01.2827	330373	00.6566	340037	01.1828
330132	01.0939	330201	01.8811	330267	01.1818	330381	01.1116	340038	01.1941
330133	01.2231	330202	01.1690	330268	01.1516	330383	01.2041	340039	01.1870
330135	01.1754	330203	01.3419	330270	01.8429	330385	01.2071	340040	01.6306
330136	01.3136	330204	01.1770	330272	00.9732	330386	01.1866	340041	01.2132
330140	01.5009	330205	01.1108	330273	01.1781	330387	01.0455	340042	01.2633
330141	01.2124	330208	01.1900	330275	01.2390	330389	01.7896	340044	01.0186
330142	01.1928	330209	01.1767	330276	01.2519	330390	01.1897	340045	00.9925
330144	01.0315	330210	01.0955	330277	01.1271	330391	01.4905	340047	01.6050
330148	01.0408	330211	01.1280	330279	01.2004	330393	01.4623	340049	00.6112
330151	01.1807	330212	01.0916	330281	00.7380	330394	01.2107	340050	01.1864
330152	01.3022	330213	01.1264	330285	01.4477	330395	01.3028	340051	01.2635
330153	01.2917	330214	01.5647	330286	01.1917	330396	01.1961	340052	00.9839
330154	01.3703	330215	01.2006	330288	01.0614	330397	01.2695	340053	01.4538
330155	01.1245	330217	01.1197	330290	01.5542	330398	01.1950	340054	01.1382
330157	01.2669	330218	01.2078	330291	01.1154	330399	01.2251	340055	01.1812
330158	01.2451	330219	01.3642	330293	01.1136	340001	01.2286	340060	01.1592
330159	01.3172	330221	01.2596	330297	01.1676	340002	01.6502	340061	01.5457
330160	01.2513	330222	01.1741	330304	01.1894	340003	01.1764	340063	01.0911
330161	01.0509	330223	01.1489	330306	01.2971	340004	01.3697	340064	01.0492
330162	01.2541	330224	01.2813	330307	01.1256	340005	01.2701	340065	01.1592
330163	01.1688	330225	01.2008	330308	01.1991	340006	01.0918	340067	01.0327
330164	01.3494	330226	01.2208	330309	01.2223	340007	01.1586	340068	01.2316
330165	01.0402	330229	01.2139	330314	01.1919	340008	01.0612	340069	01.6220
330166	00.9944	330230	01.3755	330315	01.1173	340009	00.9203	340070	01.2488

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 16 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
340071	01.0065	340138	01.1107	350032	01.0077	360028	01.2009	360082	01.2475
340072	01.1262	340141	01.4100	350033	00.9001	360029	01.1108	360083	01.0960
340073	01.2619	340142	01.1780	350034	00.9724	360030	01.0821	360084	01.3321
340075	01.1741	340143	01.3117	350035	00.8814	360031	01.1770	360085	01.5024
340076	01.0829	340144	01.2140	350036	00.9750	360032	01.1472	360086	01.2106
340079	00.9835	340145	01.1947	350038	00.9280	360034	01.0676	360087	01.2342
340080	01.1210	340146	00.9652	350039	00.8893	360035	01.3807	360088	01.0393
340084	01.0871	340147	01.2244	350041	00.9877	360036	01.1465	360089	01.0922
340085	01.2156	340148	01.2614	350042	00.9563	360037	01.5464	360090	01.2110
340087	01.1159	340151	01.0862	350043	01.1504	360038	01.2910	360091	01.2639
340088	01.1335	340153	01.3185	350044	00.8903	360039	01.1942	360092	01.1543
340089	00.9783	340154	00.9245	350047	01.0149	360040	01.1333	360093	01.1354
340090	01.1653	340155	01.3579	350049	01.0129	360041	01.2226	360094	01.1923
340091	01.4780	340156	00.8746	350050	00.8586	360042	01.1865	360095	01.2252
340093	01.0329	340157	01.2375	350051	00.8543	360044	01.1313	360096	01.0630
340094	01.3860	340158	01.1222	350053	00.9632	360045	01.3485	360098	01.2726
340096	01.1446	340159	01.1740	350055	00.8615	360046	01.0785	360099	01.0628
340097	01.0599	340160	01.0662	350056	00.9211	360047	01.0517	360100	01.2954
340098	01.5589	340162	01.2620	350058	00.9663	360048	01.4283	360101	01.3169
340099	01.2436	340164	01.2395	350060	00.9323	360049	01.1561	360102	01.2298
340100	01.3713	340166	01.2609	350061	00.9804	360050	01.2007	360103	01.2727
340101	01.2980	340167	00.7110	350063	00.8494	360051	01.3724	360104	01.0156
340104	00.9835	350001	01.0572	350064	00.8751	360052	01.4292	360106	01.1498
340105	01.3209	350002	01.4201	350065	00.9899	360053	01.2340	360107	01.1017
340106	01.1703	350003	01.1801	350066	00.8966	360054	01.2853	360108	01.1293
340107	01.2525	350004	01.6841	350067	00.8274	360055	01.1796	360109	01.0847
340109	01.3208	350005	01.1784	360001	01.1534	360056	01.2069	360112	01.4145
340111	01.2854	350006	01.1588	360002	01.1331	360057	00.9993	360113	01.1892
340112	01.0746	350007	00.9519	360003	01.3071	360058	01.0916	360114	01.0466
340113	01.0346	350008	00.8962	360006	01.5896	360059	01.3029	360115	01.1244
340114	01.2747	350009	01.1546	360007	01.0556	360061	00.4252	360116	01.0650
340115	01.3278	350010	01.1125	360008	01.2000	360062	01.4391	360118	01.2229
340116	01.4720	350011	01.4848	360009	01.2073	360063	01.0015	360119	01.0923
340119	01.2552	350012	00.8552	360010	01.1242	360064	01.3362	360120	00.8457
340120	01.1186	350013	00.9824	360011	01.2595	360065	01.2061	360121	01.0776
340121	01.1097	350014	00.9585	360012	01.2856	360066	01.1662	360122	01.1994
340122	00.9904	350015	01.5266	360013	01.1245	360067	01.1817	360123	01.1396
340123	01.1926	350016	01.1029	360014	01.1988	360068	01.3169	360124	01.2787
340124	01.0884	350017	01.2443	360015	01.3049	360069	01.0604	360125	01.1276
340125	01.4517	350018	00.8584	360016	01.3244	360070	01.2386	360126	01.2067
340126	01.2629	350019	01.3772	360017	01.4946	360071	01.1860	360127	00.9921
340127	01.1842	350020	01.1781	360018	01.3064	360072	01.2825	360128	01.1389
340129	01.1880	350021	01.0109	360019	01.1515	360074	01.2416	360129	01.0874
340130	01.2787	350023	00.9419	360020	01.2066	360075	01.3274	360130	01.1308
340131	01.3150	350024	00.9724	360021	01.2216	360076	01.2013	360131	01.1670
340132	01.2819	350025	01.0111	360022	01.1452	360077	01.3392	360132	01.1513
340133	01.1049	350027	01.0132	360024	01.1277	360078	01.2486	360133	01.3582
340135	01.0090	350029	00.8758	360025	01.1022	360079	01.4643	360134	01.3385
340136	00.9386	350030	01.0977	360026	01.1017	360080	01.1890	360135	01.1027
340137	01.0804	350031	01.0236	360027	01.4239	360081	01.2475	360136	01.0476

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
360137	01.4445	360204	01.1478	370042	00.8790	370117	01.1678	380009	01.5313
360139	01.0859	360210	01.1799	370043	00.9685	370121	01.1297	380010	01.1563
360140	01.0207	360211	01.1099	370045	01.0661	370122	00.9509	380011	01.0362
360141	01.2875	360212	01.3357	370046	01.0641	370123	01.1266	380013	01.0911
360142	01.0347	360213	01.0816	370047	01.0519	370125	00.9866	380014	01.1893
360143	01.1635	360218	01.2806	370048	01.0012	370126	01.0259	380017	01.5658
360144	01.2971	360230	01.2562	370049	01.0465	370130	01.0441	380018	01.6160
360145	01.3106	360231	01.1032	370050	00.9810	370131	00.9439	380019	01.2234
360147	01.1926	360232	01.0744	370051	01.0241	370133	00.9519	380020	01.3448
360148	01.2030	360234	01.2068	370054	01.1115	370138	01.0730	380021	01.2184
360149	01.0715	360236	01.1513	370056	01.2334	370139	01.0670	380022	01.2184
360150	01.1576	360238	01.0214	370057	01.1627	370140	01.0143	380023	01.1997
360151	01.2658	360239	01.1944	370059	01.1493	370141	01.3503	380024	01.2917
360152	01.3128	360240	01.0715	370060	01.0030	370144	01.1792	380025	01.2788
360153	01.1197	360241	00.6245	370061	00.8962	370146	00.9792	380026	01.2355
360154	01.1020	370001	01.6131	370063	01.1145	370148	01.2466	380027	01.2959
360155	01.1114	370002	01.1089	370064	00.9765	370149	01.1861	380029	01.1044
360156	01.0972	370004	01.0825	370065	01.1755	370153	01.0922	380030	00.8939
360159	01.1776	370005	00.9277	370069	01.0585	370154	00.9744	380031	00.9752
360161	01.2607	370006	01.1036	370071	00.9042	370156	01.0184	380033	01.5087
360162	01.1362	370007	01.1354	370072	00.9974	370157	00.9519	380035	01.2431
360163	01.4476	370008	01.2060	370076	01.0991	370158	01.0646	380036	01.0658
360164	01.2028	370011	00.9387	370077	01.1849	370159	01.1582	380037	01.1830
360165	00.9773	370012	00.9422	370078	01.4785	370161	01.0094	380038	01.2104
360166	00.9708	370013	01.3361	370079	00.9261	370163	00.9150	380039	01.2802
360168	00.9507	370014	01.2114	370080	01.0133	370165	00.9924	380040	01.1174
360169	01.0513	370015	01.1474	370082	00.9391	370166	01.0158	380042	01.0990
360170	01.0627	370016	01.2267	370083	01.0128	370168	00.8946	380043	01.0026
360171	01.1411	370017	00.9485	370084	00.9310	370169	01.0569	380044	01.0950
360172	01.2771	370018	01.1959	370085	00.9737	370170	01.0757	380045	01.1619
360174	01.1212	370019	01.0674	370086	01.0480	370171	00.9843	380047	01.4537
360175	01.1510	370020	01.1834	370089	01.2387	370172	00.9523	380048	00.9800
360176	01.2061	370021	01.0645	370091	01.4286	370173	01.0338	380050	01.2879
360177	01.0760	370022	01.1723	370092	01.0174	370174	00.8956	380051	01.2786
360178	01.2194	370023	01.1639	370093	01.4528	370176	01.1786	380052	01.1816
360179	01.1860	370025	01.2460	370094	01.1850	370177	00.9237	380055	01.1631
360180	01.8303	370026	01.2646	370095	00.9645	370178	01.0214	380056	00.9905
360184	01.0749	370028	01.4672	370096	00.9767	370179	01.0653	380059	01.0158
360185	01.2205	370029	01.2556	370097	01.2539	370180	01.1839	380060	01.2942
360186	00.9348	370030	01.1819	370099	01.0273	370182	01.0019	380061	01.4338
360187	01.1956	370032	01.2627	370100	01.1227	370183	01.0659	380062	00.9023
360188	01.0656	370033	01.0689	370103	01.0367	370184	01.2652	380063	01.1304
360189	01.1063	370034	01.1171	370105	01.8082	380001	01.3686	380064	01.2515
360192	01.2233	370035	01.3649	370106	01.3040	380002	01.1766	380065	01.1183
360193	01.1973	370036	01.1144	370107	01.0025	380003	01.0878	380066	01.1261
360194	01.1096	370037	01.5324	370108	00.9576	380004	01.6610	380068	01.0543
360195	01.2209	370038	00.9222	370110	00.9720	380005	01.1449	380069	01.0728
360197	01.1090	370039	01.1497	370112	00.9919	380006	01.1643	380070	01.0106
360200	01.1491	370040	01.1098	370113	01.1604	380007	01.5342	380071	01.2195
360203	01.1271	370041	00.9861	370114	01.4606	380008	01.1378	380072	00.8791

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 18 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
380075	01.2605	390039	01.0932	390095	01.2483	390154	01.1076	390213	01.0096
380077	00.9016	390040	01.0468	390096	01.2145	390155	01.2901	390215	01.1651
380078	01.1324	390041	01.1317	390097	01.3468	390156	01.2487	390217	01.0763
380079	01.1381	390042	01.1914	390098	01.5562	390157	01.1680	390219	01.1984
380081	00.9754	390043	01.0434	390100	01.5892	390158	01.2594	390220	01.2065
380082	01.2092	390044	01.4258	390101	01.2121	390159	01.1823	390222	01.2305
380083	01.1119	390045	01.2396	390102	01.2246	390160	01.1428	390223	01.5457
380084	01.4275	390046	01.3569	390103	01.0904	390161	01.0759	390224	00.9392
380087	01.0093	390047	01.4004	390104	01.1416	390162	01.1738	390225	01.2799
380088	01.0713	390048	01.1501	390106	01.0130	390163	01.1647	390226	01.4793
380089	01.2662	390049	01.3262	390107	01.1658	390164	01.5181	390228	01.2149
380090	01.3393	390050	01.7372	390108	01.2403	390165	01.0884	390229	01.3260
380091	01.2188	390051	01.9545	390109	01.2559	390166	01.1400	390231	01.2674
380094	01.1119	390052	01.0869	390110	01.1732	390167	01.1948	390232	01.0608
390001	01.1929	390054	01.1907	390111	01.6401	390168	01.1537	390233	01.2260
390002	01.2233	390055	01.4745	390112	01.1378	390169	01.2107	390234	01.3283
390003	01.1085	390056	01.1856	390113	01.1736	390170	01.5511	390235	01.6045
390004	01.2565	390057	01.2496	390114	01.0281	390171	01.0614	390236	01.0835
390005	01.1100	390058	01.2720	390115	01.2370	390172	01.1250	390237	01.4369
390006	01.4926	390059	01.4112	390116	01.1935	390173	01.0868	390238	00.8379
390007	01.1705	390060	01.1843	390117	01.0749	390174	01.4980	390242	01.1886
390008	01.1562	390061	01.2265	390118	01.1373	390176	01.1054	390244	00.9405
390009	01.3479	390062	01.1187	390119	01.2176	390178	01.3301	390245	01.2478
390010	01.0905	390063	01.4816	390121	01.1887	390179	01.2140	390246	01.1126
390011	01.1874	390064	01.3125	390122	01.0940	390180	01.2807	390247	01.0852
390012	01.2118	390065	01.1933	390123	01.1994	390181	01.0818	390249	01.0604
390013	01.1793	390066	01.2193	390125	01.1684	390183	01.0689	390252	00.8870
390014	00.8572	390067	01.4933	390126	01.2058	390184	01.0951	390256	01.5671
390015	01.1282	390068	01.2839	390127	01.1344	390185	01.1709	390258	01.1620
390016	01.1163	390069	01.1629	390128	01.1149	390186	01.1193	390260	01.2531
390017	01.0695	390070	01.1327	390130	01.0023	390187	01.1546	390261	01.6843
390018	01.1796	390071	01.1089	390131	01.2124	390188	01.0872	390262	01.3949
390019	01.0854	390072	00.9864	390132	01.0019	390189	01.0655	390263	01.4305
390020	01.2760	390073	01.1963	390133	01.3347	390191	01.1248	390265	01.2555
390021	01.0647	390074	01.1652	390135	01.2726	390192	01.0615	390266	01.1367
390022	01.1081	390075	01.2700	390136	01.1965	390193	01.1713	390267	01.1589
390023	01.1943	390076	01.2237	390137	01.0944	390194	01.0681	390268	01.1427
390024	00.7158	390077	01.2891	390138	01.2408	390195	01.3574	390270	01.2261
390025	00.8763	390078	01.0861	390139	01.4397	390196	01.1390	390272	00.6141
390026	01.2193	390079	01.6124	390142	01.5235	390197	01.2558	390275	00.5819
390027	01.5544	390080	01.1792	390143	00.9168	390198	01.2441	390276	01.1254
390028	01.5855	390081	01.1880	390145	01.1799	390199	01.2416	390277	01.1756
390029	01.4955	390083	01.1955	390146	01.1277	390200	01.0178	390278	01.3306
390030	01.1264	390084	01.1408	390147	01.1516	390201	01.3304	400001	01.1564
390031	01.1550	390086	01.1445	390148	01.0722	390203	01.2619	400002	01.2881
390032	01.1546	390088	01.3184	390149	01.2052	390204	01.1750	400003	01.1416
390034	01.0873	390090	01.5500	390150	01.1239	390205	01.1574	400004	01.1215
390035	01.3011	390091	01.1455	390151	01.1988	390206	01.2300	400005	01.0700
390036	01.2677	390092	01.1402	390152	01.0642	390209	01.0371	400006	01.2031
390037	01.1917	390093	01.1191	390153	01.1720	390211	01.1670	400007	01.1118

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988

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PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
400008	01.1208	400119	01.1743	420048	01.0320	430018	00.9465	440002	01.3394
400009	00.9595	410001	01.1909	420049	01.1222	430020	01.0657	440003	01.1015
400010	01.0626	410002	01.1517	420050	00.9860	430022	00.9338	440005	00.9542
400011	01.0981	410004	01.2985	420051	01.4450	430023	00.9398	440006	01.2204
400012	00.9818	410005	01.2579	420053	01.1117	430024	01.0622	440007	00.9796
400013	00.9262	410006	01.2303	420054	01.1211	430025	00.9305	440008	01.0251
400014	01.3371	410007	01.4260	420055	01.1230	430026	01.0065	440009	00.9738
400015	01.0968	410008	01.0862	420056	01.1045	430027	01.5974	440010	00.9949
400016	01.2577	410009	01.2105	420057	01.2098	430028	00.9756	440011	01.2391
400017	01.0372	410010	00.9837	420059	01.0652	430029	00.8815	440012	01.2205
400018	01.0846	410011	01.1692	420061	01.1724	430030	01.0189	440014	00.9314
400019	01.1651	410012	01.3775	420062	01.0728	430031	00.9479	440015	01.3950
400021	01.3341	410013	01.1471	420064	01.0677	430033	01.0362	440016	00.9782
400022	01.2422	410014	01.1269	420065	01.2914	430034	01.0722	440017	01.2530
400023	00.5382	410016	01.0001	420066	00.9648	430036	01.0793	440018	01.1630
400024	01.1138	420002	01.2692	420067	01.1587	430037	00.9304	440019	01.4245
400026	01.0128	420003	01.1183	420068	01.2240	430038	01.0431	440020	01.0253
400027	01.0873	420004	01.7415	420069	01.1294	430039	01.0626	440022	01.0752
400028	01.0369	420005	01.0502	420070	01.2584	430040	00.9362	440023	00.9228
400029	01.1085	420006	01.2321	420071	01.2145	430041	01.0674	440024	01.1108
400031	00.9623	420007	01.4340	420072	00.9409	430042	00.9824	440025	01.0685
400032	01.2361	420009	01.2086	420073	01.2557	430043	01.0422	440026	01.1559
400037	00.9891	420010	01.0785	420074	01.0075	430044	00.8694	440029	01.2044
400038	01.1497	420011	01.0664	420075	01.0104	430047	01.1749	440030	01.0481
400044	01.0639	420014	01.0679	420076	01.0749	430048	01.0699	440031	01.0167
400048	01.1230	420015	01.1400	420078	01.3824	430049	00.9687	440032	00.9803
400061	01.4333	420016	01.1706	420079	01.3738	430051	00.9062	440033	01.0581
400079	01.0895	420017	01.0401	420080	01.2434	430054	00.9285	440034	01.2654
400083	00.9053	420018	01.5070	420081	01.0235	430056	00.8877	440035	01.1520
400087	01.2332	420019	01.2001	420082	01.3537	430057	00.9244	440038	00.9416
400088	00.8380	420020	01.1802	420083	01.1735	430060	01.0642	440039	01.4746
400089	01.0847	420022	01.2079	420084	00.6700	430062	00.9005	440040	00.9779
400090	01.1710	420023	01.2600	420085	01.2739	430064	01.0470	440041	00.9157
400094	01.0558	420026	01.7561	420086	01.2008	430065	00.9846	440046	00.9745
400098	01.0228	420027	01.1283	420087	01.3575	430066	01.0061	440047	00.9181
400102	01.1516	420028	01.0282	420088	01.1590	430072	01.1529	440048	01.3318
400103	01.4508	420029	01.4459	420089	01.1700	430073	01.0725	440049	01.4217
400104	01.1099	420030	01.1539	430004	01.0430	430076	01.0196	440050	01.0667
400105	01.2216	420031	00.8987	430005	01.1935	430077	01.3034	440051	01.0038
400108	01.0074	420032	00.9225	430007	01.0621	430079	01.0118	440052	00.9128
400109	01.0811	420033	01.2305	430008	01.2125	430080	00.9624	440053	01.1780
400110	01.1512	420035	00.7801	430009	01.0608	430081	01.0234	440054	00.9484
400111	01.1180	420036	01.2247	430010	00.9798	430082	00.8908	440055	01.1313
400112	01.1919	420037	01.2174	430011	01.2607	430083	00.8727	440056	00.9374
400113	01.0993	420038	01.0682	430012	01.2179	430084	00.8902	440057	00.9436
400114	01.0391	420039	01.0992	430013	01.1411	430085	00.9072	440058	01.0578
400115	01.0314	420040	01.3275	430014	01.3188	430086	00.8754	440059	01.0731
400116	01.1152	420042	01.0778	430015	01.0512	430087	00.8299	440060	01.0326
400117	01.1323	420043	01.1569	430016	01.3676	430088	01.1009	440061	01.1467
400118	01.0530	420044	01.1773	430017	01.1147	440001	01.0234	440063	01.1814

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988

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PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
440064	00.9677	440148	00.9819	450014	01.0893	450076	01.1265	450144	01.1340
440065	01.0177	440149	01.1441	450015	01.4098	450077	01.0098	450145	01.0444
440067	01.0977	440150	01.2531	450016	01.4124	450078	01.0118	450146	00.9320
440068	01.1044	440151	01.0968	450018	01.3499	450079	01.3564	450147	01.2590
440069	01.2223	440152	01.3664	450019	01.1843	450080	01.2501	450148	01.3097
440070	00.9596	440153	00.9116	450020	01.0901	450081	01.1930	450149	01.2984
440071	01.1687	440154	00.7888	450021	01.5089	450082	01.0094	450150	01.0076
440072	01.2322	440156	01.2412	450022	01.0892	450083	01.3340	450151	01.0406
440073	01.1488	440157	00.8702	450023	01.3477	450084	01.1225	450152	01.3967
440074	00.9333	440159	01.1509	450024	01.0776	450085	01.1726	450153	01.3622
440078	00.9144	440160	01.0615	450025	01.3646	450087	01.2809	450154	01.2028
440079	00.8134	440161	01.5451	450027	01.1044	450090	01.2619	450155	01.0743
440081	01.1400	440162	01.0815	450028	01.2983	450092	01.2655	450157	01.0429
440082	01.5390	440166	01.2513	450029	01.1757	450094	01.2227	450160	00.9812
440083	00.9359	440167	01.1794	450031	01.2066	450096	01.3907	450162	01.3776
440084	01.1100	440168	00.9629	450032	01.1297	450097	01.2460	450163	01.1582
440087	00.9133	440170	01.2973	450033	01.4844	450098	01.0578	450164	01.0773
440090	01.0467	440171	00.9408	450034	01.4387	450099	01.1811	450165	01.0359
440091	01.2732	440173	01.2953	450035	01.3947	450101	01.2606	450166	01.0441
440095	00.9946	440174	00.9103	450037	01.4165	450102	01.4350	450169	00.9154
440100	01.0447	440175	01.0462	450039	01.1431	450104	01.2081	450170	01.1353
440102	01.0182	440176	01.1672	450040	01.4721	450107	01.2739	450175	01.1587
440103	01.1339	440177	00.8927	450041	01.0751	450108	01.0025	450176	01.1847
440104	01.3806	440178	01.1807	450042	01.4811	450109	01.0436	450177	01.0967
440105	01.0377	440180	00.9670	450043	01.2790	450110	01.1751	450178	01.0821
440109	01.0469	440181	00.9881	450044	01.5285	450111	01.2946	450179	01.0607
440110	01.0293	440182	00.8769	450045	01.0524	450112	01.2371	450181	01.0359
440111	01.1921	440183	01.2549	450046	01.3530	450113	01.0524	450182	00.8907
440113	01.0857	440184	01.0819	450047	01.0546	450115	01.1009	450183	01.1893
440114	01.0088	440185	01.0935	450048	01.0927	450116	01.0570	450184	01.3707
440115	01.0595	440186	01.0029	450050	01.1509	450118	01.3087	450185	01.0882
440117	00.8802	440187	00.9443	450051	01.5636	450119	01.2391	450187	01.3671
440120	01.2836	440189	01.4041	450052	01.1156	450121	01.3441	450188	01.0588
440121	01.1254	440191	01.1987	450053	01.0975	450122	00.9370	450190	01.2150
440125	01.2054	440192	01.0418	450054	01.4845	450123	01.2125	450191	01.2168
440128	00.7701	440193	01.1149	450055	01.1157	450124	01.4691	450192	01.0931
440130	01.1374	440194	01.1217	450056	01.3821	450126	01.2019	450193	02.0216
440131	01.0699	440196	01.0243	450057	01.1009	450127	01.0173	450194	01.1783
440132	00.9831	440197	01.3213	450058	01.3684	450128	01.2357	450195	01.2445
440133	01.3515	440200	01.0466	450059	01.1732	450130	01.4665	450196	01.2667
440135	01.1684	440203	01.0010	450060	01.3086	450131	01.1881	450197	01.1624
440136	01.0974	440205	00.8866	450063	00.9598	450132	01.3776	450200	01.2108
440137	01.0682	450002	01.2402	450064	01.3799	450133	01.2429	450201	01.0589
440141	00.9607	450004	01.0890	450065	01.1103	450134	01.1696	450203	01.1654
440142	00.8558	450005	00.9874	450066	01.6111	450135	01.4549	450206	00.9687
440143	01.0150	450007	01.3417	450068	01.3671	450137	01.2059	450207	01.1486
440144	01.0741	450008	01.2580	450070	01.0854	450140	00.8891	450208	01.0974
440145	00.9493	450010	01.2228	450072	01.1828	450141	00.9897	450209	01.2250
440146	01.0801	450011	01.3376	450073	01.0335	450142	01.2731	450210	01.1219
440147	00.8575	450013	01.3789	450074	01.1127	450143	01.0478	450211	01.2188

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
450213	01.3296	450305	00.9217	450395	01.2083	450537	01.1993	450630	01.5245
450214	01.1514	450306	01.0841	450399	01.0937	450538	01.3223	450631	01.5288
450217	00.9745	450307	01.1231	450400	01.1670	450539	01.1835	450632	01.1401
450218	01.0257	450309	01.1158	450403	01.2858	450544	01.2305	450633	01.4530
450219	01.1310	450315	01.2913	450410	01.0577	450545	01.2858	450634	01.2031
450221	01.1108	450317	00.9523	450411	01.0472	450546	01.2714	450637	01.1891
450222	01.3122	450320	01.2426	450415	01.1733	450547	00.9789	450638	01.4243
450224	01.0657	450321	00.9891	450416	01.2246	450550	01.1591	450639	01.3336
450229	01.3339	450322	00.9371	450417	00.9416	450551	00.9822	450641	00.9136
450230	01.1359	450324	01.4034	450418	01.3164	450557	00.9823	450643	01.1221
450231	01.4555	450325	01.2378	450419	01.2721	450558	01.6725	450644	02.3754
450233	01.0693	450327	01.1265	450422	00.7628	450559	01.0410	450646	01.3196
450234	00.9009	450330	01.2393	450423	01.1967	450561	01.3514	450647	01.6839
450235	01.1982	450331	01.2416	450424	01.1241	450563	01.1481	450648	01.1469
450236	01.1140	450332	01.1595	450425	01.0790	450565	01.1790	450649	01.0349
450237	01.3772	450333	01.1013	450429	00.9887	450568	00.5500	450651	01.4291
450239	01.1319	450334	01.0272	450431	01.3919	450569	01.0399	450652	00.9460
450241	00.9384	450337	01.0800	450438	01.2324	450570	00.9656	450653	01.3241
450242	00.8334	450340	01.2375	450446	00.9815	450571	01.2547	450654	00.9778
450243	00.9817	450341	00.9575	450447	01.2841	450573	01.1023	450656	01.2814
450246	01.2482	450342	00.8975	450450	01.0006	450574	00.9550	450658	01.0000
450248	01.1071	450346	01.2596	450451	01.1807	450575	01.0507	450659	01.4071
450249	00.9957	450347	01.2091	450457	01.4371	450578	01.1206	450660	01.4631
450250	01.0288	450348	01.0774	450458	00.9929	450580	01.1543	450661	01.0239
450253	01.0418	450349	01.3012	450460	00.9946	450581	01.1466	450662	01.2287
450256	01.0640	450351	01.3360	450462	01.3287	450583	01.0636	450665	01.1006
450258	00.9169	450352	01.2298	450464	00.8700	450584	01.2469	450666	01.2752
450259	01.2949	450353	01.1943	450465	01.1471	450586	01.1681	450667	00.9903
450263	01.2475	450355	00.9924	450467	01.1109	450587	01.1743	450668	01.4250
450264	00.8718	450357	01.1819	450469	01.2279	450588	00.9099	450669	01.2328
450268	01.2049	450358	01.6676	450472	01.1607	450590	00.9102	450670	01.1357
450269	00.9854	450359	00.7835	450473	01.0561	450591	01.1517	450671	00.5912
450270	01.0879	450362	00.9871	450475	01.0682	450596	01.2654	450672	01.4030
450271	01.2353	450365	01.1108	450476	00.9459	450597	01.1044	450673	00.9803
450272	01.2070	450366	01.3905	450484	01.2626	450600	01.0378	450674	00.9729
450275	01.0523	450369	01.1332	450486	00.9926	450603	00.9369	450675	01.1845
450276	01.1848	450370	01.0809	450488	01.0401	450604	01.2569	450677	01.3541
450278	00.9931	450371	01.0553	450489	01.0961	450605	01.3123	450678	01.3329
450280	01.2879	450372	01.2884	450492	00.9078	450607	00.9047	450679	00.9653
450281	01.3561	450373	01.0847	450497	01.1902	450609	00.9536	450681	01.4633
450283	01.1163	450374	00.8964	450498	00.9744	450610	01.2752	450682	01.2154
450286	01.1696	450376	01.3579	450508	01.2817	450613	00.9796	450683	01.2346
450288	01.1257	450378	01.2773	450514	01.1706	450614	01.1186	450684	01.2030
450289	01.1673	450379	01.4183	450517	01.0051	450615	00.9863	450685	01.2735
450292	01.1979	450381	01.0450	450518	01.1727	450617	01.3685	450686	01.3118
450293	00.8808	450388	01.5616	450523	01.3874	450620	01.2071	450687	01.0986
450296	01.1124	450389	01.1861	450527	01.0593	450621	01.0351	450688	01.1469
450297	01.0694	450391	01.1598	450530	01.3108	450623	01.0521	450690	01.2302
450299	01.2712	450393	01.2734	450534	01.0526	450626	01.0547	450691	01.3292
450303	00.9649	450394	01.2471	450535	01.2355	450628	00.9597	450694	01.1827

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 22 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
450696	01.1247	460005	01.2591	470020	00.9840	490059	01.2705	490126	01.1596
450697	01.3527	460006	01.2581	470023	01.2344	490060	01.0060	490127	01.0437
450698	00.8414	460007	01.1767	470024	01.1370	490063	01.4075	490129	00.9140
450700	00.9730	460008	01.2851	490001	01.0161	490066	01.0809	490130	01.2101
450702	01.2408	460009	01.5178	490002	00.9415	490067	01.1224	490131	00.9826
450703	01.1226	460010	01.7501	490003	00.6947	490069	01.1850	500001	01.3094
450704	01.1948	460011	01.2045	490004	01.1720	490071	01.1472	500002	01.3650
450705	00.9639	460012	01.4481	490005	01.2961	490073	01.1579	500003	01.3258
450706	01.1832	460013	01.4276	490006	01.1853	490074	01.2468	500005	01.5560
450709	01.1300	460014	01.0781	490007	01.6107	490075	01.2049	500007	01.3017
450710	00.5681	460015	01.1917	490008	01.0358	490077	01.1490	500008	01.9216
450711	01.4647	460016	00.9409	490009	01.5393	490078	00.8858	500009	01.3211
450712	00.7111	460017	01.2914	490010	01.2076	490079	01.1414	500010	01.1610
450713	01.2356	460018	00.9071	490011	01.2034	490083	00.7229	500011	01.2427
450715	01.2627	460019	01.0779	490012	01.0939	490084	01.1119	500012	01.4408
450716	01.1328	460020	00.8948	490013	01.0985	490085	01.0206	500014	01.5665
450717	01.2811	460021	01.2538	490014	01.4124	490088	01.1483	500015	01.2876
450718	01.1080	460022	00.9685	490015	01.2550	490089	01.0015	500016	01.3265
450719	01.1367	460023	01.1293	490017	01.2722	490090	01.1674	500017	01.2307
450722	00.9315	460024	00.8805	490018	01.1031	490091	01.2350	500019	01.1262
450723	01.2356	460025	00.9890	490019	01.1452	490092	01.0768	500021	01.3798
450724	01.3073	460026	01.0070	490020	01.0687	490093	01.2400	500023	01.1441
450725	00.8773	460027	00.9124	490021	01.0937	490094	01.0663	500024	01.3454
450726	01.0021	460029	00.8758	490022	01.2163	490095	01.2197	500025	01.8038
450727	01.0740	460030	01.0277	490023	01.1242	490097	01.0905	500026	01.2427
450728	01.0158	460032	00.9486	490024	01.4301	490098	01.2437	500027	01.5117
450729	00.8320	460033	00.9121	490027	01.0821	490099	01.0632	500028	00.9039
450730	01.3287	460035	00.9386	490028	01.1483	490100	01.2411	500029	00.9366
450732	01.0330	460036	00.9848	490029	01.0555	490101	01.0744	500030	01.3866
450733	01.2150	460037	00.9631	490030	01.2601	490104	00.8440	500031	01.1067
450734	01.1184	460039	00.9386	490031	01.0979	490105	00.8439	500033	01.1722
450735	00.8393	460041	01.1890	490032	01.6151	490106	00.9368	500034	01.0610
450737	00.8470	460042	01.3061	490033	01.2038	490107	01.1990	500035	01.4094
450740	01.1782	460043	01.3454	490035	01.1024	490108	00.9628	500036	01.2599
450742	01.2326	460044	01.1606	490037	01.1258	490109	00.8214	500037	01.0674
450743	01.2307	460046	01.2615	490038	01.1710	490110	01.0849	500039	01.2253
450744	01.0571	460047	01.4768	490040	01.1873	490111	01.0860	500040	01.1223
450745	00.9790	470001	01.1731	490041	01.1146	490112	01.3922	500041	01.2113
450746	00.9363	470003	01.6504	490042	01.1805	490113	01.1487	500042	01.2151
450747	01.1123	470004	01.1518	490043	01.1804	490114	01.0546	500043	01.2156
450748	00.9454	470005	01.2575	490044	01.2035	490115	01.1527	500044	01.8660
450749	01.1066	470006	01.2205	490045	01.1783	490116	01.0486	500045	01.1599
450750	00.9606	470008	01.1695	490046	01.2434	490117	01.0594	500046	01.3356
450751	01.2410	470010	01.0747	490047	01.1912	490118	01.4869	500048	00.9704
450752	01.3436	470011	01.2150	490048	01.2140	490119	01.2300	500049	01.2697
450753	00.9600	470012	01.2342	490050	01.1853	490120	01.2615	500050	01.1101
450754	01.1419	470013	01.0985	490052	01.3252	490122	01.1537	500051	01.6541
460001	01.5623	470015	01.1980	490053	01.2096	490123	01.0791	500052	01.1844
460003	01.4735	470016	01.0633	490054	01.1254	490124	01.2468	500053	01.1440
460004	01.5081	470018	01.0305	490057	01.2201	490125	00.9664	500054	01.7279

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
500055	01.0404	500132	00.9356	510059	00.7881	520031	01.1429	520096	01.1635
500057	01.1427	500134	00.9788	510060	01.1315	520032	01.2337	520097	01.2435
500058	01.2472	500135	01.1740	510061	01.0151	520033	01.2087	520098	01.5491
500059	01.2490	500138	01.9087	510062	01.1126	520034	01.2552	520100	01.1312
500060	01.1067	500139	01.2112	510063	01.2137	520035	01.1849	520101	01.1285
500061	01.1352	500140	00.9230	510064	01.1921	520037	01.5513	520102	01.1042
500062	01.0376	500141	01.2264	510065	01.0192	520038	01.2741	520103	01.2674
500064	01.4094	510001	01.3927	510066	01.1348	520039	01.0462	520104	00.9350
500065	01.1890	510002	01.1583	510067	01.1703	520040	01.2840	520105	00.9882
500068	01.0097	510004	00.9672	510068	01.2122	520041	01.0963	520107	01.1931
500069	01.0452	510005	01.0298	510070	01.1241	520042	01.0753	520109	01.0340
500071	01.1436	510006	01.2578	510071	01.2951	520043	01.5259	520110	00.9842
500072	01.1929	510007	01.2633	510072	01.0935	520044	01.3066	520111	01.0842
500073	01.1040	510008	01.1691	510074	00.9719	520045	01.4578	520112	01.0571
500074	01.1226	510009	01.1226	510076	00.9443	520047	00.9802	520113	01.1882
500075	01.1994	510011	00.9275	510077	01.0195	520048	01.3295	520114	01.1025
500076	01.2577	510012	01.0788	510080	00.9098	520049	01.6291	520115	01.1911
500077	01.2817	510013	01.1959	510081	01.0956	520051	01.7015	520116	01.2008
500078	01.2997	510014	01.1227	510082	00.9619	520053	01.0529	520117	01.0381
500079	01.2323	510015	00.9666	510084	00.9684	520054	01.1315	520118	00.9271
500080	01.0415	510016	00.9795	510085	01.1916	520056	01.1908	520120	01.0187
500084	01.0454	510018	01.1568	510086	00.9982	520057	01.0622	520121	01.0265
500085	01.0106	510019	00.8450	520001	01.2003	520058	01.0562	520122	00.9646
500086	01.3021	510020	01.0276	520002	01.2686	520059	01.2495	520123	01.0405
500087	01.2927	510022	01.4281	520003	01.1570	520060	01.1794	520124	01.1227
500088	01.3410	510023	01.0256	520004	01.2580	520062	01.2403	520126	00.9422
500089	01.0765	510024	01.2139	520006	01.0764	520063	01.2331	520127	00.8891
500090	00.8102	510025	00.9525	520007	01.0425	520064	01.4111	520130	00.9935
500092	01.0683	510026	00.9751	520008	01.1810	520066	01.1942	520131	01.1100
500093	01.1752	510027	01.1057	520009	01.3080	520068	00.9969	520132	01.2245
500094	01.2375	510028	01.1472	520010	01.1251	520069	01.2731	520134	01.0429
500096	01.0732	510029	01.2053	520011	01.1111	520070	01.2983	520135	00.9672
500097	01.0870	510030	01.0877	520012	01.0168	520071	01.0943	520136	01.3792
500098	00.9185	510031	01.2118	520013	01.2143	520074	01.0752	520138	01.6006
500100	00.9420	510033	01.2082	520014	01.2033	520075	01.2866	520139	01.2557
500101	01.0243	510035	00.9859	520015	01.2422	520076	01.2018	520140	01.3364
500102	00.9194	510036	01.1424	520016	01.0360	520077	01.0219	520141	01.0159
500104	01.2074	510038	01.1180	520017	01.1211	520078	01.2643	520142	00.9592
500106	00.9988	510039	01.1523	520018	01.1239	520081	01.2130	520143	00.9658
500107	01.1085	510040	00.9844	520019	01.2157	520082	01.2135	520144	01.0215
500108	01.6250	510043	01.0624	520020	01.3702	520083	01.4231	520145	01.0605
500110	01.1993	510045	00.9200	520021	01.2224	520084	01.0762	520146	01.1166
500114	01.2725	510046	01.3013	520022	00.9047	520087	01.3960	520148	01.1609
500118	01.2135	510047	01.1466	520024	00.9507	520088	01.1734	520149	01.1397
500119	01.3155	510048	01.1186	520025	01.1095	520089	01.3051	520151	00.9909
500122	01.2703	510050	01.2085	520026	01.0568	520090	01.1266	520152	01.1183
500123	00.9195	510053	00.9948	520027	01.1920	520091	01.3568	520153	01.0144
500124	01.2461	510054	00.9631	520028	01.3302	520092	01.1371	520154	01.1251
500125	01.1877	510055	01.1603	520029	00.9203	520094	01.1770	520156	01.1445
500129	01.5829	510058	01.2043	520030	01.4113	520095	01.2184	520157	01.0194

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 24 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
520159	00.9510								
520160	01.6802								
520161	01.0789								
520167	01.2024								
520170	01.1597								
520171	00.9884								
520173	01.0720								
520174	01.3501								
520175	00.7845								
520176	01.0479								
520177	01.3435								
520178	01.2202								
520180	00.8769								
520182	00.5903								
520184	00.5903								
520185	00.7765								
530001	01.0697								
530002	01.1829								
530003	00.9011								
530004	01.0615								
530005	01.0553								
530006	01.0747								
530007	01.1911								
530008	01.0528								
530009	01.0299								
530010	01.1765								
530011	01.1985								
530012	01.4532								
530014	01.1355								
530015	01.1031								
530016	01.1550								
530017	00.9712								
530018	01.0479								
530019	00.9129								
530022	01.0234								
530023	00.8912								
530024	01.0850								
530025	01.2335								
530026	01.0530								
530027	00.9366								
530029	01.0747								
530031	00.9318								

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1989.

BILLING CODE 4120-03-C

TABLE 4A.—WAGE INDEX FOR URBAN AREAS

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	0.8833
Taylor, TX	
Aguadilla, PR	0.4591
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	0.9620
Portage, OH	
Summit, OH	
Albany, GA	0.7791
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8697
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	0.9949
Bernalillo, NM	
Alexandria, LA	0.8468
Rapides, LA	
Allentown-Bethlehem, PA-NJ	0.9673
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9513
Blair, PA	
Amarillo TX	0.9589
Potter, TX	
Randall, TX	
*Anaheim-Santa Ana, CA	1.2181
Orange, CA	
Anchorage, AK	1.4320
Anchorage, AK	
Anderson, IN	0.9149
Madison, IN	
Anderson, SC	0.7799
Anderson, SC	
Ann Arbor, MI	1.1580
Washtenaw, MI	
Anniston, AL	0.7673
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9512
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.4370
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8672
Buncombe, NC	
Athens, GA	0.7719
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
*Atlanta, GA	0.9293
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	0.9849
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	0.8777
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9879
Kane, IL	
Kendall, IL	
Austin, TX	1.0294
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0678
Kern, CA	
*Baltimore, MD	0.9864
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9043
Penobscot, ME	
Baton Rouge, LA	0.9556
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9641
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9457
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0454
Beaver, PA	
Bellingham, WA	1.0645
Whatcom, WA	
Benton Harbor, MI	0.8482
Berrien, MI	
*Bergen-Passaic, NJ	1.0484
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9882
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8031
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9213
Broome, NY	
Tioga, NY	
Birmingham, AL	0.9352
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.9270
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.9112
Monroe, IN	
Bloomington-Normal, IL	0.9656
McLean, IL	
Boise City, ID	1.0166
Ada, ID	
*Boston-Lawrence-Salem-Lowell-Brockton, MA	1.0813
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0771
Boulder, CO	
Bradenton, FL	0.8932
Manatee, FL	
Brazoria, TX	0.8767
Brazoria, TX	
Bremerton, WA	0.9573
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1306
Fairfield, CT	
Brownsville-Harlingen, TX	0.8698
Cameron, TX	
Bryan-College Station, TX	0.9740
Brazos, TX	
Buffalo, NY	0.9395
Erie, NY	
Burlington, NC	0.7634
Alamance, NC	
Burlington, VT	0.9391
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.3973
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenes, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8903
Carroll, OH	
Stark, OH	
Casper, WY	0.9277
Natrona, WY	
Cedar Rapids, IA	0.8910
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8904
Champaign, IL	
Charleston, SC	0.8542
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9647
Kanawha, WV	
Putnam, WV	
*Charlotte-Gastonia-Rock Hill, NC-SC	0.8373
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville VA,	0.8845

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene,VA	
Chattanooga, TN-GA	0.8681
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.8786
Laramie, WY	
*Chicago, IL	1.0843
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0550
Butte, CA	
*Cincinnati, OH-KY-IN	1.0236
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7269
Christian, KY	
Montgomery, TN	
*Cleveland, OH	1.0765
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0256
El Paso, CO	
Columbia, MO	1.0378
Boone, MO	
Columbia, SC	0.8444
Lexington, SC	
Richland, SC	
Columbus, GA-AL	0.7347
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
*Columbus, OH	0.9472
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8265
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.9122
Allegeny, MD	
Mineral, WV	
*Dallas, TX	1.0143
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7629
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	0.9446
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9918
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8467
Volusia, FL	
Decatur, AL	0.7066
Lawrence, AL	
Morgen, AL	
Decatur, IL	0.8903
Macon, IL	
*Denver, CO	1.1756
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9711
Dallas, IA	
Polk, IA	
Warren, IA	
*Detroit, MI	1.0784
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7092
Dale, AL	
Houston, AL	
Dubuque, IA	0.9456
Dubuque, IA	
Duluth, MN-WI	0.9603
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8866
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.8868
El Paso, TX	
Elkhart-Goshen, IN	0.9197
Elkhart, IN	
Elmira, NY	0.9134
Chemung, NY	
Enid, OK	0.9150
Garfield, OK	
Erie, PA	0.9568
Erie, PA	
Eugene-Springfield, OR	1.0199
Lane, OR	
Evansville, IN-KY	1.0302
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0040
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8156
Cumberland, NC	
Fayetteville-Springdale, AR	0.7363
Washington, AR	
Flint, MI	1.1653
Genesee, MI	
Florence, AL	0.7090
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.7704
Florence, SC	
Fort Collins-Loveland, CO	1.0292
Larimor, CO	
*Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0258
Broward, FL	
Fort Myers-Cape Coral, FL	0.9003
Lee, FL	
Fort Pierce, FL	1.0400
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.8746
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8182
Okaloosa, FL	
Fort Wayne, IN	0.9008
Allen, IN	
De Kalb, IN	
Whitley, IN	
*Fort Worth-Arlington, TX	0.9544
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1137
Fresno, CA	
Gadsden, AL	0.8523
Etowah, AL	
Gainesville, FL	0.8726
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.0820
Galveston, TX	
Gary-Hammond, IN	1.0493
Lake, IN	
Porter, IN	
Glens Falls, NY	0.8736
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9626
Grand Forks, ND	
Grand Rapids, MI	1.0076
Kent, MI	
Ottawa, MI	
Great Falls, MT	0.9839
Cascade, MT	
Greeley, CO	1.0215
Weld, CO	
Green Bay, WI	0.9662
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.8558
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	0.9322
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.8716
Washington, MD	
Hamilton-Middletown, OH	0.9681
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	1.0515
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
*Hartford-Middletown-New Britain-Bristol, CT	1.0995
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	0.8213

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1965
Honolulu, HI	
Houma-Thibodaux, LA	0.7485
Lafourche, LA	
Terrebonne, LA	
*Houston, TX	0.9868
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	0.9177
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8260
Madison, AL	
*Indianapolis, IN	0.9903
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.0951
Johnson, IA	
Jackson, MI	0.9283
Jackson, MI	
Jackson, MS	0.8075
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.7560
Madison, TN	
Jacksonville, FL	0.8920
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7219
Onslow, NC	
Jamestown-Dunkirk, NY	0.7963
Chatauqua, NY	
Janesville-Beloit, WI	0.8999
Rock, WI	
Jersey City, NJ	1.0737
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8773
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.9149
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0421
Grundy, IL	
Will, IL	
Joplin, MO	0.8635
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1089
Kalamazoo, MI	
Kankakee, IL	0.9025
Kankakee, IL	
*Kansas City, KS-MO	1.0093
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, Mo	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0527
Kenosha, WI	
Killeen-Temple, TX	1.1227
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8202
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9416
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.9656
LaCrosse, WI	
Lafayette, LA	0.9003
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8643
Tippecanoe, IN	
Lake Charles, LA	0.8900
Calcasieu, LA	
Lake County, IL	1.0854
Lake, IL	
Lakeland-Winter Haven, FL	0.8169
Polk, FL	
Lancaster, PA	0.9843
Lancaster, PA	
Lansing-East Lansing, MI	1.0360
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7360
Webb, TX	
Las Cruces, NM	0.8469
Dona Ana, NM	
Las Vegas, NV	1.1147
Clark, NV	
Lawrence, KS	0.8810
Douglas, KS	
Lawton, OK	0.8523
Comanche, OK	
Lewiston-Auburn, ME	0.9192
Androscoggin, ME	
Lexington-Fayette, KY	0.9160
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.9178
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.9429
Lancaster, NE	
Little Rock-North Little Rock, AR	0.9240
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8154
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.9382
Lorain, OH	
*Los Angeles-Long Beach, CA	1.2443
Los Angeles, CA	
Louisville, KY-IN	0.9547
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.9714
Lubbock, TX	
Lynchburg, VA	0.8466
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.7803
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0072
Dane, WI1	
Manchester-Nashua, NH	0.9386
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8696
Richland, OH	
Mayaguez, PR	0.4608
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7679
Hidalgo, TX	
Medford, OR	0.9653
Jackson, OR	
Melbourne-Titusville, FL	0.8634
Brevard, FL	
Memphis, TN-AR-MS	0.9412
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0054
Merced, CA	
*Miami-Hialeah, FL	1.0225
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	0.9929
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0511
Midland, TX	
*Milwaukee, WI	1.0132
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
*Minneapolis-St. Paul, MN-WI	1.1345

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8234
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.0699
Stanislaus, CA	
Monmouth-Ocean, NJ	0.9367
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.8150
Ouachita, LA	
Montgomery, AL	0.8039
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.9652
Delaware, IN	
Muskegon, MI	0.9904
Muskegon, MI	
Naples, FL	1.0000
Collier, FL	
Nashville, TN	0.8893
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
*Nassua-Suffolk, NY	1.2107
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	0.9479
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.0766
New Haven, CT	
New London-Norwich, CT	1.0669
New London, CT	
*New Orleans, LA	0.9352
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
*New York, NY	1.3183
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
*Newark, NJ	1.0679
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.8546
Niagara, NY	
*Norfolk-Virginia Beach-Newport News, VA	0.9267
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
*Oakland, CA	1.4029
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8143
Marion, FL	
Odessa, TX	0.9275
Ector, TX	
Oklahoma City, OK	0.9862
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0540
Thurston, WA	
Omaha, NE-IA	0.9736
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	0.8900
Orange, NY	
Orlando, FL	0.9124
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8951
Daviess, KY	
Oxnard-Ventura, CA	1.3901
Ventura, CA	
Panama City, FL	0.7900
Bay, FL	
Parkersburg-Marietta, WV-OH	0.9065
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8749
Jackson, MS	
Pensacola, FL	0.8251
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.9794
Peoria, IL	
Tazewell, IL	
Woodford, IL	
*Philadelphia, PA-NJ	1.0774
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
*Phoenix, AZ	1.0016
Maricopa, AZ	
Pine Bluff, AR	0.7991
Jefferson, AR	
*Pittsburgh, PA	1.0107
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0241
Berkshire, MA	
Ponce, PR	0.5473
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9618
Cumberland, ME	
Sagadahoc, ME	
York, ME	
*Portland, OR	1.1215
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	0.9399
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	0.9726
Dutchess, NY	
*Providence-Pawtucket-Woonsocket, RI	0.9735
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	0.9275
Utah, UT	
Pueblo, CO	0.9295
Pueblo, CO	
Racine, WI	0.9183
Racine, WI	
Raleigh-Durham, NC	0.9395
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8526
Pennington, SD	
Reading, PA	0.9118
Berks, PA	
Redding, CA	0.9901
Shasta, CA	
Reno, NV	1.1257
Washoe, NV	
Richland-Kennewick, WA	0.9720
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.8864
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
*Riverside-San Bernardino, CA	1.1291
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8224
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0539

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Olmsted, MN	
Rochester, NY	0.9490
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9606
Boone, IL	
Winnebago, IL	
*Sacramento, CA	1.2072
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0769
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.9690
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.8691
Buchanan, MO	
*St. Louis, MO-IL	1.0126
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0509
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2582
Monterey, CA	
*Salt Lake City-Ogden, UT	0.9271
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8395
Tom Green, TX	
*San Antonio, TX	0.8334
Bexar, TX	
Comal, TX	
Guadalupe, TX	
*San Diego, CA	1.2359
San Diego, CA	
*San Francisco, CA	1.4950
Marin, CA	
San Francisco, CA	
San Mateo, CA	
*San Jose, CA	1.4702
Santa Clara, CA	
*San Juan, PR	0.5363
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Lugquillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1722
Santa Barbara, CA	
Santa Cruz, CA	1.2325
Santa Cruz, CA	
Santa Fe, NM	0.9488
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.4191
Sonoma, CA	
Sarasota, FL	0.9255
Sarasota, FL	
Savannah, GA	0.8415
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	0.9240
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
*Seattle, WA	1.0901
King, WA	
Snohomish, WA	
Sharon, PA	0.9209
Mercer, PA	
Sheboygan, WI	0.9329
Sheboygan, WI	
Sherman-Denison, TX	0.8811
Grayson, TX	
Shreveport, LA	0.8906
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	0.9026
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.9492
Minnehaha, SD	
South Bend-Mishawaka, IN	0.9712
St. Joseph, IN	
Spokane, WA	1.0764
Spokane, WA	
Springfield, IL	1.0040
Menard, IL	
Sangamon, IL	
Springfield, MO	0.8866
Christian, MO	
Greene, MO	
Springfield, MA	1.0040
Hampden, MA	
Hampshire, MA	
State College, PA	1.0453
Centre, PA	
Steubenville-Weirton, OH-WV	0.9122
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1373
San Joaquin, CA	
Syracuse, NY	0.9780
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0247
Pierce, WA	
Tallahassee, FL	0.8115
Gadsden, FL	
Leon, FL	
*Tampa-St. Petersburg-Clearwater, FL	0.8995
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8216
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	0.8025
Miller, AR	
Bowie, TX	
Toledo, OH	1.0659
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9001
Shawnee, KS	
Trenton, NJ	1.0910
Mercer, NJ	
Tucson, AZ	0.9777
Pima, AZ	
Tulsa, OK	0.9236
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.9423
Tuscaloosa, AL	
Tyler, TX	0.9239
Smith, TX	
Utica-Rome, NY	0.8101
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2273
Napa, CA	
Solano, CA	
Vancouver, WA	1.0570
Clark, WA	
Victoria, TX	0.8249
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9608
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.2797
Tulare, CA	
Waco, TX	0.8588
McLennan, TX	
*Washington, DC-MD-VA	1.0827
District of Columbia, DC	

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.9456
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.9616
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	0.9472
Palm Beach, FL	
Wheeling, WV-OH	0.8554
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.0226
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8316
Wichita, TX	
Williamsport, PA	0.9086
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0279
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8179
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	0.9417
Worchester, MA	
Yakima, WA	0.9915
Yakima, WA	
York, PA	0.9403
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.0016
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0090
Sutter, CA	
Yuba, CA	

TABLE 4B.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.6963
Alaska	1.3734
Arizona	0.8782
Arkansas	0.7071
California	1.0137
Colorado	0.8554
Connecticut	1.0175
Delaware	0.8332
Florida	0.8147
Georgia	0.7446
Hawaii	0.8640
Idaho	0.8568
Illinois	0.7994
Indiana	0.8033
Iowa	0.7933
Kansas	0.7906
Kentucky	0.7938
Louisiana	0.7564
Maine	0.8233
Maryland	0.7966
Massachusetts	1.0135
Michigan	0.9110
Minnesota	0.8929
Mississippi	0.7176
Missouri	0.7481
Montana	0.8499
Nebraska	0.7680
Nevada	0.9473
New Hampshire	0.8872
New Jersey [1]	
New Mexico	0.8049
New York	0.8069
North Carolina	0.7639
North Dakota	0.8395
Ohio	0.8650
Oklahoma	0.7908
Oregon	0.9908
Pennsylvania	0.8760
Puerto Rico	0.5371
Rhode Island [1]	
South Carolina	0.7192
South Dakota	0.7557
Tennessee	0.7043
Texas	0.7609
Utah	0.8613
Vermont	0.8400
Virginia	0.7668
Washington	0.9916
West Virginia	0.8439
Wisconsin	0.8454
Wyoming	0.9025

[1] All counties within the State are classified urban.

TABLE 4C.—WAGE INDEX FOR RURAL COUNTIES WHOSE HOSPITALS ARE DEEMED URBAN

[Area that qualify as large urban areas are designated with an asterisk]

County	Urban area	Wage index
Limestone, AL	Huntsville, AL	0.7455
Marshall, AL	Huntsville, AL	0.7207
Charlotte, FL	Sarasota, FL	0.8311
Indian River, FL	Fort Pierce, FL	0.8613
Christian, IL	Springfield, IL	0.7695
Macoupin, IL	*St. Louis, MO-IL	0.7592
Mason, IL	Peoria, IL	0.7364
Clinton, IN	Lafayette, IN	0.8095
Henry, IN	Anderson, IN	0.8411
Owen, IN [1]	Bloomington, IN	
Jefferson, KS	Topeka, KS	0.8041
Allegan, MI	Grand Rapids, MI	1.0075
Barry, MI	Battle Creek, MI	0.8337
Cass, MI	Benton Harbor, MI	0.7956
Ionia, MI	Lansing-East Lansing, MI.	0.8386
Lenawee, MI	Ann Arbor, MI	1.0242
Shiawassee, MI	Flint, MI	1.0236
Tuscola, MI	Saginaw-Bay City-Midland, MI.	0.9020
Van Buren, MI	Kalamazoo, MI	0.8610
Clinton, MO	*Kansas City, KS-MO.	0.8306
Cass, NE [1]	Omaha, NE	
Caswell, NC [1]	Danville, VA	
Currituck, NC [1]	*Norfolk-Virginia Beach-Newport News, VA.	
Harnett, NC	Fayetteville, NC	0.7497
Genesee, NY	Rochester, NY	0.7175
Columbiana, OH	Beaver County, PA	0.9089
Morrow, OH	Mansfield, OH	0.6742
Preble, OH [1]	Dayton-Springfield, OH.	
Van Wert, OH	Lima, OH	0.8375
Lawrence, PA	Beaver County, PA	0.8469
Cherokee, SC	Greenville-Spartanburg, SC.	0.7244
Bedford, VA	Roanoke, VA	0.7261
Fredericksburg City, VA.	*Washington, DC-MD-VA.	0.8232
Isle of Wight, VA [1]	Norfolk-Virginia Beach-Newport News, VA.	
Spotsylvania, VA [1]	*Washington, DC-MD-VA.	
Jefferson, WI	*Milwaukee, WI	0.8740
Walworth, WI	*Milwaukee, WI	0.9475
Jefferson, WV	*Washington, DC-MD-VA.	0.6686
Lincoln, WV [1]	Charleston, WV	

[1] There are no prospective payment hospitals in these counties.

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TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
1	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.5670	13.8	42
2	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	4.1379	12.8	41
3	01	SURG	CRANIOTOMY AGE 0-17	2.8830	12.7	41
4	01	SURG	SPINAL PROCEDURES	2.6403	11.8	40
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.5214	6.1	34
6	01	SURG	CARPAL TUNNEL RELEASE	.4709	2.0	17
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC WITH CC	3.1110	13.2	41
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	.7355	3.2	31
9	01	MED	SPINAL DISORDERS & INJURIES	1.4058	7.0	35
10	01	MED	NERVOUS SYSTEM NEOPLASMS WITH CC	1.2449	7.8	36
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.7451	4.7	33
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9391	6.9	35
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.8699	7.0	35
14	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.2260	7.4	35
15	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	.6350	4.2	32
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.0949	6.0	35
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6452	4.6	33
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS WITH CC	.9640	6.3	34
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.5869	4.1	32
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.7817	8.1	36
21	01	MED	VIRAL MENINGITIS	1.4190	7.6	36
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	.6981	4.4	32
23	01	MED	NONTRAUMATIC STUPOR & COMA	.8698	4.4	32
24	01	MED	SEIZURE & HEADACHE AGE >17 WITH CC	.9669	5.4	33
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.5270	3.6	29
26	01	MED	SEIZURE & HEADACHE AGE 0-17	.7318	3.5	31
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.6124	4.6	33
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 WITH CC	1.2750	6.1	34
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.5730	3.4	31
30	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	.3496	2.0	17
31	01	MED	CONCUSSION AGE >17 WITH CC	.7007	4.3	32
32	01	MED	CONCUSSION AGE >17 W/O CC	.4038	2.7	25
33	01	MED	CONCUSSION AGE 0-17	.2427	1.6	9
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM WITH CC	1.2069	6.0	34
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5597	3.7	32

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
36	02	SURG	RETINAL PROCEDURES	.6443	2.6	14
37	02	SURG	ORBITAL PROCEDURES	.7415	3.1	31
38	02	SURG	PRIMARY IRIS PROCEDURES	.3550	2.1	16
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.4494	1.7	7
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.4762	2.0	20
41	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3613	1.6	7
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6305	2.3	16
43	02	MED	HYPHEMA	.3350	3.7	24
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6085	5.5	33
45	02	MED	NEUROLOGICAL EYE DISORDERS	.5454	3.3	30
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.6495	4.0	32
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.3539	2.6	28
48	02	MED	OTHER DISORDERS OF THE EYE AGE 0-17	.3969	2.9	30
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	2.0633	11.0	39
50	03	SURG	SIALOADENECTOMY	.6298	2.3	15
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.5647	2.1	18
52	03	SURG	CLEFT LIP & PALATE REPAIR	.8129	2.7	26
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	.6161	2.0	20
54	03	SURG	SINUS & MASTOID PROCEDURES AGE 0-17	.6806	3.2	22
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	.4879	1.7	14
56	03	SURG	RHINOPLASTY	.4881	1.8	14
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.9313	3.5	32
58	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.3060	1.5	4
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.3878	1.6	11
60	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.2504	1.5	4
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	.6945	2.3	30
62	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE 0-17	.3052	1.3	5
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.1882	4.3	32
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.1762	5.1	33
65	03	MED	DYSEQUILIBRIUM	.4564	3.4	23
66	03	MED	EPISTAXIS	.4496	3.3	24
67	03	MED	EPIGLOTTITIS	.8589	4.4	32
68	03	MED	OTITIS MEDIA & URI AGE >17 WITH CC	.7232	5.0	33
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5281	3.9	25
70	03	MED	OTITIS MEDIA & URI AGE 0-17	.4589	3.3	22

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.

** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.

NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
71	03	MED	LARYNGOTRACHEITIS	.7307	4.5	32
72	03	MED	NASAL TRAUMA & DEFORMITY	.5528	3.3	31
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7525	4.0	32
74	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	.3386	2.1	20
75	04	SURG	MAJOR CHEST PROCEDURES	2.9603	11.9	40
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.3038	10.5	38
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.0895	4.9	33
78	04	MED	PULMONARY EMBOLISM	1.4320	8.8	37
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 WITH CC	1.6580	9.4	37
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.1382	7.1	35
81	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.0899	6.1	34
82	04	MED	RESPIRATORY NEOPLASMS	1.2016	6.6	35
83	04	MED	MAJOR CHEST TRAUMA WITH CC	1.0064	6.5	35
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5009	3.9	32
85	04	MED	PLEURAL EFFUSION WITH CC	1.1437	6.8	35
86	04	MED	PLEURAL EFFUSION W/O CC	.7223	4.6	33
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.4597	6.1	34
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0153	6.1	34
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 WITH CC	1.2059	7.2	35
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.7790	5.7	32
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.7465	4.6	30
92	04	MED	INTERSTITIAL LUNG DISEASE WITH CC	1.2182	6.9	35
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7936	5.2	33
94	04	MED	PNEUMOTHORAX WITH CC	1.3378	7.4	35
95	04	MED	PNEUMOTHORAX W/O CC	.6665	4.8	33
96	04	MED	BRONCHITIS & ASTHMA AGE >17 WITH CC	.9734	6.0	34
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.6810	4.7	27
98	04	MED	BRONCHITIS & ASTHMA AGE 0-17	.8942	6.2	34
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS WITH CC	.8493	4.4	32
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5125	2.8	20
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES WITH CC	.8966	5.3	33
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5593	3.4	31
103	05	SURG	HEART TRANSPLANT	13.2352	26.4	54
104	05	SURG	CARDIAC VALVE PROCEDURE W PUMP & W CARDIAC CATH	7.8482	18.4	46
105	05	SURG	CARDIAC VALVE PROCEDURE W PUMP & W/O CARDIAC CATH	5.9965	13.2	41

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** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
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TABLE 5

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
106	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.6558	14.2	42
107	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.2260	10.8	39
108	05	SURG	OTHER CARDIOTHORACIC OR VASCULAR PROCEDURES, W PUMP	5.7332	11.5	39
109	05	SURG	OTHER CARDIOTHORACIC PROCEDURES W/O PUMP	3.7746	7.5	36
110	05	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP WITH CC	3.5967	12.3	40
111	05	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W/O CC	2.0351	8.3	36
112	05	SURG	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	1.9106	5.3	33
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	2.4616	14.3	42
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.6119	9.8	38
115	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	3.8541	12.6	41
116	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	2.5798	6.1	34
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.0867	4.8	33
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	2.0267	3.9	32
119	05	SURG	VEIN LIGATION & STRIPPING	.8259	3.7	32
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.7059	10.8	39
121	05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	1.6220	8.6	37
122	05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.1288	6.2	34
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.3934	3.0	31
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.1876	4.5	32
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	.6874	2.3	20
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.9894	16.8	45
127	05	MED	HEART FAILURE & SHOCK	1.0169	6.2	34
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.8129	7.8	35
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.3906	2.7	31
130	05	MED	PERIPHERAL VASCULAR DISORDERS WITH CC	.8921	5.9	34
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5014	4.2	32
132	05	MED	ATHEROSCLEROSIS WITH CC	.7565	4.3	32
133	05	MED	ATHEROSCLEROSIS W/O CC	.5420	3.2	27
134	05	MED	HYPERTENSION	.5964	4.3	32
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 WITH CC	.9018	5.1	33
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 W/O CC	.5408	3.4	29
137	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.6259	3.3	31
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS WITH CC	.8707	4.8	33
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.5715	3.4	28
140	05	MED	ANGINA PECTORIS	.6307	3.9	25

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
141	05	MED	SYNCOPE & COLLAPSE WITH CC	.6920	4.5	32
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5149	3.3	23
143	05	MED	CHEST PAIN	.5226	2.9	19
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.1035	5.6	34
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6236	3.5	31
146	06	SURG	RECTAL RESECTION WITH CC	2.7386	13.8	42
147	06	SURG	RECTAL RESECTION W/O CC	1.7349	9.9	37
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES WITH CC	3.2705	14.3	42
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.8656	9.9	32
150	06	SURG	PERITONEAL ADHESIOLYSIS WITH CC	2.6617	12.4	40
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.3478	8.0	36
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES WITH CC	1.4678	7.7	36
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0149	6.5	34
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 WITH CC	3.0172	13.0	41
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 W/O CC	1.8060	8.0	36
156	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8201	6.0	34
157	06	SURG	ANAL & STOMAL PROCEDURES WITH CC	.9571	5.4	33
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.5136	2.9	23
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 WITH CC	1.1037	5.5	33
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	.6314	3.3	23
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 WITH CC	.7337	3.5	32
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.4485	2.1	14
163	06	SURG	HERNIA PROCEDURES AGE 0-17	.7729	3.5	26
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG WITH CC	2.3737	10.8	39
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.3877	7.6	26
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG WITH CC	1.3991	6.8	35
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.7922	4.4	17
168	03	SURG	MOUTH PROCEDURES WITH CC	1.0050	3.7	32
169	03	SURG	MOUTH PROCEDURES W/O CC	.5468	2.2	18
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES WITH CC	2.8091	11.4	39
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.2568	6.1	34
172	06	MED	DIGESTIVE MALIGNANCY WITH CC	1.2216	7.1	35
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.8857	4.0	32
174	06	MED	G.I. HEMORRHAGE WITH CC	.9020	5.5	34
175	06	MED	G.I. HEMORRHAGE W/O CC	.5903	4.1	25

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
176	06	MED	COMPLICATED PEPTIC ULCER	.9831	6.0	34
177	06	MED	UNCOMPLICATED PEPTIC ULCER WITH CC	.7637	5.3	32
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.5650	4.1	23
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.0648	7.2	35
180	06	MED	G.I. OBSTRUCTION WITH CC	.9134	5.8	34
181	06	MED	G.I. OBSTRUCTION W/O CC	.5229	4.1	28
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 WITH CC	.7414	4.9	33
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	.5215	3.6	26
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	.5408	3.1	31
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	.7627	4.2	32
186	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	.4062	2.9	23
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.4856	2.2	20
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 WITH CC	.9730	5.2	33
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.4767	2.9	31
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.7671	4.3	32
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES WITH CC.	5.0674	16.9	45
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	2.1816	9.9	38
193	07	SURG	BILIARY TRACT PROC W CC EXCEPT ONLY TOT CHOLECYST W OR W/O C.D.E	3.0026	14.6	43
194	07	SURG	BILIARY TRACT PROC W/O CC EXCEPT ONLY TOT CHOLECYST W OR W/O C.D.E	1.7802	10.4	38
195	07	SURG	TOTAL CHOLECYSTECTOMY W C.D.E. WITH CC	2.2810	11.5	40
196	07	SURG	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	1.5106	8.9	30
197	07	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. WITH CC	1.7378	8.8	37
198	07	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	.9865	6.0	21
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.2585	12.0	40
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.7160	9.7	38
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.4093	8.9	37
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.1953	7.2	35
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.1174	6.7	35
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.0387	6.1	34
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA WITH CC	1.2068	6.8	35
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	.6124	3.7	32
207	07	MED	DISORDERS OF THE BILIARY TRACT WITH CC	.8566	5.6	34
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.5658	3.5	29
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	2.3437	11.2	39
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 WITH CC	2.0536	12.7	41

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.4716	10.1	38
212	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.4023	7.3	31
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	1.7701	9.9	38
214	08	SURG	BACK & NECK PROCEDURES WITH CC	1.9897	11.1	39
215	08	SURG	BACK & NECK PROCEDURES W/O CC	1.2155	7.5	35
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.7852	9.2	37
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	3.0640	14.0	42
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 WITH CC	1.5359	8.2	36
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	.9363	5.2	33
220	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	.9130	5.3	33
221	08	SURG	KNEE PROCEDURES WITH CC	1.5408	6.9	35
222	08	SURG	KNEE PROCEDURES W/O CC	.8055	3.7	32
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	.8405	3.8	32
224	08	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	.6248	2.8	19
225	08	SURG	FOOT PROCEDURES	.7063	3.2	31
226	08	SURG	SOFT TISSUE PROCEDURES WITH CC	1.4308	6.9	35
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.6618	3.1	30
228	08	SURG	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	.7911	2.8	28
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.5117	1.9	15
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	.8763	4.3	32
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	.9107	3.6	32
232	08	SURG	ARTHROSCOPY	1.1229	3.7	32
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC WITH CC	1.7280	8.6	37
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	.8477	4.6	33
235	08	MED	FRACTURES OF FEMUR	1.1576	8.1	36
236	08	MED	FRACTURES OF HIP & PELVIS	.8565	6.9	35
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5662	4.5	33
238	08	MED	OSTEOMYELITIS	1.5778	10.4	38
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	.9843	7.6	36
240	08	MED	CONNECTIVE TISSUE DISORDERS WITH CC	1.0769	7.1	35
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.6216	5.0	33
242	08	MED	SEPTIC ARTHRITIS	1.3229	8.6	37
243	08	MED	MEDICAL BACK PROBLEMS	.6501	5.0	33
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES WITH CC	.7184	5.4	33
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.5108	4.1	32

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
246	08	MED	NON-SPECIFIC ARTHROPATHIES	.5910	4.6	33
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	.5285	3.7	32
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.6120	4.4	32
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.6287	4.1	32
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 WITH CC	.6806	4.6	33
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	.4230	2.5	24
252	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	.3454	1.8	15
253	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 WITH CC	.7983	5.9	34
254	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	.4346	3.7	32
255	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.4582	2.9	31
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	.6251	3.9	32
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.9402	5.5	27
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7467	4.4	18
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.9987	4.8	33
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.5654	2.7	18
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	.6285	2.4	16
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.4464	2.0	13
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS WITH CC	2.5691	15.6	44
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.4197	9.7	38
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.3903	6.6	35
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	.6867	3.2	31
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.5738	2.7	31
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	.6431	2.5	30
269	09		OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE WITH CC	1.7287	8.3	36
270	09		OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE W/O CC	.6744	3.2	31
271	09	MED	SKIN ULCERS	1.1808	8.5	37
272	09	MED	MAJOR SKIN DISORDERS WITH CC	1.0183	7.3	35
273	09	MED	MAJOR SKIN DISORDERS W/O CC	.6811	5.7	34
274	09	MED	MALIGNANT BREAST DISORDERS WITH CC	1.0610	6.4	34
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.5793	3.4	31
276	09	MED	NON-MALIGANT BREAST DISORDERS	.5602	3.3	31
277	09	MED	CELLULITIS AGE >17 WITH CC	.9382	7.1	35
278	09	MED	CELLULITIS AGE >17 W/O CC	.6492	5.6	32
279	09	MED	CELLULITIS AGE 0-17	.7278	4.2	24
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 WITH CC	.6587	4.7	33

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
281	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	.4238	3.3	31
282	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	.2305	2.2	19
283	09	MED	MINOR SKIN DISORDERS WITH CC	.7624	5.5	34
284	09	MED	MINOR SKIN DISORDERS W/O CC	.4659	3.7	32
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	2.0191	16.2	44
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.5261	10.9	39
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.2372	13.7	42
288	10	SURG	O.R. PROCEDURES FOR OBESITY	1.8656	7.4	35
289	10	SURG	PARATHYROID PROCEDURES	1.0587	4.7	33
290	10	SURG	THYROID PROCEDURES	.7805	3.4	21
291	10	SURG	THYROGLOSSAL PROCEDURES	.4589	1.9	10
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC WITH CC	2.7779	12.4	40
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.1289	6.2	34
294	10	MED	DIABETES AGE >35	.7509	5.9	34
295	10	MED	DIABETES AGE 0-35	.7252	4.4	32
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 WITH CC	.9404	6.1	34
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	.5480	4.2	32
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	.6758	3.6	32
299	10	MED	INBORN ERRORS OF METABOLISM	.8623	4.8	33
300	10	MED	ENDOCRINE DISORDERS WITH CC	1.1086	7.1	35
301	10	MED	ENDOCRINE DISORDERS W/O CC	.6250	4.4	32
302	11	SURG	KIDNEY TRANSPLANT	3.7905	15.4	43
303	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.6773	12.3	40
304	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL WITH CC	2.4944	11.0	39
305	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.2807	6.0	34
306	11	SURG	PROSTATECTOMY WITH CC	1.4060	7.8	36
307	11	SURG	PROSTATECTOMY W/O CC	.7931	4.6	28
308	11	SURG	MINOR BLADDER PROCEDURES WITH CC	1.5067	6.9	35
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.7882	3.6	32
310	11	SURG	TRANSURETHRAL PROCEDURES WITH CC	.9014	4.4	32
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.5211	2.5	18
312	11	SURG	URETHRAL PROCEDURES, AGE >17 WITH CC	.8071	4.1	32
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.4757	2.4	21
314	11	SURG	URETHRAL PROCEDURES, AGE 0-17	.4271	2.3	26
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.3366	8.2	36

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** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED	RENAL FAILURE	1.2608	6.4	34
317	11	MED	ADMIT FOR RENAL DIALYSIS	.3814	2.3	22
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS WITH CC	1.0637	6.1	34
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5453	2.8	31
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 WITH CC	1.0261	6.9	35
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.6830	5.2	31
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	.7006	4.6	33
323	11	MED	URINARY STONES WITH CC, &/OR ESW LITHOTRIPSY	.7726	3.0	31
324	11	MED	URINARY STONES W/O CC	.3964	2.2	16
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 WITH CC	.6675	4.5	32
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	.4276	3.0	25
327	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	.5444	3.1	31
328	11	MED	URETHRAL STRICTURE AGE >17 WITH CC	.6445	3.9	32
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.4020	2.3	19
330	11	MED	URETHRAL STRICTURE AGE 0-17	.2754	1.6	8
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 WITH CC	.9501	5.3	33
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	.5557	3.3	31
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	.8084	4.9	33
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.8224	10.3	38
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.3462	8.4	24
336	12	SURG	TRANSURETHRAL PROSTATECTOMY WITH CC	.9827	5.8	30
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6603	4.2	15
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	.7604	3.1	31
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	.5847	2.5	30
340	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	.4283	2.4	13
341	12	SURG	PENIS PROCEDURES	.9851	3.8	29
342	12	SURG	CIRCUMCISION AGE >17	.4806	2.1	23
343	12	SURG	CIRCUMCISION AGE 0-17	.3742	1.7	6
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.0569	5.3	33
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	.7877	4.1	32
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, WITH CC	.9214	5.5	34
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.4664	2.5	29
348	12	MED	BENIGN PROSTATIC HYPERTROPHY WITH CC	.6635	3.8	32
349	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.3828	2.1	19
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6716	4.9	29

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
351	12	MED	STERILIZATION, MALE	.3283	1.3	5
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5500	3.1	31
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	2.0645	11.4	39
354	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG WITH CC	1.4248	8.2	36
355	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	.8943	5.7	15
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.7291	4.8	19
357	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIG	2.1705	10.8	39
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY WITH CC	1.2032	7.1	29
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.8132	5.4	14
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.7760	3.8	32
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	.6859	2.7	31
362	13	SURG	ENDOSCOPIC TUBAL INTERRUPTION	.3490	1.5	6
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.6987	3.6	32
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.4669	2.3	21
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.0928	8.8	37
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM WITH CC	1.1726	6.6	35
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.4896	2.9	31
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.8927	5.9	34
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.5109	3.1	31
370	14	SURG	CESAREAN SECTION W CC	.9848	6.2	34
371	14	SURG	CESAREAN SECTION W/O CC	.6544	4.5	13
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.4540	3.1	20
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.2987	2.2	8
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.4981	2.7	8
375	14	SURG	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.6735	4.4	29
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	.3502	2.8	25
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	1.5119	3.6	32
378	14	MED	ECTOPIC PREGNANCY	.7232	4.2	15
379	14	MED	THREATENED ABORTION	.2493	2.0	14
380	14	MED	ABORTION W/O D&C	.2644	1.8	14
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	.3789	1.7	13
382	14	MED	FALSE LABOR	.1186	1.2	4
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	.3759	3.4	31
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.3279	2.2	29
385	15		NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.2084	1.8	30

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
386	15		EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	3.6039	17.9	46
387	15		PREMATURITY W MAJOR PROBLEMS	1.8046	13.3	41
388	15		PREMATURITY W/O MAJOR PROBLEMS	1.1431	8.6	37
389	15		FULL TERM NEONATE W MAJOR PROBLEMS	2.4098	7.3	35
390	15		NEONATE W OTHER SIGNIFICANT PROBLEMS	.8111	3.8	32
391	15		NORMAL NEWBORN	.2191	3.1	11
392	16	SURG	SPLENECTOMY AGE >17	3.5891	12.4	40
393	16	SURG	SPLENECTOMY AGE 0-17	1.5022	9.1	37
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.5355	5.7	34
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.7466	4.6	33
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	.3575	1.8	15
397	16	MED	COAGULATION DISORDERS	1.0955	5.5	34
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS WITH CC	1.2279	6.7	35
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.6906	4.1	32
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.6981	10.5	38
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.2572	10.4	38
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	.8945	4.1	32
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6044	8.3	36
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.7758	4.6	33
405	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.0281	4.9	33
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	2.7445	11.9	40
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.3042	6.4	34
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	.9592	4.1	32
409	17	MED	RADIOTHERAPY	1.0357	6.9	35
410	17	MED	CHEMOTHERAPY	.4890	2.6	20
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.4543	2.7	27
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.4046	2.1	20
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG WITH CC	1.2853	7.3	35
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.7557	4.7	33
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.6424	15.1	43
416	18	MED	SEPTECEMIA AGE >17	1.5346	7.4	35
417	18	MED	SEPTECEMIA AGE 0-17	.8929	5.3	33
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9641	6.6	35
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 WITH CC	.9552	5.9	34
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6005	4.7	33

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
421	18	MED	VIRAL ILLNESS AGE >17	.6337	4.3	31
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	.5874	4.0	27
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.5845	8.0	36
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.3418	13.7	42
425	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.6470	4.5	32
426	19	MED	DEPRESSIVE NEUROSES	.6255	5.6	34
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.6133	5.4	33
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7325	6.3	34
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.9016	7.5	35
430	19	MED	PSYCHOSES	.8957	8.8	37
431	19	MED	CHILDHOOD MENTAL DISORDERS	.6347	5.9	34
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7329	4.5	32
433	20		ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.3974	3.2	31
434	20		ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT WITH CC	.7886	5.7	34
435	20		ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT W/O CC	.5510	4.9	33
436	20		ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	.9873	12.0	40
437	20		ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.2005	13.8	42
438	20		NO LONGER VALID	.0000	.0	0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.6781	6.7	35
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	2.4992	10.7	39
441	21	SURG	HAND PROCEDURES FOR INJURIES	.7381	2.5	31
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES WITH CC	1.8642	5.6	34
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.1906	4.2	32
444	21	MED	MULTIPLE TRAUMA AGE >17 WITH CC	.7694	5.3	33
445	21	MED	MULTIPLE TRAUMA AGE >17 W/O CC	.4950	3.7	32
446	21	MED	MULTIPLE TRAUMA AGE 0-17	.4738	2.4	22
447	21	MED	ALLERGIC REACTIONS AGE >17	.4702	2.6	24
448	21	MED	ALLERGIC REACTIONS AGE 0-17	.3428	2.9	17
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 WITH CC	.7883	4.4	32
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4648	2.7	28
451	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	.3947	2.6	15
452	21	MED	COMPLICATIONS OF TREATMENT WITH CC	.8932	4.6	33
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4725	3.1	31
454	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG WITH CC	.9104	4.6	33
455	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG W/O CC	.4226	2.7	27

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
456	22		BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	3.1114	5.6	34
457	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	1.8725	2.7	31
458	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT	3.8130	16.4	44
459	22	SURG	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.9164	10.0	38
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.0165	6.3	34
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	.7762	2.5	31
462	23	MED	REHABILITATION	1.9047	14.4	42
463	23	MED	SIGNS & SYMPTOMS W CC	.7540	5.1	33
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4719	3.3	31
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.5202	1.8	12
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.5463	2.6	31
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4339	2.4	30
468			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3.3150	12.7	41
469		**	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	0
470		**	UNGROUPABLE	.0000	.0	0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	3.9672	15.4	43
472	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE	12.7129	19.1	47
473	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.0963	9.4	37
474	04		RESPIRATORY SYSTEM DIAGNOSIS WITH TRACHEOSTOMY	13.4688	37.6	66
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.6290	9.9	38
476			PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.2425	15.0	43
477			NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.4318	6.6	35

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

BILLING CODE 4120-03-C

TABLE 6A—NEW DIAGNOSIS CODES

Diagnosis Code	Description	DRG	CC
088.81	Lyme disease	423	No.
088.89	Other specified arthropod-borne diseases	423	No.
345.00	Generalized nonconvulsive epilepsy, without mention of intractable epilepsy	24, 25, 26	No.
345.01	Generalized nonconvulsive epilepsy, with intractable epilepsy	24, 25, 26	Yes.
345.10	Generalized convulsive epilepsy, without mention of intractable epilepsy	24, 25, 26	Yes.
345.11	Generalized convulsive epilepsy, with intractable epilepsy	24, 25, 26	Yes.
345.40	Partial epilepsy, with impairment of consciousness, without mention of intractable epilepsy	24, 25, 26	No.
345.41	Partial epilepsy, with impairment of consciousness, with intractable epilepsy	24, 25, 26	Yes.
345.50	Partial epilepsy, without mention of impairment of consciousness, without mention of intractable epilepsy	24, 25, 26	No.
345.51	Partial epilepsy, without mention of impairment of consciousness, with intractable epilepsy	24, 25, 26	Yes.
345.60	Infantile spasms, without mention of intractable epilepsy	24, 25, 26	No.
345.61	Infantile spasms, with intractable epilepsy	24, 25, 26	Yes.
345.70	Epilepsia partialis continua, without mention of intractable epilepsy	24, 25, 26	No.
345.71	Epilepsia partialis continua, with intractable epilepsy	24, 25, 26	Yes.
345.80	Other forms of epilepsy, without mention of intractable epilepsy	24, 25, 26	No.
345.81	Other forms of epilepsy, with intractable epilepsy	24, 25, 26	Yes.
345.90	Epilepsy, unspecified, without mention of intractable epilepsy	24, 25, 26	No.
345.91	Epilepsy, unspecified with intractable epilepsy	24, 25, 26	Yes.
403.00	Hypertensive renal disease, malignant, without mention of renal failure	331, 332, 333	Yes.
403.01	Hypertensive renal disease, malignant, with renal failure	316	Yes.
403.10	Hypertensive renal disease, benign, without mention of renal failure	331, 332, 333	No.
403.11	Hypertensive renal disease, benign, with renal failure	316	Yes.
403.90	Hypertensive renal disease, unspecified, without mention of renal failure	331, 332, 333	No.
403.91	Hypertensive renal disease, unspecified, with renal failure	316	Yes.
404.00	Hypertensive heart and renal disease, malignant, without mention of congestive heart failure or renal failure	134	Yes.
404.01	Hypertensive heart and renal disease, malignant, with congestive heart failure	124, 127	Yes.
404.02	Hypertensive heart and renal disease, malignant, with renal failure	316	Yes.
404.03	Hypertensive heart and renal disease, malignant, with congestive heart failure and renal failure	124, 127	Yes.
404.10	Hypertensive heart and renal disease, benign, without mention of congestive heart failure or renal failure	134	No.
404.11	Hypertensive heart and renal disease, benign, with congestive heart failure	124, 127	Yes.
404.12	Hypertensive heart and renal disease, benign, with renal failure	316	Yes.
404.13	Hypertensive heart and renal disease, benign, with congestive heart failure and renal failure	124, 127	Yes.
404.90	Hypertensive heart and renal disease, unspecified, without mention of congestive heart failure or renal failure	134	No.
404.91	Hypertensive heart and renal disease, unspecified, with congestive heart failure	124, 127	Yes.
404.92	Hypertensive heart and renal disease, unspecified, with renal failure	316	Yes.
404.93	Hypertensive heart and renal disease, unspecified, with congestive heart failure and renal failure	124, 127	Yes.
410.00	Acute myocardial infarction, of anterolateral wall, episode of care, unspecified	132, 133	No.
410.01	Acute myocardial infarction, of anterolateral wall, initial episode of care	115, 121, 122, 123	Yes.
410.02	Acute myocardial infarction, of anterolateral wall, subsequent episode of care	132, 133	No.
410.10	Acute myocardial infarction, of other anterior wall, subsequent episode of care unspecified	132, 133	No.
410.11	Acute myocardial infarction, of other anterior wall, initial episode of care	115, 121, 122, 123	Yes.
410.12	Acute myocardial infarction, of other anterior wall, subsequent episode of care	132, 133	No.
410.20	Acute myocardial infarction, of inferolateral wall, episode of care unspecified	132, 133	No.
410.21	Acute myocardial infarction, of inferolateral wall, initial episode of care	115, 121, 122, 123	Yes.
410.22	Acute myocardial infarction, of inferolateral wall, subsequent episode of care	132, 133	No.
410.30	Acute myocardial infarction, of inferoposterior wall, episode of care unspecified	132, 133	No.
410.31	Acute myocardial infarction, of inferoposterior wall, initial episode of care	115, 121, 122, 123	Yes.
410.32	Acute myocardial infarction, of inferoposterior wall, subsequent episode of care	132, 133	No.
410.40	Acute myocardial infarction, of other inferior wall, episode of care unspecified	132, 133	No.
410.41	Acute myocardial infarction, of other inferior wall, initial episode of care	115, 121, 122, 123	Yes.
410.42	Acute myocardial infarction, of other inferior wall, subsequent episode of care	132, 133	No.
410.50	Acute myocardial infarction, of other lateral wall, episode of care unspecified	132, 133	No.
410.51	Acute myocardial infarction, of other lateral wall, initial episode of care	115, 121, 122, 123	Yes.
410.52	Acute myocardial infarction, of other lateral wall, subsequent episode of care	132, 133	No.
410.60	Acute myocardial infarction, true posterior wall infarction, episode of care unspecified	132, 133	No.
410.61	Acute myocardial infarction, true posterior wall infarction, initial episode of care	115, 121, 122, 123	Yes.
410.62	Acute myocardial infarction, true posterior wall infarction, subsequent episode of care	132, 133	No.
410.70	Acute myocardial infarction, subendocardial infarction, episode of care unspecified	132, 133	No.
410.71	Acute myocardial infarction, subendocardial infarction, initial episode of care	115, 121, 122, 123	Yes.
410.72	Acute myocardial infarction, subendocardial infarction, subsequent episode of care	132, 133	No.
410.80	Acute myocardial infarction, of other specified sites, episode of care unspecified	132, 133	No.
410.81	Acute myocardial infarction, of other specified sites, initial episode of care	115, 121, 122, 123	Yes.
410.82	Acute myocardial infarction, of other specified sites, subsequent episode of care	132, 133	No.
410.90	Acute myocardial infarction, unspecified site, episode of care unspecified	132, 133	No.
410.91	Acute myocardial infarction, unspecified site, initial episode of care	115, 121, 122, 123	Yes.
410.92	Acute myocardial infarction, unspecified site, subsequent episode of care	132, 133	No.
411.81	Acute ischemic heart disease without myocardial infarction	124, 140	Yes.
411.89	Other acute and subacute forms of ischemic heart disease	124, 140	Yes.
429.71	Acquired cardiac septal defect	124, 144, 145	Yes.
429.79	Other certain sequelae of myocardial infarction, not elsewhere classified	124, 144, 145	Yes.
493.20	Chronic obstructive asthma (with obstructive pulmonary disease), without mention of status asthmaticus	88	Yes.
493.21	Chronic obstructive asthma (with obstructive pulmonary disease), with status asthmaticus	88	Yes.
651.30	Twin pregnancy with fetal loss and retention of one fetus, unspecified as to episode of care or not applicable	469	No.
651.31	Twin pregnancy with fetal loss and retention of one fetus, delivered, with or without mention of antepartum condition	370, 371, 372, 373, 374, 375.	No.
651.33	Twin pregnancy with fetal loss and retention of one fetus, antepartum condition or complication	383, 384	No.
651.40	Triplet pregnancy with fetal loss and retention of one or more fetus(es), unspecified as to episode of care or not applicable.	469	No.

TABLE 6A—NEW DIAGNOSIS CODES—Continued

Diagnosis Code	Description	DRG	CC
651.41	Triplet pregnancy with fetal loss and retention of one or more fetus(es), delivered, with or without mention of antepartum condition.	370, 371, 372, 373, 374, 375.	No.
651.43	Triplet pregnancy with fetal loss and retention of one or more fetus(es), antepartum condition or complication	383, 384	No.
651.50	Quadruplet pregnancy with fetal loss and retention of one or more fetus(es), unspecified as to episode of care or not applicable.	469	No.
651.51	Quadruplet pregnancy with fetal loss and retention of one or more fetus(es), delivered, with or without mention of antepartum condition.	370, 371, 372, 373, 374, 375.	No.
651.53	Quadruplet pregnancy with fetal loss and retention of one or more fetus(es), antepartum condition or complication	383, 384	No.
651.60	Other multiple pregnancy with fetal loss and retention of one or more fetus(es), unspecified as to episode of care or not applicable.	469	No.
651.61	Other multiple pregnancy with fetal loss and retention of one or more fetus(es), delivered, with or without mention of antepartum condition.	370, 371, 372, 373, 374, 375.	No.
651.63	Other multiple pregnancy with fetal loss and retention of one or more fetus(es), antepartum condition or complication	383, 384	No.
759.81	Prader-Willi syndrome	390	No.
759.82	Marfan syndrome	390	No.
759.89	Other specified anomalies	390	No.
996.60	Infection and inflammatory reaction due to unspecified device, implant, and graft	452, 453	Yes.
996.61	Infection and inflammatory reaction due to cardiac device, implant, and graft	144, 145	Yes.
996.62	Infection and inflammatory reaction due to other vascular device, implant, and graft	144, 145	Yes.
996.63	Infection and inflammatory reaction due to nervous system device, implant, and graft	34, 35	Yes.
996.64	Infection and inflammatory reaction due to indwelling urinary catheter	331, 332, 333	Yes.
996.65	Infection and inflammatory reaction due to other genitourinary device, implant, and graft	331, 332, 333	Yes.
996.66	Infection and inflammatory reaction due to internal joint prosthesis	249	Yes.
996.67	Infection and inflammatory reaction due to other internal orthopedic device, implant, and graft	249	Yes.
996.69	Infection and inflammatory reaction due to other internal prosthetic device, implant, and graft	452, 453	Yes.
996.70	Other complications due to unspecified device, implant, and graft	452, 453	Yes.
996.71	Other complications due to heart valve prosthesis	144, 145	Yes.
996.72	Other complications due to other cardiac device, implant, and graft	144, 145	Yes.
996.73	Other complications due to renal dialysis device, implant, and graft	144, 145	Yes.
996.74	Other complications due to other vascular device, implant, and graft	144, 145	Yes.
996.75	Other complications due to nervous system device, implant, and graft	34, 35	Yes.
996.76	Other complications due to genitourinary device, implant, and graft	331, 332, 333	Yes.
996.77	Other complications due to internal joint prosthesis	249	Yes.
996.78	Other complications due to other internal orthopedic device, implant, and graft	249	Yes.
996.79	Other complications due to other internal prosthetic device, implant, and graft	452, 453	Yes.
V23.7	Insufficient prenatal care	469	Yes.
V30.00	Single liveborn, born in hospital, delivered without mention of cesarean section	391	No.
V30.01	Single liveborn, born in hospital, delivered by cesarean section	391	No.
V31.00	Twin, mate liveborn, born in hospital, delivered without mention of cesarean section	391	No.
V31.01	Twin, mate liveborn, born in hospital, delivered by cesarean section	391	No.
V32.00	Twin, mate stillborn, born in hospital, delivered without mention of cesarean section	391	No.
V32.01	Twin, mate stillborn, born in hospital, delivered by cesarean section	391	No.
V33.00	Twin, unspecified, born in hospital, delivered without mention of cesarean section	391	No.
V33.01	Twin, unspecified, born in hospital, delivered by cesarean section	391	No.
V34.00	Other multiple, mates all liveborn, born in hospital, delivered without mention of cesarean section	391	No.
V34.01	Other multiple, mates all liveborn, born in hospital, delivered by cesarean section	391	No.
V35.00	Other multiple, mates all stillborn, born in hospital, delivered without mention of cesarean section	391	No.
V35.01	Other multiple, mates all stillborn, born in hospital, delivered by cesarean section	391	No.
V36.00	Other multiple, mates live- and stillborn, born in hospital, delivered without mention of cesarean section	391	No.
V36.01	Other multiple, mates live- and stillborn, born in hospital, delivered by cesarean section	391	No.
V37.00	Other multiple, unspecified, born in hospital, delivered without mention of cesarean section	391	No.
V37.01	Other multiple, unspecified, born in hospital, delivered by cesarean section	391	No.
V39.00	Unspecified, born in hospital, delivered without mention of cesarean section	391	No.
V39.01	Unspecified, born in hospital, delivered by cesarean section	391	No.

TABLE 6B—NEW PROCEDURE CODES

Procedure Code	Description	DRG
11.75	Radial Keratotomy [1]	42; 442, 443
11.76	Epikeratophakia [1]	40, 41; 442, 443
31.95	Tracheoesophageal fistulization	Non-OR
32.01	Endoscopic excision or destruction of lesion or tissue of bronchus	Non-OR, 412
32.09	Other local excision or destruction of lesion or tissue of bronchus	75
32.28	Endoscopic excision or destruction of lesion or tissue of lung	Non-OR, 412
38.95	Venous catheterization for renal dialysis	Non-OR
42.33	Endoscopic excision or destruction of lesion or tissue of esophagus	Non-OR, 412
43.11	Percutaneous [endoscopic] gastrostomy [PEG]	Non-OR
43.19	Other gastrostomy	Non-OR
44.43	Endoscopic control of gastric or duodenal bleeding	Non-OR
44.44	Transcatheter embolization for gastric or duodenal bleeding	Non-OR
44.49	Other control of hemorrhage of stomach or duodenum	Non-OR
45.30	Endoscopic excision or destruction of lesion of duodenum	Non-OR, 412
45.43	Endoscopic destruction of other lesion or tissue of large intestine	Non-OR, 412
46.32	Percutaneous [endoscopic] jejunostomy [PEJ]	Non-OR
46.85	Dilation of colon	Non-OR
49.31	Endoscopic excision or destruction of lesion or tissue of anus	Non-OR, 412

TABLE 6B—NEW PROCEDURE CODES—Continued

Procedure Code	Description	DRG
49.39	Other local excision or destruction of lesion or tissue of anus	157, 158; 267
51.10	Endoscopic retrograde cholangiopancreatography [ERCP]	Non-OR, 412
51.14	Other closed [endoscopic] biopsy of biliary duct or sphincter of Oddi	Non-OR, 412
51.15	Pressure measurement of sphincter of Oddi	Non-OR
51.64	Endoscopic excision or destruction of lesion of biliary ducts or sphincter of Oddi	Non-OR, 412
51.84	Endoscopic dilation of ampulla and biliary duct	Non-OR, 412
51.85	Endoscopic sphincterotomy and papillotomy	Non-OR, 412
51.86	Endoscopic insertion of nasobiliary drainage tube	Non-OR, 412
51.87	Endoscopic insertion of stent (tube) into bile duct	Non-OR, 412
51.88	Endoscopic removal of stone(s) from biliary tract	Non-OR
52.13	Endoscopic retrograde pancreatography [ERP]	Non-OR, 412
52.14	Closed [endoscopic] biopsy of pancreatic duct	Non-OR, 412
52.21	Endoscopic excision or destruction of lesion or tissue of pancreatic duct	Non-OR, 412
52.22	Other excision or destruction of lesion or tissue of pancreas or pancreatic duct	191, 192; 292, 293
52.97	Endoscopic insertion of nasopancreatic drainage tube	Non-OR, 412
52.98	Endoscopic dilation of pancreatic duct	Non-OR, 412
57.17	Percutaneous cystostomy	Non-OR
57.18	Other suprapubic cystostomy	308, 309; 344, 345; 360; 400; 406, 407; 442, 443
77.56	Repair of hammer toe	225
77.57	Repair of claw toe	225
77.58	Other excision, fusion, and repair of toes	225; 442, 443
81.40	Repair of hip, not elsewhere classified	210, 211, 212; 442, 443
81.52	Partial hip replacement	209; 292, 293; 442, 443; 471
81.53	Revision of hip replacement	209; 292, 293; 442, 443; 471
81.54	Total knee replacement	209; 442, 443; 471
81.55	Revision of knee replacement	209; 442, 443; 471
81.56	Total ankle replacement	209; 442, 443; 471
81.57	Replacement of joint of foot and toe	225; 442, 443
81.72	Arthroplasty of metacarpophalangeal and interphalangeal joint without implant	7, 8; 228; 441
81.73	Total wrist replacement	209; 442, 443
81.74	Arthroplasty of carpocarpal or carpometacarpal joint with implant	7, 8; 228; 441
81.75	Arthroplasty of carpocarpal or carpometacarpal joint without implant	7, 8; 228; 441
81.80	Total shoulder replacement	209; 442, 443
88.97	Magnetic resonance imaging of other and unspecified sites	Non-OR
88.98	Bone mineral density studies [1]	Non-OR
89.10	Intracarotid amobarbital test	Non-OR
89.19	Video and radio-telemetered electroencephalographic monitoring	Non-OR
94.61	Alcohol rehabilitation	436
94.62	Alcohol detoxification	Non-OR
94.63	Alcohol rehabilitation and detoxification	437
94.64	Drug rehabilitation	436
94.65	Drug detoxification	Non-OR
94.66	Drug rehabilitation and detoxification	437
94.67	Combined alcohol and drug rehabilitation	436
94.68	Combined alcohol and drug detoxification	Non-OR
94.69	Combined alcohol and drug rehabilitation and detoxification	437
97.05	Replacement of stent (tube) in biliary or pancreatic duct	Non-OR
98.51	Extracorporeal shockwave lithotripsy [ESWL] of the kidney, ureter and/or bladder	Non-OR, 323
98.52	Extracorporeal shockwave lithotripsy [ESWL] of the gallbladder and /or bile duct [1]	Non-OR
98.59	Extracorporeal shockwave lithotripsy of other sites [1]	Non-OR

[1] These procedures are not covered under Medicare. See Medicare Coverage Issues Manual 35-54; 35-81 and 50-44. Procedures potentially classified under code 98.59 will be evaluated for Medicare Coverage as they are developed.

TABLE 6C—REVISED PROCEDURE CODE TITLES AND INCLUSION TERMS THAT AFFECT DRG ASSIGNMENT

Procedure Code	Description	DRG
38.93	Venous catheterization, not elsewhere classified	No change
43.41	Endoscopic excision or destruction of lesion or tissue of stomach	Non-OR; 412
45.31	Other local excision of lesion of duodenum	No change
45.41	Excision of lesion or tissue of larger intestine	No change
45.42	Endoscopic polypectomy of large intestine	Non-OR; 412
51.11	Endoscopic retrograde cholangiography [ERC]	Non-OR; 412
51.12	Percutaneous biopsy of gall-bladder or bile ducts	Non-OR
51.82	Pancreatic sphincterotomy	154, 155, 156; 191, 192; 442, 443
52.92	Cannulation of pancreatic duct	No change
52.93	Endoscopic insertion of stent (tube) into pancreatic duct [1]	Non-OR; 412
52.94	Endoscopic removal of stone(s) from pancreatic duct [1]	Non-OR
52.99	Other operation on pancreas, not elsewhere classified [1]	170, 171; 191, 192; 442, 443
57.19	Other cystostomy	308, 309; 442, 443
57.21	Vesicostomy	308, 309; 344, 345; 360; 400; 406, 407; 442, 443
57.22	Revision or closure of vesicostomy	308, 309; 344, 345; 365; 400; 406, 407; 442, 443
77.54	Excision or correction of bunionette	No change
81.02	Other cervical fusion, anterior technique	4; 214, 215; 442, 443

TABLE 6C—REVISED PROCEDURE CODE TITLES AND INCLUSION TERMS THAT AFFECT DRG ASSIGNMENT—Continued

Procedure Code	Description	DRG
81.03	Other cervical fusion, posterior technique	4; 214, 215; 442, 443
81.04	Dorsal and dorsolumbar fusion, anterior technique	4; 214, 215; 442, 443
81.05	Dorsal and dorsolumbar fusion, posterior technique	4; 214, 215; 442, 443
81.06	Lumbar and lumbosacral fusion, anterior technique	4; 214, 215; 442, 443
81.07	Lumbar and lumbosacral fusion, lateral transverse process technique	4; 214, 215; 442, 443
81.08	Lumbar and lumbosacral fusion, posterior technique	4; 214, 215; 442, 443
81.09	Refusion of spine, any level or technique	4; 214, 215; 442, 443
81.51	Total hip replacement	209; 442, 443; 471
81.59	Revision of joint replacement, not elsewhere classified	233, 234; 442, 443
81.71	Arthroplasty of metacarpophalangeal and interphalangeal joint with implant	7, 8; 228; 441
81.79	Other repair of hand, fingers, and wrist	7, 8; 228; 441
81.81	Partial shoulder replacement	209; 442, 443
81.84	Total elbow replacement	209; 442, 443
89.68	Monitoring of cardiac output by other technique	Non-OR

[1] The notes for code 52.99 were revised to include the open procedures formerly included in codes 52.93 and 52.94, thus adding 52.99 to DRGs 170 and 171.

TABLE 6D—EXPANDED DIAGNOSIS CODES THAT ARE NO LONGER ACCEPTED IN GROUPER [1]

Diagnosis Code	Description	DRG
088.8	Other specified arthropod-borne diseases	423
345.0	Generalized nonconvulsive epilepsy	24, 25, 26
345.1	Generalized convulsive epilepsy	24, 25, 26
345.4	Partial epilepsy, with impairment or consciousness	24, 25, 26
345.5	Partial epilepsy, without mention of impairment of consciousness	24, 25, 26
345.6	Infantile spasms	24, 25, 26
345.7	Epilepsia partialis continua	24, 25, 26
345.8	Other forms of epilepsy	24, 25, 26
345.9	Epilepsy, unspecified	24, 25, 26
403.0	Hypertensive renal disease, malignant	331, 332, 333
403.1	Hypertensive renal disease, benign	331, 332, 333
403.9	Hypertensive renal disease, unspecified	331, 332, 333
404.0	Hypertensive heart and renal disease, malignant	134
404.1	Hypertensive heart and renal disease, benign	134
404.9	Hypertensive heart and renal disease, unspecified	134
410.0	Acute myocardial infarction, of anterolateral wall	115, 121, 122, 123
410.1	Acute myocardial infarction, of other anterior wall	115, 121, 122, 123
410.2	Acute myocardial infarction, of inferolateral wall	115, 121, 122, 123
410.3	Acute myocardial infarction, of inferoposterior wall	115, 121, 122, 123
410.4	Acute myocardial infarction, of other inferior wall	115, 121, 122, 123
410.5	Acute myocardial infarction, of other lateral wall	115, 121, 122, 123
410.6	True posterior wall infarction	115, 121, 122, 123
410.7	Acute myocardial infarction, subendocardial infarction	115, 121, 122, 123
410.8	Acute myocardial infarction of other specified sites	115, 121, 122, 123
410.9	Acute myocardial infarction, unspecified site	115, 121, 122, 123
411.8	Other acute and subacute forms of ischemic heart disease, unspecified	124, 140
759.8	Other specified congenital anomalies	390
996.6	Infection and inflamatory reaction due to internal prosthetic device, implant, and graft	452, 453
996.7	Other complications of internal prosthetic device, implant, and graft	452, 453
V30.0	Single liveborn, born in hospital	391
V31.0	Twin, mate liveborn, born in hospital	391
V32.0	Twin, mate stillborn, born in hospital	391
V33.0	Twin, unspecified, born in hospital	391
V34.0	Other multiple, mates all liveborn, born in hospital	391
V35.0	Other multiple, mates all stillborn, born in hospital	391
V36.0	Other multiple, mates live- and stillborn, born in hospital	391
V37.0	Other multiple unspecified, born in hospital	391
V39.0	Liveborn unspecified, born in hospital	391

[1] See Table 6a for New Diagnosis Codes (5 digits).

TABLE 6E—DELETED PROCEDURE CODES

Procedure Code	Description	DRG
32.0	Local excision or destruction of lesion or tissue of bronchus	75
43.1	Temporary gastrostomy	Non-OR
43.2	Permanent gastrostomy	Non-OR
49.3	Local excision or destruction of other lesion or tissue of anus	157, 158; 267
51.97	Therapeutic endoscopic procedures on biliary tract, oral route	Non-OR
52.2	Local excision or destruction of pancreatic lesion	191, 192; 292, 293
52.91	Endoscopic retrograde cannulation of pancreatic duct [ERCP]	Non-OR
98.95	Extracorporeal shockwave lithotripsy [ESWL]	Non-OR
81.18	Other fusion of toe	225; 442, 443
81.31	Arthroplasty of foot and toe with synthetic prosthesis	7, 8; 225; 442, 443
81.39	Other arthroplasty of foot and toe	7, 8; 225; 442, 443

TABLE 6E—DELETED PROCEDURE CODES—Continued

Procedure Code	Description	DRG
81.41	Total knee replacement	209; 442, 443; 471
81.48	Total ankle replacement	209; 442, 443; 471
81.61	Replacement of head of femur with use of methyl methacrylate	209; 292, 293; 442, 443; 471
81.62	Other replacement of head of femur	209; 292, 293; 442, 443; 471
81.63	Replacement of acetabulum with use of methyl methacrylate	209; 442, 443; 471
81.64	Other replacement of acetabulum	209; 442, 443; 471
81.69	Other repair of hip	210, 211, 212; 442, 443
81.86	Arthroplasty of carpals with synthetic prosthesis	7, 8; 228; 441
81.87	Other repair of wrist	7, 8; 228; 441
88.99	Magnetic resonance imaging of other and unspecified sites	Non-OR

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Table 6f --Additions to the CC Exclusions List

CCs that are added to the list are in Table 6f--Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

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Table 6q --Deletions to the CC Exclusions List

CCs that are deleted from the list are in Table 6g--Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

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TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	26393	19.5380	5	8	14	23	39
002	5618	20.1499	4	7	13	24	42
003	4	22.0000	12	12	12	32	32
004	4759	17.2820	4	7	12	21	34
005	48161	7.9049	3	4	6	9	15
006	1798	2.9082	1	1	2	3	6
007	6040	26.0570	3	6	13	27	59
008	4072	5.1790	1	2	3	6	11
009	2082	11.5034	2	4	7	13	24
010	18394	11.6908	2	4	8	15	24
011	4887	7.1078	1	3	5	9	14
012	24527	10.9543	2	4	7	12	20
013	5285	9.4102	3	4	8	11	16
014	326680	10.8496	3	5	8	13	21
015	150820	5.6843	2	3	4	7	10
016	13631	9.7055	3	4	7	11	19
017	5503	6.4923	2	3	5	8	12
018	12970	9.1760	2	4	6	11	18
019	10395	5.7537	1	2	4	7	12
020	6076	12.2168	2	5	9	15	25
021	781	10.6274	3	5	7	13	20
022	11966	5.7956	2	3	4	7	11
023	4070	6.8402	1	3	5	8	13
024	49400	7.8494	2	3	5	9	15
025	27296	4.7074	1	2	4	6	9
026	50	4.9400	1	2	3	6	9
027	2743	9.6952	1	1	5	12	22
028	7018	10.0865	1	3	6	12	21
029	4560	5.1252	1	2	3	6	11
030	1	1.0000	1	1	1	1	1
031	4389	6.7266	1	2	4	8	13
032	4517	3.8123	1	2	3	5	8
034	12229	9.5245	2	3	6	11	18
035	4852	5.5517	1	2	4	7	10
036	21527	3.1004	1	2	3	4	5
037	3212	4.7883	1	2	3	5	10
038	1288	2.9852	1	1	2	3	6
039	27706	2.0235	1	1	2	2	3
040	5232	3.1047	1	1	2	3	7
041	1	2.0000	2	2	2	2	2
042	24436	3.0432	1	1	2	3	5
043	327	4.5260	2	2	4	6	8
044	2326	6.7975	3	4	6	8	12
045	3221	4.3735	1	2	3	6	8
046	3356	5.9839	1	2	4	7	12
047	3101	3.9000	1	1	2	5	8
048	1	12.0000	12	12	12	12	12
049	7510	15.7061	3	7	12	19	30
050	5602	2.9509	1	2	2	3	5
051	738	3.1992	1	1	2	3	6
052	174	4.5000	1	2	3	4	8

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
053	9210	3.2684	1	1	2	3	7
055	7007	2.7505	1	1	1	2	5
056	1429	2.5031	1	1	2	3	5
057	858	6.3998	1	2	3	7	14
059	205	2.3150	1	1	1	2	4
061	488	4.2244	1	1	2	4	10
062	1	2.0000	2	2	2	2	2
063	8462	7.6551	1	2	4	8	16
064	6336	9.6026	1	2	5	11	21
065	31177	4.1867	2	2	3	5	8
066	10867	4.1081	1	2	3	5	7
067	427	5.7237	2	3	4	7	11
068	17144	6.2170	2	3	5	7	11
069	7104	4.7479	2	3	4	6	8
070	21	4.0476	2	2	3	5	7
071	145	6.2000	2	3	4	7	11
072	800	5.1400	1	2	3	6	10
073	8610	6.0841	1	2	4	7	12
074	1	3.0000	3	3	3	3	3
075	30798	14.6712	6	8	11	18	27
076	31487	15.0482	3	7	11	18	29
077	4748	7.3307	1	2	5	10	15
078	27912	10.6460	4	7	10	13	17
079	103023	12.5184	4	6	10	15	23
080	13077	9.2054	3	5	7	11	16
081	9	12.3333	2	7	10	16	19
082	79189	9.8489	2	4	7	12	20
083	7552	8.7673	3	4	7	11	16
084	2520	5.1147	2	2	4	6	10
085	15208	9.1284	2	4	7	12	18
086	2504	6.1093	2	3	5	8	12
087	65065	8.7957	2	4	7	11	17
088	93068	7.9341	2	4	6	9	14
089	332995	9.1679	3	4	7	11	16
090	62797	6.7632	3	4	6	9	11
091	87	5.5676	3	3	5	7	11
092	8564	9.1685	3	4	7	11	17
093	2207	6.4676	2	3	5	8	12
094	8077	10.0288	3	5	8	12	20
095	1748	6.1061	2	3	5	8	12
096	208655	7.3624	3	4	6	9	13
097	50591	5.5078	2	3	5	7	10
098	14	8.3571	2	4	6	9	20
099	35981	6.0854	2	3	4	7	12
100	12505	3.9109	1	2	3	4	7
101	22387	7.4853	2	3	6	9	14
102	5609	4.7474	1	2	4	6	9
103	118	38.1271	11	16	30	46	71
104	11480	22.7687	10	13	19	26	40
105	12103	16.9642	8	10	12	18	30
106	62031	17.0455	8	11	14	19	27

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
107	41466	12.9983	7	8	10	14	20
108	5305	15.7840	5	9	12	18	29
109	11266	12.5097	1	4	9	16	26
110	60514	16.4622	6	9	12	19	31
111	18716	9.5400	5	7	9	11	15
112	103146	7.5528	2	3	5	9	15
113	33301	18.1795	6	9	14	22	37
114	8704	13.7146	3	6	10	17	27
115	5609	15.2164	6	9	13	18	26
116	47921	7.9448	2	4	6	10	15
117	5985	7.0864	2	3	5	9	14
118	10584	6.0233	1	2	4	7	13
119	4202	6.0157	1	2	3	7	14
120	23059	17.5540	3	6	12	22	37
121	139810	10.6542	4	7	9	13	18
122	125015	7.4534	2	5	7	10	13
123	66721	5.5788	1	1	3	7	14
124	86754	6.2876	1	2	5	8	13
125	106954	3.1223	1	1	2	4	7
126	3762	22.2517	5	10	19	31	43
127	530476	8.1277	3	4	6	10	15
128	31570	8.9660	4	6	8	11	14
129	8285	5.5132	1	1	2	7	13
130	60002	8.2147	2	4	7	10	15
131	30956	5.9181	1	2	5	8	11
132	17350	5.8205	2	3	4	7	11
133	7016	4.3007	1	2	3	5	8
134	36023	5.6856	2	3	4	7	10
135	7352	7.2087	2	3	5	8	14
136	1936	4.4003	1	2	3	5	8
137	2	3.0000	2	2	4	4	4
138	173867	6.3764	2	3	5	8	12
139	80386	4.2667	1	2	3	5	8
140	371760	4.8779	2	3	4	6	9
141	72875	5.8896	2	3	4	7	11
142	41214	4.1970	1	2	3	5	7
143	96969	3.8274	1	2	3	4	8
144	44108	7.8277	2	3	6	10	15
145	8234	4.5947	1	2	4	6	9
146	7466	16.2107	8	10	13	18	27
147	2799	10.7208	6	8	10	13	16
148	125812	17.7309	8	10	14	20	31
149	29140	10.8227	7	8	10	12	16
150	17687	15.2582	6	9	12	18	27
151	6814	9.2433	4	6	8	11	15
152	7793	9.0978	3	5	8	12	18
153	4078	7.3600	3	5	7	9	11
154	48511	17.8273	5	8	13	21	34
155	8022	9.6841	4	6	8	12	17
156	1	12.0000	12	12	12	12	12
157	25779	7.4432	2	3	5	9	14

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
158	21089	3.7491	1	2	3	5	7
159	13633	7.2501	2	3	6	9	13
160	159[illegible]	4.0824	1	2	4	5	7
161	32[illegible]90	4.9269	1	2	3	6	10
162	47652	2.6429	1	1	2	3	5
163	28	5.0000	2	2	4	6	8
164	4270	12.9927	6	8	11	15	21
165	2072	8.2838	5	6	8	10	13
166	2581	8.5806	3	5	7	10	15
167	2774	4.9877	3	3	4	6	8
168	2359	6.3374	1	2	3	7	14
169	2622	3.1430	1	1	2	3	6
170	12505	16.9693	3	7	12	21	34
171	2305	8.3140	2	4	7	10	16
172	30622	10.6298	2	4	7	13	22
173	5414	6.0207	1	2	4	7	12
174	134572	7.2722	2	4	6	9	13
175	34740	4.8612	2	3	4	6	8
176	11915	7.8049	3	4	6	9	15
177	18417	6.4592	3	4	5	8	11
178	9811	4.8819	2	3	4	6	8
179	7321	9.9063	3	5	7	12	19
180	55665	7.9124	2	4	6	10	15
181	26584	5.0712	2	3	4	6	9
182	240706	6.4427	2	3	5	8	12
183	95154	4.5541	1	2	4	6	8
184	58	4.2759	1	2	3	5	9
185	4190	6.4174	1	2	4	8	13
186	2	2.0000	2	2	2	2	2
187	1756	3.2027	1	1	2	3	7
188	85974	7.5470	2	3	5	9	15
189	11765	4.2564	1	1	3	5	8
190	171	5.8246	2	3	4	7	18
191	7768	23.2004	7	11	17	28	45
192	1354	13.7260	6	8	11	16	28
193	18292	17.6045	8	10	14	21	31
194	2757	12.0022	5	8	10	15	20
195	22808	13.5987	7	8	11	16	22
196	4061	9.7030	5	7	9	12	15
197	60308	10.5198	5	6	9	12	18
198	40640	6.6438	4	4	6	8	10
199	3424	15.3023	5	8	12	19	29
200	2091	14.4974	3	6	10	18	29
201	4916	13.4493	2	5	9	17	28
202	14428	10.0640	2	4	8	12	20
203	29987	9.8787	2	4	7	13	20
204	33636	8.1114	3	4	6	10	15
205	18670	9.5019	2	4	7	12	19
206	3639	5.4086	1	2	4	7	11
207	35434	7.4519	2	4	6	9	14
208	17229	4.4990	1	2	4	6	8

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TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
209	206383	12.7093	7	9	11	14	19
210	92997	15.5039	7	9	12	17	26
211	45414	11.4067	6	8	10	13	17
212	11	8.9909	3	5	8	9	10
213	5873	13.9001	4	6	10	17	28
214	26992	13.9407	5	7	11	16	25
215	33560	8.7594	4	5	8	10	15
216	4077	13.8253	2	4	10	18	30
217	14503	23.0136	3	8	15	29	49
218	12301	11.0289	3	5	8	13	21
219	16092	6.4506	2	4	5	8	11
220	5	22.2000	4	4	5	7	30
221	3898	10.0103	2	4	7	12	20
222	7912	5.2300	1	2	4	7	11
223	15519	5.8044	2	3	4	7	11
224	8628	3.8778	1	2	3	4	6
225	14709	4.9118	1	2	3	5	11
226	4577	10.7927	2	4	7	13	23
227	8372	4.2736	1	2	3	5	9
228	5355	4.1092	1	2	3	4	8
229	4162	2.6419	1	1	2	3	5
230	2968	7.1055	1	2	4	8	15
231	6664	6.3776	1	2	3	7	14
232	740	7.1014	1	1	3	9	18
233	5854	12.4277	3	5	8	15	25
234	6094	6.1062	2	3	5	8	12
235	6500	13.0725	2	4	8	15	33
236	39756	10.0818	2	4	7	12	19
237	1820	6.1835	2	3	5	7	11
238	5438	14.4456	4	6	11	18	28
239	50886	10.3527	3	5	8	13	20
240	10719	9.7551	3	4	7	12	19
241	5016	6.4028	2	3	5	8	12
242	2821	11.5511	3	5	8	15	24
243	132108	6.9208	1	3	6	9	12
244	11491	7.6643	2	3	6	9	14
245	7070	5.6838	1	3	4	7	11
246	2170	6.0226	3	3	5	7	11
247	10187	5.0982	1	2	4	6	10
248	6838	5.9906	2	3	5	7	11
249	5649	6.3205	1	2	4	8	13
250	3725	6.0027	2	3	4	8	13
251	5004	3.4680	1	1	2	4	7
252	2	5.0000	3	3	7	7	7
253	16032	8.9998	3	3	6	10	17
254	15940	5.1040	1	2	4	6	10
255	1	2.0000	2	2	2	2	2
256	9057	5.6629	1	2	4	7	11
257	27072	6.3715	3	4	5	8	11
258	31906	4.8970	2	3	4	6	8
259	3411	7.5427	2	3	5	9	16

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
260	4268	3.3116	1	2	3	4	6
261	4871	3.0217	1	2	2	4	5
262	3513	2.6496	1	1	2	3	5
263	29306	22.5671	6	9	15	27	45
264	7028	13.6653	3	6	10	17	28
265	5411	10.9115	2	3	7	13	23
266	8464	4.9436	1	2	3	6	10
267	587	4.6349	1	1	2	5	9
268	1904	4.1686	1	1	2	6	9
269	9714	12.9418	2	5	9	16	27
270	6716	4.8691	1	2	3	6	10
271	17177	11.7595	3	6	8	14	22
272	6678	9.7549	3	5	7	12	19
273	3276	7.6947	2	4	6	9	15
274	4074	10.0751	2	3	7	12	21
275	784	6.5163	1	2	3	6	11
276	1140	5.0060	1	2	4	7	10
277	55692	8.0300	3	5	7	11	16
278	27739	6.7380	3	4	6	8	12
279	9	4.7778	2	2	4	6	8
280	13009	6.8889	2	3	5	8	13
281	9071	4.6046	1	2	3	6	9
283	6069	7.7060	2	3	6	9	15
284	3478	4.9687	1	2	4	6	10
285	3717	23.1560	6	10	16	28	45
286	1546	13.7419	6	7	10	18	26
287	7036	20.7377	5	8	13	23	42
288	516	11.7825	3	5	7	10	26
289	3798	6.9238	2	3	4	7	14
290	9094	4.6078	2	2	3	5	8
291	194	2.2474	1	1	2	3	4
292	5129	18.4075	4	8	13	22	35
293	966	8.9188	2	4	7	11	16
294	100709	7.6569	3	4	6	9	13
295	3211	6.1155	2	3	5	7	11
296	107031	6.7305	2	4	6	10	16
297	56224	5.7147	2	3	4	7	10
298	81	6.3333	1	2	4	6	11
299	929	7.3122	1	3	5	9	15
300	10828	8.6271	3	6	7	12	18
301	3020	6.0381	2	3	5	7	11
302	6147	18.2588	6	10	15	22	32
303	16007	14.9792	7	9	12	17	26
304	14727	14.6942	4	7	11	18	28
305	6078	7.7945	2	4	7	10	14
306	11501	10.2914	3	5	8	13	19
307	6183	5.6835	2	3	5	7	10
308	9579	10.2485	2	4	7	13	21
309	5039	4.9803	1	2	4	7	10
310	33668	6.3068	2	3	4	9	12
311	20035	3.1968	1	2	3	4	6

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
312	4100	5.9815	1	2	4	7	12
313	3153	3.2363	1	1	2	4	7
314	3	5.3333	2	2	3	11	11
315	27941	14.1597	2	4	9	17	30
316	39610	9.4892	2	4	7	12	19
317	1570	3.3949	1	1	2	4	6
318	7600	9.2819	2	3	6	12	20
319	1697	4.6338	1	1	3	5	9
320	143597	8.9053	3	5	7	10	15
321	39565	6.3620	3	4	5	8	11
322	73	5.6164	2	3	5	7	12
323	25738	4.2619	1	2	3	5	9
324	18484	2.8419	1	1	2	3	5
325	10962	6.1449	2	3	5	7	12
326	5742	4.0378	1	2	3	5	7
327	9	3.2222	1	1	3	4	4
328	1991	5.5932	1	2	4	7	11
329	696	2.9239	1	1	2	4	6
330	2	4.0000	3	3	5	5	5
331	26738	7.7409	2	3	6	10	16
332	9355	4.6817	1	2	3	6	10
333	369	7.4851	1	3	5	10	16
334	10381	11.8383	6	8	10	14	19
335	8532	8.9596	6	7	8	10	13
336	101077	7.0463	3	4	5	8	12
337	107610	4.6772	3	3	4	5	7
338	10581	5.6946	1	1	3	7	14
339	5502	4.2057	1	1	2	4	9
340	5	3.4000	3	3	3	4	4
341	18395	4.8403	1	3	4	6	8
342	853	3.2532	1	1	2	3	9
344	3588	7.2056	2	4	5	8	12
345	2275	5.9130	1	2	4	7	12
346	10297	8.4020	2	3	6	10	17
347	2380	3.8040	1	1	2	4	8
348	3956	5.6622	1	2	4	7	11
349	3909	2.9724	1	1	2	3	6
350	8998	6.0008	2	3	5	7	10
351	3	2.6667	1	1	2	3	5
352	1097	4.7101	1	2	3	5	9
353	2066	13.9429	6	8	11	18	25
354	7362	9.7275	5	6	8	11	16
355	7159	6.1004	4	5	6	7	9
356	29979	5.4394	3	4	5	7	8
357	6603	13.3951	6	7	10	16	24
358	15596	8.2002	4	5	7	9	13
359	27951	5.6077	4	4	5	6	8
360	4790	6.0562	1	2	4	7	13
361	462	4.5974	1	1	2	5	11
362	30	1.7333	1	1	1	2	2
363	4286	5.5405	1	2	3	5	11

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
364	4439	3.4246	1	1	2	4	7
365	3551	12.3616	3	5	8	15	26
366	5581	10.5856	2	3	7	13	23
367	1501	4.4350	1	1	3	5	9
368	1546	7.8386	3	4	6	9	14
369	3085	4.7822	1	2	3	6	9
370	467	8.3033	4	4	6	8	14
371	706	4.9093	3	4	4	5	6
372	270	4.2078	2	2	3	4	8
373	1849	2.6219	1	2	2	3	4
374	288	2.9063	2	2	3	3	4
375	7	9.5714	2	2	10	11	11
376	94	4.1702	1	2	3	4	8
377	30	7.7667	1	1	3	7	10
378	125	4.5600	3	3	4	5	7
379	244	2.6557	1	1	2	3	5
380	76	2.3553	1	1	2	2	5
381	296	2.2804	1	1	1	3	5
382	87	1.7586	1	1	1	1	3
383	737	4.9403	1	2	3	6	9
384	118	3.3644	1	1	2	4	7
385	4	20.7500	1	1	9	10	63
386	1	10.0000	10	10	10	10	10
389	26	12.9231	2	3	5	23	27
390	29	7.0345	1	1	5	7	16
391	1	7.0000	7	7	7	7	7
392	2555	16.5202	8	8	12	21	32
393	3	36.6667	7	7	9	94	94
394	2345	10.5527	1	3	6	12	23
395	73664	6.5835	1	3	5	8	13
396	53	2.4340	1	1	2	3	5
397	10330	7.7293	2	3	6	9	15
398	12238	8.1821	3	4	7	11	18
399	2737	5.9569	1	2	4	7	11
400	7960	15.1925	4	6	11	18	32
401	6808	15.3152	3	6	11	20	33
402	3602	6.1141	1	2	4	8	13
403	24380	12.3690	2	5	9	16	26
404	7384	6.6568	1	3	5	8	14
406	3939	16.1879	4	7	12	21	32
407	1764	9.2764	2	4	7	10	15
408	10042	6.7855	1	2	4	7	15
409	8847	10.6601	2	4	6	14	23
410	135537	3.4776	1	2	3	4	6
411	581	3.6817	1	1	3	5	8
412	572	2.9228	1	1	2	3	6
413	10418	11.1317	2	4	8	14	24
414	8575	7.1910	1	2	5	9	15
415	24841	21.7509	5	9	15	26	43
416	106864	10.6235	2	5	8	13	20
417	39	6.7436	2	4	6	7	14

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
418	11456	8.6144	3	4	7	11	16
419	15860	7.7802	2	4	6	9	15
420	4683	5.9445	2	3	5	7	11
421	14409	5.6390	2	3	4	7	10
422	102	4.8137	2	2	4	6	9
423	8363	11.8035	3	5	8	14	23
424	3422	24.1642	3	8	15	27	49
425	15991	6.5508	2	3	4	8	13
426	9476	8.0496	2	3	6	10	17
427	2127	8.2281	2	3	6	10	17
428	1254	10.6164	1	3	7	13	22
429	30683	12.3370	3	4	7	13	22
430	61090	12.8490	3	5	9	16	26
431	409	9.0611	2	3	6	11	18
432	837	7.8038	1	2	4	9	19
433	5209	5.0035	1	2	3	6	12
434	16479	8.4696	2	3	6	10	18
435	13606	7.4311	2	3	5	8	18
436	4221	15.9128	3	7	15	25	29
437	9335	17.2863	4	9	17	26	30
439	1242	13.3398	1	3	7	15	33
440	7491	17.6641	3	6	11	22	40
441	1008	4.5974	1	1	2	5	9
442	43407	9.9377	1	2	6	12	22
443	14365	6.5082	1	2	4	9	14
444	3860	7.2153	2	3	5	9	14
445	2789	5.1660	1	2	4	6	9
446	1	1.0000	1	1	1	1	1
447	2842	3.5943	1	1	3	4	7
448	1	2.0000	2	2	2	2	2
449	32433	6.4051	1	3	5	8	12
450	11012	3.9457	1	1	3	5	8
451	10	3.0000	1	2	3	4	5
452	23294	6.9297	1	3	5	8	14
453	10130	4.3631	1	2	3	5	9
454	5086	7.1891	1	2	5	8	15
455	1744	4.1726	1	2	3	5	8
456	240	13.3250	1	2	6	14	37
457	137	6.3066	1	1	1	8	17
458	1914	23.8072	5	10	18	30	48
459	1017	15.4798	3	6	10	19	33
460	2339	9.4361	2	4	7	11	18
461	8303	5.2579	1	1	2	5	12
462	6358	18.8877	5	9	16	25	36
463	9718	7.1176	2	3	5	9	14
464	3638	4.5709	1	2	3	6	9
465	838	2.7757	1	1	2	3	5
466	5112	3.2162	1	1	2	5	11
467	3171	4.1058	1	1	2	4	8
468	70101	19.5586	3	8	14	24	39
471	5027	17.8705	9	11	15	21	29

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
472	247	34.3441	1	11	26	46	70
473	8320	16.6238	2	4	10	25	40
474	12333	49.0676	14	24	38	59	92
475	37755	14.3742	2	6	11	18	28
476	11122	18.4035	8	11	15	21	31
477	39021	10.9720	1	3	8	13	22

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V7.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	26393	18.5380	5	8	14	23	39
002	5618	20.1499	4	7	13	24	42
003	4	22.0000	12	12	12	32	32
004	4759	17.2820	4	7	12	21	34
005	48161	7.9049	3	4	6	9	15
006	1790	2.9082	1	1	2	3	6
007	5919	26.4492	3	7	13	27	60
008	4172	5.2294	1	2	3	6	11
009	2082	11.5034	2	4	7	13	24
010	18271	11.7228	2	4	8	15	24
011	5010	7.1054	1	3	5	9	14
012	24527	10.9548	2	4	7	12	20
013	5285	9.4102	3	4	8	11	16
014	326877	10.8495	3	5	9	13	21
015	150819	5.6343	2	3	4	7	10
016	13375	9.7743	3	4	7	11	19
017	5759	6.4753	2	3	5	8	12
018	12667	9.2443	2	4	6	11	18
019	10698	5.7690	1	2	4	7	11
020	6076	12.3168	2	5	9	15	25
021	781	10.6274	3	5	7	13	20
022	11968	5.7956	2	3	4	7	11
023	4070	6.8482	1	3	5	8	13
024	48518	7.0892	2	3	5	9	15
025	28178	4.7199	1	2	4	6	9
026	50	4.9400	1	2	3	6	9
027	2743	9.6952	1	1	5	12	22
028	6066	10.1764	1	3	6	12	21
029	4712	5.1543	1	2	3	7	11
030	1	1.0000	1	1	1	1	1
031	4272	6.7900	1	2	4	8	13
032	4634	3.8276	1	2	3	5	8
034	12077	9.5785	2	3	6	11	19
035	5004	5.5420	1	2	4	7	10
036	21527	3.1004	1	2	3	4	5
037	3212	4.7088	1	2	3	5	10
038	1288	2.9852	1	1	2	3	6
039	27706	2.0285	1	1	2	2	3
040	5282	3.1047	1	1	2	3	7
041	1	2.0000	2	2	2	2	2
042	24436	3.0432	1	1	2	3	5
043	327	4.5260	2	2	4	6	8
044	2826	6.7975	3	4	6	8	12
045	3221	4.3735	1	2	3	6	8
046	3208	6.0110	1	2	4	7	12
047	3171	3.9180	1	1	2	5	8
048	1	12.0000	12	12	12	12	12
049	7510	15.7061	3	7	12	19	30
050	5682	2.8509	1	2	2	3	5
051	738	3.1992	1	1	2	3	6
052	174	4.5000	1	2	3	4	8

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V7.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
053	9210	3.2684	1	1	2	3	7
055	7887	2.7585	1	1	1	2	5
056	1429	2.5031	1	1	2	3	5
057	858	6.3998	1	2	3	7	14
059	285	2.3158	1	1	1	2	4
061	468	4.2244	1	1	2	4	10
062	1	2.0000	2	2	2	2	2
063	6462	7.6551	1	2	4	8	16
064	6336	9.6026	1	2	5	11	21
065	31177	4.1867	2	2	3	5	8
066	10667	4.1881	1	2	3	5	7
067	427	5.7237	2	3	4	7	11
068	16962	6.2209	2	3	5	7	11
069	7286	4.7569	2	3	4	6	8
070	21	4.0476	2	2	3	5	7
071	145	6.2000	2	3	4	7	11
072	800	5.1400	1	2	3	6	10
073	8610	6.0841	1	2	4	7	12
074	1	3.0000	3	3	3	3	3
075	30298	14.6712	6	8	11	18	27
076	31318	15.0711	3	7	11	18	29
077	4867	7.3589	1	2	5	10	15
078	27810	10.6433	4	7	10	13	17
079	102251	12.4639	4	6	10	15	23
080	13433	9.1756	3	5	7	11	16
081	9	12.3333	2	7	10	16	19
082	78996	9.6414	2	4	7	12	20
083	7411	8.7780	3	4	7	11	16
084	2630	5.1163	2	2	4	6	10
085	15170	9.1344	2	4	7	12	18
086	2590	6.1865	2	3	5	8	12
087	62174	8.5639	2	4	7	11	16
088	92668	7.8985	3	4	8	9	14
089	329031	9.1627	3	3	7	11	16
090	64772	6.7622	3	4	6	8	11
091	37	5.5676	2	3	5	7	11
092	8433	9.1432	3	4	7	11	17
093	2283	6.5239	2	3	5	8	12
094	8768	10.0091	3	5	7	12	19
095	1783	6.1408	2	3	5	8	12
096	206870	7.3590	3	4	6	9	13
097	51815	5.5904	2	3	5	7	10
098	14	8.3571	2	4	6	9	20
099	34943	6.1061	2	3	5	8	12
100	13329	3.5072	1	2	3	4	7
101	21802	7.4585	2	3	6	9	14
102	5857	4.7348	1	2	4	6	9
103	118	36.1271	11	16	30	46	71
104	11481	22.7631	10	13	18	26	40
105	12106	16.8611	8	10	12	18	30
106	62374	17.0252	9	11	14	19	27

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V7.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
107	41123	12.8954	7	8	10	14	20
108	5305	15.7840	5	9	12	18	29
109	11266	12.5097	1	4	9	16	28
110	67716	16.5443	8	9	12	19	31
111	19514	9.5384	5	7	9	11	15
112	103026	7.3448	2	3	5	9	15
113	38381	19.1795	6	9	14	22	37
114	8700	13.7086	3	6	10	17	27
115	5689	15.2164	8	9	13	18	28
116	47921	7.9448	2	4	6	10	15
117	6036	7.1845	2	3	5	9	14
118	10657	6.0952	1	2	4	7	14
119	4202	6.0157	1	2	3	7	14
120	28055	17.5566	3	6	12	22	37
121	139310	10.6642	4	7	9	13	18
122	125016	7.6634	2	5	7	10	13
123	66721	5.5788	1	1	3	7	14
124	88746	6.2676	1	2	5	8	13
125	106972	3.1225	1	1	2	4	7
126	3762	22.3517	5	10	19	31	43
127	580475	8.1277	3	4	6	10	15
128	31570	8.8680	4	6	8	11	14
129	8235	5.5182	1	1	2	7	18
130	59077	8.2419	2	4	7	10	15
131	31881	5.3358	1	2	5	8	11
132	16830	5.0470	2	3	4	7	11
133	7546	4.8404	1	2	3	5	8
134	36023	5.6056	2	3	4	7	10
135	7168	7.2808	2	3	5	8	14
136	2120	4.4675	1	2	3	6	8
137	2	3.0000	2	2	4	4	4
138	167635	6.4379	2	3	5	8	12
139	86567	4.2995	1	2	3	5	8
140	371767	4.8779	2	3	4	6	9
141	69569	5.9668	2	3	4	7	11
142	44520	4.2080	1	2	3	5	7
143	96067	3.6274	1	2	3	4	6
144	42486	7.8688	2	3	6	10	15
145	8058	4.6141	1	2	4	6	9
146	7266	16.2954	8	10	13	19	27
147	2898	10.7129	6	8	10	13	16
148	124407	17.7028	8	10	14	20	31
149	30042	10.8174	7	8	10	12	16
150	17463	15.3379	6	9	12	18	27
151	7138	9.8868	4	6	8	11	18
152	7700	9.9151	3	5	8	12	18
153	4171	7.3030	3	6	7	9	12
154	48240	17.6732	5	8	13	21	34
155	9311	9.6037	4	6	8	12	17
156	1	12.0000	12	12	12	12	12
157	25216	7.5158	2	3	6	9	14

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V7.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
158	21851	3.7607	1	2	3	5	7
159	13104	7.3636	2	4	6	9	13
160	16348	4.0938	1	2	4	5	7
161	30949	5.0507	1	2	4	6	10
162	49593	2.6550	1	1	2	3	5
163	20	5.0000	2	2	4	6	8
164	4199	13.0753	6	8	11	15	21
165	2943	8.2796	5	6	8	10	13
166	2455	8.6729	3	5	7	10	15
167	2850	4.9863	3	3	4	6	8
168	2204	6.4440	1	2	3	7	14
169	2697	3.1416	1	1	2	3	6
170	12456	17.0006	3	7	12	21	34
171	2433	8.3358	2	4	7	11	16
172	80521	10.6446	2	4	7	13	22
173	5513	6.0172	1	2	4	7	12
174	133650	7.2856	2	4	6	9	13
175	35661	4.8730	2	3	4	6	8
176	11915	7.8849	3	4	6	9	15
177	18008	6.4917	3	4	5	8	11
178	9639	4.8260	2	3	4	6	8
179	7321	9.9063	3	5	7	12	19
180	54860	7.9453	2	4	6	10	15
181	27289	5.0783	2	3	4	6	9
182	237589	6.4689	2	3	5	8	12
183	90206	4.5500	1	2	4	6	8
184	58	4.2759	1	2	3	5	9
185	4190	6.4174	1	2	4	8	13
186	2	2.0000	2	2	2	2	2
187	1756	3.2027	1	1	2	3	7
188	85692	7.5718	2	3	5	9	15
189	12047	4.2600	1	1	3	5	9
190	171	5.8246	2	3	4	7	13
191	8549	22.4912	7	11	17	28	44
192	1627	12.6023	4	7	10	15	22
193	13114	17.6609	8	10	14	21	31
194	2795	12.0876	5	8	11	15	20
195	22447	13.6038	7	8	11	16	22
196	4186	9.7217	5	7	9	12	15
197	50921	10.5945	5	6	9	12	18
198	41906	6.5652	4	5	6	8	10
199	3424	15.3823	5	8	12	19	29
200	2082	14.4909	3	6	10	16	29
201	4813	13.4492	2	5	9	17	28
202	14421	10.0647	2	4	8	12	20
203	29953	9.8765	2	4	7	13	20
204	33797	8.1109	3	4	6	10	15
205	19611	9.5992	2	4	7	12	18
206	3698	5.4367	1	2	4	7	11
207	34548	7.4960	2	4	6	9	14
208	17772	4.5028	1	2	4	6	8

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
209	210326	12.6269	7	9	11	14	19
210	90822	15.5945	7	9	12	17	26
211	47555	11.4920	6	8	10	13	17
212	11	8.0909	3	5	8	9	10
213	5373	13.9001	4	6	10	17	28
214	25604	13.9871	5	8	11	16	25
215	34541	9.7520	4	5	8	10	15
216	5283	14.6150	2	5	11	19	31
217	14593	23.0136	3	8	15	29	49
218	11815	11.1724	3	5	8	13	21
219	17286	6.4655	2	4	5	8	11
220	5	22.2000	4	4	5	7	90
221	3628	10.2530	2	4	8	13	21
222	8102	5.2878	1	2	4	7	11
223	11533	5.3273	2	2	4	6	10
224	8842	3.5939	1	2	3	4	6
225	14711	4.9119	1	2	3	5	11
226	4415	11.0168	2	4	7	14	23
227	8449	4.2822	1	2	3	5	9
228	5270	4.1958	1	2	3	4	8
229	4250	2.6398	1	1	2	3	5
230	2980	7.1055	1	2	4	8	15
231	6677	6.3781	1	2	3	7	14
232	741	7.0931	1	1	3	9	18
233	9737	12.6557	3	5	8	16	25
234	6260	6.1371	2	3	5	8	12
235	6500	13.8725	2	4	8	15	38
236	39756	10.0519	2	4	7	12	19
237	1820	6.1338	2	3	5	7	11
238	5438	14.4456	4	6	11	18	29
239	50006	10.3527	3	5	8	13	20
240	10581	9.8037	3	4	7	12	19
241	5955	5.3936	2	3	5	8	12
242	2321	11.5511	3	5	8	15	24
243	132107	6.9207	1	3	6	9	13
244	11247	7.7017	2	3	6	9	14
245	8214	5.6429	1	3	4	7	11
246	2170	6.0228	2	3	5	7	11
247	10137	5.0982	1	2	4	6	10
248	6839	5.9905	2	3	5	7	11
249	5649	6.3206	1	2	4	8	13
250	3606	6.6838	2	3	5	8	13
251	3123	3.4884	1	1	2	4	7
252	2	5.0000	3	3	7	7	7
253	15604	8.9732	2	3	6	10	17
254	17368	5.1997	1	2	4	6	10
255	1	2.0000	2	2	2	2	2
256	5057	5.6628	1	2	4	7	11
257	27154	6.6060	3	4	6	8	11
258	32704	4.9051	2	3	5	6	8
259	3325	7.6406	2	3	5	9	16

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
260	4354	3.3204	1	2	3	4	6
261	4371	3.0217	1	2	2	4	5
262	3513	2.6496	1	1	2	3	5
263	29197	22.6294	6	9	15	27	45
264	7217	13.6464	3	6	10	17	28
265	5231	11.1150	2	3	7	13	23
266	6644	4.6471	1	2	3	6	10
267	567	4.6349	1	1	2	5	9
268	1904	4.1686	1	1	2	4	9
269	9562	13.0980	2	5	9	16	27
270	6068	4.6853	1	2	3	6	10
271	17177	11.7595	3	6	8	14	22
272	8604	9.7045	3	5	7	12	19
273	3350	7.6618	2	4	6	9	15
274	4057	10.0961	2	3	7	12	21
275	751	5.4834	1	2	3	6	11
276	1140	5.0860	1	2	4	7	10
277	55017	9.0486	3	5	7	11	16
278	28415	6.7576	3	4	6	8	12
279	9	4.7778	2	2	4	6	6
280	12755	6.9157	2	3	5	8	13
281	10125	4.6024	1	2	3	6	9
283	5970	7.8113	2	3	6	9	15
284	3569	4.9880	1	2	4	6	10
285	3717	23.1580	6	10	16	28	45
286	1548	13.7419	6	7	10	16	25
287	7836	20.7377	5	8	13	23	42
288	515	11.7825	3	5	7	10	26
289	3793	5.9230	2	3	4	7	14
290	9094	4.6078	2	2	3	5	8
291	194	2.2474	1	1	2	3	4
292	5100	18.4582	4	8	13	22	35
293	896	8.9557	2	4	7	11	16
294	100709	7.6569	3	4	6	9	13
295	3211	6.1155	2	3	5	7	11
296	184305	8.7756	2	4	6	10	17
297	58865	5.7078	2	3	4	7	10
298	81	6.3333	1	2	4	6	11
299	929	7.3122	1	3	5	9	15
300	10709	9.6661	3	4	7	12	18
301	3137	6.0389	2	3	5	7	11
302	8147	18.2583	8	10	15	22	32
303	16087	14.9792	7	9	12	17	26
304	14578	14.7610	4	7	11	18	28
305	6230	7.8053	2	4	7	10	14
306	11334	10.3893	3	5	8	13	19
307	5380	5.6881	2	3	5	7	10
308	8401	10.4666	2	4	7	13	21
309	5217	4.9845	1	2	4	7	10
310	32686	6.4000	2	3	4	8	13
311	29017	3.1986	1	2	3	4	6

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V7.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
312	3985	6.0339	1	2	4	7	12
313	3268	3.2439	1	1	2	4	7
314	3	5.3333	2	2	3	11	11
315	27941	14.1597	2	4	9	17	30
316	39610	9.4892	2	4	7	12	19
317	1570	3.3949	1	1	2	4	6
318	7642	9.3037	2	3	6	12	20
319	1735	4.8352	1	1	3	5	9
320	142516	8.9238	3	5	7	10	16
321	40846	6.3645	3	4	5	8	11
322	73	5.6164	2	3	5	7	12
323	25434	4.2737	1	2	3	5	9
324	16788	2.8498	1	1	2	4	5
325	10856	6.1504	2	3	5	7	12
326	5848	4.0503	1	2	3	5	7
327	9	3.2222	1	1	3	4	4
328	1974	5.6125	1	2	4	7	11
329	713	2.9341	1	1	2	4	6
330	2	4.0000	3	3	5	5	5
331	26516	7.7600	2	3	6	10	16
332	9577	4.6997	1	2	3	6	10
333	369	7.4851	1	3	5	10	16
334	10075	11.9201	6	8	10	14	19
335	8838	8.9659	6	7	8	10	13
336	96567	7.1506	3	4	6	8	12
337	112120	4.6827	3	3	4	5	7
338	10581	5.6946	1	1	3	7	14
339	5582	4.2057	1	1	2	4	9
340	5	3.4000	3	3	3	4	4
341	18395	4.8483	1	3	4	6	8
342	853	3.2532	1	1	2	3	8
344	3589	7.2056	2	4	5	8	12
345	2275	5.9130	1	2	4	7	12
346	10239	8.4384	2	3	6	10	17
347	2438	3.6641	1	1	2	4	8
348	5459	5.7143	1	2	4	7	11
349	4026	2.9801	1	1	2	3	6
350	8598	6.0008	2	3	5	7	10
351	3	2.6667	1	1	2	5	5
352	1097	4.7101	1	2	3	5	9
353	2066	13.9429	6	8	11	16	25
354	7210	9.7942	5	6	8	11	16
355	7311	6.1179	4	5	6	7	9
356	29975	5.4384	3	4	5	7	8
357	6603	13.3951	6	7	10	18	24
358	15048	8.2814	4	5	7	9	14
359	20499	5.6982	4	4	5	6	8
360	4790	6.0562	1	2	4	7	13
361	462	4.5974	1	1	2	5	11
362	30	1.7333	1	1	1	2	2
363	4286	5.5485	1	2	3	5	11

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SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
364	4439	3.4246	1	1	2	4	7
365	3551	12.3616	3	5	8	15	26
366	5564	10.3866	2	3	7	13	23
367	1518	4.4262	1	1	3	5	9
368	1546	7.8396	3	4	5	8	14
369	3085	4.7022	1	2	3	6	9
370	486	8.3927	4	4	6	8	14
371	705	4.9106	3	4	4	5	7
372	278	4.2878	2	2	3	4	8
373	1049	2.5219	1	2	2	3	4
374	289	2.8997	2	2	3	3	4
375	7	9.5714	2	2	10	11	11
376	54	4.1702	1	2	3	4	8
377	30	7.7667	1	1	3	7	10
378	125	4.5600	3	3	4	5	7
379	244	2.6557	1	1	2	3	5
380	76	2.3553	1	1	2	2	5
381	296	2.2804	1	1	1	3	5
382	87	1.7586	1	1	1	1	3
383	737	4.9403	1	2	3	6	9
384	118	3.3644	1	1	2	4	7
385	4	20.7500	1	1	8	10	62
386	1	10.0000	10	10	10	10	10
389	26	12.9231	2	3	5	23	27
390	29	7.0345	1	1	5	7	16
391	1	7.0000	7	7	7	7	7
392	2555	16.5202	6	8	12	21	32
393	3	36.6667	7	7	9	34	94
394	2345	10.5527	1	3	6	12	23
395	73662	6.5334	1	3	5	8	13
396	53	2.4340	1	1	2	3	5
397	10830	7.7293	2	3	6	9	15
398	12174	8.2018	3	4	7	11	18
399	2802	5.9401	1	2	4	7	11
400	7960	15.1925	4	6	11	18	32
401	6279	13.6786	3	6	11	20	33
402	3788	6.1017	1	2	4	8	18
403	24251	12.3952	2	5	9	16	26
404	7518	5.6728	1	3	5	8	14
406	3898	16.2696	4	7	12	21	32
407	1805	8.5773	2	4	7	10	15
408	10842	6.7635	1	2	4	7	16
409	8347	10.8681	2	4	6	14	23
410	135537	3.4778	1	2	3	4	6
411	302	3.6673	1	1	3	5	7
412	402	2.9950	1	1	2	3	7
413	10362	11.1452	2	4	8	14	24
414	3611	7.1916	1	2	5	9	15
415	24958	21.7488	5	9	15	26	43
416	106849	10.6228	2	5	8	13	20
417	39	6.7436	2	4	6	7	14

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
418	11455	8.6142	3	4	7	11	16
419	15741	7.7998	2	4	6	9	15
420	4782	5.9523	2	3	5	7	11
421	14409	5.6390	2	3	4	7	10
422	102	4.8137	2	2	4	6	9
423	6362	11.6015	3	5	8	14	23
424	3422	24.1642	3	8	15	27	49
425	15991	6.5500	2	3	4	8	13
426	9476	8.0496	2	3	6	10	17
427	2127	8.2261	2	3	6	10	17
428	1254	10.6164	1	3	7	13	22
429	30633	12.3370	3	4	7	13	22
430	61090	12.8490	3	5	9	16	26
431	409	9.0611	2	3	6	11	18
432	637	7.8830	1	2	4	9	19
433	5209	5.0035	1	2	3	6	12
434	16479	8.4696	2	3	6	10	18
435	13606	7.4311	2	3	5	8	18
436	4221	15.9123	3	7	15	25	29
437	9335	17.2863	4	9	17	26	30
439	1242	13.3398	1	3	7	15	33
440	7491	17.6641	3	6	11	22	40
441	1006	4.5974	1	1	2	5	9
442	42857	9.9555	1	2	6	12	22
443	14917	6.6517	1	2	4	9	14
444	3825	7.2214	2	3	5	9	14
445	2824	5.1831	1	2	4	6	9
446	1	1.0000	1	1	1	1	1
447	2842	3.5943	1	1	3	4	7
448	1	2.0000	2	2	2	2	2
449	32039	6.4346	1	3	5	8	12
450	11406	3.9479	1	1	3	5	8
451	10	3.0000	1	2	3	4	5
452	28110	6.9395	1	3	5	8	14
453	10313	4.3921	1	2	3	5	9
454	5031	7.2282	1	2	5	8	15
455	1789	4.1556	1	2	3	5	8
456	240	13.9250	1	2	6	14	37
457	187	6.9066	1	1	1	8	17
458	1914	23.8072	5	10	18	30	40
459	1017	15.4798	3	6	10	19	33
460	2339	9.4361	2	4	7	11	18
461	8307	5.2560	1	1	2	5	12
462	6358	18.8877	5	9	16	25	36
463	9606	7.1424	2	3	5	9	14
464	3750	4.5835	1	2	3	6	9
465	838	2.7757	1	1	2	3	5
466	5110	5.2176	1	1	2	5	11
467	5169	4.1068	1	1	2	4	8
468	70294	19.5170	3	8	14	24	38
471	5027	17.8705	9	11	15	21	29

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 06/89 GROUPER V7.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
472	247	34.3441	1	11	26	46	70
473	8320	16.6238	2	4	10	25	40
474	12333	40.0676	14	24	38	59	92
475	45295	14.3648	2	6	11	18	28
476	11120	18.4045	8	11	15	21	31
477	38806	10.9883	1	3	8	13	22

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TABLE 8.—STATEWIDE AVERAGE COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS

[Case Weighted]

State	Urban	Rural
Alabama	0.5349	0.5803
Alaska	0.6668	0.8320
Arizona	0.6131	0.6490
Arkansas	0.5351	0.6206
California	0.6015	0.6056
Colorado	0.6226	0.6764
Connecticut	0.7298	0.7799
Delaware	0.6138	0.6293
District of Columbia	0.6270	
Florida	0.5561	0.5481
Georgia	0.6421	0.6106
Hawaii	0.6139	0.7264
Idaho	0.7301	0.7205
Illinois	0.6050	0.6755
Indiana	0.7320	0.7460
Iowa	0.6600	0.7469
Kansas	0.6394	0.7577
Kentucky	0.6326	0.6035
Louisiana	0.6025	0.6274
Maine	0.7177	0.7106
Maryland	0.7454	0.7058
Massachusetts	0.6880	0.7614
Michigan	0.6251	0.7068
Minnesota	0.7046	0.7402
Mississippi	0.6315	0.6476
Missouri	0.6011	0.6381
Montana	0.6917	0.6958
Nebraska	0.6298	0.7070
Nevada	0.5179	0.7496
New Hampshire	0.7290	0.7470
New Jersey	0.7300	
New Mexico	0.6274	0.6079
New York	0.6480	0.7621
North Carolina	0.6912	0.6228
North Dakota	0.7878	0.7042
Ohio	0.6767	0.6926
Oklahoma	0.6151	0.6423
Oregon	0.6701	0.7058
Pennsylvania	0.5631	0.6165
Puerto Rico	0.5388	0.6198
Rhode Island	0.7645	
South Carolina	0.6109	0.5823
South Dakota	0.6260	0.6918
Tennessee	0.5837	0.6004
Texas	0.5963	0.6957
Utah	0.7018	0.7029
Vermont	0.7690	0.7130
Virginia	0.6229	0.6194
Washington	0.7146	0.7391
West Virginia	0.6427	0.5973
Wisconsin	0.7864	0.7804
Wyoming	0.7473	0.7852

Appendix A—Regulatory Impact Analysis

I. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area or New England County Metropolitan Area, as modified, for purposes of the prospective payment system, by section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21). Section 1886(d)(8)(B) of the Act specifies that hospitals located in certain rural counties adjacent to one or more urban areas are deemed to be located in the adjacent urban area. We have identified 52 rural hospitals, some of which may be considered small, that we are classifying as urban hospitals.

It is clear that the changes being implemented in this document will affect both a substantial number of small rural hospitals as well other classes of hospitals, and the effects on some will be significant. Therefore, the discussion below, in combination with the rest of this final rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis in accordance with E.O. 12291, the RFA, and section 1102(b) of the Act.

Since we have not significantly altered our final policy from the proposed, the impact of this final rule will be virtually identical to the impact presented in our initial analysis. The only differences in this final analysis from the initial impact analysis are to reflect the availability of more recent data since publication of the proposed rule, and the receipt of public comments directed specifically at the initial impact analysis. Thus, the following analysis revises those portions of the initial impact analysis that are affected by the availability of more recent and complete data and responds to the two comments that concerned the impact analysis.

II. Impact on Excluded Hospitals and Units

As of August 15, 1989, over 930 Medicare hospitals and nearly 1,700 units in hospitals included in the prospective payment system currently are paid on a reasonable cost basis subject to the rate-of-increase ceiling requirement of § 413.40. For cost reporting periods beginning in FY 1990, these hospitals will have their individual target amounts increased by the hospital market basket percentage increase. We are projecting an increase in the hospital market basket of 5.5 percent.

The effect this will have on affected hospitals and units will vary depending on each hospital's or unit's existing relationship of costs per discharge to its target amount, and the relative gains in productivity (efficiency) the hospital or unit is able to achieve. For hospitals and units that incur per discharge costs lower than their target amounts, the primary impact will be on the level of incentive payments made under § 413.40(d). A hospital may receive incentive payments for incurring costs that are lower than its target amount, but may not receive payments for costs that exceed the target amount. We expect the increased ceiling on payments would maintain existing incentives for economy and efficiency experienced by excluded hospitals and units.

III. Analysis of the Quantifiable Impact of Changes Affecting Rates and Payment Amounts

A. Basis and Methodology of Estimates

The data used in developing the following quantitative estimates of changes in payments presented in Table I, below, are taken from FY 1988 billing data and hospital-specific data for FY 1986 and FY 1987. Our initial impact analysis used FY 1988 MEDPAR data received through December 1988 (approximately 9.7 million discharges). This final analysis relies on FY 1988 MEDPAR data received through June 1989 (approximately 10 million discharges). Also, for purposes of the final impact analysis, we have excluded the 37 Indian Health Service hospitals that receive payments under the prospective payment system from our hospital data base. These hospitals receive their own wage index and are subject to special payment policies not applicable to any other group of hospitals under the prospective payment system. Because payments to these hospitals are not representative of payments to other hospitals, including them in the impact analysis produces some distortions in our quantitative analysis. By removing them from the data base, we believe the resulting impact estimates will more accurately reflect the effect on the remainder of the prospective payment hospitals of the policy changes being implemented.

With the exception of these changes in our analytical methodology, we are conducting the same analysis in this final rule as we performed in the initial analysis. As in the initial analysis, we compare the effects of changes being implemented in this document for FY 1990 to our estimate of the payment amounts in effect for FY 1989. In addition, we have treated all hospitals in our data base as if they had the same cost reporting period; that is, a cost reporting period coinciding with the Federal fiscal year. Furthermore, our model does not take into account any prospective, behavioral changes in response to this final rule.

The tables and the discussion that follow reflect our best effort to identify and quantify the effects of the changes set forth in this document. It should be noted, however, that as a result of gaps in our data, we are unable to quantify some of the effects of the proposed rule. Also, we could not use all the hospitals in the recalibration of outlier data sets for modeling the impact analysis because in some cases the hospital-specific data necessary for constructing our impact model were missing. Data on hospital bed size and type of ownership were the data elements most frequently missing. The absent data prevented us from properly classifying and displaying these hospitals in the impact analysis. The missing data, however, did not prevent us from using the discharges from these hospitals in recalibrating the DRG weights or calculating the outlier payments that are included in the final column of Table I showing the combined effects of all changes.

The following analysis examines the changes being implemented to the DRG weights and wage index separately. That is, all variables except those associated with the provision under examination were held constant so as to display the effects of each provision compared to the baseline (FY 1989) provisions. In the last column (column 3), we present the combined effect of all changes being implemented in this rule. That is, column 3 displays the combined effects of the previous two columns as well as the FY 1990 update factor and the updating of the outlier payment thresholds. As such, this last column is the only one in which the effects of all the quantifiable payment policy changes on simulated FY 1990 payments are reflected.

Consistent with the display of the impact presented in Table I, the following discussion is divided into two parts. The first part (columns 1 and 2) describes the effects of two major changes in this document: the annual changes to the DRG classification system and recalibration of the DRG weights required under section 1886(d)(4)(C) of the Act (including the adjustment for increased case mix); and replacement of the current wage index based on an equal blend of 1982 and 1984 wage data with a wage index based on 1984 wage data. The final section discusses the combined effect of all provisions of this rule.

Comment: One commenter suggested that the impact analysis include the effect of regulatory changes on payment to hospitals with varying proportions of Medicare utilization.

Response: We agree with the commenter that such an analysis would be useful and we have incorporated Medicare utilization as a category in our impact tables.

Comment: A few commenters suggested refining the impact analysis to include not only the effect of regulatory actions on payments to various classes of hospitals, but also the effect on hospital operating margins.

Response: To date, our analytical efforts have been retrospective in nature; that is, they are concerned with examining the historical record in efforts to trace the impact of the prospective payment system through perceived changes in hospital behavior. Any efforts to predict providers' response to the changes in payment rules contained in this document would take the form of speculation rather than rigorous analytical prediction. Because of limited data, we are confined to making general statements based on reasoned judgment as to the impact of specific policy changes. Since we cannot predict how hospitals will change their behavior in response to these rules, we do not believe that we can reliably project future hospital profit margins based on the data available to us.

For example, we use FY 1988 billing data to estimate the impact of changes in FY 1990 payments. The latest cost data available for predicting FY 1990 profit margins are from FY 1987. Therefore, provider behavior changes in the recent past are not yet reflected in the data available to us, and future changes cannot be predicted. Moreover, our objective in an impact analysis is to access the probable direct consequences of changes being proposed or issued in final, not to evaluate the overall effects of the prospective payment system or to compare payments to expected costs.

In view of the problems we have experienced in quantifying impacts and attributing causality, we believe the approach we are taking in the impact analysis of measuring expected impacts on hospital payments is the most feasible one. We do not believe that we can reliably predict the impact of prospective payment system changes on future hospital profit margins. Therefore, we have focused our analysis on explaining the anticipated changes in hospital payment levels and the decisions that affected entities will have to consider.

TABLE I—IMPACT OF THE CHANGES BEING IMPLEMENTED IN THE PROSPECTIVE PAYMENT SYSTEM FOR FY 1990

	Number of hospitals [1]	Recalibration change [2] (1)	Wage index change [3] (2)	All changes [4] (3)
All Hospitals	5,557	−1.1	−0.1	3.7
Urban by Region	2,964	−1.0	−0.1	3.7
New England	162	−1.1	0.6	3.8
Middle Atlantic	381	−0.9	0.0	3.3
South Atlantic	444	−1.1	0.0	3.8
East North Central	540	−1.1	−0.7	3.1
East South Central	179	−1.0	−0.1	3.8
West North Central	200	−0.9	0.1	4.2
West South Central	374	−1.1	0.4	4.3

TABLE I—IMPACT OF THE CHANGES BEING IMPLEMENTED IN THE PROSPECTIVE PAYMENT SYSTEM FOR FY 1990—Continued

	Number of hospitals[1]	Recalibration change[2] (1)	Wage index change[3] (2)	All changes[4] (3)
Mountain	119	−1.0	−0.1	4.0
Pacific	515	−1.0	0.0	4.1
Puerto Rico	50	−1.5	−0.1	3.5
Rural by Region	2,573	−1.7	−0.1	3.5
New England	61	−1.5	0.4	4.0
Mid Atlantic	91	−1.5	−0.5	2.4
South Atlantic	343	−1.7	0.4	4.3
East North Central	332	−1.7	−0.1	3.67
East South Central	309	−1.8	0.2	3.3
West North Central	578	−2.0	−0.3	3.2
West South Central	343	−1.9	−0.6	3.5
Mountain	251	−1.8	0.0	3.9
Pacific	166	−1.6	−0.6	3.1
Puerto Rico	8	−2.1	−0.2	2.0
Large Urban Areas (populations over 1 million)	1,406	−1.0	−0.2	3.6
Other Urban Areas (populations with 1 million or fewer)	1,504	−1.1	0.1	3.9
Urban Hospitals	2,984	−1.0	−0.1	3.7
0 to 99 Beds	696	−1.7	−0.1	3.3
100 to 199 Beds	779	−1.4	−0.1	3.5
200 to 299 Beds	580	−1.2	−0.1	3.6
300 to 499 Beds	611	−1.0	0.0	3.8
400 plus Beds	271	−0.7	−0.1	3.8
Rural Hospitals	2,573	−1.7	−0.1	3.5
0 to 49 Beds	1,061	−2.2	−0.1	3.0
50 to 99 Beds	832	−1.9	−0.2	3.1
100 to 149 Beds	367	−1.8	−0.1	3.6
150 to 200 Beds	150	−1.7	−0.2	3.2
200 plus Beds	149	−1.4	−0.0	4.2
Teaching Status:				
Nonteaching	4,417	−1.5	−0.1	3.6
Resident/Bed Ratio Less Than 0.25	920	−1.0	−0.1	3.7
Resident/Bed Ratio 0.25 or Greater	215	−0.5	0.0	3.9
Disproportionate Share Hospitals (DSH):				
Non DSH	4,070	−1.3	−0.1	3.7
Urban DSH 100 Beds or More	1,069	−0.9	−0.1	3.7
Urban DSH Fewer Than 100 Beds	131	−1.4	−0.1	3.2
Rural DSH	297	−1.6	−0.3	2.8
Urban Teaching and DSH:				
Both Teaching and DSH	578	−0.7	−0.1	3.7
Teaching Only	478	−0.9	−0.1	3.8
DSH Only	622	−1.3	−0.1	3.6
Nonteaching and Non-DSH	1,306	−1.4	0.0	3.5
Other Special Status (Rural):				
Sole Community Hospital (SCHs)	308	−1.9	−0.1	3.4
Rural Referral Center (RRCs)	195	−1.5	0.1	5.2
Both SCH & RRC	23	−1.4	0.0	4.0
Type of Ownership:				
Voluntary	3,021	−1.1	−0.1	3.6
Proprietary	915	−1.3	0.1	3.8
Government	1,552	−1.2	0.0	3.7
Medicare Utilization as a Percent of Inpatient Days:				
0 to 25	396	−0.8	−0.1	3.7
25 to 50	2,923	−1.1	0.0	3.8
50 to 65	1,705	−1.3	−0.1	3.5
Over 65	403	−1.4	−0.3	3.5

[1] Because data necessary to classify some hospitals by category were missing, some hospitals were omitted from the analysis. Therefore, the total number of hospitals in each category may not equal the national total. Also, we have excluded Indian Health Service hospitals from our analysis because they are paid under special payment policies not applicable to any other hospitals under the prospective payment system.

[2] Recalibration of the DRG weights and classification changes are based on FY 1988 MEDPAR data and are performed annually in accordance with section 1886(d)(4)(C) of the Act. This column reflects the −1.22 percent adjustment in the DRG weights for the increase in the case-mix index attributable to DRG reclassification and recalibration. The −1.22 adjustment has a uniform impact on all hospitals.

[3] The wage index constructed entirely from 1984 hourly wage data was compared to the current wage index which is based on a blend of 1982 and 1984 data. The wage index also reflects changes required by section 1886(d)(8)(C) of the Act (which was added by section 8403(a) of Pub. L. 100–647). This provision requires the Secretary to compute a separate wage index value for an urban or rural area if the wage index value for that area was reduced as a result of deeming the hospitals in certain rural counties as urban in accordance with section 1886(d)(8)(B) of the Act.

[4] This column shows the combined effects of all the previous columns as well as the effects of updating the FY 1989 standardized payment amounts by the market basket increase as mandated by section 1886(b)(3)(B)(ii) of the Act. Also, FY 1989 baseline payments reflect an estimate of outlier payments at 5.7 percent in contrast to the 5.1 percent set for the outlier pool. This estimate of payments from the outlier pool is exclusive of the approximately 1.0 percent additional outlier payments that result from the elimination of the day limitation on inpatient hospital services under Pub. L. 100–360. Because our total FY 1990 estimated payments do not perpetuate this 0.6 percent excess of outlier payments relative to the outlier pool, this column reflects the 0.6 percent reduction in total prospective payments necessary to ensure equality between projected outlier payments and the outlier offsets. In addition, this column captures certain interactive effects that we are not able to quantify.

B. Changes to the DRG Classification System and Recalibration of the DRG Weights, and Changes to the Wage Index

In Column 1, we present the combined effects of revising the current DRG definitions and recalibrating the weights to reflect changes in practice patterns, modes of treatment, and new technologies as required each year by section 1886(d)(4)(c) of the Act. These changes are described in section II.C. of the preamble to this rule. (The DRGs that have been recalibrated for this analysis also reflect, insofar as possible, the changes to the DRG classification system set forth in section II.B. of the preamble of this final rule.) As part of recalibrating and normalizing the DRG weights, we are adjusting all the DRG weights to correct for increases in the average case-mix index that have resulted from past GROUPER modifications. As explained in detail in section II.C. of the preamble to this final rule, we are reducing each DRG weight by 1.22 percent over what it would have been without this adjustment. Thus, in the following analysis, we compared estimated FY 1989 hospital payments using an estimate of each hospital's case-mix index based on the current DRG classifications and weighting factors to FY 1989 simulated payments using an estimate of each hospital's case-mix index based on the new DRG classifications and recalibrated weighting factors.

Nationally, revision to the DRG weights being implemented for FY 1990, with all other variables held constant, produce a 1.1 percent decrease in payments per case. However, within certain census divisions and among certain types of hospitals, DRG reclassification and recalibration appears to have a differential impact on hospital payments as a result of shifts in the relative weights among DRGs. In analyzing these shifts, we found that the DRGs with increased relative weights tended to be more expensive initially (higher weighted) than the DRGs with decreased relative weights. Since rural hospitals have a lower case mix, one result is that the average case weight for rural hospitals will decrease relative to the average case weights for urban hospitals. Consequently, reclassifiying and recalibrating DRGs will have a disproportionate impact on rural hospitals. The average reduction in payments to rural hospitals will be about 1.7 percent compared to an average reduction of about 1.0 percent for urban hospitals when we hold other payment variables constant. Holding all other payments variables constant, rural hospitals with fewer than 50 beds will experience a reduction in payments of 2.2 percent. Holding all other payment variables constant, sole community hospitals and other rural hospitals would experience payment reductions of about 1.4 percent.

The fact that DRG reclassification and recalibration has the greatest impact on small rural hospitals and sole community hospitals may explain the larger than average reductions for rural hospitals in the West North Central and West South Central census divisions. The majority of small hospitals and sole community hospitals are located in these areas.

Column 2 of Table II displays the estimated effects of changes to the wage index in this rule. As discussed in section III of the preamble, we are basing the wage index required under section 1886(d)(3)(E) and 1886(c)(9)(B)(vi) of the Act entirely on 1984 gross hourly wage data rather than on an equal blend of an index based on 1982 data and one based on 1984 data (as described in section III.B. of the preamble to this final rule). The wage index values also reflect changes required by section 1886(d)(8)(C) of the Act (which was added by section 8403(a) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647)). This provision requires the Secretary to compute a separate wage index value for an urban or rural area if the wage index value for that area was reduced as a result of deeming hospitals in certain rural counties as urban in accordance with section 1886(d)(8)(B) of the Act (see section III.C. of the preamble to this final rule).

The changes to the wage index will have no significant effect on overall payments. The effect on hospitals in different geographic areas varies from an average 0.6 increase in payments for hospitals in the urban areas of the New England census division to a 0.7 reduction in payments for hospitals located in the urban localities of the East North Central census division. Generally, the new wage index changes will have the same effect on the overall distribution of payments to other urban and rural hospitals. The changes to the wage index will have slight effect on rural hospitals with fewer than 50 beds equal to the effect on all hospitals.

C. Combined Effects

Column 3 of Table I shows the FY 1990 rates that incorporate the combined effects of all the changes we are able to quantify. In addition to the changes described in columns 1 and 2, column 3 reflects the update factors mandated under section 1886(b)(3)(B)(i) of the Act.

Because Column 3 combines the FY 1990 payment rates and all other changes, the effects displayed also include the payment offset for outlier payments required under section 1886(d)(5)(A)(iv) of the Act. This provision requires that total outlier payments should not be less than five percent nor more than six percent of total prospective payments. In our analysis, similar to the analysis for FY 1989, we have set outlier thresholds and offset urban and rural rates for outliers so as to yield estimated outlier payments for FY 1989 equal to 5.1 percent of total DRG payments. In addition, sections 1886(d)(3)(B) and (d)(9)(b)(iv) of the Act requires that the urban and rural rates be offset by the same percentage of total payments that are outlier payments for urban and rural hospitals, respectively. Based on the most recent discharge data available, however, we anticipate that total outlier payments for FY 1989 (exclusive of the impact of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360)) will equal 5.7 percent of total prospective payments, instead of the 5.1 percent accounted for by the offsets to the current rates. Therefore, column 3 also reflects a reduction of 0.6 percent in payments compared to FY 1989 payments because the FY 1989 baseline payments are overstated by the 0.6 percent outlier payments in excess of the outlier offsets reflected in the FY 1989 standardized amounts. The 5.7 percent estimate of payments from the outlier pool is exclusive of the additional outlier payments that result from the elimination of the limitation on inpatient hospital services under section 101 of Pub. L. 100–360. Outlier payments resulting from the provisions of Pub. L. 100–360 are estimated at 1.0 percent of total DRG payments, resulting in an estimated 6.7 percent in total FY 1989 outlier payments. We estimate that the additional outlier payments resulting from the changes made by Pub. L. 100–360 will be 1.3 percent in FY 1990 and will result in FY 1990 outlier payments equal to 6.4 percent of total DRG payments.

Nationally, the effects of all changes we are making are expected to result in a 3.7 percent payment increase. Geographically, hospitals in rural areas of the South Atlantic census division and urban localities in the West South Central census division will receive the largest percentage increase in prospective payments of 4.3 percent. However, hospitals in rural areas of the Pacific census division and urban

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hospitals in the East North Central census division could expect only a 3.1 percent increase over FY 1989 payments.

Generally, urban hospitals will receive a payment increase averaging 3.7 percent (the national average) while the average increase for all rural hospitals would be 3.5 percent. Among rural hospitals, it appears that hospitals with over 200 beds would receive an increase in payments of 4.2 percent while hospitals with fewer than 50 beds would receive an increase of about 3.0 percent.

Among the different types of hospitals, rural referral centers will receive the largest increase in payments (5.2 percent) while disproportionate share hospitals located in rural areas will receive the smallest payment increase (2.8 percent). Sole community hospitals will receive an increase of about 3.4 percent. Type of ownership does not appear to be a factor influencing payment increases. Hospitals grouped by type of control (voluntary, proprietary and government) would receive payment increases at or near the national average percentage increase. Hospitals that have high Medicare utilization (hospitals with more than 65 percent Medicare patient days) can expect an average payment increase of about 3.5 percent while hospitals with between 25 and 50 percent Medicare patients days can expect an average payment increase of about 3.8 percent.

We must point out that there are interactions that result from the combining of the various separate provisions analyzed in the previous columns that we are unable to isolate. Thus, the values appearing in column 3 do not represent merely the additive effects of the previous columns plus the update factors.

Table II presents the projected FY 1990 average payments per case for urban and rural hospitals and for the different categories of hospitals shown in Table I, and compares them to the average estimated per case payments for FY 1989. As such, this table presents the combined effects of the changes presented in Table I in terms of the average dollar amounts paid per discharge. That is, the percentage change in average payments from FY 1989 to FY 1990 equals the percentage changes shown in the last column of Table I.

TABLE II.—COMPARISON OF PAYMENT PER CASE

[FY 1990 Compared to FY 1989]

	Number of hospitals	Average FY 1989 payment per case (1)	Average FY 1990 payment per case (2)	Percentage Change[1] (3)
All Hospitals	5,557	4,596	4,767	3.7
Urban by Region	2,984	5,065	5,252,431	3.7
New England	162	5,065	5,231	3.8
Middle Atlantic	381	5,645	5,832	3.3
South Atlantic	444	4,632	4,807	3.8
East North Central	540	5,007	5,162	3.1
East South Central	179	4,306	4,469	3.8
West North Central	200	5,103	5,316	4.2
West South Central	374	4,640	4,839	4.3
Mountain	119	5,008	5,204	4.0
Pacific	515	5,789	6,026	4.1
Puerto Rico	50	2,039	2,111	3.5
Rural by Region	2,573	2,956	3,060	3.5
New England	61	3,568	3,712	4.0
Middle Atlantic	91	3,362	3,444	2.4
South Atlantic	343	2,999	3,128	4.3
East North Central	332	3,024	3,132	3.6
East South Central	309	2,605	2,690	3.3
West North Central	578	2,811	2,900	3.2
West South Central	434	2,727	2,822	3.5
Mountain	251	3,102	3,221	3.9
Pacific	166	3,667	3,780	3.1
Puerto Rico	8	1,543	1,589	3.0
Large Urban Areas (population over 1 million)	1,480	5,519	5,714	3.6
Other Urban Areas (populations with 1 million or fewer)	1,504	4,593	4,772	3.9
Urban Hospitals	2,984	5,065	5,252	3.7
0–99 Beds	696	3,864	3,992	3.3
100–199 Beds	779	4,318	4,467	3.5
200–299 Beds	580	4,716	4,888	3.6
300–499 Beds	611	5,143	5,337	3.8
400 + Beds	271	6,082	6,315	3.8
Rural Hospitals	2,573	2,956	3,060	3.5
0–49 Beds	1,081	2,510	2,585	3.0
50–99 Beds	832	2,684	2,768	3.1
100–149 Beds	367	2,902	3,006	3.6
150–200 Beds	150	3,161	3,263	3.2
200 + Beds	149	3,503	3,650	4.2
Teaching Status				
Nonteaching	4,417	3,836	3,973	3.6
Resident/Bed Ratio Less than 0.25	920	5,089	5,277	3.7
Resident Bed Ratio 0.25 or Greater	218	7,607	7,907	3.9
Disproportionate Share Hospitals (DSH)				
Non-DSH	4,070	4,169	4,322	3.7
Urban DSH 100 Beds or More	1,089	5,586	5,792	3.7
Urban DSH Fewer than 100 Beds	131	4,229	4,366	3.2
Rural DSH	287	2,833	2,913	2.8

TABLE II.—COMPARISON OF PAYMENT PER CASE—Continued

[FY 1990 Compared to FY 1989]

	Number of hospitals	Average FY 1989 payment per case (1)	Average FY 1990 payment per case (2)	Percentage Change[1] (3)
Urban Teaching and DSH				
Both teaching and DSH	578	[illegible]	[illegible]	3.7
Teaching Only	478	5,296	5,486	3.8
DSH Only	522	4,536	4,700	3.6
Nonteaching and Non-DSH	1,306	[illegible]	4,419	3.6
Other Special Status (Rural)				
Sole Community Hospital (SCHs)	399	2,949	3,049	3.4
Rural Referral Center (RRCs)	195	3,570	3,756	5.2
Both SCH & RRC	23	3,616	3,761	4.0
Type of Ownership				
Voluntary	3,021	4,775	4,946	3.6
Proprietary	915	4,106	4,264	3.8
Government	1,552	4,176	4,331	3.7
Medicare Utilization as a Percent of Inpatient Days				
0–25	396	[illegible]	[illegible]	3.7
25–50	2,923	4,803	4,983	3.8
50–65	1,705	4,050	4,201	3.5
Over 65	403	3,855	3,989	3.5

[1] Percentage changes shown in this column are taken from Table I, column 3. Because the dollar amounts shown in this table are rounded to the nearest dollar, percentage changes computed on the basis of these amounts will differ slightly from those displayed in this column.

Appendix B—Final Recommendation of Update Factors for Rates of Payment for Inpatient Hospital Services

Section 1886(e)(4) of the Act, as amended by section 4002(f) of Pub. L. 100–203, requires that the Secretary, taking into consideration the recommendations of ProPAC, recommend update factors for FY 1990 that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Section 1886(e)(4) of the Act also applies to the target rate-of-increase limits for hospitals excluded from the prospective payment system.

As required by section 1886(e)(5) of the Act, we published the initial recommended FY 1990 update factors that are provided for under section 1886(e)(4) of the Act as Appendix C of the proposed rule (54 FR 19747). We recommended that the prospective payment rates be increased, on average, by an amount equal to the market basket percentage increase minus 1.5 percentage points. Based on the forecasted hospital market basket increase at the time the proposed rule was published, that is, 5.8 percent, the recommended update was 4.3 percent on average.

However, in making that recommendation, we stated that differential updates for hospitals in rural, large urban, and other urban areas would be more appropriate than a uniform update to the payment amounts. Therefore, we strongly recommended a higher update for hospitals located in rural areas. We also recommended that hospitals located in large urban areas receive a higher update than hospitals located in other urban areas. In addition, we recommended a higher update to the target rate-of-increase limits for hospitals excluded from the prospective payment system than the average update of the market basket increase minus 1.5 percentage points.

In recommending these increases, we took into account the requirement in section 1886(e)(4) of the Act that the amounts be high enough to ensure the efficient and effective delivery of medically appropriate and necessary care of high quality. In addition, as required by section 1886(e)(4) of the Act, we addressed ProPAC's Recommendations 1 through 7, which concern updating the standardized amounts and the rate-of-increase limits. Also, we requested public comment on our recommendation.

We note that although we recommended appropriate update factors, requested and received public comments on these recommendations, and are providing a final recommendation, Congress actually prescribed the update factors to be used in FY 1990 in section 1886(b)(3)(B)(i) of the Act, as amended by section 4002(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). That is, as explained in the addendum to this final rule, the applicable percentage increase for FY 1990 for inpatient hospital services for hospitals subject to the prospective payment system is equal to the market basket rate of increase forecasted for FY 1990. The most recent forecasted hospital market basket increase for FY 1990 is 5.5 percent. Therefore, the applicable percentage increase for prospective payment hospitals is 5.5 percent.

For cost reporting periods beginning on or after October 1, 1989, and before October 1, 1990, section 1886(b)(3)(B)(ii) of the Act, as amended by section 4002(e) of Pub. L. 100–203, provides that the applicable percentage increase for hospitals and hospital units excluded from the prospective payment system equals the hospital market basket rate of increase. As noted above, the most recent forecasted market basket increase is 5.5 percent; therefore the increase in these hospitals and hospital units target rate is also 5.5 percent.

We received several items of correspondence during the public comment period concerning our initial recommendation. After consideration of all the arguments presented, we have decided that our final recommendation will be the same as our initial recommendation. That is, we recommend that, on average, all hospitals receive an update in their payments for FY 1990 equal to the market basket percentage increase minus 1.5 percentage points. Based on the most recent forecasted hospital market basket increase of 5.5 percent, our recommended update is 4.0 percent on average.

To date, our analyses indicate that, while hospitals nationally continued to have positive Medicare operating margins on average in the fourth year of the prospective payment system, these levels have fallen from the high operating margins experienced in the first 2 years of that system. For this reason, we believe a prospective payment system update somewhat higher than the updates in past years is generally appropriate in order to ensure the availability of high quality care to Medicare beneficiaries. However, we believe that an average update factor lower than the market basket rate of increase is needed to continue to encourage hospitals to better control their costs.

Although we are recommending an update that averages the market basket percentage increase minus 1.5 percentage points for all prospective payment system hospitals, we recommend differentiation of the update according to the geographic classification of the hospital. We strongly recommend a higher update for hospitals located in rural areas. We also recommend that hospitals located in large urban areas (that is, those with a population exceeding 1,000,000) receive a higher update than hospitals located in other urban areas.

We are recommending differential updates based on geographic classification of hospitals as a result of our research on hospitals Medicare operating margins and our analysis of the impact the FY 1990 rates (based on a uniform update) will have on hospitals. While overall margins in FY 1987, the latest period for which we have complete data, were 5.3 percent, we found a disparity between urban and rural margins. Urban hospitals had FY 1987 inpatient Medicare operating margins of 6.3 percent. Rural hospital operating margins were −0.2 percent. Further, rural hospitals under 50 beds, which constitute 40 percent of rural hospitals, experienced, on average, operating margins of −2.9 percent. Because of our concerns with respect to the financial viability of rural hospitals, we believe that a higher update is appropriate. For hospitals in large urban areas, our data suggest that inpatient operating margins are declining as compared to the operating margins of hospitals in other urban areas, although such margins remain positive. For FY 1987, our data indicate that hospitals in large urban areas experienced margins of 5.8 percent as compared to 6.8 percent for hospitals in other urban areas. In view of the differences between costs per case and payments per case and the lower average Medicare operating margins in large urban areas, we believe that hospitals in large urban areas should receive a higher update than hospitals in other urban areas.

The FY 1990 rates are based on a uniform update equal to the percentage increase in the market basket, currently estimated at 5.5 percent. However, because of changes to the DRG weights and the wage index, as well as a reduction in outlier payments over current estimated FY 1989 levels, the FY 1990 rates will have a differential impact on hospitals according to geographic location. The net effect of all changes would be to increase payments to rural hospitals by 3.5 percent, to large urban hospitals by 3.6 percent, and to other urban hospitals by 3.9 percent. The net effect of all changes in this final rule, including the current law update, is a differential impact that is the opposite of the impact that would be appropriate based on the analysis of Medicare operating margins. Implementation of a higher update for rural hosptials and for large urban hosptials would reverse this effect.

Comment: Some commenters expressed concern that the update factor recommended by the Secretary did not include a discussion or presentation of the data used to form the basis of our recommendation and that the Secretary's recommendation was driven purely by budgetary requirements.

Response: While we have recommended an update to the prospective payment rates that is consistent with the Administration's budget proposal, our recommendation has analytic support. As in the past, we view the factors to be considered by the Secretary as a combination of hospital inputs, outputs, and outcomes.

The technical factors associated with the input and output portions of the update that we have considered include such items as the input costs faced by hospitals (that is, the hosptial market basket), hospital productivity, advances in science and technology, and changes in the nature of the practice patterns in hosptials. The productivity measure represents a future-oriented standard that incorporates expected savings based on established productivity goals. At the beginning of the prospective payment system update process, HCFA established a conservative standard for hospital productivity increase of 1.0 percent per year and, therefore, used a −1.0 percent adjustment for productivity increases. In the short run, any increases in productivity in excess of 1.0 percent would be kept by hospitals as increases in the operating margin. Increases in productivity of less than 1.0 percent would be discouraged by this standard as it affects hospital payment rates. Hospitals have made substantial increases in productivity since the implementation of the prospective payment system, and we believe that productivity gains can and should continue.

With respect to technological advances, we have relied on the results of several studies. ProPAC's study on the operating costs of new science and technology indicated that most new technologies are substitutes for old technologies and in many cases are less expensive. Other studies have shown the cost of the top 100 technologies to be relatively small in the absolute. While it appears that new devices and diagnostic procedures tend to have only a small impact on overall hospital costs, we believe it is appropriate to encourage hospitals to use health-enhancing new technologies and that a small adjustment for new technologies is appropriate.

We continue to measure for practice pattern changes based on changes in average length of stay since the beginning of the prospective payment system. We note that this represents a crude measure that does not capture all changes in practice patterns that have occurred. Average length of stay declined dramatically during the first years of the prospective payment system, but has gradually increased in the last few years. However, we believe an adjustment of as much as −0.64 percent for cumulative changes in practice patterns would be appropriate.

We have not developed an adjustment for case-mix changes as part of our recommended update because of the inherent difficulties in measuring real case-mix changes versus coding improvements. While average case mix continues to increase, we recognize that much of the upcoding noted in earlier years has leveled off. However, we agree with ProPAC's assessment that not all of the case-mix increase is attributable to increases in case complexity and that some coding improvements continue to be reflected in the observed case-mix increase.

Of the various factors that are considered in the update recommendation, outcomes are particularly difficult to analyze. For this reason, HCFA has recommended close monitoring of indicators such as the level of preventable deaths, premature discharge, and substandard regimens of care. The Secretary and the Congress have had to make subjective judgment on how these factors affect the final update amount.

Taking all these factors into account, we believe our recommended average update amount for FY 1990 of market basket percentage increase minus 1.5 percent is appropriate and that an average update factor lower than the market basket rate of increase is needed to continue to encourage hospitals to better control their costs.

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Part III

Environmental Protection Agency

40 CFR Part 261

Mining Waste Exclusion; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL-3625-8; EPA/OSW-FR-89-017]

RIN 2050 AC41

Mining Waste Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act (RCRA) excludes "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation as hazardous waste under subtitle C of RCRA, pending completion of certain studies by EPA. In 1980, EPA interpreted this exclusion (on a temporary basis) to encompass "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals" (45 FR 76619, November 19, 1980).

Today's final rule responds to a federal Appeals Court directive to narrow this exclusion as it applies to mineral processing wastes. EPA published a proposed rule articulating the criteria by which mineral processing wastes would be evaluated for continued exclusion on October 20, 1988 (53 FR 41288) and a revised proposal on April 17, 1989 (54 FR 15316). In today's final rule, EPA provides final criteria that have been modified in response to public comment, and finalizes the Bevill status of nine mineral processing waste streams that were proposed for either retention within or removal from the exclusion in the April notice. In addition, the Agency has modified the list of mineral processing wastes proposed for conditional retention in April, based upon the revised criteria and information submitted in public comment. All other mineral processing wastes that have not been listed for conditional retention will be permanently removed from the Bevill exclusion as of the effective date of this rule.

The Agency will apply the criteria described in this rule to the conditionally retained wastes and on that basis propose either to remove them from or retain them in the Bevill exclusion by September 15, 1989. Final Agency action on the scope of the Bevill exclusion for mineral processing wastes will occur by January 15, 1990.

DATES: *Effective Date:* March 1, 1990.

Not later than November 30, 1989, all persons who generate, transport, treat, store, or dispose of wastes removed from temporary exclusion by this rule and which are characteristically hazardous under 40 CFR part 261, subpart C, will be required to notify either EPA or an authorized State of these activities pursuant to section 3010 of RCRA.

See sections VI and VII of the preamble below for additional dates and details.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at (800) 424-9346 or (202) 382-3000 or for technical information contact Dan Derkics, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-3608.

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I. Introduction

A. History

Section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act (RCRA) excludes "solid waste from the extraction, beneficiation and processing of ores and minerals" from regulation as hazardous waste under subtitle C of RCRA, pending completion of certain studies by EPA. In 1980, the Agency interpreted this exclusion (on a temporary basis) to encompass all "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals" (45 FR 76619, November 19, 1980). In July, 1988, a federal Court of Appeals (*Environmental Defense Fund* v. *EPA*, 852 F.2d 1316 (D.C. Cir. 1988), *cert. denied*, 109 S. Ct. 1120 (1989) ("EDF II")) found that this exclusion is based upon the "special waste" concept first proposed by EPA in 1978 (43 FR 58946) and that

> Congress intended the term "processing" in the Bevill Amendment to include only those wastes from processing ores or minerals that meet the "special waste" concept, that is "high volume, low hazard" wastes. 852 F.2d at 1328-29.

In compliance with this Court decision, on October 20, 1988 EPA published a proposal to further define the scope of section 3001(b)(3)(A)(ii) of RCRA. (See 53 FR 41288) In the October 20, 1988 proposal, EPA presented a criterion for defining mineral processing wastes and a two-part criterion for identifying which mineral processing wastes are high volume; however, the Agency proposed to defer judgment on the hazard posed by high volume mineral processing wastes until preparation of a required Report to Congress. The Agency also applied the processing and volume criteria to its available data on mineral processing wastes, and identified 15 wastes which it believed met the criteria, and which the Agency therefore proposed to retain within the exclusion and study for the report to Congress:

1. Slag from primary copper smelting
2. Process wastewater from primary copper smelting/refining
3. Blowdown from acid plants at primary copper smelters
4. Bleed electrolyte from primary copper refining
5. Slag from primary lead smelting
6. Blowdown from acid plants at primary zinc smelters
7. Process wastewater from primary zinc smelting/refining
8. Red and brown muds from bauxite refining
9. Phosphogypsum from phosphoric acid production
10. Slag from elemental phosphorus production
11. Iron blast furnace slag
12. Air pollution control dust/sludge from iron blast furnaces
13. Waste acids from titanium dioxide production
14. Air pollution control dust from lime kilns
15. Slag from roasting/leaching of chromite ore

Based on comments received on the October 20, 1988 NPRM and further analysis, EPA decided that significant changes in the proposal were necessary before a final rule establishing the boundaries of the Bevill exclusion for mineral processing wastes could be promulgated. Accordingly, on April 17, 1989, the Agency published a revised proposed rule that contained a modified high volume criterion, clarifications to the definition of mineral processing, and for the first time, an explicit low hazard criterion. As stated in the April notice, EPA believes that such a criterion is required in order to identify those mineral processing wastes that are clearly not low hazard and, therefore, not "special wastes" even if they are high volume.

In the April NPRM, the Agency also proposed to remove from the Bevill exclusion all but 39 mineral processing wastes, many of which were "nominated" in public comment on the October NPRM. Of these 39, six wastes were believed at that time to satisfy all of the "special waste" criteria described in the proposal:

1. Slag from primary copper smelting
2. Slag from primary lead smelting
3. Red and brown muds from bauxite refining
4. Phosphogypsum from phosphoric acid production
5. Slag from elemental phosphorus production
6. Furnace scrubber blowdown from elemental phosphorus production

The other 33 wastes were proposed to be conditionally retained within the exclusion, because they are mineral processing wastes that the Agency believed satisfied the volume criterion articulated in the proposal but for which the Agency did not have adequate data to evaluate compliance with the proposal's new hazard criterion. Thus, the following 33 wastes were judged, based in many cases upon information submitted in public comment, to have generation rates that might exceed 50,000 metric tons per year per facility, and therefore, be potentially eligible for continued exclusion under Bevill:

1. Barren filtrate from primary beryllium processing
2. Raffinate from primary beryllium processing
3. Bertrandite thickener sludge from primary beryllium processing
4. Process wastewater from primary cerium processing
5. Ammonium nitrate process solution from primary lanthanide processing
6. Roast/leach ore residue from primary chrome ore processing
7. Gasifier ash from coal gasification
8. Cooling tower blowdown from coal gasification
9. Process wastewater from coal gasification
10. Bleed electrolyte from primary copper refining
11. Process wastewater from primary copper smelting/refining
12. Slag tailings from primary copper smelting
13. Calcium sulfate wastewater treatment plant sludge from primary copper smelting/refining
14. Furnace off-gas solids from elemental phosphorus production
15. Process wastewater from elemental phosphorus production
16. Fluorogypsum from hydrofluoric acid production
17. Air pollution control dust/sludge from iron blast furnaces
18. Iron blast furnace slag
19. Process wastewater from primary lead smelting/refining
20. Air pollution control scrubber wastewater from light weight aggregate production
21. Wastewater treatment sludge/solids from light weight aggregate production
22. Process wastewater from primary magnesium processing by the anhydrous process
23. Process wastewater from primary selenium processing
24. Process wastewater from phosphoric acid production
25. Wastes from trona ore processing
26. Basic oxygen furnace slag from carbon steel production
27. Leach liquor from primary titanium processing
28. Sulfate processing waste acids from titanium dioxide production
29. Sulfate processing waste solids from titanium dioxide production
30. Chloride processing waste acids from titanium and titanium dioxide production
31. Chloride processing waste solids from titanium and titanium dioxide production
32. Blowdown from acid plants at primary zinc smelters
33. Process wastewater from primary zinc smelting/refining

All other waste streams from mineral processing were proposed to be removed from the exclusion. Most of the remaining streams would be low volume; three high volume wastes were proposed for removal on the basis of hazard: Acid plant/scrubber blowdown from the primary copper, lead, and tin sectors.

Finally, the April notice responded to a number of ancillary issues raised in public comment on the October 20, 1988 NPRM. The preamble to the notice presented a summary of these comments and preliminary Agency responses to the questions and issues raised therein. Responses to additional comments received on issues addressed in the April NPRM may be found in section II below or in the Supplemental Response to Comments, which may be found in the docket supporting today's rule.

A complete chronology of the special wastes concept, the Bevill Amendment, and EPA's activities to implement the Bevill Amendment is also presented in the "background" section of the preamble to the April NPRM (53 FR 15318–22).

B. Overview of Today's Rule

Today's rule establishes the final criteria that will be used to define Bevill-excluded mineral processing wastes. This final rule completes the first stage of rulemaking regarding the Bevill status of mineral processing wastes. In evaluating the components of this rule, the Agency has considered information presented in public comment on the October 1988 and April 1989 proposals, and accordingly, has modified the criteria, where appropriate.

These criteria consist of a revised and clarified definition of mineral processing, a modified volume criterion that consists of separate volume cut-offs for solid/sludge and liquid waste streams, and a refined low hazard criterion. Each will be discussed briefly in turn. More detailed descriptions are presented in section III of this preamble.

The definition of mineral processing has been modified so as to include fewer types of unit operations. In most instances, operations that are no longer considered "processing" have been redesignated "beneficiation" operations. The primary reason for making this change is to achieve consistency with previously articulated EPA definitions of "beneficiation". Today's definition provides resolution of potential conflicts regarding the regulatory status of mining wastes that have already been studied and subjected to a Regulatory Determination; the definitions provided in the proposed rules might have suggested another study and determination for materials that have already been addressed by the Agency. EPA did not intend such a result and believes that the definition of "beneficiation" in its 1985 Report to Congress is the most consistent with the standard use of the term.

The high volume criterion has been bifurcated in response to public comment on the April notice. EPA has determined empirically that amenability to subtitle C management controls (the basis for the high volume criterion) varies markedly between liquid and non-liquid waste streams. Examination of data obtained from a recent EPA nationwide census of subtitle C treatment, storage, disposal and recycling facilities reveals that many industrial facilities successfully manage substantially more than 50,000 metric tons per year of a single hazardous wastewater stream. Non-liquid waste streams, in contrast, are managed in quantities greater than 50,000 metric tons per year in only a few instances. Accordingly, the Agency has in today's rule established final volumetric cut-offs of 45,000 metric tons per year per facility for non-liquid wastes and 1,000,000 metric tons per year per facility for liquid wastes. The rationale for these new values is presented in section III, below.

The low hazard criterion described in the April NPRM has been modified to account for resolution of a number of issues raised in public comment. While the Agency has retained its basic approach, it has modified the application of the low hazard criterion to specific waste streams in order to account for additional waste constituent data that have been submitted by facility operators or collected from other sources. The final low hazard criterion is applied by evaluating the data collected by EPA and analyzed using Method 1312 (Synthetic Precipitation Leaching Procedure). If samples of a waste stream from two or more facilities fail the test, then the waste is withdrawn from the Bevill exclusion, unless a preponderance of evidence indicates that the test results are anomalous. The conditions under which EPA will assemble and consider this evidence are discussed in section III of this preamble.

As stated in both the October 1988 and April 1989 proposals, individual waste streams must meet all Bevill special mineral processing waste criteria to be eligible for continued regulatory exclusion and study in the Report to Congress. In many cases, individual mineral processing wastes will not meet these criteria and hence, will be permanently removed from the Bevill exclusion as of the effective date of this rule.

In a limited number of cases, EPA does not currently have sufficient information to evaluate whether specific waste streams conform to the low hazard criterion. As discussed below, the status of these materials will be addressed in a subsequent rulemaking. At that time, the Agency will also reevaluate whether these wastes conform to the final volume criterion using data collected during EPA's recent National Survey of Solid Wastes from Mineral Processing Facilities.

C. Future Activities

This rule establishes the final criteria that will be employed to make individual Bevill mineral processing waste exclusion decisions. Preliminary decisions on the status of conditionally excluded high volume wastes will be articulated in a proposed rule to be signed on or before September 15, 1989. These decisions will be based upon information collected by or submitted to the Agency during recent months.

Final action on proposed wastes will be taken by January 15, 1990. At this time, the final boundaries of the Mining Waste Exclusion for mineral processing wastes will be established.

All mineral processing wastes retained within the final Bevill mineral processing waste exclusion will be subjected to detailed study by EPA. The findings of these studies will be contained in a Report to Congress that will be submitted by July 31, 1990.

Six months after submission of this report, the Agency will publish a Regulatory Determination stating that the studied materials will either be regulated under subtitle C of RCRA as hazardous wastes, or that such regulation is unwarranted.

II. Analysis of and Response to Public Comments on 10/20/88 and 4/17/89 Proposed Rules

A. EPA's General Approach

1. EPA's Response to Statutory and Judicial Directives

In promulgating today's final rule, EPA is responding to a Federal Court of Appeals order to narrow the scope of the Bevill exclusion for mineral processing wastes to a group of "special wastes," i.e., those mineral processing wastes with the unique characteristics of high volume and low hazard. To carry out these directives, EPA is today finalizing the criterion for defining mineral processing wastes and the criteria for determining whether these wastes fall under the exclusion for "special wastes." Furthermore, EPA is today applying these criteria to many of the mineral processing wastes and, therefore, is removing most of them from the Bevill exclusion. Today's rule also

constitutes final Agency action on a select group of high volume mineral processing wastes. The Bevill status of additional high volume mineral processing wastes (i.e., those that are "conditionally" exempt) will be proposed in September of this year. Some of these conditionally exempt wastes will remain within the exclusion for the purposes of further study, others will be removed because further information shows that they do not meet all of the "special wastes" criteria. Under statutory directive, the final regulatory determination for wastes that remain temporarily excluded will be made six months after completion of a Report to Congress. This is the same basic approach EPA used in its October, 1988 (53 FR 41288) and April, 1989 (54 FR 15316) proposals for narrowing the scope of the Bevill exclusion.

EPA received numerous comments questioning the approach of the October and April proposals in narrowing the Bevill exclusion. Several commenters continued to dispute the validity of using the "special waste" concept in interpreting the intent of the Bevill Amendment. In addition, some commenters asserted that EPA had proposed to interpret the Bevill Amendment too narrowly, and that in general terms wastes from the extraction, beneficiation, and processing of ores and minerals should be excluded from subtitle C regulation until comprehensive studies of these wastes can be completed. In contrast, some other commenters stated that the proposed interpretation of the Bevill exclusion was too broad, and that the exclusion should be limited to even fewer "special wastes."

EPA has carefully considered these comments as they apply to the final rule. The Agency maintains its position that the special waste concept is central to understanding Congressional intent underlying the Bevill Amendment, and that EPA must limit the scope of the Bevill exclusion to include only those wastes that meet the "special waste" criteria presented in the rule. EPA encountered no compelling arguments in public comments on the two proposals which would cause it to alter this interpretation of the legislative history; this history is described in detail in the April NPRM.

EPA's position on this matter is supported and in fact mandated by the 1988 Federal Court of Appeals decision that required a narrowing of the scope of the Bevill exclusion for mineral processing wastes. The Court determined that the Bevill Amendment was intended to apply only to mineral processing wastes that meet the "special waste" criteria, i.e., high volume, low hazard wastes. The Court ordered EPA to propose and finalize regulations that narrow the Bevill exclusion to encompass only "special wastes;" today's final rule is the latest in a multistep process to meet the requirements of the Court order.

Despite commenter assertions to the contrary, EPA is not required to complete a comprehensive study of all mineral processing waste streams prior to articulating the specific wastes remaining excluded under the Bevill Amendment. The Court of Appeals ruling stipulates that the required study (Report to Congress) is only applicable to mineral processing wastes that fall within the statutory exclusion; the study is intended to result in a final regulatory determination for those wastes (i.e., whether any of the Bevill wastes should be regulated under subtitle C).

EPA notes that there is a lack of detailed statutory, legislative, regulatory, and judicial history and guidance available to assist EPA in defining, ten years after it was originally proposed, the specific contours of the "special waste" concept, particularly as it applies to mineral processing wastes. EPA's 1978 proposal and the 1979 draft background document do not attempt to define the term "processing of ores and minerals" nor attempt to quantify the concepts of "high volume" and "low hazard." The legislative history of the Bevill amendment in 1980 fails to give content to these concepts as well. And while the U.S. Court of Appeals in EDF II, declares that six hazardous smelter wastes are not "special wastes," it specifically leaves to EPA the responsibility of defining which other mineral processing wastes are special wastes.

As a result, EPA has the discretion and responsibility to develop and apply criteria that define the scope of the Bevill exclusion within the broad limits of this ten years of history. EPA today adopts the approach proposed in October and April, that is, to quantify the terms "high volume" and "low hazard" and apply them to wastes from operations that meet a definition of "mineral processing" developed by EPA to reflect past regulatory history and EPA's professional judgment regarding the mineral processing industry.

EPA believes that using specific quantitative criteria for the volume and hazard tests best allows EPA to fairly characterize which wastes from mineral processing should remain within the Bevill exclusion. EPA agrees that it could have adopted a functional approach to defining "special wastes" from mineral processing, or could have set slightly different quantitative cutoffs based on slightly different assumptions regarding both the volume and hazard issues. However, the volume and hazard criteria adopted today are only used as a preliminary screen to define which wastes deserve closer study. And those wastes which do not pass today's criteria are not automatically subjected to subtitle C regulation; they must also exhibit one or more of the hazardous characteristics adopted by EPA in 1980 after extensive consideration and public participation.

EPA does not believe that the specific criteria chosen today are unreasonable, particularly in light of the very limited time given EPA to complete this final rule. Indeed, as EPA shows below, slight changes in the volume and hazard criteria adopted today would not appreciably affect the list of excluded wastes. EPA believes that it has resolved specific issues related to the criteria in a reasonable manner consistent with the general approach for defining "special wastes" outlined above.

2. Status of Future Waste Streams

In both the October 20, 1988 and April 17, 1989 proposals, EPA stated that the current series of rulemakings would conclude the Agency's response to statutory and judicial directives to define the scope of the Bevill exclusion for mineral processing wastes. In other words, EPA proposed to make a one-time determination of Bevill status. Wastes not yet in existence and wastes not meeting the high volume/low hazard criteria during any of the past five years would therefore not be eligible for Bevill exclusion status in the future.

Some commenters addressing this provision reiterated their disagreement with the one-time reinterpretation approach. They maintained that the Bevill Amendment does not place time limits on the exclusion of wastes, thus the one-time reinterpretation violates Congressional intent. They also maintained that a one-time reinterpretation would decrease environmental protection in the long run by creating a disincentive for industry to employ new manufacturing or waste treatment operations that may unfairly fall under costly subtitle C regulation.

Moreover, given the changing nature of the mining industry, some commenters contended that EPA must consider that new processing waste streams will arise, and that lesser volume streams that vary in quantity may satisfy the criterion in the future.

Commenters pointed to roast leach acid plant residue from primary copper processing, oil shale and tar sand processing wastes, and wastes from the processing of nodules collected from the ocean as examples of wastes that may qualify for the Bevill exclusion in the near future under the proposed criteria.

These commenters also asserted that EPA should study and issue regulatory determinations for wastes that may meet the special waste criteria in the future. They also argued that it is more appropriate to define the scope of the Bevill exclusion for mineral processing wastes directly using the criteria and not create a list of wastes that EPA has determined meet the criteria. Applying the criteria to additional waste streams in the future would allow for the effects of changing market conditions and new mineral processing technologies. Some commenters thus recommended that EPA amend the proposed rule to include a provision whereby if a waste qualifies as a high volume/low hazard waste in the future, it would become subject to the provisions of the Bevill Amendment.

The Agency has considered these comments and decided to maintain its proposed approach of a one-time reinterpretation of the Bevill exclusion for mineral processing wastes. As discussed in the April proposal, EPA interprets the legislative history as clearly establishing a temporary exclusion through the Bevill Amendment over a fixed time period. In fact, the statutory language includes explicit time limits on the Bevill exclusion which apply to the submission of the required Report to Congress and subsequent regulatory determination. Moreover, the Court of Appeals decision stipulates an updated timetable for completion of the study and the final regulatory determination.

In today's final rule, wastes not presently being generated or currently meeting the high volume/low hazard standard will not be considered for special waste status in the future. Thus, EPA is making a one-time reinterpretation of the Bevill exclusion for mineral processing wastes by providing a specific list of such wastes that tentatively fall under the "special waste" criteria. EPA further maintains that the one-time reinterpretation is not contrary to the interests of industry or the environment. New wastes generated in the future will be regulated under either the subtitle C or subtitle D regulatory programs, thus industry will know in advance the regulatory standards that will be applied to new mineral processing wastes. EPA does not believe that failure to apply the Bevill Amendment to future waste streams will discourage treatment of these wastes; the application of Subtitle C or D will, in many cases, create exactly the opposite incentive. Thus, this position is consistent with recent EPA policy initiatives that encourage the development of process changes and new waste treatment technologies that minimize hazardous waste/treatment residual generation.

Certain commenters took issue with EPA's assertion that the Report to Congress on Bevill wastes identified in today's rule would be the last under section 8002(p). They argued that EPA is under a continuing statutory duty to study and Report to Congress under sections 8002(f) and 8002(p) of RCRA regarding wastes from the extraction and beneficiation of ores and minerals in sectors not discussed in detail in EPA's 1985 report entitled "Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale" (Dec. 31, 1985). These commenters cited pages from a draft EPA report (which was never completed or released to the public) on wastes from certain mineral processing operations. In that draft report, the commenters allege, EPA committed to further study of wastes from the extraction and beneficiation of certain nonmetallic ores and minerals.

EPA disagrees that it is necessary for the Agency to commit to further studies of extraction and beneficiation wastes under section 8002(p). EPA believes that the 1985 Report, and the subsequent regulatory determination, discharged its statutory duty with respect to all extraction and beneficiation wastes. As explained in the Executive Summary to the 1985 Report, the Report specifically addressed "wastes from the extraction and beneficiation of metallic ores (with special emphasis on copper, gold, iron, lead, silver and zinc), uranium overburden, and the nonmetals asbestos and phosphate rock." Oil shale wastes were also addressed in an Appendix. EPA explained that it "selected these mining industry segments because they generate large quantities of wastes that are potentially hazardous and because the Agency is solely responsible for regulating the waste from extraction and beneficiation of these ores and minerals." Report to Congress, page ES-2. However, the Report is not limited solely to wastes from these identified sectors. Rather, the Report considers waste generation, waste management, health and environmental risks, and regulatory impacts on the entire nonfuel mining and beneficiation industry. *See, e.g.*, Report, pages ES-3, ES-4 (overview of the nonfuel mining industry), ES-10 (potential dangers posed by the nonfuel mining industry), and ES-14 (potential costs of regulating mining wastes as hazardous).

EPA's 1986 Regulatory Determination also clearly states that it covers all mineral extraction and beneficiation wastes. As EPA said at the time, "this notice constitutes the Agency's regulatory determination for the wastes covered by the Report to Congress, i.e., wastes from the extraction and beneficiation of ores and minerals." 51 FR 24497 (July 3, 1986). The Regulatory Determination went on to explain that, by contrast, Bevill mineral processing wastes (based on EPA's 1985 proposal) "were not studied in the mining waste Report to Congress and therefore, are not covered by this regulatory determination." *Ibid.*

EPA believes that the Report to Congress and Regulatory Determination make clear the Agency's intent that wastes from the extraction and beneficiation of ores and minerals are to be regulated under subtitle D. Accordingly, EPA has no present plans to conduct any further studies under 8002(p) or make any further regulatory determinations. EPA's draft Report to Congress cited by the commenters was an internal pre-decisional document and does not represent the final Agency policy on this issue. (EPA also has no plans to complete or submit that Report in any form; its relevance was rendered moot by the decision in EDF II.)

3. Retroactive Application of Subtitle C Requirements

In the April NPRM, EPA stated explicitly that subtitle C regulation arising from the withdrawal of Bevill status from most mineral processing wastes would not be imposed retroactively. That is, Subtitle C requirements would apply only to newly generated or actively managed mineral processing wastes that are removed from the Bevill exclusion and that exhibit one or more characteristics of hazardous waste, not to existing accumulations of these materials unless they are actively managed after the effective date of the rule or are subject to regulation as waste mixtures, as discussed in further detail below. This is consistent with standard Agency policy regarding the imposition of new regulatory requirements.

Commenters disagreed on the appropriateness of this approach. One commenter supported the approach, while another stated that the lack of regulation of previously disposed

mineral processing wastes would not be protective of human health and the environment. Most comments on the retroactivity provision, however, centered around the definition of "active management." Several commenters requested clarification of this term.

In keeping with the April proposed rule, today's final rule does not impose Subtitle C requirements (such as those for closure and post-closure care) on mineral processing wastes that were disposed prior to the effective date of today's rule, unless they are actively managed after the effective date. This provision ensures that those mineral processing wastes that were originally excluded from subtitle C under the Bevill exclusion, and are now considered hazardous under the reinterpretation of the Bevill exclusion, are not subject to subtitle C requirements if the wastes were disposed prior to the effective date of the final rule. EPA is maintaining its proposed approach largely because of its long-standing policy of not regulating wastes under RCRA that were disposed prior to the effective date of a rule governing those wastes. See, e.g., 45 FR 33066.

For purposes of this rule, EPA views active management as physically disturbing the accumulated wastes within or disposing additional non-Bevill hazardous wastes into existing waste management units after the effective date of this rule. EPA does *not* intend to bring under subtitle C regulation existing waste management units containing wastes now identified as non-Bevill to which only Bevill wastes or other non-hazardous solid wastes are subsequently added (i.e., this practice will not constitute active management of the non-Bevill waste(s)). For example, a waste management unit receiving a high volume slag excluded from Subtitle C regulation under today's rule may continue to receive additional slag (or other non-hazardous or Bevill waste stream) even if it has also received (prior to the effective date of the rule) hazardous waste now identified as non-Bevill, provided that no additional non-Bevill wastes that exhibit characteristics of hazard or are listed as hazardous are managed in these units. Continued use of an existing unit after the effective date of this rule for treatment, storage, or disposal of additional quantities of a newly listed or characteristic hazardous waste will be considered active management and will subject the entire unit and its contents to Subtitle C regulation.

4. Scope of Today's Rule

In the April notice, EPA stated clearly that its interpretations and definitions regarding the regulatory status of mineral processing wastes under the Bevill Amendment applied only to the wastes addressed in this series of rulemakings (i.e., mineral processing wastes).

Nonetheless, commenters contended that the Agency's position as articulated in the 4/17/89 NPRM with respect to the actual or potential status of coal combustion wastes was unclear. They stated that some of the interpretations and definitions proposed for mineral processing wastes would not be appropriate for application to coal combustion wastes (another Bevill special waste category), particularly the high volume and low hazard criteria presented in the April NPRM, and requested that EPA clarify its position on this issue.

EPA emphasizes that the applicability of the definitions and criteria interpretations contained within this rulemaking, as presented below, is confined only to mineral processing wastes. The Agency believes that the special wastes concept remains a flexible one, and that the criteria for defining special wastes in the mineral processing industry may not be directly transferable to the other special waste categories, particularly coal combustion wastes. (EPA noted differences in its discussion of coal combustion waste volumes in the October, 1988 NPRM.) The Agency will consider this issue further in the context of its Regulatory Determination for coal combustion wastes.

B. The Low Hazard Criterion

As discussed in the preamble to the April 17, 1989 NPRM, EPA has proposed a hazard criterion for use in determining the proper scope of the Bevill exclusion as it applies to mineral processing wastes. The purpose of the hazard criterion is to identify candidate Bevill mineral processing wastes that clearly do not present a low hazard to human health and/or the environment. Any wastes failing such a criterion should be immediately removed from the Bevill exclusion; these wastes would then be evaluated (just like any other solid waste) to determine whether they are hazardous—that is, whether they are listed or exhibit any of the hazardous waste characteristics.

The proposed hazard criterion was based on two types of tests: (1) A pH test and (2) a mobility and toxicity test. The pH test requires that a mineral processing waste have a pH between 1 and 13.5 to be considered an exempt special waste, which represents a one order of magnitude increase of the pH levels used to identify corrosive hazardous wastes (i.e., 2 and 12.5). The mobility and toxicity test requires that mineral processing waste constituents be extracted from the waste using a procedure (Method 1312—Synthetic Precipitation Leaching Procedure) that EPA believes is generally less aggressive in leaching out constituents from solid wastes than the EP Toxicity Test (Method 1310), which is used to determine whether non-Bevill solid wastes exhibit the toxicity characteristic. The waste extract is evaluated in the same manner and at the same regulatory levels as in the EP Toxicity test. As EPA explained in the April NPRM, the low hazard criterion is solely a preliminary screening device to determine which mineral processing wastes are special wastes, and will not be used in determining which wastes will subsequently be regulated under Subtitle C, either as a result of today's rule or in the upcoming regulatory determination.

Comments on the low hazard criterion are organized in this preamble into general comments on the appropriateness of the criterion, followed by general comments on the overall approach, and specific comments on potential components of the approach (i.e., pH test, ignitability and reactivity tests, mobility and toxicity test, constituents for testing, additional standards, application of tests, and types of information).

1. Appropriateness of Establishing a Hazard Criterion

Many comments were received on whether EPA should include a hazard criterion for identifying which wastes should not be subject to continued temporary exclusion from RCRA subtitle C requirements under the Bevill Amendment.

a. *Low Hazard Criterion is Appropriate.* Several commenters supported EPA's proposal to use a low hazard criterion. One commenter maintained that a low hazard criterion is appropriate provided that the test used to evaluate whether the low hazard criterion is met is reasonable and appropriate for use with mineral processing wastes. Another commenter stated that Bevill exclusion status should be awarded only to those wastes that meet both the volume and hazard criteria, and yet another commenter stated that EPA should immediately remove from consideration those wastes that are clearly hazardous, without further study.

Many commenters believed EPA's proposed low hazard criterion is objective, currently feasible, and essential to ensure that wastes that are not low hazard are appropriately regulated. Furthermore, one commenter maintained, the Agency's proposal is a positive step toward environmental protection; high volume wastes, because of their quantities, must be carefully evaluated for their potential risk to human health and the environment.

b. *Low Hazard Criterion is Inappropriate.* Many commenters believed that the low hazard criterion should be abandoned because, they generally contended, EPA's proposal to use a pH test and a mobility and toxicity test for mineral processing wastes directly contradicts Congressional intent and the decision in EDF I (*Environmental Defense Fund* v. *EPA*, 852 F.2d 1309 (D.C. Cir. 1988)), that hazard or hazard alone should not determine whether a waste falls within the scope of the Bevill Amendment. These commenters generally believed that the hazard/toxicity issue is better addressed within the special studies, not as a screening procedure, and/or that Congress intended for some characteristic wastes to be exempted from subtitle C regulation. Basically, these commenters argued that failure to pass the low hazard test should not deny a waste access to the detailed and comprehensive study and balancing of economic and environmental factors mandated by the Bevill Amendment.

EPA has re-examined the special waste concept, the regulatory and legislative history, and the Court decision prompting this rulemaking, and concludes that the hazard criterion described in the April NPRM, with some modifications, is appropriate for use in reinterpreting the scope of the Bevill Amendment. The Agency recognizes that a full and detailed assessment of hazard can and will be appropriately considered in a Report to Congress. Nevertheless, a test designed to identify any wastes that are clearly not low hazard wastes is a necessary and appropriate component of the criteria for identifying mineral processing wastes that should remain temporarily excluded from Subtitle C regulation by the Bevill Amendment. The utilization of a criterion to screen out wastes which are not low hazard is clearly required by the order of the Court of Appeals. *See* 852 F.2d 1331.

Some commenters supporting abandonment or substantial revision of the hazard criterion believed that EPA lacks the necessary data for adopting a low hazard criterion. EPA believes, however, that sufficient data are available to develop a workable and appropriate low hazard criterion for screening purposes and to apply that criterion to some mineral processing wastes. For wastes with insufficient information, EPA currently is conducting an extensive data-gathering effort. The new data will be applied to conditionally retained Bevill wastes, and their regulatory status will be addressed in a proposed rule by September 15, 1989.

2. Overall Approach

a. *Low Hazard Rather than High Hazard Wastes Should Be Identified.* Several commenters stated that EPA should identify wastes that are clearly low hazard and keep them within the Bevill exclusion, rather than identifying wastes that are clearly *not* low hazard and removing them from the Bevill exclusion.

EPA disagrees with this approach primarily because it would be impractical given the time and other constraints that the Agency faces in promulgating this rule. The special study waste concept within the context of this rulemaking necessitates identifying, using a screening procedure, wastes that are clearly not low hazard. To identify wastes that are clearly low hazard would involve the type of study of damage case and other risk-related information that is planned for the Report to Congress, because before concluding that specific wastes pose low hazard, the Agency would require site-specific data on physical and chemical characteristics of the waste, the waste management practices employed, the proximity of the facility and its waste management units to sensitive environments (e.g., wetlands, endangered species habitat) and potential receptors, and other factors that affect waste-related risk.

b. *Low Hazard Criterion Should Be Adopted Based on a Multi-factor, Qualitative, and/or Site-specific Test.* Some commenters indicated that a less quantitative approach for identifying wastes to remove from the Bevill exclusion should be utilized using an analysis of present management methods, environmental settings, and available damage cases, as well as of toxic and leachable constituents. For example, some commenters recommended that the Agency specifically consider information regarding past and current mineral processing waste management practices, which, the commenters stated, will clearly show that the wastes pose unacceptable risks to human health and the environment. Other commenters stated that mineral processing facilities generally pose less risk [than other potentially hazardous wastes] because they are sited in dry climates, far from ground water and drinking water, and in unpopulated areas.

The Agency believes that a multi-factor, qualitative, and/or site-specific approach as suggested by these commenters is infeasible. Given the Agency's time constraints, the information described could not be systematically collected and considered to implement such a low hazard criterion uniformly for all of the various mineral commodity sectors and facilities addressed by this rule. Furthermore, development of such a criterion would be very subjective and difficult to apply consistently in such a short time frame. Rather, the scope of the Bevill exclusion will be defined using the hazard criterion (and the volume criterion) in lieu of obtaining site-specific data. Wastes that fail this screening test are clearly not low hazard and, therefore, will be subject to potential Subtitle C regulation. For wastes remaining in the Bevill exclusion, EPA will collect and analyze various kinds of additional data (e.g., damage cases, site-specific environmental and waste management factors) for the Report to Congress. This additional analysis will involve consideration of the factors identified by commenters, and will ultimately support a regulatory determination for the mineral processing wastes temporarily excluded under the Bevill Amendment using the criteria established by today's final rule.

c. *Specified Tests Generally Are Appropriate.* Several commenters felt that EPA's proposal to use a synthetic precipitation leaching procedure for mobility testing is appropriate. One commenter maintained that any hazard test should be less stringent than the subtitle C characteristics tests and should demonstrate whether a waste poses a clear and unambiguous hazard to health or the environment. This testing standard, the commenter further stated, is necessary because the hazard criterion will be used as a screening mechanism to determine which wastes warrant further study; wastes failing the low hazard criterion will be evaluated like any other solid waste to determine whether it should be subject to subtitle C regulation.

d. *Specified Tests Generally Are Inappropriate.* Many commenters believed that the proposed hazard tests are inappropriate, generally recommending one of three alternatives: (1) EPA should not modify the current

standards, (2) EPA should modify the current standards, and (3) EPA should not use a leaching test to assess mobility.

Many commenters arguing against modification of the standards stated that EPA's decision to modify the characteristics test is an extreme measure to ensure that no low hazard waste would be regulated under Subtitle C prior to detailed study, at the risk of allowing many high hazard wastes to escape such regulation altogether. One commenter argued that a less stringent measure of inherent toxicity should not be used when evaluating a high volume waste, because high volume wastes have a greater potential to release significant quantities of hazardous materials. The result of the proposed hazard criterion, according to the commenter, would be stringent regulation of small quantities of waste while at the same time almost unregulated disposal of wastes that have caused documented environmental damage.

Some commenters contended that the Agency should implement less stringent modifications to the hazard tests. For example, one of these commenters stated that the allowable constituent concentrations in the extract should be 300 times the primary drinking water standard, instead of 100 times the standard (as proposed). According to another commenter, the application of 100 times the MCLs for all chemicals uniformly is of questionable validity. Others believed EPA should use the EP Toxicity Test for screening, but increase the values for comparison by a factor of 100 (i.e., 10,000 times the primary drinking water standard). These commenters noted that (1) the EP Toxicity Test is well established and widely used and considerable data exists for mineral processing wastes and (2) a relaxation of two orders of magnitude of the comparison values is similar to the proposed relaxation of the pH standard, and has been adopted by EPA's Land Disposal Restrictions program for "California List" wastes.

Some commenters argued against the use of any type of leaching test because of the apparent failure of this test to consider either the actual waste management practices being used or any other site-specific factors. Another commenter stated that because of the shortcomings of leaching procedures, the classification of wastes as hazardous or non-hazardous should not be based solely on an acid extraction test. Another commenter contended that Method 1312 yields extraction information only, and that testing for the mobility of a particular component can only be done by site-specific evaluation. One commenter argued further that the Method 1312 test only assesses mobilization of contaminants to ground water under accidental conditions; no other environmental media or exposure route is measured. Consequently, the commenter contended, the test does not provide a complete measure of a waste's potential hazard.

EPA has considered these comments and continues to believe that the low hazard criterion as proposed (i.e., the larger pH range and the more appropriate leaching procedure) is both necessary and appropriate for use as a screening tool. The Agency disagrees that this approach will leave highly hazardous wastes unregulated and free to contaminate the environment; in fact, just the opposite will happen—that is, wastes that fail the screening test will no longer be retained within the Bevill exclusion and will be evaluated like all other solid wastes as to their potential hazard. Wastes that pass the screening criterion test and are retained within the exclusion will be extensively studied, and a regulatory determination will be made as to their Subtitle C or D status within two years. Using the same toxicity factor as used in the EP Toxicity Test (i.e., 100 times the MCL) is appropriate because the attenuation and dilution expected for mineral processing wastes after release into the environment is expected to be similar to wastes managed at other industrial facilities; that is, the transport and fate of the toxic constituents should not be any different whether the waste is a mineral processing waste or some other type of solid waste. Moreover, although the standards set by statute under the land disposal restrictions program for "California List" wastes are 10,000 times MCLs, as the commenter noted, EPA has already proposed to amend these standards by using a multiplier of 100.

The Agency believes that a leaching test is the best way to assess waste contaminant mobility given the time and data constraints that EPA faces. Although EPA acknowledges that a leaching test generally only provides an indication of mobility in ground or surface water rather than in other media (e.g., air), this pathway is generally believed to be, for the purposes of this screening, the most indicative of the potential hazard posed by mineral processing wastes, and the most readily and consistently applicable to all mineral processing wastes, given the constraints of the Agency during this rulemaking. Other media will be assessed for the Report to Congress.

3. pH Test

a. *General.* Many commenters indicated that EPA's proposal to include a pH test was appropriate. Other commenters, however, felt that major modifications were needed for the corrosivity characteristic. For example, one commenter stated that the Agency should change its definition of the pH test for corrosivity so that it applies only to liquid wastes. Another commenter maintained that the approach should be revised because it is inconsistent with the Court's decision in EDF I that mining wastes exhibiting the characteristic of corrosivity, as defined in the RCRA Subtitle C regulations, may not pose a threat to human health and the environment. The application of a corrosivity hazard test to phosphate processing wastes, one commenter argued, would produce illogical and inappropriate results; it is only because aqueous phosphate waste streams are recycled that they ever consistently exhibit a characteristic of hazardous waste. This same commenter stated that for certain facilities, the pH may drop below 1.0 due solely to meteorological conditions.

EPA believes that a pH test is an appropriate indicator of hazard from liquid mineral processing wastes, regardless of whether the wastes were reused prior to their disposal. The comparison of the waste's pH to the proposed standard identifies wastes that are so corrosive that it would not be credible to consider them "low hazard" regardless of the industrial process used to generate the waste or the location of the facility.

The Agency does agree that the pH test should not be applied to non-liquid wastes. However, as discussed more fully below in section III, EPA has established a working definition of liquid and non-liquid wastes that considers the physical and chemical nature of mineral processing wastes on both an as-generated and as-managed basis. The distinction between liquid and non-liquid wastes is really significant, however, only when evaluating individual waste streams with respect to the Bevill volume criterion. Otherwise, as when analyzing waste samples in the laboratory, standard EPA definitions and protocols apply.

b. *Modification of the pH Standard.* Many commenters stated that the proposed increase of the pH range by one order of magnitude (to a pH range of 1.0 to 13.5) is correct and should not be changed. Other commenters, however, felt that the range should be increased even further, while some commenters felt that the range should not be increased beyond the characteristic test range (i.e., 2 to 12.5).

One commenter arguing for a further increase of the pH range stated that EPA's proposed lowering of the allowable pH level by only one pH unit (1) does not reflect the intent of the Bevill Amendment, (2) unfairly penalizes operations that have improved their treatment methods, and (3) contradicts EPA's own statement that the hazardous characteristics tests need not be determinative of Bevill status. Rather, EPA should adopt a lower pH standard of 0.5, which, this commenter believed, would have no appreciable effect on human health or the environment because of the limited migratory tendencies of mineral acids.

Two commenters supporting a further increase of the pH range argued that because mineral acids used in ore processing are not appreciably buffered, the relative acidic strength of the resulting wastes is overstated by the pH measurement; adding buffering agents simply to increase the pH above 1.0 is inappropriate because such an addition would interfere with resource recovery operations. One of these commenters illustrated the point by contending that iron chloride wastes, though exhibiting a very low pH value, would otherwise satisfy the low hazard screening criteria.

As discussed above, EPA believes that the comparison of the waste's pH to the proposed pH range satisfies the need to identify which wastes clearly are so corrosive that they do not merit continued regulatory exclusion and further study. The Agency does not find the above arguments advocating a further increase of the pH range convincing; any further increase in the pH range may result in wastes that are clearly not low hazard remaining in the Bevill exclusion, which may in turn compromise the protection of human health and the environment. For instance, the fact that mineral acids are not appreciably buffered does not alter the fact that wastes of such low pH may pose a hazard. In any case, today's rule will not create undue incentives to buffer mineral processing acids above the 1.0 level, since sampling of all high-volume wastes is now complete.

A commenter arguing for no increase of the pH range beyond subtitle C characteristic levels believed that (1) the proposed rule is arbitrary, (2) it will allow too many wastes to remain within the Bevill exclusion, and (3) EPA's primary goal of protecting human health and the environment will be compromised.

The Agency continues to believe that a one order of magnitude increase in the pH range is entirely appropriate as a screening criterion to determine which mineral processing wastes are clearly too corrosive to remain exempt pending detailed study. EPA also disagrees that environmental protection would somehow be compromised by failure to use the subtitle C pH range for purposes of identifying special wastes. EPA stresses that wastes remaining under the Bevill exclusion still will be evaluated further for specific hazard (including corrosivity) during development of the Report to Congress.

4. Ignitability and Reactivity Tests

Many commenters supported the Agency's tentative position to not screen mineral processing wastes for ignitability or reactivity. Some noted that the RCRA hazardous characteristics tests for ignitability and reactivity are not readily adaptable for a screening function and, particularly in the case of reactivity, are far too subjective to be employed in the manner proposed for the low hazard determination. One commenter argued that the RCRA tests for ignitability and reactivity should not be used to judge low hazard because they fail to identify unambiguously high hazard mineral processing wastes. Another commenter noted that ignitability is irrelevant to most mineral processing wastes because most of these wastes tend to be earthen or aqueous.

For three main reasons, EPA agrees that the RCRA tests for ignitability and reactivity are not appropriate and should not be used in the low hazard criterion: (1) The Agency currently has little or no actual data on the potential reactivity or ignitability of most mineral processing wastes, (2) the tests for ignitability and reactivity, because of their nature, cannot be readily modified for use as part of a screening criterion to identify wastes that are clearly not low hazard, and (3) despite the paucity of actual test results, the Agency does not believe, based upon best engineering and professional judgment, that mineral processing wastes are particularly ignitable or reactive.

5. Mobility and Toxicity Test

The majority of comments on the hazard criterion addressed the proposed mobility and toxicity test. For purposes of this notice, these comments are organized into appropriateness of (1) the EP Toxicity and TCLP Tests, (2) the proposed Method 1312, and (3) other types of tests.

a. *EP (Method 1310) or TCLP (Method 1311) Tests.* Many commenters supported EPA's contention that more appropriate tests than Methods 1310 or 1311 may exist for evaluating mobility and toxicity. Both of these tests are based on an assumption that, under a plausible worst-case mismanagement scenario, wastes might be co-disposed with municipal solid wastes, and several commenters argued that this disposal scenario is implausible for mineral processing wastes. The EP Toxicity Test, one commenter stated, does not correctly represent other conditions experienced by the mineral processing industry, such as low precipitation and high waste volume. Some commenters noted that this same argument should apply to mineral processing wastes removed from the Bevill exclusion, which, they stated, would be in contrast to EPA's statement in the April NPRM that mineral processing wastes removed from the Bevill exemption will be subject to Subtitle C if they exhibit EP toxicity, and that the EP test may be used to determine whether Subtitle C requirements qualify as "applicable or relevant and appropriate requirements" at CERCLA sites.

Other commenters disagreed, however, with EPA's proposal not to use the EP Toxicity Test. These commenters noted the test's well-established reputation, and the large amount of data already collected by the Agency. EPA proposed Method 1312, they argued, without demonstrating the inadequacy of the EP or TCLP tests (e.g., EPA has not demonstrated that the EP or TCLP tests significantly and consistently overestimate leaching of metals from mineral processing wastes). These commenters went on to note that the argument that monofill disposal implies that the EP test is inappropriate for mineral processing wastes clearly was rejected by EPA in promulgating the EP test in 1980. Furthermore, the commenters stated, not using the EP test because of the nature of the extraction medium falsely assumes that each processing waste is disposed of in a manner that precludes it from coming into contact with other processing or mining wastes when, in fact, there is strong reason to presume an acidic disposal environment. These commenters contended that (1) many mining and metallic ore processing wastes have significant acid generating potential (which may result in very acidic conditions, even in a monofill), (2) many wastes are stored or disposed in unlined units, (3) many sites are located in conjunction with mining and other similar activities, (4) many exempted wastes are themselves acidic, and (5) EPA's use of a 100-fold dilution/attenuation factor is sufficiently modified to account for variability in leaching conditions. EPA, they believed, should consider that exposure of non-acidic wastes to acidic conditions through commingling with other wastes, leachate, or contaminated runoff is a highly plausible scenario and certainly a reasonable worst-case scenario.

The Agency acknowledges the well-established reputation of the EP Toxicity Test and the large amount of EP extract data for mineral processing wastes, but nevertheless believes that the EP and TCLP tests and data generally are inappropriate for identifying mineral processing wastes which are "clearly not low hazard" under today's screening process and thus should be removed from the Bevill exclusion. The purpose of the EP and TCLP tests are to determine which solid wastes are "hazardous wastes" under sections 1004(5) and 3001(a) of RCRA; by contrast, today's hazard criterion determines only whether a waste should be temporarily excluded from regulation under section 3001(b)(3).

EPA agrees that mineral processing wastes may be disposed in acidic environments; however, the acids to which they will usually be exposed are mineral acids, rather than organic acids such as that used in the EP and TCLP tests. This fact is central to EPA's use of Method 1312 for evaluating the hazard of mineral processing wastes. In contrast to the disposal of municipal refuse, mineral processing wastes are unlikely to be managed in environments that contain or are capable of generating organic acids, such as the acetic acid formed by decaying garbage; mineral processing wastes, with very few exceptions, do not contain appreciable quantities of organic matter. Thus, EPA believes that use of the EP or TCLP would identify certain mineral processing wastes as not low hazard which EPA believes are appropriate for further study under section 8002(p).

Concerning the use of existing EP/TCLP extract data, and as stated in the April NPRM and discussed in Section III of this preamble, EPA will use existing EP extract data to help evaluate whether a waste stream which fails the basic toxicity test (using Method 1312) should nonetheless remain within the Bevill exclusion under certain conditions. EPA believes that use of EP/TCLP extract data in this fashion is appropriate to account for possible anomalies in the Method 1312 results, since EPA concedes that Method 1312 has not been used in a significant number of past cases.

As already stated, waste streams that are removed from the Bevill exclusion because they do not meet one or more of the Bevill criteria are not special wastes, and will be evaluated for possible regulation under subtitle C in the same manner as any other industrial solid waste. EPA believes that use of the EP (or, in the near future, the TCLP) is appropriate for non-Bevill mineral processing wastes removed from the exclusion today because EPA does not have reason to believe that the worst-case mismanagement scenario would be implausible for such low-volume wastes. Thus, these tests are appropriate for determining the hazardous characteristics of particular waste streams that are potentially subject to regulation under RCRA section 3001 without further study.

Commenters arguing for use of the EP Toxicity Test also noted several sources of information that indicate that the use of organic acids may affect the leaching of lead differently than of other metals. In addition, they stated, the reproducibility of these test procedures could be adversely affected with respect to lead. They noted one study that suggested that in cases in which lead was the only constituent that leached above regulatory thresholds, an additional test (e.g., using sulfuric acid) should be used to eliminate the effect of organic complexation while still retaining the acidic conditions. One group of commenters postulated the inappropriateness of Method 1312 (and argued for a more aggressive leaching method) by citing a certain study's evaluation of the waste extraction test (WET) and possible alternatives. This study, they said, demonstrated that tests other than WET—similar to Method 1312 according to one commenter—suffer from very low or no ionic strength and buffering capacity. The study authors, they contended, rejected claims that organic acids employed by WET, EP, or TCLP are overly aggressive.

EPA recognizes the potential differential treatment of the EP test with respect to lead-containing wastes (because of the organic acid used in the test). But, because Method 1312 does not use an organic acid, this difference is not expected to be a problem. In fact, recent results of comparisons between Methods 1310 and 1312, which EPA examined to respond to these comments, indicate that the difference in aggressiveness between the two methods with respect to lead is greater than the difference with respect to other contaminants. (See below for additional discussion on this point.)

One commenter argued that the use of a deionized water extraction test to measure inherent toxicity of smelter slag is inappropriate because deionized water generally exerts minimal extraction from slags and does not reflect conditions to which slag is exposed in the natural environment. Other commenters, however, argued that deionized water extraction is well tested and is mild enough to screen out only the highly hazardous wastes which, they contended, are the only wastes that EPA should be trying to eliminate from the exclusion at this time. A neutral water method, one commenter went on to state, is an appropriate basis for evaluating which wastes removed from the Bevill exclusion meet the criteria for hazardous waste regulation.

As indicated in the April proposal, the data from deionized water extraction tests were used as surrogates since there was very little data on mineral processing wastes available at the time using Method 1312. However, Method 1312 uses simulated acid rain as a leaching fluid to attempt to reflect conditions in the environment. For this reason, EPA believes that it is a more accurate screening tool than would be the deionized water extraction method. While Method 1312 is expected to be slightly more aggressive than the deionized water extraction test, it is still expected to be less aggressive than the EP toxicity test, and hence, more appropriate as a screening tool.

Since the proposal, EPA has collected samples of all potentially high volume mineral processing wastes for analysis using Method 1312. EPA has been able to complete laboratory analyses of samples from seven of the nine high volume wastes for which EPA used deionized water or EP toxicity data to propose hazard determinations in April. Now that the Method 1312 data are available, the Agency need not rely solely on neutral water or other test data. EPA notes here that the new sampling and analytical data obtained using Method 1312 confirm the Agency's earlier findings with respect to which of the nine wastes are and are not low hazard.

b. *Method 1312—Simulated Acidic Precipitation Procedure.* Several commenters supported EPA's proposed use of Method 1312 for testing the hazardous leachability of mineral processing wastes. Some endorsed the move toward Method 1312 because they felt it was more appropriate than the EP Toxicity Test (although they believed that improvements could be made). Many others contended that, for a variety of reasons, Method 1312 was inappropriate for determining low hazard. The reasons noted related to general issues, as well as the method's supposed lack of representativeness of the environmental conditions to which mineral processing wastes generally are exposed, the lack of available data to evaluate its accuracy, the contention that the method is not less aggressive than current methods, the questionable applicability of the method to local and/or mineral processing conditions, and finally a variety of specific technical issues. These comments are addressed in detail below.

i. *General.* Several commenters stated that Method 1312 was not finalized and could not be replicated. According to one commenter, EPA must abandon Method 1312 and instead rely on the RCRA section 8002(p) factors to study all mineral processing wastes.

EPA believes that, although Method 1312 was not finalized via a final rule at the time of the proposed rule, sufficient data were available in the docket to conduct an appropriate evaluation of the method's suitability as a mineral processing waste screening test. Furthermore, in response to these comments, EPA has examined additional data which have become available since the proposal (these data may be found in the docket for this rulemaking). In response to the suggestion that a RCRA section 8002(p) study should be conducted to evaluate hazard, and as discussed previously, EPA believes that a quantitative screening test is the most appropriate method for identifying wastes which are not low hazard, as required by the EDF II. The Report to Congress will be conducted only for the wastes remaining in the Bevill exclusion.

Many commenters stated that EPA should make the toxicity standards for liquid wastes less stringent because, as proposed, the Agency would be measuring low hazard at the same constituent concentration values used to determine whether a liquid waste exhibits a characteristic of hazardous waste; specifically, the method would impose the same criterion for liquid mineral processing wastes as would the EP Toxicity Test (Method 1310). This judgment is counter, they argued, to EPA's intention of developing a test to determine which wastes are clearly not low hazard, and is contrary to the ruling of EDF I, which maintained that the Bevill Amendment was designed to temporarily suspend regulation of special wastes under subtitle C, irrespective of whether they fail hazardous characteristic tests. As an alternative, some commenters recommended, EPA should adopt the approach used by Congress in identifying liquid hazardous wastes subject to land disposal restrictions. Finally, several commenters suggested increasing by one order of magnitude the contaminant concentrations used to determine the hazardousness of the liquid.

EPA believes that an adjustment of the screening tool for determining which wastes containing less than 0.5 percent solids are not low hazard is inappropriate, because the purpose of the 100-fold increase of the MCL is to account for dilution/attenuation of the dissolved contaminants in the environment. As already indicated, the Agency believes that once contaminants are in dissolved form and available for dispersion in the environment, the same standard should be applied to evaluate their toxicity, regardless of whether the solution tested is a waste sample or a test extract.

ii. *Evaluating the Accuracy of Method 1312.* Some commenters stated that the limited tests that have been performed on Method 1312 focus on only two of the eight metallic constituents of concern (lead and cadmium) and, therefore, are not adequate to support application of Method 1312 to a wide variety of processing wastes. Furthermore, a commenter stated, the Agency should question the accuracy of the interlaboratory testing which compared Methods 1310, 1311, and 1312 only for the parameter of lead and gave no information regarding the effectiveness of these methods on the leachability of other elements. One commenter believed that Method 1312 is inadequate as a screening test because (1) the degree to which 1312 is less aggressive than 1310 is unknown and (2) many data that are available for waste streams using 1310 and 1311 will become unusable if Method 1312 becomes the test. This commenter, however, supported EPA's proposal that data from Methods 1310 and 1311 should be used to a limited extent if Method 1312 remains as the mobility and toxicity test.

As discussed above, EPA believes that both the previous and the current test data for Method 1312 adequately prove the usefulness of this method for the purposes stated. In addition, the effectiveness of Method 1312 (e.g., compared to Method 1310) on elements besides lead has been confirmed (supporting data may be found in the docket for this rulemaking). By definition, a screening test is designed to be accurate only to the extent that it separates out only those segments of a population (in this case mineral processing wastes) that clearly do not meet a certain set of criteria (in this case low hazard). EPA reiterates that Method 1312 is only being applied as a screening test to identify wastes that clearly are not low hazard and therefore do not qualify for a Bevill exclusion. Those wastes that do qualify will still be further evaluated to determine what controls are needed.

iii. *Applicability of Method 1312 to Mineral Processing Wastes and Soils.* According to several commenters, Method 1312 is inappropriate to determine the mobility of contaminants in mineral processing wastes and wastewaters because the method originally was designed for testing contaminant migration in soils.

EPA disagrees that Method 1312 is inappropriate for this or any other reason. The original purpose of Method 1312 is irrelevant to its purpose in this rulemaking, just as its purpose here is irrelevant to other rules that do not involve identification of wastes subject to the Bevill exclusion. For the reasons presented throughout this preamble and in the background document to this rulemaking, Method 1312 is believed to be appropriate for use on mineral processing wastes within the context of the Bevill exclusion hazard criterion.

iv. *Appropriateness of Method 1312 as a Modification of the Standard.* As stated previously, several commenters acknowledged Method 1312's appropriateness as a modification of the mobility and toxicity standard. According to some commenters, however, the use of Method 1312 would not represent a less aggressive standard and, therefore, would be contrary to Congressional intent. They contended that, contrary to EPA's claim, Method 1312 is not consistently less stringent than the existing hazardous waste characteristics tests; for example, in one EPA test, Method 1312 leached more lead than the EP Toxicity Test in 12 of 18 analyses conducted on two soil samples. Before Method 1312 is incorporated into a formal rulemaking, they stated, data should be gathered to unequivocally demonstrate that the leachate concentrations will not be greater than those obtained by Method 1310.

The Agency believes that, in general, Method 1312 will be less aggressive than the EP test and the TCLP test. The following excerpt is from the EPA test report referred to by the commenters as an explanation of the results for the two samples described by the commenters:

> Method 1312, which is in essence a distilled water extraction solubilized very little lead except for the two North Carolina samples, 5 and 6, which contained very high levels of lead in the bulk soil. Results by Method 1310 for these same two soils were in general agreement with the 1312 results because no acetic acid was added during the 1310 extraction of these two soils. That is, for both methods the extracting fluids were nearly identical for these two samples.

In other words, these two unusual soil samples from a Superfund site were both highly acidic and very highly contaminated. In this situation, the EP test and Method 1312 provided essentially the same results. It is also of note that the TCLP, which will replace the EP, was significantly more aggressive than either the EP or Method 1312 for these two samples. The results from these two samples and the conditions of the sites where they were collected are in contrast to the conditions typically found at and sampling results derived from mineral processing facilities, as indicated by EPA's recent sampling program and laboratory analyses using Method 1312.

v. *Applicability of Method 1312 to Local and/or Mineral Processing Conditions.* Some commenters stated that Method 1312 is not applicable to mineral processing operations located in certain areas because the pH of the testing medium is not representative of rainfall in those areas and would potentially yield erroneous results; furthermore, because many mineral operations are in arid areas, the Method 1312 procedure of saturating the waste sample in an acid solution for 18 hours is non-representative of these sites. Other commenters believed that Method 1312 will produce misleading results because it (1) unrealistically targets certain elements in Bevill wastes, (2) produces leaching results that bear no relationship to actual management practices, and (3) fails to account for site-specific conditions. One commenter suggested that EPA allow the extraction fluid for mineral processing wastes to depend on the region of the country where the waste is managed (e.g., a pH of 4.4 could be used for east of the Mississippi, and a pH of 5.2 could be used for west of the Mississippi).

Although Method 1312 includes two different extraction fluids for soils to attempt to account for geographic variations in rainfall, this variation is appropriate only for evaluating in-place soils since their geographic location is known. For evaluating wastes for a national regulation, the Agency cannot assume that all of a particular waste will be generated and managed in any particular location or region. Therefore, to be conservative in protecting human health and the environment, the Agency will apply the pH 4.2 extraction fluid to all mineral processing wastes.

vi. *Specific Technical Issues.* A variety of specific technical issues were presented by commenters. One commenter argued that EPA should abandon the use of the Zero Headspace Extractor (ZHE) in Method 1312 because its erratic results with the extraction of volatiles is a troubling source of unexplained variation. Another commenter arguing against the applicability of Method 1312 stated that the proposed batch test approach does not account for the time dependent and flow dependent kinetics of the mobilization of species from wastes and will overestimate the resultant concentrations when compared to a natural system.

In response to the first point, the Agency believes that it is unlikely that most samples will contain volatile organics at levels of concern, nor does the Agency plan on assessing volatile organics in metal processing wastes; thus, there is no reason not to use the ZHE with the test. Concerning the second point, EPA agrees that overestimates may result, but has already accounted for potential overestimation by the use of a multiplier of 100 for the drinking water standards that are used for comparison.

Many commenters addressed specific aspects of the leaching liquid that should be used for Method 1312. For example, will the extraction fluid be brought into equilibrium with the carbon dioxide in the air? If so, they stated, the buffering capacity of the fluid will change over time if the fluid is mixed and then stored. For consistency, therefore, the description of Method 1312 should state that the fluid is to be mixed immediately before use, or brought into equilibrium with atmospheric carbon dioxide.

Another commenter on the extraction fluid used for the Method 1312 test stated that a carbonic acid/sulfuric acid/nitric acid cocktail, which has been specifically prepared to simulate precipitation, should be used. Another commenter added that, if EPA were to use Method 1312, the extraction fluid volume should be increased from 20:1 to 50:1, or the MCLs should be increased for wastes which have pH's below those of the recommended extraction fluids. One commenter contended that there are technical difficulties in using the deionized water required by Method 1312. For example, the commenter stated, deionized water can have variable pH levels which could lead to inconsistent results. Some commenters stated that, rather than Method 1312, EPA should use ASTM D 3987 (a distilled water leach test) as a more appropriate screening test.

The Agency believes that Method 1312, as described in the background document to this rulemaking, is appropriate as a screening test for mineral processing special study wastes. The current extraction fluid formulation has been adequately tested and does not need modification, and the rationale for reducing the stringency of the comparison toxicity levels for wastes with low pH levels is unclear. The statement that deionized water can have variable pH levels is sound, but this should not pose a problem because the pH is subsequently adjusted to reflect acid precipitation. Finally, given that Bevill mineral processing wastes are by definition generated in large volumes, there is no justification for increasing the extraction ratio (e.g., from 20:1 to 50:1) to simulate actual environmental conditions when evaluating candidate wastes using Method 1312.

If EPA chooses to promulgate Method 1312, some commenters stated, it should address whether a particle size reduction step is appropriate or if the step creates additional surface area that artificially elevates leachability. Another commenter contended that EPA should replace the particle size reduction requirement in Method 1312 with the Structural Integrity Procedure because a number of mineral processing wastes exist as inert, monolithic wastes that are unlikely to be physically degraded in a landfill. This commenter stated that congressional floor debate indicated recognition of this fact. One commenter believed that the selected particle size in the proposed Method 1312 is not a good analog of the particle size distribution in spent ore materials from heap leaching, and another commenter stated that the concept of particle size reduction should be eliminated altogether from Method 1312 and wastes should be tested in their natural state.

The Agency believes that, with respect to particle size reduction, there is a wide variety of particle sizes among the candidate Bevill wastes. In order to achieve analytical results that are broadly applicable across sites and over time, the particle size reduction step is necessary in order to ensure that the smaller particles in the waste as generated or after disposal are adequately represented and that the Agency has data with which to make regulatory decisions for an entire sector based upon sampling results from a small number of facilities.

c. *Other Types of Tests.* One commenter objected to the separate test proposed for wastes suspected of containing cyanides. The commenter contended that EPA must choose either the extraction solution proposed for cyanide, or that proposed for metals; to propose a separate extraction solution to assess cyanide and metals singularly is illogical and technically incorrect. Some commenters stated that EPA should utilize a method developed by the California State Water Resources Board that estimates acid-forming potential of mining wastes, because EPA should not classify mineral processing wastes with significant acid-forming potential as low hazard. Acid Mine Drainage (AMD), the commenters contended, is one of the most serious environmental concerns at mining sites and is pertinent to the mineral processing waste issue given the potential for processing waste storage at mining sites and the potential for processing waste disposal sites to become acidified.

One commenter stated that an appropriate test for inherent toxicity should account for complexing as a release mechanism for metals; for instance, the ASARCO smelter located near Tacoma, Washington disposed slag in low lying areas rich in organic matter, which has resulted in high metals loadings being released into local waterways.

EPA disagrees with the suggestion that the separate test for cyanides be eliminated. Separate tests are appropriate, because metallic elements in solid samples must be acid-digested for analysis, while cyanides can be extracted using less aggressive methods. Acid digestion of cyanide-bearing materials is also dangerous, because it can generate deadly HCN gas. In order to both collect accurate analytical data and protect laboratory personnel, EPA will continue to use separate testing methods. The Agency agrees that acid mine drainage is one of the most serious environmental concerns at mining sites. At this point, however, the Agency is only applying a screening test (Method 1312) to identify those wastes which clearly do not qualify for the special waste exclusion. Those wastes that do qualify will be further studied to determine the need for additional controls, and the acid-forming potential of those wastes is one of the factors that will be evaluated. Finally, the Agency believes that it is technically infeasible to consider factors requiring site-specific data, such as organic complexation of metallic contaminants, in a screening test. This and other risk-related variables will instead be considered for the Report to Congress on wastes retained within the Bevill exclusion.

6. Constituents for Testing

a. *Constituents Proposed in Mobility and Toxicity Test.* Some commenters stated that a major problem with the proposed constituents to be used in the mobility and toxicity test is that no distinction is made between the hexavalent and trivalent forms of chromium, which is important given that EPA has described hexavalent chromium as the more toxic form. One commenter noted that EPA has (1) decided to consider only hexavalent chromium concentrations when listing solid wastes as hazardous wastes and (2) excluded from Subtitle C regulation wastes that fail the EP Toxicity Test due primarily to the presence of trivalent chromium. The commenter claimed that the Bevill status of wastes associated with the processing of titanium ore which contains only trivalent chromium would be affected by the proposed approach.

EPA believes that total chromium concentration is a more valid and environmentally protective indicator of hazardous potential than is a measure of hexavalent chromium, principally because chromium-bearing wastes may be exposed to oxidizing conditions in the environment (which would transform trivalent chromium to hexavalent chromium). Therefore, measuring only hexavalent chromium in mineral processing wastes on an as-generated basis might yield an inaccurate indication of (i.e., understate) actual degree of hazard. Thus, EPA will continue to compare total chromium leachate concentrations to the health-based level for hexavalent chromium. This same concern is reflected in EPA's proposed Toxicity Characteristic rule (51 FR 21648), and was the primary basis upon which six low volume mineral processing wastes were listed (53 FR 35412) in response to the same federal Appeals Court ruling that precipitated this rulemaking (EDF II).

Another commenter stated that EPA should modify the low hazard test so that it focuses on a narrower range of constituents than the EP Toxicity Test. For example, they stated, silver poses no threat to human health and should not be considered hazardous; EPA's proposal to delete the MCL for silver under the SDWA is further evidence that silver is not hazardous.

EPA maintains that the basis for developing the low hazard criterion is the existing evaluation of the four factors (EP toxicity, corrosivity, ignitability, and reactivity) used to identify characteristic hazardous wastes. Silver is one of eight metals included in the EP toxicity test, which is designed to assess potential risk by comparing contaminant concentrations with human health-based standards. Because the Agency has not taken final action reflecting a decision to eliminate silver as a contaminant of concern, EPA will continue to utilize measurements of silver concentration as an element of the low hazard criterion.

b. *Other Constituents.* Several commenters stated that EPA should incorporate additional MCLs or other health standards, such as reference doses, particularly for incorporating fluoride, cyanide, manganese, and nickel into the low hazard criterion. Another commenter believed that it would be highly inappropriate to incorporate additional constituents or measurements beyond the existing EP toxicity contaminants in the mobility and toxicity test.

Remaining comments on the question of other contaminants focused on whether EPA should include radionuclides as a constituent for evaluating the hazard potential of phosphogypsum and other processing wastes. Many of those favoring the inclusion of radionuclides stated that data demonstrate that several wastes generated by the elemental phosphorus sector (furnace scrubber blowdown, process wastewater, and slag) and by the phosphoric acid sector (e.g., phosphogypsum and process wastewater) have leached radium-226 and/or gross alpha particle radioactivity at levels exceeding 100 times their respective MCLs. In the latter case, they noted, alpha radioactivity leached at levels exceeding 1000 times its MCL. Another commenter argued that based on existing cancer incidence data, any waste containing 5 pCi/g or more of radium-226 should be considered hazardous. In addition, the commenter noted, EPA has recognized that phosphogypsum has radium-226 concentrations consistently in the range of 25 to 35 pCi/g.

One commenter questioned any inclusion of radionuclides as a constituent for evaluating the hazard potential of phosphogypsum because of the proposed rule regarding the National Emission Standards for Hazardous Air Pollutants (NESHAPS), which addresses the regulation of radionuclides. The analysis described in that proposed rule, the commenter noted, should satisfy any valid concerns regarding residual radioactivity from phosphate industry wastes, and potential groundwater contamination could be addressed by the RCRA section 8002(p) study.

One commenter argued that there is no basis in RCRA for consideration of radioactivity in determining low hazard; radioactivity is not a characteristic of hazardous waste under Subtitle C, and it

must not be used. Phosphogypsum, according to this commenter, may exhibit radioactivity because of naturally occurring radionuclides, but both Congress and EPA have already given the radiological aspects of phosphate processing extensive consideration, making it unnecessary for the Agency to establish a "bright-line" test for radioactivity.

Another commenter stated that screening mineral processing waste streams out of the Bevill exclusion based solely upon radioactive characteristics without developing standards relevant to the harmfulness of these wastes would not be appropriate because the waste would subsequently fall under Subtitle C regulation, which may not be applicable to radioactive waste; a facility that had a waste removed from the Bevill exclusion might be required to incur substantial expense without public health benefit.

EPA believes that radioactivity and other constituents suggested by commenters should not be included as components of the hazard criterion because they are not addressed in the hazardous waste characteristic tests, which are the cornerstone of and reference point for the low hazard criterion. EPA believes that it would be logically inconsistent to remove a waste from the Bevill exclusion during this screening on the basis of a hazard characteristic that would not, by itself, cause the waste to be regulated under subtitle C. These constituents will, however, be considered in the detailed studies that will underlie the Report to Congress on Bevill mineral processing wastes. Accordingly, the potential risk posed by the radioactive or other nature of any of these wastes will be addressed in detail within the next year. EPA plans to utilize data developed for the radionuclide NESHAP as part of this evaluation.

7. Additional Standards

Many commenters stated that, although the Agency's use of MCLs to measure hazard to human health is supportable, a major deficiency in the approach is the use of the MCL for arsenic (a frequent constituent of processing wastes) in evaluating human health risk; arsenic's carcinogenicity mandates a more stringent standard for human health. Specifically, a 10^{-6} risk level for arsenic was suggested. These commenters also contended that EPA should not rely solely upon the MCL, but instead utilize the lowest standard from among the chronic ambient water quality criteria, MCL, cancer risk level, or oral reference dose for given substances, and then apply the 100-fold dilution factor to establish an appropriate low hazard standard. In addition, these commenters stated, the proximity of many processing sites to drinking water supplies, underlying groundwater, and human populations, as well as numerous damage cases demonstrating risks to public health, argues for a measure of hazard that directly addresses human health.

Commenters also stated that many substances present in processing wastes are more toxic to aquatic organisms than to humans. Moreover, MCLs do not exist for some toxic substances whereas ambient water quality criteria have been developed for many additional substances. Furthermore, EPA has stated in the uncompleted 1988 draft Report to Congress on selected mineral processing wastes that all of the potentially hazardous wastes studied had constituent leachate concentrations that exceeded ambient water quality criteria.

In addition, these commenters added, a number of the mineral processing wastes exceeded hazardous waste standards even when extracted with water. All the copper, zinc, and lead processing wastes, they stated, contain arsenic at levels that exceed a 10^{-6} lifetime cancer risk level; even the minimum concentrations of copper process wastewater, copper acid plant blowdown, copper bleed electrolyte, and zinc process wastewater sampled exceeded this cancer risk level.

In contrast, several commenters stated that for a variety of reasons EPA should not use additional standards. One commenter stated that an aquatic organism or radiological standard should not be used because aquatic organisms and radiological concerns are amply addressed by statutes other than RCRA. Another commenter stated that the aquatic organisms standards are inappropriate for the following reasons: RCRA is almost exclusively a human health-based program; the protection of aquatic organisms is not an integral part of RCRA; other statutes protect aquatic organisms; and mineral processing waste streams are often closed-loop and entirely contained within the facility.

Although the Agency strenuously disagrees with the contention that the scope of RCRA is generally restricted to protection of human health rather than more broad additional protection of the environment, it has decided not to augment the standards that were presented in the April notice. Part of the reasoning behind this decision is not that these standards are irrelevant, but that applying them requires site-specific data that are not currently available for most candidate mineral processing wastes. For example, applying Ambient Water Quality Criteria in any realistic way requires site-specific information on the flow of potential receiving waters, which vary over many orders of magnitude between sites. A more important argument, however, for retaining the standards proposed in April is related to the argument presented in the previous section on other constituents: EPA believes that other standards and criteria suggested by commenters should not be included as components of the hazard criterion because they are not addressed in the hazardous waste characteristic tests, which are the basis for the low hazard criterion. During the Report to Congress, however, many of the additional standards and criteria referred to by commenters will be addressed.

8. Application of Tests

Some commenters disagreed with EPA's proposal that wastes fail (i.e., are removed from the Bevill exclusion) when two or more facilities fail the hazard criterion. Many believed that the proposed "two-facility" decision rule is not stringent enough and the proposed plan to sample waste streams and apply Method 1312 ignores existing data, while others argued that the proposed application of the tests would be arbitrary and capricious. One commenter questioning the statistical accuracy of the "two-facility" test suggested that EPA sample a significant majority of the waste streams. Another commenter added that even if one could accept the statistical validity of making a recommendation based upon only two samples, the samples used in the test may have demonstrated entirely different characteristics; for example, one of the samples could have represented Missouri ores and the other Western ores.

The Agency stresses that it must make decisions, using limited data and within certain time constraints, about the degree of hazard posed by mineral processing wastes. Therefore, the screening approach described in the April NPRM and refined in today's preamble was developed to identify wastes that clearly are not low hazard and therefore should not remain within the Bevill exclusion. In response to comments, EPA has refined the hazard criterion to allow for the use of additional relevant data when a waste is generated at five or more facilities (see section III for details). Moreover, EPA has collected additional data on the nine high volume wastes for which the Agency proposed unconditional

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Bevill exclusion decisions in April. Data on other candidate Bevill mineral processing wastes will not be available until the September proposal.

The "two-facility" rule, the Agency believes, is appropriate when either (1) substantial additional relevant data are not available or (2) less than five facilities generate the waste. In the latter case, the rule translates into the question of whether half or more of the facilities generate a mineral processing waste that fails the comparison of the Method 1312 extracts to the toxicity levels. The Agency believes that the "two-facility" rule is a reasonable balance between too much and too little stringency. As for whether failure for different constituents at different facilities proves the inadequacy of the two-facility test, EPA believes that this type of situation is precisely why the low hazard criterion (and the characteristics tests upon which it is based) contains multiple factors. It matters little why a particular waste is not low hazard at one site or at multiple sites. What is important is that EPA has a method of identifying the mineral processing wastes that are not low hazard, for whatever reason.

EPA, one commenter noted, should require that the pH values for comparison be the average of a statistically valid number of samples that are representative of the waste stream; otherwise non-representative samples could incorrectly label an entire waste stream as hazardous. The Agency believes, however, that using the median rather than the average of the pH values when more than two samples are available for a facility is more appropriate because pH is measured on a logarithmic scale; the average of the anti-logs of multiple values will always be dominated by the lowest value.

Some commenters recommended that EPA determine that a processing waste passes the low hazard criterion if it passes the criterion for any single facility generating that waste. The Agency believes, however, that this approach would be insufficiently protective and exempt wastes which are clearly not low hazard at a significant number of facilities.

9. Types of Information

a. *Constituent Information.* Several commenters argued that a new sampling effort is inappropriate because the Agency already has compiled information on processing wastes in the phosphoric acid, tin, and titanium ore processing sectors; in addition, this information indicates frequent and large exceedances of the EP characteristic trigger levels. These commenters also argued that EPA already has extensive EP and water leaching data (in the draft Report to Congress) on processing operations in the copper, lead, zinc, and bauxite sectors, and, therefore, the Agency need not conduct a wholly new sampling effort.

EPA reiterates that it does not have adequate information to evaluate most candidate Bevill mineral processing wastes against the hazard criterion developed for this rulemaking (i.e., mobility and toxicity test using Method 1312), which EPA believes is the most appropriate test for this purpose. Therefore, a new sampling and waste characterization effort is vital if the Agency is to apply the hazard criterion and complete the rulemaking process. As discussed elsewhere in this preamble, existing EP toxicity or other data may be used if necessary.

One commenter recommended that appropriate testing methods for determining low hazard consider the hazard of the waste deposit as a whole (i.e., including older waste) and not just the new waste entering the deposit for the following reasons: (1) Time is important in stabilizing the waste; (2) the environmental concern is for influences and releases over an extended period of time; and (3) it is much more likely that long-term leaching behavior rather than immediate release will be important.

The low hazard criterion is designed to be a screening test that uses readily obtainable data. Conducting statistically meaningful sampling and analysis of large quantities of existing material (hundreds of millions of tons at some facilities) is well beyond the proper scope of such a screening test. Moreover, because the removal of the Bevill exclusion will not be applied retroactively (as discussed previously), the Agency believes that characterizing wastes as they are generated is far more relevant to addressing the low hazard criterion than are analytical data on accumulated wastes. As indicated above, data on older waste when it was generated may be used in specific situations.

b. *Damage Information.* Commenters stated that damage cases examined by EPA (in the draft Report to Congress) revealed numerous instances of environmental contamination as well as human health risks created by processing waste sites. In addition, they contended, EPA has had a considerable volume of data on environmental contamination from processing sites since at least 1984. One example where this information should have been used, they stated, was EPA's proposed classification of lead slag as low hazard, when out of the five active lead smelters, one lead smelter is on the Superfund National Priorities List and another has contaminated vegetation and stream sediments with heavy metals. Another commenter added that contamination caused by copper smelting slag in the Tacoma, Washington area has been documented in numerous reports: In 1983, a county health department issued a notice advising against consumption of bottom fish from the Hylebos waterway and against regular consumption of fish from other waterways in the area. The advisory, the commenter contended, was prompted by the presence of arsenic and lead in fish caused in part by smelting slag.

As indicated previously, EPA believes that, given the constraints of this rulemaking, site-specific information generally cannot be systematically considered within the hazard criterion and then applied uniformly to all of the various mineral commodity sectors distributed throughout the country. This information, however, may be considered to some extent in specific situations and definitely will be considered in detail during the study for the Report to Congress. The Agency appreciates information submitted in public comment concerning documented mineral processing waste damage cases.

c. *Risk Information.* Several commenters criticized the Agency's failure to include any risk assessment information within the low hazard criterion. By using laboratory tests exclusively, one argued, EPA disregarded current waste management practices and other important risk factors. Most minerals industry contaminants are heavy metals which are elements that cannot be destroyed or reduced to innocuous states as can organic contaminants. Thus, one commenter stated, consideration must be made in evaluating a low hazard criterion that the source itself is likely to provide the hazard. The commenter contended that to consider only the source is simpler and from a purely environmental viewpoint more acceptable, yet this approach is an inferior method of evaluating minerals industry wastes and is not in the public's best interest. Following the 8002(p) mandate to study risk, this commenter suggested, the Agency should adopt a performance-based regulation utilizing current monitoring, evaluation, treatment, and cleanup technology. Such an approach, the commenter argued, would have the advantage of considering the source and pathways at a site-specific level; the Agency has proven that this is a viable approach by utilizing it with mining and beneficiation wastes.

Several commenters argued that EPA should consider the quantity of waste in evaluating its potential hazard. They suggested that the Agency should, through the use of a variable dilution-attenuation factor applied to high-volume wastes, incorporate a measure of waste quantity into its proposed criterion.

These commenters also suggested that EPA consider all environmental data to determine actual risk arising from mineral processing wastes. They provided data on locational characteristics of mineral processing sites in order to lend support to their argument that there is a need to consider environmental risk at least as carefully as risk to human health in evaluating processing wastes.

The Agency reiterates its position on the use of risk or other site-specific information in the application of the low hazard criterion; this type of approach is inappropriate due to time constraints and EPA's belief that the hazard criterion is a screening tool for mineral processing wastes and is not intended as a replacement for the detailed study required by statute. That study will incorporate information such as waste management practices, waste characteristics, and site characteristics.

C. The High Volume Criterion

The April 17, 1989 NPRM specified a high volume criterion to be used to identify high volume mineral processing wastes. This criterion superceded and modified the original high volume criterion contained in the 10/20/88 proposal. In the April notice, the Agency stated that a waste stream would be classified as a high volume waste if it is generated at an average rate of more than 50,000 metric tons per facility per year. To account for fluctuations in mineral commodity markets, the test was to be applied to the highest average generation rate during any one year between 1983 and 1988. The actual cutoff selected by EPA for the high volume criterion was based on large volume waste streams currently being managed under Subtitle C regulations.

1. General Comments

Several commenters objected to any use of a "high volume" criterion to determine Bevill status. In particular, one commenter argued that the criterion discriminates against those sectors which, by nature of their operations, are small or are operating at reduced levels in a depressed market. Another claimed that the use of only a high volume criterion will lead to inconsistent results by removing from exclusion mineral processing wastes that Congress intended to include within Bevill and which would be likely to remain exempt following submission of the Report to Congress, while retaining in the exclusion some high volume wastes that may be subject to stricter regulation after study for the Report to Congress.

Another commenter argued that establishing a stringent high volume criterion as a screen for permanent exclusion from Bevill is inappropriate because it severely limits the regulatory options available to address particular waste streams. They maintained that the criterion should be construed liberally because retaining a waste under Bevill merely makes it eligible for study and a subsequent determination by EPA on whether the waste should be subject to Subtitle C regulation.

Several commenters recommended that EPA not rely solely on a volume criterion to determine Bevill status. They asserted that many factors were to be studied before mineral processing wastes were regulated and, in addition, that Congress intended low volume wastes which posed significant manageability problems to still be eligible for the Bevill exclusion. They argued that the Agency should consider those "high volume" issues unique to each industry that generates such wastes, including those characteristics unusual or unique to the mineral processing industry.

As discussed at length in the April notice, the Agency rejects these arguments as inconsistent with the Court's reading of legislative intent and as contrary to the special waste concept. Only waste streams that are truly "special wastes" are eligible for examination in the Report to Congress. The high volume criterion has always been central to the special waste concept and is a necessary and appropriate first screen in the final determination of a mineral processing waste's Bevill status. Other industry-specific factors relevant to mineral processing waste management will be considered in EPA's Report to Congress addressing those wastes that are high volume and low hazard.

2. Separate Volume Criteria for Liquid and Non-Liquid Waste Streams

In the April 17 NPRM, the Agency solicited comment on the use of separate high volume cut-offs for liquid and solid mineral processing wastes. Specifically, EPA suggested 1.5 million metric tons per year as a volume cut-off for liquid wastes. The consideration of a higher cut-off for liquid wastes was predicated on the fact that industry routinely manages hazardous wastewater volumes in the millions of gallons per day per facility (i.e., well over one million metric tons per year), which is in marked contrast to non-liquid waste materials which are typically generated and managed in much smaller quantities.

Comments on a separate volume criterion for liquid wastes were varied. While some commenters stated that not only is a separate wastewater cutoff wholly appropriate, it should be much larger than 1.5 million metric tons, others contended that a separate criterion should not be employed at all.

Several commenters supporting a separate criterion for liquid wastes stated that EPA should employ a separate volume criterion for liquid wastes higher than the proposed 1.5 million metric tons per year. They asserted that the proposed 50,000 metric tons per year threshold cannot be justified for liquid wastes even at average hazardous waste treatment, storage, and disposal facilities (TSDs); there must be a separate liquid volume criterion, and it should be substantially larger than 1,500,000 metric tons per year. Specifically, EPA should establish the volume criterion by determining the volume representing the 99th percentile of volume handled at regulated hazardous waste TSDs.

These commenters claimed that such an approach is supported by three considerations: (1) It makes data comparisons with those segments of the Subtitle C regulated community most relevant to the current rulemaking, therefore the results will not be arbitrary; (2) it reflects the technical feasibility of complying with subtitle C regulations, and therefore is consistent with EPA's original concept of the special waste exemption; and (3) by limiting the overlap between the regulated and exempt communities to one percent, it allows for unusual outliers while still narrowing the bounds of the exemption as Congress and the Court in EDF II intended.

These commenters went on to state that a volume criterion for liquids substantially greater than the proposed 50,000 metric tons per year is supported by data from the 1985 Biennial Report and other EPA data. They stated that the average non-commercial surface impoundment TSD owner/operator managed at least 922,000 metric tons of hazardous waste in surface impoundments during 1986, while the average non-commercial underground injection well facility managed at least 403,199 metric tons of hazardous waste during 1986. Data on Alabama, Kentucky, Louisiana, South Carolina, and West Virginia indicate that waste was generated in quantities over several hundred thousand metric tons, generally on-site at the average State TSD.

EPA agrees with the commenters that currently available data on waste management at subtitle C facilities support a higher high volume criterion for liquids than for solids. However, the data from the Biennial Report were not adequate for the type of analysis EPA believed appropriate. To address these comments and to develop a specific cut-off value, the Agency used data from EPA's National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (TSDR), which contains detailed information about volumes and specific types of wastes generated and managed at Subtitle C regulated facilities during calendar year 1986. These data allowed EPA to conduct a waste stream-level analysis of current management practices and hazardous waste volumes managed at facilities regulated under subtitle C of RCRA. Copies of the data used in the analysis are available in the docket.

As discussed more fully below, the Agency examined individual waste-code data for waste streams entering Subtitle C landfills to develop a revised criterion for solid/sludge materials, and for waste streams entering wastewater treatment processes, surface impoundments, and injection wells to develop a cut-off value for liquid waste streams. The final criterion values reflect the largest single waste code managed at the 95th percentile of the Subtitle C facilities employing these hazardous waste management techniques.

On the other side of the issue, several commenters stated that EPA's suggestion to use a separate high volume criterion for aqueous liquid wastes is inappropriate and that the Agency should apply the same high volume criterion to liquid and solid waste streams from mineral processing operations. They based this comment on the assertion that there is no justification for a separate aqueous waste criterion within RCRA, the Bevill Amendment, the Simpson Amendment, the legislative history, or the Agency's descriptions of the special waste concept. The commenters also contended that the disposal of aqueous wastes is already controlled for the most part under other programs such as the National Pollution Discharge Elimination System (NPDES) of the Clean Water Act and, therefore, a separate volume cut-off is not warranted. These commenters also remarked that a higher liquid waste cut-off would cause many facilities to lose exclusionary status and be regulated under Subtitle C for solids as well as for wastewater.

The legislative history clearly identifies amenability to management under subtitle C as a primary criterion for defining special wastes. The Agency believes that, because liquid and solid wastes have very different characteristics and are managed with very different processes, defining a separate high volume cut-off for liquids and solids is appropriate and necessary to fully capture the differences in manageability of different types of waste streams. The fact that some waste streams may lose their excluded status is not a determining factor in establishing either the basis for or the specific values of a high volume criterion.

A commenter claimed that EPA should not include liquid waste streams in the basis of comparison for developing the high volume threshold value for solid wastes. This commenter also asserted that to determine the threshold value, EPA must compare the volumes and treatability of mineral processing wastes with the volumes and treatability of those wastes which are actually regulated pursuant to subtitle C.

EPA agrees. In today's rulemaking, EPA has proposed separate high volume criterion values for solid and liquid wastes that were derived through separate examination of newly available TSDR survey data on solid and liquid wastes currently managed under subtitle C.

A commenter suggested that application of different criteria to solid and liquid waste streams is unwarranted, because wastewater is commingled with both suspended and dissolved solids; these are not differentiated in the handling process.

The Agency disagrees, because the dissolved and suspended solids are not considered separate Bevill solid wastes unless and until they have been precipitated or otherwise separated from the wastewater and are managed as a distinct waste stream. Candidate Bevill wastes that are in liquid form at the time of generation will be compared to the threshold for liquid wastes and those that are in solid form will be compared to the threshold for solid wastes. A solid/sludge residual from a high volume liquid waste will retain Bevill status if it is high volume, i.e., passes the high volume test for solid materials.

Another commenter asserted that EPA's assumption that wastewater is discharged from mining operations to waters under NPDES permits is incorrect in many cases. They maintained that the wastewater, which is commingled with solids, is evaporated. In addition, there is often no surface water in the vicinity of the mineral processing plants.

EPA has never made or articulated any assumptions about the final destination of wastewaters from mining and mineral processing operations and, in fact, asserts that the destination of treated wastewaters is irrelevant to the issue of determining Bevill status. A waste stream's Bevill status pertains only to how the waste is generated prior to disposal, not the manner in which it is finally disposed. The Agency is fully aware that wastewaters from mining and mineral processing operations are commonly evaporated or recycled after treatment.

One commenter asserted that EPA failed to understand that costs to manage wastewater escalate with impoundment size, thus regulation under subtitle C would burden facilities that manage wastewater in surface impoundments. For this reason, they maintained, EPA should use a less rigorous criterion than the 50,000 metric ton cutoff for liquid wastes.

While it may be true that the cost of waste management in surface impoundments increases in a non-linear fashion with the size of the impoundment, data from the TSDR survey indicate that facilities currently manage up to 44 million metric tons of a single hazardous waste stream in RCRA permitted surface impoundments, and that scores of facilities manage more than 50,000 metric tons of hazardous wastewater in surface impoundments annually. There are 55 facilities from the TSDR data set that managed over 1,000,000 metric tons of liquid hazardous waste in 1986. (A list of these facilities is contained in the docket to today's rule.) Many of these facilities use surface impoundments for one or more of their treatment processes. Across all facilities managing high volume hazardous waste, surface impoundments have been employed for virtually all treatment processes. These data demonstrate that management in surface impoundments under subtitle C regulations is feasible for volumes far greater than 50,000 metric tons.

Several comments specifically addressed EPA's suggestion of 1.5 million metric tons as a liquid waste cut-off. One commenter asserted that a 1.5 million metric ton threshold is arbitrary and inordinately high and suggested 250,000 metric tons as an alternative

value. Another commenter contended that EPA based its 1.5 million metric tons per year aqueous waste threshold on volumes of wastewater treated by other industries and that it is not certain that the mineral processing industry would produce the same volumes. Similarly, a commenter claimed that the 1.5 million metric ton threshold was based on unreasonable comparisons to wastewater streams that require little or no management. The proposed 1.5 million metric ton standard cannot be technically supported, they stated, because it was developed with reference to materials management practices that do not reflect the technical feasibility of applying Subtitle C controls to mineral processing wastes. Finally, one commenter contended that the total quantity of liquid waste streams routinely managed by industry is substantially lower than the proposed 1.5 million metric tons, therefore implementing this criterion would improperly exclude numerous aqueous waste streams from Bevill and the required study.

The Agency disagrees with the commenters on the importance of comparing mineral processing wastes only to identical wastes. The facilities in the TSDR data set represent a wide variety of industrial sectors and production processes, and generate a wide variety of waste streams. Waste streams examined in the analysis can in no way be construed to require "little or no management." Collectively, these facilities employ virtually all available waste management technologies, and commonly employ wastewater management techniques such as equalization, neutralization, metals precipitation, and coagulation/flocculation that are used to manage many, if not most, wastewater streams generated in the mineral processing industry. The docket document for today's rule referenced above also lists wastes generated and waste management technologies employed for 55 facilities managing high volume hazardous waste. Because these waste management technologies are generally available, virtually any wastewater management process employed by a facility in the TSDR data set could also be used by mineral processing facilities.

In its analysis of the TSDR data, however, EPA was sensitive to the concerns of these commenters about the similarity between mineral processing wastes and the subtitle C wastes being utilized to develop the high volume criterion. The similarity of waste streams examined, and therefore, the comparability of the two groups of facilities, is demonstrated by the fact that, of facilities in the data set generating volumes of waste larger than the high volume threshold, several are actually mineral processing facilities and many others are owned and operated by companies that also own and manage mineral processing facilities.

3. Degree of Aggregation of Waste Streams

In keeping with the initial approach delineated in the October 20, 1988 NPRM, EPA stated, in the April 17, 1989 notice, its intention to apply the high volume criterion to individual waste streams. The Agency employed only limited aggregation of very similar wastes such as copper slags and certain process wastewaters.

Commenters in general requested more aggregation of waste streams before application of the high volume cutoff. Several commenters objected to EPA's position that high volume aggregate wastes managed at a single facility are not high volume at all, but rather a collection of low volume single waste streams. They stated that this position undermines the intent of Congress and impermissibly reduces the number of mineral processing wastes subject to further study. They also contended that nothing in the language of the Bevill Amendment or EDF II suggests that this is appropriate.

Another commenter asserted that EPA has artificially segregated processing wastes into specific waste streams for purposes of determining which wastes will remain within the Bevill exclusion. This failure to aggregate is particularly onerous, they claimed, in light of the Agency's tentative decision regarding how to apply the mixture rule.

Several commenters claimed that no evidence exists to indicate that aggregating individual process streams increases potential hazard. They noted that the accepted industry practice is to combine all waste streams in aggregate for disposal. By failing to consider waste streams in the aggregate, they asserted, EPA ignores real world management practices.

Another commenter noted that subtitle C data are based on the combined volumes of all hazardous wastes managed at individual subtitle C facilities rather than the volumes of individual waste streams. If EPA uses these data, they contended, then it must aggregate waste streams at mineral processing facilities as well. An additional commenter maintained that EPA has failed to recognize that slag is a universal term descriptive of metallurgical processing wastes from many industry sectors. They claimed that, by specifically recognizing only wastes termed "slag," EPA has failed to afford continuing exclusion to other metallurgical process wastes that serve similar purposes.

These commenters suggested, instead, that EPA aggregate, for purposes of applying the high volume criterion, those waste streams from mineral processing which are similar in nature and subject to similar management practices. They maintained that both the legislative history and technical waste management feasibility considerations support this argument.

As it stated in the April 17 NPRM, the Agency largely disagrees with these commenters on the issue of the appropriate level of aggregation of waste streams. EPA believes, and the Court has agreed, that mineral processing wastes must meet the special waste criteria, namely high volume and low hazard, to be entitled to temporary exclusion from subtitle C requirements under the Bevill amendment. In order to complete the RCRA 8002(p) study requirements, EPA must define current and alternative management practices that could be employed to manage special mineral processing wastes. In practical terms, this requires that the Agency examine individual waste streams in order to determine whether current management practices are adequately protective of human health and the environment and whether individual Bevill wastes are amenable to Subtitle C controls. Moreover, because it is neither appropriate nor practical to apply the low hazard criteria to aggregated wastes, the Agency believes that it must address waste volumes as well as hazard on an individual waste stream basis.

Additionally, addressing mineral processing wastes on an individual waste stream basis is consistent with waste management regulations under the rest of the RCRA program. Under subtitle C, waste streams are listed individually and assigned waste codes. Each RCRA waste code represents an individual waste stream. Wastes in many industries, such as steel and petroleum production, are separated into several waste codes, each characterizing the individual process that generated them (see 40 CFR 261.31–33). These waste codes are treated individually under many of the subtitle C programs, such as the land disposal restrictions. In addition, requirements to determine whether a waste exhibits a hazardous characteristic contemplate an analysis on an "as generated" basis (see 40 CFR 262.11).

With respect to the commenter who asserted that EPA should aggregate mineral processing waste data because the data used to establish the volume criterion were aggregated, the subtitle C data used in support of today's rulemaking is sufficiently detailed to allow EPA to conduct a waste stream-level analysis of subtitle C waste management. Thus, there is no inconsistency in level of aggregation between the data used to develop the revised high volume criterion and the waste streams to which it has been and will be applied.

The Agency also received comments from representatives of individual mineral processing sectors about specific waste streams.

One commenter claimed that EPA's proposal to segregate waste streams into individual segments within a process is artificial and impractical. They maintained that this segregation would result in costly changes without significant environmental benefit. Because NPDES regulations require extensive recycling efforts and large holding ponds, it would be impractical to segregate waste streams. They asserted that the regulatory controls required by the proposed rule and by NPDES regulations would result in substantial conflict.

Another commenter stated that recirculated process water must be aggregated with phosphogypsum in making high volume determinations. Because water management at phosphate fertilizer plants uses an integrated system, they claimed, it is illogical and impractical not to aggregate phosphate process water for purposes of regulation. In addition, the waters recirculated throughout the phosphate rock processing facility are chemically similar at virtually every point.

The Agency finds these arguments unpersuasive. As discussed above and in the April 17 NPRM, it is most appropriate to consider wastes on an individual basis for the purpose of determining Bevill status. The fact that wastes are currently commingled at some point in the production irrelevant to this determination, as are site-specific permit requirements. Sector-specific waste management practices applied to Bevill mineral processing wastes will be evaluated for the Report to Congress.

A third commenter asserted that Congress considered phosphate processing wastes in the aggregate when it identified them as subject to the Bevill Amendment in the 1978 and 1979 documents, thus the Bevill Amendment requires aggregation of phosphate processing wastes. They maintained that management of aggregate waste streams is essential to comply with environmental requirements and has not been undertaken to take advantage of the Bevill Amendment. They further claimed that, in its past studies, EPA also has recognized that phosphate process water must be evaluated on an aggregate basis. They concluded that considering phosphate processing streams on an individual basis will provide no meaningful protection of human health and the environment.

The Agency rejects the argument that one sector should receive special treatment for historical reasons. EPA believes that all commodity sectors and facilities should receive equal treatment in the determination of Bevill status. Moreover, as discussed at length in the October and April proposals, EPA believes that in a general sense, aggregation is inappropriate for considering both the volume of and hazard posed by mineral processing wastes. The Agency discerns nothing unique about phosphate rock processing that would justify differential treatment.

Other commenters asserted that the legislative history of the Bevill Amendment directs EPA to study all wastes from the mineral processing industry, including all metallurgical processing wastes whose fundamental purposes are the same. For this reason, they maintained, primary zinc iron residues should be aggregated and treated similarly to metallurgical residues from other nonferrous metal industry sectors. They appealed to EPA to consider that wastes from the various zinc processing operations may be identified by different names depending on whether the facility uses pyrometallurgical or hydrometallurgical techniques, and if hydrometallurgical, by the specific leaching process employed. They maintained that zinc processing residues which are essentially identical, including zinc lean slag, goethite, jarosite, hematite, and simply "iron residue," should be aggregated.

While the Agency understands the argument made by the commenter that the wastes mentioned are all impurities from the production of zinc, EPA has determined that the wastes arise from fundamentally different production processes (e.g., pyrometallurgical versus hydrometallurgical). It has, therefore, concluded that the wastes are not sufficiently similar to warrant aggregation. In addition, as discussed above, the Agency disagrees that the Bevill Amendment requires EPA to study all mineral processing wastes for the Report to Congress regardless of volume or hazard.

A commenter stated that sludge from beryllium ore leaching should remain within the Bevill exclusion. Prior to adding the sludge leaching step to enhance recovery of beryllium, materials now discarded as part of the low volume sludge leaching stream were discarded with the high volume barren filtrate stream. For this reason, they concluded, separating these waste streams for the purpose of determining high volume is inappropriate.

EPA disagrees with this argument. If the waste streams are separable, they are evaluated individually with respect to volume and hazard. The question of which other stream(s) might be comanaged with a given stream at any point in time is entirely irrelevant to these determinations.

4. Alternative Components/Application of the High Volume Criterion

In the April 17 NPRM, EPA proposed to apply the high volume criterion as the average annual facility generation rate across all facilities generating the waste streams in question.

Several commenters stated that the high volume criterion should allow exemptions for specific facilities generating over 50,000 metric tons of waste per year even if the industry average is less than the 50,000 metric ton threshold. One commenter contended that the Agency should recognize that meeting the 50,000 metric ton threshold would qualify a waste for study, not necessarily grant exclusion from subtitle C regulation. They also believed that using an average generation rate across a sector inaccurately represents the feasibility of real world management practices. The use of sector-wide averaging, they claimed, only serves to reduce EPA's burden and does not address the waste management problems faced by industry.

Another commenter asserted that EPA's rationale for changing the high volume criterion is illogical. They claimed that EPA's view that it is discriminatory to allow a facility which generates large volumes of waste to qualify for an exclusion is counter to the entire basis for the Bevill Amendment. The commenters also argued that EPA should not subject a facility to inappropriate requirements simply because some similar but smaller operations could not meet the Bevill criterion and could comply with subtitle C. They maintained that it would be much more discriminatory to impose the full panoply of subtitle C controls on a facility which cannot economically or technically comply with them. They further maintained that even the

flexibility allowed for large volume generators under RCRA 3004(x) would be lost under EPA's proposal.

The Agency finds this argument unpersuasive and, therefore, maintains that a sector-wide average facility generation rate is the most equitable way to define high volume mineral processing wastes. As stated in the April 17 NPRM, allowing any individual facility to qualify for the exclusion while requiring other, smaller facilities in the same sector to comply with subtitle C regulations would be unfair to the smaller facilities. Alternatively, excluding a waste stream on a sector-wide basis because of the large waste volumes generated by one facility might result in the retention within the exclusion of wastes that clearly are amenable to subtitle C controls at most facilities. As stated in the April NPRM, the Agency believes that the sector-wide average per facility generation rate represents the best alternative between these two extremes.

In the October 20, 1988 NPRM, the Agency solicited comment on the use of a second test for the high volume criterion; this test was based on industry sector-wide waste stream generation. This test was dropped for the April 17 NPRM.

Several commenters contended that EPA should retain the industry-wide criterion because it is a useful alternative for volume determinations. One commenter maintained that the Court of Appeals ordered EPA to draft criteria for Bevill wastes consistent with the Agency's historic definition of "special waste" and that the industry-wide criterion is an integral aspect of the Bevill mandate.

The Agency maintains that average waste generation per facility is a better indicator of the amenability of a waste to management under subtitle C than industry-wide waste generation. As noted in the April 17 NPRM, this belief is based largely on the fact that most large volume mineral processing wastes are managed on-site. EPA notes that the U.S. Bureau of Mines supports EPA's position on this issue. EPA also notes that the decision to eliminate this criterion affected only one waste stream of all those proposed in October or April or otherwise nominated (lime kiln dust). Lime kiln dust is generated by a calcining operation and, as discussed further below, is a beneficiation waste. Therefore, elimination of the criterion has no practical effect.

EPA also received comments on the idea of using a ratio of waste volume generated to quantity of final product as an additional or alternative volume criterion. This was an idea on which EPA had solicited comments in the October 20 NPRM but which it decided not to employ in support of the revised high volume criterion published in the April 17 NPRM. Many commenters advocated using such a ratio instead of the average waste generation rate which EPA has used as the sole high volume criterion since the April 17 NPRM.

The Agency wishes to make clear the fact that it has never considered using a waste to product ratio as either a sole or alternative high volume criterion. At one time, EPA considered using a ratio in combination with the average generation rate as a high volume criterion. Following further analysis, EPA concluded that no added analytic power was provided by the ratio, because it has no relevance to the feasibility of managing a waste stream under subtitle C. For a full explanation of EPA's reasoning, refer to the April 17 NPRM (54 FR 15329). EPA has encountered no compelling arguments in any of the numerous comments on the October or April proposals that would support a change in the Agency's position with respect to the ratio concept.

Other comments addressed units of measurement. One commenter maintained that EPA should adjust its high volume criterion to take into account a waste's density. "High volume," they asserted, refers to the space a waste occupies, not its weight; the space a weight occupies is more relevant than its weight in determining its amenability to Subtitle C management.

EPA disagrees with this assertion and continues to believe that mass is the most relevant and workable indicator of the manageability of a waste stream. Because the physical space consumed by a material can vary over time based on the way in which it is handled (e.g., even "solid" materials can be compacted or undergo particle size reduction), EPA believes that mass is a more stable, and thus, more appropriate basis on which to develop and apply the high volume criterion. Additionally, mass is the most practical measure for evaluating waste quantities; virtually all other data on hazardous waste collected by EPA is measured in metric tons.

5. Type of Waste Used as the Basis of Comparison

In the April 17 NPRM, EPA based the high volume cut-off of 50,000 metric tons on volumes of waste generated and managed at Subtitle C regulated facilities. Congress intended the Bevill exclusion to cover only those waste streams that are generated in such quantities as to be potentially unmanageable under subtitle C regulations. For this reason, the Agency feels strongly that comparison of mineral processing waste volumes with those of wastes managed under Subtitle C controls for the purpose of determining Bevill status is wholly appropriate and, in fact, the only appropriate analytical basis for developing the high volume criterion.

One commenter representing mineral processing industry interests maintained that the high volume criterion should be set at a level that reflects the proven technical feasibility of onsite disposal of similar wastes subject to Subtitle C regulation and that the threshold value should be based solely upon disaggregated waste streams.

The analysis undertaken by EPA in support of today's rulemaking reflects both of these concerns.

Several commenters objected to EPA's refusal to use the lowest of extraction and beneficiation waste generation rates to establish the high volume threshold, especially in light of the Agency's recognition that some extraction and beneficiation wastes are generated in volumes less than 50,000 metric tons per year. Another commenter maintained that refusal to use the lowest generation rate of the candidate Bevill wastes seemed in direct contrast with EPA's statement in the April NPRM that the generation rates of the six recently listed smelting wastes should serve as a lower bound for the high volume criterion because the six wastes are generally accepted as low volume wastes. An additional commenter asserted that EPA's selection of 50,000 metric tons per year as the high volume criterion based on comparison to generation rates of the extraction and beneficiation industry is arbitrary, without any factual basis, and improperly removes most mineral processing wastes from the study required in RCRA § 8002.

These comments represent a distortion of EPA's reasoning in the April 17 NPRM. At that time, the Agency asserted that wastes from extraction and beneficiation were typically generated in volumes orders of magnitude greater than most mineral processing wastes and therefore would be inappropriate to use as a lower bound for the volume cutoff. Subsequently, the Agency did not base the volume cutoff solely on generation rates of extraction and beneficiation wastes but used this information as a "reality check" for the volume threshold selected. The fact that only a small number of extraction and beneficiation wastes are below the cut-off does not invalidate the concept, and in fact suggests that EPA's volume cut-off value is an appropriate measure of special waste status under real-world conditions.

One Commenter asserted that the fact that EPA received data on management of hazardous wastes biennially refutes the Agency's contention that it had to compare mineral processing wastes with aggregated subtitle C wastes because of insufficient information. They claimed that the 1985 survey (National Report of Hazardous Waste Generators and Transportation, Storage, and Disposal Facilities Regulated under RCRA) showed an average generation rate per waste of 12,467 tons per facility and suggested that this figure would be more appropriate as a basis for comparison.

The Agency agrees that a waste-by-waste evaluation is the best method for developing the high volume criterion, and has been able to use even more recent waste code-level data than that suggested by the commenter to develop the final criteria established by today's rule. The Agency disagrees, however, that the average generation rate is the appropriate value to use as the volume cutoff. As noted in the April 17 NPRM, the high volume criterion should exclude from subtitle C regulation only potentially unmanageable waste volumes, not average waste volumes.

EPA received several comments on the use of commercial subtitle C facilities as the basis of comparison. While several commenters stated that this is an inappropriate basis of comparison, other commenters supported the inclusion of commercial facilities in any data base addressing subtitle C waste management to be used as a basis of comparison.

Commenters favoring the use of commercial facilities objected to EPA's rationale that inclusion of data from commercial facilities is inappropriate because the incentives and costs/benefits from waste management differ for commercial facilities. They asserted that EPA's hazardous waste regulations apply to both commercial and non-commercial facilities; thus, the same incentives for compliance with regulations to avoid fines and/or imprisonment exist for all hazardous waste handlers. They also asserted that EPA has not demonstrated a fundamental difference in incentives for managing large volumes between commercial and non-commercial facilities. They maintained that, because commercial facilities must compete for clients, they do not have unlimited funds to comply with regulations. Finally, the commenters asserted that any difference in incentives does not address the fundamental concern of the volume criterion which is the technical and institutional feasibility of complying with subtitle C requirements. Infeasibility, they added, should not be based upon a cost/benefit analysis which has no foundation in the statute or in the special wastes concept.

These commenters also asserted that data indicate that, in States containing a large number of TSDs, most TSDs are not commercial facilities. They added that TSDs that only manage waste on-site, manage the largest quantity of hazardous waste, indicating that the average quantity of hazardous waste managed per TSD is greater for non-commercial facilities than for commercial facilities. They concluded that these data disprove the theory that commercial facilities should be better able to manage substantial quantities of hazardous waste than on-site TSDs.

While EPA finds many of these arguments unpersuasive, particularly those addressing the economic incentives to operate commercial versus non-commercial subtitle C waste management facilities, the Agency does agree that technical feasibility is the fundamental issue addressed by the volume criterion, and has, accordingly, included commercial subtitle C facilities in the data base used to develop the revised high volume criterion described below.

6. Actual Threshold Value

In the April 17 NPRM, the Agency proposed 50,000 metric tons as the high volume cutoff. This value was to be applied to the average generation rate of each candidate waste stream. Comments on the actual value of the high volume cutoff were mixed, with some commenters arguing that the value was too low and others that it was too high.

Commenters arguing that the proposed value was too low presented evidence from several sources demonstrating that some regulated TSDs manage hazardous waste in volumes greater than 50,000 metric tons. They presented data from the 1985 National Biennial Report stating that in two of the ten EPA Regions, the average quantity of hazardous waste managed at each TSD substantially exceeded 50,000 metric tons per year. The commenters' analysis of these data also indicated that the top 50 and 100 generators of hazardous waste handle waste in quantities 78 times greater and 42 times greater, respectively, than the threshold quantity proposed by EPA.

The commenters also noted that of the nine listed hazardous waste streams EPA used for comparison to mineral processing streams in the October proposal, four are generated in quantities larger than 50,000 metric tons per year. Additional data indicated that two-thirds of the nine largest waste streams currently regulated as hazardous are generated or managed in quantities exceeding 50,000 metric tons per year. Additionally, they claimed that EPA's proposed threshold quantity would exempt the average hazardous waste generator in at least three States.

Finally, the commenters maintained that the fact that 10 percent of the regulated community currently manages waste volumes larger than 50,000 metric tons indicates that the cut-off is too low. They further maintained that a 10 percent overlap between the regulated and unregulated communities is a broad overlap and does not reflect the Agency's assertion that the Bevill exclusion need not be broad.

All of these data, they asserted, indicate that the threshold proposed in the April NPRM is not indicative of technical or institutional infeasibility. They claimed that it could hardly be termed technically infeasible to manage 50,000 metric tons per year of hazardous waste if the average TSD manages quantities approaching or exceeding 50,000 metric tons per year in those parts of the country where large volumes of hazardous waste are managed.

While the Agency agrees with the basic premise of the commenters that available data support a higher high volume criterion (at least for liquid wastes), EPA disagrees with the commenters' particular use of data to support their claims. Specifically, the commenters selectively chose data from certain facilities, states, and regions to support their claims, casting doubt on the validity of their conclusions. EPA is not convinced that these selected data accurately portray current, representative hazardous waste management practices, and believes that presenting data from several selected states and regions in support of an argument is not sufficient evidence on which to base national policy. Additionally, the commenters used data that are aggregated across waste streams and, therefore, are not directly comparable to the analysis EPA has conducted. Finally, the Agency does not believe that a 10 percent overlap between Bevill wastes and the subtitle C universe is necessarily unreasonable.

Commenters asserting that the proposed value for the volume criterion was too high based their assertion primarily on three arguments: EPA arbitrarily selected 50,000 metric tons,

there should be at least a ten percent overlap between the Bevill exempt wastes and the subtitle C regulated community, and 50,000 metric tons is beyond the level of technical feasibility for wastes in solid form.

Several commenters stated that the Agency arbitrarily selected 50,000 metric tons per facility per year as a volume threshold and provided no justification for the selection of that value. A commenter also maintained that EPA should not use this very crude threshold value as a screen to perform a technical feasibility analysis for which it does not have sufficient information and support.

The volume criterion proposed in the April 17 NPRM was based on the best data EPA had available at the time and was therefore not arbitrary. However, since that time, better data have become available and have been used by the Agency in support of the volume criterion established by today's final rule, in part, to respond to these criticisms.

A commenter stated that there should be at least a ten percent overlap between the universe of Bevill processing wastes and subtitle C wastes and that the 50,000 metric ton threshold does not provide the necessary 10 percent overlap. EPA stated that the number of facilities that manage more than 50,000 mt/yr is "well under ten percent of the total," but the Agency failed to place into the administrative record data to support this claim. The commenter contended that the Agency, in failing to respond to comments raised on this issue in the October NPRM, has effectively denied the commenter an opportunity to comment fully on the proposed threshold.

The Agency does not accept the claim that data concerning subtitle C waste management and the development of the high volume criteria are not publicly available. The basis for development of the threshold is described in documents that may be found in the docket for the 10/20/88 NPRM. The issue is moot, however, because the Agency is today modifying the volume criterion based upon updated subtitle C waste management data, as described below.

Regarding the appropriateness of a ten percent overlap between the subtitle C wastes and the Bevill wastes, in the April 17 NPRM, EPA allowed a 10 percent overlap between subtitle C wastes and Bevill wastes to account for problems with the data used in the analysis. The Agency never intended to make the 10 percent overlap a rule for determining the high volume cutoff. The data used in the analysis in support of today's rulemaking are much stronger than those used before and thus the Agency believes a five percent overlap is more appropriate and is supported by these more recent data.

One commenter maintained that, while the threshold value might be used for aqueous mineral processing wastes, technical feasibility requires a much lower threshold for solid mineral processing waste.

The Agency disagrees with this position. The TSDR data indicate that at least five facilities managing hazardous waste in solid form routinely manage 45,000 metric tons per year or more of a single waste stream; this represents roughly five percent of the facilities managing hazardous wastes in on-site subtitle C landfills.

Several commenters arguing that the proposed value is too high suggested lower values ranging from 10,000 metric tons per year to 30,000 metric tons per year. One commenter maintained that EPA should establish a facility average of no greater than 30,000 metric tons per year as this would only be slightly lower than three "acknowledged" Bevill wastes—zinc extraction wastes, utility FGD sludge, and utility bottom ash. Several other commenters stated that the rate should be lowered to a 10,000 metric tons per year facility average as this threshold indicates "high volume" compared to facilities producing wastes that are not classified as special wastes.

As EPA stated above and in the April 17 NPRM, the existence of a few Bevill waste streams with generation rates below the high volume cut-off does not invalidate the adopted threshold. The Agency is not obligated to select a high volume cut-off based on the three "acknowledged" Bevill wastes. As pointed out by a commenter on the April notice, volumes of utility wastes (and by extension, other Bevill wastes) may not be directly comparable to wastes from mineral processing. With respect to the suggestion of a 10,000 metric ton cutoff, EPA has not found support for such a low threshold in any relevant data available to the Agency when technical feasibility is considered as the basis for the determination.

Two commenters stated that EPA should develop a low volume, low hazard category. One commenter noted that many small processing operations are effectively managing wastes and may be significantly affected economically if subjected to subtitle C regulations. Another commenter asserted that there is no need to regulate aggregate or individual low volume/low hazard wastes under subtitle C; regulation under subtitle D would be more appropriate.

EPA disagrees. Congress clearly intended to exempt only high volume, low hazard wastes under the Bevill Amendment. Those wastes which are not high volume may feasibly be managed under Subtitle C or Subtitle D as appropriate. Accordingly, EPA will not establish a separate regulatory category for low volume, low hazard mineral processing wastes.

One commenter claimed that EPA's statements regarding the high volume threshold are contradictory. They noted that EPA made the following statement in the November 1979 Draft Background Document: "due to the obvious interdependence of these criteria and the number of factors involved in assessing any particular criterion, *quantification of the items is impossible.*" (Emphasis in comments only.) It follows, the commenter asserted, that the Agency's current approach in which a given waste stream generated at much less than 50,000 mt/yr, and which still poses manageability problems could be withdrawn from the Bevill exclusion based only on a quantified volume criterion, is absurd.

In 1979, EPA had little experience with the RCRA program, a limited understanding of the characteristics of the regulated community, and incomplete data on hazardous wastes and waste management. Since that time, EPA has dramatically improved each of these initial shortcomings and, thus, its ability to quantify and articulate the special waste criteria.

Finally, one commenter suggested that lowering the volume threshold would not pose any threat to the environment because no matter what the outcome of the section 8002(p) studies, the waste must be regulated either under subtitle C, the provisions of section 3004(x), or subtitle D.

While EPA believes that there is some merit to this argument, as discussed more fully below, the legislative history and direction from the Court dictate that only special wastes are eligible for exemption under Bevill and examination in the 8002 studies.

7. Application of the Cutoff Value to Waste Streams

Several commenters objected to the process of formulating national average volume determinations based only upon data submitted for one facility, arguing that it is arbitrary and capricious. These commenters also stated that EPA should verify all self-reported data submitted by the mineral processing companies because of the incentive for firms to inflate their waste generation rates and thus remain exempt. They asserted that EPA routinely discovers inaccurate self-reported data in other instances, even when those data were submitted under oath.

EPA did not have the time or resources to measure candidate waste streams at affected facilities. In addition, EPA had a very limited amount of time in which to collect the additional data needed to fully determine the Bevill status of each candidate waste stream. In order to propose the regulatory status of several waste streams and provide appropriate opportunity for notice and public comment in accordance with EPA's Court-imposed schedule, the Agency had to rely on self-reported volume data. The self-reported data will be verified by examination of new data from the National Survey of Solid Wastes from Mineral Processing Facilities. Waste streams that the survey data indicate do not meet the high volume criterion will be proposed for removal in the September 15, 1989 proposed rule addressing the status of wastes that have been conditionally retained within the exclusion. Facility operators completing the mineral processing survey are subject to section 3007 penalties for submission of false data.

Several commenters objected to EPA's proposed use of the highest average generation rate over a five year period (1983–1988) as the value for comparison with the volume criterion. Several commenters expressed concern that this would ignore the possibility that waste generation across the years has been reduced due to improved waste management processes. They felt that EPA should not ignore substantial waste reduction trends, when the existence of those trends could remove the eligibility of the waste from the Bevill exclusion. These commenters suggested, instead, that EPA base volume determinations upon the lower of either the average generation quantity from 1982–87 or the average generation quantity for calendar year 1987. This method, they asserted, would allow EPA to take into account both waste reduction trends and variations in market conditions.

Congress intended to exclude only those wastes that are generated in volumes that are potentially unmanageable under Subtitle C. The Agency believes that the highest average generation rate for any year between 1983 and 1988 is a better indicator of potential difficulty in managing a waste under Subtitle C than the method proposed by the commenter because it allows for changes in waste generation rates caused by fluctuations in commodity markets. The method suggested by the commenter is arbitrary and would punish sectors that might have had low waste generation rates in any single year during the most recent five year time period due to poor economic conditions rather than waste minimization efforts as implied by the commenter.

Between the October 20, 1988 NPRM and the April 17, 1989 NPRM, EPA shifted the five year period for which EPA will consider waste generation rates from 1982–1987 to 1983–1988 so that it could base its decision on the most recently available data. Several commenters expressed concern that the shift in the "window" will allow new waste streams to become eligible for inclusion into the Bevill exclusion. They maintained that the Agency should not allow further opportunities for waste generators to provide new data.

The Agency maintains that, in the interest of treating all affected firms equally, any mineral processing wastes that meet the definition of a special waste should be included in the Report to Congress, even if the key information about that waste stream came from 1988.

The Agency rejects the argument of one commenter that EPA should use production data from all facilities producing chrome processing wastes in any year during the period 1983 through 1988, irrespective of whether any such facility is still operating. Because the Agency does not impose requirements retroactively, it would be inappropriate to use past data from facilities that are no longer in operation to develop regulations. Therefore, exclusion from Subtitle C regulation under the Bevill Amendment will be based only on waste volumes generated at active facilities. For additional detail on the EPA's policy not to impose regulatory requirements retroactively, see section II of this preamble.

D. The Definition of Mineral Processing

In the preamble to the October 20, 1988 proposed rule and again in revised form in the April 17, 1989 NPRM, EPA provided criteria for defining and identifying wastes from ore and mineral processing operations. These criteria require that all wastes qualifying for exclusion under the Bevill Amendment originate from a mineral processing operation as defined by the following elements:

(1) Excluded Bevill wastes must be solid wastes as defined by EPA.

(2) Excluded solid wastes must be uniquely associated with mineral industry operations.

(3) Excluded solid wastes must originate from mineral processing operations that possess all of the following attributes:

a. Follow beneficiation of an ore or mineral (if applicable);

b. Serve to remove the desired product from an ore or mineral, or from a beneficiated ore or mineral, or enhance the characteristics of ores or minerals, or beneficiated ores or minerals;

c. Use mineral-value feedstocks that are comprised of less than 50 percent scrap materials;

d. Produce either a final mineral product or an intermediate to the final product; *and*

e. Do not combine the product with another material that is not an ore or mineral, or beneficiated ore or mineral (e.g., alloying), do not involve fabrication or other manufacturing activities, and do not involve further processing of a marketable product of mineral processing.

(4) Residuals from treatment of excluded mineral processing wastes must be historically or presently generated and must meet the high volume and low hazard criteria in order to retain excluded status.

1. Excluded Bevill Wastes Must be Solid Wastes as Defined by EPA

EPA proposed in the October NPRM and confirmed in the April NPRM that it will use the definition of solid waste codified at 40 CFR 261.2 to identify materials that are eligible for consideration as special wastes, stating that nothing in the regulatory history of the Bevill Amendment indicates that the Agency is expected to or should apply a definition of solid waste that is different than that applied throughout the RCRA program.

EPA received a number of comments relating to the issue of when and if the materials under consideration in this rulemaking can be RCRA "solid wastes" when they are destined for recycling. These comments were of three types. Most dealt broadly with the overall question of the Agency's authority to classify materials destined for recycling as solid wastes. A few comments were more specific, mentioning types of materials involved. Finally, another group of comments dealt in detail with types of materials (principally iron and steel slag) that are recycled.

Before responding to these comments, the Agency first notes that this issue is without direct effect on persons managing materials that EPA has determined remain Bevill wastes because they satisfy the high volume/low hazard criteria. EPA will consider such materials further as part of the section 8002 study, but there are no regulatory consequences on persons

managing such materials. (EPA notes further that it is directed to study the "utiliz[ation]" of mining wastes, indicating some expectation that examination of recycling practices would be part of the Bevill study. RCRA section 8002(p).)

There may be regulatory consequences for materials that the Agency determines were improperly classified under previous interpretations of the Bevill amendment. Such materials are analogous to other wastes newly brought into the subtitle C framework, and thus become subject to all of the subtitle C regulations. If such materials are "solid wastes", then they also can be hazardous wastes subject to applicable subtitle C standards. Comments on this point failed to identify specific types of materials affected, however, and so failed to provide any indication of whether there are any elements of discard associated with the recycling activities (such as land based storage, prolonged retention times, management in unrelated facilities, presence of high concentrations of unrecyclable toxic constituents not found in virgin materials that would be processed in place of the secondary materials, and other similar elements). It is EPA's belief, based on prior rulemakings dealing with recycling, that most of the materials newly classified as non-Bevill materials would not be solid wastes when recycled in metal recovery operations because they would be unlisted sludges and byproducts being reclaimed. Such materials are not classified as solid wastes (§ 261.2 (c)(3)), unless they are being speculatively accumulated. Thus, today's rule would not have any practical impact on such materials.

EPA's responses to the commenters' specific points are set out below.

a. With respect to the Agency's authority to regulate types of recycling as hazardous waste management, EPA has indicated many times its views on the extent of its authority. See particularly 50 FR 638 (Jan. 4, 1985) and 53 FR 519 (Jan. 8, 1988). EPA does not subscribe to the view that only things that are thrown away are solid wastes. Such a reading nullifies explicit statutory authorities (see RCRA sections 3004(l), 3004(q), and 3014), and fails to take into account that many recycling practices are characterized by elements of discarding which afford jurisdiction under RCRA Subtitle C. The Agency also does not believe that anything in *American Mining Congress* v. *EPA*, 824 F. 2d 1177 (D.C. Cir. 1987) is to the contrary. Certainly, nothing in the opinion indicates that the Court intended to make legal such practices as the road oiling at Times Beach, Missouri, or unrestricted burning of hazardous secondary materials in boilers and industrial furnaces. Yet this is the direct consequence of the commenters' position. However, as noted above, this issue appears to be only an academic one in this rulemaking, given the lack of practical consequences.

EPA also notes that, contrary to the view of several of the commenters, it is not finalizing the January 8, 1988 definition of solid waste in this proceeding. EPA is indicating that a material need not be thrown away to be a solid waste, and that recycling activities can be characterized by elements of discarding. This has been EPA's articulated position since the first major RCRA subtitle rules were issued on May 19, 1980. 45 FR 33090–94. Had commenters provided more detailed information, EPA could provide more guidance as to the status of particular materials. Given the absence of such comment (with a few exceptions discussed below), EPA can only articulate broader principles here.

b. Some commenters were slightly more specific about the types of materials being recycled that should not be considered to be RCRA solid wastes. One stated that "intermediates and inprocess materials" such as copper matte, blister copper, lead bullion, lead drosses, and various "secondary materials" such as flue dust and wastewater treatment sludges, should not be considered to be solid wastes when they are processed to recover metal values. The specific type of recycling referred to in this comment is reclamation. Existing regulations (see 40 CFR 261.2(c)(3)) state that sludges and by-products such as those discussed in the comment, are solid wastes only if they meet one of the hazardous waste listing descriptions found at 40 CFR 261.1 or 261.32. When wastes from specific or non-specific sources are listed as hazardous, i.e., are included in 40 CFR 261.31 or 261.32, existing waste management practices, including recycling, are considered in establishing the precise wording of the listing. Today's rulemaking would not, however, add new listings to either 40 CFR 261.31 or 261.32, and would therefore not affect whether materials discussed in the comment, assuming that they are being legitimately recycled, would meet the definition of a solid waste. EPA has previously indicated that surface impoundments used for wastewater treatment are not part of recycling operations. *See*, e.g., 53 FR 35414–5 (lead impoundment solids). Such units are generally intended for purposes of waste treatment and are thus normally subject to regulation as waste management units.

c. A number of commenters stated that iron blast furnace slag and basic oxygen furnace slag should not be considered to be solid wastes when they are utilized as aggregate substitutes. EPA notes first that it views these materials as remaining within the scope of the Bevill exemption, so there is no immediate regulatory consequence of calling these materials solid wastes. However, EPA is not making a final determination on the issue of whether these materials are solid wastes. EPA will study this issue further as part of the section 8002 study. Commenters indicated that even though these slags are recycled in ways that involve application to the land (whether directly or in the form of slag-derived products like cement and concrete), the slags have been used for decades interchangeably with high-grade natural aggregates, they meet all relevant commercial specifications for aggregate, there is a known and profitable market for all of the slag generated by industry (indeed, some blast furnace slag is imported to meet domestic demand), and the slag appears impervious to leaching toxic metals under the EP toxicity test. EPA has requested further information comparing these blast furnace slags to virgin aggregates to ascertain whether unrecyclable toxics might possibly be being disposed by the recycling practice. The Agency is impressed by the public comments, however, and may ultimately determine that these slags are not solid wastes. Certainly, based on the public comments, these slags appear now to be a long-standing part of the commercial aggregate market, and are commonly accepted as meeting all relevant commercial specifications.

A second commenter indicated that recirculating process water is not a waste. Although the commenter did not describe precise details of operation, the Agency agrees that normally continued use of process water in an industrial process does not involve wastewater but rather continued use of process water. This answer assumes, however, that wastewater is not removed from the system to be reclaimed before it can be reutilized. In the event that this process water is managed outside of a closed-loop recycling system, such as in a surface impoundment for cooling or settling, then the impoundment would likely be considered a waste management unit and subject to EPA's jurisdiction, as discussed above.

2. Excluded Solid Wastes Must Be Uniquely Associated With Mineral Industry Operations

To be excluded under the Bevill Amendment, solid wastes must be uniquely associated with the mineral processing industry. EPA received no significant comments either in support of or in opposition to this criterion, and will continue to require that wastes meet this criterion.

3. Excluded Solid Wastes Must Originate From Mineral Processing Operations as Defined by Five Specific Criteria

In general, commenters believed that the attributes used in the proposed rule to define mineral processing were acceptable. As discussed in the Appeals Court decision that precipitated the current rulemaking, EPA is obliged to consider whether candidate wastes are high volume and low hazard in making Bevill mineral processing waste exclusion decisions. While these factors are, and have always been, the key elements in identifying special wastes, the distinction between mineral processing and nonmineral processing wastes is important because Congress intended to put within the regulatory exclusion only wastes generated as a consequence of exploiting a natural resource, not wastes from other industrial activities, even if both occur at the same facility.

a. *Operation must follow beneficiation of an ore or mineral (if applicable). Processes that use heat to change the chemical composition of ores and minerals, or beneficiated ores or minerals, are considered mineral processing operations. Heap, dump, and in-situ leaching, as well as tank and vat leaching, are specifically defined as beneficiation operations.* Commenters addressing the October, 1988 NPRM's beneficiation definition argued that it did not adequately delineate the boundary between beneficiation and processing. The U.S. Bureau of Mines (BOM) commented extensively, claiming that the October definition did not adequately express EPA's intent that leaching be considered a beneficiation operation. Therefore, in the April, 1989 NPRM, EPA modified the proposed rule (1) to define heap, dump, *in-situ*, tank, and vat leaching as beneficiation, unless they follow one or more processing operations in the production sequence, in which case they are considered processing operations; and (2) to clarify that processing operations use chemical reactions, electrolytic techniques, or pyrometallurgical/thermal processes (e.g., roasting, smelting, calcining) to concentrate or enhance the characteristics of valuable constituents and, thus, differ from beneficiation operations (some beneficiation operations employ heat, but only to remove water).

Industry commenters addressing the April NPRM criticized EPA for, in effect, narrowing the definition of beneficiation, claiming that the Agency focused too strongly on chemical and physical distinctions when it clarified the beneficiation definition. By classifying steps such as roasting as mineral processing and steps involving drying as beneficiation, the Agency's definition, they claimed, would result in some previously excluded beneficiation wastes now being considered "processing" wastes potentially subject to Subtitle C regulation. They complained that EPA has offered no explanation for why it has apparently decided to eschew previous definitions of beneficiation. They contended that the shift could cause precious metals industries in the United States to suffer drastic and unwarranted economic impacts. Commenters insisted that the Agency address the problems caused by its "clarification" of beneficiation and processing and suggested the alternatives below.

i. *Use the Report to Congress Definition of Beneficiation.* Many commenters recommended that the Agency abandon the restrictive list of beneficiation operations in the NPRM and adopt the definition of beneficiation found in the 1985 Report to Congress. These commenters maintained that this definition historically has been accepted by the mining industry, adopted by EPA, subjected to Congressional scrutiny, has withstood litigation in EDF I, and can be traced back to an even earlier definition found in the EPA effluent limitations guidelines development document on ore mining and dressing. The commenters claimed that any attempt by EPA to contradict the Report to Congress and its Regulatory Determination is barred both as a matter of administrative law and by Congress' decision that beneficiation wastes may not be regulated as hazardous without an additional Report to Congress and Regulatory Determination.

ii. *Eliminate or Modify the Heat Criterion.* Many commenters suggested that EPA eliminate or modify the heat criterion added as a part of the clarification in the April, 1989 NPRM. Commenters stated that the Agency's addition of the "heating" of ore criterion redraws the line between beneficiation and processing without adequate analysis of the impact of such revision, or support in the Bevill Amendment or the legislative or regulatory history. They argued that using heat as a criterion improperly includes beneficiation operations within mineral processing. They claimed that production activities used in the beneficiation and extraction of gold demonstrate that certain pretreatment steps are necessary to prepare ore for leaching, and insisted that EPA not categorize any pretreatment steps as processing regardless of whether they involve heat treatment. Many commenters, in discussing using heat as a criterion, addressed calcining, roasting, and leaching operations that use thermal pretreatment (i.e., autoclaving, roasting, and chlorination). These comments are summarized below.

Roasting of ore, commenters contended, is incorrectly considered a mineral processing operation rather than beneficiation in the NPRM. They contended that roasting does not fit any of the other four processing attributes detailed in the rule; roasting does not remove desired product from an ore or mineral, does not use feedstock comprised of less than fifty percent scrap, and does not produce either a final product or an intermediate to the final product, and does not involve manufacturing, alloying, etc. They noted that under the proposed definition, any operation that follows roasting or autoclaving is considered mineral processing; leaching, however, is specifically defined as a beneficiation operation, and EPA should not separate out leaching operations that involve thermal treatment.

Regarding leaching operations, commenters, especially those in or representing the precious metals sectors (e.g., gold, silver), and the Bureau of Mines agreed with EPA that beneficiation should include physical/chemical separation techniques such as heap, dump, tank, vat, and *in-situ* leaching.[1] The commenters, however, argued that the use of heat as a pretreatment for the leaching operation should not automatically render an operation as processing, noting that ores and minerals which are roasted, autoclaved, or chlorinated are no less earthen than is raw ore, and their volume remains relatively unchanged. They noted that if finalized, the April, 1989 NPRM could subject tailings or spent ore from many leaching operations to subtitle C regulation, even though the Regulatory Determination of July 3, 1986 stated that these wastes did not require such regulation. Commenters claimed that, because the near surface precious metals deposits are being depleted, the future of the industry lies in the deeper sulfide zones that produce ores requiring some pretreatment (i.e., roasting, autoclaving, and chlorinating) to effectively yield their metal values. The Agency must consider, they argued, the extremely onerous operational consequences (e.g., requiring parallel waste units for identical waste streams) and economic consequences (e.g., putting small or marginal mines out of business) that would result from maintaining the processing definition in the most recent proposal; this definition would, concurrently, yield no significant environmental benefits. Therefore, the commenters requested that EPA clarify that wastes from leaching operations that pretreat will remain beneficiation wastes excluded from Subtitle C. Alternatively, they noted, if EPA retains the definition given in the April notice, the Agency will be required to restudy gold leaching wastes (gold roaster/leach wastes would not differ significantly from the leached ores studied previously by EPA in the 1985 Report to Congress) since they would meet the high volume criterion.

Calcining, the heating of ores to high temperature without fusion of the mineral values (generally to drive off volatile components such as water and carbon dioxide), also received extensive comment from commenters who were concerned that EPA considered calcining to be processing. These commenters suggested that EPA should limit its clarification of beneficiation to exclude only those heating operations where the calcining gases effect a chemical change that will facilitate smelting. Representatives of the western phosphate processors, in particular, attacked the inclusion of calcining in processing, claiming that the sizing, drying, agglomeration, and concentration functions of calcining—which do not chemically alter the phosphate nor remove valuable constituents—meet EPA's definition of beneficiation and that the classification of phosphate rock calcining or drying and nodulizing/heating operations as beneficiation has long been the subject of agreement between EPA and the phosphate processors. The phosphorus industry stated that calcining is analogous to the calcining employed by diatomaceous earth producers which is regulated under subtitle D and argued that a supportable distinction can be made between metallurgical calcining and those heating operations found in the diatomaceous earth and phosphorus industries.

iii. *Make Other Modifications to the Beneficiation Definition.* As an alternative to using the RTC definition, industry commenters recommended several modifications to the definition of beneficiation.

- EPA should view beneficiation collectively and functionally, define beneficiation as activities, both physical or chemical, by which ores and minerals are prepared for further refinement. An operation which precedes beneficiation and/or conditions or prepares an ore or mineral so as to make it more amenable to beneficiation, should also be considered to be part of the beneficiation operation, regardless of whether the operation employs physical or chemical techniques. Removing impurities and improving quality is a purpose of beneficiation and coincides with the generally accepted technical usage of beneficiation.
- EPA should clarify that wastes from beneficiation operations that follow a processing step should be considered beneficiation wastes. Therefore, the Agency should state that any steps performed after beneficiation ends are processing operations and that processing would begin with the last beneficiation activity, not with the first processing activity. This clarification would draw a clear boundary between beneficiation and processing that would reflect "real world" operations better than the definition provided in the April 17, 1989 NPRM.
- If the Agency seeks to control specific beneficiation waste streams, it should use the Subtitle C "listing" mechanism as opposed to redefining beneficiation.

iv. *Specify Certain Activities as Beneficiation.* In addition to roasting, autoclaving, calcining, and leaching, many commenters addressed specific operations, recommending that EPA clarify that certain activities are beneficiation operations. Collectively, these commenters suggested that EPA adopt a definition of beneficiation that includes physical/chemical separation processes such as crushing, grinding, gravity concentration, magnetic and electrostatic separation, flotation, precipitation, amalgamation, ion exchange, solvent extraction, electrowinning, dissolution, chlorination, and agglomeration.

The following recommendations were made by commenters regarding specific operations.

- Electrowinning should be considered beneficiation and be retained under the Bevill exclusion. The April, 1989 NPRM states that electrolytic and other chemical techniques are processing, not beneficiation, directly and inappropriately contradicting prior EPA pronouncements and regulatory action on the scope of the beneficiation exemption.
- The carbon regeneration process in which activated carbon granules adsorb gold from solution should be considered beneficiation, as these activities conclude the leaching process, and therefore constitute beneficiation.
- The Agency should specifically include dissolution in the list of beneficiation operations. For example, trona wastes produced from the "Sesqui" process are beneficiation wastes, because the dissolving and calcining operations associated with the "Sesqui" process only remove insoluble tailings wastes and drive off excess water and carbon dioxide.
- EPA should clarify its definition of beneficiation by specifically identifying "filtration" and "physical separation" as sorting to be included as part of beneficiation.
- The Agency should continue to include agglomeration as beneficiation and not limit this term to sintering because it includes other processes besides sintering, such as pelletizing and briquetting.
- EPA should define the chlorination procedure, used on some carbonaceous ores prior to leaching, as a beneficiation operation, not as processing. The chlorination procedure uses an oxidizing agent to change the chemical composition of the ore and to enhance the leaching operation.
- EPA should state that the "chloride-ilmenite" process used for titanium dioxide processing is a simultaneous ore beneficiation and chlorination process in which beneficiation and chlorination of raw ilmenite ore are inseparably combined in the same process step. EPA should confirm its previous positions that these wastes are generated from a beneficiation process.

After review of the public comments and further analysis, the Agency has concluded that, both functionally and legally, the most appropriate definition of beneficiation for use in distinguishing between beneficiation and processing is the definition used in the December, 1985 Report to Congress (RTC) on

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[1] EPA's policy toward leaching, as stated in a previous regulatory determination (see Regulatory Determination for Wastes From the Extraction and Beneficiation of Ores and Minerals, 51 FR 24496 (July 3, 1986)) is that active leach piles and leach solutions are not wastes, but rather are raw materials used in the production process and intermediate products, respectively. Only leach solutions that escape from the production process are considered wastes while the leaching operation is active.

wastes from extraction and beneficiation of ores and minerals. This definition was, in turn, based upon a definition provided in the Effluent Guidelines Development Document. EPA believes that this definition is consistent with standard industry practice and use of the term. The RTC defines beneficiation as "the treatment of ore to concentrate its valuable constituents." [2] While the RTC did not attempt to articulate a comprehensive list of beneficiation operations, procedures or techniques, it did expound on the definition by describing beneficiation processes as including

> Physical/chemical separation techniques such as gravity concentration, magnetic separation, electrostatic separation, flotation, ion exchange, solvent extraction, electrowinning, precipitation, and amalgamation." [3]

In addition, the RTC explicitly includes leaching operations as an integral part of the extraction and beneficiation domain and labels the leachate as a "beneficiation solution." [4]

While this definition serves well as a foundation for making a distinction between beneficiation and mineral processing, the list in the RTC is not an all-inclusive list of beneficiation processes and several points of clarification are necessary regarding application of this RTC definition to real-life operations. For example, the RTC list does not include milling techniques such as crushing, grinding, washing, filtration, sorting, and sizing, or agglomeration techniques such as sintering, pelletizing, and briquetting that both industry and EPA consider to be beneficiation operations. In order to avoid further confusion, the Agency wishes at this time to identify other activities that it considers to be within the realm of beneficiation, and in particular to discuss the status of activities using heat and acid.

EPA notes here that the definitions that it has developed for today's rule represent an attempt to resolve the issues raised in public comment on the proposed rules in a reasonable and even-handed manner. The Agency recognizes that its course is not the only one available, but does believe that it provides the most equitable and workable approach to a very complicated set of issues. Furthermore, while EPA has attempted to develop consistent and reasonable definitions for and distinctions between beneficiation and processing, the Agency believes that application of these definitions must comport with common sense. In cases where a rigid application of a definition would result in an unreasonable outcome, the Agency has used best professional judgment to produce an acceptable result.

Heating steps recognized by EPA as beneficiation operations are calcining, and roasting and autoclaving of ores and minerals in preparation for leaching. All three are procedures that use heat to drive off volatiles (e.g., water, carbon dioxide, sulfur dioxide) without heating the material above the mineral's melting point and/or causing fusion (i.e. liquefying or rendering plastic by heat [5]). Operations that raise the temperature of the ores or minerals, or beneficiated ores or minerals, above their fusion or melting point, i.e., destroy the physical structure of the ore or mineral, are considered processing operations.

Calcining is often used to drive off carbon dioxide in the preparation of a final beneficiated product (e.g., talc, gypsum, lime), and for purposes of this rule is defined as the heating of an ore or mineral, or beneficiated ore or mineral to a temperature below the melting or fusion point, for purposes of driving off water (including waters of hydration) and/or carbon dioxide.

In the minerals industry, roasting serves primarily to change a sulfide ore to the oxide form, so that beneficiation by leaching or other subsequent steps may be more effectively performed. Functionally similar to roasting, autoclaving uses steam to perform heating activities (e.g., pretreating sulfide ore for leaching). For purposes of this rule, roasting and autoclaving are considered beneficiation operations if they are used to remove sulfur and/or other impurities in preparing an ore or mineral, or beneficiated ore or mineral, for leaching. Otherwise, roasting and autoclaving are defined as processing operations. Accordingly, activities such as roasting sulfide ores in preparation for precious metals heap leaching are considered beneficiation, while roasting ores or concentrates in preparation for copper, lead, or zinc smelting is specifically defined as processing.

Chlorination is sometimes used prior to gold leaching operations in a procedure functionally identical to roasting and autoclaving (i.e. to change a sulfide ore to a chemical form more amenable to leaching). EPA recognizes that this type of pretreatment operation may be an integral part of leaching operations, and accordingly, considers non-destructive chlorination of ores, minerals, or beneficiated ores or minerals when used as a pretreatment step for leaching, to be a beneficiation operation.

In contrast, heating operations such as smelting (i.e., any metallurgical operation in which metal is separated by fusion from impurities [6]) and fire-refining (e.g., retorting) are clearly and have always been considered within the realm of mineral processing. Here, the physical structure of the ore or mineral is destroyed, and neither the product stream nor the waste stream(s) arising from the operation bear any close physical/chemical resemblance to the ore or mineral entering the operation.

A specific exception to the above categorization system applies when the roasting/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing steps (e.g., the leach liquor serves as an input to inorganic chemical manufacturing). In this type of situation, the Agency believes that the operation is most appropriately considered a processing, rather than a beneficiation, operation. In the context of this rulemaking, one candidate Bevill waste (roast/leach ore residue from primary chrome ore processing) is affected by this distinction; EPA believes that this material is clearly a waste from processing, rather than beneficiation, of an ore or mineral.

Several additional operations employ heat in combination with various acids. In EPA's view, some of these operations constitute beneficiation while others are processing. The distinction hinges upon the difference between dissolving, washing, or otherwise purifying values contained within a mineral using a dilute acid solution (beneficiation) and attacking or digesting (i.e., destroying the structure of) the ore or mineral, or beneficiated ore or mineral, using a strong acid (processing). Acid dissolution, often accompanied by heat, is used as precursor for many beneficiation operations (e.g., precipitation, fractional crystallization, ion exchange, solvent extraction). EPA recognizes this as an activity integral to many beneficiation operations, regardless of the application of heat or use of acid. For example, EPA recognizes acid washing and acid dissolution as beneficiation activities; concentrated sulfuric acid attack of titanium- or phosphate-bearing ores is considered a processing operation by the Agency.

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[2] Ibid., D-1.

[3] Report to Congress on wastes from Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale, pg 2-15.

[4] Ibid., 2-16, D-4.

[5] U.S. Bureau of Mines. "A Dictionary of Mining, Mineral, and Related Terms". Washington, DC: 1972, p. 473.

[6] Ibid., pg 1033.

In considering the functional distinctions between beneficiation and processing using both heat and acid, EPA has examined both the range of actual practices employed, and the types of waste streams that are generated by these operations in various mineral commodity sectors. In a general sense, the lines that the Agency has drawn between beneficiation and processing parallel the common sense differences that can be observed between beneficiation and processing wastes generated using other types of mineral exploitation techniques. Most beneficiation processes, at least those immediately upstream from the initial processing operation in a production sequence, generate high volume solid waste streams that are essentially earthen in character. Despite the fact that valuable constituents have been removed, the remaining material is often physically and chemically similar to the material (ore or mineral) that entered the operation, except that particle size reduction has often occurred. Processing operations, in contrast, generate waste streams that generally bear little or no resemblance to the materials that entered the operation (with the arguable exception of smelting slags). These operations most often destroy the physical structure of the mineral, producing product and waste streams that are not earthen in character.

This common sense distinction is reflected in EPA's definitions of beneficiation and processing operations using heat and acid. The beneficiation operations (e.g., calcining, dissolution, roasting in preparation for leaching) produce wastes, where applicable, that are essentially earthen and of relatively high volume. The processing operations (e.g., smelting, acid or alkaline digestion), on the other hand, produce wastes that are not earthen, bear little resemblance to the materials that entered the operation, and are of relatively lower volume.

One final beneficiation/processing issue is the need for an absolute cut-off between processing and beneficiation, a need that was questioned by commenters. EPA continues to hold that beneficiation, especially as a functional activity which serves to concentrate the mineral value, is completed at some distinct point after which all operations are considered processing. As discussed in the April NPRM, the Agency considers any operations following the initial processing operation to be processing operations, regardless of whether the activity was included on the list of RTC beneficiation activities or has traditionally been considered beneficiation. For example, electrolytic refining, an operation often used after smelting and/or fire refining, uses procedures similar to activities listed in the RTC definition (e.g., electrowinning) or considered historically to be beneficiation (e.g., dissolution). Because, however, the operations follow previous processing operations, these activities will be considered processing and any associated wastes will be considered mineral processing wastes.

EPA acknowledges that the decision to use this beneficiation definition is a significant departure from the position taken in the October and April NPRMs, particularly with respect to the use of heat and acid. After analysis of public comments, further review of technical information regarding mineral beneficiation and processing techniques, and reexamination of the 1985 Report to Congress and 1986 Regulatory Determination, the Agency has concluded that this definition will render the most accurate, practical, and reasonable delineation between beneficiation and processing. Furthermore, the Agency expects that little environmental benefit would be gained by including these additional operation types within "mineral processing" because the Agency believes that the wastes from these operations are relatively few in number, have in a number of instances already been studied, and will in any case be addressed by the Subtitle D regulations for extraction and beneficiation wastes presently under development by the Agency.

b. *Operation must serve to remove the desired product from, or enhance the characteristics of, an ore or mineral, or a beneficiated ore or mineral.* Commenters addressing this attribute in the October 20, 1988 NPRM indicated that the language (i.e., to remove the desired product from an ore or mineral or beneficiated ore or mineral) obscured the regulatory status of certain processing operations (e.g., lightweight aggregate production) whose purpose is to change the characteristics of valuable constituents in ores or minerals without removing or concentrating them. They suggested, and EPA agreed, that the processing definition be modified to include operations that serve to enhance the desirable properties of, as well as those that remove the desired product from, an ore or mineral. EPA modified the second attribute of mineral processing to include production steps that use heat to alter the chemical composition of ores or minerals, or beneficiated ores or minerals. Many commenters addressing the April NPRM argued vehemently that EPA should not include all operations which use heat for operations other than drying in the definition of mineral processing, indicating, as discussed in the previous section, that these operations are often a part of beneficiation activities. Several commenters stated that this attribute should be written to specifically include operations that enhance the desirable properties of materials, leaving the concern of whether to include heating operations to the first attribute, which defines the delineation between beneficiation and processing.

After review of the comments and analysis of additional information, EPA has acknowledged the need to change this second attribute of mineral processing by modifying the "heat" criterion that considered production steps using heat to alter the chemical composition of ores or minerals (or beneficiated ores or minerals) to be mineral processing operations. The Agency agrees that the use of heat should not be the determining factor, primarily because many beneficiation operations use heat as a pretreatment to enhance the properties of the ore for subsequent beneficiation steps and because EPA does not wish to include operations already established to be beneficiation operations (e.g., leaching, phosphate rock beneficiation) within the domain of mineral processing, particularly if the sole reason for classifying them in this way is the use of heat. Therefore, in today's final rule, the Agency has removed its stipulation that operations using heat are automatically processing operations, but has allowed that operations that enhance the characteristics of the ore or mineral, or beneficiated ore or mineral, are mineral processing if the operations meet the other attributes.

c. *Operation uses feedstock that is comprised of less than 50 percent scrap materials. The 50 percent rule applies to all materials entering a process operation that contain the mineral value rather than all materials entering the operation irrespective of function.* The October 20, 1988 NPRM required that at least 50 percent of the feedstock to an operation be ore or mineral, or beneficiated ore or mineral, for the operation to be considered a primary mineral processing operation. Many commenters responding to that NPRM sought clarification concerning what materials are to be included as part of the "primary" feedstock, recommending that "in-process" materials derived from mineral processing should be considered "primary" feedstocks along with ores or minerals or beneficiated ores or minerals for the application of this fifty percent rule. In the preamble to the April NPRM, EPA asserted that the attribute, as presented in the October NPRM, affords (1) considerable flexibility to mineral processing operations, in that they are able to accept scrap and intermediate materials in their feedstocks and still be eligible for Bevill status, while (2) still maintaining the essential upper bound on the amount of non-ore present in a feedstock in order to ensure that wastes from operations that primarily process materials other than ores and minerals are not provided with an exclusion that Congress did not intend.

EPA also clarified in the April NPRM that the 50 percent rule applies to all mineral-value containing materials entering a process operation (e.g., crushed copper ore, beneficiated copper ore, in-process materials, and scrap copper for the copper smelters), rather than to the total of all materials (i.e., mineral values plus non-mineral materials such as fuel, reducing agents, or fluxing agents) entering the operation. EPA also clarified that the accounting period over which to analyze feedstock percentages should be one year, which allows for seasonal fluctuations, and that the rule must be applied to individual processing operations (e.g., the smelter separate from the refinery) rather than to an entire plant's operations.

The predominant comment addressing the April, 1989 NPRM again concerned the accounting for in-process materials. Several commenters reasserted that "in-process" materials derived from mineral processing and returned to the process should be considered mineral feedstock since they are used as a matter of course by the industry as feedstock because of their significant mineral value. One industry commenter disagreed with using this attribute at all, calling for EPA to abandon the fifty percent rule because it is an unrealistic and unnecessary restriction and an unwarranted intrusion into the production process.

As stated in the preamble to the April NPRM and further described above, EPA believes that the rule as written provides an extremely flexible tool for screening out secondary processors from the universe of primary mineral processors (the only group eligible for the Bevill exclusion), while allowing (1) large percentages of scrap to be used in primary processing operations and (2) seasonal and other variation in the proportions of feedstock materials without affecting the potential Bevill status of associated wastes. After reviewing the comments and also noting that this criterion does not, to EPA's knowledge, affect any wastes generated by primary mineral processors, the Agency has decided that it will make no changes in this attribute as first presented in the October NPRM and clarified in April.

d. *Operation produces either a final, or an intermediate to the final, mineral product.* The definition of processing in both the October and April NPRMs requires that, to be eligible for consideration for the Bevill exclusion, the operation must produce either a final mineral product or an intermediate to the final mineral product. EPA believes that products not directly related to mineral processing operations do not fall within the scope of the definition intended by Congress. Several commenters argued that EPA should follow Congress' intended broad view of the term "processing" and include all parts of integrated operations; no commenters, however, directly challenged EPA's position by nominating wastes arising from non-mineral-related processes that may be co-located with mineral process operations for exclusion under Bevill.

In this final rule, the Agency maintains the position articulated in the two proposals; that Congress did not intend the Bevill exclusion to extend to processing operations outside the production of an intermediate or final mineral product, i.e., a material of value derived primarily from an ore or mineral. This attribute ensures that other operations (e.g., chemical processing), even if physically located with a mineral processing operation, that produce a non-mineral product that may or may not be used as a feedstock to a mineral processing operation will not be included within the realm of mineral processing. The Agency also wishes to clarify that the distinction between intermediate and final products refers to whether the mineral value must undergo further mineral processing. Materials that are saleable, either as raw materials to other types of industrial processes (e.g., chemical manufacturing) or as finished products are considered final products. Materials that must undergo further mineral processing to be rendered saleable, or that have no significant value except as a feedstock to a mineral processing operation, are considered intermediate products. Examples of this latter category include ilmenite ore slags used in titanium production and electrowinning slimes that are processed for metals recovery.

e. *Operation does not combine the mineral product with another material that is not an ore or mineral, or beneficiated ore or mineral (e.g., alloying); and do not involve fabrication or other manufacturing activities.* The preceding attribute establishes that a mineral processing operation must produce a mineral product, whether final or intermediate. This attribute establishes that once that final product has been produced, no other operations performed on or with that product are considered to be within the realm of mineral processing, i.e., mineral processing has ended. In general, the end of mineral processing is the point at which the processed ore or mineral (1) is combined with another material that is not an ore or mineral, or beneficiated ore or mineral (i.e., combining processed ores or minerals such as steel with purified non-ferrous metals to produce an alloy is not mineral processing), (2) undergoes fabrication (e.g., manufacturing of copper wire), (3) is subjected to other manufacturing operations (e.g., chemical processing), or (4) is marketable and can be sold, even if the product must undergo further non-mineral processing prior to being amenable to an ultimate end use (e.g., titanium tetrachloride, an intermediate product used for the production of titanium metal and titanium dioxide, is saleable and is often sold to other producers for manufacturing inorganic chemicals; any operations following the production of this intermediate, irrespective of whether they occur on-site, are not considered to be within the realm of mineral processing).

The Agency believes that Congress, in adopting the Bevill Amendment, intended to include only those processes that remove, concentrate, and/or enhance values contained in ores and minerals, or beneficiated ores and minerals, and that manufacturing, chemical processing, and alloying operations clearly do not fit into this category. EPA continues to believe that the casting of anodes or cathodes is not a fabrication operation, but is instead an operation necessary for the production of an intermediate or final (i.e., saleable) product and is therefore within the realm of mineral processing.

One general view expressed by many commenters addressing both NPRMs was that EPA should follow Congress' intended broad view of the term "processing" and include all stages from beneficiation through production of final products, including integrated operations. Some commenters offered specific examples in support of their position.

For example, one commenter objected to EPA's preliminary conclusion that the production of ammoniated phosphates does not constitute mineral processing because it involves further processing of an intermediate mineral processing product, arguing that (1) production of ammoniated phosphates is enhancement of an intermediate to a final mineral product, since phosphoric acid must be further processed in order to be usable as fertilizer and (2) EPA regards ammoniated phosphate production as a part of phosphate processing under the Clean Water Act, and no rational basis exists for reaching a different conclusion under the Bevill Amendment. Other commenters similarly argued that wastes from alloying processes should be included, but nominated no large volume "post-processing" wastes.

In contrast, several other commenters argued that EPA should narrow the definition of processing via this attribute, and not finalize a definition of mineral processing that leaves virtually unchanged the extremely broad 1980 definition of mineral processing. In particular, these commenters stressed that the processing definition should not exempt operations that occur after the identity of the ore or mineral is destroyed. They stated, for example, that in production of titanium dioxide using the sulfate process a "slag" is produced from smelting beneficiated ilmenite ore in an electric arc furnace. This "slag", they argued, is a final mineral product which is then chemically processed (i.e., "washed with sulfuric acid" and "calcined"), and thus operations subsequent to the smelting should not be exempted. Similarly, the commenters argued that, in the case of titanium dioxide production using the chloride process, no wastes generated subsequent to chlorination should be eligible for the Bevill exemption, because titanium tetrachloride is the final mineral product and any subsequent operations are not to be considered processing.

Following review of these comments and additional analysis, EPA has concluded that none of the public comments received on the two proposals or any additional information received by the Agency support any substantial revisions to this attribute, though some clarifications are discussed here. The Agency maintains that Congress did not intend the Bevill exclusion to extend to processing operations that are performed after the production of a saleable mineral product. Phosphoric acid, for example, is a saleable mineral product that is purchased by diverse industries and has many uses in manufacturing and as a feedstock for further chemical processing. Thus, the manufacture of ammoniated phosphate fertilizer by adding ammonia to phosphoric acid, is not a mineral processing operation; this is chemical processing that uses a saleable mineral product as a feedstock. Likewise, EPA considers titanium tetrachloride, produced during the titanium chloride process, to be a saleable product; any processing subsequent to its production is considered to be chemical processing. In contrast, titanium-bearing slag generated in blast furnaces is considered eligible for continued Bevill exclusion, because although it is a saleable intermediate product, it has no significant end use except for additional mineral processing. Accordingly, the processing of this slag using sulfuric acid digestion is a mineral processing operation rather than a chemical processing operation, and all qualifying wastes from this process are Bevill wastes.

4. Residuals From Treatment of Excluded Mineral Processing Wastes Are Eligible for Exclusion Provided That They Meet the High Volume and Low Hazard Criteria

The October and April NPRMs both articulated EPA's intention to include as processing wastes the residuals from the treatment of excluded mineral processing wastes, but only if those residuals independently meet the criteria for special waste status. Several commenters specifically suggested that for clarity EPA should list for study, in the regulation itself, the category "residues from the treatment of all mineral-processing wastes on the preceding list which are generated at a rate greater than the high volume criterion established by EPA." Other commenters argued that the special waste criteria should not be applied to treatment residuals, recommending that EPA include in the regulation itself on the list for study "residues from the treatment of all mineral processing wastes on the preceding list regardless of the rate of generation." One commenter noted that treatment and discharge of process water in its industry is limited by the Clean Water Act and, as a result, treatment residuals are limited in volume and thus do not meet the high volume criterion because of other regulatory demands. Another claimed that EPA must evaluate actual waste management practices and impacts to human health and the environment before deciding that residuals are subject to subtitle C. Finally, one commenter stated that EPA should be consistent in applying its definition of process wastewater and include aqueous pollution control residuals with process wastewaters, claiming that EPA provided no rationale for the statement that process wastewater does not include aqueous waste streams from pollution control devices.

After review of the comments, EPA continues to believe that the most appropriate interpretation of the term "solid waste from the processing of ores and minerals" should include pollution control residuals that are presently generated as long as such residuals meet the high volume and low hazard criteria required for all excluded wastes. By including qualifying pollution control residuals on the list of wastes excluded under the Bevill Amendment, the intent of Congress will be achieved by allowing further study of these high-volume, low-hazard wastes. EPA does not believe it appropriate to treat low volume pollution control residuals as exempt wastes regardless of the reason why these wastes are not generated in high volumes.

5. The Processing Definition Could Be Narrowed by Adding a Co-Location Requirement

In the April NPRM the Agency solicited comment concerning whether the definition of "mineral processing" should be further narrowed by confining "mineral processing" to only those mineral processing operations that are co-located with extraction and beneficiation operations. Some commenters encouraged EPA to narrow the definition of processing and include only those processors that are co-located with beneficiation operations, stating that: (1) The co-locational requirement is an inherent aspect of the Bevill exemption, (2) the legislative history never indicated that wastes generated at locations divorced from extraction and beneficiation sites should be exempted, (3) that Congress never intended non-mining industries (e.g., the chemical industry) to have Bevill-exempt wastes, and (4) EPA itself, in the 1980 interpretation, indicated only wastes that are co-located should be exempted.

Many other commenters insisted that EPA do nothing to further narrow the definition of processing, especially by limiting the exemption to processors that are co-located with beneficiation operations. They contended that: (1) This narrowing would be inconsistent with the language of the Bevill

Amendment, the intent of Congress, and the interpretation of the Court, (2) wastes will exhibit the same intrinsic high volume, low hazard, and other characteristics regardless of their location relative to extraction and beneficiation operations, (3) if the Agency ignores site characteristics which directly affect risk (i.e., hazard) potential, then site characteristics which have no effect on risk—such as co-location, must also be disregarded, (4) if EPA relies on the special waste concept to define processing, then the Agency must recognize that the 1978 proposal as well as EPA's Draft Background Document do not give any indication that only processing operations at integrated facilities should be eligible for the Bevill exclusion, (5) many if not most sectors ship from mines to beneficiation and/or processing facilities, (6) co-location could threaten the environment if processing facilities are moved to the sensitive areas in which mines are often located, and (7) no significant domestic extraction or beneficiation occurs in some sectors, making it impossible to perform the processing (e.g., chromite ore roasting/leaching, manufacture of hydrofluoric acid) in close proximity to beneficiation anywhere in the U.S.

After further review, EPA has decided that a further narrowing of the processing definition using a co-location criterion or any other limitation is not appropriate or required by Congressional intent as reflected by the legislative history. Furthermore, the co-location requirement could conceivably create major inequities between facilities within sectors because some facilities in a sector may be co-located while others are not, and between sectors because some sectors rely entirely on foreign ore supplies and others do not; the volume or hazard of wastes in these sectors are largely unaffected by the location of the extraction and beneficiation operations providing their feedstocks. Therefore, EPA will continue to use the definition delineated above (i.e., solid waste uniquely associated with mineral processing and meeting all of the five attributes of mineral processing) and has not employed any additional criteria that would narrow the definition of "mineral processing."

E. Related RCRA Issues

1. Applicability of the Mixture Rule

The April 17, 1989 NPRM stated that EPA would apply the mixture rule to Bevill and non-Bevill mixed waste streams under almost all circumstances. Under this policy, mixtures of one or more listed hazardous wastes and a large volume, low hazard mineral processing waste would be considered a hazardous waste unless and until the mixture is delisted. EPA proposed, however, that in the case of mixtures of non-excluded "characteristic" wastes and Bevill wastes, the mixture would be considered a hazardous waste if it exhibits one or more of the same hazardous characteristics that are exhibited by the non-excluded waste. If, on the other hand, the mixture exhibits one or more hazardous characteristics exhibited by the Bevill waste but not by the non-excluded characteristic waste, then the mixture would not be a hazardous waste. Furthermore, mixing a characteristic hazardous waste with a Bevill waste would constitute treatment of a hazardous waste, and would be subject to the appropriate regulation for the treatment, storage, or disposal of hazardous wastes, including obtaining a permit.

Several commenters asserted that the Agency's preliminary position on the mixture rule is inappropriately lax and should be modified to regulate co-managed waste mixtures more stringently. These commenters argued that mixtures of Bevill and non-Bevill wastes do not meet the low hazard criterion for Bevill exclusion. Commenters also stated that co-management typically occurs subsequent to initial processing, and thus does not fall within the scope of the Bevill exclusion.

Other commenters argued that the proposed application of the mixture rule is overly strict. These commenters stated that applying the mixture rule as proposed would discourage environmentally protective co-management. Commenters specifically recommended that mixtures of non-Bevill characteristic or listed wastes and Bevill wastes be regulated as hazardous only when the resulting mixture (1) demonstrates a hazardous characteristic not exhibited by the Bevill waste, or (2) is more hazardous than the Bevill waste alone. These commenters stated that the Agency should exempt mixtures of characteristic or listed mineral processing wastes with Bevill wastes when the disposal of the Bevill waste is subject to the requirements of a State or Federal program to control groundwater contamination, provided that the waste is completely characterized such that the effects of mixing on the non-exempt waste can be assessed and considered by the applicable regulatory agency.

Other commenters argued that regulating mixtures of subtitle D extraction and beneficiation wastes and non-Bevill mineral processing wastes under subtitle C contradicts EPA's July 3, 1986 Regulatory Determination that extraction and beneficiation wastes will be excluded from all aspects of the regulatory program. These commenters requested that the Agency provide a reason for not complying with the Regulatory Determination. In urging the Agency to exempt mixtures of extraction and beneficiation wastes and non-Bevill mineral processing wastes from the subtitle C mixture rule, these commenters drew an analogy to the fact that the Agency has consistently maintained that mixtures of Bevill utility wastes and non-Bevill utility wastes are not subject to regulation under subtitle C. Other commenters, noting that the Agency is concerned that industry might dilute their subtitle C processing wastes with extraction and beneficiation wastes to avoid subtitle C regulation, suggested that the Agency prohibit intentional dilution of hazardous waste streams for the purpose of avoiding subtitle C regulation. These commenters contended that this approach has been taken in the Land Disposal Restrictions Program, and has been endorsed by the D.C. Circuit Court in regulations concerning multi-source leachate.

Some commenters stated that requiring a treatment, storage, or disposal permit when mixing characteristic hazardous wastes with Bevill wastes is particularly onerous. These commenters argued that requiring a permit when mixing wastes would render any relief made available under the proposed modifications to the mixture rule meaningless. Other commenters recommended that immediate elementary neutralization of a RCRA corrosive waste with a Bevill waste should be exempt from RCRA permitting requirements. These commenters argued that such a mixture exhibits no hazardous characteristics, the treatment is instantaneous, and the entire mixture would be inappropriately regulated under subtitle C.

Several commenters recommended that the Agency exempt *de minimis* mixtures of listed hazardous wastes with other mining wastes. These commenters asserted that such a policy would be consistent with the Agency's position regarding the derived-from rule and would result in enhanced protection of the environment. These commenters stated that *de minimis* mixing is sometimes performed in order to comply with NPDES requirements. Other commenters stated that a *de minimis* exemption would be consistent with the findings of the Agency's first Report to Congress, which found that subtitle C regulation of these waste streams was unnecessary.

Some commenters argued that the proposed modifications to the mixture rule conflict with Congressional and Court ordered requirements to perform studies of particular waste streams. These commenters stated that all processing wastes are temporarily exempt from all provisions of subtitle C—including the mixture rule—until the special study is completed and a Regulatory Determination is completed. Other commenters contended that the Court interpretation of the legislative intent of the Bevill Amendment supports the argument that the beneficial effects of waste mixing should be incorporated into the low hazard criterion, and if insufficient data are available to do so, then the Agency should further study the effects of mixing practices.

Finally, commenters argued that particular waste streams and classes of wastes should not be subject to the modified mixture rule and that they should remain eligible for the Bevill exclusion. Waste streams include bauxite red mud mixed with red scale, Lurgi wet scrubber effluent mixed with alkaline tailings at primary copper facilities, minor waste streams from the electrowinning and refining of gold mixed with tailings, and small amounts of waste mixed with sulfuric acid storage tank clean-out and recirculation water from phosphate processing.

The Agency has reviewed and considered these comments, and has concluded that it is consistent with the intent of Congress and the Court, and most protective of human health and the environment, to continue to apply the mixture rule to Bevill and non-Bevill mixed waste streams as described in the April 17, 1989 NPRM. Only in this way can the Agency ensure that an unintended regulatory exclusion is not afforded (e.g., through intentional dilution with high volume Bevill wastes) to small volume hazardous mineral processing wastes that should rightly be subject to Subtitle C requirements. By so doing, mixtures of small volume mineral processing wastes and Bevill wastes are potentially subject to subtitle C requirements, and the act of mixing them will require a subtitle C treatment permit. For the same reasons, EPA also does not see any reason to carve out particular exceptions for the waste stream mixtures cited by commenters.

Because many facilities may lack historical knowledge of the relevant concentrations of constituents and volumes of the characteristically hazardous non-excluded pre-mixed solid wastes, and pre-mixed Bevill wastes comprising the characteristically hazardous Bevill waste mixtures, EPA does not believe that a baseline risk approach is feasible. This also is why EPA's approach to these characteristic mixtures differs from the approach retained today regarding listed mixtures. (See also the discussion regarding utility wastes above). Further, concerns over enforceability of alternative approaches have convinced EPA that the approach adopted here is necessary to assure that nonexcluded characteristically hazardous wastes are properly managed and are not improperly mixed with Bevill wastes so as to avoid regulation.

The argument that EPA's position is in conflict with the 1986 Regulatory Determination for extraction and beneficiation wastes or Congressional and Court directives regarding these Bevill wastes is specious; the issue at hand is regulation of low volume hazardous mineral processing wastes, not regulation of Bevill wastes. Non-Bevill mineral processing wastes that are hazardous are subject to all aspects of the subtitle C regulations, including the mixture rule. Mixtures of Bevill and non-Bevill processing wastes will be treated in the same manner, notwithstanding the fact that EPA has not yet studied Bevill processing wastes. Further, even were EPA to agree that the mixture rule were inapplicable to the Bevill waste mixed with hazardous waste, mixtures of listed hazardous wastes with Bevill wastes would continue to be subject to regulation because the "mixture" would "contain" listed hazardous waste, subject to regulation unless delisted. See *Chemical Waste Mgmt., Inc.* v. *EPA,* 869 F.2d 1526 (D.C. Cir. 1989).

Moreover, the Agency finds no compelling reason to provide exemptions for particular small volume wastes that may be associated with mineral processing operations, such as cleaning wastes. Many other industrial operations also generate such wastes, and EPA does not believe that the fact that current management involving co-management justifies continued regulatory exclusion for wastes that are not uniquely associated with mineral processing (and therefore are not defined as mineral processing wastes) and would not, in any event meet the high volume criterion.

Finally, providing regulatory exclusions for mixtures of Bevill and non-Bevill mineral processing wastes would provide disincentives for developing ways to minimize hazardous waste generation. This would be in direct conflict with one of the Agency's major policy goals, that of pollution prevention.

2. Applicability of the Derived-From Rule

The April 17, 1989 NPRM stated that the Agency will clarify the application of the derived-from rule in a supplemental notice (expected in mid-1989) to the May 6, 1987 proposed rules for boilers and industrial furnaces burning hazardous waste. In the interim, the proposal stated that the Agency would adhere to its prior statements on this issue, i.e., that wastes from comanaging hazardous wastes and Bevill materials remain within the scope of the Bevill exclusion so long as the character of the residues is not significantly affected by the hazardous waste management activity. To the extent that co-combustion residues are significantly affected, they could no longer be considered to truly arise from processing an ore or mineral (or from other activities addressed by the Bevill Amendment). See 50 FR 49190 (November 29, 1985); 52 FR 17012–13 (May 6, 1987) for further information.

Many commenters responded to the proposed rule by requesting that the Agency immediately clarify its position on the derived-from rule and provide a supplemental notice to the final rule for boilers and industrial furnaces. Other commenters argued that Congress clearly did not intend for the Bevill Amendment to exempt the burning of hazardous wastes in smelter furnaces. These commenters further argued that the Agency's position on the derived-from rule rewards dilution as a means of disposal and is unlawful and overly broad. Commenters suggested that if the Agency determines that combustion residuals from burning hazardous waste with Bevill exempt materials are in fact exempt from Subtitle C, then the Agency should include an assessment of the potential health and environmental impacts of burning in the Report to Congress.

Other commenters stated that wastes from industrial furnaces burning hazardous waste fuel should remain under the Bevill exclusion as long as the character of the residue is not significantly affected by the management activity. These commenters argued that the air pollution control residues from hazardous waste-fired kilns are Bevill wastes just as are residues from coal-fired kilns.

The Agency has reviewed and evaluated these comments regarding the derived-from rule. As indicated in the April NPRM, EPA will clarify the application of the derived-from rule in a supplemental notice to the May 6, 1987 proposed rules for boilers and industrial furnaces burning hazardous waste. We expect this notice to be published during the next several months. Until then, wastes from co-managing hazardous wastes and Bevill materials remain within the scope of the Bevill exclusion so long as the character of the residues is not significantly affected by the waste management activity.

Effects of the Land Disposal Restrictions

Commenters argued that the Agency has misinterpreted the land disposal restrictions (LDR) as they relate to mineral processing. According to commenters, the LDR will not be automatic for non Bevill mineral processing wastes that exhibit hazardous characteristics as of May 1990. Also, these commenters stated that EPA's statutory mandate to conduct a detailed and comprehensive review of mineral processing wastes requires the Agency to take into account the potential effect of the LDR rulemaking. If the Agency considers eliminating the Bevill exclusion as applied to a particular materials stream, it should, according to these commenters, only do so in the context of a land ban BDAT determination.

The statutory mandate to conduct a detailed and comprehensive review applies only to Bevill wastes, not to the other mineral processing wastes removed from Bevill by today's final rule. Therefore, EPA is under no obligation to consider the effects of potential land disposal restrictions on mineral processors prior to removing non-Bevill mineral processing wastes from the exclusion.

A further question exists as to the status of the wastes withdrawn from the exclusion under the land disposal restriction provisions that establish a schedule for prohibiting untreated hazardous wastes from land disposal. Once withdrawn from the Bevill exclusion, these wastes will be identified as hazardous if they exhibit a hazardous waste characteristic; none will be listed (at least at this time). The statute provides with respect to wastes identified because they exhibit a hazardous waste characteristic that EPA must promulgate prohibitions and establish treatment standards for "all hazardous wastes identified under 3001" by May 8, 1990. RCRA section 3004 (g)(4)(C). (EPA interprets this language as referring to the wastes identified as hazardous as of November 8, 1984, the date of enactment of the HSWA amendments because they exhibit one or more hazardous characteristics.) Wastes newly identified after November 8, 1984 must be prohibited from land disposal, and EPA must develop a treatment standard for them, within six months after they are newly identified. RCRA section 3004 (g)(4).

EPA believes that the wastes withdrawn from the exclusion are "newly identified" for purposes of these provisions. Although technically the wastes are not being identified by a new characteristic, they are being brought into the subtitle C system after the date of the 1984 RCRA amendments. The Agency plans to address wastes brought in under subtitle C by this rule further in the proposed land disposal restrictions for the Third scheduled wastes.

However, because any hazardous waste, including newly identified wastes, is subject to the requirements of the California List and Solvents and Dioxins final rules, the most important question is how the State programs are affected. Today's final rule removing certain mineral processing wastes from the Bevill exclusion is not being imposed pursuant to the HSWA and therefore today's rule is not effective in authorized states. Thus, as discussed more fully below, today's regulation is applicable only in those states that do not have interim or final authorization. Authorized states that do not have a Bevill exclusion or analog, i.e., all mineral processing wastes are already eligible for regulation as hazardous wastes by the state, are already subject to the land disposal restrictions for California List and Solvents and Dioxins wastes.

4. RCRA Section 3004(x)

As part of the 1984 HSWA Amendments, Congress incorporated a provision allowing the EPA Administrator to relax certain of the Subtitle C standards contained in the new amendments as they relate to the management of mining wastes, utility wastes, and cement kiln dust wastes. This provision, found at section 3004(x), is commonly called the "Simpson Amendment." The Simpson Amendment allows EPA to modify the minimum technical standards for the design, construction, and operation of waste management units, land disposal restrictions, and corrective action requirements for continuing releases, as long as protection of human health and the environment is assured. In the April 17, 1989 NPRM the Agency explained that the provisions of the Simpson Amendment, and hence the opportunity for flexible application of Subtitle C requirements, apply only to the special wastes identified in the statute. Accordingly, the Simpson Amendment would not apply to wastes that are not special wastes and that would therefore be removed from the Bevill exclusion by the proposed rule.

Commenters argued that EPA's interpretation of the Simpson Amendment as applicable only to wastes retained within the Bevill exemption is incorrect and contrary to the legislative history. These commenters asserted that the legislative history of the Simpson Amendment indicates that it was meant to apply to all mining wastes and that its purpose was to clarify the Agency's authority to develop special standards for wastes removed from the Bevill exemption. On this basis, these commenters urged EPA to adopt a broader position.

Other commenters argued that EPA's reliance on a 1984 Senate report to narrow the scope of the Simpson Amendment is questionable. Because the Simpson Amendment was adopted at a time when EPA's November 1980 interpretation of the Bevill Amendment was the controlling authority, and Congress did not take any action to limit or modify the November 1980 interpretation, "processing" must be understood, according to these commenters, to include wastes from milling, smelting, and refining of ores and minerals. Furthermore, according to these commenters, Congress recognized that some, but not all, special study wastes might become subject to subtitle C, in which case differential treatment under the Amendment would be appropriate.

After reviewing these comments and the intent of the Simpson Amendment, the Agency believes that the provisions of section 3004(x), and hence, the opportunity for flexible application of Subtitle C requirements, apply only to the wastes intended by Congress to be included within the Bevill Amendment exemption, i.e., the special wastes. Accordingly, section 3004(x) would not apply to wastes that are not special wastes and that would therefore be removed from the Bevill exclusion by this rulemaking.

EPA's interpretation of the scope of section 3004(x) is based upon a reading of the legislative history of the amendment. The legislative history is replete with references that 3004(x) was designed to allow flexibility to modify subtitle C for those wastes within the scope of the Bevill amendment, i.e., the special wastes. The Conference Report accompanying 3004(x) explains clearly that it would

> Encompass all of the so-called "*special study wastes*" described in section 8002 (f), (n), (o), and (p) that become subject to regulation under subtitle C. * * * This amendment recognizes that even if some of the *special study wastes* are determined to be hazardous it may not be necessary or appropriate, because of their special characteristics and other factors, to subject such wastes to the same requirements that are applicable to other hazardous wastes, and that protection of human health and the environment does not necessarily imply the uniform application of requirements developed for disposal of other hazardous wastes."

Conf. Rpt. at 93 (emphasis added). The adoption of section 3004(x) is fully consistent with Congress' concern in 1980 that the special wastes may not necessarily be amenable to full Subtitle C controls due to the large volumes and potentially lower hazards. Such concerns would not hold for wastes which are not high volume, low hazard, and the Conference Report suggests that Congress was not concerned with applying section 3004(x) to such wastes.

The Conference Report goes on to explain that the authority of section 3004(x) "is intended to extend to all of the wastes *required to be studied by EPA* pursuant to section 8002 (f), (n), (o), and (p), and does not in any way alter *the existing scope* of section 3001(b)(3)(A)." *Id.* at 94 (emphasis added). Several commenters cited this language to indicate that the 3004(x) was designed to apply to all wastes which EPA defined within the scope of the Bevill amendment as of 1984, i.e., all mineral processing wastes regardless of volume or hazard. EPA does not agree the language can be so read. The Court of Appeals clearly ruled in EDF II that Congress never intended the Bevill Amendment to apply to wastes which are not high volume, low hazard special wastes. Thus, even in 1984, the "existing scope" of section 3001 was not as broad as EPA was interpreting it. Congress intended section 3004(x) to apply to those wastes within the scope of the Bevill amendment as Congress, not EPA, interpreted it (i.e., special wastes). EPA notes that the 1983 Senate Report referred to in the April NPRM supports this conclusion, but is not the sole basis for it.

In light of the decision of the Court of Appeals construing Congress' intent in adopting the Bevill amendment in 1980 (prior to the Simpson amendment), the proper reading of section 3004(x) is that it applies only to special wastes as defined by today's final rule. However, EPA does recognize that for certain wastes which are high volume, but also high hazard, there may be valid concerns regarding the amenability of certain subtitle C controls. EPA would appreciate receiving any information regarding these effects in industries affected by today's rule.

F. Administrative Issues

1. Subtitle C and Wastes Withdrawn From the Bevill Exclusion

Commenters recommended that the Agency clarify that surface impoundments managing processing wastes removed from the Bevill exclusion and exhibiting a hazardous characteristic will have four years, as provided for in section 3005(j)(6), to comply with the Minimum Technology Requirements (MTRs). These commenters were concerned that mineral processors newly subject to subtitle C would have to meet the MTRs under the LDR Program.

Other commenters recommended that the Agency impose subtitle C regulations on facilities that fail to properly close and secure units in accordance with all currently applicable requirements within the six month compliance period proposed in the NPRM. As an alternative, these commenters recommended that the Agency require affected facilities to implement a RCRA ground-water monitoring program to assure detection of threats to human health and the environment. Without assurance that no contamination was present, according to these commenters, Subtitle C closure and post-closure requirements must be met so as to characterize and remediate any potential human or environmental threats.

Section 3005(j)(6) provides that surface impoundments that become eligible for interim status after November 8, 1984 as a result of receiving wastes that are hazardous as a result of "additional listings or characteristics for the identification of hazardous waste under section 3001" must comply with MTRs within four years of promulgation of the new listing or characteristic. The wastes that are no longer subject to the Bevill exclusion are not being brought into the subtitle C system as a result of newly promulgated listings or characteristics, but EPA believes that the intended purpose of section 3005(j)(6) is to allow surface impoundments that are newly eligible for interim status after November 8, 1984 to have the same four years to close or retrofit afforded interim status impoundments in existence on November 8, 1984. Consequently, EPA believes that section 3005(j)(6) does apply to the impoundments receiving wastes newly brought into the subtitle C system as a result of today's action. EPA notes that it is adopting a similar construction of section 3004(g)(4) and thus is also viewing these wastes as newly identified for purposes of the land disposal restrictions program. In the event that there are inconsistencies between requirements under 3005(j)(6) and the land disposal restrictions program, they will be addressed by EPA when the Agency promulgates land ban requirements for these wastes.

2. Opportunities for Public Comment

In the April 17, 1989 NPRM, the Agency provided the public with a 45 day public comment period, during which time the Agency accepted written comments submitted to the Docket Information Center and held a public hearing in Washington, DC. Commenters asserted that by scheduling only one hearing location and date the public was denied full access to the public comment process. Other commenters argued that the public comment period was too short to allow the public adequate opportunity to review and comment on the NPRM. These commenters stated that an additional 30 days should have been allowed for public comment.

The Agency disagrees with these commenters. While the opportunities for public review and comment on the April 17, 1989 NPRM were more limited than the Agency customarily provides, the Agency believes that these opportunities were nonetheless adequate. Furthermore, the public review and comment schedule was driven by the Court-ordered schedule, which prevented the Agency from providing a longer public comment period or additional public hearings. In addition, for many issues, there have been multiple comment periods.

3. Executive Order 12291 Analysis

In the April 17, 1989 NPRM, the Agency explained that section 8 of Executive Order 12291 exempts an agency from the requirements of the Order when compliance would conflict with deadlines imposed by statute or judicial order. Accumulating the information and conducting the analyses required to fully comply with the requirements of sections 2 and 3 of Executive Order 12291 takes many months. Therefore, compliance with these requirements in preparation for the October and April proposed rules was not possible within the schedule specified by the Court for this rulemaking. In the NPRM, the Agency explained that although EPA could not conduct a complete economic impact analysis within the period of time allowed by the Court, the Agency's economic impact analyses conducted in support of previous Agency rulemaking and Report to Congress activities did suggest that the proposal might well not meet the criteria for a "major" rule.

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Commenters argued that the Agency is in fact compelled to prepare an economic analysis for this rulemaking. These commenters asserted, without providing alternative analyses or information in support of the assertion, that the rule would qualify as a major rule under each of the three tests used to determine impact under Executive Order 12291. Some commenters argued that the Court clearly indicated that the Agency is required to consider costs and benefits in making Bevill decisions (see e.g., EDF I at 1315). Commenters recommended that if the Agency requires additional time to prepare an economic impact analysis, it should request an extension from the Court.

As discussed above and in the October and April proposals, the Agency does not have adequate time to prepare a complete RIA that is fully responsive to E.O. 12291 in connection with this rulemaking. Moreover, the Agency has not received convincing arguments or information that suggest that the rule, in either proposed form or in the form finalized today, would constitute a "major rule," at least not in terms of aggregate financial impacts in excess of $100 million annually. As far as any obligation to consider economic impact in making Bevill exclusion decisions is concerned, EPA's reading of the court decision in EDF I is that economic effects and all of the other RCRA 8002(p) study factors must be evaluated in the Report to Congress and considered in making the regulatory determination for Bevill mineral processing wastes, but not in identifying the mineral processing wastes that satisfy the Bevill criteria in the first instance. Finally, because EPA is capable of discharging its duties within the time period allotted by the Court, the Agency does not believe that a schedule extension for purposes of conducting an impact study that is not required is appropriate.

Commenters stated that the Agency does not have a basis for claiming that the rulemaking will not constitute a major rule, and therefore that the rule does require a Regulatory Impact Analysis. Sufficient information, according to commenters, was provided to the docket after the October 20, 1988 proposed rulemaking. These commenters stated that the Department of Interior (DOI) has indicated that it possesses the necessary data for conducting a Regulatory Impact Analysis.

EPA disagrees that the information that has been submitted to the docket demonstrates that this action constitutes a major rule. In fact, although the Agency had requested specific information in the October and April proposals regarding low volume processing wastes that would or might be affected by today's rule, virtually no specific data on such wastes was received in public comment on these proposals. Through past cooperative work with the U.S. Bureau of Mines (BOM), EPA is well aware of the types of information available from DOI concerning mineral processing wastes. While very comprehensive information on numbers and identities of facilities and production and sales volume data are available from BOM, the Bureau has very little information on other variables that are critical to a complete evaluation of regulatory and economic impact, such as waste types, volumes, and characteristics, and waste management practices.

The Agency has made a good faith effort to comply with the requirements of Executive Order 12291 by conducting a comprehensive economic impact screening analysis, as presented below in Section VIII.

4. Regulatory Flexibility Analysis

In the April 17, 1989 NPRM, the Agency explained that Section 608 of the Regulatory Flexibility Act (RFA) allows the Administrator to waive or delay completion of the RFA screening analysis in response to an emergency that makes compliance with the requirements of section 603 or the Act on a timely basis impracticable. In this instance, the court-imposed deadlines for publication of the October and April proposed rules have prevented EPA from conducting a complete screening analysis of potential small business impacts in time to support the rulemaking process, especially given that more than 100 mineral commodity sectors would have required screening for potentially hazardous waste and the presence of significantly affected small business entities. In both the October and April NPRMs the Agency solicited comment and specific information relating to specific small businesses or individual commodity sectors that produce ore or mineral processing wastes that could, by virtue of the potential hazardous characteristics of such wastes, be subject to adverse impacts by today's rule.

Commenters responded by stating that the Agency has inadequately evaluated the rule's impact on small businesses, but no commenters provided any specific information related to small business firms or potentially affected sectors. Nonetheless, these commenters stated that the Agency should recognize that enterprise ownership patterns vary appreciably between mineral-industry sectors, and therefore, the extension of information from the nonferrous and ferroalloy producing sectors to the nonmetallic ore and mineral processing sectors is inappropriate. These commenters asserted that the Bureau of Mines could provide information necessary to support a screening study.

In section IX of this preamble, the Agency presents a comprehensive analysis of the impacts of this rulemaking on small businesses.

G. Comments Addressing Nine Wastes for which Final Bevill Status is Established by Today's Rule

This section summarizes public comments received by EPA addressing nine potentially high volume wastes on which the Agency proposed to take final action in the April NPRM. EPA's decisions regarding the Bevill status of these materials are presented in section IV, below, though responses to a limited number of specific questions and issues raised by commenters are addressed in this section.

1. Slag From Primary Copper Processing

Several commenters supported EPA's proposal to retain primary copper smelting slag within the Bevill Amendment exclusion as a high volume, low hazard mineral processing waste. They noted that slag from primary copper smelting constitutes a low hazard waste according to a study supported by EPA. They further agreed that all types of copper processing slag (i.e., reverberator furnace, converter, and refining slag) should be aggregated to meet the volume criterion. One commenter stated that its anode and converter slag is not discarded but recycled to smelters and claimed this to be a standard practice at U.S. smelters. That same commenter noted that its reactor slag is an intermediate product that is processed in a slag concentrator using beneficiation activities (i.e., cooling, grinding, flotation) and that other facilities either discard or clean the slag. They claimed that water extract tests in which only one of 15 samples exceeded EP toxicity levels have demonstrated that the waste is low hazard.

Other commenters disagreed with EPA's proposal to retain copper slag. They indicated that the waste sampling effort conducted for the draft mineral processing waste Report to Congress revealed that one of the eleven samples of copper slag exhibited the EP toxicity characteristic. In addition, the waste contained elevated leachable levels of arsenic, cadmium, and lead. Water

extraction sampling also revealed that the waste contains leachable arsenic and cadmium at concentrations exceeding the EP trigger level. They noted that data from the draft Report to Congress demonstrate exceedances of the AWQC for copper smelting slag; cadmium exceeds the AWQC by up to 9,000 times, copper by up to 9,000 times, and lead by up to 15,000 times.

One commenter who in the past used copper slag for construction purposes in the state of Washington objected to the inclusion of slag from primary copper smelting, specifically objecting to the classification of copper smelting slag as nonhazardous. This commenter contended that contamination caused by copper smelting slag in the Tacoma, Washington area has been documented in numerous reports. In 1983, they claimed, the Tacoma Pierce County Health Department issued a notice advising against consumption of bottom fish from the Hylebos waterway and against regular consumption of fish from other waterways in the area because of the presence of arsenic and lead in fish caused in part by smelting slag.

EPA today finalizes the decision to leave copper slag within the exclusion for study. Data recently collected by EPA (using Method 1312) confirms that this waste passes the hazard screening criterion. Furthermore, 1310 data developed from the same sample fails to confirm the results cited by the commenter.

2. Slag From Primary Lead Processing

A commenter supported EPA's proposed retention of lead processing slag, but indicated a concern that only smelting and not refining slag may have been included. They requested that if this is EPA's position, that the Agency modify its definition to include refining slag.

Other commenters disagreed with EPA's proposal to include lead slag, arguing that slag from primary lead processing cannot be considered low hazard under any reasonable definition. They indicated that the waste sampling effort conducted for the draft mineral processing wastes Report to Congress revealed that all five of the plants generating this waste and thirteen of seventeen samples of slag from lead processing exhibited the EP toxicity characteristic. Two of the five facilities failed for cadmium; three of the five facilities and eight of the 17 total samples exceeded the drinking water standard for lead by more than 1000-fold; and one of the plants exceeded 100 times the drinking water standard for cadmium even when leached with water. All samples of granulated or hot dumped slag exhibited the EP toxicity characteristic; only the dezinced slag passed the characteristic test. They noted that data from the draft Report to Congress demonstrate exceedances of the AWQC for copper smelting slag; cadmium exceeds the AWQC by up to 8,000 times, zinc by up to 2,100 times, and lead by up to 66,000 times.

EPA today finalizes the decision to leave lead slag within the exclusion for study. Data recently collected by EPA (using Method 1312) confirms that this waste passes the hazard screening criterion at three facilities. The data cited by the commenters is not determinative of whether the waste will remain within the exclusion under today's screening criterion.

3. Red and Brown Muds from Primary Bauxite Processing

Commenters supported the Agency's proposed retention of red and brown muds from bauxite refining within the mining waste exclusion. They agreed that red and brown muds satisfy the definition of mineral processing and meet the low hazard and high volume criteria. The commenters further claimed that should red and brown muds incorrectly be classified as hazardous waste, a large share of the hazardous waste storage capacity in the U.S. would be consumed with no increased benefit or protection to the environment. One commenter further argued that this waste is from a mineral beneficiation, not mineral processing waste.

Red and brown muds are created by an alkaline digestion operation; they therefore constitute mineral processing wastes.

4. Phosphogypsum From Phosphoric Acid Production

A number of commenters supported EPA's proposal to retain phosphogypsum within the Bevill exclusion. They agreed that phosphogypsum meets the high volume and low hazard criteria and should be retained in the Bevill exclusion. Additionally, they contended that compliance with subtitle C requirements, including land disposal restrictions, in the management of phosphate rock is not possible. Where technologically feasible, compliance would require expenditures that cannot be sustained by the fertilizer industry. Several industry commenters claimed that the exclusion for phosphogypsum will be meaningless if the rainwater falling on these stacks also is not exempted, noting that the collection of this rainwater runoff is an integral part of the processing of phosphate rock as this processing could not legally occur if the runoff was not collected and managed in accordance with the NPDES program.

Commenters argued further that phosphogypsum should not be considered separately from the recirculating process water with which it is linked. Process water is used to convey phosphogypsum to management areas and serves a critical function in maintaining water balance. Water used to transport phosphogypsum is generated at a different point in the production process only where it is recirculated. The commenters asserted that separate consideration of phosphogypsum and process wastewater does not comport with the Agency's historical approach to the Bevill Amendment.

Other commenters, in contrast, criticized EPA's proposal to retain phosphogypsum from phosphoric acid production within the Bevill exclusion. They claimed that phosphogypsum, under any reasonable definition, is not low hazard. Of the 10 plants sampled in a study contracted by EPA, 14 of 19 samples exceeded 100 times the MCLs for alpha particle radioactivity, radium-226, or both. Furthermore, adequate data exist to document the health risks associated with radioactive uranium and phosphate wastes. They asserted that: (1) EPA data indicate that the health risks from phosphogypsum stacks and ponds exceed the Agency's acceptable levels by a factor of eight, (2) phosphogypsum piles are located in areas of heavy rainfall where leaching of wastes occurs, and (3) the piles are located in heavily populated areas and in close proximity to ground water. Therefore, they contended, phosphogypsum should be regulated as a hazardous waste. EPA's failure to consider radionuclides as hazard is arbitrary, especially since EPA has previously recognized that waste with 20pCi/g constitutes more than a low level hazard and the EPA Draft Background Information Document entitled "Radionuclide Emissions from Phosphogypsum Stacks-Risk Assessment" shows phosphogypsum to have an average radium 226 concentration of 31 pCi/g, plus significant levels of other radionuclides. The commenters also expressed concern over the disposal of phosphogypsum filter pan residue on these piles as the residue has concentrations of radionuclide 2 to 3 orders of magnitude higher than normal phosphogypsum.

EPA has reviewed these comments and has elected to retain phosphogypsum within the Bevill exclusion because it passes all of the final Bevill mineral processing wastes criteria. The type(s) and magnitude of risk posed by this material, including its radioactive constituents, will be addressed in the forthcoming Report to Congress.

The Agency also wishes to reiterate its position regarding the definition of phosphogypsum, as articulated in the April NPRM. Phosphogypsum and the process water that is used to remove it to disposal represent two separate waste streams that could, if the industry desired, be managed separately. The Agency understands that when the phosphogypsum waste stream leaves the mineral processing circuit it is not entrained in the process water, but is a semi-solid residue from a filtering operation. The solid waste is *then* entrained in the process water in order to transport the waste to gypsum stacks for disposal. While alternative transport systems may be impractical, the fact remains that there exist two waste streams capable of being managed separately which must be considered separately for this rulemaking. Therefore, only phosphogypsum will be unconditionally retained within the Bevill exclusion for today's ruling.

EPA will address the status of process wastewater from phosphoric acid production, including its components (i.e., the gypsum stack run-off issue) in the September, 1989 proposal.

5. Slag From Elemental Phosphorus Production

Commenters supported EPA's proposal to retain slag from elemental phosphorus production within the Bevill Amendment. They claimed that phosphorus industry materials streams are generated by "mineral processing" operations as defined by the EPA, are high volume wastes, and are not high hazard wastes.

6. Furnace Scrubber Blowdown From Elemental Phosphorus Production

Some commenters supported EPA's proposal to retain furnace scrubber blowdown from elemental phosphorus production within the Bevill Amendment. They claimed that phosphorus industry materials streams are generated by "mineral processing" operations as defined by the EPA, are high volume wastes, and are not high hazard wastes.

Other commenters objected to including furnace scrubber blowdown within the Bevill exclusion. They contended that furnace scrubber blowdown from phosphorus production cannot be considered low hazard under any reasonable definition. Of the two plants sampled in a study contracted by EPA, both plants yielded samples that exceeded 100 times the MCLs for alpha particle radioactivity, radium-226, or both. One plant exceeded the EP standard for cadmium, while the other exceeded the MCL for arsenic by more than 10-fold, and exceeded the 10–5 cancer risk level by almost 850 fold.

7. Acid Plant and Scrubber Blowdown from Primary Copper Processing

Several commenters argued that acid plant blowdown and Lurgi scrubber effluent should be retained in the Bevill exclusion because they meet both the high volume and, at least at some facilities, the low hazard criteria. One commenter asserted that acid plant and scrubber blowdown from primary copper processing should not be eliminated from the Bevill Amendment based on its failure of EPA's low hazard test. They stated that the Agency should consider the burden of compliance for sectors eliminated from the Bevill exclusion. The commenter that claimed to have a low hazard waste stated that: (1) Their alkaline tailings are mixed with the waste which neutralizes the blowdown/Lurgi mixture, and (2) metals in the waste, by operation of internal chemical processes, become tightly bound in the matrices of various complex hydroxides contained in the tailings in which they are mixed, thus producing a minimal risk of leaching. Therefore, the representative samples of the Lurgi/blowdown/tailings mixture are not EP toxic. Additionally, they contended that the mixture poses no threat of release into the environment because the waste is deposited in a tailings pond on a deep tailings base which serves as an effective seal from migration into soil or groundwater, the waste is deposited a great distance from drinking water, and the commenter's facilities are located in an arid, unpopulated region.

Other commenters agreed with EPA's proposal to remove acid plant and scrubber blowdown from primary copper processing from the Bevill exclusion, arguing that blowdown from primary copper processing cannot be considered low hazard under any reasonable definition. They noted that the waste sampling effort conducted for the draft Report to Congress revealed that all samples of copper acid plant blowdown exhibited the EP toxicity characteristic. In addition, they indicated that the waste contained elevated leachable levels of arsenic, cadmium, and mercury, and that the acid plant blowdown samples exceeded EP characteristic trigger levels; the mercury concentrations exceeded by up to 99.5 times, and the cadmium concentrations exceeded by a factor as high as 24.5. They also noted that water extraction sampling also revealed that the waste contains leachable arsenic and cadmium at concentrations exceeding the EP trigger level. They contended that data from the Draft Report to Congress demonstrate exceedances of the AWQC for copper smelting slag; cadmium exceeds the AWQC by up to 25,000 times, arsenic by up to 1,930 times, and mercury by up to 30,000 times.

8. Acid Plant Blowdown from Primary Lead Processing

One commenter contended that acid plant blowdown from primary lead processing should not be eliminated from the Bevill Amendment based on its failure of EPA's low hazard test. The commenter maintained that lead processing acid plant blowdown and scrubber blowdown fall within the definition of process wastewaters and meet the high volume criterion; therefore, the waste should be studied.

9. Air Pollution Control Scrubber Blowdown from Primary Tin Processing

The single tin processor in the U.S. submitted in response to the October NPRM that it generated on average 68,000 metric tons of blowdown, which they claimed is a relatively dilute stream in the neutral pH range, and is similar to smelters in the lead and copper smelters. No comments were received in response to the April NPRM.

EPA need not address in detail the comments on the hazard status of phosphorous furnace scrubber blowdown and acid plant blowdown from copper, lead, and tin. These liquid wastes all fail the volume criterion.

III. Final Criteria for Defining Bevill Mineral Processing Wastes

A. Definition of Mineral Processing Wastes

For purposes of this rule, mineral processing wastes are generated by operations downstream of beneficiation (as codified by today's rule) and originate from a mineral processing operation as defined by the following elements:

(1) Excluded Bevill wastes must be solid wastes as defined by EPA.

(2) Excluded solid wastes must be uniquely associated with mineral industry operations.

(3) Excluded solid wastes must originate from mineral processing operations that possess all of the following attributes:

a. Follow beneficiation of an ore or mineral (if applicable);

b. Serve to remove the desired product from an ore or mineral, or from a beneficiated ore or mineral, or enhance the characteristics of ores or minerals, or beneficiated ores or minerals;

c. Use mineral-value feedstocks that are comprised of less than 50 percent scrap materials;

d. Produce either a final mineral product or an intermediate to the final product; and

e. Do not combine the product with another material that is not an ore or mineral, or beneficiated ore or mineral (e.g., alloying), do not involve fabrication or other manufacturing activities, and do not involve further processing of a marketable product of mineral processing.

(4) Residuals from treatment of excluded mineral processing wastes must be historically or presently generated and must meet the high volume and low hazard criteria in order to retain excluded status.

Beneficiation operations include crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining, roasting in preparation for leaching (to produce a final or intermediate product that does not undergo further beneficiation or processing), gravity concentration, magnetic separation, electrostatic separation, flotation, ion exchange, solvent extraction, electrowinning, precipitation, amalgamation, and heap, dump, vat, tank, and *in situ* leaching.

Processing operations generally follow beneficiation and include techniques that often destroy the ore or mineral, such as smelting, electrolytic refining, and acid attack or digestion. EPA also wishes to emphasize that operations following the initial "processing" step in the production sequence are also considered processing operations, irrespective of whether they involve only the techniques defined above as beneficiation. Therefore, solid wastes arising from such operations are considered mineral processing wastes, rather than beneficiation wastes.

B. The High Volume Criterion

High volume mineral processing wastes are defined as (1) non-liquid mineral processing wastes that were generated at an average annual rate of greater than 45,000 metric tons per year per facility, and (2) liquid mineral processing wastes that were generated at an average annual rate of more than 1,000,000 metric tons per year per facility during any year between 1983 and 1988.

For the purposes of this rulemaking, the volume criterion for non-liquids has been and will be used to determine if both solid (e.g., slag, phosphogypsum) and semi-solid (e.g., waste treatment sludge) materials are high volume. The volume criterion for liquids has been used to determine whether wastewaters and other aqueous wastes are high volume. Professional judgment will be employed in deciding which criterion to apply to a particular waste stream. The Agency considered the possibility of using a quantitative measure, such as percent solids, to distinguish between liquid and non-liquid materials, but concluded that such an approach would lead to results that are inconsistent with the purpose of employing separate criteria for defining large volume liquid and large volume non-liquid wastes. Specifically, the solids content of some liquid wastes generated by mineral processing operations may be higher than the solids content of some sludges resulting from the treatment of other mineral processing wastes, in spite of the fact that a major volume reduction operation (such as settling) has yet to be performed on the untreated liquid waste. Therefore, use of quantitative criteria might result in inappropriately considering a waste that has a solids content above the cut-off but for which additional volume reduction is likely (such as may occur as a result of treatment and discharge of wastewater), to be large volume, or vice versa.

The final volumetric cut-offs presented here reflect some of the largest quantities of individual and identifiable waste streams managed at facilities that are currently in the Subtitle C regulatory system. EPA developed the information supporting these cut-offs in direct response to comments reflecting both sides of this issue criticizing the Agency's less complete justification of the volume criterion cut-off values contained in the October and April proposals. For each facility responding to EPA's TSDR Survey (discussed above), the Agency first determined whether they operated an on-site hazardous waste landfill or on-site hazardous wastewater management units (wastewater treatment systems, treatment tanks, surface impoundments, or underground injection wells). Data pertaining to landfill disposal were used to develop the criterion for non-liquids and data regarding wastewater management units were used to derive the criterion for liquids. Because mineral processing wastes are typically inorganic, any solid/sludge materials that are solid wastes and are not recycled and might be regulated under subtitle C would have to be disposed in a subtitle C landfill. Therefore, establishing a volume criterion for these materials requires analysis of hazardous waste disposal in subtitle C landfills. Similarly, because liquid mineral processing wastes are generally aqueous and thus may be managed using one or more of several different techniques, EPA analyzed all of the significant technologies employed to manage hazardous wastewater under subtitle C. In both cases, the Agency identified the largest individual waste stream managed by an appropriate technique at each facility (i.e., one hazardous waste stream per facility), then computed univariate statistics on the resulting distribution. (This is the same basic approach used by certain commenters who proposed volume cut-offs utilizing data from EPA's 1985 Biennial Survey.) The final volumetric criteria represent approximately the largest individual waste stream managed by the facility at the 95th percentile of the relevant distribution. Relevant data are presented in Table 1. The Agency believes that the 95th percentile of the largest individual waste stream managed at each facility both provides a meaningful measure of the amenability of subtitle C controls to different waste types, and represents a reasonable overlap between Subtitle C wastes and Bevill wastes. EPA also notes that this value is a compromise between commenters that favored using the 99th percentile and those that favored the 90th percentile.

TABLE 1.[1]—UNIVARIATE STATISTICS ON SOLID AND LIQUID HAZARDOUS WASTES

[All quantities in metric tons managed in 1986]

	Solids	Wastewaters
Percentile:		
100	194,319	44,307,857
99	77,443 or 194,319 [2]	4,589,261 or 4,999,573
95	41,540 or 46,192	1,098,412 or 1,112,680
90	31,505 or 31,746	348,230 or 350,224
75	10,072 or 10,815	49,030 or 49,105
Number of facilities	98	964

[1] For a detailed discussion of the derivation of these data, see the docket for this rulemaking.

[2] The two different numbers reflect results using two different and equally valid techniques for computing univariate statistics. Large differences indicate significant uncertainty with respect to that portion of the distribution.

The Agency believes that by developing the final volume criterion in this manner, it has resolved all of the significant issues raised in public comment on the high volume criterion presented in the two proposed rules. First, the basis of comparison (recent Subtitle C waste management) is the most relevant to addressing the question at hand (amenability to Subtitle C controls). Second, the way in which the comparison was developed is more internally consistent than in the previous analysis; EPA developed a criterion from data on hazardous waste management of individual waste streams and will apply this criterion to individual mineral processing waste streams. Third, the two separate criteria that are presented here reflect the highly significant differences in treatment processes and treatment residuals management options that exist between nonliquid and liquid wastes. As stated in the April NPRM, it is more technically feasible to manage large volumes of wastewater than it is to manage large volumes of solids, because wastewater treatment effluent (by far the largest treatment residue in most cases) can typically be discharged or recycled while solids must often be land-disposed. Finally, in developing this approach, EPA has reconsidered its earlier position and included commercial hazardous waste management facilities in the database used to develop the cut-offs for the final high volume criterion, because the issue at hand is technical feasibility of Subtitle C waste management; considerations of differential economic incentives facing operators of commercial and private hazardous waste management facilities are not relevant in resolving this issue. Therefore, the Agency selected a volume criterion of 45,000 metric tons per year per facility for non-liquid mineral processing wastes and 1,000,000 metric tons per year per facility for liquid mineral processing wastes to correspond to approximately the 95th percentile (and rounded off so that the criterion could be easily expressed; the rounding had no effect on any waste stream's status).

C. The Low Hazard Criterion

1. The Toxicity and Mobility Test

A high volume mineral processing waste is not low hazard and, therefore, is not eligible for the temporary exclusion from Subtitle C requirements provided by the Bevill Amendment if:

- Available data indicate that waste extracts obtained using EPA Method 1312 and analyzed using established SW-846 methods contain concentrations of arsenic, barium, cadmium, chromium, lead, mercury, selenium or silver that exceed 100 times the MCL for the constituent at two or more facilities that generate the waste, unless:

i. The waste is generated at five or more facilities; and

ii. Substantial additional relevant data are available and the preponderance of these additional data indicate that the waste should be considered low hazard, where:

a. Relevant data are defined as data that result from analysis of waste extracts obtained by EPA Methods 1310, 1311, and 1312, ASTM Test Method D3987–81, or comparable procedures that the Agency has reason to believe produce reliable and representative data; and

b. To be considered substantial, the additional data must characterize the waste at 3 plants (other than those two plants where Method 1312 results exceed 100 times the MCLs) *or* at least half of the facilities that generate the waste (other than those two plants where Method 1312 results exceed 100 times the MCLs), whichever number of plants is larger.

- Constituent concentrations measured in waste sample extracts obtained using Method 1312 are used to determine facility-level values as follows:

i. If data for only one sample of the waste are available, then these data determine the facility-level constituent concentrations; and

ii. If data on two or more samples are available, then the lower bound of the 80 percent confidence interval of the mean of the data [7] serves as the facility-level constituent concentrations, where the confidence interval is calculated for each waste for each constituent using all results (from all plants generating the waste) available from testing of the waste using Method 1312.

This criterion is more complicated than the low hazard criterion proposed in April in two respects: (1) It requires that the 80 percent confidence interval for the mean be calculated for each constituent and each waste type; and (2) It requires consideration of data other than Method 1312 results, including data based on Method 1310 and 1311 that were provided in public comments or in response to the mineral processing waste survey or the "3007 letter" request for waste characteristics information.

Nonetheless, EPA believes that these modifications are appropriate because they allow EPA to make use of data that the Agency specifically requested that industry provide, while avoiding biases inherent in other alternatives for including these data. Moreover, the revised low hazard criterion is directly responsive to commenters who indicated that it was inappropriate, i.e., inconsistent with the spirit of the Bevill exclusion, for a screening criterion to remove the exclusion from a waste that "fails" the low hazard criterion at two facilities while "passing" the criterion at many more other facilities.

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[7] The 80 percent confidence interval is recommended (guidance) in chapter 9 on sampling in SW–846 as the confidence interval to be used for evaluating whether wastes pass or fail regulatory thresholds. Because the low hazard criterion is being used as a screening test to remove wastes that are clearly not low hazard from the Bevill exclusion, EPA is comparing the lower bound of the 80 percent confidence interval with the relevant standards.

2. The pH Test

A high volume mineral processing waste is not low hazard and, therefore, is not eligible for the temporary exclusion from Subtitle C requirements provided by the Bevill Amendment if:

- Fewer than five facilities generate the waste and the pH (determined as required by 40 CFR 261.22) is less than one (1) or greater than 13.5 at two or more facilities that generate the waste, or if five or more facilities generate the waste and the pH is less than one (1) or greater than 13.5 at 50 percent or more of the facilities that generate the waste.
- pH values measured for waste samples are used to determine facility-level values for individual candidate low hazard wastes as follows:

i. If a datum for only one sample from a facility is available, this datum determines the facility-level pH; and

ii. If data on two samples from a facility are available, the lower value determines the facility-level pH; and

iii. If data on more than two samples from a facility are available, the median value defines the facility-level pH.

The changes to the pH test from the April NPRM (i.e., the protocol for considering additional data) were made for the same reasons as discussed above with respect to the toxicity and mobility test.

IV. Final Bevill Status of Selected Mineral Processing Wastes

The present status of all candidate Bevill mineral processing wastes that were proposed either for retention within or removal from the exclusion in either the October or April proposals is presented in Table 2.

TABLE 2.—CURRENT STATUS OF PREVIOUSLY PROPOSED CANDIDATE BEVILL MINERAL PROCESSING WASTES

Commodity sector	Waste stream	Status	Reason for Bevill Status
Bauxite	Red and Brown Muds	Retained	Passes all Bevill Criteria.
Beryllium	Barren Filtrate	Removed	Low Volume.
	Bertrandite Thickener Slurry	Subtitle D+ Program	Reclassified as Beneficiation.
	Processing Raffinate	Removed	Low Volume.
Cerium	Process Water	Removed	Low Volume.
Chromite	Roast/Leach Ore Residue	Conditionally Retained	Passes High Volume.
Coal Gas	Cooling Tower Blowdown	Removed	Low Volume.
	Gasifier Ash	Conditionally Retained	Passes High Volume.
	Process Wastewater	Conditionally Retained	Passes High Volume.
Copper	Acid Plant Scrubber Blowdown	Removed	Low Volume.
	Bleed Electrolyte	Removed	Low Volume.
	Calcium Sulfate Sludge from WWT	Conditionally Retained	Passes High Volume.
	Process Wastewater	Removed	Low Volume.
	Slag	Retained	Passes all Criteria.
	Slag Tailings	Conditionally Retained	Passes High Volume.
Elemental Phosphorus	Furnace Off-Gas Solids	Conditionally Retained	Passes High Volume.
	Furnace Scrubber Blowdown	Removed	Low Volume.
	Process Wastewater	Removed	Low Volume.
	Slag	Retained	Passes all Criteria.
Hydrofluoric Acid	Fluorogypsum	Conditionally Retained	Passes High Volume.
	Process Wastewater	Conditionally Retained	Passes High Volume.
Iron	APC Dust/Slurry from Blast Furnaces	Conditionally Retained	Passes High Volume.
	Blast Furnace Slag	Conditionally Retained	Passes High Volume.
Lanthanides	Ammonium Nitrate Process Solution	Removed	Low Volume.
Lead	Acid Plant Blowdown	Removed	Low Volume.
	Process Wastewater	Conditionally Retained	Passes High Volume.
	Slag	Retained	Passes all Criteria.
Lightweight Aggregate	APC Dust/Sludge	Conditionally Retained	Passes High Volume.
	Scrubber Wastewater	Removed	Low Volume.
Magnesium	Wastewater from the Anhydrous Process	Conditionally Retained	Passes High Volume.
Molybdenum	Selenium Pl. Effluent from Processing APB	Removed	Low Volume.
Phosphoric Acid	Phosphogypsum	Retained	Passes all Criteria.
	Process Wastewater	Conditionally Retained	Passes High Volume.
Soda Ash	Wastes from Trona Ore Processing	Subtitle D+ Program	Reclassified as Beneficiation.
Steel	Steel (BOF and OHF) APC Dust/Sludge	Conditionally Retained	Passes High Volume.
	Steel (BOF and OHF) Slag	Conditionally Retained	Passes High Volume.
Tin	Air Pollution Control Scrubber Blowdown	Removed	Low Volume.
Titanium	Chloride Processing Waste Acids	Removed	Low Volume.
	Chloride Processing Waste Solids	Conditionally Retained	Passes High Volume.
	Leach Liquor	Removed	Low Volume.
	Sulfate Processing Waste Acids	Conditionally Retained	Passes High Volume.
	Sulfate Processing Waste Solids	Conditionally Retained	Passes High Volume.
Zinc	Acid Plant Blowdown	Removed	Low Volume.
	Process Wastewater	Removed	Low Volume.
	Zinc-Lean Slag	Conditionally Retained	Passes High Volume.

For today's final rule, EPA has applied the criteria described above to all waste streams for which it has sufficient information to make regulatory decisions. The data supporting these decisions were provided in the October and April proposals. Based upon these data and new sampling and analysis results (Method 1312) which may be found in the docket for today's rule, the following five wastes are retained within the Bevill exclusion:

1. Slag from primary copper smelting;
2. Slag from primary lead smelting;
3. Red and brown muds from primary bauxite refining;
4. Phosphogypsum from phosphoric acid production; and
5. Slag from elemental phosphorus production.

EPA has determined that each of these materials meets the definition of a waste from mineral processing operations, is generated at an annual rate exceeding the relevant final volume criterion (45,000 metric tons per year per facility for nonliquid wastes) and passes the final low hazard criterion (i.e., does not fail the toxicity and mobility or pH tests at two or more facilities).

Twenty wastes are conditionally retained within Bevill because they appear, based upon currently available data, to meet the final high volume criterion; the data needed to implement the low hazard criterion for these wastes, however, is currently unavailable. Most of these wastes were proposed for conditional exclusion in the April proposal. Two wastes (process wastewater from hydrofluoric acid production, and APC dust/slurry from carbon steel (open hearth and basic oxygen furnace) production) have been added because of information received in public comment on the April notice, as interpreted by best professional judgment.

Eighteen specific wastes proposed either for conditional retention or for removal on the basis of hazard, in addition to the list of small volume wastes provided in the April NPRM (see 54 FR 15343–4) (or any other small volume or speculative wastes, whether or not nominated for conditional exclusion), are hereby removed from the Bevill exclusion. All are liquid wastes that are generated in quantities well under the final one million metric ton per year per facility cut-off, based upon available EPA data and data submitted to the Agency in public comment.

Finally, a small number of wastes that EPA either proposed for retention in April or were nominated in public comment on the October or April proposals have been reclassified as beneficiation wastes, and hence will be addressed by the RCRA subtitle D program for mineral extraction and beneficiation wastes that EPA is currently developing. These include, but are not limited to, wastes from trona ore processing and bertrandite thickener slurry from primary beryllium production (both proposed in April), and sulfate leach ore residue from primary copper production (nominated by a commenter on the April NPRM).

V. Schedule for Final Resolution of Bevill Status for All Remaining Candidate Bevill Mineral Processing Wastes

As discussed above, the Bevill status of all potential high volume, low hazard mineral processing wastes will be proposed by EPA by September 15, 1989. Following receipt and analysis of public comments on these proposed exclusion decisions, the Agency will articulate final action on each candidate Bevill waste in a final rule by January 15, 1990. At this time, the universe of Bevill-excluded mineral processing wastes will be established, and no additional wastes will be added.

Today's final rule includes a revised list of conditionally retained wastes (see Table 2, above). Modifications to this list, which was originally published in the April NPRM, have been made to reflect new information received in public comment on the April notice, and professional judgment in applying the final Bevill mineral processing wastes criteria to EPA's data on the specific mineral production operations that generate candidate Bevill wastes and on waste generation rates. Some of the wastes designated today as being conditionally retained wastes may be proposed for removal from the Bevill exclusion in September if the survey and/or waste sampling and analysis data that the Agency is currently collecting indicate that they do not pass both the high volume and low hazard criteria. In no event, however, will additional mineral processing wastes be considered for retention within the Bevill exclusion.

VI. Regulatory Implementation and Effective Dates of the Final Rule

As of the effective date of this final rule, mineral processing wastes that have been temporarily excluded from regulation under subtitle C of RCRA since 1980, except the 25 "special wastes" described above, may now be subject to subtitle C requirements beginning in February 1990 (i.e., six months after this notice appears in the **Federal Register**) in those states that do not have authorization to administer their own hazardous wastes program in lieu of EPA. Generators, transporters, and TSD facilities in authorized states will be subject to RCRA requirements imposed as a result of this rule only after the state revises its program to adopt equivalent requirements and EPA authorizes the revision. The requirements imposed as a result of removing the temporary exclusion include: determining whether the solid waste(s) exhibit hazardous characteristics (40 CFR 262.11); obtaining an EPA identification number for managing hazardous wastes (40 CFR 262.34); complying with recordkeeping and reporting requirements (40 CFR 262.40–262.43); and obtaining interim status and seeking a permit (or modifying interim status, including permit applications or modifying a permit, as appropriate) (40 CFR part 270).

A. Section 3010 Notification

Not later than November 30, 1989, all persons who generate, transport, treat, store, or dispose of wastes removed from temporary exclusion by this rule and which are characteristically hazardous under 40 CFR part 261, subpart C, will be required to notify either EPA or an authorized State of these activities pursuant to section 3010 of RCRA. Notification instructions are set forth in 45 FR 12746, February 26, 1980. Persons who previously have notified EPA or an authorized State of their activities pursuant to section 3010 of RCRA, i.e., persons who previously have notified EPA or an authorized state that they generate, transport, treat, store or dispose of hazardous waste and have received an identification number (see 40 CFR 262.12, 263.11 and 265.1) need not re-notify.[8] Persons without EPA identification numbers are prohibited from generating, transporting, treating, storing, or disposing of hazardous wastes.

The Agency views the section 3010 notification requirements to be necessary in this case because it believes that many persons that manage the wastes coming into subtitle C regulation today have not previously notified EPA and received an EPA identification number.

B. Compliance Dates

1. Interim Status in Unauthorized States

Facilities that currently treat, store, or dispose of the wastes removed from temporary exclusion of this rule, and are characteristically hazardous under 40 CFR part 261, subpart C, but have not received a permit pursuant to section 3005 of RCRA and are not operating pursuant to interim status, may be eligible for interim status under HSWA (see section 3005(e)(1)(A)(ii) of RCRA, as amended). In order to operate pursuant to interim status, such facilities must submit a section 3010 notice pursuant to 40 CFR 270.70(a) by November 30, 1989, and must submit a part A permit application by March 1, 1990. Under section 3005(e)(3), land disposal facilities qualifying for interim status under section 3005(e)(1)(A)(ii) must also submit a part B application and certify that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements by March 1, 1991. If the facility fails to do so, interim status will terminate on that date.

Completion of final permit application will require individual facilities to develop and compile information on their on-site waste management operations including, but not limited to the following activities: ground-water monitoring (if waste management on land is involved); manifest systems, recordkeeping, and reporting; closure, and possibly, post-closure requirements; and financial responsibility requirements. The permit applications may also require development of engineering plans to upgrade existing facilities. In addition, many of these facilities will, in the future, be subject to land disposal restrictions (LDR) standards. EPA plans to promulgate LDR standards for all characteristic hazardous wastes by May 8, 1990. Under EPA regulations, these standards must require treatment of the affected wastes to a level or by a method that reflects the use of Best Demonstrated Available Technology (BDAT) before the wastes can be disposed on the land. Thus, one future implication of today's final rule will be the ban on land disposal of these wastes unless they are appropriately treated prior to such disposal. (See discussions of the LDR as related to these wastes for further details).

All existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of hazardous wastes covered by today's rule, and that are currently operating pursuant to interim status under section 3005(e) of RCRA, must file with EPA an amended part A permit application by March 1, 1990, in accordance with § 270.72(a).

Under current regulations, a hazardous waste management facility that has received a permit pursuant to section 3005 may not treat, store, or dispose of the wastes removed from temporary exclusion by today's rule and which are characteristically hazardous under 40 CFR part 261, subpart C, when the rule becomes effective on March 1, 1990, until a permit modification allowing such activity has occurred in accordance with § 270.42. EPA has recently amended its permit modification procedures for newly listed or identified wastes. For more details on the permit modification procedures, see 53 FR 37912.

2. Interim Status in Authorized States

Until the State is authorized to regulate the wastes excluded from temporary exclusion by today's rule and which are hazardous under 40 CFR part 261, subpart C, no permit requirements apply and facilities lacking a permit need not seek interim status. Any facility treating, storing, or disposing of these wastes on or before the effective date of authorization of the State to regulate these wastes under RCRA may qualify for interim status under applicable State law. Note that in order to be no less stringent than the Federal program, the State "in existence" date for determining interim status eligibility may not be after the effective date of EPA's authorization of the State to regulate these wastes. These facilities must also provide the required 3010 notification as described above and must also provide the State's equivalent of a part A permit application as required by authorized State law.

Finally, RCRA section 3005(e)(3) or any authorized State analog will apply to land disposal facilities qualifying for State interim status.

VII. Effect on State Authorizations

This final rule is not effective in authorized States, because its requirements are not being imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, this removal from temporary exclusion is applicable on March 1, 1990, only in those few States that do not have final authorization to operate their own hazardous waste programs in lieu of the Federal program. In authorized States, the reinterpretation of the regulation of non-excluded processing wastes will not be applicable until the State revises its program to adopt equivalent requirements under State law and receives authorization for these new requirements. (Of course, the requirements will be applicable as a State law if the State law is effective prior to authorization).

States that have final authorization are required (40 CFR 271.21(e)) to revise their programs to adopt equivalent standards regulating non-Bevill mineral processing wastes that exhibit hazardous characteristics as hazardous by July 1, 1991, if only regulatory changes are necessary, or by July 1, 1992, if statutory changes are necessary. These deadlines can be extended by up to six months (i.e., until January 1, 1992, and January 1, 1993, respectively) in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the revision, the State requirements become RCRA subtitle C RCRA requirements in that State. States are not authorized to carry out any regulations providing coverage similar to today's proposed rule as RCRA requirements until such regulations (or modifications to regulations) are submitted to EPA and approved. Of course, States with existing standards may continue to administer and enforce them as a matter of law.

States that submit an official application for final authorization less than 12 months after the effective date of the reinterpretation may be approved without including an equivalent provision (i.e., to address non-Bevill mineral processing wastes) in the application. However, once authorized, a State must revise its program to include an equivalent provision according to the requirements and deadlines provided at 40 CFR 271.21(e).

VIII. Economic Impact Screening Analysis Pursuant to Executive Order 12291

Sections 2 and 3 of Executive Order 12291 (46 FR 13193) require that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis (RIA) be conducted. A major rule is defined as a regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individuals, industries, Federal, State, and local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Section 8 of Executive Order 12291 exempts an agency from the requirements of the order when compliance would conflict with deadlines imposed by statute or judicial order. As noted in the Preamble to the NPRM for this rule last April (54 FR 15345), time constraints imposed by court-ordered deadlines for publication did not allow the Agency to complete a comprehensive preliminary analysis to evaluate potential economic costs and impacts. At that time, the Agency summarized results from previous work and indicated that, although a complete RIA would not be feasible due to time limitations, additional analysis of costs and impacts would be conducted to evaluate whether this should be considered a major rule. This section of today's preamble summarizes EPA's subsequent screening-level economic impact study.

Today's final rule removes the Bevill exclusion from all smaller volume wastes (less than 45,000 metric tons per year for non-liquid wastes and 1,000,000 metric tons per year for liquid wastes) and high volume wastes that are clearly not low hazard (based on currently available data) at ore and mineral processing facilities. Therefore, the impacts of today's rule fall within any metal or non-metal commodity sectors generating such waste streams from mineral processing operations, but only to the extent that these wastes exhibit the characteristic tests for hazardous wastes under subtitle C of RCRA.

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[8] Under the Solid Waste Disposal Amendments of 1980 (Pub. L. 96–482), EPA was given the option of waiving the notification requirement under section 3010 of RCRA following revision of the section 3001 regulations, at the discretion of the Administrator.

EPA's impact assessment indicates that today's rule is not a major rule (at least according to criterion 1, above), in that preliminary screening-level estimates place the total annual costs of compliance at about $53 million per year. Because this is a screening level analysis, however, the level and distribution of impacts is uncertain. It does appear that a few individual mineral commodity sectors or processing technologies could incur annual costs in the range of one to seven percent of their annual value of shipments (sales). These sectors or technologies, though few in number and small in total value of shipments relative to the 101 commodity sectors reviewed in the study, could be said to incur moderate to substantial impacts. Overall, however, with respect to the mineral industry as a whole or the portion of the industry that performs "mineral processing" in particular, the Agency believes, on the basis of its screening analysis, that today's rule does not constitute a major rule within the context of E.O. 12291.

A. General Approach to Compliance Cost Estimation

The purpose of this analysis was to assess the general level of costs and resultant economic impacts arising from the imposition of current subtitle C requirements on smaller volume mineral processing wastes and high volume wastes that are not low hazard that were previously exempt under the Bevill Amendment. As noted above, a complete and detailed examination of the costs and potential impacts of today's rule was not possible given the Court-ordered schedule prompting this rulemaking. The Agency has, however, undertaken a comprehensive screening-level review of all sectors that could be affected directly by today's rule.

EPA's economic screening methodology consisted of a number of straightforward steps designed to (1) identify and describe all mineral processing sectors, (2) characterize and determine the approximate quantities of relevant waste streams, and (3) estimate the subtitle C compliance costs for all sectors generating potentially hazardous wastes. This section briefly describes the approaches and information sources used to develop these preliminary cost estimates. The following two sections describe the cost estimates and discuss impacts on affected sectors. Additional information concerning the techniques, assumptions, and data sources used in this analysis may be found in a technical background document in the docket for today's rule.[9]

1. Processing Sector Identification

The starting point for the analysis was to identify mineral industry commodity sectors that conduct mineral processing operations within the definition of today's rule. Obviously, facilities in sectors that do not employ such operations will not experience any economic impacts. Working with the U.S. Bureau of Mines, the Agency identified a total of 101 differentiable mineral commodity sectors for initial review. Those specific sectors that employ mineral processing operations were identified by intensive contact with commodity and technical specialists at the U.S. Bureau of Mines, and by consulting outside mineral industry experts particularly knowledgeable of specific industry production techniques and waste management practices. Of the 101 initial sectors, 43 were identified as domestic mineral commodity processing sectors subject to further analysis and review of waste stream characteristics. Of the 58 remaining sectors, 51 commodity sectors were screened out as not conducting processing (i.e., their finished product resulted directly from beneficiation activities). The commodities produced domestically using extraction and beneficiation operations exclusively are listed in appendix A. An additional 7 mineral commodities are not currently processed in the United States. These include arsenic trioxide, cobalt, gallium, graphite, indium, nickel, and thallium.

It is highly noteworthy that the vast majority of mineral commodities listed in appendix A are non-metallic and that only nine of the 43 domestic sectors conducting mineral processing operations produce non-metallic commodities. Thus, the first conclusion that EPA may draw from this screening analysis is that the results from previous cost and impact studies focusing on metallic ore processing sectors are not likely to dramatically underestimate total regulatory compliance costs associated with this rule, as some commenters have persistently claimed.

2. Waste Characterization

The next step was to identify, quantify, and characterize the specific waste streams generated by the 43 identified processing sectors in order to ascertain the extent to which these facilities might be brought into the subtitle C hazardous waste management system. For a few of these sectors, the Agency had past field surveys or sampling data to draw upon, supplemented to some degree by data submitted by commenters in response to previous NPRM's. For the majority of commodity sectors, however, we relied upon technical expertise provided by process engineers experienced in designing and constructing mineral processing facilities and associated waste management systems.

TABLE 3.—MINERAL PROCESSING SECTORS NOT GENERATING POTENTIALLY HAZARDOUS MINERAL PROCESSING WASTES

Antimony [1]
Barite
Bauxite
Beryllium
Boron
Cadmium
Cerium
Cesium/Rubidium
Chromium
Coal Gas
Gemstones
Gold/Silver
Hydrofluoric Acid
Iron
Lightweight Aggregate
Lithium (from ore)
Magnesium (from ore)
Manganese, Ferromanganese
Phosphoric Acid (wet process)
Silicon, Ferrosilicon
Steel
Strontium
Synthetic Rutile
Titanium Dioxide
Zirconium/Hafnium

[1] From pyrometallurgical operations.

For each sector, a brief but systematic review was conducted for the principal or typical processing operation(s), including, for each waste, a waste description, waste generation-to-product ratio estimates, and an assessment of the likelihood of the particular waste exhibiting one or more hazardous waste characteristics. Based upon available information and best professional judgment, 25 of the 43 mineral processing commodity sectors evaluated were found not to generate any solid wastes that are likely to fail characteristic tests for hazard. Because these sectors, which are listed in Table 3, will not suffer economic impacts because of today's final rule, they were not considered further. A total of 18 commodity sectors with 118 facilities were determined likely to generate wastes that may fail hazardous waste characteristic tests. EPA has made every attempt to develop analytical elements (e.g., number of facilities in a given sector) that are directly comparable. Nonetheless, because production data (processes employed, product types, shipment volumes) for some commodities are not available on a plant-specific basis, the number of facilities identified as generating potentially hazardous wastes does not in all cases correspond to the number of facilities producing a given commodity, because very different production processes may be employed within the same commodity sector. Therefore, the number of facilities contributing to a sector's aggregate value of shipments and other sector-wide data may differ from the number of facilities predicted to experience compliance costs. In these cases, EPA may have understated the magnitude of economic impacts. Potentially affected sectors, together with the types and quantities of wastes that might be regulated under subtitle C, are presented in table 4.

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[9] USEPA. "Technical Background Document: Development of the Cost, Economic, and Small Business Impacts Arising from the Reinterpretation of the Bevill Exclusion for Mineral Processing Wastes". August 18, 1989.

TABLE 4.—HAZARDOUS WASTE GENERATION BY MINERAL PROCESSING SECTORS

Mineral sector	Process	Hazardous waste type	Facilities generating hazardous waste	Total hazardous waste (MT/year)
Aluminum	Reduction	Casthouse dust	16	13,301
	Reduction	Sludge	13	66,945
	Reduction	Cryolite recovery residue	1	30,000
Antimony	Electrolytic Refining	Stripped anolyte solution solids	1	190
Arsenic	Residuals	Lead dust leachate residue	1	339
Bismuth	Lead dross refining	Metal chloride residues	1	2,937
Calcium Metal	Retorting	Quicklime	1	45
Copper (Non-Electrowinning)	Smelting	Acid plant blowdown	8	4,399,710
	Smelting/Refining	Sodium hydroxide wastewater treatment plant sludge.	1	5,616
	Refining	Bleed electrolyte	8	444,600
	Smelting/Refining	Process wastewater	11	530,500
Copper (Electrowinning)	Electrowinning slime reduction	Residuals	10	5,400
Elemental Phosphorus	Electric furnace	Furnace scrubber blowdown	5	153,000
	Separation	Dust	5	6,446
Ferrochromium	Smelting	Slags and residues	8	161,400
Germanium	Separation	Leachate residue	3	6
Lead	Smelting	Acid plant blowdown	3	350,000
	Smelting	Spent furnace brick	4	530
	Smelting	Slag fines	1	10,400
Magnesium	Electrolytic Refining	Smut	2	21,706
Mercury	McDermitt facility	Furnace calcines	1	11
		Particulate control effluent	1	1,809
		SO_2 scrubber effluent	1	2,792
Mercury	Byproduct of gold	Dust	9	9
		Furnace residue	3	79
Molybdic Oxide/Rhenium	Roasting	Gas cleaning effluent solids	2	64
	Roasting	Refining wastes	2	2,335
	Ion Exchange	Rhenium raffinate	2	68,440
Phosphoric Acid	Furnace	Dust slurry	17	7,394
	Furnace	Phosphate contaminted wastewater	17	6,470
Tantalum/Columbium	Digestion	Digestor sludge	6	3,707
	Digestion	Raffinate solids	6	7,413
Tin	Smelting	APC scrubber blowdown	1	56,000
Titanium Metal	Sponge	Waste chloride	3	36,464
Zinc	Smelting/Refining	Process wastewater	2	1,451,000
	Smelting/Refining	Acid plant blowdown	3	305,800
	Smelting	Synthetic gypsum	1	16,600
	Smelting/Refining	Wastewater treatment plant sludge	5	45,230
	Electrowinning	Non-saleable residues	2	13,600
Total				8,280,200

3. Compliance Cost Estimation Methods

For this analysis, EPA developed likely waste management scenarios for typical facilities in each sector, addressing both current (baseline) processing waste management practices and waste management options under current subtitle C requirements. Typical practices (at appropriate scales of application) for both baseline and subtitle C compliance scenarios include techniques such as wastewater treatment in tanks, management/disposal in waste piles or landfills, and shipment for disposal at commercial off-site landfills or treatment facilities. These management scenarios were then implemented through the use of cost engineering functions to compute the incremental compliance costs of today's rule.

The baseline management scenario was developed using knowledge of current practices. The subtitle C compliance scenario was developed based upon existing statutory and regulatory requirements, and assumptions regarding the types of engineering practices that would be employed to manage individual, newly hazardous wastes under subtitle C. Rather than applying uniform subtitle C assumptions relating to on-site or off-site disposal or assuming that one particular waste disposal practice would be adopted exclusively for all sectors, the Agency designed a tailor-made subtitle C compliance scenario for each waste stream and sector. That is, each waste in each sector was assigned to a sequence of individual waste management techniques appropriate to the physical and chemical characteristics of the material in question, in such a way as to simulate a minimum cost management practice sequence for that waste type and quantity. In cases where two or more technical options existed for managing a particular waste type, EPA selected the least-cost option for managing a given waste quantity.

For each newly hazardous waste stream, an affected facility would be faced with the choice of constructing subtitle C management units or sending the material off-site for disposal. This decision is influenced by economies of scale; for most types of waste management practices, EPA determined that generators of small quantities would pay for off-site disposal, but generators of larger quantities would construct on-site management units. The waste quantity break points and the data that underlie them are presented in the technical background document for this analysis.

For all potentially hazardous mineral processing wastes in a given sector, EPA calculated baseline and projected subtitle C management costs, at the plant or facility level, for a "model plant" of average commodity processing and waste generating capacity. Results were then extrapolated to develop commodity sector totals, and then further aggregated to 4-digit Standard Industrial Classification (SIC) industry-wide totals and U.S. nationwide totals. Annual compliance costs represent the sum of annualized charges for capital investments, operating and maintenance expenses, and costs for on-site closure and postclosure responsibilities, where appropriate.

Because this is a screening-level analysis of a very large number of industrial sectors that was conducted during a short period of time, the results of the analysis must be considered somewhat uncertain. While EPA has attempted to obtain complete coverage of all domestic mineral processing activity, the depth of information that the Agency has been able to develop is variable. EPA is confident that it has identified the major processing operations and the major solid wastes associated with them for each commodity sector. The possibility exists, however, that additional waste streams generated by these processing operations may exist and may require management under subtitle C of RCRA. To the extent that this is true, EPA has underestimated the compliance costs of today's rule.

It is important to note, however, that in many respects, EPA used conservative assumptions in conducting this analysis. For example, for many sectors, the Agency used general engineering or geologic information about the nature and composition of various waste streams to infer whether they would be hazardous, and, if in doubt, adopted the conservative assumption that they would be hazardous. Furthermore, wastes assumed to be or that tested hazardous at one facility were assumed to be hazardous at every facility in that sector using the same or similar processes. EPA also assumed that all affected facilities would be encountering subtitle C requirements for the first time and would therefore not be able to take advantage of scale economies through comanagement of hazardous wastes from other operations (e.g., in addition to mineral processing they may conduct regulated activities that are not covered by Bevill, such as chemical manufacturing).

B. Aggregate and Sector Compliance Costs

EPA's estimate of the total annual cost impact of today's rule is $52.8 million annually. Predicted sector-wide costs span three orders of magnitude across the various affected commodity sectors. Aggregate and sector-specific cost estimates are presented in table 5.

TABLE 5. SUMMARY OF COSTS IN AFFECTED SECTORS WITH HAZARDOUS PROCESSING WASTES

SIC and sector	Aggregate sector costs ($)	Number of affected facilities	Cost per affected facility ($)	Cost/metric ton of mineral ($/mt) (sector-wide)	Costs/value of shipments (%) (sector-wide)
Minerals:					
2819—Phosphorus, elemental	3,111,000	5	622,200	9.65	0.57
2874—Phosphoric acid (furnace grade)	997,000	17	58,647	1.06	0.17
3313—Ferrochromium	4,711,000	8	588,875	44.02	4.67
3331—Copper—excluding Electrowinning	26,170,000	11	2,379,091	27.04	1.32
3331—Copper—Electrowinning	308,000	10	30,800	2.47	0.12
3332—Lead, including bismuth	2,943,000	4	735,750	7.86	1.09
3333—Zinc	7,620,000	5	1,524,000	28.83	2.70
3334—Aluminum	3,107,000	16	194,188	0.91	0.05
3339—Antimony	11,000	1	11,000	0.61	0.02
3339—Calcium metal	2,000	1	2,000	3.24	0.04
3339—Magnesium	233,000	2	116,500	2.15	0.06
3339—Mercury (excluding gold by-production)	159,000	1	159,000	230.65	2.61
3339—Mercury (by-product of gold)	1,000	9	111	1.14	0.01
3339—Molybdic oxide and rhenium	1,487,000	2	743,500	70.04	0.86
3339—Tantalum/columbium	513,000	8	64,125	484.21	0.29
3339—Tin	725,000	1	725,000	204.42	2.45
3339—Titanium sponge metal	728,000	3	242,667	39.91	0.42
3339—Arsenic acid	19,000	1	19,000	56.06	7.05
3339—Germanium	0	3	0	0.00	0.00
Total—All affected mineral sectors	52,845,000	[1] 103	513,056	7.91	0.46
Distribution by four-digit SICs:					
2819—Industrial inorganic chemicals, NEC	3,111,000	5	622,200	9.65	0.57
2874—Phosphatic fertilizers	997,000	17	58,647	1.06	0.17
3313—Electro-metallurgical products	4,711,000	8	588,875	44.02	4.67
3331—Primary copper	26,478,000	[1] 16	1,654,875	27.04	1.32
3332—Primary lead	2,943,000	4	735,750	7.86	1.09
3333—Primary zinc	7,620,000	5	1,524,000	28.83	2.70
3334—Primary aluminum	3,107,000	16	194,188	0.91	0.05
3339—Primary nonferrous metals, NEC	3,878,000	32	121,188	22.39	0.38

[1] Five electrowinning facilities engage also in non-electrowinning refining processes.

Note: All averages are weighted averages.

These data indicate that nearly half of the total compliance costs will be borne by the primary copper sector, and that affected facilities (16 in total) in the copper and zinc sectors will experience annual compliance costs in excess of $1 million per facility. In total, 36 of the 103 potentially affected facilities (35 percent) are predicted to experience annual compliance costs of more than $500,000 per facility.

On the other hand, six commodity sectors will face compliance costs of less than $50,000 per affected facility, and almost one-half (50 of 103) of the facilities generating potentially hazardous wastes removed from the Bevill exclusion by today's rule will experience, on average, incremental subtitle C costs of less than $100,000.

C. Economic Impacts

EPA's screening-level analysis of economic impact compares the magnitude of average compliance costs for each sector to the estimated value of shipments in those sectors. This ratio provides a first approximation of the extent to which the profitability of firms, or, alternatively, commodity prices, may be adversely affected by the imposition of regulatory compliance costs. In this screening analysis, the Agency grouped commodity sectors into three groups according to the value of compliance costs to value of shipments: Those with ratios below one percent, those between one and five percent, and those with ratios greater than five percent. Results are displayed in Table 6.

TABLE 6. CATEGORIZATION OF MINERAL SECTORS, BY LEVEL OF COMPLIANCE COSTS

Cost category mineral	SIC	Costs/value of shipments (%) (sector-wide)	Number of affected facilities
I. Below 1.0 percent:			
Germanium	3339	0.00	3
Mercury (by-product of gold)	3339	0.01	9
Antimony	3339	0.02	1
Calcium metal	3339	0.04	1
Aluminum	3334	0.05	16
Magnesium	3339	0.06	2
Copper—electrowinning	3331	0.12	10
Phosphoric acid (furnace grade)	2874	0.17	17
Tantalum/Columbium	3339	0.29	8
Titanium sponge metal	3339	0.42	3
Phosphorus, elemental	2819	0.57	5
Molybdic oxide and rhenium	3339	0.86	2
Total in category			77
II. 1.0–4.9 percent:			
Lead, including bismuth	3332	1.09	4
Copper—excluding electrowinning	3331	1.32	11
Tin	3339	2.45	1
Mercury (excluding gold by-production)	3339	2.61	1
Zinc	3333	2.70	5
Ferrochromium	3313	4.67	8
Total in category			30
III. 5.0 percent or above:			
Arsenic acid	3339	7.05	1
Total in category			1

NOTE: 5 copper electrowinning facilities also engage in non-electrowinning processes.

1. Impacts on Commodity Sectors

Twelve mineral sectors comprising 76 percent of the potentially affected facilities will incur compliance costs of less than one percent of their annual value of shipments. These are the germanium, by-product mercury, antimony, calcium metal, aluminum, magnesium, copper from electrowinning, tantalum/columbium, furnace process phosphoric acid, titanium sponge, elemental phosphorus, and molybdic oxide/rhenium sectors. Of these, only the molybdic oxide/rhenium commodity sector, with two potentially affected facilities, approaches EPA's one percent cut-off value for identifying moderate economic impacts.

Seven mineral commodity sectors, with a combined total of 31 facilities, will have compliance costs between one and seven percent of their value of shipments. These include lead/bismuth, copper from processes other than electrowinning, tin, primary mercury, zinc, ferrochromium, and arsenic acid. Only the ferrochromium sector, with eight facilities, and the arsenic acid sector, with one facility, have predicted impacts in excess of three percent of their respective value of shipments.

Sectors with ratios above one percent were considered vulnerable to moderate to significant financial impacts and were evaluated in more detail in terms of market and industry factors that might affect the ultimate incidence and impact of the costs.

To place the results into perspective, EPA examined a number of factors such as absolute price levels, major end users of the mineral commodity, competition from imports and substitutes, secondary production, and flexibility in other production cost factors.

- *Lead/Bismuth.* (Average cost/sales of 1.1 percent.) Major uses of lead are in automotive batteries, construction materials, and a wide range of other products. Secondary recovery of lead from used automotive batteries provides a substantial portion of supplies. While marginal substitution is possible in each of the markets, a price increase of 1.4 percent would not substantially alter the basic use patterns of lead. Bismuth is used in a range of pharmaceuticals and chemicals, as well as in manufacturing machine parts. These applications offer a somewhat stable market for bismuth. However, most domestic consumption comes from imports, limiting the potential for domestic suppliers to raise prices.

- *Copper.* (Average cost/sales of 1.3 percent.) Copper is widely used in building construction, electrical and electronic products, industrial machinery and equipment, transportation, and consumer products. The ability of affected firms to raise prices is limited by significant competition from foreign suppliers (some of which are government-supported) and by the wide variety of product substitutes that are available for many copper end uses (e.g., optical fiber in telecommunications cable, plastics in water pipe and plumbing fixtures).
- *Tin.* (Cost/sales of 2.4 percent.) This metal is widely used in coatings, particularly for cans, and alloys in electrical and construction applications. In the coatings business, aluminum, glass, paper, and plastic provide strong competition. Other metals compete in alloy applications. Secondary recovery of tin from scrap is another factor adding to competition. A price increase of 2.4 percent could have a marginal impact on domestic primary tin sales, but may have a significant impact on the one remaining domestic primary tin producer.
- *Mercury.* (Cost/sales of 2.6 percent.) Mercury is used in a number of electrical and chemical applications. Competition is found in the form of different technologies for batteries, process alternatives for electrolytic production of chlorine and caustic soda, substantial supplies of imported mercury, and competition from domestic producers extracting mercury from precious metals side-streams (electrowinning slimes). It is unclear that this facility, which accounts for about 14 percent of domestic production, could recover its compliance costs by increasing prices by 2.6 percent.
- *Zinc.* (Average cost/sales of 2.7 percent.) Zinc is used in die castings and anti-corrosive coatings. In castings, zinc competes with aluminum, plastic, and magnesium. In coatings, plastics, paints, and other alloys offer substitutes. A major competitive factor is the large share of supply (greater than half) coming from imported slab zinc. These factors would limit the ability of domestic sources of zinc to raise prices.
- *Ferrochromium.* (Average cost/sales of 4.7 percent.) Ferrochromium is used in specialty and high-performance alloys and steels. Its performance characteristics render it valuable to existing users and would mitigate the effects of a price increase of 4.7 percent. Nonetheless, imported supplies of ferrochromium may limit the ability of domestic sources to raise prices.
- *Arsenic Acid.* (Cost/sales of 7.0 percent.) The plant producing arsenic acid from residual lead dust is unlikely to be able to recover compliance costs by raising prices. Arsenic-based wood preservatives and pesticides are valuable to end-users. However, arsenic acid produced from imported arsenious trioxide and imported arsenic acid account for 99 percent of domestic demand. Therefore, the market price for this product are unlikely to change as a result of production cost increases at this single, small facility.

2. Effects on Consumer Prices

Because most, if not all, of the immediate markets for the affected mineral commodities are as inputs to other manufacturing or industrial activities, and because, as discussed in the previous section, the ability of firms in most affected sectors to pass through compliance costs appears to be limited, EPA believes that, in general, this rule will not create any appreciable changes in consumer prices.

3. Foreign Trade Impacts

Trade is substantial in many of the mineral commodities addressed in this study. Basic import and export data for the sectors that generate potentially hazardous wastes are presented in Tables 7 and 8, respectively. Export markets are generally small for the commodities that EPA has identified as having moderate to significant compliance cost impacts (i.e., cost/value of shipments of one percent or more), and these markets may be adversely affected by the predicted economic impacts of compliance.

TABLE 7. IMPORTS OF MINERALS PRODUCED IN SECTORS GENERATING HAZARDOUS WASTES, 1987

Mineral and categories [1]	Quantity (MT)	Value ($000)
Aluminum—metal	1,245,510	1,852,152
Antimony—metal	9,701	18,171
Arsenic—compounds	1,540	NA
Bismuth—metals and alloys (gross weight)	1,580	8,769
Calcium	352	1,916
Columbium—ore	2,079	6,612
Copper—refined in ingots, etc	469,181	734,725
Ferrochromium—Ferrochromium and ferrochromium-silicon	302,946	155,189
Germanium—unwrought waste and scrap (gross weight)	15	7,987
Lead—base bullion (lead content)	10,827	7,239
Magnesium—metal	10,884	NA
Mercury—metal	636	3,860
Molybdenum—compounds (gross weight)	3,044	13,407
Rhenium—metal, including scrap	3	2,072
Phosphoric acid	NA	NA
Phosphorus, elemental	4,096	6,609
Tantalum—ore	316	5,186
Tin—metal—bars, blocks, pigs, or granulated	41,159	250,699
Titanium—unwrought sponge metal	929	6,321
Zinc—blocks, pigs, and slabs	705,966	581,221

[1] Categories for data on trade do not necessarily correspond to the mineral sectors that involve processing.

Sources: U.S. Bureau of Mines. Minerals Yearbook 1987 and Mineral Commodities Survey 1989.

TABLE 8.—EXPORTS OF MINERALS PRODUCED IN SECTORS GENERATING HAZARDOUS WASTES, 1987

Mineral and categories [1]	Quantity (MT)	Value ($000)
Aluminum—ingots, slabs, crude	291,163	415,003
Antimony—metals and alloys, crude	795	2,817
Arsenic—compounds	167	NA
Bismuth—metals and alloys	38	641
Calcium—metal	NA	NA
Columbium	NA	NA
Copper—refined copper and semi-manufactured	114,721	427,843
Ferrochromium	4,535	5,736
Germanium	NA	NA
Lead—pigs, bars, cathodes, sheets, etc	10,118	11,946
Magnesium—metal and alloys, scrap, semi-manufactured	44,151	139,672
Mercury	NA	NA
Molybdenum—compounds (molybdenum content)	1,223	11,146
Rhenium	([2])	([2])
Phosphoric acid—type not specified	500,000	85,912
Phosphorus, elemental	20,382	30,796
Tantalum—ore, metal, other forms; powder	270	34,794
Tin—ingots, pigs, bars, etc	1,398	9,458
Titanium—unwrought sponge metal	85	746
Zinc—slabs, pigs, and blocks	1,082	2,114

[1] Categories for data on trade do not necessarily correspond to the mineral sectors that involve processing.

[2] Negligible.

Sources: U.S. Bureau of Mines. Minerals Yearbook 1987 and Mineral Commodities Survey 1989.

Because imports of many of the mineral commodities in question are significant, the ability of domestic producers to raise prices to recover compliance costs, is, as discussed above, quite limited. A direct comparison of processed domestic minerals with imports is difficult because of the presence of imports in the form of both base metals and other assorted compounds and manufactured products. Nonetheless, using the import figures in table 8 as one measure of the scale of imports, the international trade situation facing the firms in the commodity sectors that will experience cost impacts above the one percent level can be summarized as follows:

- Imports account for a relatively low percentage of domestic demand for lead and for moderate shares of copper and mercury;
- Imports exceed processed domestic production in the tin, zinc, and ferrochromium sectors; and
- Trade data for arsenic acid are difficult to quantify; imports of arsenious trioxide (an intermediate in the production of arsenic acid) are substantial.

In view of the above, it is unlikely that the overall trade balance in the domestic minerals industry will be significantly affected by today's rule, though in some sectors regulatory cost impacts may increase already positive net imports.

IX. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354), which amends the Administrative Procedures Act, requires Federal regulatory agencies to consider "small entities" throughout the regulatory process. The RFA requires, in section 603, an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by a regulation. If so, regulatory alternatives that eliminate or mitigate the impacts must be considered.

Section 608 of the Act allows an Agency head to waive or delay completion of the screening analysis in response to an emergency that makes compliance with the requirements of section 603 on a timely basis impracticable. In previous NPRMs to this rule, the Agency indicated that there was insufficient time within the Court-ordered deadline to complete a comprehensive impact screening for small business impacts, but that, based on previous analyses for metallic metals processing and general knowledge of waste characteristics in non-metals processing, it was probable that there would not be significant small business impacts from this rulemaking (54 FR 15347).

The Agency has now completed a comprehensive screening analysis to determine the potential for significant small business impacts, as described below. Based upon this subsequent analysis, the Agency has concluded that today's final rule will not have a significant adverse impact on a substantial number of small mineral processing companies. With very few exceptions, as indicated below, the commodity sectors with moderate to substantial predicted cost/economic impacts contain either few or no small business enterprises.

A. Definition of Affected Small Entities

Today's rule has its primary direct effects on ore and mineral processing facilities that generate wastes that could fail any of the Agency's tests for hazardous waste characteristics. To the best of the Agency's ability within the time constraints of this Court-ordered final rule, the mineral commodity sectors most likely to face subtitle C compliance costs have been identified in section VIII of this preamble, based on EPA's screening study of cost and economic impacts. Eighteen commodity sectors falling within eight 4-digit SIC codes represent the population of affected business firms (see table 6, above).

For purposes of defining "small business" firms, EPA has relied on the standard definitions of the Small Business Administration (SBA) as published at 13 CFR ch. 1, part 121. For the industries in question, SBA employs a basic employment-based definition, with the small business cut-off value for total company employment ranging between 500 and 1,000 employees, depending upon the specific industry in question.

B. Approach and Data Sources

Based upon the results of the economic impact screening analysis described above in section VIII, EPA conducted a comprehensive RFA business ownership screening analysis for those mineral commodity sectors estimated to incur moderate to significant economic impacts associated with today's rule. While it was not possible in the cost analysis to develop compliance cost estimates specific to different sizes of facilities within each affected mineral sector, all potentially affected small businesses were identified individually. Comparative data were then available to evaluate (a) how many small businesses operate in the mineral sectors predicted by the economic impact screening analysis to be significantly affected and (b) what fraction of the overall small business population in the minerals processing-related industry categories (SICs) might be affected by subtitle C requirements pursuant to this rule.

Working largely with U.S. Bureau of Mines mineral commodity specialists and file data, each of the facilities engaged in affected mineral sectors was identified by name and location. If the facility was owned by a separate parent company, that company was identified using either the Directory of Corporate Affiliations [10] or the Trinet Data Base.[11] Thus, for each sector EPA determined the total number of businesses owning facilities. The Agency then determined the number of employees in each business using one of four sources: Standard and Poor's Corporate Records,[12] Ward's Business Directory,[13] the Trinet Data Base, or phone contacts. Employment figures for public companies were determined using Standard and Poor's Corporate Records. Ward's Business Directory provided employee figures for many of the larger private businesses and the Trinet Data Base identified employee numbers for many of the smaller private businesses. For the small number of businesses that did not appear in any of these sources, the Agency contacted the business by phone to obtain employee information. For all but three of the facilities in the 18 affected mineral commodity sectors, the Agency was able to determine the size of the owner company.

EPA obtained the appropriate SIC classification for each affected sector from the Department of Commerce. The Agency then compared the employee estimates to the Small Business Administration's (SBA's) definition of a small business for the sector's SIC code and determined the number of small and large businesses in that sector. SBA defines small businesses as less than 1,000 employees or less than 750 employees for most of the SIC codes.[14] Results of this analysis are displayed in appendix B to today's preamble.

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[10] National Register Publishing Company, "Directory of Corporate Affiliations" (Wilmette, IL.: 1988).

[11] Trinet Company Database, Trinet Inc. (Parsippany, NJ.: 1988).

[12] Standard and Poor's Corporation, "Standard and Poor's Corporation Records" (New York, New York: 1988).

[13] Information Access Company, "Ward's Business Directory, Volume 1, US Private Companies, Largest Private Plus Selected Public Companies" (Belmont, CA: 1988).

The Agency also classified the number of affected small businesses by SIC code, then compared this to the total number of small businesses in that SIC code, based on SBA estimates of the total number of small businesses in each SIC code. EPA also computed the percentage of the total number of firms within a given 4-digit SIC code accounted for by affected small businesses and affected small and undefined businesses. Appendix C to today's preamble displays the results of this analysis.

C. Results

From the cost analysis, facilities and companies in 18 mineral commodity sectors within eight 4-digit SIC industries would be subjected to regulatory compliance costs by today's rule. The sectors were previously grouped by level of impact in Table 6. Of the 18 sectors evaluated for economic impact, seven sectors-lead/bismuth, copper from operations other than electrowinning, tin, primary mercury, zinc, ferrochromium, and arsenic acid—have potential average compliance costs greater than one percent of value of shipments (sales) and could therefore be considered to face moderate to substantial impacts for affected firms. Lead/bismuth, tin, mercury (in terms of the one affected facility), and arsenic acid have no small business operations. Only zinc (with one small company), ferrochromium (with three small firms), and possibly copper (with one firm of unknown size), therefore represent affected sectors of concern with respect to small business impacts, with a combined total of four or five small business companies. Supporting data for these findings are presented in appendix C to this preamble.

Taken together, the number of small businesses in these two or three sectors represents a very small fraction of the total number of small businesses in the relevant mineral processing industries.

Based upon this screening analysis, the Agency concludes that there will not be a significant adverse impact on a substantial number of small mineral processing companies as a result of this rulemaking.

List of Subjects in 40 CFR Part 261

Hazardous waste, Waste treatment and disposal, Recycling, Reporting and recordkeeping requirements.

Dated: August 18, 1989.

F. Henry Habicht,

Acting Administrator.

Appendix A—Mineral Commodities Produced by Beneficiation Operations

Commodity sector	Sources
Ammonium paratungstate	(A)
Asbestos	(A)
Asphalt, natural	(A)
Boron (from brines)	(A, B)
Bromine (from brines)	(A)
Clay	(A, B)
Coal	(A)
Diatomite	(A)
Emery	(A)
Feldspar	(A)
Fluorspar	(A)
Garnet	(A, B)
Gilsonite	(A)
Glauconite (greensand)	(A)
Gypsum	(A)
Ilmenite	(A)
Iodine (from brines)	(A)
Kyanite	(A)
Limestone/Lime	(A)
Lithium (from brines)	(A, C)
Magnesia	(A)
Mica	(A)
Mineral waxes	(A)
Olivine	(A)
Peat	(A)
Perlite	(A)
Phosphate	(A)
Platinum group metals	(A)
Potash	(A)
Pumice	(A)
Pyrobitumens	(A)
Pyrophyllite	(A)
Rare Earths	(A, B)
Rutile	(A)
Salt	(A)
Sand and gravel	(A)
Scandium	(A)
Silica sand	(A)
Soda ash	(A)
Sodium sulfate	(A)
Staurolite	(A, B)
Stone, crushed	(A)
Stone, dimension	(A)
Sulfer	(A)
Talc	(A)
Tripoli	(A, B)
Vanadium	(A)
Vermiculite	(A)
Wollastonite	(A, B)
Zeolites	(A, B)
Total beneficiation sectors	50

Sources:

(A)—Bureau of Mines (Commodity Specialists, 1987 Mineral Yearbook, 1985 Mineral Facts and Problems).

(B)—Kaiser Engineers, Inc, 1989, See Technical Background Document for this Rulemaking.

(C)—Charles River Associates, 1989, See Technical Background Document for this Rulemaking.

APPENDIX B—COMPANIES IN MINERAL PROCESSING SECTORS AFFECTED BY TODAY'S RULE BY SBA SIZE CATEGORY

SIC code and mineral commodity	SBA definition of a small business (maximum employment)	Number of large businesses	Number of small businesses	Number of businesses of unknown size	Number of total businesses	Percent small	Percent small or unknown
2819—Phosphorus, elemental	1,000	4	0	0	4	0	0
2874—Phosphoric acid, FG	500	5	1	0	6	17	17
3313—Ferrochromium	750	5	3	0	8	38	38
3331—Copper	1,000	10	0	1	11	0	9
3332—Lead	1,000	2	0	0	2	0	0
3333—Zinc	750	3	1	0	4	25	25
3334—Aluminum	1,000	10	1	0	11	9	9
3339—Arsenic	750	1	0	0	1	0	0
3339—Antimony	750	5	4	0	9	44	44
3339—Bismuth	750	1	0	0	1	0	0
3339—Calcium	750	1	0	0	1	0	0
3339—Germanium	750	2	0	1	3	0	33
3339—Magnesium	750	2	0	0	2	0	0
3339—Mercury/gold	750	6	3	1	10	30	40
3339—Rhenium/molybdic oxide	750	2	0	0	2	0	0
3339—Tantalum/columbium	750	6	2	0	8	25	25

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[14] SBA does not distinguish between businesses that employ more than 500 and less than 1,000 persons, i.e., it is not possible to determine how many businesses employ less than 750 people using SBA data. In the case of SIC categories in which 750 employees is the small business cut-off value, EPA used the SBA figures for businesses with less than 1,000 employees. The actual number of small businesses for those SIC categories may therefore be less.

APPENDIX B—COMPANIES IN MINERAL PROCESSING SECTORS AFFECTED BY TODAY'S RULE BY SBA SIZE CATEGORY—Continued

SIC code and mineral commodity	SBA definition of a small business (maximum employment)	Number of large businesses	Number of small businesses	Number of businesses of unknown size	Number of total businesses	Percent small	Percent small or unknown
3339—Tin	750	1	0	0	1	0	0
3339—Titanium sponge	750	2	1	0	3	33	33
Subtotal for SIC		29	10	2	41	24	29
Total—above minerals		68	16	3	87	18	22

APPENDIX C—AFFECTED SMALL BUSINESS MINERAL PROCESSORS AS A PERCENT OF SMALL BUSINESSES IN EACH INDUSTRY CATEGORY

SIC code and industry category description	SBA definition of a small business (maximum employment)	Total small businesses in SIC category[1]	Affected mineral processing businesses—			
			Affected small businesses	Affected businesses—unknown size	Affected small businesses/total small businesses (percent)	Affected small and unknown businesses/total small businesses (percent)
2819—Industrial inorganic chemicals, N.E.C.	1,000	885	0	0	0.0	0.0
2874—Phosphatic fertilizers	500	91	1	0	1.1	1.1
3313—Electro-metallurgical products	750	34	3	0	8.8	8.8
3331—Primary copper	1,000	2	0	1	0.0	50.0
3332—Primary lead	1,000	17	0	0	0.0	0.0
3333—Primary zinc	750	13	1	0	7.7	7.7
3334—Primary aluminum	1,000	43	1	0	2.3	2.3
3339—Primary nonferrous metals, NEC	750	184	10	2	5.4	6.5
Total—Above SIC categories		1,269	16	3	1.3	1.5

[1] The Small Business Administration (SBA) provided the estimates of the total number of small businesses within each SIC category. SBA does not distinguish between businesses that employ more than 500 and less than 1,000 persons, i.e., it is not possible to determine how many businesses employ less than 750 people using SBA data. In the case of SIC categories in which 750 employees is the small business cut-off value, EPA used the SBA figures for businesses with less than 1,000 employees. The actual number of small businesses for those SIC categories may therefore be less.

For the reasons set out in the preamble, part 261 of title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

1. The authority citation for part 261 continues to read as follows:

Authority: (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. Section 261.3 is amended by revising paragraphs (a)(2) (i) and (iii) to read as follows:

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(i) It exhibits any of the characteristics of hazardous waste identified in subpart C except that any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under § 261.4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under subpart C of this part only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Extraction Procedure Toxicity characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table I to § 261.24 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

* * * * *

(iii) It is a mixture of a solid waste and a hazardous waste that is listed in subpart D of this part solely because it exhibits one or more of the characteristics of hazardous waste identified in subpart C, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in subpart C of this part or unless the solid waste is excluded from regulation under § 261.4(b)(7) and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in subpart C of this part for which the hazardous waste listed in subpart D of this part was listed.

* * * * *

2. Section 261.4 is amended by revising paragraph (b)(7) to read as follows:

261.4 Exclusions.

* * * * *

(b) * * *

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore. For purposes of this paragraph, beneficiation of ores and minerals is restricted to the following activities: crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining to remove water and/or carbon dioxide, roasting in preparation for leaching (except where the roasting/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing), gravity concentration, magnetic separation, electrostatic separation, floatation, ion exchange, solvent extraction, electrowinning,

precipitation, amalgamation, and heap, dump, vat, tank, and *in situ* leaching. For the purposes of this paragraph, solid waste from the processing of ores and minerals includes only:

(i) The following solid wastes from the processing of ores and minerals that are retained within this exclusion:

(A) Slag from primary copper smelting;

(B) Slag from primary lead smelting;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production; and

(ii) The following solid wastes from the processing of ores and minerals that are conditionally retained within this exclusion, pending collection and evaluation of additional data:

(A) Roast/leach ore residue from primary chromite production;

(B) Gasifier ash from coal gasification;

(C) Process wastewater from coal gasification;

(D) Slag tailings from primary copper smelting;

(E) Calcium sulfate wastewater treatment plant sludge from primary copper smelting/refining;

(F) Furnace off-gas solids from elemental phosphorus production;

(G)Fluorogypsum from hydrofluoric acid production;

(H) Process wastewater from hydrofluoric acid production;

(I) Air pollution control dust/sludge from iron blast furnaces;

(J) Iron blast furnace slag;

(K) Process wastewater from primary lead production;

(L) Air pollution control dust/sludge from lightweight aggregate production;

(M) Process wastewater from primary magnesium processing by the anhydrous process;

(N) Process wastewater from phosphoric acid production;

(O) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(P) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(Q) Sulfate processing waste acids from titanium dioxide production;

(R) Sulfate processing waste solids from titanium dioxide production;

(S) Chloride processing waste solids from titanium tetrachloride production; and

(T) Slag from primary zinc smelting.

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[FR Doc. 89-20111 Filed 8-30-89; 8:45 am]

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federal register

Friday
September 1, 1989

Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Control of Hazardous Energy Source (Lockout/Tagout); Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-012A]

RIN 1218-AA53

Control of Hazardous Energy Sources (Lockout/Tagout)

AGENCY: Occupational Safety and Health Administration, (OSHA).

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is issuing a standard detailing safety requirement for the control of hazardous energy as a new § 1910.147. This standard addresses practices and procedures that are necessary to disable machinery or equipment and to prevent the release of potentially hazardous energy while maintenance and servicing activities are being performed. The standard requires that lockout be utilized for equipment which is designed with a lockout capability except when the employer can demonstrate that utilization of tagout provides full employee protection. For equipment which was not designed to be locked out the employer may use tagout. In addition, the standard also supplements and supports the existing lockout related provisions contained elsewhere in the general industry standards by providing that comprehensive and uniform procedures be used for complying with those provisions. This standard applies to general industry employment under 29 CFR part 1910, but does not cover maritime, agriculture, or construction employment. The standard also does not cover oil and gas well drilling; the generation, transmission and distribution of electric power by utilities; and electrical work on electric conductors and equipment. These will be the subjects of separate rulemaking efforts.

The standard contains definitive criteria for establishing an effective program for locking out or tagging out energy isolating devices and requires training for authorized and affected employees. The standard requires the employer to implement the specified procedures, and to utilize effective control measures based on the workplace hazards that are encountered. OSHA expects that this standard will prevent approximately 122 fatalities, 28,400 lost workday injuries and 31,900 non-lost workday injuries a year.

This rule, § 1910.147, is being placed in Subpart J of part 1910. The present § 1910.147 is redesignated as § 1910.150 to allow for the new section.

DATES: This final standard shall become effective October 31, 1989, except for paragraphs (c)(4), (c)(7), and (f)(2), of § 1910.147 which contain information requirements currently under review at OMB. A document announcing the effective date of the recordkeeping portions will be published at a later date in the **Federal Register**.

ADDRESS: In accordance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S-4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Room N3649, U.S. Department of Labor, Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION: For additional copies of this standard contact U.S. Department of Labor, Occupational Safety and Health Administration, Office of Publications, Room N3101, Washington, DC 20210, (202) 523-9667.

I. Background

OSHA's General Industry standards, 29 CFR part 1910, were originally published in the **Federal Register** (36 FR 10466, May 29, 1971) pursuant to Section 6(a) of the Occupational Safety and Health Act of 1970 (the OSH Act) and became effective on August 27, 1971. Before their adoption as OSHA standards, these occupational safety and health standards were either national consensus standards or established Federal standards. Virtually all of the current lockout provisions in part 1910 which are affected by this standard were adopted under the section 6(a) procedure.

At the time of adoption of the original OSHA standards, there was no general, all-encompassing consensus standard or Federal standard for locking out, tagging out, or disabling of machines or equipment to protect employees when maintenance or servicing activities were being performed—a gap that this rulemaking addresses. However, OSHA did adopt various lockout-related provisions of consensus standards which had been developed for specific types of equipment. These provisions are not deleted by this rulemaking. Current lockout-related provisions in the General Industry Standards (29 CFR part 1910) are found in the following sections:

1910.178	Powered Industrial Trucks
1910.179	Overhead and Gantry Cranes
1910.181	Derricks
1910.213	Woodworking Machinery
1910.217	Mechanical Power Presses
1910.218	Forging Machines
1910.522	Welding, Cutting and Brazing
1910.261	Pulp, Paper and Paperboard Mills
1910.262	Textiles
1910.263	Bakery Equipment
1910.265	Sawmills
1910.272	Grain Handling
1910.399	Electrical

Note: See Ex. 13 for a detailed list of lockout provisions in the above standards. For further information involving the use of these provisions, refer to the discussion found in Section VI, Summary and Explanation of the Standard, addressing paragraph (a)(3)(ii).

The present OSHA regulations for locking out or tagging out machines and equipment, where they do exist, are not uniform coverage. Inconsistencies in these regulations exist between different equipment and industries, and between different types of equipment in the same industry. Some provisions in the OSHA standards require equipment to have the capability of being "locked out," without requiring such control to be utilized. OSHA feels that the lack of a general standard, and the incompleteness of the existing provisions, have contributed to the alarming number of injuries and fatalities that have occurred.

Since the inception of its enforcement program, OSHA, for the most part, has had to rely upon the use of the "General Duty Clause" (section 5(a)(1) of the Act) citation to ensure that employers provide safeguarding for their employees from the hazards involving the release of hazardous energy. This approach has met with only limited success, limited primarily upon the need for OSHA to prove, in the event of the contest of a section 5(a)(1) citation, that the hazard was a "recognized" hazard and that the hazard was causing or could cause death or serious physical harm. Because of these difficulties, and because of the need to fill a significant gap in the current coverage of part 1910, OSHA has been working since 1977 to gather sufficient information to enable the Agency to write a comprehensive standard for energy control in general industry.

In 1977, OSHA published a Notice in the **Federal Register** entitled "Machinery and Machine Guarding, Request for Information on Technical Issues and Notice of Public Meetings" (42 FR 1741, January 7, 1977) (Docket S-212). In this Notice, OSHA addressed the issue of lockout or tagout, including the general question of whether lockout should always be required when machinery is not in its normal operating mode, or whether alternative methods for employee protection, such as tagout, should be permitted (42 FR 1807). The purpose of that Notice was to generate information for use in updating the OSHA machine guarding standards (Subpart 0). Respondents to that Notice generally recognized the hazards to employees when maintenance and repair activities are undertaken, and the need to use lockout or tagout to control these hazards. There was, however, a considerable range of opinion regarding the effectiveness of either a lock, a tag, or a combination of these devices when they are used as safeguards.

The United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) petitioned OSHA on May 17, 1979 (Docket S-012, [Ex. 2-3]) to establish an Emergency Temporary Standard (ETS) for locking out machinery and equipment. The petition stated that there existed a need to recognize the complexities of modern industrial equipment which use sources of energy other than electricity. It contained a discussion of the increasing need for locking out equipment to prevent that equipment from cycling without warning while it was being worked on, and related the importance of applying lockout procedures to systems using hydraulic or pneumatic power, to energy stored in springs and electrical capacitors, and to potential energy from suspended parts. Abstracts of case studies for fatalities involving 22 UAW members which were attributed to lockout-related causes since 1974 were submitted with the petition. OSHA also received other petitions and letters in support of the UAW petition from other labor organizations, including the AFL-CIO, Allied Industrial Workers, and the United Steelworkers of America.

OSHA responded to the UAW petition on September 11, 1979 [Ex. 2], declining to issue an ETS, but advising that OSHA was proceeding to draft an Advance Notice of Proposed Rulemaking (ANPR) addressing the subject, in which the public would be invited to comment on the major issues involved in the development of a standard.

OSHA published the ANPR for a standard on lockout/tagout in the **Federal Register** on June 17, 1980 (45 FR 41012) (Docket S-012). In that Notice, OSHA raised issues about whether or not a generic standard should be proposed; if so, what should be the scope and application of this lockout/tagout standard; what constituted the necessary and sufficient energy isolation methods and means; and whether there was a need for written procedures and documented employee training. There was not overwhelming support in the comments submitted to OSHA for a generic standard to cover all facets of the lockout/tagout problem. The comments did indicate, however, that a performance-oriented standard, offering enough flexibility to take current work practices into consideration, was desirable, and that requirements for documented procedures and employee training would have many advantages. The comments pertaining to securing energy isolating devices (the use of locks or tags) did not generate an overwhelming response strongly favoring either method. The comments received in response to that Notice were utilized in the development of the proposed standard published in the **Federal Register** on April 29, 1988 (53 FR 15496).

There were several other inputs into the development of the Proposed Rule: First, the National Institute for Occupational Safety and Health (NIOSH) provided considerable data to OSHA on this subject. NIOSH published a notice in the **Federal Register** entitled "Lockout and Interlock Systems and Devices: Request for Information" (45 FR 7006, January 31, 1980) (Docket S-012, [Ex. 2-1]) and provided OSHA with the responses to that Notice. As part of that project, NIOSH also published its "Guidelines for Controlling Hazardous Energy During Maintenance and Servicing" [Ex. 3-4]. Other important sources of information were a Bureau of Labor Statistics (BLS) Work Injury Report (WIR) survey entitled, "Injuries Related to Servicing Equipment" [Ex. 3-3] and two OSHA-directed studies—"Selected Occupational Fatalities Related to Lockout/Tagout Problems as Found in Reports of OSHA Fatality/Catastrophe Investigations" [Ex. 3-5], and "Occupational Fatalities Related to Fixed Machinery as Found in Reports of OSHA Fatality/Catastrophe Investigations" [Ex. 3-6]. Two further studies conducted by OSHA involved the compilation and analysis of OSHA Form 36 Preliminary Fatality/Catastrophe Event Reports [Ex. 3-7] and a compilation of OSHA section (5)(a)(1) citations [Ex. 3-8].

Of great assistance to OSHA in this undertaking was the publication on March 8, 1982, of the American National Standards Institute (ANSI) national consensus standard for lockout/tagout, ANSI Z244.1-1982, "American National Standard for Personnel Protection—Lockout/Tagout of Energy Sources—Minimum Safety Requirements" [Ex. 3-9]. This standard lists the uniform performance requirements for developing and utilizing a lockout or tagout procedure for the protection of employees from the unexpected energization, start-up of machines or equipment or release of stored energy during repair, maintenance, and associated activities. The consensus standard was utilized by OSHA as the primary basis for development of its proposed standard.

In July 1983, OSHA developed a preproposal draft of a standard for lockout/tagout [Ex. 3-10]. This draft was developed by utilizing all relevant materials available to OSHA at that time. This draft was distributed to associations, companies, unions and individuals which OSHA was able to identify as having an interest in the regulation. There were about 80 comments received in response to this preproposal draft. The commenters were generally in support of the effort to develop a safety standard for lockout or tagout; however, some commenters objected to the inclusion of a requirement for locking out during activities classified as "normal production operations." Comments from some sources favored the use of locks rather than tags to secure energy isolating devices, while others welcomed the more flexible approach of permitting the use of locks or tags. There was also considerable comment regarding the use of an Appendix. Many commenters wanted the information supplied in the Appendix moved into the body of the standard for enforceability. Others, however, wanted the Appendix material completely removed on the grounds that reference to it by the courts in contested cases would essentially make it mandatory.

The proposed standard was published in the **Federal Register** on April 29, 1988 (53 FR 15495). Interested persons were afforded 60 days to submit comments and/or request a hearing.

On August 9, 1988, OSHA published a Notice in the **Federal Register** (53 FR 29920) announcing the scheduling of a public hearing and an extension of the period for the submission of comments. The hearing was scheduled for September 22 and 23 in Washington, DC, and September 27 and 28 in Houston, Texas. The comment period was extended until September 22. On August 30, 1988, OSHA published another Notice in the **Federal Register** (53 FR 33149) changing the dates for the Houston, Texas segment of the hearing from September 27 and 28 to October 12 and 13.

There were 16 parties who participated in the public hearing which was presided over by Administrative Law Judge Jeffrey Tureck. During the later stages of the hearing, at the suggestion of several of the hearing

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participants Judge Tureck established a post hearing comment period, allowing the submission of additional data and evidence through November 28, 1988, and the submission of final arguments and briefs through December 23, 1988. Based upon subsequent request of several of the hearing participants, the Administrative Law Judge extended the comment period until February 6, 1989. Judge Tureck certified the record of the hearing, including materials received in the post-hearing comment period on May 3, 1989.

The comments concerning the preproposal draft (Docket S–012), the special studies and other information used in the development of the proposal for this standard, the comments received in response to the publication of the proposed standard, the evidence adduced at the public hearing and the materials submitted in the post-hearing comment period, were all utilized in the development of this Final Rule.

II. Hazards

Whenever machines or equipment are utilized in industry, there are hazards not only to the employees who work with the machines or equipment but also to other employees who work or otherwise are in the immediate area. Moreover, when it is necessary to perform maintenance or servicing on machines or equipment, such activities generate additional, unique hazards due to the continued presence of the energy used by the machine or equipment to perform its production function. This energy can emanate directly from a power source or can be stored in the equipment itself.

OSHA believes that failure to control energy adequately accounts for nearly 10 percent of the serious accidents in many industries. The following accidents, taken from the NIOSH report entitled "Guidelines for Controlling Hazardous Energy During Maintenance and Servicing" [Ex. 4], are typical of these hazards and demonstrate the applicability of the pertinent provisions in the final standard.

1. An employee was cleaning the unguarded side of an operating granite saw. The employee was caught in the moving parts of the saw and pulled into a nip point between the saw blade and the idler wheel, resulting in fatal injuries. (Failure to shutdown or turn off the equipment to perform maintenance—1910.147(d)(2).)

2. An employee was removing paper from a waste hogger. The hogger had been shut down, but the conveyor feeding the hogger had not been. The employee climbed onto the machine, fell onto the conveyor, was pulled into the hogger opening, and was fatally crushed. There was no energy control procedure at this operation. (Failure to document and implement an effective energy control procedure—1910.147(c)(4).)

3. Two employees were repairing a press brake. The power had been shut off for 10 minutes. They positioned a metal bar in a notch on the outer flywheel casing so that the flywheel could be turned manually. The flywheel had not completely stopped. The men lost control of the bar, which flew across the workplace and struck and killed another employee who was observing the operation from a ladder. (Failure to control stored energy—1910.147(d)(6).)

4. An employee was partially inside an asphalt mixing machine, changing its paddles. Another employee, while dusting in the control room, accidentally hit a toggle switch which caused the door of the mixer to close, striking the first employee on the head and killing him. Electrical switches to activate the machine were not deenergized and air pressure to move the doors was not shut off. (Failure to isolate equipment from energy sources—1910.147(d)(3).)

5. An employee was setting up a vacuum forming machine for a run of violin cases. He leaned over the press and accidentally activated the starting switch. His head was crushed between an air cylinder and the frame hogger opening, and was fatally crushed. There was no energy control procedure at this operation. (Failure to document and implement an effective energy control procedure—1910.147(c)(4).)

6. A trainee employee was cleaning a flour batch mixer. The employee was reaching into the machine when another worker activated the wrong switch, thereby turning the machine on. The employee cleaning the flour batch mixer suffered fatal crushing injuries to his neck. There was an unwritten company procedure for locking out during all maintenance. The procedure was not followed. (Failure to document and implement an effective energy control procedure—1910.147(c)(4); failure to train employees adequately in lockout/tagout procedures—1910.147(c)(7).)

7. An employee was cleaning scrap from beneath a large shear when a fellow employee hit the control button activating the blade. The blade came down and decapitated the employee cleaning scrap. (Failure to isolate, lockout/tagout or otherwise disable all potential hazardous energy sources before attempting any repair, maintenance or servicing—1910.147(c)(2).)

Servicing and maintenance activities are necessary adjuncts to the industrial process. They are needed to maintain the ability of all machines, equipment or processes to perform their intended functions. Additionally, erection, installation, construction, set-up, changeover, and dismantling usually must be performed with the equipment deenergized. These types of operations can present the employee with the same types of hazards of unexpected activation, reenergization, or release of stored energy, therefore, they are addressed by this standard. Similarly, lubricating, cleaning, unjamming, and making minor adjustments and simple tool changes are activities which often take place during normal production operations, but which may expose employees to the unexpected activation of the equipment or to the unexpected release of the energy stored in the equipment. All of the above activities are considered to be "servicing and/or maintenance" for the purposes of this standard.

With regard to servicing and/or maintenance which takes place during "normal production operations," it is important to note that this standard is intended to work together with the existing machine guarding provisions of Subpart O of part 1910, primarily §§ 1910.212 (general machine guarding) and 1910.219 (guarding of power transmission apparatus). When a machine is being used for production, § 1910.212 requires that the point of operation be guarded. For example, when an employee is using a table saw to cut wooden parts, the employee would be protected by guards around the blade of the saw. If the employee needs to reach into the point of operation in order to adjust the work piece as part of the production process, § 1910.212 requires that the guarding protection be maintained. As long as guarding is not removed or bypassed, the lockout/tagout standard is not intended to apply to these types of situations. By contrast, using the same table saw, it may be necessary for the employee to remove a piece of wood which has become jammed against the blade of the saw. In doing so, the employee might need to bypass or remove the guard on the saw and reach into the point of operation. Although this action takes place "during" normal production operations, it is not actually production, but is servicing of the equipment to perform its production function. When such servicing may expose the employee to the unexpected activation of the machinery or equipment, or to the release of stored energy, this Final Rule will apply. If the servicing is performed in a way which

prevents such exposure, such as by the use of special tools and/or alternative procedures which keep the employee's body out of the areas of potential contact with machine components or which otherwise maintain effective guarding, this standard will not apply. Thus, lockout or tagout is not required by this standard if the employer can demonstrate that the alternative means enables the servicing employee to clean or unjam or otherwise service the machine without being exposed to unexpected energization or activation of the equipment or release of stored energy.

The above mentioned servicing and/or maintenance activities are currently being accomplished in general industry with varying degrees of safeguarding or protection for employees. This safeguarding or protection ranges from allowing the employee to conduct the servicing or maintenance activity which the machine or equipment is energized and operating (virtually no protection), to requiring that the machine or equipment simply be turned off or shut down, to providing for deenergization and lockout or tagout of the machine or equipment. OSHA believes that the least desirable situation is to allow employees to perform maintenance, repair, or service activities while the machine or equipment is energized and capable of performing its normal production function. The Agency recognizes that there are certain servicing operations which, by their very nature, must take place without deenergization, such as operational testing of machines or equipment. Locking out or tagging out cannot be performed during these operations, since both lockout and tagout require that equipment to be deenergized. Additionally, this standard does not apply when certain tasks are conducted during normal production operations such as repetitive minor adjustments or simple tool changes when these activities do not increase the risk of injury to employees. Conversely, operations such as cleaning and unjamming machines or equipment are covered by this standard when the employee is exposed to greater or different hazards than those encountered during normal production operations; it should be emphasized that this rule applies to cleaning and unjamming when an unexpected activation or release of energy could occur.

The vast majority of servicing or maintenance activities can safely be done only when the machine or equipment is not operating and is deenergized; therefore, these activities are covered by this standard.

Some servicing operations do not expose employees to hazards which would necessitate that a machine, equipment or process be deenergized and locked out or tagged out. However, practices such as reaching beyond guards during the cleaning of rollers of printing presses or the feed points of screw conveyors which the equipment is operating, violate the safety conditions set forth in § 1910.212 for normal production operations, and therefore such activities would be considered servicing activities under this rule.

Performance of maintenance or servicing activities on a machine or equipment that is in operation has the potential of exposing employees not only to contact with moving machinery components at the point of operation, but also to contact with other moving components, such as power transmission apparatus, and also increases the risk of injury due to the position the employee must assume and the need to remove, bypass or disable guards and other safety devices. In many cases, these activities expose the employee to the hazard of being pulled into the operating equipment when parts of the employee's body, clothing or the material or tools used for cleaning or servicing become entrapped or entangled in the machine or equipment mechanism. The use of extension tools or devices to permit the operator to stay outside these danger areas, while of some benefit in reducing direct employee exposure to the hazards of entanglement or entrapment, can, in itself, result in injuries to employees. This can occur, for example, when an employee is struck by the tools or devices that inadvertently come in contact with moving machine components, and are pulled from the employee's grasp.

However, shutting down a machine or equipment usually is not the total solution to the problem. Once the machine or equipment has been stopped, there remains the potential for employee injury from the unanticipated movement of a component of the machine or equipment, or from movement of the material being handled. This unanticipated movement can be caused either by the release of residual energy within the machine or equipment, or as the result of the conversion of potential energy to kinetic energy (motion). For example, residual energy can be manifested by the presence of springs under tension or compression, or by the presence of pressure (either above or below atmospheric) in systems containing gases or liquids.

Potential energy is considered to be a function of the height of an object above some datum plane. This datum plane is usually considered to be where that object would come to rest if the restraint holding the object were released, such as where the upper die in a punch press is positioned above the lower die. If the restraining device holding the upper die in place was to be removed, the potential energy of the upper die would be converted into kinetic energy (downward motion), resulting in the upper die being propelled downward, coming to rest on the lower die. This motion can cause a crushing, cutting, lacerating, amputating or fracture injury to an employee's arm, hand or some other part of the body which occupies the space between the dies.

OSHA believes that the most effective method to prevent employee injury caused by the unanticipated movement of a component of a machine or equipment, or of the material being handled, is either to dissipate or minimize any residual or potential energy in the system, or to utilize a restraining device to prevent movement. This can be accomplished by moving machine or equipment components to a point at which springs are at or near a neutral state, by moving components so that liquids or gases reach or approximate atmospheric pressure, and by blocking material or components or moving them to a point of minimum potential energy (moving components to a stable, resting position).

Further, even though the machine or equipment has been shut off, and even if residual energy has been dissipated, an accident can still occur if there is an inadvertent activation of that machine or equipment. Inadvertent activation can occur due to an error on the part of the employee who is conducting the maintenance or servicing activity, or by any other person. For example, the servicing employee can unintentionally cause the machine or equipment to start by shorting across electrical switches or by accidentally moving controllers (either electrical controls or valves) into the "on" or "operational" position.

An accident can also occur when another person who is not necessarily involved with the maintenance or servicing operation causes the activation of the machine or equipment being serviced. This can occur when a person uses the wrong controller and starts a machine or equipment that the employee did not intend to start. It can also occur when a person finds a machine or equipment not operating and starts it, without knowing someone else is performing maintenance or service on it. This latter type of accident is more apt to occur when the machine or equipment is large and/or complex, and the employee who is conducting the servicing activity is at a part of the system which is some distance from or not visible from the controls. The generally accepted best means to minimize the potential for inadvertent activation is to ensure that all power to the machine or equipment is isolated, locked or blocked and dissipated at points of control, using a method that cannot readily be removed, bypassed, overridden or otherwise defeated. In the case of an electrically run machine, piece of equipment or process, this can be done by going back toward the original source of the power and shutting off a main switch or by disconnecting the electrical lines. OSHA believes that this action must be followed by the placement of some safeguard to prevent the reenergization of the circuit during the maintenance or servicing. To ensure that another employee will not attempt to restart the machine or equipment or to reenergize the circuit, there must be some assurance that all other employees know that the circuit is deenergized and must remain so. This can be accomplished by the utilization of a standardized procedure for deenergizing the system; by training employees to familiarize them with the restrictions of the procedure which apply to them; and by enforcing a prohibition on another employee removing or bypassing another's safeguard. Those employees whose job require them to opeate or use a machine or equipment that must have maintenance or servicing performed on it, must be aware that the machine or equipment is going to be stopped or shut down, and locked out or tagged out, and that they should not attempt to restart or reenergize it. Additional training is also needed for those employees who must utilize the procedure.

Even if all other protective measures are taken, accidents can still occur following the completion of the maintenance, repair or servicing activity, if the machine or equipment is reenergized and started before all guards and other safety devices have been replaced or reinstalled. Additionally, all tools and other foreign objects must be removed from the location and a check completed to ensure that no employees are in a place where the re-energization and starting of the machine or equipment will endanger them.

III. Accident Data

The collection of data on accidents resulting from a failure to utilize proper lockout or tagout procedures is hampered because many accidents are not reported; are reported only locally; or are reported and categorized under other causal factor categories (such as "caught-in" or "caught-between"). Incorrect or incomplete categorization is particularly true for lockout related accidents, since many of the injuries are grouped under the more commonly used classifications such as, burns, electrocutions, lack of machine guarding or equipment failure.

OSHA also recognizes that there has been some underreporting of accident data—either inadvertent or intentional. As a result, OSHA believes that the data available represent only a portion of the total injuries and fatalities that have occurred. However, OSHA believes that the accidents which have been recorded or reported and investigated or studied as being "lockout related" provide a graphic illustration of the extent of the problem, the causal factors, the distribution of accidents in industry, and the type and severity of injuries resulting from those accidents.

There have been several studies conducted to determine the magnitude and extent of the problem. These studies were conducted by: (a) The U.S. Department of Labor, Bureau of Labor Statistics; (b) OSHA's Office of Data Analysis (formerly Office of Statistical Studies and Analysis); (c) the National Institute for Occupational Safety and Health (NIOSH); (d) OSHA's Office of Experimental Programs; and (e) OSHA's Office of Mechanical Engineering Safety Standards. During the hearing, the UAW provided detailed data on fatalities and injuries (Tr. p. H216, H253), which they expanded upon in their post-hearing submission (Ex./ 3–49). The studies are discussed in the following paragraphs.

A. *Bureau of Labor Statistics Work Injury Report Study.* The first study examined by OSHA was the Work Injury Report Study entitled "Injuries Related to Servicing Equipment" [Ex. 3–3]. This study is a compilation of reports of accidents and follow-up survey questionnaires sent out by the Bureau of Labor Statistics (BLS). The survey, conducted from August to November 1980, covered workers who were injured while cleaning, repairing, unjamming or performing other non-operating tasks on machines, equipment and electrical or piping systems. BLS identified accidents from 25 participating states, and mailed each of the injured employees a follow-up questionnaire containing inquiries about the specific details of his/her accident. There were 1,285 questionnaires sent out and 833 (approximately 65 percent) of the employees responded. Not all questions were responded to by all participants, since many of the questions related to situations which may not have been relevant to the circumstances of each injury. In some instances, many of the respondents also gave multiple responses to a single question.

Tables I through VI present tabulations of the results of the BLS Work Injury Report Study.

TABLE I.—INDUSTRY DISTRIBUTION—BY STANDARD INDUSTRIAL CLASSIFICATION (SIC) MAJOR DIVISION AND COMPANY SIZE

Industry	Workers	Percentages (¹)
Total	833	100
Div A—Agriculture, forestry and fishing	12	1
B—Mining	1	
C—Construction	35	4
D—Manufacturing	619	74
E—Transportation and public utilities	19	2
F—Wholesale trades	57	7
G—Retail trades	31	4
H—Finance, insurance and real estate	8	1
I—Services	43	5
J&K—Others	8	1
SIZE OF THE COMPANIES AT WHICH ACCIDENTS OCCURRED		
Total	(²)794	100
1 to 19 employees	159	20
20 to 49 employees	123	15
50 to 99 employees	120	15
100 to 499 employees	234	29
500 or more employees	158	20

(¹) Due to rounding, percentages may not add to 100.

(²) The total of each table represent the number of respondents answering the pertinent question(s) of the survey.

TABLE II.—OCCUPATIONAL DISTRIBUTION

Occupation	Workers	Percent
Total	833	100
Operatives, excluding transport	373	45
Craft and kindred workers	281	34
Laborers, excluding farm	94	11
Service workers, excluding private household	19	2
Clerical and kindred workers	19	2
Managers and administrators	13	2
Professional, technical & kindred	12	1
Transport equipment operators	10	1
Farm laborers and supervisors	8	1
Nonclassified	4	(¹)

(¹) Less then .5.

Note.—Due to rounding, percentages may not add to 100.

TABLE III.—ACTIVITY OF TIME OF ACCIDENT

	Workers	Percent
WHAT WAS EMPLOYEE DOING?		
Total	833	100
Unjamming object(s) from equipment	250	30
Cleaning equipment	245	29
Repairing equipment	77	9
Performing maintenance (oiling, etc.)	34	4
Installing equipment	13	2
Adjusting equipment	99	12
Doing set-up work	57	7
Performing electrical work	29	3
Inspecting equipment	15	2
Testing material or equipment	2	(¹)

(¹) Less than 0.5 percent.

TABLE IV.—CIRCUMSTANCES OF INJURIES

	Workers	Percent (¹)
HOW DID INJURIES OCCUR?		
Total	833	100
Injured by moving machine part	735	88
Injured by contact with energized electric parts	45	5
Injured by burners, hot liquids or other hazardous materials	29	3
Injured by falling machine parts	10	1
Other	14	2
WAS EQUIPMENT TURNED OFF BEFORE DOING TASK?		
Total	833	100
No	653	78
Yes	180	22
IF EQUIPMENT NOT TURNED OFF, REASON(S) GIVEN.		
Total	(²)592	(²)
Worker felt it would slow down production or take too long	112	19
Not required by company procedure	69	12
Worker did not know how to	6	1
Did not think it necessary	209	35
Task could not be done with power off	209	35
Worker did not realize power was on	62	10
Other reasons	61	10
IF EQUIPMENT WAS TURNED OFF:		
a. What happened at the time of injury?		
Total	176	100
Injured employee accidentally turned equipment on	20	11
Co-worker accidentally turned equipment on	15	9
Co-worker turned equipment on, not knowing equipment was being worked on	56	32
Equipment or material moved when jam-up cleared	9	5
Parts were still in motion (coasting)	30	17
Other reason	46	26
IF EQUIPMENT WAS TURNED OFF:		
b. Were additional steps taken to de-energize equipment?		
Total	(²) 160	(²)
No—not necessary	49	31
No—not required by company	23	14
No—would slow down production	8	5
No—worker did not have tools	4	2
No—other reason	20	13
No—reason not given	37	23
Disconnected main power	14	9
Tagged out equipment power controls	6	4
Locked out(³), installed blank flange or removed fuse	3	2
Disconnected electric line	5	3
Drained pressure or hazardous material	9	6
Other	11	6

(¹) Due to rounding, percentages may not add to 100.

(²) Because more than one response is possible, the sum of the responses and percentages may not equal the total number of persons who answered the question.

(³) The two accidents which occurred after the equipment was locked out took place because (1) the lockout had been done to the wrong power line and (2) a second power line had been spliced into the wiring beyond the lockout.

TABLE V.—TRAINING

	Workers	Percent
WAS LOCKOUT INSTRUCTION PROVIDED EMPLOYEES?		
Total	554	100
Yes	214	39
No	340	61
IF INSTRUCTION PROVIDED, IN WHAT FORM?		
Total	273	100
Provided printed instructions	25	9
Procedures posted on equipment	37	14
Instruction given as part of on-the-job training	176	64
Formal training given at meeting, etc.	28	10
Other	7	3
WHEN WAS LOCKOUT INSTRUCTION GIVEN?		
Total	(¹)186	(¹)100
After the accident	15	8
One to six months before accident	36	19
Six months to a year before accident	28	15
Upon hiring	84	45
Over a year before accident	60	32

(¹) Because more than one response is possible, the sum of the responses and percentages may not equal the total. Percentages are calculated by dividing each number of responses by the total number of persons who answered the question.

TABLE VI.—ESTIMATED LOST WORKDAYS

Number of lost workdays	Workers	Percent
Total	793	100
No time lost	107	13
1 to 5 workdays lost	132	17
6 to 10 workdays lost	95	12
11 to 15 workdays lost	75	9
16 to 20 workdays lost	47	6
21 to 25 workdays lost	47	6
26 to 30 workdays lost	50	6
31 to 40 workdays lost	49	6
41 to 60 workdays lost	54	7
More than 60 workdays lost	41	5
No indication of number of lost workdays	86	11

B. *Analysis of 83 Fatality Investigations by OSHA's Office of Data Analysis.* The second study examined by OSHA was the compilation of data from 83 fatality investigations conducted by OSHA between 1974 and 1980. This report is entitled, "Selected Occupational Fatalities Related to Lockout/Tagout Problems as Found in Reports of OSHA Fatality/Catastrophe Investigations" [Ex. 3–5]. All of these accidents were identified as having been caused by failure to properly deenergize machines, equipment or systems prior to performing maintenance, repairs or servicing.

Tables VII through IX present tabulations of the results of the OSHA analysis of 83 fatality investigations.

TABLE VII.—CAUSAL FACTORS

Cause	Number	Percent
Total	83	100
Lack of adherence to safe work practices (no procedure or failure to follow procedure)	21	25
Accidental or inadvertent activation	29	35
Failure to deactivate	21	25
Equipment failure	7	8
Other	5	6

NOTE.—Due to rounding, percentages may not add to 100.

TABLE VIII.—NUMBER OF INJURY

Agent	Number	Percent
Total	83	100
Agitators and mixers	12	14
Rolls and rollers	11	13
Conveyors and augers	11	13
Saws and cutters	11	13
Hoists	8	10
Earth moving equipment	6	7
Crushers and pulverizers	4	5
Forges and presses	4	5
Electrical apparatus	4	5
Vehicles	3	4
Other	9	11

TABLE IX.—EMPLOYEE ACTIVITY

Activity	Number	Percent
Total	83	100
Conducting normally assigned duties	69	83
Conducting other duties	14	17

In analyzing the 83 fatality investigation reports and assigning causes to each accident, no attempt was made to draw conclusions or inferences beyond the information contained in the reports. For example, if the employee was killed in operating machinery, unless the report stated otherwise, the cause of the accident was considered to be failure to shut off the machine, rather than a combination of causal factors such as failure to shut off the machine, failure to lockout, failure to document adequate procedures, and failure to provide sufficient employee training. Additionally, if a machine was found to be running, it was assumed that the employee failed to shut off the machine rather than that another employee restarted the machine.

C. *Analysis of 125 Fixed Machinery Fatalities by OSHA's Office of Data Analysis.* A separate study by OSHA's Office of Data Analysis is entitled "Occupational Fatalities Related to Fixed Machinery as Found in Reports of OSHA Fatality/Catastrophe Investigations" [Ex. 3–6]. This study contained an analysis of investigative reports of 125 fatalities involving fixed machinery which occurred between 1974 and 1976, and which were investigated by OSHA. The primary causal factors under which the accidents were classified were operating procedures, accidental activation, lack of machine deactivation, equipment failure, and other causes.

The following is a tabulation of the results of this study.

TABLE X.—CAUSAL FACTORS, OSHA ANALYSIS OF 125 FATAL ACCIDENTS

Causal factor	Number	Percent
Total	125	100
Failure to adhere to safe operating procedures	41	33
Accidental machine activation	31	25
Machine not deactivated	23	18
Equipment failure	21	17
Other	9	7

D. *National Institute for Occupational Safety and Health, Guidelines for Controlling Hazardous Energy During Maintenance and Servicing and Study of Hazardous Release of Energy Injuries in Ohio in 1983.* The next studies considered by OSHA were done by the National Institute for Occupational Safety and Health (NIOSH) [Ex. 4 and 2–80c]. In the first, fifty-nine out of a total of 300 accident reports were analyzed to illustrate situations in which adequate control of energy might have prevented the accidents. These case files were selected because they contained sufficient detail to enable NIOSH to evaluate the accidents and determine what countermeasures might have been available to prevent the accidents.

The report indicated that these types of accidents are preventable if effective energy control techniques are available, the workers are trained to use them, and management provides the motivation to ensure their use.

The following is a tabulation of the results of the first study.

TABLE XI.—CAUSAL FACTORS, NIOSH STUDY

Factor	Number	Percent
Total	59	100
Failure to de-energize machine or control energy	27	46
Accidental re-energization	25	42
Ineffective energy isolation	6	10
Disregarding residual energy	1	2

The NIOSH draft report, undated, entitled: "Study of Hazardous Release of Energy Injuries in Ohio in 1983." (Ex 2–80c).

This report contains information on 339 accidents which occurred in the state of Ohio in 1983. These accidents were selected because: (1) They fell into likely categories of industry, occupation, type of accident, source of injury and diagnosis of injury; (2) the worker's compensation claim narrative suggested applicability; and (3) questionnaire reponses by plant officials positively identified the injuries as resulting from an unexpected energy release during equipment repair, servicing or maintenance. The report defined an unexpected or unwanted release of energy "as when a press closes on an operator's hand or when steam escapes from a broken pressure line."

The "Ohio Study" was submitted by NIOSH in draft form. OSHA is not aware of whether the study results have since been finalized by NIOSH, or whether any further effort has been expended to follow-up on its findings. However, OSHA has evaluated the draft study and has determined that few definite conclusions can be drawn from the available data. For example, most of the injuries reported in the study (70%) occurred to production workers as a result of servicing which took place during normal production operations. Although the study indicated that firms where injuries occurred used tagout, it did not indicate whether either tagout or tagout procedures were applied in situations where production employees were performing servicing work, as well as maintenance employees. Without such information, it is not possible to determine whether the tagout procedure failed in situations where it was being applied, or whether tagout (or other type of employee protection, such as shutting down the equipment) was in use at the time of the accident. In addition, the study only considered the issue of locks versus tags, and did not evaluate the other elements of the lockout or tagout programs in place. As OSHA has emphasized, the adequacy of a program for the control of hazardous energy relies on much more than whether a lockout device or a tagout device issued on the energy isolating means. Therefore, the Agency has determined that the draft Ohio study raises many more questions than it answers, and that no solid conclusions can be drawn from the data provided to date. OSHA encourages NIOSH to continue its review and analysis of this study, and looks forward to receiving a final version of the study after a full evaluation and revision has been performed.

The following is a tabulation of the usable results of this study.

TABLE XII—TASK BEING PERFORMED AT TIME OF ACCIDENT

Task	Number	Percent
Unjamming object	84	25
Cleaning equipment	75	22
Repairing equipment	41	12
Adjusting equipment	41	12
Doing set-up work	27	8
Inspecting equipment	11	3
Testing equipment	9	3
Installing equipment	9	3
Electrical work	8	2
Other tasks	34	10
Total	339	100

TABLE XIII.—EQUIPMENT MODE WHEN INJURY OCCURRED

Equipment mode	Number	Percent
Production mode	230	70
Maintenance mode	99	30
Total	[1]329	100

[1] Ten respondents did not identify the equipment mode.

F. *Analyses of Fatality/Catastrophe Reports and General Duty Clause Citations by OSHA's Offices of Experimental Programs and Mechanical Engineering Safety Standards.*

There were two additional OSHA studies which were conducted jointly by the Office of Experimental Programs and the Office of Mechanical Engineering Safety Standards. These studies were compilations and analyses of OSHA Form 36 reports [Ex. 3–7] and OSHA 5(a)(1) citations [Ex. 3–8], respectively.

An OSHA Form 36 (Preliminary Fatality/Catastrophe Event Report) is prepared each time an Area Office is notified of a serious accident resulting either in a fatality or in serious injury to five or more employees that necessitates their hospitalization. This report is used to determine whether or not OSHA will conduct an investigation of the circumstances surrounding the accident. Since OSHA does not receive notification of all accidents resulting in a fatality or catastrophe, the total number of Form 36 reports received does not equal the total number of workplace fatalities and serious injuries which occurred during this study period. However, OSHA believes that the causes of, and the circumstances leading to, the accidents clearly demonstrate the nature and seriousness of lockout/tagout-related accidents.

The OSHA Form 36 study which analyzed data reported during the period 1982–1983 [Ex. 3–7], utilized a list of 443 fatalities. From these fatalities, all of which occurred in industries subject to the present regulations, it was determined that 36 (8.1 percent) would have been prevented by the use of an effective lockout or tagout procedure.

The second study [Ex. 3–8] used information developed by OSHA's Office of Mechanical Engineering Safety Standards which identified, categorized and recorded "general duty clause" (section 5(a)(1) of the OSHA Act) citations from 1979 to 1984. A general duty clause citation is issued when, during an inspection, a "recognized hazard" is detected which is causing or is likely to cause death or serious physical harm to an employee, but which is not addressed in an OSHA standard applicable to that industry.

The citations in the latter study have been broken down between maritime, construction, and general industry. The general industry citations were further subdivided to reflect the nature of the hazard which the citation addressed, such as hazardous materials or material handling. When there was special Agency interest in an industry or hazard, the citations were further broken down by industry sector (such as oil and gas well drilling).

From 1979 through 1984, 3,638 inspections were conducted which resulted in the issuance of general duty clause citations. Of these 3,638 inspections, there were 376 inspections in whcih the failure to control hazardous energy was cited. Hence, in approximately 10 percent of all inspections which resulted in the issuance of at least one General Duty clause citation, herein referred to as a 5(a)(1) citation, failure to lockout or tagout was identified. [Ex. 3–8]

The following is a tabulation of the breakdown of lockout citations by industry division.

TABLE XIV.—INDUSTRY PROFILE, OSHA 5(a)(1) LOCKOUT CITATIONS

Industry divisions	Number of citations	Percent
Total	376	100
A—Agriculture, forestry and fishing	2	.5
B—Mining	4	1.1
C—Construction	18	4.8
D—Manufacturing	310	82.4
E—Transportation and public utilities	11	2.9
F—Wholesale trades	14	3.7
G—Retail trades	5	1.3
H—Finance, insurance and real estate	0	0
I—Services	12	3.2
J—Public administration	0	0
K—Not otherwise classified	0	0
Unknown	0	0

Note.—Due to rounding, percentages may not add to 100.

At the hearing, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) testified that there were 74 fatalities which it referred to as "lockout fatalities," which had occurred to its members between 1973 and 1988 (Tr. H253). In response to requests at the hearing, the UAW provided additional information on these fatalities (Ex. 49E). (The number of "lockout fatalities" was revised to 72 in the post-hearing submission.) The post-hearing data reinforce OSHA's determination that fatalities from hazardous energy sources involve more than simply a failure to "lock out" machines or equipment. Of the 72 fatalities, UAW reported that there had been "inadequate training" in 49 cases (68%); "inadequate procedures" in 50 cases (69%); and "adequate, but unenforced procedures" in 19 cases (26%). Although OSHA agrees that lockout provides more security against reenergization of equipment than tagout, the Agency is convinced more than ever that there is much more to energy control than the question of lockout vs. tagout. The UAW data make a strong case for the need for OSHA to provide for proper energy control procedures and adequate training in those procedures.

In the proposal, OSHA estimated, based on BLS data, that lockout or tagout related fatalities represented 7% of the total number of occupational fatalities. In their post-hearing comment, the UAW indicated that for their workers, this figure is estimated to be 26%, and that OSHA should take this larger estimated percentage into account in its projections. The UAW also argued that its data base is larger than that used by OSHA, and that it is more reliable because of its national scope and inclusion of both large and small facilities. (Ex. 49A). OSHA appreciates the time and effort taken by the UAW in compiling such data and in submitting it to the rulemaking record. At the time of the proposal, the Agency acknowledged that its injury and fatality figures were likely to be understated for various reasons. Regardless of whose figures are used, there is little doubt that the failure to control hazardous energy sources exposes employees to a significant risk, and that this standard is necessary to reduce those risks.

IV. Basis for Agency Action

OSHA believes that there exists a sufficient body of data and information upon which a reasonable standard can be based to reduce the number of fatalities and injuries resulting from failure to utilize proper and adequate practices and procedures for the control of potentially hazardous energy. This position is based upon an analysis of the accident data available to OSHA, all of which is in the docket of this rulemaking proceeding.

Most accident reports break down the relevant information in accordance with the classifications contained in the American National Standards Institute, ANSI Z16.2, "Method of Recording Basic Facts Relating to the Nature and Occurrence of Work Injuries" [Ex. 3–11]. These classifications are: The nature of the injury, part of the body, source of the injury, accident type, hazardous condition, agent of injury and unsafe act. Many accident reports are generated primarily to document the occurrence of accidents and concentrate on the information which is necessary to process workers' compensation claims. For this reason, they tend to emphasize information about the injury rather than the events and conditions which caused the accidents. Therefore, most of the pertinent information identifying the nature and extent of the problem of controlling hazardous energy was gathered by OSHA by conducting the special studies referred to above. Because of the limitation on the available data, no single study in itself can be expected to provide conclusive support for comprehensive regulation of energy hazards. However, the studies and other available data, when considered as a whole, clearly indicate not only the scope and extent of the problem, but also the need for a comprehensive standard. The studies are consistent in their demonstration of the causative factors involved in lockout-related accidents, and they provide strong evidence for the potential effectiveness of OSHA's Final Rule in dealing with those factors.

OSHA believes that the hazards associated with the failure to control hazardous energy are widespread. The following table indicates the distribution, by industry, of the accidents reported in the Bureau of Labor Statistics (BLS) Work Injury Report Study (WIR) and in the OSHA 5(a)(1) study citations discussed earlier.

TABLE XV.—INDUSTRY PROFILE, BLS WIR AND OSHA 5(a)(1) CITATIONS

Industry (by division)	BLS	Percent	5(a)(1)	Percent
Total	833	100	376	100
A—Agriculture, forestry and fishing	12	1	2	.5
B—Mining	1		4	1.1
C—Construction	35	4	16	4.3
D—Manufacturing	619	74	310	82.4
E—Transportation and public utilities	19	2	11	2.9
F—Wholesale trades	57	7	14	3.7
G—Retail trades	31	4	5	1.3
H—Finance, insurance and real estate	8	1	0	0
I—Services	43	5	12	3.2
Other or unknown	6	1	0	0

Although employees in almost every industrial division are exposed to the hazards associated with the unexpected energization or start up of machines or equipment, or by the unanticipated release of stored energy, the preponderance of the accidents and injuries occur in Manufacturing (Division D). It should also be noted that Services (Division I), includes many employers who perform maintenance on equipment in manufacturing and other sectors covered by Part 1910.

In addition to the accidents which could occur when maintenance or servicing is being conducted, OSHA also identified some accidents which could occur while employees are lubricating, cleaning, unjamming or adjusting machines or equipment. These activities differ from other activities which are conducted during normal operation in that these activities can lead to the unexpected release of energy and are usually done only on an as-required basis. When these activities are being conducted during normal operations, the machine guarding required by other OSHA standards (that is, § 1910.212 for point of operation guarding and § 1910.219 for power transmission apparatus guarding) may afford the necessary and sufficient protection for the employees performing those activities. However, in many instances the employee must either remove guards or other safety devices or work under unusual circumstances which would subject the employee to a different or greater risk than would be encountered during normal production operations. In those instances OSHA believes that the machine or equipment must, if possible, be shut down and locked or tagged out to protect the employee from injury.

As noted earlier, OSHA's has evaluated section 5(a)(1) citations that were issued for failure to control hazardous energy, and has determined that this area accounts for about 10 percent of the serious hazards not presently covered by a specific OSHA standard. The seriousness of the hazard to be addressed by this standard is highlighted by the fact that section 5(a)(1) citations are issued only for recognized hazards which cause or are likely to cause death or serious physical harm. Similarly, the OSHA Form 36, also discussed above, is initiated only when OSHA is notified of deaths or multiple hospitalizations. Further analysis of the lost workday data from the BLS WIR indicates that the severity of injuries from failure to control hazardous energy sources (an average of 24 lost workdays per lost time injury) is much higher than the national industry-wide average of 16 lost workdays [Ex. 14].

In developing this Final Rule, OSHA has estimated the total numbers of fatalities, lost-workday injuries, and minor injuries attributable to lockout-related accidents. These estimates were based on an extrapolation of the available national data sources discussed earlier [Ex. 3, 5, 6, 7]. From these data the number of preventable accidents was determined. OSHA believes that the Final Rule will prevent 85% of the total numbers of injuries or fatalities from exposure to hazardous energy in the workplace. The Agency estimates that approximately 31,900 minor (non-lost-workday) injuries; 28,400 lost-workday injuries; and 122 fatalities per year (based on 1984 accident levels) will be prevented by this standard. (see Section on Regulatory Impact Analysis below). These estimates were derived by identifying the percentage of accidents in various data sources which were determined to be lockout-related and applying those percentages to the number of accidents. It was determined that two percent of all nonfatal accidents and 7.1 percent of all fatalities occurring in general industry related to failure to adequately control hazardous energy. In addition, the data indicate that the risk of accidents and injuries is independent of the number of employees in a particular workplace. This finding is predicated upon the distribution by size of the companies which employed the injured employees surveyed in the BLS WIR. In the survey, almost as many respondents (392, or 49 percent) reported that they were employed at facilities of 100 or more employees as those who were employed at facilities of less than 100 employees (402, or 51 percent).

Based upon analysis of all of the aforementioned evidence, OSHA believes that the failure to control hazardous energy results in a significant risk to employees. Further, the data clearly demonstrate that the consequences of an accident involving failure to lockout or tagout are more severe in terms of lost workdays than the average industrial accident. OSHA also believes that a significant risk from hazardous energy extends across many segments of general industry.

OSHA has also analyzed the studies to determine the underlying causes of the conditions which existed when lockout related accidents occurred. From this information, OSHA developed a list of measures which would have prevented most of the accidents in the studies, and used this list to devleop its proposed standard. It should be noted that the studies vary widely in the quantity and quality of the information provided for the reported accidents (different methods of reporting, and incompleteness of the findings of the causes of the accidents, for example). Therefore, professional judgment was used in the interpretation of the results of the studies, in order to provide a comprehensive evaluation of the data and to correlate the information on accident causation. While the numbers and percentages from all studies do not necessarily agree, the studies all indicate the existence and seriousness of the problems, and provide valuable information as to measures that are necessary to correct the problems. Tables XVI through XX below cover what OSHA believes are the major causal factors in lockout-related accidents, and indicate the prevalence of such factors as reflected in the different accident studies.

TABLE XVI.—SERVICING ACCIDENTS OCCURRING WHILE EQUIPMENT IS OPERATING

Study (total considered)	Number	Percent
BLS WIR (833)	653	78
OSHA analysis of 83 fatalities (83)	54	65
OSHA report of fixed machinery (125)	23	18
NIOSH study (59)	27	46

The reasons most often given in the BLS WIR for not turning off equipment prior to servicing were that it would take too long or slow down production; it was not required by the employer; it was not necessary; or the task could not be done with the equipment off.

As pointed out in the Hazards section of this Notice, just shutting off a machine, equipment or process may not completely control the hazardous energy. Even after a machine, equipment or process is shut down, residual energy may still be present in the form of moving components, spring or hydraulic pressure, the force of items which have become jammed in machine parts, or the energy which is stored in machine, equipment, or system components due to their position (potential energy).

TABLE XVII.—ACCIDENTS DUE TO FAILURE TO ENSURE POWER OFF

Study (total considered)	Number	Percent
BLS WIR—Failure to check for power on (592)	62	10
OSHA analysis of 83 fatalities (83)	5	6
NIOSH study (59)	6	10

The Hazards section of this Notice also discussed the fact that even though the machine, equipment or process has been shut down, and the residual energy controlled or dissipated, an employee can still be injured if the machine, equipment or process is restarted by either that employee or another employee. Injury can occur when an employee inadvertently contacts switches, valves or other controllers or when an employee activates the equipment without recognizing the reason it was shut off, inadvertently exposing other employees to a hazard.

TABLE XVIII.—ACCIDENTS DUE TO INADVERTENT ACTIVATION

Study (total considered)	Number	Percent
BLS WIR (176)	91	52
OSHA analysis of 83 fatalities (83)	29	35
OSHA report on fatalities related to fixed machinery (125)	31	25
NIOSH (59)	25	42

Clearly, it is insufficient simply to shut off machinery to conduct repair, maintenance or servicing. OSHA believes that some means must be utilized to ensure that employees are safeguarded during those operations.

After servicing, there is also the need to ensure that all guards have been replaced, that all tools and other extraneous materials have been removed from the machine, equipment or process, and that reenergizing and starting normal productions operations will not subject an employee to an increased potential for injury. This is especially true when the maintenance, repair or service is conducted at or near an employee's workstation.

OSHA believes that many of the problems of de-energization and reenergization of machines or equipment can be reduced by the employer's development and utilization of a program which incorporates a program which incorporates a standardized procedure for servicing/maintenance operations. The procedure would outline the necessary steps to be taken to prepare for, conduct, and complete servicing of equipment, and the program would provide employees with an understanding of the procedure and the reasons why it must be followed. A program can provide the details to be followed in performing servicing operations safely (the procedure), together with the training and motivation needed to assure that employees understand and implement those details.

TABLE XIX.—ACCIDENTS ATTRIBUTABLE TO EMPLOYER NOT HAVING OR EMPLOYEES NOT UTILIZING A PROCEDURE

Study (total considered)	Number	Percent
BLS WIR (653)	482	74
OSHA report on fatalities related to fixed machinery (125)	41	33

OSHA believes that employee understanding and utilization of a standardized procedure are critical to the success of a lockout or tagout program. Without these elements and commitment from management, the effectiveness of the program can be seriously compromised. Proper training in the procedure, and explanation of how it works and why, are crucial to its implementation by the employees. Even though there can be no exact quantification of the effects of training employees, the BLS WIR Study gives an indication of the effect of the *lack* of training in the necessary measures to be taken in deenergizing machines or equipment (see Table XX below).

TABLE XX.—LOCKOUT TRAINING OF INJURED EMPLOYEES, SOURCE: BLS WIR (FROM 613 RESPONSES)

Type of training	Number	Percent
Printed instruction	25	4
Procedures posted on equipment	37	6
Training at job orientation, at meetings, or otherwise	211	34
No training	340	55

Of those injured employees who had received training, 15 stated that their training had occurred *after* their accident. Additionally, 60 employees stated that they had received their training more than a year prior to the accident. Even though training has been provided at some time during employment, the length of time between the receipt of the training and the accident is a limiting factor on any beneficial effect that has been derived from the training. In the Final Rule, discussed below, OSHA recognizes the need for remedial or refresher training of those employees who must use the procedure, and that such retraining must be conducted at least annually.

Based upon an analysis of the rulemaking record, OSHA believes that the safe performance of activities such as repair, maintenance and servicing, requires the deenergization of machines or equipment whenever feasible. Further, in order to ensure that maintenance or servicing activities are conducted safety, a lockout or tagout procedure must be utilized. This procedure must call out the steps to be taken to deenergize the machine, equipment or process; to ensure that the deenergization is sufficiently complete; to dissipate or prevent the release of residual energy; to ensure that the machine, equipment or process cannot be reenergized accidentally or unexpectedly; and to ensure that the reenergization is accomplished safely. The establishment and utilization of this procedure must be coupled with sufficient initial and follow-up training to ensure the successful utilization of the procedure.

V. Major Issues

The evidence submitted to the record is summarized and evaluated in the following discussion of each major issue and in the Summary and Explanation of this Final Rule. The numbers in brackets refer to specific written comments (Ex. —) and to the transcript page number of the testimony presented at the public hearing (Tr. p. (W for Washington, DC and H for Houston, TX) —).

1. Should OSHA require the use of locks, locks and tags, or tags alone to control potentially hazardous energy?

The most vigorously contested issue was the need to use locks or tags as the primary means to prevent the accidental operation of energy isolating devices, such as electrical disconnects, hydraulic or pneumatic valves. The proposed standard did not establish definitive criteria for employers to use in making their choices of control measures, that is, the use of locks, tags or a combination of the two.

In general, a strong preference was evidenced in the comments and hearing testimony for locks. Many parties to this proceeding (Ex. 2-2, 2-12, 2-27, 2-29, 2-42, 2-44, 2-57, 2-63, 2-66, 2-67, 2-79, 2-98, 2-99, 2-103, 2-104, 2-106, 48, 50, 58, 59, 60, 62, 63, Tr. pg. W1-68, W1-71, W1-85, W1-138, W1-141, W1-143, W1-185, W1-192, W1-233, W1-241, W1-249, W2-80, W2-91, H30, H89, H96, H129, H136, H142, H149, H153) stated that the use of locks was the only acceptable means to control hazardous energy. Some of these commenters (Ex. 2-2, 2-44, 2-63, 2-79, 2-98) argued that the use of tags alone did not afford a minimum acceptable level of protection for employees since, as opposed to locks, they could be carelessly bypassed without major effort. Several commenters (Ex. 2-27, 2-29, 2-63, 2-104, Tr. pg. W1-75, H-225) stated that the unrestricted use of tags as the primary means of safeguarding employees during maintenance or servicing of machines and equipment would seriously erode the gains which had been achieved through past labor-management negotiations. Other commenters (Ex. 2-44, 2-57, 2-63, 2-79, 2-98, 2-99, Tr. pg. W1-71, W1-72, H-220) stated that tags were susceptible to being lost or damaged in use due to environmental conditions in the workplace or by contact by employees, materials or equipment moving or being moved about the workplace. These commenters stated that tags only "warn" and that they are a label, not a safety device. Other commenters (Ex. 2-106, Tr. pg. W1-72) stated a view that, the use of tags also promotes a false sense of security among employees and that the accident rate when tags alone are used is higher than when not using any safeguard.

One participant, an employee of Armco Steel (Tr. pg. W2-91), stated that his employer had discontinued the use of tags in favor of locks. He contended that the Company realized that the use of tags alone was not effective in preventing accidents.

Finally, several commenters (Ex. 2-42, 2-79, 2-98, 2-106, Tr. pg. W1-72, W1-138, W1-140, H98, H129, H163) stated that tags can be easily defeated by negligence or ignorance and that the use of tags will not deter the willful misconduct of the employee who would ignore the message of the tag, that is, not to reenergize or restart a machine or piece of equipment.

The record contains a significant body of evidence which indicates that the "one person, one lock, one key" concept enjoys wide acceptance across industry lines. For example, the United Auto Workers provided comments (Ex. 2-24, 20) and testimony (Tr. pg. H215-354) on the use of this concept in the automotive industry. Monsanto Company stated (Ex. 3-52, attachment II) that this form of lockout protection represented their basic approach to lockout/tagout. Monsanto indicated that tagout is only used in situations "where the work is relatively low hazard and the person is in control of the energy source," such as light switches, some valves, and some plug and cord connected equipment. Monsanto also noted that group lockout is used for equipment which requires a relatively large number of servicing workers, with a large number of points to be locked out.

On the other hand, several commenters (Ex. 2-33, 2-55, 2-94, 2-96, 2-102, 2-105, and Tr. pg. W1-144, H197) stated that their companies utilize a system of tags to ensure that equipment which has been shut down will not be reenergized or restarted. One of these commenters (Tr. pg. H198) stated that the tagout system utilized by his company is "well understood by all employees. In fact, we feel so strongly about our red/danger tag procedures that we require mandatory discipline for its violation." The company submitted its safety record as support for its assertion that its tagout program is effective. The employees of this company have worked over 488 million hours between January 1980 and September 1988 with only 130 lost time accidents. Of those 130 accidents, only one occurred which was marginally related to tagout. That one accident occurred because there was no valve to guard against the transfer of heat through another closed and tagged valve. Finally this commenter stated, "The key to safety is not in a specific device, be it tag or lock. [Safety] rather, lies in good procedures and careful training combined with assurance of accountability. If these three principles are in place, a system which uses tags only will adequately protect employees. A lockout requirement in addition to tagout will not assure greater safety." (Tr. pg. H199.)

Even 2 commenters (Ex. 2-67, Tr. pg. W1-75, W1-167), who spoke out against the use of tags admitted that there might be instances in which lockout would be either impractical or impossible. However, one commenter (Tr. pg. W1-97) stated that problems, such as the loss of computer memory by shutting off automated equipment, could be overcome. Retention of the computer memory could be accomplished by providing a separate energy source for the computer so that the energy used to power the movable portions of the mechanism could be shut off and locked out without affecting the computer memory. This commenter stated that other innovative means are possible for solving other similar problems.

Other commenters (Tr. pg. W1-139, W1-157) stated that there is no data available on accidents which have occurred when machines or equipment are tagged out.

Several commenters (Tr. pg. W1-105, W1-139, W1-164) suggested tagging should be used only with an increased

emphasis on training, supervision, controlled access and employer commitment.

Much of the testimony and comment received in this rulemaking has focused on whether the standard should require lockout as opposed to the proposed approach of allowing lockout or tagout. In a sense, it was unfortunate that attention was focused more on a single aspect of the standard, though it is certainly an important one, than on the standard taken as a whole. The proposed standard was intended to specify that the employer provide a comprehensive set of procedures for addressing the hazards of unexpected reenergization of equipment, and the use of locks and/or tags was intended to be only a single element of the total program. In order to provide adequate protection to employees, the Final Rule, as did the proposal, requires employers to develop and utilize a comprehensive energy control program consisting of the development and utilization or procedures and training of employees. The procedures must consist of steps for deenergization of equipment, isolation of the equipment from energy sources, and verification of deenergization before servicing and maintenance is performed on equipment, and the employees who either perform the servicing or maintenance or are affected by those operations must be properly trained in the energy control procedures which apply to their work.

It should be noted that locks and tags by themselves do not control hazardous energy. It is the isolation of the equipment from the energy source and the following of the established procedures for deenergization and reenergization of the equipment that actually controls the energy. Locks and/or tags are attached to the disconnects and other energy isolating mechanisms after the machine or equipment has, in fact, been isolated, in order to prevent them from being reenergized before the work has been completed. If the equipment has not been properly deenergized, and if proper procedures have not been followed, neither a lock nor a tag will provide protection.

The treatment of lockout vs. tagout presents OSHA with a difficult regulatory dilemma. On the one hand, if the issue were simply whether a lock or a tag will be better able to prevent equipment from being reactivated, there is no question that a lock would be the preferred method. Locks are positive restraints which cannot be removed (except through extraordinary means such as bolt-cutters) without the use of a key or other unlocking mechanism. By contrast, the limitations of tags used alone are self-evident: They do not serve as positive restraints on energy isolating devices, but are only warnings to employees that the equipment is not to be reenergized. Tags not fastened with a strong material can become detached from the energy isolating device by wind or other environmental conditions, and the legend on some tags can be rendered illegible if the tag becomes wet. Tags may not provide protection if there are affected employees who do not read English or who have not been properly trained in the tagging system and its implementation.

However, the issue in this rulemaking is not merely on the use of lockout vs. tagout, but rather the use of locks and/or tags in a comprehensive program of energy control. As was noted in the preamble of the proposed rule (53 FR 15496, April 29, 1988), OSHA is aware of workplaces in which tagout systems are used with great effectiveness. In particular, various electric utilities and chemical plants report that they have used tagout in lieu of lockout successfully for many years (cf. Tr. H194-214; W2.2-3—2-39). In evaluating these industries, OSHA has determined that there are several factors which have contributed to their successful use of tagout programs: first, these companies have implemented detailed energy control procedures which are quite similar to those set forth in both the proposed and final lockout/tagout standard; second, they have established and utilized extensive training programs to teach their employees about their energy control procedures, including the use of tags and the importance of obeying them; third, these companies reinforce their training periodically. However, it is the fourth common element, discipline, which appears to be the most critical to the success of these programs; the companies with effective tagout programs apply various types of disciplinary action to both supervisors and employees who violate the tagout procedures.

OSHA believes that an effective tagout system needs all four of these elements to be successful. However, it is the fourth element, discipline, which is the most difficult to incorporate into a regulatory approach in the Final Rule. Not surprisingly, it also reflects the most serious limitation of tagout which does not arise with lockout. Because a tagout program does not involve positive restraints on energy control devices, it requires constant vigilance to assure that tags are properly applied; that they remain affixed throughout the servicing and maintenance of equipment; and that no employee violates the tag by reenergizing the equipment, either intentionally or inadvertently, before the tag is removed. By contrast, a lockout device, once applied, cannot inadvertently be removed, and cannot be removed intentionally by an unauthorized person except by the use of force.

In the Final Rule, OSHA has determined that lockout is a surer means of assuring deenergization of equipment than tagout, and that it should be the preferred method used by employees. However, the Agency also recognizes that tagout will nonetheless need to be used instead of lockout where the energy control device cannot accept a locking device. Where an energy control device has been designed to be lockable, the standard requires that lockout be used unless tagout can be shown to provide "full employee protection," that is, protection equivalent to lockout. These requirements will be discussed in detail in the summary and explanation of the standard, below.

The Agency believes that except for limited situations, the use of lockout devices will provide employees with a more secure and more effective means of assuring that equipment will not be reenergized while they are working on it. To the extent that equipment is capable of being locked out during servicing or maintenance, OSHA believes that it should be locked out. It should be noted, in this regard, that a number of General Industry standards, such as § 1910.305(j)(4) in Subpart S-Electrical, presently require electrical disconnects to large motors to be capable of being locked out.

According to OSHA's Regulatory Impact Analysis, approximately 90% of all electrical energy isolating devices (disconnects) and about ⅔ of all energy control valves are currently capable of being locked out. As previously discussed, the capability for lockout does not necessarily mean that the equipment has an actual hasp or other physical attachment point for a lock. For example, the use of chains can be an effective means of facilitating lockout of many types of valves, even if the valve does not have a specific locking point. Many examples of equipment which was made lockable with minor modifications have been provided to the record. For equipment of this type, OSHA believes that the lockout capability should be used in order to maximize the protection afforded by this standard.

OSHA also acknowledges that certain types of energy isolating devices currently in place are not capable of being locked out. Such equipment would need to be replaced with or modified significantly to accept locking-type mechanisms in order to become capable of being locked out. This equipment constitutes a relatively small percentage of all equipment to be covered by this standard, and will primarily involve valves rather than electrical disconnects. OSHA believes that where equipment replacement and major equipment modification would be necessary for the equipment to accommodate a lockout device, such efforts are most effectively and efficiently achieved as part of the normal replacement cycle for the equipment, rather than through a specific requirement for retrofitting within a set time frame in this standard. OSHA believes that it is much more cost-effective and protective to design a locking capability into equipment than it is to perform a major retrofitting of that equipment solely to incorporate lockout, for several reasons. First, there are situations in which locking out of equipment can create other, and sometimes greater, hazards to employees. The retrofitting of such equipment for the sole purpose of incorporating a lockout capability would not necessarily deal with the additional hazards. By contrast, the incorporation of a lockout means into the design of new equipment is far less costly than modifying equipment which was not designed to be locked out. Third, incorporating a lockout capability into either new or overhauled equipment is a far less complex task from a technological standpoint, since the locking aspect is a small part of the overall design.

Surprisingly, although there was considerable evidence submitted on equipment for which lockout is currently being used, this rulemaking provided OSHA with little new information on the costs or feasibility of extending lockout requirements to equipment which is not currently capable of being locked out. Therefore, OSHA is unable to conclude with any degree of certainty that a requirement to retrofit all such equipment would be feasible, nor is the Agency able to determine the amount of time or resources that would need to be expended to achieve compliance. For such equipment, OSHA will allow employers to use the less restrictive tagout programs, but only until the equipment is replaced, or until major rehabilitation or modification is performed on it. At that time, the new, overhauled, or modified equipment must be equipped with lockout-capable energy isolating devices, and the energy control procedure for the servicing of that equipment must be revised to make use of that capability, except if the employer can demonstrate that tagout will provide equivalent protection.

OSHA is confident that this standard is a cost-effective approach to providing protection against hazardous energy sources. It recognizes that lockout is, in general, preferable to tagout as a method of assuring that deenergized equipment is not inadvertently or accidentally reenergized. It requires that the employer develop and implement an energy control program and procedure for servicing and maintenance of machinery and equipment, using lockout or its equivalent on the great majority of energy isolating devices, namely those which are currently capable of being locked out. For energy isolating devices which do not yet have a lockout capability, the standard allows the interim use of tagout, but lockout-capable energy isolating devices must be installed when that equipment is replaced or overhauled. The standard is written in performance-oriented language, providing considerable flexibility for employers to tailor their energy control programs and procedures to their particular circumstances and working conditions. OSHA is confident that this standard will greatly reduce the toll of injuries and fatalities which occur each year from the failure to control hazardous energy in general industry workplaces.

A critical element of this standard is the determination of whether an energy isolating device is "capable of being locked out." In its most limited sense, a device would be considered to be "capable of being locked out" either if it was designed with a hasp or other integral part to which or through which a lock could be affixed, or if it has a locking mechanism built into it. However, OSHA's use of the term for the purposes of this standard is somewhat broader, without being overly expansive. OSHA considers equipment to be capable of being locked out if the use of a locking mechanism will not require the employer to dismantle, rebuild, replace, or alter in a permanent way the energy control capability of the isolating device. For example, although some valves and other energy isolating devices are not designed with an integral means of being locked, they can be secured with chains, blocking braces or wedges, which then can be locked. Because extensive equipment modification is not needed in this situation, OSHA views this type of lockout to be both technologically and economically feasible. However, a specific energy isolating device is not considered as having the capability of being locked out if the device is installed within a single cabinet, enclosure or cutout box containing several other energy isolating devices or valves and where the only preventing access to the energy isolating device or valve can be locked out individually, tags must be used and must be attached to the specific energy isolating device and not simply attached to the cabinet or enclosure door or cover. By contrast, as noted earlier, some types of valves and disconnects would require total or partial replacement in order to provide the equipment with a lockout capability.

2. Should OSHA require employee participation in the development of lockout procedures and the training programs required by this standard?

There was considerable comment on the part of labor unions (Ex. 2-29, 2-44, 2-63, 60) and other commenters (Ex. 2-92, 2-97) that OSHA should require that employees and employee representatives participate in the formulation and implementation of lockout programs (compliance plans, procedures, persons to conduct inspections, education and training programs and materials). These commenters also stated that any comments by employee representatives should be incorporated into the training programs. One commenter (Ex. 2-63) stated, "The standard does not prescribe worker participation in program design and training which is essential to an effective program." Another commenter (Ex. 2-97) stated, "Procedures cannot be written in a vacuum and must be accepted by employees, training must be appropriate and up-to-date for the situation." Finally, one commenter (Ex. 2-97) stated, "An effective lockout program must provide for employee participation and their representatives in program design and training."

OSHA has determined that a specific provision dealing with employee participation in the development of the employer's lockout or tagout procedure is not necessary for the effective implementation of the Final Rule. For standards dealing with exposure to toxic substances and harmful physical agents under section 6(b)(5) of the OSH Act, section 8(c)(3) of the Act spells out specific requirements for employee involvement in compliance activity. In particular, it requires that employees or their representatives have the opportunity to observe air monitoring and to have access to monitoring records. By contrast, there is no such specific statutory mandate for the

present standard. Although OSHA agrees that active employee involvement may enhance understanding and cooperation, the Agency believes that it would be inappropriate to require such involvement in this standard. The standard sets out the procedures and steps which the employer must take to establish and implement an effective procedure for controlling hazardous energy, and under the OSH Act, it is the employer who is responsible for complying with the standard.

3. Should OSHA change the scope and application statements of this standard in this Final Rule to cover construction, maritime, agriculture, electric utility, and oil and gas well drilling industries?

In the Notice of Proposed Rulemaking for the standard on the control of hazardous energy sources (Lockout/Tagout) (53 FR 15496, 29 April 1988), OSHA proposed exempting the construction, maritime and agricultural industries. In the preamble of the proposed rule, OSHA explained that the exemption of these industries was based upon their unique situations and work practices which would unduly complicate the development of a generic energy control standard for general industry. For example, the longshoring and the construction industries are generally characterized by casual (short term) employment which may last just until the project for which the employees were hired is completed. The project may involve the erection of a single building or the loading or unloading of a single vessel. Even on longer duration construction projects, the various tasks, such as steel erection or brick laying, are usually of relatively short duration. One commenter (Ex. 2-80), in discussing the need for regulation of the construction industry, pointed out the difficulty of providing adequate training of a transient workforce. Likewise, the agricultural industries can be characterized as ones which have more rapidly changing employment. For example, agricultural harvesting (and its employment of migrant workers) and the use of harvesting machines are limited to those times when crops are ready to be harvested.

Of additional concern in the imposition of regulations in the construction industry is the uniqueness of the earthmoving equipment, such as lattice boom mobile cranes, front-end loaders, bulldozers, scrappers and dump trucks. As opposed to maintenance on automobiles, buses and over-the-road trucks where removal of the ignition key usually ensures that the engine can not be started and the vehicle may be worked upon, some of the maintenance of the above mentioned earth moving equipment involves the positioning of components, such as buckets, blades and machine body parts, which present extraordinary hazards to maintenance or servicing personnel. These hazards and the means to minimize the potential for injury to employees involve additional considerations, which were not adequately addressed during the course of the rulemaking proceeding.

Because of the unique nature of these industries, their respective workforces and working conditions, OSHA believes that this Final Rule might need considerable modification in order to provide optimal protection to employees. In particular, OSHA is concerned with the effectiveness of the basic approach of this standard when applied to a workforce which is highly transient. The energy control procedure may vary widely from one workplace to another, and an employee in construction, for example, may find him/herself in several workplaces during the course of a single year. Similarly, the Agency will evaluate means by which the training requirements of this standard could be modified to reflect these conditions.

The Agency currently intends to consult with the Advisory Committee for Construction Safety and Health (ACCSH) on a proposed lockout-tagout standard for construction under section 107 of the Construction Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333. In addition, for the maritime industry, OSHA intends to present these matters to the Shipyard Employment Standards Advisory Committee (SESAC) for consideration as part of that Committee's review of shipyard standards in part 1915.

OSHA has determined that the Final Rule will cover General Industry, but will not be expanded to cover construction, maritime and agriculture at this time. The Agency has inadequate information at this time on both the hazards of lockout or tagout and the appropriateness of this standard's approach in those industry sectors. However, the Agency will continue to review information on these sectors and will evaluate the need to initiate further rulemaking and will consider whether this Final Rule, or an appropriate modification of same, should be used as the basis for a proposal for construction, maritime and agriculture.

There are several commenters (Ex. 2-27, 2-49, 2-57, 2-76, 2-79, 2-99, 2-106, 60), who were opposed to exempting any industry. Their concern was that the hazards associated with failure to lockout during the maintenance or servicing of machines or equipment were not restricted to a single industry or group of industries. It is their contention that this standard should have universal application. On the other side of the question, there was one commenter (Ex. 2-58) who agreed with the exclusion of these industries.

It should be noted that OSHA's electrical standards for construction (29 CFR part 1926, subpart K), which were revised on July 11, 1986 (51 FR 25318), currently contain various requirements for deactivating equipment, deenergizing electrical circuits, and limiting employee access to energized parts in construction work (e.g., §§ 1926.403(j), 1926.416, 1926.417). Similarly, OSHA's shipyard and marine terminal standards (29 CFR parts 1915 and 1917, respectively) include many provisions which address deenergization of equipment during servicing of equipment on vessels and in marine terminals (e.g., §§ 1915.162-.165, 1915.181, 1917.48(i), 1917.151(b).

Based on its experience in regulating construction and maritime employment, OSHA believes that a generic energy control standard would likely be applied quite differently in these areas than in general industry. Further, the interrelationship between a generic rule and the specific provisions currently applicable to these industry sectors must be considered. In its consultations with its advisory committee on construction and shipyard employment, OSHA will seek guidance on whether a generic rule would be appropriate for these industries; on what areas in which such a rule should differ from the general industry standard being issued today; and on the reasons for any such differences.

OSHA is no less concerned with the safety of these other employees. However, delaying the promulgation of this generic, general industry standard to examine all the unique aspects of these other industries would further delay the promulgation of this standard. There were five commenters (Ex. 2-22, 2-26, 2-45, 2-52 and 2-81) who recommended the exclusion of the natural gas transmission industry from the scope of this standard. Their contention was that OSHA would be preempted under section (4)(b)(1) of the Act from enforcement of this standard since the U.S. Department of Transportation has regulations affecting the gas transmission industry. Section (4)(b)(1) of the Act states:

> Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies and State agencies, acting under section 274 of the

Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

OSHA recognizes the possibility that its lockout or tagout standard may be preempted under section 4(b)(1) of the OSH Act by other Federal agency actions, such as regulations issued by the Department of Transportation's Division of Pipeline Safety. Section 4 (b)(1) provides that when another Federal agency exercises statutory authority over working conditions, that exercise of authority will preempt OSHA from covering those same working conditions. However, OSHA declines to incorporate a specific provision on preemption into this standard for two reasons: first, whether or not preemption takes place for a given working condition is a matter of law, to be evaluated in a case-by-case determination. Second, even in the event that preemption takes place, if the preempting agency were to choose to revoke its regulations or other exercise of authority, there would no longer be any preemption. Inclusion of a preemption provision by OSHA in a particular safety or health standard would inappropriately prevent OSHA from asserting its authority under the OSH Act in that situation.

There were five commenters (Ex. 2–21, 2–36, 2–40, 2–46 and 2–50–20), who discussed the application of this standard to the petroleum industry. Four of those commenters (Ex. 2–21, 2–36, 2–40 and 2–46) stated that OSHA should not try to "force fit" a machinery standard to process systems and piping networks; that OSHA should not expand the scope of the consensus standard; and that, if necessary, OSHA should develop a separate standard for process piping. (There was universal agreement on the part of these industry commenters that this standard did properly apply to the machinery elements of the process piping systems.) On the other hand, one commenter (Ex. 2–50) spoke out in favor of this OSHA standard to piping systems.

There were two commenters from the petroleum industry (Ex. 2–21 and 2–46) and one commenter from the chemical industry (Ex. 2–59) who objected to the use of a written lockout or tagout procedure as specified in the proposed Standard. These commenters stated that they use a work permit or work authorization system. The safe work permit checklist enclosed with one comment (Ex. 2–59) has provisions for the use of blinds and disconnecting pipes, and for extensive post isolating cleaning and testing. At the Houston segment of the hearing, the representative of the American Petroleum Institute acknowledged that the work authorization system was not inconsistent with the procedures set forth in the proposal. (Tr. p. H64). (OSHA agrees that a work permit checklist system or work authorization system could serve as the required written procedure as long as it meets the criteria for a procedure spelled out in this Final Rule.)

In their comments to the record, the American Petroleum Institute (API) restated their view that the lockout/tagout rule was not designed to regulate piping networks and process systems (Ex. 2–36). OSHA recognizes that the energy sources and control methods used in process hazards management are often quite different from those encountered with machinery and mechanical equipment. However, the Agency considers the basic approach of this standard to be appropriate for the control of all hazardous energy sources, including those discussed by API. Indeed, many, if not all, of the elements covered in the standard are addressed by the "work authorization procedures" commonly used throughout the petroleum and chemical industries. These procedures, which focus upon the issuance of work permits or permits for safe entry into piping systems, were acknowledged at the hearings to be consistent with the procedures set forth in the proposed rule. The primary area which warrants further explanation involves the different means used to isolate the energy in piping and process systems, and how they relate to the lockout or tagout requirements of this standard.

According to one commenter (Ex. 20), the procedural steps required for safe performance of process system maintenance are: (1) Deactivation, (2) removing contents, (3) isolation, (4) decontamination, (5) restraining, (6) verification, (7) control and (8) communication. In contrast, this standard sets forth five steps for lockout or tagout: (1) Equipment shutdown, (2) isolation, (3) lockout or tagout application, (4) stored energy restrictions, and (5) verification. However, these five steps encompass all elements of process system deenergization as well. For example, deactivation of a process system is analogous to equipment shutdown. Similarly, removing the contents of the piping system and isolation of the energy source can be compared to isolation and lockout or tagout of a machine or equipment, and decontamination and restraining in piping systems is essentially the same as restraining or minimizing the stored energy of machines and equipment. Finally, verification of the success of prior steps of a piping system isolation is the same as verification of proper implementation of the energy control program. OSHA acknowledges that when there are additional steps specific to the preparation for maintenance of piping systems, these steps would also need to be included in an employer's energy control program.

Based upon the foregoing comparison, OSHA believes that the imposition of the requirements of this standard (particularly the need for a standardized procedure) is not a "force fit" but the logical "tailoring" of the steps to a different type of equipment. Based upon the generic nature of this standard, OSHA recognizes that some modifications or "tailoring" of the requirements of this standard may be necessary, but the basic procedural provisions of the standard are designed to be used throughout general industry, in a wide range of applications.

Two commenters (Ex. 2–21 and 57) pointed out that some of the items listed in the definition of energy isolating devices (notably the blank flange and bolted slip blind) can require at least as much effort to remove as locks. These commenters pointed out that removal of these devices, when they are properly bolted in place, requires wrenches to disassemble the nuts and bolts holding the blank flange or blind. The use of these wrenches is comparable to using bolt cutters to remove a lock. Although the wrenches used for removing the nuts and bolts from the flanges may be more readily available with a piping system than a pair of bolt cutters in the average workplace, the time to remove the nuts and bolts would surpass the time to remove a lock. OSHA believes that this type of bolted system will provide comparable security against the release of hazardous energy in the system, even though a "lock" is not used. Based upon the above rationale, OSHA will consider bolted blank flanges or slip blinds to be an acceptable type of lockout/tagout device. As with all devices, these bolted systems must be used as part of a standardized, documented procedure, and they must meet the other requirements of the standard for lockout or tagout devices (that is, they must be durable, standardized, substantial and identifiable.)

If bolted flanges or slip blinds are used, a means must be devised so that each authorized employee can be identified as a participant in the project when he/she is working on it. For example, individual identification can be achieved by each authorized

employee hanging his/her tag on the blank flange or the slip blind when he/she starts work and removing his/her tag when he/she stops work. The tag in this case would supplement the locking mechanism of the bolts on the flanges or slip blinds.

The applicable consensus standard (ANSI Z244.1)(Ex. 9) has been reviewed for its applicability to process systems. It is clear from this review that this consensus standard was intended to apply to machines, equipment and processes. The definition of energy isolating device contains examples which include slip blinds, blank flanges, line valves and similar devices. These are devices used for energy isolation in piping systems.

OSHA believes that the employees working on the piping portions of processes deserve no less protection then when those same employees work on the mechanical components of the same systems. The advantage of writing this OSHA standard in performance language is to allow flexibility of compliance for all systems in which hazardous energy is or may be present. OSHA has used this approach to the formulation of this standard because of the wide range of energy control situations encountered throughout general industry.

OSHA also proposed to exclude from coverage of this standard certain installations under the exclusive control of electric utilities, as well as oil and gas well drilling operations. These industrial sectors were proposed to be exempted from this standard because lockout will be uniquely addressed for these industries in other proposed standards. In both cases, OSHA is actively working on projects to cover the special safety needs of these industries. (See 54 FR 4974, January 31, 1989 for the Proposed Standard on Electric Power Generation, Transmission, and Distribution.)

4. Should OSHA state the requirements of this final standard in performance language?

There were two commenters (Ex. 2–27, 2–29, and 2–91) who objected to the use of performance language in the proposed standard. Their objections were based upon the fact that, without specific requirements, employers would be allowed too much discretion in the means or methods that they utilize in complying with the standard.

There were 11 commenters (2–31, 2–34, 2–36, 2–37, 2–38, 2–46, 2–55, 2–57, 2–59, 2–62, 2–69, and 2–87) who favored the use of performance language in the standard. These commenters pointed out that the standard covers a vast segment of industry (both in size and type of companies) and type of operations. It is their contention that the use of performance language allows a degree of latitude to employers to "tailor" the required procedures, training requirements, and inspection parameters of the standard to fit the individual conditions present in their workplaces.

OSHA concurs with those commenters who stressed the need for flexibility in the standard. For example, the detail into which a procedure may have to go may vary depending upon the type of power the machine or equipment may utilize or the means used to isolate or block the machine or equipment from the source of power. The amount of detail in a procedure for shutting down a simple conveyor with a signal source of power, and single feed and discharge points, could be much less than the procedure for shutting down a long assembly line conveyor with multiple feed and discharge points, one which has many employees working about the conveyor. The use of multiple sources of power applied to the machine or equipment at multiple points would necessarily cause the complexity of the procedure to be enhanced.

Finally, the OSH Act, in discussing the promulgation of standards, states in the second sentence of section 6(b)(5), "Whenever practical, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired."

Based upon the foregoing, OSHA has decided to retain the performance language in this final standard.

VI. Summary of Explanation of the Final Standard

There were 108 comments and 64 exhibits placed in the record of the Proposed Standard for the Control of Hazardous Energy Sources (Lockout/Tagout) (53 FR 15496, April 29, 1988) and 16 parties participated in the public hearing. There was general agreement on the need for a comprehensive standard (Exhibits (Exs.) 2–1, 2–3, 2–4, 2–5, 2–8, 2–9, 2–12, 2–13, 2–21, 2–27, 2–29, 2–34, 2–36, 2–38, 2–39, 2–40, 2–42, 2–50, 2–52, 2–53, 2–55, 2–59, 2–64, 2–69, 2–70, 2–72, 2–73, 2–74, 2–75, 2–77, 2–78, 2–79, 2–80, 2–85, 2–87, 2–91, 2–95, 2–98, 2–100, 2–105, 2–106) with the major discussion centering around the form and the content that the Final Rules should take.

As previously discussed (see section entitled "Major Issues" above) OSHA has determined that the use of lockout for the control of hazardous energy is the more positive means of ensuring employee safety. The fuse of tagout, in lieu of lockout, requires the addition of certain elements of the program and the reinforcement of others to provide full employee protection.

This standard requires the adoption and utilization of standardized procedures and the implementation of safe work practices for the control of potentially hazardous energy during servicing and maintenance activities. It also requires the training of employees in the use of these practices and procedures. An Appendix is provided to serve as an aid in complying with the requirements of this section.

In paragraph (a), OSHA defines the scope, application and purpose of this Standard for the control of hazardous energy (lockout or tagout). The standard covers servicing and maintenance in general industry where the unexpected energization or start-up of machines or equipment or the release of stored energy could cause injury to employees. This Final Rule does not contain specifications which must be followed in all circumstances, but, rather, provides flexibility for each employer to develop a program and procedure which meets the needs of the particular workplace and the particular types of machines and equipment being maintained or serviced.

In their post-hearing comment, (Ex. 60) the AFL–CIO suggest adding the word "processes" to the words "machinery" and "equipment," to clarify that the standard is intended to cover piping systems as well as machinery and equipment. As discussed earlier, OSHA agrees that processes are covered by the standard, although the Agency felt that the use of the term "equipment" in the proposal was broad enough to cover all types of equipment, including process equipment. Further, had process and piping equipment not been within the scope of the standard, it would have been unnecessary to include a separate provision for "hot tap" operations, which are performed almost exclusively on process and piping equipment. However, in response to the comments, and as discussed elsewhere in this preamble, OSHA has revised several of the proposed provisions in the standard to refer directly to piping and process hazards and some of the unique aspects of controlling those hazards in the context of this generic rule. For example, many servicing operations involving process equipment utilize blinds and blank flanges as means of controlling hazardous energy in the process system. These blinds and flanges can be bolted in place, a method of securing which does not involve an actual lock, but which would be of comparable or greater difficulty to defeat either intentionally or inadvertently. OSHA believes that the bolting of blinds and flanges should be considered to be a "locking device" for the purposes of the standard, and has modified its proposed definition to reflect this determination. Since the standard requires locking devices to identify the person that affixes them, the employer will need to use a supplemental tagout device on the bolted blinds and flanges to meet this requirement.

For the reasons discussed in the section entitled, "Major Issues", above, OSHA has determined that the present rulemaking effort should be limited in scope to general industry. Development of appropriate requirements for the control of hazardous energy procedures for construction, maritime, and agricultural employments will be considered for future rulemaking proceedings.

Secondly, OSHA has determined that certain installations under the exclusive control of electric utilities, as defined in paragraph (a)(1)(ii)(B), are not to be covered by this rule. These installations are intended to be covered separately by a new section, § 1910.269, "Electric Power Generation, Transmission and Distribution," which OSHA proposed on Junuary 31, 1988 (54 FR 4974). Because of the nature of these electrical utility operations, § 1910.269 will tailor the key provisions of this standard on lockout or tagout to meet the special safety needs of that industry. However, non-utility employers and workplaces that are engaged in the activities of power generation, transmission and distribution *are* covered by this standard and are not within the intended scope of § 1910.269. Whether or not this suggested demarcation is reasonable is an issue which will be dealt with in that rulemaking proceeding.

In their post-hearing comment (Ex. 55), the Edison Electric Institute (EEI) contended that the forthcoming power generation standard should cover the servicing and maintenance of mechanical and hydraulic equipment in power plants. If such equipment is either an integral part of, or inextricably commingled with, power generation processes or equipment, OSHA agrees that the power generation standard will apply instead of the generic lockout/tagout standard.

Further, OSHA states in paragraph (a)(1)(ii)(C) that exposure to electrical hazards from work on, near, or with conductors or equipment in electric utilization installations which is covered by Subpart S of Part 1910 also are excluded from coverage by this standard. OSHA intends coverage for this work to be provided instead in a separate rulemaking on "Electrical Safety Work Practices," which was proposed on November 30, 1987 (52 FR 45530) (new §§ 1910.331 through 1910.335) as an amendment to Subpart S. Those proposed sections have their own provisions for dealing with lockout/tagout situations, and for controlling employee exposure to hazardous electrical energy with the use of electrical protective equipment. They are based largely on a national consensus standard, NFPA 70E—part II, "Electrical Safety Requirements for Employee Workplaces."

Similarly, paragraph (a)(1)(ii)(D) excludes oil and gas well drilling and servicing installations from coverage by this rule. These installations are intended to be covered separately by a new § 1910.290, Oil and Gas Well Drilling and Servicing. A proposed § 1910.290 was published on December 28, 1983 (48 FR 57202). The Agency is currently developing a revised proposal to reflect the information in the rulemaking record, which was submitted in response to the initial proposal. The hazards involving lockout or tagout that are unique to oil and gas well drilling and servicing will be given a complete evaluation during that rulemaking process and appropriate steps will be taken to control them.

One commenter (Ex. 2–54) recommended the exclusion of the machine manufacturing industry from this Final Rule. This commenter contended that the inclusion of the word "constructing" in the definition of "servicing or maintenance" would seriously endanger the ability of machine manufacturers to perform the initial construction, assembly and manufacture of machines.

During the assembly of equipment, it is normally not connected to any external power source, except when a temporary connection is made to effectuate adjustment, testing or try-out. The nature of machine manufacturing normally only requires the connection to an external power source to move parts in order to allow for the construction. Once the system has been completely assembled, it is necessary to do final testing or try-out of the system. Energization of the entire system is generally necessary to accomplish the testing. The system is then connected to external power sources and the testing undertaken. If the tests are unsuccessful or further assembly work is needed, the equipment should be disconnected from the external power source and then the additional work conducted. It is during the time when the equipment is being alternately energized and deenergized that the energy control means are particularly significant.

OSHA believes that disconnection of a machine or equipment from external power sources, as with cord and plug connected equipment, is a satisfactory method of isolating the equipment from the source of energy. OSHA also recognizes that testing with the power on is often necessary to ensure the proper assembly and functioning of all components. OSHA believes that workers "constructing" machinery and equipment need the same safeguards as other emplolyees doing other servicing on maintenance operations. OSHA is, however, providing specific requirements in paragraph (f)(1) of this Final Rule for the safeguarding of employees during operations which require the alternate energization and deenergization of machines and equipment for testing and trouble shooting.

One commenter (Ex. 2–35) recommended that maintenance of medical equipment be excluded from this standard. This recommendation was predicated on the fact that maintenance and servicing of medical equipment is already covered by national consensus standards, that technical persons working on state-of-the-art medical equipment are highly trained professionals and that some equipment must be serviced while units are energized.

OSHA believes that national consensus standards, in and of themselves, do not ensure a safe and healthful workplace since they are not enforceable regulations. Compliance with specific provisions of such standards is voluntary except when OSHA incorporates then into its regulations. In addition, as previously discussed in this preamble even if the servicing employeee is highly trained, his/her safety during the servicing operation may well be dependent on the actions of persons who are not as well trained. Other employees, upon finding a machine or equipment not operating, may attempt to start the machines, not realizing that they may be subjecting themselves or others to an increased risk of injury.

In paragraph (a)(2)(i), the Final Rule states that the standard applies to servicing or maintenance of machines or equipment. These activities are defined in paragraph (b) to include activities such as constructing, installing, setting up, adjusting, inspecting, maintaining, repairing and servicing machines and equipment. These activities generally require the stoppage of the machine or equipment and the resulting

discontinuance of the production process. It is during these activities that the machine or equipment must be isolated from the energy source and the energy isolating device disabled. It is also during these activities that employees are exposed to the unexpected energization, startup or release of stored energy against which the control procedures established in this standard are designed to provide protection.

Proper accomplishment of most servicing requires that the machine or equipment be shut down or turned off. However, simply shutting down the machine or equipment has not proven to prevent accidents when there is an unexpected energization or start up of the machine or equipment or the release of stored energy. The control of this hazardous energy is accomplished through the use of a standardized procedure which requires the shutting off of the machine or equipment, locating the energy isolating device and isolating the machine or equipment from the energy source, locking or tagging out the energy isolating device, reducing or eliminating stored or residual energy and then verifying the effectiveness of the energy isolation.

There was one commenter (Ex. 2–80) who suggested that this standard should apply before, during, and after servicing or maintenance is performed. The use of this langauge could be interpreted as meaning the standard should apply at all times since before and after do not denote a beginning or an end. OSHA believes that the steps required by this standard are considered part of the servicing activity, regardless of whether they take place before or after the specific work on the equipment has been performed. Based on this interpretation, the final standard requires the control of hazardous energy only during servicing or maintenance is being conducted.

There are some activities which are properly classified as servicing or maintenance but which are often performed during normal production operations. These activities include lubricating, cleaning, unjamming, and making minor adjustments and simple tool changes. In the proposed standard, OSHA suggested excluding these operations (paragraph (a)(2)(iii) "when it is necessary to perform the activity with the machine energized and if the activity is performed using alternative measures which the employer can demonstrate are equally effective."

Two commenters (Ex. 2–44 and 2–80) stated that this exclusion was too broad and that there is difficulty in distinguishing between normal production operations and servicing or maintenance.

As discussed earlier, OSHA recognizes that machines and equipment present many hazards during their usage during normal production operations. These production hazards are addressed by the machine guarding standards, § 1910.212 (general machine guarding standard) and § 1910.219 (guarding power transmission apparatus). This standard is not intended to deal with these same hazards. However, if a servicing type activity happens to take place during production, such as unjamming the production equipment, the employee performing the servicing may be subjected to hazards which are not encountered as part of the production operation itself. These hazards are manifested when the employee must either remove or bypass guards or other safety devices, when the employee is required to place any part of his or her body into the point of operation of the machine or equipment, or where an associated danger zone exists during a machine operating cycle. In those circumstances, when there is potential for unexpected activation or energy release and the machine or equipment can be deenergized to perform the servicing, the standard requires that it be deenergized and be locked out or tagged out in accordance with the procedure required by this standard.

As was discussed in the preamble to the proposal, OSHA recognizes that some servicing operations must be performed with the power on; in these situations, it would not make sense to require lockout or tagout, which apply to deenergized equipment. The proposal contained a requirement that when servicing or maintenance must be performed with the equipment energized, the employer must use an alternative procedure which provides, in the language of the ANSI standard, "effective protection." Paragraph 6.8 of the ANSI Z244.1–1982 (Ex. 9) states in part:

> In the case of required minor adjustments where this (deenergization) is not feasible, or in the case of normal production operations, these activities shall be accomplished under the protection of specially designed control circuits, control equipment, and operating procedures, that provide proven effective protection for the affected personnel.

The proposed provision attracted considerable comment, particularly from the union participants, many of whom felt that it provided a "loophole" in the standard. OSHA believes that much of this concern was based on a fundamental misunderstanding of what this provision was intended to accomplish. For example, Mary Twedt, of the United Food and Commercial Workers (UFCW), (Tr. p. W1–183–1900) testified about a serious injury that she had incurred while clearing a jam in a bacon slicing machine. She indicated that she had switched the machine off, but that a co-worker had inadvertently reactivated it while her hand was in the machine. However, there was no indication that it was *necessary* to perform that unjamming operation with the power on. (In fact, since Ms. Twedt did turn the machine's power off to clear the jam, OSHA assumes that it was *not* necessary to have the equipment energized at that time). Further, if it *was* necessary to keep the energy on, the proposal would have required the employer to use an alternative procedure to lockout or tagout which would provide protection.

In the testimony at the Houston hearing, the UAW contended that the "exemption" for normal production operations was too broadly drawn, and that it would be a "loophole" in the standard. Representatives of the UAW testified that they felt that the provision was unnecessary. Their reasoning essentially was that if alternative methods were used to keep the employee out of the danger zone, there was nothing for the standard to cover, since the employee would not be exposed to the hazard. (Tr. p. H290–291). OSHA agrees in principle with this statement, but believes that the standard needs to cover these situations as well in order to provide comprehensive treatment of the hazards. The Agency also agrees that the proposed provision was not clear enough in indicating the types of operations which were covered by the standard, the types of operations which would not be covered by the standard, and the criteria to be applied to each situation. Therefore, the Agency has revised this provision in the Final Rule to deal with these problems.

In the Final Rule, OSHA is clarifying the intent behind the alternative provision for servicing or maintenance which takes place during normal production operations. The general rule is that servicing or maintenance, as defined in paragraph (b), must be performed under lockout or tagout in accordance with a written procedure established under this standard. Minor tool adjustments and changes or other minor servicing activities performed during normal production operations, are not covered by lockout or tagout requirements if the activities are routine, repetitive and integral to the production operation, provided that there is an alternative means being used for employee protection in lieu of lockout or tagout which will provide effective protection to employees.

OSHA emphasizes that this standard is not intended to cover the types of minor adjustments and other activities which are inherent in the production process. The machine guarding standards in subpart O cover these types of operations. The proposed rule included an exception for these types of operations, but OSHA has determined that there were two significant problems with the exception as proposed. First, the Agency believes that the provision was too broad as to the types of servicing or maintenance which would be excluded from the coverage of this standard. Proposed paragraph (a)(2)(iii) used the phrase "servicing or maintenance which takes place during normal production operations, such as lubricating, cleaning, and making minor adjustments and simple tool changes" to describe activities which would not be covered by this standard. OSHA's intention was to exclude from coverage those actions which would otherwise fit within the definition of "servicing or maintenance," but which are actually routine, repetitive actions which are integral to the operation of the equipment for production, and which are necessary to allow production to proceed without interruption. However, the language of the proposal could have been read more broadly, to exclude from coverage certain servicing operations which should not be considered to be part of "normal" production, and which should be performed with the equipment deenergized. OSHA has revised the proposed exclusion to clarify the limitations of the standard, and to provide more guidance as to the types of servicing activities which must be performed under lockout or tagout. The second problem with the proposed exclusion was that it would have required the employer to demonstrate that it was necessary to perform the operation with the machine or equipment energized. The record reflects much concern about this provision, particularly with regard to the criteria to be applied in determining the necessity of having the equipment energized. OSHA emphasizes that this exclusion was intended to cover the types of routine, repetitive, minor adjustments which are integral to and necessary for the production process. The revised language in the Final Rule sets forth the criteria to be applied in determining whether a given servicing operation is covered by this standard, or whether it is to be considered a part of normal production operations, which require alternative means of protection.

Normal production operations, together with these minor servicing aspects which are also excluded from lockout or tagout coverage, continue to be covered by the machine guarding requirements of subpart O of part 1910. OSHA has provided several examples of the types of activities taking place during production which the Agency would consider to require lockout or tagout, as well as examples of those which would not. It must be emphasized that exclusion from lockout or tagout does not mean that the employer can avoid providing protection. As the exclusion itself makes clear, the employer must provide alternative measures which he/she can demonstrate will provide effective protection. This will generally involve compliance with OSHA's machine guarding requirements throughout the production process.

In evaluating servicing performed during normal production operations, the first question to be asked is whether employees must bypass guards or otherwise expose themselves to the potential unexpected release of hazardous energy. If no such exposure will occur, either because of the method in which the work is performed or because special tools, techniques, or other additional protection is provided, lockout or tagout is not required. If there is such exposure, the lockout or tagout requirements of this standard apply. However, if the servicing operation is routine, repetitive and must be performed as part of the production process, it is obvious that lockout or tagout cannot be performed, because these procedures would prevent the machine from economically being used in production. OSHA will continue to treat these operations as being covered by the general machine guarding requirements of subpart D. The employer must provide appropriate guarding to protect employees from points of operation, nip points, and other areas of the equipment where the employees might be endangered. The use of alternative protective methods to keep employees' bodies out of danger zones, such as specially designed servicing tools, remote oilers, and the like, would meet this requirement.

The Final Rule, as did the proposal, also recognizes that there are some servicing operations in industry which require the equipment to be energized at least at some point during the servicing, for the purpose of testing or positioning the machinery or equipment or the components thereof. Where the energization is limited to those times, and is not shown to be necessary for the entire servicing operation, such servicing will generally be covered by the lockout or tagout requirements of this standard, but with the implementation of the special procedures set forth in paragraph (f)(1) for the temporary removal of lockout or tagout only when the machine or equipment must be energized.

The concept behind both the proposed and final provisions on normal production operations was taken from the ANSI standard, which attempted to address situations in which it was necessary to keep equipment energized during servicing. It was clear to the ANSI committee, as it was and is to OSHA, that neither lockout nor tagout is possible in a situation when the equipment cannot be deenergized, because these efforts involve assurances that deenergization has been achieved and that the proper procedures and verifications of deenergization have been carried out. However, both ANSI and OSHA believe that even if lockout or tagout cannot be done, the employer must provide alternative procedures to lockout/tagout which will protect the employees doing the servicing under those conditions.

There are some situations in which lockout or tagout may not be effective or appropriate, and the standard does not require the use of lockout or tagout in these circumstances. In paragraph (a)(2)(iii), OSHA lists those situations where lockout or tagout provisions do not apply.

In the proposed paragraph (a)(2)(ii)(A), OSHA specified that the standard would not apply when employees are working on cord and plug type electrical equipment for which exposure to the hazards of unexpected energization, start-up, or release of stored energy of the equipment is effectively controlled by other measures. This exclusion would encompass the many varieties of portable hand tools that are found in the workplace, as well as cord and plug equipment which is intended for use at a fixed location.

There were 13 commenters (Ex. 2-14, 2-20, 2-27, 2-34, 2-38, 2-40, 2-44, 2-63, 2-76, 2-29, 2-80, 2-97 and 2-105) on the issue of the proposed exemption for cord and plug connected equipment. Four of these commenters (Ex. 2-44, 2-63, 2-79 and 2-97) stated that the requirements of this standard should apply to all situations (i.e., OSHA should not allow an exemption for cord and plug connected equipment). Two commenters (Ex 2-27 and 2-76) suggested that the standard should apply when the plug is not near the employee or if it could be plugged in without the employee's knowledge. Two commenters (Ex. 2-38 and 2-40) recommended expanding the scope of this exception to all small machinery or to those pieces of equipment for which the energy isolating device is in the control of the employee performing the maintenance. One commenter (Ex. 2-39) concurred with the proposal as written while one commenter (Ex. 2-14) suggested spelling out the alternate measures which were necessary to eliminate the requirement for locking out the energy isolating device. One commenter (Ex. 2-20) concurred with the exception as long as the employee who is doing the maintenance removes the plug and that employee does so only to do the maintenance.

Based upon the arguments put forward by each of the above commenters, OSHA has decided that the lockout/tagout requirements of the standard will not apply to cord and plug connected equipment if the equipment is unplugged and the plug is in the exclusive control of the employee who is performing the servicing or maintenance of that equipment. Because this employee would control the plug, he/she would be able to prevent the equipment from becoming reenergized during the servicing operation.

Paragraph (a)(2)(ii)(B) proposed that the use of lockout/tagout procedures would not apply to "hot tap" operations when continuity of service or process operation is essential, and complete shutdown of the system impractical, provided that documented procedures and special equipment are used by the employer which will provide proven effective protection for employees. This provision was intended by OSHA to address the petroleum industry's concern (Ex. 16) for the handling of "hot tap" operations commonly used in their facilities, although it might also address other similar operations.

The "hot tap" procedure is employed in repair, maintenance, and service activities, and involves the cutting and welding of equipment (pipelines, vessels or tanks) under pressure in order to install connections or appurtenances. It is commonly used to replace or add sections of pipeline without the interruption of service for air, gas, water, steam and petrochemical distribution systems. Special metal cutting and welding equipment and specific operating procedures are used to limit explosion hazards. The operation may be performed by in-house maintenance personnel or by outside contractors.

The use of "hot tap" procedures appears to avoid several safety risks which would otherwise arise in servicing equipment which is under pressure. First, process shutdowns and start-ups with equipment of this nature pose extreme hazards of explosions and fires due to the complexities and interrelationships among process components. For example, during start-up it is necessary to purge pipelines of air, water and/or inert gases before hydrocarbons are introduced. Malfunctions or operator errors during purging could easily create explosive mixtures in the equipment. In other instances, process shutdowns and start-ups can result in rapid condensation within the process equipment and may cause "water hammers," which are sudden pressure changes that can shake, vibrate and stress equipment to the extent that the pipeline breaks or connection leaks develop. Finally, a third class of hazard avoided is one created by the much higher level of worker activity required during a complete process shutdown or start-up. This may result in more extensive worker exposure to the hazards of the shutdown or start-up procedure, and in greater potential for injury than would be involved in performance of "hot tap"-type activities, in which fewer employees would be exposed.

The OSHA standard, as proposed, stipulated that hot tap operations would be exempt from the requirements of the standard if the employer could demonstrate that: (1) Continuity of service is essential; (2) shutdown of the system is impractical; and (3) documented procedures and special equipment are utilized which will provide effective protection for employees. In the preamble and the Appendix to the proposed rule, OSHA referred to the American Petroleum Institute's (API) publication, "Procedures for Welding or Hot Tapping on Equipment Containing Flammable," Publication 2201, Second Edition, November 1978, (Ex. 3-16). Reference to this document was intended to serve as an illustration of an acceptable procedure. It should be noted that the API procedure applies only to piping, vessels and tanks containing flammable liquids, gas or combustible material.

OSHA's intent in proposing this exception from the requirements of this standard was to allow, in certain cases, a particular type of work (the hot tap) in a limited number of cases (that is, when continuity of service is essential and shutdown is impractical) while providing for an acceptable level of safety for employees. Without this exception to the requirements of this standard, a hot tap operation could not be conducted since the standard would otherwise require machine or equipment shut down and lockout or tagout of energy isolating devices to perform servicing or maintenance.

There were eight commenters (Ex. 2-20, 2-21, 2-22, 2-27, 2-70, 2-76, 2-80 and 2-81) to this proposed requirement. One commenter (Ex. 2-20) suggested that the first two criteria listed above (that continuity of service is essential and shut down is impractical) are unnecessary and should be eliminated from the final rule. Three commenters (Ex. 2-21, 2-22 and 2-81) recommended eliminating the exception entirely. One commenter (Ex. 2-70) proposed the elimination of the need to use special tools. There were two commenters (Ex. 2-27 and 2-80) who encouraged OSHA to be more specific and to detail exact training requirements and work practices for workers involved in hot tap operations. Finally, one commenter (Ex. 2-76) expressed agreement with this concept as proposed.

OSHA believes that employees performing hot tap operations should have comparable protection to workers performing other servicing or maintenance of machines or equipment. OSHA also believes that these operations should be allowed to be conducted when certain limited conditions exist, such as when continuity of service is essential and system shut down is impractical. By specifying these limitations the employer would be prohibited from conducting these operations simply as an expedient. The need for continuity of service would be illustrated by the pipeline containing a petroleum product where stopping the flow of the product and draining the pipeline could introduce an additional danger to employees since the concentration of the gaseous product remaining in the pipe, when mixed with air, could fall within the explosive range of the product, thereby threatening an employee with serious injury if that employee would attempt to weld on the pipe. In this case, shut down may not be practical because shutting down the system may prove more hazardous than allowing the continued operation of the system while the hot tap operation is being conducted. Another example would be when a large storage tank with a hazardous substance is punctured or otherwise penetrated. There is obviously little or no time available to continue the service (store the substance) and shut down the system (drain the tank). In this case, the hot tap operation could be safely and

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properly conducted if a documented procedure and the required equipment are used so that they provide effective protection for employees.

In paragraph (a)(3), OSHA sets forth the manner in which the employer is required to protect employees from injuries that could result from the unexpected energization or start up of machines or equipment, or the release of stored energy, when they are engaged in servicing or maintenance activities. This standard requires the development of a program centered around the utilization of a standardized procedure and the training of employees in their role in the successful use of that procedure.

Paragraph (a)(3)(i) specifies that the control of hazardous energy be accomplished by the use of a standardized procedure for affixing the appropriate lockout or tagout devices to energy isolating devices and by otherwise disabling equipment. The steps to be followed by the employer to accomplish this goal are set forth in paragraphs (d)(1) through (d)(5).

In paragraph (a)(3)(ii), OSHA states that the intention of the standard is not to replace existing specific OSHA lockout and/or tagout provisions, but to supplement and support these provisions with the requirement for establishing a procedure and with the requirement for training employees in the energy control program. The following listing indicates a number of OSHA standards which currently impose lockout-related requirements:

Powered Industrial Trucks

1910.178(q)(5)(i)

Overhead and Gantry Cranes

1910.179(g)(5)(ii)
1910.179(g)(5)(iii)
1910.179(g)(5)(i)
1910.179(l)(2)(i) (b), (c), (d)

Derricks

1910.181(f)(2)(i)(c)
1910.181(f)(2)(i)(d)

Woodworking Machinery

1910.213(a)(10)
1910.213(b)(5)

Mechanical Power Presses

1910.217(b)(8)(i)
1910.217(d)(9)(iv)

Forging Machines

1910.218(a)(3)(iii)
1910.218(d)(2)
1910.218(e)(1)(iii)
1910.218(f)(2) (i), (ii)
1910.218(a)(3)(iv)
1910.218(e)(1)(ii)
1910.218(f)(1) (i), (ii), (iii)
1910.218(g)(3)

Forging Machines (continued)

1910.218(h)(2)
1910.261(i)(1)
1910.218(j)(1)
1910.218(h)(5)
1910.218(i)(2)

The standards listed above provide limited coverage of machinery, equipment and industries and do not address lockout or tagout issues or methodology in any detail. For example, none of the existing standards cover the need for a procedure or for more than one or two procedural steps pertaining to the actual application or release of energy control measures. The current provisions also do not address the basic requirements contained in the standard which are needed to support and coordinate the implementation of control measures such as the selection of hardware, communications, periodic inspections, and assignment of duties. Additionally, the need to document a procedure, or to train employees engaged in the relevant activities, is not explicitly required by any of the present regulations. A typical example of this limited coverage is found in the following provisions for mechanical power presses:

Section 1910.217(b)(8)(i). A main power disconnect switch capable of being locked only in the off position shall be provided with every press control.

Section 1910.217(d)(9)(iv). The employer shall provide and enforce the use of safety blocks for use whenever dies are being adjusted or repaired in the press.

A general review of these and other lockout and lockout related provisions in OSHA's § 6(a) standards would seem to indicate that the consensus groups which originally developed these standards had either of two primary concerns in mind. Those concerns involve the need either (1) to provide equipment with the physical means or capability to isolate energy sources during maintenance and repair activities; or (2) to make a choice of the control measures (locks or tags) which were to be provided and used on the specific machine, equipment or process covered by the standard.

The first category of provisions, while requiring the equipment to have the capability of being locked out, does not necessarily require that such control be accomplished. For example, § 1910.213(b)(5) states, "On each machine operated by electrical motors, positive means shall be provided for rendering such controls or devices inoperative while repairs or adjustments are being made to the machines they control." As another example, § 1910.218(e)(1)(ii) states, "Air hammers shall have a shutoff valve as required by paragraph (d)(2) of this section and shall be conveniently located and distinctly marked for ease of identification." These provisions are specific in nature as they apply to the machines and equipment regulated and are primarily design oriented. For the most part, they address the importance assigned to the proper installation of equipment with regard to the arrangement of electrical and mechanical components. They do not, however, address the use of these components directly, nor do they establish a procedure for assuring that they are, in fact, used. This standard supplements these provisions and does not conflict with their requirements. The equipment required by this category of current rules will be used as part of the servicing procedures set out in the Final Rule. For these reasons, OSHA did not propose any change in provisions in this category as they currently appear in part 1910. Provisions of similar content are:

1910.179(g)(5) (i), (ii), (iii)
1910.217(b)(8)(i)
1910.218(e)(1)(iii)
1910.218(j)(1)
1910.261(k)(2)(ii)
1910.263(l)(8)(iii)
1910.213(a)(10)
1910.218(a)(3)(iii)
1910.218(h)(2)
1910.252(c)(1)(i)
1910.262(c)(1)
1910.265(c)(26)(v)

The second category of provisions involves those which mandate the specific use of lockout, tagout or other energy control devices for certain machines, equipment or industries. The category addresses the application of locks, locks or tags, locks and tags, and in some cases the use of blocks, to control potentially hazardous energy.

An example of provisions used to specify the use of locks for a control measure is found in § 1910.179(l)(2)(i)(c) which states, "The main or emergency switch shall be open and locked in the open position." Provisions of similar content are sections:

1910.181(f)(2)(i)(c)
1910.218(f)(1)(i)
1910.218(h)(5)
1910.218(i)(2)
1910.262(n)(2)
1910.262(q)(2)
1910.263(l)(3)(iii)(b)
1910.218(d)(2)
1910.218(f)(2)(i)
1910.218(i)(1)
1910.261(b)(4)
1910.262(p)(1)

Section 1910.261(j)(4)(iii) which states: "When cleaning, inspecting, or other work requires that persons enter the beaters, all control devices shall be locked or tagged out, in accordance with paragraph (b)(4) of this section." Provisions of similar content are sections:

1910.261(g)(2)
1910.261(j)(5)(iii)
1910.261(g)(19)(iii)

An example of provisions used to specify the use of locks combined with tags is found in § 1910.261(g)(15)(i) which states: "Valves controlling lines leading into a digester shall be locked out and tagged. The keys to the locks shall be in the possession of a person or persons doing the inspecting or making repairs." A provision of similar content is found in § 1910.261(f)(6)(i).

An example of provisions used to specify the use of blocks to control hazardous energy is found in § 1910.217(d)(9)(iv) which states: "The employer shall provide and enforce the use of safety blocks for use whenever dies are being adjusted or repaired in the press." Provisions of similar content are sections:

1910.218(f)(2)(ii)
1910.218(a)(3)(iv)
1910.265(c)(13)
1910.218(f)(1)(iii)
1910.261(b)(4)

The groups of provisions found in this second category, and others similar to them covering potentially hazardous energy, are also not replaced by the final lockout or tagout standard. These provisions selectively require the use of the most effective devices for isolating and securing energy sources. This standard will supplement these other provisions in much the same way as with the first category in that it requires the establishment of procedures for energy controls, and the training of employees in these procedures.

In summary, this standard focuses primarily on procedures—procedures that are necessary to provide effective control when dealing with potentially hazardous energy sources. Where current standards require the use of specific measures, those standards are supplemented and not replaced by the procedures and training requirements of this Final Rule.

This standard is also intended to interact with any new or revised standards which may be promulgated in the future to address the use of specific control measures on an individual basis. Selection of the specific method of control, at that time, will reflect a thorough evaluation of the extent of exposure to the hazard; the risk of injury involving that particular machine, equipment, or industry, and the feasibility of applying a particular method of control. This standard requires that procedures be followed to implement the required control as part of a total package including training and education.

In paragraph (b), OSHA is adopting a number of definitions to clarify the meaning, intent and purpose of certain terms contained in this standard. In the proposed standard, all but five of the definitions were consistent with those published by the American National Standards Institute (ANSI) in their consensus standard, ANSI Z244.1–1982. The five definitions that were added covered the terms "energized," "setting up," "normal production operations," "hot tap," and "servicing or maintenance." In the Final Rule, OSHA has changed six of the proposed definitions, has added two definitions and deleted one.

The definitions of affected and authorized employees, as proposed, received considerable comment. As proposed, the definition of each was:

Affected employee. A person, other than the authorized employee, whose job includes activities covered by this standard as set forth in paragraph (a)(2) of this section.

Authorized employee. A qualified person to whom the authority and responsibility to perform a specific lockout and/or tagout assignment has been given by the employer.

Eight of the eleven commenters who discussed these definitions recommended either combining the two (Ex. 2–5, 2–28, 2–32 and 2–85) or revising them for clarity (Ex. 2–34, 2–74, 2–76 and 2–89). One commenter (Ex. 2–20) suggested changing the definitions to include supervisors while one commenter (Ex. 2–50) suggested changing "qualified" to "competent" based upon the dictionary definition of each of these terms. One commenter (Ex. 2–75) said that the definitions were satisfactory as stated.

Based upon the confusion which each of these definitions have created, OSHA is revising both definitions to identify each type or class of person. This differentiation is based upon their role in the control of energy (the action which they must either take or not take during the servicing or maintenance of machines or equipment) and the knowledge or information which they must possess regarding locking out or tagging out energy isolating devices.

OSHA has determined that the definitions of "authorized employee" and "affected employee" need to be clarified to reflect more accurately the person's involvement in the use of lockout or tagout. If an employee must utilize the energy control procedure, that employee is considered to be an "authorized employee." By contrast, an "affected employee" is one who does not perform the servicing or implement the energy control procedure, but whose responsibilities are performed in an area in which the energy control procedure is implemented and servicing operations are performed under that procedure. The affected employee does not need to know how to perform lockout or tagout, nor does that employee need to be trained in the detailed implementation of the energy control procedure. Rather, the affected employee need only be able to recognize when the energy control procedure is being implemented, to identify the locks or tags being used, and to understand the purpose of the procedure and the importance of not attempting to start up or use the equipment which has been locked out or tagged out. The definition of "affected employee" also recognizes that an affected person and an authorized person may be one and the same person when a machine operator or user must also perform servicing or maintenance on the machine or equipment. In this case, the employee must have the requisite knowledge of an authorized employee.

The proposed definition of "authorized employee" appeared to limit that term to a particular person who has responsibility for the overall implementation of an energy control procedure. Many comments indicated that this took protection away from individual employees who had responsibilities under the procedure but were not actually in charge of its full implementation (Ex. 2–32, 2–34, 2–40, 74, and 2–85). OSHA agrees that as long as an employee is involved in performing an element of servicing and maintenance which is covered by the energy control procedure, that employee should be considered an "authorized employee" for the purpose of this standard. This is particularly important in the context of the requirement in paragraph (d)(3) of the standard, which requires the authorized person to affix a personal lockout or tagout device on the energy isolating device as part of the energy control procedure. The revised definition assures that when a servicing task is performed by a team or group of employees, each employee who is directly exposed to the hazards of the servicing operation will have the responsibility to affix his/her personal lockout or tagout device before beginning the work and to remove it

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when he/she completes the work. In addition, as discussed below, paragraph (c)(5)(ii)(D) of the Final Rule provides additional accountability by requiring such lockout and tagout devices to identify the authorized person responsible for applying them.

In the proposed standard, OSHA defined the term "energized" to refer to the connection of equipment to an energy source (mechanical, electrical, hydraulic, etc.) which has not been isolated. There was one commenter (Ex. 2–76) who recommended including language for stored energy.

Based upon an evaluation of the way which this term is used in the standard, OSHA has changed the definition to indicate that energized means connected to an energy source or containing residual or stored energy. OSHA has dropped the phrase "which has not been isolated" because connection to an energy source means that the machine or equipment has not been isolated.

In this final standard, OSHA has amended the proposed definition of "energy source" to eliminate the phrase, "that is capable of causing injury to employees." The definition becomes, in essence, that an energy source is a source of energy. If an energy source does not have the capability of causing injury to employees, it is not "hazardous energy" within the scope of this standard. As used in the standard, an energy source includes the means of transmission of the energy from its true source to the energy isolating device. Therefore, isolating a machine or equipment from an energy source means utilizing an energy isolating device to interrupt the flow of energy from the means of transmission of the energy to the machine or equipment.

The identification of "energy sources," as defined in this proposal, is complicated by three very important considerations: (1) Energy is always present in machinery, equipment or processes; (2) energy is not necessarily dangerous; and (3) danger is only present when energy may be released in quantities or at rates that would harm an employee. Generally speaking, however, potentially hazardous energy sources are defined as those that can cause injury to employees working in, on, or around machines or equipment.

The energy sources identified in this standard require a more detailed discussion. "Energy," as used in this document means mechanical motion; potential energy due to pressure, gravity, or springs; electrical energy; or thermal energy resulting from high or low temperature. Some energy sources can be turned on and off, some can be dissipated, some can be eliminated, and some can only be controlled. These concepts will be addressed throughout the discussion of energy control procedures in this Final Rule. The following brief analysis of energy sources may provide the reader with a better understanding of the provisions of this standard.

1. Mechanical motion can be linear translation or rotation, or it can produce work which, in turn, produces changes in temperature. This type of energy can be turned off or left on.

2. Potential energy can be due to pressure (above or below atmospheric) as in hydraulic, pneumatic, or vacuum systems, or it can be due to springs or gravity. Potential energy manifested as pressures or in springs can be dissipated or controlled; it cannot be turned off or on.

3. Electrical energy refers to generated electrical power or static electricity. In the case of generated electricity, the electrical power can be turned on or turned off. Static electricity cannot be turned off; it can only be dissipated or controlled.

4. Thermal energy is manifested by high or low temperature. This type of energy is the result of mechanical work, radiation, chemical reaction, or electrical resistance. It cannot be turned off or eliminated; however, it can be dissipated or controlled.

The definition for "normal production operations" noted that these were operations which enable the machine or equipment to perform its intended production functions. These functions would be carried out by employees with the machine or equipment energized.

There were two comments (Ex. 2–29 and 2–80) who discussed this definition. One commenter (Ex. 2–29) contended the minor repairs, adjustments and operations should be considered servicing and maintenance rather than normal production operations. The other commenter (Ex. 2–80) suggested that the language of the Final Rule more clearly differentiate between normal production operations and servicing and maintenance.

As evidenced throughout this rulemaking proceeding, the line between "normal production operations" and "servicing or maintenance which takes place *during* normal production operations" is not always evident. The coverage of these activities, in simplest terms, is as follows: Normal production operations are covered by the machine guarding requirements in subpart O of part 1910. If servicing or maintenance is performed during normal production operations without the removal or bypassing of the machine guarding required by subpart O, this standard does not apply. Servicing or maintenance which occurs during normal production operations is covered by this Final Rule only if employees must bypass guards or otherwise place part of their bodies into an area in which they are exposed to the unexpected energization or activation of the equipment. If the employee is not exposed in this manner, such servicing or maintenance during normal production is not covered by this Final Rule. OSHA believes that the following examples will illustrate the types of activities which will come within each set of requirements.

In a printing shop, when a printing press is being used to produce printed materials, there is often the need to make minor adjustments such as to correct for paper misalignment while the press is running. This is a part of the production process, and is subject to the machine guarding requirements. The use of remote control devices will keep the employees from reaching beyond the machine guards. In addition, the use of inch (or jog) devices will permit machine speed control for test purposes. By contrast, however, printing presses may jam, requiring the employee to bypass the machine guards in order to reach the area of the jam and clear it. Although the need to unjam the machine comes about during normal production operations, it is a servicing activity which involves employee exposure to unexpected activation of the machine or release of energy, and as such, is covered by this Final Rule.

In a machine shop, a milling machine machine operator must adjust the flow of coolant oil to parts being milled while the cutting tool is in operation. This operation, which is part of the normal production process for the machine, is covered by the machine guarding requirements. Guarding must be provided to keep the employee's body away from nip points and other points of operation. If it becomes necessary to adjust the movement of the long-bed milling machine worktable where the isolating hydraulic cut-off valve is not in exclusive control of the person making the adjustment, and this requires the employee to place any part of his/her body in an area which was otherwise required to be guarded, this Final Rule would apply. If this step is performed without the employee having to bypass the guarding or otherwise expose his/her body to the potential release of energy or the unexpected activation of the milling machine, this Final Rule would not apply.

An employee is operating a machine which applies and seals a clear plastic

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sheet around a packaged product. There is a blade on the machine which cuts the plastic sheets, and this blade must be cleaned off periodically during the production process. Since the process must be stopped to clean off the blade, one could argue that this operation is more in the nature of servicing or maintenance than normal production; on the other hand, since it must be performed frequently during production, one might also argue that it was actually part of the production process. Because of the dovetailing of the requirements of this standard and the machine guarding requirements of subpart O, protection must be provided, regardless of whether the above operation is considered to be production or servicing. If it is production, the employee must be provided with guarding to protect him/her from the dangers of contacting the blade with part of his/her body; the cleaning would need to be done with special tools and procedures to provide the necessary protection. However, if it is servicing, and the employee is exposed to the point of operation which is otherwise required to be guarded, the lockout or tagout provisions of this standard would apply.

The definition of normal production operations has been simplified to state the normal production operations are the utilization of a machine or equipment to perform its intended production function. Anything that is done to prepare a machine or equipment to operate, such as setting up or changing the blade on a power saw, would not be included in the utilization of the machine or equipment and would be classified as servicing or maintenance rather than normal production operations. OSHA believes that this definition complements the definition of "servicing or maintenance" in this Final Rule. Further, these two definitions together help to provide a dividing line between the requirements of this standard and the safeguards already required for normal production operations by the general machine guarding standards in subpart O of part 1910 (§ 1910.212 and § 1910.219). Whereas the definition of servicing or maintenance includes those activities which require an employee to remove or bypass guards or other safety devices or to otherwise expose himself/herself to hazardous machine elements, the standards for machine guarding offer protection when the machine is being used in the manner in which it was designed and intended to be used, that is, when the machine or equipment is used to perform its intended production function.

OSHA has also amended the definition of setup to limit that activity to preparing a machine or equipment to perform its intended function. As proposed, setup involved placing a machine or equipment into an operational mode which could have included activities such as turning it on. Many types of machines and equipment can be turned on or started without doing what is commonly thought of and referred to as setup work.

The definition of lockout/tagout as proposed has been changed in the Final Rule to two separate definitions. This was done to clarify the fact that a lockout device, when properly applied, prevents operation of the energy isolating device whereas a tagout device indicates that the energy isolating device and the machine or equipment should not be operated.

OSHA has eliminated the definition of qualified person from this Final Rule. This was done because OSHA believes that this standard adequately specifies the type of training which is necessary and appropriate to prepare any person to perform the tasks involved in the employer's energy control program. The Final Rule requires that both authorized employees and affected employees be trained in and understand those things which are necessary for the employee to know in order to do the lockout or tagout safely. Paragraph (c)(7)(i)(A) requires that authorized employees receive training in the recognition of the applicable hazardous energy sources, the type and magnitude of the energy available in the workplace and in the procedure to be used for energy isolation and control. Additionally, paragraph (c)(7)(v) requires that, before the machine or equipment is turned off, the authorized employee knows the type and magnitude of the energy to be controlled, the hazards involved with such energy, and the procedure to be used for controlling the energy.

The development and documentation of energy control procedures is of little use unless the employer requires all authorized employees to utilize the procedures that have been provided whenever they are servicing or maintaining machines or equipment. In general, whenever lockout or tagout is used in accordance with this standard, each employee performing servicing or maintenance shall affix and remove, as necessary, an individual and identifiable lock or tag on the energy isolating device as part of the energy control procedure. To meet these requirements, paragraph (c)(1) requires the employer to ensure that hazardous energy control procedures have been implemented for all activities covered by this standard, and are being complied with by the employees. Methods for evaluating and maintaining the proper implementation of these procedures are provided in two other paragraphs of the standard: paragraph (c)(6), which addresses periodic inspection for observing employee compliance with the procedures; and paragraph (c)(7), which covers initial and periodic follow-up training to develop and maintain the knowledge and skills needed by employees for the safe application and removal of energy controls.

Paragraphs (c)(2) of this standard contains a discussion of the conditions under which either lockout or tagout may be utilized. OSHA makes a distinction between the method of controlling the energy (the type of energy control devices utilized) based primarily upon whether or not the energy isolating device was designed to accommodate a lockout device.

As discussed in the major issues section of this preamble, OSHA recognizes that there are many important elements of any energy control program, and that the choice of lockout versus tagout is just one of these elements. Further, OSHA also acknowledges that in isolation, the attachment of a lockout device to an energy isolating device, will provide greater protection against reactivation that an attachment of a tagout device. However, the issue to be resolved in this rulemaking is not the simple question of whether a lock is more protective than a tag. Rather, the Agency must address a series of related questions involving not only the effectiveness of lockout or tagout, but the feasibility and cost implications of requiring one method or the other in all energy control programs.

The record is replete with comments and testimony on the superiority of lockout to tagout as a means of securing energy isolating devices. However, there are also considerable data in the record on programs which use only tags and appear to be effective in doing so. In addition, whereas there is much information on equipment currently in place which has been designed to accept lockout devices, there is a dearth of data indicating the extent to which equipment across general industry would need to be retrofitted or modified to give it the capability to be locked out. There is little question that there is a significant hazard which needs to be addressed by an OSHA standard, but OSHA must regulate in the face of much conflicting evidence on the issues of feasibility and effectiveness. Under these circumstances, the Agency has

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reached several conclusions. First, as a general rule, lockout must be implemented as part of the overall energy control program for equipment which is "capable of being locked out." The term "capable of being locked out" is defined in the standard. Equipment which is designed with a hasp or other attachment which can be locked, or which incorporates a locking mechanism, is obviously considered to be "capable of being locked out." However, other equipment without such a *designed-in* locking capability may still be considered "capable of being locked out," but only if lockout can be achieved without the need to dismantle, rebuild or replace the energy isolating device, or permanently alter its energy control capability. Second, for equipment which is capable of being locked out, OSHA recognizes that employers may, nonetheless, wish to implement a tagout program instead of lockout. OSHA will allow the use of tagout programs under these conditions only if the employer can demonstrate that the complete program will, when using tagout devices attached to the energy isolating devices, provide full employee protection. In most cases, in order for OSHA to consider a tagout program to be sufficiently protective, the elements of such a program will need to be very detailed and intensive, and will necessitate far more commitment and day-to-day vigilance to make it work than will a lockout program. This is necessary because a tag serves only as a warning and not as a positive restraint on hazardous energy. The Final Rule establishes criteria which OSHA will evaluate in determining whether a given tagout program does, in fact, provide full employee protection. Thus, when equipment is capable of being locked out, OSHA anticipates that it will be easier for employers to use that capability than to bypass it in favor of a tagout program. Third, for equipment which is not "capable of being locked out," OSHA has determined that the employer's energy control program shall use either lockout or tagout. In making this determination, the Agency recognizes the efforts of many employers, as reflected in various comments and testimony, to retrofit their equipment to accept lockout devices. However, for equipment which would require significant modification to make it capable of being locked, such actions are necessarily taken on a case-by-case basis. Despite the Agency's efforts to acquire data in this area throughout the course of the rulemaking, there is still inadequate information in the record to allow OSHA to make a determination on the overall costs or feasibility of modifying such equipment to accept lockout devices. Accordingly, for such equipment, the standard allows the use of lockout or tagout as part of the energy control program. Fourth, and perhaps most critical, OSHA reemphasizes that the selection of lockout or tagout is only one element of the overall energy control program. Locks and tags do not deenergize equipment; they are attached after the equipment is deenergized. The actual deenergization must be accomplished using a carefully—developed and implemented set of procedures, combined with adequate training of both affected and authorized employees. Therefore, in determining the protectiveness of the standard, it is necessary to look at the *entire* standard, and not just at portions of it in isolation. OSHA is confident that the interrelationship between the different requirements of the standard will result in effective protection to employees during the performance of equipment servicing and maintenance operations.

Although OSHA has determined that lockout is, in general, a safer means of assuring deenergization of equipment than tagout, the Agency has also determined that the record provides inadequate evidence on which to support the extension of lockout to all machinery and equipment throughout general industry. Two points must be emphasized in this regard: First, the standard is a "generic" one, and as such, will apply to virtually all types of machines and equipment in use in American industry today. The designs range from the simplest to the most complex, from the oldest to the newest, and from the most worker-intensive to the most automated. Despite this determined effort to obtain the necessary information in the course of this rulemaking, OSHA has been unable to develop the type and quality of evidence on the available technology and the impacts on the affected industries which would support a finding that lockout is feasible throughout general industry. It is not possible, based on the current record, to develop a reasonable estimate of the amount of equipment modification that would be necessary throughout industry to provide such equipment with the capability of accepting lockout devices. Secondly, OSHA is concerned about whether such existing equipment could be modified for lockout without the possibility of creating greater hazards to employees as a result of the modifications. This latter concern was shared by the State of Virginia's special Task Force on lockout/tagout in General Industry, which is made up of representatives from major employer and employee associations and major industries in that State. The Task Force recommendations to OSHA, which were submitted to the record by the Virginia AFL–CIO, provided that where some kind of modification would have to be made to equipment in order to accommodate a lock, the standard should only require a tagout procedure. (Ex. 13A).

OSHA acknowledges that there are significant problems involving the use of tagout devices, as discussed above. However, the Agency also recognizes that where equipment is not designed to accept a lockout device, tagout will need to be used, even though it does not provide the same assurance that the equipment will not become energized during servicing or maintenance. What becomes important in such situations, therefore, is for the standard to address as many of the weaknesses of tagout as possible, and to impose more stringent requirements which improve the capability of a tagout program to provide effective employee protection. In developing the Final Rule, OSHA has considered the major shortcomings of the use of tagout, as discussed in the comments and testimony, and has revised the proposed requirements to focus on appropriate means by which these shortcomings can be avoided or minimized. In particular, the Final Rule requires tagout devices to be considerably stronger and more durable than provided for in the proposal. The revised provisions on tagout are intended to deal with the problem of tagout devices deteriorating when they become wet or when they are exposed to a corrosive atmosphere. The final standard also requires the tagout device to have a much stronger means of attachment which cannot simply be twisted off or unwound from the energy isolating device. The record clearly indicates that the tag must remain securely affixed throughout the servicing operation in order to serve as an effective warning device. The use of flimsy attachments makes it too easy for an unauthorized employee to remove the device, either intentionally or inadvertently. As noted earlier, there is also testimony presented at the hearings about situations in which tags have become dislodged from their attachment point by environmental conditions such as wind and rain. Perhaps the greatest limitation of tagout is that it does not actually secure the energy isolating device and prevent the equipment from being reenergized. In lockout, the presence of a servicing employee's locking device on a piece of equipment will prevent another employee from activating that equipment, even if that other employee does not understand the energy control procedure. By contrast, tagout is highly dependent on human factors, and requires constant vigilance to ensure that tagout devices are not bypassed. In addressing this limitation, OSHA is requiring additional training for employees who work with tagout or who work in areas in which tagout is used. Such training must be provided on at least an annual basis. Further, the training program must incorporate information which emphasizes the problems involved with the use of tagout, to make employees aware of why they must not deviate from the requirements of the tagout program. In addition, the standard requires that the employer's energy control procedure incorporate provisions for monitoring and enforcing the proper use of tagout. OSHA has determined that these strengthened requirements will greatly enhance the protection which can be provided by tagout programs under the Final Rule.

Paragraph (c)(2)(i) states that either lockout or tagout may be used when the energy isolating devices are not considered "capable of being locked out," as defined in the standard. This paragraph allows the employer to choose either system in this limited circumstances. If the employer wishes to perform modifications of the equipment to accommodate a locking device, OSHA encourages such modifications, but as noted above, the standard does not require them.

In paragraph (c)(2)(ii), OSHA requires the use of lockout if the energy isolating devices are "capable of being locked out." However, an employer may use a tagout program for this equipment, but only if the employer can demonstrate that his/her tagout program provides "full employee protection." The term "full employee protection" is set forth in paragraph (c)(3), and is discussed more fully below. In brief, "full employee protection" in this context means that where equipment is capable of being locked out, the tagout program must be shown to provide equivalent safety to lockout for such equipment. This requirement also states that the attachment of a tagout device must be at the same point as a lockout device would have been attached.

An employer who chooses to use tagout in this situation must demonstrate that tagout will provide full employee protection, as explained in paragraph (c)(3). The employer must obviously demonstrate that the tagout program meets all tagout-related requirements which are spelled out in the standard, such as proper materials and construction of the tagout devices, the durability of the tag, and the capability of the attachment means to prevent the unauthorized or accidental removal of the tagout device. However, as noted earlier, OSHA does not believe that a tagout program which simply meets the requirements of the standard will be as protective as a lockout program, even though the tagout requirements have been strengthened considerably from the proposal. In order for the employer to demonstrate that a tagout program is as protective as lockout for a lockable piece of equipment, that employer will need to show additional elements which bridge the gap between lockout and tagout. OSHA believes that these elements will need to be evaluated by the Agency on a case-by-case basis. As discussed in paragraph (c)(3)(ii), the employer must consider additional measures which will further enhance the safety of the tagout program, such as the removal of an isolating circuit element, the locking of a controlling switch, or the opening of an additional disconnecting device. By requiring that the employer made a showing of the effectiveness of tagout in situations which are otherwise amenable to lockout, the standard assures that each type of control (lockout or tagout) will provide an acceptable level of safety for those employees who must perform the servicing or maintenance on the machine or equipment. Based upon the range of variations which are possible in different situations, OSHA believes that the comparative effectiveness of any particular energy control program can be made only after examination and evaluation of the factors present at each point of application.

Several parties contended that because of statistical limitations and due to underreporting, the use of an authorized and affected employees to determine the thoroughness of their training and their knowledge of the energy control program. Although the company data would certainly be reviewed by the Agency, it would be only one element of the overall determination. Further, OSHA anticipates that if energy control-related accidents have occurred, whether or not they have been reported, the employees in the facility would have knowledge of the circumstances surrounding those accidents, weaknesses in the procedure which may have contributed to the accidents, and any steps which the employer has taken since the accident to deal with the problem.

In response to OSHA's requests for additional information, NIOSH provided additional sugggestions on elements to be included in a tagout procedure in the event that lockout would not be implemented. (Ex. 50). NIOSH agreed with OSHA that management involvement is critical for both lockout and tagout procedures. NIOSH recommended that tagout procedures be documented (written) and should include the supervisory and enforcement duties and the disciplinary actions to be implemented when the procedure is not followed. Other elements recommended, such as training and hazard isolation, were quite similar to those already included in this rule. Most of the items recommended by NIOSH have been incorporated into the Final Rule in some form.

Although OSHA has serious concerns about the feasibility of retrofitting existing equipment to be lockout-capable, the Agency has different concerns about what is to de done when such equipment is replaced, when new equipment is installed, or when major modifications or renovations are performed to existing equipment. OSHA believes that the optimal time to incorporate lockout capability is where this capability is programmed into the design of the equipment in the first instance. For example, much of today's automated and computerized equipment contains programmed instructions in computer memory which can be lost if the equipment is totally deenergized. If the equipment were designed and built either with a back-up energy source, or by the splitting of the incoming energy for computer memory and mechanical functions, with the mechanical function power supply being lockable, or with other means of maintaining the memory while allowing the mechanical elements to be deenergized and locked out, servicing or maintenance could be performed safely on the deenergized equipment without losing the programming for its proper operation. The implementation of such control methods would, in OSHA's judgment, be a relatively small element in terms of both design and cost when compared to the overall design and construction costs of the equipment.

Accordingly, paragraph (c)(2)(iii) of the Final Rule requires that new equipment ordered or purchased after the effective date of this standard, and existing equipment which otherwise undergoing extensive repair, renovation or modifications, must be provided with a capability of being locked out if such design is feasible. This provision will assure that even if current equipment is not designed to be locked out, future generations of such equipment will have a lockout capability. Under the requirements of this Final Rule, this equipment will then be subject to the requirement to use lockout except when a tagout system can be shown to be equally effective. OSHA anticipates, however, that the designing of lockout capability into new equipment will encourage the employer to utilize that capability in the energy control program, rather than relying on tagout.

In paragraph (c)(4), OSHA requires that employers develop, document and utilize procedures for the control of potentially hazardous energy, and that the procedures clearly and specifically outline the steps to be followed, techniques to be used, and measures to be applied by the employer to assure that the procedure is used. OSHA also specifies that the employer ensure that the control measures are used by employees whenever they might be exposed to injury from the unexpected energization or start up of machines or equipment or the release of stored energy.

There were four commenters (Ex. 2-38, 2-58, 2-70 and 2-87) to this requirement for the development and utilization of a procedure. Two of these commenters (Ex. 2-38 and 2-70) objected to the use of the word "specific" when defining the elements of the procedure while one commenter interpreted the requirement as mandating a generalized procedure for each plant, as well as a specific procedure for every machine or piece of equipment. The last commenter on this issue (Ex. 2-87) suggested the standard make it clear that it may not be necessary to have multiple procedures. This commenter also alluded to the fact that the standard should require a determination that a need to control hazardous energy exists and how this should be done before work begins.

In this final standard, OSHA has retained the word "specific" when detailing the elements of the procedure. This was done to emphasize the need to have a detailed procedure, one which clearly and specifically outlines the steps to be followed. Overgeneralization can result in a document which has little or no utility to the employee who must follow the procedure. However, whereas the procedure is required to be written in detail, this does not mean that a separate procedure must be written for each and every machine or piece of equipment. Similar machines and/or equipment (those using the same type and magnitude energy) which have the same or similar types of controls can be covered with a single procedure.

The written energy control procedure required by this standard need not be overly complicated or detailed, depending on the complexity of the equipment and the control measures to be utilized. For example, if there is a single machine with a single energy source that must be isolated, and the control measure chosen is simple, such as opening an electrical disconnect and locking out that energy source during servicing, the written procedure could be very simple. The steps set forth in the standard can be incorporated into the procedure with very little detail, reflecting the lack of complexity of the control measure. In addition, the employer's procedures may not need to be unique for a single machine or task, but can apply to a group of similar machines, types of energy and tasks if a single procedure can address the hazards and the steps to be taken satisfactorily.

OSHA believes that because of the need to follow the steps in the energy control procedure carefully and specifically, and the number of variables involved in controlling hazardous energy, a documented procedure is necessary for most energy control situations. However, the Agency has determined that in certain limited situations, documentation of the procedure will not add markedly to the projections otherwise provided by the standard. These situations incorporate several common elements: First, there is a single source of hazardous energy which can be easily identified and isolated, and there is no potential for stored or residual energy in the equipment. This greatly simplifies the procedure for controlling the energy, since the single energy source is all that need to be isolated. Second, the isolation and locking out of that single energy source will totally deenergize and deactivate the machine or equipment. There are no collateral sources of energy which need to be addressed. Third, a full lockout of the energy source is achieved by a single lockout device which is under the exclusive control of the authorized employee performing the servicing or maintenance. As used in this provision, exclusive control means that the authorized employee is the only person who can affix or remove the device. The authorized employee follows all steps necessary for deenergizing the equipment, verifying the deenergization, performing the work, and reenergizing the equipment upon completion of servicing. Because the energy control elements are simple, with a single energy source being locked out and no other potential sources of unexpected activation or energization, the authorized employee can perform them without referring to a written document. Fourth, while the equipment is locked out, the servicing or maintenance cannot expose other employees to hazards. For example, shutdown and lockout of a conveyor cannot cause jams or other hazards at other conveyors which feed into the conveyor being serviced.

The exception is intended to apply to situations in which the procedure for deenergization, servicing, and reenergization can be carried out without detailed interactions of energy sources, machines, and employees. For example, a motor in a small machine shop is wired into a single electrical disconnect, with no other energy source, and the motor does not present the hazards of stored or residual energy. When the motor needs repair, the authorized employee can isolate the motor from the single energy source and lock it out, using his/her personal lockout device on the disconnect, in accordance with the procedures set forth in the standard. Under these conditions, and provided that no other employees are exposed to hazards from the servicing operation, the servicing may be performed without the need to document the energy control procedure.

When all of the conditions for the exception are met, the standard does not require the employer to document the energy control procedure. However, if the employer, in utilizing this exception, has an accident involving the machinery or equipment, in which the unexpected release of hazardous energy is a factor, this indicates the need for more formal treatment of the energy control procedure, and documentation then becomes necessary.

It should also be noted that a small business does not necessarily have small energy control problems. Much complex machinery and equipment can be found in workplaces with few employees, especially in highly-automated companies. From the standpoint of the safety to be achieved from development of and compliance with a written energy control procedure, there is nothing to indicate that a small employer needs a written procedure any less than a large employer. As discussed earlier, the available data clearly demonstrate the need for written procedures to control hazardous energy. For example, the BLS Work Injury Reports (WIR) (Ex. 3-3) indicated that printed instructions or posted

procedures had been provided to only 62 of 554 injured employees responding on this issue in the survey (See Table V, in section III of this preamble). The WIR results also clearly demonstrate the lack of differentiation of injuries based on size of establishment. Half of the total number of injuries took place in establishments of under 100 employees: Approximately 35 percent of the total number of injured employees responding to the survey were injured at workplaces with fewer than 50 employees, and another 15 percent occurred where there were between 50 and 99 employees (See Table I, in section III of this preamble). Therefore, with the limited exception discussed above, OSHA has determined that the requirements for written procedures are appropriate for all employers covered by this standard, regardless of size. The complexity of an employer's procedure will depend on the complexity of the energy control problem in the specific facility, and not on anything unique to or inherent in the number of employees or size of the facility.

It is nonetheless imperative that the employee who is performing the maintenance or servicing (who must utilize the energy control procedure) understands the hazards of the work and how to control them. It is for this reason that paragraph (c)(7)(vi) (which is also discussed below) requires, before the machine or equipment is even turned off, that the authorized employee have knowledge of the type and magnitude of the energy, the hazards of the energy to be controlled, and the procedure to be used.

The Appendix provides employers and employees with an example of a simple lockout procedure. Where appropriate, this procedure may be used as written in the Appendix by simply filling in the blanks. This procedure is not considered unique and can be applied with considerable flexibility to groups of machines or tasks. It may also be used as a guide to develop a more specific or detailed lockout or tagout procedure. The sample would need only minor changes to methods, procedures and/or text to be acceptable for many different workplace situations.

The standard, by being written in performance language, also addresses situations in which there is a need for entirely unique lockout/tagout procedures. There may be situations which might require the entire procedure to be unique for its purpose (one of a kind) in dealing with the hazards, or the employer may only need to provide a supplement to the general procedure. For some applications, the supplement could be in the form of a check list used for gaining access to the machine or equipment and for returning it to service. The check list might address the number and locations of the energy isolating devices in order to guarantee total deenergization. In most cases, if the procedure itself takes the form of a check list, this check list would need to reflect the necessary order of energy isolation and device application.

In paragraphs (c)(5) (i) and (ii), OSHA requires that the employer provide the necessary protective materials and hardware such as locks, tags, chains, adapter pins, etc., for attachment to the energy isolating devices. The standard also requires that the devices be unique to the particular use (the only ones authorized for the purpose); that they be durable, standardized and substantial; and that they identify the user.

There were three commenters (Ex. 2-28, 2-67 and 2-80) who commented on the employer providing the necessary protective materials and hardware. One commenter (Ex. 2-28) suggested eliminating the requirement for the employer to provide the needed lockout or tagout materials or hardware. OSHA disagrees with this contention. Whereas other types of protective equipment, such as safety shoes, may be of a personal nature, the protective materials and hardware used to lockout or tagout is more machine or equipment oriented. The employer is ultimately in the best position, based upon his/her knowledge of the construction and configuration of the plant, facility and/or the type of equipment, to judge or determine the type and quantity or number of items needed in that plant or facility to effectuate the control of energy during servicing or maintenance of the machines or equipment. If the employer orders the necessary hardware, he/she can ensure that the hardware complies with the provisions of the standard (that is, that the hardware is durable, standardized, substantial and identifiable). The purchase of a larger number of those materials and hardware can also result in an overall cost savings if enough of a particular item or several items are ordered in quantity.

One of the other commenters (Ex. 2-67) recommended eliminating the need for the employer to provide tags since tags should be used only when the equipment design does not allow lockout. OSHA has previously discussed the use of tags as an acceptable energy control measure under this standard. The final commenter (Ex. 2-80) recommended changing "securing or blocking" to "blocking and/or securing. to emphasize that there may be situations when the use of a combination of energy control techniques are necessary." OSHA believes that the standard already provides for situations in which more than one energy control method is necessary. The purpose of the standard as stated in paragraph (a)(2) is to require employers to establish and utilize procedures for disabling machines or equipment in order to prevent injury to employees. What is necessary and appropriate to control hazardous energy in a given situation is one the determinations which the employer must make when implementing the program. This final standard recognizes that it may be necessary to use several different means of controlling energy simultaneously to control a particular operation.

The standard utilizes performance language in imposing the above requirements. OSHA believes that the obligations imposed by paragraphs (c)(5) (i) and (ii) are not overly restrictive or complicated. To meet the requirement in paragraph (c)(5)(i) to supply protective equipment and hardware, the employer can either issue devices to each employee responsible for implementing energy control measures, or can exercise the option of simply having a sufficient quantity of the devices on hand at any given time and assign or distribute them to employees as the need arises. As noted earlier, all authorized employees will need to have these devices available to attach to energy isolating devices whenever they perform servicing or maintenance using the energy control procedure.

The proposed standard specified that lockout or tagout devices be singularly identified, shall be the only devices used for controlling hazardous energy, shall not be used for other purposes, and shall be durable, standardized, substantial, and identifiable. This requirement remains substantially unchanged in the Final Rule. Three commenters (Ex. 2-53, 2-64 and 2-70) objected to not allowing energy control devices to be used for other purposes. This restriction was proposed, and is being adopted to ensure that the sight of a distinctive lock or tag will provide a constant message of the use that the device is being put to and the restrictions which this device is intended to convey. If lockout or tagout devices are used for other purposes, they can lose their significance in the workplace. For the energy control procedure to be effective, these devices must have a single meaning to employees: "Do not energize the equipment when such a device is affixed to it."

In paragraph (c)(5)(ii)(A) OSHA proposed that lockout or tagout devices be durable. There was no specific comment on this provision. In order to overcome some of the concerns of commenters to the use of tags, OSHA is adding in the Final Rule that tagout devices must be constructed and printed so that exposure to weather or other environmental conditions which exist in the workplace will not cause the tag to become unserviceable and/or the message on the tag to become illegible. For any sign, tag or other message bearing item, the message must remain legible for the employees to be able to ascertain the meaning and intent of the message.

In paragraph (c)(5)(ii)(B) OSHA is requiring that lockout or tagout devices be standardized in one of the following criteria: color, shape, size, print or format, in order that they be readily identificable and distinguished from other similar devices found in the workplace. In addition, the final rule adds a requirement for the use of a standardized print and format for tagout devices. This is done to ensure that the tagout devices, which rely exclusively on employee recognition for their effectiveness, will be so unique as to minimize the chances of their being misidentified or their message misinterpreted.

In paragraph (c)(5)(ii)(C) OSHA requires that lockout or tagout devices be substantial enough to minimize the possibility of premature removal. The standard requires that lockout devices be substantial enough to prevent their removal without the use of excessive force or unusual techniques. Tagout devices and their means of attachment are similarly required to be constructed so that the potential for inadvertent or accidental removal is minimized. Tag attachment means are further required to be attachable by hand, and to be of strength equivalent to a one-piece non-releasable, self locking cable tie. These additional requirements are being imposed to ensure that tags do not become disconnected or lost during use, thereby negating their effectiveness.

In item (d), OSHA requires that lockout or tagout devices identify the employee who applies the device or devices. This requirement is similar to the proposal. Identification of the user provides an additional degree of accountability to the overall program. It enables the employer to inspect the application of the energy control procedure and determine which employees are properly implementing its requirements. If locks or tags are not being properly attached by an employee, identification on the locks and tags will enable the employer to locate that employee and correct the problem promptly, including additional training, as necessary. For other employees, this requirement will enable them to determine at a glance which authorized employees are performing a given servicing operation. It puts them on notice that if questions arise about the servicing or the energy control procedure, the persons listed on the lockout and tagout devices are the appropriate persons to ask. The authorized employee has the additional assurance that other employees know of his/her involvement in the servicing, and that only he/she is allowed to remove the device.

There were three commenters (Ex. 2-21, 2-38 and 2-62) who objected to having to mark or identify locks. These commenters claimed that identifying a lockout device with a particular employee was unnecessary. OSHA believes that knowing who applied a lockout device to a machine or equipment can save time and lives. If an employee, upon completing a job, forgets to remove a lockout device, the identity of the employee can be immediately determined and the employee made available to complete the procedure. If that employee cannot be located, it is possible that he/she is still working on the equipment. It would then be possible to check out the area and assure that the employee and others are out of the danger area before the device is removed. Marking a lockout or tagout device is a simple way of identifying the person who applies it, and can prevent the inadvertent reenergization or reactivation of equipment before that employee has been located and has moved clear of the equipment. Thus, marking the identity of the employee who uses a lockout or tagout device is an appropriate safeguard.

Marking of the lockout or tagout devices can also promote a sense of security in employees, in that each device is the individual employee's device, used only for his or her protection. This sense of identity also can be used to encourage willing utilization of the energy control procedure. When an employee can identify with a part of the program he/she controls for his/her own protection, that employee will likely be an active participant in making the program work.

In paragraph (c)(5)(iii), OSHA states that the legend (major message) on tagout devices must warn against hazardous conditions if the equipment is re-energized. Five examples of major message are provided in paragraph (c)(5)(iii): Do Not Start, Do Not Open, Do Not Close, Do Not Energize, and Do Not Operate. OSHA recognizes, however, that these messages may not be sufficient to cover all conditions involving hazardous energy control. For that reason, the above stated legends are only examples of what must be stated. The use of graphics, pictographs or other symbols to convey the message which the tag represents serves the same purpose as the written message and therefore would be acceptable to OSHA. Additionally, the use of danger tags would have to meet the requirements of § 1910.145.

There were 8 commenters (Ex. 2-20, 2-32, 2-38, 2-41, 2-53, 2-62, 2-70 and 2-74) who discussed the requirement contained in (c)(5)(iii). Three of the commenters (Ex. 2-38, 2-53 and 2-62) suggested elimination of the wording in the requirement "shall warn against hazardous conditions if the equipment is re-energized." This is a statement of the purpose of the tag. The significance of this message is imparted through the training of employees and enforcement of the program. The backbone of a tagout system is that when a tagout device is placed on an energy isolating device, it informs employees that the energy isolating device is not to be turned on or otherwise moved to a position which will allow the flow of energy. The printed message on the tag provides information about what the tag stands for and what it prohibits, and indicates the name of the employee who affixed it to the energy isolating device.

Three of the commenters (Ex. 2-32, 2-41 and 2-70) commented on the language of the proposal "and shall include the legends: * * * or similar language." Two of the commenters (Ex. 2-32 and 2-70) suggested amending the wording of the phrase to say, "and shall include the following legends: * * *" The proposal was intended to require that tags have some type of commonly used message which would serve to prohibit an employee from bypassing or disregarding the tag. The items listed (that is, "Do Not Start", "Do Not Open" etc.) were intended not to be an all inclusive or complete list of the possibilities but rather, to give an indication of the type of prohibitive major message which the tag could contain. Clearly, whatever language is chosen for the message of the tag must coincide with the prohibited action. Further, employees must know and understand that the tag really means "do not touch," regardless of the type of equipment or hazard involved.

Due to the severity of the risks associated with a lapse in the

implementation of the energy control system, paragraph (c)(6) requires that periodic inspections be performed at least annually in order to verify and to ensure that the energy control program is being properly utilized. One method for meeting the performance requirements in this paragraph would be to use random audits and planned visual observations to determine the extent of employee compliance. Another would include modifying and adopting ordinary plant safety tours to suit this purpose.

The periodic inspection is intended to assure that the energy control procedures continue to be implemented properly, and that the employees involved are familiar with their responsibilities under those procedures. A significant change in this requirement from the proposal involves the activities of the person performing the inspections. The inspector, who is required to be an authorized person not involved in the energy control procedure being inspected, must be able to determine three things: first, whether the steps in the energy control procedure are being followed; second, whether the employees involved know their responsibilities under the procedure; and third, whether the procedure is adequate to provide the necessary protection, and what changes, if any, are needed. The inspector will need to observe and talk with the employees in order to make these determinations. The Final Rule provides some additional guidance as to the inspector's duties in performing periodic inspections, to assure that he or she obtains the necessary information about the energy control procedure and its effectiveness. Where lockout is used, the inspector must review each authorized employee's responsibilities under the procedure with that employee. This does not necessarily require separate one-on-one meetings, but can involve the inspector meeting with the whole servicing crew at one time. Indeed, group meetings can be the most effective way of dealing with this situation, because it reinforces the employees' and that they need to follow the procedure carefully. Where tagout is used, the inspector's review of responsibilities extends to affected employees as well, because of the increased importance of their role in avoiding accidental or inadvertent activation of the equipment or machinery being serviced. OSHA believes that these reviews, which will need to be performed on at least an annual basis during the periodic inspections, will assure that employees follow and maintain proficiency in the energy control procedure, and that the inspector will be better able to determine whether changes are needed.

A related change from the proposal is found in the certification provision in paragraph (c)(6)(ii) of the Final Rule. In addition to the operation, date of inspection, and name of inspector, the Final Rule also requires identification of the employees included in the inspection. This change provides for the inspector to indicate which employees were involved with the servicing operation being inspected, in order to assure that these employees have had the opportunity to review their responsibilities and demonstrate their performance under the procedure.

Inspections must be made by an authorized employee other than one implementing the energy control procedure being inspected. The inspections must be designed and conducted to correct any deviations uncovered. In addition, the employer must certify that they have been performed. These inspections are intended to provide for immediate feedback and action by the employer to correct any inadequacies observed.

These inspections are intended to ensure that the energy control procedure has been properly implemented and to provide an essential check on the continued utilization of the procedure.

Some commenters (cf. Ex. 2-4, 2-39) suggested that the standard require employee participation in these inspections. However, the employer has the obligation of assuring proper utilization of the energy control procedure under the standard, and the periodic inspection is a means of assuring that such compliance is taking place. If an inspection reveals flaws in the implementation of the procedure, it is the employer who must make changes in the procedure, provide retraining to employees, and take other steps to make sure that the problems are corrected. Therefore, OSHA does not believe that a requirement for employee involvement in these inspections is necessary under the OSH Act. It should be noted that the standard requires such inspections to be performed by an authorized employee other than one implementing the particular procedure. Because the inspector is also an authorized employee, he/she will have the necessary knowledge to evaluate the effectiveness of the procedure being inspected, and to report back to the employer with regard to necessary corrective measures.

In this final standard, OSHA has retained the requirement for a periodic inspection (at least annually) to ensure that the energy control procedure required by this standard is being followed. Inspections must be done by authorized employees and are intended to identify and correct any deviations or inadequacies observed. The final standard retains the requirement for the inspections to be conducted by authorized employees, in order to assure that the work. (See paragraph (b) of the standard and the explanation of paragraph (c)(7) below.)

OSHA believes that periodic inspections by the employer are necessary to ensure continued compliance with the procedure. Therefore, this requirement remains unchanged.

In paragraph (c)(7), OSHA specifies that the employer provide effective initial training, periodic retraining, and certification of such training of employees. OSHA considers these requirements to be of critical importance in helping to ensure that the applicable provisions of the hazardous energy control procedure(s) are known, understood and strictly adhered to by employees.

As it is the case with the other provisions of this generic rule, OSHA believes that the training program under this standard needs to be performance oriented, in order to deal with the wide range of workplaces covered by the standard. However, in order to provide adequate information, any training program under this standard will need to cover at least three areas: The employer's energy control program, the elements of the energy control procedure which are relevant to the employee's duties, and the requirements of this Final Rule. The details will necessarily vary from workplace to workplace, and even from employee to employee within a single workplace, depending upon the complexity of the equipment and the procedure, the employee's job duties and their responsibilities under the energy control program, and other factors. Paragraphs (c)(7)(i) (A), (B), and (C) of the standard establish the amount of training that is required for the three groups of employees: "authorized" employees, "affected" employees, and all "other" employees. The relative degree of knowledge required by these three employee groups is in descending order, with the requirements for authorized employees demanding the most effort in training. Because authorized employees are charged with the responsibility for implementing energy control procedures, it is important that they receive training in recognizing and understanding all potentially hazardous energy sources that they might be exposed to during their work assignments, and that they also be trained in the use of adequate methods and means for the control of such energy sources. These employees are the ones authorized to implement the energy control procedure and to perform servicing of the machine or equipment. Therefore, they need extensive training in aspects of the procedure and its proper utilization, together with all relevant information about the equipment being serviced.

The training OSHA requires for "affected employees" is less stringent than that for "authorized employees," simply because affected employees do not perform servicing or maintenance operations which are performed under an energy control procedure. Affected employees are important to the overall protection provided in the energy control program, however, because such employees work in areas where the program is being utilized by authorized employees. It is vital to the safety of the authorized employees that the affected employees recognize lockout or tagout devices immediately, that they know about the purpose of those devices, and, most importantly, that they know not to disturb the lockout or tagout devices or the equipment to which the devices are affixed. Therefore, the standard requires that affected employees be instructed in these matters. The instruction needs to be sufficient to enable the employees to determine if a control measure is in use. The instruction also needs to make affected employees aware that disregarding or violating the prohibitions imposed by the energy control program could endanger their own lives, or the lives of coworkers. Considerable latitude is given to employers in the development and implementation of the required training for both authorized and affected employees.

There was considerable comment on the training of the different classes of employees based upon the definitions and duties of the different employees as enumerated in the proposed standard. Five commenters (Ex. 2–5, 2–32, 2–44, 2–67 and 2–74) objected to different training for authorized and affected employees while 10 commenters (Ex. 2–28, 2–36, 2–39, 2–42, 2–46, 2–55, 2–58, 2–70, 2–73 and 2–85) objected to training "other" employees. One commenter (Ex. 2–27) suggested expanding the training to coincide with the training requirements of other OSHA standards.

The training requirements for the different classes or types of employees as they are defined in this final standard are performance oriented, thereby providing the employer with considerable flexibility in how the training should be conducted. The employer is permitted to use whatever method he/she feels will best accomplish the objective of the training.

OSHA also requires in paragraph (c)(7)(i)(C) that all other employees shall be instructed about the restrictions imposed upon all employees by the energy control program. This instruction as the employer's lockout/tagout procedure can be conveyed during new employee orientation sessions, by the use of employee handbooks, or through regularly scheduled safety meetings. The training of employees other than authorized and affected employees is considered by OSHA to be essential since other employees working in the plant or facility have been known to have turned on the power to a machine or equipment on which another employee is performing a servicing or maintenance activity. Inadvertent and intentional activation of machines or equipment by employees other than those working on the machine or equipment is not limited to affected employees. The training requirements for these other employees are minimal, essentially required only that these employees know what the energy control program does and that they are not to touch any locks, tags or equipment covered by this program.

In paragraph (c)(7)(ii), OSHA is establishing a requirement for additional training for all employees in plants or facilities where tagout is the preferred method of energy control. The need for this additional or supplemental training for employees in those facilities is based upon the fact that the use of tagout relies upon the knowledge of the employees and their adherence to the limitation imposed by the use of tags. Several commenters who use tagout programs stated in their comments and testimony (cf Ex. 47, 52, Tr. p. W2–5, W2–27 and H199–207) that tagout can only be effective when the program provides for extensive training and reinforcement of the elements of the tagout procedures.

In paragraph (c)(7)(iii), OSHA requires that periodic retraining be provided for authorized employees *at least annually*. This retraining may need to be conducted more frequently, that is, whenever and inspection under paragraph (c)(6) reveals, or whenever the employer has reason to believe, that there are deviations from or inadequacies in the energy control procedure.

Many participants and commenters (Ex. 2–29, 2–44, 2–57, 2–63, 2–67, 50, 52, 60, 62, Tr. p. W1–55, W1–165, W1–206, W1–263, W2–63, H85, H159, H166) suggested that the basic requirement for retraining should provide for the training to be conducted on a regular basis at specified minimum intervals. These commenters pointed out the fact that although the proposal said that the retraining shall be periodic, the criteria for conducting the training was based solely upon the periodic inspection or the employer having reason to believe that there were program problems.

The above comments and testimony clearly indicated that the "periodic" training in the energy control procedure needs to be provided at a minimum stated interval, rather than relying solely upon the employer's periodic inspection. Based on many current training programs, including those throughout the automobile industry it was argued that annual retraining would provide adequate assurance that employees understand their duties under abilities to carry out the energy control procedure.

There were 13 commenters (Ex. 2–20, 2–32, 2–36, 2–39, 2–41, 2–43, 2–44, 2–52, 2–62, 2–69, 2–70, 2–74 and 2–87) who suggested limiting retraining to those individuals and in those instances when there is an identified problem. These commenters reasoned that retraining should not be required unless there is some indication to the employer that it is needed.

OSHA believes that the effectiveness of training diminishes as the time from the last training session increases. Without the imposition of a requirement for periodic retraining of the employees who are critical to the success of the energy control program, that is, the persons who must utilize the procedure, the overall effectiveness of the energy control program will diminish over an extended period of time. The Agency has determined that the proposed provision, i.e., simply relying upon the finding of a problem with the program to trigger the retraining program, does not properly address the problem. Retraining is intended to provide for continued proficiency, and not merely to remedy situations in which such proficiency has been found wanting.

In addition to the periodic retraining as discussed above, additional retraining is to be conducted whenever a problem is identified during periodic inspections, or whenever the employer has reason to believe that there are problems with the energy control procedure itself or with its implementation. This retraining should be more concentrated or more encompassing than the routine retraining, based upon the severity of

the problem encountered with the use of the energy control program in the workplace.

OSHA is of the opinion that full and uniform utilization of an energy control procedure is necessary in order for that procedure to maintain its effectiveness. Every effort should be made during the periodic inspection performed under paragraph (c)(6) to determine whether or not the procedure is being used properly. If deviations are observed, retraining in accordance with paragraph (c)(7)(iii)(B) would be required. However, retraining could be triggered by events separate from the finding of a periodic inspection. For example, an employee working with an energy control procedure might be injured in the course of his duties, or there might be a "near miss," where no one is actually injured, but where the energy control program has failed nonetheless. If a subsequent investigation indicates that an employee failed to operate within the guidelines of the control procedure, retraining would be required.

In addition, the investigation might also reveal that the procedure itself was not adequate. Such inadequacies in the procedure could be the result of using a general procedure that does not handle effectively a specific application, or they may arise because changes have been made to the equipment or process that did not take the existing energy control procedure into consideration. In such cases when changes to the energy control procedure must be made, the employer is required to retrain employees in the new or revised procedures in accordance with paragraph (c)(7)(iii)(B).

In the Final Rule, when lockout is being implemented, OSHA is limiting the annual retraining requirement to authorized employees. These are the employees who must implement the energy control procedure, and their protection is the primary consideration under this standard. Because their safety requires them to follow the steps of the procedure precisely, these employees must be properly trained, and that training must be reinforced to assure their continued proficiency. By contrast, affected employees are not provided with annual retraining under this standard when lockout is used. In these situations, affected employees are initially trained about the energy control procedure and its implementation, and the relevance of that procedure to his/her work. Under lockout conditions, the essential element of the affected employee's training is a simple one: Locks are not to be defeated or bypassed, and locked out equipment must remain deenergized. This message is reinforced whenever the affected employees work in an area where energy control procedures are being implemented, because paragraph (c)(9) of the standard requires that such employees be notified before the energy control devices are applied. Further, when a lockout device is attached to a piece of equipment by an authorized employee, an affected employee should not be able to remove the lock, and thus will not have the potential of placing the authorized employee in danger.

By contrast, however, paragraph (c)(7)(iv) of the Final Rule requires that when tagout is used, both authorized and affected employees must be retrained annually in the use of the tagout system. This additional training is necessary because of the inherent difficulties of tagout systems as opposed to lockout: The use of tags relies uniquely upon the knowledge and training of the employees involved, and the continued reinforcement of the meaning of the tags. In a lockout system, even if an affected employee has not been adequately trained, the lock will prevent that employee from reenergizing the equipment. Tags, on the other hand, can be inadvertently or intentionally bypassed or ignored by an affected employee, because the tags do not actually prevent the activation of the tagged and equipment. Employees operating under a tagging system must be constantly vigilant, and their awareness of the importance of the tagout device must be frequently reinforced. OSHA believes that when tagout is used, retraining must be provided on at least an annual basis, in order to maximize its effectiveness.

Paragraph (c)(7)(v) requires that employers certify that the training required by this standard has been provided. This requirement is unchanged from the proposal. Certifications are intended to cover both the initial training and the periodic retraining. In addition to certifications, the employer must be able to demonstrate that the training includes all elements of the energy control procedure which are directly relevant to the duties of the employee. The adequacy of the training can be evaluated by the employer, employee, and OSHA alike, by comparing the elements of the training to the elements of the procedure, which is required to be in written form.

Several commenters recommended that there be a "record," rather than a "certification," that training has been performed (cf. Ex. 2–30, 2–62 and 2–89). OSHA believes that a written certification serves the same purpose, while minimizing the paperwork burden on employers. It should be noted that the certification is not intended as a means of evaluating the completeness or efficacy of the training; it only provides an indication that training has been performed. The quality and content of the training are not evaluated through the certification of performance. As noted earlier, the standard sets forth the elements which must be included in the training for the employees. In evaluating whether an employee has been adequately trained, OSHA will examine the employee's responsibilities under the energy control program in relation to the elements of the standard.

OSHA proposed in paragraph (c)(6), that energy isolating devices used for the control of potentially hazardous energy sources, including valves, be marked or labeled to identify the equipment supplied and the energy type and magnitude, unless they are positioned and arranged so that these elements are evident, and that the devices only be operated by authorized employees. OSHA reasoned that employees working with energy control procedures need adequate information about the hazards of the equipment that they are servicing, and they must be certain that the equipment they are working on is the same equipment that was intended to be disabled. They should feel confident that they have secured the correct energy control devices and are protected from the hazards of inadvertently working on energized equipment.

The proposed identification requirement of paragraph (c)(6)(i) would have applied to all energy isolating devices, including devices which control hydraulic, pneumatic, steam, and similar energy sources by the use of valves or similar devices to isolate and block energy flow. It would also have applied to the valves used in pipeline network process operations, such as those found in petroleum and chemical operations.

The proposed requirement for marking or labeling energy isolating devices to identify the equipment supplied and the type and magnitude of the energy, received considerable comment. Eleven commenters (Ex. 2–14, 2–20, 2–28, 2–32, 2–39, 2–51, 2–52, 2–53, 2–58, 2–69 and 2–70) questioned the need to specify the magnitude of the energy while two commenters (Ex. 2–32 and 2–34) questioned the ability to mark valves, etc. when the material and the magnitude of the energy contained in the material conveyed could be almost continuously variable. Seven commenters (Ex. 2–21, 2–34, 2–38, 2–46, 2–61, 2–69 and 2–70) suggested removing the requirement. Five commenters (Ex. 2–22, 2–44, 2–52, 2–58 and 2–59) proposed allowing the use of drawings, schematics, temporary tags or work permits to serve as an alternative to marking or labeling energy isolating devices. Two commenters (Ex. 2–39 and 2–62) recommended that training of qualified persons would supply the information rather than marking the energy isolating devices.

OSHA has determined that the marking or labeling of energy isolating devices is not reasonably necessary for the effectiveness of the energy control program. When employees need to know details on energy sources for protection under the standard, the energy control procedure is required to spell out this information, and the training must incorporate it, as well. For example, authorized employees, in order to perform their servicing or maintenance duties under the energy control procedure, are required to know the type and magnitude of the energy sources which must be controlled. The marking or labeling of the sources themselves will not provide the authorized employees with any additional information. Second, as far as affected or other employees are concerned, their role in the energy control program is essentially to understand what the program is designed to accomplish, and to recognized that when they see an energy isolating device with a tag and/or lock on it, they are not to touch the equipment, regardless of what the type and magnitude of the energy might be. OSHA believes that marking the equipment with this information would not enhance the protection of these employees, because their compliance with the energy control procedure does not depend upon knowledge of these details.

Accordingly, OSHA has eliminated the proposed requirement for marking or labeling energy isolating devices. In its place, OSHA is incorporating a specific requirement in paragraph (c)(7)(i)(A) that authorized employees be trained in the recognition of applicable hazardous energy sources, the type and magnitude of the energy available in the workplace, and in the methods and means necessary for energy isolation and control. OSHA further requires in paragraph (c)(7)(vi) that authorized employees must know the type and magnitude of the energy, the hazards of the energy to be controlled and the method or means to control the energy even before the machine or equipment is turned off. OSHA believes that employee knowledge of this information is essential to ensure that the correct energy control devices are used on the proper energy isolating devices and in the proper manner. This provision requires the employee to have that specific information prior to deenergizing the equipment, in order to control the energy and render the machine or equipment safe to work on. OSHA does recognize that the physical shutdown of the machine or equipment can be accomplished by either the authorized or affected employee.

The new paragraph (c)(8) requires that lockout or tagout be performed only by authorized employees. These are the only employees who are required to be trained to know in detail about the types of energy available in the workplace and how to control the hazards of that energy. Only properly trained and qualified employees can be relied on to deenergize and to properly lockout or tagout machines or equipment which are being serviced or maintained, in order to ensure that the work will be accomplished safely.

In paragraph (c)(9), OSHA requires that whenever lockout or tagout control might directly affect another employee's work activities, the employer or authorized employee must notify the affected employee before taking any action to apply or to remove lockout or tagout devices.

There were four commenters (Ex. 2–20, 2–21, 2–64 and 2–74) who discussed this provision. One commenter (Ex. 2–20) recommended that the notification occur after removal of the energy control device while one person (Ex. 2–21) suggested that the "qualified" persons not be required to notify affected employees of the energy control device removal, particularly in emergency repair conditions. Finally, two commenters (Ex. 2–64 and 2–74) insisted that the requirement was unnecessary, especially since employees must be trained and the lockout or tagout effectively prevents machine or equipment energization.

OSHA believes that this requirement is an essential component of the total energy control program. Notification of affected employees when lockout or tagout is going to be applied provides the perfect opportunity for the employer or authorized employee who notifies them of the impending interruption of the normal production operation to remind them and reinforce the importance of the restrictions imposed upon them by the energy control program.

OSHA believes that these measures are important to ensure that employees who operate or use machines or equipment do not unknowingly attempt to reenergize those machines or equipment that have been taken out of service and deenergized for the performance of activities covered by this standard. The lack of information regarding the status of the equipment could endanger both the servicing employees and the employees attempting to reenergize or operate the equipment. Such notification is also needed after servicing is completed to assure that employees know when the control measures have been removed. Without such information, employees might mistakenly believe that a system is still deenergized and that it is safe to continue working on or around it.

This standard for the control of hazardous energy is a "generic" standard, and is written largely in terms of the procedures and performance to be achieved. OSHA does not consider it practical to prescribe specific definitive criteria for each possible use of energy control measures in such a wide ranging standard. However, the Agency believes that the standard will enable the user to make a choice of the most effective control measure involving the use of locks or tags, or a combination of the two devices for securing energy isolating devices. (As discussed above, paragraph (c) of the standard provides criteria for the selection of such devices.)

The main thrust of the standard is to mandate the development, documentation and implementation of control procedures, and this is to be accomplished as outlined in paragraph (d) of the standard. The employer is given considerable flexibility in developing a control program, and such a program will be evaluated by OSHA compliance officers to determine whether it meets all the criteria in this standard.

Although the Final Rule notes the Agency preference for lockout, this standard does not impose lockout requirements in all cases for reasons discussed earlier. OSHA intends to address the need for and the feasibility of more specific lockout or tagout requirements for particular types of equipment or processes on an individual basis, as appropriate, in future rulemakings. This will involve revision of existing standards and promulgation of new ones, as necessary. (Examples of current provisions in the OSHA standards which contain specific lockout/tagout requirements can be found in the previous discussion of proposed paragraph (a)(3)(iii).)

Paragraph (d) of both the proposal and Final Rule provides that five separate and distinct steps be followed in meeting the procedural requirements of paragraph (c)(1) (Procedure) and the application of energy control (lockout or tagout) measures, and that the actions be taken in the sequence presented. Paragraph (d)(1) requires that in preparation for shutdown of machinery or equipment, the authorized employee must know about the type and magnitude of the energy, the hazards involved, and the means of controlling them. Paragraph (d)(2) then requires that the machine or equipment be turned off or shut down by an authorized employee according to the established procedures. This is the starting point for all subsequent actions necessary to put the machine or equipment in a state that will permit employees to work on it safely.

In many operations, activation of an electrical push-button control or the movement of a simple throw switch (electrical, hydraulic, or pneumatic) to the "stop" or "off" mode is sufficient to meet this provision. In other cases, however, such as those found typically in a refining or chemical process, there are control devices that do not necessarily address an "off-on" or "start-stop" condition (i.e., level controls, pressure controllers, etc.). In these instances, a series of predetermined steps may be necessary to achieve a shutdown of the machine or equipment.

One commenter (Ex. 2–28) suggested that any qualified (trained) employee be allowed to shut down or turn off machines or equipment. Another commenter (Ex. 2–41) suggested allowing machine operators to shut down or turn off the equipment. OSHA is aware that although an authorized employee would usually have the necessary knowledge and capability to shut down machines or equipment, a machine or equipment operator or user should also be in a position and know how to shut down the machine or equipment he/she is utilizing. In many cases, allowing a machine or equipment operator or user to shut it down when something goes wrong may save time and money, and may possibly avoid an accident. In many cases, the affected employee may be infinitely more familiar with the shutdown procedure for a machine or equipment, and would be able to accomplish the shutdown more rapidly and safely than an authorized person who does not work with that particular machine or equipment every day.

In the event that a machine or equipment malfunctions, the wise and prudent thing to do in most cases is to require that the machine or equipment be immediately shut down. Shutting down a machine or equipment is analogous to stopping the production operation. Contrary to the opinion of one commenter (Ex. 2–71) who stated that OSHA should not mandate equipment shut down as the mandatory first step of the procedure, OSHA believes that stopping the machine's production function is the necessary and appropriate first step in the procedure. This commenter suggested that some machinery should have components moved to a safe position before shutting off the power. OSHA believes that the necessary first step is to interrupt the production process to allow non-servicing (affected) personnel to move clear of the machinery or equipment. Once this is done and employees are not exposed to a hazard, the machine or equipment can be restarted by the authorized employee under the guidelines of paragraph (f)(1) when necessary to allow positioning of the machine or equipment, or components thereof.

Following shutdown of the machine or equipment as outlined in (d)(2), paragraph (d)(3), as the next step in the procedure, provides that energy isolation devices be physically located and operated in such a manner as to isolate the machine or equipment from the energy source(s). For example, once an electrical push-button control has been utilized to stop the movement of machine or equipment parts as the first step of the shutdown procedure, isolation can then be accomplished by ensuring that the push-button circuitry cannot be supplied with additional electrical energy. For such equipment, the isolation requirement can be accomplished by the employee's actions in tracing the path from the control toward the energy source until he/she locates the energy isolating device, and moving the energy isolating device control lever to the "safe," "off," or "open" position. Performing these actions will prevent the reintroduction of energy to the push-button circuitry and will isolate the operating control and the machine or equipment from the energy source.

One commenter (Ex. 2–41) suggested that OSHA add the restriction that only authorized employees be allowed to either locate and operate or supervise the operation of energy isolating devices. Instead of adding individual restrictions to each of the procedural steps of the standard, OSHA has added a new paragraph (c)(8) to the final standard which requires that all steps of the procedure except initial shutdown of the equipment as provided in paragraph (d)(1) be performed only by authorized employees. Since the use of lockout or tagout is presumed by OSHA to be individual protection, identification and operation of the energy isolating devices must be done only by the authorized employees who are applying the locks or tags under the procedures.

As the fourth step in the procedure, paragraph (d)(4) provides that action be taken to secure the energy isolating devices in a "safe" or "off" position. This paragraph requires that appropriate and effective lockout or tagout devices be affixed to each energy isolating device by the authorized employee, and that they be attached so as to prevent reactivation of the machine or equipment.

Where no specific standard presently requires the use of lockout versus tagout, paragraph (d)(4) requires the employer to select an appropriate and effective method, in accordance with the criteria set forth in paragraph (c)(2) above. OSHA is of the opinion that, as a general rule, when it is feasible, the physical protection offered by the use of a lock, when supported by the information provided on a tag used in conjunction with the lock, provides the greatest assurance of employee protection from the release of hazardous energy. OSHA has discussed in the section entitled "Major Issues" the arguments for the use of lockout and tagout.

Paragraph (d)(5) provides that the next step taken in the energy control procedure is to determine the presence of, and relieve, disconnect and/or restrain all potentially hazardous, stored or residual energy in the machine or equipment. Up to this point, the purpose of following all the steps of the procedure has been to enable the employee to isolate and block the source of energy feeding the machine or equipment to be worked on, at a point beyond which it can not be bypassed. However, energy can very easily be trapped in a system downstream from an energy isolating device, or can be present in the form of potential energy from gravity or from spring action. Stored or residual energy of this sort cannot be turned on or off; it must be dissipated or controlled.

When energy may still be present in a system that has been isolated from the energy source, this paragraph requires that energy to be controlled before an employee attempts to perform any work covered by the scope of the standard. Compliance with this provision might require, for example, the use of blocks or other physical restraints to immobilize the machine, machine components, or equipment where necessary for control of the hazard. In the case of electrical circuits, grounding might be necessary to discharge hazardous energy. Hydraulic or pneumatic systems might necessitate the use of bleed valves to relieve the pressure.

There were four commenters (Ex. 2–32, 2–71, 2–74 and 2–80) who discussed the requirement for the release or restraint of stored or residual energy. One commenter (Ex. 2–71) pointed out that there are several types of stored or potential energy which only the concept of zero mechanical state (ZMS) adequately covers. Examples of these hazards are machinery components which run on a cam or other concentric. For this type of machinery, the cam or concentric dictates the motion of the component or pivotal machine components which could be set in motion by inadvertent employee contact.

ZMS is the concept which was originally developed to simplify the requirements for disabling sophisticated machines and processes by reducing the possibility of mechanical movement to a minimum. The concept of ZMS is spelled out in the ANSI Z241.1–1975 American National Standard Safety Requirements for Sand Preparation, Molding and Coremaking in the Sand Foundry Industry. (Ex. 2–71). ZMS specifies that every power source that can produce movement of a machine member must be locked out.

OSHA has reviewed this aforementioned consensus standard and believes that adoption of this OSHA standard will better effectuate the purposes of the OSH Act. The OSHA standard requires the adoption and utilization of a complete program for the control of hazardous energy, including energy sources not specifically addressed by the ANSI Z241.1 standard. Further, OSHA believes that the energy control procedures established in this final rule are consistent in most respects with those of ANSI Z241.1.

The Final Rule addresses these and other hazards of stored or residual energy in a performance manner. Rather than trying to determine all of the potential manners in which this energy can be stored or retained in machines, equipment and the materials being utilized in the production process, as noted earlier, OSHA requires in paragraph (d)(1) that the authorized employee must have knowledge of the energy, its hazard and how to control it (including stored or residual energy). This paragraph (d)(4) requires the stored or residual energy to be relieved, disconnected, restrained or otherwise rendered safe as part of the energy control procedure.

One commenter (Ex. 2–74) suggested adding the phrase, "unless stored mechanical energy is a necessary element in the equipment or process." OSHA has answered this objection by requiring in this provision that stored or residual energy must be rendered safe before the servicing or maintenance may be conducted. OSHA believes that if stored or residual energy is hazardous, something must be done to protect the employees.

One commenter (Ex. 2–80) said that OSHA should consider a block, chain or other instrument used for restraining stored or residual energy to be a type of energy isolating device which does not require a lock or tag. Although OSHA defines a block as a form of energy isolating device, the requirement for the use of locks or tags is separate and distinct from the requirement for restraining stored or residual energy and the addition of a lock or tag, in most cases, would not materially add to the effectiveness of the block.

One commenter (Ex. 2–32) suggested making it clear that the stored or residual energy is only that which is downstream from the energy isolating device. OSHA acknowledges that the standard is intended to control energy as it relates to the energy isolating device and the machine or equipment being serviced, and that the only stored or residual energy addressed by the standard is that which could reenergize that equipment or be released while the servicing operation is being performed.

In paragraph (d)(4)(ii) the standard requires that verification of isolation shall be continued until the servicing or maintenance is completed when the possibility of the reaccumulation of stored energy exists. There was one commenter (Ex. 2–32) who stated that no work should be allowed to proceed until there is assurance that reaccumulation of stored energy cannot occur.

OSHA believes that this requirement of the standard should remain as proposed since there is no manner to ensure that some leakage or drainage of energy or energy containing substances, such as supercooled or cryogenic fluids, can occur. In the case of one of those substances being present in a piping, containment or transport system, a certain amount of leakage may occur without endangering employees. However, if servicing or maintenance must be performed on such a system, the standard requires the employer to continue to verify the isolation of energy sources which may be hazardous, in order to assure that such leakage does not approach a dangerous level. This may involve means such as continuous monitoring for the displacement of oxygen or the buildup of the concentration of the substance toward the lower explosive limit of the substance, such as could occur with a hydrogen system.

In paragraph (d)(6), as the sixth step in the energy control procedure, the authorized employee must ensure that the previous steps of the procedure have been taken to isolate the machine or equipment effectively. This must be done prior to starting the servicing or maintenance work. The authorized employee needs to verify that the machine or equipment has been turned off or shut down properly as required by paragraph (d)(2) of this standard; that all energy isolating devices were identified, located and operated as required by paragraph (d)(3); that the lockout or tagout devices have been attached to energy isolating devices as required by paragraph (d)(4); and that stored energy has been rendered safe as required by paragraph (d)(5).

This step of the procedure may involve a deliberate attempt to start up equipment which should not be capable of activation because of the application of the energy control devices. It is an action intended to assure the employee that energy from the main power source has been effectively isolated, that residual or stored energy has been blocked and that injury could not result from inadvertent activation of the operating controls. Another means of testing the machine or equipment is by the use of appropriate test instrumentation. This method would be appropriate for use in cases involving electrical circuits and equipment, for example, where verification of isolation could be accomplished by using a voltmeter to determine that there is no electrical energy available to the machine. Similar test equipment can be utilized to test for the presence of other energy types and sources.

OSHA also considers the use of visual inspection procedures to be of critical importance throughout the lockout or tagout procedures. Visual inspection can confirm that switches, valves, breakers, etc. have been properly moved to and secured in the "off" or "safe" position. Observing the position of the electrical main power disconnect switch can, for example, confirm that the switch is either in the "off" (open) or "on" (closed) position. Visual inspection can also verify whether or not locks and other protective devices have been applied to the control points in a manner that would prevent the unsafe movement of the switches or valves. Finally, a

visual inspection can be used to verify that isolation has taken place by determining that all motion has stopped and that all coasting parts such as flywheels, grinding wheels, saw blades, etc., have come to rest.

OSHA emphasizes that in order to verify that hazardous energy has been isolated, the authorized employee may need to use a combination of the above methods. The appropriate combination will depend upon the type of machinery or equipment involved, the complexity of the system, and other factors.

Paragraph (e) requires that certain actions be taken by authorized employees before lockout or tagout devices are removed from energy isolating devices. These actions are intended to ensure that: (1) The machine or equipment has been returned to an effective operating condition; (2) any employees who might be exposed to injury due to the process of restoring energy are made aware that such process is to begin; and (3) those employees having the responsibility for removal of the devices have been identified together with the specific conditions necessary for the procedures to take place.

One commenter (Ex. 2–70) contended that the requirements of paragraph (e) were unduly burdensome and impractical in large plants where numerous employees may be working. OSHA does not believe that this is the case. When servicing or maintenance is done on a large machine or complex system of equipment by a large number of employees, the machine or equipment would probably be operationally intact before the work begins. When the work is completed, paragraph (e)(1) merely requires that before the equipment is reenergized, the employees who did the servicing or maintenance work complete the job by replacing guards and other machinery components and cleaning up after themselves. Paragraph (e)(2) then requires a check for safe location of employees and notification that the equipment is to be reenergized. A simple procedure to follow to verify that the work area and the machinery is ready to be used for its production function is for a foreman, supervisor or leadman (whoever is in charge) to ask the workmen if they are done and then to spot check to ensure that all appears ready to resume normal operations.

Because each servicing employee will have his/her own lockout or tagout device attached to the energy isolating device during the servicing operation, the person in charge of the servicing operation will first determine whether all such devices have been removed by the servicing employees. This is an essential step in the procedure, and paragraph (e) requires that a final verification be performed to ensure that it is safe to reenergize the equipment after servicing is completed. Further, a check on the satisfactory completion of the work can also ensure that the machine or equipment will not be damaged by its start up. Although the purpose of the final check is to protect employees, it can also prevent needless downtime of the machine or equipment because the servicing or maintenance was not done correctly and/or completely the first time.

Paragraph (e)(1) requires that the workplace area around the machine or equipment be inspected to ensure that nonessential items have been removed and that equipment components are operationally intact. This step ensures that tools, machine parts and materials have been removed, and that mechanical restraints, guards and other machine parts have been replaced before returning the machine or equipment to its operational mode. Depending on the complexity of the machinery and the type and degree of servicing performed, visual inspection alone might be sufficient to meet this requirement, or there might have to be additional measures such as check lists and other administrative procedures.

One commenter (Ex. 2–28) suggested the elimination of the words "nonessential items" from this requirement and to substitute words which indicate that the only things that must be removed are those machines which could cause injury to employees or damage to items. OSHA believes that the cleanup requirement must of necessity be a broad one, since virtually any extraneous item in the servicing area could cause injury to employees if the machinery or equipment were to be reenergized before such items are removed. Further, OSHA believes that the cleanup process should not involve an evaluation of whether each item in the area could or could not cause injury. If an item does not have to be in the servicing area after the servicing is completed, OSHA believes that the prudent step is to assure that it is removed before the equipment is reenergized. Accordingly, paragraph (e)(1) is not being changed from the proposal.

In paragraph (e)(2), OSHA proposed that the work area be checked to be sure that employees are clear of the machine or equipment before energy is restored to it. This determination will usually include a visual inspection, and depending on the scope of the operation and the equipment involved, may involve the use of administrative procedures and warning devices such as horns, bells or buzzers.

There was one commenter (Ex. 2–28) who discussed this requirement. This commenter suggested that the terms "work area" and "all employees" were vague and misleading. OSHA believes that the "work area" for servicing will depend upon many factors, such as the type of equipment being serviced, the type of energy involved, and the extent of the servicing operation. OSHA's intent is that the work area include any area in the immediate vicinity of the machine or equipment being serviced, in which employees might be endangered by the startup process. Because of the broad scope of this standard, it is not possible to define with greater specificity what this area will encompass for any given workplace or servicing operation. The employer is in the best position to evaluate the equipment in the workplace, and to make a determination of areas where employees may be exposed to the hazards of the machinery or equipment.

It cannot be overemphasized that employees performing tasks on deenergized equipment may be exposed to hazards involving serious injury or death if the status of the lockout or tagout control can be changed without their knowledge. For this reason, OSHA requires in paragraph (e)(3) that lockout or tagout devices be removed by the employees who applied them. The proposal considered whether an exception should be provided for two types of situations in which the device may be removed under the direction of an authorized employee using specific procedures. Paragraph (e)(3)(i), as proposed, would have permitted other authorized employees to remove a lockout or tagout device when the employee who applied the lockout or tagout device is not available to remove it. This provision was intended to cover situations such as those that might arise from the sudden sickness or injury of an employee, key loss, or other emergency conditions. Proposed paragraph (e)(3)(ii) would have permitted use of the exception for unique operating activities involving complex systems, where the employer could demonstrate that it was not feasible to have the device removed by the employee applying it. This was intended to provide flexibility in operations similar to that where the removal of a lockout or tagout device at a remote electrical transmission or distribution system location was required and the process was controlled by a written procedure that uses an authorized employee operating from a central control point to communicate instructions to employees working in the field.

These were 9 commenters (Ex. 2–29, 2–32, 2–44, 2–50, 2–57, 2–58, 2–59, 2–63 and 2–70) who discussed allowing exceptions to the rule requiring that lockout devices have to be removed by the employees who applied the devices. Two commenters (Ex. 2–29 and 2–44) stated that the exceptions as written were too broadly drawn and would nullify the standard. Several commenters (Ex. 2–32, 2–57 and 2–63) claimed that allowing any exceptions would be unsafe. In contrast, there were four commenters (Ex. 2–50, 2–58, 2–59 and 2–70) who suggested that the exception should be more flexible so that the employer has more leeway, such as allowing the existence of either, rather than both, of the two conditions spelled out in proposed paragraphs (e)(3)(i) and (e)(3)(ii) to trigger the exception.

In paragraph (e)(3) of this Final Rule, OSHA is requiring that as a general rule, the authorized employee who affixes a lockout or tagout device is the only one allowed to remove it. OSHA believes that each such employee must have the assurance that the device is in his/her control, and that it will not be removed by anyone else except in an emergency situation. The entire energy control program in this standard depends upon each employee recognizing and respecting another employee's lockout or tagout device. The servicing employee relies upon the fact that he/she applied the device, and assumes that it will remain on the equipment while he/she is exposed to the hazards of the servicing operation.

OSHA can envision very few instances which would justify one employee's removal of another's lockout or tagout device. However, in a true emergency, and not merely because the employee is not available, the employer may be able to demonstrate a need to remove an employee's lockout or tagout device. An exception to paragraph (e)(3) of the final rule is being provided to allow for such situations, and is discussed further below. OSHA emphasizes that removal of a personal lockout or tagout device by another person may not be based on convenience or simple unavailability of the employee. If a lockout or tagout device is attached, it is assumed that the employee who attached that device is engaged in servicing the equipment to which the device is attached, and that person is exposed to the hazards of reenergization. Therefore, as a general matter, the protection of that employee requires that he/she have complete control over his/her lockout or tagout device. Some modification of the general rule is warranted in the case of transfer of authority between shifts, as discussed in paragraph (f)(4) below, and to a limited extent in group lockout or tagout, as discussed in paragraph (f)(3) below, both of which involve coordination of activities between servicing employees.

Under the exception to paragraph (e)(3), the employer may direct the removal of a lockout or tagout device by another employee only if the energy control program incorporates specific procedures and training for that purpose, and only where the employer can demonstrate that the alternative procedure will provide equivalent safety to having the employee remove his/her own device. The procedure must include, at a minimum, the following items: First, verification that the authorized employee is not at the facility; second, making all reasonable efforts to contact that employee to inform him/her that his/her device has been removed; and third, ensuring that employee knows of that device removal before he/she resumes work at the facility. These steps are necessary to ensure that the employee who is protected by the device is not exposed to energy hazards either at the time of its removal or afterwards.

Paragraph (f)(1) requires that the employer develop and utilize a procedure that establishes a sequence of actions to be taken in situations where energy isolating devices are locked out or tagged out and there is a need for testing or positioning of the machine or equipment or components thereof. These actions are required in order to maintain the integrity of any lockout or tagout protection for the servicing employees. It is also necessary in order to provide optimum safety coverage for employees when they have to go from a deenergized condition to an energized one and then return the system to lockout or tagout control. It is during these transition periods that employee exposure to hazards is high, and a sequence of steps to accomplish these tasks safely is needed.

Paragraph (f)(1) prescribes a logical sequence of steps to be followed in situation where energy isolating devices are locked out or tagged out, and when there is a need to test or position the machine, equipment or components thereof. The steps offer necessary protection to employees when they are involved in this activity. The procedure is clear-cut and should require little or no explanation other than the contents of the standard itself.

It should be pointed out that OSHA is allowing the removal of the lockout or tagout devices and the reenergization of the machine or equipment only during the limited time necessary for the testing or positioning of the machine, equipment or component thereof. This paragraph does not allow the employer or employee to disregard the requirement for locking out or tagging out during the other portions of the servicing or maintenance operation. This exception is only a temporary measure to be used only to accomplish a particular task for which energization is essential.

In paragraphs (f)(2) (i) and (ii), the final standard requires that whenever outside servicing personnel are engaged to perform any of the activities covered by this standard at a plant or facility, the employer at that facility must inform the authorized representatives of the servicing organizations (contractors, service representatives, etc.) of the lockout or tagout procedures used by the facility. The standard also requires the plant or facility employer to verify that the procedures to be used by outside service representatives are at least as protective of his/her employees as the procedures used in the plant or facility, and that the employees in the plant or facility understand the restrictions or prohibitions of the contractor's procedure and the energy control program of the outside servicing organizations.

These requirements are necessary when outside personnel work on machines or equipment because their activities have the same or greater potential for exposing employees to servicing hazards as would exist if the employer's own employees were performing the work. These hazards can pose a threat to both the outside service representatives and the employees in the plant or facility.

The outside servicing personnel would certainly be expected to know about the specific equipment being serviced, but they might not be familiar with the energy control procedures being used in the particular workplace. Similarly, the employees at the worksite might be familiar with the procedures being used by their own employer, but they might not know what to do if the contractor has a procedure which differs from their own. If such procedures were not coordinated, each group of employees might be endangered by the actions of the other, even if each one followed its own procedures.

This standard is intended to ensure that both the employer and the outside service personnel are aware that their interaction can be a possible source of injury to employees and that the close coordination of their activities is needed in order to reduce the likelihood of such injury. OSHA sees the proper utilization of these provisions, when they are understood and agreed upon, as a way to prevent misunderstandings by either plant employees or outside service personnel regarding the use of lockout or tagout procedures in general, and with regard to the use of specific lockout or tagout devices that are selected for a particular application.

There were several commenters (Ex. 2–3, 2–41, 2–58 and 2–67) who suggested OSHA require outside contractors to use the same procedures as used in the plant or facility that the work is being done. OSHA believes that it might adversely affect the safety of employees if the standard were to require them to comply with a procedure which is unfamiliar to them and differs from their usual practices under their own employer's energy control program. Further, by allowing each employee to use the procedure that he/she is familiar with, there is greater assurance that the employees will willingly use the procedure.

When different procedures are being used by the contractor and the facility employer, the standard requires each employer to determine the impacts of the other employer's procedure on his/her own employees, and to assure that those employees are protected as effectively under the other procedure as they would be under their own procedure. For example, if there are elements of the contractor's procedure which need to be explained to the facility employees, or if there are other steps needed to assure their safety under that procedure, the facility employer must provide these employees with adequate support and information to provide the necessary protection.

Several commenters (Ex. 2–35, 2–39, 2–40, and 2–69) recommended specifying that the plant or facility employer require compatibility of procedures. Because of the wide range of potential programs and procedures to be developed under this standard, OSHA considers that a requirement for full compatibility of procedures would be difficult, if not impossible, to implement with any degree of consistency. However, OSHA believes that if each employer provides the necessary information on his/her energy control procedure to the other employer whose employees are affected by that procedure, both employers will be able to evaluate the different procedures and determine what information needs to be provided to their respective employees. Accordingly, paragraph (f)(3) of the Final Rule requires that the plant or facility manager inform the outside contractor about the lockout or tagout procedures used in the facility; that the plant or facility employer assure that the contractor's procedure provide equivalent protection to the plant employees; and that the employees in the facility understand and comply with the instruction and prohibition of the procedures.

The requirement for coordination between the contractor and the on-site employer is intended to deal with the potential for either one's employees to create or compound the hazards to which the other's employees are exposed. Regardless of the degree of coordination required by paragraph (f)(2), each covered employer, whether contractor or on-site employer, has an independent obligation under the OSHA Act to provide the protection under the standard for his/her own employees.

The facility owner must look at various aspects of the contractor's energy control program to assure that his/her employees are not placed at an increased risk. For example, is the contractor's means of notifying the affected employees of the pending lockout or tagout as thorough as the facility employer's? Is the procedure for identifying the energy isolating devices as exhaustive or complete as the facility employer's? Is the method of lockout or tagout used by the contractor recognized and respected by the facility's employees? Does the contractor's procedure take into account the possibility of reaccumulation of stored energy (if that is a potential problem)? Does the contractor's procedure for removal of lockout or tagout devices and reenergization and startup of the machine or equipment provide for employee notification and ensuring the equipment is safe before startup? If any of the steps in the contractor's procedures fail to cover significant or essential conditions of the workplace which could adversely affect the safety of the facility employees, action must be taken by the facility employer to minimize the potential for injury to his/her employees.

Proposed paragraph (f)(3) contained a series of provisions dealing with group lockout. In brief, group lockout involves the performance of servicing or maintenance activities when more than one employee is engaged in the servicing operation, using a group lockout device, with an authorized employee directly responsible for the performance of the overall servicing. The proposed requirement for group lockout specified that the authorized employee would have a primary lock, which is affixed when the equipment is deenergized, and is removed when the job is completed. It did not provide for the use of individual locks or tags by the individual employees in the group. The proposal would have allowed this system, with the authorized employee being responsible for the safety of all the employees in the group, if that program provided the same degree of safety as personal lockout or tagout.

Based on the record (Ex. 2–27, 2–29, 2–32, 2–44, 2–63, 2–99, 2–106, 51, 56, 60, Tr. pg. W1–142), OSHA has reexamined the issue of group lockout and has concluded that an additional element is necessary for the safety of the servicing employees: each employee in the group needs to be able to affix his/her personal lockout or tagout system device as part of the group lockout. This is necessary for several reasons: first, the placement of a personnal lockout or tagout system device enable that employee to have a degree of control over his/her own protection, rather than having to depend completely upon other people; second, the use of a personal device will enable each servicing employee to verify that the equipment has been properly deenergized in accordance with the energy control procedure, and to affix his/her device to indicate that verification; third, the presence of an employee's lockout or tagout system device will inform all other persons, including the other servicing employees and supervisors, that the employee is still working on the equipment; fourth, as long as that device remains attached, the authorized person in charge of the group lockout or tagout knows that the job is not completed and that it is not safe to reenergize the equipment; and, fifth, the servicing employee will continue to be protected by the presence of his/her device until he/she removes it. The authorized employee in charge of the group lockout or tagout does not remove the group lockout device until each employee in the group has removed his/her personal device, indicating that employees are no longer exposed to the hazards from the servicing operation. OSHA is convinced that the use of individual lockout or tagout system devices to supplement the group lockout device is necessary for the safety of the servicing employees.

The proposed rule contained several general elements for group lockout, including provision on primary responsibility and coordination of work forces. These elements are carried forward in the Final Rule. The requirement for the use of personal lockout or tagout devices will only enhance the overall effectiveness of these provisions, because the authorized employee in charge of the group lockout will be better able to evaluate the status of the servicing operation, as well as to determine which, if any, of the servicing employees are working on the equipment at a particular time.

OSHA requires in paragraph (f)(3) that when a crew, craft, department or other *group* lockout or tagout device is used, it must provide the authorized and affected employees with a degree of protection that is equivalent to the use of *personal* lockout or tagout procedures. As in the case of other forms of lockout or tagout protection, the employer who uses a group lockout or tagout system must develop a procedure which encompasses the elements set forth in paragraph (c)(4).

Paragraph (f)(3) identifies requires several key provisions which must be included in all group lockout or tagout procedures. If a single lockout device or set of lockout devices (often referred to as "operations locks") are utilized to isolate the machine or equipment from the energy sources, each authorized employee is afforded a means to utilize his/her personal lockout or tagout devices so that no single employee has control of the means to remove the group lockout or tagout devices while employees are still servicing or maintaining the machine or equipment. This can be accomplished by the use of a lockout or other similar appliance. Once the machine or equipment is locked out, the key is placed into the lockbox and each authorized employee places his/her lockout or tagout device on the box. When each individual completes his/her portion of the work, that person removes his/her lockout or tagout device from the lockbox. Once all personal lockout or tagout devices have been removed, the key for the group lockout devices for the machine or equipment can be used to remove that group lockout device. This method provides protection for all employees working under the protection of a particular group lockout or tagout device. When more than one group is involved, another authorized person might need to maintain responsibility for coordination of the various lockout control groups in order to ensure continuity of protection and to coordinate workforces.

In addition to designating and assigning responsibility to authorized employees, paragraph (f)(3) requires the employer to develop and implement procedures for determining the exposure status of individual crew members and for taking appropriate measures to control or limit that exposure.

These provisions are seen by OSHA as requiring at least the following steps:

1. Verification of shutdown and isolation of the equipment or process before allowing a crew member to place a personal lockout or tagout device on an energy isolating device, or on a lockout box, board, or cabinet;

2. Ensuring that all employees in the crew have completed their assignments, removed their lockout and/or tagout devices from the energy isolating device, the box lid or other device used, and are in the clear before turning the equipment or process over to the operating personnel or simply turning the machine or equipment on.

3. Providing the necessary coordinating procedures for ensuring the safe transfer of lockout or tagout control devices between other groups and work shifts.

The special coverage of paragraph (f)(3) recognizes the importance of group lockout and/or tagout devices used under conditions in which the safety of all employees working in the group is dependent on how those devices are used. For that reason, it involves a closer examination of the conditions, methods and procedures needed for effective employee protection.

OSHA also believes that by requiring each servicing employee to attach his/her own device in group servicing operations, it becomes possible to extend coverage of group servicing activities under paragraph (f)(3) beyond lockout, as envisioned by the proposal, to cover tagout, as well. This would primarily involve equipment which has not been designed to accept a lockout device. OSHA believes that when a group lockout or tagout procedure is properly implemented, it adds an additional element of protection to servicing employees: the authorized employee in charge of the group servicing operation applies a group lockout or tagout device to the equipment being serviced, and each servicing employee attaches a personal lockout or tagout device to the group device. These individual devices are removed by the employees who applied them, leaving the group device attached. These employees, by clearing the equipment and removing their own devices, indicate that they are no longer exposed to the hazards of the servicing operation. The authorized employee in charge of the group servicing operation then verifies that all elements of the group servicing have, in fact, been completed, and that it is safe to reenergize the system, before he/she removes the group device. Thus, the additional step provides further assurance that reenergizing the equipment will not endanger employees. Expanding group procedures to encompass tagout as well as lockout will extend the additional protection to operations which would otherwise be permitted under this standard to use tagout devices instead of lockout.

One of the most difficult problems to be dealt with by this standard involves the servicing and maintenance of complex equipment, particularly when the work extends across several workshifts. Under the basic approach taken by this standard, each servicing employee is responsible for the application and removal of his/her own lockout or tagout device. However, the record indicates that the servicing of some complex equipment may take days or weeks, and that in some cases, hundreds of lockout or tagout devices may be necessary. EEI (Ex. 56) noted that in some major maintenance operations, it can take a day or more just to apply lockout/tagout devices to all energy isolating devices. CMA (Ex. 56) explained that in a chemical plant, certain "turn-around" jobs may require the locking or tagging of a hundred or more energy isolation devices and require 25 or more employees to perform the servicing.

Paragraph (f)(4) of this Final Rule requires that specific procedures be utilized to ensure continuation of lockout or tagout protection for employees during shift or personnel changes in order to provide for an orderly transfer of control measures, and to be certain that the machine or equipment is continuously maintained in a safe condition. As with group lockout or tagout, this task is accomplished as part of the procedures that are defined in performance language in paragraph (c)(4). Paragraph (f)(4) requires specific procedures whenever transfer of control measures is necessary. The underlying rationale for these provisions, whereby hazardous energy control responsibility is transferred, is for the maintenance of uninterrupted protection for the employees involved. It is therefore considered essential that lockout or tagout devices be maintained on energy isolating devices throughout the transition period.

Basically, the transfer of responsibility can be accomplished by the on-coming shift employees accepting control of the system involved prior to the release of control by the off-going employees. Also, the procedures, whether they necessitate the use of simple control measures or the more

detailed use of logs and check lists to accomplish an orderly transfer, are to be followed by an assurance that the system is indeed safe for employees to continue working. This assurance involves action by the authorized or supervisory employee responsible for the transfer to verify the continued isolation of energy in the system.

There was considerable discussion at the hearings with regard to proposed paragraph (f)(4), concerning the need to ensure continued protection during shift or personnel changes. This paragraph was intended to provide protection for servicing operations which extend over more than one shift, usually involving from a few to large numbers of employees on each shift. OSHA attempted to provide a means of assuring that there is no gap in coverage between the off-going employee's removal of his/her lockout or tagout device and the on-coming employee's attachment of his/her own device. Several participants at the hearings testified as to methods used in their facilities to deal with this situation. EEI, for example, (Tr. pg. W2-22-2-26) testified that for complex jobs involving large numbers of energy control devices and many employees on different shifts, member companies use work permits which must be reauthorized at the beginning of each shift. The lockout/tagout devices which are attached to the energy control means at the start of the job are not removed between shifts. Before beginning work, the on-coming shift employees walk through the equipment and verify that the equipment has been deenergized and that proper procedures have been followed. Another system, involving an "operations lock," was endorsed by representatives of API (Ex. 57, Tr. pg. H 40) and OCAW (Tr. pg. H69–70). An "operations lock," essentially a type of group lockout device, is the first lock attached to the equipment when the equipment is deenergized, and it is the last lock removed when the job is completed. Each servicing employee attaches his/her personal lockout/tagout device while working on the equipment, and removes the device when the job is completed, or when leaving for the day. OSHA believes that when properly implemented, either of these methods can provide adequate assurance to the on-coming employee that the equipment is safe to work on.

Perhaps the most critical element of assuring continuity of protection is providing the individual employee with an opportunity to verify that the equipment has been deenergized. Even more than in the case with individual lockout or tagout, the on-coming employee should not have to depend on the actions of another employee or supervisor, particularly one who has left the workplace for the day, for assurance that it is safe to work on the machinery or equipment. The group lockout provisions in paragraph (f)(4) of the Final Rule contain what OSHA believes to be the necessary safeguards for these situations. To the extent that the procedures described by EEI, API, and OCAW provide for individual verification that the equipment has been properly deenergized, and to the extent that the procedures allow for the servicing employee to attest to that verification in accordance with the standard, OSHA believes that such procedures would comply wth the Final Rule. In the case of the type of complex servicing operation described by EEI, involving large numbers of energy isolation devices, large numbers of servicing employees, and multiple shifts, OSHA acknowledges that the removal and replacement of the lockout/tagout devices each shift could be overly burdensome. In these situations, the use of the work permit, with each employee signing on and off the equipment, combined with the employees walking down the equipment to ensure continued deenergization prior to beginning work, would be an acceptable approach to compliance with group lockout/tagout and shift transfer provisions of the standard.

Because the person applying the lockout or tagout device is generally the one being protected by that device, it is essential that the device not be removed by anyone else except in emergencies. When an employee transfers servicing duties to an employee on the next shift, and the equipment is to remain deenergized throughout the shift change, it should not be an undue burden to establish a procedure under paragraph (f)(4) for the off-going employee to transfer his/her authority to the on-coming employee. In situations where the off-going employee removes his/her lockout or tagout device before the on-coming employee arrives, the procedure could allow for the off-going employee to apply a tagout device at the time he/she removes his/her device, indicating that the lock had been removed, but that the machine or equipment had not been reenergized. The on-coming employee would verify that the system was still deenergized, and would remove the interim tag and substitute his/her lockout device. This would assure that the continuous protection is maintained from one shift to another. When tagout devices are used, it would be possible to use a tag with space for the off-going employee to sign off, giving the date and time, and for the on-coming employee to sign on, also giving the date and time. Each employee would verify the deenergization and energy isolation for his/her own protection before signing onto the tag.

VII. Regulatory Impact Analysis

Introduction

Executive Order 12291 (46 FR 13193, February 17, 1981) requires that a regulatory analysis be conducted for any rule potentially having major economic consequences on the national economy, geographical regions, individual industries, or levels of government. Consistent with these requirements, (OSHA) has prepared a Regulatory Impact Analysis (RIA) for this Final Rule. The analysis includes: A profile of the potentially affected firms and employees; a description of regulatory and nonregulatory alternatives; an analysis of the technological feasibility of the rule; and a study of the potential social benefits, economic costs, and environmental impacts that may result from full compliance with the rule.

The complete analysis, as summarized in this section, is based on data and information provided by the Eastern Research Group (ERG) in a study entitled, "Industry Profile Study of a Standard for Control of Hazardous Energy Sources Including Lockout/Tagout Procedures" [Ex. 15]. Additional information was obtained from comments submitted to OSHA in response to the proposed rule and a supplemental ERG report [Ex. 21].

The Secretary has determined that this action is a "major action" as defined by section 3(b) of Executive Order 12291 as it will have an annual effect on the economy of $100 million or more. The Regulatory Impact Analysis is available for inspection and copying in the rulemaking docket.

Affected Industries

The Final Rule will affect most employment covered by OSHA under Part 1910 except: (1) Those activities that are specifically excluded from coverage such as certain work on plug and cord type electrical equipment; and (2) employment for which OSHA has or is in the process of providing separate coverage under a different Subpart or Part, such as the oil and gas field services industry. OSHA has estimated that the rule will affect activities in some 1.7 million establishments employing approximately 39 million workers.

To analyze the differing effects of the rule, OSHA has divided the affected industries into a high-impact group, a low-impact group, and a zero or negligible-impact group. The high-impact group consists of all manufacturing industries. In 1984, approximately 20 million workers were employed in 340,451 high-impact establishments.

Firms classified as low-impact include those in transportation; utilities; wholesale trade; retail food stores; and several service industries, including personal services, business services, automotive repair, miscellaneous repair, and amusement services. OSHA has estimated that approximately 19 million workers were employed in 1.4 million low-impact establishments in 1984.

The negligible-impact group consists of industries that ERG determined had little potential for a lockout or tagout-related accident. Retail trade, finance, insurance, real estate, service, and public administration firms not classified in the high or low-impact sectors were included in this group.

The Agency's analysis focuses on the potential regulatory effects to high- and low-impact firms.

Population at Risk

As noted, some 39 million workers are employed in industries that may be affected by the Final Rule. All such workers have the potential for being injured due to inadequate or nonexistent use of lockout or tagout. In estimating the number of workers at risk from exposure to hazardous energy, OSHA classified "at-risk" occupations in the Final Rule as those being held by individuals who would actually perform lockout or tagout activities. Although this approach tends to underestimate the number of workers who could benefit from promulgation of a lockout or tagout rule, it does provide a good measure of the number of workers who will have to alter their work patterns to comply with the rule. Thus, it is an appropriate method for estimating the costs of the rule. Based on the ERG study [Ex. 15, p. 3–35], OSHA has determined that two million workers in high-impact industries, and one million workers in low-impact industries, are employed in occupations where the unexpected energization or start-up of machines or equipment or release of stored energy could cause injury to employees. The risk appears to be the greatest for those workers employed as craft workers, machine operators, and laborers. Certain types of machinery, such as packaging and wrapping equipment, along with printing presses and conveyors, are associated with a high proportion of the accidents.

Significance of Risk

The installation, assembly, service, repair, maintenance, change over, and disassembly of machines, equipment, and systems are activities integral to most industrial processes. During these activities, however, accidents often result from the inadvertent energization or movement of machinery or equipment.

The ERG study [Ex. 15, p. 6–27, 6–48] estimated that two percent of all workplace injuries, and 7.1 percent of all fatal occupational accidents, occur as a result of inadequate or nonexistent lockout or tagout procedures in industries regulated under this Final Rule. Based on these percentages, the Agency has estimated that in 1984 there were 144 fatalities, 33,432 lost workday injuries, and 37,561 non-lost workday injuries that occurred due to inadequate lockout or tagout procedures in the affected industries. Assuming that these types of accidents grow proportionately with the average level of employment, approximately 1,530 fatalities, 352,965 lost workday injuries, and 396,560 non-lost workday injuries would occur during the next 10 years in the absence of a lockout or tagout standard.

The accidents commonly resulting from inadequate or nonexistent lockout or tagout activities tend to be significantly more severe that the average occupational injury. Injuries typically include fractures, lacerations, contusions, amputations, and puncture wounds. The ERG study [Ex. 15, p. 6–52] estimated that such injuries cause workers to lose an average of 24 workdays. By way of comparison, the 1981 Bureau of Labor Statistics' Occupational Injuries and Illnesses Study [Ex. 18] reports that the average lost time occupational injury involves 16 lost workdays.

Based upon the aforementioned evidence, OSHA has determined that the failure to control hazardous energy results in a significant risk to employees. Since the private market fails to provide an adequate level of safety for workers servicing and maintaining equipment, the Agency has examined various regulatory and nonregulatory alternatives, including tort litigation, distribution of information, workers' compensation, and industry self-regulation. The Agency has concluded that the standard would reduce risk in an optimal manner.

Technological Feasibility

The Final Rule is written in performance-based language that permits firms to develop lockout or tagout procedures that are most appropriate for their specific machines and equipment. Based on data gathered during ERG site visits, OSHA has determined that some firms of all sizes and types are already in full compliance with the Final Rule. As this rule would not require the development of new technologies or significant equipment modifications, OSHA has determined that all provisions of the standard are technologically feasible.

Costs of Compliance with the Rule

OSHA has estimated the cost of full compliance with the standard based on the most cost-effective methods of implementing the Final Rule. The Agency estimates that 72.5 percent of all energy isolating devices are lockable (90 percent of the electrical disconnects and 66.7 percent of the valves) and will be locked out under the Final Rule, while the remaining 27.5 percent are not lockable and will be tagged out. Thus, the Agency has concluded that promulgation of the rule will cost 631,000 establishments a total of $214.3 million during the first year of implementation and $135.4 million in subsequent years.

The costs of complying with the standard can be briefly summarized by category. For locks, tags, and other hardware, the first-year cost is estimated to be $18.5 million, and the annual recurring costs amount to $8.9 million. For voluntary equipment modification to facilitate lockout or tagout, the first-year cost is estimated at $27.0 million, with no annual recurring costs. In terms of work practice modifications, the first-year cost and the annual recurring costs are $102.7 million each. For planning and implementing lockout or tagout procedures, the first-year cost is calculated at $35.2 million, and the annual recurring costs are estimated at $21.0 million. For employee training, the first-year cost is $31.0 million, and the annual recurring costs are $3.6 million.

OSHA also has estimated the average costs per establishment for firms not currently using adequate lockout or tagout procedures. First-year compliance costs for establishments in manufacturing industries, which are classified as high-impact firms, would range from $120 per firm for very small establishments (those having less than 20 employees) to $28,172 for large establishments (those having more than 250 employees). Industries categorized as low-impact would incur first-year costs of approximately $169 per firm. First-year costs of the standard by SIC code for the high and low-impact industries are summarized in Table XXIV.

Table XXIV.—First Year Cost of the Standard for the Control of Hazardous Energy Sources by SIC

[millions $]

SIC code	Industry name	Cost
	High impact industries	
20	Food and kindred products	10.8
21	Tobacco manufacturers	0.5
22	Textile mill products	7.2
23	Apparel and other finished products	2.0
24	Lumber and wood products, except furniture	3.6
25	Furniture and fixtures	2.4
26	Paper and allied products	5.9
27	Printing, publishing, and allied industries	14.1
28	Chemicals and allied products	8.2
29	Petroleum, refining, and related industries	1.4
30	Rubber and miscellaneous plastics products	6.0
31	Leather and leather products	1.1
32	Stone, clay, glass, and concrete products	4.1
33	Primary metal industries	10.1
34	Fabricated metal products, except machinery and transportation equipment	13.3
35	Machinery, except electrical	18.1
36	Electrical and electronic machinery, equipment, and supplies	13.3
37	Transportation equipment	14.9
38	Measuring, analyzing, and controlling instruments	2.9
39	Miscellaneous manufacturing industries	2.3
	Low impact industries	
Div. E	Transportation	9.5
Div. E	Communications	23.7
Div. E	Utilities	4.4
Div. F	Wholesale trade	13.7
Div. G	Retail trade	1.2
Div. I	Services	19.0
Total cost to high and low impact industries.		*214.3

* Total may not add due to rounding.
Source, OSHA, ORA, April, 1989.

Benefits of the Final Rule

OSHA has estimated the total number of accidents that the Final Rule would have prevented in 1984, assuming full compliance by all affected firms and workers. As as conservative estimate, the Agency assumed that only 85 percent of those accidents identified as caused by inadequate or nonexistent lockout or tagout procedures would actually be prevented under this rule. It was assumed that 15 percent of the noted accidents may still occur even if both employees and employers are complying fully with the rule (e.g., a block used to hold the weight of a suspended machine component may fail). Based on the above assumptions, OSHA has estimated that the Final Rule would have prevented approximately 122 fatalities, 28,416 lost workday injuries, and 31,926 non lost workday injuries in 1984.

Cost-Effectiveness

OSHA has calculated the cost per fatality avoided by the standard as one measure of its efficacy. Overall, for both low-impact and high-impact industries, the compliance costs of the standard are estimated to amount to about $1.2 million per fatality avoided. If compliance costs are further adjusted to reflect the additional economic benefits expected to accrue to employers (e.g., less lost production time, less administrative preparing insurance claims and accident reports, and less inefficiency related to replacing injured workers), the cost per fatality avoided falls to $0.19 million. However, this calculation only includes fatalities, and does not take into account the costs or benefits for the avoidance of employee injuries. If injuries were included in the calculations, cost per injury prevented would be extremely low. Thus, the Agency has concluded that the lockout or tagout rule will reduce the number of occupational fatalities and injuries in a cost-effective manner.

Economic Effects

OSHA has determined that full compliance with the standard will have a minor negative impact on the profits of the affected firms because, on average, compliance costs will equal no more than 0.05 percent of operating costs and 2.2 percent of net income for any size establishment. Neither the gross national product (GNP), the level of international trade, the price of consumer goods, nor the level of employment will be significantly affected. Based on these estimates, the Agency has concluded that the economic effects of the rule will be negligible, and thus neither the stability nor the profitability of any particular industry or size firm will be at issue as a consequence of the promulgation of the final standard.

VIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), OSHA must assess the potential economic impact of its standards to determine whether they will impose significant costs upon a substantial number of small entities. "Significance" is determined by the impact upon small firms' profits, market share, and financial viability. In particular, OSHA must determine whether its rules will have a relatively greater negative effect on small entities than on large entities.

To assess the impact of this rule on small entities, the Agency has estimated the total cost of compliance per establishment for firms not currently practicing lockout or tagout. First-year costs would range from $120 for very small firms (those having fewer than 20 employees; to $1,737 for small firms (those having 20 to 99 employees) to $28,172 for large firms (those having 250 employees or more) [Ex. No. 17, p. VI–43]. The cost of compiling with the Final Rule will depend primarily on the number of workers employed by a firm and the number of maintenance and servicing tasks required annually—factors that typically depend upon the scale of operation of a company. Thus, based on the above estimates, the costs of the Final Rule will be proportional to the size of the firm and no significant differential impact is expected.

OSHA also has compared the costs of compliance with small entities' total costs of production. The Agency has determined that the cost of full compliance with the rule will equal no more than 0.05 percent of an average small or very small firm's operating costs, and no more than 2.2 percent of an average small firm's net income [Ex. 17, p. VII–6].

As the costs of compliance for small and very small firms are proportional to the size of the firm, and would represent such a small component of the overall cost of the facilities, OSHA certifies that the Final Rule will not have a significant impact upon a substantial number of small entities. The Regulatory Flexibility Assessment of this rule is available for inspection and copying in the rulemaking docket.

IX. Environmental Assessment

This Final Rule has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR part 1500), and Department of Labor NEPA Procedures (29 CFR part 11). As a result of this review, the Acting Assistant Secretary for OSHA has determined that the rule will have no significant environmental impact.

The Final Rule focuses on the reduction of accidents and injuries by means of the utilization of specific work practices, procedures, and training. This proposal would not have an impact on air, water, or soil quality, plant or animal life, the use of land, or any other aspects of the environment. As such,

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this proposal can therefore be categorized as an excluded action according to subpart B, § 11.10, of the DOL NEPA regulations.

X. Paperwork Reduction Act

This section contains a collection of information requirements in paragraphs § 1910.147(c)(4), (c)(7) and (f)(2) which pertain to the development and utilization of a written energy control procedure and the training of employees in that procedure. The paperwork requirements contained in this rule will be submitted to the Office of Management and Budget (OMB) for approval.

XI. International Trade

Increases in the price of domestically manufactured goods in general result in an increase in the demand for imports, and a decrease in the demand for exports. The magnitude of this impact depends on the relevant demand elasticities and the magnitude of the price changes. While the final standard may result in slightly higher prices of manufactured goods, the estimated magnitude of this increase is so small that the Agency has concluded that any resultant impact on foreign trade will be negligible.

XII. Federalism

This Final Rule has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions which would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' clear intent to preempt State laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions (see section 18(c)(2) of the OSH Act).

The Federal standard on control of hazardous energy sources addresses hazards which are not unique to any one State or region of the country. Nonetheless, States with occupational safety and health plans approved under Section 18 of the OSH Act will be able to develop their own State standards to deal with any special problems which might be encountered in a particular State. Moreover, because this standard is written in general, performance-oriented terms, there is considerable flexibility for State plans to require, and for affected employers to use, methods of compliance which are appropriate to the working conditions covered by the standard.

In brief, this Final Rule addresses a clear national problem related to occupational safety and health in general industry. Those States which have elected to participate under Section 18 of the OSH Act are not preempted by this standard, and will be able to deal with any special conditions within the framework of the Federal Act, while ensuring that the State standards are at least as effective as that standard.

XIII. State Plan Standards

The 25 States and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final standard. These States and territories are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States.

XIV. Effective Date

In developing the Final Rule, OSHA has considered whether a delayed effective data is necessary for any of the provisions of the standard. Since the Final Rule does not require extensive retrofitting or major modifications of existing equipment, the Agency believes that 60 days is adequate time for employers to obtain the necessary hardware (primarily lockout and tagout devices). This amount of time should also be adequate for the development of the energy control program and procedures required by the standard. The record indicates that many industries with highly complex equipment, such as the automotive, chemical, and petroleum industries, have already implemented lockout or tagout procedures which would need to be modified little, if at all, to meet the standard. For those employers who will need to develop new procedures to comply with the standard, the standard provides considerable guidance to assist in that development process. Appendix A to the Final Rule sets forth an example of a simple procedure which can be tailored to the individual workplace in situations involving a single energy source. OSHA believes that many employers, particularly small businesses, will be able to use this procedure by filling in the blanks with the necessary information. For more complex situations, a more complex procedure may be necessary. During this rulemaking, interested parties submitted a wide range of procedures and information on their implementation to the rulemaking record, and these materials are available for review and copying in OSHA's Docket Office.

XV. List of Subjects in 29 CFR Part 1910 1910

Lockout; Tagout; Control of hazardous energy sources; Deenergize; Training; Occupational safety and health; Occupational Safety and Health Administration; Safety.

XVI. Authority

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor 200 Constitution Ave., NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR part 1911, 29 part 1910 is hereby amended as set forth below.

Signed at Washington, D.C., this 28th day of August 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

29 CFR Part 1910 is amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart J of Part 1910 is revised to read as follows:

Authority: Section 4, 6 and 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754) 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable. Sections 1910.141, 1910.142 and 1910.147 also issued under 29 CFR part 1911.

§ 1910.150 [Redesignated From 1910.147]

2. Section 1910.147 is redesignated as § 1910.150.

3. A new § 1910.147 and Appendix to § 1910.147 are added to read as follows:

§ 1910.147 The control of hazardous energy (lockout/tagout).

(a) *Scope, application and purpose*—(1) *Scope.*

(i) This standard covers the servicing and maintenance of machines and equipment in which the *unexpected* energization or start up of the machines or equipment, or release of stored energy could cause injury to employees. This standard establishes minimum performance requirements for the control of such hazardous energy.

(ii) This standard does not cover the following:

(A) Construction, agriculture and maritime employment;

(B) Installations under the exclusive control of electric utilities for the purpose of power generation, transmission and distribution, including related equipment for communication or metering; and

(C) Exposure to electrical hazards from work on, near, or with conductors or equipment in electric utilization installations, which is covered by Subpart S of this part; and

(D) Oil and gas well drilling and servicing.

(2) *Application.* (i) This standard applies to the control of energy during servicing and/or maintenance of machines and equipment.

(ii) Normal production operations are not covered by this standard (See Subpart 0 of this Part). Servicing and/or maintenance which takes place during normal production operations is covered by this standard only if;:

(A) An employee is required to remove or bypass a guard or other safety device; or

(B) An employee is required to place any part of his or her body into an area on a machine or piece of equipment where work is actually performed upon the material being processed (point of operation) or where an associated danger zone exists during a machine operating cycle.

Note: *Exception to paragraph (a)(2)(ii):* Minor tool changes and adjustments, and other minor servicing activities, which take place during normal production operations, are not covered by this standard if they are routine, repetitive, and integral to the use of the equipment for production, provided that the work is performed using alternative measures which provide effective protection (See Subpart 0 of this Part).

(iii) This standard does not apply to the following.

(A) Work on cord and plug connected electric equipment for which exposure to the hazards of unexpected energization or start up of the equipment is controlled by the unplugging of the equipment from the energy source and by the plug being under the exclusive control of the employee performing the servicing or maintenance.

(B) Hot tap operations involving transmission and distribution systems for substances such as gas, steam, water or petroleum products when they are performed on pressurized pipelines, provided that the employer demonstrates that (*1*) continuity of service is essential; (*2*) shutdown of the system is impractical; and (*3*) documented procedures are followed, and special equipment is used which will provide proven effective protection for employees.

(3) *Purpose.* (i) This section requires employers to establish a program and utilize procedures for affixing appropriate lockout devices or tagout devices to energy isolating devices, and to otherwise disable machines or equipment to prevent unexpected energization, start-up or release of stored energy in order to prevent injury to employees.

(ii) When other standards in this part require the use of lockout or tagout, they shall be used end supplemented by the procedural and training requirements of this section.

(b) *Definitions applicable to this section.*

Affected employee. An employee whose job requires him/her to operate or use a machine or equipment on which servicing or maintenance is being performed under lockout or tagout, or whose job requires him/her to work in an area in which such servicing or maintenance is being performed.

Authorized employee. A person who locks or implements a tagout system procdure on machines or equipment to perform the servicing or maintenance on that machine or equipment. An authorized employee and an affected employee may be the same person when the affected employee's duties also include performing maintenance or service on a machine or equipment which must be locked or a tagout system implemented.

"Capable of being locked out." An energy isolating device will be considered to be capable of being locked out either if it is designed with a hasp or other attachment or integral part to which, or through which, a lock can be affixed, or if it has a locking mechanism built into it. Other energy isolating devices will also be considered to be capable of being locked out, if lockout can be achieved without the need to dismantle, rebuild, or replace the energy isolating device or permanently alter its energy control capability.

Energized. Connected to an energy source or containing residual or stored energy.

Energy isolating device. A mechanical device that physically prevents the transmission or release or energy, including but not limited to the following: A manually operated electrical circuit breaker; a disconnect switch; a manually operated switch by which the conductors of a circuit can be disconnected from all ungrounded supply conuctors and, in addition, no pole can be operated independently; a slide gate; a slip blind; a line valve; a block; and any similar device used to block or isolate energy. The term does not include a push button, selector switch, and other control circuit type devices.

Energy source. Any source of electrical, mechanical, hydraulic, pneumatic, chemical, thermal, or other energy.

Hot tap. A procedure used in the repair, maintenance and services activities which involves welding on a piece of equipment (pipelines, vessels or tanks) under pressure, in order to install connections or appurtenances. It is commonly used to replace or add sections of pipeline without the interruption of service for air, gas, water, steam, and petrochemical distribution systems.

Lockout. The placement of a lockout device on an energy isolating device, in accordance with an established procedure, ensuring that the energy isolating device and the equipment being controlled cannot be operated until the lockout device is removed.

Lockout device. A device that utilizes a positive means such as a lock, either key or combination type, to hold an energy isolating device in the safe position and prevent the energizing of a machine or equipment.

Normal production operations. The utilization of a machine or equipment to perform its intended production function.

Servicing and/or maintenance. Workplace activities such as constructing, installing, setting up, adjusting, inspecting, modifying, and maintaining and/or servicing machines or equipment. These activities include lubrication, cleaning or unjamming of machines or equipment and making adjustments or tool changes, where the employee may be exposed to the *unexpected* energization or startup of the equipment or release of hazardous energy.

Setting up. Any work performed to prepare a machine or equipment to perform its normal production operation.

Tagout. The placement of a tagout device on an energy isolating device, in accordance with an established procedure, to indicate that the energy isolating device and the equipment being controlled may not be operated until the tagout device is removed.

Tagout device. A prominent warning device, such as a tag and a means of attachment, which can be securely fastened to an energy isolating device in accordance with an established procedure, to indicate that the energy isolating device and the equipment being controlled may not be operated until the tagout device is removed.

(c) *General*—(1) *Energy control program.* The employer shall establish a program consisting of an energy control procedure and employee training to ensure that before any employee performs any servicing or maintenance on a machine or equipment where the unexpected energizing, start up or release of stored energy could occur and cause injury, the machine or equipment shall be isolated, and rendered inoperative, in accordance with paragraph (c)(4) of this section.

(2) *Lockout/tagout.* (i) If an energy isolating device is not capable of being locked out, the employer's energy control program under paragraph (c)(1) of this section shall utilize a tagout system.

(ii) If an energy isolating device is capable of being locked out, the employer's energy control program under paragraph (c)(1) of this section shall utilize lockout, unless the employer can demonstrate that the utilization of a tagout system will provide full employee protection as set forth in paragraph (c)(3) of this section.

(iii) After October 31, 1989, whenever major replacement, repair, renovation or modification of machines or equipment is performed, and whenever new machines or equipment are installed, energy isolating devices for such machines or equipment shall be designed to accept a lockout device.

(3) *Full employee protection.* (i) When a tagout device is used on an energy isolating device which is capable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program.

(ii) In demonstrating that a level of safety is achieved in the tagout program which is equivalent to the level of safety obtained by using a lockout program, the employer shall demonstrate full compliance with all tagout-related provisions of this standard together with such additional elements as are necessary to provide the equivalent safety available from the use of a lockout device. Additional means to be considered as part of the demonstration of full employee protection shall include the implementation of additional safety measures such as the removal of an isolating circuit element, blocking of a controlling switch, opening of an extra disconnecting device, or the removal of a valve handle to reduce the likelihood of inadvertent energization.

(4) *Energy control procedure.* (i) Procedures shall be developed, documented and utilized for the control of potentially hazardous energy when employees are engaged in the activities covered by this section.

Note: *Exception:* The employer need not document the required procedure for a particular machine or equipment, when all of the following elements exist: (1) The machine or equipment has no potential for stored or residual energy or reaccumulation of stored energy after shut down which could endanger employees; (2) the machine or equipment has a single energy source which can be readily identified and isolated; (3) the isolation and locking out of that energy source will completely deenergize and deactivate the machine or equipment; (4) the machine or equipment is isolated from that energy source and locked out during servicing or maintenance; (5) a single lockout device will achieve a locked-out condition; (6) the lockout device is under the exclusive control of the authorized employee performing the servicing or maintenance; (7) the servicing or maintenance does not create hazards for other employees; and (8) the employer, in utilizing this exception, has had no accidents involving the unexpected activation or reenergization of the machine or equipment during servicing or maintenance.

(ii) The procedures shall clearly and specifically outline the scope, purpose, authorization, rules, and techniques to be utilized for the control of hazardous energy, and the means to enforce compliance including, but not limited to, the following:

(A) A specific statement of the intended use of the procedure;

(B) Specific procedural steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy;

(C) Specific procedural steps for the placement, removal and transfer of lockout devices or tagout devices and the responsibility for them; and

(D) Specific requirements for testing a machine or equipment to determine and verify the effectiveness of lockout devices, tagout devices, and other energy control measures.

(5) *Protective materials and hardware.* (i) Locks, tags, chains, wedges, key blocks, adapter pins, self-locking fasteners, or other hardware shall be provided by the employer for isolating, securing or blocking of machines or equipment from energy sources.

(ii) Lockout devices and tagout devices shall be singularly identified; shall be the only devices(s) used for controlling energy; shall not be used for other purposes; and shall meet the following requirements:

(A) *Durable.* (*1*) Lockout and tagout devices shall be capable of withstanding the environment to which they are exposed for the maximum period of time that exposure is expected.

(*2*) Tagout devices shall be constructed and printed so that exposure to weather conditions or wet and damp locations will not cause the tag to deteriorate or the message on the tag to become illegible.

(*3*) Tags shall not deteriorate when used in corrosive environments such as areas where acid and alkali chemicals are handled and stored.

(B) *Standardized.* Lockout and tagout devices shall be standardized within the facility in at least one of the following criteria: Color; shape; or size; and additionally, in the case of tagout devices, print and format shall be standardized.

(C) *Substantial*—(*1*) *Lockout devices.* Lockout devices shall be substantial enough to prevent removal without the use of excessive force or unusual techniques, such as with the use of bolt cutters or other metal cutting tools.

(*2*) *Tagout devices.* Tagout devices, including and their means of attachment, shall be substantial enough to prevent inadvertent or accidental removal. Tagout device attachment means shall be of a non-reusable type, attachable by hand, self-locking, and non-releasable with a minimum unlocking strength of no less than 50 pounds and having the general design and basic characteristics of being at least equivalent to a one-piece, all-environment-tolerant nylon cable tie.

(D) *Identifiable.* Lockout devices and tagout devices shall indicate the identity of the employee applying the device(s).

(iii) Tagout devices shall warn against hazardous conditions if the machine or equipment is energized and shall include a legend such as the following: *Do Not Start, Do Not Open, Do Not Close, Do Not Energize, Do Not Operate.*

(6) *Periodic inspection.* (i) The employer shall conduct a periodic inspection of the energy control procedure at least annually to ensure that the procedure and the requirements of this standard are being followed.

(A) The periodic inspection shall be perfomed by an authorized employee other than the ones(s) utilizing the energy control procedure being inspected.

(B) The periodic inspection shall be designed to correct any deviations or inadequacies observed.

(C) Where lockout is used for energy control, the periodic inspection shall include a review, between the inspector and each authorized employee, of that employee's responsibilities under the energy control procedure being inspected.

(D) Where tagout is used for energy control, the periodic inspection shall include a review, between the inspector and each authorized and affected employee, of that employee's responsibilities under the energy control procedure being inspected, and the elements set forth in paragraph (c)(7)(ii) of this section.

(ii) The employer shall certify that the periodic inspections have been performed. The certification shall identify the machine or equipment on which the energy control procedure was being utilized, the date of the inspection, the employees included in the inspection, and the person performing the inspection.

(7) *Training and communication.* (i) The employer shall provide training to ensure that the purpose and function of the energy control program are understood by employees and that the knowledge and skills required for the safe application, usage, and removal of energy controls are required by employees. The training shall include the following:

(A) Each authorized employee shall receive training in the recognition of applicable hazardous energy sources, the type and magnitude of the energy available in the workplace, and the methods and means necessary for energy isolation and control.

(B) Each affected employee shall be instructed in the purpose and use of the energy control procedure.

(C) All other employees whose work operations are or may be in an area where energy control procedures may be utilized, shall be instructed about the procedure, and about the prohibition relating to attempts to restart or reenergize machines or equipment which are locked out or tagged out.

(ii) When tagout systems are used, employees shall also be trained in the following limitations of tags:

(A) Tags are essentially warning devices affixed to energy isolating devices, and do not provide the physical restraint on those devices that is provided by a lock.

(B) When a tag is attached to an energy isolating means, it is not to be removed without authorization of the authorized person responsible for it, and it is never to be bypassed, ignored, or otherwise defeated.

(C) Tags must be legible and understandable by all authorized employees, affected employees, and all other employees whose work operations are or may be in the area, in order to be effective.

(D) Tags and their means of attachment must be made of materials which will withstand the environmental conditions encountered in the workplace.

(E) Tags may evoke a false sense of security, and their meaning needs to be understood as part of the overall energy control program.

(F) Tags must be securely attached to energy isolating devices so that they cannot be inadvertently or accidentally detached during use.

(iii) Employee retraining.

(A) Retraining shall be provided for all authorized and affected employees whenever there is a change in their job assignments, a change in machines, equipment or processes that present a new hazard, or when there is a change in the energy control procedures.

(B) Additional retraining shall also be conducted whenever a periodic inspection under paragraph (c)(6) of this section reveals, or whenever the employer has reason to believe, that there are deviations from or inadequacies in the employee's knowledge or use of the energy control procedures.

(C) The retraining shall reestablish employee proficiency and introduce new or revised control methods and procedures, as necessary.

(iv) The employer shall certify that employee training has been accomplished and is being kept up to date. The certification shall contain each employee's name and dates of training.

(8) *Energy isolation.* Implementation of lockout or the tagout system shall be performed only by authorized employees.

(9) *Notification of employees.* Affected employees shall be notified by the employer or authorized employee of the application and removal of lockout devices or tagout devices. Notification shall be given before the controls are applied, and after they are removed from the machine or equipment.

(d) *Application of control.* The established procedure for the application of energy control (implementation of lockout or tagout system procedures) shall cover the following elements and actions and shall be done in the following sequence:

(1) *Preparation for shutdown.* Before an authorized or affected employee turns off a machine or equipment, the authorized employee shall have knowledge of the type and magnitude of the energy, the hazards of the energy to be controlled, and the method or means to control the energy.

(2) *Machine or equipment shutdown.* The machine or equipment shall be turned off or shut down using the procedures required by this standard. An orderly shutdown must be utilized to avoid any additional or increased hazard(s) to employees as a result of equipment deenergization.

(3) *Machine or equipment isolation.* All energy isolating devices that are needed to control the energy to the machine or equipment shall be physically located and operated in such a manner as to isolate the machine or equipment from the energy source(s).

(4) *Lockout or tagout device application.* (i) Lockout or tagout devices shall be affixed to each energy isolating device by authorized employees.

(ii) Lockout devices, where used, shall be affixed in a manner to that will hold the energy isolating devices in a "safe" or "off" position.

(iii) Tagout devices, where used, shall be affixed in such a manner as will clearly indicate that the operation or movement of energy isolating devices from the "safe" or "off" position is prohibited.

(A) Where tagout devices are used with energy isolating devices designed with the capability of being locked, the tag attachment shall be fastened at the same point at which the lock would have been attached.

(B) Where a tag cannot be affixed directly to the energy isolating device, the tag shall be located as close as safely possible to the device, in a position that will be immediately obvious to anyone attempting to operate the device.

(5) *Stored energy.* (i) Following the application of lockout or tagout devices to energy isolating devices, all potentially hazardous stored or residual energy shall be relieved, disconnected, restrained, and otherwise rendered safe.

(ii) If there is a possibility of reaccumulation of stored energy to a hazardous level, verification of isolation shall be continued until the servicing or maintenance is completed, or until the possibility of such accumulation no longer exists.

(6) *Verification of isolation.* Prior to starting work on machines or equipment that have been locked out or tagged out, the authorized employee shall verify that isolation and deenergization of the machine or equipment have been accomplished.

(e) *Release from lockout or tagout.* Before lockout or tagout devices are removed and energy is restored to the machine or equipment, procedures shall be followed and actions taken by the authorized employee(s) to ensure the following:

(1) *The machine or equipment.* The work area shall be inspected to ensure that nonessential items have been removed and to ensure that machine or equipment components are operationally intact.

(2) *Employees.* (i) The work area shall be checked to ensure that all employees have been safely positioned or removed.

(ii) Before lockout or tagout devices are removed and before machines or equipment are energized, affected employees shall be notified that the lockout or tagout devices have been removed.

(3) *Lockout or tagout devices removal.* Each lockout or tagout device shall be removed from each energy isolating device by the employee who applied the device. *Exception to paragraph (e)(3):* When the authorized employee who applied the lockout or tagout device is not available to remove it, that device may be removed under the direction of the employer, provided that specific procedures and training for such removal have been developed, documented and incorporated into the employer's energy control program. The employer shall demonstrate that the specific procedure provides equivalent safety to the removal of the device by the authorized employee who applied it. The specific procedure shall include at least the following elements:

(i) Verfication by the employer that the authorized employee who applied the device is not at the facility;

(ii) Making all reasonable efforts to contact the authorized employee to inform him/her that his/her lockout or tagout device has been removed; and

(iii) Ensuring that the authorized employee has this knowledge before he/she resumes work at that facility.

(f) *Additional requirements.* (1) *Testing or positioning of machines, equipment or components thereof.* In situations in which lockout or tagout devices must be temporarily removed from the energy isolating device and the machine or equipment energized to test or position the machine, equipment or component thereof, the following sequence of actions shall be followed:

(i) Clear the machine or equipment of tools and materials in accordance with paragraph (e)(1) of this section;

(ii) Remove employees from the machine or equipment area in accordance with paragraph (e)(2) of this section;

(iii) Remove the lockout or tagout devices as specified in paragraph (e)(3) of this section;

(iv) Energize and proceed with testing or positioning;

(v) Deenergize all systems and reapply energy control measures in accordance with paragraph (d) of this section to continue the servicing and/or maintenance.

(2) *Outside personnel (contractors, etc.).* (i) Whenever outside servicing personnel are to be engaged in activities covered by the scope and application of this standard, the on-site employer and the outside employer shall inform each other of their respective lockout or tagout procedures.

(ii) The on-side employer shall ensure that his/her personnel understand and comply with restrictions and prohibitions of the outside employer's energy control procedures.

(3) *Group lockout or tagout.* (i) When servicing and/or maintenance is performed by a crew, craft, department or other group, they shall utilize a procedure which affords the employees a level of protection equivalent to that provided by the implementation of a personal lockout or tagout device.

(ii) Group lockout or tagout devices shall be used in accordance with the procedures required by paragraph (c)(4) of this section including, but not necessarily limited to, the following specific requirements:

(A) Primary responsibility is vested in an authorized employee for a set number of employees working under the protection of a group lockout or tagout device (such as an operations lock);

(B) Provision for the authorized employee to ascertain the exposure status of individual group members with regard to the lockout or tagout of the machine or equipment and

(C) When more than one crew, craft, department, etc. is involved, assignment of overall job-associated lockout or tagout control responsibility to an authorized employee designated to coordinate affected work forces and ensure continuity of protection; and

(D) Each authorized employee shall affix a personal lockout or tagout device to the group lockout device, group lockbox, or comparable mechanism when he or she begins work, and shall remove those devices when he or she stops working on the machine or equipment being serviced or maintained.

(4) *Shift or personnel changes.* Specific procedures shall be utilized during shift or personnel changes to ensure the continuity of lockout or tagout protection, including provision for the orderly transfer of lockout or tagout devices between off-going and oncoming employees, to minimize exposure to hazards from the unexpected energization, start-up of the machine or equipment, or release of stored energy.

Note: The following Appendix to § 1910.147 services as a non-mandatory guideline to assist employers and employees in complying with the requirements of this section, as well as to provide other helpful information. Nothing in the Appendix adds to or detracts from any of the requirements of this section.

BILLING CODE 4510-26-M

APPENDIX A -- TYPICAL MINIMAL LOCKOUT OR TAGOUT SYSTEM PROCEDURES

General

Lockout is the preferred method of isolating machines or equipment from energy sources. To assist employers in developing a procedure which meets the requirements of the standard, however, the following simple procedure is provided for use in both lockout or tagout programs. This procedure may be used when there are limited number or types of machines or equipment or there is a single power source. For more complex systems, a more comprehensive procedure will need to be developed, documented, and utilized.

Lockout (or Tagout) Procedure for (Name of Company).

Purpose

This procedure establishes the minimum requirements for the lockout or tagout of energy isolating devices. It shall be used to ensure that the machine or equipment are isolated from all potentially hazardous energy, and locked out or tagged out before employees perform any servicing or maintenance activities where the unexpected energization, start-up or release of stored energy could cause injury (Type(s) and Magnitude(s) of Energy and Hazards).

Responsibility

Appropriate employees shall be instructed in the safety significance of the lockout (or tagout) procedure (Name(s)/Job Title(s) of employees authorized to lockout or tagout). Each new or transferred affected employee and other employees whose work operations are or may be in the area shall be instructed in the purpose and use of the lockout or tagout procedure (Name(s)/Job Title(s) of affected employees and how to notify).

Preparation for Lockout or Tagout

Make a survey to locate and identify all isolating devices to be certain which switch(s), valve(s) or other energy isolating devices apply to the equipment to be locked or tagged out. More than one energy source (electrical, mechanical, or others) may be involved. (Type(s) and Location(s) of energy isolating means).

Sequence of Lockout or Tagout System Procedure

(1) Notify all affected employees that a lockout or tagout system is going to be utilized and the reason therefor. The authorized employee shall know the type and magnitude of energy that the machine or equipment utilizes and shall understand the hazards thereof.

(2) If the machine or equipment is operating, shut it

down by the normal stopping procedure (depress stop button, open toggle switch, etc.)

(3) Operate the switch, valve, or other energy isolating device(s) so that the equipment is isolated from its energy source(s). Stored energy (such as that in springs, elevated machine members, rotating flywheels, hydraulic systems, and air, gas, steam, or water pressure, etc.) must be dissipated or restrained by methods such as repositioning, blocking, bleeding down, etc. (Type(s) of Stored Energy-methods to dissipate or restrain).

(4) Lockout and/or tagout the energy isolating devices with assigned individual lock(s) or tag(s) (Method(s) Selected; i.e., locks tags, additional safety measures, etc.)

(5) After ensuring that no personnel are exposed, and as a check on having disconnected the energy sources, operate the push button or other normal operating controls to make certain the equipment will not operate (Type(s) of Equipment checked to ensure disconnections).

CAUTION: Return operating control(s) to "neutral" or "off" position after the test.

(6) The equipment is now locked out or tagged out.

Restoring Machines or Equipment to Normal Production Operations

(1) After the servicing and/or maintenance is complete and equipment is ready for normal production operations, check the area around the machines or equipment to ensure that no one is exposed.

(2) After all tools have been removed from the machine or equipment, guards have been reinstalled and employees are in the clear, remove all lockout or tagout devices. Operate the energy isolating devices to restore energy to the machine or equipment.

Procedure Involving More Than One Person

In the preceding steps, if more than one individual is required to lockout or tagout equipment, each shall place his/her own personal lockout device or tagout device on the energy isolating device(s). When an energy isolating device cannot accept multiple locks or tags, a multiple lockout or tagout device (hasp) may be used. If lockout is used, a single lock may be used to lockout the machine or equipment with the key being placed in a lockout box or cabinet which allows the use of multiple locks to secure it. Each employee will then use his/her own lock to secure the box or cabinet. As each person no longer needs to maintain his or her lockout protection, that person will remove his/her lock from the box or cabinet

(Name(s)/Job Title(s) of employees authorized for group lockout or tagout).

Basic Rules for Using Lockout or Tagout System Procedure

All equipment shall be locked out or tagged out to protect against accidental or inadvertent operation when such operation could cause injury to personnel. Do not attempt to operate any switch, valve, or other energy isolating device where it is locked or a tagged out.

LOCKOUT (OR TAGOUT) PROCEDURE

Entry No	(Description)
1.	Name of Company
2.	Type(s) and Magnitude(s) of energy and hazards
3.	Names(s)/Job Title(s) of employees authorized to lockout or tagout
4.	Names(s)/Job Title(s) of affected employees and how to notify
5.	Type(s) and Location of energy isolating means
6.	Type(s) of Stored Energy-methods to dissipate or restrain
7.	Method(s) Selected i.e., locks, tags, additional safety measures, etc.
8.	Type(s) of Equipment checked to ensure disconnections
9.	Name(s)/Job Title(s) of employees authorized for group lockout or tagout

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federal register

Friday
September 1, 1989

Part V

Department of Health and Human Services

National Institutes of Health

Recombinant DNA; Advisory Committee Meeting and Proposed Actions Under Guidelines for Research

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health (NIH), Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, on October 6, 1989, from approximately 9 a.m. to adjournment at approximately 5 p.m. This meeting will be open to the public to discuss:

Proposal that the Recombinant DNA Advisory Committee institute a study;
Proposed major actions;
Proposed revision of NIH Guidelines definition of recombinant DNA for the purposes of shipment;
Points to consider document on human gene transfer;
Amendment of NIH Guidelines; and
Other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, telephone (301) 496–9838, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: August 28, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–20661 Filed 8–31–89; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on October 6, 1989. After consideration of these proposals and comments by the RAC, the Acting Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by September 27, 1989, will be reproduced and distributed to the RAC for consideration at its October 6, 1989 meeting.

ADDRESS: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Building 31, Room 4B11, National Institutes of Health, Bethesda, Maryland 20892 or send by telecopier to 301–496–9839. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays betwen the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Building 31, Room 4B11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Amendment of Section I–B of the NIH Guidelines

At its meeting on January 30, 1989, the RAC discussed a proposal submitted by the National Wildlife Federation to amend section I–B, "Definition of Recombinant DNA Molecules," of the NIH Guidelines. There was general agreement that newer technologies are not covered under the current definition in the NIH Guidelines, which is based on early methods for cutting and joining pieces of DNA. The Committee requested that the Revision of the NIH Guidelines Subcommittee examine the current definition and revise it to encompass newer techniques, without greatly expanding the scope of the NIH Guidelines.

The Revision of the NIH Guidelines Subcommittee met on June 5, 1989, and considered this charge. The Subcommittee agreed that additional information regarding the potential effects of the new techniques was needed before the definition could be revised. Their conclusion was to recommend that:

> RAC institute a study on the extent to which new techniques for introducing foreign DNA into living cells without the use of recombinant DNA methodology pose potential biohazards.

II. Points To Consider Document on Human Gene Transfer

On September 29, 1986, the RAC adopted the "Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols," which was prepared by the Human Gene Therapy Subcommittee."

At the January 30, 1989, meeting, the RAC endorsed a proposal to form a subcommittee to update and report to the Human Gene Therapy Subcommittee recommendations to amend the "Points to Consider." The Points to Consider Subcommittee met on March 31, 1989, and developed a draft revision of the original document.

On July 31, 1989, the Human Gene Therapy Subcommittee met to consider this document. The title and scope of the 1986 document were revised to reflect the Subcommittee's experiences reviewing a proposal for human gene transfer. The results of their deliberations are as follows:

NATIONAL INSTITUTES OF HEALTH

Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into Human Subjects—

Human Gene Therapy Subcommittee—

NIH Recombinant DNA Advisory Committee

Outline

Applicability
Introduction

I. Description of Proposal.

A. Objectives and rationale of the proposed research
1. Use of recombinant DNA for therapeutic purposes
2. Transfer of recombinant DNA for other purposes
B. Research design, anticipated risks and benefits
1. Structure and characteristics of the biological system
2. Preclinical studies, including risk assessment studies
3. Clinical procedures, including patient monitoring
4. Public health considerations
5. Qualifications of investigators, adequacy of laboratory and clinical facilities
C. Selection of patients
D. Informed consent
E. Privacy and confidentiality

II. Special Issues.

A. Provision of information to the public
B. Communication of research methods and results to investigators and clinicians

III. Requested Documentation.

A. Original protocol
B. IRB and IBC minutes and recommendations
C. One-page abstract of gene transfer protocol
D. One-page description of proposed experiment in non-technical language
E. Curricula vitae for key professional personnel
F. Indication of other federal agencies to which the protocol is being submitted
G. Other pertinent material

IV. Reporting Requirements.

National Institutes of Health

Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into Human Subjects

Applicability

These "Points to Consider" apply to research conducted at or sponsored by an institution that receives any support for recombiant DNA research from the National Institutes of Health (NIH). Other researchers (e.g., those employed by private companies, non-United States organizations, and non-profit organizations) are encouraged to use the "Points to Consider." Experiments in which recombiant DNA is introduced into cells of a human subject with the intent of stably modifying the subject's genome are covered by Section III–A–4 of the NIH Guidelines for Research Involving Recombinant DNA Molecules (49 FR 46266). Section III–A–4 applies both to recombinant DNA and to DNA or RNA derived from recombinant DNA.

Introduction

(1) This document is intended to provide guidance in preparing proposals for NIH consideration under Section III–A–4 of the NIH Guidelines for Research Involving Recombinant DNA Molecules. Section III–A–4 requires experiments involving the transfer of recombinant DNA into human subjects to be reviewed by the NIH Recombinant DNA Advisory Committee (RAC) and approved by the NIH. RAC consideration of each proposal will be on a case-by-case basis and will follow publication of a precis of the proposal in the **Federal Register**, an opportunity for public comment, and a review of the proposal by the Human Gene Therapy Subcommittee (the Subcommittee) of the RAC. RAC recommendations on each proposal will be forwarded to the NIH Director for a decision which will then be published in the **Federal Register**.

(2) In general, it is expected that the transfer of recombinant DNA into human subjects will not present a risk to public health or to the environment as the recombinant DNA is expected to be confined to the human subject. Nevertheless, Section I–B–4–b of the "Points to Consider" document specifically asks the researchers to address this point.

(3) This document will be considered for revision as experience in evaluating proposals accumulates and as new scientific developments occur. This review will be carried out periodically as needed.

(4) A proposal will be considered by the RAC only after the protocol has been approved by the local Institutional Biosafety Committee (IBC) and by the local Institutional Review Board (IRB) in accordance with Department of Health and Human Service (DHHS) Regulations for the Protection of Human Subjects (45 Code of Federal Regulations, Part 46). (If a proposal involves children, special attention should be paid to subpart D of these DHHS regulations.) The IRB and IBC may, at their discretion, condition their approval on further specific deliberation by the RAC and its Subcommittee. Consideration of proposals by the RAC may proceed simultaneously with review by any other involved federal agencies[1] provided that the RAC is notified of the simultaneous review. Meetings of the Committee and the Subcommittee will be open to the public except where trade secrets or proprietary information would be disclosed. The committee prefers that the first proposals submitted for RCA review contain no proprietary information or trade secrets, enabling all aspects of the review to be open to the public. The public review of these protocols will serve to inform the public not only on the technical aspects of the proposals but also on the meaning and significance of the research.

(5) The clinical application of recombinant DNA techniques raises two general kinds of questions: (i) the questions usually discussed by IRBs in their review of any proposed research involving human subjects; and (ii) broader issues. The first type of question is addressed principally in Part I of this document. Several broader issues are discussed later in this Introduction and in Part II below.

(6) Following the Introduction, this document is divided into four parts. Part I requests a description of the protocol with special attention to the short-term risks and benefits of the proposed research to the patient[2] and to other people, the selection of patients, informed consent, and privacy and confidentiality. In Part II, investigators are requested to address special issues pertaining to the free flow of information about the clinical trials. These issues lie outside the usual puview of IRRBs and reflect general public concerns about biomedical research. Part III summarizes other requested documentation that will assist the RAC and its Subcommittee in their review of the proposals. Part IV specifies reporting requirements.

(7) The RAC and its Subcommittee will not at present entertain proposals for germ line alterations but will consider for approval protocols involving somatic cell gene therapy. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into a patient's somatic cells. In germ line alterations, a specific attempt is made to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring.

(8) The acceptability of human somatic cell gene therapy has been addressed in several public documents as well as in numerous academic studies. The November 1982 report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Splicing Life, resulted from a two-year process of public deliberations and hearings; upon release of that

report, a House subcommittee held three days of public hearings with witnesses from a wide range of fields from the biomedical and social sciences to theology, philosophy, and law. In December 1984, the Office of Technology Assessment released a background paper, Human Gene Therapy, which concluded:

"Civic, religious, scientific, and medical groups have all accepted, in principle, the appropriateness of gene therapy of somatic cells in humans for specific genetic diseases. Somatic cell gene therapy is seen as an extension of present methods of therapy that might be preferable to other technologies."

In light of this public support, the RAC is prepared to consider proposals for somatic cell gene therapy.

(9) In their evaluation of proposals involving the transfer of recombinant DNA into human subjects, the RAC and its Subcommittee will consider whether the design of such experiments offers adequate assurance that their consequences will not go beyond their purpose, which is the same as the traditional purpose of all clinical investigations, namely, to protect the health and well-being of the individual subjects being treated while at the same time gathering generalizable knowledge.

Two possible undesirable consequences of the transfer of recombinant DNA would be unintentional: (1) Vertical transmission of genetic changes from an individual to his or her offspring or (2) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, this document requests information that will enable the RAC and its Subcommittee to assess the possibility that the proposed experiments will inadvertently affect reproductive cells or lead to infection of other people (e.g., treatment personnel or relatives).

(10) In recognition of the social concern that surrounds the subject of gene transfer, the Subcommitte will cooperate with other groups in assessing the possible long-term consequences of the transfer of recombinant DNA into human subjects and related laboratory and minimal experiments in order to define appropriate human applications of this emerging technology.

(11) Responses to the questions raised in these "Points to Consider" should be provided in the form of either written answers or references to specific sections of the protocol or its appendices.

(12) Investigators should indicate points which are not applicable with a brief explanation. Investigators submitting proposals that employ essentially the same vector systems (or with minor variations), and/or that are based on the same preclinical testing as proposals previously reviewed by the Subcommittee and the Recombinant DNA Advisory Committee (RAC), may refer to proceeding documents without having to rewrite such material.

I. Description of Proposal—A. Objectives and rationale of the proposed research. State concisely the overall objectives and rationale of the proposed study. Please provide information on the specific points that relate to whichever type of research is being proposed:

1. Use of recombinant DNA for therapeutic purposes. For research in which recombinant DNA is transferred in order to treat a disease or disorder (e.g., genetic diseases, cancer, and metabolic diseases), the following questions should be addressed:

a. Why is the disease selected for treatment by means of gene therapy a good candidate for such treatment?

b. Describe the natural history and range of expression of the disease selected for treatment. What objective and/or quantitative measures of disease activity are available? In your view, are the usual effects of the disease predictable enough to allow for meaningful assessment of the results of gene therapy?

c. Is the protocol designed to prevent all manifestations of the disease, to halt the progression of the disease after symptoms have begun to appear, or to reverse manifestations of the disease in seriously ill victims?

d. What alternative therapies exist? In what groups of patients are these therapies effective? What are their relative advantages and disadvantages as compared with the proposed gene therapy?

2. Transfer of DNA for Other Purposes. a. Into what cells will the recombinant DNA be transferred? Why is the transfer of recombinant DNA necessary for the proposed research? What questions can be answered by using recombinant DNA?

b. What alternative methodologies exist? What are their relative advantages and disadvantages as compared to the use of recombinant DNA?

B. Research design, anticipated risks and benefits.—1. *Structure and characteristics of the biological system.* Provide a full description of the methods and reagents to be employed for gene delivery and the rationale for their use. The following are specific points to be addressed:

a. What is the structure of the cloned DNA that will be used?

(1) Describe the gene (genomic or cDNA), the bacterial plasmid or phage vector, and the delivery vector (if any). Provide complete nucleotide sequence analysis or a detailed restriction enzyme map of the total construct.

(2) What regulatory elements does the construct contain (e.g., promoters, enhancers, polyadenylation sites, replication origins, etc.)? From what source are these elements derived? Summarize what is currently known about the regulatory character of each element.

(3) Describe the steps used to derive the DNA construct.

b. What is the structure of the material that will be administered to the patient?

(1) Describe the preparation, structure, and composition of the materials that will be given to the patient or used to treat the patient's cells.

(a) If DNA, what is the purity (both in terms of being a single DNA species and in terms of other contaminants)? What tests have been used and what is the sensitivity of the tests?

(b) If a virus, how is it prepared from the DNA construct? In what cell is the virus grown (any special features)? What medium and serum are used? How is the virus purified? What is its structure and purity? What steps are being taken (and assays used with their sensitivity) to detect VL30 RNA, other nucleic acids, or proteins) or contaminating viruses (both replication-competent or replication-defective) or other organisms in the cells or serum used for preparation of the virus stock including any contaminants that may have biological effects?

(c) If co-cultivation is employed, what kinds of cells are being used for co-cultivation? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials? Specifically, what tests are being done to assess the material to be returned to the patient for the presence of live or killed donor cells or other non-vector materials (for example, VL30 sequences) originating from those cells?

(d) If methods other than those covered by (a)-(c) are used to introduce new genetic information into target cells, what steps are being taken to detect and eliminate any contaminating materials? What are possible sources of contamination? What is the sensitivity of tests used to monitor contamination?

(2) Describe any other material to be used in preparation of the material to be administered to the patient. For example, if a viral vector is proposed, what is the nature of the helper virus or cell line? If carrier particles are to be used, what is the nature of these?

2. Preclinical studies, including risk-assessment studies. Describe the experimental basis (derived from tests in cultured cells and animals) for claims about the efficacy and safety of the proposed system for gene delivery and explain why the model(s) chosen is (are) the most appropriate.

a. Laboratory studies of the delivery system.

(1) What cells are the intended target cells of recombinant DNA? If target cells are to be treated ex vivo and returned to the patient, how will the cells be characterized before and after treatment? What is the theoretical and practical basis for assuming that only the target cells will incorporate the DNA?

(2) Is the delivery system efficient? What percentage of the target cells contain the added DNA?

(3) How is the structure of the added DNA sequences monitored and what is the sensitivity of the analysis? Is the added DNA extrachromosomal or integrated? Is the added DNA unrearranged?

(4) How many copies are present per cell? How stable is the added DNA both in terms of its continued presence and is structural stability?

b. Laboratory studies of gene transfer and expression.

(1) What animal and cultured cell models were used in laboratory studies to assess the *in vivo* and *in vitro* efficacy of the gene transfer system? In what ways are these models similar to and different from the proposed human treatment?

(2) What is the minimal level of gene transfer and/or expression that is estimated to be necessary for the gene transfer protocol to be successful in humans? How was this level determined?

(3) Explain in detail all results from animal and cultured cell model experiments which assess the effectiveness of the delivery system (part 2.a. above) in achieving the minimally required level of gene transfer and expression (2.b.(2) above).

(4) To what extent is expression only from the desired gene (and not from the surrounding DNA)? To what extent does the insertion modify the expression of other genes?

(5) In what percentage of cells does expression from the added DNA occur? Is the product biologically active? What percentage of normal activity results from the inserted gene?

(6) Is the gene expressed in cells other than the target cells? If so, to what extent?

c. Laboratory studies pertaining to the safety of the delivery/expression system.

(1) If a retroviral system is used:

(a) What cell types have been infected with the retroviral vector preparation? Which cells, if any, produce infectious particles?

(b) How stable are the retroviral vector and the resulting provirus against loss, rearrangement, recombination, or mutation? What information is available on how much rearrangement or recombination with endogenous or other viral sequences is likely to occur in the patient's cells? What steps have been taken in designing the vector to minimize instability or variation? What laboratory studies have been performed to check for stability, and what is the sensitivity of the analyses?

(c) What laboratory evidence is available concerning potential harmful effects of the transfer, e.g., development of neoplasia, harmful mutations, regeneration of infectious particles, or immune responses? What steps have been taken in designing the vector to minimize pathogenicity? What laboratory studies have been performed to check for pathogenicity, and what is the sensitivity of the analyses?

(d) Is there evidence from animal studies that vector DNA has entered untreated cells, particularly germ line cells? What is the sensitivity of the analyses?

(e) Has a protocol similar to the one proposed for a clinical trial been carried out in non-human primates and/or other animals? What were the results? Specifically, is there any evidence that the retroviral vector has recombined with any endogenous or other viral sequences in the animals?

(2) If a non-retroviral delivery system is used: What animal studies have been done to determine if there are pathological or other undesirable consequences of the protocol (including insertion of DNA into cells other than those treated, particularly germ line cells)? How long have the animals been studied after treatment? What tests have been used and what is their sensitivity?

3. Clinical procedures, including patient monitoring. Describe the treatment that will be administered to patients and the diagnostic methods that will be used to monitor the success or failure of the treatment. If previous clinical studies using similar methods have been performed by yourself or others, indicate their relevance to the proposed study.

a. Will cells (e.g., bone marrow cells) be removed from patients and treated ex vivo? If so, what kinds of cells will be removed from the patients, how many, how often, and at what intervals?

b. Will patients be treated to eliminate or reduce the number of cells containing malfunctioning genes (e.g., through radiation or chemotherapy)?

c. What treated cells (or vector/DNA combination) will be given to patients? How will the treated cells be administered? What volume of cells will be used? Will there be single or multiple treatments? If so, over what period of time?

d. How will it be determined that new gene sequences have been inserted into the patient's cells and if these sequences are being expressed? Are these cells limited to the intended target cell populations? How sensitive are these analyses?

e. What studies will be done to assess the presence and effects of the contaminants?

f. What are the clinical endpoints of the study? Are there objective and quantitative measurements to assess the natural history of the disease? Will such measurements be used in following patients? How will patients be monitored to assess specific effects of the treatment on the disease? What is the sensitivity of the analyses? How frequently will follow-up studies be done? How long will patient follow-up continue?

g. What are the major beneficial and adverse effects of treatment that you anticipate? What measures will be taken in an attempt to control or reverse these adverse effects if they occur? Compare the probability and magnitude of potential adverse effects on patients with the probability and magnitude of deleterious consequences from the disease if recombinant DNA transfer is not used.

h. If a treated patient dies, what special post mortem studies will be performed?

4. Public health considerations. Describe any potential benefits and hazards of the proposed therapy to persons other than the patients being treated. Specifically:

a. On what basis are potential public health benefits or hazards postulated?

b. Is there a significant possibility that the added DNA will spread from the patient to other persons or to the environment?

c. What precautions will be taken against such spread (e.g., to patients sharing a room, health-care workers, or family members)?

d. What measures will be undertaken to mitigate the risks, if any, to public health?

e. In light of possible risks to offspring, including vertical transmission, will birth control measures be recommended to the patient? Are such concerns applicable to health care personnel?

5. Qualifications of investigators, adequacy of laboratory and clinical facilities. Indicate the relevant training and experience of the personnel who will be involved in the preclinical studies and clinical administration of recombinant DNA. In addition, please describe the laboratory and clinical facilities where the proposed study will be performed.

a. What professional personnel (medical and nonmedical) will be involved in the proposed study and what is their relevant expertise? Please provide curricula vitae of key professional personnel (see Section III–E).

b. At what hospital or clinic will the treatment be given? Which facilities of the hospital or clinic will be especially important for the proposed study? Will patients occupy regular hospital beds or clinical research center beds? Where will patients reside during the follow-up period? What special arrangements will be made for the comfort and consideration of the patients? Will the research institution designate an ombudsman, patient care representative, or other individual to help protect the rights and welfare of the patient?

C. *Selection of patients.* Estimate the number of patients to be involved in the proposed study. Describe recruitment procedures and patient eligibility requirements, paying particular attention to whether these procedures and requirements are fair and equitable.

1. How many patients do you plan to involve in the proposed study?

2. How many eligible patients do you anticipate being able to identify each year?

3. What recruitment procedures do you plan to use?

4. What selection criteria do you plan to employ? What are the exclusion and inclusion criteria for the study?

5. How will patients be selected if it is not possible to include all who desire to participate?

D. *Informed consent.* Indicate how patients will be informed about the proposed study and how their consent will be solicited. The consent procedure should adhere to the requirements of DHHS regulations for the protection of human subjects (45 Code of Federal Regulations, Part 46). If the study involves pediatric or mentally handicapped patients, describe procedures for seeking the permission of parents or guardians and, where applicable, the assent of each patient. Areas of special concern highlighted below include potential adverse effects, financial costs, privacy, long-term follow-up, and post mortem examination.

1. How will the major points covered in Sections I–A through I–C of this document be disclosed to potential participants in this study and/or parents or guardians in language that is understandable to them?

2. How will the innovative character and the theoretically possible adverse effects of the experiment be discussed with patients and/or parents or guardians? How will the potential adverse effects be compared with the consequences of the disease?

3. What explanation of the financial costs of the experiment, follow-up care, and any available alternatives will be provided to patients and/or parents or guardians?

4. How will patients and/or their parents or guardians be informed that the innovative character of the experiment may lead to great interest by the media in the research and in treated patients?

5. How will patients and/or their parents or guardians be informed:

a. About the irreversible consequences of some of the procedures performed?

b. About any adverse medical consequences that may occur if a subject withdraws from the study once it has begun?

c. About expectations of willingness to cooperate in long-term follow-up?

d. About expectations that permission to perform an autopsy will be granted in the event of a patient's death following transfer as a precondition for a patient's participation in the study? This stipulation is included because an accurate determination of the precise cause of a patient's death would be of vital importance to all future patients.

E. *Privacy and confidentiality.* Indicate what measures will be taken to protect the privacy of patients and their families as well as to maintain the confidentiality of research data.

1. What provisions will be made to honor the wishes of individual patients (and the parents or guardians of pediatric or mentally handicapped patients) as to whether, when, or how the identity of patients is publicly disclosed?

2. What provision will be made to maintain the confidentiality of research data, at least in cases where data could be linked to individual patients?

II. Special Issues

Although the following issues are beyond the normal purview of local IRBs, the RAC and its Subcommittee request that investigators respond to questions A and B below.

A. What steps will be taken, consistent with point I-E above, to ensure that accurate and appropriate information is made available to the public with respect to such public concerns as may arise from the proposed study?

B. Do you or your funding sources intend to protect under patent or trade secret laws either the products or the procedures developed in the proposed study? If so, what steps will be taken to permit as full communication as possible among investigators and clinicians concerning research methods and results?

III. Requested Documentation

In addition to responses to the questions raised in these "Points to Consider," please submit the following materials:

A. Your protocol as approved by your local IRB and IBC.

B. Results of local IRB and IBC deliberations and recommendations that pertain to your protocol.

C. A one-page scientific abstract of the protocol.

D. A one-page description of the proposed experiment in nontechnical language.

E. Curricula vitae for key professional personnel.

F. An indication of other federal agencies to which the protocol is being submitted for review.

G. Any other material which you believe will aid in the review.

IV. Reporting Requirements

A. Serious adverse effects of treatment should be reported immediately to both the local IRB and the NIH Office for Protection from Research Risks, and a written report should be filed with both groups. A copy of the report should also be forwarded to the NIH Office of Recombinant DNA Activities (ORDA).

B. Reports regarding the general progress of patients should be filed with both your local IRB and ORDA within 6 months of the commencement of the experiment and at six-month intervals thereafter. These twice-yearly reports should continue for a sufficient period of time to allow observation of all major effects. In the event of a patient's death, a summary of the special post mortem studies and statement of the cause of death should be submitted to the IRB and ORDA, if available.

Footnotes:

1. The Food and Drug Administration (FDA) has jurisdiction over drug products intended for use in clinical trials of human gene transfer. For general information on FDA's policies and regulatory requirements, please see the **Federal Register**, Volume 51, pages 23309–23313, 1986.

2. The term "patient" and its variants are used in the text as a shorthand designation for "patient-subject."

III. Proposal to Amend Appendix H of the NIH Guidelines

The **Federal Register** of June 24, 1988 (53 FR 23775), contained a proposal by the Postal Service to ban the shipment of all etiologic agents, or materials believed to contain etiologic agents, as defined by the Department of Transportation and the Department of Health and Human Services regulations. Under Appendix H of the current NIH Guidelines for Research Involving Recombinant DNA Molecules of May 7, 1986 (52 FR 16976), this ban could apply to all shipments of recombinant molecules contained within an organism or virus, regardless of whether they are potentially hazardous to human health. Such a ban could affect the terms and conditions under which commercial shippers would transport recombinant DNA products. The RAC recognized the potential significance of this issue and referred it to the Definitions Subcommittee of the RAC, which met on December 5, 1988, and developed the following proposal:

A. Proposed replacement of Appendix H

"Preamble:

"Recombinant DNA molecules contained in an organism or in a viral genome shall be shipped under the appropriate requirements of the U.S. Public Health Service (42 CFR, part 72), U.S. Department of Agriculture (9 CFR subchapters D&E; 7 CFR, part 340) and/or the U.S. Department of Transportation (49 CFR, part 173). For purposes of these Guidelines the following recombinant DNA molecules contained in an organism or in a viral genome shall be shipped as etiologic agents: (1) those listed as Class 2, 3, or 4 agents in Appendix B; and/or (2) those contained in reference G–III–2 [1]; and/or (3) those regulated as animal or plant pathogens or pests under titles 7 and 9 CFR; or (4) host organisms containing recombinant DNA derived from those organisms or viral genomes.

"Appendix H–I:

"An illustration of one method of packaging and labeling of recombinant DNA-containing microorganisms and viral genomes defined as etiologic agents in the Preamble is shown in Figures 1, 2, and 3. Additional information on packaging and shipping is given in the "Laboratory Safety Monograph—A Supplement to the NIH Guidelines for Recombinant DNA Research," available from the Office of Recombinant DNA Activities and in the publication Biosafety in Microbiological and Biomedical Laboratories.[1]

"Appendix H–II—Footnote and References of Appendix H:

1. Biosafety in Microbial and Biomedical Laboratories, 2nd Edition, (May 1988), U.S. Department of Health and Human Services, Centers for Disease Control, Atlanta, Georgia 30333, and National Institutes of Health, Bethesda, Maryland 20892."

B. *Proposed Replacement of the Illustration in Appendix H.*

The heading changes and the replacement paragraph were written by NIH staff on December 12, 1988, to reflect the intent of the Definitions Subcommittee of the RAC.

The replacement paragraph would read:

"Figures 1, 2, and 3 depict one method for the packaging and labeling of those recombinant DNA-containing organisms and viral genomes defined as etiologic agents in the Preamble of Appendix H. The key features are identified in Figure 1. It is the responsibility of the shipper to comply with the applicable requirements of 42 CFR part 72 and 49 CFR part 173 when shipping biological materials or etiologic agents. It is recommended that all organisms containing recombinant molecules, which are exempt and/or Class 1 agents, should be shipped in secure, leak-proof containers."

After considering this proposal at the January 30, 1989, meeting, the RAC members agreed that it solved 90 percent of the difficulties posed by the original version, but that additional work was needed.

The Definitions Subcommittee met on July 12, 1989, and adopted the following motion:

"To recommend to the Recombinant DNA Advisory Committee consideration and adoption of the following amendment to Appendix H of the NIH Guidelines for Research Involving Recombinant DNA Molecules:

"Appendix H is to be replaced as follows:

"Appendix H—Shipment.

"Recombinant DNA molecules contained in an organism or in a viral genome shall be shipped under the applicable regulations of the U.S. Postal Service; the U.S. Public Health Service (42 CFR Part 72); the U.S. Department of Agriculture (9 CFR subchapters D and E; 7 CFR Part 340); and/or the U.S. Department of Transportation (49 CFR Parts 171–179).

"For purposes of the NIH Guidelines:

"Host organisms or viruses will be defined as etiologic agents regardless of whether or not they contain recombinant DNA if they are regulated as human pathogens under U.S. Public Health Service (42 CFR Part 72) or as animal pathogens or plant pests under the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (Titles 9 and 7 CFR, respectively).

"Additionally, host organisms and viruses will be defined as etiologic agents if they contain recombinant DNA when:

"A. the recombinant DNA includes the complete genome of a host organism or virus regulated as a human or animal pathogen or a plant pest; or

"B. the recombinant DNA codes for a toxin or other factor directly involved in eliciting human, animal or plant disease or inhibiting plant growth and is carried on an expression vector or within the host chromosome and/or when the host organism contains a conjugation proficient plasmid or a generalized transducing phage; or

"C. the recombinant DNA comes from a host organism or virus regulated as a human or animal pathogen or as a plant pest and has not been adequately characterized to demonstrate that it does not code for a factor involved in eliciting human, animal or plant disease.

"Appendix H–1—Footnotes and References of Appendix H.

"For further information on shipping etiologic agents, please contact: (1) Centers for Disease Control, ATTN: Biohazards Control Office, 1600 Clifton Road, Atlanta, Georgia 30333, (404) 639–3883, FTS 236–3883; (2) Department of Transportation, ATTN: Office of Hazardous Materials Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–4545; or (3) Department of Agriculture, ATTN: Animal & Plant Health Inspection Service, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–7885 for Animal Pathogens, (301) 436–7612 for Plant Pests."

IV. Proposed Amendment of the NIH Guidelines Regarding Klebsiella oxytoca

In a letter dated August 3, 1989, Dr. Rogers Yocum, Director, Biochemical Products and Processes, Biotechnica International, Cambridge, Massachusetts, requests that certain experiments involving all strains derived from *Klebsiella oxytoca* strain M5a1 be given exempt or BL1 status under the NIH Guidelines.

In his August 3, 1989 letter, Dr. Yocum states:

"BioTechnica International, Inc. would like to request that certain experiments involving all strains derived from *Klebsiella oxytoca* strain M5a1 be given exempt or BL1 status in the NIH Guidelines for Recombinant DNA Research. We believe that *K. oxytoca* M5a1 has had a long history of safe use in many laboratories and that BL1 containment should be more than adequate. Self cloning experiments and experiments involving DNA clones isolated from non-pathogenic organisms or clones that are known not to encode production of toxic materials and transformed into M5a1 should be as harmless as experiments that utilize the non-recombinant strain. Below we will document what we know of the history and the nature of *K. oxytoca* M5a1, which we shall call 'M5a1' from here on.

"The earliest reference we know for M5a1 is a 1946 paper on butanediol fermentation (Freeman (1946), The fermentation of sucrose by *Aerobacter aerogenes*, Chemical Abstracts in Biochemistry 41: 389–398). M5a1 was isolated in the 1930's by Dr. Elizabeth McCoy at the University of Wisconsin (Winston Brill, personal communication). The strain was originally classified as *Aerobacter aerogenes*, (Wilson (1955) Nitrogen fixation in *Aerobacter aerogenes*, in Biochemistry of

Nitrogen, A.I. Vitanen Homage Volume, Ann. Acad. Scientarium. Fennicae Ser. AII *60*, 139–150; Mahl et al. (1965) Nitrogen fixation by members of the tribe *Klebsiella*, J. Bact. *89*: 1481–1487). The strain was distributed to various workers interested in free living nitrogen fixing bacteria in the 1940's by Dr. M.J. Johnson of the University of Wisconsin and in the 1960's by Dr. Perry Wilson also of the University of Wisconsin. In 1965 the strain was reclassified as *Klebsiella pneumoniae* by the CDC (CDC #2551–63). M5a1 was once again reclassified in 1977 to *K. oxytoca* (CDC Publication 78–8356). The primary taxonomic difference between *K. oxytoca* and *K. pneumonia* is that *K. oxytoca* produces indole while *K. pneumoniae* does not. We have tested M5a1 for indole production and have confirmed that M5a1 does produce indole from tryptophan. In general, *K. oxytoca* is found in the intestines of humans and animals, and in 'botanical and aquatic environments' (Bergey's Manual of Systematic Bacteriology (1986), Sneath, ed., Williams and Wilkins, Baltimore). Thus *K. oxytoca* appears to be ubiquitous. Wild-type M5a1 is resistant to low levels of ampicillin (up to 100 μg/ml) but it is sensitive to higher levels of ampicillin and usual experimental levels of kanamycin, tetracycline, cephalosporins and chloramphenicol.

"Interest in M5a1 expanded in 1971 (Streicher et al. (1971), Transduction of the nitrogen fixation genes in *Klebsiella pneumoniae* DNAs *68*: 1174–1177). M5a1 was one of two strains of *K. pneumoniae* that was shown to be sensitive to bacteriophage P1 out of a total of 27 strains tested. The significance of P1 sensitivity was that P1 is routinely used for generalized transduction in *E. coli*, an extremely useful genetic technique. The ability to transduce mutations among strains of *K. pneumoniae* would greatly accelerate study of the genes involved in nitrogen fixation. Thus M5a1 became the strain of choice for studying the genetics of nitrogen fixation in at least four different labs: Ray Valentine, University of California, Berkeley; Winston Brill, University of Wisconsin; Ray Dixon, Sussex; Ethan Signer and Fred Ausubel, MIT. The MIT lab renamed M5a1 as 'KP1,' which reflects its seminal position in their strain collection. The MIT group then discovered that M5a1 would support growth of the lambdoid coliphage 424 and that M5a1 had a DNA restriction system that prevented efficient transfer of DNA from *E. coli* to M5a1. They subsequently isolated a restrictionless mutant of M5a1, called KP5022, which became the parent of many other derivatives (Streicher et al. (1974) Regulation of Nitrogen Fixation in *Klebsiella pneumoniae*, J. Bact. *120*: 815–821).

"M5a1 was then shown to be 'non-capsulated,' a trait that is common with *E. coli* K–12, and which may account for the reduced pathogenicity of *E. coli* K–12 (Shanmugam et al. (1974) Bioch. Biophys. Acta *338*: 545–553). In fact it was probably the non-capsulated nature of M5a1 that made it more susceptible than other *Klebsiella* strains to phages of P1 and 424.

"Winston Brill's group showed that bacteriophage Mu could infect M5a1. The group then used variants of Mu to mutagenize and construct fusions of *nif* genes to *E. coli* lacZ. They renamed M5a1 as 'UN,' and generated many hundreds of derivatives, such as UN1290, which contains the recA56 allele of *E. coli* transduced into M5a1 (MacNeil et al. (1981), Regulation of Nitrogen Fixation in *Klebsiella pneumoniae*, J. Bact. *145*: 348–357; MacNeil et al (1978) Fine structure mapping and complementation analysis of *nif* genes in *Klebsiella pneumoniae*, J. Bact. *136*: 253–288).

"During the 1970's there was much work at the University of Sussex and elsewhere on the enzymology of nitrogen fixation. Large amounts of nitrogenase enzyme were required, and since the genetic work was being done in M5a1 and its derivatives, M5a1 became the organism of choice for producing nitrogenase. M5a1 was grown routinely in 1,000 liter fermentors, and kilogram quantities of cell pastes were routinely worked up, using no special precautions (Eady et al. (1972) Biochem. J. *128*: 655–675). In fact, they reported injecting live M5a1 into rabbits for the purpose of raising antibodies against intact cells. No pathogenic effects were observed (see Appendix I, page 4). Appendix I also documents the successful M5a1 declassification petitions of the Postgate lab at Sussex to the Genetic Manipulation Advisory Committee, U.K. They obtained permission to perform various M5a1 recombinant experiments under conditions of good microbiological practice. Thus M5a1 has been used in several labs, both genetic and biochemical since 1946. No harmful effects of M5a1 have been reported from any of the labs.

"Finally, starting in the 1970's, many recombinant DNA experiments have been done with M5a1. In particular, all of the genes involved in nitrogen fixation and many of the genes involved in regulation of nitrogen metabolism of M5a1 have been cloned into *E. coli* K–12 (for examples, see Dixon et al. (1976) Construction of a P plasmid carrying nitrogen fixation genes from *Klebsiella pneumoniae*, Nature *260*: 268–271; Cannon et al. (1988) The nucleotide sequence of the *nif* gene of *Klebsiella pneumoniae*, Nuc. Acids. Res. *16*: 11379).

"The current NIH guidelines for recombinant DNA work (Federal Register Volume *51*, no. 88, May 7, 1986) are contradictory with respect to *Klebsiella*. On one hand, the genus *Klebsiella* is considered to be a natural DNA exchanger with *E. coli*, and so any cloning between *E. coli* and *Klebsiella* in *either direction* is exempt (p. 16967). On the other hand, *Klebsiella*—all species and serotypes—is listed as a Class 2 pathogen, and as such, cloning into *Klebsiella* requires BL2 containment (paragraph III–B–1–a, p. 16960) and cloning recombinant DNA from *Klebsiella* into non-pathogenic prokaryotes (i.e. *E. coli* K–12) also requires BL2 containment (paragraph III–B–2–a, p. 16960). We request that the status of *Klebsiella* be clarified, particularly in the case of *K. oxytoca* strain M5a1. Specifically, we propose that the following classes of experiments and fermentations of the resulting organisms be exempted from the guidelines:

"(1) All self cloning experiments involving DNA from M5a1 and any of its derivatives.

"(2) All experiments involving clones of M5a1 DNA into *E. coli* K–12.

"In addition, we propose that the following classes of experiments be given BL1 status:

"(1) All experiments involving clones of *E. coli* K–12 DNA into M5a1.

"(2) All experiments involving well defined clones from nonpathogenic organisms or clones known not to contain DNA that encodes production of material toxic to vertebrates into M5al.

"We feel that the history of safe use of M5al and the ubiquitous distribution of *K. oxytoca* justify these containment conditions."

Additional documentation supporting this request is provided in an appendix that will be distributed at the meeting. This material also is available upon request from ORDA.

V. Other Matters to be Considered

Time permitting, the following agenda items will be presented and discussed:

1. The National Research Council has conducted a project entitled, *Scientific Evaluation of the Introduction of Genetically Modified Microorganisms and Plants into the Environment.* Publication of this report is scheduled for September 1989. The results of this project will be of use to the RAC in its consideration of revisions to Section I–A, "Definition of Recombinant DNA" of the NIH Guidelines.

2. The Department of Commerce has issued an interim rule regarding the export of microorganisms, including specific provisions requiring an export license for "all genetically engineered or manipulated agents." A revised rule is expected to be published shortly. A Department of Commerce representative will present a status report on the rule.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual

programs listed in the Catalog of Federal Domestic Assistance are affected.

Jay Moskowitz,

Associate Director, Office of Science Policy and Legislation, National Institutes of Health.

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Part VI

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 633
Project Management Oversight; Final Rule

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 633

[Docket No. 87-B]

RIN 2132-AA31

Project Management Oversight

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Final rule.

SUMMARY: This final rule implements section 324 of the Surface Transportation and Uniform Relocation Assistance Act of 1987. This section permits UMTA to use up to ½ of 1 percent of the funds made available in each fiscal year under UMTA's capital grants programs for project management oversight of major capital projects. Section 324 also requires a recipient implementing a major capital project with Federal financial assistance from UMTA to prepare and implement a project management plan. Finally, section 324 requires UMTA to implement its provisions by regulation. This rule will improve the quality of major capital projects receiving funding from UMTA.

EFFECTIVE DATE: This rule will be effective on October 2, 1989.

FOR FURTHER INFORMATION CONTACT: For general program questions: Frank McCarron, Office of Grants Management, Room 9315, UMTA, 400 7th St., SW., Washington, DC 20590, (202) 366–2440. For legal matters: Susan Schruth, Office of Chief Counsel, Room 9316, same address, (202) 366–4011.

SUPPLEMENTARY INFORMATION:

I. Background

UMTA provides Federal financial assistance to support urban areas in the planning, development, and improvement of comprehensive mass transportation systems. This assistance is provided by means of a variety of programs within the statutory authority granted by the Urban Mass Transportation Act of 1964, as amended (the UMT Act). UMTA assistance comes in many forms, including providing a matching share for capital construction of mass transportation projects, research and development dollars, assistance for operations, and several small, specialized programs.

A. *UMTA Project Management Initiatives.* Beginning in 1983, UMTA reviewed the way in which it provided oversight of one of its principal functional areas—construction of major capital projects by recipients of its funds. After examining a number of other Federal and related agency oversight programs, UMTA concluded that it was important to increase its independent oversight of significant UMTA-funded projects. UMTA developed a national project management oversight program for major capital projects using independent contractors. At that time, the definition of major capital project focused on new rail start projects. Under the program, UMTA assigned independent contractors, paid by and reporting directly to UMTA, to perform project management oversight functions on certain major capital projects. This arrangement allowed UMTA to more carefully monitor certain major capital projects without increasing its staff.

The program was useful immediately to UMTA and its recipients. The contractor's report became a key resource document UMTA used in evaluating a recipient's technical capacity and capability to execute a major capital project. The contractor's report also enabled the recipient to objectively assess various aspects of its capabilities.

There were, however, significant funding problems with this UMTA initiative. UMTA was not authorized to use funds from any of its major capital programs to provide for such a program, and instead had to rely on funding from its smaller research and study programs. This problem was resolved when Congress, in both the FY 1986 and FY 1987 DOT appropriation acts, authorized UMTA to use up to ½ of 1 percent of the funding available under its major capital programs in each of those fiscal years to contract directly with independent contractors for project management oversight.

By competitive procurement in 1986, UMTA retained a number of highly qualified national firms as contractors. Currently these contractors are working actively on over 25 separate assignments covering over 40 projects. In making assignments, considerable effort is taken to make certain that there is no real or apparent conflict of interest between an UMTA contractor and the project(s) assigned to the contractor. Once assigned to a project, the contractor monitors the recipient's overall implementation of the project and reports on it directly to UMTA. Such a report emphasizes project cost, schedule, and quality, and enables UMTA to assess effectively a recipient's performance on a particular project. When necessary, the report also makes recommendations for modifying practices to improve project performance.

B. *Statutory Program.* Because of the success and usefulness of UMTA's project oversight initiative, Congress included a project management oversight program in UMTA's reauthorization legislation (the Surface Transportation and Uniform Relocation Assistance Act of 1987, (STURAA) Pub. L. 100–17, effective April 2, 1987). Section 324 of STURAA added a new section 23 to the UMT Act.

Section 23 goes beyond UMTA's initiative of the mid-1980's by specifying three elements of the project management oversight program. First, UMTA may use up to ½ of 1 percent of the funds available under sections 3, 9, and 18 of the Urban Mass Transportation Act of 1964, as amended, 23 U.S.C. 103(e)(4) (interstate transfer—transit projects), and section 14(b) of the National Capital Transportation Amendments of 1979 (the Washington, DC Metrorail system) for project management oversight. Second, section 23 of the UMT Act requires a recipient constructing a major capital project to prepare a project management plan and, upon UMTA approval, to implement such plan. And third, section 23 requires UMTA to issue regulations to implement its provisions. This rulemaking is intended to fulfill this third provision of section 23.

II. The NPRM

UMTA published its notice of proposed rulemaking (NPRM) on August 11, 1987 (52 FR 29702). In response to the NPRM, UMTA received seventeen (17) comments, broken-down by the following categories:

11 UMTA urban recipients and lcoal governments
1 Contractor providing PMO services
4 State governments
1 Public Trade Association

All commenters were in general support of the PMO regulation, although most made recommendations on specific aspects of the rule. These specific recommendations are noted below and discussed in detail in the next section of the preamble ("Section-by-Section Analysis").

UMTA specifically sought comment on the definition of major capital project, and seven commenters requested clarification of this definition. Two commenters addressed the time period for the submission of the project management plan. Five commenters proposed that the requirement for monthly submissions of cost and data be changed to a quarterly submission. Two commenters suggested that a project management plan be deemed approved if the Administrator's review is not completed within sixty days.

Commenters also sought deletion of updated ridership estimates, the addition of exemptions from the PMO program, exclusion of the section 18 program from the PMO regulation, and clarification of the process for obtaining a waiver from certain items otherwise required to be included in the project management plan.

The final rule published today is substantively similar to the proposed rule. The following section-by-section analysis discusses these significant comments in more detail, as well as the agency's response to these comments.

III. Section-by-Section Analysis and Response To Public Comments

This portion of the preamble discusses each section of the final rule. It includes a review of any significant comments on a particular issue, as well as UMTA's response to such comments and its reasons for making the decisions incorporated in the final rule. The structure of the final rule is somewhat different from the proposed rule: to make the rule clearer, the agency has broken down a few large sections into several smaller sections. This, combined with descriptive section headings, should make the rule easier to use.

Subpart A—General Provisions

Section 633.1 Purpose

This section explains that the purpose of the rule is to implement section 23 of the UMT Act, as added by section 324 of the Surface Transportation and Uniform Relocation Assistance Act of 1987. The agency received no comments on this section. The agency has added to this section a brief description of the two different thrusts of the part—project management oversight and project management plans.

Section 633.3 Scope

This section provides that the part applies to any recipient of UMTA financial assistance undertaking a major capital project. The agency received no comments on this section.

Section 633.5 Definitions

This section contains ten definitions specifically applicable to this part. Several definitions drew comment.

Major Capital Project. "Major Capital Project" is an important element of this regulation, since it triggers both project management oversight on the part of UMTA and requires a recipient to comply with the project management plan provisions of the regulation. The NPRM defined a major capital project as having three separate categories: (1) Any new start rail project or extension; (2) any rail modernization project costing more than $100 million; or (3) a project determined to be a major capital project for purposes of this program by the Administrator. We noted in the preamble to the NPRM that one area in which the Administrator generally would be expected to exercise discretion to designate a project as major is any project costing more than $100 million.

Seven commenters recommended that further consideration be given to our definition. Commenters noted that the $100 million threshold language was not included in the proposed rule itself. Similarly, commenters criticized the lack of concise criteria or process for determining what constitutes a major capital project in the third instance—that is, the Administrator's discretionary designation of a project as "major"—and suggested that UMTA establish evaluation criteria to define more narrowly and objectively the Administrator's discretion. Commenters are concerned that the lack of objective criteria in this regard could create uncertainty and confusion as project planning, programming and implementation proceed without a recipient knowing whether the project might at some point be deemed "major" by UMTA.

UMTA recognizes this concern; in response, we have included in the final rule more specific guidance regarding the determination of what may constitute a major capital project. The final rule breaks down the concept of major capital project into three principal types. First is any new start project or extension. Second is any rehabilitation or modernization project, if costs exceed $100 million. These projects automatically are subject to the provisions of Part 633. That is, automatically these recipients will have to develop a project management plan, and they will be subject to some kind of project management oversight. The agency anticipates that these first two categories will constitute the great majority of the projects covered by part 633.

The third principal category identified in the major capital project definition includes those projects "deemed major" by the Administrator. It is this third category which has caused confusion among commenters and which we have clarified in the final rule. This category provides the Administrator with the necessary flexibility to apply the benefits of the project management oversight program to projects on an as-needed basis. This is not to say that a decision about any project would be arbitrary or capricious. Indeed, a necessary element of each decision by the Administrator is a determination that the project management oversight program will benefit specifically the agency or the recipient, or both.

Although the agency cannot specifically identify all types of cases in which the Administrator may make this type of determination, we have tried to list both here and in the definition section of the regulation the most likely types of projects under this third category:

(1) A project that generally is expected to have a total project cost in excess of $100 million;

(2) A project that is not exclusively for the routine acquisition, maintenance, or rehabilitation of vehicles or other rolling stock;

(3) A project that involves new technology;

(4) A project that is of a unique nature for the recipient; or

(5) A project involving a recipient whose past experience indicates to the agency the appropriateness of the extension of this program.

The final rule also makes it clear that any project deemed major by the Administrator will be subject to both parts of the project management oversight program—developing a project management plan and subject to project management oversight.

One final note concerning projects subject to a discretionary determination of "major" by the Administrator. Section 23 of the UMT Act also provides that the definition of major capital project "shall exclude projects for the acquisition of vehicles or other rolling stock, or for the performance of vehicle maintenance or rehabilitation." UMTA believes that the legislative intent in this regard was to exclude *routine* acquisition, rehabilitation or maintenance of vehicles or rolling stock from coverage of the rule—that is, to exclude those activities undertaken by a recipient in its normal course of business to maintain current service with existing or on-the-shelf technology. On the other hand, in UMTA's view the acquisition rehabilitation, or maintenance of vehicles by a recipient using technology or methods not utilized curently in the day-to-day operation of transit systems in this country, or in the day-to-day operations of a particular recipient, should not be excluded categorically from the project management oversight program, nor was it meant to be. Accordingly, projects involving non-routine acquisition, rehabilitation or maintenance are included in the third category of major capital projects—those within the descretion of the Administrator to designate as major if the Administrator determines it is to the benefit of UMTA, the recipient, or both.

Project Management. UMTA has added a definition of "project management plan" to the final rule. Under the statute, such a plan must be prepared by each recipient undertaking a major capital project, and must be approved by UMTA. The plan is the key reference document for a project participant to implement, and for an observer to monitor, a project. It is a dynamic document which may change often and be revised as the project passes through different phases. In addition to being a recipient's key management tool, the project management plan is a primary resource document used by UMTA in determining a recipient's technical capacity and capability to carry out a project.

Grantee. Finally, to be consistent with other UMTA regulations, we have replaced the definition of the term "grantee" with a definition of "recipient" in the final rule. A recipient is the entity that enters into a grant agreement with UMTA. Thus, we have deleted from the final rule the term "grantee" and replaced it in each case with "recipient." If the recipient does not actually carry out a proposed project, but rather passes funds through to some other entity, and the project is major for purposes of this regulation, it remains the responsibility of the recipient to make certain that this regulation is complied with either directly by the recipient or by the entity carrying out the project.

Subpart B—Project management oversight services

Section 633.7 of the NPRM contained all of the provisions relating to PMO services. There were no comments on these provisions. In the final rule, this material is broken down into five sections. New § 633.11 indicates which statutory funding programs are covered by this part. Section 633.13 discusses the timing of the initiation of this program—noting that while UMTA normally will contract for PMO services during the grant application process, it is possible that the agency will determine a project is a major capital project at some later date. The agency then would contract for PMO services at this later time.

Section 633.15 sets out the information access provisions—that the recipient must make records and sites available to UMTA or the PMO contractor.

Section 633.17 states that project management oversight services may be provided by any person or entity. UMTA anticipates that PMO will continue to be carried out by private companies, but it it possible that other entities, such as states, may be used. No recipient can provide PMO services in connection with its own project. Furthermore, the entity carrying out PMO may not have a conflict of interest with regard to the project and would be required to have an objective and unbiased outlook vis a vis the particular project. There also may be instances in which UMTA staff would itself provide all required PMO services. This section also makes it clear that UMTA uses government-wide procurement regulations found at 48 CFR CH I when contracting for PMO services.

Section 633.19 describes the Federal share for a PMO contract—100 percent—and indicates that UMTA is authorized to expend for project management oversight an amount not to exceed one-half of one percent of the funds made available each year under sections 3, 9, and 18 of the UMT Act, as well as under 23 U.S.C. 103(e)(4) and section 14(b) of the National Capital Transportation Amendments of 1979. Under sections 9 and 18, UMTA, as necessary, takes these funds "off the top" of the appropriation before the funds are allocated or apportioned under their particular requirements.

The practice under Section 3 and under the Interstate Transfer provision is somewhat different given the practice by Congress of earmarking those programs. Section 3 by law is divided into separate categories. UMTA takes the PMO ½ of 1 percent from each separate category, rather than directly "off the top". For the New Starts category, Congress fully earmarks projects to be funded. Thus, each earmark may be reduced by ½ of 1 percent to fund PMO activities. Under the Interstate Transfer Program, Congress specifically sets aside funds for PMO activities as part of their earmarks. Thus, the earmarks do not have to be reduced. Of course, if Congress were to change any of its practices discussed above the agency would have to reexamine how it takes down the PMO funds.

Subpart C—Project Management Plans

Old § 633.11, project management plans, has been broken down into two sections to help readability. New § 633.21 provides that, as a condition of Federal financial assistance, a recipient undertaking a major capital project submit a project management plan to UMTA. Two commenters addressed the timing of the submission of the project management plan. One suggested that it should not be required until after a grant is awarded; another proposed that it should be submitted after grant approval.

UMTA recognizes that each project is different, and that establishing absolute procedures without exceptions can be problemmatic in the grants area. The PMP is a dynamic document reflecting the four stages of a project (preliminary engineering, final design, construction, start up). The initial PMP must address subsequent elements of the project—if only in a general way. For example, it may not be possible for a recipient to submit detailed information on its change order procedure at the preliminary engineering stage, even though this is a required element of the plan. Initially, the recipient must address this requirement in general terms. Section 633.27 makes it clear that the recipient must submit periodic updates to the plan, as needed and appropriate.

However, UMTA also believes that the PMP is a key document in determining a recipient's technical capability and capacity to implement a project. Even as early as the grant application stage, a potential recipient needs to have considered how the project will be administered as much as it has defined what actual work and construction needs to be done. In this connection, section 3(a)(2)(A)(i) of the UMT Act states that "[n]o grant * * * shall be provided under this section unless the Secretary determines that the applicant has or will have the technical capacity to carry out the proposed project."

To assist UMTA in making the statutory determination noted above, the final rule provides generally that a project management plan must be submitted during the grant review process and is part of UMTA's grant application review. UMTA recognizes that the due date for such a plan may vary depending on the nature of the major capital project involved, the circumstances surrounding its development, as well as the fact that UMTA may not have even determined that there is a major capital project involved. UMTA will strive to make its determination as early as possible.

In most cases, then, UMTA will notify the recipient of the plan's due date for the final plan during the grant review process. In those cases where the Administrator determines after grant review that a project is major, UMTA will notify the applicant as soon as possible after the determination. The final rule adds a provision (§ 633.21(c)) that the grantee will have at least 90 days from UMTA notification of the

project management plan requirement to the due date of the plan. (Of course, an applicant for a new start or a major rail modernization project knows that it has to prepare a project management plan and may wish to submit it with its grant application to UMTA.)

New § 633.23 provides that UMTA has 60 days from the receipt of a final plan to notify the recipient that the plan is approved or disapproved; that it will require some changes before approval; or indicate that UMTA has not yet completed review of the plan, and state when that review will be completed. Two commenters suggested that the plan be deemed approved if UMTA's review is not complete within the 60 days. UMTA believes that such a provision would not be prudent management on its part. We recognize, however, that action must be taken within 60 days, either in the form of approval or disapproval of the plan, or a statement that UMTA needs more time to review the plan, and the regulation so provides.

Section 663.25, contents of a project management plan, discusses the contents of a project management plan and reflects, as did the provision in the NPRM, the specific requirements of the statute. One commenter suggested that the submission of updated ridership estimates be deleted. This is a statutory requirement, and as such cannot be deleted from the rule.

As noted in the NPRM, section 324 of the Act enumerated specific elements of the plan. The Act also stated, however, that the plan "* * * shall, as required in each case by the Secretary, provide for * * *" the specifically listed elements. The agency believes that the language "as required in each case by the Secretary" provides some discretion to the Administrator in determining the proper contents of each plan. Section 633.29 permits the Administrator, upon application of a grantee or on the Administrator's own initiative, to waive certain requirements upon a clear showing that any of the elements are unnecessary.

In this connection, one commenter suggested a more specific process for obtaining a waiver. In response, the agency does not believe that it would be possible to describe every specific basis for granting a waiver. Waivers will be considered on a case-by-case basis as requested in writing by a recipient. UMTA will grant waivers based on the merits of a specific request, consistent with the underlying purpose of section 23 of the UMT Act.

One commenter suggested that a recipient with an approved project management plan be exempt from submitting a new plan for a new project. The agency believes that it would not be prudent to approve a one-time submission of the project management plan. UMTA needs to verify periodically that the recipient is following the approved plan for a particular project and to monitor its implementation and changes. However, a recipient that manages multiple major capital projects using a plan that has been approved previously by UMTA, may resubmit the document, state that it seeks to execute the proposed project using the same plan, and request a waiver. UMTA will consider granting a waiver from the requirement of a new plan and let the existing plan be used for the new project. If this approach is approved by UMTA and any changes to the old plan are to be made, the recipient need only document those changes.

Section 633.27 discusses implementation of a project management plan after approval by the Administrator, as well as the requirement that a recipient submit periodic updates to the project management plan. Further, the recipient is required to submit monthly data on the project's cost and schedule data. Several commenters suggested that this requirement was too burdensome and duplicative. Section 23 of the UMTA Act specifically includes this requirement and consequently, the agency must include it in the final rule. In any event, the monthly submission of cost and schedule information is data that the recipient should have available and the provision requires the minimum—that the recipient send UMTA a copy of its basic project monitoring data on a monthly basis. Further, this request is not in conflict with the more detailed data required on a quarterly basis.

IV. Regulatory Impacts

A. Significant Rulemaking Analysis

This action has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. If promulgated, this rule would not result in an annual effect on the economy of $100 million or more, nor would it create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete in domestic or export markets. Moreover, this regulation is not significant under the Department's Regulatory Policies and Procedures. UMTA finds that economic impact of this regulation is minimal and a full regulatory evaluation is not necessary.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 95–354, UMTA certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

C. Federalism Analysis

This proposed rule has been reviewed under Executive Order 12612 on "Federalism", and UMTA has determined that it does not have implications for principles of Federalism that warrant the preparation of a Federalism Assessment. If promulgated, this rule will not limit the policymaking and administrative discretion of the States, nor will it affect the States' abilities to discharge traditional State governmental functions or otherwise affect any aspects of State sovereignty.

D. Paperwork Reduction Act

The collection of information requirements in this rule is subject to the Paperwork Reduction Act, Public Law 96–511, 44 U.S.C. Chapter 35. Section 324(e) of the Act specifically requires a grantee constructing a major capital project to prepare a plan and submit it to UMTA for approval. These requirements have been submitted to the Office of Management and Budget (OMB) and have received approval under OMB control number 2132–0502.

List of Subjects in 49 CFR Part 633

Government contracts. Grant programs—Transportation, Mass Transportation.

Accordingly, for the reasons described in the preamble, 49 CFR chapter VI is amended by adding a new part 633, as set forth below:

PART 633—PROJECT MANAGEMENT OVERSIGHT

Sec.

Subpart A—General Provisions

633.1 Purpose.
633.3 Scope.
633.5 Definitions.

Subpart B—Project Management Oversight Services

633.11 Covered projects.
633.13 Initiation of PMO services.
633.15 Access to information.
633.17 PMO contractor eligibility.
633.19 Financing the PMO program.

Subpart C—Project Management Plans

633.21 Basic requirement.
633.23 UMTA review of PMP.

633.25 Contents of a project management plan.
633.27 Implementation of a project management plan.
633.29 PMP waivers.

Authority: 49 U.S.C. 1601 et. seq., 1619.

Subpart A—General Provisions

§ 633.1 Purpose.

This part implements section 324 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17), which added section 23 to the UMT Act. The part provides for a two-part program for major capital projects receiving assistance from the agency. First, Subpart B discusses project management oversight, designed primarily to aid UMTA in its role of ensuring successful implementation of federally-funded projects. Second, Subpart C discusses the project management plan (PMP) required of all major capital projects. The PMP is designed to enhance the recipient's planning and implementation efforts and to assist UMTA's grant application analysis efforts.

§ 633.3 Scope.

This rule applies to a recipient of Federal financial assistance undertaking a major capital project using funds made available under:

(a) Sections 3, 9, or 18 of the Urban Mass Transportation Act of 1964, as amended;

(b) 23 U.S.C. 103(e)(4); or

(c) Section 14(b) of the National Capital Transportation Amendments of 1979 (93 Stat. 1320, Pub. L. 96–184).

§ 633.5 Definitions.

As used in this part:

Administrator means the Administrator of the Urban Mass Transportation Administration or the Administrator's designee.

Days means calendar days.

Fixed guideway means any public transportation facility which utilizes and occupies a separate right-of-way or rails. This includes, but is not limited to, rapid rail, light rail, commuter rail, automated guideway transit, people movers, and exclusive facilities for buses and other high occupancy vehicles.

Full funding agreement means a written agreement between UMTA and a recipient that establishes a financial ceiling with respect to the Government's participation in a project; sets forth the scope of a project; and sets forth the mutual understanding, terms, and conditions relating to the construction and management of a project.

Major capital project means a project that:

(1) Involves the construction of a new fixed guideway or extension of an existing fixed guideway;

(2) Involves the rehabilitation or modernization of an existing fixed guideway with a total project cost in excess of $100 million; or

(3) The Administrator determines is a major capital project because the project management oversight program will benefit specifically the agency or the recipient. Typically, this means a project that:

(i) Generally is expected to have a total project cost in excess of $100 million or more to construct;

(ii) Is not exclusively for the routine acquisition, maintenance, or rehabilitation of vehicles or other rolling stock;

(iii) Involves new technology;

(iv) Is of a unique nature for the recipient; or

(v) Involves a recipient whose past experience indicates to the agency the appropriateness of the extension of this program.

Project management oversight means the monitoring of a major capital project's progress to determine whether a project is on time, within budget, in conformance with design criteria, constructed to approved plans and specifications and is efficiently and effectively implemented.

Project management plan means a written document prepared by a recipient that explicitly defines all tasks necessary to implement a major capital project.

Recipient means a direct recipient of Federal financial assistance from UMTA.

UMT Act means the Urban Mass Transportation Act of 1964, as amended.

UMTA means the Urban Mass Transportation Administration.

Subpart B—Project Management Oversight Services

§ 633.11 Covered projects.

The Administrator may contract for project management oversight services when the following two conditions apply:

(a) The recipient is using funds made available under section 3, 9, or 18 of the Urban Mass Transportation Act of 1964, as amended; 23 U.S.C. 103(e)(4); or section 14(b) of the National Capital Transportation Amendments of 1979; and

(b) The project is a "major capital project".

§ 633.13 Initiation of PMO services.

PMO services will be initiated as soon as it is practicable, once the agency determines this part applies. In most cases, this means that PMO will begin during the preliminary engineering phase of the project. However, consistent with other provisions in this part, the Administrator may determine that a project is a "major capital project" at any point during its implementation. Should this occur, PMO will begin as soon as practicable after this agency determination.

§ 633.15 Access to information.

A recipient of UMTA funds for a major capital project shall provide the Administrator and the PMO contractor chosen under this part access to its records and construction sites, as reasonably may be required.

§ 633.17 PMO contractor eligibility.

(a) Any person or entity may provide project management oversight services in connection with a major capital project, with the following exceptions:

(1) An entity may not provide PMO services for its own project; and

(2) An entity may not provide PMO services for a project if there exists a conflict of interest.

(b) In choosing private sector persons or entities to provide project management oversight services, UMTA uses the procurement requirements in the government-wide procurement regulations, found at 48 CFR CH I.

§ 633.19 Financing the PMO program.

(a) UMTA is authorized to expend up to ½ of 1 percent of the funds made available each fiscal year under sections 3, 9, or 18 of the UMT Act, 23 U.S.C. 103(e)(4), or section 14(b) of the National Capital Transportation Amendments of 1979 (93 Stat. 1320) to contract with any person or entity to provide a project management oversight service in connection with a major capital project as defined in this part.

(b) A contract entered into between UMTA and a person or entity for project management oversight services under this part will provide for the payment by UMTA of 100 percent of the cost of carrying out the contract.

Subpart C—Project Management Plans

§ 633.21 Basic requirement.

(a) If a project meets the definition of major capital project, the recipient shall submit a project management plan prepared in accordance with § 633.25 of this part, as a condition of Federal financial assistance. As a general rule, the PMP must be submitted during the grant review process and is part of UMTA's grant application review. This section applies if:

(1) The project fails under one of the automatic major capital investment project categories (§ 633.5(1) or (2) of this part); or

(2) UMTA makes a determination that a project is a major capital project, consistent with the definition of major capital project in § 633.5. This determination normally will be made during the grant review process. However, UMTA may make such determination after grant approval.

(b)(1) UMTA will notify the recipient when it must submit the PMP. Normally, UMTA will notify the recipient sometime during the grant review process. If UMTA determines the project is major under its discretionary authority after the grant has been approved, UMTA will inform the recipient of its determination as soon as possible.

(2) Once UMTA has notified the recipient that it must submit a plan, the recipient will have a minimum of 90 days to submit the plan.

§ 633.23 UMTA review of PMP.

Within 60 days of receipt of a project management plan, the Administrator will notify the recipient that:

(a) The plan is approved;

(b) The plan is disapproved, including the reasons for the disapproval;

(c) The plan will require modification, as specified, before approval; or

(d) The Administrator has not yet completed review of the plan, and state when it will be reviewed.

§ 633.25 Contents of a project management plan.

At a minimum, a recipient's project management plan shall include—

(a) A description of adequate recipient staff organization, complete with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(b) A budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and such miscellaneous costs as the recipient may be prepared to justify;

(c) A construction schedule;

(d) A document control procedure and recordkeeping system;

(e) A change order procedure which includes a documented, systematic approach to the handling of construction change orders;

(f) A description of organizational structures, management skills, and staffing levels required throughout the construction phase;

(g) Quality control and quality assurance programs which define functions, procedures, and responsibilities for construction and for system installation and integration of system components;

(h) Material testing policies and procedures;

(i) Plan for internal reporting requirements including cost and schedule control procedures; and

(j) Criteria and procedures to be used for testing the operational system or its major components;

§ 633.27 Implementation of a project management plan.

(a) Upon approval of a project management plan by the Administrator the recipient shall begin implementing the plan.

(b) If a recipient must modify an approved project management plan, the recipient shall submit the proposed changes to the Administrator along with an explanation of the need for the changes.

(c) A recipient shall submit periodic updates of the project management plan to the Administrator. Such updates shall include, but not be limited to:

(1) Project budget;

(2) Project schedule;

(3) Financing, both capital and operating;

(4) Ridership estimates, including operating plan; and

(5) Where applicable, the status of local efforts to enhance ridership when estimates are contingent, in part, upon the success of such efforts.

(d) A recipient shall submit current data on a major capital project's budget and schedule to the Administrator on a monthly basis.

§ 633.29 PMP waivers.

A waiver will be considered upon initiation by the grantee or by the agency itself. The Administrator may, on a case-by-case basis, waive:

(a) Any of the PMP elements in § 633.25 of this part if the Administrator determines the element is not necessary for a particular plan; or

(b) The requirement of having a new project management plan submitted for a major capital project if a recipient seeks to manage the major capital project under a previously-approved project management plan.

Issued on: May 28, 1989.

Roland J. Mross,

Deputy Administrator.

[FR Doc. 89–20644 Filed 8–31–89; 8:45 am]

BILLING CODE 4910-57-M

federal register

Friday
September 1, 1989

Part VII

Department of Education

Student Literacy Corps Program; Invitation for Applications for New Awards for Fiscal Year 1990; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.219]

Student Literacy Corps Program; Invitation for Applications for New Awards for Fiscal Year 1990

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To promote student literacy corps projects operated by institutions of higher education (IHEs) where volunteer undergraduates will serve as unpaid literacy tutors in public community agencies.

Deadline for Transmittal of Applications: January 2, 1990.

Deadline for Intergovernmental Review: March 2, 1990.

Available Funds: $5,108,000.

Estimated Range of Awards: Up to $50,000.

Estimated Average Size of Awards: $45,000.

Estimated Number of Awards: 90–110.

Note: The Department is not bound by any estimate in this notice.

Project Period: 24 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), and part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program: The Secretary of Education will make two-year non-renewable grants to eligible institutions of higher education to support literacy training at public community agency facilities. No more than $25,000 can be expended by any IHE during the first year. To be eligible to receive a grant, an IHE must demonstrate that it has previously engaged in community service activities. Specifically, it must indicate that it has either used a portion of its allotment under part C of title IV of the Higher Education Act of 1965, as amended (HEA), for work study and community service learning under section 443(b)(2)(A), or conducted a cooperative education program.

Upon request of the IHE, the Secretary may grant a waiver of the prior community service requirement described above if the IHE provides assurances that: (a)(1) it has conducted some other significant program involving community outreach and service; or (2) if it has not conducted such a program, it can demonstrate that it currently has the ability to engage in outreach efforts necessary to carry out Student Literacy Corps requirements; and (b) in the event that it receives an allotment under part C of title IV of the HEA, that a portion of this allotment will be used for community service learning programs.

Each IHE applicant must provide assurances in its application for Student Literacy Corps Program funds that—

(a) Its grant will be used to cover an IHE's costs of participation in the Student Literacy Corps Program for which assistance is sought, including evaluation and stipends for student coordinators, and funds made available will not be used for the payment of stipends or salaries to tutors, in accordance with the USES OF FUNDS provision in the authorizing legislation (20 U.S.C. 1018b);

(b) It will provide literacy tutoring services in structured classroom settings supervised by qualified personnel in one or more public community agencies in the community in which it is located that serve educationally or economically disadvantaged individuals (the term "public community agency" means an established community agency with an established program of instruction such as elementary and secondary schools, Head Start Centers, prisons, agencies serving youth, and agencies serving the handicapped, including disabled veterans);

(c) It will offer one or more courses for academic credit (in such academic areas as the social sciences, economics or education) designed to combine formal study with undergraduates' experience as literacy tutors;

(d) As a condition of receiving credit for the courses of instruction referred to in paragraph (c) above, undergraduates will perform not less than six hours of voluntary, uncompensated service each week of the academic term in a public community agency as tutors in its educational or literacy programs;

(e) The tutoring service referred to in paragraph (d) above will be supplementary both to the IHE's regular academic program and the existing instructional services offered by the community service learning programs; and

(f) It will make arrangements for adequate training of volunteers, depending upon available resources, which may include the training of student coordinators to assist in the process of preparing and placing undergraduates as tutors in community service learning programs.

Selection Criteria:

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of Title I, part D of the Higher Education Act of 1965, as amended, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of Title I, part D of the Higher Education Act of 1965, as amended.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in Title I, part D of the higher Education Act of 1965, as amended, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (30 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA # 84.219, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which the applicant submits its completed application. Do not send application to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.219), Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.219), Room # 3633, Regional Office Building # 3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Posal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (Note: ED Form GCS–009 is intended for the use of grantees and should not be transmitted to the Department.)

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80-0004).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Dr. Donald N. Bigelow, Office of Higher Education Programs, U.S. Department of Education, Room 3082, (202) 732-5596, ROB-3, Mail Station 5131, 400 Maryland Avenue, SW., Washington, DC 20202.

Program Authority: 20 U.S.C. 1018-1018f.

Dated: August 28, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

BILLING CODE 4000-01-M

Appendix

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

- A. State
- B. County
- C. Municipal
- D. Township
- E. Interstate
- F. Intermunicipal
- G. Special District
- H. Independent School Dist.
- I. State Controlled Institution of Higher Learning
- J. Private University
- K. Indian Tribe
- L. Individual
- M. Profit Organization
- N. Other (Specify): ____________

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:
____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE ____________

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - —"New" means a new assistance award.
   - —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

> **Column (a)** – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.
>
> **Column (b)** – Enter the contribution to be made by the applicant.
>
> **Column (c)** – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.
>
> **Column (d)** – Enter the amount of cash and in-kind contributions to be made from all other sources.
>
> **Column (e)** – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

BILLING CODE 4000-01-C

Instruction for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The Narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a single page summary of the proposed project;
2. Describe the project in terms of each of the selection criteria in the order in which they are listed; and
3. Include in the Narrative, information that will assist the Secretary in reviewing the application by indicating as fully as possible how the relevant "assurances" (a) to (f) in the Description of the Program will be carried out. Clearly describe the course(s) to be offered, the related training for undergraduate tutors and the duties of student coordinators, if any; explain which community agencies will be cooperating and why, with information about their programs and their clients; finally, describe the management and logistics of the proposed project, whether or not it is new, and, if it is new, how it will be combined with pre-existing projects.

Please limit the Application Narrative to no more than 15 double-spaced, typed pages (on one side only).

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840–0618, Washington, DC 20503.

(Information collection approved under OMB control number 1840–0618. Expiration date: 3/31/1992.)

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Student Literacy Corps Program
Program Assurances

As the duly authorized representative of the IHE applicant, I certify that the applicant will comply with all statutory and regulatory requirements applicable to this program and provide specific program assurances that:

a. Its grant will be used to cover an IHE's costs of participation in the Student Literacy Corps Program for which assistance is sought, including evaluation and stipends for student coordinators, and funds made available will not be used for the payment of stipends or salaries to tutors, in accordance with the USES OF FUNDS provision in the authorizing legislation (20 U.S.C. 1018b);

b. It will provide literacy tutoring services in structured classroom settings supervised by qualified personnel in one or more public community agencies in the community in which it is located which serve educationally or economically disadvantaged individuals (the term "public community agency" means an established community agency with an established program of instruction such as elementary and secondary schools, Head Start Centers, prisons, agencies serving youth, and agencies serving the handicapped, including disabled veterans).

c. It will offer one or more courses for academic credit (in such academic areas as the social sciences, economics or education) designed to combine formal study with undergraduates' experience as literacy tutors;

d. As a condition of receiving credit for the courses of instruction referred to in paragraph (c) above, undergraduates will perform not less than six hours or voluntary, uncompensated service each week of the academic term in a public community agency as tutors in its educational or literacy programs;

e. The tutoring service referred to in paragraph (d) above will be supplementary both to the IHE's regular academic program and the existing instructional services offered by the community service learning programs; and

f. It will make arrangements for adequate training of volunteers, depending upon available resources, which may include the training of student coordinators to assist in the process of preparing and placing undergraduate as tutors in community service learning programs.

Signature or Authorized Certifying Official	Title
Applicant Organization	Date Submitted

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

ED Form GCS-008, (REV. 12/88)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-008, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ED Form GCS-009, (REV. 12/88)

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about–

 (1) The dangers of drug abuse in the workplace;
 (2) The grantee's policy of maintaining a drug-free workplace;
 (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

 (1) Abide by the terms of the statement; and
 (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

 (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED 80-0004

[FR Doc. 89–20584 Filed 8–31–89; 8:45 am]

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federal register

Friday
September 1, 1989

Part VIII

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 405, et al.

Medicare Program; Medicare Coverage of Screening Mammography; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 410, 413, and 494

[BERC–619–P]

RIN 0938–AD68

Medicare Program; Medicare Coverage of Screening Mammography

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 204 of the Medicare Catastrophic Coverage Act of 1988, which provides limited coverage for screening mammography services. The rule would amend current Medicare regulations to set forth payment limitations and conditions for coverage of screening mammography. The conditions would consist of quality standards to assure the safety and accuracy of screening mammography services performed by qualified physicians and other suppliers of these services.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on October 31, 1989.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–619–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or,

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting, please refer to file code BERC–619–P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT:

William Larson (Conditions for Coverage) (301) 966–4640

William Morse (Payment Limits) (301) 966–4520

SUPPLEMENTARY INFORMATION:

I. Background

Section 1862(a) of the Social Security Act (the Act) lists items and services excluded from Medicare coverage. Paragraph (a)(7) of that section identifies routine physical checkups as excluded services, and it is on this basis that screening mammography has been excluded from Medicare coverage. This policy is reflected in Medicare regulations at 42 CFR 405.310(a), which implement the statute by excluding coverage for routine physical checkups. In addition, current coverage instructions setting forth the routine physical checkup exclusion are found in the Medicare Carriers Manual (HCFA Pub. 14), the part A Intermediary Manual (HCFA Pub. 13), the Hospital Manual (HCFA Pub. 10), the Skilled Nursing Facility Manual (HCFA Pub. 12), and the Home Health Agency Manual (HCFA Pub. 11). Current coverage instructions on payment for diagnostic mammograms (as distinguished from screening mammograms) are included in section 50–21 of the Medicare Coverage Issues Manual (HCFA Pub. 6).

Section 204 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360, enacted on July 1, 1988) amended sections 1833, 1834, 1861, 1862, 1863, 1864, 1865, 1902, and 1915 of the Act to provide coverage of screening mammography (including a physician's interpretation of the images or films produced by the radiologic procedure) effective January 1, 1990, subject to frequency limitations, quality standards, and special payment rules.

In the legislative history of Public Law 100–360, Congress expressed strong concern that steps be taken to ensure the quality of screening mammography services. In the opening statement of the hearing on Medicare coverage for mammography, Representative Fortney H. Stark said, "To assure that Medicare beneficiaries receive the highest quality of care, my bill requires the Secretary to establish conditions of participation for facilities offering mammography procedures" (Report of the Subcommittee on Health of the Committee on Ways and Means, House of Representatives, H.R. Rep. No. 100–47, 100th Congress, 1st Session 7 (1987)). In testimony before the committee, other individuals and professional organizations in the health care community (the American College of Radiology, the American Cancer Society, and the National Women's Health Network, among others) also expressed concern regarding the quality of mammography services. For example, Alan C. Sartorelli, Ph.D., Alfred Gilman Professor of Pharmacology and Director of the Yale Comprehensive Cancer Center of the Yale University School of Medicine, and also President of the Association of American Cancer Institutes, testified that in constructing a Medicare screening mammography program that will be successful in the early detection of breast cancer, "* * * it is critical that quality control of the examinations be included". At the request of the Congress, the Office of Technology Assessment (OTA) published a report on the subject ("Breast Cancer Screening for Medicare Beneficiaries: Effectiveness, Costs to Medicare and Medical Resources Required", p. 11, November 1987). In this report, OTA identifies "the need to monitor the quality of screening service * * * if Medicare expects to restrict the amount to be reimbursed to providers of screening services", and says that "the rapid rise in new freestanding breast screening facilities is likely to raise concerns about the quality of the services provided" (p. 12). This concern about the quality of screening mammography has been strengthened by the May 1989 report of the U.S. Preventive Services Task Force to the Secretary, entitled "Guide to Clinical Preventive Services". Citing four studies, it concluded that, "Wide variation is found in the quality and consistency of mammography, as well as in the accuracy of interpretation, radiation exposure and cost" (p. 29).

In response to this concern for the quality of screening mammography services, as well as to the congressional mandate for quality standards contained in section 1834(e)(3) of the Act, we are proposing comprehensive standards regarding equipment specifications, the qualifications of supervising and interpreting physicians and other personnel, safety measures, compliance with Federal, State, and local laws and regulations, the preservation and disposition of examination results and other records, and the need for an ongoing equipment quality assurance program.

We recognize that this approach to assuring the quality of screening mammography is not entirely consistent with our recent emphasis on using "outcome" or "performance" standards to assure the quality of provider services paid for under the Medicare program. Such as approach would be desirable in the screening mammography area, but it does not appear to be feasible at this time. An outcome oriented approach requires that certain methodologies such as a valid proficiency test be available to evaluate how well the goals established by regulation are being met. Some progress has been made in the development of a proficiency test for the performance of screening mammography examinations, primarily in the use of phantoms to evaluate the quality of the images being produced and in the development of other physics tests. However, we do not yet have a test for technologist positioning accuracy or for radiologist interpretative skills. Neither do we have a carefully evaluated clinical comparison for the physics tests now in use. Some research, sponsored by the Centers for Disease Control (CDC) and the Food and Drug Administration (FDA), is now under way that may contribute to the development of some of the missing elements. This research and efforts by professional groups may eventually lead to a comprehensive valid proficiency test that will permit use of an outcome oriented approach in screening mammography. For the present, however, we believe that it will be necessary to require facilities to meet specific requirements that are known to contribute to effective mammography examinations and their interpretations. The proposed standards reflect this approach. However, we request comments on the availability and accuracy of proficiency testing for the elements noted above.

II. Provisions of the Regulations

This proposed rule would implement section 204 of Public Law 100–360 by setting forth payment limitations and establishing conditions for coverage of screening mammography to ensure the safety and accuracy of the screening process.

Thus, we would specify an exception to the list of examples of routine physical checkups excluded from coverage at 42 CFR 405.310(a)(1). The exception would be for screening mammography (including a physician's interpretation of the results) that is consistent with the payment requirements proposed at § 410.34 and that meets the conditions for coverage that we would specify under subpart B of a new 42 CFR part 494.

Coverage of screening mammography would be provided under Medicare Part B only; a reasonable interpretation of the law does not support Part A coverage of the procedure.

A. Payment Limitations

We would add a new § 405.534 to set forth limitations on payment for screening mammography services. There would be three categories of billing for mammography services, as is the case with other radiological services. Bills may be for the professional component of mammography services (that is, for the physician's interpretation of the results of the examination), for the technical component (all other services), or for both (global). This new section would establish payment limits for each of those categories. For purposes of payment for screening mammography services, we propose to weight the professional and technical components in the same manner that we did in establishing fee schedules for radiologists' services that were published in the **Federal Register** on March 2, 1989 (54 FR 8994–9024). Thus, we propose that, at this time, the professional component would represent 37 percent of the total amount for the complete service and the technical component would represent 63 percent. If the relationship between these values changes at a later date, we would modify § 405.534 to reflect the change.

Billing for screening mammography services would be in accordance with general Medicare payment policy for radiology services furnished by physicians in providers (§§ 405.554 through 405.555) and with policy governing payment under the fee schedule for radiologist services furnished in all settings (§§ 405.530 through 405.533). That is, a global charge may be made for services furnished in settings other than hospitals or the technical and professional components may be billed separately. However, global billing is not permitted for services furnished in hospital outpatient departments. Furthermore, the technical component of screening mammography services furnished in hospital outpatient departments would not be paid through the special methodology set forth in § 413.122, which is the generally applicable policy for payment of hospital outpatient radiology services. We propose that screening mammography services be excluded from the provision. Proposed payment for these services is discussed below.

Section 405.534(a) would set the limitations for payment of both the professional and technical components through global billing for services furnished in all settings. As discussed above, global fees may not be billed for screening mammography services furnished in hospitals. For screening mammography services furnished in all settings when a global charge is appropriate, the amount of payment subject to the deductible would be equal to 80 percent of the least of the—

- Actual charge for the service;
- Amount determined with respect to the professional and technical components for the service under §§ 405.530 through 405.533, which set forth the methodology for computing payments for radiologist services; or
- Limit for the procedure. For services furnished in calendar year 1990, the limit would be $50. On January 1 of each subsequent year, the limit would be updated by the percentage increase in the Medicare Economic Index (MEI).

In paragraph (b) of proposed § 405.534, we would set forth the limits for payment of the professional component. For services furnished in all settings in which the professional component is billed separately, the amount of payment for that professional component subject to the deductible would be equal to 80 percent of the least of the—

- Actual charge for the professional component of the service;
- Amount determined with respect to the professional component for the service under §§ 405.530 through 405.533, which set forth the methodology for computing payments for radiologist services; or
- Professional portion of the screening mammography limit. This amount is determined by multiplying the screening mammography limit (that is, $50 in calendar year 1990) by the same percentage that the professional relative value for screening mammography bears to the global relative value for screening mammography under §§ 405.530 through 405.533, or 37 percent. On January 1 of each subsequent year, the screening mammography limit would be updated by the percentage increase in the MEI.

In paragraph (c) of the proposed § 405.534, we would set forth the limitations for payment of the technical component. We propose the following:

- For services furnished in all settings in which the technical component is billed separately, the limit for that technical component subject to the deductible would be equal to 80 percent of the least of the—
  —Actual charge for the technical component of the service;

—Amount determined with respect to the technical component for the service under §§ 405.530 through 405.533; or

—Technical portion of the screening mammography limit. This amount is determined by multiplying the screening mammography limit (that is, $50 in calendar year 1990) by the same percentage that the technical relative value for screening mammography bears to the global relative value for screening mammography under §§ 405.530 through 405.533, or 63 percent. On January 1 of each subsequent year, the overall limit would be updated by the percentage increase in the MEI.

- For services furnished in the outpatient departments of hospitals, the limit for that technical component subject to the deductible would be the same as described above.

We would also add a new § 405.535 to stipulate that, if screening mammography services are furnished to a beneficiary by a nonparticipating physician or supplier, a special limiting charge applies to the charges made to the beneficiary. The limiting charge would be the lesser of the amount determined using § 405.533 (rules for nonparticipating physicians furnishing radiology services) or the limit for nonparticipating suppliers set forth in section 204 of Public Law 100–360. In 1990, this limit would be 125 percent of the payment limit; in 1991, 120 percent; and, beginning January 1, 1992, 115 percent of the payment limit.

B. Coverage Limitations and Conditions

We would revise § 410.1(a), which sets forth the statutory basis for part B benefits, by adding section 1834 of the Act. Section 1834 provides for part B coverage of screening mammography services. We would revise § 410.10 to add a paragraph (t) reading "Screening mammography services". This would add screening mammography services to the listing of "medical and other health services" that part B covers.

We would redesignate the current § 410.34 as § 410.35. The new § 410.34 would set forth conditions for coverage for and limitations on coverage for screening mammography services. It would define screening mammography as a radiologic procedure furnished to a woman for the purpose of early detection of breast cancer, including a physician's interpretation of the results of the procedure. Section 410.34(a) would explicitly state that coverage is available for screening mammography services only if furnished by a screening mammography supplier that meets the conditions for coverage of screening mammography proposed in subpart B of part 494.

According to the Report of the Committee of Conference that accompanied Public Law 100–360 (H.R. Rep. No. 100–661, 100th Congress, 2d Session 171 (1988)), the conferees "understand that a bilateral four-view procedure is currently considered to be the standard of care in the United States for screening mammography * * * [and] therefore anticipate that this would be initially included in the quality standards to be developed by the Secretary as a requirement for coverage". Accordingly, § 410.34(b)(1) would specify that the service must be a bilateral four-view exposure (that is, a cranio-caudal and a medial lateral oblique view of each breast) furnished by a supplier that meets the conditions for coverage of screening mammography services.

Additionally, § 410.34 would set forth the following restrictions imposed by section 1834(e)(2) of the Act:

- No payment may be made for screening mammography performed on an asymptomatic woman under 35 years of age (§ 410.34(b)(2)).
- Payment may be made for only 1 screening mammography performed on an asymptomatic woman over 34 years of age, but under 40 years of age (§ 410.34(b)(3)).
- For an asymptomatic woman over 39 years of age, but under 50 years of age, the following coverage guidelines apply:

—Payment may be made for a screening mammography performed after at least 11 months have passed since the last screening mammography, if the woman has a high risk of developing breast cancer, that is, if she has—

—A personal history of breast cancer;

—A personal history of biopsy-proven benign breast disease;

—A mother, sister, or daughter who has had breast cancer; or

—Not given birth prior to age 30.

—Payment may not be made for a screening mammography performed within the 23 months after the previous screening mammography if the above criteria do not apply (that is, the woman is not at a high risk of developing breast cancer) (§ 410.34(b)(4)).

- For an asymptomatic woman over 49 years of age, but under 65 years of age, payment may not be made for screening mammography performed within 11 months after a previous screening mammography (§ 410.34(b)(5)).
- For an asymptomatic woman over 64 years of age, payment may not be made for screening mammography performed within 23 months after a previous screening mammography (§ 410.34(b)(6)).

These proposed guidelines reflect the mandated provisions of the law, except that the factors indicating a high risk of developing breast cancer were identified based upon advice we received from the National Cancer Institute of the National Institutes of Health. The proposed guidelines do not include a requirement that the screen mammography radiologic procedure (as distinguished from the physician's interpretation) must be prescribed by a physician for a particular beneficiary in order for it to be covered under the benefit. The law does not specify it, and the legislative history is also silent as to the need for physician referral. As provided in section 1834(e)(2)(B) of the Act, added by section 204(b)(2) of Public Law 100–360, the guidelines may be revised by the Secretary on the basis of consultation with the National Cancer Institute, but not before January 1, 1992.

We intend to publish a separate regulation concerning current payment methods for hospital outpatient radiology services and other diagnostic procedures. We are proposing to exclude screening mammography services as described in § 410.34 from those payment methods.

We would add a new § 413.123 that would specify the payment method for screening mammography performed by hospitals on an outpatient basis.

We would add a new Part 494 entitled "Conditions for Coverage of Particular Services". Subpart A would be reserved for future use as "General Provisions", and Subpart B would specify "Conditions for Coverage of Screening Mammography". In proposing the conditions for coverage of screening mammography, we used part 405, subpart N (Conditions for Coverage ot Portable X-ray Services) as a model. Because of the similarity of services furnished and based on our experience with the portable X-ray benefit, we believe that some of the conditions for coverage of portable X-ray services furnish a sound basis upon which to develop similar conditions for coverage of screening mammography. The first condition for coverage under subpart B would be a general condition at § 494.50. It would provide that in order to be approved for participation in the Medicare program, a supplier of screening mammography must meet all the conditions set forth in subpart B with respect to individuals entitled to Medicare part B. Section 1834(e)(3) of the Act authorizes the Secretary to

establish safety and accuracy standards "under this Part", that is, under Medicare part B. All facilities (including participating providers) would have to meet all the safety and accuracy standards specified in the proposed regulations to qualify as screening mammography suppliers. Medicare participating hospitals, for instance, would not be considered to meet the proposed requirements solely because they are certified as participating providers. The second condition for coverage would be located at § 494.51. Using language similar to that used in § 405.1411 of subpart N, we would require compliance with Federal, State, and local laws and regulations by the supplier of screening mammography services. (Section 405.1411 requires compliance with Federal, State, and local laws as a condition for coverage of portable X-ray services.)

At a new § 494.52, we would establish a condition requiring supervision by a qualified physician. The language we would use is similar to that used in § 405.1412(a), which sets forth a physician supervision standard for coverage for portable X-ray services. We would establish a standard at § 494.52(a) to require that the screening mammography services must be supervised by a physician. Additionally, section 494.52(a), using language similar to that used in § 405.1412(b), would set forth the required qualifications of the physician supervisor. The new section would state that he or she must be a licensed doctor of medicine or licensed doctor of osteopathy who meets the requirements for the interpretation of the results of screening mammograms as specified in § 494.54. We would consider adequate supervision to be provided if the supervising physician meets the requirement proposed at § 494.52(b). Specifically, the supervising physician must certify annually that he or she has checked the procedural manuals and has observed monthly the operators' performance, that he or she has verified that the equipment and personnel meet applicable Federal, State, and local licensure and registration requirements, that safe operating procedures are used, and that all other requirements of part 494, subpart B are being met.

We would add a new § 494.54 to set forth the requirements governing the interpretation of the results (that is, films or images) of screening mammography as a condition for Medicare coverage, in accordance with section 1834(e)(3)(C) of the Act. This section of the Act requires that mammography results be interpreted by either a physician "who is certified as qualified to interpret radiological procedures by such an appropriate board as the Secretary specifies" or "who is certified as qualified to interpret screening mammography procedures by such a program as the Secretary recognizes in regulation, as assuring the qualifications of the individual with respect to such interpretation". Thus, under § 494.54(a), we would require that the results of all screening mammography be interpreted by a physician who meets either of the following certification requirements that we developed as a result of consultation with the FDA, the American College of Radiology (ACR), and the National Cancer Institute (NCI):

- The interpreting physician is certified by the American Board of Radiology or by the American Osteophathic Board of Radiology (§ 494.54(a)(1)).
- The interpreting physician is certified as qualified to interpret the results of a screening mammography procedures by an appropriate program that assures the qualifications of the individual (§ 494.54(a)(2)).

We are specifically soliciting suggestions from the public concerning alternate sources of certification or other appropriate programs that may be used to meet this requirement, and we will revise proposed § 494.54(a)(2), as appropriate, based on those comments.

Additionally, on the basis of consultation with the FDA, ACR, and NCI, we would require in § 494.54(b) that the interpreting physician meet certain experience and continuing education standards to ensure that the special skills required to interpret the results (that is, films or images) of screening mammography accurately are kept up-to-date. The results of a screening mammography procedure are very difficult to interpret accurately and require a physician's special skills. These skills need to be kept up-to-date through special training and experience that is recognized by the ACR in its own accreditation program. We understand that neither certification by the American Board of Radiology nor by the American Osteopathic Board of Radiology includes any assurance that interpreting physicians are keeping their skills up-to-date through continuing training and experience. The experience and continuing education standards we would require in § 494.54(b) follow:

- A physician first meeting the board certification standards or meeting other equivalent certification qualifications as outlined above before January 1, 1990 must also—

—Have read the results of an average of 10 or more screening or diagnostic mammographies per work week in the 6 months prior to January 1, 1990 (the effective date of the final rule);

—Have successfully completed a minimum of 40 hours of post-graduate instruction in mammography interpretation in the 24 months prior to January 1, 1990; and

—Have successfully completed a minimum of 40 hours of post-graduate instruction in mammography interpretation every 24 months after January 1, 1990.

—Continued to read the results of an average of 10 or more screening or diagnostic mammographies per work week after he or she begins to read screening mammographies for Medicare beneficiaries.

- A physician first meeting the board certification standards or meeting other equivalent certification qualifications as outlined above on or after January 1, 1990, must also—

—Have read the results of an average of 10 or more screening or diagnostic mammographies per work week in the 6 months before the date that he or she begins reading screening mammographies for Medicare beneficiaries;

—Have successfully completed a minimum of 40 hours of post-graduate instruction in mammography interpretation in the 24 months before the date he or she begins reading screening mammographies for Medicare beneficiaries; and

—Have successfully completed a minimum of 40 hours of post-graduate instruction in mammography interpretation every 24 months after the date that he or she begins reading screening mammographies for Medicare beneficiaries.

—Continue to read an average of 10 or more screening or diagnostic mammographies per work week after he or she begins reading screening mammographies for Medicare beneficiaries.

We are interested in receiving comments regarding the appropriateness of these training and experience requirements.

Section 494.54(c) would require that the interpreting physician prepare and sign a written report on his or her interpretation of the results (that is, the images or films) of the screening mammography procedure and that a copy of that report and the original images or films be forwarded to the patient's screening mammography supplier for inclusion in the patient's medical records. It would also require that the interpreting physician provide a written statement to the patient, in terms easily understood by a lay person. The statement would describe the importance of the screening mammography procedure to her ongoing health (including a description of the steps that should be taken if the results of the mammography procedure are positive), as well as her responsibility to share with any new physician or supplier of her next screening mammography, the date and place of her previous screening mammography. The statement must record the date of the procedure, the name of the facility providing the procedure, the physician (if any) to whom the woman wants a copy to be sent, and must indicate that the original images or films have been provided to the screening mammography supplier for inclusion in the woman's permanent medical record. This proposed requirement was also included as a result of our meetings with representatives of the FDA and the ACR.

We would add a new § 494.56 to set forth requirements concerning qualifications and orientation of technical personnel and the retention of employee records. Paragraphs (a) and (b) of this section were modeled after similar requirements at § 405.1413 concerning the conditions for coverage of portable X-ray services. Paragraph (a) would require that all operators of screening mammography equipment be licensed by the State to perform radiological procedures or, in States that have no licensing requirements, be certified in radiography by the American Registry of Radiologic Technologists, the American Registry of Clinical Radiographic Technologists, or possess equivalent certification qualifications.

In addition, on the basis of consultation with the FDA and ACR, we would require that all operators of screening mammography equipment meet certain formal and specialized training standards to ensure that a high level of quality is achieved in producing the results (that is, films or images) of the radiologic procedure. State licensure or other certificates in radiography normally mean that operators are only generally qualified to perform radiological procedures and not that they are specifically trained to perform screening mammography procedures that are especially difficult to do correctly. Accordingly, the operators would be required to successfully complete a program of not less than 24 months of formal training in X–ray technology in a school that meets the requirements of Appendix A (Standards for Accreditation of Educational Programs for Radiographers) of 42 CFR Part 75, or that is approved by the Council on Allied Health Education and Accreditation. Also, they would have to have successfully completed specialized training in mammographic positioning, compression, and technique factor settings in the 24 months prior to January 1, 1990 (or in the 24 months preceding the time he or she begins performing mammographies for Medicare beneficiaries), and every 24 months thereafter.

Paragraph (b) of proposed § 494.56 would require that a supplier of screening mammography services have an orientation program for operators based on a procedural manual that is available to all staff members and that includes instructions in all of the following areas:

- Precautions to protect the following individuals from unnecessary exposure to radiation—
  - —Patients;
  - —Individuals supporting a patient during a mammography procedure;
  - —Other individuals in the surrounding environment; and
  - —The operator of the screening mammography equipment.
- Determination of the area that will receive the primary beam (breast positioning).
- Pertinent information on compression, exposure levels, resolution, contrast, noise, examination identification, artifacts, and average glandular dose per view.
- Employee responsibilities concerning the proper use of personal radiation monitors.
- Proper use and maintenance of equipment, including a discussion of the image receptors appropriate for use with mammography and the kV(kilovoltage)-target-filter combination to be used with each image receptor.
- Proper maintenance of records.
- Possible technical problems and solutions.
- Protection against electrical hazards.
- Hazards of excessive exposure to radiation.

Paragraph (c) of § 494.56 provides alternative qualification criteria for people who furnish diagnostic X-ray physics support. The primary criteria are contained in (c)(1), which would require that those who furnish diagnostic X-ray physics support be certified by the American Board of Radiology as diagnostic medical physicists or possess qualifications that are recognized by the Secretary as equivalent to those required for certification. We are soliciting suggestions from the public for alternate sources of certification or registration for meeting this requirement. After consulting with the FDA, the ACR, and other health care organizations, we concluded that adoption of this certification requirement would be the best way to ensure that these individuals would be qualified to maintain a satisfactory quality assurance program. We were advised that the person furnishing diagnostic X-ray physics support is the technical expert with the overall responsibility of assuring that mammography equipment performance is consistently on the level required by the quality standards. He or she is a recognized expert in the physics involved in the operation of mammography equipment and the techniques used in monitoring equipment performance, and is capable of evaluating the monitoring results. Furthermore, he or she is specially qualified to carry out corrective actions as needed to ensure that the equipment continues to operate properly. Under this proposed rule, the person furnishing diagnostic X-ray physics support would establish and guide the quality assurance program. Specific duties would include conducting or training others to conduct equipment performance monitoring functions, analyzing the monitoring results to determine if there are problems requiring correction, and carrying out or arranging for the necessary corrective actions as well as the required calibrations and other preventive maintenance. Paragraph (c)(1) would also require that the person furnishing diagnostic X-ray physics support meet minimum training, experience, and continuing education requirements pertinent to screening mammography. We solicit suggestions regarding what these requirements should encompass.

Paragraph (c)(2) provides an alternate set of criteria, which has been included in recognition of the fact that in some parts of the country, especially in the rural regions, individuals meeting the qualifications set forth in (c)(1) may be unavailable to the screening mammography facility. In such cases, paragraph (c)(2) permits the State radiation control agency to recognize other individuals from the private sector as being qualified to provide guidance to the facility for the establishment and maintenance of a quality assurance program. This is a logical extension of the programs already in existence in several States in which the State program identifies "qualified experts" in

the private sector capable of performing a variety of diagnostic radiology physics tests and corrective actions. It is also in accordance with recommendations to the States contained in the "Suggested State Regulations for the Control of Radiation" (developed by the Conference of Radiation Control Program Directors) concerning the identification of those qualified to furnish diagnostic X-ray physics support. We are soliciting comments from the public on this alternative approach and suggestions for other ways of identifying individuals who are qualified to establish and maintain a satisfactory quality assurance program.

The proposed § 494.56(d) was adopted from the language used in § 405.1413(c). Section 494.56(d) would require that records be maintained for each current employee and that the records include evidence that each employee is qualified for his or her position by means of appropriate State licensure, other certification, training, and experience.

We would add a new § 494.58 to set forth a condition specifying the requirements for obtaining and preserving screening mammography records. It was modeled after § 405.1414, which specifies similar requirements for the preservation of portable X-ray records. The proposed condition states that all reasonable efforts be made to obtain any of the beneficiary's previous screening mammography records including original images or films, copies of written reports prepared by interpreting physicians, and other relevant information pertinent to previous screening mammographies that might be available from others, for comparison with the current screening mammography records. We would also require that records of previous screening mammographies obtained and current and subsequent screening mammographies produced by the supplier must be properly preserved and made available to other qualified mammography suppliers or others that submit a written request authorized by the beneficiary. The two specific standards that § 494.58 would set forth are as follows:

- The supplier must make, for each beneficiary, a record of the screening mammographies it performs, including: the date the screening mammogram was made and the date of the interpretation; the name of the beneficiary; the name of the equipment operator and the name of the interpretating physician; a description of the procedures performed; the name of the referring physician (if any), or other physician (if any) identified by the beneficiary to receive the interpreting physician's written report; and the date the physician's written report was sent to the appropriate physician or beneficiary.
- The supplier must provide satisfactory assurances (as documented in its medical records) that the images or films of the first and subsequent screening mammography procedures and the related written reports of the physicians' interpretations for each woman who is a Medicare beneficiary are either placed in her permanent medical records kept by the supplier or sent to another person (including the beneficiary) for placement in the women's permanent medical record as directed by the woman or by her physician. In the case of a participating supplier who holds the woman's medical records, the records of the mammography procedure must be retained for a period of at least 60 calendar months following the date of service (or longer if required by State law). Some concern has been expressed that these records should be retained indefinitely, but we believe that a reasonable limit must be placed on the retention of these records. Therefore, we have specified 60 calendar months, which is the longest period of time that any other participating provider or supplier is currently required to retain medical records. However, we specifically ask for comments on this issue.

Additionally, we would add a new § 494.60 to set forth the technical standards for mammography equipment. We have included in these proposed standards the requirements set forth at 21 CFR 1020.30 (FDA standards for diagnostic X-ray systems and their major components) and 21 CFR 1020.31 (FDA standards for radiographic equipment) and have also adopted suggestions from the FDA and the ACR. However, it is important to note that general purpose X-ray systems with special attachments for mammography, which are permitted under the FDA performance standards, would not meet the requirements for this standard. This is because section 1834(e)(3)(A) of the Act states that "the equipment used to perform the mammography must be specifically designed for mammography." General purpose units with special attachments for mammography are designed for a wide range of diagnostic and screening examinations and therefore do not meet the statutory requirement that they be specifically designed for mammography.

At the annual meeting of the Conference of Radiation Control Program Directors that was held in May 1986, a 1985–86 Nationwide Evaluation of X-ray Trends (NEXT) survey was discussed. This survey, which was conducted by the Conference of Radiation Control Program Directors, found that 30 percent of the xerography units were specifically designed for mammography while 82 percent of the film/screen units were so designed (Fred Rueter, NEXT 1985, (Mammography) Fall 1987, Newsletter of the Conference of Radiation Control Program Directors, Attachment No. 3). However, on the basis of analysis performed by the FDA there are about twice as many film/screen units as xerography units so overall about 70 percent of the mammography systems met the proposed requirement in 1985–86 and only about 30 percent did not. Furthermore, the percentage of systems specifically designed for mammography has been increasing rapidly; the newly purchased systems are almost entirely of that type.

The FDA fully expects that the data from the NEXT 1988 survey will show that the percentage of units that would meet this general requirement would be above 70 percent and that the use of only specifically designed units for mammography will continue to grow.

Thus, the specific standards proposed in § 494.60 follow:

- The equipment must be specifically designed for mammography and identified by the manufacturer as designed only for mammography.
- The equipment must meet the FDA performance standards for diagnostic X-ray systems and their major components at 21 CFR 1020.30 and FDA's standards for radiographic equipment at 21 CFR 1020.31. (However, the FDA standards include general requirements for any type of X-ray equipment; they do not specify requirements designed specifically for mammography equipment. In addition, the published FDA standards do not address the subject of image receptor systems, which are essential to the consistent performance of quality mammograms. Therefore, the requirements that follow must be added to explain what is meant by the statutory phase "specifically designed for mammography.")
- The image receptor systems and all their individual components must be designed appropriately for mammography.
- The equipment must be limited to providing kV(kilovoltage)-target-filter combinations appropriate to image receptors.
- The nominal focal spot size of the X-ray tube must not exceed 0.7 mm.

- Devices parallel to the imaging plane must be available to immobilize and compress the breast.
- The equipment must have the capability for using anti-scatter grids.
- The equipment must have the capability of automatic exposure control.
- The equipment must have a control panel that includes a device (usually a milliammeter) or means for an audible signal to give positive indication of the production of X-rays whenever the X-ray tube is energized. The control panel must include appropriate indicators (labeled control settings or meters that show the physical factors such as kVp (kilovoltage potential), mAs (milliampere seconds), exposure time, or whether timing is automatic) used for exposure.

In a new § 494.62, we propose to set forth a condition concerning safety standards for mammography. In proposing this condition, we adapted the provisions of § 405.1415, which set the safety standards for portable X-rays. We would require that screening mammograms be conducted with equipment that is free from unnecessary hazards for patients, personnel, and other people in the immediate environment, and in accordance with procedures that provide minimum radiation exposure. These standards would include the following:

- Using proper safety precautions, including: adequate shielding for patients, personnel, and facilities. The equipment must be operable only from a shielded position.
- Use of exposure badges or other appropriate devices to measure the radiation exposure of personnel operating the equipment.
- Periodic inspection of equipment and shielding by a staff or consultant medical physicist or by a physicist approved by an appropriate State or local government agency as meeting the qualification requirements of § 494.56(c). Identified hazards must be promptly corrected.
- Use of shockproof and grounded equipment.

Finally, we would add a new § 494.64 to set forth quality assurance standards. These standards were written after consultation with representatives from the FDA and the ACR and, for the most part, incorporate the principles described in the FDA recommendations for quality assurance programs for diagnostic radiology facilities at 21 CFR 1000.55. Specifically, § 494.64 would require a supplier of mammography services to have an ongoing equipment quality assurance program specific to mammography imagery and covering all components of the X-ray system from X-ray generator to the image developer in order to ensure consistently high quality images with minimum patient exposure. We would specify that the supplier must conduct a general review of the program at least annually and employ (or hire on a consultative basis) a medical physicist who, under the direction of the supervising physician described in § 494.52, will be responsible for establishing and conducting the program. The specific standards set forth in proposed § 494.64 that follow are given to ensure that the level of quality assurance is consistent no matter which facility the patient visits:

- The medical physicist has the overall responsibility for establishing and conducting the ongoing equipment quality assurance program. The medical physicist's specific duties must include—

—Conducting or training others to conduct equipment performance monitoring functions;

—Analyzing the monitoring results to determine if there are problems requiring correction; and

—Carrying out or arranging for necessary corrective actions as well as calibrations and other preventive maintenance.

- All variable parameters of the equipment must be calibrated—

—When it is first installed;

—After any major changes or replacement of parts;

—At least annually during use; and

—When quality assurance tests indicate that calibration is needed.

- The supplier must routinely monitor the performance of the mammography system. The need to monitor the following parameters at the given frequencies is generally accepted by radiological experts.

—At a minimum, the parameters that must be monitored are—

Processor performance (through sensitometric-densitometric means);

Half value layer;

Output reproducibility and linearity;

Automatic exposure control reproducibility, kVp response, and thickness response;

Adequacy of film storage (both before use and after exposure if processing does not occur immediately);

Darkroom integrity;

Availability and use of technique charts that must include an indication of the kV-target-filter combination to be used with each image receptor;

Image quality (using a testing device called a "phantom", which simulates the composition of the breast and indicators of disease conditions, allowing objective analysis of clinical image quality); and

Dose.

—The equipment must be monitored frequently.

Processor performance and the use of a kV-target-filter combination appropriate to the image receptor must be monitored daily before patient irradiation.

Image quality must be monitored before patient irradiation with a phantom every time the unit is moved, altered in any major way including the replacement of parts, and at least monthly between movements or alterations.

The frequency of monitoring of all other parameters must be proportional to the expected variability of each parameter, but, at a minimum, monitoring must be conducted at least annually.

- *Standard—monitor evaluation.* Monitoring must be evaluated on a regular basis.

—Standards of image quality giving acceptable ranges of values for each of the parameters tested must be established to aid in the evaluation. The standards of image quality related to dose must include a requirement that the mean glandular dose for one craniocaudal view of a 4.5 cm compressed breast (50 per cent adipose/50 per cent glandular) must not exceed 100, 300, and 400 mrad (millirad) for film/screen units without grids, film/screen units with grids, and xerography units respectively. These dose values reflect generally accepted standards of practice.

—The monitoring results must be compared routinely to the standards of image quality. If the results fall outside the acceptable range, the test must be repeated. If the results continue to be unacceptable, the source of the problem must be identified and corrected before further examinations are conducted.

- A program to analyze retakes must be established as a further aid in detecting and correcting problems affecting image quality or exposure.
- Responsibility for each standard, from monitoring through the annual review, must be assigned to qualified personnel. These assignments must be documented in the supplier's record.

III. Regulatory Impact Analysis

A. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians and suppliers of screening mammography services and equipment are treated as small entities.

This proposed rule would implement section 204 of Public Law 100–360 to provide Medicare coverage of screening mammography. We anticipate that Medicare coverage of screening mammography would result in the following costs:

TABLE I.—PROJECTED COSTS AS A RESULT OF MEDICARE COVERAGE OF SCREENING MAMMOGRAPHY

[In millions] [1]

Fiscal year—				
1990	FY 1991	FY 1992	FY 1993	FY 1994
$150	$275	$325	$375	$425

[1] Rounded to the nearest 25 million.

Our projected costs are based on the following assumptions:

- An effective date of January 1, 1990.
- A 50-percent utilization rate across all age groups in calendar year 1990 rising five percent annually to reach 75 percent in calendar year 1995.

Below are estimates of the number of incurred screening mammographies.

TABLE II.—PROJECTED NUMBER OF INCURRED SCREENING MAMMOGRAPHIES AS A RESULT OF MEDICARE COVERAGE OF SCREENING MAMMOGRAPHIES

[In millions]

	Calendar year—				
	1990	1991	1992	1993	1994
Total	4.9	5.5	6.1	6.7	7.4

We estimate that in FY 1990 there would be 7,000 screening mammography facilities increasing to 9,000 in FY 1991. The total cost of surveying and certifying these 9,000 facilities would be approximately $3.5 million.

We believe that any effects of these provisions on the economy and public would primarily be the result of the statute and not this proposed rule. This is because we have proposed to implement the statute exercising administrative discretion in only the following four areas: the equipment standards for screening mammography; the safety standards for screening mammography; specifying who we consider to be a high risk individual for the purpose of determining the frequency of screening mammography for an asymptomatic woman over 39 years of age, but under 50; and the Board certification we would accept. In section II of this preamble, we discuss our rationale for choosing specific provisions. As discussed in the analyses below, with one exception, we do not believe these provisions would result in effects that meet E.O. 12291 or Regulatory Flexibility Act criteria. That exception is the proposed equipment standards for screening mammography of Medicare beneficiaries. The equipment must be specifically designed for mammography and identified by the manufacturer as designed only for mammography. We are not able to determine the costs associated with this exception. For that reason, and because Medicare coverage of screening mammography represents a significant expansion of Medicare benefits, we are providing voluntary regulatory impact and regulatory flexibility analyses.

1. Background

Congressional hearings held in 1986 projected that in 1987 approximately 110,000 women would be diagnosed as having new primary cases of breast cancer, and approximately 47,000 deaths from breast cancer would occur (Medicare Coverage for Mammography Examinations: Hearings Before the Subcommittee on Health of the House Committee on Ways and Means, 100th Cong., 1st Sess. 6 (1987)). Furthermore, it was estimated that one out of every ten women would develop the disease in her lifetime (ibid. note 1, at 66).

Additionally, the Subcommittee report stated that women 65 and older are about one and one-half times as likely as women in the 40–64 age group to develop breast cancer. It was projected that in 1987 about 48,000 (44 percent) of the new primary cases and about 24,000 of breast cancer deaths would occur in women over age 65 ("The Feasibility of Breast Cancer Screening," Health Technology, 1:26–37, 1987).

Some medical experts believe that appropriate use of screening mammography, in conjunction with clinical examination and breast self examination, can enable health care suppliers to detect many breast cancers at their earliest stage (op. cit. note 1, at 66).

2. Effects on Physicians and Other Healthcare Suppliers

We believe that a great number of the supervising physicians and most of the interpreting physicians who perform screening mammographies are radiologists. As of December 31, 1986, there were 8,345 radiologists practicing in the United States with 6,365 being certified by their corresponding board (Physician Characteristics and Distribution in the U.S., 1986. Department of Data Release Services, Division of Survey and Data Resources, American Medical Association, 1987). Radiologists, as a group, had a physician participation rate of 40 percent in 1987 and a Medicare assignment rate of 73 percent in 1986.

We believe that Medicare coverage of screening mammography would result in increased utilization over current levels on the part of Medicare eligible women. A logical outgrowth of this increased utilization would be an increase in demand for those who provide the services and supplies that constitute the screening mammography field, namely: supervising physicians, interpreting physicians, medical physicists, radiological technologists, and suppliers of screening mammography services and equipment.

The effect of this proposed rule on an individual radiologist, physician, or other health care supplier would depend on the percentage of their business that involves Medicare eligible women and the percentage of their business that involves performing screening mammographies. Clearly, this would vary among practicing radiologists, physicians, and other healthcare suppliers. Additionally, we believe that suppliers of screening mammography equipment would experience increased demand for their equipment.

The upper limit for a screening mammography service performed in 1990 would be $50. In subsequent years, the upper limit would be increased by the percentage increase in the Medicare Economic Index (MEI) for that subsequent year.

Nonparticipating physicians would be affected by this proposed rule. Section 1834(e)(5)(B) of the Act, with respect to screening mammography performed by a nonparticipating physician, places an upper limit on the amount that a nonparticipating physician or supplier can charge beneficiaries. In 1990, the first year of implementation, the upper charge limit would be 125 percent of the payment limit, which would be $62.50. In 1991, the upper charge limit would be 120 percent of the payment limit, and in subsequent years, the upper charge limit would be 115 percent of the payment limit.

Below is a discussion of several areas in which we are using administrative discretion with respect to physicians and other health care suppliers and a discussion of why we believe, with the exception of the proposed equipment standards, their effects on these entities would be negligible.

First, in developing the equipment standards for screening mammography, we have incorporated FDA requirements and have also adopted suggestions from the FDA and ACR. Although in certain respects the proposed equipment standards go beyond what is currently required by the FDA for diagnostic X-ray systems and radiographic equipment, we believe that the majority of physicians and healthcare suppliers would be able to meet them. This belief is based on the 1985–86 NEXT survey discussed in section II.B. of the preamble. This survey, conducted by the Conference of Radiation Control Program Directors, found that approximately 70 percent of currently existing mammography systems would meet the equipment standards we are proposing and about 30 percent would not.

Those physicians that possess mammography systems that would not meet the proposed equipment standards would incur additional expenses if they choose to meet these standards. One major factor in their decision as to whether to purchase this equipment might be the percentage of their patient population that are Medicare beneficiaries. We are unable to determine this percentage or the percentage of physicians who currently do not meet these proposed standards and would choose to comply with them. Thus, we cannot estimate the cost of compliance.

Second, in developing safety standards for screening mammography, we adapted the safety standards currently in use for portable X-ray equipment. Thus, for the most part the equipment and safety standards we are proposing are drawn from currently used standards and, therefore, would place little if any additional burden on most healthcare suppliers.

Third, the statute allows the Secretary to specify in regulations the appropriate organization to certify that an individual is qualified to perform radiological procedures and the appropriate board to certify that an individual is qualified to interpret radiological procedures, or be board eligible, or meet equivalent qualifications. We are proposing the use of two board certifying organizations—the American Board of Radiology and the American Osteopathic Board of Radiology. Use of these particular board certifying organizations poses no additional burden on radiologists since those organizations' board certification requirements are no more restrictive than current Medicare requirements that radiologists must meet in order to perform radiological services other than screening mammographies for Medicare beneficiaries.

Furthermore, as stated in section II.B. of the preamble, in consultation with the FDA, ACR, and NCI, we would require in § 494.54(b) that the interpreting physician meet several experience and continuing education standards specifically related to mammogram reading and interpretation. We believe that it is necessary to have these standards in order to implement the intent of Congress with regard to the safety and accuracy of screening mammography for Medicare beneficiaries.

We believe it is reasonable to expect physicians who perform screening mammographies for Medicare beneficiaries to have the experience and training in this area required by these proposed standards. Moreover, we do not believe that these proposed standards are onerous.

Lastly, at a new § 494.52, we would establish a condition requiring supervision of screening mammography by a qualified physician. As stated in section II.B. of the preamble, the physician supervisor must be a licensed doctor of medicine or licensed doctor of osteopathy who meets the requirements for the interpretation of screening mammograms as specified in § 494.54. The language we would use is similar to that used in 42 CFR 405.1412(a) which sets forth a supervising physician standard for coverage for portable X-ray services and 42 CFR 405.1412(b) which sets forth the required qualifications of the supervising physician. Because the supervising physician coverage standards we are proposing are drawn from currently used standards, we believe they would place little if any additional burden on most supervising physicians.

3. Effect on Beneficiaries

We believe that the effect of this proposed rule on beneficiaries would be a positive one. After meeting the $75 part B deductible, the only expense a beneficiary would incur for a covered screening mammography would be the 20 percent coinsurance if the physician performing the service is a participating physician. For calendar year 1990, this would be no more than $10 (20 percent coinsurance × $50 limit). (If a nonparticipating physician is used, the physician is limited in what he or she can charge.)

There is an area in which we are using administrative discretion with respect to beneficiaries. The statute allows us to specify who we consider to be a high risk individual for the purpose of determining the frequency of screening mammography for an asymptomatic woman over 39 years of age, but under 50. The guidelines we proposed are ones we received from the National Cancer Institute of the National Institutes of Health. We believe they are broad enough to capture those asymptomatic women who have a demonstrable need for a screening mammography.

B. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Information Collection Requirements

Proposed regulations at §§ 494.52, 494.54, 494.56, 494.58, and 494.64 contain

information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C 3501 *et seq.*). The information collection requirements concern written reports on examination results, interpretations, and employee records. The respondents who would provide the information are suppliers of mammography services. Public reporting burden for this collection of information is estimated to be [estimate to be provided before final publication] minutes/hours per response. A notice will be published in the Federal Register after approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESS" section of this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATE" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 494

Mammography, X-rays, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV would be amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405, subpart C is amended as set forth below:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer, and Suspension of Payment

1. The authority citation for subpart C is amended to read as follows:

Authority: Secs. 1102, 1815, 1833, 1834, 1842, 1861, 1862, 1866, 1870, 1871 and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395m, 1395n, 1395x, 1395y, 1395cc, 1395gg, 1395hh, and 1395pp) and 31 U.S.C. 3711.

2. In Section 405.310 the introductory text of the section and the introductory text of paragraph (a) are reprinted and (a)(1) is revised to read as follows:

§ 405.310 Particular services excluded from coverage.

The following services are excluded from coverage.

(a) *Routine physical checkups such as*—

(1) Examinations performed for a purpose other than treatment or diagnosis of a specific illness, symptom, complaint, or injury, except for screening mammography (including a physician's interpretation of the results) that meets the payment requirements specified at § 410.34 of this chapter and the conditions for coverage at subpart B, part 494 of this chapter.

* * * * *

B. Part 405, subpart E is amended as set forth below:

Subpart E—Criteria for Determination of Reasonable Charges; Radiology Fee Schedules; and Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authority citation for subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834 (b) and (e), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m (b) and (e), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. A new § 405.534 is added to read as follows:

§ 405.534 Limitation on payment for screening mammography services.

This section implements section 1834(e) of the Act by establishing a limit on payment for screening mammography examinations. There are three categories of billing for screening mammography services. Those categories and the payment limitations on each follow:

(a) *Global or complete service billing representing both the professional and technical components of the procedure.* When a global service fee is billed, the amount of payment subject to the deductible is equal to 80 percent of the least of the—

(1) Actual charge for the service;

(2) Amount determined with respect to the professional and technical components for the service under §§ 405.530 through 405.533; or

(3) Limit for the procedure. For services furnished in calendar year 1990, the limit is $50. On January 1 of each subsequent year, the limit will be updated by the percentage increase in the Medicare Economic Index (MEI).

(b) *Professional component billing representing only the physician's interpretation for the procedure.* When the professional component of screening mammography services is billed separately, the amount of payment for that professional component subject to the deductible is equal to 80 percent of the least of the—

(1) Actual charge for the professional component of the service;

(2) Amount determined with respect to the professional component for the service under §§ 405.530 through 405.533, which set forth the methodology for computing payments for radiologist services; or

(3) Professional portion of the screening mammography limit. This amount is determined by multiplying the screening mammography limit described in paragraph (a)(3) of this section by 37 percent.

(c) *Technical component billing representing other resources involved in furnishing the procedure.* When the technical component of screening mammography services is billed separately, the amount of payment subject to the deductible is equal to 80 percent of the least of the—

(1) Actual charge for the technical component of the service;

(2) Amount determined with respect to the technical component for the service under §§ 405.530 through 405.533; or

(3) Technical portion of the screening mammography limit. This amount is determined by multiplying the screening mammography limit described in paragraph (a)(3) of this section by 63 percent.

3. A new § 405.535 is added to read as follows:

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§ 405.535 Special rules for nonparticipating physicians furnishing screening mammography services.

If screening mammography services are furnished to a beneficiary by a nonparticipating physician or supplier who does not accept assignment, a special limiting charge applies to the charges made to the beneficiary. The limiting charge is the lesser of—

(a) The amount determined using § 405.533 (special rules for nonparticipating physicians furnishing radiology services); or

(b) A percentage of the payment limit for screening mammograms as follows:

(1) 125 percent of the payment limit in 1990;

(2) 120 percent of the payment limit in 1991; and

(3) 115 percent of the payment limit beginning January 1, 1992.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

C. Part 410, Subpart B is amended as set forth below:

1. The authority citation for part 410 is revised to read as follows:

Authority: Secs. 1102, 1832, 1833, 1834, 1835, 1861, (r), (s) and (cc), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395m, 1395n, 1395x, (r), (s) and (cc), 1395hh, and 1395rr).

2. Section 410.1 is amended by revising paragraph (a) to read as follows:

§ 410.1 Basis and scope.

(a) *Statutory basis.* Section 1832 of the Social Security Act establishes the scope of benefits provided under the Medicare Part B supplementary medical insurance (SMI) program. Sections 1833, 1834, 1835, and 1862 set forth the amounts of payment for SMI services, the conditions for payment, and the exclusions from coverage. Section 1861 defines the kinds of services that may be covered.

* * * * * * *

Subpart B—Medical and Other Health Services

3. In § 410.10, the introductory text is reprinted and paragraph (t) is added to read as follows:

§ 410.10 Medical and other health services: Included services.

Subject to the conditions and limitations specified in § 410.12, "medical and other health services" includes the following services:

* * * * *

(t) Screening mammography services.

§ 410.35 [Redesignated from § 410.34]

4. The current § 410.34 is redesignated as § 410.35, and a new § 410.34 is added to read as follows:

§ 410.34 Conditions for coverage for and limitations on coverage for screening mammography services.

Effective January 1, 1990, Medicare pays for screening mammography services (including physician interpretation of the results). Screening mammography is defined as a radiologic procedure furnished to a woman for the purpose of early detection of breast cancer and includes a physician's interpretation of the results of the procedure.

(a) Coverage is available for screening mammography services only if furnished by a screening mammography supplier that meets all the conditions for coverage of screening mammography specified in subpart B of part 494 of this chapter.

(b) The following limitations apply to coverage of screening mammography services:

(1) The service must be a four-view exposure (that is, a cranio-caudal and a medial lateral oblique view of each breast) furnished by a supplier that meets the conditions for coverage of screening mammography services specified in subpart B of part 494 of this chapter.

(2) Payment may not be made for screening mammography performed on an asymptomatic woman under 35 years of age.

(3) Payment may be made for only 1 screening mammography performed on an asymptomatic woman over 34 years of age, but under age 40.

(4) For an asymptomatic woman over 39 years of age, but under age 50, the following restrictions apply:

(i) Payment may be made for a screening mammography performed after at least 11 months have passed since the last screening mammography if the woman has—

(A) A personal history of breast cancer;

(B) A personal history of biopsy-proven benign breast disease;

(C) A mother, sister, or daughter who has had breast cancer; or

(D) Not given birth prior to age 30.

(ii) If the woman does not meet the conditions described in paragraph (b)(4)(i) of this section, payment may be made for a screening mammography performed after at least 23 months have passed since the last screening mammography.

(5) For an asymptomatic woman over 49 years of age, but under age 65, payment may be made for a screening mammography performed after at least 11 months have passed since the last screening mammography.

(6) For an asymptomatic woman over 64 years of age, payment may be made for a screening mammography performed after at least 23 months since the last screening mammography.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

D. Part 413, subpart F is amended as set forth below:

1. The authority citation for Part 413 is revised to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1834(e), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395m(e), 1395x(v), 1395hh, 1395rr, and 1395ww).

Subpart F—Specific Categories of Costs

2. A new § 413.123 is added to read as follows:

§ 413.123 Payment for screening mammography performed by hospitals on an outpatient basis.

(a) *Basis and scope.* This section implements section 1834(e)(1)(C) of the Act and establishes the method for determining Medicare payment for screening mammographies performed by hospitals.

(b) *Payment to hospitals on an outpatient basis.* Payment to hospitals for screening mammography services performed on an outpatient basis (described in § 410.33 of this chapter) is determined in accordance with § 405.534(c) of this chapter.

E. A new part 494 is added to read as follows:

PART 494—CONDITIONS FOR COVERAGE OF PARTICULAR SERVICES

Subpart A—General Provisions [Reserved]

Subpart B—Conditions for Coverage of Screening Mammography

Sec.
494.50 Condition for coverage: General.
494.51 Conditions for coverage: Compliance with Federal, State, and local laws and regulations.
494.52 Condition for coverage: Supervision by a qualified physician.
494.54 Condition for coverage: Interpretation of the results of screening mammography procedures.
494.56 Condition for coverage: Qualifications and orientation of technical personnel, and retention of employee records.

Sec.
494.58 Condition for coverage: Obtaining and preserving records.
494.60 Condition for coverage: Equipment standards.
494.62 Condition for coverage: Safety standards.
494.64 Condition for coverage: Quality assurance.

Authority: Secs. 1833(a)(2)(E), 1834, 1861, 1862(a), 1863, 1864(a), 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) of the Social Security Act (42 U.S.C. 1395l(a)(2)(E), 1395m, 1395x, 1395y(a), 1395z, 1395aa(a), 1395bb(a), 1396a(a)(9)(C), and 1396n(a)(1)(B)(ii)(I)).

Subpart A—General Provisions [Reserved]

Subpart B—Conditions for Coverage of Screening Mammography

§ 494.50 Condition for coverage: General.

To be approved for participation in the Medicare program a supplier of screening mammography services must meet all the conditions set forth in this subpart with respect to individuals entitled to Medicare part B.

§ 494.51 Conditions for coverage: Compliance with Federal, State, and local laws and regulations.

The supplier of screening mammography services must comply with all applicable Federal, State, and local laws and regulations pertaining to radiological services and screening mammography services. This includes—

(a) Licensure or registration of supplier;

(b) Licensure or registration of personnel;

(c) Licensure or registration of equipment;

(d) Compliance with safety laws.

§ 494.52 Condition for coverage: Supervision by a qualified physician.

(a) *Standard: Qualifications of the physician supervisor.* Screening mammography services must be furnished under the supervision of a licensed doctor of medicine or licensed doctor of osteopathy who meets the requirements for the interpretation of the results of the screening mammography procedure as specified in § 494.54.

(b) *Standard: Physician supervision.* The provision of all screening mammography services must be supervised by a physician who must document in writing annually that—

(1) He or she has checked the procedural manuals and has observed monthly the operators' performance;

(2) He or she has verified that equipment and personnel meet applicable Federal, State, and local licensure and registration requirements;

(3) Safe operating procedures are used; and

(4) All the other requirements of this subpart are being met.

§ 494.54 Condition for coverage: Interpretation of the results of screening mammography procedures.

The results of all screening mammography procedures must be interpreted by a physician who meets the following certification, experience, continuing education, and written report requirements:

(a) *Standard: Board certification.* The interpreting physician must—

(1) Be certified by the American Board of Radiology or by the American Osteopathic Board of Radiology; or

(2) Possess equivalent certification qualifications.

(b) *Standard: Experience and continuing education.* (1) For physicians first meeting the board certification requirements or meeting other equivalent certification requirements described in paragraph (a) of this section before January 1, 1990, the physician must also—

(i) Have been reading the results of an average of 10 or more screening or diagnostic mammographies per work week in the 6 months preceding January 1, 1990.

(ii) Have successfully completed a minimum of 40 hours of post-graduate instruction in mammography interpretation in the 24 months preceding January 1, 1990;

(iii) Have successfully completed a minimum of 40 hours of post-graduate work in mammography interpretation every 24 months after January 1, 1990; and

(iv) Continue to read the results of an average of 10 or more screening or diagnostic mammographies per work week after he or she begins to read screening mammographies for Medicare beneficiaries.

(2) For physicians first meeting the board certification requirement or meeting other equivalent certification qualifications described in paragraph (a) of this section on or after January 1, 1990, the physician must also—

(i) Have been reading the results of an average of 10 or more screening or diagnostic mammographies per work week in the 6 months preceding when he or she begins reading screening mammographies for Medicare beneficiaries;

(ii) Have successfully completed a minimum of 40 hours of post-graduate instruction in mammography interpretation in the 24 months preceding when he or she begins readings screening mammographies for Medicare beneficiaries.

(iii) Have successfully completed a minimum of 40 hours of post-graduate work in mammography interpretation every 24 months after the date he or she begins reading screening mammographies for Medicare beneficiaries; and

(iv) Continue to read the results of an average of 10 or more screening or diagnostic mammographies per work week after he or she begins to read screening mammographies for Medicare beneficiaries.

(c) *Standard: Written and signed report.* The interpreting physician must—

(1) Prepare and sign a written report on his or her interpretation of the results (that is, images or films) of the screening mammography procedure;

(2) Provide a copy of the written report and the original images or films to the patient's screening mammography supplier for inclusion in the patient's permanent medical record; and

(3) Provide a written statement to the patient, in terms easily understood by a lay person. The statement must describe the importance of the screening mammography to her ongoing health (including a description of the steps that should be taken if the results of the mammography procedure are positive), as well as her responsibility to share with any new physician or supplier of her next screening mammography procedure, the date and place of her previous screening mammography procedure. The statement must record the date of the procedure, the name of the facility providing the procedure, the physician (if any) to whom the woman wants a copy to be sent, and must indicate that the original images or films have been provided to the screening mammography supplier for inclusion in the woman's permanent medical record.

§ 494.56 Condition for coverage: Qualifications and orientation of technical personnel, and retention of employee records.

(a) *Standard: Qualifications of operators of screening mammography equipment.* Anyone operating screening mammography equipment must—

(1) Be licensed by the State to perform radiological procedures, or, in States that have no licensure requirements, be certified in radiography by the American Registry of Radiologic Technologists, the American Registry of Clinical Radiographic Technologists, or possess equivalent certification qualifications;

(2) Have successfully completed a program of formal training in radiologic

technology of not less than 24 months' duration in a school that meets the requirements of appendix A (Standards for Accreditation of Educational Programs for Radiographers) of 42 CFR part 75, or that is approved by the Council on Allied Health Education and Accreditation; and

(3) Have completed specialized training in mammographic positioning, compression, and technique factor settings in the 24 months preceding January 1, 1990 (or in the 24 months preceding the time he or she begins performing screening mammographies for Medicare beneficiaries), and complete this specialized training every 24 months thereafter.

(b) *Standard: Personnel orientation.* The supplier of screening mammography services must have an orientation program for operators of mammography equipment based on a procedures manual that is available to all members of the staff and that incorporates relevant documents, and instructions concerning the following:

(1) Precautions to protect the operator of the equipment, the patient and individuals in the surrounding area from unnecessary exposure to radiation.

(2) Determination of the area that will receive the primary beam (breast positioning).

(3) Pertinent information on compression, exposure levels, resolution, contrast, noise, examination identification, artifacts, and average glandular dose per view.

(4) Employee responsibilities concerning the proper use of personal radiation monitors.

(5) Proper use and maintenance of equipment, including a discussion of the image receptors appropriate for use with mammography and the kV-target-filter combination to be used with each image receptor.

(6) Proper maintenance of records.

(7) Possible technical problems and solutions.

(8) Protection against electrical hazards.

(9) Hazards of excessive exposure to radiation.

(c) *Standard: Qualifications of individuals furnishing diagnostic x-ray physics support.* Individuals furnishing diagnostic x-ray physics support must meet one of the following qualifications.

(1) The individual must be certified by the American Board of Radiology as a diagnostic medical physicist or possess equivalent qualifications. Additionally, the individual must meet minimum training, experience, and continuing education requirements pertinent to screening mammography.

(2) The individual must be recognized by a State radiation control agency as qualified to provide oversight of the establishment and conduct of the quality assurance program in § 494.64, which sets forth the standards of a quality assurance program for screening mammography required as a condition of coverage.

(d) *Standard: Employee records.* Records are maintained to show that each employee is qualified for his or her position by means of appropriate State licensure, other certification, training, and experience.

§ 494.58 Condition for coverage: Obtaining and preserving records.

All reasonable efforts must be made by the supplier of the current examination to obtain any of the beneficiary's previous screening mammography records, including original images and films, copies of written reports prepared by interpreting physicians, and other relevant information pertinent to previous screening mammographies that might be available from others, for comparison with the current screening mammography records. Records of previous screening mammographies obtained and of current and subsequent screening mammographies performed by the supplier must be properly preserved and made available to other qualified mammography suppliers or others that submit a written request authorized by the beneficiary.

(a) *Standard: Records of screening mammography services performed by the supplier.* The supplier must make, for each beneficiary, a record of the screening mammography services it provides, including—

(1) The date the screening mammography procedure was performed and the date of the interpretation;

(2) The name of the beneficiary;

(3) The name of the operator of the equipment and the name of the interpreting physician;

(4) A description of the procedures performed;

(5) The name of the referring physician (if any), or other physician (if any) identified by the beneficiary to receive the interpreting physician's written report; and

(6) The date the physician's written report was sent to the appropriate physician or beneficiary.

(b) *Standard: Preservation of records.* The supplier must provide satisfactory assurances (as documented in its medical records) that the images or films of the first and subsequent screening mammography procedures and the related written reports of the physicians' interpretations for each beneficiary are either placed in her permanent medical record kept by the supplier, or sent to another person (including the beneficiary) for placement in the beneficiary's permanent medical record as directed by her or by her physician. If the records of the examination must be retained by the supplier, they must be retained for a period of at least 60 calendar months following the date of service (or longer if required by State law).

§ 494.60 Condition for coverage: Equipment standards.

The equipment used to perform mammography must be specifically designed for mammography and must meet the following standards:

(a) *Standards: Equipment design.* The equipment must be specifically designed for mammography and identified by the manufacturer as designed only for mammography.

(b) *Standard: FDA standards.* The equipment must meet the FDA performance standards for diagnostic X-ray systems and their major components at 21 CFR 1020.30 and FDA's standards for radiographic equipment at 21 CFR 1020.31.

(c) *Standard: Image receptor systems.* The image receptor systems and all their individual components must be designed appropriately for mammography.

(d) *Standard: kV-target-filter combinations.* The equipment must be limited to providing kV-target-filter combinations appropriate to image receptors meeting the requirements of paragraph (c) of this section.

(e) *Standard: Focal spot size.* The nominal focal spot size of the X-ray tube must not exceed 0.7 mm.

(f) *Standard: Devices to immobilize and compress the breast.* Devices parallel to the imaging plane must be available to immobilize and compress the breast.

(g) *Standard: Anti-scatter grids.* The equipment must have the capability for using anti-scatter grids.

(h) *Standard: Automatic exposure control.* The equipment must have the capability of automatic exposure control.

(i) *Standard: Control panel indicators.* The equipment must have a control panel that includes a device (usually a milliammeter) or means for an audible signal to give positive indication of the production of X-rays whenever the X-ray tube is energized. The control panel must include appropriate indicators (labeled control settings of meters that show the physical factors such as

kilovoltage potential (kVp), milliampere seconds (mAs), exposure time, or whether timing is automatic) used for exposure.

§ 494.62 Condition for coverage: Safety standards.

Screening mammograms must be conducted using equipment and operating procedures free of unnecessary hazards and providing minimum radiation exposure to patients, personnel, and other persons in the immediate environment.

(a) *Standard: Safety precautions.* Proper safety precautions must be maintained. This includes adequate shielding for patients, personnel, and facilities. The equipment must be operable only from a shielded position.

(b) *Standard: Exposure badges.* Personnel operating the equipment must wear badges or other appropriate devices to measure their radiation exposure.

(c) *Standard: Equipment inspection.* Periodic inspection of equipment and shielding must be made by a staff or consultant medical physicist or by a physicist approved by an appropriate State or local government agency as meeting the qualification requirements of § 494.56(c). Identified hazards must be promptly corrected.

(d) *Standard: Protection against electrical hazards.* All equipment must be shockproof and grounded.

§ 494.64 Condition for coverage: Quality assurance.

The supplier must have an ongoing equipment quality assurance program specific to mammography imagery, and covering all components of the X-ray system, from the X-ray generator to the image developer, to ensure consistently high-quality images with minimum patient exposure. The supplier must conduct a general review of the program at least annually, and have available the services of a person qualified to furnish diagnostic X-ray physics support who, under the direction of the supervising physician described in § 494.52, is responsible for establishing and conducting the program.

(a) *Standard: Responsibility for the quality assurance program.* Under the direction of the supervising physician, the person furnishing diagnostic X-ray physics support has the overall responsibility for establishing and conducting the ongoing equipment quality assurance program. That individual's specific duties must include—

(1) Conducting or training others to conduct equipment performance monitoring functions;

(2) Analyzing the monitoring results to determine if there are any problems requiring correction; and

(3) Carrying out or arranging for the necessary corrective actions as well as for the calibrations and other preventive maintenance.

(b) *Standard: Calibration of equipment.* All variable parameters of the equipment must be calibrated—

(1) When the equipment is first installed;

(2) After any major changes or replacement of parts;

(3) At least annually during use; and

(4) When quality assurance tests indicate that calibration is needed.

(c) *Standard: Performance monitoring.* The supplier must routinely monitor the performance of the mammography system.

(1) At a minimum, the parameters that must be monitored are—

(i) Processor performance (through sensitometric-densitometric means);

(ii) Half value layer;

(iii) Output reproducibility and linearity;

(iv) Automatic exposure control reproducibility, kVp response, and thickness response;

(v) Adequacy of film storage (both before use and after exposure if processing does not occur immediately;

(vi) Availability and use of technique charts that must include an indication of the kV-target-filter combination to be used with each image receptor;

(vii) Darkroom integrity;

(viii) Image quality (using a testing device called a "phantom", which simulates the composition of the breast and indicators of disease conditions, allowing objective analysis of clinical image quality); and

(ix) Dose.

(2) The equipment must be monitored as follows:

(i) Processor performance and the use of a kV-target-filter combination appropriate to the image receptor must be monitored daily before patient irradiation.

(ii) Image quality must be monitored with a phantom every time the unit is moved, altered in any major way including the replacement of parts, and at least monthly between movements or alterations.

(iii) The frequency of monitoring all other parameters must be proportional to the expected variability of each parameter, but monitoring must be conducted at least annually.

(d) *Standard: Evaluation of monitoring results.* Monitoring must be evaluated on a regular basis.

(1) Standards of image quality giving acceptable ranges of values for each of the parameters tested must be established to aid in the evaluation. The standards of image quality related to dose must include a requirement that the mean glandular dose for one craniocaudal view of a 4.5 cm compressed breast (50 percent adipose/50 percent glandular) must not exceed 100, 300, and 400 mrad (millirad) for film/screen units without grids, film/screen units with grids, and xerography units, respectively.

(2) The monitoring results must be compared routinely to the standards of image quality. If the results fall outside the acceptable range, the test must be repeated. If the results continue to be unacceptable, the source of the problem must be identified and corrected before further examinations are conducted.

(e) *Standard: Retake analysis program.* A program to analyze retakes must be established as a further aid in detecting and correcting problems affecting image quality or exposure.

(f) *Standard: Responsible personnel.* Responsibility for each standard, from monitoring through the annual review, must be assigned to qualified personnel. These assignments must be documented in the supplier's records.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance.)

Dated: June 30, 1989.

Approved: August 18, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-20605 Filed 8-31-89; 8:45 am]

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 1989

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

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A new table will be published in the first issue of each month.

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federal register

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Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and Atlanta, GA, see announcement on the inside cover of this issue.

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Federal Register

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 801

Official Performance Requirements for Grain Inspection Equipment

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Interim final rule.

SUMMARY: To maintain accuracy of field instruments in performing official inspection services, the Federal Grain Inspection Service (FGIS) is amending the regulations under the United States Grain Standards Act, as amended (USGSA) to include maintenance tolerances for near-infrared spectroscopy (NIRS) instruments used in testing soybeans for oil and protein content.

DATES: Effective September 4, 1989; written comments must be submitted on or before November 6, 1989.

ADDRESSES: Comments must be submitted in writing to Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090-6454. Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail. Telex users may respond as follows: to Lewis Lebakken Jr., TLX:7607351, ANS:FGIS UC. Telecopy users may respond to the automatic telecopier machine at (202) 447-4628.

All comments received will be made available for public inspection at Room 0628 South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This interim rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this interim rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform those services do not meet the requirements for small entities.

Action

In the Federal Register of August 16, 1989 (54 FR 33702) FGIS announced that soybean oil and protein testing would be included as official criteria under the USGSA (7 U.S.C. 71 *et seq.*) effective September 4, 1989. In providing official service upon a request basis, approved near-infrared spectroscopy (NIRS) equipment, including both near-infrared reflectance and near-infrared transmittance equipment, would be used in performing these tests.

Accordingly, FGIS is amending § 801.7 of the regulations (7 CFR 801.7) under the USGSA to include maintenance tolerances for the NIRS equipment used in the testing of soybeans for oil and protein content. Maintenance tolerances allow FGIS to maintain consistent accuracy of field instruments in performing official inspection services. The maintenance tolerance for the NIRS instruments used in performing official inspections for determination of soybean oil shall be +/−0.20 percent, mean deviation from standard solvent extraction; and for determination of protein content shall be +/−0.20 percent, mean deviation from standard Kjeldahl. The appropriateness of these values was verified in field testing by FGIS.

Presently, § 801.7 of the regulations includes maintenance tolerances for the instruments used in the analysis of wheat for protein content, which is an official criteria under the USGSA. As a result, § 801.7 of the regulations will be renamed and the text expanded to include instrument maintenance tolerances for both the wheat protein instruments and the soybean oil and protein instruments. In addition, the provision for NIRS wheat protein analyzers would be revised to correspond to language that appears in the provision for NIRS soybean oil and protein analyzers.

Pursuant to 5 U.S.C. 553, it is found and determined that, upon good cause, it is impracticable, unnecessary, and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) FGIS has determined as announced in the August 16, 1989, **Federal Register** (54 FR 33702) that soybean oil and protein content testing should be available as official criteria under the USGSA, upon a request basis, beginning September 4, 1989; (2) the maitnenance tolerances for NIRS equipment also should be made effective on that date; (3) the soybean harvest is expected to begin in early to mid-September; and (4) a comment period until November 6, 1989, is provided.

List of Subjects in 7 CFR Part 801

Exports, Grains.

For reasons set out in the preamble, 7 CFR part 801 is amended as follows:

PART 801—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN INSPECTION EQUIPMENT

1. The authority citation for part 801 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 801.7 is revised to read as follows:

§ 801.7 Tolerances for near-infrared spectroscopy (NIRS) analyzers and Kjeldahl analyzers.

(a) *NIRS Wheat Protein Analyzers.* The maintenance tolerance for the NIRS analyzers used in performing official inspection for determination of wheat protein content shall be +/−0.15 percent, mean deviation from standard Kjeldahl.

(b) *NIRS Soybean Oil and Protein Analyzers.* The maintenance tolerance for the NIRS instruments used in performing official inspections for determination of soybean oil shall be +/−0.20 percent, mean deviation from standard solvent extraction; and for determination of protein content shall be +/−0.20 percent, mean deviation from standard Kjeldahl.

(c) *Kjeldahl.* The maintenance tolerance for Kjeldahl analyzers used in performing official inspection services shall be +/−0.15 percent, standard deviation.

Dated: August 25, 1989.

D. R. Galliart,

Acting Administrator.

[FR Doc. 89-20871 Filed 9-1-89; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 681]

Lemons Grown in California and Arizona, Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 681 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 300,000 cartons during the period September 3 through September 9, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 681 (7 CFR Part 910) is effective for the period September 3 through September 9, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on August 29, 1989, in Los Angeles, California, to consider the current prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Sec. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.981 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.981 Lemon Regulation 681.

The quantity of lemons grown in California and Arizona which may be handled during the period September 3, 1989, through September 9, 1989, is established at 300,000 cartons.

Dated: August 30, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-20771 Filed 8-31-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1036

[Docket No. AO-179-A52; DA-88-113]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action changes the classification provisions of the Eastern Ohio-Western Pennsylvania milk order based on industry proposals considered at a public hearing held November 1, 1988. The classification of milk used to make buttermilk biscuit and pancake mixes is changed from Class I to Class III, eliminating raw product cost differences for milk so used between the Eastern Ohio-Western Pennsylvania order and surrounding Federal order markets. The requirement that handlers obtain prior approval from the market administrator if milk dumped at the plant is to be classified as Class III is eliminated. These changes are necessary to reflect current marketing conditions and maintain orderly

marketing in the Eastern Ohio-Western Pennsylvania marketing area.

More than two-thirds of the producers whose milk was pooled under the Eastern Ohio-Western Pennsylvania order in April 1989 and who voted in a referendum approved the issuance of the amended order.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued October 13, 1988; published October 18, 1988 (53 FR 40733).

Recommended Decision: Issued April 13, 1989; published April 18, 1989 (54 FR 15413).

Final Decision: Issued July 20, 1989; published July 25, 1989 (54 FR 30898).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Eastern Ohio-Western Pennsylvania order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1036

Dairy products, Milk, Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. The authority citation for 7 CFR part 1036 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 1036.40 is amended by revising paragraphs (c) (1) and (3) to read as follows:

§ 1036.40 Classes of utilization.

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, cheese (excluding cottage cheese and cottage cheese curd), evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class III products, nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, buttermilk biscuit and pancake mixes, any product containing six percent or more nonmilk fat (or oil) and sterilized products (except fluid cream products and those products listed in paragraph (b)(3) of this section) in hermetically sealed glass or metal containers;

* * * * *

(3) Skim milk and butterfat in fluid milk products, fluid cream products and products listed in paragraph (b)(3) of this section that are dumped by a handler who maintains adequate records of such use and notifies the market administrator of such use on the next business day following such use.

Signed at Washington, DC, on: August 30, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89-20772 Filed 9-1-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1049-89]

RIN 1115-AA76

Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements section 101(b)(1)(D) of the Immigration and Nationality Act as amended by the Immigration Reform and Control Act of 1986 (Pub. L. 99-603), which recognizes the relationship between a biological father and his illegitimate child for immediate relative and preference petitioning purposes. It also establishes procedures for filing for immigration benefits based on this relationship. This will assist Service administration and public understanding on the documentary evidence necessary to establish that a bona-fide parent/child relationship exists or existed between a natural father and his illegitimate child.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Yolanda Sanchez-K., Senior

Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Room 7223, Washington, DC 20536, (202) 633–5014.

SUPPLEMENTARY INFORMATION: On March 17, 1989, the Immigration and Naturalization Service published in the **Federal Register** (54 FR 11160) an interim rule to amend 8 CFR 204.2(c)(3), (4), and (5) to provide guidance on eligibility criteria under this section, as well as identify acceptable documentary evidence to support one's claim to eligibility.

Under prior regulation and statute, fathers of out-of-wedlock children were not eligible to petition for or be petitioned by their children. With the passage of Public Law 99–603, the Immigration Reform and Control Act of 1986, fathers may now petition for or be petitioned by their illegitimate children if they establish that a bona-fide parent/child relationship exists or existed and if otherwise eligible. To implement this provision under IRCA, the Service has promulgated this rule which provides guidelines on identification of a natural father and procedures for filing for immigration benefits under this section.

During the comment period, the Service received two comments. Both commentors recommended technical changes to the interim rule which have been considered and incorporated into the final rule.

One commentor pointed out that the interim rule does not address cases in which a father legitimates a child. It was recommended that the final rule distinguish between the filing of a petition on behalf of an illegitimate child and a legitimated child. The Service agrees that a distinction is necessary and has amended the final rule accordingly.

The second commentor requested that, for brother/sister relationships, the final rule be amended to require evidence which evinces or evinced an active parental concern only where the "common parent" is the father who "fathered" the out of wedlock child. The interim rule appears to omit qualified brothers and sisters where the "common parent" is the mother; and, consequently evidence that an active concern for the child's support is/has been evinced is not required under the Act as amended. The final rule is amended to reflect this recommendation.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

This amendment is a substantive rule that recognizes and implements the amendment to INA section 101(b)(1)(D) that removed the restriction on approval of alien relative visa petitions based on the relationship between a man and his out-of-wedlock child. Therefore, it is not necessary to delay the effective date until at least 30 days after publication in the **Federal Register** (5 U.S.C. 553(d)(1)).

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act under control number #1115–0054.

List of Subjects in 8 CFR Part 204

Administrative practice and procedures, Petition, Reporting and recordkeeping requirements.

Accordingly, part 204 of chapter 1 of title 8, Code of Federal Regulations, is amended as follows:

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

1. The authority citation for part 204 continues to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, and 8 CFR part 2.

2. In § 204.2 paragraphs (c)(3) through (5) are revised to read as follows:

§ 204.2 Documents.

* * * * *

(c) * * *

(3) *Petition for child.* (i) If a Form I–130, "Petition for Alien Relative", is submitted to the Service by a mother in behalf of a child, regardless of the child's age, the birth certificate of the child showing the name of the mother must accompany the petition. If a petition is submitted by a father in behalf of a legitimate child or by a stepparent in behalf of a stepchild, regardless of the child's age, a certificate of marriage of the parents, proof of legal termination of their prior marriages, and the birth certificate of the child must accompany the petition. If the petition is submitted by a father in behalf of a legitimated child, regardless of the child's age, evidence of the legitimation which must have occurred prior to the child's eighteenth birthday, proof of legal termination of parent's prior marriages if legitimation resulted from the natural parents' marriage to each other, and the birth certificate of the child must accompany the petition. If the petition is submitted by the purported father of a child born out-of-wedlock, regardless of the child's age, the father must establish that he is the natural father and that a bona fide parent-child relationship exists or has existed. Such a relationship exists or has existed where the father evinces or has evinced an active concern for the child's support, instruction, and general welfare. Furthermore, the parent-child relationship must be or have been established while the child is or was unmarried and under twenty-one (21) years of age. Once established, benefits may be sought at a later date pursuant to section 201(b) or 203(a) of the Act, provided that all other eligibility criteria under the appropriate section have been met and that a parent-child relationship exists or has existed. Evidence to establish that the petition is the child's natural parent may include, but is not limited to the following:

(A) The beneficiary's birth certificate or religious documents relating to birth or baptism of the beneficiary;

(B) Local civil records;

(C) Affidavits from knowledgeable witnesses, and/or;

(D) Evidence of financial support of the child by the putative father.

(ii) The district director may require a specific Blood Group Antigen Test to be conducted of the petitioner, beneficiary and beneficiary's mother on Form G–620. If the Specific Blood Group Antigen Test does not exclude paternity and the district director determines additional evidence is needed, a Human Leucocyte Antigen (HLA) test may be required. Such blood tests will be conducted, at the expense of the petitioner or beneficiary, by the United States Public Health Service or by a qualified medical specialist designated by the District Director. Refusal to submit to a Specific Blood Group or HLA blood test when required may constitute a basis for denial of the petition.

(4) *Petition for a brother or sister.* If a sibling relationship is claimed through a common mother, the petition shall be supported by a birth certificate of the petitioner and a birth certificate of the beneficiary showing a common mother. If the petition is on behalf of a brother or sister having a common father and different mothers, the birth certificate of the petitioner and the birth certificate of the beneficiary showing a common father along with the marriage certificate (if applicable) of the petitioner's parents, the marriage certificate (if applicable) of the beneficiary's parents, and proof of the

legal termination of the parents' prior marriages, if any, must accompany the petition. If either the petitioner or the beneficiary is a child born out-of-wedlock and the common parent is the father, evidence to establish legitimation prior to the child's eighteenth birthday or evidence that the father and child have or had a bona fide parent-child relationship as described in paragraph (c)(3) of this section for a child born out-of-wedlock must accompany the petition.

(5) *Petition in behalf of a parent.* If a petition is submitted in behalf of a mother, the petitioner's birth certificate showing the name of the mother must accompany the petition. If a petition is submitted in behalf of a father of a legitimate child or a stepparent, the petitioner's birth certificate and the marriage certificate of his or her parent (if applicable) and stepparent must accompany the petition, as well as proof of the legal termination of their prior marriages, if any. If a petition is submitted in behalf of a father of a legitimated child, the petitioner's birth certificate and evidence of the petitioner's legitimation which must have occurred prior to his or her eighteenth birthday must accompany the petition. If legitimation was based on the natural parents' marriage to each other, evidence of the legal termination of the parents' prior marriages, if any, must also accompany the petition. If a petition is submitted by a petitioner born out-of-wedlock on behalf of his or her natural father, evidence to establish that the beneficiary is the petitioner's natural parent as described in paragraph (c)(3) of this section for a child born out-of-wedlock, and evidence that a parent-child relationship exists or has existed, must accompany the petition.

* * * * *

Dated: August 18, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89–20722 Filed 9–1–89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 310

[Docket No. 86–012–F]

RIN 0583–AA48

Use of Air During Slaughter Operations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to provide for the approval of several procedures which have been field tested and found acceptable for the inflation of carcasses and parts of carcasses with compressed air injected during dressing operations to facilitate head skinning and the removal of hides and foot hair. Two comments were received in response to the proposal. After careful consideration of the comments received, FSIS is adopting the proposal as published. This action will permit the use of these voluntary alternate procedures for use during slaughter operations in official establishments without requiring further testing or additional written approval.

EFFECTIVE DATE: October 5, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Jill Hollingsworth, Director, Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule will provide official slaughtering establishments with voluntary alternate procedures for use during slaughter operations, by permitting approved methods of injecting compressed air to facilitate head skinning and the removal of hides and foot hair.

Effect on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Public Law 96–354 (5 U.S.C. 601). The rule will relieve a current regulatory restriction with respect to the use of air injection into carcasses and parts of carcasses; and, it will provide all official slaughtering establishments with voluntary alternate procedures for use during slaughter operations, by permitting approved methods of compressed air injection without imposing additional requirements.

Paperwork Requirements

This rule will require that establishment which would like to test new procedures for the use of air, submit a request to FSIS for approval. (This paperwork requirement will be submitted to the Office of Management and Budget for approval under control number 0583–0015).

Background

Section 310.13 of the Federal meat inspection regulations (9 CFR 310.13) provides, in part, that carcasses or parts of carcasses shall not be inflated with air. The original intent in disallowing the use of air was to aid in the prevention of adulterated carcasses or parts of carcasses. In particular, the insanitary use of injected air may contaminate the carcass or part or mask abnormal conditions. Section 1(m)(4) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601(m)(4)) provides that any carcass, part thereof, meat or meat food product is adulterated "if it has been prepared * * * under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; * * *" If the air were unclean or if there were a contaminated injection procedure, the carcass might become contaminated. Additionally, it was believed that the presence of air in subcutaneous tissues could mask an abnormal condition such as a gas-producing bacterial infection. Section 1(m)(8) of the FMIA (21 U.S.C. 601(m)(8)) provides that any carcass, part thereof, meat or meat food product is adulterated "* * * if damage or inferiority has been concealed in any manner; * * *" Such adulteration could occur by filling out hollows in the animal carcass to make the animal appear of better quality. Thus, FSIS prohibited the use of air to inflate carcasses or parts of carcasses on the basis that the air may be used in an insanitary manner or may mask abnormal conditions, resulting in product adulteration under the FMIA.

Recently, several establishments requested permission to use injected air for hide removal. FSIS determined, at that time, that if establishments could demonstrate that the use of air would result in wholesome, unadulterated meat products, such additional procedures could allow more efficient dressing operations for slaughter establishments. Therefore, FSIS has permitted, on an experimental basis and under close FSIS monitoring, various uses of air during the dressing operations at several establishments. These uses included:

(1) Compressed air injected into cattle feet to facilitate the removal of hair from feet intended for human consumption.

(2) Compressed air injected into the skull of an animal in conjunction with a captive bolt stunner to aid in holding the animal still during the bleeding operation so that fewer injuries to establishment employees would occur.

(3) Compressed air injected under the skin of cattle heads to facilitate head skinning prior to the use of a down hide-puller.

(4) Compressed air injected into the abdominal cavity of swine to facilitate the skinning operation and to minimize the loss of body fat.

Many cattle slaughter establishments are currently requesting authorization to use air injection for hide removal. These establishments wish to accomplish three things: First, reduce equipment and carcass damage by reducing the amount of tension which must be applied to remove the hide from the head and neck with a down hide-puller; second, prevent damage to the hide in the removal process; and third, reduce contamination of the head when the hide is removed intact.

The above described uses, after field testing, were found to be acceptable. The sanitary injection of air did not mask abnormal carcass conditions and did not contaminate carcasses or parts. Microbiological testing has proven that air injection can be sanitary. The Agency now believes that air injection can be performed in a sanitary manner by a procedure that includes air filtration and injection needle disinfection. Air filtration would consist of not less than two stages. An initial stage of filtration would occur at or near the use point and would consist of an aerosol or coalescing filter, capable of filtration to not more than 0.75 micron, for the removal of oil and water. A subsequent stage of filtration would occur at or near the point of needle hose attachment to the air line and would be a particulate filter, capable of filtration to not more than 0.3 micron. The filters would be maintained by inspecting regularly to assure they are working properly, and cleaned or replaced when necessary. The injection needle would be disinfected by placement in water that is not less than 180 °F. for at least 10 seconds immediately prior to each injection. Therefore, the Administrator believes it is now appropriate to amend the Federal meat inspection regulations to allow certain uses of air. On January 13, 1989, FSIS published a proposed rule (54 FR 1370) to approve the use of injected air as listed in the cited examples.

This final rule will allow permanent approval of only the compressed air injection activities in the examples listed above. Any official establishment interested in the use of air for other than these approved methods will be required to submit a request for experimental testing of any unapproved procedure to FSIS for approval, prior to its use. These requests must state the purpose of the use of air, a detailed description of the procedure, and evidence that the procedure can be performed in a sanitary manner. Final approval of an acceptable new proposed method can be obtained by modifying, through rulemaking procedures, the Federal regulations to include the new method.

Comments on the Proposed Rule

On January 13, 1989, a proposed rule was published. FSIS received two comments in response to the proposal (54 FR 1370): One from a professional association and one from private industry. Both commenters were in support of the proposed rule. The reasons cited were that slaughter "processing" would be more cost effective, and that the reduced tension in hide removal would lower the potential for employee injury.

Final Rule

List of Subjects in 9 CFR Part 310

Meat inspection; Post-mortem inspection.

For reasons discussed in the preamble, FSIS is amending 9 CFR part 310 of the Federal meat inspection regulations as follows:

PART 310—POST-MORTEM INSPECTION

1. The authority citation for 9 CFR part 310 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254(b).

2. Section 310.13 would be revised in its entirety to read as follows:

§ 310.13 Inflating carcasses or parts thereof; transferring caul or other fat.

(a)(1) Establishments shall not inflate carcasses or parts of carcasses with air, except as set forth in paragraph (a)(2) of this section.

(2)(i) Any establishment slaughtering livestock that wishes to inflate carcasses or parts thereof with air, using procedures other than the approved methods listed below, shall submit a request for approval for experimental testing to the Administrator. Such a request shall include the purpose of the use of air, a detailed description of the procedure for injecting the air and evidence that the procedure can be performed in a sanitary manner.

(ii) The Administrator shall evaluate newly submitted procedures for the use of air. If the Administrator determines that any such procedure will likely result in wholesome, unadulterated meat product, then the Administrator shall approve experimental testing of the new procedure. In any situation where the Administrator finds a submitted procedure to be unlikely to result in wholesome, unadulterated meat product, the Administrator shall send written notification to the establishment of the denial of such approval. The establishment may re-submit for evaluation a testing procedure that has been denied, provided that modifications have been made to address the original reason for denial. The establishment also shall be afforded an opportunity to submit a written statement in response to the notification of denial. In those instances where there is a conflict of facts, a hearing, under applicable rules of practice, will be held to resolve the conflict.

(iii) Final approval of an acceptable new proposed method shall be effectuated by modifying, through rulemaking procedures, the Federal regulations to include the new method.

(iv) Uses for which approval is granted are:

(A) Compressed air injection of cattle feet to facilitate removal of hair from feet intended for human consumption;

(B) Compressed air injection under the skin of cattle heads to facilitate head skinning; or

(C) Compressed air injection into the skull in conjunction with a captive bolt stunner to hold the animal still for dressing operations.

The method of compressed air injection shall be a sanitary procedure that includes air filtration and injection needle disinfection. Air filtration shall consist of not less than two stages. An initial stage of filtration shall occur at or near the use point and shall consist of an aerosol or coalescing filter, capable of filtration to not more than 0.75 micron, for the removal of oil and water. A subsequent stage of filtration shall occur at or near the point of needle hose attachment to the air line and shall be a particulate filter, capable of filtration to not more than 0.3 micron. The filters shall be maintained by inspecting

regularly to assure they are working properly, and cleaned or replaced when necessary. The injection needle shall be disinfected by placement in water that is not less than 180 °F. for at least 10 seconds immediately prior to each injection.

(b) Transferring the caul or other fat from a fat to a lean carcass is prohibited.

(Approved by the Office of Management and Budget under control number 0583-0015).

Done at Washington, DC, on August 30, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-20773 Filed 9-1-89; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150-AD29

Duplication Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by revising the charges for copying records publicly available at the NRC Public Document Room in Washington, DC. The amendment is necessary in order to reflect the change in copying charges resulting from the Commission's award of a new contract for the copying of records.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen E. Ruhlman, Public Document Room Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 202-634-3366.

SUPPLEMENTARY INFORMATION: The NRC maintains a Public Document Room (PDR) at its headquarters at 2120 L Street NW., Lower Level, Washington, DC. The PDR contains an extensive collection of publicly available technical and administrative records that the NRC receives or generates. Requests by the public for the duplication of records at the PDR have traditionally been accommodated by a duplicating service contractor selected by the NRC. The schedule of duplication charges to the public established in the duplicating service contract is set forth in 10 CFR 9.35 of the Commission's regulations. The NRC has recently awarded a new duplicating service contract. The revised fee schedule reflects the changes in copying charges to the public that have resulted from the awarding of the new contract for the duplication of records at the PDR.

Because this is an amendment dealing with agency practice and procedures, the notice provisions of the Administrative Procedures Act do not apply pursuant to 5 U.S.C. 553(b)(A). In addition, the PDR users were notified on June 30, 1989, that the new contract was being awarded and that the new prices would go into effect on July 10, 1989. The amendment is effective upon publication in the **Federal Register**. Good cause exists to dispense the usual 30-day delay in the effective date because the amendment is of a minor and administrative nature dealing with agency procedures.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1).

Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0043.

Backfit Analysis

This final rule pertains solely to minor administrative procedures of the NRC; therefore, no backfit analysis has been prepared.

List of Subjects in 10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for part 9 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 9.35, paragraph (a)(1) is revised to read as follows:

§ 9.35 Duplication fees.

(a)(1) Charges for the duplication of records made available under § 9.21 at the NRC Public Document Room (PDR), 2120 L Street, Lower Level, NW., Washington, DC by the duplicating service contractor are as follows:

(i) 5.8 cents per page for paper copy to paper copy, except for engineering drawings and any other records larger than 17 x 11 inches for which the charges vary as follows depending on the reproduction process that is used:

(A) Xerographic process—$1.50 per square foot for large documents or engineering drawings (random size up to 24 inches in width and with variable length) reduced or full size;

(B) Photographic process—$6.75 per square foot for large documents or engineering drawings (random size exceeding 24 inches in width up to a maximum size of 42 inches in length) full size only.

(ii) 5.8 cents per page for microform to paper copy, except for engineering drawings and any other records larger than 17 x 11 inches for which the charge is $1.35 per square foot or $2.95 for a reduced size print which the charge is $1.35 per square foot or $2.95 for a reduced size print (18 x 24 inches).

(iii) 85 cents per microfiche to microfiche.

(iv) 85 cents per aperture card to aperture card.

* * * * *

Dated at Rockville, Maryland, this 29th day of August 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-20792 Filed 9-1-89; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOUSING FINANCE BOARD

12 CFR Chapters V and IX

[No. FHFB 89-1]

Establishment of Chapter IX and Redesignation of Regulations From Chapter V

Dated: August 28, 1989.

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: By this document the Federal Housing Finance Board ("FHFB" or "Board") establishes chapter IX in title 12 of the Code of Federal Regulations for publication of its rules, regulations, and policy statements. The Board is an independent agency in the Executive

Branch of the Government, established by the Federal Home Loan Bank Act, as amended by Public Law 101–73. The Board is also redesignating certain regulations concerning the Federal Home Loan Bank System and the Financing Corporation which formerly appeared at chapter V of title 12, Code of Federal Regulations.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: James H. Grey, Jr., Attorney, (202) 906–6161; or Charles J. Szlenker, Attorney, (202) 906–6664, Federal Housing Finance Board Task Force.

SUPPLEMENTARY INFORMATION:

A. General

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, abolished the Federal Home Loan Bank Board and established the FHFB as an independent agency in the executive branch of the Government responsible for overseeing the Federal home loan banks. Regulations concerning the Federal Home Loan Bank System were contained in title 12 CFR parts 521–35, while regulations concerning the Financing Corporation were contained in part 592 of title 12. These regulations were issued under the authority of the former Federal Home Loan Bank Board. Section 402(h) of Public Law No. 101–73 preserves the authority of Federal Home Loan Bank Board regulations unless terminated or superseded by the appropriate successor agency.

This document establishes the FHFB regulations in title 12, chapter IX of the Code of Federal Regulations. The table of contents for chapter IX set forth below includes regulations which are issued in this final rule, as well as the part titles of other materials which the FHFB intends to issue in the near future and reserved part titles. The regulations are being transferred from parts 521–35 and 592 without any change in substantive or technical matters or nomenclature in order to accomplish an expedient transfer of authority from the defunct Federal Home Loan Bank Board to the FHFB. Where the transferred regulations refer to the "Board" (defined in the regulations being transferred as the Federal Home Loan Bank Board (12 CFR 521.3)) it is intended that this term "Board" apply to the FHFB, until the definition is corrected in a later technical amendment.

B. Directors

Section 707 of Public Law No. 101–73 amends the Federal Home Loan Bank Act provisions concerning the election or appointment of Federal home loan bank directors. Sections 522.20–522.27 of the transferred regulations deal with the election and appointment of Federal home loan bank directors under provisions of the Federal Home Loan Bank Act prior to its amendment by Public Law 101–73. Where these transferred sections have been superseded by the Federal Home Loan Bank Act amendments, they are inoperative and will be amended as soon as practical.

C. Indemnification

Section 707(k) of Public Law No. 101–73 provides that the directors of a Federal home loan bank will determine the conditions under which a director or officer of the Federal home loan bank will be indemnified. Until such time as this provision is implemented by the Federal home loan banks under the oversight of the FHFB, § 522.72 of the transferred regulations continues to be in force.

D. Miscellaneous

Public Law No. 101–73 amends Federal Home Loan Bank Act section 2b(b)(2) and abolishes all joint offices of the Federal home loan banks except the Office of Finance. Sections 522.80 through 522.90 are transferred in their entirety until the FHFB can implement section 2b, as amended, and repeal these sections as appropriate.

In general, the transferred regulations include provisions addressing liquidity requirements for savings associations which are members of a Federal Home Loan Bank System as well as collateral required of a member institution receiving an advance from a Federal home loan bank. Some of the transferred provisions have been superseded by changes to the Federal Home Loan Bank Act. The regulations are being transferred in their entirety and the FHFB will promulgate appropriate amendments as soon as practical.

Sections 506.1 through 506.6 and §§ 506a.1 through 506a.9 of title 12, Code of Federal Regulations, dealing with issuance of Federal home loan bank consolidated bonds or debenture and book entry issuance of consolidated bonds, respectively, are being transferred to chapter IX of title 12.

The FHFB is transferring these regulations, even where the provisions have been superseded by statute, to effect an efficient and convenient transfer of authority from the defunct Federal Home Loan Bank Board to the FHFB. Where appropriate or required, the FHFB will amend the transferred regulations or promulgate new regulations in order to comply with the sweeping changes to the Federal Home Loan Bank System mandated by Public Law No. 101–73.

E. Administrative Procedure Act

The transferred regulations were previously promulgated by the former Federal Home Loan Bank Board after notice and an opportunity for public comment where required. Therefore, a notice of proposed rulemaking and a comment period in this case is unnecessary. Moreover, the Board finds that the interest of the public and the Federal Home Loan Bank System are served if these regulations are transferred to the auspices of the Board, as mandated by Public Law No. 101–73, as soon as possible. Consequently these rules will be effective immediately and without prior notice and opportunity for public comment. The FHFB is empowered to take this action pursuant to 12 CFR 508.11 and 508.14 which continue in effect despite the termination of the Federal Home Loan Bank Board, under provision by Public Law 101–73.

F. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b).

Accordingly, the Federal Housing Finance Board hereby amends chapter V and establishes a new chapter IX, title 12, Code of Federal Regulations, as set forth below.

1. Title 12 is amended by adding a chapter IX (consisting of subchapters A through D) to read as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

SUBCHAPTER A—GENERAL

Part
900 Organization and channeling of functions [Reserved].
902 Operations [Reserved].
904 Availability and Character of Records [Reserved].
906 Public information regarding meetings of the Board of Directors of the Federal Housing Finance Board [Reserved].
908 Information collection requirements under the Paperwork Reduction Act [Reserved].
910 Consolidated Bonds and debentures.
912 Book-entry procedure for Federal Home Loan Bank Securities.
914 Hearings [Reserved].
916 Promulgation of regulations and amendments [Reserved].
918 Implementation of the Equal Access to Justice Act [Reserved].

Part
920 Use of penalty mail in the location and recovery of missing children [Reserved].
922 Employee Responsibilities and conduct [Reserved].
924 Practice before the Board of Directors [Reserved].

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

931 Definitions.
932 Organization of the Banks.
933 Members of the Banks.
934 Operations of the Banks.
935 Advances.
936 Advertising of accounts.
937 Housing opportunity allowance program.
938 Nondiscrimination requirements.
939 Nondiscrimination in federally assisted programs.
940 Statements of policy.
941 Rulings of the former Federal Home Loan Bank Board or the Board of Directors, Federal Housing Finance Board.
942 Electronic fund transfers.
943 Collection, settlement, and processing of payment instruments.
944 Prohibited consumer credit practices.

SUBCHAPTER C—FINANCING CORPORATION

950 Operations [Reserved].

SUBCHAPTER D—RESOLUTION FUNDING CORPORATION

955 Assessment of the Federal home loan banks for the Resolution Funding Corporation [Reserved].

2. Title 12 of the Code of Federal Regulations is amended by redesignating certain regulations from 12 CFR chapter V to 12 CFR chapter IX as set forth in the following redesignation table which shows the relationship of the former CFR part, subpart and section numbers under 12 CFR chapter V and new part, subpart and section numbers in 12 CFR chapter IX:

Redesignation Table

12 CFR ch. V Former Section Numbers	12 CFR ch. IX New Section Numbers
Part 506	Part 910
506.1	910.1
506.2	910.2
506.3	910.3
506.4	910.4
506.5	910.5
506.6	910.6
Part 506a	Part 912
506a.1	912.1
506a.2	912.2
506a.3	912.3
506a.4	912.4
506a.5	912.5
506a.6	912.6
506a.7	912.7
506a.8	912.8
506a.9	912.9
Subchapter B	Subchapter B
Part 521	Part 931
521.1	931.1
521.2	931.2
521.3	931.3
521.4	931.4
521.5	931.5
521.6	931.6
521.6–1	931.7
521.6–2	931.8
521.7	931.9
521.8	931.10
521.9	931.11
521.10	931.12
521.11	931.13
Part 522	Part 932
522.1	932.1
522.5	932.2
522.6	932.3
522.10	932.4
522.11	932.5
522.12	932.6
522.13	932.7
522.20	932.8
522.21	932.9
522.22	932.10
522.23	932.11
522.24	932.12
522.25	932.13
522.26	932.14
522.27	932.15
522.28	932.16
522.60	932.27
522.61	932.28
522.62	932.29
522.70	932.40
522.71	932.41
522.72	932.42
522.73	932.43
522.75	932.50
522.76	932.51
522.80	932.55
522.81	932.56
522.82	932.57
522.85	932.60
522.86	932.61
522.87	932.62
522.90	932.65
Part 523	Part 933
523.1	933.1
523.3	933.3
523.3–1	933.4
523.3–2	933.5
523.3–3	933.6
523.4	933.7
523.5	933.8
523.6	933.9
523.7	933.10
523.8	933.11
523.10	933.13
523.11	933.14
523.12	933.15
523.13	933.16
523.14	933.17
523.15	933.18
523.20	933.22
523.25	933.27
523.29	933.31
523.30	933.32
523.31	933.33
Part 524	Part 934
524.1	934.1
524.2	934.2
524.3	934.3
524.4	934.4
524.5	934.5
524.6	934.6
524.7	934.7
524.8	934.8
524.9	934.9
524.10	934.10
524.11	934.11
524.12	934.12
524.13	934.13
Part 525	Part 935
525.1	935.1
525.2	935.2
525.3	935.3
525.4	935.4
525.5	935.5
525.6	935.6
525.7	935.7
525.8	935.8
525.9	935.9
525.10	935.10
525.33	935.30
525.34	935.31
525.35	935.32
525.36	935.33
Part 526	Part 936
526.1	936.1
526.2	936.2
Part 527	Part 937
527.1	937.1
527.2	937.2
527.3	937.3
527.4	937.4
527.5	937.5
527.6	937.6
527.7	937.7
527.8	937.8
Part 528	Part 938
528.1	938.1
528.1a	938.2
528.2	938.3
528.2a	938.4
528.3	938.5
528.4	938.6
528.5	938.7
528.6	938.8
528.7	938.9
528.8	938.10
Part 529	Part 939
529.1	939.1
529.2	939.2
529.3	939.3
529.4	939.4
529.5	939.5
529.6	939.6
529.7	939.7
529.8	939.8
529.9	939.9
529.10	939.10
529.11	939.11
529.12	939.12
Part 531	Part 940
531.1	940.1
531.2	940.2
531.4	940.3
531.8	940.4
531.9	940.5
531.10	940.6
Part 532	Part 941
532.1	941.1
Part 533	Part 942
533.1	942.1
Part 534	Part 943
534.1	943.1
534.2	943.2
534.3	943.3
534.4	943.4
534.5	943.5
534.6	943.6
534.7	943.7
Part 535	Part 944
535.1	944.1
535.2	944.2
535.3	944.3

535.4	944.4
535.5	944.5

By the Federal Housing Finance Board.

Jack Kemp,

Acting Chairperson.

[FR Doc. 89-20791 Filed 9-1-89; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Part 934

[No. FHFB 89-2]

Office of Thrift Supervision Assessments

Dated: August 28, 1989.

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: To assist the Office of Thrift Supervision ("OTS") with its need to fund the costs of examining institutions under its jurisdiction, the Federal Housing Finance Board ("FHFB") hereby adopts a regulation pursuant to the Home Owners' Loan Act of 1933 ("HOLA"), as amended, requiring the Federal home loan banks to participate in OTS' payment mechanism. Because of the exigent circumstances of OTS being newly created and requiring funds to operate, the regulation is adopted effective September 5, 1989.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Amy Maxwell, (202) 906-7865; James H. Gray, Attorney, (202) 906-6161, Federal Housing Finance Board Task Force.

SUPPLEMENTARY INFORMATION:

A. General

Section 9 of the HOLA as added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, section 301(9)(f), requires the Federal home loan banks ("banks") to collect fees and assessments from bank members regulated by OTS, by agreement and upon the request of the Director of OTS. 12 CFR 502, recently promulgated by OTS, requires all OTS regulated savings associations to establish demand deposit accounts at the bank in their district.

Pursuant to section 11(e)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1431(e)(1)) the banks are authorized to take in deposits of instrumentalities of the United States: a term which encompasses the OTS. Moreover, 12 U.S.C. 1701c(c)(1), as amended by section 306(b) of Pub. L. 101-73, authorizes the Director of OTS to utilize the services of any Federal instrumentality (which term includes the banks) with the consent of the instrumentality. By the promulgation of this regulation, the FHFB requires that the banks perform this service on behalf of OTS and accept the deposits of OTS funds for the purposes described in this regulation.

The banks may choose to require their affected members to enter agreements with the bank to clarify the charge and the ministerial nature of the bank's role in this agreement process. FHFB assumes that determination of the proper dates and amounts of the assessments are to be agreed upon by OTS and the savings associations. The bank's sole responsibility will be a ministerial one of acting as collecting agent. As specifically provided in the HOLA, the banks will expect to the reimbursed for the actual cost of collection. Those bank members who are not regulated by the OTS are not affected by this regulation.

B. Administrative Procedure Act

The FHFB is adopting this regulation as a final rule effective immediately, without the usual notice and comment period or delayed effective date provided for in the Administrative Procedure Act, 5 U.S.C. 553. Those requirements may be waived for "good cause." 5 U.S.C. 553(b)(3)(B), 553(d)(3). The FHFB finds that good cause exists because of the urgent necessity of establishing a mechanism to meet the OTS' immediate funding needs following its establishment by enactment of the FIRREA. Similarly, providing notice and comment procedures and a delayed effective date would be contrary to the public interest because OTS could not immediately discharge its statutory responsibilities.

C. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 12 CFR Part 934

Assessments, Federal home loan banks, Examinations, Securities, Surety bonds.

Accordingly, the Federal Housing Finance Board hereby amends part 934 of subchapter B, chapter IX, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 934—OPERATIONS OF THE BANKS

1. The authority citation for part 934 is revised to read as follows:

Authority: Sec. 9, as added by sec. 301, 103 Stat. 316 (12 U.S.C. 1467); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 12, as added by sec. 310, 103 Stat. 343 (12 U.S.C. 1468a).

2. Section 934.14 is added to read as follows:

§ 934.14 Office of Thrift Supervision assessments.

At the request of, and in accordance with the instructions of, the Director of the Office of Thrift Supervision, the Federal home loan banks shall remit funds made available by their members to satisfy Office of Thrift Supervision assessments.

By the Federal Housing Finance Board.

Jack Kemp,

Acting Chairperson.

[FR Doc. 89-20790 Filed 9-1-89; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

RIN 3245-AB98

Business Loans for 8(a) Program Participants

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Section 302 of the "Business Opportunity Development Reform Act of 1988," Public Law 100-656 (102 Stat. 3853), enacted November 15, 1988 (1988 legislation), provides a statutory basis for a program of direct, guaranteed and immediate participation financial assistance for small businesses which are participants in the Small Business Administration's (SBA) section 8(a) program and which are presently eligible to receive contracts under that program. This final rule implements the 1988 legislation.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Deputy Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416, telephone (202) 653-6574.

SUPPLEMENTARY INFORMATION: On June 13, 1989, SBA published proposed regulations in the **Federal Register** (54

FR 25128) to implement the 1988 legislation. Public Law 101-37, enacted June 15, 1989 (103 Stat. 70) changed the effective date of this program from October 1, 1989 to June 1, 1989. Four comments were received. One commenter noted that the regulation as proposed did not make clear whether SBA would assist debt refinancing under this program. It is the SBA position that debt refinancing or refunding is not available under this program and the final regulation makes that clear. Neither is SBA assistance available under this program for the payment of taxes. The program is to provide section 7(a) aid to section 8(a) businesses which are eligible to receive contracts at the time that the section 7(a) assistance is sought.

Two of the commenters suggested that SBA increase the administrative limit on direct loans from $150,000 to $500,000. SBA is capping the amount at $150,000 to conform to other section 7(a) lending and to allow the appropriation levels to assist more eligible applicants. In any event, SBA has the authority to increase the $150,000 to up to $750,000 on a case-by-case basis.

The third commenter was of the opinion that more centralized processing of applications in this program would eliminate the possibility of favoritism. Over the years, SBA has decentralized its loan processing procedures. The oversight responsibilities in the various offices preclude, to a very large degree, the possibility of favoritism. In the final regulation, SBA has reserved to its Central Office the authority to increase the administrative limits, but except for that, the Administration has determined that decentralized processing works best.

One of the commenters discussed the importance of subordinating SBA's loans to facilitate a company's additional financing. The final regulation authorizes SBA to subordinate on a case-by-case basis based upon reasonable credit criteria but SBA will take a security interest in the items financed. The commenter was of the opinion that shorter term maturities should be utilized. SBA establishes maturity on an as-needed basis. The 25 year maturity stated in the final regulation is the maximum permissible period and will not be utilized in every case. The commenter also suggested that SBA be flexible in repayment scheduling, with a specific reference to the allowance of balloon payments. SBA has flexibility presently to structure repayment schedules, although use of balloons is very limited.

Section 122.7-1 as amended provides for a $150,000 administrative limit for direct loans made under this program, but the Associate Administrator for Minority Small Business and Capital Ownership Development has the authority to increase that up to $750,000.

Section 122.59-1 sets forth the statutory policy behind this program. In this regard, it is to be available to participants in the program which are eligible to receive 8(a) contracts at the time the financial assistance is sought. The assistance is to be available on much the same terms as SBA's other financial assistance is made available to small businesses. (§ 122.59-2). Under the legislation, if loan proceeds are to be used for working capital, the recipient must be a manufacturer. If loan proceeds are to be used for plant construction, conversion, or expansion (including the acquisition of equipment, facilities, machinery, supplies, or material), the recipient may be either a manufacturer or a nonmanufacturer. It is acknowledged by SBA that to the extent possible, without compromising the integrity of the program, criteria applied to this special loan program will recognize the economically disadvantaged nature of the applicants. However, in no event shall debt refinancing or refunding be available under this program, nor shall loan proceeds be used for the payment of taxes.

With respect to guaranteed loans made under this program, SBA shall guaranty no less than 90 percent of the principal balance at the time the loan is made of loans of a principal amount of not more than $155,000 and no less than 85 percent of loans of a principal amount of more than $155,000. The rate of interest on such loans is calculated in the same way that it is calculated for SBA guaranteed business loans for small businesses. (See § 122.59-3.)

A direct loan note generated under this program is subordinated by SBA to all past borrowings of the borrower from banks and other financial institutions, but not individuals. SBA will consider subordination to future borrowings on a case-by-case basis using normal credit criteria. (§ 122.59-4(b)(1)). The interest rate on direct loans made under this authority is 1 percent less than direct loans made in the regular business loan program. (§ 122.59-4(b)(2)). There is an administrative ceiling of $150,000 on direct loans which may be waived upon the recommendation of the Associate Administrator for Minority Small Business and Capital Ownership Development for good cause shown, on a case-by-case basis. (§ 122.59-4(b)(5)).

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this final rule will not have a significant impact on a substantial number of small entities. SBA's best estimates indicate that approximately 20 to 40 loans per year will be made under this authority.

SBA certifies that this final rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more because it is anticipated that no more than $10,000,000 will be appropriated for this program in a given fiscal year.

The final rule would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

This final rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 122

Business loans.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)) and section 302 of Public Law 100-656, SBA hereby amends part 122, chapter I, title 13, Code of Federal Regulations, as follows:

PART 122—[AMENDED]

1. The authority citation for part 122 continues to read as follows:

Authority: 15 W.S.C. 634(b)(6) and 636(a).

2. Section 122.7-1 is revised to read as follows:

§ 122.7-1 Direct loans.

The statutory limit for direct loans made under the authority of section 7(a)(1)-(19) of the Small Business Act is $350,000. SBA has established an administrative limit of $150,000. The statutory limit for direct loans made under the authority of section 7(a)(20) is $750,000. SBA has established an administrative limit of $150,000; however, the Associate Administrator for Minority Small Business and Capital Ownership Development may authorize in writing the acceptance of an application up to $750,000 that exceeds the administrative but not the statutory limit.

3. New §§ 122.59, 122.59-1, 122.59-2, 122.59-3, and 122.59-4 are added to subpart B to read as follows:

§ 122.59 Loans to participants in the 8(a) program.

§ 122.59-1 Policy.

The Act authorizes the Administration to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns receiving assistance under subsection 7(j)(10) and section 8(a) of the Act; i.e., firms which are presently participating in the section 8(a) program and are eligible for contractual assistance under section 8(a) of the Act; and not firms which may be eligible to apply for the program.

§ 122.59–2 Conditions.

(a) Any assistance provided under this section may be provided only if the Administration determines that—

(1) The type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources. Every applicant for a direct loan, immediate participation of guaranty loan must show that the loan is not available without SBA assistance. In addition, an applicant for a direct loan must show that neither an immediate participation nor a guaranty loan is available; an applicant for an immediate participation must show that a guaranty loan is not available;

(2) With such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

(3) The proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

(4) Such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern. No financial assistance shall be extended under this section unless there is reasonable assurance that the loan can be paid from the earnings of the business.

(b) No loan shall be made under this authority if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed $750,000.

(c) In no event shall debt refinancing or refunding be made by the Administration under this program.

§ 122.59–3 Conditions applicable to deferred participation assistance (guaranteed).

(a) Subject to the provisions of § 122.59–2(b), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administration shall be no less than 90 per centum of the balance of the financing outstanding at the time of disbursement of loans of a principal amount does not exceed $155,000 and no less than 85 per centum of loans of a principal amount of more than $155,000.

(b) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable, and shall be calculated in accord with §§ 122.8–3 and 122.8–4 of this title.

§ 122.59–4 Conditions applicable to immediate participation and direct assistance.

(a) All immediate participation and direct financings made pursuant to this section shall be subject to the applicable provisions of this title and the following limitations:

(1) No immediate participation may be purchased unless it is shown that a deferred participation is not available.

(2) No direct financing may be made unless it is shown that a participation is unavailable.

(b) A direct loan or the Administration's share of an immediate participation loan made pursuant to this section shall be accomplished by the issuance of a secured debt instrument—

(1) That is subordinated by its terms to all other borrowings of the issuer from banks or other financial institutions which are in existence at the time that the SBA assistance is made. SBA will consider subordination of assistance it makes available under this subsection to subsequent borrowings on a case-by-case basis based upon reasonable credit criteria;

(2) The rate of interest on which shall be the same as that calculated pursuant to § 122.8–1 of this title, less one per centum;

(3) The term of which is not more than twenty-five years;

(4) The principal on which is amortized at such rate as may be deemed appropriate by the Administration, and the interest on which is payable not less often than annually.

(5) The maximum principal amount of which may be no more than $150,000; however, the Associate Administrator for Minority Small Business and Capital Ownership Development may authorize, in writing, the acceptance of an application that exceeds $150,000 but does not exceed $750,000.

Dated: August 23, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–20718 Filed 9–1–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N–052G]

RIN 0905–AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Combination Drug Products Containing Promethazine Hydrochloride; Marketing Status; Policy Statement

AGENCY: Food and Drug Administration.

ACTION: Policy statement.

SUMMARY: The Food and Drug Administration (FDA) is announcing that cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products containing promethazine hydrochloride may not be marketed over-the-counter (OTC) at this time. Such products may continue to be dispensed on prescription or administered by licensed practitioners, in accordance with approved new drug applications (NDA). This announcement is made in accordance with FDA's enforcement policy applicable to prescription drugs undergoing review in the OTC drug review (see 21 CFR 330.13(b)(2)). This policy statement is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: This policy statement is effective September 5, 1989.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products, together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (Cough-Cold Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in these

drug classes. The Cough-Cold Panel recommended OTC marketing, in oral dosage forms with specific labeling (41 FR 38312 at 38390, 38391, 38418 to 38421, and 38423), of certain drug products containing promethazine hydrochloride that were previously marketed as prescription drug products. However, at that time, the agency did not agree with the Panel's recommendation to switch this drug to OTC marketing status (41 FR 38313) and products containing this ingredient could not then, under 21 CFR 330.13, be marketed OTC under the OTC drug review.

The enforcement policy set out in 21 CFR 330.13 permits OTC marketing, prior to the establishment of a final monograph, of drugs previously limited to prescription use only when certain conditions are met. In general, such drugs can only be marketed OTC either when FDA agrees with an advisory review panel or when FDA independently decides that such OTC marketing is appropriate and publishes a notice in the **Federal Register**. Even then, as stated in the enforcement policy, such drug products are marketed subject to the risk that the agency may later adopt a different position that would preclude OTC marketing.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products was published in the **Federal Register** of August 12, 1988 (53 FR 30522). Publication of the tentative final monograph allowed OTC marketing of combination drug products containing promethazine, for certain indications and under specified conditions, under the terms of 21 CFR 330.13. To date, the agency is not aware of any OTC marketing of such products.

Interested persons were invited to file by December 12, 1988, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. New data could be submitted until August 14, 1989, and comments on the new data can be submitted until October 12, 1989.

In response to the proposed rule on OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products, one manufacturer and seven health professionals submitted comments related to promethazine hydrochloride. Also, one consumer's group submitted a citizen petition. In addition, FDA's Pulmonary-Allergy Drugs Advisory Committee discussed the issue of OTC marketing of cough-cold combination drug products containing promethazine hydrochloride in a public meeting held on July 31, 1989. Copies of the comments, the citizen petition, and the transcripts of the advisory committee's meeting are on public display in the Dockets Management Branch, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

FDA is now announcing that cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products containing promethazine hydrochloride may not be marketed OTC at this time in order to allow the agency to consider thoroughly all of the additional data and information that have been submitted on the safety of OTC marketing of these drug products. Therefore, under 21 CFR 330.13, OTC marketing of such products under the OTC drug review is no longer being permitted at this time.

I. Background

The Cough-Cold Panel classified promethazine hydrochloride in Category I as an OTC antihistamine (41 FR 38312 at 38390 and 38391). The agency dissented from the Panel's Category I classification of promethazine hydrochloride in the preamble to the Panel's report (41 FR 38312 and 38313). The agency's dissent was based in part on the degree of drowsiness produced by promethazine hydrochloride and the possible adverse effects that might occur, especially in children, such as extrapyramidal disturbances.

In the tentative final monograph (proposed rule) for OTC antihistamine drug products (50 FR 2200 at 2206 to 2208; January 15, 1985), the agency stated that the possibility of choreoathetosis (a condition marked by jerky, involuntary movements) occurring with OTC oral doses of promethazine is unlikely. This conclusion was supported by a review of FDA adverse reaction data for the period 1970–1981 and a review of the published literature. These sources revealed only a few cases of extrapyramidal effects possibly associated with dosages of promethazine that would be available OTC. Also, there was no evidence to indicate that these effects would be more likely to occur in children. Based upon the available data, the agency stated that concerns regarding the occurrence of extrapyramidal effects and choreoathetosis and the concern that children seem particularly liable to develop adverse central nervous system reactions to promethazine had been adequately addressed. Thus, in FDA's view, at that time these possible adverse effects were no longer considered issued that would preclude use of this ingredient at proposed OTC oral dosages.

However, the agency placed promethazine hydrochloride in single-ingredient drug products in Category III in the proposed rule for OTC antihistamine drug products because of concerns that the rare, but serious adverse reaction of the central nervous system known as tardive dyskinesia might occur if promethazine hydrochloride is used on a long-term basis (50 FR 2206 to 2208). (Placement in Category III at that time meant that there was insufficient evidence to determine whether the drug was generally recognized as safe and effective for OTC use.) The agency noted that promethazine hydrochloride has not been used extensively on a long-term basis as a single ingredient for antihistamine/allergic rhinitis/antiallergy use and that consumers who use OTC antihistamines to treat the symptoms of allergic rhinitis often use these products on a long-term basis because the symptoms of allergic rhinitis usually occur for extended periods of time. The agency also noted that promethazine hydrochloride as a prescription drug is used primarily in combination drug products for relief of acute cough-cold symptoms on a short-term basis.

Subsequently, in the tentative final monograph (proposed rule) for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products (53 FR 30522 at 30558 to 30559 and 30563; August 12, 1988, and 53 FR 45774; November 14, 1988), the agency proposed that cough-cold combination drug products containing promethazine hydrochloride be Category I for short-term use (7 days) only for relief of symptoms of the common cold. By this action, OTC marketing for this limited use was permitted at that time under 21 CFR 330.13. Claims for use of these drug products in treating the symptoms of allergic rhinitis were specifically excluded from the labeling (53 FR 30559).

In response to this tentative final monograph, the agency received a citizen petition from Public Citizen Health Research Group and the University of Maryland Sudden Infant Death Syndrome (SIDS) Institute (Ref. 1), a letter from Public Citizen Health Research Group (Ref. 2), and comments from several physicians (Ref. 3) objecting to the agency's proposal

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allowing limited OTC marketing of drug products containing promethazine hydrochloride.

The citizen petition requested an immediate ban on all OTC use of products containing promethazine hydrochloride; a contraindication of prescription promethazine hydrochloride use in children under the age of 2 years, or in pregnant or lactating females; strengthening of the physician labeling provisions to include a bold, prominent, boxed warning stating "This product contains promethazine hydrochloride, a drug which should not be used by children under the age of 2 years, or by pregnant or breast feeding women because safety is not established in these patients, and because promethazine is associated with SIDS and infant respiratory depression"; addition of a mandatory patient package insert stating that a modified dosage schedule should be used in elderly patients, and that the product should not be used in children under the age of 2 years, or by pregnant or breast feeding women; modification of the new drug application for promethazine hydrochloride-containing drug products to prohibit promethazine use as an antihistamine in prescription cold-cough analgesic-antipyretic compounds; and removal from prescription availability of promethazine-containing products marketed specifically for this antihistamine use.

The major concern that the petition and the letters from physicians raise is that there is a possibility that the use of drug products containing promethazine hydrochloride in children under 2 years of age may be associated with the occurrence of SIDS, and that OTC availability of these drug products could "dramatically increase" "overuse" of these drug products in children this age. In addition, the petition raised concerns about possible adverse neurological reactions to drug products containing promethazine hydrochloride. The petition also raised concerns regarding the use on a prescription basis of promethazine-containing drug products in children under age 2, in pregnant or nursing women, and in the elderly.

One manufacturer of combination drug products containing promethazine hydrochloride has submitted data and information to the agency (Ref. 4) in response to the concerns raised in the citizen petition and has objected to the requests in the petition. In addition, the agency has received other information concerning OTC use in Canada of drug products containing promethazine hydrochloride (Ref. 5).

In response to the citizen petition and the manufacturer's submission, FDA scheduled a meeting of its Pulmonary-Allergy Drugs Advisory Committee to further discuss the advisability of switching the marketing of cough-cold combination drug products containing promethazine hydrochloride from a prescription basis to an OTC basis. The advisory committee met on July 31, 1989. Presentations were made by FDA staff and consultants, by representatives of Public Citizen Health Research Group, and by representatives of Wyeth-Ayerst. Following these presentations, the advisory committee deliberated on several questions concerning OTC status for cough-cold combination drug products containing promethazine hydrochloride.

In response to one question concerning the relationship between the use of promethazine-containing drug products and SIDS and/or sleep apnea, one committee member voted that no relationship exists while the other seven members voted that there is a possible relationship. In response to a question concerning whether there is reason for concern about the use in the elderly of the proposed OTC adult oral dosage of promethazine hydrochloride (6.25 mg every 4 to 6 hours, not to exceed 37.5 mg in 24 hours) on a short-term (7-day) basis, four committee members voted yes and four members voted no. With respect to potential neurologic toxicities at the proposed OTC dosage, none of the committee members felt there was a definite concern, but all voted that there are possible concerns. In response to a question concerning whether (based on the data presented to the committee) a cough-cold combination drug product containing promethazine hydrochloride at proposed OTC doses with specific labeling requirements for short-term (7-day) use should be marketed OTC for relief of the symptoms of the common cold, the committee recommended to FDA by a vote of seven to one that these drug products not be marketed OTC at this time.

FDA has concluded that it should accept the advisory committee's advice and is limiting cough-cold combination drug products containing promethazine hydrochloride to prescription only status at this time. Before making a final decision concerning OTC status for these products and before responding to the various requests in the citizen petition (see discussion above), the agency intends to fully and thoroughly evaluate the data and information submitted to date, the data and information presented at the July 31, 1989 advisory committee meeting, and other data and information that may be pertinent.

FDA is aware that there is some controversy in the scientific and medical communities concerning whether a cause-and-effect relationship exists between use of promethazine hydrochloride containing drug products and the occurrence of SIDS and/or sleep apnea. There are also differences of opinion whether a modified dosage schedule should be used in elderly patients and on the extent of concern about possible neurologic toxicity resulting from the use of promethazine hydrochloride at proposed OTC dosages. The agency intends to reopen the administrative record for the rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products to allow additional information to be submitted on these and related subjects. A notice will appear in a future issue of the **Federal Register**. A final decision on the OTC marketing status of combination drug products containing promethazine hydrochloride will also appear in a future issue of the **Federal Register**.

References

(1) Comment No. CP, Docket No. 76N-052G, Dockets Management Branch.

(2) Comment No. C00210, Docket No. 76N-052G, Dockets Management Branch.

(3) Comments No. C000201, C000205, C000207, C000208, C000209, C000210, and C000212, Docket No. 76N-052G, Dockets Management Branch.

(4) Comments No. RC0001 and RC0002, Docket No. 76N-052G, Dockets Management Branch.

(5) Comments No. LET088 and LET089, Docket No. 76N-052G, Dockets Management Branch.

II. Compliance

Drug products' containing promethazine hydrochloride were limited on or after May 11, 1972 (the date of the initiation of the OTC drug review), to prescription use for the indications and routes of administration considered by the OTC Cough-Cold Panel. As stated above, these products could only be marketed OTC after the date of publication in the **Federal Register** of the tentative final monograph (proposed rule) for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products (53 FR 30522; August 12, 1988). Under 21 CFR 330.13(b)(2), OTC drug products containing promethazine hydrochloride that are marketed after the date of publication in the **Federal Register** of a tentative final monograph (proposed rule) but prior to the effective date of a final monograph, are

* * * subject to the risk that the Commissioner may not accept the Panel's recommendation and may instead adopt a different position that may require relabeling, recall, or other regulatory action. The Commissioner may state such position at any time by notice in the **Federal Register**, either separately or as part of another document; appropriate regulatory action will commence immediately and will not await publication of a final monograph. Marketing of such a product with a formulation or labeling not in accord with a proposed monograph or tentative final monograph also may result in regulatory action against the product, the marketer, or both.

Under this enforcement policy, the agency can stop OTC marketing of a drug while the agency reviews and evaluates relevant data and information. By this notice, all combination drug products containing promethazine hydrochloride are prescription drugs and may only be marketed in accordance with the terms and conditions specified in their approved NDA. Accordingly, the agency would consider as misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)), any combination drug product containing promethazine hydrochloride that is marketed OTC at this time.

The agency is not currently aware of any combination drug product containing promethazine hydrochloride having been marketed OTC to date. However, any combination drug product containing promethazine hydrochloride that has already been initially introduced or initially delivered for introduction into interstate commerce must be immediately removed from OTC sale. Manufacturers of any such products should contact the agency immediately to discuss how removal of their products will be accomplished (i.e., removed from retail shelves, placed under the control of pharmacists, and dispensed only on prescription). Affected manufacturers should contact the Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, phone 301-295-8063.

Dated: August 28, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-20732 Filed 9-1-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200 and 206

[Docket No. R-89-1415; FR-2481]

RIN 2501-AA67

Home Equity Conversion Mortgage Insurance; Corrections

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule, corrections.

SUMMARY: The purpose of this document is to clarify a technical correction published in the **Federal Register** on August 4, 1989 (54 FR 32059), that corrected a final rule which authorized the Secretary to carry out a program for insuring mortgages on the homes of elderly homeowners, by enabling the homeowners to convert the equity in their homes into cash. It will also correct a typographical error published in that correction document.

FOR FURTHER INFORMATION CONTACT: Judith V. May, Office of Economic Affairs, Room 8218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. 202-755-5426. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 9, 1989 (54 FR 24822), the Department published a final rule that added a new part 206 to title 24, chapter II of the Code of Federal Regulations. Part 206 implemented section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100-242), which added a new section 255 to the National Housing Act (Act). Section 255 authorized the Secretary to carry out a program for insuring mortgages on the homes of elderly homeowners, enabling the homeowners to convert the equity in their homes to cash.

On August 4, 1989 (54 FR 32059), the Department published technical corrections to that final rule. This document will clarify the correction for § 206.23(d) that was published on August 4, 1989.

Accordingly, the following corrections are made in FR Doc. 89-13639, to 24 CFR parts 200 and 206, published in the **Federal Register** issue dated June 9, 1989 (54 FR 24822), as corrected in FR Doc. 89-18252, published in the **Federal Register** issue dated August 4, 1989 (54 FR 32059):

§ 206.21 [Corrected]

1. In § 206.21(d), in the introductory text only, on page 24835, as corrected on page 32060, correct by removing the words "interest rate" and inserting in their place, "mortgage balance".

§ 206.23 [Corrected]

2. In § 206.23(d), on page 24835, as corrected on page 32060, correct the word "mortgage" the last time it appears, to read "mortgagee".

Dated: August 29, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-20754 Filed 9-1-89; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218-AB26

Air Contaminants

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; Grant of petitions for reconsideration of three exposure limits and partial stays of effective dates for four substances.

SUMMARY: OSHA reduced exposure limits for 375 air contaminants on January 19, 1989 at 54 FR 2332. OSHA is granting a petition for reconsideration of the Short Term Exposure Limit (STEL)) for acetone of 1000 ppm for the cellulose acetate fiber industry and it is not in effect for that industry. The STEL remains in effect for all other industries except the cellulose acetate fiber industry. The Time Weighted Average (TWA) of 750 ppm for acetone is stayed until September 1, 1990 for one operation in the cellulose acetate fiber industry.

OSHA is also granting a petition for reconsideration of the new limit of 5 mg/m^3 for calcium hydroxide and it is not in effect. The prior limit of 5 mg/m^3 respirable dust and 15 mg/m^3 total dust as a particulate not otherwise regulated remains in effect. OSHA will also reconsider the limit of 5 mg/m^3 for calcium oxide but the prior limit which was also 5 mg/m^3 will remain in effect.

A stay of the ceiling limit for carbon monoxide is granted for three operations in the steel industry. A stay of the new limits for nitroglycerin and ethylene glycol dinitrate is granted to the explosives industry until October 1, 1989. A stay until October 1, 1989 is granted to the drycleaning industry for the new limit for perchloroethylene.

DATE: These actions take effect on September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, Room N–3647, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: On January 19, 1989 at 54 FR 2332 OSHA issued a final standard setting new or more protective exposure limits for 375 substances. The new limits are to be achieved with any reasonable combination of controls including engineering controls and respirators by September 1, 1989, and with a preference for engineering controls by December 31, 1992. Individual companies or trade associations representing industry brought 28 law suits challenging approximately 15 of these new limits. The AFL–CIO also challenged a number of exposure limits as not sufficiently protective.

The objective of this regulatory effort is to create major improvements in occupational health by lowering exposures of 4.5 million workers to many toxic substances. OSHA concludes that the commitments obtained from industry as part of the settlements of individual law suits described in this notice will lead to improved health protection to workers, or will maintain protection while resolving complex legal issues or leading to the resolution of complex technical issues, consistent with statutory requirements.

1. Acetone

In the case of acetone, OSHA lowered exposures from a 1000 ppm 8 hour TWA to a 750 ppm TWA and issued a new 1000 ppm STEL. The cellulose acetate fiber industry consisting of two companies, Tennessee Eastman and Hoechst Celanese, petitioned the Court of Appeals to review the standard challenging both the health need for the STEL, and the feasibility of the STEL for their industry only. They are challenged the practicality of respirator use in some areas and administratively petitioned OSHA to reconsider the STEL.

OSHA reviewed the information submitted and continues to conclude there is a health need for the STEL to prevent moderate irritation and that it is generally feasible. OSHA carefully reviewed feasibility of the STEL for this sector.

Based upon its review the cellulose acetate fiber industry's agreement to under take certain specific measures to protect the health of its employees, OSHA agreed to settle the law suit challenging the acetone standard. The Amalgamated Clothing and Textile Workers Union, which represents workers in that industry, supported the settlement agreement.

The settlement agreement is available in the OSHA Docket Office (Room N–2625 at the above address, (202) 523–7894, Ex. No. 221–67 in Docket H–020). It provides that the two companies and three plants which make up the entire industry will commence now on a schedule over the next three years to install an extensive series of engineering controls to reduce employee exposure to acetone. OSHA believes these controls will generally succeed in bringing employee exposures below the 1000 ppm STEL.

In addition the companies will install airline respirators at locations where they are needed and feasible. The companies will also maintain a medical program and transfer workers who demonstrate irritation to lower exposure areas. The petitioners have withdrawn their law suit.

OSHA concludes, in light of this extensive worker protection program and the additional feasibility data it will provide, to grant the petition for reconsideration of the STEL only for the cellulose acetate fiber industry while the industry is installing these extensive controls. As a result the decision on the STEL is no longer final for the industry and it is not in effect for this industry. When the program is complete, but no later than June 30, 1993, OSHA will commence reviewing its results and issue a new final rule regarding the STEL for acetone in this industry after an opportunity for notice and comment. The final decision will be subject to judicial review under section 6(f) of the Act. OSHA concludes that this will result in better protection for workers in the industry than continuing with lengthy and complex litigation. The STEL remains in effect for all other industries.

In addition, OSHA pursuant to the settlement agreement, is also authorizing a stay of enforcement until September 1, 1990 of the start-up date of the new TWA for a limited group of workers, certain "doffers," in this sector in limited circumstances. Doffers are those workers who remove and transport bobbins containing cellulose acetate thread after it emerges from the fiber extrusion and spinning process. The employer will immediately commence installation of engineering controls necessary to achieve compliance and not wait to complete them by the December 31, 1992 date which would be permitted by the regulation.

2. Calcium Oxide and Calcium Hydroxide

OSHA's prior limit for calcium oxide was 5 mg/m^3. The final air contaminant standard retained the preexisting 5 mg/m^3 standard for calcium oxide.

Calcium hydroxide was not a listed air contaminant. It was regulated as a nuisance dust (particulate not otherwise regulated—PNOR) at 5 mg/m^3 respirable dust and 15 mg/m^3 total dust. The final rule set a 5 mg/m^3 limit for calcium hydroxide.

These two substances are irritants. Lime is the common name for calcium oxide and is sometimes used as the common name for a combination of the two.

The National Lime Association contended that the calcium oxide level should be raised to 10 mg/m^3 and that the calcium hydroxide level should be left at the PNOR level. It petitioned the Court of Appeals for review of the standard and filed a petition for reconsideration with OSHA.

OSHA has concluded that a major additional study on the health effects of calcium oxide and calcium hydroxide would be of considerable benefit in refining the exposure limit for these substances. Accordingly OSHA entered into a settlement agreement with the National Lime Association that provides for such a study. The settlement agreement, which OSHA believes will better protect employees than continuation of the litigation, is available in the Docket Office as Ex. 221–68.

Specifically, the National Lime Association has agreed to perform a study pursuant to a protocol reviewed by OSHA. That study has commenced and is intended to be completed by December 31, 1990. The Association has withdrawn its law suit.

OSHA concludes in light of the commencement of the study to grant the petition for reconsideration. As a result of this action the decision on the exposure limits for calcium hydroxide and calcium oxide in the Final Rule Limits column is no longer final and those exposure limits are no longer in effect.

Upon completion of the study and no later than the deadline date specified in the agreement or June 30, 1991, OSHA will commence reconsidering the exposure limits for calcium oxide and calcium hydroxide and reach final decisions. Comments will be requested in the Federal Register and judicial review will be available under section 6(f) of the Act of the final rule.

The Transitional Limits column of Table Z–1–A exposure limit of 5 mg/m^3 for calcium oxide remains in effect. It is the limit which is to be followed by employers and is to be achieved with the preference for engineering controls as specified in 29 CFR 1910.1000(e).

Also as a result of the reconsideration, calcium hydroxide remains regulated as a particulate not otherwise regulated (PNOR) at the exposure limit of 5 mg/m^3 respirable dust and 15 mg/m^3 total dust as specified in the Transitional Limits column. Employers are to limit employee exposure to calcium hydroxide to those levels following the methods of compliance specified in 29 CFR 1910.1000(e).

3. Additional Actions

The American Iron and Steel Institute petitioned OSHA to administratively stay the TWA and ceiling limits for carbon monoxide for the steel industry. For the reasons stated in OSHA's letter of July 17, 1989 available in the Docket Office as Ex. 221–65, OSHA has partially granted that stay. Specifically OSHA has stayed the September 1, 1989 start-up date of the ceiling limit for carbon monoxide for the steel industry (SIC 33) pending the outcome of litigation in the court of appeals for three operations only: blast furnaces, vessel blowing at basic oxygen furnaces and sinter plants.

The Institute of Makers of Explosives petitioned OSHA to administratively stay the new exposure limits for nitroglycerin and ethylene glycol dinitrate for the explosives industry. OSHA has stayed the September 1, 1989 start-up date of the Final Rule Limits column (new) exposure limits for those substances pending settlement negotiations until October 1, 1989. This is discussed in OSHA's letter of July 17, 1989, Ex. 221–64 in the Docket Office.

OSHA is staying the September 1, 1989 start-up date of the new 25 ppm TWA exposure limit for perchloroethylene for the drycleaning industry until October 1, 1989. OSHA has sent a letter of interpretation to the International Fabricare Institute indicating that air-purifying respirators may be used in certain circumstances. Ex. 221–69. This delay will permit a more orderly notification of the interpretation.

The following amendments to § 1910.1000 Table Z–1–A effectuate the above OSHA discussions and settlement agreements.

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to secion 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 4 of the Administrative Procedure Act, 5 U.S.C. 553, 29 CFR part 1911 and Secretary of Labor Order 9–83 (48 FR 35736).

Signed at Washington, DC this 29 day of August, 1989.

Alan C. McMillan,

Acting Assistant Secretary.

PART 1910—[AMENDED]

1. The authority citation for subpart Z of part 1910 continues to read in part as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z–1–A, which have identical limits listed in the Transitional Limits columns of Table Z–1–A, Table Z–2 or Table Z–3. The latter were issued under section 6(a) (5 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2 and Table Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, the transitional limits columns of Table Z–1–A, Table Z–2 and Table Z–3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

§ 1910.1000 [Amended]

2. Section 1910.1000 is amended by adding a sentence at the end of paragraph (f)(2)(i) to read as follows: "(See Note at end of Table Z–1–A.)"

* * * * *

3. Section 1910.1000, Table Z–1–A is amended by revising the entries for acetone, calcium hydroxide and calcium oxide to include superscripts for footnotes and adding corresponding footnotes and a Note at the end of the Table to read as follows:

TABLE Z–1A.—LIMITS FOR AIR CONTAMINANTS

Substance	CAS No.	Transitional limits: PEL ppm	Transitional limits: PEL mg/m^3	Transitional limits: Skin Designation	Final rule limits: TWA ppm	Final rule limits: TWA mg/m^3	Final rule limits: STEL ppm	Final rule limits: STEL mg/m^3	Final rule limits: Ceiling ppm	Final rule limits: Ceiling mg/m^3	Skin designation
*	*	*		*	*		*		*		
Acetone[h]	67–64–1	1000	2400		750	1800	1000[h]	2400[h]			
*	*	*		*	*		*		*		
Calcium hydroxide[i]	1305–62–0					5[i]					
Calcium oxide[j]	1305–78–8		5			5[j]					
*	*	*		*	*		*		*		

* * * * * * *

[h] The acetone STEL does not apply to the cellulose acetate fiber industry. It is in effect for all other sectors.

[i] The Final Rule Limit of 5 mg/m^3 is not in effect as a result of reconsideration. Calcium hydroxide is covered by the exposure limits for particulates not otherwise regulated of 5 mg/m^3 respirable dust and 15 mg/m^3 total dust.

[j] The Final Rule Limit TWA of 5 mg/m^3 is not in effect as a result of reconsideration. The calcium oxide Transitional Limit of 5 mg/m^3 remains in effect and employee exposures shall be kept below that level pursuant to the methods of compliance specified in 29 CFR 1910.1000(e).

Note: Pursuant to administrative stays effective September 1, 1989 and published in the Federal Register on September 5, 1989, the September 1, 1989 start-up date specified in 29 CFR 1910.1000(f)(2)(i) is stayed as follows: until October 1, 1989 for nitroglycerin and ethylene glycol dinitrate in the explosives industry and perchloroethylene for the drycleaning industry; until September 1, 1990 for the acetone TWA for certain "doffers" in the cellulose acetate fiber industry; and until the decision on the merits of the Eleventh Circuit Court of Appeals in the case of *Courtaulds Fibers, Inc. v. U.S. Department of Labor*, No 89–7073 and consolidated cases, for the Ceiling for carbon monoxide for blast furnace operations, vessel blowing at basic oxygen furnaces and sinter plants in the steel industry (SIC 33). OSHA will publish in the **Federal Register** notice of the termination of the carbon monoxide stay.

[FR Doc. 89-20694 Filed 9-1-89; 8:45 am]

BILLING CODE 4510-26-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6847]

Suspension of Community Eligibility; Nebraska, et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: As shown in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not complaint with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures und. : 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and community name	County	Community No.	Effective date
Nebraska: Amherst, village of	Buffalo	310245	Sept. 6, 1989.
North Dakota:			
Moran, township of	Richland	380666	Do.
Noonan, city of	Divide	380191	Do.
Norway, township of	Traill	380643	Do.
Portal, city of	Burke	380196	Do.
Stavanger, township of	Traill	380642	Do.
South Dakota:			
Egan, town of	Moody	460061	Do.
Estelline, city of	Hamlin	460036	Do.
Westport, town of	Brown	460011	Do.
Utah:			
Amalga, town of	Cache	490013	Do.
American Fork, city of	Utah	490152	Do.
Annabella, town of	Sevier	490122	Do.
Aurora, town of	Sevier	490123	Do.
Unincorporated areas	Cache	490012	Do.
Charleston, town of	Wasatch	490165	Do.
Clarkston, town of	Cache	490014	Do.
Escalante, town of	Garfield	490067	Do.
Elsinore, town of	Sevier	490125	Do.
Fairview, city of	Sanpete	490113	Do.
Unincorporated areas	Garfield	490065	Do.
Monroe, city of	Sevier	490126	Do.
Moroni, city of	Sanpete	490118	Do.
Newton, town of	Cache	490022	Do.
Panguitch, city of	Garfield	490070	Do.
Paragonah, town of	Iron	490075	Do.
Parowan, city of	Iron	490076	Do.
Richfield, city of	Sevier	490131	Sept. 15, 1989.
Richmond, city of	Cache	490027	Do.
Riverton, city of	Salt Lake	490104	Do.
Roy, city of	Weber	490223	Do.
Unincorporated areas	Sanpete	490111	Do.
West Virginia: Bath (Berkley Springs), town of	Morgan	540005	Do.
Wyoming:			
Afton, town of	Lincoln	560068	Do.
Unincorporated areas	Carbon	560009	Do.
Glenrock, town of	Converse	560014	Do.
Kaycee, town of	Johnson	560026	Do.
Unincorporated areas	Natrona	560036	Do.
Ten Sleep, town of	Washakie	560055	Do.

Issued: August 29, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-20756 Filed 9-1-89; 8:45 am]

BILLING CODE 6718-21-M

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44 CFR Part 64

[Docket No. FEMA 6848]

Suspension of Community Eligibility; New York, et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given if this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contracter.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community received a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—Floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date[1]
Region II					
New York	Mamaroneck, town of, Westchester County.	360917	May 12, 1972, Emerg. Dec. 1, 1977, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Region III					
Pennsylvania	Amwell, town of, Washington County.	422615	Jan. 17, 1975, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Do	Barnesboro, borough of, Cambria County.	420227	Nov. 25, 1974, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Do	Hopewell, borough of, Bedford County.	420120	July 3, 1975, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Do	Jackson, township of, Butler County.	421420	Jan. 3, 1975, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Do	Pike, township of, Clearfield County.	421190	Dec. 3, 1979, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Virginia	Appalachia, town of, Wise County.	510319	Mar. 27, 1975, Emerg. Sept. 17, 1980, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Region IV					
Georgia	Burke County, unincorporated areas.	130022	Jan. 13, 1976, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Mississippi	Holmes County, unincorporated areas.	280211	Apr. 11, 1974, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Do	Lawrence County, unincorporated areas.	280272	May 22, 1979, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Do	Leake County, unincorporated areas.	280293	Apr. 23, 1979, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Do	Mount Olive, town of, Covington County.	280048	Feb. 11, 1981, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Do	Neshoba County, unincorporated areas.	280276	Apr. 23, 1979, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Do	Pike County, unincorporated areas.	280278	May 13, 1980, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Do	Batesville, city of, Panola County.	280126	Apr. 2, 1974, Emerg. June 30, 1976, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Tennessee	Martin, city of, Weakley County.	470202	Jan. 28, 1975, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Region VI					
Oklahoma	Goldsby, town of, McClain County.	400102	Jan. 18, 1977, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Region VIII					
Wyoming	Rock Springs, city of, Sweetwater County.	560051	Sept. 1, 1972, Emerg. July 18, 1979, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Region IX					
California	Cypress, city of, Orange County.	060217	Feb. 26, 1975, Emerg. Feb. 9, 1979, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Do	Napa County, unincorporated areas.	060205	Jan. 29, 1971, Emerg. Feb. 1, 1980, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Idaho	Cascade, city of, Valley County.	160161	Aug. 13, 1976, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Oregon	Paisley, city of, Lake County.	410117	July 28, 1975, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Do	Wasco, city of, Sherman County.	410195	Apr. 24, 1978, Emerg. Sept. 15, 1989, Reg. Sept. 15, 1989, Susp.	Sept. 15, 1989	Sept. 15, 1989.
Region II					
New York	Hudson, city of, Columbia County.	361512	Aug. 1, 1975, Emerg. June 19, 1985, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Middlesex, town of, Yates County.	360960	Apr. 29, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	St. Johnsville, village of, Montgomery County.	360457	Oct. 23, 1974, Emerg. Feb. 19, 1986, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date[1]
Region III					
Virginia	Floyd County, unincorporated areas.	510199	Nov. 18, 1974, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Region IV					
Alabama	Houston County, unincorporated areas.	010096	June 25, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	St. Clair County, unincorporated areas.	010290	Feb. 9, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Cartersville, city of, Bartow County.	130209	Apr. 17, 1974, Emerg. June 25, 1982, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Jenkins County, unincorporated areas.	130116	Jan. 16, 1976, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Millen, city of, Jenkins County.	130119	May 29, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Kentucky	Ballard County, unincorporated areas.	210268	May 2, 1984, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Hartford, city of, Ohio County.	210357	Sept. 8, 1982, Emerg. Sept. 4, 1985, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Ohio County, unincorporated areas.	210183	Aug. 3, 1983, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Mississippi	Adams County, unincorporated areas.	280209	Apr. 4, 1974, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Lauderdale County, unincorporated areas.	280224	May 28, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Marion, town of, Lauderdale County.	280095	June 26, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Vicksburg, city of, Warren County.	280176	Mar. 28, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Region V					
Illinois	Clinton, city of, DeWitt County.	170193	Feb. 17, 1976, Emerg. Aug. 15, 1983, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	DeWitt County, unincorporated areas.	170192	July 28, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Pearl city, village of, Stephenson County.	170642	July 29, 1975, Emerg. Apr. 1, 1977, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Michigan	Vassar, city of, Tuscola County.	260208	Dec. 19, 1973, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	June 19, 1989	Sept. 29, 1989.
Ohio	Amesville, village of, Athens County.	390015	Feb. 24, 1977, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Darke County, unincorporated areas.	390137	Feb. 13, 1976, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Fulton County, unincorporated areas.	390162	June 25, 1982, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Gallia County, unincorporated areas.	390165	Mar. 2, 1977, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Greenville, city of, Darke County.	390139	Apr. 16, 1975, Emerg. July 18, 1985, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Hamden, village of, Vinton County.	390554	Aug. 13, 1979, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Lawrence County, unincorporated areas.	390325	Feb. 27, 1976, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Wisconsin	Barron County, unincorporated areas.	550568	Nov. 6, 1974, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Barron, city of, Barron County.	550010	July 24, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Brodhead, city of, Green County.	550160	Apr. 30, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Rosendale, village of, Fond Du Lac County.	550141	Oct. 20, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Region VII					
Missouri	Independence, city of, Clay and Jackson Counties.	290172	Oct. 15, 1971, Emerg. Feb. 1, 1979, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Region VIII					
Colorado	Dolores, town of, Montezuma County.	080122	July 15, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Fremont County, unincorporated areas.	080067	June 25, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Gunnison County, unincorporated areas.	080078	May 28, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Logan County, unincorporated areas.	080110	Jan. 3, 1977, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Monument, town of, El Paso County.	080064	June 10, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Morgan County, unincorporated areas.	080129	Apr. 22, 1980, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Pueblo County, unincorporated areas.	080147	June 21, 1974, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Routt County, unincorporated areas.	080156	May 9, 1979, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
Do	Sterling, city of, Logan County.	080294	Aug. 4, 1977, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
North Dakota	Medora, city of, Billings County.	380006	Apr. 21, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Utah	Tooele, city of, unincorporated areas.	490145	Mar. 10, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Region IX					
Arizona	Litchfield Park, city of, Maricopa County.	040128	Aug. 18, 1988, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Maricopa County, unincorporated areas.	040037	Dec. 31, 1970, Emerg. July 2, 1979, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Wickenburg, town of, Maricopa County.	040056	Jan. 16, 1974, Emerg. Jan. 5, 1976, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
California	Butte County, unincorporated areas.	060017	Mar. 21, 1983, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Hesperia, city of, San Bernardino County.	060733	Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Highland, city of, San Bernardino County.	060732	Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Redding, city of, Shasta County.	060360	June 18, 1975, Emerg. July 3, 1985, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Shafter, city of, Kern County.	060082	Jan. 3, 1977, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Clark County, unincorporated areas.	320003	June 27, 1975, Emerg. Sept. 29, 1989, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Region X					
Washington	Auburn, city of, King County.	530073	May 29, 1974, Emerg. June 1, 1981, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Kent, city of, King County	530080	Nov. 2, 1974, Emerg. Apr. 1, 1981, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	King County, unincorporated areas.	530071	Oct. 13, 1972, Emerg. Sept. 29, 1978, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Redmond, city of, King County.	530087	Oct. 15, 1974, Emerg. Feb. 1, 1979, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.
Do	Renton, city of, King County.	530088	Oct. 15, 1974, Emerg. May 5, 1981, Reg. Sept. 29, 1989, Susp.	Sept. 29, 1989	Sept. 29, 1989.

[1] Certain federal assistance no longer available in special flood hazard areas.

Code for reading fourth column:
Emerg.—Emergency.
Reg.—Regular.
Susp.—Suspension.
Rein.—Reinstatement.

Issued: August 29, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–20750 Filed 9–1–89; 8:45 am]

BILLING CODE 6718–21–M

DEPARTMENT OF DEFENSE

48 CFR Ch. 2

[Defense Acquisition Circular 88–12]

Department of Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88–12 amends the DoD FAR Supplement (DFARS) with respect to Appendices H and I, and update of Appendix N to reflect recent changes.

EFFECTIVE DATE: September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o OUSD(A)(M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1988 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1988 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 86–1 through 86–16.

B. Public Comments

DAC 88–12, Items I and II

Public comments are not solicited with respect to these revisions because they do not have a significant effect beyond agency internal operating procedures.

C. Regulatory Flexibility Act

DAC 88–12, Items I and II

These final rules do not constitute a significant revision within the meaning of Pub. L. 98–577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DoD FAR Supplement Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 89–610D in correspondence.

D. Paperwork Reduction Act

These rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Chapter 2

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

August 31, 1989.

This Defense Acquisition Circular is effective September 15, 1989.

Defense Acquisition Circular (DAC) 88–12 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 Edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—Revisions to DFARS Appendices H and I (Final Rule)

DFARS Appendices H and I are revised to add to the Mode/Method of Shipment Codes Code R, European Distribution System/Pacific Distribution System. This additional code reflects a recent change to the Military Standard Transportation Movement (MILSTAMP) Manual.

Item II—Update of Appendix N—Activity Address Numbers (Final Rule)

Appendix N has been updated to reflect changes in Activity Names or Addresses.

Adoption of Amendments

Therefore, the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR Chapter 2 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

Appendix H to Chapter 2—[Amended]

2. In Appendix H, Section H–610 is amended by revising Codes F, Q, R, Z, 2 and the first sentence of the description in Code 9 to read as follows:

H–610 Mode/Method of Shipment Codes

Code	Description
	* * * * *
F	MAC Channel and Special Assignment Airlift Mission
	* * * * *
Q	Commercial air freight
R	European Distribution System/Pacific Distribution System
	* * * * *
Z	Military Sealift Command (MSC); controlled, contract, or arranged space
2	Government watercraft, barge, or lighter
	* * * * *
9	Local delivery by government or commercial truck including onbase transfers and deliveries between air, water, or motor terminals and adjacent activities. * * *
	* * * * *

Appendix I to Chapter 2—[Amended]

3. In Appendix I, section I–302 is amended by revising Codes F, Q, R, Z, 2 and the first sentence of the description in Code 9 to read as follows:

I–302 Mode/Method of Shipment Codes

Code	Description
	* * * * *
F	MAC Channel and Special Assignment Airlift Mission
	* * * * *
Q	Commercial air freight
R	European Distribution System/Pacific Distribution System
	* * * * *
Z	Military Sealift Command (MSC); controlled, contract, or arranged space
2	Government watercraft, barge, or lighter
	* * * * *
9	Local delivery by government or commercial truck including onbase transfers and deliveries between air, water, or motor terminals and adjacent activities. * * *
	* * * * *

4. Appendix N to chapter 2 is revised to read as follows:

Appendix N—Activity Address Numbers

Activity Address Numbers are for use in conjunction with the Uniform Procurement Instrument Identification Numbering System as prescribed in subpart 204.70 of the DoD FAR Supplement. The six-character code is use in the first six positions of the Procurement Instrument Identification Number (PIIN). The two-character code is used in the first two positions of the Call/Order Serial Number.

For further information, see subpart 204.70 of the DoD FAR Supplement.

Activities coding procurement instruments shall use only those unique and significant codes assigned by their respective Department/Agency Activity Address Monitor(s). When required, activities shall also be assigned a two-position code. (Newly assigned numbers will be listed in future revisions to Appendix N.)

Army

Chief, Contract Supply Office, SFRD–KS,
Rm 1C642, The Pentagon,
Washington, DC 20310–0103

Navy

Navy Accounting and Finance Center,
(NAFC–624), Washington, DC 20390
(Six-Character Unit Identification Number only)[1]

Air Force

SAF/AQCX, Directorate, Contracting
and Manufacturing Policy,
Washington, DC 20330–5040

Defense Logistics Agency

Chief, Systems Branch (DLA–PPS),
Procurement Division, Defense
Logistics Agency, Cameron Station,
Alexandria, VA 22304–6100

Marine Corps

Headquarters, U.S. Marine Corps, (Code
LBO), Washington, DC 20380–0001
(Six-Character Unit Identification Number only)[1]

Other Defense Agencies

The following agencies will forward requests for Appendix N maintenance to HQDA(JDHQ–SV–W–P), Washington, DC 20310–0600.

Defense Mapping Agency

Director of Acquisition, Defense
Mapping Agency, Washington, DC
20305–3000

Defense Nuclear Agency

Chief, Contract Division, Defense
Nuclear Agency, Washington, DC
20305–1000

Defense Communications Agency

Chief, Logistics Management Office,
Code 202, Defense Communications
Agency, Washington, DC
20305–2000

Department of the Army

DAAA03, B1—Pine Bluff Arsenal, Attn: SMCRM–PO, Pine Bluff, AR 71602–9500

DAAA05, B2—Rocky Mountain Arsenal, Attn: SMCR–IS, Commerce City, CO 80022–2180

DAAA08, B7—Rock Island Arsenal, Attn: SCMRI–CT, Rock Island, IL 61299–5000

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[1] The Navy and Marine Corps Activity Address Monitor for assignment of two-character call/serial numbers is: Office of the Assistant Secretary of the Navy (S&L), Room 536, Crystal Plaza 5, Washington, DC 20360–5000. Requests for changes in either the six-character or the two-character codes will be submitted to the appropriate Activity Address Monitor in accordance with internal procedures. Activity Address Monitors shall refer requests for additions, deletions, or changes to their respective DAR Council Policy Member with a copy of Executive Agent, Defense Logistics Agency, DLA–PPS, Cameron Station, Alexandria, VA 22304–6100. The Executive Agent is responsible for maintaining the data base of six- and two-character code assignments and distributing the blocks of two-character codes to the Monitors for further assignment.

DAAA09, BA—HQ, AMCCOM, Attn: AMSMC–PC(R), Rock Island, IL 61299–6000
DAAA15, ZU—Chemical Research & Development Cmd., Attn: AMSMC–PR(A), Aberdeen Proving Ground, MD 21010–5423
DAAA21, 2T—Armament Research & Development Cmd., Attn: AMSMC–PC(D), Picatinny Arsenal, NJ 07806–5000
DAAA22, BV—Watervliet Arsenal, Attn: SMCWV–PP, Watervliet, NY 12189–4050
DAAA27, 00—Radford Army Ammunition Plant, Attn: SMCRA–CA, Radford, VA 24141–0298
DAAA31, GJ—McAlester Ammunition Plant, Attn: SMCMC–PC, McAlester, OK 74501–5000
DAAB07, BG—USA Communications and Electronics Command, Attn: AMSEL–PC, Ft Monmouth, NJ 07703–5000
DAAB08, 2V—USA Communications and Electronics Command, Attn: Procurement Directorate, Base Ops, Ft Monmount, NJ 07703–5008
DAAB10, ZP—USA Communications & Electronics Activity, Attn: SELCE–PC–OP, Vint Hill Farms Station, Warrenton, VA 22186–5172
DAAC01, BH—Anniston Army Depot, Attn: SDSAN–DOC, Anniston, AL 36201–5003
DAAC09, ZR—Sacramento Army Depot, Attn: SDSSA–K, Sacramento, CA 95813–5021
DAAC21, ZM—Sharpe Army Depot, Attn: SDSSH–DC, Lathrop, CA 95331–5000
DAAC67, ZN—Letterkenny Army Depot, Attn: SDSLE–P, Chambersburg, PA 17201–4150
DAAC69, D2—New Cumberland Army Depot, Attn: SDSNC–P, New Cumberland, PA 17070–5001
DDAC71, ZS—Tobyhanna Army Depot, Attn: SDSTO–K, Tobyhanna, PA 18466–5100
DAAC79, D7—Red River Army Depot, Attn: SDSSR–PC, Texarkana, TX 75507–5000
DAAC83, BJ—Corpus Christi Army Depot, Attn: SDSCC–C, Corpus Christi, TX 78419–6000
DAAC89, BK—Tooele Army Depot, Attn: SDSTE–CD, Tooele, UT 84074–5000
DAAD01, B5—Yuma Proving Ground, Attn: STEYP–CR, Yuma, AZ 85365–9103
DAAD03, B6—Jefferson Proving Ground, Attn: STEP–LG–C, Madison, IN 47250–5100
DAAD05, BM—Aberdeen Proving Ground Activity, Attn: STEAP–PR, Aberdeen Proving Ground, MD 21005–5001
DAAD07, BN—White Sands Missile Range, Attn: STEWS–PR, White Sands, NM 88002–5031
DAAD09, BP—Dugway Proving Ground, Attn: STEDP–DOC, Dugway, UT 84002–5031
DAAD10, ZX—USA Test and Evaluation Command, Attn: AMSTE–PR, Aberdeen Proving Ground, MD 21005–5055
DAAE07, BR—USA Tank Automotive Command, Attn: AMSTA–I, Warren, MI 48090–5000
DAAG60, G8—USA Military Academy, Attn: Purchase & Contracting Division MAPC, West Point, NY 10996–1594
DAAG99, ZY—USA Program Manager–SANG, Attn: AMCPM–NGA–A, APO New York 09038
DAAH01, CC—USA Missile Command, Attn: AMSMI–PC, Redstone Arsenal, AL 35898–5280
DAAH03, D8—USA Missile Command, Attn: AMSMI–PC–FC (Lab/Base Ops), Redstone, Arsenal, Al 35898–5280
DAAJ02, D9—Aviation Research & Technology Activity, Attn: SAVRT–TY–CD, Ft Eustis, VA 23604–5577
DAAJ04, C6—USA St. Louis Support Center, Attn: AMSAV–PDS–2, Granite City, IL 62040–1801
DAAJ05, ZF—USA Aviation Systems Command, Attn: IAS 21-Wrking Group, Ft. Eustis, VA 23604–5577
DAAJ09, BS—USA Aviation Systems Command, Attn: AMSAV–PRR, 4300 Goodfellow Blvd., St. Louis, MO 63120–1798
DAAJ11—USA Plant Representative Office, McDonnall Douglas Helicopter Company, 5000 East McDowell Road, Mesa, AZ 85025–9797
DAAJ12—USA Plant Representative Office, Boeing Helicopter Company, PO Box 16859, Philadelphia, PA 19142–0859
DAAJ13—USA Plant Representative Office, Bell Helicopter Textron, Inc., PO Box 1605, Ft. Worth, TX 76101–1605
DAAK01 BB—USA Troop Support Command, Attn: AMSTR–PY, 4300 Goodfellow Blvd., St. Louis, MO 63120–1798
DAAK60 C5—USA Natick Research & Development Center, Attn: AMSTR–PW, Natick, MA 01760–5011
DAAK70 EI—USA Belvoir Research & Development Center, Attn: AMSTR–PV, Ft. Belvoir, VA 22060–5606
DAAL01 1Y—Electronics Technology & Devices Command, Attn: SLECT–DP, Ft. Monmouth, NJ 07703–5000
DAAL02 D3—USA LABCOM Procurement Office, Attn: SLCIS–PR–PO, 2800 Powder Mill Road, Adelphi, MD 20783–1197
DAAL03, G2—USA Research Office, Attn: SLCRO–PR, Box 12211, Research Triangle Park, NC 27709–2211
DAAL04, D6—USA Materials and Mechanics Research Center, Arsenal Street, Watertown, MA 02172–2719
DABT01, F6—USA Aviation Center Contracting Office, Attn: ATZQ–DI–PC, Bldg 116, Ft. Rucker, AL 36362–5000
DABT02, 2A—USA Military Police & Chemical Schools, Attn: ATZN–DOC. Ft. McClellan, AL 36205–5000
DABT10, 2B—USA Infantry Center Contracting Office, Attn: ATZB–DC Ft Benning, GA 31905–5179
DABT11, 2C—USA Signal Center Contracting Office, Attn: ATZH–DIP, Bldg 2050, Ft Gordon, GA 30905–5041
DABT15, F9—USA Soldier Support Center Contracting Office, Attn: ATZI–DIP, Bldg 600, Room 209 Ft Benjamin Harrison, IN 46216–5230
DABT19, 2D—USA Combined Arms Directorate of Contracting, Attn: ATZL–GDC, Bldg 198, Ft Leavenworth, KS 66027–5031
DABT23, 2E—USA Armor Center Contracting Office, Attn: ATZJ–DIP, Bldg 4022 Ft Knox, KY 40121–5000
DABT31, 2F—USA Engineer Training Center Contracting Office, Attn: ATZI–SI–PC, Box 140, Ft Leonard Wood, MO 65473–0140
DABT35, 2G—USA Training Center, Attn: ATZDGD–G, Ft Dix, NJ 08640–5405
DABT39, 2H—USA Army Field Artillery Center Directorate of Contracting, Attn: ATZR–Q, PO Box 3501, Ft Sill, OK 73503–0501
DABT43, 2J—Carlisle Barracks Contracting Office, Attn: ATZE–DIP, Bldg 46, Carlisle Barracks, PA 17013–5002
DABT47, 2K—USA Training Center Contracting Division, Attn: ATZJ–DIP, Bldg 4350, Ft Jackson, SC 29207–5402
DABT51, 2L—USA Training Center Contracting Office, Attn: ATZC–DIP Ft Bliss, TX 79916–0078
DABT57, 2N—USA Transportation Center Contracting Office, Attn: ATZF–DIO–CD, Bldg 2745, Ft. Eustis, VA 23604–5293
DABT58, 2P—Headquarters Contracting Office, Attn: ATZG–C, #62 Bldg 195, Ft. Monroe, VA 23651–6070
DABT59, 2Q—USA Quartermaster Center Contracting Division, Attn: ATZM–DIP, Bldg T–7124, Ft. Lee, VA 23081
DABT60, 1L—USA TRADOC Contracting Activity—East, Attn: ATCAE–E, Bldg 1748, Ft. Eustis, VA 23604–5538
DABT61, BF—USA JAG School Contracting Office, Attn: Budget Branch, Charlottesville, VA 22904–1781

DABT62, 2P—USA TRADOC Contracting Activity—West, Attn: PO Box Y, Ft. Hood, TX 76544–5065
DACA01, DACW01, CK—USA Engineer District, Mobile, PO Box 2288, Mobile, AL 36628–0001
DACA03, DACW03, CL—USA Engineer District, Little Rock, PO Box 867, Little Rock, AR 72203–0867
DACA05, DACW05, CM—USA Engineer District, Sacramento, 650 Capitol Mall, Sacramento, CA 95814–4794
DACA06, DACW06, CN—USA Engineer District, South Pacific, 630 Sansome Street, Room 1216, San Francisco, CA 94111–2206
DACA07, DACW07, CP—USA Engineer District, San Francisco, 211 Main Street, San Francisco, CA 94105–1905
DACA09,DACW09,CQ—USA Engineer District, Los Angeles, PO Box 2711, Los Angeles, CA 90053–2325
DACA17, DACW17, CS—USA Engineer District, Jacksonville, PO Box 4970, Jacksonville, FL 32232–0019
DACA19, DACW19, CU—USA Engineer Division, South Atlantic, 30 Pryor Street, Rm 510 Title Bldg, Atlanta, GA 30335–6801
DACA21, DACW21, CV—USA Engineer District, Savannah, PO Box 889, Savannah, GA 31402–0889
DACA22, DACW22, CW—USA Engineer Division, North Central, 536 South Clark Street, Chicago, IL 60605–1592
DACA23, DACW23, CX—USA Engineer District, Chicago, 219 South Dearborn Street, Chicago, IL 60604–1797
DACA25, DACW25, CD—USA Engineer District, Rock Island, PO Box 2004, Clock Tower Building, Rock Island, IL 61202–2004
DACA27, DACW27, CY—USA Engineer District, Louisville, PO Box 59, Louisville, KY 40201–0059
DACA29, DACW29, CZ—USA Engineer District, New Orleans, PO Box 60267, New Orleans, LA 70160–0267
DACA31, DACW31, DA—USA Engineer District, Baltimore, PO Box 1715, Baltimore, MD 21203–1715
DACA33, DACW33, DB—USA Engineer District, New England, 424 Trapelo Road, Waltham, MA 02254–9149
DACA35, DACW35, DC—USA Engineer District, Detroit, 150 Michigan Avenue, PO Box 1027, Detroit, MI 48231–1027
DACA37, DACW37, DD—USA Engineer District, St. Paul, 1210 USPO & Custom House, St. Paul, MN 55101–1479
DACA38, DACW38, DE—USA Engineer District, Vicksburg, PO Box 60, Vicksburg, MS 39181–0060
DACA39, DACW39, DF—USA Engineer Water-Ways Experiment Station, PO Box 631, Vicksburg, MS 39180–0631
DACA40, DACW40, DG—USA Engineer Division, Lower Mississippi Valley, PO Box 80, Vicksburg, MS 39180–0080
DACA41, DACW41, DH—USA Engineer District, Kansas City, 700 Federal Bldg., 601 East 12th Street, Kansas City, MO 64106–2896
DACA43, DACW43, DJ—USA Engineer District, St. Louis, 210 North 12th Street, St. Louis, MO 63101–1986
DACA45, DACW45, DK—USA Engineer District, Omaha, Room 6012, US Post Office & Courthouse, Omaha, NE 68102–4910
DACA46, DACW46, DL—USA Engineer Division, Missouri River, PO Box 103, Downtown Station, Omaha, NE 68101–0103
DACA47, DACW47, DM—USA Engineer District, Albuquerque, PO Box 1580, Albuquerque, NM 87103–1583
DACA49, DACW49, DN—USA Engineer District, Buffalo, Foot Bridge Street, Buffalo, NY 14207–3199
DACA51, DACW51, CE—USA Engineer District, New York, 26 Federal Plaza, New York, NY 10278–0090
DACA52, DACW52, DP—USA Engineer Division, North Atlantic, 90 Church Street, New York, NY 10007–9998
DACA54, DACW54, DQ—USA Engineer District, Wilmington, 308 Custom House, Wilmington, NC 28402–1890
DACA55, DACW55, DR—USA Engineer Division, Ohio River, PO Box 1159, Cincinnati OH 45201–1159
DACA56, DACW56, DS—USA Engineer District, Tulsa, PO Box 61, Tulsa, OK 74121–0061
DACA57, DACW57, DT—USA Engineer District, Portland, PO Box 2496, Portland, OR 97208–2496
DACA58, DACW58, DU—USA Engineer Division, North Pacific, PO Box 2870, Portland, OR 97209–0898
DACA59, DACW59, DV—USA Engineer District, Pittsburgh, Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222–4186
DACA60, DACW60, DW—USA Engineer District, Charleston, PO Box 905, Charleston, SC 29402–0919
DACA61, DACW61, CF—USA Engineer District, Philadelphia, Custom House, 2nd & Chestnut Streets, Philadelphia, PA 19106–2991
DACA62, DACW62, DX—USA Engineer District, Nashville, PO Box 1070, Nashville, TN 37202–1070
DACA63, DACW63, DY—USA Engineer District, Fort Worth, PO Box 17300, Fort Worth, TX 76101–0300
DACA64, DACW64, DZ—USA Engineer District, Galveston, PO Box 1229, Galveston, TX 77553–1229
DACA65, DACW65, EA—USA Engineer District, Norfolk, 803 Front Street, Norfolk, VA 23510–1096
DACA66, DACW66, EB—USA Engineer District, Memphis, Rm B202, Clifford Davis Federal Office Building, Memphis, TN 38103–1894
DACA67, DACW67, EC—USA Engineer District, Seattle, PO Box C–3755, Seattle, WA 98124–2255
DACA68, DACW68, YW—USA Engineer District, Walla Walla Building 602, City-County Airport Walla Walla, WA 99362–9265
DACA69, DACW69, CG—USA Engineer District, Huntington, 502 Eight Street, Huntington, WV 25701–2070
DACA70, DACW70, YX—USA Engineer Division, Southwestern Main Tower Building, 1114 Commerce Street, Dallas, TX 75242–0216
DACA72, DACW72, ZA—Humphrey Engineer Support Activity Center, Kingman Building, Fort Belvoir, VA 22060–5580
DACA73, DACW73, CH—Office, Chief of Engineers, Attn: DAEN–ECP–C, Washington, DC 20314–1000
DACA74, DACW74, ZB—Rivers & Harbors, Board of Engineers, Tempo C Building, Second & C Streets, SW, Washington, DC 20315
DACA75, DACW75, ZC—USA Engineer Division, Middle East, APO New York, NY 09038
DACA76, DACW76, ZD—USA Engineer Topographic Laboratories, Fort Belvoir, VA 22060–5546
DACA78, DACW78, 9V—USA Engineer Division, Middle East, PO Box 2250, Winchester, VA 22601–1450
DACA79, DACW79, 2R—USA Engineer District, Japan APO San Francisco, CA 96343–0061
DACA81, DACW81—USA Engineer District, Far East APO San Francisco, CA 96301–0427
DACA84, DACW84, ZH—USA Engineer Division, Pacific Ocean Building 230, Ft. Shafter, HI 96858–5440
DACA85, DACW85, ZJ—USA Engineer District, Alaska PO Box 7002, Anchorage, AK 99506–0898
DACA86, DACW86—USA Engineer District, Riyadh, APO New York, NY 09038
DACA87, DACW87, ZW—USA Engineer Division, Huntsville, PO Box 1600 West Station, Huntsville, AL 35807–4301
DACA88, DACW88, B8—USA Construction Engineering Research Laboratory, PO Box 4005, Champaign, IL 61820–1305
DACA89, DACW89, 1Z—USA Cold Regions Research and Engineering Laboratory, 72 Lyme Road, Hanover, NH 03755–1290
DACA90, DACW90—USA Engineer Division, Europe, Attn: EUDPS–C, APO New York, NY 09757
DACA94, DACW94—MX Program Agency, Attn: CEMXPA, Norton, AFB, CA 92409

DADA01, 2S—Letterman Army Medical Center, Attn: HSHH–LCP, Bldg 1060, Presidio of San Francisco, CA 94129–6700
DADA03, 8W—Fitzsimmons Army Medical Center, Attn: IOC–HPSP, Aurora, CO 80045–5001
DADA09, YY—William Beaumont Army Medical Center, Attn: HSHM–LOC–CO, Box 70003, El Paso, TX 79920–5001
DADA10, ZQ—USA Health Services Command, Attn: Central Contracting Office, Ft. Sam Houston, TX 78234–6000
DADA11, OV—Brooke Army Medical Center, Attn: HSHE–LOC, Ft. Sam Houston, TX 78234–6200
DADA13, OW—Madigan Army Medical Center, Attn: HSHJ–LOC, Tacoma, WA 98431–5246
DADA15, OX—Walter Reed Army Medical Center, Attn: HSHL–P&C, Bldg T–20, Washington, DC 20307–5000
DADA16, OY—Tripler Army Medical Center, Attn: HSHK–LD–PC, Tripler, AMC, HI 96859–5000
DAEA08, E4—Headquarters, 7th Signal Command, Attn: ASN–OA–PC, Bldg 148, Ft Ritchie, MD 21719–5000
DAEA16, E7—Headquarters, 5th Signal Command, Attn: ASE–LG–C, APO New York, NY 09056–3140
DAEA18, BL—Headquarters, USA Garrison, Attn: Directorate of Contracting (ASHDOC–S), Ft Huachuca, AZ 85613–6000
DAEA20, E8—Commander, 1st Signal Brigade, Attn: ASK–LC, APO San Francisco, CA 96301–0044
DAEA28, OZ—USA Information Systems Engineering Command, Attn: ASW–MSD (STOP 40), Ft Belvoir, VA 22060–5456
DAHA01, 9B—USPFO for Alabama, PO Box 3715, Montgomery, AL 36193–4801
DAHA02, OG—USPFO for Arizona, 5636 E. McDowell Road, Phoenix, AZ 85008–3495
DAHA03, 9D—USPFO for Arkansas, Camp Joseph Robinson, North Little Rock, AR 72118–2200
DAHA04, 9N—USPFO for California, PO Box G, San Luis Obispo, CA 93403–5104
DAHA05, Z0—USPFO for Colorado, Camp George West, Golden, CO 80401–3997
DAHA06, 1S—USPFO for Connecticut, National Guard Armory, 360 Broad Street, Hartford, CT 06105–3779
DAHA07, 9A—USPFO for Delaware, Grier Building, 1161 River Road, New Castle, DE 19720–5199
DAHA08, 2W—USPFO for Florida, State Arsenal, St. Augustine FL 32084–1008
DAHA09, 2X—USPFO for Georgia, PO Box 17882, Atlanta, GA 30316–0882
DAHA10, 2Y—USPFO for Idaho, PO Box 45, Boise, ID 83701–4501
DAHA11, 9E—USPFO for Illinois, Camp Lincoln, 1301 North McArthur Blvd., Springfield, IL 62702–2317
DAHA12, 4E—USPFO for Indiana, PO Box 41346, Indianapolis, IN 46241–0346
DAHA13, 9L—USPFO for Iowa, Camp Dodge, 7700 Beaver Drive, Johnston, IA 50131–1902
DAHA14, 4Z—USPFO for Kansas, Kansas State Arsenal, PO Box 2099, Topeka, KS 6601–2099
DAHA15, 6P—USPFO for Kentucky, Boone National Guard Center, Frankfort, KY 40601–6192
DAHA16, 0A—USPFO for Louisiana, Headquarters Building, Jackson Barracks, New Orleans, LA 70146–0330
DAHA17, 0B—USPFO for Maine, Camp Keys, Augusta, ME 04333–0332
DAHA18, 0C—USPFO for Maryland, State Military Reservation, PO Box 206, Havre de Grace, MD 21078–0206
DAHA19, 0D—USPFO for Massachusetts, NG Supply Depot, 143 Speen Street, Natick, MA 01760–2599
DAHA20, 9F—USPFO for Michigan, 3111 W. St. Joseph Street, Lansing, MI 48913–5102
DAHA21, 9K—USPFO for Minnesota, Camp Ripley, PO Box. 288, Little Falls, MN 56345–0288
DAHA22, —USPFO for Mississippi, PO Box 4447, Fondren Station, Jackson, MS 39216–0447
DAHA23, 9H—USPFO for Missouri, 1715 Industrial Avenue, Jefferson City, MO 65101–1468
DAHA24, 9P—USPFO for Montana, State Arsenal Building, PO Box 1157, Helena, MT 69624–1157
DAHA25, USPFO for Nebraska, 1234 Military Road, Lincoln, NE 68508–1092
DAHA26, USPFO for Nevada, 2601 South Carson Street, Carson City, NV 89701–5596
DAHA27, USPFO for New Hampshire, State Military Reservation, PO Box 2003, Concord, NH 03301–2003
DAHA28, ZK—USPFO for New Jersey, PO Box 2000, Trenton, NJ 08607–2000
DAHA29, USPFO for New Mexico, PO Box 4277, Santa Fe, NM 87502–4277
DAHA30, USPFO for New York, Building 4, State Campus, Albany, NY 12226–5100
DAHA31, USPFO for North Carolina, 4201 Reedy Creek Road, Raleigh, NC 27607–6412
DAHA32, USPFO for North Dakota, PO Box 1817, Bismarck, ND 58502–5511
DAHA33, USPFO for Ohio, 2811 W. Granville Road, Worthington, OH 43085–2712
DAHA34, USPFO for Oklahoma, 3501 Military Circle, NE., Oklahoma City, OK 73111–4398
DAHA35—USPFO for Oregon, PO Box 14840, Salem, OR 97303–5008
DAHA36, USPFO for Pennsylvania, c/o Dept. of Military Affairs (IGMR) Annville, PA 17003–5003
DAHA37—USPFO for Rhode Island, 51 Stenton Avenue, Providence, RI 02906–1954
DAHA38—USPFO for South Carolina, 9 National Guard Road, Columbia, SC 29201–4763
DAHA39—USPFO for South Dakota, 2823, West Main, Rapid City, SD 57702–8186
DAHA40—USPFO for Tennessee, PO Box 40748, Nashville, TN 37204–0748
DAHA41, 9C—USPFO for Texas, PO Box 5218, WAS, Austin, TX 78763–5218
DAHA42—USPFO for Utah, PO Box 2000, Draper, UT 84020–2000
DAHA43—USPFO for Vermont, Camp Johnson, Bldg. 1, Winooski, VT 05404–1697
DAHA44—USPFO for Virginia, 401 East Main Street, Richmond, VA 23219–2317
DAHA45—USPFO for Washington, Camp Murray, Tacoma, WA 98430–5000
DAHA46—USPFO for West Virginia, Buckhannon, WV 26201–2396
DAHA47, 9G—USPFO for Wisconsin, Camp Douglas, WI 54618–9002
DAHA48—USPFO for Wyoming, PO Box 1709, Cheyenne, WY 82003–1709
DAHA49—USPFO for the District of Columbia, Bldg. 350, Anacostia Naval Air Station, Washington, DC 20315–0350
DAHA50—USPFO for Hawaii, 3949 Diamond Head Road, Honolulu, HI 96816–4495
DAHA51—USPFO for Alaska, Camp Denali, Pouch B, FT Richardson, AK 99505–5000
DAHA70—USPFO for Puerto Rico, PO Box 3786, San Juan, PR 00904–3786
DAHA72—USPFO for Virgin Islands, PO Box 1050, Christiansted, St. Croix, VI 00820
DAHA74—USPFO for Guam, Ft Juan Muna, 622 E Harmond Park Road, Tamuning, Guam 96911–4421
DAHA90, 2Y—National Guard Bureau, Contracting Policy,Skyline Place 6, Suite 401–B, 5109 Leesburg Pike, Falls Church, VA 22041–3101
DAHC21, G3—MTMC Eastern Area, Attn: MTE–LOA, Bldg. 41, Bayonne, NJ 07002–5302
DAHC23, G4—MTMC Western Area, Attn: MTW–LOA, Oakland Army Base, Oakland, CA 94026–5000
DAHC24, 1B—HQ MTMC Acquisition Division, Attn: MT–LOA, 5611 Columbia Pike, Falls Church, VA 22041–5050

DAHC25—HQ MTMC, Directorate of Personal Property, Attn: MT–PP, 5611 Columbia Pike, Falls Church, VA 22041–5050
DAHC26, OE—HQTRS MTMC, TOPS Project Management Office, Attn: MT–TP, Ft Belvoir, VA 22060–5898
DAHC30, OF—MDW, DCS for Acquisition, Bldg. 15, Cameron Station, Alexandria, VA 22304–5050
DAHC31—The Adjutant General Center, Publication Center, Attn: DAIM–APR–F, Alexandria, VA 22331–0302
DAHC32, OM—National Defense University, Bldg. 59, Ft Leslie J. McNair, Washington, DC 20319
DAHC35, 2M—Ft Belvoir Directorate of Contracting, Bldg. T742, Ft Belvoir, VA 22060–5075
DAHC40—USA TSA Southeast Contracting Office, DALO–TAC–C, Bldg. T5204, Ft Lee, VA 23801–6025
DAHC41, OH—USA TSA Northeast Commissary Region, Attn: Contracting Division, Ft George G. Meade, MD 20755–5220
DAHC42, OJ—USA TSA Midwest Commissary Region, Attn: Contracting Division (DALO–T–M–P), Ft Sam Houston, TX 78234–5000
DAHC43, OK—USA TSA Western Commissary Region, Attn: Contracting Division, Ft Lewis, WA 98433–0093
DAHC44, ZG—USA TSA Contracting Group, Bldg. P–12400, PO Box 5310, Ft Lee, VA 23801–6020
DAHC75, OU—US Army Western Command, Attn: ACSAM, Ft Shafter, HI 96858–5100
DAHC76, 8U—HQTRS 6th Inf Div (L) & USA Garrison Alaska, Attn: USAG–AK–DOC, Ft Richardson, AK 99505–5000
DAHC77, CJ—US Army Support Command, Hawaii, Attn: APZV–KOC, Ft Shafter, HI 96856–5025.
DAHC90, YJ—HQTRS Intelligence & Security Command, Attn: IALOG–C, Arlington Hall Station, Arlington, VA 22212–5000.
DAHC92, 1V—USA South, 41st Area Support Group, Directorate of Contracting, Attn: SOGA–CO, APO Miami, FL 34002–5000.
DAHC94, BD—Information Systems for Command, Control Communications & Computers (DISC4) SAIS–ZP, Alexandria, VA 22331–0700.
DAJAO1, 9Q—Hqtrs USA Southern European Task Force, APO New York 09168.
DAJAO2, G5—Seckenheim Area Contracting Office, Attn: USACAE/USAREUR, APO New York 09081.
DAJA04, 9R—Fourth Army Contracting Office, Attn: USACAF, APO New York, 09696–5345.
DAJAO6, 9S—Chief, ACO Stuttgart, USACAE, Attn: AEUPC–ST, APO New York 09154–0503.
DAJAO8, BT—Giessen Suboffice—RCO Frankfurt, Attn: AEUCC–F–G, APO New York 09169
DAJA10, 9U—Chief, ACO Augsburg, Attn: AEUPC–AUG, APO New York 09178–0505
DAJA16, 8X—Chief, Grafenwoehr Suboffice, Attn: AEUPC–FH–G, APO New York 09114–5413.
DAJA18—Director of Purchasing, Armed Forces, Recreation Center, Germany (AFRC) APO New York 09053.
DAJA23, 9W—Commander, USA Berlin, Attn: AEBA–PR, APO New York 09742.
DAJA25, 9X—Chief, ACO Bremerhaven, Attn: AEUPC–BRN, APO New York 09069–0030.
DAJA37, G6/Ol—Commander, USACAE, Attn: AEUCC–MP, Box 49, APO New York 09710–53445.
DAJA45, 9Y—Commander, 47th Area Support Group, Attn: AERUK–SP, APO New York 09075.
DAJA61, 9Z—Hqtrs USAREUR & 7th Army, Attn: Brussels RCO, APO New York 09667–5005.
DAJA76, 8V—Chief, ACO Frankfurt, Attn: AEUPC–FRT–S, Box 73, APO New York 09710.
DAJA83, 2Z—RCO Rheinberg, Attn: AEUCC–R, APO New York 09712.
DAJA84—Fulda Suboffice—RCO Frankfurt, Attn: AEUCC–F–FD, APO New York 09146–0979.
DAJA85, B8—Hanau Suboffice—RCO Frankfurt, Attn: AEUCC–F–H, APO New York 09165–5345.
DAJA86, CO—Mainz-Kastel Suboffice—RCO Frankfurt, Attn: AEUCC–F–MK, APO New York 09457.
DAJA87, DO—Mid-East CAS Branch—USAREUR Contract Center, Attn: AEUCC–C–CI, APO New York 09672–0008.
DAJA88, EO—United Kingdom CAS Branch—USAREUR Contract Center, Attn: AEUCC–C–CU, APO New York 09083–5000.
DAJA89, FO—Wuerzburg Suboffice—RCO Fourth, Attn: AEUCC–FU–W, APO New York 09801–2013.
DAJA90, OT—Bad Kreuznach Suboffice—RCO Frankfurt, Attn: AEUCC–F–BK, APO New York 09252–0029.
DAJB03, F4—USA Korea Contracting Agency, Attn: EAKC–CSS, APO San Francisco, CA 96301–0062.
DAKF01, 1A—Presidio of San Francisco, Attn: AFZM–DI–PR, Bldg 650, Presidio of San Francisco, CA 94129–5607
DAKF03, F2—Directorate of Contracting, Attn: AFZW–PC, PO Box 27, Ft. Ord, CA 93941–0027
DAKF04, ZE—US Army National Training Center, Attn: AFZJ–DCP, PO Box 10039, Ft. Irwin, Barstow, CA 92311–5000
DAKF06, 1C—DCQA, Attn: AFZC–CQ–C, Bldg 6048, Fort Carson, CO 80913–5000
DAKF10, 1D—Contracting Division, Attn: AFZP–DIP, Ft. Stewart, GA 31313–5192
DAKF11, 1E—Contracting Division, Attn: AFZK–DI–C, Ft. McPherson, GA 30330–5000
DAKF12, BC—FORSCOM Contracting Office, Building 228, Ft. McPherson, Atlanta, GA 30330–6000
DAKF15, 1F—Contracting Division, Attn: AFZO–DI–C, Ft. Sheridan, IL 60037–5000
DAKF19, 1G—Contracting Division, Attn: AFZN–DI–C, Ft. Riley, Junction City, KS 66442–0248
DAKF23, 1H—Contracting Division, Attn: AFZB–DI–PC, Ft. Campbell, Oak Grove, KY 42223–1293
DAKF24, G1—Contracting Division, Attn: AFZX–DI, Ft. Polk, Leesville, LA 71459–5000
DAKF27, 1J—Contracting Division, Attn: AFZI–DI–C, Ft. Meade, Ft. George G. Meade, MD 20755–5081
DAKF31, 1K—Contracting Division, Attn: AFZD–DI–P, Ft. Devens, Ayer, MA 01433–5340
DAKF36, 1M—Contracting Division, Attn: AFZS–DI–P, Ft. Drum, Watertown, NY 13602–5000
DAKF40, 1N—Contracting Division, Attn: AFZA–DI–C, Ft. Bragg, Drawer 70120, Fayetteville, NC 28306–0120
DAKF48, 1Q—Contracting Division Attn: AFZF–DI–CON, Ft. Hood, Killeen, TX 76544–5059
DAKF49, 1R—Contracting Division, Attn: AFZG–DI–P, Ft. Sam Houston San Antonio, TX 78234–5000
DAKF57, 1T—Contracting Division, Attn: AFZH–DI–P, Ft. Lewis, Tacoma, WA 98433–5000
DAKF61, 1U—Contracting Division, Attn: AFZR–DI–P, Ft. McCoy, Sparta, WI 54656–5000
DAMD17, B3—US Army Medical Research Acquisition Activity, Ft. Detrick, Attn: SGRD–RMA, Ft. Detrick, MD 21701–5014
DASG60, CB—Deputy Commander, USA Strategic Defense Command, Attn: CSSD–H–CPP, PO Box 1500, Huntsville, AL 35807–3801

Department of the Navy

N00011, LB,* LBZ—Chief of Naval Operations, Washington, DC 20350–2000
N00013, MR—Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332
N00014, EE—Office of Naval Research, Arlington, VA 22217
N00015, LO,* LOZ—Naval Intelligence Command HQ (Suitland, MD), 4600

Silver Hill Road, Washington, DC 20389
N00018, MC,* MD,* J5,* MCZ—Naval Medical Command, Washington, DC 20372–5120
N00019, EF,* EFO–9–Naval Air Systems Command, Washington, DC 20361
N00023, 4J,* 4JO–9—Commander, Naval Supply Systems Command, Washington, DC 20376
N00024, EH,* EHO–9—Naval Sea Systems Command, Washington, DC 20360
N00025, EJ,* FZ,* EJO–9—Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332
N00030, EK,* EKO–9—Strategic Systems Programs, Department of the Navy, Washington, DC 20376–5002
N00032, GU—Director of Contracts, Cruise Missiles Project, Washington, DC 20360
N00033, EL—Commander, Military Sealift Command, Washington, DC 20390
N00034, EM—Navy Finance Center, Navy Military Pay System, Cleveland, OH 44114
N00039, NS—Space and Naval Warfare Systems Command, Washington, DC 20360
N00060, LH,* LHZ—Commander-in-Chief, Atlantic Fleet, Norfolk, VA 23511
N00062, 8A,* L9,* RO,* 8AO–9—Chief of Naval Education and Training, Code 013, NAS, Pensacola, FL 32508–5100
N00063, NT,* NTZ—Naval Telecommunications Command, 4401 Massachusetts Avenue, NW, Washington, DC 20394–5290
N00065, SO,* SOZ—Naval Oceanography Command, NSTL, MS 39529–5000
N00069, 8Q,* 8QZ—Naval Security Group HQ, 3801 Nebraska Avenue, NW, Washington, DC 20390–0008
N00070, LP,* V5,* LPZ—Commander in Chief Pacific Fleet, Pearl Harbor, HI 96860–7000
N00072, 9T,* 9TZ—Commander Naval Reserve Force Code 17, New Orleans, LA 70146
N00101, 3R—Naval Air Station, South Weymouth, MA 02190
N00102, EN—Portsmouth Naval Shipyard, Portsmouth, NH 03801
N00104, EP, EQ—Navy Ships Parts Control Center, Mechanicsburg, PA 17055
N00105, JT—Naval Medical Clinic, NAVSHIPYD, Portsmouth, NH 03801
N00109, F1—Naval Weapons Station, Yorktown, VA 23491
N00123, ES—Commanding Officer, Naval Regional Contracting Center, 937 N. Harbor Drive, San Diego, CA 92132–5075
N00124, M5—Naval War College, Newport, RI 02840
N00127, H1—Naval Air Station, Quonset Point, RI 02819
N00128, EU—Supply Department, Naval Administrative Command, Naval Training Station, Great Lakes, IL 60088
N00129, EV—Submarine Base, New London, Groton, CT 06340
N00140, EX, LA—Commanding Officer, Naval Regional Contracting Center, Naval Base Bldg. No. 600, Philadelphia, PA 19112
N00146, QK —Marine Corps Air Station, Cherry Point, NC 28533
N00151, EY—Philadelphia Naval Shipyard, Philadelphia, PA 19112
N00153, NO—Governor, Naval Home, 01800 East Beach Blvd., Gulfport, MS 39501
N00156, 3V—Naval Air Station, Willow Grove, PA 19090
N00161, FA—Naval Academy, Annapolis, MD 21402
N00163, FB—Naval Avionics Center, 21st and Arlington Avenue, Indianapolis, IN 46218
N00164, FC—Naval Weapons Support Center, Crane, IN 47522
N00166, LC—Naval Air Facility Bldg. 3086, Andrews AFB, Washington, DC 20396–5130
N00167, FD—David W. Taylor Naval Ship Research & Development Center, Carderock Laboratory, Bethesda, MD 20084–5000
N00168, FE—Naval Medical Command, National Capital Region, Bethesda, MD 20014
N0017A—Atlantic Fleet Weapons Training Facility, (Code 51), (Roosevelt Roads, PR) Naval Station, Box 3023, FPO Miami 34051
N00171 N5—HQ, Naval District Washington, Washington Navy Yard, Washington, DC 20374
N00173, FF—Naval Research Laboratory, Washington, DC 20390
N00174, FG—Naval Ordnance Station, Indian Head, MD 20640
N00181, FJ—Norfolk Naval Shipyard, Portsmouth, VA 23709
N00187, 3J—Navy Public Works Center, Norfolk, VA 23511
N00188 H2—Naval Air Station Norfolk, VA 23511
N00189 FK, H3—Naval Supply Center Norfolk, VA 23512
N00191 FL—Charleston Naval Shipyard Naval Base, Charleston, SC 29408
N00193, (MAJ00024), EHD–G—Commanding Officer (Code 11), Naval Weapons Station Charleston, SC 29408–7000
N00196, 3K—Commanding Officer (Code 60), Naval Air Station, Atlanta, Marietta, GA 30060
N00197, FM—Naval Ordnance Station, Louisville, KY 40214
N00203 (MAJ00018), MCL—Commanding Officer, Naval Hospital, Pensacola, FL 32512
N00204, FN—Naval Air Station (Code 19P10), Pensacola, FL 32508
N00205, FP—Naval Support Activity (Code N443), New Orleans, LA 70146
N00206—Naval Air Station, New Orleans, LA 70146
N00207, FQ—Naval Air Station, Jacksonville, FL 32212
N00211 (MAJ00018), MCQ–S—Naval Hospital, Great Lakes, IL 60088–5230
N00213, H4—Naval Air Station, Key West, FL 33040
N00215, 3W—Naval Air Station (Code 60), Dallas, TX 75211
N00216, FR—Commanding Officer (Code 194), Naval Air Station, Bldg. 10, Corpus Christi, TX 78419
N00221, K5—Mare Island Naval Shipyard, Vallejo, CA 94592
N00228, FU—Naval Supply Center, Oakland, CA 94625
N00231—Commanding Officer, Naval Medical Clinic, Quantico, VA 22134
N00232 (MAJ00018), MCC–E—Naval Hospital, Jacksonville, FL 32214–5222
N00236, NX—Naval Air Station, Alameda, CA 94501
N00244, NW—Naval Supply Center, Naval Base, 937 North Harbor Drive, San Diego, CA 92132
N00245 (MAJ00070), LPN—Naval Station San Diego, CA 92136–5000
N00246, H5—Naval Air Station, North Island, San Diego, CA 92135
N00247, HC—Naval Training Center San Diego, CA 92133
N00249—Commanding Officer, Civil Engineer Support Office, Naval Construction Battalion Center, Port Hueneme, CA 93043
N00250, FW—Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, NY 10305
N00251, FX—Puget Sound Naval Shipyard, Bremerton, WA 98314
N00253, FY—Commanding Officer, Naval Undersea Warfare Engineering Station, Keyport, WA 98345
N00255 (MAJ00070), LPS–T, LPW–X—Naval Station Puget Sound, Seattle, WA 98115–5000
N00267 (MAJ00018), MCO–1—Commanding Officer, Naval Medical Clinic, Key West, FL 33040
N00274—Naval Air Facility, Detroit, Selfridge Air Force Base, Supply Department, Mt. Clemens, MI 48045
N00275, 3M—Naval Air Station, Glenview, IL 60026
N00276—Naval Air Station, Twin Cities, Minneapolis, MN 55450
N00281 (MAJ00062), L90–1—Commanding Officer, Fleet Combat Training Center, Atlantic Dam Neck, Virginia Beach, VA 23461

N00285 (MAJ00018), MDR—Commanding Officer, Naval Hospital, Corpus Christi, TX 78419
N00288—Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120
N00296, NY—Naval Air Station, Moffett Field, CA 94035
N00311, GA—Pearl Harbor Naval Shipyard, Box 400, Pearl Harbor, HI 96860
N00314, M7—Submarine Base, Pearl Harbor, HI 96860
N00334, N6—Naval Air Station, Barbers Point, HI 96862
N00383, GB, GC—Navy Aviation Supply Office, 700 Robbins Avenue, Philadelphia, PA 19111
N00389, KL, MM—Contracting Officer (Code 192), U.S. Naval Station (Roosevelt Roads, PR), Box 3002, FPO Miami 34051
N00406, GE—Naval Supply Center, Puget Sound, Bremerton, WA 98314
N00421, M8—Naval Air Test Center, Patuxent River, MD 20670
N00600, GG—Naval Regional Contracting Center, Washington Navy Yard, Washington, DC 20374
N00604, NQ—Naval Supply Center, Pearl Harbor, Pearl Harbor, HI 96860
N00612, GH—Commanding Officer, Naval Supply Center, RCD, Code 200M, Charleston, SC 29408
N00620, H6—Naval Air Station, Whidbey Island, Oak Harbor, WA 98277
N00639, H7—Commanding Officer, Naval Air Station, Memphis (84), Millington, TN 38054
N00651, H8—Naval Supply Depot, Subic Bay (Philippines), Box 33, FPO San Francisco, CA 96651
N00702 (MAJ00069), 8QM–N—Naval Security Group Activity, Winter Harbor, ME 04693
N00743, 8N—Commanding Officer, Naval Communication Station (Roosevelt Roads, PR), Box 3022, FPO Miami 34051
N00788—Commanding Officer, Naval Communication Unit, Washington, (Cheltenham, MC), Washington, DC 20390
N00849 (MAJ00069), 8QC–Naval Security Group Activity, Skaggs Island, Sonoma, CA 95476–5000
N00886, QB—Naval Communication Station, San Francisco, Rough and Ready Island, Stockton, CA 95203
N00927 (MAJ00063), NTA—U.S. Naval Communication Station (San Miguel), FPO San Francisco 96656–1803
N00950, 8R—Naval Communication Area, Master Station, EASTPAC, Wahiawa, HI 96786
N0417A (MAJ00025), EJA—Naval Support Facility, PO Box 1000, Thurmont, MD 21788
N0428A, 3Q—Naval Air Station, Patuxent River, MD 20670
N0429A, 3A—Naval Air Station, Point Mugu, CA 93042
N0463A, EHC—Commanding Officer, Navy Experimental Diving Unit, NAVCOASTSYSCEN, Bldg. 321, Panama City, FL 32401
V04697 (MAJ00060), LHA—USS Simon Lake, FPO Miami, FL 34085–2590
N0488A, HS—Navy Manpower Engineering Center Detachment, San Diego, CA 92147
N0597A (MAJ31699), HXP–W—Director, Office of Civilian Personnel Management, Southeast Region, Bldg A–67, Naval Base, Norfolk, VA 23511–6096
N0598A (MAJ31699), HXN—Director, Office of Civilian Personnel Management, Pacific Division, Box 119, Pearl Harbor, HI 96860–5060
N0604A (MJ31699), HXJ–L—Director, Office of Civilian Personnel Management, Northwest Region, 2890 North Main Street, Suite 301, Walnut Creek, CA 94596–2739
N0605A (MAJ31699), HXG–H—Director, Office of Civilian Personnel Management, Northeast Region, Bldg 75–3 Naval Base, Philadelphia, PA 19112–5006
N0618A (MAJ00062), 8AE—School of Music, Naval Amphibious Base, Little Creek, Norfolk, VA 23521–5240
N0619A, 8E—Naval Health Sciences Education & Training Command, NAVMEDCOM NATCAPREG, Bethesda, MD 20814
N08939—Navy Section, US Military Group (Caracas, Venezuela), Department of State, Washington, DC 20521
N09534—Navy Section, US Military Group (Lima, Peru) APO Miami 34031
N09550, 4G—Commander Fleet Air Mediterranean (Naples, Italy), FPO New York, NY 09521
N30492 (MAJ00039) NSC—David W. Taylor Naval Ship Research and Development Center Detachment Puget Sound, Bremerton, WA 98324–5215
N30776, 4N—Naval Air Station, Kingsville Auxiliary Landing Field Detachment, Orange Grove, TX 77630
N30779, 3Z—Naval Auxiliary Landing Field, Goliad, TX 77963
N30829—Officer in Charge, Naval Support Activity, Naples Detachment (Gaeta, Italy) FPO New York 09522
N30929—Commanding Officer, Navy Flight Demonstration Squadron (Blue Angels), Naval Air Station (Attn: Supply Officer), Pensacola, FL 32508
N31149 (MAJ00024), EHA—Naval Sea Logistics Center Det Philadelphia, Naval Base, Philadelphia, PA
N31699, V8,* HX,* V8Z—Office of Under Secretary of the Navy, Washington, DC 20350–1000
N31701 (MAJ31699), V80–1—Assistant Secretary of the Navy (Shipbuilding & Logistics) Washington, DC 20360–5000
N31863—Director, Naval Audit Service, Capital Region, P.O. Box 1206, Falls Church, VA 22041
N31954 (MAJ00062), ROX—Submarine Training Facility, San Diego, CA 92106
N32525, 8S—U.S. Naval Communication Detachment, Naples Detachment (Sigonella, Italy), FPO New York 09523
N32778 (MAJ00070), 4LE—Fleet Activities, China (Korea) FPO San Francisco 96769–1100
N32832 7K—Naval Aviation Logistics Center European Repair and Rework Activity Representative (Alverca, Portugal) APO New York, NY 09265
N32960 K2—Navy Support Office, La Maddelena (Sardinia Italy) FPO New York 09533
N3317—Naval Intelligence Operations Group DET CTG 168.4 (Munich, Germany) APO New York 09108
N39167—Commanding Officer Naval Brach Medical Clinic Naval Air Station Meridian, MS 39309
N39353, GV—Commanding Officer, Integrated Combat Systems Test Facility, San Diego, CA 92152
N41756, LE—Navy Engineering Logistics Office Washington, DC 20000
N42237, 7A—Commanding Offier, Naval Submarine Base, Code N411, Kings Bay, GA 31547
N44405 (MAJ00062), 8AA—Antilles Consolidated School System, Box 3200 (Roosevelt Roads, PR), FPO Miami 34051
N44416 (MAJ00023), 4JL—Navy Publishing and Printing Service Northern Area, 700 Robbins Avenue, Philadelphia, PA 19111–5093
N44930 KN—Intra-Fleet Supply Support Operations Program Norfolk, VA 23512
N44967 KP—Naval Sea Systems Command Detachment (PERA CSS) San Francisco, CA 94124–2995
N45045 (MAJ31699) V8A—Navy Comptroller Standard Systems Activity Det. Raleigh Oaks Plaza Office Bldg 3606 Austin Peay Highway Memphis, TN 38128–3757
N45406 LD—Officer in Charge, Naval Sea Systems Command Detachment (PERA CV), Bremerton, WA 98310–0206
N45411 (MAJ00070) LPE—Assault Craft #5, MCB Camp Pendleton, CA 92055–5003
N45854 V1—Fleet Surveillance Support Command, Chesapeake, VA 23322–5010

N46079—Military Sealift Command

N57100 (MAJ00070) LPO–1—Naval

Commissary Div., Naval Air Station,

N46079—Military Sealift Command Office, Northern Europe (Bremerhaven, Germany) APO New York 09069-0006
N46450 L5 Naval Supply Center, Charleston Detachment Naval Submarine Base Kings Bay, GA 31547
N46531 (N31699) HXO-E—Office of Civilian Personnel Management National Capital Region 801 N. Randolph Street Arlington, VA 22203
N46656 NP—Telecommunication Management Detachment West, 937 North Harbor Drive San Diego, CA 92132-5104
N46657 (MAJ00063) NTO-NT1—Telecommunication Management Detachment Pacific Wahiawa, HI 96786-3050
N46658 LQ—Telephone Management Detachment East Wards Corner Executive Center, Suite 222 138 E. Little Creek Road Norfolk, VA 23505
N46659 KJ—Telephone Management Detachment Europe (Naples, Italy) FPO New York 09524
N46904, JO—Commanding Officer, Precommissioned Unit, Antisubmarine Warfare Training Group, Atlantic, Bldg CEP 104, Naval Station, Norfolk, VA 23511-6495
N52846 (MAJ00019) EFA-B—Naval Aviation Depot Operations Center European Repair and Rework Activity (Naples, Italy) FPO New York 09521
N52855 LZ—Special Boat Unit 11 FPO San Francisco 96601-4517
V53210 (MAJ00060) LHJ-K—Assault Craft Unit 2, Naval Amphibious Base, Little Creek Norfolk, VA 23520
N53825 GY—Naval Surface Force, US LANTFLT, Norfolk, VA 23511-6002
V55322 (MAJ00060) LHN—Explosive Ordnance Disposal Group Two, Fort Story, VA 23459-5024
R55418 (MAJ00070) V50—Naval Support Force Antarcica, Detachment Christchurch (Christchurch, New Zealand) FPO San Francisco 96690
N57012 GQ—Commander Naval Air Force, U.S. Atlantic Fleet Naval Air Station, Norfolk, VA 23511
N57007, VO—Commander, Middle East Force (Jufair, Bahrair), FPO New York 09501-6008
N57023, GT—Commander, Operational Test and Evaluation Force, Naval Base, Norfolk, VA 23511
N57032—Naval Air Facility (Mildenhall, UK) FPO New York 09127
N57053 (MAJ00070) LPQ—Naval Facility, Centreville Beach, Ferndale, CA 95536-9766
N57075 (MAJ00060) LH9—Commanding Officer, Naval Facility Argentia (Canada) FPO New York 09597-1051
N57095 (MAJ00060) LHO-LHI—Atlantic Fleet Headquarters Support Activity, CINLANTFLEET, Norfolk, VA 23511
N57100 (MAJ00070) LPO-1—Naval Special Warfare Group One NAVPHIBASE Coronado San Diego, CA 92155
N60002—Commanding Officer, Naval Hospital, Millington, TN 38054
N60028 QC—Naval Station, Treasure Island, San Francisco, CA 94130
N60036, QD—Naval Weapons Station, Concord, CA 94520
N60042 (MAJ00070) LPU—Naval Air Facility, El Centro, CA 92243
N60050, HD—Marine Corps Air Station, El Toro, Santa Ana, CA 92709
N60087, 3P—Naval Air Station, Burnswick, ME 04011
N60169, WO—Commanding Officer, Marine Corps Air Station, Beaufort, SC 29904
N60191, 4A—Naval Air Station, Oceana Virginia Beach, VA 23460
N60200, 3G—Commanding Officer, Naval Air Station, Cecil Field, FL 32215
N60201, L7—Commanding Officer, Naval Station, P.O. Box M, Mayport, FL 32228
N60211, 3D—Naval Auxiliary Landing Field, Crows Landing, CA 95313
N60234, 4R—Naval Air Station, Whiting Field, OLF Saufley Field, Pensacola, FL 32508
N60241, 3X—Commanding Officer, Naval Air Station, Bldg. 2701, Kingsville, TX 78363
N60258, GK—Long Beach Naval Shipyard, Long Beach, CA 90801
N60259, H9—Naval Air Station, Miramar San Diego, CA 92145-5000
N60268 (MAJ62980) MQO-1—Navy Recruiting District Chicago, Glenview, IL 60026-5200
N60376, 3Y—Commanding Officer, Naval Air Station, Chase Field, Beeville, TX 78103
N60462, WE—Naval Air Station, Adak (Alaska), FPO Seattle, WA 98791-1200
N60478, 3C—U.S. Naval Weapons Station, Earle, Colts Neck, NJ 07722
N60495, 3T—Naval Air Station, Fallon, NV 89406
N60508, 4Q—Commanding Officer, Naval Air Station, Whiting Field, Milton, FL 32570
N60514, GL—Commanding Officer, Naval Station (Guantanamo Bay, Cuba), Box 33, FPO New York 09593
N60530, GM—Naval Weapons Center, China Lake, CA 93555
N60656, GN—Navy Resale Activity, Naval Station, Annapolis, MD 21402
N60663, GR—Officer in Charge, Navy Resale Activity, Commissary Support Office, Naval Base, Bldg 2600, Great Lakes, IL 60088
N60666, GS—Navy Resale Activity, Naval Air Station, Key West, FL 33040
N60676, GX—Navy Resale and Services Support Office, Field Support Office Commissary Div., Naval Air Station, Mechanicsburg, PA 17055
N60681, HA—Commissary Store Division, NAVRESSOFSO, Naval Station, San Diego, CA 92136
N60693, HB—Navy Resale Activity, Commissary Support Office, Naval Base Pearl Harbor, Box 110, Pearl Harbor, HI 96860
N60701, 4M—Naval Weapons Station, Seal Beach, CA 90740
N60865, (MAJ00070), V5X—Naval Forces, Marianas (Guam), FPO San Francisco 96630
N60872 (MAJ00070), V5T—Naval Magazine (Guam), FPO San Francisco 96630-1300
N60895, HF—Commissary Store Division, NAVRESSOFSO, Naval Air Station, Alameda, CA 94501
N60921, HG, FH—Commander, Naval Surface Weapons Center, Headquarters, Dahlgren, VA 22448
N60935, HH—Commissary Store Div, NAVRESSOFSO, Naval Air Station, Jacksonville, FL 32212
N60936, HJ—Navy Resale Activity Commissary Region Support Office, Naval Air Station, Pensacola, FL 32508
N60937, HK—Navy Resale Activity Det Commissary Store, Naval Support Activity, New Orleans, LA 70140
N60938, HL—Navy Resale Activity, Commissary Support Office, Naval Air Station, Corpus Christi, TX 78419
N60939, HM—Navy Resale Activity Commissary Store, Naval Air Station, Memphis 32, Millington, TN 38054
N60951 (MAJ00060), LHU—Fleet Accounting and Disbursing Center, U.S. Atlantic Fleet, Norfolk, VA 23511-6096
N61115, HN—Navy Resale Activity, Submarine Base, New London, Groton, CT 06340
N61119, HP—Naval Supply Depot, Guam, FPO San Francisco, CA 96630
N61165, NN—Supply Officer, Bldg NS46, Naval Station, Charleston, SC 29408-5000
N61174, 7B—Naval Station, New York, Brooklyn, NY 11251
N61189—Naval Station, Philadelphia, PA 19112
N61217, HQ—Navy Resale Activity, Naval Air Station, Bermuda, FPO New York 09560
N61331, HR—Commanding Officer, Naval Coastal Systems Center, Panama City, FL 32407
N61337, HO—Commanding Officer, Naval Hospital, Beaufort, SC 29904
N61339, HT—Commanding Officer, Naval Training Systems Center (N-601), Orlando, FL 32826-3275
N61414, 4B—Naval Amphibious Base, Little Creek Norfolk, VA 23521

N61463, (MAJ00060), LHC—Naval Base, Norfolk, VA 23511-6002
N61466, Commander, Naval Base, Bldg NH48, Charleston, SC 29408
N61510, HU—Navy Resale Activity, Naval Station, Guam, Box 179, FPO San Francisco, CA 96630
N61533, HW—David W. Taylor Naval Ship Research and Development Laboratory, Annapolis, MD 21402
N61564, FS—Naval Hospital, NAVBASE (Guantanamo Bay, Cuba) FPO New York 09593
N61577 (MAJ00070), V5P—Naval Air Station, Agana (Guam), Box 60, FPO San Francisco 96630-1200
N61581, (MAJ00070), 4LT—Fleet Activities (Yokosuka, Japan) FPO, Seattle, 98762-1100
N61685 (MAJ00065), SOA—Naval Oceanography Command Center (Guam), Box 12, FPO San Francisco 96630-2926
N61726, QL—Naval Hospital, Naval Submarine Base, New London, Groton, CT 06349
N61751 (MAJ00018), MCN, Naval Medical Research Unit No. 3, Cairo (Egypt), FPO New York 09527-1600
N61755 (MAJ00070), V5E—Naval Station (Guam), FPO San Francisco 96630-1000
N61762, HY—Naval Ordnance Missile Test Facility, White Sands Missile Range, NM 88002
N62021, 7V—Naval Amphibious Base, Coronado, San Diego, CA 92155
N62161, HZ—Navy Resale Activity Det, Rough and Ready Island, Stockton, CA 95203
N62190—Commanding Officer, Naval Research Laboratory, Underwater Sound Reference Detachment, P.O. Box 8337, Orlando, FL 32856
N62191 (MAJ00062), L97—Commanding Officer, Naval Reserve Officers Training Corps and Naval Administrative Unit, Room 20E-125, Massachusetts Institute of Technology, Cambridge, MA 02139
N62254 (MAJ00070), 4LX—Commander Fleet Activities, Okinawa, Naval Air Facility, Kadena (Ryukyu Islands Southern), Box SU/CR, FPO Seattle 98770-1100
N62269, JC—Commander, Naval Air Development Center, Johnsville, Warminster, PA 18974
N62271, QE—Naval Postgraduate School, Monterey, CA 93940
N62285 (MAJ00065), S00-S01—Naval Observatory, Washington, DC, 34th and Massachusetts Avenue NW., Washington, DC 20390-5100
N62306, 7C—Commanding Officer (Code 4410), Naval Oceanographic Office, National Space Technology Laboratory, Bay St. Louis, MS 39552
N62367 (MAJ00023), 4JC—Navy Clothing and Textile Research Facility, 21 Strathmore Road, Natick, MA 01760-2490
N62376, 4K—Commanding Officer, Naval Air Propulsion Center, P.O. Box 7176, Trenton, NJ 08628
N62381, JG—Military Sealift Command, Atlantic, Military Ocean Terminal, Building 42, Bayonne, NJ 07002
N62382, Military Sealift Command Office, Gulf Subarea, 4400 Dauphin Street, New Orleans, LA 70146
N62383, JH—Military Sealift Command, Pacific, Naval Supply Center, Oakland, CA 94625
N62387, Commander, Military Sealift Command (Code M10-3), 4228 Wisconsin Avenue, Washington, DC 20016
N62395, JK—Navy Public Works Center, Mariana Island Guam (U.S.), FPO San Francisco 96630-2937
N62404, JJ—Military Sealift Command, Far East, (Yokahama, Japan), FPO Seattle 98760
N62410 (MAJ62980), MQ6—Navy Recruiting District, P.O. Box 8667, Albuquerque, NM 87198-8667
N62412 (MAJ62980), MLR—Commanding Officer, Navy Recruiting District, Perry Hill Office Park, 3815 Interstate Court, Montgomery, AL 36109-5294
N62415 (MAJ62980) MLX—Commanding Officer, Navy Recruiting District, Strom Thurmond Federal Bldg., Suite 771, 1835 Assembly Street, Columbia, SC 29201-2430
N62416, NV—Navy Recruiting District Columbus Room 609, Federal Bldg., 200 North High Street, Columbus, OH 44142-2474
N62419—Commanding Officer, Navy Recruiting District, Melrose Bldg., 1121 Walker Street, Houston, TX 77002
N62422—Commanding Officer, Navy Recruiting District, 2974 Woodcock Drive, Jacksonville, FL 32207
N62423—Commanding Officer, Navy Recruiting District, 301 Center Street, Little Rock, AR 72201
N62425—Commanding Officer, Navy Recruiting District, 1808 West End Ave., Suite 1312, Nashville, TN 37203
N62427—(MAJ62980) MLP—Navy Recruiting District Omaha, Overland-Wolf Bldg, 6910 Pacific Omaha, NE 68106
N62429 (MAJ62980) MLE—Navy Recruiting District Portland, 1220 SW Third Avenue, Suite 576, Portland, OR 97204
N62430—Commanding Officer, Navy Recruiting District, 1001 Navaho Drive, Raleigh, NC 27609
N62437 (MAJ62980) MQ4—Commanding Officer, Navy Recruiting District, 918 So. Ervay Street, Dallas, TX 75201
N62438 (MAJ62980) MLQ—Navy Recruiting District Denver, Capital Life Center, 3rd Floor, 1600 Sherman Street, Denver, CO 80203-1668
N62440 (MAJ62980)—Navy Recruiting District, 2420 Broadway, Kansas City, MO 64108
N62441 (MAJ62980) MLG—Navy Recruiting District Los Angeles, 5051 Rodeo Road, Los Angeles, CA 90016
N62442—Commanding Officer, Navy Recruiting District Atlanta, 612 Tinker Street, Suite C, Marietta, GA 30060
N62443 (MAJ62980) MLV—Navy Recruiting District, Federal Office Bldg., 2nd & Washington Avenues, S., Minneapolis, MN 55401
N62444—Commanding Officer (Code 602-2C), Navy Recruiting District, 4400 Dauphine Street, New Orleans, LA 70146
N62448 (MAJ62980) MLN—Navy Recruiting District San Francisco, 1500 Broadway, Room 210, Oakland, CA 94612-1430
N62449 (MAJ62980) MLC—Navy Recruiting District Seattle, Naval Station, Bldg. 30, Seattle, WA 98115-5105
N62467, JM—Commanding Officer, Naval Facilities Engineering Command, Southern Division, (SOUTHNAVFACENGCOM), 2155 Eagle Drive, P.O. Box 10068, Charleston, SC 29411-0068
N62470, JN—Naval Facilities Engineering Command, Atlantic Division, Norfolk, VA 23511
N62471, N7—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Mid-Pacific, Pearl Harbor, HI 96860
N62472, JP—Naval Facilities Engineering Command, Northern Division, U.S. Naval Base, Philadelphia, PA 19112
N62474, JR—Naval Facilities Engineering Command, Western Division, San Bruno, CA 94066
N62477, JU—Naval Facilities Engineering Command, Chesapeake Division, Washington Navy Yard, Washington, DC 20390
N62481, N8—Naval Air Station, Bermuda, FPO New York 09560
N63507 (MAJ00070) 4LJ—Commanding Officer, Naval Air Facility, Atsugi, Japan Box 3, FPO Seattle 98767-1200
N62522 JV—Military Sealift Command, Europe (London, UK) Box 3, FPO New York 09510-3700
N62535, HE—Marine Corps Air Station (HELO) Tustin, CA 92710
N62537—Military Sealift Command, Mediterranean Sub-Area (Naples, Italy), Box 23, FPO New York 09521-0609
N62538, K1—Military Sealift Command Office, NSC Bldg Y100A, Norfork, VA 23512
N62539—Military Sealift Command Office, United Kingdom (London, UK) Box 28, FPO New York 09510-3700

N62573, K8—Marine Corps Air Station, New River Plaza, Jacksonville, NC 28540
N62576 (MAJ00023), 4JG—Navy Publishing and Printing Service, 700 Robbins Avenue, Philadelphia, PA 19111–5094
N62578, J2—Naval Construction Battalion Center, Davisville, RI 02854
N62583, J3—Naval Construction Battalion Center, Port Heuneme, CA 93041
N62585, K3—Commander, Naval Activities, United Kingdom, (London, UK), FPO New York 09510
N62586 (MAJ00070), V5A—Naval Ship Repair Facility (Guam), FPO San Francisco 96630–1400
N62588, NR—Naval Support Activity, Naples (Italy), FPO New York 09521
N62593—Director, Navy Publications & Printing Services Det Office, Southeast Div., 4400 Dauphine St., Unit 601–3–B, New Orleans, LA 70146
N62603—Commanding Officer, Fleet & Mine Warfare Training Center, Naval Base, Bldg 647, Charleston, SC 29408
N62604, J4—Commanding Officer, Naval Construction Battalion Center, Gulfport, MS 39501
N62613 (MAJ00027), MUE—Commanding Officer, Marine Corps Air Station, (Iwakuni, Japan), FPO Seattle 98764–5001
N62645, EG—Naval Medical Materiel Support Command, Fort Detrick, Frederick, MD 21701–5015
N62649, JY—Naval Supply Depot, Yokosuka (Japan), FPO Seattle 98762
N62651—Director, Navy Publications & Printing Service Detachment Office, Southeast Division, Pensacola, FL 32508
N62653—Director, Navy Publications & Printing Service Office, Southeast Division, Bldg. 1628, Naval Base, Charleston, SC 29408
N62654 (MAJ00019), EFE—Naval Weapons Evaluation Facility, Kirtland AFB, Albuquerque, NM 87117
N62665, JQ—Supervisor of Shipbuilding, Conversion and Repair, USN, Barnes Building—6th Floor, 495 Summer Street, Boston, MA 02210
N62670, 8B—Supervisor of Shipbuilding, Conversion and Repair, USN, Drawer T, Mayport Naval Station, Jacksonville, FL 32228
N62673, 8P—Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Base, Charleston, SC 29408
N62678, 8C—Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 215, Portsmouth, VA 23705
N62688, GW—Naval Station, Naval Base, Norfolk, VA 23511–6002
N62695—Auditor General of the Navy, Naval Audit Services Headquarters, P.O. Box 1206, Falls Church, VA 22041
N62700 (MAJ00023), 4JJ—Navy Publications and Printing Service Detachment Office, Northern Division, Bldg 2A, Great Lakes, IL 60088–5708
N62703 (MAJ00023), 4JA—Navy Publications and Printing Service Detachment Office, Bldg 530, Puget Sound Naval Shipyard, Bremerton, WA 98314
N62705 (MAJ00023), 4JN—Navy Publications and Printing Service Detachment Office, Naval Supply Center, Oakland, CA 94625–5045
N62706, JS—Navy Publications and Printing Service Office, Western Division, Bldg. 154, San Diego, CA 92136–5148
N62735 (MAJ00070), 4LP—Commander, Fleet Activities, (Sasebo, Japan), FPO Seattle 98766–1100
N62741, MB—Commanding Officer, Navy Supply Corps School, Code 60, Athens, GA 30606
N62742, KB—Naval Facilities Engineering Command, Pacific Division, Pearl Harbor, HI 96860
N62745—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Mediterranean (Madrid, Spain), APO New York 09285
N62755, J7—Commanding Officer, Navy Public Works Center, Pearl Harbor, HI 96860–5470
N62766, L1—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts (Guam), FPO San Francisco, CA 96630
N62770 (MAJ00070), LPJ–L—Naval Ship Repair Facility (Subic Bay, Philippines), Box 34, FPO San Francisco 96651–1400
N62786, ER—Supervisor of Shipbuilding, Conversion and Repair, USN, 574 Washington Street, Bath, ME 04530–0998
N62789, L8—Supervisor of Shipbuilding, Conversion and Repair, USN, Groton, CT 06340
N62791, NU—Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Station, Box 119, San Diego, CA 92136–5119
N62793, 4T—Supervisor of Shipbuilding, Conversion and Repair, USN, Newport News, VA 23607–2785
N62794, 7D—Supervisor of Shipbuilding, Conversion and Repair, USN, Flushing & Washington Avenues, Brooklyn, NY 11251–9000
N62795, 7F—Supervisor of Shipbuilding, Conversion and Repair, USN, Pascagoula, MS 39568–2210
N62798, 4X—Supervisor of Shipbuilding, Conversion and Repair, USN, San Francisco, CA 94124–2996
N62799, 7M—Supervisor of Shipbuilding, Conversion and Repair, USN, Seattle, WA 98115–5001
N62806 (MAJ00025), FZO—Public Works Center, Subic Bay (Luzon, Republic of the Philippines), FPO San Francisco 96651–2900
N62832—Naval Activities, Rota, Spain, FPO New York 09540
N62836, L4—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Far East, Yokosuka, Box 61, FPO Seattle, WA 98762
N62841 (MAJ00030), EKA—Commanding Officer, Naval Ordnance Test Unit, Cape Canaveral, FL 32920–1623
N62844, KO—Naval Imaging Command, Washington Navy Yard, Washington, DC 20350–2000
N62849 (MAJ00019), EFC—Naval Aviation Engineering Service Unit, Philadelphia, PA 19112–5088
N62852—Naval Electronic System Security Engineering Center, Naval Security Station, 3801 Nebraska Avenue, NW, Washington, DC 20390
N62856 (MAJ00060), LHW–X—Naval Air Facility (Lajes, Azores), APO New York 09406–5000
N62861, KD—Naval Plant Representative Office, General Dynamics, PO Box 2505, Pomona, CA 91766
N62863, K4—Naval Station, Rota, Spain, FPO New York 09540
N62864, L2—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Southwest Pacific (Manila, Philippines), APO San Francisco, CA 96528
N62892 (MAJ00069), 6QA—Commanding Officer, Naval Security Group Activity, Site "B", Card Sound Road, Homestead, FL 33039–6428
R62894 (MAJ00070), 4LA—Commander, U.S. Naval Forces Korea (Yongsan, South Korea), APO San Francisco, CA 96301–0023
N62907, KG—Naval Plant Representative Office, Applied Physics Laboratory, Johns Hopkins Road, Laurel, MD 20810
N62908, 8D—Naval Weapons Engineering Support Activity, Washington Navy Yard, Washington, DC 20374
N62911 (MAJ62980)—Navy Recruiting Area One, Scotia, NY 12302–9462
N62913 (MAJ62980), MLL—Commander, Naval Recruiting Area Three, 451 College Street, PO Box 4887, Macon, GA 31208–4887
N62917 (MAJ62980), MLO–1—Commander, Navy Recruiting Area Seven, 1499 Regal Row, Suite 501, Dallas, TX 75247
N62918 (MAJ62980), MLA—Navy Recruiting Area Eight, 7677 Oakport

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Street, Suite 650, Oakland, CA 94621–1929
N62921, KH—Naval Plant Representative Office (Special Projects), Lockheed Missiles & Space Co., PO Box 504, Sunnyvale, CA 94088
N62922, 7W—Resident Officer in Charge of Construction, Pacific, Department of the Navy, PO Box 416, San Bruno, CA 94067
N62938, KK—Naval Plant Representative Office, Grumman Aerospace Corp., Bethpage, L.I., NY 11714
N62974, JB—Marine Corps Air Station, Yuma, AZ 85364
N62980, ML*, MQ*, MLZ—Naval Military Personnel Command, Washington, DC 20370
N62990, L3—Supervisor of Shipbuilding, Conversion and Repair, USN, PO Box 26, Sturgeon Bay, WI 54235
N62995, 4H—Naval Air Station, Sigonella (Italy) FPO New York 09523
N63005, Commanding Officer, Administrative Support Unit, Bahrain, FPO New York 09526
N63007 (MAJ00060) LHS—Nuclear Weapons Training Group, Atlantic, Norfolk, VA 23511
N63015, 7Y—Naval Education and Training Support Center, Pacific, Fleet Station PO Bldg, San Diego, CA 92132
N63026, (MAJ00027), MUJ—Marine Corps Air Station (Futenma, Japan), FPO Seattle 98772–5001
N63028, U2—Polaris Missile Facility Atlantic, Charleston, SC 29408
N63032, KS—U.S. Naval Station Keflavik (Iceland), FPO New York 09571
N63038, 8M—U.S. Naval Communication Unit, Cutler, East Machias, ME 04630
N63042, NZ—Naval Air Station, Lemoore, Ca 93245
N63043, 3S—Commanding Officer, Naval Air Station, Meridian, MS 39301
N63051—Commanding Officer, Naval Investigative Service, Southeast Region, Naval Base, Bldg NH 53, Charleston, SC 29408
N63053—Commanding Officer, Naval Investigative Service Office, P.O. Box 6438, New Orleans, LA 70174
N63058 (MAJ00011), LBC—Naval Investigative Service, Northwest Region, Bldg 7, NAVSTA Treasure Island San Francisco, CA 94130
N63073—U.S. Naval Security Group Activity RAF, Edzell UK, FPO New York 09518
N63080, KT—Navy Resale Activity, Chinhae (South Korea), FPO Seattle, WA 98769
N63082—Commanding Officer, Naval Technical Training Center Corry Station (Code 4480), Pensacola, FL 32511
N63110—Commanding Officer, Chief of Naval Air Training (Code N–73), Naval Air Station, Corpus Christi, TX 78419
N63111—Commanding Officer, Cheif of Naval Technical Training, Naval Air Station, Memphis, Millington, TN 38054
N63124—Supervisor of Shipbuilding, Conversion and Repair, USN, New Orleans, LA 70146
N63134, 7R—Fleet Numerical Oceanography Center, Monterey, CA 93940
N63136—Navy Section, U.S. Military Group, Argentina (Buenos Aires), Department of State, Washington, DC 20521
N63143, 8K—Naval Communication Station (Keflavik, Iceland), Box 22, FPO New York 09571
N63152, GZ—Fleet Combat Direction Systems Support Activity, San Diego, CA 92147–5081
N63165, 7U—Navy Regional Data Automation Center, Washington, Washington Navy Yard, Washington, DC 20374
N63182, 8T—Naval Communication Station (Rota, Spain), FPO New York 09539
N63204, KV—Naval Plant Representative Office, Goodyear Aerospace Corp., Akron, OH 44305
N63209 (MAJ00062), L9A—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of New Mexico, Albuquerque, NM 87106
N63210 (MAJ00062), L9B—Commanding Officer, Naval Reserve Officers Training Corps Unit, Iowa State University of Science and Technology, Ames, IA 50011–3010
N63211 (MAJ00062), L9C—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Michigan, Ann Arbor, MI 48109–1085
N63212 (MAJ00062), L9G—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Texas at Austin, Austin, TX 78712
N63213 (MAJ00062), L9J—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of California, Berkeley, CA 94720–0001
N63214 (MAJ00062) L9M—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Colorado, Box 374, Boulder, CO 80309–0374
N63215 (MAJ00062) L9U—Commanding Officer, Naval Reserve Officers Training Corps Unit, Illinois Institute of Technology, 3300 S. Federal Street, Chicago, IL 60616–3793
N63216 (MAJ00062) L9W—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Missouri, Columbia, MO 65201
N63217 (MAJ00062) L9Z—Commanding Officer, Naval Reserve Officers Training Corps Unit, Oregon State University, Corvallis, OR 97331
N63218 (MAJ00062) ROB—Commanding Officer, Naval Reserve Officers Training Corps Unit, Northwestern University, Evanston, IL 60201
N63219 (MAJ00062) ROE L99—Commanding Officer, Naval Reserve Officers Training Corps Unit, Rice University, P.O. Box 1892, Houston, TX 7701
N63220 (MAJ00062) ROL—Commanding Officer, Naval Reserve Officers Training Corps Unit, UCLA, Men's Gym, Room 123, 405 Milgard Avenue, Los Angeles, CA 90024–1399
N63221 (MAJ00062) 8AB—Commanding Officer, Naval Reserve Officers Training Corps Unit, PED 101, University Park MC 0654, University of Southern California, Los Angeles, CA 90089–0654
N63222 (MAJ00062) ROH—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Kansas, Lawrence, KS 66044
N63223 (MAJ00062) ROK—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Nebraska, Lincoln, NE 68508
N63224 (MAJ00062) 8AD—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Wisconsin, 1610 University Avenue, Madison, WI 53705
N63225 (MAJ00062) 8AH—Commanding Officer, Naval Reserve Officers Training Corps Unit, Marquette University, Milwaukee, WI 53233
N63226 (MAJ00062) 8AJ—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Minnesota, Minneapolis, MN 55455–0108
N63227 (MAJ00062) 8AK—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Idaho, Moscow, ID 83843–3244
N63228 (MAJ00062) 8AM—Commanding Officer, Naval Reserve Officers Training Corps Unit, Tulane University, New Orleans, LA 70118
N63229 (MAJ00062) 8AN—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Oklahoma, Norman, OK 73019
N63230 (MAJ00062) 8AR—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Notre Dame, Notre Dame, IN 46556–5601
N63231 (MAJ00062) 8AW—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Utah, Salt Lake City, UT 84112–1107
N63232 (MAJ00062) 8AY—Commanding Officer, Naval Reserve Officers

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Training Corps Unit, University of

Training Corps Unit, University of

N63352, KE—Navy Resale Activity Det

N64181 (MAJ00062), ROW—Department

Fiscal & Supply Service, Code 32C,

Training Corps Unit, Prairie View

Training Corps Unit, University of Washington, Seattle, WA 98195

N63234 (MAJ00062) L9Q—Commanding Officer, Naval Reserve Officers Training Corps Unit, 505 East Armory Street, University of Illinois, Champaign, IL 61820–6288

N63235 (MAJ00062) RO5—Commanding Officer, Naval Reserve Officers Training Corps Unit, Purdue University, West Lafayette, IN 47907–0001

N63273, 4S—Fleet Combat Direction Systems Support Activity, Dam Neck, Virginia Beach, VA 23461

N63274, 4F, 4W—Naval Electronic Systems Engineering Center, Vallejo, CA 94592

N63282, KZ—Naval Plant Representative Office, Lockheed Aircraft Corp., Burbank, CA 91503

N63285 (MAJ00011) LBO—Naval Security and Investigative Command, Washington, DC 20388

N63290 (MAJ00062) R00–R01—Commanding Officer, Combat Systems Technical Schools Command, Mare Island, Vallejo, CA 94592

N63291 (MAJ00062) ROF—Commanding Officer, Naval Reserve Officers Training Corps Unit, Barton Hall, Cornell University, Ithaca, NY 14853

N63294 (MAJ00062) 8AV—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Rochester, Rochester, NY 14627

N63295 (MAJ00062) ROM—Commanding Officer, Naval Reserve Officers Training Corps Unit, Rensselaer Polytechnic Institute, Troy, NY 12180–3590

N63296 (MAJ00062) L9F—Commanding Officer, Naval Reserve Officers Training Corps Unit, Auburn University, Auburn, AL 36830

N63299 (MAJ00062) ROA—Commanding Officer, Naval Reserve Officers Training Corps Unit, Duke University, Durham, NC 27706

N63301 (MAJ00062) L9D—Commanding Officer, Naval Reserve Officers Training Corps Unit, Georgia Tech, Atlanta, GA 30313

N63303 (MAJ00062) ROV—Commanding Officer, Naval Reserve Officers Training Corps Unit, College of the Holy Cross, Worcester, MA 01610–2389

N63306 (MAJ00062) 8AS—Commanding Officer, Naval Reserve Officers Training Corps Unit, Miami University, Oxford, OH 45056–1698

N63307 (MAJ00062) RON—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Mississippi, Box 69, University, MS 38677

N63308 (MAJ00062) L9R—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of North Carolina, Chapel Hill, NC 27515

N63309 (MAJ00062) L9Y—Commanding Officer, Naval Reserve Officers Training Corps Unit, The Ohio State University, Columbus, OH 43210–1169

N63310 (MAJ00062) ROP—Commanding Officer, Naval Reserve Officers Training Corps Unit, Wagner Bldg., The Pennsylvania State University, University Park, PA 16802

N63311 (MAJ00062) 8AT—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Pennsylvania, Philadelphia, PA 19104

N63313 (MAJ00062) L9X—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of South Carolina, Columbus, SC 29208

N63315 (MAJ00062) 8AL—Commanding Officer, Naval Reserve Officers Training Corps Unit, Vanderbilt University (Westside Hall), Nashville, TN 37240

N63316 (MAJ00062) ROR—Commanding Officer, Naval Reserve Officers Training Corps Unit, Villanova University, Villanova, PA 19085–1699

N63317 (MAJ00062) L9T—Commanding Officer, Naval Reserve Officers Training Corps Unit, Maury Hall, University of Virginia, Charlottesville, VA 22903–3194

N63325, 7X—Naval Education & Training Support Center, Atlantic Bldg. Z–86, Naval Station, Norfolk, VA 23511

N63331, LF—Naval Plant Representative Office, United Technologies Corp., Sikorsky Aircraft Div., Stratford, CT 06497

N63339, LL—Navy Resale Activity, Naval Station, Adak (Alaska), FPO Seattle, WA 98791

N63340, LM—Navy Resale Activity, Naval Station, Argentina (Canada), FPO New York 09597

N63341, LN—Naval Resale Activity Det. Commissary Store, Naval Air Station, Chase Field, Beeville, TX 78102

N63344, LR—Navy Commissary Store Region, Naval Station, Charleston, SC 29408

N63345, LS—Navy Resale Activity, Naval Station, Guantanamo Bay (Cuba), FPO New York 09598

N63346, LT—Navy Resale Activity, Naval Station, Keflavik (Iceland), FPO New York 09571

N63348, LV—Navy Resale Activity, Det Commissary Store, Naval Air Station, Kingsville, TX 78364

N63349, LW—Navy Resale Activity, Naval Air Station, Lemoore, CA 93246

N63350, 3L—Navy Resale Activity, COMNAVACT, Dunstable, UK, FPO New York 09510

N63351, LY—Navy Commissary Store Region, Naval Station, Long Beach, CA 90802

N63352, KE—Navy Resale Activity Det Commissary Store, Naval Air Station, Meridian, MS 39301

N63353, MA—Officer in Charge, Navy Resale Activity, Commissary Support Office, Naval Support Activity, Naples (Italy), FPO New York 09521

N63357, ME—Navy Resale Activity, Naval Station, Rota (Spain), FPO New York 09540

N63362, MK—Officer in Charge, Navy Resale Activity, Commissary Support Office (Subic Bay, Philippines), P.O. Box 28, FPO San Francisco 96651

N63365, MN—Navy Resale Activity, Commissary Support Office (Yokosuka, Japan), Box 33, FPO Seattle 98762

N63367, MP—Officer in Charge, Commissary Div., Navy Resale and Services Support Office, Field Support Office, Norfolk, VA 23511

N63369—Military Sealift Command Office, Benelux (Rotterdam, Netherlands), APO New York 09159

N63381 (MAJ00011), LBA—Joint U.S. Military Advisory Group, Thailand, APO San Francisco 96346

N63387, JD—Navy Public Works Center, Naval Base, San Diego, CA 92136

N63394, L6—Naval Ship Weapon Systems Engineering Station, Port Huenueme, CA 93043

N63395, 8L—U.S. Naval Communication Station Thurso (Caithness, UK), FPO New York 09516

N63402, K7—Commanding Officer, Strategic Weapons Facility, Pacific, Bremerton, WA 98383

N63406, HV—Navy Material Transportation Office, Norfolk, VA 23511–6691

N63410, KA—Navy Manpower and Material Analysis Center, Atlantic, Norfolk, VA 23511

N63427, 8F—U.S. Naval Communication Station, Harold E. Holt, Exmouth, Western Australia, FPO San Francisco 96680

N63429, MH—Naval Communication Unit London (UK), FPO New York 10000

N63439, K9—Naval Ophthalmic Support and Training Activity, Yorktown, VA 23690

N63821 (MAJ00039), NSA–B—Officer in Charge, Naval Underwater Systems Center, AUTEC Andros Range Detachment, Andros Island, Bahama Islands, FPO New York 09559

N63886 (MAJ00069), 8QO–1—Naval Security Group Activity (Adak, AK), FPO Seattle 98777

N63891 (MAJ00069), 8QG—Naval Security Group, Northwest, Chesapeake, VA 23322

N64165 (MAJ00062), ROZ—Naval Unit, Lowry Air Force Base, CO 80230

N64181 (MAJ00062), ROW—Department of Naval Science, Texas Maritime Academy, Galveston, TX 77553–1675

N64267, M9—Naval Weapons Station, Seal Beach Detachment, Fleet Analysis Center, Corona Annex, Corona, CA 91720

N64281, 3U, KX—Commanding Officer, Naval Sea Combat Systems Engineering Station, Naval Station, Norfolk, VA 23511

N64356, KF—Commanding Officer, Naval Administrative Command, Armed Forces Staff College, Norfolk, VA 23511–6097

N64980—Officer in Charge, Naval Weapons Facility, Detachment Machrinhanish, UK, FPO New York 09515

N64981—Commanding Officer, Naval Weapons Facility, St. Mawgan UK, FPO New York 09511

N65113, EZ—Navy Public Works Center, Bldg 1A, Great Lakes, IL 60088–5600

N65114—Commanding Officer, Navy Public Works Center, Naval Air Station, Pensacola, FL 32508

N65115 (MAJ00025), FZA—Navy Public Works Center, Box 13 (Yokosuka, Japan), FPO Seattle 98762–3100

N65116, MZ—Officer in Charge, Navy-Marine Corps Appellate Review Activity, Officer of the Judge Advocate General, Washington Navy Yard, Washington, DC 20374–2001

N65117, NJ, MO—Naval Plant Representative Office (Strategic Systems Programs), General Electric Ordnance Systems, 100 Plastics Avenue, Pittsfield, MA 01201

N65146, 7E—Procurement Branch, OP–09B31, Office of the Chief of Naval Operations Support Activity, Washington, DC 20350

N65198, 3H—Naval Administrative Unit, 550 First Street, Idaho Falls, ID 83401

N65202—Supervisor of Shipbuilding, Conversion and Repair, USN, Box 400, Pearl Harbor, HI 96860

N65227, NH—Naval Plant Representative Office, Unisys Corp., Great Neck, L.I., NY 11020

N65236, V7—Naval Electronic Systems Engineering Center, 4600 Goer Road, North Charleston, SC 29406

N65258 (MAJ31699)—Navy Office of Information, East, 133 East 58th Street, 1st Floor, New York, NY 10022

N65428 (MAJ00018), MDP—Commanding Officer, Naval Hospital (Roosevelt Roads, PR), FPO Miami 34051–8100

N65440, 4V—Officer in Charge, Navy Resale Activity, Exmouth, Western Australia, FPO San Francisco 96680

N65491 (MAJ00018), J5P—Naval Hospital (Subic Bay, Philippines), FPO San Francisco 96652–1600

N65492 (MAJ00018), MCA—Commanding Officer, Naval Hospital, Fiscal & Supply Service, Code 32C, Orlando, FL 32813–5200

N65497, 4U—Commissary Store Division, NAVRESSO, Field Support Office, 2801 "C" Street, SW, Auburn, WA 98001

N65575 (MAJ00018), MCY—Naval Medical Clinic, Seattle, WA 98115

N65576—Navy Space Systems Activity, PO Box 92960, Worldway Postal Center, Los Angeles, CA 90009

N65580, M2—Naval Electronic Systems Engineering Center, PO Box 55, Portsmouth, VA 23705

N65584, EW, 3E, KU, 3D—Naval Electronic Systems Engineering Center, PO Box 80337—Building 4, Code 104, San Diego, CA 92138

N65849 (MAJ31699), HXY–Z—Office of Civilian Personnel Management, Southwest Region, San Diego, CA 92186

N65870, M4—Supervisor of Shipbuilding, Conversion and Repair, USN, Long Beach Naval Shipyard, Long Beach, CA 90822

N65886—Commanding Officer, Aviation Depot, Naval Air Station, Jacksonville, FL 32212

N65888, ED Aviation Depot, North Island, San Diego, CA 92135

N65889—Commanding Officer, Aviation Depot, Naval Air Station, Code 56000, Pensacola, FL 32508

N65912, GP—Commanding Officer, Naval Sea Support Center, Atlantic St. Juliens Creek Annex, Portsmouth, VA 23702

N65913, 7L—Naval Sea Support Center, Pacific, San Diego, CA 92138

N65918, FT—Shore Intermediate Maintenance Activity, Naval Station, San Diego, CA 92136–5000

N65926 (MAJ00039), NSA–B—Officer in Charge, Naval Underwater Systems Center Detachment, AUTEC, West Palm Beach Detachment, West Palm Beach, FL 33402

N65928, N3—Naval Training Systems Center, Orlando, FL 32813

N65980—Naval Electronic Systems Engineering Activity, St. Inigoes, MD 20684

N65995, KM—Officer in Charge, Naval Support Activity (Holy Loch, UK), FPO New York 09514

N66001, 7N—Naval Ocean Systems Center, San Diego, CA 92152

N66021, 7G—Commander Fleet Air, Western Pacific (Atsugi, Japan), FPO Seattle, WA 98767

N66022 (MAJ00018), MDW—Naval Dental Clinic, San Diego, CA

N66032, LK—Navy Automatic Data Processing Selection Office, Building 218, Washington Navy Yard, Washington, DC 20374

N66074 (MAJ00062), 8AU—Commanding Officer, Naval Reserve Officers Training Corps Unit, Prairie View A&M University, Prairie View, TX 77445

N66095 (MAJ00018), J5E—Naval Hospital, NAS, Lemoore, CA 93246

N66097 (MAJ00018), MDE—Naval Hospital, Oak Harbor, WA 98278–8500

N66125 (MAJ00070), V5J—Naval Facility (Guam), FPO San Francisco 96630–2903

N66231 (MAJ00072), 9TS—Naval Reserve Readiness Center, Bldg 2711, Naval Training Center, Great Lakes, IL 60088–5707

N66458 (MAJ00065), SOC—Naval Oceanography Command, NAS, Brunswick, ME 04011–5000

N66604 N4—Naval Underwater Systems Center, Newport, RI 02840

N66612 (MAJ00062), L95—Commanding Officer, Naval Reserve Officers Training Corps Unit, The Citadel, Charleston, SC 29409–0770

N66691, 4P—Commanding Officer, Naval Support Activity, Souda Bay, Crete, Greece, FPO New York 09528

N66715, VJ—Commander, Navy Recruiting Command, Washington, DC 22203–1191

N66753 (MAJ00062), ROG—Commanding Officer, Naval Reserve Officers Training Corps Unit, Jacksonville University, Jacksonville, FL 32211

N66754 (MAJ00069), 8QL—Commanding Officer, Naval Security Group Activity (Sabana Seca, PR), FPO Miami 34053

N66809 (MAJ00062), ROV—Commanding Officer, Naval Reserve Officers Training Corps Unit, Savannah State College, Savannah, GA 31404

N66810 (MAJ00062), L9H—Commanding Officer, Naval Reserve Officers Training Corps Unit, Southern University and A&M College, Baton Rouge, LA 70813

N66818 JX—Commanding Officer, Naval Medical Command Mid-Atlantic Region, Norfolk, VA 23508–1297

N66833 (MAJ00060), LHL—Commanding Officer, U.S. Naval Station Panama (Rodman, Canal Zone), FPO Miami 34061–1000

N66863 (MAJ00018), MCU–X—Commanding Officer, Naval Biodynamics Laboratory, 13800 Old Gentilly Road, Michout Assembly Facility, New Orleans, LA 70189

N66890, LJ—Naval Station, Mare Island, Supply and Fiscal Code 90, Bldg 851, Vallejo, CA 94592

N66898—Commanding Officer, Naval Medical Clinic, New Orleans, LA 70142

N66957—Director, Navy Publications and Printing Service Det Branch, Southeast Division, Bldg. 2049, NTC, Orlando, FL 32813

N66959—Director, Navy Publications and Printing Service Det Office, Southeast Division, P.O. Box 3, NAS, Jacksonville, FL 32212
N66965 (MAJ00023), 4JQ—Navy Publishing and Printing Servjce Det Office, Western Area, Point Mugu, CA 93042–5027
N66972—Commanding Officer, Naval Recruiting District, 5901 S.W. 74th Street, Miami, FL 33143
N67596—Commanding Officer, Naval Recruiting District, 102 W Rector Street, San Antonio, TX 78216
N68011—Commanding Officer, Naval Recruiting District, 8 North Third Street, Sterick Bldg. Memphis, TN 38103
N68047 (MAJ00070), 4LO—Navy Office, Singapore, FPO San Francisco, CA 96699–2100
N68056 JE—Naval Medical Command, Southwest Region, San Diego, CA 92134
N68057 VZ—Commanding Officer, Naval Regional Data Automation Center Norfolk, Code 212, Norfolk, VA 23511
N68064 (MAJ00062), ROD—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Florida, Van Fleet Hall, Room 26, Gainesville, FL 32601
N68072 (MAJ00062), L9V—Commanding Officer, Naval Reserve Officers Training Corps Unit, Texas A&M University, College Station, TX 77843
N68084 (MAJ00018), MDJ–M—Commanding Officer (Code 206), Naval Hospital, Charleston, SC 29408-6900
N68086 7S—Naval Hospital, Newport, RI 02841
N68090 (MAJ00018) MDO–9—Naval Hospital, Long Beach, CA 90822–5199
N68092—Naval Medical Command, Northeast Region Great Lakes, IL 60088
N68093 (MAJ00018) MCG–H—Naval Hospital, Camp LeJeune, NC 28542–5008
N68094 V9—Naval Hospital, Camp Pendleton, CA 92055–5008
N68095 JF—Naval Hospital, Boone Road, Bremerton, WA 98312–1898
N68096 (MAJ00018) J50—Commanding Officer, Naval Hospital (Guam), FPO San Francisco 96630–1600
N68097 QA—Naval Medical Command, Northwest Region Oakland, CA 94627
N68101 (MAJ00018) MDT–V—Naval Hospital, 17th Street and Pattison Avenue, Philadelphia, PA 19145–5199
N68139 (MAJ00062) 8AZ—Commanding Officer, Naval Reserve Officers Training Corps Unit, Florida A&M University Tallahassee, FL 32307
N68141 (MAJ00062) L9P—Commanding Officer, Naval Reserve Officers Training Corps Unit, Maine Maritime Academy, Castine, ME 04421–0902
N68166 (MAJ00015) LO1—Naval Technical Intelligence Support Center, 4301 Suitland Road, Washington, DC 20390
N68171 M3—Commanding Officer, Naval Regional Contracting Center, (Naples, Italy) FPO New York 09521
N68175 (MAJ62980) MQA—Navy Recruiting District, New Jersey Parkway Towers, Bldg A, 485 US Route 1, So. Iselin, NJ 08830–3012
N68199—Commanding Officer, Navy Office of Information, Southeast 1459 Peachtree Street, NE—Suite 300, Atlanta, GA 30309
N68200 VM—Director, Navy Office of Information, Southwest, 1114 Commerce Street, Suite 811 Dallas, TX 75242
N68221 7J—Commanding Officer, Naval Personnel Research and Development Center, San Diego, CA 92152
N68248, V6—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Naval Submarine Base, Kings Bay, GA 31547
R68251 (MAJ00070) LPC—Shore Intermediate Maintenanace Activity, Pearl Harbor Box 141, Pearl Harbor, HI 96860
N68292 (MAJ00018) J5A—Naval Hospital, (Yokosuka, Japan) FPO Seattle 98765–1615
N68297 ET—Naval Magazine, Lualualei, Oahu HI 96792–4301
N68303 (MAJ00062) ROC—Commanding Officer, Naval Reserve Officer, Training Corp Unit, State University of New York Maritime College, Fort Schuyler, Bronx, NY 10465–4198
N68306 (MAJ00072) 9TF—Commander, Naval Reserve Readiness Command, Region Six, WNY Bldg 200 Washington, DC 20374–2003
N68307—Commander, Code 431 Naval Reserve Readiness Command Region Ten, New Orleans, LA 70142
N68308 (MAJ00072) 9TQ—Naval Reserve Readiness Command, Region 20, Bldg 1, NAVSTA Treasure Island, San Francisco, CA 94130–5032
N68311, JL—Naval Station, Long Beach, CA 90822
N68322 7Z, Naval Education & Training Program, Management Support Activity, Code SU1 Saufley Field, Pensacola, FL 32509
N68328 (MAJ00072 9TJ—Naval Reserve Readiness Command, Region 22, Bldg 9, Naval Station Seattle, WA 98115–5009
N68330 (MAJ00072) 9TN—Naval Reserve Readiness Command, Region 13, Bldg 1, Code 712, NTC Great Lakes, IL 60088–5026
N68332 9TO–1—Commander, Naval Reserve Readiness Command, Region 18, 301 Navy Drive, Industrial Airport, KS 66031–0031
N68335 4Y—Commanding Officer, Naval Air Engineering Center, Supply Dept., Purchase Division Lakehurst, NJ 08733
N68348 (MAJ00072) 9TG—Commander, Naval Reserve Readiness Command, Region Nine NAS Memphis (76), Bldg E–35 Millington, TN 38054
N68355 (MAJ00062) ROJ—Commanding Officer, Naval Reserve Officers Training Corps Unit, Virginia Military Institute, Lexington, VA 24450–2697
N68356 (MAJ00072) 9TD—Commander, Naval Reserve Readiness Command, Region Seven, Naval Base, Charleston, SC 29408
N68357 (MAJ00072) 9TL—Commander, Naval Reserve Readiness Command, Region Two, Scotia, NY 12302–9465
N68358 (MAJ00072) 9TA—Commander, Naval Reserve Readiness Command, Region Eight, Naval Air Station, Jacksonville, FL 32212
N68359—Commander, Naval Reserve Readiness Command, Region Eleven, Bldg 11, Naval Air Station, Dallas, TX 75211
N68378 KQ—Navy Public Works Center, San Francisco Bay, Oakland, CA 94623
N68391 (MAJ62980) MLB—Navy Recruiting District, Harrisburg, 310 North Second Street, Harrisburg, PA 17101–1304
N68401 (MAJ62980) MLJ—Navy Recruiting District, San Diego Naval Training Center, Bldg 335, San Diego, CA 92133–6800
N68402 (MAJ31699) V8E—Navy Office of Information, New England Branch, 408 Atlantic Avenue, Boston, MA 02210–2203
N68409 (MAJ00018) MDC—Naval Dental Clinic, San Francisco, CA 94130–5030
N68436 KC J6—Naval Submarine Base, Bangor, Code 863, Bremerton, Wa 98315
N68441—Commanding Officer, Naval Dental Clinic, Naval Air Station, Pensacola, FL 32508
N68443 7T—Commanding Officer, Naval Dental Clinic, Bremerton, Wa 98314
N68451 MF—Navy Regional Data Automation Center, Naval Air Station, San Francisco, Alameda, CA 94501
N68470 (MAJ00018) J5J—Naval Hospital (Okinawa, Japan), FPO Seattle, 98778–1610
N68478 7H—Naval Plant Branch Representative Office, Westinghouse Electric Corporation, Oceanic Division, PO Box 1488, Annapolis, MD 21404
N68497—Commanding Officer, Code 40, Naval Administrative Command, Naval Training Center, Orlando, FL 32813

N68499 LX—Director, Naval Council of Personnel Boards, Ballston Center Towe: #2, 801 North Randolph Street, Arlington, VA 22203–1989
N68518—Commanding Officer, Naval Reserve Support Office, Internal Supply, Code S43, 4400 Dauphine Street, New Orleans, LA 70146 N68520 7P—Aviation Depot Operations Center, Naval Air Station, Patuxent River, MD 20670
N68525 7Q—Naval Plant Representative Office, General Electric Company, Aircraft Engine Group, 1000 Western Avenue, Lynn, MA 01910
N68546 QG—Navy Environmental Health Center, Naval Station, Norfolk, VA 23511
N68547 (MAJ00060) LHQ—Personnel Support Activity, Norfolk, VA 23511–5115
N68561 (MAJ00039) NSE—Navy Management Systems Support Office, Norfolk, VA 23511–6694
N68593 (MAJ00060) LHE—Naval Ocean Processing Facility, Dam Neck, VA 23461–5450
N68610 GF—Officer in Charge, Fleet Hospital Support Office, 620 Central Ave., Bldg #5, Alameda, CA 94501–3874
N68646 (MAJ00024) EHJ–K—Naval Sea Systems Command, Automated Data Systems Activity, PO Box 100, Indian Head, MD 20640–0100
N68679 3N—Commanding Officer, Naval Plant Representative Office, 4800 East River Road, Minneapolis, MN 55421
N68691 JW—Naval Plant Representative Office, (Melbourne, Australia), APO San Francisco 96405
N68692 (MAJ00062) 8AX—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of San Diego/San Diego State University, Alcala Park, San Diego, CA 92110-2496
N68693 JZ—Naval Plant Representative Office, McDonnell Douglas Corp, P.O. Box 516, St. Louis, MO 63166
N68695 (MAJ00060) LHG—Shore Intermediate Maintenance Activity, Naval Reserve Maintenance Facility, Bldg 133, Naval Base, Philadelphia, PA 19112–5066
N68699 (MAJ00062) 8AP—Commanding Officer, Naval Reserve Officers Training Corps Unit, Hampton Roads, 5215 Hampton Blvd., Norfolk, VA 23508–8556
N68707 (MAJ00072) 9TU—Naval Reserve Maintenance Training Facility, Puget Sound, Tacoma, WA
N68710 (MAJ00062) L9K—Commanding Officer, Naval Reserve Officers Training Corps Unit, Virginia Polytechnic Institute and State University, Blacksburg, VA 24061–2308
N68717 (MAJ00062) L9L—Commanding Officer, Naval Reserve Officers Training Corps Unit, Boston University, 116 Bay State Road, Boston, MA 02215
N68725 (MAJ00062) R0Q—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Arizona, Tucson, AZ 85721
N68726 (MAJ00062) R0T—Commanding Officer, Naval Reserve Officers Training Corps Unit, The George Washington University, Washington, DC 20052
N68727 (MAJ00062) 8AF—Commanding Officer, Naval Reserve Officers Training Corps Unit, Memphis State University, Memphis, TN 38152–0001
N68728 (MAJ00062) 8AQ—Commanding Officer, Naval Reserve Officers Training Corps Unit, Norwich University, Northfield, VT 05663–1097
N68733 (MAJ00030) EKC—Strategic Weapons Facility, Atlantic, Kings Bay, GA 31547–6600
N68742 (MAJ00070) LPA—Naval Base, Seattle, WA 98115–5012
N68790—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Diego Garcia, FPO San Francisco 96685
N68831 (MAJ00070) LPG—Shore Intermediate Maintenance Activity San Francisco, Bldg 162, NAS, Alameda, CA 94501–5065
N68836 J9—Commanding Officer, Naval Supply Center, Jacksonville, FL 32212
N68857 (MAJ00062) 8AC—Commanding Officer, Naval Reserve Officers Training Corps Unit, Texas Tech University, Lubbock, TX 79409–4559
N68860 KR—Naval Supply Center—Pensacola, Pensacola, FL 32508–6200
N68863 LU—Naval Commercial Communications Office, 4401 Mass Avenue, NW, Washington, DC 20390–5290
N68877 (MAJ00062) RQY—Commanding Officer, Naval Reserve Officers Training Corps Unit, Carnegie Mellon University, Pittsburgh, PA 15213
N68881 (MAJ00062) L9E—Commanding Officer, Naval Reserve Officers Training Corps Unit, Morehouse College, Atlanta, GA 30314
N70092 (MAJ00069) 8QJ—Naval Security Station, 3801 Nebraska Avenue, NW, Washington, DC 20390–6230
N70240 M6—Commanding Officer, Naval Communication Station, San Diego, 937 N. Harbor Drive, San Diego, CA 92132
N70272 8G, ND—Naval Communication Area, Master Station Atlantic, Norfolk, VA 23511–6898
N70273, V3—Naval Radio Station, Jim Creek, Oso, WA 98223
N70278 V4—Naval Communication Station, (Yokosuka, Japan), Box 3, FPO Seattle 98762
N70283 (MAJ00069) 8QE—Commanding Officer, Code 30, Naval Security Group Activity, (Galeta Island, Canal Zone), FPO Miami 34060–9998
N70294 8H—U.S. Naval Communication Area, Master Station MED, (Naples, Italy), FPO New York 09524
N70295 6J—U.S. Naval Communication Station, (Nea Makri, Greece), FPO New York 09525
N70310 N2—Naval Radio Station R, Sugar Grove, WV 26815
M00027, MS*, MSO–9—Headquarters, U.S. Marine Corps, Washington, DC 20380
M00146, MT—Marine Corps Air Station, Cherry Point, NC 28533
M00243, NE—Marine Corps Recruit Depot, San Diego, CA 92140
M00263, MX—Marine Corps Recruit Depot, Parris Island, SC 29905
M00264, MY—Marine Corps Development and Education Command, Quantico, VA 22134
M00318—Marine Corps Air Station, (Kaneohe Bay, Oahu, HI), FPO San Francisco, CA 96628
M00681, NG—Marine Corps Base, Camp Pendleton, Oceanside, CA 92054
M60050, MV—Marine Corps Air Station, El Toro, (Santa Ana), CA 92709
M62204, MW—Marine Corps Logistics Base, Barstow, CA 92311
M62974, NA—Marine Corps Air Station, Yuma, AZ 85364
M67001, NB—Marine Corps Base, Camp Lejeune, NC 28542
M67004, NC—Marine Corps Logistics Base, Albany, GA 31704
M67011, (MAJ00027), MSA—Director, 1st Marine Corps District, Garden City, Long Island, NY 11530
M67013, (MAJ00027), MSC—Director, 4th Marine Corps District, Philadelphia, PA 19112–5072
M67015, (MAJ00027), MSE—Director, 6th Marine Corps District, Atlanta, GA 30303
M67016, (MAJ00027), MSG—Director, 8th Marine Corps District, New Orleans, LA 70113
M67017, (MAJ00027), MSJ—Director, 9th Marine Corps District, Shawnee Mission, KA 66204
M67019 (MAJ00027), MSL—Director, 12th Marine Corps District, San Francisco, CA 94130
M67021, (MAJ00027), MUC—Marine Aircraft Wing 4, New Orleans, 4400 Dauphine Street, New Orleans, LA 70146–9125
M67025—Headquarters, Fleet Marine Force, Pacific, Oahu, FPO San Francisco, CA 96610

M67029, (MAJ00027), MSN—Marine Barracks, Washington, DC 20003
M67030, (MAJ00027), MUP—Marine Corps Security Force Battalion Pacific, NAVSTA Mare Island, Vallejo, CA 94592-5022
M67290, (MAJ00027), MSY—Marine Aviation Training Support Group-90, NATTC, NAS Memphis, Millington, TN 38054-5125
M67351—Marine Detachment, London, APO New York 09510
M67353, (MAJ00027), MSQ—Headquarters Battalion, Marine Corps, Henderson Hall, Arlington, VA 22214
M67354—Post Supply Officer, Headquarters Marine Corps, Navy Annex, Arlington, VA 20380
M67365, (MAJ00027), MUO-1—Camp H.M. Smith, U.S. Marine Corps, Halawa Heights, Oahu, Hawaii 96861
M67391, KY—Marine Corps Camp Det, Atlantic, (Camp Elmore), Norfolk, VA 23511
M67399, NF—Marine Corps Air-Ground Combat Center, Twentynine Palms, CA 92278
M67400, QJ, MUA—Marine Corps Procurement Office, Okinawa, Marine Corps Base, Camp Smedley D. Butler, (Ryuku Island), Southern), FPO Seattle, WA 98773
M67428, JA—Marine Corps Air Bases Western Area, MCAS El Toro, Santa Ana, CA 92709
M67443, LG—Marine Corps Finance Center, Kansas City, MO 64197
M67842, K6—East Coast Commissary Complex, Marine Corps Base, Camp LeJeune, NC 28542
M67853, (MAJ00027), MUR—Marine Corps Security Force Battalion Atlantic, Naval Base, Norfolk, VA 23511-5697
M67854, (MAJ00027), MU6-8—Marine Corps Research, Development and Acquisition Command, Washington, DC
M68479, (MAJ00027), MSU—4th Marine Division (Rein), FMF, USMCR, 4400 Dauphine Street, New Orleans, LA 70146-5400
M68522, (MAJ00027), MSW—Marine Corps Reserve Support Center, Purchasing Department, 10950 El Monte, Overland Park, KS 66211-1408

Department of the Air Force

(C) Denotes a Central Contracting Activity

F01600, 5A—3800 ABW/LGC, Maxwell AFB, AL 36112-5320
F01620, 6K—HQ SSC/PK, Gunter AFS, AL 36114-6343
F02600, 5B—82 FTW/LGC, Williams AFB, AZ 85240-5004
F02601, 5C—836 AD/LGC, Davis-Monthan AFB, AZ 85707-5320
F02604, 5D—832 AD/LGC, Luke AFB, AZ 85309-5320
F02610, SR—AFPRO, Hughes Missile Systems Group, P.O. Box 11337, Emery Park Station Tucson, AZ 85734-1337
F03601, 5E—97 BMW/LGC, Eaker AFB, AR 72317-5320
F03602, 5F—314 TAW/LGC, Little Rock AFB, AR 72076-5320
F04604, 5G—93 BMW/LGC, Castle AFB, CA 95342-5320
F04605, 5H—22 AREFW/LGC, March AFB, CA 92518-5320
F04606, SM—SM-ALC/PM, Sacramento Air Logistics Center, McClellan AFB, CA 95652-5320
F04607, 5J—63 MAW/LGC, Norton AFB, CA 92409-5320
F04609, 5K—831 AD/LGC, George AFB, CA 92394-5320
F04611, QQ—AFFTC/PK (C), Edwards AFB, CA 93523-5320
F04612, 5L—323 FTW/LGC, Mather AFB, CA 95655-5320
F04620, S6—AFPRO, TRW Electronics & Defense Sector, One Space Park, Redondo Beach, CA 90278-1078
F04626, 5M—60 MAW/LGC Travis AFB, CA 94535-5320
F04630, RY—AFPRO, RI Rocketdyne Division, 6633 Canoga Avenue, Canoga Park, CA 91303-2790
F04666, 5N—9 SRW/LGC Beale AFB, CA 95903-5320
F04679, QR—AFPRO, Northrop Corp, One Northrup Avenue, Hawthorne, CA 90250-3286
F04681, QS—AFPRO, RI Corp, Los Angeles Division, PO Box 92098, Los Angeles, CA 90009-2098
F04682, QT—AFPRO, Hughes Aircraft Company, PO Box 92463, Los Angeles, CA 90009-2463
F04684, QW—4392 AEROSW/LGC, Vandenberg AFB, CA 93437-5320
F04688, QV—AFPRO, Aerojet-General Corp, PO Box 15846, Sacramento, CA 95852-1848
F04689, RN—1004 Space Support Group, Onizuka AFB, PO Box 3430, Sunnyvale, CA 94088-3430
F04690 CSTC/PM, PO Box 3430, Sunnyvale, CA 94088-3430
F04691, QX—AFPRO, Lockheed Missile & Space Corp, 1111 Lockheed Way, P.O. Box 3504, Sunnyvale, CA 94088-3504
F04693, MG—SSD/PMB, Base Contracts, PO Box 92960, Worldway Postal Center, Los Angeles, CA 90009-9260
F04696, RB—AFPRO, RI Anaheim, 3370 Miraloma Ave., Anaheim, CA 92803-3110
F04699, Q5—SM-ALC/PMK, Base Contracts, McClellan AFB, CA 95652-5320
F04700, Q2—AFFTC/PKB, Base Contracts, Edwards AFB, CA 93523-5000
F04701, TB—SSD/PM (C), Space Systems Division, PO Box 92960, Worldway Postal Center, Los Angeles, CA 90009-9960
F04702, HQ AAVS/LGC, Norton AFB, CA 92409-5439
F04703, R8—WSMC/PM (C), Western Space and Missile Center, Vandenberg AFB, CA 93437-6021
F04704, R9—BSD/PK (C), Ballistic Systems Division, Norton AFB, CA 92409-6493
F04705, RT—Det 6, 2762 Logistics Sq. (AFLC), Norton AFB, CA 92409
F04709, S5—Det 42, SM-ALC, Norton AFB, CA 92409-6447
F04710, TC—AFPRO, Douglas Aircraft Company, 3855 Lakewood Boulevard, Long Beach, CA 90846-0001
F04720, RD—AFPRO RI NAAO, OL-AA, 2825 East Avenue P, Palmdale, CA 93550-0319
F04735, 6M—SM-ALC/QL, McClellan AFB, CA 95652-5990
F05600, 5P—LTTC/LGC, Lowry AFB, CO 80230-5320
F05603—HQ Air Force Space Command/PK, Peterson AFB, CO 80914-5001
F05604, SX—3d Space Support Wing/CMB, Peterson AFB, CO 80914-5000
F05611, 5Q—USAFA/LGC, USAF Academy, CO 80840-0189
F05617, RE—AFPRO, Martin Marietta Denver Aerospace, PO Box 179, Denver, CO 80201-0179
F06700, T5—AFPRO, Pratt & Whitney, 400 Main Street, East Hartford, CT 06108-0969
F07603, 5R—436 MAW/LGC, Dover AFB, DE 19902-5320
F08602, 5S—56 TTW/LGC, MacDill AFB, FL 33608-5320
F08606, RG—ESMC/PM (C), Eastern Space & Missile Center, Patrick AFB, FL 32925-5472
F08620, 5T—1 SOW/LGC, Hurlburt Field, FL 32544-5320
F08621, 5U—31 TFW/LGC, Homestead AFB, FL 33039-5320
F08635, RH—MSD/PM (C), Munition Systems Division, Eglin AFB, FL 32542-5000
F08637, 5V—HQ USAF ADWC/LGC, Tyndall AFB, FL 32403-5320
F08650, TJ—ESMC/PMK, Base Contracts, Patrick AFB, FL 32925-5472
F08651, Q3—MSD/PMK, Base Contracts, Eglin AFB, FL 32542-5320
F08675, T2—AFPRO, Pratt & Whitney Aircraft, PO Box 109600, West Palm Beach, FL 33412-9600
F09603, RJ, RR—WR-ALC/PM, Warner Robins Air Logistics Center, Robins AFB, GA 31098-5320
F09604, RU—Det 8, 2762 Logistics Sq (AFLC), Robins AFB, GA 31098

F09607, 5W—347 TFW/LGC, Moody AFB, GA 31699-5320
F09609, 5X—94 CSG/LGC, Dobbins AFB, GA 30069-5320
F09632, RK—AFPRO, Lockheed-GA Co., Marietta, GA 30063-0001
F09634, 5Y—HQ AFRES/LGC, Robins AFB, GA 31098-6001
F09650, Q6—WR-ALC/PMK, Base Contracts, Robins AFB, GA 31098-5320
F10603, 5Z—366 TFW/LGC, Mountain Home AFB, ID 83648-5320
F11602, 6A—CTTC/LGC, Chanute AFB, IL 61868-5320
F11603, 6B—928 TAG/LGC, Chicago O'Hare ARFF, IL 60666-5000
F11623, 6C—375 AAW/LGC, Scott AFB, IL 62225-5320
F11624, X4—2026 CS/PGZ, Scott AFB, IL 62225-60001
F11626, RL—HQ MAC/TRC, Scott AFB, IL 62225-5001
F12617, 6D—305 AREFW/LGC, Grissom AFB, IN 46971-5320
F14614, 6E—384 BMW/LGC, McConnell AFB, KS 67221-5320
F14615, RP—AFPRO, Boeing Military Airplane Company, 3801 South Oliver Street, Wichita, KS 67277-7730
F16600, 6F—23 TFW/LGC, England AFB, LA 71311-5320
F16602, 6G—2BMW/LGC, Barksdale AFB, LA 71110-5320
F17600, 6H—42 BMW/LGC, Loring AFB, ME 0475-5320
F18400, S2—AFPRO, Westinghouse Defense and Electronics Systems Center, PO Box 1693, Baltimore, MD 21203-1693
F18600, RQ—HQ AFSC/PK (C), Andrews AFB, DC 20334-5000
F19617, XO—439 CSG/LGC, Westover AFB, MA 01022-5320
F19620, SQ—AFPRO, Textron Defense Systems, 201 Lowell Street, Wilmington, MA 01887-2941
F19628, RS—ESD/PK (C), Electronic Systems Division, Hanscom AFB, MA 01731-5000
F19630, RV—AFCAC/PK (C), Hanscom AFB, MA 01731-6340
F19650, SH—ESD/PKU, Base Contracts, Hanscom AFB, MA 01731-5320
F20603, 6J—379 BMW/LGC, Wurtsmith AFB, MI 48753-5320
F20613, 6L—410 BMW/LGC, K.I. Sawyer AFB, MI 49843-5320
F21611, 6N—934 TAG/LGC, Minneapolis-St. Paul IAP, MN 55450-5000
F22600, RC—KTTC/LGC, Keesler AFB, MS 39534-5000
F22608, 6Q—14 FTW/LGC, Columbus AFB, MS 39701-5000
F23606, 6R—351 SMW/LGC, Whiteman AFB, MO 65305-5320
F23608, 6S—442 CSG/LGC, Richards-Gebaur AFB, MO 64030-5000
F24604, 6T—341 SMW/LGC, Malmstrom AFB, MT 59402-5320
F25600, 6U—55 SRW/LGC, Offutt AFB, NE 68113-5320
F25606, TD—3906 CONS/LGC, Offutt AFB, NE 68113-5000
F26600, S4—554 OSW/LGC, Nellis AFB, NV 89191-5320
F27604, R5—509 BMW/LGC, Pease AFB, NH 03803-5320
F28609, 6V—438 MAW/LGC, McGuire AFB, NJ 08641-5320
F29601, RW—Air Force Space Technology Center (AFSC)/PKR, Kirtland AFB, NM 87117-5320
F29605, 6W—27 TFW/LGC, Cannon AFB, NM 88103-5320
F29650, R3—Air Force Space Technology Center (AFSC)/PKB, Kirtland AFB, NM 87117-5320
F29651, 6X—833 AD/LGC, Holloman AFB, NM 88330-5320
F30602, RX—RADC/PK (C), Rome Air Development Center, Griffiss AFB, NY 13441-5700
F30617, 6Y—914 TAG/LGC, Niagara Falls IAP, NY 14304-5320
F30625, ST—AFPRO, Eaton AIL, Eaton Corporation, AIL Div., Commack Road, Deer Park, Long Island, NY 11729-9998
F30635, S3—416 BMW/LGC, Griffiss AFB, NY 13441-5320
F30636, 6Z—380 BMW/LGC, Plattsburgh AFB, NY 12903-5320
F31601, BU—317 TAW/LGC, Pope AFB, NC 28308-5320
F31610, BW—4 TFW/LGC, Seymour Johnson AFB, NC 27531-5320
F32604, BX—57 AD/LGC, Minot AFB, ND 58705-5320
F32605, BY—321 SMW/LGC, Grand Forks AFB, ND 58205-5320
F33600, RZ—WPCC/PMR, PMS, PMT & PMY, Wright-Patterson AFB, OH 45433-5320
F33601, Q7—WPCC/PMK, Base Contracts, Wright-Patterson AFB, OH 45433-5320
F33615, SG—ASD/PMR, Directorate of R&D Contracting, Wright Patterson AFB, OH 45433-6503
F33620, SN—AFPRO RI NAAO, OL-AB, Rockwell International, PO Box 1259, Columbus, OH 43216-1259
F33630, C1—910 TAG/LGC, Youngstown MAP, OH 44473-0910
F33654, SB—AFPRO, General Electric Company, Cincinnati, OH 45215-6303
F33657, SC—ASD/PM (C), Aeronautical Systems Division, Wright-Patterson AFB, OH 45433-6503
F33659, Q8—2803 ABG/PM, Newark AFS, OH 43055-5320
F33661—Air Force Contract Maintenance Center (AFCMC), Wright-Patterson AFB, OH 45433-5000
F33661, S1—AFCMC/CM Wright-Patterson AFB, OH 45433-5000
F33661, MJ—Det 33, AF Contr. Maint. Center, APO New York 09667-6207
F33661, SS—Det 16 AFCMC, APO New York 09633-5000
F33661, S8—AFLC Logistics Support Group—Saudi Arabia, AFCMC Contract Management Division, APO New York 09238-5002
F33661, SV—Det 17 AFCMC, APO New York 09378-5000
F33661, R1—Det 28 AFCMC, APO SF 96214-0006
F33661, SU—Det 19 AFCMC, APO New York 09285-0001
F33661, YE—Det 32 AFCMC, APO New York 09672-0008
F33661, TQ—Det 34 AFCMC, APO New York 09254-5365
F33661, VF—Det 36 AFCMC, APO New York 09240-5000
F33733, J8—HQ AFSC/PLMM, Wright-Patterson AFB, OH 45433-6503
F34600, C2—71 FTW/LGC, Vance AFB, OK 73705-5000
F34601, SD, TA, TG—OC-ALC/PM, Oklahoma City Air Logistics Center, Tinker AFB, OK 73145-5320
F34608, TE—HQ EID/PK, Tinker AFB, OK 73145-6343
F34612, C3—443 MAW/LGC, Altus AFB, OK 73523-5320
F34650, Q9—OC-ALC-PMK, Base Contracts, Tinker AFB, OK 73145-5320
F35610, C4—114 TFTS/LCG, Kingsley Field, Klamath Falls, OR 97601
F36629, C7—911 TAG/LGC, Greater Pittsburgh IAP, PA 15231-5320
F36700, C8—913 TAG/LGC, Willow Grove ARF, PA 19090-5130
F36701, SF—AFPRO, GE Re-Entry Div, P.O. Box 8555, Philadelphia, PA 19101-8555
F38601, C9—363 TFW/LGC, Shaw AFB, SC 29152-5320
F38604, T3—HQ USCENTAF/LGC, Shaw AFB, SC 29152-5002
F38606, CA—354 TFW/LGC, Myrtle Beach AFB, SC 29579-5320
F38610, CR—437 MAW/LGC, Charleston AFB, SC 29404-5320
F39601, CT—44 SMW/LGC, Ellsworth AFB, SD 57706-5320
F40600, Q4—AEDC/PK (C), Arnold Engineering Development Center, Arnold AFB, TN 37389-5000
F40650, D1—AEDC/PKP, Base Contracts, Arnold AFB, TN 37389-5000
F41608, SA, QU—SA-ALC/PM, San Antonio Air Logistics Center, Kelly AFB, TX 78241-5320
F41612, D4—STTC/LGC, Sheppard AFB, TX 76311-5000
F41613, D5—7 BMW/LGC, Carswell AFB, TX 76127-5320
F41614, E2—GTTC/LGC, Goodfellow AFB, TX 76908-5000

F41620, E3—64 FTW/LGC, Reese AFB, TX 79489-5000
F41621, SJ—HQ ESC/LEC, San Antonio, TX 78243-5000
F41622, QY—HSDPKO, Brooks AFB, TX 78235-5320
F41624—HSD/PK (C), Brooks AFB, TX 78235-5320
F41636, ZV—3700 Contracting Squadron, Lackland AFB, TX 78236-5000
F41640—HQ AFCOMS/DOC, Kelly AFB, TX 78241-6290
F41650, YA—SA-ALC/PMK, Base Contracts, Kelly AFB, TX 78241-5320
F41652, E5—96 BMW/LGC, Dyess AFB, TX 79607-5320
F41685, E6—47 FTW/LGC, Laughlin AFB, TX 78840-5000
F41687, E9—67 TRW/LGC, Bergstrom AFB, TX 78743-5320
F41689, SK—3303 CS, Randolph AFB, TX 78150-5001
F41691, YO—12 FTW/LGC, Randolph AFB, TX 78150-5000
F41695, SL, TH—AFPRO, General Dynamics, P.O. Box 371, Fort Worth, TX 76101-0371
F41800, T9—San Antonio Contracting Center, Ft Sam Houston AIN, P.O. Box 8218, San Antonio, TX 78208-8218
F41853, WP—AFPRO LTV, LTV Aerospace and Defense Co, P.O. Box 655907, Dallas, TX 75265-5907
F41999—AFNAF Purchasing Office, HQ AFMPC/DPMSK, 9504 IH 35 North, Rm 330, San Antonio, TX 78233
F42600, QP, SY—OO-ALC/PM, Ogden Air Logistics Center, Hill AFB, UT 84056-5320
F42650, R2—OO-ALC/PMK, Base Contracts, Hill AFB, UT 84056-5320
F42651, R6—AFPRO, Morton Thiokol Corp, PO Box 524/MS Z-10, Brigham City, UT 84302-0524
F44600, F3—1 TFW/LGC Langley AFB, VA 23665-5320
F4450, Q1—4400 CONS/LGCN (C), Langley AFB, VA 23665-5000
F45603, F5—62 MAW/LGC McChord AFB, WA 98438-5320
F45613, F8—92 BMW/LGC, Fairchild AFB, WA 99011-5320
F45692, SP—AFPRO, The Boeing Company, PO Box 3707, Seattle, WA 98124-3707
F47606, G7—440 TAW/LGC, Gen. Billy Mitchell Field, 300 College Ave., Milwaukee, WI 53207-5000
F48608, G9—90 SMW/LGC, F.E. Warren AFB, WY 82001-5320
F49620, SE—AFOSR/PK (C), AF Office of Scientific Research, Bolling AFB, DC 20332-6448
F49642, J1—1100 CNS/CN (AFDW), Andrews AFB, DC 20331-5320
F61040, M1—1605 MASW/LGC, APO New York 09406-5320
F61051—USDAO, American Embassy—Brussels, APO New York 09667
F61060—USDAO, American Embassy—Sofia, APO New York 09757
F61080—USDAO, American Consulate General—Prague, APO New York 09757
F61100—USDAO, American Embassy—Copenhagen, APO New York 09170
F61101, T1—3d Space Support Wing/Det 1, APO New York 09170-5000
F61121, RF—USAFE Contracting Office, OL A DET 4, 7000 CONS/LGC APO New York 09193-5320
F61130—USDAO, American Embassy—Helsinki, APO New York 09664
F61171—USDAO, American Embassy—Athens, APO New York 09223
F61173, N1—USAFE Contracting Region—Greece, Det 7, 7000 CONS/LGC, APO New York 09223-5320
F61180—USDAO, American Consulate General—Budapest, APO New York 09757
F61210—USDAO, American Embassy—Rome, APO New York 09794
F61211, N9—USAFE Contracting Region—Italy, Det 8, 7000 CONS/LGC, APO New York 09293-5320
F61214, U9—USAFE Contracting Office, OL-A Det 6, 7000 CONS/LGC, APO New York 09240-5320
F61220, BZ—AFLC/SCE-PM, Support Center Europe, APO New York 09240-5320
F61250, TP—USAFE Contracting Office, OL-B Det 6, 7000 CONS/LGC, APO New York 09694-5320
F61256—USAFE Contracting Office, OL-C DET 6, 7000 CONS/LGC, APO New York 09161-5320
F61260—USDAO, American Embassy—The Hague, APO New York 09159
F61264—USAFE Contracting Office, OL-B DET 10, 7000 CONS/LGC, APO New York 09669-5320
F61270—USDAO, American Embassy—Oslo, APO New York 09085
F61271, T8—USAFE Contracting Office OL-A Det 2, 7000 CONS/LGC, APO New York 09085-5320
F61280—USDAO, American Consulate General—Belgrade, APO New York 09757
F61290—USDAO, American Embassy—Lisbon, APO New York 09678
F61301—USDAO, American Embassy—Bucharest, APO New York 09757
F61308, W3—USAFE Contracting Region—Spain, Det 5, 7000 CONS/LGC, APO New York 09283-5320
F61310—USDAO, American Embassy—Madrid, APO New York 09285
F61354, W8—7241 ABG/LGC, APO New York 09224-5320
F61355, T4—HQ TUSLOG/LGC, APO New York 09254-5320
F61358, W9—39 TACG/LGC, APO New York 09289-5320
F61503, UC—435 TAW/LGC, APO New York 09057-5320
F61504, T6—7350 ABG/LGC, APO New York 09611-5320
F61517, UF—USAFE Contracting Region—Eifel, Det 3, 7000 CONS/LGC, APO New York 09132-5320
F61519, R4—USAFE Contracting Region—Mosel, Det 10, 7000 CONS/LGC, APO New York 09109-5320
F61521, UH—USAFE Contracting Office—Rhineland Pfalz, Det 2, 7000 CONS/LGC, APO New York 09012-5320
F61527—USAFE Contracting Office, OL-C Det 10, 7000 CONS/LGC, APO New York 09027-5320
F61546, UJ—USAFE Contracting Center, Det 1, 7000 CONS/LGC, APO New York 09633-5320
F61560, 4C—AFLC Logistics Support Group—Europe, APO New York 09012
F61700, TM—USAFE Contracting Office, OL-A Det 9, 7000 CONS/LGC, APO New York 09150-5320
F61708, UK—USAFE Contracting Region—Thames Valley, Det 9, 7000 CONS/LGC, APO New York 09194-5320
F61712, UM—USAFE Contracting Office, OL-B Det 4, 7000 CONS/LGC, APO New York 09755-5320
F61730, UQ—USAFE Contracting Office, OL-C Det 4, 7000 CONS/LGC, APO New York 09238-5320
F61775, UV—USAFE Contracting Region—UK North, Det 4, 7000 CONS/LGC, APO New York 09179-5320
F61815, T7—USAFE Contracting Office OL-A Det 10, 7000 CONS/LGC, APO New York 09292-5320
F61817, UW—USAFE Contracting Office, OL-A Det 5, 7000 CONS/LGC, APO New York 09286-5320
F61910, WJ—USAFE Contracting Office, OL-A Det 3, 7000 CONS/LGC, APO New York 09188-5320
F62032, 4D—HQ USMTM/SAS-LGC, APO New York 09616-5320
F62321, RA—313 AD Contracting Center/LGC, APO SF 96239-5320
F62509, QZ—432 TFW Base Contracting Division/LGC, APO SF 96519-5000
F62562, SW—475 ABW Contracting Center/LGC, APO SF 96328-5320
F62600—5 DSCS/LGC, APO SF 96267-5000
F63197, UX—USAFE Contracting Office, OL-A Det 7, 7000 CONS/LGC, APO New York 09291-5320
F64133, S9—43 BMW/LGC, APO SF 96334-5320
F64605, TN—15 ABW Contracting Center/LGC, Hickam AFB, HI 96853-5320
F64608—Communications/ADPE Branch, 15 ABW Contracting Center, Hickam AFB, HI 96853-5320
F64620, SZ—HQ PACAF/LGC, Hickam AFB, HI 96853-5001

F64719, TK—13 AF Contracting Center/LGC APO SF 96274-5320
F65501, WF—Det 2, 5000 CONS/LGC, Elmendorf AFB, AK 99506-5001
F65503, WH—Det 1, 5000 CONS/LGC, Eielson AFB, AK 99702-5320
F65517, QN—HQ AAC/LGC, Elmendorf AFB, AK 99506-5001
F66501, R7—USAFSO/LGC, APO Miami 34001-5320

Defense Logistics Agency

DLAHOO, YK—DLA ADP/Telecommunications Contracting Office, Cameron Station, Alexandria, VA 22304-6100
DLA002, TS—Defense Industrial Plant Equipment Center, Defense Depot Memphis, Memphis, TN 38114-5297
DLA003, TT—Defense Depot Ogden, Ogden, UT 84407-5000
DLA005, TV—Defense Depot Tracy, Tracy, CA 95376-5000
DLA100, TW—Defense Personnel Support Center, Directorate of Clothing & Textiles, 2800 South 20th Street, Philadelphia, PA 19101-8419
DLA120, TW—Defense Personnel Support Center, Directorate of Medical Materiel, 2800 South 20th Street, Philadelphia, PA 19101-8419
DLA13H, UE—Defense Personnel Support Center, Directorate of Subsistence, 2800 South 20th Street, Philadelphia, PA 19101-8419
DLA132, U8—Defense Subsistence Office, Kansas City, 601 E. 12th Street, Room 1768, Kansas City, MO 64106
DLA135, W4—Defense Subsistence Office, New Orleans, 4400 Dauphine Street, New Orleans, LA 70146
DLA136, W5—Defense Subsistence Office, Cheatham, Cheatham Annex, Bldg 113, Williamsburg, VA 23185
DLA137, W6—Defense Subsistence Region, Pacific, 2155 Mariner Square Loop, Alameda, CA 94501
DLA139, U6—Defense Subsistence Region, Europe, APO New York, NY 09052
DLA140, W7—Defense Personnel Support Center, (Installation Support), 2800 South 20th Street, Philadelphia, PA 19101-8419
DLA200, X1—Defense Reutilization and Marketing Service, Federal Center, Battle Creek, MI 49016-3092
DLA400, TY—Defense General Supply Center, Richmond, VA 23297-5000
DLA410, XH—Defense General Supply Center, Base Support Branch, Richmond, VA 23297-5000
DLA420, XK—Defense General Supply Center, Educational Supplies Branch, Richmond, VA 23297-5000
DLA500, TZ—Defense Industrial Supply Center, 700 Robbins Avenue, Philadelphia, PA 19111-5096
DLA600, UA—Defense Fuel Supply Center, Cameron Station, Alexandria, VA 22304-6160
DLA700, UB—Defense Construction Supply Center, Columbus, OH 43216-5000
DLA710, YL—Defense Construction Supply Center, Commercial Services & Supplies Branch, Contracting Division II, Columbus, OH 43216-5000
DLA720, YM—Defense Construction Supply Center, Wood Products Branch, Contracting Division I, Columbus, OH 43216-5000
DLA8AC, UG—DCASMA, Santa Ana, 34 Civic Center Plaza, P.O. Box C, 12700, Santa Ana, CA 92712-2700
DLA8AG, Z3—DCASPRO, Aero, Route 3, Box 9, Lake City, FL 32055-8705
DLA8AL, Y1—DCASMA, Atlanta, 805 Walker Street, Marietta, GA 30060-2789
DLA8AM, YQ—DCASPRO McDonnell Douglas, PO Box 600, Mailstop 12, Titusville, FL 32781-0600
DLA8AT, UL—DCASR, Atlanta, 805 Walker Street, Marietta, GA 30060-2789
DLA8BA, UN—DCASMA, Birmingham, 2121 8th Avenue North, Birmingham, AL 35203-2376
DLA8BC, UP—DCASMA, Bridgeport, Lordship Blvd, Stratford, CT 06497-5000
DLA8BL, Y4—DCASPRO AVCO Lycoming Division, 550 South Main Street, Stratford, CT 06497-7554
DLA8BM, UR—DCASMA, Baltimore, 300 East Joppa Road, Towson, MD 21204-3099
DLA8BN, US—DCASPRO, AT&T Technologies, Inc., 204 Graham Hopedale Road, Burlington, NC 27215-2941
DLA8BP, UT—DCASR, Boston, 495 Summer Street, Boston, MA 02210-2184
DLA8BS, Y3—DCASMA, Boston, 495 Summer Street, Boston, MA 02210-2184
DLA8BT, UU—DCASPRO, Bendix Corp., Route 46, Teterboro, NJ 07068-1173
DLA8BU, XC—DCASMA Buffalo, 1103 Federal Building, 111 W. Huron Street, Buffalo, NY 14202-2392
DLA8BV, YT—DCASPRO, General Electric, Lakeside Avenue, Burlington, VT 05401-4984
DLA8CD, UZ—DCASMA, Cedar Rapids, 1231 Park Place, NE, Cedar Rapids, IA 52402-1251
DLA8CH, UY—DSCASR, Chicago, O'Hare International Airport, P.O. Box 66475, Chicago, IL 60666-0475
DLA8CL, VB—DCASR, Cleveland, J. Celebrezze Federal Bldg., 1240 East Ninth Street, Cleveland, OH 44199-2064
DLA8CN, Y5—DCASMA, Cleveland, J. Celebrezze Federal Bldg., 1240 East Ninth St, Cleveland, OH 44199-2064
DLA8CO, X6—DCASPRO, Goodyear Aerospace, c/o Goodyear Aerospace Corp., 1210 Massillon Road, Akron, OH 44306-4136
DLA8CS, VE—DCASPRO, General Dynamics, 5001 Kearny Villa Road, P.O. Box 80647, San Diego, CA 92138-0647
DLA8DA, VG—DCASR, Dallas, 1200 Main Street, Dallas, TX 75202-4399
DLA8DB, 27—DCASMA, Dallas, P.O. Box 50500, Dallas, TX 75250-5050
DLA8DC, VH—DCASMA, San Diego, Bldg. 4, AF Plant 19, 4297 Pacific Coast Highway, San Diego, CA 92110-3289
DLA8DD, U4—DCAPRO, Rockwell International Corporation, 3200 E Renner Rd, Richardson, TX 75081-6209
DLA8DM, Y7—DCASMA, Detroit, McNamara Federal Bldg., 477 Michigan Avenue, Detroit, MI 48226-2506
DLA8DN, VK—DCASMA, Denver, 750 W Hampden Ave., Suite 250, Englewood, CO 80110-2199
DLA8DP, VL—DCASMA, Dayton, c/o Defense Electronics Supply Center, Bldg. 1, Dayton, OH 45444-5300
DLA8EC, YP—DCASMA, Chicago, O'Hare International Airport, 6400 N. Manneheim Road, P.O. Box 66911, Chicago, IL 60666-0911
DLA8FL, VN—DCASPRO, ITT, Defense Group, 500 Washington Ave., Nutley, NJ 07110-3698
DLA8FS, VR—DCASPRO, FMC, 333 Brokaw Rd, P.O. Box 367, San Jose, CA 95103-0367
DLA8FT, Y2—DCASPRO, Ford Newport Beach, Admin Bldg, Rm 313, Ford Road, Newport Beach, CA 92660-1400
DLA8GD, YB—DCASPRO, Gould, 18901 Euclid Ave, Cleveland, OH 44117-1388
DLA8GL, VV—DCASPRO, General Electric (27753), 1100 Western Ave, Lynn, MA 01910-0001
DLA8GM, VW—DCASMA, Grand Rapids, Riverview Center Bldg., 678 Front Street, N.W., Grand Rapids, MI 49504-5352
DLA8GN, VX—DCASMA, Garden City, 605 Stewart Avenue, Garden City, NY 11530-4761
DLA8HB, WA—DCASPRO, Hayes Birmingham, Hayes International Corporation, P.O. Box 2583, Birmingham, AL 35202-2583
DLA8HC, WB—DCASMA, Hartford, 96 Murphy Road, Hartford, CT 06114-2179
DLA8HD, WC—DCASPRO, Singer, 25 Continental Dr, Wayne, NJ 07424-0400
DLA8HE, Z2—DCASPRO, Hayes (Dothan), Napier Field, Dothan, AL 36303-9236
DLA8HM, WD—DCASPRO, Honeywell, 2701 Fourth Ave S, Minneapolis, MN 54408-1792

DLA8HR, Z9—(DCASMA-SF) Hawaii Residency, Federal Building, Room 4115, 300 Ala Moana Blvd., Honolulu, HI 96813–4908
DLA8HS, XT—DCASPRO, Hamilton Standard, Bradley Field, Windsor Locks, CT 06096–0463
DLA8HU, XG—DCASPRO, Hughes Aircraft Company, Bldg. 600, Mail Station B104, P.O. Box 3310, Fullerton, CA 92633–2177
DLA8JJ, WG—DSCASMA, Indianapolis, Building 1, Fort Benjamin Harrison, Indianapolis, IN 46249–5701
DLA8JK, Z6—DCASPRO, GMC Detroit Diesel Allison, 2001 S Tibbs Ave, Indianapolis, IN 46241–4612
DLA8JL, X2—DCASPRO, Magnavox, 1616 Directors Row, Fort Wayne, IN 46808–1286
DLA8KA, XY—DCASPRO, Kaman Aerospace Corp., Old Windsor Road, Bloomfield, CT 06002–0002
DLA8LA, WL—DCASR, Los Angeles, 222 N Sepulveda Blvd, El Segundo, CA 90245–4320
DLA8LB, WM—DCASPRO, Litton, 5490 A Canoga Ave, Woodland Hills, CA 91367–6619
DLA8LC, Y6—DCASMA, El Segundo, 222 N Sepulveda Blvd, El Segundo, CA 90245–4320
DLA8LT, WN—DCASPRO, E-Systems, Inc., P.O. Box 379, Greenville, TX 75401–0379
DLA8MB, V1—DCASPRO, Harris Melbourne, 1465 Clearmont Street, N.E., Palm Bay, Florida 32905–4093
DLA8MC, V2—DCASPRO, Rockwell International–MSD, P.O. Box 1367, Duluth, GA 30136–4099
DLA8MF, QF—DCASMA, San Juan, P.O. Box 34167, Ft. Buchanan, PR 00934
DLA8MH, X9—DCASPRO, McDonnell Douglas, Astronautics Co., 5301 Bolsa Avenue, Huntington Beach, CA 92647–2048
DLA8MM, XL—DCASPRO, Martin Marietta, Orlando Aerospace, P.O. Box 5837, Mail Point 49, Orlando, FL 32855–5837
DLA8MN, WQ—DCASMA, Twin Cities, 2305 Ford Parkway, St. Paul, MN 55116–1893
DLA8MW, WR—DCASMA, Milwaukee, S. Reuss Federal Bldg, Suite 340, 310 W. Wisconsin Ave., Milwaukee, WI 53203–2216
DLA8NC, WV—DCASMA, Ottawa, Journal Tower South, 14th Floor, 365 Laurier Ave. West, Ottawa, ONT, Canada K1A 0S5
DLA8NF, WW—DCASMA, Orlando, 3555 Maguire Blvd., Orlando, FL 32803–3276
DLA8NH, YS—DCASPRO, Sanders Associates, Daniel Webster Highway S, P.O. Box 868, Nashua, NH 03061–0868
DLA8NJ, WT—DCASMA, Springfield, 240 Route 22, Springfield, NJ 07081–3170
DLA8NL, Z1—DCASMA, New Orleans, 13800 Old Gentilly Highway, Bldg. 350, P.O. Box 29283, New Orleans, LA 70189–2218
DLA8NM, YR—DCASPRO, IBM, Route 17C, Owego, NY 13827–1298
DLA8NN, YN—DCASPRO, Harris, 6801 Jericho Turnpike, Syosset, NY 11791–4465
DLA8NY, WU—DCASR, New York, 201 Varick Street, New York, NY 10014–4811
DLA8NZ, Y9—DCASMA, New York, 201 Varick Street, New York, NY 10041–4811
DLA8PA, WY—DCASMA, Phoenix, The Monroe School, 215 N. 7th St., Phoenix, AZ 85034–1012
DLA8PH, XA—DCASR, Philadelphia, P.O. Box 7478, Philadelphia, PA 19101–7478
DLA8PL, X3—DCASMA, Philadelphia, P.O. Box 7699, Philadelphia, PA 19101–7699
DLA8PM, XB—DCASPRO, IBM, Manassas, 9500 Godwin Drive, Manassas, VA 22110–4198
DLA8PP, XD—DCASMA, Pittsburgh, 1612 S. Federal Bldg., 1000 Liberty Ave., Pittsburgh, PA 15222–4190
DLA8PR, X7—DCASPRO, RCA, Marne Highway and Borton Landing Road, Moorestown, NJ 08057–3095
DLA8PW, XE—DCASPRO, Ford Aerospace, 3939 Fabian Way, Palo Alto, CA 94303–4606
DLA8RB, XF—DCASPRO, Raytheon, Spencer Laboratory, Wayside Ave., Burlington, MA 01803–4608
DLA8RP, XM—DCASMA, Reading, 45 S. Front Street, Reading, PA 19602–1094
DLA8SA, XN—DCASMA, San Antonio, 615 E. Houston, P.O. Box 1040, San Antonio, TX 78294–1040
DLA8SD, X8—DCASPRO, Sundstrand, P.O. Box 5066, Rockford, IL 61125–0066
DLA8SF, XR—DCASMA, San Francisco, 1250 Bayhill Drive, San Bruno, CA 94066–3070
DLA8SK , XQ—DCASPRO, Singer-Link, Kirtland Plant, Binghamton, NY 13902–1237
DLA8SL, XS—DCASCR, St. Louis, 1136 Washington Avenue, St. Louis, MO 63101–1194
DLA8SN, XU—DCASMA, Syracuse, U.S. Courthouse & Federal Bldg., 100 S. Clinton St., Syracuse, NY 13260–0115
DLA8ST, X5—DCASMA, St. Louis, 405 S. Tucker Blvd., Room 5101, St. Louis, MO 63102–1181
DLA8SW, XW—DCASMA, Seattle, Bldg. 5D, Naval Station, Seattle, WA 98115–5010
DLA8SY, XX—DCASPRO, GTE Communications Systems Corp., 360 First Ave., Needham, MA 02194–9123
DLA8TC, YF—DCASPRO, Teledyne CAE, 1330 Laskey Rd., P.O. Box 6971, Toledo, OH 43612–0971
DLA8TE, XZ—DCASPRO, Texas Instruments, Inc., P.O. Box 660246, MS 256, Dallas, TX 75228–0246
DLA8TO, U3—DCASPRO, McDonnell Douglas/ Rockwell, 2000 North Memorial Dr., Tulsa, OK 74115–3833
DLA8VC, YC—DCASMA, Van Nuys, 6230 Van Nuys Blvd., Van Nuys, CA 91401–2713
DLA8WK, YD—DCASMA, Wichita, 435 Southwater, Wichita, KS 67202–3617
DLA8WR, YH—DCASPRO, Williams International, 2280 West Maple Rd., Walled Lake, MI 48088–0200
DLA8WS, YG—DCASPRO, Westinghouse, 401 E. Hendy Avenue, P.O. Box 499 MS 11–7, Sunnyvale, CA 94088–3499
DLA8WT, Z8—DCASPRO, Grumman, P.O. Drawer 1137, Stuart, FL 33495–1137
DLA8WU, VA—DCASPRO, Northrop, 600 Hicks Rd., Rolling Meadows, IL 60008–1098
DLA8WV, VD—DCASPRO, AM General, 701 W. Chippewa Ave., South Bend, IN 46680–2841
DLA900, UD—Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444–5000
DLA910—Defense Electronics Supply Center, Base Contracting Section, 1507 Wilmington Pike, Dayton, OH 45444–5000

Defense Communications Agency

DLA100, GO—Defense Communications Agency, Attn.: Contract Management Division, Code 680, Washington, DC 20305–2000
DCA200—DCA/DECCO, Code D610, Bldg. 3189, Scott AFB, IL 62225–8300
DCA300—DECCO-PAC, 1154 Bishop Street, Honolulu, HI 96813
DCA400—DECCO-EUR, APO New York, NY 09136–5000

Defense Mapping Agency

DMA600, BQ—Hqtrs., Defense Mapping Agency, 8301 Greensboro Drive, Suite 800, McLean, VA 22102–3672
DMA650—Defense Mapping Agency, Inter-American Geodedic Survey, Ft. Sam Houston, TX 78234–5000
DMA700, 8Y—Defense Mapping Agency Aerospace Center, 3200 South Second Street, St. Louis, MO 63118–3399
DMA800, YZ—Defense Mapping Agency, Hydrographic/Topographic Center, Attn.: LOCC4, 6500 Brooks Lane, Washington, DC 20315–0030

Defense Nuclear Agency

DNA001, 8Z—Defense Nuclear Agency, Attn.: OAAM, Washington, DC 20305–1000
DNA002, ON—Hqtrs. Field Command, Defense Nuclear Agency, Attn.: Office of Procurement, Kirtland AFB, NM 87115–5000
DNA004—Defense Nuclear Agency, Armed Forces Radiobiology Research Institute, Bethesda, MD 20814–5145

Miscellaneous Defense Activities

MDA902—American Forces Radio and Television Service, 10888 La Tuna Canyon Road, Sun Valley, CA 91352–2058
MDA903, F7—Defense Supply Service—Washington, Room 1D245, The Pentagon, Washington, DC 20310–5200
MDA904; BE—Maryland Procurement Office, Attn.: P&P Directorate, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000
MDA905, B4—Uniformed Services, University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799
MDA906—Office for the Civilian Health & Medical Program of the Uniformed Services (CHAMPUS), Aurora, CO 80045–6900
MDA907—P&C Office, Menwith Hill Station, APO, New York, NY 09210
MDA908, F3—Virginia Contracting Activity, P.O. Box 46353, Washington, DC 20050–6563
MDA946—Procurement & Contracting Office, Attn.: DOD/OSD/WHS, Rm 1D198, The Pentagon, Washington, DC 20310–1155
MDA970—Defense Test & Evaluation Support Agency, 4308 Carlisle N.E., Suite 101, Albuquerque, NM 87107
MDA972, WS—DARPA Contract Management Office, 1400 Wilson Blvd., Arlington, VA 22209–2309

Strategic Defense Initiative Organization

SDI084—Strategic Defense Initiative Organization, Attn.: SDIO/CP, Washington, DC 20301–7100

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AA93

Migratory Bird Permits; Permit Exceptions for Captive-Reared Mallards

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule finalizes the Fish and Wildlife Service's (Service) proposal to require the use of nontoxic shot on game preserves, in field trials and during bona fide dog training activities when taking captive-reared mallards. This action is being taken to correct the regulatory anomaly that, heretofore, has allowed lead shot to be used for taking captive-reared mallards in nontoxic (steel) shot zones. The effective date of this requirement has been delayed until the 1990–91 hunting season.

EFFECTIVE DATE: September 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634, Arlington Square, 4401 Fairfax Drive, Arlington, Virginia 22203, or write Director (FWS/MBMO), Mail Stop 634-Arlington Square, 18th & C Streets NW., Washington, DC 20240 (703/358–1714).

SUPPLEMENTARY INFORMATION:

Background

In 1987, it was brought to the attention of the Service by several States that existing exemptions to take captive-reared mallards in nontoxic shot zones with lead shot are inconsistent with the goal of the Service to eliminate lead poisoning in waterfowl and bald eagles. These situations exist because the provisions of this part 21 (§ 21.13) are specifically exempted from the provisions of part 20. In the rule titled "Zones in which lead shot will be prohibited for the taking of waterfowl, coots and certain other species in the 1988–89 season" (52 FR 47428), the Service proposed that § 21.13, Permit exceptions for captive-reared mallards, be changed to make it subject to the requirements of § 20.108 of part 20, Nontoxic shot zones. The proposed rule schedule would have required shooting preserves within existing nontoxic shot zones to convert simultaneously in the 1988–89 season. Other shooting preserves would have been required to convert in the 1989–90, 1990–91 and 1991–92 seasons according to the appendix N schedule of the 1986 Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States (SEIS).

This proposal was based on the knowledge that shooting preserve areas, including "tower shoot" operations, usually host wild waterfowl and raptors at one time or another; the birds are then exposed to the spent shot. Also, when lead shot is used to take captive-reared mallards during field trials or bona fide dog training activities, it results in the deposition of spent shot and potential lead exposure for wild migratory birds. Application of § 20.108 to shooting preserves and these other activities would eliminate additional sources of lead shot and potential lead poisoning mortality for waterfowl and other migratory birds. In fact, the 1986 SEIS did not anticipate waterfowl hunting lead shot enclaves continuing in existence. The nationwide strategy to convert totally to nontoxic shot to eliminate lead poisoning in migratory birds was implemented on the basis that *all* hunting of waterfowl, coots and certain other species would be done with nontoxic shot.

Because of the known interest and paucity of comments received when the proposed rule comment period closed on January 13, 1988, the Service published a clarification, correction and comment period reopening in the **Federal Register** on March 25, 1988 (53 FR 9781). The reopening notice clarified the Service proposal by pointing out the following:

- The section proposed to be revised deals only with captive-reared mallards that are taken under the permit requirements of the Federal regulations.
- This proposal would not change the existing regulations restricting hunting of any other captive-reared species, or use of other captive-reared species in dog trials or dog training. The subsection to which this amendment will be added begins "Captive-reared and properly marked mallard ducks * * * may be acquired * * * and disposed of by any person without a permit, subject to the following conditions * * *" (50 CFR 21.13, Permit exceptions for captive-reared mallards.)
- This regulation is not aimed at bona fide dog training or trials where it is apparent that no one is attempting to take migratory birds. While the words being amended might appear to relate to such trials, the section into which they fit related only to the taking of captive-reared mallards.
- The proposed revision is aimed at establishing a uniform zone requirement for requiring nontoxic shot to take waterfowl, thus eliminating the potential for wild waterfowl and bald eagles to be lead-poisoned from ingestion of lead shot. This regulatory change will ensure that when a county is phased-in for nontoxic shot use the "game farms" or bona fide dog training or field trial operations within that county that are shooting captive-reared mallards are phased-in at the same time.
- Among these other objectives, this proposal would provide regulatory

consistency across nontoxic shot zones and, therefore, consistency in enforcement.

Additionally, the Service pointed out that the taking of wild waterfowl on game preserves has been and will continue to be subject to the nontoxic shot requirement of the county(ies) in which they are located and other regulations of part 20. Likewise, any taking of wild waterfowl during dog training activities or during field trial operations remains subject to *all* Part 20 regulations.

Summary of Comments

Over the period December 14, 1987, to April 25, 1988, when the last comment period closed, approximately 103 letters of comment representing about 90 commentors were submitted specifically on the § 21.13 proposal. Of this number, 10 States provided 15 letters of comment, 82 letters were received from private individuals or owners on behalf of shooting preserves, 3 letters were received from public interest organizations and 3 from members of Congress. The States responding largely supported the proposal; virtually all of the other comments submitted were in opposition to the proposal.

State Comments

Of those potentially affected by this proposal, only 10 State wildlife management agencies provided written comments. Of the 10, only a single State totally opposed the proposal. Most, if not all, of the nonresponding States were contacted by phone to determine if the proposed rule had been received and to obtain oral comments. The States had been sent two separate mailings of the Service's intent to promulgate this rule. Those States not commenting are considered to have provided passive concurrence for the proposal. Written comments of State wildlife management agencies are as follows:

California

The California Department of Fish and Game (Department) advised that Licensed Domesticated Migratory Game Bird Shooting Clubs in that State are required to hunt in a prescribed manner that includes a prohibition against shooting over water. For this reason, the Department argues that no threat of lead poisoning exists for wild waterfowl and, therefore, the proposed regulation is inappropriate to such clubs in California.

Colorado

The Colorado Division of Wildlife (Division) provided general support for the proposal but noted what is perceived as a problem with its inflexibility. The Division agreed that steel shot for captive-reared mallards should become mandatory on areas where spent shot would be scattered in water or wetland areas, utilized by wild waterfowl, or even on adjacent upland areas, including croplands, where wild waterfowl normally feed. However, the Division cited situations where facilities are specifically constructed for field trial or tower-to-pond shooting of captive-reared mallards that are removed from wetlands utilized by wild waterfowl. The Division maintains that these areas that are seldom, if ever, utilized by wild waterfowl should be subject to a process that could provide exemptions to the steel shot requirement on site-by-site basis.

Delaware

The Delaware Division of Fish and Wildlife (Division) stated that nontoxic shot and other applicable Federal regulations should apply to the taking of all waterfowl whether in a "game farm" environment, a regulated shooting area, or elsewhere, because there is a potential to expose wild waterfowl to lead poisoning in most of these areas. However, the Division did not support requiring nontoxic shot for dog training and during field trials outside of wetlands habitat because these areas are open to other forms of hunting where lead is customarily used.

Florida

The Florida Game and Fresh Water Fish Commission supported the proposal, without qualification, to require nontoxic shot for taking captive-reared mallards.

Indiana

The Indiana Department of Natural Resources, Division of Fish and Wildlife (Division) noted a nonobjection to the proposal to require the use of nontoxic shot for taking captive-reared mallards. The Division noted that pen-reared mallards are shot over water and whether it is a pen-reared or wild duck makes no difference in respect to lead being deposited in a wetland.

Kansas

The Kansas Department of Wildlife and Parks (Department) responded that it supports the proposal to require the use of nontoxic shot to take captive-reared mallards. The Department noted that nontoxic shot rules should apply equally to all hunting of waterfowl as a deposit of lead occurs whether fired at wild or captive-reared waterfowl.

Maryland

The Maryland Department of Natural Resources responded that it strongly supports the proposed rule and cited as reasons for doing so: the decoy effect of captive-reared mallards that increases the risk to wild waterfowl—ducks and geese; public relations problems with regard to allowing a segment of the hunting community to use lead shot while others are required to use nontoxic shot; law enforcement problems associated with identifying where nontoxic shot is or is not required; and the problem of continuing exposure of bald eagles to waterfowl containing embedded and/or consumed lead shot.

Minnesota

The Minnesota Department of Natural Resources responded that it favors the requirement to use nontoxic shot for taking captive-reared mallards on shooting preserves and similarly affected areas.

New York

The New York Department of Environmental Conservation (Department) advised that few, if any, of shooting preserve operators in New York were aware of this proposed rule until they were contacted by the State in the second comment period. Thus, the Department requested that "tower shoot" operations be exempted from having to shoot nontoxic shot for 1988–89 only, in order to avert financial problems related to inventories of lead shot that were purchased in anticipation of needs this current season.

Texas

The Texas Parks and Wildlife Department (Department) requested a delay on implementation of this rule until the last year of the nationwide phase-in. This delay of implementation was requested to allow acquisition of specific information concerning the use and impact of lead shot on shooting resorts in Texas.

Issues identified in this group of official State comments, such as deferral of the effective date, exemptions for "tower shoots," etc., are addressed later in this rule, with those of the general public.

Other Comments

As set out above, 88 letters of comment were received from individuals and organizations other than State wildlife management agencies. Public interest organizations submitting comments on the proposals to require nontoxic shot for taking captive-reared

mallards on shooting preserves are the International Shooting and Hunting Alliance (ISHA), the National Rifle Association (NRA), the National Wildlife Federation (NWF) and the Wildlife Legislative Fund of America (WLFA); the NWF supported, and the others opposed, the proposal.

The ISHA stated that the proposal justification is not supported by even a "* * * minimum of factual data or biological information." The ISHA disagreed with the manner in which the justification for the strategy to phase out lead shot nationwide was applied to this proposal because the conditions for lead poisoning to impact wild waterfowl, as set out by the Bellrose Report, are not met. Too, the ISHA submits that the Service abandoned the logical and justifiable "hot spot" approach in considering the use of nontoxic shot "* * * because of ease of law enforcement, unwillingness to allocate personnel and funds to ascertain geographical areas where nontoxic shot was necessary and, quite obviously, bowing to political pressure from the anti-sportsmen community." The ISHA also stated that, despite the disclaimer, no one would be able to use captive-reared mallards for field trials or dog training as "taking" does, in fact, take place. This group also requested a public hearing to provide a record upon which to act.

The NRA is opposed to the proposed rule and urged that private shooting preserves continue to be exempted from the nontoxic shot requirements. The NRA stated that application of nontoxic shot requirements to shooting preserves may result in fewer captive-reared waterfowl being produced and released without any potential for lead poisoning impacts on waterfowl and/or bald eagles. The NRA also stated that many shooting preserves are not visited by wild waterfowl at any time and, thus, lead shot use does not pose a threat to wild waterfowl and/or bald eagles. Lastly, this group stated that in all likelihood less excise taxes and permit fees will be collected because many thousands of captive-reared mallards are raised and harvested than would otherwise be the case if nontoxic shot was required, which would ultimately work to the detriment of the resource.

The NWF strongly supported the proposed rule, stating that "[t]here is no biological reason to assume that lead shot incidental to the covered activities would be any less susceptible to ingestion by waterfowl than shot spent pursuant to the taking of wild waterfowl." The NWF stated that, in this regard "* * * steel shot regulations correctly make no distinction between the taking of wild waterfowl in uplands or wetlands since there is no evidence to suggest that waterfowl or eagles are immune from the effects of ingested or embedded lead shot in upland locations." Further, the NWF stated that the line should logically be drawn around the target species rather than create an enforcement problem associated with attempting to make distinctions between "waterfowl habitat" and wetlands. Too, the NWF cited the anomaly with regard to the exception created for captive-reared mallards by § 21.13 and the unfair situation that further exempting shooting preserves would create for hunters that have no access to such areas and the responsibility that all hunters should share to "* * * pursue their sport in a manner that conserves America's waterfowl and endangered species for the enjoyment of future generations." Finally, the NWF stated that the proposal is viewed by that group as an important component of the nationwide conversion to steel shot.

The WLFA questioned the basis for the decision to effect a nationwide ban on the use of lead shot for waterfowl and coot hunting by the 1991–92 season, and reiterated their support for the "hot spot" approach to the lead poisoning problem. The WLFA then specifically protested the proposed rule on the grounds that it is being done for the convenience and ease of the Service, charging that it is an unwarranted intrusion on private activities and is being done at the expense of legitimate private interests. The WLFA asked that the requirement be eliminated.

The Service also received comments on the proposed rule from one member of the United States House of Representatives and two United States Senators.

The House member stated that the exemption for shooting preserves should be retained on the basis that the exposure of wild waterfowl to lead is minimal because of the limited amount of hunting that occurs on a limited number of shooting preserves. The House member also stated a common objection to nontoxic shot rules that there is still a great deal of controversy and argument in the scientific community regarding the actual overall effect of lead shot on the waterfowl population. Further, shooting preserves are not open to the general public and most of these birds are raised specifically for the purpose of sport hunting.

One Senator urged the Service to take a closer look at the proposed rule, and to leave intact the exemption for privately raised waterfowl on game farms on the basis that the proposal eliminates the exemption wholesale without any regard for the particular circumstances under which a game preserve shoots captive-reared mallards. Further, the Senator stated that some game preserves arrange their shoots such that no shooting occurs over water or where mallards feed, and that the proposal contained no factual data to support the assertion that the exemption should be eliminated.

The other Senator requested that an alternative be developed to preserve options for lead shot usage and to ensure that wild migratory waterfowl would be unlikely to ingest spent lead pellets.

Sixty-five of the letters received on this issue represent shooting preserve interests in the State of New York. Fourteen letters were received from a scattering of other States, including Illinois (1), Iowa (2), Louisiana (1), Minnesota (1), Missouri (1), South Carolina (2), Texas (4), Virginia (1) and Wisconsin (1). Three letters were received from the District of Columbia. Of the 65 New York letters, 16 are from members of the State legislature and offer two themes. One theme is that preserves not shooting over water areas do not expose migratory birds (waterfowl) to lead poisoning and should be exempted. The other theme is that States should be given regulatory authority to allow preserves exemptions on a case-by-case basis. Many, if not most, of the other New York responses and the 17 from the other States and the District also contain these two themes, and expand the bases for objection by citing other factors.

Although the exact manner in which the two themes are expressed varies somewhat from letter group to letter group, the following is representative of the comments received:

> * * * we hunt over dry land, are not part of the flyway and are never visited by migratory wild birds, it is hard to see how the application of the proposed amendment * * * would be consistent with the intent of the steel shot regulations.
>
> If the amendment is approved * * * we request that the states in which the affected hunting preserves exist be granted the authority to permit exceptions.

Other factors injected into the arguments against this requirement by those commenting vary considerably; some are not relevant to this proposed rulemaking and will not be addressed here because they have been responded to in earlier nontoxic shot zone rulemakings. Commentors should refer to the following sources for responses to comments not addressed in this final rulemaking. (References are to the pertinent portions of the Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States (1986) and the final rulemaking for the 1986–87 nontoxic zones (51 FR 31429; September 3, 1986).)

- Arguments against the lead shot-lead poisoning connection in waterfowl and bald eagles, including situations involving shooting over fields and over deep water, observers noting absence of carcasses, perceived documentation deficiencies, etc. (see, for example, Issues 1, 2, 7 and 8 and chapter III of the SEIS);
- Relative merits of the "hotspots" approach vs. the current phase-in strategy (see, for example, Issue 5 and chapters II and IV of the SEIS);
- Crippling and shooting performance of lead vs. steel shot (see, for example, Issue 12 and chapter III, page 86, of the SEIS);
- Cost of steel shot vs. lead shot and availability of steel shot (see, for example, Issue 14 and chapter III, page 90, of the SEIS);
- Capability of steel shot with weapons and safety (see, for example, Issue 13 and chapter IV, pages 11–15, of the SEIS);
- General allegations of arbitrariness in Service actions to eliminate lead poisoning as a mortality factor in waterfowl and coot (see, for example, Issue 3);
- Enforcement concerns (See chapter IV, page 57, of the SEIS); and
- Finding a suitable nontoxic alternative to lead (see, for example, Issue 14 and chapter III, page 90, of the SEIS).

Relevant Issue Identification and Responses

After review of the letters of comment provided to the Service on this proposal, a relatively few relevant common issues emerge. The following is an identification of those relevant common issues raised by commentors and the Service's response to each. Two of those identified, the "themes" mentioned earlier, predominate among the comments submitted and are addressed first as issues 1 and 2.

Issue No. 1: Although expressed in various ways, the essence of this concern is that in the more controlled shooting situations, i.e., "tower shoots," there is little or no potential for exposing wild migratory birds to spent lead shot and consequent lead poisoning.

Response: The Service recognizes that there exists a spectrum of shooting preserve types, from the wild bird/natural habitat conditions on one end to the captive-reared bird/tower-pond shoots on the other; there is also a concomitant spectrum of potential for spent shot exposure. However, even for the "tower shoots," it is virtually impossible to ensure that no exposure to spent lead shot results for wild waterfowl and raptors. Most of those commenting referenced only that the risks were minimal or nonexistent for wild waterfowl. Raptors are an important part of the overall lead shot-lead poisoning equation; bald eagles were a primary consideration in the litigation that resulted in adoption of the nationwide lead shot ban strategy.

Wild waterfowl are attracted to shooting preserves because of the "decoy effect" and/or because "tower shoot" ranges ordinarily include a wetland collection point for the flighted birds. Raptors are attracted to debilitated birds on or off preserves that have embedded and/or ingested shot because of the vulnerability resulting.

Too, it is not necessary for raptors to visit the shooting area to be exposed to ingested and/or embedded lead shot. One commentor pointed out that the club, to which he belongs, raises 25,000 mallards for "tower shoots" and, of that number, 10–15 percent are lost to the wild. Others cited losses of captive-reared birds to the wild at their clubs but stated that it was a positive factor because it supplemented wild populations. Despite the lack of evidence that released or escaped captive-reared mallards are benefiting wild populations of mallards in any significant way, captive-reared mallards undoubtedly transport imbedded or ingested lead shot that can be ingested by bald eagles and other predators remotely from the game preserves.

Issue No. 2: Authority should be delegated to the individual States to certify qualified shooting preserves to be nonproblem lead shot-lead poisoning areas, on a case-by-case basis.

Response: In light of the information presented here and elsewhere in these issues and responses, it should be apparent that the problem is not as simple as visiting game preserves and certifying that problems with lead shot-lead poisoning do not exist on-site because the lead problem is in all probability not that obvious on-site, spatially or temporally, and can be exported off-site as well. Lead poisoning problems traditionally are not readily identified or believed by the casual observer because of the nature of the illness. There are also considerable problems associated with establishing standards/definitions for what does or does not constitute a problem and the administrative burdens associated with inspection, certification and enforcement. Most importantly, exempting certain areas from nontoxic shot requirements is a significant departure from the strategy adopted to eliminate lead poisoning and does not treat the problem evenheandedly. Too, no responding States have suggested that the problem be resolved on the basis that they be empowered to certify game preserves as lead shot-lead poisoning nonproblem sites.

Issue No. 3: The proposal justification is not supported by factual data/biological information.

Response: Although the charges made are much broader than this proposal and are largely answered in the references noted earlier for nonrelevant issues, the Service believes a general response is appropriate. As previously stated, the purpose of this rule is to correct an anomaly existing under the current regulations relating to nontoxic shot requirements. The justification for this action is the same justification presented in the 1986 Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States for implementing a nationwide ban of lead shot for hunting waterfowl. The intent continues to be to cover all hunting activities involving waterfowl, coots and certain other species. (For the purposes of the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*; 40 Stat. 755), captive-reared mallards are migratory waterfowl and subject to Federal regulation.)

It is also important to this discussion to note that a major stimulus for the action to phase out nationwide the use of lead shot for waterfowling is the *NWF* vs. *Hodel* court decision of 1985 (Civ. No. 585–0837 EJG). In this decision, the court found, on the basis of the factual data/biological information, that a lead poisoning problem does exist and that the Department of the Interior had not responded to this problem commensurate with its statutory responsibilities. Since the 1985 decision, the Court has on two separate occasions relied upon that same factual data/biological information to support the Service's actions to eliminate lead poisoning in migratory birds through the cessation of lead shot use for waterfowling.

Issue No. 4: Game farm mallards do not have lead poisoning problems, therefore, lead poisoning cannot be a problem for wild waterfowl or bald eagles; there are no waterfowl and/or eagles in the vicinities of some of the

preserves; wild waterfowl and eagles are kept away from the preserves by all the activities; etc.

Response: Some of the comments provided on this issue were somewhat contradictory. A game preserve operator pointed out that lead poisoning was recognized as a problem for game farm mallards years ago and, therefore, it is in the best interests of the game preserves to ensure that the lead shot does not fall into lakes and streams where feeding occurs. Others stated that the lead shot could not conceivably cause lead poisoning because it is deposited in upland areas away from the flight terminus—usually a pond. Others readily agreed that the lead shot does reach areas where it is accessible to wild and captive-reared waterfowl but stated that lead poisoning has never been noted in the captive-reared birds that utilize the pond areas for as long as 9 months out of the year. Assurances were also given that some of these areas were not within any flyway, and are not frequented by bald eagles.

For captive-reared waterfowl, there are probably few studies illustrating the lead risk. One such study of Hungarian mallards (Salyi et al. 1987) showed an associated decreased flying ability and wing and leg paralysis from physiological damage after ingestion of lead shot in the shooting area. In a recent (1988) radiological evaluation of captive-reared mallards shot in an upland area at Winchester's Nilo Farms, fully 12 percent of the birds had ingested lead shot although that "tower" shooting operation had been steel-only for 2 years.

As captive-reared mallards return overland to the release site from the flight terminus there is ample opportunity to ingest shot when picking up grit for the gizzard. Thus, the fact that ponds at the flight terminus are not shot-over may not preclude captive-reared mallards from ingesting spent lead shot. Certainly, many do carry embedded shot.

The concept of a "flyway" can be misunderstood. Although the number of birds passing through a given area in the north may be quite small in comparison to that of a comparably-sized area in the south, both are a part of a "flyway." All of the States of the contiguous States and Alaska are part of a "flyway." Eagles and other raptors also have migratory routes, "flyways," that may bring them to the vicinities of game preserves on a seasonal basis. However, their absence in a given area may mean only that bald eagle recovery there has not been as successful as it should be. Although bald eagle recovery is very encouraging in some parts of the United States, there are large portions of the historical range that are still unused or the numbers there are still below established recovery goals. The use of lead shot for captive-reared and wild waterfowl shooting is clearly inimical to the long-term recovery objectives for bald eagles.

Issue No. 5: Two concerns addressed in this single response relate to the charges that the proposal totally eliminates lead shot use from game preserves and is a "foot-in-the-door" to require nontoxic shot for taking other species.

Response: As stated earlier, the reopening **Federal Register** notice of March 25, 1988, explains that the proposal is restricted to § 21.13 of 50 CFR, Permit exceptions for captive-reared mallards, and does not change the existing regulations restricting hunting of any other captive-reared species, or use of other captive-reared species in dog trials or dog training. The implementation of nontoxic shot zones affects only the taking of waterfowl, coots and certain other species—"certain other species" referring to species taken in an aggregate with waterfowl or coots. Thus, the use of lead shot is not disallowed for taking other game preserve species that would otherwise be allowed by Federal and/or State regulations. The regulation change being implemented still allows shooting captive-reared mallards over water areas, it simply requires that it be done with nontoxic shot.

There are currently no data available that suggest a necessity to expand a nationwide requirement for nontoxic shot to other species of migratory birds. States may be, and sometimes are, more restrictive in their regulations to take other species (migratory and nonmigratory) in instances where there are lead poisoning problems.

One person commenting on the upland game bird aspect of this situation remarked that it is illogical to require nontoxic shot for captive-reared mallards and not pheasants when on preserves both may be hunted in the same areas. States customarily have primary authority for managing upland game birds. It would be a State's prerogative to require nontoxic shot for pheasants and other upland game species except where Federal lands involve a cooperative effort by the State and the managing Federal agency. In this regard, on Service managed lands, the Service is cooperating with the States to require the use of nontoxic shot to hunt pheasants and other upland game species in wetlands. Some States have taken the initiative to require nontoxic shot on all State-regulated hunting areas.

Issue No. 6: Steel shot is not compatible with some double barreled shotguns used by members of game preserves; game preserves are the last areas where the expensive, "classic" American and European double guns may be used for waterfowling because of the exemption there for lead shot.

Response: The Service has consistently stated to waterfowlers and other members of the interested public that, in the process of converting the nation from lead shot to steel shot for waterfowl and coot hunting to eliminate lead poisoning in migratory birds, there are shotguns having thin-walled or soft steel barrels that likely could not be used with steel shot. Nevertheless, the Service has not given exemptions for hunters who have traditionally used these antique or "classic" shotguns with such barrels—even off game preserves. Neither has the Service given exemptions to the relatively small number of waterfowlers who hunt with muzzleloading guns of recent or early ("originals") manufacture. Although their use for waterfowling may have to be discontinued under this regulatory change, these breechloading antique or "classic" shotguns may still be used for hunting upland birds and/or migratory birds other than waterfowl or coot. For the game preserves that require the use of double guns, there are doubles sold currently that are certified for steel shot. Some older, "classic" doubles are reputedly suitable for use with steel shot, but should be approved for use by the manufacturer or a qualified gunsmith.

Issue No. 7: Field trials and bona fide dog training activities should be exempted because in the areas where these two activities occur it is also common for other game birds to be hunted.

Response: This comment has been substantially addressed in Issue No. 5. Further, training and field trials with captive-reared mallard taking usually involves retrieving dogs in water and field areas that often are available to wild waterfowl. Requiring nontoxic shot for these activities will help to ensure that such areas do not present lead exposure opportunities and lead poisoning. Where these same areas have upland game bird hunting, the State has the prerogative to expand nontoxic shot coverage beyond captive-reared and wild waterfowl and coots. However, it should be recalled that the developing nationwide ban on the use of lead shot for waterfowling involves uplands as well as wetlands.

Issue No. 8: The implementation of this rule as proposed will place an economic burden on shooting preserves because they have already purchased ammunition supplies that will not be legal to use in the coming season.

Response: Recognizing that some shooting preserve operators may have inventories of lead shot ammunition, and consistent with its approach of "phasing-in" steel shot use in proportion to the risks posed to migratory birds, the Service is delaying the implementation of this rule requiring the use of nontoxic shot for taking captive-reared mallards until September 1, 1990.

In summary, this final rule makes § 21.13 of part 21, Permit exceptions for captive-reared mallards, subject to the requirements of § 20.108, Nontoxic shot zones, and becomes effective on September 1, 1990. All game preserves and other affected areas in existing nontoxic shot zones will convert to steel shot for taking captive-reared mallards simultaneously in the 1990–91 waterfowl hunting season. Game preserves and dog training/field trial areas not affected by the 1990–91 zoning will convert to steel shot in the final year of the nationwide phase-in, i.e., in the 1991–92 waterfowl hunting season.

This action is taken under the authority granted the Secretary of the Interior by the Migratory Bird Treaty Act and the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884). Justification for this action is based on: The 1986 SEIS analyses of the effects of the use of lead shot in waterfowl and coot hunting on migratory birds; scattered and light response from the general public and the States; the support of the majority of the States responding; the discriminatory effect that continuing this exemption would have on a portion of the waterfowl hunting community; and the need to be consistent in the approach to eliminating lead poisoning in waterfowl and raptors, nontoxic shot zoning and enforcement and compliance with nontoxic shot requirements.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The Service believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to the Endangered Species Act, a section 7 consultation was done on the potential impacts of the provisions of this rule on bald eagles. The section 7 opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle. More recently, a section 7 opinion concluded that the actions being carried out to ban the use of lead shot nationwide for waterfowl hunting is not likely to jeopardize the continued existence of the Aleutian Canada goose.

Authorship

The primary author of this final rule is Dr. Keith A. Morehouse, Staff Specialist, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 21

Exports, Imports, Reporting requirements, Wildlife.

Accordingly, part 21, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 21—[AMENDED]

1. The authority citation for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

2. Section 21.13(d) is amended by revising the language beginning with "Provided further," and ending with the words "preserve operations," to read as follows (the introductory paragraph is being republished):

§ 21.13 Permit exceptions for captive-reared mallard ducks.

Captive-reared and properly marked mallard ducks, alive or dead, or their eggs may be acquired, possessed, sold, traded, donated, transported and disposed of by any person without a permit subject to the following conditions, restrictions and requirements.

* * * * *

(d) * * * *Provided further,* That the provisions of:

(1) The hunting regulations (part 20 of this subchapter), with the exception of § 20.108 (Nontoxic shot zones), and

(2) The Migratory Bird Hunting Stamp Act (duck stamp requirement) shall not apply to shooting preserve operations, * * *

* * * * *

Dated: August 10, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–20677 Filed 9–1–89; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 54, No. 170
Tuesday, September 5, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 841

RIN 3206–AD62

Federal Employees Retirement System; General Administration; Cost of Living Adjustments

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations concerning computation of the cost-of-living adjustment (COLA) on basic benefits under the Federal Employees Retirement System (FERS). These regulations state which benefits are subject to COLA's and provide the methodology for computing COLA's on each type of FERS basic benefit subject to COLA's. These regulations also provide the methodology for determining the COLA's on mixed annuities (partially computed under FERS and partially computed under the Civil Service Retirement System (CSRS)). These regulations are necessary to implement the Federal Employees Retirement System Act of 1986.

DATE: Comments must be received on or before November 6, 1989.

ADDRESS: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–4682.

SUPPLEMENTARY INFORMATION: FERS COLA's are effective December 1 of each year and first appear in the January annuity payments for those eligible for the increases.

1. COLA's on FERS Basic Annuities and Survivor Annuities

Generally, FERS COLA's are 1 percent less than the actual increase in the cost of living as determined under the law. However, if the actual increase is between 2 and 3 percent, FERS COLA's are 2 percent and, if the actual increase is 2 percent or less, FERS COLA's match the inflation rate. FERS COLA's apply to retirees' basic annuities only (not annuity supplements), but for survivor annuitants they apply to both the basic survivor annuities and the annuity supplements. In addition, FERS COLA's do not apply for annuitants who are under age 62 as of December 1, except:

1. Spouse, former spouse, or insurable interest survivor annuitants;
2. Certain disability annuitants;
3. Those who retired under the special provisions for law enforcement officers and firefighters;
4. Those who retired under the special provision for air traffic controllers; and
5. Those who retired under the special provision for military reserve technicians because they ceased satisfying the requirements of their position due to a disability.

Under FERS, children's annuities are increased under CSRS provisions rather than FERS provisions. However, children's benefits under FERS are offset by social security children's benefits (which also receive a cost-of-living increase effective December 1). In most cases the social security benefit will exceed the FERS benefit, with the result that no FERS benefit is actually paid.

Generally, COLA's are not payable on disability annuities during the first year (nor does the social security offset increase during the first year). However, COLA's are payable during the first year if the annuity rate payable is the retiree's earned benefit or if the annuity is being redetermined because the retiree has reached age 62 during the first year. After the first year, both the disability benefit and the social security offset (if any) are increased by FERS COLA's. Disability annuitants' earned benefits also increase with COLA's, even when we are not paying the earned benefits. After application of the COLA, we compare the increased earned benefit to the increased 40 percent disability benefit offset by social security and pay the greater benefit until the annuity is redetermined at age 62. After age 62, we compare the redetermined annuity with the earned annuity after application of COLA's and we pay the greater benefit.

Full COLA's are paid only to annuitants who have been on the annuity roll for the full period covered by the COLA. Others receive only prorated shares of full COLA's. For example, FERS COLA's were payable on annuities having a commencing date before December 1, 1988. The full 1988 FERS COLA rate was 3.0 percent, but, only FERS annuities that commenced before January 1, 1988, received the full 1988 COLA. Annuities that began on or after January 1, 1988, received prorated COLA's according to the commencing date of the annuity. For survivors (other than children) of deceased annuitants, the proration was determined by the date the annuity was first payable to the deceased annuitant, and COLA's were applied to annuity supplements as well as basic survivor annuities. Eligible FERS annuitants received prorated COLA's effective December 1, 1988, according to the following chart:

Month annuity commenced	Proportion of full 3.0% increase	Prorated percentage
January 1988	11/12	2.8
February 1988	10/12	2.5
March 1988	9/12	2.3
April 1988	8/12	2.0
May 1988	7/12	1.8
June 1988	6/12	1.5
July 1988	5/12	1.3
August 1988	4/12	1.0
September 1988	3/12	0.8
October 1988	2/12	0.5
November 1988	1/12	0.3

Annuitants who do not get COLA's during their first year because they are under age 62 will have been on the annuity roll for over a full year when eligible for their first COLA's; therefore, their first COLA's are not prorated. The same is true for disability annuitants barred from receiving COLA's during their first year as annuitants.

2. COLA's on Basic Employee Lump Sum Death Benefits

Under FERS, a basic lump sum benefit is payable to the surviving spouse (or by court order to a former spouse) of a deceased employee with at least 18 months creditable civilian service. The law provides that this lump sum benefit is an amount equal to half the employee's final annual pay (or high-3 average pay, if higher) plus $15,000, adjusted for COLA's under CSRS rules.

Since the COLA's under CSRS rules were 4.2 percent and 4.0 percent effective December 1, 1987, and 1988, respectively, the $15.000 has increased to $16,255.20.

3. Applying COLA's to Combined CSRS/FERS Annuities

To compute COLA's on mixed benefits, we first compute the initial retired employee annuity rate. After applying CSRS rules to CSRS service and FERS rules to FERS service to obtain the annual amount payable for each component, we make any applicable FERS reductions for age and/or survivor benefits to each component. The sum of the two components is the initial annual annuity rate. The initial monthly installment is ⅟₁₂th (with cents dropped) of the initial annual annuity rate. Then, we determine the initial whole-dollar amount of the monthly CSRS component by dividing the annual CSRS component by 12 and dropping any odd cents. The initial whole-dollar amount of the monthly FERS component equals the initial monthly rate minus the initial monthly whole-dollar CSRS component. The following example illustrates the computation of the initial whole-dollar amount of monthly CSRS and FERS components for an annual CSRS component of $11,987.76 and an annual FERS component of $15.30:

—Initial monthly installment: $1,000
  Annual CSRS component divided by 12: 998.980
  Annual FERS component divided by 12: 1.275
—Drop odd cents from CSRS component $998
—Subtract CSRS component (less any cents) from monthly installment.
—The balance—$2—is the FERS component.

In some cases an employee with only a month or two of FERS service would have a monthly FERS component of zero under the method described above for determining the amounts of the components. In such cases, the FERS component will be the minimum of $1 per month in addition to the CSRS component. This FERS component receives a $1 COLA. (Employees with less than a month of FERS service have no FERS components and are not due any FERS COLA's.)

After computing the initial retired employee annunity rates, we can apply COLA's to employee annunities. COLA's are determined by applying the appropriate increase to each component and rounding to the next lower dollar (each component must increase by at least one dollar) before adding them together for the new monthly amount payable. The components are already whole-dollar amounts to which we can apply future COLA's. For example:

	CSRS	FERS	Monthly amount payable
Component	$998	$2	$1,000
COLA	1.05	1.04	
Total	1,047.90	2.08	
New amounts	1,047	3	1,050

Survivor annuities do not have CSRS/FERS components. The initial survivor annuity is 50 percent (or in some cases 25 percent) of the annual amount of the retiree's annuity before reduction for the survivor benefit. The initial monthly survivor rate is 1/12th of the annual survivor rate, rounded down to the next lower dollar (but not less than one dollar).

Because the CSRS and FERS COLA's are usually computed using different rates and because FERS generally does not pay COLA's for retirees under age 62, the total annuity increases at a rate different from either of its components.

When the retiree dies, the monthly rate payable to the survivor is the initial monthly survivor rate increased by the total percent by which the deceased's annuity had increased since retirement.

For example:

A. At Retirement

- Retiree's annual annuity rate before reduction for survivor annuity: $17,567.89
- Retiree's rate after 10 percent reduction for survivor benefit and conversion to monthly rate: $17,567.89 × .90 = $15,811.10, divided by 12 and rounded to the next lower dollar: $1,317
- Initial monthly survivor rate (50 percent of retiree's annual rate before reduction for survivor benefit, divided by 12 and rounded to the next lower dollar): $17,567.89 × .50 = $8783.95, divided by 12 and rounded to the next lower dollar: $731

B. At Retiree's Death

- Retiree's monthly annuity rate at death: $2,174
- Total percent of increase in retiree's monthly annuity rate since retirement began: 65 percent
- Initial monthly survivor annuity payable ($731 × 1.65, rounded to next lower dollar): $1,206

C. After the Retiree Dies and the Survivor Annuity Has Begun

- The survivor annuity increases according to FERS COLA provisions.

4. COLA's for Certain Military Reserve Technicians

Under section 8462(c)(3)(B)(ii) of title 5, United States Code, military reserve technicians who retired under section 8414(c) of title 5, United States Code, as a result of a disability are excepted from the bar against COLA increases for retirees under age 62. Section 841.708 provides that for this purpose disability means medical disability.

Military reserve technicians who meet the requirements that apply to the general employee population may retire under the general disability retirement rule, section 8451(a)(1)(B) of title 5, United States Code. This allows retirement of military reserve technicians who are medically disabled for their positions and who meet the same disability provisions as other disabled Federal employees.

In addition, military reserve technicians may retire under either of two special provisions depending on their age and length of service. Section 8414(c) of title 5, United States Code, provides a special form of discontinued service retirement for military reserve technicians. It allows retirement of military reserve technicians who may not be disabled for their positions, but are medically or nonmedically disqualified for military service or the rank required to hold the position, and who are at least age 50 with 25 years of service.

Section 8456 of title 5, United States Code, allows military reserve technicians who are not eligible under section 8451(a)(1)(B) or section 8414(c) but who are medically disqualified for military service or the rank required to hold their positions to retire on disability. These technicians retire under the general disability provision, but the annuity stops if they are rehired in the Federal service or they decline a Federal job offer.

Technicians who retire under the disability provisions (section 8451(a)(1)(B) or section 8456) get COLA's after their first full year on the disability rolls. In providing COLA's for military reserve technicians retiring under the discontinued service provision (section 8414(c)) only when the technicians are disabled, section 8462(c)(3)(B)(ii) distinguishes between medical and nonmedical disqualification from military service or rank.

Usually, when technicians retire under section 8414(c), neither OPM nor the technician's employing office receives information about the reason for disqualification. These regulations provide that when we receive no information about the reason for the disqualification, we will process the case assuming that the disqualification was for a nonmedical reason. We will inform these retirees that they will not receive COLA's until they reach age 62 unless they provide an official certification from the military showing that their disqualification was for medical reasons.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance B. Newman,

Director.

Accordingly, OPM proposes to amend 5 CFR part 841 as follows:

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

1. The authority citation for part 841 is revised to read as follows:

Authority: 5 U.S.C. 8461; Section 841.108 also issued under 5 U.S.C. 552a; subpart D also issued under 5 U.S.C. 8423; Section 841.504 also issued under 5 U.S.C. 8422; Section 841.507 also issued under section 505 of Public Law 99–335; Subpart J also issued under 5 U.S.C. 8469.

Subpart A—General Provisions

2. In § 841.102, paragraph (a)(7) is revised to read as follows:

§ 841.102 Regulatory structure for the Federal Employees Retirement System.

(a) * * *

(7) Cost-of-living adjustments (subpart G);

* * * * *

3. Subpart G is added to read as follows:

Subpart G—Cost-of-Living Adjustments

Sec.

841.701 Purpose and scope.
841.702 Definitions.
841.703 Increases on basic annuities and survivor annuities.
841.704 Proration of COLA's.
841.705 Increases on basic employee death benefits.
841.706 Increases on combined CSRS/FERS annuities.
841.707 COLA's affecting computation of survivor supplements.
841.708 Special provisions affecting retired military reserve technicians.

Subpart G—Cost-of-Living Adjustments

§ 841.701 Purpose and scope.

(a) The purpose of this subpart is to regulate computation of cost-of-living adjustments (COLA's) for basic benefits under the Federal Employees Retirement System (FERS).

(b) This subpart provides the methodology for—

(1) Computing COLA's on each type of FERS basic benefit subject to COLA's; and

(2) Computing COLA's on mixed annuities (partially computed under FERS and partially computed under the Civil Service Retirement System (CSRS)).

(c) COLA's on children's annuities are not covered by this subpart because COLA's on children's annuities are computed under CSRS rules.

§ 841.702 Definitions.

In this subpart—

Annuity supplement means the benefit under subpart E of part 842 of this chapter. An "annuity supplement" is only payable to retirees.

Basic annuity means the benefits computed under subpart D of part 842 of this chapter and payable to retirees.

Basic employee death benefit means the basic employee death benefit as defined in § 843.102 of this chapter.

Beneficiary of insurable interest annuity means a person receiving a recurring benefit under FERS that is payable (after the employee's, Member's, or retiree's death) to a person designated to receive such an annuity under § 842.605 of this chapter.

COLA means a cost-of-living adjustment.

Combined CSRS/FERS annuity means the recurring benefit with a CSRS component and a FERS component. A "combined CSRS/FERS annuity" is only payable to a retiree who as an employee elected to transfer to FERS under part 846 of this chapter, who at the time of transfer had at least 5 years of civilian service creditable under CSRS (excluding service that was subject to both social security and partial CSRS deductions), and who was covered by FERS for at least 1 month.

CSRS means the Civil Service Retirement System as described in subchapter III of chapter 83 of title 5, United States Code.

CSRS component means the portion of a combined CSRS/FERS annuity that is computed under CSRS rules.

Current spouse annuity means a current spouse annuity as defined in § 842.602 of this chapter.

Disability retiree means a retiree who retired under part 844 of this chapter

Effective date means the date annuities increased by a COLA begin to accrue at the higher rate.

FERS means the Federal Employees Retirement System as defined in chapter 84 of title 5, United States Code.

FERS component means the portion of a combined CSRS/FERS annuity computed under FERS rules.

Former spouse annuity means a former spouse annuity as defined in § 842.602 of this chapter.

Initial monthly rate means the monthly annuity rate that a retiree (other than a disability retiree) is entitled to receive at the time of retirement (as defined in § 842.602 of this chapter).

Percentage change means the percent change in the price index as defined in section 8462(a)(2) of title 5, United States Code.

Retiree means a retiree as defined in § 842.602 of this chapter.

Survivor means a person receiving a current spouse annuity or a former spouse annuity, or the beneficiary of an insurable interest annuity. As used in this subpart, "survivor" does not include a child annuitant.

Survivor supplement means the recurring benefit payable to a survivor under § 843.308 of this chapter.

§ 841.703 Increases on basic annuities and survivor annuities.

(a) Except as provided in §§ 841.704, 841.706, and 841.707, and paragraph (e) of this section COLA's on basic annuities and survivor annuities are the greater of—

(1) One dollar per month; or

(2)(i) If the percentage change is less than 2 percent, the percentage change;

(ii) If the percentage change is at least 2 percent and not greater than 3 percent, 2 percent; and

(iii) If the percentage change exceeds 3 percent, 1 percentage point less than the percentage change.

(b) After survivor annuities commerce, they are subject to COLA's computed under paragraph (a) of this section, even if they are based on a basic employee annuity that includes a CSRS component.

(c) COLA's apply to basic annuities (not to annuity supplements), survivor annuities, and survivor supplements.

(d) COLA's do not apply for annuitants who are under age 62 as of the effective date, except—

(1) Survivors;

(2) Disability retirees (other than disability retirees whose benefit is based on 60 percent of high-3 average salary);

(3) Retirees who retired under § 842.208 of this chapter (the special provisions of law enforcement officers and firefighters);

(4) Retirees who retired under § 842.207 of this chapter (the special provision for air traffic controllers);

(5) Retirees who retired under § 842.210 of this chapter (the special provision for military reserve technicians who ceased satisfying the requirements of their position) due to a disability.

(e)(1) Except as provided in paragraph (e)(2) of this section, COLA's are not payable to disability retirees during the first year.

(2) COLA's are payable to disability retirees during the first year if the annuity rate payable is the retiree's earned benefit or the annuity is redetermined because the retiree has reached age 62.

(3) After the first year, both the disability benefit and the social security offset (if any) are increased by COLA's. Disability retirees' earned benefits also increase with COLA's, even when earned benefits are not paid. After application of the COLA, the greater of the increased 40 percent benefit offset by social security or the increased earned benefit is paid until the annuity is redetermined at age 62. After age 62, the redetermined annuity and earned annuity are compared after application of COLA's and the greater benefit is paid.

(f) COLA's are payable to retirees and survivors whose annuities commence before the effective date.

§ 841.704 Proration of COLA's.

(a) The full amounts of COLA's are payable on annuities having a commencing date more than 11 months before the effective date.

(b)(1) Prorated portions of COLA's are payable on annuities having a commencing date within 11 months before the effective date.

(2) Proration is based on the number of months (with any portion of a month counting as a month) between the annuity commencing date and the effective date.

(3) For survivors of deceased retirees, proration is determined by the date the annuity was first payable to the deceased retiree. COLA's apply to survivor supplements as well as basic survivor annuities.

(4) Proration applied to the assumed social security disability insurance benefit is based on the commencing date of the disability annuity, not the beginning of the social security disability benefit.

§ 841.705 Increases on basic employee death benefits.

(a) COLA's on the basic employee death benefit increase the $15,000 component by the percentage change.

(b) Recipients of the basic employee death benefit are entitled to COLA's if the employee or Member died on or after the effective date.

§ 841.706 Increases on combined CSRS/FERS annuities.

(a) COLA's on combined CSRS/FERS annuities are computed by increasing the CSRS component by the percentage change and the FERS component by the amount of COLA's under § 841.703(a).

(b) The initial monthly CSRS component is computed by—

(1) Applying CSRS rules to CSRS service and FERS rules to FERS service to obtain the annual amount payable for each component, then

(2) Making any applicable FERS reductions for age and/or survivor benefits to each component; then

(3) Dividing the annual amount of the CSRS component by 12, then

(4) Dropping any cents from the CSRS component.

(c) The initial monthly FERS component is computed by subtracting the initial monthly CSRS component from the initial monthly rate.

(d) A retiree who was covered under FERS for at least 1 month has an FERS component. If the amount of the FERS component as computed above is zero (because the CSRS component is equal to the monthly installment, leaving no balance for the FERS component), the FERS component is $1 per month. The reitree is due a full dollar increase on the FERS component with the next COLA. (An employee with less than a month of FERS service has no FERS component and is not due any FERS COLA's.)

(e) COLA's are determined by applying the appropriate increase to each component and rounding to the next lower dollar (each component must increase by at least 1 dollar if a COLA applies to each component) before adding them together for the new monthly amount payable.

§ 841.707 COLA's affecting computation of survivor supplements.

For purposes of computing the assumed CSRS annuity under § 843.308 of this chapter, the assumed CSRS annutiy includes COLA's computed under CSRS rules.

§ 841.708 Special provisions affecting retired military reserve technicians.

(a) Military rearve technicians who retire as a result of a medical disability are excepted from the bar against COLA increases for retirees under age 62.

(b) Military reserve technicians have retired as a result of a medical disability if they retire under—

(1) Section 8451(a)(1)(B) of title 5, United States Code, (that allows retirement by military reserve technicians who are medically disabled for their positions); or

(2) Section 8456 of title 5, United States Code, (that allows military reserve technicians who are not disabled for their positions and who are not eligible under the special military reserve technician discontinued service provisions (section 8414(c)) but who are medically disqualified for military service or the rank required to hold their positions).

(c)(1) Military reserve technicians have not retired as a result of a medical disability if they retire under section 8414(c) of title 5, United States Code, (that allows retirement of military reserve technicians who may not be disabled for their positions, but are medically or nonmedically disqualified for military service or the rank required to hold the position, and who are at least age 50 with 25 years of service) unless they provide OPM official documentation from the military showing that their disqualification was for medical reasons.

(2) When OPM receives no information about the reason for the disqualification of a military reserve technician retiring under section 8414(c) of title 5, United States Code, OPM will process the case assuming that the disqualification was for nonmedical reasons. OPM will inform these retirees that they will not receive COLA's until they reach age 62 unless they provide an official certification from the military showing that their disqualification was for medical reasons.

[FR Doc. 89-20787 Filed 9-1-89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV-89-020PR]

Filberts/Hazelnuts Grown in Oregon and Washington; Proposed Administrative Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action invites comments on deletions, revisions, and additions to the administrative rules and regulations under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. These proposed changes were unanimously recommended by the Filbert/Hazelnut Marketing Board (Board), which is responsible for local administration of the order. These changes are intended to reflect the Board's current needs and practices by making administrative changes to improve administration of the order.

DATES: Comments must be received by October 5, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 382-1754.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 982 (7 CFR part 982), as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order, and approximately 1,300 producers in the Oregon and Washington production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

This proposed rule would make several changes to the administrative rules and regulations of the filbert/hazelnut marketing order. Several changes are necessary to update administrative rules and regulations to reflect the August 19, 1986, (51 FR 2947) amendments to the marketing order.

Form numbers specified in the administrative rules and regulations need to be changed to reflect the current form numbers used by the Board. Additionally, for clarity, the Board has recommended that other specific form references be inserted into sections that previously contained only a general reference to reporting requirements. No new forms are added as a result of reference changes.

Further, the Board has recommended that the term "hazelnuts" be used in the rules and regulations to reflect the fact that filberts may also be called hazelnuts. This is reflected by the definition of filberts in the order. In addition, hazelnuts is the term used in Europe where a portion of the domestic crop is marketed. Therefore, this rule would change all references to filberts to filberts/hazelnuts.

The first change would delete § 982.432 from the rules and regulations. This section describes nomination procedures which independent growers should follow when nominating independent grower members for Board membership. During the formal rulemaking process completed in 1986, § 982.30 was changed to no longer distinguish between independent and cooperative grower members on the Board. Therefore, it is proposed that § 982.432 be deleted as it is unnecessary.

Most of § 982.446, dealing with inspection documentation of restricted filberts/hazelnuts is no longer applicable. The industry no longer uses seals, stamps, or tags as specified in § 982.446(a) to identify product. Rather, the industry uses the identification procedures specified in current § 982.446(c). Therefore, this rule would delete paragraph (a) of § 982.446 from the rules and regulations and § 982.446 would be revised to reflect the current identification procedures contained in paragraph (c).

Paragraphs (b) (1), (2), and (3) of § 982.446 should also be deleted from the rules and regulations because the industry no longer has reason to physically identify stored inshell filberts/hazelnuts as free or restricted filberts/hazelnuts. Currently, filberts/hazelnuts declared as restricted are identified by lot numbers on records kept by handlers. In the past, handlers stored free and restricted filberts/hazelnuts in 100-pound sacks that were labeled free or restricted. Handlers no longer use these sacks. Rather, large bins or cartons are used to store such filberts/hazelnuts. Such designation is easily identifiable in handlers' records.

Section § 982.450 provides procedures for handling restricted filberts/hazelnuts. The Board has recommended that specific form references be inserted in § 982.450 (a), (b), and (c) to identify the forms that handlers are currently required to submit. Under this proposal, references to F/H Form 1d would be added to paragraph (a) of § 982.450, F/H Form 4 would be added to paragraph (b), and F/H Form 1d and F/H Form 7 would be added to paragraph (c).

Paragraphs (a)(1), (a)(2), and (b) of § 982.452 provide procedures for the disposition of restricted filberts/hazelnuts and contain outdated form number references. The Board recommended that these be changed to the new form number references. In paragraph (a)(1) of § 982.452 the form reference would be changed to F/H Form B, and in paragraph (a)(2) the form reference would be changed to F/H Form 7. The form reference for the export agreement between handlers and the Board found in paragraph (b) would be stated as F/H Form A. Paragraph (b) of § 982.452 provides authority for handlers to act as agents of the Board in arranging sales of inshell filberts/

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hazelnuts into export markets. The Board recommended revising the language of paragraph (b) to reference the provisions of § 982.52(b) of the order. Therefore, the phrase "including those as set forth in § 982.52(b)" would be added to this paragraph if this proposal is adopted. In addition, proposed revisions of paragraphs (a) (1) and (2) of § 982.452 provide gender neutral language.

Handlers are required to be bonded if they intend to defer their withholding obligations under the order into the next season. Section § 982.454 describes the types of bonds accepted by the Board. The Board currently requires handlers to submit F/H Form C to document handlers' use of this provision. Therefore, based on the Board's recommendation, this proposal would add the specific form reference to § 982.454.

Section 982.456 describes procedures for interhandler transfers of filberts/hazelnuts and contains an outdated form reference. Under this proposal, the form reference would be changed to F/H Form 2.

In 1986, § 982.57 of the order was amended to allow growers acting as handlers to sell unlimited quantities of their own production directly to consumers from their orchards, at roadside stands, or at farmers' markets. Quantities of filberts/hazelnuts sold in this manner are exempt from the volume regulation and assessment provisions of the order. Section 982.457 allows handlers to be exempt from certain order requirements (inspection, certification, restricted obligation, assessments, and reporting requirements) if they handle less than 250 pounds of inshell filberts/hazelnuts during any fiscal year. Section 982.457 was originally implemented to allow growers who acted as handlers by selling small quantities of their filberts/hazelnuts directly to consumers to be exempt from the order's regulatory and assessment provisions. Section 982.57, however, now provides authority for growers to sell unlimited quantities of the grower's own production directly to consumers. Therefore, since the 250-pound limitation no longer applies, § 982.457 would be deleted from the rules and regulations.

Section 982.460 provides procedures for transferring excess restricted credits of filberts/hazelnuts and contains outdated form references. The Board recommended that these be changed to the new form references. In paragraphs (b) and (c) of § 982.460, the form reference should be changed to F/H Form 3. In addition, the proposed revision of paragraph (b) would provide gender neutral language.

The Board recommended that § 982.466 include a reference to the complete series of forms currently used. Reference to F/H Forms 1a through 1e should be added to § 982.466. Also, the Board proposed changing the frequency of reports on these forms. The Board has indicated that handlers have found it difficult to submit weekly reports of shipments in October, November, and December (the busiest time of the marketing season) in a timely manner. The Board, therefore, recommended that F/H Form 1a through 1e be submitted once a month, rather than weekly. Accordingly, this change would reduce the information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35. Such reports would include shipment transactions from the beginning of the month to the end of the month. Such reports would be due in the Board office 10 days following the end of the reporting period. The Board indicated that monthly reporting would provide sufficient and timely information essential to the filbert/hazelnut industry. Therefore, this proposal would revise § 982.466 accordingly.

Section 982.468 contains two outdated form references that would be changed to reflect new form references. The outdated form references would be changed to F/H Form 5 and F/H Form 6 in § 982.468. The Board also recommended that the dates of the reporting periods be changed to make them correspond with the Board's marketing year and that provisions be made for the Board to request reports on other duties, with the approval of the Secretary. Section 982.17 of the order was amended in 1986 to change the dates of the marketing year.

Sections 982.453, 982.455, and 982.471 would be revised to change references to "filberts" to "filberts/hazelnuts." The Board recommended that "filbert" be changed to "hazelnuts." The order provides that the term "filberts" means filberts or hazelnuts produced in the States of Oregon and Washington from trees of the genus *Corylus*. However, the Department has proposed substituting the term "filbert/hazelnut" in this rule and in appropriate sections of the rules and regulations. The term "filbert/hazelnut" would accomplish the Board's purpose. It would also avoid the confusion which might occur when the order refers to "filberts" alone and the rules and regulations would refer to "hazelnuts."

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the sections of the regulations proposed to be revised have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581–0144.

List of Subjects in 7 CFR Part 982

Filberts/hazelnuts, Marketing agreements and orders, Oregon, and Washington.

For the reasons set forth in the preamble, 7 CFR part 982 is proposed to be amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

§ 982.432 [Removed]

2. Section 982.432 is removed.

3. Section 982.446 is revised to read as follows:

§ 982.446 Inspection documentation.

Pursuant to § 982.46(b), handlers are required to use the following identification on bags and cartons of 25 pounds or larger capacity which contain certified filberts/hazelnuts:

(a) The words "This Produce Inspected and Certified Per Federal Marketing Order No. 982" shall be contained within an outline of the combined States of Oregon and Washington; and

(b) This identification shall be printed on the upper right quarter of the printed side of a bag; or

(c) This identification shall be printed on the upper right quarter of one of the side panels of a carton.

4. Section 982.450 is revised to read as follows:

§ 982.450 Application of restricted obligation.

(a) Each handler required to withhold restricted filberts/hazelnuts pursuant to § 982.50 or § 982.51 shall hold such filberts/hazelnuts separate from all other filberts/hazelnuts and shall maintain the identity of each lot so withheld. The restricted product withheld must be reported to the Board on F/H Form 1d, Restricted Inshell Certified.

(b) Each handler making the election pursuant to § 982.50(c) in connection with certified merchantable filberts/hazelnuts which have not been handled, shall thereupon give written notification to the Board on F/H Form 4 of the particular election and of the weight and identity of the filberts/hazelnuts involved.

(c) Pursuant to § 982.50(d), a handler may withdraw from withholding restricted filberts/hazelnuts in excess of his restricted obligation upon advising the Board of the weight and lot identity of the filberts/hazelnuts to be withdrawn. When the quantity of restricted filberts/hazelnuts to be withdrawn from withholding consists of a part of a lot of ungraded filberts/hazelnuts, no part of such lot shall be withdrawn unless the remainder of such lot is reinspected and meets the requirements of § 982.51. Handlers will use F/H Form 1d prior to the end of the marketing year or F/H Form 7 after the end of the marketing year, when reporting the withdrawal of restricted filberts/hazelnuts from withholding status.

5. Section 982.452 is amended by revising paragraph (a)(1) introductory text and paragraph (a)(1) (i)–(iii), (a)(2) and (b) to read as follows:

§ 982.452 Disposition of restricted filberts/hazelnuts.

(a) *Shelling.* (1) Any person desiring to shell restricted filberts/hazelnuts during a fiscal year may do so upon being designated by the Board as an authorized sheller for such year. Application for such designation shall be made in duplicate on F/H Form B and include, in addition to the conditions specified in § 982.52(a), the following: (i) The location of the applicant's shelling operation; (ii) the number of years such person has operated a filbert/hazelnut shelling plant; and (iii) the daily (8-hour) shelling capacity of the plant. * * *

(2) When an authorized sheller completes the shelling of a lot of restricted filberts/hazelnuts, the sheller shall submit a report thereon to the Board on F/H Form 7 showing:

(i) The date shelling was completed;

(ii) The inspection certificate or lot number;

(iii) The quantity shelled;

(iv) The weight of the kernels produced; and

(v) The location where restricted filberts/hazelnuts were held immediately prior to shelling.

(b) *Exports.* Any handler who desires to act as agent of the Board in negotiating export sales of certified merchantable restricted filberts/hazelnuts may do so upon the execution of an "Export Agreement", F/H Form A, wherein the handler agrees, among other things, to negotiate such export sales at not less than such price as the Board may prescribe, and in conformity to and compliance with the other terms and conditions of the Export Agreement including those set forth in § 982.52(b).

6. Section 982.453 is revised to read as follows:

§ 982.453 Disposition of small size filberts/hazelnuts.

Any inshell filberts/hazelnuts that are substandard only because they are small size, as the term "small size" is defined in the Oregon Grades Standards For Filberts in Shell, may be disposed of in export in the same manner and under the same conditions and procedures pursuant to § 982.52(b) for sales in export of certified merchantable restricted filberts/hazelnuts. Such small size filberts/hazelnuts are not eligible for restricted credit.

7. Section 982.454 is revised to read as follows:

§ 982.454 Sureties acceptable to the Board.

Bonds secured by cash, cashier's or certified checks, or by assets that are entirely separate and apart from the handler named in the bond may be accepted by the Board pursuant to § 982.54(a). As a condition of accepting any surety, the Board may require such financial statements or other information relating to the ability of such surety to guarantee a handler's bond as it deems necessary. Handlers are also required to submit F/H Form C to the Board to document the handler's execution of a bond.

8. Section 982.455 is revised to read as follows:

§ 982.455 Exchange of certified merchantable filberts/hazelnuts withheld.

Each handler desiring to exchange filberts/hazelnuts pursuant to § 982.55 shall prior thereto file a written notification with the Board setting forth for the respective quantities of filberts/hazelnuts involved in the exchange, the inspection certificate numbers, quantities, locations, and applicable lot numbers.

9. Section 982.456 is revised to read as follows:

§ 982.456 Interhandler transfers.

Each interhandler transfer of filberts/hazelnuts pursuant to § 982.56 (a) and (c) may be made upon notification to the Board in triplicate by the receiving handler on F/H Form 2 signed by both the transferring handler and the receiving handler which shall include the following information:

(a) Date of transfer;

(b) Names of the transferring and receiving handlers;

(c) Locations between which the filberts/hazelnuts were transferred;

(d) Whether uncertified inshell or certified merchantable;

(e) Net weight of the filberts/hazelnuts transferred, by size and variety;

(f) The inspection certificate, or lot number covering the filberts/hazelnuts; and

(g) If certified merchantable, the name of the handler responsible for compliance with the applicable requirements pursuant to this part relating to such filberts/hazelnuts.

§ 982.457 [Removed]

10. Section 982.457 is removed.

11. Section 982.460 is amended by revising the first sentence in paragraph (b) and revising paragraph (c) to read as follows:

§ 982.460 Transfer of excess restricted credits.

(a) * * *

(b) *Application.* Each handler who has excess restricted credits and desires to transfer them to another handler, may submit such request to the Board on F/H Form 3. * * *

(c) *Transfer.* The Board shall transfer the requested amount of the excess restricted credits from one handler to a designated handler upon receipt of a completed F/H Form 3 together with such information as may be required by the section.

12. Section 982.466 is revised to read as follows:

§ 982.466 Reports of inshell filberts/hazelnuts handled, shelled and withheld.

Each handler shall report to the Board monthly on F/H Form 1 and F/H Forms 1a through 1e, as applicable, the quantities of inshell filberts/hazelnuts handled or withheld for restricted use and all product shelled and certified since the last report. All reports shall be submitted to include transactions through the end of each month, or other reporting periods established by the Board, and are due in the Board office on the tenth day following the end of the reporting period. The quantities of inshell filberts/hazelnuts handled shall be reported by size. The respective quantities of merchantable or ungraded filberts/hazelnuts withheld as restricted product shall be reported separately.

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and with respect to filberts/hazelnuts certified for shelling, or certified kernels withheld, the kernel weight and inshell equivalent weight shall be reported separately by size.

13. Section 982.468 is revised to read as follows:

§ 982.468 Report of filbert/hazelnut receipts, disposition, and inventory.

On or before January 15 and July 15, or any other date requested by the Board with the approval of the Secretary, each handler shall:

(a) Report to the Board on F/H Form 6 receipts and disposition of inshell filberts/hazelnuts and production of filbert/hazelnut kernels during the respective preceding six-month period of July 1 to December 31, and the preceding 12-month period of July 1 to June 30, and

(b) Report to the Board on F/H Form 5 inventory of filberts/hazelnuts as of January 1 and July 1, respectively, showing the quantities of inshell filberts/hazelnuts separately in terms of certified merchantable, graded uncertified merchantable, restricted, and ungraded.

The certified merchantable filberts/hazelnuts shall be reported on the basis of whether located within or outside the production area and whether or not the restricted obligation has been met.

14. Section 982.471 is revised to read as follows:

§ 982.471 Records.

Each handler shall maintain complete and accurate records showing the receipt, shipment and sale of all filberts/hazelnuts handled, used or otherwise disposed of and shall retain such records for the two-year period prescribed in § 982.71. Handlers shall also maintain a current record of all filberts/hazelnuts held in inventory.

Dated: August 29, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-20708 Filed 9-1-89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 87-060]

Procedures for Importing Animals Through the Harry S Truman Animal Import Center; Approval of Embarkation Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the regulations concerning the Harry S Truman Animal Import Center (HSTAIC) to establish more efficient procedures for allocating space in that facility. To help streamline procedures for the use of HSTAIC, we would eliminate provisions for giving multiple importers use of HSTAIC for the same importation. By granting to one importer only the exclusive right to use HSTAIC for the duration of an importation, we would exercise control over importations to an extent otherwise impossible. We are also proposing to establish priorities for granting use of HSTAIC. First, we propose that the Secretary of Agriculture may give priority to applications to use HSTAIC filed by federal agencies for importations of potential value to the general public. We would limit importations by government agencies to one per year. The order in which names of applicants are drawn during an annual lottery would determine the priority given to their applications for use of HSTAIC during the next calendar year. This lottery would consist of four categories, based on the types of animals intended for importation and the disease status of the countries or areas from which the animals would come. The priority list determined by the four-part lottery would determine the order in which we offered applicants the exclusive right to an importation through HSTAIC.

For animals from countries where certain exotic diseases exist, quarantine in an embarkation quarantine facility is used to establish the animals' eligibility for export to the United States, and is prerequisite to quarantine in HSTAIC. To reflect the changing conditions under which importations through HSTAIC now take place, including the geographic range of countries of export, we propose to change the criteria for approving embarkation quarantine facilities, so that one facility would receive Animal and Plant Health Inspection Service approval for a specific quarantine only.

DATE: Consideration will be given only to comments received on or before October 5, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-060. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue, SW, Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export Products Staff, Veterinary Services, APHIS, USDA, Room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, §§ 92.41 and 92.42 (referred to below as the regulations) set forth the conditions under which importers may qualify animals to enter the United States through the Harry S Truman Animal Import Center (HSTAIC) in Fleming Key, Florida.

When HSTAIC was being planned during the 1960's and 1970's, the importers urging its construction were interested in a quarantine facility for animals being systematically and unconditionally excluded from the United States because of the existence of an exotic disease, such as rinderpest or foot-and-mouth disease, in their country of origin. In particular, those importers focused their attention on cattle. We drafted the original regulations in direct response to market conditions as then understood.

Market conditions have changed during the 1980's, making revision of the regulations imperative. We now receive more applications for importations through HSTAIC of llamas and alpacas, for example, than we do for importations of cattle. Although this does not change the purpose for which HSTAIC was built—to make possible importation of breeds capable of improving domestic livestock production—we propose to meet the changing needs of importers by revising the regulations. The proposed regulations would delete outdated paragraphs 92.41(e) and 92.41(f), concerned with one-time importations of, respectively, water buffalo from Trinidad and llamas and alpacas from Chile.

The original HSTAIC regulations were based on conditions that did not remain fixed. Demand for animals from South America has exceeded that for animals from Europe; interest in llamas, alpacas, and other species has surpassed interest in cattle. Provisions for allocating space in HSTAIC either by lottery or by granting a single importer use of the entire facility have been complicated and confusing. The utilization rate of HSTAIC was low; this situation represented lost opportunities for importers and $25,000-losses to the Federal Government for each month HSTAIC was not being used.

Because the procedures established in the current and suspended HSTAIC regulations (suspension effective September 15, 1987; see 52 FR 35230-35231, Docket Number 87-122) created a situation that did not best serve the public interest, we are proposing a complete revision of those regulations. The alternative ways of applying for space in HSTAIC, previously set forth as "Procedures for special authorization issued on a lottery basis" and "Procedures for special authorization for exclusive use of the HSTAIC," caused, at least in part, some of the key problems associated with HSTAIC importations. Profiting from many years of experience with those problems, we are proposing a single, simpler system, one dependent on fewer variables. This new, streamlined procedure should ensure that only applicants financially prepared to proceed with a proposed importation appear on the HSTAIC priority list; moreover, it would equitably allocate space in HSTAIC, making more than one importation each year feasible in practice as well as one paper.

The involvement of more than one importer in each shipment of animals through HSTAIC inevitably compounds the technical, tactical, and logistical problems presented at any point in the HSTAIC importation process. Coordinating and consolidating arrangements among all the importers attempting to quality their several animals during the same HSTAIC importation, authorized under current § 92.41(a), places great administrative burdens on the Animal and Plant Health Inspection Service. The system is not efficient; delays at every stage of the importation, from negotiating agreements to transporting animals, have been common. Certain problems are inherent in the multifaceted system of testing and quarantine that determines the eligibility of animals for export to, then importation into, the United States: Obtaining documents in foreign countries; construction delays; outbreaks of new strains of contagious diseases cannot be predicted. While we can do nothing about those problems, past example suggests that we can eliminate other problems administratively. In our proposed cooperative-service agreement with the importer, we set terms that would make control of much of the importation process possible. Experience indicates that we can expedite the HSTAIC-importation process by working exclusively with one importer per importation. This practical reality, reinforced by the increasing demand for use of the entire quarantine facility by a single importer, convinced us to propose to discontinue allocating space in HSTAIC on any basis other than "exclusive right to use."

This means that, if the proposed regulations are adopted, we will put the animal quarantine facility at the disposal of one importer alone, the importer with whom we enter into the cooperative-service agreement authorizing the HSTAIC importation. Whether this importer, having been granted the exclusive right the use HSTAIC, includes in his/her importation animals of the same species, belonging to other parties, would be a private matter in which the Animal and Plant Health Inspection Service would not become involved. We would deal exclusively with the importer granted the right to use HSTAIC, who would assume responsibility for all costs (except capital expenditures at HSTAIC) incurred during the importation. The grantee's agreements with other importers would have nothing to do with the terms of the cooperative-service agreement with us. Exclusive responsibility, or liability, would rest with the importer granted the exclusive right to use HSTAIC, as provided in the cooperative-service agreement. This absolute, exclusive financial responsibility assigned to the importer in whose name the cooperative-service agreement was signed would apply under all circumstances, without qualification and without exception.

Capital expenditures at HSTAIC would constitute extraordinary operating costs and, as such, would constitute the sole category of HSTAIC-importation costs assumed by the Animal and Plant Health Inspection Service, and not the importer.

By proposing to require that each application for use of HSTAIC include a substantial deposit—$50,000 by an irrevocable letter of credit—we are attempting to deter persons who might otherwise file applications only because of their nuisance value; persons who, lacking interest or lacking means, would not follow through with an importation. We consider it unlikely that persons not prepared to undertake an importation through HSTAIC would be financially prepared to deposit $50,000 to assume a position on the priority list of prospective importers for as long as 15 months. In the past, applicants had nothing to lose by presenting themselves as legitimately interested in an importation through HSTAIC; as a result, at little cost to themselves, they were able to delay the allocation of space in HSTAIC to the next eligible importer, who in some cases was no longer in a position to proceed with the proposed, legitimate importation. Therefore, in some instances, the facility was underused. We are limiting the method of deposit to an irrevocable letter of credit to minimize the administrative costs to the Animal and Plant Health Inspection Service of managing importations through HSTAIC. Administering deposits in the form of checks or money orders requires more agency resources and staff hours than does administering deposits in the form of irrevocable letters of credit.

Planned importations may fail to materialize for reasons beyond the control of the would-be importer. We are therefore proposing to allow the importer two weeks during which he/she may, without forfeiting his/her deposit, refuse the exclusive right to use HSTAIC being offered to him/her. Upon signing the cooperative-service agreement, however, the importer would become liable for all costs of the animal-qualification process (with the exception of capital expenditures at HSTAIC), with it understood that, by accepting the terms of this cooperative-service agreement, the importer granted the right to use HSTAIC is denying other prospective importers access to the facility, and that whatever happens during the course of the importation will not affect the fixed cost of maintaining the quarantine facility at HSTAIC. During the time the facility is unoccupied, while prospective importers lose opportunities, the Federal Government incurs expenses that, under the current regulations, it cannot recoup. Therefore, we propose to make a change that makes it clear that the importer is liable for all non-capital costs of operating HSTAIC during the period of his/her exclusive right to use the facility. Providing for a nonrefundable deposit would afford us the security of an "insurance policy." Our suspended practice, which required no deposits of this kind, cost the Federal Government hundreds of thousands of dollars (see 52 FR 35230-35231, September 18, 1987, suspending § 92.41(b)). If we do not change it, as we are now proposing to do, economics might force us to stop operating HSTAIC as the only quarantine facility in the United States available to importers of domestic ruminants and swine from countries where certain diseases exist.

Importation by Federal Agencies

From time to time, Federal agencies may require use of HSTAIC to import animals for projects of potential value to a broad sector of the general public. Therefore, we are proposing that the Secretary of Agriculture may give first priority to an application for the exclusive right to use HSTAIC for such an importation. In fairness to other applicants, we would require that, for lotteries held in years other than 1989, each such agency ensure that the Import-Export Animals Staff of Veterinary Services receive its application between the 1st and 15th of the September immediately before the calendar year during which the HSTAIC importation would take place. For the lottery held in 1989, we would publish the time period during which such applications must be received in a final rule in the **Federal Register**. We invite comments concerning the most appropriate time period for accepting such applications. At the time of application, the agency would be required to enter into an interagency agreement with APHIS to deposit $50,000. The application would be submitted in accordance with the procedures established for participants in the annual lottery. An application submitted by a Federal agency at any other time would receive no priority; it would be handled no differently than other "late" applications. We would limit government agency importations to one per year—except when HSTAIC is available and the Import-Export Operations Staff of Veterinary Services has received no other applications for its use during that year—to make it likely that other importers will have access to HSTAIC, even in years in which a government importation is carried out.

The Lottery

The priority allotted to each applicant for the exclusive right to use HSTAIC would be decided by the order in which his/her name were drawn during an annual, four-part lottery. We would draw the name of every eligible lottery applicant during the lottery; every one of those names would appear on the priority list, the waiting list comprising the name of all participants in the annual lottery.

Anyone could obtain the necessary application form from the Import-Export Animals Staff of Veterinary Services, Animal and Plant Health Inspection Service. To enter the lottery, the applicant would have to return this completed form, accompanied by a deposit in the amount of $50,000, to the Import-Export Animals Staff. The deposit would have to be in the form of an irrevocable letter of credit in the applicant's name, and each application would have to be accompanied by a separate letter of credit. For lotteries held in years other than 1989, applications received any time from September 1st through September 15th immediately preceding the annual lottery would qualify for the lottery; applications received at any other time would not be included in the lottery. For the lottery held in 1989, we would publish the time period for receipt of applications in a final rule in the **Federal Register**. We invite comments concerning the most appropriate time period for accepting such applications. Any applications received in 1989 at any time other than during the time period to be published in the **Federal Register** would not be included in the lottery for 1989. The irrevocable letter of credit woudl have to remain in effect until the end of the calendar year of the prospective importation, unless revised as discussed in this document under the heading "Costs."

In years other than 1989, the annual lottery would take place during the first seven days of October. In such years, we would publish a notice providing the exact date, which would vary from year to year, in the **Federal Register** at least 30 days before the lottery. In 1989, we would publish the date of the lottery in a final rule in the **Federal Register**. We invite comments concerning the most appropriate date for conducting the lottery in 1989.

The lottery would have four parts. Animals that are eligible for importation only through HSTAIC, because they are from countries or areas where certain exotic diseases exist, would take precedence over animals from other countries or areas. Also, in accordance with the intent of Congress in approving construction of HSTAIC, cattle, sheep, goats, and swine would take precedence over other animals.

Part one of the lottery would consist of a drawing of the names of applicants proposing to import cattle, sheep, goats, or swine from locations identified in 9 CFR 94.1 as those in which rinderpest or foot-and-mouth disease exists, or proposing to import swine from locations identified in 9 CFR 94.8, 94.9, or 94.12, respectively, as those in which African swine fever exists or the Administrator has reason to believe that it exists, hog cholera is known to exist, or swine vesicular disease is considered to exist. Part two would follow, and would be a drawing of the names of applicants proposing to import llamas, alpacas, water buffalo, camels, or deer or other ruminants susceptible to rinderpest or foot-and-mouth disease and raised under domestic conditions, when these animals are from locations in which rinderpest or foot-and-mouth disease exist. Part three would follow, and would be a drawing of the names of applicants proposing to import cattle, sheep, goats, or swine from locations other than those in which rinderpest or foot-and-mouth disease exists, or proposing to import swine from locations we believe free of African swine fever, hog cholera, or swine vesicular disease. Part four would follow and would be a drawing of the names of applicants proposing to import llamas, alpacas, water buffalo, camels, or deer or other ruminants raised under domestic conditions, from locations other than those in which rinderpest or foot-and-mouth disease exists. (The lottery excludes animals not easily accommodated in the facility, which was structurally designed for ruminants and swine.) All lottery applicants' names would appear on the priority list in sequential order, exactly as they were drawn, with the names drawn during each part taking precedence over those drawn during subsequent parts.

The applicant first on the priority list would receive notification that he/she could proceed with plans for the HSTAIC-importation proposed for the next calendar year. To allow as many importers as possible to use HSTAIC, each importer would be limited to one importation during the period encompassing the calendar year for which the lottery is held and the following calendar year, except when no other lottery participants are prepared to use HSTAIC during the time it would be available those years. Once we have entered into the cooperative-service agreement scheduling the first HSTAIC importation for the year in question, we should be able to guage whether and when we might expect space in HSTAIC to become available for other quarantines during that year. When we believe we can with some confidence predict HSTAIC arrival and release dates—by month if not day—we would be prepared to grant the right to use the facility to the applicant next on the priority list. The number of possible importations per year depends on too many variables for us to authorize more than one importation at the time of the lottery. Nonetheless, we consider it likely that, as in the past, more than one applicant remaining on the priority list would be granted an importation through HSTAIC during the calendar year. Because of this, we propose to

retain all applications for the exclusive right to use HSTAIC until the end of the next calendar year; the priority list established by the lottery would not change. The name of each applicant filing the requisite form, including the deposit, after the deadline for the lottery, would be added, in the order received, to the priority list. However, applicants with priority established by the lottery would always have priority over the late applicants, even if this means granting two HSTAIC importations to a single party. This last case could occur only if no other applicants participated in the lottery or if, having participated, other participants withdrew their applications.

By requesting that his/her deposit be returned, an applicant would automatically remove his/her name from the priority list.

In years other than 1989, we would cancel the annual lottery if we failed to receive more than one application between September 1st and September 15th. In 1989, we would cancel the annual lottery if we failed to receive more than one application during the time period for receipt of applications which would be published in a final rule in the **Federal Register**. In cases where the lottery would be cancelled, we would award the exclusive right to HSTAIC importations for the next calendar year on a first-come, first-served basis. The same conditions would govern any HSTAIC importation we authorized, regardless of how the importer received the grant. At any time during the year, the deposit of $50,000 would have to accompany the completed application form; that application would go directly to the Import-Export Animals Staff; and all other phases of the importation process, described below, would proceed in accordance with these proposed regulations.

Cost

Past problems make it necessary for us to propose requiring advance payment in full of the amount estimated to cover the cost of every importation of animals eligible to enter the United States only after quarantine in HSTAIC. The amount could at best approximate the final cost, because each importation involves variable peculiar to itself. Among these variables: the number of animals the importer intends to qualify for importation, which may not tally with the number actually arriving at HSTAIC; the species of animals; conditions in the country of origin, including all aspects of the quarantine in the embarkation quarantine facility (EQF), when quarantine in an EQF is required; medical treatment; and laboratory tests. With the fact understood that the amount quoted in the cooperative-service agreement represents an approximation only, we propose to require that the importer return that amount with the signed cooperative-service agreement.

Final costs of an importation cannot be calculated until we receive all billings, which can take several months. The exact cost of an importation is not usually known until all bills have passed through our accounting office; this process can usually be completed within 90 days of the end of the quarantine. If the final accounting eventually showed that the importer's advance payment had exceeded costs, we would refund the excess. If it showed that the amount advanced had not covered costs, we would, as before, bill the importer for the amount outstanding. As before, we would require the importer to pay those bills upon receipt.

The importer would submit, with the cooperative-service agreement, the amount due—that is, the estimated cost of the importation less than $50,000 deposit. He/she could remit this in the form of a certified check, a money order, or an increase in the irrevocable letter of credit submitted with the application for importation. Such an increase in the irrevocable letter of credit would have to bear an effective date 90 days after the animal's scheduled release from HSTAIC. Whatever the form of payment, at the time the cooperative-service agreement is submitted, the effective date of the $50,000 letter of credit submitted with the application for importation would have to be revised to extend to 90 days after the animals' scheduled release from HSTAIC. Each cooperative-service agreement would specify the scheduled release date.

Special Circumstances

The Import-Export Animals Staff would not screen the completed applications before the lottery, other than to decide, on the basis of the type and origin of the species specified on the application form, in which part of the lottery to enter the applicant. The first comprehensive review of particulars of a proposed importation would occur only when we were preparing to grant the prospective importer the exclusive right to use HSTAIC. This means that a grantee could unknowingly apply for permission to import animals from a location where officials will not authorize the Animal and Plant Health Inspection Service to proceed in accordance with our regulations. In that case, the animals of choice could not meet the requirements for importation into the United States. We would notify the importer of his/her two options: to withdraw his/her application, or to import animals from another location. In the two weeks allowed for this decisionmaking, the exclusive right to use HSTAIC would take on a provisional status. The ramifications of delaying the schedule by more than two weeks make it necessary for us to propose imposing this deadline on the importer. Time constrains all activity involving HSTAIC, preventing us from introducing more flexibility into our scheduling procedures.

The Cooperative-Service Agreement

We are proposing to revise the agreement that is provided for in the current regulations to reflect the changes discussed elsewhere in this docket. To present its terms more clearly, we propose to revise the format of the agreement, to rewrite it in "Plain English," and to refer to it as a "cooperative-service agreement." These changes are editorial. Also, the agreement in the current regulations holds the "cooperator" liable for costs related to the HSTAIC importation process in two stages. This proposal would replace the two-stage liability system with a provision holding the importer liable for all costs, excluding capital expenditures at HSTAIC, attributable to qualifying animals for and through quarantined in an EQF and HSTAIC. We are proposing to make no other substantive changes, other than to delete provisions inapplicable to the proposed regulations.

Embarkation Quarantine Facility (EQF)

Animals eligible for importation only through HSTAIC must be quarantine in an EQF before being moved to HSTAIC. to reflect the changing conditions under which importations through HSTAIC now take place, we propose to change both the criteria according to which we approve EQF's and some of the specific standards an approved facility must meet.

The current regulations specify that we must approve only one EQF per continent, and only withdraw our approval if the EQF fails to comply with the requirements in § 92.42. When the distance from premises of origin to an EQF was relatively short, curbing transportation costs, that system worked well. Particularly when the animals being quarantined belonged to many importers, rather than to a single importer with the exclusive right to use HSTAIC, establishment of a permanent EQF has practical advantages. When the

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that nondiscriminatory and reasonable

importation or the species involved, we

number of importers per importation depended on the number of applicants, and when the number of applicants determined the number of animals an individual importer could attempt to qualify for importation, an importation through HSTAIC usually pooled animals from several countries. The permanent presence of an EQF in a third country provided importers with a place for assembling animals in sufficient number to make that joint importation economical. In Europe, the system proved reasonably efficient.

The source of most animals intended for importation through HSTAIC today, however, is South America. Requiring importers with animals originating in Chile or Peru, for example, to use a quarantine facility hundreds of miles away, only because of a regulatory requirement drafted in and for other conditions, serves no purpose. Shipping to a facility in another country on the same continent in fact increases the importer's costs. Further, it additionally complicates the HSTAIC-importation process which, by its nature, is unavoidably variable-dependent. As the number of variables increases, the odds that the importation will go smoothly decrease. We cannot justify requiring the continued use of a single EQF to serve an entire continent when all animals intended for importation through HSTAIC originate in a country able to offer an EQF meeting VS standards.

Granting to a single importer the exclusive right to use HSTAIC would make the original criteria for approving one EQF per continent irrelevant. The importer would assume responsibility for all costs incurred in conjunction with his/her importation; to deny the importer the right to request approval of the EQF of his/her choice would serve no purpose. Therefore, we propose to change the regulations. As proposed, an importer authorized to use HSTAIC would request approval of an EQF, when quarantine in an EQF is required, by submitting site-specific blueprints and location. This information would have to reach the Import-Export Animals Staff at the same time as the completed cooperative-service agreement. After reviewing this information and conducting an on-site inspection, APHIS personnel would approve any proposed facility that meets the requirements of § 92.42(b).

Approval of a facility would expire at the end of the specifically authorized quarantine. Subsequent importers granted use of HSTAIC and proposing to use one of the previously approved EQF's would have to apply for approval in accordance with the procedures prescribed above. By confining approval to a specific importation, we would, we hope, prevent the creation of potentially discriminatory monopolies. To limit the number of variables involved in a single importation, achieving the greatest possible control over contingencies that could undermine or delay shipping the animals to HSTAIC, we propose to approve only one EQF per HSTAIC importation. If for any reasons that facility closes down or loses its "approved" status, the importer would, under the proposed regulations, follow the procedures described above to apply for approval of an alternative facility.

To reflect changing conditions, we propose to remove the requirement that an EQF be located near a dock that services ocean vessels, unless the animals for export are being shipped by sea. More animals today more by air than by sea; accordingly, we would require that the EQF be located near the point of embarkation through which the HSTAIC-bound animals would leave the country. This would probably, but not necessarily, be an airport. Therefore, for flexibility, we would amend the wording of § 92.42(b)(1)(i) and (ii) by replacing the word "docks" with "point of embarkation."

Finally, to ensure that no potential contaminants enter the quarantine facility, we would require that all animal feed come from a location free of foot-and-mouth disease and any other exotic disease necessitating the quarantine or that could jeopardize the quarantine.

We would also make nonsubstantive editorial changes to present the provisions of § 92.42 more clearly.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would change the procedures according to which we allocate space in the Harry S Truman Animal Import Center. While demand for use of space in that facility, the only one in the United States equipped and authorized to quarantine ruminants and swine from countries where certain exotic diseases exist, continues to exceed HSTAIC's capacity, competition among importers has caused administrative problems. We believe certain potential importers took advantage of the original application process, which they deliberately exploited, proceeding with negotiations solely as a delaying tactic while waiting for the United States Department of Agriculture to recognize countries such as Chile as FMD-free. While they were negotiating, possibly in bad faith, for the exclusive right to an importation through HSTAIC, they prevented importers seriously interested in importing animals from doing so. The regulations exacted no penalty from those applicants who prevented us from scheduling HSTAIC importations. As a result, while HSTAIC stood empty, other importers, as well as the Federal Government and the general public, "paid." Importers denied use of HSTAIC lost the opportunity to compete freely in both foreign and domestic markets. The money of taxpayers covered the cost of maintaining HSTAIC, a cost that should have been borne by the importer authorized to use it.

Having identified the flaws in the original procedures, we are proposing to establish a new system for allocating space in HSTAIC. By requiring all prospective importers to submit deposits of $50,000 with their completed application forms, we are proposing to establish a screening system that should prevent parties who would otherwise submit "nuisance" applications from doing so. Similarly, by making it understood that the $50,000 deposit of an importer granted the exclusive right to use HSTAIC becomes nonrefundable once the cooperative-service agreement is signed, we would ensure that this importer would cover the non-capital costs of maintaining HSTAIC during the planning period, whatever the ultimate outcome.

We are proposing to approve EQF's on a case-by-case basis to accommodate the interests of importers, who may choose to quarantine animals in any facility that meets the standards in our regulations; and to prevent EQF's from being controlled by monopolies. Monopoly control of EQF's would, in practical terms, translate to control of certain HSTAIC importations. Although the current regulations require that the operator of an EQF give permission to use the EQF to any person who has received permission to use HSTAIC, and that nondiscriminatory and reasonable fees be charged for such use, the operator of an EQF could delay importations through HSTAIC by charging fees that are allegedly discriminatory or unreasonable. Even if the Administrator ultimately determines that the fees charged *are* discriminatory or unreasonable, the delays caused could have a negative economic impact on potential importers.

Our intent in proposing to establish a new system for granting importers use of HSTAIC is to ensure that they all compete equally; that our allocation system is the fairest possible. All proposed changes, from the administration of the annual lottery itself to required deposits and clarification of the HSTAIC-importer's responsibilities for all costs (other than capital expenditures at HSTAIC) incurred during every stage of the importation, would work to that end.

Under the proposed regulations, there is no formal provision—as there is under the current regulations—for importers of less than 50 animals to take part in a lottery to assemble an importation of at least 50 animals. However, under the proposed regulations, importers of less than 50 animals could organize independently and arrange to import a total of at least 50 animals in a single importation. Market demand in recent years, however, has indicated virtually no interest in such aggregate importations and has indicated instead increasing demand for exclusive use importations, which under the current regulations have been given priority over importations by lottery. Since 1984, only one lottery has been held—in 1985, for 17 importers and involving a total of 90 animals. On the other hand, in the approximately four years between November, 1984, and December, 1988, HSTAIC has been used for three exclusive use importations, involving 319, 167, and 472 animals, and importers continue to show increasing interest in exclusive use. Thus, with increasing demand for exclusive use, it is market demand that would be the primary limiting factor on importations by small importers, not the proposed changes to the regulations.

Section 92.41(a) of the current regulations requires a deposit of $1,000 per animal from importers being allocated space in HSTAIC under the lottery system. An importer proposing to import 50 animals would, under the regulations now in effect, deposit $50,000, the sum we propose to require of all applicants for use of HSTAIC. While this figure will remain constant, regardless of the size of the proposed importation or the species involved, we expect applicants for the right to a HSTAIC-importation to propose to quarantine considerably more than 50 animals at a time. Our requirement that one importer assume complete responsibility for all non-capital expenditures incurred during the HSTAIC-importation process would not prevent small-scale importers from undertaking an importation in their common interest. However, in accordance with the regulations, the Animal and Plant Health Inspection Service would work exclusively with the importer signing the cooperative-service agreement, regardless of independently reached agreements among importers, or other private business matters involving the importer of record.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0040.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consulation with state and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.41, paragraphs (a) through (f) would be removed, paragraph (g) would be redesignated as paragraph (e), and new paragraphs (a) through (d) would be added to read as follows:

§ 92.41 Requirements for the importation of animals into the United States through the Harry S Truman Animal Import Center

(a) *Exclusive right to use HSTAIC.* The Animal and Plant Health Inspection Service will enter into a cooperative-service agreement with only one importer for each importation through the Harry S Truman Animal Import Center (HSTAIC). An importer granted the exclusive right to use HSTAIC may include in his/her allotted number, animals of the same species belonging to other persons interested in importing animals through HSTAIC. However, the Animal and Plant Health Inspection Service will deal exclusively with the importer in whose name the application for use of HSTAIC was submitted. The Animal and Plant Health Inspection Service will hold this importer solely responsible for all costs (excepting capital expenditures at HSTAIC) incurred during the animal qualification process. HSTAIC can accommodate a finite number of animals at one time, but the maximum allowed for a particular importation will vary, depending on the size of the species; the Animal and Plant Health Inspection Service will specify this figure in the cooperative-service agreement, reproduced in paragraph (d) of this section.

(b) *Scheduling.* Applications for prospective users of HSTAIC are processed according to the following system:

(1) To qualify to use HSTAIC, an importer must submit a completed application,[1] providing estimates when exact information as required on the application form is unavailable. Each application must include a deposit, in the form of an irrevocable letter of credit, in the name of the applicant and in the amount of $50,000, payable to the United States Department of Agriculture, Animal and Plant Health Inspection Service. Each application must be accompanied by a separate irrevocable letter of credit. The irrevocable letter of credit is to remain in effect until the end of the calendar year of the prospective importation, unless revised in accord with the cooperative-service agreement set forth in paragraph (d) of this section. The

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[1] Application forms are available from, and must be submitted to the Administrator, c/o Import-Export Animals Staff, Veterinary Services, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

deposits of all unsuccessful applicants will be cancelled at the end of the calendar year of the prospective importation, or whenever an applicant removes his/her name from the priority list described in paragraph (b)(4) of this section. The deposit of an importer whose application is selected, and who returns a signed cooperative-service agreement accepting the exclusive right to use HSTAIC, is nonrefundable.

(2) In years other than 1989, during the first seven days of October,[2] the Animal and Plant Health Inspection Service will hold a lottery, randomly drawing the names of applicants in an order that will determine the order in which they will be offered use of HSTAIC for an importation during the next calendar year. In 1989, such a lottery will be held [date to be inserted in the final rule]. One application, with deposit, is required for each importation proposed. In years other than 1989, to be included in the annual October lottery, applications must reach the Import-Export Animals Staff, Veterinary Services,[3] no earlier than September 1 and no later than September 15 of that year. In 1989, to be included in the annual lottery, applications must reach the Import-Export Animals Staff, Veterinary Services,[4] no earlier than [date to be inserted in the final rule] and no later than [date to be inserted in the final rule].

(3)(i) The annual lottery will consist of four parts, as follows:

(A) The first part will include the names of applicants proposing to import cattle, sheep, goats, or swine from locations identified in § 94.1 of this chapter as those in which rinderpest or foot-and-mouth disease exists, or proposing to import swine from locations identified in §§ 94.8, 94.9, or 94.12 of this chapter, respectively as those in which African swine fever exists or the Administrator has reason to believe that it exists, hog cholera is known to exist, or swine vesicular disease is considered to exist.

(B) The second part will include the names of applicants proposing to import llamas, alpacas, water buffalo, camels, or deer or other ruminants susceptible to rinderpest and foot-and-mouth disease and raised under domestic conditions, from locations identified in § 94.1 of this chapter as those in which rinderpest or foot-and-mouth disease exists.

(C) The third part will include the names of applicants proposing to import cattle, sheep, or goats from locations not identified in § 94.1, 94.8, 94.9, or 94.12 of this chapter, respectively, as those in which rinderpest or foot-and-mouth disease exists, African swine fever exists or the Administrator has reason to believe that it exists, hog cholera is known to exist, or swine vesicular disease is considered to exist.

(D) The fourth part will include the names of applicants proposing to import llamas, alpacas, water buffalo, camels, or deer or other ruminants raised under domestic conditions, from locations not identified in § 94.1 of this chapter as those in which rinderpest or foot-and-mouth disease exists.

(ii) All names will appear precedence established by the priority of the lottery list, with the order of precedence established by the priority of the lottery part: names drawn in the first part of the lottery would take precedence over those in subsequent parts; names in the second part would take precedence over those in the third and fourth parts, and names in the third part would take precedence over those in the fourth part. The priority list established by the annual lottery will remain effective from January 1 through December 31 of the next calendar year, superseding all previous lists.

(4) In years other than 1989, the names of all applicants whose applications, with deposits, have reached the Import-Export Animals Staff, Veterinary Services,[5] no earlier than September 1 and no later than September 15 (see paragraphs (b)(1) and (6)(2) of this section) will be drawn during the next month's lottery. In 1989, the names of all applicants whose applications, with deposits, have reached the Import-Export Animals Staff, Veterinary Services, no earlier than [date to be inserted in the final rule] and no later than [date to be inserted in the final rule] (see paragraphs (b) (1) and (2) of this section) will be drawn in the annual lottery. The order in which names appear on the priority list will correspond to that established by the lottery. If the person first offered the right to use HSTAIC does not ensure receipt of the cooperative-service agreement by the Import-Export Animals Staff, Veterinary Services, within 14 days of receiving the cooperative-service agreement, the Animal and Plant Health Inspection Service will void that offer, and make an offer to the applicant next on the priority list. The Animal and Plant Health Inspection Service will limit importations to one per importer per the period encompassing the calendar year for which the lottery is held and the following calendar year, except when no other lottery participants are prepared to use HSTAIC during the time it would be available in those years. In years other than 1989, the priority list established during the October lottery will remain in effect during the calendar year following the lottery, and will take precedence over any applications received after September 15th. In years other than 1989, applications received after September 15th will be added to the priority list, with precedence established by the order in which the Import-Export Animals Staff, Veterinary Services, receives them. For the lottery held in 1989, the priority list established during the annual lottery will remain in effect during the calendar year following the lottery, and will take precedence over any applications received after [date to be inserted in the final rule]. In 1989, applications received after [date to be inserted in the final rule] will be added to the priority list, with precedence established by the order in which the Import-Export Animals Staff, Veterinary Services, receives them.

(5) In years other than 1989, if the Import-Export Animals Staff, Veterinary Services, does not receive more than one application between September 1st and September 15, the lottery for that year will be canceled, and the Animal and Plant Health Inspection Service will grant the exclusive right to use HSTAIC for an importation during the next calendar year in the order applications are received. In 1989, if the Import-Export Animals Staff, Veterinary Services, does not receive more than one application between [date to be inserted in the final rule] and [date to be inserted in the final rule], the lottery for 1989 will be cancelled, and the Animal and Plant Health Inspection Service will grant the exclusive right to use HSTAIC for an importation during the next calendar year in the order applications are received.

(6) The Secretary of Agriculture may grant priority over other applications to an application from an agency of the United States government, if for an importation potentially of value to the general public, and if, in years other than 1989, received between September 1 and September 15. The Secretary of Agriculture may grant priority over other applications to an application from an agency of the United States government, if for an importation potentially of value to the general public, and if, in 1989, received between

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[2] In years other than 1989, the Animal and Plant Health Inspection Service will publish a notice announcing the exact date in the Federal Register at least 30 days in advance of the October drawing.

[3] See footnote 1 in § 92.41(b)(1).

[4] See footnote 1 in § 92.41(b)(1).

[5] See footnote 1 in § 92.41(b)(1).

[date to be inserted in the final rule] and [date to be inserted in the final rule]. However, an agency of the United States government must submit its application in accordance with this section, except that, in lieu of an irrevocable letter of credit, an agency of the United States government must enter into an interagency agreement with the Animal and Plant Health Inspection Service for a deposit of $50,000. HSTAIC importations by agencies of the United States government will be limited to one per year, except when HSTAIC is available and the Import-Export Animals Staff, Veterinary Services, has received no other applications for its use during that year.

(c) *Responsibilities of the Applicant Selected.* By certified mail, return receipt requested, the Animal and Plant Health Inspection Service will send a cooperative-service agreement to the applicant being offered the exclusive right to use HSTAIC, as provided in paragraph (d) of this section. The applicant must, within 14 days of receipt, sign and ensure that the Import-Export Animals Staff, Veterinary Services, receives the cooperative-service agreement, accompanied by a certified check, a money order, or an increase in the irrevocable letter of credit (with an effective date 90 days after the animals' scheduled release date from HSTAIC), for the amount specified in the cooperative-service agreement. The $50,000 deposit required as part of the application will be applied to the quarantine costs, and deducted from the balance due with the cooperative-service agreement. At the time the cooperative-service agreement is returned to the Import-Export Animals Staff, Veterinary Services, the effective date of the $50,000 irrevocable letter of credit submitted with the application for importation must be revised to extend 90 days beyond the animals' scheduled release from HSTAIC. For importations requiring use of an embarkation quarantine facility (EQF), site-specific blueprints and location must be included when the cooperative-service agreement is returned to the Import-Export Animals Staff, Veterinary Services.

(1) An importer interested in animals ineligible for importation because officials in the exporting country or area will not allow the Animal and Plant Health Inspection Service to provide the services prescribed in the cooperative-service agreement, may, upon notification of this ineligibility from the Animal and Plant Health Inspection Service, propose to substitute animals available from another location. If this importer has lost interest, is unable to make alternate arrangements, or for any other reason has not returned the signed cooperative-service agreement within the 14 days specified in the agreement, the Animal and Plant Health Inspection Service will return his/her deposit. In that case, the applicant next in priority will be offered the exclusive right to use HSTAIC, in accordance with the procedures in this section.

(2) The importer may not abrogate his/her responsibility for costs incurred during an importation authorized in his/her name, regardless of any occurrences that, after the signing of the cooperative-service agreement, prevent the importation from proceeding as planned.

(3) The importer signing the cooperative-service agreement returned to the Animal and Plant Health Inspection Service is responsible for paying all costs, excluding capital expenditures at HSTAIC, incurred in qualifying the specified animals for importation through HSTAIC. A partial list of costs for which the importer must assume responsibility includes: Expenses for sentinel animals in the United States, when required, and for tested animals prevented, for any reason, from moving from HSTAIC elsewhere within the United States; laboratory tests; medical treatment; official travel by Animal and Plant Health Inspection Service personnel, including per diem expenses in the country from which animals are being exported, when required; courier services to transport test samples to the Foreign Animal Disease Diagnostic Laboratory, when required; salaries of HSTAIC personnel; all supplies for animal care, maintenance, and testing during the quarantine and in the post-quarantine cleaning and disinfection of HSTAIC; utilities and overhead, including support staff, during the quarantine and post-quarantine cleanup.

(4) Capital expenditures at HSTAIC constitute the only costs for which the importer will not be held responsible.

(5) For costs incurred during any stage of the importation through HSTAIC—that is, costs not calculated into the amount collected from the importer in accordance with the cooperative-service agreement—the Animal and Plant Health Inspection Service will bill the importer at a later date. Payment will be due upon receipt of the bill.

(6) The Animal and Plant Health Inspection Service will return to the importer any money remitted with the cooperative-service agreement set forth in paragraph (d) of this section.

(d) *Cooperative-Service Agreement.* Each importer being granted the right to use HSTAIC must sign, and comply with, the cooperative-service agreement with the Animal and Plant Health Inspection Service. A sample cooperative-service agreement for importers other than agencies of the United States government is reproduced in this paragraph. (Agencies of the United States government being granted the right to use HSTAIC must enter into an interagency agreement with the Animal and Plant Health Inspection Service.) The amount of money the importer must advance, left blank in the following sample, will depend on figures unique to a particular importation. This amount will be specified in the cooperative-service agreement the importer receives.

COOPERATIVE-SERVICE AGREEMENT BETWEEN (NAME OF IMPORTER) AND THE UNITED STATES DEPARTMENT OF AGRICULTURE, ANIMAL AND PLANT HEALTH INSPECTION SERVICE

The importer, ______________, wishes to qualify animals for importation into the United States. The United States Department of Agriculture, Animal and Plant Health Inspection Service, administers the Harry S Truman Animal Import Center (HSTAIC), a facility through which the importer may import animals into the United States.

To effect this importation, both parties agree to the following terms:

The importer agrees:

1. To have this cooperative-service agreement in the office of the Animal and Plant Health Inspection Service's Import-Export Animals Staff, Veterinary Services, within 14 days of the date of receipt, evidenced by the postal return-receipt.

2. To remit with this cooperative-service agreement a certified check, money order, or an increase in the irrevocable letter of credit submitted with the application for importation (with an effective date that extends 90 days beyond the animals' scheduled release from HSTAIC), payable to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of $________. (This amount represents the estimated cost (except capital expenditures at HSTAIC) of qualifying the animals for importation through HSTAIC, less the $50,000 deposited with the application for the exclusive right to use HSTAIC.)

3. To revise the effective date of the irrevocable letter of credit submitted with the original application for the importation to extend 90 days beyond the animals' scheduled date of release from HSTAIC, if the effective date of the irrevocable letter of credit does not extend 90 days beyond the animals' scheduled date of release from HSTAIC.

4. To limit ______ the number of animals, species ______, transported to HSTAIC for an importation scheduled to begin on or about ______ and to end with the animals' release from HSTAIC, scheduled for ______.

5. To assume liability for all costs (except capital expenditures at HSTAIC) attributable to qualifying animals for and through quarantine in the embarkation quarantine facility (EQF), when quarantine in an EQF is required, and in HSTAIC for importation into the United States. (A partial list of these costs would include expenses for sentinel animals in the United States and for tested animals prevented, for any reason, from moving from HSTAIC elsewhere within the United States; laboratory tests; medical treatment; official travel by Animal and Plant Health Inspection Service personnel, including per diem expenses in the country from which the animals are being exported; courier services to transport test samples to the Foreign Animal Disease Diagnostic Laboratory; salaries of HSTAIC personnel; all supplies for animal care, maintenance, and testing during the quarantine and in the post-quarantine cleaning and disinfection of HSTAIC; utilities and overhead, including support staff, during the quarantine and post-quarantine cleanup.)

6. To obtain from foreign government officials authorizations granting Animal and Plant Health Inspection Service personnel free access to the EQF, when quarantine in an EQF is required, and permits for export.

7. To secure from animal carriers permission for Animal and Plant Health Inspection Service personnel to accompany the animals to the EQF, when quarantine in an EQF is required, and from the EQF to HSTAIC.

8. To maintain and operate the EQF, when quarantine in an EQF is required, in compliance with title 9, part 92, section 42 of the Code of Federal Regulations.

9. To accept as final the findings of the Administrator, Animal and Plant Health Inspection Service, on the animals' eligibility to enter the EQF, when quarantine in an EQF is required, to enter HSTAIC, and to be released from HSTAIC.

10. To follow procedures prescribed by the Animal and Plant Health Inspection Service, appropriate to the disease and pest status of the quarantined animals. (When quarantine in an EQF is required, the presence in the EQF of even one animal either exposed to, or infected with, foot-and-mouth disease, rinderpest, hog cholera, African swine fever, swine vesicular disease, or certain other contagious, exotic diseases, automatically disqualifies all animals in the EQF from entering HSTAIC. Similarly, the presence in HSTAIC of even one animal either exposed to, or infected with, one of the diseases referred to in this paragraph, automatically disqualifies all animals in HSTAIC from moving anywhere within the United States after the period in quarantine.)

11. To assume responsibility for disposal of quarantined animals that do not qualify to move into or within the United States. (In the case of animals disqualified while quarantined in HSTAIC, the Animal and Plant Health Inspection Service will stipulate the conditions under which the disqualified animals in HSTAIC must be destroyed. The importer must, within 10 days of notification from the Animal and Plant Health Inspection Service, remove from the EQF or HSTAIC, animals untreatable or treated for, but not cured of, a communicable disease other than foot-and-mouth disease or any of certain other exotic diseases; those removed from HSTAIC must be moved out of the United States or be destroyed under conditions stipulated by the Animal and Plant Health Inspection Service.)

12. To assume responsibility for all costs the Animal and Plant Health Inspection Service incurs during this importation, excluding capital expenditures at HSTAIC.

13. To pay, upon receipt, post-quarantine billings incurred during this importation, for costs exceeding the amount remitted with this cooperative-service agreement plus the initial $50,000 deposit.

The Animal and Plant Health Inspection Service agrees:

1. To provide the personnel required to perform inspections, laboratory procedures, and examinations, and to provide on-site supervision of the isolation, quarantine, care and handling of animals on premises of origin, in the EQF when quarantine in an EQF is required, and in HSTAIC.

2. To inform the importer of any quarantined animals in the EQF or in HSTAIC that fail to qualify for entry into the United States, and to inform the importer that he/she must assume responsibility for their disposal.

3. To finance capital expenditures at HSTAIC without charging the importer.

4. To account for all money disbursed from the amount remitted, providing the importer with a complete written account upon termination of this cooperative-service agreement.

5. To refund to the importer any part of the amount remitted with this cooperative-service agreement that is not used to cover the non-capital costs of the importation through HSTAIC.

Both parties agree:

1. That this cooperative-service agreement is effective upon signature by both parties.

2. That this cooperative-service agreement will not be signed by the Administrator if the Import-Export Animals Staff, Veterinary Services, Animal and Plant Health Inspection Service, has not received this signed cooperative-service agreement, including the specified remittance for the amount due, by 4:30 p.m. on the fourteenth calendar-day after the date on the United States Postal Service's return receipt, evidencing its receipt by the importer.

3. That this cooperative-service agreement will not be signed by the Administrator if not accompanied by the physical plans for the EQF, including its location and site-specific blueprints (except when quarantine in an EQF is not required).

4. That this cooperative-service agreement will be voided if the Administrator, Animal and Plant Health Inspection Service, determines that the importer has not completed arrangements with the responsible officials in the exporting country by 4:30 p.m. on the date 42 calendar-days after the importer's signing of this cooperative-service agreement.

5. That, if both parties agree in writing, this cooperative-service agreement may be amended.

6. That either party may terminate this cooperative-service agreement upon giving 30 days' written notice to the other party, but premature termination will not relieve the importer of responsibility for costs incurred, as provided in this cooperative-service agreement, nor will it relieve the Animal and Plant Health Inspection Service of responsibility for providing the importer with a complete written accounting of money disbursed from the amounts remitted.

7. That during the performance of this cooperative-service agreement, the importer agrees to be bound by the Equal Employment Opportunity and Nondiscrimination provisions set forth in Exhibit A and the Nonsegregation of Facilities provisions set forth in Exhibit B, which are attached to and made part of this cooperative-service agreement.

8. That no member of, or delegate to, Congress may participate in, or benefit from, this cooperative-service agreement.

Date ____________________
Importer____________________
Date ____________________
Administrator ____________________

Animal and Plant Health Inspection Service, United States Department of Agriculture.

* * * * *

3. In § 92.42, the phrase "approved embarkation quarantine facility" would be amended by revising the phrase to read "embarkation quarantine facility" wherever it appears.

4. In § 92.42, the introductory paragraph, and paragraphs (a)(2), (a)(4), (b)(1) (i) and (ii), and (b)(2)(iv) would be revised to read as follows:

§ 92.42 Embarkation quarantine facility: criteria and standards for approval

Criteria for the establishment of an embarkation quarantine facility outside the United States for the purpose of importing animals into the United States that are eligible for importation only through the Harry S Truman Animal Import Center are as follows:

(a) * * *

(2) To qualify for designation as an embarkation quarantine facility (EQF) for a specifically authorized importation, the facility must meet the requirements of paragraph (b) of this section.

* * * * *

(4) The Animal and Plant Health Inspection Service requires that the importer submit the physical plans for the EQF for which he/she is requesting approval. These plans must include location of facility and site-specific blueprints. The importer must send this information, due with the completed agreement as provided in § 92.41(d) of this part, to the Import-Export Animals Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. The Animal and Plant Health Inspection Service will, after reviewing the importer's plans and conducting an on-site inspection, approve an EQF found to meet the requirements of this section. Approval of an EQF will expire at the end of the specifically authorized quarantine. Subsequent importers granted use of HSTAIC and proposing to use one of the existing EQFs must apply for approval as if for a new facility. No more than one EQF will receive approval for a specific HSTAIC importation. If an EQF closes down or loses its "approved" status for any reason, the Animal and Plant Health Inspection Service may approve a replacement following the method specified in this paragraph.

* * * * *

(b) *Standards for approval of embarkation quarantine facilities*—(1) *Location.* (i) The EQF must be in an area isolated from ruminants, swine, and poultry. It must be located near the point of embarkation: a dock, if the animals will travel by ocean vessel; and airport, if the animals will travel by plane.

(ii) The animals' route from the EQF to the point of embarkation will be limited to areas free of ruminants, swine, and poultry.

* * * * *

(2) *Building.* * * *

(iv) Mesh double screens must protect all open areas, so that insects cannot gain access to the animal holding area. If the animals are removed from the double-screened building before export to the HSTAIC, or if the United States Department of Agriculture Veterinarian in Charge of the quarantine operation determines that insects capable of transmitting communicable animal diseases are entering the animal holding area, the Animal and Plant Health Inspection Service will require implementation of a program of insect vector control. This vector control program will involve treating animals, building interiors, and environs with United States Environmental Protection Agency-registered pesticides. The pesticides must be used in the manner prescribed on the United States Environmental Protection Agency-approved label, and in accordance with the requirements of the government of the country in which the EQF is located.

* * * * *

5. In § 92.42, paragraph (b)(4) would be redesiganted as paragraph (b)(5) and new paragraph (b)(4) would be added to read as follows:

(b) * * *

(4) *Feed.* The animal feed supply in the EQF must consist only of feed obtained from a country or area that is listed as free of foot-and-mouth disease (see § 94.1(a)(2) of this chapter) and any other exotic disease necessitating the quarantine or that could jeopardize the quarantine.

* * * * *

Done in Washington, DC, this 30th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-20737 Filed 9-1-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

Prescriptions

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend the prescription requirements of 21 CFR part 1306 to clarify and facilitate the keeping of prescription information on original dispensing and refills by automated data processing systems. The action is necessary in order to make it easier for persons affected by the regulations to more readily comply with its provisions. The intended effect of the changes is to clarify the requirements to keep automated prescription data for controlled substances and to simplify the requirements to maintain these records.

DATES: Written comments and objections must be received on or before October 5, 1989.

ADDRESSES: Comments and objections should be submitted in quadruplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, (202) 633-1216.

SUPPLEMENTARY INFORMATION: Section 1306 of title 21 of the CFR concerns the preparation and retention of prescription records for controlled substances.

Section 1306.21 concerns the requirements of a prescription. A new § 1306.21(d) would be added allowing a prescription in Schedule III or IV to be directly entered into a computer system when received by telephone. The regulation requires that the same information which is required for a written prescription be entered into the computer system for those prescriptions received by telephone. When a pharmacy employs a computer system to maintain prescription records, written prescriptions received at the pharmacy must also be entered into the system.

Section 1306.22 concerns the filling and refilling of prescriptions for Schedule III and IV controlled substances, and provides a mechanism for maintaining original dispensing and refill records using an automated data processing system. The proposed rulemaking would amend § 1306.22(b)(1) to allow, with certain provisions, the use of an identity number in place of the name, strength and dosage form of the controlled substance in a computerized system. This, in some cases, would make it more readily compatible with some computerized systems. Section 1306.22(b)(2)(i) would be added requiring a monthly record of original prescription and refill information for Schedules III and IV controlled substances. Section 1306.22(b)(3) would be amended by eliminating the requirement of a daily printout of computerized prescription refills. In its place would be the requirement that the automated data processing systems employed must provide certain security procedures and back-up procedures which are enumerated in the proposed rulemaking. The proposed rule is intended to facilitate the use of computers in documenting prescription transactions and also to provide the necessary security requirements. Section 1306.22(b)(4) would be amended to provide for a printout of the current month's dispensing records of Schedule III and IV controlled substances and extend deadlines. Section 1306.22(b)(5) would be amended to include original, as well as refill, information. Section 1306.22(b)(6) is added to require a back-up copy in the event the original is damaged, destroyed or lost.

Section 1306.26 concerns the transfer between pharmacies of prescription information for Schedule III, IV and V controlled substances for refill purposes. Section 1306.26(c)(3) would be amended to clarify the requirement of an electronic transfer of prescription information.

Section 1306.31 concerns the dispensing of Schedule V controlled substances pursuant to a prescription. The proposed rulemaking would add a new paragraph to require that Schedule V prescriptions and refills be subject to the same requirements as set forth in § 1306.22 for Schedules III and IV

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controlled substances. There is no change for Schedule V controlled substances dispensed without prescription as authorized in § 1306.32.

The proposed amendments would not require any additional paperwork and are intended to reduce and simplify present requirements. They are intended to alleviate some of the requirements of hard copy records for computerized prescription refills and prescription transfers while at the same time providing adequate security measures to protect against the diversion of controlled substances. Most of these proposed changes in the use of computer systems by pharmacies are being initiated at the request of several of the pharmaceutical groups, who have for some time recommended that DEA update its requirements in this area. The amendments would allow for the original and refill prescription information for Schedule III, IV and V controlled substances received verbally by telephone to be entered directly into the computer system.

The Deputy Assistant Administrator hereby certifies that this proposal will not have significant impact upon small entities whose interest must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The changes will not impose any additional regulatory requirements. They will merely revise the method and type of computerized record required to be kept. In addition the changes will significantly reduce paperwork by not requiring a daily printout of computerized refills. They will eliminate the requirement that the pharmacist initial each computerized printout of refill information and in its place provide for other security measures to insure that the pharmacist filling or refilling the prescription can be properly identified.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Pursuant to section 3(c)(3) and (2)(B) of Executive Order 12291, this proposed action has been reviewed by the Office of Management and Budget.

List of Subjects in 21 CFR Part 1306

Drug traffic control, Prescription drugs.

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b) which has been delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator, Office of Diversion Control, by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator hereby proposes that 21 CFR part 1306 be amended as follows:

PART 1306—PRESCRIPTIONS

1. The authority citation for part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, 871(b) unless otherwise noted.

2. Section 1306.21 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 1306.21 Requirement of prescription.

(a) A pharmacist may dispense directly a controlled substance listed in Schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug and Cosmetic Act, only pursuant to a written prescription signed by a prescribing individual practitioner, an oral prescription made by a prescribing individual practitioner and promptly reduced to writing by the pharmacist containing all information required in § 1306.05, except for the signature of the prescribing individual practitioner. In lieu of promptly reducing an oral prescription to writing, it may be directly entered into an automated data system pursuant to the requirements of § 1306.22.

* * * * *

(d) An original prescription received via the telephone for a controlled substance in Schedule III or IV which is directly entered into a computer system, as described in § 1306.22, must be designated as an original prescription in the computer system. The original prescription must be entered into the system by the pharmacist or designated person receiving the prescription. The number of authorized refills along with the information required by § 1306.22 must also be entered into the computer system. A written prescription received by a pharmacist is required to be maintained at the pharmacy for a period of two years and is subject to the requirements of § 1304.04. A pharmacy utilizing a computer system must also enter into the computer system the information on a written prescription including the number of refills, the fact that it is an original prescription and the information required by § 1306.22.

3. Section 1306.22 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(3), (b)(4), and (b)(5) and adding paragraphs (b)(2)(i), (b)(2)(ii) and paragraph (b)(6) to read as follows:

§ 1306.22 Refilling of prescriptions.

* * * * *

(b) As an alternative to the procedures provided by § 1306.21 and paragraph (a) of this section, an automated data processing system may be used for the storage and retrieval of original and refill information for prescription orders for controlled substances in Schedules III and IV, subject to the following conditions:

(1) Any such proposed computerized system must provide on-line retrieval (via CRT display or hard-copy printout) of original prescription order information. This shall include, but is not limited to, data such as the original prescription number, date of issuance of the original prescription order by the practitioner, name and address of the patient, name, address, and DEA registration number of the practitioner, the name, strength, dosage form, quantity of the controlled substance prescribed (and quantity dispensed if different from the quantity prescribed), the total number of refills authorized by the prescribing practitioner and the name or initials of the dispensing pharmacist. A unique numeric identifier (such as an N.D.C. number) may be used in place of the name, strength and dosage form, as long as the computerized system has the capability of replacing this unique identifier with the name, strength and dosage form for each original prescription and refill. When requested by an authorized official of the Administration or other authorized official, the information must be provided by name, strength and dosage form.

(2) * * *

(i) At the end of each month a record shall be generated which documents all original prescriptions and refills of Schedule III and IV controlled substances dispensed during that month. This record must separate the original and refill information for Schedule III and IV controlled substances prescriptions from other prescriptions in the same data system. This record shall include, but is not limited to: the prescription number, date of issuance, name and address of the patient, name, address and DEA registration number of the practitioner, initials of dispensing pharmacist, and the name, strength, dosage form, quantity of the controlled substance prescribed (and quantity dispensed if different from the quantity prescribed).

(ii) The monthly printouts must be provided upon request from an authorized official of the Administration or other authorized official. These records shall be maintained in accordance with § 1304.04.

(3) Accuracy and completeness of the original and refill information entered into an automated system must be verified each time by the individual pharmacist who fills an original prescription or refill order for a Schedule III or IV controlled substance, i.e., thorough check of data screen prior to actual entry into the database. The system employed must be designed to protect against unauthorized access to, and use of, the automated system and associated data and be able to identify the pharmacist filling the original prescription or refill. Such protection shall be accomplished as follows:

(i) Each authorized pharmacist shall be assigned a unique access code of three or more characters to be entered prior to each and every original prescription, refill order or any edit of data, i.e., the automated system shall prompt the user for this unique code each and every time an original prescription or refill, or edit of data is entered in the computer system. Such code when entered shall not visibly appear on the screen. This will insure that the code is not compromised by onlookers.

(ii) Such access codes shall automatically cause the initials of the pharmacist assigned the code to appear within the appropriate data field and become part of the original prescription or refill order.

(iii) The knowledge or ability to change, delete or add assigned access codes shall be strictly limited. (For example, the owner, pharmacy manager, corporate security officer, or other authorized and appropriate individual.)

(4) Any such computerized system shall have the capability of producing a printout for the current month's original and refill data for Schedule III and IV prescriptions. Such a printout must include all the information required by paragraphs (b)(1) and (b)(2) of this section. This printout must be produced upon request of an authorized official of the Administration or other authorized official. In any computerized system employed by a user pharmacy which utilizes a central recordkeeping facility, as permitted by 21 CFR 1304.04, the central recordkeeping location must be capable, if requested, of producing and delivering the requested printout to the pharmacy within three working days. Such requests can be made by an authorized official of the Administration or other authorized official.

(5) In the event that a pharmacy which employs such a computerized system experiences system down-time, the pharmacy must have an auxiliary procedure which will be used for documentation of originals and refills of Schedule III and IV controlled substance prescription orders. This documented auxiliary procedure must provide assurance that refills are authorized by the original prescription order, that the maximum number of refills has not been exceeded, and that all of the appropriate data is retained for on-line data entry as soon as the computer system is available for use again.

(6) A back-up copy of original prescription and refill information must be made daily for that day's transactions. The back-up copy can be stored on hard disk, floppy disk, or magnetic tape in lieu of a printed medium. The copy must be stored on an entirely separate storage medium distinct from the operating medium normally utilized and kept two years from the transaction date.

4. Section 1306.26 is amended by revising paragraph (c) to read as follows:

§ 1306.26 Transfer between pharmacies of prescription information for Schedules III, IV and V controlled substances for refill purposes.

* * * * *

(c) Prescriptions can be electronically transferred on a one-time basis provided that:

(1) The electronic transfer contains the information required on a prescription and refill by § 1306.22 (b)(1) and (b)(2)(i).

(2) A system is devised where the pharmacy transferring the prescription can no longer refill the prescription once it is transferred to another pharmacy.

(3) A system is devised in the automated data system that will prevent subsequent transfers to other pharmacies in the network.

* * * * *

5. Section 1306.31 is amended by revising the heading to the section and adding paragraph (d) to read as follows:

§ 1306.31 Schedule V controlled substances dispensed on prescription.

* * * * *

(d) A pharmacy which employs an automated data system in filling or refilling a prescription for a Schedule V controlled substance shall comply with the requirements of § 1306.22 regarding the filing and retrieval of prescription information. Criteria that apply to Schedule III and IV prescriptions also apply to Schedule V prescriptions.

Dated: July 28, 1989.

Gene Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 89-20696 Filed 9-1-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Request for public comment.

SUMMARY: Governor Clements of the State of Texas notified the Office of Surface Mining Reclamation and Enforcement (OSMRE) by letter, dated May 11, 1989, that the State had addressed the last known abandoned mine area having coal-related problems; and further, the State has adequate funds for any unforeseen coal problems that might arise during the life of the Abandoned Mine Land Reclamation (AMLR) program. Having satisfied the requirements of the Act in regard to abandoned coal mine reclamation, the State of Texas requests certification to proceed with noncoal reclamation projects as provided for under section 409 of title IV of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87, 30 U.S.C. 1202 et. seq.).

This notice sets forth the times and locations for the public to submit written comments or to meet and discuss the request with OSMRE representatives or request public meetings.

DATES: OSMRE will accept written comments on the request until 4:30 p.m. c.s.t. on October 5, 1989.

Upon request, OSMRE will hold a public hearing on the request on September 25, 1989, beginning at 9:00 a.m. c.s.t. The public hearing will be held at the location shown under "**ADDRESSES**" below.

OSMRE will accept requests for a public hearing until 4:30 p.m. c.s.t. on September 20, 1989. If no person has contacted OSMRE by that date to express an interest in testifying at the hearing, it will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed to the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, or hand-delivered to the same address.

If requested, a public hearing will be held at the Tulsa Field Office of the

Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550.

Requests for a public hearing should be made by contacting the individual listed under "**FOR FURTHER INFORMATION CONTACT.**"

Copies of the Texas AMLR program and the request for certification are available for inspection Monday through Friday, 8:30 a.m. to 4:00 p.m. excluding holidays, at the following addresses:

Railroad Commission of Texas, Surface Mining and Reclamation Division, 1701 N. Congress, Austin, Texas 78701; Telephone (512) 463–6900.
Office of Surface Mining Reclamation and Enforcement Administrative Record Room 5315, 1100 L. Street NW., Washington, DC 20240.
Office of Surface Mining Reclamation and Enforcement Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581–6430.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977, Pub. L. 95–87, 30 U.S.C. 1201 et seq., establishes an Abandoned Mine Land Reclamation (AMLR) program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws.

Each State having within its border coal-mined lands eligible for reclamation under title IV of SMCRA may submit to the Secretary of the Interior a State Reclamation Plan demonstrating its capability for administering an AMLR program. Upon approval of the State Reclamation Plan by the Secretary, the State may submit to OSMRE on an annual basis an application for funds to be expended in that State on specific reclamation projects that are necessary to implement the approved State reclamation plan. Such annual requests are reviewed and approved by OSMRE in compliance with the requirements of 30 CFR part 886.

AMLR funds are to be utilized to address the problems caused by past mining in the following order. First, reclamation efforts are to be directed at correcting or mitigating the problems caused by past coal mining. Certain noncoal mining-related problems may also be addressed at the same time if they involve direct threats to the public health and safety. Second, following the completion of all coal-related impacts, a State program may then direct its efforts to alleviating the problems caused by all other types of mining. Finally, when all coal and noncoal related impacts have been addressed, and if certain other conditions set forth in section 402(g) (2) of SMCRA are satisfied, AMLR funds may be used for construction of specific public facilities in communities impacted by coal mining development.

The Texas Reclamation Plan, as submitted on April 24, 1980, and amended on May 30, 1980, June 2, 1980 and June 4, 1980, was approved effective June 23, 1980 (45 FR 41940). Since this approval, the State has received OSMRE approval of four coal reclamation projects at a total cost of $6.1 million. In addition, OSMRE has approved two noncoal reclamation grants involving seven sites at a cost of $0.47 million. Currently, Texas has approximately $14 million in State share funds that have been allocated to the State but not granted for abandoned mine land (AML) reclamation. In addition, there are more than $3 million in unappropriated funds in the State's share of the AML fund.

II. Discussion of Proposed Action

The Governor of the State of Texas notified OSMRE by letter on May 11, 1989 (Administrative Record No. TAML–40), that the State has reclaimed all known and related problems eligible for funding under section 404 of SMCRA and has committed funds to address any unforeseen coal problems that might arise.

Once a State has reclaimed all lands adversely impacted by past coal mining, SMCRA provides that a State may utilize its AMLR funds to address eligible problems caused by noncoal mining. OSMRE is seeking public comments and information concerning any known or suspected unreclaimed lands and water resources in the State that may have been adversely affected by coal mining practices prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws.

If no past coal mining problems eligible for funding under section 404 of SMCRA are identified through this process, the Secretary is authorized to allow the State to address noncoal problems as set forth in 30 CFR part 875. Such noncoal reclamation activities, however, may occur with one condition; that is, if a coal problem occurs or is identified some time in the future, the State must seek immediate funding for reclaiming that problem. In the event of certification by the Secretary, the State has agreed to this condition.

To assist in its analysis of Texas' grant application and the proposed plan for funding future coal-related problems, OSMRE solicits comments on all relevant economic, environmental, and legal issues involving the reclamation of lands adversely affected by past coal mining practices and the State's request to fund eligible noncoal projects.

Lists of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 18, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89–20712 Filed 9–1–89; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 775

Procedures for Implementing the Procedural Provisions of the National Environmental Policy Act

AGENCY: Department of the Navy.

ACTION: Proposed rule with request for comments.

SUMMARY: The Department of the Navy is proposing to revise its regulations for implementing procedural provisions of the National Environmental Policy Act. This proposed rule is in compliance with 40 CFR part 1507 which requires each federal agency to adopt, as necessary, procedures supplementing regulations published by the Council on Environmental Quality.

DATES: Agency and public comments concerning this proposed rule are requested to be sent to the address given below and to be postmarked no later than October 5, 1989.

ADDRESSES: Comments concerning this regulation may be mailed to: Mr. Thomas J. Peeling, Special Assistant for Environmental Planning, Office of the Deputy Chief of Naval Operations (Logistics), Room 10N67, Hoffman Bldg. II, 200 Stovall St., Alexandria, Virginia 22332–2300.

FOR FURTHER INFORMATION CONTACT: Thomas J. Peeling, telephone (202) 325–7344/0521.

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4361 (1976)) establishes national policy and goals for protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports significantly affecting the quality of the human environment.

Executive Order 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issue regulations to implement procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR parts 1500–1508) on November 29, 1978, which are binding on all federal agencies as of July 30, 1979.

These regulations require each federal agency, as necessary, to adopt implementing procedures to supplement the CEQ regulations. Section 1507.3(b) of the CEQ regulations identifies those sections of the regulations which must be addressed in agency procedures.

This proposed rule would revise Department of the Navy procedures (32 CFR part 775) for compliance with NEPA and the CEQ regulations. The last several years of NEPA compliance has provided substantial experience in reviewing project impacts and to better determine which types of projects do not have the potential, either individually or cumulatively, for significant environmental impacts. Based on that experience, the proposed revisions consist primarily of changes to the list of categorical exclusions contained in § 775.6(c). The entire part 775 is presented here for clarity and continuity.

For the reasons set out in the preamble, it is proposed that, title 32, chapter VI, subchapter G, of the Code of Federal Regulations be amended by revising part 775 to read as follows:

PART 775—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.
775.1 Purpose.
775.2 Scope.
775.3 Policy.
775.4 Responsibilities.
775.5 Classified actions.
775.6 Planning considerations.
775.7 Time limits for environmental documents.
775.8 Scoping.
775.9 Documentation and analysis.
775.10 Relations with state, local and regional agencies.
775.11 Public participation.
775.12 Action.

Authority: 5 U.S.C. 301; 42 U.S.C. 4321–4361; 40 CFR Parts 1500–1508.

§ 775.1 Purpose.

To supplement Department of Defense (DOD) regulations by providing policy and assigning responsibilities to the Navy and Marine Corps for implementing the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act (NEPA).

§ 775.2 Scope.

The policies and responsibility assignments of this rule apply to the Office of the Secretary of the Navy, the Navy Department, and the Navy and Marine Corps operating forces and shore establishment. This rule is limited to the actions of these elements with environmental effects in the United States, its territories, and possessions.

§ 775.3 Policy.

(a) The Department of the Navy (DON) must act with care to ensure, to the maximum extent possible, that in conducting its mission of providing for the national defense, it does so in a manner consistent with national environmental policies. In so doing, the Navy recognizes that the NEPA process includes the systematic examination of the likely environmental consequences of implementing a proposed action. To be an effective decisionmaking tool this process will be integrated with other Navy-Marine Corps project planning at the earliest possible time. This ensures that planning and decisionmaking reflect environmental values, avoid delays, and avoid potential conflicts. Care must be taken to ensure that, consistent with other national policies and national security requirements, practical means and measures are used to protect, restore, and enhance the quality of the environment, to avoid or minimize adverse environmental consequences, and to attain the objectives of:

(1) Achieving the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other consequences that are undesirable and unintended;

(2) Preserving important historic, cultural, and natural aspects of our national heritage, and maintaining, where possible, an environment that supports diversity and variety of individual choice;

(3) Achieving a balance between resource use and development within the sustained carrying capacity of the ecosystem involved; and

(4) Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

(b) The DON shall:

(1) Assess environmental consequences of proposed actions that could affect the quality of the environment in the United States, its territories, and possessions in accordance with DOD and CEQ regulations;

(2) Use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and environnental considerations in planning and decisionmaking where there may be an impact on man's environment;

(3) Ensure that presently unmeasured environmental amenities are considered in the decisionmaking process;

(4) Consider the reasonable alternatives to recommended actions in any proposal that would involve unresolved conflicts concerning alternative uses of available resources;

(5) Make available to states, counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment; and

(6) Use ecological information in planning and developing resource-oriented projects.

§ 775.4 Responsibilities.

(a) The Assistant Secretary of the Navy for Shipbuilding and Logistics (ASN(S&L)) shall;

(1) Advise the Secretary of the Navy on DON policy regarding NEPA compliance and communications with foreign governments concerning environmental matters and/or other arrangements/investigations coordinated through the Department of State.

(2) Be the principal point-of-contact with the CEQ, Environmental Protection Agency (EPA), the Deputy Assistant Secretary of Defense for Environment (DASD(E)), other DOD components and federal agencies concerned with NEPA matters, and with private environmental groups as applicable.

(3) Direct and/or, upon recommendation, approve the preparation of Environment Impact Statements (EIS) to the EPA and to other appropriate agencies for review and comment.

(4) Approve and forward to the Navy Judge Advocate General (JAG) Findings of No Significant Impact (FONSI) for publication in the **Federal Register** for those actions of national concern that the Navy/Marine Corps has determined will not have a significant effect on the quality of the human environment and for which an EIS will not be prepared.

(5) Approve and forward to the Navy JAG, for publishing in the **Federal Register**, a Record of Decision (ROD) which will summarize for the public record the decision made by the Navy/Marine Corps among the alternatives presented in a Final EIS.

(6) Maintain liaison with the Chief of Information who will coordinate with the Assistant Secretary of Defense (Public Affairs) those environmental matters which have significant public affairs implications.

(7) Maintain liaison with the Office of Legislative Affairs who will coordinate with the Assistant Secretary of Defense (Legislative Affairs) and the Congress those environmental matters which have significant legislative implications.

(b) The Chief of Naval Operations, or his designee, and the Commandant of the Marine Corps, or his designee, are responsible, within their respective services, for NEPA compliance, which includes;

(1) Implementing DON policy regarding protection of the environment to include NEPA compliance.

(2) Advising commands in cases of necessity of the requirement for submitting environmental assessments or impact statements.

(3) Coordinating as appropriate with CEQ, EPA, DASD(E), ASN(S&L), and other DOD components and federal agencies concerned with environmental matters.

(4) Serving as the point of contact for DON environmental matters.

(5) Coordinating, as appropriate, with the Chief of Information for the release to the public of environmental assessments, impact statements, Findings of No Significant Impact, and other environmental documents, according to the Freedom of Information Act and other applicable federal laws.

(6) Providing assistance for actions initiated by private persons, state or local agencies and other non-DON/DOD entities for which DON involvement may be reasonably foreseen.

(7) Identifying major decision points in the chain of command where environmental effects shall be considered.

(8) Ensuring that relevant environmental documentation accompanies all proposals for action through the appropriate review process so that such information is available to the decision maker.

(c) The Chief of Naval Operations and the Commandant of the Marine Corps are to comply with this instruction by subsequently directing subordinates to:

(1) Ensure all appropriate instructions, directives, and orders include the requirement for funding and planning for environmental documentation, as required;

(2) Conduct analyses of the environmental effects of current and proposed actions in accordance with DOD regulations, CEQ regulations (40 CFR parts 1500–1506), and other applicable regulations;

(3) Encourage, to the extent practicable, citizen participation in environmental evaluations of projects or programs;

(4) Evaluate environmental impacts at initial planning stages and at each following significant step or decision milestone in the development of a project or program, as warranted.

§ 775.5 Classified actions.

(a) The fact that a proposed action is of a classified nature does not relieve the proponent of the action from complying with NEPA and the CEQ regulations. Therefore, environmental document shall be prepared, safeguarded and disseminated in accordance with the requirements applicable to classified information. When feasible, these documents shall be organized in such a manner that classified portions are included as appendices so that unclassified portions can be made available to the public.

(b) It should be noted that a classified EA/EIS serves the same "informed decisionmaking" purpose as does a published unclassified EA/EIS. Even though the classified EA/EIS does not undergo public review and comment, it must still be part of the information package that is placed before the decisionmaker for the proposed action. The content of a classified EA/EIS (or the classified portion of a public EA/EIS) will therefore meet the same content requirements applicable to a published unclassified EA/EIS.

§ 775.6 Planning considerations.

(a) When integrating the NEPA process into early stages of proposed actions, action proponents will determine as early as possible the appropriate level of documentation required under NEPA, i.e., is the action a major federal action significantly affecting the human environment requiring an environmental impact statement (EIS), is the action one for which the impacts are not known or which may not be significant and, therefore, an environmental assessment (EA) is appropriate, or is the action one that has no potential for significant impacts and can be categorically excluded from further NEPA documentation.

(b) The command responsible for preparation of the appropriate documentation may prepare an EA on any action at any time in order to assist in planning and decisionmaking, including the decision whether or not to prepare an EIS. If a determination is made based on information presented in an environmental assessment that an EIS is not required, a Finding of No Significant Impact (FONSI) will be prepared and made available to the public in accordance with CEQ regulations (40 CFR 1506.6).

(c) CEQ regulations provide for the establishment of categorical exclusions (40 CFR 1508.4) for those actions which do not individually or cumulatively, under normal circumstances, have a significant effect on the human environment and for which, therefore, neither an EA nor an EIS is required. "Normal circumstances" is intended to denote the absence of extenuating site specific conditions such as the absence of wetlands, endangered or threatened species, historic/archaeological resources, and/or hazardous wastes. The presence of extenuating circumstances will usually preclude use of a categorical exclusion and, therefore, require preparation of an EA or EIS. Categorical exclusions are justified for those kinds of Navy actions which minimally affect the quality of the human environment, do not result in any significant change from existing conditions at the site of the proposed action, and those whose effect is primarily economic or social. The following are actions which, under normal conditions, are categorically excluded from further documentation requirements under NEPA:

(1) An action the effects of which are included in a previous EA or EIS and for which site specific constraints and/or mitigation measures described in the NEPA decision documents (i.e., FONSI or ROD) will be incorporated.

(2) Routine personnel, fiscal, and administrative activities involving military and civilian personnel, e.g., recruiting, processing, paying, and records keeping.

(3) Reductions in force wherein impacts are limited to socioeconomic factors.

(4) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments (when no new support facilities are required) to perform as operational groups, and/or for repair and overhaul.

(5) Relocation of personnel into existing federally-owned or commercially-leased space which does not involve a substantial change in the supporting infrastructure (e.g., an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase).

(6) Emergency activities when immediate action is required for protection of lives, and for public health and safety. Emergency situations requiring action by naval authorities which could result in significant harm to the environment shall be reported to CNO (OP-04E)/CMC (LFL) who will facilitate consultation with the CEQ.

(7) The preparation of policy and planning documents, e.g., activity master plans and natural resources management plans.

(8) Studies, data and information-gathering that involve no physical change to the environment, e.g., topographic surveys, bird counts, wetland mapping, forest inventories, and timber cruising.

(9) Routine repair and maintenance of facilities and equipment in order to maintain existing operations and activities, including maintenance of improved and semi-improved grounds such as landscaping, lawn care, and minor erosion control measures.

(10) Alteration of and additions to existing structures to conform or provide conforming use required by new or existing applicable legislation or regulations, e.g., hush houses for aircraft engines and scrubbers for air emissions.

(11) Routine actions normally conducted to operate, protect, and maintain Navy-owned and/or controlled properties, e.g., maintaining law and order, physical plant protection by military police and security personnel, and pest management activities on improved and semi-improved lands conducted in accordance with applicable federal and state directives.

(12) New construction that is consistent with existing land use and, when completed, the use or operation of which complies with existing regulatory requirements, e.g., a building on a parking lot with associated discharges/runoff within existing handling capacities.

(13) Procurement activities that provide goods and support for routine operations.

(14) Day-to-day manpower resource management and research activities that are in accordance with approved plans and inter-agency agreements and which are designed to improve and/or upgrade Navy ability to manage those resources.

(15) Continuing actions and facility function when there is no substantial change from previously existing conditions.

(16) Training exercises on military property, and properties under land use agreement, when all applicable environmental and natural resources conservation factors have been incorporated into the exercise plan.

(17) Decisions to close facilities, decommission equipment, and/or temporarily discontinue use of facilities or equipment (where such equipment is not used to prevent/control environmental impacts). Note: Does not apply to permanent closure of public roads.

(18) Contracts for activities conducted at established laboratories and plants, to include contractor-operated laboratories and plants, within facilities where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable federal, state, and local laws and regulations.

(19) Identification, characterization, and clean-up of hazardous sites/materials when such actions are in accordance with applicable laws and the procedural aspects for execution involve the public in the decisionmaking process.

(20) Routine movement, handling and distribution of materials, including hazardous materials/wastes that when moved, handled, or distributed are in accordance with applicable regulations.

(21) Demolition, disposal, or improvements involving buildings or structures not on or eligible for listing on the National Register of Historic Places and when in accordance with applicable regulations.

(22) Acquisition, installation, and operation of utility and communication systems, data processing cable, and similar electronic equipment which use existing rights of way, easements, distribution systems, and/or facilities.

(23) Renewals and/or initial real estate ingrants and outgrants involving existing facilities and land wherein use does not change significantly. This includes, but is not limited to, existing federally-owned or privately-owned housing, office, storage, warehouse, laboratory, and other special purpose space.

(24) Grants of license, easement, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles; electrical, telephone, and other transmission and communication lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities; and for similar utility and transportation uses.

(25) Transfer of real property from the Navy to another military department or to another federal agency, and the granting of leases (including leases granted pursuant to the agricultural outleasing program), permits and easements where there is no significant change in land use or where subsequent land use would otherwise be categorically excluded.

(26) Disposal of excess easement interests to the underlying fee owner.

(27) Renewals and minor amendments of existing real estate grants for use of government-owned real property where no significant change in land use is anticipated.

(28) Pre-lease exploration activities for oil, gas or geothermal reserves, e.g., geophysical surveys.

(29) Return of public domain lands to the Department of the Interior.

(30) Land withdrawal continuances or extensions which merely establish time periods and where there is no significant change in land use.

(31) Temporary closure of public access to Navy property in order to protect human or animal life.

(32) Engineering effort undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed.

(33) Actions which require the concurrence or approval of another federal agency where the action is a categorical exclusion of the other federal agency.

(34) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(35) Installation of devices to protect human or animal life, e.g., raptor electrocution prevention devices, fencing to restrict wildlife movement onto airfields, and fencing and grating to prevent accidental entry to hazardous areas.

(36) Natural resources management actions undertaken or permitted pursuant to agreement with or subject to regulation by federal, state, or local organizations having management

responsibility and authority over the natural resources in question, including hunting or fishing during hunting or fishing seasons established by state authorities pursuant to their state fish and game management laws.

(37) Approval of recreational activities which do not involve significant physical alteration of the environment or increase human disturbance in sensitive natural habitats and which do not occur in or adjacent to areas inhabited by endangered or threatened species.

(38) Routine maintenance of timber stands, including issuance of down-wood firewood permits, hazardous tree removal, thinning and salvage operations, prescribed burning, and planting and seeding.

(39) Reintroduction of endemic or native species (other than endangered or threatened species) into their historic habitat.

§ 775.7 Time limits for environmental documents.

(a) The timing of the preparation, circulation, submission and public availability of environmental documents is important in achieving the purposes of NEPA. Therefore, the NEPA process shall begin as early as possible in the decisionmaking process.

(b) The EPA publishes a weekly notice in the **Federal Register** of environmental impact statements filed during the preceding week. The minimum time periods set forth below shall be calculated from the date of publication of notices in the **Federal Register**. No decision on the proposed action may take place until the later of the following dates:

(1) Ninety days after publication of the notice of availability for a draft environmental impact statement (DEIS). Draft statements shall be available to the public for 15 days prior to any public hearing on the DEIS (40 CFR 1506.6(c)(2)).

(2) Thirty days after publication of the notice of availability for a final environmental impact statement (FEIS). If the FEIS is available to the public within ninety days from the availability of the DEIS, the minimum thirty day period and the minimum ninety day period may run concurrently. However, not less than 45 days from publication of notice of filing shall be allowed for public comment on draft statements prior to filing of the FEIS (40 CFR 1506.10(c)).

§ 775.8 Scoping.

As soon as practicable after the decision to prepare an EIS is made, an early and open process called "scoping" shall be used to determine the scope of issues to be addressed and to identify the significant issues to be analyzed in depth related to the proposed action (40 CFR 1501.7). This process also serves to deemphasize insignificant issues, narrowing the scope of the EIS process accordingly (40 CFR 1500.4(g)). Scoping results in the identification by the proponent of the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). For any action, this scope may depend on the relationship of the proposed action to other existing environmental documentation.

§ 775.9 Documentation and analysis.

(a) Environmental documentation and analyses required by this rule should be integrated as much as practicable with any environmental studies, surveys and impact analyses required by other environmental review laws and executive orders (40 CFR 1502.25). When a cost-benefit analysis has been prepared in conjunction with an action which also requires a NEPA analysis, the cost-benefit analysis shall be integrated into the environmental documentation.

(b) CEQ regulations encourage the use of tiering whenever appropriate to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for discussion at each level of environmental review (40 CFR 1502.20). Tiering is accomplished through the preparation of a broad programmatic environmental impact statement discussing the impacts of a wide ranging or long term stepped program followed by narrower statements or environmental assessments concentrating solely on issues specific to the analysis subsequently prepared (40 CFR 1508.28).

(1) *Appropriate use of tiering.* Tiering is appropriate when it helps the lead agency to focus on issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe. (40 CFR 1508.28(b)). The sequence of statements or analyses is:

(i) From a broad program, plan, or policy environmental impact statement (not necessarily site specific) to a subordinate/smaller scope program, plan, or policy statement or analysis (usually site specific) (40 CFR 1508.28 (a)).

(ii) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation) (40 CFR 1508.28(b)).

(iii) *Preparation of the Programmatic Enviromental Impact Statement.* In addition to the discussion required by these regulations for inclusion in environmental impact statements, the programmatic environmental impact statement shall also discuss:

(A) A description of the subsequent stages or sites that may ultimately be proposed in as much detail as presently possible,

(B) All of the implementing factors of the program that can be ascertained at the time of impact statement preparation,

(C) All of the environmental impacts that will result from establishment of the overall program itself that will be similar for subsequent stages or sites as further implementation plans are proposed,

(D) All of the appropriate mitigation measures that will be similarly proposed for subsequent stages or sites.

(iv) *Preparation of the Tiered analysis.* The analytical document used for stage or site specific analysis subsequent to the programmatic environmental impact statement shall also be an environmental impact statement when the subsequent tier itself may have a significant impact on the quality of the human environment or when an impact statement is otherwise required. Otherwise, it is appropriate to document the tiered analysis with an environmental assessment to fully assess the need for further documentation or whether a FONSI would be appropriate.

§ 775.10 Relations with state, local and regional agencies.

Close and harmonious planning relations with local and regional agencies and planning commissions of adjacent cities, counties, and states, for cooperation and resolution of mutual land use and environment-related problems should be established. Additional coordination may be obtained from state and area-wide planning and development "clearinghouses". These are agencies which have been established pursuant to Executive Order 12372 of 1982. The clearinghouses serve a review and coordination function for Federal activities and the proponent may gain insights on other agencies' approaches to environmental assessments, surveys, and studies in relation to any current proposal. The clearinghouses would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

§ 775.11 Public participation.

The importance of public participation in preparing environmental assessments shall be recognized (40 CFR 1501.4(b)). In determining the extent to which public participation is practicable, the following are among the factors to be weighed by the command preparing the environmental documentation:

(a) The magnitude of the environmental considerations associated with the proposed action;

(b) The extent of anticipated public interest; and

(c) Any relevant questions of national security classification.

§ 775.12 Action.

The Chief of Naval Operations and the Commandant of the Marine Corps shall, each, as appropriate:

(a) Provide guidelines and procedures for administrative direction and implementation of this rule and CEQ regulations; and,

(b) Maintain a focal point for the coordination of the preparation of environmental assessments and impact statements.

Dated: August 29, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–20606 Filed 9–1–89; 8:45 am]

BILLING CODE 3810-AE-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 353

RIN 3067–AB49

Fee for Services in Support, Review and Approval of State and Local Government or Licensee Radiological Emergency Plans and Preparedness

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action extends the time allotted for review and comment of FEMA's proposed rule, 44 CFR part 353, published in the **Federal Register** on Thursday, June 29, 1989 (54 FR 27390). The extension is until September 11, 1989. The rule proposes to establish a fee for services the agency provides in the review and approval of State and local government or licensee site-specific offsite radiological emergency plans and preparedness for commercial nuclear power plants. These services are provided pursuant to Presidential Directive and Memorandum of Understanding between FEMA and the Nuclear Regulatory Commission (NRC). FEMA's services contribute to the emergency preparedness requirements needed for the NRC's licensing purposes under the Atomic Energy Act of 1954, as amended. The proposed fees are based on site-specific costs incurred by FEMA's Radiological Emergency Preparedness (REP) Program and related site-specific litigation costs associated with the NRC licensing process as a result of FEMA's support, review and approval of offsite radiological emergency plans and preparedness. The proposed fees are applicable to the full range of situations involving emergency planning, preparedness and response, including emergency response planning by a utility.

DATE: Comments must be received on or before September 11, 1989.

ADDRESS: Comments should be mailed to Rules Docket Clerk, Office of General Counsel, Room 840, 500 C Street SW., Washington, DC 20471. They may be transmitted to the Clerk by facsimile at 202–646–4536.

FOR FURTHER INFORMATION CONTACT: Vernon Adler, Acting Chief, Program Development Branch, Technological Hazards Division, Washington, DC (202) 646–2854.

Dated: August 30, 1989.

Dennis H. Kwiatkowski,

Assistant Associate Director, Office of Natural and Technological Hazards.

[FR Doc. 89–20840 Filed 9–1–89; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Gen. Docket Nos. 89–116, 89–117 and 89–118; DA 89–1021]

Procedure for Measurement of Intentional Radiators; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction to Order extending date for comments.

SUMMARY: The Chief Engineer is correcting the date shown in the Order released August 16, 1989 (54 FR 35212, August 24, 1989), which extended the time period for filing comments and reply comments in these proceedings.

DATES: The correct date for filing comments is September 25, 1989 and the correct date for filing reply comments is October 30, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard Fabina, FCC Laboratory, 301–725–1585.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements, Security measures.

In the matter of FCC procedure for measurement of intentional radiators (except for periodic and spread spectrum devices and devices operating below 30 MHz); FCC procedure for measuring RF emissions from intentional radiators with periodic operation and associated superregenerative receivers; FCC procedure for measurement of unintentional radiators (except digital devices and devices operating below 30 MHz), GEN Docket Nos. 89–116, 89–117 and 89–118; *Erratum.*

Released: August 24, 1989.

By the Chief Engineer:

The Order Extending Time to File Comments concerning the above-captioned proceedings, FCC 89–154, FCC 89–155 and FCC 89–156, respectively, which was released on August 16, 1989, is corrected to show the comment date as September 25, 1989, and reply comment date as October 30, 1989.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 89–20786 Filed 9–1–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 17 and 23

Proposed Policy on Giant Panda Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed policy for issuance of permits for giant pandas; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a proposed policy for issuance of permits for the import of giant pandas. Existing regulations and guidelines would be clarified with respect to new information for situations involving issuance of permits for giant pandas. Specifically, restrictions on animals intentionally removed from the wild for exhibition loans would continue. Only female pandas 2 years to under 4 years and males 2 years to under 5 years at the start and conclusion of a loan

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period, respectively, and those over 18 years old would typically be considered for temporary exhibition loans, and then only if funds committed in the loan agreement are used for specific projects designed primarily to enhance the survival of the giant panda. The Service would be supportive of the use of captive animals when the loan or permanent transfer is likely to enhance the captive-breeding population. Furthermore, the basis for findings required by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) on "primarily commercial purposes" and the "suitability of facilities" are clarified and conditioned in the proposed policy.

DATES: The Service will consider comments received by October 5, 1989, before announcing a final decision on this proposed policy.

ADDRESSES: Comments may be submitted to the Office of Scientific Authority, Mail Stop: Arlington Square Building, Room 725, U.S. Fish and Wildlife Service, Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, Arlington Square Building, Room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority Findings—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358–1708.

Management Authority Findings—Mr. Marshall P. Jones, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358–2093.

Permit Issuance—Mr. Richard K. Robinson, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION:

Background

The survival and ultimately the increase of the giant panda *(Ailuropoda melanoleuca)* is the strong desire of the United States, the People's Republic of China, and the international conservation community.

Since 1983, natural calamities, especially the die-off of certain bamboo populations (the giant panda's principal food), have threatened the survival of the giant panda. The people and the Government of the People's Republic of China (PRC) have undertaken significant efforts to save the panda and to restore its habitat. This has generated interest and support of people and conservation organizations worldwide, and perhaps has also generated the interest in panda loans that are now a point of concern.

There are believed to be fewer than 1,000 giant pandas remaining in the wild. These animals occur in many fragmented populations, only a few of which consist of as many as 50 pandas. Poaching of pandas and loss of their habitat continues. Finally, there are fewer than 100 pandas in captivity, and breeding programs have not yet resulted in a self-sustaining captive population.

Last year, proposals for temporary exhibition loans of giant pandas became an increasingly controversial issue. The giant panda is subject to strict U.S. and international protection by its listing as an endangered species under the U.S. Endangered Species Act (Act), and its inclusion in Appendix I to the Convention. The Service is responsible for regulating panda loans to the United States by deciding whether to grant the import, export, and re-export permits required by the Act and the Convention. The Service believes that its existing regulations and guidelines under the Act and the Convention have been sufficient for panda import and re-export permit decisions made to date.

However, the Service has received reports that as many as 30 additional institutions may have been negotiating with various entities in the People's Republic of China to arrange panda loans, potentially posing additional threats to the wild and captive populations of the species. Since a large percentage of the institutions that may seek loans are from the United States, the Service must carefully evaluate new information as it relates to existing regulations and guidelines to ensure that its permitting actions continue to meet the specific issuance criteria presented later in this section. The Service announced the initiation of this reevaluation in the June 24, 1988, **Federal Register** (53 FR 23847).

Responses to this announcement were received from the International Primate Protection League (League), the Chairman of the Panda Task Force (Task Force) for the American Association of Zoological Parks and Aquariums (AAZPA), and Mr. C.P. Kanoles. With regard to specific recommendations, Mr. Kanoles commented on the purposes for which import would be allowed, emphasized the need for adequate facilities and resources for long-term care, and suggested that a numerical import quota be established.

The League expressed concern about the stress resulting from travel and changes in diet and water, and the possibility that the large amount of funds provided to China could lead to removal of additional animals from the wild. The League also thought that the policy should apply to other species; the golden monkey was referred to elsewhere in their letter.

The Task Force (1) suggested that the AAZPA mandatory standards and the International Union for Conservation of Nature and Natural Resources (IUCN) resolution provisions should be incorporated in the guidelines, (2) asked that general guidance be provided on long-term loans but that specific criteria be considered separately, (3) suggested that a registry of all specimens be provided, (4) indicated that female pandas over 3 to 4 years should not be loaned, but were equivocal on loans of male pandas, suggesting consideration of the individual male's previous contribution to the genetic diversity of the species might be a basis for allowing loans, (5) supported the idea that any animal being loaned should be captive-born, (6) recommended that resources provided to activities in China under the loan agreement should be for tasks on a "prioritized list of panda conservation-research projects", and (7) indicated that the Task Force was not in favor of a quota system.

Furthermore, comments on most of the above topics were provided during a meeting with representatives of the World Wildlife Fund and AAZPA, where the finding on "primarily commercial purposes" was also discussed.

The U.S. Fish and Wildlife Service is reviewing available information and present policies to ensure that those loans that are permitted will not be harmful to the survival of the species. The PRC Ministry of Forestry is developing management plans for panda reserves, and the Chinese Association of Zoological Gardens is making a concerted effort to coordinate and strengthen the captive breeding program for pandas in China. The proposed U.S. policy presented herein was developed to provide all involved and interested parties with the Service's understanding of issues that it considers important to ensure that loans will not have a detrimental effect on the species and will contribute to specific activities most likely to enhance the propagation or survival of the species. The June 24, 1988, **Federal Register** notice referred only to short-term exhibition loans, since recent loans have been of this type. However, this proposed policy also addresses long-term loans for breeding

purposes because these loans also may have significant effects on the species.

Before any import permit can be granted, it must be reviewed in terms of the applicable requirements of the Convention and the Act by the Service's Offices of Scientific and Management Authority. Issuance of an import permit under the Convention requires prior findings that: (1) The import would not be for purposes detrimental to the survival of the species; (2) the import would not be for primarily commercial purposes; and (3) the permit applicant could suitably house and care for the animals. Issuance of a permit under the Act requires prior determinations that, among other things: (1) The import would be for scientific purposes or to enhance the propagation or survival of the species, in a manner consistent with the purposes and policies of the Act; and (2) issuance of the import permit would not be likely to jeopardize the continued existence of the species. These requirements are further implemented by application requirements and issuance criteria found in 50 CFR 17.21, 17.22, 23.14, and 23.15.

With regard to making the first findings listed above under both the Convention and the Act, the issue is to determine whether the loss of breeding potential as a result of a loan is offset by specific enhancement features in order to allow determinations that the import will be for purposes that are not detrimental and that will enhance the survival of the species. The second determination listed above under the Act (that the action would not be likely to jeopardize the continued existence of the species) would, of course, also have to be made.

Relationship of Age to Reproductive Potential

In general, the Service believes that animals of breeding age that are already in captivity should be maintained in captive-breeding programs. Therefore, the Service would not support loans of breeding age animals even during the non-breeding season unless the loans are clearly in support of creating breeding opportunities, except for special situations discussed elsewhere in this guidance. There are at least two potentially detrimental effects of loans on panda breeding programs. The first is the effect on reproductive potential of the loaned animals, and the second is the effect on genetic representation in future generations of the animals being loaned.

It is most important to include currently captive, breeding age animals in breeding programs to allow for maximum production and to maximize opportunities to ensure that genetic lines are represented in the next generation. Females may first breed when 5 or 6 years old (and the Sichuan Province's Department of Forestry has indicated that females may breed as early as 4½ years old), and males when 6 years old. Recent information indicates that the movement and loan of animals during the non-breeding season may disrupt the breeding cycle aswell as affect the socializationprocess among potential mates, which appears necessary for successful natural matings. Animals approaching breeding age may be similarly affected. Therefore, any young females involved in exhibition loans should typically be returned to breeding situations by the time they are 4 years old, and males, which mature slightly later, by 5 years of age.

There is still uncertainty regarding the relative importance of natural matings, and therefore of the importance of males in captive breeding. One view is that females in strong estrus will always accept natural mating by a suitable companion male, and because the conception rate resulting from natural matings is almost 100 percent, these situations should be encouraged. The Service's proposed policy is based on this view. The Service's position might be modified if new data become available that indicate otherwise.

Young animals do not achieve independence until about 1½ years of age, and therefore no pandas would be permitted to enter the United States until they are 2 years old. While there will always be some risk to individual pandas, along with the possibility that loans of pandas over 2 but less than 4 years (or 5 years for males) may affect subsequent breeding, these risks are acceptable if specific beneficial management projects are part of the total import application; i.e., if the possible loss of breeding potential is offset by possible benefits from specific projects designed to enhance the propagation or survival of the species. There does not seem to be any reason, however, why either young or old animals cannot be loaned to more than one location during the time that the individual panda is in the United States.

At least some individual pandas may breed up to at least 18 years of age, although they may live until they are at least 25 years old. Presently, there is no upper age that can be set to assure that a panda is not capable of breeding. However, older animals are less likely to be capable of reproduction. Allowing the use of older animals for loans should also provide greater assurance that offspring representing their genetic lines have been produced. Of course the movement of any animals of this age could increase the risk of mortality. Nevertheless, with regard to older animals the proposed policy would typically treat the loan of older animals as not likely to detract from the breeding program, and the Service would usually accept the increased risk of mortalities because of offsetting enhancement projects associated with management plans. Therefore, the Service would generally permit the use of pandas 18 years old and older for short-term loans. The loan of an animal for which evidence definitively establishes that the animal is not capable of breeding would be considered on a case-by-case basis. Aggressive or incompatible behavior, or low sperm count would not be acceptable as the sole basis for meeting this part of the proposed policy.

As an aid to the coordinated management of individual animals that may be in a breeding program, a registry or family file, as these records are called in China, should be kept current and available. A coordinated registry presumably is or would be maintained by the Chinese Association of Zoological Gardens. A studbook with additional information, including parentage and relatedness, as well as a species survival plan, including designation of "founder" animals, are also important for management of a captive population. However, for the purpose of issuing permits, the name, sex, location, birth date (or estimated age if the animal was formerly rescued from the wild), and birthplace of all pandas that may be involved in loans should be documented in a registry or family file, available to all involved parties from the PRC Ministry of Forestry (the Management Authority for the Convention for the People's Republic of China), or from the Management Authority of any other exporting country. This procedure would also be consistent with the desire and intent of the Chinese to expand their captive management of this species. Certification of age and sex and a listing of distinctive or identifying markings of the specific animal(s) involved in a loan would also be documented on the export license or permit.

Conservation Benefits of Specific Projects

Management plans to enhance the survival of the panda in the wild are being developed by the People's Republic of China for each of the panda reserves, as well as an overall national plan for panda conservation, and we understand that these plans will identify the highest priority projects that may contribute the most to the enhancement or survival of the species in the wild. Furthermore, there are some projects related to the captive population that may enhance the propagation, hence survival, of the species in captivity, such as development of a studbook, significant relocation of the animals for breeding purposes and, under special circumstances (i.e., where actually needed for animals already in captivity), the creation or renovation of breeding facilities. Final discussions on management plans for the panda reserves were held in October 1988. Plans were developed and are awaiting final approval by the Chinese Government. Meetings have also been held with the Chinese Association of Zoological Gardens regarding captive propagation and research, and the establishment of a studbook or registry. High priority projects identified in the panda reserve and national management plans or appropriate captive breeding programs, preferably certified by the PRC Ministry of Forestry to the U.S. Management Authority, would be accepted as offsetting the possible effect of loans of pandas of the ages previously discussed. In order to determine whether the activities associated with the loan will enhance the propagation or survival of the species, as required by the Act, the applicant usually must include descriptions of projects to be funded in China. In addition to projects related to panda reserves and national management plans, projects to support loans or the permanent transfer of captive pandas designed to move animals into captive breeding programs would also be considered in deciding whether the enhancement criteria have been met. Finally, the Service would identify the specific projects to which resources would be committed by the applicant as part of the **Federal Register** notice for an endangered species permit application.

Determination of Whether Import is for Primarily Non-Commercial Purposes

With regard to the determination of whether a short-term exhibition loan of giant pandas is primarily for non-commercial purposes, the Service proposes the following clarification of policy:

(a) Resolution Conf. 5.10 of the Conference of the Parties to the Convention establishes that the nature of the transfer between the owner in the country of export and the recipient in the country of import may be commercial. It is the intended use of the specimens in the country of import that must be primarily non-commercial, and it is the responsibility of the recipient country's Management Authority to make this determination. The resolution further establishes that there may be some commercial aspects of that use, but that other non-commercial uses must be predominant in order to be deemed primarily non-commercial.

(b) To date, all successful applicants have been public, nonprofit institutions. The Service's general regulations at 50 CFR 10.12 define "public" institutions as those that * * * "are open to the general public and are either established, maintained, and operated as a government service, or are privately endowed and organized but not operated for profit." Governmental agencies and nonprofit conservation organizations will likewise receive consideration if they meet a similar test.

(c) It is the Service's policy that funds raised by a public institution or organization (as defined above) that are retained (but not primarily considered as expenses) by the organization(s) or institution(s) involved in arranging for the loan, are to be used entirely to further the stated objectives and programs for which the institution or organization was established. All such excess funds retained by the importer must be used for non-commercial purposes. At least some of these excess funds must be used for the conservation of the giant panda, as well as for other endangered species and for the general conservation of fauna, flora, and other natural resources.

Collection of revenues by the importing institution, either for its own use or for the use of other organizations, for purposes other than described above, would be judged to be a primarily commercial activity, as would the use of revenues for profit-making purposes.

Suitability of Facilities

With regard to whether the recipient of a short-term panda loan would be suitably equipped to house and care for the pandas, the Service believes that there is sufficient information available that, if followed, would ensure the safety of the pandas and the viewing public. It should be noted that pandas, as is the case with other bears, can be dangerous. Applicants considering exhibiting giant pandas should consult with at least two other facilities that have successfully held pandas in recent years, and should have plans that address the National Zoological Park's recommended measures for giant panda care and facilities. Applicants should provide a statement that these reviews have taken place and that the necessary features for maintaining and exhibiting pandas have or will be incorporated into their facilities and program, and that zoo staff involved in the care of pandas, especially the keepers, have had proper training. This statement would be expected in addition to the presently required layout and drawings of facilities and resumes of all those responsible for caring for the pandas. Furthermore, it has been customary for the Chinese involved with the loan to inspect the facilities to assure themselves that the facilities are suitable. If a permit is issued prior to inspection by the Chinese, its validity would be conditional pending their approval. The Service may also inspect the facility, and if it deems the facilities unsuitable the permit would not be issued unless or until the situation is corrected to the Service's satisfaction.

Response to The Secretariat's Views

The Service notes the Secretariat's recommendation that all giant panda exhibition loans should be undertaken in accordance with the provisions of Article III of the Convention, with no exemptions for "pre-Convention" animals (those that came into captivity prior to December 6, 1983). Therefore, if the management authority of the country of origin or of the country of re-export does not issue a pre-Convention certification, the Service will require a U.S. import permit and an export permit or reexport certificate, as appropriate, from the exporting country in accordance with Article III of the Convention.

The Secretariat also expressed concern that the increase in zoo exhibition loans will lead to the taking of more specimens from the wild. The Service will continue its policy of not allowing short-term loans of pandas when the possibility of import may contribute to the removal of pandas from the wild. Therefore, because the number of loans and financial incentives have increased in the last few years, no exhibition loan permits would typically be issued for animals removed from the wild after December 30, 1986. The Secretariat's concern regarding loans of breeding age animals and loans where the noncommercial purposes do not clearly predominate were addressed earlier in this document.

Summary of Proposed Policy for Panda Loans

1. Age of Animals

Loans (unless they clearly involve the movement of animals in support of creating breeding opportunities) should involve animals old enough to be

independent of maternal care, but not yet of breeding age or approaching breeding age, so as to minimize disruption of any captive breeding programs. Specifically, the following animals would be considered:

(a) Females at least 2 years old at the start of a loan period, and under 4 years at its conclusion;

(b) Males at least 2 years old at the start of a loan period, and under 5 years at its conclusion;

(c) Animals of either sex that are 18 years or older;

(d) Case-by-case consideration of individuals where evidence establishes that animal(s) is incapable of breeding.

2. Registry of Animals

Information about animals involved in a loan should be documented in a registry or family file available from the P.R.C. Ministry of Forestry, and they should be certified as to their age and sex, with any distinctive or identifying marks indicated, on the export license or permit.

3. Projects to Conserve the Species

Permit applications for temporary exhibitions usually must include descriptions of projects to be funded in China. These projects should be designed to implement high priority tasks from Chinese panda reserve and national management plans or appropriate captive breeding programs (preferably with supporting information from the China Management Authority if available), and should be certified by the P.R.C. Ministry of Forestry. Projects to support loans or permanent transfers of pandas into captive breeding programs would also be considered in deciding whether the enhancement criteria have been met.

4. Use of Funds for Non-commercial Purposes

The application should clearly demonstrate the noncommercial purposes of the proposed loan for each institution or organization that will have access to any part of revenues generated from the loan. Specifically, each organization or institution should demonstrate that it will use its share of funds to further its stated nonprofit objectives, and that these objectives will contribute primarily to the conservation of giant pandas and other endangered species, but may also contribute to other species of fauna and flora or other natural resource values.

5. Suitability of Facilities

Applicants should demonstrate that they have consulted with at least two other facilities that have successfully held pandas in recent years, that they have facility designs that address the National Zoological Park's recommended measures for giant panda care and facilities, and that zoo staff, especially keepers, have had proper training. Facilities should be fully acceptable to the Service and the Chinese Government prior to arrival of the animals.

6. Recommendations of the Secretariat of CITES

The Service agrees with the recommendation of the Secretariat that no exemptions be granted to the requirements of Article III for the shipment of giant pandas, even for animals that might otherwise qualify for an exemption as "pre-convention" under Article VII. Therefore, if the management authority of the country of origin or of the country of re-export does not issue a pre-Convention certification, the Service will require a U.S. import permit and an export permit or re-export certificate, as appropriate, from the exporting country in accordance with Article III of the Convention. The Service will also continue its policy of approving applications only if it is sure of the possibility that the loan did not, or will not, contribute to removal of pandas from the wild, and that noncommercial purposes for the loan predominate. No exhibition loan permit would typically be issued for animals removed from the wild after December 30, 1986.

Comments Solicited

The Service requests comments on this proposed policy. The final decision on this proposal will take into consideration the comments and any additional information received, and such consideration might lead to a final policy that differs from this proposal.

This notice was prepared by Dr. Charles W. Dane, Chief, Office of Scientific Authority, and Mr. Marshall P. Jones, Chief, Office of Management Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 30, 1989.

Susan Recce Lawson,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-20700 Filed 9-1-89; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 23

RIN 1018-AA29

Proposed Changes in Appendices to the Endangered Species Convention

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animals and plants. Species for which trade is controlled are listed in Appendices I, II, and III to CITES. The United States as a Party to the Convention may propose amendments to the appendices for consideration by the other Parties.

In this notice, the Fish and Wildlife Service (Service) announces the decisions on proposals submitted by the United States to amend Appendices I and II. These proposals will be considered at the seventh regular meeting of the Conference of the Parties. The meeting is scheduled for October 9–20, 1989, in Lausanne, Switzerland.

DATES: Comments received by October 3, 1989, on proposals submitted will be considered in development of final negotiating positions. Comments must be received by this date in order for them to be adequately considered before the meeting of the Parties. Comments on those proposals submitted, as well as on the tentative negotiating positions on proposals by foreign countries and on non-species matters related to the agenda of the meeting of the Parties, may also be presented at a public meeting to be held on September 8, 1989, from 1:00–4:30 p.m., in room 7000 of the U.S. Department of the Interior, 18th and C Streets NW., Washington, DC.

ADDRESSES: Please send correspondence concerning this notice to the Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Department of the Interior, Washington, DC 20240.

Background materials will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority at the address given above, or telephone (703) 358–1708.

SUPPLEMENTARY INFORMATION:

Background

In its previous notices on this subject (53 FR 35530, September 14, 1988, and 54 FR 11551, March 21, 1989), the U.S. Fish and Wildlife Service (Service) first requested information on plant or animal species that might lead it to prepare listing amendments for the Convention, and then described tentative U.S. proposals and sought additional comments, requesting specific information for each of the tentative proposals. The proposals announced in this notice were submitted by the Service and received by the Convention's Secretariat on May 12, 1989, in order to be considered at the next biennial meeting of the parties in Lausanne, Switzerland.

Public Comments

Decisions about suggested U.S. proposals discussed in the previous notice of March 21, 1989, are as follows:

1. Red-eared slider (*Trachemys* [= *Pseudemys*] *scripta elegans*)—Comments were received by the Service during two time periods. The first was in response to the September 14, 1988, **Federal Register** notice requesting information on species that should be considered for listing changes. In response to that request, the International Wildlife Coalition submitted to the Service a proposal to include the red-eared slider in Appendix II of CITES. In response to the March 21, 1989 **Federal Register** notice, the Service received additional comments on this species. In order to use all of the information available, the Service considered all comments received on this species, including those provided by its biologists, in reaching its decision not to submit this proposal.

Written comments were received from two governmental agencies (Tennessee Department of Conservation, and the Chief, Epidemiology Section, Center for Infectious Disease, U.S. Public Health Service), from 11 conservation and animal welfare organizations (including Monitor, on behalf of 10 additional organizations), 24 professional herpetologists, 1 member of Congress, and about 200 private individuals. Many of those in support of the proposal cited concerns about the possible impact of escaped exports on foreign aquatic communities, disease transmission, and humane treatment. As important as these issues may be, the Service did not consider them to be applicable to the criteria for listing species in the Appendices to the Convention. Many respondents also cited concern about the collection of mature females from the wild to replace breeding stocks on turtle farms, and the use of adult red-eared sliders as a food source.

The criteria for listing in Appendix II as stated in resolution Conf. 1.1 require some indication that the species may be or may become threatened with extinction and that the species is presently subject to trade or is likely to become subject to trade. The information on the species status should indicate that the population is decreasing or is very limited in size or geographical distribution. Furthermore, the amount of trade should be such that there is evidence of actual or expected trade in such a volume as to constitute a potential threat to the survival of the species. The red-eared slider has an extensive distribution within the United States. With western limits of the Pecos River in New Mexico, the panhandle of Oklahoma, and western Kansas, it occurs throughout Texas and the southern states as far east as the Florida panhandle, Alabama, and central Tennessee and Kentucky. To the north, the species occurs throughout most of Missouri, Illinois, western Indiana, and into Wisconsin.

Little quantitative information is available on the size of population, but the species is reported to be common throughout much of its range although there are enough subjective (anecdotal) comments from herpetologists to suggest that it may have decreased in some areas (especially, Louisiana).

In 1987, the Service did not believe that the collecting of adult turtles to replace breeding stocks on turtle farms would threaten the survival of the species over its broad range (July 10, 1987, Federal Register). There does not appear to have been any substantial increase in the number of turtle farms, and the Service still believes that the species is not likely to become threatened with extinction as a result of the trade in turtles as pets.

However, the Service is concerned about the possibility that large numbers of adult female sliders are removed from the wild for export for Asian food markets and claims that wild populations have dramatically declined in numbers. Nevertheless, little data, other than anecdotal information, was furnished to demonstrate that there has been a significant impact on red-eared slider populations throughout its range, and the Service was unable to substantiate that large numbers of wild-caught adults are being exported to Asian countries for food.

The proposal from the International Wildlife Coalition indicated that 20,000–30,000 turtles per week are captured and exported for food during the peak of harvest season. This estimate appeared to be based on a report by Warwick and Steedman (1988) who estimated that 300,000 to 700,000 turtles are exported annually for food. TRAFFIC-U.S. with contacts to some U.S. seafood dealers, TRAFFIC-Japan, World Wildlife Fund-Hong Kong, and others tried to assess the occurrence of such a trade. They reported that no known market for these turtles as food items existed in Asia. Nevertheless, the Service will make a specific effort to collect information on exports, and will begin entering all information on red-eared sliders obtained at the ports into the computer data system including number and weight per shipment.

If additional information substantiates that there is a large uncontrolled market for these turtles as food items, the Service may consider proposing the listing of this species in Appendix II at a later date through the postal procedure (Article XV (2)).

2. African Elephant (*Loxodonta africana*)—In response to the September 14, 1988, **Federal Register** document requesting information on species that should be considered for listing changes, the Humane Society of the U.S. proposed that the African elephant be listed on Appendix I. In the March 21, 1989, **Federal Register** the Service indicated that it was considering the submission of such a proposal and asked for additional information.

The Service recognizes the significant decline in African elephant populations and the threat posed by continued poaching and illegal trade in elephant tusks and ivory pieces. In the February 3, 1989, **Federal Register** (54 FR 5553) information was sought as to the ability of ivory-producing countries to control poaching and properly manage their native elephant populations.

Written comments were received from conservation and animal welfare organizations and private individuals. One host country (Botswana) responded (in cable form) stating that "they had no intention of changing its position that elephants not be accorded total protection by being placed on Appendix I."

Four organizations (American Fur Industry; National Trappers Association, Inc.; Safari Club International; and the Wildlife Legislative Fund of America) urged the Service to reject any proposal to uplist the elephant until more information is available this summer (July) when the African Elephant Working Group convenes in Botswana. However, the deadline for submitting proposals was May 12, 1989. The other organizations

(The American Society for the Prevention of Cruelty to Animals; American Association of Zoological Parks and Aquariums; Committee for Humane Legislation; Bristol Humane Society, Inc.; International Wildlife Coalition; Friends of Animals; and the Humane Society of the United States) strongly support the uplisting of the African elephant to Appendix I. Most of the public comments (529 for; 23 against) supported listing the elephant in Appendix I.

The International Wildlife Coalition and the Friends of Animals both submitted draft amendments proposing the transfer of the African elephant from Appendix II to Appendix I. Information in these proposals was considered by the Service in the preparation of the proposal submitted to the CITES Secretariat, as well as information provided by TRAFFIC (USA) and the Humane Society of the United States.

In addition to the U.S. proposal to transfer the African elephant to Appendix I, six other nations (Austria, Gambia, Hungary, Kenya, Somalia, and Tanzania) recommended the proposed transfer.

3. Flying foxes (*Pteropus* spp. and *Acerodon* spp.)—The Service received a proposal to transfer all 14 taxa of flying foxes (also known as fruit bats) currently listed in Appendix II to Appendix I, and to add the remaining 48 species in the genus to Appendix II. In the March 21, 1989, **Federal Register** notice, the Service announced receiving this proposal and requested specific information on trade in and population status of any of these 48 species. At least one species listed in the genus *Acerodon* in the "Checklist of the Mammals of the World" is now considered belonging to the genus *Pteropus*. Conversely, in the proposal one of the species referred to as belonging to the genus *Pteropus* is, in fact, still generally considered to be in the genus *Acerodon*. Because of the perceived need to protect this species, *Acerodon jubatus*, and because the four other species listed in the genus *Acerodon* in the checklist appear especially similar to *Pteropus* species (differing only in dental characters), the Service also included them in the proposal submitted to the CITES Secretariat. However, the Service will be particularly receptive to any comments received on this proposal in developing its final negotiating position. In fact, some further field assessments are still being conducted by the Service.

Flying foxes have been an important source of food to traditional subsistence communities of the Pacific archipelagos of Micronesia and Polynesia and continue to be consumed in great quantities as a delicacy in more modern communities, especially on Guam. According to the proposal received, over 12,000 flying foxes from Palau, Truk, Pohnpei, Western Samoa, and the Philippines were imported into Guam in 1988, although over 50,000 have been requested for import. Palau, Truk, and Pohnpei are currently the largest suppliers.

Available data on the status of flying fox species of western Pacific archipelagos either indicate population declines due to commercial exploitation for food and/or document trade in species with especially restricted distributions.

The Service received 10 written comments during the public comment period: 8 from professional organizations, 1 from conservation and humane organizations, and 1 from the Government of Guam. Mr. Antonio S. Quitugua, Acting Director, of Guam's Aquatic and Wildlife Resources commented that their agency has collected information on the volume of flying fox imports into Guam for about 15 years and is the source of much of the data presented in the original proposal submitted to the Service. He states that current import levels from the Micronesian Islands of Palau, Truk, and Pohnpei continue to be high and raise legitimate concerns that overharvesting will decimate flying fox populations on these islands.

However, he stated that Guam could not support the uplisting of the 14 taxa of *Pteropus* from Appendix II to Appendix I since this would: (1) Increase the illegal hunting pressure on endangered flying foxes on Guam and the Northern Mariana Islands, and (2) expand the trade in flying foxes to other species. Mr. Quitugua stated that a more desirable option would be to add the remaining 48 species of *Pteropus* to Appendix II, to encourage all countries with populations of flying foxes "to establish management authorities for their natural resources, and to enforce the export permit requirement for the importation of these Appendix II species into Guam." Comments by others clarified distribution and status information, reporting a decrease in populations of flying foxes throughout their range in the Pacific.

Based upon all comments received, including those provided by Service biologists and pertinent information provided by Drs. Pierson and Rainey in their comprehensive proposal, the Service has submitted the following proposal for consideration at the next conference of the Parties in October: Transfer of *Pteropus insularis, P. mariannus, P. molossinus, P. phaeocephalus, P. pilosus, P. samoensis* (dead specimens and parts only) from Appendix II to Appendix I; retention of *P. marcrotis, P. tonganus,* and *P. tokudae* and the addition of *P. speciosus* and *Acerodon jubatus* in Appendix II under provisions of Article II, paragraph 2a; and inclusion of the remaining unlisted *Pteropus* species and all *Acerodon* species in Appendix II under provisions of Article II, paragraph 2b, i.e., for reasons of similarity of appearance (dead specimens and parts only).

4. Northern Pacific Fur Seal (*Callorhinus ursinus*)—The U.S. National Marine Fisheries Service requested that this species be proposed for inclusion in Appendix II of CITES. The fur seal was commercially harvested in the North Pacific under the auspices of a series of International Treaties from 1911 to 1984. The Interim Convention on Conservation of North Pacific Fur Seals of 1957 expired in 1984 and the resulting lack of regulations on international trade in this species and possible significant take, expecially of adult females, in the high seas driftnet fisheries constitute a continuing threat to its declining population.

The Service received 10 comments on this proposal: 7 from conservation and animal welfare organizations, one from the Alaska Department of Fish and Game, one from the Pribilof Aleut Fur Seal Commission, and one from the Marine Mammal Commission. Four organizations (American Association of Zoological Parks and Aquariums; Center for Marine Conservation; International Wildlife Coalition; and the Humane Society of the United States) favored the listing, while three organizations were opposed (American Fur Industry; National Trappers Association Inc.; and Safari Club International). The Pribilof Aleut Fur Seal Commission also opposed the proposed amendment. The Alaska Department of Fish and Game acknowledged that fur seals using the Pribilof Islands have declined greatly after the population peaked at approximately 2.2 million animals in the mid-1950's to about 870,000 animals at the present, but did not believe sufficient information was available to take a position on the proposed listing.

The Pribilof Aleut Fur Seal Commission opposed the Appendix II listing because the National Marine Fisheries Service previously found that the northern fur seal is not threatened, and because the Commission believed that inclusion of the species on Appendix II would seriously impede the development of a handicraft industry on the Pribilof Islands. The Service notes that the threatened status under the Endangered Species Act is not synonymous with an Appendix II listing. Furthermore, the Service does not consider that an Appendix II listing would in and of itself preclude the export of handicrafts made from seal parts should such exports be permitted by the National Marine Fisheries Service.

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors, has reviewed the proposal and recommended that the Service propose that the Northern Pacific Fur seal be added to Appendix II.

The Service submitted the proposal for consideration at the next biennial meeting of the Parties, but continues to seek additional relevant information.

5. Northern elephant seal (*Mirounga angustirostris*)—The U.S. National Marine Fisheries Service had recommended that this species be proposed for removal from Appendix II. The southern elephant seal (*M. leonina*) is also listed in Appendix II. There is no known international trade in either species. In 1985, the CITES Management Authority for Argentina suggested postponing the delisting of the northern elephant seal because of uncertainty about whether harvesting of the southern elephant seal might resume (exploitation ceased in 1961). Mexico, which harbors a major population of northern elephant seals, is not a Party to CITES, but has protected this species. Uncontrolled harvest in the United States is prohibited under the Marine Mammal Protection Act.

The Service received written comments from the American Association of Zoological Parks and Aquariums and the Center for Marine Conservation. Both recommended the removal of this species from Appendix II due to the lack of data of present exploitation. At the North American Regional CITES meeting on April 26, 1989, Fish and Wildlife Service representatives met with the Mexican government counterparts. The Mexican representative stated that they considered the species to be threatended and that there had been recent requests for specimens for exhibition purposes. Therefore, at the request of the Mexican government, the Service will not submit this proposal for consideration at the next biennial meeting of the Party Nations.

6. Resolution related to the first commercial captive breeding operation for an Appendix I animal species. In the September 14, 1988, **Federal Register** notice, the Service announced tentative criteria to be used to evaluate any proposal that might be submitted to request the Parties to accept the first commercial captive breeding operation for an Appendix I animal species, as called for in resolution Conf. 6.21. Although no one requested the United States to submit such a proposal, the Animals Committee requested the U.S. and Canadian Scientific Authorities to develop such criteria. Subsequently, a draft resolution relating to bred-in-captivity was discussed at the second meeting of the Animals Committee on April 4–6, 1989, in Montevideo, Uruguay.

In response to the draft resolution, Mr. David Alderton in the United Kingdom published an article in the April 22, 1989, Cage and Aviary Birds newsletter, which incorrectly stated that the resolution would apply to all bred-in-captivity determinations. The Service, in responce to Mr. Alderton's article, received 52 comments on the draft resolution, almost entirely from aviculturlists in the United Kingdom.

The United States and Canada did submit a revised resolution dealing with the first commercial captive breeding operation for an Appendix I animal species. This resolution will receive further review by the Animals Committee, and may serve as a basis for the Parties to consider any first commercial captive breeding operation for an Appendix I animal species. To date, one such proposal received by the CITES Secretariat has been withdrawn, and the Secretariat is endeavoring to clarify the intentions of a second Party. For commercial facilities involving species that have already been registered with the CITES Secretariat as "bred-in-captivity" as well as any new species accepted by the Parties, the Management Authority in the country of export is still responsible for interpreting resolution Conf. 2.12, and ensuring that other facilities registered with the Secretariat meet the criteria of Conf. 2.12 for the species for which that facility is being registered.

The resolution contains recommendations: (1) As to what removal of wild specimens should be considered detrimental, (2) criteria to minimize augmentation with wild specimens, including an initial minimum of 5 male and 5 female unrelated animals, plus a breeding scheme to minimize inbreeding, (3) an expectation for overall breeding success, including viable offspring (F_1) from 80 percent of the original 5 pairs, and documentation that 75 percent of the founders have some genetic representation in the second generation, and evidence that at least 50 percent of the breeding age specimens of the species at the operation must have produced viable offspring.

Copies of the draft resolution are available from the Office of Scientific Authority (see ADDRESSES). Comments on the proposed resolution will be considered in developing the final negotiating position on the resolution, and in further communications with the Animals Committee. In addition, the Service is preparing proposed guidelines for registering U.S. facilities producing Appendix I specimens as "bred-in-captivity" for commercial purposes. These guidelines will be for species already registered or accepted by the Parties, and will be the subject of a separate **Federal Register** notice.

7. Plants. Comments were received only on some proposals; these are summarized below. In addition, changes in some proposals have been made based on information that became available from other sources; such changes also are presented below. Particular information is still being sought on two proposals on trees, also indicated below. If there were no comments or other changes, the proposal was submitted as presented in the March 21, 1989, **Federal Register** (54 FR 11551). These include: (1) The proposal to transfer a new Colombian cycad genus, *Chiqua*, from Appendix II to Appendix I, (2) the proposal not to recommend annotating any Appendix I plant species (this will allow their hybrids to be regulated as Appendix II species), (3) the proposals under 10-year-review provisions to delist the following Appendix I species:

Prepusa hookeriana, Lavoisiera itambana, and *Guarea longipetiola,* and the following Appendix II species: *Phoenix hanceana* var. *philippinensis* and *Salacca clemensiana,* and (4) the 10-year-review proposal to downlist *Welwitschia mirabilis* to Appendix II. The other proposals included below are given in the same order as in the March 1989, **Federal Register** notice.

Madagascar succulents: The three species of *Pachypodium* identified in the March **Federal Register** and their natural hybrids were proposed in a separate document. Nine rather than 10 succulent species of *Euphorbia* were included in the proposal to uplist all dwarf species and their natural hybrids of the subgenus *Lacanthis* in Madagascar, since *E. decaryi* var. *cap-saintemariensis* was used instead of *E. cap-saintemariensis.*

Snowdrops: In the March 1989 **Federal Register**, it was stated that the four species of *Galanthus* would be proposed for Appendix I and others in Appendix II. However, the information that

became available better supported the final proposal, which included all species and natural hybrids of the genus in Appendix II.

Chamaedorea palms: Five commenters in commercial horticulture were opposed to all or parts of the proposal; some also supported parts of the proposal. One commenter gave tentative support to CITES regulation for 16 of the 18 species, and stated opposition for 2 species best known to him. Another commented in opposition, only on the same two species. A third commenter supported the listing in Appendix II of nine species, including the three species so recommended in the March 1989 **Federal Register**, and six other species that had been recommended for Appendix I. He opposed the listing of seven species that are successfully cultivated, although it was not clear from the comments to what extent wild seeds might be used in propagation of some of these, in addition to those (perhaps the majority) grown from seeds of plants in cultivation (the United States considers specimens grown from wild seeds not to quality as artificially propagated under CITES). A fourth commenter opposed listing any of the species, and provided information on most of them. The Florida Nurserymen and Growers Association requested that the proposal be set aside, or that a public hearing be held on it in Florida. After reviewing the revised proposal this association will have an opportunity to provide further comments either in writing or at the Service's September 8, 1989, meeting to receive comments on negotiating positions for the meeting of the Parties.

Some commenters did not seem familiar with the actual restrictions that would be imposed under CITES for specimens depending on whether the species was in Appendix I or Appendix II. Furthermore, some did not discern the regulatory distinctions of the different kinds or origins of specimens, for example wild seeds themselves, or specimens grown from wild seeds, or specimens artificially propagated, such as those grown from seeds of propagation stock plants indefinitely maintained under controlled conditions in cultivation. The Service's Office of Management Authority (P.O. Box 3507, Arlington, VA 22203, telephone 703/358–2104; fax 703/358–2232) can provide general information on the regulation of plants under CITES.

The final proposal submitted to the CITES Secretariat has also been sent to those commenting on the draft summary in the March 1989 **Federal Register**. It differs from that summarized in that document by: (1) Changing to propose four species (*Chamaedorea cataractarum, C. metallica, C. radicalis,* and *C. Seifrizii*) for Appendix II instead of Appendix I, and (2) by excluding artificially propagated specimens of *C. Seifrizii.* The Service is considering removal or modification of this exclusion and the only other similar exclusion, which was discussed for *C. elegans,* from the proposal. The Service remains interested in receiving any comments on the proposal to place 18 species and their natural hybrids of *Chamaedorea* under regulation by CITES, i.e., 9 species in Appendix I (*C. amabilis, C. ferruginea, C. glaucifolia, C. klotzschiana, C. montana, C. oreophila, C. pulchra, C. stolonifera,* and *C. tenella*), and 9 in Appendix II (including *C. elegans, C. ernesti-augusti, C. rojasiana, C. simplex,* and *C. tuerkheimii* in addition to the 4 species listed above that were changed to Appendix II), but excluding artificially propagated specimens of *C. elegans* and *C. seifrizii* (both proposed for Appendix II). Although *Chamaedorea* 'Florida Hybrid' (*C. erumpens* x *C. seifrizii*) normally would be regulated following CITES resolution Conf. 2.13, because *C. seifrizii* specimens that are artificially propagated are excluded, so also would be the hybrids made from such specimens. Only if wild specimens of *C. seifrizii* were used to make new hybrids would *C.* 'Florida Hybrid' be subject to regulation by CITES.

Madagascar palms: No proposal on these species was submitted for the seventh meeting of the Conference of the Parties this October; the anticipated draft proposal was not provided, and the partial information that was provided came too late and unexpectedly to develop into a proposal. Comments opposed to the uplisting of *Neodypsis decaryi* were received from three persons in commercial horticulture, who were concerned that regulating the seeds of this species would not benefit it in the wild; one stated that so much seed is available from commercial propagation stock, where it is now artificially propagated outside Madagascar, that it is unlikely there is a significant demand for the wild seeds now. One of the commenters requested delisting of the *Neodypsis,* a position the Service opposes because there is some evidence of continuing collection of its wild seeds for international trade. One of the commenters supported the listing of the other two palms, and one opposed the listing, stating as a general principle that unregulated exchange of seeds was mroe likely to prevent species' complete extinction, as they might survive in cultivation if not in their ecosystems.

Cycad seeds: One horticultural seed company commented to support the delisting of seeds of cycads in Appendix II of CITES, independently stating some of the views in the draft proposal. The Service submitted the proposal to delist these seeds to the CITES Secretariat.

10-year Review Actions: A taxonomic botanist specialized in aroids (Araceae) commented that *Alocasia zebrina* was common where he had seen it during field work. Based on all available information, the proposal to delist this Appendix I species was submitted. The Service also submitted a proposal to delist the Appendix I *Caryocar costaricense.* However the potential for international use of edible oils from this species may pose a sufficient risk to warrant retention of this species including its parts and derivatives on Appendix II. Use of these oils was not considered in making the proposal, nor has anyone commented or as yet provided information on this subject. Therefore, the Service would appreciate any information on this trade.

Switzerland has proposed to delist *Tachigali versicolor* from Appendix I, while the United States has proposed to downlist it to Appendix II. The United States may decide to support the Swiss proposal, but so far has been unable to obtain valuable information from several U.S. researchers who may be studying the species in the field. It expects to be able to obtain the information in September, which may add support for the Swiss proposal.

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture) Treaties.

This notice is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; 87 Stat. 884, as amended). It was prepared by Drs. Richard M. Mitchell and Bruce MacBryde, Office of Scientific Authority.

Dated: August 29, 1989.

Richard N. Smith,

Acting Deputy Director.

[FR Doc. 89–20914 Filed 9–1–89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Ch. VI

[Docket No. 90650–9150]

RIN 0648–AB25

Atlantic Coast Striped Bass Regulations in the Exclusive Economic Zone

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of extension of comment period.

SUMMARY: NOAA issues this notice to extend the period during which the public may comment on the advance notice of proposed rulemaking (ANPR) on regulations on fishing for Atlantic striped bass in the exclusive economic zone (EEZ) 3–200 miles (4.8–321.9 km) offshore. Copies of the advance notice of proposed rulemaking may be obtained from the address below.

DATE: Comments on the ANPR should be submitted on or before October 15, 1989.

ADDRESSES: Send comments on the ANPR to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: David G. Deuel or Austin R. Magill, 301–427–2347.

SUPPLEMENTARY INFORMATION:

Background

The ANPR on proposed regulations on fishing for Atlantic striped bass in the EEZ was published in the **Federal Register** on August 16, 1989 (54 FR 33735). The schedule for this submitted ANPR specified a comment period through September 15, 1989.

A key organization to supply comments from on the ANPR is the Atlantic States Marine Fisheries Commission. The management measures presented in the ANPR were discussed at the Atlantic States Marine Fisheries Commission's Striped Bass Management Board Meeting on August 23, 1989. The Board (representatives of five coastal states) concluded that it would prefer to discuss proposed regulations with all 12 member Atlantic coastal states involved with striped bass management. The annual meeting of the Atlantic States Marine Fisheries Commission is scheduled for October 2–5, 1989, and the management measures in the ANPR could be discussed by all member states at that time. Therefore, to obtain the views of all member states of the Commission, the comment period is extended through October 15, 1989 by this notice.

(16 U.S.C. 1851 note)

Dated: August 29, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–20774 Filed 9–1–89; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register

Vol. 54, No. 170

Tuesday, September 5, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act Systems of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising one of its Privacy Act Systems of Records, USDA/FmHA–1, "Applicant/Borrower or Grantee File, USDA/FmHA," for the purpose of adding two new routine uses and to clarify one of the previously established routine uses of the system.

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on November 6, 1989, unless modied by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before October 5, 1989.

FOR FURTHER INFORMATION CONTACT: Aimee Fisher, Freedom of Information Officer, Administrative Services Division, Farmers Home Administration (FmHA) USDA, Room 6865, South Building, Washington, DC 20250; telephone (202) 382–9638.

SUPPLEMENTARY INFORMATION: USDA/FmHA hereby revises its System of Records, USDA/FmHA–1, by amending the "routine uses of records maintained in the system, including categories of users and the purposes of such uses".

One new routine use is being added to implement the discretion granted the Secretary of Agriculture under the Stewart B. McKinney Homeless Assistance Amendments of 1988 (Pub. L. No. 100–628, dated November 7, 1988, which amended section 510(d) of the Housing Act of 1949) to permit litigation arising under section 502 (Farmers Home Administration single family housing loans) to be handled by the Department of Justice, by the USDA Office of the General Counsel, or by contract with private sector attorneys. This new routine use permits private sector attorneys under contract to provide legal services access to the FmHA files of borrowers involved in foreclosure, possession, and collection actions related to their FmHA loans. A second new routine use is being added to enable FmHA to refer its files to the Department of Justice for the purpose of litigation arising under statutes administered by FmHA. This system notice also modifies a previously published routine use to clarify that FmHA must make a determination, prior to releasing information that constitutes evidence in a judicial or administrative proceeding or that is sought in the course of discovery, that the information disclosed is relevant and necessary to the proceeding. A minor stylistic change has also been made to a second previously published routine use for purposes of clarity.

Accordingly, USDA publishes the following routine uses of the FmHA System of Records, "Applicant/Borrower or Grantee File, USDA/FmHA–1," originally published in 50 FR 25727, June 21, 1985:

USDA/FmHA–1

System Name:

Applicant/Borrower or Grantee File, USDA/FmHA–1

* * * * *

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute or a rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

Information not identified with any individual borrower(s) may provide the basis for statistical reports and news releases citing borrowers' progress.

Referral to employers, businesses, landlords, creditors and others to determine repayment ability and eligibility for FmHA programs. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Referral to a collection or servicing contractor, or a local, State, or Federal agency, when FmHA determines such referral is appropriate for servicing or collecting the borrower's account or as provided for in contracts with servicing or collection agencies.

Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery, to the extent that the information disclosed is relevant and necessary to the proceeding.

Referral of commercial credit information, which is filed in a system of records, to a commercial credit reporting agency for it to make the information publicly available.

Referral to financial consultants, advisors, or underwriters, when FmHA determines such referral is appropriate for developing packaging and marketing strategies involving the sale of FmHA loan assets required by the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509.

Referral to private attorneys under contract either with FmHA or with the Department of Justice for the purpose of foreclosure and possession actions and collection of past due accounts in connection with FmHA loans.

Referral to the Department of Justice for the purpose of litigation arising under statutes administered by FmHA.

Dated: August 29, 1989.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 89–20734 Filed 9–1–89; 8:45am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 89–133]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company to allow the field testing, in Jerseyville, Illinois, of genetically engineered tomato plants. The tomato plants have been genetically engineered to be tolerant to tobacco mosaic virus, tomato mosaic virus, or both. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Schechtman, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8761. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89–073–01.

SUPPLEMENTARY INFORMATION:

The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test tomato plants genetically engineered to be tolerant to tobacco mosaic virus, tomato mosaic virus, or both. The field trial will take place in Jerseyville, Illinois.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tomato plants under conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS's finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genes encoding the tobacco mosaic virus coat (capsid) protein and the tomato mosaic virus coat protein have been inserted separately and jointly into the chromosomes of a series of tomato plants. In nature, the genetic material contained in a plant chromosome can only be transferred to other sexually compatible plants via cross-pollination. In this field trial, the inserted gene(s) would not spread to any other plant by cross-pollination because the field test plot is a sufficient distance from any sexually compatible plants with which the genetically engineered tomato plants might cross-pollinate.

2. Neither the viral coat (capsid) protein genes, nor their gene products, confers on tomato plants any plant pathogenic characteristic. Introduction of these genes is expected to have no effect on complex plant characteristics such as the ability to fix nitrogen, yield, or susceptibility to unrelated plant pests.

3. The plasmid vectors used to transfer the tobacco mosaic virus coat (capsid) protein gene and the tomato mosaic virus coat protein gene into a tomato chromosome have been evaluated for their use in this experiment, and do not pose a plant pesk risk. The plasmid vectors, although derived from an original Ti plasmid with known plant pathogenic potential, have been disarmed; that is, genes that are necessary to confer phytopathogenicity have been removed from them. The plasmid vectors have been tested either alone or with their host bacterium, and shown to be nonpathogenic to susceptible plants.

4. The vector agent, the phytopathogenic bacterium that was used to deliver the plasmid vector encoding the tobacco mosaic virus coat (capsid) protein gene and the tomato mosaic virus coat protein gene into a tomato plant cell, has been shown to be eliminated and no longer associated with any transformed tomato plant or seed.

5. Horizontal movement by infectious transfer of the introduced gene is not known to be possible. The plasmid vector acts by delivering the gene to the tomato genome where it is stably inserted into the tomato chromosomal DNA. The plasmid vector cannot replicate independently of its vector agent and does not survive in any plant. No mechanism of horizontal movement is known to exist in nature to move the inserted gene from a chromosome of a transformed plant to any other organism.

6. The field test plot, which is approximately 0.8 acre, will be located on a large research farm. The research farm is located in an isolated area and has been safely used for controlled experiments employing regulated articles. The level of physical containment has been found to be adequate to prevent an accidental release or dissemination into the environment.

7. The field experiment will be ended by mowing and disking tomato plants and fruit back into the field plot. To eliminate volunteer plants, the plot will be cultivated as necessary for 2 months following the test, and again the following spring.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 30th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–20738 Filed 9–1–89; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 89–143]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public of the issuance, suspension, revocation, or termination of veterinary biological product and establishment licenses, and veterinary biological product permits by the Animal and Plant Health Inspection Service during the month of June 1989. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistance, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6332.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the month of June 1989:

Product license code	Date issued	Product	Establishment	Establishment license No.
1095.20	06-30-89	Bovine respiratory syncytial virus vaccine, killed virus	Grand Laboratories, Inc.	303.
1177.20	06-07-89	Bovine rhinotracheitis-virus diarrhea-parainfluenza₃ vaccine, modified live and killed virus.	CEVA Laboratories, Inc.	243–A.
1185.20	06-23-89	Bovine rhinotracheitis-virus diarrhea-parainfluenza₃-respiratory syncytial virus vaccine, killed virus.	Grand Laboratories, Inc.	303.
1679.31	06-07-89	Mink distemper-enteritis vaccine, modified live and killed virus	Harlan Sprague Dawley, Inc.	245.
1685.21	06-07-89	Mink enteritis, vaccine, killed virus	Harlan Sprague Dawley, Inc.	245.
1895.00	06-02-89	Pseudorabies vaccine, killed virus	Boehringer Ingelheim Animal Health, Inc.	124.
2840.00	06-09-89	Streptococcus suis bacterin	Bio VAc Laboratories, Inc.	307.
48B5.10	06-16-89	Newcastle-bronchitis vaccine—mycoplasma gallisepticum bacterin, killed virus.	Schering Corporation	165–A.
4929.31	06-07-89	Mink distemper-enteritis vaccine—clostridium botulinum type C bacterin-toxoid, modified live and killed virus.	Harlan Sprague Dawley, Inc.	245.
4949.31	06-07-89	Mink distemper-enteritis vaccine—clostridium botulinum type C-pseudomonas aeruginosa bacterin-toxoid, modified live and killed virus.	Harlan Sprague Dawley, Inc.	245.
4955.21	06-07-89	Mink enteritis vaccine—clostridium botulinum type C bacterin-toxoid, killed virus.	Harlan Sprague Dawley, Inc.	245.
49A5.21	06-07-89	Mink enteritis vaccine—clostridium botulinum type C-pseudomonas aeruginosa bacterin-toxoid, killed virus.	Harlan Sprague Dawley, Inc.	245.
B699.00	06-15-89	Pasteurella haemolytica toxoid	Langford Laboratories, Inc.	362.
A271.01	06-23-89	Bursal disease virus, live virus, for further manufacture	Select Laboratories, Inc.	279.
B641.00	06-23-89	Erysipelothrix rhusiopathiae bacterin, for further manufacture	SmithKline Beckman Corporation	189.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that every person importing biological products subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) into the United States shall hold a U.S. Veterinary Biological Product Permit for each biological product to be imported. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit. Pursuant to these regulations, APHIS issued the following U.S. Veterinary Biological Product Permit for general distribution and sale during the month of June 1989:

Establishment	Permit No.	Dated Issued
Langford Laboratories, Inc.	362	June 15, 1989.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license. No U.S. Veterinary Biological Establishment Licenses were issued during the month of June 1989.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits. No U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, or U.S. Veterinary Biological Product Permits were suspended, revoked, or terminated during the month of June 1989.

Done in Washington, DC, this 30th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-20739 Filed 9-1-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.
Title: Weather Modification Activities Report.
Form Numbers: NOAA—Forms 17-4, 17-4A, and 17-4B; OMB—0648-0025.
Type of Request: Request for extension of OMB approval of a currently cleared collection.
Burden: 40 respondents; 40 reporting hours; average hours per response—.5 hours; recordkeeping hours—5 hours per recordkeeper.
Needs and Uses: All non-Federal attempts to modify the weather must be reported. The data on the attempts are used to show trends in modification activities and for research.
Affected Public: State or local governments, businesses or other for-profit, small businesses or organizations.
Frequency: On occasion, recordkeeping.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Russell Scarato, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: August 28, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-20667 Filed 9-1-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Quarterly Financial Report.

Form Number: QFR-101, 101A, 102, 103A.

Agency Approval Number: 0607-0432.

Type of Request: Revision of a currently approved collection.

Burden: 180,980 hours.

Number of Respondents: 14,785.

Avg Hours per Response: 4 hours and 11 minutes.

Needs and Uses: The Quarterly Financial Report (QFR) is the best source of timely financial data for gauging quarterly performance of the nonregulated, domestic corporate sector. Data are collected from a sample of manufacturing, mining, and trade corporations and are used by Government and private sector organizations and individuals for economic policy making and in estimating the Gross National Product.

Affected Public: Businesses and other for profit organizations and small businesses or organizations.

Frequency: Quarterly, Annually QFR-103A only, Biennially QFR-103A only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 25, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-20668 Filed 9-1-89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

Joint Factory Computing and Communications Subcommittee of: The Automated Manufacturing Equipment Technical Advisory Committee; the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; the Computer Systems Technical Advisory Committee and the Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Joint Factory Computing and Communications Subcommittee of the Automated Manufacturing Equipment Technical Advisory Committee; the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; the Computer Systems Technical Advisory Committee and the Electronic Instrumentation Technical Advisory Committee will be held September 29, 1989, 9:00 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC. The Joint Subcommittee advises the Office of Technology & Policy Analysis on overlapping issues such as: Computerized Numerical Control (CNC), Computer-Aided-Design (CAD), Computer-Aided-Manufacturing (CAM), Computer Aided-Engineering (CAE), etc.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Reports from Technical Advisory Committee Representatives.
4. Discussion of CAD Project.
5. Networking.
6. Discussion of Automated Test Equipment.
7. Other Business.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the

materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in sections 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Subcommittee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on 202/377-2583.

Dated: August 29, 1989.

William L. Clements,

Acting Director, Office of Technology & Policy Analysis.

[FR Doc. 89-20724 Filed 9-1-89; 8:45 am]

BILLING CODE 3510-DT-M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held September 27, 1989, 1:00 p.m. in the Herbert C. Hoover Building, Room 1617F, 14th & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Agenda

General Session

1. Opening remarks by the Chairman.

2. Presentation of papers or comments by the public.

3. Supercomputer Subcommittee Annual Report and 1990 Plan.

4. Computer Systems Technical Advisory Committee Annual Report and 1990 Plan.

5. Meeting Dates and Agenda for Future Meeting in Portland, Oregon.

6. Miscellaneous Items (Other Meeting Reports and Status Items).

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10 (d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter at (202) 377-2583.

Dated: August 29, 1989.

William L. Clements,

Acting Director, Office of Technology & Policy Analysis.

[FR Doc. 89-20726 Filed 9-1-89; 8:45 am]

BILLING CODE 3510-DT-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held September 28, 1989, 1:00 p.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

General Session

1. Opening Remarks by the Chairman.

2. Presentation of Papers or Comments by the Public.

3. Annual Report and 1990 Plan.

4. Status on Array Processor Foreign Availability Study.

5. Computer Systems Technical Advisory Committee Responses to Department of Commerce.

6. LAN Proposal Review.

7. License Simplification Proposal.

8. Workstations.

Executive Session

9. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377–2583.

Dated: August 29, 1989.

William L. Clements,

Acting Director, Office of Technology & Policy Analysis.

[FR Doc. 89–20726 Filed 9–1–89; 8:45 am]

BILLING CODE 3510-DT-M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held September 27, 1989, 9:00 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street & Constitution Avenue, NW., Washington, DC. The Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Annual Report and 1990 Plan.
4. Review of Computer Systems Technical Advisory Committee Responses to Action Items.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Subcommittee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter at (202) 377–2583.

Dated: August 29, 1989.

William L. Clements,

Acting Director, Office of Technology & Policy Analysis.

[FR Doc. 89–20727 Filed 9–1–89; 8:45 am]

BILLING CODE 3510-DT-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held September 26, 1989 at 9:30 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Software Subcommittee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Annual Report and 1990 Plan.
4. Status on Delegation of Authority on Encryption.
5. Status on CCL 1566 ("software" and technology).

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be presented at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter at (202) 377–2583.

Dated: August 29, 1989.

William L. Clements,

Acting Director, Office of Technology & Policy Analysis.

[FR Doc. 89–20725 Filed 9–1–89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[C–223–601]

Certain Cut Flowers From Costa Rica; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 28, 1989, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain cut flowers from Costa Rica. We have now completed that review and determine that the signatories have complied with the terms of the suspension agreement during the period January 13, 1987 through December 31, 1987.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 27197) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation regarding certain cut flowers from Costa Rica (52 FR 1356; January 13, 1987). We have now completed that administrative review in

accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Costa Rican miniature (spray) carnations, standard carnations and pompon chrysanthemums. During the review period, such merchandise was classifiable under items 192.17 and 192.21 of the Tariff Schedules of the United States. This merchandise is currently classifiable under HTS items 0603.10.30 and 0603.10.70.

The review covers 29 producers and exporters of the subject merchandise. These 29 producers and exporters, along with the Government of Costa Rica (GOCR) and the Asociacion Costarricense de Floricultores (ACOFLOR), are the signatories to the suspension agreement (see Appendix A of this notice for a listing of the 29 signatory producers and exporters).

The review covers the period January 13, 1987 through December 31, 1987, and six programs: (1) Tax Credit Certificates; (2) Certificates for Increasing Exports (CIEX); (3) Income Tax Exemptions for Export Earnings; (4) Exporter Credit for Sales Tax and Consumption Tax on Certain Domestic Purchases; (5) Exporter Exemptions for Taxes and Duties on Imports; and (6) Accelerated Depreciation.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine that the signatories have complied with the terms of the suspension agreement for the period January 13, 1987 through December 31, 1987.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject cut flowers into the United States. Our information indicates that the 29 signatory companies accounted for substantially all of the imports into the United States of this merchandise during the review period.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Dated: August 23, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix A

List of Signatory Producers and Exporters

1. American Flower Corp., S.A.
2. Flores del Cerro
3. Agroflor de Paraiso, S.A.
4. Hermelink y Garces, S.A.
5. Tico Flor, S.A.
6. Cooexflo R.L.
7. Compania Agricola Flex, S.A.
8. Flor Bella, S.A.
9. Expoflor de Cartago, S.A.
10. Lianpa, S.A.
11. Floricultura de Costa Rica, S.A.
12. Vivero el Zamorano, S.A.
13. Flores de Iztaru, S.A.
14. Inversiones Costa Flor, S.A.
15. Coopeflor R.L.
16. Euroflores, S.A.
17. Flores y Follajes del Tirol, S.A.
18. Flores del Volcan CRP, S.A.
19. Goreza, S.A.
20. Llano Claro, S.A.
21. Ornamentales Cargil, S.A.
22. Floricultura La Colina, S.A.
23. Flores Intercontinentales, S.A.
24. Fincas Nabori, S.A.
25. Flores de Coris, S.A.
26. Florex, S.A.
27. C.R.B. Internacional, S.A.
28. Flores del Caribe, S.A.
29. Zurqui Flor de Costa Rica, S.A.

[FR Doc. 89–20698 Filed 9–1–89; 8:45 am]

BILLING CODE 3510-DS-M

[C–533–065]

Certain Fasteners From India; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of revocation of countervailing duty order.

SUMMARY: The Department of Commerce is revoking the countervailing duty order on certain industrial fasteners from India because it is no longer of interest to interested parties.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 27662) its intent to revoke the countervailing duty order on certain fasteners from India (45 FR 48607; July 21, 1980). Interested parties who objected to the revocation were provided the opportunity to submit their comments on or before July 31, 1989. Additionally, as required by § 355.25(d)(4)(ii)) of the Commerce Department's regulations, published in the **Federal Register** on December 27, 1988 (53 FR 52358) (to be codified at 19 CFR 355.25(d)(4)(ii), the Department served written notice of its intent to revoke this order on each interested party listed on the service list. On July 3, 1989, the Department published a notice of opportunity to request administrative review in this proceeding (54 FR 27920) for the period January 1, 1988 through December 31, 1988.

Scope of Order

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Indian industrial fasteners. Through 1988, such merchandise was classified under item numbers 646.4920, 646.4940, 646.5800, 646.6020, 646.6040, 646.6320, and 646.6340 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item numbers 7318.11.00, 7318.12.00, 7318.14.10, 7318.14.50, 7318.15.20, 7318.15.40, 7318.15.60, and 7318.15.80. The written descriptioin remains dispositive.

Determination to Revoke

The Department may revoke an order if the Secretary of Commerce concludes that an order is no longer of interest to interested parties. We received no objections to our intent to revoke the countervailing duty order on certain fasteners from India and have not received a request to conduct an administrative review of the order for the past five consecutive annual anniversary months.

Based on the absence of both objections to the revocation of this order and requests for administrative reviews by interested parties, the Department has concluded that the order is no longer of interest to interested parties. Therefore, we are revoking the countervailing duty order on certain fasteners from India in accordance with § 355.25(d)(4) of the Department's regulations. The effective date of this revocation is January 1, 1989.

Further, as required by § 355.25(d)(5) of the Department's regulations, the Department is terminating the suspension of liquidation and will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported from India on or after January 1, 1989.

This notice is in accordance with § 355.25(d)(3)(vii) and 355.25(d)(5) of the Department's regulations.

Dated: August 28, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-20729 Filed 9-1-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-804]

Final Negative Countervailing Duty Determination; Certain Steel Wire Nails From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Malaysia of certain steel wire nails ("the subject merchandise"), as described in the Scope of Investigation section of this notice.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Carole Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-3217.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Malaysia of the subject merchandise.

Case History

Since publication of the Preliminary Negative Countervailing Duty Determination: Certain Steel Wire Nails from Malaysia (54 FR 26229, June 22, 1989), the following events have occurred. From July 17 to July 21, 1989, we conducted verification in Malaysia of the questionnaire responses of the Government of Malaysia and South Engineers Sdn. Bhd. (South Engineers). On August 11, 1989, we received a case brief filed on behalf of respondents.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are certain steel wire nails from Malaysia. These nails are: steel wire nails of one-piece construction as currently provided for in HTS items 7317.00.5505, 7317.00.5510, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, and 7317.00.6560; steel wire nails of two-piece construction, as currently provided for in HTS item 7317.00.7500; and steel wire nails with lead heads, as currently provided for in HTS item 7317.00.7500.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1988, which corresponds to the fiscal year of the respondent company. Based upon our analysis of the petition, the responses to our questionnaires, verification, and respondents' case brief, we determine the following:

I. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters in Malaysia of the subject merchandise did not receive benefits during the review period for exports of the subject merchandise to the United States under the programs listed below. With the exception of the Double Deduction of Insurance Premiums for Importers, these programs were described in the preliminary determination in this investigation:

A. Export Tax Incentives

1. Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales and an Abatement of Five Percent of the Value of Indigenous Materials Used in Exports
2. Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales
3. Allowance of Taxable Income of Five Percent of the F.O.B. Value of Export Sales for Trading Companies Exporting Malaysian-Made Products
4. Double Deduction for Export Credit Insurance Payments
5. Double Deduction for Export Promotion Expenses
6. Industrial Building Allowance

B. Other Export Incentives

1. Export Credit Refinancing
2. Export Insurance Program

C. Other Tax Incentives

1. Pioneer Status Under the Investment Incentives Act of 1968
2. Pioneer Status Under the Promotion of Investments Act of 1986
3. Investment Tax Allowance
4. Double Deduction for Operational Expenses
5. Abatement of Five Percent of Adjusted Income

D. Medium- and Long-Term Government Financing

Medium- and long-term financing provided by the following institutions:

- the Industrial Bank of Malaysia (formerly the Industrial Development Bank of Malaysia)
- the Development Bank of Malaysia
- the Borneo Development Corporation
- the Sabah Development Bank

E. Double Deduction of Insurance Premiums for Importers

Although not alleged by petitioner and not included in our notice of initiation or preliminary determination, we found during verification that South Engineers claimed a double deduction for insurance premiums on imports on its 1988 income tax return. The double deduction is authorized under the provisions of Income Tax (Deduction of Insurance Premiums for Importers) Rule 1962. The rule provides that the double deduction may be taken by importers only if insurance is purchased from a company incorporated in Malaysia.

In the case of South Engineers, we verified that the insurance premiums for which a double deduction was claimed were for imports of merchandise entirely unrelated to the manufacture or exportation of the subject merchandise. Therefore, we determine that, with respect to the subject merchandise, the double deduction of insurance premiums for importers was not used.

Verification

We verified the information used in making our final determination in accordance with section 776(b) of the Act. During verification we followed standard verification procedures including meeting with government and company officials, examining relevant documents and accounting records, tracing information in the responses to source documents, accounting ledgers and financial statements, and collecting additional information that we deemed necessary for making our final determination. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Dated: August 23, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-20730 Filed 9-1-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-405]

Certain Textile Mill Products From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 26, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain textile mill products from Mexico. We have now completed that review and determine the total bounty or grant to be zero or *de minimis* for 25 compaines, 11.50 percent *ad valorem* for Fibras Sinteticas, 9.83 for Hilasal Mexicana, and 3.01 percent *ad valorem* for all other companies during the period January 1, 1986 through December 31, 1986.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Jean Carroll Kemp or Ilene Hersher, Officer of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1988, the Department of Commerce ("the Department") published in the Federal Register (53 FR 37327) the preliminary results of its administrative review of the countervailing duty order on certain textile mill proudcts from Mexico. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS number(s).

Imports covered by the review are the Tariff Schedules of the United States Annotated items listed in appendix A. Such merchandise is currently classifiable under the HTS items listed in appendix B. The review covers the period January 1, 1986 through December 31, 1986 and the following programs: (1) FOMEX; (2) FOGAIN; (3) FONEI; (4) CEPROFI; (5) State tax incentives; (6) National Industrial Development Fund ("FOMIN"); (7) NDP preferential discounts; (8) Trust Fund for the Study and Development of Industrial Parks ("FIDEIN"); (9) Bancomext loans; (10) Delay of payments on loans; (11) Delay of payments to PEMEX of fuel charges; (12) PROFIDE loans; (13) Export credit insurance; (14) Tax Rebate Certificate ("CEDI"); (15) Accelerated depreciation; (16) Article 15 loans; (17) Preferential state investment incentives; and (18) Import duty reductions and exemptions.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. On November 14, 1988, we received comments from the following respondents: Fibras Sinteticas, Hilasal Mexicana, the Mexican Textile Industry Chamber, and Tapetes Luxor. At the request of respondents, we held a public hearing on November 22, 1988. On December 2, 1988, we received post-hearing comments from the Mexican Textile Industry Chamber.

Comment 1: As a result of the "Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties" (the "Understanding"), signed on April 23, 1985, Mexico became a "country under the Agreement." Therefore, respondents argue that U.S. law (19 U.S.C. 1671(a)) requires an affirmative injury determination as a prerequisite to the imposition of countervailing duties on any Mexican merchandise imported on or after April 23, 1985, whether the countervailing duty order was published before or after that date.

While Article VI of the General Agreement on Tariffs and Trade ("GATT") requires an affirmative injury determination before the imposition of countervailing duties, the United States was allowed to "grandfather" provisions in its laws which allowed countervailing duties to be placed on dutiable products without an injury test. Duty-free products were not subject to countervailing duties at the time the United States acceded to the GATT. In 1974, Congress amended section 303 of the Tariff Act of 1930 to authorize the United States to impose countervailing duties on duty-free products. However, for countries towards which the United States has an "international obligation," Congress authorized the imposition of countervailing duties on imports of duty-free goods only after an affirmative injury determination. Thus, the "grandfather clause," which allowed countervailing duties on dutiable products absent an injury test, did not apply to duty-free products from countries towards which the United States had an international obligation.

The Trade Agreements Act of 1979 ("TAA") established an injury test requirement before any countervailing duties could be imposed on products from "countries under the Agreement," and amended section 303 of the Tariff Act to apply only to countries which were not under the Agreement. Under the TAA, respondents claim that no countervailing duties can be imposed on Mexican imports after the date Mexico became a country under the Agreement, absent an affirmative injury determination.

The imposition of duties in this review would occur after Mexico became a country under the Agreement whether the controlling date is the time of entry or the time of final assessment and liquidation.

Respondents cite three decisions of the Court of International Trade ("CIT") to support the conclusion that under any interpretation of what the controlling date is, an injury test is required for entries of Mexican textiles in 1986: *Cementos Anahuac del Golfo, S.A.* v. *United States*, 687 F. Supp. 1558 (CIT 1988) ("Anahuac I"), *Cementos Guadalajara* v. *United States*, 686 F. Supp. 335 (CIT 1988) ("Guadalajara"), and *Cementos Anahuac del Golfo, S.A.* v. *United States*, 689 F. Supp. 1191 (CIT 1988) ("Anahuac II").

In Anahuac I, the court found that Mexico was entitled to an injury test for goods entering the United States prior to the time Mexico became a country under the Agreement, as long as the imposition of duties occurred after the date Mexico qualified for an injury test. In the Anahuac II decision, the CIT held that since the liability for duties, as well as all legal obligations attached to that liability (including an injury test), occur at the time of entry, no injury test was required for any goods entered prior to the date of the Understanding. Respondents contend that the CIT implied in Anahuac II that before countervailing duties could be assessed, an affirmative injury determination would be required on goods entering after April 23, 1985. The Guadalajara decision also emphasized that the date on which the goods enter the United States is determinative of whether an injury test is required. Anahuac I and Anahuac II both held that country under the Agreement status means that the TAA applies to Mexican imports made on or after April 23, 1985. Therefore, absent an affirmative injury finding on all entries after April 23, 1985, the effective date of the Understanding, the countervailing duty order on textile mill products from Mexico should be revoked.

Department's Position: We do not agree that the injury determination mandated by section 701 of the TAA applies to Mexican products imported on or after the effective date of the Understanding if those products were subject to a countervailing duty order prior to that date. Article 5 of the Understanding makes clear that country under the Agreement status was not given to Mexico retroactively for the purpose of obtaining injury tests on merchandise subject to countervailing duty orders that were in effect before April 23, 1985. Before Mexico's accession to the GATT on August 24, 1986, the United States had no international obligation towards Mexico to provide an injury test on any merchandise covered by this order, whether dutiable or duty-free. We agree, however, that we must grant an injury test on duty-free merchandise from a country towards which the United States has an international obligation. Mexico's accession to the GATT created such an obligation for an injury test on entries of duty-free merchandise made on or after August 24, 1986 before countervailing duties can be imposed on such merchandise.

We appealed the CIT's decision in Anahuac I. On July 13, 1989, the United States Court of Appeals for the Federal Circuit reversed the CIT's decision in Anahuac I and upheld the CIT decision in Anahuac II, where the court supported our position that the Understanding does not require an injury test for Mexican countervailing duty orders issued before April 23, 1985, but only for countervailing duty investigations in progress on that date or orders issued after that date. In fact, contrary to respondent's interpretation, the CIT in Anahuac II explicitly upheld the Department's position that "the Understanding excluded CVD orders existing prior to April 23, 1985, the effective date of the Understanding * * *" 689 F. Supp. 1191 at 1213. We confirmed with the principal U.S. negotiators that the intent of Article 5 of the Understanding was to exclude from the application of the Understanding, and hence the application of country under the Agreement status, orders existing before April 23, 1985. The U.S. Court of Appeals also upheld the Guadalajara decision, in which the CIT indicated that an injury test is required only on duty-free goods from Mexico entering the United States after Mexico acceded to the GATT.

As we have explained in numerous final results notices, we believe that we lack the authority to revoke any countervailing duty order on Mexican products on the basis of the Understanding. *See, e.g.* Portland Hydraulic Cement and Cement Clinker from Mexico; Final Results of Countervailing Duty Administrative Review, (51 FR 44501, December 10, 1986); Certain Iron Metal Construction Castings from Mexico; Final Results of Countervailing Duty Administrative Review, (51 FR 9698, March 20, 1986); Portland Hydraulic Cement and Cement Clinker; Final Results of Administrative Review, (52 FR 18325, May 23, 1988); and Bricks from Mexico; Final Results of Countervailing Duty Administrative Review, (53 FR 38314, September 30, 1988).

Comment 2: Respondents argue that the relevant U.S. statute (19 U.S.C. 1671) does not permit a country's entitlement to an injury test to depend in any way on the interpretation of the term "investigation" as used in the Understanding. When it officially designated Mexico as a country under the Agreement, the Office of the United States Trade Representative did not put any qualifications on that status, as doing so would have been in violation of 1671(a). The statute does not permit the Department to impose duties on entries from a country under the Agreement unless (1) subsidies are being provided, and (2) the International Trade Commission ("ITC") makes an affirmative injury determination.

The CIT's decision in Anahuac I clearly defines the term "investigation" as used in the Understanding to mean both the process through which the Department initially issues a countervailing duty order and any subsequent administrative reviews. The CIT's discussion in Anahuac II of the term "investigations in progress" only reflected the court's concern that Mexico not be afforded an injury test for the entries that occurred prior to the Understanding. That discussion should not be construed to negate the basic implication of the CIT's Guadalajara and Anahuac II decisions that an injury test is required for all merchandise from Mexico entered on or after April 23, 1985.

Department's Position: As discussed in our response to Comment 1, the U.S. Court of Appeals reversed the Anahuac I decision, and upheld the decisions in Anahuac II and Guadalajara, thus supporting our position that the Understanding does not require an injury test for products subject to pre-Understanding countervailing duty orders.

Comment 3: The Mexican Textile Industry Chamber argues that in Article 8 of the Understanding, Mexico was granted "most favored nation" ("MFN") status. The MFN principle requires that Mexico be given the same treatment as other countries under the Agreement. When the TAA was enacted, countries under the Agreement had three years after the effective date of the TAA to request an injury test for products covered by countervailing duty orders in effect before that date. Mexico deserves this same treatment as of the date it became a country under the Agreement and, thus, should have been accorded an injury test within three years of the

signing of the Understanding. Since more than three years have passed since the signing of the Understanding, and Mexico has not been granted an injury test for Mexican products entered under per-Understanding orders, this countervailing duty order should be revoked.

Department's Position: The international obligation created in Article 8 of the Understanding does not extend to entries covered by this review because the Understanding itself makes clear that the only international obligation of the United States is to provide an injury test to investigations in progress or investigations begun after April 1985. The investigation in this case was completed in March 1985. Therefore, the United States is not required by the MFN language in Article 8 to grant an injury test in this case on entries of merchandise covered by this review. *See,* Portland Hydraulic Cement and Cement Clinker From Mexico; Final Results of Administrative Review, (53 FR 18325, May 23, 1988).

The three-year grace period provided for in section 104(b) of the TAA applies only to the three-year period after the effective date of the TAA, *i.e.,* January 1, 1980. 19 U.S.C. 1671 note. Congress made no special provision for an injury test for any products from countries that did not become countries under the Agreement before the end of the three-year grace period.

Comment 4: The Mexican Textile Industry Chamber argues that Mexico's accession to the GATT entitles Mexico to an injury test on the duty-free products entered on or after August 24, 1986, as required by the international obligations of the United States. Absent such a test, the countervailing duty order on Mexican textile mill products must be revoked with regard to the duty-free items subject to the order. The Department has previously partially revoked a countervailing duty order because the ITC believed it had no mechanism to perform an injury test (*see,* Certain fasteners from India, 47 FR 19562). There are 14 TSUSA items covered by this order that enter duty-free under the Generalized System of Preferences ("GSP"): 319.030, 319.0700, 339.1000, 355.8100, 356.2510, 358.0690, 358.1400, 360.7900, 360.8400, 364.0500, 364.1800, 364.2500, 365.8400, and 366.8400.

Department's Position: We are currently pursuing means by which an injury determination can be made concerning imports of duty-free Mexican textile mill products entered on or after August 24, 1986, the date Mexico acceded to the GATT. Twelve of the items cited by the respondent, 319.0300, 319.0700, 339.1000, 355.8100, 356.2510, 358.0690, 358.1400, 360.7900, 360.8400, 364.0500, 364.1800, and 364.2500, were duty-free on and after August 24, 1986. We will instruct the Customs Service not to liquidate shipments of the duty-free products listed above which were entered, or withdrawn from warehouse, for consumption on or after August 24, 1986, until we resolve this issue. The two other items listed by the respondent, 365.8400 and 366.8400, became ineligible for GSP status on August 1, 1986 and were dutiable after that date. Therefore, we will instruct Customs to assess duties on entries under those two TSUSA categories made on or after August 24, 1986.

Comment 5: Respondents argue that the appropriate benchmark for both determining if FOMEX financing is a countervailable subsidy and measuring the benefit from such financing is the cost to the Government of Mexico of obtaining similar funds. Item (k) of the Illustrative List of Export Subsidies appended to the Subsidies Code, and incorporated by reference in section 771(5)(i) of the TAA as part of the statutory definition of an export subsidy, provides that the benchmark for considering export credits to subsidies is whether funds have been provided to the borrower at less than the cost of funds to the government. The Department has recognized the Illustrative List as a source of applicable benchmarks for export-related government programs. The Understanding also uses this cost-to-government standard. The Department has erroneously and illegally used a commercial benchmark to measure the benefit from FOMEX loans.

Department's Position: The cost-to-government standard in the Understanding applies only to whether Mexico is in compliance with the Understanding and does not limit the United States in applying its own national countervailing duty law with regard to subsidized imports from Mexico. We addressed this issue and our use of a commercial benchmark for short-term financing at length in the final results of the last review of this order. *See,* Certain textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review, (52 FR 45010, November 24, 1987). The use of a commercial benchmark is consistent with our standard of measuring subsidies from countervailable financing in terms of the benefit to the recipient rather than the cost to the government. *See, e.g.,* Certain Steel Products from Belgium; Final Affirmative Countervailing Duty Determination, Appendices 2 and 4 (47 FR 39304, September 7, 1982); and Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Ceramic Tile from Mexico, (47 FR 200014, May 10, 1982).

When the United States signed the Subsidies Code, it was not required by the Code to include the Illustrative List in its countervailing duty statute. Part I of the Code deals with the implementation by the signatories of their own national countervailing duty laws, or the "Track I" of the Code. Part Two of the Code relates only to the obligations of the signatories concerning their use of subsidies, the "Track II" of the Code. The Illustrative List does not relate to and is not mentioned in the Track I part of the Code. Article 9 of Part Two prohibits the use of export subsidies and refers to the Illustrative List to describe such export subsidies.

The TAA in relevant part states: "the term 'subsidy' has the same meaning as the term 'bounty or grant' as that term is used in section 303, and includes, but is not limited to, the following: i) any export subsidy described in Annex A to the Agreement (relating to the Illustrative List of Export Subsidies) * * *" (emphasis added). While Congress incorporated the Illustrative List in the statute, it did not limit the definition of export subsidy to the practices outlined in the List. The legislative history of the TAA explains, "The reference to specific subsidies in the definition is not all inclusive, but rather is illustrative of practices which are subsidies within the meaning of the word as used in the bill. The administering authority may expand upon the list of specified subsidies consistent with the basic definition." S. Rep. 96–249, 96th Cong., 1st Sess. 85 (1979). *See, also,* Trade Agreements Act of 1979: Statements of Administrative Action, H.R. Doc. No. 96–153, Pt. II, 96th Cong., 1st Sess. 432 (1979).

The Illustrative List is not, therefore, the sole statutory standard for identifying and measuring export subsidies, but must be considered with the definition of the term "bounty or grant" that practice and the courts have ascribed to it. When we have cited the Illustrative List as a source for benchmarks to identify and measure export subsidies, those benchmarks have been consistent with our long-standing practice of using commercial benchmarks to measure the benefit to the recipient of a subsidy program. The cost-to-government standard in item (k) of the Illustrative List does not fully capture the benefits provided to recipients of FOMEX financing. Therefore, we msut use a commercial

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benchmark to calculate the benefit from a subsidy, consistent with the full definition of "subsidy" in the statute.

Comment 6: Tapetes Luxor argues that it should not be required to post cash deposits of estimated countervailing duties. The Department has sufficient information and has had ample time to verify that Tapetes did nto receive any benefits under its current owners (the company changed ownership in April 1987) and did not benefit from the FOMEX financing that the previous owners' U.S. importer received in 1985. Tapetes has since renounced FOMEX benefits for itself and its U.S. importers. Tapetes argues that the Department places unnecessary and unjustified hardships on the company by requiring it to continue to post estimated countervailing duty deposits when it is not receiving benefits. The Department has previously made adjustments to cash deposits based on subsequent events. *See, e.g.,* Certain Softwood Products from Canada; Final Countervailing Duty Determination, (48 FR 24159, May 31, 1983).

Department's Position: As we explained in detail in the final results of our last review in this case, because Tapetes did not export during the period of review, we do not have a record on which to base a determination that it did not receive benefits in the review period. *See,* Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review, (52 FR 45010, November 24, 1987). If Tapetes exported in 1987, we will revisit its claims in the 1987 review, which is already underway.

Comment 7: The Mexican Textile Industry Chamber argues that the Department should retract its improper expansion of the scope of the countervailing duty order on Mexican textile mill products with regard to cotton yarns. The Department's interpretation of the cotton yarn TSUSA numbers as series of ranges adds 133 new TSUSA items to the scope of the order. The Department's interpretation that these items were intended to be included in the scope is not supported by the record. Petitioners clarified that the ranges applied to fabrics, but they never did so for yarns. Additionally, petitioners never responded to the Department's request for comments on this issue.

Department's Position: We have already considered this issue in our scope determination memorandum signed on September 22, 1988. In that memorandum, we decided that the record supports our interpretation that each of the cotton yarn numbers published in the original countervailing duty order and subsequent notices represented a range of TSUSA items. If respondents did not agree with our scope determination, the proper remedy was to appeal the scope determination to the CIT within 30 days of that determination.

Comment 8: The Mexican Textile Industry Chamber contends that the Department should accept zero-rate certifications from companies that certified zero-rate status in the last review but not in this review. These companies simply did not know that they had to re-certify to maintain their zero-rate status. Since the petitioners have not sought a hearing in this review, acceptance of such certificates would not prejudice the interests of any party.

Department's Position: The new Commerce Regulations (53 FR 52354, December 27, 1988, to be codified at 19 CFR 355.22) allow a producer or exporter to request an individual administrative review if that producer or exporter and the government submit certifications that the producer or exporter did not apply for or receive any net subsidy on the merchandise from any program that the Department previously found countervailable in the proceeding and will not do so in the future. This provision became effective on March 1, 1989. For any reviews initiated prior to the effective date of this provision, including this review, it was our policy to accept zero-rate certifications from companies if we received these certifications before the publication of the preliminary results or, in cases where we verify, before the verification. This practice allowed all interested parties to comment on zero-rate findings after reviewing the preliminary results of the administrative review. Since we did not receive certifications before our preliminary results, we cannot accept them.

Comment 9: Fibras Sinteticas ("FISISA") argues that the Department should correct its preliminary results to reflect the benefit from subsidies FISISA received only on its U.S. exports. FISISA reported all its FOMEX loans to the Mexican government, including a loan for a shipment to Shanghai, China that transited the United States. The Government of Mexico did not exclude FISISA's FOMEX loan on this shipment from its questionnaire response. This FOMEX pre-export loan was not for exports to the United States and therefore should be excluded from the Department's calculation of FISISA's company-specific benefit. Eliminating this loan brings FISISA's rate well within the rate for "all other" companies. FISISA argues that its supplemental data on the China shipment is not a submission of new information but a clarification of information the Department received in the questionnaire response. Other interested parties had ample time to comment on the clarification and did not do so. The Department should accept this clarification and adjust its calculations.

Department's Position: After reveiwing FISISA's questionnaire response, commercial invoices for the China shipment transiting the United States, bank debit notices, FOMEX documents, and other documents regarding the shipment, we agree that the FOMEX loan for that shipment was not for products exported to the United States. We have revised our calculations for FISISA accordingly by omitting the FOMEX loan for that shipment. However, § 355.22(d) of our new regulations define a significant differential as a difference of the greater of at least five percentage points, or 25 percent, from the weighted average net subsidy calculated on a country-wide basis. Evren with the China shipment financing removed from the calculation of the company's benefits, FISISA's company-specific benefit is more than five points higher than the weighted-average country-wide rate. We also found another company, Hilasal Mexicana, to have benefits that are significantly different. In addition, we inadvertently omitted another company's CEPROFI benefits from the "all other" rate.

Adjusting for these corrections, we determine the benefit during the review period from FOMEX to be zero or *de minimis* for 25 companies, 11.50 percent *ad valorem* for Fibras Sinteticas, 9.83 percent *ad valorem* for Hilasal Mexicana and 2.69 percent *ad valorem* for all other companies; from FOGAIN to be zero or *de minimis* for 27 companies and 0.03 percent *ad valorem* for all other companies; from CEPROFI to be zero or *de minimis* for 27 companies and 0.01 percent *ad valorem* for all other companies; and from FONEI to be zero or *de minimis* for 27 companies and 0.01 percent *ad valorem* for all other companies. The resulting total benefit is zero or *de minimis* for 25 companies, 11.50 percent *ad valorem* for FISISA, 9.83 percent *ad valorem* for Hilasal Mexicana and 3.01 percent *ad valorem* for all other companies during the period January 1, 1986 through December 31, 1986.

We have also reconsidered the calculation of the FOMEX benefit for purposes of cash deposits of estimated countervailing duties. Since the end of the 1986 review period, the Costo Porcentual Promedio (CPP) has been alternately volatile and stable for various periods of time. Because the interest rate on FOMEX per-export loans is based in significant part on the CPP, as is our benchmark, we cannot accurately estimate the change, if any, in the benefit received from FOMEX pre-export loans. Therefore, we determine that the "all other" cash deposit rate for FOMEX is the same as the review period assessment rate, 2.96 percent *ad valorem.* We determine that for the purposes of cash deposits of estimated countervailing duties, the rate is zero or *de minimis* for 25 companies, 11.50 percent *ad valorem* for FISISA, 9.83 percent *ad valorem* for Hilasal Mexicana and 3.01 percent *ad valorem* for all other companies.

In the preliminary results, Crisol Textil, S.A. de C.V. was listed as receiving *de minimis* benefits for purposes of cash deposits of estimated countervailing duties. For the purposes of cash deposits, we now determine the benefit for Crisol Textil to be in the "all other" category.

Firms Not Receiving Benefits

We determine that the following firms received zero or *de minimis* benefits during the period January 1, 1986 through December 31, 1986:

(1) Abetex, S.A. de C.V.;
(2) Acytex, S.R.L. de C.V.;
(3) Celanese Mexicana, S.A.;
(4) Celulosa y Derivados, S.A. de C.V. (Derivados Acrilicos, S.A.);
(5) Corporacion Charles, S.A.;
(6) Extrafil, S.A.;
(7) Fabrica de Hilados y Tejidos SINDEC, S.A.;
(8) Fabrica La Estrella, S.A.;
(9) Fariel, S.A. de C.V.;
(10) Fisher Price, S.A. de C.V.;
(11) Glassmex, S.A.;
(12) Jeramex, S.A.;
(13) Hilados y Tejidos de Tepeji del Rio, S.A.;
(14) Milyon, S.A. de C.V.;
(15) Noblis Lees, S.A. de C.V.;
(16) Ryltex, S.A. de C.V.;
(17) Sociedad Cooperativa de Produccion Maquiladora El Progresso, S.C.L.;
(18) Stanmex, S.A. de C.V.;
(19) Telas Ajijic, S.A.;
(20) Terpel, S.A. de C.V.;
(21) Textiles Mabratex, S.A.;
(22) Textiles Panzacola, S.A.;
(23) Texturizados y Tejidos Windsor, S.A.;
(24) Torenco, S.A. de C.V.; and
(25) Turbofil, S.A.

Final Results of Review

After reviewing all of the comments received, we determine the total bounty or grant to be zero or *de minimis* for 25 companies, 11.50 percent *ad valorem* for FISISA, 9.83 percent *ad valorem* for Hilasal Mexicana and 3.01 percent *ad valorem* for all other companies during the period January 1, 1986 through December 31, 1986.

Merchandise entering under the following TSUSA items covered by this review is afforded duty-free status under the Generalized System of Preferences: 319.0300, 319.0700, 339.1000, 355.8100, 356.2510, 358.0690, 358.1400, 360.7900, 360.8400, 364.0500, 364.1800, and 364.2500. Section 303 of the Tariff Act prohibits the imposition of countervailing duties on duty-free products absent an injury test when the United States has an international obligation to provide such a test. Mexico's accession to the GATT on August 24, 1986 imposes such an international obligation on the United States with respect to duty-free merchandise entered into the United States on or after the date of Mexico's accession.

For the duty-free merchandise, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments from the 25 firms listed above exported on or after January 1, 1986 and on or before December 31, 1986. The Department will also instruct the Customs Service to assess countervailing duties of 11.50 percent of the f.o.b. invoice price on shipments from FISISA, 9.83 percent of the f.o.b. invoice on shipments from Hilasal Mexicana, and 3.01 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1986 and entered, or withdrawn from warehouse, for consumption before August 24, 1986. The Department will instruct the Customs Service to continue to suspend liquidation on all unliquidated shipments of the duty-free Mexican textile mill products entered, or withdrawn from warehouse, for consumption on or after August 24, 1986, while we pursue means by which an injury determination can be made concerning this merchandise.

For all dutiable merchandise listed in appendix A, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments from the 25 firms listed above and to assess countervailing duties of 11.50 percent of the f.o.b. invoice price on shipments from FISISA, 9.83 percent of the f.o.b. invoice on shipments from Hilasal Mexicana, and 3.01 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1986 and on or before December 31, 1986.

The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on any shipments of merchandise from the 25 firms listed above, and to collect a cash deposit of estimated countervailing duties of 11.50 percent of the f.o.b. invoice price on shipments from FISISA, 9.83 percent of the f.o.b. invoice price on shipments from Hilasal Mexicana, and 3.01 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52354) (to be codified at 19 CFR 355.22).

Dated: August 28, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix A—Certain Textile Mill Products From Mexico

C-201-405

TSUSA Item Numbers for 1986

300.6005		
300.6010		
300.6024		
300.6028		
301.0100	through	301.0900
301.1000	through	301.1900
301.2000	through	301.2900
301.3000	through	301.3900
302.0124	through	302.0924
302.1024	through	302.1924
302.1028	through	302.1928
302.2020	through	302.2920
302.2024	through	302.2924
302.2026	through	302.2926
302.2028	through	302.2928
302.3024	through	302.3924
302.3026	through	302.3926
302.3028	through	302.3928
302.4026	through	302.4926
303.2040		
303.2042		
307.7000		
310.0106		
310.0107		
310.0108		
310.0110		
310.0114		
310.0130		

310.0149
310.0150
310.0206
310.0207
310.0108
310.0249
310.0250
310.0270
310.0510
310.1015
310.1070
310.1205
310.1210
310.1555
310.1570
310.2150
310.4027
310.4047
310.4050
310.5046
310.5047
310.5049
310.6034
310.9000
310.9310
310.9320
310.9500
316.5500
316.5800
316.7000
319.0300
319.0700
320.0103 through 320.0903
320.0121 through 320.0921
320.0122 through 320.0922
320.0134 through 320.0934
320.0138 through 320.0938
320.0145 through 320.0945
320.0149 through 320.0949
320.0154 through 320.0954
320.0157 through 320.0957
320.0163 through 320.0963
320.0166 through 320.0966
320.0177 through 320.0977
320.0180 through 320.0980
320.0198 through 320.0998
320.1034 through 320.1934
320.1045 through 320.1945
320.1063 through 320.1963
320.1071 through 320.1971
320.1077 through 320.1977
321.0134 through 321.0934
321.1071 through 321.1971
321.1077 through 321.1977
322.0162 through 322.0962
322.0163 through 322.0963
322.1006 through 322.1906
322.1015 through 322.1915
322.1025 through 322.1925
322.1034 through 322.1934
322.1036 through 322.1936
322.1037 through 322.1937
322.1045 through 322.1945
322.1047 through 322.1947
322.1048 through 322.1948
322.1050 through 322.1950
322.1051 through 322.1951
322.1052 through 322.1952
322.1053 through 322.1953
322.1058 through 322.1958
322.1065 through 322.1965
322.1066 through 322.1966
322.1068 through 322.1968
322.1071 through 322.1971
322.1075 through 322.1975
322.1077 through 322.1977
322.1079 through 322.1979
322.1081 through 322.1981
322.1084 through 322.1984
322.1085 through 322.1985
322.1086 through 322.1986
322.1088 through 322.1988
322.1089 through 322.1989
322.1090 through 322.1990
322.1091 through 322.1991
322.1095 through 322.1995
322.1097 through 322.1997
322.2016 through 322.2916
322.2023 through 322.2923
322.2069 through 322.2969
322.2073 through 322.2973
322.4003 through 322.4903
322.4021 through 322.4921
322.4022 through 322.4922
322.4038 through 322.4938
322.4042 through 322.4942
322.5015 through 322.5915
322.5016 through 322.5916
322.5017 through 322.5917
322.5023 through 322.5923
322.5069 through 322.4969
322.5073 through 322.5973
322.8016 through 322.8916
322.8023 through 322.8923
322.8069 through 322.8969
322.9003 through 322.9903
322.9021 through 322.9921
322.9022 through 322.9922
322.9038 through 322.9938
322.9042 through 322.9942
322.9049 through 322.9949
322.9054 through 322.9954
322.9057 through 322.9957
322.9072 through 322.9972
322.9060 through 322.9960
322.9098 through 322.9998
324.2022 through 324.2922
324.2024 through 324.2924
324.2031 through 324.2931
324.2038 through 324.2938
324.2042 through 324.2942
324.2049 through 324.2949
324.2054 through 324.2954
324.2057 through 324.2957
324.2072 through 324.2972
324.2080 through 324.2980
324.2098 through 324.2998
324.8072 through 324.8972
324.8074 through 324.8974
324.8080 through 324.8980
324.8098 through 324.8998
325.1051 through 325.1951
322.4049 through 322.4949
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322.4057 through 322.4957
322.4072 through 322.4972
322.4080 through 322.4980
322.4098 through 322.4998
322.5014 through 322.5914
325.1052 through 325.1952
325.1085 through 325.1985
325.1089 through 325.1989
325.1091 through 325.1991
325.1095 through 325.1995
325.8022 through 325.8922
325.8024 through 325.8924
327.2021 through 327.2921
327.2022 through 327.2922
327.2031 through 327.2931
327.2038 through 327.2938
327.2042 through 327.2942
327.2049 through 327.2949
327.2054 through 327.2954
327.2057 through 327.2957
327.3003 through 327.3903
327.3021 through 327.3921
327.3022 through 327.3922
327.3038 through 327.3938
327.3049 through 327.3949
327.3054 through 327.3954
327.3057 through 327.3957
328.2003 through 328.2903
328.2021 through 328.2921
328.2022 through 328.2922
328.2031 through 328.2931
328.2038 through 328.2938
328.2049 through 328.2949
328.2054 through 328.2954
328.2057 through 328.2957
328.2072 through 328.2972
328.2080 through 328.2980
328.2098 through 328.2998
331.2022 through 331.2922
331.2024 through 331.2924
331.2031 through 331.2931
331.2038 through 331.2938
331.2049 through 331.2949
331.2054 through 331.2954
331.2057 through 331.2957
331.2072 through 331.2972
331.2074 through 331.2974
331.2080 through 331.2980
331.2098 through 331.2998
336.1540
336.6251
336.6252
336.6254
336.6257
338.4004
338.5006
338.5007
338.5009
338.5010
338.5011
338.5013
338.5016
338.5021
338.5023
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338.5031
338.5036
338.5037
338.5041

338.5043
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338.5059
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338.5064
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338.5076
338.5079
338.5080
338.5082
338.5084
338.5085
338.5087
338.5088
338.5092
338.5095
338.5098
339.1000
345.4000
345.5553
345.5555
345.5557
345.5575
345.5585
346.5850
346.6265
346.7000
346.8040
346.6800
348.0065
351.3000
351.5010
351.5060
351.6010
351.7060
351.8060
351.9060
352.2060
352.8010
352.8060
353.1000
353.5012
353.5052
355.1610
355.1620
355.1630
355.2500
355.4530
355.8100
355.8500
356.2510
357.4500
357.7010
357.8060
358.0290
358.0690
358.1400
358.3500
358.5040
359.1010
359.1030
360.0600
360.1200
360.2500
360.4225
360.4335
360.4825
360.4835
360.7000
360.7800
360.7900
360.8300
360.8400
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363.8515
363.8525
363.8545
363.8550
363.8555
364.0500
364.1300
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364.2500
364.3000
364.5060
365.6615
365.6625
365.6665
365.8400
365.8700
365.8910
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365.8940
365.8970
365.8980
366.1720
366.2460
366.2480
366.4200
366.4600
366.4700
366.5100
366.7700
366.7925
366.7930
366.8400
367.3200
367.3300
367.6325
367.6340
367.6380

Appendix B.—Certain Textile Mill Products From Mexico

C–201–405

Harmonized Item Numbers for Duty Deposit Purposes

3703.10.60 3918.10.31 3918.10.32 3921.12.11
3921.12.19 3921.13.11 3921.13.19 3921.90.11
3921.90.19 3921.90.21 3926.90.56 3926.90.58
4008.21.00 4010.10.10 4010.91.11 4010.91.15
4010.99.11 4010.99.15 5106.10.00 5106.20.00
5107.10.00 5107.20.00 5108.10.60 5108.20.60
5109.10.60 5109.90.60 5110.00.00 5111.11.60
5111.19.20 5111.19.60 5111.20.90 5111.30.60
5112.19.60 5112.20.00 5112.30.00 5113.00.00
5204.11.00 5204.19.00 5204.20.00 5205.11.10
5205.12.10 5205.12.20 5205.13.10 5205.13.20
5205.14.10 5205.22.00 5205.23.00 5205.24.00
5205.25.00 5205.31.00 5205.32.00 5205.33.00
5205.34.00 5205.42.00 5205.43.00 5205.44.00
5206.11.00 5206.12.00 5206.13.00 5206.14.00
5206.15.00 5206.31.00 5206.32.00 5206.33.00
5206.34.00 5206.35.00 5206.41.00 5206.42.00
5206.43.00 5206.44.00 5206.45.00 5207.10.00
5207.90.00 5208.11.20 5208.11.20 5208.12.40
5208.13.00 5208.19.40 5208.21.20 5208.21.40
5208.22.40 5208.22.60 5208.23.00 5208.29.40
5208.29.60 5208.31.20 5208.31.40 5208.31.60
5208.31.80 5208.32.10 5208.32.30 5208.32.40
5208.32.50 5208.33.00 5208.39.20 5208.39.60
5208.39.80 5208.41.40 5208.41.60 5208.41.80
5208.42.10 5208.42.30 5208.42.40 5208.42.50
5208.43.00 5208.49.40 5208.51.20 5208.51.40
5208.51.60 5208.51.80 5208.52.10 5208.52.30
5208.52.40 5208.52.50 5208.53.00 5208.59.20
5208.59.60 5208.59.80 5209.11.00 5209.19.00
5209.21.00 5209.29.00 5209.31.30 5209.31.60
5209.32.00 5209.39.00 5209.41.30 5209.41.60
5209.42.00 5209.43.00 5209.49.00 5209.51.30
5209.51.60 5209.52.00 5209.59.00 5210.21.40
5210.21.60 5210.22.00 5210.29.40 5210.29.60
5210.31.40 5210.31.60 5210.32.00 5210.39.40
5210.39.60 5210.51.40 5210.51.60 5210.52.00
5210.59.40 5210.59.60 5211.31.00 5211.39.00
5211.51.00 5211.59.00 5212.21.60 5212.22.60
5212.23.60 5212.24.60 5212.25.60 5308.30.00
5311.00.60 5401.10.00 5401.20.00 5402.10.30
5402.20.30 5402.20.60 5402.31.30 5402.31.60
5402.32.30 5402.32.60 5402.33.30 5402.33.60
5402.39.30 5402.39.60 5402.41.00 5402.42.00
5402.43.00 5402.49.00 5402.51.00 5402.52.00
5402.59.00 5402.61.00 5402.62.00 5402.69.00
5403.10.30 5403.20.30 5403.20.60 5403.31.00
5403.32.00 5403.33.00 5403.39.00 5406.10.00
5406.20.00 5407.10.00 5407.41.00 5407.42.00
5407.43.20 5407.44.00 5407.52.20 5407.53.10
5407.53.20 5407.54.00 5407.60.05 5407.60.10
5407.60.20 5407.71.00 5407.72.00 5407.73.20
5407.74.20 5407.81.00 5407.82.00
5407.83.00 5407.84.00 5407.91.05 5407.91.20
5407.92.05 5407.92.20 5407.93.05 5407.93.20
5407.94.05 5407.94.20 5408.10.00 5408.21.00
5408.22.00 5408.23.20 5408.24.00 5408.31.05

5408.31.20	5408.32.05	5408.32.90	5408.33.05
5408.33.90	5408.34.05	5408.34.90	5508.10.00
5508.20.00	5509.12.00	5509.21.00	5509.22.00
5509.31.00	5509.32.00	5509.41.00	5509.51.30
5509.51.60	5509.53.00	5509.69.20	5509.69.40
5509.99.20	5509.99.40	5511.10.00	5511.20.00
5511.30.00	5512.11.00	5512.19.00	5512.21.00
5512.29.00	5512.91.00	5512.99.00	5513.11.00
5513.13.00	5513.19.00	5513.21.00	5513.23.00
5513.29.00	5513.33.00	5513.39.00	5513.41.00
5513.43.00	5513.49.00	5514.11.00	5514.19.00
5514.21.00	5514.29.00	5514.41.00	5514.49.00
5515.11.00	5515.12.00	5515.13.05	5515.19.00
5515.21.00	5515.29.00	5515.91.00	5515.99.00
5516.11.00	5516.12.00	5516.13.00	5516.14.00
5516.21.00	5516.22.00	5516.23.00	5516.24.00
5516.41.00	5516.42.00	5516.43.00	5516.44.00
5516.91.00	5516.92.00	5516.93.00	5516.94.00
5601.10.20	5601.22.00	5602.10.10	5602.10.90
5602.21.00	5602.90.30	5602.90.60	5602.90.90
5603.00.90	5604.20.00	5604.90.00	5606.00.00
5607.41.30	5607.49.15	5607.49.25	5607.49.30
5607.50.20	5607.50.40	5607.90.20	5608.11.00
5608.19.10	5701.10.16	5701.10.20	5701.90.20
5702.10.90	5702.31.10	5702.31.20	5702.32.10
5702.32.20	5702.39.20	5702.41.10	5702.41.20
5702.42.10	5702.42.20	5702.49.10	5702.51.20
5702.51.40	5702.52.00	5702.59.10	5702.59.20
5702.91.30	5702.91.40	5702.92.00	5702.99.10
5702.99.20	5703.10.00	5703.20.10	5703.20.20
5703.30.00	5703.90.00	5704.10.00	5704.90.00
5705.00.20	5801.31.00	5801.33.00	5801.34.00
5801.35.00	5801.36.00	5802.30.00	5803.10.00
5803.90.30	5804.10.00	5804.21.00	5804.29.00
5804.30.00	5805.00.10	5805.00.25	5805.00.30
5805.00.40	5806.31.00	5806.32.10	5806.40.00
5806.90.00	5809.00.00	5810.10.00	5810.91.00
5810.92.00	5811.00.20	5901.10.20	5901.90.40
5902.10.00	5902.20.00	5902.90.00	5903.10.20
5903.10.30	5903.20.20	5903.20.30	5903.90.20
5905.00.90	5906.91.20	5906.91.30	5906.99.20
5906.99.30	5907.00.90	5910.00.10	5911.10.20
5911.20.10	5911.31.00	5911.32.00	5911.40.00
5911.90.00	6001.10.60	6001.22.00	6001.92.00
6002.10.80	6002.20.10	6002.20.30	6002.20.60
6002.30.20	6002.43.00	6002.93.00	6301.10.00
6301.20.00	6301.30.00	6301.40.00	6301.90.00
6302.10.00	6302.21.20	6302.22.10	6302.22.20
6302.29.00	6302.31.20	6302.32.10	6302.32.20
6302.39.00	6302.40.10	6302.40.20	6302.51.10
6302.51.20	6302.51.30	6302.51.40	6302.52.10
6302.52.20	6302.53.00	6302.59.00	6302.60.00
6302.91.00	6302.92.00	6302.93.20	6302.99.10
6302.99.20	6303.12.00	6303.19.00	6303.92.00
6303.99.00	6304.11.10	6304.11.20	6304.11.30
6304.19.05	6304.19.15	6304.19.20	6304.19.30
6304.91.00	6304.92.00	6304.93.00	6304.99.10
6304.99.15	6304.99.20	6304.99.40	6304.99.60
6307.10.20	6307.90.90	7019.20.10	9404.90.90
9505.10.25	9505.10.50	9505.90.00	

[FR Doc. 89–20731 Filed 9–1–89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an amended export trade certificate of review, application no. 87–2A001.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to American Film Marketing Association on April 10, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on April 17, 1987 (52 FR 12578).

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 87–00001 was issued to American Film Marketing Association ("AFMA") on April 10, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on April 17, 1987 (52 FR 12578).

AFMA has amended its Certificate to:

1. Add each of the following companies (but not their controlling entities) as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2 (1)): Angelika Films, Inc., New York, NY; Bandcompany, Los Angeles, CA: Cinetrust Entertainment Corp., Los Angeles, CA; Esquire Films, Inc., Burbank, CA; Film & Television Company, Beverly Hills, CA; Filmstar, Inc., Los. Angeles, CA; Golden Harvest/Golden Communications, Beverly Hills, CA (controlling entity: Golden Communications); International Film Exchange, New York, NY; Morgan Creek International, Los Angeles, CA (controlling entity: Morgan Creek Film Productions, Inc.); Odyssey/Cinecom Int'l., Los Angeles, CA (controlling entity: Odyssey Entertainment Ltd.); Premiere Film Marketing, Beverly Hills, CA; Silver Star Film Corp., Los Angeles, CA; Sugar Entertainment Inc., Encino, CA; Tom Parker Motion Pictures, Tarzana, CA; and Vidmark Entertainment, Santa Monica, CA;

2. Delete each of the following companies as a "Member" of the Certificate: Globe Export Company; and Vista Organization Partnership.

3. Change the listing of the company name of the following two current "Members" as follows: change Cannon International, Inc. to Pathe Films, N.V.; and F/M Entertainment Int'l. Inc./The Norkat Company to The Norkat Co. Ltd.

Effective date: May 31, 1989.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: August 29, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89–20796 Filed 9–1–89; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

Business Development Center Applications; Minneapolis/St. Paul, MN

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-federal contributions for the budget period February 1, 1990 to January 31, 1991. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Minneapolis/St. Paul geographic service area. The award number of this MBDC will be 05–10–90001–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDC funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project costs through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is October 10, 1989. Applications must be postmarked on or before October 10, 1989.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353–0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be outlined at the above address.

Catalog of Federal Domestic Assistance; 11.800 Minority Business Development

David Vega,

Regional Director, Chicago Regional Office.

Dated: August 29, 1989.

[FR Doc. 89–20713 Filed 9–1–89; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and the Council's Administrative Committee will meet September 26–28, 1989, at the Hotel Villa Parguera, Lajas, Puerto Rico.

The Council will hold its 67th regular public meeting to discuss, among other topics, the results of the first round of public hearings on the draft Queen Conch Fishery Management Plan (FMP), the request for emergency action on the red hind closure, and the Option Paper for Amendment #1 to the Shallowwater Reef Fish FMP. The approximate schedule for the Council's meeting is September 27, 1989, from 9 a.m. to 5 p.m., and September 28 from 9 a.m. to noon.

The Caribbbean Council's Administrative Committee will meet September 26 from approximately 2 p.m. to 5 p.m., to discuss the Council's regular administrative matters.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: (809) 766–5926.

Dated: August 25, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–20716 Filed 9–1–89; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will meet September 11–14, 1989, at the Crowne Plaza Holiday Inn, 333 Poydras, New Orleans, LA. Except as noted below, the meetings are open to the public.

The Council will meet September 13 at 8:30 a.m. From 8:45 a.m. to 9:15 a.m., it will hear public comments on the Red Drum Fishery Management Plan (FMP), and review committee recommendations. From 9:45 a.m. to 10:15 a.m., it will hear public comments on Mackerel Amendment #3, take action on the amendment, review Draft Amendment #5 and schedule public hearing locations. It will also review Draft Amendment #1 to the Swordfish FMP, schedule public hearing locations, and receive a summary report of the swordfish session of the International Commission for the Conservation of Atlantic Tuna. There also will be reports from the Intercouncil Billfish, Ad Hoc Limited Entry, and Advisory Panel (AP) Selection Committees. (The AP Selection Committee session will be closed to the public to discuss personnel matters.) The meeting will recess at 5 p.m.

On September 14 the Council will reconvene at 8:30 a.m., to review the Law Enforcement Committee report. From 8:45 to 9:15 a.m., it will hear public testimony on Shrimp Amendment #4 and review committee recommendations; it will also discuss proposed 1990 Council meeting dates, receive enforcement reports, review the status of the Shark FMP and Gulf amendment, receive a tuna hearing summary and Director's reports, review the notice of control date for reef fish, and elect a Chair and Vice-Chair. The Council meeting will adjourn at 11:30 a.m.

On September 11 the Mackerel Management Committee will meet from 1 p.m. to 5:30 p.m. On September 12 the Red Drum Management Committee will meet at 8:30 a.m., followed by meetings of the Limited Entry and the AP Selection Committees. (The AP Selection Committee session will be closed to the public to discuss personnel matters.) Adjournment will be at noon. At 1 p.m., the Shrimp Management Committee will meet, followed by a meeting of the Swordfish Management Committee which will adjourn at 5:30 p.m. In another public session, the Law Enforcement Committee will meet at 2:30 p.m., and will adjourn at 4:30 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: August 25, 1989.

Council, 1825 Connecticut Ave., NW

agriculture committees and the

Done at Washington, DC, this 25th day of

only in the implementation of certain of

charges of 0.298 kilograms, for goods

Dated: August 25, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-20717 Filed 9-1-89; 8:45 am]

BILLING CODE 3510-22-M

National Fish and Seafood Promotional Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

TIME AND DATE: The meeting will convene at 8:00 a.m. on Tuesday, September 19, 1989 and adjourn approximately 4:00 p.m. on Wednesday, September 20, 1989.

PLACE: Periwinkle Gardens Hotel, 575 Sterling Highway , Homer, AK 99603.

STATUS: NOAA announces a meeting of the National Fish and Seafood Promotional Council (NFSPC). The NFSPC, consisting of 15 industry members and the Secretary of Commerce as a non-voting member, was established by the Fish and Seafood Promotion Act of 1986 to carry out programs to promote the consumption of fish and seafood and to improve the competitiveness of the U.S. fishing industry.

The NFSPC is required to submit an annual marketing plan and budget to the Secretary of Commerce for his approval that describes the marketing and promotion activities the NFSPC intends to carry out. Funding for NFSPC activities is provided for through Congressional appropriations.

MATTERS TO BE CONSIDERED

September 19, 1989

8:00 a.m.–3:00 p.m.—Chairman's opening remarks; approval of minutes from last meeting; Operations Committee budget recommendations and discussion; regional implementation meetings review; advertising and public relations updates; media review/preview; discussion of FY 1990 marketing plan.

September 20, 1989

8:30 a.m.–4:00 p.m.—Executive Director's update; Committee reports; Discussion on International Seafood Conference, trade shows, advertising achievement award program, omnibus consumption study, Astoria, Oregon project, species-specific councils update, 1990 American Seafood Challenge, and future Council options.

PORTION CLOSED TO THE PUBLIC: None.

FOR FURTHER INFORMATION CONTACT: Jeanne M. Grasso, Program Manager, National Fish and Seafood Promotional Council, 1825 Connecticut Ave., NW., Suite 618, Washington, DC 20235. Telephone: 202-673-5237.

Dated: August 24, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 89-20702 Filed 9-1-89; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION FOR THE IMPROVEMENT OF THE FEDERAL CROP INSURANCE PROGRAM

Under the Federal Crop Insurance Commission Act of 1988 (7 U.S.C. 1508 note), notice is hereby given of the following meeting of the Commission for the Improvement of the Federal Crop Insurance Program:

Date: September 12–13, 1989.

Time: 1:00 p.m.—5:30 p.m., September 12, 1989. 8:00 a.m.—5:30 p.m., September 13, 1989.

Place: Embassy Suites Hotel, 1250 22nd Street NW., Washington, DC 20037; Telephone: (202) 857-3388.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To review the extent to which the Commission's recommendations for improvements in the Federal crop insurance program have been implemented; to draft the Commission's September monthly report; to consider other possible recommendations to improve the program; and to consider any other item of business necessary for the effective functioning of the Commission.

At this meeting, the Commission will be reviewing the extent to which its recommendations for improvements in the Federal crop insurance program are being implemented.

In April 1989, the Commission submitted an interim report to the congressional agriculture committees and the Secretary of Agriculture. The report sets forth the Commission's findings and recommendations for immediate administrative improvements in the Federal crop insurance program that it believes would foster increased participation by farmers. The Commission's findings and recommendations fall into four general categories: (1) Increased responsiveness to producer needs; (2) broadening participation; (3) program simplification; and (4) improvement of delivery system performance.

The Commission recently submitted its principal report to the congressional agriculture committees and the Secretary. In addition to recommendations for administrative improvements in the Federal crop insurance program, the report—which is dated July 1989—includes recommendations for legislation and a status report on the improvement of program administration by the Secretary based on the recommendations made by the Commission in the April report. The recommendations and findings of the Commission contained in the July report fall into four general categories: (1) Increased responsiveness to producer needs; (2) broadening participation; (3) program simplification; and (4) improved program administration.

Under the Federal Crop Insurance Commission Act of 1988, the Commission is charged with the responsibility of continuing to monitor the Federal crop insurance program and reporting on a monthly basis, through December 31, 1990, to the congressional agriculture committees and the Secretary on (1) the extent to which the recommendations of the Commission have been implemented, and (2) the level of participation in the program by producers.

The Commission considers the continued monitoring and monthly reporting a very serious responsibility. In addition to meeting the statutory requirements, the Commission intends to use the monthly reporting process as a means of furnishing the congressional agriculture committees and the Secretary with any additional recommendations it may develop on ways to improve the program.

The Commission also intends to study and analyze the recommendations contained in the April report and the July report and furnish the congressional agriculture committees and the Secretary, through the monthly reporting process, with any views or comments it may develop with respect to such recommendations.

Accordingly, at this meeting, the Commission will be reviewing the extent to which its recommendations are being implemented; drafting the Commission's September report; and considering other possible recommendations to improve the Federal crop insurance program. The Commission will also consider any other item of business necessary for the effective functioning of the Commission.

Contact Person: Kellye A. Eversole, Executive Director, Commission for the Improvement of the Federal Crop Insurance Program, 1255 23rd Street, NW., Suite 880, Washington, DC, 20037. Telephone: (202) 887-6700.

Done at Washington, DC, this 25th day of August 1989.

Benjamin I. Baker,

Acting Executive Director.

[FR Doc. 89-20872 Filed 9-1-89; 8:45 am]

BILLING CODE 4310-[illegible]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits, Sublimits and Charges for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

August 30, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits, sublimits and charges.

EFFECTIVE DATE: September 6, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits and sublimits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9461. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits and sublimits for certain categories are being increased for carryover and recrediting of carryforward not used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 52461, published on December 28, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 30, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on September 6, 1989, the directive of December 22, 1988 is amended further to increase the limits and sublimits for the following categories, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and the United Mexican States:

Category limits not in a group	Adjusted 12-month limit [1]
201-C/669-C [2]	1,334,242 kilograms.
334	82,382 dozen.
336/636	211,070 dozen.
340/640	423,576 dozen.
341/641	789,032 dozen of which not more than 285,600 dozen shall be in Categories 342-Y/641-Y. [3]
347/348/647/648	4,412,250 dozen.
349/649	2,941 dozen.
351/651	340,647 dozen.
352/652	2,864,451 dozen.
604-A [4]	680,715 kilograms.
604-O/607-O [5]	1,937,991 kilograms.
669-B [6]	625,050 kilograms.
Non-Special Regime Category Sublimits [1]	
340/640	105,894 dozen.
347/348/647/648	529,764 dozen.
349/649	588,300 dozen.
351/651	51,097 dozen.
352/652	1,289,003 dozen.

[1] The limits and sublimits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Categories 201-C/669-C, only HTS numbers 5607.41.3000, 5607.49.1500, 5607.49.2500, 5607.50.2000 and 5607.90.2000 in Category 201-C; and 5607.49.3000 and 5607.50.4000 in Category 699-C.

[3] In Categories 341-Y/641-Y, only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030 in Category 341-Y; and 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025 in Category 641-Y.

[4] In Category 604-A, only HTS number 5509.32.0000.

[5] In Category 604-O, all HTS numbers except 5509.32.0000; and in Category 607-O all HTS numbers except 5509.53.0030 and 5509.53.0060.

[6] In Category 669-B, only HTS numbers 6305.31.0020 and 6305.39.0000.

Also effective on September 6, 1989, you are directed to deduct 3,266 kilograms, for goods exported in 1988, from the current charges made to Category 459. Import charges of 6,286 kilograms, for goods exported in 1988, shall be charged to the 1988 limit established in the March 7, 1988 directive for Category 459.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 89-20723 Filed 9-1-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, October 3, 1989; Tuesday, October 10, 1989; Tuesday, October 17, 1989; Tuesday, October 24, 1989; and Tuesday, October 31, 1989 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and priviledged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D284, The Pentagon, Washington, DC 20301.

Dated: August 29, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–20701 Filed 9–1–89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Air Force Academy Board of Visitors; Meeting

Pursuant to section 9355, Title 10, United States Code, the Air Force Academy Board of Visitors will meet at the Air Force Academy, Colorado Springs, Colorado, October 12–14, 1989. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

This meeting will be closed to the public to discuss matters analogous to those listed in subsections (2), (4), and (6) of section 552b(c), Title 5, United States Code. These closed sessions will include: attendance at cadet classes and panel discussions with groups of cadets and military staff and faculty officers involving personal information and opinions, the disclosure of which would result in a clearly unwarranted invasion of personal privacy. Closed sessions will also include executive sessions involving discussions of personal information, including financial information, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Meeting sessions will be held in various facilities throughout the cadet area.

For further information, contact Major Tim Taylor, Headquarters, US Air Force (DPPA), Washington, DC 20330–5060, at (202) 697–2919.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–20719 Filed 9–1–89; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Advisory Committee on Nuclear Facility Safety; Open Meeting; Agenda Change

On Tuesday, August 22, 1989, at page 34810 of **Federal Register** Vol. 54, No. 161; the Advisory Committee on Nuclear Facility Safety announced an open meeting being held on Wednesday, September 6, 1989 from 8:30 am to 10:00 pm, and Thursday, September 7, 1989 from 8:30 am to 3:00 pm at the U.S. Department of Energy, Savannah River Site, Aiken, South Carolina. In order to provide for the fullest participation of committee members in the scheduled meeting, the agenda item regarding the Waste Isolation Pilot Plan (WIPP) has been moved from September 7 to September 6. The overall agenda for both days, including the revision, is as set forth below.

Tentative Agenda

September 6, 1989

8:30 am—Chairman John F. Ahearne Opens Meeting. Review of Reactor Restart Plan
Noon—Lunch
1:00 pm—Review of Reactor Restart Issues. Status Report on Waste Isolation Pilot Plant
5:30 pm—Meeting Adjourned
8:00 pm–10:00 pm—Public Comment Session

September 7, 1989

8:30 am—Review of Reactor Restart Issues (Continued). Subcommittee Reports
12:00 noon—Lunch
1:00 pm—Review of Selected Technical Issues
3:00 pm—Meeting Ends.

Contact: Wallace R. Kornack, Executive Director, ACNFS, S–2, 1000 Independence Ave., SW., Washington, DC 20585, 202–586–1770.

Issued at Washington, DC on August 30, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89–20629 Filed 8–30–89; 5:01 pm]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted to the Office of Management and Budget for review.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before October 5, 1989. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, 1000 Independence Avenue SW., Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION:

The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–16A
3. 1902–0105
4. Monitoring (Omnibus) Report (stand-by authority)
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for profit
9. 1 respondent
10. 1 response annually
11. The estimated average hours per response for each of the respondents is 1 burden hour.
12. The estimated total reporting burden is 1 hour.
13. Stand-by authority to collect information needed to ensure that the FERC has timely information available with respect to the natural gas supply outlook for the upcoming winter period and to identify potential areas where shortages may exist or develop.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–574
3. 1902–0116
4. Gas Pipeline Certificates—Hinshaw Exemption
5. Extension
6. One-time filing
7. Required to obtain or retain a benefit
8. Businesses or other for profit
9. 1 respondent
10. 1 response annually
11. The estimated average hours per response for each of the respondents is 245 burden hour.
12. The estimated total reporting hours are 245.
13. The FERC–574 data are used by the Commission in assessing applications for exemption from certain provisions of the NGA by companies engaging in the transportation or sale for resale of natural gas in interstate commerce.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law No. 93–275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790(a).

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89–20788 Filed 9–1–89; 8:45 am]

BILLING CODE 6450-01-M

Form EIA–6, Coal Distribution Report

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of proposed revision of the Form EIA–6, Coal Distribution Report and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly addressed. Currently EIA is soliciting comments concerning the proposed revision to the Form EIA–6, Coal Distribution Report.

DATE: Written comments must be submitted within 30 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESS: Send comments to Mr. Bruce F. Quade, EI–521, Mail Stop 2G090, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6868.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the form and instructions should be directed to Mr. Bruce F. Quade at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Requests for Comments

I. Background

In order to fulfill its responsibilities under the Department of Energy Organization Act (Public Law 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resources, reserves, production, demand, and technology, and related economic and statistical information. The program will also include data and information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

Form EIA–6 collects coal production, stock and shipment data from U.S. coal producers and distributors. The data collected on Form EIA–6 are used by the Federal government to support economic analysis of the coal and transportation industries, for analyses of the impacts of regulatory and legislative initiatives, for publication of timely coal statistics for use by the Congress and Federal agencies, and in the private sector to conduct market assessments and other economic analysis.

II. Current Actions

The proposed change to the EIA–6 is a revision of the existing survey with no change in the expiration date. Starting with 1990 data submissions beginning in April 1990, EIA–6 respondents will report by coal-producing State of origin instead of by the coal-producing District and State of origin.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed revision. The following general guidelines are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficent? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average 2.5 hours per response. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained on Form EIA–6.

Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval of the form; they also will become a matter of public record.

Authority: Sec. 5(a), 5(b), 13(b), and 52 of Public Law 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b) and 790a.

Issued in Washington, DC, August 29, 1989.

Yvonne Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 89–20789 Filed 9–1–89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP88–178–000 and CP88–178–001]

Indiana Ohio Pipeline Co.; Intent To Prepare an Environmental Assessment for the Indiana Ohio Project and Request for Comments on Environmental Issues

August 29, 1989.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced dockets for the Indiana Ohio Project.

Indiana Ohio Pipeline Company (Indiana Ohio) is seeking a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act and 18 CFR part 157, subpart E to construct and operate 110.72 miles of 30-inch-diameter natural gas pipeline and appurtenant facilities. The proposed facilities would be used to transport natural gas from Panhandle Eastern Pipe Line Company's (Panhandle) mainline system in Grant County, Indiana to Texas Eastern Transmission Corporation's (Texas Eastern) mainline system in Warren County, Ohio. The purpose of the Indiana Ohio Project is to provide an interconnecting pipeline link between the midcontinent gas supplies and the downstream facilities serving Northeast and Middle Atlantic markets.

By this notice the FERC staff is requesting comments on the scope of the analysis that should be conducted for the EA. All comments will be reviewed prior to publication of the EA and significant issues will be addressed. Comments should focus on potential environmental effects, alternatives to the proposal (including alternative routes), and measures to mitigate environmental impact. Written comments must be submitted by October 2, 1989, in accordance with the instructions provided at the end of this notice.

Proposed Action

On January 15, 1988, Indiana Ohio filed an application with the FERC in Docket No. CP88–178–000 to construct 110 miles of new 20-inch-diameter pipeline, a new 6,000-horsepower compressor station, and metering and related facilities with a design capacity of 200,000 Mcf (thousand cubic feet) of gas per day. However, on August 15, 1989, Indiana Ohio filed an amendment (Docket No. CP88–178–001) that changed the diameter of the proposed pipeline from 20 to 30 inches, deleted the 6,000-horsepower compressor station, and modified the pipeline route. All of these facilities would be owned and operated by Indiana Ohio, a wholly owned and operated subsidiary of Panhandle Eastern Corporation.

Proposed Facilities

The general location of the proposed pipeline is shown in figure 1.[1] The 30-inch-diameter, 110.72-mile-long pipeline would originate from Panhandle's Zionsville 7-gate valve, located about 4.7 miles south-southeast of Gas City, Indiana, and cross Grant, Delaware, and Randolph Counties, Indiana, and Darke, Preble, Montgomery, and Warren Counties, Ohio. The route would parallel existing pipeline, railroad, powerline and road rights-of-way for about 60 percent of its length and terminate at Texas Eastern's Lebanon Compressor Station, located about 2 miles north of Lebanon, Ohio.

Indiana Ohio proposes to use a 66-foot-wide construction right-of-way at most locations along the route. Larger work areas would be required at some road, railroad, stream, and wetland crossings. Indiana Ohio seeks to maintain a 66-foot-wide permanent right-of-way for the life of the project.

Indiana Ohio's metering facilities would be located at milepost 110.72 within Texas Eastern's existing Lebanon Compressor Station. No additional land would be required.

Construction Timing and Techniques

The proposed facilities would be constructed and operated in accordance with all applicable regulations. These include: 49 CFR part 192—Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 18 CFR 2.69—Guidelines to be Followed by Natural Gas Pipeline Companies in the Planning, Clearing, and Maintenance of Rights-of-Way; and other applicable Federal, state, and local regulations and permit requirements.

If authorized, construction of the proposed project may occur in the warm weather months of 1990 and take about 4 months to complete.

Pipeline construction would begin with surveying. Then clearing and grading of a 66-foot-wide construction right-of-way would occur, in most locations, to prepare a relatively level strip to accommodate construction equipment. Rotary-wheel ditching machines, backhoes, clamshells, draglines, or other similar equipment would be used to excavate a trench deep enough to provide a minimum of 3.5 feet of cover, except for stream, river, road, and railroad crossings which would have about 5 feet of cover. Blasting would be required when areas of unrippable consolidated rock are encountered. As proposed, topsoil would be removed and conserved on all cultivated and improved lands if requested by the landowner.

After trenching, pipe segments would be strung along the right-of-way, bent to conform to the contours of the trench, welded together, coated, and lowered into the trench. Backfilling of the trench would use suitable previously excavated materials (no rock over 8 inches in diameter) or imported materials where necessary. Conserved topsoil would be replaced at approximately its original position. The right-of-way would be restored to its original contours as much as practicable, and reseeded, limed, fertilized and mulched in accordance with an erosion and sediment control plan that will be reviewed by the FERC staff.

Special construction methods would be employed across wetlands, rivers, and streams to provide stable work areas and to restore vegetation and prevent changes in drainage patterns. Small streams would be trenched using a backhoe, dragline or clam dredge. For major river crossings, a barge-mounted backhoe, hydraulic suction dredge or directional drilling may be employed. Staging areas for stream and wetland crossings would be located back from the waterline. Construction methods for crossing small wetlands would be similar to those used on dry land. Construction in large wetland areas would employ the "push-pull" technique where flotation devices are attached to the welded pipeline, the pipeline is pushed or pulled into place over the excavated trench, the floats are removed and the pipe settles to the bottom of the trench, and the trench is backfilled and the original wetland contours are restored.

Environmental Issues

Based on preliminary analysis of the application, pipeline route, and the environmental information provided by the applicant, the FERC staff has identified the following issues which will be addressed in the EA:

Soils and Geology.	Erosion control and revegetation.
	Effect on crop production and farmland.
	Effects of blasting and geologic hazards.
	Impact on exploitable mineral resources.
Water Resources..	Effects on potable water supplies.
	Impact on streams.
Vegetation.............	Impact on wetlands.
	Short- and long-term effects on vegetation.
Wildlife..................	Impact on fisheries.
	Impact on threatened and endangered species.
Cultural Resources.	Effect of the project on properties listed on or eligible for the National Register of Historic Places.
Land Use/ Aesthetics.	Impact on homes, future development, and public recreation areas.
	Impact on nature preserves, parks, and public lands.
	Effect of the right-of-way on scenic areas.
Pipeline Safety......	Possibility of pipeline rupture.
	Blasting in populated areas.

Alternatives, route modifications, and specific mitigating measures will also be considered in the staff's analysis. Comments are solicited on any additional topics of environmental concern to residents and others in the project area. After comments from this notice are received and analyzed and the various issues investigated, the staff will publish an EA for the Indiana Ohio Project.

Comment Procedure

A copy of this notice and request for comments on environmental issues has been sent to Federal, state, and local environmental agencies, parties in this proceeding, public interest groups, libraries, newspapers, and other interested individuals. All counties in the project area, and all townships which are traversed by the proposed pipeline have been provided copies of detailed maps which identify the location of the proposed project in their respective areas.

Comments on the scope of the EA should be filed as soon as possible but no later than October 2, 1989. All written comments must reference Docket No. CP88–178–001 and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. Kenneth Frye, Project Manager, Federal Energy Regulatory Commission, Room 7312M, 825 North Capitol Street, NE., Washington, DC 20426. Comments recommending that the FERC staff address specific environmental issues should be supported with a detailed explanation of the need to consider such issues.

The EA will be based on the FERC staff's independent analysis of the proposal and, together with the comments received, will be a part of the record to be considered by the Commission in this proceeding. The EA will be sent to all parties in this proceeding, to those providing comments in response to this notice, to Federal and state agencies, and to interested members of the public. The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Additional information about the proposal, including detailed route maps for specific locations, is available from Mr. Kenneth Frye, Project Manager, telephone (202) 357–8898.

Lois D. Cashell,

Secretary.

[FR Doc. 89–20703 Filed 9–1–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89–460–000, CP89–1851–000]

Pacific Gas Transmission Co., Altamont Gas Transportation Project; Notification of Schedule For Public Scoping Meetings on Environmental Issues To Be Addressed in the Joint Draft Environmental Impact Report Statement

August 29, 1989

The staff of the Federal Energy Regulatory Commission (FERC) hereby announces the schedule of public scoping meetings to be held jointly with the California Public Utility Commission (CPUC). The meetings will be conducted to identify the scope and significance of environmental impact associated with two proposals to transport natural gas between Canada and southern California for use by various local distribution companies and utilities. The attachment lists the locations, dates, and times of the meetings.

On August 8, 1989, the FERC staff issued a notice of intent to prepare a draft environmental impact report/statement and request for comments on its scope for the projects proposed in the dockets listed above (54 FR 33272). This notice stated that the CPUC is working with the FERC staff to produce a joint environmental impact document and contained brief descriptions of the actions proposed, general location maps, and information on comment procedures. Proposed locations for public scoping meetings were noted, and the public was afforded an opportunity to comment and/or nominate additional locations. The attachment to this notice finalizes the times, dates, and locations of the scoping meetings for these proposals.

As referenced in the August 8, 1989 notice, the public scoping meetings are intended as an opportunity for state and local governments and the general public to provide information and assistance directly to the FERC and CPUC staffs in defining the range of environmental issues and concerns that need to be addressed in the impact analysis. As previously stated, Federal agencies with an interest in these proposals have formal channels for input into the analysis and are expected to coordinate their comments through the lead Federal agency outside the public meeting mechanism.

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[1] Figure 1 is not being printed in the Federal Register, but copies are available from the Commission's Public Reference Branch at (202) 357–8118.

Further information concerning the public scoping meetings or about these proposals in general is available from the following individuals:

Ms. Lauren H. O'Donnell, Room 7312, Office of Pipeline and Producer Regulation, Environmental Compliance and Project Analysis Branch, Federal Energy Regulatory Commission, Washington, DC 20426, Telephone (202) 357–8874.

or

Mr. Clyde Murley, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, Telephone (415) 557–4027.

Persons who would like to make oral presentations at the meetings should contact the FERC project manager identified above to have their names placed on the speakers' list. Persons on the speakers' list prior to the date of the meeting will be allowed to speak first. A second speakers' list will be available at the public meeting. Priority will be given to those persons representing groups.

Lois D. Cashell,

Secretary.

Schedule of Joint FERC/CPUC Public Scoping Meetings

Date	Time	Location
Altamont Gas Transportation Project		
Monday, September 18, 1989.	7:00 p.m.	Holiday Inn, North Federal at Sunset, Riverton, Wyoming.
Tuesday, September 19, 1989.	7:00 p.m.	Sheraton Hotel, 27 North 27th Street, Billings, Montana.
PGT/PG&E Expansion Project		
Monday, September 18, 1989.	7:00 p.m.	Antioch City Hall, City Council Chamber, 3rd and H Street, Antioch, California.
Tuesday, September 19, 1989.	7:00 p.m.	Riverhouse Motor Inn, Little Deschutes Room, 3075 North Highway 97, Bend, Oregon.
Wednesday, September 20, 1989.	7:00 p.m.	Ridpath Hotel, Legend Room A, 515 W. Sprague Avenue, Spokane, Washington.

[FR Doc. 89–20704 Filed 9–1–89; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. G–8493–003, et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Co., et al.;

Applications For Certificates and Abandonment of Service[1]

August 28, 1989

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 14, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G–8493–003, B, 8–1–89	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Texas Eastern Transmission Corporation, Various Fields, Hardin, *et al.* Counties, Texas.	Certain leases released. Certain other leases assigned 10–1–86 to Murphy Oil U.S.A., Inc. and 11–8–72 to Norman A. Bock and Douglas E. Bacon.
CI89–482–000, E, 7–19–89	Mitchell Energy Corporation, P.O. Box 4000, The Woodlands, TX 77387–4000.	Natural Gas Pipeline Company of America, Wise and Jack Counties, Texas.	Acreage acquired 3–1–88 from Gerald Rauch, Sabio Oil & Gas, Inc. and S.P. Mandell.
CI89–496–000 (CI61–151), F, 7–31–89.	Samson Resources Company, Samson Plaza, Two West Second Street, Tulsa, OK 74103.	Arkla Energy Resources, a division of Arkla, Inc., Manziel Field, Wood County, Texas.	Acreage acquired 11–1–87 from Shell Western E&P Inc.
CI89–497–000, E, 8–7–89	Samson Resources Company	Arkla Energy Resources, a division of Arkla, Inc., Cameron Field, LeFlore County, Oklahoma.	Acreage acquired 12–1–85 from Harold Hamm and Carroll L. Brewer.
CI89–498–000 E, 8–7–89	Samson Resources Company	Arkla Energy Resources, a division of Arkla, Inc., Arkoma Area, Latimer County, Oklahoma.	Acreage acquired 5–5–86 from Amelia R. Josey.
CI89–503–000 (G–16774), B, 8–11–89.	Oryx Energy Company, P.O. Box 2880, Dallas, TX 75221.	El Paso Natural Gas Company, Blali Lower Gallup Field, San Juan County, New Mexico.	Non-productive acreage.
CI89–504–000 (CI67–12435, B, 8–11–89.	Oryx Energy Company	El Paso Natural Gas Company, Gallegos Canyon, *et al.* Fields, San Juan County, New Mexico.	Non-productive acreage.
CI89–505–000 (CI66–103), B, 8–11–89.	Oryx Energy Company	Transwestern Pipeline Company, Bell Lake Field, Lea County, New Mexico.	Non-productive acreage.
CI89–506–000 (G–13748), B, 8–11–89.	Oryx Energy Company	Texas Eastern Transmission Corporation, Hidalgo Field, Hidalgo County, Texas.	Non-productive acreage.
CI89–507–000 (CI61–372), B, 8–11–89.	Oryx Enirgy Company	Transwestern Pipeline Company, Kermit South Field, Winkler County, Texas.	Well abandoned in 1985.
CI89–515–000 E, 8–17–89	Sonat Exploration Company, P.O. Box 1513, Houston, TX 77251–1513.	Natural Gas Pipeline Company of America, North Beckville Field, Panola County, Texas.	Acreage acquired 6–1–88 from /Thomas D. Barrow, John T. Neal, and B and N Petroleum, Inc.

A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of areage; E—Succession; F—Partial Succession.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[FR Doc. 89–20705 Filed 9–1–89; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3640–4]

Financial Assistance Program for Review Under 40 CFR Part 29

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and review.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a new financial assistance program (66.032 "State Indoor Radon Grants") to provide financial support to States (including the District of Columbia and the U.S. Trust Territories) for the purpose of assisting States in the development and implementation of programs for the assessment and mitigation of radon. The program is authorized by the Toxic Substances Control Act, (15 U.S.C. 2601 et seq.), under Title III, the Indoor Radon Abatement Act (15 U.S.C. 2661 *et seq.*).

DATES: States choosing to include this program in their intergovernmental review process must notify EPA on or before October 5, 1989. On or before September 22, 1989, States should notify EPA of their intent to apply for assistance under this program. Letters of intent should include proposals for innovative projects, if applicable. Completed applications must be received by EPA no later than December 15, 1989, to be considered for award.

ADDRESSES: Letters of intent, applications, and intergovernmental review comments on applications should be sent to the appropriate EPA Regional Grants Management Office:

Program Planning & Integration Branch, EPA—Region I, John F. Kennedy Federal Bldg, Room 2203, Boston, MA 02203
Grants Administration Branch 2MGT, EPA—Region II, 26 Federal Plaza, New York, NY 10278
Grants & Audit Resolution Branch, EPA—Region III, 841 Chestnut Street, Philadelphia, PA 19107
Grants and Contracts Section, EPA—Region IV, 345 Courtland Street, NE., Atlanta, GA 30365
Grants & Financial Management Branch 5MF, EPA—Region V, 230 South Dearborn Street, Chicago, IL 60604
Program Planning & Intergration Branch 6MG, EPA—Region VI, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75270
Program Integration Branch, EPA—Region VII, 726 Minnesota Avenue, Kansas City, KS 66101
Grants Management Branch 8PM–GM, EPA—Region VIII, 999 18th Street, Suite 500, Denver, Co 80202–2405
Policy and Grants Branch M5, EPA—Region IX, 215 Fremont Street, San Francisco, CA 94105
Comptroller Branch, EPA—Region X, 1200 Sixth Avenue, Seattle, WA 98101.

Letters indicating State intent to participate in intergovernmental review should be sent to EPA on or before October 5, 1989 at the following address: Grants Policy and Procedures Branch, Grants Administration Division (PM–216F), 401 M Street SW., Washington DC, 20460, Attention: Corinne Allison.

FOR FURTHER INFORMATION CONTACT EPA REGIONAL RADIATION PROGRAM MANAGERS:

EPA—Region I, Thomas D'Avanzo, (617–565–4502)
EPA—Region II, Larainne Koehler, (212–264–0546)
EPA—Region III, Hank Sokolowski, (215–597–9075)
EPA—Region IV, Paul Wagner, (404–347–3907)
EPA—Region V, Patricia A.J. York, (312–886–6035)
EPA—Region VI, Terrie DeLorimier, (214–655–7208)
EPA—Region VII, Carl Walter (913–236–2893)
EPA—Region VIII, Milton Lammering, (303–293–1709)
EPA—Region IX, Mike Bandrowski, (415–974–8378)
EPA—Region X, Jerry Leitch, (206–442–7660).

SUPPLEMENTARY INFORMATION:

Under the authority of section 306 of the Indoor Radon Abatement Act (IRAA, 15 U.S.C. 2666) (EPA may award grants to State agencies for the State Indoor Radon Grant (SIRG) program. This program is eligible for intergovernmental review under Executive Order 12372 (E.O. 12372). States must notitify the Grants Policy and Procedures Branch, listed under **ADDRESSES** above, whether or not applications for the SIRG program will be subject to their State's official E.O. 12372 review process.

Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out if their applications for this program are subject to their State's official E.O. 12372 review process. If subject to their State's E.O. 12372 review process, then the applicant must submit their application or any other material required by their State to their SPOC for review. SPOCs should send their official intergovernmental review comments on an application to the appropriate EPA Regional Grants Management Office listed under **ADDRESSES** above, no later than 60 days after the receipt of the application/other required for review.

State Indoor Radon Grants

Purpose

The State Indoor Radon Grant Program (SIRG), authorized by section 306 of IRAA (15 U.S.C. 2666) through Fiscal Year 1991, allows the governor of a State to apply to EPA for assistance in the development and implementation of programs for the assessment and mitigation of radon. The governor of a State must designate a lead agency to represent the State, as specified by section 306(b) of IRAA (15 U.S.C. 2666(b)). Eligible State applicants, as defined by section 3 of the Toxic Substances Control Act (15 U.S.C. 2602(13)), include: any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States. Therefore, the term "State" as used in this notice shall include the States, the District of Columbia, and the U.S. Trust territories, as defined above. States may, at their discretion, use grant funds to assist local governments for certain eligible activities pursuant to section 306(g) of IRA (15 U.S.C. 2666(g)).

Section 306(f) of IRAA (15 U.S.C. 2666(f)) states that the Federal cost share of radon program activities implemented under the SIRG program shall not exceed 75% and 60% in the first and second grant year, respectively. Thus, States must provide a non-Federal cost share of at least 25% in the first grant year of participation in the SIRG program, and at least 40% in the State's second grant year. Section 306(h) of IRA (15 U.S.C. 2666(h)) states that EPA may request information, data, and reports as necessary to determine the continuing eligibility of a State recipient. This section also specifies that State recipients shall provide EPA with all radon-related information generated by the recipient's activities, and that State recipients shall maintain and make available to the public a list of firms and individuals within the State that have received a passing rating under the EPA proficiency rating program. Section 306(i) of IRAA (15 U.S.C. 2666(i)) includes the following limitations on the State's use of grant funds:

(1) Before a State can receive funding for a second grant year, EPA must determine that such State has satisfactorily implemented the activities funded by the grant in the previous grant year.

(2) The costs of purchasing radon measurement devices and of implementing demonstration projects (eligible activities (4) and (9) listed below) shall not in the aggregate exceed 50% of the amount of the grant award in a fiscal year. A State should make every effort, consistent with the goals and successful operation of the State radon program, to give a preference to low-income persons.

(3) The costs of general overhead and program adminsitration (eligible activity (7) listed below) shall not exceed 25% of the amount of the grant award in a fiscal year.

(4) A State may use grant funds for financial assistance to persons only to the extent such assistance is related to demonstration projects or the purchase and analysis of radon measurement devices.

Eligible Activities

Under SIRG, the following activities are eligible for funding, as specified by section 306(c) or IRAA (15 U.S.C. 2666(c)):

(1) Survey of radon levels, including special surveys of geographic areas or classes of buildings (such as, among others, public buildings, schools, high risk residential construction types).

(2) Development of public information and educational materials concerning radon assessment, mitigation, and control programs.

(3) Implementation of programs to control radon in existing and new structures.

(4) Purchase by the State of radon measurement equipment or devices.

(5) Purchase and maintennce of analytic equipment connected to radon measurement and analysis, including costs of calibration of such equipment.

(6) Payment of costs of Environmental Protection Agency-approved training programs related to radon for permanent State or local employees.

(7) Payment of general overhead and program administration costs.

(8) Development of a data storage and management system for informationn concerning radon occurrence, levels, and programs.

(9) Payment of costs of demonstration of radon mitigation methods and technologies as approved by EPA, including State participation in the EPA Home Evaluation Program.

(10) A toll-free radon hotline to provide information and technical assistance.

Program Development Framework

The Agency will fund eligible activities that augment (but do not supplant) existing State efforts. EPA has identified four functional areas that together form the framework for the eligible activities specified by IRAA (and described above) to develop an effective, comprehensive State Indoor Radon Program. These functional areas are derived from the document entitled *Key Elements of a State Radon Program* (EPA 520/1–88–006). These four functional areas constitute a model radon program framework:

(1) Program Management: Organization and management activities designed to establish an effective program infrastructure. Examples include strategy development, designation of responsibilities, and implementation of data management systems.

(2) Public Information: Activities which provide basic, up-to-date information to citizens within the State concerning the sources of radon contamination, paths of exposure, health risks, assessment techniques, mitigation methods, and prevention measures.

(3) Problem Assessment: Process of identifying and evaluating areas of potentially significant radon exposure and health risk. Activities in this area may range from conducting isolated measurements in houses and schools to surveying "hot spot" areas and undertaking large, State-wide surveys.

(4) Problem Response: Actions designed to reduce radon exposure and risk to acceptable levels. Problem response encompasses both mitigation of risks in existing homes, schools, and other buildings and preventing radon problems in new structures.

EPA believes that every State should possess, at a minimum, the capacity to identify and respond to its most serious radon problem areas. States are strongly encouraged to complete their basic framework in each of these functional areas prior to (or concurrently with) undertaking more advanced activities. States with more mature programs are encouraged to propose activities that build upon existing efforts in the four functional areas. In some cases, a State may wish to undertake innovative projects which may be of use to other States. Innovative projects would complement the State's basic Indoor Radon Program, and can serve as a model for other States.

Innovative Projects

States may propose projects that have the potential for development of innovative approaches to reducing public health risk from radon. Projects funded from this pool should be useful as models either on a national or regional scale and have the potential to be adopted by other States. Project proposals may be submitted under any of the functional program areas identified in the model program framework (described above) for any of the activities described under Eligible Activities. States interested in implementing innovative projects should call the EPA Regional Radiation Program contacts listed under **FOR FURTHER INFORMATION** above for assistance in developing brief proposals. Interested States should then submit these proposals with their letter of intent no later than September 22, 1989 to the appropriate EPA Regional Grants Management Office listed under **ADDRESSES** above.

Funding

As specified in section 306(j) of IRAA (15 U.S.C. 2666(j)), up to $10,000,000 is authorized for SIRG for Fiscal Year 1990, and no more than 10% of the total amount available may be awarded to a single State. If State applications exceed the total funds available, EPA will give priority to activities or projects based on each of the following criteria specified

by section 306(e) of IRAA (15 U.S.C. 2666(e)):

(1) The seriousness and extent of the radon contamination problem to be addressed.

(2) The potential for the activity or project to bring about reduction in radon levels.

(3) The potential for development of innovative radon assessment techniques, mitigation measures as approved by EPA, or program management approaches which may be of use to other States.

(4) Any other uniform criteria that EPA deems necessary to promote the goals of the grant program and that EPA provides to States before the application process.

EPA has established an additional criteria, as authorized by section 306(e)(4):

The potential for the activity to establish a core Indoor Radon Program in all States who wish to participate.

Application Requirements

States who wish to apply for grant assistance under the SIRG program should submit a letter of intent (and brief innovative project proposals, if applicable) to the appropriate EPA Regional Office listed under **ADDRESSES** above by September 22, 1989. States must submit their completed applications to the appropriate EPA Regional Office no later than December 15, 1989.

Each application submitted to EPA for Fiscal Year 1990 grant awards must include the following information (See section 306(b) of IRAA, 15 U.S.C. 2666(b)):

1. Application SF–424: Application for Federal Assistance.
2. EPA Form 5700–49: Certification Regarding Debarment, Suspension, and Other Responsibility Matters.
3. A description of the seriousness and extent of the radon exposure in the State.
4. An identification of the State Agency which has the primary responsibility for radon programs and which will receive the grant, a description of the roles and responsibilities of the lead State agency and any other State agencies involved in the radon programs, and description of the roles and responsibilities of any municipal, district, or areawide organization involved in radon programs.
5. A description of the activities and programs related to radon which the State proposes in such year.
6. A budget specifying Federal and State funding of each element of activity of the grant application.
7. For the initial grant year, a 3-year plan which outlines long range program goals and objectives, tasks necessary to achieve them, and resource requirements for the entire 3-year period, including anticipated State funding levels and desired Federal funding levels.

Dated August 29, 1989.

Margo T. Oge,

Acting Director, Office of Radiation Programs.

[FR Doc. 89–20767 Filed 9–1–89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3636-2]

Proposed Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Adler Seeds, Inc., et al.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into a de minimis settlement under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. Section 9622(g). This proposed settlement is intended to resolve the liabilities under CERCLA of 139 de minimis parties for response costs incurred and to be incurred at the I. Jones Recycling, Clinton Street facility in Fort Wayne, Indiana.

DATE: Comments must be provided on or before (30 days from publication).

ADDRESS: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, and should refer to: In Re I. Jones Recycling Site in Fort Wayne, Indiana, U.S. EPA Docket No. V–W–89C–009.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, 5CS–TUB–3, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–0562.

Notice of De Minimis Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the I. Jones Recycling hazardous waste site at 3651 Clinton Street in Fort Wayne, Indiana. The agreement was proposed by EPA Region V on March 20, 1989. Subject to review by the public pursuant to this Notice, the agreement has been approved by the United States Department of Justice and the Department of the Interior. Below are listed the parties who have executed binding certifications of their consent to participate in the settlement:

Adler Seeds, Inc.; Aeroquip Corp./L–O–F Plastics, Inc./Sterling Engineered Products, Inc.; Group Dekko International, Inc. for Albion Wire/Indiana Insulated Wire; Allen County Motors, Inc.; Stoutco, Inc. for Ameri-Kan Division Corp.; American Tool & Die, Inc.; Appleton Papers Inc.; Aristech Chemical Corp. for USS Chemicals; Morton Thiokol, Inc., for Armstrong Products; ANR Freight System, Inc., for Associated Truck Lines, Inc.; Ball State University; Bard Manufacturing Co., Bauman Harnish Rubber and Plastics, Inc.; Dresser Industries for Bay State Abrasives; Allied-Signal Inc. for Bendix Corp.; Berne Tube Products, Division of Blissfield Manufacturing Co.; Uniroyal Goodrich Tire Co.; Biomet, Inc.; Boehringer Mannheim Diagnostics; Bowman Construction Co., Inc.; Bowmar Instrument Corp., Bowmar/Aerospace Division; Carretta Trucking, Inc.; Huntington County Community School Corp. for Central School; Central Soya Co., Inc.; Chase Brass & Copper Co.; Miami Carey, Inc. for Chemcraft, Inc.; Chemcentral Corp.; Pullman Co. for Imperial Clevite; CMS Roofing, Inc.; Commercial Intertech Corp. for Commercial Shearing, Inc.; Cooper Tire & Rubber Co., Industrial Products Division; Corning Glass Works; Craft Laboratories, Inc.; Crown International Inc.; CTS Corp. for CTS of Berne, Inc.; Baxter Healthcare Corp. for Dayton Flexible Products; Decatur Salvage, Inc.; Swift-Eckrich, Inc. for Peter Eckrich & Sons; Emerson Electric Co. for Doerr Electric; EPCO Products, Inc.; Erie Stone Inc.; Federal Insulation of Indiana, Inc.; Masco Corp. for Flint & Walling, Inc.; FMC Corp.—Fire Apparatus Division; Ford Meter Box Co., Inc.; City of Fort Wayne, Board of Public Works and Safety; Harris-Kayot, Inc. for Fort Wayne Anodizing Division/Harris Manufacturing Corp.; Fort Wayne Community Schools; Fort Wayne Newspapers, Inc.; Fort Wayne Pools, Inc.; Steel & Aluminum Fabricating Co. for Fort Wayne Structural Steel; Frye Copisystems, Inc.; National Oil & Gas, Inc. for Gasway Oil Inc.; G.F. Furniture Systems; Gladieux Refinery Inc.; Grav-I-Flow Corp.; Detrex Corp. for Gold Shield; Gould Inc.; Gripco Fastener Division, Emhart Industries Inc.; Grumman Corp. for Grumman Olson; GTE North Inc.; Hamlin, Inc.; Hansen Manufacturing Co., Inc.; Harrison Engine Service, Inc.; Harter Corp.; Hausman Steel Corp.; Eagle Picher for Hillsdale Tool & Manufacturing Co.; Hoosier Co. Inc.; Johnson Controls, Inc. for Hoover Universal; Easco Aluminum for Indiana

Aluminum Extrusion; Indiana Michigan Power Co.; Interior Woodworking Corp.; ITT Aerospace/Optical Division, ITT Corp.; Ivy Tech; King-Seeley Thermos Co., Division of Household Manufacturing; Kunkle Industries Inc.; Larden Division, Bristol Corp.; Lucas Ledex Inc.; Lincoln Graphic Corp.; Lincoln National Corp.; Maco Corp.; Martin Enterprises, Inc.; Metal Forge Co.; Meyer Stamping and Manufacturing Co., Inc.; FL Aerospace Corp. for Midland Ross Corp.; Miles Inc.; Kim Miller; Milton Roy Co.; Aro Corp. for Modernair Corp.; Morrill Motors, Inc.; Moyer Spring Co.; Sequa Corp. for Muncie Reclamation & Supply; National Railroad Passenger Corp.; Nationwide Industries, Inc.; New York Blower Co.; Nibco Inc.; N.I. Industries, Inc. for Norris Industries; Philips Lighting Co. Division of North American Philips Corp.; North American Van Lines, Inc. and its Fleet Service Division; Universal-Rundle Corp. for Northway Products; University of Notre Dame; Nylon Craft, Inc.; OEC-Diasonics; Parkview Memorial Hospital; Pullman Co. for Peabody ABC Corp.; Phelps Dodge Magnet Wire; Philips Industries Inc./Ventline Division; Petrochem Services, Inc.; Potlatch Corp.; Precision Heat Treating Corp.; Protective Coatings, Inc.; Public Service Company, of Indiana, Inc.; Quality Springs Products Division, Kuhlman Corp.; Rand McNally & Co.; Ransburg Corp.; Minnesota Valley Engineering, Inc. for Richmond-Lox Equipment Co.; Ross Laboratories Division, Abbott Laboratories; Saginaw Medical Center; St. Joseph Medical Center; Salvation Army; Sheller-Globe Corp.; Special Machine & Engineering, Inc.; States Engineering Corp.; Stoutco Inc.; Federal-Mogul Corp. for Switches, Inc.; Du Pont Photomasks, Inc. for Tau Laboratories; TECO, Inc.; Tokheim Corp.; Tritech Manufacturing, Inc. Tube Processing Corp.; Tulox Plastics Corp. for T.L.B. Plastics; Tuthill Corp.; Universal Cooperatives, Inc. for Universal Livestock Equipment; Valspar Corp.; Van Waters & Rogers; Wabash County Hospital; Wayne/Scott Fetzer Co. for Wayne Home Equipment; Westvaco Corp. and Zimmer, Inc.

These 139 parties have prepaid $2,172,038.74 in settlement payments under the agreement, subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice. Of this amount, $1,888,328.05 would reimburse EPA for a portion of its past response costs at the I. Jones Recycling site. The remainder of the settlement payments would represent settlement of the potential liability of certain settling parties for penalties related to EPA's July 27, 1988, unilateral order concerning the site.

EPA is entering into this agreement under the authority of section 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with parties in the I. Jones case who are responsible for less than .45 percent of the volume of hazardous substances at the site. EPA issued a preliminary settlement proposal on February 8, 1989, and invited comments on that proposal by all interested parties. On March 20, 1989, EPA issued final revisions to the proposed settlement, which included several modifications made in response to comments. The EPA also provided its response to major comments which the Agency determined did not require changes to the settlement proposal. The proposed settlement reflects, and was agreed to based on, conditions as known to the parties as of March 20, 1989. Settling parties will be required to pay their volumetric share of the Government's past response costs and the estimated future response costs at the site. Settling parties will also be required to pay a settlement premium on the expected future response costs to compensate for the risks that are posed by settling before all costs are known. Settling parties had the option to choose to pay a premium of approximately 1.5 times the share of expected future response costs in exchange for a release from further civil or administrative liabilities for the site, including Federal natural resource damage liabilities, which would be reopened if total site response costs exceeded $10.5 million. Alternatively, settling parties may choose to pay a premium of approximately 2.5 times the share of expected future response costs in exchange for a complete release from further civil or administrative liabilities for the site, including Federal natural resource damage liabilities. In addition, those settling parties that did not fully comply with the EPA's July 27, 1988, unilateral cleanup order for the I. Jones Recycling Clinton Street site will be required to pay an additional amount, equal to their volumetric share of expected future response costs, in settlement of their potential liability for noncompliance penalties related to that order. The settlement, as it is now proposed, includes several minor adjustments to volumetric shares of settling parties, which adjustments made after the proposal, was sent to all eligible parties on March 20, 1989, in response to additional evidence provided by those parties. The affected parties are: Phelps Dodge Magnet Wire, Imperial Clevite, Gould Manufacturing, Peabody ABC, TECO, Conrail, GTE, Peter Eckrich & Sons, and Parkview Memorial Hospital.

The Environmental Protection Agency will receive written comments relating to this agreement for 30 days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region V Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois, 60604. Additional background information relating to the settlement is available for review at the EPA's Region V Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9601–9675.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–20769 Filed 9–1–89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–59274A; FRL–3640–8]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–89–20. The test marketing conditions are described below.

EFFECTIVE DATE: August 29, 1989.

FOR FURTHER INFORMATION CONTACT: William B. Lee, New Chemicals Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3769.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonably risk of injury.

EPA hereby approves TME–89–20. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–89–20. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–89–20

Date of Receipt: July 19, 1989.

Notice of Receipt: August 18, 1989 (54 FR 34231).

Applicant: Cape Industries.

Chemical: (G) aromatic polyester polyol.

Use: (G) industrial and commercial.

Production Volume: 200,000 lbs.

Number of Customers: (Confidential).

Test Marketing Period: Six months, commencing on first day of manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present an unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions or an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 29, 1989.

John Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 89–20764 Filed 9–1–89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–59274B; FRL–36407]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME–89–21 and TME–89–22. The test marketing conditions are described below.

EFFECTIVE DATE: August 29, 1989.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemical Control Division (TS–794), Office Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, D.C. 20460, (202) 382–2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–89–21 and TME–89–22. EPA has determined that test marketing of these new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–89–21 and TME–89–22. A bill of lading accompanying each shipment must state that the use of the substances are restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–89–21 and TME–89–22

Date of Receipt: July 24, 1989.

Notice of Receipt: August 18, 1989 (54 FR 34231).

Applicant: Confidential.

Chemical: (G) Fatty acid amine-organic salts.

Use: (G) Corrosion Inhibitor.

Production Volume: (Confidential).

Number of Customers: (Confidential).

Test Marketing Period: 1 year, commencing on first day of manufacture.

Risk Assessment: Although EPA identified concerns for toxicity to aquatic organisms, the Agency does not expect significant environmental releases of these test market substances. EPA identified concerns for potential irreversible ocular damage due to workers who may be exposed to the substance, however, the Agency does not believe there will be significant human exposure to the TME substances because periods of potential exposure are anticipated to occur infrequently and in conjunction with the use of safety goggles. Therefore, the test market activities will not present an unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 29, 1989.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 89-20765 Filed 9-1-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59272B; FRL-3640-6]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-89-17. The test marketing conditions are described below.

EFFECTIVE DATE: August 29, 1989.

FOR FURTHER INFORMATION CONTACT: Karen K. Pollard, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460 (202) 475-8993.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-89-17. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-89-17:

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. During manufacturing, processing, and use of the substance at any site controlled by the Company, any person under the control of the Company, including employees and contractors, who may be exposed via inhalation to the substance shall use:

a. Organic vapor respirator with dust prefilter.

3. The applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Records of the quantity of the TME substance produced and the date of manufacture.

b. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

c. Copies of the bill of lading that accompanies each shipment of the substance.

T-89-17

Date of Receipt: June 22, 1989.

Notice of Receipt: July 14, 1989 (54 FR 29779).

Applicant: Confidential.

Chemical: (G) Cross linked starch hydrolyzed acrylonitrile copolymer.

Use: (G) Oil fracturing fluid, thickening agent.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Two year period.

Risk Assessment: EPA identified concerns for delayed lung toxicity to workers exposed via inhalation, based on an analogous chemical substance. However, during manufacturing, processing, and use, this concern will be mitigated with the use of a respirator where there is exposure in the form of a dust or particulate. Therefore, the test market activities will not present an unreasonable risk of injury to health. EPA identified no significant environmental concerns for the test market substance. Therefore, the test market activities will not present an unreasonable risk of injury to the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: August 29, 1989.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 89-20766 Filed 9-1-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3640-3]

Proposed Determination To Prohibit, Restrict, or Deny the Specification, or the Use for Specification, of an Area as a Disposal Site; South Platte River

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: Section 404(c) of the Clean Water Act (CWA) 33 U.S.C. 1344(c), authorizes the Environmental Protection Agency (EPA) to prohibit or restrict the discharge of dredged or fill material at defined sites into waters of the United States whenever it determines, after notice and opportunity for hearing, that use of such sites for discharge would have an unacceptable adverse impact on various resources, including fisheries, recreation areas and wildlife. Pursuant to section 404(c), EPA Region VIII proposes to prohibit or restrict use of the South Platte River in Douglas and Jefferson Counties, Colorado, as a discharge site for fill material in connection with construction of Two Forks dam and reservoir. On behalf of itself and the Metropolitan Water Providers (Providers), the Denver Board of Water Commissioners (DWB) has applied for a 404 permit to construct and operate Two Forks dam and reservoir which would eliminate approximately 30 miles of coldwater stream fishery, approximately 300 acres of wetland, and 7,300 acres of related upland areas. Inundation of the streams, wetlands and upland areas of the site would have an unacceptable adverse effect on fisheries, recreation and wildlife habitat.

Purpose of Public Notice: EPA seeks comments on this proposed determination to prohibit or restrict the discharge of dredged or fill material into the South Platte River in connection with the construction and operation of Two Forks dam and reservoir. See Solicitation of Comments, at the end of this public notice, for further details.

Public Comment: Comments on or requests for additional copies of the proposed determination should be submitted to the EPA Region VIII's designated Record Clerk, Mary Alice Reedy, U.S. EPA, Region VIII, 8WM-SP, 999 18th Street, Suite 500, Denver, CO 80202-2405.

EPA seeks comments concerning the issues enumerated under the Solicitation of Comments at the end of this notice. Copies of all comments submitted in response to this notice, as well as the administrative record to date, will be made available for public inspection during normal working hours (8:00 a.m. to 4:00 p.m.) at the EPA Region VIII office.

In accordance with EPA regulations at 40 CFR 231.4, the Regional Administrator has decided that public hearings on this proposed 404(c) determination would be in the public interest. Mr. Lee A. DeHihns, III, has been appointed the Regional Decision Officer for purposes of any EPA action on Two Forks dam and reservoir pursuant to section 404(c); since Mr. DeHihns has been designated to exercise all such authority of the Regional Administrator for the Two Forks dam and reservoir project, Mr. DeHihns will hereafter be referred to as the Regional Administrator. A separate public notice will be published in advance of the hearings in the **Federal Register** and local newspapers to announce the date, time and location of these hearings and describe the hearing procedures. Written comments may be submitted prior to the hearings, and both oral and written comments may be presented at the hearings.

Because of the scale of the proposed project, the complexity of issues, and the large volume of information which exists about this project, the Regional Administrator hereby determines that good cause exists to establish a comment deadline of November 17, 1989. This will also provide an opportunity for people to visit the site and make their own observations if they wish to do so.

FOR FURTHER INFORMATION CONTACT: Dr. Gene Reetz, EPA, Region VIII, State Programs Branch, 8WM-SP, 999 18th Street, Suite 500, Denver, CO 80202-2405. (303) 293-1570.

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I. Section 404(c) Procedure

The Clean Water Act, 33 U.S.C. 1251 *et seq.*, prohibits the discharge of pollutants, including dredged or fill material, into waters of the United States except under a permit issued pursuant to section 404 33 U.S.C. 1344. Section 404 establishes a federal permit program to regulate the discharge of dredged or fill material subject to environmental regulations developed by EPA in conjunction with the Department of the Army Corps of Engineers (COE).

The COE may issue permits authorizing dredged and fill material discharges into waters and wetlands if the permits comply with, among other things, EPA's section 404(b)(1) Guidelines at 40 CFR Part 230 (herein after "Guidelines"), except as provided in section 404(c). Section 404(c) authorizes EPA, after providing notice and opportunity for hearing, to prohibit or restrict the discharge to waters of the United States where EPA determines that such use would have an unacceptable adverse effect on wildlife or other specified environmental values. EPA, in its discretion, can exercise section 404(c) authority to "veto" a permit the COE has decided to issue.

Regulations published at 40 CFR part 231 establish the procedures to be followed by EPA in exercising its section 404(c) authority. Whenever the Regional Administrator has reason to believe that use of a site may have unacceptable adverse effects on one or more of the pertinent resources, EPA is to notify the COE and the applicant that EPA intends to issue a proposed determination under section 404(c). Unless the applicant or the COE persuades the Regional Administrator within 15 days that no unacceptable adverse effects will occur, the Regional Administrator is to publish a notice in the **Federal Register** of his proposed determination, soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the close of the comment period, the Regional Administrator may withdraw the proposed determination or prepare a recommended determination. A decision to withdraw will be reviewed by the Assistant Administrator for Water at EPA Headquarters. If the Regional Administrator prepares a recommended determination, he forwards it and the complete administrative record to the Assistant Administrator for Water. The Assistant Administrator then makes the final decision affirming, modifying, or rescinding the recommended determination.

II. Project Description and Background

The proposed Two Forks dam would be located on the South Platte River about 1 mile downstream from the confluence of the North Fork of the South Platte with the South Platte River. The dam would straddle the Jefferson-Douglas County line approximately 24 miles southwest of Denver.

The dam would consist of a concrete arch structure approximately 615 feet high with a crest length of 1,700 feet. The normal maximum reservoir pool level would be at an altitude of 6,547 feet. The reservoir would have a surface area of approximately 7,300 acres and provide an active storage capacity of 1,100,000 acre-feet (AF).

Two Forks dam and reservoir would provide long term storage for flows from the South Platte basin upstream from the dam, as well as storage of transmountain water diversions from the west slope of Colorado. Two Forks dam and reservoir storage would allow the Denver Water Department (DWD) to further integrate the northern and southern sections of its water supply system and improve yields from the existing Williams Fork and Fraser River collection systems. The DWB consists of a five-member board appointed by the Mayor of Denver to formulate the water supply and water development policies

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for the City and County of Denver. The DWD is the public utility which implements the DWB policy.

The operation of the proposed reservoir, in conjunction with the rest of the DWD water supply system would result in an estimated 98,000 acre-feet of safe yield per year (AFY) from Two Forks dam and reservoir. The Blue River would supply 42 percent of the safe yield; the South Platte, 33 percent; the Fraser River, 20 percent; and the Williams Fork, 5 percent.

In December 1981, the DWB requested the COE be the lead agency in preparation of the Systemwide Environmental Impact Statement (SEIS). The SEIS was required to meet a stipulation of the 1979 Foothills Consent Decree which resulted from litigation initiated in the late 1970s concerning the construction of DWD's Strontia Springs dam and the Foothills water treatment plant. The primary purpose of the SEIS was to document the environmental impacts of the proposed future development of the DWD water supply system. The SEIS was also to include analysis of alternatives, including a No Federal Action alternative, consistent with requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 1421 *et seq.*).

In February 1984, prior to completion of the SEIS, the DWB requested section 404 permits for construction of the Two Forks dam and reservoir project. The DWB permit request changed the nature of the SEIS from that of a systemwide planning document to a site-specific EIS designed to meet all federal and state permitting requirements for the Two Forks dam and reservoir project.

In January 1987, after three years of extensive studies, review and coordination, the COE provided public notice of availability of the draft environmental impact statement (DEIS) and section 404 permit applications for Two Forks dam and reservoir project. The DEIS clearly indicated that the Two Forks dam and reservoir project was the most environmentally damaging of the alternatives examined. In April 1987, the EPA submitted comments to the COE on the DEIS and rated the draft EU–3 (environmentally unsatisfactory-inadequate information). The primary bases for the EU–3 rating were that adverse environmental impacts of the project would be significant and an appropriate mitigation plan had not been developed. Additionally, EPA expressed concerns that the DEIS inadequately addressed potentially significant water quality standards violations and failed to fully address reasonably available alternatives which had the potential to reduce or obviate the significant adverse environmental impacts. In view of the substantial inadequacies of the document, EPA recommended that the COE prepare a supplement to the DEIS to address these outstanding issues.

In March 1988, the COE issued the final environmental impact statement (FEIS). While improvements, especially a more detailed impact analysis, had been made between the DEIS and FEIS, EPA concluded a number of major issues had not been adequately addressed. EPA's May 26, 1988 comments on the Two Forks dam and reservoir FEIS and public notice identified that major concerns remained, including the (1) lack of a definitive mitigation plan, (2) length of the proposed permit, (3) adequacy of the implementation program for "interim" water supplies and effective conservation, and (4) the lack of a re-opener of the permit process in the future to reassess need. Even with the mitigation measures developed between the DEIS and FEIS, EPA indicated the Two Forks dam and reservoir alternative remained the most environmentally damaging of the alternatives examined.

On June 9, 1988, EPA provided the COE with detailed NEPA comments on the Two Forks dam and reservoir FEIS. The detailed comments addressed (1) alternative water supply sources, (2) mitigation, (3) water quality, (4) aquatics, (5) wetlands and (6) water conservation. In addition, EPA announced that it was considering its options under section 404, including referral to a higher COE authority under section 404(q) and referral of the matter to the Council on Environmental Quality.

During an extensive, post FEIS coordination effort among EPA, the COE, the DWD and the Providers, numerous reviews and proposed modifications of the proposed Two Forks dam and reservoir 404 permit conditions were undertaken. Following these efforts, on March 15, 1989, the COE issued a "notice of intent" to issue the permit for the Two Forks dam and reservoir. In response, EPA informed the COE on March 24, 1989, that EPA would commence the 404(c) process by preparing a public notice in accordance with 40 CFR part 231. During the "15 day" period (which was extended to July 14, 1989 by mutual agreement between the applicant and EPA) available to project applicant's and the COE to convince EPA that unacceptable effects would not occur as a result of the proposed discharge, EPA met numerous times with the DWD, the Providers, and their consultants. In addition, meetings were held with the Governor of Colorado, Mayor of Denver, numerous other elected officials, and representatives of the environmental community. EPA also received, and reviewed, thousands of comments submitted by mail. The materials received during the meetings and the correspondence will be in the Agency administrative record. During this period, visits were made to the Two Forks dam and reservoir site, Cheesman Canyon, the DWD's system and portions of northeastern Colorado.

III. Characteristics of the Site

The South Platte basin upstream from the Two Forks dam and reservoir site is approximately 2,580 square miles and contains a mix of land uses and habitat types. South Park, a large, nearly treeless high mountain basin of approximately 1,000 square miles dominates the upper portion of the basin. The remainder of the basin is dominated by rugged rocky slopes which are heavily forested at the higher altitudes. The primary upland habitat types in the immediate project area are Douglas fir and ponderosa pine coniferous forests, with gambel oak, mountain grassland and mountain shrubland accounting for the majority of the remaining upland habitat.

A. Area Affected by Construction and Inundation

The reservoir would inundate approximately 7,300 acres of upland and aquatic habitat, including approximately 300 acres of vegetated wetlands and approximately 30 miles of riffle and pool complexes. Twenty five wetland community types were identified in the FEIS with the dominant types being cottonwood-willow, wet meadow, willow thicket and willow-sedge. The majority of the wetlands in the immediate project vicinity are small (79 percent are less than 1 acre) and associated with the streamside riparian areas. Wetland mammals common in the area include beaver and muskrat, and wetland birds include Wilson's warbler, belted Kingfisher, Lincoln's sparrow, dipper, and many others.

The fishery in the Two Forks dam and reservoir area is an extremely valuable and unique resource. The Colorado Division of Wildlife examined the historic records concerning the South Platte fisheries and concluded that the entire South Platte basin upsteam from Denver possessed a phenomenal native fishery prior to initial settlement. By the late 1880s this quality fishery was being actively promoted by the railroads in an effort to attract fare-paying fishermen.

This large area of quality fishery has been reduced to limited portions of the basin today, much of which is in the Two Forks dam and reservoir area.

In recognition of the value and uniqueness of the remaining resource, both the U.S. Fish and Wildlife Service (USFWS) and the Colorado Wildlife Commission have selected the South Platte River in the inundation area for special status. The USFWS has designated portions of the stream in the inundation area as a Resource Category 1 indicating the "habitat to be impacted is of high value for evaluation species and is unique and irreplaceable on a national basis or in the ecoregion section". The Colorado Wildlife Commission has designated much of the stream as a Gold Medal trout fishery, one of the highest quality habitats for trout which offers the greatest potential for trophy trout fishing and angling success. The primary game fish in the area are rainbow and brown trout.

It has been suggested that the high quality fishery below Chessman Dam is a result of the presence of the dam itself. While the dam provides a warmer winter thermal regime for the fish, Colorado Division of Wildlife studies have documented the negative effects of Cheesman Dam on the existing fishery. The general conclusion is that fishery management, in the presence of exceptional physical habitat, has resulted in the high quality fishery in the inundation area. This high quality fishery consists of both a high biomass (in 1985 the second highest in the State, second only to the Frying Pan River) and the density of large fish (in 1985 there were more trout greater than 14 inches per acre than any other river in Colorado).

Additional information provided by the DWD during the recent consultation period indicated that of 53 stream segments considered to be high quality fisheries in the western United States, the three South Platte stream segments to be inundated are three of the top ten fisheries on the list. Only two segments of the Frying Pan River in Colorado and single stream segments in Montana, Idaho, Wyoming, Utah, and New Mexico contained fisheries which the DWD considered to be higher quality than the three segments of the South Platte in the inundation area.

The primary recreational resources in the inundated areas are related to the free-flowing stream reaches. The high quality scenic vistas, Gold Medal trout fishing, white water rafting and tubing are further enhanced by the ease of access to the 1.9 million people in the Denver metropolitan area. There is also an extensive system of hiking and motorized vehicle trails in the area.

The adjacent upland habitat provides food and shelter to support game species such as mule deer and elk. Other upland species of concern include Merriam's turkey, bighorn sheep, golden eagle and the endangered bald eagle, and peregrine falcon. The Two Forks dam and reservoir project area comprises a major portion of the known habitat of the threatened pawnee montane skipper butterfly.

B. Area Affected by Hydrologic Operations

(1) West Slope

The primary resources on the west slope of Colorado to be affected by the Two Forks dam and reservoir project are related to basins from which water would be diverted for storage in Two Forks reservoir, or other DWD reservoirs. These basins include the Blue River from Dillon Reservoir downstream, the Williams Fork, the Fraser River and the Colorado River downstream from the confluence with the Fraser. The Blue River downstream from Dillon Reservoir, as well as a 20-mile reach of the Colorado River downstream from the Fraser River, are Gold Medal trout streams. The Blue River and the Colorado River are also used for whitewater recreation and Dillon Reservoir is used for extensive water-based recreation. The Colorado River near Grand Junction contains populations of the endangered Colorado squawfish, bonytail and humpback chubs. The razorback sucker, a species presently proposed for listing as endangered is also found in this area. Much of the stream banks on these west slope rivers are bordered by riparian wetlands.

(2) East Slope

The hydrologically affected areas of the eastern slope of the Continental Divide extend downstream through Nebraska. The fisheries and recreational resources of the North Fork of the South Platte as well as the South Platte downstream from Antero Reservoir would be affected as a result of the operation of Two Forks dam and reservoir. South Boulder Creek from the Moffat tunnel downstream to the Ralston diversion also contains fisheries and recreational resources. Most of these stream reaches are bordered with riparian wetlands. Downstream from Denver the stream channel resources include warmwater fisheries, wetland/riparian areas and wildlife. Riparian areas are critical to this reach.

(3) Nebraska

The Platte River and its surrounding habitat in Nebraska provides essential habitat for many species of migratory birds. Habitat losses have caused concern for the millions of migratory birds that use the Platte River and its associated habitats. There is also concern for the welfare of summer, winter and year-round resident species. Migratory species of major importance include the Federally endangered whooping crane, peregrine falcon, bald eagle, least tern and the threatened piping plover. In addition to these endangered and threatened species, the Platte River supports about one-half million sandhill cranes and 5 to 7 million ducks and geese, including white-fronted geese, Canada geese, mallards, pintails and other waterfowl species during the spring staging period.

The area of the Platte River from Chapman to Lexington, Nebraska, has been designated as Resource Category 1, by the USFWS, indicating the uniqueness of this area. Many species of migratory birds other then waterfowl, sandhill cranes and endangered and threatened species use the Platte River Valley (such as, hawks, owls, wading birds, shore birds, gulls, terns, crows, some game birds, and songbirds).

These birds use the area during spring migration, fall migration, and for reproduction. The migratory species are of international, national, state, regional and local importance. There is also a diverse group of local fish and wildlife which is composed of game species which provide recreational and consumptive use and nongame species whose importance is predominately nonconsumptive, recreational and ecological.

IV. Basis of the Proposed Determination

A. Section 404(c) Criteria

The CWA requires that exercise of the final Section 404(c) authority be based on a determination of "unacceptable adverse effect" to municipal water supplies, shellfish beds, fisheries, wildlife or recreational areas. EPA's reguations define "unacceptable adverse effect" at 40 CFR 231.2(e) as:

> Impact on aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) Guidelines (40 CFR part 230).

The Guidelines prohibit the discharge of dredged or fill material into waters of the United States if there is a less environmentally damaging practicable alternative, if it would cause or contribute to a violation of a State water quality standard, or if it would cause or contribute to significant degradation of waters of the United States. Those portions of the Guidelines which are particularly important in evaluating the unacceptability of environmental impacts in this case are:

—Less environmentally damaging practicable alternatives and special aquatic sites (§ 230.10(a));
—Water quality and endangered species impacts (§ 230.10(b));
—Significant degradation of waters of the United States (§ 230.10(c));
—Minimization of adverse impacts to aquatic ecosystems (§ 230.10(d));
—Impacts on existing indigenous aquatic organisms or communities (§ 230.11(e));
—Cumulative effects (§ 230.11(g)); and
—Secondary effects (§ 230.11(h)) to the aquatic ecosystem.

A major consideration during the application of the Guidelines is the definition of the "applicant". Although formally the permit applicant for the Two Forks dam and reservoir is the DWB, the section 404(b)(1) practicability analysis must consider both the DWB and the Providers as the applicant. One of the primary reasons the DWB wishes to build a Two Forks dam and reservoir is to supply water to the Providers. Since the Providers have an 80 percent interest in the cost and yields from Two Forks dam and reservoir, it is logical to consider the Providers as a part of the "applicant". Without the Providers the DWB has no "Need" to build the project. The approach taken by the COE in narrowly defining the applicant to include only the DWB during the practicability analysis while broadly defining the applicant to include the DWB as well as the Providers to establish the need for the project is obviously inconsistent.

B. Adverse Impacts of the Proposed Project

(1) Area Affected by Construction and Inundation.

Construction and filling of the Two Forks dam and reservoir would inundate a diverse riverine/wetland/upland complex which has extremely high fish, wildlife and recreational value. The riffle and pool component includes 21.3 miles of the main stem of the South Platte River and 8.8 miles of the North Fork of the South Platte River. Inundation of these resources would result in the loss of 1,467,800 square feet (33.7 acres) of adult trout habitat with the corresponding loss of sustained trout standing crop estimated at 38,200 pounds. The inundated adjacent wetland/upland component comprises 7,300 acres of various vegetation types, including approximately 300 acres of wetlands.

As described in section III(A), approximately 20 miles of the main stem of the South Platte River in the inundation area has been designated as Gold Medal Trout Waters by the Colorado Wildlife Commission. This stretch of stream has also been designated as a Resource Category 1 by the USFWS. Furthermore, the three South Platte segments to be inundated are unique in terms of their proximity to a major metropolitan area. The outstanding acquatic resource and the readily available stream fishing on these high quality waters would be irretrievably lost as a result of the project.

The significant recreational uses described above would also be lost. The South Platte corridor is the only area within a convenient day-use driving distance from the Denver metropolitan area where a relatively natural setting along a major waterway is available for dispersed public recreation use. This area is also used for whitewater recreation as well as more leisurely tubing and other water-oriented recreation. No comparable substitute recreational opportunities exist in similar proximity to the Denver metropolitan area or any other city of its size.

Major wildlife impacts associated with the Two Forks dam and reservoir project in the inundation area are related to the construction and inundation impacts on 7,300 acres of terrestrial wildlife habitat. Construction and inundation will result in the loss of mule deer, elk, wild turkey and bighorn sheep habitat. The potential also exists that the bighorn sheep herd may be completely lost as a result of stress induced during construction. New roads and construction activities may also disturb potential peregrine falcon nesting.

Two Forks dam and reservoir project has the potential to affect the federally threatened and endangered bald eagle, peregrine falcon and pawnee montane skipper. The pawnee montane skipper was officially listed as a threatened species on September 25, 1986. The present montane skipper range covers about 38 square miles (24,328 acres) along the North and South Forks of the Platte River and their tributaries, Buffalo and Horse Creeks.

The 1,100,000 AF Two Forks dam and reservoir would result in a direct impact on approximately 5,376 acres (22 percent) of the "best" montane skipper habitat. This would result in the loss of 23 to 42 percent of the montane skipper population. Additional significant, but unquantified, impacts to the pawnee montane skipper would result from the construction of recreation facilities around Two Forks Reservoir, boat launching ramps, residential development, the isolation of small pieces of habitat, and the splitting of the habitat along the North Fork of the South Platte and the mainstem of the South Platte into two separate isolated habitats.

The official position of the USFWS is that with full implementation of the conservation measures contained in the biological opinion, the project is not likely to jeopardize the continued existence of the montane skipper. Nevertheless, concern has been expressed that, even with the proposed conservation measures, the project would cause the loss of more than 40 percent of the skipper populations and the species classification could be downgraded from threatened to endangered.

(2) Area Affected by Hydrologic Operations

Two Forks dam and reservoir operations would reduce the flow of west slope streams with the potential for adversely affecting water quality on the west slope. EPA is concerned about potentially significant negative effects in the Williams Fork and Fraser River basins related to the loss of dilution, as well as increased salinity concentrations downstream on the Colorado River. Channel stability effects also have the potential to degrade the physical, chemical and biological integrity of the affected streams; these effects may have been understated in the FEIS. Whitewater recreation on the west slope will be negatively affected through the loss of peak flows.

The FEIS did not contain a detailed analysis of impacts of Two Forks dam and reservoir on fish and wildlife resources on the South Platte River from the Henderson gauge (just north of Denver) to the Colorado-Nebraska state line. During the summer of 1989, the Colorado Division of Wildlife sighted an endangered least tern in this area. The COE has not consulted with the USFWS concerning impacts of Two Forks dam and reservoir on the endangered least tern in Colorado.

(3) Nebraska

Concerns in Nebraska center around the recreational and wildlife habitat

losses, including impacts to endangered species, as a result of reduced peak flows and sediment transport. However, there is wide disagreement among the USFWS, COE and the applicant and the State of Nebraska and national environmental organizations concerning impacts of Two Forks dam and reservoir in Nebraska.

The State of Nebraska has two general concerns with the Two Forks dam and reservoir project. First, the projected impacts are based on what Nebraska believes to be an invalid hydrologic model. The Nebraska Department of Water Resources has reviewed one part of the hydrologic models and believe it is seriously flawed. Nebraska's level of concern has led the State to initiate a lawsuit with Wyoming over the use of a similar model for the Deer Creek dam and reservoir project to the U.S. Supreme Court. Further, the issues of the hydrologic model and sufficiency of the conservation measures are subject of ongoing litigation in U.S. District Court in Nebraska.

Second, Nebraska argues that the mitigation scheme for the endangered species is unauthorized, untested and has no scientific basis. Both the Nebraska Game and Parks Commission and the Department of Water Resources have reviewed the "conservation measures", which replace a water based habitat need with a land based mitigation approach, and found them untested at best and lacking in scientific validity at worst. The National Audubon Society and the National Wildlife Federation are in agreement with Nebraska concerns.

C. Project Purpose, Need and Alternatives

(1) Project Purpose

EPA considers the basic project purpose for Two Forks dam and reservoir is to supply water to the Denver metropolitan area. The Guidelines at 40 CFR 230.10(a) provide that no discharge is to be allowed if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, unless the alternative has other significant adverse environmental consequences. Under 40 CFR 230.10(a)(2) and 230.3(q), an alternative is practicable if it is available and capable of being done considering cost, existing technology and logistics in light of overall project purposes. Obviously, how project purposes are defined will determine the scope of practicable alternatives.

To that end, the DWB developed a ten-point project purpose statement. This was supplemented with three Provider-specific project purposes. The DWB and the Providers argue that EPA is required to use these project purposes in determining the practicability of any alternative to the Two Forks reservoir. They also argue that the EPA cannot ignore an applicant's statement of project purpose or substitute a different project purpose for that of an applicant. In addition, they believe that the EPA should give conclusive deference to a project purpose defined by a public entity.

Under the authority in the CWA and the regulations, the federal government has the responsibility for defining project purpose. Further, project purpose should be defined at its most basic or fundamental level, i.e., without qualifiers or additional criteria often unrelated to the project's basic water supply goal. Consideration is to be afforded an applicant's stated purpose, but it would be inconsistent with the CWA and the Guidelines to simply adopt without question an applicant's definition of the project purpose. Otherwise, an applicant could craft its project purpose so that every possible alternative would be excluded from consideration. This would reduce the Guideline alternative analysis to little more than a procedural requirement to be perfunctorily carried out by the COE.

Furthermore, the COE agrees with this need to avoid unduly narrowing both the purpose of the Two Forks dam and reservoir project and the corresponding scope of alternatives. In its 404(b)(1) Evaluaiton (March 10, 1989) the COE concluded:

> The applicant's stated project purposes taken at face value would seem to preclude the practicability of any alternative to the 1.1 million acre-foot (MAF) Two Forks * * * it would be inappropriate to accept without question or review a statement of project purpose so narrowly defined.

(2) Project Need

EPA questions whether the applicant has demonstrated current need for the proposed project within the appropriate time period, that is, by 2035. There are four factors to consider in determining the need for the proposed Two Forks dam and reservoir: (a) The amount of water needed to meet the expected population increase, (b) the DWD water available in the near future to meet that need, (c) the uncertainty of planning estimates, and (d) the role of water conservation.

(a) Population Forecasting. The COE revised the Denver metropolitan area population estimates between the DEIS and FEIS. Using estimates from the Bureau of Economic Analysis, the population projections made by the Denver Regional Council of Governments (DRCOG) for the DEIS were reduced by 13 percent. Since publication of the FEIS, both the Census Bureau and DRCOG have further reduced population estimates for the Denver metropolitan area.

DRCOG population estimates showed the area gained 0.1 percent during 1988 with births exceeding net migration. More people left the region during 1988 than moved in with a net migration out of approximately 16,750 persons. According to DRCOG's August 1989 projections, even if the Denver metropolitan area is able to recover from its current economic slump and return to growth rates of 2.4 percent per year by 2000, the expected population would be about 8 percent lower in 2010 than that indicated in the FEIS. This projected lower 2010 population would reduce projected water demand by 46,000 AFY. This factor alone would delay the need for additional water supplies by approximately 15 years.

(b) DWD's Available Water Supply. The DWD indicated it will have 107,000 AFY of available water supplies without Two Forks dam and reservoir by 1995. These sources include 21,000 AFY available from current sources not now listed (firm safe yield less current use), 26,600 AFY in conservation reductions by DWD, and 60,000 AFY of sources to become available to DWD by 1995. DWD indicates these latter sources consist of system enhancements, water rights acquisitions, new alluvial wells, water transfers, and water exchanges that have been approved by the water courts. This 60,000 AFY had been listed in the FEIS as "interim supplies". However, DWD indicated these will be available water supplies by 1995.

The DWB indicates it may not be willing to share its available supplies. DWB indicated it cannot share its water supplies because the needs of the residents of Denver must be considered first under its charter obligations. However, the history of the DWB since expanding its service area to the adjoining suburban communities has been to share its available supplies. DWD planning documents indicated its intention to reserve sufficient water to buildout its land area including the proposed new airport. Buildout would entail residential and commercial expansion to current zoning densities. DWD also intends to reserve another 10 percent of its supply. DWD also stated a need to meet the upper limits of certain special contracts and adequate water to build out the land area of its suburban distributors. At the expected rates of growth, such buildout would not occur until long after the 2035 planning period, possibly after the end of the next century.

The FEIS indicated that about 9000 AFY of additional water will be needed for the City and County of Denver through 2035 although Denver's proposed new airport may result in an additional water need. By comparison, DWD has reserved 20 percent, or 19,600 AFY of the proposed Two Forks dam and reservoir project safe yield. If DWB chose to reserve water needed for its own growth until 2035 or the amount that Two Forks would have provided, rather than that needed for many centuries, the remainder of the supplies could be available for the metropolitan area. This remainder is a significant amount since the DWD appears to have or will shortly have, available supplies to meet it needs and those of its suburban distributors until 2035.

Despite the finding of the COE that no sharing would take place, the 1982 Metropolitan Water Development Agreement provides for a means of adding water supply projects to be shared with DWD and the suburban communities. DWB could add its available supplies to the Metropolitan Water Development Agreement thereby providing sources of water for suburban expansion.

(c) Planning Uncertainty. DWD asks that the following "safety factors" be considered in assessing project need: Drought beyond that planned, uncertainties in population estimates, delays in obtaining the first yield of the project, provisions for system failure (primarily a potential failure of the Roberts Tunnel), reduced ability to decrease demand through conservation efforts, and uncertainties in "interim supplies." According to DWD, including or excluding such safety factors can accelerate or delay the need for the additional water supplies by approximately 25 years. However, most of these uncertainties appear to have been accounted for in the water demand projections. These uncertainties indicate that the timing of the Two Forks project itself is uncertain, and therefore, need for the project has not been reasonably established.

DWD's expressed desire to hold the permit for an unusually long period, also indicates uncertainty. The applicant requested that the permit life be at least 25 years with renewal options. This indicates that the need is neither immediate nor compelling. Until many of the above planning uncertainties are resolved, it appears that available supplies and water conservation can provide for additional community growth during the planning time frame. Thus, the Two Forks dam and reservoir, and the concurrent loss of unique environmental resources, can be deferred.

(d) Role of Water Conservation. The COE has indicated that, as a condition of permit issuance, it would require approximately an 8 percent reduction (or 42,000 AFY) in the anticipated water demand by 2035 to be achieved through water conservation programs. DWD plans to achieve approximately 26,600 AFY of savings by 1995 by completing its ongoing meter installation plan and other conservation measures. DWD also has stated its willingness to make its conservation water available for future growth of Denver and possibly for use by the suburbs.

Experience in other communities in the western U.S. has shown that effective water conservation programs, such as rate increases and financial rebate programs for plumbing and irrigation improvements, can reduce water demand by 15 to 30 percent over 5 to 10 years. Reduction of water use by the proposed 8 percent over anticipated use is far less than can be achieved by a utility determined to cut customer use. Such savings could be achieved without changing lifestyles or landscaping practices. The water saved would also be available to supply community growth and thus avoid additional water supply projects.

DWD agreed, as part of the Foothills Consent Decree in 1979, to take steps to reduce per capita consumption by approximately 20 percent between 1979 and 1999. Yet, information developed by the COE during the NEPA process projects increased water use with higher personal incomes and household size reductions and, thus, makes this prior 20 percent reduction commitment more difficult to attain.

In fact, the COE used these factors to conclude that per capita water use would increase.

The COE has indicated that if the per capita consumption goals of the 1979 Foothills Consent Decree were attained, an additional 29,000 AFY would not be needed by 2000. Reasonable, cost-effective conservation measures are available to achieve the proposed permit reduction of 42,000 AFY and the additional 29,000 AFY necessary to achieve the Foothills goals. Further reductions of water conservation may be possible as demonstrated in other communities.

EPA is now conducting a detailed investigation of cost effective water conservation programs suitable for Denver as part of the EPA 1989 evaluation of the DWD compliance with the Foothills Consent Decree conservation goals. A draft report on this effort is expected by January 1990. This evaluation should define additional programs suitable for Denver to achieve further water savings.

(3) Alternatives

The following discussion concentrates on alternative supply solutions analyzed in the COE's regulatory permit process and is by no means complete. The water supply needs of the Denver metropolitan area have been extensively studied at the local, State and Federal levels for many years, and many alternatives have been proposed. However, today's notice includes the proposed determination of whether there is a practicable, less environmentally damaging alternative, or combination of alternatives, to supply the Denver metropolitan area with sufficient water supply to replace that which would be available should Two Forks dam and reservoir be constructed. The available information supports the conclusion that there are such alternatives.

(a) Structural. The FEIS examined in detail four practicable, structural alternatives to the 1,100,000 AF Two Forks dam and reservoir project: 660,000 AF New Cheesman dam and reservoir, 400,000 AF Two Forks dam and reservoir, 400,000 AF Estabrook dam and reservoir and 200,000 AF Estabrook dam and reservoir. These projects would supply a safe yield of 68,000, 62,000, 58,000, and 46,000 AFY to the Denver metropolitan area respectively. While these are not the only alternatives available to supply water to the Metropolitan area, they were considered reasonable alternatives for the NEPA analysis, and, determined to be practicable under the Guidelines. Each of these structural alternatives is less environmentally damaging than Two Forks dam and reservoir. Consequently, it is questionable whether Two Forks dam and reservoir complies with the Guidelines, specifically § 230.10(a).

(b) No Federal Action. The FEIS presented a practicable, No Federal Action alternative, comprised primarily of ground-water sources and conservation, which would result in a yield of approximately 79,000 AFY. The 1982 Metropolitan Water Development Agreement is the principal basis by which the No Federal Action alternative is considered practicable since this constitutes the existing institutional arrangement by which other water can be shared or developed. Failure to question the DWB's ability to enter into

other water sharing arrangements and by accepting the pre-existing agreements, allows the DWB to characterize the project so as to preclude the existence of practicable alternatives. This type of pre-permit application action which attempts to limit the range of available alternative is not binding. Otherwise an applicant could, through agreements or other means, foreclose all possible alternatives except its own.

(c) Ground Water. There are sufficient ground-water resources stored in aquifers beneath the Denver metropolitan area to warrant the careful use of those resources, in conjunction with surface waters, as part of an alternative supply to Two Forks Dam and Reservoir. The area's ground water can be categorized as having a "renewable" portion (basically the ground water in the alluvial aquifers and a small portion of the ground water in the bedrock aquifers) and a "non-renewable" portion (predominately the ground water found in the bedrock aquifers). The quality of water contained in the bedrock aquifers is generally suitable for drinking with little or no treatment.

Ground water contained in the bedrock aquifers beneath the metropolitan area is legally and physically available for use if a sound water management plan can be developed. Based on estimates by the Colorado State Engineer's Office, EPA has calculated that approximately 69 million acre-feet of legally and physically recoverable ground water are contained in the five major aquifers beneath the 1,440 square-mile Denver metropolitan area. Even if only a portion of this would be economically available, a sufficient total ground-water supply exists to expand ground water use into the next several centuries.

While EPA recognizes that a portion of the ground water can be considered as a "non-renewable" resource, this is not an excluding criterion for the purposes of the Guidelines analysis. In order for the ground water within the Denver metropolitan area to be used in conjunction with surface water, Denver and its suburbs need to consider locating wells throughout the area and integrating this source directly into their existing water supply systems. For example, the U.S. Geological Survey estimates that 3,000 AFY could be used by Denver to provide water for three city parks. As noted in the FEIS, opportunities exist for nontributary ground water to supply an additional supply of 30,000 AFY. This could mean depleting the ground water at a somewhat faster rate than its recharge. However, with the large volume of water economically available, such a rate of depletion could be sustained for well over 1000 years.

For the purposes of the alternatives to the Two Forks dam and reservoir, ground water should be considered as part of a practicable approach to meeting metropolitan water supply needs. Just because a resource is finite does not mean the resource is unavailable for use; rather, its use must be judicious and coordinated with other available supplies.

D. Other Issues

1. Metropolitan Cooperation

The DWD has stated in its permit application that one purpose of the proposed Two Forks dam and reservoir is to provide water to share as an inducement to extend non-water related cooperation among community governments. Community officials have expressed a variety of hopes for future cooperative efforts to share the costs of hospital, cultural, and transportation facilities. As part of these cooperative efforts, some officials hope to consolidate regional land use planning to reduce the costs and environmental burdens of independent decision making. The applicants have suggested that such sharing and cooperation depend upon a sufficiently large water supply.

Many intergovernmental relationships are now well established and such arrangements are likely to expand where mutually beneficial. The current efforts by the City and County of Denver to offer water to its neighboring communities so they can then better share regional costs and burdens is an exciting prospect for community leaders and is endorsed by EPA.

The success of these cooperative efforts appear to be dependant on the amount of water available for sharing and not on the construction of the Two Forks dam and reservoir or any other project. Since its inception, the DWB has had a history of sharing its well-managed water supply system. This practice will continue with or without the Two Forks project or as long as sufficient water is available to share. So long as sufficient water is available, conditions appear conducive to metropolitan cooperation.

As noted above, the DWB indicated that its available sources will amount to 107,000 AFY by 1995. Because the City and County of Denver may only require as much as 9,000 AFY for its own growth during the planning period or choose to reserve that amount it would have retained from the Two Forks dam and reservoir (19,600 AFY), sufficient water appears to be available to allow the sharing of DWD's water to promote metropolitan cooperation without the Two Forks dam and reservoir. Moreover, the 1982 Metropolitan Water Development agreement provides an existing contractual arrangement for this purpose. In addition, the DWB has had, and indicated in its April 1989 policy statement it will continue to have, a policy of sharing available water beyond that needed to meet its direct charter obligations to the residents of Denver.

(2) Agricultural Water Exchanges and Transfers

One of the applicant's stated project purposes is to maintain Colorado's irrigated agricultural economy. Some project proponents have asserted that without the Two Fords dam and reservoir, Providers will acquire irrigation water, resulting in the "dry-up" of irrigated lands. Those proponents also alleged that this would result in substantial reduction in wetlands and other wildlife habitat. While recognizing the importance of agriculture in Colorado's economy, EPA agrees with the COE's analysis of the applicant's project purpose relating to protecting the state's agricultural economy. Protection of the States' agricultural economy is indeed an important planning goal.

It should be noted that irrigated agriculture in Colorado accounts for approximately 85–90 percent of total water use, whereas municipal and industrial use accounts for only 10–15 percent. Colorado water law permits the transfer of water rights and such transfers occur in a basically "free market" forum within the current Colorado water court process. Given the substantial proportion of water used by agriculture, and the legal system's flexibility, it is not surprising that, even without a decision of Two Forks dam and reservoir, Provider communities (Aurora and Thornton for example) have acquired agricultural water rights with the intent of transferring those rights to municipal uses.

There is no clear evidence that agricultural "dry-up" will occur as a result of a Two Forks dam and reservoir permit denial. During the "15-day" consultation period, local experts could not agree on the potential effects on irrigated agriculture of either proceeding, or not proceeding, with Two Forks dam and reservoir. No documentation was provided which indicated that the historical trends in irrigated agriculture would change with, or without, Two Forks dam and reservoir. It would appear that local and regional land use decisions governing urban, commercial and industrial expansion, coupled with agriculture's "soft" economic situation, have driven the shifting patterns of irrigated agriculture in Colorado.

Acquisition of agricultural waters can be a component for meeting metropolitan water supply needs. Such transfers can also occur with adequate and appropriate environmental safeguards. There may be creative arrangements (such as, dry year leasing or acquisition of water "salvaged" through improved irrigation practices) which could benefit both the agricultural community and the metropolitan area and also protect environmental values. Some arrangements could be implemented now, whereas others (use of "salvaged" water) may require institutional changes.

The Governor of Colorado, in his 1988 "A Colorado Agenda for Water", made a number of observations and recommendations which have a bearing on these issues. "* * * I believe the General Assembly should investigate ways to encourage water savings in the State's agricultural sector. Agriculture uses the vast majority of our water, and thus the potential for savings are tremendous. Yet our current system discourages water conservation by Agricultural users." The Governor further observed, "We know that there are a number of ways to reduce water consumption without reducing agricultural production, and we know that these methods often are cheaper than building a dam. We should seriously consider legislation which encourages farmers to find those savings and allow them to profit from their initiative." The Governor's statement also noted the need to balance a diversity of competing interests (protection of basin of origin, municipal, agriculture, environmental and recreational uses) and the desirability of fostering greater metropolitan cooperation.

(3) Current and Potential Use of the Reservoir Area

During the initial "15-day" consultation period, several commenters expressed the opinion that the area to be directly inundated by Two Forks reservoir was not especially valuable because it was "trashed-out" and "poorly managed". The areas to be inundated range from pristine (such as Cheesman Canyon) to areas of virtually uncontrolled use (such as portions of the lower North Fork of the South Platte). No doubt the resources and recreational opportunities of the entire area could be better managed to capitalize on the outstanding natural amenities and recreational opportunities.

V. Proposed Determination

The Regional Administrator proposes to recommend that the discharge of dredged or fill material into the South Platte River at the Two Forks dam and reservoir site be restricted or prohibited for the purpose of constructing the proposed Two Forks dam and reservoir and ancillary facilities. Based on current information, the adverse effects of the Two Forks dam and reservoir would be unacceptable. Moreover, it appears these impacts are partly or entirely unnecessary and avoidable.

This proposed determination is based primarily on the adverse impacts to fisheries, wildlife and recreational resources. EPA has reason to believe the project would cause or contribute to significant degradation of waters of the United States and violate the Guidelines. It would directly destroy approximately 30 miles of riffle and pool complexes, approximately 300 acres of wetlands, an irreplaceable mix of recreational values readily available to the Denver metropolitan area population, and 22 percent of the known pawnee montane skipper habitat. In addition, operation of the Two Forks dam and reservoir has the potential to degrade both east and west slope recreational opportunities, and threatened and endangered fish and bird populations in Colorado and Nebraska, as well as other wildlife such as the big horn sheep. Furthermore, there are less environmentally damaging practicable alternatives for meeting regional water supply needs. Impacts which are avoidable are unacceptable.

VI. Mitigation

As discussed above, there are practicable, less damaging alternatives to the Two Forks dam and reservoir project, without considering mitigation of potential adverse effects. However, because of the great emphasis which has been placed on mitigation throughout the COE's NEPA and permitting process, the following summarizes the Agency's major concerns with the environmental mitigation contained in the proposed Section 404 permit conditions.

The proposed Section 404 permit conditions provide for mitigation efforts for 16 different resources. The COE recognized Two Forks dam and reservoir would result in significant visual impacts but chose to defer to the U.S. Forest Service for permit conditions for this resource (Permit Conditions page 16). During the 404(q) process, the permit conditions were altered in an attempt to address EPA's concerns with the wetland, aquatic life, water quality, conservation and available supplies. However, the mitigation plan remains insufficient to fully replace the values which would be lost as a result of Two Forks dam and reservoir construction and operation.

For example, replacement of 90 percent of the lost instream trout biomass is inappropriate. Mitigation should be used to replace all the values lost. Every effort should be made to replace the value lost with equal values. The mitigation proposal for Two Forks dam and reservoir would allow, for example, replacement of one mile of 400 pound per acre stream fishery with 2 miles of 200 pound per acre stream fishery. This approach to mitigation does not address the real value of the resource to be lost, that is, there are very few 400 pound per acre stream fisheries. This inappropriate, out-of-kind mitigation is equally unaccepatable in the replacement of the quality fishing recreational values.

Furthermore, the COE and the applicant believe all practicable steps to mitigate the impacts have been taken, the permit conditions require that additional mitigation be pursued if the proposed mitigation proves ineffective. This logic renders the recreation and aquatic permit conditions suspect. It is difficult to see how the applicant will be able to pursue mitigation to replace unsuccessful mitigation if the applicant has already determined there is presently no additional practicable mitigation available.

EPA is also concerned with the after-the-impact approach to aquatic mitigation. The net result of this approach is that the risk of loss is placed on the resource. Much of the resource will be lost before the mitigation methods can be proven to work. A similar approach is used for the threatened pawnee montane skipper.

These concerns with the mitigation plan underscore the conclusion that the resource is of great value, that the resource is difficult if not impossible to replace in-kind, and impacts to this resource should be avoided if less damaging, practicable alternatives are available. As note above, there are less damaging, practicable alternatives.

VII. Solicitation of Comments

EPA is today soliciting comments on all issues discussed in this notice. In particular, comments on the likely adverse impacts to fish, wildlife and recreational values of the rivers,

streams, and wetlands in all areas which would be affected by the construction and operation of Two Forks dam and reservoir are requested. All relevant data, studies, knowledge of studies, or informal observations are appropriate. Where comments or materials have been previously submitted to EPA, it is sufficient to reference them by title and date of submission rather than resubmitting them.

While the significant loss of aquatic and recreational values and the availability of less damaging practicable alternatives serve as EPA's main bases for this proposed 404(c) determination, EPA Region VIII has additional concerns with the proposed project, including water quality impacts, threatened and endangered species, alternatives and project need. Therefore, EPA also solicits comments on the following aspects of the project:

(1) The potential for the Two Forks dam and reservoir project to violate State water quality standards, especially as related to potential channel stability alterations;

(2) Whether, based on information collected since preparation of the biological opinions, the threatened and endangered species consultation should be reinitiated for any of the species potentially affected by the Two Forks dam and reservoir project;

(3) Information on the wildlife species which would be affected by changes in the aquatic ecosystem;

(4) Information on the recreational uses which would be affected;

(5) Information on the availability of less environmentally damaging practicable alternatives to satisfy the basic project purpose of municipal and industrial water supply, taking into account cost, technology, and logistics, and including other alternatives which do not require the discharge of dredged material into the waters of the United States;

(6) Whether the discharge should be prohibited forever, allowed as proposed by the COE, or restricted in time, size or other manner; and

(7) Information on recent population projections by DRCOG, information on what criteria Denver should utilize to supply water under its charter obligation, and the affect of planning uncertainties on water supply planning.

Dated: August 29, 1989.

Lee A. DeHihns, III,

Regional Decision Officer.

[FR Doc. 89-20768 Filed 9-1-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 28, 1989.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3520).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. A copy of the comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

Please note: The Commission has requested emergency processing of this item under the provisions of 5 CFR 1320.18 and has requested that the Office of Management and Budget take action by August 28, 1989.

OMB Number: None.

Title: Tariff Update Format.

Action: New collection.

Respondents: Businesses.

Frequency of Response: One-time response.

Estimated Annual Burden: 39 responses; 3,900 hours; 100 hours average burden per respondent.

Needs and Uses: The information is needed to provide a simplified, consistent format for a scheduled update of rates charged by local telephone companies. Use of the format allows waivers of other cost support rules and a more focused and efficient review by the FCC and the public. Repondents are local telephone companies, with the exception of most small telephone companies.

Text of Tariff Update Format

In accordance with the provision of 5 CFR 1320.15(b)(1) the text of the Tariff Update format follows in its entirety.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

BILLING CODE 6712-01-M

WS-1
Approved by OMB
3060-XXXX
Expires XX/XX/XX

See below for statement regarding public burden estimate.

RATE FACTOR DEVELOPMENT
SWITCHED TRAFFIC SENSITIVE AND SPECIAL

(DOLLARS IN THOUSANDS)

TARIFF LEVEL:

	SWITCHED TRAFFIC SENSITIVE	REV. REQ. UNDERLYING CURRENT RATES * (A)	NON-RECURRING AND ICB REV. IN COL. A (B)	RECURRING REVENUES (C)=A-B	NET REV. REQ. CHANGE ** (D)	ADJUSTED RECURRING REVENUES (E)=C+D	RATE ADJUSTMENT FACTOR (F)=E/C
100	SWITCHING						
110	TRANSPORT						
120	INFORMATION						
	SPECIAL ACCESS						
130	SPECIAL ACCESS						

* SAME AS WS-3, COL. A

** FROM WS-3, COL. F

NOTICE: The Tariff Update Format (TUF) contains information that certain local telephone companies must file to support their access charge tariff filings. The information is needed to provide a simplified, consistent format for a scheduled update of rates charged by local telephone companies and is used by the FCC to determine whether the services offered are just and reasonable as required by the Communications Act of 1934, as amended. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 100 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3060-0000), Washington, DC 20503.

This Notice is required by the Privacy Act of 1974, P.L. 93-579, December 31, 1974, 5 U.S.C. 552a(e)(3) and the Paperwork Reduction Act of 1980, P.L. 96-511, December 11, 1980, 44 U.S.C. 3504(c)(3)(c).

WS-2

CARRIER COMMON LINE RATE DEVELOPMENT SUMMARY

(ALL AMOUNTS ARE IN WHOLE NUMBERS)

TARIFF ENTITY: -

	DESCRIPTION	SOURCE	UNDERLYING 8/1/89 RATES * (A)	PROPOSED 1/1/90 (B)	CHANGE (C)=B-A
100	TOTAL COMMON LINE REV. REQ.	WS-3 ROW 100,E			
110	END USER REVENUES (INCLUDING SURCHARGE)	WS-14 ROW 100,B + WS-14 ROW 110,B			
120	LONG TERM AND TRANSITIONAL SUPPORT	NECA			
130	REV. REQ. TO BE RECOVERED FROM CCL	ROW 100 - ROW 110 + ROW 120			
140	CHARGEABLE ORIGINATING RATED MOU	WS-10 ROW 100,C + (ROW 120,C * .45)			
150	ORIGINATING REVENUES	ROW 140 * ROW 240			
160	REVENUE REQUIREMENT TO BE RECOVERED FROM TERMINATING RATED MOU	ROW 130 - ROW 150			
170	CHARGEABLE TERMINATING RATED MOU	WS-10 ROW 110,C + (ROW 130,C * .45)			
	CCL MOU				
180	PREMIUM ORIG. - RATED	WS-10 ROW 100,C			
190	NON-PREMIUM ORIG. - RATED	WS-10 ROW 120,C			
200	CHARGEABLE ORIG. - RATED	ROW 140			
210	PREMIUM TERM. - RATED	WS-10 ROW 110,C			
220	NON-PREMIUM TERM. - RATED	WS-10 ROW 130,C			
230	CHARGEABLE TERM. - RATED	ROW 170			
	CCL RATE				
240	PREMIUM ORIGINATING	(FCC ORDER)			
250	NON-PREMIUM ORIGINATING	ROW 240 * .45			
260	PREMIUM TERMINATING	ROW 160 / ROW 170			
270	NON-PREMIUM TERMINATING	ROW 260 * .45			

* RATES IN EFFECT ON 8/1/89 UNLESS UPDATED BY LATER TRANSMITTAL PER COL'S D OR E ON WS-9

NOTE: ALL ENTRIES FOR COL. A ARE FROM 7/17/89 FILING UNDERLYING CURRENT CCL RATES

ALL ENTRIES FOR COL. B ARE REFERENCED IN THE SOURCE COLUMN

WS-3

COST ANALYSIS SUMMARY

(DOLLARS IN THOUSANDS)

TARIFF LEVEL:

	COST CATEGORIES	REV. REQ. UNDERLYING CURRENT RATES * (A)	EXOGENOUS COST ADJUSTMENT FACTOR ** (B)	ADJUSTED BASE REV. REQ. (C)=A*B	REV. REQ. GROWTH FACTOR (D)	ANNUALIZED TEST PERIOD REV. REQ. (E)=C*D	NET REV. REQ. CHANGE (F)=E-A
100	COMMON LINE						
110	BFP (***)						
120	ISW						
130	PAY						
140	SWITCHED TRAFFIC SENSITIVE						
150	SWITCHING						
160	TRANSPORT						
170	INFORMATION						
180	SPECIAL ACCESS						
190	TOTAL ACCESS						

* SOURCE IS WS-9 COLUMN F

** SOURCE IS WS-4 COLUMN D

*** SOURCE IS WS-5 SUMMARIZED TO TARIFF LEVEL

WS 4

EXOGENOUS COST FACTOR DEVELOPMENT

(DOLLARS IN THOUSANDS)

TARIFF LEVEL:

	COST CATEGORIES	REV. REQ. UNDERLYING 4/1/89 RATES EXCLUDING FCC ADJUST. **	EXOGENOUS COST CHANGES *	REV. REQ. ADJUSTED FOR EXOGENOUS COST CHANGES	EXOGENOUS COST GROWTH FACTOR
		(A)	(B)	(C)=A+B	(D)=1+((C-A)/A)
100	COMMON LINE				
110	BFP (***)				
120	ISW				
130	PAY				
140	SWITCHED TRAFFIC SENSITIVE				
150	SWITCHING				
160	TRANSPORT				
170	INFORMATION				
180	SPECIAL ACCESS				
190	TOTAL ACCESS				

* SOURCE IS WS-6 COLUMN G

** SOURCE IS SAME AS WS-9 COL. A
SHOULD BE THE SAME AS FEBRUARY ERRATA OR OTHER
TRANSMITTALS GRANTED BY THE FCC

WS-5

COMMON LINE - BASE FACTOR PORTION
REVENUE REQUIREMENT DEVELOPMENT

(DOLLARS IN THOUSANDS)

STUDY AREA:

		AMOUNT (A)
	REVENUE REQUIREMENTS	
100	REV. REQ. UNDERLYING CURRENT RATES * (INCLUDING FCC ADJUSTMENTS)	
110	ADJUSTED BASE REV. REQ. (L100 * L160)	
120	ANNUALIZED TEST PERIOD REV. REQ. (L110 * 210)	
	EXOGENOUS COST FACTORS	
130	REV. REQ. UNDERLYING 4/1/89 RATES ** (EXCLUDING FCC ADJUSTMENTS)	
140	EXOGENOUS COST CHANGES ***	
150	REV. REQ. ADJUSTED FOR EXOGENOUS COST CHANGES (L130 + L140)	
160	EXOGENOUS COST ADJUSTMENT FACTOR (1+ ((L160 - L130) / L130))	
	BFP GROWTH FACTOR	
170	BFP REV. REQ. (1/89 THRU 6/89)	
180	1989 SPF	
190	BFP REV. REQ. (1/88 THRU 6/88)	
200	1988 SPF	
210	BFP GROWTH FACTOR ((L170 / L180) / (L190 / L200)) ^ (7.5/12)	

* SAME AS WS-9 COL. F SUMMARIZED AT TARIFF LEVEL

** SAME AS WS-9 COL. A SUMMARIZED AT TARIFF LEVEL

*** SAME AS WS-6 COL. G SUMMARIZED AT TARIFF LEVEL

EXOGENOUS COST CHANGES

(DOLLARS IN THOUSANDS)

TARIFF LEVEL:

	COST CATEGORIES	REV. REQ. UNDERLYING 4/1/89 RATES EXCLUDING FCC ADJUST. ** (A)	SPF (B)	INSIDE WIRE (C)	DEM (D)	DEPRECIATION REPRESCRIPTION AND AMORTIZATION (E)	OTHER *** (F)	TOTAL EXOGENOUS COST CHANGES * (G)
100	COMMON LINE							
110	BFP (***)							
120	ISW							
130	PAY							
140	SWITCHED TRAFFIC SENSITIVE							
150	SWITCHING							
160	TRANSPORT							
170	INFORMATION							
180	SPECIAL ACCESS							
190	TOTAL ACCESS							

* MAY NOT EQUAL THE SUM OF COLUMNS B THRU F DUE TO THE INTERACTIVE EFFECTS OF EACH RULE CHANGE

** SAME SOURCE AS WS-9 COL. A

*** MAY BE USED PRUSUANT TO WAIVER ONLY

EXOGENOUS COST CHANGE DETAIL

(DOLLARS IN THOUSANDS)

WS-7.1
1 OF 2

COSTS UNDERLYING 4/1/89 RATES (EXCLUDING FCC ADJUSTMENTS)

STUDY AREA:

		COMMON LINE			
		BFP	ISW	PAY	TOTAL
		(A)	(B)	(C)	(D)=A+B+C
	REVENUES				
100	REVENUE REQUIREMENTS				
110	MISCELLANEOUS REV. & UNCOLLECTIBLES				
	EXPENSES				
120	PLANT SPECIFIC				
130	NON-PLT SPECIFIC				
140	MARKETING				
150	CUSTOMER OPER SVC				
160	CORPORATE OPER				
170	OTHER				
180	DEPRE & AMORT				
190	TOTAL EXPENSES				
	TAXES				
200	OTHER TAXES				
210	FIXED CHARGES				
220	FEDERAL INCOME				
	INVESTMENT				
230	GSF				
240	COE SW				
250	COE TRANS				
260	C&W				
270	I O/T				
280	OTHER INV				
290	TOTAL INVESTMENT				
	RESERVES				
300	DEPR AND AMORT				
310	DEFERRED				
320	OTHER				
330	TOTAL RESERVES				
340	AVERAGE NET INVESTMENT				
350	NET RETURN				

EXOGENOUS COST CHANGE DETAIL

(DOLLARS IN THOUSANDS)

WS-7.1
2 OF 2

COSTS UNDERLYING 4/1/89 RATES (EXCLUDING FCC ADJUSTMENTS)

STUDY AREA:

		SWITCHED TRAFFIC SENSITIVE					
		SWITCHING	TRANSPORT	INFORMATION	TOTAL	SPECIAL ACCESS	TOTAL INTERSTATE ACCESS
		(E)	(F)	(G)	(H)=E+F+G	(I)	(J)=D+H+I
	REVENUES						
100	REVENUE REQUIREMENTS						
110	MISCELLANEOUS REV. & UNCOLLECTIBLES						
	EXPENSES						
120	PLANT SPECIFIC						
130	NON-PLT SPECIFIC						
140	MARKETING						
150	CUSTOMER OPER SVC						
160	CORPORATE OPER						
170	OTHER						
180	DEPRE & AMORT						
190	TOTAL EXPENSES						
	TAXES						
200	OTHER TAXES						
210	FIXED CHARGES						
220	FEDERAL INCOME						
	INVESTMENT						
230	GSF						
240	COE SW						
250	COE TRANS						
260	C&W						
270	I O/T						
280	OTHER INV						
290	TOTAL INVESTMENT						
	RESERVES						
300	DEPR AND AMORT						
310	DEFERRED						
320	OTHER						
330	TOTAL RESERVES						
340	AVERAGE NET INVESTMENT						
350	NET RETURN						

WS-7.2
1 OF 2

EXOGENOUS COST CHANGE DETAIL

(DOLLARS IN THOUSANDS)

EXOGENOUS COST CHANGE FOR - SPF

STUDY AREA:

		COMMON LINE			
		EFP	ISW	PAY	TOTAL
		(A)	(B)	(C)	(D)=A+B+C
	REVENUES				
100	REVENUE REQUIREMENTS				
110	MISCELLANEOUS REV. & UNCOLLECTIBLES				
	EXPENSES				
120	PLANT SPECIFIC				
130	NON-PLT SPECIFIC				
140	MARKETING				
150	CUSTOMER OPER SVC				
160	CORPORATE OPER				
170	OTHER				
180	DEPRE & AMORT				
190	TOTAL EXPENSES				
	TAXES				
200	OTHER TAXES				
210	FIXED CHARGES				
220	FEDERAL INCOME				
	INVESTMENT				
230	GSF				
240	COE SW				
250	COE TRANS				
260	C&W				
270	I O/T				
280	OTHER INV				
290	TOTAL INVESTMENT				
	RESERVES				
300	DEPR AND AMORT				
310	DEFERRED				
320	OTHER				
330	TOTAL RESERVES				
340	AVERAGE NET INVESTMENT				
350	NET RETURN				

WS-7.2
2 OF 2

EXOGENOUS COST CHANGE DETAIL

(DOLLARS IN THOUSANDS)

EXOGENOUS COST CHANGE FOR - SPF

STUDY AREA:

		SWITCHED TRAFFIC SENSITIVE				SPECIAL ACCESS	TOTAL INTERSTATE ACCESS
		SWITCHING	TRANSPORT	INFORMATION	TOTAL		
		(E)	(F)	(G)	(H)=E+F+G	(I)	(J)=D+H+I
	REVENUES						
100	REVENUE REQUIREMENTS						
110	MISCELLANEOUS REV. & UNCOLLECTIBLES						
	EXPENSES						
120	PLANT SPECIFIC						
130	NON-PLT SPECIFIC						
140	MARKETING						
150	CUSTOMER OPER SVC						
160	CORPORATE OPER						
170	OTHER						
180	DEPRE & AMORT						
190	TOTAL EXPENSES						
	TAXES						
200	OTHER TAXES						
210	FIXED CHARGES						
220	FEDERAL INCOME						
	INVESTMENT						
230	GSF						
240	COE SW						
250	COE TRANS						
260	C&W						
270	I O/T						
280	OTHER INV						
290	TOTAL INVESTMENT						
	RESERVES						
300	DEPR AND AMORT						
310	DEFERRED						
320	OTHER						
330	TOTAL RESERVES						
340	AVERAGE NET INVESTMENT						
350	NET RETURN						

EXOGENOUS COST CHANGE DETAIL

(DOLLARS IN THOUSANDS)

WS-7.3
1 OF 2

EXOGENOUS COST CHANGE FOR - INSIDE WIRE

STUDY AREA:

		COMMON LINE			
		BFP	ISW	PAY	TOTAL
		(A)	(B)	(C)	(D)=A+B+C
	REVENUES				
100	REVENUE REQUIREMENTS				
110	MISCELLANEOUS REV. & UNCOLLECTIBLES				
	EXPENSES				
120	PLANT SPECIFIC				
130	NON-PLT SPECIFIC				
140	MARKETING				
150	CUSTOMER OPER SVC				
160	CORPORATE OPER				
170	OTHER				
180	DEPRE & AMORT				
190	TOTAL EXPENSES				
	TAXES				
200	OTHER TAXES				
210	FIXED CHARGES				
220	FEDERAL INCOME				
	INVESTMENT				
230	GSF				
240	COE SW				
250	COE TRANS				
260	C&W				
270	I O/T				
280	OTHER INV				
290	TOTAL INVESTMENT				
	RESERVES				
300	DEPR AND AMORT				
310	DEFERRED				
320	OTHER				
330	TOTAL RESERVES				
340	AVERAGE NET INVESTMENT				
350	NET RETURN				

WS-7.3
2 OF 2

EXOGENOUS COST CHANGE DETAIL

(DOLLARS IN THOUSANDS)

EXOGENOUS COST CHANGE FOR - INSIDE WIRE

STUDY AREA:

		SWITCHED TRAFFIC SENSITIVE					
		SWITCHING (E)	TRANSPORT (F)	INFORMATION (G)	TOTAL (H)=E+F+G	SPECIAL ACCESS (I)	TOTAL INTERSTATE ACCESS (J)=D+H+I
	REVENUES						
100	REVENUE REQUIREMENTS						
110	MISCELLANEOUS REV. & UNCOLLECTIBLES						
	EXPENSES						
120	PLANT SPECIFIC						
130	NON-PLT SPECIFIC						
140	MARKETING						
150	CUSTOMER OPER SVC						
160	CORPORATE OPER						
170	OTHER						
180	DEPRE & AMORT						
190	TOTAL EXPENSES						
	TAXES						
200	OTHER TAXES						
210	FIXED CHARGES						
220	FEDERAL INCOME						
	INVESTMENT						
230	GSF						
240	COE SW						
250	COE TRANS						
260	C&W						
270	I O/T						
280	OTHER INV						
290	TOTAL INVESTMENT						
	RESERVES						
300	DEPR AND AMORT						
310	DEFERRED						
320	OTHER						
330	TOTAL RESERVES						
340	AVERAGE NET INVESTMENT						
350	NET RETURN						

BEST COPY AVAILABLE

EXOGENOUS COST CHANGE DETAIL

(DOLLARS IN THOUSANDS)

WS-7.4
1 OF 2

EXOGENOUS COST CHANGE FOR - DEM

STUDY AREA:

		COMMON LINE			
		BFP (A)	ISW (B)	PAY (C)	TOTAL (D)=A+B+C
	REVENUES				
100	REVENUE REQUIREMENTS				
110	MISCELLANEOUS REV. & UNCOLLECTIBLES				
	EXPENSES				
120	PLANT SPECIFIC				
130	NON-PLT SPECIFIC				
140	MARKETING				
150	CUSTOMER OPER SVC				
160	CORPORATE OPER				
170	OTHER				
180	DEPRE & AMORT				
190	TOTAL EXPENSES				
	TAXES				
200	OTHER TAXES				
210	FIXED CHARGES				
220	FEDERAL INCOME				
	INVESTMENT				
230	GSF				
240	COE SW				
250	COE TRANS				
260	C&W				
270	I O/T				
280	OTHER INV				
290	TOTAL INVESTMENT				
	RESERVES				
300	DEPR AND AMORT				
310	DEFERRED				
320	OTHER				
330	TOTAL RESERVES				
340	AVERAGE NET INVESTMENT				
350	NET RETURN				

EXOGENOUS COST CHANGE DETAIL

(DOLLARS IN THOUSANDS)

WS-7.4
2 OF 2

EXOGENOUS COST CHANGE FOR - DEM

STUDY AREA:

		SWITCHED TRAFFIC SENSITIVE					
		SWITCHING (E)	TRANSPORT (F)	INFORMATION (G)	TOTAL (H)=E+F+G	SPECIAL ACCESS (I)	TOTAL INTERSTATE ACCESS (J)=D+H+I
	REVENUES						
100	REVENUE REQUIREMENTS						
110	MISCELLANEOUS REV. & UNCOLLECTIBLES						
	EXPENSES						
120	PLANT SPECIFIC						
130	NON-PLT SPECIFIC						
140	MARKETING						
150	CUSTOMER OPER SVC						
160	CORPORATE OPER						
170	OTHER						
180	DEPRE & AMORT						
190	TOTAL EXPENSES						
	TAXES						
200	OTHER TAXES						
210	FIXED CHARGES						
220	FEDERAL INCOME						
	INVESTMENT						
230	GSF						
240	COE SW						
250	COE TRANS						
260	C&W						
270	I O/T						
280	OTHER INV						
290	TOTAL INVESTMENT						
	RESERVES						
300	DEPR AND AMORT						
310	DEFERRED						
320	OTHER						
330	TOTAL RESERVES						
340	AVERAGE NET INVESTMENT						
350	NET RETURN						

EXOGENOUS COST CHANGE DETAIL

(DOLLARS IN THOUSANDS)

WS-7.5
1 OF 2

EXOGENOUS COST CHANGE FOR - DEPRECIATION & AMORT.

STUDY AREA:

		COMMON LINE			
		BFP	ISW	PAY	TOTAL
		(A)	(B)	(C)	(D)=A+B+C
	REVENUES				
100	REVENUE REQUIREMENTS				
110	MISCELLANEOUS REV. & UNCOLLECTIBLES				
	EXPENSES				
120	PLANT SPECIFIC				
130	NON-PLT SPECIFIC				
140	MARKETING				
150	CUSTOMER OPER SVC				
160	CORPORATE OPER				
170	OTHER				
180	DEPRE & AMORT				
190	TOTAL EXPENSES				
	TAXES				
200	OTHER TAXES				
210	FIXED CHARGES				
220	FEDERAL INCOME				
	INVESTMENT				
230	GSF				
240	COE SW				
250	COE TRANS				
260	C&W				
270	I O/T				
280	OTHER INV				
290	TOTAL INVESTMENT				
	RESERVES				
300	DEPR AND AMORT				
310	DEFERRED				
320	OTHER				
330	TOTAL RESERVES				
340	AVERAGE NET INVESTMENT				
350	NET RETURN				

EXOGENOUS COST CHANGE DETAIL

(DOLLARS IN THOUSANDS)

WS-7.5
2 OF 2

EXOGENOUS COST CHANGE FOR - DEPRECIATION & AMORT.

STUDY AREA:

		SWITCHED TRAFFIC SENSITIVE					
		SWITCHING	TRANSPORT	INFORMATION	TOTAL	SPECIAL ACCESS	TOTAL INTERSTATE ACCESS
		(E)	(F)	(G)	(H)=E+F+G	(I)	(J)=D+H+I
	REVENUES						
100	REVENUE REQUIREMENTS						
110	MISCELLANEOUS REV. & UNCOLLECTIBLES						
	EXPENSES						
120	PLANT SPECIFIC						
130	NON-PLT SPECIFIC						
140	MARKETING						
150	CUSTOMER OPER SVC						
160	CORPORATE OPER						
170	OTHER						
180	DEPRE & AMORT						
190	TOTAL EXPENSES						
	TAXES						
200	OTHER TAXES						
210	FIXED CHARGES						
220	FEDERAL INCOME						
	INVESTMENT						
230	GSF						
240	COE SW						
250	COE TRANS						
260	C&W						
270	I O/T						
280	OTHER INV						
290	TOTAL INVESTMENT						
	RESERVES						
300	DEPR AND AMORT						
310	DEFERRED						
320	OTHER						
330	TOTAL RESERVES						
340	AVERAGE NET INVESTMENT						
350	NET RETURN						

EXOGENOUS COST CHANGE DETAIL

(DOLLARS IN THOUSANDS)

WS-7.6
1 OF 2

EXOGENOUS COST CHANGE FOR - OTHER (PURSUANT TO WAIVER ONLY)

STUDY AREA:

		COMMON LINE			
		BFP	ISW	PAY	TOTAL
		(A)	(B)	(C)	(D)=A+B+C
	REVENUES				
100	REVENUE REQUIREMENTS				
110	MISCELLANEOUS REV. & UNCOLLECTIBLES				
	EXPENSES				
120	PLANT SPECIFIC				
130	NON-PLT SPECIFIC				
140	MARKETING				
150	CUSTOMER OPER SVC				
160	CORPORATE OPER				
170	OTHER				
180	DEPRE & AMORT				
190	TOTAL EXPENSES				
	TAXES				
200	OTHER TAXES				
210	FIXED CHARGES				
220	FEDERAL INCOME				
	INVESTMENT				
230	GSF				
240	COE SW				
250	COE TRANS				
260	C&W				
270	I O/T				
280	OTHER INV				
290	TOTAL INVESTMENT				
	RESERVES				
300	DEPR AND AMORT				
310	DEFERRED				
320	OTHER				
330	TOTAL RESERVES				
340	AVERAGE NET INVESTMENT				
350	NET RETURN				

EXOGENOUS COST CHANGE DETAIL

(DOLLARS IN THOUSANDS)

WS-7.6
2 OF 2

EXOGENOEXOGENOUS COST CHANGE FOR - OTHER (PURSUANT TO WAIVER ONLY)

STUDY AREA:

		SWITCHED TRAFFIC SENSITIVE				SPECIAL ACCESS	TOTAL INTERSTATE ACCESS
		SWITCHING	TRANSPORT	INFORMATION	TOTAL		
		(E)	(F)	(G)	(H)=E+F+G	(I)	(J)=D+H+I
	REVENUES						
100	REVENUE REQUIREMENTS						
110	MISCELLANEOUS REV. & UNCOLLECTIBLES						
	EXPENSES						
120	PLANT SPECIFIC						
130	NON-PLT SPECIFIC						
140	MARKETING						
150	CUSTOMER OPER SVC						
160	CORPORATE OPER						
170	OTHER						
180	DEPRE & AMORT						
190	TOTAL EXPENSES						
	TAXES						
200	OTHER TAXES						
210	FIXED CHARGES						
220	FEDERAL INCOME						
	INVESTMENT						
230	GSF						
240	COE SW						
250	COE TRANS						
260	C&W						
270	I O/T						
280	OTHER INV						
290	TOTAL INVESTMENT						
	RESERVES						
300	DEPR AND AMORT						
310	DEFERRED						
320	OTHER						
330	TOTAL RESERVES						
340	AVERAGE NET INVESTMENT						
350	NET RETURN						

WS-7.7
1 OF 2

EXOGENOUS COST CHANGE DETAIL

(DOLLARS IN THOUSANDS)

TOTAL EXOGENOUS COST CHANGES

STUDY AREA:

		COMMON LINE			
		BFP	ISW	PAY	TOTAL
		(A)	(B)	(C)	(D)=A+B+C
	REVENUES				
100	REVENUE REQUIREMENTS				
110	MISCELLANEOUS REV. & UNCOLLECTIBLES				
	EXPENSES				
120	PLANT SPECIFIC				
130	NON-PLT SPECIFIC				
140	MARKETING				
150	CUSTOMER OPER SVC				
160	CORPORATE OPER				
170	OTHER				
180	DEPRE & AMORT				
190	TOTAL EXPENSES				
	TAXES				
200	OTHER TAXES				
210	FIXED CHARGES				
220	FEDERAL INCOME				
	INVESTMENT				
230	GSF				
240	COE SW				
250	COE TRANS				
260	C&W				
270	I O/T				
280	OTHER INV				
290	TOTAL INVESTMENT				
	RESERVES				
300	DEPR AND AMORT				
310	DEFERRED				
320	OTHER				
330	TOTAL RESERVES				
340	AVERAGE NET INVESTMENT				
350	NET RETURN				

EXOGENOUS COST CHANGE DETAIL

(DOLLARS IN THOUSANDS)

WS-7.7
2 OF 2

TOTAL EXOGENOUS COST CHANGES

STUDY AREA:

		SWITCHED TRAFFIC SENSITIVE				SPECIAL ACCESS	TOTAL INTERSTATE ACCESS
		SWITCHING	TRANSPORT	INFORMATION	TOTAL		
		(E)	(F)	(G)	(H)=E+F+G	(I)	(J)=D+H+I
	REVENUES						
100	REVENUE REQUIREMENTS						
110	MISCELLANEOUS REV. & UNCOLLECTIBLES						
	EXPENSES						
120	PLANT SPECIFIC						
130	NON-PLT SPECIFIC						
140	MARKETING						
150	CUSTOMER OPER SVC						
160	CORPORATE OPER						
170	OTHER						
180	DEPRE & AMORT						
190	TOTAL EXPENSES						
	TAXES						
200	OTHER TAXES						
210	FIXED CHARGES						
220	FEDERAL INCOME						
	INVESTMENT						
230	GSF						
240	COE SW						
250	COE TRANS						
260	C&W						
270	I O/T						
280	OTHER INV						
290	TOTAL INVESTMENT						
	RESERVES						
300	DEPR AND AMORT						
310	DEFERRED						
320	OTHER						
330	TOTAL RESERVES						
340	AVERAGE NET INVESTMENT						
350	NET RETURN						

NOTES ON EXOGENOUS CHANGES

STUDY AREA ________________

		1988	1989
100	SPF	______	______
110	DEM	______	______

120 INSIDE WIRE AMORTIZATION STATUS: ________________
121 ________________
122 ________________
123 ________________
124 ________________
125 ________________

130 DEPRECIATION: (DESCRIBE) ________________
131 ________________
132 ________________
133 ________________
134 ________________
135 ________________

140 OTHER (DESCRIBE) ________________
141 ________________
142 ________________
143 ________________
144 ________________
145 ________________

DEVELOPMENT OF REVENUE REQUIREMENT UNDERLYING CURRENT RATES WS-9

(DOLLARS IN THOUSANDS)

TARIFF LEVEL:

	COST CATEGORIES	REV. REQ. UNDERLYING 4/1/89 RATES EXCLUDING FCC ADJUSTMENT	FCC ADJUSTMENTS 3/22/89 *	FCC ADJUSTMENTS 6/29/89 *	OTHER ADJ. BY TRANSMITTAL *	OTHER ADJ. BY TRANSMITTAL *	REV. REQ. UNDERLYING CURRENT RATES **
		(A)	(B)	(C)	(D)	(E)	(F)=A+B+C+D+E
100	COMMON LINE						
110	BFP						
120	ISW						
130	PAY						
140	SWITCHED TRAFFIC SENSITIVE						
150	SWITCHING						
160	TRANSPORT						
170	INFORMATION						
180	SPECIAL ACCESS						
190	TOTAL ACCESS						
200	TRANSMITTAL NUMBER ***						
210	TRANSMITTAL DATE ****						

* IDENTIFY TRANSMITTAL ASSOCIATED WITH THIS VIEW

** MUST AGREE WITH WS-3, COL. A

*** THE TRANSMITTAL NUMBER FOR COL.'S B, C, D AND E SHOULD BE ENTERED ON ROW 200. ENTER "NONE" IF NO TRANSMITTALS WERE SUBMITTED

**** THE TRANSMITTAL DATE SHOULD BE ENTERED ON ROW 210. ENTER "NONE" IF NO TRANSMITTALS WERE SUBMITTED

COMMON LINE DEMAND - MOU

(MINUTES IN THOUSANDS)

TARIFF LEVEL:

	COMMON LINE DEMAND	DEMAND UNDERLYING 4/1/89 RATES ** (A)	DEMAND GROWTH FACTOR (B)	TEST PERIOD DEMAND (C)=A*B
	MINUTES			
100	CCL ORIG. PREM.			
110	CCL TERM. PREM.			
120	CCL ORIG. NON-PREM.			
130	CCL TERM. NON-PREM.			

* SOURCE IS WS-11

** DEMAND UNDERLYING 4/1/89 RATES (INCLUDING FCC ADJUSTMENTS) UNLESS UPDATED BY A LATER TRANSMITTAL PER COL"S D & E OF WS-9

COMMON LINE MINUTES OF USE GROWTH FACTOR DEVELOPMENT

(MINUTES IN THOUSANDS)

TARIFF ENTITY :

	CCL MOU GROWTH FACTOR	AMOUNT (A)
	PREMIUM ORIGINATING MOU	
100	PREMIUM ORIG. MOU (1/89 THRU 6/89)	
110	PREMIUM ORIG. MOU (1/88 THRU 6/88)	
120	PREMIUM ORIG. MOU GROWTH FACTOR (NOTE 1)	
	PREMIUM TERMINATING MOU	
130	PREMIUM TERM. MOU (1/89 THRU 6/89)	
140	PREMIUM TERM. MOU (1/88 THRU 6/88)	
150	PREMIUM TERM. MOU GROWTH FACTOR (NOTE 2)	
	NON-PREMIUM ORIGINATING MOU	
160	NON-PREMIUM ORIG. MOU (1/89 THRU 6/89)	
170	NON-PREMIUM ORIG. MOU (1/88 THRU 6/88)	
180	NON-PREMIUM ORIG. MOU GROWTH FACTOR (NOTE 3)	
	NON-PREMIUM TERMINATING MOU	
190	NON-PREMIUM TERM. MOU (1/89 THRU 6/89)	
200	NON-PREMIUM TERM. MOU (1/88 THRU 6/88)	
210	NON-PREMIUM TERM. MOU GROWTH FACTOR (NOTE 4)	

NOTE 1: (L100 / L110) ^ (7.5/12)
NOTE 2: (L130 / L140) ^ (7.5/12)
NOTE 3: (L160 / L170) ^ (7.5/12)
NOTE 4: (L190 / L200) ^ (7.5/12)

WS-12

COMMON LINE DEMAND - ACCESS LINES

STUDY AREA:

	COMMON LINE DEMAND	DEMAND UNDERLYING 4/1/89 RATES ** (A)	DEMAND GROWTH FACTOR (B)	TEST PERIOD DEMAND (C)=A*B
	LINES			
100	RESIDENCE, SINGLE LINE BUS. & LIFELINE SUBSCRIBER LINES			
110	MULTILINE BUSINESS & CENTREX			
120	SURCHARGE LINES			

* SOURCE IS WS-13

** DEMAND UNDERLYING 4/1/89 FILING (INCLUDING FCC ADJUSTMENTS) UNLESS UPDATED BY A LATER TRANSMITTAL PER COL"S D & E OF WS-9

COMMON LINE DEMAND - ACCESS LINE GROWTH FACTORS

STUDY AREA :

		AMOUNT (A)
	LINE GROWTH FACTORS	
	SINGLE LINE BUSINESS AND RESIDENCE LINE GROWTH FACTOR	
100	SLB & RES. LINES (1Q89)	
110	SLB & RES LINES (1Q88)	
120	SLB & RES. LINES GROWTH FACTOR (NOTE 1)	
	MULTILINE BUSINESS (INCL. CTX) LINE GROWTH FACTOR	
130	MULTILINE BUS. (INCL CTX) LINES (1Q89)	
140	MULTILINE BUS. (INCL CTX) LINES (1Q88)	
150	MULTILINE BUS. (INCL CTX) LINE GROWTH FACTOR (NOTE 2)	
	SURCHARGEABLE LINES GROWTH FACTOR	
160	SURCHARGEABLE LINES (1Q89)	
170	SURCHARGEABLE LINES (1Q88)	
180	SURCHARGEABLE LINE GROWTH FACTOR (NOTE 3)	

GENERAL - ALL LINE COUNTS ARE END OF PERIOD

NOTE 1: (L100 / L110) ^ (7.5/12)
NOTE 2: (L130 / L140) ^ (7.5/12)
NOTE 3: (L160 / L170) ^ (7.5/12)

WS-14

ANNUALIZED
ACCESS PRICEOUT
COMPARISONS

(DOLLARS IN THOUSANDS)

TARIFF ENTITY:

		REVENUES AT CURRENT RATES (A)	REVENUES AT PROPOSED RATES (B)	CHANGE (C)=B-A
100	TOTAL MULTI-LINE BUSINESS (INCL CTX AND SURCHARGABLE LINES)			
110	TOTAL RESIDENCE AND SINGLE-LINE BUSINESS			
120	TOTAL CCL			
130	TOTAL TS-SWITCHED (EXCL. DA)			
140	TOTAL SPECIAL			
150	DIRECTORY ASSISTANCE			

NOTE: 1. REVENUES ARE CALCULATED USING DEMAND UNDERLYING PROPOSED RATES. THE DEMAND USED TO CALCULATE THE REVENUES IN COL'S A AND B SHOULD BY IDENTICAL.

2. ATTACH A SEPARATE TABLE TO IDENTIFY THE MULTI-LINE BUSINESS SUBSCRIBER LINE CHARGE IN EACH JURISDICTION

[FR Doc. 89-20795 filed 9-1-89; 8:45 am]

BILLING CODE 6712-01-C

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-838-DR]

District of Columbia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the District of Columbia (FEMA-838-DR), dated August 28, 1989, and related determinations.

DATED: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emegency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice

Notice is hereby given that, in a letter dated August 28, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

> I have determined that the damage in certain areas of the District of Columbia, resulting from severe storms and high winds on June 14-15, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288, as amended by Public Law 100-707. I, therefore, declare that such a major disaster exists in the District of Columbia.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Public Law 93-288, as amended by Public Law 100-707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James F. Oesterling of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the District of Columbia to have been affected adversely by this declared major disaster:

The District of Columbia for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89-20756 Filed 9-1-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-839-DR]

Maryland; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maryland (FEMA-839-DR), dated August 28, 1989, and related determinations.

DATED: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice

Notice is hereby given that, in a letter dated August 28, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Public Law 100-707), as follows:

> I have determined that the damage in certain areas of the State of Maryland, resulting from severe storms and high winds on June 14-15, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288, as amended by Public Law 100-707. I, therefore, declare that such a major disaster exists in the State of Maryland.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Public Law 93-288, as amended by Public Law 100-707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James F. Oesterling of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maryland to have been affected adversely by this declared major disaster:

Montgomery County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89-20757 Filed 9-1-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

Citizens Homestead Federal Savings Assoc.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Citizens Homestead Federal Savings Association, New Orleans, Louisiana on August 7, 1989.

Dated: August 8, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-20775 Filed 9-1-89; 8:45 am]

BILLING CODE 6720-01-M

Delta Savings and Loan Assoc.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 406F(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), as amended, the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Delta Savings and Loan Association, Kenner, Louisiana, on May 11, 1989.

Dated: August 8, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-20776 Filed 9-1-89; 8:45 am]

BILLING CODE 6720-01-M

Delta Savings and Loan Assoc. F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Delta Savings and Loan Association, F.A., Kenner Louisiana, on August 7, 1989.

Dated: August 4, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 20777 Filed 9-1-89; 8:45 am]

BILLING CODE 6720-01-M

Federal Savings Association of the Southwest; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as sole conservator ("Conservator") for Federal Savings Association of Southwest, Kilgore, Texas on July 26, 1989.

Dated: August 8, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 20778 Filed 9-1-89; 8:45 am]

BILLING CODE 6720-01-M

First City Federal Savings and Loan Assoc.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Federal Savings Association, Baton Rouge, Louisiana on August 4, 1989.

Dated: August 8, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-20779 Filed 9-1-89; 8:45 am]

BILLING CODE 6720-01-M

Security Homestead Federal Savings Assoc.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Security Homestead Federal Savings Association, New Orleans, Louisiana, on August 7, 1989.

Dated: August 8, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 20780 Filed 9-1-89; 8:45 am]

BILLING CODE 6720-01-M

Citizens Homestead Assoc.; Replacement of Conservator With a Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Citizens Homestead Association, New Orleans, Louisiana ("Association") with the FSLIC as sole receiver for the Association on August 7, 1989.

Dated: August 8, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 20781 Filed 9-1-89; 8:45 am]

BILLING CODE 6720-01-M

Delta Savings and Loan Assoc.; Replacement of Conservator With Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Delta Savings and Loan Association, Kenner, Louisiana ("Association"), with the FSLIC as sole Receiver for the Association on August 7, 1989.

Dated: August 8, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-20782 Filed 9-1-89; 8:45 am]

BILLING CODE 6720-01-M

Federal SavingsBanc of the Southwest; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as sole receiver ("Receiver") for Federal SavingsBanc of the Southwest, Kilgore, Texas ("Association") on July 26, 1989.

Dated: August 8, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-20784 Filed 9-1-89; 8:45 am]

BILLING CODE 6720-01-M

First City Savings Bank, S.S.B.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for First City Savings Bank, S.S.B., Baton Rouge, Louisiana ("Association"), with the FSLIC as sole receiver for the Association on August 4, 1989.

Dated: August 8, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-20783 Filed 9-1-89; 8:45 am]

BILLING CODE 6720-01-M

Security Homestead Association; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation

("FSLIC") as Conservator for Security Homestead Association, New Orleans, Louisiana ("Association"), with the FSLIC as sole receiver for the Association on August 7, 1989.

Dated: August 8, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-20785 Filed 9-1-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Norwest Corp.; Request for Exemption

Norwest Corporation, Minneapolis, Minnesota ("Norwest"), has requested, pursuant to section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 *et seq.*) ("section 106"), that the Board grant an exception in order to permit the bundling of credit card products, which are offered through only one of its banking affiliates, with traditional banking products offered by its other affiliates at an aggregated lower cost to the customer. Although section 106 permits a bank to fix or to vary the consideration for extending credit or furnishing services on condition that a customer also obtain a traditional banking service (loan, discount, deposit or trust service) from that bank, it prohibits a bank from engaging in these same activities on condition that the customer obtain any additional credit or services from any other subsidiary of the bank's parent bank holding company. The Board may, however, grant an exception that is not contrary to the purposes of this provision.

Norwest proposes to bundle credit card products, currently offered through only one of its banking affiliates, with traditional banking products offered by its other banking affiliates in such a way that the total price to the consumer for the bundled products would be lower than the price to the consumer for the products if purchased separately. For example, credit card products could be made available at a reduced interest rate or with a waiver for the first year of a service fee if purchased in conjunction with other traditional banking products offered by other banking affiliates. All products offered by other banking affiliates would continue to be available separately to customers at separate prices.

In support of its request, Norwest maintains that section 106's legislative history reveals a Congressional intent to prohibit anti-competitive conduct. Norwest contends that its proposal is not anti-competitive in that the customer would not be required either directly or indirectly to accept one product in order to obtain another product. All products are available separately at separate prices and the prices of products are kept competitive through normal market forces. Norwest concludes that it does not have enough economic power in the national credit card market to cause a lessening of competition in the markets for the other traditional banking products with which credit cards may be bundled. Customers may freely choose to purchase bundled or separate services from Norwest affiliates or from competitors.

Norwest also maintains that its proposal is consistent with the legislative history of section 106 because it only involves the bundling of traditional banking products. Norwest notes that Congress had no intent to prohibit traditional banking practices under section 106 and argues that the only difference between its current proposal and activities expressly authorized under section 106 is the fact that Norwest proposes to bundle the products offered by more than one affiliate.

Notice of the request is published solely in order to seek the views of interested persons on the issues presented by the request and does not represent a determination by the Board that the request meets or is likely to meet the standards of section 106.

The request may be inspected at the offices of the Board of Governors.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than October 2, 1989.

Board of Governors of the Federal Reserve System, August 29, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-20715 Filed 9-1-89; 8:45am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89F-0343]

Minnesota Mining & Manufacturing Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Minnesota Mining & Manufacturing Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a copolymer of vinylidene fluoride and hexafluoropropene as an adjuvant for ethylene-vinyl acetate polymers for food-contact use.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4154) has been filed by Minnesota Mining & Manufacturing Co., 3M Center, St. Paul, MN 55144-1000, proposing that § 177.1350 *Ethylene-vinyl acetate copolymers* (21 CFR 177.1350) be amended to provide for the safe use of a copolymer of vinylidene fluoride and hexafluoropropene as an adjuvant for ethylene-vinyl acetate polymers for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 24, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-20733 Filed 9-1-89; 8:45am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 48, No. 198, pg. 46440, dated Wednesday, October 12, 1983 and Vol. 51, No. 63, pg. 11348, dated Wednesday, April 2, 1986) is amended to reflect a realignment of functions within the Division of Contractor Financial Management and within the Division of Provider Audits, Office of Financial Operations, Bureau of Program

Operations, Associate Administrator for Operations.

The specific changes to Part F. are as follows:

- Section FP.20.A.4.a., Division of Contractor Financial Management (FPA71) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

a. Division of Contractor Financial Management (FPA71)

Provides leadership in developing, implementing and evaluating policies and procedures for the Medicare contractor budget process. Formulates and approves the national budget for Medicare contractor administrative costs. Develops, implements and monitors cash management letter-of-credit procedures for contractors and servicing banks. Develops, implements, and monitors fund control for the Medicare contractor administrative costs. Sets requirements and procedures for contractors and regional offices to prepare and submit periodic budget estimates and reports. Analyzes and evaluates budget estimates submitted by contractors for ADP systems proposals. Participates in experimental contract Request for Proposal (RFP) preparation and proposal evaluation made by the Bureau of Program Operations (BPO). Participates in negotiations and approval of all related price adjustments. Reviews periodic contractor expenditure reports to evaluate budget execution and determinations of the allowability of costs. Designs, maintains and, as necessary, prepares specifications to revise the Medicare financial administration and benefit payment systems. Analyzes contractor administrative cost data and trends. Directs and prepares instructions to guide regional office performance to assure consistency in implementation of financial policy. Interprets cost reimbursement principles and policies for contractors related to operational accounting issues. Determines compliance with accepted accounting principles and procedures. Participates in the formulation of regulations and development of administrative cost and benefit outlays reporting policy for the Catastrophic/Drug Program. Establishes procedures for the reporting of Catastrophic/Drug Program expenditures.

- Section FP.20.A.4.d., Division of Provider Audits (FPA76) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

d. Division of Provider Audits (FPA76)

Analyzes regulations, executive orders, policies and legislative proposals and assesses their financial impact on the audit budget. Develops the plan, necessary audit programs, guidelines and instructions for the implementation of current and future regulations, legislation and court orders. Establishes audit protocols, priorities and procedures for use in performing compliance reviews required by applicable legislation, i.e., drug processors under the Catastrophic Drug provision. Plans and develops audit strategies that can be employed to improve and enhance the management of the audit function. Develops rationale for the audit and reimbursement portion of the national contractor budget and legislative audit budget package applicable to catastrophic and drug legislation. Develops the return ratio requirements for provider audits to assure maximum return on investment (expenditures). Reviews and evaluates contractor audit and reimbursement reports to determine the effectiveness of contractor audit and reimbursement performance and compliance with established audit guidelines, priorities, funding limitations and workload objectives. Analyzes and researches issues and responds to reimbursement and financial audit reports and studies prepared by the Office of Inspector General and General Accounting Office and other components both within and outside HCFA. Coordinates Provider Statistical & Reimbursement Report (PS&R) related activities with contractors, Blue Cross and Blue Shield Association (BCBSA) and HCFA central and regional office components. Implements, maintains and develops future enhancements for a uniform system of audit and reimbursement data collection and retrieval (System Tracking for Audit and Reimbursement) which supports the PRISM system, and manages the timely development and implementation. Plans, monitors and reports on special audit projects (e.g., uniform cost reports, skilled nursing facility and home health agency prospective payment). Conducts national and regional training for contractors on audit and reimbursement issues.

Dated: August 23, 1989.

Robert A. Streimer,

Acting Associate Administrator for Management.

[FR Doc. 89-20740 Filed 9-1-89; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Opportunity for a Cooperative Research and Development Agreement and an Exclusive License To Pursue Research and Development of a Chinese Hamster Ovary Cell Line That Produces B19 Proteins

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: Offer of an opportunity for collaborative research and apply for an exclusive license for: scientific and commercial production of a genetically-engineered cell line that produces empty capsids of B19 (human) parvovirus; development of a B19 parvovirus diagnostic and of a vaccine against the virus; exploration of potential packaging of this cell line for use in gene therapy; and development of the nonstructural protein of parvovirus as a cytotoxic reagent, using the cell line and other techniques.

ADDRESS: Responses and requests for further information, including a copy of the patent application, may be addressed to Mr. Stephen A. Ficca, Executive Officer and Technology Development Coordinator, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 5A50, 9000 Rockville Pike, Bethesda, Maryland 20892, (301) 496-2411.

DATE: Interested parties should submit a written plan for development and marketing of the invention within 30 days from the date of this notice.

Late or incomplete responses will not be considered. If the Government determines that it is necessary, timely respondees may be allowed another opportunity to provide additional information, to present an oral statement, and to answer questions. A potential awardee's failure to submit a timely response will be considered in the Government's assessment of any objection raised by the company to the granting of an exclusive patent license to the awardee finally selected.

SUPPLEMENTARY INFORMATION: The Clinical Hematology Branch (CHB), National Heart, Lung, and Blood Institute (NHLBI) of the National Institutes of Health (NIH) seeks an exclusive licensee under U.S. Patent (pending) "Chinese Hamster Ovary Cell Line Producing B19 Proteins" who will also collaborate with NHLBI to pursue efficiently and effectively further research and development of a Chinese hamster ovary (CHO) cell line that produces B19 proteins to (1) develop an assay for antibodies to B19 parvovirus; (2) produce a vaccine to protect patients against infection with B19 parvovirus; (3) explore the potential of the cell line for transfer of genetic material into bone marrow cells for purposes of gene therapy; (4) and utilize this cell line and other techniques in developing the nonstructural protein of B19 parvovirus as a cytotoxic reagent. Scientists from the CHB, NHLBI, have used recombinant DNA technology to engineer a stable cell line that produces the major and minor structural proteins of B19 parvovirus. These proteins are produced in natural proportions and self-assemble into noninfectious virion capsids. These capsids are indistinguishable from infectious virus present in serum and infected bone marrow cells by electron microscopy and immunoblot. This cell line may be useful in developing practical assays for B19 parvovirus antibody and also serve as the basis for a vaccine for the virus. Parvoviruses have been proposed as vectors for gene therapy, and this cell line might be employed for packaging of other cells. Finally, the nonstructural protein of B19 parvovirus is toxic to proliferating cells and may have potential usefulness in the treatment of cancer.

The Government seeks a company which, in accordance with the requirements of the regulations governing the licensing of Government-owned inventions (37 CFR 404.8), presents the most meritorious plan for: (1) The commercial exploitation of a genetically-engineered cell line that produces empty capsids of B19 (human) parvovirus with the best terms for the Government; and (2) the further development of the invention through collaborative research with the NHLBI. Specifically, the company must be able to:

(1) Culture 3-11-5 CHO cells under conditions that maintain stable expression of the transfected genes and production of empty capsids. The company will provide the collaborating Government laboratory with sufficient quantities of empty capsids and metabolically radioactively-labelled empty capsids for investigative purposes. The company will assure minimal lot-to-lot variation by determination of B19 protein production and encapsidation using standard techniques.

(2) Develop an immunological assay for anti-B19 parvovirus IgM and IgG antibodies utilizing the products of the cell line. The company will be responsible for quality control of this product, its manufacture, and its marketing. Until commercial distribution occurs, the company will provide to selected state and other government laboratories designated by NHLBI sufficient CHO 3-11-5 lysate for the performance of such antibody tests. The company will be responsible for expeditiously achieving regulatory approval of this assay, and any other assays, by the Food and Drug Administration.

(3) Develop a vaccine based on the CHO 3-11-5 cell line for the purpose of protecting patients with underlying hemolysis who are at risk for transient aplastic crisis; immunosuppressed and susceptible patients who are at risk for chronic anemia due to persistent parvovirus infection; pregnant women who are susceptible to this virus from infection and possible fetal loss; and for broader vaccination of the general population if indicated. The company will be responsible for performing adequate preclinical and clinical trials of such a vaccine, including support of basic immunologic studies in the collaborating laboratory.

CRITERIA FOR REVIEW OF APPLICANT COMPANIES' PLANS: Companies' plans will be reviewed by a panel of senior Government scientists. The principal criteria used in the review will be those set forth by 37 CFR 404.7(a)(1)(ii)–(iv); and:

(1) Expertise and experience in mass mammalian cell line development, cell culture, and purification of proteins from cell culture, including quality control of the cell line and its expressed protein.

(2) Expertise and experience in protein chemistry and virology that would insure the ability to isolate and characterize empty capsid particles.

(3) Expertise and experience in developing diagnostic assays.

(4) Expertise and experience in developing vaccines.

(5) Expertise and experience in related methods for the support of this research, including prior experience in the construction of recombinant genes for production of vaccine molecules, production of monoclonal antibodies and hyperimmune sera, and standard molecular assays for protein, DNA, and RNA.

(6) Expertise and experience in the design, conduct, and evaluation of clinical studies for development of biological products, including recombinant proteins.

(7) Prior development and regulatory experience with recombinant proteins that have been evaluated in clinical studies under INDA.

(8) Willingness to share in the cost and the development of 3-11-5 cell line to its fullest potential by collaboration with and support of the collaborating Government laboratory. Specifically, the company will support basic laboratory work in B19 parvovirus directed towards utilizing the cell line for gene therapy and utilizing the nonstructural protein of B19 parvovirus. The company will provide financial support to be used for supplies, travel and equipment and provide at least 4 individuals to work in the Clinical Hematology Branch laboratory.

(9) Commitment to pay to the United States Government reasonable royalties once the diagnostic product or vaccine is marketed at rates to be negotiated, based on rates set forth in the company's plan.

(10) Agreement to comply with the Department of Health and Human Services' rules involving human/animal subjects.

(11) Appropriateness of the plans for efficiently and effectively pursuing this research and development, including milestones and deadlines for a vaccine and diagnostic products.

If it is necessary, in order to determine which applicant is best qualified to commercialize the invention in collaboration with the NHLBI, offerors may be allowed an opportunity to provide additional information, present an oral statement, and/or answer questions.

Upon selection of the best qualified applicant, an exclusive license will be negotiated in accordance with the procedures of 37 CFR part 404. A Cooperative Research and Development Agreement (CRADA) will be negotiated on the basis of the NIH Model CRADA, with the exclusive licensee selected under 37 CFR part 404.

Dated: August 28, 1989.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 89-20711 Filed 9-1-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2041]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

BEST COPY AVAILABLE

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 29, 1989.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: Information Collection and Recordkeeping Requirements on Loan Servicing—section 223(f) and 221(d) Coinsurance Programs.

Office: Housing.

Description of the Need for the Information and Its Porposed Use: The information collected includes items which coinsuring lenders collect from mortgagors to monitor project performance and management as well as items which HUD collects from coinsuring lenders to monitor and to ensure effective servicing of section 223(f) and 221(d) coinsured loans.

Form Number: HUD–92329, 93479, 93480, 93841, 92410, 93486, 949, 9250, 92458, 92266, 92426, 2744A, 2744B, 2744C, 2744D, and 2744F.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: Recordkeeping and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	5		1		1		5
Annual Report:							
Inventory Reconciliation	30		1		1		30
Servicing Report	30		1		2		60
Financial Statements	1,300		1		85		110,500
Occasional Reports:							
Change of Management Agents	130		1		4		520
Reserve for Replacements Transactions	650		1		1		650
Reports Related to Troubled Projects, Acquistion, and Disposition	130		1		2		260
Other Mortgagor Reports to Lender	200		1		1		200
Other Lender Reports to HUD	200		1		1		200

Total Estimated Burden Hours: 112,425.

Status: Reinstatement.

Contact: Matthew C. Andrea, HUD, (202) 755–4956; John Allison, OMB, (202) 395–6880.

Dated: August 29, 1989.

[FR Doc. 89–20752 Filed 9–1–89; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N–89–2042]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension,

reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 28, 1989.

John T. Murphy,

Information Policy and Management Division.

Proposal: Statement of Taxes

Office: Administration

Description of the Need for the Information and Its Proposed Use: The Form HUD–434 will be used by the Department to record the necessary information pertaining to taxes to enable HUD to establish its tax records and to continue immediate payment of taxes. The form also will verify the taxes paid when the lender's claim is audited for insurance benefits.

Form Number: HUD–434

Respondents: State or Local Governments, Businesses or Other For-Profit, and Federal Agencies or Employees

Frequency of Submission: On Occasion

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–434	433		1		.5		214

Total Estimated Burden Hours: 217

Status: Extension

Contact: Monroe Herndon, HUD, (202) 755–6448, John Allison, OMB, (202) 395–6880

Dated: August 28, 1989.

[FR Doc. 89–20753 Filed 9–1–89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Seventh Regular Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth summaries of the proposed U.S. positions for the seventh regular meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Comments or other relevant information concerning these proposed negotiating positions are solicited. A public meeting to discuss these proposed negotiating positions as well as proposals to amend the Convention's appendices concerning species to be controlled also will be held.

ADDRESS: Information and comments should be communicated to the U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203–3507. Information and comments received pursuant to this notice are available for public inspection at the Office of Management Authority, 4401 N. Fairfax Drive, Room 432, Arlington, Virginia 22203, telephone (703) 358–2095, from 8:00 a.m. to 4:15 p.m., Monday through Friday (except holidays).

DATES: A public meeting will be held on September 8, 1989, from 1:00–4:30 p.m., in rooms 7000A and 7000B of the U.S. Department of Interior, 18th and C Streets, NW., Washington, DC.

The Service will consider information and comments received by close of business September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur Lazarowitz, Chief, Operations Branch, Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203–3507, telephone (703) 358–2095.

Background

The United States is a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as CITES or the Convention), an international agreement designed to control international trade in certain species of animals and plants. The purpose of such control is to ensure that no species becomes extinct or threatened with extinction due to trade. CITES provides for biennial meetings of the Conference of the Parties (COP) at which CITES implementation is reviewed.

This notice is the third in a series of notices intended to inform the public of preparations for the seventh regular meeting (COP7) to be held in Lausanne, Switzerland, October 9–20, 1989. The first notice, published on December 8, 1988 (53 FR 49611–49612), announced the time and place of COP7 and called for suggestions for agenda items for COP7. The second notice, publised on March 20, 1989 (54 FR 11449.11450), set forth the provisional agenda for COP7 (subsequently revised). The U.S. Fish and Wildlife Service (Service) invited the public to provide information and comments on that provisional agenda and also announced a public meeting that was subsequently held on March 29, 1989, to receive further public input toward development of the U.S. positions. A separate series of notices from the Service's Office of Scientific Authority has been and will be addressing proposals to amend CITES Appendices I and II which are lists of species controlled by CITES.

Proposed Negotiating Positions

In this notice, the Service summarizes proposed negotiating positions for COP7. Numerals next to each summary correspond to the numbers used in the provisional agenda as revised (Doc. 7.1(Rev.)). A summary of any information and comments on the agenda items received at the March 29, 1989, public meeting or submitted in writing to the Service, as well as a brief rationale, follow each proposed summary negotiating position. In some instances, no proposed negotiating position is stated, but an explanation for not developing one is given.

I. Official Opening Ceremony

Proposed negotiating position: No position necessary.

Information and comments: None received.

Rationale: Not an issue for negotiation.

II. Welcoming Address

Proposed negotiating position: As Chair of the Standing Committee, the United States will present a welcoming address which will emphasize the need for the Parties, the Secretariat and nongovernmental organizations to rededicate themselves and provide the leadership to make CITES one of the most important and effective conventions for the conservation of wild fauna and flora.

Information and comments: None received.

Rationale: It is believes that CITIES has not lived up to its potential and that in light of renewed public concern for the environment the time is ripe to reinvigorate the implementation process.

III. Adoption of the Rules of Procedure

Proposed negotiating position: As Chair of the Bureau for the meeting, the United States will suggest that consideration be given to the admission of the public to the proceedings of Committees I and II in such a manner as not to disturb the normal functioning of these committees.

Information and comments: None received.

Rationale: World attention will be focused on COP7 because of concern over the serious decline of African elephant populations. Public awareness of CITES will be enhanced by opening Committee I and Committee II meetings. However, limitations on public attendance may be necessary in order to ensure the normal functioning of these committees. Generally, the Plenary sessions shall be open to the public (Rule 21 of the provisional Rules of Procedure, Doc 7.3). Sessions of Committees I and II are open to delegates and observers, but no mention is made of public attendance (Rule 22). Decisions taken in Committees I and II are not open for discussion in the Plenary session unless one-third of the voting delegates support a motion to open debate (Rule 13 paragraph 6).

IV. Election of Chair and Vice-Chair of the Meeting and of Committees I and II

Proposed negotiating position: Support the election of Chair and Vice-Chair on the basis of capabilities and regional representation.

Information and comments: None received.

Rationale: CITES is a worldwide convention. CITES would benefit from the use of human resources from every region of the world.

V. Adoption of Agenda and Working Programme

Proposed negotiating position: Support adoption of the provisional agenda (Doc. 6.1 (Rev.)).

Information and comments: None received.

Rationale: Usually adoption is *pro forma.*

VI. Establishment of the Credentials Committee and Committees I and II

Proposed negotiating position: Support the establishment of the Credentials Committee and Committees I and II.

Information and comments: None received.

Rationale: Establishment of the Credentials Committee is a *pro forma* matter. The United States supports the establishment of Committees I and II provided most Parties participating in COP7 have been able to send at least two delegates, or that the rules governing debate of Committee I and Committee II recommendations in Plenary have been sufficiently relaxed to ensure that most delegations will have had an opportunity to debate such recommendations before a final decision is made.

VII. Report of the Credentials Committee

Proposed negotiating position: Support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries party to CITES. Representatives whose credentials are not in order should be afforded observer status as under Article XI.7(a). If Credentials have been delayed, representatives should be allowed to vote on a provisional basis. A liberal interpretation of the rules of procedure on credentials should be adhered to in order to permit clearly legitimate representatives to participate.

Information and comments: None received.

Rationale: Adoption of the report is usually *pro forma.* Exclusion of representatives whose credentials are in order could undermine cooperation among Parties which is essential to the effective implementation of CITES.

VIII. Adminission of Observers

Proposed negotiating position: The United States supports the admission as observers of all representatives of agencies or bodies which meet the requirements specified in CITES that they be technically qualified in protection, conservation or management of wild fauna of flora.

Information and comments: None received.

Rationale: Participation of qualified nongovernmental organizations at COP's is specifically provided by Article XI of CITES. The United States has typically supported the opportunities of all technically qualified observers to participate to the maximum extent. Such wide participation has, on the whole, proven beneficial.

IX. Matters Related to the Standing Committee

1. Report by the Chairman

Proposed negotiating position: As Chair, the United States should stress the leadership role of the Standing Committee as it relates to oversight of the development and execution of the Secretariat's budget and the provision of general policy and operational direction to the Secretariat concerning CITES implementation.

Information and comments: None received.

Rationale: The operations of the Secretariat would be more effective if guided by a set of long-term goals and objectives established by the Parties that could then be used to structure short-term work plans. The Secretariat's budget needs to be presented in a comprehensive, clear and concise fashion so that the Standing Committee and the Parties can better oversee the Secretariat's budget functions. The Secretariat staff must be given long-term contracts and full benefits as a matter of the highest priority.

2. Election of New Members

Proposed negotiating position: Support the election of regional members that are willing and able to actively participate in Standing Committee activities.

Information and comments: None received.

Rationale: The Standing Committee has the potential to become a stronger leader in the development of CITES. Its mandate was substantially strengthened by COP6 and its review of the economy and efficiency of the Secretariat was a good start at using this expanded mandate. Capable and energetic regional members are essential to the development of the Standing Committee's leadership role. In keeping with the principle of rotation of office the United States will not be standing for re-election as North American regional member of the Standing Committee and will probably be replaced by Canada. New Representatives from Europe and Oceania will also be chosen to replace the Federal Republic of Germany and Australia, respectively.

3. Election of Alternate Regional Members

Proposed negotiating position: Advocate the adoption of a U.S. proposal to amend the mandate of the Standing Committee to establish alternate regional members.

Information and comments: None received.

Rationale: Alternate regional members would attend Standing Committee meetings only in the absence of the member of the region to which the alternate belongs. Because of their representational function and authority to vote, attendance of regional members or their alternates is important to the effective functioning of the Standing Committee.

X. Report of the Secretariat

Proposed negotiating position: None Necessary.

Information and comments: One commenter recommended that the COP evaluate the effectiveness of the Secretariat and implement a mechanism for job performance evaluation, including hiring and firing criteria. The commenter indicated that "signatories to the Convention and animal protection/conservation NGO's worldwide are dissatisfied with the current performance of the Secretariat, and their grievances should have their hearing at the Conference of the Parties."

Rationale: This agenda item enables the Secretariat to make a report to the COP of its activities in the immediately prior year. It usually contains such information as an accounting of CITES membership, reservations, Party submission of annual and biennial reports and the like. Normally, the Parties accept the report with little comment. The Secretariat's report has not been received by the Service as of this date. Full consideration will be given to any comments concerning the performance of the Secretariat. As noted under item IX.1, Report by the Chairman (of the Standing Committee), there are certain deficiencies in the operation of the Secretariat that need to be remedied. Secretariat staff members are employees of the United Nations Environment Programme (UNEP), which has the ultimate authority for personnel decisions.

XI. Financing and Budgeting of the Secretariat and of Meetings of the Conference of the Parties

Proposed negotiating position: Oppose any substantial increase in the Secretariat's budget representing an increase in its work program; recommend that the Secretariat continue to work with the Standing Committee to impose economies. Make clear the U.S. Government's position that its contributions under the financial amendment are voluntary. Continue to press for complete accounting of external revenues and expenditures and for a more transparent budget presentation.

Information and comments: None received.

Rationale: A large part of the increase in the 1990–1991 budget flows from the Standing Committee's decision to transfer the ivory control unit's budget from external funding to the core budget in order to exercise closer oversight. UNEP's decision to reclassify most of the professional positions in the Secretariat also caused part of the increase. External funding still represents a large part of the increase. External funding still represents a large part of the Secretariat's budget, and the Parties still need a comprehensive accounting of those funds.

XII. Committee Reports and Recommendations

1. Animals Committee

Proposed negotiating position: None necessary.

Information and comments: None received.

Rationale: The Animals Committee's report may contain information and/or recommendations on continuation of the review of significant trade in Appendix II species, on the draft resolution on first breeding facility for bred-in-captivity criteria for the first breeding facility for a new species, a request for committee operating budget, and a summary of marking techniques. These issues are discussed separately elsewhere in this notice. The overall applicability of the Berne criteria may also be discussed but no conclusion/recommendation is expected to be presented.

2. Plants Committee

Proposed negotiating position: Continue to encourage development of the committee, and accomplishment of its tasks identified in the report, to improve the effectiveness of CITES for plants. Tasks include: (1) Strengthen interaction with other (including regional) plant organizations and institutions; (2) publish identification *Guide;* (3) publish checklists and develop computerized databases on listed higher taxa; (4) study significant trade in orchids (and selected succulents); (5) assess trade in bulbs, timber, and possibly medicinal plants; (6) other stated (often administrative) items to encourage or assist Parties in implementing CITES and to consistently interpret its provisions for plants; and (7) expand educational efforts.

Information and comments: None Received.

Rationale: The United States has chaired the prior Plant Working Group and the Committee since 1983. Improving CITES effectiveness for the many listed (and the many possibly qualifying) plants is a long-term undertaking. Consider request for operating budget.

3. Identification Manual Committee

Proposed negotiating position: Continued to foster development of the animal and plant identification manuals and the plant Guide for use by port and border enforcement officers and to seek information on their usefulness. Renew efforts to recruit a new chairman for the Committee, preferably one from the European region for the sake of continuity.

Information and comments: None received.

Rational: The identification manuals are a long term undertaking due to the large number of species controlled by CITES. The former chairman of the manual for animals, a Swiss Federal Government employee, resigned at COP6 and is acting as a caretaker until a successor can be found.

4. Nomenclature Committee

Proposed negotiating position: Encourage and support the development/adoption of checklists for all taxa. Support clarification of any taxa not adequately described by proponents at the time of listing in the Appendices.

Information and comments: One commenter raised several questions related to how the Parties should deal with listing status questions when an inadequate scientific description of a taxon was given at the time of the listing.

Rationale: Implementation of the Convention is strengthened by use of uniform names of listed species by all parties, and adopted checklists provide guidance. Furthermore, the Chairman of the Nomenclature Committee has requested that the CITES Secretariat "prepare proposed 'procedures for action' of the Nonmenclature Committee in cases requiring interpretation of the nonmenclatural status of a species in the absence of supporting documentation at the time the listing was adopted by the Parties." The Chairman of the Nomenclature Committee also requested the CITES Secretariat to "obtain an independent legal opinion of the limits of authority [that] permanent committees hold regard to interpreting the intent of the Conference of the Parties (in relation to the preparation of the procedures for action)".

XIII. Intepretation and Implementation of the Convention

1. Report on National Reports Under Article VIII, Paragraph 7, of the Convention

Proposed negotiating position: Support measures that would encourage or pressure Parties to submit their annual reports and that would upgrade their quality.

Information and comments: None received.

Rational: Approximately 70 percent of the Parties are submitting an annual report, up from 58 percent in 1981. Accurate and complete report data are necessary to adequatley measure the impact of international trade on the species and can be a useful enforcement tool.

2. Review of Alleged Infractions

Proposed negotiating position: Support necessary and appropriate recommendations designed to obtain wider compliance with the terms of CITES.

Information and comments: None received.

Rationale: Article XIII provides for COP review of alleged infractions. A COP may make whatever recommendations it deems appropriate. The Service has received a first draft of the Secretariat's Infractions Report which covers the period July 1987–May 1989, and notes that 15 Parties have not identified a Scientific Authority and so notified the Secretariat.

3. Trade in Ivory From African Elephants

Proposed negotiating position: If the African elephant is listed on Appendix I, with no populations excluded from such listing, oppose any move to allow countries to trade in stockpiles of African elephant ivory or other parts or derivatives for primarily commercial purposes.

Information and comments: One commenter urged that a joint session of Committees I and II be held to consider elephant issues in order to facilitate participation of delegations and observers with few members. The commenter also opposed the establishment of quotas for the ivory trade regardless of origin (e.g. confiscated, culled, etc.)

Rationale: Importation of Appendix I specimens for primarily commercial purposes is not allowed under the terms of CITES. It is very doubtful that legal trade of ivory stocks could be accomplished without providing cover for illegal trade. In response to a 1981 request to allow commercial trade in Appendix I flood-killed lizards, the Parties recommended they be saved in storage or destroyed (Conf.3.14).

4. Trade in Rhinoceros Products

Proposed negotiating position: Support reasonable proposals that would enhance interdiction of the illegal rhinoceros horn trade and rhinoceros protection in the wild.

Information and comments: One commenter urged the U.S. Government to take all possible steps to eliminate trade in rhinoceros products.

Rationale: Illegal taking and trade of rhinoceros horn have been further depleting the already endangered species of rhinoceros. Medicinal forms are difficult to interdict. Further measures need to be taken on the supply side and in the consumer countries.

5. Trade in Leopards Skins

Proposed negotiation position: Advocate stricter controls if necessary to prevent quota violations. Oppose any further increases in quotas without adequate supporting data that includes well documented studies based on sound scientific principles.

Information and comments: One commenter urged a strong position against trade in leopards, and measures that would ensure that leopards are being killed because of their unacceptable activities and not to fill the quota.

Rationale: Trade of leopard skins for noncommercial purposes is allowed under CITES resolution Conf.6.9, which recognizes killing in defense of life and property and to enhance the survival of the species. Controversy exists over the adequacy of a leopard study produced for the Secretariat. Thus far, no quota increases have been requested.

6. Trade in Plant Specimens

Proposed negotiating position: No draft resolutions or other documents are pending. The Plants Committee will hold its second meeting simultaneously with portions of COP7. Encourage and be generally supportive of recommendations and items presented at COP7 that would improve CITES effectiveness for plants. If an item on certification of orchid nurseries is presented, consider supporting it within the existing CITES framework for issuance of certificates and permits for artificially propagated specimens of species.

Information and comments: None received.

Rationale: As no specific items have been presented, no firmer positions can be adopted. The Conservation Committee of the International Orchid Commission, and the Orchid Specialist Group of the Species Survival Commission of the IUCN, are seeking ways to expedite trade in artificially propagated orchids, as discussed in the first meeting of the Plants Committee. Orchid specialists familiar with various countries may offer advice and assistance to Parties in reaching their decisions as to which nurseries propagate orchids artificially. So long as certification is based on species and certain knowledge of each facility (not just on general information and without first knowing the facility's full inventory), and so long as the Parties remain actively responsible in using the advice and assistance to issue certificates and permits, the effort should be encouraged.

7. Marking of Specimens

Proposed negotiating position: Support continuing efforts to find new practical and effective methods of marking of animal and plant specimens.

Information and comments: None received.

Rationale: Article VI provides that where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen. The Animals Committee may present a paper at COP7 that describes and evaluates current marketing systems for live animals and parts and derivatives and that questions the systems of marking of ranched specimens recommended by resolution Conf. 5.16 (see also item XIII.18, Trade in ranched specimens between Parties, non-Parties and reserving Parties.)

Significant Trade in Appendix II Species

Proposed negotiating position: Support expeditious completion of studies of significantly traded Appendix II species. Support regular funding for the coordination of significant trade study projects.

Information and comments: One commenter recommended that a mechanism should be implemented that would restrict trade to reasonable and biologically sustainable levels.

Rationale: It has been 6 years since the Parties recognized that some Appendix II species may have been traded at levels detrimental to their survival and without sufficient information to know whether or not this was the case. Over 85 species were identified as fitting that description. Some studies have been started and a few completed, but not enough has been done. Without adequate biological data, the possibility that some of those species are being detrimentally affected by trade is rather high.

9. Sale of Confiscated Specimens of Species Included in Appendix II

Proposed negotiating position: Oppose any proposal that would give the Secretariat general authority to receive confiscated specimens for the purpose of auction and that would authorize the Secretariat to expend the proceeds of auction to establish a conservation program with the confiscating country to study the status of the species and/or assist the Management Authority of that country.

Information and comments: None received.

Rationale: The administration of such auctions and project development proposals would divert valuable resources of the Secretariat to activities best left to the individual Parties. While some governments may have problems assuring that the disposal of confiscated specimens and the disposition of the proceeds thereof is free from wrongdoing, the Secretariat should not be seen as a surrogate for such governments and, given the possibility of a large and continuing supply of such specimens, as a commercial establishment for the sale of Appendix II specimens.

10. Export/Re-Export Permit/Certificates

Proposed negotiating position: Support proposals that a security stamp must be authenticated on its face and its number printed on the face of the permit or certificate; that permits/certificates should be refused if modified without indication that modification was made by the appropriate authorities; that the date of issuance of the country of origin permit number be included on the re-export certificate (if available); that re-export certificates indicate country of last re-export with permit number and date of issuance in block 5 of the standardized permit; that validity of such documents be conditional on transport of live animals in accordance with IATA Live Animals Regulations; and that each Party send to the Secretariat three signature specimens of each official authorized to sign CITES export permits and re-export certificates.

Information and comments: None received.

Rationale: Printing the number of the security stamp on the face of the permit or certificate and cancelling the security stamp would mitigate against removal and reuse of security stamps. Modification of permits/certificates without official indication of the validity of such modification makes it difficult to distinguish between official and unofficial (sometimes fraudulent) modification. Inclusion of the date of issuance of the country of origin export permit in some instances would facilitate the search for the permit by the issuing authority. Inclusion of the last country of re-export's permit number and issuance date on the next re-export certificate would facilitate tracing back of a shipment of CITES specimens that has entered two or more countries. Current U.S. regulations under the Lacey Act requires shipping containers for live mammals and birds to meet, at a minimum, space and design guidelines of IATA's Live Animals Regulations (LAR). These regulations are a stricter domestic measure, permissible under Article XIV of CITES. The Service has been conditioning its export permits/re-export certificates on compliance with LAR.

11. Treatment of Genuine Re-Export Certificates for Illegal Specimens

Proposed negotiating position: Support the proposition that an importing country has the right to question the validity of a CITES document which on its face was appropriately issued, but which may not have been issued in accordance with all CITES requirements.

Information and comments: None received.

Rationale: While substantial weight must be given to the official documents of another country, they should not be binding on the importing country (and exporting country if prospective trade involves Appendix I species) if that country has good reason to believe that issuance was not in accordance with all CITES requirements. CITES does not expressly state that the importing country must accept all official documents of the exporting country. CITES does provide that each Party must take stricker domestic measures regarding the conditions for trade or the complete prohibition thereof (Article XIV, paragraph 1(a)).

12. Transport of Live Animals

Proposed negotiating position: Support modification of resolution Conf. 6.24 if that modification would not substantially weaken resolutions adopted at previous COP's.

Information and comments: One commenter was distressed that two earlier resolutions designed to reduce transport related mortalities have failed to be implemented, citing Conf.6.24 relating to a checklist of requirements for safe transport, among other things; and Conf.1.6 relating to a call for the phasing in of captive-bred animals to replace wild ones in the international trade of pets.

Rationale: This agenda item relates to the conditions of transport for live animals rather than whether wild or captive-bred animals should be used in the international trade of pet specimens. Oppose any attempt to eliminate the Conf.4.20, paragraph (d) recommendation that for so long as the CITES Secretariat and Committee (now the Standing Committee would fulfill this function) agree, IATA (International Air Transport Association) Regulations are generally deemed to meet CITES requirements with respect to air transport.

13. Guidelines for Evaluating Marine Turtle Ranching Proposals

Proposed negotiating position: Support the recommendations of a meeting convened by the International Union for the Conservation of Nature and Natural Resources (IUCN) relating to guidelines for evaluating marine turtle ranching proposals, provided they would promote protection of wild populations of marine turtles.

Information and comments: None received.

Rationale: While the Parties have considered several ranching proposals, none have been accepted. The meeting convened by IUCN in San Jose, Costa Rica in January of 1988 produced draft guidelines, but none have been finalized.

14. Review of Resolution Conf.5.21 on Special Criteria for the Transfer of Taxa From Appendix I to Appendix II

Proposed negotiating position: Support the extension of Conf.5.21, provided those Parties whose species are transferred pursuant thereto, are required to later justify the transfer on the basis of information that meets the "Berne Criteria" for downlisting to Appendix II (See Conf.1.2)

Information and comments: None received.

Rationale: Conf.5.21 allows an exemption from the strict criteria for downlisting species placed on Appendix I at COP1 or at the original negotiation meeting of CITES in 1973. Conf.5.21 coupled downlisting with export quotas to reduce the possibilities that trade would be detrimental to the survival of the species. Since data were insufficient for meeting the Berne Criteria for downlisting, export quotas based on such data are not likely to provide assurance of nondetrimental trade over an extended period of time. Management of the species for export under the quota system should enhance the capabilities of the Conf.5.21 countries of origin to obtain the data necessary to meet the downlisting Berne Criteria.

15. Consideration of Criteria and Applications for Inclusion of New Species in the "Register of Operations Which Breed Specimens of Species Included in Appendix I in Captivity for Commercial Purposes"

Proposed negotiating position: Support the adoption of reasonable criteria designed to assure that breeding operations are not established or maintained in a manner detrimental to the survival of the species.

Information and comments: None received.

Rationale: While resolution Conf.2.12 defines the term "bred in captivity," it needs more quantitative definition to enable breeding operations to feel more assured that they would meet or would continue to meet Conf.2.12 criteria. The United States and Canada have submitted like proposals for COP7 consideration that would provide such assurance.

16. Exemption for Blood and Tissue Samples for DNA Studies From CITES Permit Requirements

Proposed negotiating position: Oppose any exemption for blood and tissue samples that is not within the terms of CITES and existing CITES resolutions.

Information and comments: None received.

Rationale: Presumably, a real problem exists in expediting CITES formalities to accommodate specimens subject to spoilage or high trade volume. All reasonable solutions should be explored to resolve the problem short of negating the requirements of CITES.

17. Return of Live Animals of Appendix II or III Specimens

Proposed negotiating position: Oppose any recommendation that would favor return of live Appendix II or III specimens accompanied by faulty documents to the country of export without penalty to the importer or exporter.

Information and comments: None received.

Rationale: The application of sanctions for illegal trade is essential to fostering compliance with CITES rules.

18. Trade in Ranched Specimens Between Parties, Non-Parties and Reserving Parties

Proposed negotiating position: Oppose any substantial weakening of the marking and trade criteria of resolution Conf. 5.16.

Information and comments: None received.

Rationale: The marking and trade criteria of Conf. 5.21 were specifically tightly drawn to provide strong assurances that the wild Appendix I populations related to ranched Appendix II populations would not be impacted by trade in specimens from the ranching operations. Trade was limited to non-reserving Parties (non-Parties and reserving Parties could not participate in such trade), in part, to prevent the wild Appendix I specimens from being traded as Appendix II ranched specimens and probably as an inducement to reserving Parties and non-Parties to become Parties.

19. Amendments to Appendix III

Proposed negotiating position: Oppose any move to restrict Appendix III listings to coincide with meetings of COP.

Information and comments: None received.

Rationale: Article XVI allows any Party to unilaterally list a species in Appendix III at any time. Presumably, this proposal is for purposes of administrative convenience, since it would enable regulatory agencies to adjust to new species listings all at one time—once every 2 years after each COP. However, it would work to postpone Appendix III listings and the protection afforded thereby for up to two years. Perhaps a resolution could encourage Parties to consider deferring Appendix III listings to COP's if to do so would not produce biological harm to the species.

XIV. Consideration of Proposals for Amendment of Appendices I and II

Suggestions for appropriate changes to the CITES Appendices were solicited in the September 14, 1988, **Federal Register** (53 FR 35530). On March 21, 1989, the Service identified the species that the United States might submit as proposed amendments to the Appendices (54 FR 11551) and requested further information and comments. The Service reviewed all available information and submitted its proposed amendments to the CITES Secretariat by the May 12, 1989, deadline. The decision on the proposals considered and those submitted was announced in early September in the **Federal Register**. Proposed amendments submitted by other Parties have been received and reviewed by the Service. These proposals and a tentative negotiating position on each proposal have been announced in the August 23, 1989, **Federal Register** (54 FR 35013).

XV. Conclusion of the meeting

1. Determination of the Time and Venue of the Next Regular Meeting of the Conference of the Parties

Proposed negotiating position: Favor holding COP8 in the Pacific area, provided adequate funding is available and all Parties will be admitted to the host country without political difficulties. Support the holding of COP's on a biennial basis.

Information and comments: None received.

Rationale: As yet, the Pacific area has not hosted a COP. It is an important wildlife and plant area with significant trade problems. Holding the COP there would help focus attention in that area on CITES and stimulate interest in its goals and activities. COP meetings energize governmental and nongovernmental organizations concerned with CITES to reexamine its implementation. Studies have indicated that much needs to be done to bring implementation up to a satisfactory level. Stretching out meetings to 3-year intervals under these circumstances is not appropriate. It is likely that the apparent cost savings that would result from a 3-year intervals would be reduced by an increase in committee meetings in the interim.

Request for Information and Comments and Announcement of Public Meeting

Information and comments related to the above proposed negotiating positions are hereby solicited. They should be forwarded to: U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203–3507. For express mail and messenger deliveries the address is: 4401 N. Fairfax Drive, Room 432, Arlington, Virginia.

A public meeting will be held on Friday, September 8, 1989, from 1:00 to 4:30 p.m., in rooms 7000A and 7000B, U.S. Department of Interior (Main Building), 18th and C Streets, NW., Washingotn, DC for the purpose of receiving information and comments and discussion of the proposed negotiating positions summarized above, as well as proposals to amend CITES Appendices I and II. Written statements may by submitted at or before the meeting. Appointments to speak may be made with the Office of Management Authority at the street address mentioned above or by telephoning (704) 358–2095. Speakers without appointments will be given an opportunity to speak following speakers with appointments to the extent time allows. This meeting will be conducted

in a rather informal manner. Participants will be provided opportunities, to the extent that time allows. to comment on each point.

Observers

Article IX, Paragraph 7 of the Convention provides:

> "Any body or agency technically qualified in protection, conservation or mangement of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by the observers, shall be admitted unless at least one-third of the Parties object:
>
> (a) International agencies or bodies, either government or nongovernmental, and national governmental agencies and bodies; and
>
> (b) National non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted these observers shall have the right to participate, but not to vote."

Persons wishing to be observers representing United States national non-governmental organizations must receive prior approval of the Service. Requests for such approval should include evidence of technical qualification in protection, conservation or management of wild fauna or flora and should be sent to the Office of Management Authority (see "Address above). Copies of letters of approval should be used by these organizations to inform the Secretariat of their wish to send observers to the meeting. In the past, the Secretariat has required such information to be received at least 1 month prior to the meeting. The letters should be sent to the Secretariat at the following address: CITES Secretariat, 6 rue du Maupas, Case postale 78, CH–1000 LAUSANNE 9 Chauderon, Switzerland.

This notice was prepared by Arthur Lazarowitz of the Office of Management Authority.

Dated: August 31, 1989.

Richard N. Smith,

Acting Deputy Director.

[FR Doc. 89–20948 Filed 9–1–89; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[UT–060–4320–02]

Grazing Advisory Board; Meeting

August 28, 1989.

AGENCY: Bureau of Land Management, Moab District, Interior.

ACTION: Grazing Advisory Board meeting notice.

SUMMARY: Notice is hereby given in accordance with Public Law 92–463 that the Moab District Grazing Advisory Board will meet September 28, 1989. The meeting will begin at 10 a.m. in the conference room of the Bureau of Land Management Price Resource Area Office, 900 N. 700 E. Price, Utah 84501.

The agenda for the Grazing Advisory Board Meeting includes a discussion of fiscal 1989 range management projects, allotment management plans, and the prioritization of 1990 range improvement project packages and range improvement funds. The board will also hear an update on drought measures in the Moab District.

The Meeting is open to the public. Interested persons may make oral statements to the board between 2:00 and 3:00 p.m. on September 28, 1989 or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532, by September 26, 1989.

Summary minutes of the Board meeting will be maintained in the District Office and will be available within thirty (30) days following the meeting.

Kenneth V. Rhea,

Associate District Manager.

[FR Doc. 89–20751 Filed 9–1–89; 8:45 am]

BILLING CODE 4310-DO-M

National Park Service

Badlands National Park, South Dakota

AGENCY: National Park Service and United States Forest Service.

ACTION: Boundary adjustment order.

Order adjusting the boundary of the North Unit of Badlands National Park and transferring jurisdiction of certain lands to the Department of Agriculture and transferring jurisdiction of certain other lands to the Department of the Interior.

SUMMARY: Pursuant to the authority contained in the Act of May 7, 1952, 66 Stat. 65, 16 U.S.C. 441f and the Act of August 8, 1968, 82 Stat. 663, 16 U.S.C. 441j, and as land exchanges are currently being consummated which enhance the land-ownership pattern for the North Unit of Badlands National Park as well as the Buffalo Gap National Grassland, the Department of the Interior and the Department of Agriculture have agreed to the boundary adjustments contained herein.

EFFECTIVE DATE: The effective date of this Order is September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Chief, Land Resources Division, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969-2610 or FTS 327–2610.

SUPPLEMENTARY INFORMATION: The above-cited authorities authorize the Secretary of the Interior to adjust and redefine the boundary of the North Unit of Badlands National Park provided the total acreage of the area does not exceed the acreage of the area as authorized by the Act of August 8, 1968, 82 Stat. 663, 16 U.S.C. sec. 441j. Further, the Act of May 7, 1952, 66 Stat. 65, 16 U.S.C. sec. 441f, provides that federally-owned lands under the administrative jurisdiction of any other Department or Agency of the Federal Government shall be included within the park area only with the approval of the head of such Department or Agency.

On December 4, 1987 Mr. F. Dale Robertson, Chief, U.S. Forest Service, Washington, DC, gave approval for the subject boundary adjustment as it affects U.S. Forest Service administered lands being included into the Badlands National Park. The total acreage of the Badlands National Park will be reduced by 519.34 acres upon completion of this boundary adjustment.

The lands are all located in the Black Hills Meridian.

I. The following described lands in paragraph I are hereby exclused from the Badlands National Park and the boundary is so revised. Subject to valid existing non-Federal rights, if any, the administrative jurisdiction of all federally-owned lands described hereafter in this paragraph are hereby transferred to the Department of Agriculture to be administered as part of the Buffalo Gap National Grassland, Nebraska National Forest, in accordance with existing and future applicable laws and regulations.

Jackson County, South Dakota

T. 4 S., R. 18 E., Sec. 2, S½NW¼ NW¼; (Federal land)
T. 3 S., R. 18 E., Sec. 13, NW¼ (non-Federal land);
  Sec. 14, N½ (Federal land);
  Sec. 15, N½ (non-Federal land);
  Sec. 16, NE¼. (Federal land),

containing 980 acres, more or less.

Pennington County, South Dakota

Part of Section 12 as shown on "Certificate of Survey in Badlands National Park" Dependent Resurvey and Subdivision Section 12, T. 3 S., R. 17 E. B.H.M., Pennington County, South Dakota. Said survey was recorded on December 21, 1988 with the County Register of Deeds in Book 22 of Plats on page 142, more particularly described as follows:

Beginning at the section corner common to Sections 1, 6, 7, and 12, Township 3 South, Ranges 17 and 18 East of the Black Hills Meridian; thence South 01 degrees 18 minutes West, 2629.5 feet along the section line common to Sections 7 and 12 to the ¼ corner common to Sections 7 and 12; thence South 01 degree 20 minutes West, 809.1 feet along the section line common to Sections 7 and 12 to a point on said section line; thence North 63 degrees 31 minutes West, 589.0 feet to Angle Point 10; thence North 32 degrees 17 minutes West, 3819.3 feet to the ¼ corner common to Sections 1 and 12; thence South 88 degrees 50 minutes East, 2645.8 feet along the section line common to Sections 1 and 12 to the point of beginning and containing 117.84 acres, more or less, of Federal land.

The above-described parcels of land in paragraph I contain 1097.84 acres, more or less.

II. Subject to valid existing non-Federal rights, the following described lands in paragraph II are hereby included into the Badlands National Park and the boundary is so revised.

Jackson County, South Dakota

T. 4 S., R. 18 E., Sec. 2, N½NE¼NW¼.

Parts of Sections 7 and 8 as shown on "Certificate of Survey in Buffalo Gap National Grasslands" Dependent Resurvey and Subdivision sections 7 and 8, T. 3 S., R. 18 E., B.H.M., Jackson County, South Dakota. Said survey was recorded on September 1, 1987, with the County Register of Deeds in Book C of Plats on page 192, more particularly described as follows:

Beginning at the southwest corner of said Section 7, thence N 01 degrees 20 minutes E along the west line of Section 7, a distance of 1,860.4 feet to P.I. No. 1;
thence S 63 degrees 31 minutes E 1231.4 feet to P.I. No. 2 which is on the north line fo the S½S½ of said Section 7;
thence S 88 degrees 47 minutes E 1,466.8 feet to the center south ¹⁄₁₆ corner of said Section 7 which is also P.I. No. 3;
thence S 88 degrees 44 minutes E 1,318.5 feet to P.I. No. 4 which is on the north line of the S½S½ of said Section 7;
thence N 16 degrees 24 minutes E 416.5 feet to P.I. No. 5;
thence N 49 degrees 39 minutes E 716.5 feet to P.I. No. 6;
thence N 57 degrees 55 minutes E 803.9 feet to the P.I. No. 7 which is also the ¼ corner common to said Sections 7 and 8;
thence N 52 degrees 32 minutes E 275.1 feet to P.I. No. 8;
thence S 56 degrees 57 minutes E 324.2 feet to P.I. No. 9 which is on the east-west center section line of said Section 8;
thence S 88 degrees 54 minutes E 1735.3 feet to P.I. No. 10 which is on the east-west center section line of said Section 8;
thence N 04 degrees 32 minutes E 232.0 feet to P.I. No. 11;
thence N 25 degrees 39 minutes E 388.6 feet to P.I. No. 12;
thence N 21 degrees 03 minutes W 403.0 feet to P.I. No. 13;
thence N 02 degrees 42 minutes W 211.8 feet to P.I. No. 14;
thence N 72 degrees 31 minutes E 445.3 feet to P.I. No. 15;
thence N 89 degrees 08 minutes E 345.9 feet to P.I. No. 16;
thence S 59 degrees 23 minutes E 796.6 feet to P.I. No. 17;
thence S 54 degrees 28 minutes E 743.0 feet to P.I. No. 18;
thence S 49 degrees 37 minutes E 738.4 feet to P.I. No. 19 which is on the east-west center section line of said Section 8;
thence S 51 degrees 57 minutes E 223.7 feet to P.I. No. 20;
thence S 39 degrees 27 minutes E 352.5 feet to P.I. No. 21 which is the east line of the SE¼ of said Section 8;
thence S 01 degree 29 minutes W along the east line of the SE¼ to the southeast corner of said Section 8;
thence N 88 degrees 57 minutes W along the south line of the SE¼ of Section 8 to the south ¼ corner of said Section 8;
thence N 89 degrees 02 minutes W along the south line of the SW¼ of said Section 8 to the southwest corner of Section 8 which is also the SE corner of said Section 7;
thence N 88 degrees 53 minutes W along the south line of the SE¼ of said Section 7 to the south ¼ corner of Section 7;
thence N 88 degrees 58 minutes W along the south line of the SW¼ of said Section 7 to the southwest corner of Section 7, said point being also the point of being. The above-described parcels of land contain 578.5 acres, more or less.

The transfer of administrative jurisdiction of the existing Federal lands and the hereafter acquired non-Federal lands described in paragraph II is hereby accepted by the Department of the Interior to be administered as part of the Badlands National Park in accordance with existing and future applicable laws and regulations.

Dated: August 28, 1989.

Manuel Lujan Jr.,

Secretary of the Interior.

[FR Doc. 89–20692 Filed 9–1–89; 8:45 am]

BILLING CODE 4310-70-M

National Capital Region, Public Affairs; Public Meeting

The National Park Service is seeking public comments and suggestions on the planning of the 1989 Christmas Pageant of Peace, which opens December 14 on the Ellipse, south of the White House.

A public meeting will be held at the Park Service's National Capital Region Building in East Potomac Park at 1100 Ohio Drive, SW., Room 234, at 10 a.m., Wednesday, October 11, 1989.

Interested persons who would like to comment at the meeting may notify the National Park Service by calling the Office of Public Affairs between 9 a.m. and 4 p.m., weekdays at (202) 485–9666. Persons who cannot attend the meeting may send written comments to Regional Director, National Capital Region, 1100 Ohio Drive, SW., Washington, DC 20242. Written comments will be accepted until October 25, 1989.

Dated: August 28, 1989.

Ronald N. Wrye,

Acting Regional Director, National Capital Region.

[FR Doc. 89–20685 Filed 9–1–89; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 26, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by September 29, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Pima County

Speedway—Drachman Historic District, Roughly bounded by Lee St., Park Ave., Speedway Blvd., 7th Ave., Drachman St., and 2nd Ave., Tucson, 89001460

CONNECTICUT

Farfield County

Greens Ledge Lighthouse (Operating Lighthouses in Connecticut MPS), Long Island Sound, S of Five Mile River and W of Norwalk Harbor, Rowayton vicinity, 89001468
Peck Ledge Lighthouse (Operating Lighthouses in Connecticut MPS), Long Island Sound, SE of Norwalk Harbor and NE of Goose Island, Norwalk vicinity, 89001472
Penfield Reef Lighthouse (Operating Lighthouses in Connecticut MPS), Long Island Sound off Shoal Point, Bridgeport vicinity, 89001473

Stratford Point Lighthouse (Operating Lighthouses in Connecticut MPS), Stratford Point at mouth of Housatonic River, Stratford, 89001476
Tongue Point Lighthouse (Operating Lighthouses in Connecticut MPS), W side of Bridgeport Harbor at Tongue Point, Bridgeport vicinity, 89001478

Middlessex County

Lynde Point Lighthouse (Operating Lighthouses in Connecticut MPS), SE terminus of Sequassen Ave., Old Saybrook, 89001469
Saybrook Breakwater Lighthouse (Operating Lighthouses in Connecticut MPS), S terminus of Saybrook Jetty at mouth of Connecticut River, Old Saybrook, 89001474

New Haven County

Falkner Island Lighthouse (Operating Lighthouses in Connecticut MPS), Long Island Sound, 5 mi. S of Guilford, Guilford vicinity, 89001467
Southwest Ledge Lighthouse (Operating Lighthouses in Connecticut MPS), SW end of east breakwater at entrance to New Haven Harbor, New Haven vicinity, 89001475
Stratford Shoal Lighthouse (Operating Lighthouses in Connecticut MPS), SW end of east breakwater at entrance to New Haven Harbor, New Haven vicinity, 89001477

New London County

New London Harbor Lighthouse (Operating Lighthouses in Connecticut MPS), Lower Pequot Ave., New London, 89001470
New London Ledge Lighthouse (Operating Lighthouses in Connecticut MPS), Entrance to New London Harbor, E side of Main Channel, New London vicinity, 89001471

FLORIDA

Alachua County

WRUF Radio Station, Old, Museum Rd. and Newell Dr., Gainesville, 89001479

Leon County

Los Robles Gate, Thomasville and Meridian Rds., Tallahassee, 89001480

Palm Beach County

Johnson, C.L., House, 315 E. Sessoms Ave., Lake Wales, 89001481

ILLINOIS

Kane County

Old Hotel, 241 Main St., Sugar Grove, 89001464

KANSAS

Wilson County

Flack, Dr. A.C., House, 303 N. 8th St., Fredonia, 89001463

MASSACHUSETTS

Middlesex County

American Walthan Watch Company Historic District (Waltham MRA) Waltham, 89001501
American Watch Tool Company (Waltham MRA) 169 Elm St., Waltham, 89001574
Andrews, Joseph, House (Waltham MRA), 258 Linden St., Waltham, 89001554
Baker, Charles, House (Waltham MRA), 107 Adams St., Waltham, 89001484
Baker, Charles, Property (Waltham MRA), 119–121 Adams St., Waltham, 89001485
Banks, E. Sybbill, House (Waltham MRA), 27 Appleton St., Waltham, 89001488
Beard, Josiah, House (Waltham MRA), 70 School St., Waltham, 89001529
Beth Eden Baptist (Waltham MRA), 82 Maple St., Waltham, 89001544
Boston Manufacturing Company Housing (Waltham MRA), 380–410 River St., Waltham, 89001534
Boston Manufacturing Company Housing (Waltham MRA), 153–165 River St., Waltham, 89001535
Brigham House (Waltham MRA), 235 Main St., Waltham, 89001551
Building at 202–204 Charles Street (Waltham MRA), 202–204 Charles St., Waltham, 89001493
Buttrick, Francis, House (Waltham MRA), 44 Harvard St., Waltham, 89001566
Buttrick, Francis, Library (Waltham MRA), 741 Main St., Waltham, 89001547
Byam, Charles, House (Waltham MRA), 337 Crescent St., Waltham, 89001576
Central Square Historic District (Waltham MRA), Roughly bounded by Church, Carter, Moody, Main, Lexington, and Church Sts., Waltham, 89001526
Charles Street Workers' Housing Historic District (Waltham MRA), 128–144 Charles St., Waltham, 89001503
Christ Episcopal Church (Waltham MRA), 750 Main St., Waltham, 89001546
Clough, Benjamin F., House (Waltham MRA), 42–44 Prospect St., Waltham, 89001536
Colburn, Gilbert, House (Waltham MRA), 110–112 Crescent St., Waltham, 89001578
Company F State Armory (Waltham MRA), Curtis and Sharon Sts., Waltham, 89001571
Dow, Lenoir, House (Waltham MRA), 215 Adams St., Waltham, 89001487
Dunbar-Stearns House (Waltham MRA), 209 Linden St., Waltham, 89001517
East Main Street Historic District (Waltham MRA), Roughly E. Main St. from Townsend St. to Chamberlain Ter., Waltham, 89001498
Eastern Middlesex County Second District Court (Waltham MRA), 38 Linden St., Waltham, 89001516
First Congregational Church (Waltham MRA), 730 Main St., Waltham, 89001548
First Parish Church (Waltham MRA), 87 School St., Waltham, 89001507
Fisher, Henry N., House (Waltham MRA), 120 Crescent St., Waltham, 89001577
Fiske, Elijah, House (Waltham MRA), 457 Lincoln St., Waltham, 89001514
Fitch, Ezra, School (Waltham MRA), 10 Ash St., Waltham, 89001489
Flagg, Frederick, House (Waltham MRA), 65 Fairmont Ave., Waltham, 89001573
French, Daniel, School (Waltham MRA), 38–40 Common St., Waltham, 89001581
Fuller-Bemis House (Waltham MRA), 41–43 Cherry St., Waltham, 89001495
Gale-Banks House (Waltham MRA), 935 Main St., Waltham, 89001545
Gibbs, William, House (Waltham MRA), 14 Liberty St., Waltham, 89001561
Gilbrae Inn (Waltham MRA), 403 River St., Waltham, 89001550
Grove Hill Cemetery (Waltham MRA), 290 Main St., Waltham, 89001549
Hagar-Smith-Livermore-Sanderson House (Waltham MRA), 51 Sanders Ln., Waltham, 89001532
Hager-Mead House (Waltham MRA), 411 Main St., Waltham, 89001572
Hall, Henry C., House (Waltham MRA), 107 Crescent St., Waltham, 89001579
Hammond, Ephraim, House (Waltham MRA), 265 Beaver St., Waltham, 89001490
Hammond, Jonathan, House (Waltham MRA), 311 Beaver St., Waltham, 89001491
Hardy, Nahum, House (Waltham MRA), 724 Lexington St., Waltham, 89001562
Harrington Block (Waltham MRA), 376–390 Moody St., Waltham, 89001543
Harrington, Samuel, House (Waltham MRA), 475 South St., Waltham, 89001508
Hill, Rev. Thomas, House (Waltham MRA), 132 Church St., Waltham, 89001528
Hobbs Brook Basin Gate House (Waltham MRA), Off Winter St. at mouth of Hobbs Brook, Waltham, 89001524
Holbrook, Richard, Houses (Waltham MRA), 29–31 Heard St., Waltham, 89001565
Johnson, Edwin C., House (Waltham MRA), 177 Weston St./8 Caldwell St., Waltham, 89001522
Johnson, Newell D., House (Waltham MRA), 428 Lexington St., Waltham, 89001564
Lawton Place Historic District (Waltham MRA), Lawton Pl. between Amory Rd. and Jackson St., Waltham, 89001504
Libby, Nelson F., House (Waltham MRA), 147–149 Weston St., Waltham, 89001521
Linden Street Bridge (Waltham MRA), Boston & Maine Railroad over Linden St., Waltham, 89001515
Lord's Castle (Waltham MRA), 211 Hammond St., Waltham, 89001567
Lyman Street Historic District (Waltham MRA), Roughly Lyman St. from Church to Main Sts., Waltham, 89001505
Martin, Aaron, Houses (Waltham MRA), 188–194 Adams St., Waltham, 89001486
Martin, Aaron, House (Waltham MRA), 786 Moody St., Waltham, 89001540
Moody Street Fire Station (Waltham MRA), 533 Moody St., Waltham, 89001541
Moody Street Historic District (Waltham MRA), Moody and Crescent Sts., Waltham, 89001502
Mount Feake Cemetery (Waltham MRA), 203 Prospect St., Waltham, 89001497
Mt. Prospect School for Boys (Waltham MRA), 90 Worcester Ln., Waltham, 89001525
Murray, Robert, House (Waltham MRA), 85 Crescent St., Waltham, 89001580
Newton Street Bridge (Waltham MRA), Newton St. at River St. over the Charles River, Waltham, 89001539
North Lexington Street Historic District (Waltham MRA), 508–536 N. Lexington St., Waltham, 89001500
O'Hara Waltham Dial Company (Waltham MRA), 74 Rumford Ave., Waltham, 89001533
Olcott, John E., House (Waltham MRA), 35–37 Central St., Waltham, 89001492
Oxford, The (Waltham MRA), 4 Adams St., Waltham, 89001483
Peck, John M., House (Waltham MRA), 27 Liberty St., Waltham, 89001559

Piety Corner Historic District (Waltham MRA), Roughly Bacon and Lexington Sts., Waltham, 89001499
Potter—O'Brien House (Waltham MRA), 206 Newton St., Waltham, 89001538
Prospect House (Waltham MRA), 11 Hammond St., Waltham, 89001568
Robbins, Royal E., School (Waltham MRA), 58 Chestnut St., Waltham, 89001496
Sanderson, John, House (Waltham MRA), 562 Lexington St., Waltham, 89001563
Sanderson, Mathan, II, House (Waltham MRA), 111 Lincoln St., Waltham, 89001513
Sanderson, Nathan, I, House (Waltham MRA), 107 Lincoln St., Waltham, 89001556
Sanderson—Clark Farmhouse (Waltham MRA), 75 Lincoln/28 Lincoln Ter., Waltham, 89001557
Smith, Marshall, House (Waltham MRA), 28 Liberty St., Waltham, 89001560
Smith, Perez, House (Waltham MRA), 46 Lincoln St., Waltham, 89001558
St. Charles Borromeo Church (Waltham MRA), Hall and Cushing Sts., Waltham, 89001569
St. Mary's Roman Catholic Church Complex (Waltham MRA), 133 School St., Waltham, 89001527
Stanley, Leonard W., House (Waltham MRA), 23–25 Taylor St., Waltham, 89001509
Stark Building (Waltham MRA), 416—424 Moody St., Waltham, 89001542
Stark, Robert M., House (Waltham MRA), 176 Main St., Waltham, 89001552
Stearns, Amos, House (Waltham MRA), 1079 Trapelo Rd., Waltham, 89001518
Stewart, Henry, House (Waltham MRA), 294 Linden St., Waltham, 89001553
Swasey, James, House (Waltham MRA), 30 Common St., Waltham, 89001530
Tyler, Frank J., House (Waltham MRA), 238 Linden St., Waltham, 89001555
United States Watch Company (Waltham MRA), 256 Charles St., Waltham, 89001494
Waltham Gas Light Company (Waltham MRA), 2 Cooper St., Waltham, 89001506
Waltham Gas and Electric Company Generating Plant (Waltham MRA), 96 Pine St., Waltham, 89001537
Waltham High School (Waltham MRA), 55 School St., Waltham, 89001531
Waltham Water Works Shop (Waltham MRA), 92 Felton St., Waltham, 89001570
Warren, Nathan, House (Waltham MRA), 50 Weston St., Waltham, 89001520
Wellington, Benjamin, House (Waltham MRA), 56 Whittier St., Waltham, 89001523
Wellington, William, House (Waltham MRA), 785 Trapelo Rd., Waltham, 89001512
Wellington—Castner House (Waltham MRA), 685 Trapelo Rd., Waltham, 89001511
Wetherbee House (Waltham MRA), 357 Crescent St., Waltham, 89001575
White, Warren, House (Waltham MRA), 192 Warren St., Waltham, 89001519
Whitney—Farrington—Cook House (Waltham MRA), 385 Trapelo Rd., Waltham, 89001510

MISSOURI

Franklin County

Downtown Washington Historic District, Roughly W. Front St. from Stafford St. to Market St. and Elm St. from W. Front St. to Fourth St., Washington, 89001465

NEBRASKA

Scotts Bluff County

US Post Office—Scottsbluff, 120 E. 16th St., Scottsbluff, 89001462

OHIO

Greene County

South School, 909 S. High St., Yellow Springs, 89001459

Hamilton County

Edwards, William, Farmhouse, 3851 Edwards Rd., Newtown, 89001455
St. Peter's Lick Run Historic District, 2145—2153 Queen City Ave., Cincinnati, 89001453

Lucas County

Toledo Olde Towne Historic District, Roughly bounded by Central Ave., Cherry St., Franklin Ave., Bancroft St., and Collingwood Ave., Toledo, 89001454

Mahoning County

Damascus Grade School, 14923 Morris St., Damascus, 89001456
Sebring, Frank, House, 385 W. Ohio Ave., Sebring, 88000545

Summit County

Corbusier, John William Creswell, House (Hudson MPS), 226 College St., Hudson, 89001451
Hudson Historic District (Boundary Increase) (Hudson MPS), Roughly bounded by Hudson St., Old Orchard Dr., Aurora St., Oviatt St., Streetsboro St., and College St. to Aurora, Hudson, 89001452
Izant, Grace Goulder, House (Hudson MPS), 250 College St., Hudson, 89001450
Porter, Orin, House (Hudson MPS), 240 College St., Hudson, 89001449

Washington County

St. Mary's School, Old, 132 S. Fourth St., Marietta, 89001457

WISCONSIN

Door County

Baileys Harbor Range Light, Roughly Co. Rd. Q, Ridges Rd., and WI 57, Baileys Harbor, 89001466

[FR Doc. 89–20806 Filed 9–1–89; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Bourdeauhui

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 23, 1989, a proposed Consent Decree in *United States* v. *Bourdeauhui,* No. H–88–354, was lodged with the United States District Court for the District of Connecticut. This suit was brought under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607(a), to recover costs incurred by EPA in connection with removal actions conducted at two mercury-contaminated sites in Willington, Connecticut. As a result of settlements with other potentially responsible parties and defendants, EPA already has recovered $229,000. The proposed Consent Decree would resolve the liability of the four remaining defendants—Eugene Bourdeaudhui, Edward Battle, Ott Dental Supply Co., and Smith-Holden, Inc.—for $200,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Jay Printing, D.J. Ref. 90–11–2–356.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Connecticut, Federal Courthouse Building, 141 Church Street, Post Office Box 1824, New Haven, Connecticut 06508, and at the Region 1 Office of the Environmental Protection Agency, J.F.K. Federal Building, Boston, Massachusetts 02203. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.90 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–20750 Filed 9–1–89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act in United States v. City of Durant, Oklahoma and State of Oklahoma

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 30, 1989, a proposed Consent Decree in *United States* v. *City of Durant and State of Oklahoma,* Civil Action No. 89–314–C, was lodged with the United States District Court for the District of Oklahoma.

The Complaint in this enforcement action was filed on June 30, 1989, against City of Durant and State of Oklahoma pursuant to section 309, 33 U.S.C. 1319, of the Clean Water Act seeking civil penalties for the improper management of a Publicly Owned Treatment Works (POTW) and injunctive relief to abate the release of hazardous substances from the POTW. The proposed Consent Decree ("Decree") requires the City to pay a civil penalty of $33,000 and implement a schedule for construction and modification of the POTW.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Durant,* D.J. No. 90–5–1–1–2774.

The proposed Consent Decree may be examined at the office of the United States Attorney, 33 Federal Courthouse, Fifth and Muskogee, Muskogee, Oklahoma 74401 and at the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy please enclose a check in the amount of $1.50 payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–20693 Filed 9–1–89; 8:45am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87–74]

Leonardo V. Lopez, M.D.; Denial of Application

On October 1, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Leonardo V. Lopez, M.D., (Respondent) of 12791 Superior, Southgate, Michigan 48195, proposing to deny his application, executed on September 5, 1987, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held on April 12, 1988, in Ann Arbor, Michigan. Respondent failed to appear at the hearing. Subsequently, by letter dated May 26, 1988, Respondent notified Government counsel that he had not appeared at the hearing because he had suffered a heart attack on April 4, 1988. Respondent further advised in the letter that he was still interested in obtaining DEA registration.

On August 4, 1988, Judge Bittner ordered that the record of the April 12, 1988, hearing be stricken and that a new hearing be conducted. Following prehearing procedures, a hearing was held on January 11, 1989, in Ann Arbor, Michigan. On June 9, 1989, the Administrative Law Judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and on August 1, 1989, the Administrative Law Judge transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in 1977, the Michigan State Police, Diversion Investigation Unit, obtained information from a confidential informant that Respondent was selling prescriptions for controlled substances for no legitimate medical purpose. As a result, an undercover investigation of Respondent was initiated. On four separate occasions between June 14, 1977 and August 9, 1977, a Michigan State Police detective went to Respondent's office in an undercover capacity. On three of these occasions, the detective was accompanied by a Michigan Department of Licensing and Regulation investigator. Respondent wrote prescriptions for Tuinal, Desoxyn, Quaalude and Valium, all controlled substances, for the undercover officers during each visit. Respondent never performed any sort of physical examination prior to issuing the prescriptions. Respondent wrote a total of fifteen prescriptions for the officers during the four visits. Of these prescriptions, nine of them were for fictitious individuals. Respondent never asked the officers for any information about the backgrounds of these individuals before issuing prescriptions in their names.

During these visits, neither Respondent nor the officers made any attempt to hide the fact that the prescriptions were written strictly as a business transaction and not for a valid medical need. During the second visit, Respondent wrote one of the officers a prescription for Quaalude, but stated that he would have to be more careful because the state or Federal authorities were "after him." Respondent then stated that he had to raise the price of the prescriptions because of the risk involved. On at least one occasion, one of the undercover officers told Respondent that he was selling the drugs that Respondent prescribed for him. In addition, the officers spoke with other individuals in Respondent's waiting room during the visits. These individuals made it clear to the officers that they had come to Respondent solely to "score" or buy prescriptions for drugs from the doctor.

Respondent was arrested on August 15, 1977, and charged with two felony counts of delivery of Desoxyn in violation of the laws of the State of Michigan. On September 22, 1977, Respondent entered a guilty plea in Recorder's Court for the City of Detroit to one count of delivery of Desoxyn, a felony offense.

On January 2, 1985, Respondent executed an application for registration with DEA. Subsequently, on March 24, 1986, the Deputy Assistant Administrator, Office of Diversion Control, DEA, issued to Respondent an Order to Show Cause why that application should not be denied. A hearing regarding that application was held before Administrative Law Judge Francis L. Young on April 19, 1986. On November 25, 1986, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Judge Young recommended that Respondent's application for registration be denied. In a final order effective February 12, 1987, the Administrator adopted Judge Young's recommendation in its entirety and thus denied Respondent's application. See, *Leonardo* V. *Lopez, M.D.,* Docket No. 86–39, 52 FR 4542 (February 12, 1987).

At the hearing regarding the application which is the subject of this final order, Respondent essentially argued that his need for a DEA registration to obtain employment and the passage of time since his conviction constitute compelling reasons to grant his application. With respect to Respondent's asserted need for a DEA registration, Judge Bittner stated that

that need does not outweigh the public interest in assuring that controlled substances are properly handled. The Drug Enforcement Administration registers medical practitioners so that they may prescribe, dispense, administer and otherwise handle controlled substances in order to effectively treat their patients. These substances are controlled because of their potential for abuse and they must be handled responsibly.

Judge Bittner further stated that the mere fact that the events for which Respondent was convicted occurred in 1977 does not establish that now he should have a DEA registration. The paramount issue is not how much time has elapsed since his unlawful conduct, but rather, whether during that time Respondent has learned from past mistakes and has demonstrated that he would handle controlled substances properly if entrusted with a DEA registration. Judge Bittner concluded that the record of these proceedings does not contain such a demonstration. In fact, at the hearing, when referring to the events which led to his 1977 conviction, Respondent stated that he had "forgotten all the details about it." This statement clearly indicates that Respondent does not appreciate the egregiousness of his past unlawful conduct. Further, the Administrative Law Judge was not convinced that Respondent recognizes and understands the responsibilities that accompany DEA registration.

In light of the reasons stated above, as well as Respondent's controlled substance-related felony conviction, the Administrative Law Judge concluded that Respondent's registration would be inconsistent with the public interest and thus, recommended the denial of Respondent's application for registration. The Administrator has considered the factors listed in 21 U.S.C. 823(f) and concurs with the Administrative Law Judge's conclusion that Respondent's registration would be inconsistent with the public interest. The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application of Leonardo V. Lopez, M.D., executed on September 5, 1987, for registration as a practitioner under the Controlled Substances Act, be, and it hereby is, denied.

This order is effective September 5, 1989.

John C. Lawn,

Administrator.

Dated: August 28, 1989.

[FR Doc. 89-20695 Filed 9-1-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-31]

Anderson T. Scott, Jr., M.D., Covington, VA; Hearing

Notice is hereby given that on April 5, 1989, the Drug Enforcement Administration, Department of Justice, issued to Anderson T. Scott, Jr., M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AS1601954, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 29, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, Courtroom one, second floor, 717 Madison Place, NW., Washington DC.

Dated: August 23, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-20697 Filed 9-1-89; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Meeting of State Advisory Group Chairs

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice sets forth the schedule for the forthcoming meeting of the State Advisory Groups. Notice of the meeting is required by the Federal Advisory Committee Act..

DATE: September 16, 1989–2:00 p.m.–5:00 p.m. September 17, 1989–9:00 a.m.–5:00 p.m. September 18, 1989–9:00 a.m.–12:00 p.m.

ADDRESS: Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037.

SUPPLEMENTARY INFORMATION: The State Advisory Groups, and advisory committee established pursuant to section 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. app. 2) will meet to carry out its advisory functions under section 241(f) of the Juvenile Justice and Delinquency Prevention Act of 1984, as amended. These sessions which will be open to the public, are scheduled at the above listed dates.

FOR FURTHER INFORMATION CONTACT: For information please contact Pamela Swain, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Washington, DC 20531, (202) 724-5921.

Dated: August 31, 1989.

Terrence S. Donahue,

Acting Administration, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 89-20933 Filed 9-1-89; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Meetings

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, two meetings of the Advisory Council on Employee Welfare and Pension Benefits Plans will be held on Tuesday and Wednesday, September 26 and 27, 1989, in Suite N-3437, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC.

The purpose of the September 26 meeting, which will begin at 9:30 a.m., is to consider items listed below and to invite public comment on any aspect of the administration of ERISA.

1. Assistant Secretary's Report on:
(a) PWBA update and priorities.
(b) Miscellaneous Issues.
2. General Business of the Advisory Council.
3. Report of the Enforcement Work Group.
4. Report of the Access To Health Care Work Group.
5. Statements from the Public.

The purpose of the September 27 meeting, which will begin at 9:30 a.m., is to consider items listed below and to invite public comment on any aspect of the administration of ERISA.

1. General Business of the Advisory Council.
2. Chief, Division of Technical Assistance and Inquiries Report on:
(a) Participant Assistance.
(b) Benefit Recoveries.

3. Report of the National Retirement Income Policy Work Group.
4. Report of the Pension Portability Work Group.
5. Discussion of Current Proposed Legislation.
6. Statements from the Public.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before September 20, 1989, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, NW. Washington, DC 20210. Individuals wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202/523-8753). Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 20, 1989.

Signed at Washington, DC this 30th day of August, 1989.

William E. Morrow,

Executive Secretary, ERISA Advisory Council.

[FR Doc. 89-20747 Filed 9-1-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Small Business Competitiveness Demonstration Program; Plan for Expansion in Targeted Industry Categories

AGENCY: Office of Small and Disadvantaged Business Utilization, NASA.

ACTION: Notice.

SUMMARY: This notice invites public comment on NASA's proposed plan to expand small business participation in 10 industry categories pursuant to Title VII of the "Business Opportunity Development Reform Act of 1988," Public Law 100-656.

DATES: Comments are due in writing on September 29, 1989.

ADDRESS: Comments should be addressed to Franz Hoffmann, National Aeronautics and Space Administration, Office of Small and Disadvantaged Business Utilization, Room 116, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Franz Hoffmann (202) 453-2088, Small Business Advisor.

SUPPLEMENTARY INFORMATION: Among other things, Title VII of the "Business Opportunity Development Reform Act of 1988" seeks to demonstrate whether targeted goaling and management techniques can expand Federal contract opportunities for small business in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. NASA has been identified as a participant in the demonstration program.

For purposes of the expansion portion of the demonstration program, NASA the targeted the following industries:

Industry number	Industry title
1. 3571	Electronic Computers.
2. 3577	Computer Peripheral Equipment, Not Elsewhere Classified (NEC).
3. 3663	Radio & TV Broadcasting and Communications Equipment.
4. 3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Units Parts.
5. 3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, Not Elsewhere Classified (NEC).
6. 3812	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments.
7. 3827	Optical Instruments and Lenses.
8. 7371	Computer Programming Services.
9. 7373	Computer Integrated Systems Design.
10. 7379	Computer Related Services, Not Elsewhere Classified (NEC).

NASA's Policy and Implementation Initiatives Proposed to Achieve the Goals.

The headquarters Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for the development and management of NASA programs to assist small businesses, as well as firms which are owned and controlled by socially and economically disadvantaged individuals. The office functionally oversees and directs the activities of corresponding offices at each of the nine NASA installations. The primary objective of the small business program is to increase the participation of small and disadvantaged businesses in NASA procurement. In support of this objective, the office offers individual counseling sessions to business people seeking advice on how to best pursue contracting opportunities with NASA. Specific guidance is provided regarding procedures for getting on bidder's mailing lists, current and planned procurement opportunities, arrangements for meeting with technical requirements personnel and various assistance or preference programs which might be available. The OSDBU will assist the contracting activities in implementing the Small Business Competitiveness Demonstration Program. NASA will implement this program by putting into effect the following initiatives:

—Develop instructional programs and train the Agency's procurement personnel in their roles and responsibilities in implementing the provisions under the law.

—Where possible, break out requirements to allow more participation by small businesses in areas where their participation has been historically low or nonexistent.

—Continue mailing copies of solicitations directly to small business.

—Enhance outreach programs to help small businesses become more competitively involved in the Agency acquisition activities.

—Increase sponsorship and participation in seminars and workshops which provide prospective vendors with detailed information on NASA's requirements.

—Conduct training sessions for middle and top management personnel.

—Encourage and promote joint ventures, teaming agreements and other similar arrangements, which permit small business concerns to effectively compete for contract solicitations for which an individual small business concern would lack the requisite capacity or capability needed to establish responsibility for the award of a contract.

—Small Business set-asides.

Dated: August 25, 1989.

Eugene D. Rosen,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 89-20686 Filed 9-1-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by October 5, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the reinstatement of a previously approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: International Panel "Exhibition Project Description". Frequency of Collection: Annually. Respondents: Non-profit institutions.

Use: The Arts Endowment and the United States Information Agency (USIA) cooperate in selecting cultural programming including exhibitions for overseas presentation by USIA. The form is needed to allow an International Panel to determine the suitability of exhibitions for international touring. The form will be sent to U.S. museum officials.

Estimated Number of Respondents: 200

Average Burden Hours per Response: 1

Total Estimated Burden: 200

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89-20706 Filed 9-1-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for First Quarter Calendar Year 1989; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). The AOs are described below, together with the remedial actions taken. The events are also being included in NUREG-0090, Vol. 12, No. 1 ("Report to Congress on Abnormal Occurrences: January–March 1989"). This report will be available in the NRC's Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC about three weeks after the publication date of this **Federal Register** notice.

Nuclear Power Plants

89-1 Plug Failure Resulting in Steam Generator Tube Leak at North Anna Unit 1

The second general AO criterion notes that major degradation of essential safety-related equipment can be considered an abnormal occurrence. Also, one of the AO examples notes that a major deficiency in design, construction, or operation having safety implications requiring immediate remedial action can be considered an abnormal occurrence. In addition, another AO example notes that an incident with implications for similar facilities (generic incidents) which create major safety concern can be considered an abnormal occurrence.

Date and Place—February 25, 1989; North Anna Unit 1, a Westinghouse-designed pressurized water reactor (PWR), operated by Virginia Electric and Power Company, and located in Louisa County, Virginia.

Nature and Probable Consequences—At 2:07 p.m., Unit 1 automatically tripped from 76 percent power. The initiating signal for the reactor trip was "C" steam generator (S/G) steam flow greater than feedwater flow coincident with a low S/G water level; this was later determined to be caused by the "C" main feedwater regulating valve closing due to a problem in the instrument air supply line.

During recovery operations, operators noted that primary system makeup was 50-60 gpm greater than letdown and that the condenser air ejector monitor indicated increased radiation. The licensee identified a primary-to-secondary leak of about 74 gpm in the "C" S/G and declared a Station Alert at 3:25 p.m. The licensee continued cooldown and depressurization. The plant entered cold shutdown at 10:12 p.m. and the Station Alert was terminated at 10:20 p.m. At the time of the event, Unit 2 was in a refueling shutdown.

Investigation showed that the leak was in tube R3C80 (Row 3 Column 60), about 4 inches above the seventh support plate. The tube had been plugged by Westinghouse in 1985. The leak was due to a hot leg mechanical plug failure. The top portion of the plug was severed from the body of the plug, was propelled up the inner diameter of the tube by the primary system pressure, and punctured the tube just above the U-bend transition. The puncture was approximately 2¼ inches long and ¾ inches wide. The plug dented an adjacent tube, R4C80. A small radioactive release occurred, resulting in dose rates less than approximately 3 percnet of technical specification limits.

Failure of the plug was attributed to primary water stress corrosion cracking of heat treated plug material (Inconel 600) due to low mill anneal temperatures which rendered the material highly susceptible to stress corrosion cracking.

The primary-to-secondary leak was well within the normal primary system makeup capability; in addition, the radiological releases were well below technical specification limits. However, the event identified major safety concerns because: (a) This was an unexpected failure mechanism for S/G tubes; (b) it was a potential common mode failure mechanism with the possibility of multiple S/G tubes failing; and (c) there were generic implications for other plants using such susceptible tube plugs.

Previously, North Anna Unit 1 experienced a S/G tube repture on July 15, 1987. This leak was also in the "C" steam generator, also near the seventh support plate. the 1987 event was not caused by plug failure, but occurred because of fatigue failure due to fluid elastic excitation. The tube had failed over 360 degrees of the circumference, and the fractured ends were displaced in the axial direction approximately one-half inch. The leak rate was estimated to be between 550 to 637 gpm. This event was reported as abnormal occurrence 87-15 in NUREG-0090, Vol. 10, No. 3.

Cause or Causes—As discussed above, the cause of the plug failure was attributed to primary water stress corrosion cracking of the heat treated Inconel 600 plug material.

Actions Taken To Prevent Recurrence

Licensee—The licensee's recovery plan was to investigate (with Westinghouse) the cause of the failure, determine corrective actions, and place Unit 1 into a refueling/maintenance outage so that S/G repairs could be done simultaneously. The susceptible plugs were identified in the S/Gs for both Unit 1 and Unit 2. Repairs consisted either of removing susceptible plugs and replacing them, or inserting a different type of plug into susceptible plugs. Repairs were completed for the S/Gs of both units and the NRC agreed that the plants could be restarted. Unit 2 returned to power operation by the end of April 1989. Unit 1 restarted in July 1989.

NRC—The NRC continues to investigate the potential generic implications of heat treated mechanical plugs used by Westinghouse, Combustion Engineering, and Babcock and Wilcox designed plants. On March 23, 1989, the NRC issued Information Notice No. 89-33 ("Potential Failure of Westinghouse Steam Generator Tube Mechanical Plugs") to all holders of operating licenses or construction permits for PWRs to alert licensees to the potential for plug failures.

On May 15, 1989, the NRC issued Bulletin No. 89-01 ("Failure of Westinghouse Steam Generator Tube Mechanical Plugs") to all holders of operating licenses or construction permits for PWRs. the bulletin requested the addressees to determine whether certain mechanical plugs supplied by Westinghouse are installed in their steam generators and, if so, that an action plan be implemented to ensure that these plugs will continue to provide adequate assurance of reactor coolant system pressure boundary integrity under normal operating, transient, and postulated accident conditions.

89-2 Steam Generator Tube Repairs at McGuire Unit 1

The second general AO criterion notes that major degradation of essential safety-related equipment can be considered an abnormal occurrence. Also, one of the AO examples notes that major degradation of the primary coolant pressure boundary can be considered an abnormal occurrence.

Date and Place—March 7, 1989; McGuire Unit 1, a Westinghouse-designed pressurized water reactor (PWR) operated by Duke Power Company, and located in Mecklenburg County, North Carolina.

Nature and Probable Consequences—At 11:40 p.m., Unit 1, while at 100 percent power, received a "B" main steam line radiation monitor alarm which could not be reset. A substantial and continual decrease in pressurizer level and steam generator (S/G) "B" feedwater flow were noted in the control room. The control room operators suspected a S/G tube leak. The licensee immediately took action to reduce plant load. At 11:45 p.m., the licensee declared a Station Alert. At 11:46 p.m. the reactor was manually tripped (which caused a turbine trip), and the licensee continued procedures for plant cooldown to equalize reactor coolant and S/G pressure to reduce the leak rate. the licensee terminated the Station Alert at 6:15 p.m. on March 8, 1989.

The maximum tube leak rate was estimated to be between 540 and 600 gpm. This leak rate considerably exceeds the normal primary system makeup capability (i.e., with the centrifugal charging pumps (CCPs) operating as part of the chemical and volume control system). In order to keep up with the leak, the licensee switched the pumps to their safety injection lineup—the pumps taking suction on the fueling water storage tank and injecting into all four cold legs of the reactor vessel. In this mode, each CCP can pump from about 150 gpm at normal operating pressure to over 300 gpm at reduced pressure.

Steam generator tube rupture is one of the design basis accidents considered in the NRC safety review of nuclear power plants. Significant S/G tube ruptures, where the leak rate considerably exceeds the normal primary system makeup capability, occasionally occur, as it did at McGuire Unit 1, and previously at Ginna and North Anna Unit 1. The event at Ginna occurred on January 25, 1982 with an estimated maximum leak rate of about 760 gpm; the event was reported as abnormal occurrence 82-4 in NUREG-0090, Vol. 5, No. 1. The event at North Anna Unit 1 occurred on July 15, 1987 with an estimated maximum leak rate between 550 to 637 gpm; the event was reported as abnormal occurrence 87-15 in NUREG-0090, Vol. 10, No. 3.

An Augmented Inspection Team (AIT) was sent by the NRC to investigate the McGuire Unit 1 event. The team concluded that the operating crew performed competently, but weaknesses in both normal and emergency operating procedures were identified. The tube failure did not result in a radiological release to the environment that exceeded regulatory limits. The event did not result in exceeding a technical specification (TS) safety limit. The whole body and thyroid doses from this event were a small fraction of the TS limits. All notifications to the NRC and offsite agencies were made in a timely manner. The AIT report, documented in Inspection Report Nos. 50-369/89-06 and 50-370/89-06, was issued to the licensee on April 10, 1989.

Cause or Causes—Investigation by the licensee determined that the leak was due to a crack in tube R18C25 on the cold leg side (preheater section) about 3¾ inches long, and about one foot above the top of the tube sheet. The licensee concluded that the cause of the tube rupture was intergranular stress corrosion cracking; the rupture was contained within a long, shallow, axial groove on the outside tube surface.

Actions Taken To Prevent Recurrence

Licensee—The licensee's recovery actions included inspection of all tubes in all four S/Gs, metallurgical analysis of the ruptured tube, removal or plugging of tubes as necessary, and revision of the procedures which the AIT identified as needing upgrading. The licensee committed to a 100 percent inspection of the inservice S/G tubes of all S/Gs at both McGuire Units 1 and 2 at their next refueling outages.

NRC—The NRC staff concurred with the corrective actions taken, and the commitments made by the licensee. Permission to restart Unit 1 was given on May 5, 1989. The plant attained criticality on May 9, 1989, and reached full power operation on May 13, 1989.

Other NRC Licensees

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

89-3 Medical Therapy Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—January 23, 1989; Abbott Northwestern Hospital; Minneapolis, Minnesota.

Nature and Probable Consequences—A patient suffering from a malignant tumor on his right femur (thigh) received a 250 rad radiation dose to the left femur by mistake.

The patient was scheduled for 12 treatments of 250 rads each to the right thigh using a cobalt-60 teletherapy device. The procedure was for the patient to be brought to the teletherapy simulator to begin preparation for the actual treatment. The simulator is used to chart or map the exact area on the patient's body to be exposed to the cobalt-60. Once this area is determined, it is outlined with indelible ink by the simulator technologist. The patient is then transferred to the cobalt-60 teletherapy room for treatment.

On January 23, 1989, the patient was placed on the simulator table. Due to machine restrictions, however, the table had to be turned 180 degrees, placing the patient's left thigh closest to the technician and the thigh to be treated furthest away. With the patient's position reversed, the technician mistakenly marked the wrong thigh. Once the marking was completed, the therapy physician reviewed and approved the incorrect setup. The patient was then taken to the treatment room where the left femur was exposed to 250 rads of radiation. The therapy technologist discovered the error within minutes of the exposure when she received a copy of the simulator check list. The check list specified that the right femur was the area to be treated. Treatment was subsequently performed on the correct femur and the treatment schedule continued.

The patient's referring physician and the NRC's Region III Office were informed of the misadministration on January 23, 1989. The licensee determined that the misadministration could possibly cause the patient increased fatigue and possible bone marrow suppression in the left femur.

Cause or Causes—Several personnel errors occurred in this misadministration. The simulator technologist, in turning the table, apparently disoriented herself, and marked the wrong thigh. The therapy physician checked and approved the incorrect thigh marking and treatment. The therapy technologist should have waited until the patient's simulator check list was available in the teletherapy unit before commencing treatment.

Actions Taken To Prevent Recurrence

Licensee—As documented in an NRC Region III Confirmatory Action Letter dated January 25, 1989, the licensee committed to: (1) Provide additional guidance to the simulator and operator technologists and the therapy physician on procedures governing teletherapy administration; (2) inform the operator technologist that the completed simulation check list describing the treatment must be on hand and reviewed prior to setup; (3) provide NRC Region III within 30 days a comprehensive quality assurance/quality control (QA/QC) program which will incorporate Item 2; and (4) assure that the QA/QC procedure also will cover dosimetry, treatment planning and implementation, and radiation safety practices.

On February 16, 1989, the licensee notified NRC Region III that it had completed all items listed in the Confirmatory Action Letter. The licensee's QA/QC program includes dosimetry checks by three independent reviewers, chart checks by two independent reviewers, and treatment prescription by a physician. The hospital had a QA/QC policy prior to the misadministration that included some of the above procedures.

NRC—An NRC inspection was conducted on February 14–15, 1989, to review the circumstances associated with the event. Four minor violations of NRC requirements were identified—none relating to the misadministration. An NRC consulting physician reviewed the patient misadministration and determined that the misadministration would not likely have any significant or deleterious effect on the patient. The licensee's revised policy, and its implementation, will be reviewed by the NRC at the next routine inspection at the hospital.

89–4 Medical Therapy Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—March 9, 1989; Kennebec Valley Medical Center; Augusta, Maine.

Nature and Probable Consequences—A radiotherapy physician had prescribed therapeutic treatments in fractionated doses to two elderly patients from a Veterans' Administration facility. One patient was to be treated for a brain tumor, while the second patient was to be treated for a lesion near the lower palate. Both patients were brought to the hospital at the same time. Because of an identification error, the second (lower palate) patient was brought into the treatment room and the procedure for the brain tumor treatment was begun. When the error was discovered, the procedure was stopped. A total of 100 rads had been delivered to the brain of the patient. The patient had correctly received 2400 rads to the lower palate from previous treatments.

The licensee has advised the NRC that no adverse effects are anticipated as a result of the misadministration.

Cause or Causes—The misadministration was caused by human error on the part of the staff of the radiotherapy department at the medical center. The names, physical appearances, and treatment planning pictures of both patients were similar.

Action Taken To Prevent Recurrence

Licensee—The licensee's planned corrective actions include a strengthening of its patient identification policies along with second person confirmation of patient identity and treatment parameters.

NRC—NRC Region I will conduct an inspection to review the circumstances associated with this misadministration.

89–5 Medical Diagnostic Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—March 14, 1989; New England Center Hospitals; Boston, Massachusetts.

Nature and Probable Consequences—A patient was intended to receive an iodine-123 uptake and diagnostic scan. This would result in an exposure to the thyroid of about 7 rads. However, a staff endocrinologist mistakenly requested an iodine-131 upstage and scan. A floor administrator, transcribing the request to a computer, selected an iodine-131 whole body scan as the intended request. The dosage for this incorrect procedure was prepared and administered to the patient by nuclear medicine department personnel, resulting in the patient receiving five millicuries of iodine-131. This misadministration resulted in a therapeutic dose to the thyroid of approximately 4,000 to 5,000 rads, with a possible range between 1,200 and 9,000 rads. This dosage could affect the function of the thyroid.

The licensee stated that the patient, a cardiac patient under the care of an endocrinologist, might later have been administered a similar dosage of iodine-131 for thyroid ablation as treatment for his cardiac condition. However, this is no basis for the misadministration; the incident should not have occurred if

proper controls had been in place and followed.

Cause or Causes—The licensee stated that the misadministration was caused by human error on the part of the staff endocrinologist and lack of training of involved personnel. The root cause was done to inadequate supervision of activities.

Actions Taken To Prevent Recurrence

Licensee—The licensee stated that: (1) The Chief of Nuclear Medicine will review all requests for iodine-131 whole body scans, and (2) there will be weekly interdepartmental meetings of the Nuclear Medicine Department and the Department of Endocrinology.

NRC—NRC Region I conducted a special inspection on June 5, 1989, to review the circumstances associated with the event, and the appropriateness of the licensee's corrective actions. The results of the inspection are under review. Region I requested an NRC medical consultant to review the incident.

Dated at Rockville, MD this 29th day of August, 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89–20793 Filed 9–1–89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 7–9, 1989 in Room P–110, 7920 Norfolk Avenue, Bethesda, MD. Notice of this meeting was published in the Federal Register on July 26, 1989 and August 22, 1989.

Thursday, September 7, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman—The ACRS Chairman will report on items of current interest.

8:45 a.m.–12:00 Noon: Maintenance of Nuclear Power Plants (Open)—The Committee will review and report on the proposed NRC policy statement and an associated draft regulatory guide related to maintenance programs at nuclear power plants.

1:00 p.m.–2:00 p.m.: License Renewal (Open)—The Committee will hear and discuss a report from NRC staff representatives regarding the status of activities related to license renewal for nuclear power plants.

2:00 p.m.–4:30 p.m.: Individual Plant Examination for External Events (IPEEE) (Open)—A briefing and discussion with representatives of the NRC staff and the nuclear industry will be held regarding the status of the IPEEE program.

4:45 p.m.–5:45 p.m.: Industrial Sabotage (Open/Closed)—The Committee will review and report on a proposed resolution of Generic Issue A–29, Nuclear Power Plant Design for Reduction of Vulnerability to Industrial Sabotage.

Portions of this session will be closed as necessary to discuss information related to security provisions at nuclear power plants.

5:45 p.m.–6:30 p.m.: Accident Severity Scale (Open)—A briefing and discussion regarding proposed accident severity scale for use in the public announcement of nuclear power plant events and accidents will be held.

Friday, September 8, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

8:30 a.m.–12:00 Noon: Seabrook Nuclear Power Station, Unit 1 (Open)—The Committee will review and report on the proposed off-site emergency preparedness for full power operation of the Seabrook nuclear power plant.

1:00 p.m.–3:00 p.m. and 3:15 p.m.–4:15 p.m.: EPRI Requirements for Advanced Light Water Reactors (Open)—A briefing and discussion will be held regarding the status of the NRC review of the proposed EPRI Requirements for Advanced LWRs.

4:15 p.m.–5:15 p.m.: NUMARC Activities (Open)

A briefing and discussion will be held regarding NUMARC activities related to nuclear power plant IPEs and accident management.

5:15 p.m.–5:45 p.m.: Advanced Pressurized Water Reactors (Open)—A briefing and discussion will be held regarding the status of the NRC staff review of Westinghouse and Combustion Engineering standardized nuclear power plants.

5:45 p.m.–6:15 p.m.: Future ACRS Activities (Open)—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

Saturday, September 9, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

8:30 a.m.–12:00 Noon: Preparation of ACRS Reports to NRC (Open)—The Committee will continue the discussion of the proposed ACRS reports to NRC regarding items considered during this meeting.

1:00 p.m.–1:45 p.m.: Appointment of ACRS Members (Open/Closed)—The Committee will discuss qualifications of candidates proposed for nomination as ACRS Members.

Portions of this session will be closed as appropriate to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

1:00 p.m.–1:45 p.m.: Subcommittee Activities (Open)—The Committee will discuss the status of assigned ACRS subcommittee activities, including activities of NRC regional offices.

1:45 p.m.–2:30 p.m.: Miscellaneous (Open)—The Committee will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and Safeguards/Security Information applicable to specific nuclear facilities (5 U.S.C. 552b(c)(3)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 310/492–8049), between 8:15 a.m. and 5:00 p.m.

Dated: August 28, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–20794 Filed 9–1–89; 8:45 am]

BILLING CODE 7590-01-M

Issuance and Availability of NUREG-1217, "Evaluation of Safety Implications of Control Systems in LWR Nuclear Power Plants—Technical Findings Related to USI A–47," and NUREG–1218, "Regulatory Analysis for Resolution of USI A–47"

The U.S. Nuclear Regulatory Commission (NRC) staff is issuing the resolution of Unresolved Safety Issue (USI) A–47, "Safety Implications of Control Systems." The resolution is documented in two final reports entitled "Evaluation of Safety Implications of Control Systems in LWR Nuclear Power Plants—Technical Findings Related to USI A–47" (NUREG–1217) and "Regulatory Analysis for Resolution of USI A–47 (NUREG–1218)." The proposed resolution and the draft NUREG reports had been published for public comment on May 27, 1988. All the comments received were addressed and summarized in appendix C of NUREG–1217. Safety Implications of Control Systems was identified as an Unresolved Safety Issue in the NRC 1980 Annual Report to the Congress pursuant to section 210 of the Energy Reorganization Act of 1974 as amended on December 13, 1977.

Nuclear power plant instrumentation and control systems are composed of safety-related protection systems and non-safety related control systems. The safety-related protection systems are designed to satisfy the General Design Criteria identified in appendix A to 10 CFR part 50. They are used in part to trip the reactor when certain plant parameters exceed allowable limits and to protect the core from overheating by actuating emergency core cooling systems. Non-safety-related control systems are used to maintain the plant within prescribed pressure and temperature limits during shutdown, startup, and normal power operation. The non-safety-related control systems are not relied on to perform any safety functions during or following postulated transients or accidents. They are used, however, to control plant processes that could have an impact on plant dynamics.

The purpose of the USI A–47 study was to perform a review of the non-safety-related control systems and to assess the effects of control system failures on plant safety. To this end, tasks were established to identify potential control system failures that, either singly or in selected combinations, could cause overpressure, overcooling, overheat, overfill, or reactivity events.

The NRC staff concluded from its A–47 investigations that certain actions should be taken to further enhance safety in LWR plants. These actions recommend that plants: (1) Provide systems to protect against reactor vessel/steam generator overfill events and to prevent steam generator dryout, (2) include in their plant procedures and their technical specifications provisions to periodically verify operability of these systems, and (3) modify selected emergency procedures to ensure safe plant shutdown following a small-break loss-of-coolant accident. Most plants already have substantial design protection against control system failures. The recommended safety improvements would apply to those plants for which additional or enhanced protection is warranted. The recommended actions are included in Appendix C of NUREG–1218.

Copies of the documents included in the final resolution for USI A–47 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC.

Dated at Rockville, Maryland this 28th day of August 1989.

For the Nuclear Regulatory Commission.

R. Wayne Houston,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 89–20741 Filed 9–1–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–237 and 50–249]

Commonwealth Edison Co.; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (the licensee) to withdraw its October 29, 1985, application for proposed amendment to Provisional Operating License No. DPR–19 and Facility Operating License DPR–25 for the Dresden Nuclear Power Station, Unit Nos. 2 and 3, located in Grundy County, Illinois.

The proposed amendment would have revised the Technical Specifications to implement detection requirements of Generic Letter 84–11 for Dresden 2, revise the ISI time period to reflect the second 10-year program, and correct various typographical errors for Dresden Nuclear Power Station Unit Nos. 2 and 3.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 23, 1986 (51 FR 15394). However, by letter dated August 4, 1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 29, 1985, and the licensee's letter dated August 4, 1989, which withdrew the application for the license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland this 28th day of August 1989.

For the Nuclear Regulatory Commission.

Byron L. Siegel,

Project Manager, Project Directorate III–2, Division of Reactor Projects III, IV, V, and Special Projects.

[FR Doc. 89–20742 Filed 9–1–89; 8:45 am]

BILLING CODE 7590-01-M

[License No. 21–24472–01; Docket No. 030–18655; EA 89–068]

Nuclear and Radiologic Imaging Physicians, Troy Professional Building, Order Suspending License and Revoking License

I

Nuclear and Radiologic Imaging Physicians, Troy Professional Building, 2151 Livernois, Suite 201, Troy, Michigan 48083 (the licensee) is the holder of Byproduct Material License No. 21–24472–01 (the license), which was issued by the Nuclear Regulatory Commission (Commission or NRC) on April 17, 1985 and is due to expire on April 30, 1990. The license authorizes Nuclear and Radiologic Imaging Physicians to possess byproduct material for use in

performing diagnostic and certain therapeutic medical procedures in accordance with the conditions specified in the license. Dr. Subhash C. Khullar is the only authorized user listed on the license.

II

During the period April 25 through May 25, 1989, NRC Region III conducted an inspection of the licensee's byproduct material program. As a result of this inspection, two apparent violations of NRC requirements were identified. These apparent violations included: (1) Byproduct material stored at locations not authorized by the license and (2) failure to make NRC-required records available to NRC inspectors upon reasonable notice.

On April 25, 1989, NRC inspectors arrived at one of the authorized locations listed in the license (2151 Livernois, Suite 201, Troy, Michigan). There they met an individual who indicated he was Dr. Khullar's business manager. When asked how to contact Dr. Khullar, he stated that the Doctor saw patients at Sanford Medical Center in Utica, Michigan. In Dr. Khullar's absence, the inspectors were unable to review NRC-required records of receipt, use and disposal of radioactive material for that facility. The Business Manager agreed to attempt to contact Dr. Khullar and inform him of an inspectors' request to review records.

A visit by the NRC inspectors to Sanford Medical Center (Sanford) on the afternoon of April 25, 1989, revealed several sealed sources containing byproduct material and three shipping cases which contained decayed unit doses of NRC-licensed radiopharmaceuticals. Sanford was previously an authorized location of use, but was not, at this time, authorized by any NRC license for use or storage of byproduct material. An attempt to contact Dr. Khullar by his Medical Assistant at Sanford was unsuccessful.

On April 26, 1989, in an attempt to locate Dr. Khullar, the inspectors visited another authorized location of use listed in the license, 31500 Schoolcraft, Livonia, Michigan. The inspectors were informed that the office was closed, but were allowed access into the facility. The facility appeared to be vacated and no records of receipt, use, or disposal of radioactive material were located; nor were the inspectors able to verify whether a closeout survey for radioactive contamination had been performed as required by 10 CFR 30.36(b).

Also on April 26, the inspectors returned to Sanford Medical Center and informed Dr. Khullar's medical assistant that Dr. Khullar could not possess radioactive material at that location. The Medical Assistant agreed to release the material for transfer to another licensee authorized for possession; however, she wanted to inform Dr. Khullar. While she was talking to Dr. Khullar, the inspectors requested to talk with him. They were promptly told by the Medical Assistant that he was in a meeting and could not talk to them.

On April 28, 1989, an inspector contacted the Medical Assistant at Sanford and informed her of the importance of talking with Dr. Khullar. The inspector was informed by the Medical Assistant that Dr. Khullar was busy and could not speak with him.

On May 2, 1989, as a result of numerous unsuccessful attempts to contact Dr. Khullar, a certified letter was mailed to Dr. Khullar requesting a date, time, and location where NRC could meet with him to perform an inspection of his licensed activities. The letter was received back at the NRC Region III office on May 25, 1989 and was marked as unclaimed.

On June 19, 1989, the Region III Deputy Regional Administrator attempted to contact the licensee and a message was left with Dr. Khullar's secretary stressing the importance of a response from Dr. Khullar; however, the call was not returned. On July 3, 1989, the Region III Regional Administrator sent a letter with an enclosed Notice of Violation (Notice), citing the license for violations involving storage of material at an unauthorized location and failure to allow NRC inspectors access to NRC-required records.

That letter with enclosed Notice was sent Certified Mail to all known locations where Dr. Khullar has worked. The certified letter as well as the enclosed Notice required that Dr. Khullar respond within 30 days. Both the letter and the Notice stated that failure to respond to the Notice within 30 days could result in revocation of the license. The certified letter was accepted at one of the licensee's addresses; however, NRC has not received a response to the letter or the Notice as of the date of this Order.

III

Dr. Khullar's failure to respond to the Notice of Violation and his apparent efforts to avoid his regulatory responsibilities raise substantial questions regarding Dr. Khullar's ability or willingness to comply with NRC requirements, and cannot and will not be tolerated. As a result of these actions on the part of the licensee, I lack the requisite reasonable assurance that the licensee's current operations can be conducted under Byproduct Material License No. 21–24472–01 in accordance with the Commission's requirements and that the health and safety of the public will be protected. Consequently, the public health, safety, and interest require that Byproduct Material License No. 21–24472–01 be suspended, that the licensee be required to transfer all licensed material to an authorized recipient, and, thereafter, that the license be revoked. Furthermore, pursuant to 10 CFR 2.201(c) and 2.202(f), I find that no prior notice is required and that this Order is effective immediately.

IV

In view of the above, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the regulations in 10 CFR parts 2, 30, and 35, *it is hereby ordered*, effective imediately, that:

a. Byproduct Material License No. 21–24472–01 is suspended except for the activity set forth in Section IV.b. The licensee shall not receive any licensed material. The licensee shall cease and desist from any use of byproduct material in its possession and shall immediately place all such material in locked storage.
b. Within 30 days of the date of this Order, the licensee shall cause all licensed material in its possession to be transferred to an authorized recipient in accordance with 10 CFR 30.41 and shall submit for NRC approval: (1) A completed form NRC-314 and (2) a radiation survey report prepared in accordance with 10 CFR 30.36 to confirm the absence of radioactive materials or to establish the levels of residual radioactive contamination. This information should be addressed to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.
c. Upon a written finding by the Regional Administrator, NRC Region III, that no licensed material remains in the licensee's possession, Byproduct Material License No. 21–24472–01 is revoked.

The Regional Administrator, NRC Region III, may, in writing, relax or rescind any of these provisions for good cause shown.

V

Pursuant to 10 CFR 2.202(b), the licensee may show cause why this Order, in whole or in part, should not have been issued by filing a written answer under oath or affirmation within 20 days of the date of issuance of this Order, setting forth the matters of fact

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and law on which the licensee relies. The licensee may answer, as provided in 10 CFR 2.202(d), by consenting to the entry of this Order. If the licensee fails to file an answer within the specified time, consents to this order, or fails to request a hearing in accordance with section VI below, and in the absence of any other request for a hearing, this order shall be final without further proceedings.

VI

The licensee or any other person adversely affected by this Order may request a hearing on all or any aspects of this Order within 20 days of the date of this Order. Any answer to this Order or request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). An answer to this order or a request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of the hearing. If a hearing is held, the issue to be considered shall be whether this Order shall be sustained.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Dated at Rockville, Maryland, this 23rd day of August 1989.

[FR Doc. 89–20743 Filed 9–1–89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Establishment of the Director's Task Force on Pay Reform

AGENCY: Office of Personnel Management.

ACTION: Notice.

Establishment of a Task Force. This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) and advises of the establishment of the Director's Task Force on Pay Reform. The Director of the Office of Personnel Management has determined that establishment of this Task Force is in the public interest.

Designation. Director's Task Force on Pay Reform.

Purpose. The purpose of the Task Force is to provide an opportunity for a wide spectrum of interested parties to have significant involvement in discussions on pay reform initiatives and to develop options to the current Federal pay system for the Director's consideration. Federal agencies, unions and management associations, public interest groups and private sector experts will be represented on the Task Force.

FOR FURTHER INFORMATION CONTACT: The Office of the Director, OPM, is the organization within the agency sponsoring this task force. For additional information, contact Mr. Vernon B. Parker, Counselor to the Director, OPM, on (202) 632–6101.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 89–20642 Filed 9–1–89; 8:45 am]

BILLING CODE 6325-01-M

Director's Task Force on Pay Reform

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the OPM Director's Task Force on Pay Reform will be held on:

DATES:

September 20, 1989, 11:00 a.m., Office of Personnel Management, Room 1350, 1900 E Street, NW., Washington, DC.
September 27, 1989, 10:00 a.m., Office of Personnel Management, Room 1350, 1900 E Street, NW., Washington, DC.
October 4, 1989, 10:00 a.m., Office of Personnel Management, Room 1350, 1900 E Street, NW., Washington, DC.
October 11, 1989, 10:00 a.m., Office of Personnel Management, Room 1350, 1900 E Street, NW., Washington, DC.

Agenda: The Task Force will consider various alternatives for reforming the Federal white collar pay system and develop options for the Director's consideration.

FOR FURTHER INFORMATION CONTACT: Vernon B. Parker, Counselor to the Director, Room 5524, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION: As time permits, an opportunity will be provided for members of the public in attendance at the meetings to provide their views.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 20641 Filed 9–1–89; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27185; File Nos. SR–NYSE–89–01; SR–MSE–89–05]

Self-Regulatory Organizations; New York Stock Exchange, Inc. and Midwest Stock Exchange, Inc.; Order Approving and Notice and Order Granting Accelerated Approval to Proposed Rule Changes

On February 24, 1989, the New York Stock Exchange, Inc. ("NYSE") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish specific written sales practice and suitability criteria and standards concerning uncovered short options transactions.[3]

The NYSE proposed rule change was noticed in Securities Exchange Act Release No. 26621 (March 9, 1989), 54 FR 10769 (March 15, 1989).[4] No comments

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] On August 24, 1989, the NYSE amended its proposed rule change to modify the "Special Statement for Uncovered Option Writers" that is to be provided to uncovered options writers. *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Joseph Furey, Branch Chief, Division of Market Regulation, SEC, dated August 23, 1989. In addition, on July 13, 1989, the Midwest Stock Exchange ("MSE") submitted to the Commission a proposed rule change (File No. SR–MSE–89–05) substantially identical to the amended NYSE proposed rule change and to proposed rule changes by the other options exchanges which were recently approved by the Commission. *See* Securities Exchange Act Release No. 26952 (June 21, 1989), 54 FR 27256. Hereinafter, the terms "self-regulatory organizations" and "exchanges" refer to the NYSE and MSE.

[4] Because the MSE proposed rule change is substantially identical to the NYSE amended proposed rule change this order also serves as the notice and order granting accelerated approval to File No. SR–MSE–89–05.

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were received on the proposed rule change.

The exchanges' proposed rule changes require that member and member organizations transacting business with the public in writing uncovered short options contracts develop, implement, and maintain specific written criteria and standards for approving customer accounts for uncovered short options transactions. The proposed rule changes also require that member and member organizations establish a minimum net equity requirement for approving and maintaining such customer accounts. If a customer does not meet the member or member organization's specific criteria/standards, the customer's account may be approved for uncovered short options transactions only by the member or member organization's Senior Registered Options Principal or Compliance Registered Options Principal. The reasons for approving any such account must be recorded and the records maintained by the member or member organization. The exchanges' proposed rule changes further require that the member or member organization develop, implement, and maintain specific written procedures concerning the member or member organization's supervisory review of customer accounts which have established uncovered short options positions. In addition, the exchanges' proposed rule changes require that members and member organizations furnish to customers a written description of the risks involved in uncovered short options transactions, at or prior to the customers' initial uncovered short options transaction.[5] This written disclosure document must be furnished to customers in addition to the Options Disclosure Document required to be provided to customers trading in options pursuant to existing rules of the exchanges.[6]

The exchanges state that the proposed rule changes are designed to increase customer awareness of the risks entailed in writing uncovered options contracts and to intensify member and member organization supervision of customer accounts engaged in writing uncovered options contracts.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.[7] Specifically, the Commission believes that the exchanges' development and implementation of specific written procedures governing: (1) The suitability of customers for writing uncovered short options transactions; (2) the approval of accounts engaged in such uncovered writing; and (3) the establishment of specific minimum net equity requirements for initial approval and maintenance of customer accounts will protect investors by ensuring that only those investors suitable for writing uncovered options will be approved to do so. In particular, the proposed rule change is designed to ensure that only those investors who possess the financial resources, investment background and objectives, and suitable risk tolerance will be approved for writing uncovered options.

In addition, the Commission believes that the distribution to customers of a short succinct written statement that describes the risks associated with uncovered options writing, at or prior to the customers' initial uncovered short options transaction, will help ensure investor protection because it will increase customer awareness of the potential for significant losses in writing uncovered short options contracts. In this regard, the Commission notes that since disclosure is an important component of investor protection under the federal securities laws, providing investors with a special uncovered short options risk statement may help ameliorate problems associated with uncovered short options transactions (*e.g.*, significant margin calls), especially during volatile markets such as those experienced in October 1987.[8]

The Commission finds good cause for approving the MSE proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register** because the MSE proposed rule change is substantially identical to the amended NYSE proposed rule change. In addition, the Commission recently approved substantially identical proposed rule changes submitted by the other options exchanges.[9] Moreover, the MSE rule change is part of an agreement among the options exchanges to adopt new uniform sales practice standards for short uncovered options writing.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the respective principal offices of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by September 26, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule changes (SR–NYSE–89–01) and SR–MSE–89–05) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: August 25, 1989.

Shirley E. Hollis,

Assistant Secretary.

Exhibit A—Rule 726 Risk Description

Special Statement for Uncovered Option Writers

There are special risks associated with uncovered option writing which expose the investor to potentially significant loss. Therefore, this type of strategy may not be suitable for all customers approved for options transactions.

1. The potential loss of uncovered call writing is unlimited. The writer of an uncovered call is in an extremely risky position, and may incur large losses if the value of the underlying instrument increases above the exercise price.

2. As with writing uncovered calls, the risk of writing uncovered put options is substantial. The writer of an uncovered put option bears a risk of loss if the value of the underlying instrument declines below the exercise price. Such loss could be substantial if there is a significant decline in the value of the underlying instrument.

3. Uncovered option writing is thus suitable only for the knowledgeable investor who understands the risks, has the financial capacity and willingness to incur potentially substantial large losses, and has sufficient

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[5] *See* Exhibit A.

[6] *See, e.g.*, NYSE Rule 726(a).

[7] 15 U.S.C. 78f (1982).

[8] *See* Division of Market Regulation, "The October 1987 Market Break" (February 1988) at 12–15 through 12–18.

[9] *See* Securities Exchange Act Release No. 26952 (June 21, 1989), 54 FR 27256.

[10] 15 U.S.C. 78s(b)(2) (1982).

[11] 17 CFR 200.30–3(a)(12) (1988).

liquid assets to meet applicable margin requirements. In this regard, if the value of the underlying instrument moves against an uncovered writer's options position, the investor's broker may request significant additional margin payments. If an investor does not make such margin payments, the broker may liquidate stock or options positions in the investors account with little or no prior notice in accordance with the investor's margin agreement.

4. For combination writing, where the investor writes both a put and a call on the same underlying instrument, the potential risk is unlimited.

5. If a secondary market in options were to become unavailable, investors could not engage in closing transactions, and an option writer would remain obligated until expiration or assignment.

6. The writer of an American-style option is subject to being assigned an exercise at any time after he has written the option until the option expires. By contrast, the writer of a European-style option is subject to exercise assignment only during the exercise period.

Note: It is expected that you will read the booklet entitled "Characteristics and Risks of Standardized Options" available from your broker. In particular your attention is directed to the chapter entitled Risks of Buying and Writing Options. This statement is not intended to enumerate all of the risks entailed in writing uncovered options.

[FR Doc. 89-20744 Filed 9-1-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27187; File No. SR-MSE-88-11]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Arbitration Process and the Use of Predispute Arbitration Clauses

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1988, the Midwest Stock Exchange, Inc. ("Exchange" or "MSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items I and II below, which Items have been prepared by the self-regulatory organization ("SRO"). Amendment No. 1, submitted on August 14, 1989, proposed additional changes to the Exchange's rules. The MSE has requested accelerated approval of this proposal because the filing is substantially identical to rule filings of the New York Stock Exchange ("NYSE"), National Association of Securities Dealers ("NASD"), and American Stock Exchange ("AMEX") that were approved by the Commission on May 10, 1989,[1] and by the Chicago Board Options Exchange ("CBOE") approved on August 2, 1989.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule changes would amend the Exchange's rules for administering arbitration proceedings and address many issues regarding the fairness and efficiency of the arbitration process administered by the Exchange, as well as institute new requirements applicable to the use by Exchange members of predispute arbitration clauses in agreements with customers.

The MSE developed these proposed rule changes through the auspices of the Securities Industry Conference on Arbitration ("SICA"). The SROs have worked together over the past twelve years to develop uniform arbitration rules through SICA, which is comprised of a representative from each SRO that administers an arbitration program,[3] a representative of the securities industry, and four representatives of the public.

On September 10, 1987, after a review of securities industry-sponsored arbitration, the Commission sent to SICA a letter that set out its views regarding the need for changes to the Uniform Code of Arbitration ("Uniform Code").[4] The Commission also sent letters to the SROs on July 8, 1988 requesting that the SROs review the issues raised by the current use of mandatory predispute arbitration agreements by their member firms.[5] Since September 1987, SICA and its subcommittees have met regularly to develop proposals in response to the Commission's letters.

The majority of the proposals to amend the MSE's rules were based on changes in the Uniform Code made by SICA largely in response to the September 1987 and July 1988 Commission letters.[6] The other proposals included in this order were developed to meet concerns that have arisen through the administration of the arbitration programs.

Substantially identical rule filings submitted by the NYSE, AMEX and NASD were approved by the Commission on May 10, 1989. The comparable rule filing of the CBOE was approved on August 2, 1989. In its May 10, 1989 Order, the Commission addressed fully the significant public dialogue and comment that preceded its action. This notice and order granting accelerated approval of the proposed rule change is consistent with the substance of the May 10, 1989 Order, and the discussion set out in that order is fully applicable to the MSE rules approved herein.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule changes is available at the Office of the Secretary, MSE, and at the Commission's Public Reference Section.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose.

(a) *Service of Pleadings.* The MSE proposes to modify the procedures for service of pleadings. Currently, the arbitration department of the MSE serves all pleadings on the parties. As cases have increased, using the arbitration department as an intermediary for the service of pleadings has added unnecessarily to delays in processing cases and to the cost of operating the arbitration system. The MSE proposes to serve only the initial pleading in a case, the "claim," and to require that parties serve all subsequent pleadings directly upon one another. This approach is intended to save administrative time and costs while continuing to ensure that respondents receive adequate notice of the institution of arbitration proceedings.

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[1] Securities Exchange Act Release No. 26805 (May 10, 1989), 54 FR 21144 (May 16, 1989) (approving Files No. SR-NYSE-89-08, SR-NYSE-88-39, SR-NASD-88-29, SR-NASD-88-51, SR-NASD-89-12, and SR-AMEX-88-29) ("May 10, 1989 Order").

[2] Securities Exchange Act Release No. 27093 (August 2, 1989), 54 FR 32731 (August 9, 1989).

[3] The SROs that administer an arbitration program are the MSE, NYSE, NASD, AMEX, CBOE, Municipal Securities Rulemaking Board, Pacific Stock Exchange, Boston Stock Exchange, Cincinnati Stock Exchange and Philadelphia Stock Exchange.

[4] *See* letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to James E. Buck, Senior Vice President, NYSE, dated September 10, 1987. This letter was also addressed separately to each of the other members of SICA.

[5] *See* letter from David S. Ruder, Chairman, SEC, to John J. Phelan, Jr., Chairman, NYSE dated July 8, 1988. This letter was also addressed to the senior executive officers of all other SROs that administer arbitration facilities.

[6] The Exchange's rules developed in response to the Commission's letters are MSE sections 8, 9, 11, 14, 21, 28, 30, 32(b) and 34.

Under amended MSE section 13, parties also will be required to supply the department of arbitration with sufficient additional copies of the pleadings for the arbitration department staff and each of the arbitrators. Additionally, the proposal specifies that service by first-class postage prepaid or by overnight mail service is considered to be made on the date of mailing and service by other means is considered to be made on the date of delivery.

This proposed rule change would apply both to arbitration proceedings conducted pursuant to the simplified procedures for small claims under MSE section 13 and regular cases initiated pursuant to MSE section 13.

Additionally, amended MSE section 13 provides that where both an MSE member firm and a person associated with the member firm are named parties to an arbitration proceeding, service on the associated person may be made either on the associated person, or on the member firm, which would then have the obligation to perfect service on the associated person. Proposed section 13 also provides that if the firm does not undertake to represent the associated person, the member firm must serve the associated person, advise all parties and the director of arbitration that the firm is not representing the associated person, and must provide the associated person's current address.

(b) *Classification of Arbitrators.* The arbitration panels at the SROs for cases involving public customers have historically been composed of a majority of "public arbitrators" and a minority of "industry arbitrators". However, there have not been clear requirements or specifications for who may serve as a public arbitrator. Under the Exchange's proposal, amended MSE section 8 would specify who may not serve as a public arbitrator and who may serve as an industry arbitrator.

The MSE's proposal addresses the potential for real or apparent bias on the part of public arbitrators who may have some professional or personal association with the securities industry. MSE section 8 defines as an industry arbitrator one who is associated with a member of an SRO, broker, dealer, government securities broker, government securities dealer, municipal securities dealer, or registered investment adviser. MSE Section 8 also deals with the appropriate role in the arbitration system of professionals such as attorneys or accountants who provide services to securities industry clients. The rule would classify as industry arbitrators, rather than public arbitrators, attorneys, accountants and other professionals who devoted twenty percent or more of their professional work effort to securities industry clients within the last two years. In addition, the rule excludes from service as a public or industry arbitrator persons who are spouses or other members of the household of a person associated with a registered broker-dealer, municipal securities dealer, government securities dealer or investment adviser.

MSE Section 8 permits an individual who had been associated with the securities industry to become a public arbitrator after three years, if the individual has gone on to other work and is not retired from the securities industry. Also, under the rule, industry retirees will no longer be permitted to serve as public arbitrators, although they may continue to serve as industry arbitrators. The MSE is also proposing disclosure provisions designed to assist parties in assuring that the panel assigned to each case is appropriately balanced. Under proposed MSE section 9, the employment histories of the arbitrators for the past ten years as well as the information provided by arbitrators pursuant to separate disclosure obligations contained in proposed MSE section 11 will be disclosed.[7]

The amendments regarding the classification of arbitrators are designed to promote impartial and knowledgeable decisions in the arbitration of disputes between investors and broker-dealers. The reclassification of securities industry retirees to the industry arbitrator pool and the establishment of a three year period before a former securities industry employee may serve as a public arbitrator should relieve most doubts that investors may have had regarding the impartiality of the public arbitrator pool. Similarly, the judgment to exclude from the public arbitrator pool lawyers, accountants and other professionals who regularly service the securities industry makes clearer the distinctions between the two arbitrator pools.

(c) *Arbitrator Disclosure and Background Information to be Supplied to the Parties.* The MSE is also proposing changes to its rules dealing with disclosures to be made by arbitrators, and with supplying arbitrator disclosures to the parties. Under the current rules, parties have been provided only with the names and current business affiliations of the arbitrators proposed for their cases. The Exchange's proposed rule change would provide the necessary guidance to arbitrators about the types of relationships that may create conflicts of interest. Moreover, parties have had to request specifically any other information from the arbitration departments within very short time frames. The Exchange's proposed rule change would provide to the parties all of the information disclosed by arbitrators pursuant to the amended disclosure rules at the time when the parties are first given the arbitrators' names. This change would provide full disclosure of arbitrators' backgrounds to parties at the earliest possible stage in the process, and should therefore avoid unnecessary postponements of hearings and promote knowledgeable use of challenges.

Accordingly, proposed MSE section 11(a) establishes specific disclosure obligations of arbitrators. The rule requires that arbitrators disclose any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. These disclosures extend to any relationships the arbitrators may have with any party, or its counsel, or with any individual whom they have been advised will be a witness. The rule also requires arbitrators to disclose any such relationship involving members of their families or their current employers, partners or business associates.

MSE section 11(b) admonishes prospective arbitrators to make a reasonable effort to inform themselves of any interests or relationships described in subsection (a). MSE section 11(c) advises arbitrators that the duty to disclose under subsection (a) of the rule is an ongoing duty, and that any person who serves as an arbitrator must disclose at any stage of the arbitration proceeding any such interests, relationships, or circumstances that arise, or that are recalled or discovered. Also, under section 11(d), the MSE has clarified that prior to the first session, the director of arbitration may remove an arbitrator based on information disclosed pursuant to the rule. Parties are to be informed of any information disclosed pursuant to the rule, if the arbitrator has not been removed.[8]

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[7] The disclosure rules are proposed rule changes discussed in subsection (c) of this notice. The rules would require arbitrators to make extensive disclosures to the parties.

As discussed above, MSE Section 9 provides that parties will be informed of the names and business affiliations of the arbitrators for the past ten years, as well as any information disclosed pursuant to MSE section 11 at least eight days prior to the date fixed for the initial hearing session. Under MSE section 9, parties may also make further inquiry through the department of arbitration concerning the arbitrators' background.

(d) *Appointment of Replacement Arbitrators on a Panel.* The MSE is also proposing two changes with respect to its ability to appoint a replacement arbitrator on a panel when a vacancy occurs. The first of these changes concerns the ability of the director of abritration to replace an arbitrator who becomes unavailable to serve less than eight days prior to the first hearing session. Under the proposed amendment, if after appointment and prior to the first hearing session an arbitrator residgns, dies, withdraws, is disqualified or otherwise unable to perform as an arbitrator, MSE section 9 authorizes the director of arbitration to appoint a replacement arbitrator. The rule permits the appointment of replacement arbitrators closer than eight days to the hearing. The rule also explicitly provides that parties are entitled to receive the same disclosure regarding the background of the replacement arbitrator as they received for the initial arbitrator(s), and have the same right to request more information, and to challenge the arbitrator as provided in the rules, although within a shorter time frame.

The second change concerning the ability to appoint replacement arbitrators addresses situations where an arbitrator resigns, dies, withdraws, is disqualified or otherwise unable to perform as an arbitrator after the commencement of the first hearing session. Under the MSE's existing rules, if a vacancy occurs after the hearings have begun, both parties must consent either to the appointment of a replacement arbitrator to hear the rest of the case, or to continuing with the remaining arbitrator(s). Otherwise, if that consent cannot be obtained, the case must be reheard from the beginning with a full panel.

The proposed amendment to MSE section 12 permits the remaining arbitrators to continue with the hearing and determination of the controversy. However, under the proposal, if a party objects, a replacement arbitrator would be appointed by the director of arbitration under the same procedures as for the replacement of an arbitrator prior to the first hearing. The rule is designed to permit parties in particular cases to make the decision that makes the most sense for their case. For example, in cases where only peripheral issues have been dealt with and relatively little progress has been made, it may make sense for parties to request a replacement arbitrator. Conversely, where the hearings have progressed significantly, or are in fact substantially completed, it would make less sense for parties to request a replacement arbitrator, who then would have to learn all that had occurred in his absence.

In the event that parties do request a replacement arbitrator, it is clear that the arbitrators have the authority to require the rehearing of part or all of the case, or to withdraw from the case, effectively requiring the appointment of another panel, as is appropriate in their judgment. With this rule change, however, a party may no longer delay the resolution of the dispute by insisting on a rehearing whenever an arbitrator unexpectedly is unable to continue in his hearing of a case.

(e) *Availability of Small Claims Procedures and the Number of Arbitrators Required to Hear a Claim.* The MSE proposes to amend section 2(a) to increase to $10,000 from $5,000 the monetary claim limit for cases to be heard under the simplified procedures developed in the Uniform Code. Under these expedited procedures, a single arbitrator decides a case based upon the papers submitted by the parties. No oral hearing is held unless requested by the investor, or ordered by the arbitrator. This change is designed to decrease the cost of arbitration.[9]

MSE section 8(a) would change the number of arbitrators generally used for large cases from five to three. The rule currently provides for the appointment of five arbitrators in cases brought by public customers in which the claim exceeds $500,000. In order to alleviate administrative delays and costs frequently encountered in such cases, the proposed rule would eliminate the requirement of five-member panels, allowing the director of arbitration to exercise discretion in appointing panels of no fewer than three and no more than five arbitrators in cases not heard under the MSE's simplified arbitration procedures.

The MSE also proposed a technical amendment, in MSE section 2(f), regarding the single arbitrators used in cases administered under the simplified procedures. The amendment codifies the existing practice of appointing a public arbitrator as the single arbitrator in the case.

(f) *Discovery.* The MSE is proposing significant changes to its arbitration discovery rules, which should assist in the early resolution of discovery disputes and encourage the efficient resolution of cases on their merits. Under current Exchange rules, parties have been expected to exchange documents informally and voluntarily. Parties may also request documents pursuant to subpoena under the existing rules, but these do not have to be produced until the day of the hearing.

The MSE's proposed discovery rule expands party access to prehearing discovery and provides specific time frames for parties to request information from parties and for responding to such an information request. The rule also establishes a mechanism for prehearing conferences and for arbitrator involvement in prehearing matters where needed. Under the MSE's proposed rule change, arbitrators may also order depositions when appropriate.

Proposed MSE section 14(a) continues the policy established under existing rules for parties to cooperate to the fullest extent possible in the voluntary exchange of documents and information. In the event that voluntary exchanges are not sufficient, the rule establishes a clear framework for document production and information requests.

Proposed MSE section 14(b) provides that a party may serve a written request for information or documents twenty days after service of the claim or upon the filing of the answer, whichever is earlier. All parties are to receive copies of the request, and parties are required to endeavor to work out disputes regarding the request between themselves before an objection to the request is filed. Unless the requesting party allows more time, information requests must either be satisfied or objected to within thirty calendar days from the date of service. The party who made an information request has ten

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[8] Once the arbitration panel is sworn, it controls all of the procedural aspects of the hearing. Accordingly, under the Uniform Code and the MSE's Uniform Arbitration Code, the director of arbitration may not remove an arbitrator after the hearings have begun. An arbitrator should be alert to the guidelines set out in the American Bar Association/American Arbitration Association Code of Ethics for Arbitrators in Commercial Disputes ("ABA/AAA Code") and the applicable law with respect to arbitrator bias, and remove himself from the panel when conflicts arise after hearings have begun. *See* Canon II, E.(2) of the ABA/AAA Code.

[9] MSE section 2(c) would establish a filing fee of $200 in cases where the amount in controversy is more than $5,000 but does not exceed $10,000.

days from receipt of the objection to respond to the objection.

Under the proposal, a party whose information request has not been satisfied may request in writing that the director of arbitration refer the matter to a prehearing conference. Parties may also find that there are other matters in addition to unresolved information requests that require the assistance of a prehearing conference. MSE section 14(d) provides that the director of arbitration may appoint someone to preside over the prehearing conference. The prehearing conferences could be held either in person or by telephone conference call, and are designed to help the parties to reach agreement on such matters as the exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulations of fact, identification and briefing of contested issues, and any other matter which will expedite the arbitration proceedings.

When a prehearing conference is unable to resolve any of these issues, MSE section 14(e) provides for the director of arbitration to appoint a single arbitrator to decide the issues outstanding. The rules allows the arbitrator to issue subpoenas, direct appearances of witnesses, direct the production of documents and depositions, and set deadlines and issue any other ruling which will expedite the hearing and permit any party to develop fully its case. MSE section 14(e) provides that the single arbitrator appointed to decide prehearing matters would be a public arbitrator in those cases where public customers have requested a majority of public arbitrators for their panel.

Other amendments to the prehearing provisions require parties to serve on one another at least ten days prior to the first hearing copies of documents in their possession that they intend to present at the hearing and identify witnesses they intend to present at the hearing. Under proposed MSE section 14(c), arbitrators may exclude from the arbitration, documents not exchanged or witnesses not identified at that time. The provision does not extend to documents or witnesses that parties may use for cross-examination or rebuttal. In addition, the MSE is proposing to amend its rules regarding subpoenas. In MSE section 21, the Exchange proposes to require parties to serve copies of all subpoenas on all parties.

(g) *Preservation of a Record.* The MSE is amending its arbitration rules to assure that records of arbitration proceedings are made and preserved. These records are necessary for courts to use in conjunction with any review of the proceedings they may make. MSE section 26 would codify a requirement that a verbatim record by stenographic reporter or tape recording be maintained. The rule further provides that, if a party to a proceeding elects to have the record transcribed, the cost of such transcription shall be born by that party unless the arbitrator(s) direct otherwise. If a record is transcribed at the request of a party, the rule requires that a copy shall be provided to the arbitrators.

(h) *Content and Public Availability of Arbitration Awards.* The MSE's proposed rule for arbitration awards expands both the content and public availability of arbitration awards. Prior to the Commission's May 10, 1989 approval of the amended arbitration rules of the Amex, NASD and NYSE, and prior to the submission of the proposal made in this filing, the only information generally available to the public regarding SRO arbitration cases was the percentage of investors that received some portion of the amount they claimed against their broker-dealer. No data had been previously available with respect to particular arbitrators' awards. The MSE's proposal affords substantially more public access to the results of this process of dispute resolution.

Proposed MSE section 30(e) provides that awards shall contain the names of the parties, a summary of the issues in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, a statement of any other issues resolved, the dates the claim was filed and the award rendered, the number and dates of hearing sessions, the location of the hearing(s), the names of the arbitrators and the signatures of the arbitrators concurring in the award. The awards, including any written opinion voluntarily prepared by the arbitrators, are to be made public, except that the names of customer parties to the arbitration will be excluded pursuant to proposed MSE section 30(f) if the customer parties request in writing that their names not be included on the public version of the award.

(i) *Arbitration Fees.* Under proposed MSE section 32, the fees that may be assessed by the arbitrators for particular cases have been significantly increased in order to defray the MSE's costs of administering its arbitration program.[10] For example, MSE section 32(a) proposes that all parties who file claims, such as counterclaims, cross-claims and third party claims, now should be required to pay deposits. Under the existing rules, deposits are required only of original claimants. This significantly increases the potential fees that may be recovered by the Exchange and assessed against a party since arbitrators may assess costs against a single party. Proposed MSE section 32(d) would raise to $200 from $100 the minimum deposit for cases where no money damages are claimed. Proposed MSE section 32(h) sets a fee for prehearing sessions with an arbitrator of seventy-five percent of hearing session fees.

Proposed MSE section 32(c) also clarifies that arbitrators may assess the costs of conducting a hearing against the parties as they deem appropriate. These costs include not only the fees for each session, but all other costs of conducting the hearing comtemplated under the rules, such as the costs of transcribing a record, or producing witnesses or documents, and any other cost contemplated by the agreement between the parties or permitted by applicable law.

Finally, the MSE is proposing to codify its definition of a "hearing session". Under proposed MSE section 32(b), a "hearing session" would be a meeting between the parties and arbitrators that lasts less than four hours.

(j) *Predispute Arbitration Clauses.* The MSE also proposes two rule changes designed through the auspices of SICA to improve disclosure to customers in account opening agreements and to restrict the content of the arbitration clauses. Under the proposed rule change, MSE Section 34 would require broker-dealers that employ predispute arbitration clauses to place immediately before the clause introductory language that would inform customers that they are waiving their right to seek remedies in court, that arbitration is final, that discovery is generally more limited than in court proceedings, that the award is not required to contain factual findings and legal reasoning, and that the arbitration panel typically will include a minority of arbitrators associated with the securities industry.

Proposed MSE section 34 would require that the disclosure language be highlighted four ways. First, large or otherwise distinguishable type must be used. Second, the disclosure language must be set out in outline form so as to be noticeable to readers. Third, a statement, also highlighted, that provides that the agreement contains a predispute arbitration clause, and where that clause is located in the contract, must be inserted into the agreement immediately preceding the signature line. Fourth, a copy of the agreement containing a predisupute arbitration clause must be given to the customer, who is to acknowledge receipt of the agreement, either in the agreement itself or in a separate document.

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[10] The MSE has advised the Commission that its costs for administering its arbitration program for the years 1987 and 1988 were $10,000 and $15,000, respectively.

Additionally, proposed MSE section 34 prohibits SRO members from having agreements with customers that limit or contradict the rules of any SRO, or limit the ability of a party to file any claim in arbitration or limit the ability of the arbitrators to make any award.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) and the Act, 15 U.S.C. 78f(b), which requires that national securities exchanges have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, provide for an equitable allocation of fees, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that there is good cause to approve the MSE's proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register.**[11] The proposal is substantially identical to the NYSE, NASD and Amex rule filings that were the subject of the Commission's May 10, 1989 approval order. [12] The NYSE's, NASD's and AMEX's versions of the same rules were published for public comment in the **Federal Register**, providing both the public and broker-dealer community with ample opportunity to comment on the proposed rule change that is the subject of this release. All public comments directed at the other SROs' arbitration filings were considered in the context of the review undertaken for the Commission's May 10, 1989 approval order. In light of the Commission's thorough consideration of all comments directed at the SRO arbitration filings that were the subject of the Commission's May 10, 1989 approval order, the substantially identical nature of the MSE's arbitration proposal, and the benefits that will accrue to investors from the availability of these improved arbitration procedures, the Commission believes that a good cause finding is justified.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(4) and (5) of the Act, [13] which require that national securities exchanges and registered securities associations have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, provide for an equitable allocation of fees, and, in general, protect investors and the public interest.

The Commission believes that the proposed rules appropriately balance the need to strengthen investor confidence in the arbitration systems at the SROs, both by improving the procedures for administering the arbitrations and by creating clear obligations regarding the use by SRO members of predispute arbitration clauses, with the need to maintain arbitration as a form of dispute resolution that provides for equitable and efficient administration of justice. In particular, the rule changes affecting the classification of arbitrators, arbitrator disclosure, discovery, the preservation of a record, the form and public availability of awards, and guidelines for the use of predispute arbitration clauses dynamically advance the public interest in SRO arbitration.[14] Likewise, the SROs' initiatives with respect to the handling of pleadings, appointment of replacement arbitrators, the use of small claims procedures, and the number of arbitrators should improve the efficiency and speed of arbitration, maintaining those bargained for qualities of traditional arbitration. Because these rules will aid in the just resolution of disputes between investors and broker-dealers, we conclude that these rules are designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade and in general, protect investors and the public interest consistent with section 6(b)(5) of the Act. The fee increases represented by these changes appear to be reasonable and provide for an equitable allocation of fees among SRO members and investors using the arbitration facilities consistent with section 6(b)(4) of the Act.

IV. Solicitation of Comments and Conclusion

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements addressing the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filings and comment letters will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should prefer to the file number in the caption above and should be submitted by September 26, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [15] that the above mentioned proposed rule changes be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

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[11] The proposed rule changes to MSE sections 8, 9, 11, 12, 14, 21, 22, 26 and 30 are effective October 1, 1989. The proposed rule changes to MSE sections 2, 12 and 32 are effective only for cases filed with the MSE after October 1, 1989. The proposed rule change to MSE section 34 will become effective September 7, 1989.

[12] *See* note 1, *supra*. The proposal is also substantially identical to the CBOE rule filing. *See* note 2, *supra*.

[13] 15 U.S.C. 78f(b) (4) and (5).

[14] The Commission's approval of MSE Rule 34, and the comparable rules of the NYSE, NASD and AMEX, is consistent with the conclusion of the Court of Appeals for the Sixth Circuit in Roney v. Goren, No 88-1874 (May 26, 1989), that the Commission has the authority to assure customer choice among SRO arbitration forums.

[15] 15 U.S.C. 78s(b)(2) (1982).

[16] 17 CFR 200.30-3(a)(12) (1988).

Dated: August 25, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-20745 Filed 9-1-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24945]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 25, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 18, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Louisiana Power and Light Company (70-7653)

Louisiana Power and Light Company ("LP&L"), 317 Baronne Street, New Orleans, Louisiana 70112, a wholly owned subsidiary of Energy Corporation, formerly known as Middle South Utilities, Inc., a registered holding company, has filed a further amendment to its previously amended application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(d) of the Act and Rules 44 and 50(a)(5) thereunder.

On June 29, 1989, the Commission issued a notice (HCAR No. 24911) ("June Notice") of a proposal by LP&L to sell and leaseback approximately 20% of its 100% undivided ownership ("Undivided Interest") in Unit 3 of the Waterford Steam Electric Generating Station ("Waterford 3") for a fair market value expected not to exceed $515 million. The June Notice indicated that LP&L proposes to enter into one or more Participation Agreements providing for the sale of its Undivided Interest to a trustee ("Owner Trustee/Lessor") acting on behalf of an equity investor or investors ("Owner Participant"). Additionally the June Notice indicated that LP&L proposed to cause a letter of credit to be issued which the Owner Participants would be entitled to draw on under certain circumstances.

LP&L now proposes to sell and leaseback to up to three undivided interests totaling approximately 14% of its ownership interest in Waterford 3, having an aggregate appraised value expected not to exceed approximately $360 million.

LP&L now proposes that no letter of credit will be required for the first five years of the Lease. During the period of time that a letter of credit is not provided, however, the Owner Participant would be entitled to withdraw from the lease upon the occurrence of certain adverse financial events ("Financial Events") with respect to LP&L and to receive payment from LP&L of amounts (casualty value or special casualty value, as the case may be) equivalent to amounts that would have been provided through a letter of credit.

LP&L now states that in order to fulfill its obligation to pay the Owner Trustee/Lessor (or the Owner Participant) an amount sufficient to permit the Owner Participant to withdraw from the Lease upon the occurrence of a loss event ("Loss Event"), a Financial Event or a Lease event of default (in each case as specified in the Lease and related documents), it proposes to execute and deliver to the Owner Participant one or more promissory notes ("Notes"). The Notes will have stated maturity coincident with the end of the basic term of the Lease, and will have an aggregate principal amount equal to the equity portion of the maximum Casualty Value or the maximum Special Casualty Value (whichever is higher). LP&L estimates that the initial principal amount of the Notes will be approximately $200 million. The Notes will bear interest at a rate not to exceed 2% over the higher of (1) the prime rate of interest of a bank to be designated or (2) the highest rate payable with respect to the long-term secured lease obligation bonds issued with respect to the portion of the cost to be borrowed.

The Notes may be payable during the basic term of the lease but they will not become payable, and interest will not accure, until the occurrence of Loss Events, Financial Events or Lease events of default. All payments by LP&L of the principal of and/or interest on any overdue principal of the Notes will be credited against LP&L's obligation under the Lease of other transaction documents to pay the equity portion of Casualty Value or Special Casualty Value, as the case may be.

Upon (1) expiration of the basis term of the Lease, and assuming no amount of such Casualty Value or Special Casualty Value or any accrued interest thereon is due any payable, or (2) payment in full of the principal amount of and any accrued interest on the Notes, or (3) the timely furnishing by LP&L to the Owner Participant of a letter of credit as generally described in the June Notice, the Notes will be returned by the Owner Participant to LP&L for retirement and cancellation. If LP&L elects to renew and extend the Lease beyond the basis term of the Lease, LP&L must issue to the Owner Participant new promissory notes ("Renewal Notes") having the same terms as the retired Notes and a stated maturity coincident with the expiration of the related renewal term.

The Notes and Renewal Notes will be nontransferable except to a permitted successor Owner Participant. Prior to such time (if any) as the Notes or any Renewal Notes are collateralized with Collateral Bonds (as defined below), the Notes or any Renewal Notes will be secured by a security interest in LP&L's right, title and interest (including its leasehold interest) in and to the Undivided Interest.

By the beginning of the sixth year of the Lease, LP&L will be obligated to provide the Owner Participant with financial support as security for such payment in the form of either (1) a letter of credit (as described in the June Notice), or (2) collateral first mortgage bonds ("Collateral Bonds") issued by the LP&L under its Mortgage and Deed of Trust dated as of April 1, 1944, as supplemented ("Mortgage"). If LP&L chooses to issue Collateral Bonds then the Notes will remain outstanding whereas if LP&L chooses to issue a letter of credit, then the Notes will be returned and cancelled.

The Collateral Bonds issued by LP&L would have an aggregate stated principal amount and a stated maturity date equal to the principal amount and maturity date of the Notes. The Collateral Bonds would be issued as a separate series of bonds under LP&L's Mortgate so that there would be a separate series of Bonds for each Owner Participant.

The Bonds will serve to collateralize LP&L's payment obligations on the Notes. In the event that any principal amount of the Notes became due and payable (by virtue of a Loss event, a Financial Event or a Lease event of default), LP&L would be required to redeem Collateral Bonds having an aggregate principal amount equal to the principal amount of the Notes then due.

No payment obligation on the Collateral Bonds would arise (whether for principal or interest), unless and until an obligation to make payment of principal on the Notes arose. Upon (1) expiration of the basic term of the Lease, and assuming no amount of principal of the Notes were due and payable, or (2) payment by LP&L in full of the principal of and accrued interest (if any) on the Collateral Bonds, the Collateral Bonds would be required to be returned by the Owner Participant to LP&L for retirement and cancellation. If LP&L elects to extend and renew the Lease beyond the basic term under circumstances where Collateral Bonds were previously issued and delivered to the Owner Participant, LP&L would issue to the Owner Participant new collateral first mortgage bonds of a new series ("Renewal Collateral Bonds") in an aggregate principal amount equal to the principal amount of the Renewal Notes described above. Such renewal Collateral Bonds would have the same terms as the retired Collateral Bonds and a stated maturity coincident with the maturity of the related Renewal Notes. The Collateral Bonds and any Renewal Collateral Bonds would be nontransferable except to a permitted successor Owner Participant to whom the Notes or any Renewal Notes were transferred.

In the amendment, LP&L has requested an exception from the competitive bidding requirements of Rule 50 of the Act pursuant to Rule 50(a)(5) in order to negotiate and privately place the Notes and Collateral Bonds. It may do so.

System Fuels, Inc., et al. (70–7686)

System Fuels, Inc. ("SFI"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a fuel procurement subsidiary company of Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174, Arkansas Power & Light Company, 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, and System Energy Resources, Inc., Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213, (collectively "Operating Companies"), each an electric public-utility subsidiary company of Entergy Corporation ("Entergy"), a registered holding company, and the Operating Companies have filed a declaration under sections 6(a), 7, 12(b), and 13(b) of the Act and Rules 45, 90 and 91 thereunder.

In order to finance its nuclear materials and services inventory, SFI proposes to borrow an aggregate principal amount of up to $45 million at any one time outstanding under a Revolving Credit Agreement ("Credit Agreement") with The Yasuda National Trust and Banking Co., Ltd., New York Branch ("Yasuda"), and possibly with one or more other banks and Yasuda as agent (collectively "Banks"), such borrowings to be evidenced by the issuance of a master note. Loans under the Credit Agreement would be due and payable by, and the Credit Agreement would expire on, September 30, 1992, unless otherwise extended, with the consent of the Banks, for additional one-year periods. SFI requests authorization for additional extensions of the Credit Agreement without seeking further Commission authorization.

Loans under the Credit Agreement will bear interest at SFI's option at either (i) Yasuda's Base Rate, (ii) the Eurodollar Rate, plus 0.4375%, or (iii) the CD Rate, plus 0.5625%. Assuming full utilization by SFI of the $45 million commitment under the Credit Agreement with Yasuda, SFI estimates that its effective cost of money per annum in respect of Base Rate Loans, Eurodollar Rate Loans, and CD Rate Loans, as of July 10, 1989, would be approximately 11%, 10.0625% and 10%, respectively.

SFI will grant Yasuda a security interest in SFI's nuclear materials and services inventory financed under the Credit Agreement together with the proceeds thereof from sales to the Operating Companies pursuant to the Purchase Agreement, SFI's accounts receivable for such inventory, and certain other rights and instruments incident thereto.

The Operating Companies, SFI and Yasuda also propose to enter into a Consent and Agreement acknowledging and consenting to SFI's granting of a security interest in SFI's accounts receivable arising from sales by SFI to the Operating Companies of nuclear materials and services under the Purchase Agreement. Under the Consent and Agreement, the Operating Companies will agree to pay amounts due to SFI under the Purchase Agreement for nuclear fuel inventory financed by the Banks directly to an account maintained by SFI with Yasuda, which account SFI will pledge to Yasuda as agent for the Banks, and, in the event that the loans should become due and payable under the Credit Agreement and not be paid by SFI. SFI will sell and the Operating Companies will purchase the inventory of nuclear materials financed under the Credit Agreement.

General Public Utilities Corporation (70–7670)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rule 42 and 50(a)(5) thereunder.

GPU proposes to issue and sell, from time-to-time through December 31, 1995, up to 2,500,000 shares of its common stock ("Common Stock"), $2.50 par value pursuant to a dividend reinvestment and stock purchase plan ("Plan") to be adopted by GPU. GPU requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) for its issuance of the Common Stock.

Under the Plan, holders of GPU common stock ("Shareholders") would be able to have all cash dividends automatically reinvested in additional GPU common stock and to purchase additional common stock by making optional cash payments of not less than $50 nor more than $6,000 each quarter. Common Stock held pursuant to the Plan will be voted by the Plan administrator ("Plan Administrator"), to be appointed by GPU, only in accordance with Shareholders' instructions.

Common Stock will be purchased under the Plan either on the open market or directly from GPU, as GPU may direct, by the Plan Administrator. Open market purchases will be priced at the average price of such shares purchased with respect to a dividend payment date, excluding any related brokerage fees or commissions which will be paid by GPU. Shares issued directly by GPU under the Plan will be priced at the average of the high and low sales prices of GPU common stock as reported in the Wall Street Journal for New York Stock Exchange Composite Transactions for the 10 trading days immediately preceding the relevant dividend payment date.

GPU will use the proceeds from the sale of the Common Stock issued under the Plan to make capital contributions to its subsidiaries, as authorized by orders of the Commission dated November 2, 1988 and March 22, 1989 (HCAR Nos. 24738 and 24848, respectively) and advances to its subsidiaries, which will be the subject of a future application with the Commission, and for other corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

FR Doc. 89–20746 Filed 9–1–89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Clark County, Nevada

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Clark County, Nevada.

FOR FURTHER INFORMATION CONTACT:

Anton J. Horner, Division Administrator, Federal Highway Administration, Nevada Division, 1535 Hot Springs Road, Suite 100, Carson City, Nevada 89706–0602, Telephone: 702/885–5320, or

Walter W. Wagner, Supervisor, Environmental Services Division, Nevada Department of Transportation, 1263 South Stewart Street, Carson City, Nevada 89712, Telephone: 702/885–5880.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nevada Department of Transportation (NDOT) and Clark County, will prepare an Environmental Impact Statement (EIS) on a proposal to construct a new limited access freeway from Boulder Highway (US 93) on the east to Durango Road on the west in a corridor that generally lies between McCarran International Airport on the north and the City of Henderson on the south.

Alternatives to be considered in the EIS will include the no action alternative and various alignment and design alternatives. The development of the specific alternatives is an ongoing process that will incorporate possibilities and features brought forth during the scoping and public involvement activities in addition to those identified by project engineers as preliminary design activities progress.

Scoping Process: Two scoping meetings addressing the project will be held in Training Room B at McCarran International Airport, Las Vegas, Nevada. The first will be at 9:30 a.m. on September 20, 1989; the second is planned for early December 1989. In addition, three public informational meetings will be held from 3 to 8 p.m. as follows:

October 10, 1989 Commissioners' Meeting Room.

October 11, 1989 Green Valley Community Library.

October 12, 1989 Henderson Convention Center.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Also planned are early coordination and exchanges of information with the public and agencies through public information meetings, scoping meetings, direct request to other agencies to become cooperating agencies, and early notification and solicitation with entities affected by the proposed action through the Clearinghouse process. In addition, at least one formal location public hearing will be held. Public notice will be given of the time and place of any hearings. The Draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or suggestions concerning this proposed action and the EIS should be directed to the NDOT or FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Anton J. Horner,

Federal Highway Administration, Carson City, Nevada.

[FR Doc. 89–20748 Filed 9–1–89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee of Commercial Operations of the U.S. Customs Service

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATE: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on September 22, 1989 at 9:30 a.m. in Room 4121 of the Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Trade and Tariff Affairs, Office of the Assistant Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 566–8435.

SUPPLEMENTARY INFORMATION: Agenda items for the fourth meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service on June 22, 1989 will include:

I. Old Business

1. User fee legislation update
2. Follow-up on Customs administration and enforcement of export licensing requirements
3. Impact of customs commercial operations on ports and carriers

II. New Business

1. Triangle processing
2. Customs invoice standards
3. Discussion of preparation of annual report
4. Other new business

The meeting is open to the public. Owing to the security procedures in place at the Treasury Building, it is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the building to attend the meeting, contact Dennis M. O'Connell at (202) 566–8435, no later than September 18, 1989.

Dated: August 30, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89–20720 Filed 9–1–89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of Systems Notice

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) is considering amending routine use statements. The proposed changes are for the system of records entitled

Compensation, Pension, Education and Rehabilitation Records—VA (58VA 21/22) as set forth in **Federal Register** publication, "Privacy Act Issuances," 1987 Compilation, Volume V, pages 808–812. A change is also proposed to the section, Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System, regarding the location of Target terminals.

Department of Defense (DOD) and Department of Transportation (Coast Guard) finance centers have requested access to the information contained in the VA's Compensation, Pension, Education and Rehabilitation system to assist them in disbursing benefits. It is VA's belief that release of information from 58VA 21/22 will prove beneficial to VA beneficiaries.

VA is proposing to allow disclosure of all records in the Compensation, Pension, Education and Rehabilitation system of records through on-line computer terminal access using the VA telecommunications network. Terminals will be located in the service finance centers and will permit access to records maintained in automated data processing format at VA Data Processing Centers. Authorized employees at the service finance centers will have read-only access to information relevant to the reconciliation and/or waiver of service department or retired pay, and will not be able to change VA records. Service finance center employees will not have access to any other information or to information on other individuals. Information in the system is routinely provided to service finance centers upon their request to reconcile discrepant accounts.

To provide the information for the service finance centers, VA is proposing to amend two routine use statements. The proposed change to routine use number 17 will permit the disclosure of any information from 58VA 21/22 to service finance centers. This information will facilitate reconciliation of discrepant accounts and reduce correspondence between the military and VA regional offices. VA is also proposing to change routine use number 17 to restrict its use to specific activities pertaining to the reconciling of the amount and/or waiver of service department and retired pay. Separate routine uses are proposed for the release by VA of certain information to the Department of Health and Human Services (HHS) so that it can reconcile the amounts of Supplemental Security Income (SSI) paid to individuals by HHS and for VA's disclosure of certain information to DOD for DEERS and CHAMPUS purposes. These disclosures are currently contained in routine use number 17, but for administrative purposes of this proposal will provide clear and concise routine uses thereby avoiding any misunderstanding of the purpose of each disclosure. The proposed change to routine use number 26 will permit the disclosure of information for other payees, in addition to veterans. The proposed change regarding location of Target terminals will include the service finance centers.

VA has determined that release of information for this purpose is a necessary and proper use of information in this system of records and that a specific routine use for transfer of this information is appropriate.

A "Report of Altered System" and an advance copy of the revised system notice have been sent to the majority and minority chairmen of the Committee on Government Operations of the House of Representatives and, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, as required by 5 U.S.C. 552a(o) (Privacy Act) and guidelines issued by the Office of Management and Budget December 24, 1985, and Public Law 100–503.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amended routine use statements to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before October 5, 1989, will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until October 16, 1989.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Department of Veterans Affairs, the amendments to 58VA 21/22 included herein are effective October 5, 1989.

Approved: August 21, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

The system identified as 58VA 21/22, "Compensation, Pension, Education and Rehabilitation Records—VA" as set forth in **Federal Register** publication "Privacy Act Issuances," 1987 Compilation, Volume V, pages 808–812, is amended by revising the following entries:

58 VA 21/22

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

17. The name, address, VA file number, effective date of compensation or pension, current and historical benefit pay amounts for compensation or pension, service information, date of birth, date of death, competency payment status, incarceration status, and social security number of veterans and their surviving spouses may be disclosed to the following agencies upon their official request. Department of Defense; Defense Manpower Data Center; Marine Corps; Department of Transportation (Coast Guard); PHS (Public Health Service), NOAA (National Oceanic and Atmospheric Administration) Commissioned Officer Corps in order for these departments and agencies and VA to reconcile the amount and/or waiver of service department and retired pay. These records may also be disclosed as a part of an ongoing computer matching program to accomplish these purposes. This purpose is consistent with 10 U.S.C. 684, 38 U.S.C. 3101, 38 U.S.C., 3104 and 38 U.S.C. 3301.

26. Identifying and payment information may be disclosed, upon the request of a Federal agency, to a State or local government agency to determine a beneficiary's eligibility under programs provided for under Federal legislation and for which the requesting Federal agency has responsibility. These records may also be disclosed as a part of an ongoing computer matching program to accomplish these purposes. This purpose is consistent with 38 U.S.C. 3301.

* * * * *

51. The name, address, VA file number, date of birth, date of death, social security number, and service information may be disclosed to the Defense Manpower Data Center. The Department of Defense will use this information to identify retired veterans and dependent members of their families who have entitlement to Department of Defense benefits but who are not identified in the Defense Enrollment Eligibility Reporting System (DEERS) program and to assist in determining eligibility for Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits. This purpose is consistent with 38 U.S.C. 3301. These records may also be disclosed as part of an ongoing computer matching program to accomplish this purpose.

52. The name, address, VA file number, social security number, sex of veteran, date(s) of birth of the veteran and dependents, current benefit pay amounts for compensation or pension, pay status, check amount, aid and attendance status, veteran and spouse annual income amounts and type and combined degree of disability will be disclosed to the Department of Health and Human Services. The Social Security Administration will use the data in the administration of the supplemental security income (SSI) payment system as prescribed by Pub. L. 92–603. These records may also be disclosed as a part of an ongoing computer matching program to accomplish these purposes. This purpose is consistent with 38 U.S.C. 3301.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records (or information contained in records) are maintained on paper documents in claims file folders (e.g., "C" file folders, educational file folders and vocational rehabilitiation folders) and on automated storage media (e.g., microfilm, microfiche, magnetic tape and magnetic disks). Such information may be accessed through a data telecommunications terminal system designated the Target System. Target terminal locations include VA Central Office, regional offices, some VA medical health care facilities, U.S. Army Finance and Accounting Center, Navy Finance Center, Marine Corps Finance Center, Air Force Accounting and Finance Center, U.S. Coast Guard Pay and Personnel Center. Information relating to receivable accounts owed to VA, denominated the Centralized Accounts Receivable System (CARS), is maintained on magnetic tape, microfiche and microfilm. CARS is accessed through a data telecommunications terminal system at St. Paul, Minnesota.

* * * * *

RETRIEVABILITY:

Authorized service finance center employees will have read only access to the portions of the data base containing information relevant to the reconciliation of the amount and/or waiver of service department or retired pay for individuals currently receiving or entitled to receive these payments.

SAFEGUARDS:

Access to service finance centers is limited to authorized employees. The centers are protected by armed guards. Access to terminals within each center is limited to those employees who need access to the date to perform their assigned duties.

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[FR Doc. 89–20691 Filed 9–1–89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 170
Tuesday, September 5, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Tuesday, August 29, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) An administrative enforcement matter; (2) matters relating to the possible closing of certain insured banks; (3) matters relating to the Corporation's corporate activities; and (4) a personnel matter.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director M. Danny Wall (Director of the Office of Thrift Supervision), concurred in by Director C.C. Hope, Jr. (Appointive), and Director Robert L. Clarke (Comptroller of the Currency), that corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 30, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-20685 Filed 8-31-89; 8:45 am]

BILLING CODE 6714-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE: 2:30 p.m, Thursday, September 7, 1989.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Eighth Floor-Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Martha A. Diaz-Ortiz, Assistant Secretary 376-2400.

AGENDA:

I. Call to Order and Remarks of Chairman
II. Approval of Minutes, February 21, 1989
III. Executive Director's Activity Report
IV. Ad Council Campaign Report
V. Budget Committee Report
  a. Proposed FY'89 Reallocation
  b. Proposed FY'90 Line Item Budget
  c. Proposed FY'91 OMB Submission
VI. Treasurer's Report
  a. Financial Statements
  b. Pension Plan Technical Amendments

Martha A. Diaz,

Assistant Secretary.

[FR Doc. 89-20686 Filed 8-31-89; 3:04 am]

BILLING CODE 7570-01-M

UNITED STATES INSTITUTE OF PEACE

DATE: Thursday, September 6, 1989.

TIME: 5:45 p.m. to 7:30 p.m.

PLACE: The United States Institute of Peace, 1550 M Street, NW., ground floor (conference room).

STATUS: Open session.

AGENDA: Meeting of the Committee on Institutional Planning of the Board of Director's convened. Long-range planning issues.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457-1700.

Dated: August 31, 1989.

Bernice J. Carney,

Administrative Officer, The United States Institute of Peace.

[FR Doc. 89-20934 Filed 8-31-89; 3:43 am]

BILLING CODE 3155-01-M

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federal register

**Tuesday
September 5, 1989**

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 108

Explosives Detection Systems for Checked Baggage; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. 25956; Amdt. No. 108–7]

RIN 2120–AD12

Explosives Detection Systems for Checked Baggage

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration is amending the airplane operator security regulations to require U.S. air carriers to use explosives detection systems to screen checked baggage for international flights in accordance with their respective approved security programs. This action is intended to protect passengers and crewmembers from acts of sabotage directed against civil aviation and is responsive to recent legislation.

EFFECTIVE DATE: October 5, 1989.

ADDRESSES: The complete docket for this rule, including the Regulatory Impact Analysis, may be examined at the Federal Aviation Administration, Rules Docket (AGC–10), Room 915–G, 800 Independence Ave. SW., Washington, DC 20591, between 8:30 a.m. and 5 p.m. weekdays, except Federal holidays.

For copies of performance criteria and implementation procedures for explosives detection systems, prospective manufacturers may write to the Federal Aviation Administration, Director of Civil Aviation Security (Attn: ACS–200), 800 Independence Ave. SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Quinten T. Johnson, Civil Aviation Security Division (ACS–100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8058.

SUPPLEMENTARY INFORMATION:

Introduction

On July 6, 1989, the Federal Aviation Administration (FAA) issued a Notice of Proposed Rulemaking (NPRM) to amend part 108 of the Federal Aviation Regulations (FAR) to require certain U.S. air carriers to use explosives detection systems (EDS's) to screen checked baggage on international flights in accordance with their respective security programs (54 FR 28985, July 10, 1989). This regulation was proposed on the FAA's own initiative and in response to legislation because attacks against international civil aviation have increased in sophistication over the past decade. In recent years, explosive devices have been used to damage or destroy civilian aircraft resulting in the loss of many lives. For example, 259 people on board Pan American World Airways (Pan Am) Flight 103 plus 11 people on the ground in Lockerbie, Scotland, were killed by an explosion aboard that flight in December 1988. As a result of such incidents, security has become a greater concern of the aviation community, and more sophisticated measures are required to prevent recurrences of such incidents. Therefore, the regulation requiring U.S. air carriers to use EDS's to screen checked baggage for international flights in accordance with their respective security programs is adopted as final.

Background

FAR Part 108, promulgated in 1981 (46 FR 3782, January 15, 1981), is part of the FAA's Civil Aviation Security Program initiated in 1973. Section 108.9 requires certain U.S. carriers to conduct security screening of passengers and their baggage "to prevent or deter the carriage aboard airplanes of any explosive, incendiary, or deadly or dangerous weapon on or about each individual's person or accessible property, and the carriage of any explosive or incendiary in checked baggage."

For many years, this screening program was effective in countering the threat to domestic and international civil aviation, which came primarily from hijackers. In recent years an additional threat has come from persons seeking to bomb or sabotage aircraft. To counter this threat, improved methods of detecting explosives are needed.

The U.S. Government has actively supported research and development in explosives detection. For example, between fiscal years 1982 and 1989, the FAA spent over $47 million on vapor detection and thermal neutron analysis equipment alone. In February 1989, the International Civil Aviation Organization (ICAO) convened a special session of its Council to discuss acts of sabotage directed against civil aviation and the need to expedite research and development on the detection of explosives. In March 1989, the ICAO held a meeting of world experts in explosives detection to address the issue. Similar discussions have taken place in European organizations as well.

The FAA has tested several explosives detection systems and has purchased six Thermal Neutron Analysis (TNA) units for initial installation at selected airports. These units detect explosives using Californium-252 as a thermal neutron emitter to activate nitrogen atoms. Testing was performed over a period of several months during 1987 and 1988 at Los Angeles International and San Francisco International Airports. During these testing periods, over 40,000 actual passenger bags were subjected to TNA screening. This operational experience demonstrated that TNA is one technology that can be successfully deployed for the detection of explosives.

After the destruction of Pan Am Flight 103, the FAA conducted a comprehensive review of security procedures to determine where improvements or new procedures were needed. On April 3, 1989, Secretary of Transportation Samuel K. Skinner announced a number of aviation security initiatives. Among the most significant of these was the deployment of explosives detection systems being addressed in this rule, and the establishment of a Security Directive and Information Circular system, for which a regulation was promulgated on July 10, 1989 (54 FR 28982; July 10, 1989).

There has also been substantial Congressional interest in improving aviation security. One Congressional response was legislation (Pub. L. 101–45), signed by the President on June 30, 1989, that directs the FAA to require EDS's at airports where the Administrator of the Federal Aviation Administration determines the use of EDS's is necessary. This legislation provided that—

> Not later than thirty days after the date of the enactment of this Act, the Federal Aviation Administrator shall initiate action, including such rulemaking or other actions as necessary, to require the use of explosive detection equipment that meets minimum performance standards requiring application of technology equivalent to or better than thermal neutron analysis technology at such airports (whether located within or outside the United States) as the Administrator determines that the installation and use of such equipment is necessary to ensure the safety of air commerce. The Administrator shall complete these actions within sixty days of enactment of this Act[.]

Discussion of the Proposed Regulation

In its July 6, 1989, proposed rule, the FAA requested comments on three alternative plans for deploying EDS's. The alternatives identified in the NPRM were as follows:

I. Domestic and International Alternative—Install EDS's at 427 airports in the United States and 95 foreign airports over a 10-year phase-in period (100% checked baggage screening of domestic and U.S. international flights, eventually requiring 1,250 EDS's by 1999).

II. International Alternative—Install only enough EDS's to screen U.S. carrier international flights at domestic and foreign airports over a three year phase-in period (100% checked baggage screening of all U.S. international flights, eventually requiring 400 EDS's by 1999).

III. Threat-Driven Alternative—Install 200 EDS's at an unspecified number of domestic and foreign airports over a three year phase-in period, based on the need to counter threats (100% checked baggage screening of all international flights at selected airports, eventually requiring 270 EDS's by 1999).

The FAA stated that, while comments were welcome on the feasibility of all three alternatives, it was proposing Alternative II. It proposed that for international flights each air carrier conducting screening under an approved security program use an EDS that has been approved by the Administrator to screen checked baggage. This proposal would enable the FAA to require air carriers to use EDS's for all international flights.

Thus, in the proposed rule, the FAA sought the authority to require EDS's for all international operations through subsequent amendments to each air carrier's security program, although initial deployment of EDS's would be limited to approximately 40 airports. The FAA stated that before extending EDS requirements to international locations beyond the initial deployment, it would consider a variety of factors such as successful consultation with foreign governments, level of vulnerability at the particular location, and the projected level of usage. The FAA also stated that it would look closely at benefits and costs.

Discussion of Comments

The FAA received comments from 28 individuals and organizations. Although the proposed rule addressed only the screening of international baggage, the FAA also invited comments on the feasibility of either requiring EDS's for domestic operations or requiring EDS's on a threat-driven basis. Several other issues were also raised by commenters, the major points of which are discussed below.

Domestic Application

Most commenters oppose any requirement for EDS's for domestic operations because, they believe, there is no significant domestic threat. In the absence of identifiable threat, they believe, the cost of these proposed systems is not warranted. The FAA believes the current level of threat to domestic operations does not require EDS screening and that current security practices for countering threats to domestic operations are adequate. Therefore, the FAA intends to limit the scope of the rulemaking to international flights as originally proposed. The FAA will continue to review all threats against civil aviation, both domestic and foreign, and will take action to require use of EDS's for domestic operations if warranted. In the meantime, if there were a threat against a specific domestic flight at a specific airport that has an EDS in operation, the FAA would take that EDS into account when developing appropriate countermeasures.

Threat-Driven Approach

Some commenters believe that the practice of using EDS's only where known threats exist would satisfy the Congressional mandate in Public Law 101–45 and that carrier flights not operating from high threat locations would then be spared the expense of using an EDS to screen checked baggage. One commenter said that if terrorists didn't know where EDS's are, this approach would deter criminal acts. Other commenters said that the FAA should use mobile EDS's to counter site- or time-specific threats. The FAA believes that the value of widescale use of EDS's is in their general deterrence and not simply in response to specific threats. Moreover, the FAA does not believe it is presently feasible to employ mobile EDS's because of the large size of the EDS equipment currently available and because of the long lead times needed to acquire, install, and operate EDS's. However, as indicated elsewhere in this preamble, the FAA will carefully evaluate where to require the use of EDS's.

Cost

Some commenters believe that the FAA underestimated the costs of acquiring and operating EDS's. While some comments could not be evaluated because of lack of supporting data on underlying assumptions, the FAA acknowledges that a number of points raised by the comments are valid and has made adjustments in the cost estimates. The final rule cost estimates are considerably higher than those identified in the NPRM. The revised cost estimates, addressing such factors as cost of structures to house EDS's, number of systems needed, operator training, and maintenance are discussed later in this preamble under "Regulatory Impact Analysis Summary." The Regulatory Impact Analysis, not published in the **Federal Register**, is part of the docket for this rule and contains a thorough analysis of costs. It may be examined at the location stated under **ADDRESSES.**

Some commenters express the opinion that the Government should fund implementation of this regulation since, they said, the U.S. Government, not the air carriers, is actually the terrorists' target. The FAA does not agree with commenters who say that the Government should fund EDS's. The FAA notes that the Federal government does not currently fund implementation of other mandatory security programs. The FAA recognizes that this rule will have a cost impact on air carriers, but it is projected to be modest on a per-passenger basis, and the FAA expects air carriers to recover the cost as they would other operational costs.

One commenter expresses concern that small carriers would be competitively disadvantaged in foreign operations if they had to pay for EDS equipment. Furthermore, the commenter points out that the larger carriers would be so overwhelmed by screening their own baggage that they would not be able to serve small carriers. The FAA recognizes that cooperation among air carriers in the use of available EDS equipment is critical to minimize costs and maximize EDS use. The FAA's cost estimates are predicated on cooperation that allows for maximum utilization of EDS equipment. Shared use of EDS equipment is also necessary to permit carriers with relatively low passenger volume from a given location to be competitive. It is expected that, as with other security equipment in the past, air carriers will enter into agreements among themselves to achieve shared use of EDS equipment. If unforeseen problems arise in specific situations, the FAA will work with the carrier involved to address appropriate checked baggage screening procedures.

One commenter suggests that foreign carriers should also be covered by this regulation since many Americans travel on foreign carriers. These travelers, the commenter said, should receive the same protection as those on U.S. carriers. The FAA believes that the aviation security threat is directed primarily at U.S. air carriers and not U.S. citizens per se. Should this situation change, the FAA will reconsider the applicability of the rule. Furthermore, it is important to work through the International Civil Aviation Organization to achieve unified, coordinated, worldwide improvements in aviation security. To this end the FAA is actively working with the member states of ICAO to prevent and deter threats against all of civil aviation.

The same commenter adds that Americans might find it preferable to use foreign carriers in order to avoid check-in delays, and that this would worsen the trade deficit. The FAA believes it has adequately projected the number of machines that will be required to process passengers based on current check-in procedures and thus does not agree that there will be significant additional delays. In addition, the increased level of security recognized by the traveling public could work to the advantage of those carriers using EDS equipment to screen checked baggage.

Premature Adoption of EDS Requirement

Some commenters believe the FAA would discourage technological development by adopting an EDS rule at this time, since the FAA acknowledges that only one system, TNA, is currently available that can meet the performance criteria. Several commenters express concern that the TNA system is not ready for operational use and is being deployed too rapidly.

Not only has Congress directed the FAA to require explosives detection equipment, the FAA believes there is an urgent need to establish such requirements. The FAA decided to purchase TNA systems because, after operational testing, the TNA system proved to have the highest degree of explosives detection capability currently available. It is the FAA's belief that by implementing the first generation of EDS technology, it is creating an incentive for manufacturers to make technological advances and produce smaller, less costly equipment. Although one commenter advises the FAA to be certain that vendors will be able to produce EDS equipment quickly enough to meet any deployment schedules that may be established through amendments to air carriers' security programs, the FAA believes, based on consultation with the manufacturer of TNA, that there will be an adequate supply of machines. Also, deployment schedules will be subject to the manufacturers' ability to produce the equipment. The FAA recognizes that other systems are in development and welcomes the opportunity to test and approve them when they meet the performance criteria established by the Administrator. The phased-in implementation of EDS technology will facilitate further research and development of alternatives.

The FAA has established the following minimum performance criteria for all EDS's:

1. The systems must be automated.
2. They must detect defined quantities and configurations of FAA-defined explosives.
3. They must be safe for operators and baggage.

Some commenters remark that the FAA should have spelledout the performance criteria and described the method by which the Administrator will approve EDS technology. The rule, however, is not the means by which a manufacturer's equipment is approved; it is an enablement of the FAA to require EDS's. More detailed information about the capabilities, use, compliance dates, locations, and deployment schedules of the system will be incorporated into each air carrier's approved security program. Specific performance criteria will be made available to manufacturers upon request. However, in accordance with § 191.5 of the FAR, the FAA will not publish this information in any document generally available to the public. The Director of Civil Aviation Security has determined that disclosure of this information would be detrimental to the safety of the traveling public. For the same reasons, the specific locations and numbers of EDS units will not be made available to the public. Persons with an operational need to know may write to the Federal Aviation Administration, Director of Civil Aviation Security (Attn: ACS–200), 800 Independence Ave., SW., Washington, DC 20591, for further information.

Another issue raised by commenters is the ability to set TNA equipment to detect small enough levels of explosives to adequately ensure passenger safety. The current performance criteria are reflective of the amounts of various explosives which have been determined to pose a threat.

One commenter points out that the size of the opening of the FAA-purchased TNA precludes oversized bags. It should be noted, however, that the vast majority of passenger bags do fit into the opening of the TNA equipment, and air carriers may contract for different machines with larger openings if they wish. The FAA will address screening procedures for oversize bags in connection with the air carriers' security programs.

Alarm Resolution

Concern has been expressed over how alarms will be handled and the amount of time it will take to clear suspect baggage. Procedures that will take into account the type of threat, limitations on terminal facilities, availability of law enforcement personnel, and explosives ordnance disposal support will be required under each air carrier's security program. While alarm resolution is not intended to be a wholly automated function of EDS's, as one commenter thinks, procedures appropriate to each type of technology and location will be developed. Alarm resolution may induce some operational difficulties, such as delays for individual passengers being unable to board their flights because of uncleared baggage. These operational difficulties will be addressed jointly by the FAA and the affected air carriers in the individual air carriers' security programs.

Delays

A number of comments address the concern that use of EDS equipment would lead to delays and disruptions. Some of this concern is over alarm resolution (discussed above), and some is related to the logistics of processing large amounts of baggage with a limited number of EDS's. In all locations, the FAA made careful estimates of how many EDS's will be needed to prevent delays at each airport based on the number of flights peaking and locations of the terminals. The FAA believes that EDS screening at foreign airports may actually reduce delays at locations where physical searches are now conducted, especially in Western Europe.

Carry-On Baggage

A few commenters state that carry-on baggage should be subject to EDS screening as well as checked baggage because dupes and suicidal individuals may carry their explosives aboard in hand baggage. While the FAA is actively looking at the carry-on baggage screening process, requiring EDS for carry-on baggage is beyond the scope of this rulemaking. Improvements in carry-on baggage screening requirements have already been instituted in a number of geographic locations, and other improvements are being considered as part of other FAA security initiatives. The FAA will continue to evaluate the feasibility of requiring that EDS screening be applied to carry-on baggage.

Potential Radiation Effects

Some commenters voice concern regarding possible radiation from the use of any EDS that uses a radioactive source. The commenters advise that baggage handlers and the public may suffer ill effects from exposure to the radiation emitted during the decay of the induced radioactivity, and that the baggage may retain radioactivity after screening. Because of the possible effects of exposure, one commenter has suggested that the National Environmental Policy Act of 1969 requires an environmental impact statement for this rulemaking.

While this final rule regulates air carriers under part 108, it should be noted that the FAA has previously addressed the subject of security equipment in connection with the acquisition of such equipment by airports under part 107 of the Federal Aviation Regulations (14 CFR part 107). Such acquisition has been categorically excluded from environmental assessment under FAA Order 5050.4A, "Airport Environmental Handbook."

With respect to the use of security equipment, the key difference between part 107 and part 108 is that, under part 107 it is the airport that acquires the security equipment for installation and use, whereas under part 108 the air carrier does so. There are no differences between these regulations that suggest that the categorical exclusion under part 107 should not apply with respect to part 108. Nevertheless, because of particular concerns raised regarding EDS's that use radioactive sources, and since the Nuclear Regulatory Commission (NRC) determined that an environmental assessment (EA) was appropriate with respect to its role in licensing EDS's that use radioactive sources, an EA has been prepared to aid of the FAA's response to these docketed comments and has been included in the docket.

As stated in the FAA's EA, the NRC conducted its environmental review in amending the FAA's Materials License (which permits the use of equipment employing thermal neutron activation technology at John F. Kennedy International Airport) to authorize the FAA to install and operate this equipment at other airports. In an "Environmental Assessment and Finding of No Significant Impact" (published in the **Federal Register** at 54 FR 33636; August 15, 1989), the NRC examined the environmental impacts of installing and operating TNA devices at airports, including possible external exposure of workers and passengers, possible internal exposure of passengers or other members of the public who may consume irradiated food items packed in baggage, anticipated radiation doses, potential exposure due to malfunctions of the EDS, and several accident scenarios. The NRC concluded that the environmental effects of normal TNA use in baggage or cargo handling ramps will be insignificant. The NRC found that while some short-term residual radioactivity is induced in baggage at the time of screening, by the time the baggage emerges from the machine, the radioactivity is negligible. The NRC further found that "the maximum unrestricted area concentrations are calculated to be well below the maximum permissible concentrations specified in 10 CFR 20.106 and 10 CFR part 20, appendix B."

The FAA's EA for this rulemaking adopts the NRC's "Environmental Assessment and Finding of No Significant Impact." It provides that, in order to assure that implementation of the new regulation through the air carrier security programs will not permit a degrading of the minimal radiation exposure described in the NRC's EA, the FAA will provide, in each security program covered by new § 108.20, that no EDS (using a specific radiation source such as californium-232 that is subject to NRC jurisdiction) will be finally approved by the FAA unless the carrier demonstrates to the FAA that—

(1) For systems intended for use in the U.S., the EDS is covered by a license issued by the NRC (as required by 10 CFR 30.3), or by the appropriate Agreement State (as also required by the NRC's regulations);

(2) For systems intended for use outside the U.S., the carrier demonstrates either that the system is the same as one that has been previously licensed under NRC requirements, or that the system is registered by the NRC under 10 CFR 32.210. This is in addition to any requirements imposed by the country of installation.

The EA also indicates that, for each EDS that is approved by the FAA under § 108.20, each security program will also require that the carrier continue to comply with all conditions imposed on the installation and operation of that system under the NRC licensing and registration process.

The purpose of these requirements is to provide additional assurance that there will be no significant exposure to radiation. For these reasons, the FAA's EA concludes that the implementation of this final rule with respect to the installation and use of EDS's involving radioactive sources will not cause a significant impact on the quality of the human environment.

In consideration of the foregoing, the FAA environmental assessment included in the docket for this final rule contains a finding of no significant impact.

Two commenters doubt whether certain foreign governments opposed to the presence of nuclear materials would allow TNA machines to be installed. Where needed, the FAA will work to effect coordination with foreign governments. The FAA recognizes that it cannot require air carriers to comply with EDS regulations if they are precluded from doing so by a foreign government. Should such an instance arise, the FAA would require alternate procedures.

Miscellaneous

Wet leases—One commenter expresses concern over aircraft operated under wet leases. Wet leasing is the practice of air carriers leasing aircraft and flightcrews (except flight attendants) to foreign carriers. Usually foreign carriers paint the aircraft and operate them as though they were their own. The commenter feels that because the baggage on flights on such aircraft would be subject to EDS screening, the resulting delays would mean foreign carriers would want to avoid leasing U.S. aircraft and therefore be able to bid more successfully for wet leases among themselves.

Because wet leases may present special circumstances, especially where the aircraft is not readily identifiable as a U.S. aircraft, the FAA will work with carriers regarding the application of EDS requirements and consider the use of alternative procedures.

Insurance—One commenter believes the FAA should assume responsibility for obtaining adequate insurance for suppliers of EDS equipment. The FAA does not agree with this comment as suppliers of aircraft and other aviation products have the capability of building the price of insurance into their product costs.

Discussion of the Final Rule

The final rule is being adopted as originally proposed. Thus, the FAA will have the authority to amend each air carrier's approved security program to require use of EDS's to screen all checked baggage on all international flights by U.S. carriers for which screening is required.

In its initial exercise of its authority under this final rule, the FAA intends to require deployment of about 150 EDS's at approximately 40 international airports that are served by U.S. air carriers, taking current security procedures and threat information into account. The FAA has already issued a proposed amendment to the security programs of U.S. air carriers relating to the initial deployment. If the proposed amendment is adopted, the FAA projects that as many as 50 EDS's may be in use by the end of 1990, and approximately 150 EDS's may be in use by the end of 1991. The FAA will work closely with the industry in the implementation of the rule and evaluate operational experience to determine whether changes to these projections are necessary. As indicated in the NPRM, the FAA intends to phase-in implementation of this rule and may later expand the deployment to international flights at additional locations.

As stated in the proposed rule, the FAA will carefully consider whether and when to require the installation of EDS's at locations beyond the initial deployment. Any further deployment would occur only after additional action by the FAA to amend air carriers' security programs. This amendment process is established in § 108.25 of the Federal Aviation regulations (14 CFR 108.25). The process provides the affected air carriers notice and an opportunity to comment before final action is taken. The amendment process will provide a mechanism to evaluate the need for EDS use at specific locations, projected level of usage, level of vulnerability, availability of alternative security procedures, and other relevant factors that may affect a decision to expand the use of EDS's to new locations.

Section 108.7(b)(8)

Section 108.7(b)(8) will require certificate holders (air carriers) to describe in their approved security programs the procedures, facilities, and equipment used to comply with the new EDS requirements.

Section 108.20

This new section will require that each certificate holder conducting screening under an approved security program use an approved EDS to detect explosives in checked baggage on international flights in accordance with its security program. The rule does not require each individual certificate holder to own an EDS, nor does it preclude use of a single EDS by several air carriers. Indeed, the FAA believes that cooperation among air carriers is critical to the effective implementation of this rule.

Regulatory Impact Analysis Summary

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for the regulatory change outweigh the potential costs to society. The Order also requires the preparation of a Regulatory Impact Analysis of all "major" proposals except those responding to emergency situations or other narrowly defined criteria. A "major" proposal is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

This final rule is determined to be a "major" rule as defined in the Executive Order, so a full Regulatory Impact Analysis evaluating alternative approaches has been prepared. This analysis is included in the docket, and quantifies, to the extent practicable, estimated costs to the private sector, consumers, Federal, State, and local governments, as well as anticipated benefits and impacts.

A summary of the Regulatory Impact Analysis is contained in this section. For a more detailed analysis, the reader is referred to the full Regulatory Impact Analysis contained in the docket (see **ADDRESSES**).

This section summarizes the cost and benefit assessment of an amendment to Part 108 of the Federal Aviation Regulations which would require U.S. air carriers conducting screening under an approved security program to use an explosives detection system (EDS) approved by the Administrator to screen checked baggage on international flights. The addition of new § 108.20 will require affected air carriers to use explosives detection systems in accordance with the provisions established by the Administrator and contained in their approved security programs. In addition, the economic analysis also considers two other alternatives; these include the option of broadening the scope of coverage to include screening all domestic and international baggage with EDS, and one in which screening would be conducted only for international operations at airports selected on a threat-driven basis.

The primary objective of this rule is the prevention of criminal acts or acts of terrorism against U.S. air carriers by individuals using explosive devices. Toward this end, the FAA has conducted extensive research aimed at detecting explosives. This research has concentrated on explosives detection system devices, including the Thermal Neutron Analysis (TNA) system and vapor detection systems, as well as advanced x-ray systems. The TNA device is the most advanced explosives detection system now available. Its capabilities can be enhanced by equipping them with x-ray systems. Therefore, the FAA has elected to analyze three alternative proposals for explosive detection using these enhanced TNA systems over the ten-year period of 1990 to 1999. These are—

I. *Domestic and International Alternative.* Install explosives detection systems at 427 airports in the U.S. and at airports in 88 foreign countries over a ten-year phase-in period (100% checked baggage screening of U.S. domestic and international flights, eventually requiring 1,825 explosives detection systems by 1999).

II. *International Alternative (The Final Rule).* Install only enough explosives detection systems to examine U.S. carrier international flights at domestic and foreign airports over a five year phase-in period (100% checked baggage screening of all U.S. international flights, eventually requiring 860 explosives detection systems by 1999).

III. *Threat-Driven Alternative.* Install 200 explosives detection systems at an unspecified number of domestic and foreign airports over a three year phase-in period, based on a threat-driven approach (100% checked baggage screening of all international flights at selected airports, eventually requiring 300 explosives detection systems by 1999).

It is important to note that in the NPRM, Alternative II's phase-in period was three years, while here, it is five years. The number of TNA systems required to screen all international flights at current enplanement levels rose from 179 in the NPRM to 491 in the final rule. The production capacity does not exist to install this many systems within three years, but will exist within five years.

The methods and assumptions used in the analyses for the alternatives have been developed by the FAA. A major consideration guiding this analysis is the assumption that 100% screening of checked baggage on flights where passenger screening is currently required would be conducted under all three scenarios at those airports where EDS are to be used. The analyses assume enough systems to take into account peak hour travel, the projected growth in enplanements, and air carrier logistical difficulties. Preliminary cost factors were obtained from manufacturers and research organizations. Information for the formulation of benefits was obtained form the safety records of the International Civil Aviation Organization (ICAO) and the FAA. The costs and benefits of each of these alternatives have been analyzed over the ten-year span of 1990 to 1999.

The costs associated with the acquisition, installation, operation, and repair and maintenance of the TNA systems were difficult to quantify because these systems are still in an early stage of development. As such, there is limited experience on which to draw. At the present, there is only one manufacturer now capable of producing TNA systems. The FAA encourages other manufacturers to develop and produce explosives detection systems to meet the anticipated worldwide demand. In addition, the FAA believes that the entry of other manufacturers into the market would stimulate competition and would reduce costs. Thus, the unit costs used in the analysis assume that mass production techniques and the efficiency with which enhanced TNA and other EDS and x-ray systems are produced would reduce prototype and initial production cost estimates. The FAA assumes that production capacity in 1990, the first year that the rule would be in effect, could be as high as 50 units. Production capacity could increase to as many as 100 units in 1991 and could expand to an annual rate of more than 150 units thereafter.

The FAA has estimated costs for explosives detection system equipment, x-ray enhancement apparatus, equipment maintenance and repair, airport space rental, and labor; these have been used to estimate the cost of compliance with the three alternatives. The cost of a prototype TNA system is estimated to be $1 million in 1990. Based on discussions with the manufacturer on a quantity purchase, the FAA projects that the acquisition cost of a basic EDS unit, including delivery, installation, and operator training, would be $750,000 in 1990 and 1991. The FAA further believes that the effect of competition and the expected increases in the efficiency with which these units would be produced over time, which would yield economies of scale, would cause the cost of $750,000 to decline to $500,000 per TNA unit. On the basis of the limited operating history of the equipment and information furnished by the manufacturer, the annualized cost of maintenance and repair for an explosives detection system is estimated to be $26,200 per year. The FAA expects that the acquisition cost of x-ray enhancement units, including delivery and installation and training, is assumed to be $150,000 per unit in 1990 and 1991 and fall to $75,000 per unit in 1992 and the ensuing years. The estimated annual cost of maintenance and repair for the x-ray system is estimated to be $15,000 per unit in 1990 and 1991, which would then decline to $7,500 per unit per year in 1992 and the following years.

The FAA assumes for this analysis that airport space for the system would be rented at an estimated $25 per square foot per year which would cover all costs for site preparations (such as floor reinforcing or new construction), electrical power availability, space rental, etc. Using the estimated rental rate of $25 per square foot per year, this yields an average yearly rental fee of approximately $19,000 per system. This stream of revenues is expected to enable the airport authorities to recover all capital expenses over time.

Operating a TNA system with an enhanced x-ray system would require a system-wide average of two technical operators per eight hour shift. The annual salary, including appropriate overhead rate, for this type of operator is estimated to be $30,000. Accordingly, the direct labor cost to the affected air carriers is $120,000 per year per unit. In addition, the FAA has determined that each operator would initially require eight weeks of training, and this cost of training would amount to approximately $5,000 per operator per year or $20,000 for the four operators who are needed per unit. The FAA assumes that the job turnover rate is 25%; thus, there would be a recurring training cost of $5,000 per operator per year for each established system.

To estimate the potential benefits of this rule, and of the alternatives, the FAA reviewed the safety record for the ten year period between 1979 and 1988. This review reveals that 19 separate criminal acts and incidents of terrorism using explosives were perpetrated against U.S. air carriers during this period. The FAA has classified these incidents into Class I and Class II categories. The Class I category includes those incidents, such as the explosion aboard Pan American (Pan Am) Flight 103, that involve the loss of an entire aircraft and a large number of fatalities. Class II accounts for all other incidents in which airplanes were only partially damaged or the incident was partially averted, such as explosions that occurred outside the aircraft (usually somewhere in the airport itself). These two types of incidents vary significantly both in terms of costs and their frequency. The FAA estimates that those Class II incidents that would occur over the ten years from 1990 to 1999 would result in a discounted cost of $31.0 million.

The losses associated with Class I or major incidents would, of course, be substantially greater. For example, the loss in human life and property, and reduced revenues from the loss of U.S. carriers' market share associated with Pan Am Flight 103 are estimated to have a present value range of $411.0 million to $520.0 million depending on the extent of market reduction. It is difficult to predict the extent to which international terrorism will increase. Nevertheless, the FAA believes that in the absence of additional preventive measures, terrorist attacks against U.S. air carriers would continue. The FAA can not predict the number and severity of future incidents. The frequency of such incidents would depend on several factors, including, but not limited to, the world-wide political climate, the skill and technical sophistication of terrorist organizations, and the success of efforts to avert these incidents. Given the historical record of one such incident in each of the past two decades and the expectation that the general threat will increase, and moreover, that the specific threat of sabotage will also increase, the FAA estimates total benefits on the basis of two Class I incidents. Therefore, in this case, the present value of the benefit associated with the prevention of these incidents would be as high as $1.071 billion. Table I of this summary shows the estimated costs and benefits of these alternatives:

TABLE I.—SUMMARY OF COSTS AND BENEFITS

[Net present value in millions of dollars]

Options	Estimated costs	Percentage of total incidents avoided for breakeven[1]	Calculations
Alternative I (Domestic and International Alternative)	$1,420	133	$1,420/$1,071=133%
Alternative II (International Alternative—The Final Rule)	896	84	896/$1,071=84%

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TABLE I.—SUMMARY OF COSTS AND BENEFITS—Continued

[Net present value in millions of dollars]

Options	Estimated costs	Percentage of total incidents avoided for breakeven[1]	Calculations
Alternative III (Threat-Driven Alternative)	393	37	393/$1,071=37%

[1] The sum of the total incidents is equal to two Class I incidents and all Class II incidents avoided. The discounted present value of these incidents avoided is $1,071 million. The percentages do not represent a judgment of the relative effectiveness of each alternative.

Table I examines how many Class I and Class II incidents would have to be prevented by each alternative for the alternatives to be cost beneficial. The percentages in the table do not represent a judgment of the relative effectiveness of each alternative; they show the percentage of total incidents whereby each of the three alternatives will have different breakeven points so as to become cost beneficial. The costs associated with each alternative are compared with those benefits projected from avoiding two Class I incidents and a discounted present value of the $31 million worth of projected costs from all Class II incidents. For the purposes of this analysis, this is the projected universe of incidents that these alternatives are designed to address.

For Alternative II to be cost beneficial, it would have to prevent roughly four-fifths (84%) of this projected set of Class I and Class II incidents. If EDS screening includes domestic operations (Alternative I), this option would have to prevent more than the entire set of projected Class I and Class II incidents to be cost beneficial; in other words, it is not cost beneficial. The costs associated with limiting installation of EDS to those international operations at locations selected on a threat-driven basis (Alternative III) are roughly one third of the assumed set of incidents.

Because the number and potential severity of future attacks and the scope and location of threats are difficult to predict, the FAA has elected not to attempt to quantify the percentage of possible attacks that would be prevented by each alternative. For similar reasons, the FAA will not assign values to the probabilities of a Class I or Class II event for each alternative scenario.

In addition to these quantifiable benefits, the FAA expects further significant unquantifiable benefits. The rule would result in public recognition of additional security measures implemented by U.S. air carriers. The public's subsequent higher confidence levels should result in more passengers and higher revenues.

The deterrence of terrorist attacks against U.S. civil aviation also has significant public and foreign policy benefits. In addition to the tragic effects on those involved and their families and friends, an attack on an American aircraft disrupts the lives and plans of great numbers of people who have suffered no direct loss in the incident. (Indeed, this is presumably one of the goals of those who perpetrate terrorist attacks.) The FAA cannot calculate the cost of uncompleted business, disrupted education, and deferred vacations. Nevertheless, that cost is unquestionably significant, and it will be avoided if the public retains a high level of confidence in the safety of the civil air transportation system. Maintaining and improving the public's confidence, while at the same time reducing the threat to human life and property, is the central goal of this rulemaking.

Comments—A total of 12 commenters raise economic issues. Some of those comments that dealt directly with economic issues as described in the NPRM will be briefly summarized in this section.

Several of the comments point out that the NPRM analysis did not include the costs of constructing housing and/or supporting structures for those EDS's that would need them. The FAA specifically had requested comments on such costs, and, based on these comments, has added housing costs by means of the calculation of space rental data. It is the FAA's view that the costs involved would depend on the individual circumstances and that the actual location of each EDS would be determined by individual airport layout and other factors.

One commenter believes that the analysis seriously underestimates the number of systems needed at New York-Kennedy Airport and other similarly configured and heavily utilized airports. This commenter believes that 2400 systems would be needed under Alternative II, which is six times the number of systems estimated in the NPRM. The assumption used in the commenter's analysis revolves around the belief that 30, instead of 5, systems would be needed for New York-Kennedy Airport. (Five TNA systems were assumed for New York-Kennedy Airport in the NPRM's Alternative II). Therefore, because six times as many systems would be needed for this airport, the commenter estimates that six times the number of systems would be needed at all airports, both now and through 1999. The commenter did not disclose the methodology by which it was calculated that 30 machines would be needed for this gateway airport, so it is impossible for the FAA to analyze these assertions. Very few other airports included in the FAA's analysis are similarly configured or as heavily utilized as New York-Kennedy Airport. Therefore, while the FAA recognizes that the NPRM analysis underestimated the EDS requirements at a few major airports, it does not follow that the agency's analysis underestimated such requirements at all airports. As is discussed in the following paragraph, the FAA has recalculated the number of required systems.

The analysis presented in the Regulatory Impact Analysis may address some of the assumptions that were inherent in this commenter's analysis. To obtain the daily average number of outbound passengers, the annual numbers of outbound passengers for each airport was divided by 312 days; 312 days was used instead of 365 days of reflect the fact that many flights do not operate 7 days a week. The international peak hour percentage was increased from 15% to a range of 25% to 50%, depending on annual passenger flow, to take into account the demands on such heavily utilized airports. The per hour baggage requirements on the systems was lowered to 540 an hour to take into account the fact that baggage probably will not always be able to be fed into the system at a steady stream. In addition, extra machines were added to the busiest domestic and foreign airports to account for airport layout and baggage interline and transfer

problems. For example, this analysis' estimate for the number of TNA systems required at New York-Kennedy is nineteen, which the FAA belives is realistic.

This commenter also believes that the annual maintenance and repair costs for the basic TNA unit was too low. The figure used ($25,000 per year unit) was the data provided, based on the limited operating history of the equipment and on information furnished by the manufacturer. However, even if the costs were 60% higher ($40,000 per year per unit), the overall effect on costs would not be greater; total discounted costs would rise by less than 5%.

Another commenter interprets the FAA's statement in the NPRM that "in the absence of additional preventive measures", terrorist attacks against U.S. carriers will continue, and that this implied that the FAA considers that the proposed EDS is "the ultimate security solution." The FAA has never stated that EDS is the ultimate security solution; rather, the FAA believes it to be one of many security improvements which will be needed.

Several commenters stated that alternative EDS technologies exist that are less expensive than TNA. Currently, the TNA is the only explosives detection system that has been approved for use by the FAA. The FAA welcomes other EDS technology that will be less expensive than the TNA. TNA costs are used in the FAA's analysis because it is the only existing, proven system.

Several commenters raise environmental concerns with respect to the potential radiation effects of TNA systems. One comment called for the FAA to prepare an environmental impact statement with respect to this potential impact. In response to these comments the FAA has prepared an environmental assessment. This assessment has resulted in the conclusion that the adoption and implementation of this final rule will not have an adverse impact on the quality of the human environment. The assessment and Finding of No Significant Impact are included in the docket.

Several commenters state that since terrorism is being perpetrated against the U.S. government and not the air carriers, the government should pay for these systems. The U.S. government has traditionally not funded security measures needed to protect passengers on privately owned air carriers and does not intend to do so in this instance.

There has been concern expressed that requiring all U.S. air carriers to purchase EDS equipment would be an unrealistic drain on many of them, especially small carriers and those with unscheduled service. The rule does not require carriers individually to purchase EDS systems for their own private use. Such carriers have the commonly used option of renting the use of such facilities from other carriers.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires Federal agencies to review rules which may have a "significant economic impact on a substantial number of small entities." Issuance of the amendment to part 108 of the FAR will affect some small air carriers. The FAA's Order prescribing small entity size standards identifies a small air carrier as one with nine or fewer operating aircraft. According to FAA data for the period ending December 31, 1988, there were 54 air carriers subject to the rules of part 121 that operated nine or fewer airplanes. These 54 carriers are the entities affected by the rule.

The criteria for a "substantial number of small entities" is one-third of the small firms subject to the final rule, but no fewer than 11 firms. A review of the 54 small carriers engaged in scheduled and unscheduled service shows that only 10 firms would be subject to this rule. Therefore, it is certified that the amendment to Part 108 would not have a significant economic impact on a substantial number of small entities. In any event, if unforeseen problems arise in specific situations, the FAA will work with the air carrier involved to address appropriate checked baggage screening procedures.

Trade Impact Statement

The FAA finds that this rule will only impact part 121 operators and thus it is not likely to affect international trade. This final rule is expected to have no impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States. While there will be an increased cost to U.S. air carriers as a consequence of this rule, these increased costs will be offset by the increase in public confidence, the avoidance of incidents, and by the ability to reduce the use of certain costly security procedures now required of U.S. air carriers.

Paperwork Reduction Act

The FAA finds that this final rule will not result in an additional burden under the Paperwork Reduction Act.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that these rules will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed above, the FAA has determined that this regulation is major under Executive Order 12291. In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This final rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) because of its cost and the substantial public interest in aviation security. A Regulatory Impact Analysis of this rule, including a Regulatory Flexibility Determination and a Trade Impact Analysis, has been placed in the docket. A copy may be obtained by writing to the Director of Civil Aviation Security (see **ADDRESSES**).

List of Subjects in 14 CFR Part 108

Air carriers, Aircraft, Airmen, Airports, Arms and munitions, Explosives, Law enforcement officers, Reporting and recordkeeping requirements, Security measures, X-rays.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 108 of the Federal Aviation Regulations (14 CFR part 108) as follows:

PART 108—AIRPLANE OPERATOR SECURITY

1. The authority citation is revised to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1421, 1424, and 1511; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. Section 108.7 is amended by adding a new paragraph (b)(8) to read as follows:

§ 108.7 Security program; Form, content, and availability.

* * * * *

(b) * * *

(8) The procedures and a description of the facilities and equipment used to comply with the requirements of § 108.20 regarding explosives detection systems.

3. Section 108.20 is added to read as follows:

§ 108.20 Use of Explosives Detection Systems.

When the Administrator shall require by amendment under § 108.25, each certificate holder required to conduct screening under a security program shall use an explosive detection system that has been approved by the Administrator to screen checked baggage on international flights in accordance with the certificate holder's security program.

Issued in Washington, DC, on August 30, 1989.

James B. Busey,

Administrator.

[FR Doc. 89–20624 Filed 8–30–89; 4:12 pm]

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federal register

Tuesday
September 5, 1989

Part III

Environmental Protection Agency

40 CFR Part 52

Assessment of Visibility Impairment; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL-3526-9]

Assessment of Visibility Impairment: Proposed Rule

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposal addresses the necessity of revising the federally promulgated implementation plans (FIP's) for the States of Maine, Arizona, and Utah to include best available retrofit technology (BART) or other control strategies to remedy visibility impairments within the Moosehorn Wilderness, Grand Canyon National Park, and Canyonlands National Park attributable to specific sources. Today's action is in accordance with a settlement agreement with the Environmental Defense Fund (EDF) and others which requires EPA to propose appropriate measures to remedy certified visibility impairments in mandatory Class I Federal areas where the impairment in the area is reasonably attributed to specific sources. Parties in this settlement agreement negotiated revisions which allowed EPA to defer decisions concerning impairments in these three Class I areas until August 31, 1989 (52 FR 45132 (Nov. 24, 1987) and 53 FR 3595 (Sept. 15, 1988)).

DATES: Comments on this notice of proposed rulemaking must be submitted to the Central Docket Section no later than November 6, 1989.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to Air Docket (LE-131), Attention: A-89-02, U.S. EPA, Rm. M1500 Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Docket: Pursuant to section 307(d)(1)(B) of the Clean Air Act (Act), 42 U.S.C. 7607(d)(1)(B), this action is subject to the procedural requirements of section 307(d). Therefore, EPA has established a docket for this notice, Docket Number A-89-02. Materials related to the development of this notice have been placed in this docket. For background information, materials related to the development of the visibility protection program (40 CFR 51.300 et seq.) are available in Docket A-79-40. Also, materials related to the development of the visibility new source review and visibility monitoring strategies are available in Docket A-84-32. Finally, materials related to the visibility long-term strategy, implementation of control strategy, and integral vista program are available in Docket A-85-26. All dockets are available for public inspection and copying between 8:00 a.m. and 4:00 p.m. Monday through Friday at EPA's Central Docket Section, Office of General Counsel, Room 1500, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

Public Hearing: Any request for a public hearing should be submitted in writing to: Ms. Denise Scott, Air Quality Management Division (MD-15), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Denise Scott at telephone number (919) 541-0870 or FTS 629-0870.

SUPPLEMENTARY INFORMATION:

Background

A. Regulatory Requirements

Section 169A of the Act, 42 U.S.C. 7491, sets as a national goal "the prevention of any future, and the remedying of any existing impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." Mandatory Class I Federal areas are certain national parks, wildernesses, and international parks as described in section 162(a) of the Act, 42 U.S.C. 7472(a). Section 169A requires that EPA promulgate regulations to assure reasonable progress toward meeting the national goal for mandatory Class I Federal areas where EPA has determined that visibility is an important value. On November 30, 1979, EPA identified 156 areas, including Moosehorn Wilderness in Maine, Canyonlands National Park in Utah, and Grand Canyon National Park in Arizona, where visibility is an important air quality related value (44 FR 69122). Section 169A specifically requires EPA to promulgate regulations requiring States to amend their State implementation plans (SIP's) to provide reasonable progress toward meeting the national goal for the 156 areas.

On December 2, 1980, EPA promulgated the required visibility regulations (45 FR 80084, codified at 40 CFR 51.300 et seq.). In broad outline, the visibility regulations require the 36 States listed in section 51.300(b), including Arizona, Maine, and Utah, to: (1) Coordinate SIP development with the appropriate Federal land managers (FLM's), (2) develop a program to assess and remedy visibility impairment from new and existing sources, (3) develop a long-term (10 to 15 years) strategy to assure reasonable progress toward the national goal, (4) develop a visibility monitoring strategy to collect information on visibility conditions, and (5) consider in all aspects of visibility protection any "integral vistas" (important views of landmarks or panoramas that extend outside of the boundaries of the Class I area) identified by the FLM's as critical to the visitor's enjoyment of the Class I areas. The affected States were required to submit revised SIP's satisfying these provisions by September 2, 1981. See 45 FR 80091, codified at 40 CFR 51.302(a)(1).

The second requirement listed above is of particular relevance to today's action. 40 CFR 51.302(c)(2) requires that each affected State include in its SIP such emission limitations, schedules of compliance, and other measures as may be necessary to make reasonable progress toward the national visibility goal. In addition, under 40 CFR 51.302(c)(1), an FLM may certify to a State that there exists impairment of visibility in any mandatory Class I Federal area. Pursuant to 40 CFR 51.302(c)(4)(i), where impairment is certified at least 6 months prior to plan submission, an affected State must (1) identify each existing stationary facility which may "reasonably be anticipated to cause or contribute" to any such impairment which is "reasonably attributable" to that facility, and (2) analyze for BART any facility so identified. "Reasonably attributable" impairment is impairment "attributable by visual observation or any other technique the State deems appropriate" [40 CFR 51.301(s)]. Where a State defaults on its obligations under the visibility regulations, EPA may act in place of the State pursuant to a FIP under section 110(c) of the Act, 42 U.S.C. 7410(c).[1] In such cases, all of the rights and duties that would otherwise fall to the State accrue instead to EPA. Thus, EPA may utilize attribution techniques it deems appropriate, must identify "reasonably attributable" sources of impairment, conduct BART analyses, adopt BART requirements, and may promulgate such other control strategies that EPA, in its discretion, deems necessary to make reasonable progress toward the national visibility goal.

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[1] Section 110(c) requires EPA to promulgate FIP's whenever (a) a State fails to submit an implementation plan (or portion thereof) which meets the requirements of section 110; (b) the Administrator determines that a plan (or portion) is not in accordance with the requirements of section 110; or (c) the State fails to revise its plan within 60 days after notification by the Administrator (or some longer period, if so prescribed by the Administrator) in accordance with section 110(a)(2)(H).

In December 1982, environmental groups, including EDF, filed a citizen's suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act, 42 U.S.C. 7410(c), to promulgate visibility FIP's for the 35 States [2] that, at that time, had failed to submit SIP's to EPA as called for by the 1980 visibility regulations (*EDF* v. *Reilly*, No. C826850 RPA).

The EPA and the plaintiffs negotiated a settlement agreement for the remaining States which the court approved by order on April 20, 1984. For more information on details of the provisions of the settlement, including a schedule of actions by EPA, see EPA's announcement of the agreement at 49 FR 20647 (May 16, 1984).

B. Settlement Agreement

The settlement agreement required EPA to promulgate FIP's on a specified schedule for those States that had not submitted visibility SIP revisions to EPA. Specifically, the first part of the agreement required EPA to promulgate FIP's which cover the monitoring and new source review (NSR) provisions of 40 CFR 51.305 and 51.307. The EPA promulgated its monitoring strategy for 23 States and its NSR provisions for 21 States (50 FR 28544, 51 FR 5504, and 51 FR 22937). In separate notices, EPA approved the SIP's of the other States with respect to monitoring and NSR.

The second part of the settlement agreement required EPA to determine the adequacy of the SIP's to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions, including BART and other implementation control strategies (§ 51.302), integral vista protection (§ 51.302-307), and long-term strategies (§ 51.306). The settlement agreement required EPA to promulgate FIP's to remedy any deficiencies on a specified schedule.

On November 14, 1985, the U.S. Department of the Interior (DOI) certified to EPA, under 40 CFR 51.302(c)(1), the existence of visibility impairment in Moosehorn Wilderness and identified a pulp and paper mill as the probable source of this impairment. On March 24, 1986, the DOI sent another letter to EPA pursuant to 40 CFR 51.302(c)(1) supplementing its November 1985 certification. This letter certified the existence of visibility impairment in Grand Canyon National Park and Canyonlands National Park and identified the Navajo Generating Station (NGS), a 2250 megawatt coal-fired power plant located near Page, Arizona, as the probable source of the impairment in these two Class I areas. Copies of the letters certifying the impairments have been placed in the docket for this rulemaking.

On January 23, 1986, EPA determined that the SIP's of 32 States (including Arizona, Maine, and Utah) were deficient with respect to the remaining visibility provisions (51 FR 3046). Thereafter, EPA and the plaintiffs negotiated revisions to the settlement agreement which extended the deadlines for proposing FIP's to remedy these deficiencies. The court approved these revisions by its order of September 9, 1986.[3]

In accordance with the revised settlement agreement, on March 12, 1987 (52 FR 7802), EPA proposed to disapprove the SIP's of 32 States (including Arizona, Maine, and Utah) for failing to meet the remaining provisions of the visibility regulations, including general plan requirements (which in turn includes BART and other control strategies (section 51.302) and long-term strategies (§ 51.306). Also in accordance with the agreement, on November 24, 1987 (52 FR 45132), EPA took final action disapproving the affected SIP's and promulgating, as FIP measures under section 110(c), general plan requirements and long-term strategies for these States. Under the revised agreement, EPA's decision regarding the need for BART or other control measures in the FIP's for these States to address certified visibility impairments in seven Class I areas which potentially could be reasonably attributed to a specific source in the States of Arizona, Maine, Minnesota, and Utah was deferred until August 31, 1988 pending acquisition and evaluation of additional monitoring information regarding the potential sources of impairment. The EPA required additional information to determine whether the impairment in any of these Class I areas is "reasonably attributable" to an existing stationary facility, and to enable a BART analysis for any source so identified as causing or contributing to visibility impairment (40 CFR 51.302(c)(4)(i)).

On May 19, 1989, EPA, in accordance with the revised settlement agreement, promulgated decisions concerning certified visibility impairments in four Class I areas. Based on monitoring conducted in these areas, EPA found that the visibility impairments were not reasonably attributable to any specific source. Therefore, EPA determined that it was not necessary at that time to revise the FIP's for the States of Arizona, Maine, and Minnesota to include BART or other control strategies to remedy impairments in Roosevelt Campobello International Park (Canada), Voyageurs National Park (Minnesota), Saguaro Wilderness (Arizona), and Petrified Forest National Park (Arizona).

Because EPA was unable to resolve certain questions regarding the need to remedy the impairments found in three additional Class I areas (the Grand Canyon National Park in Arizona, the Canyonlands National Park in Utah, and the Moosehorn Wilderness in Maine), EPA sought and received a 1-year extension of its August 31, 1988 deadline to address the impairment in these areas.

The National Park Service (NPS) has submitted to EPA a final draft report which analyzes the data from a wintertime impairment attribution study. The Winter Haze Intensive Tracer Experiment (WHITEX) was conducted in 1987 in the Colorado Plateau. The National Park Service report on WHITEX [4] identifies the NGS in Page, Arizona, as a source of a substantial portion of the impairment in the Grand Canyon National Park. The EPA has reviewed this report and concurs preliminarily with the findings of the NPS that NGS is a contributor to visibility impairment in Grand Canyon National Park. The NGS is located approximately 20 km from the Grand Canyon National Park boundary and 110 km from the WHITEX monitoring site at Hopi Point in the Park.

The proposal to find impairment in the Grand Canyon National Park attributable to NGS was not based on any single analysis, but rather on the collection of analyses performed by the NPS on the WHITEX data. Of particular import to this proposal, however, was the tracer mass balance regression analysis which documented the presence of the NGS plume (and sulfur emissions from NGS) in the Grand Canyon. As part of the BART analysis, EPA will quantify sulfur compounds attributable to NGS.

The EPA expects that the NPS will submit additional analyses concerning the accuracy of the attribution techniques and a final report in early September. The EPA does not anticipate any significant changes in the conclusions of this report. When these documents are made available to EPA, they will be placed in the docket for this rulemaking.

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[2] The State of Alaska had submitted a SIP which was approved on July 5, 1983 at 48 FR 30623.

[3] A copy of the settlement agreement and revisions is available in docket A-85-26 at the address given at the beginning of this notice.

[4] "The National Park Service report on the Winter Haze Intensive Tracer Experiment Draft Final Report," William Malm, Kristie Gebhart, Douglas Latimer, Thomas Cahill, Robert Eldred, Roger Pilke, Roger Stocker, and John Watson, April 7, 1989.

Because of the delay in receiving the NPS report, EPA and EDF filed a joint motion to revise the settlement agreement to allow adequate time to conduct a BART analysis for NGS in the event that EPA proposed to find impairment reasonably attributable to NGS. By order dated July 6, 1989, the court approved revision of the settlement agreement to require EPA to:

- Issue a notice of proposed rulemaking by August 31, 1989 (as previously scheduled) concerning the need to revise any FIP to address visibility impairments in Moosehorn Wilderness and Canyonlands National Park.
- Issue a notice of proposed rulemaking by August 31, 1989 addressing whether any facility can be identified which may reasonably be anticipated to cause or contribute to impairment in Grand Canyon National Park.
- Analyze for BART any facility identified as a contributor of impairment in the Grand Canyon National Park and issue a notice of proposed rulemaking by February 1, 1990.

The EPA must provide at least a 60-day comment period for each of the above proposed rulemakings. The EPA will promulgate the final rule for each proposal 6 months after the close of the comment period on the proposed rule with the exception of EPA's proposal to attribute impairment in the Grand Canyon National Park to NGS. In this case, EPA will finalize its attribution decision when it makes a final decision regarding BART requirements, which will be 6 months after close of any comment period on the proposal to require BART. The EPA also intends to make regulatory decisions regarding the need for control measures other than BART in accordance with this schedule.

C. Today's Action

In today's proposal, EPA addresses certified visibility impairments in three Class I areas. With respect to Moosehorn Wilderness, EPA believes that, based on the modifications to the pulp and paper mill in Woodland, Maine, owned by Georgia-Pacific Corporation (GP) and the prevention of significant deterioration (PSD) permit requirements for the mill, it is unnecessary at this time to revise the FIP for the State of Maine to include BART requirements or other control strategies. Any future information regarding impairment in this Class I area will be addressed in the periodic review required by the State's long-term strategy (40 CFR 51.306 and 52.29).

With respect to the Canyonlands National Park, EPA has no data at this time to attribute the impairment in the park to any specific source. Thus, EPA believes that it is unnecessary at this time to revise the FIP for the State of Utah to include BART requirements or other control strategies. If additional data become available which permit EPA or the State to attribute the impairment in this Class I area, it will be addressed in the periodic review required by the State's long-term strategy.

Based on the NPS report on the WHITEX data, EPA believes that a substantial portion of visibility impairment in Grand Canyon National Park is attributable to a specific source—NGS. The EPA, in accordance with the recently revised settlement agreement, will issue a notice of proposed rulemaking to address whether to revise the FIP for the State of Arizona to include BART requirements for this facility or other control strategies by February 1, 1990.

Discussion of Impairment

A. Moosehorn Wilderness, Maine

The Fish and Wildlife Service (FWS) previously noted the existence of elevated layered hazes of differing colors in the Moosehorn Wilderness (see discussion at 52 FR 7802). However, the existing data were inadequate to positively identify the sources of the impairment or to complete a BART analysis. Consequently, the FWS and the Interagency Monitoring of Protected Visual Environments Technical Steering Committee directed its contractor to install an 8-millimeter, time-lapse camera system at Moosehorn Wilderness. The camera started operation on October 5, 1987.

The FWS had identified the GP pulp and paper mill as the probable source of impairment existing within the Moosehorn Wilderness. The mill is approximately 7 kilometers (km) from the northern section of Moosehorn Wilderness. The camera system installed at Moosehorn recorded a visible plume emitted nearly every day from the mill. Under certain conditions, the plume appeared to cross the Wilderness boundary causing visibility impairments in the Wilderness. Thus, EPA believes that the impairment certified by the DOI in 1985 is attributable to the GP pulp and paper mill in Woodland, Maine.

As part of a modernization and modification of the mill, GP had applied for a PSD permit. Since the emission limitations required by the PSD permit could significantly affect the pollutants which cause the visibility impairment, EPA deferred its decision pending completion of the PSD permit process. This permit process has now been completed. The PSD permit process included a review of existing sources of plume blight at the mill. It is anticipated that the impairment will be reduced by additional air pollution controls required by the PSD permit for existing facilities and the retirement of two existing facilities which contributed to the observed impairment. Based upon the PSD permit requirements, EPA believes that existing impairment will be adequately remedied such that revisions to the Maine FIP are not necessary to address the impairment certified in 1985 by DOI. A copy of the State of Maine's Air Emission License (PSD permit) for GP has been placed in the docket for this rulemaking.

B. Canyonlands National Park, Utah, and Grand Canyon National Park, Arizona

The DOI has documented the occurrence of visibility impairments at Canyonlands and Grand Canyon National Parks during winter inversion conditions (see discussion at 52 FR 7802). Both of these parks are mandatory Class I Federal areas located in the Colorado River area of the Colorado Plateau. Canyonlands National Park is located approximately 200 km northeast of Grand Canyon National Park. The visibility impairment identified in these Class I areas during the winter months has been described as a haze "with a bright white layer and a distinct upper edge and it occasionally includes one or more perceptible layers." [8]

WHITEX, a 6-week study conducted in January and February 1987 in the Colorado River area, was designed to evaluate the ability of a variety of receptor modeling approaches to attribute visibility impairment in several Class I areas to a single source. WHITEX was a cooperative effort between several utility groups including Salt River Project (SRP), the operators of NGS, and several government agencies including NPS. As discussed below, WHITEX employed several attribution methodologies including the use of a unique tracer injected into the NGS stack to track the power plant's plume. A meteorological analysis was conducted to document the wind flow patterns and stagnation events occurring during the winter months.

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[8] Ibid. p. 4.

The study area consisted of three major and five satellite monitoring sites. Major monitoring sites were located in Grand Canyon National Park (at Hopi Point), Canyonlands National Park, and Page, Arizona (near the Glen Canyon Dam). Satellite sites were located in major transport corridors of the study area. Extensive air quality monitoring was conducted at these eight sites to evaluate NGS' contribution to visibility impairment in the area.

The NPS calculated a light extinction budget for each of the three major sites based on optical and aerosol measurements taken simultaneously at each site. The light extinction budgets express the relative contribution to light extinction by various aerosol constituents (e.g., sulfates or organics) or the type of extinction observed (e.g., scattering or absorption). Light extinction, a standard method used to monitor visibility impairment, is the combined effect of light scattering and absorption. The NPS found that fine particle scattering due to sulfates accounted for the largest share of anthropogenic visibility impairment during the WHITEX study period at all three sites.

The NPS then attributed the extinction (due to fine sulfates) to specific source(s) using various receptor modeling techniques. Three statistical methods and one deterministic model were used to estimate the relative contributions of sources within the study area to visibility impairment observed during the 6-week study. Receptor modeling methods used included chemical mass balance, tracer mass balance regression, and differential mass balance.

Other less quantitative techniques were also used to attribute the impairment observed to specific sources. An emissions analysis was conducted along with a meteorological analysis and an analysis of the spatial patterns and temporal trends in ambient sulfate concentrations. In all, nine techniques were used by NPS to attribute the visibility impairment observed to specific sources.

Canyonlands National Park

Only a few tracer samples from the Canyonlands National Park WHITEX monitoring site have been analyzed to date. Although tracer was detected at Canyonlands National Park, there is insufficient data to determine whether NGS contributed significantly to total ambient sulfate. Analysis of wind flow patterns and the spatial and temporal trends indicate that the NGS plume might have contributed to impairment at Canyonlands National Park on various days for which tracer data have been analyzed. Based on the data analyses currently available, the NPS concluded that NGS appears to be less of a contributor to visibility impairment at Canyonlands than are more local sources, and the NPS is unable to attribute the impairment in Canyonlands National Park to any specific source at this time. Thus, EPA believes that it is not necessary at this time to revise the FIP for the State of Utah to include BART requirements or other control strategies to address impairment in this Class I area.

Grand Canyon National Park

The NPS report on WHITEX concludes that NGS was the largest single contributor to visibility impairment in Grand Canyon National Park during the 6-week study period. The data analyses conducted by the NPS indicate that under certain meteorological conditions, which are common in the area during the winter months, large quantities of sulfur dioxide from NGS are transported into the Grand Canyon. One of these analyses included measurement at Hopi Point in the Grand Canyon National Park of the unique tracer which was injected into the NGS stack. Another of these analyses further showed that the high sulfate episodes observed during WHITEX were typical results of transport and transformation of pollutants during the wintertime.

The NPS analyzed extensively the data collected at Hopi Point during the three major sulfate episodes. All nine analytical techniques used by NPS support the conclusion that NGS is a significant contributor to visibility impairment during the winter months in Grand Canyon National Park. The NPS data indicate that NGS contributes approximately 40 percent on the average to the observed wintertime visibility impairment and approximately 60–70 percent during the worst visibility impairment episodes. During one episode, the NPS analysis identified copper smelters located in southern Arizona and Mexico as major contributors to visibility impairment. It is important to note that subsequent to the 1987 study timeframe, these sources have either been controlled to reduce emissions or shut down.

Based on the NPS report, EPA is proposing to find that NGS may reasonably be anticipated to cause or contribute to visibility impairment in this Class I area. Under the requirements of the settlement agreement, EPA is proceeding with a BART analysis for NGS (see discussion below). In accordance with the latest revision to the settlement agreement, a decision by EPA on the need for BART (or other control measures) will be proposed by February 1, 1990.

Legal and Regulatory Issues

On May 15, 1989, the SRP submitted comments on the technical merits of the draft NPS report and on legal and regulatory issues pertaining to potential regulatory action affecting NGS. In addition, SRP and Alabama Power Company, *et al.*, a consortium of firms representing the electric utility industry, have submitted further legal arguments in support of a motion seeking revision of the current settlement agreement and consent order in *EDF* v. *Reilly* (Memorandum in Support of Motion of Intervenors Alabama Power Company, *et al.*, and SRP, *et al.*, for Modification of Order Granting Joint Motion to Extend Deadline, August 1, 1989. (Both documents have been placed in Docket No. A–89–02.)) The EPA will respond to the technical comments following submission of a final report on the WHITEX study by NPS. However, it is appropriate to summarize here the legal and regulatory issues identified by SRP, and present EPA's views on them, to enable more informed participation in the public comment process. The EPA specifically solicits comment on these issues.

A. Scope of the Current Visibility Regulations

The SRP asserts that the type of visibility impairment in the Grand Canyon is a "homogeneous regional haze," and thus beyond the scope of EPA's current visibility regulations, which are allegedly limited to "plume blight." The EPA disagrees with this contention. The current regulations focus on impairment due to discrete, discernible plumes, but they are not limited to "plume blight." Rather, as SRP acknowledges, the visibility rules regulate any impairment that "can be traced to a single existing stationary facility or small group of * * * facilities" (45 FR 80085, col. 3). Thus, it appears that the core of SRP's argument is the claim that impairment in the Grand Canyon cannot, in fact, be attributed to NGS.

B. Attribution of Impairment to a Significant Contributor

The SRP argues that a finding of reasonable attribution cannot be made unless one source (or a small group of sources) is the sole contributor to visibility impairment. In support of this view, SRP states that control of one source would result in significant improvement in visibility only if the impairment was being caused only by that source, whereas if many sources are contributing, all must be controlled to result in improved visibility. The EPA disagrees, because SRP's position is flawed logically, and assumes key facts that the WHITEX data indicate are untrue, or which must await a BART analysis. Specifically, if NGS is a significant contributor to wintertime impairment in the Grand Canyon, notwithstanding that other sources may also contribute to the impairment, it follows that the addition of emissions controls at NGS alone may result in significant improvement in visibility. In addition, as discussed above, the WHITEX data indicate that NGS is, in fact, a significant contributor to wintertime impairment in the Grand Canyon. Thus, in today's notice, EPA has preliminarily determined that the impairment in question may be reasonably attributable to NGS. Whether control of NGS alone would result in a significant improvement in visibility will be addressed in depth by the BART analysis that EPA will conduct, and is not at issue here.

C. Attribution Techniques

The SRP and Alabama Power Company, *et al.*, also claim that the visibility regulations prohibit EPA from basing a finding of reasonable attribution on the WHITEX study, pointing to 40 CFR 51.301(s), which defines "reasonably attributable" as "attributable by visual observation or any other techniques the State deems appropriate." In their view, the rules on their face authorize only States, and not EPA, to use techniques other than visual observation to make a reasonable attribution decision.

The EPA disagrees with this view. The part 51 visibility regulations, including the definition in question, contain numerous references to the duties of "States" in the SIP planning process for the obvious reason that those regulations' principal purpose is to set forth the requirements that SIP's must meet to comply with the regulations. In this instance, however, Arizona has defaulted on its responsibility, as it has failed to submit a visibility SIP or any portion thereof. Consequently, EPA has an obligation under section 110(c)(1)(A) of the Act to promulgate such visibility measures as may be necessary to fulfill the requirements of the visibility regulations at 40 CFR 51.300 *et seq.* In so doing, EPA stands in the shoes of the defaulting State, and all of the rights and duties that would otherwise fall to the State accrue instead to EPA. Thus, in this instance, EPA is in effect acting as a "State," and may utilize any attribution technique it deems appropriate, not just visual observation. (Moreover, there is no inherent reason why EPA should be limited to visual observation when it acts under section 110(c) if a State is not so limited in developing a SIP.) Similarly, 40 CFR 51.302(c)(4)(i) provides that the "State" must identify and analyze for BART any source as to which a reasonable attribution finding is made. Nevertheless, where EPA is acting in place of the "State" under section 110(c), these duties, as well as other duties of "States" under the part 51 visibility regulations, fall to EPA. In this case, EPA has found that the Arizona SIP is deficient for failing to meet the requirements of 40 CFR 51.302, including reasonable attribution and BART requirements, and has disapproved the SIP for that failure (51 FR 3046, 3048 (January 23, 1986); 52 FR 45132, 45133). The EPA believes that its position represents a reasonable interpretation of the Act and its own regulations, and is fully in keeping with the language, goals, and purposes of the Act and those regulations. However, EPA solicits comments on whether it would be appropriate to make changes in the definitional provisions of 40 CFR part 51 in order to provide additional clarification on EPA's interpretation that the Administrator, like a "State," may utilize whatever techniques he deems appropriate in making "reasonable attribution" findings in promulgating a plan under section 110(c) of the Act. After the close of the comment period that commences today, EPA may proceed to make clarifying changes without further public notice.

D. Sequence of Reasonable Attribution and BART Decisions

The SRP and Alabama Power Company, *et al.*, assert that, with respect to visibility impairment in the Grand Canyon, EPA has no authority to conduit a BART analysis or propose or promulgate emissions limitations representing BART until (1) the Administrator has made a final reasonable attribution decision, and (2) the State has been given an opportunity to conduct its own BART analysis. The EPA disagrees with these assertions because they seriously misread the applicable statutory and regulatory requirements.

Regarding the purported need for a "final" attribution determination before proceeding to a BART analysis, there is no support in the regulations for the notion that EPA must proceed in this fashion. Indeed, 40 CFR 51.302(c)(4) speaks of a single requirement to "identify and analyze for BART." Because of a need for additional time, the court in *EDF* v. *Reilly* has granted the parties' joint request that EPA be given additional time to conduct a BART analysis and issue a proposal on the need for BART, but the regulations do not suggest that it is necessary to formalize this voluntary bifurcation of a single decision, and make a "final" determination on the first portion before proceeding to the second. Nor is it necessary to proceed in the fashion these commenters suggest in order to satisfy the rulemaking requirements of the Act or the Administrative Procedure Act, because neither a "proposed" nor a "final" reasonable attribution determination is a promulgated rule or other "final action" within the meaning of those statutes, and is not subject to judicial review. Rather, it is a preliminary finding that may lead to a final rule or other final action (i.e., a final decision that emission limitations representing BART are unnecessary, or the imposition of such limitations) that is subject to review.

Regarding the purported need to afford Arizona an opportunity to perform its own BART analysis, there is likewise no basis for such a requirement. As explained above, the prerequisite for remedial action by EPA to promulgate appropriate FIP measures under section 110(c)(1)(A) of the Act has already been met because Arizona failed completely to submit any visibility SIP provisions. Moreover, EPA has already issued a notice of SIP deficiency and disapproved the State's SIP for this reason. No other preliminary steps are necessary under the Act.

BART Analysis

Once impairment has been certified by the FLM and the impairment has been reasonably attributed to a specific source(s), a State (or EPA if the State's visibility protection program addressing BART has not been approved and a FIP has been promulgated instead) is required by the visibility regulations at 40 CFR 51.302(c)(4)(i) to analyze the facility for BART.

Pursuant to 40 CFR 51.302(c)(4)(iii), the procedure that EPA will use to conduct the BART analysis for NGS is found in "Guidelines for Determining Best Available Retrofit Technology Analysis for Coal-Fired Power Plants and Other Existing Stationary Facilities" (EPA-450/3-80-009b). A copy of this document has been placed in the docket established for this rulemaking. In analyzing a facility for BART, the following must be considered: the costs of compliance, the energy and nonair quality environmental impacts, any

existing pollution control technology in use at the facility, the remaining useful life of the plant, and the degree of improvement in visibility anticipated to result from application of controls (see 40 CFR 301(c)). According to section 169A(c)(2) of the Act, an exemption from BART requirements may only be granted if NGS can demonstrate that the facility is located at such a distance from the Class I area so as not to contribute to significant visibility impairment in that area.

Format for Remedial Action

With respect to implementation of other visibility requirements, because of the large number of States involved and the ongoing nature of the regulatory requirements, EPA deemed it appropriate to promulgate generic Federal implementing regulations and insert them into the SIP's of the affected States. See, e.g., 40 CFR 52.26 (visibility monitoring strategy, implementing 40 CFR 51.305); 40 CFR 52.27 and 52.28 (visibility new source review, implementing 40 CFR 51.307); 40 CFR 52.29 (implementing long-range strategies, 40 CFR 51.306); and 40 CFR 52.145 (b) and (c) (incorporating these provisions into the Arizona SIP). With respect to source attribution and BART, however, Arizona is the only State for which remedial Federal measures are even potentially needed at this time. Accordingly, EPA proposes to simply follow the appropriate provisions of the part 51 visibility regulations in making source attribution and BART findings regarding NGS and, if those findings result in the imposition of actual emissions limitations representing BART, to amend the visibility FIP for Arizona in 40 CFR 52.145 to incorporate such limitations.

The EPA deems it appropriate to interpret references to the rights, duties, and responsibilities of a "State" under 40 CFR part 51, subpart P, as referring to the "Administrator" in the case of a plan promulgated under section 110(c) of the Act. However, as noted above, EPA is soliciting comments on whether it would be appropriate to revise the definitional provisions of 40 CFR part 51 to clarify that the Administrator, like a "State," may utilize whatever techniques he deems appropriate in making "reasonable attribution" findings.

Solicitation of Comments

The EPA solicits comments on the proposed finding that, because of the major modifications completed at GP's pulp and paper mill in Woodland, Maine, and the additional control measures required by the PSD permit issued to this facility, it is unnecessary at this time to include BART or other control measures in the FIP for the State of Maine.

In addition, EPA solicits comments on the proposed finding that because EPA does not have data at this time to attribute the impairment in Canyonlands National Park to any source, it is unnecessary at this time to revise the FIP for the State of Utah to include BART requirements or other control measures.

Also, EPA solicits comments on the proposed finding that a portion of the visibility impairment in Grand Canyon National Park is attributable to NGS.

Finally, EPA solicits comments on the legal and regulatory issues noted above, and on whether to clarify the visibility regulations by specifying that the Administrator as well as the States may use any attribution technique he deems appropriate in determining reasonably attributable impairment.

The EPA has established a docket for this proposal, Docket Number A-89-02. The docket is an organized and complete file of all significant information submitted to or otherwise considered by EPA during this proceeding. This docket will serve as the record in the case of judicial review under section 307(b) of the Act, 42 U.S.C. 7607(b).

Classification

The Administrator certifies pursuant to the provisions of 5 U.S.C. 605(b) that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

The proposed rules do not contain any information collection requirements subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980, U.S.C. 3501 et seq.

The proposed rule implements part of subpart P (40 CFR 51.300 through 51.307) which was promulgated on December 2, 1980. An economic impact assessment was made for promulgation of subpart P and can be found in Docket Number A-79-40.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because: (1) The national annualized costs total less than $100 million; (2) the action does not cause a major increase in prices or production costs; and (3) the action does not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets. This regulation was submitted to OMB for review as required by Executive Order 12291. Any written communication between OMB and EPA pertaining to the standards has been put in Docket Number A-89-02.

Dated: August 29, 1989.

F. Henry Habicht,

Acting Administrator.

[FR Doc. 89-20762 Filed 9-1-89; 8:45 am]

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

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[4] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Vol. 54 No. 171

federal register

Wednesday
September 6, 1989

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-89-009]

RIN 0581-AA19

Tobacco Inspection; Fees and Charges for Inspection and Grading of Imported Tobacco

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Tobacco Adjustment Act of 1983, as amended requires the Secretary of Agriculture to fix and collect fees and charges for the inspection and grading of all tobacco offered for importation into the United States, except cigar and oriental tobacco. This action would increase the fees charged to importers from $.0035 per pound to $.0040. The increased fees are necessary in order to cover the Department's costs of providing services under the Act.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice was given (54 FR 27883, July 3, 1989) that the Department proposed to amend the regulations governing the inspection of all imported tobacco, except cigar and oriental tobacco, to increase the fees for inspection and grading.

Interested parties were given an opportunity to comment on the proposed rule. No comments were received. This action makes final the fee increase as proposed. This fee increase is necessary to cover the cost of providing the service, including administrative and supervisory costs. The authority for this rule is contained in the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r).

Imported tobacco is inspected for grade and quality using the same standards applied to tobacco marketed through a warehouse in the United States. Fees are assessed to cover the cost of providing this grading service. The fee for grading imported tobacco has been $.0035 per pound since 1984.

The Department proposed to increase the fee to $.0040 per pound. This fee was determined after an annual review and analysis was conducted of the financial status of the program. The major factors generating the need for additional funds are increases in salaries, travel allowances and overall administrative costs since 1984.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" because it does not meet any of the criteria established for major rules under the Executive order.

Additionally, in conformance with the provisions of Public Law 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact on small business. Few, if any, of the firms which would be affected by this rule are small businesses. The Administrator, Agricultural Marketing Service, has determined that this action would have no significant economic impact upon any entity, small or large, and would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this revision would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and it would not alter the market share or competitive positions of small entities relative to large entities. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Tobacco.

Accordingly, the Department hereby amends the regulations in 7 CFR part 29, subpart B, as follows:

PART 29—[AMENDED]

1. The authority citation for part 29, Subpart B, continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

Subpart B—Regulations

2. Section 29.500 is amended by revising paragraph (a) to read as follows:

§ 29.500 Fees and charges for inspection and testing of imported tobacco.

(a) The fee for inspection of imported tobacco is $.0040 per pound, and shall be paid by the importer. This inspection fee applies to all tobacco imported into the United States except as provided in § 29.400. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service".

* * * * *

Dated: August 30, 1989.

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 89-20831 Filed 9-5-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 915

[Docket No. FV-89-045FR]

Avocados Grown in South Florida; Minimum Weight and Diameter Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule with appropriate corrections the provisions of an interim final rule which changed the minimum maturity requirements in effect on a continuous basis for Florida and imported avocados. That rule changed the maturity shipping schedules for the Hardee, Nadir, and Pinkerton varieties of avocados, and the maturity schedule in Table I of the regulation to synchronize it with the 1989-90 calendar years. The corrections incorporated into the final rule make the shipping periods for the Black Prince variety sequentially correct, delete the Kosel and Fairchild varieties from the maturity schedule, and add the Chica and Gossman varieties to the maturity schedule. The final rule is designed to promote orderly

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marketing conditions for Florida and imported avocados in the interest of growers and consumers by assuring shipment of only mature fruit, thereby creating and maintaining consumer satisfaction and avocado sales.

DATES: Section 915.332 is adopted as a final rule effective September 6, 1989. This section is applicable to avocados imported into the United States under § 944.31 as of September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Marketing Order No. 915, both as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 34 handlers subject to regulation under the marketing order for avocados grown in South Florida, and an estimated 20 importers who import avocados into the United States. In addition, there are approximately 330 avocado producers in South Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these avocado handlers, importers, and producers may be classified as small entities.

An interim final rule was issued June 2, 1989, and published in the **Federal Register** (54 FR 24322, June 7, 1989), changing the maturity requirements for avocados grown in Florida under § 915.332, and for imported avocados under § 944.31. That rule provided that interested persons could file written comments through July 7, 1989. A comment was filed by the committee identifying provisions in the interim final rule which needed correction in this final rule. The corrections incorporated in this action: (1) Change the Black Prince variety shipping period date beginning the 4th Monday of September to the 2nd Monday of September so that it is sequentially correct; (2) delete the Kosel and Fairchild varieties from the maturity schedule since they are no longer shipped; and (3) add the Chica and Gossman varieties to the maturity schedule since they are expected to be shipped this season. Since these corrections reflect the original recommendations of the committee, are based upon shipping data and maturity test data developed last season and rectify inadvertent errors made in the interim final rule, it is necessary and appropriate to incorporate such changes in this final rule.

The interim final rule revised Table I appearing in paragraph (a)(2) of § 915.332 to change the maturity requirements for the Hardee, Nadir, and Pinkerton varieties of avocados, based on last season's test data on the maturity characteristics of these varieties. The test data indicate that the Hardee and Nadir varieties mature later in the season, the Hardee variety matures at a lower weight, and the Pinkerton variety matures sooner in the season than the dates currently reflected in the shipping schedule. In recognition of these factors, the seasonal shipping schedule for the Hardee variety was shifted two weeks later into the season, with the starting date moved from the second Monday in June to the fourth Monday in June. Also for the Hardee variety, the minimum weight requirement is reduced by two ounces, with starting minimum weight reduced from 18 to 16 ounces. For the Nadir variety, the shipping schedule was shifted one week later into the season, with the starting date moved from the third Monday in June to the fourth Monday in June. For the Pinkerton variety, shipments are permitted one week earlier beginning the first Monday in October. Also, the interim final rule made calendar date adjustments in the varietal shipping schedules in the Florida avocado maturity regulation to synchronize them with the 1989–90 calendar years.

The Avocado Administrative Committee (committee) recommended the specified maturity requirements for 1989–90 season Florida avocado shipments, at its meeting of April 12, 1989. The committee works with the Department in administering the marketing agreement and order. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Section 8e of the Act (7 U.S.C. 608e–1) requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. The Act further provides that the requirements on imports shall not become effective until giving not less than three days notice.

Avocado import maturity requirements are in effect on a continuous basis under § 944.31 (7 CFR § 944.31), issued under Section 8e of the Act. That section provides that minimum weight and diameter maturity requirements for avocados imported into the United States from northern hemisphere countries be the same as such maturity requirements specified in § 915.332 for Florida avocados, and that the requirements contained in paragraph (a)(2) of § 915.332 do not apply to imported avocados grown in the southern hemisphere. Since the interim final rule changed the minimum weight and diameter maturity requirements for Florida produced avocados, these same changes apply to imported avocados grown in northern hemisphere countries. No change is needed in the text of the import regulation by this action.

Further, avocado import grade requirements are currently in effect on a continuous basis under § 944.28 (7 CFR § 944.28). A minimum grade requirement of U.S. No. 2 is also currently in effect on a continuous basis for Florida avocados under § 915.306 (7 CFR § 915.306). Since this action does not change the grade requirements for Florida avocados, the avocado grade import requirements appearing in § 944.28 are not affected.

Some Florida avocado shipments are exempt from the maturity requirements, including gift fruit shipments of up to 20 pounds in individually addressed containers. Florida avocados utilized in commercial processing are not covered by the maturity requirements. In addition, the Florida and import avocado maturity and Florida and import grade requirements permit shipments up to 55 pounds of avocados exempt from such requirements.

The maturity requirements in the final rule reflect the committee's and the Department's appraisal of the appropriate maturity requirements for domestic and import shipments of avocados. The Department's view is that the requirements do not adversely impact growers, handlers, and importers. The application of the maturity requirements to both Florida and imported avocados over the past several years have helped to assure that only mature avocados are shipped to fresh markets. The committee considers the Florida avocado maturity requirements to be necessary to improve grower returns.

Similar maturity requirements have been in effect for several seasons, and Florida avocado growers and handlers have found such requirements beneficial in the successful marketing of the avocado crop. While compliance with these maturity requirements affect handlers' and importers' costs, these costs would be offset by the benefits derived from the more successful marketing of the crop.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the interim final rule, as published in the **Federal Register** (54 FR 24322) on June 7, 1989, along with the corrections herein specified, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This final rule maintains handling requirements currently in effect, with appropriate corrections incorporated, for Florida and imported avocados; (2) Florida avocado handlers are aware of these handling requirements, which were recommended by the committee at a public meeting and they will need no additional time to continue complying with such requirements; (3) the grade and maturity requirements for imported avocados are mandatory under section 8e of the Act; and (4) the interim final rule provided a 30-day comment period, and the comment received is fully addressed in this final rule.

List of Subjects in 7 CFR Part 915

Marketing agreements and orders, avocados, Florida.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

Note: This section will appear in the Code of Federal Regulations.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 915.332, which was published in the **Federal Register** (54 FR 24322, June 7, 1989), is adopted as a final rule with the following changes. In § 915.332, Table I in paragraph (a)(2) is amended by: (1) Removing from the table the Kosel and Fairchild varieties; (2) changing on the table for the Black Prince variety the effective period entry "4th Mon. Sept" to "2nd Mon. Sept"; and (3) adding to the table the Chica variety between the Simpson and Choquette varieties, and the Gossman variety between the Zio (P) and Wagner varieties reading as follows:

§ 915.332 Florida avocado maturity regulation.

(a) * * *
(2) * * *

TABLE I

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
*	*	*	*	*
Black Prince	2nd Mon. Aug	4th Sun. Aug	26	4 1/16
	4th Mon. Aug	2nd Sun. Sept	23	3 15/16
	2nd Mon. Sept	1st Sun. Oct	16	3 9/16
*	*	*	*	*
Chica	3rd Mon. Sept	1st Sun. Oct	12	3 5/16
	1st Mon. Oct	3rd Sun. Oct	10	3 3/16
*	*	*	*	*
Gossman	4th Mon. Nov	4th Sun. Dec	11	3 1/16
*	*	*	*	*

* * * * *

Dated: August 30, 1989.

William J. Doyle,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-20809 Filed 9-5-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 932 and 944

[Docket No. FV-89-087]

Olives Grown in California and Imported Olives; Interim Final Rule Establishing Grade and Size Requirements for Limited Use Styles of California Processed Olives for the 1989–90 Season, and Conforming Changes in the Olive Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes grade and size requirements for California processed olives used in the production of limited use styles of olives such as wedges, halves, slices, or segments and establishes similar requirements in the olive import regulation to bring that regulation into conformity with the domestic requirements. The grade and size requirements are the same as implemented last season. Olives used in limited use styles are too small to be desirable for use as whole or pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles. Their use in such products over the years has helped the California olive industry meet the increasing market needs of the food service industry. The requirements for domestic olives were unanimously recommended by the California Olive Committee (committee), which works with the Department in administering the marketing order program for olives grown in California. The establishment of such requirements for imported olives is required pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: This interim final rule becomes effective September 6, 1989. Comments which are received by October 6, 1989, will be considered prior to issuance of a final rule.

ADDRESSES: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the docket number and the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96458, Room 2530-S, Washington, DC 20090-6456; telephone (202) 475-3862.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 932 (7 CFR part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are seven handlers of California olives subject to regulation under the order and approximately 1,400 producers in California. Approximately 25 importers of olives are subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Most but not all of the olive producers and importers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. About 75 percent of the production comes from the San Joaquin Valley and 25 percent from the Sacramento Valley.

Olive production has fluctuated from a low of 24,200 tons during the 1972-73 crop year to a high of 146,500 tons during the 1982-83 crop year. The committee indicated that 1988 production totalled about 84,600 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. The industry expects the 1989-90 crop to be about 97,500 tons.

The primary use of California olives is for canned ripe olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. Very few California olives are exported.

This action will allow handlers to market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the California olive supply, facilitate market expansion, and benefit both growers and handlers.

This interim rule modifies § 932.153 of Subpart—Rules and Regulations (7 CFR 932.108-932.161). The modification establishes grade and size regulations for 1989-90 crop limited use size olives. The modification is issued pursuant to paragraph (a)(3) of § 932.52 of the order. This rule also makes necessary conforming changes in the olive import regulation (Olive Regulation 1; 7 CFR 944.401). The import regulation is issued pursuant to section 8e of the Act. Section 8e provides that whenever grade, size, quality, or maturity provisions are in effect for specified commodities, including olives, under a marketing order, the same or comparable requirements must be imposed on the imports.

Paragraph (a)(3) of § 932.52 of the marketing order provides that processed olives smaller than the sizes prescribed for whole and pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in various size categories. The section further provides for the establishment of size tolerances.

To allow handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives, the committee recommended that grade and size requirements again be established for limited use olives for the 1989-90 crop year (August 1, 1989, through July 31, 1990). The grade requirements are the same as those applied during the 1988-89 crop year, as are the sizes and the size tolerances. Permitting handlers to use small olives in the production of limited use style canned olives will have a positive impact on industry returns. In the absence of this action, the undersized fruit would have to be used for non-canning uses, like oil, for which returns are lower. Except for the changes necessary in the effective date, the provisions, hereinafter set forth in § 932.153, are the same as those established last season.

Paragraph (b)(12) of § 944.401 of the olive import regulation allows imported bulk olives which do not meet the minimum size requirements for canned whole and pitted ripe olives to be used for limited use styles if they meet specified size requirements. Continuation of the limited use authorization for California olives by this interim rule requires that similar changes be made in paragraph (b)(12) of § 944.401 to keep the import regulation in conformity with the applicable domestic requirements. These conforming changes will benefit importers because they will be able to import small-sized olives for limited use during the 1989-90 season which ends July 31, 1990.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities because it provides handlers and importers more marketing flexibility.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that authorizing the use of smaller olives in the production of limited use styles will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Compliance with this action will require no special preparation by handlers and importers; (2) it is important that these requirements apply to as much of the 1989-90 marketing season as possible; (3) the olive import requirements are mandatory under section 8e of the Act; (4) this action relieves restrictions on handlers and importers; and (5) the rule provides a 30-day comment period, and any comments received will be considered prior to finalization of this interim final rule.

List of Subjects

7 CFR Part 932

California, Marketing agreements and orders, Olives.

7 CFR Part 944

Fruits, Import regulations, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR parts 932 and 944 are amended as follows.

Note: These sections will appear in the Code of Federal Regulations.

1. The authority citations for 7 CFR parts 932 and 944 continue to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 932—OLIVES GROWN IN CALIFORNIA

2. Section 932.153 is revised to read as follows:

§ 932.153 Establishment of grade and size requirements for processed 1989-90 crop year olives for limited use.

(a) *Grade.* On and after September 6, 1989, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1989, and meet the grade requirements specified in paragraph (a)(1) of § 932.52 as modified by § 932.149.

(b) *Sizes.* On and after September 6, 1989, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were harvested during the period August 1, 1989, through July 31, 1990, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1989, or after July 31, 1990.

(2) Variety Group I olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh 1/90 pound: *Provided,* That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/90 pound.

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh 1/140 pound: *Provided,* That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/140 pound.

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh 1/180 pound: *Provided,* That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/180 pound.

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh 1/140 pound: *Provided,* That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/140 pound.

PART 944—FRUITS; IMPORT REGULATIONS

5. Section 944.401 is amended by revising the introductory text of paragraph (b)(12) to read as follows:

§ 944.401 Olive Regulation 1.

* * * * *

(b) * * *

(12) Imported bulk olives when used in the production of canned ripe olives must be inspected and certified as prescribed in this section. Imported bulk olives which do not meet the applicable minimum size requirements specified in paragraphs (b)(2) through (b)(11) of this section may be imported during the period September 6, 1989, through July 31, 1990, for limited use, but any such olives so used shall not be smaller than the following applicable minimum size:

* * * * *

Dated: August 30, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-20811 Filed 9-5-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 993

[FV-89-082FR]

Expenses and Assessment Rate for Dried Prunes Produced in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the 1989-90 crop year under Marketing Order No. 993 for dried prunes produced in California. Authorization of this budget will allow the Prune Marketing Committee (Committee), the agency responsible for local administration of the order, to

incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1989 through July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 993 (7 CFR part 993), hereinafter referred to as the "order," regulating the handling of dried prunes produced in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 16 handlers of prunes produced in California subject to regulation under the California prune marketing order and approximately 1,200 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of prune handlers and producers may be classified as small entities.

The marketing order for California prunes requires that the assessment rate for a particular crop year shall apply to all assessable prunes handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of regulated prunes. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are, therefore, in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of assessable prunes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and assessment rate are usually acted upon by the Committee shortly before a crop year begins, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on June 27, 1989, and unanimously recommended 1989–90 crop year expenditures of $250,895 and an assessment rate of $1.39 per salable ton of prunes. In comparison, 1988–89 crop year budgeted expenditures were $248,320 and the assessment rate was $1.60 per ton. Assessment income for 1989–90 is estimated at $250,895 based on a crop of 180,500 salable tons of prunes.

While this final action imposes some additional costs on handlers of California prunes, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 993.340 and is based on Committee recommendations and other available information. A proposed rule was published in the **Federal Register** on August 2, 1989 (54 FR 31847). Comments on the proposed rule were invited from interested persons until August 14, 1989. No comments were received.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This action should be expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 993

California, Dried prunes, and Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR Part 993 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 993.340 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 993.340 Expenses and assessment rate.

Expenses of $250,895 by the Prune Marketing Committee are authorized, and an assessment rate payable by each handler in accordance with § 993.81 is fixed at $1.39 per ton for salable dried prunes for the 1989–90 crop year ending July 31, 1990.

Dated: August 30, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–20612 Filed 9–5–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 171

[T.D. 89–83]

Customs Regulations Amendment Relating to the Definition of Fraud Under 19 U.S.C. 1592

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to incorporate a revision of the definition of "fraud" in the penalty guidelines for violations of 19 U.S.C. 1592 published as appendix B to part 171 (19 CFR 171, appendix B). The definition of "fraud" is changed by removing the requirement that intent to defraud the revenue of the United States be proven as an element of the violation. This change brings the Customs guidelines into conformity with the current legal requirements applicable to the Government's burden of proof in civil fraud cases. Under the new definition, the critical element necessary to prove the violation is the intent to commit the fraudulent act or omission. The document also modifies the definition of "gross negligence" to maintain the distinctions between the two types of violations.

EFFECTIVE DATE: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra L. Gethers, Regulatory Procedures and Penalties Division (202–566–8317).

SUPPLEMENTARY INFORMATION

Background

Appendix B to part 171, Customs Regulations (19 CFR part 171, appendix B), sets forth the revised penalty guidelines for violations of 19 U.S.C. 1592. Section 1592 imposes monetary penalties and other sanctions for entering, introducing, or attempting to enter or introduce any merchandise into the commerce of the U.S. by means of any document, written or oral statement, or act which is material and false, or any omission which is material. The guidelines provide for, among other things, mitigation of the monetary penalty according to the degree of culpability involved in the violation of section 1592.

Section (B) of the revised penalty guidelines in appendix B to part 171 lists and defines three degrees of culpability as: negligence, gross negligence, and fraud. In a **Federal Register** notice of December 10, 1986, (51 FR 44483), the Customs Service announced a proposed amendment of the definition of fraud in these guidelines. The guidelines are intended to provide internal guidance to Customs employees, and are not a part of the Customs Service Regulations. Although they are not technically subject to the requirements of the Administrative Procedures Act (5 U.S.C. 553(b)(A)), members of the public were offered the opportunity to submit comments on the proposed amendment to the definition.

As originally proposed, the definition for fraud under section 1592 would have been changed to read:

> A violation is determined to be fraudulent if the material false statement or act in connection with the transaction was committed (or omitted) knowingly, i.e., was done voluntarily and intentionally, and not because of mistake or accident or other innocent reason, as established by clear and convincing evidence.

Discussion of Comments

The Customs Service received sixty-five comments from members of the public. The great majority of these opposed some aspect of the proposed redefinition.

Comment: Several comments expressed concern that by placing the phrase, "as established by clear and convincing evidence" after the phrase, "and not because of mistake or accident or other innocent reason", Customs was changing the burden of proof so that an alleged violator would have to prove his innocence in order not to be accused of fraud.

Response: It was not the intention of Customs to change the Government's burden of proof in such instances. Accordingly, a modification of the definition has been made to clarify this point.

Comment: That "fraud", in general, requires intent to commit an act with knowledge of its consequences and with intent to bring about such consequences.

Response: Since section 1592 is a civil statute, the elements of fraud that must be established for penalties thereunder differ in some respects from those relating to criminal fraud. The required element of intent in civil fraud cases is intent that a representation be made, that it be directed to a particular person or class of persons, that it convey a certain meaning, that it be believed and that it shall be acted upon in a certain way.

By amending the definition of fraud under the guidelines, Customs merely is adhering to the general principle applied in civil fraud cases that "the intent which becomes important is the intent to deceive, to mislead, to convey a false impression." Thus, the intent under the new definition is directed to the making of the false representation or omission, as opposed to causing the consequences of such representation or omission (e.g. duty loss, quota violation, etc.).

Comment: The proposed change to the definition of fraud destroys the distinction between fraud and gross negligence.

Response: Under the new definition of fraud, the degree of culpability of fraud and gross negligence will remain distinguishable. For fraud, Customs still will be required to establish by clear and convincing evidence that the violator knew at the time of the import transaction involved, that the material false statement was made or that a material omission had occurred.

Inasmuch as the phrase, "deliberate intent to defraud the revenue or otherwise violate the law" will not be a part of the new definition of fraud under the guidelines, the phrase, "but without intent to defraud the revenue or violate the laws of the United States", is being eliminated from the definition of "gross negligence" under the guidelines. The latter language no longer will be needed to distinguish the definition of "gross negligence" from the succeeding definition of "fraud" set forth in the guidelines.

Comment: That Congress intended that "fraud" under section 1592, include the element of "intent to defraud the revenue or intent to violate the law", since this was a part of the definition of fraud that existed in the Customs guidelines at the time of the 1978 amendment of the statute.

Response: Customs believes that if Congress had intended that Customs not be free to adopt a definition consistent with the current trends in the law with respect to the degrees of culpability specified in the statute, Congress would have included a definition in the statute. For example, to eliminate the possibility that a lesser burden of proof, i.e. "preponderance of the evidence," might be employed in civil forfeiture cases, Congress specifically required that section 1592 violations based upon fraud be established by the Government by "clear and convincing evidence." (19 U.S.C. 1592(e)(2)) Thus, by its inaction, Congress preserved the agency's ability to define the terms.

Comment: That small importers, brokers, as well as multinational companies, while having good intentions will be more susceptible to penalties and seizures under section 1592 based upon fraud.

Response: Customs does not believe that the size, frequency, or complexity of the importer's business will have any bearing on the decision of whether or not to allege fraud in the prosecution of violations of section 1592. The actions, rather than the identities, of the parties are the determining factors considered by Customs when seizure or other actions are initiated for violations of section 1592.

Determination

After consideration of all the comments received in response to the publication of the notice of proposed amendment, and upon further review of the matter, it has been determined to adopt the amendments with the modifications discussed.

Executive Order 12291

This is not a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that these amendments will not have a significant impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 171

Customs duties and inspection, Administrative practice and procedure, Law enforcement, Penalties, Seizures and forfeitures.

Amendment to the Regulations

Part 171 Customs Regulations (19 CFR Part 171), is amended as set forth below:

PART 171—FINES, PENALTIES AND FORFEITURES

1. The authority citation for Part 171 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624 * * *.

2. Appendix B to part 171 is amended by revising paragraphs (B)(2) and (B)(3) to read as follows:

Appendix B to Part 171—Customs Regulations, Revised Penalty Guidelines, 19 U.S.C. 1592

* * * * *

(B) * * *

(2) *Gross Negligence.* A violation is determined to be grossly negligent if it results from an act or acts (of commission or omission) done with actual knowledge of or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligations under the statute.

(3) *Fraud.* A violation is determined to be fraudulent if the material false statement or act in connection with the transaction was committed (or omitted) knowingly, i.e., was done voluntarily and intentionally, as established by clear and convincing evidence.

* * * * *

William von Raab,

Commissioner of Customs.

Approved: June 7, 1989.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89-20797 Filed 9-5-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject To Certification; Selenium Disulfide Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by CEVA Laboratories, Inc., providing for a change from prescription to over-the-counter (OTC) distribution of a selenium disulfide suspension for use on dogs as a cleansing shampoo and as an agent for removing skin debris associated with dry eczema, seborrhea, and nonspecific dermatoses.

EFFECTIVE DATE: September 6, 1989.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: CEVA Laboratories, Inc., 7101 College Blvd., Suite 610, Overland Park, KS 66210, filed a supplement to NADA 8-422 providing for OTC distribution of a selenium disulfide suspension for use on dogs as a cleansing shampoo and as an agent for removing skin debris associated with dry eczema, seborrhea, and nonspecific dermatoses. The supplement is approved and the regulations in 21 CFR 524.2101 are amended in paragraph (c) and removed in paragraph (d) to reflect the approval. The basis for approval is stated in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.2101 [Amended]

2. Section 524.2101 *Selenium disulfide suspension* is amended in the introductory text of paragraph (c) by removing "and 023851" and adding in its place "023851, and 050604", and by removing paragraph (d).

Dated: August 24, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-20847 Filed 9-5-89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Fenbendazole

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co., providing for safe and effective use of Safe-Guard™ (fenbendazole) Type A articles to make Type C free-choice vitamin/mineral feeds for cattle.

EFFECTIVE DATE: September 6, 1989.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202-206 North, P.O. Box 2500, Somerville, NJ 08876-1258, filed supplemental NADA 137-600 providing for use of 4 or 20 percent Safe-Guard™ (fenbendazole) Type A articles to make 1.9- and 5-gram-per-pound fenbendazole vitamin/mineral free-choice feeds for use as cattle anthelmintics. The feed is given for 3 to 6 days for a total dose of 5 milligrams fenbendazole per kilogram of body weight (2.27 milligrams per pound) for the removal and control of lungworms and certain stomach and intestinal worms. The supplemental application is approved and the regulations in 21 CFR 558.258(c) are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Fenbendazole is a new animal drug used in a Type A article to make a Type C feed. It is a Category II drug which, as provided in 21 CFR 558.4, requires an approved form FDA-1900 for making a Type C feed from a Type A article as in this NADA as amended and in the regulations in 21 CFR Part 558 as amended.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Section 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.258 is amended by adding new paragraph (c)(3) to read as follows:

§ 558.258 Fenbendazole.

* * * * *

(c) * * *

(3) It is used in free-choice cattle feed as follows:

(i) *Amount.* 5 milligrams fenbendazole per kilogram body weight (2.27 milligrams per pound).

(ii) *Indications for use.* For the removal and control of infections of lungworms (*Dictyocaulus viviparus*), barberpole worms (*Haemonchus contortus*), brown stomach worms (*Ostertagia ostertagi*), small stomach worms (*Trichostrongylus axei*), hookworms (*Bunostomum phlebotomum*), thread-necked intestinal worms (*Nematodirus helvetianus*), small intestinal worms (*Cooperia oncophora* and *C. punctata*), bankrupt worms (*Trichostrongylus colubriformis*), and nodular worms (*Oesophagostomum radiatum*) in cattle.

(iii) *Limitations.* Feed a total of 5 milligrams of fenbendazole per kilogram (2.27 milligrams per pound) of body weight to cattle over a 3 to 6 day period. Retreatment may be needed after 4 to 6 weeks. Do not slaughter within 13 days following last treatment. Do not use in dairy cattle of breeding age. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

(iv) May be fed in a Type C feed as follows:

	Percent	International Feed No.
(A) Ingredient:		
Copper sulfate	0.45	6-01-720
Dried Cane Molasses	3.12	4-04-695
Monosodium phosphate	31.16	6-04-288
Salt (sodium chloride)	59.00	6-04-152
Zinc sulfate	0.76	6-05-556
Fenbendazole Type A article (200 grams per kilogram)	5.51	
(B) Ingredient:		
Dicalcium phosphate	32.31	6-00-080
Limestone	17.13	6-02-632
Magnesium oxide	9.79	6-02-756
Zinc sulfate	1.47	6-05-556
Copper sulfate	0.29	6-01-720
Potassium iodide	0.0098	6-03-759
Dried Cane Molasses	0.98	4-04-695
Selenium	0.0002	
Salt	35.93	6-04-152
Fenbendazole Type A article (200 grams per kilogram)	2.09	

(C) The content of any added vitamin and trace mineral may be varied; however, they should be comparable to those used by the firm for other free-choice feeds. Formulation modifications require FDA approval prior to marketing. The amount of selenium must comply with published regulations. For selenium (21 CFR 573.920) up to 120 parts per million in a mixture for free-choice feeding at a rate not to exceed an intake of 3 milligrams per head per day.

Dated: August 29, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-20848 Filed 9-5-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; removal of condition.

SUMMARY: OSMRE is announcing the removal of a condition placed on the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) by the Secretary of the Interior in his conditional approval of the program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This condition, known as condition (b), required Illinois to promulgate regulations or otherwise amend its program to require, that, in permanent impoundments, a minimum of 10 meters of water cover the pit floor or the highest exposed coal seam to prevent oxidation of acid-forming materials. Illinois has now repealed the provision precipitating imposition of the condition, thus rendering the condition moot.

EFFECTIVE DATE: September 6, 1989.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 600 East

Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background
II. Secretary's Findings
III. Public and Agency Comments
IV. Secretary's Decision
V. Procedural Matters

I. Background

On June 1, 1982, the Secretary of Interior conditionally approved the Illinois program. Information pertinent to the general background, revisions, modifications, and amendments to the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883 *et seq.*). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.15, 913.16, and 913.17.

II. Secretary's Findings

As originally submitted to OSMRE, the Illinois program at 62 IAC 1816.103(a)(1) allowed the creation of permanent "last cut lake" impoundments, provided the pit floor and highest exposed coal seam were covered with a minimum of four feet of water. While the Secretary found merit in the general concept of covering acid-forming materials with water to prevent oxidation, he also found that technical studies had demonstrated that a minimum water depth of 9 meters (29.5 feet) was necessary to do so.

Therefore, the Secretary, with the State's concurrence, imposed condition (b) on his approval of the Illinois program. As codified at 30 CFR 913.11(b), condition (b) required the State to submit promulgated regulations or otherwise amend its program to require that the pit floor and highest coal seam be covered with a minimum of 10 meters (33 feet) of water. It also specified that, pending completion of the above, Illinois could not approve impoundments in which these materials would be covered with less than 10 meters of water.

By letter dated March 28, 1986 (Administrative Record No. IL–1028), Illinois submitted a major regulatory reform package, which it subsequently revised and resubmitted on May 22, 1987 (Administrative Record No. IL–1029A). With a few exceptions, the Director approved the revised regulations on October 25, 1988 (53 FR 43137). As part of this package, Illinois repealed 62 IAC 1816.103(a)(1), which originally resulted in the imposition of condition (b), and replaced it with new 62 IAC 1816.102(f), which requires exposed coal seams to be "adequately covered with nontoxic and noncombustible materials." Since this language is identical to that of the corresponding Federal rule at 30 CFR 816.102(f), and since the State has deleted those provisions of its program authorizing the creation of permanent impoundments with less than adequate cover, the Secretary finds that Illinois has satisfied the requirements of 30 CFR 913.11(b).

III. Public and Agency Comments

Pursuant to 30 CFR 732.17(b)(3) and (11)(i), the Director solicited comments on both the March 28, 1986, proposed amendments and the May 22, 1987, revisions from the public and various Federal agencies with an actual or potential interest in the Illinois program (51 FR 23858, May 9, 1986, and 52 FR 24035, June 26, 1987). No substantive comments regarding condition (b), the repeal of 62 IAC 1816.103(a)(1), or the addition of 62 IAC 1816.102(f) were received. Since no one requested an opportunity to testify at a public hearing, none was held.

In addition, as announced in the May 19, 1989, **Federal Register** (54 FR 21630), OSMRE provided a separate public comment period and opportunity to request a public hearing on the removal of condition (b). No comments or request for a hearing were received either during or after this comment period, which closed June 19, 1989.

IV. Secretary's Decision

Based on the above finding, the Secretary is removing the condition of approval of the Illinois program codified at 30 CFR 913.11(b) and is amending 30 CFR part 913 to implement this decision. This final rule is being made effective immediately since consistency of State and Federal standards is required by SMCRA.

V. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. *Executive Order 12291 and the Regulatory Flexibility Act:* On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that the removal of this condition will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 29, 1989.

Scott Sewell,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 913.11 [Removed]

2. Section 913.11 is removed in its entirety.

[FR Doc. 89–20819 Filed 9–5–89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of Army

32 CFR Part 518

[Army Regulation 340–17]

Release of Information and Records From Army Files; Special Designation of Initial Denial Authority; Correction

AGENCY: Department of the Army, DOD.

ACTION: Final rule; correction.

SUMMARY: The Department of the Army published on May 2, 1989, 54 FR 18653 a revision relating to the release of information and records from Army Files. This document corrects the paragraph designation which was incorrectly listed.

FOR FURTHER INFORMATION CONTACT: John O. Roach, II, Army Liaison Officer with the Federal Register, (202) 325–6277.

§ 518.15 [Corrected]

Correction

In FR Doc. 89–10460, published May 2, 1989, on page 18653, the following correction is made to § 518.15 by correctly designating paragraph (a)(4)(xix) as (a)(4)(xxv).

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 89–20977 Filed 9–5–89; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3640-1]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: USEPA announces final approval of a revision to the Wisconsin State Implementation Plan (SIP) for sulfur dioxide (SO_2). The revision consists of the incorporation of section NR 154.12(6) of the Wisconsin Administrative Code (WAC), Milwaukee Sulfur Limitations, into the Wisconsin SIP. The revision sets SO_2 emission limits for large electric utility sources in the City of Milwaukee, and provides a compliance schedule for meeting these limits. USEPA's action is based upon a SIP revision request that was submitted by the Wisconsin Department of Natural Resources (WDNR) on January 23, 1984. A notice of proposed rulemaking on this revision appeared in the August 17, 1984, **Federal Register** (49 FR 32865).

EFFECTIVE DATE: This final rulemaking becomes effective on October 6, 1989.

ADDRESSES: Copies of this revision to the Wisconsin SIP are available for inspection at: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office).

U.S. Environmental Protection Agency,
Region V, Air and Radiation Branch,
230 South Dearborn Street, Chicago,
Illinois 60604.

Copies of this SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses:

U.S. Environmental Protection Agency,
Public Information Reference Unit, 401
M Street, SW., Washington, DC 20460.

Wisconsin Department of Natural
Resources, Bureau of Air
Management, 101 South Webster,
Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886–6034.

SUPPLEMENTARY INFORMATION:

Background

In today's final rulemaking action, USEPA is approving a revision to the Wisconsin SIP consisting of sections NR 154.12(6)(a) and NR 154.12(6)(b) of the WAC NR 154.12(6).[1] Section NR 154.12(6)(a) modifies the SIP to limit the SO_2 emissions of all large (greater than 250 million BTU heat input per hour) electric utility plants in the City of Milwaukee, on which construction or modification was begun prior to December 1, 1983.

This SIP revision specifies emission limits based on the type of fuel used. The emission limits are as follows:

Type of fuel	Emission limit
Solid fossil fuel or coal	3.28 lbs. of SO_2/MMBTU.
Residual fuel oil (fuel oil #6)	1.60 lbs. of SO_2/MMBTU.
All other fuels (fuel oil #2 and natural gas).	0.50 lbs. of SO_2/MMBTU.
Combination of fuels	Weighted average of the individual emission limits for each fuel type, based on the percentage of each fuel type in the fuel combination.

The WEPCo Valley Station, which burns coal, is subject to these emission limits, this is the only major SO_2 source in the area. USEPA has reviewed the State's technical support document, including the modeling analysis, which was submitted to USEPA with the SIP revision request. Based on the dispersion modeling used to set the SO_2 limits for the Milwaukee nonattainment area, USEPA has determined that a 3.28 lbs. of SO_2 per million BTU emission limitation for the WEPCo Valley Station will protect the constraining 24-hour standard, as well as the 3-hour and annual standards, thus ensuring attainment of the SO_2 National Ambient Air Quality Standards (NAAQS) in the Milwaukee area. The determination was based on a block average interpretation of the SO_2 NAAQS. Other SO_2 sources in Milwaukee County will be governed by SIP provisions such as the Wisconsin Statewide SO_2 Rule, when it is approved, and applicable New Source Review requirements.

The model technique used in the demonstration supporting this revision are based on modeling guideline in place at the time the analysis was performed (i.e. USEPA guideline 1978). Since that time, the revision has been promulgated (September 7, 1985). Since the model was completed prior to publication of revised guidance, USEPA accepts the analysis as it stands.

Section NR 154.12(6)(b) of Wisconsin's proposed SIP revision sets a compliance timetable by which compliance with the proposed emission limits must be achieved. The schedule begins on December 1, 1983, and ends on November 9, 1985, with interim milestones for compliance plan submittal, contracting, and construction. If compliance is achieved through fuel switching, however, then effective compliance is required by August 9, 1985. USEPA is approving this timetable because it is consistent with USEPA policy, as contained in "Guidance Document for Correction of Part D SIP's for Nonattainment Areas" (January 27, 1984) and "Compliance with the Statutory Provisions of Part D of the Clean Air Act, Final Rule" (48 FR 50686), and the requirements of the Clean Air Act.

The compliance test method for the emission limitations is Method 6 stack test (see 40 CFR Part 60 appendix A), this test method was approved by USEPA on May 31, 1972 (37 FR 10842), for the State and it remains in effect for these emission limitations.

On July 8, 1985 (50 FR 27892), USEPA promulgated Stack Height Rules, pursuant to section 123 of the Clean Air Act. These rules do not apply to stack heights "in existence" before December 31, 1970. A stack is "in existence" if the owner or operator had, by December 31, 1970: (1) Begun a continuous program of physical on-site construction of the stack; or, (2) entered into a binding agreement or contractual obligation, which could not be cancelled or modified without substantial loss, to undertake a program of stack construction to be completed within a reasonable time.

On October 7, 1985, the WDNR certified that the two existing stacks (serving four boilers) at WEPCo's Valley plant were "in existence" prior to December 31, 1970. Thus, the physical stack height for these two stacks is not subject to the Stack Height Rules and is fully creditable. Credit for merged gas streams is also allowed, because dispension techniques, such as merging gas streams, instituted before December 31, 1970, are "grandfathered" under Section 123 of the Clean Air Act, and the merging at WEPCo's Valley plant was part of the original facility construction and occurred before December 31, 1970.

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[1] NR 154.12(6) was recodified without substantive changes to NR 418.04. For the purposes of this notice, USEPA is using the original codification numbers for the preamble, because that is how the rule was originally submitted to USEPA and proposed by us. However, USEPA is using the recodified number for the purpose of incorporating the rule into the SIP, because the rule with this codification is that which the State currently has the authority to enforce.

Discussion of Comments

No public comments on the August 7, 1984, proposed rulemaking were received during the designated comment period. However, some two years later the Natural Resources Defense Council (NRDC), submitted a letter commenting on the proposal, and the Utility Air Regulatory Group (UARG) filed responsive comments. Both submissions were confined to the issue of averaging methods. USEPA will respond to those comments here.

NRDC argues that "USEPA may not lawfully approve the WEPCo Valley Station emission limits as adequate to attain and maintain the SO_2 NAAQS based on a 'block' average modeling analysis". NRDC also incorporated by reference several other letters sent to USEPA by NRDC in 1984 which address the issue of block versus running averages. In this correspondence NRDC argues that the use of block averages violates Section 110 of the Clean Air Act, which requires that emission limitations ensure attainment and maintenance of the air quality standards, and further, that running averages are the Agency's officially adopted interpretation of the NAAQS.[2]

USEPA disagrees with NRDC's comments. In 1971 USEPA promulgated NAAQS for sulfur oxides. The primary standard was to be measured on both an annual and 24-hour basis, and the secondary standard measured on a 3-hour basis. Since the inception of the standard in 1971 it has been USEPA's general practice to use block averages to determine attainment of the NAAQS for SO_2. In 1981 the D.C. Circuit issued an opinion in *PPG Industries, Inc.* v. *Costle*, 659 F.2d 1239 (D.C. Cir. 1981), which held that in rules implementing a national ambient air quality monitoring system USEPA could not change the NAAQS measurement method to running averages without meeting notice requirements of the Administrative Procedure Act.

From late 1985 to March 1986 USEPA conducted internal discussions concerning whether the long-standing use of block averages in SO_2 NAAQS implementation should be continued. As a result, on March 28, 1986, the Director of the Office of Air Quality Planning and Standards (OAQPS) issued a memo and supporting staff paper explaining the Agency's longstanding policy of accepting block averages and announcing that block averages were proper and would continue to be accepted. The memorandum also made it clear that in accordance with Section 116 of the Clean Air Act, States were free to submit plans to USEPA on the basis of either block or running averages.

In May 1988 the D.C. Circuit issued an opinion in *NRDC.* v. *Thomas*, 845 F.2d 1088 (D.C. Cir. 1988) dismissing NRDC's petition for review of the March 28, 1986, OAQPS memorandum. In that case, the D.C. Circuit stated that the status quo recognized in *PPG Industries* established that "block averages are a proper practice". 845 F.2d at 1094. Furthermore, the Court stated that USEPA must not act inconsistently with the D.C. Circuit's prior opinion in PPG Industries, which held that in order to require running averages, rulemaking would be necessary. 659 F.2d at 1250. Thus, contrary to NRDC's claims, USEPA's approval of Wisconsin's SIP submission based on block averages is appropriate and in accordance with law.

UARG's comments supported USEPA's approval of the Wisconsin submission. However, USEPA disagrees with UARG's contention that block averages are the only legal interpretation of the SO_2 NAAQS. As the OAQPS memorandum stated, the States are free, under Section 116 of the Clean Air Act, to provide more stringent requirements than USEPA. Also, the *NRDC* v. *Thomas* decision indicated that until rulemaking is conducted limiting the averaging method to one type or the other, USEPA should accept submissions from the States using either one.

Conclusion

USEPA reviewed NR 154.12(6)(a) and concluded that the emission limit of 3.28 lbs. of SO_2 per million BTU proposed for WEPCo's Valley Generating Station would attain and maintain the SO_2 NAAQS. In addition, USEPA concluded that the compliance schedule set forth in NR 154.12(6)(b) was consistent with USEPA policy and the Clean Air Act requirements. Therefore, on August 17, 1984 (49 FR 32865), USEPA published a rulemaking action proposing to approve Section NR 154.12(6). The comments received have not persuaded USEPA to change its position. Thus, USEPA is taking final action to approve this revision to the Wisconsin SIP.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur oxides, Intergovernmental relations.

Note: Incorporation by reference of the State Implementation Plan for the State of Wisconsin was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 28, 1989.

F. Henry Habicht,

Acting Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Wisconsin

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2570 is amended by adding paragraph (c)(38) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(38) On January 23, 1984, the Wisconsin Department of Natural Resources (WDNR) submitted SO_2 emission limits for large electric utility sources located in the City of Milwaukee, Milwaukee County, Wisconsin.

WDNR recodified the rule and on October 23, 1987, submitted it as recodified.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, Natural Resources (NR) 418.04 as found at (Wisconsin) Register, September 1986, No. 369, effective October 1, 1986.

[FR Doc. 89–20868 Filed 9–5–89; 8:45 am]

BILLING CODE 6560-50-M

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[2] Letter from David Hawkins, NRDC, to Gary Gulezian, USEPA, Region V, regarding proposed actions on PPG Barberton Plant, and Ohio Power Muskingum River Plant, November 21, 1984.

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40 CFR Parts 148 and 268

[FRL-3641-2]

Land Disposal Restrictions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On August 17, 1988, EPA published regulations promulgating the congressionally-mandated prohibitions on land disposal of certain hazardous wastes listed in 40 CFR 268.10 (First Third wastes). On May 2, 1989, EPA published a rule amending certain of the "No Land Disposal" standards promulgated in the First Third final rule. This notice corrects errors and clarifies the language in the preamble and regulations of the August 17, 1988 final rule, and makes several corrections required by the May 2, 1989 rule.

EFFECTIVE DATE: This rule is effective on September 6, 1989.

ADDRESSES: The OSW docket is located at the following address, and is open from 9:30 to 3:30, Monday through Friday, excluding Federal holidays: EPA RCRA Docket (M–2427)(OS–305), 401 M Street, SW., Washington, DC 20460.

The public must make an appointment by calling (202) 475–9327 to review docket materials. Refer to Docket numbers F–88 LDR9–FFFFF and F–89–LD10–FFFFF when making appointments to review any background documentation for this rulemaking. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page. Copies of not easily obtainable references are available for viewing and copying only in the OSW docket.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424–9346 (toll-free) or (202) 382–3000 in the Washington, DC metropolitan area. For technical information contact Wanda LeBleu, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–7392.

SUPPLEMENTARY INFORMATION:

I. Reasons and Basis for Today's Amendment

The Agency's on-going review of the clarity and accuracy of the existing hazardous waste regulations has resulted in the need to make a number of corrections and clarifications in today's rule.

Any correspondence regarding these corrections and clarifications should be sent to Wanda LeBleu at the address shown in the "**FOR FURTHER INFORMATION CONTACT**" section of this notice.

II. Summary of Clarifications and Corrections to the First Thirds Final Rule

1. In the preamble to the final rule (53 FR 31144), third column, fourth line from the top, "provisions of § 268.8." is a typographical error and in today's notice it is corrected to read "prohibitions of § 268.33(f).".

2. Certain issues have arisen regarding the use of a cost test to satisfy the requirement applicable to soft hammer wastes to utilize the best treatment practically available as an alternative to landfill or surface impoundment disposal. RCRA section 3004(g)(6). EPA interpreted this requirement to mandate use of practically available treatment that provides the greatest environmental benefit. Section 268.8(a)(1). In assessing whether treatment is practically available, EPA stated that considerations of cost could be considered, and offered by way of guidance a particular cost ratio (if treatment costs are double or more than the cost of disposal). 53 FR 31182. EPA reemphasizes here, however, as it did in the preamble to the August 17, 1988 rule, that this cost ratio is not a binding rule and therefore does not automatically mean that treatment that costs double the cost of current disposal is not practically available. *Id.* Nor are cost considerations the only ones that are relevant. Other factors that EPA considers are technical feasibility, previous practices of the generator submitting the demonstration and certification, that entity's size and financial status, and other case-specific considerations. *Id.* at 31182–83; *see also* Letter of J. Winston Porter, Assistant Administrator of the Office of Solid Waste and Emergency Response to the Regional Administrators, October 19, 1988 (also detailing that the cost ratio is only one of a number of factors that the Agency will consider).

3. In both the preamble to the final rule (53 FR 31171) and in § 268.43(a), EPA set treatment standards for hazardous waste number K101 wastewaters and low arsenic nonwastewaters, and for K102 wastewaters and low arsenic nonwastewaters. K101 and K102 high arsenic nonwastewaters have no promulgated treatment standards and are prohibited from landfill and surface impoundment disposal under the soft hammer provisions. Section 268.33(a) lists only those wastes for which treatment standards have been promulgated and, therefore, only K101 wastewaters and low arsenic nonwastewaters and K102 wastewaters and low arsenic nonwastewaters should be included in § 268.33(a). Today's notice corrects these errors.

4. On May 2, 1989, EPA amended the treatment standards for a number of First Third nonwastewaters for which the promulgated treatment standard was no land disposal. 54 FR 18836. The no land disposal standard applies only to wastes generated from the process described in the waste's listing description and disposed after August 17, 1988. EPA rescheduled all other forms of these wastes to the Third Third. *Id.* EPA, however, omitted to cross-reference these revisions in section 268.33(a), the regulation codifying First Third waste prohibitions. Today's correction adds this crossreference.

In addition, EPA rescheduled all K015 and K083 nonwastewaters to the Third Third as part of the May 2, 1989 notice. EPA is thus removing these wastecodes from § 268.33(a).

5. In the preamble to the final rule (53 FR 31145 and 31186), the Agency stated that First Third wastes for which treatment standards or effective dates have not been promulgated, as well as national capacity variance wastes, that are disposed of in a landfill or surface impoundment, must be disposed of in a landfill or surface impoundment unit (as opposed to facility) that is in compliance with the minimum technological requirements of RCRA Section 3004(o). This interpretation of minimum technological requirements was recently upheld in *Mobil Oil* v. *EPA*, 871 F. 2d 149 (D.C. Cir. 1989). In § 268.5(h)(2), the Agency stated that these restricted wastes must be disposed of in a landfill or surface impoundment unit that meets the minimum technological requirements of parts 264 and 265. The Agency intended that the language of § 268.5(h)(2) apply to all existing landfill and surface impoundment units as well as new, replacement, and lateral expansion units. However, § 268.5(h)(2) (i) and (ii) refer to § 265.301 and § 264.301, respectively, which apply only to new, replacement, and lateral expansion units. Thus, § 268.5(h)(2) can improperly be construed as not applying to existing units. Today's notice clarifies this issue by modifying § 268.5(h)(2) to specify that all landfill and surface impoundment units where these wastes are disposed are within the scope of that section.

6. In the preamble to the final rule (53 FR 31200), the Agency inadvertently stated that commenters and applicants

for site-specific treatability variances should write to the Assistant Administrator for the Office of Solid Waste and Emergency Response. These commenters and applicants should send their materials to the Administrator, or his delegated representative. Today's notice corrects this error.

7. EPA included in the proposed and final regulations an extended discussion of the meaning and ramifications of the respective terms "restricted" and "prohibited" hazardous wastes (53 FR 17620 (May 17, 1988) and 53 FR 31208–09 (August 17, 1988)). This discussion was essentially accurate, but contains several features requiring further clarification. In some cases, clarifying rule changes are necessary to match the preamble language.

In the preamble (53 FR 31208), EPA indicated that restricted wastes are those that are prohibited from land disposal by either statute or regulation, "regardless of whether subcategories of such wastes are subject to a § 268.5 extension, § 268.6 'no migration' exemption, or national capacity variance, any of which makes them currently eligible for land disposal." EPA did not intend to imply that these three enumerated circumstances are the only ones to consider in determining whether a waste is "restricted." Thus, the correct formulation is that any hazardous waste that is exempt from a prohibition on some form of land disposal, but nevertheless subject to at least one type of prohibition, is still "restricted." An example not mentioned in the preamble is a waste going to an underground injection well if such a waste is prohibited from one or more other methods of land disposal. Another example is a soft hammer waste, which is prohibited under § 268.8 from disposal in some landfills and impoundments, but not prohibited from other methods of land disposal (e.g., land treatment units). EPA is consequently amending this paragraph of the preamble to make this point more clear.

EPA, however, has never intended to regulate certain wastes under the land disposal restriction program, even though the August 17, 1988 preamble technically characterized such wastes as "restricted" hazardous wastes. These wastes are farmers' wastes being disposed of on a farmer's own land, conditionally exempt small quantity generator wastes, and newly listed or identified wastes for which EPA has not promulgated a regulatory land disposal prohibition within six months of the final rule identifying or listing the waste. The regulations are already clear that conditionally exempt small quantity generator wastes and certain farmer wastes are not subject to any provisions of part 268 (see § 261.5 (b), (c), (e), (f), and (g), and § 262.70), and EPA has certainly never suggested that newly identified or listed wastes become subject to part 268 requirements until EPA promulgates regulations prohibiting such wastes from land disposal. EPA is adding clarifying regulatory language today to make this point absolutely clear.

EPA also suggested in the preamble that restricted wastes would invariably be subject to the prohibitions on storage and on dilution (53 FR 31209). Although generally true, this overstates the case for certain wastes that are not subject to or are exempt from a land disposal prohibition, and that are actually disposed using a method allowed by the regulations or statute. Examples are soft hammer wastes not destined for landfill or impoundment disposal, or wastes subject to national capacity variances. As written, both the preamble discussion and the regulations subject these wastes to the dilution and storage prohibitions (through the use of the term "restricted" in section 268.3 and the broad introductory language in § 268.50(a) and a limited number of exceptions in § 268.50(d)). This was not EPA's intent. The general principle is that the dilution and storage prohibitions apply only if the waste is disposed by a prohibited method of land disposal. There is no reason to prohibit dilution or storage if the waste can be land disposed by a method that is not prohibited. For example, conditionally exempt small quantity generator wastes (as defined by § 261.5) can be diluted or stored for any length of time before being land disposed, because such wastes are not subject to the land disposal prohibitions. The Agency is consequently using this opportunity to clarify the preamble language regarding § 268.3 and correcting the language of § 268.50 to be consistent with this overall principle. (EPA does not believe that the regulatory language of § 268.3 requires any change, because that provision is written essentially in terms of a person's diluting as a means of avoiding a prohibition—which language applies only if there is a prohibition to be avoided. The regulatory language in § 268.3 continues to apply provided it is interpreted in accord with the above paragraph and the paragraph that follows.)

EPA cautions, however, that if a person dilutes a restricted waste which is not subject to a land disposal prohibition when diluted but which becomes subject to a land disposal prohibition before it is land disposed, the § 268.3 dilution prohibition could apply. For example, if generator A dilutes a national capacity variance waste before the expiration of the variance but disposes of it after the variance expires, EPA may consider the dilution to have been for the purpose of avoiding a prohibition and therefore impermissible. The following chart summarizes which restricted wastes are subject to the dilution prohibition and the storage prohibition. It also clarifies which restricted wastes are subject to the waste analysis and tracking requirements.

Waste	Waste analysis and tracking (§ 268.7)	Dilution (§ 268.3)	Storage (§ 268.50)
National capacity variance (Subpart C)	YES	NO*	NO
Case-by-case extension (§ 268.5)	YES	NO*	NO
No migration exemption (§ 268.6)	YES	NO*	NO
Soft hammer wastes:			
a. disposed in landfill or impoundment	YES	YES	NO
b. disposed by another method	YES	NO*	NO
Wastes injected underground where there is a treatment standard applicable to one or more other methods of land disposal	YES	NO*	NO
Wastes treated in § 268.4 impoundments	YES	YES	YES
Conditionally Exempt Small Quantity Generator wastes (§ 261.5)	NO	NO	NO
Farmer disposing on own land (§ 262.70)	NO	NO	NO
Newly identified or listed wastes for which EPA has not promulgated a treatment standard	NO	NO	NO
Wastes that meet all applicable treatment standards and prohibition levels	YES	NO	NO

YES=subject to regulatory requirement; NO=not subject.

* These wastes are not subject to the dilution prohibition in § 268.3 if they are disposed using a permissible method of land disposal during the period of the variance, extension, or exemption.

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8. EPA stated in the preamble to the final regulation that "soft hammer" wastes (*i.e.*, First Third or Second Third wastes for which treatment standards are not established by August 8, 1988 and June 8, 1989, respectively) that are not being disposed in landfills or surface impoundments remain subject to the tracking requirements in § 268.7 (53 FR 31209)). EPA had also indicated at proposal that § 268.7 would apply to all soft hammer wastes (53 FR 11765, April 8, 1988). A tracking requirement is necessary for these wastes in order to provide a consistent method of tracking all restricted wastes, and to inform facilities receiving the wastes of other applicable regulatory requirements (*id.*).

The regulatory language codifying these statements, however, could be read as applying only to soft hammer wastes that are destined for disposal in landfills and surface impoundments. See § 268.7(a)(4). This is because § 268.7(a)(4) cross-references § 268.33(f), which in turn cross-references § 268.8, both of which can be read to apply only to soft hammer wastes intended for landfill and surface impoundment disposal. In order to ensure that the regulations more clearly reflect EPA's intent that tracking is required for all soft hammer wastes (as proposed and as discussed in the final preamble), EPA is amending § 268.7(a)(4) to make this requirement clear.

9. Section 268.7(b)(6) of the regulations was added as part of the First Third rule to clarify the certification and notification obligations of a treatment, storage, or disposal facility that sends its prohibited wastes to another treatment facility or storage facility rather than to a land disposal facility. Today's notice reiterates that § 268.7(b)(6) does not relieve treatment facilities of their testing obligations, which are set out in the introductory paragraph of § 268.7(b). Thus, they must continue to test at the frequency specified in their waste analysis plan.

10. A number of commenters found § 268.8 to be confusing; this probably was due to the fact that the provisions covering the certification/demonstration requirements were spread out in several regulatory paragraphs. Today's notice rearranges § 268.8 to consolidate these requirements.

11. In the preamble to the final rule (53 FR 31185), EPA stated that the owner or operator of a TRSF (treatment, recovery, or storage facility) must, only for the initial shipment of a soft hammer waste, send a copy of the generator's demonstration and certification and the TRSF's certification (if applicable) to the disposal facility receiving the waste or treatment residues. Subsequent shipments generally require only the certifications. Section 268.8(c)(2) does not explicitly state this point. Today's notice revises § 268.8(c)(2) to state that the demonstration requirements only apply to the initial shipment of a soft hammer waste.

However, it should be noted that if there are any changes in the conditions that formed the basis of the demonstration and certification(s), the generator must notify the Regional Administrator of the changes (see § 268.8(b)(1)). EPA indicated in the preamble that the generator would also have to prepare a new demonstration and certification to account for these changed circumstances (52 FR 31185). The TRSF must send this new demonstration, along with the applicable certifications, to the receiving facility along with the initial shipment of the waste after the change in circumstances.

12. In § 268.8(d) of the final rule, "under § 263.33(f)" is a typographical error and should read "under § 268.33(f)". Today's notice corrects this error.

13. In the preamble to the final rule (53 FR 31145), wastewaters are defined as wastes that contain less than 1% total organic carbon (TOC) and less than 1% total suspended solids (TSS). The preamble then goes on to use the terms TSS and total filterable solids interchangeably. These terms are not necessarily the same. TSS corresponds to a test method called the Non-filterable Residues Test (Method No. 160.2, Methods for Chemical Analysis of Water and Wastes, EPA–600/4–79–020, March, 1983). The term filterable solids refers to a different test method called the Filterable Residues Test. The Agency intended the use of only TSS (and the Non-filterable Residues Test) to determine whether a waste is a wastewater. Today's notice clarifies this ambiguity in the preamble. Section 268.12(b) of the final rule refers only to TSS and does not need to be changed.

14. In § 268.32(f) of the final rule, "if such disposal" is a typographical error and should read "if such unit". Today's notice corrects this error.

15. In the final rule (53 FR 31217), second column, in § 268.33(f), "of this part are not applicable," and "or surface impoundment unless the wastes are the subject of a valid demonstration and certification pursuant to § 268.8." have typographical errors and should read "of this part have not been promulgated," and "or surface impoundment unless a demonstration and certification has been submitted pursuant to § 268.8.", respectively. Today's notice corrects these errors.

16. Section 268.6(f)(1) indicates that a consequence of detecting migration of hazardous constituents at a unit which has received a no migration variance is that receipt of "restricted" waste at the unit must be suspended. The reference to "restricted" wastes is erroneous, and EPA intended the slightly less broad term "prohibited" waste. (*See* § 268.6(f)(3), a parallel provision, where EPA used the correct term "prohibited".) Use of the term "restricted" would, for example, prevent the unit from receiving treated soft hammer wastes or wastes that are subject to a type of capacity variance. The Agency did not intend to impose such requirements and is therefore correcting the error.

17. EPA amended § 266.20 to provide that materials that are recycled by being used in a manner constituting disposal would be exempt from subtitle C regulation only if they meet the treatment standards for every prohibited hazardous waste that they contain. 53 FR 31212 and 53 FR 31197–98 (preamble). EPA also stated that fertilizers produced from waste K061 continued to be exempt from subtitle C regulation. *Id.*

In codifying these provisions, however, EPA inadvertently deleted the final sentence of the pre-existing § 266.20, which provided that "[c]ommercial fertilizers produced for the general public's use that use recycled materials also are not presently subject to regulation." It is clear from the preamble (cited above) that the result EPA intended was for all such fertilizers (except those produced from waste K061 and not containing any other hazardous waste) to remain exempt from subtitle C regulation provided that they meet applicable treatment standards for every hazardous waste that they contain. In other words, such fertilizers would be subject to the same regulatory requirements as all other prohibited wastes being used in a manner constituting disposal. EPA consequently is correcting the regulatory language to achieve this result.

EPA also notes that commercial fertilizers that are produced from waste K061 are not subject to the tracking requirements in § 268.7(b)(8) for other wastes that are used in a manner

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constituting disposal. EPA meant the reference in § 268.7(b)(8)—"subject to the provisions of § 266.20(b)"—to refer to wastes that are subject to substantive provisions of § 266.20(b), namely those required to meet substantive treatment standards. EPA is amending § 268.7(b)(8) to state that the tracking provision applies to wastes used in a manner constituting disposal that must meet treatment standards.

EPA also is adding a conforming subparagraph (4) to § 268.7(c) to cross-reference the determination that users of waste-derived products used in a manner constituting disposal are not subject to § 268.7 with respect to these wastes (and assuming the wastes meet all applicable treatment standards). See 53 FR 31198, August 17, 1988.

EPA also is changing the inaccurate parenthetical reference in § 266.20(b) to "hazardous waste constituent" as synonymous to "recyclable material" to the correct "hazardous waste." See § 261.6(a).

18. In § 268.33(g) of the final regulation, EPA indicated, incorrectly, that initial generators could determine whether they are in compliance with applicable first third treatment standards only by testing their waste. In fact, EPA's rules have stated since the inception of the land disposal prohibition program that generators also have the option of determining if the waste meets a treatment standard based on their own knowledge of the waste. Section 268.7(a). EPA is correcting § 268.33(g) to include this option, and to correct the unintended inconsistency with § 268.7(a). (Of course, a generator who also treats is subject to the testing requirements of § 268.7(b).)

III. Rationale for Immediate Effective Date

Today's notice does not create any new regulatory requirements. Rather, it restates and clarifies existing requirements by correcting a number of errors in the August 17, 1988 final rule (53 FR 31138) and the May 2, 1989 rule (54 FR 18836). For these reasons, EPA finds that good cause exists under section 3010(b)(3) of RCRA, 42 U.S.C. 9903(b)(3), to provide for an immediate effective date. In addition, there already was full opportunity to comment on all of these issues during the rulemaking so that further comment is unnecessary. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to promulgate today's corrections in final form and that there is good cause under 5 U.S.C. 533(d)(3) to waive the requirement that regulations be published at least 30 days before they become effective.

Finally, EPA notes that although it is not withdrawing any existing regulatory language, all of today's revisions operate prospectively.

IV. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. Due to the nature of this regulation (technical correction), the amendment is not "major"; therefore, no Regulatory Impact Analysis is required.

List of Subjects

40 CFR Part 148

Environmental protection, Hazardous materials, Imports, Insurance, Labeling, Packaging and containers, Recycling, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

Dated: August 29, 1989.

Jonathan Z. Cannon,

Acting Assistant Administrator for Solid Waste and Emergency Response.

The following corrections are made in the preamble to SWH-FRL-3420-4, the Hazardous Waste Management System; Land Disposal Restrictions; Final Rule, published in the Federal Register on August 17, 1988 (53 FR 31138):

1. On page 31144, third column, fourth line from the top, "provisions of § 268.6.", should read "prohibitions of § 268.33(f).".

2. On page 31145, third column, 21st line from the top, "(*i.e.*, total filterable solids)" should read "(TSS)".

3. On page 31145, third column, second paragraph, fifth line, "filterable solids content (*i.e.*, total suspended solids (TSS) levels)," should read "TSS levels".

4. On page 31145, third column, second paragraph, eighth line and 14th line, "filterable solids" should read "suspended solids".

5. On page 31145, third column, second paragraph, 11th line, "filtered solids" should read "suspended solids".

6. On page 31200, second column, 14th line from the bottom, "Assistant Administrator for the Office of Solid Waste and Emergency Response" should read "Administrator, or his designated representative,".

7. On page 31200, second column, 3rd line from the bottom, and third column, 7th line from the top, "Assistant Administrator (or Regional Administrator, if authority is delegated)" should read "Administrator, or his designated representative,".

8. On page 31208, third column, the second paragraph should read as follows:

> "Restricted" wastes are those categories of hazardous wastes that are prohibited from one or more methods of land disposal either by regulation or statute (regardless of whether subcategories of such wastes are subject to a § 268.5 extension, § 268.6 "no migration" exemption, or any other exemption, any of which makes them currently eligible for one or more methods of land disposal). In other words, a hazardous waste is "restricted" no later than the date of the first automatic prohibition established in, or pursuant to, RCRA section 3004 (d), (e), (f), or (g).

The following corrections are made in the rules for SWH-FRL-3420-4, the Hazardous Waste Management System; Land Disposal Restrictions; Final Rule, published in the Federal Register on August 17, 1988 (53 FR 31138):

§ 266.20 [Corrected]

9. On page 31212, first column, § 266.20(b) is revised to read as follows:

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in Subpart D of Part 268 (or applicable prohibition levels in § 268.32 or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (*i.e.*, hazardous waste) that they contain. Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not presently subject to regulation provided they meet these same treatment standards or prohibition levels for each recyclable material that they contain. However, zinc-containing fertilizers using hazardous waste K061 that are produced for the general public's use are not presently subject to regulation."

§ 268.1 [Corrected]

10. In § 268.1(c), the introductory text is revised by changing "prohibited" to "restricted", §§ 268.1(c)(3) and 268.1(c)(4) are removed, and a new § 268.1(e) is added to read as follows:

(e) The following hazardous wastes are not subject to any provision of part 268:

(1) Waste generated by small quantity generators of less than 100 kilograms of non-acute hazardous waste or less than 1 kilogram of acute hazardous waste per month, as defined in § 261.5 of this chapter;

(2) Waste pesticides that a farmer disposes of pursuant to § 262.70;

(3) Wastes identified or listed as hazardous after November 8, 1984 for which EPA has not promulgated land disposal prohibitions or treatment standards.

§ 268.5 [Corrected]

11. On page 31213, third column, § 268.5(h)(2) is revised to read as follows:

(h) * * *

(2) Such hazardous waste may be disposed in a landfill or surface impoundment only if such unit is in compliance with the technical requirements of the following provisions regardless of whether such unit is existing, new, or a replacement or lateral expansion.

§ 268.6 [Corrected]

12. On page 31213, second column, § 268.6(f)(1) is revised to read as follows: "(1) Immediately suspend receipt of prohibited waste at the unit, and".

§ 268.7 [Corrected]

13. On page 31213, third column, § 268.7(a)(3) is revised to read as follows:

(a) * * *

(3) If a generator's waste is subject to an exemption from a prohibition on the type of land disposal method utilized for the waste (such as, but not limited to, a case-by-case extension under § 268.5, an exemption under § 268.6, or a nationwide capacity variance under subpart C), with each shipment of waste he must submit a notice to the facility receiving his waste stating that the waste is not prohibited from land disposal. The notice must include the following information:

* * * * *

§ 268.7 [Corrected]

14. On page 31214, first column, § 268.7(a)(4) is revised to read as follows:

(a) * * *

(4) If a generator determines that he is managing a waste that is subject to the prohibitions under § 268.33(f) (including wastes that are disposed of in disposal units other than landfills or surface impoundments) and is not subject to the prohibitions set forth in § 268.32 of this part, with each shipment of waste the generator must notify the treatment, storage or disposal facility, in writing, of any applicable prohibitions set forth in § 268.33(f). The notice must include the following information:

* * * * *

§ 268.7 [Corrected]

15. On page 31214, second column, the first sentence of § 268.7(b)(8) is revised to read as follows: "Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of § 266.20(b) regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (*i.e.*, the recycler) is not required to notify the receiving facility, pursuant to paragraph (b)(4) of this section."

§ 268.7 [Corrected]

16. On page 31214, third column, the following paragraph (c)(4) is added:

(c) * * *

(4) Where the owner or operator is disposing of any waste that is a recyclable material used in a manner constituting disposal subject to the provisions of § 266.20(b), the owner or operator is not subject to paragraphs (c)(1)–(3) of this section with respect to such waste.

§ 268.8 [Corrected]

17. On page 31214, third column, and page 31215, first and second columns, § 268.8(a) is revised to read as follows:

(a) * * *

(2) If a generator determines that there is no practically available treatment for his waste, he must fulfill the following specific requirements:

(i) Prior to the initial shipment of waste, the generator must submit a demonstration to the Regional Administrator that includes: a list of facilities and facility officials contacted, addresses, telephone numbers, and contact dates, as well as a written discussion of why he was not able to obtain treatment or recovery for that waste. The generator must also provide to the Regional Administrator the following certification:

> I certify under penalty of law that the requirements of 40 CFR 268.8(a)(1) have been met and that disposal in a landfill or surface impoundment is the only practical alternative to treatment currently available. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

The generator does not need to wait for Regional Administrator approval of the demonstration/certification before shipment of the waste. However, if the Regional Administrator invalidates the demonstration/certification for the reasons outlined in § 268.8(b)(2), the generator must immediately cease further shipments of the waste, and immediately inform all facilities that received the waste of such invalidation, and keep records of such communication on-site in his files.

(ii) With the initial shipment of waste, the generator must submit a copy of the demonstration and the certification discussed above in § 268.8(a)(2)(i) to the receiving facility. With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged. Such a generator must retain on-site a copy of the demonstration (if applicable) and certification required for each waste shipment for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site disposal. The five-year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(3) If a generator determines that there are practically available treatments for his waste, he must contract to use the practically available technology that yields the greatest environmental benefit. He must also fulfill the following specific requirements:

(i) The generator must submit to the Regional Administrator, prior to the initial shipment of waste, a demonstration that includes: a list of facilities and facility officials contacted, addresses, telephone numbers, and contact dates, as well as a written discussion explaining why the treatment or recovery technology chosen provides the greatest environmental benefit. The generator must also provide to the Regional Administrator the following certification:

> I certify under penalty of law that the requirements of 40 CFR 268.8(a)(1) have been met and that I have contracted to treat my waste (or otherwise provide treatment) by the practically available technology which yields the greatest environmental benefit, as indicated in my demonstration. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

The generator does not need to wait for Regional Administrator approval of the demonstration/certification before shipment of the waste.

(ii) With the initial shipment of waste, the generator must submit to the receiving facility a copy of the demonstration and the certification discussed above in § 268.8(a)(3)(i). With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged. Such a generator must retain on-site a copy of the demonstration (if applicable) and certification required for each waste shipment for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site disposal. The five-year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§ 268.8 [Corrected]

18. On page 31215, second column, § 268.8(b)(1) is revised by adding the following language before the period at the end of the sentence: ", and submit a new demonstration and certification as provided in § 268.8(a) to the receiving facility."

* * * * *

§ 268.8 [Corrected]

19. On page 31215, third column, first paragraph, § 268.8(c)(2) should read:

(c)(2) The owner or operator of a treatment, recovery or storage facility must, for each initial shipment of waste, send a copy of the generator's demonstration (if applicable) and certification under § 268.8(a)(2)(i) or § 268.8(a)(3)(i) and certification under § 268.8(c)(1) (if applicable) to the facility receiving the waste or treatment residues. With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged.

§ 268.8 [Corrected]

20. On page 31215, third column, second paragraph, § 268.8(d), "prohibited under § 263.33(f)" should be changed to read "prohibited under § 268.33(f)."

§ 268.32 [Corrected]

21. On page 31216, third column, in § 268.32(f), "such disposal" should be changed to "such unit."

§ 268.33 [Corrected]

22. On page 31217, first column, in § 268.33(a), "K004 (nonwastewater)" should read "K004 wastes specified in § 268.43(a)."

23. On page 31217, first column, in § 268.33(a), "K008 (nonwastewaters)" should read "K008 wastes specified in § 268.43(a)."

24. On page 31217, first column, in § 268.33(a), "K015 wastewaters" should be removed.

25. On page 31217, first column, in § 268.33(a), "K021 (nonwastewater)" should read "K021 wastes specified in § 268.43(a)."

26. On page 31217, first column, in § 268.33(a), "K025" should read "K025 nonwastewaters specified in § 268.43(a)."

27. On page 31217, first column, in § 268.33(a), "K083 (nonwastewaters)" should be removed.

28. On page 31217, first column, in § 268.33(a), "K100" should read "K100 nonwastewaters specified in § 268.43(a)."

29. On page 31217, first column, in § 268.33(a), "K101" should read "K101 (wastewater), K101 (nonwastewater, low arsenic subcategory—less than 1% total arsenic)."

30. On page 31217, first column, in § 268.33(a), "K102" should read "K102 (wastewater), K102 (nonwastewater, low arsenic subcategory—less than 1% total arsenic)."

§ 268.33 [Corrected]

31. On page 31217, second column, in § 268.33(f), "are not applicable" is revised to read "have not been promulgated,"; and "unless the wastes are the subject of a valid demonstration and certification pursuant" is revised to read "unless a demonstration and certification have been submitted."

§ 268.33 [Corrected]

32. On page 31217, second column, in § 268.33(g), "extract of the waste" should read "extract of the waste, or the generator may use knowledge of the waste."

§ 268.44 [Corrected]

33. On page 31221, second column, second paragraph, in § 268.44(h), "facility may apply to the Assistant Administrator of the Office of Solid Waste and Emergency Response, or his delegated representative," should read "facility may apply to the Administrator, or his delegated representative,".

§ 268.50 [Corrected]

34. On page 31221, third column, § 268.50(d) is revised to read as follows:

(d) If a generator's waste is exempt from a prohibition on the type of land disposal utilized for the waste (for example, because of an approved case-by-case extension under § 268.5, an approved § 268.6 petition, or a national capacity variance under subpart C), the prohibition in paragraph (a) of this section does not apply during the period of such exemption.

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40 CFR Part 271

[FRL-3636-1]

North Carolina; Recommencement of Proceedings to Determine Whether To Withdraw Hazardous Waste Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Notice of continuation of hearing to determine whether to withdraw hazardous waste program approval.

SUMMARY: On April 20, 1989 (54 FR 15940), EPA issued a Notice of its intent to hold a hearing to determine whether to withdraw hazardous waste approval of North Carolina's Hazardous Waste Program. A hearing was held during July 18–21, 1989 and July 24–28, 1989, in Raleigh, North Carolina. On August 23, 1989, the presiding Administrative Law Judge provided notice that the hearing would continue beginning Monday, September 18, 1989, at the Radisson Plaza Hotel, 420 Fayetteville Street, Raleigh, North Carolina.

DATES: These proceedings will continue beginning September 18, 1989. A block of rooms has been reserved for those persons needing overnight lodging through September 29, 1989. Reservations must be made by September 8, 1989, at the location listed below. Tenants are responsible for costs involving overnight stay.

ADDRESS: Radisson Plaza Hotel, 420 Fayetteville Street Mall, Raleigh, North Carolina 27601.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 89-20866 Filed 9-5-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6744

[CA-940-09-4214-10; CA 24903]

Partial Revocation of Public Land Order No. 2729; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects 80.79 acres of public land withdrawn for use of the Bureau of Reclamation in connection with the Central Valley Reclamation Project. This action will open the land to allow the sale of the Federally reserved minerals underlying privately owned lands to the surface owner.

EFFECTIVE DATE: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 2729 which withdrew land for the Central Valley Project, Nashville Unit, Consumnes River Division, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 9 N., R.10 E., Sec. 25, lots 1 to 4 inclusive.

The area described contains 80.79 acres in El Dorado County.

2. At 10 a.m. on October 6, 1989, the land described in paragraph 1 shall be opened to the operation of Section 209 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2757; 43 U.S.C. 1719, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

Dated: August 28, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89-20860 Filed 9-5-89; 8:45 am]

BILLING CODE 4310-40-M

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43 CFR Public Land Order 6745

[OR-943-09-4214-10; GP9-235; OR 39912]

Withdrawal of Public Land for U.S. Air Force Radar Transmitter Site; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 2,622 acres of public land from surface entry and mining for 20 years to be used as a U.S. Air Force radar transmitter site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: September 6, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general lands laws, including the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws, and reserved for use by the Department of the Air Force in connection with the Over-the-Horizon Backscatter West Coast Transmitter Site:

Willamette Meridian

A parcel of land situated in secs. 19, 30, 31, and 32, T. 26 S., R. 20 E., and sec. 6, T. 27 S., R. 20 E., described as follows:

Commencing at the southwest corner of said section 31; thence N. 0°50′01″ E. along the west line of said section 4,682.15 feet to the Point of Beginning; thence continuing along said line N. 0°50′01″ E., 18.26 feet; thence N. 67°22′48″ E., 5,402.59 feet; thence N. 54°09′10″ W., 4,023.04 feet; thence N. 35°51′06″ E., 6,213.18 feet; thence S. 54°09′28″ E., 6,100.18 feet; thence S. 35°50′47″ W., 6,213.99 feet; thence S. 22°36′50″ E., 2,985.54 feet; thence S. 78°51′00″ E., 5,087.51 feet; thence S. 11°09′00″ W., 6,499.77 feet; thence N. 78°50′00″ W., 6,122.13 feet; thence N. 11°08′47″ E., 4,055.50 feet; thence S. 67°22′48″ W., 4,277.00 feet; thence N. 22°37′12″ W., 6,196.46 feet to the Point of Beginning.

The area described contains approximately 2,622 acres in Lake County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary of the Interior determines that the withdrawal shall be extended.

3. If the site is abandoned, or the withdrawal is relinquished or expires without being extended, all structures and facilities shall be timely removed and the land shall be restored to the satisfaction of the Secretary of the Interior, in consultation with the head of the holding agency. In the event the withdrawal expires without being extended, the holding agency shall undertake no activities on the land except in connection with decontamination, restoration, and the removal of structures and facilities.

Dated: August 28, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89-20861 Filed 9-5-89; 8:45 am]

BILLING CODE 4310-32-M

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43 CFR Public Land Order 6746

[AK-932-09-4214-10; AA-721]

Partial Revocation of Air Navigation Site No. 157, Iliamna, for Selection of Land by the State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Departmental Order insofar as it affects 4.77 acres of public land withdrawn for Air Navigation Site No. 157, at Iliamna, Alaska. The land is no longer needed for the purpose for which it was withdrawn. This action will also open the land for selection by the State of Alaska, if such land is otherwise available. If the land is not selected by the State, this order opens the land to metalliferous mining. The land has been and will remain closed to nonmetalliferous mining and mineral leasing pursuant to Public Land Order No. 5180, as amended.

EFFECTIVE DATE: September 6, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-3342.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. The Departmental Order dated April 19, 1941, as amended, which

withdrew public land for Air Navigation Site No. 157 is hereby revoked insofar as it affects the following described land:

Iliamna, Alaska

Beginning at meander corner No. 4 of U.S. Survey 2944, proceed approximately N. 60° W., 925 feet, more or less, to the center of the approximately 12 ft. x 30 ft. concrete slab (formerly supporting a generator building), thence N. 5° W., 240 feet, more or less, to the centerline of the Iliamna Airport-Roadhouse Bay Road, to corner No. 1, the true point of beginning:

From corner No. 1 by metes and bounds,
N. 85° E., along the centerline of the Iliamna Airport-Roadhouse Bay Road, 267 feet, to corner No. 2;
S. 5° E., 390 feet, to corner No. 3;
S. 85° W., 533 feet, to corner No. 4;
N. 5° W., approximately 390 feet, to corner No. 5, a point on the centerline of the Iliamna Airport-Roadhouse Bay Road;
N. 85° E., 266 feet, to corner No. 1, the place of beginning.

The area described contains approximately 4.77 acres.

2. Subject to valid existing rights, the land described above is hereby opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, *et seq.*; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371, 2437–2438; 43 U.S.C. 1635.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described above, for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

4. At 10 a.m. on December 6, 1989, the land will be opened to location and entry under the United States mining laws for metalliferous minerals, subject to valid existing rights, the provisions of existing withdrawals, and the requirement of applicable laws. Appropriation of any of the land described in this order under the general mining laws for metalliferous minerals prior to the date and the time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 22, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89-20862 Filed 9-5-89; 8:45 am]

BILLING CODE 4310-JA-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 42, 44, 45, 170, and 174

[CGD 76-080]

RIN 2115-AA11

Hopper Dredge Working Freeboard; Load Line and Stability Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The U.S. Coast Guard is amending the load line and stability regulations to allow self-propelled hopper dredges to obtain working freeboards. This rulemaking was initiated because of the interest of a segment of the dredging industry to load to a deeper draft (working freeboard) in order to carry more spoil per trip and this rule will allow the authorization of that carriage.

EFFECTIVE DATE: October 6, 1989.

ADDRESSES: 1. The comments and materials referenced in this rulemaking are available for examination and copying between 8 a.m. and 4 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G-LRA-2), U.S. Coast Guard Headquarters, Room 3600, 2100 Second Street SW., Washington, DC 20593-0001.

2. A Final Regulatory Evaluation is available for inspection or copying as explained in the preceding paragraph or by contacting the person listed below under **FOR FURTHER INFORMATION CONTACT.** The Categorical Exclusion from the requirements of the National Environmental Policy Act (NEPA) is available for inspection and copying at the same address or from the same person.

FOR FURTHER INFORMATION CONTACT: Dr. J.S. Spencer, Marine Technical and Hazardous Materials Division. Office of Marine Safety, Security and Environmental Protection, (202) 267-2988.

SUPPLEMENTARY INFORMATION: On August 2, 1976, the Coast Guard published in the **Federal Register** (41 FR 32237) an Advance Notice of Proposed Rulemaking (ANPRM) to consider developing damage stability standards for hopper dredges which elicited several responses. On December 10, 1979, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (44 FR 70791). On January 24, 1980, a Supplemental Notice of Proposed Rulemaking (SNPRM) was published (45 FR 5780) to insert some inadvertently omitted text. Eight comments were received after publication of the NPRM raising some additional technical questions. Because of the time elapsed since the NPRM and the reconstruction of the proposal due to the eight comments, the Coast Guard published a second SNPRM in the **Federal Register** (52 FR 47422 of December 14, 1987) for public comment. This SNPRM incorporated all but two of the comments received after publication of the NPRM and was a complete restatement of the proposed rules as changed by those comments. On February 22, 1988, the comment period was reopened and extended until March 23, 1988 (53 FR 5200).

Drafting Information.

The principal persons involved in drafting this document are Mr. William Hayden, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. Stanley Colby, Project Counsel, Office of the Chief Counsel.

Discussion of Comments and Changes Made

Ten letters commenting on the proposed regulations were received. Eight letters were received following the publication of the NPRM in 1979 and some of the major comments from those were discussed in the December 14, 1987, SNPRM. The two other letters were received following the publication of that SNPRM. Of the ten letters, seven were from organizations having direct involvement in the dredging industry. Six letters were received from civilian dredge operators, one from an unidentified company, one from the Army Corp of Engineers, one from the Maritime Administration and one from a Goast Guard field office.

Several commenters questioned whether the proposed regulations applied to existing hopper dredges and to vessels which do not load their own hoppers yet still transport dredged material or processed sludge. One commenter requested that the definition of hopper dredge be clarified to reduce confusion.

The rules are applicable only to self-propelled dredges which have machinery permanently installed for the purpose of loading internal tanks (hoppers) with dredge spoils. Also, the damage stability requirements are applicable only to those hopper dredges, both new and existing, for which a working freeboard assignment is desired. These regulations are not applicable to hopper barges, sludge barges or other vessels incapable of performing dredging functions. As such, the definition in § 44.310 has been clarified to avoid confusion.

Several commenters recommended, in response to the NPRM, to change the maximum specific gravity of the dredge spoils from 2.0 to 1.8. The SNPRM published on December 14, 1987, agreed with these comments and reduced the maximum specific gravity from 2.0 to 1.8. From the comments received in response to the second SNPRM, it appears that there is some disagreement as to what the maximum specific gravity of dredged spoils can be. In response to these comments, the Coast Guard is modifying § 174.210 (formerly § 174.830) to allow calculations to be performed at the highest specific gravity of dredge spoils the operator expects to encounter in the operation of the vessel. This maximum specific gravity will be stated on the load line certificate by the Assigning Authority.

Several commenters recommended that dumping of the spoils be allowed as one of the assumed situations to demonstrate compliance with the damage stability requirements. These commenters argue that the first action of the Master of a dredge after a casualty would be to dump the spoil.

The Coast Guard agrees with these commenters. Further, the Coast Guard agrees that the impact on the design and cost of a dredge resulting from the "no-dumping" assumption greatly exceeds the hazard that results from the few instances where the spoil may not be able to be dumpad after a casualty. Therefore, the proposed regulations contained in the SNPRM, § 174.845 (now § 174.330), were relaxed to permit the designer to assume that the spoil has been dumped immediately after damage provided the dredge meets certain operating requirements, such as the time required to open and the means of opening the bottom dump doors.

One commenter felt that the proposed requirement in § 174.843(a) (now § 174.325(c)) for maintaining at least 2 inches of positive metacentric height should be applied only in the case of symmetric flooding. The commenter proposed several other criteria for maintaining positive stability after cross flooding.

The Coast Guard believes that the maintenance of at least 2 inches of metacentric height after damage is necessary to provide for an acceptable amount of residual stability after damage and ensure that the righting arm curve is positive. This is also in keeping with the damage stability requirements of vessels that are not hopper dredges.

One commenter questioned why the proposed regulations would require that the stability calculations take into account the spillage of the dredge spoils resulting from the changing heel and trim of the vessel. They felt that in order to meet the requirements of § 174.310 it would require a significant amount of calculations which would dramatically increase the amount of work and cost involved.

The Coast Guard agrees with this comment; by not accounting for the spillage of dredge spoils, a more conservative righting arm curve will result. Therefore, the word "must" has been replaced with the word "may" in § 174.310(d) (formerly § 174.820(e)). The provision to account for the spillage is retained to provide a means for the designer who wishes to account for the spillage of dredge spoils.

Several commenters questioned why the proposed discharge area in § 174.845 (now § 174.335) for the hoppers must be 30% of the vessel waterplane area rather than some percentage of the hopper area.

The Coast Guard intended, in the proposed rules, that the discharge area should be 30% of the maximum hopper waterplane area, not the vessel's waterplane area. This wording as proposed has been redrafted for the final rule to prevent confusion.

Several commenters questioned the proposed requirements in § 174.845 (now § 174.330) that the bottom doors or split hull actuating mechanism be able to dump the spoils in two minutes or less even if the vessel is damaged.

The Coast Guard intends that the actuating systems be designed to fail in the open position so that in the event of damage or loss of power the spoils can be easily jettisoned. This requirement is necessary to validate the assumptions made for damage stability calculations that the spoil is dumped.

One commenter questioned why no special mark will be placed on the vessel when issued a working freeboard.

The International Load Line Convention and U.S. laws require that only one freeboard mark may be visible on the vessel at any time. This means that vessels with multiple load line marks must paint out one mark while operating in accordance with the second. The Coast Guard felt that it would be an undue burden on the industry to require the load line marks to change from the working freeboard marks to the standard freeboard marks when the vessel changed service. Vessels meeting the requirements for the assignment of working freeboard marks will be issued a load line exemption certificate which will permit the operator to submerge the load line to the working freeboard. The Coast Guard expects the master will not load his vessel deeper than the authorized working freeboard but violations would subject the perpetrator to the penalty provisions of 46 U.S.C. 5116.

Several commenters felt that the requirements in proposed § 93.40.20 in the NPRM to demonstrate that the vessel would survive an assumed bottom damage would be overly burdensome to the industry.

This comment has been considered and the proposed calculation for bottom damage has been withdrawn.

During review of the comments on the SNPRM, the Coast Guard realized that some of the problems commenters found with the proposed regulations stemmed from its less than clear organization. In addition, much of the text of the proposed rules was not trenchantly stated. In order to assist readers in meeting these requirements, the Coast Guard has reorganized the final rule by combining material that was related, eliminating redundancies, and clarifying text when necessary. None of these editorial changes affect the substantive content of the proposal. The following table will help readers locate the proposed rules in the new system.

Section title	SNPRM sec.	Final rule sec.
Specific applicability	174.800	174.300
Definitions	174.810	174.305
Calculations (Renamed General)	174.820	174.310
Assumptions (Added to General)	174.830	174.310
Extent and character of damage	174.841	174.315
Permeability (Added to General)	174.842	174.310
Damage survival	174.843	174.320
Equalization	174.844	174.325
Jettisoning of spoil	174.845	174.330
Watertight doors	174.850	174.335
Collision bulkhead	174.860	174.340

RIN Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulation. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this

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Subpart C—Rules for Assigning Working

(i) Show the fore, aft, and mean draft

maximum specific gravity allowed for

document can be used to cross reference this action with the Unified Agenda.

Regulatory Evaluation

This rule is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 28, 1979).

The economic impact of this proposal would involve calculation hours spent by naval architecture and engineering firms hired by the dredge owners and operators. The dredge owners and operators would have to pay for the services of the naval architects and engineers but would recoup their costs quickly because they would be able to load to deeper drafts and carry more dredged spoil per trip to the dump site. Vessels which have been granted working freeboards during the past six years on a case by case basis already meet the damage stability requirements in the proposed rules. The proposed rules are not a requirement for all hopper dredges. Only those dredges desiring an increased capacity would be required to meet the requirements promulgated by this document.

Compared to the current procedure for obtaining a working freeboard, the procedures set out in these rules would cost dredge owners less money. This is because the necessary procedure would be clearly provided by the rules promulgated in this document. Costs are estimated at $5800 for each new hopper dredge built over the next 10 years which is estimated to be 10 vessels. For that period, the estimated costs for existing vessels is $17,400. The estimated cost for industry for the next ten years would be $75,400.

Environmental Impact

It has been determined that this regulation is categorically excluded from further environmental documentation. The Categorical Exclusion for Hopper Dredge Working Freeboard, Load Line and Stability Requirements has been prepared and placed in the rulemaking docket (CGD 76.080). It is available for examination and copying as noted in the ADDRESSES above.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

An increase in information collection requirements for the vessels under these rules would result to the extent that the industry chooses to utilize this voluntary rule. The OMB control number for this rulemaking is 2115–0565 which is approved through March 31, 1991.

Regulatory Flexibility Act

Based upon the information in the evaluation, the Coast Guard certifies, under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these regulations will not have a significant economic impact on a substantial number of small entities. For the purposes of this rulemaking, a small entity has been defined as a business with gross revenues less than $500,000 per year. The rules contained in this rulemaking are voluntary and provide an economic benefit to industry, therefore no further evaluation is necessary.

List of Subjects

46 CFR Part 42

Penalties, Reporting and record-keeping requirements, Vessels.

46 CFR Part 44

Reporting and record-keeping requirements, Vessels.

46 CFR Part 45

Great Lakes, Reporting and record-keeping requirements, Vessels.

46 CFR Part 170

Marine safety, Reporting and record-keeping requirements, Vessels.

46 CFR Part 174

Marine safety, Vessels.

In accordance with the foregoing, subchapters E and S of title 46, Code of Federal Regulations, are amended as follows:

PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

1. The authority citation for part 42 continues to read as follows:

Authority: 46 U.S.C. 5115; 49 CFR 1.45, 1.46; sec. 42.01–5 also issued under the authority of 44 U.S.C. 3507.

2. Section 42.03–5 is amended by adding paragraph (e) to read as follows:

§ 42.03–5 U.S.-flag vessels subject to the requirements of this subchapter.

* * * * *

(e) Hopper dredges engaged in limited service domestic voyages. Self-propelled hopper dredges over 79 feet (24 meters) in length with working freeboards, on limited service domestic voyages within 20 nautical miles (37 kilometers) from the mouth of a harbor of safe refuge, are subject to the provisions of this subchapter that apply to a Type "B" vessel and to the provisions of Subpart E of Part 44 of this chapter.

3. Section 42.03–30 is amended by adding paragraph (b)(4) to read as follows:

§ 42.03–30 Exemptions for vessels.

* * * * *

(b) * * *

(4) For self-propelled hopper dredges engaged on international voyages or on limited service domestic voyages by sea. These vessels may be exempt from applicable hatch cover requirements of § 42.15–25 of this part by showing they meet the requirements in § 174.310 of this chapter. When a Load Line Exemption Certificate is issued for this exemption, it must have an endorsement that only seawater is allowed in the vessel's hoppers.

* * * * *

4. Section 42.20–5 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 42.20–5 Freeboard assignment: Type "B" vessel.

* * * * *

(c) Any Type "B" vessel that is greater than 100 meters (328 feet) in length and any hopper dredge meeting the requirements in Subpart C of Part 44 of this chapter may have a reduced freeboard from that assigned under Table 42.20–15(b)(1) in accordance with paragraph (d) or paragraph (e) of this section if—

* * * * *

PART 44—VARIANCE FOR CERTAIN VESSELS

5. The authority citation for part 44 continues to read as follows:

Authority: 46 U.S.C. 5115; 49 CFR 1.46.

6. Part 44 is amended by revising its title to read as follows:

PART 44—SPECIAL SERVICE LIMITED DOMESTIC VOYAGES

7. Part 44 is amended by redesignating subpart 44.01 as subpart A while retaining the title, "Administration", and redesignating subpart 44.05 as subpart B and revising the title of the new subpart B to read as follows:

Subpart B—Rules for Assigning Special Service Load Lines

8. Part 44 is amended by adding a new Subpart C to read as follows:

Subpart C—Rules for Assigning Working Freeboards to Hopper Dredges

Sec.
44.300 Applicability.
44.310 Definitions.
44.320 Submission of plans and calculations.
44.330 Obtaining working freeboards for hopper dredges.
44.340 Operating restrictions.

Subpart C—Rules for Assigning Working Freeboards to Hopper Dredges

§ 44.300 Applicability.

This subpart applies to each self-propelled hopper dredge—

(a) For which a working freeboard assignment is desired after January 1, 1990; and

(b) That operates with a working freeboard assigned under this subpart.

§ 44.310 Definitions.

Hopper dredge means a self-propelled dredge with an open hold or hopper in the hull of the dredge that receives dredged material.

Working freeboard means one-half the distance between the mark of the load line assigned under this subchapter and the freeboard deck.

§ 44.320 Submission of plans and calculations.

To request a working freeboard, calculations, plans, and stability information necessary to demonstrate compliance with this subpart must be submitted to the:

(a) Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC), 400 Seventh Street SW., Washington, DC 20590–0001; or

(b) American Bureau of Shipping, 45 Eisenhower Drive, Paramus, New Jersey 07652–0910.

§ 44.330 Obtaining working freeboards for hopper dredges.

A hopper dredge may be issued a working freeboard on a limited service domestic voyage load line certificate or a Great Lakes load line certificate if the following are met:

(a) The hopper dredge structure must have adequate strength for any draft up to the working freeboard draft. Dredges built and maintained in conformity with the requirements of a classification society recognized by the Commandant usually meet this requirement.

(b) The hopper dredge must—

(1) Meet subpart I of part 174 of this chapter; and

(2) Have on its bridge remote draft indicators that:

(i) Show the fore, aft, and mean draft of the dredge at all times while the dredge is operating; and

(ii) Have each indicator marked with the assigned freeboard and the working freeboard.

§ 44.340 Operating restrictions.

(a) Each hopper dredge assigned a working freeboard may be operated at drafts from the normal freeboard to the working freeboard if the—

(1) Seas are not more than 10 feet;

(2) Winds are not more than 35 knots;

(3) Area of operation is not more than 20 nautical miles (37 kilometers) from the mouth of a harbor of safe refuge; and

(4) Specific gravity of the spoil carried is not more than the highest specific gravity of spoil used in the stability calculations required by subchapter S of this chapter.

(b) The Assigning Authority designates on the face of the dredge's load line certificate—

(1) Each restriction contained in paragraph (a)(1) through (a)(3) of this section; and

(2) The maximum specific gravity of the spoils allowed to be carried.

PART 45—GREAT LAKES LOAD LINES

9. The authority citation for part 45 continues to read as follows:

Authority: 46 U.S.C. 5115; 49 CFR 1.46.

10. Section 45.9 is amended by revising paragraph (b) to read as follows:

§ 45.9 Seasonal application of load lines for vessels not marked under this part.

* * * * *

(b) Except for hopper dredges operating at working freeboards in accordance with subpart C of part 44 of this chapter, the Assigning Authority may not allow for lesser freeboards.

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

11. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C., 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

12. Section 170.110 is amended by adding paragraph (d)(16) to read as follows:

§ 170.110 Stability booklet.

* * * * *

(d) * * *

(16) For each self-propelled hopper dredge with a working freeboard, the maximum specific gravity allowed for dredge spoil.

* * * * *

13. Section 170.248 is amended in paragraph (a) by adding the words "or paragraph (c)" after the words "paragraph (b)" and adding paragraph (c) to read as follows:

§ 170.248 Applicability.

* * * * *

(c) A watertight door on a self-propelled hopper dredge with a working freeboard must comply with § 174.335 of this subchapter.

14. Part 170 is amended by adding § 170.300 to read as follows:

§ 170.300 Special consideration for free surface of spoil in hopper dredge hoppers.

The calculations required by this subchapter for each self-propelled hopper dredge must include—

(a) The free surface effect of consumable liquids and the free surface effect of the dredged spoil in the hoppers; and

(b) Either of the following assumptions when performing the calculations required by § 174.310(b) of this chapter:

(1) If the dredged spoil is assumed to be jettisoned, the free surface of the dredged spoil may be disregarded.

(2) If the dredged spoil is not assumed to be jettisoned. the free surface of the dredged spoil must be calculated.

PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

15. The Authority citation for part 174 continues to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12334; 45 FR 58801. 3 CFR, 1980 comp. p. 277; 49 CFR 1.46.

16. Section 174.005 is amended by adding paragraph (f) to read as follows:

§ 174.005 Applicability.

* * * * *

(f) Self-propelled hopper dredge having an assigned working freeboard.

17. Part 174 is amended by adding subpart I to read as follows:

Subpart I—Hopper Dredges With Working Freeboard Assignments

Sec.
174.300 Specific applicability.
174.305 Definitions.

Calculations

174.310 General.
174.315 Extent and character of damage.
174.320 Damage survival.
174.325 Equalization.

Sec.
174.330 Jettisoning of spoil.

Design

174.335 Watertight doors.
174.340 Collision bulkhead.

Subpart I—Hopper Dredges With Working Freeboard Assignments

§ 174.300 Specific applicability.

This subpart applies to each self-propelled hopper dredge for which a working freeboard assignment is being sought under part 44, subpart C, of this chapter.

§ 174.305 Definitions.

Hopper dredge has the same meaning as contained in § 44.310 of this chapter.

Length has the same meaning as contained in § 42.13–15(d) of this chapter.

Working freeboard has the same meaning as contained in § 44.310 of this chapter.

Calculations

§ 174.310 General.

(a) Each hopper dredge under this subpart must be shown by design calculations based on the assumptions under paragraphs (b), (c), (d), and (e) of this section, that it meets—

(1) The requirements in §§ 170.170, 170.173, and 170.300 of this chapter in each condition of loading and operation; and

(2) The survival conditions of § 174.320 in each condition of loading and operation assuming the character and extent of damage specified in § 174.315.

(b) The calculations required by paragraph (a) of this section must assume:

(1) The hoppers are full of seawater;

(2) The permeability of flooded spaces is as provided by Table 174.310;

(3) The equalization provisions of § 174.325; and

(4) The jettisoning provisions of § 174.330.

(c) The calculations required by this section must take into account a sufficient number of loading conditions to identify the condition in which the vessel is least stable, including, but not limited to, the most severe loading condition, and the:

(1) Specific gravity of the dredge spoil, from 1.02 up to and including the maximum required by paragraph (e)(1) of this section; and

(2) Draft, up to and including the draft corresponding to the working freeboard for the full range of trim.

(d) The calculations required by this section for a dredge with open hoppers may include spillage of spoil from the hopper resulting from changing the angle of heel and trim.

(e) The following assumptions must be made when doing the calculations required by this section:

(1) Dredged spoil in the hopper is a homogeneous liquid with a maximum specific gravity for the areas of operation.

(2) When calculating the vessel's righting arm, it is assumed at each angle of heel that the vessel trims free and the trimming moment is zero.

TABLE 174.310—PERMEABILITY OF FLOODABLE SPACES

Spaces and tanks	Permeability
Storerooms	0.60
Accommodation spaces	0.95
Consumable liquid tanks	0.00 or 0.95—whichever results in the more disabling condition.
Machinery space	0.85—unless otherwise supported by calculations.
Cargo tanks	Determined from the actual density and amount of liquid carried in the tank.

§ 174.315 Extent and character of damage.

(a) The calculations required by § 174.310 must show that the dredge can survive damage at any location along the length of the vessel including at a transverse bulkhead in accordance with paragraph (b) of this section.

(b) The calculations required by paragraph (a) of this section must assume the most disabling side penetration with the damage collision penetration provided by Table 174.315, except that if the most disabling damage collision penetrations would be less than those provided by Table 174.315, the smaller damage collision penetration must be assumed.

TABLE 174.315—EXTENT OF DAMAGE COLLISION PENETRATION

Longitudinal extent	$0.495L^{2/3}$ or 47.6 feet. [$(\frac{1}{3})(L)^{2/3}$ or 14.5 meters] whichever is less.
Transverse extent [1]	B/5 or 37.7 feet. (11.5 meters), whichever is less.
Vertical extent	From the base line upward without limit.

[1] Damage applied inboard from the vessel's side at a right angle to the centerline at the draft corresponding to the working freeboard assigned under subchapter E of this chapter.

§ 174.320 Damage survival.

A hopper dredge survives assumed damage if it meets the following conditions:

(a) The maximum angle of heel in each stage of flooding must not exceed 30 degrees or the angle of downflooding whichever is less.

(b) The final waterline, taking into account sinkage, heel, and trim, must be below the lowest edge of each opening through which progressive flooding may take place.

(c) The righting arm curve calculated after damage must:

(1) Have a minimum positive range of 20 degrees beyond the angle of equilibrium; and

(2) Reach a height of at least 4 inches (100mm) within the 20 degree positive range.

(d) Each opening within, or partially within, the 20 degree range beyond the angle of equilibrium must be weathertight.

(e) After flooding or equalization as allowed by § 174.325, the hopper dredge's metacentric height must be at least 2 inches (50mm) when the dredge is in an upright position.

§ 174.325 Equalization.

When doing the calculations required by § 174.310 of this subpart—

(a) Equalization arrangements requiring mechanical aids, such as valves, may not be assumed to be effective in reducing the angle of heel; and

(b) Spaces joined by ducts may be assumed to be common spaces only if equalization takes place within 15 minutes after flooding begins.

§ 174.330 Jettisoning of spoil.

(a) When doing the calculations required by § 174.310 for a hopper dredge with bottom doors, it may be assumed that the spoil is jettisoned immediately after damage and that the bottom doors remain open if:

(1) The bottom doors are designed so that they may be fully opened from:

(i) The closed position within two minutes even if the main power source is lost or the bottom door actuating mechanism is damaged; and

(ii) The navigating bridge;

(2) The discharge area through the bottom doors is equal to or greater than 30 percent of the maximum cross sectional area of the hopper measured in a plane parallel to the waterline; and

(3) Asymmetrical jettisoning of the spoil is impossible.

(b) When doing the calculations required by § 174.310 for a hopper dredge with a split hull, it may be assumed that the spoil is jettisoned immediately after damage if—

(1) The hull is designed so that—

(i) The complete separation is effected within two minutes even if the main power source is lost or the actuating means is damaged; and

(ii) The actuating means can be operated from the navigating bridge;

(2) It is shown to the Commanding Officer, Marine Safety Center, either by calculations or by operational tests, that the hulls can separate sufficiently to allow the dredged material to dump without bridging; and

(3) Asymmetrical jettisoning of the spoil is impossible.

Design

§ 174.335 Watertight doors.

(a) Each hopper dredge must have sliding watertight doors (Class 3) approved under subpart 163.001 of this chapter if the sill for the door is—

(1) Installed below the bulkhead deck; and

(2) Less than 24 inches above the final waterline as shown by the calculations required by § 174.310 in each damage condition up to and including the maximum amount of assumed damage.

(b) Each hopper dredge must have sliding watertight doors (Class 3) approved under subpart § 163.001 of this chapter, or quick acting hinged watertight doors (Class 1) approved under the same Subpart if the sill of the watertight door is—

(1) Installed below the bulkhead deck; and

(2) Greater than 24 inches above the final waterline as shown by the calculations required by § 174.310 in each damage condition up to and including the maximum amount of assumed damage.

§ 174.340 Collision bulkhead.

Each hopper dredge must have a collision bulkhead that is located not less than 5 percent of the length abaft of the forward perpendicular.

Dated: August 11, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–20817 Filed 9–5–89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1515 and 1552

[FRL-3640-5]

Acquisition Regulation; Submission of General Financial and Organizational Information and Purchasing System Information by Offerors

AGENCY: Environmental Protection Agency.

ACTION: Provisional rule.

SUMMARY: This document establishes a provisional rule on the submission of general financial and organizational information and purchasing system information by offerors. This rule is necessary to permit a more thorough initial evaluation of proposals received from offerors, and to identify those contractors which the Environmental Protection Agency (EPA) has the responsibility for the conduct of Contractor Purchasing System Reviews (CPSR). The intended effect of this rule is to require offerors to submit information with their proposals to assist in the evaluation process and determination of CPSR responsibility.

EFFECTIVE DATE: October 15, 1989.

FOR FURTHER INFORMATION CONTACT: Edward N. Chambers, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone: (202) 382–5028.

SUPPLEMENTARY INFORMATION:

A. Background

The EPA currently requires general financial and organizational information only from offerors in the competitive range. This information is obtained by offerors' completion of the questions under Environmental Protection Agency Acquisition Regulation (EPAAR) 1552.215–76, or their certification or updating of previously submitted information as directed by EPAAR 1552.215–75. Pertinent general financial and organizational information has therefore not been available for the initial evaluation of proposals.

Federal Acquisition Regulation 44.302 requires that Contractor Purchasing System Reviews (CPSR) be conducted for each contractor whose qualifying sales to the Government are expected to exceed $10 million over the next 12 months. The cognizant contract administration agency conducts these reviews at least every three years for contractors that continue to exceed the $10 million threshold.

The general and organizational information prescribed under EPAAR 1552.215–76 does not include information concerning an offeror's purchasing system. The EPA attempts to identify contractors for which it has CPSR responsibility through its Contract Information System (CIS). The CIS is an automated tracking system of all contract actions processed by EPA. The CIS does not enable EPA to identify all contractors for which EPA has CPSR responsibility since the CIS does not contain information on subcontractors and contracts with other Government agencies.

Information to be provided by offerors under this rule will enable EPA to identify contractors with qualifying Government sales in excess of $10 million and to ascertain the cognizant contract administration agency for these contractors.

This rule was published as a proposed rule in the **Federal Register** on February 16, 1989. The Office of Federal Procurement Policy (OFPP) by letter of March 29, 1989, identified provisions of the rule as having potential government-wide application. In accordance with the OFPP letter, EPA has submitted a request to the FAR Councils for initiation of a FAR case. When a rule contains issues submitted to the FAR Councils for initiation of a FAR case, OFPP guidance permits publication of the rule as provisional. If the FAR Councils adopt a rule, EPA will rescind the provisional rule. If FAR coverage is determined to be unnecessary, EPA will publish this provisional rule as final, taking the FAR Councils' deliberations into account.

B. Executive Order 12291

Office of Management and Budget (OMB) Bulletin No. 85–7, dated December 14, 1984, establishes the requirements for OMB review of agency acquisition regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring review.

C. Paperwork Reduction Act

The information collection requirements contained in this provisional rule were approved by the Office of Management and Budget and have been assigned OMB Control Number 2030–0006.

D. Regulatory Flexibility Act

The provisional rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The information requested for submission is readily available and will require only a minimal effort for offerors to compile.

The EPA certifies that this provisional rule will not exert a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

E. Public Comments

No comments were received in response to the notice of proposed rule making.

List of Subjects in 48 CFR Parts 1515 and 1552

Government procurement.

For the reasons set out in the preamble, chapter 15 of title 48 Code of Federal Regulations is amended as set forth below.

1. The authority citation for 48 CFR Parts 1515 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

PART 1515—[AMENDED]

2. Section 1515.407 is amended by revising paragraph (a)(3) to read as follows:

1515.407 Solicitation provisions.

(a) * * *

(3) 1552.215-76, General Financial and Organizational Information.

* * * * *

1515.407 [Amended]

3. In § 1515.407, paragraph (b) is deleted and paragraph (c) is redesignated as paragraph (b).

PART 1552—[AMENDED]

1552.215-75 [Removed and Reserved]

4. Section 1552.215-75 is removed and reserved.

5. Section 1552.215-76 is amended by revising the introductory paragraph and paragraph (q) to read as follows:

1552.215-76 General financial and organizational information.

As prescribed in 1515.407(a)(3), insert the following provisions:

* * * * *

(q) Purchasing System: FAR 44.302 requires EPA, where it is the cognizant Government agency, to conduct a Contractor Purchasing System Review for each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed $10 million (annual billings) during the next twelve months. The $10 million sales threshold is comprised of prime contracts, subcontracts under Government prime contracts, and modifications (except when the negotiated price is based on established catalog or market prices or is set by law or regulation). Has your purchasing system been approved by a Government agency?

Yes ________ No ________

If yes, name and location of the Government agency:

____

Period of Approval: ________________________

If no, do you estimate that your negotiated sales to the Government during the next twelve months will meet the $10 million threshold?

Yes ________ No ________

If you respond yes to the $10 million threshold question, is EPA the cognizant agency for your organization based on the preponderance of Government contract dollars?

Yes ________ No ________

If EPA is not your cognizant Government agency, provide the name and location of the cognizant agency ________________________

____

Are your purchasing policies and procedures written?

Yes ________ No ________

* * * * *

Date: August 26, 1989.

Harvey Pippen, Jr.,

Acting Director, Office of Administration.

[FR Doc. 89-20761 Filed 9-5-89; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1056

[Ex Parte No. MC-19 (Sub-No. 40)]

Return of Proportional Freight Charges by Motor Carriers of Household Goods

AGENCY: Interstate Commerce Commission.

ACTION: Adoption of final rule.

SUMMARY: After review of the comments of the parties to this proceeding we adopt the revision of our rule at 49 CFR 1056.15 proposed in our Notice of Proposed Rulemaking previously entitled *Refund of Tariff Charges on Shipments With Less Than Total Loss or Destruction*, 53 FR 50270, published December 14, 1988. The docket number is also corrected in this notice and in our decision adopting the final rule from Ex Parte No. MC-19 (Sub-No. 39) to Ex Parte No. MC-19 (Sub-No. 40) because Docket No. Ex Parte No. MC-19 (Sub-No. 39) was used in another proceeding. The revised rule requires motor common carriers of household goods to refund proportional freight charges on shipments with less than total loss or destruction in transit at the time corresponding loss and damage claims are processed. We believe that the rule change will eliminate the difficulties the moving industry has experienced in complying with the present rule and, at the same time, will assure that shippers will be refunded appropriate tariff charges for articles lost or destroyed in transit.

EFFECTIVE DATE: The revised rule is effective October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Heber P. Hardy (202) 275-7148 or John W. Fristoe (202) 275-7844, [TDD for hearing impaired (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pickup in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), [assistance for the hearing impaired is available through TDD services (202) 275-1721].

Energy and Environmental Considerations

This action does not affect significantly either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We certify that the adoption of this final rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1056

Advertising, Consumer protection, Freight, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

This action is taken under the authority of 49 U.S.C. 10321, 11109, 11110 and 5 U.S.C. 553.

Decided: August 28, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1056 of the Code of Federal Regulations is amended as follows:

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

1. The authority citation for Part 1056 continues to read as follows:

Authority: 49 U.S.C. 10321, 11109, 11110 and 5 U.S.C. 553.

2. Section 1056.15(b) is revised to read as follows:

§ 1056.15 Collection of freight charges on household goods shipments involving loss or destruction in transit.

* * * * *

(b) In the event that any portion, but less than all, of a shipment of household goods is lost or destroyed in transit, a motor common carrier of household goods in interstate or foreign commerce shall, at the time it disposes of claims for loss, damage, or injury to the articles in the shipment as provided in part 1005 of this chapter, refund that portion of its published freight charges (including any charges for accessorial or terminal services) corresponding to that portion of the shipment which is lost or destroyed in transit. To calculate the charges applicable to the shipment as delivered, the carrier shall multiply the percentage corresponding to the portion of the shipment delivered by the total charges (including accessorial and terminal charges) applicable to the shipment tendered by the shipper. If the charges computed in the manner set forth above exceed the charges otherwise applicable to the shipment as delivered, the lesser of those charges shall apply. The provisions of this paragraph shall apply only to the transportation of household goods as defined in § 1056.1(b)(1) of these rules. Notwithstanding any other provisions of this paragraph, a carrier shall collect, and the shipper shall be required to pay, that proportion of any charges for accessorial or terminal services rendered which corresponds to the proportion of the shipment not lost or destroyed in transit and any specific valuation charge that may be due. The provisions of this paragraph shall not be applicable to the extent that any such loss or destruction is due to the act or omission of the shipper. Carriers shall determine, at their own expense, the proportion of the shipment not lost or destroyed in transit.

* * * * *

[FR Doc. 89-20906 Filed 9-5-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Final Frameworks for Selecting Early Hunting Seasons on Certain Migratory Game Birds in the United States, Including Alaska, Puerto Rico and the Virgin Islands, for the 1989–90 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; amendment.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is amending the final rule prescribing the frameworks for early open seasons in Alaska that appeared in the **Federal Register** on August 11, 1989 (54 FR 32975). This amendment allows a season on canvasbacks in Alaska.

EFFECTIVE DATE: Effective on September 6, 1989.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, Room 634—Arlington Square, Washington, DC 20240, (703) 358-1714.

SUPPLEMENTARY INFORMATION: In the August 11, 1989, **Federal Register** (54 FR 32975) the Service published a final rule prescribing the early open seasons, hunting hours, hunting areas, and daily bag and possession limits for certain migratory game birds in the United States, including Alaska, Puerto Rico and the Virgin Islands. In that rule, there was no open season on canvasbacks in Alaska. The rule was developed prior to complete information on the status of canvasbacks as measured by the Waterfowl Breeding Population Survey and presented in the "1989 Status of Waterfowl & Fall Flight Forecast," July 25, 1989. Following harvest guidelines in the "1983 Environmental Assessment on Canvasback Hunting," canvasbacks are managed as "western" and "eastern" populations, with 3-year average breeding populations of 140,000 and 360,000 canvasbacks, respectively, being thresholds below which no hunting would be considered. The populations have been below these thresholds, and the season was not open in any state in 1988. The 1989 index for the Western Population was 168,400 canvasback, 57 percent above that of last year and 28 percent above the 1955–88 average. The 1989 index increased the average index to 141,300, a level which could allow hunting. Therefore, this amendment allows a season on canvasbacks in Alaska, but with daily bag and possession limits more restrictive than those which had been permitted prior to the season closure.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1989–90 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–718h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act (43 Stat. 739; as amended, 54 Stat. 1103–04).

The following amendment is made in Migratory Bird Hunting; Final Frameworks for Selecting Early Hunting Seasons on Certain Migratory Game Birds in the United States, Including Alaska, Puerto Rico and the Virgin Islands, for the 1989–90 Season published in the August 11, 1989, Federal Register (54 FR 32975).

On page 32983, under the heading "Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1989–90," bag limits are amended to read as follows:

Daily Bag and Possession Limits

Ducks—Except as noted, a basic daily bag limit of 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. The basic limits may not include more than 2 pintails daily and 6 pintails in possession, and 1 canvasback daily and 3 canvasbacks in possession. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Dated: August 30, 1989.

Richard N. Smith,

Acting Director.

[FR Doc. 89-20849 Filed 9-5-89; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 54, No. 171
Wednesday, September 6, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-89-206]

RIN 0581-AA19

Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products; Inspection and Certification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Certain Other Products by increasing the fees charged for the inspection of processed fruits and vegetables and certain other products. The proposed fees would recover the costs of performing inspection services, as authorized by the Agricultural Marketing Act of 1946.

DATES: Comments must be received on or before October 6, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, DC 20090-6456. Comments should note the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Raymondo O'Neal, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, DC 20090-6456, Telephone (202) 447-5021.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96-354 (5 U.S.C. 601).

The proposed rule reflects fee increases needed to recover the costs of services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946. Furthermore, the inspection, grading and certification program for processed fruits and vegetables and related products is voluntary.

The AMA authorizes voluntary official inspection, grading, and certification on a user-fee basis, of processed food products including processed fruits, vegetables, and processed products made from them. The AMA provides that reasonable fees be collected from the user of the program services to cover as nearly as practicable the costs of services rendered. This proposal would amend the schedule for fees and charges for services rendered to the processed fruit and vegetable industry to reflect the costs currently associated with the program.

AMS regularly reviews these programs to determine if fees are adequate. Since the last fee change June 5, 1986, (51 FR 20438), program operating costs have increased. The major contributing factors have been two salary increases for Federal employees—a 3-percent pay increase effective January 1, 1987, and a 2-percent pay increase effective January 1, 1988.

Employee salary and fringe benefits are major program costs that account for approximately 85 percent of the total operating budget. In fiscal year 1989, the following increases occurred in program operating expenses: (1) A Government-wide salary increase of 4.1 percent effective January 1, 1989; (2) a 28.3 percent increase in the Agency's contribution to the Federal Employees Health Benefits Program (applicable to all Government agencies) effective January 1, 1989; (3) a 10 percent Government-wide increase in travel entitlements effective in October 1988; and (4) a projected inflationary cost increase of 3.8 percent for fiscal year 1989. The Agency has determined that due to the aforementioned increases in program operating costs, these programs will incur over a $900,000 loss in fiscal year 1989.

Based on the Agency's analysis of increased costs since 1986, AMS proposes to increase the fees relating to such services. The following table compares current fees and charges with proposed fees and charges for processed fruit and vegetable inspection as found in 7 CFR 52.42-52.52. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 52.42:

Current	Proposed
$29.00 inspector hour, plus $5.50/hr. overtime.	$31.00 inspector hour, plus $7.00/hr. overtime.

Charges for copies of score sheets as found in § 52.49:

Current	Proposed
$25.00/hr	$31.00/hr.

Charges for additional copies of inspection certificates as found in § 52.50:

Current	Proposed
$25.00/hr	$31.00/hr.

Charges for travel and other expenses as found in § 52.51:

Current	Proposed
$29.00/hr	$31.00/hr.

Charges for year-round in-plant inspection services on a contract basis as found in § 52.52(c):

Current	Proposed
(1) For inspector assigned on a year-round basis: $22.00/hr	(1) For inspector assigned on a year-round basis: $25.00/hr.

Current	Proposed
(2) For inspector assigned on less than a year-round basis:	(2) For inspector assigned on less than a year-round basis:
Each Inspector $27.00/hr	Each inspector: $28.00/hr.
In-plant sampler—$14.00/hr	In-plant sampler—$14.00/hr.
(5) Overtime: All overtime hours charged at regular rate specified in (c) (1) and (2) plus $5.50 per hour.	(5) Overtime: All overtime hours charged at regular rate specified in (c) (1) and (2) plus $7.00 per hour

Current	Proposed
Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis as found in § 52.52(d):	

Current	Proposed
(1) Each inspector $27.00/hr	(1) Each inspector: $28.00/hr.[1]

Current	Proposed
(2) In-plant sampler—$14.00/hr	(2) In-plant sampler—$14.00/hr.
(5) Overtime: All overtime hours charged at regular rate specified in (d) (1) and (2) plus $5.50 per hour.	(5) Overtime: All overtime hours charged at regular rate specified in (d) (1) and (2) plus $7.00 per hour.

[1] Except a minimum of 8 hours per day will be billed for intermittent type in-plant services in lieu of a minimum of 40 hours a week. Assignments in-plant for less than four weeks will be billed in accordance with § 52.42.

List of Subjects in CFR Part 52

Processed fruits and vegetables, Food grades, Standards.

Accordingly, for the reasons set forth in the preamble, it is proposed that the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR 52.42, 52.49, 52.50, 52.51, 52.52c, 52.52d) would be amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, 1090 as amended (7 U.S.C. 1622, 1624).

2. Section 52.42 would be revised to read as follows:

§ 52.41 Schedule of fees.

Unless otherwise provided in a written agreement between the applicant and the Administrator, the fee for any inspection service performed under the regulations in this part, shall be at the rate of $31.00 per hour plus an additional $7.00 per hour for all scheduled overtime hours. When work is performed on a holiday, an additional hour shall be charged at the regular hourly rate for each hour worked.

3. Section 52.49 would be revised to read as follows:

§ 52.49 Charges for copies of inspection documents and/or inspection data.

If the applicant for inspection service requests additional copies of inspection documents and/or inspection data referable to the processed product covered thereby, the applicant may obtain such copies from the supervisor in the office of inspection serving the area where the service was performed at a charge of ½ hour per copy in accordance with the rate in § 52.42: *Provided*, that no charge shall be made for one copy if requested at the time of the original request for inspection. Inspection certificates issued in accordance with § 52.21 may be supplied to any financially interested party at a charge of ½ hour per certificate for each seven (7), or fewer copies in accordance with the rate in § 52.42.

§ 52.50 [Removed]

§§ 52.51 and 52.52 [Redesignated as §§ 52.50 and 52.51]

4. Section 52.50 would be removed and §§ 52.51 and 52.52 would be redesignated as §§ 52.50 and 52.51 and newly redesignated § 52.50 would be revised to read as follows:

§ 52.50 Travel and other expenses.

Charges may be made to cover the cost of travel time incurred in connection with the performance of any inspection service, including appeal inspections, at the rate of $31.00 per hour. This includes time spent waiting for transportation as well as time spent traveling, but not to exceed eight hours of travel time for any one person for any one day: *And provided further*, that if travel is by common carrier, no hourly charge may be made for travel time outside the employee's official work hours.

5. Newly designated section 52.51 would be amended by republishing (c) introductory text and by revising paragraphs (c)(1), (c)(2), (c)(5), (d) introductory text, (d)(1), (d)(2), and (d)(5) to read as follows:

§ 52.51 Charges for inspection services on a contract basis.

* * * * *

(c) Charges for year-round in-plant inspection services on a contract basis will be billed to the applicant monthly for all hours worked with a minimum of 40 hours per week for each inspector assigned to perform the inspection services in accordance with the following schedule:

(1) For personnel assigned to a year-round basis:
Each inspector—$25.00 per hour.

(2) For personnel assigned on less than a year-round basis:
Each inspector—$28.00 per hour.
In-plant sampler—$14.00 per hour.

* * * * *

(5) Overtime. All overtime hours will be charged at the regular rates specified in paragraphs (c)(1) and (2) of this section plus $7.00 per hour.

(d) Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis will be billed to the applicant monthly for all hours with a minimum of 40 hours for each inspection assigned to perform the inspection services in accordance with the following schedule:[1]

(1) Each inspector—$28.00 per hour.[2]

(2) In-plant sampler—$14.00 per hour.

* * * * *

(5) *Overtime.* All overtime hours will be charged at the regular rates specified in (d)(1) of this section plus $7.00 per hour.

* * * * *

Dated: August 30, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-20813 Filed 9-5-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 920

[FV-89-091]

Kiwifruit Grown in California; Proposed Rule To Establish an Interest Charge on Delinquent Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish an interest charge for delinquent handler assessments. This action would encourage California kiwifruit handlers to pay their assessments in a timely manner so that the Kiwifruit Administrative Committee would be assured that there are adequate funds available to cover program expenses.

DATES: Comments must be received by October 6, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 920 and Marketing Order No. 920 (7 CFR Part 920), regulating the handling of kiwifruit grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of California kiwifruit subject to regulation under the marketing order and approximately 1,225 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California kiwifruit may be classified as small entities.

The Kiwifruit Administrative Committee (committee), which is responsible for local administration of the marketing order, met on July 19, 1989, and recommended that an interest charge be established for delinquent handler assessments. Under § 920.40 of the marketing order, the committee is authorized to incur expenses that are reasonable and necessary to operate the program. Section 920.41 provides that handlers be assessed on a pro-rata basis to cover such costs. Further, § 920.41 authorizes the committee, with the approval of the Secretary, to establish an interest charge on assessments that are not paid within a time period prescribed by the committee.

The timely payment of assessments is important to the efficient functioning of the committee. The committee incurs expenses on a continuous basis and must be assured of a positive cash flow in order to meet its financial obligations, such as salaries and rent.

At its meeting on July 19, 1989, the committee recommended that handlers whose assessments were in arrears be subject to an interest charge of 18 percent per year or 1.5 percent per month on the balance owed. In order to give handlers ample time to make payment before being subject to this charge, assessments would not be considered subject to interest charges until 60 days after billing by the committee office. Interest would begin to accrue immediately following this 60-day grace period.

Therefore, it is proposed that a new § 920.112 be added to the rules and regulations under the kiwifruit marketing order which would specify that an interest charge of 18 percent per year or 1.5 percent per month will be charged on assessments not received 60 days after billing by the committee.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 920

California, kiwifruit, marketing agreements and orders

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 920 be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Part 920 is amended by adding a new § 920.112 to read as follows:

§ 920.112 Late payments.

Pursuant to § 920.41(a), late payment of assessments shall be subject to an interest charge of 1–½ percent per month on the balance due. Assessments shall be deemed late 60 days after the invoice date.

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[1] Except a minimum of 8 hours per day will be billed in lieu of a minimum of 40 hours a week. Assignments in-plant for less than four weeks will be billed in accordance with § 52.42.

[2] See footnote 1 in introductory text of § 52.51(d).

Dated: August 30, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-20814 Filed 9-5-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 932

[Docket No. FV-89-070]

Olives Grown in California; Change in Procedures for Nominating Producer Members To Serve on the California Olive Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the mail balloting procedure used to nominate producer members and alternate producer members to serve on the California Olive Committee (Committee). The change would allow producers who are interested in serving on the Committee, but are unable to attend meetings at which candidates are selected for nomination, to submit their names to the Committee to be included on the mail ballot. Thus, more producers would be able to participate in the nomination process.

DATES: Comments must be received by October 6, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2530-S, Washington, DC 20090-6456, telephone 202-475-3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 932 (7 CFR 932) regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven handlers of California olives regulated under this marketing order each season, and approximately 1,390 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Most, but not all, of the olive producers and none of the olive handlers may be classified as small entities.

The Committee works with the Department in administering the marketing order. The Committee consists of 16 members and alternates. Eight members represent producers and eight members represent handlers. The producer members are apportioned among four districts within the State of California. Four handler members represent handlers who are cooperative handler organizations, and four represent handlers who are not cooperative handler organizations.

Sectioin 932.129 of Subpart-Rules and Regulations (7 CFR 932.108-932.161) specifies that producer members and alternates may be nominated by mail ballot or at nomination meetings as the Committee may determine. When mail ballot voting is used in lieu of nomination meetings, the Committee is required to schedule a meeting in each producing district for the purpose of selecting candidates for member and alternate member nominations. The mail ballot voting procedures set forth in paragraph (a)(1) of § 932.129 do not permit a producer who is not present at a candidate selection meeting and who is not recommended as a candidate by a producer in attendance at such a meeting to be included on a nomination ballot.

Experience has shown that there are instances where producers are unable to attend these meetings but would like to offer themselves as candidates for nomination. It is the Committee's view that all producers interested in serving on the Committee should be provided an opportunity to be considered by their fellow producers for nomination, and that circumstances preventing a producer from attending a meeting should not be cause for denying that producer a chance to be nominated to serve on the Committee.

At its June 6, 1989, meeting, the Committee unanimously recommended that provision be added to paragraph (a)(1) to allow producers who are unable to attend the candidate selection meeting in their respective districts to submit their name to the Committee office, no later than seven days after such meeting, to be placed on the ballot as a candidate for a member or an alternate member position. The proposed change would be made in § 932.129(a)(1) by redesignating paragraph (iv) as paragraph (v) and adding a new paragraph (iv) specifying that in the event a producer cannot attend a meeting but wishes to be included on the ballot, that producer may notify the Committee office in writing no later than 7 days after the date of the nomination meeting for the producer's district.

The proposed change would not impose any additional costs on producers or handlers. Furthermore, the change is for the benefit of producers and will provide an opportunity for greater producer participation in the Committee nomination process.

Based on the Committee's recommendation and other available information, the Administrator of the AMS has determined that this proposal would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 932

California, Marketing agreements and orders, Olives.

For the reasons set forth in the preamble, 7 CFR Part 932 is proposed to be amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 932 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Paragraph (a)(1)(iv) of § 932.129 is redesignated as paragraph (a)(1)(v) and

a new paragraph (a)(1)(iv) is added to read as follows:

§ 932.129 Nomination procedures for producer members.

(a) * * *

(1) * * *

(iv) In the event a producer cannot attend a meeting but wishes to be included on the ballot, that producer may notify the Committee office in writing no later than 7 days after the date of the nomination meeting for the producer's district and request that the producer's name be included on the ballot.

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Dated: August 30, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-20810 Filed 9-5-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 1106 and 1126

[Milk Order Nos. AO-231-A56 and AO-210-A48; DA-88-110]

Milk in the Texas and Southwest Plains Marketing Areas; Termination of Proceeding on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action terminates the current proceeding on proposals to amend the producer-handler definitions of the Texas and Southwest Plains Federal milk orders. A public hearing was held September 7-8, 1988, to consider proposals by three cooperative associations that represent a substantial number of the dairy farmers who supply the markets. On June 22, 1989, the Department issued its recommendation to deny the proposals. Subsequently, the cooperative associations have asked that the proceeding be terminated.

DATES: This withdrawal is effective September 6, 1989.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued June 10, 1988; published June 16, 1988 (53 FR 22499).

Notice of Rescheduled Hearing: Issued July 14, 1988; published July 19, 1988 (53 FR 27174).

Recommended Decision: Issued June 22, 1989; published June 28, 1989 (54 FR 27179).

Statement of Consideration

A public hearing was held to consider proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Texas and Southwest Plains marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), at Irving, Texas, on September 7-8, 1988, pursuant to notices issued June 10, 1988 (53 FR 22499) and July 14, 1988 (53 FR 27174).

The hearing was held to consider proposals by three cooperative associations (Associated Milk Producers, Inc., Mid-America Dairymen, Inc., and Southern Milk Sales, Inc.) to amend the producer-handler definitions of the two orders. A recommended decision, based on evidence presented at the hearing and the record thereof, denying the proposals was issued on June 22, 1989 (54 FR 27179). The recommended decision concluded, in part, that there was insufficient evidence to demonstrate the existence of disorderly marketing conditions that could warrant the adoption of the proposals. Interested parties were afforded an opportunity to file written exceptions thereon by July 28, 1989.

Although no exceptions were filed to the recommended decision, the proponent cooperative associations requested that the proceeding be terminated. As a result of their withdrawal of support for this proceeding, there is no apparent support for a further consideration of the proposals by any party with respect to this proceeding. Since the recommended decision was to deny the adoption of the proposals, recognition should be given to the proponent's request to terminate the proceeding.

Termination Order

In view of the foregoing, it is hereby determined that the aforesaid proceeding with respect to proposed amendments to the tentative marketing agreements and to the orders should be and is hereby terminated.

List of Subjects in 7 CFR Parts 1106 and 1126

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR Parts 1126 and 1106 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on: August 30, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-20815 Filed 9-5-89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-061]

Horse Quarantine Facility Standards; Collection of Fees at Animal Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the regulations concerning quarantine facilities for animals being imported into the United States. We propose: (1) To include requirements for approval of permanent, privately operated quarantine facilities for horses (there are currently no requirements in the regulations for these facilities); and (2) to add new requirements to those already in the regulations for approval of temporary, privately operated quarantine facilities for horses. We believe these amendments are needed to ensure that private facilities meet minimum standards for disease control. We are also proposing that the government collect payment from each privately operated quarantine facility for services the government provides at that facility. We believe this amendment is necessary to ensure that the government is fully reimbursed for services it provides at private facilities.

DATE: Consideration will be given only to comments received on or before November 6, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies of Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 85-

061. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to help prevent the introduction into the United States of various diseases. The regulations require that some of these animals be quarantined upon arrival in the United States as a condition of importation. There are two types of quarantine facilities for animals being imported into the United States: government operated facilities and privately operated facilities. The regulations currently contain requirements for the approval of various privately operated quarantine facilities, including temporary, privately operated quarantine facilities for horses. (See 9 CFR 92.11(d) (2) and (3)).

Permanent, Privately Operated Quarantine Facilities

The regulations do not contain requirements for the approval of permanent, privately operated quarantine facilities for horses. There is occasional public demand for quarantine services for horses in excess of those available at existing federal facilities. This demand may not be able to be filled by temporary, privately operated quarantine facilities because such facilities are established, approved, and operated by importers to handle only their own horses or to handle only horses imported for one unique importation, race, or show. Only the importer's horses or the horses involved in the event are quarantined in a temporary, privately operated quarantine facility. Therefore, in order to meet unfilled demand for quarantine services, we are proposing to add a new § 92.11(e) [1] containing requirements for approval of permanent, privately operated quarantine facilities for horses. In conjunction with the addition of these regulations, the existing regulations concerning temporary, privately operated quarantine facilities for horses would be modified as appropriate (see explanation under "Temporary, Privately Operated Quarantine Facilities," below).

We are not proposing to apply the existing regulations concerning approval of temporary, privately operated quarantine facilities for horses to permanent, privately operated quarantine facilities for horses. Though most of the requirements would be the same for both types of facilities, there are basic differences between permanent and temporary quarantine facilities. The most important difference is that the risk of disease spread within and from permanent facilities is greater than similar risks at temporary facilities. A permanent facility would be occupied on a continuing basis by a large number of animals in different lots. Smaller numbers of animals, in a single group, are quarantined in a temporary facility, and temporary facilities are only in operation a short period of time before all the animals are removed and the facility closed. These differences in operation dictate that security measures must be tighter, and disease detection and prevention measures must be stricter at permanent facilities than at temporary facilities. The proposed requirements for permanent and temporary facilities would appropriately reflect the differences between the two types of facilities, as noted in the following discussion.

With respect to permanent, privately operated quarantine facilities for horses, the regulations would be amended to add a definition of "permanent, privately operated quarantine facility," and to add requirements concerning cooperative agreements; responsibility for costs of operating facilities; supervision of facilities; physical plant requirements, including location and construction; sanitation and security; operating procedures for personnel, handling of horses, cleaning and disinfecting, and recordkeeping; and environmental responsibilities. Information would also be added to the regulations concerning how to apply for approval of permanent, privately operated quarantine facilities for horses, and concerning denial and withdrawal of approval.

The proposed definition of "permanent, privately operated facility" would state that a permanent, privately operated quarantine facility is a facility that offers quarantine services for horses to the general public on a continuing basis, and that is operated by an entity other than the Federal government.

Proposed § 92.11(e)(1) would require that no facility shall operate as a permanent, privately operated quarantine facility for horses unless it is operated in accordance with a cooperative agreement executed by the operator or other representative of the facility and by the Administrator, and unless the cooperative agreement includes all the requirements of proposed § 92.11(e). This provision is necessary to ensure that permanent, privately operated quarantine facilities for horses operate only in accordance with the regulations. As discussed below, we are proposing to add this requirement to § 92.11(d)(2) to apply to temporary facilities.

Proposed § 92.11(e)(1) would also provide that the cost of the facility and all costs associated with its maintenance and operation must be borne by the operator of the facility in accordance with § 92.12 of the regulations. This requirement would be necessary to ensure that all costs associated with the facility, which is a private enterprise, are borne by the individuals responsible.

Under the proposed regulations, Animal and Plant Health Inspection Service (APHIS) personnel would provide services at permanent, privately operated quarantine facilities. Proposed § 92.11(e)(2) provides that facilities meet the minimum requirements detailed in paragraph (e) in order to be approved, but that approval of any permanent, privately operated quarantine facility for horses is contingent upon a determination by the Administrator that sufficient APHIS personnel are available to provide services at the facility. This requirement is necessary to ensure that APHIS has enough personnel to provide the inspection, testing, and other services that the regulations require for horses in quarantine. Assignment of APHIS personnel will be carried out on a "first-come-first served" basis—*i.e.*, if sufficient personnel are available, they will be assigned to a facility as soon as the facility meets all other requirements for approval in proposed § 92.11(e). Because the deployment of these personnel at one facility might result in another facility not being approved due to insufficient APHIS personnel, we would provide in proposed § 92.11(e)(2) that the operator of an approved facility be required to make its services available to the general public on an equitable basis.

Proposed § 92.11(e)(2)(i) requires that the facility be operated in the presence of an APHIS veterinarian. This proposed requirement is intended to ensure that the facility operates in accordance with all applicable rules and regulations.

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[1] Current § 92.11(e) would be redesignated § 92.11(f), and other redesignations would be made as needed, if this proposal is adopted.

Physical Plant Requirements—Permanent Facilities

Proposed § 92.11(e)(2)(ii) details the physical plant requirements necessary for approval of a permanent, privately operated quarantine facility for horses. The proposed requirements would ensure that the facility is capable of operating in accordance with the regulations, and of handling horses as the regulations require, to prevent the spread of diseases to horses in different lots or outside the facility. Under the proposed requirements, the facility must be located near enough to a port listed in § 92.3(a), or to any other port designated as an international port or airport by the U.S. Customs Service, to minimize the risk of imported horses introducing and disseminating diseases while moving from the port of entry to the quarantine facility. (See proposed § 92.11(e)(2)(ii)(A)). No similar provision exists with regard to temporary facilities. This is because in the case of temporary, privately operated quarantine facilities, APHIS personnel accompany the horses from the port to the quarantine facility. This could not be done with horses imported through permanent, privately operated quarantine facilities, because of the large number of shipments of horses into these facilities. Therefore, the requirement that permanent facilities be located near enough to the ports of entry to minimize disease risk while the animals are in transit is designed to offer the same degree of disease protection as that provided by APHIS personnel personally supervising the movement of horses to temporary facilities. Section 92.11(e)(2)(ii)(A) would also require that the quarantine facility be located at least ½ mile from any livestock. We have determined that disease agents for various infectious diseases of horses can travel in aerosol fashion, but are unlikely to do so for more than ½ mile.

The proposed requirements for permanent facilities also include construction requirements in proposed § 92.11(e)(ii)(B). The regulations would require that the facility be enclosed by a chain link security fence that is at least 8 feet high and that is made of a minimum of 11–½ gauge wire. A fence of this nature can reasonably be expected to prevent unauthorized persons, and horses and other animals from outside the facility, from having contact with horses quarantined in the facility. Also included would be requirements that all floors and the surfaces of that part of the walls with which the horses, their excrement or discharges have contact be constructed of materials that are impervious to moisture or than can undergo cleaning and disinfection between shipments without deterioration. The cleaning and disinfection of all of these surfaces would help ensure that disease agents would not be spread from one lot of horses to another. The surfaces most likely to be contaminated by disease agents would be those nearest the horses. The risk of surface contamination would decrease as the distance from the animals increased. For this reasons, the floors and lower part of the walls with which the horses, their excrement, or discharges would have contact, would need more frequent or more intensive cleaning and disinfection. The ceilings and the upper part of the walls would require considerably less maintenance to keep them clean and disinfected and would not need to be impervious to moisture. However, the regulations would require that they be able to undergo cleaning and disinfection between shipments without deterioration. Except in situations where the Administrator specifically approves alternative doors or openings, it would be required that all entryways be equipped with a series of two doors that are either solid or covered with double screening of 16-gauge or finer mesh, and that all other openings be covered with double screening of 16-gauge or finer mesh, to prevent disease-carrying insects or animals from entering or leaving the facility. Because we recognize that other methods of preventing the entry or exit of disease-carrying insects or animals might exist or might be developed, the proposed regulations would provide that the Administrator may approve alternative types of doors or openings if he or she determines that they are adequate to prevent the entry of insects that are vectors of diseases of horses.

It would also be required that the facility be constructed so that different lots of horses held at the facility at the same time are separated by physical barriers in such a manner that horses in one lot do not have physical contact with horses in another lot, or with their excrement or discharge. A "lot" of horses would be defined as a group of horses that, while being held on a conveyance or premises, have had opportunity for commingling (physical contact with other horses in the group or with their excrement or discharges) at any time during shipment to the United States. These provisions would help ensure that disease-affected or exposed horses in the facility do not spread that disease or expose other horses to it. Those horses that have already been commingled with other horses (and therefore are horses of the same lot) would be considered affected by a disease if any one horse in the lot has the disease. Therefore, it would not be necessary to separate horses within the same lot.

The proposed regulations also require that permanent facilities have ventilation capable of controlling moisture and odors and maintaining them at levels that are not injurious to the health of the horses in the facility. Those facilities that are approved to handle more than one lot of horses at a time would be required to have a separate, forced air ventilation system for each lot of horses that is housed in the facility, to prevent exposure of other lots of horses. No similar provision applies to temporary facilities. Unlike permanent facilities, temporary facilities cannot house more than one lot of horses. If an infectious disease is discovered, all horses in the temporary facility are considered to have been exposed to the disease. Ventilation would not be considered to be a contributing cause of further spread of the disease, since all the horses in the facility would be considered to have already been exposed.

The proposed regulations also require, for approval of permanent facilities, that certain areas, rooms and equipment necessary to conduct quarantine operations, to maintain the facility, and to keep it clean, are located within the facility. These include a vermin-proof feed storage area; enough office space to contain a chair, a desk, and a filing cabinet for recordkeeping; a storage area for equipment used in the facility; an area for washing clothes and equipment used in the facility; and a shower at the entrance to the necropsy area.

Showers would be required in the facility, to be located according to the configuration of the facility. To clarify these provisions regarding showers, we would add definitions for the terms "horse-holding area" and "horse-holding compound" to the regulations. A horse-holding area would be defined as that area in a privately operated quarantine facility in which a single lot of horses is held at one time. A horse-holding compound would be defined as that area in a permanent, privately operated quarantine facility that is comprised of all of the horse-holding areas in the facility. We would require that in those facilities where it is possible to move from each horse-holding area to a shower without passing through any

other horse-holding area, a shower be located at the entrance to the horse-holding compound. In those facilities where it is not possible to move from each horse-holding area to a shower without passing through any other horse holding area, the regulations would require that a shower be located at the entrance to each horse holding area. The regulations would require that a clothes storage and a clothes change area be located at each end of the shower areas. The regulations would also require that the facility contain a necropsy area that is at least 15′ × 15′ and that is illuminated by at least 70 footcandles—to provide sufficient space and light to conduct an adequate necropsy of a horse—and that is equipped with running water, a drain, a cabinet for storing instruments, and a refrigerator-freezer for storage of laboratory specimens. These requirements are all necessary to ensure that the facility is operated in a manner that will not spread disease into or out of the facility or among lots of horses in quarantine in the facility.

As noted above, the requirements for a permanent, privately operated quarantine facility would be more extensive than those for temporary facilities. Office space is not required at temporary facilities because they are not in operation long enough for paperwork to become a major concern for the APHIS veterinarian servicing the facility. A separate storage area for equipment for each lot of horses would be required at permanent, privately operated quarantine facilities. This would help ensure that equipment used on a horse in one lot does not come into contact with horses from another lot or with equipment used on those other horses. However, a separate storage area for equipment is not needed at temporary facilities. All horses in a temporary facility are considered to be one lot, and in the event that an infectious disease is discovered, all the animals are considered to have been exposed to the disease. A separate storage area would therefore not be effective in preventing further spread of disease in the temporary facility, since all the horses would be considered to have already been exposed.

A separate necropsy area is not required at temporary facilities, but would be required for permanent facilities. Based on our experience with regard to temporary facilities, we believe such a requirement would be impractical for those facilities, because they operate for only a short period of time and handle only a small number of horses. With regard to blood samples that must be drawn for all horses in quarantine, it has been our experience that this is less time-consuming to do at temporary facilities than at other facilities. Historically, there have been only a few horses in the temporary facility; therefore only a few samples need to be drawn. Because the horses are all in one lot, the APHIS veterinarians have been able to take all the samples during one visit. The number of samples is small; therefore, the APHIS veterinarian taking the samples has been able to carry the necessary equipment, supplies, and sample preparation and packaging materials with him or her. Because the number of samples is small, the APHIS veterinarian has also been able to retain duplicate samples under his or her supervision, and does not need a place to store them at the facility. This system has worked well at temporary facilities. However, we believe that at permanent facilities, with multiple lots of horses entering and leaving the facility on a continuing basis, this system would not be practical. Generally, many samples would have to be drawn, for numerous shipments, and it would be impractical for the veterinarian to carry the necessary equipment and supplies with him. Storage space for these items, work space for preparing and packaging samples for mailing, and storage space for duplicate samples, would be required.

With regard to examination of horses that have died in quarantine, temporary facilities are not required to have necropsy areas because, historically, they have not needed them. Temporary, privately operated quarantine facilities for horses have been operating for more than 15 years, and no horse has ever died while in quarantine at one of these facilities. The possibility of a horse dying while in quarantine at a temporary, privately operated quarantine facility is very low, because so few horses are imported through these facilities and they remain at the facilities for a very short time. However, we believe it is likely that some horses imported through permanent, privately operated quarantine facilities would die while in these facilities. We base this belief on the fact that some horses imported into the United States through Federally operated quarantine facilities, which are similar to the proposed permanent, privately operated quarantine facilities for horses in that they operate continuously and handle a large number of animals, have died while in quarantine in such facilities. Therefore, a necropsy area would be required at permanent, privately operated quarantine facilities for horses. Providing for necropsies within the facility would reduce the risk of spreading disease to horses outside the facility, by minimizing the transporting of the carcass of a horse that may have been diseased. The necropsy area would be necessary to perform post-mortem inspection of animals that die in the quarantine facility and to collect samples for laboratory diagnosis—actions that are taken to determine if the death of the horse was associated with a disease, of if it was caused by other factors, such as colic or physical injury.

The proposed regulations also specify additional sanitation and security requirements for permanent, privately operated quarantine facilities for horses. These appear at proposed § 92.11(e)(2)(ii)(C). These provisions include requirements that adequate equipment and supplies for cleaning, disinfecting, and maintaining the facility, and for controlling pests, be available. In addition, these provisions require that there be an adequate supply of potable water; that wastes be disposed of by either incineration or burial, or in a public sewer system; and that arrangements be made for carcasses to be disposed of by incineration, burial, or grinding and then heating for at least 1 hour at a temperature of not less than 285°F. Grinding and heating a carcass according to the time and temperature specified (also known as rendering) is effective in destroying any disease agents that might be present in the carcass. The proposed provisions also include a requirement that surface drainage into and out of the facility be controlled in such a manner that no agent of livestock diseases can be spread into or from the facility; that clean clothing and footwear, and receptacles for clothing that has been worn, be provided; and that feed and bedding for horses in quarantine be stored in the facility and originate in an area not under quarantine for cattle fever ticks. These requirements are all designed to ensure that disease is not spread into or out of an approved quarantine facility.

Personnel at Permanent Facilities

Specific regulations concerning personnel at permanent, privately operated quarantine facilities for horses are contained in § 92.11(e)(2)(iii)(A) of the proposed regulations. These requirements would restrict access to the facility to persons working at the facility or to persons specifically granted access by the APHIS veterinarian to perform veterinary

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functions, and would require that a log be kept of all persons entering and leaving the facility. Such a log would not be required at temporary facilities, which historically have been small enough that APHIS personnel can exercise complete control over persons entering the facility. When APHIS personnel leave the facility, they seal it, making further access to the facility impossible until APHIS personnel return to break the seal. Because they already operate under high security, additional security provisions for temporary facilities appear unnecessary.

The regulations would also require that all individuals change into clean clothing and footwear when entering and leaving the horse-holding compound within the facility, and when moving from one lot of horses to another lot of horses within the horse-holding compound. The regulations would require that enough clothing and footwear be available at the facility to allow these individuals to change clothing and footwear when required. The regulations would also require that those individuals shower when entering and leaving the horse-holding compound, when moving from one lot of horses to another lot of horses in the horse holding compound, and when leaving the necropsy area after conducting a necropsy. At the end of each workday, the operator of the facility would be required to collect work clothing worn into the horse-holding areas and keep it in a bag until the clothing is washed. Used footwear would be required to be left in the clothes change area or cleaned with hot water (148 °F. minimum) and detergent, and disinfected with either a quaternary ammonia-based disinfectant or a phenolic-based disinfectant, applied in accordance with the label approved by the Environmental Protection Agency. Any vehicle entering the quarantine facility building would have to be cleaned and disinfected in the presence of an inspector before entering and leaving the facility. These requirements are all necessary to preclude transmission of any equine disease agent into or out of the facility.

Handling of Horses at Permanent Facilities

Along with location and construction of facilities and personnel within the facility, the proposed regulations would govern the handling of horses at the facility. These requirements are contained in § 92.11(e)(2)(iii)(B) of the proposed regulations. These requirements would provide that horses be handled by lot (which could include any number of animals), and that each lot of horses be quarantined on an "all-in, all-out" basis. Removing animals from the lot, except for diagnostic purposes, after the start of the quarantine period, and adding animals to the lot after the start of the quarantine period would be prohibited. The proposed provisions would also require that the portion of the facilities where a lot of horses has been quarantined must be cleaned and disinfected after the animals are released from quarantine, so that newly arriving horses are not exposed to any diseases carried by the previous lot of horses. This cleaning and disinfection would have to take place in the presence of an APHIS veterinarian. These requirements would ensure that animals are released into the United States only if quarantine requirements have been complied with. These requirements would also simplify management of horses in the facility and would minimize possible disease spread.

Recordkeeping at Permanent Facilities

Proposed § 92.11(e)(2)(iii)(C) would require that the supervisory APHIS veterinarian maintain a daily log. Basically, the log would record the health of each horse each day of the quarantine. Maintaining this log would act as a control, ensuring that all horses were accounted for, properly quarantined, and incompliance with all regulatory requirements before release from the quarantine facility. The log would also provide information needed to trace animal diseases to their country of origin. Information required for the daily log for each lot of horses would include: Individual identification of the horses, source of origin of the horses in the lot, total number of horses in the lot when imported, number of dead or injured horses when the lot arrived, the date the lot was placed into the facility, the number of deaths each day in the lot of horses during the quarantine period, necropsy results, laboratory findings on horses that died during the quarantine period, and date of prescribed tests and results. Other information required would be Department import permit numbers for each lot, the date the lot was removed from the facility, and any other observations concerning the general health of the horses in the lot. The supervisory APHIS veterinarian of the facility would also be required to make, at the time each horse is identified, an identification record containing the identification number or markings of each horse. These records would be required to be maintained at the facility for 12 months from the date the horses were released from quarantine, and would have to be made available to APHIS personnel on request. The records would be required to be kept for 12 months to facilitate any APHIS investigation into possible alleged violations of import requirements or disease traceback. It has been our experience that virtually all investigations and disease tracebacks are conducted in the 12 months following importation. Similar information and recordkeeping requirements do not exist for temporary facilities. Temporary facilities operate only for a short period of time and then close. Frequently, there is no facility remaining where records can be maintained or inspected. In many cases, the operators of the facilities are not citizens of the United States, and return to their homeland after the temporary facilities close. However, all horses that will be quarantined at a privately operated quarantine facility must enter the United States under a permit. That permit provides identification and other information on the health, source, and owner of each animal. Permits are issued by APHIS, and APHIS maintains records of all permits issued.

Compliance With Environment Regulations

We are also proposing to require that each permanent, privately operated quarantine facility for horses be certified as complying with all applicable environmental regulations by a Federal or State government official responsible for ensuring compliance with those regulations. This requirement, which would appear at proposed § 92.11(e)(2)(iv), is necessary to provide us with documentation that all environmental requirements are met.

Additional Requirements

To allow adjustments for unanticipated circumstances, the regulations would provide, at § 92.11(e)(2)(v), that additional requirements could be imposed by the Administrator in specific cases in order to assure that the quarantine of horses in permanent, privately operated quarantine facilities is adequate "to enable determination of their health status, prevent spread of disease among horses in quarantine, and prevent escape of equine disease agents from the facility."

Approval of Permanent Facilities

The proposed regulations include procedures to request approval of permanent, privately operated quarantine facilities for horses. One of the proposed requirements is that

applications for approval be submitted to the Administrator no less than 90 days prior to the proposed date of entry of the first lot of horses in the facility. This is in contrast to the 15 days required for applications for approval of temporary facilities. This time is needed to inspect and approve the facility, then to arrange for personnel to provide services at the facility. The amount of time needed to make personnel arrangements so that services can be provided at the different kinds of facilities differs. Temporary facilities operate only for a short period of time. Therefore, all personnel arrangements that have to be made to provide services at such facilities can be made on a temporary basis, and they are relatively easy and quick to arrange, even if personnel must be detailed from other jobs. However, permanent facilities operate on a long-term basis. Long-term personnel plans and arrangements must be made, including the possible hiring of personnel or the permanent transfer of existing personnel. The time needed to make these arrangements is much longer than the time needed to make arrangements to provide services at temporary facilities.

The proposed regulations also include procedures for denying or withdrawing approval of permanent, privately operated quarantine facilities for horses if any provision of the proposed regulations is not met. The regulations would also establish due process procedures regarding a denial or withdrawal of approval and an opportunity for a hearing when there is a dispute of material fact regarding the denial or withdrawal. In addition to denial or withdrawal of approval when the requirements for approval are not complied with, approval would automatically be withdrawn by the Administrator when the operator notifies the Area Veterinarian in Charge for the state in which the facility is located, in writing, that the facility is no longer in operation.

Temporary, Privately Operated Quarantine Facilities

This document also proposes to make several amendments to the regulations concerning approval of temporary, privately operated quarantine facilities for horses. Certain of the provisions are also required for the approval of permanent, privately operated quarantine facilities, and would make requirements for both types of privately operated facilities more consistent.

The regulations would be amended to add a definition of "Temporary, privately operated quarantine facility." The definition would state that a temporary, privately operated quarantine facility is a facility that offers quarantine services for one lot of horses at a time, and that is owned and operated by any entity other than the Federal government.

In current § 92.11(d), various functions at temporary, privately operated quarantine facilities are referred to as being carried out by the importer of the horses, rather than by the operator of the facility. In actual practice, however, it is the operator of the facility who carries out these functions, and the operator is not necessarily the importer. For this reason, we are proposing to change references to "importer" in § 92.11(d) to "operator."

We are proposing to amend the regulations to add, at § 92.11(d)(2), a requirement that no facility operate as a temporary, privately operated quarantine facility for horses unless it is operated in accordance with a cooperative agreement executed by the operator or other designated representative of the facility and by the Administrator, and unless the terms of the cooperative agreement require compliance with § 92.11(d) (2) and (3) (requirements for approval of temporary, private facilities). This provision is necessary to ensure that temporary, privately operated quarantine facilities for horses operate only in accordance with the regulations.

Physical Plant Requirements—Temporary Facilities

The proposed amendments would include specific construction requirements for temporary facilities, at § 92.11(d)(3)(ii)(B). To ensure against absorption and retention of disease agents, all walls, floors, and ceilings would be required to be constructed so that the floors and surfaces of that part of the walls with which the horses, their excrement, or discharges have contact are impervious to moisture and can undergo cleaning and disinfection between shipments without deterioration. The cleaning and disinfection of all these surfaces would help ensure that disease agents would not be spread to animals that might be quarantined at the temporary facility at some future date. The surfaces nearest the horses would be most likely to be contaminated by disease agents, with the risk of surface contamination decreasing with distance from the animals. For this reason, the floors and lower part of the walls, with which the horses, their excrement, or their discharges would have contact, would need more frequent or more intensive cleaning and disinfection. The ceilings and the upper part of the walls would require considerably less maintenance to keep them clean and disinfected and would not need to be impervious to moisture. They would, however, be required to be able to undergo cleaning and disinfection between shipments without deterioration.

The quarantine facility would have to be constructed with each entryway equipped with a series of two doors that are either solid or equipped with double screening of 16-gauge of finer mesh, and with other openings covered with double screening of 16-gauge or finer mesh, unless the Administration specifically approves other types of doors and openings as adequate to prevent the entry of insects that are vectors of diseases of horses.

We are also proposing to amend the regulations to require that surface drainage into and out of temporary facilities be controlled in a manner adequate to prevent any agent of livestock diseases from being spread into or from the facility. This requirement would appear in § 92.11(d)(3)(ii)(B)(*3*).

We are also proposing to amend § 92.11(d)(3)(ii)(B) to add a new paragraph (*4*) to require that temporary, privately operated quarantine facilities for horses provide a shower and clothes storage and change area. Unlike the proposed regulations for permanent, privately operated quarantine facilities, we are not proposing to require that the shower and clothes storage and change area for a temporary facility be in any specific location. Temporary facilites have historically been small facilities, and the APHIS personnel supervising activities there have been able to monitor the entire facility at one time. Therefore, it appears that APHIS personnel can ensure personally that the clothes changing and showering requirements proposed in this document are met.

Section 92.11(d)(3)(iii)(C)(*7*) would require that arrangements be made for carcasses to be disposed of by incineration or burial, or by grinding and then heating the carcass for at least 1 hour at a temperature of not less than 265° F. (also known as rendering).

Proposed new paragraph § 92.11(d)(3)(iii)(F) would require that temporary, privately operated quarantine facilities for horses have equipment and supplies available for clearing, disinfecting, and maintaining the facility, and for controlled pests. Although the current regulations address cleaning, disinfecting, and pest control, the proposed new paragraph would clarify that such basic equipment and supplies must be available.

It is proposed to amend the regulations to add, at § 92.11(d)(3)(iii), a new paragraph (G) to require that temporary, privately operated facilities for horses have a vermin-proof feed storage area. This would ensure that feed for horses in quarantine at such facilities is not contaminated by vermin, which could carry disease.

Sanitation Procedures at Temporary Facilities

The regulations would also be amended to add requirements, at new § 92.11(d)(3)(iii)((H), (I), and (J), that the operator of the facility provide enough clean clothing and footwear to ensure that workers at the facility have clean clothing and footwear at the start of each workday. At the end of each workday, the operator would be required to collect all work clothing worn into the horse-holding area and keep it in a bag until the clothing is washed. The facility would be required to have a receptacle for soiled and contaminated clothing in the clothes storage and change area. The regulations would require that used footwear either be left in the clothes change area or be cleaned with hot water (148° F. minimum) and detergent and disinfected with either a quaternary ammonia-based disinfectant or a phenolic-based disinfectant, applied in accordance with the label approved by the Environmental Protection Agency. All persons granted access to the facility would be required to wear clean protective clothing and footwear upon entering the horse-holding area, and to shower and change their clothing and footwear when entering and leaving the facility. (See proposed § 92.11(d)(3)(iv)(A)(*4*) and (*5*)). These proposed amendments are all necessary to ensure that the facility is operated in a manner that will not spread disease into or out of the facility. No amendments are proposed to require personnel to shower or change while in the facility. Such provisions, though proposed for permanent facilities, as explained above, are not necessary at temporary facilities. The horses in a temporary facility are considered to be one lot, and in the event that an infectious disease is discovered, all the animals are considered to have been exposed to the disease. Showering and changing requirements for personnel already in the facility would therefore not be effective in preventing further spread of the disease in the facility, since all the horses would already have been exposed.

It is also proposed to amend the regulations at § 92.11(d)(3)(iv) to add a new paragraph (C) to require that the facility be throughly cleaned and disinfected with a disinfectant authorized in § 71.10(a)((5) of title 9, CFR, after the horses are released from quarantine and before the facility is used for any other purpose. The disinfectants authorized in § 71.10(a)(5) have proven to be effective, and appropriate for use in an animal facility. This proposed requirement is to ensure that there is no risk of disease contamination or spread.

APHIS Services

We are also proposing to amend the provisions of § 92.12(a), regarding APHIS's services and costs at privately operated quarantine facilities for horses and other types of animals, to make the operators of the facilities responsible for requesting and paying for services provided by APHIS. Because, under the proposed regulations, the operator of the facility would be responsible for ensuring that it is operated and maintained according to the regulations, we believe that it is appropriate for the operator to deal directly with APHIS in requesting necessary services. Additionally, while APHIS personnel have no direct or continuing contact at private facilities with individual importers or their agents, private quarantine facilities do have direct contract with importers or their agents, and are equipped and experienced in billing and collecting for services provided to those importers. Under these circumstances, it appears it would be more efficient and practical for APHIS to collect payments for Federal government-provided services from the private facility involved, rather than from individual importers.

Miscellaneous

We are also proposing to amend the regulations to clarify that quarantine facilities provided by other than the Federal government are "privately operated" quarantine facilities.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the proposed regulations, fees for Federal-government provided services would not be increased. At this time, there is one permanant, privately operated quarantine facility used for horses in the United States, and it is a small entity. Over the period of a year, approximately 10–25 temporary privately operated quarantine facilities, all of which are small entities, are used by importers of horses. The amendments to the regulations proposed by this document would not require significant construction changes to either the one permanent, privately operated facility for horses currently in use, or to the design of temporary privately operated facilities for horses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0040.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, it is proposed to amend 9 CFR part 92 as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as set forth below:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.1 would be amended by adding, in alphabetical order, the following new definitions:

§ 92.1 Definitions.

* * * * *

Horse-holding area. That area in a privately operated quarantine facility in which a single lot of horses is held at one time.

Horse-holding compound. That area in a permanent, privately operated quarantine facility that is comprised of all of the horse-holding areas in the facility.

* * * * *

Permanent, privately operated quarantine facility. A facility that offers quarantine services for horses to the general public on a continuing basis and that is owned and operated by an entity other than the Federal Government.

* * * * *

Temporary, privately operated quarantine facility. A facility that offers quarantine services for one lot of horses at a time, and that is owned and operated by an entity other than the Federal government.

* * * * *

§ 92.3 [Amended]

3. In § 92.3, the heading to paragraph (g) would be revised to read as follows:

(g) *Ports and privately operated quarantine facilities for horses.* * * *

4. In § 92.3, paragraph (g) would be amended by removing the words "U.S. Customs Service and quarantined at quarantine facilities provided by the importer" and adding in their place the works "U.S. Customs Service and quarantined at privately operated quarantine facilities", and by removing the phrase "§§ 92.2(i), 92.4(a), 92.8(a), 92.11(d), and 92.17 are met." and adding in its place the phrase "§§ 92.2(i), 92.4(a), 92.8(a), 92.17, and either §§ 92.11(d) or 92.11(e) as appropriate, are met."

§ 92.11 [Amended]

5. In § 92.11, paragraph (d)(2), the first sentence would be revised to read as follows: "Horses presented for entry into the United States as provided in § 92.3(g) of this part for quarantine in temporary facilities provided by the importer shall be quarantined in facilities approved by the Administrator."

6. In § 92.11, the last word in the last sentence in paragraph (d)(2) would be changed from "importer" to "operator".

7. In § 92.11(d), the following sentence would be added to the end of paragraph (d)(2): * * * "No facility shall operate as a temporary, privately operated quarantine facility for horses unless it is operated in accordance with a cooperative agreement executed by the operator or other designated representative of the facility and by the Administrator, and unless such cooperative agreement includes all the applicable requirements of this section and includes a requirement that the cost of the facility and all costs associated with the maintenance and operation of the facility shall be borne by the operator in accordance with the provisions of § 92.12 of this part."

8. In § 92.11, paragraph (d)(3), the heading and introductory text would be revised to read as follows:

(d) * * *

(3) *Standards and handling procedures for approval of temporary, privately operated quarantine facilities.* To qualify for designation as a temporary privately operated quarantine facility for horses, the facility shall be maintained and operated in accordance with the following standards:

* * * * *

9. In § 92.11, paragraph (d)(3)(i), the words "by the importer of his agent" would be removed and the words "by the operator of the facility" would be added in their place.

10. In § 92.11, paragraph (d)(3)(ii)(B) would be revised to read as follows:

§ 92.11 Quarantine requirements.

* * * * *

(d) * * *

(3) * * *

(ii) * * *

(B) *Construction.* (*1*) The quarantine facility shall be constructed so that the surfaces of the floors and the surfaces of that part of the walls with which the horses, their excrement, or discharges have contact are constructed of materials that are impervious to moisture and that can undergo cleaning and disinfection between shipments without deterioration. The ceiling and that part of the walls with which the horses, their excrement, or discharges do not have contact shall be constructed so that they can undergo cleaning and disinfection between shipments without deterioration.

(*2*) The quarantine facility shall be constructed with each entryway equipped with a series of two doors that are either solid or covered with double screening of 16-guage or finer mesh, and with other openings covered with double screening of 16-gauge or finer mesh, unless the Administrator specifically approves other types of doors and openings as adequate to prevent the entry of insects that are vectors of diseases of horses.

(*3*) Surface drainage into or from the facility shall be controlled in a manner adequate to prevent any agent of livestock diseases from being spread into or from the facility;

(*4*) There shall be a shower and a clothes storage and change area in the facility.

* * * * *

11. In § 92.11, paragraph (d)(3)(iii)(C), the first sentence would be revised to read as follows: "Upon the death or destruction of any horse, the operator must arrange for disposal of the carcass, in conformance with all applicable environmental quality control standards, by incineration or burial, or by grinding and then heating any carcasses for at least one hour at a temperature of not less than 265 °F." * * *

12. In § 92.11, paragraphs (d)(3)(iii)(A), (d)(3)(iii)(C), and (d)(3)(iv)(A)(*2*) would be amended by removing the words "the importer", the one time they appear in each of those paragraphs, and adding in their place the words "the operator".

13. In § 92.11, new paragraphs (d)(3)(iii) (F), (G), (H), (I), and (J); and (d)(3)(iv)(A) (*4*) and (*5*) would be added, to read as follows:

§ 92.11 Quarantine requirements.

* * * * *

(d) * * *

(3) * * *

(iii) * * *

(F) The facility shall have available equipment and supplies to maintain the facility in clean and sanitary condition, including insect and pest control equipment and supplies.

(G) The facility shall have a vermin-proof feed storage area.

(H) The operator of the facility shall provide enough clean clothing and footwear to ensure that workers at the facility have clean clothing and footwear at the start of each workday.

(*i*) The facility shall have a receptacle for soiled and contaminated clothing in the clothes storage and change area.

(*j*) At the end of each workday, the operator shall collect all work clothing worn into the horse-holding area and keep it in a bag until the clothing is washed. Used footwear shall either be left in the clothes change area or cleaned with hot water (148°F minimum) and detergent and disinfected with either a quaternary ammonia-based disinfectant or a phenolic-based disinfectant, applied in accordance with the label approved by the Environmental Protection Agency.

(iv) * * *

(A) * * *

(*4*) Persons granted access to the quarantine facility shall wear clean protective clothing and footwear upon entering the horse-holding area.

(*5*) Persons granted access to the quarantine facility shall shower when entering and leaving the horse-holding area.

* * * * *

14. In § 92.11, paragraph (d)(3)(iv)(B) would be amended by removing the words "in an approved quarantine facility provided by the importer" and adding, in their place, the words "in an approved temporary, privately operated quarantine facility".

15. In § 92.11, a new paragraph (d)(3)(iv)(C) would be added to read as follows:

§ 92.11 Quarantine requirements.

* * * * *

(d) * * *

(3) * * *

(iv) * * *

(c) *Facility.* The facility shall be thoroughly cleaned and disinfected in the presence of an APHIS veterinarian with a disinfectant authorized in § 71.10(a)(5) of this chapter, after the horses are released from quarantine and before the facility is used for any other purpose.

* * * * *

16. In § 92.11, paragraphs (e) (f), and (g) would be redesignated paragraphs (f), (g), and (h) and footnotes 3, 4, and 5 would be redesignated as footnotes 5, 6, and 7.

17. In § 92.11, redesignated paragraph (f) would be amended by changing the reference to "paragraph (f)", wherever it appears, to read "paragraph (g)", and by changing the reference to "paragraph (f)(7)" to read "paragraph (g)(7)".

18. In § 92.11, redesignated paragraph (g), the introductory text would be amended by changing the reference to "paragraph (f) (1) through (6)" to read "paragraphs (g) (1) through (6), and by changing the reference to "§ 92.11(g)" to read "§ 92.11(h).

19. In § 92.11, redesignated paragraph (g)(3)(ii)(A) would be amended by changing the reference to "paragraph (e)" to read "paragraph (f)".

20. In § 92.11, redesignated paragraph (g)(5)(vi) would be amended by changing the reference to "paragraphs (f)(6)(ii)(B) or (f)(6)(ii)(C)" to read "paragraphs (g)(6)(ii)(B) or (g)(6)(ii)(C)".

21. In § 92.11, redesignated paragraph (g)(6)(i) would be amended by changing the reference to "paragraph (f)(6)(ii)" to read "paragraph (g)(6)(ii)".

22. In § 92.11, redesignated paragraph (g)(6)(ii) would be amended by changing the reference to "paragraph (f)(6)(iv)" to read "paragraph (g)(6)(iv)".

23. In § 92.11, redesignated paragraph (g)(7)(i) would be amended by changing the reference to "paragraph (e)" to read "paragraph (f)", and by changing the reference to "paragraph (f)(7)(iii)" to read "paragraph (g)(7)(iii)".

24. In § 92.11, redesignated paragraph (g)(7)(ii) would be amended by changing the reference to "paragraph (f)(7)(iii)" to read "paragraph (g)(7)(iii)".

25. In § 92.11, redesignated paragraph (g)(7)(iii), paragraph (A)(5) "Cooperative and Trust Fund Agreement" would be amended by changing the reference to "§ 92.11 (f)" to read "§ 92.11(g)".

26. In § 92.11, redesignated paragraph (g)(7)(iii), paragraph (A)(13) of the "Cooperative and Trust Fund Agreement" would be amended by changing the reference to "§ 92.11(f)(3)(ii)(C)" to read "§ 92.11(g)(3)(ii)(C)".

27. In § 92.11, redesignated paragraph (g)(7)(iii), paragraph (C)(2) of the "Cooperative and Trust Fund Agreement" would be amended by changing the reference to "paragraph (f)(7)(iii)(A)(16)" to read "paragraph (g)(7)(iii)(A)(16)".

28. In § 92.11, redesignated paragraph (h) would be amended by changing the reference to "paragraph (f)" to read "paragraph (g)".

29. In § 92.11, a new paragraph (e) would be added to read as follows:

§ 92.11 *Quarantine requirements.*

* * * * *

(e) *Standards for approval of permanent, privately operated quarantine facilities for horses, and handling procedures for importation of horses.*—(1) *Cooperative agreement.* No facility shall operate as a permanent, privately operated quarantine facility for horses unless it is operated in accordance with a cooperative agreement executed by the operator or other designated representative of the facility and by the Administrator, and unless such cooperative agreement includes all the requirements of paragraph (e) of this section and includes a requirement that the cost of the facility and all costs associated with the maintenance and operation of the facility shall be borne by the operator in accordance with the provisions of § 92.12.

(2) *Approval of facilities.* To quality for designation as a permanent, privately operated quarantine facility for horses,[3] and to retain such approval, the facility and its maintenance and operation must meet the minimum requirements of paragraph (e) of this section. Approval of any quarantine facility shall be contingent upon a determination made by the Administrator that sufficient personnel are available to provide services required by the facility if approved. In the event that more than one facility requests approval, the facilities shall have APHIS personnel assigned to them in the order that they meet all other criteria for approval. The operator of the facility shall make its services available to the general public on an equitable basis. The cost of the facility and all costs associated with the maintenance and operation of the facility shall be borne by the operator in accordance with the provisions of § 92.12 of this part.

(i) *Supervision of the facility.* The facility shall be operated in the presence of an APHIS veterinarian.

(ii) *Physical plant requirements.* The facility shall comply with the following requirements:

(A) *Location.* The quarantine facility shall be located close enough to one of the ports listed in § 92.3(a) of this part, or at any other port designated as an international port or airport by the U.S. Customs Service, to minimize the possibility of introduction and dissemination of diseases by the imported horses while in transit from the point of entry to the quarantine facility, and shall be located at least one-half mile from any livestock.

(B) *Construction.* The quarantine facility building shall:

(*1*) Be surrounded by a chain link security fence that is at least 8 feet high and that is made of a minimum of 11½ guage wire;

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[3] Information as to the location of such facilities may be obtained from the Administrator, c/o Import Export Animals Staff, VS, APHIS, USDA, Room 765, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(*2*) Be constructed so that the surfaces of the floors and the surfaces of that part of the walls with which the horses, their excrement, or discharges have contact that constructed of materials that are impervious to moisture and that can undergo contained cleaning and disinfection between shipments without deterioration;

(*3*) Be constructed so that the ceiling and that part of the walls with which the horses, their excrement, or discharges do not have contact can undergo cleaning and disinfection between shipments without deterioration;

(*4*) Be constructed so that each entryway is equipped with a series of two doors that are either solid or covered with double screening of 16-gauge or finer mesh, and so that other openings are covered with double screening of 16-gauge or finer mesh, unless the Administrator specifically approves other types of doors and openings as adequate to prevent the entry of insects that are vectors of diseases of horses;

(*5*) Be constructed so that different lots of horses in the facility at the same time are separated by physical barriers in such a manner that horses in a given lot do not have physical contact with horses in another lot, or with their excrement, or discharge (for the purposes of this section a "lot" shall mean a group of horses that, while being held on a premises or conveyance, have had opportunity for commingling (physical contact with other horses in the group or with their excrement or discharges) at any time during shipment to the United States);

(*6*) Have a ventilation capacity sufficient to control moisture and odor and maintain them at levels that are not injurious to the health of the horses in quarantine;

(*7*) Have a separate, controlled, forced air ventilation system for each lot of horses that is housed in the facility, to prevent exposure to airborne diseases of other lots of horses in the facility, if the facility is approved to handle more than one lot of horses at a time;

(*8*) Have a separate, vermin-proof, feed storage area, if feed is stored in the facility;

(*9*) Have office space for recordkeeping that is of sufficient size to contain a chair, a desk, and a filing cabinet;

(*10*) Have a necropsy area that is at least 15′×15′, that is illuminated with at least 70 footcandles of light, and that is equipped with running water, a drain, a cabinet for storing instruments, and a refrigerator-freezer for storing specimens for laboratory examination;

(*11*) Have an area for washing clothes and equipment used in the facility;

(*12*)(*i*) In facilities where it is possible to move from each horse-holding area to a shower without passing through any other horse-holding area, have a shower at the entrance to the horse-holding compound; or

(*ii*) In facilities were it is not possible to move from each horse-holding area to a shower without passing through any other horse-holding area, have a shower at the entrance to each horse-holding area;

(*13*) Have a shower at the entance to the necropsy area;

(*14*) Have a clothes storage and change area at each end of each shower area; and

(*15*) Have a storage area for hoses, brooms, shovels, soaps, and disinfectants.

(*16*) Have a separate storage area for equipment and supplies for each lot of horses.

(C) *Sanitation and security.* Arrangements shall exist for:

(*1*) Equipment and supplies necessary to maintain the facility in clean and sanitary condition, including insect and pest control equipment and supplies;

(*2*) A supply or portable water adequate to meet all watering and cleaning needs.

(*3*) Power cleaning and disinfecting equipment with adequate capacity to disinfect the facility and equipment;

(*4*) Stocks of a disinfectant authorized in § 71.10(a)(5) of this chapter sufficient to disinfect the entire facility;

(*5*) Disposal of wastes, other than dead horses, by burial or incineration, or in a public sewer system in compliance with all applicable environmental quality control standards;

(*6*) Upon the death or destruction of any horse, disposal of the carcass, in conformance with all applicable environmental quality control standards, by incineration or burial, or by grinding and then heating any carcasses for at least one hour at a temperature of not less than 265 °F.

(*7*) Control of surface drainage into or from the facility in a manner adequate to prevent any agent of equine diseases from being spread into or from the facility;

(*8*) Enough clothing and footwear to ensure that workers at the facility have clean clothing and footwear at the start of each workday and when they move from one lot of horses to another lot of horses;

(*9*) A receptacle or receptacles situated so that clothing that has been worn into a horse holding area can be deposited in the receptacle after workers leave the horse holding area and before they enter the shower;

(*10*) Feed and bedding for horses in quarantine that originates in an area not under quarantine because of cattle fever ticks (see part 72 of this chapter) and that is stored in a manner that protects these supplies from being spoiled or infested by vermin.

(iii) *Operational procedures.* To retain designation as an approved quarantine facility, the following procedures shall be observed at the facility at all times:

(A) *Personnel.* Access to the facility shall be granted only to persons working at the facility or to persons specifically granted such access by the APHIS veterinarian in order to conduct veterinary functions. A daily log shall be maintained to record the entry and exit of all persons entering the facility.

(*1*) All personnel granted access to the horse-holding compound shall:

(*i*) Change into clean clothing and footwear when entering and leaving the horse-holding compound, and when moving from one lot of horses to another lot of horses in the horse-holding compound;

(*ii*) Shower when entering and leaving the horse-holding compound, and when moving from one lot of horses to another lot of horses within the horse-holding compound; and

(*iii*) Shower when leaving the necropsy area after conducting a necropsy;

(*2*) At the end of each workday, the operator of the facility shall collect work clothing worn into each horse-holding area and keep it in a bag until the clothing is washed. Used footwear shall be either left in the clothes change area or cleaned with hot water (148 °F. minimum) and detergent and disinfected with either a quaternary ammonia-based disinfectant or a phenolic-based disinfectant, applied in accordance with the label approved by the Environmental Protection Agency.

(*3*) Any vehicle entering the quarantine facility building shall be cleaned and disinfected in the presence of an inspector with a disinfectant authorized in § 71.10 of the regulations immediately before entering and before leaving the facility.

(B) *Handling of the horses in quarantine.* The horses in the quarantine facility shall be handled in compliance with the following requirements:

(*1*) Each lot of horses to be quarantined shall be placed in the facility on an "all-in, all-out" basis. No horse shall be taken out of the lot while it is in quarantine except for diagnostic purposes and no horse shall be added to a lot while the lot is in quarantine.

(*2*) The portion of the quarantine facility from which a lot of horses has been released shall be thoroughly cleaned and disinfected, in the presence of an inspector, with a disinfectant authorized in § 71.10(a)(5) of this chapter, before a new lot is placed in that portion of the facility.

(C) *Records.* It shall be the responsibility of the supervisory APHIS veterinarian to maintain a current daily log for each lot of horses. The supervisory APHIS veterinarian shall make an identification record containing the identification number or markings of each horse, and shall record such information as the general condition of the horses each day, source or origin of the horses in the lot, total number of horses in the lot when imported, number of dead or injured horses when the lot arrived, the date the lot was placed into the facility, the general condition of the horses each day, every medication administered to the horses, number of deaths in the lot each day during the quarantine period, necropsy results, laboratory findings on horses that died during the quarantine period, date of prescribed tests and results, Department import permit numbers of each lot, the date the lot was removed from the facility, and any other observations pertinent to the general health of the horses in the lot. The operator of the facility shall hold the log for 12 months following the date or release of the horse from quarantine and shall make it available to APHIS personnel upon request.

(iv) *Environmental requirements.* It shall be the responsibility of the operator of the facility to provide a certification that the facility complies with all applicable environmental regulations. The certification must be executed by a State or Federal government official responsible for ensuring compliance with those regulations.

(v) *Additional requirements.* Additional requirements as to location, security, physical plant and facilities, sanitation, and other items may be imposed by the Administrator in each specific case in order to assure that the quarantine of the horses in such facility will be adequate to enable determination of their health status, prevent spread of disease among horses in quarantine, and prevent escape of animal disease agents from the facility.

(3) *Request for approval.* Requests for approval may be made by writing to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, Room 765, 6505 Belcrest Road, Hyattsville, MD 20782. The application should include the full name and mailing address of the applicant and the location and street address of the facility for which approval is sought. Requests for approval and plans for permanent proposed facilities shall be submitted no less than 90 days before the proposed date of entry of the first lot of horses into the quarantine facility.

(4) *Withdrawal or denial of approval.* Approval of any facility may be refused or withdrawn at any time by the Administrator, if any of the provisions of paragraph (*e*) of this section are not met. Before such action is taken, the operator of the facility will be informed of the reasons for the proposed action. If there is a conflict as to any material fact, the operator shall be afforded an opportunity for a hearing to resolve such conflict, in accordance with rules of practice, which shall be adopted for the proceeding by the Administrator. However, such withdrawal shall become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal shall be effective upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, written confirmation shall be given to the operator of the facility as promptly as circumstances allow. This withdrawal shall continue in effect pending the completion of the proceeding and any judicial review, unless otherwise ordered by the Administrator. In addition to withdrawal or denial of approval when the requirements for approval are not complied with, approval will be automatically withdrawn by the Administrator when the operator of any approved facility notifies the Area Veterinarian in Charge for the state in which the facility is located in writing, that the facility is no longer in operation.[4]

§ 92.12 [Amended]

30. In § 92.12, paragraph (a), the seventh sentence would be revised to read as follows: "The operator of the privately operated quarantine facility shall request in writing such inspection and other services as may be required, and the importer, or his agent, shall waive all claim against the United States and Veterinary Services or any employee of Veterinary Services for damages that may arise from such services."

31. In § 92.12, paragraph (a), the ninth sentence would be amended by removing the words "the importer, or his agent," and by adding in their place the words "the operator of the privately operated quarantine facility".

Done in Washington, DC, this 30th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-20736 Filed 9-5-89; 8:45 am]

BILLING CODE 3410-34-M

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[4] The name and address of the Veterinarian in Charge of any State are available from the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, Room 765, 6505 Belcrest Road, Hyattsville, MD 20782.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ACE-22]

Proposed Alteration of VOR Federal Airways; Missouri

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airways V-14 and V-88 located in the vicinity of St. Louis, MO. The proposed realignment would provide published airways in areas where aircraft are usually radar vectored. This action would reduce controller workload.

DATES: Comments must be received on or before October 16, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ACE-500, Docket No. 89-ACE-22, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on their notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ACE-22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The prosposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemkaing will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of VOR Federal Airways V-14 and V-88 located in the vicinity of St. Louis, MO. The realignments would provide published airways in an area where aircraft are normally radar vectored. This action would reduce controller workload. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291d; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evalaution as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the critiera of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-14 [Amended]

By removing the words "Foristell, MO; St. Louis, MO;" and substituting the words "INT Vichy 067°T(061°M) and St. Louis, MO, 225°T(220°M) radials;"

V-88 [Amended]

By removing the words "INT Vichy 091° and St. Louis, MO, 171° radials." and substituting the words "to Troy, IL."

Issued in Washington, DC, on August 24, 1989.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 89-20651 Filed 9-5-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASW-19]

Proposed Alteration of VOR Federal Airways; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several VOR Federal Airways located in the Austin and San Antonio, TX, areas. These airway changes would improve the flow of traffic in the Austin and San Antonio terminal areas. The Houston Air Route Traffic Control Center (ARTCC) is presently undergoing a resectorization plan and these airway changes are necessary to support that plan. This action would aid flight planning and reduce controller workload.

DATES: Comments must be received on or before October 16, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW-500, Docket No. 89-ASW-19, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASW–19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign VOR Federal Airways V–68, V–558, V–565, V–574, and V–583 located in the vicinity of Austin and San Antonio, TX. These airway changes would improve traffic flow in the Austin and San Antonio terminal areas. The Houston, TX, Air Route Traffic Control Center (ARTCC) is presently undergoing a resectorization plan and these airway changes are necessary to support that plan. This action would aid flight planning and reduce controller workload. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–68 [Amended]

By removing the words "Junction, TX; San Antonio, TX;" and substituting the words "Junction, TX; Center Point, TX; San Antonio, TX;"

V–558 [Amended]

By removing the words "INT Austin 090°M(097°T) and Industry, TX, 310°M(316°T) radials; Industry;" and substituting the words "Industry, TX;"

V–565 [Amended]

By removing the words "to Austin" and substituting the words "Austin; College Station, TX; to Lufkin, TX"

V–575 [Amended]

By removing the words "From Navasota, TX, via" and by substituting the words "From Austin, TX; INT Austin 102°M(109°T) and Navasota, TX, 251°M(259°T) radials; Navasota;"

V–583 [Revised]

From Austin, TX; INT Austin 055°M(062°T) and College Station, TX, 262°M(270°T) radials; College Station; Leona, TX; Frankston, TX; to Quitman, TX.

Issued in Washington, DC, on August 23, 1989.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 89–20852 Filed 9–5–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 89–AEA–12]

Proposed Alteration and Revocation of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Jet Route J–6 and eliminate Jet Route J–228. Jet Route J–6 would be extended from Lancaster, PA, to Plattsburg, NY, along the present route of J–228. Concurrent with the extension of J–6, Jet Route J–228 would be eliminated. The route along J–6 and J–228 is a heavily traveled route which requires the filing and issuance of more than one airway. This proposed action would reduce controller and pilot workload and improve flight planning.

DATES: Comments must be received on or before October 16, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AEA–500, Docket No. 89–AEA–12, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AEA–12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–20, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter the description of J–6 and to eliminate J–228. Jet Route J–6 would be extended from Lancaster, PA, to Plattsburg, NY, along the present route of J–228. Concurrent with the extension of J–6, Jet Route J–228 would be eliminated. The route along J–6 and J–228 is a heavily traveled route which requires the filing and issuance of more than one airway. This action would reduce controller and pilot workload by facilitating air to ground communications as well as improve flight planning. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore; (1) is not a "major rule" under Executive Order 12201; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J–6 [Amended]

By removing the words "to Lancaster, PA." and substituting the words "Lancaster, PA; Broadway, NJ; Sparta, NJ; Albany, NY; to Plattsburg, NY."

J–228 [Removed]

Issued in Washington, DC, on August 24, 1989.

Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–20853 Filed 9–5–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 91

[Docket No. 26001; Notice No. 89–22; Special Federal Aviation Regulation No. 47–3]

Special Flight Authorization for Noise Restricted Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to extend the Special Federal Aviation Regulation (SFAR) which provides for limited issuance of special flight authorizations to conduct certain nonrevenue operations that are otherwise prohibited by the noise restrictions found in the general operating rules of the Federal Aviation Regulations (FAR). The current rule terminates on December 31, 1989. This proposal, if adopted, would extend SFAR 47 through December 31, 1991, to provide the time to install Stage 2 or Stage 3 hushkits on non-compliant Stage 1 aircraft.

DATES: Comments must be received on or before September 25, 1989.

ADDRESSES: Comments on the proposal are to be marked "Docket No. 26001" and mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 26001, 800 Independence Ave., SW., Washington, DC 20591; or delivered in duplicate to Room 916, 800 Independence Ave., SW., Washington, DC. Comments may be inspected in Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mrs. Laurette Fisher, Policy and Regulatory Division (AEE–300), Office of Environment, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267–3561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impacts of this proposal. Comments should contain the regulatory docket or notice number and be submitted in duplicate to the address above. All comments received as well as a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for comments. Before taking any final action on the proposal, the Administrator will consider the comments made on or before the closing date, and the proposal may be changed in light of the comments received. The FAA will acknowledge receipt of a comment if the commenter submits a self-addressed, stamped postcard with the comment and on the postcard the following statement is made: "Comments to Docket No. 26001." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the customer.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should be identified by the docket number of this proposed rule. Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Synopsis of the Proposal

Under Part 91 of the Federal Aviation Regulations (FAR), on or after January 1, 1985, no person may operate a civil subsonic turbojet airplane with maximum weight of more than 75,000 pounds to or from an airport in the United States unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels under part 36. This restriction applies to U.S. registered aircraft that have standard airworthiness certificates and foreign registered aircraft that would be required to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. SFAR 47 was adopted February 26, 1985 (50 FR 7751, February 26, 1985), to permit certain operations of noise restricted aircraft without a formal grant of exemption under FAR part 11. These operations included (a) flying the airplane to an airport where alterations are to be performed to achieve compliance with Stage 2 or Stage 3 noise levels under part 36; (b) exporting the airplane, including flights through U.S. airport(s) necessary for the aircraft to leave this country; (c) operations deemed necessary by the FAA for the sale, lease, or other disposition of the airplane; and (d) flight to a storage facility. SFAT 47 has been extended twice since December 31, 1986 (51 FR 47219, 12/31/86 and 52 FR 35052, 9/16/87). The SFAR extensions limited operations to hushkitting, scrapping, or exporting of Stage 1 aircraft. SFAR 47 expires on December 31, 1989.

When SFAR 47 was originally adopted, the FAA believed that most non-compliant Stage 1 aircraft would either be modified to meet Stage 2 noise standards or be removed from service. During the period of January 1, 1985, through July 20, 1989, the FAA issued 591 Special Flight Authorizations for purposes of hushkitting, exporting, scrapping, or storing Stage 1 aircraft. Over 80% of the special flight authorizations were issued between 1985 and 1987, with the remaining 20% issued from January 1, 1988, to July 20, 1989. Since 1987, SFAR extensions have limited operations to hushkitting, exporting, or scrapping Stage 1 aircraft. From January 1, 1989, to July 20, 1989, 32 requests were received for special flight authorizations and all were for hushkitting purposes only. There were no applications for exporting or scrapping aircraft. Therefore, the FAA originally questioned the need to extend the SFAR 47 date, since there has been a significant decline in the number of requests to hushkit Stage 1 aircraft.

However, information now available to the FAA through applications for Supplemental Type Certificates indicates that manufacturers are developing Stage 3 hushkits for non-complying Stage 1 aircraft. Airport operators and the public are demanding more Stage 3 aircraft operations at their airports, as shown by the number of new orders of Stage 3 aircraft to replace existing Stage 2 aircraft. With the continuing demand for quieter aircraft, the SFAR extension would allow operators to convert their non-complying aircraft from Stage 1 to Stage 2 or Stage 3 at their discretion. The demand for quieter aircraft is also spreading to other countries, as evidenced by the increasing number of special flight authorizations requested for foreign aircraft. This NPRM proposes to extend the FAA's authority to issue a special flight authorization for a Stage 1 airplane to operate in the United States in order to be modified to Stage 2 or Stage 3. Therefore, the FAA is soliciting information to determine whether the demand by interested operators for these Stage 2 or Stage 3 hushkits for Stage 1 airplanes warrants extending SFAR 47 again to allow transport of such aircraft to be hushkitted. Without such an extension, operators of aircraft that do not comply with FAR Part 91, for which hushkitting is desired after January 1, 1990, would have to use the FAR Part 11 exemption process.

If there is sufficient support for the extension of SFAR 47 to 1991, special flight authorizations would be limited to hushkitting efforts only, based on the requests for special flight authorizations received in 1989, as noted above. Consequently, the FAA proposes to amend SFAR 47 by deleting paragraphs 2 (b) and (c) which respectively allow exporting and scrapping the airplane.

Economic/Regulatory Impact Evaluation

This proposed rule would have negligible economic impact. Adoption of the proposal would allow an alternative from the exemption process for certain operations, reducing the administrative costs of both operators and the FAA. While the operations are not without some noise costs, these costs can be characterized as trivial, since the number of operations at any one local airport will be extremely low in number.

For the same reasons, the FAA certifies that the SFAR extension, if adopted, is not likely to have significant economic impact upon a substantial number of small entities. The basis for this is the very low number of requests which FAA foresees as a result of the adoption of this proposal. The FAA does not expect this number to exceed fifty over the life of the regulation. Accordingly, preparation of a full regulatory evaluation is not required.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a draft Finding of No Significant Impact has been prepared and is available to the public. The changes proposed in this rule would not significantly affect the quality of the human environment.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The Act requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a large number of small business entities. As noted above, the extension of SFAR 47 for hushkitting purposes will not have any economic impact on the affected operators. Consequently, the FAA determines that, under the criteria of the Regulatory Flexibility Act of 1980, a regulatory flexibility analysis is not required.

Conclusion

Accordingly, for reasons stated above, the FAA has determined that: (1) The amendment does not involve a major rule under Executive Order 12291; (2) the amendment is not significant nor does it require a Regulatory Evaluation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) it is certified that under the criteria of the Regulatory Flexibility Act that the amendment would not have significant economic impact on a substantial number of small entities. In addition, this proposal, if adopted would have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the United States.

Lists of Subjects

14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Air traffic control, Airspace, Air transportation, Airworthiness directives and standards.

The Proposed Amendment

Accordingly, the FAA proposes to amend part 91 of the Federal Aviation Regulations (14 CFR part 91) by amending Special Federal Aviation Regulation 47 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 State 1180); 42 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983.]

Special Federal Aviation Regulation 47—[Amended]

2. By deleting from paragraph 2 subparagraphs (b) and (c).

3. By deleting from paragraph 5 the year "1989" and substituting the year "1991."

Issued at Washington, DC on August 29, 1989.

J.E. Densmore,

Director, Office of Environment.

[FR Doc. 89-20856 Filed 9-5-89; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Service on Self-Regulatory Organization Governing Boards or Committees by Persons With Disciplinary Histories

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing a new Regulation 1.63 which would prohibit persons with certain disciplinary histories from serving on any self-regulatory organization's ("SRO") disciplinary committees, arbitration panels or governing board, and which would require each SRO to implement rules in this regard. Regulation 1.63 also would require each SRO to provide both notice to the public of what SRO rule violations would result in such a prohibition and certification to the Commission of compliance with Regulation 1.63.

DATE: Comments on the proposed rule must be received by November 6, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2933 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

Currently, the Commission's regulations do not restrict persons with disciplinary histories from sitting on SRO disciplinary committees, arbitration panels or governing boards. In general, those SROs which have rules in this regard indirectly prohibit committee participation by persons with disciplinary histories by prohibiting expelled or suspended SRO members from committee service.[1]

The Commission believes that the probity of the self-regulatory process requires that SRO bodies which establish and enforce an SRO's rules be impartial and free from the potential for and even the appearance of impropriety. The Commission further believes that the actual and perceived integrity with which an SRO operates is largely determined by the character and experience of the persons who serve on the SRO's rule-making and rule-enforcing bodies. The Commission is concerned, for instance, that a person found to have acted in contravention of an SRO's rules or to have acted dishonestly in other areas may be or may be perceived as being unwilling to formulate or enforce an SRO's rules in a fully principled manner. The Commission also believes that the persence of such a person on an SRO disciplinary committee, arbitration panel or governing board could diminish public confidence in that SRO as a self-regulator of its respective marketplace.

The Commission's proposed Regulation, therefore, would address these concerns and perceptions by establishing a minimum qualification standard for persons serving on certain SRO bodies charged with the responsibility of either disciplining SRO members or making the rules of the SRO. The Commission has designed proposed Regulation 1.63 to enhance the self-regulatory process without unduly hindering the ability of the SROs to conduct their business through a committee system.[2] The goal of its present proposal is to establish an industry-wide standard for eligibility for certain SRO committee service.

II. Proposed Regulation 1.63

As previously stated, the Commission believes that the integrity of the self-regulatory process requires that SRO bodies which make and enforce an SRO's rules be impartial and free from the potential for an even the appearance of impropriety. Proposed Regulation 1.63 is structured so that a person who has been found to have committed certain acts which would call into question his personal integrity or willingness to comply with an SRO's rules would be barred from assuming a position in which he would either help formulate an SRO's rules or judge others accused of violating an SRO's rules. Accordingly, proposed Regulation 1.63 would prohibit persons with disciplinary histories, as identified in the Regulation, from serving on any SRO's disciplinary committees, arbitration panels or governing board, and would require each SRO to adopt rules in this regard.[3]

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[1] See, e.g., Chicago Board of Trade Rule 561.00 and Chicago Mercantile Exchange Rule 435.

[2] For instance, "governing boards" would be the only class of SRO bodies affected by Regulation 1.63 whose functions would include the formulation and establishment of SRO rules. There are, of course, other permanent and temporary SRO bodies which have responsibilities and duties similar to those of governing boards. The Commission believes, however, that since final decisions by an SRO governing board are usually the decisions which, excepting Commission approval, alter the rules of the SRO, the application of Regulation 1.63 to governing boards alone would have a beneficial impact on the SRO rule-making process.

A. Proposed Regulations 1.63(b)(1) Through (4)

Under SRO rules required to be implemented pursuant to Commission Regulations 1.63(b) (1) and (3), a person [4] who was found by an SRO [5] to have committed a disciplinary offense [6] would be barred from serving [7] on any SRO's disciplinary committee,[8] arbitration panel [9] or governing board for a period of three years after final adjudication by the SRO or the length of any resultant expulsion, suspension, or failure to pay a disciplinary fine, whichever was longer.[10] Similarly, under proposed Commission Regulations 1.63(b) (2) and (4) any person who either was at that time subject to sanctions consented to in a settlement agreement with an SRO or had entered into such a settlement agreement in the previous three years, would be required to be prohibited by SRO rules from serving on any SRO's disciplinary committees, arbitration panels or governing board.[11] With these provisions, the Commission's proposed Regulation should ensure that a person violating SRO rules, with certain limited exceptions described above, would be ineligible to serve on the indicated SRO bodies for a substantial minimum period irrespective of the actual severity of the underlying disciplinary sanction.

Notably, the bar upon serving on an SRO rule-making or rule-enforcing body would be contingent upon the disciplinary action of or a settlement agreement with any SRO. Therefore, there would be no difference in the length of the bar dependent on whether the disciplinary sanction or settlement agreement arose at the SRO where the relevant body was located or at some other SRO. In this regard, the Commission believes that since the purpose of the proposal is that SROs should avoid the appearance of allowing rule violators to make rules or sit in judgment of other rule violators, there is no reason to distinguish between rule violators based upon which SRO disciplined them.

B. Proposed Regulations 1.63(b) (5) and (6)

Commission Regulations 1.63(b) (5) and (6) would require that SROs also impose restrictions on committee service for sanctions imposed as a result of Commission enforcement actions. Regulation 1.63(b)(5) would require SROs to impose a three-year committee service ban on those persons found to have violated the Commodity Exchange Act ("Act") or the Commission's regulations by administrative law judges, the Commission, or the courts where such findings has not been overturned or stayed. It also would imose such a ban where an individual has entered into a settlement agreement with the Commission in which any of the charges indentified include a violation of the Act or the Commission's regulations. Additionally, proposed Regulation 1.63(b)(6) would require each SRO to similarly bar SRO committee service for as long as a person was subject to an agreement with the Commission not to apply for registration or membership with any SRO.

Proposed Regulation 1.63(b)(6) also would require SROs to implement rules making persons ineligible to serve on any SRO disciplinary committee, arbitration panel or governing board whenever they are subject to an agreement with any contract market, clearing organization or registered futures association not to apply to that respective SRO for membership. This provision would not overlap with Regulation 1.63(b)(4) and its prohibition

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[3] Under proposed Regulation 1.63, an implementing SRO rule would make ineligible those committee members sitting at the time of the rule's implementation who had disciplinary histories in violation of the implementing SRO rule. While the Commission does not believe that this circumstance should cause any undue disruption to the SROs' committee systems, it specifically requests comment as to whether this proposed implementation schedule would cause undue disruption.

[4] Although the term "person" could encompass member firms, the Commission's understanding is that service on SRO boards and committees is limited to natural persons serving in an individual capacity. That is, member firms are not elected to seats which they can fill with a representative of their choosing. The Commission invites comment on whether there are any circumstances under which sanctions imposed on a firm should bar individuals associated with that firm from serving on a board or committee.

[5] For the purposes of this proposed Regulation, "SRO" would be defined to include designated contract markets, registered futures associations and futures clearing organizations (Proposed Commission Regulation 1.63(a)(1)).

[6] Proposed Commission Regulation 1.63(a)(4) would define "disciplinary offense" to mean committing or having supervisory responsibility for any act which violated an SRO's rules with exclusions for minor recordkeeping and trade timing violations as well as decorum and attire violations. In defining what constitutes a minor recordkeeping and trade timing violations, the Commission believes that such a violation usually receives a fine of $750 or less. Any such violation receiving either a fine larger than this or some period of suspension indicates a more grievous offense. Consequently, the Commission proposal excludes from the definition of "disciplinary offense" those recodkeeping or trade timing violations which incur fines less than $750 and no period of suspension. The Commission intends the decorum and attire exclusion to encompass fighting, cursing, spitting, dress code and other similar violations.

Under Regulation 1.63(a)(4), "disciplinary offense" is defined in terms of types of acts which violate an SRO's rules and is intended to include offenses identified in settlement agreements as well as findings following a final adjudication. Thus, a disciplinary offense could become the basis for committee disqualification under proposed Regulation 1.63 in two types of circumstances: (1) when it had "been found by the final adjudication of [an SRO's] disciplinary committee" (Regulation 1.63(b)(1) and (3)); or, (2) when it had been "identified in [a] settlement agreement" (Regulation 1.63(b)(2) and (4)).

[7] Proposed Regulation 1.63(b) also would prohibit persons with disciplinary histories from "seek[ing] election to" any SRO disciplinary committee, arbitration panel or governing board. The Commission believes that since persons with disciplinary histories would, under this proposal, be ineligible to serve on these SRO bodies, such persons should not be permitted to seek election to those SRO bodies when popular election is required.

[8] Proposed Commission Regulation 1.63(a)(2)'s definition for "disciplinary committee" would include bodies which commence disciplinary proceedings, impose sanctions, or hear appeals thereof. Therefore, the definition would cover probable cause committees, floor committees, disciplinary committees and boards of directors (who sit in appellate review of disciplinary actions). This definition thus should ensure that persons found to have acted in contravention of an SRO's rules or to have acted dishonestly in other areas would not be in a position to serve on any disciplinary committee in judgment of others accused of violating an SRO's rules.

[9] Proposed Commission Regulation 1.63(a)(3) would define "arbitration panel" to mean "any person or panel empowered by [an SRO] to arbitrate disputes involving either customers or the [SRO's] members." The proposed definition would make clear that such panels would include any body empowered to arbitrate any type of dispute under the SRO's rules.

[10] Under the Commission's proposal, a final SRO disciplinary decision which was no longer subject to any appeal under the SRO's appeal and review process would constitute an SRO finding of a disciplinary offense (Proposed Regulation 1.63(a)(5) and (b)). Therefore for the purposes of this proposal, any bar period would run from the point in time of the SRO's final decision even if the respondent decided to appeal the SRO decision to the Commission. Of course, if the Commission or a court overturned or stayed the SRO decision, the bar would be lifted.

[11] Warning letters would not qualify as either a settlement agreement (Regulation 1.63(a)(6)) or as an SRO finding of a disciplinary offense (Regulation 1.63(a)(5)).

on committee service for persons subject to SRO suspension or expulsion pursuant to a settlement agreement. Instead, Regulation 1.63(b)(6) is intended to cover the circumstance where a person with SRO membership commits some rule violation, ceases to be a member, is subsequently charged with the rule violation by the SRO and, as a sanction, agrees with the SRO not to reapply for SRO membership for some length of time.

C. Proposed Regulation 1.63(b) (7) and (8)

Under SRO rules adopted pursuant to the Commission's proposed Regulation 1.63(b) (7) and (8), a person whose trading privileges have been revoked or suspended or whose Commission registration in any capacity was revoked or suspended for any reason would be barred from serving on any SRO's rule-making or rule-enforcing body for a period of three years or the length of the revocation or suspension, whichever was longer. The Commission believes that it is appropriate that the bases for the restrictions of proposed Regulation 1.63 include trading prohibitions and registration revocations and suspensions in view of the serious nature of the acts on which such revocations and suspensions are predicated. For example, registration revocations and suspensions due to statutory disqualification under sections 8a(2) and (3) of the Act are based upon a list of activities which indicate that a person is not fit to handle customer funds.[12]

D. Proposed Regulation 1.63(c)

Proposed Regulation 1.63(c) would make it a direct violation of the Regulation for any person to seek election to or serve on any SRO's disciplinary committees, arbitration panels or governing board if his disciplinary history included any of the conditions set forth in Regulation 1.63(c).[13] Regulation 1.63(c) thus would enable the Commission to enforce the requirements of this provision directly, if necessary. The Commission believes that this reservation of enforcement power for itself is appropriate given the import of Regulation 1.63 and its purpose of upholding the integrity of the self-regulatory process. Of course, each SRO would continue to have a responsibility under section 5a(8) of the Act and Commission Regulation 1.51 to enforce any of its own rules implemented pursuant to Regulation 1.63(b).

E. Proposed Regulation 1.63(d)

Under proposed Regulation 1.63(b), each SRO would be required to implement and maintain in effect rules which were consistent with the Regulation and which had been submitted to the Commission pursuant to section 5a(12) of the Act and Commission Regulation 1.41 or, in the case of a registered futures association, pursuant to section 17(j) of the Act. In addition, each SRO would be responsible under section 5a(8) of the Act and Commission Regulation 1.51 for taking whatever steps may be necessary to ensure that persons selected to the SRO's disciplinary committees, arbitration panels or governing board were in compliance with those SRO rules.

In order to facilitate each SRO's ability to enforce effectively any rules implemented pursuant to proposed Commission Regulation 1.63, Regulation 1.63(d) would require each SRO to establish, maintain and make available to the general public a notice of all those rules of the SRO which if violated would constitute a "disciplinary offense" under Regulation 1.63. This procedure would enable any person who had been found to have committed a rule violation by an SRO to determine whether that violation was in fact a "disciplinary offense" for the purposes of Regulation 1.63 and whether he would be disqualified from future SRO committee service. Also, an SRO upon ascertaining that a potential committee selectee had violated some rule at another SRO, could review that other SRO's listing of "disciplinary offenses" to determine whether the potential selectee should be disqualified from committee service.

F. Proposed Regulation 1.63(e)

Under proposed Regulation 1.63(e), each SRO would be required to certify to the Commission on an annual basis that the SRO had complied with the requirements of Regulation 1.63. Additionally, Regulation 1.63(e) would require each SRO to submit to the Commission annually a list of any persons who had been removed from the SRO's committees during the previous year in accordance with the requirements of Regulation 1.63. The Commission believes that its receipt of this information would facilitate its ability to monitor each SRO's compliance with Regulation 1.63.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 604 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). Furthermore, the Chairman of the Commission previously has certified on behalf of the Commission that comparable rule proposals effecting clearing organizations and registered futures associations, if adopted, would not have had a significant economic impact on a substantial number of small entities. 51 FR 44866 (December 12, 1986). Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 et. seq., imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In reviewing this proposed rule the Commission has determined that it does not impose any information collection requirements as defined by the PRA.

Persons wishing to comment on this determination of no information collection burden should contact Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581; and The Office of Management and Budget, Paperwork Reduction Project (3038–XXXX), Washington, DC 20503.

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[12] These proscribed activities include: (1) having been enjoined by a Commission order or settlement from acting as a futures commission merchant, introducing broker, associated person, commodity trading advisor, commodity pool operator, etc. (section 8a(2)(C)); (2) having been convicted of a felony involving commodity transactions, embezzlement, fraud, theft, misappropriation, etc. (section 8a(2)(D)); (3) having been found by a competent tribunal to have been involved in various securities law violations (section 8a(2)(E)); (4) willfully filing false information with the Commission (section 8a(3)(G)); (5) being subject to an order denying or suspending membership from some contract market, registered futures association, or SRO (e.g., national securities exchange, registered securities association or clearing agency, or the Municipal Securities Rulemaking Board) (section 8a(3)(J) and appendix A to part 3 of the Commission's Regulations—Interpretative Statement With Respect to section 8a(2) (C) and (E) and section 8a(3) (J) and (M) ("Interpretative Statement")); and, (6) being subject to an order revoking a state real estate or insurance license (section 8a(3)(M) and Interpretative Statement).

[13] Regulation 1.63(c) incorporates by reference the conditions listed in Regulations 1.63(b) (1) through (8). See infra section II. A through C for a description of those relevant conditions.

List of Subjects in 17 CFR Part 1

Contract markets, Clearing organizations, Registered futures associations, Members of contract markets.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21 and 26(b) the Commission is proposing to amend title 17, chapter I, part 1 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 USC 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.63 is proposed to be added to read as follows:

§ 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.

(a) *Definitions.* For the purposes of this section:

(1) *Self-regulatory organization* means "self-regulatory organization" as defined in § 1.3(ee), and includes the term "clearing organization" as defined in § 1.3(d).

(2) *Disciplinary committee* means any person or panel empowered by a self-regulatory organization to commence disciplinary proceedings, to impose disciplinary sanctions or to hear appeals thereof.

(3) *Arbitration panel* means any person or panel empowered by a self-regulatory organization to arbitrate disputes involving either customers or members of the self-regulatory organization.

(4) *Disciplinary offense* means

(i) Any act which violates a self-regulatory organization's rules, excluding those acts which violate rules regarding recordkeeping or trade timing for which a fine of less than $750 and no suspension or expulsion was imposed, or decorum or attire;

(ii) Any failure to exercise supervisory responsibility diligently which failure results in any of the acts described in paragraph (a)(4)(i) of this section.

(5) *Final adjudication* means an adjudication which is no longer subject to appeal under the self-regulatory organization's appeal and review process, is not subject to a Commission stay, and has not been reversed by the Commission or any court of competent jurisdiction.

(6) *Settlement agreement* means any agreement that either a self-regulatory organization or the Commission enters into with a person wherein such person consents to the imposition of sanctions by the self-regulatory organization or the Commission.

(b) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(12) of the Act and § 1.41 or, in the case of a registered futures association, pursuant to section 17(j) of the Act, that make a person ineligible to seek election to or to serve on the self-regulatory organization's disciplinary committees, arbitration panels or governing board if he:

(1) Has been found by the final adjudication of any self-regulatory organization's disciplinary committee within the prior three years to have committed a disciplinary offense under that self-regulatory organization's rules;

(2) Has entered into a settlement agreement with any self-regulatory organization within the prior three years in which any of the charges identified in the settlement agreement include a disciplinary offense under that self-regulatory organization's rules;

(3) Is currently subject to a trading or membership suspension or expulsion or owes any portion of a fine imposed for having committed a disciplinary offense under any self-regulatory organization's rules based upon the final adjudication of that self-regulatory organization's disciplinary committee;

(4) Is currently subject to a trading or membership suspension or expulsion or owes any portion of a fine imposed pursuant to a settlement agreement with any self-regulatory organization in which any of the charges identified in the settlement agreement include a disciplinary offense under that self-regulatory organization's rules;

(5) Was found to have violated any provision of the Act or the Commission's regulations by an administrative law judge, the Commission or a court in a Commission enforcement proceeding within the prior three years, and such finding has not been overturned or stayed, or has entered into a settlement agreement with the Commission within the prior three years in which any of the charges identified include a violation of the Act or the Commission's regulations;

(6) Is currently subject to an agreement with the Commission, or any self-regulatory organization not to apply for either registration or membership in any self-regulatory organization;

(7) Was subject to a Commission trading prohibition, registration revocation or suspension in any capacity for any reason within the prior three years; or,

(8) Is currently subject to a Commission trading prohibition, registration revocation or suspension in any capacity for any reason.

(c) No person may seek election to or serve on any self-regulatory organization's disciplinary committees, arbitration panels or governing board if he is subject to any of the conditions in paragraphs (b)(1) through (b)(8) of this section.

(d) Each self-regulatory organization shall establish, maintain and make available to the general public a notice of all those rules of the self-regulatory organization which if violated would constitute a disciplinary offense under this regulation.

(e) Each self-regulatory organization shall submit to the Commission within thirty days of the end of each calendar year:

(1) A certification that the self-regulatory organization has complied with the requirements of this regulation during the prior year; and

(2) A certified listing of all those persons who have been removed from the self-regulatory organization's disciplinary committees, arbitration panels or governing board pursuant to the requirements of this regulation during the prior year.

Issued in Washington, DC on August 29, 1989, by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 89–20802 Filed 9–5–89; 8:45 am]

BILLING CODE 6351-01-M

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17 CFR Part 1

Trading Errors, Unmatched Trades, and Outtrades

AGENCY: Commodity Futures Trading Commission.

ACTION: Statement of agency interpretation.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is issuing this interpretation to reemphasize the need for maintaining complete information on trading errors, unmatched trades, and outtrades and conducting thorough surveillance of such activities.

FOR FURTHER INFORMATION CONTACT: Shauna L. Turnbull, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission ("Commission") is issuing this interpretation to reemphasize that the obligation of exchange members, exchanges, and their clearing organizations to maintain adequate audit trail records includes the requirement that they maintain complete records for trading errors, unmatched trades, and outtrades. The Commission also reemphasizes that the surveillance of this information for the detection of trading abuses must be a regular, integral part of the affirmative compliance programs of exchanges and clearing organizations.

In past oversight reports and as part of its enforcement activities, Commission staff has noted that trading errors, unmatched trades, and outtrades are susceptible to abuse.[1] The recent indictments and Commission administrative actions against futures brokers and traders in Chicago for alleged trading abuses further illustrate the possibility that trading errors can provide opportunities for, mask, or involve violations.

The Commission, therefore, is issuing this interpretation of sections 4(a), 4g, and 5a of the Commodity Exchange Act ("Act") and Commission Regulations 1.31, 1.35, and 1.51. Commission Regulation 1.35(a) requires every member of a contract market to "keep full, complete, and systematic records * * * of all transactions relating to its business of dealing in commodity futures, commodity options, and cash commodities." Under Commission Regulation 1.31, these records must be retained for five years. Commission Regulation 1.35(e) requires that exchanges must maintain a trade register of transaction data. In addition, Commission Regulation 1.51 requires that exchanges must conduct effective surveillance of trading practices, including the examination of members' books and records. Pursuant to these regulations and the Act, information on the chronology of trading errors, unmatched trades, and outtrades must be kept and reviewed for possible violations. By maintaining complete data on the correction of trading errors, unmatched trades, and outtrades as part of the audit trail[2] and by closely monitoring these audit trail data, the exchanges should be able to reduce the susceptibility of such activity to abuse.

I. Interpretation

Although certain exchanges currently are capable of reconstructing an audit trail for trading errors, unmatched trades, and outtrades, in order to comply with audit trail and other recordkeeping requirements as set forth in Commission Regulations 1.31 and 1.35 the Commission believes that it is essential that all exchanges have methods for identifying outtrades, unmatched trades, and errors that may occur throughout the data submission and clearing process. This audit trail should be complete and enable the exchanges to reconstruct the chronology of the resolution of errors, unmatched trades, and outtrades. Also, clearing firms and members must keep all records related to errors, unmatched trades, or outtrades for a minimum of five years, pursuant to Commission Regulations 1.31 and 1.35. The Division has delegated authority, under Commission Regulation 1.35(i), to request special reports concerning trade data accuracy.

Exchanges have taken steps in the past to expedite the resolution of outtrades. The Commission believes that exchanges should continue to explore and implement ways to process outtrades in the most efficient manner possible. By reducing the time taken to resolve outtrades, the exchanges can reduce the opportunity for "floating" trades or engaging in other abuses.

Exchanges should monitor the available data related to trading errors, unmatched trades, and outtrades, in conjunction with other transaction data, where appropriate, for the types of abuses described below, as well as other violations. The Commission recognizes that exchanges already conduct reviews of outtrade data; however, the Commission emphasizes that, in order to satisfy the requirements regarding the maintenance of their affirmative compliance programs under section 5a(8) and Commission Regulation 1.51, exchanges must integrate regular reviews of errors during the trading session, unmatched trades, and outtrades into these programs. Exchange personnel also may be employed to conduct floor surveillance or supervise activities related to the resolution of trading errors, unmatched trades, and outtrades. Exchanges should consider requiring additional supervisory procedures for the correction of such trades.

All exchanges first need to ensure that they have access to complete information about errors, unmatched trades, and outtrades and then need to integrate such data into their surveillance systems. Those exchanges that use computerized surveillance systems should design programs or software to identify readily such trades for further investigation. The remaining exchanges should develop routine capabilities for reviewing a sampling of documents used to resolve trading errors, unmatched trades, and outtrades.

II. Background

A. Trading Errors, Unmatched Trades, and Outtrades and Procedures for Their Resolution

Trading errors, unmatched trades, and outtrades can arise in a number of ways. A floor broker may err in filling a customer's order by failing to purchase or sell the specified quantity or commodity; failing to execute the order at a specified price, during a specified time, or in a specified manner; buying when he should be selling or selling when he should be buying; failing to record correct trade information; or in other ways.[3] Similarly, a floor trader or "local" who executes trades primarily for his own account may record incorrect information or fail to record information about completed trades. An error also can occur when a broker or local claims to have executed a transaction that is disavowed by an opposite trader.

Some errors may be detected soon after the trades are executed; these may not become part of the matching and clearing processes. Other errors will be discovered in the matching and clearing processes. Errors that can cause unmatched trades may be resolved before the matching and clearing process concludes for that trading day.

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[1] As evidence of the concern about trading errors, unmatched trades, and outtrades, Commission staff, for example, reviewed actions taken by the Commodity Exchange, Inc. in 1987 and the Chicago Mercantile Exchange in 1986 and 1987 to resolve outtrade problems. In addition, the Division of Trading and Markets ("Division") has made numerous recommendations to several exchanges on outtrade and error resolution procedures in rule enforcement reviews. Most recently, the Division recommended that the Coffee, Sugar & Cocoa Exchange, Inc. should broaden its review of outtrades that have been resolved after the date of execution ("as ofs"), that the New York Cotton Exchange should discontinue use of toleration factors for errors that result in late and missing offset tickets, and that the New York Mercantile Exchange should improve its system for accepting late trade data. *See also In the Matter of Wilkens and Pesek*, CFTC Docket No. 87–13, slip op. (initial decision Jan. 20, 1989) (involving, among other charges, allegations that trades had been prearranged to cover losses sustained through outtrades).

[2] As used herein, the term "audit trail" refers to the chronology of documents generated by traders and brokers and submissions made to exchanges or their clearing organizations for the purpose of correcting trading errors, unmatched trades, and outtrades. Such data, depending on the exchange system currently in place, may be maintained in hard copy, electronically, or both.

[3] Other sources for errors are clearing members, which process trade data, and data entry personnel, who enter such data.

If they are not so resolved, they become outtrades.

Once a member discovers that he has committed an error, including one that has resulted in an unmatched trade,[4] futures exchanges provide various methods for resolving the error, which may vary depending upon the type of error or the state in the matching and clearing process in which it is discovered. Generally, if a member discovers the error prior to the end of the trading session, exchanges require the member to notify the opposite party of the error and attempt to resolve it. When resolving an error, a member cannot change data that relate to a trade except to correct an actual error. As a general practice, in cases where members are unable to resolve the error, they "bust" the trade, that is declare it null and void. As necessary, members re-enter the market promptly to establish the correct position.

When a broker or clearing firm makes an error in connection with a customer's order, the position reflecting the error may be placed in an error account. Any loss as a result of the error generally must be made up to the customer through a cash payment from the broker or clearing firm.[5] In addition, a broker or clearing firm must provide certain profits made from the corrected trade to the customer, unless the customer agrees to other arrangements. Exchange floor committees or designated officials may be used to resolve disputes over the correction of trading errors. At certain exchanges, trade dispute resolutions are recorded on forms provided by the futures exchange.[6] Subsequently, exchanges generally provide that the matter can be brought before an arbitration committee.

If a member discovers the error after the trades from the relevant session have been cleared, the trade may become an outtrade.[7] For purposes of this interpretation, an outtrade is defined as a transaction for which a floor member(s) or clearing member(s) submits insufficient, erroneous, or unmatched data or fails to submit data to the clearing member, exchange, or clearing organization for the purpose of reporting, matching, or clearing a trade. All exchanges have procedures for the correction or late submission of data submitted for reporting or clearing purposes.[8] Futures exchanges generally require that members use their best efforts to resolve outtrades promptly. A member resolves an outtrade by discussing the error with the opposite party and agreeing to corrections of data submitted to clearing. Futures exchanges and the Commission prohibit members from executing a noncompetitive trade as a means of resolving an error.[9]

When members cannot resolve an outtrade, the trade is broken. In that case, members reenter the market, as necessary, to cover their positions. When such an outtrade involves a customer's order, the broker or clearing firm generally must enter the market as soon as possible to establish the customer's correct position. As with errors made during the trading session, the broker or clearing member generally must reimburse any loss to a customer that results from an outtrade. Further, the broker or clearing member must offer certain profits made from the resolution of a customer's outtrade to that customer, unless the customer agrees to other arrangements. Under these circumstances, the profit owed to a customer generally is that profit earned when a trader executes a corrected trade at a better price for the customer. When members resolve outtrades, the corrected outtrades are made "as of" the original trading day and then included on the exchange's trade register. For this reason, outtrades that are resolved after the date of execution usually are called "as ofs."

B. Potential Abuses Related to Outtrades, Unmatched Trades, and Errors

Although the occurrence of outtrades, unmatched trades, and errors need not be illegal and the process of resolving them is necessary, they are susceptible to abuse. Losses incurred through the correction of errors can provide an incentive for attempting to recoup those losses through later violations.

Various types of violations can be associated with errors, unmatched trades, and outtrades. For example, a member may execute an error-free transaction but intentionally create an outtrade to escape or avoid payment of margin for the trade. When a member intentionally creates an outtrade to delay payment of margin he is said to "float" the trade. A member also may commit a legitimate error but resolve his mistake in an illegal manner. For example, the member may attempt to execute a noncompetitive trade during or after trading hours to correct his error. Additionally, he may arrange to have another member take the loss on an error, unmatched trade, or outtrade through a noncompetitive trade(s), with the understanding that that member would be reimbursed with cash or through later illegal trades. Such illegal trades may be to the detriment of customers other than the one(s) involved in the error, unmatched trade, or outtrade. In addition, the member may resolve an error, unmatched trade, or outtrade in a legitimate manner but, thereafter, arrange illegal, noncompetitive trades that are intended to reimburse both himself and any other members for losses attributable to the error, unmatched trade, or outtrade.

C. Exchange Systems for Maintaining Information Regarding Outtrades, Unmatched Trades, and Errors

Deterrence, detection, and prosecution of abuses related to errors, unmatched trades, and outtrades can be improved by enhanced recordkeeping and surveillance techniques. Such improved recordkeeping should include an audit trail for the resolution of errors, unmatched trades, or outtrades. This audit trail should be a complete record of data reflecting such activities. From this audit trail, an exchange should be able to reconstruct the steps taken to address the errors, unmatched trades, and outtrades. At a minimum, exchanges currently should be able to identify all pertinent aspects of the error, unmatched trade, or outtrade (*e.g.*, parties, price, quantity, clearing firms, and customer type indicators); all changes in trade data originally and subsequently made; the time of the original transaction; and the results (*e.g.*, whether the trade was broken or corrected and, if corrected, the way in which it was changed).

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[4] Errors that involve critical matching data such as contract, price, or opposite firms, if undetected, will result in an unmatched trade, which must be corrected before the trade can clear. Other errors which involve only edit criteria, such as execution time/bracket, card/order number, or account number, will not cause an unmatched trade, and such trades may be cleared even if such data are erroneous.

[5] *See, e.g.*, Chicago Board of Trade Rule 350.04A; New York Mercantile Exchange Rule 6.17; New York Futures Exchange Rule 430; and New York Cotton Exchange Rule 1.09–B.

[6] *See, e.g.*, Commodity Exchange, Inc. Rule 4.28.

[7] In cases where a member discovers an error after the trading session and the transaction has matched or cleared, the error generally still may be resolved through exchange procedures for the correction of matched or cleared data. *See, e.g.*, Chicago Board of Trade Rules 350.04 (Errors and Mishandling of Orders) and 350.04A (Errors and Mishandling of Orders); Chicago Mercantile Exchange Rule 526 (Errors Discovered During Trading Session and Errors Discovered After a Trading Session); and New York Mercantile Exchange Rule 6.17 (Errors and Omissions in Handling Orders). Usually, however, when members commit errors involving critical matching data and do not correct the errors prior to the clearing of trade data, the trade does not clear.

[8] *See, e.g.*, Chicago Board of Trade Rules 350.04 (Errors and Mishandling of Orders) and 350.04A (Errors and Mishandling of Orders); Chicago Mercantile Exchange Rule 526 (Errors Discovered During Trading Session and Errors Discovered After a Trading Session); Commodity Exchange, Inc. Rules 4.28 (Disputes Discovered During Trading Session), 4.29 (Errors Discovered After Trading Session), and 4.30 (Unacknowledged Transactions); and New York Mercantile Exchange Rule 6.17 (Errors and Omissions in Handling Orders).

[9] *See, e.g.*, 17 CFR 1.38; Commodity Exchange, Inc. Rule 4.29.

Futures exchanges use various methods for tracking the resolution of errors, unmatched trades, and outtrades. For errors discovered prior to the end of the trading session, most exchanges require the members to resolve the dispute between themselves, with the assistance of a floor committee, if necessary. The resolution of errors such as these may be indicated on pit cards, order tickets, trading cards, floor committee minutes, or exchange forms.[10] It is important that futures exchanges ensure that they have an audit trail of such errors. As noted above, errors may be corrected in an illegal manner, and losses associated with errors can provide a motive for subsequent noncompetitive trades. To detect such violations, exchanges need to have access to all information about the parties involved in an error; the trade information, including the price, quantity, commodity, clearing firms, and customer type indicators; the approximate amount of the profit or loss at the time of the rectification of the error; the time of the original transaction; and steps taken to correct or break a trade.

For errors discovered after the trading session, the various systems used by exchanges to process trades result in different data sources for the review of unmatched trades and outtrades. Certain exchanges use on-line, computerized systems for the submission of all or some trade data and for the matching and clearing of trades.[11] Trade data are given to clearing members or the exchange, and the clearing member of exchange enters the data for processing by the computer. The computer generally assigns unique trade identification numbers to each trade submission.

Trades are matched at designated times during the trading day and afterwards. Among exchanges with on-line data submission systems, unmatched trade runs are provided to members. At these exchanges, members generally have access to trade matching information through computer terminals and printers located on the exchange floor. After each trade matching run, referred to as "reconciliations" by some exchanges, members have an opportunity to correct errors or break trades during the trading session or afterwards. Any re-submission of data on a trade generally would receive the same trade identification number. Thus, a trade could be tracked throughout the resolution process. In addition, the exchange may require that traders submit forms that contain information about corrections or deletions of trade data.

Other exchanges use trade clearing or matching systems that do not include the on-line submission of trade data to the exchange or a clearing house for some or all trades. With these systems, trade data are given to the exchange or clearing firms on written forms. The exchange or clearing firm then either enters data into a computer system and sends incomplete forms back to the traders for additional trade information or completes new forms and sends these to the exchange or clearing house for matching or clearing.

For the New York Mercantile Exchange, which uses a pit-card and Transfer Form system, any errors in trade data are corrected on Trade Data Correction Forms during the trading day and Transfer Forms after 5:00 p.m. that day. Once completed, these forms are submitted to the clearing house where information is entered into the computer. Although this system does not generate unmatched trades, errors could occur when incorrect information is reflected on the Transfer Form. In addition, outtrades could occur when the selling member fails to submit trade data to the exchange on the day of execution and the buying member fails to verify his transaction.[12] In cases where the selling member fails to submit trade data and the trade is not verified, the exchange requires that the members submit forms the following day with pertinent trade information.

For exchanges that use a matching process and do not use an on-line data entry system, unmatched trade runs are provided to members for the purpose of resolving errors in data submission. Any re-submission of trade data may or may not be recorded as being related to the original trade. In addition, certain exchanges require that a member or clearing firm record information on corrections and deletions on slips provided by the exchange.

In sum, the exchanges provide a variety of methods for tracking and reviewing errors, unmatched trades, and outtrades. As a result of the regular surveillance of activities related to errors, unmatched trades, and outtrades, trading abuses should be diminished.

Issued in Washington, DC, on this 29th day of August, 1989.

Lynn K. Gilbert,

Deputy Secretary to the Commission.

[FR Doc. 89–20801 Filed 9–5–89; 8:45 am]

BILLING CODE 6351-01-M

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[10] For example, Commodity Exchange, Inc. Rule 4.28 provides that disputes during the trading day over the price or quantity of any transaction, among other items, must be resolved by decision of a majority of the members of the Exchange Floor Committee then present in the ring in which the transaction occurred. Any such resolution must be recorded on forms provided by the Exchange for that purpose.

[11] These include the Chicago Board of Trade, Chicago Mercantile Exchange, Commodity Exchange, Inc., Kansas City Board of Trade, and New York Futures Exchange.

[12] At the New York Mercantile Exchange, this situation is called an "as of."

RAILROAD RETIREMENT BOARD

20 CFR Part 332

RIN 3220-AA76

Mileage or Work Restrictions and Stand-By or Lay-Over Rules

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend part 332 of its regulations to redefine what is meant by the phrase "equivalent of full-time work" for railroad train and engine service employees who do not have regular assignments. The non-work days of an employee who has the equivalent of full-time work are not considered to be "days of unemployment" for which benefits otherwise might be payable under the provisions of section 2(a) of the Railroad Unemployment Insurance Act.

DATES: Comments must be received on or before October 6, 1989.

ADDRESSES: Office of Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611; (312) 751–4513, (FTS) 386–4513.

SUPPLEMENTARY INFORMATION: Part 332 of the Board's regulations relates to the eligibility for unemployment benefits of railroad employees in train and engine service and other similar types of service who work under collective bargaining agreements that impose work restrictions and stand-by or lay-over rules. Part 332 is based upon the third proviso of section 1(k) of the Railroad Unemployment Insurance Act. Section 1(k) defines what is meant by the phrase "day of unemployment" and provides, in part, that a day of unemployment means a calendar day with respect to which no remuneration, as defined in section 1(j) of the Act, is payable or accrues to the employee. However, under the third proviso of section 1(k), if no remuneration is payable or accrues to an employee for any calendar day solely because of the application to the employee of mileage or work restrictions agreed upon in schedule agreements between employers and employees or solely because the employee is standing by for or laying over between regularly assigned trips or tours of duty, such calendar day shall not be considered as a day of unemployment for such employee.

Under current regulations, if, under his or her applicable agreement, an employee is getting 14 basic work days in a registration period, the employee is, in effect, employed full-time and not eligible for unemployment benefits for his or her non-work days. The Board considers that the employee's non-work days result from the operation of the extra board and the work restrictions relating thereto. Under this proposed rule, the Board would consider an employee to be fully employed if he or she gets 10 basic work days in a registration period.

The 14-day test for full-time work set forth in the present § 332.5 has become obsolete in light of modern day rail industry practices recognized by rail labor and management in their agreements. In recent years, collectively-bargained rules regarding train and engine crew changes have been relaxed to permit a train crew to travel substantially more miles on a given assignment. Such assignments are referred to as being in "interdivisional pool service." An employee who is a crew member on such an assignment may now travel in one day the same number of miles that previously required two or more work days, with the result that the employee has more than the usual number of non-work days between such assignments.

Whereas an employee in pool service formerly might work as many as 10 days out of 14 in order to be credited with a certain number of miles, he or she may now be able to work the same number of miles in only 8 days with the result that he or she has 6 rest days, rather than 4, in a two-week period and no loss of income. However, under present regulations, as long as such employee does not earn at least 14 basic days, as defined in the applicable agreement, he or she may receive unemployment benefits for two of the six rest days, since the RUIA provides for the payment of such benefits for all days of unemployment in excess of four in a 14-day registration period.

Indeed, the above example has become quite common since under current industry practices most employees in pool service will not earn 14 basic days in a two-week period, yet, as may be seen from the above example, such employees from an economic standpoint have suffered no loss of income and have the additional advantage of having more rest days than employees who may have regular hours and assignments.

The proposed rule recognizes this change in rail industry practices by decreasing what is regarded as the equivalent of full-time work from 14 basic work days to 10. Thus, in the example above, if the employee had earned 10 basic days through service on just 8 days, as may often be the case, he or she will not be held eligible for unemployment benefits for his or her six non-work days. In addition, to prevent avoidance of this rule, the proposed regulation provides that in determining whether an employee has earned 10 basic days, an employee who misses his or her turn to work will be credited with the number of miles or hours he or she would have been credited with had he or she not missed the turn.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collection required by part 332 has been approved by the Office of Management and Budget under control number 3220–0022.

List of Subjects in 20 CFR Part 332

Railroad employees, Railroad unemployment benefits.

For the reasons set out in the preamble, title 20, chapter II, part 332 of the Code of Federal Regulations is proposed to be amended as follows:

PART 332—MILEAGE OR WORK RESTRICTIONS AND STAND-BY OR LAY-OVER RULES

1. The authority citation for Part 332 is revised to read as follows:

Authority: 45 U.S.C. 362(1).

2. Section 332.5 is revised to read as follows:

§ 332.5 Equivalent of full-time work.

An employee who has the equivalent of full-time work with respect to service on days within a registration period is not eligible for unemployment benefits for any non-work days within such registration period. In determining whether an employee has the equivalent of full-time work, the Board will consider the provisions of labor-management agreements that prescribe the number of miles or hours of credit constituting a basic work day, week, or month in the employee's occupation or service. The Board will consider that an employee had the equivalent of full-time work if the number of miles or hours credited to the employee for service in the registration period is at least 10 times the number of miles or hours constituting a basic day in the employee's occupation or service. For this purpose, any miles or hours of credit not earned because the employee missed his or her turn and any penalty miles assessed to the employee shall be added to the miles or hours of credit actually earned on the basis of service on days within the registration period.

Dated: August 28, 1989.

By Authority of the Board.

Beatrice Ezerski,
Secretary to the Board.

[FR Doc. 89–20858 Filed 9–5–89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–74–86]

RIN 1545–AJ74

Untimely Filing of Income Tax Returns by Nonresident Alien Individuals and Foreign Corporations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the **Federal Register** publication for Monday, July 31, 1989, at 54 FR 31545 of the notice of proposed rulemaking. The proposed rules relate to denial of deductions and credits to nonresident alien individuals and foreign corporations that did not file true and accurate income tax returns by the time limits set forth in the proposed regulations.

FOR FURTHER INFORMATION CONTACT: Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, telephone (202) 566–6384, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 874 and 882 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking contains a typographical error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed rules which was the subject of FR Doc. 89–17725, is corrected as follows:

§ 1.874–1 [Corrected]

In § 1.874–1(c)(2), on page 31546, column 3, line 8, the language "§ 301.7605–2(a)" is corrected to read, "§ 301.7605–1(a)".

Dale D. Goode,
Chief, Regulations Unit, Assistant Chief Counsel (Corporate)

[FR Doc. 89–20803 Filed 9–5–89; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[AMS-FRL-3640-9]

Performance Warranty Regulations and the Voluntary Aftermarket Part Certification Program: Proposed Alternative Short Test Procedure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearing and extension of comment period.

SUMMARY: This notice announces a public hearing regarding the notice of proposed rulemaking (NPRM) for a proposed alternative short test procedure in the voluntary aftermarket part certification program (54 FR 32598, August 8, 1989). The public comment period is being extended to a date 30 days after the comment period.

DATES: The public hearing will be held Tuesday, October 10, 1989, beginning at 9:00 a.m. The public comment period is being extended to November 10, 1989.

ADDRESSES: The public hearing will be held in the conference room of the EPA Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Parties wishing to present oral testimony at the public hearing should notify in writing, prior to the hearing, Mr. Michael Sabourin, Certification Division, U.S. EPA, Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

Any party may also submit written comments regarding the NPRM to the EPA, Air Docket, Room M–1500 (LE-131), Waterside Mall, 401 M Street SW., Washington, DC 20460, ATTENTION: Docket No. A–88–31. Copies of material relevant to the NPRM in this docket will be available for public inspection from 8:00 a.m. to 12:00 noon and from 1:30 p.m. to 3:30 p.m. on weekdays. A reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Michael Sabourin, Certification Division, U.S. EPA, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668–4316.

SUPPLEMENTARY INFORMATION: On August 8, 1989, EPA promulgated a final rule revising the voluntary aftermarket part certification program regulations (54 FR 32566). Under these revised regulations, whenever a manufacturer is required to perform emissions testing as part of its demonstration requirement for certification of an emission-related part, it must use the Federal Test Procedure (FTP).

In the same **Federal Register**, EPA published a notice of proposed rulemaking (NPRM) proposing an alternative test procedure for the certification of aftermarket parts (54 FR 32598). The alternative test is comprised of the first 505 seconds of the FTP and is known as the cold 505 test procedure.

In the NPRM, EPA specifically requested comments in two areas. First, EPA requested comments on the appropriate level of the cold 505 standards. Second, EPA requested comments on whether it is inappropriate to certify certain aftermarket parts using the cold 505 procedure. Interested parties should address these topics as well as any other issues raised in the NPRM.

Persons wishing to present their views at the public hearing are requested to notify the EPA contact identified above by no later than October 2, 1989, of their intention to make a statement. On the day of the hearing presenters are requested to bring sufficient copies of their oral presentation to distribute to EPA panel members, and to industry attendees. Persons who have not given notice of their intent to speak will be heard as time permits following the scheduled statements.

Dated: August 30, 1989.

William G. Rosenberg,
Assistant Administrator for Air and Radiation.

[FR Doc. 89–20867 Filed 9–5–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 8E3682 and 9E3715/P488; FRL-3641-3]

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for the combined residues of the herbicide glyphosate and its metabolite in or on the raw agricultural commodity crop group *Brassica* (cole) leafy vegetables and in or on the raw agricultural commodities longan, mamey sapote, lychee, sapodilla, and passion fruit. The proposed regulation to establish maximum permissible levels for residues of the herbicide in or on the crop group and raw agricultural commodities was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 8E3682 and 9E3715/P488], must be received on or before October 6, 1989.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions (PP) 8E3682 and 9E3715 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the named Agricultural Experiment Stations. The petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine), and its metabolite aminomethylphosphnonic acid (AMPA) in or on certain raw agricultural commodities.

1. *PP 8E3682.* Petition submitted on behalf of the Agricultural Experiment Stations of California, Florida, Michigan, and New York in or on the raw agricultural commodity crop group *Brassica* (cole) leafy vegetables at 0.2 part per million (ppm). The proposed tolerance for the *Brassica* (cole) leafy vegetables crop group replaces, in part, the existing glyphosate tolerance for leafy vegetables at 0.2 ppm. The *Brassica* (cole) leafy vegetable group consists of the raw agricultural commodities broccoli, Chinese broccoli, broccoli raab, Brussels, sprouts, cabbage, Chinese cabbage, Chinese mustard cabbage, cauliflower, collards, kale, kohlrabi, mustard greens, and rape greens.

The term "leafy vegetables" is a crop group designation that was used prior to the revision of 40 CFR 180.34(f), the Crop Group Regulations, which was published in the **Federal Register** of June 29, 1983 (48 FR 29855). Establishment of the proposed tolerance for *Brassica* (cole) leafy vegetables partially replaces, but does not allow the deletion of, the already established crop grouping "leafy vegetables"; the *Brassica* (cole) leafy vegetable crop group does not include all members of the leafy vegetable crop group.

2. *PP 9E3715.* Petition submitted on behalf of the Agricultural Experiment Station of Florida in or on the raw agricultural commodities longan, mamey sapote, lychee, sapodilla, and passion fruit at 0.2 ppm.

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 10 milligrams (mg) per kilogram (kg) per day.

2. A chronic feeding-oncogenicity study in rats with a systemic NOEL of 31 mg/kg/day, which was negative for oncogenic potential under the conditions of the study at all feeding levels tested (0, 3, 10, and 31 mg/kg/day). Although the rat study meets the requirement for a chronic feeding study, it does not satisfy guideline requirements for an oncogenicity study. There is no evidence that the highest dose tested (31 mg/kg/day) was a toxic or maximum tolerated dose (MTD).

3. A 1-year dog feeding study with a systemic NOEL of 500 mg/kg/day (highest dose tested).

4. A rat teratology study, negative for teratogenic effects at 3,500 mg/kg/day (highest dose tested), with maternal and developmental toxicity NOELs of 1,000 mg/kg/day.

5. A rabbit teratology study, negative for teratogenic effects at 350 mg/kg/day (highest dose tested), with a maternal NOEL of 175 mg/kg/day and a developmental toxicity NOEL of 350 mg/kg/day.

6. Mutagenicity studies as follows: chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with or without S–9 activation); DNA repair in rat hepatocytes (negative); *in vivo* bone marrow cytogenic in rats (negative); rec-assay with *B. subtilis* (negative up to 2,000 micrograms of test material per disk); reverse mutation with *S. typhimurium* (negative); Ames test with *S. typhimurium* (negative); and a dominant lethal test in mice (negative).

Additionally, a 2-year oncogenicity study in CD–1 mice has been completed and reviewed by the Agency. Feeding levels in this study were 1,000, 5,000 and 30,000 ppm (equivalent to 150, 750 and 4,500 mg/kg/day, respectively). The NOEL for nonneoplastic chronic effects was established at 5,000 ppm. In this study, glyphosate produced an equivocal oncogenic response, possibly causing a slight increase in the incidence of renal tubular adenomas (a benign tumor of the kidney) in male mice at the highest dose tested (30,000 ppm). Because of the equivocal nature of the oncogenic response in mice and the lack of an acceptable oncogenicity study in rats, the Agency referred the issue to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel (SAP) for a "Weight-of-Evidence" recommendation. After reviewing all available evidence, the SAP concluded that the oncogenic potential of glyphosate could not be determined from the available information and recommended that the mouse and/or rat studies be repeated to clarify unresolved questions. Subsequently, the Agency classified glyphosate as a "Category D Oncogen" (inadequate evidence of oncogenicity) and requested repeat oncogenicity studies in both mice and rats. The rat oncogenicity study is due in 1990, and a repeat study in male mice is due in 1992.

Current Agency policy is to establish tolerances for significant new uses of glyphosate on a case-by-case basis. Tolerances which change the theoretical maximum residue contribution (TMRC) by more than 1 percent are generally considered significant.

The acceptable daily intake (ADI), based on the NOEL of 10 mg/kg/day from the rat reproduction study and using a 100-fold safety factor, is calculated to be 0.1 mg/kg of body weight (bw)/day. The TMRC from existing tolerances for a 1.5-kg daily diet is calculated to be 0.005096 mg/kg/day. The tolerance for *Brassica* (cole) leafy vegetables will not result in an increase in the TMRC because of the already established tolerance on the leafy vegetable crop group. The tolerances for longan, lychee, mamey sapote, sapodilla, and passion fruit will result in an increase in the TMRC of less than 0.000001 mg/kg/day, an inconsequential increase in the ADI.

The established tolerances for meat, milk, poultry, or eggs are adequate to cover any secondary residues from feed use of the *Brassica* (cole) leafy vegetable crop group commodities and longan, lychee, mamey sapote, sapodilla, and passion fruit are not considered livestock feed commodities. The nature of the residues is adequately understood, and an adequate analytical method (gas chromatography using a flame photometric detector) is available for enforcement purposes. An analytical enforcement method is currently available in the *Pesticide Analytical Manual* (PAM), Volume II. There are currently no actions pending against the continued registration of this chemical.

Based on the data and information considered, the Agency concludes that the tolerances proposed would protect the public health. Therefore, it is

proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3682 and 9E3715/P488]. All written comments filed in response to this petition will be available in the Public Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 28, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR 180 be amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.364(a) is amended by adding and alphabetically inserting the commodity crop group *Brassica* (cole) leafy vegetables and the raw agricultural commodities longan, lychee, mamey sapote, passion fruit, and sapodilla, to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * *	*
Longan	0.2
Lychee	0.2
Mamey sapote	0.2
* * * *	*
Passion fruit	0.2
* * * *	*
Sapodilla	0.2
* * * *	*
Vegetables, leafy, *Brassica* (cole)	0.2
* * * *	*

[FR Doc. 89–20864 Filed 9–5–89; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register

Notices

Federal Register
Vol. 54, No. 171
Wednesday, September 6, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

State of Ohio Multiflora Rose Control Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all State cost-share payments made under the Ohio Multiflora Rose Control Program are primarily for the purposes of soil and water conservation and protecting or restoring the environment. This determination is in accordance with section 126 of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The determination permits recipients to exclude these payments from gross income to the extent allowed by the Internal Revenue Service (IRS).

FOR FURTHER INFORMATION CONTACT: Lawrence G. Vance, Chief, Division of Soil and Water Conservation, Ohio Department of Natural Resources, Fountain Square, Columbus, Ohio 43224; or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, (202) 382–1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 126, provides that certain payments made to persons under State conservation programs may be excluded from the recipient's gross income for Federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forest, or providing a habitat for wildlife * * *." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR part 14 and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

One of the State conservation programs is the Ohio Multiflora Rose Control Programs authorized by Ohio Revised Code chapters 1511 and 1515. It is funded by annual State appropriations providing financial assistance to private land owners to help them maintain various conservation practices on their land. Cost-share payments minimize the loss of crop and pasture land to brush infestation.

Procedural matters: The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. An Ohio Multiflora Rose Control Program, "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from Chief, Division of Soil and Water Conservation, Ohio Department of Natural Resources, Fountain Square, Columbus, Ohio 43224; or the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013.

Determination: As required by section 126 of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Ohio Multiflora Rose Control Program. In accordance with the criteria set out in 7 CFR part 14, I have determined that all cost-share payments made under this program are primarily for the purposes of soil and water conservation and protecting or restoring the environment. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for Federal income tax purposes, all or part of such payments made under the Ohio Multiflora Rose Control Program.

Signed at Washington, DC, on August 30, 1989.

Clayton Yeutter,
Secretary.

Ohio Multiflora Rose Control Program

Record of Decision

Primary Purpose Determination for Federal Tax Purposes

Introduction

The Secretary of Agriculture is authorized by section 126 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 126), to determine whether payments under certain Federal and State cost-sharing programs are made for the primary purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife. This determination identifies payments that are eligible for exclusion from the recipient's gross income for Federal tax purposes to the extent allowed by the Internal Revenue Service.

Basis for Determination

The U.S. Department or Agriculture (USDA) determination is made in accordance with 7 CFR part 14 by reviewing authorizing legislation, regulations, and operating policy and procedures to identify the purposes for which cost-share payments are made. Final determinations are made on the basis of program, category of practices, or individual practices and are published in the **Federal Register**.

Statement of Findings

The Ohio Multiflora Rose Control Program is authorized under the Ohio Revised Code, sections 1511 and 1515. Ohio law states the Chief of the Division of Soil and Water Conservation of the Ohio Department of Natural Resources shall specify the multiflora rose control practices eligible for State cost sharing and determine the conditions for eligibility, standards and specifications, the maintenance requirements, and the limits of cost sharing for such practices.

The main objective of the program is to control multiflora rose, therefore, retaining the land's productivity.

The landowner must enter into an agreement with the local Soil and Water Conservation District which provides for cost-share assistance and requires the landowner to continue the control two years after the initial treatment.

Summary

The purpose of the program is to preserve and protect Ohio's land. Cost sharing is limited by law or policy and is consistent with other similar programs. Priority for assistance is given to those projects providing the greatest public benefit.

Determination

It is determined that all cost-share payments for multiflora rose control made by landowners, occupiers, and operators under the Ohio Multiflora Rose Control Program are for the purpose of soil and water conservation and protecting or restoring the environment.

[FR Doc. 89–20870 Filed 9–5–89; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Members of the Bureau of the Census Performance Review Board

The following individuals will serve as members of the Bureau of the Census Performance Review Board:

(1) Bryant Benton
(2) William P. Butz
(3) Charles D. Jones
(4) Roland H. Moore
(5) Charles A. Waite
(6) Katherine K. Wallman

Dated: August 30, 1989.

C.L. Kincannon,
Deputy Director, Bureau of the Census.

[FR Doc. 89–20888 Filed 9–5–89; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[C-559-804]

Initiation of Countervailing Duty Investigation: Certain Computer Aided Software Engineering Products From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Singapore of certain computer aided software engineering products (CASE software), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination on or before November 2, 1989.

EFFECTIVE DATE: September 6, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Cotjanle or Carole Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3534 and (202) 377–3217.

SUPPLEMENTARY INFORMATION:

The Petition

On August 9, 1989, we received a petition in proper form from Visible Systems Corporation, of Waltham, Massachusetts on behalf of the U.S. industry producing CASE software. In compliance with the filing requirements of § 355.12 of the Commerce Department Regulations published in the Federal Register on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.12), the petition alleges that manufacturers, producers, or exporters of CASE software in Singapore receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable. Therefore, section 303(b) of the Act applies to this investiation. Accordingly, petitioner is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise from Singapore materially injure, or threaten material injury to, a U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry producing the products that are subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce officials cited in the "**FOR FURTHER INFORMATION CONTACT**" section of this notice.

Initiation of Investigation

The Department is limited by section 303 of the Act to the imposition of a countervailing duty upon a class or kind of article or merchandise that is imported into the United States. In its consideration of the petition submitted by Visible Systems Corporation, the Department has had to examine the complex issue of whether the software product described in the petition constitutes merchandise subject to the Act, *i.e.*, whether the software in question is a "good" or a "service." The countervailing duty law provides no direct guidance on this question. However, since the filing of the petition, the Department has conducted considerable research into this issue. We have found that in other contexts software has been classified as either a good or a service because it has both tangible and intangible characteristics and manifestations. The different classifications of software appear to depend on the circumstances under which it is analyzed.

Although no single universally accepted definition of software exists, software is generally defined as a set of statements or instructions to be used directly or indirectly in a computer to perform a desired task or set of tasks. Software does not generally include procedures which are external to computer operations.

CASE software is sold pre-packaged and is not created pursuant to a service contract between a software producer and an end-user. Rather, it is pre-written and copyrighted with no one particular end-user in mind, can be purchased "off-the-shelf," and is usable, without further intervention by the seller of the software, by a broad range of customers. Moreover, pre-packaged software is marketed in commerce as merchandise;

vendors maintain inventories of it just as with any other similar merchandise; and manufacturers generally provide product warranties enabling customer returns for refunds.

Several state courts have held that software on carrier media constitutes a good because the carrier media cannot be severed from the software, *i.e.*, the carrier media is essential for customer usage. These courts have also held that software is subject to sales tax. Furthermore, section 2-105 of the Uniform Commercial Code (UCC) defines goods as "all things (including specially manufactured goods) which are movable at the time of identification to the contract * * *." Software contained on a carrier media is movable. Additionally, software has been classified by some states as a good under their commercial codes.

The General Agreement on Tariffs and Trade (GATT) has determined that there are two accepted methods for the assessment of duties on software. Under GATT, duties on software can either be assessed on the basis of the recording area on the carrier media or on an *ad valorem* basis by reference to the value of the software contained on the carrier media (*see*, GATT, Committee on Customs Valuation; Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment Adopted By the Committee on Customs Valuation on September 24, 1984 (VAL/8), 31 *Supp. GATT Basic Instruments and Documents*, 274 (1985)). U.S. Customs has chosen to assess duties solely on the basis of the recording area of the carrier media (*see, U.S. Valuation of Imported Carrier Media Bearing Data or Instructions for Use in Data Processing Equipment*, T.D. 85-124, 50 FR 30558 (July 28, 1985)). However, U.S. Customs does distinguish between recorded and non-recorded carrier media in the calculation of duties, imposing a slightly higher rate of duty on recorded carrier media. The higher duty for recorded media implies that the data recorded on the media is both of value and is dutiable. The different treatment of recorded and non-recorded media by the Customs Service and the GATT's declaration of accepted methods of duty assessment on software is consistent with the classification of software as dutiable merchanise.

Base on information available to the Department and presented in the petition, we have determined that CASE software is (1) a pre-packaged software product which can be purchased off-the-shelf, (2) typically contained on a carrier media, (3) a pre-written product with broad application, which does not need additional servicing by the seller of the software prior to use by the end-user, (4) marketed similarly to other types of merchandise, (5) maintained in inventory by vendors, and (6) treated differently than non-recorded carrier media by the U.S. Customs Service. Therefore, for purposes of determining whether to initiate this investigation, we have focused on the tangible aspects of software products and have determined that CASE software is a good, and thus, merchandise subject to the countervailing duty law.

Under section 702(c) of the Act, we must make the determination on whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on CASE software from Singapore and have found that it meets these requirements.

Therefore, since (1) CASE software is merchandise subject to the Act, and (2) the petition meets the statutory requirements regarding the alleged bounties or grants, we are initiating an investigation pursuant to section 702(c) of the Act.

If our investigation proceeds normally, we will make our preliminary determination on or before November 2, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). The HTS item number(s) are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The products covered by this investigation are "front-end" Computer Aided Software Engineering (CASE) tools, including all updated versions, which have been imported from Singapore, whether labelled or unlabelled. These software products are personal computer-based tools which run in the Disk Operating System (DOS) environment and are designed to automate the various stages of the software development tasks of defining user requirements, conducting system analysis activities, and creating a detailed design specification for the software system under development. There are a number of standardized engineering techniques which front-end CASE tools are designed to automate. These include techniques of "structured analysis", "structured design", and "data modeling", among others. All front-end CASE tools are designed to produce logically validated and documented systems specifications, which in turn are used as detailed "blueprints" for the actual writing of application codes. These front-end stages of the software development life cycle are contrasted with the "back-end" lifecycle stages of coding, testing, and maintenance. Back-end CASE tools are not covered by this investigation.

Although front-end CASE tools generally are imported on recorded floppy disks, they may also be imported on other carrier media. All such dutiable imports are covered by the scope of this investigation. Petitioner has indicated that CASE software may be imported packaged ready for sale; as a master disk for duplication purposes within the United States; or via electronic transmission. The subject merchandise is currently classifiable under HTS item numbers 8524.21.30.80, 8524.22.20.00, 8524.23.20.00, and 8524.90.40.80. Merchanise which is imported duty-free is not included in the scope of this investigation.

Allegations of Subsidies

Petitioner lists a number of practices by the Government of Singapore which allegedly confer bounties or grants on manufacturers, producers, or exporters of CASE software. We are initiating an investigation of the following programs:

- *Double Deduction of Research and Development Expenses*
- *Expansion of Established Enterprises*
- *Investment Allowance*
- *Initiatives in New Technologies*
- *Software Development Assistance Scheme*
- *Product Development Assistance Scheme*
- *Capital Assistance Scheme*
- *Research and Development Assistance Scheme*
- *Skills Development Fund*
- *Information Technology Institute Development of CASE Products*

- *OHQ Operational Headquarters Program*
- *Double Deduction for Export Promotion Expenses*
- *Production for Export*
- *Warehousing and Servicing Incentives*
- *Operational Subsidy*
- *Small Industries Assistance Scheme*
- *Small Industries Finance Scheme*
- *Accelerated Depreciation*

This notice is published pursuant to section 702(c)(2) of the Act.

Dated: August 29, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-20904 Filed 9-5-89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended export trade certificate of review.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the California Cherry Export Association of San Joaquin County. Notice of issuance of the Certificate was published in the **Federal Register** on September 3, 1987 (52 FR 33465).

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 87-00009 was issued to the California Cherry Export Association of San Joaquin County (CCEA) on August 27, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on September 3, 1987 (52 FR 33465).

The California Cherry Export Association of San Joaquin County (CCEA) has amended its Certificate to:

1. Revise the name of the Certificate holder from the "California Cherry Export Association of San Joaquin County" to the "California Cherry Export Association" to reflect its statutory name change of September 19, 1988.
2. Add the following additional companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Churchill Nut Company, Hollister, California; Dole Bakersfield, Inc., Victor, California; and Blue Anchor, Inc., Sacramento, California.

EFFECTIVE DATE: May 31, 1989.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: August 30, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-20905 Filed 9-5-89; 8:45 am]

BILLING CODE 3510-DR-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7-189,037, "Cockroach Growth Regulating Composition and Method" to University of Florida, having a place of business at 223 Grinter Hall, Gainesville, Florida 32611. The patent rights in this invention have been assigned to the United States of America as represented by the Secretary of Agriculture and the Secretary of the Army, and to the University of Florida.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487-4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Charles A. Bevelacqua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-20863 Filed 9-5-89; 8:45 am]

BILLING CODE 3510-04-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Requirements for Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through August 31, 1992, of information collection requirements in the safety regulations applicable to full-size cribs codified at 16 CFR 1500.18(a)(13) and part 1508. These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration and other injuries associated with full-size cribs. (A full-size crib is a crib having an interior length dimension ranging from 51¾ inches to 53 inches; and an interior width ranging from 27⅜ inches to 28⅝ inches.) The regulations prescribe performance, design, and labeling requirements for non-full-size cribs. They also require manufacturers and importers of those products to maintain

sales records for a period of three years after the manufacture or importation of non-full-size cribs. If any full-size cribs subject to the provisions of 16 CFR 1500.18(a)(13) and Part 1508 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207

Title of information collection: Recordkeeping Requirements for Full-Size Baby Cribs—16 CFR 1508.12.

Type of request: Extension of approval.

Frequency of collection: Varies depending upon volume of products manufactured, imported, or sold.

General description of respondents: Manufacturers and importers of non-full-size cribs.

Estimated number of respondents: 55.

Estimated average number of hours per respondent: 5 per year.

Estimated number of hours for all respondents: 275 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable

Dated: August 31, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89–20901 Filed 9–5–89; 8:45 am]

BILLING CODE 6355-01-M

Notification of Request for Extension of Approval of Information Collection Requirements—Procedures for Export of Noncomplying Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through August 31, 1992, of information collection requirements in regulations codified at 16 CFR part 1019, which establish procedures for export of noncomplying products. These regulations implement provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act which require persons and firms to notify the Commission before exporting any product which fails to comply with an applicable standard or regulation enforced under provisions of those laws. The Commission is required by law to transmit the information relating to the proposed exportation of noncomplying products to the government of the country of intended destination.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207

Title of information collection: Procedures for Export of Noncomplying Products.

Type of request: Extension of approval.

Frequency of collection: Varies depending upon volume of noncomplying products exported.

General description of respondents: Exporters of products which fail to comply with standards or regulations enforced under provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, or the Flammable Fabrics Act.

Estimated number of respondents: 100.

Estimated average number of hours per respondent: 1.5 per year.

Estimated number of hours for all respondents: 150 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: August 31, 1989.

Sadye E. Dunn, Secretary,

Consumer Product Safety Commission.

[FR Doc. 89–20902 Filed 9–5–89; 8:45 am]

BILLING CODE 6355-01-M

Notification of Request for Extension of Approval of Information Collection Requirements—Requirements for Non-Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through August 31, 1992, of information collection requirements in the safety regulations applicable to non-full-size cribs codified at 16 CFR 1500.18(a)(14) and part 1509. These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration and other injuries associated with non-full-size cribs. (A non-full-size crib is a crib having an interior length dimension either greater than 55 inches or smaller than 49¾ inches; or an interior width either greater than 30⅝ inches or smaller than 25⅜ inches; or both.) The regulations prescribe performance, design, and labeling requirements for non-full-size cribs. They also require manufacturers and importers of those products to maintain sales records for a period of three years after the manufacture or importation of non-full-size cribs. If any non-full-size cribs subject to the provisions of 16 CFR 1500.18(a)(14) and part 1509 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207

Title of information collection: Recordkeeping Requirements for Non-Full-Size Baby Cribs—16 CFR 1509.12.

Type of request: Extension of approval.

Frequency of collection: Varies depending upon volume of products manufactured, imported, or sold.

General description of respondents: Manufacturers and importers of non-full-size cribs.

Estimated number of respondents: 50.

Estimated average number of hours per respondent: 4 per year.

Estimated number of hours for all respondents: 200 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: August 31, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89–20903 Filed 9–5–89; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

August 29, 1989.

The USAF Scientific Advisory Board Strategic Cross-Matrix Panel will meet on 20–21 Sep 89, from 8:00 a.m. to 5:00 p.m., at ASD, Wright-Patterson AFB OH.

The purpose of this meeting will be to gather information on space technologies related to the National Aero-Space Plane as requested by CINCSAC. The meeting at ASD will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liasion Officer.

[FR Doc. 89–20843 Filed 9–5–89; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Record of Decision Chemical Stockpile Disposal Program; Tooele Army Depot

AGENCY: Department of the Army, DOD.

ACTION: Availability of record of decision (ROD).

SUMMARY: This announces the availability of the Record of Decision regarding the destruction of the stockpile of lethal unitary chemical agents and munitions stored at Tooele Army Depot (TEAD), Utah. The Army has decided to construct and operate a full-scale disposal facility at TEAD using the Johnston Atoll Chemical Agent Disposal System (JACADS) reverse assembly and incineration technology.

SUPPLEMENTARY INFORMATION: Title 14, part B, section 1412 of Public Law 99–145 and subsequent legislation requires destruction of the U.S. stockpile of lethal unitary chemical agents and munitions by April 1997, in conjunction with the acquisition of the new binary chemical weapons. To implement the Congressional directive, the Department of Army conducted a programmatic environmental review consistent with the National Environmental Policy Act and governing Council on Environmental Quality Regulations (40 CFR Parts 1500–1508). A Final Programmatic Environmental Impact Statement (FPEIS) was issued in January 1988.

The FPEIS addressed five alternatives: (1) Continued storage of the stocks at their present locations; (2) on-site disposal of the stocks at their present storage locations; (3) relocation of the stocks to regional disposal centers at Anniston Army Depot, Alabama, and TEAD for destruction; (4) relocation of the stocks to a national disposal center at TEAD for destruction; and (5) relocation of the inventories at some specific sites to alternative sites, with the remainder destroyed at their present storage locations. The FPEIS identified the on-site disposal option as the environmentally preferred alternative and concluded that the stockpile of chemical agents and munitions stored in the continental U.S. can be destroyed in a safe, environmentally acceptable manner.

In its programmatic Record of Decision (53 FR 5816, February 26, 1988), the Department of Army selected on-site incineration as its preferred alternative. In making that decision, the Army noted that environmental impacts, including the hazards and risk analyses presented in the FPEIS, were a contributing but not determining factor in the decision. Other factors considered included the feasibility and effectiveness of emergency response measures, vulnerability to terrorism and sabotage, and logistical complexity. In addition, incineration was endorsed by the National Research Council as the best and safest means of destroying these lethal chemical agents.

Subsequent to issuance of the FPEIS and the attendant Record of Decision, the validity of the programmatic decision for on-site disposal of the TEAD stockpile was given further consideration in a Phase I Environmental Report, issued in September 1988. The report used recently collected site-specific data to examine the suitability of on-site disposal of agents and munitions stored at TEAD. The report also examined resource data for the TEAD vicinity to determine whether significant resources are present that could affect implementation of on-site disposal at TEAD. No new or unique site-specific information was found that would change or contradict the conclusion of the FPEIS for TEAD.

On February 8, 1989, the findings and conclusions of the Phase I Environmental Report and an independent review (which concurred with the findings of the report) were certified to Congress by then Assistant Secretary of the Army (Installations and Logistics) John W. Shannon. This certification initiated the preparation of the Final Environmental Impact Statement, July 1989. As presented in the Final EIS, the Department of Army's proposed action is to implement the programmatic decision of on-site destruction of the lethal unitary chemical agents and munitions stockpiled at the Tooele Army Depot. This action entails construction and operation of a destruction facility based on the JACADS incineration technology and experience. The alternatives considered in the site-specific EIS, based on the information and conclusions presented in the Programmatic EIS and the Phase I reports, included on-site locations for the destruction facility and the "no action" alternative of indefinite storage of the TEAD stockpile. Because of the Congressional directive to destroy the stockpile and hazards associated with continued storage, the "no action" alternative is not a viable long-term option.

The ROD selected the site located near the center of the TEAD-South area adjacent to the southeast corner of the existing chemical munitions storage area for the construction of the chemical disposal facility at TEAD. This site was both the Army preferred site and also the environmentally preferred alternative because it best meets the criteria of safety to the off-post communities, minimizes the transportation distance from the storage area, minimizes exposure to potential earthquakes, and minimizes interferences with other activities at the Depot. Construction of the disposal facility is expected to begin in September 1989 and will take about 30 months to complete.

The Army will adopt all practicable means to avoid or minimize environmental harm from the alternative selection. Measures to mitigate both the likelihood and consequence of severe accidents will be incorporated in the facility design and operating procedures as delineated in the Final EIS for Tooele. A major program is also under way to enhance emergency preparedness at TEAD and contiguous areas. The program is intended to mitigate the human health impacts of catastrophic accidents from both storage and disposal operations.

Before operations begin, a four-month design and procurement verification period will be included in the program to incorporate changes resulting from the JACADS program. Prior to toxic operations, there will be a period of preoperational checkout, training, and integrated systems operation under mock conditions with simulant munitions (without agent). All state and federal regulations will be complied with before and during disposal operations. Once toxic agent operations are initiated, destruction of the stockpile is expected to take approximately four years based on a 24-hour day, five-day per week schedule. CONCLUSION: The Department of Army has weighed the costs, benefits, schedule, and environmental impacts in its decision to destroy the stockpile of lethal unitary chemical agents and munitions stored at TEAD. Through this analysis, the Department of Army has selected construction and operation of a JACADS-type reverse assembly and incineration facility at TEAD. This alternative is the best choice from a public health and environmental perspective.

Interested individuals may obtain copies of the Record of Decision by contacting the Program Manager for Chemical Demilitarization, ATTN: SAIL–PMI (Ms. Marilyn Tischbin), Aberdeen Proving Ground, Maryland 21010–5401.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I&L).

[FR Doc. 89–20857 Filed 9–5–89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 6, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 30, 1989.

George Sotos,

Acting Director for Office of Information Resources Management.

Office of Planning, Budget, and Evaluation

Type of Review: New

Title: A Descriptive Study of the Chapter 1 Migrant Education Program

Frequency: One time only

Affected Public: Individuals or households; State or local governments

Reporting Burden: Responses: 3,517

Burden Hours: 2,644

Recordkeeping Burden: Recordkeepers: 0

Burden Hours: 0

Abstract: This study will collect, analyze and report on a nationally-representative sample of the program operations, administration, and staffing for the Chapter 1 Migrant Education Program—the Department will use this information for program management and refinement of policy.

[FR Doc. 89–20818 Filed 9–5–89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to Texas A&M University

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award under Grant Number DE–FG01–89CE21038 to Texas A&M University.

Scope: The funding for this grant will allow the grantee to perform the first step in measuring the energy impact of infiltration on test cells and building components.

The purpose of this project is to conduct a set of experiments which will quantify the heat transfer/heat exchange processes in test cells and a set of building components present in a test cell. This will be accomplished through steady-state measurements made on components, combinations of components and complete test cells as well as through dynamic measurement of complete test cells. These measurements will determine the extent of the heat exchange which occurs in key building components and assemblies and will test measurement techniques which can be used to measure the infiltration load in houses and other buildings.

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to Texas A&M University. This project represents a unique idea for which a competitive solicitation would be inappropriate. This project is meritorious in that it will increase the knowledge base available to private sector building designers and provide tehcnical information on the accurate determination of the energy requirement associated with infiltration.

The proposal submitted by Texas A&M outlines a well conceived and systematic approach, beginning with simple test cell measurements and evolving into a detailed experimentation and analysis leading to the development of an "infiltration/heat exchange" model.

The combination of Texas A&M's well-suited research facilities, the expertise of the project director, and the preliminary work, which has already been done by Texas A&M, is indicative of a high probability of achieving the objectives stated in the grantee's proposal.

The term of this grant shall be six (6) months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Kristin Wright, MA–453.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–20830 Filed 9–5–89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10113–000]

Perpetual Storage, Inc.; Availability of the Environmental Assessment

August 29, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing reviewed the application for exemption from licensing for the proposed Whitmore Hydropower Project, located on Little Cottonwood Creek in Salt Lake County, Utah, and prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff analyzes the potential environmental impacts of the proposed project and concludes that, with appropriate mitigation measures, approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89–20822 Filed 9–5–89; 8:45 am]

BILLING CODE 6717-01-M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

Puerto Rican Referendum Legislative Activities—Availability of Funds

AGENCY: Executive Office of the President, Office of Administration.

ACTION: Notice of funds availability.

SUMMARY: In the matter of funds made available to political parties in Puerto Rico, as described in Pub. L. 101–45: availability of funds.

The Office of Administration, Executive Office of the President, announces its policies and application procedures for funds available under Public Law 101–45, to the Popular Democratic, New Progressive, and Puerto Rico Independence political parties of the Commonwealth of Puerto Rico for participation in the legislative process involving the future political status of Puerto Rico. The purpose of this announcement is to communicate to the potential grantees the policies and procedures that will be used in administering this program.

Eligible Applicants

The following organizations are eligible to apply for funds under this notice: the Popular Democratic Party of Puerto Rico; the New Progressive Party of Puerto Rico; and the Puerto Rican Independence Party of the Commonwealth of Puerto Rico.

Program Objective

The primary objective of this program is to implement the statutory mandate of Pub. L. 101–45 appropriating $1.5 million to the Office of Administration of the Executive Office of the President for three equal grants to the above-mentioned political parties to enhance their participation in the legislative process involving the future political status of Puerto Rico. Funds may be used for travel and transportation of persons; services as authorized by section 3109 of title 5, United States Code; communications, utilities; printing and reproduction; supplies and materials; administrative costs; and other related services. No funds may be used for any expenses for declared candidates for political office or any employees of campaigns for political office. No funds may be used for entertainment expenses. Other prohibited or restricted uses of funds will be listed in the grant agreement.

Available Funds

$1.5 million is available for grants of $500,000 to the three eligible applicants. Funds may be used to cover necessary expenses incurred after March 1, 1989, and will remain available until the sine die adjournment of the 101st Congress, which shall be no later than the end of calendar year 1990.

Application Procedures

Prior to receipt of any funds, each eligible applicant must submit an application for funding. This application must identify the name and address of the official in the party responsible for and authorized to enter into a grant agreement between the party and the U.S. Government. The application will also contain a proposed budget outlining, by month, how these funds will be spent, what internal controls will be used to ensure that the funds are spent for the purposes stated, and the name of a person who will serve as administrative officer for the grant. The applications shall be sent to Mr. Hector F. Irastorza, Jr., Special Assistant to the President and Deputy Director of the Office of Administration, Old Executive Office Building, Washington, DC 20500 (202) 456–6226, who shall serve as the grant officer. Applications are due sixty days from the date of publication of this notice. The applicant may be required to submit any other information deemed necessary prior to approval of the grant.

Funding Mechanism and Restrictions

Upon receipt and approval of the application, the grantee and the government will execute grant agreements specifying the mechanism for receipt of funds and the conditions attendant to initial and continued receipt of these funds. The applicant will be expected to comply with the following conditions before any funds can be spent: all travel funded must be in accordance with published U.S. Government travel regulations; any consultant contract over $50,000 funded under this contract must be approved as to funding eligibility by the government's grant officer prior to being entered into by the grantee; all pertinent information regarding the grant must be made available to the public; applicable civil rights and anti-discrimination statues must be adhered to; accounting systems and records shall be such that the Comptroller General of the United States shall be able to audit the uses of the grant funds. Other conditions regarding expenditure of grant funds and grantee performance shall be specified in the terms and conditions of the grant that must be executed before any funds may be received.

After execution of the grant agreement, award payments shall be made by the letter-of-credit method. In accordance with appropriate regulations and relevant OMB and Department of Treasury guidelines, the recipient shall: (1) Maintain procedures for fund control to ensure that any drawdowns on the letter-of-credit are requested only when actually needed for its immediate disbursement needs; (2) comply with timely reporting of cash disbursements and balances as required. If the recipient does not adhere to these provisions, the Government may revoke the letter-of-credit and institute reimbursement of costs incurred by treasury check.

For any expenditures incurred after March 1, 1989 but prior to execution of the grant agreement, detailed transaction records must be submitted along with evidence supporting that the expenditures were for the purposes stated in the legislation. The grant officer will have to approve reimbursement for these expenditures before they can be considered eligible grants costs.

Further information may be received by contacting the grant officer.

Dated: August 23, 1989.

Paul W. Bateman,

Deputy Assistant to the President for Management and Director of the Office of Administration.

[FR Doc. 89-20823 Filed 9-5-89; 8:45 am]

BILLING CODE 3115-01-M

FEDERAL ELECTION COMMISSION

[Notice 1989-15]

Filing Dates for Mississippi Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Mississippi special election.

SUMMARY: Mississippi has scheduled a special election in the 5th Congressional District of Mississippi to fill the seat that was held by Larkin Smith. There are two possible elections, but only one may be necessary.

- Special Election: October 3, 1989. If no candidate wins a majority of votes in the Special Election, the two top vote-geters, regardless of party affiliation will participate in a Special Runoff.
- Special Runoff Election: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E St., NW., Washington, DC 20463, Telephone: (202) 376-3120; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: Principal campaign committees of candidates who participate in the Mississippi Special Election must file reports according to the schedules given in Charts 1 through 3. The committee treasurer should consult the chart that corresponds to the candidate's situation. Party committees and PACs that make contributions or expenditures in connection with the Special Elections during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not file special Pre- and Post-Election reports.

Calendar of Reports for Mississippi Special Election

Chart 1: If only one election is held; Special (10/3/89)

Report	Period covered[1]	Reg./cert mailing date[2]	Filing date
Pre-Special	07/01/89-09/13/89	09/18/89	09/21/89
Post-Special	09/14/89-10/23/89	11/02/89	11/02/89
Year-End	10/24/89-12/31/89	01/31/90	01/31/90

Chart 2: If two elections are held, and the committee is involved in both; Special (10/3/89) and Runoff (10/17/89):

Report	Period covered[1]	Reg./Cert. mailing date[2]	Filing date
Pre-Special	07/01/89-09/13/89	09/18/89	09/21/89
Pre-Runoff	09/14/89-09/27/89	[3]10/05/89	10/05/89
Post-Runoff	09/28/89-11/06/89	11/16/89	11/16/89
Year-End	11/07/89-12/31/89	01/31/90	01/31/90

Chart 3: If two elections are held, but a committee is involved in only the first; Special (10/3/89):

Report	Period covered[1]	Reg./Cert. mailing date[2]	Filing date
Pre-Special	07/01/89-09/13/89	09/18/89	09/21/89
Year-End	09/14/89-12/31/89	01/31/90	01/31/90

[1] The period begins with the close of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

[3] Committees involved in the Runoff Election may use the October 5 filing date as the mailing date for the Pre-Runoff Report.

Note: If no candidate achieves a majority of the vote in the Special Election, the two top vote-getters, regardless of party, go to a Runoff Election.

Dated: August 30, 1989.

John Warren McGarry,

Commissioner.

[FR Doc. 89-20796 Filed 9-5-89; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 28, 1989.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (title 44 U.S.C. chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy on the proposed information collection and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

For Further Information Contact

Federal Reserve Board Clearance Officer—Frederick Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Request for OMB Approval to Extend Without Revision

Report title: Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks
Agency form number: FFIEC 004
OMB Docket number: 7100-0034
Frequency: Annually (for the report), quarterly and on occasion (for recordkeeping and disclosure requirements)
Reporters: Executive officers and principal shareholders of member banks
Annual reporting hours: 6,922
Estimated average hours per response: 1.27 hours (1 hour of reporting burden, 2.35 hours of recordkeeping burden)
Estimated number of respondents: 5,450 (4,360 executive officers and principal shareholders filing the report, 1,090 state member banks fulfilling the recordkeeping burden)
Small businesses are affected.

General description of report:

This information collection is mandatory (12 U.S.C. 1972(2)(G)) and is given confidential treatment (12 CFR 215.22(2)).

Executive officers and principal shareholders of member banks who are indebted to correspondent banks must file the FFIEC 004 report on such indebtedness to them or their related interests. State member banks are required to retain these reports for a period of three years.

Board of Governors of the Federal Reserve System, August 28, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-20833 Filed 9-5-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 15, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Otis Guy Bacon,* Ardmore, Oklahoma; to acquire an additional 10.3 percent of the voting shares of Amcorp Financial Corporation, Inc., Ardmore, Oklahoma, and thereby indirectly acquire American National Bank, Ardmore, Oklahoma.

Board of Governors of the Federal Reserve System, August 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-20834 Filed 9-5-89; 8:45 am]

BILLING CODE 6210-01-M

The Citizens and Southern Corp.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 22, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *The Citizens and Southern Corporation,* Atlanta, Georgia, and the Citizens and Southern Florida Corporation, Fort Lauderdale, Florida; to acquire 100 percent of the voting shares

of The Ocean State Bank, Neptune, Florida.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *PSB Financial Shares, Inc.*, Prinsburg, Minnesota; to become a bank holding company by acquiring 98.1 percent of the voting shares of Prinsburg State Bank, Prinsburg, Minnesota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *South Holt Bancshares, Inc.*, Oregon, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Zook and Roecker State Bank, Oregon, Missouri.

Board of Governors of the Federal Reserve System, August 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-20835 Filed 9-5-89; 8:45 am]

BILLING CODE 6210-01-M

The First National Bankshares of Henry County, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 22, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *The First National Bankshares of Henry County, Inc.*, Stockbridge, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Henry County, in organization, Stockbridge, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Great River Bancshares Corporation*, Burlington, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Burlington Bank and Trust, Burlington, Iowa.

2. *Peotone Bancorp, Inc.*, Peotone, Illinois; to acquire an additional 0.96 percent of the voting shares of Rock River Bancorporation, Oregon, Illinois, and thereby indirectly acquire Rock River Bank, Oregon, Illinois.

3. *Yale Bancorporation*, Yale, Iowa; to become a bank holding company by acquiring at least 96.25 percent of the voting shares of Farmers State Bank, Yale, Iowa.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to merge with First Bellevue Bancshares, Co., Bellevue, Nebraska, and thereby indirectly acquire The First National Bank of Bellevue, Bellevue, Nebraska.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Far West Bancorporation*, Provo, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Far West Bank, Provo, Utah.

2. *Valley Capital Corporation*, Las Vegas, Nevada; to acquire 100 percent of the voting shares of the successor by merger to First Business Bank of Arizona, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, August 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-20836 Filed 9-5-89; 8:45 am]

BILLING CODE 6210-01-M

National Bancorp, Inc.; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 21, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *National Bancorp, Inc.*, Melrose Park, Illinois; to engage *de novo* in acquiring and servicing loans or other extensions of credit of the type set forth in § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-20837 Filed 9-5-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 27, 1989.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Earl K. Nau*, Springfield, Missouri; to acquire an additional 5.36 percent of the voting shares of First City Bancshares, Inc., Springfield, Missouri, for a total of 15.26 percent, and thereby indirectly acquire First City National Bank, Springfield, Missouri.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *David A. Erickson*, Linton, North Dakota; to acquire an additional 1.14 percent of the voting shares of Linton Bancshares, Inc., Linton, North Dakota, and thereby indirectly acquire The First National Bank, Linton, North Dakota.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *John F. Piercey*, Salt Lake City, Utah, to acquire 50 percent; Lynne B. Haldemann, Chinook, Montana, to acquire 12.5 percent; Scott M. Browning, San Diego, California, to acquire 12.5 percent; Gay Browning, Salt Lake City, Utah, to acquire 12.5 percent; and Diane Browning, River Heights, Utah, to acquire 12.5 percent of the voting shares of Cottonwood Bancorporation, Salt Lake City, Utah, and thereby indirectly acquire Cottonwood Security Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, August 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-20838 Filed 9-5-89; 8:45 am]

BILLING CODE 6210-01-M

Plainview Bankshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 22, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Plainview Bankshares, Inc.*, Plainview, Minnesota; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank, Plainview, Minnesota.

In connection with this application, Applicant also proposes to continue to engage in its existing lending and loan participation activities, which include obtaining lending capital from a Federal Intermediate Credit Bank, making loans and other extensions of credit for primary agricultural production, purchasing participations in loans from its subsidiary bank, and making loans and extensions of credit to certain officers, directors and share holders of Applicant. These activities will be conducted in Wabasha, Olmstead, and Winona Counties.

Board of Governors of the Federal Reserve System, August 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-20839 Filed 9-5-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS. The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Public Law 96-511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. The HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements for Sole Community Home Health Agencies; *Form Number:* HCFA-R-85; *Frequency:* On occasion case-by-case; *Respondents:* Individuals/households; *Estimated Number of Responses:* 20; *Average Hours per Response:* 5; *Total Estimated Burden Hours:* 100.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Long Term Care Request for Certification; *Form Number:* HCFA-1516; *Frequency:* Annually; *Respondents:* State/local governments, businesses/other for

profit, and small businesses/organizations; *Estimated Number of Responses:* 19,100; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 4,775.

3. *Type of Request:* Revision; *Title of Information Collection:* Medicaid Management Information System; *Form Number:* HCFA–R–4; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 47; *Average Hours per Response:* 47,177; *Total Estimated Burden Hours:* 2,217,300.

4. *Type of Request:* Extension; *Title of Information Collection:* Integrated Review Schedule; *Form Number:* HCFA–301; *Frequency:* Monthly; *Respondents:* State/local governments; *Estimated Number of Responses:* 102,192 (Reporting) and 370,436 (Recordkeeping); *Average Hours per Response:* .2991 (Reporting); *Total Estimated Burden Hours:* 30,569 (Reporting) and 20,374 (Recordkeeping); total 50,943.

Additional Information or Comments: Call the Reports Clearance Officer on 301–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: August 30, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89–20845 Filed 9–5–89; 8:45 am]

BILLING CODE 4120–03–M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority; Deputy Commissioner, Management

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Chapter S1 of the Deputy Commissioner, Management, is being amended to reflect some internal realignments of subordinate offices in that Office. Chapter S1, Section S1E is amended to add division- and staff-level subcomponents and functions within the Office of Human Resources, Training and Management Analysis in the Office of the Deputy Commissioner, Management. The new material and changes are as follows:

Section S1E.200 *The Office of Human Resources, Training and Management Analysis*—(Functions):

Add:

C. 1. The Executive Recruitment and Services Staff (S1EA5).

a. Develops and implements all SSA policies and activities relating to the Agency's executive personnel management program.

b. Develops and implements policies and guidelines for SSA administration of the Senior Executive Service.

2. The Division of Labor and Employee Relations (S1EA4).

a. Plans and directs the development and evaluation of the SSA labor-management and employee relations (disciplinary/adverse and unacceptable performance) programs; formulates SSA-wide labor-management and employee relations policy; serves as the SSA reference point for inquiries, guidance and interpretations on labor-management and employee relations matters and provides SSA liaison with the Office of Personnel Management (OPM), HHS and other non-SSA entities and organizations concerning labor-management and employee relations in SAA.

b. Implements labor-management relations programs and policies throughout SSA's headquarters and field organizations; participates in negotiation and implementation of such procedures with labor organizations; resolves or recommends resolution in labor relations disputes and advises management during bargaining sessions.

c. Represents SSA management in all labor-management relations matters and proceedings which are adjudicated outside the Agency.

d. Provides the full range of labor-management relations advisory services to all SSA components to ensure proper application of negotiated agreement provisions and directs monitoring of union-management consultations as required by negotiated agreements or executive orders.

e. Implements an SSA program for disciplinary/adverse and unacceptable performance actions, in accordance with applicable regulations and procedures. Provides technical assistance, guidance, representation and letter-writing services for misconduct and performance action cases to management in SSA headquarters. Also provides these services to the field in complex cases.

f. In coordination with HHS' Office of the General Counsel, researches law, executive orders, court, Merit Systems Protection Board and Comptroller General decisions, regulations, policies, precedents and procedures on disciplinary/adverse actions, employee appeals and grievances.

3. The Division of Personnel Operations (S1EA1).

a. Implements policies and regulations pertaining to SSA recruitment and placement. Initiates and processes personnel actions for SSA headquarters employees and participates with office managers and staffs in assessing placement actions; directs the administration of all Merit Promotion Plans applicable within Baltimore/Washington headquarters components. Processes necessary administrative actions required for new employees entering on duty.

b. Provides professional counseling and referral services for emotionally disturbed employees and employees with alcohol or drug problems. Provides technical advice and guidance to SSA management officials on matters related to these functions.

c. Implements policies, regulations and affirmative action programs pertaining to special recruitment and staffing activities for SSA headquarters and field organizations; develops and implements special needs placement programs, including handicapped and veterans readjustment programs.

d. Develops, implements and evaluates SSA's employees health services programs in conformance with appropriate laws, policies and regulations.

e. Directs the development and operation of SSA's employee services such as: Workers' Compensation, health benefits, preretirement counseling and employee thrift plans. Provides assistance to employees regarding claims for loss of wages, settlement awards, notices of injury and required medical reports.

4. The Division of Classificiation and Organization Management (S1EA2).

a. Develops and implements SSA-wide programs of position classification and position management within SSA headquarters. Directs position classification and position management activities having SSA-wide significance.

b. Provides advice and assistance to all SSA components on activities and issues that involve position classification and position management; serves as the central SSA referral point on these programs and acts as SSA liaison with OPM, HHS and other non-SSA entities and organizations with respect to assigned areas of responsibility.

c. Formulates and oversees the implementation of policies, procedures, standards, directives and objectives which assure that position structure and management promote cost-effective operations and the efficient use of employee skills.

d. Provides leadership and coordination in the formulation of SSA policies, directives and programs relating to the Fair Labor Standards Act and to salary and wage surveys; and conducts a continuing review of the applicability of classification standards and, as appropriate, negotiates with OPM for the revision of such standards or the development of single agency standards.

e. Directs an SSA-wide program for inspection and evaluation of SSA's personnel management program including employment and staffing, position management and classification, employee relations, equal employment opportunity and labor relations. Conducts administrative surveys and special studies to provide managers with information and assistance to assure conformance with OPM regulations and HHS/SSA policies and directives.

f. Authorizes the establishment of positions and organizations, providing advice and guidance to managers on organizational structure and preparing **Federal Register** and Organizational Manual material.

5. The Division of Personnel Policy, Data and Research (S1EA3).

a. Directs the formulation and issuance of SSA personnel management policies and directives. Reviews all proposals submitted by other components pertaining to such areas as staffing, compensation, appraisals and performance standards, personnel information disclosure, employee relations, labor-management relations and management communications and ensures that such proposals are consistent with pertinent laws, regulations and policies. Oversees the dissemination and implementation of SSA-wide policies and directives pertaining to personnel management areas. Directs the development and maintenance of the SSA personnel manual system, reviewing all issuances under this system.

b. Provides overall coordination and direction to work environment improvement efforts within SSA. Coordinates a variety of studies throughout SSA designed to improve the work environment.

c. Designs, analyzes and implements a variety of research projects in the areas of personnel management. Plans, designs and implements human resources planning policy and procedures consistent with SSA-wide strategic planning initiatives.

d. Directs the development and operation of SSA employee awards programs. Develops and implements SSA employee suggestion, incentive and honor awards programs.

e. Plans and directs ongoing development, analysis and evaluation of SSA's personnel recordkeeping systems; develops general objectives and performance standards for automated systems and detailed specifications for development or modification of computer programs used in automated systems and proposes changes in these systems to meet SSA's human resources data, statistics and information needs. Coordinates, with SSA's Office of the Deputy Commissioner, Operations, the planning, development, modification and evaluation of automated systems. Reviews and processes all personnel and payroll actions in conformance with OPM and HHS regulations.

f. Plans, designs and evaluates personal computers and office automation support for human resources systems. Operates selected data processing/office automation systems in the Office of Human Resources.

Subsection D. The Office of Training (S1EB).

Delete:

D. The Office of Training (S1EB) in its entirety.

Add:

D. The Office of Training (S1EB) is responsible for the management and administration of a national training program to enhance SSA's capability of providing effective and efficient service to the public. It develops and issues Agencywide policies, procedures and operational guidelines for the design, development, implementation, maintenance and evaluation of all SSA training activities. Reviews training conducted by component technical training staffs in both Headquarters and the field, the SSA instructor cadre, other Government agencies and outside contractors to ensure that the results of all training are consistent with Agency needs. It directs the financial management of training monies to ensure accountability of money spent to train and develop the Agency's employees—from new hires to senior-level executives—located throughout the nation. Maintains the Headquarters Training Center, the Individualized Learning Center and the Training Information Center.

1. The Division of Management and Employee Development (S1EB1).

a. Directs, designs, develops, implements, conducts and evaluates all SSA supervisory, managerial and executive-level training development activities.

b. Has Agencywide responsibility for common needs and general skills training, including related developmental activities for nonsupervisory personnel.

c. Initiates independent studies and analyses to anticipate and identify new or changing training and development needs in a dynamic organizational environment.

d. Engages in applied research and development efforts associated with training and development programs administered by the division. Provides ongoing consultative assistance and support to SSA components, including training needs identification and program design; monitors and evaluates Agency training and developmental activities to ensure desired results and effects of nontechnical training provided to the Agency's employees. Fosters and maintains effective communications with appropriate internal and external organizations to ensure positive results relative to Agency objectives, policy directives, new initiatives, inservice training needs, etc.

e. Plans, directs, coordinates and administers the activities relative to developing and executing budget activities; evaluates SSA training in terms of cost-effectiveness, quality and value to the Agency; plans, formulates and implements SSA training policies and provides overall support and coordination to the training function. Coordinates attendance for Government-sponsored and nongovernment-sponsored conferences.

2. The Division of Technical Training (S1EB2).

a. Directs the design, development, implementation and evaluation of SSA program/technical training, including entry-level and advanced program, systems-user and computer technology training and other technical training to meet the needs of SSA components Agencywide.

b. Conducts ongoing research to identify automated technologies and instructional methodologies for application to training throughout SSA.

c. Develops guidelines and procedures to determine technical training needs, and reviews and evaluates technical training Agencywide.

Subsection E. The Office of Management Analysis (S1EC).

Add:

1. The Division of Workforce Utilization (S1EC2).

a. Develops and implements comprehensive workforce utilization and planning programs to improve productivity and the use of the SSA workforce.

b. Conducts studies and analyses of work processes and procedures, workflows and workload processing positions; applies a variety of disciplines and techniques, including management analysis and model building to assure best workforce utilization and recommends action to top SSA executives for improving the effectiveness of the SSA workforce.

c. Develops SSA-wide workforce management policies, procedures and guidelines; develops, analyzes and interprets workforce forecasting data and projects future workforce needs, including the types of skills and positions required.

d. Develops and implements a program to evaluate Agency operations in light of OMB Instruction A–76 and establishes policies to ensure overall compliance with A–76 provisions.

2. The Division of Management Studies and Analysis (S1EC1).

a. Directs, develops and implements a comprehensive program of management studies, research and analysis to evaluate and determine the feasibility of implementing major changes affecting the SSA organization, its administrative practices and its methods of operation. Studies and analyses are Agencywide, frequently deal with issues of a sensitive nature and may involve other Government agencies.

b. Undertakes feasibility, predictive benefit and cost/risk analyses to identify alternatives and to develop administrative strategies for consideration by the SSA Executive Staff in responding to Agencywide problems and issues.

c. Directs, develops and conducts Agencywide reviews and studies using industrial engineering, model building and other scientific approaches and methodologies.

d. Reviews and analyzes existing and proposed formal delegations of program and administrative decisionmaking authorities within SSA.

e. Has responsibility for SSA mobilization procedures for assuring continuity of all necessary SSA operations during a national emergency.

Dated: August 11, 1989.

John R. Dyer,

Deputy Commissioner for Management.

[FR Doc. 89–20804 Filed 9–5–89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2043]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB for emergency processing, an information collection package with respect to the Public Housing Drug Elimination Program.

This Notice is intended to inform the public that the Department is seeking emergency processing by September 6, 1989, of the paperwork requirements contained in a Notice of Fund Availability (NOFA) for the Public Housing Drug Elimination program. The NOFA announces the availability of $8.2 million in grant funds for public housing agencies and Indian housing authorities to eliminate drug-related crime in public housing projects. The public is invited to submit comments by September 6, 1989, on any paperwork requirements contained in the NOFA to: OMB Desk Officer for HUD, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the NOFA may be obtained from the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410. Upon approval of the paperwork requirements by OMB, a 90-day control number will be issued and displayed in the NOFA.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information collection proposal; (3) the description of the need for the information and its propose use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 30, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Housing Drug Elimination Program—Notice of Fund Availability (NOFA).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: This information collection announces the availability of $8.2 million in grant funds for the purpose of eliminating drug-related crime in public housing projects.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: One-Time and Semi-Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Plan	500		1		26		13,000
Comments	5,000		1		1		5,000
Application	500		1		32		16,000
Grant	500		1		5		2,500
Periodic Reports	100		2		25		5,000

Total Estimated Burden Hours: 41,500.

Status: Revision.

Contact: Howard Mortman, HUD, (202) 755–3611, John Allison, OMB, (202) 395–6880.

Dated: August 30, 1989.

[FR Doc. 89–20800 Filed 9–5–89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Ivory Export Quotas Issued by the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora's Ivory Control System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: On June 9, 1989, under the provisions of the African Elephant Conservation Act, the United States prohibited the import of all African elephant ivory except for sport-hunted trophies. Trophies may be imported from an ivory producing country if it has an ivory export quota accepted by the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. As ivory export notifications are received from the Secretariat by the Fish and Wildlife Service, they will be published in the **Federal Register**. The first such notice was published on March 20, 1989. This notice adds 1989 quotas for Burkina Faso, Chad, Kenya, Nigeria, Senegal, Somalia and Tanzania.

EFFECTIVE DATE: September 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Frank McGilvrey, Office of Management Authority, telephone (703) 358–2095.

SUPPLEMENTARY INFORMATION: On June 9, 1989, the Fish and Wildlife Service published a notice of a moratorium on importation of raw and worked ivory (54 FR 24758). This is a total ban except for import of sport-hunted trophy ivory. Section 2202(e) of the African Elephant Conservation Act of 1988 states that "Individuals may import sport-hunted elephant tropies that they have legally taken in an ivory producing country that has submitted an ivory quota."

Through the **Federal Register**, notices will be published of such quotas as notifications are received from the CITES Secretariat. Sport-hunted trophies may be imported into the United States only from nations which have ivory quotas for the year in which the import will take place. The first such notice was published on March 20, 1989 (54 FR 11449). Since then, quotas have been established for Burkina Faso, Chad, Kenya, Nigeria, Senegal, Somalia and Tanzania. This allows sport-hunted trophies with proper export permits to be imported from these countries into the United States during 1989. As of this date, import of trophies will be allowed for 1989 only from the following nations:

Country	1989 quota for total export of African elephant tusks
Botswana	1,000
Burkina Faso	46
Cameroon	296
Central African Republic	600
Chad	269
Congo	1,042
Ethiopia	670
Kenya	2,000
Malawi	238
Mozambique	17,961
Nigeria	50
Senegal	28
Somalia	1,653
South Africa	2,236
Tanzania	12,000
Zambia	3,772
Zimbabwe	5,000

This notice was prepared by Frank McGilvrey, U.S. Fish and Wildlife Service, Office of Management Authority.

Dated: August 30, 1989.

Richard M. Smith,

Director.

[FR Doc. 89–20887 Filed 9–5–89; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[UT-940-09-4212-11; U-54156]

Termination of Recreation and Public Purpose Classification; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purpose Classification affecting 9.242 acres in Box Elder County, Utah.

EFFECTIVE DATE: September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Mike Barnes, BLM Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111–2303, (801) 539–4119.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by the Recreation and Public Purpose Act of June 14, 1926, as amended; 43 U.S.C. 869; 869–4, it is ordered as follows:

Pursuant to 43 CFR 2091.7–1(b)(1) and the authority delegated to me by BLM Manual section 1203 (48 FR 85), classification decision U–54156 dated April 8, 1985, which classified 9.242 acres of public land as suitable for recreation and public purposes is hereby revoked insofar as it affects the following described lands:

Salt Lake Meridian

T. 13 N., R. 13 W.,

Sec. 3, Beginning at a point located 3,909.20 feet North and 50 feet East of the SW corner of section 31, thence East 660 feet, thence North 610 feet, thence West 660 feet, thence South 610 feet to the point of beginning.

The area described contains 9.242 acres located in Box Elder County.

The classification provided for segregation of the lands against all forms of appropriation under the public land laws, including location under the mining laws, but not the Recreation and Public Purposes Act and the mineral leasing laws. A 30 year lease was subsequently issued to Box Elder County for a sanitary landfill.

The County would now like to acquire unrestricted title to the land pursuant to section 203 of the Federal Land Policy and Management Act, (43 U.S.C. 1713). At 9:00 a.m., on September 30, 1989, the Recreation and Public Purpose classification will be terminated and the lands described above will be open only to disposal pursuant to section 203 of the Federal Land Policy and Management Act, to Box Elder County at fair market value, subject to any valid existing rights, and the requirements of applicable laws, rules and regulations.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-20889 Filed 9-5-89; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-943-09-4212-13; U-56998]

Notice of Issuance of Land Exchange Conveyance Document; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to The Nature Conservancy for the following described lands under section 206 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2756, 43 U.S.C. 1716:

Salt Lake Meridian

T. 41 S., R. 13 W.,
  Sec. 29, E½SE¼NE¼SW¼, SW¼NE¼SW¼, NE¼NE¼SE¼SW¼, NW¼SE¼SW¼, W½SW¼SE¼SW¼, SW¼NW¼NW¼SE¼, S½SE¼SE¼SW¼, W½SE¼NW¼SW¼, W½NE¼SW¼SW¼, SE¼SW¼SW¼, SW¼NW¼NE¼SE¼, W½SW¼NE¼SE¼, SE¼SW¼NE¼SE¼, SE¼SE¼NE¼SE¼, NW¼NE¼NW¼SE¼, S½NE¼NW¼SE¼, N½NW¼NW¼SE¼, W½SW¼NW¼SE¼, SE¼NW¼SE¼, NE¼SW¼SE¼, W½NW¼SW¼NE¼, SE¼NW¼SW¼SE¼, E½SW¼SW¼SE¼, SE¼SE¼SW¼SE¼, E½NE¼SE¼SE¼, S½NW¼SE¼SE¼, S½S½SE¼SE¼, NE¼SE¼SE¼SE¼.
  Containing 147.50 acres.

In exchange for these lands, the United States acquired the surface estate only (except as noted) of the following described lands

Salt Lake Meridian

T. 11 S., R. 18 W.,
  Sec. 3 S½;
  Sec. 4, S½;
  Sec. 5, all (surface and mineral estate);
  Sec. 6, SE¼SE¼;
  Sec. 7, NE¼SE¼;
  Sec. 8, all;
  Sec. 9 all;
  Sec. 17, W½SW¼;
  Sec. 18, W½NE¼S½NW¼S½.
  Containing 3,210.20 acres.

The purpose of the exchange was to acquire non-Federal land that will allow blocking the land into better management units. The public interest was best served through the completion of the exchange.

The values of the Federal public land and the non-Federal land in the exchange were both appraised at $413,000, and $321,020 respectively. The Nature Conservancy paid $91,980 difference in value.

Dated: August 22, 1989.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-20890 Filed 9-5-89; 8:45 am]

BILLING CODE 4310-DQ-M

[CO-942-09-4730-12]

Colorado: Filing of Plats of Survey

August 28, 1989.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., August 1989.

The plat representing the dependent resurvey of portions of the First Standard Parallel North (south boundary) and the subdivisional lines and the subdivision of sections 26 and 35, T. 5 N., R. 98 W., Sixth Principal Meridian, Colorado, Group No. 894, was accepted August 11, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 89-20859 Filed 9-5-89; 8:45 am]

BILLING CODE 4310-JB-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31477 [1]]

Consolidated Rail Corp.—Acquisition Exemption—Canadian National Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 11343–11345: (1) The purchase by Consolidated Rail Corporation (Conrail) of approximately 22.2 miles of Canadian National Railway Company's (CN) rail line and real property between Massena, NY (CN's milepose 0.0 and Conrail's milepost 160.8) and the U.S.-Canadian border (CN's milepost 22.2); and (2) the termination of Conrail's present overhead trackage rights agreement under which Conrail presently operates over this line. Both exemptions are subject to standard labor protective conditions. The exemption of Contrail's line purchase is also subject to an Historic Preservation Act condition.

DATES: This exemption is effective on October 6, 1989. Petitions for stay must be filed by September 21, 1989. Petitions for reconsideration must be filed by October 2, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31477 to:

Office of the Secretary, Case Control Branch, Att'n: Finance Docket No. 31477, Interstate Commerce Commission, Washington, DC 20423

Jonathan M. Broder (Conrail), 1138 Six Penn Center Plaza, Philadelphia, PA 19103–2959

Robert P. vom Eigen (CN), Hopkins, Sutter, Hamel & Park, 888 16th Street NW., Washington, DC 20006

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721)

SUPPLEMENTAL INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275–1721.)

Decided: August 28, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-20907 Filed 9-5-89; 8:45 am]

BILLING CODE 7035-01-M

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[1] Embraces Finance Docket No. 31477 (Sub-No. 1), *Consolidated Rail Corporation—Cancellation of Trackage Rights Exemption—Canadian National Railway Company.* We have consolidated these proceedings because they are integral parts of the same transaction, embracing the same issues and affecting the same parties.

[Finance Docket No. 31520]

Norfolk and Western Railway Co.—Trackage Rights Exemption—Illinois Central Railroad Co.

Illinois Central Railroad Company has agreed to grant overhead trackage rights to Norfolk and Western Railway Company between milepost 12 at Chicago, IL, and milepost 110 at Gibson City, IL. The trackage rights were to have become effective on August 17, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pledings must be filed with the Commission and served on: Robert J. Cooney, Three Commercial Place, Norfolk, VA 23510–2191.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: August 29, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-20825 Filed 9-5-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31520 (Sub-No. 1)]

Norfolk and Western Railway Co.—Trackage Rights Exemption—Illinois Central Railroad Co.

Illinois Central Railroad Company has agreed to grant overhead trackage rights to Norfolk and Western Railway Company between milepost 127 at Champaign, IL, and milepost 137 at Tolono, IL. The trackage rights were to have become effective on August 17, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert J. Cooney, Three Commercial Place, Norfolk, VA 23510–2191.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: August 29, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-20826 Filed 9-5-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 72X)]

Norfolk and Western Railway Co. and Wabash Railroad Company—Abandonment Exemption—In Lucas County, OH

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6.5-mile line of railroad between milepost TN–10.8, at Delmont Junction, and mileport TN–17.3, at Whitehouse, in Lucas County, OH.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line & Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 6, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by September 18, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by September 26, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environmental (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by September 11, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 29, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-20827 Filed 9-5-89; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-file trail use statement so long as it retains jurisdiction to do so.

BEST COPY AVAILABLE

[Docket No. AB-225 (Sub-No. 2X)]

Portland Traction Co.—Abandonment Exemption—in Multnomah and Clackamas Counties, OR

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904, the abandonment by Portland Traction Company of 17.5 miles of rail line from milepost 4.54 near Milwaukie Industrial Park to the end of the line at milepost 22.04 near Boring, in Multnomah and Clackamas Counties, OR, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 10, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by September 18, 1989, petitions to stay must be filed by September 25, 1989, and petitions for reconsideration must be filed by October 5, 1989. Requests for a public use condition and trail use statements must be filed by September 18, 1989.[2]

ADDRESSES: Send pleadings referring to Docket No. AB-225 (Sub-No. 2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioner's representatives: Joseph D. Anthofer, Jeanna L. Regier, 1416 Dodge Street, Omaha, NE 68179.

and

Gray A. Laakso, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Joseph H. Detmar, (202) 275–7245. [TDD for hearing impaired (202) 275–1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pickup in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing is available through TDD service (202) 275–1721.]

Decided: August 28, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamoley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–20828 Filed 9–5–89; 8:45 am]

BILLING CODE 7035-01-M

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[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[2] The Commission will accept late-filed trail use statements so long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 18, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 18, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 28th day of August 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date Received	Date of Petition	Petition Number	Articles Produced
ATF Davidson Co. (USW)	Whitinsville, MA	8/28/89	8/9/89	23,305	Printing Equipment
Arrow Pumps & Supply, Inc. (Workers)	Ada, OK	8/28/89	8/18/89	23,306	Oil & Gas
Continental Pet Technologies (UFWA)	Kentwood, MI	8/28/89	7/23/89	23,307	Plastic Containers
Customized Transportation, Inc. (UAW)	Trenton, NJ	8/28/89	8/14/89	23,308	Warehouse for GM
Daily Petroleum Services, Inc	Lafayette, LA	8/28/89	8/3/89	23,309	Rent & Repair Drilling Jars
Diversified Drilling	Abilene, TX	8/28/89	8/16/89	23,310	Oil & Gas
Dresses-Rand Co. & Midland Repair Center (Workers).	Midland, TX	8/28/89	8/14/89	23,311	Oil & Gas
Forest Hill Co. (Workers)	Dallas, TX	8/28/89	8/18/89	23,312	Oil & Gas
Forest Hill Co (Workers)	Quitman, TX	8/28/89	8/18/89	23,313	Oil & Gas
Greenwich Oil Corp. (Workers)	Dallas, TX	8/28/89	8/18/89	23,314	Oil & Gas
L&S Shirt Co., Inc. (Workers)	New York, NY	8/28/89	4/24/89	23,315	Sportswear
Litton Panelvision (Workers)	Pittsburgh, PA	8/28/89	8/9/89	23,316	Panel Displays
Mercury Marine (Workers)	Fon Du Lac, WI	8/28/89	8/16/89	23,317	Motors
Miller Taxidermy (Company)	Aransas Pass, TX	8/28/89	8/11/89	23,318	Commercial Taxidermy Service
Monon Corp. Mfg. Plant (UBCJA)	Monon, IN	8/28/89	8/22/89	23,319	Shipping Containers
Moriarty Welding & Fabrication	Buffalo, WY	8/28/89	7/18/89	23,320	Oil & Coal
Munsingwear Design Dept. (Workers)	Minneapolis, MN	8/28/89	8/18/89	23,321	Sportswear
Niagara Paper Co. (UPIU)	Buffalo, NY	8/28/89	8/21/89	23,322	Paper
Petroplex Savings Association (Workers)	Midland, TX	8/28/89	8/11/89	23,323	Savings & Loan Assoc.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date Received	Date of Petition	Petition Number	Articles Produced
Pharmacia ENI Diagnostic, Inc. (Workers)	Cranbury, NJ	8/28/89	8/11/89	23,324	Testing Kits
Planters Lifesavers Co. (Workers)	Canajoharie, NJ	8/28/89	8/15/89	23,325	Gum, Candy, Etc.
Racal Milgo, Inc. (Workers)	Miami & Sunrise, FL	8/28/89	8/15/89	23,326	Data Communications Equipment
Research Planning Institute (Workers)	Boulder, CO	8/28/89	8/17/89	23,327	Geological Data
Savory Planning Institute (Workers)	Lakewood, NJ	8/28/89	5/6/89	23,328	Toasters Ovens
Sooner Completion Co. (Workers)	Enid, OK	8/28/89	8/15/89	23,329	Oil & Gas
Syltron Inc. (Workers)	Luquillo, Puerto Rico	8/28/89	8/6/89	23,330	Printed Wire for Computers
Triumph-Lor, Inc. (Company)	Broussard, LA	8/28/89	8/4/89	23,331	Drill Collars & Pipes
Union Carbide-Round Brook Plant	Piscataway, NJ	8/28/89	8/15/89	23,332	Phenolic Resins
West Point Pepperell, Inc. (Workers)	Keysville, VA	8/28/89	8/18/89	23,333	Tufted bath Products

[FR Doc. 89–20883 Filed 9–5–89; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the **Federal Register** for the date received in column 3 of the appendix of FR Document 89–19503 on page 34263. which was published on August 18, 1989.

In column 3 of the Appendix, the date received is corrected to read "7/31/89" instead of 8/7/89 for Petition No. 23,226 General Motors BOC Body Assembly, Lansing, Michigan and Petition No. 23,247 General Motors/BOC Chassis Assembly, Lansing, MI.

Signed at Washington, DC, this 29th day of August 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–20882 Filed 9–5–89; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of August 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-22,896; Lamontre Case Co., Inc., Long Island City, NY

TA-W-22,994; Control Data Corp., Arden Hills, MN

TA-W-22,995; Control Data Corp., Minneapolis, MN

TA-W-23,053; The Atlantic Foundry Co., Akron, OH

TA-W-23,024; Bison Drilling Inc., Wakeeney, KS

TA-W-23,038; Henkel Corp., Harrison, NJ

TA-W-23,092; Stacy Industries, Inc., Woodridge, NJ

TA-W-23,093; Weymouth Art Leather Co., South Braintree, MA

TA-W-23,071; Wallace-Crossley Corp., Miami, FL

TA-W-22,976; C.E.F. Co—Raytron, West New York, NJ

TA-W-23,011; L & S Sales, Inc., Caribou, ME

TA-W-23,028; Champion Spark Plug Co., Toledo, OH

TA-W-23,029; Champion Spark Plug Co., Detroit, MI

TA-W-23,030; Champion Spark Plug Co., Cambridge, OH

TA-W-23,031; Champion Spark Plug Co., Iowa Industries Div., Burlington, IA

TA-W-23,044; Parkway Fabricators, South Amboy, NJ

TA-W-23,075; Cadic, Inc., Beaverton, OR

TA-W-23,051; Aneco Trousers Corp., Hanover, PA

TA-W-23,052; Aneco Trousers Corp., Taneytown, MD

TA-W-23,068; Schreiber Foods, Inc., Curwensville, PA

TA-W-23,063; Pendleton Land & Exploration, Inc., Englewood, CO

TA-W-23,083; Malina, Inc., Providence, RI

TA-W-23,079; Inman Molding & Manufacturing Co., Inc., Rahway, NJ

TA-W-22,843; American Trim Products, Inc., Rochester, NY

TA-W-23,128; W & W Steel Co., Electric Transformer Div., Norman, OK

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-23,049; W.C.I. Major Appliance Group, Newark, OH

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,036; Ellithrope Well Control, Inc., Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,065; Plessey Electronic Systems Corp., Wayne, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for cetification.

TA-W-23,039; L & M Oil Co., Dallas, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-23,035; Delsea Parker Corp., Millville, NJ

U.S. imports of fabricated structural steel declined in 1986 compared to 1987 and in the first four months of 1989 compared to the same period in 1988.

TA-W-22,986; Amoco Production Co., Houston, TX Region

And Operating at Various Locations in The Following States

TA-W-22,986A; New Mexico
TA-W-22,986C; Michigan
TA-W-22,986B; Texas

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for cetification.

TA-W-22,996; Crescent Foods, Inc., Seattle, WA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,089; Quickie Manufacturing Corp., Cinnaminson, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,004; H & H Atlas, Bronx, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,047; Tapley Rutter, Moonachie, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,034; Cravat Coal Co., Holloway-Freeport Mine, Cadiz, OH

U.S. imports of bituminous steam coal, lignite and anthracite were negligible in 1987 and 1988.

TA-W-23,026; C & H Transportation Co., Inc., Dallas, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,988; AT & T Technologies, Inc., Dallas Works, Mesquite, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-23,066; Quintana Petroleum Corp., Denver, CO

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,032; Chrysler Corp., Kenosha, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,099; Charles Komar & Sons, Middletown, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,070; Smithkline Beckman Corp., U.S. International, Philadelphia, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,042; Metallurgical Exoproducts Corp., Metscrap Div., McKees Rock, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,060; McCord Heat Transfer Corp., Plymouth, IN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,069; U.K. Dye Works, Paterson, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,213; Bethenergy Mines, Inc., Eighty Four, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,214; Bethenergy Mines, Inc., Ellsworth, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,073; Wichita River Oil Corp., Denver, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,100; Cone Mills Manufacturing, New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,074; Adidas, Inc., Warren, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,056; Gary Williams Energy Corp., Gas Processing Plant, Roosevelt, UT

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,088; Petrolite Corp., Oil Field Chemical Group., Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,153; Petrolite Corp., Oil Field Chemical Group., St. Louis, MO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,076; Equitable Handbags, New Brunswick, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,125; Trafalgar House Oil & Gas, Inc., Houston, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-23,077; Four Corners Drilling Co., Farmington, NM

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-23,081; J.M. Huber Corp., Oil and Gas Div., Houston, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-23,101; Crist Lakeshore Plateau Supply, Phoenix, AZ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,117; Plateau Supply, Farmington, NM

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,094; Wyoming Casing Service, Inc., Dickinson, ND

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-23,095; Wyoming Casing Service, Inc., Gillette, WY

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-23,080; J.L. Prescott Co., Passic, NJ

U.S. imports of plastic bottle soap detergents are negligible.

TA-W-23,080A; J.L. Prescott Co., Lincoln Park, NJ

U.S. imports of plastic bottle soap detergents are negligible.

Affirmative Determination

TA-W-23,174; Boyd Exploration Co., Casper, Wy

A certification was issued covering all workers separated on or after July 13, 1988.

TA-W-23,084; N.H.R., Inc., Nicholls, GA

A certification was issued covering all workers separated on or after May 31, 1988.

TA-W-23,179; Jackson Drilling Co., Conroe, TX

A certification was issued covering all workers separated on or after June 29, 1988 and before February 28, 1989.

TA-W-23,110; Klinger Industries, Morton, MS

A certification was issued covering all workers separated on or after June 22, 1988.

TA-W-23,958; Babcock & Wilcox Co., Beaver Falls Works, Beaver Falls, PA

A certification was issued covering all workers separated on or after May 8, 1988 and before June 1, 1989.

TA-W-23,958A; Babcock & Wilcox Co., Koppel, PA

A certification was issued covering all workers separated on or after May 8, 1988 and before June 1, 1989.

TA-W-23,958B; Babcock & Wilcox Co., Ambridge, PA

A certification was issued covering all workers separated on or after May 8, 1988 and before June 1, 1989.

TA-W-22,840; Aeronca, Inc., Middletown, OH

A certification was issued covering all workers separated on or after April 12, 1988.

TA-W-22,980; Therma Tru, Van Buren, AR

A certification was issued covering all workers separated on or after November 1, 1988 and before August 1, 1989.

TA-W-23,033; Copperweld Steel Co., Inc., Warren, OH

A certification was issued covering all workers separated on or after May 27, 1988.

TA-W-23,078; Heci Exploration Co., Dallas, TX

A certification was issued covering all workers separated on or after May 31, 1988.

TA-W-23,000; GTE Halls Station, GTE Products Corp., Muncy, PA

A certification was issued covering all workers separated on or after May 11, 1988.

TA-W-23,061; Montgomery Drilling Co., Roosevelt, UT

A certification was issued covering all workers separated on or after January 1, 1989 and before March 19, 1989.

TA-W-22,991; Bayonne Fashions, Inc., Bayonne, NJ

A certification was issued covering all workers separated on or after May 15, 1988.

TA-W-23,046; Signetics Co., Orem, UT

A certification was issued covering all workers separated on or after May 20, 1988.

TA-W-23,090; Renaissance Eyewear, Perth Amboy, NJ

A certification was issued covering all workers separated on or after May 25, 1988.

TA-W-23,016; Stackpole Carbon Co., St. Marys, PA

A certification was issued covering all workers engaged in the production of carbon and graphite brushes separated on or after July 6, 1989.

TA-W-23,040; L.S. Thorsen Corp., Ellsworth, ME

A certification was issued covering all workers separated on or after May 23, 1988.

TA-W-23,057; Goldstar of America, Inc., Huntsville, AL

A certification was issued covering all workers separated on or after June 1, 1988.

TA-W-23,041; Meriden-Steinhour Press, Inc., Meriden, CT

A certification was issued covering all workers separated on or after January 1, 1989 and before July 1, 1989.

TA-W-23,087; Parchman Oilfield Service, Inc., Edinburg, TX

A certification was issued covering all workers separated on or after June 5, 1988.

TA-W-22,961; Continental Plastics and Chemicals, Inc., Avenel, NJ

A certification was issued covering all workers separated on or after May 12, 1988 and before April 30, 1989.

TA-W-23,058; Keystone Lamp Mfg. Corp., Slatington, PA

A certification was issued covering all workers separated on or after May 31, 1988.

TA-W-23,050; A.O. Smith Electrical Products Co., Tipp City, OH

A certification was issued covering all workers engaged in the production of the hand machining operation for the production electric motor kits separated on or after June 6, 1988.

TA-W-23,072; Whirlpool Corp., Evansville Div., Evansville, IN

A certification was issued covering all workers engaged in the production of control boxes, roller coasters and water and tubing valves separated on or after January 1, 1989.

TA-W-23,054; Cardinal Surveys Co., Odessa, TX

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-23,054A; Cardinal Surveys Co., Midland, TX

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-23,055; Cardinal Surveys Co., Hobbs, NM

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-23,163; Westinghouse Electric Corp., El Paso, TX

A certification was issued covering all workers separated on or after June 28, 1988.

TA-W-23,160; Terra Tec Core Services, Midland, TX

A certification was issued covering all workers separated on or after June 26, 1988 and before May 30, 1989.

I hereby certify that the aforementioned determinations were issued during the month of August 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: August 29, 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: August 29, 1989.

[FR Doc. 89-20884 Filed 9-5-89; 8:45 am]

BILLING CODE 4510-30-M

Research, Evaluation, Pilot and Demonstration Plans for Program Year 1989

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) announces its research, evaluation, pilot and demonstration (R,E,P&D) procurement plan for Program Year 1989 (July 1, 1989 through June 30, 1990). The current plans are to implement projects that will address specific issues related to enhancing the quality of work, the productivity of workers, and labor market efficiency throughout the 1990's.

FOR FURTHER INFORMATION: Firms wishing to be included on a bidders' list may write to: Office of Acquisitions and Assistance, Department of Labor, Employment and Training

Administration, Room C–4305, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210 Attention: Bidders' List.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) announces its research, evaluation, pilot and demonstration (R,E,P&D) procurement plan for Program Year 1989 (July 1, 1989 through June 30, 1990). The current plans are to implement projects that will address specific issues related to enhancing the quality of work, the productivity of workers, and labor market efficiency throughout the 1990's.

This notice serves to alert interested parties to ETA's plan. It does not solicit applications or proposals. Solicitations for grant award (SGAs) will be announced throughout the Program Year in the **Federal Register**, and requests for proposals (RFPs) will be announced in the Commerce Business Daily. Some projects will be implemented through agreements with other DOL agencies and with other Federal departments. In some cases, these agencies will offer competitions for the projects. Some future competitions may be limited (for example, among States, Service Delivery Areas, or Private Industry Councils under the Job Training Partnership Act (JTPA) program) and, therefore, will be announced only through ETA's administrative communications system. Still other procurements may be set aside for small business or 8(a) firms. These procurement plans are subject to change; projects may not be initiated under all topics, or topics may be added or expanded. This announcement is for general information purposes to indicate the direction of the R,E,P&D agenda.

These projects are now planned to fall within five subject areas. They are:

(1) Workplace 2000,

(2) Youth Opportunities,

(3) Workplace Literacy,

(4) Worker Adjustment and Adult Programs, and

(5) Homeless Job Training.

This announcement consists of three parts. Part I provides general background information concerning the R,E,P&D program. Part II describes the five subject areas and provides a brief discussion of key issues. Part III announces the intention to initiate a field generated procurement competition later in the year.

Part I—Background

A. Mission of the Employment and Training Administration and its Research, Evaluation, Pilot and Demonstration Program

ETA is the Federal agency with the lead responsibility for the Federal Government's training and employment programs. Both U.S. workers and employers, and ultimately the economy, benefit from the comprehensive system of training and employment programs ETA administers. Its major programs include:

—JTPA, which consists of a wide range of activities targeted to individual groups who need job-related assistance, with emphasis on economically disadvantaged youth and adults and others who face severe problems in the job market;
—The Employment Service System, which operates as a labor exchange, matching workers with available jobs, as well as carrying out other functions;
—The Unemployment Insurance Program, which provides limited compensation to workers who lose their jobs through no fault of their own;
—Trade Adjustment Assistance, which is available to workers who lose their jobs as a result of increased imports; and
—Economic Dislocation and Worker Adjustment Assistance (EDWAA) program, under JTPA, which assists dislocated workers.

ETA's R,E,P&D program is operated to measure the impact and effectiveness of the agency's various activities, explore new program concepts, techniques and designs, and to assist the Nation in expanding current and future work opportunities and assuring access to those opportunities for all who desire them. ETA carries out its R,E,P&D program through State and local public agencies, private-for-profit and nonprofit organizations, colleges and universities, community-based and labor groups, and other Federal agencies.

B. Workforce 2000

R,E,P&D projects for Program Year 1989, which began on July 1, 1989, will continue to focus on workplace issues confronting the Nation through the year 2000. These issues, initiated in Program Year 1987, were first articulated in a 17-month study titled "Workforce 2000: Work and Workers for the Twenty-first Century". The report crystallized key issues and questions the Nation must deal with if it is to prosper in the intensely competitive and technologically sophisticated global market of the 21st Century. For example, the U.S. must:

—Fully integrate women, blacks, Hispanics, immigrants, and handicapped workers into the economy. The labor force will grow more slowly over the next 16 years than at any time in U.S. history, except during the decade of the Great Depression. The net growth in workers will be predominantly women, blacks and immigrants, sources of labor that have long been underutilized. Because there will be fewer young people beginning their careers overall, this could provide opportunities to bring groups historically underutilized into full participation in the economy.
—Provide the work force with the education and skills that new jobs in the expanding service-oriented economy will demand. Most new jobs in fast growing service industries will require higher levels of reading, math and reasoning skills than traditional jobs in manufacturing industries. Individuals with less than a high school education will face increasing difficulty in finding work and fewer opportunities for good pay and advancement. Yet 700,000 students drop out of school each year, and inadequate literacy skills have become a major problem among young adults.
—Ensure that the increasingly middle-aged work force is adaptable and retains its willingness to learn. The rapidly changing economy will demand workers who are flexible and willing to respond to new opportunities and conditions. Workers with years of experience often lack the flexibility and specialized skills they need to move into expanding industries.
—Reconcile the conflicting demands of work and family responsibilities, especially for women. The increase in the labor force participation of mothers, including women with young children, has been striking. As of March 1987, 66.7 percent of women with children under 18 and 52 percent of mothers with children under 2 years were in the labor force. Welfare mothers and displaced homemakers are among groups needing special consideration.

A basic step in meeting these challenges is strengthening ETA's information base. The R,E,P&D procurement plan announced in this notice is designed to provide more complete information to enable the

agency to better understand and deal with specific issues.

Part II—Subject Areas

A. Workplace 2000

The U.S. economy is expected to continue to grow at least at its current rate through the year 2000. Nonetheless, the efficiency of our labor markets will be severely tested. More sophisticated jobs will demand greater skills. Fewer young people will be entering the labor market, and a growing fraction will be minorities who traditionally are educationally disadvantaged as a group. Greater flexibility will be demanded of all workers, but particularly the middle-aged worker. In the anticipated tight labor market of the year 2000, employers will be forced to either seek out and invest in workers heretofore underutilized, or to bid up wages or export jobs overseas.

Employer-based training is one such method of investing in workers. Recent study findings indicate that it is a primary source of productivity improvement. However, there are gaps in the research needed to fully understand learning in the workplace. More information is needed on how to make learning on the job more effective and efficient for both workers and employers.

A critical part of any planning for the future is a sound information base. The work effort sought through Workplace 2000 projects is intended to supplement and expand on information bases for National, local, and occupation-specific improvements. It is intended to provide information to develop a cohesive national policy on workforce preparedness, improve labor market information, and seek out ways for solving labor shortage situations.

In some labor shortages situations, foreign workers have been permitted to fill the gaps, for example, in nursing. However, the issue of immigration is much broader, including responses to new and proposed immigration legislation.

Activities planned within this category of projects include initiating a number of inter-agency demonstration efforts aimed at preparing at-risk groups, such as teen-aged parents and welfare recipients, for the work force, and evaluating new Federal programs with the same aim.

DOL plans to share in a survey of business attitudes and activities about workplace training, and to assess the impact of past unemployment insurance program extensions during periods of recession.

Also planned, is a comprehensive program of immediate and longer-term research on workplace trends and projections. Demographic changes, changes in employment status, e.g., contingent and part-time workers, trends in benefits and employer-based training would be key areas of exploration.

B. Youth Opportunities

Improving the educational preparedness of workers is a challenge we must meet to be competitive into the 21st century. This is most important for our young people. Today's youth at risk of dropping out are our entry level workers of the next two decades. They face jobs demanding higher skills in math, reading and communications. Yet recent studies have shown that many of these youth are reading, writting, and computing at levels below present day expectations. Further, many of these youth are disenfranchised from and disillusioned with schools, and fail to see education's connection with good paying jobs. In some inner cities, as many as 50 percent of youth drop out of school. Further efforts must also be focused on young people who do not go to college. Businesses report that their levels of job preparedness are frequently inadequate.

ETA intends to closely examine programs and linkages that appear successful in helping our youth make the connnection between education and work. A number of programs linking school and employment and training programs with apprenticeship are successfully operating. In an effort to inform and encourage expansion of these school/training-to-work bridges, programs and the factors that make them successful need to be identified.

Project activities planned to prepare youth, particularly youth at-risk of dropping out, include the documentation and analysis of the outcomes experienced by a multi-year series of interagency demonstrations. A comprehensive research and development effort will also be undertaken to explore the employment and education patterns of youth and evaluate promising models for successful youth achievements such as dropout prevention/recovery and school-to-work transition.

Major youth demonstrations are planned for large cities and rural areas that will focus on integrating and linking the provision of services by the many local agencies concerned with the well-being of dropout and dropout prone youth.

DOL also plans to join forces with foundations to share in longer term research and evaluation studies related to at-risk youth; other plans include the evaluation of recently funded demonstrations to provide alternative education to at-risk youth.

C. Workplace Literacy

As the remainder of this century unfolds, it is expected that jobs requiring higher levels of literacy and analytic skills will increase, and those requiring only strength and manual ability will shrink. Further, the population groups presently in jobs with lesser skill requirements can expect a more difficult time in the job markets ahead unless their literacy skills are increased. In addition to increased skills, increased flexibility to new working conditions, new technology and new environments will be required. In the rapidly increasing service sector, the jobs will spring up in places to accommmodate customers. Job mobility will be required. Effective mobility rests on the premise that skills learned and tested in one area will be rated and recognized in another.

In the past several years, ETA has undertaken a wide variety of programs to explore, test and demonstrate new learning techniques and programs for groups in particular need of enhancing their workplace literacy skills, and efforts to assess literacy skill levels.

D. Worker Adjustment Assistance and Adult Programs

Trade Adjustment Assistance (TAA) and Economic Dislocation and Worker Adjustment Assistance (EDWAA) (Title III of JTPA) programs are available to assist dislocated workers train for and find new employment. Major new legislation was enacted last year substantially revising and expanding these important programs.

Women, work and family issues are subsumed under this topic, as well. Since the mid-1940's the labor force participation rate for women has grown dramatically from about 33 percent to more than 70 percent. In 1987, 66.7 percent of women with children participated in the labor force. The rate for mothers with young toddlers was 55.2 percent, more than double the rate of only 20 years ago. Contrary to popular belief, most working women (78 percent) work full time, and only 17 percent work part time voluntarily. Estimates for the remainder of the century indicate that women will increase their labor force participation, but at a slower rate. By the year 2000, the labor force participation rate for women is expected to reach 81 percent, while that of men will be nearly 93 percent.

Clearly, the conflicts between work and family needs will increase. Among these conflicts are the adequacy of arrangements for the care of children and elderly family members. As women continue to work more hours per week and more weeks per year, solutions to this problem will become increasingly critical.

Solutions will have to include flexible hours to care for sick children and dependents, and the overall time and financial resources to raise children. Better paying, full-time, skilled jobs will be needed by many women to adequately care for their families and their own occupational aspirations.

Improvements in the training and employment system including research and assessments of such programs as Unemployment Insurance, JTPA and joint efforts with other Federal agencies fall primarily within the purview of this category.

DOL plans to demonstrate the joint administration and delivery of worker adjustment programs by State agencies. Evaluations are planned for other worker adjustment programs or their components including The Targeted Jobs Tax Credit and Trade Adjustment Assistance programs.

Improvements in the training and employment delivery system will be studied through such research efforts as identifying the kinds of jobs obtained by those who complete JTPA training, and assessing the success of systems to identify mass layoffs. Technical writing and logistical assistance may also be sought to support conferences and required reports.

Part III—Field-Initiated Procurement Competition

A. Background

In the past several Programs Years, ETA has received hundreds of unsolicited proposals from offerors who requested funding support from R,E,P&D resources. A very small proportion of these have been funded. There are a number of reasons for this beyond funding limitations:

—Many have been inappropriate appeals to establish businesses, buy buildings, purchase major equipment, or receive loans, etc.

—Some have duplicated announced competitive projects, and

—Many have been requests to simply replicate established operations.

In order to reduce the number of inappropriate proposals and to increase the fairness and probability of funding proposals that are more responsive to the ETA R,E,P&D initiatives, ETA proposes to announce an annual review and selection process for proposals initiated from the field.

B. Proposed Competitive Process

Beginning in Program Year 1990, ETA will announce an annual competition for grant solicitations initiated from the field in support of R,E,P&D initiatives. The broad topic areas that will be considered for Program Year 1989 are those announced in this notice under Part II. Specific rating criteria that will be applied against each proposal along with funding limitations will be listed in the notice. The notice announcing the initiative of this process will be published shortly.

Signed at Washington, DC, this 29th day of August, 1989.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 89-20861 Filed 9-5-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-111-C]

Hansford Smokeless Collieries, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Hansford Smokeless Collieries, Inc., 41 Eagles Road, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entires) to its No. 4 Mine (I.D. No. 46-04388) located in Raleigh County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On September 13, 1982, petitioner was granted a modification of 30 CFR 75.326 to use belt and track haulage entries for ventilating active working places, to install an early warning fire detection system, and to monitor the air with a carbon monoxide detection system (docket no. M-82-37-C).

2. This petition concerns paragraph 5 of MSHA's Decision and Order which requires that the velocity of the air current in the belt entry not exceed 300 feet per minute (fpm).

3. Petitioner proposes that paragraph 5 of the Decision and Order be deleted, thus allowing velocities in excess of 300 fpm in the belt entry.

4. In support of this request, petitioner states that mining is taking place in the Beckley Seam, which is renowned for its unpredictable geology. Faults, rolls, and washouts make it impossible to plan and develop the airways necessary to maintain adequate ventilation. The mine is liberating in excess of 3.5 million cubic feet of methane per 24-hour period. Evaluations have shown that 12,000 cubic feet per minute of air must be delivered behind the line curtain on particular sections in order to dilute and render harmless the methane being liberated by the faces.

5. In further support of this request, petitioner states that the working sections are currently developing toward "virgin" areas of the reserve. They are also being developed beneath Paint Mountain, which rises over 2200 feet above the Beckley Seam, making a shaft impractical at this time.

6. For these reasons, petitioner requests an amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.326.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 6, 1989. Copies of the petition are available for inspection at that address.

Dated: August 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-20870 Filed 9-5-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-135-C]

Hickory Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Hickory Coal Company, R.D. No. 1, Box 479, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Slope No. 1 (I.D. No. 36-07783) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair of set

of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air reaching each working face is required to be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Requiring extremely high velocities in small cross-sectional airways and manways in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

(a) The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

(b) The minimun quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

(c) The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 6, 1989. Copies of the petition are available for inspection at that address.

Dated: August 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-20875 Filed 9-5-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-126-C]

Mid-Continent Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mid-Continent Resources, Inc., 1058 Road 100, P.O. Box 500, Carbondale, Colorado 81623 has filed a petition to modify the application of 30 CFR 75.302-4(e) (auxiliary fans and tubing) to its Dutch Creek Mine (I.D. No. 05-00301) located in Pitkin County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that when air passing through an auxiliary fan or tubing contains 1.0 volume per centum or more of methane, the provisions of 30 CFR 75.308 must be applied. Should the requirements of 30 CFR 75.308 necessitate deenergizing the auxiliary fan, the auxiliary fan must not be restarted until the methane content in the affected area is less than 1.0 volume per centum.

2. As an alternate method, petitioner proposes that whenever a bifurcated type auxiliary fan is used, the fan motor would not be required to be deenergized if one (1.0) volume per centum or more of methane is passing through the fan tubing or fan blades, provided:

(a) The environment in which the fan motor is operating is less than one and one-half (1.5) volume per centum of methane;

(b) The air passing by the fan motor is monitored for methane while the auxiliary fan is operating, and the fan motor is automatically deenergized when one and one-half (1.5) volume per centum or more of methane is detected at the fan motor;

(c) A methane monitor is installed inside the fan and is set to automatically deenergize the entire section, including the auxiliary fan unit, when the volume of methane being conducted through the fan reaches two (2.0) per centum or more. This type of installation affects not only the equipment set in the working place (all electrical equipment traditionally in by the last open crosscut) but also any equipment connected to the section's powercenter; and

(d) The fan blades are constructed of non-sparking material.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 6, 1989. Copies of the petition are available for inspection at that address.

Dated: August 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-20877 Filed 9-5-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-113-C]

Westmoreland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Drawer A & B, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries to its Holton Mine (I.D. No. 44-04197) located in Lee County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On August 2, 1986, petitioner was granted a modification of 30 CFR 75.326 to use air from the belt haulage and track entries to ventilate active working places, to install an early warning fire detection system, and to monitor the air with a carbon monoxide detection system (docket no. M-84-220-C).

2. This petition concerns paragraph 1(d) of MSHA's Decision and Order which requires that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction. The velocity of the air current in the belt conveyor entry cannot exceed 300 feet per minute.

3. Paragraph 1(d) should be modified to require that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction.

4. In support of this request, petitioner states that limiting velocities to 300 feet per minute seriously impairs the ability to maintain the minimum velocity of 50 feet per minute required for a definite and distinct air movement in the designated direction in section belt

entries. Furthermore, restricting the air current in the belt conveyor entries to 300 feet per minute would reduce the volume of air coursed to longwall mining sections necessary to dilute, render harmless and to carry away flammable, explosive, noxious, and harmful gases and dust and to ensure adequate ventilation of gob areas.

5. For these reasons, petitioner requests an amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.326.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 6, 1989. Copies of the petition are available for inspection at that address.

Dated August 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-20878 Filed 9-5-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-115-C]

Westmoreland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Drawer A & B, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Holton Mine (I.D. No. 44-04197) located in Lee County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On August 2, 1986, petitioner was granted a modification of 30 CFR 75.1105 to use air currents which are used to ventilate transformers, permanent pumps, and rectifiers be used to ventilate active working places in lieu of being coursed directly into the return and to install an early warning fire detection system and to monitor the air with a carbon monoxide detection system in all belt entries utilized as intake aircourses (Docket No. M-84-222-C).

2. This petition concerns paragraph 1(d) of MSHA's Decision and Order which requires that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction. The velocity of the air current in the belt conveyor entry cannot exceed 300 feet per minute.

3. Paragraph 1(d) should be modified to require that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction.

4. In support of this request, petitioner states that limiting velocities to 300 feet per minute seriously impairs the ability to maintain the minimum velocity of 50 feet per minute required for a definite and distinct air movement in the designated direction in section belt entries. Furthermore, restricting the air current in the belt conveyor entries to 300 feet per minute would reduce the volume of air coursed to longwall mining sections necessary to dilute, render harmless and to carry away flammable, explosive, noxious, and harmful gases and dust and to ensure adequate ventilation of gob areas.

5. For these reasons, petitioner requests an amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.1105.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 6, 1989. Copies of the petition are available for inspection at that address.

Dated: August 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-20879 Filed 9-5-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-114-C]

Westmoreland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Drawer A & B, Big Stone Gap, Virginia 24217 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Holton Mine (I.D. No. 44-04197) located in Lee County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. On August 2, 1986, petitioner was granted a modification of 75.1103-4(a) to use a fire sensor and warning device system capable of identification of fire by activated sensors rather than identification of fire within each belt flight and to install an early warning fire detection system and to monitor the air with a carbon monoxide detection system in all belt entries utilized as intake aircourses (docket no. M-84-221-C).

2. This petition concerns paragraph 1(d) of MSHA's Decision and Order which requires that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction. The velocity of the air current in the belt conveyor entry cannot exceed 300 feet per minute.

3. Paragraph 1(d) should be modified to require that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction.

4. In support of this request, petitioner states that limiting velocities to 300 feet per minute seriously impairs the ability to maintain the minimum velocity of 50 feet per minute required for a definite and distinct air movement in the designated direction in section belt entries. Furthermore, restricting the air current in the belt conveyor entries to 300 feet per minute would reduce the volume of air coursed to longwall mining sections necessary to dilute, render harmless and to carry away flammable, explosive, noxious, and harmful gases and dust and to ensure adequate ventilation of gob areas.

5. For these reasons, petitioner requests an amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.1103-4(a).

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 6, 1989. Copies of the petition

are available for inspection at that address.

Dated: August 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-20880 Filed 9-5-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL COMMISSION ON MIGRANT EDUCATION

Meeting

AGENCY: National Commission on Migrant Education.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 100-297, the National Commission on Migrant Education announces a forthcoming meeting of the Commission.

DATE: September 27, 1989, 9:00 a.m. to 3:00 p.m.

ADDRESS:

9:00 a.m.—noon, Capitol Building, Room S-128, Washington, DC 20510

1:30 p.m.—3:00 p.m., Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Nancy Watson, Administrative Officer, National Commission on Migrant Education, 8120 Woodmont Avenue, Bethesda, Maryland 20814, (301) 843-1387.

TYPE OF MEETING: Open.

AGENDA:

9:00 a.m.—9:15 a.m. Welcoming Remarks from Chairman

9:15 a.m.—10:00 a.m. Swearing in the Commissioners

10:00 a.m.—Noon General Discussion on the personnel, study, scope and schedule

1:30 p.m.—3:00 p.m. Briefing by Department of Education officials on migrant education.

Linda Chavez,

Chairman.

[FR Doc. 89-20850 Filed 9-5-89; 8:45 am]

BILLING CODE 6820-DE-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting

AGENCY: The National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

DATE: September 18, 1989—9:00 a.m. to 5:00 p.m.; September 19, 1989—12:00 a.m. to 5:00 p.m.

ADDRESS: September 18, Cannon House Office Building, Caucus Room, Independence Avenue SW., Washington, DC 20515 September 19, the General Service Administration Auditorium, 18th and F Streets NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carlton Lee, Chief Liaison Officer, The National Commission on Acquired Immune Deficiency Syndrome, Washington, DC 20407, (202/472-9058).

Type of Meeting: Open.

Agenda: On September 18, 1989, the meeting will be called to order at 9:00 a.m. The Commission will hear from a variety of experts, including a panel of people with AIDS, regarding their experiences with HIV AND AIDS. The Commission will review the recommendations of the Presidential Commission on the Human Immunodeficiency Virus Epidemic and discuss the National Commission's plans for performing the functions outlined in Public Law 100-607. The Commission may also review any pending legislation or policy recommendations affecting HIV and AIDS. On the morning of September 19, 1989, the Commission will visit the Whitman Walker Clinic and reconvene the public meeting at 12:00 a.m. to resume consideration of the issues raised on the previous day.

Maureen Byrnes,

Executive Director.

[FR Doc. 89-21117 Filed 9-5-89; 10:25 am]

BILLING CODE 6820-CO-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: Institute of Museum Services.

ACTION: Notice.

SUMMARY: The Institute of Museum Services has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503 (202-395-7316f). In addition, copies of such comments may be sent to Ms. Mamie Bittner, Institute of Museum Services, Room 510, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-786-0536).

FOR FURTHER INFORMATION CONTACT: Ms. Mamie Bittner, Institute of Museum Services, Room 510, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-786-0536) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Institute requests review of a new collection of information as follows.

Title: Conservation Assessment Program Application and Guidelines.

Frequency of Collection: Annual.

Respondents: Non-profit institutions.

Use: Application for funding.

Estimated Number of Respondents: 1000.

Average Burden Hours per Response: 1.

Total Estimated Burden: 100.

Mamie Bittner,

Institute of Museum Services.

[FR Doc. 89-20832 Filed 9-5-89; 8:45 am]

BILLING CODE 7036-01-M

NATIONAL LABOR RELATIONS BOARD

Rescheduling of Unfair Labor Practice Hearings: Experimental Modification of Procedures

AGENCY: National Labor Relations Board.

ACTION: Notice of extension of comment period.

SUMMARY: The National Labor Relations Board gives notice that it will extend until October 2, 1989 the deadline for filing comments on its experimental modification of the procedures governing the rescheduling of unfair labor practice hearings.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: On August 1, 1988, the National Labor Relations Board implemented a one-year experiment in all of its Regional Offices whereby the authority to reschedule unfair labor practice hearings was transferred, subject to certain exceptions, from the Regional Directors to the administrative law judges. The Board's original notice of this experiment invited parties to submit comments on the experiment on or before August 30, 1989. (See 53 FR 26348). A subsequent notice by the Board regarding the experiment also restated this deadline for submitting comments. (See 54 FR 31392).

However, having received requests for an extension, the Board has decided to extend the comment period until the close of business on October 2, 1989.

As indicated in the previous notices, comments should be sent to: Office of the Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, August 30, 1989.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 89-20621 Filed 9-5-89; 8:45 am]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 14, 1989 through August 24, 1989. The last biweekly notice was published on August 23, 1989 (54 FR 35099).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 6, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arkansas Power & Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment requests: July 1, 1988 as supplemented August 15, 1989

Description of amendment requests: The proposed amendments would revise Facility Operating License Nos. DPR-51 and NPF-6 for Arkansas Nuclear One, Units 1 and 2 (ANO-1&2) to authorize Entergy Operations, Incorporated (EOI) to act on behalf of Arkansas Power and Light (AP&L), with responsibility for the control over the physical construction, operation and maintenance of the facilities. This action is proposed in conjunction with EOI becoming the operator of Waterford Steam Electric Station, Unit 3 and Grand Gulf Units, 1 and 2. The proposed amendments were originally noticed on August 10, 1988 (53 FR 30126) with System Energy Resources, Inc. as the proposed operator.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. AP&L has evaluated the proposed changes to Facility Operating License Nos. DPR-51 and NPF-6 and has determined the following.

EOI will be a wholly owned subsidiary of Entergy. The employees of AP&L presently engaged in the operation of ANO-1&2 will become employees of EOI. The organizational structure of EOI will provide for clear management control and effective lines of authority and communication among the organizational units involved in the management, operation, and technical support of the facility.

As a result of the proposed amendments, there will not be physical changes to the facilities, and all Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. With the exception of administrative changes to reflect the role of EOI, the quality assurance program, security plan, and training program are unaffected. With regard to emergency plans, certain physical and personnel resources, limited to support in administrative areas but not inclusive of decision making authority, will continue to be provided by AP&L in support of these activities. The licensee states that decisional responsibilities related to accident recognition and classification, mitigation and corrective actions, radiological assessment and protective action recommendations and coordination with state and local authorities will rest with EOI personnel. AP&L corporate management will provide direction to other non-nuclear AP&L facilities for support to ANO-1&2. Operating agreements will ensure continued compliance with among others, General Design Criterion 17 of Appendix A to 10 CFR Part 50 on Electrical Power Systems. Therefore, the proposed changes will not increase the probability or consequences of any accidents previously evaluated.

The design and design bases of ANO-1&2 remain the same. Therefore, the current plant safety analyses remain complete and accurate in addressing the licensing basis events and analyzing plant response and consequences. The Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits are not affected by the proposed amendments. With the exception of administrative changes to reflect the role of EOI, plant procedures are unaffected. As such, the plant conditions for which the design basis accident analyses have been performed are still valid. Therefore, the proposed amendments cannot create the possibility of a new or different kind of accident than previously evaluated.

Plant safety margins are established for and reflected in Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these or any other margins. The proposed amendments therefore will not involve a reduction in a margin of safety.

The staff has reviewed the licensee's evaluation and agrees with the conclusions. Therefore, based on the above, the staff proposed to determine that the proposed license amendments do not involve a significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell, & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Frederick J. Hebdon

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: December 17, 1987

Description of amendment request: The proposed amendment would make corrections or clarifications in various sections of the Shearon Harris Nuclear Power Plant, Unit 1 (Harris) Technical Specifications (TS). Specifically, the following eight corrections or clarifications would be made: (1) establish consistency of nomenclature when a table or figure is deleted from the TS index; (2) insert omitted brackets to equation in Note 1 of Table 2.2-1 used to calculate the overtemperature trip setpoints; (3) clarify report submission timing for consistency between TS 3.3.3.6 Action c, 6.9.2, 3.3.3.4a and 3.3.3.9.a; (4) correct spelling of radioactivity in Item 1, Table 4.3-8; (5) improve consistency in nomenclature by deleting brackets enclosing train identifiers for residual heat removal loops in TS 3.4.1.3.d and 3.4.1.3.e; (6) delete references to deleted Table 3.6-1 from TS 4.6.3.2 and 4.6.3.3; (7) revise references for special reporting in Surveillance Requirement 4.4.5.5.c, Bases for Section 3/4.2.4 and TS 6.9.1, 6.9.1.6 and 6.9.2 to refer to TS 6.9.2 or 10 CFR 50.4, as appropriate, for consistency; and (8) add additional information to TS sections where the specifications were relocated to plant procedure PLP-106.

In the case of the eighth category of clarifications, the TS were reissued with the full power license, relocating certain surveillances and technical data related to valves, snubbers, materials and containment penetration conductor overcurrent protective devices to plant procedure, PLP-106, Technical Specification Equipment List Program. These clarifications describe more thoroughly where the relocated material may be found.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes are administrative in nature. The changes correct typographical errors and inconsistencies and are intended to clarify the Technical Specifications. The proposed amendment does not result in a change in any Limiting Condition for Operation or their bases nor does it result in any physical change to the plant.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the proposed changes are purely administrative in nature. No new operating environment, conditions, or procedures are introduced by this change. As such, the proposed amendment cannot create any new or different kind of accident.

3. The proposed amendment does not involve a significant decrease in a margin of safety. The proposed changes are administrative in nature and enhance the clarity and/or consistency of the Technical Specifications. This will result in less chance of operator confusion and, therefore, increase the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The Commission has published guidance in the **Federal Register** (48 FR 14864) concerning examples of amendments that are not likely to involve a significant hazards consideration. These changes are consistent with one of the examples: "(i) A purely administrative change to technical speciifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on the guidance example and the licensee's analysis, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: July 11, 1989 as supplemented by August 14, 1989.

Description of amendments request: Currently, the Quad Cities Nuclear Power Station (QCNPS), Units 1 and 2, Technical Specifications (TS) do include cycle-specific and fuel bundle type specific power distribution operating limits. Typically, in the past, changes to these limits would be submitted for NRC approval prior to each refueling outage to reflect upcoming cycle-specific characteristics. Since these limits were determined using a methodology previously approved by the NRC, license amendments were an unnecessary burden on utility and NRC resources. In order to facilitate the elimination of these unnecessary amendments, the NRC issued Generic Letter 88-16, "Removal of Cycle-Specific Parameter Limits from Technical Specifications". This Generic Letter provides guidance in removing the cycle-specific and fuel bundle-specific operating limits from TS and recording them in a Core Operating Limits Report (COLR). Commonwealth Edison Company (CECo) proposed a TS amendment for QCNPS in accordance with Generic Letter 88-16 and the previously approved lead Boiling Water Reactor (BWR) plant - Brunswick.

CECo's proposed TS amendment removes the following cycle-specific and fuel bundle type specific operating limits: Average Planar Linear Heat Generation Rate (APLHGR), Minimum Critical Power Ratio (MCPR), Linear Heat Generation Rate (HLGR), and Rod Block Monitor (RBM) Upscale Setpoints. In place of these limits, the applicable TS sections will reference the COLR. The COLR is an unit specific document containing the power distribution operating limits that apply for a specific cycle.

COLRs for future operating cycles will be submitted to the NRC for information prior to startup following each refueling outage, as required by Generic Letter 88-16. The implementation and revision of the COLRs will be controlled QCNPS Administrative Procedures. It should be noted that COLR revisions will receive the same level of detailed review and required approvals by the CECo Nuclear Fuel Services (NFS) Department, and On-Site and Off-Site Review Committees as Technical Specification changes do. In addition, the Definitions Section of the Technical Specifications shall have an entry entitled "Core Operating Limits Report" and there will be a new administrative reporting requirement added to the existing reporting requirements in Section 6.6.A of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(C). A proposed amendment to an operating license involves no significant hazards consideration if operaiton of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

CECo reviewed the proposed changes to TS and determined that the requested amendment does not involve a significant hazards consideration. More specifically, operation of QCNPS in accordance with the proposed amendment:

(1) Does not involve a significant increase in the probability or consequences, of any accident previously evaluated because plant protective functions and modes of operation are not altered. This amendment removes cycle-specific and fuel bundle type specific power distribution limits from the Technical Specifications and places them in a separate, controlled document (i.e. COLR). These changes are essentially administrative in nature, as the parameters in the COLR are the same as those currently specified in the Technical Specifications. NRC approved methods will still be used to analyze reloads of NRC approved fuel types for determining the results reported in the COLR. The surveillance requirements for these operating limits remain unchanged. Furthermore, functional requirements of safety-related equipment remain uneffected.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated because as stated above no safety-related equipment, safety function, plant protective feature, or mode of operation will be altered as a result of this amendment. The proposed changes do not create any new type of accident. The proposed amendment is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting removal of the values of cycle-specific parameters from TS. These operating limits will be developed in accordance with NRC-approved methodology, and the incorporation of these limits to the COLR ensure they will be properly controlled. Furthermore, the TS requirement for submitting the COLR to the Commission will allow the staff to continue to trend the value of these limits without the need for prior staff approval and without introduction of an unreviewed safety question. The current spectrum of analyzed reactor transients and accidents remains unchanged.

(3) Does not involve a significant reduction in the margin of safety. No plant functions are changed by this amendment. The change only removes cycle-specific and fuel bundle type specific power distribution limits from the Technical Specifications and incorporates these limits in the COLR. The plant will still continue to be operated within the boundaries established by these same power distribution limits, as calculated using NRC approved methods.

The Commission conducted a preliminary review of CECo's proposed amendment and analysis of no significant hazards. Currently, the Commission concurs with CECo's determination, and proposes that the aforementioned amendment does not constitute a significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Acting Project Director: Paul C. Shemanski

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: August 3, 1989

Description of amendments request: Commonwealth Edison Company (CECo) submitted an application to amend Appendix A, Technical Specifications (TS), of Operating Licenses DPR-29 and DPR-30 for the Quad Cities Nuclear Power Station (QCNPS). This application would reduce (from sixteen channels to four) the number of operable temperature switches, required by TS, which could initiate primary containment isolation of the High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) Systems. Furthermore, the high temperature trip setpoint for primary containment isolation of HPCI and RCIC would be lowered from 200F to 170F.

High area temperature will isolate the main steam (MS) supply from containment to either HPCI or RCIC in the event of a steamline break in their respective rooms. In the past, spurious HPCI and/or RCIC system isolations have occurred from minor steam leaks at the HPCI/RCIC turbine gland seals and the proximal placement of primary containment isolation temperature switches. CECo plans to modify the location and number of temperature switch groups in the HPCI and RCIC rooms to maximize system reliability (i.e., minimize probability of spurious isolations) and yet still be capable of adequately sensing bulk room temperature during an actual MS line break. The temperature trip setpoint for primary containment isolation will also be lowered to compensate for the reduced number of temperature switches by improving system isolation response time.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

CECo evaluated the proposed amendment in accordance with 10 CFR 50.92(c) and determined that it does not involve a significant hazards consideration for the following reasons:

(1) Operation of QCNPS according to the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

HPCI and RCIC high temperature switches are installed to detect a smaller break in the MS supply piping than that which would result in 300% MS line flow (i.e. high steamline flow would initiate primary containment isolation). Tripping of the high area temperature switches results in actuation of the RCIC or HPCI isolation valves. The trip logic for this isolation actuation is one-out-of-two taken twice and, as such all channels are required to be operable or in a tripped condition to meet single failure criteria. The trip settings of high area temperature and high flow, as well as valve closure times, assure that core uncovery is prevented and fission product releases are maintained within 10 CFR Part 100 limits.

The proposed modification to the HPCI and RCIC high temperature switches does not significantly increase the probability or consequence of an accident previously evaluated since the isolation function of the HPCI or RCIC temperature monitoring system is not directly affected. Relocation and reduction in the number of temperature switches is accompanied by a decrease in the trip level setting to assure acceptable response time and thereby minimize radiation releases to the room. The proposed change does not affect the one-out-of-two taken twice trip logic or the requirement that all installed sensors are operable (or in the tripped position). It is the intent of this proposed plant modification, and concurrent TS change, to maximize HPCI and RCIC system availability (i.e. reduce spurious isolations) without adversely effecting primary containment isolation response times during actual MS line break conditions.

(2) Operation of QCNPS according to the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification is submitted to support a proposed modification to the HPCI and RCIC temperature monitoring system which relocates and reduces the number of temperature switches. The system isolation logic design and the need for all instruments to be operable (or in the tripped condition) have not been changed. The trip level setting will be lowered (i.e., more conservative) to ensure adequate system response times and to maintain radiation levels within the limits of 10 CFR Part 100. As such, isolation of the HPCI and RCIC systems will occur when the bulk room temperature reaches the new trip setpoint (170° F) which would be indicative of a steamline break of the system. Calculations have been performed to demonstrate that the new temperature setpoint provides adequate assurance of system actuation in the event of a steamline break. The reduction of the number of switches prevents spurious isolations due to small localized steam leaks and removes the system sensitivity to area "hot spots", primarily at the turbine gland seals. HPCI and RCIC systems reliability is thereby increased by decreasing the number of unwanted system challenges.

Since the isolation function remains and the setpoint has been revised to accommodate for the system reconfiguration, no new or different kind of accident from any accident previously evaluated has been created.

(3) Operation of QCNPS according to the proposed changes does not involve a significant reduction in the margin of safety.

The purpose of the RCIC and HPCI system isolation is to assure system isolation in the event of a steamline break to prevent reactor inventory loss and maintain radiation doses to less than 10 CFR Part 100 limits. The modified temperature monitoring system will maintain separation criteria for electric power supplies. The one-out-of-two taken twice trip logic will be retained so that the isolation capability is maintained in the event of single switch failure. A large steam leak resulting from the rupture of the RCIC or HPCI steam supply line would cause the high flow instrumentation to provide a trip of the isolation logic. For smaller leaks, the bulk room temperature of the HPCI and RCIC rooms would increase until actuation of primary containment isolation due to high temperature. Relocation and reduction in the number of temperature switches is compensated for by a lowering, in the conservative direction, of the temperature isolation setpoint which will assure adequate system response. The current high flow isolation, accompanied by the modified temperature isolation, assures that only a minimal inventory loss occurs, thus preventing core uncovery and ensuring that 10 CFR Part 100 requirements are not exceeded; as such, a significant reduction in the margin of safety does not occur.

Therefore, the NRC staff proposes to determine that this amendment request does not involve significant hazards consideration based upon a preliminary review of the application and the licensee's evaluation of no significant hazards considerations.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Acting Project Director: Paul C. Shemanski

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: July 31, 1989

Description of amendment request: The proposed amendment would revise License Condition 3.E, remove fire protection Technical Specifications (TSs) 3.22, 4.17, 6.2.2.e and 6.4.2 and revise TSs 4.2.2 and 6.5.2.4.1. Generic Letters 86-10, dated April 24, 1986, and 88-12, dated August 2, 1988, from the NRC provided guidance to licensees to request removal of the fire protection TSs. The licensee's proposed amendment is in response to these Generic Letters.

Basis for proposed no significant hazards consideration determination: The NRC staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The proposed revision to the License Condition is in accordance with the guidance provided in Generic Letter 86-10 for licensees requesting removal of fire protection TSs. The incorporation of the NRC-approved Fire Protection Program and the former TS requirements, by reference to the procedures implementing these requirements, into the Final Safety Analysis Report (FSAR) and the use of the standard License Condition on fire protection will ensure that the Fire Protection Program, including the systems, the administrative and technical controls, the organization, and the other plant features associated with fire protection will be on a consistent status with other plant features described in the FSAR. Also, the provisions of 10 CFR 50.59 would then apply directly for changes the licensee desires to make in the Fire Protection Program. In this context, the determination of the involvement of an unreviewed safety question defined in 10 CFR 50.59(a)(2) would be made based on the "accident...previously evaluated" being the postulated fire in the fire hazards analysis for the fire area affected by the change. Hence, the proposed License Condition establishes an adequate basis for defining the scope of changes to the Fire Protection Program which can be made without prior Commission approval, i.e., without introduction of an unreviewed safety question. The revised License Condition and the removal of the existing TS requirements on fire protection do not create the possibility of a new or different kind of accident from those previously evaluated. They also don't involve a significant reduction in the margin of safety since the License Condition does not alter the requirement that an evaluation be performed for the identification of an unreviewed safety question for each proposed change to the Fire Protection Program. Consequently, the proposed License Condition and the removal of the fire protection requirements do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Currently, Section 6 of the TSs requires that written procedures be established, implemented, and maintained covering Fire Protection Program implementation. Technical Specification 6.5, Review and Audit, is modified to include the review of the changes to the Fire Protection Program and implementing procedures by the Nuclear Safety Board. In this manner, the Fire Protection Program will be addressed by administrative control requirements that are consistent with other programs addressed by License Conditions. These changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards consideration.

The proposed amendment includes the removal of fire protection TSs in four areas: (1) fire detection systems, (2) fire suppression systems, (3) fire barriers, and (4) fire brigade staffing and training requirements. While it is recognized that a comprehensive Fire Protection Program is essential to plant safety, many details of this program that are currently addressed in TSs can be modified without affecting nuclear safety. With the removal of these requirements from the TSs, they have been incorporated into the Fire Protection Program implementing procedures. Hence, with the additions to the existing administrative control requirements that are applicable to the Fire Protection Program and the revised License Condition, there are suitable administrative controls to ensure that licensee initiated changes to these requirements, that have been removed from the TSs, will receive careful review by competent individuals. Again, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards consideration.

Based on the preceding assessment, the NRC staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John Thoma, Acting

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: February 17, 1989

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to include operability and surveillance requirements for a flow path from the Low Pressure Injection (LPI) system discharge to the High Pressure Injection (HPI) pump suction. This flow path is necessary to assure the availability of long term core cooling following a small break loss of coolant accident in which the borated storage tank is depleted and Reactor Coolant system pressure remains above the shutoff head of the LPI pumps. This flow path currently exists in Oconee Units 1, 2 and 3; however, the flow paths were not addressed in the TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The probability or consequences of an accident previously evaluated are not significantly increased since these proposed amendments constitute additional restrictions not presently included within the TS to provide increased assurance of the operability of the Emergency Core Cooling System. (ECCS).

The changes included within these proposed amendments add operability and surveillance requirements to the TS for the flow path from the LPI system to the HPI pump suction. No changes to the system configuration or design result from this change. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The additional operability and surveillance requirements included within these proposed amendments provide increased assurance that the ECCS will be available during all design basis accident scenarios. As such, the proposed amendments do not involve a significant reduction in a margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: David B. Matthews

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: July 26, 1989

Description of amendment request: This amendment would add operability requirements, actions, and surveillance requirements for core exit thermocouples and a Reactor Coolant Inventory Tracking System to the Technical Specifications. Core exit thermocouples measure the temperature of reactor coolant as it leaves the reactor core. A Reactor Coolant Inventory Tracking System uses a differential pressure measurement to help operators determine the level of coolant within the reactor vessel. These instruments, when used in conjunction with other plant indicators, can help operators analyze accidents more quickly and accurately, thus allowing them to take prompt corrective action.

Basis for proposed no significant hazards consideration determination: The Commission has provided criteria for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of criteria in 10 CFR 50.92 by providing certain examples (51 FR 7750). One of the examples of actions involving no significant hazards considerations is example (ii), a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement.

The staff has evaluated the licensee's proposed changes in light of the criteria provided in 10 CFR 50.92. In regard to the first criterion, the staff has found that the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated since the additional requirements placed on the inadequate core cooling instrumentation by the proposed amendment will serve to ensure their operability during and after an accident.

In regard to the second criterion, the staff has found that the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes introduce no new mode of plant operation, nor do they involve any physical modifications of the plant.

In regard to the third criterion, the staff has found that the proposed changes do not involve a significant reduction in a margin of safety. As the changes involve an additional restriction to ensure the operability of currently installed systems, no reduction in a margin of safety is involved.

The staff, after performing a preliminary review of the licensee's proposed changes, agrees that the criteria of 10 CFR 50.92 are met. Furthermore, the staff believes that the proposed amendment is in accordance with example (ii) in 51 FR 7750. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: July 28, 1989

Description of amendment request: This amendment would remove organizational charts from the Technical Specifications (TS) and add to the TS general requirements that capture the essential aspects of the organizational structure in accordance with the guidance provided in Generic Letter 88-06. The amendment would also revise the composition of the Plant Review Committee by deleting references to specific job titles for its members.

The TS currently contain organizational charts that depict the reporting chain for some organizational functions. Although it is important to have TS on plant organization, and to ensure that reporting chains for certain organizational functions are such that scheduling and operational pressures are subordinate to safety concerns, it has been the staff's experience that the organizational charts themselves have been of little help. As part of the proposed amendment, the aspects of the organizational charts that are essential to plant safety would be captured elsewhere in the TS.

As the organizational charts are currently a part of the TS, any update of, or title change affected by, these charts can only be accomplished through a license amendment; this places an unnecessary burden on both the licensee and the Commission. Thus, this amendment should reduce the administrative load on all parties.

Basis for proposed no significant hazards consideration determination: The Commission has provided criteria for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes in light of these criteria. In regard to the first criterion, the licensee found that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated since the essence of the TS will remain in place in more general terms. Thus, the proposed changes are in accordance with Generic Letter 88-06. Furthermore, the removal of the specific titles of the members of the Plant Review Committee were found acceptable as the TS would be modified to require that the members be supervisors from various disciplines.

In regard to the second criterion, the licensee determined that the proposed amendment did not create the possibility of a new or different kind of accident from any accident previously evaluated. This determination was made since the proposed amendment introduces no new mode of plant operation, nor does it involve any physical modification to the plant.

In regard to the third criterion, the licensee determined that the proposed amendment does not involve a significant reduction in a margin of safety. Changes to the organization will still be controlled by the provisions of 10 CFR Part 50 Appendix B, and 10 CFR 50.54(a)(3). Thus, this amendment will reduce the administrative burden on both the licensee and the Commission without a significant decrease in a margin of safety.

The staff, after performing a preliminary review of the licensee's proposed changes, agrees that the criteria of 10 CFR 50.92 are met. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazard considerations.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: July 28, 1989

Description of amendment request: Revises and corrects various technical specification surveillance requirements including reactor protection system.

Basis for proposed no significant hazards consideration determination: GPU Nuclear Corporation has determined that this Technical Specification Change Request poses no significant hazards as defined by the NRC in 10 CFR 50.92. It does not involve significant hazards as evaluated below.

> 1. Operation of Three Mile Island Nuclear Station, Unit-1, in accordance with this change would not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed Technical Specification does not modify or create an accident initiating condition.
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> 2. Operation of Three Mile Island Nuclear Station, Unit-1, in accordance with this change would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed Technical Specification does not modify or create an accident initiating condition.
>
> 3. Operation of Three Mile Island Nuclear Station, Unit-1, in accordance with this change would not involve a significant reduction in a margin of safety since all Updated Final Safety Analysis Report (UFSAR) assumptions remain unchanged.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed

amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 1, 1988 as supplemented August 15, 1989

Description of amendment request: The proposed amendment would revise Facility Operating License No. NPF-38 for Waterford 3 to authorize Entergy Operations, Incorporated (EOI) to act on behalf of Louisiana Power and Light (LP&L), with responsibility for the control over the physical construction, operation and maintenance of the facility. This action is proposed in conjunction with EOI becoming the operator of Arkansas Nuclear One, Units 1 and 2 and Grand Gulf Units, 1 and 2. The proposed amendment was originally noticed on August 10, 1988 (53 FR 30136) with System Energy Resources, Inc. as the proposed operator.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. LP&L has evaluated the proposed change to Facility Operating License No. NPF-38 and has determined the following.

EOI will be a wholly owned subsidiary of Entergy. The employees of LP&L presently engaged in the operation of Waterford 3 will become employees of EOI. The organizational structure of EOI will provide for clear management control and effective lines of authority and communication among the organizational units involved in the management, operation, and technical support of the facility.

As a result of the proposed amendment, there will not be physical changes to the facility, and all Limiting Conditions for Operation, Limiting Safety System Setting, and Safety Limits specified in the Technical Specifications will remain unchanged. With the exception of administrative changes to reflect the role of EOI, the quality assurance program, security plan, and training program are unaffected. With regard to emergency plans, certain physical and personnel resources, limited to support in administrative areas but not inclusive of decision making authority, will continue to be provided by LP&L in support of these activities. The licensee states that decisional responsibilities related to accident recognition and classification, mitigation and corrective actions, radiological assessment and protective action recommendations and coordination with state and local authorities will rest with EOI personnel. LP&L corporate management will provide direction to other non-nuclear LP&L facilities for support to Waterford 3. Operating agreements will ensure continued compliance with among others, General Design Criterion 17 of Appendix A to 10 CFR Part 50 on Electrical Power Systems. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The design and design bases of Waterford 3 remain the same. Therefore, the current plant safety analyses remain complete and accurate in addressing the licensing basis events and analyzing plant response and consequences. The Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits are not affected by the proposed amendment. With the exception of administrative changes to reflect the role of EOI, plant procedures are unaffected. As such, the plant conditions for which the design basis accident analyses have been performed are still valid. Therefore, the proposed amendment cannot create the possibility of a new or different kind of accident than previously evaluated.

Plant safety margins are established for and reflected in Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these or any other margins. The proposed amendment therefore will not involve a reduction in a margin of safety.

The staff has reviewed the licensee's evaluation and agrees with the conclusions. Therefore, based on the above, the staff proposed to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Frederick J. Hebdon

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 14, 1989

Description of amendment request: The proposed amendment would change the Technical Specifications to allow the control element assembly drop time acceptance to be based on the average drop time rather than the slowest drop time of any control element assembly (CEA).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee has performed an analysis as follows.

> The proposed change to the CEA drop time requirements have been evaluated for impact on Waterford 3 analyses. Analyses show that assuming the negative reactivity insertion of CEAs falling in a reasonable distribution about the average is the same as the negative reactivity insertion due to all CEAs dropping into the core at the average rod drop time. Thus, the change is equivalent to the current acceptance criteria because the required negative reactivity insertion must be attained within the same 3.0 second limit. Since the negative reactivity insertion during reactor trip assumed in accident analyses is not adversely impacted by assuming all CEAs drop at the rate of the average CEA, the proposed change will not increase the probability or consequences of an accident previously evaluated.

The proposed change does not involve any new or modified structures, systems, or components. Rather, the proposed change affects only an acceptance criteria for confirming the required reactivity insertion performance of the existing CEA hardware. Since the new acceptance criteria preserves the safety analyses reactivity insertion assumptions, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The margin of safety associated with CEA insertion (maximum reactor trip time) is assumed for each of the analyzed events in the Final Safety Analysis Report. Technical Specification 3.1.3.4 ensures actual plant performance stays bounded by the safety analyses assumptions on CEA drop time. As stated above, the proposed change in the CEA drop time requirement is equivalent to the current requirement and will not have any adverse impact upon safety analyses. Therefore, the margin of safety in the analyses is not reduced.

We have reviewed the licensee's analysis for hazards consideration and find it acceptable. Therefore on the basis of the above, the staff proposes to determine that the change does not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Frederick J. Hebdon

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: July 25, 1989

Description of amendment request: The proposed change to the Technical Specifications would add the term "Source Check" to the surveillance requirement to administratively eliminate discrepancies between Sections 4.8.A.1, 4.8.B.1 and their referenced tables, Tables 4.8-1 and 4.8-2.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed changes, in accordance with 10 CFR 50.92 and has concluded and the NRC agrees, that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change involves adding the term "source check" to the surveillance requirement of Specifications 4.8.A.1 and 4.8.A.2 in order to make them consistent with Tables 4.8-1 and 4.8-2. The change does not impact the way the surveillance is currently performed and, therefore, does not impact the consequences or probability of occurrence of any accident.

2. Create the possibility of a new type of accident from those previously analyzed. The change represents only an administrative correction, and as such does not impact any related systems, components, or parameters. Therefore, no new type of accident could be created.

3. Involve a significant reduction in the margin of safety. The original intent of the technical specification remains unchanged by the administrative correction. Therefore, there is no reduction in the margin of safety.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: July 31, 1989

Description of amendment request: The proposed change to the Technical Specifications would add four valves to Table 3.7.1. The addition of these to the table of primary containment isolation valves adds the capability to use the existing drywell compressors to take suction from the torus, and discharge directly into the drywell atmosphere. This also minimizes the purging operations which would have been needed to maintain the required differential pressure between the drywell and torus.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed changes, in accordance with 10 CFR 50.92 and has concluded and the NRC agrees, that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The addition of the four additional containment isolation valves to Table 3.7.1 of the Millstone Unit No. 1 Technical Specifications will have no impact on the initiation or consequences of any accident previously evaluated. This change will ensure that the additional valves are leak rate tested. Therefore, the aforementioned change does not increase the probability or consequences of a design basis accident nor does it affect the performance or failure probability of any safety system. The change described is administrative in nature and, as such, has no effect on the initiation, probability, or consequences of any previously evaluated accident scenario.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not result in any physical modification to the plant, but only adds to an existing list of containment isolation valves. This administrative change does not result in any new failure mode and, therefore, no new or different kind of accident from any previously evaluated is created.

3. Involve a significant reduction in the margin of safety. Containment integrity will be maintained, and the addition of these valves to the list of Primary Containment Isolation Valves (Table 3.7.1) will have no adverse impact on protective boundaries; therefore no reduction in margin of safety will be created.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: July 31, 1989

Description of amendment request: The proposed change to the Technical Specifications would revise the distribution voltage listed from 27.6KV to 23KV for the primary side of the Emergency Station Services Transformer (ESST). This reflects a previous plant modification.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed changes, in accordance with 10 CFR 50.92 and has concluded and the NRC agrees, that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. Since the capacity and low-side voltage ratings remain the same and only the high-side voltage has been reduced, the ESST still serves its intended function. The change is administrative in nature and corrects an oversight from the time when physical changes were made to the ESST supply line.

2. Create the possibility of a new or different kind of accident from those previously analyzed, in that the proposed change corrects the Technical Specifications to reflect the actual voltage of the ESST supply, and does not affect the ESST purpose of providing alternate off-site power to Millstone Unit No. 1. The change does not modify plant response nor does it have any new failure modes associated with it.

3. Involve a significant reduction in the margin of safety. The margin of safety is not affected by this proposed change in that the change is only in the wording of the Technical Specifications and has no effect on plant operation.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: August 8, 1989

Description of amendment request: The proposed change to the Technical Specifications would add a new requirement to maintain an average water temperature of less than 75° F at the intake structure except when the reactor is in the cold shutdown or refueling condition. The design basis for the service water system as stated in the Updated Final Safety Analysis Report is a maximum water temperature of 75° F.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed changes, in accordance with 10 CFR 50.92 and has concluded and the NRC agrees, that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The change reflects the assumption made for ultimate heat sink in the design basis analysis and is more stringent than the existing Technical Specifications. There are no design accidents adversely affected by the proposed change, and the change cannot result in the initiation of any event. The additional shutdown requirement will maintain the plant with the 75° F design basis service water temperature.

2. Create the possibility of a new or different kind of accident from those previously analyzed. The proposed change has no effect on plant operation within the design basis, no new failure modes are introduced, and no hardware modifications are included in this change.

3. Involve a significant reduction in the margin of safety. The change does not have any adverse impact on the protective boundaries. The change has no effect on the consequences of any accident and there is no reduction in the margin of safety.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: August 2, 1989

Description of amendment request: The proposed amendment would eliminate Table 3.7.1, "Primary Containment Isolation," from the Technical Specifications (TSs). The Updated Safety Analysis Report (USAR), Table 5.2-3b, would replace TS Table 3.7.1 for identification of primary containment isolation valves and descriptive information such as valve closure time, normal position, and isolation group assignment.

The operability of containment isolation valves ensures that the containment atmosphere will be isolated from the outside environment in the event of a release of radioactive material to the containment atmosphere or pressurization of the containment. Although the proposed change involves the removal of the table in the TSs which identifies the valves which must be operable to ensure containment integrity, the basic requirements that ensure operability and periodic surveillance will remain in the TSs. The substitution of USAR Table 5.2-3b for TS Table 3.7.1 is an administrative action to allow future changes to the facility to be made under the authority of 10 CFR 50.59 when appropriate.

Basis for proposed no significant hazards consideration determination: The Commission's staff has evaluated the proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The substitution of TS Table 3.7.1 with USAR information would have no impact on plant operation or safety. The TSs would continue to require containment isolation valves to be operable, appropriate action to be taken in event of inoperable valves, and periodic surveillance testing of the valves. Changes to the USAR Table which would replace Table 3.7.1 would be controlled under the provisions of 10 CFR 50.59.

The Commission's staff finds that the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the amendment would not eliminate operability or surveillance requirements for isolation valves needed to ensure containment integrity; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because no facility modifications are involved which could create such a possibility; or

3. Involve a significant reduction in a margin of safety because operability and surveillance criteria for valves needed for containment integrity would not be relaxed.

Therefore, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John Thoma, Acting

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: August 15, 1989 (Reference LAR 89-09)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to (1) allow the use of a temporary source range detector during refueling if one of the two permanently installed excore source range detectors fails, (2) clarify that certain activities, which do not significantly affect core reactivity, are not considered alterations, (3) require containment closure during movement of the reactor upper internals and head, and (4) allow latching the control rod mechanism shaft to the rod cluster control assemblies (RCCAs) and friction testing of individual control rods with one source range detector.

The specific TS changes proposed would include the following:

(1) TS Definition 1.10, "Core Alterations", would be revised to clarify that certain activities, which do not

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significantly affect core reactivity, are not considered core alterations.

(2) TS 3.9.2, "Instrumentation", would be revised to allow latching the control rod drive shaft mechanism to the rod cluster control assemblies and friction testing of individual control rods with one source range detector.

(3) Bases for TS 3/4.9.2, "Instrumentation," would be revised to permit use of a temporary source range detector if the temporary detector is functionally equivalent to the permanently installed source range detectors.

(4) TS 3/4.9.4, "Containment Penetrations", would be revised to required containment integrity during movement of the reactor head and upper internals over fuel.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of August 15, 1989, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The possibility that the temporary source range detector may contact and damage a fuel element during refueling has been evaluated. Based on the bounding analysis of a dropped fuel assembly presented in FSAR Update Section 15.4.5.1.3, striking of the temporary detector assembly on the fuel element will result in no core damage. The active portion of the fuel is separated from the upper internals by 11 inches. Since material greater than 9 inches from the active core is neutronically decoupled, reinstallation of the reactor vessel upper internals and head will not affect core reactivity. The movement of control rods during latching and friction checks adds an amount of positive reactivity which is accounted for in the shutdown margin requirements of TS 3/4.9.1. Tools and equipment in the core region do not add positive reactivity to the core nor do they pose a fuel damage hazard from dropping into the vessel. The proposed requirement for maintaining containment integrity provides an additional safety measure.

The uncontrolled RCCA bank withdrawal from a subcritical condition and uncontrolled boron dilution accidents were evaluated for impact due to the proposed change. The probability or consequences of these accidents is not increased due to the proposed change to the definition of core alterations. Latching the control rods and performing the friction checks with only one operable excore source range detector would be acceptable because the technical specification shutdown margin requirements are not affected by the proposed change. Further, since the core is fully loaded during latching and friction checks, the core will be geometrically coupled to the operable detector and capable of monitoring reactivity changes.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The fission chamber does not affect core reactivity. The insertion of the temporary detector in the core increases the source strength slightly but does not affect the k_{eff} value.

The change in the definition of Core Alterations would allow movement of the reactor vessel upper internals and insertion of small components, such as tools, into the reactor core region when core alterations are suspended. A small probability exists for dropping a component into the reactor vessel. The only object of sufficient size that is handled over the reactor vessel that could cause fuel damage is the upper internals package. The proposed changes will still require containment closure when handling the reactor vessel upper internals or reactor vessel head over the fuel. Control rod latching and performing the required friction checks will still be done with the core fully loaded and coupled to at least one operable excore source range detector. Any reactivity changes will still be adequately monitored.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The operability of the source range neutron flux monitors ensures that redundant monitoring capability is available to detect changes in the reactivity condition of the core. Use of the temporary source range detector will provide this redundant capability in the event that an installed source range detector failed. The revision of TS 3/4.9.2 will continue to assure safe operations by continuing to monitor core alterations that may affect reactivity or damage the fuel by requiring that two source range detectors be operable, except for control rod latching and performance of friction checks. These evolutions can be adequately monitored by one operable excore source range detector. The proposed changes still result in the containment being required to be closed when moving the reactor vessel upper internals or reactor vessel head over the fuel.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that these changes do not involve significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: August 15, 1989 (Reference LAR 89-10)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to implement a Core Operating Limits Report (COLR) for each unit in accordance with Generic Letter 88-16, "Removal of Cycle-Specific Parameter Limits from Technical Specifications". The licensee requests that the cycle-specific information for Shutdown Rod Insertion Limit, Control Rod Insertion Limits, and Axial Flux Difference (AFD) be relocated to the COLR. The specific TS changes proposed would include the following:

(1) Definition 1.43, "Core Operating Limits Report" would be added in accordance with Generic Letter 88-16.

(2) TS 3.1.3.1, "Movable Control Assemblies", would be revised to reference Specification 3.1.3.6 for rod insertion limits, rather than Figure 3.1-1 (actually 3.1-1a and 3.1-1b), which are being deleted in accordance with Generic Letter 88-16 (See item 4 below).

(3) TS 3.1.3.5, "Shutdown Rod Insertion Limit", and the related Surveillance Requirement, 4.1.3.5, would be revised to delete the insertion limit requirement and reference the COLR.

This change is consistent with Generic Letter 88-16.

(4) TS 3.1.3.6, "Control Rod Insertion Limits", would be revised to delete Figures 3.1-1a and 3.1-1b and reference the COLR. To support this change the reference to these figures in TS 3.1.3.1, "Moveable Control Assemblies", would be deleted and the COLR referenced. These changes are consistent with Generic Letter 88-16.

(5) TS 3.2.1, "Axial Flux Difference", would be revised to delete Figures 3.2-1a and 3.2-1b and reference the COLR. These changes are consistent with Generic Letter 88-16.

(6) Surveillance Requirements (SR) 4.2.2.1.2.c. and 4.2.2.2.2.e would be revised to reference the COLR instead of the Peaking Factor Limit Report. SR 4.2.2.1.2.f would be revised to reference Specification 3.2.1 instead of Figure 3.2-1a. The Bases would be revised to refer to the COLR, rather than the Peaking Factor Limit Report.

(7) TS 6.9.1.8, "Peaking Factor Limit Report" would be deleted. TS 6.9.1.8, "Core Operating Limits Report", would be added in accordance with Generic Letter 88-16. The COLR for each unit would contain the information that was provided in the Peaking Factor Limit Report. Since the COLR is required to be submitted to the NRC, it is no longer necessary to have a Peaking Factor Limit Report.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of August 15, 1989, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The shutdown rod insertion limit, the control rod insertion limits, and the AFD operational limits of the TS are cycle-specific parameters. This [proposed amendment] is administrative nature as it proposes to relocate these parameter limits to a unit-specific COLR. Eliminating the Peaking Factor Limit Report and placing the contents in the COLR is also an administrative change. The removal of the cycle-specific parameters from the TS has no influence or impact on the probability or consequences of a previously evaluated accident. The cycle-specific parameter limits, although not in the TS, will be maintained via the DCPP TS and the COLR. The proposed amendment still requires the same action to be taken when or if limits are exceeded as is required by the TS. Future reloads will be evaluated using NRC approved methodologies and will be examined per the requirements of 10 CFR 50.59.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

There is no physical alteration to any plant system, nor is there a change in the method by which any safety related system performs its function. As stated above, the proposed change is administrative in nature.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The margin of safety is not affected by the removal of cycle-specific parameter limits from the TS. The proposed amendment still requires operation within the core limits as determined from the NRC-approved reload design methodologies. Appropriate actions will continue to be taken if limits are violated. The development of the limits for future reloads will continue to conform to those methods described in NRC approved documentation. In addition, each future reload will involve a 10 CFR 50.59 review.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC Staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the Staff proposes to determine that these changes do not involve significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

The Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Dates of amendment request: December 2, 1986, as supplemented on December 19, 1986, and revised on January 15, 1988 and September 13, 1988.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted a proposed amendment to the Physical Security Plan for the Trojan Nuclear Power Plant to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.D of Facility Operating License No. NPF-1 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on January 15, 1988 and September 13, 1988 to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 Salmon Street, Portland, Oregon 97204.

NRC Project Director: George W. Knighton

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 21, 1989

Description of amendment request: Change the description of fuel and control rod assemblies.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.92 the licensee has reviewed the proposed changes and has concluded as follows that they do not involve a significant hazards consideration:

No Significant Hazards Consideration Evaluation

The proposed changes to the Hope Creek Generating Station (HCGS) Technical Specifications:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to section 5.3.1 will enable HCGS to change fuel assemblies without a license amendment. The core operating limits will still be based on the NRC approved methodology of GESTAR II. Since NRC approval of GESTAR II is predicated on review of specific fuel assembly designs, HCGS will still be using NRC approved fuel designs.

The proposed revision to Section 5.3.2 will allow HCGS to use ABB-ATOM hafnium tipped control blades as replacements for the existing General Electric control blades. These control blades have been previously approved by the NRC on a generic basis. The 10 CFR 50.59 evaluation that will be performed prior to control blade replacement will address any plant specific concerns and will assure that the probability or consequences of an accident will not be increased. The requirements of specification 3/4.1.3 will continue to assure that the control rods are OPERABLE, with acceptable scram times. The NRC approved methodology of ABB-ATOM will be applied specifically to HCGS.

Therefore, PSE&G has concluded that this amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

NRC approved methodologies and fuel/control rod designs will be required for use in HCGS and plant specific evaluations pursuant to 10 CFR 50.50 will be performed for each fuel cycle. The fuel bundles, control rods assemblies and related operating limits used at HCGS will remain bounded by the current UFSAR accident analyses.

Therefore, PSE&G has concluded that this amendment request does not introduce any new or different kind of accident from those previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The core operating limits which are affected by the fuel and control rod assemblies will continue to be done using the methods of GESTAR II, which have been previously approved by the NRC. These methods will set the limiting parameters for core operation such that the Safety Limits as defined by the Technical Specifications and UFSAR safety analyses are not challenged. The removal of specific design information from sections 5.3.1 and 5.3.2 of the Technical Specifications does not result in a reduction in the margin of safety since NRC approved methodologies are still applied to reactor core design. Design changes are still subject to the provisions of 10 CFR 50.59.

Therefore, this amendment request does not involve a significant reduction in a margin of safety as defined in the basis for any Technical Specification.

The staff reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analysis. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: May 9, 1989. The request includes References 1 and 2.

Description of amendment request: The purpose of this amendment is to incorporate additional Specifications and Action Statements regarding required operability of the Ginna Station motor-driven and turbine-driven auxiliary feedwater pumps. In particular, additional Action Statements have been added for the turbine-driven feedwater system and its relationship to 10 CFR 50.63, the Station Blackout Rule. Also, the format of the Specifications and Action Statements have been modified for clarification.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazard determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the May 9, 1989, letter states the following:

The Action Statements for the turbine-driven auxiliary feedwater system have been incorporated. In accordance with 10 CFR 50.63, the Station Blackout Rule, one AC-independent means of providing auxiliary feedwater is required. Thus, with one of the two steam supply or discharge flow paths inoperable, the requirements of 10 CFR 50.63 are met. Since service water is not AC-independent, it also need not be available to meet Station Blackout. Thus, startup or continued operation is considered acceptable under such circumstances; however, a Special Report to the NRC is considered prudent and has been incorporated into the proposed Technical Specifications. The Technical Specifications have been modified to specify testing requirements of the turbine-driven auxiliary feedwater pump if the pump has one operable discharge flow path. With both steam supply or discharge flow paths, or the pump itself inoperable, Rochester Gas and Electric Corporation has evaluated Station Blackout risk. Based on Reference (1), an allowable unavailability of 27 days/year is acceptable, with a diesel generator reliability of 0.95. RG&E's reliability is greater than 0.975, based on their response to the Station Blackout Rule. A prudent maximum out-of-service duration of 7 days has been chosen.

Following a reactor/turbine trip, the motor-driven auxiliary feedwater pumps are automatically started on a low steam generator level or a trip signal from both main feedwater pumps. The motor-driven auxiliary feedwater pump will also automatically start on a safety injection actuation. With one motor-driven auxiliary feedwater pump inoperable, the turbine-driven auxiliary feedwater can be started and deliver flow to one or both steam generators. In addition, the two standby auxiliary feedwater pumps can deliver flow to either steam generator. Because of the number and diverse means of acceptable backup to the auxiliary feedwater pumps, it is considered acceptable to require the submittal of a Special Report to the NRC as the Action Statement, when one motor-driven auxiliary feedwater flow path is declared inoperable, rather than requiring a shutdown Action Statement.

If two motor-driven auxiliary feedwater pumps are inoperable, the turbine-driven auxiliary feedwater pump can supply 100% of the required accident flow rate to both steam generators. In addition, each of the two standby auxiliary feedwater pumps can supply 100% of the required service water flow to its associated steam generator. A 72-hour duration has been selected to restore one of the two motor-driven auxiliary feedwater pumps to operable status.

Rochester Gas and Electric Corporation has also clarified the case where the turbine-driven and one motor-driven auxiliary feedwater pump associated with the same steam generator would be inoperable. This would result in no automatic actuation of auxiliary feedwater to that steam generator. Although the motor-driven and turbine-driven auxiliary feedwater pumps have provisions for delivering to either steam generator, and the standby auxiliary feedwater system has been shown to meet required delivery requirements under worst-case conditions, Reference (2), a 72-hour duration has been selected to restore one of the two automatic means to service.

As explained in the above discussions, the proposed amendment incorporates additional Action Statements regarding the turbine-driven auxiliary feedwater system, in accordance with Rochester Gas and Electric Corporation's compliance with 10 CFR 50.63, the Station Blackout Rule. These proposed changes do not increase the probability or consequences of a previously-evaluated accident, or create a new or different kind of accident. Furthermore, there is no significant reduction in the margin of safety for any particular Technical Specifications, and the addition of restrictions, such as for the turbine-driven auxiliary feedwater pump and flow paths, has increased the margins of safety.

Therefore, Rochester Gas and Electric submits that the issues associated with this amendment request are outside the criteria of 10 CFR 50.91 and a no significant hazards finding is warranted.

The Commission has provided guidance concerning the application of the standard in 10 CFR 50.92 for determining whether a significant hazards consideration exists by providing certain examples of amendments that will likely be found to involve no significant hazards considerations. The changes to the Technical Specifications proposed in this amendment request are similar to NRC example (ii). Example (ii) relates to changes that constitute additional limitation restrictions and controls not presently included in the Technical Specifications.

Based on this guidance and the reasons discussed above, the licensee has concluded that the proposed change does not involve a significant hazards consideration. The Commission agrees with this conclusion.

References:

(1) Allowable Unavailability of the Turbine-Driven Auxiliary Feedwater System, Rochester Gas and Electric Corporation 89-11, dated February 1989.

(2) Feedwater System Pipe Breaks, System Evaluation Program Topic XV-6, NRC Safety Evaluation Report, dated September 4, 1981.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, Le Boeuf, Lamb, Leiby and McRae, Suite 1100, 1133 New Hampshire Avenue, NW., Washington, DC 20036.

NRC Project Director: Richard H. Wessman

Southern California Edison Company, et al., Docket Nos. 50-206, 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 1, 2, and 3, San Diego County, California

Date of amendment request: April 28, 1989

Description of amendment request: Southern California Edison Company (SCE) requests changes to the operating licenses of the three San Onofre units to reflect changes in the ownership which would result from the merger of SCE and San Diego Gas and Electric Company.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis about the issue of no significant hazards consideration which is quoted below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve a significant increase in the probabilities or consequences of accidents previously evaluated because it only revises the operating licenses to reflect the merger of two entities which are currently licensees. This revision represents an administrative change and therefore has no impact on accidents previously evaluated.

2. Will operation of the facility in accordance with the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not modify the facility or the manner in which it operates. SCE will continue to act as operating agent for the co-owners with exclusive responsibility and control over the physical construction, operation, and maintenance of SONGS. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed change is administrative in nature and as such will not impact any margin of safety.

The NRC staff has reviewed the analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

System Energy Resources, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: August 15, 1989, as revised August 22, 1989

Description of amendment request: The proposed amendment would revise Facility Operating License No. NPF-29 for Grand Gulf Nuclear Station, Unit 1 (GGNS-1 or the facility) to authorize Entergy Operations, Incorporated (EOI) to act on behalf of System Energy Resources, Inc. (SERI) and South Mississippi Electric Power Association with responsibility for and control over the physical construction, operation and maintenance of the facility. This action is proposed in conjunction with EOI becoming the operator of Arkansas Nuclear One, Units 1 and 2 and

Waterford Steam Electric Station, Unit 3.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. SERI has evaluated the proposed change to Facility Operating License No. NPF-29 and has determined the following.

EOI will be a wholly owned subsidiary of Entergy Corporation (Entergy), formerly known as Middle South Utilities, Inc. The employees of SERI presently engaged in the operation of GGNS-1 will become employees of EOI. The organizational structure of EOI will provide for clear management control and effective lines of authority and communication among the organizational units involved in the management, operation, and technical support of the facility.

As a result of the proposed amendment, there will be no physical changes to the facility, and all Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. With the exception of administrative changes to reflect the role of EOI, the quality assurance program, the emergency plan, security plan, and training program are unaffected. Operating agreements will ensure continued compliance with General Design Criterion 17 of Appendix A to 10 CFR Part 50 regarding Electric Power Systems and EOI control over all activities within the exclusion area. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The design and design bases of GGNS-1 remain the same. Therefore, the current plant safety analyses remain complete and accurate in addressing the licensing basis events and analyzing plant response and consequences. The Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits are not affected by the proposed amendment. With the exception of administrative changes to reflect the role of EOI, plant procedures are unaffected. As such, the plant conditions for which the design basis accident analyses have been performed are still valid. Therefore, the proposed amendment cannot create the possibility of a new or different kind of accident than previously evaluated.

Plant safety margins are established for and reflected in Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these or any other margins. The proposed amendment therefore will not involve a reduction in a margin of safety.

The staff has reviewed the licensee's evaluation and agrees with the conclusions. Therefore, based on the above, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Cook, Purcell, and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Elinor G. Adensam

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: August 23, 1989

Description of amendment request: The amendment requests changing the Technical Specifications by deleting specification 4.0.2b which limits the combined surveillance intervals of three successive surveillance tests to 3.25 times the specified interval for individual surveillance tests. The limit of 25 percent extension for individual surveillance intervals would be retained.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazard exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed changes in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve a significant hazard consideration.

The proposed changes do not involve a significant hazard because the operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1. Not involve a significant increase in the probability or consequences of an accident previously evaluated because surveillance intervals will still be limited by TS 4.0.2a. Additionally, the 3.25 surveillance interval extension criteria of TS 4.0.2b was not considered in the plant accident analysis.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not add or modify any system design nor does it involve a change in operation of any plant system. The surveillance interval will continue to be constrained by the 25 percent interval extension criteria of TS 4.0.2a.

3. Not involve a significant reduction in a margin of safety because surveillance intervals will continue to be constrained by TS 4.0.2a which provides allowable tolerances for performing surveillance requirements beyond those specified in the normal surveillance interval.

The NRC staff has reviewed and agrees with the licensee's evaluation. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazard consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri.

Date of amendment request: August 2, 1989.

Description of amendment request: The proposed amendment would revise Technical Specification Figures 5.1-1, 5.1-2, 5.1-3 and 5.1-4 (exclusion area, low population zone, site boundary for gaseous effluents, and site boundary for liquid effluents). The proposed figures have been clarified and updated to show the additional areas closed to public use by the Reform Wildlife Management Agreement dated April 10, 1989.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards considerations using the Commission's standards.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change does not affect any equipment important to safety. The proposed revision to the Technical Specification figures does not change the location of the Exclusion Area, Low Population Zone, or the site boundary for radioactive gaseous or liquid effluents as described in the Callaway Final Safety Analysis Report (FSAR) and Technical Specifications.

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. There are no new failure modes or mechanism associated with the proposed change. This change does not involve any modification in operational limits or physical design of equipment important to safety.

The proposed change does not involve a significant reduction in a margin of safety. This change does not affect any Technical Specification margin of safety.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; does not involve a reduction in the required margin of safety. The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: August 11, 1989

Description of amendment request: The proposed changes would amend the North Anna Power Station, Unit Nos. 1 and 2 (NA-1&2) Technical Specifications (TS) which govern the control rod insertion limits. The changes would allow greater operational flexibility with respect to control rod bank positioning in order to minimize localized Rod Control Cluster Assembly (RCCA) wear.

Based on control rod examinations (hot cell data), Westinghouse (W) has determined that the RCCA fretting wear may reach the W recommended maximum as early as 74,000 hours of critical operation time. Repositioning the RCCA banks is estimated to result in a gain of 37,000 additional hours of critical operation time. As both NA-1&2 have used the same fully withdrawn position for their entire operation to date, these units are approaching the recommended maximum W criteria. The licensee projects that this limit will occur at the end of cycle 8, which is late 1990 for NA-1 and late 1991 for NA-2. TS changes are therefore being requested to change the fully withdrawn position from 228 steps to a range varying from 225 to 229 steps. To minimize the wear and maximize the RCCA operating life, the NA-1&2 RCCA fully withdrawn positions would change routinely, with the fully withdrawn position being defined at the beginning of each operating cycle. The fully withdrawn position would be between 225 and 229 steps (inclusive). This change is similar to requests approved by the NRC for other operating facilities. The proposed changes would also add a definition of Fully Withdrawn to the TS, which allows positioning of the RCCAs between 225 and 229 steps withdrawn from the core. A modification to the TS on rod drop time is also proposed, which will require that measurements of actual drop times start from the maximum withdrawn position of 229 steps. TS Figure 3.1.1 for both NA-1&2 would also be modified to reflect the change in the fully withdrawn position. The actual insertion positions as a function of power will not change. The only changes from the current figures are the redefinition of the upper bound of the y-axis from 228 steps to "FULLY WITHDRAWN", and definition of the fraction of reacted thermal power for Bank C fully withdrawn positions between 225 and 229 steps, inclusive. Although the fully withdrawn position may change during the middle of the cycle in which the change is first implemented, the fully withdrawn position applicable to a given cycle would normally be defined prior to starting the nuclear design of that cycle, and would not change during the cycle. The fully withdrawn position to be used for a given cycle would be specified in the reload Safety Evaluation and the nuclear design report, and would be provided to the operators in the form of a cycle-specific rod insertion limit operator curve.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes in accordance with the criteria above and has made the following determination that the proposed changes do not involve a significant hazards consideration as defined in 10 CFR 50.92 because the changes would not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. The extremely small impact on power distributions and core physics key analysis parameters resulting from the change in the fully withdrawn position can be accommodated within the existing [NA-1&2] core design limits. None of the parameter changes exceed the available margin to the key parameter safety analysis limits. The current control rod drop times and other tripped rod characteristics assumed in the safety analyses will not be changed as a result of the RCCA fully withdrawn position change. Therefore the current safety analyses will remain bounding.

2. Create the possibility of a new or different kind of accident than previously evaluated. The proposed change[s] [do] not involve any alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors.

3. Involve a significant reduction in the margin of safety. The parameter changes do not exceed the available margin to the key

parameter safety analysis limits. Thus, the current [Updated Final Safety Analysis Report] analyses remain bounding and there is no reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis and agrees with the above conclusion. Therefore, the staff proposes to determine that the proposed changes do not involve significant hazards considerations.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 25, 1989

Description of amendment request: The proposed technical specification change would revise Surveillance Requirement 4.9.6.1 to require the Refueling Machine to be demonstrated operable within 100 hours prior to the movement of fuel assemblies within the Reactor Vessel. The proposed change would also revise Surveillance Requirement 4.9.6.2 to require the Auxiliary Hoist to be demonstrated operable within 100 hours prior to the movement of drive rods within the Reactor Vessel. As Technical Specifications currently read, the Refueling Machine and the Auxiliary Hoist both must be proven operable 100 hours prior to lifting the Reactor Vessel Head.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has reviewed the proposed change and has determined the following:

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

This proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change only involves whether the Refueling Machine has to be demonstrated operable prior to Reactor Vessel Head Lift, or prior to when it is required. The Refueling Machine and the Auxiliary Hoist do not perform any function until after the Head has been lifted and the Refueling Pool has been partially flooded.

Standard 2 - Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

This proposed change does not create the possibility of a new or different kind of accident previously evaluated. This change does not involve any setpoints or change when any equipment is operated. It only requires that the Surveillance Requirements for the Refueling Machine and the Auxiliary Hoist be performed prior to using the equipment.

Standard 3 - Involve a Significant Reduction in a Margin of Safety.

The proposed change does not involve a significant reduction in a margin of safety. This change only involves when a Surveillance Requirement is required, it makes no significant changes to any margin to safety.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Frederick J. Hebdon

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: August 3, 1989

Brief description of amendment: The proposed amendments would revise the Technical Specifications (TS) to reduce from 75% to 50% the number of moveable incore detector thimbles in McGuire Unit 1 required to be available during the remainder of the present fuel cycle for the Moveable Incore Detection System to be deemed operable.

Date of publication of individual notice in **Federal Register**: August 21, 1989 (54 FR 34633)

Expiration date of individual notice: September 21, 1989

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: August 2, 1989

Description of amendment request: The proposed amendments would revise the Surry Units 1 and 2 Technical Specifications by allowing the removal of one service water suppy line from service at a time for a series of modifications which will upgrade the service water system.

Date of publication of individual notice in **Federal Register**: August 16, 1989 (54 FR 33788)

Expiration date of individual notice: September 15, 1989

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following

amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: May 1, 1989

Description of amendments: The amendments change Technical Specification Section 4.6.1.2, Containment Leakage, by deleting the requirement to use only the mass point method for Type A containment integrated leak rate testing. The amendments allow use of any containment leak rate determination method permitted by Appendix J.

Date of issuance: August 4, 1989

Effective date: August 4, 1989

Amendment Nos.: 136 and 166

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: June 14, 1989 (54 FR 25369). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: June 23, 1987, as supplemented May 19, 1989.

Description of amendments: The amendents change the Technical Specifications to delete the words "a storage capacity limited to" from Technical Specification 5.6.3.

Date of issuance: August 11, 1999

Effective date: August 11, 1989

Amendment Nos.: 137 and 167

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: June 28, 1989 (54 FR 27223). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 11, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois

Date of application for amendments: May 24, 1989, supplemented July 20, 1989 and August 1, 1989.

Brief description of amendments: These amendments modify Technical Specification 3.7.5 to utilize seismic qualification of the deep well pumps by allowing these pumps to be used in several instances instead of the essential service water make-up pumps to satisfy the design bases of the ultimate heat sink.

Date of issuance: August 15, 1989

Effective date: August 15, 1989

Amendment Nos.: 32, 32

Facility Operating License Nos. NPF-37 and NPF-66. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 12, 1989 (54 FR 29402). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units Nos. 2 and 3, Grundy County, Illinois

Date of application for amendments: December 21, 1988 and supplemented May 4, 1989.

Brief description of amendments: The amendments primarily revise the testing requirements for other systems or subsystems of the Emergency Core Cooling System (ECCS) or Standby Gas Treatment System (SGTS) when one system or subsystem is inoperable. In addition, operability requirements for several ECCS systems or subsystems were revised and some administrative changes were made.

Date of issuance: August 10, 1989

Effective date: August 10, 1989

Amendment Nos.: 107, 102

Provisional Operating License Nos. DPR-19 and DPR-25. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 17, 1989 (54 FR 21300), June 14, 1989 (54 FR 25372). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: September 23, 1988 supplemented by letter dated January 16, 1989

Brief description of amendment: This amendment revises the Technical Specification requirements relating to administrative controls. The proposed changes establish the Plant Manager as Chairman of the Plant Review Committee, eliminate the Plant

Engineering organization, and establish the Plant Safety and Licensing Department and the Nuclear Safety Services Department.

Date of issuance: August 16, 1989

Effective date: August 16, 1989

Amendment No.: 127

Provisional Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23311). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 4, 1987, as supplemented December 7, 11, and 29, 1987, March 29, May 4 and 18, June 16, July 1, August 8 and 24, and December 15, 1988, and June 12 and 28, 1989.

Brief description of amendments: The amendments modified the Technical Specifications by adding requirements for the steam generator power operated relief valves.

Date of issuance: August 15, 1989

Effective date: August 15, 1989

Amendment Nos.: 68 and 62

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29404). Because the June 28, 1989, submittal clarified and corrected certain aspects of the original request, the substance of the changes noticed in the **Federal Register** and the proposed no significant hazards consideration determination were not affected.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 1, 1989

Brief description of amendment: The amendment revised Technical Specifications (TS) 3/4.1 and 3/4.2 of Appendix A by replacing the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report (COLR), which contains the values of those limits. In addition, the COLR was included in the Definitions Section of the TS to note that it is the unit-specific document that provides these limits for the current operating reload cycle. Furthermore, the definition notes the values of those cycle-specific parameter limits are determined in accordance with Specification 6.9.1.6. The Specification requires the Core Operating Limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with applicable limits of the safety analysis. The Specification states that the report and any mid-cycle revisions will be provided to the NRC. Figure 3.1-3 was also deleted from the TS. Generic Letter 88-16, dated October 4, 1988, provided guidance to licensee on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's amendment was in response to this Generic Letter.

Date of issuance: July 31, 1989

Effective date: July 31, 1989

Amendment Nos.: 9 and 1

Facility Operating License Nos. NPF-76 and NPF-80. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27229). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: February 5, 1988

Description of amendment request: The title of "Power Plant Manager" is changed to the more specific "Manager - Clinton Power Station."

Date of issuance: August 22, 1989

Effective date: August 22, 1989

Amendment No.: 26

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26524). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: May 18, 1989

Description of amendment request: The change adds a note clarifying the channel configuration for the Main Steam Line Turbine Building Temperature - High trip channels.

Date of issuance: August 17, 1989

Effective date: August 17, 1989

Amendment No.: 25

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 18, 1988 (53 FR 50329). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: June 30, 1987

Brief description of amendment: This amendment revised Technical Specification 3.5.G.3 to clarify the Limiting Condition for Operation (LCO) which requires that certain emergency core cooling equipment be available when work is performed which has the potential for draining the reactor vessel. Additional restrictions (TS 3.5.G.4(d) and 3.5.G.5) would prohibit operations which have the potential for draining the reactor vessel when the suppression pool water supply is not adequate. Moreover, various administrative changes were made to the above Specifications and to the Bases.

Date of issuance: August 15, 1989

Effective date: August 15, 1989

Amendment No.: 162

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27230). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 15, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 14, 1989

Brief description of amendments: Technical Specification changes to support Emergency Service Water System modifications resulting from compliance with the requirements of 10 CFR Part 50, Appendix R.

Date of issuance: August 16, 1989

Effective date: Effective as of its date of issuance

Amendment Nos.: 92 and 56

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21314). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 16, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South, Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: April 14, 1989

Brief description of amendment: The amendment revised the provisions in the Technical Specifications relating to radiological effluents. In particular, this amendment changed Environmental Limiting Condition of Operation (ELCO) 8.1.1, Environmental Surveillance Requirement (ESR) 8.1.1, and ESR 8.1.2.

Date of issuance: August 14, 1989

Effective date: August 14, 1989

Amendment No.: 71

Facility Operating License No. DPR-34. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27239). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: February 27, 1989 and supplemented on April 3, 1989.

Brief description of amendment: The amendment added clarification and consistency to the refueling specifications with respect to reference measurements, load setpoints and travel limits. An additional change conservatively raised the minimum allowable source range monitor (SRM) count rate in Sections 4.9.2 and 4.3.7.6 of the Technical Specifications to agree with SRM requirements imposed elsewhere in the Specifications. The supplemental information added an additional SRM change that did not alter the technical content of the original change request.

Date of issuance: August 21, 1989

Effective date: August 21, 1989, but implementable within sixty days to allow for any germane procedural revisions.

Amendment No.: 31

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29410). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1989.

No significant hazards consideration comments received: Yes. The comments received from the Bureau of Nuclear Engineering of the State of New Jersey were addressed in the Safety Evaluation issued with the amendment.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: December 27, 1988

Brief description of amendments: Replaced Environmental Technical Specifications with an Environmental Protection Plan.

Date of issuance: August 21, 1989

Effective date: As of the date of issuance and shall be implemented within 45 days of the date of issuance.

Amendment Nos.: 100 and 77

Facility Operating License Nos. DPR-70 and DPR-75. These amendments replaced the Environmental Technical Specifications with an Environmental Protection Plan.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18957). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 21, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: February 17, and June 20, 1989 (TS 266)

Brief description of amendment: The amendments correct errors in the Browns Ferry Nuclear Plant (BFN), Unit 2, Technical Specifications (TS) as follows: (1) Table 3.2.F (Page 3.2/4.2-32), Instrument Number (RR-90-322A) - change the instrument number to read "RM-90-306 and RR-90-360," correct typographical error in the Type Indication and Range column (correct units from curies per cubic centimeter to microcuries per cubic centimeter), delete the Iodine and Patriculate indications and range, (2) Notes to Table 3.2.F (Pages 3.2/4.2-33) - correct typographical errors in footnote 7 (change TS 6.7.2 to 6.9.1.4 and 6.7.2 and 6.9.2) and add footnote 9 (clarifies the function of subject instrument to noble gas only); (3) Table 4.2.F, Item 23 (Page 3.2/4.2-55) - correct instrument number and type to read "Wide Range Gaseous Effluent Radiation Monitor and Recorder (RM-90-306 and RR-90-360);" (4) Page 6.0-29, Item 6.9.2.10 - correct the word "high-range" to "wide-range."

Date of issuance: August 22, 1989

Effective date: August 22, 1989, and shall be implemented within 60 days

Amendment No.: 171

Facility Operating License No. DPR-52: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29412). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 2, 1988 (TS 88-14)

Brief description of amendments: The amendments modify the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications. The changes revise Table 3.3-12, "Radioactive Liquid Effluent Monitoring Instrumentation," to require a minimum of one liquid effluent radiation monitor channel to be operable for each header for the effluent from the essential raw cooling water system.

Date of issuance: August 14, 1989

Effective date: August 14, 1989

Amendment Nos.: 125, 114

Facility Operating License Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53098). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 14, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: May 26, 1989, revised July 10, 1989

Brief description of amendment: The amendment revises the restrictions on intervals between functional testing of snubbers by deleting the applicability of Specification 4.0.2b to this surveillance requirement for the present cycle of operation only. Specification 4.0.2b would limit the total maximum combined interval for any three consecutive tests to 3.25 times the 18-month individual intervals, or approximately 60 months.

Date of issuance: August 15, 1989

Effective date: August 15, 1989

Amendment No.: 136

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27242). At the NRC staff's request, the licensee made a submittal dated July 10, 1989, that would limit the proposed change to the present surveillance interval. Since this reduced the scope and safety significance of this request, the no significant hazards determination published in the original notice in the **Federal Register** was not affected.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 15, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: April 26, 1989

Brief description of amendments: The amendments clarified the reporting requirements for operation of the Overpressure Mitigating System (OMS) and deleted two schedular commitments which have been implemented.

Date of issuance: August 24, 1989

Effective date: August 24, 1989

Amendment Nos.: 124, 127

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29415). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By October 6, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 2, 1989 (TS 89-38)

Brief description of amendments: These amendments temporarily revise Surveillance Requirement (SR) 4.4.11.a of Section 3/4.4.11, Reactor Coolant System Vents, of the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specification (TS). The changes add a footnote to the requirement for both units that the manual isolation valves for the reactor vessel head vent system must be locked open. The footnote states that "the requirement to verify that the upstream manual isolation valves are locked in the open position is waived until the Cycle 4 refueling outage. This waiver is granted on a one-time basis. At the first Mode 5 outage following the issuance of the above waiver, a flow verification test will be performed to verify that the manual isolation valves are open." The changes apply for both Units 1 and 2 until the next refueling outage, which is the Cycle 4 refueling outage for both units. The Cycle 4 refueling outages are scheduled for Spring of 1990 for Unit 1 and Fall of 1990 for Unit 2.

The Commission (1) granted a Waiver of Compliance to the Tennessee Valley Authority (TVA) at 4:00 p.m. on July 31, 1989 to return power to the reactor vessel head vent system for both units until the staff could act on this application and (2) determined pursuant to 10 CFR 50.91 that these amendments should be implemented as soon as possible. The amendments permit the licensee to continue operating the units until the Cycle 4 refueling outage. The changes have no adverse effect on safety and would be beneficial to overall plant safety because the units would not be forced into an unnecessary shutdown. Because the manual isolation valves are not locked, the reactor vessel head vent system is considered inoperable and the TS require that power be removed from the system. The Waiver of Compliance, to return power to the reactor vessel head vent system, was temporary until this application for amendments was acted on but for not later than August 27, 1989. Consequently, the NRC staff determined that exigent circumstances existed which justify reducing the public notice period normally provided for licensing amendments. A Public Notice that the NRC staff proposed to amend the TS was published in the *Chattanooga New-Free Press* and the *Chattanooga Times* on Tuesday, April 8, 1989. The Public Notice stated that the NRC staff proposed to issue these amendments at the close of business on August 10, 1989. No comments on the Amendments and no requests for a hearing were received by the staff by the close of business on August 10, 1989.

Date of issuance: August 11, 1989

Effective date: August 11, 1989

Amendment Nos.: 123, 112

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: No notice was published. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 7, 1989, as revised August 10, 1989 (TS 89-37)

Brief description of amendments: These amendments temporarily add two additional Action Statements for the Limiting Condition for Operation (LCO) 3.5.1.1, Cold Leg Injection Accumulators, of the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specification (TS). The Action statements for an LCO state the actions to be taken by the licensee if the unit does not meet the LCO. These two additional Action statements state that (1) with one water level or pressure channel inoperable per accumulator, return the inoperable channel to operable status within 30 days or be in at least hot standby within the next six hours and in hot shutdown within the following six hours and (2) with more than one channel, water level or pressure, inoperable per accumulator, immediately declare the affected accumulator(s) inoperable and enter Action statement "a" to return the inoperable channels to operable status in one hour or shut down the unit. The Action statements for LCO 3.5.1.1 previous to these amendments did not specifically address the inoperability of instrumentation channels for the accumulators. These changes are temporary because they are only effective for each unit from the date of issuance of these amendments until the restart of Unit 2 from the Unit 2 Cycle 4 refueling outage.

These amendments were issued under the emergency provisions of 10 CFR 50.91 without the normal 30-day public comment period after the Notice of Consideration of Issuance of an amendment is issued in the **Federal Register**. As explained in the application dated August 7, 1989, one water level channel on an accumulator for each unit is inoperable and the TS did not specifically address inoperable instrumentation channels for the accumulators. The Action statement for an inoperable accumulator is to repair the cause of the inoperability within one hour or proceed to shut down the affected units. The licensee concluded that the inoperable water level channel did not warrant shutting down the two units because the accumulators were still meeting the LCO using the remaining operable instrumentation channels. The licensee requested emergency relief from the TS to prevent shutting down the two units.

As discussed in the Safety Evaluation issued with these amendments, the Commission (1) granted the licensee a Waiver of Compliance at 1:30 p.m. on August 7, 1989 for Sequoyah to not have to comply with Surveillance Requirement 4.5.1.1.2 until the staff could act on this application but no later than September 6, 1989 and (2) determined pursuant to 10 CFR 50.91 that emergency conditions existed and these amendments should be implemented as soon as possible to prevent shutdown of Units 1 and 2. We conclude that the licensee acted in good faith to promptly address the inoperability of the level channel for each unit but could not avoid the need for an emergency TS change.

Date of issuance: August 11, 1989

Effective date: August 11, 1989

Amendment Nos.: 124, 113

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: No notice was published. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Washington Public Power Supply System, et al., Docket No. 50-397, Nuclear Project, No. 2, Benton County, Washington

Date of application for amendment: August 13, 1989, as supplemented August 14, 1989.

Brief description of amendment: This amendment revised Technical Specification Table 3.8.4.2-1, "Primary Containment Penetration Conductor Protective Devices," by changing the backup protection device for the 480VAC fused disconnects from a 125 ampere circuit breaker to a fused disconnect.

Date of issuance: August 16, 1989

Effective date: This license amendment is effective as of the date of issuance.

Amendment No.: 72

Facility Operating License No. NPF-21: Amendment revised the Technical Specifications.

Public Comment requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State of Washington, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 16, 1989.

Attorneys for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352

Dated at Rockville, Maryland, this 29th day of August, 1989.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Acting Director, Division of Reactor Projects - III, IV, V and Special Projects Office of Nuclear Reactor Regulation

[Doc. 89-20735 Filed 9-5-89; 8:45 am]

BILLING CODE 7590-01-M

Materials Licensee Financial Assurance Guidance Related to Decommissioning: Availability

The Nuclear Regulatory Commission has published NUREG–1336, Rev. 1 entitled, "Standard Format and Content Guide for Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR parts 30, 40, 70 and 72" and NUREG–1337, Rev. 1 entitled, "Standard Review Plan for the Review of Financial Assurance Mechanisms for Decommissioning Under 10 CFR parts 30, 40, 70 and 72."

NUREG–1336, Rev. 1, discusses the information to be provided in a materials license application and establishes a uniform format for presenting the information required to meet the decommissioning licensing requirements. NUREG–1337, Rev. 1, is prepared for the guidance of Nuclear Regulatory Commission staff reviewers in performing reviews of applications from materials licensees. The document identifies who performs the review, the matters that are reviewed, the basis for the review, how the review is performed, and the conclusions that are sought.

Copies of NUREG–1336, Rev. 1 and NUREG–1337, Rev. 1, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA. 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Dated at Washington, DC, this 29th day of August, 1989.

For the Nuclear Regulatory Commission.

Michael J. Bell,

Chief, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89–20874 Filed 9–5–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co., et al.[1] Issuance of Amendment to Construction Permits

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 11 to Construction Permit CPPR–126 and Amendment No. 10 to Construction Permit CPPR–127 for the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, respectively, to show a change in ownership interest.

By letter dated May 4, 1989, Texas Utilities Electric Company (TU Electric) requested amendment of Construction Permit Nos. CPPR–126 and CPPR–127 for the CPSES, Units 1 and 2, to reflect the transfer of a 2⅛% interest in CPSES ownership from Tex-La Electric Cooperative of Texas, Inc. to TU Electric. These amendments will become effective as of the date of completion of the transfer of the ownership interest.

The issuance of these amendments to Construction Permit Nos. CPPR–126 and CPPR–127 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the regulations in 10 CFR chapter I, which are set forth in Amendments No. 11 and No. 10. Prior public notice of Amendments No. 11 and No. 10 was not required since the amendments do not involve a significant hazards consideration.

The staff has prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on August 29, 1989 (54 FR 35737). The staff has concluded that this action will not have a significant impact on the quality on the human environment.

For further details with respect to this action, see (1) the application for amendment dated May 4, 1989, (2) Amendments No. 11 and No. 10 to Construction Permit Nos. CPPR–126 and CPPR–127, respectively, and (3) the Commission's related safety evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and the local public document room at Somervell County Library on the Square, P.O. Box 1417, Glen Rose, Texas 76043.

In addition, copies of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Comanche Peak Project Division, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 29th day of August, 1989.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Comanche Peak Project Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20873 Filed 9–5–89; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting Change

Notice is hereby given that the time of the Nuclear Waste Technical Review Board's Environmental and Public Health Panel meeting announced in the **Federal Register** on August 30, 1989 (FR 35957), has been changed. The Panel will meet on Thursday, September 14, 1989, from 8:00 a.m. to 5:00 p.m., in Room 258, 2000 L Street, NW., Washington, DC 20036.

Further information can be obtained from William W. Coons, Executive Director, Nuclear Waste Technical Review Board, 1111 18th Street, NW., Washington, DC 254–4792.

Dated: September 1, 1989.

William W. Coons,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 89–20876 Filed 9–5–89; 8:45 am]

BILLING CODE 6820-AM-M

PEACE CORPS

Information Collection Request Under OMB Review

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) this notice announces that the information collection request abstracted below has been forwarded to the Office of Management and Budget for review and is available for public review and comment. A copy of the information collection may be obtained from Ms. Charlotte Storti, Office of Medical Services, Peace Corps, 1990 K

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[1] The current construction permit holders for the Comanche Peak Steam Electric Station are: Texas Utilities Electric Company (TU Electric) and Texas Municipal Power Agency (TMPA). Transfer of ownership from TMPA to TU Electric was previously authorized by Amendments No. 9 and No. 6 to Construction Permits CPPR–126 and CPPR–127, respectively, on August 25, 1988 to take place in 10 installments as set forth in the agreement attached to the application for amendment dated March 4, 1988. At the completion thereof, TMPA is no longer an applicant or construction permit holder.

Street, NW., Washington, DC 20526. Ms. Storti may be called at 202–254–6914. Comments on this form should be addressed to Mr. Donald Arbuckle, Desk Officer, Office of Management and Budget, Washington, DC, 20503.

Information Collection Abstract:

(1) *Title:* Medical Exam Reimbursement Forms.

(2) *Need for and Use of the Information:* Peace Corps needs this information in order to reimburse Volunteer applicants for the cost of medical and dental examinations required prior to their entry into service.

(3) *Respondents:* Individuals who apply and are nominated for Peace Corps Volunteer service.

(4) *Burden on the public:*

a. Annual reporting burden: 342 hours.

b. Annual recordkeeping burden: 0 hours.

c. Estimated average burden hours per response: 5 minutes.

d. Frequency of response: on occasion.

e. Estimated number of likely respondents: 4,100.

This notice is issued in Washington, DC, on August 30, 1989.

Margaret H. Thome,

Associate Director for Management.

[FR Doc. 89–20807 Filed 9–5–89; 8:45 am]

BILLING CODE 6051-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142

Upon Written Request, Copy Available From: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–1002.

Extension: File No. 270–303—Rule 6c–9 and Form N–6C9.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 6c–9 and Form N–6C9 under the Investment Company Act of 1940 (the "Act"). The rule permits a foreign bank or the bank's finance subsidiary to sell its debt securities or non-voting preferred stock in the United States without registering as an investment company under the Act. Each of the estimated fifty respondents annually incurs an average estimated one burden hour to comply with this requirement.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Project (3235–0344), Room 3208 New Executive Office Building, Washington, DC 20543.

Dated: August 29, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20896 Filed 9–5–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–27189; File Nos. SR–CBOE–89–16; SR–PSE–87–21, Amendment No. 5; SR–Phlx–89–46]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Pacific Stock Exchange, Inc.; Philadelphia Stock Exchange, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Changes Relating to Extension of the Market Index Option Escrow Receipt Pilot Program

On July 21, 1989, the Chicago Board Options Exchange, Inc. ("CBOE"), and the Pacific Stock Exchange, Inc. ("PSE") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] proposed rule changes to extend the market index option escrow receipt ("MIOER") pilot program until January 1, 1990.[3]

In August 1985, the Commission approved a one-year pilot program to permit the use of cash, cash equivalents, one or more qualified securities, or a combination of the foregoing, as collateral for escrow receipts issued to cover short call positions in broad-based stock index options.[4] The proposed rule changes are designed to extend the pilot program until such time as the exchanges and the Options Clearing Corporation ("OCC") resolve certain matters concerning the format of the receipt and administration of the program. The proposed rule changes also are designed to provide the CBOE the opportunity to update its report concerning the effectiveness of the MIOER program [5] and provide the Commission the opportunity to review the updated information.

The Commission finds good cause both for approving the proposed rule changes and approving them prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** for several reasons. First, an extension of the pilot, retroactive from April 30, 1989 through January 1, 1990, will allow for the uninterrupted continuation of a program designed to reduce operational difficulties of banks and trust companies while the options exchanges and the OCC continue their review of the receipt format. Second, the extension will allow the Commission to continue its evaluation of the program's effectiveness. Third, the pilot was previously approved by the Commission and no adverse comments have been received regarding its operation.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [6] that the proposals to extend the operation of the pilot, retroactive from April 30, 1989 through January 1, 1990 (SR–CBOE–89–16; SR–PSE–87–21, Amendment No. 5; and SR–Phlx–89–46) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: August 28, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20894 Filed 9–5–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–27190; File SR–MCC–89–10]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Clearing Corp. Relating to Technical Changes to MCC's Fund/Serv Service

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] On August 7, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx") submitted a substantially identical proposal for the extension of the MIOER pilot. *See* File No. SR–Phlx–89–46. Hereinafter, the terms "self-regulatory organizations" and "exchanges" refer to the CBOE, PSE, and Phlx.

[4] *See* Securities Exchange Act Release No. 22323 (August 13, 1985), 50 FR 33430 for a description of the pilot.

[5] *See* Chicago Board Options Exchange, Inc., *Market Index Option Escrow Receipt Pilot Report* (February 6, 1987).

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30–3(a)(12) (1988).

that on August 17, 1989 the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed change would make the technical changes described below to the Midwest Clearing Corporation's ("MCC") Fund/Serv Service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make certain technical changes to MCC's Fund/Serv rules to more accurately reflect the way that exchanges are handled and have been handled. Exchanges allow a mutual fund owner the ability to switch from one fund to a different mutual fund investment within the same family of funds without incurring additional charges and without having to exchange money.

Commencing August 25, 1989, MCC will no longer accept for processing through Fund/Serv exchanges where the mutual shares are held in physical form. Due to the short settlement period, there is not sufficient time to perform the operational arrangements necessary to complete the work involved in the cancellation of physical shares involved in an exchange. These transactions have not been able to be processed since initiation of Fund/Serv since the mutual funds themselves do not accept physical shares in these circumstances. Accordingly, this filing is correcting the language to the present Fund/Serv rule to conform to existing practice.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 (the "Act") in that it promotes the prompt and accurate clearance and settlement of mutual fund transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

MCC has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR–MCC–89–10 and should be submitted by September 27, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 28, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20893 Filed 9–5–89; 8:45 am]

BILLING CODE 8010-01-M

[34–27193; File No. SR–PTC–89–02]

Self-Regulatory Organizations; The Participants Trust Co.; Order Approving a Proposed Rule Change Eliminating the Right of a Receiving Participant, Acting as an Agent, To Reverse a Transfer if It Determines in Good Faith That Its Principal May Be Unable To Fulfill Its Reciprocal Obligations

August 29, 1989.

On July 11, 1989, the Participants Trust Company ("PTC") filed a proposed rule change (SR–PTC–89–2) pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change appeared in the **Federal Register** of July 26, 1989.[2] No comments were received. As discussed below, the Securities and Exchange Commission ("Commission") is approving the proposed rule change.

I. Description of the Proposal

The proposed rule filing amends Article II, Rule 13, section 6 of PTC's rules by deleting the provision that allows a receiving participant,[3] acting in an agency capacity, to reverse a transfer.[4] Currently, a PTC participant may reverse a transaction to either its agency account or pledgee account, if it determines, in good faith, that its principal may be unable to fulfill all of its obligations to the participant. In order to reverse a transaction, a participant must notify PTC of its intention to reverse a delivery before 3:30 p.m. (New York Time [NYT]) on the day settlement would have occurred (forty-five minutes before final payment is due, at 4:15 p.m. [NYT]).[5] The participant will be held liable for the account transfer if it fails to give notice within the time frame specified by PTC.

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[1] 15 U.S.C. 78s(b)(1) (1981).

[2] Securities Exchange Act Release No. 27046 (July 10, 1989), 54 FR 31,134 (July 26, 1989).

[3] PTC's rules define a "Receiving Participant or Limited Purpose Participant" as the "intended recipient of an Account Transfer * * *." PTC Rules, Art. I, Rule 1.

[4] The term "transfer" within the context of the proposed amendment refers to an "Account Transfer," which is defined by PTC's rules as a "a requested book-entry transfer from one account on the books of * * * [PTC] to another Account * * *." *Id.*

Pursuant to PTC's current rules a transfer reversal must comply with the account transfer rules. According to these rules the reversal must be fully collateralized by the remaining equity in the corresponding transfer account.[6] PTC measures the level of collateralization at the time the receiving participant issues the reversal instructions. PTC will not process a reversal if a pledge or liquidation of the equity remaining in the transfer account would be insufficient to cover a potential participant's default on its net debit balance.

II. PTC's Rationale for the Proposed Rule Change

According to PTC, the proposed rule change will enhance the finality of the PTC settlement system. Settlement finality has been a constant concern of the industry, the Commission and the Board of Governors of the Federal Reserve System ("FRS"). PTC believes that the proposed rule change will eliminate the uncertainty, delay and confusion prompted by reversals, thus improving the finality of its settlement system and placating the regulatory and industry concerns over the lack of settlement finality.

In this regard, PTC also believes that the proposal complies with section 17A(b)(3)(F) of the Act,[7] because it provides for the prompt and accurate settlement of securities transactions at PTC.

III. Discussion

Sections 17A(b)(3) (A) and (F) of the Act require that a clearing agency have the capacity and the rules necessary to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible.[8] The Commission believes that PTC's proposal is consistent with these objectives. The proposal is one of several rule changes PTC undertook to implement when it applied for registration as a clearing agency [9] and membership in the FRS.[10] PTC's current rule limits transfer reversals to transactions involving participants acting in an agency capacity. This rule operates to allocate losses among financial intermediaries acting on behalf of one customer in the event of that customer's default.

Transfer reversals, however, affect the net position of a receiving participant who has incurred obligations with other participants in reliance on the temporary cash credit resulting from the transaction subsequently cancelled by the agent. This situation potentially could cause succeeding failures, if the reversal results in further defaults and reversals.[11] Moreover, since a participant can reverse a delivery at the end of the day (*i.e.*, forty-five minutes before final payment is due), the potential for a liquidity crisis can be particularly acute.

The Commission believes that the additional protection offered by settlement finality, as set forth in PTC's proposal, will enhance PTC's capacity to safeguard securities and funds while promoting the prompt and accurate settlement of securities as required by section 17A(b)(3)(A) of the Act.[12] Eliminating delivery reversals will require participants acting in an agency capacity to exercise greater control over their customer accounts. In particular, if a customer fails to deposit sufficient funds with a participant who can not reverse a delivery, the participant, acting in an agency capacity, will have greater incentive to obtain the necessary funds from their customers in time to meet its settlement obligations.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed filing (SR–PTC–89–02) be, and is hereby, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20895 Filed 9–5–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–27170; File No. SR–Phlx–89–05]

Self-Regulatory Organization; Order Approving Proposed Rule Changes by Philadelphia Stock Exchange Relating to the Automated Submission of Customer and Proprietary Trading Data by Member Firms

I. Introduction

The Philadelphia Stock Exchange ("Phlx" or "Exchange") has submitted for Commission consideration, pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] proposed rule changes that would require member firms to submit certain customer and proprietary trading information in an automated format.[2] The information to be submitted is what the Exchange routinely requests in connection with its market surveillance inquiries (so-called "blue sheet information").

Under the proposal, where the Phlx requests information on proprietary transactions by a member or member firm, the member firm must submit specified information to the Exchange in the designated automated format.[3] Where an information request to a member firm from the Phlx involves transactions executed for a customer's account, the proposed rules require submission, in the automated format, of the information required for proprietary trades plus additional data identifying the customer.[4] The proposed rules also

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[5] Telephone conversation with Kathryn S. Pruim, Vice President and Secretary, Participants Trust Company (August 18, 1989).

[6] PTC Rules, Art. II, R. 13 section 1(b).

[7] 15 U.S.C. 78q–1(b)(3)(F) (1981).

[8] 15 U.S.C. 78q-1(b)(3) (A) & (F) (1981).

[9] *See* Securities Exchange Act Release No. 28671 (March 28, 1989), 54 FR 13,266, 13,267 (March 31, 1989). *See also* Letter from Lois J. Radisch, Attorney, Milbank, Tweed, Hadley & McCloy (Counsel to PTC), to Jonathan Kallman, Assistant Director Division of Market Regulation, Securities and Exchange Commission (February 8, 1989) (Representing PTC's intention to amend its rules in order to disallow the reversal of transfers).

[10] Letter from William W. Wiles, Secretary of the Board of Governors of the FRS, to Thomas A. Williams, Attorney Milbank, Tweed, Hadley & McCloy (March 27, 1989). PTC filed the instant proposal with the FRS. The Federal Reserve Bank of New York has responded, stating no objection to the proposed rule change. Letter from Ernest T. Patrikis, General Counsel and Executive Vice President, Federal Reserve Bank of New York, to Kathryn S. Pruim, Vice President and Corporate Secretary, PTC (June 27, 1989).

[11] *See* Staff FRS, Proposals for Modifying the Payments System Risk Reduction Policy 90 (May 1989).

[12] 15 U.S.C. 78q-1(b)(3)(A). As explained in PTC's Temporary Registration Order, the Commission believes that PTC has sufficient capabilities to safeguard funds and securities in a manner consistent with the Act, without having to rely on reversals. These safeguarding capabilities include: Membership applicant standards and continuing financial qualifications for participants, a participants funds, full collateralization of delivery obligations, net debit caps, specific procedures to manage participant defaults and insolvencies, including committed lines of credit to allow PTC to meet its immediate settlement obligations if a participant defaults and rules allocating losses in the event any occur. *See* Securities Exchange Release No. 28671, *supra* note 9, at 13,270.

[1] 15 U.S.C. 78s(b).

[2] The Phlx proposal was noticed in Securities Exchange Act Release No. 26536 (February 15, 1989), 54 FR 7117 (February 16, 1989). No comments were received on the proposal.

[3] The proposed rule specify that member organizations will submit in an automated format the following information for proprietary trades: Clearing house member for the organization submitting the data, and the member or member firm on the opposite side of the trade; symbol identifying the security; date of transaction; number of shares in each transaction and description of the type of transaction (*e.g.*: Purchase, sale, short sale); transaction price; account number; and the market center where the transaction was executed.

[4] The proposed rules provide that the additional information required for these non-proprietary

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provide that the Exchange may require that additional types of information be submitted in an automated format,[5] and permit the Exchange to grant exceptions to member firms from the requirement that requested blue sheet information be submitted in an automated format.

In its filing, the Phlx states that a universal automated format for the transmission of member firms' proprietary and customer transaction data has been developed by the Intermarket Surveillance Group and the Securities Industry Association, working in conjunction with the self-regulatory organizations. The Exchange believes that its adoption of this automated blue sheet format will significantly enhance its regulatory and surveillance capabilities by enabling its surveillance staff to review and analyze blue sheet information more rapidly and more effectively. Receiving the data in a compatible automated format will permit the Exchange to enter the data directly into its computer systems for analysis. In addition, the Exchange believes that the new automated format will enable member firms complying with the proposed rule to respond to such information requests with greater speed and efficiency since complying firms will no longer have to manually assemble the requested blue sheet information.

The Commission has closely reviewed the provisions of the proposed Phlx rules, and believes that they are consistent with the requirements of the Act, particularly sections 6(b)(1) and 6(b)(5). The adoption of the universal automated format for blue sheet information under the proposed rules will significantly improve the ability of the Phlx's regulatory and surveillance staffs to conduct their market surveillance and monitoring responsibilities under sections 6(b)(1) and 6(b)(5) and other provisions of the Act. The Commission also believes that adoption of the automated format will make it easier for member firms complying with the proposed rules to gather and submit information in response to requests from the Exchange in a timely manner and will thus reduce the regulatory burden on those firms. Further, receipt of such market surveillance information in an automated format will permit the Exchange's surveillance staff to review and analyze the data more rapidly and effectively by enabling them to enter the data directly into the Exchange's own computer systems for analysis. In addition, in instances where the Exchange refer matter to the Commission for further action, availability of the pertinent blue sheet information in an automated format will also facilitate the Commission's ability to analyze and evaluate relevant trading and market surveillance data. Finally, the proposal is identical to proposals by other exchanges that the Commission has approved previously.[6]

It is therefore, ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes be, and hereby are, approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Dated: August 23, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20897 Filed 9–5–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–27178; File No. S7–24–89]

Joint Industry Plan; Notice of Filing of a Proposed Reporting Plan for NASDAQ/NMS Securities Traded on an Exchange on an Unlisted or Listed Basis by the National Association of Securities Dealers, Inc., and the American, Boston, Midwest, and Philadelphia Stock Exchanges

On June 21, 1989, pursuant to Rules 11A3–2 and 11A3–1 under the Securities Exchange Act of 1934 ("Act"), the National Association of Securities Dealers, Inc. ("NASD"), together with the American ("Amex"), Boston ("BSE"), Midwest ("MSE"), and Philadelphia ("Phlx") Stock Exchanges filed with the Securities and Exchange Commission ("Commission") a proposed Joint Industry Plan ("Plan") governing the collection, consolidation and dissemination of quotation and transaction information for NASDAQ/National Market System ("NMS") Securities listed on an exchange or traded on an exchange pursuant to a grant of unlisted trading privileges ("UTP").

I. Background

On September 16, 1985, the Commission announced its willingness to grant UTP to national securities exchanges in NMS securities if certain terms and conditions were met.[1] The Commission determined to establish a one-year pilot program during which each exchange requesting UTP would be permitted to trade up to 25 OTC securities designated as NMS Securities pursuant to Rule 11A2–1 under the Act. The Commission's willingness to grant UTP was conditioned, in part, on its approving a plan submitted by certain exchanges and the NASD to consolidate and disseminate exchange and OTC quotation data and transaction data in OTC securities upon which UTP is granted ("Joint Industry Plan").[2] The exchanges and the NASD have been negotiating the terms of the transaction reporting plan since that time.

Because of the protracted negotiations, the MSE decided in 1986 to enter into an interim transaction reporting plan with the NASD that was significantly more limited than the plan now under consideration.[3] On April 29, 1987, the Commission approved the MSE's application for UTP in 25 OTC securities [4] and simultaneously

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trades includes: customer name; address; branch office number; registered representative number; whether the order was solicited or unsolicited; date account was opened; employer name; tax identification number(s); and, if the customer was also a member broker-dealer, whether the firm executing the order was acting as a principal or agent on the transaction.

[5] Any proposed rule requiring submission of additional information in an automated format would have to be submitted to the Commission for approval pursuant to the requirements of section 19(b) of the Act and Rule 19b–4 thereunder.

[6] *See* Securities Exchange Act Release No. 26536 (February 10, 1989).

[1] *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38235 ("OTC/UTP Release"). The grant of UTP in specific securities would be pursuant to section 12(f) of the Act, and only after the notice and comment period specified in that section. Furthermore, section 12(f)(2) requires that the Commission, prior to granting UTP for any security, must find that the grant is consistent with the maintenance of fair and orderly markets and the protection of investors. Before granting a UTP application in an OTC stock, the Commission must also consider, among other things, the public trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

[2] OTC/UTP Release, *Supra* note 1, 50 FR 38235.

[3] For example, under the interim plan, the NASD and MSE use the existing NASDAQ System and the NASD's transaction reporting system to collect, consolidate and disseminate quotation and transacation information received from NASDAQ market makers and the MSE in eligibile securities. The NASD disseminates on NASDAQ Level I service (which provides the best bid and offer quotations in each NASDAQ security without identifying market makers) a consolidated best bid and offer quotation with size based upon quotation information for eligible securities received from the MSE and NASDAQ market makers. The best bid and offer quotation and transaction reports do not contain market identifiers. *See* Securities Exchange Act Release No. 24635 (June 23, 1987), 52 FR 24149.

[4] *See* Securities Exchange Act Release No. 24407 (April 29, 1987), 52 FR 17349.

approved the interim transaction reporting plan submitted by the MSE and the NASD ("MSE/NASD Plan").[5] If the Commission approves the Joint Plan, it is anticipated that the MSE/NASD Plan utltimately will be superceded by the Joint Industry Plan.

II. Description of the Plan

The proposed Joint Industry Plan provides for the collection from the Plan Participants, and the consolidation and dissemination to vendors, subscribers and others of quotation and transaction information in "eligible securities," *i.e.*, NMS Securities traded on an exchange on a listed or UTP basis.[6] The following is a summary of the major provisions of the Plan. The full text of the Plan, as well as a "Concept Paper" describing the requirements of the Plan, are contained in the original filing which is available for inspection and copying in the Commission's Public Conference Room.

A. Implementation of the Plan

In its submission, the NASD stated that it will implement the Plan when (a) the Commission approves the Plan, and (b) the Commission grants an Exchange Participant's application for UTP in NASDAQ/NMS securities pursuant to Section 12(f) of the Act.[7] When the Plan Processor, which under the terms of the Plan will be NASDAQ, Inc. for at least the first 5 years, reports that the necessary modifications to the NASDAQ System have been completed and that it is ready to initiate operations, Exchange Participants will transmit quotation information and transaction reports in eligible securities to the Processor via computer-to-computer interfaces ("CTCI"), except that Limited Participants, and any Exchange Participant that is not yet ready with its CTCI, will transmit information through the NASDAQ System, using the NASDAQ Workstation Service.

B. Manner of Collecting, Processing, Sequencing, Making Available, and Disseminating Last Sale Information

Section VI.B. of the Plan provides that the Processor shall be capable of receiving last sale information on transactions in eligible securities received from Exchange Participants using a CTCI, and from NASDAQ market makers using NASDAQ-approved devices. The Processor will use the NASDAQ System and the NASD's Transaction Reporting System, modified to include marketplace identifiers, to consolidate last sale information in eligible securities received from the Participants and disseminate it to authorized vendors, subscribers, and news services in a fair and nondiscriminatory manner, via the NASDAQ/NMS Last Sale Information Service, as specified in the Concept Paper. Limited Participants and Exchange Participants that have not yet implemented a CTCI will utilize the NASDAQ Workstation Service, and will not market identifiers on their trade reports. The Processor will accept transaction reports in eligible securities from Exchange Participants, Limited Participants, and NASDAQ market makers and include them in a consolidated last sale data stream on a first-in, first-out basis.

C. Reporting Requirements

Pursuant to Section XI of the Plan, Participants will be required to report transactions in eligible securities executed between 9:30 a.m. and 4:00 p.m. Eastern Time ("ET") to the Processor between the hours of 9:30 a.m. and 4:01:30 p.m. ET on all days the Processor is in operation. Transaction reports may be entered after 4:01:30 p.m. ET, but they shall be reported as "late," in accordance with the rules of the Participant in whose market the transaction occurred. At the expense of any requesting Participant(s), the Processor will disseminate last sale trade reports until 4:30 p.m. ET.

D. Standards and Methods Ensuring Promptness, Accuracy, and Completeness on Transaction Reports

Section XII of the Plan requires that each participant enforce compliance by its members with the Plan's provisions. The rules of each Participant, to the extent they are not inconsistent with the Plan, will apply to the actions of the Participant's members in reporting quotation and transaction data in eligible securities executed through the Participant's facilities.[8]

The NASD stated that it would monitor members' compliance with the requirement that transaction reports be promptly reported, accurate and complete, primarily through examinations of NASDAQ market makers' books and records. Should the NASD discover apparent rule violations, the NASD will ocnsider possible disciplinary action. The NASD stated that it believed the other Participants will use similar methods to ensure the promptness, accuracy, and completeness of transaction reports.

The Processor also will check the accuracy and completeness of transaction reports by using the automatic validation feature of the NASD's Transaction Reporting System. That system automatically will check data transmitted by a NASDAQ market maker or Exchange Participant to ensure that all required information has been reported and that the reported price is reasonable as measured against the current market price. If information is missing or improperly reported, or if the reported price exceeds established parameters, the Processor will reject the report and will notify the reporting party through its CTCI or terminal.

E. Terms and Conditions of Access

As required by the 1985 UTP Release, the Plan provides that NASDAQ market makers shall have access to the exchange markets to the same extent that NASDAQ market makers provide access to OTC trading facilities. Section IX.A of the Plan provides that each Exchange Participant and Limited Participant shall provide each NASDAQ market maker with direct telephone access to the specialist post in each Eligible Security in which the NASDAQ market maker is registered as a market maker. Similarly, pursuant to section IX.B., the NASD shall ensure that each Exchange Participant, Limited Participant, and their members have direct telephone access to the trading desk of each NASDAQ market maker in each eligible security in which it displays quotations.

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[5] *See* Securities Exchange Act Release No. 24635 (June 23, 1987), 52 FR 24140.

[6] The signatories of the Plan, *i.e.*, the NASD, Amex, MSE, Phlx, and the BSE, are the "Participants." The BSE, however, has joined the Plan as a "Limited Participant," and only will report quotation information and transaction reports in NASDAQ/NMS securities listed on the BSE. (The BSE is not now interested in trading OTC securities on an unlisted basis but, because it has listed several NASDAQ/NMS securities that it wishes to continue trading, it is participating on a limited basis in the Plan.) The Plan provides that any other national securities association or exchange in whose market eligible securities are or become traded may become a Plan Participant by executing a copy of the Plan and paying its share of development costs. (Limited Participants, however, do not pay development costs.) "Participant" is used in this release to refer both to full and Limited Participants, unless otherwise indicated.

[7] The NASD also noted that the BSE's participation is contingent upon the Commission granting it an exemption from the requirement of paragraph (b)(2)(iii) of Rule 11Aa3–1 under the Act to provide market identifiers on transaction reports or last sale data. *See* letter from George W. Mann, Jr., Senior Vice President and General Counsel, BSE, to Christine Sakach, Branch Chief, Division of Market Regulation, SEC, data August 17, 1989, and discussion at pp. 11–12 *infra*.

[8] In its submission to the Commission, the NASD noted that the pertinent rules include Article III, sections 1, 5 (and accompanying interpretation), 6 (and accompanying Policy), and 18 of the NASD's Rules of Fair Practice, and applicable provisions of Schedule D of the NASD By-Laws.

F. Description of Operation of Facility Contemplated by the Plan

The Plan makes specific provision for administration of the UTP Service by the Participants through an Operating Committee.[9] As noted above, NASDAQ, Inc. will, at least initially, be the Plan Processor. In that capacity, NASDAQ, Inc. will modify the NASDAQ System to permit the Participants to report to NASDAQ quotation and trade data for eligible securities. The basic operations of the UTP Processor are described in the Concept Paper.

G. Method and Frequency of Processor Evaluation

Section V.A. of the Plan provides that the Processor's performance is subject to review by an Operating Committee during the fifth year of its initial five-year term, and periodically thereafter (at least every two years, or from time to time upon the request of any two Participants but not more frequently than once each year).

Section V.B. provides that, in evaluating the Processor's performance, the Operating Committee shall consider whether the Processor has performed its functions in a reasonably acceptable manner in accordance with the provisions of the Plan, and whether its reimbursable expenses are excessive and not justified on a cost basis. Among the factors the Operating Committee may consider in evaluating whether the Processor has performed its functions in a reasonably acceptable manner are the reasonableness of its response to requests from Exchange or Limited Participants for technological changes or enhancements pursuant to Section IV.C.2. of the Plan. Section V.B. also provides that if the Operating Committee determines that the Processor has failed to perform its functions in a reasonably acceptable manner in accordance with the provisions of the Plan or that its reimbursable expenses have become excessive and not justified on a cost basis, the Processor may be terminated by a majority vote of the Operating Committee; provided, however, that Limited Participants shall not vote. Pursuant to Section IV.C.1.b. of the Plan, replacement of the Processor for any reason other than termination for cause requires the Operating Committee's unanimous vote.

H. Dispute Resolution

The Plan does not include any provision for a specialized mechanism for the resolution of disputes arising under the Plan. Section IV.A. of the Plan authorizes the Operating Committee to make decisions and take action within specified areas of responsibility, and provides that such decisions or action are binding upon each Participant, without prejudice, however, to the rights of any Participant to seek redress from the Commission pursuant to Rule 11Aa3–2 or in any other appropriate forum.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

With the exception of standard charges to Limited Participants and Exchange Participants using NASDAQ Workstation Service, the Plan does not provide for the imposition of any fees or charges in connection with the collection, consolidation, and dissemination of information regarding eligible securities. Section IX.A of the Plan prohibits an Exchange or Limited Participant from imposing or permitting the imposition of any access or execution fee, or any other fee or charge, with respect to transactions in eligible securities effected with NASDAQ market makers that are communicated to the exchange floor by telephone.

Section XIV of the Plan provides that the NASD shall recover from exchange participants a sum of money to be negotiated.[10] The Plan also provides for revenue sharing, but states that the method of revenue sharing shall not be included in the Plan at this time. The method of revenue sharing is to be resolved within one year of the commencement of the UTP Service. Net revenues will be distributed to Participants (but not Limited Participants) in a manner to be determined. Prior to any such distribution, however, all operating and administrative expenses of the Processor in connection with the Plan shall be offset against operating revenues.

J. Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan

The Participants have entered into an agreement, memorialized in an Undertaking dated April 1, 1989, which provides that for the one-year period following the date on which the UTP Processor commences operations, each initial entry or update of quotation information in Eligible Securities shall be effected by an individual at a computer terminal and shall not be programmed or automated. A copy of the Undertaking is attached to the filing.

III. The Boston Stock Exchange's Request for Exemption

As described above, the Plan does not provide for market identifiers for transaction reports and the inclusion of Limited Participants in the consolidated best bid and offer quotation.[11] Subsection (b)(2)(viii) of Rule 11Aa3–1, however, requires that any transaction reporting plan submitted to the Commission must provide market identifiers for transaction reports or last sale data made available to vendors.[12] Thus, the BSE, as the only Limited Participant under the Plan, requested that the Commission exempt it from this requirement.[13] The BSE stated that it has signed the Plan only because it seeks to continue to provide trading facilities for 21 dually listed (*i.e.*, listed on the BSE and traded in NASDAQ) stocks that it listed on the BSE as of the date the Plan was filed with the Commission and does not wish to apply for OTC/UTP.[14] To accommodate the

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[9] Unanimous votes would be required for certain matters, including amendments to the Plan, reduction of fees charged, and replacement of the Processor.

[10] Section XIV of the Plan states that "[i]t is expressly agreed and understood among the Participants that specific provisions governing the issues of cost allocation and revenue-sharing among the Participants will not be included in the Plan at the time of execution thereof, but will be resolved within one year from the commencement of the Plan's operation. The provisions agreed upon by the Participants will be applied on a retroactive basis by means of an amendment to the Plan. There shall be no retroactive application if the Participants are unable to agree upon a cost allocation and revenue-sharing provision or the amount of recapture. * * *"

[11] Limited participants will send transaction and quotation data to the processor through the NASDAQ system, specifically through Workstation Terminals, in the same manner of OTC market markes. The NASDAQ system has never disseminated market identifiers for transaction and quotation reports for NMS securities.

[12] Rules 11Ac1–1 and 11Ac1–2 also require market identifiers for transaction and quotation reports. The Commission previously provided NASDAQ and vendors exemptions, however, under those rules. *See* Securities Exchange Act Release No. 18585 (March 23, 1982), 47 FR 13265; letter from Richard G. Ketchum, Associate Director, Division of Market Regulation, SEC, to James M. Yates, Bridge Data Company, dated March 30, 1982. These exemptions will continue to apply to dissemination under the Plan.

[13] Letter from George W. Mann, Jr., Senior Vice President and General Counsel, BSE, to Christine Sakach, Branch Chief, Division of Market Regulation, SEC, dated August 17, 1989.

[14] Any exchange that trades securities covered by the Plan is required to sign the Plan or delist such securities. Therefore, the BSE was required to sign the Plan to continue trading the 21 dually listed stocks, or delist these 21 issues.

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BSE, the Plan Participants created the category of "Limited Participants," which do not pay any of the development costs of modifying NASDAQ to accommodate OTC/UTP and have limited voting rights under the Plan.[15] Limited Participants will not be permitted to either expand the number of dually listed issues or to apply for OTC/UTP.[16]

IV. MSE Comment Letter

The Commission has received one comment letter from the MSE on the proposed Plan.[17] The MSE stated that two issues were not resolved to its satisfaction during the negotiations among the Participants under the Plan.

First, the MSE stated that the Plan provides that nothing therein will affect existing agreements between the NASD and the International Stock Exchange and the Singapore Stock Exchange. The MSE stated that it is troubled by this provision for two reasons. First, the NASD has not made these agreements available for inspection, despite requests to do so. The MSE maintains that the Plan Participants have been asked to accept this provision without the opportunity to assess the potential effect of these agreements on the Participants or the Plan. Second, the MSE is troubled by the fact that there are no restrictions on further amendments to the agreements. Thus, according to the MSE, there is nothing to prohibit further amendments that may affect the rights and obligations of the Participants.

The second issue that has not been resolved to the MSE's satisfaction concerns the best bid and offer ("BBO"). The Plan provides that, in calculating the BBO disseminated to vendors, if quotations of more than one Participant are identical, the earliest in time shall be the best.[18] The MSE believes, however, that the BBO should be determined by size, not time priority, and referred to the Commission's adoption of Rule 11Ac1–2 in 1979 and the accompanying release in support of its position.[19]

In addition to the two issues mentioned above, the MSE also opposes the separate formal agreement that the participants would not allow their members to use Autoquote systems for a period of one year for those securities subject to the Plan.[20] The MSE stated that the NASD declined to sign the Plan if the exchanges were permitted to use Autoquote for NASDAQ stocks, and that the NASD introduced this condition immediately prior to the scheduled sign-up date for the Plan, after 3 years of negotiations. The MSE noted that it agreed to refrain from using Autoquote for one year, along with the other Participants, despite its belief that the condition is inappropriate. The MSE asked that the Commission consider whether to approve the one year prohibition.

Finally, the MSE requested that the grant of OTC/UTP be expanded to allow each exchange to trade 100 OTC Securities on an unlisted basis.[21] Since May 1987, the MSE has traded 25 NASDAQ/NMS securities pursuant to its interim UTP Plan with the NASD. Based on its experience during this period, the MSE believes that the Commission should expand the program from 25 to 100 OTC stocks.[22] The MSE, in addition to requesting that the interim Plan be expanded to 100 OTC stocks, has requested that the proposed Joint Industry Plan also encompasses 100 stocks.

V. Request for Comment

Interested persons are invited to submit written data, views and arguments concerning: (1) The provisions of the Joint Industry Plan; (2) the BSE's request for an exemption from the Rule 11Aa3–1 requirement that transaction reporting plans provide that transaction reports include market identifiers; and (3) the MSE's request to expand the pilot program to 100 securities.[23] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposal that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 27, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: August 24, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20692 Filed 9–5–89; 8:45 am]

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[15] While Limited Participants are permitted to attend all meetings, they are permitted to vote only on those matters that directly effect them.

[16] Limited participants could, however, become full Participants, pay their share of the development costs and apply for OTC/UTP.

[17] Letter from J. Craig Long, Vice President, General Counsel and Secretary, MSE, to Jonathan G. Katz, Secretary, SEC, dated July 7, 1989.

[18] NASDAQ calculates the BBO based on price and time priority for all securities traded in the NASDAQ system.

[19] The MSE stated that the relevant parts of that Release provide that time receipt is a "less useful" factor as orders are not routed on the basis of quotation time, and, if anything, the "oldest" quotation is more likely to be stale. Size, alternatively, provides investors with the depth of the market displaying the best price. *See* Securities Exchange Act Release No. 16590 (February 19, 1980), 45 FR 12391.

[20] Autoquote systems allow specialists automatically and instantaneously to update their quotes when some predesignated condition occurs (for example, the primary market in a security changes its quote). The MSE stated that the regional exchanges developed Autoquote systems to permit specialists to eliminate stale quotations.

[21] As noted above, the Commission has indicated a willingness to approve a one-year pilot program during which each exchange will be permitted to trade up to 25 OTC stocks on an unlisted basis. *See* OTC/UTP Release, *supra* note 1, 50 FR 36235.

[22] The MSE stated in its comment letter that there had been no disruption of the OTC market during the pendency of the interim plan, that pricing efficiency generally had improved in all 25 securities, and that it has been very difficult to attract order flow with only 25 stocks.

[23] In the alternative, commenters also are requested to address whether OTC/UTP should be expanded to all NASDAQ/NMS securities included on NASDAQ on or after April 26, 1979, in order to parallel the Commission's Rule 19c–3 which removed all off-board trading restrictions on securities listed on an exchange after that date. *See* Rule 19c–3 under the Act, 17 CFR 240.19c–3 (1989). In this regard, commentators should estimate the number of securities as well as the percentage of transaction and dollar volume which would be covered by such a requirement.

[34–27192; File No. SR–NSCC–87–04; SR–MCC–87–03; SR–SCCP–87–03]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the National Securities Clearing Corp., Midwest Clearing Corp., and Stock Clearing Corp. of Philadelphia on a Temporary Basis

August 29, 1989.

The National Securities Clearing Corporation ("NSCC"), Midwest Clearing Corporation ("MCC"), and Stock Clearing Corporation of Philadelphia ("SCCP") have filed proposed rule changes permitting them to guarantee at an earlier time settlement of member trades in their respective Continuous Net Settlement ("CNS") systems. The proposals also would permit NSCC, MCC, and SCCP (collectively, "the Clearing Corporations") to revise the CNS portion of their respective clearing fund formulas to protect against increased risk posed by an earlier guarantee.[1] The Commission requested public comment on the proposals,[2] and no comments were received. This Order approves the proposals on a temporary basis until December 31, 1990.[3]

I. Description of the Proposals

The proposals permit the Clearing Corporations to guarantee settlement [4] of CNS trades [5] at an earlier time. Under the proposals, "locked-in" trades [6] are guaranteed as of midnight on the day after trade date (T+1), while other trades are guaranteed as of midnight on the day they are reported to members as compared (usually the second day after trade date (T+2)).[7] Prior to the proposals, the Clearing Corporations guaranteed settlement of CNS trades on the fourth day after trade date (T+4). The proposals reduce the time during which clearing members are exposed to the risk of *contra*-side default but increase the time during which the Clearing Corporations are exposed to such risk.

To protect against increased CNS system risk associated with an earlier guarantee, each Clearing Corporation proposes to revise the CNS portion of its clearing fund formula. NSCC's revised CNS clearing fund formula [8] includes the following components: (a) 2 percent of the member's projected total long CNS positions;[9] plus (b) the net of each day's difference between the contract price of pending, compared CNS trades and the current market price for all guaranteed pending CNS trades which have not yet reached settlement;[10] plus (c) .25 percent of the net of all guaranteed pending CNS trades and open CNS positions.[11]

NSCC calculates CNS clearing fund requirements daily and collects clearing fund deposits monthly, unless circumstances justify, as described below, additional deposits on a more frequent basis. NSCC may collect additional intra-month clearing fund deposits from a member if: (a) That member's current clearing fund requirement (based on the previous 20 business day's activity) for CNS activity is more than 25% higher than its present clearing fund deposit; or (b) the average of that member's last five days' clearing fund requirements (each day's requirement based on the previous 20 days' activity) for CNS activity is more than 15% higher than its present clearing fund deposit.[12] NSCC collects intra-month deposits on the day these parameter breaks occur. NSCC does not require an increased contribution if the deficiency is less than 10% of the member's clearing fund deposit or $10,000 and may grant exemptions from the additional deposit requirement in certain instances.[13]

MCC also has revised the NCS portion of its clearing fund formula.[14] Prior to implementation of its revised formula, MCC established, for a selected 20-day period,[15] each member's pre-settlement long and short positions for NCS trades. Each day during that period that a member had a net debit exposure,[16]

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[1] NSCC filed its proposed rule change (SR–NSCC–87–04) on February 27, 1987, and amendments to that proposal on March 11, 1987, and October 1, 1987. In its March 11, 1987 amendment, NSCC proposed that when-issued trades not be subject to its earlier CNS guarantee. *See* Letter from Michael Simon, Associate General Counsel, NSCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, dated March 22, 1987. As described in detail *infra*, in its October 1, 1987 amendment, NSCC established standards for the imposition of intra-month clearing fund deposit requirements. MCC filed its proposed rule change (SR–MCC–87–03) on June 2, 1987. SCCP filed its proposed rule change (SR–SCCP–87–03) on October 28, 1987, and an amendment to that proposal on June 8, 1989. As noted *infra*, SCCP's amendment conformed its earlier guarantee time frames to those proposed by NSCC and MCC.

[2] *See* Securities Exchange Act Release Nos. 24301 (April 3, 1987), 52 FR 11892; 24705 (July 15, 1987), 52 FR 27480; and 26954 (June 22, 1989), 54 FR 27260.

[3] NSCC and MCC, following notification to the Division of Market Regulation ("Division"), implemented their earlier guarantee proposals prior to this Order, based on authority granted the Clearing Corporations in their rules prior to the proposed amendments. *See* Rule 18 of NSCC's Rules. *See* also, Article VII, Rules 2 and 3 and Article X, Rule 11 of MCC's Rules. SCCP has not implemented its earlier guarantee proposal. Since 1982, however, SCCP has guaranteed, as of trade date, all trades executed by a specialist with a SCCP participant recorded in a SCCP margin account. Such trades are guaranteed up to 1,000 shares.

[4] Until the Clearing Corporation guarantees settlement of a trade, each side to the trade bears the risk of the *contra*-side defaulting if the Clearing Corporation ceases to act for a defaulting member. Once the Clearing Corporation guarantees settlement, the original contractual obligations between the two parties are discharged and replaced by contracts between the Clearing Corporation and each of the original parties (*i.e.*, the Clearing Corporation becomes the buyer to every seller and the seller to every buyer).

[5] Two other accounting systems, the Balance Order and Trade-by-Trade systems, are used to process transactions not eligible for CNS. Under the Balance Order system, balance orders, in the form of receive and deliver tickets, are netted by the Clearing Corporation and guaranteed on settlement date. Under the Trade-by-Trade system, transactions are cleared through the Clearing Corporation but are settled by the individual parties to the transaction.

[6] Locked-in trades (*i.e.*, trades executed through automated order routing and trade execution systems) are reported to members as compared on T+1.

[7] Originally, SCCP proposed to guarantee locked-in trades as of midnight on T+2 and non-locked-in trades as of midnight on the day after the trades were reported to members as compared. SCCP's June 8, 1989 amendment conforms its proposal to the time frames described above.

[8] Under NSCC's prior CNS clearing fund formula, a member was required to deposit 2.5% of its average daily settlement debits and credits, other than the member's envelope settlement system debits and credits.

[9] NSCC believes this component of its revised formula protects against the risk that a member purchasing securities will be unable to pay for those securities upon delivery (*i.e.*, allocation risk).

[10] NSCC believes this component of its revised formula protects against the risk that the market price of compared trades will move away from their contract price before settlement (*i.e.*, mark-to-the-market risk). This component represents the absolute dollar value of mark-to-the-market risk. Credits are not factored into the mark-to-the-market calculation.

[11] When an NSCC member becomes insolvent, NSCC ceases to act for that member and liquidates the member's positions. Even if the member has made mark-to-the-market payments prior to becoming insolvent, the liquidation price may differ from the current price in the CNS system. NSCC believes this third component guards against current market price to liquidation price risk.

In addition to the three components described above, NSCC requires members to deposit 2.5% of the member's average daily envelope settlement system debits and credits or 5% of its average daily envelope settlement system debits, whichever is greater, subject to a $10,000 minimum contribution.

[12] For example, assume that on July 20, 1989, Broker A's clearing fund requirements is $782,386. Further assume Broker A's end of June clearing fund requirement was $617,966. Broker A could be assessed an intra-month clearing fund deposit under part (a) of the formula above, because its July 20, 1989 requirement would exceed its end of June clearing fund requirement by 27%. Alternatively, if on July 20, 1989, the average of Broker A's last five days' clearing fund requirements is $777,085, it could be assessed an intra-month clearing fund deposit under part (b), because that weekly requirement would exceed Broker A's end of June requirement by 26%.

[13] NSCC would grant an exemption from the additional deposit requirement if it determines that (1) a member does not pose additional risk that would require an additional deposit prior to the month-end review, or (2) the increase appears to be due to general market conditions unrelated to risk posed by the member (*e.g.*, a single trade inconsistent with a member's normal business causes a parameter break or a mispriced trade results in a parameter break).

[14] Under MCC's prior CNS clearing fund formula, a member was required to deposit 2% of its daily average short value positions (*i.e.*, a member's position when its net open commitments from sales and borrowings of a security exceed its net open commitments from purchases of the security) plus .5% of its daily average long value positions (*i.e.*, a member's position when its net open commitments from purchases of a security exceed its net open commitments from sales and borrowings of the security) and loan value positions (*i.e.*, position of a member with respect to a security loaned by the member under CNS), with a minimum deposit requirement of $5,000 in cash.

[15] That period was September 27, 1987 through October 19, 1987.

[16] Net debit exposure is the net amount payable by a member to MCC on account of securities movements, settling trades, changes in value positions ("marks-to-the-market"), and other amounts payable by the member as a result of services provided by MCC. Credits are not factored into the net debit exposure calculation.

MCC assessed that member at a rate of 102% of that exposure. The average dollar amount each member was assessed during the 20-day period became that member's initial clearing fund requirement.[17]

MCC calculates CNS clearing fund requirements daily. If a member's average net debit exposure for a particular day (each day's average based upon the member's previous 20 business days' activity) exceeds the member's current clearing fund requirement (as derived from adjustments to the initial clearing fund requirement described above) by more than 10%, it is assessed an additional clearing fund contribution that day. Additional clearing fund requirements not exceeding this parameter break are collected weekly.

SCCP also has revised the CNS portion of its clearing fund formula. Under that revised formula, members are required to deposit the larger of: (a) The member's monthly average trading activity based on the preceding quarter, $1,000 for every 25 trading units of 100 shares, with a $5,000 minimum and $50,000 maximum contribution (*i.e.*, SCCP's current CNS clearing fund formula) and (b) the aggregate dollar amount of the member's long trades at their execution price for each quarter divided by the number of days in such quarter, multiplied by 2%. The maximum amount collectable per participant under the revised formula is $100,000.

SCCP would calculate clearing fund requirements quarterly but would monitor member mark-to-the-market exposure daily. If a participant has mark-to-the-market exposure[18] exceeding $10,000 for a particular day, it would be assessed that amount that day as an additional clearing fund requirement.

During the temporary approval period ("Period"), the Division will collect data from the Clearing Corporations to assess the ability of their proposed CNS clearing fund formulas to guard against increased risk posed by an earlier CNS guarantee.[19] Specifically, the Clearing Corporation will select 30 members (including five members in each of six categories: retail, specialist, market-maker, clearing, institutional, and arbitrage members). The Clearing Corporations will provide, with respect to each sample member, (a) the dollar value of daily mark-to-the-market exposure for guaranteed trades that have not reached settlement, (b) the dollar value of the clearing fund deposit held by the Clearing Corporation, and (c) the daily clearing fund calculation produced under the revised formula, including identification of parameter breaks and intra-month deposits.

II. Rationale for the Proposals

The Clearing Corporations believe their proposed rule changes are consistent with the purposes and requirements of section 17A of the Act. Specifically, they believe their proposals, in guaranteeing at an earlier time the settlement of CNS system trades, provide increased stability and certainty in the securities markets. Moreover, they believe proposed revisions to the CNS portion of their respective clearing fund formulas adequately protect against increased risk posed by earlier guarantees.

III. Discussion

The Commission believes the proposals to expand the number of trades subject to Clearing Corporation guarantees are consistent with the Act, and Section 17A in particular. Specifically, the Commission believes the proposals are designed to increase trade settlement certainty without compromising the safety of clearing member funds and securities. The Commission is approving the proposals on a temporary basis, however, while it monitors the adequacy of Clearing Corporation safeguards applicable to earlier CNS guarantees.

The Commission believes the proposals are designed to increase the certainty of CNS trade settlement.[20] Prior to the proposals, clearing members were exposed to the risk of *contra*-side default from the date of comparison until T+4. Under the proposals, members are relieved of that potential financial exposure to the extent the Clearing Corporations assume responsibility to settle compared CNS trades on T+1 or T+2.

The Commission recognizes that earlier CNS guarantees, without appropriate safeguards, may pose increased risk to member funds and securities. A clearing agency's primary protection against member default is the defaulting member's clearing fund contribution. Upon default, the clearing agency liquidates the defaulting member's open commitments through purchases and sales in the open market. The clearing agency covers any loss from liquidation with the defaulting member's clearing fund deposit. The clearing agency is authorized to assess non-defaulting members, on a *pro-rata* basis, if the defaulting member's deposit is insufficient to cover that loss.[21] An earlier clearing agency guarantee increases exposure to market risk for guaranteed trades, thereby increasing exposure to clearing members that if a member defaults, the liquidation losses of the defaulting clearing member will be greater and so too will be *pro-rata* assessments.

During the Market Break, Clearing Corporation safeguards applicable to earlier CNS guarantees were tested. Although the Clearing Corporations maintained aggregate CNS clearing funds sufficient to cover aggregate mark-to-the-market exposure,[22] some clearing members had CNS clearing fund deposits insufficient to cover individual mark-to-the-market obligations.[23] To guard against mark-to-the-market exposure, the Division suggested that the Clearing Corporations consider collecting marks on all open obligations from the time of guarantee (generally T+1 or T+2 under the proposal) through the scheduled settlement date [the fifth day after trade date (T+5)], instead of collecting such marks on settlement date, which is current Clearing Corporation practice.[24] The Division believed this process would reduce Clearing Corporation risk to one-day price fluctuations (and liquidation risks) on guaranteed trades, compared with three or four-day price fluctuations (and liquidation risks) inherent in trade guarantees on T+1 or T+2.[25] As described above and discussed below, NSCC and MCC would calculate market exposure on guaranteed, pending trades, but would collect only a percentage of that exposure in the ordinary course.

Data provided by the Clearing Corporations during the temporary approval period should address whether their revised formulas adequately address increased risk posed by an earlier guarantee or whether additional safeguards, such as collection of marks from the date of trade guarantee through settlement, should be implemented. As indicated below, the Commission is concerned that daily clearing fund calculations based on a member's average mark-to-the-market exposure for a rolling 20-day period may not reflect that member's actual daily mark-to-the-market exposure. The data should permit the Commission to compare a member's daily mark-to-the-market exposure with that member's daily clearing fund requirement and determine whether the revised formulas adequately account for daily mark-to-the-market exposure. The data also should permit the Commission to monitor Clearing Corporation intra-month deposit requirements and determine whether those requirements are adequate safeguards.

In addition to their revised clearing fund formulas, the Clearing Corporations employ other safeguards designed to protect against member default and the possibility of *pro-rata* assessment. Specifically, the Clearing Corporations monitor extensively member financial condition, review member settlement activity in relation to prior activity, and monitor securities settled in its systems for volatility. The Clearing Corporations can collect additional marks or clearing fund deposits if a member's financial condition deteriorates or its settlement activity increases dramatically or becomes concentrated in volatile securities. The Clearing Corporations also routinely review clearing member CNS contractual obligations to identify delivery obligations that have not been affirmed by cash account customers through depository institutional delivery systems, thereby enabling the Clearing Corporations to identify CNS obligations members may not be able to settle on T+5 (*e.g.*, because their customers have not acknowledged the terms of the trade or have not authorized settlement with those clearing members) and take appropriate action (*e.g.*, require additional marks or clearing fund deposits) to protect against member default. The Clearing Corporations are enhancing their risk monitoring systems in response to Commission recommendations.[26]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the Act and, in particular, section 17A. The Commission believes the proposals are designed to increase CNS trade settlement certainty. The Commission also believes, pending review of data submitted by the Clearing Corporations during the temporary approval period, the revised clearing fund formulas are designed to protect against increased risk posed by an earlier guarantee.

It is therefore ordered, pursuant to section 19(b) of the Act, that the proposed rule changes (SR–NSCC–87–4, SR–MCC–87–3, and SR–SCCP–87–3) be, and hereby are, approved on a temporary basis until December 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20891 Filed 9–5–89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974

The Department of Transportation (DOT) herewith publishes a proposal to amend a system of records.

Any person or agency may submit written comments on the proposed altered system to: Lieutenant Commander C.M. Rich, U.S. Coast Guard, Office of the Chief Counsel, U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593–0001. Comments must be received within 30 days to be considered.

If no comments are received, the proposed changes will become effective 30 days from the date of issuance. If comments are received, the comments will be considered and, where adopted, the document will be republished with the changes.

Issued in Washington, DC, August 25, 1989.

Melissa J. Allen,

Acting Assistant Secretary for Administration.

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[17] Members with a 20-day average below MCC's $5,000 minimum clearing fund deposit requirement were not required to provide additional funds.

[18] Marking-to-the-market refers to the process by which the difference between securities' market value and the contract price is collected from parties to a transaction. Unlike NSCC and MCC, SCCP's daily calculation of member mark-to-the-market exposure would be based on that day's exposure rather than average exposure for a 20-day period.

[19] As discussed *infra*, the Commission is concerned that daily clearing fund calculations based on mark-to-the-market average exposure for a rolling 20-day period may not reflect actual mark-to-the-market exposure as well as, for example, daily collection of marks-to-the-market ("marks"). As discussed *infra*, data provided by the Clearing Corporations during the temporary approval period will be used to evaluate this concern.

[20] Prior to implementation of the proposals, earlier guarantees were discussed at the 1984 Securities Processing Roundtable ("Roundtable"). Roundtable participants urged clearing agencies "to investigate the feasibility of earlier trade guarantees, in conjunction with a marking system, to increase safety and service quality in the National [Clearance and Settlement] System and to provide an early warning about potential defaults by participants that are unable to meet their obligations." Roundtable participants believed earlier guarantees would increase trade settlement certainty and benefit trading strategies coupling stock trades with options or futures trades. *See* U.S. Securities and Exchange Commission, *Report of the Division of Market Regulation 1984 Securities Processing Roundtable* (May 31, 1984) at viii ("Roundtable Report").

[21] The risk of *Pro-rata* assessment was most evident during the October 1987 Market Break ("Market Break"). On October 21, 1987, NSCC, as well as other clearing agencies, ceased to act for Metropolitan Securities ("Metropolitan"), because Metropolitan failed to meet its settlement obligations on October 20, 1987. NSCC liquidated 188 Metropolitan positions from October 22, through November 3, with a total contract value of $58,438,000 and reversed CNS allocations from Metropolitan's account totaling approximately $5.6 million in value. NSCC's loss prior to applying Metropolitan's clearing fund contribution was approximately $570,000. After applying Metropolitan's $175,000 clearing fund contribution, NSCC sufferend a loss of approximately $395,000. That loss was covered by NSCC retained earnings and no *pro-rata* assessments occurred. *See The October 1987 Market Break, A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission (February 1988)* ("Market Break Report") at 10–17.

NSCC and the Options Clearing Corporation ("OCC") ceased to act for H.B. Shaine & Co. Inc. ("Shaine") on October 20, 1987. In that liquidation, OCC suffered an $8.5 million loss and allocated that loss on a *pro-rata* basis among its clearing members, marking the first time a clearing agency's members have had their clearing fund deposit assessed in connection with the default of another member. NSCC did not suffer a loss in the Shaine liquidation. *See* Market Break Report at 10–19 and 10–44.

[22] For example, on October 20 and October 21, 1987, NSCC's CNS market risk exposure was approximately $90.7 million and $92.25 million respectively. NSCC's clearing fund, with approximately $437 million in deposits on October 31, 1987, was sufficient to cover that risk exposure. *See* Market Break Report, *supra* note 21, at 10–24.

[23] For example, in a sample of 30 NSCC members (including five members in each of six categories: retail, specialist, market-maker, clearing, institutional, and arbitrage members) four members on October 19, 1987, six members on October 20, 1987, and seven member on October 21, 1987, would have had daily marks in excess of their clearing fund deposits. *See* Market Break Report, *supra* note 21, at 10–24.

[24] *See* Market Break Report, *supra* note 21, at 10–24 and 10–25.

[25] *Id.* Roundtable participants also discussed an earlier mark-to-the-market system to guard against increased clearing corporation exposure resulting from an earlier guarantee. Many broker-dealers believed that for customer-related activity, they would be forced to fund earlier marks themselves, because institutional customers generally settle on a cash-on-deliver basis and would be unwilling to, or legally restrained from, paying marks prior to settlement. Those brokers, however, believed they could fund non-cash marks by depositing letters of credit or valued securities with the clearing corporation. It was suggested that smaller broker-dealers could have difficulty even with non-cash marks. *See* Roundtable Report, *supra* note 20, at viii.

[26] For example, in the Market Break Study, the Division recommended that NSCC enhance its current risk monitoring system. As discussed above, NSCC monitors its member's guaranteed positions that have not reached settlement to assess its liquidation exposure. NSCC marks the member's open but unsettled positions to the closing prices of the previous day to determine the potential cost of liquidation to NSCC if that firm defaults. Previously, NSCC's monitoring system could not provide real-time estimates of liquidation cost (*i.e.*, it marked positions to yesterday's close but did not take into account today's price movements or, perhaps more importantly, potential price movements tomorrow). Thus, if current prices varied significantly from yesterday's close, NSCC did not have an accurate, up-to-the-minute cost of liquidation. NSCC is in the process of developing, implementing, and testing systems to provide those estimates.

Narrative Statement—Department of Transportation, Office of the Secretary, on Behalf of the United States Coast Guard for Alteration of the Claims and Litigation Program Record System DOT/CG–508

The Office of the Secretary, on behalf of the Coast Guard, proposes to amend the Claims and Litigation Record System, DOT/CG–508, to permit the use of collection agencies and the International Revenue Service (IRS) tax refund offset for indebtedness to the United States.

The purpose of this notice is to revise the system to reflect the reorganization and centralization of the claims and litigation function at three units in the Coast Guard and to authorize the use of this system by collection agencies and as part of the IRS tax refund offset program. These changes should improve the effectiveness of the affirmative actions for civil penalty collection.

The changes include amendment to:

a. System location. This was changed to reflect the three locations where claims and litigation files are maintained.

b. Categories of individuals. This was changed to clarify which individuals could expect to find records located in this system.

c. Routine uses. This was changed to permit use of records within this system by collection agencies that are hired by the government to collect delinquent debts and to permit the records to be used as part of the IRS tax refund offset program.

d. Storage, retrievability, accessing, retaining, safeguards. This was changed to reflect the increased use of computers and magnetic disks for record storage.

Since this proposal is an amendment to an existing record system, the probable effects of this proposal on the privacy interests of the general public is minimal.

Authority for maintenance of the system is contained in 5 U.S.C. 3301.

Access to these records is controlled by the supervising attorneys for the respective commands. As a result, the probable or potential effects of this proposal on the privacy of the general public is minimal. Any interest that an individual had would have been waived by the filing of the claim or lawsuit.

A description of the steps taken by the Department of Transportation to safeguard these records is given under the appropriate heading of the attached Federal Register system of records notice.

The purpose of this report is to comply with Office of Management and Budget Circular A–130 Appendix I, dated December 12, 1985.

Amendment—DOT/CG–508

System Location: Amended to reflect the centralization of the Coast Guard claims and litigation function as a result of the reorganization of the Coast Guard. This more accurately reflects the location of the records for the various types of activities.

Categories of individuals covered by the system: Amended to clarify by explicitly stating the categories of individuals who could expect to find a record within this system.

Categories of records in the system: Amended to clarify the nature of the records maintained.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Amended to reflect the use of the records for offset against tax refund, and referral to the collection agencies.

Storage, retrievability, accessing, retaining, safeguards: Amended to include the use of computer and magnetic disks and to conform to amended record retention guidelines.

Record source categories: Revised to more accurately reflect sources of information that are used.

DOT/CG 508

SYSTEM NAME: Claims and Litigation. DOT/CG.

SYSTEM LOCATION: Department of Transportation (DOT). Litigation records are primarily located at Coast Guard Headquarters. Claims records are located at Coast Guard Headquarters and at the two Maintenance and Logistics Commands.

a. Litigation:

United States Coast Guard (CG), Commandant (G–LCL), 2100 2nd Street, SW., Washington, DC 20593–0001

b. Claims:

United States Coast Guard (CG), Commandant (G–LCL), 2100 2nd Street, SW., Washington, DC 20593–0001

Commander, Maintenance and Logistics Command Atlantic (ml), Governors Island, Building 400, New York, New York 10004–5098

Commander, Maintenance and Logistics Command Pacific (ml), Coast Guard Island, Alameda, California 94501–5100

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: Persons who have filed a claim initiated litigation, or are the subject of an affirmative claim or litigation on behalf of the Coast Guard. Persons would include corporations, estates, insurance companies or other legal entities authorized by Federal law to file a claim or lawsuit against the United States or United States Coast Guard.

CATEGORIES OF RECORDS IN THE SYSTEM: Lawsuits and claims for and against the Coast Guard. Files may include all background information obtained in adjudicating or deciding the Coast Guard's position on the lawsuit or claim.

ROUTINE USES OF RECORDS IN THE SYSTEM including categories of users and the purposes of such uses:

a. Disclosures from this system may be made to Federal employees responsible for collecting debts owed the United States pursuant to 5 U.S.C. 5514, 31 U.S.C. 3716 and 37 U.S.C. 1007(c), including collection by means of referral to the IRS for deduction from tax refunds pursuant to 31 U.S.C. 3720a, or by means of withholding, revoking, suspending, or collecting by means of not renewing documents, licenses, loans or other privileges when authorized by law.

b. Disclosures from this system may be made to individuals, corporations, private counsel and other entities contracted by the United States to collect debts owed the United States pursuant to 31 U.S.C. 3718 and any other applicable statutes. The contracted collection agency, individual or counsel shall be subject to the Privacy Act.

c. Disclosures from this system may be made to other Federal, state and local agencies for assistance in resolving the claim or lawsuit.

d. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCY: Disclosures from this system may be made to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12). The Coast Guard may disclose to a consumer reporting to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and the program under which the claim arose. The Coast Guard may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(f). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE: Magnetic tape or disk, and file folders.

RETRIEVABILITY: Information is retrieved by individual name in alphabetical file or by taxpayer identification number.

SAFEGUARDS: Information available only to authorized personnel. Data processing access if by password. File folders retained in locked room when unattended.

RETENTION AND DISPOSAL: Record retained for one year at the responsible Coast Guard command and then forwarded to the Federal Records Center where they are destroyed 8 years after the final action on the lawsuit or claim. Card index files and magnetic tape and disk files retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS: Chief Counsel.

Department of Transportation, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001

NOTIFICATION PROCEDURE: Written request must be signed by the individual and be mailed to:

Department of Transportation, United States Coast Guard Headquarters, Commandant (G–TIS), 2100 2nd Street, SW., Washington, DC 20593–0001

RECORD ACCESS PROCEDURE: Procedures may be obtained by writing Commandant (G–TIS) at the address in "Notification Procedure" above. Proof of identity may be required prior to affording access to records.

CONTESTING RECORD PROCEDURE: Same as "Record Access Procedure."

RECORD SOURCE CATEGORIES:

a. Information obtained from Coast Guard military and civilian personnel, Coast Guard investigating officers, other law enforcement investigating officers, and members of the public.

b. Records from CG Privacy Act System DOT/CG 507.

[FR Doc. 89–20805 Filed 9–5–89; 8:45 am]

BILLING CODE 4910–62–17

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Executive Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. app. I), notice is hereby given for the Executive Committee meeting to be held September 29, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) approval of the minutes of meeting held July 21, RTCA Paper No. 276–89/EC–1034; (3) Executive Director's report; (4) Special Committee Activities Report for July-August; (5) approval of RTCA Operations and Special Budgets for 1990 and Operations Planning Budget for 1991; (6) consideration of proposals to establish new special committees; (7) consideration of approval of Special Committee 160 report, "Minimum Operational Performance Standards for 406 MHz Emergency Locator Transmitters (ELT)"; (8) consideration of approval of Special Committee 147 change 6 to RTCA/DO–185, "Minimum Operational Performance Standards for TCAS II"; (9) other business; and (10) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 28, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89–20654 Filed 9–5–89; 8:45 am]

BILLING CODE 4910–13–M

Airborne Area Navigation Equipment Using Multi-Sensor Inputs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C115a prescribes the minimum performance standards that airborne area navigation equipment using mulit-sensor inputs must be identified with the marking "TSO–C115a."

DATE: Comments must identify the TSO file number and be received on or before December 15, 1989.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division Aircraft Certification Service—File No. TSO–C115a. Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

OR DELIVER COMMENTS TO: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

Changes incorporated in proposed TSO–C115a are to establish consistence criteria with later navigation equipment standards. TSO–C115 was first in a series of navigation equipment TSO's issued. Changes include new paragraphs addressing Holding Pattern Maneuvering, Automatic Scanning of Sensor, and Sensor Ground Facilities.

How To Obtain Copies

A copy of the proposed TSO–C115a may be obtained by contacting the person under "**FOR FURTHER INFORMATION CONTACT**". TSO–C115a references Radio Technical Commission for Aeronautics Secretariat (RTCA) Document No. DO–187, dated November 13, 1987, for minimum performance standards, RTCA.CO–160B for the environmental standard, and TRCA/DO–178A for the computer software requirements; RTCA documents may be purchased from the Radio Technical Comission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

Sunshine Act Meetings

Federal Register

Issued in Washington, DC, on August 28, 1989.

John K. McGrath,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89–20855 Filed 9–5–89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 89–84]

Approval of Unimar, Inc. as a Commercial Gauger

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Approval of Unimar, Incorporated as a commercial gauger.

SUMMARY: Unimar Incorporated of Houston, Texas recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals, and vegetable and animal oils under § 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Unimar meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with § 151.13(f) of the Customs Regulations, Unimar, Incorporated, 14511 Woodforest Boulevard, Houston, Texas 77015, is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–2446).

Dated: August 30, 1989.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Service.

[FR Doc. 89–20900 Filed 9–5–89; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 171
Wednesday, September 6, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, September 19, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Review

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 89–21058 Filed 9–1–89; 3:00 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, September 19, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 89–21059 Filed 9–1–89; 3:00 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, September 26, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Amex Commodities Corporation 10 Year Treasury Note Futures
Minneapolis Grain Exchange Hard Red Spring Wheat Options

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 89–21060 Filed 9–1–89; 3:00 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, September 26, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Review

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 89–21061 Filed 9–1–89; 3:00 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, September 26, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 89–21062 Filed 9–1–89; 3:00 pm]

BILLING CODE 6351-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE–89–31

TIME AND DATE: Monday, September 11, 1989 at 2:00 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
   Certain Polymer Geogrid Products and Processes Therefor (Docket No. 1520).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252–1000.

Dated: August 30, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–21018 Filed 9–1–89; 12:52 pm]

BILLING CODE 7020-02-M

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

TIME AND DATE: Immediately following a 9:30 a.m. case-adjudicatory meeting, Friday, September 8, 1989.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS CONSIDERED:

Personnel matters

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254–9430.

Dated, Washington, DC, September 1, 1989.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 89–21077 Filed 9–1–89; 3:42 pm]

BILLING CODE 7445-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 4, 11, 18, and 25, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 4

There are no meetings scheduled for the Week of September 4.

Week of September 11—Tentative

Monday, September 11

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, September 14

10:00 a.m.
Briefing on Status of NRC Technical Training Programs (Public Meeting)

Friday, September 15

9:00 a.m.
Briefing on Status of Maintenance Initiatives and Schedule (Public Meeting)

Week of September 18—Tentative

Wednesday, September 20

10:00 a.m.
Briefing on EPRI Design Requirements Document for Advanced Light Water Reactors (Public Meeting)

Thursday, September 21

10:00 a.m.
Briefing on Study of Adequacy of Regulatory Oversight of Materials Under a General License (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 25—Tentative

There are no meetings scheduled for the Week of September 25.

ADDITIONAL INFORMATION: By a vote of 4–0 on August 25, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Immediate Effectiveness Review for Full Power Licensing of Limerick, Unit 2" (Public Meeting) held on August 25, be held on less than one week's notice to public.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: August 31, 1989.

William M. Hill, Jr.,
Office of the Secretary.

[FR Doc. 89–21063 Filed 9–1–89; 3:01 pm]

BILLING CODE 7590-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

By telephone and written vote, a majority of the members contracted and voting, the Board of Governors voted to add two items to the agenda for the meeting closed to public observation on September 11, 1989, in Washington, DC. The two items are: (1) Consideration of a proposed filing with the Postal Rate Commission for postal service changes and (2) a capital investment for new facilities at Dulles Airport in northern Virginia. [See 54 FR 36094, August 31, 1989, for prior Notice regarding time and place of this meeting.]

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Mackie, Nevin, Ryan and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Cox.

As to the first item, the Board determined that, pursuant to section 552b(c)(3) and (10) of Title 5, United States Code, and section 7.3(c) and (j) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under chapter 36 of Title 39 [having to do with postal ratemaking, mail classification and changes in postal services], which is specifically exempted from disclosure by section 410(c) (4) of Title 39, United States Code.

As to the second item, the Board determined that, pursuant to section 552b(c)(9)(B), of title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information, the prematrure disclosure of which would likely significantly frustrate implementation of a proposed procurement action.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(3), (9)(B) and (10) of Title 5 and section 410(c)(4) of Title 39, United States Code, and section 7.3(c), (i) and (j) of Title 39, Code of Federal Regulations.

Request for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

David F. Harris,
Secretary.

Paul J. Kemp,
Certifying officer.

[FR Doc. 89–21017 Filed 9–1–89; 12:52 pm

BILLING CODE 7710-12-M

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federal register

Wednesday
September 6, 1989

Part II

Environmental Protection Agency

48 CFR Parts 1529 and 1552

Acquisition Regulation; Clarification of Cost-Reimbursable Type Contracts for Determining the Availability of State and Local Tax Exemptions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1529 and 1552

[FRL-3570-6]

Acquisition Regulation; Clarification of Cost-Reimbursable Type Contracts for Determining the Availability of State and Local Tax Exemptions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the Environmental Protection Agency (EPA) Acquisition Regulation (EPAAR) to clarify Contractor responsibility under cost-reimbursable type contracts for determining the availability of State and local tax exemptions and obtaining such exemptions, when available. The action is necessary to ensure Contractors do not unnecessarily pay State and local taxes for which an exemption is available. This action places the responsibility for determining the availability of an exemption on Contractors.

DATE: Written comments should be submitted not later than October 6, 1989.

ADDRESS: Comments should be addressed to Environmental Protection Agency, Procurement and Contracts Management Division (PM-214F), 401 M Street SW., Washington, DC 20460, attn: Joseph Nemargut, Jr.

FOR FURTHER INFORMATION CONTACT: Joseph Nemargut, Jr. at (202) 475-8176 (FTS 475-8176).

SUPPLEMENTARY INFORMATION:

A. Background

Under cost-reimbursable type contracts, the Environmental Protection Agency (EPA) may authorize a contractor to purchase equipment needed in performance of a contract. Generally in such cases, title to the equipment vests immediately in the EPA. State and local governments may offer contractors and subcontractors exemptions from the payment of State and local taxes, such as a State sales tax on such purchases. The availability of such exemptions depends upon the particular State or local law involved.

This rule places responsibility on contractors to determine the availability of State and local tax exemptions and obtain such exemptions, when available. Under the Federal Acquisition Regulation, the EPA may not reimburse Contractors and subcontractors for payment of State and local taxes for which exemptions were available.

B. Executive Order 12291

OMB Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements, which would require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Regulatory Flexibility Act

The EPA certifies this rule does not exert a significant economic impact on a substantial number of small entities. The rule merely clarifies contractor responsibility for determining the availability of State and local tax exemptions, and obtaining such exemptions, when available. Reimbursement for payment of State and local taxes for which exemptions are available is already prohibited under the Federal Acquisition Regulation, regardless of the size of the entity.

List of Subjects in 48 CFR Parts 1529 and 1552

Government procurement, Taxes, Solicitation provisions and Contract clauses.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is proposed to be amended as set forth below.

1. Part 1529 is added to 48 CFR Chapter 15 to read as follows:

PART 1529—TAXES

Subpart 1529.3—State and Local Taxes

1529.303 Application of State and local taxes to Government contractors and subcontractors.

Subpart 1529.4—Contract Clauses

1529.401 Domestic contracts.

1529.401-70 Cost-reimbursable type contracts.

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1529.3—State and Local Taxes

1529.303 Application of State and local taxes to Government contractors and subcontractors.

Contractors are responsible for determining the availability of State and local tax exemptions and obtaining such exemptions, if available, unless the Contracting Officer determines under FAR 31.205-41(b)(3) that the administrative burden outweighs the corresponding benefit. Contractors are responsible for ensuring that subcontractors also seek and obtain such exemptions, if available.

Subpart 1529.4—Contract Clauses

1529.401 Domestic contracts.

1529.401-70 Cost-reimbursable type contracts.

Contracting Officers shall insert the clause at 1552.229-70 in all solicitations and contracts when it is anticipated a cost-reimbursable type contract shall be used or a contractor or subcontractor shall be reimbursed for materials at cost.

PART 1552—[AMENDED]

2. The authority citation for Part 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

3. Part 1552 is amended by adding section 1552.229-70 to read as follows:

1552.229-70 State and local taxes.

As prescribed in 1529.401-70, insert the following clause:

State and Local Taxes (Sep 1989)

In accordance with FAR 29.303 and FAR 31.205-41, the Contractor or any subcontractor under this contract shall not be reimbursed for payment of any State and local taxes for which an exemption is available. The Contractor is responsible for determining the availability of State and local tax exemptions and obtaining such exemptions, if available. The Contractor shall include this clause, suitably modified to identify the parties, in all subcontracts at any tier. The Contractor shall notify the Contracting Officer if problems arise in obtaining State and local tax exemption. The contractor may seek a waiver by the Contracting Officer from this requirement if the administrative burden of seeking an exemption appears to outweigh the potential savings to the Government.

(End of Clause)

Dated: August 7, 1989.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 89-20763 Filed 9-5-89; 8:45 am]

BILLING CODE [illegible]

federal register

Wednesday
September 6, 1989

Part III

Department of Transportation

Coast Guard

33 CFR Part 151 and 46 CFR Part 25
Prevention of Pollution From Ships; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

46 CFR Part 25

[CGD 88-002A]

RIN: 2115-AC89

Prevention of Pollution From Ships

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to require that all manned, oceangoing, U.S. ships 79 feet or more in length engaged in commerce keep records of garbage discharges. The Coast Guard is also proposing to require that all manned oceangoing U.S. ships 40 feet or more in length engaged in commerce, or equipped with galleys and berths, maintain waste management plans. Finally, the Coast Guard is proposing that all U.S. ships 26 feet or more in length prominently post informational placards for crew and passengers. The term "ship" includes fixed and floating platforms and recreational vessels. The proposed regulations would implement requirements of the "Act to Prevent Pollution from Ships," as amended. If these proposals are adopted it will facilitate compliance with the Act and reduce the amount of plastics, including synthetic fishing nets, and other ship generated garbage discharged into the marine environment.

DATES: Comments must be submitted on or before November 6, 1989.

ADDRESSES: 1. Written comments should be submitted to the Executive Secretary, Marine Safety Council (G-LRA-2/3600), U.S. Coast Guard Headquarters, Room 3600, 2100 Second Street, SW., Washington, DC, 20593-0001. Attention: CGD 88-002A. A draft Regulatory Evaluation and Environmental Assessment are available for inspection and copying at the same address. Normal office hours are between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

2. Persons desiring to comment on the information collection requirements in the proposed rules should submit their comments to: Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, Attention: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Carl A. Crampton, Project Manager, Office of Marine Safety, Security and Environmental Protection (G-MPS-3), (202) 267-0491, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: For the convenience of the reader, the supplementary information explaining this rulemaking is organized as indicated below:

I. Background
II. Regulatory Approach
III. Regulatory Evaluation and Environmental Impact.

Drafting Information

The principal persons involved in drafting this notice are: Lieutenant Commander Carl A. Crampton, Project Manager, Office of Marine Safety, Security and Environmental Protection and Mr. Stanley Colby, Project Counsel, Office of Chief Counsel.

I. Background

The Act to Prevent Pollution from Ships (33 U S.C. 1901 *et seq.*), hereafter referred to as the Act, requires the Secretary of the Department in which the Coast Guard is operating to administer and enforce the various Annexes of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), done at London on February 17, 1978. Annex V of MARPOL 73/78 is entitled "Regulations for the Prevention of Pollution by Garbage from Ships" and its purpose is to reduce the discharge of ship-generated garbage into the marine environment. A particular focus of Annex V is to prevent the discharge of plastics, including synthetic fishing nets, and other debris which persist in the marine environment. The President signed Pub. L. 100-220, including Title II, known as the the "Marine Plastic Pollution Research and Control Act of 1987" (MPPRCA) on December 29, 1987 which provides the authority to implement the requirements of Annex V of MARPOL 73/78. Annex V and the Act became effective December 31, 1988.

The Coast Guard published an interim rule in the **Federal Register** of April 28, 1989 (54 FR 18384) to implement the requirements of Annex V of MARPOL 73/78 and the Act which concern the actual disposal of plastics and other garbage. In that interim rule, 33 CFR 151.55, 151.57, and 151.59 were reserved for a subsequent rulemaking to implement the recordkeeping and informational requirements of section 2107(b) of title II by specifying which ships must develop waste management plans, maintain records of garbage discharges, or post informational placards for the crew and passengers. This notice proposes regulations to implement these requirements for U.S. ships. In developing the interim regulations published on April 28, 1989, the Coast Guard received comments from government, industry and private environmental organizations as to how the Coast Guard should implement these record keeping and informational requirements. Those comments, along with data extracted from the economic and environmental evaluations conducted for the interim rule were used to develop these proposed rules.

II. Regulatory Approach

The proposed regulations would provide the text to be inserted in the reserved sections in 33 CFR part 151, and revise 46 CFR part 25. The proposal uses terms that are currently defined in title 33, Code of Federal Regulations, § 151.05. Some of the more important definitions are repeated here as an aid to understanding this proposal.

Ship means a vessel of any type whatsoever, operating in the marine environment. This includes hydrofoils, air-cushion vehicles, submersibles, floating craft whether self-propelled or not, and fixed or floating drilling rigs and other platforms.

Oceangoing ship means a ship that—

(1) Is operated under the authority of the United States and engages in international voyages;

(2) Is operated under the authority of the United States and is certificated for ocean service;

(3) Is operated under the authority of the United States and is certificated for coastwise service beyond three miles from land;

(4) Is operated under the authority of the United States and operates at any time seaward of the outermost boundary of the territorial sea of the United States as defined in 33 CFR 2.05; or

(5) Is operated under the authority of a country other than the United States.

It should be noted that a Canadian or U.S. ship being operated exclusively on the Great Lakes of North America or their connecting and tributary waters, or exclusively on the internal waters of the United States and Canada is not an oceangoing ship.

Person means an individual, firm, public or private corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

The proposed regulations would apply only to U.S. ships because the Act requires the Coast Guard to prescribe regulations implementing refuse record books, waste management plans and placards applicable to ships of U.S. registry, nationality, or operating under the authority of the United States. The proposed regulations apply primarily to oceangoing ships because garbage discharge within U.S. navigable waters has long been prohibited. In addition, vessels operating within 3 miles of the coast have frequent opportunity to discharge their garbage to facilities ashore. Oceangoing vessels also have greater chance for undetected illegal garbage discharge. Finally, regulating all ships would create a large and unnecessary burden on the public.

In drafting these proposed rules, the Coast Guard considered the sources and amounts of garbage produced by different categories of vessels. The consideration revealed that although a specific category of vessel can produce a great deal of garbage, the amount of garbage discharged by an individual vessel in that category may be low. These proposed rules establish a scaled approach providing lesser requirements for vessels creating smaller amounts of garbage per ship, while providing greater requirements for those vessels that produce greater amounts of garbage per ship, particularly those that may be operating in areas where indiscriminate discharge overboard could be a temptation. The Coast Guard selected categories of ships for the proposed requirements based on the estimated amount of garbage produced per ship, and the area in which the ship operates.

Section 151.55 proposes the use of a Refuse Record Book because the Coast Guard believes that manned U.S. oceangoing ships 79 feet or more in length engaged in commerce are likely to generate and discharge garbage in areas where there is little outside incentive to comply with the regulations concerning the disposal of garbage. These ships would be required to maintain the Record Book in conformance with the instructions contained in the book. Initially, the Record Books would be issued by local Coast Guard Marine Safety Offices. Following that initial issue the Record Books would be purchased from the Government Printing Office for a nominal fee. The proposed regulations would require that the Record Books be returned to the Coast Guard within 30 days of the first anniversary of the initial entry, when all space for entries has been used, when the ship changes owners, or when the ship is no longer required to keep a Record Book. The Coast Guard expects to use the books as an enforcement tool and as research material for evaluation of this regulatory program and its effect on the environment.

Proposed § 151.57 would require that all manned oceangoing U.S. ships 40 feet or more in length, engaged in commerce or equipped with galleys and berths, prepare waste management plans. The Coast Guard believes these vessels would create significant amounts of garbage per ship because they are large enough to operate in the marine environment for periods that might promote garbage discharge overboard and discourage retention aboard for land disposal. These vessels could also operate in areas where there is little outside incentive to comply with the regulations concerning the disposal of garbage. Written waste management plans would ensure that personnel responsible for the handling of ship generated garbage are aware of the garbage pollution regulations and ensure that a consistent procedure is identified for the handling of garbage aboard the ship. This is particularly desirable for commercial vessels that may have frequent crew changes.

Proposed § 151.57 would require that all U.S. vessels 26 feet in length or more post placards in a prominent location on the vessel as a reminder of the restrictions on garbage disposal and the penalties for non-compliance. Although the additional vessels covered by this section have the capacity to create large amounts of garbage as a group, without galleys and overnight accommodations there is less likelihood for extended voyages requiring the identification of procedures for the retention of garbage aboard. A simple reminder should be sufficient to prevent all but willful violations.

III. Regulatory Evaluation and Environmental Assessment

Regulatory Evaluation

The Coast Guard considers these regulations to be non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) and non-major under Executive Order 12291. A draft regulatory evaluation has been prepared and placed in the rulemaking docket. Copies of the evaluation may be inspected or copied at the address indicated in the first paragraph of ADDRESSES above.

The Coast Guard determined the implementation costs of these regulations by considering vessel types: passenger vessels, towing vessels, merchant vessels, fishing vessels, recreational vessels, vessels engaged in offshore oil and gas operations, research and other miscellaneous classes of vessels. The costs for each of the actions proposed by these regulations were calculated for each vessel type. The costs for each action were then multiplied by the estimated number of each vessel type that would be subject to the proposed regulations. The total annual projected costs are approximately $7.2 million. This burden is apportioned among the vessel types as follows: Merchant shipping, $0.16 million; passenger vessels, $3.4 million; towing vessels, $.027 million; fishing vessels, $1.08 million; recreational boating, $.87 million; vessels engaged in offshore oil and gas operations including manned fixed and floating platforms, $1.6 million; research and other miscellaneous classes of vessels, $.069 million. The primary difference in these costs is due to the population of vessels subject to the requirements.

Quantifiable and environmental benefits for the proposed regulations are similar to those benefits estimated for the interim rule. The Coast Guard believes that it is impossible to separate benefits deriving from this proposed rulemaking from benefits that were enumerated in the interim rule. Therefore, the potential net benefits of these proposed regulations are estimated to be positive.

Environmental Impact

The proposed regulations have been thoroughly reviewed by the Coast Guard and have been determined to be categorically excluded from further environmental documentation as provided for in 10 CFR 51.22(c)(3). Therefore, neither an Environmental Assessment or Environmental Impact Statement has been prepared for this Interim Rule. A Categorical Exclusion Determination has been made for these regulations and may be inspected or copied at the address indicated in the first paragraph of ADDRESSES above. The regulations are expected to have a positive but not significant environmental impact, as defined in the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*). The regulations are expected to contribute to the reduction of the occurrence of plastic as well as other ship-generated garbage in the marine environment. Since the placarding requirement will remind persons of their responsibilities under the law, and the amounts and locations of discharge of significant quantities of garbage will be recorded, the Coast Guard feels that there can be no negative environmental impact and there will be a beneficial effect, even if not quantifiable.

Regulatory Flexibility Act

A regulatory flexibility analysis was conducted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) to evaluate the impact of the rule on small entities and it has been made part of the Draft Regulatory Evaluation. The Coast Guard is proposing to adopt the definition of "small business" used when the Small Business Administration is considering loans to concerns engaging in marine transportation (13 CFR 121.2 Table 2) as a definition for small entities. A concern is considered small, under this definition, if its annual receipts do not exceed $3.5 million.

The Coast Guard does not have accurate information on how many vessels would qualify as small entities. However, the Coast Guard estimates that this will affect 2,200 miscellaneous U.S. flag vessels of less than 1,000 gross tons, 14,800 fishing vessels, and 600 vessels engaged in offshore oil and gas operations that would be considered as small entities.

These regulations contain reporting or recordkeeping requirements for small entities. Most vessels which are small entities would have to comply with the requirements for placards and waste management plans but would be exempt from the requirement for Record Books. Based on a calculation that the annualized compliance costs would be less than 1.5 percent of net income or operational costs for representative entities, the Coast Guard certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations will establish information collection requirements at 33 CFR 151.55 and 33 CFR 151.57. Revisions to existing OMB paperwork approvals, which have been assigned RCS/OMB Control Numbers 2115–0025 and 2115–0120 respectively, have been submitted to the Office of Management and Budget (OMB) for this Notice of Proposed Rulemaking. Persons desiring to comment on this information collection requirement should submit their comments to the Office of Management and Budget at the address listed in the second paragraph of ADDRESSES above. It is requested that a copy of these comments also be submitted to the Coast Guard at the address shown in the first paragraph of ADDRESSES above.

Federalism Statement

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rules do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Regulatory Information Number (RIN)

A regulatory information number has been assigned to this regulatory action and it is listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center (RISC) publishes the Unified Agenda in April and October of each year. The RIN number listed at the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

In consideration of the preceding, it is proposed to amend part 151 of title 33, Code of Federal Regulations, as follows:

PART 151—[AMENDED]

1. The authority citation for subpart A of part 151 continues to read as follows;

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

2. By amending § 151.05 by adding the definition for the term "Act" in the proper alphabetical sequence to read as follows:

§ 151.05 Definitions.

* * * * *

"Act" means the Act to Prevent Pollution from Ships, as amended (33 U.S.C. 1901, *et seq.*).

* * * * *

3. By adding § 151.55 to read as follows:

§ 151.55 Recordkeeping requirements.

(a) This section applies to each manned oceangoing ship 79 feet or more in length engaged in commerce that is documented under the laws of the United States or numbered by a state, and to each manned fixed or floating platform subject to the jurisdiction of the United States

(b) Each person who is in charge of a vessel described in paragraph (a) shall ensure that a Coast Guard Refuse Record Book, available for purchase from the Government Printing Office is—

(1) Maintained on board the ship;

(2) Completed in accordance with the instructions in the Refuse Record Book each time garbage is—

(i) Discharged overboard in accordance of this part;

(ii) Discharged overboard in accordance with the emergency provisions of this part;

(iii) Discharged overboard for some other reason;

(iv) Discharged to another vessel;

(v) Discharged to a reception facility in a port or terminal; or

(vi) Incinerated on board the vessel; and

(3) Returned to the Commandant (G–MPS), U.S. Coast Guard, 2100 2nd Street SW., Washington, DC 20593–0001 within 30 days of—

(i) The first anniversary date of the initial entry;

(ii) The date all space for entries has been used;

(iii) The date the ship on which the Record Book is being used changes owners; or

(iv) The date the ship is no longer required to keep a Record Book.

4. By adding § 151.57 to read as follows:

§ 151.57 Waste management plans.

(a) This section applies to each manned oceangoing ship 40 feet or more in length that is documented under the laws of the United States or numbered by a state, engaged in commerce or equipped with a galley and berthing, and to each manned fixed or floating platform subject to the jurisdiction of the United States.

(b) Each person in charge of a ship described in paragraph (a) shall ensure that it does not operate unless a written waste management plan meeting paragraph (c) of this section is on board the ship and that each person handling garbage follows the plan.

(c) Each waste management plan required under paragraph (a) of this section must—

(1) Provide for the discharge of garbage by means that meet Annex V of MARPOL 73/78, the Act, and this subpart;

(2) Describe procedures for collecting processing, storing, and discharging the vessel's garbage; and

(3) Designate the person who is in charge of the ship.

5. By adding § 151.59 to read as follows:

§ 151.59 Placards.

(a) Each person who is in charge of a U.S. ship under this part, that is 26 feet in length or more, shall display in a prominent location so that passengers and crew can read its message, a placard that—

(1) Is at least 9 inches wide by 4 inches high with lettering no smaller than ⅛ of an inch in height;

(2) Is made of a durable material; and

(3) Notifies passengers and crew that the—

(i) Discharge of any plastic into any waters is prohibited;

(ii) Discharge of all garbage is prohibited within 3 miles from the seacoast and in the navigable waters of the U.S.;

(iii) Discharge of dunnage, lining, and packing materials that float is prohibited within 25 miles of the seacoast;

(iv) Other garbage may be discharged beyond 12 nautical miles from the seacoast;

(v) Other garbage ground to less than 1 inch may be discharged beyond 3 nautical miles from the seacoast;

(vi) Violation of these requirements may result in civil penalty of up to $25,000, fine and imprisonment.

List of Subjects in 46 CFR Part 25

Fire prevention, Marine safety.

It is proposed to amend chapter I of title 46, Code of Federal Regulations as follows:

PART 25—[AMENDED]

6. The authority citation to part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b), 46 U.S.C. 3306, 4104, and 4302; 49 CFR 1.46.

7. By revising § 25.20–1 to read as follows:

§ 25.20–1 Criteria.

Each uninspected vessel must meet the garbage discharge, record keeping, waste management plan, and placard requirements of 33 CFR part 151.

Note: The Act to Prevent Pollution from Ships, as amended (33 U.S.C. 1901–1911) (the Act), prohibits the discharge of all plastics from vessels, limits discharges of other types of garbage in U.S. waters, and requires certain U.S. vessels to maintain a garbage record book, to operate under a waste management plan, and to have placards outlining provisions of the Act. See 33 CFR 151.05 for definition of "plastic" and "garbage" and 33 CFR 151.55, 151.57, and 151.59 for the record keeping, waste management plan, and placard requirements.

Dated: August 11, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–20816 Filed 9–5–89; 8:45 am]

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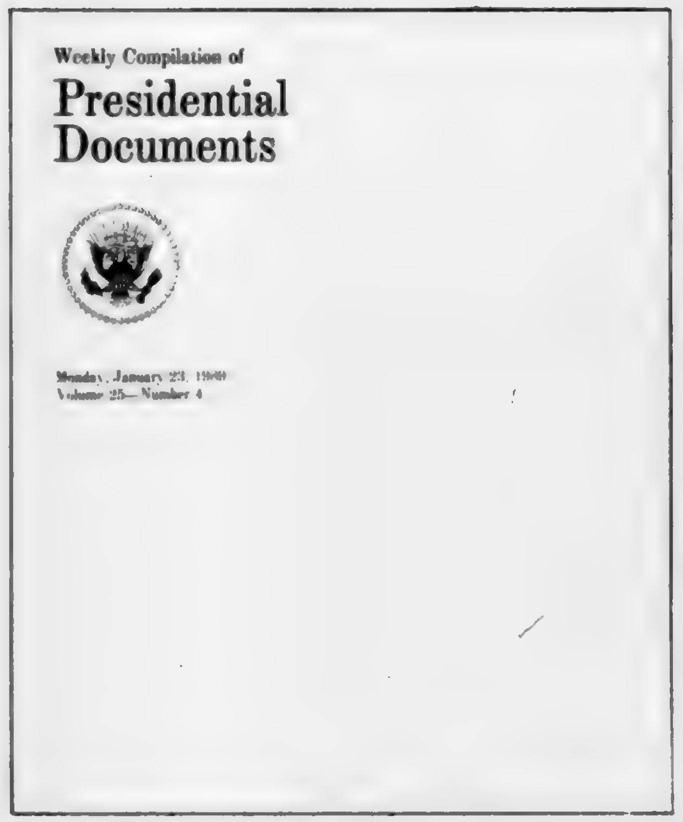

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Thursday
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Presidential Documents

Title 3—

The President

Presidential Determination No. 89-25 of August 28, 1989

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State, the Secretary of the Treasury

Under Section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a determination made by former President Reagan on September 8, 1988 (53 FR 35289), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 1989.

I hereby determine that the extension for one year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

Therefore, pursuant to the authority vested in me by Section 101(b) of Public Law 95–223, I extend for one year, until September 14, 1990, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 CFR Part 500;

(2) the Transaction Control Regulations, 31 CFR Part 505;

(3) the Cuban Assets Control Regulations, 31 CFR Part 515; and

(4) the Foreign Funds Control Regulations, 31 CFR Part 520.

The Secretary of the Treasury is directed to publish this Determination in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, August 28, 1989.

[FR Doc. 89-21200
Filed 9-5-89; 2:27 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register

Rules and Regulations

Federal Register
Vol. 54, No. 172
Thursday, September 7, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 302

Procedures for Selecting Candidates for Appointment in the Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting as final its interim regulations governing procedures used to select candidates for appointments in the excepted service to clarify the rights of applicants entitled to 10-point veterans preference when numerical scores are not assigned. The regulations require that applicants entitled to 10 point preference on a basis other than compensable disability will be referred after compensably disabled 10-point preference eligibles but before applicants entitled to 5-point veterans preference.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6817.

SUPPLEMENTARY INFORMATION: On May 9, 1989 (54 FR 19869), OPM issued interim regulations revising final regulations issued September 13, 1988 (53 FR 35291), which permitted agencies to refer candidates for excepted appointments in order of veterans preference without other ranking. Under the unranked referral procedures, applicants eligible for 10-point veterans preference based on a compensable service-connected disability of 10 percent or more were to be referred first (unless the position is a scientific or professional one at grade GS-9 or above), followed by other veteran preference eligibles and, last, by applicants not eligible for veterans preference.

The interim regulations revised this order by providing for applicants entitled to 10-point veterans preference under 5 U.S.C. 2108(3)(D) through (G) to be referred in a separate category following compensably disabled veterans entitled to 10-point preference under 5 U.S.C. 2108(3)(C), but ahead of eligibles entitled to 5-point preference under 5 U.S.C. 2108(3) (A) and (B). Selections must be made from the highest available preference category as long as at least three candidates remain in that category. This revision ensures that eligibles in each preference category receive the full preference provided by law.

We received no comments on the interim regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation affects only the procedures used to appoint certain Federal employees.

List of Subjects in 5 CFR Part 302

Administrative practice and procedures, Government employees.

Office of Personnel Management.
Constance Berry Newman,
Director.

PART 302—[AMENDED]

Accordingly, OPM is adopting its interim rule amending 5 CFR part 302 published in the **Federal Register** (54 FR 19869, May 9, 1989) as a final rule without change.

(Authority: 5 U.S.C. 1302, 3301, 3302, 8151; E.O. 10577 (3 CFR 1954–1958, Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 et seq.)

[FR Doc. 89-21036 Filed 9-6-89; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 315

Noncompetitive Appointments of Former Incumbents of Positions Brought into the Competitive Service; Technical Amendment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations permitting noncompetitive appointment based on former incumbency of a position brought into the competitive service to cover former employees entitled to restoration following a compensable injury. Currently, the regulations refer only to former employees entitled to restoration following active military service.

EFFECTIVE DATE: September 7, 1989.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 632-6817.

SUPPLEMENTARY INFORMATION: By law (5 U.S.C. 8151(b)(1)), an employee who is found by the Department of Labor to be fully recovered from a compensable on-the-job injury or disability within 1 year after the date compensation begins, or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States, is entitled to be restored to his or her former position, or an equivalent position, and to receive all attendant rights which he or she would have acquired in the former position but for the injury. OPM has issued regulations implementing this statutory entitlement for employees in both the competitive and the excepted service. It has come to our attention, however, that the langauge of the part 315 regulations would not clearly cover an eligible employee whose position was brought into the competitive service while the employee was off the rolls as a result of a compensable injury.

When positions are brought from the excepted into the competitive service, employees occupying those positions under nontemporary appointment may be retained and converted to career or career-conditional appointments. Since an employee restored under 5 U.S.C. 8151 is entitled to acquire the tenure he or she would have gained by remaining on the job, such an employee whose position has been brought into the competitive service is entitled to be restored in a competitive appointment. However, the applicable regulations in 5 CFR part 353 provide for restoration in a position of like status to that previously held. While this language, together with the language of the law, could be read as permitting restoration in a competitive appointment when the status of the position itself has changed, the existing part 315 regulation does not provide explicit authority for the noncompetitive appointment of an employee whose previous service was under excepted appointments. To provide such explicit authority, OPM is amending the regulation which permits noncompetitive appointment based on former incumbency of a position brought into the competitive service to afford the same benefit to persons entitled to restoration following compensable injury as is already afforded to those entitled to restoration following military duty.

OPM is also amending § 315.607, which authorizes noncompetitive appointment of present and former Peace Corps personnel, to remove a duplicate paragraph.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making the amendment effective in less than 30 days. The regulations reflect a statutory entitlement that is already in effect.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation affects only the procedures used to appoint certain Federal employees.

List of Subjects in 5 CFR Part 315

Administrative practice and procedures, Government employees.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR Part 315 as follows:

PART 315—[AMENDED]

1. The authority citation for Part 315 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; §§ 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652; §§ 315.602 and 315.604 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 315.603 also issued under 5 U.S.C. 8151, Pub. L. 93–416; § 315.605 also issued under E.O. 12034, 43 FR 1917, Jan. 13, 1978; § 315.606 also issued under E.O. 11219, 3 CFR 1964–1965 Comp., p. 303; § 315.607 also issued under 22 U.S.C. 2506, 93 Stat. 371, E.O. 12137, 22 U.S.C. 2506, 94 Stat. 2158; § 315.608 also issued under E.O. 12362, 47 FR 21231; § 315.610 also issued under 5 U.S.C. 3304(d), Pub. L. 99–586; § 315.710 also issued under E.O. 12596, 52 FR 17537; Subpart I also issued under 5 U.S.C. 3321, E.O. 12107.

2. Section 315.603 is amended by adding a new paragraph (a)(3) to read as follows:

§ 315.603 Appointment based on former incumbency of a position brought into the competitive service.

(a) * * *

(3) *Employee recovered from compensable injury.* An agency may appoint a former incumbent of a permanent excepted position who was serving under an appointment not limited to 1 year or less, when the position has been brought into the competitive service *and* when:

(i) The employee is entitled to restoration based on recovery from compensable injury in accordance with 5 U.S.C. 8151 and part 353;

(ii) The employee's position was brought into the competitive service either before the employee's separation for compensable injury or during his or her period of statutory restoration rights following such injury, and the employee's separation for compensable injury occurred before the end of the time limits set forth in § 315.701(c);

(iii) the agency initiates the appointment within 6 months after cessation of compensation; and

(iv) The employee performed 6 months of statisfactory service immediately before the date his or her position was brought into the competitive service in the civilian executive branch of the Government, unless OPM has excepted his or her particular type of case from this requirement by a provision of the Federal Personnel Manual.

§ 315.603 [Amended]

3. Section 315.603 is amended by revising paragraph (d)(2) to read as follows:

(d) * * *

(2) A person appointed under paragraph (a)(2) or (a)(3) of this section acquires a competitive status automatically on completion of probation.

§ 315.607 [Amended]

4. Section 315.607 is amended by removing paragraph (b)(3).

[FR Doc. 89–21037 filed 9–6–89; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Parts 872 and 873

RIN 3206–AD75

Additional Optional Life Insurance and Family Optional Life Insurance under FEGLI

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting as final its interim regulations issued on April 5, 1989, concerning the Federal Employees' Group Life Insurance (FEGLI) Program. The interim regulations: (1) Eliminated a requirement to be under age 36 to cancel a declination of additional optional life insurance; (2) clarified to whom benefits shall be paid on family optional insurance when an employee predeceases a covered family member and the family member dies within 31 days after the death of the insured; and (3) eliminated a requirement to be in a pay and duty status for the cancellation of a declination of family optional insurance to become effective.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Bill Smith, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On April 5, 1989, OPM published interim regulations in the **Federal Register** (54 FR 13665) implementing the three changes noted above. OPM received two comments from interested parties, one from an employee organization and one from an individual. The employee organization supported the changes. The individual respondent recommended that employees who missed out on the opportunity to obtain additional coverage due to the age restriction be afforded a one time opportunity to enroll for a 60 day period after the final regulations are published. The 60 day period would allow employees who have acquired a spouse or children since the last FEGLI open season an opportunity to enroll. This recommendation can not be adopted. Unless there are legislatively-imposed effective dates, regulatory provisions are effective prospectively. In making this change, OPM recognized the need to put it into effect at the earliest possible date, and accomplished that end by publishing these changes as interim

rules effective immediately upon publication (i.e., April 5, 1989).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees and their family members.

List of Subjects in 5 CFR Parts 872 and 873

Administrative practice and procedure, Government employees, Life insurance.

Office of Personnel Management.

Constance B. Newman,

Director.

PARTS 872 and 873—[AMENDED]

1. The authority citation for Parts 872 and 873 continues to read as follows:

Authority: 5 U.S.C. 8716.

2. The interim regulations amending 5 CFR 872.205, 873.102 and 873.205, that were published at 54 FR 13665 on April 5, 1989, are adopted as final rules without change.

[FR Doc. 89–21038 Filed 9–6–89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

Guaranteed Farmer Program Loan

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule, correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule published January 13, 1989 (54 FR 1534) involving subpart B of part 1980 of its regulations. The title of Attachment 2 of Exhibit A to subpart B of part 1980 was included in the final rule but not the designation as Attachment 2. Attachment 3 of Exhibit A to subpart B of part 1980 was inadvertently omitted in the final rule. The intended effect of this action is to correct this error.

EFFECTIVE DATE: September 7, 1989.

FOR FURTHER INFORMATION CONTACT: Ann B. Dill, Guaranteed Loan Making Branch, Farmers Home Administration, USDA, Room 5440, Washington, DC 20250. Telephone: (202) 382–1186.

SUPPLEMENTARY INFORMATION: On January 13, 1989, FmHA published a final rule to implement changes to its guaranteed farmer program loan regulations necessary to implement the Agricultural Credit Act of 1987. Subpart B of part 1980 was republished in its entirety. Exhibit A to 7 CFR part 1980, subpart B contains the Approved Lender Program for guaranteed operating, farm ownership and soil and water loans. When the final rule was published, an error was made in the heading of Attachment 2. The title of the Attachment was included but not the designation as Attachment 2. An error was also made omitting the existing Attachment 3 of Exhibit A to subpart B of part 1980. This attachment is the Approved Lender Program Application for Guarantee, and is necessary to an orderly operation of that program.

The following correction is made to 54 FR on pages 1589 and 1592, respectively, dated January 13, 1989:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Farmer Program Loans

Exhibit A—[Amended]

2. Exhibit A, the title of Attachment 2—Farmers Home Administration Approved Lender Program (ALP) is changed as follows:

Attachment 2—Farmers Home Administration Approved Lender Program (ALP)

Lender's Agreement for Operating Line of Credit Guarantee (Contract of Guarantee Cases)

3. Exhibit A, Attachment 3—Farmers Home Administration Approved Lender Program (ALP) is added to read as follows:

Attachment 3

TO: County Supervisor, FmHA

SUBJECT: Request for Loan Note Guarantee under Approved Lender Agreement Applicable to Loan Note Guarantee Cases (Attachment 1). Principal Amount of Loan $________

AND/OR

Request for Line of Credit Guarantee under Approved Lender Agreement Applicable to Contract of Guarantee Cases (Attachment 2).

Line of Credit Ceiling $________.

Principal Amount of Initial Advance $________

Lender Agreement Dated ________.

Lender IRS I.D. No. ________

Request is made for issuance of a guarantee(s) in the following case.

Applicant's Name ________________

Address________________________

Social Security or IRS Tax No.________ County________ State________

Percent Guarantee Requested________%

Interest rate to borrower________% If variable, state method determined and frequency of adjustment

Specific amounts and purposes of loan/line of credit are as follows:

Proposed repayment terms: ________________

Proposed closing date if request is approved:

Special or unique conditions or problems:

Applicant's Financial Condition:

New Worth $________ ________________

	Assets value	Debt	Amount due in 12 months
Current [1]			
Intermediate [2]			
Long Term [3]			
Totals			

[1] Current: Cash savings, marketable bonds, receivables, 60 day sales of goods available within 60 days.

[2] Intermediate: Machinery, livestock, retirement accounts, cash value life insurance, securities household goods, receivable 60 days to 1 year.

[3] Long term: Real estate, contracts and notes receivable amount beyond current year.

Ratio Calculation from Financial Information and Operating Plans:

Total Assets of $________ divided by Total Liabilities ________ = Net Capital Ratio ________

Annual Cash Operating Expenses $________ divided by Gross Income $________ = Operating Ratio ________

Net Income $________ divided by Total Assets $________ = Profit to Assets ________

Debt Repayment $________ divided by Gross Income $________ = Debt Repayment ________

Security Proposed:

Item	Value	Prior liens (if any)	Equity value
Totals			

Briefly list any special conditions and narrate security accounting, reporting limitations and supervision etc., contained in proposed loan/line of credit agreement. See 7 CFR part 1980, subpart B, § 1980.113(d)(7)

The applicant's total farming operation is as follows: (Include total acres owned and/or leased broken down to use and indicate irrigated, double crop, etc., if any. Includes totals of all livestock owned and/or tended and describe operation purchasing, marketing, breeding details. Use attachments if necessary.)

The undersigned certifies that:

1. The information contained in this request is correct and that a complete application containing all required items described in § 1980.113(d) of part 1980, subpart B are on file and may be examined by FmHA at any time during regular business hours prior to or after FmHA responds to this request for a loan note guarantee or contract of guarantee.
2. Before a Loan Note Guarantee or Contract of Guarantee is issued by FmHA, the lender will certify to conditions in § 1980.60 of 7 CFR part 1980, Subpart A.
3. The lender will provide a Guarantee Loan Closing Report on Form FmHA 1980–19 and a check for the amount of the guarantee fee at the time the Loan Note Guarantee or Contract of Guarantee is issued.
4. This proposed loan/line of credit is considered sound, will be fully secured and is within the borrower's repayment ability.
5. All applicable requirements have been or will be met.
6. The loan or advance under the line of credit cannot be made without an FmHA guarantee.

____
(Name of Lender)
By __________________________
Title ________________________
____
(Lender's IRS I.D. Tax No.)
Date _________________________

Dated: August 14, 1989.

Roland R. Vautour,
Under Secretary for Small Community and Rural Development.

[FR Doc. 89–21007 Filed 9–6–89; 8:45 am]

BILLING CODE 3410-07-M

Packers and Stockyards Administration

9 CFR Part 201

Technical Amendment

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule—technical amendment.

SUMMARY: The Packers and Stockyards Administration is making two corrections to the control numbers assigned by the Director of the Office of Management and Budget upon approval of the reporting and recordkeeping requirements, and deleting a reference to a regulation no longer in effect.

EFFECTIVE DATE: September 7, 1989.

FOR FURTHER INFORMATION CONTACT: Calvin W. Watkins, Deputy Administrator, Packers and Stockyards Administration, U.S. Department of Agriculture, Room 3039 South Building, Washington, DC 20250–2800, (202) 447–7063.

SUPPLEMENTARY INFORMATION: This merely corrects some errors and does not impose any requirements on the affected public, therefore:

(a) It is not a "major rule" as in E.O. 12291 section 1(b);

(b) It will not have a significant economic impact on a substantial number of small entities as in 5 U.S.C. 605;

(c) Notice and public procedure on it are unnecessary as in 5 U.S.C. 553(b)(B) so notice of proposed rulemaking is not required by 5 U.S.C. 553(b); and

(d) Good cause is hereby found for making it effective in less than 30 days as in 5 U.S.C. 553(d)(3).

List of Subjects in 9 CFR Part 201

Reporting and recordkeeping requirements, Packers, Stockyards, Dealers and market agencies.

Accordingly, part 201, Chapter II of title 9 of the Code of Federal Regulations is amended as set forth below:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 222, 228(a), 7 CFR 2.17(e), 2.56.

2. Section 201.10 is amended by changing the Office of Management and Budget control number to "0590–0001".

§ 201.10 Requirements and procedures.

* * * * *

(Approved by the Office of Management and Budget under control number 0590–0001)

3. Section 201.99 is amended by changing the Office of Management and Budget control number to "0590–0001".

§ 201.99 Purchase of livestock by packers on a carcass grade, carcass weight, or carcass grade and weight basis.

* * * * *

(Approved by the Office of Management and Budget under control number 0590–0001)

4. Section 201.200(c) is amended by removing ", or by § 201.68 relating to financing packers by dealers or vice versa." As revised, paragraph (c) reads as follows:

§ 201.200 Sale of livestock to a packer on credit.

* * * * *

(c) The provisions of this section shall not be construed to permit any transaction prohibited by § 201.61(a) relating to financing by market agencies selling on a commission basis.

Done at Washington, DC, this 1st day of September, 1989.

B.H. (Bill) Jones,
Administrator, Packers and Stockyards Administration.

[FR Doc. 89–21006 Filed 9–6–89; 8:45 am]

BILLING CODE 3410-KD-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AA00

Organization; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: On December 15, 1988, the Farm Credit Administration (FCA) published a final rule which amended the regulation relating to organizational authorities of Farm Credit institutions (53 FR 50381). On January 23, 1989, a correction to that final rule was published in the **Federal Register** (54 FR 2994). The FCA is revising the correction document to remove a word that was incorrectly added.

EFFECTIVE DATE: February 22, 1989.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In the January 23, 1989 correction to the final rule, an error was inadvertently made in 12 CFR 611.310.

PART 611—ORGANIZATION

1. On page 2994, third column, the word "director," was incorrectly added in § 611.310(c). Paragraph (c) is corrected to read as follows:

Subpart C—Election of Directors

§ 611.310 Eligibility for membership on bank and association boards and subsequent employment.

* * * * *

(c) No bank director shall, within 1 year after the date when he or she ceases to be a member of the board, serve as a salaried officer or employee of such bank, or any association with which the bank has a discount or agent relationship.

* * * * *

Dated: August 31, 1989.

David A. Hill,
Secretary, Farm Credit Administration Board.

[FR Doc. 89–20915 Filed 9–6–89; 8:45 am]

BILLING CODE 6705-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AB86

Business Loan Policy

AGENCY: Small Business Administration, (SBA).

ACTION: Final rule.

SUMMARY: This rule implements section 102 of Public Law 100–590 (102 Stat. 2989), enacted November 3, 1988 (1988 legislation), which authorizes SBA certified and preferred participating lenders to retain one-half of the guaranty fee payable to the SBA on loans of $50,000 or less.

EFFECTIVE DATE: September 7, 1989.

ADDRESSES: For further information, contact Charles R. Hertzberg, Deputy Associate Administrator for Financial Assistance, Small Business Administration, 1441 L Street NW., Washington, DC 20416. Telephone (202) 653–6574.

SUPPLEMENTARY INFORMATION: On March 6, 1989, SBA published in the **Federal Register** (54 FR 9233), a notice of proposed rulemaking to implement section 102 of the 1988 legislation. The Agency received eight written comments all of which supported the rule as proposed.

The SBA charges a guaranty fee for a participating lender to obtain the SBA guaranty. On loans with maturities in excess of twelve months, the guaranty fee is two percent of the amount that SBA guarantees. Such fee is paid by the lender to SBA, but the lender may pass that charge on to the small business concern borrower. This is true whether the loan being guaranteed by SBA is a regular loan, a loan made under the Certified Lenders Program (CLP) (under which a lender is promised a three-day turnaround review by SBA), or a loan made under the Preferred Lenders Program (PLP) (under which the loan may be approved by a lender without prior processing review by SBA). Under this final rule, any certified or preferred lender which makes a loan of $50,000 or less, with a maturity in excess of twelve months, could retain one-half of the guaranty fee payable to the SBA.

One commenter suggested that the lender be given an option not to charge the borrower the one-half of the guaranty fee which the lender is permitted to keep under the 1988 legislation. The commenter stated that this could be a useful marketing tool for the lender in competitive markets and would be of assistance to the borrower. SBA has no objection to this proposal, and neither the statute nor the regulation prohibits this procedure. The purpose of the 1988 legislation is to encourage a lender to make small SBA guaranteed loans, and this may be effected by allowing the lender not to pay to SBA the full amount of the guaranty fee. Section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) places the obligation on the lender to pay the guaranty fee to SBA. That section then authorizes the lender, if it chooses, to be reimbursed by the borrower. If the lender elects not to charge the borrower for all or any part of the guaranty fee, that is permissible. The borrower which is not charged for the guaranty fee is released from an expense which inures to its benefit. The 1988 legislation apparently presumes that a lender ordinarily chooses to charge the borrower for the full amount of the guaranty fee payable to SBA, but that need not be the situation in every case. The thrust of the 1988 legislation is to authorize SBA to collect from the lender only one-half of the guaranty fee attributable to a loan of $50,000 or less. If a lender chooses to absorb the other half of the guaranty fee, to the borrower's benefit, SBA has no objection since the Agency is still receiving the mandated one-half of the guaranty fee.

A commenter recommended that the size of loan eligible for this program be increased from $50,000 to $100,000. Such an increase would require additional legislation. Accordingly, SBA is precluded from adopting this suggestion.

Another suggestion was to allow financial institutions to use their own standard closing documents. SBA has not adopted this recommendation. SBA's forms have been interpreted in many court decisions over the years, which permits a degree of certainty as to their meaning. This enables SBA to provide financial assistance to small business concerns on a nationwide basis without fear of adverse legal implications.

The Agency has reconsidered its earlier decision on application forms for these small loans. Accordingly, at an early date, SBA will issue new and simplified application forms for loans of $50,000 or less. Until such new forms are approved, printed, and circulated, SBA personnel are authorized to continue to use existing forms.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this final rule will not have a significant impact on a substantial number of small entities because recent history indicates to SBA that a large number of loans $50,000 or less will not be made.

SBA certifies that this final rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more because it is not anticipated that such a large number of $50,000 loans will be made. In 1986, the average SBA loan was $150,000, for 1987 it was $160,000, and for 1988 it was $161,000.

The final rule would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

The final rule will not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

The revision and amendment sequences were misstated for the final regulation published on May 30, 1989 (54 FR 22977), amending part 120 of SBA regulations (13 CFR part 120). The correct sequence is revision 7, amendment 5.

List of Subjects in 13 CFR Part 120

Loan programs/business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)) and section 136 of Public Law 100–590 (102 Stat. 2989), SBA hereby amends part 120, chapter I, title 13, Code of Federal Regulations, as follows:

Part 120—Business Loan Policy

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.104–1 is amended by adding a new Paragraph (f) to read as follows:

§ 120.104–1 Guaranty fees.

* * * * *

(f) *Retention of Guaranty Fee for Small Loans.* When a Certified Lender or Preferred Lender makes a loan of $50,000 or less, with a maturity in excess of twelve months, it shall pay SBA an amount equal to one percent of the amount of the deferred participation share of such loan.

Dated: August 16, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–20929 Filed 9–6–89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 89–85]

Tariff Classification of Scroll Cut Tin Free Steel Sheet

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final interpretative rule.

SUMMARY: This document gives notice of a change in the tariff classification of scroll-cut tin free steel sheet, cut to length, and scroll-cut tin free steel sheet which has been laquered, painted or varnished (but not decorated, designed or otherwise finished). Customs previously published notice of the proposed change in classification and invited comments.

This merchandise has heretofore been classified under the provision for other articles of iron or steel, not coated or plated with precious metal, in item 657.25, Tariff Schedules of the United States (TSUS). The column 1 rate of duty under item 657.25, TSUS, is 5.7 percent ad valorem. Merchandise so classified is not subject to import restrictions imposed by Voluntary Restraint Agreements or VRAs.

The merchanise in question will now be classified under the provision for plates, sheets, and strip, of iron or steel, whether or not cut, pressed, or stamped to nonrectangular shape, if electrolytically coated or plated with base metal other than tin, lead, or zinc, in item 609.17, TSUS. The column 1 rate of duty under item 609.17, TSUS, is 5.7 percent ad valorem. Merchandise so classified is subject to VRAs.

EFFECTIVE DATE: This decision will be effective as to merchandise entered, or withdrawn from warehouse for consumption, on or after October 20, 1989.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division, Office of Regulations and Rulings (202) 566–8181.

SUPPLEMENTARY INFORMATION:

Background

In response to a petition received on behalf of Bethlehem Steel Corporation under the authority of section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), Customs agreed to review the classification of scroll-cut, tin free steel sheet, and tin free steel sheet which has been scroll-cut and also lacquered, painted or varnished (but not decorated, designed or finished). Customs published notice in the Federal Register on April 18, 1989 (54 FR 15440), that the classification in question was under review and invited public comments on the proposed change. Five (5) comments were received in response to the notice.

The merchandise affected by this decision is tin free steel sheet, which is black plate (*i.e.*, cold-rolled steel sheets, not coated, in thicknesses ranging from 0.0055 inches to 0.0149), electrolytically coated with metallic chromium oxide, and cut to a nonrectangular shape by scroll cutting. Scroll cutting involves the shearing of each end of a sheet to form a pattern of interlocking notches which fit into one another. The sheet may then be lacquered, painted, or varnished. These sheets are suitable for use in making cans and can ends for beverages and other food products.

Effective January 1, 1989, the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), replaced the Tariff Schedules of the United States (TSUS) as the tariff code of this country. However, because the VRAs will continue in effect through September of 1989, and a product's coverage under a particular Arrangement will depend on how it is classified under the TSUS, it is necessary, for purposes of the VRAs, to resolve this issue under the TSUS.

In a letter dated March 13, 1978 (056338), Customs ruled that scroll-cut electrolytic tin plate or sheet was classifiable under the provision for articles of iron or steel, not coated or plated with precious metal, of tin plate, under item 657.15, TSUS, if of tin plate. If of iron or steel without actual tin plating, classification was held to be under the provision for other articles of iron or steel, in item 657.20, TSUS. The scroll-cut sheets in this case were found to be articles or products, rather than sheets. By letter dated September 11, 1978 (057211), Customs ruled that scroll-cut tinplate sheets were classifiable in item 657.15, TSUS. The ruling noted that the scroll pattern was designed to serve a specific purpose which takes the tinplate beyond the description of a basic material. Finally, a letter dated April 23, 1986 (077760), cited rulings 056338 and 057211, and confirmed that scroll-cut tin free steel sheets sprayed with an epoxy phenolic lacquer, then heated and dried, were classifiable in item 657.25, TSUS.

Summary of Comments

Of the five (5) comments received, three (3) favored the proposed change and two (2) opposed the change. Those favoring the change made the following arguments:

(1) The merchandise is encompassed by item 609.17, TSUS, because it is a steel sheet for purposes of the TSUS, is electrolytically coated other than with tin, lead, or zinc, and is cut to a nonrectangular shape by scroll cutting;

(2) Scroll cutting is not an additional process that advances the merchandise beyond the status of a basic shape or form because the steel sheet is still within the product description contained in item 609.17;

(3) The provision in item 609.17, TSUS, is relatively more specific than the provision in item 657.25, TSUS, for articles of iron or steel; and

(4) Conclusions reached in some of the existing rulings on this merchandise are based on incorrect statements of fact.

Those opposing the proposed change in classification made the following arguments:

(1) The classification of scroll-cut tin free steel sheet is well known in the importing community, as evidenced by the cited Customs rulings;

(2) There has been no change in the way the merchandise is manufactured that might serve as a basis for changing its classification; and

(3) Because scroll-cut tin free steel sheet has previously been excluded from coverage under the VRAs, any proposal to change the tariff status of this merchandise should be addressed at negotiating sessions with an individual country or countries.

Analysis of Comments

Customs agrees with the comments submitted in favor of the proposed change in classification. The merchandise in question satisfies each of the particular requirements necessary for classification in item 609.17, TSUS. With respect to scroll cutting, Customs believes that no step in the creation of merchandise otherwise classifiable as a basic shape or form of iron or steel can, at the same time, be an advancement of that merchandise beyond the status of a basic shape or form. Scroll cutting merely results in steel sheet which is nonrectangular in shape, as provided for in item 609.17. The additional steps of lacquering, painting or varnishing scroll-cut, tin free steel sheet are permissible treatments allowed by Schedule 6, Part 2, Headnote 1, TSUS. Customs believes that the requirements for classification in item 609.17, TSUS, are more difficult to satisfy than are those of item 657.25. Consequently, item 609.17 is the relatively more specific provision. Finally, Customs believes that conclusions contained in some of the cited rulings on this merchandise may have been based not on incorrect statements, but on a misapplication of the stated facts.

With respect to the comments opposing the change in classification, Customs believes the fact that classification of this merchandise in item 657.25, TSUS, may be well documented by the existing rulings, and the fact that there has been no change in the way this merchandise is made, does not override its obligation to classify and assess duty on merchandise in its condition as imported. Moreover, concerning the comment that the proposed change in classification would bring within the coverage of the VRAs merchandise not previously intended by the negotiaters to be included, Customs notes that this result was anticipated because the VRAs were negotiated with the understanding that changes in classification might occur. Relevant provisions in Part 177, Customs Regulations (19 CFR Part 177), giving Customs the authority to modify or revoke rulings, were well known to the negotiators of the VRAs.

Decision

After careful analysis of the submitted comments, and further review of the matter, the proposed change in classification of scroll-cut tin free steel sheet and scroll-cut tin free steel sheet which has been lacquered, painted or varnished (but not decorated, designed or finished), is adopted. The merchandise in question will be classified under the provision for plates, sheets, and strip, of iron or steel, whether or not cut, pressed, or stamped to nonrectangular shape, plated or covered with chromium oxide or with chromium and chromium oxide, in item 609.1710, Tariff Schedules of the United States Annotated (TSUSA).

This change in classification is effective as to merchandise entered, or withdrawn from warehouse, for consumption, on or after 30 days from the date of publication of this decision in the Customs Bulletin.

Customs rulings of March 13, 1978 (056338), September 11, 1978 (057221), and April 23, 1986 (077760) are hereby revoked.

Drafting Information

The principal author of this document was James A. Seal, Commercial Rulings Division, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: August 31, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89–20899 Filed 9–6–89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nitrofurazone Ointment; Technical Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a sponsor change from Wendt Laboratories to Quality Plus Essar Corp. for a new animal drug application (NADA) for nitrofurazone ointment. The agency is issuing this technical amendment to amend § 524.1580b(b) (21 CFR 524.1580b(b)).

EFFECTIVE DATE: September 7, 1989.

FOR FURTHER INFORMATION CONTACT: J. Taylor Madill, Center for Veterinary Medicine (HFV–231), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3336.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 25, 1987 (52 FR 36022), FDA published a document reflecting the change of sponsor of several NADA's from Wendt Laboratories to Quality Plus Essar Corp. That document provided for a sponsor change for NADA 118–586 Nitrofurazone ointment, but it failed to amend the corresponding regulation in § 524.1580b(b) to reflect the sponsor change.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.1580b [Amended]

2. Section 524.1580b *Nitrofurazone ointment* is amended in paragraph (b) by removing the number "015579," from the first sentence.

Dated: August 31, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 89–20867 Filed 9–6–89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Change of Sponsors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for new animal drug applications (NADA's) from Hess & Clark, Inc., to Feed Specialties Co., Inc., and from SDS Biotech Corp. to Fermenta Animal Health Co.

EFFECTIVE DATE: September 7, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Feed Specialties Co., Inc., 1877 NE. 58th Avenue, Des Moines, IA 50313, has informed FDA that it has acquired NADA 48-480 which provides for use of a Type A medicated article containing 50 grams of chlortetracycline per pound in making Type C medicated feeds. The feeds are indicated for use as growth promotants in chickens and turkeys. Hess & Clark, Inc., the former sponsor, has confirmed the change of sponsor. Accordingly, the agency is amending 21 CFR 558.15 to reflect the change of sponsor.

Additionally, an error in § 558.15(g)(1) has been noted. In § 558.15(g)(1), in the table, under "Drug sponsor," the two entries for "SDS Biotech Corp." (i.e. at "Bacitracin methylene disalicylate" and at "Chlortetracycline") are incorrect in that they refer to NADA's that have been transferred from SDS Biotech Corp. to Fermenta Animal Health Co., a subsidiary of SDS Biotech Corp., by a publication in the **Federal Register** of August 8, 1986 (51 FR 28546). Therefore, § 558.15 is further amended to reflect the correct sponsor.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.15 [Amended]

2. Section 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is amended in paragraph (g)(1) in the table, under the "Drug Sponsor" heading, by revising the entry for "A. L. Laboratories, Inc., SDS Biotech Corp." to read "A. L. Laboratories, Inc., Fermenta Animal Health Co." and by revising the entry for "American Cyanamid Co., SDS Biotech Corp., Hess & Clark, Pfizer, Inc., and VPO, Inc." to read "American Cyanamid Co., Fermenta Animal Health Co., Feed Specialties Co., Inc., Pfizer, Inc., and VPO, Inc."

Dated: August 31, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-20966 Filed 9-6-89; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8259]

RIN 1545-AM99

Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to real estate mortgage investment conduits. The relevant provisions in the Internal Revenue Code were added or amended by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988. These regulations prescribe the manner in which an entity elects status as a real estate mortgage investment conduit (REMIC) for Federal income tax purposes and the procedures to be followed when filing a Federal income tax return as a REMIC. The regulations also require REMICs and certain other issuers to file information returns with the Internal Revenue Service and to provide notice to holders of REMIC interests or other debt instruments to which section 1272(a)(6) applies of income and certain allocable expenses attributable to their interests.

In addition, the temporary regulations set forth in this document generally serve as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective after December 31, 1986, except as follows:

With respect to certain reporting requirements, §§ 1.67-3T(f), and 1.6049-7T(b)(1) and the amendements to § 1.1275-3T(b) are effective September 7, 1989.

Sections 1.6049-7T(e)(2)(x) and 1.6049-7T (f)(2)(i)(G) and (f)(2)(ii)(K) are effective for calendar years beginning after December 31, 1989.

Sections 1.860F-4T(e)(1)(ii) (A) and (B), 1.6049-7T(c) (6) through (14), 1.6049-7T(e) (1), (2) (i) through (ix), (3), (4), and (5), 1.6049-7T(f)(3) (i) and (ii), and 1.6049-7T (f)(5)(i) and (f)(7) are effective for calendar quarters and calendar years beginning after December 31, 1988.

Section 1.6049-7T(f)(2)(ii) (E), (F), and (I) are effective for calendar quarters and calendar years beginning after December 31, 1987.

Sections 1.860F-4T(e)(1)(ii)(D) and 1.6049-7T(f)(3)(iii) are effective for calendar quarters and calendar years beginning after December 31, 1987 and ending before January 1, 1990.

Section 1.860F-4T(e)(1)(ii)(C) is effective for calendar quarters and calendar years beginning after December 31, 1986 and ending before January 1, 1988.

With respect to who may sign a REMIC return, § 1.860F-4T(c)(1) is effective for REMICs with a startup day on or after November 10, 1988.

Finally, the § 1.6049-7T(g) requirement to set forth information on the face of the debt instrument is effective for debt instruments issued after April 8, 1988.

FOR FURTHER INFORMATION CONTACT: Laura Ann M. Lauritzen, 202-566-6624 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed and, pending receipt and evaluation of pubic comments, approved by the Office of Management and Budget (OMB) under control number 1545-1018.

The estimated total annual reporting and/or recordkeeping burden for the requirements contained in §§ 1.860D-1T(d), 1.860F-4T, 1.1275-3T(b), 1.6049-7T(b), 1.6049-7T(e), 1.6049-7T (f)(1) through (f)(6) of this regulation is reflected on Forms 1066, 1099-INT, 1099-OID, 8281, and 8811. The estimated annual burden per respondent/recordkeeper varies from *0.1* hours to *20.0* hours, depending on individual

circumstances, with an estimated average of *1.5* hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require more or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Issuance of Proposed Regulation

The rules contained in this document are also being issued as proposed regulations by the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the rules will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Background

This document sets forth temporary income tax regulations (26 CFR part 1) under sections 860D, 860F, and 6049 (d)(7) of the Internal Revenue Code of 1986 (Code), relating to real estate mortgage investment conduits or REMICs. Section 671 of the Tax Reform Act of 1986 (the 1986 Act) added to the Code new sections 860A through 860G to provide rules relating to real estate mortgage investment conduits. Section 674 of the 1986 Act amended section 6049 to impose certain information reporting requirements with respect to REMIC interests and certain other debt instruments. Section 1006(t) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) amended certain provisions in sections 860A through 860G and section 6049.

In general, a REMIC is a fixed pool of mortgages in which multiple classes of interests are held by investors and which elects to be taxed as a REMIC. The regulations under section 860D prescribe the manner in which an entity elects status as a REMIC. The regulations under section 860F govern the filing of the REMIC's income tax return and, together with the regulations under section 6049, require notice of income and other information to be provided to REMIC investors and the Internal Revenue Service.

Explanation of Provisions

Treatment of a REMIC as a Partnership

Except in determining who may sign a REMIC return, section 860F(e) provides that, for purposes of subtitle F of the Code (Procedure and Administration), a REMIC is treated as a partnership and any holder of a residual interest is treated as a partner. Thus, the rules relating to the tax treatment of partnership items (subchapter C of chapter 63 of the Code) generally apply to a REMIC. For example, under § 1.860F-4T(d), a REMIC may designate a tax matters person in the same manner in which a partnership may designate a tax matters partner under § 301.6231(a)(7)-1T. If there is only one holder of the REMIC residual interest, however, § 1.860F-4T(a) provides an exception to the application of those rules.

REMIC Income Tax Return and Election

Section 1.860F-4T(b) generally requires a REMIC to file an income tax return annually with the Internal Revenue Service. The Service has developed Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, for this purpose. As required by section 860F(e), the return must include the amount of the daily accruals determined under section 860E(c). The due date and any extensions for filing the REMIC's annual return are determined as if the REMIC were a partnership that uses the calendar year. Section 1.860F-4T(c)(1) provides that the REMIC return must be signed by a person who is authorized to sign the return of the entity absent the REMIC election.

As provided in § 1.860D-1T(d)(1), a qualified entity, as defined in § 1.860D-1T(c)(4), elects to be treated as a REMIC by timely filing, for its first taxable year, a Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, signed by a person authorized to sign that return under § 1.860F-4T(c). The Commissioner may, however, upon a showing of good cause, grant a reasonable extension of time under § 1.9100 for electing REMIC status. Once made, the election is irrevocable for that taxable year and all succeeding taxable years.

Section 1.860D-1T(d)(2) requires that the REMIC provide certain information with its income tax return for the first taxable year of the REMIC's existence. That information includes the REMIC's employer identification number (a REMIC may apply for an EIN on Form SS-4, Application for Employer Identification Number), information concerning the terms of each class of regular interest and the designated residual interest, and any other information that is required by the form. Each REMIC's EIN must differ from that of any other REMIC or other entity.

The REMIC must also provide on its first return a description of the prepayment and reinvestment assumptions that are made pursuant to section 1272(a)(6). Finally, pursuant to § 1.860D-1T(d)(3), sufficient records must be kept concerning investments to show the REMIC's compliance with the provisions of sections 860A through 860G during each taxable year.

Notice to Residual Interest Holders

At the close of each calendar quarter, a REMIC is required under § 1.860F-4T(e)(1) to provide to each person who held a residual interest in the REMIC during the quarter notice on Schedule Q (Form 1066) of certain information. That information includes (a) the residual holder's share of REMIC taxable income or net loss for the calendar quarter, (b) the amount of the excess inclusion with respect to the holder's residual interest, (c) in the case of certain holders, the allocable investment expenses for the quarter, and (d) for calender years after 1987, the percentage of the REMIC's assets that are qualifying real property loans under section 593, assets described in section 7701(a)(19), and real estate assets defined in section 856(c)(6)(B). A residual interest holder may rely upon the information provided on Schedule Q concerning the percentage of assets tests in determining the tax treatment of its residual interest under sections 593, 7701(a)(19)(C), and 856. This right of reliance will be explicitly stated in future regulations under those code sections.

For calendar quarters after 1988, in determining the information to be reported to REMIC interest holders concerning the percentage of assets tests, § 1.860F-4T(e)(1)(ii) (concerning residual interests) and § 1.6049-7T(f)(3)(i) (concerning regular interests) direct a REMIC to compute the applicable percentages by reference to the average adjusted basis of the REMIC's assets during the calendar quarter. This differs from the rule now contained in temporary regulation § 1.860F-4T(e)(1)(i)(D) and § 1.6049-7T(f)(3)(i), which direct a REMIC to compute the applicable percentages by reference to the average fair market value of the REMIC's assets during the calender quarter. The Service intends that, for calendar quarters in 1989, a

REMIC may use either method and that no REMIC will be penalized for having used one method rather than the other.

Section § 1.860F–4T(e)(2) requires that Schedule Q be mailed (or otherwise delivered) to each holder of a residual interest during a calendar quarter not later than the last day of the month following the close of the calendar quarter. Further, § 1.860F–4T(e)(4) provides that a copy of Schedule Q for each person who was a residual interest holder at any time during a REMIC's taxable year and for each quarter in which that person was a residual interest holder must be attached to the REMIC's income tax return for that taxable year. Quarterly notice to the Internal Revenue Service is not required.

Reporting to the Internal Revenue Service

Section 1.6049–7T(b)(1) requires every REMIC and issuer of a collateralized debt obligation (as defined in § 1.6049–7T(d)(2)) to file Form 8811, Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations, with the Internal Revenue Service by the later of July 31, 1989, or 30 days after the startup day (as defined in section 860G(a)(9)) of the REMIC or the issue date (as defined in section 1275(a)(2)) of a collateralized debt obligation. Further, a new Form 8811 must be filed within 30 days of any change in the information previously provided on Form 8811.

The information required on Form 8811 includes the name, title, address, and telephone number of a person to be contacted by the Internal Revenue Service for information concerning the form. The form also requires designation of a person to be contacted by certain brokers, middlemen, corporations, non-calendar year taxpayers, and other persons specified in § 1.6049–7T(e)(4) for financial information necessary to complete Form 1099.

Reporting to certain brokers, middlemen, corporations, non-calendar year taxpayers, and other persons specified in § 1.6049–7T(e)(4)

The Internal Revenue Service will print in Publication 938 the information on Form 8811 concerning the representative to be contacted by persons specified in § 1.6049–7T(e)(4). For calendar quarters after 1988 a person specified in § 1.6049–7T(e)(4) may request in writing or by telephone the tax information specified in § 1.6049–7T(e)(2) from a REMIC or an issuer of a collateralized debt obligation. Pursuant to § 1.6049–7T(e)(3), the REMIC or issuer must then supply the tax information by telephone, by written statement, by causing it to be published in a publication generally read by persons permitted to make the request, or by any other method agreed to by the parties, by the later of 30 days after the close of the calendar quarter for which the information was requested, or two weeks after the receipt of the request.

The information the REMIC or the issuer of a collateralized debt obligation is required to provide includes: (a) Name, address, and Employer Identification Number of the REMIC or issuer of the collateralized debt obligation; (b) the Committee on Uniform Security Identification Procedure (CUSIP) number, account number, serial number, or other identifying number or information for each class of interest; (c) interest and original issue discount includible in the holder's gross income for each accrual period during the specified calendar quarter; (d) the length of the accrual period; (e) the adjusted issue price at the beginning of each accrual period in the specified calendar quarter; and (f) information necessary to compute the accrual of market discount.

A REMIC must also provide certain information with respect to the percentage of the REMIC's assets that are qualifying real property loans under section 593, assets described in section 7701(a)(19), and real estate assets under section 856(c)(6)(B). A regular interest holder may rely on the information provided by the REMIC concerning the percentage of assets tests in determining the tax treatment of its regular interest under sections 593, 7701(a)(19)(C), and 856. This right of reliance will be explicitly stated in future regulations under those code sections.

Reporting to regular interest holders

Section 6049 of the Code requires that certain returns of information be made regarding payments of interest. Under section 6049(d)(7) and § 1.6049–7T(a), the term "interest" includes amounts includible in the gross income of any holder of a REMIC regular interest or a collateralized debt obligation.

As required by § 1.6049–7T(b)(2), an information return must be made with respect to any payment of interest (as defined in § 1.6049–7T(a)) aggregating $10 or more. For calendar quarters and calendar years after 1988, this return must be made by a REMIC or an issuer of a collateralized debt obligation and by any broker or middleman who holds as a nominee any REMIC regular interest or any collateralized debt obligation for the actual owner. Information returns are not required, however, with respect to amounts includible as interest by certain holders specified in § 1.6049–7T(c).

Section 1.6049–7T(b)(2)(iii)(A) requires that for amounts includible as interest, other than original issue discount, the information return be made on Form 1099 for each calendar year showing the aggregate amount includible, the name, address, and taxpayer identification number of the record holder, and such other information as is required by the form. Section 1.6049–7T(b)(2)(iii)(B) requires similar information with respect to amounts of original issue discount includible by any record holder of a REMIC regular interest or a collateralized debt obligation.

The information returns required under § 1.6049–7T(b)(2) are to be filed annually in the manner prescribed in paragraph (b)(2)(iv) of that section. Generally, § 1.6049–7T(f) requires that the information provided to the Service and, if applicable, an additional statement containing information regarding market discount and original issue discount be furnished to each person in whose income amounts are includible as interest in the time and manner specified in paragraphs (f) (5) and (6) of that section respectively. Under § 1.6049–7T(f)(3), certain information regarding REMIC assets must also be provided to investors.

Nominee requirement to furnish information to corporations, non-calendar year taxpayers, and other persons specified in § 1.6049–7T(c) (9) through (14)

Section 1.6049–7T(f)(7)(i) requires brokers and middlemen holding as nominees REMIC regular interests or collateralized debt obligations to provide in writing or by telephone the information specified in § 1.6049–7T(e)(2). The information must be provided to corporations, non-calendar year taxpayers, and other persons specified in § 1.6049–7T(c) (9) through (14) in the time prescribed in § 1.6049–7T(f)(7)(ii).

Information required on debt instrument

Under § 1.6049–7T(g), the issuer of any REMIC regular interest or any collateralized debt obligation is required to set forth certain information on the face of the regular interest or collateralized debt obligation. This requirement is effective, however, only with respect to any regular interest or collateralized debt obligation that is issued after April 8, 1988.

Reporting original issue discount on debt instruments not subject to section 1272(a)(6)

Section 1.1275–3T(b) is revised to require issuers to provide additional information with the Form 8281. The issuer must provide a schedule showing the amount of original issue discount per unit of original principal amount that accrues for each accrual period and specify the unit of original principal amount if other than $1,000, specify the yield to maturity, and state whether the debt instrument is a variable rate debt instrument.

Notice to pass-through interest holders who hold regular interests in single-class REMICs

Section 1.67–3T(f) currently provides that a single-class REMIC (generally, one that would be classified as a trust had it not elected REMIC status) must furnish quarterly statements to certain of its regular interest holders showing each such interest holder's allocable share of the REMIC's investment expense. Quarterly reporting is no longer required. Section 1.67–3T(f) now provides that a REMIC is reqwuired to report annually to its regular interest holders.

Special Analyses

It has been determined that these regulations are not major regulations as defined in Executive Order 12291. Therefore, a regulatory impact analysis is not required.

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Therefore, these regulations do not constitute regulations that are subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these temporary regulations is Laura Ann M. Lauritzen, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR 1.61–1 Through 1.281–4

Deductions, Exemptions, Income tax, Taxable income.

26 CFR 1.851–1 Through 1.860F–4

Income taxes, Investment companies, Real estate investment trusts, Real estate mortgage investment conduits.

26 CFR 1.1271–1 Through 1.1297–3

Income taxes, Capital gains and losses, Original issue discount, Applicable Federal rate, Market discount, Short-term obligations, Stripped bonds and stripped coupons, Tax-exempt obligations.

26 CFR 1.6001–1 Through 1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, Title 26, Parts 1 and 602 of the Code of Federal Regulations are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805; * * * § 1.860F–4T also issued under 26 U.S.C. 860G(e); * * * § 1.1275–3T also issued under 26 U.S.C. 1275(c); * * * § 1.6049–7T also issued under 26 U.S.C. 860G(e), 26 U.S.C. 1275(c), and 26 U.S.C. 6049(d)(7)(D). * * *

Par. 2. Paragraphs (f)(1) and (f)(2)(ii) of § 1.67–3T are revised to read as follows:

§ 1.67–3T Allocation of expenses by real estate mortgage investment conduits (temporary).

* * * * *

(f) *Notice to pass-through interest holders*—(1) *Information required.* A REMIC must provide to each pass-through interest holder to which an allocation of allocable investment expense is required to be made under paragraph (a)(1) of this section notice of—

(i) The aggregate amount of expenses paid or accrued during the calendar quarter (calendar year in the case of a regular interest holder) for which a REMIC is allowed a deduction under section 212, and

(ii) The proportionate share of these expenses allocated to that pass-through interest holder, as determined under paragraph (c) of this section.

(2) *Statement to be furnished.*

* * * * *

(ii) *To regular interest holder.* For each calendar year, a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) must provide to each pass-through interest holder who held a regular interest during the calendar year the notice required under paragraph (f)(1) of this section. Quarterly reporting is not required. The information required to be included in the notice may be separately stated on the statement described in § 1.6049–7T(f) instead of on a separate statement provided in a separate mailing. See § 1.6049–7T(f) (4) and (6)(i)(A).

* * * * *

Par. 3. Sections 1.860D–1T and 1.860F–4T are revised to read as follows:

§ 1.860D–1T Definition of a REMIC (temporary).

(a) *In general.* [Reserved]

(b) *Specific requirements.* [Reserved]

(c) *Segregated pool of assets*—(1) *Formation of REMIC.* A REMIC may be formed as a segregated pool of assets rather than as a separate entity. To constitute a REMIC, the assets identified as part of the segregated pool must be treated for all Federal income tax purposes as assets of the REMIC and interests in the REMIC must be based solely on assets of the REMIC.

(2) *Identification of assets.* [Reserved]

(3) *Transfer of property for interests.* [Reserved]

(4) *Qualified entity defined.* For purposes of this section, the term "qualified entity" includes an entity or a segregated pool of assets within an entity.

(d) *Election to be treated as a real estate mortgage investment conduit*—(1) *In general.* A qualified entity, as defined in paragraph (c)(4) of this section, elects to be treated as a REMIC by timely filing, for the first taxable year of its existence, a Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, signed by a person authorized to sign that return under § 1.860F–4T(c). See § 1.9100 for rules regarding extensions of time for making elections. Once made, this election is irrevocable for that taxable year and all succeeding taxable years.

(2) *Information required to be reported in the REMIC's first taxable year.* For the first taxable year of the REMIC's existence, the qualified entity, as defined in paragraph (c)(4) of this section, must provide either on its return or in a separate statement attached to its return—

(i) The REMIC's employer identification number, which must not be the same as the identification number of any other entity,

(ii) Information concerning the terms and conditions of the regular interests and the residual interest of the REMIC, or a copy of the offering circular or prospectus containing such information,

(iii) A description of the prepayment and reinvestment assumptions that are made pursuant to section 1272(a)(6) and the regulations thereunder, including a

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statement supporting the selection of the prepayment assumption,

(iv) The form of the electing qualified entity under State law or, if an election is being made with respect to a segregated pool of assets within an entity, the form of the entity that holds the segregated pool of assets, and

(v) Such other information as is required by the form.

(3) *Requirement to keep sufficient records.* A qualified entity, as defined in paragraph (c)(4) of this section, that elects to be a REMIC must keep sufficient records concerning its investments to show that it has complied with the provisions of sections 860A through 860G and the regulations thereunder during each taxable year.

§ 1.860F–4T REMIC reporting requirements and other administrative rules (temporary).

(a) *In general.* Except as provided in paragraph (c) of this section, for purposes of subtitle F of the Internal Revenue Code, a REMIC is treated as a partnership and any holder of a residual interest in the REMIC is treated as a partner. A REMIC is not subject, however, to the rules of subchapter C of chapter 63 of the Code, relating to the treatment of partnership items, for a taxable year if there is at no time during the taxable year more than one holder of a residual interest in the REMIC.

(b) *REMIC tax return*—(1) *In general.* To satisfy the requirement under section 6031 to make a return of income for each taxable year, a REMIC must file the return required by paragraph (b)(2) of this section. The due date and any extensions for filing the REMIC's annual return are determined as if the REMIC were a partnership.

(2) *Income tax return.* The REMIC must make a return, as required by section 601(a), for each taxable year on Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return. The return must include—

(i) The amount of principal outstanding on each class of regular interests as of the close of the taxable year,

(ii) The amount of the daily accruals determined under section 860E(c), and

(iii) the information specified in § 1.860D–1T(d)(2) (i), (iv), and (v).

(c) *Signing of REMIC return*—(1) *In general.* Although a REMIC is generally treated as a partnership for purposes of subtitle F, for purposes of determining who is authorized to sign a REMIC's income tax return for any taxable year, the REMIC is not treated as a partnership and the holders of residual interests in the REMIC are not treated as partners. Rather, the REMIC return must be signed by a person who could sign the return of the entity absent the REMIC election. Thus, the return of a REMIC that is a corporation or trust under applicable State law must be signed by a corporate officer or a trustee, respectively. The return of a REMIC that consists of a segregated pool of assets must be signed by a person who could sign the return of the entity that owns the assets of the REMIC under applicable State law.

(2) *REMIC whose startup day is before November 10, 1988*—(i) *In general.* The income tax return of a REMIC whose startup day is before November 10, 1988, may be signed by any person who held a residual interest during the taxable year to which the return relates, or, as provided in section 6903, by a fiduciary, as defined in section 7701(a)(6), who is acting for the REMIC and who has furnished adequate notice in the manner prescribed in § 301.6903–1(b).

(ii) *Startup day.* For purposes of paragraph (c)(2) of this section, startup day means any day selected by a REMIC that is on or before the first day on which interests in such REMIC are issued.

(iii) *Exception.* A REMIC whose startup day is before November 10, 1988, may elect to have paragraph (c)(1) of this section apply, instead of paragraph (c)(2) of this section, in determining who is authorized to sign the REMIC return. See section 1006(t)(18)(A) of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3426) and regulations thereunder for the time and manner for making this election.

(d) *Designation of tax matters person.* A REMIC may designate a tax matters person in the same manner in which a partnership may designate a tax matters partner under § 301.6231(a)(7)–1T. For purposes of applying that section, all holders of residual interests in the REMIC are treated as general partners.

(e) *Notice to holders of residual interests*—(1) *Information required.* As of the close of each calendar quarter, a REMIC must provide to each person who held a residual interest in the REMIC during that quarter notice on Schedule Q (Form 1066) of information specified in paragraphs (e)(1) (i) and (ii) of this section.

(i) *In general.* Each REMIC must provide to each of its residual interest holders the following information:

(A) That person's share of the taxable income or net loss of the REMIC for the calendar quarter;

(B) The amount of the excess inclusion (as defined in section 860E and the regulations thereunder), if any, with respect to that person's residual interest for the calendar quarter;

(C) If the holder of a residual interest is also a pass-through interest holder (as defined in § 1.67–3T(a)(2)), the allocable investment expenses (as defined in § 1.67–3T(a)(3)) for the calendar quarter, and

(D) Such other information as is required by Schedule Q (Form 1066).

(ii) *Information with respect to REMIC assets*—(A) *95 percent asset test.* For calendar quarters after 1988, each REMIC must provide to each of its residual interest holders the following information:

(*1*) The percentage of REMIC assets that are qualifying real property loans under section 593,

(*2*) The percentage of REMIC assets that are assets described in section 7701(a)(19), and

(*3*) The percentage of REMIC assets that are real estate assets defined in section 856(c)(6)(B), computed by reference to the average adjusted basis (as defined in section 1011) of the REMIC assets during the calendar quarter (as described in paragraph (e)(1)(iii) of this section). If the percentage of REMIC assets represented by a category is at least 95 percent, then the REMIC need only specify that the percentage for that category was at least 95 percent.

(B) *Additional information required if the 95 percent test not met.* If, for any calendar quarter after 1988, less than 95 percent of the assets of the REMIC are real estate assets defined in section 856(c)(6)(B), then, for that calendar quarter, the REMIC must also provide to any real estate investment trust (REIT) that holds a residual interest the following information:

(*1*) The percentage of REMIC assets described in section 856(c)(5)(A), computed by reference to the average adjusted basis of the REMIC assets during the calendar quarter (as described in paragraph (e)(1)(iii) of this section),

(*2*) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F(a)(2)) described in section 856(c)(3) (A) through (E), computed as of the close of the calendar quarter, and

(*3*) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F(a)(2)) described in section 856(c)(3)(F), computed as of the close of the calendar quarter. For purposes of this paragraph (e)(1)(ii)(B)(*3*), the term "foreclosure property" contained in section 856(c)(3)(F) has the meaning specified in section 860G(a)(8).

In determining whether a REIT satisfies the limitations of section 856(c)(2), all REMIC gross income is deemed to be derived from a source specified in section 856(c)(2).

(C) *For calendar quarters in 1987.* For calendar quarters in 1987, the percentages of assets required in paragraphs (e)(1)(ii) (A) and (B) of this section may be computed by reference to the fair market value of the assets of the REMIC as of the close of the calendar quarter (as described in paragraph (e)(1)(iii) of this section), instead of by reference to the average adjusted basis during the calendar quarter.

(D) *For calendar quarters in 1988 and 1989.* For calendar quarters in 1988 and 1989, the percentages of assets required in paragraphs (e)(1)(ii) (A) and (B) of this section may be computed by reference to the average fair market value of the assets of the REMIC during the calendar quarter (as described in paragraph (e)(1)(iii) of this section), instead of by reference to the average adjusted basis of the assets of the REMIC during the calendar quarter.

(iii) *Special provisions.* For purposes of paragraph (e)(1)(ii) of this section, the percentage of REMIC assets represented by a specified category computed by reference to average adjusted basis (or fair market value) of the assets during a calendar quarter is determined by dividing the average adjusted basis (or for calendar quarters before 1990, fair market value) of the assets in the specified category by the average adjusted basis (or, for calendar quarters before 1990, fair market value) of all the assets of the REMIC as of the close of each month, week, or day during that calendar quarter. The monthly, weekly, or daily computation period must be applied uniformly during the calendar quarter to all categories of assets and may not be changed in succeeding calendar quarters without the consent of the Commissioner.

(2) *Quarterly notice required*—(i) *In general.* Schedule Q must be mailed (or otherwise delivered) to each holder of a residual interest during a calendar quarter no later than the last day of the month following the close of the calendar quarter.

(ii) *Special rule for 1987.* Notice to any holder of a REMIC residual interest of the information required in paragraph (e)(1) of this section for any of the four calendar quarters of 1987 must be mailed (or otherwise delivered) to each holder no later than March 28, 1988.

(3) *Nominee reporting*—(i) *In general.* If a REMIC is required under paragraph (e) (1) and (2) of this section to provide notice to an interest holder who is a nominee of another person with respect to an interest in the REMIC, the nominee must furnish such notice to the person for whom it is a nominee.

(ii) *Time for furnishing statement.* The nominee must furnish the notice required under paragraph (e)(3)(i) of this section to the person for whom it is a nominee no later than 30 days after receiving this information.

(4) *Reports to the Internal Revenue Service.* A copy of Schedule Q for each person who was a residual interest holder at any time during a REMIC's taxable year and for each quarter in which that person was a residual interest holder must be attached to the REMIC's income tax return for that taxable year. Quarterly notice to the Internal Revenue Service is not required.

Par. 4. Paragraph (b) of § 1.1275–3T is amended as follows:

1. In paragraph (b)(1), after the last sentence, by adding the sentence, "Any person making an offering of interests in a REMIC or other debt instrument subject to section 1272(a)(6), however, is not treated as an issuer of publicly offered debt instruments having original issue discount and, consequently, is not required to make an information return on Form 8281."

2. In paragraph (b)(2)(i) by removing the language "address, and" and adding in its place the language "address, telephone number, and".

3. By redesignating paragraphs (b)(2) (iv), (v), (vi), (vii), (viii), and (ix) as paragraphs (b)(2) (v), (vi), (vii), (ix), (x), and (xi) respectively.

4. Redesignated paragraphs (b)(2)(ix) (D), (E) and (F) and further redesignated as paragraphs (b)(2)(ix) (E), (F) and (G) respectively.

5. By adding a new paragraph (b)(2)(iv) immediately after paragraph (b)(2)(iii), a new paragraph (b)(2)(viii) immediately after paragraph (b)(2)(vii), and a new paragraph (b)(2)(ix)(D) immediately after paragraph (b)(2)(ix)(C), to read as follows:

§ 1.1275–3T Original issue discount information reporting requirements.

* * * * *

(b) *Information required to be reported to Secretary*—

* * * * *

(2) *Information required to be reported.*

* * * * *

(iv) A schedule showing the amount of original issue discount per unit of original principal amount that accrues for each accrual period and specify the unit of original principal amount if other than $1,000;

* * * * *

(viii) The yield to maturity;

(ix) * * *

(D) Whether the debt instrument is a variable rate debt instrument described in § 1.1275–5(a);

* * * * *

Par. 5. Section 1.6049–7T is revised to read as set forth below.

§ 1.6049–7T Returns of information with respect to REMIC regular interests and collateralized debt obligations (temporary).

(a) *Definition of interest*—(1) *In general.* For purposes of section 6049(a), for taxable years beginning after December 31, 1986, the term "interest" includes:

(i) Interest actually paid with respect to a collateralized debt obligation (as defined in paragraph (d)(2) of this section),

(ii) Interest accrued with respect to a REMIC regular interest (as defined in section 860G(a)(1)), or

(iii) Original issue discount accrued with respect to a REMIC regular interest or a collateralized debt obligation.

(2) *Interest deemed paid.* For purposes of this section and in determining who must make an information return under section 6049(a), interest as defined in paragraph (a)(1) (ii) and (iii) of this section is deemed paid when includible in gross income under section 860B(b) or section 1272.

(b) *Information required to be reported to the Commissioner*—(1) *Requirement of filing Form 8811 by REMICs and other issuers*—(i) *In general.* Except in the case of a REMIC all of whose regular interests are owned by another REMIC, every REMIC and every issuer of a collateralized debt obligation (as defined in paragraph (d)(2) of this section) must make an information return on Form 8811, Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations. Form 8811 must be filed in the time and manner prescribed in paragraph (b)(1)(iii) of this section. The submission of Form 8811 to the Internal Revenue Service does not satisfy the election requirement specified in § 1.860D–1T(d) and does not require election of REMIC status.

(ii) *Information required to be reported.* The following information must be reported to the Commissioner on Form 8811—

(A) The name, address, and employer identification number of the REMIC or the issuer of a collateralized debt obligation (as defined in paragraph (d)(2) of this section);

(B) The name, title, address, and telephone number of the official or representative of the REMIC or the issuer of a collateralized debt obligation who will provide to any person specified in paragraph (e)(4) of this section the interest and original issue discount information specified in paragraph (e)(2) of this section;

(C) The startup day (as defined in section 860G(a)(9)) of the REMIC or the issue date (as defined in section 1275(a)(2)) of the collateralized debt obligation;

(D) The Committee on Uniform Security Identification Procedure (CUSIP) number, account number, serial number, or other identifying number or information, of each class of REMIC regular interest or collateralized debt obligation;

(E) The name, title, address, and telephone number of the official or representative of the REMIC or the issuer of a collateralized debt obligation whom the Internal Revenue Service may contact, and

(F) Such other information as is required by Form 8811.

(iii) *Time and manner of filing of information return*—(A) *Manner of filing.* Form 8811 must be filed with the Internal Revenue Service at the address specified on the form. The information specified in paragraph (b)(1)(ii) of this section must be provided on Form 8811 regardless of whether other information returns are filed by use of electronic media.

(B) *Time for filing.* Form 8811 must be filed by each REMIC or issuer of a collateralized debt obligation by the later of July 31, 1989, or 30 days after the startup day (as defined in section 860G(a)(9)) in the case of a REMIC or the issue date (as defined in section 1275(a)(2)) in the case of a collateralized debt obligation. Further, each REMIC or issuer of a collateralized debt obligation must file a new Form 8811 within 30 days after the change of any information previously provided on Form 8811.

(2) *Requirement of reporting by REMICs, issuers, and nominees*—(i) *In general.* Every person described in paragraph (b)(2)(ii) of this section who pays to another person $10 or more of interest (as defined in paragraph (a) of this section) during any calendar year must file an information return on Form 1099, unless the interest is paid to a person specified in paragraph (c) of this section.

(ii) *Person required to make reports.* The persons required to make an information return under section 6049(a) and this section are—

(A) REMICs or issuers of collateralized debt obligations (as defined in paragraph (d)(2) of this section), and

(B) Any broker or middleman who holds as a nominee any REMIC regular interest or any collateralized debt obligation.

(iii) *Information to be reported*—(A) *REMIC regular interests and collateralized debt obligations not issued with original issue discount.* An information return on Form 1099 must be made for each holder of a REMIC regular interest or collateralized debt obligation not issued with original issue discount, but only if the holder has been paid interest (as defined in paragraph (a) of this section) of $10 or more for the calendar year. The information return must show—

(*1*) The name, address, and taxpayer identification number of the record holder.

(*2*) The CUSIP number, account number, serial number, or other identifying number or information, of each REMIC regular interest or collateralized debt obligation, with respect to which a return is being made,

(*3*) The aggregate amount of interest paid or deemed paid to the record holder for the period during the calendar year for which the return is made,

(*4*) The name, address, and taxpayer identification number of the person required to file this return, and

(*5*) Such other information as is required by the form.

(B) *REMIC regular interests and collateralized debt obligations issued with original issue discount.* An information return on Form 1099 must be made for each holder of a REMIC regular interest or a collateralized debt obligation issued with original issue discount, but only if the holder has been paid interest (as defined in paragraph (a) of this section and as determined under section 1272(a)(6) and the regulations thereunder) of $10 or more for the calendar year. The information return must show—

(*1*) The name, address, and taxpayer identification number of the record holder,

(*2*) The CUSIP number, account number, serial number, or other identifying number or information, of each REMIC regular interest or collateralized debt obligation, with respect to which a return is being made,

(*3*) The aggregate amount of original issue discount deemed paid to the record holder for the period during the calendar year for which the return is made,

(*4*) The aggregate amount of interest, other than original issue discount, paid or deemed paid to the record holder for the period during the calendar year for which the return is made,

(*5*) The name, address, and taxpayer identification number of the person required to file this return, and

(*6*) Such other information as is required by the form.

(C) *Cross-reference.* See § 1.67-3T(f)(3)(ii) for additional information required to be included on an information return on Form 1099 with respect to certain holders of regular interests in REMICs described in § 1.67-3T(a)(2)(ii).

(iv) *Time and place for filing a return with respect to amounts includible as interest.* The returns required under paragraph (b)(2) of this section for any calendar year must be filed after September 30 of that year, but not before the payor's final payment to the payee for the year, and on or before February 28 of the following year. These returns must be filed with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1099. For extensions of time for filing returns under this section, see § 1.6081-1. For magnetic media filing requirements, see § 301.6011-2.

(c) *Information returns not required.* An information return is not required under section 6049(a) and this section with respect to payments of interest, if the holder of a REMIC regular interest or a collateralized debt obligation is—

(1) An organization exempt from taxation under section 501(a) or an individual retirement plan;

(2) The United States or a State, the District of Columbia, a possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any one or more of the foregoing;

(3) A foreign government, a political subdivision thereof, or an international organization;

(4) A foreign central bank of issue (as defined in § 1.895-1(b)(1) to be a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency);

(5) Any trust which is described in section 4947(a)(1) (relating to certain charitable trusts);

(6) For calendar quarters and calendar years after 1988, a broker (as defined in section 6045(c) and § 1.6045-1(a)(1)) who holds any REMIC regular interest or collateralized debt obligation;

(7) For calendar quarters and calendar years after 1988, a middleman (as defined in § 1.6049-4(f)(4)) who holds as a nominee any REMIC regular interest or collateralized debt obligation;

(8) For calendar quarters and calendar years after 1988, a corporation (as

defined in section 7701(a)(3)), whether domestic or foreign;

(9) For calendar quarters and calendar years after 1988, a dealer in securities or commodities required to register as such under the laws of the United States or a State;

(10) For calendar quarters and calendar years after 1988, a real estate investment trust (as defined in section 856);

(11) For calendar quarters and calendar years after 1988, an entity registered at all times during the taxable year under the Investment Company Act of 1940;

(12) For calendar quarters and calendar years after 1988, a common trust fund (as defined in section 584(a));

(13) For calendar quarters and calendar years after 1988, a financial institution such as a mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization; and

(14) For calendar quarters and calendar years after 1988, any trust which is exempt from tax under section 664(c) (*i.e.*, a charitable remainder annuity trust or a charitable remainder unitrust).

(d) *Special provisions and definitions*—(1) *Incorporation of referenced rules.* The special rules of § 1.6049-4(d) are incorporated in this section, as applicable. Sections 1.6049-4(d)(2) and 1.6049-5(c) do not, however, apply to any REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies.

(2) *Collateralized debt obligation.* For purposes of this section, the term "collateralized debt obligation" means any debt instrument (except a tax-exempt obligation) described in section 1272(a)(6)(C)(ii) that is issued after December 31, 1986.

(e) *Requirement of furnishing information to certain nominees, corporations, and other specified persons*—(1) *In general.* For calendar quarters and calendar years after 1988, each REMIC or issuer of a collateralized debt obligation (as defined in paragraph (d)(2) of this section) must provide the information specified in paragraph (e)(2) of this section in the time and manner prescribed in paragraph (e)(3) of this section to any persons specified in paragraph (e)(4) of this section who request the information.

(2) *Information required to be reported.* For each class of REMIC regular interest or collateralized debt obligation and for each calendar quarter specified by the person requesting the information, the REMIC or issuer of a collateralized debt obligation must provide the following information—

(i) The name, address and Employer Identification Number of the REMIC or issuer of a collateralized debt obligation;

(ii) The CUSIP number, account number, serial number, or other identifying number or information, of each specified class of REMIC regular interest or collateralized debt obligation;

(iii) Interest paid on a collateralized debt obligation for each calendar quarter, and the aggregate amount for the calendar year if the request is made for the last quarter of the calendar year;

(iv) Interest accrued on a class of REMIC regular interest for each accrual period during such calendar quarter, and the aggregate amount for the calendar year if the request is made for the last quarter of the calendar year;

(v) Original issue discount accrued for each accrual period during such calendar quarter, and the aggregate amount for the calendar year if the request is made for the last quarter of the calendar year;

(vi) The daily portion of original issue discount per unit of original principal amount as determined under section 1272(a)(6) and the regulations thereunder for each accrual period and specify the unit or original principal amount if other than $1,000;

(vii) The length of the accrual period;

(viii) The adjusted issue price (as defined in section 1275(a)(4)(B)(ii)) of the REMIC regular interest or the collateralized debt obligation at the beginning of each accrual period for the requested quarters,

(ix) The information required by paragraph (f)(3) of this section, and

(x) For calendar years after 1989, the information required by paragraphs (f)(2)(i)(G) or (f)(2)(ii)(K) of this section.

(3) *Time and manner for providing information*—(i) *Manner of providing information.* The information specified in paragraph (e)(2) of this section may be provided as follows—

(A) By telephone;

(B) By written statement sent by first class mail to the address provided by the requesting party;

(C) By causing it to be printed in a publication generally read by and available to persons specified in paragraph (e)(4) and by notifying the requesting persons in writing or by telephone of the publication in which it will appear, the date of its appearance, and, if possible, the page upon which it appears; or

(D) By any other method agreed to by the parties. If the information is published, then the publication should also specify the date and, if possible, the page on which corrections, if any, will be printed.

(ii) *Time for furnishing the information.* Each REMIC or issuer of a collateralized debt obligation must furnish the information specified in paragraph (e)(2) of this section by the later of—

(A) 30 days after the close of the calendar quarter for which the information was requested, or

(B) Two weeks after the receipt of the request.

(4) *Persons entitled to request information.* The following persons may request the information specified in paragraph (e)(2) of this section from a REMIC or issuer of a collateralized debt obligation in the manner prescribed in paragraph (e)(5) of this section:

(i) Any broker who holds on its own behalf or as a nominee any REMIC regular interest or collateralized debt obligation,

(ii) Any middleman who is required to make an information return under section 6049(a) and paragraph (b)(2) of this section and who holds as a nominee any REMIC regular interest or collateralized debt obligation,

(iii) Any corporation or non-calendar year taxpayer who holds a REMIC regular interest or collateralized debt obligation directly, rather than through a nominee,

(iv) Any other person specified in paragraphs (c) (9) through (14) of this section who holds a REMIC regular interest or collateralized debt obligation directly, rather than through a nominee, or

(v) A representative or agent for a person specified in paragraphs (e)(4) (i), (ii), (iii), or (iv) of this section.

(5) *Manner of requesting information from the REMIC.* A requesting person specified in paragraph (e)(4) of this section should obtain Internal Revenue Service Publication 938, Real Estate Mortgage Investment Conduit (REMIC) and Collateralized Debt Obligation Reporting Information. This publication contains a directory of REMICs and issuers of collateralized debt obligations. The requesting person can locate the REMIC or issuer from whom information is needed and request the information from the official or representative of the REMIC or issuer at the address or telephone number specified in Publication 938. The information may be requested in writing or by telephone. The request should specify the calendar quarters (*e.g.*, all calendar quarters in 1989) and the classes of REMIC regular interests or collateralized debt obligations for which information is needed.

(f) *Requirement of furnishing statement to recipient*—(1) *In general.* Every person filing a Form 1099 under section 6049(a) and this section must furnish to the holder (the person whose identifying number is required to be shown on the form) a written statement showing the information required by paragraph (f)(2) of this section. The written statement provided by a REMIC must also contain the information specified in paragraph (f)(3) of this section.

(2) *Form of statement*—(i) *REMIC regular interests and collateralized debt obligations not issued with original issue discount.* For REMIC regular interests or collateralized debt obligations issued without original issue discount, the written statement must specify for the calendar year the following information:

(A) The aggregate amounts shown on Form 1099 to be included in income by that person;

(B) The name, address, and taxpayer identification number of the person required to file this form;

(C) The name, address, and taxpayer identification number of the person who must include the amount of interest in gross income;

(D) A legend, including a statement that the amount is being reported to the Internal Revenue Service, that conforms to the legend on Form 1099, Copy B, For Recipient;

(E) The CUSIP number, account number, serial number, or other identifying number or information, of each REMIC regular interest or collateralized debt obligation, with respect to which a return is being made;

(F) All other items shown on Form 1099 for the calendar year; and

(G) For calendar years after 1989, information necessary to compute accrual of market discount including:

(*1*) For each accrual period in the calendar year, a fraction, the numerator of which equals the interest allocable to that accrual period, and the denominator of which equals the remaining interest as of the beginning of the accrual period, and

(*2*) [Reserved].

The interest allocable to each accrual period and the remaining interest are calculated by taking into account events which have occurred before the close of the accrual period and the prepayment assumption, if any, determined as of the startup day (as defined in section 860G(a)(9)) of the REMIC or the issue date (as defined in section 1275(a)(2)) of the collateralized debt obligation that would be made in computing original issue discount if the debt instrument had been issued with original issue discount.

(ii) *REMIC regular interests and collateralized debt obligations issued with original issue discount.* For REMIC regular interests or collateralized debt obligations issued with original issue discount, the written statement must specify for the calendar year the following information:

(A) The aggregate amount of original issue discount includible in gross income of the holder for the calendar year with respect to the REMIC regular interest or the collateralized debt obligation;

(B) The aggregate amount of interest, other than original issue discount, includible in the gross income of the holder for the calendar year with respect to the REMIC regular interest or the collateralized debt obligation;

(C) The name, address, and taxpayer identification number of the person required to file this form;

(D) The name, address, and taxpayer identification number of the person who must include the amount of interest specified in paragraph (f)(2)(ii) (A) and (B) of this section in gross income;

(E) For calendar years after 1987, the daily portion of original issue discount per unit of original principal amount as determined under section 1272(a)(6) and the regulations thereunder for each accrual period and specify the unit of original principal amount if other than $1,000;

(F) For calendar years after 1987, the length of the accrual period;

(G) All other items shown on Form 1099 for the calendar year;

(H) A legend, including a statement that the information required under paragraph (f)(2)(ii) (A), (B), (C), (D) and (G) of this section is being reported to the Internal Revenue Service, that conforms to the legend on Form 1099, Copy B, For Recipient;

(I) For calendar years after 1987, the adjusted issued price (as defined in section 1275(a)(4)(B)(ii)) of the REMIC regular interest or the collateralized debt obligation at the beginning of each accrual period with respect to which interest income is required to be reported on Form 1099;

(J) The CUSIP number, account number, serial number, or other identifying number or information, of each class of REMIC regular interest or collateralized debt obligation, with respect to which a return is being made; and

(K) For calendar years after 1989, information necessary to compute accrual of market discount including:

(*1*) For each accrual period in the calendar year, a fraction, the numerator of which equals the original issue discount allocable to that accrual period, and the denominator of which equals the remaining original issue discount as of the beginning of that accrual period, and

(*2*) [Reserved].

The original issue discount allocable to each accrual period and the remaining original issue discount are calculated by taking into account events which have occurred before the close of the accrual period and the prepayment assumption determined as of the startup day (as defined in section 860G(a)(9) of the REMIC or the issue date (as defined in section 1275(a)(2)) of the collateralized debt obligation.

(3) *Information with respect to REMIC assets*—(i) *95 percent asset test.* For calendar years after 1988, the written statement provided by a REMIC must also contain the following information for each calendar quarter:

(A) The percentage of REMIC assets that are qualifying real property loans under section 593,

(B) The percentage of REMIC assets that are assets described in section 7701(a)(19), and

(C) The percentage of REMIC assets that are real estate assets defined in section 856(c)(6)(B), computed by reference to the average adjusted basis (as defined in section 1011) of the REMIC assets during the calendar quarter (as described in section 1.860F–4T(e)(1)(iii)). If for any calendar quarter the percentage of REMIC assets represented by a category is at least 95 percent, then the statement need only specify that the percentage for that category, for that calendar quarter, was at least 95 percent.

(ii) *Additional information required if the 95 percent test not met.* If, for any calendar quarter after 1988, less than 95 percent of the assets of the REMIC are real estate assets defined in section 856(c)(6)(B), then for that calendar quarter, the REMIC's written statement must also provide to any real estate investment trust (REIT) that holds a regular interest the following information:

(A) The percentage of REMIC assets described in section 856(c)(5)(A), computed by reference to the average adjusted basis of the REMIC assets during the calendar quarter (as described in § 1.860F–4T(e)(1)(iii)),

(B) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F(a)(2)) described in section 865(c)(3) (A) through (E), computed as of the close of the calendar quarter, and

(C) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F(a)(2)) described in section 865(c)(3)(F), computed as of the close of the calendar quarter. For purposes of this paragraph (f)(3)(ii)(C), the term "foreclosure property" contained in section 865(c)(3)(F) shall have the meaning specified in section 860G(a)(8). In determining whether a REIT satisfies the limitations of section 856(c)(2), all gross income is deemed to be derived from a source specified in section 856(c)(2).

(iii) For calendar years 1988 and 1989, the percentage of assets required in paragraph (f)(3) (i) and (ii) of this section may be computed by reference to the average fair market value of the assets of the REMIC during the calendar quarter (as described in § 1.860F–4T(e)(1)(iii)), instead of by reference to the average adjusted basis of the assets of the REMIC during the calendar quarter.

(4) *Cross-reference.* See § 1.67–3T(f)(2)(ii) for additional information that may be separately stated on the statement required by paragraph (f) of this section with respect to certain holders of regular interests in REMICs described in § 1.67–3T(a)(2)(ii).

(5) *Time for furnishing statements*—(i) *For calendar quarters and calendar years after 1988.* For calendar quarters and calendar years after 1988, each statement required under paragraph (f) of this section to be furnished to any person of a calendar year with respect to amounts includible as interest must be furnished to that person after April 30 of that year and on or before March 15 of the following year, but not before the final interest payment (if any) for the calendar year.

(ii) *For calendar quarters and calendar years prior to 1989*—(A) *In general.* For calendar quarters and calendar years prior to 1989, each statement required under paragraph (f) of this section to be furnished to any person for a calendar year with respect to amounts includible as interest must be furnished to that person after April 30 of that year and on or before January 31 of the following year, but not before the final interest payment (if any) for the calendar year.

(B) *Nominee reporting.* For calendar quarters and calendar years prior to 1989, each statement required under paragraph (f) of this section to be furnished by a nominee must be furnished to the actual owner of a REMIC regular interest or a collateralized debt obligation to which section 1272(a)(6) applies by the later of—

(*1*) 30 days after the nominee receives such information, or

(*2*) January 31 of the year following the calendar year to which the statement relates.

(6) *Special rules*—(i) *Copy of Form 1099 permissible.* The requirements of paragraph (f) of this section for the furnishing of a statement to any person, including the legend requirement or paragraphs (f)(2)(i)(D) and (f)(2)(ii)(H) of this section, may be met by furnishing to that person—

(A) A copy of the Form 1099 filed pursuant to paragraph (b)(2) of this section is respect of that person, plus a separate statement (mailed with the Form 1099) that contains the information described in paragraphs (f)(2)(i)(G), (f)(2)(ii) (E), (F), (I), and (K), (f)(3) and (f)(4), if applicable, of this section, or

(B) A substitute form that contains all the information required under paragraph (f) of this section and that complies with any current revenue procedure concerning the reproduction of paper substitutes of Forms 1099 and the furnishing of substitute statements to forms recipients.

(ii) *Statement furnished by mail.* A statement mailed to the last known address of any person shall be considered to be furnished to that person within the meaning of this section.

(7) *Requirement that nominees furnish information to corporations and certain other specified persons*—(i) *In general.* For calendar quarters and calendar year after 1988, every broker or middleman must provide in writing or by telephone the information specified in paragraph (e)(2) of this section to—

(A) A corporation,

(B) A non-calendar year taxpayer, or

(C) Any other person specified in paragraphs (c)(9) through (14) of this section who requests the information and for whom the broker or middleman holds as a nominee a REMIC regular interest or a collateralized debt obligation. A corporation, non-calendar year taxpayer, or any other person specified in paragraphs (c)(9) through (14) of this section may request the information in writing or by telephone for any calendar quarter and for any class of REMIC regular interest or collateralized debt obligation.

(ii) *Timer of furnishing information.* The statement required in paragraph (f)(7)(i) of this section must be furnished to the corporate or non-calendar year taxpayer within 45 days after receipt of the request. If the request is made, however, for the last calendar quarter in a year, then the information must be furnished by the later of—

(A) 45 days after receipt of request, or

(B) March 15 of the year following the calendar quarter for which the information was requested.

(g) *Information required to be set forth on face of debt instrument.* In the case of any REMIC regular interest or collateralized debt obligation that is issued after April 8, 1988 and that has original issue discount, the issuer must set forth on the fact of the REMIC regular interest or collateralized debt obligation—

(1) The amount of the original issue discount,

(2) The issue date,

(3) The rate at which interest is payable (if any) as of the issue date,

(4) The yield to maturity, including a statement as to the assumption made under section 1272 (a)(6)(B)(iii),

(5) The method used to determine yield where there is a short accrual period, and

(6) The amount of the original issue discount allocable to the short accrual period based on the prepayment assumption determined on the startup day (as defined in section 860G (a)(9)) or the issue date (as defined in section 1275 (a)(2)).

In cases where it is not possible to set forth the information required by this paragraph (g) of the fact of the REMIC regular interest or collateralized debt obligation by the issue date, the issuer must deliver to the holder a sticker containing this information within 10 days after the issue date. For rules relating to the penalty imposed for failure to show the information required by this paragraph (g) on the regular interest or collateralized debt obligation, see section 6706 (a) and the regulations thereunder.

PART 602—[AMENDED]

Par. 6. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 7. Section 602.101 (c) is amended by adding to the table in the appropriate place—

"§ 1.67–3T......1545–1018",
"§ 1.860D–1T......1545–1018",
"§ 1.860F–4T......1545–1018", and
"§ 1.6049–7T......1545–1018".

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: August 5, 1989.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 89–20916 Filed 9–6–89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

COTP Western Alaska Regulation 89-04, Safety Zone Regulations: Viekoda Bay, Kodiak Island, Alaska

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a one hundred (100) yard safety zone around the incinerator barge MLC–333, tug MARINE CHALLENGER, and berthing vessel JEANE CANDIES. The zone is needed to protect these vessels from a safety hazard associated with small vessels obstructing movement of vessels transporting oil spill debris to the MLC–333. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective at 5:30 p.m., August 18, 1989. It terminates at 12:00 a.m., September 15, 1989, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LCDR W.J. Hutmacher, (907) 271–5137.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent damage to the vessels involved, possible loss of oily debris, and injury to vessel crews.

Drafting Information

The drafters of this regulation are LCDR W. J. Hutmacher, project officer for COTP Western Alaska, and CDR R. L. Nelson, project attorney, Commander, Seventeenth Coast Guard District (dl).

Discussion of Regulation

The circumstances requiring this regulation resulted from the citizens of Port Lions stating they planned to demonstrate against the burning of oil spill debris aboard the barge MLC–333 and possibly block the approach of debris-carrying vessels to the incinerator barge. Small boats obstructing the path of debris-carrying vessels can create potential problems for the safe navigation of the debris-carrying vessels that could result in damage to those vessels and the protest vessels, possible loss of oily debris resulting in further oil pollution, and possible injuries to the crews involved. The regulation is necessary to prevent damage and possible injuries from occurring.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. A new § 165.T1704 is added to read as follows:

§ 165.T1704 Safety zone.

One hundred (100) yards around the incinerator barge MLC–333, tug MARIEN CHALLENGER, and the berthing vessel JEANE CANDIES.

(a) *Location:* The following area is a safety zone: One hundred (100) yards around the incinerator barge MLC–333, tug MARIEN CHALLENGER, and the berthing vessel JEANE CANDIES while anchored in Viekoda Bay, Kodiak Island, Alaska, position 57–51N, 153–05W.

(b) *Effective Date.* This regulation becomes effective at 5:30 p.m., August 18, 1989. It terminates at 12:00 a.m., September 15, 1989, unless sooner terminated by the Captain of the Port.

(c) *Regulations:* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: August 18, 1989.

W.J. Morani, Jr.,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Western Alaska.

[FR Doc. 89–20946 Filed 9–6–89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AD76

Veterans Education; Implementation of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986

AGENCY: Department of Veterans Affairs.

ACTION: Correction; Final regulations.

SUMMARY: On August 17, 1989, commencing on page 33885 (54 FR 33885–33894), the Department of Veterans Affairs (VA) published a final rule to better acquaint the public with the way in which VA intends to administer the provisions of law contained in the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 which affect the administration of dependents' educational assistance and benefits provided under the Vietnam-era GI bill. VA inadvertently neglected to show that the introductory text of § 21.4204 contained in the current edition of title 38 Code of Federal Regulations is not removed. The introductory text is published below to avoid any confusion. VA regrets the error and hereby corrects it.

FOR FURTHER INFORMATION CONTACT: Mr. William G. Susling, Jr., Acting Assistant Director for Education Policy and Program Administration (225), Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2092.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Dated: August 30, 1989.

Charles A. Fountaine III,

Chief, Directives Management Division.

In 38 CFR part 21, Vocational Rehabilitation and Education, the introductory text of § 21.4204 is republished to read as follows:

§ 21.4204 Periodic certification.

Educational assistance allowance is payable on the basis of a required certification concerning the pursuit of a course during the reporting period.

* * * * *

[FR Doc. 89–20957 Filed 9–6–89; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–588; RM–6481]

Radio Broadcasting Services; The Dalles, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Nugent Broadcasting Corporation, substitutes Channel 249C2 for Channel 249A at The Dalles, Oregon, and modifies its license for Station KACI(FM) to specify operation on the higher powered channel. Channel 249C2 can be allotted to The Dalles in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometer (6.0 miles) northwest to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 45–38–54 and West Longitude 121–16–18. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 16, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–588, adopted August 18, 1989, and released September 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by adding Channel 249C2 and removing Channel 249A at The Dalles, Oregon.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–21051 Filed 9–6–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–590; RM–6484; RM–6690]

Radio Broadcasting Services; Ravenel, Barnwell and Blackville, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Coastal Broadcasting, Inc., substitutes Channel 269C2 for Channel 269A at Ravenel, South Carolina, modifies its license for Station WMGL(FM) to specify operation on Channel 269C2, substitutes Channel 256A for Channel 269A at Barnwell, South Carolina, and modifies Station WBAW(FM)'s license to specify the alternate Class A channel. At the request of Aiken Broadcast Group, the Commission allots Channel 250A to Blackville, South Carolina, as its first local FM service. Channel 250A can be allotted to Blackville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for the Blackville allotment are North Latitude 33–21–48 and West Longitude 81–16–06. Channel 269C2 can be allotted to Ravenel with a site restriction of 17.2 kilometers (10.7 miles) southwest to accommodate Coastal's desired transmitter site. The coordinates for the Ravenel allotment are North Latitude 32–40–40 and West Longitude 80–23–40. Channel 256A can be allotted to Barnwell in compliance with the Commission's minimum distance separation requirements and can be used at Station WBAW(FM)'s present transmitter site. The coordinates for the Barnwell allotment are North Latitude 33–13–25 and West Longitude 81–21–35. With this action, this proceeding is terminated.

DATES: Effective October 16, 1989. The window period for filing applications for Channel 250A at Blackville, South Carolina, will open on October 17, 1989, and close on November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–590, adopted August 18, 1989, and released September 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended as follows: the entry for Barnwell, South Carolina, is amended by removing Channel 269A and adding Channel 256A; an entry for Blackville, South Carolina, Channel 250A, is added; and the entry for Ravenel, South Carolina, is amended by removing Channel 269A and adding Channel 269C2.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–21052 Filed 9–6–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 81132-9033]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of revision of effective date.

SUMMARY: This document revises the "**DATES**" portion of the preamble of a notice of adjustment to the 1989 specification of total allowable catch for pollock for the groundfish fishery of the Gulf of Alaska published August 10, 1989 (54 FR 32819). This action is intended to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: This notice of revision is effective September 5, 1989. This notice changes the effective date of the notice published at 54 FR 32819 (August 10, 1989) from September 5, 1989 to September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, 907–586–7230.

SUPPLEMENTARY INFORMATION: NMFS has been requested by fishermen and processors to delay the opening of directed fishing for pollock in the Gulf of Alaska to September 15. Processors argue that the September 7–8 halibut opening will produce such a quantity of fish that not less than a week will be required to properly handle the product. Processing of halibut is very different from pollock and requires adjustment in plant operations. Many fishermen have their vessels on contract to Exxon/Veco on oil spill clean-up activities through September 15. Other fishermen, believing the opening would occur in mid-September, have vessels undergoing repair and will not be ready until September 15. An earlier opening would eliminate much of their fishing opportunity and would result in wastage.

In rule document 89–18881, in the issue of August 10, 1989, page 32819, the phrase, "Effective September 5, 1989", should read, "Effective September 15, 1989." In column three, the sentence, "This inseason adjustment takes effect 30 days after the Secretary has filed the proposed adjustment with the Office of the Federal Register," before the Classification Section, should be deleted.

Classification

This action is taken under § 672.22 and Amendment 15 to the FMP. This action is in compliance with Executive Order 12291.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 1, 1989.

Herbert L. Blatt,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–21033 Filed 9–1–89; 3:04 pm]

BILLING CODE 3510-22-M

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50 CFR Parts 611 and 672

[Docket No. 81132-9033]

Foreign fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) prohibits trawling for groundfish in the Gulf of Alaska with a fishing vessel that has trawl gear other than pelagic trawl gear attached or on board that vessel, effective September 2, 1989, through the remainder of 1989. This action is necessary to limit the prohibited species catch (PSC) for Pacific halibut to the amount provided for by regulations implementing the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). It is intended to carry out the management objectives of the North Pacific Fishery Management Council.

DATES: This notice is effective at 12:00 noon, Alaska Daylight Time (ADT) on September 2, 1989, until midnight, Alaska Standard Time, December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs groundfish fishing in the U.S. exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR 611.92 and part 672. Special consideration is given to the conservation of Pacific halibut (halibut), a valuable species sought in another U.S. fishery, but which are caught as bycatch in the groundfish fishery. Pacific halibut are managed under authority of the International Pacific Halibut Commission; however, bycatches by U.S. fishermen are controlled through prohibited species catch (PSC) limits (50 CFR 672.20(f)).

The current halibut PSC limit for the Gulf of Alaska is an amount that would result in the mortality of no more than 2,000 metric tons (mt). A PSC share allocated to domestic annual processing (DAP) fisheries was not specified numerically, but was defined as the amount that would result in a total mortality inflicted on halibut of 1,485 mt. No JVP operations are planned during the remainder of 1989, and, therefore, the DAP fishery was allowed to continue until the halibut mortality was 2,000 mt. The Regional Director has determined that halibut mortality will equal this number on September 2, 1989. Under § 672.20(f)(1), the Regional Director is prohibiting fishing with trawl gear other than pelagic trawl gear for the remainder of the 1989 fishing year. Fishing with trawl gear is interpreted to include operations at sea in support of, or in preparation for, the use of trawl gear, such as having trawl gear on board.

Classification

Unless this notice takes effect promptly, the halibut PSC for the Gulf of Alaska will be exceeded. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Parts 611 and 672

Fisheries.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: August 31, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–21034 Filed 9–1–89; 3:10 pm]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment and closure.

SUMMARY: NOAA announces adjustment to the commercial ocean salmon management measures in the exclusive economic zone (EEZ) as follows: (1) For the subarea from Cape Falcon to Orford Reef Red Buoy, a ration restriction of one chinook for every two coho salmon landed is established and the first two coho salmon may be landed without a chinook salmon, beginning August 14, 1989; (2) the quota for chinook salmon in the commercial fishery from Humbug Mountain, Oregon to Punta Gorda, California, beginning August 18, 1989 is increased from 7,500 to 9,200 fish; and (3) when the commercial fishery from Humbug Mountain to Punta Gorda is open fish taken in this fishery, and only this fishery, may be landed at Port Orford, Oregon, beginning August 18, 1989.

NOAA also announces the closure of four ocean salmon fisheries in the EEZ as follows: (1) The commercial fishery for coho salmon from Cape Falcon, Oregon to Horse Mountain, California, at midnight, August 17, 1989; (2) the recreational fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, at midnight August 17, 1989; (3) the commercial fishery from Humbug Mountain, Oregon, to Punta Gorda, California, at midnight, August 20, 1989; and (4) the recreational fishery from Cape Falcon to Orford Reef Red Buoy, Oregon, at midnight, August 20, 1989. The Director, Northwest Region, NMFS (Regional Director), has determined that this action is necessary to conform to the preseason notice of 1989 management measures. This action is intended to allow maximum harvest of ocean salmon quotas established for the 1989 season, to accommodate fishermen's needs without substantially or adversely affecting the implementation of the 1989 management measures, and to ensure conservation of chinook and coho salmon.

DATES: The adjustments were effective as follows: (1) 0001 hours local time, August 14, 1989 for the adjustment to the commercial fishery from Cape Falcon to Orford Reef Red Buoy, Oregon; (2) 2400 hours local time, August 17, 1989 for the closure of the commercial fishery for coho salmon from Cape Falcon, Oregon, to Horse Mountain, California, and closure of the recreational fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon; (3) 0001 hours local time, August 18, 1989 for the revised quota and adjustment to the commercial fishery from Humbug Mountain, Oregon, to Punta Gorda, California; and (4) 2400 hours local time, August 20, 1989 for the closure of the commercial fishery from Humbug Mountain Oregon, to Punta Gorda, California, and closure of the recreational fishery from Cape Falcon to Orford Reef Buoy, Oregon. Actual notice to affected fishermen was given prior to those times through a special telephone hotline and U.S. Coast Guard notice-to-mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). Public comment on this notice will be accepted through September 22, 1989.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731–7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR part 661. Management measures for 1989 were effective on May 1, 1989 (54 FR 19798, May 8, 1989). The following adjustments to the commercial management measures are authorized by the ocean salmon regulations at 50 CFR 661.21(b)(1)(i)–(v).

Adjustment to Commercial Fishery From Cape Falcon to Orford Reef Red Buoy, Oregon

In its preseason notice of 1989 management measures, NOAA specified landing limits, landing boundaries, and ratio fisheries (restriction on the ratio of coho to chinook salmon which can be landed) for the 1989 commercial seasons in the subareas from Cape Falcon to Cascade Head, Oregon, and from Cascade Head to Orford Reef Red Buoy, Oregon. These restrictions were modified effective 0001 hours local time, July 18, 1989 (54 FR 31196, July 27, 1989) as follows. For the subarea from Cape Falcon to Cascade Head, a single daily landing limit per vessel or 50 coho salmon was established; for the surbarea from Cascade Head to Orford Reef Red Buoy, a ratio restriction of one chinook salmon for every two coho salmon landed was established and the first two coho salmon could be landed without a chinook salmon.

Based on the most recent catch information, the Regional Director determined that the catch rate should be slowed in the subarea from Cape Falcon to Cascade Head, Oregon, in order to allow maximum harvest of the overall coho quota and subarea coho ceilings established for the area south of Cape Falcon and to provide for equitable distribution of harvest among Oregon ports. Therefore, a landing ratio restriction of one chinook salmon for every two coho salmon landed with the provision that the first two coho salmon may be landed without a chinook salmon was established for the combined subarea from Cape Falcon to Orford Reef Red Buoy, Oregon, effective 0001 hours local time, August 14, 1989.

Adjustment to Commercial Fishery From Humbug Mountain, Oregon, to Punta Gorda, California

The 1989 commercial troll salmon fisheries from Humbug Mountain, Oregon, to Punta Gorda, California, are managed not to exceed an overall quota of 30,000 chinook salmon through August 31. This overall quota is partitioned into three subquotas and seasons. Any overages or underages in meeting a subquota for one time period are subtracted from or added to the next time period prior to August 31.

The commercial fisheries for the first two time periods have been completed. Actual landings indicate that about 20,800 chinook salmon have been caught, and 9,200 fish remain in the overall chinook quota. The third and last season governed by this chinook quota began on August 18, 1989, from Humbug Mountain, Oregon, to Punta Gorda, California. Therefore, the subquota for this fishery should be increased by the number of chinook salmon not harvested in the two earlier fisheries. Accordingly, the subquota for the commercial fishery from Humbug Mountain, Oregon, to Punta Gorda, California, beginning August 18, 1989, was increased from 7,500 to 9,200 chinook salmon.

The preseason notice of 1989 management measures requires that salmon caught in the commercial fisheries from Humbug Mountain, Oregon, to Punta Gorda, California, must be delivered within the area. Commercial fishermen requested to land their catch in Port Orford, Oregon, which is in the closed area between Orford Reef Red Buoy and Humbug Mountain, Oregon. By earlier inseason adjustment (54 FR 24906, June 1989), Port Orford is allowed to receive salmon caught only in the commercial fishery to the north between Cascade Head and Orford Reef Red Buoy, Oregon. In order to allow fishermen to land salmon in Port Orford and to provide proper accounting of catches for each management area, effective 0001 hours local time, August 18, 1989, whenever the commercial salmon fishery between Humbug Mountain, Oregon, and Punta Gorda, California is open, salmon caught in this fishery, and only this fishery, may be landed at Port Orford, Oregon. These landing boundaries, as well as the landing limits, will remain in effect only until this area is closed to commercial fishing.

Closures

Regulations governing the ocean salmon fisheries to 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Closure of Commercial Fishery From Cape Falcon, Oregon, to Horse Mountain, California, to Coho Salmon

The 1989 commercial fishery in the area from Cape Falcon, Oregon, to the U.S.-Mexico border is limited to an overall quota of 474,000 coho salmon, of which 5,000 coho salmon were reserved preseason for the commercial fishery south of Horse Mountain, California.

Based on the best available information, the commercial fishery catch south of Cape Falcon was projected to reach the 460,000 coho salmon quota (deducting the 5,000 coho salmon reserved preseason as stated above) by midnight, August 17, 1989. Therefore, the commercial fishery in the subarea from Cape Falcon, Oregon, to Horse Mountain, California, was closed to further fishing for coho salmon effective 2400 hours local time, August 17, 1989. In accordance with the preseason notice of 1989 management measures, the commercial salmon fishery in the subarea from Cape Falcon to Horse Mountain will continue for all salmon species except coho salmon, and the commercial salmon fishery in the subarea from Horse Mountain to the U.S.-Mexico border will continue for all salmon species through the earlier of September 30 or the attainment of a subarea quota of 5,000 coho salmon, effective 0001 hours local time, August 18, 1989.

Closure of Recreational Fishery From Leadbetter Point, Washington, to Cape Falcon, Oregon

The 1989 recreational fishery for all salmon species in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, commenced on June 26, 1989, and was scheduled to continue through the earliest of September 28, 1989, or the attainment of either a subarea quota of 111,400 coho salmon or an overall quota of 47,500 chinook salmon north of Cape Falcon. Based on the best available information, the recreational fishery catch in the subarea was projected to reach the 111,400 coho salmon quota by midnight, August 17, 1989. Therefore, the recreational fishery in this subarea was closed to further fishing effective 2400 hours local time, August 17, 1989.

Closure of Commercial Fishery From Humbug Mountain, Oregon, to Punta Gorda, California

According to the preseason notice, the commercial fishery in the subarea from Humbug Mountain, Oregon, to Punta Gorda, California, opened on August 18, 1989 for all salmon species except coho salmon and was scheduled to continue through the earlier of August 31, 1989 or the attainment of a subarea quota of 9,200 chinook salmon (as described above). Based on the best information available before the fishery opened, the commercial fishery catch in the subarea was projected to reach the subarea quota of 9,200 chinook salmon by midnight, August 20, 1989. Therefore, the commercial fishery in this subarea was closed to further fishing effective 2400 hours local time, August 20, 1989.

Closure of Recreational Fishery From Cape Falcon to Orford Reef Red Buoy, Oregon

The 1989 recreational fishery in the area from Cape Falcon, Oregon, to the U.S.-Mexico border is limited to an overall quota of 285,000 coho salmon. If the recreational coho quota is reached, the recreational fishery from Cape Falcon to Orford Reef Red Buoy, Oregon, is to be closed while the fishery from Orford Reef Red Buoy, Oregon, to the U.S.-Mexico border remains open as regularly scheduled.

The recreational fishery for all salmon species in the subarea from Cape Falcon to Orford Reef Red Buoy, Oregon, commenced on May 1, 1989, and was scheduled to continue through the earlier of September 15 or the attainment of an overall quota of 285,000 coho salmon south of Cape Falcon. The fishing week in this subarea was shortened to Sunday through Thursday only effective 2400 hours local time, July 27, 1989 (54 FR 31841, August 2, 1989) in order to provide a longer recreational fishing season. Based on the best available information, the recreational fishery catch south of Cape Falcon is projected to reach the 285,000 coho salmon quota by midnight, August 20, 1989. Therefore, the recreational fishery in the subarea from Cape Falcon to Orford Reef Red Buoy, Oregon, is closed to further fishing effective 2400 hours local time, August 20, 1989.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding these closures and inseason adjustments. The States of Washington, Oregon, and California will manage the commercial and recreational fisheries in state waters adjacent to the affected areas of the EEZ in accordance with this federal action. This notice does not apply to other fisheries which may be operating in other areas.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to the times listed above by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through September 21, 1989.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 1, 1989.

Herbert L. Blatt,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-21046 Filed 9-6-89; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 81131-9019]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment; notice rescinding and partially rescinding prohibitions on receipt of certain groundfish.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the joint venture processing (JVP) portion of the domestic annual harvest (DAH). This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), is necessary to assure optimum use of groundfish in that area. It is a conservation and management measure intended to promote fishery objectives of the North Pacific Fishery Management Council.

DATES: Effective noon, September 3, 1989, Alaska daylight time (A.D.T). Comments will be accepted through September 18, 1989.

ADDRESS: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP is implemented by rules appearing at 50 CFR 611.93 and part 675.

Initial specifications of groundfish for 1989 were published at 54 FR 3605

(January 25, 1989). Initially, 15 percent of the 1989 total allowable catch (TAC) for each species or species group was placed in reserve. Domestic annual processing (DAP) amounts were determined based on NMFS' preseason comprehensive survey of domestic processors. Remaining amounts were provided to domestic fishermen delivering fish to be processed by foreign processors (JVP). No initial specifications were provided for foreign fishing because DAH requirements exceeded the optimum yield. The same notice apportioned amounts from reserve to JVP for arrowtooth flounder, squid, and "other species" in order to provide bycatch amounts for JVP fisheries.

In June, the Regional Director sent another written survey to DAP processors to determine whether information gathered in the initial survey was still valid. The midseason survey was completed on July 28. Respondents indicated actual production for the first and second quarters of 1989 and changes, if any, to amounts requested for the third and fourth quarters. A thorough evaluation of survey returns by NMFS Regional Office staff indicated amounts excess to DAP needs exist within DAH in 1989, as well as DAP amounts that could require supplementation. Amounts that may be needed to supplement DAP are retained in the non-specific reserve, to be apportioned to DAP if the need arises later in the year. Amounts in DAP and reserve which are in excess of DAP requirements are apportioned to JVP.

Earlier this year, NOAA announced prohibitions of receipt by foreign processors of fish taken in several directed fisheries. These included directed fisheries for Bering Sea subarea pollock, effective January 21, 1989 (54 FR 3609, January 25, 1989), Pacific cod, effective February 11, 1989 (54 FR 6934, February 15, 1989), rock sole, effective February 21, 1989 (54 FR 7933, February 24, 1989) and yellowfin sole, effective March 1, 1989 (54 FR 9216, March 6, 1989). This notice reapportions sufficient amounts of pollock and yellowfin sole to permit resumption of JVP directed fisheries for those two species. The prohibitions of receipt by foreign processors of pollock and yellowfin sole taken in directed fisheries are rescinded. However, the amounts of Pacific cod and rock sole reapportioned by this notice are sufficient only to provide bycatch amounts for the directed fishing of other species. The prohibitions of receipt by foreign processors of Pacific cod and rock sole taken by the directed fishing for these species remain in effect.

Reapportionment

The following actions are taken by this notice to reapportion groundfish from DAP and from the non-specific reserve.

The Regional Director has found that the current DAP for Bering Sea subarea pollock may require supplementation by part of the reserve (up to 27,000 mt) later in the year. However, 174,000 mt of the reserve is available and is reapportioned to JVP for Bering Sea subarea pollock. Similarly, 30,000 mt of the nonspecific reserve is available and is reapportioned to JVP for Pacific cod.

The currently specified DAP amounts for yellowfin sole, Greenland turbot, other flatfish, and rock sole are in excess of DAP requirements for 1989. Therefore, excess DAP amounts of these species, along with reserve amounts, are reapportioned to JVP.

These reapportionments will not result in overfishing of any species, since, in each case, the resulting species TAC is less than its acceptable biological catch.

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

[Values are in metric tons]

		Current	This action	Revised
Pollock (Bering Sea subarea)	DAP	1,045,565		1,045,565
TAC=1,313,000; ABC=1,340,000	JVP	93,415	+174,000	267,415
Yellowfin sole	DAP	45,274	−24,000	21,274
TAC=193,952; ABC=241,000	JVP	110,000	+62,678	172,678
Greenland turbot	DAP	6,800	−200	6,600
TAC=6,800; ABC=20,300	JVP	0	200	200
Other Flatfish	DAP	23,906	−15,000	8,906
TAC=63,906; ABC=155,900	JVP	40,000	+15,000	55,000
Pacific cod	DAP	158,613		158,613
TAC=226,079; ABC=370,600	JVP	37,466	+30,000	67,466
Rock Sole	DAP	67,543	−25,000	42,543
TAC=77,148; ABC=171,000	JVP	9,605	25,000	34,605
Total (TAC=2,000,000)	DAP	1,409,514	−64,200	1,345,314
	JVP	295,211	+306,878	602,089
RESERVES		295,275	−242,678	52,597

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit domestic fishermen who otherwise would be unable to obtain markets for their catch. Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 1, 1989.

Herbert L. Blatt,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-21032 Filed 9-1-89; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 90407-9170]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reapportionment and closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that, (1) previously specified

prohibited species catch (PSC) allowances for Pacific halibut and red king crab are incorrect, and (2) the PSC allowances of red king crab for domestic fisheries in bycatch limitation zone 1 (Zone 1) in the Bering Sea and Aleutian Islands (BSAI) area have been attained. Therefore, the Secretary of Commerce (Secretary) is reapportioning PSC allowances for Pacific halibut and red king crab. In addition, the Secretary is prohibiting any further directed fishing for yellowfin sole, rock sole, and "other flatfish," and directed fishing for pollock and Pacific cod with bottom trawl gear in Zone 1. This action is necessary to prevent excessive bycatch of red king crabs in the trawl fishery for groundfish in an area of particular importance to the red king crab stock. This action is intended to carry out the objectives of recently implemented measures to control the bycatch of prohibited species in the trawl fishery for groundfish.

EFFECTIVE DATES: September 3, 1989 through December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Fishery Management Biologist), NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802–1668, telephone 907–586–7229.

SUPPLEMENTARY INFORMATION: The Secretary approved Amendment 12A to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 12A was implemented by the Secretary with a final rule promulgaed August 9, 1989 (54 FR 32642) and effective September 3, 1989 through December 31, 1990.

The purpose of Amendment 12A is to limit incidental catches of the prohibited species Tanner crab, red king crab, and Pacific halibut by the groundfish fisheries in the BSAI area. Such incidental catches are referred to as bycatches in fisheries targeting other species.

The amendment establishes five prohibited species catch (PSC) limits, each of which are apportioned among four fisheries: The domestic annual processing (DAP) fisheries for (1) flatfish and (2) other species, and the joint venture processing (JVP) fisheries for (3) flatfish and (4) other species. Each of the 20 PSC allowances prescribed for the 1989 groundfish fisheries were specified in the final rule implementing Amendment 12A (50 CFR § 675.21, Table 2, 54 FR 32651, August 9, 1989). Specification of the PSC allowances was based on the anticipated bycatch of prohibited species through the use of a mathematical prediction procedure using statistical information derived from fishery performance in previous years and projected performance for the 1989 fishing year.

Reapportionment

The Regional Director has determined that the prediction procedure has led to incorrect specification of the PSC allowances for Pacific halibut and red king crab. These adjustments of the PSC allowances are based on the best available scientific information concerning the actual groundfish harvest to date and new projections of harvest for the remaining fishing year. The Regional Director has determined that there was insufficient halibut PSC allowance apportioned to the DAP and "JVP flatfish fisheries" and excessive halibut PSC allowance apportioned to the DAP and "JVP other fisheries," and that there was insufficient red king crab PSC allowance apportioned to the "JVP flatfish fishery" and excessive red king crab PSC allowance apportioned to the "JVP other fishery." This adjustment will allow redistribution of uncaught PSC allowances among fisheries. Therefore, the Secretary is adjusting the incorrectly specified halibut and red king crab PSC allowances specified in Table 2, 50 CFR 675.21 as follows:

REAPPORTIONMENT OF 1989 PROHIBITED SPECIES CATCH (PSC) ALLOWANCES OF PACIFIC HALIBUT (IN METRIC TONS) AND RED KING CRAB (IN NUMBERS OF ANIMALS)

Fishery	Original primary PSC allowance for halibut	Change	New primary PSC allowance for halibut
DAP flatfish	181	+50	231
DAP other	3,408	−50	3,358
JVP flatfish	146	+250	396
JVP other	665	−250	415
Primary PSC limit	4,400		4,400
Fishery	Original secondary PSC allowance for halibut (BSAI-wide)	Change	New secondary PSC allowance for halibut (BSAI-wide)
DAP flatfish	220	+50	270
DAP other	4,131	−50	4,081
JVP flatfish	177	+250	427
JVP other	805	−250	555
Secondary PSC limit	5,333		5,333
Fishery	Original PSC allowance for red king crab (zone 1)	Change	New PSC allowance for red king crab (zone 1)
JVP flatfish	111,858	+16,552	128,410
JVP other	16,684	−16,552	132

Closure

The Regional Director has determined that the "DAP flatfish fishery," the "DAP other fishery," the "JVP flatfish fishery" and the "JVP other fishery" have attained their PSC allowances for red king crab in Zone 1 for the 1989 fishing year.

Therefore, the Secretary, by this notice and under authority of § 675.21(c), prohibits for the remainder of the fishing year:

(1) Directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in Zone 1 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors;

(2) Directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in Zone 1 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors;

(3) The receipt by foreign vessels of groundfish caught from Zone 1 that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" in the aggregate; and

(4) The receipt by foreign vessels of groundfish caught from Zone 1 with bottom trawl gear that is composed of 20 percent or more pollock and Pacific cod in the aggregate.

Classification

These actions are taken under §§ 675.20 and 675.21 and they comply with Executive Order 12291.

List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

(Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 31, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Services.

[FR Doc. 89–21031 Filed 9–1–89; 2:07 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 172
Thursday, September 7, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 425

[Amendment No. 2; Doc. No. 7089S]

Peanut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Peanut Crop Insurance Regulations (7 CFR Part 425), effective for the 1990 and succeeding crop years. The intended effect is to standardize the unit structure and to establish units by share where there is a landlord/tenant relationship.

COMMENT DATE: Written comments, data, and opinions on this proposed rule should be received not later than October 10, 1989.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to amend the Peanut Crop Insurance Regulations (7 CFR Part 425) to standardize the unit structure and to establish units by share where there is a landlord/tenant relationship.

Changes being proposed herein serve to allow standard policy units currently in existence for all peanut program counties.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 425

Crop insurance; Peanuts

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Peanut Crop Insurance Regulations (7 CFR Part 425), proposed to be effective for the 1990 and succeeding crop years, as follows:

PART 425—[AMENDED]

1. The authority citation for 7 CFR Part 425 is revised to read as follows:

Authority: 7 U.S.C. 1508, 1516.

2. The Peanut Crop Insurance Regulations (7 CFR part 425) § 425.7 is amended in Section 7(d) by revising subsections 17.c. and 17.n., to read as follows:

§ 425.7 The application and policy.

* * * * *

(d) * * *

17. Meaning of terms. * * *

c. *"County"* means the county shown on the actuarial table and any additional land located in a local producing area bordering on the county, and shown by the actuarial table; and * * *

n. *"Unit"* means all insurable acreage of peanuts in the county on the date insurance attaches for the crop year:

(1) in which you have a 100 percent share; or

(2) which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the insured crop on such land will be considered owned by the lessee. Units will be determined when the acreage is reported and may be adjusted to reflect the actual unit structure when adjusting a loss; however, no further unit division may be made at loss adjustment time.

We may consider any acreage and share thereof reported by or for your spouse or child

or any member of your household to be your bona fide share or the bona fide share of any person having an interest therein.

Peanut acreage that would otherwise be one unit, may be divided into more than one unit, if for each proposed unit you maintain written verifiable records of planted acreage and harvested production for at least the previous crop year. Production reports by unit based on those records must be filed no later than the earlier of the acreage reporting date or 45 days after the sales closing date for the upcoming crop year. The acreage planted to the insured peanut crop, to be divided into units, must be located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified and the insured acreage is easily determined; and

(2) The peanuts are planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number,

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

* * * * *

Done in Washington, DC on August 16, 1989.

John Marshall,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 89–20953 Filed 9–6–89; 8:45 am]
BILLING CODE 3410-08-M

FEDERAL TRADE COMMISSION

16 CFR Part 307

Smokeless Tobacco

AGENCY: Federal Trade Commission.

ACTION: Extension of time to file comments.

SUMMARY: The Federal Trade Commission has granted several requests to extend the public comment period for all interested parties for 45 days, until October 16, 1989, on the Notice of Proposed Rulemaking for possible amendments to its regulations under the Comprehensive Smokeless Tobacco Act of 1986. The original comment period on the Notice, published on July 31, 1989 (54 FR 31541), ended on August 30, 1989.

DATE: Comments regarding the proposed amendments to the regulations must be filed no later than October 16, 1989.

ADDRESS: Comments should be addressed to Secretary, Federal Trade Commission, 6th & Pennsylvania Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Anne V. Maher (202) 326–2987. Division of Advertising Practices, Federal Trade Commission, 6th & Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking published on July 31, 1989 (54 FR 31541), the Federal Trade Commission requested public comment on proposed amendments to 16 CFR part 307, the Commission's regulations under the Comprehensive Smokeless Tobacco Act of 1986 ("Act"). Those regulations, which took effect on February 27, 1987, implement the Act's requirements for the display of health warnings in the labeling and advertising of smokeless tobacco products and for the submission of plans for compliance with the Act. The regulations exempt "utilitarian objects for personal use, such as pens, pencils, clothing and sporting goods" from the Act's requirement that all advertising display the warnings. The Commission's decision to exempt utilitarian items was challenged in court, and the court subsequently ordered the Commission to delete the exemption.[1] Consequently, the Notice proposed the deletion of the exemption of utilitarian objects from the regulations, and proposed a method for displaying the required health warnings on utilitarian objects.

The date on which comments would have been due was August 30, 1989. Two organizations, however, have requested a 30-day extension to the time period, while the Smokeless Tobacco Council has requested a 60-day extension. Having considered the requests, the Commission has determined that a 45-day extension period will provide all parties with a sufficient amount of time to prepare comments to the proposed amendments. Accordingly, the comment period will be extended for 45 days, and the Commission will accept written public comments on the Notice until October 16, 1989.

List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade practices.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 89–20974 Filed 9–6–89; 8:45 am]
BILLING CODE 6750-01-M

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[1] *Public Citizen, et al. v. Federal Trade Commission*, No. 88–5209, (D.C. Cir. March 14, 1989), *aff'g.* 688 F. Supp. 667 (D.D.C. 1988).

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Rule Amendments Concerning Trading Cards and Submission of Trade Records

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed Rule Amendments.

SUMMARY: The Commodity Futures Trading Commission proposes several amendments to Regulation 1.35, 17 CFR 1.35. These amendments would (1) require that trading cards prepared by a member of a contract markets showing purchases and sales executed on that contract market, pursuant to paragraph 1.35(d)—(a) contain pre-printed, unique identifying information which would permit the sequencing of such records intra-day, (b) distinguish each member's records from those of other members, and (c) distinguish each such record from all other such records prepared by the member over a period of one week; (2) require that trading cards be timestamped promptly upon completion; (3) require that all contract markets adopt and make effective within 60 days rules which require that trading cards prepared pursuant to Regulation 1.35(d) and customer order tickets prepared pursuant to Regulation 1.35(a–l) be submitted by the executing member to the clearing member or the exchange immediately at the end of intervals not to exceed 30 minutes, commencing with the beginning of the trading session; provided that the time period for submission of trading records after the close not exceed five minutes; (4) require that all contract markets adopt rules providing that the 30-minute period for submission subsequently be shortened to 15 minutes; (5) require that members of contract markets submit the records required by Regulations 1.35(a–1) and 1.35(d) in accordance with exchange rules adopted to implement the 30-minute and 15-minute trade submission requirements; (6) that members be held accountable for all of the trading cards prepared pursuant to paragraph 1.35(d) in exact numerical sequence, regardless of whether that trading cards was voided or otherwise not used for submission of trades to clearing; (7) that members record trades on trading cards in exact chronological order on sequential lines of a trading card with no lines skipped between trades; provided, however, that if lines remain after the last execution recorded on a trading card, the remaining lines

The Commission believes that

collection and timestamping

that trading cards be timestamped by

shall be marked through; (8) that all contract markets adopt rules which designate the opening and closing periods upon which the opening and closing trading ranges are based in each of their designated futures or option contracts; (9) that all contract markets adopt rules requiring that members identify on their trading cards prepared pursuant to 1.35(d) the trades executed during designated opening and closing periods, either by drawing a line on the card to separate those trades from others recorded thereon or by other method approved by the Commission.

DATES: Comments on the proposed amendments to Regulation 1.35 must be received on or before October 10, 1989.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Patricia C. Apfelbaum, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

Public report burden for this collection of information is estimated to average 80.83 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW, Washington, DC 20581; and to, Office of Management and Budget, Paperwork Reduction Project (3038–xxx), Washington, DC 20503.

II. Background

Existing Regulation 1.35 governs the records of cash commodity, futures, and option transactions which must be prepared and maintained for all purchases and sales of commodities for future delivery or commodity options on designated contract markets. Regulation 1.35(d) requires that each member of a contract market executing purchases and sales prepare regularly and promptly a trading card or other record showing such purchases and sales. These records are made by exchange members with respect to their personal (customer type indicator "CTI" 1) trades, although in some markets those records also are used to reflect trades executed for the benefit of other account types.[1] The contract markets likewise impose on their members a variety of requirements for the preparation of such records and the submission of trade records for clearing, consistent with each exchange's system for assigning a one-minute time of execution to each trade, as required by Commission Regulation 1.35(g). Commission Regulation 1.35(a–1) requires that a written record be prepared of all customer orders both by the futures commission merchant ("FCM") and the member receiving the order on the trading floor, and that the orders be timestamped upon receipt and at the time a report of execution is made from the trading floor.

Commission Regulation 1.35 imposes a variety of obligations on the members of contract markets to keep accurate and complete records of their trading activity. Further, the one-minute trade timing standard of Commission Regulation 1.35(g) is a performance standard which requires an accurate and verifiable time of execution for each trade.[2] The Commission has found that, in many instances, members are not preparing accurate trade records in accordance with their own recordkeeping obligations and, therefore, also are not providing accurate data which will permit an exchange to meet the performance standard as to their trades. Moreover, the exchanges have had sufficient opportunity to address these issues and, although some steps have been taken, have failed to implement adequate measures to address this situation.

For these reasons, the Commission has determined that it is necessary that Commission Regulation 1.35 be amended to provide a variety of means to prevent the above-described source records from being fabricated or altered, to verify the sequence of a member's trading activity, and to enhance surveillance of trades executed during opening and closing periods. These records are source documents from which trade data, particularly for those trades executed for a member's personal account, are taken for entry into clearing and used in the creation of an exchange's trade register. The trade register then is used to conduct trade practice surveillance and to reconstruct trading for various purposes.

Collecting these records more frequently after completion than required now at most exchanges should reduce the potential for a member to alter such records to commit or conceal illegal trading activity. Requiring that trading records be submitted within five minutes after the close also will reduce the potential for members improperly to execute trades after the close of trading. A separate requirement that members comply with those submission requirements would provide the Commission with the authority to enforce these requirements as well.

Timestamping trading cards and including pre-printed sequence information thereon would provide a mechanism by which to verify the sequential order of the trading cards, deter alteration of such trading cards in connection with illegal trading, and help enforce the trade record collection requirements being proposed. Requiring members to be fully accountable for all trading cards will provide more complete written records for surveillance purposes. Requiring that members record trades on trading cards in exact chronological sequence without skipping lines will further reduce the ability of a member to fabricate trades after the fact.[3] Finally, the designation of separate opening and closing periods and identification by members on their trading cards of trades executed during those periods would facilitate the identification of those trades for the purposes of monitoring potential abuses involving customer orders during those periods, which generally have greater volume, and often more price volatility, than other designated time periods during a trading day.[4] A separate requirement that members comply with exchange rules in this regard provide the Commission with the authority to enforce that requirement.

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[1] In some instances, customer orders also may be used to record information specifically required by Regulation 1.35(d) such as opposite clearing member. Such orders are not addressed by the proposed amendments herein that relate to trading cards.

[2] *See*, 49 FR 50190 (December 27, 1984).

[3] The proposed requirement that members record trades on trading cards in exact chronological order on sequential lines of a trading card without skipping lines will not prevent members from recording buys and sells separately on different sides of the trading card or on different cards as long as buys and sells so recorded are in sequential order.

[4] The opening and closing periods referred to herein are the periods which are the basis for establishing the opening and closing ranges and not opening and closing bracket periods. Data collected in connection with the adoption of the amendments to Regulation 1.35 for the timing of trades to the nearest minute indicated that, in some markets the volume of transactions executed during the open ranged from 13–25% and that as much as 12% of the volume of transactions may occur in the closing period.

The Commission believes that timestamping and regular collection of trade records are readily achievable at reasonable expense to the exchanges and their members. With respect to timestamping, order tickets already are required to be timestamped upon report, pursuant to Commission Regulation 1.35(a–1), and trading cards easily could be timestamped upon completion in the same manner. Further, many exchanges already have recognized the benefit of frequent collection of trading records and have imposed such requirements on their members. Likewise, recording trades on trading cards without skipping lines between trades and designating opening and closing periods can be implemented at no cost to exchanges and their members and without a material increase in the time required for the preparation of the required record.

The Commission believes that the proposed requirements would provide several additional benefits. By reducing the opportunity to alter or fabricate source records, the proposed requirements would increase the reliability of audit trail data based on such records and the confidence of public customers in the accuracy of such data. The time stamp and designation of the open and close on trading cards could be used to refine existing exchange audit trail systems. Specifically, the additional timing data would aid verification of the one-minute trade times required under Commission Regulation 1.35(g). Such time stamp data also would provide additional information which could be used in the derivation of one-minute times, for systems which impute trade times, and as such should aid such audit trail systems in imputing reliable one-minute trade times to trades involving a member's personal account (CTI 1 trades), with an increased level of confidence than is the case today. The Commission has identified weaknesses in the exchanges' existing audit trail systems with respect to those trades.[5]

In its review of the implementation of exchange audit trail systems and in its analysis of audit trail proposals preparatory to the adoption of the one-minute timing standard, the Commission previously has identified many of these steps as a means of improving audit trails and made recommendations to the exchanges toward that end.[6] The collection and timestamping requirements combined with additional trading card identification and sequencing information and recording requirements also would address the types and manner of certain abuses allleged in criminal indictments and Commission compliants against a number of traders at the CME and CBT, announced on August 2, 1989. The indictments allege, among other things, that certain traders altered, rewrote, or destroyed trading cards and made false reports of trades to clearing in order to conceal and falsely reflect trading activity which deprived their customers of profits and enabled the traders to avoid liability for trading errors.

In sum, such amendments should result in immediate improvements in the deterrence and detection of illegal trading abuses facilitated by improper fabrication and alteration of trading records and in audit trail data. In particular, such actions would reduce the opportunity for members trading for their personal accounts to participate in illegal trading to defraud customers.

III. Existing Exchange Practices

As noted above, the exchanges already have in place some requirements that address these issues and have indicated that these systems are a valuable tool in their surveillance efforts.[7] Specifically, at the CBT pre-numbered sequential trading cards must be used to record all of a member's personal trades (Regulation 332.04). Trading cards must be used in ascending order each day but need not be used in exact numerical sequence as long as they are used in ascending order on a day-to-day basis. However, CBT has adopted a rule, which will become effective on September 1, 1989, to make members accountable for all trading cards in numerical order, regardless of whether the trading card is used for trade submission (Regulation 332.04).[8] CBT Regulation 332.05 requires that clearing members collect trading cards at designated times throughout the trading day, presently intra-day and once after the close of the market for the day trading session and every half-hour during the evening trading session. The CBT has amended this rule to require that trading cards be timestamped by the clearing member upon collection.[9] CBT has represented the Commission staff that it intends to require the hourly submission of trading cards to clearing members effective September 1, 1989. With respect to designation of opening and closing periods, the CBT currently has no rules establishing such periods.

At the Coffee, Sugar & Cocoa Exchange ("CSC") members are required to record all trades in exact chronological order of execution on pre-printed sequentially numbered trading cards, provided by the CSC. The trading cards are collected by the CSC promptly following the end of each half-hour bracket period, beginning at 10:00 a.m. (Rule 3.18). The traders use three-ply carbon trading cards and submit the top copy of the card to the Exchange. CSC presently employs an opening call procedure for opening its coffee, sugar, and cocoa markets (Rule 3.04), whereby each contract month is "called" for the execution of opening orders for that contract month alone. Typically, the opening call for any particular month lasts one minute or less. There is a similar closing call in the coffee and sugar contracts. The closing period for trading in the cocoa contract is five minutes in length (Rule 3.04(e)). Members are required to place a line on their trading cards to designate trades executed during the opening call (Rule 3.18(d)).

At the New York Futures Exchange ("NYFE") all trades must be recorded on trading cards in the order of execution with each trade on a separate line and no lines skipped. Trading cards are numbered sequentially by the executing member and must be submitted to NYFE no later than 15 minutes after the end of the half-hour bracket period during which those trades were executed (Rule 409 and Regulatory Memorandum 84–11). With respect to the open and close, NYFE has an opening call subject to procedures established by the Floor Committee (Rules 411 and 412). The closing period is set as the last minute of trading (Rule 435(a)). Members are required to draw a line on their trading cards to indicate when the opening call was completed (Rule 409(b)).

At the CME, trades for a member's personal account (CTI 1) and house account (CTI 2) trades originated by the member must be recorded on trading cards in the order in which they are executed. All of the member's cards must be numbered sequentially in the order in which they are used, and once a trade has been recorded on a new card, the member may not return to a previous card (Rule 536 B and C). Trading cards are submitted to clearing members twice intra-day and once after the close of the market (Rule 536 A, Memorandum from CME Clearinghouse to All Members re "Intra-day Trade Submission Compliance," August 7, 1989).[10] With respect to opening and closing periods, CME has specified closing periods of 30 seconds for its agricultural, interest rate and S & P futures and 60 seconds for currencies and S & P options.

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[5] *E.g.*, Rule Enforcement Review of the Chicago Board of Trade ("CBT"), February 17, 1989; Audit Trail Rule Enforcement Review of the Chicago Mercantile Exchange ("CME"), September 19, 1988.

[6] *E.g.*, Letters from the Division of Trading and Markets ("Division") to the exchanges dated February 7 and March 8, 1989; and the Rule Enforcement Review of the CBT.

[7] In its response to the Division's March 8, 1989 letter, the Commodity Exchange, Inc. ("Comex") characterized these procedures as minimizing the opportunity to fabricate or alter source documents and increasing the opportunity for detection of such activities.

[8] The rule was submitted to the Commission pursuant to Commission Regulation 1.41(c). In a letter dated May 24, 1989, the Division notified the Exchange that the rule could be so implemented.

[9] The rule was submitted to the Commission pursuant to Commission Regulation 1.41(c). In a letter dated July 25, 1989, the Division notified the Exchange that the rule could be so implemented. On the same date, the Division informed the Exchange that amendments to CBT Regulation 465.01, which require that all time stamps be affixed by synchronized time clocks, could also be implemented under 1.41(c).

Comex requires that CTI 1 and 2 trades be recorded on trading cards in the exact order of execution (Rule 4.60(a)(1)). Members also may record CTI 3 and CTI 4 trades on their trading cards. Further, all members submit trading cards and order tickets to their clearing members every half hour beginning at 9:15 a.m. for trades executed during designated half-hour periods (Rule 4.63(a)). Clearing members are required to have full-time representatives on the floor to collect such trading documents (Rule 4.85). Openings at Comex are conducted pursuant to a call procedure (Rule 4.04). The closing period is the last minute of trading (Rule 4.80).

At the Kansas City Board of Trade ("KCBT") all trades must be recorded on trading cards (Rule 1115.00). Further, trades must be submitted to clearing within 90 minutes after the trade was executed (Clearing Corporation Bulletin 88–11, July 27, 1988). In order to comply with these requirements, clearing members must collect trading cards regularly from the executing member. With respect to the open and close, KCBT rules provide that the opening range is set by the Pit Reporter based on all prices at which orders on the open are executed (Rules 1111.00 and 1111.01). The closing period is the last 30 seconds of trading (Rule 1111.02).

At the New York Cotton Exchange ("NYCE") all trades are recorded on numbered carbonized trading cards in the order of execution. Buys and sells are recorded on the left and right sides of the card, respectively, and, except for cross trades and straddles, each buy or sell must be recorded on the line immediately following the prior transaction. A member may, however, skip lines between trades if that is his practice, that practice has been submitted in writing to the Compliance Department, and the practice does not result in trades being recorded out of sequence (Rule 5.10(d)). Trades must be submitted by the clearing member to the clearing house within one-half hour after the bracket in which the trade occurred.[11] The opening period is set at one minute (Rule 5.10(c)).

The existence of these exchange requirements, although less extensive than the proposed regulations, indicate that the exchanges believe that requirements of the type being proposed are important to their audit trail and surveillance capabilities, as well as to the intra-day clearing and reconciliation of trades. These procedures provide an existing structure for the contract markets and their members readily to adopt the necessary changes without disrupting the markets. The proposed regulatory amendments provide a uniform minimum standard for the preparation and submission of trade data and provide additional information to verify the accuracy of that data and enforce existing requirements.

IV. Proposed Rules

In light of the foregoing, the Commission proposes to amend Regulation 1.35 by amending paragraph 1.35(a–1), which pertains to written records of customer orders and paragraph 1.35(d), which pertains to trading cards, and adding a new paragraph (j), which relates to the submission of trading documents to a clearing member or contract market, and designation of opening and closing periods.

1. Proposed Paragraph (a–1) Futures commission merchants, introducting brokers, and members of contract markets: Recording of customers' and option customers' orders.

The Commission proposes to add to subparagraph (a–1)(4) of Regulation 1.35 a new sentence which would require that the members of contract markets comply with exchange rules adopted pursuant to proposed Commission Regulations 1.35(j) (1) and (2), which would require that written records of customer orders be submitted to exchange personnel or the clearing member within certain timeframes.[12] This proposal would give the Commission the authority to enforce such trade date submission requirements independent of any exchange action and thereby would provide the Commission with an additional tool for enforcing the other requirements of Commission Regulation 1.35.

2. Proposed Paragraph (d)—Members of contract markets.

The Commission proposes to add to paragraph (d) of Regulation 1.35 a new sentence which would require that trading cards contain a pre-printed sequence number which would permit the sequencing of such records at least intra-day. The proposed amendments would require further that the trading card contain information to identify the member and to distinguish each of that member's trading cards from other trading cards the member prepares during a period of one week. The Commission further proposes to require that trading cards be timestamped promptly after completion in the same manner as written records of customer orders presently are timestamped upon report. The Commission believes that such identifying and timing information would permit it more effectively to determine whether a member has entered his trades in chronological order and to monitor whether a trader may have altered, fabricated, or destroyed trade records to carry out or conceal illegally trading activity. Likewise, the proposed requirement that members record trades on trading cards in exact chronological order without skipping lines and mark through any lines remaining after the last execution is recorded on a trading card should inhibit the ability of a member to fabricate trades after the fact.

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[10] In a report dated April 19, 1989, the CME's Special Committee to Review Trading Practices recommended that trading cards be collected on an hourly basis and that trading cards have pre-printed numbers. Subsequently, a special Computerized Trade Reconstruction ("CTR") Enhancements Committee ("Committee"), in a report to the Board of Governors dated July 27, 1989, recommended that the Exchange implement the hourly collection of trading cards. The proposal would require that trades executed and recorded prior to 8:00 a.m. would be submitted to the clearing members no later than 8:30 a.m., and that subsequent submissions would take place every hour on the half-hour. Thus, all trades executed and recorded between 8:00 a.m. and 9:00 a.m. would be submitted by 9:30 a.m., and so on throughout the remainder of the trading day. On August 2, 1989, the Board of Governors adopted this requirement, to take effect upon approval by the Commission.

The Committee further recommended that the Exchange require that clearing members timestamp all "locals'" trading cards upon receipt at the firm's floor trading desk. The Committee recommended that the Exchange *not* adopt a requirement that trading cards have pre-printed numbers.

[11] At NYCE trades are submitted to clearing on brokerage submission sheets. Rule 9.10(a) requires trading members to submit brokerage sheets to their clearing members promptly.

[12] The order tickets which must be submitted in accordance with this requirement are any written records of customer orders used on the floor of an exchange, whether prepared on the floor, transmitted via wire, or originating from the FCM or introducing broker.

Further, the timestamping requirement would enable the exchanges to enforce the proposed requirement, discussed below, that trading cards and order tickets be submitted at regular intervals throughout the trading day. The proposed amendments would require members to comply with exchange rules implementing the latter requirement and with rules requiring that they identify trades executed during opening and closing periods on their trading cards, thereby providing the Commission with an additional tool to ensure compliance with other requirements of Regulation 1.35.

The Commission believes that the requirement that trading cards be timestamped upon completion generally could be accomplished in the same manner that order tickets presently are timestamped. At exchanges where trading cards are collected by clearing members, this mechanism for compliance would extend equally to all members. At those exchanges the clearing member already would have the trading cards and simply would have to provide for those trading cards to be timestamped at the floor desk along with order tickets.

As noted above, several exchanges already require that members record trades on pre-printed sequentially numbered trading cards or that sequence numbers be recorded manually. This information is required to be included when trades are submitted for clearing at the CBT, CME, and CSC as part of their computerized systems for deriving one-minute times of execution for each trade. Further, this record enables the exchanges to investigate the sequence of a member's trading activity during a particular trading session and compare the contemporaneous record of the trade to the data submitted for clearing. These exchanges do not, however, require that the trading card numbers be unique except within one trading session. This increases the potential for a member to use a trading card with a duplicate pre-printed number, which ordinarily would be used on a different trade day, to rewrite or fabricate trading records.

For that reason, the Commission is proposing steps to limit the potential for a trader to circumvent the sequence requirement through the use of duplicate printed records. The proposed regulation would require that each trading card contain unique identifying information which would permit the records of each member to be distinguished from those of other members. The trading cards also would have to contain identifiers which would permit the trading cards of a member prepared during one trading session to be distinguished from trading cards the member prepares for other trading sessions during a period of one week.

Compliance with this requirement may be achieved through a variety of means at the election of the member and in accordance with any relevant exchange rules, but any such information must be pre-printed on the trading card. Among the possible methods to achieve this result would be pre-printed dates to distinguish trading days, plus, where applicable, an alpha or other designation to identify the particular trading session during a day. Separate series numbers or letter designations for each group of sequence numbers would be another method by which the trading cards for each trading session could be distinguished from those for other trading sessions during a one-week period. Pre-printed clearing member or floor member identification, which frequently already appear on trading cards, would facilitate further the unique identification of a trading card.

The Commission believes that the flexibility permitted in implementing the proposed amendment recognizes that these types of data presently are used in computerized audit trail systems, and that practical limitations exist on the number of fields and spaces available for data entry. Thus, although the exchanges likely would find it necessary to publish rules or guidelines for their members on the parameters that the unique identifiers must meet, the Commission has determined not to establish more specific criteria for such identifiers or to require that all trading cards be unique indefinitely.

Finally, the amendments to this paragraph would require members of contract markets to comply with exchange rules adopted pursuant to paragraph (j) that require the periodic submission of trading cards, that members be accountable for all trading cards in numerical sequence, and that members identify trades which are executed during designated opening and closing periods. In this manner, the Commission will be able independently to enforce such requirements.

3. Proposed Paragraph (j)—Submission of trading records.

The Commission proposes to add to Regulation 1.35 a new paragraph (j) which would require that contract markets adopt and have in place within 60 days rules requiring that order tickets prepared under paragraph 1.35(a–1) and the trading cards prepared under paragraph 1.35(d) be submitted to the clearing member, or to the exchange, at intervals not to exceed 30 minutes; provided, however, that the time period for submission of such trading records after the close shall not exceed five minutes. The new paragraph further would provide that, effective 90 days after implementation of the 30-minute requirement, the time for submission be reduced to 15 minutes.

Currently, Regulation 1.35(a–1) requires that order tickets be timestamped upon report, which should be as soon as possible after an order has been filled. Nonetheless, order tickets have been included in the proposed amendment to assure that under no circumstances would they be held by a broker longer than the time periods provided for the collection of trading cards.

The purpose of the proposed requirement that trading records be submitted within a particular timeframe to the exchange or clearing member is to remove the record from the trader's control to that of exchange or clearing firm employees and thereby reduce the potential for the member to alter the record or fabricate records in the time which might otherwise intervene between trade execution and the submission of the trades for clearing. In this regard, the Commission intends that the documents remain beyond the member's control at least until after the trades have been entered into clearing.[13]

The timely collection of trade records, together with the requirement that those records be sequentially numbered and otherwise identified, should materially reduce the potential for such abuses. On the other hand, the Commission believes that the proposed collection schedules should be sufficient for traders to fully record and confirm their trades and submit them to the appropriate entity without impeding trade executions.

The proposed regulation also would require that exchanges establish rules subject to Commission approval which designate opening and closing trading periods for each market and require members to identify on their trading cards the trades executed during such periods. This requirement would enhance the ability of exchange and

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[13] This requirement is intended to accommodate existing practices whereby the individual member presently is responsible for the direct submission of trades for clearing and retains his own trade records. For example, it could be fulfilled through the use of multi-part trading cards such as those used at the CSC. Both the top copy of such multi-part cards and the carbon copies constitute records which must be retained pursuant to Commission Regulation 1.31.

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Commission staff to identify trades executed during those periods and monitor those trades for potential abuse of customer orders at no increased costs to exchanges or their members and with no material increase in the time needed to prepare those records.

Finally, the proposed new paragraph would require that members account for all trading cards required by paragraph (d) in sequence, without gaps, regardless of whether that record is voided or otherwise is not used by the clearing member or member to enter trades for clearing. If, for instance, a member has a clerk rewrite his trades on a new card because of an error discovered upon confirmation to the opposite side, he nevertheless would have to retain the original trading card and submit it to the contract market upon request. If a member's trading cards ordinarily are retained by his clearing member, the clearing member likewise would be responsible for those trading cards not used for trade submission.

V. Proposed Effective Dates

The Commission proposes that proposed Commission Regulation 1.35(j)(1), which would require that trading cards and order tickets be submitted at intervals not to exceed 30 minutes, and that those trading records be submitted within five minutes of the close, be effective 60 days after publication of final rules. After an additional 90 days, the requirement of subparagraph 1.35(j)(2) that such records be submitted at intervals not to exceed 15 minutes would become effective. Further, the requirements in proposed Regulation 1.35(d), that all trading cards be timestamped upon completion, and of Regulation 1.35(j), that exchanges designate open and closing periods and require members to identify trades executed during those periods, also would become effective 60 days after publication of final rules.

The Commission proposes that the additional requirements of proposed Regulation 1.35(d), that trading cards contain certain pre-printed sequence and identifying information, and of proposed Regulation 1.35(j)(3), that members be accountable for all such trading cards, become effective 90 days after the publication of final rules.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 et seq., requires that agencies, in proposing rules, consider the impact of the rules on small businesses. The Regulation 1.35 amendments proposed here would affect contract markets, clearing members, and contract market members. The Commission previously has determined that contract markets are not "small entities" for the purposes of the RFA, and that the Commission need not, therefore, consider the effect of the proposed amendments on contract markets in relation to the RFA. 47 FR 18618, 18619, April 30, 1982.

The Commission also previously has determined that FCMs should be excluded from the definition of "small entity" based upon the fiduciary nature of the FCM/customer relationships as well as the fact that FCMs must meet minimum financial requirements. 47 FR 18618, 18619, April 30, 1982. The Commission has determined that clearing members are, by exchange or clearing house rule, subject to a minimum capital requirement which is at least as great, and in most cases substantially greater, as that imposed on FCMs, and are not, therefore, small entities for the purposes of the RFA. Further, many clearing members are also FCMs. The Commission need not, therefore, consider the effect of proposed amendments on clearing members in relation to the RFA.

With respect to members of contract markets, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all floor brokers should be considered small entities and, if so, to analyze the economic impact on such entities at that time. 47 FR 18618, April 30, 1982. The members of contract markets affected by the proposed regulation, other than clearing members, would be floor brokers and floor traders.

Commission Regulation 1.35 imposes requirements on members of contract markets to prepare complete and accurate records of their trades. Commission Regulation 1.35 also establishes a performance standard for accurate and verifiable one-minute times of execution. This standard requires that the trading data recorded by members to be accurate. Moreover, Commission Regulation 1.31 authorizes the Commission to request records for inspection at anytime. The proposed amendments are intended to ensure that the existing requirements of Regulation 1.35 are satisfied.

The Commission believes that the proposed amendments can be implemented without imposing a significant economic burden on a substantial number of small entities. With respect to the requirements that members identify trades executed during the open and close on their trading cards, that they be fully accountable for all trading cards prepared pursuant to Regulation 1.35(d), whether or not those trading cards are used for submitting trades for clearing, and that they record trades in chronological sequence without skipping lines between trades, the Commission believes these requirements would not impose a significant economic burden on members. Notably, there should be very few occasions when a member will have a trading card which is not going to be used for trade submission to clearing, since this only involves trading cards which are rewritten completely due to errors. All other such trading cards already are used directly or indirectly for submitting trade data for clearing.

With respect to the collection of trading records at 30-minute, and ultimately 15-minute, intervals, the Commission again notes that many exchanges already require the frequent collection of those records. For these exchanges, therefore, a mechanism exists to enable members to comply with exchange rules adopted to implement this requirement. At other exchanges compliance with these requirements can reasonably be integrated into existing procedures for the collection of trading information. Although the proposed requirement would require more frequent collection, the Commission believes that existing resources will be sufficient in most cases to meet the requirement. Moreover, the personnel to perform these functions often are employees of clearing members, which are not small entities. Similarly, existing Regulation 1.35(a–1) requires customer order tickets to be timestamped upon report. This means that a procedure for timestamping documents already exists, and trading cards could be timestamped in the same manner. At exchanges where clearing members already are required to collect trading cards, this mechanism for compliance extends equally to all members.

Finally, with respect to the requirement that certain information be pre-printed on trading cards, the Commission believes that the economic impact will not be significant. As noted above, the CBT and the CSC already require that trading cards contain pre-printed sequential numbers. Further, many members at all exchanges already are having their trading cards pre-printed with their member identification. At other exchanges, the Commission believes that these items can be accomplished at reasonable expense. Finally, the timeframe for the implementation of this requirement is expected to reduce further any economic burden which may incur to the members.

Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1168 (5 U.S.C. 605(b)), based on its initial review of the available data, the Commission certifies the belief that this rule, promulgated, will not have a significant economic impact on a substantial number of small entities. If additional data are provided to the record to suggest that these proposed requirements will have a significant impact on small entities, the CFTC will complete a regulatory flexibility analysis with the final rulemaking. The Commission invites specific comment regarding the potential costs of these requirements for small entities and alternative less burdensome means to achieve the Commission's objectives.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, (Act) 44 U.S.C. 3501, *et seq.*, imposes certain requirements on federal agencies, (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including this proposed rule, is as follows:

Average Burden Hours Per Response: 60.83.

Number of Respondents: 339.

Frequency of Response: on occasion.

Persons wishing to comment on the information which would be required by this proposed rule should contact Gary Waxman, Office of Management and budget, Room 3228, NEOB, Washington, DC 20502, (202) 395–7340. Copies of the information collection submission to OMB are available from Joseph Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

List of Subjects

17 CFR Part 1

Commodity futures, Commodity options, Contract markets, Customers, Exchanges of futures for physicals, Futures commission merchants, Introducing brokers, Members of contract markets, Noncompetitive trading, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4, 4g, 5, 5a and 8a thereof, 7 U.S.C. 6, 6g, 7, 7a, and 12a, the Commission hereby proposes to amend 17 CFR part 1 of chapter I of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Regulation 1.35 is proposed to be amended by revising paragraph (a–1)(4) to read as follows:

§ 1.35 Record of Cash Commodity, Futures, and Option Transactions,

* * * * *

(a–1) * * *

(4) Each member of a contract market reporting the execution of a customer's or option customer's order from the floor of a contract market shall record on a written record of such order, including the account identification and order number, by time-stamp or other timing device, the date and time, to the nearest minute, such report of execution is made. Each member of a contract market shall submit the written records of customer orders prepared pursuant to this paragraph in accordance with the requirements of exchange rules adopted in accordance with paragraphs (j)(1) and (j)(2) of this section.

3. Regulation 1.35 is proposed to be amended by revising paragraph (d) to read as follows:

* * * * *

(d) *Members of contract markets.* (1) Each member of a contact market who, in the place provided by the contract market for the meeting of persons similarly engaged, executes purchases or sales of any commodity for future delivery or commodity option on or subject to the rules of such contract market, shall prepare regularly and promptly a trading card or other record showing such purchases and sales. Such trading card or record shall show the member's name, the name of the clearing member, transaction date, time (as specified in rules of the contract market which comply with the requirements of this section), quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call and strike price. Such trading card or other record shall also clearly identify the opposite floor broker or floor trader with whom the transaction was executed, and the opposite clearing member (if, in accordance with the rules or practice of the contract market, such opposite clearing member is made known to the member).

(2) Each member of a contract market recording trades on trading cards pursuant to this paragraph shall record such trades in exact chronological order of execution on sequential lines of the trading card without skipping lines between trades; provided, however, that if lines remain after the last execution recorded on a trading card, the remaining lines shall be marked through.

(3) Each trading card prepared pursuant to paragraph (d)(1) of this section also must contain pre-printed sequence numbers, which would permit such records to be sequenced intra-day. The trading cards prepared pursuant to this paragraph also must contain trader identification and other unique identifying information which would permit trading cards of one member to be distinguished from those of other members and would permit each of the tradng cards prepared by the member to be distinguished from other such trading cards prepared by the member for no less than a one week period.

(4) Each member of a contract market reporting the execution of trades on a trading card pursuant to this paragraph shall record, by time-stamp or other timing device, the date and the earlier of the time, to the nearest minute, such trading card is completed or submitted as required by paragraphs (j)(1) and (j)(2) of this secton.

(5) Each member of a contract market shall be accountable for all trading cards prepared pursuant to this paragraph in exact numerical sequence, whether or not such trading cards are used in the submission of trades for clearing.

(6) Each member of a contract market shall prepare in accordance with exchange rules adopted pursuant to paragraph (j)(4) of this section and submit in accordance with exchange rules adopted pursuant to paragraphs (j)(1) and (j)(2) of this section the trading cards prepared pursuant to this paragraph.

§ 1.35 [Amended]

* * * * *

3. Regulation 1.35 is proposed to be amended by adding paragraph (j) to read as follows:

* * * * *

(j) *Submission of trading records.* Each contract market shall:

(1) Have rules in effect requiring that trading records prepared by members of the contract market pursuant to paragraphs (a–1) and (d) of this section be submitted to contract market personnel or the clearing member at intervals not to exceed 30 minutes, commencing with the beginning of each

trading session; provided, however, that the time period permitted for the submission of trading records after the close of trading in each market shall not exceed five minutes.

(2) Have rules in effect which will require that upon 90 days after the requirements of paragraphs (j)(1) of this section become effective, that the records required to be submitted pursuant to this paragraph be submitted to contract market personnel or the clearing member at intervals not to exceed 15 minutes.

(3) Have rules in effect which provide that members of the contract market shall be accountable for all trading cards prepared pursuant to paragraph (d) of this section in exact numerical sequence, whether or not such records are used in the submission of trades for clearing.

(4) Have rules in effect which designate the opening and closing periods upon which the opening and closing trading ranges are based for each of its markets. The rules also shall provide that members of the contract market identify on the trading cards prepared pursuant to paragraph (d) of this section the trades executed during such opening and closing periods either by drawing a line on the trading card to separate those trades from others recorded thereon or other method approved by the Commission.

Issued in Washington, DC, on this 29th day of August, 1989.

Lynn K. Gilbert,

Deputy Secretary to the Commission.

[FR Doc. 89–20928 Filed 9–6–89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N–89–1963; FR–2656]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation—Chicago, Il

Special Revisions for Fiscal Year 1986 and Fiscal Year 1987

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document proposes to amend the Fiscal Year 1986 and the Fiscal Year 1987 Fair Market Rent Schedules to establish new FMRs for the Chicago, Illinois market area for those fiscal years. These rents are necessary to provide FMRs more comparable to market rents for new construction in this market area.

DATES: Comments due October 10, 1989.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address. (7:30 a.m. to 5:30 p.m. weekdays).

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street SW., Washington, DC 20410–0500, telephone (202) 426–7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the differences between the total housing expense and the total family contribution. Initial contract rents, plus an allowance for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. For the FY 1987 FMRs previously promulgated by the Department (see the April 26, 1988 **Federal Register**, 53 FR 14954), these rents reflected the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs.

This Document

This document proposes special revisions to the Fiscal Year 1986 and the Fiscal Year 1987 Fair Market Rent schedules applicable to the Chicago, Illinois market area. These FMRs reflected data submitted by the Chicago Office. Where sufficient market rental comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

The Chicago Office requested that the Department establish new rents for the Chicago, Illinois market area. Careful analysis of this request and reanalysis of the FY 1986 and FY 1987 FMRs for this market area indicate that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even when it is clear that there has been compliance with the Department's cost containment guidelines with respect to project design. Therefore, upward adjustments of the FY 1986 and FY 1987 FMRs for this market area are needed. Accordingly, the Department is proposing revisions of the FY 1986 and FY 1987 schedules applicable to the Chicago, Illinois market area. It is intended that when these schedules are

published for effect, their applicability will be the same as set forth in the preamble to the original FY 1986 and FY 1987 schedules, published on August 7, 1986, at 51 FR 28486, and April 26, 1988, at 53 FR 14954, respectively.

Other Information

HUD regulations in 24 CFR Part 50, implementing section 102(2)(c) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs established in this Notice are within the exclusion set forth in § 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (Section 8).

Accordingly, the following amendments to the FY 1986 and FY 1987 Fair Market Rent schedules are proposed for the Chicago, Illinois Market Area:

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

REGION 5—CHICAGO REGIONAL OFFICE MARKET; CHICAGO, ILLINOIS

[Including Housing Finance and Development Agencies' Programs]

Structural	Number of Bedrooms				
	0	1	2	3	4+
Special revision of FY 1986 FMRs:					
Detached			786	934	1077
Semi-detached/row	566	639	721	847	939
Walkup	482	600	664	796	836
Elevator 2–4 STY	515	606	714		
Elevator 5+ STY	631	759	917		
Special revision of FY 1987 FMRs:					
Detached			810	962	1109
Semi-detached/row	585	658	743	962	1109
Walkup	496	618	684	820	861
Elevator 2–4 STY	530	624	735		

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION—Continued

[Including Housing Finance and Development Agencies' Programs]

Structural	Number of Bedrooms				
	0	1	2	3	4+
Elevator 5+ STY	636	760	934		

Authority: Section 8(c)(1), U.S. Housing Act of 1937, 42 U.S.C. 1437f; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: August 30, 1989.

James E. Schoenberger,

Deputy General Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 89–21009 Filed 9–6–89; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–27–89]

RIN 1545–AN52

Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed income tax regulations relating to real estate mortgage investment conduits. The relevant provisions in the Internal Revenue Code were added or amended by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988. These regulations prescribe the manner in which an entity elects status as a real estate mortgage investment conduit (REMIC) for Federal income tax purposes and the procedures to be followed when filing a Federal income tax return as a REMIC. The regulations also require REMICs and certain other issuers to file information returns with the Internal Revenue Service and to provide notice to holders of REMIC interests or other debt instruments to which section 1721 (a)(6) applies of income and certain allocable expenses attributable to their interests.

In addition, in the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations that relate to the reporting requirements and other administrative matters with respect to interests in REMICs and other debt instruments to which section 1272(a)(6) applies. Except for the amendments to § 1.67–3T and § 1.1275–3T, the text of those temporary regulations and the amendments to § 1.6049–4(b)(2) and to proposed regulation § 1.1275–3 that are proposed in this notice serve as the comment document for this proposed rulemaking.

DATES: These regulations are proposed to be effective after December 31, 1986, except as follows:

With respect to certain reporting requirements, § 1.6049–7(b)(1) and the amendments to § 1.1275–3(b) are proposed to be effective September 7, 1989.

The amendments to § 1.6049–4(b)(2) is proposed to be effective for calendar years after 1990.

Sections 1.6049–7(e)(2)(x) and 1.6049–7(f)(2)(i)(G) and (f)(2)(ii)(K) are proposed to be effective for calendar years beginning after December 31, 1989.

Sections 1.860F–4(e)(1)(ii) (A) and (B), 1–6049–7(c)(6) through (14), 1.6049–7(e)(1), (2)(i) through (ix), (3), (4), and (5), 1.6049–7(f)(3) (i) and (ii), and 1.6049–7(f)(5)(i) and (f)(7) are proposed to be effective for calendar quarters and calendar years beginning after December 31, 1986.

Section 1.6049–7(f)(2)(ii) (E), (F), and (I) are proposed to be effective for calendar quarters and calendar years beginning after December 31, 1987.

Section 1.860F–4(e)(1)(ii)(D) and 1.649–7(f)(3)(iii) are proposed to be effective for calendar quarters and calendar years beginning after December 31, 1987 and ending before January 1, 1990.

Section 1.860F–4(e)(1)(ii)(C) is proposed to be effective for calendar quarters and calendar years beginning after December 31, 1986 and ending before January 1, 1988.

With respect to who may sign a REMIC return, § 1.860F–4(c)(1) is proposed to be effective for REMICs with a startup day on or after November 10, 1988.

Finally, the § 1.6049–7(g) requirement to set forth information on the face of the debt instrument is proposed to be effective for debt instruments issued after April 8, 1988.

Written comments and requests for a public hearing must be mailed or delivered by October 10, 1990.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, Attn: CC:CORP:T:R (FI–27–89), Room 4429, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Laura Ann M. Lauritzen, 202–566–6624 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1545–1018), Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collections of information in this regulation are in §§ 1.860D–1(d), 1.860F–4, 1.1275–3(b), 1.6049–4(b)(2), and 1.6049–7 (b)(1), (b)(2), (e), and (f). This information is required by the Internal Revenue Service to provide the Service and investors in REMICs and other debt instruments subject to section 1272(a)(6) with the amount of interest or original issue discount allocable to them. This information will be used to examine the required income tax returns and information returns to ensure compliance with the applicable tax law. The likely respondents are business or other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service Individual respondents/recordkeepers may require more or less time, depending on their particular circumstances.

The estimated total annual reporting and/or recordkeeping burden for the requirements contained in §§ 1.60D–1 (d), 1.860F–4, 1.1275–3(b), 1.6049–4 (b)(2), 1.6049–7(b), 1.6049–7(e), 1.6049–7 (f)(1) through (f)(6) of this regulation is reflected on Forms 1066, 1099–INT, 1099–OID, 8281, and 8811.

Estimated total annual reporting and/or recordkeeping burden for the requirements contained in § 1.6049–7(e): *720* hours.

The estimated annual burden per respondent/recordkeeper varies from *0.1* hours to *12.0* hours, depending on individual circumstances, with an estimated average of *1.2* hours.

Estimated number of respondents and/or recordkeepers: *600.*

Estimated annual frequency of responses (for reporting requirements only): *12.*

Estimated total annual reporting and/or recordkeeping burden for the requirements contained in § 1.6049–7 (f)(7): *250* hours.

The estimated annual burden per respondent/recordkeeper varies from *0.1* hours to *20.0* hours, depending on individual circumstances, with an estimated average of *5.0* hours.

Estimated number of respondents and/or recordkeepers: *50.*

Estimated annual frequency of responses (for reporting requirements only): *50.*

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** amend regulations §§ 1.67–3T and 1.1275–3T, withdraw §§ 1.860D–1T, 1.860F–4T, and 1.6049–7T and add new temporary regulations §§ 1.860D–1T, 1.860F–4T, and 1.6049–7T to part 1 of title 26 of the Code of Federal Regulations (CFR). The final regulations that are proposed to be based on these temporary regulations would be added to part 1 of title 26 of the CFR. The new temporary regulations §§ 1.860–1T, 1.860F–4T, and 1.6049–7T are promulgated as new proposed regulations §§ 1.860D–1, 1.860F–4, and 1.6049–7. The revisions to § 1.67–3T and 1.1275–3T, however, are not being proposed by cross reference.

Those final regulations would provide rules on the reporting requirements and other administrative matters of REMICs and collateralized debt obligations and some additional reporting requirements for debt instruments with original issue discount. For the text of the Temporary Regulations, see T.D. 8259, published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the regulations.

This document also contains a notice of proposed rulemaking which proposes to amend §§ 1.1275–3(b) and 1.6049–4 (b)(2).

The proposed amendments to § 1.1275–3(b) require issuers to provide additional information with the Form 8281. The issuer must provide a schedule showing the amount of original issue discount per unit of original principal amount that accrues for each accrual period and specify the unit of original principal amount if other than $1,000, specify the yield to maturity, and state whether the debt instrument is a variable rate debt instrument.

For debt instruments issued with original issue discount, § 1.6049–4(b)(2) permitted brokers to send Forms 1099–OID to only those persons who were holders of record on the semiannual record date, if any, or on June 30 and December 31. The proposed amendments to § 6049–4(b)(2) require brokers to provide a Form 1099–OID to each person who was a holder of record at any time during the calendar year, even if the person was not the holder of record on June 30 or December 31 of that year, and to report the original issue discount for the period that the person held the debt instrument.

Special Analyses

It has been determined that these proposed regulations will not be major regulations as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations are being sent to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Laura Ann M. Lauritzen, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR 1.1271–1 through 1.1297–3

Income taxes, Capital gains and losses, Original issue discount, Applicable federal rate, Market discount, Short-term obligations, Stripped bonds and stripped coupons, Tax-exempt obligations.

26 CFR 1.6001–1 through 1.6109–2

Income taxes, Administration and procedure, Filing requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805; * * * § 1.1275–3(b)(2) also issued under 26 U.S.C. 1275(c). * * *

Par. 2. Section 1.1275–3(b) of the amendment to the regulations proposed April 8, 1986, (51 FR 12086) is amended as follows:

1. In paragraph (b)(1) by removing the word "and" after the language "(ii) certificates of deposit," in paragraph (b)(1) and by removing the period after the language "(within the meaning of section 1286)" and by adding in place of the period the following language ", and (iv) interests in a REMIC or other debt instrument subject to section 1271(a)(6)."
2. In paragraph (b)(2)(i) by removing the language "address, and" and adding in its place the language "address, telephone number, and".
3. By redesignating paragraphs (b)(2)(iv), (v), (vi), (vii), (viii), and (ix) as paragraphs (b)(2) (v), (vi), (vii), (ix), (x), and (xi) respectively.
4. Redesignated paragraphs (b)(2)(ix)(D) and (E) are further redesignated as paragraphs (b)(2)(ix) (E) and (F) respectively.
5. By adding a new paragraph (b)(2)(iv) immediately after paragraph (b)(2)(iii), a new paragraph (b)(2)(viii) immediately after paragraph (b)(2)(vii), and a new paragraph (b)(2)(ix)(D) immediately after paragraph (b)(2((ix)(C), to read as follows:

§ 1.1275–3 Original issue discount information reporting requirements.

* * * * *

(b) *Information required to be reported to Secretary—*

* * * * *

(2) *Information required to be reported.*

* * * * *

(iv) A schedule of the amount of original issue discount per unit of original principal amount for each accrual period and specify the unit of original principal amount if other than $1,000;

* * * * *

(viii) The yield to maturity;

(ix) * * *

(D) Whether the debt instrument is a variable rate debt instrument described in § 1.1275–5(a);

* * * * *

§ 1.6049–4 [Amended]

Par. 3. Section 1.6049–4 is amended as follows:

1. The first sentence of paragraph (b)(2) is amended by adding a period after the language "aggregating $10 or more" and by removing the parenthetical "(determined, if semiannual record date reporting is being used, under § 1.6049–1(a)(1)(ii)(*b*)(*1*), by treating each holder as holding the obligation on every day it was outstanding during the calendar year)" and adding in its place the following sentence "For calendar years ending before January 1, 1991, semiannual record date reporting under § 1.6049–1(a)(1)(ii)(*b*)(*1*) may be used, and if used, the original issue discount includible in gross income is determined by treating each holder as holding the obligation on every day it was outstanding during the calendar year."

The second sentence in paragraph (b)(2)(iii) is revised to read as follows, "For calendar years ending before January 1, 1991, semiannual record date reporting under § 1.6049–1(a)(1)(ii)(*b*)(*1*) may be used, and if used, the original issue discount includible in gross income is determined by treating each holder as holding the obligation on every day it was outstanding during the calendar year."

3. The flush language that follows paragraph (b)(2)(vi) is revised to read as follows, "Section 1.6049–1(a)(1)(ii)(*b*)(*2*) and, for calendar years ending before January 1, 1991, § 1.6049–1(a)(1)(ii) (*b*)(*1*), and (*c*), apply for purposes of this paragraph."

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 89–20917 Filed 9–6–89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendments.

SUMMARY: OSM is announcing receipt of a revision pertaining to a previously proposed amendment to the New Mexico permanent regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to provide additional safeguards for protection of the hydrologic balance.

This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4:00 p.m., m.d.t. September 22, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, New Mexico 87102, Telephone: (505) 766–1486.

New Mexico Energy and Minerals Department, Mining and Minerals Division, 525 Camino de los Marquez, Santa Fe, NM 87503, Telephone (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program, can be found in the December 31, 1980, **Federal Register** (45 FR 86489). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated February 21, 1989 (Administrative Record No. NM–474), New Mexico submitted a proposed amendment to its permanent regulatory program pursuant to SMCRA. New Mexico submitted the proposed amendment at its own initiative. The rule that New Mexico proposed to amend is Coal Surface Mining Commission (CSMC) Rule 80-1-20-41(d)(1). OSM published a notice in the March 14, 1989, **Federal Register** (54 FR 10562) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM-482). The public comment period ended April 13, 1989.

During its review of the amendment, OSM identified concerns relating to the protection of the hydrologic balance. OSM notified New Mexico of the concerns by telephone conversation on August 14, 1989 (Administrative Record No. NM-535). New Mexico responded in a letter dated August 17, 1989, by submitting a proposed revision to CSMC Rule 80-1-42(a)(1) (Administrative Record No. NM-534), which is in addition to that revision previously proposed for CSMC 80-1-20-41(d)(1). This additional revision (Administrative Record No. NM-534) is now under consideration.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed New Mexico program amendment to provide the public an opportunity to reconsider the adequacy of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 25, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-20924 Filed 9-6-89; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 934

North Dakota Permanent Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; withdrawal of proposed amendment.

SUMMARY: OSMRE is announcing withdrawal of a proposed amendment to the North Dakota permanent regulatory program (hereafter referred to as the North Dakota program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to the reclamation bond liability period for surface coal mining acreage disturbed for sediment ponds and associated access roads, surface water diversions and soil stockpiles.

EFFECTIVE DATE: September 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Casper, Wyoming 82601-1918, Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program.

On December 15, 1980, the Secretary of Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1980, **Federal Register** 45 FR 82246. Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.12, 934.13, 934.14, 934.15, and 934.16.

II. Submission of Amendment.

On November 8, 1988, North Dakota submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. (ND-H-01). The amendment would revise regulation section at: NDAC section 69-05.2-22-07, which requires, a 10-year bond liability period for a reclamation tract, beginning after the last year of augmented seeding, planting, fertilization, irrigation or other work.

At it's own initiative, for purposes of improving operational efficiency of the State program, North Dakota proposed to amend to section 69-05-2-22-07, to allow for a case-by-case determination of reclamation bond liability periods, for sedimentation ponds and associated disturbances, that would end at the same time as the reclamation bond liability period for the disturbances within the reclamation tract.

OSMRE published a notice in the December 23, 1988, **Federal Register** 53 FR 51845 announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. ND-H-11). The public comment period ended on January 23, 1989.

III. Withdrawal of Amendment.

On July 31, 1989, North Dakota requested that the proposed amendment submitted on November 8, 1988, be withdrawn (Administrative Record No. ND-H-13). Therefore, the proposed amendment published in the December 23, 1988, **Federal Register** is withdrawn and 30 CFR Part 934 is not amended.

IV. List of Subjects in 30 CFR Part 934:

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 24, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-20925 Filed 9-6-89; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions pertain to the entire amendment. The amendment is intended to allow the construction of bluffs as final reclamation features where such features will enhance post-mining land uses for the benefit of wildlife and livestock.

This notice sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4:00 p.m., m.d.t. October 10, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Jerry R. Ennis at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Mr. Jerry R. Ennis, Director,
Casper Field Office,
Office of Surface Mining Reclamation
and Enforcement,
100 East B Street, Room 2128,
Casper, WY 82602-1918,
Telephone: (307) 261-5776.
Department of Environmental Quality
Land Quality Division
Herschler Building—Third Floor West
122 West 25th Street
Cheyenne, WY 82002
Telphone: (307) 777-7756.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980 **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, and 950.16.

II. Proposed Amendment

By letter dated December 13, 1988 (administrative record No. WY-11-1), Wyoming submitted a proposed amendment to its program pursuant to SMCRA. Wyoming submitted the proposed amendment at its own initiative. The proposed amendment defines and provides for approval of bluffs as final reclamation features if it is determined that the bluff-type features will enhance the post-mining land use. Governmental agencies and the public would be provided the opportunity for review of and comment on any applicant's bluff proposal prior to Wyoming approving or disapproving it. Approved bluff-type features would have to be designed and constructed to meet safety, stability, reclamation, and land use planning criteria specified in the proposed amendment.

The proposed amendment requires that approval of bluff-type features be made in accordance with the fish and wildlife protection performance standards of the approved State program.

The regulations that Wyoming proposes to amend are: Wyoming Department of Environmental Quality, Land Quality Division, Rules and Regulations, September 1, 1986.

Chapter I. Section 2. Definitions.

Chapter II. Section 3(b)(i)(B)(VIII) Permit Applications. Special application content requirements for surface coal mining operations.

Chapter IV. Section 2(b)(ii)(A). General environmental protection performance standards. Soft rock surface mining.

Chapter IV. Section 3(a)(v). Special environmental protection performance standards applicable to surface coal mining and reclamation operations. Backfilling, grading, and contouring.

Chapter IV. Section 3(a)(x). Special environmental protection performance standards applicable to surface coal mining and reclamation operations. Backfilling, grading, contouring.

OSM published a notice in the January 13, 1989 **Federal Register** (54 FR 1399) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (administrative record No. WY-11-5). The public comment period ended February 13, 1989.

During its review of the amendment, OSMRE identified some concerns relating to the definition of bluff, chapter 1, Section 2, and backfilling, grading and contouring requirements, chapter IV, Section 3. OSM notified Wyoming of the concerns by letter dated March 29, 1989 (administrative record No. WY-11-11). Wyoming responded in a letter dated August 21, 1989 by submitting additional explanatory information and a revised amendment package (administrative record No. WY-11-15).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Wyoming program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 25, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-20926 Filed 9-6-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1 89-040]

Drawbridge Operation Regulations; Bellamy River, NH

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the New Hampshire Department of Transportation, the Coast Guard is considering a change to the regulations governing the Route 4 (Scammell) drawbridge across the Bellamy River at mile 0.1, at Dover, New Hampshire to provide that the draw need not open for passage of vessels. Should the needs of navigation warrant, however, the bridge shall be returned to operable condition within six months after notification by the District Commander to do so. This change is being made because no requests have been made to open the draw since August 1958. This action should relieve the bridge owner of the burden of restoring and maintaining the machinery and of having a bridge tender available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 23, 1989.

ADDRESSES: Comments should be

mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, at (212) 668–7170.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Jose M. Arca Jr., project officer, and LT. Robert E. Korroch, project attorney.

Discussion of Proposed Regulation

This drawbridge provides a vertical clearance of 9 feet at mean high water and 16 feet at mean low water. Reportedly, in February 1956, the U.S. Army Corps of Engineers authorized operation of the bridge on 4 hours advance notice during specified hours from April to October, except for emergency openings. However, Title 33 Code of the Federal Regulation Part 117 does not reflect that any special regulations were officially issued. Therefore, operation of the bridge is governed by the general regulation which requires that at all times the draw shall open on signal. The bridge was last opened in August 1958. The present structural and mechanical condition of the bridge precludes opration without the expenditure of substantial funds. However, the proposed regulation would contain provision for restoring the bridge to operation within six months after notification by the District Commander. The New Hampshire Department of Transportation is also investigating replacement of the entire structure.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The determination is based on the reported information that no requests for openings have been made since 1958. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implications Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 449; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. A new section 117.695 is added to read as follows:

§ 117.695 Bellamy River.

The draw of the Route 4 drawbridge at mile 0.1 at Dover, New Hampshire need not open for the passage of vessels. However, the bridge shall be returned to operable condition within six months after notification by the District Commander.

Dated: August 21, 1989.

R. I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 89–20947 Filed 9–6–89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3641-5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is disapproving a submission by the State of Wisconsin as a revision to the Wisconsin State Implementation Plan (SIP) for ozone. This revision consists of a site-specific reasonably available control technology (RACT) determination for high performance architectural coatings used on miscellaneous metal parts and products at the Masco Corporation (Masco) facility located in Milwaukee, Wisconsin.

USEPA today is disapproving this SIP revision because (1) the Wisconsin Department of Natural Resources (WDNR) has not demonstrated that all sources operated by Masco are in compliance with applicable rules, and (2) NWDNR has not demonstrated that this revision will not jeopardize attainment, maintenance or reasonable further progress (RFP).

DATE: Comments on this revision and on the proposed USEPA action must be received by October 10, 1989.

ADDRESSES: Copies of the SIP revision and technical support documents are available at the following addresses for review. (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604
Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and five copies if possible) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinios 60604 (312) 886–6031.

SUPPLEMENTARY INFORMATION: On November 3, 1988, the WDNR submitted a revision to its ozone SIP, for a site-specific RACT[1] determination for high performance architectural coatings used on miscellaneous metal parts and products for the Masco facility, located in Milwaukee, Wisconsin, an urban nonattainment area for ozone.

Wisconsin's SIP

Under the existing federally approved SIP for Wisconsin, the high performance architectural coatings are subject to the control requirements contained in NR 422.15, Wisconsin Administrative Code. This rule established a VOC emission limit of 4.3 pounds per gallon of coatings, excluding water, for both cured and air dried clear coatings, and 3.5 pounds per gallon of coating, excluding water, for extreme performance cured coatings and all other air-dried coatings. A limit of 3.0 pounds VOC per gallon of coatings, excluding water, is established for all other cured coatings. USEPA approved these rules as meeting the RACT requirement of the Clean Air Act on January 11, 1980 (45 FR 2319), and June 21, 1982 (47 FR 26622).

Analysis

WDNR's November 3, 1988, submittal contains a variance for Masco, whereby the source is subject to the following conditions:

1. Volatile organic compound (VOC) emissions from high performance architectural coatings shall not exceed 6.0 pounds per gallon of coatings, excluding water and exempt solvents, as applied.

2. Masco shall maintain records of the following information for each coating, as it is applied:

a. A unique coating identification name or number
b. Percent solids by volume
c. Percent VOC by volume (excluding exempt VOC)
d. Percent water and exempt VOC by volume
e. Density of the VOC identified in c. (above) in pounds per gallon
f. Pounds of VOC per gallon of coating, excluding water and exempt VOC

3. The department may modify the emission limit in condition 1 in the event coatings capable of meeting the Architectural Aluminum Manufacturer's Association specification 605.2 are developed which have a VOC content lower than that specified in condition 1.

4. High performance architectural coatings may not participate in any internal offset under NR 425.04(3), Wisconsin Administrative Code.

5. This variance shall not become effective until approved by the Administrator of the USEPA or his designee as a source-specific revision to Wisconsin's ozone SIP, pursuant to NR 436.05(5), Wisconsin Administrative Code.

In order for the 6.0 pounds of VOC per gallon of coating emission limit proposed by Masco to be considered RACT, the source must initially demonstrate that it is technically or economically infeasible to meet a lower emission limit using coatings with low VOC content or using add-on control equipment, and then demonstrate it can meet other requirements, involving the impact of the relaxation on attainment and maintenance of the NAAQS.

WDNR also issued an approval to Masco to demonstrate compliance with the applicable rules for the non-high performance architectural coatings through the use of an internal offset with transfer efficient credit. This internal offset has not been submitted to USEPA as a SIP revision.[2]

Masco has demonstrated that it is not feasible to meet the existing SIP limit through the use of currently available coatings alone. The coatings involved in the variance are specialized coatings supplied by a limited number of companies. In addition to the documentation provided by Masco, Region V independently surveyed the coating suppliers and determined that a low-VOC formulation of this type of coating is not currently available.

Masco also evaluated the technical and economic feasibility of add-on control. This evaluation considered controlling emissions to the level required by the SIP, as well as two intermediate alternatives (control of oven exhaust and control of ovens, plus one booth). Masco provided vendor quotes, as well as cost estimates calculated using the procedures outlined in the Economic Analysis Branch Control Cost Manual (EPA 450/5–87–001A). These cost estimates indicate that it is not economically feasible for Masco to meet the existing SIP limit, using add-on control equipment. Masco evaluated the economic feasibility of meeting an intermediate limit using alternative control strategies in the same manner and determined that it is economically infeasible to control bake oven exhaust or to control one spray booth and the bake ovens.

Although Masco has demonstrated that it is not technicallly and economically feasible to meet the existing SIP limit, this revision is still not approvable for two reasons. First, Masco has not met the requirement, contained in NR 436.05, Wisconsin Administrative Code, that the owner or operator of the air contaminant sources for which a revision is requested demonstrates that all direct or portable sources owned or operated in the State by such person and in compliance with all applicable requirements of chapters NR 400 to 499 or are on a schedule for compliance with such requirements.

(The only facility owned or operated by Masco is the subject of this review. Some air-dried and cured coatings (which are not high performance architectural coatings and, therefore, not part of this review) are not in compliance at this time. See footnote 2.)

Second, WDNR has not demonstrated that this revision will not jeopardize attainment and maintenance of the ozone national ambient air quality standards (NAAQS) or reasonable further progress (RFP) towards attainment. WDNR has argued that the revision will not jeopardize attainment because Wisconsin VOC emission summaries indicate the actual emissions for 1986 and 1987 are below target levels in Wisconsin's approved 1982 ozone SIP, and because the increase in emissions allowed by the revision is less than 0.02 percent of the inventory for these years. However, because USEPA recently issued an ozone SIP call to Wisconsin, a demonstration which relies on the previously approved SIP is not acceptable. In additon, USEPA does not consider any increase in VOC emissions to be insignificant.

Proposal

USEPA is disapproving this SIP revision because (1) Masco has not demonstrated that all sources operated by Masco in Milwaukee, Wisconsin, are in compliance with the applicable rules, and (2) WDNR has not demonstrated that this revision will not jeopardize attainment and maintenance of the NAAQS or RFP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevent statutory and regulatory requirements.

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[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular sources is capable of meeting by the application of control technology that is reasonably available, considering technological and economical feasibility.

[2] WDNR approved Masco's internal offset request on October 31, 1988. The request has not been submitted to USEPA as a SIP revision. Because USEPA believes that the internal offset and transfer efficiency provisions must be submitted as SIP revisions in order to be effective, USEPA will not consider the non-high performance architectural coatings to be in compliance through the use of an internal offset with transfer efficiency credit, unless it has been approved as a SIP revision.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before (30 days from publication) will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V Office address provided at the front of this notice.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under 5 U.S.C. section 605(b), I certify that this SIP disapproval will not have a significant economic impact on a substantial number of small entities because it deals with only one source, Masco Corporation. (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Environmental Protection
Pollution control
Hydrocarbon
Ozone
Carbon monoxide
Intergovernmental Offices

Authority: 42 U.S.C. 7401–7642

Dated: August 29, 1989.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89–20994 Filed 9–6–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FRL–3641–4]

Designation of Areas for Air Quality Planning Purposes; Oklahoma; Tulsa County Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes to disapprove a request from the Oklahoma State Department of Health (OSDH) to revise the attainment status designation for Tulsa County from nonattainment to attainment for the Ozone National Ambient Air Quality Standard (NAAQS). EPA is proposing to disapprove Oklahoma's request because (1) the area does not have a fully approved State Implementation Plan (SIP) and (2) the ambient air monitoring data do not demonstrate attainment. This notice discusses EPA's review, the State's request, and EPA's proposed action.

DATES: Comments on this action must be received by October 10, 1989.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Dallas, Texas 75202–2733

Oklahoma State Department of Health, Air Quality Service, 1000 Northeast 10th Street, P.O. Box 53551, Oklahoma City, Oklahoma 73152

FOR FURTHER INFORMATION CONTACT: Gregg Guthrie, Air Programs Branch, U.S. EPA Region 6, telephone (214) 655–7214, or (FTS) 255–7214.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (CAA), the Administrator of EPA has promulgated the NAAQS attainment status for all areas within each State. These area designations may be revised whenever sufficient data become available to justify a redesignation.

Background

On March 3, 1978, at 43 FR 8962 EPA identified Tulsa County, Oklahoma as nonattainment for the Ozone NAAQS. In accordance with the requirements of the CAA for such nonattainment areas, the OSDH submitted a SIP revision in April of 1979. The 1979 SIP indicated the Ozone standard would be achieved by December 31, 1982. The 1979 SIP revision for Tulsa County was conditionally approved on February 13, 1980, at 45 FR 9733. After additional submittals by the OSDH, EPA removed the conditions on the 1979 Ozone plan revision on November 28, 1980, at 45 FR 79051. The approved revision included the adoption of the required Set I and Set II stationary source regulations which reflected the application of reasonably available control technology (RACT). Because this revision predicted attainment by December 31, 1982, these regulations were required to represent RACT for major sources only.

Violations of the ozone NAAQS continued during 1983.

Consequently, on February 24, 1984, EPA issued a letter to the Governor of Oklahoma calling for a revision to correct the inadequacy of the existing SIP. As a Post-1982 nonattainment county, EPA required the adoption of regulations specified in the Group I, II and III Control Techniques Guideline (CTG) documents for both major and minor sources located in the County. The State was also required to implement a vehicle Inspection/Maintenance program and submit a demonstration of attainment. On February 20, 1985, the Governor of Oklahoma, submitted a SIP revision designated to achieve the Ozone standard in Tulsa County.

The February 20, 1985, revision predicted attainment by December 31, 1986. The revision has thus far failed to receive EPA approval. EPA intends to act on this revision in the near future, however, approval of that submittal rests on the State's ability to demonstrate that the State's current stationary and mobile source regulations are enforceable and represent RACT and the State's adoption of all regulations required under part D of the CAA.

Because 1984–1986 monitoring data did not demonstrate attainment of the Ozone NAAQS, the Tulsa metropolitan statistical area (MSA) was identified as a potential 1988 SIP Call area in Appendix A of the proposed Post-1987 Ozone/Carbon Monoxide strategy that was published in the **Federal Register** on November 24, 1987. Using the same monitoring data that Oklahoma has submitted to support its redesignation request, EPA issued a Phase I SIP Call for the Tulsa MSA on May 26, 1988. That 1985–1987 ambient monitoring data revealed a calculated expected exceedance rate of 1.1 per year. As a Phase I SIP Call area, the State is required to correct deficiencies and inconsistencies in their existing SIP, complete the adoption of regulations previously required under part D of the CAA, and begin updating their emission inventory to reflect current emission levels in the Tulsa MSA.

Ozone Redesignation Criteria

When considering a redesignation request for ozone, a number of criteria must be met. One of these criteria is achievement of the NAAQS for ozone. The NAAQS for ozone is defined a 0.12 parts per million (ppm) over a one-hour average not to be exceeded more than once per year. An area is determined to be in violation of the standard when the annual average expected number of daily exceedances is greater than one (1.0) at any monitoring site. A daily exceedance occurs when the maximum hourly ozone concentration is greater

than 0.124 ppm during a given day. Ozone daily exceedance is defined at 40 CFR part 50. The expected number of daily exceedances is calculated from the observed number of exceedances by making the assumption that nonmonitored days (invalid or incomplete data) have the same fraction of daily exceedances as those exceedances observed on monitored days.

Specific criteria for ozone redesignation reviews are given in the following policy memoranda; a December 7, 1979, memorandum from Richard G. Rhoads former Director of EPA's Control Programs Development Division; an April 21, 1983, memorandum from Sheldon Meyers, former Director of EPA's Office of Air Quality Planning and Standards (OAQPS); and an April 6, 1987, memorandum from Gerald A. Emison, Director of OAQPS. In summary, those memoranda indicate that the calculated average number of expected exceedances should be determined from the most recent three years of quality assured representative monitoring data and that observed improvements in air quality must be due to implementation of permanent and enforceable emission control measures. Those memoranda also specify that any redesignation request contain evidence that the SIP for the area be fully approved by EPA and finally implemented by the State.

Tulsa Redesignation Request

On August 9, 1988, the OSDH submitted a request to redesignate Tulsa County to an attainment status for the ozone NAAQS. This request was based on the most recent, complete, quality assured three years of monitoring data covering calendar years 1985–1987. These data were collected at three sites within Tulsa County; Site 127 located in 1326 East Mohawk Boulevard, Tulsa, Oklahoma; Site 137 located at 900 South Osage Drive, Skiatook, Oklahoma; and Site 174 located at 502 East 144th Place, South, Glenpool, Oklahoma. These sites are located in a north-south line across the county and all sites have experienced exceedances of the ozone standard during the 1985–1987 time frame. The ozone concentrations showing exceedances are summarized below:

TABLE 1.—OZONE CONCENTRATION EXCEEDANCES PER YEAR (PPM)

Site Number	1985	1986	1987
127	0.13	0.14; 0.13	none.
137	0.13	none	none.
174	0.15	0.13	none.

EPA examined the 1985–1987 air quality data and found that they were collected in accordance with all EPA requirements. Sites 127, 137 and 174 have a calculated annual average expected number of exceedances of 1.1, 0.33 and 0.67 respectively based on the above data. The data collected from Site 127 reveal the area has not reached attainment since EPA requires a 1.0 or lower value for an annual average expected exceedance to demonstrate attainment. In addition, EPA has reviewed the 1988 ozone data and found that more recent exceedances of the ozone standard have occurred. EPA found an expected exceedance rate of 1.1 violations per year based upon 1986–1988 data which reflects continued nonattainment of the area.

Proposed Action

Based on three or more years of monitoring data that fails to demonstrate attainment of the ozone NAAQS and the lack of an EPA-approved control strategy, EPA is proposing to disapprove the State's request to redesignate Tulsa County to attainment. All interested persons are invited to submit written comment on today's proposal. Written comments received by the date specified above will be considered in determining EPA's final action.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: May 15, 1989.

Robert E. Layton, Jr.,

Regional Administrator.

[FR Doc. 89–20995 Filed 9–6–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-379, RMs-6618; 6657; 6670 and 6793]

Radio Broadcasting Services; Atlantic, Audubon, Fairfield and Newton, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on four petitions for rule making. Wireless Communications Corp seeks the allotment of Channel 243C2 to Atlantic, IA, as the community's second local FM service. Christian Family Radio seeks the allotment of Channel 243C1 to Audubon, IA, as its first local FM service. KCOB/KLVN requests the substitution of Channel 241C2 for Channel 240A at Newton, IA, and the modification of its license for Station KLVN–FM accordingly. Galesburg Broadcasting Company seeks the substitution of Channel 240C2 for Channel 240A at Fairfield, IA, and the modification of its license for Station KCMD accordingly by either adjusting the site restriction on proposed Channel 241C2 at Newton or substituting Channel 241A for Channel 240A at Newton and modifying Station KLVN–FM's license accordingly.

DATES: Comments must be filed on or before October 23, 1989, and reply comments on or before November 7, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John E. Carl, President, KCOB/KLVN, Inc., 611 First Avenue East, Newton, Iowa 50208 (Petitioner for Newton); James M. Weitzman, Esq., Kaye, Scholer, Fierman, Hayes and Handler, 901 15th Street, NW., Washington, DC 20005 (Counsel to Christian Family); John T. Pritchard, Galesburg Broadcasting Company, 57½ S. Court Street, Fairfield, IA 52556 (Petitioner for Fairfield); and Barry A. Friedman, Esq., Wilner & Scheiner, 1200 New Hampshire Avenue, NW., Suite 300, Washington, DC 20036 (Counsel to Wireless Communications).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No.

89-379, adopted August 18, 1989, and released August 31, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Channel 243C2 can be allotted to Atlantic in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 243C2 at Atlantic are North Latitutde 41-24-00 and West Longitude 90-00-54. Channel 243C1 can be allotted to Audubon with a site restriction of 30.4 kilometers southeast. The coordinates for Channel 243C1 at Audubon are North Latitude 41-30-04 and West Longitude 94-42-09. Channel 240C2 can be allotted to Fairfield with a site restriction of 16.2 kilometers southwest. The coordinates for the Fairfield allotment are North Latitude 40-54-33 and West Longitude 92-05-45. Channel 241C2 can be allotted to Newton with a site restriction of 13.3 kilometers west and Channel 241A can be allotted to Newton for use at Station KLVN-FM's present transmitter site. The coordinates for Channel 241C2 at Newton are North Latitude 41-43-16 and West Longtitude 93-12-22. The coordinates for Channel 241A at Newton are North Latitude 41-41-42 and West Longitude 93-12-22.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-20982 Filed 9-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-369, RM-6647]

Radio Broadcasting Services; Twin Lakes, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Twin Lakes. Broadcasting, Inc. seeking the substitution of Channel 290C3 for Channel 288A at Twin Lakes, Iowa, and the modification of its license for Station KTLB accordingly. Channel 290C3 can be allotted to Twin Lakes in compliance with the Commission's minimum distance separation requirements and can be used at Station KTLB's present transmitter site. The coordinates for this allotment are North Latitude 42-32-09 and West Longitude 94-40-48. In accordance with § 1.420(g) of the Commission's Rules Station KTLB's license may be modified without accepting competing expressions of interest in use of the higher powered channel at Twin Lakes and without requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such interested parties.

DATES: Comments must be filed on or before October 23, 1989, and reply comments on or before November 7, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Francis N. Donnelly, President, Twin Lakes Broadcasting, Inc., North Twin Lakes, S-18, Rockwell City, Iowa 50579 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making MM Docket No. 89-369, adopted August 14, 1989, and released August 31, 1989. The full text of this Commission decision is available for inspection and copying during normal buisness hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing premissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch Policy and Rules Division Mass Media Bureau.

[FR Doc. 89-20984 Filed 9-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-378, RM-6823]

Radio Broadcasting Services; Leesville, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Stannard Broadcasting Company, Inc., licensee of Station KVVP(FM), Channel 288A, Leesville, Louisiana, proposing the substitution of Channel 289C3 for Channel 288A at Leesville, and the modification of its station's license accordingly. The proposal could provide the community's first wide coverage area FM service. Channel 286C3 can be allotted to Abbeville consistent with the Commission's minimum distance separation requirements with a site restriction of 17.3 kilometers (10.7 miles) south of the city, at coordinates 30-59-30 and 93-13-00.

DATES: Comments must be filed on or before October 23, 1989, and reply comments on or before November 7, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James J. Popham, Esquire, 700 Camp Street, New Orleans, LA 70130 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89-378, adopted August 18, 1989, and released September 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-21053 Filed 9-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-374, RM-6870]

Radio Broadcasting Services; Leland, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Pyramid Communications Ltd., proposing the substitution of FM Channel 232C3 for Channel 232A at Leland; Michigan, and modification of its construction permit (BPH-850712XY) for Channel 232A to specify Channel 232C3. Canadian concurrence will be obtained for Channel 232C3 at Leland at coordinates 44-51-40 and 85-55-30.

DATES: Comments must be filed on or before October 23, 1989, and reply comments on or before November 7, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barbara L. Waite, Venable, Baetjer, Howard & Civiletti, 1301 Pennsylvania Ave. NW., Suite 1200, Washington, DC 20004. (Counsel to the petitioner)

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89-374, adopted August 15, 1989, and released August 31, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-20961 Filed 9-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-376, RM-6871]

Radio Broadcasting Services; Aitkin, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Upper Minnesota Broadcasting Corporation, proposing the substitution of FM Channel 232C3 for Channel 232A at Aitkin, Minnesota, and modification of the license for Station KEZZ to specify the new channel. Canadian concurrence will be obtained for Channel 232C3 at coordinates 46-36-15 and 93-39-55.

DATES: Comments must be filed on or before October 23, 1989, and reply comments on or before November 7, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy K. Brady, P.O. Box 986, Brentwood, Tennessee 37027-0986, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89-376, adopted August 15, 1989, and released September 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The Complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are published in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-21054 Filed 9-6-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-368, RM-6809]

Radio Broadcasting Services; Greenwood, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Team Broadcasting. Co., Inc., permittee of Channel 282A Greenwood, Mississippi, proposing the substitution of Channel 282C3 for Channel 282A, and modification of its permit to specify operation on Channel 282C3. The coordinates for Channel 282C3 are 33–35–48 and 90–15–50.

DATES: Comments must be filed on or before October 23, 1989, and reply comments on or before November 11, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or its counsel or consultant, as follows: Lawrence Roberts, Mark N. Lipp, Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, Suite 500, Washington, DC. 20036 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89–368, adopted August 14, 1989, and released August 31, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is not longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-20965 Filed 9-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-372, RM-6907]

Radio Broadcasting Services; Clarkedale, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by WKDJ Radio, proposing the substitution of FM Channel 243C3 for Channel 243A at Clarkdale, Mississippi, Petitioner also requests modification of its contruction permit for Channel 243A to specify Channel 243C3. The coordinates for Channel 243C3 are 34–06–00 and 90–25–00.

DATES: Comments must be filed on or before October 23, 1989, and reply comments on or before November 7, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J. Boyd Ingram, General Partner, P.O. Box 73, Batesville, Mississippi 38606.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89–372, adopted August 15, 1989, and released September 1, 1989. The full text of this Commission decision is available for inseption and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court reveiw, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-21055 Filed 9-6-89; 8:45 am]

BILLING CODE 6712-02-M

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47 CFR Part 73

[MM Docket No. 89-373, RM-6873]

Radio Broadcasting Services; Lexington, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal filed by J. Scott Communications, Inc. requesting the substitution of FM Channel 290C3 for Channel 292A at Lexington, Mississippi, and modification of its license for Station WLTD(FM) to specify operation on the higher class channel. The coordinates for Channel 290C3 are 33–00–00 and 89–53–30.

DATES: Comments must be filed on or before October 23, 1989, and reply comments on or before November 7, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Linda J. Eckard, Mark N. Lipp, Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue NW., Washington, DC 20036, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89–373, adopted August 7, 1989, and released September 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-21056 Filed 9-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-375, RM-6846]

Radio Broadcasting Services; Bozeman, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Northern Sun Corporation, proposing the allotment of FM Channel 260C1 to Bozeman, Montana, as that community's third commercial FM broadcast service. The coordinates for Channel 260C1 are 45–40–54 and 111–02–18.

DATES: Comments must be filed on or before October 23, 1989, and reply comments on or before November 7, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis F. Begley, Reddy, Begley & Martin, 2033 M Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89–375, adopted August 15, 1989, and released September 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-21057 Filed 9-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR 73

[MM Docket No. 89-370, RM-6842]

Radio Broadcasting Services; Wadesboro, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Red Penny Broadcasting seeking the substitution of Channel 228C3 for Channel 228A at Wadesboro, North Carolina, and the modification of its construction permit for a new station there for specify the higher powered channel. Channel 228C3 can be allotted to Wadesboro in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.9 kilometers (3.0 miles) northeast to avoid a short-spacing to Station WZNS, Dillon, South Carolina, Station WCEZ, Columbia, South Carolina, and to an application for Channel 229A at Bishopville, South Caroline (BPH-880519ND). The coordinates for this allotment are latitude 34°59'57" N. and longitude 80°02'34" W. We will not accept competing expressions of interest in use of Channel 228C3 at Wadesboro or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 23, 1989, and reply comments on or before November 7, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Justine Hope Lambert, General Partner, Red Penny Broadcasting, 206 S. Rutherford Street, Wadesboro, North Carolina 28170 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89–370, adopted August 14, 1989, and released August 31, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-20983 Filed 9-6-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 90809-9209]

RIN 0648-AC28

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule for comment on Amendment 3 to the Fishery Management Plan for the American Lobster Fishery (FMP). Amendment 3 and this proposed rule would: (1) Delay implementation of the increase in the escape vent size scheduled for January 1, 1990 to January 1, 1992; and (2) require that effective January 1, 1992, lobster traps contain an escape panel or equivalent mechanism that would degrade, keeping a trap from ghost fishing after it has been abandoned or lost for 12 months or more. Proposal 2 would become effective only if the New England Fishery Management Council (Council) specifies, and the Regional Director publishes a list of acceptable escape mechanisms at least 12 months prior to January 1, 1992. The purpose of this action is to allow the maximum utilization of the resource through maximum retention of legal sized lobsters during the period of scheduled size increases and to reduce mortality caused by lost or abandoned traps.

DATE: Written comments must be received on or before October 16, 1989.

ADDRESSES: Comments on the proposed rule should be sent to Richard Roe, Rigional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, Massachusetts 01930. Mark the outside of the envelope "Comments on the Lobster Regulations."

Copies of the amendment which incorporates the environmental assessment and the regulatory impact review are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Resource Policy Analyst, 508-281-9331.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the American Lobster Fishery (FMP) and implementing regulations were prepared by the Council in 1983 (48 FR 36266). The objective of the FMP is to support and promote the development and implementation, on a continuing basis, of a unified regional management program for American lobsters (*Homarus americanus*), which is designed to promote conservation, to reduce the possibility of recruitment failure and to allow full utilization of the resource by the United States fishing industry. Efforts to better achieve this objective have resulted in Amendment 1 to the FMP in 1986 (51 FR 19210), Amendment 2 to the FMP in 1987 (52 FR 46088), and this proposed rule to implement Amendment 3.

Amendment 3 contains two proposals: (1) Delay the implementation of the increase in the escape vent size scheduled for January 1, 1990 until January 1, 1992; and (2) require that lobster traps must contain an escape panel or equivalent mechanism that would degrade and allow lobsters to escape after a trap has been abandoned or lost for 12 months or more.

Proposal 1

Amendment 2 to the FMP implemented a schedule of lobster size increases an an escape vent size increase according to the following schedule:

Effective date	Minimum carapace length
January 1, 1988	Increased to $3\frac{7}{32}$ inches.
January 1, 1989	Increased to $3\frac{1}{4}$ inches.
January 1, 1990	No change in carapace length, escape vents compatible with $3\frac{5}{16}$ inches.
January 1, 1991	Increase to $3\frac{9}{32}$ inches.
January 1, 1992	Increase to $3\frac{5}{16}$ inches.

Amendment 3 proposes to delay the scheduled vent size increase until January 1, 1992, in order to ease an unforeseen regulatory burden that the original schedule is likely to impose on the industry.

According to the original schedule, on January 1, 1990, the escape vent size will be increased to one that is compatible with a $3\frac{5}{16}$ inch lobster carapace size. At the time this schedule was published the Council decided that the choice of 1990 for the implementation of the vent size increase was regarded as the most conservative and practical alternative, and that the vent size increase should be compatible with the $3\frac{5}{16}$" carapace size. Since that time, however, the National Marine Fisheries Service provided the Council with scientific guidance concerning the size and timing of the escape vent requirement. This guidance provided the Council with two options (1) a vent size specification of $1\frac{7}{8}$ inches which would maximize the retention of legal size lobsters and (2) a vent size of $1\frac{15}{16}$ which would maximize escapement of lobsters less than the legal size.

Consistent with the objective of the FMP to promote conservation, the Council opted for the vent size that enhances escapement of sublegals, i.e., $1\frac{15}{16}$ inches. However, if this vent size increase were to be implemented in 1990, according to the original schedule, it is estimated that 10-15 percent of lobsters just meeting the minimum legal size could escape until the schedule of lobster minimum size increases is fully implemented in 1992. In short, implementation of a vent size that might allow excessive escapement of legal size lobsters could cause an unintended loss in revenue to the fishery, and erode the cooperation and compliance needed to achieve the objectives of the FMP.

In order to offset the potentially negative economic impacts of the scheduled vent size increase, the Council proposes to postpone the $1\frac{15}{16}$" vent size increase until 1992. This proposal would allow for optimal retention of legal sized lobsters, while ensuring that adequate escapement is achieved consistent with the scheduled increases in minimum carapace length.

Proposal 2

The second proposal would require, effective January 1, 1992, that lobster traps contain an escape panel or equivalent mechanism to keep a trap from ghost fishing after it has been abandoned or lost for 12 months or more. The purpose of this proposal is to reduce fishing mortality caused by lost traps ("ghost fishing") on all sizes of lobster. Every year lobstermen lose about 20–25 percent of their traps due to storms or damage to trap lines caused by trawlers. An unknown number of these traps continue to catch lobsters and cause some level of lobster mortality which is thought to be significant.

Several states already require degradable material in certain types of fish and shellfish traps. For instance, since 1985, Florida has required that spiny lobster traps be made of wood. Other states have a number of fishery regulations similar in purpose which require a range of readily degradable

materials such as cotton twine, soft steel trap hooks and magnesium pins to be used in fish traps.

On January 1, 1989, the state of Connecticut implemented a measure requiring biodegradable escape panels in lobster traps in state waters. Maine is considering a similar regulation that is likely to remain in a pending status until the federal rule is implemented.

Although the potential of time release mechanisms to prevent ghost fishing has been demonstrated in a number of other fisheries, their use is not widespread. Experimentation by individual lobstermen or even academic and scientific institutions is unlikely to lead to a consistent or widely accepted standard for a time release mechanism. In this environment, it is also unlikely that gear manufacturers will develop and distribute the appropriate products to help solve this problem.

This proposal would become effective January 1, 1992, only if the Council specifies, and the Regional Director publishes at least twelve months prior to this date a list of escape mechanisms. Some members of the industry are concerned that the technology of escape mechanisms has not been sufficiently tested. Although the concept of an escape panel is generally supported, a list of acceptable escape mechanisms might not be available one year prior to January 1, 1992. Therefore, implementation will occur at least one year after a list is available and published.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99-659, 16 U.S.C. 1854 (a)(1)(D)(ii) requires the Secretary of Commerce (Secretary) to publish regulations proposed by the Council within 15 days of receipt of the amendment and proposed regulations. At this time the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information views and comments received during the comment period.

The Council prepared within Amendment 3 an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained from the Council at the address given above and comments on it are requested.

The Under Secretary for Oceans and Atmosphere, NOAA, has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared within Amendment 3 a regulatory impact review (RIR) which concludes that this rule, if adopted, would have the following economic impacts. Proposal 1 is expected to prevent a reduction in catch of lobsters between $3\frac{1}{4}$" and $3\frac{5}{16}$" of 8 percent in 1990 and 5 percent in 1991. The net benefits associated with this are unquantifiable because of the lack of data on size distribution of lobsters landed from the exclusive economic zone (EEZ). Proposal 2 is expected to provide an annual net benefit of $1.05–1.52 million in revenues to fishermen in the EEZ. Based on 1987 ex-vessel prices, proposal 2 would provide a gross annual benefit of $1.13-1.59 million in revenues to fishermen because it is expected to increase EEZ lobster landings by 139–196,000 pounds annually. The annual cost of degradable materials, such as hemp, jute, cotton twine or steel wire, is estimated to be $5–6,000 for about 550,000 traps. The opportunity cost of labor to install degradable fasteners annually is estimated to be $55–61,000. The additional cost of slightly larger plastic escape panels needed to cover the escape path opening in the lobster trap is estimated to range from about $11–13,000. A period of one year for an escape release mechanism to work is sufficient to allow a variety of materials and thicknesses to be used without forcing lobstermen to replace escape panel fasteners too frequently. Most inshore lobstermen fish nine months or less. If the material used to secure the escape panels lasts at least this amount of time, then the lobstermen will be able to re-secure the escape panels once a year before putting the gear in the water at the beginning of a new season. Total costs are expected to range from $72–80,000 annually.

Administrative, enforcement, and paperwork and recordkeeping requirements are expected to remain unchanged, thus, there are no impacts on federal, state, or local government agencies. No data on operating costs are currently available for the harvesting sector; however, operating expenses are not expected to increase measurably. Employment impacts are expected to be neutral or very slightly positive because of the small size of the increase in revenues. Impacts on the competitive position of U.S. lobstermen are expected to be neutral or slightly positive. A copy of the RIR may be obtained at the address listed above.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities for the reasons stated above in the summary of the RIR. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule is exempt from the procedures of E.O. 12291 under Section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act require the Secretary to publish this proposed rule within 15 days of its receipt. The proposed rule is being reported to the Director, Office of Management and Budget with an explanation of why it is not necessary to follow the procedures of the order.

This rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Delaware, Maryland and New Jersey. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 649

Fisheries, Reporting and recordkeeping requirements.

Dated: August 31, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is proposed to be amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 649.2, the definition of "escape vent" is added in alphabetical order to read as follows:

§ 649.2 Definitions

* * * * *

Escape vent means an opening in a lobster trap designed to allow lobsters smaller than the legal minimum size to escape from the trap.

* * * * *

3. Section 649.20, the table in paragraph (b) is revised to read as follows:

§ 649.20 Harvesting and landing requirements.

* * * * *

(b) *Carapace length.*

* * * * *

Effective dates	Minimum carapace length
January 1, 1985, through December 31, 1987.	3$\frac{3}{16}$ inches.
January 1, 1988, through December 31, 1988.	3$\frac{7}{32}$ inches.
January 1, 1989, through December 31, 1990.	3$\frac{1}{4}$ inches.
January 1, 1991, through December 31, 1991.	3$\frac{9}{32}$ inches.
January 1, 1992, and beyond [1].	3$\frac{5}{16}$ inches.

[1] By January 1, 1992, escape vents in traps must be compatible with a minimum carapace length of 3$\frac{5}{16}$ inches.

* * * * *

4. Section 649.21 is amended by revising paragraph (c)(2) and by adding paragraph (c)(3) to read as follows:

§ 649.21 Gear identification, marking, and escape vent requirements.

* * * * *

(c) * * *

(2) On January 1, 1992, all lobster traps must contain one of the following:

(i) A rectangular escape vent compatible with an unobstructed opening not less than 1$\frac{15}{16}$ inches high (49.2 mm) by 6 inches wide (152.2 mm), if the escape vent is made by cutting meshes on a wire mesh trap the width will be measured from center to center on the wires;

(ii) Two circular escape vents with unobstructed openings not less than 2$\frac{7}{16}$ inches (61.9 mm) in diameter; or

(iii) Any other type of escape vent which the Regional Director finds to be consistent with paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

(3) On January 1, 1992, lobster traps must contain an escape panel or equivalent mechanism to keep a trap from ghost fishing after it has been abandoned or lost for 12 months or more. This requirement shall become effective on or before January 1, 1991, only if the Council specifies, and the Regional director publishes, a list of acceptable methods for complying with this requirement, including the minimum dimensions of the escape path.

* * * * *

[FR Doc. 89–21035 Filed 9–1–89; 3:32 pm]

BILLING CODE 3510–22–M

Notices

Federal Register

Vol. 54, No. 172

Thursday, September 7, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative Agreements Award; Cornell University

AGENCY: Office of International Cooperation and Development (OICD).

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with Cornell University to provide partial support funding for collaborative international research on Development of DNA-Probes for Identification Pseudomonas Syringae Pathovar Glycinea.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds in fiscal year 1989 (FY1989) and/or FY1990 to enter into a cooperative agreement with Cornell University to collaborate on international research on Development of DNA-Probes for identification Pseudomonas Syringae Pathovar Glycinea. Cornell University's Department of Plant Pathology will conduct collaborative research with Italy's University of Bologna. Assistance will be provided only to Cornell University's which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for supplies, a research associate, and international travel. Italy's University of Bologna will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated that $20,000 will be available in FY 1989 and/or FY 1990 to support this work. A total of $40,000 is anticipated to be provided for this cooperative research effort over a three year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58–319R–9–020 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Dated: August 30, 1989.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 89–21042 Filed 9–6–89; 8:45 am]

BILLING CODE 3410–DP–M

Cooperative Agreements Award; Cornell University

AGENCY: Office of International Cooperation and Development (OICD).

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with Cornell University to provide partial support funding for collaborative international research on Indexing Grape Propagation Material for the Crown Gall Pathogen and Developing Strategies for Disease Control.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds in fiscal year 1989 (FY1989) and/or FY1990 to enter into a cooperative agreement with Cornell University to collaborate in international research on indexing grape propagation material for the Crown Gall Pathogen and developing strategies for disease control. Cornell University's Department of Plant Pathology will conduct collaborative research with Italy's University of Bologna. Assistance will be provided only to Cornell University, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for a research assistant and international travel. Italy's University of Bologna will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated $16,250 will be available in FY1989 and/or FY1990 to support this work. A total of $50,250 is anticipated to be provided for this cooperative research effort over a three year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58–319R–9–019 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Dated: August 30, 1989.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 89–21043 Filed 9–6–89; 8:45 am]

BILLING CODE 3410–DP–M

Cooperative Agreements Award, Ohio Staten University

AGENCY: Office of International Cooperation and Development (OICD).

ACTION: Notice of intent.

Activity: OICD intends to award a Grant to Ohio Staten University for publication of proceedings from the ISEC Research Committee conference on "International Agricultural Research."

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1989 (FY1989) to provide funding support to Ohio State University for preparation, publication and distribution of the proceedings from the April 10, 1989, conference on International Agricultural Research, sponsored by the International Science and Education Council (ISEC) Research Committee. Assistance will be provided only to Ohio State University which will utilize funds to partially support the publication.

Based on the above, this is not a formal request for application. An estimated $3,720 will be available in FY1989 as partial project support.

Information on proposed Grant #59–319R–9–004 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Dated: August 30, 1989.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 89–21044 Filed 9–6–89; 8:45 am]

BILLING CODE 3410–DP–M

BEST COPY AVAILABLE

Cooperative Agreement Award, University of Florida

AGENCY: Office of International Cooperation and Development (OICD).

ACTION: Notice of intent.

Activity: **OICD intends to enter into a Cooperative Agreement with the University of Florida to provide partial support funding for collaborative international research on Evaluating Brassicas as a Cloning Source for Resistance Genes Against Xanthomonas.**

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD announces the availability of funds in fiscal year 1989 (FY1989) and/or FY1990 to enter into a cooperative agreement with the University of Florida to collaborate in international research on evaluating Brassicas as a cloning source for resistance genes against Xanthomonas. The University of Florida's Plant Pathology Department will conduct collaborative research with Singapore's National University. Assistance will be provided only to the University of Florida, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for a research assistant and international travel. Singapore's National University will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated that $16,000 will be available in FY1989 and/or FY1990 to support this work. A total of $33,500 is anticipated to be provided for this cooperative research effort over a two year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58-319R-9-017 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Dated: August 30, 1989.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 89-21045 Filed 9-6-89; 8:45 am]

BILLING CODE 3410-DP-M

Cooperative Agreements Award; Washington State University

AGENCY: Office of International Cooperation and Development (OICD).

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with Washington State University to provide partial support funding for collaborate international research on Constraints to the Expansion of Edamame and Azuki Production for the Japanese Market.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD announces the availability of funds in fiscal year 1989 (FY1989) and/or FY1990 to enter into a cooperative agreement with Washington State University to collaborative in international research on constraints to the expansion of Edamame and Azuki production for the Japanese market. Washington State University's Department of Agronomy and Soils will conduct collaborative research with Iwate and Kokkaido Universities. Assistance will be provided only to Washington State University, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for a research assistant and international travel. Iwate and Kokkaido Universities will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated that $19,500 will be available in FY1989 and/or FY1990 to support this work. A total of $59,500 is anticipated to be provided for this cooperative research effort over a three year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58-319R-9-018 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Dated: August 30, 1989.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 89-21046 Filed 9-6-89; 8:45 am]

BILLING CODE 3410-DP-M

Cooperative Agreements Awards; William Patterson College

AGENCY: Office of International Cooperation and Development (OICD).

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with William Patterson College to provide partial support funding for collaborative international research on Di-Haploid Soybean Plant Induction Via Anther and Inflorescence Culture.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD announces the availability of funds in fiscal year 1989 (FY1989) and/or FY1990 to enter into a cooperative agreement with William Patterson College to collaborate in international research on di-haploid soybean plant induction via anther and inflorescence culture. William Patterson College will conduct collaborative research with People's Republic of China's Heilongjiang Academy of Agricultural Science, Harbin. Assistance will be provided only to William College, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for a research assistant and international travel. People's Republic of China's Heilongjiang Academy of Agricultural Science, Harbin, will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated that $18,800 will be available in FY1989 and/or FY1990 to support this work. A total of $55,800 is anticipated to be provided for this cooperative research effort over a three year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58-319R-9-021 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Dated: August 30, 1989.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 89-21047 Filed 9-6-89; 8:45 am]

BILLING CODE 3410-DP-M

Soil Conservation Service

South Branch Kawkawlin River Watershed Protection Plan, Michigan

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the South Branch Kawkawlin River Watershed, Bay, Midland and Saginaw Counties, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will benefit water quality in the South Branch Kawkawlin River Watershed by significantly reducing the amounts of sediment and phosphorus entering the stream. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of practices for water quality improvement. The practices will include: Conservation tillage, critical area planting, grassed waterways, stripcropping, diversions, water and sediment control basins, grade stabilization structures, tree planting, vegetative barriers and field windbreaks. Total financial assistance cost is estimated to be $1,740,300; $973,200 PL-566 funds and $767,100 local funds.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904-Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: August 25, 1989.

Homer R. Hilner,

State Conservationist.

[FR Doc. 89-20906 Filed 9-6-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council and its Committees will hold public meetings on September 12-14, 1989, at the Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY.

The Council will begin meeting on September 13 at 1 p.m., and will adjourn on September 14 at 3 p.m. The Council will elect officers, recommend 1990 quotas for surf clams and ocean quahogs, as well as discuss other fishery management and administrative matters. The public meeting may be lengthened or shortened depending upon progress on the agenda. The Council also may hold a closed session (not open to the public) to discuss personnel and/or national security matters.

The Habitat Committee will meet on September 12 at 8 a.m.; the Information and Education Committee will meet on September 12 at 10 a.m.; the Coastal Migratory Fisheries Committee will meet jointly with the Atlantic States Marine Fisheries Commission Bluefish Board on September 12 at 1 p.m., to consider the Bluefish Fishery Management Plan, and the Demersal Fisheries Committee will meet on September 13 at 8 a.m.

For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: August 30, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-20919 Filed 9-6-89; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council: Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council, its Scientific and Statistical Committee (SSC), Advisory Panel (AP), and other Council advisory groups will meet on September 24-29, 1989, at the Sheraton Hotel in Anchorage, AK. Except as noted below, the meetings are open to the public.

The Council will begin meeting on September 26 at 9 a.m. (Also on September 28 the Council will meet at noon in executive session (not open to the public) to discuss employment and litigation matters.) During its open session, the Council will elect officers for the coming year; receive status of stocks reports for groundfish in the Gulf of Alaska and Bering Sea/Aleutian Islands, and set initial harvest quotas and apportionments for domestic and joint venture fisheries for 1990. The Council's administrative process for setting initial and final groundfish specifications will be reviewed and discussed. The Council also will review the performance of domestic harvesters and processors, and receive the results of the survey of crab resources in the Bering Sea and Aleutian Islands. It will receive a status report from the Office of the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), on efforts to implement a federal domestic observer program. In addition, there will be reports on bycatch management planning, and regulatory and plan amendments in progress.

The Council also will review and approve a formal policy for deadlines for public comments, and will also consider future utility of the Fisheries Obligation Guarantee and the Capital Construction Fund Programs.

The Council will review limited access planning schedules for the sablefish, halibut, groundfish and crab fisheries, and also determine whether they should be modified or abandoned. It will consider approval of a draft sablefish limited access plan for public review and also consider approval of halibut limited access decision points for final staff analysis, as well as review public comments on a draft amendment to fishery management plans (FMPs) to address the issue of roe stripping in the pollock fisheries in the Gulf of Alaska and Bering Sea/Aleutian Islands. It also will consider final approval of this amendment for Secretarial review as well as review options for addressing full utilization and waste issues.

The Council will receive a preliminary analysis for NOAA General Counsel on allocation proposals for allocating resources between at-sea and non-at-sea components of the fishing industry, and review the Fishery Planning Committee recommendations. The Council will determine how to proceed with further development of any of the alternatives.

The Council will review public comments on the revised FMP for Salmon Fisheries in the Exclusive Economic Zone off Alaska, and consider approval of the plan for Secretarial review. The Council also will review allocative proposals received for the 1990 halibut season, and decide which should be further analyzed and forwarded for public review. It will also consider adjusting the halibut management cycle.

A draft regulatory amendment to prohibit using groundfish pots in the Gulf of Alaska without halibut exclusion mechanisms also will be considered for approval. The Pacific Northwest Crab Industry Advisory Committee will report to the Council on its first meeting under the new Bering Sea and Aleutian Islands King and Tanner Crab FMP. The Council also will consider action to implement a federal observer program for the crab fisheries and initiate discussion on formulating cost recovery programs for the fishing industry.

The Council will review foreign permit applications as available and set priorities for consideration of review of such applications in December. Also, as appropriate, the Council will consider and develop various international issues.

The Council's AP and SSC also will meet during the week of September 24. The AP will begin meeting at 10:30 a.m., on September 24 and the SSC will begin meeting at 10:30 a.m., on September 25. Other meetings scheduled are:

(1) Halibut Management Team, September 24 at 1:30 p.m.
(2) Halibut Regulatory Amendment Advisory Group, September 24 at 7 p.m.
(3) Halibut Bycatch Work Session, September 25 at 7 p.m.
(4) Halibut Committee, September 26 at 7 p.m.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: September 1, 1989.

Herbert L. Blatt,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–21049 Filed 9–6–89; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will meet on September 18–21, 1989, at the Red Lion Inn-Downtowner, 1800 Fairview, Boise, ID. Except as noted below, the meetings are open to the public.

The Council will meet on September 20 at 8 a.m., to address groundfish management issues, including but not limited to: (1) Inseason management measure adjustments for rockfish and sablefish; (2) preliminary management specifications for 1990; (3) Canadian management proposals for 1990; (4) sablefish management in 1990; (5) a preliminary report on measures to extend the whiting venture season; (6) Council guidance on the draft plan amendment; and (7) proposed regulations governing domestic offshore processors. Also on September 20 the Council will hear a status report on the Pacific halibut fisheries in 1989, and discuss the schedule of meetings to develop the 1990 allocations. On September 20 at 4 p.m., the Council will receive public comments on any issue not on the agenda. Public comments on agenda items will be considered before Council action on each item.

The Council will convene on September 21 at 8 a.m., in closed session (not open to the public), to discuss litigation and personnel matters. The open session will start at 9 a.m., to address salmon management, habitat and administrative matters. Salmon management agenda items include, but are not limited to, (1) the sequence of events and current status of the 1989 fisheries; (2) approval of the draft plan amendment for public hearings; (3) a report from council on penalties for barbless hook violations and legality of multiple landings of the same fish, and (4) a discussion on management implications of the decision to classify Sacramento River winter chinook as a threatened species.

The Scientific and Statistical Committee will meet on September 18 at 8 a.m., to address scientific issues on the Council's agenda, and will reconvene on September 19 at 8 a.m.

The Groundfish Select Group will meet on September 19 at 8 a.m., to address groundfish issues on the Council's agenda.

The Budget Committee will meet on September 19 at 1 p.m., to review the status of the 1989/90 Council budgets.

The Habitat Committee will meet on September 19 at 3 p.m., to consider timely and relevant habitat matters impacting fisheries in the Council's jurisdiction.

Detailed agendas for the above meetings will be made available to the public after September 1, 1989. For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 S.W. First Avenue, Room 420, Portland, OR 97201; telephone: (503) 326–6352.

Dated: August 30, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–20920 Filed 9–6–89; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Anchovy Plan Development Team will hold a public meeting on September 14, 1989, at 9 a.m., at the National Marine Fisheries Service, Southwest Fisheries Center, 8604 La Jolla Shores Drive, La Jolla, CA. The Team will continue developing a plan amendment to the Council's anchovy fishery management plan, which would provide for a mininal reduction fishery under specified conditions.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: August 30, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–20921 Filed 9–6–89; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Scientific and Statistical Committee salmon subcommittee will hold a public meeting on September 14–15, 1989, at the General Administration Building, Director's Conference Room, Olympia, WA. On September 14 the meeting will begin at 11 a.m., and on September 15 the meeting will adjourn by 4:30 p.m. The subcommittee will review the methods used to estimate

wild coho returns to Washington State coastal streams.

A detailed agenda is available from the Pacific Council's office. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: August 30, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–20922 Filed 9–6–89; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold a public meeting of the Bluefish Advisory Panel at the Council's headquarters (address below), beginning on September 25, 1989, at 1 p.m., and concluding on September 26 at noon. The advisory panel will review the Bluefish Fishery Management Plan and consider comments received at recent public hearings concerning the plan. It will also formulate recommendations to the Council regarding management measures contained in the proposed plan. A detailed agenda will be available to the public on or about September 8, 1989.

For more information contact Carrie R. F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: September 1, 1989.

Herbert L. Blatt,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–21050 Filed 9–6–89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Program Review; Permits for Taking Marine Mammals for Public Display Purposes

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA Commerce.

ACTION: Notice.

SUMMARY: The National Marine Fisheries Service (NOAA Fisheries) will hold a working session to solicit input on a definition of public display consistent with the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407) (MMPA). This working session is part of a comprehensive review of NOAA Fisheries' permit program to take marine mammals for purposes of public display and scientific research. Note that this working session is not a hearing. Participants should be prepared to contribute substantively to the permit program review.

DATES: Persons wishing to participate in the working session must notify the Information Contact listed below by September 22, 1989. The working session will be held on Tuesday, October 3, 1989, at 9:30 a.m.

ADDRESS: Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Art Jeffers, Permits Division, address above; telephone 301/427–2289.

SUPPLEMENTARY INFORMATION: NOAA Fisheries is conducting a review of its program and policies for issuing permits to take marine mammals for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock pursuant to the MMPA, and for scientific research and enhancement pursuant to the Endangered Species Act (See 54 FR 13099, March 30, 1989 and 54 FR 27663, June 30, 1989). One of the objectives of the permit program review is the development of a definition of public display consistent with the policies and the purposes of the MMPA. The need for such a definition and the issues and concerns regarding whether certain activities or types of facilities constitute public display, as that term is used in the MMPA, are presented in a Discussion Paper released as part of the permit program review.

This working session is being held to give interested members of the public an opportunity to participate in group discussions to: identify, consistent with the MMPA, the elements that should enter a definition of public display; develop and examine alternative definitions of public display; and discuss the role of education in public display. The results of the working session together with the comments received on the Discussion Paper will be considered by NOAA Fisheries in the development of revised permit regulations and an Advance Notice of Proposed Rulemaking will be issued at that time. This working session is not a hearing. Participants are encouraged to: be prepared to contribute substantively and constructively to group discussions; have a working knowledge of the relevant sections of the MMPA: and be familiar with the applicable chapters of the Discussion Paper.

Separate working sessions will be held on other topics as part of the permit program review, including but not limited to the following: care and maintenance of captive marine mammals; scientific research permits; effects on wild populations; permits and the National Environmental Policy Act. Dates and locations will be published in the **Federal Register**.

Dated: August 30, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–20923 Filed 9–6–89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Manufacturing Board; Meeting

AGENCY: Under Secretary of Defense (Acquisition).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Office of the Under Secretary of Defense for Acquisition announces a forthcoming planning meeting for a Defense Manufacturing Board project on concurrent engineering.

Date and Time: September 25, 1989, 0900–1500.

Address: Institute for Defense Analysis, 1801 N. Beauregard, Room 218S, Alexandria, VA 22311.

The agenda for the meeting will include an overview of Department of Defense activity in the general area of concurrent engineering.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Fitzpatrick of the DMB Secretariat, (202) 697–0957.

Dated: August 31, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–20939 Filed 9–6–89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology

ACTION: Change in Location of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Low

Observable Technology scheduled for August 23–24, 1989 as published in the **Federal Register** (Vol. 54, No. 96, Page 21648, Friday, May 19, 1989, FR Doc. 89–12018) will be held on August 23–24, 1989 at the Institute for Defense Analyses. This notice supercedes the change previously submitted in **Federal Register** (Vol. 54, No. 117, Page 25892, Tuesday, June 20, 1989, FR Doc. 89–14508).

Dated: August 31, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–20940 Filed 9–6–89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow-on Forces Attack

ACTION: Change in Date of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Follow-on Forces Attack scheduled for September 6–7, 1989 as published in the **Federal Register** (Vol. 54, No. 134, Page 29769, Friday, July 14, 1989, FR Doc. 89–16483) will be held on September 14–15, 1989.

Dated: August 31, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–20941 Filed 9–6–89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Extension of Public Review Period for the Draft Environmental Impact Statement for Electronic Installations in the Western Pacific

The public review and comment period for the Draft Environmental Impact Statement for Electronic Installations in the Western Pacific is hereby extended to October 5, 1989. All comments must be postmarked on or before that date and sent to: E.C. Rushing, Jr., Commander, CEC, USN, Head, Facilities Planning Department, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii 96860–7300.

Dated: September 1, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–20951 Filed 9–6–89; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel Advisory Committee Space Task Force; Closed Meeting

Notice was published on August 21, 1989, at 54 FR 34547–8 that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Space Task Force will meet September 26–27, 1989 at 4401 Ford Avenue, Alexandria, Virginia. This meeting has been canceled. In accordance with 5 U.S.C. section 552b(e)(2), the meeting cancellation is publicly announced at the earlier practical time.

Dated: September 1, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–20949 Filed 9–6–89; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel Advisory Committee on Superconductivity; Closed Meeting

Notice was published on August 16, 1989, at 54 FR 33759 that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee on Superconductivity will meet on September 5–6, 1989 at 4401 Ford Avenue, Alexandria, Virginia. This meeting has been canceled. In accordance with 5 U.S.C. section 552b(e)(2), the meeting cancellation is publicly announced at the earliest practical time.

Dated: September 1, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–20950 Filed 9–6–89; 8:45 am]

BILLING CODE 3810-AE-M

Performance Review Board Membership; Correction

Volume 54, No. 154 of the **Federal Register** at pages 33053 and 33054 which was issued on August 11, 1989 contained the names of individuals who were nominated for the Department of the Navy's Senior Executive Service Performance Review Boards. That list was not complete as one entire page of names was not published. The following is the list of names omitted in the previous publication.

Addendum to Department of the Navy PRB Membership

Storey, R. C. Mr.
Swofford, F. W. Mr.
Tarbell, W. A. Mr.
Taussig, J. K. Mr.
Thomas, R. O. Mr.
Thompson, R. H. Mr.
Tobin, P. E. RADM
Topping, R. RADM
Tupaz, J. B. Capt
Turner, D. Mr.
Turnquist, C. J. Mr.
Urban, R. G. Mr.
Weiss, A. R. Mr.
Wilcox, H. J. Mr.
Wilgenbusch, R. RADM
Williams, J. F. Mr.
Willoughby, W. J. Mr.
Wineglass, R. J. MGEN
Winokur, R. S. Dr.
Wood, A. D. Dr.
Wyant, F. E. Mr.
Zanfagna, P. E. Mr.
Zimmerman, Jr, H. H. Mr.

Dated: September 1, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–20952 Filed 9–6–89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Applications Submitted Under Direct Grant Programs

AGENCY: Department of Education.

ACTION: Notice for individuals interested in reviewing applications submitted under direct grant programs administered by the Office of Bilingual Education and Minority Languages Affairs.

SUMMARY: The Director of the Office of Bilingual Education and Minority Languages Affairs (OBEMLA), Department of Education, invites interested individuals to apply to serve as field readers for programs administered by OBEMLA. OBEMLA administers programs authorized by the Bilingual Education Act, 20 U.S.C. 3281–3341 as amended by Public Law 100–297 (April 28, 1988), and 34 CFR parts 500, 501, 524, 525, 526, 561, 573, and 574.

Each year the Secretary selects field readers to evaluate grant applications based upon criteria published in program regulations and, where applicable, additional criteria published in the application notices in the **Federal Register**.

Expertise is desirable in such areas as evaluation, curriculum and materials development, personnel and parent training, education administration, research, bilingual education, English as a second language, teaching English to speakers of other languages (TESOL), second language acquisition, adult education, special education, and vocational education. This list is not intended to be all inclusive and individuals with expertise in related fields are encouraged to apply. Individuals selected as reviewers will be compensated for their services as needed. Individuals interested in serving as field readers for the fiscal year 1990 funding cycle should contact OBEMLA no later than September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Craig, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 5086, Switzer Building), Washington, DC 20202–6642. Telephone: (202) 732–5722.

Dated: August 17, 1989.

Rita Esquivel,

Director, Office of Bilingual Education and Minority Languages Affairs.

Catalog of Federal Domestic Assistance (CFDA) No. 84.003, Bilingual Education

I. Transitional Bilingual Education Program
II. Developmental Bilingual Education Program
III. Special Alternative Instructional Program
IV. Academic Excellence Program
V. Family English Literacy Program
VI. Special Populations Program
VII. Educational Personnel Training Program
VIII. Training Development and Improvement Program
IX. Short-Term Training Program

[FR Doc. 89–20937 Filed 9–6–89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.158N]

Office of Special Education Programs

Application for New Awards under the Training and Employment Models for Youth with Handicaps

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: This notice corrects an error made in the application notice published in the **Federal Register** on July 21, 1989 (54 FR 30656). The deadline for transmittal of applications is corrected to read December 18, 1989. The deadline for Intergovernmental Review is corrected to read February 16, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4620–2644), Washington, DC 20202. Telephone (202) 732–4503.

Program Authority: 20 U.S.C. 1425

Dated: August 30, 1989.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89–20938 Filed 9–6–89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP88-26-000]

Northern Pump Co., Danner No. A–1 Well; Order Vacating Final Well Category Determination

Issued August 3, 1989

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

On February 17, 1988, and May 23, 1988, the Kansas Corporation Commission (Kansas) issued orders revoking its prior determinations under section 108 of the Natural Gas Policy Act of 1978 (NGPA) [1] that the Danner No. A–1 well (the well), located in Finney County, Kansas and formerly owned and operated by Northern Pump Company (Northern Pump), was qualified as a stripper well and that production from the well was seasonally affected.[2] On July 11, 1988, Hawley Management Company (Hawley) [3] filed a protest to Kansas' orders. The Commission took no action to reverse or remand the Kansas determination revoking the seasonally affected determination and that determination became final on July 21, 1988.

On March 27, 1989, the Commission reopened the final well determination that the well qualified as stripper well under section 108.[4] In the March 27, 1989 order reopening the stripper well determination, the Commission found that it appeared that in making the subject determination untrue statements of material fact were relied upon or necessary material facts were omitted. Kansas, in its February 17, 1988 order noted that testimony had revealed that it was Northern Pump's practice to partially close the valve on the well. Further, Williams Natural Gas Company, Larson Family Farms, and Randal K. Loder (purchasers of the gas) argued that the record showed that Northern Pump read the irrigation meters only once a month and estimated the number of irrigation gas days of production each month by dividing this monthly amount by an estimated daily volume which it assumed an irrigation pump would use during one day of operation.

Section 108(b) of the NGPA provides that a well qualifies as a stripper well if:

> (A) During the preceding 90-day production period, such well produced nonassociated natural gas at a rate which did not exceed an average of 60 Mcf per production day during such period; and
>
> (B) During such period such well produced at its *maximum efficient rate of flow* (MER), determined in accordance with recognized conservation practices designed to maximize the ultimate recovery of natural gas. [Emphasis added.]

Section 271.803(d) of the Commission's regulations provides that a production day means:

> (1) Any day during which gas is produced; and
>
> (2) Any day during which gas is not produced if production during such day is prohibited by a State law or a conservation practice recognized or approved by the State agency having regulatory jurisdiction over the production of natural gas.

On April 26, 1989, the purchasers filed the only comments received in response to the March 27, 1989 order. The purchasers request that the Commission vacate the section 108 stripper well determination based upon the record in this proceeding. The purchasers argue that the production figures submitted by Northern Pump in support of its section 108 application did not reflect the true maximum efficient rate of flow of the well as required by NGPA section 108(b)(1), because the valve was restricted. The purchasers further argue that the production records submitted in Northern Pump's section 108 application were also tainted by the use of estimated irrigation gas production days which creates the possibility of the double counting of production days. Finally, purchasers contend that state

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[1] 15 U.S.C. 3318 (1982).

[2] On May 21, 1986, the Commission issued an order reopening and remanding to Kansas a determination that the well is a seasonally affected stripper gas well. 35 FERC ¶61,207.

[3] Hawley states that it is serving as manager of liquidation and dissolution of Northern Pump Company and acting as agent for the Estate Trust of Roseta H. Wright, the owner of Northern Pump Company. Hawley further states that the current operator and partial owner of the well is Ensign Operating Company (Ensign), which purchased the well in November 1986, and that Amoco Production Company also owns an interest in the well.

[4] 46 FERC ¶61,367 (1989). The Commission found that the May 28, 1986 order had only reopened and remanded the seasonally affected determination. 46 FERC at 62,153.

[Docket No. RP89-221-000]

flow tests demonstrate that the well's MER exceeded 60 Mcf per day in 1978.

Northern Pump in the course of the stripper well determination made no statement concerning the operating practice of restricting the valve on the well and failed to explain its method of estimating production days to show its compliance with § 271.803(d) of the regulations. Section 275.205(d) of the Commission's regulations provides that the Commission shall vacate any reopened determination if it finds that the grounds for reopening the determination exist.[5] Accordingly, we find good cause under section 503(d) of the NGPA to vacate the final section 108 determination of natural gas produced from the subject well.

Ensign and all working interest owners and first resellers that have collected proceeds from first sales of gas from the subject well, if they have not already done so, must refund, with interest calculated under § 154.102(c) of the Commission's regulations, all amounts collected in excess of the otherwise applicable maximum lawful price.

The Commission orders:

(A) The stripper well determination under section 108 for the Danner No. A–1 well is hereby vacated pursuant to section 503(d) of the NGPA and § 275.205 of the Commission's regulations.

(B) Within ten days from the date of this order, Ensign shall serve a copy of this order on all working interest owners or all purchasers/resellers of gas from the well and must give the Commission a list of the owners or purchasers.

(C) Within 60 days from the date of this order, Ensign and any other working interest owners and purchasers/resellers of the gas from the well must refund with interest all amounts collected in excess of the applicable maximum lawful price.

(D) Within ninety days from the date of this order, anyone who collected proceeds from first sales of gas from the well shall file a refund report. The refund report must show (1) the amount of overcharges and interest refunded, (2) the dates the refunds were paid, and (3) a statement of concurrence by the purchasers that all refunds were made, or, alternatively, a statement that no refunds are due.

(E) This order shall not prejudice any enforcement action that may be warranted.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–20942 Filed 9–6–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89–5–1–000]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 30, 1989.

Take notice that on August 24, 1989, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post office Box 918, Florence, Alabama 35631, tendered for filing Alternate Second Revised Sheet No. 4A to its FERC Gas Tariff, First Revised Volume No. 1. Such tariff sheet is proposed to become effective July 1, 1989.

Alabama-Tennessee states that the filing is to adjust the currently effective take-or-pay surcharge rates to its customers to reflect decreases in the amount being billed to it by Tennessee Gas Pipeline Company, and to adjust the computation of carrying charges for one customer, in compliance with the Commission's July 7, 1989 order in Docket No. TM89–3–1–000. Alabama-Tennessee asserts that the allocation methodology utilized is that approved by the Commission in Docket Nos. RP88–205–001 and TM89–1–1–000. Alabama-Tennessee further states that such filing is being made pursuant to § 26.1(a) of its tariff.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspections.

Lois D. Cashell,

Secretary.

[FR Doc. 89–20943 Filed 9–6–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89–220–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 30, 1989.

Take notice that CNG Transmission Corporation on August 25, 1989 tendered for filing proposed changes in its FERC gas tariff Volume No. 1. The purpose of the filing is to implement new rates for Outer Continental Shelf interruptible transportation service. The proposed tariff sheets being filed are Second Revised Sheet No. 1, Superseding First Revised Sheet No. 1; Original Sheets No. 81A, 81B, 81C, 81D, 81E and 81F; Sixth Revised Sheet No. 32, and First Revised Sheets No. 226, 227, 228, 229, 230 231, and 232.

The Federal Energy Regulatory Commission, in Orders 509 and 509A, issued to CNG a blanket certificate for off-shore transportation. CNG initially filed to continue use of its current TF and TI rates for off-shore transportation under this blanket certificate, but by this filing proposes to use new rates designed specifically for interruptible off-shore transportation.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before September 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–20944 Filed 9–6–89; 8:45 am]

BILLING CODE 6717-01-M

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[5] 18 CFR 275.205 (1988).

[Docket No. RP89–221–000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

August 30, 1989.

Take notice that North Penn Gas Company (North Penn) on August 25, 1989, pursuant to Ordering paragraph (G) of the Commission Order dated August 3, 1989, filed the following tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

Substitute Ninety-third Revised Sheet No. PGA—Effective August 1, 1989
Substitute Ninety-fourth Revised Sheet No. PGA—Effective September 1, 1989
Second Revised Sheet No. 15H(1)—Effective September 1, 1989
Original Sheet No. 15H(1)(a)—Effective September 1, 1989
Original Sheet No. 15H(6)—Effective September 1, 1989

North Penn states these sheets establish procedure by which it recovers from its customers FERC Order 473 Compression Allowance Charges and LNG Charges for which North Penn's pipeline suppliers have received Commission approval to bill and which are being billed to North Penn.

The tariff sheets in which North Penn proposes the pass-through of these charges are as follows:

(1) Second Revised Sheets No. 15H(1) and Original Sheet No. 15H(1)(a). These tariff sheets establish procedures (Section 18) by which North Penn will recover from its customers the FERC Order 473 Compression Allowance and the LNG Charges which North Penn's pipeline suppliers bill North Penn.

(2) Original Sheet No. 15H(6). This tariff sheet (as well as Appendix A) sets for each category of up-stream cost, the allocation of amounts billed to North Penn through July 1989; the amount of any such costs paid by North Penn's customers through a PGA surcharge; any related account 191 credit (off-set); and the net amount of each charge to be billed to North Penn's customers. The allocation methodology utilizes the same procedure utilized by North Penn's pipeline suppliers in their allocation of costs to North Penn.

As per Section 18, the amounts billed to North Penn after July 1989 will be billed by North Penn as incurred to its customers and Corning Natural Gas Corporation (Corning).

(3) Substitute Ninety-third, and Substitute Ninety-fourth Revised Sheet No. PGA–1. These revised tariff sheets eliminate the PGA surcharge for Order 473 and LNG Costs currently in effect, so that the net amount of these charges can be billed effective September 1, 1989 under tariff sheet No. 15H(6).

In the August 3, 1989 Commission order (page 15, footnote 48), the Commission states that "for purposes of determining the Corning-related portion of the Account No. 191 balance, the balance as of October 31, 1988 should be used. During the deferral period ended on that date, North Penn received several large refunds from Tennessee relating to the period when Corning was a customer of North Penn."

North Penn states it has difficulty implementing the above-passage as to refunds associated with Corning's past purchases, which refunds were reflected in Account 191 after October 31, 1988. To avoid prejudice to Corning or any customer, North Penn has designated and reserved such amounts pending Commission clarification.

Copies of this filing were served upon North Penn's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before September 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–20945 Filed 9–6–89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3641-9]

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Phase 3 of the Pesticide Reregistration Process (EPA ICR #1543.01). This ICR requests clearance for a new information collection.

Abstract: Under Phase 3 of the pesticide reregistration process, registrants responsible for submitting generic data to support reregistration of certain active ingredients must provide the following information to EPA: an update on their commitment to comply with reregistration data requirements; summaries of studies previously submitted to the Agency; reformatted versions of toxicology and residue chemistry reports submitted prior to 1982; information on unreasonable adverse effects; and any other information that might support reregistration.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1360 hours per response, including 346 hours to summarize an average of 34 studies, 976 hours to reformat an average of 12 studies, 25 hours to complete the "Phase 3 Chemical Response Worksheet," 14 hours to identify unreasonable adverse effects, and 15 minutes to complete the "Phase 3 Report and Worksheet on Project Status." These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Pesticide manufacturers

Estimated No. of Respondents: 1220

Estimated Total Annual Burden on Respondents: 1,659,803 hours

Frequency of Collection: One time.

Send comments regarding the burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460, and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone 395–3084).

Dated: August 30, 1989.

Paul Lapsley

Director, Information and Regulatory Systems Division.

[FR Doc. 89–20991 Fild 9–6–89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3641-6]

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: EPA is requesting emergency processing of this ICR by September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382–2740).

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Pesticides in Groundwater GIS Case Study (EPA ICR# 1512).

Abstract: Respondents will be asked to voluntarily answer questions concerning pesticide usage and the proximity of application points to water supplies. Data will be used to demonstrate techniques for identifying vulnerable water supplies needed in developing State Pesticide in Groundwater Management Plans. This collection is essential to the mission of the agency and statutory deadlines may be missed if normal procedures are followed.

Burden Statement: The estimated public reporting burden for this collection of information is one hour per respondent, per year. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Farmers, County Agriculture Agents

Estimated No. of Respondents: 151

Estimated Total Annual Burden on Respondents: 158 hours

Frequency of Collection: One-time only.

To obtain a copy of the ICR package contact Sandy Farmer on (202) 382–2740.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460, and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395–3084).

Dated: August 30, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89–20993 Filed 9–6–89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3641-7]

Workshop on Environmental and Occupational Asthma

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of workshop.

SUMMARY: A scientific workshop, sponsored by the Federal Task Force on Environmental Cancer and Heart and Lung Disease, will be held at the Hyatt Regency Long Beach, 200 South Pine Avenue, Long Beach, California.

DATES: The workshop will begin at 5:00 p.m. on Tuesday, November 28, 1989 and conclude at 12:00 p.m. on December 1, 1989.

ADDRESSES: Preregistration is required and attendance will be limited to 150 persons (including observers from the public). To register as an observer for the workshop, contact Ms. Willie Sanderson, Technical Resources Inc., 3202 Tower Oaks Boulevard, Rockville, Maryland, 20852, Tel. (301) 231–5250. Registration will be closed on October 20, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas O. Miller, U.S. Environmental Protection Agency, RD–683, 401 M Street SW., Washington DC, 20460, Tel. (202) 382–5893 (FTS: 382–5893).

SUPPLEMENTARY INFORMATION: The Federal Task Force on Environmental Cancer and Heart and Lung Disease is an interagency group established by Congress to promote cooperation and coordination among Federal agencies on environmental health issues and to recommend research needed to understand the relationship between environmental factors and human disease. The purpose of the workshop is to identify research needs on environmentally and occupationally related asthma and to promote communication linkages between pulmonary medicine specialists and primary care providers.

Dated: August 25, 1989.

John H. Skinner,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89–20992 Filed 9–6–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

August 31, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3520).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0228

Title: Section 80.59, Compulsory ship stations

Action: Extension

Respondents: Individuals or households, state or local governments, businesses (including small businesses), and non-profit institutions

Frequency of Response: On occasion

Estimated Annual Burden: 200 respondents; 400 hours total annual burden; 2 hours average burden per response

Needs and Uses: Rule is needed to permit vessels to operate for up to 30 days beyond expiration of safety certificate when annual inspection required by treaty or statute cannot be performed in time.

OMB Number: 3060–0265

Title: Section 80.868, Card of instructions

Action: Extension

Respondents: Individuals or households, state or local governments, businesses (including small businesses), and non-profit institutions

Frequency of Response: Recordkeeping requirement

Estimated Annual Burden: 3,000 recordkeepers; 300 hours total annual burden; 6 minutes average burden per recordkeeper

Needs and Uses: Rule needed to ensure that radiotelephone distress procedures are readily available on board certain ships required by statute or treaty to be equipped with radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89–20979 Filed 9–6–89; 8:45 am]

BILLING CODE 6712-01-M

Application for Consolidated Hearing; Longhorn Broadcast Limited Partnership, et al

1. The Commission has before it the following mutually exclusive applications for 1 new FM station and 2 new AM stations:

I.

Applicant	File No.	MMDocket No.
A. Longhorn Broadcast Limited Partnership; Elgin, Texas.	BPH-871124MD	89-380
B. Johnny L. Crain and Richard J. Martinez, d/b/a Elgin Broadcasting; Elgin, Texas.	BPH-871124ML	
C. Dynamic Radio Broadcasting Corporation; Elgin, Texas.	BPH-871124MR	
D. Austin Broadcasting Company; Elgin, Texas.	BPH-871124MX	
E. William Robert Lundgren; Elgin, Texas.	BPH-871124MB (Previously Dismissed)	

Issue heading and applicants

1. & 2. Real Party-in-Interest, A
3. Qualifications, A
4. Comparative, A,B,C,D
5. Ultimate, A,B,C,D

II.

Applicant	File No.	MMDocket No.
A. William W. Muench; Willard, Missouri.	BPH-880126NO	89-371
B. MW Multicom Inc.; Willard, Missouri.	BPH-880126OI	

Issue heading and applicants

1. Air Hazard, A,B
2. Comparative, A,B
3. Ultimate, A,B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Service Division, Mass Media Bureau.

Appendix (Elgin, Texas)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of (A) Longhorn.

2. To determine whether (A) Longhorn's organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 through 2 above, whether (A) Longhorn possesses that basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 89–20980 Filed 9–6–89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003155–009.

Title: Port Authority of New York and New Jersey Terminal Agreement.

Parties: Port Authority of New York and New Jersey (Port Authority), Maersk Container Service Company, Inc.

Synopsis: The Agreement provides for the removal on or after September 1, 1989, of the Port Authority's termination right associated with Building No. 186, Port Newark (Paragraph 12 of Agreement No. 224–003155–008) which is used as an equipment maintenance facility.

Agreement No.: 224–200235–001.

Title: Port of Palm Beach District Terminal Agreement.

Parties: Port of Palm Beach District, Palm Beach Steamship Agency (Agency).

Synopsis: The Agreement provides that if the Agency exercises its renewal option in the basic lease agreement, it is to be evidenced in writing and filed with the Federal Maritime Commission to become effective pursuant to the provisions of the Shipping Act of 1984. All other terms and conditions of the basic agreement remain the same.

By Order of the Federal Maritime Commission.

Dated: August 31, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–20910 Filed 9–6–89; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance) to Neckermann Und Reisen et al.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR part 540):

Nur Touristic GmbH (d/b/a Neckermann Und Reisen)/Trans World Cruises, Inc./and Arcalia Shipping Company, c/o Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005–1759.

Vessel: VASCO DA GAMA.

Dated: September 1, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–20966 Filed 9–6–89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of July 5–6, 1989

In accordance with § 271.5 of its Rules Regarding Availability of Information (12 CFR 271, *et seq.*), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on July 5–6, 1989.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

> The information reviewed at this meeting tends to confirm earlier indications that economic growth has slowed this year. Gains in total nonfarm payroll employment have moderated substantially in recent months, but the civilian unemployment rate, at 5.2 percent in May, remained close to its average level in earlier months of the year. Industrial production increased on balance in April and May at about the reduced rate experienced earlier in the year. Growth in consumer spending has weakened considerably this year. Housing starts declined slightly further in May. Recent indicators of business captial spending suggest a substantial additional increase in the second quarter after a rebound in the first quarter. The nominal U.S. merchandise trade deficit narrowed in April from a substantially reduced average value in the first quarter. Broad measures of prices have risen more rapidly this year than in 1988, reflecting sharp increases in energy and food prices.
>
> Interest rates have fallen since the Committee meeting on May 16, with the largest declines generally occurring on long-term markets. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G–10 currencies rose sharply earlier in the intermeeting period but subsequently more than retraced that rise in often volatile trading.
>
> M2 and M3 declined in May, primarily because of sizable reductions in transaction and other liquid balances arising from the clearing of unusually large tax payments; data through mid-June point to a rebound in these measures of money. Thus far this year, expansion of M2 has been at a rate below the Committee's annual range, while growth of M3 has been around the lower bound of the Committee's range.
>
> The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee reaffirmed at this meeting the ranges it had established in February for growth of M2 and M3 of 3 to 7 percent and 3½ to 7½ percent, respectively, measured from the fourth quarter of 1988 to the fourth quarter of 1989. The monitoring range for growth of total domestic nonfinancial debt also was maintained at 6½ to 10½ percent for the year. For 1990, on a tentative basis, the Committee agreed to use the same ranges as in 1989 for growth in each of the monetary aggregates and debt, measured from the fourth quarter of 1989 to the fourth quarter of 1990. The behavior of the monetary aggregates will continue to be evaluated in the light of movements in their velocities, developments in the economy and financial markets, and progress toward price level stability.
>
> In the implementation of policy for the immediate future, the Committee seeks to decrease slightly the existing degree of pressure on reserve positions. Taking account of indications of inflationary pressures, the strength of the business expansion, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, somewhat greater reserve restraint or somewhat lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from June through September at annual rates of about 7 percent. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 7 to 11 percent.

By order of the Federal Open Market Committee, August 31, 1989.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 89–20961 Filed 9–6–89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 21, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Dan B. Kyle,* Richwood, Ohio; to retain up to 15 percent of the voting shares of The Citizens Savings Bank Company, Richwood, Ohio.

Board of Governors of the Federal Reserve System, August 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–20963 Filed 9–6–89; 8:45 am

BILLING CODE 6210-01-M

Intercounty Bancshares, Inc. Employee Stock Ownership Plan; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (14 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 28, 1989.

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[1] Copies of the record of policy actions of the Committee for the meeting of July 5–6, 1989, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *InterCounty Bancshares, Inc. Employee Stock Ownership Plan,* Wilmington, Ohio; to become a bank holding company by acquiring 25 percent of the voting shares of InterCounty Banshares, Inc., Wilmington, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bank Maryland Corp.,* Towson, Maryland; to acquire 100 percent of the voting shares of Universal Bank of Maryland, Lanham-Seabrook, Maryland.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Lemens Banking Investments, Ltd.,* Austin Texas; to become a bank holding company by acquiring 61.8 percent of the voting shares of First Bank & Trust Co. Bartlett, Bartlett, Texas, and Eagle Bank, Jarrell, Texas.
2. *The Plains Corporation,* Wilmington, Delaware; to become a bank holding company by acquiring 98.02 percent of the voting shares of the Plains Corporation, Lubbock, Texas, and thereby indirectly acquire Plains National Bank of Lubbock, Lubbock, Texas.

Board of Governors of the Federal Reserve System, August 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–20964 Filed 9–6–89; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Report to Congress on the Costs of Operating Privately Owned Vehicles

The Travel Expense Amendments Act of 1975 (Pub. L. 94–22, May 19, 1975) requires the periodic investigation of the operating costs of privately owned vehicles (airplanes, automobiles, and motorcycles) to Government employees while engaged on official business. Further, the Act requires that the results of these investigations be reported to the Congress and published in the **Federal Register**.

The following report is being published to comply with the requirements of the Act.

Dated: August 23, 1989.

Richard G. Austin,

Acting Administrator of General Services.

The Travel Expense Amendments Act of 1975 (Pub. L. 94–22, May 19, 1975), 5 U.S.C. 5707(b), requires that the Administrator of General Services, in consultation with the Comptroller General of the United States, the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct a periodic investigation of the costs of operating privately owned vehicles to Government employees while engaged on official business and report the results to the Congress at least once a year. The Act further requires that a determination of the average, actual cost per mile be made based on the results of the investigation. Such figures must be reported to the Congress within 5 working days after the determinations have been made.

The General Services Administration (GSA) conducted an automobile cost investigation based on calendar year 1988 data and consulted with representatives of employee organizations, the General Accounting Office, and the Departments of Defense and Transportation on the results. As required, GSA is reporting the results of that investigation and the cost per mile determination.

GSA's investigation of the costs of operating privately owned automobiles revealed an average cost of 24 cents per mile. GSA is currently processing an amendment to the Federal Travel Regulation increasing the automobile mileage reimbursement rate from the current level of 22.5 cents to 24 cents.

The investigation of the cost of operating privately owned motorcycles and airplanes is still in process. The results of that investigation will be reported upon completion of the investigation and the consultation process.

This report on the cost of operating privately owned automobiles will be published in the **Federal Register**.

[FR Doc. 89–20970 Filed 9–6–89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement No. 948]

Availability of Funds for Fiscal Year 1989 for a Cooperative Agreement for an Epidemiologic Study to Determine the Incidence and Extent of Human Immunodeficiency Virus (HIV) Infection in American Blood Donors

Introduction

The Centers for Disease Control (CDC) proposes to continue assistance to the American Red Cross (ARC) through a cooperative agreement for an epidemiologic surveillance study to determine the incidence and extent of infection with Human Immunodeficiency Virus (HIV) and related retroviruses in American blood donors and to monitor trends over time using computer software developed by ARC and CDC.

Authority

This program is authorized under section 317(k)(3) of the Public Health Service Act (42 U.S.C. 247(b)), as amended.

Eligible Applicant

The American Red Cross (ARC) is the major collector of blood for transfusion in the United States, with about six million units collected annually. This number comprises approximately half the nation's blood supply. The other half is collected by numerous independent local blood banks and the military. ARC is national in scope, with collection in at least parts of most States in the continental United States. Because the prevalence of HIV infection, and especially the incidence of new infection, in blood donors is low (due to the self-deferral process), very large numbers of donors need to be studied to obtain meaningful results. Additionally, HIV infection levels vary considerably by geographic area. It is essential to obtain HIV infection data from across the entire United States.

The ARC, funded through cooperative agreement U64/CCU302659, awarded by the Centers for Disease Control in Fiscal Year 1986 has 3 years in experience in epidemiologic surveillance studies of HIV infection. It has developed a system to collect, manage, and analyze at least 6 million records a year on donations that have been tested for HIV infection. There is no other organization that is known to have already collected, managed, and analyzed millions of blood donation records which would enable to monitoring of trends in HIV infection from as early as 1986. Therefore, the intent of this announcement is to provide funding to the American Red Cross for an additional five years to continue this study.

Availability of Funds

Approximately $203,000 is available in fiscal year 1989 to fund this award. The award will be funded with 12-month annual budget periods within a 5-year project period, which will begin September 29, 1989. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. The funding estimate outlined above may vary and is subject to change. No other applications are being accepted for this project.

Purpose

The purpose of this cooperative agreement is to continue assistance to the American Red Cross for: (1) Determining and monitoring the extent of HIV infection in blood donors, (2) analyzing the characteristics of infected donors to strengthen the effectiveness of the donor deferral and screening process, (3) analyzing the socio-demographic characteristics of donors to assess the degree of representativeness of the general population, and (4) monitoring for emergence of additional Acquired Immunodeficiency Syndrome (AIDS) viruses as well as other viruses relevant to the epidemiology of AIDS.

Program Requirements

1. Recipient Agency Activities

a. Collect and analyze, on a national scale, serologic and demographic data on first-time and repeat blood donors to determine the prevalence of HIV infection by person, place, and time.

b. Continue to refine the data management system for the study.

c. Provide training for data management personnel at the ARC regional level.

d. Identify areas experiencing appreciable percentage of true seropositives which would permit ARC to determine reasons why the self-deferral process was not fully effective in screening these donors.

e. Analyze the socio-demographic characteristics of blood donors to assess the degree of their representativeness of the general U.S. population.

f. Using the computerized surveillance software developed by ARC and CDC, prepare summary data to be used for other epidemiologic studies of HIV infection in blood donors.

g. Develop and implement CDC/ARC collaborative studies for national surveillance of HIV–2 and other viruses relevant to the epidemiology of AIDS.

h. Collaborate with CDC in the presentation and dissemination of study results.

2. Centers for Disease Control Activities

a. Provide technical assistance in designing a data management system.

b. Monitor trends in the prevalence of HIV infection in first-time donors and the incidence of new HIV infection in repeat donors.

c. Evaluate and validate trend findings by comparison with trend data from other national and regional sentinel surveillance activities.

d. Collaborate in the analysis of the socio-demographic characteristics of blood donors to assess the degree of their representativeness of the general U.S. population.

e. Provide technical collaboration to the applicant in the data analyses, the evaluation of the self-deferral process and socio-demographic studies.

f. Collaborate in the presentation and dissemination of study results.

Evaluation Criteria

The application will be reviewed and evaluated based on the following criteria:

1. The extent to which the proposed objectives are measurable, specific, time-phased, and related to required recipient activities and program purpose.

2. The quality of the applicant's plan for conducting program activities and the potential effectiveness of the proposed methods in meeting its objectives.

In addition, consideration will also be given to the extent that the budget request and proposed use of project funds are appropriate and reasonable.

Funding Priorities

The intent of this announcement is to renew the cooperative agreement U64/CCU302659 between the American Red Cross and the Centers for Disease Control.

E.O. 12372 Review

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 13.118.

Application Submission and Deadline

The American Red Cross must submit an original and two copies of application form PHS–5161–1 (Rev 3/89) to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before September 8, 1989.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 948 and contact the following: Business: Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, or by calling (404) 842–6575 or FTS 236–6575. Technical: Lyle Peterson, M.D., AIDS Program, Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333, (404) 639–2082 or FTS 236–2082.

Dated: August 31, 1989.

Robert L. Foster,

Acting Director, Office of Program Support Centers For Disease Control

[FR Doc. 89–20956 Filed 9–6–89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 85F–0477]

INI Agrico, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 5M3882) proposing that the food additive regulations be amended to provide for the safe use of a source of gamma radiation to control insect infestation and to inhibit growth and maturation in fresh papaya at doses not to exceed 1 kiloGray (kGy).

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 13, 1985 (50 FR 46834), FDA published a notice that it had filed a petition (FAP 5M3882) submitted by INI Agrico, Inc., 1000 Elwell Ct., Suite 232, Palo Alto, CA 94303, that proposed to amend the food additive regulations to provide for the safe use of a source of gamma radiation to control insect infestation and to inhibit growth and maturation in fresh papaya at doses not to exceed 1 kGy (100 kilorad).

The agency concludes that the petitioned amendment is not necessary because of a broader regulation issued in 1986. In the **Federal Register** of April 18, 1986 (51 FR 13376), FDA issued a regulation based on a 1984 proposal that, among other things, permits the use of ionizing radiation to inhibit the growth and maturation of fresh foods and to disinfest food of arthropod pests at a dose not to exceed 1 kGy. Thus, the agency concludes that the use of radiation requested by the petitioner is already permitted and that the petition should be withdrawn.

On February 14, 1989, the agency requested the petitioner to concur that the petitioned amendment is no longer necessary and that the petition be withdrawn without prejudice (21 CFR 171.7) within 30 days. The agency has not received a response to this request and has been unable to contact the petitioner. Therefore, FDA is withdrawing the petition without prejudice. The agency will refile the petition if the petitioner so requests within 30 days.

Dated: August 24, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–20969 Filed 9–6–89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Establishment; AIDS Research Advisory Committee

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86, Stat. 770–776), and sec. 2304 of the Public Health Service Act, (42 U.S. Code 300cc–3) as amended, the National Institutes of Health, announces the establishment by the Director, National Institutes of Allergy and Infectious Diseases of the AIDS Research Advisory Committee, NIAID.

The AIDS Advisory Committee shall advise the Director of the National Institutes of Allergy and Infectious Diseases, and Director, Division of AIDS, on all aspects of research of HIV infection and AIDS related to the mission of the Division of AIDS, including pathogenesis, epidemiology, vaccine development, and treatment research.

Authority for this Committee shall terminate on August 23, 1991, unless renewed by appropriate action as authorized by law.

Dated: August 29, 1989.

William F. Raub,

Acting Director, NIH.

[FR Doc. 89–20911 Filed 9–6–89; 8:45 am]

BILLING CODE 4140-01-M

Meeting; National Heart, Lung, and Blood Institute

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Tuesday, October 3, 1989, from 9 a.m. to 3:00 p.m., at the Old Colony Inn, 625 First Street, Alexandria, Virginia 22314, (703) 548–6300.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol Education Program. Attendance by the public will be limited to space available.

For the agenda, list of participants, and meeting summary, contact: Dr. James I. Cleeman, Coordinator, National Cholesterol Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, C–200, Bethesda, Maryland 20892, (301) 496–0554.

Dated: August 30, 1989.

William F. Raub,

Acting Director, NIH.

[FR Doc. 89–20912 Filed 9–6–89; 8:45 am]

BILLING CODE 4140-01-M

Meeting; National Diabetes Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the National Diabetes Advisory Board's meeting date which will be October 1–2, 1989. The meeting will begin at approximately 5:30 p.m. October 1, 1989, and recess at approximately 10:00 p.m. The meeting will reconvene at 8:00 a.m. on October 2, 1989, and conclude by 3:30 p.m. The Board will meet at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The purpose of the meeting is to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Although the entire meeting will be open to the public, attendance will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045. His office will provide, for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: August 29, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–20913 Filed 9–6–89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Health Resources and Services Administration

Final Project Specifications, Review Criteria, Funding Preference and Funding Priorities for Grants for Podiatric Primary Care Residency Training Programs

The Health Resources and Services Administration announces the final Project Specifications, Review Criteria, Funding Preference and Funding Priorities for Grants for Podiatric Primary Care Residency Training Programs.

Section 788(e) authorizes the award of grants to accredited schools of podiatric medicine and public and nonprofit private hospitals to meet the costs of projects to: (1) Plan and implement projects in primary care training for podiatric physicians in approved or provisionally approved residency training programs; and (2) provide financial assistance in meeting costs of supporting trainees who participate in such programs and who plan to specialize in primary care.

Proposed Project Specifications, Review Criteria, Funding Preference and Funding Priorities were published in the **Federal Register** May 11, 1989, (54 FR 20440) for public comment. Four comments were received from three respondents during this 30-day comment period.

Proposed Project Specifications

Three of the comments were related to the Proposed Project Specification (a) which states that each project is expected to have a project director who is employed by the grantee institution and has completed at least one year of podiatric residency training and has at least one year of clinical teaching experience.

The three respondents recommended that a person who is certified by one of the recognized specialty boards within the profession, i.e., the American Board of Podiatric Surgery, the American Board of Podiatric Public Health, or the American Board of Podiatric Orthopedics, and who has a minimum of five years of clinical teaching experience in a college or approved post-graduate program, also be eligible to serve as project director for the program.

One respondent also recommended that an alternative qualification be added following ". . . clinical teaching experience" in specification "a" to read as follows: "or hold certification in a recognized specialty area in podiatric medicine and has at least five years of clinical teaching experience."

The respondents presented the following rationale for the recommendations. Many of the existing podiatric residency training programs have been established by or are under the direction of podiatrists who have not completed a residency training program themselves, since these podiatrists graduated during the 1960s and early 1970s when postdoctoral training opportunities in podiatric medicine were minimal. If the Proposed Project Specification (a) were to remain unchanged, many experienced and qualified leaders in the field of podiatric medicine would be prohibited from serving as project directors.

The Department accepts the rationale for the recommended changes to Project Specification (a) and has revised this requirement accordingly.

Specification "a" stipulates that the project director must complete at least one year of podiatric residency training. It was also suggested to insert "approved" between "podiatric" and "residency training" to ensure the educational integrity of the proposed program. The Department has accepted this suggestion and has revised the requirement accordingly.

Proposed Funding Preference

A comment was also received in support of the Proposed Funding Preference regarding the establishment of a new residency program. The respondent recommended that an alternate method for achieving preference status be added: namely, the addition of a minimum of three new positions to an already established and approved residency program. These three new positions would constitute a separate training track with its own educational program designed to meet applicable requirements.

No change will be made in the Proposed Funding Preference since the Department interprets the phrase "new podiatric primary care residency training program with a minimum of three new residency positions" to include the addition of a podiatric primary care residency training track to an existing approved podiatric residency training program, provided that the addition to an existing program results in a net increase of three podiatric residency positions.

The following final project specifications, review criteria, funding preference and funding priorities will be used in making grant awards in Fiscal Year 1989:

Final Project Specifications

Each project should have:

a. A project director who is employed by the grantee institution and: (1) Has completed at least one year of approved podiatric residency training and has at least one year of clinical teaching experience; or (2) is board certified in a recognized specialty area in podiatric medicine and has had at least five years of clinical teaching experience.

b. An appropriate administrative and organizational plan and appropriate faculty, staff and facility resources for the achievement of stated objectives.

c. A systematic evaluation of the educational program, including the performance and competence of trainees and faculty, the administration of the program, and the degree to which program and educational objectives are met.

d. Use of ambulatory care settings where podiatric primary care is practiced and where an adequate portion of the clinical training is conducted.

e. A curriculum which:

1. Is appropriate for the academic level of the trainees and the specific length and nature of the educational program;

2. Supplements any practical (including clinical) experiences with related educational activities; and

3. Includes: A minimum of 20 percent of curriculum time devoted to supervised instruction in ambulatory clinical settings; instruction in behavioral sciences and the development of psychosocial skills and topics; and a supervised clinical experience in a family medicine or general internal medicine ambulatory care setting;

f. A sufficient number of residents to provide an adequate collegial environment for the educational program and to enhance cost-efficiency.

g. An adequate number of qualified faculty with training and experience in podiatric medicine, and behavioral sciences and liaison faculty in related program areas for the number of residents in the program. The faculty in the program are expected to engage in periodic faculty development activities to improve their teaching skills.

h. Adequate facilities for the provision of the educational activities and, in particular, have ambulatory care space the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372 Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).
the residents with a broad clinical experience.

Final Review Criteria

Approval of all applications will be based on an analysis of the following factors:

1. The degree to which the proposed project provides for the project specifications;

2. The administrative and management capability of the applicant to carry out the proposed project in a cost effective manner;

3. The degree to which the proposed training program emphasizes podiatric primary care; and

4. The potential of the project to continue on a self-sustaining basis.

Final Funding Preference

Applications that propose to start a new podiatric primary care residency program with a minimum of three new residency positions will be placed ahead of other approved applications in the funding order.

Final Funding Priorities

In determining the order of funding of approved applications, a funding priority will be given to:

1. Applications which demonstrate an affiliation with a college of podiatric medicine that will serve to enrich the educational experience of participating residents.

2. Applications which demonstrate a realistic plan for the recruitment of underrepresented minorities (i.e. Black, Hispanic and American/Alaskan Native) into the program.

3. Applications which meet at least two of the following curriculum initiatives:

a. Applications proposing to develop and implement curricula concerning ambulatory and inpatient care of those with HIV infection-related diseases.

b. Applications which are innovative in their educational approaches to quality assurance/risk management activities: monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

c. Applications proposing to provide substantial multidisciplinary geriatric training experiences in multiple ambulatory settings and inpatient and extended care facilities.

This program will be listed at 13.181 in sufficient to provide an adequate clinical experience for the residents.

i. A sufficient number of patients with a variety of health care needs to provide

Dated: August 31, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–20966 Filed 9–6–89; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration

Final Funding Preference for Scholarships for the Undergraduate Education of Professional Nurses Grant Program

The Health Resources and Services Administration announces the Final Funding Preference for Scholarships for the Undergraduate Education of Professional Nurses Grant Program.

Section 843 of the Public Health Service Act, as amended authorizes scholarships to provide financial assistance to individuals who are enrolled or accepted for enrollment as undergraduate nursing students in diploma, associate, or baccalaureate degree programs or in programs of nursing education leading to first degrees in professional nursing and who are in financial need with respect to attending these schools. A scholarship recipient must agree to serve full time upon graduation as a registered nurse for a period of not less than 2 years in an Indian Health Service Center, or a Native Hawaiian Health Center, or a public hospital, or a Migrant Health Center, or a Community Health Center, or a certified nursing facility, or a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses.

A Proposed Funding Preference was published in the **Federal Register** on June 16, 1989 (54 FR 25629) for public comment. Comments were received from 10 respondents during this 30-day comment period. One comment was received that supported the definition of undergraduate nursing student, which was not part of the **Federal Register** notice.

Proposed Funding Preference

One comment suggested an alternative method of achieving the outcome of the preference by requiring schools to give preference in awarding scholarships to students from disadvantaged and minority backgrounds.

The purpose of the preference is to attract those schools that, by virtue of their enrollment, already have an 11.4 percent minority representation. These schools represent students most in need of scholarship support.

Several respondents indicated their intention to withdraw from applying for the scholarships because they did not meet the minority enrollment requirement to obtain the funding preference. The requirement of minority enrollment is to receive a funding preference. The preference is a bonus which does not preclude from consideration those applicants who do not qualify for the preference. There are instances where applicants who meet the requirements of the law but do not qualify for the preference are funded. Conversely, because of a limited appropriation of funds some applicants might qualify for a funding preference and not get funded because of the large number of approved applicants.

All comments received have been carefully considered.

No change will be made in the Proposed Funding Preference. The following final funding preference will be used in making grant awards in Fiscal Year 1989.

Final Funding Preference

For Fiscal Year 1989, preference in the award of the scholarship grants will be given to applicants which show evidence that they exceed the 3-year average enrollment of underrepresented minority students (i.e., Black, Hispanic, American Indian, Alaskan Native, Native Hawaiian, Asian/Pacific Islander), in undergraduate nursing programs. For the 1985–86 school year underrepresented minorities reflected 11.4 percent of undergraduate nursing students. The Administration has determined that these population groups continue to be underrepresented in the nursing profession. Their representation should be increased to ensure equitable opportunities to a career in nursing.

This program is listed at 13.182 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provision of Executive Order 12372, Intergovernment Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: August 31, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–20965 Filed 9–6–89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2045]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 25, 1989.

John T. Murphy,

Information Policy and Management Division.

Proposal: Financial Statement (Claims Collection)

Office: Administration

Description of the Need for the Information and its Proposed Use: Each office in the Department is authorized to have a claims collection officer to establish and maintain a file regarding each claim for which collection activities are made. This information will be used by the claims collection officer to make judgements concerning the likelihood of being able to collect a claim.

Form Number: HUD-27041

Respondents: Individuals or Households

Frequency of Submission: On Occasion

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-27041 6,000		1		1		

Total Estimated Burden Hours: 6,000

Status: Reinstatement

Contact: Ronald A. Nelson, HUD, (202) 755-1446; John Allison, OMB, (202) 395-6880

Date: August 25, 1989.

[FR Doc. 89-21010 Filed 9-6-89; 8:45 am]

BILLING CODE 4210-01-M

Office of Administration

[Docket No. N-89-2044]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 30, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Housing and Urban Development (HUD) Act of 1987, Preservation of Low Income Housing, Prepayment of a HUD-Insured Mortgage By an Owner of Low Income Housing, Title II

Office: Housing

Description of the Need for the Information and its Proposed Use: This rule gives regulatory effect to legislative provisions governing prepayment of HUD insured mortgages. These provisions will assure that affordable multifamily housing units are preserved to the maximum extent practicable for lower-income families and that displacement of such families are minimized while public and private sectors find long term remedies to the potential loss of affordable housing.

Form Number: None

Respondents: State or Local Government, Businesses or Other For-Profit, Federal Agencies or Employers

Frequency of Submission: Other

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection 120		1		100		

Total Estimated Burden Hours: 12,000

Status: Revision

Contact: James J. Tahash, HUD, (202) 426-3944, John Allison, OMB, (202) 395-6880

Date: August 30, 1989

[FR Doc. 89-21011 Filed 9-6-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-650-4143-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for collection of information listed below has been submitted to the Office of Managment and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0121), Washington, DC 20503, telephone (202) 395-7340.

Title: 43 CFR parts 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3570 and 3580 Leasing of Solid Minerals Others than Coal and Oil Shale.

OMB Approval Number: (1004-0121).

Abstract: Respondents supply information relevant to the identification, location and quality of the specific non-energy mineral under application for prospecting, leasing or exploration and their qualifications for holding Federal mineral permits, leases and exploration licenses. This information allows the Bureau to determine the availability of the lands under application and to assure that prospective permittees, lessees and licensees are in compliance with applicable statutory and regulatory requirements.

Bureau Form Numbers: 3104-3, 3104-5, 3504-1, 3504-3, 3504-4 and 3510-2.

Estimated completion times:

- Competitive lease bid: 1 hr.
- Preference right lease application: 10 hrs.
- Fringe acreage/lease modification: 2 hrs.
- Assignment/sublease: 2 hrs.
- Lease renewal/adjustment: 2 hrs.
- Exploration license: 3 hrs.
- Development contract: 3 hrs.
- Prospecting permit extension: 1 hr.
- Exploration plan for prospecting permit: 10 hrs.
- Prospecting permit application: 5/6 hr.
- Use permit application (Bureau Form 3510-2): 2 hrs.
- Bonding requirements (Bureau Form Nos. 3504-1, 3504-3, 3504-4, 3104-3 and 3104-5): 5/6 hr.

Description of Respondents: Prospective holders of Federal non-energy prospecting permits, leases, use permits and exploration licenses.

Annual Responses: 1,246

Annual Burden Hours: 3,722

Bureau clearance officer: Rick Iovaine (202) 653-8853

Dated: April 14, 1989.

Hillary A. Oden,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 89-20972 Filed 9-6-89; 8:45am]

BILLING CODE 4310-84-M

[AZ-020-09-4213-01]

Phoenix District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Phoenix District Advisory Council.

DATE: October 5-6, 1989, 9:00 a.m.

ADDRESS: 2015 West Deer Valley Road, Phoenix, Arizona 85027.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets October 5-6, 1989. A tour of the Kingman Resource Area will occur on October 5. The formal meeting will be held at the Kingman Resource Area Office, 2475 Beverly Avenue Kingman, Arizona at 9:00 a.m. on October 6.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

The agenda for the meeting includes:

—Kingman Resource Management Plan

—BLM Management Updates

—Business form Floor

—Public Comments and Statements

—Futures Meetings and Agenda Topics

SUPPLEMENTARY INFORMATION: This is a public meeting and the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters are welcome.

Dated: August 31, 1989.

Henri R. Bisson,

District Manager.

[FR Doc. 89-20955 Filed 9-6-89; 8:45 am]

BILLING CODE 4310-32-M

[NV-930-09-4212-13; N-51436]

Realty Action; Exchange of Public Lands, Clark County, Nevada

The following described federal lands are being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
  Sec. 5, NW¼;
  Sec. 6, N½, NE¼SW¼, W½NE¼ NW¼SW¼, W½SE¼NW¼SW¼, W½NW¼SW¼, SW¼SW¼, E½SE¼ SW¼, SE¼;
  Sec. 7, N½, SW¼, W½SE¼;
  Sec. 17, N½, SW¼, N½SE¼, SW¼SE¼;
  Sec. 20, NE¼NE¼;
  Sec. 21, SW¼NW¼;
  Sec. 28, W½NE¼, E½NW¼, SW¼NW¼, N½SE¼.
  Total acres 2,290

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), subject to valid existing rights, publication of this Notice shall segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, and from any subsequent land exchange proposals filed by any proponent other than Metroplex Properties or their nominee.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five days, interested parties may submit comments to the District Manager, Las Vegas District Office, 4765 Vegas Drive, Las Vegas, Nevada 89126.

Dated: August 30, 1989.

Gary Ryan,

Acting District Manager, Las Vegas, Nevada.

[FR Doc. 89-21019 Filed 9-6-89; 8:45 am]

BILLING CODE 4310-HC-M

[UT-943-09-4212-13; U-61686]

Issuance of Land Exchange Conveyance Document; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: This action informs the public of the conveyance of 1,673.72 acres of public lands out of Federal ownership and the acquisition of 12,596.52 acres into Federal ownership.

FOR FURTHER INFORMATION CONTACT: Mike Barnes, BLM Utah State Office, 324 South State Street, Salt Lake City, Utah 84111, 801-439-4119.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 1,673.72 acres of land in Tooele County, Utah, from Federal to private ownership.

1. In exchange, the following described lands have been reconveyed to the United States:

Salt Lake Meridian, Utah

T. 10 N., R. 4 W.,
  Sec. 19, lots, 1,2,3,4, E½, E½W½;
  Sec. 29, all;
  Sec. 31, lots 1,2,3,4, E½, E½W½.
T. 10 N., R. 16 W.,
  Sec. 3, lots 1,2,3,4, S½N½, S½.
T. 11 N., R. 16 W.,
  Sec. 29, all;
  Sec. 33, all.

3. The mineral estate for the lands described in paragraph 1 were not acquired by the Bureau of Land Management.

4. The following described lands have been reconveyed to the United States but will remain closed to surface and mineral entry until a notice of opening is given in the Federal Register:

Salt Lake Meridian, Utah

T. 9 S., R. 18 W.,

Dewey No. 2, Dewey No. 3, and Dewey No. 4 patented mining claims, within section 8 and 17, of Mineral Survey #6311.
T. 9 S., R. 18 W.,
Roy No's, 1, 2, 3, 4, and 5 patented mining claims, within section 27, 28, 33, and 34, Mineral Survey #3697.
containing 135.46 acres.

5. The purpose of the exchange was to acquire non-federal land that will allow blocking the land into better management units. The public interest was best served through the completion of the exchange.

Dated:

Ted D. Stephenson,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-21020 Filed 9-6-89; 8:45 am]

BILLING CODE 4310-DO-M

Fish and Wildlife Service

Klamath River Basin Fisheries Task Force; Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 9:00 a.m. to 4:00 p.m., Thursday, September 7, 1989, and from 8:00 a.m. until noon on Friday, September 8th. A public scoping meeting will be held from 7:00 p.m. to 9:00 p.m., September 7, 1989.

PLACE: The meeting will be held at the Eureka Inn, 7th and C Streets, Eureka, California 95501.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097-1006, telephone (916) 842-5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Reports will be provided to the Task Force on current projects of the Klamath River Basin Fishery Restoration Program. Schedules and procedures for carrying out the long-range planning of the Restoration Program will be discussed. The Task Force will make final recommendations on the Restoration Program work plan for Fiscal Year 1990. Status of appointing a sport fishery representative to the Task Force will be reported. The evening scoping meeting will permit members of the public to offer comments and suggestions for developing the long-range plan and environmental assessment for the Restoration Program.

Dated: August 21, 1989.

W.E. Martin,
Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 89-20971 Filed 9-6-89; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-297]

Commission Decision not to Modify or Vacate Initial Determination Granting Temporary Relief, and Issuance of a Limited Temporary Exclusion Order and Temporary Cease and Desist Orders, Subject to Posting of Bond by Complainant

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to modify the presiding administrative law judge's (ALJ) initial determination (ID) granting temporary relief in the above-referenced investigation, and has issued a limited temporary exclusion order and temporary cease and desist orders, subject to posting of a bond by complainant.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418 (Aug. 23, 1988) and in sections 210.24 and 210.58 of the Commission's Interim Rules of Practice and Procedure (53 FR 33034, Aug. 29, 1988, and 53 FR 49118, Dec. 6, 1988).

On April 17, 1989, Motorola, Inc. filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 in the importation and sale of certain cellular radiotelephones and subassemblies and component parts thereof. Motorola's complaint alleged infringement of seven U.S. patents. The motion for temporary relief was limited to 4 claims of 3 patents: claims 62 and 77 of U.S. Letters Patent 4,523,155; claim 18 of U.S. Letters Patent 4,636,593; and the sole claim of U.S. Letters Patent Des. 269,873.

Pursuant to Commission interim rule 210.24(e)(8), the Commission provisionally accepted Motorola's motion for temporary relief at the Commission meeting on May 23, 1989. The Commission also instituted an investigation into the allegations of Motorola's complaint and published a notice of investigation in the **Federal Register**. 54 FR 23292-93 (May 31, 1989). The notice named the following respondents: (1) Nokia Corporation of Helsinki, Finland; (2) Nokia-Mobira Oy of Salo, Finland; (3) Nokia, Inc. of Basking Ridge, New Jersey; (4) Nokia-Mobira, Inc. of Largo, Florida; (5) Tandy Mobira Communications Corporation of Masan, The Republic of Korea; (6) Tandy Corporation of Fort Worth, Texas; and (7) A & A International of Fort Worth, Texas.

The presiding administrative law judge (ALJ) held an evidentiary hearing on Motorola's motion for temporary relief from July 7 to July 12, 1989. All respondents actively participated in the hearing. The Commission received submissions on the issues of remedy, the public interest, and bonding, from all parties on July 31, 1989, in accordance with Commission interim rule 210.24(e)(18)(ii).

On August 9, 1989, the ALJ issued his ID granting Motorola's motion for temporary relief. All parties filed written comments or responses to comments on the ID.

The Commission, having considered the ID, the comments and responses to comments of the parties, and the record in this investigation, determined that there are no errors of law or policy reasons to vacate or modify the ID. Consequently, pursuant to Commission interim rule 210.24(e)(17)(ii), the ID became the Commission's determination.

The Commission having determined that there is reason to believe that there is a violation of section 337 in the importation, sale for importation, or sale in the United States of the accused cellular radiotelephones, subassembles thereof, or component parts thereof, and having determined that temporary relief is warranted, considered the issues of the appropriate form of such relief, whether the public interest precludes issuance of such relief, complainant's bond, and respondents' bond during the period such relief is in effect.

The Commission has determined that a temporary limited exclusion order and temporary cease and desist orders directed to all U.S. respondents are the appropriate form of temporary relief. The Commission has further determined that the statutory public interest factors do not preclude the issuance of such relief, and that respondents' bond under the temporary limited exclusion order and the temporary cease and desist orders shall be in the amount of twenty-five (25) percent of the entered value of the imported articles.

Commission interim rule 210.58(b)(3) sets forth the requirements for posting of complainant's bond. Commission interim rule 210.58(b)(7) requires that all bonds posted by complainant must be approved by the Commission Secretary before the temporary relief which the bond will secure will be issued. Consequently, the issuance of temporary relief described in the preceding paragraph is subject to the posting and approval of complainant's bond in the amount of five (5) percent of complainant's 1988 revenues from the products in question. Complainant is to file its bond with the Commission Secretary within seven (7) business days of publication of this notice in the **Federal Register**.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Issued: August 29, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-21012 Filed 9-6-89; 8:45 am]

BILLING CODE 7020-02-M

[TA-503(a)-18 and 332-279]

President's List of Articles Which May Be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on August 16, 1989, of a request from the U.S. Trade Representative, the Commission instituted investigation No. TA-503(a)-18 and 332-279 under sections 503(a) and 131(a) of the Trade Act of 1974 (19 U.S.C. 2463(a) and 2151(b)) and section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g))—

(1) Pursuant to sections 503(a) and 131(a) of the Trade Act, and the authority of the President delegated to the U.S. Trade Representative by sections 4(c) and 8(c) and (d) of Executive Order 11846, as amended, to advise the President, with respect to each article listed in Part A of the attached Annex, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties under the U.S. Generalized System of Preferences (GSP). In providing its advice, the USTR requested the Commission to assume that benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the "competitive need" limits specified in section 504(c)(1) of the 1974 Act.

(2) Under authority delegated by the President, pursuant to section 332(g) of the Tariff Act, to advise the President—

(A) With respect to each article listed in Part B of the attached Annex, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the removal of the articles in Part B from eligibility for duty-free treatment under the GSP;

(B) With respect to the article listed in Part C of the attached Annex, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the removal of Brazil from eligibility for duty-free treatment under the GSP;

(C) In accordance with section 504(c)(3)(A)(i) of the Trade Act, as to the probable economic effect on domestic industries producing like or directly competitive articles and on consumers of waiving the competitive need limits for countries specified with respect to the articles listed in Part D of the attached Annex and for Malaysia with respect to the articles provided for in HTS 8541.40.9060;

(D) As to the probable economic effect on domestic industries producing like or directly competitive articles and on consumers of restoring the competitive need limits specified in section 504(c)(1) of the 1974 Act for Mexico with respect to the articles listed in Part F of the attached Annex, all of the foregoing articles for which Mexico currently is subject to the reduced competitive need limits specified in section 504(c)(2)(B) of the 1974 Act;

(E) In accordance with section 504(d) of the 1974 Act, which exempts from one of the competitive need limits in section 504(c) of the 1974 Act articles for which no like or directly competitive article was being produced in the United States on January 3, 1985, as to whether products like or directly competitive with the articles in Part A or Part E of the attached Annex were being produced in the United States on January 3, 1985.

EFFECTIVE DATE: August 29, 1989.

FOR FURTHER INFORMATION CONTACT:
(1) Agricultural products, Mr. C. B. Stahmer (202-252-1321)
(2) Textiles and apparel, Mr. Larry Butler (202-252-1470)
(3) Chemical products, Ms. Elizabeth Nesbitt (202-252-1355)
(4) Minerals and metals, Ms. Deborah McNay (202-252-1425)
(5) Machinery and equipment, Ms. Kathleen Lahey (202-252-1409)
(6) General manufactures, Mr. Eric Langer (202-252-1497)

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202-252-1091.

BACKGROUND: The USTR announced the items which have been sent to the Commission for probable economic effect advice in the **Federal Register** of August 10, 1989.

Public Hearing: A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC 20436, beginning at 9:30 a.m. on October 3, 1989 and continuing as required on October 4 and 5. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E St. SW., Washington, DC 20436, not later than noon, September 22, 1989. Posthearing briefs must be filed by October 11, 1989.

Written Submissions: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on October 2, 1989. Commercial or financial information which a submitter desires the

BEST COPY AVAILABLE

Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

By order of the Commission.

Dated: August 31, 1989.

Kenneth R. Mason,

Secretary.

Annex I (HTS Item Numbers) [1]

A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.

0710.22.30(pt.)
0811.90.40
0811.90.60(pt.)
1102.90.40(pt.)
1104.29.00
1512.11.0040
2004.10.00(pt.)
2007.99.55
2007.99.65
2309.90.60(pt.)
2924.29.40(pt.)
2935.00.45(pt.)
3407.00.00(pt.)
3812.30.10(pt.)
5503.40.00
6116.10.4505
6216.00.2505
6216.00.3005
6216.00.4005
6304.99.20(pt.)
6911.10.50(pt.)
6912.00.49(pt.)
7005.21.10
7005.21.20
7005.29.0510
7005.29.15
7005.29.25
7013.99.50(pt.)
7614.90.10(pt.)
8528.10.8055
8532.10.00
8532.25.00
8532.29.00
8541.40.9060
9607.11.00
9607.19.00

B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.

2827.51.00
2905.44.00
3503.00.50
3506.99.00
3912.20.00
7312.10.50
7312.10.60
7312.10.70
7312.10.90
8507.10.0060

C. Petition to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences.

2905.43.00 (Brazil) [2]

D. Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preference.

0711.90.60(pt.) (Mexico)
2001.90.40(pt.) (Mexico)
2001.90.40(pt.) (Mexico)
2005.90.90(pt.) (Mexico)
2203.00.00 (Mexico)
3903.19.00 (Mexico)
3904.10.00 (Mexico)
4818.10.00 (Mexico)
4818.20.00 (Mexico)
4818.30.00 (Mexico)
7314.19.00 (Mexico)
8421.23.00 (Mexico)
8421.31.00 (Mexico)
8471.20.00 (Mexico)
8471.91.00 (Mexico)
8471.99.30 (Malaysia)
8504.40.00 (Malaysia)
8505.19.00 (Mexico)
8511.30.00 (Mexico)
8523.20.00 (Mexico)
8525.20.30 (Malaysia)
8541.40.9060 (Malaysia)
8605.00.00 (Mexico)
8606.10.00 (Mexico)
8606.20.00 (Mexico)
8606.30.00 (Mexico)
8606.91.00 (Mexico)
8606.92.00 (Mexico)
8606.99.00 (Mexico)
9503.70.80 (Mexico)
9503.90.50 (Mexico)
9503.90.60 (Mexico)

E. Petitions to determine an eligible article as not like or directly competitive with any article produced in the United States on January 3, 1985.

1515.30.00(pt.)
2001.90.40(pt.)
2005.90.90(pt.)
9405.91.20(pt.)

F. Restoring the competitive need limits is being considered for the following articles from Mexico.

2005.90.90(pt.)
2203.00.00
3904.10.00
7314.19.00
8421.23.00
8421.31.00
8505.19.00
8523.20.00
9503.70.80
9503.90.50
9503.90.60

[FR Doc. 89–21015 Filed 9–6–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–424 (Final)]

Martial Arts Uniforms From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act that an industry in the United States is not materially injured, or threatened with material injury, nor is the establishment of an industry in the United States materially retarded, by reason of imports from Taiwan of martial arts uniforms, provided for in subheadings 6203.22.10, 6203.23.00, 6203.29.20, 6204.22.10, 6204.23.00, and 6204.29.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less their fair value (LTFV).

Background

The Commission instituted this investigation effective May 1, 1989, following a preliminary determination by the Department of Commerce that imports of martial arts uniforms from Taiwan were being sold at LTFV within the meanings of section 735 of the Act (19 U.S.C. 1673d(a)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 31, 1989 (54 FR 23205). The hearing was held in Washington, DC, on July 25, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 28, 1989. The views of the Commission are contained in USITC Publication 2216 (August 1989), entitled "Martial Arts Uniforms From Taiwan: Determination of the Commission in Investigation No. 731–TA–424 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Dated: August 29, 1989.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–21013 Filed 9–6–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–296]

Certain Phenylene Sulfide Polymers and Polymers Compounds and Products Containing Same; Commission Decision not To Review an Initial Determination Amending the Complaint and Notice of Investigation To Add an Additional Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

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[1] See USTR **Federal Register** notice of August 10, 1989 (54 FR 32891), for article descriptions.

[2] The country named is the beneficiary developing country specified by the petitioner. The TPSC reserves the right to address removal of GSP status for countries in addition to those specified by the petitioner.

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Commissioner Eckes and Commissioner Newquist dissenting.

SUMMARY: Notice is hereby given that the United States International Trade Commission has determined not to review an initial determination (ID) (Order No. 16) issued by the presiding administrative law judge (ALJ) granting the motion of complainant Phillips Petroleum Company (Phillips) to add Polyplastics Co., Ltd. of Osaka, Japan (Polyplastics) as a respondent to the above-captioned investigation.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436, Telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Craig L. McKee, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E. Street SW., Washington, DC 20436, telephone 202–252–1117.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On July 13, 1989, the presiding ALJ issued an ID amending the complaint and notice of investigation to add Polyplastics as a respondent. No petitions for review of the ID or government agency comments were received. These actions are taken under authority of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule § 210.53(h).

By order of the Commission.

Dated: August 30, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–21014 Filed 9–6–89; 8:45 am]

BILLING CODE 7020-02-M

[332–278]

United States-Canada Free-Trade Agreement: Probable Economic Effects on U.S. Industries and Consumers of Accleleraled Elimination of U.S. Tariffs on Certain Articles From Canada

AGENCY: United States International Trade Commission.

ACTION: Notice of receipt from the U.S. Trade Representative (USTR) of supplemental information; notice of availability of annotated list prepared by the Commission of articles in USTR **Federal Register** notice of July 17, 1989 (54 FR 29959).

Background

In her letter to the Commission on July 17, 1989, the USTR provided a list of subheadings in the U..S Harmonized Tariff Schedule which may be considered for acceleration of tariff removal under the United States-Canada Free-Trade Agreement and requested the Commission's advice as to the probable economic effect of such accelerated elimination on domestic industries producing like or directly competitive articles and on consumers.

Ambassador Hills indicated in her letter that a number of the petitions received by the Governments of the United States and Canada requested acceleration only for selected products within a subheading, and that to the extent possible separate additional advice was desired on the effect of acceleration of tariff elimination on the narrow product coverage specified in such petitions.

On August 4, 1989, the Commission received from the USTR a list of such selected products within subheadings contained in petitions to the USTR. The Commission was advised that it will receive a simlar list of products contained in petitions submitted to the Government of Canada.

Upon request, a copy of an annotated Commission list of HTS subheadings included in Annex I of the USTR notice of July 17, 1989, showing for each subheading a brief products description, may be obtained from the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436 (202–252–1802). Also available is a copy of the selected products within subheadings contained in petitions to the USR.

The original notice of the Commission's institution of investigation and scheduling of hearing was published in the **Federal Register** on August 9, 1989 (54 FR 32701).

FOR FURTHER INFORMATION CONTACT: Carl Seastrum, (202–252–1493), or any of the other persons named in the Commission's original notice of investigation.

Hearing-impaired persons can obtain information of this study by contacting our TDD terminal on (202–252–1810).

By order of the Commission

Dated: August 31, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–21016 Filed 9–6–89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31519 (Sub-No. 1)]

Norfolk and Western Railway Co.—Trackage Rights Exemption—Chicago Rail Link and Chicago Short Line Railway Co.

In Finance Docket No. 31519, Chicago Rail Link (CRL) has agreed to grant overhead trackage rights to Norfolk and Western Railway Company (NW) over 2,730 feet of its Illinois Central Railroad Company (IC) connection track and number 14 track in Chicago, IL. In Finance Docket No. 31519 (Sub-No. 1), CRL and Chicago Short Line Railway Company have agreed to grant overhead trackage rights to NW over 1,320 feet of their track number 14 in Chicago, IL.[1] The proposed transactions were to have been consummated on or about August 17, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Robert J. Cooney, Three Commercial Place, Norfolk, VA 23510–2191.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate.* 360 I.C.C. 653 (1980).

Dated: August 29, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–20989 Filed 9–6–89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31521]

North Carolina Railroad Co. Merger Exemption—Atlantic and North Carolina Railroad Co.

North Carolina Railroad Company (NCR) and Atlantic and North Carolina Railroad Company (ANCR) have filed a

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[1] In Finance Docket No. 31520, *Norfolk and Western Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company*, IC agreed to grant overhead trackage rights to NW over its line between milepost 12, at 95th Street in Chicago, IL, and milepost 110, at Gibson City, IL. There is no connection between 95th Street and NW's Calumet Yard. The purpose of these trackage rights is to provide such a connection.

with the undercover detectives,

Respondent on ten years probation and

evidence contained much hearsay

notice of exemption to merge ANCR into NCR. The merger is expected to be consummated by September 30, 1989.

NCR and ANCR are Class III rail carriers, whose lines and properties are leased to affiliates of Norfolk Southern Corporation. The State of North Carolina owns 75 percent and 74 percent, respectively, of the outstanding common stock of NCR and ANCR.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3).[1] It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The proposed transaction is intended to effect operating efficiencies.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: E. Stephen Stroud, North Carolina Railroad Company, 300 S. Salisbury Street, P.O. Box 1550, Raleigh, NC 27602; and Frank A. Rouse, Atlantic and North Carolina Railroad Company, 131 S. Queen Street, P.O. Box 3557, Kinston, NC 28502.

Decided: August 31, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–20988 Filed 9–6–89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–3 (Sub-No. 84)]

Missouri Pacific Railroad Co.; Abandonment of Railroad Between Centralia and Hoyleton in Clinton and Washington Counties, IL; Findings

The Commission has found that the public convenience and necessity permit Missouri Pacific Railroad Company to abandon its approximately 8-mile line of railroad between milepost 15.025 near Centralia and milepost 23.0 at Hoyleton, IL.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of the Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Rail Section, AB–OFA."** Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: August 29, 1989

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Vice Chairman Simmons concurred in the result with a separate expression. Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89–20990 Filed 9–6–89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88–90]

Nathan Beckman, D.D.S.; Denial of Application

On September 6, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Nathan Beckman, D.D.S., (Respondent) of 2301 Collins Avenue, Mez. Suite 101, Miami Beach, Florida 33139, proposing to deny his application, executed on September 1, 1987, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing session was held on January 18, 1989, in Miami, Florida. Due to civil disturbances in the Miami area, the Government's witness was unable to attend the hearing. As a result, Respondent presented his case and another hearing session was scheduled for March 15, 1989, in West Palm Beach, Florida. At that session, the Government presented its case and Respondent was permitted to testify with respect to the evidence presented by the Government.

On April 12, 1989, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Pursuant to 21 CFR 1316.66, on May 2, 1989, the Government filed exceptions to Judge Young's opinion and recommended decision. On May 26, 1989, the Administrative Law Judge transmitted the record of these proceedings, including the Government's exceptions, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

During 1981, the Metro-Dade Police Department initiated an undercover investigation of an individual who was interested in purchasing large quantities of cocaine. Undercover conversations with the individual in early September 1981, included negotiations for the delivery of one kilogram of cocaine for $43,000. The individual told the undercover detective that his buyer was Respondent, a Miami Beach dentist. The individual further told the detective that Respondent and his partner, a Miami Beach attorney, bought and sold 21 kilograms of cocaine per month. This individual introduced the undercover detectives to a second individual. The second individual told the detectives that he was negotiating with them on behalf of Respondent, who was interested in purchasing large amounts of cocaine. This individual subsequently requested and received from the detective a sample of cocaine (⅛ gram) to give to Respondent. The individual stated that if Respondent liked the cocaine, Respondent would purchase one to five kilograms of it for $43,000 per kilogram. The individual later contacted the undercover detectives and advised them that Respondent liked the quality of cocaine and wanted to talk to the detectives.

On September 11, 1981, the individual took the undercover detectives to Respondent's office in Miami Beach, Florida. Upon entering Respondent's office, the detectives observed Respondent freebasing cocaine with a group of people. During a conversation with the undercover detectives, Respondent acknowledged that he had received and tested the cocaine sample which was given by the undercover detectives to the individual for Respondent. Respondent also stated that he was interested in purchasing three to five kilograms of cocaine from the detectives. During further negotiations, Respondent discussed the price per kilogram of cocaine and admitted to trafficking in approximately 21 kilograms of cocaine per month. Respondent also advised the detectives that he could supply large quantities of Quaaludes. On this occasion, Respondent gave the individual one gram of cocaine to give to the undercover detectives.

On September 15, 1981, the undercover detectives met with Respondent at his office where he gave them another gram of cocaine and negotiated to purchase cocaine from the detectives. Subsequent undercover conversations with Respondent on September 15 and 17, 1981, concerned the delivery of Quaaludes by Respondent through the first individual. On September 18, 1981, undercover detectives met the individual at his residence where the detectives agreed to purchase 50,000 Quaalude tablets for $40,000. The individual delivered approximately 20,000 Quaalude tablets to the detectives stating that the Quaaludes belonged to Respondent. The individual was then arrested.

On September 22, 1981, Respondent was arrested as a result of the Metro-Dade Police Department investigation. At the time of the arrest, officers seized six pounds of Quaalude tablets, approximately one-quarter ounce of cocaine and approximately 270 amphetamines ("black beauties") which were in plain view.

On October 6, 1981, Respondent was charged in a Florida State court with one count of trafficking in methaqualone, one count of possession with intent to sell methaqualone, two counts of delivery of cocaine, one count of conspiracy to traffic in methaqualone and one count of conspiracy to traffic in cocaine. On October 14, 1981, Respondent was also charged with offenses relating to the drugs seized at his office at the time of his arrest. Respondent was specifically charged with one count of trafficking in methaqualone, one count of actual or constructive possesson of cocaine and one count of possession with the intent to sell methaqualone.

Respondent entered a guilty plea to all charges and was adjudged convicted. On January 19, 1982, the Court withheld imposition of sentence, placed Respondent on ten years probation and fined him $10,000. The period of probation was suspended after three years.

On October 12, 1982, the State of Florida, Department of Professional Regulation, Division of Professions, Board of Dentistry, suspended Respondent's license to practice dentistry for five years with the possibility of reinstatement after one year. The Board also ordered that Respondent's DEA registration be suspended for at least five years. On January 25, 1988, Respondent's dental license was reinstated without any restrictions.

Testimony at the hearing indicated that Respondent suffered from attacks of depression from 1975 through 1981. Specifically, Respondent experienced attacks of endogenous depression in 1975 and in 1979 or 1980, which were professionally treated. These attacks of depression were caused by a chemical imbalance in Respondent's brain. During the 1980 attack, Respondent began abusing cocaine; however, Respondent's treating psychiatrist was not aware of Respondent's drug abuse until after his arrest. Respondent's psychiatrist testified that he treated Respondent for his second bout of depression. The psychiatrist stated that Respondent's depression drove him to cocaine abuse. The psychiatrist further stated that he felt that Respondent had made a complete recovery from the 1980 attack of endogenous depression, but stated that there was a possibility that Respondent could experience further attacks of depression. Respondent's psychiatrist testified that Respondent may become depressed because some internal biochemical mechanism goes off. The psychiatrist further stated that this sort of chemical imbalance in the brain does not go away by itself; however, a person with such an imbalance may exist for five to ten years without another attack of depression. Respondent's psychiatrist stated that he did not believe that Respondent would resort to drug abuse as a result of future attacks of depression.

In his opinion, Judge Young states that three aspects of this case call for careful consideration: First, circumstances that led Respondent to become involved with drug abuse and cocaine dealers; second, the extent of his involvement as a dealer; and third, his present situation. The Administrative Law Judge noted that although Respondent was arrested and charged with conspiracy and drug dealing, there was no trial since he pled guilty to the charges against him. Judge Young concluded that the Government's evidence contained much hearsay testimony as to what other persons, apparent drug dealers, said about Respondent's participation with them. The Administrative Law Judge conceded that Respondent seemed to be talking as a member of a group that was dealing in large quantities of drugs; however, Judge Young did not believe that the record supported a conclusion that Respondent was, in fact, a "big-time" and long-time cocaine-world figure. The Administrative Law Judge also conceded that Respondent did indeed agree to sell officers a large quantity of Quaaludes, but, Judge Young stated, the delivery of the Quaalude tablets was actually effected by someone other than Respondent. Judge Young concluded that there is no question that Respondent was guilty of the offenses with which he was charged; however, Judge Young stated that the extent of his involvement was not shown to be as great as the Government implied. The Administrative Law Judge believed that Respondent's involvement in drugs resulted from a physical and mental impairment and that this impairment is not present in Respondent at the present time. The Administrative Law Judge concluded that based on the evidence presented, Respondent can be trusted to responsibly handle controlled substances and recommended that Respondent's application be granted.

The Administrator may deny an application for registration if he determines that such registration would be inconsistent with the public interest. The factors which are considered in determining whether the registration would be in the public interest are enumerated in 21 U.S.C. 823(f). Three of the factors to be considered include the applicant's conviction record under Federal or state laws relating to controlled substances, the applicant's compliance with Federal, state or local laws relating to controlled substances and such other conduct which may threaten the public health and safety. All factors need not be present for the Administrator to deny an application for registration. Instead, the Administrator may accord each factor the weight he deems appropriate in determining the public interest. See, *Neveille H. Williams, D.D.S.*, Docket No. 87–47, 53 FR 23465 (1988); *Paul Stepak, M.D.*, 51 FR 17556 (1986).

In this instance, there is no question that Respondent has been convicted of controlled substance-related felony offenses. Although the illegal activities which resulted in Respondent's conviction fell outside the scope of his professional practice and did not involve the use of his DEA registration, the conviction constitutes a sufficient basis for finding that his registration is not in the public interest. See, *Gordon Acker, M.D.*, Docket No. 86–41, 52 FR 9962 (1987), aff'd *sub nom Acker v. DEA*, No. 87–1160 (D.C. Cir. January 19, 1988); and *Walker L. Whaley, M.D.*, Docket No. 85–12, 51 FR 15556 (1986).

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[1] Normally, the intercorporate family class exemption would be available only if common control had been previously approved or an exemption from the common control provisions had been previously granted. Here it appears that control over these carriers by the State of North Carolina pre-dated the Interstate Commerce Act and that, therefore, Commission approval for control is not required. Publication of the notice is not a ruling by the Commission on this issue.

Based upon Respondent's felony convictions relating to controlled substances, the facts underlying those convictions and Respondent's history of mental illness, the Administrator concludes that Respondent's registration would not be in the public interest. Respondent was involved in the trafficking of large quantities of cocaine and methaqualone. Respondent admitted to undercover detectives that he was involved in trafficking approximately 21 kilograms of cocaine per month. He negotiated the delivery of a large quantity of methaqualone and actually delivered two grams of cocaine to the undercover detectives. Respondent's methaqualone negotiations with the detectives ultimately resulted in the seizure of a significant quantity of the drug as well as the arrest of Respondent and his associates. During Respondent's arrest, detectives seized large quantities of methaqualone and amphetamines, which in no way, given the quantities, could have been intended for personal use. The Administrator concludes that the evidence supports a finding that Respondent was not only personally abusing controlled substances, but he was also trafficking in significant quantities of drugs.

The Administrator further concludes that Respondent's behavior may very well have been caused by his attack of endogenous depression in the early 1980s; however, the likelihood of a recurrence of such a bout of depression causes the Administrator to conclude that Respondent cannot be trusted with a DEA registration. Respondent's attacks of depression were caused by a chemical imbalance in his brain. Respondent's psychiatrist testified that there is a 30–40% chance that Respondent will suffer another bout of depression in the future. The psychiatrist further testified that this sort of chemical imbalance in the brain does not go away by itself; however, a person with such an imbalance may exist for five to ten years without another recurrence of the depression.

A DEA registration carries with it a serious responsibility for the proper use of controlled substances. The Administrator requires assurance that the registrant will uphold his responsibility to handle controlled substances with sufficient care to protect the public interest. Respondent has yet to provide the Administrator with that degree of assurance. As a result, the Administrator concludes that Respondent's registration is inconsistent with the public interest and his application for registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823(f), hereby orders that the application for registration, executed by Nathan Beckman, D.D.S., on September 1, 1987, be, and it is, denied. This order is effective September 7, 1989.

Dated: August 30, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89–21021 Filed 9–6–89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89–14]

Thomas E. Brewer, Jr., M.D. High Point, NC; Hearing

Notice is hereby given that on February 13, 1989, the Drug Enforcement Administration, Department of Justice, issued to Thomas E. Brewer, Jr., M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, September 19, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, Courtroom one, second floor, 717 Madison Place, N.W., Washington, DC.

Dated: August 29, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–21022 Filed 9–6–89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89–9]

Charles Christian Briggs, III, Nantucket, MA; Hearing

Notice is hereby given that on January 23, 1989, the Drug Enforcement Administration, Department of Justice, issued to Charles Christian Briggs, III, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AB5392802, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, September 26, 1989, commencing at 10:00 a.m., at the United States Tax Court, Boston Federal Building, 10 Causeway Street, Courtroom 1013, Boston, Massachusetts.

Dated: August 29, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–21023 Filed 9–6–89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89–20]

Butler Drug Store, Inc., Lafayette, TN; Hearing

Notice is hereby given that on April 5, 1989, the Drug Enforcement Administration, Department of Justice, issued to Butler Drug Store, Inc., an order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, BB0761836, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, October 3, 1989, commencing at 9:30 a.m., at the United States District Court, 801 Broadway, Courtroom A–826, Nashville, Tennessee.

Dated: August 29, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–21024 Filed 9–6–89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89–25]

Ozie T. Faison, Jr., Smith Discount Drugs, New Bern, NC; Hearing

Notice is hereby given that on March 23, 1989, the Drug Enforcement Administration, Department of Justice, issued to Ozie T. Faison, Smith Discount Drugs, an Order to Show Cause as to why the Drug Enforcement

Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Friday, October 13, 1989, commencing at 10:00 a.m., at the United States District Court of Appeals for the Federal Circuit, Courtroom one, second floor, 717 Madison Place, NW., Washington, DC.

Dated: August 29, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–21025 Filed 9–6–89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89–29]

Sidney Lesser, D.D.S., Detroit, MI; Hearing

Notice is hereby given that on March 23, 1989, the Drug Enforcement Administration, Department of Justice, issued to Sidney Lesser, D.D.S., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AL2745000, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, September 21, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, Courtroom one, second floor, 717 Madison Place, NW., Washington, DC.

Dated: August 29, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–21026 Filed 9–6–89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89–42]

The Medicine Shoppe, Donelson, TN; Hearing

Notice is hereby given that on June 15, 1989, the Drug Enforcement Administration, Department of Justice, issued to The Medicine Shoppe, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, BT1385877, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, October 5, 1989, commencing at 9:30 a.m., at the United States District Court, 801 Broadway, Courtroom A–826, Nashville, Tennessee.

Dated: August 29, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–21027 Filed 9–6–89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88–55]

Wayne Nichols, D.V.M.; Revocation of Registration

On April 21, 1988, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause and Immediate Suspension of Registration to Wayne Nichols, D.V.M., 3505 Mt. Tabor Road, West Liberty, Ohio (Respondent), proposing to revoke his DEA Certificate of Registration, AN2871451. The statutory predicate for the Order to Show Cause was that Respondent's continued registration with DEA was inconsistent with the public interest as set forth in 21 U.S.C. 823(f) and 824(a)(4). Additionally, citing his preliminary finding that Respondent's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of the registration pending the outcome of these proceedings. 21 U.S.C. 824(d).

Respondent requested a hearing on the issues raised in the Order to Show Cause in a letter dated May 23, 1988. The matter was placed on the docket of Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Columbus, Ohio on February 9 and 10, 1989. On May 11, 1989, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed. On June 20, 1989, Judge Young transmitted the record of these proceedings to the Administrator of DEA. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby enters his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent was a veterinarian first inspected by DEA in April 1976, because of his unusual purchases of cocaine and codeine sulfate. Investigators noted that Respondent failed to note the date of receipt and amount received on his DEA 222 order forms, which are the documents Respondent is required to keep to record his purchases of Schedule II controlled substances. Respondent also failed to keep any records of dispensing of controlled substances, and failed to note dates of receipt on invoices for Schedule III–V controlled substances. Respondent was verbally advised of these violations by Investigators, and was also sent a registered letter advising him of the violations on August 27, 1976. This letter was signed for by a member of Respondent's household. Respondent did not respond to the letter and was sent another registered letter in November 1976. While Respondent maintains that he responded to this letter, the DEA has no record of any such response.

In 1977, DEA Investigators returned to Respondent's registered location. They found that Respondent continued to fail to note the amount and date of receipt on his DEA 222 order forms; that he failed to produce for Investigators some of the order forms for which he was accountable; that he failed to maintain complete and accurate records of dispensing of controlled substances; and that he failed to take a May 1, 1977, biennial inventory. Respondent was again advised of these violations both verbally and in writing. He was sent a Notice of Hearing dated September 12, 1977, by registered mail. Respondent failed to appear at the hearing and the matter was referred to the Ohio State Board of Veterinary Examiners. The Veterinary Board later advised DEA that the Executive Secretary of the Board had spoken with Respondent, who assured him that he would keep more efficient records.

A review of summaries from DEA's ARCOS System showed that Respondent was one of the largest practitioner purchasers of Dilaudid and cocaine in the United States for the years 1985, 1986, and 1987. In fact, Respondent was the number one practitioner purchaser of cocaine in the country in 1986, purchasing 1,745 grams; and the second largest practitioner purchaser of Dilaudid in the country for 1986, purchasing 14,750 4mg. tablets. DEA Investigators again conducted an investigation of Respondent's dispensing of controlled substances in January 1987. Using a zero balance as the beginning inventory, Investigators audited four controlled substances, including Dilaudid and cocaine for an 18-month period. During the audit period, Respondent received 117.28 ounces of cocaine and 12,437 Dilaudid tablets. Investigators again noted that Respondent failed to maintain proper receiving records and failed to properly dispose of controlled substances. During the audit period Respondent reported a loss of 1,600 Dilaudid tablets which he had stored in an unlocked refrigerator in an unlocked camper parked at a racetrack in Kentucky. These highly abused Schedule II controlled substances were stored in a manner that failed to comply with DEA security regulations and at a location not registered with DEA. At the conclusion of the investigation, the DEA Investigators advised Respondent of the violations noted and provided him with a booklet outlining the DEA regulations applicable to practitioners.

In March 1988, DEA Investigators conducted yet another audit of Respondent's controlled substance records. The Investigators again noted the same recordkeeping violations and conducted an audit of selected controlled substances. Two audits were conducted of Respondent's controlled substance records. One utilized patient records, one utilized Respondent's log book. The results of the audits were widely disparate. While both audits showed significant shortages of Dilaudid 4mg. tablets, one set of records showed an overage of more than 12 ounces of cocaine, the other records showing a shortage of 34 ounces. Respondent had no explanation for these differences. In addition, Respondent noted a loss of 1,200 Dilaudid tablets which he said disintegrated when he spilled chloral hydrate on them. He did not report this loss to DEA as required.

On April 27, 1988, DEA Investigators and Agents returned to Respondent's registered address, executed a search warrant and served Respondent with an Order to Show Cause and Immediate Suspension of Registration. A short audit was conducted using two separate sets of records. There were discrepancies in the audit figures and Respondent continued to keep incomplete records.

The Administrative Law Judge also found that commonly used veterinary references do not list cocaine and Dilaudid as drugs commonly used in veterinary medicine. The American Association of Equine Practitioners and the American Veterinary Medical Association have both issued policy statements discouraging the use of controlled substances such as Dilaudid in veterinary practice. The Administrative Law Judge concluded that the evidence is undisputed that Respondent has continually failed to comply with the recordkeeping and security requirements of the Controlled Substances Act and the implementing regulations. He did so even though he had been specifically advised and notified by DEA that there were deficiencies in his recordkeeping and security practices. Although there was no direct evidence of intentional diversion of the unusually large amounts of cocaine and Dilaudid purchased by Respondent, Respondent's lax security and inadequate records provided the opportunity for diversion to occur. In fact, 1,600 Dilaudid tablets, with a street value of approximately $64,000, were stolen from Respondent's trailer due to his careless and improper storage of the drug. The Administrative Law Judge found that Respondent's continued registration was inconsistent with the public interest in that he continually failed to comply with applicable State, Federal, or local laws relating to controlled substances; and that his conduct threatened the public health and safety by allowing diversion of controlled substances into the illicit traffic. The Administrator adopts the opinion and recommended ruling of the Administrative Law Judge, and concludes that Respondent's DEA Certificate of Registration should be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AN2871451, previously issued to Wayne Nichols, D.V.M., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of that registration be, and they hereby are, denied.

At the time the Order to Show Cause and Immediate Suspension of Registration was served on Respondent, all controlled substances possessed by Respondent under the authority of his then-suspended registration were placed under seal until the time for disposition of this proceeding and taking appeals had elapsed, or until all appeals had been concluded. Accordingly, these controlled substances shall remain under seal until October 10, 1989, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

This order is effective September 7, 1989.

Dated: August 29, 1989.

John C. Lawn,
Administrator.

[FR Doc. 89–21028 Filed 9–6–89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standard Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on September 13 and 14, 1989, in Room N–3437 B and C of the Francis Perkins Building, Department of Labor, Washington, DC. The meeting is open to the public and will begin at 9:00 a.m.

The agenda for this meeting includes reports by the Bureau of Labor Statistics on recordkeeping requirements, the work group on cadmium, OSHA's Technical Data Center Staff, the voluntary protection programs, the work group on steel erection, and the departmental legislative affairs staff. Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone 202–523–8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Alan C. McMillan,
Acting Assistant Secretary.

[FR Doc. 89–20962 Filed 9–6–89; 8:45 am]

BILLING CODE 4510-26-M

LEGAL SERVICES CORPORATION

Request for Comments on a Grant Award to Single Parents United 'N Kids (SPUNK)

AGENCY: Legal Services Corporation.

ACTION: Correction.

FOR FURTHER INFORMATION CONTACT: Victoria O'Brien, Counsel to the Director, or Charles T. Moses, Associate Director, Legal Services Corporation, Office of Field Services, 400 Virginia Ave., SW., Washington, DC 20024–2751, (202) 863–1837.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation's article in the **Federal Register** Notice, dated Wednesday, August 30, 1989, Vol. 54, No. 167, page 35953, announced its intention to award a grant in the amount of $32,380 to SPUNK. However, in one instance, in the second sentence of the first paragraph under **SUPPLEMENTARY INFORMATION,** it was referred to as SUPPORT. It should have read "SPUNK".

Dated: September 5, 1989.

Ellen J. Smead,
Acting Director, Office of Field Services.

[FR Doc. 89–21133 Filed 9–6–89; 8:45 am]

BILLING CODE 7050-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89–60)]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Technology Requirements for Human Performance on Long Space Missions.

DATES: September 19, 1989, 12:15 p.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Federal Building 10B, Room 647, 600 Independence Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Jenkins, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2750.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Technology Requirements for Human Performance on Long Space Missions, chaired by Dr. Gerald P. Carr, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda:

September 19, 1989
  12:15 p.m.—Review Existing Studies of Human Space Explorations.
  5 p.m.—Adjourn.

Dated: August 30, 1989.

John W. Gaff,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89–20959 Filed 9–6–89; 8:45 am]

BILLING CODE 7510-01-M

[Notice (89–61)]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee and the Aerospace Research and Technology Subcommittee.

DATES: September 25, 1989, 8:30 a.m. to 5:30 p.m.; September 26, 1989, 8 a.m. to 4 p.m.; and September 27, 1989, 8:30 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1222, H.J.E. Reid Conference Center, Hampton, VA 23665.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine L. Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2367.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee was established to provide overall guidance of direction to the space research and technology activities in the Office of Aeronautics and Space Technology (OAST). The Aerospace Research and Technology Informal Subcommittee (ARTS) was formed to provide technical support for the SSTAC and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Dr. Joseph F. Shea, is comprised of 20 members. The subcommittee is comprised of 26 members. The meeting will be open to the public up to the seating capacity of the room (approximately 150 persons including the Committee members and other participants).

Type of Meeting: Open.

Agenda:

September 25, 1989
  8:30 a.m.—Opening Remarks.
  8:45 a.m.—Overview of Langley Research Center Activities.
  9:45 a.m.—Space Overview and Current Planning.
  11 a.m.—Parallel Discipline Sessions.
  5:30 p.m.—Adjourn.
September 26, 1989
  8 a.m.—Continue Parallel Discipline Sessions.
  1:30 p.m.—Discipline Reports.
  3:30 p.m.—OAST Responses to Ad Hoc Review Team Recommendations.
  4 p.m.—Adjourn.
September 27, 1989
  8:30 a.m.—Opening Remarks.
  8:35 a.m.—OAST Overview.
  10 a.m.—Task Force Activities.
  12:45 p.m.—SSTAC Report Summaries.
  2:15 p.m.—Closing Remarks.
  3 p.m.—Adjourn.

Dated: August 30, 1989.

John W. Gaff,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89–20960 Filed 9–6–89; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-295 and 50-304]

Commonwealth Edison Co.; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-39 and DPR-48, issued to Commonwealth Edison Company, (the licensee) for Zion Station, Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would permit temporary one-time changes to Zion Technical Specifications regarding the Auxiliary Electric Power that would allow performing extensive preventive maintenance, in accordance with the manufacturer's recommendation, on the diesel generator that is shared between the two units. Because the common diesel generator is shared, extended maintenance periods have not been available under present Technical Specifications, even during scheduled refueling outages of either of the two units. The proposed changes would extend the present allowable out-of-service period for the common diesel from 7 days to 45 days during which, with one unit in cold shutdown, two diesel generators would be required to satisfy the standby AC on-site power requirements for Unit 2. In addition, the remaining two diesels for Unit 1 will also be available while the shared diesel is out of service.

This revision to the licenses of Zion Station, Units 1 and 2, would be made in response to the licensee's application for amendment dated July 6, 1989, as supplemented August 4, August 10 and August 24, 1989.

The Need For The Proposed Action

Pursuant to 10 CFR 50.90, the licensee has proposed amendments to Facility Operating Licenses DPR-39 and DPR-48 for Zion Station, Units 1 and 2, respectively. The proposed amendments, would extend the allowable out-of-service period for a one-time maintenance overhaul of the "0" diesel generator.

The "0" diesel generator is shared between Units 1 and 2, and the existing Technical Specification Section 3.15.2.C permits reactor operation for 7 days, if the "0" diesel generator becomes inoperable. This amendment request would modify Section 3.15.2.C of the Technical Specifications to permit the allowable out-of-service period for the "0" diesel generator to be extended from 7 days to 45 days for a one-time maintenance overhaul. The proposed extension to 45 days is necessary in order to perform the extensive maintenance overhaul to the diesel generator in conformance with the manufacturer's recommendation that such overhaul be performed at 5 year intervals.

Environmental Impacts of the Proposed Action

The Commission has evaluated the radiological impact of the proposed amendments and determined that for any of the core melt sequences to be influenced by the "0" diesel outage one must first have a complete loss of offsite power, which has never occurred at Zion station since its criticality in 1973. The outage of "0" diesel may have some influence in case of a small break loss of coolant accident concurrent with complete loss of all offsite power and an additional failure of one of the remaining diesels. However, the staff has concluded that a simultaneous loss of all offsite power (i.e., 6 offsite lines and 4 paths to ESF buses) and a loss of coolant accident concurrent with additional single failure of a diesel generatcr is a very unlikely event over the 45-day period while the "0" DG is out for maintenance. The licensee has reviewed and verified their existing emergency operating procedures (EOP) for its applicability during LOCA with only one emergency safety feature bus available. The licensee stated that their EOP procedures allow for unit shutdown following a LOCA using either a single charging pump or single safety injection pump. Thus, the risk and likelihood of core melt are not significantly affected by Unit 2 operation while the "0" DG is out for maintenance.

The staff finds that the proposed extension of the allowable out-of-service period to allow for maintenance of the "0" diesel generator poses no undue risk to the public health and safety. This conclusion is based upon numerous compensatory actions planned by the licensee during this outage (e.g., removal of fuel from Unit 1 for most of the time the "0" diesel is unavailable and performance of maintenance on emergency safeguards features buses only when the "0" diesel is operable), and the likelihood of the event that may cause a significant damage to the core.

The proposed amendments involve a change to a requirement with respect to the installation and use of a facility component located within the restricted area as defined in 10 CFR part 20.

With regard to nonradiological impacts, the proposed amendments involve systems located entirely within the restricted area as defined in 10 CFR part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission also concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Zion Station, Units 1 and 2 dated December 1972, regarding radiological environmental impacts from the plants during normal operation or after accident conditions, are not adversely altered by this action.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 20, 1989 (54 FR 30485). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Actions

Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Nuclear Regulatory Commission's Final Environmental Statement for the Zion Nuclear Power Station, Units 1 and 2, dated December 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittals of July 6, 1989, August 4, August 10 and August 24, 1989 and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement of the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated July 6, 1989, as supplemented August 4, 1989, August 10, 1989, and August 24, 1989, and the Final Environmental Statement for Zion, dated December 1972, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555; and at the Local Public Document Room, Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 1st day of September 1989.

For the Nuclear Regulatory Commission.

Paul C. Shemanski,

Acting Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-21001 Filed 9-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-445A]

Texas Utilities Electric Co., Comanche Peak Steam Electric Station, Unit 1; Reevaluation of Antitrust Funding

Notice is hereby given that counsel for Cap Rock Electric Cooperative, Inc. has requested a reevaluation by the Director of the Office of Nuclear Reactor Regulation of the "Finding of No Significant Change" pursuant to the operating license antitrust review of the captioned nuclear unit. After further review, I have decided not to change my finding.

A copy of my finding, the request for reevaluation, and my reevaluation are available for public examination and copying, for a fee, at the Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555.

Dated at Rockville, Maryland, this 29th day of August 1989.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nucler Reactor Regulation.

[FR Doc. 89-21002 Filed 9-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 76 to Facility Operating License No. NPF-10 and Amendment No. 64 to Facility Operating License No. NPF-15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and the City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County California.

The amendments were effective as of the date of issuance.

These amendments revised the following Technical Specifications (TS):

a. TS 3/4.3.3.5, "Remote Shutdown Instrumentation." (Unit 2 only)

b. TS 3/4.3.3.6, "Accident Monitoring Instrumentation." (Unit 2 only)

c. TS 3/4.7.6, "Snubbers."

TS 3/4.3.3.5 and TS 3/4.3.3.6 are revised to allow a one-time extension of the surveillance interval for channel calibration of pressurizer level instruments used for remote shutdown monitoring and accident monitoring. TS 3/4.7.6 is revised to increase the interval for functional testing of snubbers to at least once per refueling interval, which is defined as 24 months. Also, TS 3/4.7.6 is revised to provide an extension of the visual inspection interval requirements for snubbers inspected during the Cycle 4 refueling outage. These amendments are in response to applications for amendments designated as PCN 246 and PCN 290, dated May 19, 1988 and March 10, 1989.

The applications for amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations, the Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which is set forth in the license amendments.

Notices of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action were published in the **Federal Register** on February 27, 1989 (54 FR 8250) and April 24, 1989 (54 FR 16438-D). No request for a hearing or petition for leave to intervene was filed following the notices.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the applications for amendments dated May 19, 1988 and March 10, 1989, (2) Amendment No. 76 to License No. NPF-10 and Amendment No. 64 to License No. NPF-15, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555, and the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 30th day of August, 1989.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Senior Project Manager, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Regulatory Regulation.

[FR Doc. 89-20998 Filed 9-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-362]

Southern California Edison Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Unit 3, located in San Diego County, California. The request for amendment was submitted by letter dated July 26, 1989, and identified as Proposed Change PCN-294.

The proposed change would revise Technical Specification 3/4.7.6, "Snubbers." Surveillance Requirement 4.7.6.b requires a visual inspection of all snubbers on a regular basis. The interval for visual inspections is decreased as a function of the number of inoperable snubbers is discovered. With no inoperable snubbers found, a maximum interval of 18 months plus or minus 25 percent is allowed. With one inoperable snubber per inspection period, the interval is 12 months plus or minus 25 percent. The proposal change would allow a one-time extension of the 12 month interval to 20 months plus or minus 25 percent, for the case where one inoperable snubber was found.

Before issuance of the proposed license amendments, the Commission

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will have made findings required by the

reasonable specificity. Contentions shall

completion of any required hearing if it

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coolant average temperature greater

the measured time, the licensees have

made a party to the proceeding; (2) the

will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 10, 1989, the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition with requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–600 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California, 94111, attorneys for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 30th day of August, 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20999 Filed 9–6–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co., et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–10 and NPF–15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California. The request for amendment was submitted by letter dated July 31, 1989, and identified as Proposed Change PCN–295.

The proposed change would revise Technical Specification 3/4.1.3.4, "CEA Drop Time," and its Bases, to use both an arithmetic average Control Element Assembly (CEA) drop time and a maximum individual CEA drop time. The maximum individual CEA drop time restriction would be used to limit the CEA drop time distribution from the arithmetic average.

The requirements of Technical Specification 3/4.1.3.4 ensure that actual drop times for full length CEAs are consistent with the drop time assumed in the accident and transient analyses. The drop times for full length CEAs, from the fully withdrawn position until the CEA reaches its 90 percent insertion position, are measured with the reactor

coolant average temperature greater that 520 °F and all reactor coolant pumps running. CEA drop times are measured following each removal and reinstallation of the reactor vessel head; following any maintenance on, or modification to the CEA drive system which could affect the drop time of those specific CEAs; and at least once per refueling interval.

Prior to SONGS Unit 2 Cycle 4 start-up, CEA drop times were measured individually using a visicorder to simultaneously monitor CEA position (from the reed switch position transmitter) and power to the upper gripper coil. The CEA was withdrawn from the core to its full out position and dropped by opening its individual circuit breaker. From the visicorder chart, the time from the interruption of power to 90 percent CEA insertion could be determined.

Beginning with the SONGS Unit 2 Cycle 4 start-up, a new method of measuring CEA drop times was instituted. This method uses special software (CEA Drop Time Test or CDTT software) loaded into one of the Control Element Assembly Calculators (CEACs). The CDTT software initiates a Core Protection Calculator (CPC) trip and simultaneously monitors the positions of all 91 CEAs (83 full length and 8 part length) as a function of time. The data obtained is then analyzed to determine individual CEA drop times. Under this method, it is important to note that power is interrupted at the reactor trip breakers rather than at the individual breakers as in the previous method. This new method more accurately reflects the operation of the reactor protection system during a scram.

The CEA drop times measured using the new method during SONGS Unit 2 Cycle 4 start-up were unexpectedly longer than those measured by the visicorder method. This is due to the longer time constant for dissipation of the gripper coil stored energy when tripped by the reactor trip breakers than when tripped by the individual circuit breakers. Subsequently, SCE requested a Technical Specification change to revise the drop time to the current limit of 3.2 seconds. In addition, Core Operating Limits Supervisory System (COLSS) and CPC penalty factors were installed to account for the increased CEA drop time. All the design basis events were re-analyzed at that time to support the change to 3.2 seconds.

The SONGS Unit 3 Cycle 4 CEA drop time test found that the margin between the slowest CEA and the Technical Specification limit of 3.2 seconds was small. To increase the margin between the Technical Specification value and the measured time, the licensees have proposed to amend the CEA drop time specification to incorporate the use of an arithmetic average CEA drop time with a restriction on the maximum individual CEA drop time. In addition, the proposed amendment would expand the Technical Specifications to have a range of average and maximum individual drop times.

The proposed specification would provide three average CEA drop times of 3.0, 3.2, and 3.4 seconds, with corresponding maximum individual CEA drop times of 3.2, 3.4, and 3.6 seconds. It would also provide COLSS margin and CPC margin-to-trip adjustment factors, and a penalty would be applied (adjustment factor greater than 1.0) if the average time is longer than 3.2 seconds. The plant would not enter either Mode 2 or 1 if either the average CEA drop time is greater than 3.4 seconds or the maximum individual CEA drop time is greater than 3.6 seconds.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 10, 1989 the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licensees, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1–(800)325–6000 (in Missouri 1–(800)342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, Califorina 94111, attorneys for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 30th day of August, 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21000 Filed 9–6–89; 8:45 am]

BILLING CODE 7590-01-M

Docket No. 50–271–OLA (Spent Fuel Pool Amendment)

Appointment of Adjudicatory Employee; Vermont Yankee Nuclear Power Corp.

Commissioners: Kenneth M. Carr, Chairman, Thomas M. Roberts, Kenneth C. Rogers, James R. Curtiss.

In accord with the requirements of 10 CFR 2.4, notice is hereby given that Dr. Harold VanderMolen, a Commission employee in the Office of Nuclear Reactor Regulation, has been appointed as a Commission adjudicatory employee within the meaning of § 2.4 to advise the Commission on issues in the above-captioned proceeding related to consideration under the National Environmental Policy Act of the proposed spent fuel pool reracking.

Dr. VanderMolen has not been engaged in the performance of any investigative or litigating function in connection with the Vermont Yankee facility or in any factually-related proceeding.

Until such time as a final decision is issued in the above-captioned matter, interested persons outside the agency and agency employees performing investigation or litigating functions in the Vermont Yankee operating license amendment proceeding are required to observe the restrictions of 10 CFR 2.780 and 2.781 in their communications with Dr. VanderMolen.

It is so *ordered.*

Dated at Rockville, Maryland this 30th day of August, 1989.

For the Commission.

Samuel J. Chilk

Secretary of the Commission.

[FR Doc. 89–20900 Filed 9–6–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–320]

Meeting of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 GPU Nuclear Corporation

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI–2) will be meeting on September 21, 1989, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 S. Second Street, Harrisburg, Pennsylvania. The meeting will be open to the public.

At this meeting, the Panel will receive a status report on the progress of defueling from the licensee, GPU Nuclear Corporation. The licensee will also discuss the radiation monitoring program around TMI–2, and the schedule and proposed funding for the remainder of the cleanup. The NRC staff will summarize the findings of Final Supplement 3 to the Programmatic Environmental Impact Statement related to decontamination and disposal of radioactive wastes resulting from the March 28, 1979 accident at TMI–2. Final Supplement 3 evaluates the licensee's proposal to place the facility in long term storage following defueling.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–1373.

Dated: September 1, 1989.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 89–21194 Filed 9–6–89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Approval of RI 20–1 Application for Minimum Annuity Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, (title 44, U.S. Code, chapter 35) this notice announces a request to extend the use of RI 20–1 (Application for Minimum Annuity). OPM currently uses RI 20–1 to determine if an annuitant qualifies for the minimum annuity, repealed under Section 305 of Public Law 99–251 (Federal Employees Benefits Improvement Act of 1986). Annuitants who were entitled to the minimum annuity prior to the repeal date of February 27, 1986 continue to receive the minimum annuity in accordance with Section 305.

Approximately 300 Civil Service annuitants complete the form, which requires approximately 15 minutes, for a total public burden of 75 hours. For copies of this proposal, call Larry Dambrose (632–0199) or Grace Butler (632–0259).

DATES: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, 202–632–5472.

U.S. Office of Personnel Management.

Constance Newman,

Director.

[FR Doc. 89–21041 Filed 9–6–89; 8:45 am]

BILLING CODE 6325-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Exemption From Bond/Escrow Requirement Relating To Sale of Assets by an Employer

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from The Orioles, Inc. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. Two of these conditions are that the purchaser post a bond or deposit money in escrow for a five plan year period beginning after the sale, and that the contract of sale between the seller and the purchaser provide that the seller will be secondarily liable for its withdrawal liability if the purchaser withdraws from the plan within five years after the sale and does not pay its withdrawal liability. The PBGC is authorized to grant exemptions from these requirements. Prior to granting an exemption, the PBGC is required to give interested persons an opportunity to comment on the exemption request. The effect of this notice is to advise interested persons of this exemption request and to solicit their views on it.

DATES: Comments must be submitted on or before October 23, 1989.

ADDRESSES: All written comments (at least three copies) should be addressed to: Pension Benefit Guaranty Corporation, Office of General Counsel (22510), 2020 K Street, NW., Washington, DC 20006. The request for an exemption and the comments received will be available for public inspection at the PBGC's Communication and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Senior Counsel, Office of General Counsel (22510), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; (202) 778–8850; (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 4204(a)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") provides that a bona fide arm's length sale of assets to an unrelated party by an employer that contributes to a multiemployer pension plan will not result in a withdrawal if three conditions are met. These conditions, listed in section 4204(a)(1)(A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years before the year of sale or the seller's required annual contribution for the plan year before the year of sale; and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay its liability to the plan, the seller will be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) and the sale-contract requirement of section 4204(a)(1)(C). The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance from the requirements of section 4204(A)(1)(B) or (C) does not constitute a finding by PBGC that the transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), requests for waivers of the bond/escrow and contract/provision requirements are normally made to the multiemployer plan in question. However, under § 2643.2 of the regulation, a waiver of these requirements may be sought from the PBGC, if the transaction does not satisfy any of the criteria in Subpart B of the regulation and the parties assert some other basis for granting the waiver. Under § 2643.3(a) of the regulation, the PBGC will approve a variance or exemption request if it determines that approval of the request—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from the purchaser, The Orioles, Inc. (the "Buyer"), a corporation formed under the laws of Maryland, for an exemption from the requirements of section 4204(a)(1)(B) of ERISA with respect to its purchase of the Baltimore Orioles baseball team from The Baltimore Orioles, Inc. (the "Seller"). In the request, the Buyer represents among other things that:

1. The Major League Baseball Players Benefit Plan (the "Plan") is established and maintained pursuant to a collective bargaining agreement between the 26 professional major league baseball teams and the Major League Baseball Players Association.

2. The Seller was a participating employer in the Plan.

3. The major league clubs have established the Major Leagues Central Fund (the "Central Fund") pursuant to the "Major League Agreement in re Major Leagues Central Fund." Under this Agreement, contributions to the Plan for all participating employers are paid by the Office of the Commissioner of Baseball from the Central Fund on behalf of the clubs in satisfaction of their pension liability arising under the

Plan's funding agreement. The monies in the Central Fund, which fund the Plan, are derived directly from (i) gate receipts from All-Star games, (ii) radio and television revenues from World Series, League Championships, intra-division play-offs and All-Star games, and (iii) certain other radio and television revenue (including foreign broadcasts) from regular and exhibition games.

4. In 1988, the major league clubs contributed the sum of $33,000,000 per year to cover both pension and welfare benefits, approximately $28,000,000 of which was remitted to the Plan. Each major league club is responsible the ¹⁄₂₆ of that amount. In 1988, the Central Fund paid approximately $1,000,000 as pension contributions to the Plan on behalf of the Seller.

5. The Buyer and the Seller entered into an agreement on March 16, 1989 for the sale of the Baltimore Orioles baseball team. The final closing occurred on or about May 26, 1989.

6. The contract of sale provides that the Buyer will have an obligation to contribute to the Plan for substantially the same number of contribution units as the Seller.

7. The sales agreement further provides that:

> If the Buyer hereafter, but prior to the end of the fifth plan year commencing after closing, partially or completely withdraws * * * Seller shall remain secondarily liabile for any withdrawal liability it would have had to the Plan but for the operation of ERISA § 4204.

8. In support of the variance request, the Buyer states that:

> [b]ecause the Plan is funded directly from the revenues which are paid from the Central Fund directly to the [Plan's trust fund] without first passing through the hands of any of the Employers, the Plan enjoys adequate security * * *. A change in ownership * * * does not in any way affect the obligation to fund the Plan * * * nor create the possibility that there will be difficulty in collecting Plan contributions from any new owner * * *.

9. The Buyer has sent by certified mail, return receipt requested, a complete copy of this request to the Plan and the collective bargaining representative of the Orioles baseball team.

Comments

All interested persons are invited to submit written comments on the pending exemption to the above address on or before [insert date 45 days after publication]. All comments will be made a part of the record. Comments received, as well as the application for exemption, will be available for public inspection at the address set forth above.

Issued at Washington, DC on this 30th day of August 1989.

James B. Lockhart III,

Executive Director Pension Benefit Guaranty Corporation.

[FR Doc. 89–21030 Filed 9–6–89; 8:45 am]

BILLING CODE 7708–01–M

POSTAL RATE COMMISSION

[Order No. 843, Docket No. C89–4]

MOAA Catalog Subclass Proposal; Order on Filing of Complaint of Mail Order Association of America

Issued August 31, 1989.

Before Commissioners: Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc, III; Patti Birge Tyson.

Notice is hereby given that on August 18, 1989, a document entitled "Complaint of Mail Order Association of America Seeking the Creation of a Subclass for Catalogs Sorted to the Carrier Route" was filed with the Commission and assigned Docket No. C89–4. MOAA's complaint alleges that under the current classification, the Postal Service is charging third-class rates which do not conform to the policies of the Postal Reorganization Act and claims that creation of a subclass would remedy this allegedly inequitable situation.

The statutory basis set forth in the complaint is MOAA's assertion that the current classification system results in violations of the requirements of sections 3623(c)(1), 3622(b)(1), 3622(b)(3) and 3622(b)(6) of the Postal Reorganization Act, which generally relate to considerations of fairness and equity, costing, and mail preparation.[1] In support of its position, MOAA cites several factors which it believes have led to "overcharging" catalogs sorted to the carrier route level. These include the alleged failure of the current schedule to recognize cost differences between carrier and non-carrier route mail, the Commission's allegedly misplaced confidence that rate category treatment for carrier route pieces produces fair rates and the impact of the minimum-per-piece/per pound rate structure on heavier (pound-rated) pieces. *See* Complaint at pp. 3–5.

Relationship to Docket Nos. R80–1, R87–1 and C89–3. MOAA asserts (at pp. 5–8) that its complaint requires a review of the evidentiary basis for Commission action in Docket No. R80–1 eliminating a distinction between catalogs and circulars and argues against the ability of the existing three-tier rate structure, based on presortation, to reflect adequately cost savings. In addition, MOAA criticizes the Commission's decision, in Docket No. R87–1, not to recommend a carrier route subclass for bulk third class mail, specifically questioning the conclusion that there must be intrinsic differences for a type of mail to be given subclass status. It nonetheless argues that catalogs meet this criterion in that they are intrinsically different from the balance of third-class mail in terms of physical makeup, purpose, use and nature of the mailing customer. At the same time, MOAA claims that catalogs have intrinsic similarities in, among other things, their handling and cost characteristics, their use as a marketing tool, and their preparation. Complaint at pp. 9–13. Accordingly, MOAA argues in favor of a carrier route subclass for catalogs or, in the alternative, for a catalog subclass encompassing all three levels of sortation. Complaint at pp. 12–13.

Procedural matters. MOAA acknowledges the Complaint of Advo-System, Inc. (Docket No. C89–3) seeking a separate subclass for local saturation mail and urges consolidation of this and any related complaints. In addition, in conformance with the Commission's rules of practice, MOAA identifies "persons affected" as all those making use of third-class mail for the purpose of effecting delivery of their catalogs, particularly those persons entering their catalogs sorted to the carrier route level.

It is ordered:

(1) The Postal Service's answer to the MOAA Complaint is to be filed by September 18, 1989.

(2) Stephen A. Gold, Director of the Office of the Consumer Advocate, is appointed to represent the interests of the general public.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 89–20978 Filed 9–6–89; 8:45 am]

BILLING CODE 7715–FW–M

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[1] In MOAA's view, violations of the requirements of section 3623(c)(1) arise in that the current classification system fails adequately to reflect the cost differences for the various types of mail within the class. Violations of 3622(b)(1) allegedly occur because the current classification system results in a rate schedule which is not "fair and equitable." With respect to section 3622(b)(3), MOAA claims carrier route mail, particularly carrier route catalogs, bear a portion of non-attributable costs exceeding that which is "reasonably assignable." MOAA also claims that the classification fails to comply with the section 3622(b)(6)'s requirement that the schedule recognize "the degree of preparation of mail * * * and its effect upon reducing costs of the Postal Service."

PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS

Meeting

The Presidential Commission on Catastrophic Nuclear Accidents, pursuant to its authority under Subsection 170(1), of Public Law 100–408, the Price-Anderson Amendments Act of 1988, will hold a meeting on September 27, 1989, from 10:00 a.m.–5:00 p.m., in the Potomac Rooms at the Wyndham-Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037. The Commission was created to conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accidents and to submit a final report to Congress not later then August 20, 1990.

The purpose of the meeting is to receive a briefing from Joseph B. Knotts, Jr. of the law firm Bishop, Cook, Purcell and Reynolds on the present status, pursuant to the Price-Anderson Act, of persons injured as a result of an accident at a nuclear power plant in the United States; from representatives of the nuclear insurance pools on their claims experience with respect to the Three Mile Island accident in Pennsylvania; and from Kenneth R. Feinberg, a member of the Commission, on the American Bar Association's recent report on mass torts. The Commission will also discuss its plans for future meetings and activities and will be briefed by respresentatives of the General Services Administration on standards of conduct.

Further information on these meetings can be obtained from Jerome Saltzman whose temporary address is c/o Department of Energy, 1000 Independence Avenue, NW., RW–20, Washington, DC 20585, (202) 586–9692.

The public will be permitted to attend this meeting as observers. The meeting will be transcribed and procedures to obtain transcripts will be provided at the meeting. Members of the public wishing to attend the Commission should notify Jerome Saltzman on (202) 586-9692 by close of business, September 22, 1989.

Dated: September 1, 1989.

Jerome Saltzman,

Executive Director Presidential Commission on Catastrophic Nuclear Accidents.

[FR Doc. 89–20954 Filed 9–6–89; 8:45 am]

BILLING CODE 6820–SF–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27202; File No. SR–PSE–89–16]

Self-Regulatory Organizations; Notice of Filing of Amendment to Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to a One-Year Pilot Which Requires the Trading Crowd to Make Ten-Up Markets

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 15, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") an amendment to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its earlier rule filing, changing Rule VI, section 87, as set forth below (Amendments are indicated with brackets for deletions, and italics for new language.)

Rule VI, Section 87—Trading Crowd Firm Disseminated Market Quotes

Sec. 87. Each trading crowd is required to provide a depth of ten (10) option contracts for all non-broker/dealer customer orders, at the bid/offer which is displayed as the Disseminated market quote at the time such orders are announced or displayed at the trading post designated for trading the subject option class.

(a) The member/member organization entering an order for execution pursuant to this Rule is responsible for ascertaining the account origin of such order and for providing notation on the subject order ticket of such order's account origin.

(b) The Rule shall be in effect at all times other than during a trading rotation at the subject trading post and a reasonable period of time immediately following a trading rotation, not to exceed five (5) minutes.

(c) [Should the executing Floor Broker attempt to split the disseminated market quotes, or] *A trading crowd shall be exempt from the provisions of this rule* upon the declaration of a "fast market" pursuant to Rule VI, Section 38 [, the trading crowd shall be exempt from the provisions of this rule.]

(d) Should the response of members present at a trading post be insufficient to provide a depth of ten (10) contracts, the Order Book Official shall allocate among the Market Makers present at the trading post the balance of contracts necessary to provide an execution on ten contracts. The Order Book staff shall record and maintain lists of the individual Market Makers who were allocated contracts, and consider such allocations when similar occasions arise within the same trading session. The Order Book Official shall seek, as reasonably as possible, to equalize such allocations.

(e) The enforcement of this Rule, and the *determination of the* expiration months and strike prices subject to the provisions of this Rule shall be [determined by] *within the jurisdiction of* the Options Floor Trading Committee. Two Options Floor Officials may grant exemptions to the provisions of this Rule for either a class or series within a class of option contracts if, in their determination, the individual situation warrants such action, or upon their determination that an error occurred in the dissemination of a market quote.

(f) This Rule is effective on (approval by Commission) and shall continue in effect to and including (date one year after approval.) Any extension of the effectiveness of this Rule shall require further approval by the Securities and Exchange Commission.

Commentary:

.01 If a bid/offer displayed as a disseminated market quote is on behalf of an order represented by a Floor Broker or the Order Book Official and is for less than ten (10) contracts, the trading crowd is obligated to buy/sell the balance of contracts necessary to provide a depth of ten (10) contracts at the disseminated bid/offer.

.02 Should a Floor Broker cause a bid/offer to be disseminated and the order is subsequently executed or cancelled, the Floor Broker shall be responsible for causing the removal of such disseminated bid/offer. Failure to remove such bid/offer may result in the Floor Broker being held responsible for providing a depth of ten (10) contracts. A Market Maker who has caused a bid/offer to be disseminated is equally responsible for causing the removal of such bid/offer upon leaving a trading post.

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[1] The original proposed rule change was published for comment in Securities Exchange Act Release No. 26957 (June 22, 1989), 54 FR 27445.

.03 Market Maker orders for less than ten (10) contracts that are represented at a trading post by a Floor Broker shall not be disseminated. Floor Brokers shall remain obligated to use due diligence in the representation of orders pursuant to Rule VI, Section 62(a).

.04 [Options Floor Officials, pursuant to Rule VI, Section 39, and Commentary .05 thereunder, may issue Floor Citations for v] Violations of this Section and its Commentary *shall be subject to formal disciplinary action* pursuant to Rule XX.

Rule VI, Section 1

Applicability, Definitions and References.

Sec. 1(a)(29). No Change.

Rule VI, Section 39

Admission to and Conduct on the Trading Floor.

Sec. 39. Commentary .05. No change.

Rule VI, Section 62

Responsibilities of Floor Brokers.

Sec. 62. Commentaries .04 and .05. No change.

Rule VI, Section 79

Obligations of Market Makers.

Sec. 79. Commentary .08. No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The Exchange proposes to amend the proposed Rule VI, section 87, to remove the exemption set forth in paragraph (c) that provides for a trading crowd's exemption from its "ten-up" obligation in the event a floor broker attempts to "split" the disseminated market quotes, to specifically state, in paragraph (e), that the enforcement of Section 87 is within the jurisdiction of the Options Floor Trading Committee ("OFTC"), and to require, in Commentary .04, that violations of Section 87 would be subject to formal disciplinary action, as opposed to disposition via floor citation.

The OFTC reconsidered the exemption with regard to a trading crowd's obligation in the event a floor broker attempts to split the market by announcing a bid or offer which betters the displayed market. The purpose of the exemption had been to preclude floor brokers from using the provisions of Section 87 as a leverage to obtain executions at better prices than those disseminated at the time an order is announced at the trading post. The OFTC determined that while this leverage activity should be discouraged, the exemption essentially provided that the "ten-up" requirement extend only to the market quotes caused to be disseminated by market makers, substantially limiting any benefit to public customers.

The Exchange proposes to amend Commentary .04 of section 87 to reflect that violations of Section 87, which would include the refusal by a market maker to accept an allocation of contracts by an Order Book Official pursuant to paragraph (d), and the failure of a floor broker to provide a "ten-up" execution as a result of his failure to remove a disseminated bid or offer for which he is responsible, would be subject to formal disciplinary action, as opposed to disposition via floor citation, pursuant to the Exchange's Minor Rule Plan. The Exchange believes that the formal disciplinary procedures as set forth in Rule XX would be more appropriate, due to the serious nature of these violations. The sanction amounts for these violations would be based on the premium value of the refused allocations or executions.

The Exchange believes that the proposed rule change will protect investors and promote the public interest by assuring a minimum ten contract execution of public customer orders at the displayed bid or offer.

The proposed rule changes are consistent with section 6(b)(5) of the 1934 Act, which provides, in pertinent part, that the rules of the Exchange be designated to promote just and equitable principles of trade and to protect the investing public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposes rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file a six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 31, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-21003 Filed 9-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27204; File No. SR-PSE-88-07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to Arbitration Procedures and Filing Fees

I. Introduction

On June 3, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change designed to simplify arbitration procedures for claims up to $10,000, to provide for three or five arbitrators in certain matters, to update the filing fees, and to increase the amount retained from the deposit where a matter is settled or withdrawn prior to the first arbitration session. Amendment No. 1, submitted by the PSE on August 25, 1989, makes additional changes to the Exchange's rules under the proposed rule change and the statements of purpose concerning the proposed rule change.

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No, 26832, May 18, 1989), and by publication in the **Federal Register** (53 FR 27254, July 19, 1988). The Commission received no comments on the proposed rule change.

II. Description of the Proposal

A Uniform Arbitration Code (the "Uniform Code") has been developed by the Securities Industry Conference on Arbitration ("SICA"), to establish a uniform system of arbitration procedures throughout the securities industry. The proposed rule changes are intended to conform certain provisions of PSE Rule XII of PSE with the Uniform Code. In general, the changes are intended to simplify arbitration procedures for claims up to $10,000, to provide for three or five arbitrators in certain matters, to update the filing fees, and to increase the amount retained from the deposit where a matter is settled or withdrawn prior to the first arbitration session.

Section 2(a) of PSE Rule XII currently provides that claims of less than $5,000 may be decided by a single arbitrator pursuant to expedited and simplified arbitration procedures. The proposed amendment would increase the limit on the size of claims for which the simplified arbitration procedures are available from $5,000 to $10,000, in order to increase substantially the number of cases processed under the expedited procedures. The proposal would also establish a filing fee of $200 in cases where the amount in controversy is more than $5,000 but does not exceed $10,000.

Section 2(d) PSE Rule XII currently provides that, in a simplified arbitration, if a counterclaim exceeding $5,000 is filed, the arbitrator may refer the claim, counterclaim, and/or third party claim, if any, to a panel of three or five arbitrators. The proposed amendment to section 2(d) would provide for an increased threshold of $10,000.

Section 8(a)(1) of PSE Rule XII currently provides that in all matters involving public customers where the claim does not exceed $500,000, or where the claim does not involve or disclose a monetary claim, the Director of Arbitration shall appoint a panel of no fewer than three nor more than five arbitrators.

Moreover, section 8(a)(2) currently provides that in all matters involving public customers where the claim is $500,000 or more, a panel of five arbitrators is required, unless the parties agree to have three arbitrators. In order to alleviate administrative delays and costs frequently encountered in such cases, an amendment would eliminate the requirement that the Director of Arbitration appoint five-member panels for large cases. The amended rule would allow the Director of Arbitration to exercise discretion in appointing panels of three or five arbitrators, as appropriate, in all cases not heard under the simplified arbitration procedures.

The proposed rule change amending section 31(a) of Rule XII would increase the deposit required for claims over $500,000 from $750 to $1,000. The proposed rule amendment to section 31(a) establishes a non-refundable filing fee of $500 imposed on all member firms for each arbitration Submission Agreement filed with PSE against a non-member. In the case of non-monetary claims, the proposed rule would amend section 31(c) to provide a maximum deposit of $1,000, rather than $750. The proposed rule change amending section 31(d) of Rule XII would provide that the administrative fee retained in an arbitration case which is settled or withdrawn prior to the first hearing session be increased from $25 to $100.

PSE has adopted the proposed rule change pursuant to section 6(b)(5) of the Securities Exchange Act of 1934, which requires that the PSE's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest. The fee increases represented by these changes are reasonable and provide for an equitable allocation of fees among SRO members and investors using the arbitration facilities consistent with section 6(b)(4) of the Act.

III. Discussion and Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b) (4) and (5) of the Act,[3] which require that national securities exchanges and registered securities associations have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, provide for an equitable allocation of fees, and, in general, protect investors and the public interest. In accordance with the guidelines provided by SICA's recent revisions to the Uniform Code of Arbitration,[4] the Commission finds that the proposed amendments will streamline the Exchange's procedural rules governing arbitration, provide for more efficient arbitration proceedings involving smaller claims, and help defray the expenses associated with the Exchange's administration of the arbitration forum.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the above mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: August 31, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-21004 Filed 9-6-89; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] 15 U.S.C. 78f(b) (4) and (5).

[4] *See, e.g.,* Securities Exchange Act Release No. 26315 (November 28, 1988), 53 FR 48995 (December 5, 1988) (approval of SEC File No. SR-AMEX-88-17). *See also,* Securities Exchange Act Release No. 26805 (May 10, 1989), 54 FR 21144 (May 16, 1989) (approval of SEC Files No. SR-NYSE-88-08, SR-NYSE-88-29, SR-NASD-88-51, SR-NYSE-88-19, and SR-AMEX-88-29), and Securities Exchange Act Release No. 27093 (August 2, 1989), 54 FR 32713 (August 9, 1989) (accelerated approval of SEC File No. SR-CBOE-89-06).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1989).

[Release No. 34–27206; File No. SR–Phlx–89–17]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Crossing Agency Orders

I. Introduction

On March 27, 1989, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change designed to clarify the rights and obligations of market participants in executing agency cross transactions. Amendment No. 1, submitted by the Exchange on July 31, 1989,[3] amends the operation of the proposed rule change as it applies to specialists and alternate specialists and addresses concerns raised by the proposal at it relates to customer priority rules.

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26832, May 18, 1989), and by publication in the **Federal Register** (54 FR 22513, May 24, 1988). The Commission received no comments on the proposed rule change.

II. Description of the Proposal

Rule 126 of the Rules of the Exchange's Board of Governors generally requires that when a member is holding an order to buy and an order to sell the same security, the member must offer the security at a price which is higher than his bid by the minimum variation permitted in the security before making a transaction with himself. The proposed rule change amends Phlx Rule 126 to codify a policy that, as a general matter, a specialist or alternate specialist may not interfere with the customer side of a cross by buying or selling for his own account at that price. For the limited purposes of Exchange Rule 126, the proposal would generally define a "customer order" as any order which a broker represents in an agency capacity, including any order of a market maker or other broker-dealer not affiliated with the executing broker or of any associated person of such broker-dealer is excluded from the rule's definition of "customer order".

The proposal would allow the participation of a specialist or alternate specialist in a cross transaction executed on the Exchange in certain specified circumstances. When a member organization has both a customer's order to buy and a customer's order to sell the same security at the same price, or when one member organization has a customer's order on one side and another member organization has a customer's order on the other side, the proposed rule change will allow a specialist or alternate specialist to participate in the cross by buying or selling for his own account at that price only to the extent that the specialist had previously made a bid or offer at the same price as the cross and that bid or offer had been publicly disseminated. Similarly, where a member organization has a customer's order on one side only and the member organization (or another member organization) is acting as principal on the other side, a specialist or alternate specialist may participate on the customer side of the trade by buying or selling securities for his own account only to the extent that the specialist or alternate specialist had entered a publicly disseminated bid or offer at that price. In addition, specialists and alternate specialists are not required to yield priority to the member organization on the principal side of such a cross. Finally, the Phlx states that the specialist or alternate specialist could participate in the cross on behalf of any customer orders to buy or sell at the cross price.

The rule also specifies that a specialist cannot seek to avoid the operation of the rule by placing an order in one of his specialty stocks with another member in order to have that order placed on the specialist's own book. A specialist would not, however, be prevented from entering orders in securities traded by an unaffiliated specialist unit.

The proposal clarifies that an agency cross is entitled to priority over a member's proprietary bids or offers. Where a specialist or alternate specialist has exposed himself to market risk by publicly disseminating a bid or offer at a specified price, however, he will be protected from yielding priority to an agency cross up to the size of his disseminated market. In addition, because the specialist or alternate specialist can participate in the cross on behalf of any customer orders to buy or sell at the cross price, the proposal ensures that customer orders entrusted to Phlx specialists will not be disadvantaged by priority being granted to agency crosses.

The Exchange contends that the proposed rule change addresses concerns raised by the existence of multiple exchange markets in a trading environment increasingly characterized by substantial block positioning in a manner consistent with auction market principles, and that the proposal strikes a balance between the competing needs of various groups of customers and between the varying interests of equity specialists, options market makers and floor brokers.

III. Discussion and Conclusion.

In response to concerns raised by Commission staff about how the proposed rule change could affect customer priority rules,[4] the Exchange emphasized that the proposed rule change does not operate in a manner inconsistent with traditional auction market concepts of customer priority embodied in Section 11(a) of the Act.[5] For purposes of the proposed rule change, the Exchange stated that the term "customer order" would not include any transactions circumscribed by Section 11(a) of the Act, as it does not extend to any order for the account of a broker-dealer affiliated with the executing broker, or any associated person of the broker-dealer.[6]

In recognition of the fact that most principal trading activity originating on the Exchange's equity floor, other than facilitation crosses, is undertaken by the specialist or alternate specialist acting in that capacity, the proposed rule change would impose limitations on specialists or alternate specialists seeking to trade in such capacity while one or more member organizations are seeking to effect cross transactions. The Exchange believes that the proposed rule change does not permit a transaction, or give parity, priority, or precedence to the order of a member, in a manner inconsistent with the operation of section 11(a)(1)(G) of the Act.[7] Moreover, consistent with section 11(a)(1)(A) of the Act, to the extent a specialist or alternate specialist had made a publicly disseminated bid or offer at the cross price, the proposed rule change does not limit his or her ability to participate along with the customer side of the cross up the size of his or her disseminated market.

The Commission finds the proposed rule change to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds the proposed rule change to be consistent with the requiremetns of section 6(b)(5) [8] in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by assuring that agency cross transactions are executed in a fair and orderly auction market environment. In addition, the proposal is consistent with section 11A(a)(1)(C) (ii) and (iv) of the Act [9] because it should promote fair competition among brokers and dealers and the practicability of brokers executing investors' orders in the best market.

The Commission believes the proposed rule change strikes an appropriate balance between the competing needs of various customers' orders represented for execution on the Phlx and the proprietary trading operations of Exchange members and member organizations. The proposal clarifies that an agency cross is entitled to priority over a member's proprietary bids of offers, except where a specialist or alternate specialist had publicly disseminated a bid or offer at the cross price. The proposal will continue to afford price protection to customer limit orders entered on a specialist's book and prevent such orders from being disadvantaged by priority being granted to agency crosses. Orders on the book that coincide with the cross price will benefit by generally being assured of receiving an execution at the cross price. Finally, the proposed rule change does not limit the ability of customer orders to receive price improvement, since the proposed rule change covers only the proprietary trading activity of a member at the cross price, and therefore does not restrict the ability of a member to interfere with the execution of a cross at a better price.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: August 31, 1989.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 89–21005 Filed 9–6–89; 8:45 am]
BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] *See* Letter from Richard T. Chase, Executive Vice-President, PHLX, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated July 28, 1989.

[4] *See* note 3, *supra.*

[5] 15 U.S.C. 78k(a)(1) (1988). *See also* Commission Rule 11a1–1(T)(a)(3), which provides that customer orders must be given priority over orders of an exchange member at the same price. 17 CFR 240.11a1–1(T)(a)(3) (1989).

[6] *See* letter from Richard T. Chase, *supra* note 3. The Commission notes that in order to comply with Section 11(a), the term "customer order" must not include any order for an account with respect to which a broker-dealer or an associated person of the borker-dealer exercises investment discretion.

[7] *Id.*

[8] 15 U.S.C. 78f(b)(5) (1982).

[9] 15 U.S.C. 78k–1(a)(1)(C) (ii) and (iv) (1982).

[10] 15 U.S.C. 78s(b)(2) (1982).

[11] 17 CFR 200.30–3(a)(12) (1989).

[Release No. 34–27203; File No. SR–PHLX–89–37]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Half Point Strike Prices

On June 26, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the addition of half point (.005) strike price intervals for the Deutsche Mark, Japanese Yen, and Swiss Franc currency options.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27014 (July 10, 1989), 54 FR 30123 (July 18, 1989). No comments were received on the proposed rule change.

The PHLX proposes to adopt a pilot program, pursuant to Exchange Rule 1011(a)(ii), to provide for the addition of half point (.005) strike price intervals for the Deutsche Mark (CFM/XDM), Japanese Yen (CJY/XJY) and Swiss Franc (CSF/XSF) currency options. In order to minimize any potential operational burdens that may result from the proliferation of options series, the pilot program would be limited to no more than the first three expiration cycles and the nearest four half point strike price intervals to the currency spot market (*i.e.*, two above the two below spot).

The Exchange believes that the additional half point strike prices will enable investors in Deutsche Mark, Japanese Yen, and Swiss Franc options contracts to manage and hedge their currency risk more effectively. Moreover, the Exchange believes that establishing these additional options series in both American and European style foreign currency options will provide foreign currency options market participants with competitive alternative products to the other foreign currency markets, particularly the over-the-counter options market and the forward market.

The PHLX believes that the proposed rule changes is consistent with section 6(b) of the Act in that it is designed to facilitate the trading of the Deutsche Mark, Japanese Yen and Swiss Franc foreign currency options contracts. In addition, the PHLX believes the proposal promotes the protection of investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[3] By introducing half point intervals, the proposal provides investors in a non-volatile currency with greater flexibility in managing their currency risk, thereby promoting the mechanism of a free and open market and protecting investors and the public interest. Moreover, to avoid the proliferation of options series, the PHLX will add half point strikes only for at-or near-the-money strikes and for no more than the first three expiration cycles. Finally, the strike price revision is similar to others the Commission has approved in options for other non-volatile currencies traded on the PHLX.[4]

It is therefore ordered, pursuant to section 19(B)(2) of the Act,[5] that the proposed rule change (SR–PHLX–89–37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: August 31, 1989.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 89–21006 Filed 9–6–89; 8:45 am]
BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(12) (1984).

[2] 17 CFR 240.19b–4 (1988).

[3] 15 U.S.C. 78f (1984).

[4] *See* Securities Exchange Act Rel. No. 23866 (December 12, 1986), 51 FR 45979; Securities Exchange Act Rel. No. 24103 (February 13, 1987), 52 FR 5605 (February 25, 1987); and Securities Exchange Act Rel. No. 25685 (May 10, 1988), 53 FR 17524 (May 17, 1988).

[5] 15 U.S.C. 78s(b)(2) (1984).

[6] 17 CFR 200.30–3(a)(12) (1988).

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[Rel. No. IC-17122; File No. 812-7308]

Golden American Life Insurance Co., et al.

August 31, 1989.

AGENCY: The Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Golden American Life Insurance Company ("Golden American" or "Company"), Golden American Knox Funds Separate Account B of Golden American Life Insurance Company (the "Account"), and Directed Services, Inc. ("DSI").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Account under a deferred variable annuity contract (the "Deferred Annuity") and an immediate variable annuity certain contract (the "Annuity Certain") (collectively, the "Contracts") and to permit the deduction of a guaranteed death benefit charge from the accumulation value in the Account under the Deferred Annuity.

FILING DATE: The application was filed on April 18, 1989 and amended on August 4, 1989.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on September 25, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Golden American Life Insurance Company, 909 Third Avenue, 19th Floor, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst, at (202) 272-2058 or Clifford E. Kirsch, Acting Assistant Director, at (202) 272-2061.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Golden American is a stock life insurance company organized under the laws of the State of Minnesota. From January 2, 1973 through December 31, 1987, the name of the company was St. Paul Life Insurance Company. On December 31, 1987, after all of St. Paul Life Insurance Company's business was sold, the name was changed to Golden American Life Insurance Company. The Account is a separate investment account of Golden American established to act as a funding vehicle of variable annuity contracts. The Account is registered with the Commission as a unit investment trust and a registration statement on Form N-4 has been filed with the Commission.

2. The Account is divided into divisions, each division investing in shares of a designated series of the Knox Funds (the "Fund"). The Fund is registered with the Commission as an open-end management investment company and has filed a registration statement on Form N-1A. The Fund is a series-type mutual fund that contains four series, each of which will pursue different investment objectives and policies.

3. Pursuant to a Distribution Agreement between Directed Services, Inc. (a wholly owned subsidiary of the Golden Financial Group, Inc.) and Golden American, DSI will solicit sales of the Contracts through registered representatives who are licensed to sell securities and variable insurance products including variable annuities. The registered representatives will be appointed by Golden American to sell the Company's Contracts. The offering of the Contracts will be continuous.

4. The Contracts provide for the accumulation of values on a variable basis except to the extent that a portion of the accumulation value is allocated to the Guaranteed Interest Division of the general account. Payment of annuity benefits will be on a fixed or variable basis. The variable aspects of the Contracts differ significantly from the fixed aspects in that the Contract owner and the Annuitant assume the risk of investment gain or loss under a Contract rather than Golden American. A Contract owner directs the allocation of premium payments and accumulation value to the Account.

5. The Deferred Annuity is an individual flexible premium payment contract which provides for an initial premium payment and for additional premium payments if the Contract owner so desires. There is, however, no obligation to make additional payments. In the Deferred Annuity, the Company guarantees a minimum death benefit payable to the beneficiary if the Contract owner or the Annuitant (when there is no Contingent Annuitant) dies prior to the annuity commencement date. The Company will pay the greater of: (1) The accumulation value or (2) the lesser of the guaranteed death benefit or the maximum guaranteed death benefit. The guaranteed death benefit is the accumulated value of the premiums paid adjusted at an annual interest rate of 5% minus the accumulated value of the partial withdrawals taken adjusted at an annual interest rate of 5%. The Company reserves the right to modify this interest rate structure to one which approximately yields equivalent results over the life of a contract. The maximum guaranteed death benefit is two times the sum of premiums paid minus two times the sum of partial withdrawals taken. The charge for the guaranteed death benefit will be no greater than $1.20 per $1,000 of guaranteed death benefit per contract year. In the future, the Account may offer other variable annuity contracts that may make a guaranteed death benefit charge of up to $1.20 per $1,000 of guaranteed death benefit per year. This charge is not an asset-based charge. Rather it is a contract charge imposed to compensate the Company for the risk that the minimum guaranteed death benefit due under a Deferred Annuity when the annuitant dies during the accumulation phase may exceed the normal death benefit otherwise payable. Expressed as an asset charge (assuming a hypothetical gross return of 5%), it would effectively increase the mortality and expense risk charge by approximately 0.10%. For higher hypothetical gross returns, this charge, when expressed as an asset charge, would be less; and for lower hypothetical gross returns, it would be more. In the Applicants' view, assessment of this risk charge in this manner will benefit Contract owners because it provides a better match of the charge and the risk than does assessing it as a daily percentage of assets charged against assets in each division of the Account.

6. The Annuity Certain is an immediate annuity which provides for a single premium payment and variable annuity payments to be paid to the Annuitant over a fixed period of time.

7. The Contracts provide for partial withdrawals. In the Deferred Annuity, the cash surrender value may be applied at any time before the annuity commencement date to an income plan and, on the annuity commencement date, the accumulation value may be applied to an income plan. In the Annuity Certain, the cash surrender value may be applied to an income plan at any time during the certain period.

8. Sales loading at a maximum rate of 1.5% of each premium is deducted from each premium payment. This charge is allocated to cover distribution expenses. All sales loading applicable to initial, single or additional premium payments is deducted by Golden American at the time of payment.

9. The Contracts provide that a maximum mortality and expense risk charge equal to 0.002477% of the asset values in each division of the Account will be deducted on a daily basis (equivalent to an annual charge of 0.90%). In the Deferred Annunity, approximately 0.55% of the maximum charge is for assuming the mortality risk and 0.35% is for assuming the expense risk. In the Annunity Certain, approximately 0.45% of the maximum charge is for assuming the mortality risk and 0.45% is for assuming the expense risk. The mortality risk assumed by the Company arises from its obligations to continue to make annunity payments under the Contracts or income plan provisions of the Contracts, determined in accordance with the guaranteed annunity tables and other provisions of the Contracts, regardless of how long each annuitant lives and regardless of how long all payees as a group live. The particular mortality risk assumed by the Company under the Deferred Annunity is the risk that, after annuitization or upon selection of an annuity option with a life contingency, annuitants will live longer than the Company's actuarial projections indicated, resulting in higher than expected payments during the payout phase, since the payment options are guaranteed not to be less than the tables discussed in the Deferred Annunity. The particular mortality risk assumed by the Company under the Annunity Certain relates to the fact that, at all times, the Company will offer the option to convert the Annunity Certain, which does not provide for payments based on life contingencies, to one or more annuity contracts that provide for payments based on life contingencies. The mortality risk assumed by the Company is the risk that annuitants, or beneficiaries after the death of the annuitant, will choose one such option and will possibly live longer than the Company's actuarial projections indicate, resulting in higher than expected payments during the payout phase, since any payment option is guaranteed not to be less than the tables discussed in the Annuity Certain. In addition, the Company assumes a risk that the charges for the administrative expenses may not be adequate to cover such expenses. In the Deferred Annuity, Golden American also assumes a risk to pay out a guaranteed death benefit in excess of the accumulation value. Golden American is compensated for this risk by the guaranteed death benefit charge. The guaranteed death benefit charge is based on the amount of the guaranteed death benefit and is less than 0.10% of net assets (assuming a hypthetical gross return of 5%).

10. Applicants represent that they have reviewed publicly available information regarding the level of the mortality and expense risk and guaranteed death benefit charges under comparable variable annuity contracts currently being offered in the industry, taking into consideration such factors as current charge level or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon the foregoing, Applicants represent that the maximum charges under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

11. Applicants do not believe that the sales loading imposed under the Contracts will necessarily cover the expected costs of distributing the Contracts. Any "shortfall" will be made up from the general account assets which includes amount derived from risk charges. The Company has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit the Account and the Contract owners. The Company will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

12. Applicants further represent that the Account will only invest in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of such funds, formulate and approve any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-20997 Filed 9-7-89; 8:45am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council, Connecticut; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:00 a.m., on Monday, October 2, 1989, at the Days Inn, 900 East Main Street, Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

For further information, write or call Henry A. Povinelli, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut 06106, phone (203) 240-4670.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 28, 1989.

[FR Doc. 89-20930 Filed 9-6-89; 8:45 am]

BILLING CODE 8025-01-M

New York Advisory Council Meeting Region II; Public Meeting

The United States Small Business Administration Region II Advisory Council, located in the geographical area of New York City, will hold a public meeting on Wednesday, September 27, 1989, at 9:30 am in the Board Room of Pfizer, Inc., located at 235 East 42nd Street, New York City. To be discussed are such matters as may be presented by members, staff of the Small Business Administration or others present.

For further information, write or call Mr. Bert X. Haggerty, District Director New York, U.S. Small Business Administration, 26 Federal Plaza, Room 3100, New York NY 10278, telephone (212) 264-1318.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 28, 1989

[FR Doc. 89-20931 Filed 9-6-89; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council, Vermont; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, will hold a public meeting at 10:00 a.m., Thursday, September 21, 1989, at the Holiday Inn, Rutland, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

For further information, write or call Ora H. Paul, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602, phone (802) 828–4422.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 25, 1989

[FR Doc. 89–20932 Filed 9–6–89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; San Benito County, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this Notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in San Benito County, California.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Schultz, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915. Telephone: (916) 551–1307.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, San Benito County, and the City of Hollister, will prepare an Environmental Impact Statement (EIS) on a proposal to improve highway facilities on State Highway Route 156 in San Benito County. The 7-mile section of highway to be improved is comprised of contiguous segments of 2–lane, 4-lane, and 4-lane divided highway beginning in the vicinity of the Union/Mitchell Road/Route 156 intersection, west of Hollister, passing through downtown Hollister and terminating in the vicinity of the San Felipe Road/Route 156 intersection, north of Hollister. Some intersections in Hollister are now operating at or near capacity during peak hours. The highway carries both through and local traffic, including large trucks which add to the congestion (especially when they don't follow the signed truck route). A Route 156 bypass is proposed to allow through trucks, recreational vehicles and cars to go around, instead of through, downtown Hollister.

The alternates under consideration are the "no-build," "upgrade" the existing facility, and construct a "bypass" around the north and west sides of town. The no-build alternate is not considered viable at this time since traffic volume is now very heavy and will continue to increase. It is not considered practicable to widen the existing highway through town since this would require taking many residential and commercial buildings. Several bypass alternates are being considered. All start west of town near the Union/Mitchell Road/Route 156 intersection, and end either just south of the City Airport near the Flynn Road/Route 156 intersection, or north of the airport near the San Felipe Road/Route 156 intersection. The selected bypass alternate could be constructed as a 2-lane limited access highway, but sufficient right-of-way would be purchased to accommodate an ultimate 4-lane divided highway.

The project would be partially funded by a County sales tax measure, which would provide $6,250,000 toward the cost of constructing a Route 156 bypass around the City of Hollister.

Advertised public meetings and community advisory committee meetings have been held to discuss the project and obtain public input. More such meetings will be held prior to the formal public hearing planned for early 1990. These meetings, and the comments to be received from this Notice of Intent (and the Notice of Preparation), will constitute the scope process for this project.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12472 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 29, 1989.

Susan E. Klekar,

District Engineer, Sacramento, California.

[FR Doc. 89–20973 Filed 9–6–89; 8:45 am]

BILLING CODE 4910-22-M

National Motor Carrier Advisory Committee

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on September 26, and 17, 1989, in Ann Arbor, Michigan. The meeting on September 26 will begin at 9:15 a.m. and will be held in Room 1443 of the Chrysler Engineering Center on Bonisteel Boulevard on the North Campus of the University of Michigan. On September 27 the meeting will reconvene at 9:00 a.m. at the Ann Arbor Marriott, 3600 Plymouth Road, Ann Arbor Michigan. The meeting on both days will be open to the public.

The agenda will include discussion of the National Transportation Policy, possible revisions to streamline the Federal Motor Carrier Safety Regulations, proposed changes to the definition of a "commercial motor vehicle" regarding the weight of such vehicles, proposed actions of the Commercial Motor Vehicle Safety Regulatory Review Panel regarding uniformity of State motor carrier safety requirements, alcohol testing of commercial motor vehicle operators, the biometric identification of commercial motor vehicle operators, and intelligent Vehicle/Highway Systems. Recommendations will also be presented from the Subcommittee on Safety. The Committee will also tour the University of Michigan's Transportation Research Institute (UMTRI).

In conjunction with the full committee meeting, the Subcommittee on Safety will meet on September 25, 1989, to discuss the issue referenced above regarding the definition of a "commercial motor vehicle" and the appropriate weight threshold for the Federal regulation of those vehicles and their operators. The meeting will also be held at the Ann Arbor Marriott and will begin at 1:30 p.m. This Subcommittee meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HOA–1, Room 4218, 400 7th Street, SW., Washington, DC 20590, (202) 366–2238, office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Dated: August 30, 1989.

Thomas D. Larson,

Federal Highway Administrator.

[FR Doc. 89–20927 Filed 9–6–89; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Approval of Applicant as Mortgagee; Bank of the West

Notice is hereby given that Bank of the West, having offices at 2 West Santa Clara Street, San Jose, California 95113, has been approved as Mortgagee pursuant to Public Law 100–710 and 46 CFR 221.43.

Dated: August 31, 1989.

By Order of the Maritime Administrator.

James S. Saari,

Secretary.

[FR Doc. 89–20996 Filed 9–6–89; 8:45 am]

BILLING CODE 4910-81-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 172
Thursday, September 7, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, September 11, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–21109 Filed 9–1–89; 8:45 am]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Monday, September 11, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Monday, September 11—Tentative

10:00 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Amendments to 10 CFR Part 34: Safety Requirements for Industrial Radiographic Equipment
b. Motion by Joseph J. Macktal to Reconsider CLI–89–14 (Tentative)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for reaffirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: September 1, 1989.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89–21195 Filed 9–5–89; 2:30 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 54, No. 172
Thursday, September 7, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 Parts 52 and 81

[FRL-3627-7]

Approval and Promulgation of Implementation Plans; and Designation of Areas for Air Quality Purposes; State of Iowa

Correction

In rule document 89-18998 beginning on page 33536 in the issue of August 15, 1989, make the following corrections:

§ 52.827 [Corrected]

1. On page 33539, in § 52.827, in the table, footnote g should read "October 16, 1992."

2. On page 33541, in the first column, in the file line at the end of the document, "FR Doc. 89-18996" should read "FR Doc. 89-18998".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

Proposed Customs Regulation Amendment to the Definition of Switchblade Knives

Correction

In proposed rule document 89-19492 beginning on page 34186 in the issue of, Friday, August 18, 1989, make the following correction:

On page 34187, in the first column, in the 27th line, "not" should read "now".

BILLING CODE 1505-01-D

federal register

Thursday
September 7, 1989

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 410

Medicare; Catastrophic Outpatient Benefit; Proposed Rule

42 CFR Part 414

Medicare; Payment for Covered Outpatient Drugs; Proposed Rule

42 CFR Parts 400, 417, 485, and 489

Medicare; Conditions of Participation for Home Intravenous Drug Therapy Providers; Proposed Rule

Medicare; Outpatient Prescription Drugs; List of Covered Home IV Drugs; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 410

[BPD-613-P]

RIN 0938-AD91

Medicare Program; Catastrophic Outpatient Drug Benefit

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would implement, in part, section 202 of the Medicare Catastrophic Coverage Act of 1988 (MCCA), which establishes a new catastrophic drug benefit under Medicare Part B. The new benefit would be added to the drug coverage already available under Medicare, which would continue largely unchanged.

The MCCA provides for payment of a catastrophic level of beneficiary expenditures for "covered outpatient drugs". The payment aspect of this benefit will be implemented in separate regulations. The MCCA defines the items and services included as "covered outpatient drugs" to include coverage of outpatient prescription drugs on a much broader scope than is now available under Part B. These proposed regulations describe that new benefit.

These regulations also describe the bases that HCFA would use to implement the statutory requirement for establishing standards for the prescribing of each "covered outpatient drug". These standards would be used to identify inappropriate drug prescribing and dispensing and adverse drug reactions and to educate physicians and pharmacists about them. They would not be used to define coverage or payment of covered outpatient drugs.

The regulations also describe limits on the supply of a "covered outpatient drug" that Medicare would pay for, and reflect other related changes in Medicare created by MCCA.

DATE: To assure consideration, comments must be received at the appropriate address, as provided below, no later than 5:00 p.m. on November 6, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-613-P, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-613-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (Phone 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Walter Rutemueller, (301) 966-6849.

SUPPLEMENTARY INFORMATION: In this proposed rule, we explain in much detail, current Medicare coverage of drugs, as well as the expansion of drug coverage set forth in the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, enacted on July 1, 1988). To assist readers in referencing sections contained in this proposed rule, we are providing a table of contents below:

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I. Background

The Medicare program was established by Congress in 1965 with the enactment of title XVIII of the Social Security Act (the Act). The program provides payment for certain medical services and supplies for persons 65 years of age or over, disabled beneficiaries, and persons with end-stage renal disease. The program currently covers approximately 28.8 million aged, 3 million disabled individuals, and 100,000 persons with end-stage renal disease.

Medicare consists essentially of two complementary insurance programs, the Hospital Insurance program (known as Part A) and the Supplementary Medical Insurance program (known as Part B). Although Part A is called Hospital Insurance, covered benefits also include services furnished in skilled nursing facilities (SNFs) or by home health agencies and hospices.

Part B covers a wide range of medical services and supplies such as those furnished by physicians or others in connection with physicians' services, outpatient hospital services, and outpatient physical and occupational therapy services. Physicians' services covered under Part B include visits to patients in the home, office, hospital, and other institutions. Part B also currently covers certain drugs and biologicals that cannot be self-administered, diagnostic x-ray and laboratory tests, and purchase or rental of durable medical equipment, ambulance services, prosthetic devices, and certain medical supplies.

The Medicare program was not designed to cover the total cost of providing medical care for its beneficiaries. Under current law, beneficiaries are liable for specified cost-sharing charges, in the form of deductibles and coinsurance amounts, and the cost of the first 3 pints of whole blood (unless replacement blood is furnished). Part B of Medicare pays for Part B services according to formulae established by statute; generally 80 percent of the reasonable charge is paid for physicians' services and other covered medical services (including drugs used in immunosuppressive therapy furnished within 1 year of a

covered organ transplant) after the beneficiary has met the $75 deductible. The beneficiary is then liable for the remaining amount of the charge for the services, which is usually 20 percent of the reasonable charge (known as coinsurance). In addition, if a physician does not accept assignment (that is, does not agree to accept Medicare's determination of the reasonable charge amount as payment in full for covered services), the beneficiary may be liable for the difference between Medicare's reasonable charge and the physician's actual charge, subject to certain limits on that charge.

II. Pre-existing Drug Benefit

The Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, enacted on July 1, 1988) established a new catastrophic outpatient drug benefit under Part B. For purposes of coverage, payment, deductibles and coinsurance, the new Part B catastrophic outpatient drug benefit is distinct and separate from the current Medicare coverage of drugs that existed before the enactment of Public Law 100-360. The current Medicare drug benefit, to which we will refer in this preamble as the "pre-existing drug benefit", includes both Part A and Part B coverage. For the most part the pre-existing drug benefit has not been changed by Public Law 100-360. In this section of the preamble, we discuss both the Part A and Part B coverage requirements of the pre-existing drug benefit.

Pre-existing Medicare coverage of drugs is based on title XVIII of the Act; Medicare regulations at 42 CFR, Chapter IV; and the Medicare Carriers Manual (Part 3, Chapter II, section 2050.5).

A. General Statutory Provisions

- The Medicare statute, at section 1861(t)(1) of the Act, defines "drugs" and "biologicals", except for purposes of home health services, to include only those drugs and biologicals, respectively, as are included (or approved for inclusion)—

—In the U.S. Pharmacopoeia, the National Formulary, or the U.S. Homeopathic Pharmacopoeia;
—In New Drugs or Accepted Dental Remedies (except for any drugs and biologicals unfavorably evaluated therein); or
—As approved by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of a hospital furnishing the drugs and biologicals for use in the hospital.

- In addition, in accordance with section 1862(c)(1) of the Act, payment may not be made under Part B for any expenses incurred for a drug product if all of the following conditions are met:

—The drug product—
  +Meets the requirements of section 107(c)(3) of the Drug Amendments of 1962, that is, generally stated, was approved by the Secretary as safe before October 10, 1962;
  +May be dispensed only upon prescription;
  +Is one for which the Secretary has issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug and Cosmetic Act (FFDCA) on a proposed order of the Secretary to withdraw approval of an application for the drug product under that section, because the Secretary has determined that the drug is less than effective for all conditions of use prescribed, recommended, or suggested in its labeling; and
  +Is one for which the Secretary has not determined that there is a compelling justification for its medical need.
—Any other drug product that is identical, related, or similar (as determined in accordance with 21 CFR 310.6(b)(1)) to a drug product described above and for which the Secretary has not determined that there is a compelling justification for its medical need.

B. Part A Statutory Provisions

Pre-existing Medicare Part A coverage of drugs and biologicals is provided for in section 1861 of the Act as follows:

- Drugs and biologicals used in the hospital that are ordinarily furnished by the hospital for the care and treatment of patients (paragraph (b)(2));
- Drugs and biologicals furnished for use in a SNF that ordinarily are furnished by the facility for the care and treatment of inpatients (paragraph (h)(5));
- Drugs and biologicals furnished to terminally ill individuals under a written plan as part of a hospice program (paragraph (dd)(1)(E)).

C. Part B Statutory Provisions

All Medicare Part B coverage of drugs is derived from the scope of benefits provided for in section 1832 of the Act. Section 1861 of the Act defines the coverage provisions specified in section 1832 of the Act.

Pre-existing Medicare Part B coverage of outpatient drugs and biologicals is provided for in section 1861 of the Act, as follows:

- Drugs and biologicals that cannot be self-administered and that are furnished as incident to a physician's service (subsections (s)(2) (A) and (B));
- Diagnostic services furnished by a hospital to outpatients, including drugs and biologicals required in the performance of these services (subsection (s)(2)(C));
- Dialysis supplies, including drugs and biologicals (subsection (s)(2)(F));
- Antigens that are prepared by a physician for a particular patient and that are administered by or under the supervision of a physician (subsection (s)(2)(G));
- Blood clotting factors, for hemophilia patients competent to use those factors to control bleeding without medical or other supervision (subsection (s)(2)(I));
- Immunosuppressive drugs and drugs that are needed for effective immunosuppressive therapy furnished to an individual who receives an organ transplant for which payment is made under Medicare, and that are furnished within 1 year after the date of the transplant procedure (subsection (s)(2)(J), as it was in effect before the enactment of Pub. L. 100-360).
- Supplies that are incident to a physician assistant's services furnished under the supervision of a physician, including drugs and biologicals (subsection (s)(2)(K)(ii));
- Pneumococcal, influenza, and hepatitis B vaccines (subsection (s)(10));
- Drugs and biologicals that cannot be self-administered and that are furnished to an individual who is an outpatient of a comprehensive outpatient rehabilitation facility (subsection (cc)(1)(F));
- Drugs and biologicals furnished as part of or incident to the provision of covered rural health clinic services (subsection (aa)(1)), partial hospitalization services (subsection (ff)(2)(D)), certified nurse-midwife services (subsection (gg)(1)), and qualified psychologist services (subsection (ii)).

Drugs and biologicals also are covered as part of or incident to services furnished in qualified ambulatory surgical centers as provided in section 1832(a)(2)(F)(i) of the Act.

Public Law 100-360 expanded Medicare coverage of prescription outpatient drugs and biologicals by creating a new drug benefit. Pre-existing coverage, as discussed above, will continue unchanged except for drugs used in immunosuppressive therapy. As discussed below, coverage for these drugs would be expanded under the provisions of Public Law 100-360 and would be included as part of the new catastrophic drug benefit.

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in April 1987 (Carriers Manual, section

controls FDA approval of drugs and

DESI drug lacks substantial evidence of

D. Instructions

The Medicare Carriers Manual (HCFA Pub. 14–3) (Part 3, Chapter II, § 2050.5) provides instructions on the pre-existing Part B coverage of drugs and biologicals specified in the statute and in regulations (42 CFR 410.10 and 410.26 through 410.29).

- The drugs and biologicals that Medicare covers meet the definition of "drugs" or "biologicals" in section 1861(t)(1) of the Act and are not unfavorably evaluated in either the American Medical Association's Drug Evaluations or Accepted Dental Therapeutics. If a drug is excluded from coverage because it is unfavorably evaluated in either of these compendia, the exclusion applies only to those uses for which the drug or biological was so unfavorably evaluated.
- The drugs and biologicals are not covered if they are excluded as immunizations (section 1862(a)(7) of the Act). As stated in section 2050(c) of the Medicare Carriers Manual, vaccinations or inoculations are excluded as "immunizations" unless they are directly related to the treatment of an injury or direct exposure to a disease or condition, such as antirabies treatment, tetanus antitoxin or booster vaccine, botulin antitoxin, antivenin sera, or immune globlin. We note that coverage of the following vaccines has been specifically provided for by Congress.

—Pneumococcal vaccinations.

With the enactment of the Social Security Act Amendments of 1980 (section 1 of Pub. L. 96–611) on December 28, 1980, Part B pays 100 percent of the reasonable charges for pneumococcal vaccine and its administration to a patient if it is ordered by a physician who is a doctor of medicine or osteopathy (section 1861(s)(10) of the Act).

—Hepatitis B vaccine.

With the enactment of the Deficit Reduction Act of 1984 (section 2323 of Pub. L. 98–369), coverage under Part B was extended to hepatitis B vaccine and its administration furnished to a Medicare beneficiary who is at high or intermediate risk of contracting Hepatitis B (section 1861(s)(10) of the Act).

—Influenza vaccine.

The Omnibus Budget Reconciliation Act of 1987 (section 4071 of Pub. L. 100–203) provides for the coverage of influenza vaccine and its administration by either November 1, 1990 or April 1, 1993 contingent upon the Secretary demonstrating that the use of influenza vaccine is cost-effective.

- The drugs and biologicals are reasonable and necessary for the diagnosis or treatment of the illness or injury for which they are administered according to accepted standards of medical practice (section 1862(a)(1)(A) of the Act). In making national coverage decisions, HCFA interprets the terms "reasonable" and "necessary" contained in section 1862(a)(1)(A) of the Act to mean that a service is safe, effective, non-investigational, and appropriate as evidenced by available scientific and medical information. We published a proposed rule on January 30, 1989 (54 FR 4302) that would establish in regulations generally applicable criteria and procedures for determining whether a service is "reasonable" and "necessary" under the Medicare program, and to set forth the coverage decisionmaking process that we propose to include in regulations. The January 30, 1989 rule proposes to include cost-effectiveness considerations in addition to the other criteria we currently use when determining whether a service is reasonable and necessary. However, we note that not all of the criteria announced in the January 30, 1989 rule would apply to the Medicare catastrophic drug benefit. Public Law 100–360 added section 1834(c)(5)(C)(ii) to the Act, which prohibits the denial of coverage of or payment for any specific use of a covered outpatient drug for a specific indication except for those instances in which the Secretary determines under section 1862(a)(1) of the Act that use of the drug for that indication is not safe or not effective. (Accordingly, as discussed in greater detail below, except for exclusions based on section 1861(t)(4)(A) of the Act, which pertains to the definition of "covered home IV drugs", or section 1862(c)(2) of the Act, which pertains to prescriptions in excess of a 30-day supply, we would use only considerations concerning safety and effectiveness to make decisions to exclude from coverage or to deny payment for a specific covered outpatient drug or class of drugs under the Medicare catastrophic drug benefit.)

Under the current program, we have determined as a matter of national policy that drugs or biologicals approved for marketing by the Food and Drug Administration (FDA) are generally considered safe and effective for purposes of meeting the reasonable and necessary criteria when used for indications specified in their labeling (section 2050.5(D) of the Medicare Carriers Manual). In addition, except for drugs used in immunosuppressive therapy, FDA-approved drugs also may be covered when used for indications other than those specified on their labeling unless such use is contraindicated on the drugs' labels or is specifically not covered by HCFA.

- Drugs that are considered by the FDA to be experimental or investigational are not covered except for certain cancer drugs distributed by the National Cancer Institute (NCI).

Under its Cancer Therapy Evaluation, the Division of Cancer Treatment within NCI, distributes certain drugs for use in terminally ill cancer patients. One group of these drugs, designated by FDA and NCI as Group C drugs, unlike other drugs distributed by the NCI, is not limited to use in clinical trials for the purpose of testing their efficacy. In view of NCI controls on their distribution and use, Group C drugs are covered by Medicare under current rules if all other applicable coverage requirements are met.

- In accordance with section 1861(s)(2)(J) of the Act, as added by section 9335(c) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), we covered, effective January 1, 1987, immunosuppressive drugs furnished to an individual who receives a Medicare covered organ transplant, for a period of up to 1 year beginning with the date of discharge from the inpatient hospital stay during which the transplant was performed. Section 4075 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended section 1861(s)(2)(J) of the Act to expand Medicare coverage to include prescription drugs used in immunosuppressive therapy. We have restricted coverage of drugs used in immunosuppressive therapy to those specifically labelled by the FDA as immunosuppressive drugs and to those whose approved labels indicate they are used in conjunction with immunosuppressive drugs as part of a therapeutic regimen. We restricted coverage of these drugs to labelled indications to ensure that we did not allow coverage of these drugs beyond the scope of section 1861(s)(2)(J) of the Act, which before the enactment of Public Law 100–360 specifically authorized payment only for prescription drugs used in immunosuppressive therapy. Coverage of non-labeled uses for other drugs is ordinarily determined by our contractors taking into consideration the generally accepted medical practice in the community. The statutory changes mentioned above specified that the 1-year period during these drugs could be covered would begin with the date of a transplant. We issued manual instructions to our Medicare contractors

in April 1987 (Carriers Manual, section 2050.5, paragraph G). We interpreted the statutory phrase, "within one year after the date of the transplant procedure," to mean 365 days from the day on which the inpatient is discharged from the hospital. We believe the term "transplant procedure" can be interpreted to mean something broader than just the surgery itself, and for the reasons set forth below, we consider the procedure to end at the date of discharge. If the date of surgery was used instead of the date of discharge, the immunosuppressive drug benefit would vary from one Medicare beneficiary to another, depending upon the beneficiary's post-operative recovery period while an inpatient. For example, if one patient's hospital stay was 30 days longer than another patient's stay, one of the patients would receive less coverage under Part B. Further, the conference report accompanying Public Law 99–509 (H.R. Rept. 99–1012, page 337) indicates that Congress was aware that immunosuppressive drugs are already covered while a beneficiary is in the hospital.

Nonetheless, Congress added this coverage by amending section 1861(s)(2) of the Act, which is a listing of "medical and other health services" covered under Part B. By amending this section, Congress made immunosuppressive drugs a specific Part B benefit, which extends explicitly for 1 year. Since inpatient immunosuppressive drugs are covered already under Part A, and since the date of discharge is later than the date of surgery, to use the actual transplant date would require us to either shorten the coverage under Part B to less than 1 year or pay for inpatient hospital services with Part B funds. The former is inconsistent with Congressional intent. If we were to furnish Part B benefits beginning at the time of surgery, we would have to adjust the diagnosis related group weights to exclude the costs of post-operative immunosuppressive drugs. This would be cumbersome. Further, it is administratively more difficult for a carrier to determine the date of surgery rather than the date of discharge.

III. FDA Responsibilities and Categories of Prescription Drugs Resulting From Amendments to the Federal Food, Drug and Cosmetic Act

For purposes of discussing later in this preamble the expanded coverage of drugs mandated by Congress, we are providing a summary of the responsibilities of the FDA in approving drugs and licensing biologicals for marketing and of the statute that controls FDA approval of drugs and biologicals for marketing.

FDA protects the public health of the nation by regulating foods, drugs, biological products, cosmetics, medical devices, radiological products, poisons, pesticides, and food additives. FDA's regulatory functions are to assure that: foods are safe, pure, and wholesome; drugs, medical devices, and biological products are safe and effective; cosmetics are harmless; all of the above are honestly and informatively packaged, and that exposure to potentially injurious radiation is minimized. The role of FDA is critical to the Medicare coverage process since, as discussed earlier, FDA approval of drugs and devices precedes Medicare coverage in most cases.

The FDA's current role as it relates to approval of drugs is controlled by the Federal Food, Drug and Cosmetic Act of 1938 (FFDCA) (Pub. L. 75–717, 21 U.S.C. 301, et seq.). Before enactment of the FFDCA, drugs could be marketed in the United States as long as a drug's label did not present false information regarding the drug's strength and purity. The FFDCA first established the requirement that a manufacturer has to prove the safety of a drug before it could market it in the United States. In accordance with the FFDCA, drugs marketed before passage of the 1938 Act were "grandfathered" so that manufacturers, if they did not change the representations on the drugs' labels, were allowed to continue to market them unless evidence was developed to indicate that they were not safe. However, once a manufacturer changed the representation on a drug's label, that drug was considered a "new drug" and the manufacturer was required to prove that the drug was safe for its intended use.

In 1962, the FFDCA was amended to require that drugs sold in the United States be regulated more closely. Under the provisions of the Drug Amendments of 1962 (Pub. L. 87–781, enacted on October 10, 1962), all new drugs must be shown by adequate studies to be both safe and effective before they can be marketed. This legislation also applied retroactively to all drugs approved as safe from 1938 to 1962. These drugs were permitted to remain on the market while evidence of their effectiveness was reviewed. The program established to review the effectiveness of drugs approved between 1938 and 1962 was named the Drug Efficacy Study Implementation (DESI) program. The pre-1962 drugs that are subject to review under this program are referred to as the "DESI" drugs. If the FDA decides that a DESI drug lacks substantial evidence of effectiveness for the condition(s) it is intended to treat, it publishes a notice of opportunity for a hearing in the Federal Register concerning its proposal to withdraw approval for marketing. This process afforded the manufacturer an opportunity for a hearing before a final determination is made. Drugs for which a notice of opportunity for hearing has been issued but the hearing has not been completed are considered by the FDA to be less than effective.

Biologicals were first required to be licensed under the Biologics Control Act of 1902, which was recodified in 1944 as section 351 of the Public Health Service Act (PHS Act, 42 U.S.C. 262). To be licensed under section 351 of the PHS Act, a biological must be shown to be safe, pure, and potent. The majority of biological products also meet the drug definitions in the FFDCA subject to the drug adulteration, misbranding, and registration provisions of the FFDCA.

When the Bureau of Biologics (currently the Center for Biologics Evaluation and Research) became a part of FDA in 1972, biologicals licensed before July 1972 were reviewed for efficacy by expert advisory review panels. Similar to the DESI program described above, manufacturers of biologicals with inadequate evidence of effectiveness are offered an opportunity for a hearing on proposals to revoke product licenses.

When a manufacturer submits an application for the approval of a new drug, it indicates on the application the proposed uses for the drug. The FDA requires the manufacturer to submit clinical data and scientific information to prove the safety and effectiveness of the drug for these proposed uses. The FDA requires the manufacturer to submit clinical data and scientific information to prove the safety and effectiveness of the drug for these proposed uses and determines for which of the proposed uses the manufacturer has proven that the drug is safe and effective. If a drug is approved, it may be labeled, promoted, and advertised by the manufacturer only for those specific proposed uses of the drug that have been approved by the FDA as safe and effective. The labeling includes a description of the drug, its action, clinical pharmacology, and indications and usage for the drug. In addition, sections with the headings, contraindications, warnings, precautions, and adverse reactions are included when applicable. All labels conclude with sections on dosage and administration and how the drug is supplied.

After a drug is approved, additional medical and scientific information may be developed by the medical community that indicates there are other appropriate uses for the drug besides those specified on a drug's label. As previously stated, we may cover FDA-approved drugs for uses other than those specified on their labeling if the available medical and scientific information indicates that additional uses are appropriate and accepted in the medical community, unless the uses are contraindicated on a drug's label.

IV. The Medicare Catastrophic Coverage Act of 1988

The Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360, enacted on July 1, 1988) made a number of significant changes to the Medicare program. Generally, the statute provides for—

- Expanded hosptial, SNF, and hospice care coverage under part A of the program beginning January 1, 1989;
- A cap on the amount a beneficiary must spend on specified services under part B before Medicare will assume the full part B payment beginning January 1, 1990;
- Coverage of screening mammography and in-home respite care benefits, and improved home health benefits beginning January 1, 1990; and
- Coverage of drugs used in immunosuppressive therapy without regard to the duration of that therapy or whether the organ transplant procedure was covered by Medicare and home intravenous (IV) therapy services beginning January 1, 1990, and for coverage of other outpatient prescription drugs, biologicals, and insulin beginning on January 1, 1991.

Specifically, section 202 of Public Law 100–360 amended the Act to include "covered outpatient drugs" as part of the "medical and other health services" benefit under sections 1832 (a)(1) and (a)(2)(B) of the Act. Pre-existing coverage of drugs, as described in section II of this preamble, would continue unchanged except for drugs used in immunosuppressive therapy. As discussed below, coverage for these drugs would be expanded and extended under the provisions of Public Law 100–360, and these drugs would be included as part of the new catastrophic drug benefit. A discussion of the specific provisions of section 202 of Public Law 100–360 that this proposed rule would implement follows.

A. Definition of Covered Outpatient Drugs

Section 202(a) of Public Law 100–360 amended sections 1861(s)(2)(J) and added section 1861(t)(2) of the Act. As revised, section 1861(s)(2)(J) provides coverage of "covered outpatient drugs", which is primarily defined in section 1861(t)(2). Section 1861(t)(2) defines the term to include a broad range of drugs, biological products, and insulin.

1. *Drugs*

A drug is covered if it may be dispensed only upon prescription and meets one of the following requirements:

a. The drug is approved for safety and effectiveness as a prescription drug under sections 505 or 507 of the FFDCA, or approved under section 505(j) of the FFDCA.

b. The drug was commercially used or sold in the United States before the date of enactment of the Drug Amendments of 1962 (October 10, 1962) or it is identical, similar or related to such a drug, as defined by 21 CFR 310.6(b)(1). Nevertheless, these drugs will not be covered if the Secretary has made a final determination that they are "new drugs" and have not been approved under sections 505 or 507 of the FFDCA, or if they are subject to certain actions brought by the Secretary to enforce provisions of section 502(f) or 505(a) of the FFDCA (21 U.S.C. 352(f), or 355(a)).

c. The drug is described in section 107(c)(3) of the Drug Amendments of 1962 and is one for which the Secretary has determined there is compelling justification for its medical need, or it is identical, similar, or related to such a drug. Also, the drug must be one for which the Secretary has not issued a notice to withdraw approval for marketing, because the Secretary has determined that the drug is less than effective for all conditions of use represented, recommended, or suggested on its labeling. These are the "DESI" drugs. (We note that the conference report that accompanied Public Law 100–360 indicates, apparently in error, that the only DESI drug that would be covered under Medicare because a notice for an opportunity for hearing has not been issued, is nitroglycerin patches (H.R. Rep. No. 100–661, 100th Congress, 2d Session 185–186 (1988)).

2. Biological Products

A biological product is considered a "covered outpatient drug" if it is one that may be dispensed only upon prescription, is licensed under section 351 of the PHS Act (42 U.S.C. 262), and is produced at an establishment licensed under that Act to produce that product.

3. Insulin

Insulin is covered if it is certified under section 506 of the FFDCA (21 U.S.C. 356) for the strength, quality, and purity necessary to ensure adequate safety and efficacy of use. In accordance with section 1861(t)(2)(C) of the Act, insulin would be considered a "covered outpatient drug" whether or not it is dispensed under a prescription.

B. Covered Home IV Drugs

Section 202(a)(2)(C) of Public Law 100–360 added sections 1861(t)(4) (A) and (B) to the Act to specify the following:

- "Covered home IV drugs" are defined as covered outpatient drugs that are dispensed to an individual and intravenously administered to an individual in a place of residence used as the individual's home, and that are—
  - —Antibiotic drugs unless the Secretary has determined, for a specific drug or for the indication for which it is applied, that the drug cannot generally be administered safely and effectively in a home setting; or
  - —Drugs that are not antibiotics, but only if the Secretary has determined for a specific drug and the indications for which the drug is being applied that it can generally be administered safely and effectively in a home setting.
- By January 1, 1990 and periodically thereafter, the Secretary is required to publish a list of covered home IV drugs, and indications for the drugs, with respect to which home IV drug therapy may be furnished under Medicare.

C. Drugs Excluded From Catastrophic Coverage

In enacting the expanded drug coverage under Public Law 100–360, Congress specified in section 202(a)(2)(C) several restrictions on which drugs can be included under the new benefit. Thus, section 1861(t)(3)(A) of the Act excludes from the new benefit certain drugs, biologicals, or insulin that were covered by Medicare before the enactment of Public Law 100–360 from the definition of "covered outpatient drugs". Coverage for any drug, biological, or insulin furnished as one of the following benefits or, as part of, or as incident to, any of the following benefits, for which payment may be made under Medicare, would continue but would not be included as part of this new catastrophic drug benefit. These items would not be subject to the same coverage standards and coinsurance and deductible requirements that apply to drugs covered as part of the catastrophic drug benefit.

- Inpatient hospital services (section 1861(b)(2)).
- Extended care services (section 1861(h)(5)).

- Physicians' services (section 1861(s)(2) (A) or (B)).
- Dialysis supplies (section 1861(s)(2)(F)).
- Antigens (section 1861(s)(2)(G)).
- Blood clotting factors for hemophiliacs (section 1861(s)(2)(I)).
- Services of a physician assistant (section 1861(s)(2)(K)(ii)).
- Pneumococcal, hepatitis B, or influenza vaccines (section 1861(s)(10)).
- Rural health clinic services (section 1861(aa)(1)).
- Comprehensive outpatient rehabilitation facility services (section 1861(cc)(1)(F)).
- Hospice care (section 1861(dd)(1)(E)).
- Certified nurse-midwife services (section 1861(gg)(1)).
- A covered surgical procedure in an ambulatory surgical center (section 1832(a)(2)(F)(i)).

The purpose of section 1861(t)(3)(A) of the Act is to preserve and keep separate from the catastrophic drug benefit the coverage of drugs authorized by the benefits listed above. The coverage of drugs authorized by these benefits would remain unchanged and would not be duplicated or replaced by the catastrophic drug benefit. For example, section 1861(t)(3) of the Act specifies, in part, that the term "covered outpatient drug" does not include any drug, biological, or insulin furnished as, as part of, or as incident to extended care services if payment for these drugs or biologicals may be included under Medicare. The term "extended care services" is defined at section 1861(h)(5) of the Act as including drugs and biologicals that may be ordinarily furnished by SNFs for the care and treatment of inpatients.

Therefore, drugs and biologicals furnished to beneficiaries who qualify for Part A covered inpatient care in a participating SNF would be excluded from the covered outpatient drug benefit since payment could be made for these drugs and biologicals as part of the extended care services benefit under section 1861(h)(5) of the Act. However, in those instances where Part A coverage is exhausted, or not available to a particular beneficiary who is eligible for Part B only, the catastrophic Part B drug benefit would apply. Therefore, except for drugs already included under a pre-existing Part B benefit (such as antigens) and covered home IV drugs, drugs furnished in a hospital or a SNF to a beneficiary who is not eligible for Medicare Part A services could be covered as part of the new catastrophic drug benefit. This individual could either be a beneficiary who is eligible for Part B only or one who has exhausted his or her Part A benefit. Consistent with this policy, drugs furnished to residents of a long term care facility would be eligible for payment under the catastrophic drug benefit if the nursing home stays does not qualify for Part A payment for inpatient services and the drugs are not otherwise payable under a pre-existing Part B benefit.

D. Phase-in of Coverage

While section 202(m)(1) of Public Law 100–360 specifies that the amendments made by section 202 shall apply to items dispensed on or after January 1, 1990, the provisions of section 1861(t)(3)(B) of the Act (as added by section 202(a)(2)(C) of Pub. L. 100–360) limit covered outpatient drugs dispensed in 1990 to the following drugs:

1. Immunosuppressive Drugs

Effective January 1, 1987, immunosuppressive drugs were covered if furnished within 1 year after the beneficiary's date of discharge from an inpatient hospital stay during which a covered organ transplant was performed (section 1861(s)(2)(J) of the Act, as in effect before the enactment of Pub. L. 100–360). (Medicare currently covers heart, kidney, and bone marrow transplants. Liver transplants in limited circumstances for children under age 18 are also covered.) The coverage of immunosuppressive drugs was expanded by section 4075 of Public Law 100–203, effective December 22, 1987, to include prescription drugs used in immunosuppressive therapy. Section 202(a) of Public Law 100–360, effective January 1, 1990, extends the coverage of drugs used in immunosuppressive therapy to include those drugs furnished in subsequent years after the first year following a covered transplant and those following a noncovered transplant irrespective of any prescribed time limitations.

2. Covered Home IV Drugs as Defined in Section 1861(t)(4) of the Act

Accordingly, in 1990, the new drug benefit would only include drugs used in immunosuppressive therapy and covered home IV drugs. It would not include all covered outpatient drugs described in section 1861(t)(2) of the Act until January 1, 1991.

E. Ensuring Appropriate Prescribing and Dispensing Practices

Section 202(b)(4) of Public Law 100–360 added section 1834(c)(5) to the Act, which requires the Secretary—

- To establish a program to identify (and educate physicians and pharmacists concerning)—
  - —Instances or patterns of unnecessary or inappropriate prescribing or dispensing practices for covered outpatient drugs,
  - —Instances or patterns of substandard care with respect to covered outpatient drugs, and
  - —Potential adverse reactions with respect to covered outpatient drugs.
- To establish standards for the prescribing of each covered outpatient drug for purposes of the program identified above. The standards must be based on accepted medical practice. In establishing these standards, we must incorporate standards from authoritative compendia we select; however, we may modify a standard through rulemaking on the basis of scientific and medical information that the standard is not consistent with the safe and effective use of a drug. Congress intended that we rely only on those compendia that base their standards on a review of published scientific and medical information and that employ a review process that allows public comment. The compendia should also provide adequate assurances that the panelists who establish the standards are free of financial (or other) conflicts of interest (H. R. Rept. No. 100–661, 100th Congress, 2d Session 192 (1988)).
- To provide for the coverage and payment of every specific covered outpatient drug, and specific class of covered outpatient drugs. However, the Secretary may exclude a specific use of a covered outpatient drug for a specific indication if he has found under section 1862(a)(1) of the Act that the use is not safe or effective. Also, the Secretary may exclude from coverage or payment certain drugs under section 1862(c)(2) of the Act (which relates to prescriptions in excess of a 30-day supply, unless a greater supply is authorized by the Secretary) or section 1861(t)(4)(A) of the Act (which relates to the definition of covered home IV drugs).

F. Limitations on the Length of Prescriptions

Section 202(d) of Public Law 100–360 added a new section 1862(c)(2) to the Act to prohibit payment under Part B for any expense incurred for a covered outpatient drug if the drug is dispensed in a quantity exceeding a 30-day supply or a longer period of time as the Secretary may authorize. Under this provision of the law, we may authorize payment for more than a 30-day supply, but not for more than a 90-day supply except in exceptional circumstances as determined by the Secretary. This extended supply policy may apply to specific drugs or classes of drugs.

G. Study and Report on Experimental Drugs

Finally, we note that in accordance with section 202(k)(1)(A) of Public Law 100–360, we are required to conduct a study and submit a report to Congress by January 1, 1990, on the possibility of covering certain experimental drugs and biologicals (for example, those used in the treatment of cancer or in immunosuppressive therapy) as covered outpatient drugs under the Medicare program. We received public comments on the issue of Medicare coverage of experimental or investigational drugs under the pre-existing drug benefit when we published a proposed rule on January 30, 1989 (54 FR 4302), pertaining to making Medicare coverage decisions. We are currently considering those comments and we will respond to them in the rule that finalizes our policies on Medicare coverage decisions.

V. Provisions of this Proposed Rule

To implement the provisions of section 202 of Public Law 100–360 described above, we are proposing in this rule to amend 42 CFR part 410, Subpart B as discussed below.

- We would add a new § 410.29 to expand coverage under Medicare Part B to include catastrophic expenses for covered outpatient drugs. We would use the statutory language to define "covered outpatient drugs". The definition would indicate that, except for insulin, "covered outpatient drugs" would be limited to those drugs and biologicals that may be dispensed only upon prescription. Therefore, except for insulin, drugs that can be purchased without a prescription, even if they are prescribed, would not be included in the definition of "covered outpatient drugs".

We would define the term "covered home IV drug" to mean a covered outpatient drug that is furnished by a qualified home IV drug therapy provider to an individual and that is intravenously administered in a place of residence used as that individual's home. The definition would include the requirement that a home IV drug, to be covered and reimbursed, must be furnished directly or under arrangements by a qualified home IV drug therapy provider. The statute at 1861(jj)(3)(i) of the Act requires, in part, that a qualified home IV drug therapy provider be capable of furnishing or arranging for covered home IV drugs. We believe that it is implicit in the statute that Congress intended that covered home IV drugs be furnished only by these providers. This requirement is consistent with the standards that Congress established in section 1861(jj) of the Act to ensure that covered home IV drugs are furnished as part of a safely and effectively administered home IV therapy benefit. We believe we would be undermining the intent of this section of the statute, if we did not require that covered home IV drugs be furnished directly or under arrangements by a home IV drug therapy provider that we have determined, in accordance with section 1861(jj) of the Act, is capable of furnishing or arranging for the services needed to conduct safely and effectively an IV drug therapy program.

There are many hazards associated with furnishing home IV drug therapy. The furnishing of home IV drugs may result in complications that could cause permanent damage or threaten the life of the patient. A patient could be afflicted with a possibly life-threatening condition such as anaphalaxis (severe allergic reaction), IV infiltration (accumulation of the IV drug in tissue surrounding the vein), or site infection, as a result of receiving home IV drug therapy. Also, these drugs may cause one or more other serious side effects such as diarrhea, fever, nephrotoxicity (destructive effect to kidney cells), coagulapathy (blood clotting disorder), and phlebitis (inflammation of the vein). Thus, while receiving home IV drug therapy, the patient must be carefully monitored to discern the presence of signs or symptoms of impending problems.

All home IV drug therapies involve the separate functions of mixing and administering potentially dangerous drugs. The preparation of IV drugs for administration is a specialty that has evolved over the years as the profession of pharmacy has expanded. It is a subspecialty of hospital pharmacy, and requires special training and education.

All IV drugs require special conditions for their preparation, including asceptic work areas, specific lighting requirements, and special equipment such as laminar flow hoods, pumps, tubing, needles, and syringes. Individual drug labels have specific requirements dealing with all aspects of preparation and storage before administration. These requirements include cautions concerning special needles and syringes necessary for reconstitution, inspection for particulate matter after reconstitution, temperature ranges at which the reconstituted drugs must be stored, as well as a whole range of other precautions. Because of the cost factors involved, as well as the specialization necessary on the part of the pharmacist to prepare these drugs, the local chain or community pharmacist could not be expected to have the expertise, equipment, or work area necessary to prepare these drugs in a manner to ensure their sterility and stability, a factor that is necessary to guarantee their safety for use in the home.

Additional complications associated with home IV drug therapy result from factors related to the patients, such as disease progression, combinations of disease processes and their therapies, and the aging process in general. Often, Medicare beneficiaries have several concurrent medical problems, and they are often in need of long-term, interrelated therapies. Frequently, these beneficiaries may lack visual acuity and manual dexterity. Psychoses or neuroses of patients can present additional problems for safe and effective home IV drug therapy. Also, patient safety might be affected by noncompliance with the drug therapy regimen, poor living conditions, or high stress levels of both a patient and the spouse or other caregiver, or a combination of these factors. Therefore, to prevent morbidity and mortality, and to achieve the desired therapeutic effect, it is critical that the provider be skilled in carefully screening and evaluating patients initially, and on a continuing basis.

Some home IV drugs have the potential to be toxic and to cause lethal consequences even when administered in the proper dosages. This potential exists because some drugs have undesired side effects on certain organs or body systems and a particular patient's organs or body systems may already be compromised by aging or specific disease processes. For example, antibiotics have the potential to cause anaphylaxis in patients who may be allergic to the drug, and morphine can cause respiratory depression, which can be life threatening.

In addition, the rate of infusion of some drugs is problematic. For example, if a drug such as aminophyline is administered at a rapid infusion rate, it can cause severe cardiovascular problems, which could lead rapidly to death from arrythmia. Furthermore, the site of infusion must be closely monitored, not only for infections or blood clot formation, but also for extravasation (leaking of the medication from the vein into the tissue).

Because of the risks and dangers associated with home IV drug therapy, it is critical that providers who furnish these drugs possess the expertise to evaluate patient signs and symptoms and to discern the potential for toxic reactions, such as renal or hepatic failure. In addition, the provider must be

able to teach and reinforce teaching about necessary safety precautions to be taken by its employees and patients.

Section 1862(a)(1)(A) of the Act prohibits payment under the Medicare program for an expense incurred for services "which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." In considering whether an IV drug is reasonable and necessary for coverage and payment purposes, we have to determine if the drug is being used safely and effectively. Additionally, the statute at section 1861(t)(4)(A) of the Act requires that we determine which drugs can or cannot be safely and effectively administered in a home setting. To make these determinations in a meaningful way, we had to use as a basis the expectation that the drugs would be furnished by a provider qualified to conduct a safe and effective home IV drug program. We believe that any rational determination that a drug can be safely and effectively administered in the home setting would have to be based on the premise that the drug would be furnished by a provider that meets our conditions of participation and is therefore qualified to furnish the services necessary to ensure that the drug is administered safely and effectively. Section 1861(jj)(3) of the Act describes the requirements that a home IV drug therapy provider must meet to qualify to furnish the services, including pharmacy and nursing services, "as are necessary to conduct safely and effectively an intravenously administered drug regimen through use of a covered home IV drug * * *." We believe it was the intent of Congress in using this language that covered home IV drugs be furnished only by providers who meet these requirements.

In addition, in compiling the list of IV drugs that should be included on the required list of covered home IV drugs, we determined that, to ensure that we would have a safe and effective home IV drug program, it would be necessary to require that each home IV drug be furnished by a qualified home IV drug therapy provider. Moreover, for the drugs included on the list, we determined that they could only be safely and effectively administered in a home setting if they were furnished by a qualified home IV drug therapy provider. We chose this approach because of the potentially serious or life threatening side effects of these drugs, the precautions that must be taken to ensure that IV drug therapy administered in a home setting is safe and effective, and the importance of proper patient selection when serving an older and more frail population.

In deciding upon the proposed policy that a covered home IV drug must be furnished directly or under arrangements by a qualified home IV drug therapy provider, we considered as an alternative also making Medicare payments directly to pharmacies that dispense these drugs. However, we rejected this alternative for the following reasons that relate to ensuring that covered home IV drugs are safely and effectively administered in a home setting.

If the Medicare program paid pharmacies directly for the covered home IV drugs they dispensed, we would lose the controls established by Congress in section 1861(jj) of the Act to ensure that these drugs would be safely and effectively administered in a home setting. These controls include requirements pertaining to the following:

a. Patients being under a plan of care established and periodically reviewed by a physician.

b. Patients receiving the items and services such as nursing, pharmacy, and related services (including medical supplies, IV fluids, proper delivery and equipment) that are necessary to conduct safely and effectively an IV administered drug regimen.

c. Patients having services available 7 days a week on a 24-hour basis and procedures being in place to handle their emergencies.

d. Patients being provided with drug regimen review and coordination of care.

e. Patients having services furnished by properly trained personnel.

If the Medicare program paid pharmacies directly for the covered home IV drugs they dispensed, we would be treating these drugs the same as other "covered outpatient drugs." However, Congress clearly singled-out these home IV drugs and treated them differently because of its concerns about ensuring the safety and effectiveness of home IV drug therapy. This is evidenced by sections 1861(t)(4) (A) and (B), 1834(d)(3), 1835(a)(2)(G), and 1861(jj) of the Act. Congress has included in the Act several provisions that involve certain precautions to ensure the safety and effectiveness of the covered home IV drug therapy program. It was because of the dangers associated with the use of home IV drugs for the treatment of the elderly that Congress established these precautions. We do not want these regulations to allow these precautions to be circumvented. We believe that one of the most important of these precautions is the link that Congress has established between covered home IV drugs and covered home IV therapy services furnished by a qualified provider.

If we paid pharmacies directly for the covered home IV drugs that they dispensed, we believe we would be undermining the purpose for which Congress enacted section 1861(jj) of the Act. In section 1861(jj) of the Act, Congress authorized home IV drug therapy services and established a new class of providers to ensure that covered home IV drugs are administered safely and effectively. The Act also stipulates that covered home IV drug therapy services must be furnished by a qualified home IV drug therapy provider. If we paid pharmacies directly for these drugs, we would possibly be allowing home IV drugs to be furnished to individuals who would receive them without the involvement of a qualified home IV drug therapy provider and without any assurance that they would receive the home IV drug therapy services, as defined in section 1861(jj) of the Act, that are necessary for safe and effective home IV drug therapy. The home IV drug therapy services were intended by Congress as means to an end. The ultimate concern is to ensure the safe and effective use of home IV drugs. Thus, we do not believe it was the intent of Congress to place restrictions on who can be paid by the Medicare program for furnishing covered home IV drug therapy services without at the same time intending that similar restrictions be placed on who can be paid by the Medicare program for furnishing covered home IV drugs.

Of course, a pharmacy can qualify as a provider of home IV drug therapy services by meeting the requirements applicable to such a provider in section 1861(jj)(3) of the Act and implementing regulations. However, if we directly paid pharmacies that dispensed covered home IV drugs, this practice would be contrary to the intent of section 1861(jj)(3) of the Act, which stipulates that certain requirements must be met by qualified home IV drug therapy providers. The purpose of these requirements is to ensure that those entities that furnish the services necessary to conduct home IV drug therapy safely and effectively in a home setting are qualified to do so. This is another step that Congress has taken as a result of its concerns about the safety and effectiveness of home IV drug therapy. However, if covered home IV drugs were available from other sources besides qualified home IV drug therapy providers, we would not be able to ensure that the services necessary for safe and effective home IV drug therapy are furnished by an entity that is qualified to do so.

While we have proposed to limit coverage and payment to "covered home IV drugs" that are furnished directly by or under arrangements with a qualified home IV therapy provider, we specifically invite comments concerning this proposal. (As defined in section 1861(w)(1) of the Act, the term "under arrangements" means that the Medicare payment for a service procured by a Medicare provider of services by contract with an outside entity may be made only to the Medicare provider of services, not to the outside entity. Further, the term "under arrangements" also means that this Medicare payment to the provider discharges the beneficiary's legal obligation to pay the bill for those services, whether the bill is from the provider or the outside entity.)

As illustrated by the statutory provisions relating to home IV therapy services, the definition of a qualified home IV therapy provider, and the requirement that covered home IV drug therapy services must have prior approval by a Peer Review Organization, Congress intended that the use of covered home IV drugs be strictly controlled and regulated. As set forth in section 1861(jj) of the Act, Congress established high standards to ensure the safety and effectiveness of IV drugs used in the home setting. We do not believe we can ensure the safe and effective use of these drugs in the home unless we require that these drugs be furnished by qualified home IV therapy providers. We believe that, were we to propose otherwise, we would be undercutting the high safety and effectiveness standards established by Congress for covered home IV drugs. Moreover, without this requirement, the purpose for which the statute established qualified home IV therapy providers as a special and separate type of Medicare provider would be seriously weakened and easily circumvented. Thus, we have included in the definition of a "covered home IV drug" the restriction that the drug must be furnished directly or under arrangements made by a qualified home IV therapy provider.

In essence, the totality of the home IV benefit as it is constructed by Congress in sections 1154(a)(16), 1834(d), 1816(k), 1835(a)(2)(G), 1861(t)(4), and 1861(jj) of the Act, anticipates close monitoring not only of the home IV therapy services in terms of use and administration of the drug but also of the quality of the preparation of the drug, its delivery to the home of a beneficiary, its proper maintenance, and storage. The home IV therapy legislation establishes a completely new class of providers that will be dealing with frail beneficiaries who, in many cases, will be self-administering home IV drugs or who will have caregivers perform the administration. A primary consideration is that the drugs involved will be dangerous, toxic substances that must be carefully prepared, delivered timely to a beneficiaries home by an entity that can ensure proper handling so that the stability of the drug is not compromised (for example, is properly refrigerated) and maintained in a manner that will ensure viability at the time of its use. We think that these considerations support the view that it was the intent of Congress that home IV drugs be furnished to beneficiaries only by qualified home IV providers.

We also believe that the statute reflects the intent of Congress that only qualified home IV therapy providers submit claims and receive payment for covered home IV drugs. Section 1816(k) of the Act authorizes the Secretary to use intermediaries to pay for home IV drugs and home IV drug therapy services. Thus, claims for covered home IV drugs and home IV drug therapy services would be processed by intermediaries. Traditionally, under the Medicare program only providers submit claims to intermediaries. In authorizing the use of intermediaries to process these claims, therefore, we believe it was the intent of Congress that only providers, rather than suppliers or beneficiaries, be allowed to bill for covered home IV drugs and home IV drug therapy services.

In addition, section 1834(c)(1)(A)(ii) of the Act exempts from the catastrophic drug deductible "covered home IV drugs dispensed in conjunction with home intravenous drug therapy services which are part of a continuous course of such therapy initiated while the individual was an inpatient in a hospital." Since all claims for home IV drug therapy services would be processed by intermediaries, only an intermediary would know if a home IV drug was dispensed in conjunction with home IV drug therapy services begun in a hospital. Thus, administratively we believe it would be impractical for other entities besides intermediaries to process claims for home IV drugs. Traditionally, as stated above, suppliers and beneficiaries do not submit claims to intermediaries.

It is important to note that qualified home IV therapy providers could either furnish covered home IV drugs directly or arrange for them. Accordingly, there is no reason for any outside entity to bill the Medicare program for the drug. Instead, the entity would seek payment from the provider. In fact, to permit splintering of services would be undesirable from both a medical and an administrative point of view.

The definition of "covered home IV drugs" would include antibiotics except for specific antibiotics or specific indications that we determine are not safe and effective for home use. We would include those non-antibiotics that we determine can be safely and effectively administered in the home. Also, as required by section 1861(t)(4)(B) of the Act as added by section 202(a) of Public Law 100–360, we will publish by January 1, 1990 in the **Federal Register** a list of home IV drugs that can generally be administered safely and effectively in a beneficiary's home, and the indications for which those drugs may be used. We are in the process of developing this list based on a review of available medical and scientific information, and consultations with providers of home IV drugs and publishers of authoritative compendia. Home IV drug therapy services could be covered under Medicare only for those listed drugs.

In new § 410.29(c)(1), we would specify that we will update the list (that is, in terms of additions or deletions) at least annually. Updates may occur more frequently as necessary, possibly semi-annually, contingent upon the information we receive about IV drugs that might safely and effectively be used in the home. We specifically request comments about the frequency of these updates. As we understand it, there may be only 10 to 20 new drugs approved for marketing by the FDA during the course of a year that might be administrable through the IV route. However, we would determine whether these newly approved drugs can be safely and effectively administered in the home. In addition, we would specify that home IV drugs would be covered irrespective of whether there was a prior inpatient hospital stay. We are including this clarification to ensure that it is understood that coverage of home IV drugs does not require a prior inpatient hospital stay. (The list of drugs proposed for the home IV benefit was published separately in the **Federal Register**. We will also be publishing separate proposed rules concerning a payment methodology for covered outpatient drugs; coverage requirements for home IV drug therapy services; conditions of participation for home IV drug therapy providers; drug deductible and

coinsurance amounts; the fee schedule for home IV drug therapy services; requirements for participating pharmacies and drug bill processors; and coverage of catastrophic Part B expenses, outpatient drug expenses, and respite care benefits for beneficiaries enrolled in pre-pay health plans, such as health maintenance organizations. We will propose a definition of "home" for purposes of the home IV benefit in the proposed rule on the general coverage requirements for home IV drug therapy services.)

We would specify in new § 410.29(c)(2) that a home IV drug would be covered separately under Medicare. Therefore, beginning on January 1, 1990, those drugs appearing on the list of home IV drugs promulgated by HCFA under the authority of section 1861(t)(4)(B) of the Act would be available as "covered home IV drugs" only through the covered home IV drug benefit under the authority of section 1861(t)(4)(A) of the Act. (We note that this does not mean that outside of the covered home IV drug benefit these drugs would not continue to be covered under the pre-existing drug coverage specified in section 1861(t)(3)(A) of the Act.) Considering all of the separate provisions in sections 202 and 203 of Public Law 100–360 regarding the safety and effectiveness of covered home IV drugs, we believe it was the intent of Congress that these drugs be covered only as part of the specifically identified pre-existing benefits or the covered home IV drug benefit and not as part of another benefit. Accordingly, these drugs would no longer be available as part of the durable medical equipment benefit, under which it is now possible for Medicare payment to be made for IV administered drugs.

- We would redesignate existing § 410.29 as § 410.30 and add the following limitations that pertain to the new drug coverage benefit under Public Law 100–360:

—For the period January 1, 1990 through December 31, 1990, "covered outpatient drugs" would be limited to the drugs that are used in immunosuppressive therapy, and covered home IV drugs for appropriate indications identified in the final list of covered home IV drugs to be published after we evaluate public comments on the proposed list mentioned above.

—The regulations would identify those categories of drugs that are currently covered by Medicare and that would be excluded from the definition of a "covered outpatient drug" under Public Law 100–360. As indicated earlier, section 1861(t)(3) of the Act specifies which currently covered categories of drugs would be excluded from the definition of "covered outpatient drugs." These drugs would continue to be covered but not as part of the new drug benefit.

—Initially, we are proposing to limit payment for covered outpatient drugs to those drugs dispensed in a 34-day supply or less under an original prescription or under a refill. Generally, the statute limits payment for a covered outpatient drug to a 30-day supply or a longer period as the Secretary may authorize up to 90 days, and beyond in exceptional circumstances. Although, as discussed in greater detail below, we are considering exceptions to this policy, we believe that by limiting the supply of prescription drugs to 34 days, we would accomplish certain objectives as follows:

+We would provide a means of controlling excessive prescribing and stockpiling of drugs for the period of the next year before the deductible is met.

+Physicians and pharmacists would be provided frequent and regular opportunities to review patients' drug utilization.

+We would reduce wastage of prescription drugs when a patient discontinues a drug therapy because of successful treatment of the condition for which the medication had been prescribed, because of an unsatisfactory or adverse outcome, or because a drug has reached its expiration date.

We have decided that 34-days is a more appropriate limit than 30 days for the following reasons:

+Many tablets and capsules are packaged in quantities of 100 by pharmaceutical manufacturers and distributors. Also, the dosage for many tablets and capsules is one taken three times a day. Thus, under a 30-day limit, if a physician orders 100 tablets or capsules, the pharmacist could dispense only 90 tablets or capsules at one time and 10 tablets or capsules (10%) would remain. The cost of the remaining quantity would not be recouped until another prescription for the same medication is dispensed. If the limit is set at a 34-day supply, the pharmacist could dispense the full quantity of 100 tablets or capsules.

+Many nursing homes receive pharmaceuticals under a unit dose system. The pharmacy usually bills the nursing home once a month, regardless of the dosage or the quantity of medication. In this circumstance, the closing date for the billing could be the first of the month or any other date of the month, but in those months in which there are 31 days, because the pharmacy bills on the basis of a calendar month, it would bill for a 31-day supply of medication.

+Many patients see their physicians "once a month". This does not always mean every 30 days. Because of weekends and holidays, appointments may not always be scheduled every 28 or 30 days. Setting the allowed upper limit quantity to a 34-day supply might alleviate the need for patients to call for authorization to refill medication just before an appointment when the medication might be discontinued by the prescriber.

For these reasons, we believe that a 34-day limit on the length of prescriptions is a more practical approach than to propose a 30-day drug limit.

Section 1862(c)(2) of the Act stipulates that no payment may be made under Part B for *any expense* incurred for a covered outpatient drug if the drug is dispensed in a quantity exceeding a supply authorized by the Secretary. In accordance with this limitation, we would not pay for any portion of a prescription, not even for a 34-day supply or less, that is dispensed for a supply of more than 34 days. This limitation would apply after the drug deductible is met. It also would apply to the drug claim by which an individual exceeds the deductible. Therefore, payment for these drugs would be the total responsibility of the beneficiary or another health insurer. We would notify Medicare providers of services of this limitation to discourage the prescribing of drugs for more than a 34-day supply.

For drugs prescribed for use on a "take as needed" basis, the pharmacist would be asked to calculate the number of days supply for which a drug is prescribed based on the physician's indicated dosage range if that range is known. If the range is unknown, the calculation would be based on the manufacturer's recommended maximum daily dosage specified in the drug's approved labeling. For drugs, such as creams and ointments, whose approved labeling does not include a manufacturer's recommended maximum daily dosage, the pharmacist would be asked to estimate, based on the patient's condition, the number of days supply for which a drug is prescribed.

The 34-day limitation would pertain to the quantity of drugs dispensed at one time. Therefore, payment could be made for a prescription that authorizes a 34-day supply or less of a drug, even if the prescription authorizes refills. Nevertheless, neither a prescription nor an authorized refill could be paid for if it was dispensed for more than a 34-day supply.

As noted earlier, the statute permits the Secretary to authorize payment for prescriptions up to 90 days and for exceptions beyond a 90-day supply. In proposing the 34-day limitation, we recognize that its application to all prescription drugs could be burdensome to some beneficiaries on maintenance drugs, especially those living in rural areas. Also, a 34-day limit would result in more claims being processed and a greater number of dispensing fees. Therefore, we are considering exceptions to the 34-day limit for certain types of maintenance drugs (for example, insulin, digitalis, antiarthritics, anticoagulants, hormones, antiarhythmics) for which more than a 34-day supply may be appropriate. One exception we are including in this proposed rule is for those covered outpatient drugs that are marketed only in an amount that exceeds a 34-day supply. For these covered outpatient drugs, payment would be allowed for the smallest supply in which the drugs are marketed. We invite comments to identify other specific drugs or categories of drugs we should consider paying for in excess of a 34-day supply. Also, we note that at the point of sale, the contractors that will be processing the drug bills (referred to as "drug bill processors") will ordinarily not know the beneficiary's diagnosis. For this reason, we ask commenters to base recommendations for exceptions to the 34-day limit on names of drugs or therapeutic categories of drugs rather than on types of diagnoses. In the final rule, we will identify any exceptions to this limit that we believe are appropriate based on the comments we receive.

- In § 410.31, we would expand the coverage requirements for drugs used in immunosuppressive therapy to provide for payment of all covered outpatient drugs used in immunosuppressive therapy, beginning January 1, 1990, irrespective of whether the beneficiary received a Medicare covered or noncovered organ transplant and irrespective of a prescribed time limit.
- We would add a new § 410.32 to establish standards based on accepted medical practice for the prescribing of each covered outpatient drug. Section 1834(c)(5) of the Act, as amended by section 202(b)(8) of Pub. L. 100-360, requires the Secretary to establish, for each covered outpatient drug, standards for the prescribing of the drug that are based on accepted medical practice. This section of the law indicates that these standards are for the purpose of carrying out the program required by section 1834(c)(5)(A) of the Act. This program must identify (and educate physicians and pharmacists concerning)—

—Unnecessary or inappropriate prescribing or dispensing practices for covered outpatient drugs,
—Instances or patterns of substandard care with respect to these drugs, and
—Potential adverse reactions with respect to covered outpatient drugs.

In establishing the standards that would be used to implement this program, the statute requires us to incorporate standards from those authoritative compendia that we select. The conference report that accompanied Public Law 100-360 states that the conferees expect that we would use only those compendia that base their standards on a review of published scientific and medical information, that provide for a public comment and review process, and that provide adequate assurances that the panelists who establish standards are free of financial (or other) conflicts of interest (H. R. Rep. No. 100-661, 100th Congress, 2d Session 192 (1988)).

We believe it is essential for a compendium to meet at least these three criteria to ensure that its standards are based on accepted medical practice. Therefore, we propose to incorporate drug standards only from compendia that meet these three criteria. Information included in an authoritative compendium should be based on a review of published scientific and medical information to ensure that it is consistent with accepted current medical practice and verified by the latest research and published literature in the field of pharmacology. We also believe that an authoritative compendium should provide for a comment and review process that allows experts who are directly responsible for developing the compendium to review and comment on its content. This process is needed to ensure that the compendium presents a consensus view based on the published literature and the advice of experts from the scientific and medical community. It is also essential that an authoritative compendium provide adequate assurances that the panelists who establish standards are free of financial (or other) conflicts of interest. It is crucial that a compendium be as unbiased as possible. Therefore, an authoritative compendium must ensure that those who establish its standards are free of conflicts of interest.

Additionally, the conference report states that the conferees expect that among the compendia we would consider for use would be the U.S. Pharmacopoeia Dispensing Information, volume 1 (Drug Information for the Health Care Professional), the American Medical Association's Drug Evaluations, and the American Hospital Formulary Service Drug Information. We have considered these three compendia and believe that all three meet the selection criteria described in the committee report and discussed above. Therefore, for purposes of certain provisions of the drug utilization review program; that is, the identification and education of physicians and pharmacists about inappropriate prescribing and dispensing practices and substandard care with respect to drugs and potential adverse reactions, we propose to adopt as our standards the standards established in these three compendia. These standards would not be used to define coverage or payment of covered outpatient drugs under the Act.

These standards together with the standards derived from accepted medical practice, medical literature, advice obtained from medical consultants and experts in the field (some of whom we expect would be under contract), would be used to develop criteria for purposes of drug utilization review. In conducting a drug utilization review program, we also would apply the requirements in the statute and regulations that govern the coverage of and payment for covered outpatient drugs. Parts of the drug utilization review program would serve as the basis for the program required by section 1834(c)(5)(A) of the Act to identify and educate physicians and pharmacists concerning inappropriate prescribing and dispensing practices. We intend to publish a separate proposed rule concerning the drug utilization review program when we have more information. That proposed rule will describe how, as part of retrospective drug utilization review, we would use data collected through the electronic point-of-sale claims processing system required by section 1842(o)(4) of the Act, as amended by Public Law 100-360. The data on covered outpatient drugs would be used to identify and educate physicians and

pharmacists concerning in apropriate prescribing and dispensing practices.

Section 1834(c)(5)(C)(ii) of the Act authorizes the Secretary to exclude from coverage or to deny payment for a specific use of a covered outpatient drug for a specific indication if the Secretary determines the use is not safe or is not effective. We anticipate that the use of this authority would be necessary only in a limited number of circumstances. The criteria mentioned above together with the statute and regulations would be used to identify those exceptional circumstances that warrant the use of this authority. Since diagnostic information will not be included on the prescription, ordinarily it would not be known by the drug processor at the time a claim is received either electronically or by mail. Therefore, in order to deny payment or exclude coverage for a specific use of a covered outpatient drug for a specific indication that we have determined is not safe or is not effective, as authorized by section 1834(c)(5)(C)(ii) of the Act, we would establish a pre-authorization review process. For those drug uses and indications for which we have determined that a pre-authorization review process is needed, we would require that information from the prescribing physician regarding the beneficiary's diagnosis and the purpose for which the drug has been prescribed must accompany the claim, or if it is a participating pharmacy that the pharmacist must have the information on file before payment could be approved. For example, beneficiaries using a nonparticipating pharmacy, would be required to submit this information directly to the drug bill processor as part of submitting a paper claim. For beneficiaries using a participating pharmacy, it would be sufficient for the pharmacist to have the required information on file. An override of an alert transmitted by the drug bill processor could be the means used by the participating pharmacy to indicate that the information is on file. The beneficiary would be obligated either to obtain the additional documentation from the physician, or if he or she is unwilling or unable to do so, to submit a paper claim for the drug. Of course, if the pharmacist in a participating pharmacy chooses to do so, he or she may call the physician to ascertain the diagnosis for which the physician prescribed the drug and then document the information in the pharmacy files.

Even though sections 1834(c)(5)(C)(ii) and 1861(t)(2) of the Act both refer to the safety and effectiveness of drugs, they pertain to two completely separate and distinct administrative processes. Thus, the words "safe" and "effective" as used in section 1834(c)(5)(C)(ii) have a different application and relate to a different purpose than the words "safety" and "effectiveness" that appear in section 1861(t)(2). Therefore, even though a drug may have been approved for "safety" and "effectiveness" by the FDA, the Secretary may determine that a specific use of the drug for a specific indication is not safe or is not effective.

Section 1834(c)(5)(C)(ii) pertains to determinations made by the Secretary to exclude coverage of or deny payment for specific uses of covered outpatient drugs for specific indications under Medicare. It gives the Secretary authority to deny payment or exclude coverage under the Medicare program if the Secretary determines that a specific use of a drug for a specific indication, which might not be limited to the labeled usages, is not safe or is not effective.

Section 1861(t)(2) of the Act refers to the process (described in section III of this preamble), whereby the FDA determines before a new drug can be marketed that the drug is safe and effective for certain specific indications identified on the drug's approved label. According to this process, before the FDA will approve a new drug for marketing, it has to be shown to be safe and effective for its proposed uses. The purpose of this process is to determine whether a drug is safe and effective for marketing for its labeled uses.

Thus, section 1834(c)(5)(C)(ii) authorizes exclusion of Medicare coverage or denial of Medicare payment for specific uses of covered outpatient drugs for specific indications, while the FDA process referred to in section 1861(t)(2) relates to the uses for which an approved drug may be marketed.

We are considering what the specific elements of a drug utilization review program should be. One of the elements under consideration is therapeutic drug utilization review. We propose to include this element as part of our drug utilization review program. Its purpose would be to identify prescribed drugs that may interact harmfully with either an existing disease or medical condition of a beneficiary. We specifically invite comments concerning the feasibility of including therapeutic drug utilization review as part of either prepayment or postpayment drug utilization review.

We plan to begin implementing the drug utilization review program in January 1991. At this time, we believe that a drug utilization review program should consist minimally of the following elements:

—Prepayment Review and Denial.

Claims for Medicare drug payments ordinarily would be submitted to drug bill processors directly by participating pharmacies through an electronic point-of-sale claims processing system or by beneficiaries who receive drugs from a nonparticipating pharmacy. (Claims for home IV drugs would be submitted to intermediaries. The drug utilization review program described here would only apply to claims submitted to drug bill processors, thus, it would not pertain to covered home IV drugs.) Before payment is approved, the drug claim would be reviewed by the drug bill processor regarding the following items:

+ Does the drug meet the definition of a "covered outpatient drug" as defined in section 1861(t) (2) through (4) of the Act? For example, a drug that may be dispensed without a prescription would not be covered.
+ Was the drug dispensed for more than a 34-day supply? If the drug was dispensed for more than a 34-day supply, it would not be paid for by Medicare unless Medicare regulations authorize an exception for that drug. Payment would not be approved for any portion of a supply of drugs if the supply exceeds the limitations set forth in regulations on the length of prescriptions.
+ Is the drug prescribed for a use that is not safe or is not effective? In accordance with section 1834(c)(5)(C)(ii) of the Act, the Secretary may determine that the specific use of a drug for a specific indication is not safe or effective for the diagnosis or treatment of an illness or injury as required by section 1862(a)(1)(A) of the Act. Drugs prescribed for cosmetic purposes (for example, those used to treat conditions such as wrinkles or balding) would not be covered. However, if these conditions are caused by a medical problem, covered outpatient drugs prescribed for the treatment of the medical problem would be covered. Similarly, we are considering whether other drugs (such as oral contraceptives) should be subject to this same exclusion.

- Under section 1834(c)(5)(C)(ii) of the Act, payment may be denied for a drug if the Secretary determines that it is not safe or effective for the particular beneficiary for whom it is prescribed. For purposes of safety and efficacy, payment for duplicate prescriptions for a drug would be denied, unless in the judgement of the pharmacist, after conferring with the beneficiary or

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prescribing physician, or in the judgement of the drug bill processor, there is a justifiable reason for filling the prescription. By the term "duplicate prescriptions" we mean prescriptions for the same drug and for the same patient that are prescribed for the same time period. A duplicate prescription could result from two different physicians unknowingly prescribing the same drug for the same patient. An example of a reason why payment for a duplicate prescription may be justifiable would be that the drugs obtained from a previous prescription might have been lost or stolen. Also, some allowance would be made to permit an individual to refill a prescription before all of the previously dispensed quantity of drugs has been consumed (that is, when there are 10 or fewer days of a supply remaining on the previous dispensing of that prescription). If prescriptions include refills, for purposes of convenience or to ensure that their medication is continued as directed, individuals do not ordinarily completely exhaust a current supply of drugs before having a prescription refilled. Therefore, we do not believe it would be warranted to alert pharmacies about a potential duplication of a prescription if the drug bill processor's records indicate that if the beneficiary had taken the drug as directed there would be a drug supply of 10 or fewer days remaining from the previous dispensing of that prescription. The drug bill processor would know how many days' supply would be remaining, since at the time the drug was dispensed the pharmacist would have informed the drug bill processor of the number of days for which the drug was prescribed. We decided on 10 or fewer days, because we believe this would give the beneficiary sufficient time to obtain a refill before his or her supply of drugs was exhausted. In addition, we believe it is a reasonable benchmark for identifying those instances when it is not necessary to alert a pharmacy about a possible situation in which an individual may be inappropriately having a prescription duplicated.

+ Does the beneficiary's medication profile indicate that a prescribed drug may interact harmfully with a drug in the profile? We anticipate that the pharmacy would be alerted regarding the possible need for counseling or some other type of intervention before filling a particular prescription if the drug bill processor's records indicate there is a risk of a significant drug interaction between a newly prescribed drug and a drug that has previously been dispensed to the beneficiary.
+ Was the drug prescribed in an amount that exceeds the recommended maximum daily dose? Pharmacies would be alerted by the drug bill processors concerning claims for drugs that are prescribed in amounts that are likely to cause severe adverse effects. Pharmacies would be expected to take what they consider to be appropriate action.

—Post-payment Review.

For purposes of implementing a post-payment drug review program, we plan to use expert consultants to help develop drug utilization review criteria. As mentioned above, these criteria would, in part, be based on the compendia whose standards we have adopted. These criteria would be used to identify and educate physicians and pharmacists concerning potential or possible inappropriate prescribing or dispensing practices or substandard care. In conducting post-payment drug utilization review, Medicare contractors would analyze and study the following data on beneficiaries:

+ A beneficiary's age, sex, and reason for entitlement (that is, by reason of disability or age).
+ The total number of prescriptions used by a beneficiary, particularly drug dosage form, and strength, including therapeutic class, doses per day, number of treatment drugs and remedial drugs and increases in the use of these drugs.
+ The number of different prescribing physicians and different pharmacies.
+ Diagnostic information reported on physician claims for services, number of physician visits, and increases in visits.
+ Other relevant information requested by our consultants.

—Education.

We would establish a program to educate physicians and pharmacists about inappropriate prescribing and dispensing practices. This program would educate physicians and pharmacists about the criteria that we use for drug utilization review and the findings that result from drug utilization review. The program would include the following educational aspects:

+ If post-payment utilization review indicates that, in accordance with our criteria, drugs may have been inappropriately prescribed or dispensed to a particular beneficiary, the individual's physician or pharmacist would be informed of the drug utilization review findings. For example, a physician may be informed that one of his or her patients with diabetes is taking a drug that raises blood sugar. The physician would be advised of this information for his or her evaluation and action, if appropriate.
+ We would utilize educational materials and continuing education programs to inform and advise physicians and pharmacists about unnecessary and inappropriate prescribing and dispensing of drugs.

We specifically request public comment regarding the establishment of standards for a covered drug that is not included in any of the three compendia we propose to adopt. Also, since we were not able to review all compendia before publishing this rule, we invite comments regarding other compendia whose standards may be appropriate for our use.

If we would decide to change our selection of any of the compendia after this rule is issued in final form, we would publish a proposed rule to announce the change(s). If we would wish to modify any of the standards in a selected compendia, we would publish a notice in the **Federal Register** describing the modification(s).

In accordance with section 1834(c)(5)(C) of the Act, we would base all decisions to exclude coverage or deny payment for any specific use of a covered outpatient drug for a specific indication on a finding under section 1862(a)(1) of the Act that the use of the drug for the particular indication was not safe or was not effective. Section 1862(a)(1)(A) of the Act precludes Medicare from paying for any expenses incurred for items or services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. However, as explained earlier, Congress specified in section 1834(c)(5)(C) of the Act (as amended by section 202(b)(4) of Pub. L. 100–360) that under section 1862(a)(1) of the Act, payment or coverage of covered outpatient drugs can be denied only if the Secretary has determined they are not safe or effective for a particular indication. Hence, under section 1862(a)(1) of the Act, payment would be denied for a covered outpatient drug only when we determine, or in accordance with our guidelines, an authorized Medicare agent determines, that a specific use of a drug is not safe or effective for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. Our guidelines would

explain, for example, that if a prescription is issued in the presence of a clear contraindication, the use of a drug would not be considered safe or effective and would not be covered. Also, a prescription for a drug that is not medically necessary or appropriate for a particular beneficiary would not be covered because of safety and effectiveness considerations. Therefore, carriers would be authorized to deny payment for a covered drug in specific situations and for particular beneficiaries, if scientific and medical information indicates that the use of the drug in those circumstances is not safe or effective for the treatment of a particular patient.

As stated above, in accordance with the requirements of section 1862(a)(1)(A) of the Act, services are not covered by Medicare unless they are reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. We do not consider cosmetic changes that occur as part of the natural aging process to constitute illness or injury for purposes of Medicare coverage. Therefore, drugs prescribed for the treatment of cosmetic conditions that result from the natural process of aging (for example, wrinkles and balding) would not meet the requirements of section 1862(a)(1)(A) of the Act and would be excluded from coverage.

We would allow Medicare payment for uses of covered drugs even if those uses are not included in the official FDA approved label unless the use is contraindicated by the drug's label. (We note, however, that we would cover home IV drugs only for the indications set forth in the published list of home IV drugs discussed earlier in this preamble.) Also, if we determine on the basis of scientific and medical information that a use of a covered drug is not safe or effective, we would deny payment.

VI. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The central purpose of this proposed rule would be to bring our existing regulations into conformity with the definition of a "covered outpatient drug" contained in section 1861(t) of the Act. With respect to the provisions of section 1834(c)(5)(B) of the Act as added by section 202(b)(4) of Public Law 100–360, which require the Secretary to establish standards for the use of covered drugs, as described in section V of this preamble, we propose to adopt as our standards, the standards in the U.S. Pharmacopoeia Dispensing Information, volume 1 (Drug Information for the Health Care Professional), the American Medical Association's Drug Evaluations, and the American Hospital Formulary Service Drug Information. Since these compendia are to be used only as part of a program established under section 1834(c)(5)(A) to identify and educate physicians and pharmacists about instances or patterns of inappropriate prescribing or dispensing of covered outpatient drugs, substandard care or potential adverse drug reactions, their adoption as part of a monitoring and educational program would have only an indirect effect on physicians and pharmacists. Furthermore, in proposing to adopt these compendia, we would be utilizing standards that are widely and commonly accepted by physicians, pharmacists, and other health care professionals. Consequently, we believe that our proposed use of these compendia as part of the basis on which we would develop prescribing standards would not alter, to any significant degree, current prescribing patterns or practices.

Section 1862(c)(2) of the Act (which was added by section 202(d) of Pub. L. 100–360) requires the Secretary to deny payment for a covered outpatient drug, including any portion of the prescription, if a drug is dispensed in a quantity exceeding a specified number of days. The Act permits the Secretary to set limits from 30 days to 90 days (and for periods longer than 90 days under exceptional circumstances).

In section V of the preamble, we have explained our reasons for proposing a limit on the amount of a covered outpatient drug for which we would make payment to a 34-day supply (§ 410.30). Although we are considering exceptions to the proposed 34-day dispensing limit for certain types of maintenance drugs (we have specifically requested comments in section V of this proposed rule on which drugs to grant an exception), nevertheless, many drugs may be subject to the proposed limit and as a consequence, there may be some adverse effects resulting from this proposal.

For example, Medicare beneficiaries living in rural areas may find this proposed policy particularly onerous and costly. In addition, the proposed 34-day limitation on dosage supply could result in higher program costs. When we pay for a covered outpatient drug on the basis of the drug's average wholesale price (in accordance with section 1834(c)(3) of the Act that was added by section 202(b)(3) of Pub. L. 100–360), we are required to pay the dispensing pharmacy an administrative allowance of $4.50 to a participating pharmacy and $2.50 to another pharmacy. The proposed 34-day supply dispensing limit may result in more prescriptions being refilled than might occur under a policy that would permit the statutorily mandated maximum 90-day supply of a drug to be dispensed at one time. Consequently, the administrative allowance might be paid more frequently under the proposed policy. Also, we may incur additional administrative costs as a result of the higher volume of bills that would be processed. However, these additional costs for pharmacy administrative allowances and bill processing may be offset by savings generated from reducing the volume that might have been dispensed but, subsequently was never used. The proposed 34-day limit on the supply of drugs that may be dispensed at one time may reduce this kind of waste and produce savings for both the Medicare program and beneficiaries (the Medicare program would achieve savings by avoiding payment for unused drugs, and Medicare beneficiaries would save by not incurring the out-of-pocket expenses for the purchase of the unused drugs).

In conclusion, balancing possible higher payments for pharmacy administrative allowances and bill processing against savings resulting from reducing the unnecessary purchase of drugs, we believe that the total economic impact of the proposed 34-day limitation on the dispensing of covered outpatient drugs should be less than $100 million per year compared to a policy that would cover the maximum number of days permitted under the statute.

Thus, for the reasons we have given, we do not believe this rule would meet any of the criteria of a major rule under E.O. 12291 and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all pharmacists, most pharmacies, and some pharmaceutical manufacturers qualify as small entities.

As stated in the discussion on the applicability of E.O. 12291 to this proposed rule, we believe that the central provision of this rule, which specifies which drugs would be considered covered outpatient drugs under the Medicare program, is prescribed by the Act as amended by section 202 of Public Law 100-360. Thus, we view any benefits or adverse consequences that may affect small entities as a result of the applicable statute rather than of this proposed rule. Also, as explained in our discussion of the effects of this proposed rule under the E.O., we believe that adoption of the U.S. Pharmacopoeia Dispensing Information, volume 1 (Drug Information for the Health Care Professional), the American Medical Association's Drug Evaluations, or the American Hospital Formulary Service Drug Information as standards for drug utilization review and education purposes would have a minimal effect on the behavior of physicians and other health professionals licensed to prescribe medication.

Although our proposal in § 410.30 to limit the amount of a covered outpatient drug that may be dispensed at one time to a 34-day supply for either a prescription or a refill may provide substantial revenue increases to some pharmacies in the form of more frequent dispensing fees, we do not expect the provisions in § 410.30 to have a substantial effect on a significant number of small entities; given the projected dollar amount of national retail sales of covered outpatient drugs; the comparatively small increase in Medicare payments caused by requiring refills of a covered outpatient prescription drug every 34 days compared with the cost of paying for drugs which would have been dispensed in larger amounts; and the actual dollar amount of the dispensing fee established under the Act.

The proposed regulation at § 410.29(b) restricting coverage of or payment for home IV drugs to only those drugs dispensed either under arrangement or directly to the beneficiary by a qualified home IV provider may be perceived by some pharmacies as unnecessarily restricting entry of pharmacies into the Medicare home IV market. These pharmacies may argue that our interpretation of the law is too narrow, thus preventing many qualified pharmacies from competing for the sale of home IV drugs to Medicare beneficiaries.

As discussed in section V of this preamble, we believe that it is only prudent, on our part, to control the dispensing of home IV drugs to beneficiaries because of the high risk involved both in handling some of the drugs we would approve for home use and in the administration of all home IV drugs. Thus, to ensure that home IV drugs are prepared and administered safely and effectively, we believe it reasonable to restrict the source of IV drugs used in the home to those providers that meet the standards for home IV providers specified in the Act. Only by having a single provider organization responsible and accountable for all home IV services furnished at any one time to a beneficiary can we ensure that beneficiaries would receive safe end effective care.

With the assurance of adequate care, both the Medicare program and beneficiaries may realize certain economic benefits that might be lost if pharmacies and beneficiaries had access to the home IV drug market in the same manner as they would for the sale and purchase of other covered outpatient drugs. Without the proposed limitation on access to home IV drugs, patients might take it upon themselves to purchase home IV drugs without fully understanding the technical requirements of storing and handling these compounds. This could result in injuries to patients and higher costs to the program in the form of emergency care or hospitalization even if the drug were safely and effectively administered. Placing responsibility on a single entity for all home IV services, including pharmacy services should, we believe, greatly reduce the risk of an IV drug-related mishap and thus avoid the costs associated with treating these accidents.

As a final point, we note that the limitations we propose to impose on pharmacy access to the home IV drug market are no different, in practice, than the limitations hospitals and other types of providers place on pharmacy services. For example, in hospitals and nursing facilities, pharmacy access to beneficiaries is limited to the pharmacy services these providers either arrange for or furnish directly to patients. We believe that it is reasonable to maintain the same kind of relationship between the pharmacy and the home IV provider as exists between these other types of providers and their pharmacy services.

Therefore, for the reasons given in this section, we have determined, and the Secretary certifies, that this proposed rule would not have a significant effect on a substantial number of small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

C. Voluntary Statement of Effects

As we have stated, we believe that we are not obligated to provide an analysis of the effects of this proposed rule. Nevertheless, we are voluntarily providing a summary of the effects (particularly on Medicare beneficiaries) that we believe may result from implementing sections 1861 (s)(2)(J) and (t) of the Act as amended by section 202 of Public Law 100-360. We are providing this statement because coverage of outpatient prescription drugs represents a significant expansion of Medicare benefits.

Readers may find the following discussion to be very similar to impact analyses appearing in other regulations or notices implementing provisions of the Medicare catastrophic drug benefit. We have purposefully provided complete analyses in each document (even though they may be repetitious) so as to provide readers with complete discussions of the possible effects of the provisions being implemented without having to refer to other **Federal Register** documents.

1. Benefits Beginning in 1990

Under section 1861(t)(3)(B) of the Act, as added by section 202(a)(2)(C) of Public Law 100-360, drugs used in immunosuppressive therapy and covered home IV drugs would be covered as a part of the Medicare

catastrophic benefit beginning January 1, 1990.

a. Coverage of drugs used in immunosuppressive therapy. As added, section 1861(t)(3)(B)(i) of the Act extends coverage for prescription drugs used in immunosuppressive therapy furnished beyond the first year following an organ transplant to an individual regardless of whether the beneficiary receives a transplant that is covered under the Medicare program. Under section 202(b)(4) of Public Law 100-360, payment for prescription drugs used in connection with immunosuppressive therapy would be included as part of the new catastrophic benefit (see section 1834(c)(2) of the Act). However, under section 1834(c)(1)(A)(iii) of the Act, a beneficiary requiring immunosuppressive drug therapy during the first year following a Medicare covered organ transplant would not have to meet the covered outpatient drug deductible amount required under section 1834(c)(1)(C) of the Act (as added by section 202(b)(4) of Pub. L. 100-360). Also, under section 1834(c)(2)(C)(i) of the Act (as added by section 202(b)(4) of Pub. L. 100-360), the beneficiary coinsurance percentage for immunosuppressive drugs required in connection with a transplant covered under the Medicare program is limited to 20 percent during the first year following the organ transplant.

Under section 1861(t)(3)(B)(i) of the Act (as added by section 202(a)(2)(C) of Pub. L. 100-360), coverage would be provided under the catastrophic drug benefit beginning January 1, 1990 for drugs used in immunosuppressive therapy following a transplant that is not covered by the Medicare program (for example, a heart transplant performed in a hospital not approved by Medicare as a heart transplant facility). In these cases, however, the individual would be required to meet the deductible payment amount required by section 1834(c)(1)(C)(i) of the Act and the coinsurance percentages required under section 1834(c)(2)(C)(ii) of the Act (which were added by section 202(b)(4) of Pub. L. 100-360).

- In 1990, we estimate that about 9,500 beneficiaries will undergo an organ transplant that will be covered under the Medicare program. There may be an additional 7,600 beneficiaries who had undergone an organ transplant covered under the Medicare program sometime in 1989. Both groups would be covered under the catastrophic drug benefit for the drugs used in their immunosuppressive therapy beginning January 1, 1990, and would be exempt from the catastrophic drug deductible and subject only to a 20 percent catastrophic drug coinsurance rate for up to 1 year following their discharge from the hospital.

Also, beginning January 1, 1990, we expect that approximately 19,700 beneficiaries who had undergone a Medicare covered transplant before 1989 or had undergone or will undergo an organ transplant not covered under the Medicare program will be covered under the catastrophic drug benefit provisions. These beneficiaries, however, would be subject to the catastrophic drug deductible payment amount and to the 50 percent coinsurance rate that would be in effect for 1990.

b. Coverage of home IV drugs. Also, beginning January 1, 1990, home IV drugs would be covered under section 1861(t)(3)(B)(ii) of the Act (as added by section 202(a)(2)(C) of Pub. L. 100-360). For covered home IV drugs furnished as part of a continuous course of therapy initiated while a beneficiary is a hospital inpatient, the deductible amount specified in section 1834(c)(1)(C) of the Act (as added by section 202(b)(4) of Pub. L. 100-360) does not apply in accordance with section 1834(c)(1)(A)(ii) of the Act (as added by section 202(b)(4) of Pub. L. 100-360). The beneficiary coinsurance percentage for all covered home IV drugs would be 20 percent under section 1834(c)(2)(C)(i) of the Act (which was added by section 202(b)(4) of Pub. L. 100-360). We estimate that as many as 65,000 Medicare beneficiaries would utilize home IV drugs in 1990. Of these, we estimate that 56,550 beneficiaries would begin their IV drug therapy while still in the hospital, thereby being exempted from the catastrophic drug benefit deductible and subject only to a 20 percent coinsurance payment rate that applies to all covered home IV drugs.

2. Prescription Drugs Covered Under This Proposed Rule Beginning in 1991

As of June 1988, there were 378 pharmaceutical firms licensed to manufacture prescription drug products in the United States. There are now about 9,700 different drugs meeting the statutory definition of a covered outpatient drug marketed in the United States. Of the total number of approved drug products, 1,975 products are each manufactured by a single firm, and almost 7,795 drugs are manufactured by more than one firm. Under this proposed rule, all the approved prescription drugs described above would be paid for beginning in 1991, in accordance with payment rules that we plan to publish in a separate document.

3. Benefits for Medicare Beneficiaries, 1991 Through 1993.

Our actuaries project that, without the catastrophic drug benefits provided under sections 1832 and 1861 (s) and (t) of the Act as amended by section 202 of Public Law 100-360, in 1991, total beneficiary expenditures for covered outpatient drugs would have totaled $12.4 billion. By 1993, this figure would have grown to $14.2 billion. By distributing total projected spending for covered outpatient drugs in 1991 over all Medicare beneficiaries, we expect the average incurred expense per beneficiary would have equalled about $405 for an average 18.7 prescriptions. Similarly, in 1993, we projected the average expenditure per beneficiary would have been an average of $450 per beneficiary for an average of 19.4 prescriptions.

While we made these projections in terms of all beneficiaries, we estimate that only about 85 percent of aged beneficiaries would actually purchase covered outpatient drugs in any given year. Thus, the amount for each beneficiary who would purchase prescription drugs in 1991 (the average expense for covered outpatient drugs per Medicare user) is expected to be about $475. By 1993, the average expense per Medicare user would increase to about $530. Although the level of the covered outpatient drug deductible in 1991 is set by statute at $600 (a level that would permit an estimated 24 percent of all beneficiaries to receive covered outpatient drug benefits), the percentage of beneficiaries meeting this deductible would equal nearly 28 percent of those beneficiaries who actually would purchase covered outpatient drugs. In 1993, the level of the covered outpatient drug deductible would be set at an amount that would permit 16.8 percent of all Medicare beneficiaries to qualify for the prescription drug benefit. Yet in terms of those who are expected to purchase covered outpatient drugs, the percent of users meeting the deductible amount would be about 20 percent.

Beginning in 1991, those who meet the deductible would receive an average benefit of about $345 for the year. As envisioned by the statute, and assuming adequate financing, in 1993, the average benefit payment made on behalf of a beneficiary who had met the deductible amount would increase to about $700. The projected growth in benefit payments per beneficiary would be largely the result of the increased portion of prescription drug costs the Medicare program would be required to

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pay. In accordance with the statute, the

for prescription drugs is expected to

proceed with a final rule, we will

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§ 410.28 [Amended]

(1) Is an antibiotic drug and HCFA

incident to, any of the following services

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pay. In accordance with the statute, the proportion of drug costs covered by the program after the deductible amount is reached would increase from 50 percent in 1991 to 80 percent in 1993.

While the portion of drug costs covered by Medicare would increase from 1990 through 1993, the proportion of beneficiaries expected to meet the deductible amount would drop during this period. By law, the deductible amount, in 1991, would be set at $600, enabling about 24 percent of all beneficiaries to qualify for drug payment benefits (or about 28 percent of projected actual Medicare beneficiaries requiring covered outpatient drugs). In 1992, the deductible amount would increase to $652, which would enable 23 percent of Part B enrollees (or almost 27 percent of those beneficiaries projected to actually use covered outpatient drugs) to qualify for the drug benefit. In 1993, the law requires the deductible amount to be set at a level that would permit 16.8 percent of all beneficiaries to receive covered outpatient drug benefits. This would be the equivalent of about 20 percent of those beneficiaries who would purchase covered outpatient drugs during that period.

4. Benefits to Pharmaceutical Manufacturers and Others Involved in the Distribution and Sale of Covered Outpatient Drugs

In developing our estimates of benefit payments, we assumed that once a beneficiary reached the deductible amount, there would be an induced demand for prescription drugs that would increase the number of prescriptions written, and possibly, the cost of the prescriptions as well. That is, prescribing health professionals may feel freer to prescribe both a larger quantity and more expensive drugs for a patient who has met the deductible amount than for one who has not met the deductible amount. Similarly, a patient who has met the deductible payment amount may feel less constrained to demand more medications or to have more prescriptions filled than a patient who has not met the deductible amount.

In attempting to predict the magnitude of the induced demand for covered outpatient drugs, we assumed that the effect would be directly related to the amount of program benefit payments. This amount, in turn, is a function of the deductible payment amount and the percentage of the beneficiary copayment. In 1991, we project that induced demand would account for about 23 percent of program benefit payments for covered outpatient drugs. In 1992, the percent of induced benefits for prescription drugs is expected to grow to 26.5 percent, and by 1993, the percentage is expected to reach 32.4 percent. Since these induced benefits would apply to purchases of additional covered outpatient drugs that would not otherwise have been purchased, in addition to possibly benefiting Medicare beneficiaries through enabling them to have greater access to medications, the induced demand for covered outpatient drugs could also financially benefit every entity involved in the manufacturing and marketing of prescription drugs.

It should be noted that the expected induced demand does not necessarily represent an abuse of the Medicare drug benefit. We believe that in many cases, the increased demand may represent a decision on the part of a health professional to treat a condition more aggressively than he or she might do if the catastrophic drug benefit were not available. Similarly, a beneficiary might forego having a prescription filled or avoid taking a drug at the prescribed frequency in order to conserve the available medication were it not for the coverage of outpatient drugs now afforded by the Act. Thus, the induced demand may represent, in part, a medically appropriate demand for prescription drugs that currently is not being met.

D. Conclusion

We have summarized the most significant effects of the covered outpatient drug provisions specified in section 1861 of the Act, as amended by section 202 of Pub. L. 100-360. We do not believe that we are required to furnish this information under either E.O. 12291 or the RFA. Nevertheless, in the interest of providing the public with information regarding a major revision to the Medicare program, we have voluntarily offered an analysis of the major effects of extending Medicare coverage to covered outpatient drugs as defined by the Act.

VII. Information Collection Requirements

These proposed regulations contain no information collection requirements and do not come under the provisions of the Paperwork Reduction Act of 1980.

VIII. Responses to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

IX. List of Subjects in 42 CFR Part 410

Drugs, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

For the reasons set forth in the preamble, 42 CFR chapter IV, part 410, subpart B, would be amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

Subpart B—Medical and Other Health Services

A. The table of contents for part 410, subpart B, is amended by revising the title of §§ 410.29 and 410.32 and adding new §§ 410.30, 410.31, and 410.33 to read as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

* * * * *

Subpart B—Medical and Other Health Services

Sec.

* * * * *

410.29 Covered outpatient drugs.
410.30 Limitations on Part B coverage of drugs.
410.31 Prescription drugs used in immunosuppressive therapy.
410.32 Standards for assuring appropriate prescribing and dispensing practices of drugs.
410.33 Diagnostic X-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions.

* * * * *

Authority: Secs. 1102, 1832, 1833, 1834, 1835, 1861 (r), (s), (t), and (cc), 1862, 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395m, 1395n, 1395x (r), (s), (t), and (cc), 1395y, 1395hh, and 1395rr).

B. In § 410.10, the introductory paragraph is republished and paragraph (r) is added to read as follows:

§ 410.10 Medical and other health services: Included services.

Subject to the conditions and limitations specified in § 410.12, "medical and other health services" includes the following services:

* * * * *

(r) Covered outpatient drugs, as described in § 410.29(a).

§§ 410.26 and 410.27 [Amended]

C. In §§ 410.26(b) and 410.27(b), the reference to "§ 410.29" is removed and "§ 410.30" is inserted in its place.

§ 410.28 [Amended]

D. In § 410.28(b), the reference to "§ 410.29 (b) and (c)" is removed and "§ 410.30" is inserted in its place.

E. Current §§ 410.29 and 410.32 are redesignated as §§ 410.30 and 410.33, respectively; new §§ 410.29, 410.31, and 410.32 are added, and the newly redesignated § 410.30 is revised to read as follows:

§ 410.29 Covered outpatient drugs.

(a) "*Covered outpatient drug*" includes the following:

(1) A drug that may be dispensed only upon prescription and that—

(i) FDA has approved for safety and effectiveness as a prescription drug under sections 505 or 507 of the Federal Food, Drug, and Cosmetic Act (FFDCA), or has approved under section 505(j) of the FFDCA;

(ii) Was commercially used or sold in the United States before October 10, 1962, or which is identical, similar or related to such a drug as defined in 21 CFR 310.6(b)(1), and which has not been the subject of a final determination by the FDA that it is a new drug or the subject of an action brought by the FDA under sections 301, 302(a), or 304(a) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 331, 332(a), or 334(a)) to enforce sections 502(f) or 505(a) of that Act (21 U.S.C. 352(f) or 355(a)); or

(iii) Was approved by the FDA before October 10, 1962 solely on the basis of safety, and for which the FDA has—

(A) Determined there is compelling justification for its medical need, or which is identical, similar, or related to such a drug as defined in 21 CFR 310.6(b)(1); and

(B) Not issued a notice of opportunity for a hearing on a proposal to withdraw approval for marketing because the FDA has determined that the drug is less than effective for all conditions of use represented, recommended, or suggested on its labeling.

(2) A biological product that may be dispensed only upon prescription, is licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), and is produced at an establishment licensed under that Act to produce that product.

(3) Insulin certified under section 506 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 356), whether or not it is dispensed under a prescription.

(b) "*Covered home IV drug*" means a covered outpatient drug described in paragraph (a) of this section that is furnished directly or under arrangement by a qualified home IV drug therapy provider to an individual and is intravenously (IV) administered to that individual in a place of residence that is used as the individual's home and that—

(1) Is an antibiotic drug and HCFA has not determined, for the specific drug or for the indication for which it is applied, that the drug cannot generally be administered safely and effectively in a home setting, or

(2) Is not an antibiotic drug, and HCFA has determined for the specific drug and the indications for which the drug is being applied that it can generally be administered safely and effectively in a home setting.

A drug that would otherwise be a covered outpatient drug is excluded from coverage if the drug is intravenously administered in a home setting but does not meet the definition of a covered home IV drug set forth in this paragraph. (The drug must appear on the list that is published periodically under paragraph (c) of this section and be administered for one of the indications presented on that list.) Coverage does not require a prior inpatient hospital stay.

(c) *List of covered home IV drugs.*

(1) At least annually, HCFA will publish in the **Federal Register** a notice of additions or deletions to the list of covered home IV drugs and their indications with respect to which home IV drug therapy services under Medicare may be furnished.

(2) A covered home IV drug included on the list of covered home IV drugs may not be covered as part of durable medical equipment.

§ 410.30 Limitations on Part B coverage of drugs.

(a) Except for those drugs described as "covered outpatient drugs" in § 410.29(a), Medicare Part B does not pay for the following:

(1) Except as provided in § 410.29(a), any drug or biological that can be self-administered, whether furnished by a physician, a provider, or an entity other than a provider.

(2) Any drug product approved by the FDA before October 10, 1962 that is available only through prescription that does not meet all of the conditions identified in § 410.29(a)(1)(iii) (A) and (B).

(b) Beginning January 1, 1990 and until January 1, 1991, the term "covered outpatient drug" described in § 410.29 is limited to:

(1) Drugs that are used in immunosuppressive therapy.

(2) Covered home IV drugs as defined in § 410.29(b).

(c) The term "covered outpatient drug" does not include any drug, biological product, or insulin for which payment may be made under Medicare and that is furnished as, as part of, or as incident to, any of the following services or supplies:

(1) Inpatient hospital services (section 1861(b)(2) of the Act and § 409.10).

(2) Extended care services (section 1861(h)(5) of the Act and § 409.20).

(3) Physicians' services (section 1861(s)(2) (A) or (B) of the Act and § 410.10(c)).

(4) Dialysis supplies (section 1861(s)(2)(F) of the Act and § 410.10(k)).

(5) Antigens (section 1861(s)(2)(G) of the Act and § 410.10(q)).

(6) Blood clotting factors for hemophiliacs (section 1861(s)(2)(I) of the Act).

(7) Services of a physician assistant (section 1861(s)(2)(K)(ii) of the Act).

(8) Pneumococcal, hepatitis B, or influenza vaccines (section 1861(s)(10) of the Act and § 410.57).

(9) Rural health clinic services (section 1861(aa)(1) of the Act and § 491.9).

(10) Comprehensive outpatient rehabilitation facility services (section 1861(cc)(1)(F) of the Act and § 485.51).

(11) Hospice care (section 1861(dd)(1)(E) of the Act and § 418.202(f)).

(12) Certified nurse-midwife services (section 1861(gg)(1) of the Act).

(13) A covered surgical procedure in an ambulatory surgical center (section 1832(a)(2)(F)(i) of the Act and § 416.65).

(d) Payment may not be made under Part B for any expense incurred for a covered outpatient drug described in § 410.29(a) if one of the following conditions are met:

(1) HCFA finds that the specific use of the drug for a specific indication is not safe or not effective for the diagnosis or treatment of illness or injury, or to improve the functioning of a malformed body member, in a specific situation or for a particular beneficiary (for example, the drug is prescribed solely for cosmetic purposes, such as to correct or ameliorate conditions such as wrinkles and balding).

(2) After the drug deductible is met, the drug is dispensed in a quantity exceeding a 34-day supply (unless HCFA has specified an exception for a longer prescription as described in paragraph (e) of this section).

(e) An exception to the limitation described in paragraph (d)(2) of this section is allowed for drugs that are marketed only in an amount that exceeds a 34-day supply. For these drugs, payment may be made for the smallest supply in which the drug is marketed.

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§ 410.31 Prescription drugs used in

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Due to staffing and resource

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plan as part of a hospice program.

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§ 410.31 Prescription drugs used in immunosuppressive therapy.

(a) *General rule.* Payment is made for prescription drugs used in immunosuppressive therapy only as described in paragraphs (b) and (c) of this section.

(b) *Drugs dispensed before January 1, 1990.* For drugs dispensed before January 1, 1990, payment may be made only for those drugs furnished after a Medicare covered organ transplant if the drugs—

(1) Have been approved for marketing by the FDA;

(2) Are either specifically labeled for the prevention or treatment of rejection of a transplanted organ or tissue, or identified in FDA-approved labeling for use in conjunction with immunosuppressive drug therapy; and

(3) Are used for a period of up to 1 year beginning with the beneficiary's date of discharge from the inpatient hospital stay during which the transplant was performed.

(c) *Drugs dispensed beginning January 1, 1990.* Beginning January 1, 1990, payment may be made for drugs that meet the requirements for covered outpatient drugs described in § 410.29(a)(1) and that are used in immunosuppressive therapy after either a covered or noncovered organ transplant and without any prescribed time limitations.

§ 410.32 Standards for assuring appropriate prescribing and dispensing practices of drugs.

(a) *Selected compendia.* Drug standards that appear in the following medical compendia are used for certain aspects of drug utilization review, that is, to identify and educate physicians and pharmacists about inappropriate prescribing and dispensing practices and potential adverse drug reactions:

(1) The U.S. Pharmacopoeia Dispensing Information, volume 1 (Drug Information for the Health Care Professional).

(2) The American Medical Association's Drug Evaluations.

(3) The American Hospital Formulary Service Drug Information.

(b) *Changes in selected compendia or standards.* (1) If HCFA changes its selection of any of the compendia identified in paragraph (a) of this section, it will publish a proposed rule and subsequent final rule to announce the change(s).

(2) If HCFA modifies any of the standards used for purposes of the education program described in paragraph (a) of this section that are adopted from a selected compendium, it will do so using appropriate rulemaking procedures.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: June 9, 1989.

Louis B. Hays,
Acting Administrator, Health Care Financing Administration.

Approved: August 19, 1989.

Louis W. Sullivan,
Secretary.

[FR Doc. 89-20844 Filed 9-6-89; 8:45 am]

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42 CFR Part 414

[BPD-614-P]

RIN 0938-AD99

Medicare Program; Payment for Covered Outpatient Drugs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the methodology for determining payment for covered outpatient drugs under the new catastrophic drug benefit. This proposal would implement sections 1834(c) (2), (3), and (4) of the Social Security Act as added by section 202(b) of the Medicare Catastrophic Coverage Act of 1988. Coverage of and payment for these covered outpatient drugs under Part B of Medicare would be implemented on January 1, 1990 for drugs used in immunosuppressive therapy and covered home intravenous (IV) drugs and on January 1, 1991 for all other drugs.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on November 6, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-614-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

If comments concern information collection or recordkeeping requirements, please address a copy of the comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting, please refer to file code BPD-614-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Janice Flaherty, (301) 966-4574.

SUPPLEMENTARY INFORMATION:

I. Background

- Medicare consists essentially of two separate but complementary insurance programs, the Hospital Insurance (Part A) program and the Supplementary Medical Insurance (Part B) program. Under Part A, in addition to payment for inpatient hospital services, payment is made for medical services furnished in skilled nursing facilities (SNFs) and by home health agencies (HHAs), and by hospices as an alternative to hospitalization. Part A covered benefits also include many drugs furnished to beneficiaries in hospitals, SNFs, and hospices.

Current Medicare Part A rules concerning coverage of and payment for prescription drugs and biologicals (referred to collectively as drugs in this document) are as follows:

- Under section 1861(b)(2) of the Social Security Act (the Act), we cover drugs used in the hospital that are ordinarily furnished by the hospital for the care and treatment of patients. For hospitals under the prospective payment system, payment is included in the prospective payment rates. For hospitals excluded from the prospective payment system, payment is made on a reasonable cost basis.
- Under section 1861(h)(5) of the Act, we cover drugs furnished for use in a SNF that ordinarily are furnished by the facility for the care and treatment of inpatients. Payment is determined on a reasonable cost basis.
- Under section 1861(dd)(1)(E) of the Act, we cover drugs furnished to terminally ill individuals under a written plan as part of a hospice program. Payment is made as a component of the prospective payment rate for hospices.

Currently, under the provisions of sections 1832, 1833, and 1842 of the Act, payment is made under Part B for a wide range of medical services and supplies including those furnished by physicians or others in connection with physicians' services, outpatient hospital services, outpatient physical and occupational therapy services, and home health services. Payment under Part B is also made for drugs provided as part of certain Part B services. Generally, these are drugs that cannot be self-administered. Payment is also made for a few specified drugs as separate services.

All Medicare Part B coverage of drugs is derived from the scope of benefits provisions in section 1832 of the Act. Certain paragraphs in section 1861 of the Act define the terms in the scope of benefits provisions as including outpatient drugs. Thus, section 1832 of the Act provides for Part B coverage of outpatient drugs. Current Medicare Part B rules generally provide coverage and payment for outpatient drugs as follows:

- Under section 1861(s)(2)(A) of the Act, we cover drugs that cannot be self-administered and that are furnished incident to a physician's professional services. Payment is determined on the basis of the approximate cost for ingredients and supplies plus an injection fee.
- Under section 1861(s)(2)(C) of the Act, we cover diagnostic services furnished by a hospital to outpatients, including drugs required in the performance of these services. Payment is determined on a reasonable cost basis.
- Under section 1861(s)(2)(F) of the Act, we cover dialysis supplies, including drugs, under the end-stage renal disease (ESRD) prospective payment rate. Under 42 CFR 413.170, payment to an ESRD facility is based on cost.
- Under section 1861(s)(2)(G) of the Act, we cover antigens that are prepared by a physician for a particular patient and that are administered by or under the supervision of a physician. Payment is determined based on the cost of the antigens plus an injection fee.
- Under section 1861(s)(2)(I) of the Act, we cover blood clotting factors for hemophilia patients competent to use those factors to control bleeding without medical or other supervision. Payment is determined on a reasonable charge basis.
- Under the former section 1861(s)(2)(J) of the Act, we covered immunosuppressive drugs and drugs that are needed for effective immunosuppressive therapy furnished to an individual who receives an organ transplant for which payment is made under Medicare and that are furnished within 1 year after the date of the transplant procedure. Payment is determined on the basis of approximate cost for ingredients and supplies. Because drugs used in immunosuppressive therapy are self-administered, no additional payment is made for administration.
- Under section 1861(s)(2)(K)(ii) of the Act, we cover drugs that cannot be self-administered that are incident to a physician assistant's services furnished under the supervision of a physician. Payment is determined based on the approximate cost for ingredients and supplies of the drug plus an injection fee.
- Under section 1861(s)(10) of the Act, we cover pneumococcal and hepatitis B vaccines, as well as influenza vaccines for some beneficiaries under a demonstration project. Payment is determined based on the approximate cost for ingredients and supplies plus an injection fee.
- Under section 1861(cc)(1)(F) of the Act, we cover drugs that cannot be self-administered and that are furnished to an individual who is an outpatient of a comprehensive outpatient rehabilitation facility. Payment is determined on a reasonable cost basis.
- We cover drugs that cannot be self-administered and that are furnished as part of or incident to the provision of the following covered services:

—Covered rural health clinic services (section 1861(aa)(1) of the Act). Payment is made on a cost-related rate per visit, subject to an upper limit.

—Partial hospitalization services (section 1861(ff)(2)(D) of the Act). Payment is determined on a reasonable cost basis.

—Certified nurse-midwife services (section 1861(gg)(1) of the Act). Payment is determined based on the approximate cost for ingredients and supplies plus an injection fee. Some carriers provide an amount for additional related supplies.

—Ambulatory surgical center (ASC) services (section 1832(a)(2)(F)(i) of the Act). Under §§ 416.61(c) and 416.120, payment is made as a component of the prospective payment rate for ASCs.

Medicare generally pays 80 percent of each payment amount determined above for covered drugs and services after the beneficiary has met a $75 deductible. The beneficiary is then liable for the remaining amount of the charge (coinsurance), which is usually 20 percent of the payment amount. The only exception to this rule is payment for pneumococcal and influenza vaccines and for the services connected with the furnishing of these two vaccines, which, under the authority of section 1833(a)(1)(B) of the Act, are not subject to the 20 percent coinsurance (that is, Medicare pays 100 percent of the payment amount). In addition to the deductible and coinsurance amounts, if a physician or other supplier does not accept assignment (that is, does not agree to accept Medicare's determination of the reasonable charge amount as payment in full for covered drugs), the beneficiary is liable for the difference between Medicare's reasonable charge and the supplier's actual charge, subject to certain limits on that charge.

II. The Medicare Catastrophic Coverage Act of 1988

The Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, enacted on July 1, 1988) established a new catastrophic outpatient drug benefit under Medicare Part B. For purposes of coverage, payment, deductibles, and coinsurance, the new Part B catastrophic outpatient drug benefit is distinct and separate from the pre-existing Medicare drug benefits. The current Medicare drug benefit includes both Part A and Part B coverge as described above. Except for drugs used in immunosuppressive therapy, the current drug benefit (including both coverage and payment provisions) has not been changed by Public Law 100-360.

In general, section 202 of Public Law 100-360 provides for coverage of and payment for drugs used in immunosuppressive therapy following an organ transplant without regard to the duration of that therapy or whether the organ transplant procedure was covered by Medicare, and for covered home intravenous (IV) drugs. Payment for these two categories of benefits begins January 1, 1990 and for all other covered outpatient drugs (including insulin) payment begins on January 1, 1991.

Specifically, section 202(a) of Public Law 100-360 amended sections 1861 (s)(2)(J) and (t) of the Act to include "covered outpatient drugs" as part of the "medical and other health services" benefit under sections 1832 (a)(1) and (a)(2)(B) of the Act. As discussed below, current coverage for drugs used in immunosuppressive therapy would be expanded under the provisions of Public Law 100-360, and these drugs would be included as part of the new catastrophic drug benefit.

As revised, section 1861(s)(2)(J) of the Act provides coverage of "covered outpatient drugs", as defined in section 1861(t)(2) of the Act. Section 1861(t)(2) of the Act defines that term to include a broad range of drugs, biological products, and insulin. In this proposed rule, we use the term "drugs" to include biologicals and insulin because payment would be determined in the same manner for these items as for drugs. Sections 1861(t)(4) (A) and (B) of the Act specify that, in general, covered home IV drugs are defined as covered outpatient drugs that are safe and effective for intravenous administration to an individual in a place of residence used as the individual's home.

The payment methodology for covered outpatient drugs is set forth in sections 1834(c) (2), (3), and (4) of the Act as added by section 202(b) of Pub. L. 100–360. Briefly, the payment methodology is as follows:

- Subject to the catastrophic drug deductible, the payment amount for covered outpatient drugs is equal to the payment percent of the lesser of—

—The actual charge for the drug; or

—The applicable payment limit for the drug.

- The payment percent is equal to 100 percent minus the applicable coinsurance amount.
- A separate payment limit is calculated for—

—Nonmultiple-source drugs and multiple-source drugs with restrictive prescriptions; and

—Multiple-source drugs without restrictive prescriptions.

These provisions are discussed in detail below as a part of our discussion of the provisions of this proposed rule, which set forth the methodology for determining payment for covered outpatient drugs. Coverage of outpatient drugs, including definitions, is discussed in a separate notice of proposed rulemaking. In addition, we are publishing other proposed rules to implement the new catastrophic drug benefit. These proposed rules include separate documents detailing coverage requirements for home IV drug therapy services, conditions of participation for qualified home IV drug therapy providers, catastrophic drug deductibles and coinsurance amounts, the fee schedule for home IV drug therapy services, requirements for participating pharmacies, and the list of covered home IV drugs.

III. Provisions of This Proposed Rule

A. General

This proposed rule sets forth the payment methodology for outpatient drugs that are covered under the new catastrophic drug benefit, including covered prescription drugs used in immunosuppressive therapy following an organ transplant and covered home IV drugs, effective January 1, 1990. Coverage and payment for all other covered outpatient drugs would begin January 1, 1991.

Immunosuppressive drugs were covered effective January 1, 1987 if furnished within 1 year after the beneficiary's date of discharge from an inpatient hospital stay during which a covered organ transplant was performed. Coverage was extended to all prescription drugs used in immunosuppressive therapy furnished after a covered transplant within 1 year after the beneficiary's date of hospital discharge beginning December 22, 1987. The provisions of section 1861(t) of the Act, as amended by section 202(a) of Public Law 100–360, effectively extend the coverage of drugs used in immunosuppressive therapy to include those drugs furnished in subsequent years after the first year following a covered transplant and those drugs furnished after a noncovered transplant irrespective of any time limitations. Thus, beginning in 1990, prescription drugs used in immunosuppressive therapy are considered part of the catastrophic drug benefit, rather than the original Medicare drug benefit. Therefore, drugs used in immunosuppressive therapy would no longer be subject to the provisions of the law pertaining to the current Medicare benefit for drugs, but, effective January 1, 1990, will be subject to the coverage and payment rules applicable to the catastrophic drug benefit.

The payment methodology described herein pertains to Medicare payments for all covered outpatient drugs after Medicare beneficiaries meet the drug deductible. The amount payable for a covered outpatient drug would be the applicable payment percent for the drug multiplied by the lesser of the actual charge for the drug or the applicable payment limit for the drug. The payment limit for multiple-source drugs without restrictive prescriptions and the payment limit to be used for both multiple-source drugs with restrictive prescriptions and nonmultiple-source drugs are determined under two separate calculations.

B. Payment Percent

Under section 1834(c)(2)(B) of the Act, the payment percent equals 100 percent minus the applicable percent. Under section 1834(c)(2)(C) of the Act, the coinsurance percents are as follows:

- For covered home IV drugs and drugs used in immunosuppressive drug therapy that are furnished during the first year after a covered organ transplant, 20 percent.
- For all other covered outpatient drugs—

—50 percent for drugs dispensed in 1990 or 1991;

—40 percent for drugs dispensed in 1992; and

—20 percent for drugs dispensed in 1993 or a subsequent year.

Because the payment percent equals 100 percent minus the applicable coinsurance percent, the payment percent is as follows:

- For covered home IV drugs and drugs used in immunosuppressive drug therapy that are furnished during the first year after a covered organ transplant, 80 percent.
- For all other covered outpatient drugs—

—50 percent for drugs dispensed in 1990 or 1991;

—60 percent for drugs dispensed in 1992; and

—80 percent for drugs dispensed in 1993 or a subsequent year.

C. Determination of Payment Limit

As stated above, the payment limit for multiple-source drugs without restrictive prescriptions would be determined under a different methodology than the methodology used for both multiple-source drugs with restrictive prescriptions and nonmultiple-source drugs. These payment limits would be determined for specific payment calculation periods. In addition, under section 1834(c)(3)(C)(iv) of the Act, the average price component of the payment limits is to be determined on a national basis except that the Secretary may make these determinations on a regional basis if it can be demonstrated that there are limitations on the availability of drug products and variations among different areas in the average wholesale or comparable direct price (referred to in this document as average price) for a drug product. We intend to determine the average price component of the payment limits on a national basis. We would consider exceptions to the national price if presented with documented information regarding limited availability and price variations. Such determinations would be made on a case-by-case basis. Explanations of these terms and the two methodologies that would be used in determining the payment limits are set forth below.

1. Definitions

a. Payment Calculation Period. As provided in section 1834(c)(9)(C) of the Act, the term "payment calculation period" means either the 6-month period beginning January 1st of each year or the 6-month period beginning July 1st of each year. Thus, a new payment limit would be calculated for all covered drugs every 6 months.

b. Multiple-Source Drug. In accordance with the provisions of section 1834(c)(9) of the Act, we would define a multiple-source drug as a covered outpatient drug for which, during a payment calculation period, there are two or more drug products that meet all of the following conditions:

- The drug products are rated as therapeutically equivalent by the Food and Drug Administration (FDA) in its most recent publication of "Approved Drug Products with Therapeutic Equivalence Evaluations."
- The drug products have been determined by the FDA to be pharmaceutically equivalent and bioequivalent as follows:

—As set forth in section 1834(c)(9)(A)(iii)(I) of the Act, pharmaceutically equivalent drug products are those drug products that contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity.

—As defined in section 1834(c)(9)(A)(iii)(II) of the Act, drug products are bioequivalent if they do not present a known or potential bioequivalence problem or, if they do present such a problem, are shown to meet an appropriate standard of bioequivalence.

However, as provided in section 1834(c)(9)(A)(ii) of the Act, this requirement that drug products be pharmaceutically equivalent and bioequivalent does not apply if the FDA changes by regulation (after an opportunity for public comment of 90 days) the requirement that, for purposes of the FDA's most recent publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations," in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent. In this case, the drug product would have to meet the revised FDA definition of therapeutic equivalence.

- The drug products are sold or marketed during the period. Under the provisions of section 1834(c)(9)(A)(iii)(III) of the Act, a drug is considered to be sold or marketed if it is listed in FDA's most recent publication of "Approved Drug Products with Therapeutic Equivalence Evaluations" (other than in the Discontinued Drug Product List in that publication) and we do not determine that the sale or marketing is not actually occurring.

c. Nonmultiple-Source Drug. Section 1834(c)(3)(A) of the Act refers to the case of a drug that "is not a multiple-source drug (as defined in paragraph (9)(A) (of section 1834(c) of the Act))." We would define a nonmultiple-source drug as any drug that does not meet the definition of a multiple-source drug. In general, this would mean a drug that is available for purchase under only one "brand name" or a drug that has several drug products that are not rated therapeutically equivalent.

d. Drug with a Restrictive Prescription. As provided in section 1834(c)(9)(B) of the Act, we would define a drug as having a restrictive prescription if either of the following conditions apply:

- In the case of a written prescription for a drug, the prescribing physician (or other legally authorized person who is prescribing the drug) includes on each prescription form in his or her own handwriting, the specific phrase "brand medically necessary," meaning that the particular drug must be dispensed.
- In the case of a prescription for a drug that is issued by telephone, the prescribing physician (or other legally authorized person who is prescribing the drug) states "brand medically necessary," meaning that the particular drug must be dispensed and, within 30 days of the date of the telephone call, sends a written confirmation (for example, a completed prescription form) to the pharmacy indicating that the particular drug was required. Each confirmation must also include the phrase "brand medically necessary" in the handwriting of the prescriber and the prescriber's signature.

In these cases where the pharmacist fills a prescription for a multiple-source drug with a brand-name product even though the prescriber has not restricted the prescription by indicating "brand medically necessary," the Medicare payment amount would be that for a multiple-source drug without a restrictive prescription.

We propose to limit acceptable phrases to those that include the phrase "brand medically necessary" although section 1834(c)(9)(B) of the Act permits the Secretary to accept other phrases if he determines that they are appropriate. We believe that any prescription for a brand name drug should be the result of a conscious decision concerning the medical necessity of the particular drug. Thus, alternatives such as dual-line prescription forms (in which the prescribing physician furnishes his or her signature above a statement that reads "dispense as written" or "product selection permitted"), notations and phrases such as "d.a.w. (dispense as written)" or "N/S (no substitution)," or check boxes, all of which may be acceptable for some State generic drug laws, would not be acceptable because they do not establish satisfactorily a conscious determination of the medical necessity to override generic substitution in order to obtain the more costly brand name drug for a particular patient.

We also believe that limiting acceptable phrases to "brand medically necessary" would be simpler for prescribers because they would have only one phrase to remember. We are interested in receiving public comment concerning whether there are any additional phrases that we could include as allowable that convey the concept of medical necessity.

Under section 1834(c)(9)(B)(ii) of the Act, if a prescription is issued by telephone, the written confirmation must be received within 30 days of the telephone call and must be "in the handwriting of the physician or other person prescribing the drug" and must indicate "with such appropriate phrase (as "brand medically necessary") that the particular drug was required to have been dispensed" in order to be considered a restrictive prescription. A prescription form prepared by the prescriber with "brand medically necessary" in the handwriting of the prescriber with his or her signature and forwarded by the prescriber to the pharmacy would meet the requirement for a written confirmation.

As noted above, under the requirements of section 1834(c)(9)(B)(ii)(II) of the Act, a prescriber is responsible for providing a written confirmation to a pharmacy within 30 days of a telephone prescription. However, if a written confirmation is not provided to the pharmacy by the prescriber, it is the pharmacy that could suffer any resulting payment reduction. That is, in the absence of a written confirmation that a brand name drug was medically necessary, the prescription would not meet the definition of a restrictive prescription as set forth in section 1834(c)(9)(B)(ii) of the Act. Thus, payment for the drug prescribed would be made using the payment methodology set forth in section 1834(c)(3)(B) of the Act for multiple-source drugs without a restrictive prescription, which is expected to result in a lower payment amount than the payment methodology set forth in section 1834(c)(3)(A) of the Act for multiple-source drugs with a restrictive prescription.

Since the statute places the obligation to confirm a telephone prescription for a brand name drug on the prescriber and at the same time imposes any penalty for not having that confirmation on the pharmacy, we would allow pharmacies to assist the prescribers in meeting their obligation. If a pharmacy chooses to, it would be permitted to complete a form for each restrictive prescription and send the form to the prescriber so that the prescriber could write in his or her own handwriting the phrase "brand medically necessary" on the form, sign it, and return it to the pharmacy. We believe that this approach would both satisfy the requirements of section 1834(c)(9)(B)(ii)(II) of the Act and assist the pharmacy in obtaining written confirmations from prescribers who do not fulfill their obligation to provide them. We are interested in receiving suggestions regarding other methods that could be used to assist pharmacies in obtaining written confirmations. We note that we would consider only methods that comply with the statute; that is, each restrictive telephone prescription must have a written confirmation with the phrase "brand medically necessary" in the prescriber's own handwriting.

We are also seeking comments on the appropriate designation of restrictive prescriptions transmitted to pharmacies by facsimile (FAX) machines. We are proposing that such prescriptions be considered telephone prescriptions because it is not always possible for the pharmacist to determine from a "faxed" prescription that the prescriber wrote "brand medically necessary" in his or her own handwriting on each prescription. Thus, the same requirements for a written confirmation that apply to telephone prescriptions would apply to prescriptions transmitted by a FAX machine.

2. General Methodology for Payment Limits

This section sets forth the methodologies that would be used in determining the two different payment limits. Explanations of the provisions that apply to both payment limits (that is, the administrative allowance and determination of dosage unit average price) are set forth in sections III.C.3 and III.C.4 of this preamble, below. Section III.C.5. of this preamble discusses the determination of the 90th percentile of actual charges, which would be used for determining the payment limit for nonmultiple-source drugs and multiple-source drugs with restrictive prescriptions only.

a. Payment Limit Methodology for Multiple-Source Drugs Without Restrictive Prescriptions. As provided in section 1834(c)(3)(B) of the Act, the payment limit for a multiple-source drug without a restrictive prescription is equal to the sum of—

- The amount of the administrative allowance (as set forth in section 1834(c)(4) of the Act); and
- The product of the number of tablets (or other dosage units) dispensed and the per dosage unit average price for the drug during the payment calculation period in which the drug is dispensed.

b. Payment Limit Methodology for Nonmultiple-Source Drugs and Multiple-Source Drugs With Restrictive Prescriptions. As provided in section 1834(c)(3)(A) of the Act, the payment limit for a nonmultiple-source drug and a multiple-source drug with a restrictive prescription is determined as follows:

- For drugs dispensed on or after January 1, 1990 and before January 1, 1992, the payment limit equals the sum of—

—The amount of the administrative allowance; and

—The product of the number of tablets or other dosage units dispensed and the per dosage unit average price for the drug during the payment calculation period in which the drug is dispensed

- For drugs dispensed on or after January 1, 1992, the payment limit is equal to the lesser of the following:

—The amount of the administrative allowance plus the product of the number of tablets or other dosage units dispensed and the per dosage unit average price for the drug during the payment calculation period in which the drug is dispensed.

—The 90th percentile of the actual charges for the drug for the second previous payment calculation period. (For example, if the current payment calculation period is January 1, 1992 through June 30, 1992, then the second previous payment calculation period would be January 1, 1991 through June 30, 1991.) The charge screens for actual charges would be computed on a per dosage unit basis, taking into consideration dosage form and strength.

3. Administrative Allowance

In this proposed rule, as provided in section 1834(c)(4)(A) of the Act, the amount of the administrative allowance, which is paid to a pharmacy for dispensing a covered outpatient drug, is determined as follows:

- For drugs dispensed in 1990 and 1991, the administrative allowance is equal to—

—$4.50 for a drug dispensed by a participating pharmacy; and

—$2.50 for a drug dispensed by a pharmacy that is not a participating pharmacy.

- In each year subsequent to 1991, the administrative allowance is equal to the allowance for the preceding year increased by the percentage increase (if any) in the implicit price deflator for gross national product (as pubished by the Department of Commerce in its "Survey of Current Business") over the 12-month period ending with August of that preceding year. In making this calculation, the amount of the new allowance is rounded to the nearest penny.

We are proposing that separate administrative allowance for pharmacy services would not be made for dispensing a drug to be used in home IV drug therapy because payment for pharmacy services, including the administrative cost connected with dispensing drugs for home IV drug therapy, would be made as part of a home IV drug therapy services per diem fee schedule for pharmacy services and supplies, nursing services and supplies, and other equipment necessary for home IV drug therapy. (As noted above, our proposed methodology for determining this per diem fee schedule will be published as a separate notice of proposed rulemaking.) Consequently, the charge reflected by the home IV drug therapy provider for the drug ingredient should not include any items that are paid for under the per diem fee schedule, that is, pharmacy services and supplies, nursing services and supplies, or other equipment.

We are also proposing to limit the payment of the administrative allowance for drugs dispensed on an "as needed" basis to residents of long-term care facilities. We are proposing to pay the administrative allowance each time a drug product is prescribed on an as-needed basis, that is, each time the prescriber makes a notation in the patient's chart. It should be noted that these prescriptions must meet the

requirements concerning the length of time or number of doses of a prescription set forth in our proposed rule on coverage of drugs under Public Law 100–360. A second administrative allowance would be paid for the same drug product only when it is prescribed a second time.

The purpose of this limitation is to preclude situations where an administrative allowance would be charged each time a dose of the "as needed" drug is dispensed. We invite comments regarding other approaches for the payment of an administrative allowance for drugs dispensed on an "as needed" basis to residents of a long-term care facility that would avoid excessive changes for dispensing these drugs.

In the case of insulin that is injected by the beneficiary subcutaneously and is available without a prescription, we would pay an administrative allowance each time a reasonable quantity of insulin is purchased. We consider a reasonable quantity of insulin to be a 30-day supply. If a beneficiary purchases two or more bottles of insulin at one time, we would pay one administrative allowance for the purchase.

We fully expect that most beneficiaries who purchase nonprescription insulin will purchase it in 30-day supplies. However, we also recognize that there are exceptional circumstances where purchases would need to be made more often and an administrative allowance would be paid in these circumstances; for example, there is a change in the type of insulin the beneficiary uses or the beneficiary's insulin regimen is otherwise modified, or if because of travel plans, the beneficiary needs to make smaller purchases or forgets to bring along enough insulin for duration of the trip.

We believe that paying an administrative allowance each time a 30-day supply of insulin is purchased would be reasonable because many diabetics purchase insulin in approximately a 30-day supply and because, if the Medicare program routinely pays for more frequent purchases, program costs and premiums may be higher than necessary with no corresponding benefit to the beneficiaries.

Under section 1842(o)(1) of the Act as added by section 202(c)(1)(C) of Public Law 100–360, a participating pharmacy means, with respect to covered outpatient drugs dispensed on or after January 1, 1991, an entity that is authorized under a State law to dispense covered outpatient drugs and that has entered into an agreement with the Secretary under which the pharmacy agrees to accept payment on an assignment-related basis for all covered outpatient drugs dispensed to a Medicare beneficiary after the pharmacy has been notified that the beneficiary has met the catastrophic drug deductible. (As noted above, we are preparing a separate notice of proposed rulemaking concerning the requirements for participating pharmacies.)

Although section 1834(c)(4)(A) of the Act provides for an administrative allowance in 1990 for participating pharmacies, section 1842(o)(1) of the Act, as noted above, defines participating pharmacies only in the context of dispensing covered drugs on or after January 1, 1991. Because under 1842(o)(1) of the Act an entity cannot be a participating pharmacy until January 1, 1991, the administrative allowance for drugs dispensed in 1990 (other than drugs to be used in home IV therapy, for which payment for pharmacy services would be made under a fee schedule) would have to be made at the nonparticipating pharmacy rate of $2.50. Because section 1861(t)(3)(B) of the Act limits covered outpatient drugs to be dispensed in 1990 to drugs used in immunosuppresive therapy and covered home IV drugs, an administrative allowance would be made in 1990 only for dispensing drugs used in immunosuppressive therapy.

Under section 1834(c)(4)(B) of the Act, after consultation with pharmacists, groups representing the elderly, and private insurers, the Secretary may, by regulation, reduce the administrative allowance for any drug dispensed by a mail-service pharmacy (as defined by the Secretary). Any reduction must be based on differences between mail service pharmacies and other pharmacies with respect to operating costs and other economies.

We are not proposing to make any reduction to the statutory administrative allowance for a drug dispensed by a mail-service pharmacy at this time. However, we will continue to pursue setting a reduced administrative allowance for drugs dispensed by a mail-service pharmacy based on a variety of factors, including operating costs, overall charge levels, and the extent of use of mail-service pharmacies by Medicare beneficiaries. In addition, we are specifically seeking public comment from pharmacists, groups representing the elderly, and private insurers concerning whether it would be appropriate to make a reduction in the administrative allowance for drugs dispensed by a mail-service pharmacy. If a commenter believes that some reductions are appropriate, we are interested in receiving data and suggestions concerning these adjustments.

4. Determination of Dosage Unit Average Price

Dosage unit average price would be based on dosage form and strength for each drug product. Dosage unit average price would be determined in one of two ways: Using published average wholesale or comparable direct prices for the drug or using survey prices. We intend to conduct a biannual survey of nonmultiple-source drugs that are most commonly used by beneficiaries. We are considering conducting a survey of the most commonly used multiple-source drugs. We would use commonly recognized comprehensive listings, discussed below, to determine the published average prices. If there is both a survey average price and a published average price, we would use the lower of the two prices. If a specific drug is not included in the survey, the determination of average price would be based on published average wholesale or comparable direct prices for the drug.

For both a survey and a published average price, the prices used would be those in effect on the first day of the previous payment calculation period as required by section 1834(c)(3)(C)(iii) of the Act. For example, for determining payment for a drug to be dispensed on or after January 1, 1992 and before July 1, 1992, the prices that would be used are those in effect on July 1, 1991.

Under section 1834(c)(3)(C)(iii) of the Act, we are required to use reasonable quantities, which we define as the most frequently purchased package size, as appropriate. In addition, under section 1834(c)(3)(C)(iv) of the Act, the determination is made on a national basis, except that we may make this determination on a regional basis if it can be demonstrated that there are limitations on the availability of drug products and variations among regions in the average prices for a drug product. As we stated above, we intend to make the determination of the average price component on a national basis.

a. Biannual Survey. Under section 1834(c)(3)(C)(ii)(I) of the Act, the Secretary must conduct a biannual survey of nonmultiple-source drugs to determine the per dosage unit average price for the drug. However, the Secretary need not conduct a survey if—

- During 1990, the Secretary determines that a survey is not appropriate for a specific covered outpatient drug; or
- After 1990, there is a low volume of sales for the drug or there are other

appropriate reasons not to conduct a survey.

Under section 1834(c)(3)(C)(ii)(II) of the Act, for multiple-source drugs, the Secretary may base the per dosage unit average price for the drug on either the published average price for the drug or on a biannual survey.

The biannual surveys must be based on prices in effect the first day of the previous payment calculation period. For example, for drugs dispensed on or after January 1, 1991 and before July 1, 1991, the survey must be based on prices in effect on July 1, 1990. In addition, the biannual surveys must be based on a representative sample of direct sellers, wholesalers, or pharmacies (as appropriate) of wholesale or comparable direct prices excluding discounts to pharmacies. That is, in determining the average price, the Secretary cannot take into account any discount provided to a pharmacy.

We are considering use of a survey for multiple-source drugs that are commonly prescribed to Medicare beneficiaries. We intend to conduct the survey on a selected basis because we believe that the survey results may give a more accurate reflection of prices (exclusive of discounts) of prescription drugs compared to the published average prices in the comprehensive listings. The extent of the survey would be determined on an on-going basis. As required by section 1834(c)(3)(B)(ii) of the Act, we would use the unweighted median of the surveyed prices. We also intend to limit the survey of nonmultiple-source drugs to those drugs that are more commonly prescribed to Medicare beneficiaries. In this case, we would use the median of the surveyed prices.

Any survey that we conduct would use statistically valid methods of sampling, estimation, and imputation in order to establish the drug prices in effect for the payment calculation period.

Section 1834(c)(3)(C)(ii) of the Act specifies that discounts to pharmacies should not be considered in determining the average price. There is a common billing practice of showing both suggested list price and the wholesaler's or manufacturer's actual selling price on invoices. For example, an invoice has one column marked "suggested list price," "list AWP," or a similar phrase. A second column is marked "actual cost" or "price." We would use the actual selling prices (before discounts) for purposes of the survey because the suggested list prices (or list AWP) are essentially comparative prices to demonstrate that when the purchaser pays the actual selling price, the purchaser pays less than the suggested list prices. The actual selling price is the price at which the drug product is generally available to pharmacies, either from a wholesaler or a manufacturer.

For determining survey prices, we would use the generally available selling price instead of the "list average wholesale price (AWP)" because we believe this is consistent with Congressional intent. The Conference Report states that the survey "is vital to ensuring the integrity of reimbursement limits" and, to that end, Congress gave the Secretary the authority to impose civil monetary penalties if a wholesaler or direct seller refuses to provide information to the Secretary or provide false information. (H.R. Rep. No. 661, 100th Cong., 2d Sess. 189 (1988).) Implicit in the statement that the survey is vital to the integrity of payment limits and in the provisions for civil monetary penalties is the assumption that the prices to be derived from the survey will be more accurate and, in all likelihood, lower than the prices in the nationally recognized comprehensive published price listings.

The "list AWP" on invoices sampled for the survey activity is the same as or similar to the average wholesale price in the published price listings. There would be no value in conducting a survey of this nature if it would be merely an exercise in gathering data already available in the published price listings. In addition, there would be no purpose in expending public funds to carry out the survey if it duplicates price information that is already publicly available. There would also seem to be no purpose in Congress giving the Secretary authority to impose civil monetary penalties for refusal to provide information or provision of false information if we would only be gathering price information that is already available. We are, however, specifically requesting comments on using the generally available selling price in determining survey prices.

b. Published Average Price. We intend to use the Red Book published by Medical Economics, the American Druggist Blue Book (Blue Book) published by the Hearst Corporation, and prices published by Medi-Span, Inc. (Medi-Span) for determinations of published average price. In developing the unweighted median of the published average prices for a multiple-source drug without a restrictive prescription, we would array the average prices from these three publications. If there is a difference in the published listings of a distributor's price, we would use the lowest price.

For nonmultiple-source drugs and multiple-source drugs with a restrictive prescription, we would use the lowest published price from the sources listed above, as stated in the Conference Report (H.R. Rep. No. 661, 100th Cong. 2nd Sess. 189 (1988)).

c. New Therapeutically Equivalent Drugs. If drugs are added to the FDA's publication, "Approved Drug Products with Therapeutic Equivalence Evaluations," during a 6-month payment calculation period, the following would apply:

- If addition of a drug changes the status of the drug from a nonmultiple-source drug to a multiple-source drug, we would recompute the dosage unit average price. The new dosage unit average price would be reflected in payments within 1 month of when the FDA published the addition of a therapeutically equivalent product in "Approval Drug Products with Therapeutic Equivalence Evaluations."
- If a drug was already a multiple-source drug at the beginning of the payment calculation period, we do not anticipate making any adjustment to the dosage unit average price. Of course, after the 6-month payment calculation period in which a drug is added to "Approved Drug Products with Therapeutic Equivalence Evaluations," we would consider the pricing information for the drug just as we consider pricing information for other drugs.

We believe that these decisions on how to handle additions to "Approved Drug Products with Therapeutic Equivalence Evaluations" would be reasonable. In the case of a drug that becomes a multiple-source drug during the payment calculation period, the price at which a therapeutically equivalent product is available is likely to be less. We believe that these potential price reductions should be incorporated into Medicare payments. For a drug that was already a multiple-source drug, we believe the addition of another drug product is less likely to modify the Medicare payment limits in a significant way.

5. Determining the 90th Percentile of Actual Charges

Under section 1834(c)(3)(A)(i) of the Act, the Secretary computes the 90th percentile of actual charges on any geographic basis that he determines to be appropriate, for example, carrierwide or statewide. The most administratively feasible bases for these computations would be carrierwide or national. We considered using a carrierwide basis, that is, calculating the 90th percentile in

each of the drug bill processor regions. However, we are proposing to use a national basis for determining the 90th percentile of actual charges because the other payment limit component (the administrative allowance plus the product of the number of tablets or other dosage units dispensed and the per dosage unit average price for the drug) would also be computed on a national basis. We believe that using two nationally based amounts would yield the most equitable comparison. We are, however, interested in receiving comments on the advisability of using a carrierwide basis instead of a national basis for these computations.

The determination of the 90th percentile of actual charges would be made on a per dosage unit basis taking into consideration the dosage form and strength.

D. Nontherapeutically Equivalent Drugs

In classifying generic drugs, the FDA uses two categories. The A category includes drug products that are considered to be therapeutically equivalent to other pharmaceutically equivalent products. The B category includes drug products that the FDA does not at this time consider to be therapeutically equivalent to other pharmaceutically equivalent products. Drugs in category B do not meet the definition of multiple-source drugs as set forth in section 1834(c)(9)(A) of the Act because category B drugs are not therapeutically equivalent. Thus, B category drugs may not be substituted for category A drugs or for "brand name" drugs.

We are proposing to pay for category B drugs but only as nonmultiple-source drugs and only if the prescription specifically identifies the category B drug. We are specifically seeking public comments about category B drugs and our proposal to pay for them only as nonmultiple-source drugs.

E. Changes to the Regulations

The regulations implementing the provisions of sections 1834(c) (2), (3), and (4) of the Act that provide for payment for drugs under the catastrophic drug benefit provisions would be located in Subpart I (Payment for Drugs Under the Catastrophic Drug Benefit) of a new Part 414 (Payment for Part B Medical and Other Health Services). We intend to issue a separate final rule to move the current sections on reasonable charges for Part B services from Part 405, Subpart E to Part 414. Other subparts will be added in separate documents as new provisions of the law are implemented through the usual rulemaking process.

IV. Regulatory Impact Statement

A. Executive Order 12291 and Regulatory Flexibility Analyses

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all pharmacists, most pharmacies, and some pharmaceutical manufacturers qualify as small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

Readers may find the following discussion to be very similar to impact analyses in other regulations or notices implementing provisions of the Medicare catastrophic drug benefit. We have purposefully provided complete analyses in each document (even though they may be duplicative) to provide readers with complete discussions of the possible effects of the provisions being implemented without having to refer to other **Federal Register** documents.

This proposed rule would implement section 202(b) of Public Law 100–360, which provides Part B payment for covered drugs used in immunosuppressive therapy and covered home IV drugs effective January 1, 1990 and for all other covered drugs effective January 1, 1991. As envisioned by the statute and assuming adequate financing, we anticipate that Medicare payment for these drugs would result in the following costs:

TABLE I—PROJECTED COSTS AS A RESULT OF MEDICARE PAYMENT FOR OUTPATIENT PRESCRIPTION DRUGS

[In millions]*

Fiscal year—			
1990	1991	1992	1993
$130	$1,210	$3,600	$3,830

*Rounded to the nearest $10 million.

We believe that any effects of these provisions on the economy and public would primarily be the result of the statute and not this proposed rule. This is because we have proposed to implement the statute exercising administrative discretion in the following four areas only:

- Determining the 90th percentile of actual charges for nonmultiple-source drugs and multiple-source drugs with restrictive prescriptions on a national basis.
- For all covered drugs, the Secretary must calculate the average price component on a national basis. However, to take account of limitations on the availability of drug products and variations among different areas in the average price for a drug product, the Secretary may determine the average price component of the payment limits on a regional basis.
- For multiple-source drugs without restrictive prescriptions, the Secretary may base the per dosage unit average price for the drug on either the published average price for the drug or on a biannual survey. We are considering use of a survey for multiple-source drugs that are commonly prescribed to Medicare beneficiaries. The statute makes no mention of a survey for multiple-source drugs with restrictive prescriptions. Therefore, their price would be determined by the lowest published price.
- For nonmultiple-source drugs, the Secretary must base the per dosage unit average price for the drug on a biannual survey. However, the Secretary need not conduct a survey if, during 1990, the Secretary determines that a survey is not appropriate for a specific covered outpatient drug, or, after 1990, there is a low volume of sales for the drug or there are other appropriate reasons not to conduct a survey. In such cases, the per dosage unit average price is based on the published average price.

In section III of this preamble, we discuss our rationale for choosing specific provisions. As discussed below in the analyses in section IV.B. of this preamble, we do not believe these provisions would result in significant

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effects under E.O. 12291, RFA, or rural

lower than the median. However, we do

discounts) of prescription drugs than by

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catastrophic drug benefits provided

reached would increase from 50 percent

would result in an increase in the

effects under E.O. 12291, RFA, or rural hospital criteria.

The major provisions of this proposed rule are prescribed by the Act as amended by Pub. L. 100–360. This rule would conform the provisions of the Code of Federal Regulations to the changes made by the statute. However, we have prepared voluntary E.O. 12291 and regulatory flexibility analyses (at section IV.C. below) for this proposed rule because coverage of outpatient prescription drugs would represent a significant expansion of Medicare benefits and because of the large number of pharmacists, pharmacies, and pharmaceutical manufacturers who would be affected by the statute.

We are not preparing a rural hospital impact statement since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

B. Use of Administrative Discretion

Below is a discussion of those areas in which we have exercised administrative discretion and a discussion of why we believe the effects of our choices would be negligible.

Section 1834(c)(3)(A) of the Act sets forth the payment limit for nonmultiple-source drugs and multiple-source drugs with restrictive prescriptions. The payment limit for these drugs for a payment calculation period is equal to the lesser of the 90th percentile of the actual charges (computed on a statewide basis, carrierwide basis, or other appropriate geographic area basis, as specified by the Secretary) or the amount of the administrative allowance plus the product of the number of tablets and the per tablet or unit average price for such drug. We are given discretion in determining the appropriate geographic basis for calculating the 90th percentile of actual charges. As stated in section III. of this preamble, we propose to do this on a national basis.

We believe that the most administratively feasible basis for determining the 90th percentile of charges is either carrierwide or national. We propose to use a national basis because the other payment limit component (the administrative allowance plus the product of the number of tablets or other dosage units dispensed and the per dosage unit average price for the drug) is computed on a national basis. We believe using two nationally-based amounts would yield the most equitable comparison. We believe that use of a national basis could benefit those pharmacies that have overhead and operating costs lower than the median. However, we do not believe that this would have any significant effect on pharmacies.

Under section 1834(c)(3)(C)(iv) of the Act, the average price component of the payment limits for all covered drugs is to be determined on a national basis. However, the Secretary may make these determinations on a regional basis if it can be demonstrated that there are limitations on the availability of drug products and variations among different areas in the average price for a drug product.

We expect that the instances when we would use this authority would be unusual. That is, we believe it is unlikely that the availability or price of a drug would vary significantly in one area relative to others. The purpose of the authority to make these adjustments is to take account of such unusual situations regarding the availability and price of drugs. Since these adjustments should more accurately reflect pharmacy costs in unusual circumstances, we anticipate that their effect, while minimal, would not be adverse.

In accordance with section 1834(c)(3)(C)(ii)(I) of the Act, the Secretary is required to survey wholesalers, manufacturers, and other direct sellers of covered outpatient drugs to determine the average wholesale price of nonmultiple-source drugs. In 1990, the Secretary may exclude a drug from the survey if he determines there is good reason to do so. For surveys conducted after 1990, a drug may be excluded from the price survey either because of a low volume of sales for that drug or for some other appropriate reason.

As explained in section III.C.4. of this preamble, we intend to survey all commonly prescribed nonmultiple-source drugs to determine their average wholesale price. In order to determine which nonmultiple-source drugs are commonly prescribed for Medicare beneficiaries, we will collect data on the volume of Medicare sales of these drugs in addition to obtaining wholesale price information.

Under section 1834(c)(3)(C)(ii)(II) of the Act, for all multiple-source drugs without restrictive prescriptions, the Secretary may base the per dosage unit average price for the drug on either the published average price for the drug or on a biannual survey.

We are considering use of a survey for multiple-source drugs that are commonly prescribed to Medicare beneficiaries. We intend to conduct the survey on a selected basis because we believe that it may give a more accurate reflection of prices (exclusive of discounts) of prescription drugs than by using the published prices. We will also be collecting sales data so that we can determine which multiple-source drugs to include in constructing the payment limit. In this case, we would use the unweighted median of the surveyed prices.

After conducting a survey, we would pay the lesser of the survey price and the published price for all covered drugs because this would best reflect the true acquisition cost of the drug. By paying the lower price, we better serve the beneficiaries, who together pay premiums for 100 percent of this benefit, and we serve as prudent stewards of the Part B trust funds.

C. Voluntary Regulatory Flexibility Analysis

1. Effects on Beneficiaries

a. Benefits for Medicare Beneficiaries Beginning in 1990. In 1990, we estimate that about 9,500 beneficiaries will undergo an organ transplant that will be covered under the Medicare program. There may be an additional 7,600 beneficiaries who had undergone an organ transplant covered under the Medicare program sometime in 1989. Both groups would be covered under the catastrophic drug benefit for the drugs used in their immunosuppressive therapy beginning January 1, 1990, and would be exempt from the catastrophic drug deductible and subject only to a 20 percent catastrophic drug coinsurance rate for up to 1 year following their discharge from the hospital.

Also, beginning January 1, 1990, we expect that approximately 19,700 beneficiaries who had undergone a Medicare covered transplant before 1989 or had undergone or will undergo an organ transplant not covered under the Medicare program will be covered under the catastrophic drug benefit provisions. These beneficiaries, however, would be subject to the catastrophic drug deductible payment amount and to the 50 percent coinsurance rate that would be in effect for 1990.

We estimate that as many as 65,000 Medicare beneficiaries would use covered home IV drugs in 1990. Of these, we estimate that about 56,550 beneficiaries would begin their IV drug therapy while still in the hospital and thus be exempt from the catastrophic drug benefit deductible and subject only to a 20 percent coinsurance payment rate for home IV drugs furnished as part of home IV drug therapy.

b. Benefits for Medicare Beneficiaries, 1991 through 1993. Our actuaries project that, without the

catastrophic drug benefits provided under sections 1832 and 1861 (s) and (t) of the Act as amended by section 202 of Public Law 100–360, in 1991, total beneficiary expenditures for prescription drugs would have been $12.6 billion. By 1993, our actuaries project that this figure would have grown to $14.2 billion. By distributing total projected spending for outpatient drugs in 1991 over all Medicare beneficiaries, we expect the average expenditure per beneficiary would have been about $405 for an average 18.7 prescriptions. Similarly, in 1993, we expect that the average expenditure per beneficiary would have been $450 per beneficiary for an average of 19.4 prescriptions.

While we make these projections in terms of all beneficiaries, we estimate that only about 85 percent of all beneficiaries would purchase covered prescription drugs in any given year. Thus, the amount for each beneficiary who would actually purchase prescription drugs in 1991 (that is, the average expense for outpatient prescription drugs per Medicare user) is expected to be about $475. By 1993, the average expense per Medicare user would increase to about $540.

Although the level of the prescription drug deductible in 1991 is set by statute at $600 (a level that would permit an estimated 24 percent of all beneficiaries to receive covered outpatient drug benefits), the percentage of beneficiaries meeting this deductible would equal nearly 28 percent of those beneficiaries who actually would purchase covered outpatient drugs. In 1993, the level of the covered outpatient drug deductible would be set at a level that would permit 16.8 percent of all Medicare beneficiaries to qualify for the covered outpatient drug benefit. Yet in terms of those who are expected to actually purchase covered outpatient drugs, the percent of users meeting the deductible amount would be about 20 percent.

Beginning in 1991, those who meet the deductible would receive an average benefit of about $345 for the year. As envisioned by the statute, and assuming adequate financing, in 1993, the average benefit payment made on behalf of a beneficiary who had met the deductible amount would increase to about $700. The projected growth in benefit payments per beneficiary would be largely the result of the increased portion of prescription drug costs the Medicare program would be required to pay. In accordance with the statute, the proportion of drug costs covered by the program after the deductible amount is reached would increase from 50 percent in 1991 to 80 percent in 1993.

While the portion of drug costs covered by Medicare would increase from 1990 through 1993, the proportion of beneficiaries expected to meet the deductible amount would drop during this period. Section 1834(c)(1)(C) of the Act sets forth the catastrophic drug deductible amount for 1990, 1991, and 1992 and requires that the Secretary determine for 1993 a deductible amount that will result in 16.8 percent of beneficiaries incurring expenses for covered outpatient drugs sufficient to meet the catastrophic drug deductible. The deductible amount in 1991 would be set at $600, enabling about 24 percent of all beneficiaries to qualify for drug payment benefits (or about 28 percent of projected actual Medicare beneficiaries requiring covered outpatient drugs). In 1992, the deductible amount would increase to $652, which would enable 23 percent of all beneficiaries (almost 27 percent of those beneficiaries projected to actually use covered outpatient drugs) to qualify for the drug benefit. In 1993, as required by the statute, the deductible amount would be set at a level that would permit 16.8 percent of all beneficiaries to receive covered outpatient drug benefits. This would be the equivalent of about 20 percent of those beneficiaries who would require covered outpatient drugs during that period.

2. Effects on Pharmacists, Pharmacies, and Pharmaceutical Manufacturers

As of June 1988, there were 378 pharmaceutical firms licensed to manufacture prescription drug products in the United States. There are now about 9,700 different drug products meeting the statutory definition of a covered outpatient drug marketed in the United States. Of the total number of approved drug products, 1,975 products are manufactured by a single firm, and almost 7,795 products are manufactured by more than one firm. We estimate that we will process data from more than 55,000 pharmacies for outpatient prescription drug bills.

Sections 1834(c)(9)(B) (i) and (ii) of the Act requires that the prescribing physician or other legally authorized person who is prescribing the drug indicate with an appropriate phrase such as "brand medically necessary" in his or her handwriting if the prescriber wants to prohibit generic substitution by the pharmacist.

We believe that the provision cited above, along with section 1834(c)(3)(B) of the Act, which sets forth the payment limit methodology for multiple-source drugs without restrictive prescriptions, would result in an increase in the generic dispensing rate for all pharmacies. This is because it would be in a pharmacy's best economic interest in those instances when the phrase "brand medically necessary" was not used in the prescribing process to substitute a lower-cost generic equivalent for the original brand since to do otherwise would result in a lower profit on each prescription dispensed. We also believe that these provisions of the statute might adversely affect those pharmaceutical manufacturers who do not manufacture generic equivalents since we believe their market share might decrease.

Furthermore, we believe that pharmacies may see a decrease in their profit per dispensed prescription for Medicare beneficiaries to the extent that those prescription drugs would have been dispensed as a higher-priced brand name drug if Public Law 100–360 had not been enacted. This is because we believe there is currently more profit in dispensing higher-priced brand name prescriptions than there is in dispensing their generic equivalents. However, we believe the decrease in profit per dispensed prescription would be offset by an increase in the number of prescriptions dispensed. We address this issue as "induced" demand later in this section.

The administrative allowance for all drugs dispensed in 1990 would be at the nonparticipating pharmacy rate of $2.50 because there is no statutory provision for participating pharmacies in 1990. In 1990, this administrative allowance is only relevant to immunosuppressive drugs because the administrative allowance would not be applied in computing the payment for dispensing home IV drugs. Instead, as explained in section III.C.3. above, payment for dispensing drugs used in home IV drug therapy would be made as part of a home IV drug therapy services per diem fee schedule.

Each time a prescription is filled in 1991, the Medicare program would pay an administrative allowance of $4.50 for drugs dispensed by a participating pharmacy and $2.50 for drugs dispensed by a nonparticipating pharmacy, as required by section 1834(c)(4)(A)(i) of the Act. Section 1834(c)(4)(A)(ii) of the Act requires that after 1991 the allowances be adjusted annually based on changes in the implicit price deflator for the GNP. The implicit price deflator measures the rate of inflation for the entire U.S. economy and is the means by which the GNP is adjusted for inflation. We have no administrative discretion in setting either the amount of the administrative allowances or the rate of increase since both are set by statute.

The dosage unit average price would be updated every 6 months. For example, if a survey of drug prices were made on January 1, 1991, those prices would be used for prescription reimbursement from July 1 through December 31, 1991. Thus, the dosage unit average prices would be 6 months out of date at the beginning of each 6-month period and 12 months out of date before they would be updated.

In developing our estimates of benefit payments, we assumed that once a beneficiary reached the deductible amount, there would be an "induced" demand for prescription drugs that would increase the number of prescriptions written and, possibly, the cost of prescriptions as well. That is, prescribing health professionals may feel freer to prescribe both a larger quantity and more expensive drugs for a patient who has met the deductible amount than for one who has not met the deductible amount. Similarly, a patient who has met the deductible payment amount may feel less constrained to demand more medications or to have more prescriptions filled than a patient who has not met the deductible amount.

In attempting to predict the magnitude of the "induced" demand for covered outpatient drugs, we assumed that the effect would be directly related to the amount of program benefit payments. This amount, in turn, is a function of the deductible payment amount and the percentage of the beneficiary copayment. In 1991, we project that "induced" demand would account for about 23 percent of program benefit payments for covered outpatient prescription drugs. In 1992, the percent of "induced" benefits for prescription drugs is expected to grow to 28.5 percent, and by 1993, the percentage is expected to reach 32.4 percent. Since these "induced" benefits would apply to purchases of additional covered outpatient drugs that would not otherwise have been purchased, in addition to possibly benefiting Medicare beneficiaries through enabling them to have greater access to medications, the "induced" demand for covered outpatient drugs could also financially benefit every entity involved in the manufacturing and dispensing of prescription drugs.

It should be noted that the expected "induced" demand does not necessarily represent an abuse of the Medicare drug benefit. We believe that in many cases, the increased demand may represent a decision on the part of a health professional to treat a condition more aggressively than he or she might do if the catastrophic drug benefit were not available. Similarly, a beneficiary might forego having a prescription filled or avoid taking a drug at the prescribed time interval in order to conserve the available medication (and thus save money) were it not for the coverage of outpatient drugs now afforded by the Act. Thus, the "induced" demand may represent, in part, a medically appropriate demand for prescription drugs that currently is not being met.

Pharmaceutical manufacturers' benefits from the payment provisions of section 202(b) of Public Law 100–360 would be based on the benefits that would accrue to pharmacies. Assuming that pharmacies experience an increase in prescriptions written and prescription drugs sold, the pharmaceutical manufacturing industry would likewise experience a concomitant increase in the amount of pharmaceutical drugs sold for distribution to pharmacies and final distribution to Medicare beneficiaries.

D. Conclusion

We have summarized the most significant effects of the outpatient prescription drug payment provisions specified in section 1834 of the Act as amended by section 202(b) of Public Law 100–360. We do not believe that we are required to furnish this information under either E.O. 12291 or the RFA. Nevertheless, in the interest of providing the public with information regarding a major revision to the Medicare program, we have voluntarily offered an analysis of the major effects of the payment methodology for covered outpatient drugs.

V. Other Required Information

A. Paperwork Burden

Sections 414.508 (b) and (c) of this proposed rule contain information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511). Section 414.508(b) requires, for a handwritten restrictive prescription, that the physician or the person prescribing the drug use specific language on the prescription and that this language must be in the prescribing person's handwriting. Section 414.508(c) requires, for a telephone restrictive prescription, that the prescriber provide a written and signed confirmation, in his or her own handwriting, to the pharmacy. We estimate that complying with the requirement in 414.508(b) to write "brand medically necessary" on handwritten prescriptions will require an additional 5 to 10 seconds per prescription. We estimate that completing a prescription form for a telephone prescription, as required in §414.508(c), would routinely require no more than 1 to 2 minutes per prescription.

A notice will be published in the **Federal Register** after OMB approval of these requirements is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESS" section of this preamble.

B. Public Comment

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date specified in the "Dates" section of this preamble, and we will respond to the comments in the preamble of the final rule.

List of Subjects in 42 CFR Part 414

Drugs, Medicare, Reporting and recordkeeping.

A new 42 CFR Part 414 would be added as set forth below:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

Subpart A-H—[Reserved]

Subpart I—Payment for Outpatient Drugs Under the Catastrophic Drug Benefit

Sec.
414.500 Purpose.
414.502 Definitions.
414.504 Determination of amount payable.
414.506 Determination of the payment limit.
414.508 Determining whether a prescription is restrictive.
414.510 Determination of dosage unit average price.
414.512 Administrative allowance.
414.514 Amount of the payment percent.

Authority: Secs. 1102, 1834(c), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395m(c), and 1395hh).

Subpart A-H—[Reserved]

Subpart I—Payment for Outpatient Drugs Under the Catastrophic Drug Benefit

§ 414.500 Purpose.

This subpart implements section 1834(c) of the Act in part by specifying how payments are made for covered outpatient drugs under the catastrophic drug benefit.

§ 414.502 Definitions.

For purposes of this subpart, the following definitions apply:

Average price means the price that is determined through the use of either published or survey data concerning amounts pharmacies pay for drug products.

Multiple source drug means a covered outpatient drug for which there are two or more drug products that meet all of the following conditions during a payment calculation period:

(a) *Therapeutically equivalent.* The drug products are rated as therapeutically equivalent by the Food and Drug Administration (FDA) in its most recent publication of "Approved Drug Products with Therapeutic Equivalence Evaluations."

(b) Pharmaceutically equivalent and bioequivalent. (1) Except as provided in paragraph (b)(2) of this section, the drug products have been determined by FDA to be pharmaceutically equivalent and bioequivalent.

(2) The drug products are not required to meet the condition concerning pharmaceutically equivalency and bioequivalency as set forth in paragraph (b)(1) of this section if FDA changes by regulation (after an opportunity for public comment of 90 days) the requirement that, for purposes of the "Approved Drug Products with Therapeutic Equivalence Evaluations," in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent.

(c) *Available for sale or marketing.* The drug products are considered to be available for sale or marketing. Drug products meet this condition if they are listed by FDA in its most recent publication of "Approved Drug Products with Therapeutic Equivalence Evaluations" (other than in the Discontinued Drug Product List in that publication) unless HCFA determines that sale or marketing is not actually occurring.

Nonmultiple-source drug means a covered outpatient drug that does not meet the definition of a "multiple-source drug."

Payment calculation period means the 6-month period beginning January 1st of each year or the 6-month period beginning July 1st of each year.

§ 414.504 Determination of amount payable.

(a) *General.* The amount payable for a covered outpatient drug under the catastrophic drug benefit as described in § 410.29 of this chapter is the applicable payment percent for the drug as determined under § 414.514 multiplied by the lesser of—

(1) The actual charge; or

(2) The payment limit determined under § 414.506.

(b) *Effective date.* Payment is determined under the criteria described in paragraph (a) of this section for—

(1) Drugs dispensed for immunosuppressive therapy after a transplant or covered home IV drugs on or after January 1, 1990; and

(2) All other covered outpatient drugs dispensed on or after January 1, 1991.

§ 414.506 Determination of the payment limit.

(a) *General.* To determine the payment limit for a drug, HCFA uses the procedures set forth in paragraph (b) or (c) of this section.

(b) *Nonmultiple-source drug and multiple-source drug with a restrictive prescription.* For a nonmultiple-source drug and multiple-source drug with a restrictive prescription as described in § 414.508, the payment limit is determined as follows:

(1) For drugs dispensed on or after January 1, 1990 and before January 1, 1992, the payment limit is equal to the sum of—

(i) The amount of the administrative allowance as set forth in § 414.512; and

(ii) The product of the number of tablets or other dosage units dispensed and the dosage unit average price as determined in § 414.510 for the payment calculation period in which the drug is dispensed.

(2) For drugs dispensed on or after January 1, 1992, the payment limit is equal to the lesser of—

(i) The amount of the administrative allowance plus the product of the number of tablets or other dosage units dispensed and the average price per dosage unit determined under § 414.510 for the payment calculation period in which the drug is dispensed; or

(ii) The 90th percentile of actual charges for a drug for the second previous payment calculation period adjusted to reflect the number of tablets or other dosage units dispensed.

(c) *Multiple-source drug without a restrictive prescription.* For a multiple-source drug without a restrictive prescription, the payment limit is equal to the sum of—

(1) The administrative allowance; and

(2) The product of the number of tablets or other dosage units dispensed and the dosage unit average price based on the unweighted median determined under § 414.510 for the payment calculation period in which the drug is dispensed.

§ 414.508 Determining whether a prescription is restrictive.

(a) *General.* A drug has a restrictive prescription if it meets the conditions set forth in either paragraph (b) or paragraph (c) of this section.

(b) *Handwritten prescription.* In the case of a written prescription for a drug, only if the prescribing physician (or other person prescribing the drug) includes in his or her handwriting the phrase "brand medically necessary."

(c) *Telephoned prescription.* In the case of a prescription for a drug that is telephoned to the pharmacy, the prescribing physician (or other legally authorized person who is prescribing the drug) indicates that the particular drug must be dispensed by stating the phrase "brand medically necessary" both—

(1) During the telephone call; and

(2) Within 30 days after the telephone call, in a written and signed confirmation, in his or her handwriting, to the pharmacy.

§ 414.510 Determination of dosage unit average price.

(a) *General.* HCFA determines the average price on a per dosage unit basis for purchases in reasonable quantities, as appropriate, based on prices in effect on the first day of the previous payment calculation period. The average price is based on dosage form and strength for each drug product.

(b) *Sources for dosage unit average price.* HCFA obtains the information described in paragraph (a) of this section from the lower of—

(1) When available, a biannual survey of a representative sample of direct sellers, wholesalers, or pharmacies as appropriate; or

(2) Prices published in commonly recognized, comprehensive listings of drug prices.

(c) *Performance of surveys*—(1) *Nonmultiple-source drugs.* (i) HCFA performs the biannual survey described in paragraph (b)(1) of this section for those nonmultiple-source drugs that are commonly prescribed to Medicare beneficiaries except that this survey does not have to be performed in—

(A) Any year in which HCFA determines that a survey is not appropriate for a specific covered outpatient drug; or

(B) In years subsequent to 1990, any year in which HCFA determines that there is a low volume of sales for a drug.

(ii) The dosage unit average price is based on the median of the surveyed prices.

(2) *Multiple-source drugs.* HCFA performs the biannual survey described in paragraph (b)(1) of this section for

multiple-source drugs, but only if HCFA determines a survey to be appropriate. The dosage unit average price is based on the unweighted median of the surveyed prices.

(d) *Use of published prices—(1) Nonmultiple source drugs and multiple-source drugs with restrictive prescriptions.* The dosage unit average price for nonmultiple-source drugs and multiple-source drugs with restrictive prescriptions is based on the lowest published price.

(2) *Multiple-source drugs without restrictive prescriptions.* The dosage unit average price for multiple-source drugs without restrictive prescriptions is based on the unweighted median of published prices.

(e) *National determination.* The determination of the dosage unit average price is made on a national basis unless HCFA makes the determination on a regional basis to take into account limitations on the availability of drugs and variations on the prices among different areas.

(f) *Discounts.* In determining the dosage unit average price, HCFA does not consider discounts.

§ 414.512 Administrative allowance.

(a) *For 1990 and 1991.* For a drug dispensed on or after January 1, 1990 and before January 1, 1992, the administrative allowance for dispensing the drug is—

(1) $4.50 per prescription for a pharmacy that meets the requirements under subpart B of part 490 of this chapter for a participating pharmacy; or

(2) $2.50 per prescription for a pharmacy that is not a participating pharmacy.

(b) *For years subsequent to 1991.* For each year subsequent to 1991, the administrative allowance is the allowance applicable to the previous year increased by the percentage increase in the implicit price deflator for gross national product over the 12-month period ending with August of the preceding year as published by the Department of Commerce rounded to the nearest penny.

(c) *Limitation on administrative allowance for dispensing insulin—(1) Purchase of a 30-day supply.* For insulin that is available without a prescription, the administrative allowance is made for each purchase of a reasonable quantity, that is, a 30-day supply.

(2) *Exceptions.* An administrative allowance is made for a purchase of a supply of insulin for fewer than 30 days in the following circumstances (or if other extenuating conditions exist):

(i) There is a change in the type of insulin the beneficiary uses or the insulin regimen is otherwise modified; or

(ii) If, because of travel plans, the beneficiary needs to make smaller purchases or forgets to bring along enough insulin for duration of the trip.

(d) *Exception for drugs dispensed for home IV drug therapy.* No administrative allowance is paid for dispensing a drug that is to be used in home IV drug therapy. An allowance for dispensing IV drugs is made under the fee schedule for payment for services related to home IV drug therapy under subpart J of part 414.

§ 414.514 Amount of the payment percent.

(a) *Immunosuppressive and Home IV drugs.* For drugs related to immunosuppressive drug therapy dispensed during the first year after a covered organ transplant and for home IV drugs, the payment percent equals 80 percent.

(b) *Other drugs.*

The payment percent for covered outpatient drugs other than the drugs described in paragraph (a) of this section equals the following:

(1) In 1990 and 1991, 50 percent.

(2) In 1992, 60 percent.

(3) In 1993 and subsequent years, 80 percent.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: July 12, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: August 19, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89–20846 Filed 9–6–89; 8:45 am]

BILLING CODE 4120-01-M

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42 CFR Parts 400, 417, 485, and 489

[BPD–617–P]

RIN 0938–AE09

Medicare Program; Conditions of Participation for Home Intravenous Drug Therapy Providers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the conditions of participation that an entity would be required to meet in order to qualify as a home intravenous drug therapy provider. This proposal would implement the provisions of section 1861(jj)(3) of the Social Security Act, which was added by section 203(b) of the Medicare Catastrophic Coverage Act of 1988. An entity that meets these conditions of participation would be eligible for payment from Medicare for covered home IV drug therapy services furnished to Medicare beneficiaries.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on November 6, 1989.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-617–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309 G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

If comments concern information collection or recordkeeping requirements, please address a copy of the comments to:

Office of Management and Budget,
Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting, please refer to file code BPD–617–P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION, CONTACT: Betty Burrier, (301) 966–4649.

SUPPLEMENTAL INFORMATION:

I. Background

Many individuals require intravenous (IV) drug therapy on an ongoing basis because the medication is not available in oral dosage form, the patient is unable to take the medication orally or by other less invasive means, or the medication is more effective if administered intravenously. Most of these individuals require hospitalization for the initiation of IV drug therapy and must remain hospitalized for the duration of the therapy. There is, however, an increasing number of individuals whose IV drug therapy care, in whole or in part, can be managed at home. Allowing these patients to receive drug therapy at home rather than in the hospital can improve the quality of their lives and potentially allow their return to normal activities.

Currently, under the Medicare Part A (Hospital Insurance) program coverage of drugs and biologicals is provided as follows:

- Under section 1861(b)(2) of the Social Security Act (the Act), we cover drugs and biologicals used in the hospital that are ordinarily furnished by the hospital for the care and treatment of patients.
- Under section 1861(h)(5) of the Act, we cover drugs and biologicals furnished for use in a skilled nursing facility that are ordinarily furnished by the facility for the care and treatment of inpatients.
- Under section 1861(dd)(1)(E) of the Act, we cover drugs and biologicals furnished to terminally ill individuals under a written plan as part of a hospice program.

The Medicare Part B (Supplementary Medical Insurance) program covers drugs as defined in the scope of benefits set forth in section 1832 of the Act. Certain sections of section 1861 of the Act define the coverage provisions specified in section 1832 of the Act.

Current Medicare Part B coverage of outpatient drugs and biologicals is, in part, provided for under section 1861 of the Act as follows:

- Under section 1861(s)(2) (A) and (B) of the Act, we cover drugs and biologicals that cannot be self-administered and that are furnished as incident to a physician's service.
- Under section 1861(s)(2)(C) of the Act, we cover diagnostic services furnished by a hospital to outpatients, including drugs and biologicals required in the performance of these services.
- Under section 1861(s)(2)(F) of the Act, we cover dialysis supplies, including drugs and biologicals.
- Under section 1861(s)(2)(G) of the Act, we cover antigens that are prepared by a physician for a particular patient and that are administered by or under the supervision of a physician.
- Under section 1861(s)(2)(I) of the Act, we cover blood clotting factors for hemophilia patients competent to use those factors to control bleeding, without medical or other supervision.
- Under section 1861(s)(2)(J) of the Act, we cover immunosuppressive drugs and drugs that are needed for effective immunosuppressive therapy furnished to an individual who receives an organ transplant for which payment is made under Medicare and that are furnished within 1 year after the date of the transplant procedure.
- Under section 1861(s)(2)(K)(ii) of the Act, we cover supplies that are incident to a physician assistant's services furnished under the supervision of a physician, including drugs and biologicals.
- Under section 1861(s)(10) of the Act, we cover pneumococcal, influenza, and hepatitis B vaccines.
- Under section 1861(cc)(1)(F) of the Act, we cover drugs and biologicals that cannot be self-administered and that are furnished to an individual who is an outpatient of a comprehensive outpatient rehabilitation facility.
- We cover drugs and biologicals furnished as part of or incident to the provision of the following covered services:

—Rural health clinic services (section 1861(aa)(1) of the Act).
—Partial hospitalization services (section 1861(ff)(2)(D) of the Act).
—Certified nurse-midwife services (section 1861(gg)(1) of the Act).
—Qualified psychologist services (section 1861(ii) of the Act).

- Payment has also been made for certain drugs and biologicals as part of the durable medical equipment (DME) benefit (section 1861(n) of the Act) and the prosthetic device benefit (section 1861(s)(8) of the Act).

Drugs and biologicals are also covered as part of or incident to services furnished in qualified ambulatory surgical centers as stated in section 1832(a)(2)(F)(i) of the Act.

Section 203(a) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100–360), enacted on July 1, 1988, amended section 1832(a)(2)(A) of the Act to establish coverage under Part B for home IV drug therapy services furnished on or after January 1, 1990. Section 203(b) of Public Law 100–360 added section 1861(jj) to the Act to define home IV drug therapy services. Under new 1861(jj)(2) of the Act, home IV drug therapy services means "nursing, pharmacy, and related items and services (including medical supplies, intravenous fluids, delivery, and equipment) as are necessary to conduct safely and effectively an intravenously administered drug regimen * * *." As stated in section 1861(jj)(1) of the Act, home IV drug therapy services are to be "furnished to an individual who is under the care of a physician—(A) in a place of residence used as such individual's home; (B) by a qualified home intravenous drug therapy provider or by others under arrangements with them made by such provider and (C) under a plan established and periodically reviewed by a physician."

A qualified home IV drug therapy provider (referred to below as home IV providers) is defined in section 1861(jj)(3) of the Act as an entity that the Secretary determines meets the following requirements:

- The entity is capable of providing or arranging for the items and services described in section 1861(jj)(2) of the Act (that is, the provision of nursing, pharmacy, and related services) as are necessary to conduct safely and effectively an intravenously administered drug regimen through use of a covered home IV drug, as defined in section 1861(t)(4) of the Act. Under the provision of the law, the entity must also be capable of providing covered home IV drug directly or under arrangements.
- The entity maintains clinical records on all patients.
- The entity adheres to written protocols and policies with respect to the provision of the covered items and services.
- The entity makes services available (as needed) seven days a week on a 24-hour basis.
- The entity coordinates all services with the patient's physician.
- The entity conducts a quality assessment and assurance program, including drug regimen review and coordination of patient care.
- The entity assures that only trained personnel furnish covered home IV drugs (and any other service for which training is required to furnish the service safely).
- The entity assumes responsibility for the quality of services furnished by others under arrangements with the agency or entity.
- In the case of an entity in any State in which State or applicable local law provides for the licensing of entities of this nature, the entity—

—Is licensed under that law; or
—Is approved by the agency of the State or locality responsible for licensing entities of this nature as meeting the standards established for that licensing.

- The entity meets such other requirements as the Secretary may determine are necessary to assure the safe and effective provision of home IV drug therapy services and the efficient administration of the home IV drug therapy benefit.

This proposed rule sets forth the conditions that a home IV drug therapy provider would have to meet to participate in the Medicare program.

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That is, we would consider any entity that complies with the requirements of the Act and this proposed rule to meet the definition of home IV provider under the provisions of new section 1861(jj)(3) of the Act. (Our proposals concerning coverage of specific drugs for use in home IV drug therapy, coverage of the services connected with home IV drug therapy, payment rules for the drugs, and the fee schedule under which the services will be paid will be addressed in separate rulemaking documents.)

Under section 1861(jj)(3) of the Act, the Secretary is required to establish the conditions of participation under which entities may qualify as home IV providers. In addition, as mentioned above, under section 1861(jj)(3)(x) of the Act, the Secretary may determine the conditions necessary for the assurance of safe and effective provision of home IV drug therapy services and the efficient administration of the home IV drug therapy benefit.

In order to become familiar with the wide range of current practices and arrangements for furnishing home IV drug therapy, we received information from companies that currently furnish home IV drug therapy services, home health agencies (HHAs), pharmaceutical manufacturers, physicians, pharmacists, and various professional associations. In addition, we contacted two major professional organizations that currently have standards for the provision of home IV drug therapy services; that is, the Joint Commission for the Accreditation of Health Care Organizations (JCAHO), which has developed the "Standards for the Accreditation of Home Care," and the Intravenous Nursing Society (INS), which developed the "Intravenous Nursing Standards of Practice." We reviewed both the JCAHO and INS standards in detail along with existing HCFA standards for different types of providers of services.

The delivery of home IV drug therapy services under Medicare will involve the administration of potentially dangerous drugs, using sophisticated medical equipment and techniques, to a predominantly elderly population in their homes. Accordingly, we intend that the conditions of participation for home IV providers, once adopted, will assure the safe and effective delivery of home IV drug therapy services to these patients.

Thus, our main objective in establishing these conditions of participation is to minimize the risks for the Medicare beneficiaries while maximizing the benefits. Therefore, after reviewing both the materials furnished by the organizations and individuals we contacted and various medical journal articles about home IV drug therapy, we extracted the provisions that we believe would be most important to meet the requirements of the statute and our responsibilities in assuring that this new benefit will be furnished in the most safe and effective manner possible.

In general, we also want to state that, in setting forth the provisions of section 203 of Pub. L. 100–360, Congress established strong standards for the establishment of conditions of participation for home IV providers and made it clear that entities wishing to qualify as home IV providers must do so under these conditions of participation. For example, in the case of HHAs or DME suppliers, such entities may qualify as a home IV provider for purposes of furnishing home IV therapy services if they meet the requirements of these conditions of participation. (See H.R. Rep. No. 661, 100th Cong., 2nd Sess. 201 (1988).)

II. Provisions of the Proposed Regulations

Most of the conditions for home IV providers would be based on the specific requirements set forth in sections 1861(jj)(3) (i) through (ix) of the Act. The remaining conditions would be established under the general authority of section 1861(jj)(3)(x) of the Act concerning safety and effectiveness and the efficient administration of home IV therapy services.

We are proposing to add a new Subpart C to 42 CFR Part 485 (Conditions of Participation and Conditions for Coverage: Specialized Providers) in which we would set forth the proposed conditions that entities must meet to satisfy the definition of a home IV provider under section 1861(jj) of the Act and to be accepted for participation in Medicare in accordance with the provisions of Part 489 (Provider Agreements under Medicare). These conditions of participation would serve as the basis for survey activities on the part of the Medicare State survey agencies. (We note that once the conditions of participation are in place under a final rule, noncompliance with them could result in the application of sanctions including intermediate sanctions set forth in section 1846 of the Act, as amended by section 203(e) of Public Law 100–360. A separate rulemaking document that deals with intermediate sanctions and appeal rights for home IV drug therapy providers is being developed.)

We would make a conforming change to § 489.2 to include a home IV provider as one of the entities that must have a provider agreement in order to furnish and receive payment for services under Medicare.

In addition, we would amend § 400.202 to include a home IV provider in the definition of "provider" under Medicare. (We would also make a technical correction in that definition to delete the end of the effective date for hospice care. Although section 122(h)(1)(A) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–35) specified that hospice care would not be covered under Medicare after September 30, 1986, this sunset provision was repealed by section 9123 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272). We would also amend § 417.416 to add hospices and home IV providers to the list of providers that must meet the applicable conditions of participation in Medicare in order to furnish services to an HMO enrollee.)

A. Definition

In accordance with section 1861(jj)(3) of the Act, in § 485.101, we would define a "home IV drug therapy provider" as an entity that—

- Is capable of furnishing covered home IV drugs, nursing and pharmacy services, and other services necessary for the administration of home IV drug therapy; and
- Meets the conditions specified under proposed new §§ 485.105 through 485.165 and other applicable requirements of the statute and regulations.

B. Compliance With Federal, State, and Local Laws

In § 485.105, we would require that a home IV provider be in compliance with applicable Federal and State laws. Also, we would require that a home IV provider ensure that personnel who furnish services, including those who do so under arrangements with the provider, meet all applicable standards that are required by State and local laws. This condition would implement the provisions of section 1861(jj)(3)(ix) of the Act, which specify that an entity meet State and local licensing requirements. Our proposed language in § 485.105 is similar to that which we use in regulations governing conditions of participation for other providers, such as hospitals (§ 482.11) and comprehensive outpatient rehabilitation facilities (§ 485.54).

C. Governing Body and Administration

In accordance with sections 1833(jj)(3) (i) thru (vii) of the Act, which set forth the specific responsibilities of a home IV provider, we would require in § 485.110

that a home IV provider have either a governing body or designated individuals who are legally responsible for the conduct of the home IV provider in furnishing the required services. We believe that this condition is necessary for the purpose of centralization of authority and responsibility for overall operation of the provider.

1. Standard: Disclosure of ownership

We would require a home IV provider to disclose certain information about ownership and control. We would include this requirement because section 1124 of the Act requires a provider of services to disclose ownership information and because section 1834(d)(3) of the Act prohibits a home IV provider from furnishing services to a Medicare beneficiary based on a referral from a physician (or an immediate family member of the physician) who has an ownership interest in, or receives compensation from, the provider. The referring physician is the physician who prescribes the home IV drug or establishes the plan of care for this therapy, or both. Congress established several exceptions to this prohibition that are addressed in a separate proposed rulemaking document concerning coverage of home IV drug therapy services

2. Standard: Participation in reports and studies

New section 1861(jj)(3)(x) of the Act states that an entity wishing to qualify as a home IV provider must meet such "* * * requirements as the Secretary may determine are necessary to assure * * * the efficient administration of the home intravenous drug therapy benefit." Under this provision, we propose to require that home IV providers furnish information as requested by the Secretary concerning cost matters or other issues that may relate to the efficient administration of the home IV drug therapy benefit. We would expect providers to cooperate as needed in this regard and participate in any reports or studies that are conducted.

3. Standard: Chief executive officer

We would require that a home IV provider have a chief executive officer who is responsible for the day-to-day operations of the provider because we believe that it is necessary that there be one person who is accountable for the operation of the provider. The language we are proposing to use is similar to the language in § 482.12, which specifies that a participating hospital must have a chief executive officer who is responsible for managing the hospital.

4. Standard: Patient care policies

Under this proposed rule, a patient's referring physician would determine whether a particular patient would be a good candidate for home IV drug therapy and would determine the drug regimen for each patient. Section 1833(jj)(3)(iii) of the Act requires that a home IV provider adhere to the physician's directions for the provision of items and services. In implementing section 1833(jj)(3)(iii) of the Act, we would require that a home IV provider have written patient care policies to govern the services it furnishes. The patient care policies must include the following:

- A description of the services furnished by the home IV provider's employees and those furnished under arrangements.
- The criteria specifying by diagnoses the patient population for whom the services are designed. That is, the home IV provider would be required to design criteria under which it would admit only a patient whose needs can be met by the services it provides.
- Procedures for the acceptance of a referral, including the assignment of appropriate staff to conduct a timely assessment of the patient's medical and psychological readiness for home IV drug therapy services.
- Procedures for quickly notifying the referring physician if the patient does not meet the home IV provider's admission criteria.
- Procedures for notifying the referring physician of incidences of phelebitis, IV infiltration, or site infection once a course of home IV drug therapy has began.

5. Standard: Contracted services and professional management responsibility

Section 1861(jj)(3)(viii) of the Act provides that a qualified home IV provider must assume "responsibility for the quality of services provided by others under arrangements with the agency or entity." Thus, we believe that Congress did not intend that the home IV provider merely serve as a billing agency for the entity or individual who actually furnishes the services. Therefore, we are proposing that the home IV provider must retain professional and administrative responsibility for, and control and supervision of, contracted services and must ensure that they are furnished in a safe and effective manner by nurses and pharmacists in accordance with the patient's plan of care and other applicable requirements.

Under proposed § 485.110(e), the home IV provider must maintain a legally binding written agreement with each contractor who provides arranged services that includes at least the following provisions:

- Identification of the services to be provided.
- A requirement that contracted services are provided only if directly authorized by the home IV provider.
- A description of the manner in which the contracted services are coordinated, supervised, and evaluated by the home IV provider.
- Delineation of the roles of the home IV provider and the contractor in the patient care process.
- A requirement for the preparation of patient records including the prompt incorporation of progress notes and other observations by the physician, nurse, and pharmacist.
- A requirement that both the personnel and services provided under arrangements meet the same requirements that would be applicable if the personnel and services were furnished directly by the home IV provider.
- Specification of the financial arrangements with a contractor who furnishes home IV therapy services under arrangements. We would require that the financial arrangements provide that the contractor may not bill the patient or Medicare for covered services. This is because, under section 1861(w)(1) of the Act, covered services furnished under arrangements must be billed through the home IV provider exclusively and receipt of payment by the home IV provider for these services on behalf of an entitled individual discharges the individual's liability to pay for services. (Under Medicare, participating providers accept Medicare payment as payment in full except for any applicable deductible and coinsurance amounts, which are the responsibility of the beneficiary. There are no deductible or coinsurance amounts applicable to home IV drug therapy services.)

We are including these requirements because we believe that the professional supervision of the contracted services must include application of many of the same controls as would be applied to services furnished by employees of the home IV provider. This proposed delineation of the roles for the employees of the home IV provider and employees of a contractor is generally similar to the same standard concerning the provision of contracted services by individuals who are not employees of a hospice (§ 418.56).

D. Patient Selection

We propose in § 485.115 that the home IV provider must make a comprehensive assessment of each patient and the patient's needs at the time of patient selection. In order to assess patients, the home IV provider would need to assemble a multidisciplinary team of experts who are aware of both the problems that can occur at home with IV therapy and the criteria that must be met before a patient is accepted. In the case of a hospital inpatient, we would require that this assessment occur before the patient is discharged from the hospital.

The home IV provider would furnish services only to a patient whose needs can be met by these services. In the case of a hospital inpatient, the home IV provider must determine that the patient is medically suitable for their program of home IV therapy and services. We believe and emphasize that proper patient selection is necessary for a safe, effective program of home IV therapy. In considering the home care alternative, it is important for the home IV provider to assess the degree of self-care that is feasible, that is, whether the patient will actually be able to administer the medication, and if not, whether the patient would have available the aid that would be necessary from a caregiver. We believe that patient compliance with the necessary elements of successful home IV therapy is an important factor in allowing the patient to remain at home and not be readmitted to a hospital.

1. Standard: Medical Criteria

We are proposing that in order to be selected for home IV drug therapy, a patient must meet certain medical criteria. We would require that the patient—

- Be under the care of the referring physician who either prescribes the home IV drug or establishes the plan of care for the services, or both, and, therefore, monitors the progress of the home IV drug therapy;
- Have a clinical status that allows IV drugs to be safely administered at home;
- Have body sites available for peripheral IV catheter or needle placement or have a central venous catheter or other central venous access device; and
- For medical or therapeutic reasons, be unable to take the prescribed IV medication orally.

2. Standard: Nonmedical criteria

In addition to the medical criteria, we are proposing that the patient must meet certain nonmedical criteria. It is necessary to assess the patient's nonmedical condition because we believe that an uncooperative patient or one who lacks certain skills would not be able to comply with a home IV regimen successfully. Thus, we would require that the patient—

- Be capable of performing self-administration of drugs and self-care after adequate patient education (for example, be able to learn aseptic technique and heparin lock maintenance and be able to read the drug labeling) or have a primary caregiver who can perform these tasks;
- Be motivated to use home IV drug therapy services;
- Be psychologically stable (that is, the prospect for adherence to a disciplined medical regimen is realistic); and
- Have a home environment that is conducive to the provision of home IV drug therapy services (that is, a clean home with electricity, water, a telephone, refrigeration, and enough space to support home IV drug therapy services).

We are proposing these requirements under the authority of section 1861(jj)(3)(x) of the Act, which states that the Secretary may determine requirements for home IV providers that are necessary to assure the safe and effective provision of home IV drug therapy. We believe that home IV drug therapy could not safely and effectively be furnished to patients who do not meet the above nonmedical criteria.

E. Plan of Care and Physician Review

Section 1861(jj)(1)(C) of the Act requires that home IV drug therapy services be furnished under a plan established and periodically reviewed by a physician. Therefore, we propose that an individual plan of care be developed by the patient's referring physician for a patient to receive home IV drug therapy services. The patient's individual plan of care would be based on initial and ongoing individualized patient assessments by the patient's physician. The plan of care would be reassessed and updated when the patient's physician determines an update is necessary but, as stated below, at least once every 30 days. (We expect that generally the referring physician would also be the patient's physician while receiving home IV drug therapy. However, there may be situations in which this is not the case. For example, a patient may have been an inpatient in a specialty hospital in one city and then referred for home IV drug therapy in the patient's home that is in another city.)

1. Standard: Development of a plan of care

A requirement would be imposed that a plan of care be developed for each patient in accordance with the following provisions:

- The patient's referring physician develops the individual's plan of care.
- The home IV provider assesses the patient and, if the patient is accepted, implements the plan of care as written by the referring physician.
- The plan of care is based on the referring physician's initial and continued patient assessments.
- The plan of care is reassessed by the referring physician as needed but at least once every 30 days.
- The plan of care includes at least the following current information about the patient and the home IV drug therapy services to be provided:

—Name, gender, age, and lean body weight.
—A narrative description of the appropriate diagnoses.
—Drug allergies or sensitivities.
—Current drug therapy, including nonprescription drugs and home remedies.
—The goal of home IV drug therapy services for the patient including duration of IV drug therapy services.
—The drugs to be furnished and the method used to furnish the drugs by the home IV provider including the following:
  +Amount of dosage and timing of administration.
  +Route of administration, that is, either peripheral or central venous line. (A peripheral line is the usual form of administering IV drugs through a surface vein. The needle must be changed every few days. A central line is inserted semipermanently only by a physician in a vein feeding the heart.)
  +Frequency of IV site monitoring.
  +Type of IV equipment, related supplies, and other equipment, and fluids to be administered.
—Physician identifier, date, and signature.

2. Standard: Physician review of plan of care

Various Medicare benefits require a physician to develop and review a plan of care. Generally, how often a plan of care is reviewed varies depending on the type of provider. Under current regulations, the plan of care of a patient receiving services furnished by an HHA must be reviewed at least once every 60 days (§ 405.1223(b)); however, we require that the plan of care for a hospice patient be reviewed at intervals specified by the physician (§ 418.58(b)). The difference in these requirements is specifically related to the medical condition and medical problems of the type of patient served by those providers and the needs of those patients; that is, hospice care is continuous whereas we do not expect that services provided by an HHA would ordinarily be continuous.

In keeping with this concept, we believe that a review of the plan of care for home IV drug therapy patients every 30 days would not be unreasonable. In addition, in a separate proposed rulemaking document, we would require that prescriptions for covered home IV drugs be written for an amount that ordinarily does not exceed a 34-day supply. Thus, the referring physician would review the prescription on a monthly basis. We believe that the referring physician should review the plan of care at the same time that he or she reviews the need for continued drug therapy.

We are proposing that the review of the plan of care by the referring physician meet the following requirements:

—At least once every 30 days, the physician reviews the patient's progress in attaining the objectives of the plan of care.
—This review is based upon appropriate information provided by health professionals, including information furnished by the home IV provider's registered nurse and pharmacist.

F. Central Clinical Records

This condition would implement the provisions of section 1861(jj)(3)(ii) of the Act, which require that home IV providers maintain clinical records on all patients including those who are not entitled to Medicare. In accordance with accepted principles of medical record practice, we propose to require that the home IV provider establish and maintain a clinical record for every individual receiving care and services. We would require that each clinical record be completely, promptly, and accurately documented, readily accessible, and systematically organized to ease retrieval and compilation of information.

1. Standard: Content

We propose the following:

- Each clinical record be a comprehensive compilation of medical and other data that contains sufficient information to identify the patient clearly and to justify the diagnoses and treatment.
- Entries in the clinical record be made for all services provided directly or under arrangements.
- Entries be made for each treatment performed and signed by the individual who provides the services.
- Documentation on each patient be consolidated into one clinical record that is required to contain the following information:

—Patient identification data.
—The initial patient assessment and subsequent reassessments.
—Current plan of treatment.
—Consent and authorization forms.
—Past and present pertinent medical history.
—Complete documentation of all services provided.
—Upon completion of treatment, a summary that includes patient status relative to goal achievement, prognosis, and future treatment considerations.

2. Standard: Retention and preservation.

Generally, the home IV provider would be required to retain clinical records for the appropriate time period provided below beginning with the date of the patient's last treatment. If the requirements of State law concerning retention of records are used, they must be requirements of the law of the State in which the services were provided to the patient. More specifically, we would require the following:

- The home IV provider must maintain clinical records for the time period provided under the appropriate State law.
- In the absence of an appropriate State law, the home IV provider must maintain clinical records for the time period provided under the appropriate statute of limitations concerning medical malpractice in the State.
- If there is no appropriate State law or State statute of limitations concerning medical malpractice, the home IV provider must maintain clinical records for at least 5 years.
- In addition to all other requirements for maintaining clinical records, in the case of home IV drug therapy services furnished to a minor, the home IV provider must maintain clinical records for at least 3 years after the individual attains the age of majority under State law.

3. Standard: Protection of information

We are proposing that the home IV provider be required to safeguard the clinical record against loss, destruction, or unauthorized use. The home IV provider would be required to have procedures that govern the use and removal of records and the conditions for release of information to authorized individuals. The home IV provider would also have to ensure that unauthorized individuals cannot gain access to or alter patient records. The patient's written consent would have to be obtained before release of any information not required to be released by law. Original records would be released by the home IV provider only in accordance with Federal or State laws, court orders, or subpoenas.

4. Standard: Patient access

In § 485.125(d), we would specify that the home IV provider permit each patient (or his or her legal representative) to inspect or obtain copies of his or her clinical records within 48 working hours after the provider receives a written request.

G. Core Staff and Services

In complying with the authority of section 1861(jj)(3)(x) of the Act under which the Secretary may require such other requirements as are necessary to assure the safe and effective provision of home IV drug therapy services and the effective administration of the home IV drug therapy benefit, we carefully reviewed the available information on current home IV drug therapy practices. It is clear that home IV drug therapy services have become increasingly sophisticated during the approximately 10 years that home IV therapy has been available. However, because Medicare beneficiaries often have several concurrent medical problems, they are often in need of long term, interrelated therapies. In addition, beneficiaries frequently have suffered a loss of visual acuity and manual dexterity, making them less clinically eligible for a course of home IV therapy that involves self-administration of drugs and the use of sophisticated equipment. Also, in many cases, the available caregiver would also be an elderly person for whom the complexities of home IV drug therapy could be very difficult to confront.

It is also true that, although many home IV providers have established safeguards for home IV therapy administration, their experience with Medicare beneficiaries may have been limited because home IV drug therapy has not been a covered service. Accordingly, we believe that we have ample justification for establishing conditions of participation that will help to assure the safe and effective provision of home IV drug therapy services.

Existing entities that furnish home IV drug therapy currently provide different types of IV drug therapies such as antibiotics, analgesics, and hydration and electrolyte replacement. In addition, some entities offer heparin infusion (blood clotting care) and aminophylline therapy (asthma therapy). All of these IV drug therapies may cause one or more side effects such as rash, diarrhea, fever, kidney toxicity, blood coagulation problems, and phlebitis (inflammation of the vein). In addition, the provision of IV drug therapies may cause the possibly life threatening conditions of anaphylaxis (allergy reaction), IV infiltration (leaking of fluid into surrounding tissues), and site infection.

All home IV drug therapies involve the separate functions of mixing and administering potentially dangerous drugs. Each of these functions plays a critical role in the safe administration of home IV drug therapy. Thus, we do not consider the home IV drug therapy benefit as being either a nursing benefit or a pharmacy benefit but rather a benefit that requires a team effort involving safe and effective patient care. We believe that such an effort is necessary to maintain patient safety and is the key to successful home IV drug therapy.

To take into account patient safety, we had to consider both existing and potential complications for the beneficiary. Complications may be related to disease progression, combinations of disease processes and their therapies, and the aging process in general. Psychoses or neuroses of a patient can present an additional challenge in gaining appropriate patient involvement. In addition, patient safety might be barred by noncompliance with the drug therapy regimen, poor living conditions, or high stress levels of both a patient and the spouse or other caregiver, or a combination of these factors.

In reviewing the available literature, we had to identify potential side effects, complications, and risks of the therapy and determine the probability and severity of each of these harmful effects. For example, for each possible complication, we had to consider whether the complication could cause reversible damage, permanent damage, or threaten the life of the patient. In addition, we considered whether the onset of side effects or complications might be sudden or gradual. We also had to consider how the beneficiary or caregiver could obtain immediate help from the home IV provider if he or she has a problem with the infusion.

In reviewing various options under the provisions of the law, we had to consider whether it would be safe for one organization to deliver the drugs, another to provide nurses, and a third to provide equipment. We considered the difficulties that might arise if the beneficiary or the caregiver is required to call all three organizations to resolve a problem. We considered how long it might take to get a problem resolved if the beneficiary had an infusion problem at midnight and how the beneficiary would know whom to call in an emergency or for a routine question.

Once we collected factual information about home IV drug therapy, we examined factors that could either increase or decrease the level of safety. It appears to us that home IV drug therapy is potentially as dangerous as it is helpful. The potential side effects of the therapy are so great that we are sure, as we noted earlier, that Congress did not intend for a "store front operation" or a "billing operation" to qualify as a home IV provider. That is, we do not believe Congress intended that a business that acts strictly as an answering service and a billing agent while contracting out all the home IV drug therapy services should be a Medicare home IV provider.

Although some existing entities that furnish home IV drug therapy contract out one or more of the different services they provide, other entities furnish all of the services themselves. While we believe that having one entity furnishing all the drug therapy services would be the most safe and effective method and the easiest configuration with which our beneficiary population could work, we are precluded by sections 1861(jj) (1)(B) and (3)(i) of the Act from requiring that all services to beneficiaries be provided by individuals directly employed by the home IV provider.

As discussed earlier, in providing that an entity wishing to qualify as a home IV provider must be capable of providing or arranging for the provision of the nursing, pharmacy, and related services necessary to conduct an intravenously administered drug regimen in the home safely and effectively, section 1861(jj) (3)(i) of the Act specifically cross-refers to section 1861(jj)(2) of the Act. Section 1861(jj)(3) of the Act then goes on to list several functions that the entity itself must be able to perform or to assure their performance. Thus, we believe these provisions of the Act draw a distinction between the home IV drug therapy services that involve direct patient care and those that relate to oversight of patient care and supervision of the persons directly furnishing the patient care. Section 1861(jj)(2) of the Act defines home IV drug therapy services that are to be "furnished to an individual" in his or her home as "such nursing, pharmacy, and related services * * * as are necessary to conduct safely and effectively an intravenously administered drug regimen * * * ." It is these direct patient care services (for example, nursing visits and mixing and delivery of the IV drugs) that sections 1861(jj) (1)(B) and (3)(i) of the Act state may be furnished under arrangements. (We note that when covered services are furnished "under arrangements", Medicare payment to the provider discharges the beneficiary's obligation to pay for those services furnished by the outside source under contract with the provider. See section 1861(w)(1) of the Act.)

On the other hand, certain functions, some of which have already been discussed above, are not subject to the "under arrangements" language of the statute. These functions are set forth in section 1861(jj)(3) of the Act and pertain not to direct care services to beneficiaries but to administration, management, and quality control issues. We believe that the responsibility for these functions must rest with the home IV provider itself. That is, the provider must perform these functions rather than make arrangements with an outside source to perform them. These functions are the following:

- Maintenance of clinical records on all patients (section 1861(jj)(3)(ii) of the Act).
- Adherence to written protocols and policies concerning provision of items and services (section 1861(jj)(3)(iii) of the Act).
- Assurance of the availability of services, as needed, 7 days a week on a 24-hour basis (section 1861(jj)(3)(iv) of the Act).
- Coordination of all services (that is, nursing, pharmacy, and related services) with the patient's physician (section 1861(jj)(3)(v) of the Act).
- Performance of a quality assessment and assurance program, including drug regimen review and coordination of patient care (section 1861(jj)(3)(vi) of the Act).
- Assurance that only trained personnel provide covered home IV drugs, and any other service that necessarily entails training, to ensure safety (section 1861(jj)(3)(vii) of the Act).
- Assumption of responsibility for the quality of those services furnished to patients under arrangements (section 1861(jj)(3)(viii) of the Act).
- Licensure of the home IV provider to the extent required by States in local law (section 1861(jj)(3)(ix) of the Act).
- Compliance with other safety and effectiveness requirements as set forth by the Secretary (section 1861(jj)(3)(x) of the Act).

We note that by stating that coordination of services with the patient's physician is the function of the home IV provider, we do not intend to diminish the responsibility in this respect of an organization under contract with the home IV provider. For example, nurses employed by an organization that is furnishing nursing services under contract with a home IV provider would still be obligated, as they would under routine circumstances and prevailing standards of patient care, to coordinate the particulars of patient care with the attending physician. In this context, it is the oversight function of ensuring that such coordination is routinely and effectively conducted that would be the responsibility of the home IV provider.

In addition, the home IV provider would itself have a role in coordination of patient care with the physician in terms of consultation about the plan of care and its periodic review and updating. Similarly, an organization under contract with a home IV provider would normally be responsible for the training of its own personnel who, for example, deal with the drugs to be furnished to beneficiaries or conduct nursing visits, but it is the obligation of the home IV provider to verify and ensure that these personnel are adequately trained. In other words, the requirement that the home IV provider assure that only trained personnel furnish covered home IV drugs (section 1861(jj)(3)(vii) of the Act) applies to both its own employees and those of an organization under contract. The provider would also be required to maintain professional, financial, and administrative responsibility for services furnished under arrangements.

Accordingly, as we discuss in greater detail below, we believe that a home IV provider must directly employ core staff to perform administrative, quality assurance, and other oversight and supervisory functions necessary for the safe and effective provision of the home IV drug therapy benefit. In addition, the home IV provider must also either furnish directly (through its own facilities and employees) or through others under arrangements the patient care services and home IV drugs necessary for a safely and effectively administered home IV drug regimen.

We concluded that we should propose, under the authority of section 1861(jj)(3)(x) of the Act, which gives the Secretary broad discretion to add conditions necessary for safe and effective administration of the home IV benefit, that a home IV provider must, at a minimum, employ directly on a full-time basis core staff of either a nurse or a pharmacist.

In making this proposal, we draw a distinction between what we have identified as the core staff requirement and the core services requirements reflected in the law (that is, those functions that must be performed by the home IV provider). The key point is that the home IV provider would be responsible, through its directly employed nurse or pharmacist, for the oversight and supervisory functions discussed above. In addition, the home IV provider would be required to assure that the needs of patients, both routine and urgent, ranging from routine or emergency inquiries to the actual furnishing of patient care services, are met on a 24-hour-a-day, 7-day-a-week basis either through its own employees or those furnishing services under arrangements, or through a combination of professionals directly employed and under contract either on duty or on call.

For example, we view this approach working as follows. A home IV provider directly employs a pharmacist who participates, along with other provider employees, in the oversight functions of coordination of patient care, conducting a quality assurance program and drug regimen review for all patients, and other required core service tasks. The pharmacist also helps in addressing patient inquiries during the normal work day and is periodically on call for this purpose after the work day ends. The home IV provider also has arrangements with outside sources to furnish some or all of the necessary patient care related pharmacy and nursing services. In this case, the home IV provider would be responsible for ensuring the quality of the services furnished, making certain that the pharmacy under contract and the organization furnishing the nursing services comply with the requirements set forth in the condition of participation, and verifying that all pharmacists and nurses employed by the organizations working under arrangements meet the professional standards and qualifications established in the conditions of participation.

The home IV provider would also be responsible for ensuring that staff are available to furnish phone coverage to handle patient inquiries 24 hours a day, 7 days a week. Furthermore, as necessary, a nurse furnishing services under arrangements might contact the patient's physician for coordination of care, but the home IV provider would be responsible for keeping abreast of these contacts for overall coordination of patient care among the physician and the nurses and pharmacy working under arrangements, as well as for overall coordination of the patient's plan of care and its timely updating and review by the physician.

There are several alternatives to the core staff requirement of a nurse or pharmacist that we considered:

- One such alternative would be to specify that the home IV provider directly employ the number of full-time equivalent (FTE) nurses *and* pharmacists necessary to perform around the clock core service supervisory and consultative nursing *and* pharmacy functions. Our initial supposition was that this requirement could be met with as few as 2.5 FTE nurses and 2.5 FTE pharmacists.
- Second, we considered requiring that a home IV provider must directly employ at least one full-time nurse *and* one full-time pharmacist whose services could be supplemented as necessary by other directly employed nurses or pharmacists to ensure around the clock coverage.
- Third, we considered stating that each provider could determine the number of core staff it needs; that is, that the home IV provider would only be required to employ directly, as core staff, a sufficient number of nurses and pharmacists to be able to respond to patients at all times.

We are specifically interested in receiving suggestions and comments from the public about these or other alternatives to the single directly-employed nurse or pharmacist requirement. We emphasize that our interest in this regard is protecting the health of beneficiaries and providing for their safety to the greatest extent that is reasonably possible without putting undue staffing burdens on potential home IV providers.

1. Standard: Core Staffing Requirements

To reiterate, we propose that a home IV provider be required to employ directly, at a minimum, either a full-time nurse or a full-time pharmacist. The provider may also employ additional pharmacists and nursing staff as it chooses, either part-time or full-time.

As we have stated, we believe that Congress did not intend for a billing operation to qualify as a home IV provider, that is, an answering service or business office that contracts out all the work. Thus, we believe this core staff requirement is necessary.

2. Standard: Core Services Requirements

The home IV provider would be required to ensure that its employees perform the following functions:

- Developing, supervising, and coordinating all activities of nursing and pharmacy services including assuming responsibility for assuring that only qualified individuals administer home IV drugs.
- Consulting with pharmacists involved in patient care to coordinate the patient's plan of care with the patient's physician.
- Performing a quality assessment and assurance program including drug regimen review.

3. Standard: Twenty-Four-Hour Availability of Services

This standard would implement the provision of section 1861(jj)(3)(iv) of the Act that requires that home IV providers make needed services available, as needed, on a 24-hour-a-day, 7-day-a-week basis.

A home IV provider would be required to meet the following time requirements related to care of the patient:

- The home IV provider must make available routinely or urgently needed nursing, pharmacy, and related services and home IV drugs and supplies 24 hours every day.
- The home IV provider must be accessible to the patients at all times. If a patient or caregiver telephones the home IV provider with a problem relating to either the administration of a drug or the malfunctioning of equipment, the home IV provider must be able to make telephone contact with the patient or caregiver within 10 minutes, and the provider must be able to resolve the patient's problem expeditiously within periods of time contingent upon the nature of the problem (that is, mechanical or medical). For example, we believe that a period of 90 minutes should be adequate to resolve a problem and provide for the needs of a patient, but we specifically request comments about appropriate limits and preferred methods for establishing limits.

We believe that the relatively short time frames we are proposing to require for dealing with patient problems are reasonable given the medical necessity of administering completely an IV drug on a timely basis. Because of the burden that these requirements could place on a home IV provider, we are specifically interested in public comments concerning any reasonable alternatives that would ease the burden on the providers but at the same time, meet the needs of the patient.

- In an emergency, the home IV provider must be able to deliver IV drugs to the patient at least 30 minutes before the drugs are scheduled for use. We are proposing this requirement for several reasons. Elderly people (that is, individuals 65 years of age and older), when compared to other individuals, have decreased lean body mass, decreased total body water, decreased serum albumin and, in proportion, increased body fat. Because of these factors, the percentage of "free drug" circulating in their bodies is increased. Thus, the dose and the appropriate dose interval prescribed by the physician must be carefully followed to ensure effective use of a drug, as well as to decrease morbidity and additional cost from adverse reactions. Therefore, if a patient needs a drug on an emergency basis, we believe the provider must be capable of responding timely. Since it is common practice to keep IV medications either refrigerated or frozen, the drug would have to be kept at room temperature for a certain amount of time before infusion. We believe that 30 minutes is an appropriate amount of time, and that is why we are proposing that time requirement.
- The home IV provider must furnish services in a manner consistent with acceptable standards of practice.

H. Nursing Services

Under this proposed rule, the home IV provider would be responsible for furnishing nursing services using only registered nurses (except, as discussed below, with respect to those States in which physicians or physician assistants may furnish IV therapy related nursing services). In addition, the provider would also have to ensure the following:

- Nursing services are directly supervised by the home IV provider and are made available to ensure that the needs of the patients are met.
- Patient care responsibilities of the nurses are specified.
- All nurses employed directly by the home IV provider or whose services are obtained under arrangements with a contractor meet the following requirements concerning education, experience, and proficiency:

—Each nurse must have been educated in the principles and practices of infusion therapy and cardiopulmonary resuscitation.

—Each nurse must have at least 2 years experience in patient assessment and infusion therapy.

—Each nurse must be proficient in all clinical aspects of IV therapy with validated competency in clinical judgment and practice demonstrated by education credentials or job experience. For example, each nurse must be able to access peripheral veins and recognize medication and solution incompatibilities.

—Each nurse must be able to perform the following procedures:

+Interpret the physician's order for IV therapy and administer IV medications as ordered.

+Perform venipuncture and insertion of all types of needles and catheters commercially available (excluding the insertion of subclavian, jugular, and cut-down catheters).

+Prepare IV solutions with the addition of medications in the absence of admixture services.

+Initiate, monitor, and terminate IV solutions and additives.

+Set the flow rates, as established by the physician, for all IV solutions and medications.

+Maintain and replace sites, tubing, and dressings in accordance with established policy.

+Draw blood.

—Each nurse must have a thorough knowledge of and proficient technical ability in the use of the specific type of IV equipment to be used so that the nurse is able to evaluate the equipment and identify when maintenance would be necessary.

—Each nurse must be able to observe and assess all significant reactions related to IV therapy and initiate appropriate nursing interventions. All significant findings must be reported to the physician.

—Each nurse must follow established infection control and aseptic practices.

—Each nurse must document his or her actions associated with the preparation, administration, and termination of all aspects of IV therapy.

We are proposing this condition under section 1861(jj)(1)(B) of the Act under which the home IV provider furnishes directly, or arranges for the furnishing of, nursing, pharmacy, and related services as described in section 1861(jj)(2) of the Act and under section 1861(jj)(3)(x) of the Act under which the Secretary is authorized to make additional requirements as necessary to assure the safe and effective provision of home IV drug therapy services.

We would allow a registered nurse, a physician, or, in States in which State medical practice acts permit physicians and physician assistants to do so, a physician assistant under the supervision of a physician to furnish nursing services in connection with home IV drug therapy services. (In such States, the references found in this proposed rule to "registered nurse" or "nurse" are read to include physician assistants.) Services performed by a physician or physician assistant could not be billed for separately. (That is, as discussed below, the nursing services furnished in connection with home IV drug therapy by these individuals would be paid for under the fee schedule.)

We contacted the National Council of State Boards of Nursing to determine whether States allow licensed practical nurses or other allied health professionals (other than physician's assistants) to administer IV drug therapy. Based on information obtained from this organization, we learned that, except for some limited exceptions, State laws allow only registered nurses to administer IV drug therapy. There are currently approximately three States that allow a licensed practical nurse to disconnect an established IV line. Several States permit a licensed practical nurse to hang a clear IV bottle. However, even these States require the direct supervision of a registered nurse when these services are performed by a licensed practical nurse. In addition, none of the entities that we contacted that currently furnish home IV drug therapy allow anyone but a registered nurse to furnish nursing services connected with IV drug therapy. Therefore, our proposal not to allow licensed practical nurses or other allied health professionals other than physician's assistants to furnish the nursing services associated with home IV drug therapy is, in general, consistent with established State laws on the provision of IV drug therapy.

As mentioned above, as part of a separate rulemaking document, we are proposing that payment for nursing services under the home IV drug therapy benefit would be made as part of a fee schedule that would cover the provisions of all home IV drug therapy services. We reiterate that, if a physician or a physician's assistant does perform services, these services could not be billed for separately because they would be taken into account in the home IV drug therapy fee schedule.

I. Pharmacy Services

As with our proposals concerning nursing services, we are proposing the following condition concerning the provision of pharmacy services under section 1861(jj)(1)(B) of the Act, which states that the home IV provider directly provides or arranges for nursing, pharmacy, and related services, and section 1861(jj)(3)(x) of the Act, which gives the Secretary the authority to make additional requirements he or she deems necessary to assure the safe and effective provision of home IV drug therapy services. Under this condition, we would specify that the home IV provider must ensure that a registered pharmacist is responsible for the purchasing, preparation, safe administration, and clinical monitoring of drugs.

1. Standard: Pharmancy Services Management

The home IV provider would be required to manage its pharmacy services, or ensure that pharmacy services obtained under arrangements are furnished, in accordance with the following provisions:

- The policies and procedures of the home IV provider include provisions designed to ensure that pharmacy practice at all times is consistent with applicable law and regulations governing professional licensure and operation of pharmacies.
- The home IV provider maintains and makes available up-to-date pharmaceutical references that include a copy of HCFA's current list of covered home IV drugs (that is, HCFA's list of covered home IV drugs as published in the **Federal Register**) and official pharmaceutical compendia, periodicals, and current editions of texts and reference books covering pharmaceutical practice as it relates to patient care.
- The home IV provider maintains patient profiles that includes—

—The patient name, age, and lean body weight;

—The patient's diagnosis or diagnoses;

—Clinical information relating to the patient's initial and ongoing home IV drug therapy;

—Current drug therapy provided to the patient including nonprescription and home remedy products; and

—A description of the patient's drug allergies or sensitivities.

- A pharmacist reviews each prescription order before a drug is dispensed to ensure that the drug is a covered home IV drug and to ensure that the correct drug is dispensed to the patient.
- A pharmacist and the patient's physician determine the appropriate lab monitoring schedule for monitoring the patient through laboratory testing. This schedule must include a list of the laboratory tests that are to be performed, identification of the Medicare-approved laboratory that will perform the tests, the frequency of the tests, and the schedule to be followed for obtaining the results.
- A pharmacist supervises support personnel to ensure adequate quality of the drugs and pharmaceutical supplies.

2. Standard: Storage, Equipment, and Preparation Area

- The home IV provider would be required to ensure that drugs, supplies, and equipment are maintained either in its own pharmacy or in a pharmacy furnishing services under arrangements in accordance with the following procedures:

—Drugs must be stored separately from other materials under proper conditions of sanitation, temperature, light, moisture, ventilation, and security.

—Areas used in the preparation of sterile products must be constructed to minimize opportunities for particulate and microbial contaminations and must be separate from areas used in the preparation of nonsterile products.

—Work surfaces are kept free of equipment, supplies, records, and labels unrelated to the preparation of a given prescription.

—Work surfaces and equipment must be disinfected after preparation of each prescription.

—Clean benches or laminar flow hoods must be used in the preparation of IV drugs and must be inspected at least annually in accordance with standard inspection practice.

—Both ingredients and final products must be inspected for the presence of inappropriate particulate matter or signs of deterioration or microbial contamination. The equipment necessary for such an inspection must be maintained by the pharmacy.

—Drugs must be kept in a locked storage area.

—Each dosage unit of both a cytotoxic drug and a Schedule II controlled drug must be accounted for in a distribution log.

- Unless contraindicated, an appropriate air-eliminating filter is employed in the home for delivery of IV fluids. We are proposing that an appropriate air-eliminating filter be used to protect the patient from particulates, possible air emboli, pathogenic bacteria (micro-organisms), and the risks of IV-related complications and sepsis.
- Mislabeled or otherwise unusable drugs are not made available for patient use.
- Outdated drugs are destroyed using accepted methods of disposal.

We welcome public comment on the above standards. In particular, we are interested in receiving comments regarding the marginal effectiveness in preventing IV drug contamination of requiring laminar flow hoods over clean work benches. We would be interested in any data reflecting differences in: (a) Expected levels of drug contamination; and (b) Equipment acquisition costs.

3. Standard: Drug Labeling

We would specify that the label on any IV drug or solution that has been dispensed to a patient by the provider or by a pharmacy furnishing services under arrangements contain at least the following information:

- The name, address, and telephone number of the dispensing pharmacy and the telephone number of the home IV provider if the pharmacy services are furnished under arrangements.
- The dates of both preparation and expiration of the drug.
- The pharmacy's identifying serial number for the drug order or prescription.
- The full name of both the patient and prescribing physician.
- The name of the drug, its strength, and the amount dispensed.
- The directions for use including the scheduled date, time, and rate of administration and appropriate space for the patient or caregiver to add the date and time the IV is started. The directions must include information that the patient is to completely use or discard IV fluids within 24 hours of mixing or unfreezing a mixture.
- The directions for storage.
- Cautionary or accessory labels if appropriate.
- The lot number or control number of the batch from which the drug was obtained.

J. Patient and Caregiver Evaluations and Instructions

In general, home IV drug therapy programs are designed for patients whose referring physicians recommend home IV drug therapy. These patients may have started IV drug therapy in a hospital and are now ready to leave the hospital except for needing to continue a course of IV drug therapy. Although the referring physician may have recommended a patient for a course of home IV drug therapy, under proposed § 485.145 the home IV provider is responsible for accepting only those patients whose needs it can meet. Once it is determined that the patient meets all criteria for acceptance, the provider is responsible for assessing the adequacy of any training previously received and for furnishing any new or supplemental training the patient or caregiver may need. We believe that having a registered nurse teach the patient or caregiver or both individuals, IV therapy care helps to ensure safe provision of IV drug therapy for the patient at home. We are proposing these standards under the authority provided in section 1861(jj)(3)(x) of the Act under which the Secretary is authorized to make additional requirements to assure the safe and effective provision of home IV drug therapy services.

As discussed above, we believe the patient selection is critical in ensuring a successful outcome in home IV drug therapy. However, once the patient is selected, it is just as critical that the home IV provider's program for patient and caregiver education be comprehensive. A selected patient or caregiver must undergo a training program for the purpose of learning to administer potent drugs, generally antibiotics, intravenously. We believe that a patient or caregiver must be able to demonstrate proficiency in home IV drug therapy care before discharge from the hospital. Hospitals are currently doing this training and we expect them to continue. We are assuming continuity of this responsibility and are using it as a basis for our general approach to coverage and payment policies. This responsibility for patient training while in the hospital is required under § 482.21(b) of the hospital conditions of participation under which a "hospital must have an ongoing plan, consistent with available community and hospital resources, to provide or make available social work, psychological, and educational services to meet the medically-related needs of its patients."

We would require that the patient or caregiver be supervised at home for the first infusion of the IV drug to verify the ability of the patient or caregiver to transfer learning from the hospital setting to the home setting. Supervision of the first infusion at home would also allow the home IV provider staff to provide additional training in the home, as necessary. The IV therapy nurse would be required to provide instructions in heparin lock care and administration of the IV medication. A patient who requires a Hickman or Broviac catheter (that is, a central line) must be provided with instructions in catheter care and infusion care. If necessary, a second training session for a patient who started IV drug therapy in a hospital would be appropriate. We expect that a patient who starts IV drug therapy at home would need three or four training sessions.

We would specify that each patient receive a set of written and illustrated instructions along with a telephone number of the home IV provider, which must be staffed 24 hours each day, because, as provided in proposed § 485.130(a)(3), the patient or caregiver must be able to make contact with either a nurse or a pharmacist within 10 minutes of his or her initial telephone call.

K. Protocols and Policies

Section 1861(jj)(3)(iii) of the Act provides that a home IV provider must adhere to written protocols and policies concerning the provisions of home IV drug therapy services. We are proposing that the IV provider adhere to the following procedures and have written protocols and policies with respect to the provision of home IV drug therapy items and services.

1. Standard: First Dose

Based on our research, we believe that the first dose of any intravenous medication to be provided outside of an institutional setting should be given under direct physician or home IV provider's nurse supervision. For example, if a patient was receiving tetracycline intravenously and then the physician ordered the IV medication to be changed to ampicillin, we believe that the first dose of the ampicillin needs to be given under the direct supervision of a physician or nurse.

We are proposing that if this supervision is provided by a physician it could be furnished as a physician service in the physician's office, in the outpatient department of a hospital, or even in the patient's home. If the first dose is administered at home under the direct supervision of the home IV provider's nurse, the first dose would be considered a home IV drug therapy service. After the first dose is administered, we are proposing that the supervising nurse or physician remain in attendance with the patient for a length of time sufficient to make sure that the patient is stable. Under this proposed rule, resuscitation medication and equipment to treat anaphylaxis must be readily available.

Since we are concerned about creating a possibly unnecessary delay between the time a physician decides that an IV medication should be changed and the time at which the new IV medication can be administered, we are proposing that a first dose of a different IV medication could be administered by registered nurse. However, we are specifically seeking public comment about the safety of this proposal, that is, whether it is medically acceptable to allow the first dose of a different IV medication to be given without a physician in attendance. If a commenter believes that it is necessary for a physician to be present during the first dose of an IV medication furnished outside of an institution, we are

interested in receiving information about the specific IV medications that the commenter believes could not be started safely without a physician present.

2. Standard: Venipuncture and Catheter Care

We are proposing that a registered nurse rotate the peripheral injection site at least every 3 days to reduce the possibility of phelebitis. If applicable, the nurse must inspect the central line catheter site at least once each week. Aseptic techniques would be practiced during all venipuncture, dressing changes, catheter care, and assembly of IV infusion systems for both peripheral and central line patients.

For infection control purposes, we would require that the home IV drug provider make sure that the patient or the caregiver changes the IV administration set at least every 24 hours and the IV dressings at least every 48 hours or immediately if soiled or wet. (An administration set usually consists of a length of tubing that connects the source of the IV drug to the needle.) The air elimination filter would be routinely changed by the nurse.

3. Standard: Quality of the Air Elimination Filter and Sterility of the Catheter

For a sample of patients, the nurse would be required to package air elimination filters that have been removed from IV tubing and immediately send them to an independent laboratory for analysis of particulate matter and bacterial and fungal contamination. Also, on a sample basis, the nurse would package and send IV catheters that have been removed from patients to a laboratory for analysis of sterility.

In addition, we would specify that the home IV provider must keep copies of laboratory results on the testing of both the air elimination filter and the catheter that must be made available for review on request.

4. Standard: Drug Therapy Review

We are proposing that the pharmacist and nurse review the combination of drugs and equipment for appropriateness before drug therapy is initiated. In addition, the pharmacist would be required to conduct ongoing review (at least once every 3 days) to evaluate the effectiveness of the drug therapy. We would require that he or she then inform the physician of his or her findings as necessary. At a minimum, we would require that this review evaluate the following:

- The therapeutic appropriateness of the choice of drugs for the patient and the drug regimen (including therapeutic duplication of drugs).
- The effectiveness of the dosage, frequency, and route of administration.
- The patient's adherence to the drug regimen.

5. Standard: Patient Rights and Responsibilities

Because the patient's care is usually continuous in nature, we propose to require that the home IV provider ensure that the following conditions concerning the rights and responsibilities of patients are met.

- The home IV provider begins treatment of a patient only if the home IV provider is capable of furnishing needed care at the level of intensity required by the condition of the patient.
- Each patient receives care appropriate to his or her needs in a timely manner.
- The home IV provider informs the patient in a timely manner of the need for transfer to another medical entity or level of care and of any appropriate alternatives.
- If the home IV drug therapy is to end without transfer to another medical entity, the home IV provider informs the patient in a timely manner of the impending discharge, continuing care requirements, and other available services, if needed.
- The home IV provider honors a patient's rights and informs a patient of his or her responsibilities, if any, in the care process. The rights and responsibilities are clearly stated in materials or brochures distributed to a patient upon admission into the home IV drug therapy program.
- The home IV provider sets up procedures to deal with patient grievances and patient-recommended changes in policies and services without coercion, discrimination, reprisal, or interruption of services. The home IV provider informs the patient at the beginning of IV drug therapy about these procedures for making, reviewing, and resolving complaints.

L. Quality Assurance

Section 1861(jj)(3)(vi) of the Act provides that a home IV provider is required to conduct "* * * a quality assessment and assurance program, including drug regimen review and coordination of patient care." We are proposing that a home IV provider maintain an ongoing quality assurance program designed for monitoring patient care objectively and systematically, evaluating the quality and appropriateness of patient care, resolving identified problems, and pursuing other opportunities to improve patient care.

1. Standard: Program Objectives

We would require that, through an ongoing, planned, and systematic process, the home IV provider monitors and evaluates the quality and appropriateness of patient care, including the performance of employees and other personnel who furnish services under arrangements with the home IV provider.

We propose that the home IV provider include at least the following in a written plan:

- Scope and objectives of the quality assurance activities.
- Activities identified for monitoring and evaluation.
- Methods for implementing the monitoring and evaluation activities and for reporting the results.
- Mechanisms for taking follow-up action.
- The responsibility of staff for each activity in the quality assurance program.

2. Standard: Patient Care

We would require that the home IV provider monitor and evaluate the quality and appropriateness of patient care, including identification of important aspects of care or service that focus on high-risk, high-volume, or problem-prone activities. Thus, the home IV provider would be required to collect data on the following:

- Length of home IV drug therapy by diagnosis and treatment.
- Incidences of rehospitalization and the cause of rehospitalization.
- Incidences of—

—Phelebitis;
—Infiltration;
—Site infection; and
—Other infection.

- Hydration and nutritional status (including sudden or large weight loss, loss of appetite, or reduction in serum albumin level to a subnormal level).

We propose that the data collected by the home IV provider be reviewed and analyzed at least once annually to determine the frequency of negative outcomes, to ascertain whether corrective action was taken immediately in cases of negative outcomes, and whether negative outcomes were analyzed as soon as possible to evaluate the effectiveness of the chosen corrective action. We would expect that such analyses would result in necessary changes to recommended courses of action so that recurrences of negative outcomes would be reduced.

3. Standard: Patient Satisfaction

We would use patient satisfaction as an indicator of quality. The provider would be required to determine from the patient that—

- Drugs and IV equipment were delivered timely to the patient.
- The patient could read the preparation and expiration dates on the drug labels.
- A nurse visited any patient with a peripheral IV catheter placement every 3 days and rotated the peripheral IV injection site.
- A nurse visited any patient with a central line at appropriate intervals for monitoring.
- Procedures have been established to enable patients to make complaints for which the home IV provider finds acceptable solutions and keep a record of the complaints and solutions.

M. Infection Control

Under this proposed rule, we would require that a home IV provider develop infection control procedures to be used in connection with the provision of services. These procedures must concern at least personal hygiene, isolation precautions, aseptic procedures, staff health, including transmitted infections, and cleaning and sterilization of equipment.

Furthermore, we would specify that the home IV provider advise staff, patients, and caregivers of any necessary precautions, including infection control and personal hygiene and their responsibilities in the infection control program. Also required would be a system for evaluating, reporting, and maintaining records of infection related to the care or service provided among patients and, as appropriate, among staff.

III. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, the proposed rule would likely result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we would treat all home IV therapy providers as small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area.

This proposed rule would implement the provisions of section 1861(jj) of the Act as enacted by section 203(b) of Public Law 100-360. Although we have made a concerted effort to estimate the effects of our proposal, we have found that we cannot estimate, with any degree of confidence, the incremental cost of this rule to entities that provide home IV drug therapy services. In light of the fact that many of the proposed requirements are both currently practiced and recommended by companies that currently provide home IV drug therapy services, we believe that this proposed rule would not have a significant economic impact on these companies. In addition, we believe that any effects that this proposed rule may have on small individual entities that furnish home IV drug therapy services, particularly those in rural areas would be minor.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis.

IV. Other Required Information

A. Paperwork Reduction Act

Proposed regulations at §§ 485.110, 485.120, 485.125, 485.135, 485.140, 485.145, 485.150, 485.155, and 485.16. contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511). Home IV drug therapy providers must provide documentation to assure compliance with the conditions of participation in order to receive Federal funds on behalf of Medicare beneficiaries. The total reporting burden for each home IV provider for this collection of information is estimated to be 3 hours per beneficiary treated during the first 12-month period that the rule would be in effect. A notice will be published in the Federal Register after OMB approval of these requirements is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESS" section of this preamble.

B. Public Comment

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "DATE" section of this preamble, and we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 417

Administrative practice and procedure, Health maintenance organization (HMO), Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Chapter IV would be amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

I. Part 400 is amended as follows:

PART 400—INTRODUCTION; DEFINITIONS

A. The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102, 1871 of the Social Security Act (42 U.S.C. 1302, and 1395hh) and 44 U.S.C. Chapter 35.

Subpart B—Definitions

B. In § 400.202, the introductory text is republished and the definition of "Provider" is revised to read as follows:

§ 400.202 Definitions specific to Medicare.

As used in connection with the Medicare program, unless the context indicates otherwise—

* * * * *

"Provider" means a hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, a home IV drug therapy provider, or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has a similar agreement but only to furnish outpatient physical therapy or speech pathology services.

* * * * *

II. Part 417 is amended as follows:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

A. The authority citation for Part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97–248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215 and 1301 through 1318 of the Public Health Service Act, as amended (42 U.S.C. 216 and 300e through 300e–17), unless otherwise noted.

Subpart C—Health Maintenance Organizations and Competitive Medical Plans

B. Section 417.416 is amended by revising paragraph (b)(1) to read as follows:

§ 417.416 Qualifying condition: Furnishing of services.

* * * * *

(b) *Standard: Conformance with conditions of participation, conditions for coverage, and conditions for certification.* (1) Hospitals, SNFs, HHAs, comprehensive outpatient rehabilitation facilities, hospices, home IV drug therapy providers, and providers of outpatient physical therapy or speech pathology services must meet the applicable conditions of participation in Medicare, as set forth elsewhere in this chapter.

* * * * *

III. Part 485 is amended as follows:

PART 485—CONDITIONS OF PARTICIPATION AND CONDITIONS FOR COVERAGE: SPECIALIZED PROVIDERS

A. The authority citation for Part 485 is revised to read as follows:

Authority: Secs. 1102, 1124, 1136, 1154, 1861 (aa), (cc), and (jj), and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a–3, 1320b–6, 1320c–3, 1395x (aa), (cc), and (jj), and 1395(hh).

B. A new Supart C is added to read as follows:

Subpart C—Conditions of Participation: Home IV Drug Therapy Providers

Sec.
485.100 Basis and scope.
485.101 Definition.
485.105 Condition of participation: Compliance with Federal, State, and local laws.
485.1110 Condition of participation: Governing body and administration.
485.1115 Condition of participation: Patient selection.
485.120 Condition of participation: Plan of care.
485.125 Condition of participation: Central clinical records.
485.130 Condition of participation: Core staff, core services, and full-time availability of patient care services.
485.135 Condition of participation: Nursing services.
485.140 Condition of participation: Pharmacy services.
485.145 Condition of participation: Patient and caregiver evaluations and instructions.
485.150 Condition of participation: Protocols and policies.
485.155 Condition of participation: Quality assurance.
485.160 Condition of participation: Infection control.

Subpart C—Conditions of Participation: Home IV Drug Therapy Providers

§ 485.100 Basis and scope.

This subpart sets forth the conditions that entities must meet to be approved for participation in Medicare as home IV drug therapy providers under section 1861(jj) of the Act and Part 489 of this chapter.

§ 485.101 Definition.

As used in this subpart, unless the context indicates otherwise, *"home intravenous (IV) drug therapy provider", "home IV provider"*, or *"provider"* means an entity that—

(a) Is capable of providing covered home IV drugs, nursing and pharmacy services, and other services as are necessary for the administration of home IV drug therapy; and

(b) Meets all the requirements of this subpart.

§ 485.105 Condition of participation: Compliance with Federal, State, and local laws.

The home IV provider and all personnel who furnish services must be in compliance with applicable Federal, State, and local laws and regulations.

(a) *Standard: Compliance with Federal laws.* The home IV provider must be in compliance with applicable Federal laws related to the health and safety of patients.

(b) *Standard: Licensure of home IV provider.* If State or local law requires licensing, the home IV provider must be currently licensed or approved as meeting the standards established for licensure.

(c) *Standard: Licensure of personnel.* Personnel who provide services, including individuals who provide services under arrangements with the home IV provider, must be licensed, registered, certified, or meet other applicable standards in accordance with applicable State and local laws.

§ 485.110 Condition of participation: Governing body and administration.

(a) *Standard: Governing body.*

A home IV provider must have either—

(1) A governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing all operations of the home IV provider; or

(2) Individuals who are legally responsible for the conduct of the home IV provider and who carry out the governing body functions that are specified in this section.

(b) *Standard: Disclosure of ownership.* The home IV provider must comply with the provisions of Subpart C of Part 420 of this chapter, which require health care providers and fiscal agents to disclose certain information about ownership and control.

(c) *Miscellaneous reporting.* The home IV provider must furnish information relevant to, and participate in, surveys and studies concerning cost-finding or other issues relating to the efficient administration of the home IV therapy benefit as requested by the Secretary under section 1861(jj)(3)(x) of the Act.

(d) *Standard: Chief executive officer.* The governing body must appoint a chief executive officer who meets the following conditions:

(1) Assumes responsibility for the overall management of the facility under the authority delegated by the governing body.

(2) Assumes responsibility for the day-to-day operation of the home IV provider.

(e) *Standard: Patient care policies.* The home IV provider must have written patient care policies that govern the services it furnishes. The patient care policies must include the following:

(1) A description of the services furnished by the home IV provider's employees and those furnished under arrangements.

(2) The diagnostic criteria that identify the patients for whom the services are designed.

(3) Provisions for accepting only those patients whose needs can be met by the services it furnishes.

(4) Procedures for the acceptance of a referral, including the assignment of appropriate staff to conduct a timely assessment of the patient's medical and psychological readiness for home IV drug therapy services.

(5) Procedures for quickly notifying the referring physician if the patient does not meet the home IV provider's admission criteria.

(6) Procedures for notifying the referring physician of incidences of phlebitis, IV infiltration, or site infection that occurs after the provider begins furnishing home IV drug therapy services.

(f) *Standard: Contracted services and professional management responsibility.* (1) The home IV provider must—

(i) Retain professional and administrative responsibility for and control and supervision of contracted services; and

(ii) Ensure that the services are furnished—

(A) In a safe and effective manner by nurses or pharmacists meeting the qualifications of this subpart; and

(B) In accordance with the patient's plan of care and other applicable requirements of this subpart.

(2) With each contractor that provides arranged services, the home IV provider must have a legally binding written agreement that meets at least the following requirements:

(i) Identifies the services to be provided.

(ii) Specifies that contracted services are provided only if directly authorized by the home IV provider.

(iii) Describes the manner in which the contracted services are coordinated, supervised, and evaluated by the home IV provider.

(iv) Delineates the roles of the home IV provider and the contractor in the patient care process.

(v) Provides for the preparation of patient records with progress notes and observations and for the prompt incorporation of the patient records into the clinical record of the home IV provider.

(vi) Provides that the requirements for the services furnished under arrangements and personnel who furnish them are the same as for the services furnished directly by the home IV provider and the personnel who furnish them.

(vii) Specifies the financial arrangements that provide for payment to the contractor by the home IV provider for the provision of covered services.

(viii) Specifies that a contractor that furnishes services under arrangements may not bill the patient or Medicare for covered services.

§ 485.115 Condition of participation: Patient selection.

After a patient's referring physician requests home IV drug therapy, the home provider makes an assessment of each patient and his or her needs. For hospital inpatients, the home IV provider must make this assessment prior to discharge. The home IV provider furnishes services only to patients whose needs can be met by its services.

(a) *Standard: Medical critieria.*

A patient must—

(1) Be under the care of a licensed referring physician who either prescribed the home IV drug or established the plan of care, or both, and who continually monitors the home IV drug therapy;

(2) Have a clinical status that allows IV drugs to be safely administered in the home;

(3) Have venous sites available for peripheral IV catheter or needle placement or have a central venous catheter or other central venous access device; and

(4) Be unable, for medical or therapeutic reasons, to take the provided medication orally or by other means less intrusive than IV.

(b) *Standard: Nonmedical criteria.*

A patient must—

(1) Be capable of performing safely self-administration of drugs and self-care after adequate patient education (for example, be able to learn aseptic technique and heparin lock maintenance and read and understand the labeling of the home IV drugs) or have a primary caregiver who can perform these tasks;

(2) Be motivated to use home IV drug therapy services;

(3) Be psychologically stable (that is, the prospect for adherence to a disciplined medical regimen is realistic); and

(4) Have a home environment that is conducive to the provision of home IV drug therapy services (that is, a clean home with electricity, a telephone, running water, refrigeration, and enough space to support home IV drug therapy services).

§ 485.120 Condition of participation: Plan of care.

For each patient, the referring physician must establish and periodically review a plan of care.

(a) *Standard: Development of the plan of care.* A plan of care must meet the following requirements:

(1) The plan of care is developed by the patient's referring physician.

(2) The plan of care is implemented by the home IV provider.

(3) The plan of care is based on the referring physician's initial and ongoing individual patient assessments.

(4) The plan of care is reviewed by the referring physician as necessary, but at least once every 30 days.

(5) The plan of care includes at least the following current information about the patient and the home IV drug therapy services to be provided:

(i) The patient's name, gender, age, and lean body weight.

(ii) A narrative description of the appropriate diagnoses.

(iii) The patient's drug allergies or sensitivities.

(iv) The patient's current drug therapy, including nonprescription drugs, and home remedies.

(v) The goal of the provision of home IV drug therapy services for the patient.

(vi) The drugs and method of drug therapy administration to be furnished by the home IV provider including—

(A) Amount of dosage and timing of administration;

(B) Route of administration, either peripheral or central venous line.

(C) Frequency of IV site monitoring; and

(D) Type of IV equipment, related supplies and other equipment, and fluids to be administered.

(vii) Identifying physician information, the physician's signature, and the date.

(b) *Standard: Referring physician review of plan of care.* The referring physician review of the plan of care must meet the following requirements:

(1) The referring physician reviews the patient's process in attaining the objectives of the plan of care at least every 30 days.

(2) The review is based upon appropriate information provided by health professionals, including information furnished by the registered nurse and pharmacist employed by the home IV provider.

§ 485.125 Condition of participation: Central clinical records.

In accordance with accepted principles of medical record practice, the home IV provider must establish and maintain a clinical record for all individuals receiving care and services including those who are not entitled to Medicare. Each clinical record must be completely, promptly, and accurately documented, readily accessible, and systematically organized to ease retrieval and compilation of information.

(a) *Standard: Content.* Each clinical record is a comprehensive compilation of information of medical and other data that must contain sufficient information to identify the patient clearly and to justify the diagnoses and treatment. Entries in the clinical record must be made for all services provided directly or under arrangements. Entries must be made for each treatment performed and must be signed by the individual who performs the services. Documentation on each patient must be consolidated into one clinical record that must contain the following information:

(1) Patient identification data.

(2) The initial patient assessment and subsequent reassessments.

(3) Current plan of treatment.

(4) Consent and authorization forms.

(5) Past and present pertinent medical history.

(6) Complete documentation of all services provided.

(7) Upon completion of treatment, a summary that includes a description of patient status relative to goal achievement, prognosis, and future treatment considerations.

(b) *Standard: Retention and preservation.* The home IV provider must retain clinical records for the appropriate time period as specified in this paragraph. If the requirements of State law are used to define the time period for maintaining clinical records, it must be the law of the State in which the services were provided to the patient.

(1) If the State where the services are furnished has a law that applies to the provider governing the maintenance of clinical records, the home IV provider must maintain its clinical records for the time required by that law.

(2) In the absence of an applicable State law, the home IV provider must maintain clinical records for the time periods provided under the appropriate statute of limitations concerning medical malpractice in the State.

(3) If there is no applicable State law or State statute of limitations concerning medical malpractice, the home IV provider must maintain clinical records for at least 5 years.

(4) In addition, for services furnished to a minor, the home IV provider must maintain clinical records for at least 3 years after the individual attains the age of majority under State law.

(c) *Standard: Protection of information.* The home IV provider must—

(1) Safeguard the clinical record against loss, destruction, or unauthorized use;

(2) Have procedures to govern the use and removal of records, to ensure release of information only to authorized individuals, and to ensure that unauthorized individuals cannot gain access to, or alter, patient records;

(3) Obtain the patient's written consent before releasing information not required to be released by law; and

(4) Release original records only in accordance with Federal or State laws, court orders, or subpoenas.

(d) *Standard: Patient access.* The home IV provider must permit each patient or his or her legal representative to inspect or obtain copies of his or her clinical records within 48 working hours after the provider receives a written request.

§ 485.130 Condition of participation: Core staff, core services, and full-time availability of patient care services.

A home IV provider must make all necessary nursing and pharmaceutical services available 24 hours a day, 7 days a week to meet the reasonable needs of its patients with respect to home IV drug therapy services.

(a) *Standard: Core staffing requirements.* A home IV provider must employ directly either a full-time registered nurse or a full-time registered pharmacist.

(b) *Core services.* A home IV provider must perform the following oversight and supervisory functions itself (that is, these functions may not be furnished under arrangements):

(1) Assurance that all patient care related nursing and pharmacy services, whether furnished directly or under arrangements, are available on a 24-hour-a-day, 7-day-a-week basis.

(2) Development and coordination of all activities of nurses and pharmacists including assuring that only qualified, properly trained individuals furnish these services.

(3) Necessary consultations and coordination concerning a patient's plan of care with the patient's physician and provision of all patient laboratory test results.

(4) Conducting a quality assessment and assurance program including drug regimen review.

(c) *Standard: Twenty-four-hour availability of patient care services.* (1) To meet the needs of patients, a home IV provider may contract for additional nursing or pharmacy services to supplement the services directly furnished by the home IV provider. If services directly furnished under arrangements, the provider must maintain professional, financial, and administrative responsibility for the services.

(2) A home IV provider must be able to meet the following time requirements related to care of a patient:

(i) The home IV provider must make routine or urgently needed nursing, pharmacy, and related services and home IV drugs and supplies available 24 hours a day, 7 days a week.

(ii) The home IV provider must be accessible to patients at all times. If a patient or caregiver telephones the home IV provider with a problem concerning the administration of a drug or malfunctioning equipment, the provider must be able to make telephone contact with the patient or caregiver within 10 minutes, and the provider must be able to resolve the problem as expeditiously as possible given the nature of the problem.

(iii) In an emergency, the provider must be able to deliver drugs to the patient at least 30 minutes before the drugs are scheduled for use.

(iv) The home IV provider must furnish services in a manner consistent with accepted standards of medical practice.

§ 485.135 Condition of participation: Nursing services.

(a) *General requirements.* The home IV provider is responsible for furnishing nursing services, directly or under arrangements, that are necessary for the provision of IV drug therapy services. Persons furnishing the nursing services either as employees of the home IV provider or of the organization under contract with the home provider must be either registered nurses, or in States that permit such practice, physicians or physician assistants under the supervision of a physician. (In such States, the references in this subpart to a "registered nurse" or "nurse" are read to include physician assistants.) In addition, the home IV provider must—

(1) Direct and staff nursing services to ensure that the needs of its patients are met;

(2) Specify the patient care responsibilities of the nurses; and

(3) Ensure that the requirements of paragraphs (b) through (d) of this section are met.

(b) *Education and experience.* (1) The home IV provider must ensure that each nurse who furnishes home IV drug therapy services meets the following requirements for education, experience, and proficiency:

(i) Education in the principles and practices of infusion therapy and cardiopulmonary resuscitation.

(ii) Experience in patient assessment and infusion therapy.

(iii) Proficiency in all clinical aspects of IV therapy with validated competency in clinical judgment and practice demonstrated by work experiences. For example, each nurse must be able to access peripheral veins and must be able to recognize medication and solution incompatibilities.

(iv) Ability to perform the following procedures:

(A) Interpret the physician's order for IV therapy and administer IV medications as ordered.

(B) Perform venipuncture and insertion of all types of needles and catheters commercially available (excluding the insertion of subclavian, jugular, and cut-down catheters).

(C) Prepare IV solutions with the addition of medications in the absence of admixture services.

(D) Initiate, monitor, and terminate IV solutions and additives.

(E) Evaluate the effectiveness of the dosage, frequency and route of administration of IV drugs and the patient's adherence to the drug regimen.

(F) Set the flow rates established by the physician for all IV solutions and medications.

(G) Maintain and replace sites, tubing, and dressings in accordance with established policy.

(H) Draw blood.

(v) Thorough knowledge of and proficient technical ability in the use of the specific type of IV equipment to be used by a particular patient so that the nurse is able to evaluate IV equipment and identify when maintenance would be necessary.

(vi) Ability to observe and assess all significant reactions related to IV therapy and initiate appropriate nursing interventions.

(c) *Aseptic practices.* Each nurse must follow established infection control and aseptic practices.

(d) *Physician notification.* All significant findings of the nurse in the course of delivering home IV services must be communicated to the physician.

(e) *Documentation.* Each nurse must document in the patient's clinical record his or her actions associated with the preparation, administration, and termination of all aspects of IV therapy.

§ 485.140 Condition of participation: Pharmacy services.

The home IV provider must ensure that a registered pharmacist is responsible for purchasing, preparation, safe administration, and clinical monitoring of drugs. The home IV provider may directly furnish necessary pharmacy services or it may enter into arrangements for the services.

(a) *Standard: Pharmacy services management.* The home IV provider must ensure that necessary pharmacy services, furnished directly or under arrangements, are furnished in accordance with the following requirements:

(1) The policies and procedures of the home IV provider must ensure that pharmacy practice at all times is consistent with applicable law and regulations governing professional licensure and operation of pharmacies.

(2) The home IV provider must maintain and make available an up-to-date copy of HCFA's list of covered home IV drugs and pharmaceutical references that include official pharmaceutical compendia, periodicals and current editions of texts and reference books covering pharmaceutical practice as it relates to patient care.

(3) The home IV provider must maintain patient profiles that include—

(i) The patient's name, age, and lean body weight;

(ii) The patient's diagnosis or diagnoses;

(iii) Clinical information relating to the patient's initial and ongoing home IV drug therapy;

(iv) Current drug therapy provided to the patient including nonprescription and home remedy products; and

(v) A description of the patient's drug allergies or sensitivities.

(4) A pharmacist reviews each prescription order before dispensing a drug to ensure that the drug is a covered home IV drug and that the correct drug is dispensed to the patient.

(5) A pharmacist assists the physician in determining the appropriate schedule for monitoring the patient through laboratory testing. This schedule must include identification of tests to be performed and the Medicare-approved laboratory that will perform the tests and the frequency of testing and obtaining the results.

(6) A pharmacist supervises support personnel to ensure adequate quality of the drugs and pharmaceutical supplies.

(b) *Standard: Storage, equipment, and preparation area.* (1) The IV provider must ensure that drugs, supplies, and equipment are maintained in the pharmacy in accordance with the following procedures:

(i) Drugs must be stored separately under proper conditions of sanitation, temperature, light, moisture, ventilation, and security.

(ii) Areas used in the preparation of sterile products must be constructed to minimize opportunities for particulate and microbial contaminations and must be separate from areas used in the preparation of nonsterile products.

(iii) Work surfaces are kept free of equipment, supplies, records, and labels unrelated to the preparation of a given prescription.

(iv) Work surfaces and equipment must be disinfected after the preparation of each prescription.

(v) Clean work benches or laminar flow hoods must be used in the preparation of IV drugs and must be inspected at least annually in accordance with standard inspection practice.

(vi) Both ingredients and final products must be inspected for the presence of inappropriate particulate matter or signs of deterioration or microbial contamination. The equipment necessary for such an inspection must be maintained by the pharmacy.

(vii) Drugs must be kept in a locked storage area.

(viii) Each dosage unit of both a cytotoxic drug and a Schedule II controlled drug must be accounted for in a distribution log.

(2) Unless contraindicated, an appropriate air-eliminating filter must be employed in the home for delivery of IV fluids.

(3) Mislabeled or otherwise unusable drugs must not be made available for patient use.

(4) Outdated drugs must be destroyed.

(c) *Standard: Drug labeling.* The label on any IV drug or solution that has been dispensed to a patient must contain at least the following information:

(1) The name, address, and telephone number of the pharmacy and the telephone number of the home IV provider if the pharmacy services are furnished under arrangements.

(2) The dates of both preparation and expiration of the drug.

(3) The pharmacy's identifying serial number for the drug order or prescription.

(4) The full name of both the patient and prescribing physician.

(5) The name of the drug, its strength, and the amount dispensed.

(6) The directions for use including the scheduled date, time, and rate of administration, and appropriate space for the patient or caregiver to add the date and time the solution is started. These directions must indicate that the IV fluids must be completely used or discarded within 24 hours of mixing or unfreezing a mixture.

(7) The directions for storage.

(8) Cautionary or accessory labels if appropriate.

(9) The lot number or control number of the batch from which the drug was obtained.

§ 485.145 Condition of participation: Patient and caregiver evaluations and instructions.

To ensure safe home IV therapy for the patient, a registered nurse who is proficient in the delivery of home IV drug therapy services evaluates the patient to determine suitability for the provision of home IV drug therapy services. If the nurse determines that the patient is suitable for this therapy and the home IV provider can furnish the necessary therapy, the nurse trains the patient or caregiver or both, as appropriate, in providing the therapy and in proper maintenance of the equipment.

(a) *Standard: Patient evaluation.* The registered nurse performs the following activities:

(1) Reviews the referring physician's medical orders before evaluating a patient for home IV drug therapy.

(2) Before accepting the patient for care, evaluates the patient or caregiver for general competency and specific comprehension of the particualr IV drug therapeutic procedures to be used. In making this evaluation, the nurse—

(i) Discusses possible complications of the treatment with the patient or caregiver or both, as appropriate;

(ii) Explains and demonstrates home IV drug therapy procedures to the patient or caregiver;

(iii) After the patient or caregiver demonstrates IV drug therapy procedures, including aseptic techniques, evaluates and documents the competency and proficiency of the patient or caregiver.

(3) May inspect the patient's home prior to hospital discharge to ascertain that there is an area in the home available for storage of drugs and supplies and an area available for use of sterile supplies.

(4) Supervises the patient or caregiver when either starts the first infusion therapy at home to verify his or her ability to transfer learning from the provider setting to the home setting.

(b) *Standard: Patient and caregiver education and instructions.* The nurse instructs the patient or caregiver, as appropriate, in home IV drug therapy procedures, including aseptic techniques and provides written and illustrated instructions.

(1) The written instructions that are prepared for each different drug class and administration route must include the following information:

(i) A step-by-step description of the procedures that the patient or caregiver must follow in administering an IV drug, including procedures for any probable emergency that might arise.

(ii) Storage procedures.

(iii) Procedures for disposal of drugs and IV equipment.

(iv) A telephone number that would enable a patient to receive assistance at any time.

(2) The nure must instruct the patient or caregiver about the following:

(i) Methods of detecting early signs and symptoms of IV-related sepsis and complications so that they may be reported immediately to the home IV provider's medical personnel.

(ii) When appropriate use of electronic controlling devices (for example, an infusion pump) in delivery of home IV drug therapy so that the patient or caregiver can recognize any malfunction that should be reported to the home IV provider.

(iii) Emergency interventions for possible IV complications that can be performed by the patient or caregiver.

(iv) Discarding IV needles in an appropriate receptacle (such as a Sharp's container) that is properly labeled and that is removed by the home IV provider staff or personnel at least every 3 days.

(v) Procedures for recording the administration of IV solutions and drugs so the information can be given to the home IV provider and attached to the patient's clinical record.

(3) The nurse must discuss the range of physical activity that is appropriate for the patient.

§ 485.150 Condition of participation: Protocols and policies.

The home IV provider adheres to the following procedures and has written protocols and policies consistent with respect to the provision of home IV drug therapy items and services.

(a) *Standard: First dose.* The first dose of any drug not previously administered intravenously is administered under the direct supervision of a physician or nurse who must—

(1) remain in attendance for a time period sufficient to make sure that the patient is stable; and

(2) Have resuscitation medication and equipment to treat anaphylaxis readily available.

(b) *Standard: Venipuncture and catheter care.* (1) The site of a peripheral catheter is rotated by the nurse at least every 3 days. A catheter whose tip lies in a central vessel must be rotated by a physician when appropriate.

(2) IV administration sets are changed at least every 24 hours by the patient or caregiver.

(3) IV dressings should be changed at least every 48 hours or immediately upon becoming soiled or wet.

(4) The air elimination filter is routinely changed.

(5) The central line catheter site is inspected by a nurse at least once each week.

(6) Aseptic techniques are practiced during all venipuncture, dressing changes, catheter care, and assembly of IV infusion systems.

(c) *Standard: Quality of the air elimination filter and sterility of the catheter.* (1) On a sample of patients, the nurse packages air elimination filters that have been removed by the nurse from the IV tubing and immediately sends them to an independent laboratory for analysis of particulate matter and bacterial and fungal contamination.

(2) On a sample basis, the home IV provider packages catheters that have been removed from patients and immediately sends them to an independent laboratory for analysis of sterility.

(3) The home IV provider keeps copies of laboratory results on the testing of both air elimination filters and catheters that are made available for review upon request.

(d) *Standard: Drug therapy review.* (1) The pharmacist and nurse must review the combination of IV drugs and equipment for appropriateness before drug therapy is initiated.

(2) The pharmacist must conduct ongoing review (at least once every 3 days) of the drug therapy and inform the physician of significant findings. At a minimum, this review must include the appropriateness of the drug regimen and any instances of therapeutic duplication of drugs.

(e) *Standard: Patient rights and responsibilities.* The home IV provider must ensure that the following requirements are met:

(1) Treatment of a patient begins only if the home IV provider is capable of furnishing needed care at the level of intensity required by the condition of the patient.

(2) Each patient receives care appropriate to his or her needs in a timely manner.

(3) The patient is informed in a timely manner of the need for transfer to

another medical entity or level of care and of any appropriate alternatives.

(4) If the home IV drug therapy is to end without transfer to another medical entity, the patient is informed in a timely manner of the impending discharge, continuing care requirements and other available services, if needed.

(5) Patients' rights as set forth in this paragraph are honored and patients are informed of their responsibilities, if any, in the care process. The rights and responsibilities are clearly stated in documents distributed to patients upon admission to the home IV drug therapy program.

(6) Procedures are established to deal with patient grievances and patient-recommended changes without coercion, discrimination, reprisal, or interruption of services. A patient is informed at the beginning of home IV drug therapy about these procedures for making, reviewing, and resolving complaints.

(f) *Standard: Written protocols and policies.* The home IV provider has written protocols and policies that are consistent with these procedures.

§ 485.155 Condition of participation: Quality assurance.

The home IV provider maintains an ongoing quality assurance program designed to monitor patient care objectively and systematically, evaluate the quality and appropriateness of patient care, resolve identified problems, and pursue other opportunities to improve patient care.

(a) *Standard: Program objectives.* Through an ongoing, planned, and systematic process, the home IV provider monitors and evaluates the quality and appropriateness of patient care, including the performance of employees and other personnel who furnish services under arrangements with the home IV provider.

The home IV provider includes at least the following in a written evaluation plan:

(1) Scope and objectives of the quality assurance activities.

(2) Activities identified for monitoring and evaluation.

(3) Methods for implementing the monitoring and evaluation activities and for reporting the results.

(4) Mechanisms for taking follow-up action.

(5) Staff responsibilities for each activity in the quality assurance program.

(b) *Standard: Patient care.* (1) The monitoring and evaluation of the quality and appropriateness of patient care by the home IV provider must include identification of important aspects of care or service and focus on high-risk, high-volume, or problem-prone activities.

(2) The home IV provider collects data about the following matters:

(i) Length of home IV drug therapy by diagnosis and treatment.

(ii) Incidences and causes of patient rehospitalization.

(iii) Incidences of—

(A) Phlebitis;

(B) Infiltration;

(C) Site infection; and

(D) Other infection.

(iv) Hydration and nutritional status.

(3) The home IV provider analyzes the data it collects at least annually to determine the frequency of negative outcomes and prescribes corrective action for negative outcomes.

(c) *Standard: Service delivery.* The provider determines the following:

(1) Drugs and IV equipment were delivered timely to the patient.

(2) The patient could read the preparation and expiration dates on the drug labels.

(3) A nurse visited any patient with a peripheral IV catheter placement every 3 days and rotated the peripheral IV injection site.

(4) A nurse visited any patient with a central line at appropriate intervals for monitoring.

(5) Procedures have been established to enable patients to make complaints.

(6) The provider found acceptable solutions for complaints and kept a record of both.

§ 485.160 Condition of participation: Infection control.

The home IV provider must develop infection control procedures. These procedures must address at least staff personal hygiene and health status, isolation precautions, aseptic procedures, cleaning and sterilization of equipment, and methods to avoid transmitting infections. The home IV provider—

(a) Advises staff, patients, and caregivers of any necessary precautions, including infection control and personal hygiene and their responsibilities in the infection control program; and

(b) Develops a system for evaluating, reporting, and maintaining records of infection related to the care or service provided among patients and as appropriate, among staff.

IV. Part 489 is amended as follows:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

A. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

Subpart A—General Provisions

B. In § 489.2, the introductory text of paragraph (b) is republished and a new paragraph (b)(7) is added to read as follows:

§ 489.2 Scope of part.

* * * * *

(b) The following providers are subject to the provisions of this part:

* * *

(7) Home IV drug therapy providers.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: June 23, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: August 10, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-20956 Filed 9-6-89; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-521-PN]

RIN: 0938-AE10

Medicare Program; Outpatient Prescription Drugs: List of Covered Home IV Drugs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice sets forth a list of intravenous drugs that we propose to cover on the basis that they can be safely and effectively administered in the home. The notice would implement section 1861(t)(4) of the Social Security Act as added by section 202(a) of the Medicare Catastrophic Coverage Act of 1988.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on November 6, 1989.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-621-PN, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC., or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-621-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (Phone 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Holly McBryde, (301) 966-6731.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Program

Medicare (title XVIII of the Social Security Act (the Act)) consists of two separate but complementary insurance programs, the Hospital Insurance program (known as Part A) and the Supplementary Medical Insurance program (known as Part B). Under Part A, covered benefits generally include services furnished in hospitals, skilled nursing facilities (SNFs) or by home health agencies (HHAs) and hospices.

Part B covers a wide range of medical services and supplies such as those furnished by physicians or others in connection with physicians' services, outpatient hospital services, and outpatient physical and occupational therapy services. Part B also currently covers certain drugs and biologicals that cannot be self-administered.

More specifically, under Part B, outpatient drugs have been covered only for specific purposes and only under certain conditions. For example, we currently cover hepatitis B vaccine but not flu shots or other immunizations; injections by physicians but not drugs that can be self-administered; and injectable drugs administered in comprehensive outpatient rehabilitation facilities but not injectable drugs administered in the home by HHAs.

B. Current Coverage of IV Drugs

Generally, drugs administered by an intravenous (IV) route, if furnished in an inpatient setting, are covered under Part A. As noted above, drugs administered in certain outpatient settings, including IV drugs, also can be covered.

C. FDA Approval of Drugs as Safe and Effective for Marketing

With the exception of "grandfathered" or certain experimental cancer drugs described below, the Food and Drug Administration (FDA) must approve a drug or license a biological for marketing before Medicare will cover the product. Following is a brief summary of the FDA approval processes.

The FDA's current role as it relates to approval of drugs is controlled by the Federal Food, Drug and Cosmetic Act of 1938 (FFDCA) (Pub. L. 75-717, 21 U.S.C. 301, et seq.). Before enactment of FFDCA, drugs could be marketed in the United States as long as a drug's label did not present false information regarding the drug's strength and purity. The FFDCA first established the requirement that a manufacturer had to prove the safety of a drug before it could market it in the United States. In accordance with the FFDCA, drugs marketed before passage of the 1938 Act were "grandfathered" so that manufacturers, if they did not change the representations on the drugs' labels, were allowed to continue to market them unless evidence was developed to indicate that they were not safe. However, once a manufacturer changed the representation on a drug's label, that drug was considered a "new drug" and the manufacturer was required to prove that the drug was safe for its intended use.

In 1962, the FFDCA was amended to require that drugs sold in the United States be regulated more closely. Under the provisions of the Drug Amendments of 1962 (Pub. L. 87-781, enacted on October 10, 1962), all new drugs must be shown by adequate studies to be both safe and effective before they can be marketed. This legislation also applied retroactively to all drugs approved as safe from 1938 to 1962. These drugs were permitted to remain on the market while evidence of their effectiveness was reviewed. The program established to review the effectiveness of drugs approved between 1938 and 1962 was named the Drug Efficacy Study Implementation (DESI) program. The pre-1962 drugs that are subject to review under this program are referred to as the "DESI" drugs. If the FDA decides that a DESI drug lacks substantial evidence of effectiveness for the condition(s) it is intended to treat, it publishes a notice of opportunity for a hearing in the Federal Register concerning its proposal to withdraw approval for marketing. This process affords the manufacturer an opportunity for a hearing before a final determination is made. Drugs for which a notice of opportunity for hearing has been issued are considered by the FDA to be less than effective until the hearing has been completed.

Biologicals were first required to be licensed under the Biologics Control Act of 1902, which was recodified in 1944 as section 351 of the Public Health Service Act (PHS Act, 42 U.S.C. 262). To be licensed under section 351 of the PHS Act, a biological must be shown to be safe, pure, and potent. The majority of biological products also meet the drug definition in the FFDCA subject to the drug adulteration, misbranding, and registration provisions of the FFDCA.

When the Bureau of Biologics (currently the Center for Biologics Evaluation and Research) became a part of FDA in 1972, biologicals licensed before July 1972 were reviewed for efficacy by expert advisory review panels. Similar to the DESI program described above, manufacturers of biologicals with inadequate evidence of effectiveness are offered an opportunity for a hearing on proposals to revoke product licenses.

When a manufacturer submits an application for the approval of a new drug, it indicates on the application the proposed uses for the drug. The FDA requires the manufacturer to submit clinical data and scientific information to prove the safety and effectiveness of the drug for these proposed uses and determines for which of the proposed uses the manufacturer has proven that the drug is safe and effective. If a drug is approved, it may be labeled, promoted, and advertised by the manufacturer only for those specific proposed uses of the drug that have been approved by the FDA as safe and effective. The labeling includes a description of the drug, its action, clinical pharmacology, and indications and usage for the drug. In addition, sections with the headings, "contraindications", "warnings", "precautions", and "adverse reactions" are included when applicable. All labels conclude with sections on dosage and administration and how the drug is supplied.

After a drug is approved, additional medical and scientific information may be developed by the medical community that indicates there are other appropriate uses for the drug besides those specified on a drug's label. We may cover FDA-approved drugs for uses other than those specified on their labeling if the available medical and scientific information indicates that additional uses are appropriate and accepted in the medical community, unless the uses are contraindicated on a drug's label.

As a matter of current national Medicare policy, drugs or biologicals approved for marketing by the FDA are generally considered safe and effective for purposes of meeting the "reasonable" and "necessary" criteria of section 1862(a)(1)(A) of the Act when used for indications specified in their labeling. In addition, FDA-approved drugs also may be covered when used for indications other than those specified on their labeling as long as neither FDA nor HCFA has specified such use as nonapproved, and any additional relevant medical and scientific information indicates that the additional uses are appropriate and accepted in the medical community. As stated in the April 1982 (Volume 12, Number 1) *FDA Drug Bulletin*, the FFDCA "does not, however, limit the manner in which a physician may use an approved drug. Once a product has been approved for marketing, a physician may prescribe it for uses or in treatment regimens or patient populations that are not included in approved labeling. In addition, "accepted medical practice often includes drug use that is not reflected in approved drug labeling." Nevertheless, HCFA has specifically identified some indications as noncovered under Medicare, in the form of national coverage decisions published in the Coverage Issues Manual (HCFA Pub. 6). (For example, the use of (Ethylenedinitrilo)tetraacetic acid (EDTA, Edetic Acid) as a chelating agent to treat artherosclerosis, arteriosclerosis, calcinosis, or similar generalized conditions not listed by the FDA as an approved use is not covered. Any such use of EDTA is considered experimental.) Coverage of unlabeled uses of approved drugs is determined by HCFA contractors taking into consideration the generally accepted medical practice in the community.

As noted above, drugs that are considered by the FDA to be experimental or investigational are not covered except for certain cancer drugs distributed by the National Cancer Institute (NCI). Under its Cancer Therapy Evaluation, the Division of Cancer Treatment within NCI, in cooperation with FDA, approves and distributes certain drugs for use in treating terminally ill cancer patients. One group of these drugs, designated as Group C drugs, are unlike other drugs distributed by the NCI, in that they are not limited to use in clinical trials for the purpose of testing their efficacy. In view of NCI controls on their distribution and use, Group C drugs, which do not include Modified Group C drugs, are covered by Medicare under current rules if all other applicable coverage requirements are satisfied.

II. The Medicare Catastrophic Coverage Act of 1988

A. Overview

In the most significant expansion of the Medicare program since its inception in 1965, the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) was enacted on July 1, 1988. Generally, this legislation provides for—

- Expanded hospital, SNF, and hospice care coverage under Part A of the program beginning January 1, 1989;
- A cap on the amount of a beneficiary's financial liability under Medicare Part B beginning January 1, 1990;
- Coverage of screening mammography and in-home respite care benefits, and improved home health benefits beginning January 1, 1990; and
- Coverage of drugs used in immunosuppressive therapy and home IV drugs and therapy services beginning January 1, 1990, and of other covered outpatient drugs, biologicals, and insulin beginning on January 1, 1991.

B. Home IV Coverage

Section 202(a) of Pub. L. 100–360 amended sections 1861(s)(2)(J) and (t) of the Act to provide general coverage for outpatient prescription drugs under Part B and to authorize Part B coverage of home IV drugs. In addition, section 203 of Pub. L. 100–360 added sections 1861(jj), 1834(d) and 1835(a)(2)(G) to the Act and amended other related sections to authorize coverage of home IV therapy services. For purposes of this new home IV benefit, under new section 1861(t)(4)(B) of the Act, we are required to publish, by January 1, 1990 and periodically thereafter, a list of covered home IV drugs, and their indications, that can be safely and effectively administered in the home.

It is this list of drugs that we are addressing in this proposed notice. Proposed rules setting forth regulations to implement the various other provisions of Pub. L. 100–360 dealing with the outpatient prescription and home IV drug benefits will be published in separate documents as follows:

- Overall coverage of outpatient prescription drugs (including drugs used in immunosuppressive therapy and home IV drugs).
- Payment methodology for covered outpatient prescription drugs (which will apply also to covered home IV drugs).
- Coverage of home IV drug therapy services.
- Conditions of participation for home IV drug therapy providers.
- Fee schedule for home IV drug therapy services.
- Deductible and coinsurance amounts and the Part B cap on out-of-pocket expenses.
- Participating pharmacies.
- Drug bill processors.
- Coverage of catastrophic Part B expenses, outpatient drug expenses, and respite care benefits for beneficiaries enrolled in pre-pay health plans, such as health maintenance organizations.

The statute provides specific definitions of "covered outpatient prescription drugs" and of what constitutes "covered home IV drugs". In order to be a covered home IV drug, the drug must first qualify as a covered outpatient prescription drug as described below.

Section 202(a) of Pub. L. 100–360 amended sections 1861(s)(2)(J) and (t) of the Act by establishing the following definition of a "covered outpatient drug", which includes drugs, biological products, and insulin.

- Drugs. A drug that may be dispensed only upon prescription and that meets one of the following requirements:

—The Drug is approved for safety and effectiveness as a prescription drug under sections 505 or 507 of the FFDCA, or approved under section 505(j) of the FFDCA.

—The drug was commercially used or sold in the United States before the date of enactment of the Drug Amendments of 1962 (October 10, 1962) or it is identical, similar or related to such a drug, as defined by 21 CFR 310.6(b)(1). Nevertheless, such a drug will not be covered if the Secretary has made a final determination that it is a "new drug" and has not been approved under sections 505 or 507 of the FFDCA, or if it is subject to certain actions brought by the Secretary to enforce provisions of sections 502(f), or 505(a) of the FFDCA (21 U.S.C. 352(f), or 355(a)).

—The drug is described in section 107(c)(3) of the Drug Amendments of 1962 and is one for which the Secretary has determined there is compelling justification for its medical need, or it is identical, similar, or related to such a drug. Also, the drug must be one for which the Secretary has not issued a notice to withdraw approval for marketing, because the Secretary has determined that the drug is less than effective for all conditions of use represented, recommended, or suggested on its labeling. These are the "DESI" drugs.

- Biological products. A biological product is considered a "covered outpatient drug" if it is one that may be dispensed only upon prescription, is licensed under section 351 of the PHS Act (42 U.S.C. 262), and is produced at an establishment licensed under that Act to produce that product.
- Insulin. Insulin is covered if it is certified under section 506 of the FFDCA (21 U.S.C. 356) for the strength, quality, and purity necessary to ensure adequate safety and efficacy of use. In accordance with section 1861(t)(2)(C) of the Act, as amended by Pub. L. 100–360, insulin would be considered a "covered outpatient drug" whether or not it is dispensed under a prescription.

In addition, section 202(a)(2)(C) of Pub. L. 100–360 added sections 1861(t)(4)(A) and (B) to the Act to define "covered home IV drugs" as covered outpatient drugs that are intravenously administered to individuals in places of residence that are used as the individuals' homes. The definition includes—

- Antibiotic drugs unless the Secretary has determined, for a specific drug or for the indication for which it is applied, that the drug cannot generally be administered safely and effectively in a home setting; and
- Drugs that are not antibiotics, but only if the Secretary has determined that for a specific drug and the indications for which the drug is being applied that it can generally be administered safely and effectively in a home setting.

III. Process Followed in Compiling the Drug List

A. Description of the Process

As noted above, section 202(a)(2)(C) of Pub. L. 100–360 added section 1861(t)(4)(B) to the Act to require us to develop a list of covered home IV drugs by January 1, 1990. These drugs must meet the definitions of a "covered outpatient drug" set forth in new sections 1861(t)(2) and (2) of the Act and of a "covered home IV drug" set forth in new section 1861(t)(4)(A) of the Act.

Our task with respect to putting together a proposed list of covered home IV drugs has been twofold. First, we had to compile a list of IV drugs (both antibiotics and non-antibiotics) and their indications. Second, in accordance with section 1861(t)(4) of the Act, we had to identify from that list those IV drugs that are safe and effective for use in the home. In accordance with section 1861(t)(4)(A)(ii) of the Act, our rules for including antibiotics and non-antibiotics differed. We obtained information about IV drugs based on the following categories:

- Antibiotic IV drugs, and indications for which each drug is applied, that can generally be safely and effectively administered in the home.
- Non-antibiotic IV drugs, and indications for which each drug is applied, that can generally be safely and effectively administered in the home. We separated this category into the following groups:

—Anti-infectives (other than antibiotics);

—Hydration therapy;

—Pain management drugs;

—Antineoplastic drugs; and

—Other drugs.

In determining which drugs may be administered intravenously, we obtained the following lists from the FDA:

- All IV drugs that are currently approved by the FDA for marketing.
- DESI drugs.
- "Compliance Report for DESI–2," also referred to as the "B List" of unapproved drugs that are currently marketed.

The drugs that we considered for our proposed list had to meet the statutory definition of "covered outpatient drug" and can be found on one of these FDA generated lists. Before we reviewed a specific drug for possible inclusion as a "covered home IV drug", the drug had to meet this initial requirement, as set forth in section 1861(t) of the Act.

In listing the drugs, we decided to place together in one list all those drugs, both antibiotics and non-antibiotics, that we initially propose as being covered. We believe setting forth a comprehensive list of covered drugs for purposes of rulemaking will make it easier for the public to direct their comments appropriately to a specifically named drug or indication, as opposed to our soliciting comments on those antibiotics and their indications that we propose not to cover. As discussed below, we encountered special problems with unlabeled indications for antibiotics in this regard. Therefore, Appendix I to this notice contains a list of drugs and indications that we propose to cover. Appendix II contains a list of antibiotics and indications that we propose not to cover.

We want to emphasize that we do not have the discretion under the home IV drug benefit to pay for a drug or an indication that is not on the final list. Section 1861(t)(4)(A) of the Act, as added by section 202(a) of Pub. L. 100–360, limits coverage of home IV drugs to those drugs that the Secretary has determined are safe and effective for use in the home. Any drug or indication not addressed on the final list to be published after we consider and evaluate public comments on the attached proposed list, or any drug or indication not included in a subsequent update, would not meet this requirement and payment would not be made for that drug or indication.

To obtain advice in determining whether an IV drug should be included in our proposed list of IV drugs as being safe and effective for use in the home, we contacted the following organizations:

- The U.S. Pharmacopeia (USP).
- The American Society of Hospital Pharmacists (ASHP).
- The American Medical Association (AMA).
- Various home IV providers (recognized in the field of home IV therapy).
- The Pharmaceutical Manufacturers Association.
- Various drug manufacturers.

We requested that these sources submit a list of IV drugs that, in their opinion, could generally be safely and effectively administered in the home, and, in addition, any other information they though pertinent. Although all of

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the organizations we contacted did not respond with recommendations about drugs suitable for home use, we did receive specific recommendations based on reviews by advisory panels, medical and clinical evident to support inclusion of certain drugs, lists of IV drugs that are currently being administered in the home setting, and recommendations for exclusions.

In addition, we contacted the publishers of the following compendia:

- United States Pharmacopeia Dispensing Information, Volume 1 (Drug Information for the Health Care Professional) (USP DI);
- American Medical Association's Drug Evaluations (AMA DE); and
- American Hospital Formulary Service Drug Information (AHFS DI).

Based on the information we received from all of these sources, we constructed an initial list of IV drugs that we considered for inclusion on the proposed list as being safe and effective for home use. (At this point, the list included certain antineoplastic drugs but did not include 12 of the antibiotic drugs that were included on the master list of IV drugs submitted to us by the FDA. For reasons discussed below, neither of these groups of drugs is included in Appendix I.) We then obtained from the FDA the labeled indications for these drugs.

For the purpose of determining unlabeled uses of approved drugs, we relied on the information provided by the three compendia and the suggestions of the various home IV providers.

Having put together the list of IV drugs and indications, we then submitted it to health care professionals recommended to us by the Intravenous Nurses Society and the AMA. We requested that these individuals examine the list from a clinical perspective and we received several clinical recommendations.

As noted earlier, our rules for including antibiotic and non-antibiotic drugs on the proposed list have differed. The law requires the Secretary to cover all antibiotic drugs *unless* the Secretary makes the determination that a specific antibiotic *cannot* generally be administered safely and effectively in the home. The list of IV drugs we initially obtained from the FDA included identification of all IV antibiotic drugs that are currently available on the market. Of those antibiotic drugs, there were 12 antibiotics that we are proposing as not generally being safe and effective for use in the home.

It is our understanding that the following factors may prevent these 12 drugs that we propose for exclusion from being safe or effective when administered in the home setting:

- Potential serious or life-threatening side effects;
- Stringent monitoring requirements that could not effectively be performed in the home setting; and
- Stability limitations.

We list these 12 antibiotics below and specifically solicit comments and information about these drugs and their indications that might be relevant to a final determination about their suitability for use in the home. The drugs are:

- Chloramphenicol Sodium Succinate
- Colistimethate Sodium
- Doxycycline Hyclate
- Erythromycin Gluceptate
- Erythromycin Lactobionate
- Kanamycin Sulfate
- Lincomycin Hydrochloride
- Minocycline Hydrochloride
- Moxalactum Disodium
- Oxytetracycline Hydrochloride
- Polymyxin B Sulfate
- Tetracycline Hydrochloride

In addition, we want to note that, in our administrative process of assembling the list of antibiotic drugs (covered and noncovered), we believe that we have addressed all antibiotic drugs currently on the market. However, the introduction of new drugs into the marketplace is an ongoing occurrence. In addition, it is not inconceivable that in our process, we may have inadvertently missed an antibiotic drug. Therefore, we also invite public comment concerning antibiotics that do not appear in either appendix.

For non-antibiotic drugs, the Secretary has to make a determination that a drug *can* generally be safely and effectively administered in the home. Therefore, before an IV drug could be placed on Appendix I, we had to develop evidence from which that determination could be made. We derived this list based on consultations with the USP DI and the AHFS DI, providers of home IV therapy, and a review of available medical and scientific information.

With respect to the antineoplastic drug subcategory, we initially considered the following drugs for inclusion on the list:

- Bleomycin sulfate
- Cyclophosphamide
- Cytarabine
- Daunorubicin hydrochloride
- Diethylstilbestrol diphosphate
- Doxorubicin hydrochloride
- Etoposide
- Fluorouracil
- Methotrexate sodium
- Mitomycin
- Mitoxantrone hydrochloride
- Steptozocin
- Vinblastine sulfate
- Vincristine sulfate

Concerns were raised throughout the process of developing and clearing the list about the general safety of this group of drugs when administered intravenously in the home setting. A review of the drug labels revealed that of the 14 drugs in this category, 12 of them had warnings that specified that the drug should be administered by or under the supervision of a qualified physician who is experienced in cancer therapy. In addition, several drugs had additional warnings that patients should have access to or be treated in a facility with laboratory and supportive resources sufficient to monitor drug tolerance. We also reviewed the National Institutes of Health (NIH) recommended guidelines for the "Handling of Parenteral Antineoplastic Drugs" prepared in collaboration with oncologists, the clinical center pharmacy (within NIH), oncology nurses, and National Cancer Institute staff. With these factors to consider, and mindful also of the extensive safety requirements these factors could necessitate in the conditions of participation for home IV drug providers, we concluded that we are not able to propose, at this time, that these drugs could be safely and effectively administered intravenously in the home. In order to be consistent with the approved FDA labeling, we made the decision to remove these drugs from Appendix I. Because of the concern about whether antineoplastics are safe for use in the home, we have decided to seek further advice from the Public Health Service on this matter. Coverage of antineoplastic drugs under the home IV therapy benefit will accordingly be deferred pending receipt of such advice.

B. Use of Compendia

We selected the three compendia listed above as reliable sources for some of the advice and information we needed based on the rcommendations contained in the Conference Report accompanying Pub. L. 100–360 (H.R. Report No. 661, 100th Congress, 2d Session 192 (1988)). In the report, the three compendia are suggested for consideration as references for a related purpose under the new drug benefit, that is, for purposes of the establishment of standards for covered outpatient prescription drugs, as required under the new section 1834(c)(5)(B) of the Act (as added by section 202(b)(4) of Pub. L. 100–360). Since Congress recognized these compendia as authoritative for one purpose under the new drug benefit, we believe it is appropriate to rely on them for a related similar purpose under that benefit.

In addition, the USP DI is sponsored by the USP, an organization that includes members of schools of medicine and pharmacy, State medical and pharmacy associations, national medicine and pharmacy associations. Its listing of drugs includes virtually all drugs approved in the United States. The USP DI staff prepare monographs after a literature search and review of FDA approved labeling. (A monograph is an essay or treatise on the available data for a specified drug.) These monographs are reviewed by over 300 additional experts, plus many schools, associations, pharmaceutical companies, and government agencies. They are again reviewed by advisory panels until a consensus is developed. Proposed monographs are then published in the USP DI Review for general public comment before being published in the USP DI. The USP DI is republished annually with six supplements per year and contains individual monographs, most information from the FDA-approved label, and unlabeled uses of approved drugs.

The AHFS DI is sponsored by the American Society of Hospital Pharmacists, which represents 22,000 pharmacists. AHFS DI staff prepare monographs after a literature search and review of FDA labeling. These monographs are reviewed by over 300 specialists at the doctoral level, including physicians, pharmacologists, and biochemists selected from among experts in drug therapy. This review process continues until a consensus is developed. The AHFS DI includes individual drug monographs with some general category statements, full FDA label disclosure, and unlabeled uses of approved drugs. The AHFS DI is republished annually with three to four supplements per year.

The AMA DE is sponsored by the AMA, which represents over 293,000 physicians. The listed drugs include all drugs approved by the FDA for use in the United States. AMA staff prepare monographs after a literature search and review of FDA-approved labeling. These monographs are reviewed by about 400 consultants followed by approximately 100 designees or members of the American Society for Clinical Pharmacology and Therapeutics. The review process continues until a consensus is developed. The AMA DE includes mostly general statements with truncated drug monographs including unlabeled uses of approved drugs. The AMA DE has been published every 3 years with updates. However, beginning in late 1989, the AMA plans to publish this compendium annually with quarterly updates.

IV. Description of the List

Appendix I consists of IV drugs and their indications divided into three main categories. The categories are—biologicals, antibiotics and non-antibiotics (which is further broken down as indicated above into the four subcategories of drugs, excluding for reasons discussed above antineoplastic drugs). The list is based on our analysis and evaluation of the recommendations and information received from the various professional organizations that we contacted. Appendix II consists of the antibiotic drugs and indications not proposed for coverage.

We recognize that there is wide variation in both the type of drugs included in Appendix I as well as the indications for these drugs. This is due in part to the fact that the concept of home IV therapy has evolved to treat diverse types of patients:

- Patients who began a course of IV therapy in the hospital that has not been completed, but who are stable enough to no longer require hospitalization.
- Patients who are terminally ill and require IV therapy, but whose condition does not warrant hospitalization.
- Other types of patients who require IV therapy but do not require hospitalization.

We are proposing that all candidates for home IV therapy meet specific selection criteria as outlined in the regulations referred to earlier that deal with coverage of home IV drug therapy services and conditions of participation for home IV drug therapy providers.

While many of the drugs on the proposed list can be safely and effectively administered in the home setting and would be covered, such medications are sometimes taken orally. Payment may be denied if a more appropriate route of administration is available. When deciding that the route of administration is appropriate, the Peer Review Organization (PRO) will carefully review to determine if another route of administration would be effective (for example, oral, subcutaneous, etc.). If the PRO makes a determination that another route would be effective, the PRO would deny payment. (An example might be: a physician seeking prior approval for the administration of intravenous Aminophylline.) Payment is made for home IV therapy only when it is reasonable and necessary and there is medical justification for its use.

The proposed list includes some very toxic drugs while other less toxic drugs are excluded. We note, however, that in urging us to include virtually all IV drugs on the list, some organizations we contacted took the position that "a drug is a drug, and a cell is a cell". These organizations believe a drug that can be administered in a hospital setting can also be administered in the home setting. We take a different view. There are a variety of factors that we have considered that play a role in the determination of whether a drug is safe and effective for use in the home. These factors include, in addition to the obvious factor of potential serious or life threatening side effects, drug product stability and compatibility characteristics, and the need for close patient monitoring.

The variation of indications for each specific drug is a reflection of the varying degrees and stages of illnesses that will be treated in the home setting. We believe that we must allow flexibility to enable the physician to develop a plan of treatment appropriate for the specific medical condition of the patient. Nevertheless, we wish to make clear that the appearance of an indication for a covered drug on the listing is not intended to imply that the indication is approved under the provisions of the FFDCA.

With respect to the specific working of the indications, because there are different phrases to describe the same disease states and conditions, there may appear to be inconsistencies in our use of medical terminology when listing indications. According to medical professionals and medical texts, the following terms are examples of terms that may be used interchangeably:

- Genitourinary infections with gynecological infections; and
- Skin and soft-tissue infections with skin and skin structure infections.

Also, there may be times when a specific indication could be considered as a subset of a larger classification. Examples of these would include:

- Cystitis as part of urinary tract infections; and
- Gonorrhea as part of genitourinary infections.

Such indications may have been listed separately in Appendix I because that is the way they appeared in the recommendations that we received. In addition, because the practice of medicine is dynamic, it would not be feasible to list all indications, either labeled or unlabeled, that are not suitable for treatment in the home. For this reason, we have listed the indications for each drug that *can* generally be treated safely and effectively in the home. The following indications are proposed for exclusion for all intravenous antibiotics because it is our understanding that the seriousness of the condition requires hospitalization.

- Biliary tract infections.
- Central nervous system infections.
- Intra-abdominal infections.
- Respiratory tract infections.
- Septicemia.

Furthermore, specific labeled indications for certain drugs have been excluded because it is our understanding that they could not be safely and effectively treated intravenously in the home.

One of our proposed sub-categories is "hydration therapy." For our purposes and purposes of home IV therapy, the term is defined as the replacement of fluids or electrolytes, or both, in the human body when the physiologic and homeostatic mechanisms, which normally preserve their balance, fail as a result of illness or disease.

Most of the drugs that appear on the proposed list have specific dosages or dose ranges and are given at specific time intervals. For example, Cimetidine, used for hypersecretory conditions has a recommended dosing schedule of 300 mg administered intravenously every 6 to 8 hours. In comparison, for hydration therapy purposes, a physician can prescribe any of numerous available solutions used for this purpose, with the addition of one or more of the listed electrolytes, in a dose he or she has determined to be appropriate (for example, dextrose 5 percent in sodium chloride 0.45 percent, 1000 ml with 7 mEq of calcium as the chloride, gluconate or glucepate salt).

The magnitude of different combinations of ingredients in this sub-category requires our format for listing drugs in hydration therapy to differ from the other categories. This means that the options available to a physician prescribing a course of hydration therapy for a Medicare beneficiary would not be limited. The only restrictions on amounts of ingredients are those placed on solutions. These limitations have been determined to be the upper limits of commercially available products that would normally be used for hydration therapy (versus parenteral nutrition).

We are aware that our list will need periodic revision as new drugs are approved by FDA for entry in the market place. The FDA has informed us that 10 to 20 new IV drugs are approved over the course of each year that we would have to consider for entry on the list. In addition, if a drug already on the list is removed from the market or if a drug is no longer considered to be appropriate for home use, we would delete the drug from the list. We will update the list at least annually through a notice in the **Federal Register**. Updates may occur more frequently, possibly as often as semi-annually.

V. Regulatory Impact Statement

A. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed notice that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Also, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, pharmaceutical manufacturers and physicians are considered small entities.

As noted earlier in this preamble, this notice addresses the issues of: (1) Identifying IV drugs (both antibiotics and non-antibiotics) and their indications that are approved for marketing by FDA; and (2) identifying those IV drugs that are safe and effective for use in the home. There may be some economic or other effects of the proposed list of drugs that may touch upon other proposed rules implementing other home IV provisions of the catastrophic legislation, and some of these effects are addressed here as well as in the other rules. The purpose of this duplication is to ensure that the reader may determine the effects of each document without referring to the other proposed documents.

In addressing the first issue discussed above, all of the IV drugs listed in this notice may be covered under Medicare as covered outpatient drugs because they meet the criteria defined in section 1861(t)(2) of the Act. Thus, HCFA has exercised no administrative discretion in this area.

Administrative discretion, however, was required to identify those IV drugs that are safe and effective for use in the home. As discussed earlier in this preamble, we contacted the USP, ASHP, AMA, various home IV providers, the Pharmaceutical Manufacturers Association, various drug manufacturers and the Intravenous Nurses Society in making our initial determination as to whether a certain IV drug could be proposed as safe and effective for use in the home. We believe that the information solicited from the compendia along with the advice of the other organizations constitutes a valid basis on which to conclude with reasonable assurance that a particular drug can generally be administered safely and effectively in a home setting. Furthermore, we believe that the identification of IV drugs that are safe and effective for use in the home would not result in any significant effects on the economy or on small businesses. Our reasons follow:

1. Effects on drug manufacturers

Drug manufacturers producing IV drugs that are included in this proposed list would be advantaged in competing for the Medicare market because their drugs would be covered under Medicare as home IV drugs. We recognize that manufacturers producing IV drugs that are not included in our proposed list would be adversely affected in competing for the Medicare share of the IV drug market. Although we do not have data available that allow us to determine the degree to which drug manufacturers would be affected, we do not believe that will be significantly affected. This is because IV drugs (except antineoplastics) currently being prescribed for home use would likely be included on the proposed list based on the methodology used in developing this list.

2. Effects on beneficiaries

Medicare beneficiaries who are prescribed an IV drug for home use that is on the proposed list would benefit by being eligible for Medicare coverage of that drug. Conversely, beneficiaries for whom a drug has been prescribed that is not covered by Medicare for home IV use, may have to remain in the hospital to receive covered IV therapy or may have to incur expenses for home IV therapy themselves. Since we believe that most drugs currently prescribed for home IV use are included on the list, we

do not believe beneficiaries would be significantly affected adversely.

3. Effects on physicians

If drugs commonly prescribed by a physician for use in the home are not on the list, the physician could be influenced to change his or her prescribing patterns for Medicare patients to ensure that the patient is prescribed a Medicare covered home IV drug. However, given that we have consulted with various professional organizations and compendia in developing this list, we believe that the list, with the exception of antineoplastics, contains the most frequently prescribed home IV therapy drugs. Thus, we believe it unlikely that physicians' prescribing patterns would change significantly as a result of this list.

For the reasons discussed above, we believe that this notice would not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, we have determined that this notice is not a major rulemaking document under E.O. 12291, and a regulatory impact analysis is not required. Also, for the reasons discussed, we have determined, and the Secretary certifies, that this notice would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis would not be required under the RFA.

B. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this proposed notice would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VI. Information Collection Requirements

This proposed notice does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VII. Responses to Comments

In responding to this notice, we request that comments restrict their comments and suggestions to the suitability of the drugs listed in the Appendix for use in the home for the indications listed. We also request commenters about any IV drugs that are not included on the list, which commenters believe would be suitable for home use, and their indications.

Because of the large number of items of correspondence we normally receive on proposed notices, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this notice, and, if we proceed with a final notice, we will respond to the comments in that notice.

(Secs. 1832(a)(2)(A)(i) and 1861(s)(2)(J) and (t) of the Social Security Act (42 U.S.C. 1395k(a)(2)(A)(i) and 1395x(s)(2)(J) and (t)))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 7, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: August 19, 1989.

Louis W. Sullivan,

Secretary.

Appendix I.—Proposed List of Covered Home IV Drugs and Indications

I. Antibiotics

- Amdinocillin
  - Urinary tract infections, bacterial
- Amikacin Sulfate
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and soft-tissue infections
  - Urinary tract infections, bacterial
- Ampicillin Sodium
  - Arthritis, gonococcal
  - Bone and joint infections
  - Endocarditis, bacterial
  - Entercolitis, "Shigella"
  - Genitourinary tract infections
  - Gonorrhea
  - "Hemophilus" infections
  - Listeriosis
  - Paratyphoid fever
  - Skin and soft-tissue infections
  - Urethritis, gonococcal
- Ampicillin Sodium and Sulbactam Sodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
- Azlocillin Sodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Aztreonam
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Carbenicillin Disodium
  - Genitourinary tract infections
  - Skin and soft-tissue infections
  - Urinary tract infections, bacterial
- Cefamandole Nafate
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Cefazolin Sodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Cefonicid Sodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Cefoperazone Sodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Ceforanide
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Cefotaxime Sodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Cefotetan Disodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Cefoxitin Sodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Ceftazidime
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Ceftizoxime Sodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and soft-tissue infections
  - Urinary tract infections, bacterial
- Ceftriaxone Sodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Lyme Disease, joint and CNS
  - Skin and skin structure infections
  - Urinary tract infections, bacterial

- Cefuroxime Sodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Gonorrhea
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Cephalothin Sodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and soft-tissue infections
  - Urinary tract infections, bacterial
- Cephapirin Sodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Cephradine
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Clindamycin Phosphate
  - Bone and joint infections
  - Genitourinary tract infections
  - Skin and soft-tissue infections
- Gentamicin Sulfate
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Listeriosis
  - Skin and soft-tissue infections
  - Urinary tract infections, bacterial
- Imipenem and Cilastatin Sodium
  - Bone and joint infections
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Methicillin Sodium
  - Endocarditis, bacterial
  - Skin and soft-tissue infections
- Mezlocillin Sodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Miconazole
  - Candidiasis, disseminated
  - Candidiasis, mucocutaneous, chronic
  - Petriellidiosis
  - Urinary bladder infections, fungal
- Nafcillin Sodium
  - Endocarditis, bacterial
  - Skin and soft-tissue infections
- Netilmicin Sulfate
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Oxacillin Sodium
  - Endocarditis, bacterial
  - Skin and soft-tissue infections
- Penicillin G Potassium
  - Arthritis, gonococcal
  - Diphtheria, prophylaxis
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Gingivostomatitis, necrotizing ulcerative
  - Listeriosis
  - Lyme disease, joint and CNS
  - Syphilis
- Penicillin G Sodium
  - Arthristis, gonococcal
  - Diphtheria, prophylaxis
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Gingivostomatitis, necrotizing ulcerative
  - Listeriosis
  - Lyme disease, joint and CNS
  - Syphilis
- Piperacillin Sodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urethritis, gonococcal
  - Urinary tract infections, bacterial
- Ticarcillin Disodium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and soft-tissue infections
  - Urinary tract infections, bacterial
- Ticarcillin Disodium and Clavulanate Potassium
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Skin and skin structure infections
  - Urinary tract infections, bacterial
- Tobramycin Sulfate
  - Bone and joint infections
  - Endocarditis, bacterial
  - Genitourinary tract infections
  - Listeriosis
  - Skin and skin structure infections
  - Urinary tract infections,
- Vancomycin Hydrochloride
  - Bone and joint infections
  - Endocarditis, bacterial

II. Non-Antibiotic Drugs

A. Anti-infectives (other then antibiotics)

- Acyclovir Sodium
  - Herpes zoster
  - Herpes simplex
- Pentamidine Isethionate
  - Pneumonia, "Pneumocystis carinii"
  - Leishmaniasis, visceral
  - Trypanosomiasis, African
- Sulfamethoxazole and Trimethoprim
  - Bone and joint infections
  - Chancroid
  - Chlamydial infections
  - Enterocolitis "Shigella"
  - Genitourinary tract infections
  - Gonorrhea
  - "Hemophilus" infections
  - Lymphogranuloma venereum
  - Paratyphoid fever
  - Pneumonia, "Pneumocystis carinii"
  - Rheumatic fever
  - Urinary tract infections, bacterial

B. Hydration Therapy

Intravenous Solutions

1. dextrose in water solutions
2. sodium chloride solutions
3. dextrose/sodium chloride solutions
4. premixed potassium chloride solutions up to concentrations of 40mEq/L

The following limitations apply fot all of the above solutions:

a. concentration of dextrose in any solution is not to exceed 10%.

b. concentration of sodium chloride in any solution is not to exceed 0.9%.

5. premixed electrolyte solutions, containing any combination of the following electrolytes in their various salt forms, which are not intended for parenteral nutrition:
   - sodium
   - potassium
   - calcium
   - magnesium
   - chloride
   - phosphate

The caloric content of these solutions is limited to 340 calories.

Electrolytes

- calcium chloride
- calcium gluconate
- calcium glucepate
- magnesium chloride
- magnesium sulfate
- potassium acetate
- potassium chloride
- potassium phosphate
- sodium acetate
- sodium bicarbonate
- sodium chloride
- sodium phosphate

The indications for drugs in this category are less specific than for other drugs. After referring to various clinical texts, we have determined that water depletion, and combined water and electrolyte depletion, can be the result of many disease and non-disease states, including but not limited to the following:

Extrarenal losses

1. Gastrointestinal (vomiting, diarrhea, ostomy drainage)
2. Skin losses (sweating, burns)
3. Lung losses (bronchorrhea)

Renal losses

1. Renal disease (chronic renal failure, diuretic phase of acute renal failure)
2. Diuretic excess
3. Osmotic diuresis (diabetic glycosuria)
4. Mineralcorticoid deficiency (Addison's disease, hypoaldosteronism)

There may be other instances when a patient needs hydration therapy. Patients taking antineoplastic drugs must often be hydrated to increase urine output to insure the timely excretion of the drug because of its toxic side effects.

C. Pain Management Drugs

Indication: For treatment of chronic intractable pain.

- Butorphanol Tartrate
- Hydromorphone Hydrochloride
- Meperidine Hydrochloride
- Morphine Sulfate

D. Other

- Aminophylline
  - Asthma, bronchial
- Bumetanide
  - Edema
- Cimetidine Hydrochloride
  - Adenoma, multiple endocrine
  - Bleeding, upper gastrointestinal
  - Hypersecretory conditions, gastric
  - Mastocytosis, systemic
  - Pancreatic insufficiency
  - Reflux, gastroesophageal
  - Stress-related mucosal damage

  - Ulcer, duodenal
  - Ulcer, gastric
  - Zollinger-Ellison syndrome
- Deferoxamine Mesylate
  - Toxicity, iron chronic
  - Toxicity, aluminum
- Dexamethasone Sodium Phosphate
  - Adrenocortical insufficiency, chronic primary (Addison's)
  - Adrenocortical insufficiency, secondary
  - Adrenogenital syndrome (adrenal hyperplasia, congenital)
  - Anemia, hemolytic, acquired (autoimmune)
  - Anemia, hypoplastic, congenital (erythroid)
  - Anemia, red blood cell (erythroblastopenia)
  - Arthritis, psoriatic
  - Arthritis, rheumatoid
  - Bowel disease, inflammatory, including colitis, ulcerative
  - Bronchitis, asthmatic, acute or chornic
  - Calcium pyrophosphate deposition disease, acute (pseudogout, chondrocalcinosis articularis, synovitis, crystal-induced)
  - Carcinoma, breast
  - Carcinoma, prostatic
  - Connective tissue disease, mixed
  - Dermatitis, exfoliative
  - Dermititis herpetiformis bullous
  - Dermatitis, seborrheic, severe
  - Dermatomyositis, systemic
  - Dermatoses, inflammatory, severe Enteritis, regional (Crohn's disease)
  - Erythema multiforme, severe (Stevens-Johnson syndrome)
  - Fever, due to malignancy
  - Gouty arthritis, acute
  - Hemolysis
  - Hypercalcemia associated with neoplasms (or sarcoidosis)
  - Increased cranial pressure due to malignancy
  - Leukemia, acute or chronic
  - Lupus erythematosus, systemic
  - Lymphomas, Hodgkins, or non-Hodgkins
  - Multiple myeloma
  - Mycosis fungoides
  - Nausea and vomiting, cancer-chemotherapy induced
  - Pemphigoid
  - Pemphigus
  - Polychondritis, relapsing
  - Polymyalgia, rheumatica
  - Polyps, nasal
  - Pulmonary disease, chronic obstructive (not controlled with theophylline and beta-adrenergic agonists)
  - Reiter's disease
  - Rheumatic fever
  - Rhinitis, allergic, perennial, or seasonal, severe
  - Thrombocytopenia, secondary, in adults
  - Thrombocytopenia purpura, idiopathic, in adults
  - Trichinosis
- Diphenhydramine Hydrochloride
  - Nausea and vomiting
- Famotidine
  - Adenoma, multiple endocrine
  - Bleeding, upper gastrointestinal
  - Hypersecretory conditions, gastric
  - Mastocytosis, systemic
  - Pancreatic insufficiency
  - Reflux, gastroesophageal
  - Stress-related mucosal damage
  - Ulcer, duodenal
  - Ulcer, gastric
  - Zollinger-Ellison syndrome
- Furosemide
  - Edema
- Heparin Calcium
- Heparin Sodium
  - Thromboembolism
- Hydrocortisone Sodium Phosphate
- Hydrocortisone Sodium Succinate
  - Adrenocortical insufficiency, chronic primary (Addison's)
  - Adrenocortical insufficiency, secondary
  - Adrenogenital syndrome (adrenal hyperplasia, congenital)
  - Anemia, hemolytic, acquired (autoimmune)
  - Anemia, hypoplastic, congenital (erythroid)
  - Anemia, red blood cell (erythroblastopenia)
  - Arthritis, psoriatic
  - Arthritis, rheumatoid
  - Bowel disease, inflammatory, including colitis, ulcerative
  - Bronchitis, asthmatic, acute or chronic
  - Calcium pyrophosphate deposition disease, acute (pseudogout, chondrocalcinosis articularis, synovitis, crystal-induced)
  - Carcinoma, breast
  - Carcinoma, prostatic
  - Connective tissue disease, mixed
  - Dermatitis, exfoliative
  - Dermatitis herpetiformus, bullous
  - Dermatitis, seborrheic, severe
  - Dermatomyositis, systemic
  - Dermatoses, inflammatory, severe
  - Enteritis, regional (Crohn's disease)
  - Erythema multiforme, severe
  - Fever, due to malignancy
  - Gouty arthritis, acute
  - Hemolysis
  - Hypercalcemia associated with neoplasms (or sarcoidosis)
  - Increased cranial pressure, due to malignancy
  - Leukemia, acute or chronic
  - Lupus erythematosus, systemic
  - Lymphomas, Hodgkin's or non-Hodgkin's
  - Multiple myeloma
  - Mycosis fungoides
  - Nausea and vomiting, cancer-chemotherapy induced
  - Pemphigoid
  - Pemphigus
  - Polychondritis, relapsing
  - Polymyalgia, rheumatica
  - Polyps, nasal
  - Pulmonary disease, chronic obstructive (not controlled with Theophylline and beta-adrenergic agonists)
  - Reiter's disease
  - Rheumatic fever
  - Rhinitis, allergic, perennial or seasonal, severe
  - Thrombocytopenia, secondary, in adults
  - Thrombocytopenia purpura, idiopathic, in adults
  - Trichinosis
- Iron Dextran
  - Iron deficiency anemia
- Leucovorin Calcium
  - Methotrexate toxicity (antidote to folic acid antagonist)
- Mannitol
  - Premedication, cancer chemotherapy
- Methylprednisolone Sodium Succinate
  - Adrenocortical insufficiency, chronic primary (Addison's)
  - Adrenocortical insufficiency, secondary
  - Adrenogenital syndrome (adrenal hyperplasia, congenital)
  - Anemia, hemolytic, acquired (autoimmune)
  - Anemia, hypoplastic, congenital (erythroid)
  - Anemia, red blood cell (erythroblastopenia)
  - Arthritis, psoriatic
  - Arthritis, rheumatoid
  - Bowel disease, inflammatory, including colitis, ulcerative
  - Bronchitis, asthmatic, acute or chronic
  - Calcium pyrophosphate deposition disease, acute (pseudogout; chondrocalcinosis articularis; synovitis, crystal-induced)
  - Carcinoma, breast
  - Carcinoma, prostatic
  - Connective tissue disease, mixed
  - Dermatitis, exfoliative
  - Dermatitis, herpetiformis, bullous
  - Dermatitis, seborrheic, severe
  - Dermatomyositis, systemic
  - Dermatoses, inflammatory, severe
  - Enteritis, regional (Crohn's disease)
  - Erythema multiforme, severe (Stevens-Johnson syndrome)
  - Fever, due to malignancy
  - Gouty arthritis, acute
  - Hemolysis
  - Hepatitis, chronic active
  - Hepatitis, nonalcoholic, in women
  - Hypercalcemia associated with neoplasms (or sarcoidosis)
  - Increased cranial pressure, due to malignancy
  - Leukemia, acute or chronic
  - Lupus erythmatosus, systemic
  - Lymphomas, Hodgkins or non-Hodgkins
  - Multiple myeloma
  - Mycosis fungoides
  - Necrosis, hepatic, subacute
  - Pemphigoid
  - Pemphigus
  - Polychondritis, relapsing
  - Polymyalgia, rheumatica
  - Polyps, nasal
  - Pulmonary disease, chronic obstructive (not controlled with Theophylline and beta-adrenergic agonists)
  - Reiter's disease
  - Rheumatic fever
  - Rhinitis, allergic, perennial or seasonal, severe
  - Thrombocytopenia, secondary, in adults
  - Thrombocytopenic purpura, idiopathic, in adults
  - Trichinosis
- Metoclopramide
  - Gastroparesis
  - Nausea and vomiting, cancer chemotherapy induced
- Phenytoin Sodium
  - Epilepsy
- Prochlorperazine Edisylate
  - Nausea and vomiting
- Ranitidine Hydrochloride
  - Adenoma, multiple endocrine
  - Bleeding, upper gastrointestinal
  - Hypersecretory conditions, gastric
  - Mastocytosis, systemic
  - Pancreatic insufficiency
  - Reflux, gastroesophageal
  - Stress-related mucosal damage
  - Ulcer, duodenal
  - Ulcer, gastric

Zollinger-Ellison syndrome

III. IV Biologicals and Indications

A. Anti-Infectives

NONE

B. Fluid Replacement

NONE

C. Pain Management

NONE

D. Anit-Cancer Chemotherapeutic

NONE

E. Other

Immune Globulin
  Immunodeficiency Syndrome
  Thrombocytopenic purpura, idiopathic
Alpha-proteinase Inhibitor, Human
  Emphysema, panacinar, due to alpha-antitrypsin
  deficiency

Appendix B—Proposed List of Non-Covered Home IV Antibiotic Drugs and Indications

I. Antibiotic Drugs not Proposed for Coverage

Chloramphenicol Sodium Succinate
Colistimethate Sodium
Doxycycline Hyclate
Erythromycin Gluceptate
Erythromycin Lactobionate
Kanamycin Sulfate
Lincomycin Hydrochloride
Minocycline Hydrochloride
Moxalactum Disodium
Oxytetracycline Hydrochloride
Polymyxin B Sulfate
Tetracycline Hydrochloride

II. Indications for Antibiotic Drugs not Proposed for Coverage

Biliary tract infections
Central nervous system infections
Intra-abdominal infections
Respiratory tract infections
Septicemia

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Thursday
September 7, 1989

Part III

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Final Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

RIN 1810–AA49

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary amends the regulations governing eligibility, entitlement, and payment determinations under section 3(d)(2)(B) of the Impact Aid Program. Changes in a number of other regulatory provisions relating to payments under sections 2, 3, and 4 of this program also are made. These regulations are intended to provide guidance to local educational agencies (LEAs) applying for maintenance and operations assistance under Public Law 81–874 (the Act), and may affect the Department's calculation of assistance amounts.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments with the exception of §§ 222.3, 222.9 through 222.11, 222.14 through 222.17, 222.20, 222.22, 222.25, 222.33, 222.34, 222.36, 222.40, 222.72, 222.74, and 222.125 through 222.129. Sections 222.3, 222.9 through 222.11, 222.14 through 222.17, 222.20, 222.22, 222.25, 222.33, 222.34, 222.36, 222.40, 222.72, 222.74, and 222.125 through 222.129 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Charles E. Hansen, Acting Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW., Room 2079, Washington, DC 20202–6244. Telephone: (202) 732–3637.

SUPPLEMENTARY INFORMATION:

A. General

Public Law 81–874, as amended, 20 U.S.C. 236 through 241–1 and 242 through 244, known as the Impact Aid maintenance and operations assistance program, authorizes assistance to LEAs that are financially burdened by a reduced tax base resulting from the Federal acquisition of real property, an increased student population due to Federal activities, or both. Section 3 of the Act addresses both types of burdens by authorizing payments to LEAs that are required to provide free public education to children who live on, and/or whose parents are employed on, tax-exempt, federally owned or leased real property ("federally connected children"). These payments supplement local revenues and assist the LEAs in meeting their maintenance and operations costs.

Section 3(d)(2)(B) of the Act, 20 U.S.C. 238(d)(2)(B), provides financial assistance in addition to regular payments under section 3 of the Act, to certain heavily impacted LEAs that demonstrate eligibility for that assistance. For an applicant eligible to receive assistance under section 3(d)(2)(B), the statute provides that the Secretary will supplement the eligible LEA's section 3 payment to enable it to provide a level of education equivalent to that provided by the school districts determined to be generally comparable to it. A payment provided under section 3(d)(2)(B), however, is subject to a maximum entitlement amount.

In order to inform applicants about the operation of section 3(d)(2)(B) of the Act, the Secretary believes it is desirable to describe in regulations how the Department determines eligibility, entitlements, and payments for all LEAs applying for section 3(d)(2)(B) assistance. In addition to establishing a new subpart K, which relates specifically to section 3(d)(2)(B), a number of existing regulatory provisions are amended. Also, subpart H, containing provisions related to handicapped children and children with specific learning disabilities, is revised to clarify language and specify requirements for fiscal accountability for the use of section 3(d)(2)(C) funds.

These regulations are based upon the requirements in the Act as revised by the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297, April 28, 1988) (Hereinafter "the Hawkins-Stafford Amendments") and Public Law 101–26, enacted on May 11, 1989. Unless otherwise indicated, the provisions in these regulations reflect the current policy and practice of the Department. The final regulations become effective starting with FY 1990.

B. Information Contained in the Notice of Proposed Rulemaking

On March 23, 1989, the Secretary published a notice of proposed rulemaking (NPRM) for the Impact Aid maintenance and operations assistance program in the **Federal Register**, 54 FR 12104–12120. Most of the explanatory statements in the NPRM remain relevant. For the sake of brevity, those statements are not being reprinted here. Readers are referred to the **Federal Register** of March 23, 1989. (54 FR 12104–12120).

C. Significant Changes

Significant changes in the final regulations from the NPRM are described below. The NPRM noted that examples concerning subpart K would not be shown in the Code of Federal Regulations. Accordingly, those examples are not included in the final regulations. Except for minor editorial and technical revisions, there are no other differences between the NPRM and these final regulations.

1. *Section 222.74.* The fiscal accountability requirements in § 222.74(d) are modified in response to public comment. The manner in which the Department tests whether section 3(d)(2)(C) funds were spent for their authorized purpose has been amended so that all expenditures on handicapped programs, including those from all Federal, State, and local funds will be factored into the average per pupil handicapped expenditure formula rather than just general State and local expenditures, as described in the NPRM. To the extent that this amendment may alter current procedure, the Department intends this modification to apply.

2. *Sections 222.124, 222.129, and 222.132.* Public Law 101–26, which became effective on May 11, 1989, made several technical amendments to the Impact Aid statute. One of the amendments changed the tax effort requirement for section 3(d)(2)(B), from 80 percent to 95 percent of the applicant's comparable LEAs' effort. As a result of this recent legislation, references to tax effort in §§ 222.124, 222.129, and 222.132 have been changed from 80 percent to 95 percent.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, several parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to

which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Sections 222.9 and 222.10

Comment: One commenter stated that §§ 222.9 and 222.10 appear to be inconsistent. Section 222.9 indicates that applications are to be transmitted through State educational agencies (SEAs) while § 222.10 specifies that applications are to be simultaneously submitted to the Department and the SEA. Section 222.10 also states that SEAs must notify the Secretary by February 15 if they have any problems with an LEA's application. The commenter recommended that this review period be extended to allow SEAs 30 days to review applications.

Discussion: Section 222.10 accurately reflects the Department's proposed new practice for the submission of applications. The changes proposed are expected to reduce the incidents of applications filed too late to qualify for finding and to expedite payments.

The Secretary believes that SEAs will have sufficient time to review applications and notify the Secretary by February 15 of any concerns they have with individual applications. The Department traditionally receives applications throughout the month of January. Presumably, LEAs will maintain their usual schedules for preparing and submitting applications in the future. As a result, SEAs should have the same amount of time to review applications as in the past. In some cases, this will be more than 30 days.

Changes: The language of § 222.9 has been revised to make it consistent with § 222.10.

Section 222.33

Comment: Several commenters stated that they believe the change in the statute to allow applicants for funding under section 3(d)(2)(B) to have their payment based on three comparable LEA's should be incorporated in the regulations by revising § 222.33. They recommended that § 222.33 require groups of comparables to contain a minimum of three LEAs instead of the current minimum of ten.

Discussion: Section 222.33 describes the identification of generally comparable LEAs for all section 3 applicants, not just those seeking assistance under section 3(d)(2)(B). The statutory provision allowing the use of three comparable LEAs applies only to determinations of section 3(d)(2)(B) eligibility and payments.

Changes: None.

Section 222.36

Comment: Four commenters objected to the method proposed by the Department for identification of three comparable LEAs for section 3(d)(2)(B) purposes. One commenter complained that the statute refers to "three or more" comparables while the regulations refer to "three" comparables. This commenter recommended that section 3(d)(2)(B) applicants be allowed to select from three to nine comparables under § 222.36 using the method described in § 222.33(c)(3)(i)(A). Three commenters proposed that the regulations state that the same comparable LEAs will be used for computing local contribution rates for section 3 purposes and for computing payments under section 3(d)(2)(B).

Discussion: In one place, the statute refers to "three" comparable LEAs and in another to "three or more" comparable LEAs. The bill report from the Senate, which proposed this change, refers to three comparable LEAs. The Department uses the more specific reference in these regulations and believes this results in a distinct new option for the identification of comparable LEAs, in addition to the methods currently contained in § 222.33, including that in § 222.33(c)(3)(i)(A). Further, the apparent intention of the statutory provision is to identify the LEAs in a section 3(d)(2)(B) applicant's State that are most comparable to the applicant. The Department believes that this can best be accomplished by applying all of the objective factors incorporated in § 222.33 and then selecting three of the LEAs that most nearly match the applicant on these factors.

The Department does not believe it would be appropriate to adopt the commenter's suggestion to base a section 3(d)(2)(B) applicant's local contribution rate (for its regular section 3 payment) on the three comparable LEAs selected under the new method. The statute indicates that these three comparables may be used to determine an LEA's eligibility for a payment under section 3(d)(2)(B) but does not say they are to be used for section 3 purposes. Using different comparable LEAs for these two payment calculations would not adversely affect a district's total Impact Aid payment, because section 3(d)(2)(B) funds are added to whatever an applicant receives for a regular section 3 payment to allow the district to match the expenditures of its comparables.

Change: None.

Section 222.37

Comment: One commenter objected to applying the tax effort requirements referred to in § 222.37 to applicants for assistance under section 3(d)(3)(B)(ii), which compensates LEAs for increased expenditures resulting from unusual geographic factors. The commenter stated that this requirement should apply only to applicants under section 3(d)(2)(B) since a tax effort requirement is specifically incorporated in that provision of the statute but not in section 3(d)(3)(B)(ii).

Discussion: The Secretary believes it is appropriate to apply the tax effort requirements to both of these special assistance provisions because they are both based on financial need. A tax effort requirement under section 3(d)(3)(B)(ii) emphasizes that financial need for funds under this section must be demonstrated and helps to verify that an applicant cannot maintain a level of education equivalent to that of its comparables because of increased expenditures and not because of reduced revenues. The legislative history specifically states that "[t]he amount of the increase (in a section 3(d)(3)(B)(ii) applicant's local contribution rate) will be the amount necessary to enable it to maintain a level of education equivalent to that maintained in the school districts determined by the (Secretary) to be (generally) comparable." *See* H. Rept. 2287, 81st Cong., 2d Sess. 14 (1950). The Secretary does not believe that an LEA should be allowed to make a minimal tax effort or decrease its tax effort and expect the Impact Aid program to make up the difference by increasing the applicant's section (3)(d)(3)(B)(ii) payment.

Changes: None.

Section 222.74(b)

Comment: One commenter stated that the methods of obligation and expenditure of funds outlined in § 222.74(b) impose a significant limitation on LEAs for the expenditure of section 3(d)(2)(C) funds because the districts receive these funds late in the fiscal year. He recommends that this section be revised to allow an LEA to obligate or expend section 3(d)(2)(C) funds for the fiscal year for which the funds were appropriated or for any succeeding fiscal year provided that the LEA can demonstrate that the funds were spent on programs or projects for federally connected, handicapped children. In support of his recommendation, the commenter pointed out language in the NPRM that discussed the rationale for removing the Tydings amendment requirement (20 U.S.C. 1225b). This requirement stated that section 3(d)(2)(C) funds must be obligated or expended by the end of the fiscal year following the fiscal year for which the funds were obligated.

Discussion: Section 222.74(b) requires that a district obligate or expend section 3(d)(2)(C) funds for, but not necessarily in, the fiscal year for which the funds were apppropriated, or reimburse itself for obligations or expenditures of local funds already made. Because districts generally receive their section 3(d)(2)(C) funds in the fiscal year for which the funds are appropriated, the Secretary believes that it is reasonable to tie the funds to that fiscal year. In addition, it is not administratively feasible to track the funds if they are not tied to a specific fiscal year.

Changes: None.

Section 222.74(b)(2)

Comment: One commenter stated that § 222.74(b)(2), which provides that an LEA may reimburse itself for obligations or expenditures of local funds, precludes LEAs in highly equalized States from utilizing the provision. He recommends that the wording be revised to include State expenditures as well as local expenditures made.

Discussion: The reference to local expenditures in this provision encompasses expenditures from local funds and general State aid. The Secretary is unable to include specific State funds in this provision because it would conflict with section 5 of the Act and § 222.75, which require that section 3(d)(2)(C) funds not supplant State funds that were or would have been available to the LEA for the free public education of children counted under section 3(d)(2)(C). However, the Secretary believes that a clarification can be added to the term "local funds."

Changes: The phrase "and general State aid" is added to the portion of § 222.74(b)(2) that refers to local funds.

Section 222.74(d)

Comment: Three commenters objected to the fiscal accountability provisions in § 222.74(d) that apply to additional payments under section 3(d)(2)(C) to LEAs that provide free appropriate public education to federally connected, handicapped children. One commenter stated he believes that the accountability provisions in § 222.74(d) make State aid for handicapped children categorical even when some State laws do not apparently specify that all State aid for handicapped children must actually be spent for such children. Two commenters indicated they feel that the fiscal accountability requirements in the NPRM do a disservice to equalized States and States that heavily compensate their LEAs for expenditures for handicapped children by focusing only on the amount of local expenditures that were made for special services for the handicapped. One commenter also believes that the effect of this test is to make Federal funds received under section 3(d)(2)(C) the "last" dollars spent on federally connected, handicapped children, and he doe snot believe there is Federal authority to compell that result. One commenter recommended that in lieu of the fiscal accountability requirements proposed, which he feels penalize LEAs in equalized States, the Department require an LEA in an equalized State to subject a budget to their SEA delineating the specific services to be provided with the 3(d)(2)(C) funds.

Discussion: The Secretary agrees that the accountability test has the potential for penalizing LEAs that have low expenditures from local sources for special education purposes but are highly compensated for these expenditures by their States either through equalization or other means. The Secretary believes that the accountability test would be strengthened by taking into consideration all funds, including Federal, State, and local, expended by the LEA for handicapped programs. The Secretary also recognizes that the test contained in the NPRM may have the effect of making State handicapped aid categorical. The Secretary does not generally believe that it is good public policy for States to provide extra money for handicapped students without specifying that the money must be spent for those students. The Secretary believes, however, that the Act does not require LEAs to spend State dollars before section 3(d)(2)(C) funds are spent. The Secretary cautions that while State funds may not necessarily be categorical, States need to be aware that they are, nevertheless, clearly prohibited from using section 3(d)(2)(C) funds to supplant State funds that would have been otherwise available to LEAs.

Changes: The Secretary has modified § 222.74(d) by deleting the provisions that separate expenditures from State funds and Federal Education of the Handicapped Act (EHA) funds from expenditures from local funds for programs or projects serving federally connected, handicapped children. The fiscal accountability test in this section has been expanded to look at the total amount of expenditures made, from all Federal, State, and local funds for handicapped programs and projects that serve federally connected, handicapped students in an LEA.

Section 222.128

Comment: Three commenters proposed that § 222.128 apply to fiscally independent districts as well as fiscally dependent school districts. This section allows, subject to the approval of the Secretary, the use of local tax sources other than real property taxes in the determination of reasonable tax effort.

Discussion: As stated in § 222.124 of the NPRM, the provisions of §§ 222.126–22.128 apply to fiscally independent school districts. Also, § 222.129 notes that applicable provisions of §§ 222.126–222.128 may be used for fiscally dependent school districts. Therefore, no change is needed in the final regulations.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected area, Grant programs-education, Public housing, Reports and recordkeeping requirements.

Dated: August 1, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operation)

The Secretary amends Part 222 of Title 34 of the Code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The authority for part 222 is revised to read as follows:

Authority: 20 U.S.C. 236–241–1 and 242–244, unless otherwise noted.

2. The Table of Contents for part 222 is amended by revising subpart H and by adding a new subpart K to read as follows:

* * * * *

Subpart H—Provisions Related to Handicapped Children and Children With Specific Learning Disabilities

222.70 What are the scope and purpose of these regulations?
222.71 What definitions apply to this subpart?
222.72 What requirements must an LEA meet in order to count a handicapped child for purposes of section 3(d)(2)(C)?
222.73 What assurances and certifications regarding handicapped children must an LEA provide in its application?
222.74 What restrictions and requirements apply to the use of the additional payments under section 3(d)(2)(C)?
222.75 How does section 3(d)(2)(C) relate to State aid programs?
222.76 When may an LEA count children in private schools or residential programs for the purposes of section 3(d)(2)(C)?
222.77 What other statutory and regulatory requirements are relevant to section 3(d)(2)(C)?

* * * * *

Subpart K—Provisions for Section 3(d)(2)(B)

222.120 What are the scope and purpose of these regulations?
222.121 What financial data from LEAs are used to determine eligibility, entitlement, and payment under section 3(d)(2)(B)?
222.122 What LEAs are eligible for financial assistance under section 3(d)(2)(B)?
222.123 How does a State's equalization program affect an LEA's eligibility for section 3(d)(2)(B) assistance?
222.124 How does the Secretary determine whether a fiscally independent LEA is making a reasonable tax effort?
222.125 What information must be provided by the State educational agency?
222.126 What tax rates does the Secretary use if real property is assessed at different percentages of true value?
222.127 What tax rates does the Secretary use if two or more different classifications of real property are taxed at different rates?
222.128 What tax rates may the Secretary use if substantial local revenues are derived from local tax sources other than real property taxes?
222.129 How does the Secretary determine whether a fiscally dependent LEA is making a reasonable tax effort?
222.130 How does the Secretary determine whether an LEA lacks sufficient funds to enable it to provide a level of education equivalent to that provided by its generally comparable LEAs?
222.131 How does the Secretary determine an LEA's maximum entitlement under section 3(d)(2)(B)?
222.132 How does the Secretary determine an LEA's payment under section 3(d)(2)(B)?

* * * * *

3. Section 222.3 is amended by removing the definition of "working on Federal property," revising the definitions of "applicant" (and its authority citation), "application," and "uniformed services" (and its authority citation), and by adding new definitions for "federally connected children," "local educational agency," "membership," and "parent employed on Federal property" to read as follows:

§ 222.3 Definitions.

* * * * *

Applicant means any local educational agency that files an application for financial assistance under section 2, 3, or 4 of the Act and the regulations in this part. For purposes of sections 3 and 4, a State educational agency may be an applicant only if the State agency directly operates and maintains facilities for providing free public education for the children it claims in its application.

(Authority: 20 U.S.C. 240(a) and 244(6))

Application means a properly completed and executed "Application for School Assistance in Federally Affected Areas" filed by an applicant requesting financial assistance under section 2, 3, or 4 of the Act and the regulations in this part, including amendments to the application and any supporting documents indicated by the applicant.

* * * * *

Federally connected children refers to children described in subsection 3(a) or 3(b) of the Act.

(Authority: 20 U.S.C. 238)

* * * * *

Local educational agency means a board of education or other legally constituted local school authority having administrative control and direction of free public elementary or secondary education through grade 12 in a county, township, independent, or other school district located within a State. This term includes a State educational agency so long as it also directly operates and maintains facilities for providing free public education for the children it claims in its application. Children claimed by a State educational agency must actually be attending State-operated facilities, and the State educational agency may not, through a tuition arrangement, contract, or any other means, pay another entity to operate and maintain facilities for those children.

(Authority: 20 U.S.C. 244(6))

Membership means—

(1)(i) The definition given to the term by State law; or

(ii) If State law does not define the term, the number of children listed on a local educational agency's current enrollment records on its survey date. The membership of children for whom the applicant is responsible for providing a free public education but who are attending schools other than those operated by the applicant, under a tuition arrangement described in § 222.81(d), must be included in the applicant's membership count.

(2) This term does not include children who—

(i) Have never attended classes in schools of the local educational agency or of another educational entity that the local educational agency has a tuition arrangement with;

(ii) Have permanently left the school district;

(iii) Otherwise have become ineligible to attend classes there; or

(iv) Attend the schools of the applicant under a tuition arrangement with another local educational agency that is responsible for providing them a free public education.

(Authority: 20 U.S.C. 238, 242(b), 244(10))

Parent employed on Federal property includes—

(1)(i) An employee of the Federal Government who reports to work on or whose place of work is located on Federal property;

(ii) A person not employed by the Federal Government but who spends more than 50 percent of his working time on Federal property (whether an employee or self-employed) when engaged in farming, grazing, lumbering, mining, or other operations that are authorized by the Federal Government, through a lease or other arrangement, to be carried out entirely or partly on Federal property; and

(iii) A portion, to be determined by the Secretary, of persons working on commingled Federal and non-Federal properties other than those persons covered under paragraph (a)(ii) of this definition.

(2) This term does not include a person who reports to work at a work station not on Federal property but spends more than 50 percent of his working time on Federal property providing services to operations or activities authorized to be carried out on Federal property.

(Authority: 20 U.S.C. 236, 238, 242(b))

* * * * *

Uniformed services means the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

(Authority: 20 U.S.C. 238 and 37 U.S.C. 101)

4. Section 222.9 is revised to read as follows:

§ 222.9 Application form.

Any local educational agency (LEA) seeking financial assistance under section 2, 3, or 4 of the Act shall, as a condition of entitlement, file with the Secretary an "Application for School Assistance in Federally Affected Areas." A copy of the application must be filed with the State educational agency (SEA) in accordance with the applicable filing dates established in §§ 222.10 and 222.11 and must contain information necessary to establish the LEA's entitlement under the Act and regulations. Copies of the application form may be obtained from the SEA.

(Authority: 20 U.S.C. 240(a))

5. Section 222.10 is revised to read as follows:

§ 222.10 Application filing requirements.

Beginning with fiscal year (FY) 1990, to be considered for financial assistance under section 2, 3, or 4 of the Act, an LEA must meet the following requirements:

(a) Except as provided in paragraphs (c) and (e) of this section, an LEA must—

(1) File its application for financial assistance under section 2, 3, or 4 with the Secretary on or before January 31 of the fiscal year for which assistance is sought; and

(2) Certify that it will file, and file, a copy of the application referred to in paragraph (a)(1) of this section with its SEA on or before January 31 of the fiscal year for which assistance is sought.

(b)(1) Except as provided in paragraphs (c) and (e) of this section, an SEA must notify the Secretary of any inconsistencies or other concerns it has with an LEA's application on or before February 15 of the fiscal year for which assistance is sought. If the Secretary does not receive any notification from an LEA's SEA by February 15, the Secretary assumes that the data and statements in the application are, to the best of the SEA's knowledge, true, complete, and correct.

(2) An application that is timely filed under paragraph (a)(1) of this section is not processed for payment until any concerns raised by the SEA are resolved.

(c)(1) If any of the following events, giving rise to eligibility or entitlement, occurs within the fiscal year for which assistance is sought, an LEA seeking assistance shall file an application within the time limits required by paragraph (c)(2) of this section:

(i) The United States Government initiates or reactivates a Federal activity, or acquires real property.

(ii) The United States Congress enacts new legislation.

(iii) A reorganization of school districts takes place.

(iv) Property, previously determined in writing by the Secretary not to be Federal property, is determined to be Federal property.

(2) Except as provided in paragraph (e) of this section, an LEA shall file an application as permitted by paragraph (c)(1) of this section as follows:

(i) The LEA shall file the application on or before January 31 of the fiscal year for which assistance is sought or within 60 days after the applicable event occurs, whichever date is later, but not later than September 30, the end of the Federal fiscal year.

(ii) The LEA shall also certify that it will file, and file, a copy of the application referred to in paragraph (c)(2)(i) of this section with its SEA on or before September 30 of the fiscal year for which assistance is sought.

(d)(1) Except as provided in paragraph (e) of this section, an SEA must notify the Secretary of any inconsistencies or other concerns with an LEA's application within fifteen days of the applicable filing date. If the Secretary does not receive any notification from the SEA, the Secretary assumes that the data and statements in the application are, to the best of the SEA's knowledge, true, complete, and correct.

(2) An application that is timely filed under paragraph (c)(2)(i) of this section is not processed for payment until any concerns raised by the SEA are resolved.

(e) If a filing date set forth in this section falls on a Saturday, Sunday, or Federal holiday, the deadline for filing an application is the next succeeding business day.

(f) To be timely filed under this section, an application must be—

(1) Received by the Secretary on or before the applicable filing date; or

(2) Bear a U.S. Postal Service postmark dated on or before that filing date.

(Authority: 20 U.S.C. 240(a))

Note to paragraph (f)(2): The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

6. Section 222.11 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 222.11 Amendments to applications: Filing dates.

(a) An LEA may amend its application following any of the events described in § 222.10(c) by submitting a written request to the Secretary and a copy to its SEA within 60 days after the applicable event occurs, or by the end of the Federal fiscal year for which assistance is sought, whichever is earlier.

(b) The LEA may also amend its application no later than the end of the Federal fiscal year for which assistance is sought—

* * * * *

7. Section 222.12 is revised to read as follows:

§ 222.12 Applications under sections 2, 3, and 4 received after deadlines.

The Secretary does not process for payment applications for assistance under sections 2, 3, and 4 of the Act that are not timely filed with the Secretary in accordance with the applicable filing dates established by §§ 222.10 and 222.11.

(Authority: 20 U.S.C. 240(a))

8. Section 222.14 is amended by revising the heading to read as follows:

§ 222.14 Membership data: General.

* * * * *

9. Section 222.17 is amended by revising the heading, introductory text, and paragraph (a) to read as follows:

§ 222.17 Alternative methods for counting federally connected children.

An applicant may use one of the two following methods to count federally connected children and to obtain the information described in the definition of "parent-pupil survey" in § 222.3:

(a) The applicant may determine federally connected membership by conducting a parent-pupil survey.

* * * * *

10. Section 222.22 is revised to read as follows:

§ 222.22 Calculation of ADA for an LEA's federally connected children for purposes of computing entitlements and payments under section 3.

(a) This section describes the manner in which the Secretary computes the average daily attendance (ADA) of federally connected children for each category in sections 3 and 4 of the Act—for the current fiscal year—in order to determine an applicant's entitlements under those sections.

(b) If an LEA is in a State that collects actual ADA data for purposes of distributing State aid for education, the Secretary calculates the ADA of that LEA's federally connected children for the current fiscal year by—

(1) Except as provided in paragraph (b)(2) of this section—

(i) Dividing the ADA of all the LEA's children for the prior fiscal year by the LEA's total membership on its survey date for the prior fiscal year (or, in the case of an LEA that conducted two membership counts in the prior fiscal year, by the average of the LEA's total membership on the two survey dates); and

(ii) Multiplying the figure determined in paragraph (b)(1)(i) of this section by the LEA's total membership of federally connected children in each subcategory described in section 3 of the Act on the LEA's survey date for the current fiscal year (or, in the case of an LEA that conducts two membership counts in the current fiscal year, by the average of the LEA's total membership of federally connected children in each subcategory on the two survey dates).

(2)(i) For purposes of this section, "actual ADA" means raw ADA data that have not been weighted or adjusted to reflect higher costs for specific types of students for purposes of distributing State aid for education.

(ii) If an LEA provides a program of free public summer school, attendance data for the summer session are included in the LEA's ADA figure in accordance with State law or practice.

(iii) An LEA's ADA count includes attendance data for children for whom it makes tuition arrangements with other educational entities.

(3) Applicants may not count attendance data for—

(i) Any child who is not physically present at school for the daily minimum time period required by the State, unless the child is participating via telecommunication or correspondence course programs that meet State standards or is being served by a State-approved homebound instruction program for the daily minimum time period appropriate for the child; or

(ii) Any child attending the schools of the applicant under a tuition arrangement with another LEA.

(c) If an LEA is in a State that does not collect ADA data for purposes of distributing State aid for education, the LEA or SEA shall submit data necessary for the Secretary to calculate the ADA of the LEA's federally connected children as follows:

(1) If an LEA is in a State that formerly collected ADA data for purposes of distributing State aid for education, the SEA may submit the total ADA and total membership data for the State for each of the last three fiscal years that ADA data were collected. The Secretary uses these data to calculate the ADA of the LEA's federally connected children by—

(i) Dividing the total ADA data by the total membership data for each of the three fiscal years and averaging the results; and

(ii) Multiplying the average determined in paragraph (c)(1)(i) of this section by the LEA's total membership of federally connected children in the current fiscal year as described in paragraph (b)(1)(ii) of this section.

(2) An LEA may collect and submit attendance data based on sampling during the prior fiscal year. The sampling must include attendance data for all children for at least 30 school days. The data must be collected during at least three periods evenly distributed throughout the school year. Each collection period must consist of at least five consecutive school days. The Secretary uses these data to calculate the ADA of the LEA's federally connected children by—

(i) Determining the ADA of all children in the sample;

(ii) Dividing the figure obtained in paragraph (c)(2)(i) of this section by the LEA's total membership for the prior fiscal year; and

(iii) Multiplying the figure determined in paragraph (c)(2)(ii) of this section by the LEA's total membership of federally connected children for the current fiscal year, as described in paragraph (b)(1)(ii) of this section.

(3) If an LEA is in a State that distributes State aid for education based on data similar to attendance data, the SEA may request that the Secretary use those data to calculate the ADA of the LEA's federally connected children. The Secretary determines whether those data are, in effect, equivalent to attendance data and, if so, allows use of the requested data and determines the method by which the ADA of the LEA's federally connected children will be calculated.

(Authority: 20 U.S.C. 238, 239, 240(a), 244(10))

11. Section 222.30 is amended by revising paragraph (a) and the introductory text of paragraph (c) to read as follows:

§ 222.30 Determination of local contribution rates: General.

(a) In order to compute the amount to be paid to an applicant local educational agency (LEA) under section 3 of the Impact Aid program, the Secretary—after consultation with the LEA and its State educational agency (SEA)—determines the LEA's local contribution rate.

* * * * *

(c) Except for § 222.32, the provisions in §§ 222.31 through 222.37 do not apply to applicant LEA's located in—

* * * * *

§ 222.31 [Amended]

12. In § 222.31, paragraph (a)(2) is removed and paragraph (a)(3) is redesignated as paragraph (a)(2).

13. Section 222.32 is amended by revising the introductory text of paragraph (a) and the authority citation and by adding a new paragraph (c) to read as follows:

§ 222.32 Local contribution rate guaranteed by the Act.

(a) Except as provided in paragraphs (b) and (c) of this section, the local contribution rate guaranteed by the Act is the greater of—

* * * * *

(c)(1) For FY 1988 and each fiscal year thereafter, the Act guarantees a special local contribution rate, as described in paragraph (c)(3) of this section, for certain LEA's whose boundaries are coterminous with the boundaries of a military installation ("coterminous LEA's").

(2) LEA's that qualify for the special guaranteed rate under paragraph (c)(3) of this section include all coterminous LEA's except—

(i) Any coterminous LEA located in a State in which the State equalization law would prohibit the LEA from retaining the additional funds resulting from a rate described in paragraph (c)(3) or (c)(4) of this section; and

(ii) Any coterminous LEA located in a State in which the State law would require that State aid to the LEA for free public education be reduced in proportion to the additional funds resulting from a rate described in paragraph (c)(3) or (c)(4) of this section.

(3) For any coterminous LEA that qualifies under paragraph (c)(2) of this section, the Act guarantees a local contribution rate that is 70 percent of the average per pupil expenditure in all of the 50 States and the District of Columbia during the second fiscal year preceding the fiscal year for which the local contribution rate is being computed unless that rate would raise the LEA's per pupil expenditure for the second preceding fiscal year above the State average per pupil expenditure for the second preceding fiscal year, in which case the LEA's rate is determined under paragraph (c)(4) of this section.

(4) If the rate described in paragraph (c)(3) of this section would raise the LEA's per pupil expenditure for the second preceding fiscal year above the State average per pupil expenditure for

the second preceding fiscal year, then the LEA receives the greater of—

(i) The rate necessary to raise the per pupil expenditure for that LEA for the second preceding fiscal year to the average per pupil expenditure in the LEA's State for the second preceding fiscal year; or

(ii) The rate described in paragraph (a)(2) of this section.

(Authority: 20 U.S.C. 238(d)(3) (B) and (b))

14. Section 222.33 is amended by revising the introductory text of paragraph (a) and paragraphs (a)(2)(i) and (b)(2) to read as follows:

§ 222.33 Identification of generally comparable LEA's.

(a) If an LEA wishes to recommend to the Secretary a rate based on appropriate data from generally comparable LEA's within its State, the SEA for that State shall, except as provided in § 222.36, use data from the second fiscal year preceding the fiscal year for which the local contribution rate is being computed to group all of its LEA's, including all applicant LEA's, as follows:

* * * * *

(2) *Grouping by Grade Span/Legal Classification and Size.* (i) Divide all LEA's into groups by grade span (or the alternative grade-span groups described in paragraph (a)(1) of this section) and legal classification, if relevant and sufficiently different from grade span and size.

* * * * *

(b) * * *

(2) Except as provided in § 222.36, the SEA may not compute a local contribution rate for any group that contains fewer than 10 LEA's.

* * * * *

§ 222.35 [Amended]

15. The undesignated, introductory language of § 222.35 is amended by inserting after the word "Act" and before the comma, the phrase "and in § 222.36".

16. Section 222.36 is revised to read as follows:

§ 222.36 Determination of additional assistance.

(a) The provisions of this section govern an LEA that applies to the Secretary for assistance under section (3)(d)(2)(B) of the Act, in addition to its application for a regular payment under section 3.

(b) An LEA that applies for funds under section 3(d)(2)(B) may have its 3(d)(2)(B) eligibility and payment based on three comparable LEAs in its State. These three comparable LEAs are identified as follows:

(1) Using data from the prior fiscal year, the SEA first follows the directions in § 222.33(a)(4). The SEA then removes from the resulting list any LEAs that are heavily impacted, as described in § 222.33(b)(1), except the applicant LEA.

(2) If the remaining LEAs are not in rank order by ADA, the SEA shall list them in that order.

(3) The LEA may then select as its generally comparable LEAs for purposes of section 3(d)(2)(B) three LEAs that are adjacent to it in size (e.g., the next three larger LEAs, the next three smaller, the next two larger and the next one smaller, or the next one larger and the next two smaller).

(4) The Secretary uses the financial data of these three LEAs and the procedures in §§ 222.130–222.132 to determine whether the applicant LEA is eligible for funding under section 3(d)(2)(B) and, if so, the amount of that funding.

(c) If an LEA does not choose to exercise the option offered by paragraph (b) of this section and if it is applying for a regular payment under section 3 based on a local contribution rate guaranteed by the Act, the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers the LEA comparable to all LEAs in its State; and

(2) Uses prior year data and the procedures in §§ 222.130–222.132 to determine whether the applicant LEA is eligible for funding under section 3(d)(2)(B) and, if so, the amount of that funding.

(d) If an LEA does not choose to exercise the option offered by paragraph (b) of this section and if, in applying for a regular payment under section 3, it recommends a local contribution rate based on generally comparable LEAs in its State, the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers as comparable LEAs the same LEAs that the applicant identifies as comparable in its application for a regular payment under section 3; and

(2) Uses prior year data and the procedures in §§ 222.130–222.132 to determine whether the applicant LEA is eligible for funding under section 3(d)(2)(B) and, if so, the amount of that funding.

(e) If an LEA does not choose to exercise the option offered by paragraph (b) of this section and if, in applying for a regular payment under section 3, it recommends the "hold-harmless" rate described in § 222.31(d), the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers as comparable LEAs the group of LEAs that produces the highest regular section 3 rate under the generally comparable LEA method, as described in § 222.33; and

(2) Uses prior year data and the procedures in §§ 222.130–222.132 to determine whether the applicant LEA is eligible for funding under section 3(d)(2)(B) and, if so, the amount of that funding.

(Authority: 20 U.S.C. 238(d)(2)(B), 242(b))

17. Section 222.37 is amended by adding a new paragraph (e) to read as follows:

§ 222.37 Determination of compensation for unusual geographical factors.

* * * * *

(e) The Secretary does not provide compensation under section 3(d)(3)(B)(ii) unless an applicant is determined to be making a reasonable tax effort in accordance with §§ 222.124–222.129.

* * * * *

18. Section 222.42 is amended by revising paragraph (b) to read as follows:

§ 222.42 Adjustment for or recovery of overpayment.

* * * * *

(b)(1) If the LEA is not entitled to subsequent payments under the Act, the LEA shall promptly refund the amount of the overpayment to the Secretary.

(2) If the LEA does not promptly repay the amount of the overpayment or promptly enter into a repayment agreement with the Secretary, the Secretary may use the procedures set forth in the regulations contained in 34 CFR Part 30 to offset that amount against other Department programs or, under the circumstances permitted in Part 30, to request that another agency offset the debt.

* * * * *

19. Section 222.61 is amended by removing paragraph (a)(4) and by adding paragraphs (b) (4) and (5) to read as follows:

§ 222.61 Treatment of State aid programs in general.

* * * * *

(b) * * *

(4) No State, whether or not it has an equalization program that qualifies under § 222.62, may, in allocating State aid, take into consideration a local educational agency's eligibility or entitlement for payments under the Act if that local educational agency does not apply for and receive those payments.

(5) Any State that takes into consideration payments under the Act in accordance with the provisions of section 5(d)(2) in allocating State aid to local educational agencies must reimburse any local educational agency for any amounts taken into consideration for any fiscal year to the extent that the local educational agency did not in fact receive payments in those amounts during that fiscal year.

(Authority: 20 U.S.C. 240(d) (1) and (2))

§ 222.63 [Amended]

20. Section 222.63(a) is revised by removing "§ 222.62(a)(4)", in the first sentence, and inserting in lieu thereof "§ 222.62(d)".

§ 222.67 [Amended]

21. Section 222.67 is amended by removing paragraph (c) and by redesignating paragraph (d) as paragraph (c)

22. Subpart H (currently consisting of §§ 222.70 through 222.79) is revised to consist of new §§ 222.70 through 222.77 to read as follows:

Subpart H—Provisions Related to Handicapped Children and Children With Specific Learning Disabilities

§ 222.70 What are the scope and purpose of these regulations?

(a) The regulations in this subpart govern the provision of additional payments under section 3(d)(2)(C) of the Act to local educational agencies (LEAs) that provide free appropriate public education to federally connected, handicapped children who are counted under section 3(d)(2)(C) of the Act. See § 222.77 for other statutes and regulations that may be relevant.

(b) These regulations set forth the requirements, interpretations, and guidance necessary to implement section 3(d)(2)(C).

(Authority: 20 U.S.C. 238(d)(2)(C), 242(b))

§ 222.71 What definitions apply to this subpart?

In addition to the terms defined in § 222.3, the following definitions, which are generally the same as the definitions used in the Education of the Handicapped Act (20 U.S.C. 1401 *et seq.*) and in 34 CFR part 300, apply to this subpart:

Free appropriate public education means special education and related services that—

(1) Are provided at public expense, without charge, and, except for services provided to children placed in or referred to private schools or facilities by their LEAs in accordance with § 222.76, under public supervision and direction;

(2) Meet the Standards of the State educational agency (SEA), including the requirements of this part;

(3) Include preschool, elementary school, or secondary school education in the State involved; and

(4) Are provided in confirmity with an individualized education program that meets the requirements under 34 CFR 300.340–300.349.

Handicapped children is defined in 34 CFR 300.5.

Preschool program means an educational or related program encompassing the educational level from a child's birth to the time at which elementary education is provided as determined under State law, provided that this program is recognized as free public education under State law.

Related needs means those needs related to a handicap or specific learning disability for which related services, in addition to direct instructional services, are deemed necessary so that the child may effectively participate in the instructional program of the LEA.

Related services means transportation and such developmental, corrective, and supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, counseling services, and medical services for diagnostic and evaluation purposes only) required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children. (See 34 CFR 300.13 for additional information.)

(Authority: 20 U.S.C. 238(d)(2)(C), 244(10); H. Rept. 1137, 95th Cong., Sess. 2d 104–105 (1978))

§ 222.72 What requirements must an LEA meet in order to count a handicapped child for purposes of section 3(d)(2)(C)?

(a) In order that a handicapped child may be counted for the purpose of an additional payment under section 3(d)(2)(C), a child must—

(1) Have a parent on active duty in the uniformed services, as defined in § 222.3, or reside on Indian lands, as described in section 403(1)(A) of the Act;

(2) Be receiving services suited to the child's special educational and related needs; and

(3) Be enrolled in a program (including a preschool program if appropriate) that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the child's special educational and related needs and is provided as part of free public education in the LEA.

(b) An LEA shall—

(1) State in its application the number of federally connected, handicapped children it claims for an increased payment under section 3(d)(2)(C); and

(2) Meet the regular eligibility requirements of section 3(c) of the Act in order to receive an additional payment under section 3(d)(2)(C). (There is no minimum number of federally connected, handicapped children who must be served in order for the LEA to receive the additional payment under section 3(d)(2)(C).)

(c) An LEA shall provide the assurances and certifications required under § 222.73.

(d) An LEA shall have in effect a written individualized educational program for each federally connected, handicapped child claimed for an increased payment under section 3(d)(2)(C). An LEA that satisfies the requirements of 34 CFR 300.340–300.348 for children counted under section 3(d)(2)(C) has satisfied the requirements of this paragraph.

(e) The program provided for the handicapped children counted under section 3(d)(2)(C) must conform to State standards for programs for handicapped children and must encompass the specific educational and related needs of the children counted.

(Authority: 20 U.S.C. 238 (a), (b), and (d)(2)(C), 240(f), 242; S. Rept. 1028, 93d Cong., 2d Sess. 159 (1974); *Chinle Common School District v. Mathews*, Civil No. 76–1273 (D.D.C. 1976))

§ 222.73 What assurances and certifications regarding handicapped children must an LEA provide in its application?

(a) *Size, scope, and quality of programs.* (1) An LEA shall provide an assurance that federally connected, handicapped children claimed for an increased payment under section 3(d)(2)(C) are receiving services in programs (including preschool programs) that are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational and related needs of these children. The Secretary considers any special education program serving the special educational needs of these children that conforms to the requirements for special education programs under part B of the Education of the Handicapped Act as satisfying this assurance.

(2) The LEA shall also certify that its programs conform to State standards for

programs for the types of children served.

(b) *Education of the Handicapped Act requirements.* (1) An LEA shall provide an assurance that its programs conform to the policies, procedures, and requirements of sections 612 and 613 of the Education of the Handicapped Act.

(2) The Secretary may consult with persons in charge of special education programs for handicapped children and children with specific learning disabilities in the SEA to determine whether State standards and programs conform to the policies and procedures required under sections 612 and 613 of the Education of the Handicapped Act.

(c) *Additional information.* The Secretary may require information in addition to that contained in the application in order to substantiate compliance with these assurances.

(Authority: 20 U.S.C. 238(d)(2)(C); H. Rept. 805, 93d Cong., 2d Sess. 43–46 (1974); S. Rept. 1028, 93d Cong., 2d Sess. 45 (1974); Cong. Record, daily ed., H7396, July 31, 1974)

§ 222.74 What restrictions and requirements apply to the use of the additional payments under section 3(d)(2)(C)?

(a) *General.* The additional payment to an LEA that is related to the increase in entitlement under section 3(d)(2)(C) (hereinafter "section 3(d)(2)(C) funds") must be used for programs and projects designed to meet the special educational and related needs of the handicapped children counted under that section.

(Authority: 20 U.S.C. 240(f))

(b) *Methods of obligation and expenditure of funds.* Obligations and expenditures of section 3(d)(2)(C) funds may be incurred in either of two ways:

(1) An LEA may obligate or expend the section 3(d)(2)(C) funds for the fiscal year for which the funds were appropriated.

(2) An LEA may reimburse itself for obligations or expenditures of local and general State aid funds already made for the fiscal year for which the section 3(d)(2)(C) funds were appropriated.

(Authority: 20 U.S.C. 238(d)(2)(C), 240(f), 242(b))

(c) *Allowable expenditures.* An LEA shall use its section 3(d)(2)(C) funds for the following types of expenditures:

(1) Expenditures that are reasonably related to the conduct of programs or projects for the education of handicapped children. These expenditures may include program planning and evaluation but may not include the construction of school facilities.

(2) Acquisition cost (net invoice price) of equipment to meet the special educational and related needs of handicapped children. If section 3(d)(2)(C) funds are used for the acquisition of equipment and any financial advantage is realized through rebates, discounts, bonuses, free pieces of equipment not used in a program or project for the education of handicapped children, or other circumstances, the fair market value of that financial advantage is not an allowable expenditure and may not be credited as an expenditure of those funds. In no case may the section 3(d)(2)(C) funds be used to acquire equipment if the title to that equipment would be in a private school and not in the applicant agency.

(d) *Fiscal accountability requirements.* An LEA shall account for the use of the section 3(d)(2)(C) funds as follows:

(1) By recording, for each fiscal year, the receipt (or credit) of section 3(d)(2)(C) funds separately from other funds received under the Act, *i.e.*, on a line item basis in the general fund account or in a separate account.

(2) By demonstrating that, for each fiscal year, the total amount of expenditures for programs or projects serving federally connected, handicapped children is at least equal to the amount of section 3(d)(2)(C) funds received or credited for that fiscal year. This is done as follows:

(i) For each fiscal year, the amount of an LEA's total expenditures for programs or projects serving handicapped children is determined.

(ii) The amount determined in paragraph (d)(2)(i) of this section is divided by the ADA of the total number of handicapped children the LEA served during that fiscal year.

(iii) The amount determined in paragraph (d)(2)(ii) of this section is then multiplied by the total ADA of the LEA's federally connected, handicapped children claimed by the LEA for that fiscal year.

(3) If the amount of section 3(d)(2)(C) funds the LEA received (or was credited) for the fiscal year exceeds the amount obtained in paragraph (d)(2)(iii) of this section, an overpayment equal to the excess section 3(d)(2)(C) funds is established. This overpayment may be reduced or eliminated to the extent that the LEA chooses to and can demonstrate that the average per pupil costs for serving federally connected, handicapped children exceeded its average per pupil costs for serving non-federally connected, handicapped children.

(Authority: 20 U.S.C. 238(d)(2)(C), 240(f), 242(b); H. Rept. No. 805, 93d Cong., 2d Sess. 45 (1974))

§ 222.75 How does section 3(d)(2)(C) relate to State aid programs?

Section 3(d)(2)(C) funds may not supplant any State funds that were or would have been available to the LEA for the free public education of children counted under section 3(d)(2)(C).

(a) No section 3(d)(2)(C) funds may be paid to an LEA whose per pupil State aid for federally connected, handicapped children, either general State aid or special education State aid, has been or would be reduced as a result of eligibility for or receipt of section 3(d)(2)(C) funds, whether or not a State has a program of State aid that meets the requirements of section 5(d)(2) of the Act and subpart G of this part.

(1) A reduction in the per pupil amount of State aid for handicapped children, including children counted under section 3(d)(2)(C), from that received in a previous year raises a presumption that supplanting has occurred.

(2) The LEA may rebut this presumption by demonstrating that the reduction was unrelated to the receipt of section 3(d)(2)(C) funds.

(b) In any State in which there is only one LEA, all funds for handicapped programs other than funds from Federal sources are considered by the Secretary to be local funds.

(Authority: 20 U.S.C. 238(d)(2)(C), 240 (d) and (f), 242(b))

§ 222.76 When may an LEA count children in private schools or residential programs for the purposes of section 3(d)(2)(C)?

(a) An LEA must have placed a handicapped child in, or referred a handicapped child to, a private school or facility under the policies and procedures required by section 613 of the Education of the Handicapped Act in order to count that child under section 3(d)(2)(C). Regulations implementing those policies and procedures are set forth in 34 CFR part 300, subpart D.

(Authority: 20 U.S.C. 244(10), 1413(a)(4)(B))

(b) If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the LEA may count that child under section 3(d)(2)(C). Regulations describing these placements are set forth in 34 CFR part 300, subpart C.

(Authority: 20 U.S.C. 244(10), 1401 (9), (10), and (18), 1413(a)(4)(B))

(c) Children who have been placed in private schools by their parents may not be counted under section 3(d)(2)(C) but may participate in public school programs that use section 3(d)(2)(C) funds.

(Authority: 20 U.S.C. 238(d)(2)(C), 240(f); H. Rept. 805, 93d Cong., 2d Sess. 45 (1974))

§ 222.77 What other statutory and regulatory requirements are relevant to section 3(d)(2)(C)?

(a) *Applicability of the Education of the Handicapped Act and related regulations.* LEAs receiving section 3(d)(2)(C) funds are generally subject to the requirements of the Education of the Handicapped Act, as amended, and related regulations (20 U.S.C. 1401 *et seq.* and 34 CFR part 300).

(b) *Applicability of general provisions regulations.* Relevant provisions contained in 34 CFR parts 75, 77, and 80 are applicable to programs conducted with section 3(d)(2)(C) funds.

(Authority: 20 U.S.C. 242(b))

23. Section 222.81 is amended by revising paragraph (a)(4) and the authority citation to read as follows:

§ 222.81 Free public education.

(a) * * *

(4) Under public supervision and direction, except with respect to—

(i) Handicapped children; and

(ii) Children who are attending schools funded under section 1128 of Public Law 95–561 (the Indian School Equalization Program operated by the Bureau of Indian Affairs, Department of the Interior) but who are not eligible for funding under that section.

* * * * *

(Authority: 20 U.S.C. 238(d)(2)(D), 244(4))

24. A new subpart K (§§ 222.120 through 222.132) is added to read as follows:

Subpart K—Provisions for Section 3(d)(2)(B)

§ 222.120 What are the scope and purpose of these regulations?

(a) The regulations in this subpart implement section 3(d)(2)(B) of the Act. Sections 222.124–222.129 also implement section 3(d)(3)(B)(ii) of the Act.

(b) The program authorized by section 3(d)(2)(B) provides financial assistance, in addition to regular payments under section 3 of the Act, to certain heavily impacted local educational agencies (LEAs) that demonstrate eligibility for that assistance.

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.121 What financial data from LEAs are used to determine eligibility, entitlement, and payment under section 3(d)(2)(B)?

Final computations and determinations made with regard to an LEA's eligibility (§§ 222.122–222.130), maximum entitlement (§ 222.131), and payment (§ 222.132) under section 3(d)(2)(B) are based on final financial data for the LEA's current fiscal year and final financial data for the prior fiscal year of the LEAs determined under § 222.36 to be generally comparable to the applicant LEA (referred to in this part as "generally comparable LEAs").

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.122 What LEAs are eligible for financial assistance under section 3(d)(2)(B)?

Subject to § 222.123, an LEA is eligible for financial assistance under section 3(d)(2)(B) of the Act if the LEA is eligible for a regular section 3 payment, applies for assistance under section 3(d)(2)(B), and the Secretary determines that the LEA meets all of the following requirements:

(a) As determined under § 222.130, the LEA does not have sufficient funds to enable it to provide a level of education equivalent to that provided by its generally comparable LEAs. For the purpose of this subpart, "level of education" means average per pupil expenditure amount. (See § 222.131(a).)

(b) The LEA is making a reasonable tax effort in accordance with the requirements of §§ 222.124–222.129 and exercising due diligence in availing itself of revenues derived from State and other sources.

(c) At least 50 percent of the total number of children in average daily attendance (ADA) for whom the LEA provides free public education during its current fiscal year are federally connected children.

(d) The eligibility of the LEA for State aid and the amount of State aid are determined on a basis no less favorable than that for other LEAs in the State.

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.123 How does a State's equalization program affect an LEA's eligibility for section 3(d)(2)(B) assistance?

The Secretary determines that an LEA is not eligible for financial assistance under section 3(d)(2)(B) if—

(a) The LEA is in a State that has an equalized program of State aid that meets the requirements of section 5(d)(2) of the Act; and

(b) The State, in determining the LEA's eligibility for or amount of State aid, takes into consideration the LEA's payments under section 3(d)(2)(B).

(Authority: 20 U.S.C. 238(d)(2)(B), 240(d)(2))

§ 222.124 How does the Secretary determine whether a fiscally independent LEA is making a reasonable tax effort?

(a) To determine whether a fiscally independent LEA, as defined in § 222.3, is making a reasonable tax effort as required by § 222.122, the Secretary compares the LEA's local real property tax rates for school purposes (referred to in this part as "tax rates"), as defined in § 222.3, with the tax rates of its generally comparable LEAs.

(b) For purposes of this section, the Secretary uses—

(1) Actual tax rates if all the real property in the LEA and its generally comparable LEAs is assessed at the same percentage of true value; or

(2) Tax rates computed under §§ 222.126–222.128.

(c) The Secretary determines that an LEA is making a reasonable tax effort if—

(1) The LEA's tax rate is equal to at least 95 percent of the average tax rate of its generally comparable LEAs;

(2) Each of the LEA's tax rates for each classification of real property is equal to at least 95 percent of each of the average tax rates of its generally comparable LEAs for the same classification of property;

(3) The LEA taxes all of its real property at the maximum rates allowed by the State, if those maximum rates apply uniformly to all LEAs in the State; or

(4) The LEA has no taxable real property.

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.125 What information must be provided by the State educational agency?

The State educational agency (SEA) of any State with an LEA applying for assistance under section 3(d)(2)(B) shall provide the Secretary with relevant information necessary to determine whether the LEA is making a reasonable tax effort under §§ 222.126–222.129, whichever is applicable.

(Authority: 20 U.S.C. 238(d)(2)(B), 242(b))

§ 222.126 What tax rates does the Secretary use if real property is assessed at different percentages of true value?

If the real property of an LEA and its generally comparable LEAs consists of one classification of property but the property is assessed at different percentages of true value in the different LEAs, the Secretary determines whether the LEA is making a reasonable tax effort under § 222.124(c)(1) by using tax rates computed by—

(a) Multiplying the LEA's actual tax rate for real property by the percentage of true value assigned to that property for tax purposes; and

(b) Performing the computation in paragraph (a) of this section for each of its generally comparable LEAs and determining the average of those computed tax rates.

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.127 What tax rates does the Secretary use if two or more different classifications of real property are taxed at different rates?

If the real property of an LEA and its generally comparable LEAs consists of two or more classifications of real property taxed at different rates, the Secretary determines whether the LEA is making a reasonable tax effort under § 222.124(c) (1) or (2) by using one of the following:

(a) Actual tax rates for each of the classifications of real property.

(b) Tax rates computed in accordance with § 222.126 for each of the classifications of real property.

(c) Tax rates computed by—

(1) Determining the total true value of all real property in the LEA by dividing the assessed value of each classification of real property in the LEA by the percentage, of true value assigned to that property for tax purposes and aggregating the results;

(2) Determining the LEA's total revenues derived from local real property taxes for school purposes;

(3) Dividing the amount determined in paragraph (c)(2) of this section by the amount determined in paragraph (c)(1) of this section; and

(4) Performing the computations in paragraphs (c) (1), (2), and (3) of this section for each of the generally comparable LEAs and determining the average of their computed tax rates.

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.128 What tax rates may the Secretary uses if substantial local revenues are derived from local tax sources other than real property taxes?

(a) In a State in which a substantial portion of revenues for current expenditures for educational purposes is derived from local tax sources other than real property taxes, the SEA may request that the Secretary take those revenues into account in determining whether an LEA in that State is making a reasonable tax effort under § 222.124.

(b) If, based upon the request of an SEA, the Secretary determines that it is appropriate to take the revenues described in paragraph (a) of this section into account in determining whether an LEA in that State is making a reasonable tax effort under § 222.124, the Secretary uses tax rates computed by—

(1) Dividing the assessed value of each classification of real property in the LEA by the percentage of true value assigned to that property for tax purposes and aggregating the results;

(2) Determining the LEA's total revenues derived from local tax sources for school purposes;

(3) Dividing the amount determined in paragraph (b)(2) of this section by the amount determined in paragraph (b)(1) of this section; and

(4) Performing the computations in paragraphs (b) (1), (2), and (3) of this section for each of the generally comparable LEAs and determining the average of those computed tax rates.

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.129 How does the Secretary determine whether a fiscally dependent LEA is making a reasonable tax effort?

(a) If an LEA is fiscally dependent, as defined in § 222.3, the Secretary compares the LEA's imputed local tax rate, calculated under paragraph (b) of this section, with the average tax rate of its generally comparable LEAs, calculated under paragraph (c) of this section, to determine whether the LEA is making a reasonable tax effort.

(b) The Secretary imputes a local tax rate for a fiscally dependent LEA by—

(1) Dividing the assessed value of each classification of real property within the boundaries of the general government by the percentage of true value assigned to that property for tax purposes and aggregating the results;

(2) Determining the amount of locally derived revenues made available by the general government for the LEA's current expenditures for school purposes; and

(3) Dividing the amount determined in paragraph (b)(2) of this section by the amount determined in paragraph (b)(1) of this section.

(c) The Secretary performs the computations in paragraph (b) of this section for each of the fiscally dependent generally comparable LEAs and the computations in §§ 222.126–222.128, whichever is applicable, for each of the fiscally independent generally comparable LEAs and determines the average of all those tax rates.

(d) The Secretary determines that a fiscally dependent LEA is making a reasonable tax effort if its imputed local tax rate is equal to at least 95 percent of the average tax rate of its generally comparable LEAs.

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.130 How does the Secretary determine whether an LEA lacks sufficient funds to enable it to provide a level of education equivalent to that provided by its generally comparable LEAs?

(a) The Secretary determines whether an LEA lacks sufficient funds to enable it to provide a level of education equivalent to that provided by its generally comparable LEAs, in accordance with § 222.122, as follows:

(1) First, the Secretary establishes the level of education equivalent to that provided by the LEA's generally comparable LEAs by—

(i) Computing the average per pupil expenditure (APPE) of the generally comparable LEAs by dividing the sum of the total current expenditures of those LEAs for their prior fiscal year by the sum of the total ADA of those LEAs for that prior fiscal year;

(ii) Increasing or decreasing the amount obtained in paragraph (a)(1)(i) of this section by the percentage the APPE of the generally comparable LEAs increased or decreased from their second preceding fiscal year to their prior fiscal year; and

(iii) Multiplying the amount determined in paragraph (a)(1)(ii) of this section by the LEA's total ADA for its current fiscal year.

(2) The Secretary next identifies the funds available to the LEA for current expenditures for its current fiscal year by—

(i) Adding the LEA's section 3 payment for the current fiscal year and all other funds available to the LEA for current expenditures for that current fiscal year; and

(ii) Subtracting from the amount obtained in paragraph (a)(2)(i) of this section the LEA's allowable carryover amount, which is that portion of the LEA's opening cash balance for the current fiscal year that does not exceed—

(A) The maximum amount of funds for current expenditures that the LEA was allowed by State law to carry over from the prior fiscal year to the current fiscal year, provided that State restrictions on carryover amounts were applied uniformly to all LEAs in the State; or

(B) If no State law governing cash balances exists, 30 percent of the LEA's "operating costs" for the prior fiscal year.

(3) The Secretary then subtracts the amount obtained in paragraph (a)(2)(ii) of this section from the figure computed in paragraph (a)(1)(iii) of this section.

(b) The Secretary determines that an LEA lacks sufficient funds to enable it to provide a level of education equivalent to that provided by its generally comparable LEAs if the amount determined in paragraph (a)(3) of this section is greater than 0.

(c) The following definitions apply to this subpart:

All other funds available to the LEA for current expenditures means—

(1) All funds received by the LEA for current expenditures from local sources (or, in the case of a fiscally dependent LEA, all funds budgeted for or made available to the LEA, whichever is greater, by the general government) and from State and Federal sources, except any payments under section 3 or section 3(d)(2)(B) of the Act received during the current fiscal year and funds granted for the purpose of Chapter 1 or Chapter 2 of Title 1 of the Elementary and Secondary Education Act of 1965; and

(2) Funds on hand for current expenditures at the beginning of the current fiscal year ("opening cash balance").

Operating costs is given the same meaning as the term "current expenditures," which is defined in § 222.3.

Section 3 payment means the total payment based on the LEA's entitlements under sections 3(d)(1), (3)(d)(2)(C)(i), and 3(d)(2)(D) of the Act.

(Authority: 20 U.S.C. 238(d)(2)(B), (C)(i), and (D), 244(5))

§ 222.131 How does the Secretary determine an LEA's maximum entitlement under section 3(d)(2)(B)?

To determine the maximum entitlement under section 3(d)(2)(B) for an LEA that meets the requirements of § 222.122, the Secretary—

(a) Computes the average per pupil expenditure of the generally comparable LEAs in accordance with § 222.130(a)(1) (i) and (ii);

(b) Multiplies the amount determined in paragraph (a) of this section by the total ADA of the LEA's federally connected children; and

(c) Subtracts from the amount computed in paragraph (b) of this section the total amount of State aid received by the LEA for its federally connected children.

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.132 How does the Secretary determine an LEA's payment under section 3(d)(2)(B)?

(a) Except as provided in paragraph (b) of this section, an LEA that meets the requirements of § 222.122 receives a payment under section 3(d)(2)(B) in an amount equal to the lesser of—

(1) The amount determined in § 222.130(a)(3); or

(2) The LEA's maximum entitlement determined under § 222.131 minus the amount of the LEA's section 3 payment for the current fiscal year.

(b) In the case of an LEA whose tax rate is at least 95 percent but less than 100 percent of the average tax rate of its generally comparable LEAs, the Secretary reduces the LEA's payment under section 3(d)(2)(B), as determined in paragraph (a) of this section, by the percentage that the average tax rate of the generally comparable LEAs exceeds the tax rate of the LEA.

(Authority: 20 U.S.C. 238(d)(2)(B))

[FR Doc. 89–20935 Filed 9–6–89 8:45 am]

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federal register

Thursday
September 7, 1989

Part IV

Department of Education

34 CFR Parts 668 and 682

Student Assistance General Provisions and Guaranteed Student Loan and PLUS Program; Rule; Correction

Department of Education

34 CFR Parts 668 and 682

Student Assistance General Provisions and Guaranteed Student Loan and PLUS Programs; Correction

AGENCY: Department of Education.

ACTION: Final regulation; correction.

SUMMARY: This document corrects final regulations for the Student Assistance General Provisions and Guaranteed Student Loan and PLUS Programs, published in the **Federal Register** on June 5, 1989 (54 FR 24114).

FOR FURTHER INFORMATION CONTACT: Patricia Newcombe or Pamela A. Moran. Telephone: (202) 732–4242.

SUPPLEMENTARY INFORMATION: In the June 5, 1989 **Federal Reigster**:

PART 668—[AMENDED]

1. On pages 24118 and 24119, Appendix A the Track Record Disclosure Forms I and II are correctly added to read as follows:

BILLING CODE 4000-01-M

Form I:

HOW OUR STUDENTS ARE DOING

To help you make a good decision about whether to sign up for (name of program), (name of institution) wants you to know that, according to the latest information--

---

_____%, or ___ of the _____ students in this program scheduled to graduate in (year) went on to graduate;

*_____%, or __ of the ____ students scheduled to graduate in that year have found jobs in (name of occupation or field for which training is offered); and

_____%, or __ of the ______ students in this program taking the (name of test) administered by the State of (name of State in which the program is being offered to the student) in (year) passed that examination.

I have read and understood the graduation rate, licensing or certification examination pass rate, and job placement rate information provided above.

____________ (Prospective student's signature)

Date

*We have been told by ____ of the students that were scheduled to graduate in that year that, even though they graduated, they decided not to look for a job in that occupation. Also, ____ of the students scheduled to graduate in that year have not responded to our job placement questionnaire, so we do not know whether they have found jobs or not.

Form II:

HOW OUR STUDENTS ARE DOING

To help you make a good decision about whether to sign up for (name of program), (name of institution) wants you to know that, according to the latest information--

_____%, or ___ of the _____ students in this program scheduled to graduate in (year) went on to graduate; and

*_____%, or __ of the ____ students scheduled to graduate in that year have found jobs in (name of occupation or field for which training is offered).

I have read and understood the graduation rate and job placement rate information provided above.

______________ (Prospective student's signature)

Date

* We have been told by ____ of the students scheduled to graduate in that year that, even though they graduated, they decided not to look for a job in that occupation. Also, ____of the students scheduled to graduate in that year have not responded to our job placement questionnaire, so we do not know whether they have found jobs or not.

BILLING CODE 4000-01-C

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2. On page 24114, in the first column, last paragraph, after (d), insert "(insofar as paragraph (d) operates to require a school to provide the information described in §§ 668.44(c)(1)(ii) through (iv))".

3. On page 24114, in the first column, last paragraph, the phrase "loans certified for" is corrected to read "students enrolled for".

4. On page 24115, in the first column, lines 24 and 31, the word "graduates" is corrected to read "students".

§ 668.15 [Corrected]

5. On page 24116, in the third column, in § 668.15(a)(3)(i), Line 1, insert the word "has" after the word "that".

6. On page 24116, in the third column, in § 668.15(b), remove "after fiscal year 1988".

7. On page 24117, in the first column, in § 668.15(b)(2)(ii)(A), the word "graduates" is corrected to read "students".

8. On page 24117, in the first column, in § 668.15(b)(2)(ii)(B), "§ 668.44(c)(3)" is corrected to read "§ 668.44(c)(1)(iii)".

9. On page 24117, in the first column, in § 668.15(b)(2)(ii)(C), "§ 668.44(c)(4)" is corrected to read "§ 668.44(c)(1)(iv)".

§ 668.44 [Corrected]

10. On page 24117, in the third column, in § 668.44(c)(1)(ii), the phrase "graduates of the program" is corrected to read "students in the program".

11. On page 24118, in the first column, in § 668.44(c)(1)(iii), the word "graduate" is corrected to read "student" each time it appears.

12. On page 24118, in the first column, in § 668.44(c)(1)(iii), Line 7, before the word "any", remove the word "for".

13. On page 24118, in the first column, in § 668.44(c)(l)(iii), Line 9, the word "graduate's" is corrected to read "student's".

14. On page 24118, in the second column, in (f)(2), after "of", "such graduates" is corrected to read "students scheduled to graduate in that year", and, after "address of the", the word "graduate" is corrected to read "student".

Appendix A to Part 34 [Corrected]

15. On page 24118, in the third column, in Appendix A introductory text, "668.44(c)(2) through (4)" is corrected to read "668.44(c)(1)(ii) through (iv)".

16. On page 24119, in the second column, before the period at the end of number 6, add "and (c)".

17. On page 24121, in the third column, in § 668.606(c)(1), Line 10, the word "upward" is corrected to read "downward".

18. On page 24121, in the third column, in § 682.606(c)(1), Line 14, the word "plus" is corrected to read "and less."

Dated: August 30, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-20936 Filed 9-6-89; 8:45 am]

BILLING CODE 4000-01-M

federal register

Thursday
September 7, 1989

Part V

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 413, 424, 482, and 483

Medicare Program; Swing-Bed Program Changes: Interim Final Rule With Comment Period

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 413, 424, 482, and 483

[BERC–493–IFC]

RIN 0938–AD83

Medicare Program; Swing-Bed Program Changes

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: These interim rules revise the current Medicare rules relating to approved swing-bed hospitals. They expand the allowable rural hospital bed size from 49 beds to 99 beds. They require approved swing-bed hospitals with more than 49 beds to—

- Transfer extended care hospital patients within 5 days to an available skilled nursing facility (SNF) bed in the geographic region, unless the patient's physician certifies within the 5 day period that transfer is not medically appropriate;
- Have availability agreements with SNFs in their geographic region, concerning the availability of extended care beds and the transfer of extended care patients; and
- Not seek Medicare payment for those patient days of extended care services (in a cost reporting period) that exceed 15 percent of the product of the number of days in the period and the average number of licensed beds at the hospital. An exception to this provision is that Medicare payment will continue to be made for those patients who are receiving extended care services at the time the hospital reaches the above-mentioned limit.

These regulations also require that SNFs in the geographic region of an approved swing-bed hospital must provide notice to the hospital of the availability of SNF beds.

These provisions conform our regulations with changes made by section 4005(b) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) and section 411(b)(4)(D) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360).

DATES: *Effective date:* These regulations are effective on October 10, 1989. They are being issued in as an interim rule with comment for reasons explained in the Interim Rule with Comment section under Supplementary Information below.

Comment period: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 6, 1989.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–493–IFC, P.O. Box 26676, Baltimore Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Huber H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–493–IFC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Indepndence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

Please address a copy of comments on information collection requirements to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

FOR FURTHER INFORMATION CONTACT:

Thomas Hoyer, (301) 966–4607, (Coverage Issues)
Linda McKenna, (301) 966–4530, (Reimbursement Issues)

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare and Medicaid programs cover inpatient health care services at both a hospital level of care and a skilled nursing facility (SNF) level of care. Under certain conditions and at a State's option, the Medicaid program also covers care in an intermediate care facility (ICF) for patients whose medical conditions require institutional care that is above the level of room and board, but less intensive than care provided in a hospital or SNF.

Hospitals participating in Medicare and Medicaid, in addition to providing an inpatient hospital level of care, may also provide SNF or ICF levels of care through the establishment of a separately participating "distinct part" unit. Among health, safety and other requirements, a distinct part SNF or ICF must be an entire separately identifiable unit consisting of all the beds within that unit (such as, a separate building, floor, wing, or corridor). A distinct part SNF or ICF unit is paid as an entity separate from the rest of the institution.

Small rural hospitals had difficulty in establishing identifiable units for SNF or ICF levels of care because of limitations in their physical plant and accounting capabilities. Thus, these hospitals often had an excess of hospital beds and their communities had a scarcity of SNF beds in Medicare and Medicaid participating facilities. To alleviate some of these problems, Congress enacted section 904 (the swing-bed provision) of the Omnibus Reconciliation Act of 1980 (OBRA), Pub. L. 96–499. Section 904 enacted section 1883 of the Social Security Act (the Act), under which rural hospitals with fewer than 50 beds may use their inpatient facilities to furnish SNF services to Medicare and Medicaid beneficiaries, and ICF services to Medicaid beneficiaries. These hospitals with approved swing-bed programs are paid at rates that are appropriate for those services and are generally lower than hospital rates. On July 20, 1982, we published an interim final rule in the **Federal Register** (47 FR 31518) that implemented section 1883 of the Act. The requirements contained in this section were considered in the amendments to the conditions proposed in the hospital regulations published January 4, 1983 (48 FR 299). These requirements were made final June 17, 1986 (51 FR 22010). The requirements for swing-bed hospitals are located at 42 CFR 482.66.

II. Summary of New Legislation

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) was enacted. Section 4005(b) of Pub. L. 100–203 amends section 1883(b)(1) of the Act by expanding the swing-bed program to rural hospitals with fewer than 100 beds.

Section 4005(b)(2)(B) of Pub. L. 100–203 amends section 1883(d) of the Act by adding the following requirements and definitions:

- Payment for extended care services furnished by hospitals with more than 49 beds but fewer than 100 beds, approved as swing-bed hospitals by Medicare after March 31, 1988, may not be made for extended care services furnished to a swing-bed hospital extended care patient more than 5 days (excluding weekends and holidays) after a bed in a SNF becomes available in the geographic region, unless the patient's physician certifies within the 5 day period, that the transfer of the patient is not medically appropriate.

- The term "extended care patient" means an individual being furnished extended care services at a swing-bed hospital under an agreement with the Secretary.
- The term "availability date" means, with respect to an extended care patient at a swing-bed hospital, any date on which a bed is available for the patient in a SNF located within the geographic region in which the hospital is located.
- The Secretary must promulgate regulations to provide for notice by SNFs of availability dates to hospitals with swing-bed agreements located within the same geographic region.
- In the case of a hospital which has more than 49 beds and a swing-bed agreement after March 31, 1988, the hospital will not seek payment in a cost reporting period for patient days of extended care services that exceed 15 percent of the product of the number of days in the period and the average number of licensed beds in the hospital in the period.

These swing-bed amendments do not affect providers operating under section 1883 agreements entered into before March 31, 1988.

On July 1, 1988, the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) was enacted. Section 411(b)(4)(D) of Pub. L. 100–360 adds a technical amendment to the 15 percent payment limitation by providing continued payment for those patients in the swing-bed hospital receiving extended care services at the time the limit is reached.

III. Provisions of this Interim Rule

In developing these regulations, we have essentially relied on the language of the statute, as amended by section 4005(b) of Pub. L. 100–203, and section 411(b)(4)(D) of Pub. L. 100–360.

A. Requirements Relating to Payment for Extended Care Services in a Swing-Bed Hospital

Current regulations at § 413.114 explain the reimbursement methodology for those rural hospitals that participate in the swing-bed program. In § 413.114, we are defining the terms "geographic region" and "availability date".

We define "geographic region" to mean an area that includes the SNFs with which a hospital has traditionally arranged transfers and all other SNFs within the same proximity to the hospital. In the case of a hospital without existing transfer practices upon which to base a determination, the geographic region is an area that includes all the SNFs within 50 miles of the hospital unless the hospital can demonstrate that the SNFs are inaccessible to its patients. In the event of a dispute as to whether a SNF is within a hospital's geographic region, or the SNF is inaccessible to hospital patients, the HCFA Regional Office will make a determination.

We define "availability date" to mean with respect to an extended care patient in a swing-bed hospital, the later of—

- The date on which a bed is available for the patient in a SNF located within the hospital's geographic region;
- The date that a hospital learns that a SNF bed is available; or
- If the notice is prospective, the date that a SNF bed will become available.

In § 413.114, we are adding a new subsection that describes certain payment requirements for rural hospitals with more than 49 beds (but fewer than 100) that wish to participate as a swing-bed hospital. The first requirement states that if there is an available SNF bed in the geographic region, the extended care patient must be transferred within a 5 day period (excluding weekends and holidays) beginning on the availability date of the SNF bed unless the patient's physician certifies within that 5 day period that transfer is not medically appropriate.

Under the second requirement in order to receive Medicare payments, hospitals must not exceed 15 percent of the product of the number of days in the period and the average number of licensed beds in the hospital in the same period. It is necessary for these hospitals to monitor the number of Medicare extended care days in order to prevent the hospital's exceeding this 15 percent payment limitation. In those States that do not license hospital beds, the hospitals must use the total average of hospital beds reported on their most recent Certificate of Need (CON) (excluding bassinets). If during the cost reporting period, there is an increase or decrease in the number of "licensed" beds, the number of "licensed" beds for each part of the period is to be multiplied by the number of days for which that number of "licensed" beds was available. After totalling the results, compute 15 percent of the total available "licensed" bed days to determine the payment limitation.

This new subsection of § 413.114 will also specify the payment restrictions that are applicable to swing-bed hospitals with more than 49 beds. The first restriction states that hospitals must not seek payment for extended care services after the end of the 5 day period (excluding weekends and holidays) beginning on the availability date of a SNF bed unless the patient's physician has certified, within that 5 day period, that the transfer of the patient to the SNF was not medically appropriate.

The second payment restriction states that swing-bed hospitals with more than 49 beds must not seek payment for extended care services in a cost reporting period to the extent that they exceed 15 percent of the product of the number of days in the period and the average number of licensed beds in the hospital in the period. In those States that do not license hospital beds, the hospital must use the average number of hospital beds reported on its most recent CON, excluding bassinets.

We also are adding a new § 413.114(d)(4) that describes the exception to the payment limitation. This exception states that Medicare payment will be continued for those patients who are receiving extended care services in the swing-bed hospital at the time the 15 percent limit is reached.

B. Requirements for Posthospital SNF Care

Current regulations at 42 CFR 424.20 (formerly 42 CFR 405.1632) specify the requirements for Medicare payment of posthospital SNF care. The regulations currently provide that a physician must certify that SNF care is or was needed for continued treatment of a medical condition that an individual had as an inpatient. This section also states that the certification for SNF care must be obtained at the time of admission to the SNF or as soon thereafter as is reasonable and practicable. We are revising § 424.20(a), to add the certification requirements set forth in section 1883(d) of the Act. These requirements will make it clear that if the swing-bed hospital does not timely transfer the patient to the SNF, the extended care patient's physician must certify that the transfer of the patient within 5 days of the availability date as defined in § 413.114(d), was not medically appropriate.

In addition, we are revising paragraph (b) of § 424.20, by adding a new (b)(2) concerning the timing of the physician certification. Section 424.20(b)(2) will require the physician of an extended care patient to certify within 5 days (excluding weekends and holidays) of the availability date, that transfer of the patient is not medically appropriate.

C. Special Requirements for Hospital Providers of Long Term Care Services

Current regulations at § 482.66 contain the special requirements that hospital providers of long-term care services (swing-beds) must meet in order to be approved to provide post-hospital extended care services. Section 482.66(a)(1) requires the facility to have fewer than 50 hospital beds, excluding beds for newborns and beds in intensive care type inpatient units. We are revising this section to expand the swing-bed program to hospitals with fewer than 100 beds, excluding beds for newborns and beds in intensive care type inpatient units or distinct parts.

We are making minor technical revisions to the section title, the introductory paragraph, paragraphs (a)(1), (4) and (5) and are adding a new paragraph (a)(6) to § 482.66 to specify the requirements of the availability agreement between hospitals and SNFs with more than 49 beds (but fewer than 100) approved after March 31, 1988.

In the title, the term "Conditions of Participation" has been dropped. Section 482.66 has been retitled as "Special Requirements" because the requirements found in this section are not traditional conditions of health and safety. Rather, they are requirements relating to approval of hospitals wishing to have swing-bed approvals.

In a new paragraph (a)(6)(i), we specify that hospitals must have an availability agreement with SNFs in their geographic region that ensures that the SNF will notify the hospital when an extended care bed becomes available.

In a new paragraph (a)(6)(ii), we specify that once the hospital learns of the availability date of a SNF bed, it must transfer the swing-bed extended care patient within 5 days (excluding weekends and holidays) of that date, unless the patient's physician certifies that the transfer is not medically appropriate. Hospitals with under 50 beds are not subject to the 5 day transfer agreement.

In a new paragraph (a)(7), we specify that we will determine the number of beds a hospital has for purposes of this section. In paragraph (a)(7)(i), we specify that a hospital bed count is calculated by excluding from the count, beds that, because of their special nature, such as newborn and intensive care beds, would not be available for swing-bed use. Also excluded from the bed count are beds in a separately certified "distinct part" as SNFs and ICFs.

At paragraph (a)(7)(ii) we specify that a hospital licensed for more than 49 or 99 beds, as the case may be, will be considered to have the number of beds that it consistently utilizes and staffs. Hospitals, at a minimum, document their count by staffing schedules and census information for the previous 12 months before application to be a swing-bed hospital. The hospital must provide written assurance to HCFA that they will not operate over 49 or over 99 beds, excluding newborn and intensive or coronary care beds, except in connection with a catastrophic event.

D. Requirements for Long Term Care Facilities

We are adding a new § 483.80 that describes the special requirements that SNFs must have with swing-bed hospitals in their geographic region. We are stating that a SNF that has an availability agreement to accept extended care patients from swing-bed hospitals with more than 49 beds, in their geographic region must provide notice of when the beds are available. In this interim regulation we have also replaced the cross references to current SNF regulations that appear in § 482.66 with references to the SNF regulations we published on February 2, 1989 (54 FR 5316). We have not changed the scope of the SNF requirements that a swing-bed hospital must meet.

E. Certification Effective Date

The statute authorizes payment for these swing-bed services, effective April 1, 1988. Therefore, hospitals that have been providing these services may request retroactive approval. This retroactive approval can be granted back to the date the hospital began providing the service but not prior to April 1, 1988, the effective date of the statutory provision. Future approvals will be not earlier than the date of the survey.

To be approved retroactively, the hospital must be found in compliance with all the swing-bed requirements at the time of the State agency survey and a review of records must provide reasonable assurance that the hospital has been continuously complying with these requirements from the date for which retroactive approval is requested.

F. Optional Reimbursement Method

Under current regulations at § 413.24(d)(5), an optional reimbursement method is available to small, rural hospitals with Medicare-participating distinct part SNFs. To qualify for this method, a hospital-SNF complex must be located in a rural area and the hospital and SNF must have a combined bed count of fewer than 50 beds. Under this method, the general routine service costs of the hospital component and SNF component are combined into a single cost center for purposes of computing the average cost per diem for hospital and SNF services. However, the two components remain as separate providers for certification and coverage purposes.

We considered extending the optional reimbursement method to those rural hospital-SNF complexes that have a combined bed count of more than 49 (but fewer than 100) beds. However, we do not believe that allowing these facilities to use the optional reimbursement method is appropriate or necessary. The optional reimbursement method was intended for use by those very small hospital-SNF complexes that, because of their size and locality, had limited resources for maintaining the distinct part components for reimbursement purposes. Because of the difficulties and the excessive strain on the resources of these hospitals, we provided for the optional reimbursement method. However, we do not believe the same problems exist to the same degree with respect to hospitals having more than 49 beds and therefore are not proposing any extension of this reimbursement method.

G. Identifying Eligible Hospitals

In administering the original swing-bed provision, HCFA considered hospitals with 49 or fewer beds in general use as eligible to participate. In other words, hospitals with 50 beds or more whose staffing and usual census showed that they routinely operated with fewer than 50 beds were considered appropriate for swing-bed approval as long as they met the other statutory and regulatory requirements for participating. We had also excluded newborn beds, intensive and coronary care beds and those associated with distinct parts and those associated with a catastrophic event. We understand that the Congress was aware of this administrative choice and that it assumed we would continue to exercise it when we implemented the new provision. Accordingly, we will look at the number of beds a hospital actually is operating to determine if it (1) is eligible for participation as a swing-bed hospital, and (2) should be considered to fall under the rules applicable to hospitals of under or over 50 beds.

H. Beneficiary Impact

Approval of swing-bed hospitals with more than 49 beds but fewer than 100 could provide beneficiaries with a new source of SNF care in rural areas. However, the statutory payment limitations on these hospitals create instances where Medicare payment may not be made and the beneficiary could be liable for the provider services. These include the following—

- A hospital that has exceeded the 15 percent payment limitation for swing-bed services will not receive Medicare

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payment for any new patients admitted to a SNF swing-bed while the limitation is in effect. Therefore, a hospital, in conducting its daily census should separately account for beneficiaries receiving Medicare covered extended care services. A patient's liability for payment for extended care services in a swing-bed hospital when the hospital has reached the 15 percent payment limitation for these services is dependent upon the hospital's giving proper notice to the beneficiary of this liability. If the beneficiary is admitted directly to the swing bed hospital for extended care services after the 15 percent payment limitation has been reached, the hospital must give the beneficiary notice under section 1879 of the Act and § 405.336(d) of the regulations that the beneficiary does not require inpatient hospital care. If the hospital converts the beneficiary's status from hospital patient to long-term care patient, the hospital must give the beneficiary notice under section 1154(e) of the Act and § 412.42(c) of the regulations that the beneficiary no longer requires inpatient hospital care. ("Inpatient hospital care" can include cases in which a beneficiary needs a SNF level of care, but under Medicare criteria, a SNF level bed is not available.) These notices, which must be given prior to a change in the beneficiary's status within the hospital, or prior to admission to a swing-bed hospital for long term care, must include language indicating that the beneficiary will be liable for payment of SNF type services because the 15 percent payment limitation has been reached. This notice must point out that the beneficiary is liable only in that particular facility and that the beneficiary has the option to remain in the facility and pay for those days or request a transfer to another facility. Also included in the notice is the date Medicare would again start to pay for extended care services in that hospital (the beginning date of a hospital's new cost reporting period). The 2 day delay in the beneficiary's liability that usually applies under § 412.42(c) does not apply in connection with such changes in swing-bed status because hospital payment rules do not apply when a patient is in a swing-bed. Instead, the patient is considered for payment purposes to be a patient of a SNF and care provided is subject to SNF rules.

- Medicare payment for SNF swing-bed services ceases 5 days after a SNF bed becomes available in the geographic region, unless the beneficiary's physician certifies within that 5 day period that the beneficiary's transfer to the SNF would not be medically appropriate. The beneficiary's liability for payment for extended care services after the 5 day period has expired is dependent upon the hospital's giving prior notice to the beneficiary of this liability. These notices, which may be given at the time of admission for long term care or change of status, as appropriate, must include language indicating that the patient will be liable for payment after the expiration of the 5 days if an SNF bed is available in the geographic region and the beneficiary's physician has not certified that a transfer to that facility would be medically inappropriate.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any interim rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We anticipate that this interim rule will result in the following costs to the Medicare and Medicaid programs.

TABLE 1.—PROJECTED MEDICARE AND MEDICAID COSTS AS A RESULT OF SWING-BED PROGRAM CHANGES[1]

	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
Medicare	$25	$25	$30	$35	$35
Medicaid	0	5	5	5	5

[1] Rounded to the nearest $5 million.

Section 1913 of the Act permits States to amend their State plans in order to make payment to Medicare swing-bed hospitals for SNF and ICF services. Medicaid payments may rise to the extent that this regulation increases the number of swing-bed hospitals in States that have adopted this Medicaid option. In conclusion, this iterim rule is not a major rule under E.O. 12291 criteria, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that an interim rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all hospitals are treated as small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if an interim rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

The provisions of this interim rule generally conform our regulations to changes made by section 4005(b) of Pub. L. 100–203 and section 411(b)(4)(D) of Pub. L. 100–360. However, we are exercising some discretion in implementing these provisions as discussed below.

First, section 4005(b) of Pub. L. 100–203 allows the Secretary to define the term "geographic region", and we have defined it as an area that includes the SNFs with which a hospital has traditionally arranged transfers and all other SNFs within the same proximity to the hospital. In the case of a hospital without existing transfer practices upon which to base a determination, the geographic region is an area that includes all the SNFs within 50 miles of the hospital unless the hospital can demonstrate that the SNFs are inaccessible to its patients.

Second, we are adding to the definition of "availability date" found in section 4005(b) of Pub. L. 100–203 in order to clarify it. We have defined it to mean the date that a hospital learns that a SNF bed is available or if the notice is prospective, the date that a SNF bed will become available. The 5 day period begins either on the date that the hospital learns the bed is available or the date the bed becomes available, whichever is later.

We do not believe that these definitions will result in a significant impact. Because this interim rule, with few exceptions, merely conforms our policy to the statute, we have determined that a regulatory flexibility analysis and rural impact statement are not necessary.

V. Other Required Information

A. Interim Final Rule With Comment Period

Section 4039(g) of Pub. L. 100–203 provides that, if necessary, we may issue regulations to implement certain provisions of that law, including the swing bed expansion and other Medicare reforms, on an interim final basis. Congress, in Public Law 100–203, charged the agency with developing and implementing several significant and complex payment reforms. Congress recognized, however, that the agency may not be able both to develop the regulations necessary to implement these reforms and to engage in the time- and resource-consuming process entailed by the usual notice and comment procedure before the effective dates which it prescribed. Indeed, in the case of the modifications to the swing bed program contained in section 4005(b) of Pub. L. 100–203 (enacted December 22, 1987), Congress clearly intended for the Secretary to make use of interim final rules by imposing, in section 4005(b)(4), a March 31, 1988 effective date on the swing bed modifications. The usual notice and comment procedures could not have been completed in the time allowed.

The Secretary believes it necessary to exercise his option, under section 4039(g), to issue these swing bed provisions as an interim final rule in order to provide hospitals with the guidelines needed to participate in the expanded swing bed program, which statutorily became effective on March 31, 1988. The urgency contemplated by Congress in enacting section 4039(g) has not been reduced by the fact that we have been unable to develop and publish these regulations until now. Were we to go through the usual notice and comment process now, we would have to leave the current swing bed guidelines in place. Further, § 1883(d)(2)(A) of the Act, as added by section 4005(b)(2) of Public Law 100–203, requires certain criteria applicable to the expanded swing bed program to be issued by regulation. Therefore, those hospitals most affected by the expanded program (hospitals with between 50 and 100 beds) would be left with no guidelines, particularly with respect to the SNF/hospital availability agreements, to utilize in applying for swing bed participation.

Although this rule is being issued as an interim final rule, we are interested in comments and advice regarding changes that should be made to this issuance. Therefore, we are providing a 60-day comment period for public comment.

B. Response to Comments

Because of the large numbers of items of correspondence we normally receive concerning regulations, we are not able to acknowledge or respond to the comments individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and we will respond to the comments in the preamble of that rule.

VI. Information Collection Requirements

Sections 413.114(d)(1)(ii), 482.66(a)(6)(ii), 482.66(a)(7) and 483.80 of this rule contain information collection and reporting requirements that are subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980. An affected hospital must identify and then make an "availability agreement" with SNFs in its area; these SNFs must report availability of SNF beds to hospitals. The hospital must also track swing-bed days as a proportion of "licensed" bed days to prevent improper payment for or transfer of patients to swing-beds. Public reporting burden for this collection of information is estimated to be 1 hour per response. Other organizations and individuals desiring to submit comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden should direct them to the office identified in the **ADDRESS** section of this preamble.

VII. List of Subjects

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set out in the preamble, 42 CFR Chapter IV is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

Subpart F—Specific Categories of Costs

B. Part 413, Subpart F is amended as follows:

1. The authority citation for Part 413 is revised to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

2. In § 413.114, the title and paragraphs (a) and (b) are revised; and a new paragraph (d) is added to read as follows:

§ 413.114 Payment for extended care services furnished by a swing-bed hospital.

(a) *Purpose and basis.* This section implements section 1883 of the Act, which provides for payment for extended care services furnished by rural hospitals having a swing-bed approval. Payments to these hospitals for extended care services furnished in general routine inpatient beds are based on the reasonable cost of extended care services, in accordance with paragraph (c) of this section. Swing-bed hospitals approved after March 31, 1988 with more than 49 beds must meet additional payment requirements as set forth in paragraph (d) of this section.

b. *Definitions.* For purposes of this section—"Availability date" means with respect to an extended care patient in a swing-bed hospital, the later of—

(1) Any date on which a bed is available for the patient in a SNF located within the hospital's geographic region;

(2) The date that a hospital learns that a SNF bed is available; or

(3) If the notice is prospective, the date that a SNF bed will become available.

"Geographic region" means an area that includes the SNFs with which a hospital has traditionally arranged transfers and all other SNFs within the same proximity to the hospital. In the case of a hospital without existing transfer practices upon which to base a determination, the geographic region is an area that includes all the SNFs within 50 miles of the hospital unless the hospital can demonstrate that the SNFs are inaccessible to its patients. In the event of a dispute as to whether a SNF is within a hospital's geographic region or the SNF is inaccessible to hospital patients, the HCFA Regional Office makes a determination.

"Swing-bed hospital" means a hospital participating in Medicare that has an approval from HCFA to provide extended care services as defined in § 409.20 of this chapter, and meets the requirements specified in § 482.66 of this chapter.

* * * * *

(d) *Additional requirements*—(1) *General rule.* Prior to Medicare payment being made to a swing-bed hospital with more than 49 beds (but fewer than 100) the following payment requirements must be met:

(i) If there is an available SNF bed in the geographic region, the extended care patient must be transferred within 5 days (excluding weekends and holidays) of the availability date, unless the patient's physician certifies within the 5-day period that transfer is not medically appropriate.

(ii) The number of patient days for extended care services in a cost reporting period does not exceed 15 percent of the product of the number of days in the period and the average number of licensed beds in the hospital in the period. In those States that do not license their hospital beds, the hospitals must use the total number of hospital beds reported on their most recent Certificate of Need (CON), excluding bassinets. If during the cost reporting period, there is an increase or decease in the number of "licensed" beds, the number of "licensed" beds for each part of the period is to be multiplied by the number of days for which that number of "licensed" beds was available. After totalling the results, compute 15 percent of the total available "licensed" bed days to determine the payment limitation.

(2) *Payment restrictions.*

(i) The hospital must not seek payment for extended care services after the end of the 5 day period (excluding weekends and holidays) beginning on the availability date of a SNF bed unless the patient's physician has certified, within that 5 day period, that the transfer of the patient to the SNF was not medically appropriate.

(ii) The hospital must not seek payment for extended care services in a cost reporting period to the extent that they exceed 15 percent of the product of the number of days in the period and the average number of licensed beds in the period. In those States that do not license hospital beds, the hospital must use the average number of hospital beds reported on its most recent CON, excluding bassinets.

(3) *Payment exception.* Payment will continue to be made during the cost reporting period in which the 15 percent limit specified in paragraph (d)(1)(ii) of this section is reached for those patients who are receiving extended care services at the time the hospital reaches the limit.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

Subpart B—Physician Certification and Plan of Treatment Requirements

C. Part 424, Subpart B is amended as follows:

1. The authority citation for Part 424 is revised to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870 (e) and (f), 1871, 1872, and 1883(d) of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g(c), 1395n, 1395u(b), 1395x, 1395cc(d), 1395gg, 1395gg(e), 1395gg(f), 1395hh, 1395ii, and 1395tt(d)).

2. In § 424.20 paragraphs (a) and (b) are revised to read as follows:

§ 424.20 Requirements for posthospital SNF care.

* * * * *

(a) *Content of certification.*—(1) *General requirements.* (i) Posthospital SNF care is or was required because the individual needs or needed on a daily basis skilled nursing care (furnished directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services that, as a practical matter, can only be provided in a SNF or a swing-bed hospital on an inpatient basis; and (ii) The SNF care is or was needed for a condition for which the individual received inpatient care in a participating hospital or a qualified hospital, as defined in § 409.3 of this chapter.

(2) *Special requirement: A swing-bed hospital with more than 49 beds (but fewer than 100) that does not transfer a swing-bed patient to a SNF within 5 days of the availability date.* Transfer of the extended care patient to the SNF is not medically appropriate.

(b) *Timing of certification.*—(1) *General rule.* The certification must be obtained at the time of admission or as soon thereafter as is reasonable and practicable.

(2) *Special rules for certain swing-bed hospitals.* For swing-bed hospitals with more than 49 beds that are approved after March 31, 1988, the extended care patient's physician has 5 days (excluding weekends and holidays) beginning on the availability date as defined in § 413.114(b), to certify that the transfer of the extended care patient is not medically appropriate.

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PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

Subpart E—Requirements for Specialty Hospitals

D. Part 482, Subpart E is amended as follows:

1. The authority citation for Part 482 continues to read as follows:

Authority: Secs. 1102, 1138, 1814(a)(6), 1861(e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1338, 1395f(a)(6), 1395x(e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396d(a)).

2. In § 482.66, the section heading is revised; the introductory text is revised; the introductory text for paragraph (a) is revised; paragraph (a)(1) is revised; the semicolons at the end of paragraphs (a)(2) and (a)(3) are removed and periods are added in their place; paragraph (a)(4) is revised; new paragraphs (a)(6) and (a)(7) are added; and paragraph (b) is revised to read as follows:

§ 482.66 Special requirements for hospital providers of long-term care services ("swing-beds").

A hospital that has a Medicare provider agreement must meet the following requirements in order to be granted an approval from HCFA to provide post-hospital extended care services, as specified in § 409.30 of this chapter, and be reimbursed as a swing-bed hospital, as specified in § 413.114 of this chapter:

(a) *Eligibility.* A hospital must meet the following eligibility requirements:

(1) The facility has fewer than 100 hospital beds, excluding beds for newborns and beds in intensive care type inpatient units (for eligibility of hospitals with distinct parts electing the

optional reimbursement method, see § 413.24(d)(5) of this chapter).

* * * * *

(4) The hospital does not have in effect a 24-hour nursing waiver granted under § 405.1910(c).

(5) The hospital has not had a swing-bed approval terminated within the two years previous to application.

(6) A hospital with more than 49 beds (but fewer than 100) approved under this section after March 31, 1988, must—

(i) Have an availability agreement with SNFs in its geographic region that requires the SNFs to notify the hospital of the availability of extended care beds and the dates when those beds will be available; and

(ii) Transfer the extended care patient within 5 days (excluding weekends and holidays) after learning that a SNF bed is available or in the case of prospective notification by the SNF, within 5 days of the date the bed becomes available, unless the patient's physician certifies, as required under § 424.20, that the transfer is not medically appropriate.

(7) The hospital must provide written assurance to HCFA that the hospital will not operate over 49 or over 99 beds except in connection with a catastrophic event. The hospital bed count is determined as follows:

(i) A hospital bed count is calculated by excluding from the count, beds that because of their special nature such as, newborn and intensive care beds, would not be available for swing-bed use. Also excluded from the bed count are beds in separately certified "distinct part" SNFs and ICFs.

(ii) A hospital licensed for more than 49 or 99 beds, is considered to have the number of beds that it consistently utilizes and staffs. Hospitals, at a minimum, document their count by staffing schedules and census information for the previous 12 months before application to be a swing-bed hospital.

(b) *Skilled nursing facility services.* The facility is substantially in compliance with the following skilled nursing facility requirements contained in Subpart D of Part 483 of this chapter.

(1) Patients' rights (§ 483.10(a)(1) and (a)(2), Notice of Rights and Services, § 483.10(b)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), (b)(9), and (b)(10));

(2) Specialized rehabilitative services (§ 483.45);

(3) Dental services (§ 483.55);

(4) Social services (§ 483.15(g));

(5) Patient activities (§ 483.15(f)); and

(6) Discharge planning (§ 483.20(e)).

PART 483—REQUIREMENTS FOR LONG TERM CARE FACILITIES

Subpart B—Provider Agreements

E. Part 483, Subpart B is amended as follows:

1. The authority citation for Part 483 continues to read as follows:

Authority: Sec. 1102, 1861 (j) and (l), 1863, 1871, 1902(a)(28), and 1905 (a) and (c) of the Social Security Act (42 U.S.C. 1302, 1395x (j) and (l), 1395hh, 1396a(a)(28), and 1396d(c)), unless otherwise noted.

2. A new § 483.80 is added to read as follows:

§ 483.80 Special requirements for skilled nursing facility agreements with swing-bed hospitals.

SNFs must enter, as appropriate, into availability agreements as specified in § 482.66(a)(6) with swing-bed hospitals of more that 49 beds to provide notice that they have available beds and the dates these beds will become available. These agreements are only required for hospitals that are swing-bed hospitals and fall within the SNFs geographic region as defined by § 413.114.

(Catalog of Federal Domestic Assistance Program—Medicare Program: Hospital Insurance—No. 13.744.)

Dated: January 30, 1989.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: April 10, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-20808 Filed 9-6-89; 8:45 am]

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Part VI

Environmental Protection Agency

40 CFR Parts 180, 185, and 186

Daminozide; Revocation and Amendment of Tolerances and Food Additive Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP-300202; FRL-3643-1]

Daminozide; Revocation and Amendment of Tolerances and Food Additive Regulations

AGENCY: Environmental Protection Agency ("EPA"; "the Agency").

ACTION: Proposed rule.

SUMMARY: This document proposes (1) the reduction or revocation of all tolerances for combined residues of the plant growth regulatory daminozide, trade name Alar®, Kylar®, B-Nine®, in or on all raw agricultural commodities; (2) the revocation of daminozide food/feed additive regulations for processed foods and animal feed; and (3) the establishment of expiration dates for all tolerances not revoked as of the date this rule becomes final. These proposed actions are being initiated because the Agency has determined that long term dietary exposure to daminozide and unsymmetrical dimethyl hydrazine (UDMH), a degradate and metabolite of daminozide, poses unacceptable risks to the general population.

The proposed effective dates of the tolerance revocation will vary by crop with several tolerances being revoked as of about November 30, 1989, and other tolerances being reduced as of that date and revoked by May 31, 1991. The proposed effective date of the revocation of the food/feed additive regulations is November 30, 1989, the date this proposed action is expected to be issued as a final action.

DATES: Written comments, identified by the document control number OPP-300202, must be received on or before October 23, 1989.

ADDRESS: By mail, submit comments to:

Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

In person, deliver comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Lisa Engstrom, Special Review and Reregistration Division (H7508C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Special Review Branch, Room 1020, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-7400.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA is proposing to revoke all tolerances and food additive regulations under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) for the plant growth regulator daminozide (butanedioic acid mono (2,2-dimethylhydrazide)). For several food uses of daminozide, the tolerance will be reduced for an interim period prior to the date of final revocation.

II. Legal Background

The Federal Food, Drug, and Cosmetic Act (FFDCA), (21 U.S.C. 301 *et seq.*), authorizes the establishment of tolerances and exemptions from tolerances for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408, and the promulgation of food additive regulations for pesticide residues in processed food under section 409 of that Act (21 U.S.C. 346(a), 348). Under the Reorganization Plan, No. 3 of 1970, 4 Stat. 3086, which established EPA, the authority to set tolerances for pesticide chemicals in raw agricultural commodities and processed food under sections 408 and 409 of the FFDCA was transferred from the Food and Drug Administration (FDA) to EPA. The FDA retains the authority to enforce the tolerance and food additive provisions under this Plan.

Without such tolerances, exemptions from tolerances, or food additive regulations (sometimes also referred to as "tolerances"), a food containing pesticide residues is "adulterated" under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 346a(a), 348(a)). Pursuant to section 402(a)(2)(C) of the FFDCA, a food additive regulation must be established for processed food if the pesticide residue in the processed food is greater than the tolerance prescribed for the raw agricultural commodity. Where, however, the pesticide residues in the processed food resulting from treatment of the raw agricultural commodity do not exceed the tolerance level established for the raw agricultural commodity, a separate food additive regulation is not necessary (21 U.S.C. 342(a)(2)(C)).

To establish a tolerance or an exemption under section 408 of FFDCA, the Agency must make a finding that the promulgation of the rule would "protect the public health" (21 U.S.C. 346a(b)). In reaching this determination, the Agency is directed to consider, among other relevant factors: (a) The necessity for the production of an adequate, wholesome and economical food supply; (b) other ways in which the consumer may be affected by the pesticide; and (c) the usefulness of the pesticide for which a tolerance is sought. Thus, in essence, section 408 of the FFDCA gives the Agency the authority to balance risks against benefits in determining appropriate tolerance levels. The Agency is permitted to set a tolerance at zero "if the scientific data before the Administrator does not justify the establishment of a greater tolerance" (21 U.S.C. 346a(b)).

The establishment of a food additive regulation under section 409 requires a finding that use of the pesticide will be "safe" (21 U.S.C. 348(c)(3)). Relevant factors in this safety determination include: (1) the probable consumption of the pesticide or its metabolites; (2) the cumulative effect of the pesticide in the diet of man or animals, taking into account any related substances in the diet; and (3) appropriate safety factors to relate the animal data to the human risk evaluation. Section 409 contains the Delaney Clause, which specifically provides that, with very limited exceptions, no additive is deemed safe if it induces cancer when ingested by man or animals. *Id.*

Under sections 408 and 409 of the FFDCA, the proponent of a tolerance or a food additive regulation has the burden of providing data establishing the safety of the pesticide for which a tolerance (or food additive regulation) is sought (21 U.S.C. 346a(d)(1), 348(b)(2)). As noted by both the House and Senate reports:

> Before any pesticide-chemical residue may remain in or on a raw agricultural commodity, scientific data must be presented to show that the pesticide chemical is safe from the standpoint of the consumer. The burden is on the person proposing the tolerance or exemption to establish the safety of such pesticide-chemical residue.

H.R. Rep. No. 1385, 83d Cong., 2d Sess. at 5 (1954); S. Rep. No. 1635, 83d Cong., 2d Sess. at 4 (1954). Once a tolerance (or food additive regulation) has been established, the burden of justifying the continued safety of the pesticide residues authorized by the rule remains with the proponent of such rule (*Environmental Defense Fund* v. *Department of Health, Education and Welfare*, 428 F.2d 1083, 1092 n. 27 (DC Cir. 1970)).

For a pesticide to be sold and used in the production of a crop or an animal, the pesticide must not only have appropriate tolerances under the FFDCA but must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 *et seq.*). FIFRA requires the registration of all pesticides which are sold and distributed in the United States. The statutory standard for registration is that, among other things, the pesticide performs its intended function without causing "unreasonable adverse effects on the environment (including people)" (7 U.S.C. 136a(c)(5)). Under section 6 of FIFRA, EPA may cancel the registration for a use of a pesticide or modify the terms and conditions of registration whenever it determines that the use of the pesticide no longer satisfies the statutory standard for registration (7 U.S.C. 136d(b)).

III. Regulatory Background

Daminozide is the accepted common name for butanedioic acid mono (2,2-dimethylhydrazide). It was first registered as a pesticide under FIFRA in 1963 by the Uniroyal Chemical Company. Uniroyal registered daminozide under the trade name Alar. Daminozide is currently registered for use on a variety of crops as a plant growth regulator to control vegetative and reproductive growth of orchard crops such as apples, cherries, nectarines, peaches and pears. Daminozide affects flower bud initiation, fruit set and maturity, fruit firmness and coloring, preharvest fruit drop and the market quality of fruit at harvest and during storage, while delaying the onset of water core. Daminozide is also used to encourage shorter and more erect peanut vines, to retard stem growth in tomato transplants, and to modify the stem length and shape of ornamental plants.

All daminozide tolerances for raw agricultural commodities issued under section 408 are listed in the following Table 1:

TABLE 1—DAMINOZIDE TOLERANCES

Commodity	CFR Sec.	ppm
Apples	180.246	20.0
Cattle, Fat	180.246	0.2
Cattle, Meat Byproducts	180.246	0.2
Cattle, Meat	180.246	0.2
Cherries, Sour	180.246	55.0
Cherries, Sweet	180.246	30.0
Eggs	180.246	0.2
Goats, Fat	180.246	0.2
Goats, Meat Byproducts	180.246	0.2
Goats, Meat	180.246	0.2
Grapes	180.246	10.0
Hogs, Fat	180.246	0.2
Hogs, Meat Byproducts	180.246	0.2
Hogs, Meat	180.246	0.2
Horses, Fat	180.246	0.2
Horses, Meat Byproducts	180.246	0.2
Horses, Meat	180.246	0.2
Milk	180.246	0.02
Nectarines	180.246	30.0
Peaches	180.246	30.0
Peanuts	180.246	30.0
Peanuts, Hay	180.246	20.0
Peanuts, Hulls	180.246	10.0
Pears	180.246	20.0
Poultry, Fat	180.246	0.2
Poultry, Kidney	180.246	0.2
Poultry, Meat Byproducts (Excluding Kidney)	180.246	0.2
Poultry, Meat	180.246	0.2
Sheep, Fat	180.246	0.2
Sheep, Meat Byproducts	180.246	0.2
Sheep, Meat	180.246	0.2
Tomatoes	180.246	0.5

Established food and feed additive regulations under section 409 for daminozide are listed in the following Table 2:

TABLE 2—SECTION 409 FOOD AND FEED ADDITIVE REGULATIONS

Commodity	CFR Sec.	ppm
Peanuts, Meal	186.1550	90.0
Tomatoes, Concentrated Products.	185.1550	3.0
Tomatoes, Pomace (Dried).	186.1550	10.0

On July 18, 1984, EPA issued a Notice of Special Review of daminozide (49 FR 29186) based on carcinogenic concerns for both daminozide and UDMH. In September 1985 EPA submitted a Draft Preliminary/Final Determination (PD 2/3/4) and a Draft Cancellation Notice to the FIFRA Scientific Advisory Panel (SAP) and U.S. Department of Agriculture, as required by FIFRA. The SAP believed that the animal cancer studies relied upon by EPA in its risk determination were insufficient to allow a quantitative risk assessment for either daminozide or UDMH. Although EPA is not bound by the SAP's opinion, EPA concluded that, in this case, it should not proceed with the cancellation but should instead require more data and take steps to reduce daminozide/UDMH exposure in the interim.

At that time, the Agency lowered the daminozide tolerance for apples from 30 parts per million (ppm) to 20 ppm. EPA set the tolerance to expire on July 31, 1987, in the belief that some of the residue and market basket survey data to be generated would be available by then, and that a further evaluation of the tolerance could be undertaken at that time. Data available in July 1987 showed that the apple tolerance could not be lowered without potentially making some legally treated apples over tolerance and subject to seizure. Thus, the 20 ppm tolerance was extended to January 31, 1989, at which time the tolerance was to be reevaluated in light of new cancer data on daminozide and UDMH.

In January 1989, the Agency estimated the risk of daminozide use based on interim results from a 2-year mouse study using UDMH. Although the Agency found that the interim results were sufficient for a quantitative risk assessment, the Agency noted that there were limitations in the data base. Those limitations included the fact that the study results were interim and thus actual tumor response over a lifetime was not known; a carcinogenic response had only been identified in a single species; and that mice in the study were dying early at the highest dose tested which was the only dose at which a statistically significant response was observed. The quantitative risk assessment estimated the theoretical upper bound lifetime risk for the general population at 4.5×10^{-5}.

The Agency believed this lifetime risk to be unreasonable, and therefore, made plans to cancel the registration of daminozide. In light of the time required to carry out cancellation procedures, on February 10, 1989, EPA extended the 20 ppm apple tolerance for an additional 18 months (hereinafter referred to as the "February 1989 tolerance extension", 54 FR 6392). The extension was granted because EPA found that the available data indicated the risk posed by the extension was acceptable. Nonetheless, the Agency noted that the risk was of sufficient concern that it would move quickly toward cancellation under FIFRA of daminozide's registration.

On May 24, 1989, EPA issued a Preliminary Determination and Draft Cancellation Notice that proposed the cancellation of the food crop use registrations of daminozide under FIFRA (54 FR 22558). The cancellation proposal relied on the same mouse study cited in the February tolerance extension document in estimating the risk posed by daminozide. The lifetime risk for the general population was estimated to be 4.9×10^{-5}. The Agency concluded that this risk exceeds the benefits of daminozide and thus cancellation under FIFRA was appropriate.

The risk numbers calculated in the cancellation notice varied from the February 1989 tolerance extension document (4.9×10^{-5} compared to 4.5×10^{-5}) because of two factors. First, the risk was decreased by a correction of the exposure values; exposure values had been slightly overestimated for processed foods. Second, the risk was increased on the basis of metabolism studies showing that daminozide is converted to UDMH in the digestive system. The earlier risk calculations had not taken this factor into account.

In May 1989, the Agency also received new data concerning daminozide. First, Uniroyal provided preliminary information on oncogenicity from a recently completed 2-year UDMH drinking water study in rats. In that study, significant dose-related trends were seen for hepatocellular carcinomas and combined hepatocellular carcinomas/adenomas. Second, the Agency also received monitoring data for fresh apples and processed apple commodities from several private and State organizations. Only levels of daminozide residues were reported; samples were not generally tested for UDMH residues. In general, the results of the monitoring data indicate that average daminozide residues are currently found at levels equal to or less than 1 ppm in fresh apples. Average levels of daminozide residues in processed apple commodities were found to be considerably less than 1 ppm. Although the methods of analysis used for determining the levels of residues differed in sensitivity, the Agency believes these data corroborate the applicable data sets in the 1986 market basket survey as well as EPA's estimate that usage has dropped since the time of the survey. This survey provided much of the exposure data used to estimate risks in the Agency's risk assessments.

IV. Current Proposal

A. Timing of the Current Proposal

It is generally EPA policy not to revoke pesticide tolerances under the FFDCA prior to cancellation of the registration under FIFRA (47 FR 42956; Sept. 29, 1982). The Agency's policy attempts to coordinate action under the two statutory authorities in a logical manner by ensuring that pesticides which may be legally sold, distributed, and used under FIFRA do not result in crops which are adulterated under FFDCA. The Agency believes that coordinating action under the two statutes is important for providing fair notice to growers on what pesticides they may use without the possibility of incurring legal sanctions.

In the February 1989 tolerance extension, EPA indicated that it would not take immediate action under the FFDCA citing its above-mentioned policy. Since the tolerance extension was published, however, a number of events have occurred which when considered in combination, suggest that continuing to adhere to the policy for the daminozide tolerances is unnecessary to fulfill the policy's goal of fair notice to growers. First, early in June, Uniroyal Chemical Co., Inc. of Bethany, Connecticut, the sole manufacturer of daminozide products registered for food uses, signed a formal agreement with EPA to immediately stop sales and recall all stocks of food use daminozide products including those held by users. Second, an apple industry trade association has publicly recommended that growers cease use of daminozide. Finally, EPA has provided notice at apple grower and trade association meetings that EPA would be proposing to significantly lower tolerances this summer.

Accordingly, because growers have been advised by both private and public sources not to use daminozide, and of their potential jeopardy if they do use it, as well as provided with the opportunity to return any purchased daminozide for a full refund, the Agency considers the present situation sufficiently analogous to a final cancellation action that consideration of the revocation of the daminozide tolerances at the present time is appropriate.

The Agency also believes it is important to consider revocation at this point because of the confirmatory data received recently regarding the carcinogenic risks of UDMH. First, EPA has received preliminary (unaudited) tumor data on the final results of the 2-year rat study which shows that UDMH is associated with an increased number of liver tumors at levels which do not appear to have excessive toxicity. With submission of the preliminary rat data, EPA now has evidence in two species of tumor response in studies that meet the current protocols. The results of the rat study are an important factor in the Agency's weight-of-the-evidence test for assessing the carcinogenicity of UDMH. Second, in mid-July, the Agency also received preliminary unaudited results of the 2-year "low dose" UDMH cancer study in mice. The report showed an increase in combined lung adenomas and carcinomas in female mice. Although this report adds to the qualitative evidence supporting UDMH's carcinogenicity, its usefulness in quantitatively characterizing UDMH risk can be determined only after the full report is received in September 1989.

B. Revocation

There are currently tolerances for daminozide under both section 408 and section 409. Under section 408, a pesticide tolerance may be approved if it "protects the public health." The statute requires consideration of a number of factors including the "necessity for the production of an adequate, wholesome, and economical food supply" (Section 408(b)). Thus, EPA must balance risks and benefits in assessing whether a tolerance "protects the public health." Under section 409, a pesticide tolerance may only be approved if use of the pesticide is "safe" (21 U.S.C. 348(c)).

In applying these standards, the Agency is relying on the analysis contained in the Preliminary Determination and Draft Cancellation Notice on Daminozide (54 FR 22558) and the Daminozide Special Review Technical Support Document. Copies of the Technical Support Document are available from the contact person listed under "FOR FURTHER INFORMATION CONTACT" above. A summary of the risk/benefit analysis from those documents is provided below.

1. *Risk considerations*. The Agency evaluated the Uniroyal data submitted in the last year in conjunction with the previously considered data on daminozide and UDMH in a weight-of-the-evidence determination. Based on this evaluation both daminozide and UDMH were classified as B2 chemicals, probable human carcinogens. In both the earlier studies and the new Uniroyal studies, daminozide produced vascular and lung tumors in mice. In the more recent Uniroyal mouse study, daminozide showed a statistically significant increase in hemangiomas/hemangiosarcomas with increasing dose (Cochran Armitage trend analysis), but not by pairwise comparison (Fischer's exact test—a statistical comparison of control and treated animals). A dose-related trend for lung tumors was also seen in male mice. The Agency believes the new data, supported by the occurrence of similar tumors in the earlier daminozide studies, are sufficient to classify daminozide as a probable human carcinogen. However, the Agency also believes the oncogenic response seen in the daminozide studies

is likely caused by the presence of UDMH in the test material and/or metabolic conversion to UDMH.

Vascular and lung tumors seen in the historical UDMH data were also seen in the 1-year interim sacrifice in mice from the new Uniroyal study at 80 and 40 ppm. The increase in vascular tumors at 80 ppm was statistically significant by pairwise comparison and trend analysis. UDMH has produced a clear oncogenic response in mice at the highest dose tested and the Agency anticipates that an increase in vascular tumors will also be seen at the lower dose at terminal sacrifice (the 40 ppm dose showed one hemangioma in both a male and female mouse at the 1-year interim sacrifice).

The Agency used data from a 1986 market basket survey, recent crop field trial data, and recently conducted animal feeding studies to estimate exposure for both daminozide and UDMH. From the interim sacrifice report of the UDMH mouse cancer study, the Agency calculated an interim carcinogenic potency factor based on the incidence of hemangiosarcomas (malignant vascular tumors) and combined hemangiomas/hemangiosarcomas of the liver. Based upon this information, the Agency estimated the lifetime risk of cancer for the general population due to dietary exposure to UDMH to be 4.9×10^{-5}. The agency is particularly concerned that a disproportionate share of the lifetime risk occurs from childhood exposure because of the high ratio of food intake per unit bodyweight and the relatively high proportion of a child's diet that is composed of foods which may contain daminozide and UDMH residues. The lifetime risk to non-nursing infants (0 to 1 year of age), the highest exposure group, from one year exposure to UDMH is estimated to be approximately 6×10^{-6}. The estimates for children are based on the same potency factor as used for adults.

Because UDMH as well as daminozide residues are considered in this document for assessing risk, it is important to note that the analytical method used to test for daminozide residues converts the parent daminozide compound to UDMH for quantitation. Thus, both daminozide and UDMH residues are determined and reported as daminozide residues.

2. *Benefits summary*. The benefits from daminozide use have been assessed in terms of economic impacts which would result if the registered uses of daminozide were cancelled. In assessing benefits, the Agency considered usage information from 1985 and 1988. The Agency concluded the overall impacts from cancellation of daminozide on food uses would be insignificant to minor. Although there are alternatives for some of daminozide's uses, no one alternative chemical provides all the benefits of daminozide. For food uses, the greatest anticipated annual impacts would be in apple production. Estimates of the economic impact on the apple industry are based on 10 percent (range of 5 to 15 percent) of the crop treated. Earlier estimates made in conjunction with the apple tolerance extension document of January 31, 1989, used a 4 to 8 percent annual crop treatment. The higher estimate (5 to 15 percent) in the PD 2/3 is a result of additional and more in-depth information gathered since the February tolerance document.

Based on 1988 usage data, impacts on the apple use, in terms of net social cost for the whole of society, could range from $18 to $81 million with the most likely impact approaching the lower end of this range. Growers of Stayman and McIntosh varieties would suffer the greatest individual impact. For other food uses, the annual impacts are anticipated to be approximately $1.5 to $5.5 million for peaches, approximately $200,000 for peanuts, and negligible impacts for nectarines, cherries, grapes, and pears.

3. *New information*. As discussed above, Uniroyal has recently submitted preliminary oncogenicity findings of a 2-year UDMH drinking water study in rats. In this study, male and female Fischer 344 rats were fed drinking water containing 0, 1, 50, and 100 ppm UDMH for 2 years. The data submitted showed that UDMH caused increased incidence of combined hepatocellular carcinomas and adenomas (malignant and benign liver tumors, respectively) and hepatocellular carcinomas in female rats at 50 and 100 ppm. Although the tumor increases were not significant by Fischer's exact test (pairwise comparison of control and treated animals), significant dose-related trends were seen for hepatocellular carcinomas and combined hepatocellular carcinomas/adenomas by Cochran Armitage trend analysis. The Agency believes these conclusions are important because the historical incidence of hepatocellular cancer in female Fischer rats at the contract laboratory which conducted the study is extremely low (2 hepatocellular adenomas out of 370 total control female Fischer rats or 0.5 percent). The incidence of liver tumors in treated males were similar to that of the control groups and are not considered to be statistically significant.

The recently received preliminary report on the results of the 2-year "low dose" (highest dose tested was 20 ppm in female mice, 10 ppm in male mice) UDMH cancer study in mice showed an increase in combined lung adenomas and carcinomas in female mice. Although these results are too preliminary for use in quantitative analysis, the results do provide further quantitative evidence supporting UDMH's carcinogenicity.

4. *Conclusion*. Based on all the data and information considered by the Agency, EPA has concluded that the daminozide tolerances do not protect the public health, taking into account, among other things, the necessity for the production of an adequate, wholesome, and economical food supply. As to the food/feed additive regulations, the Agency has concluded that these regulations do not meet the statutory standard for safe use.

C. Timing of Revocation

Although revocation of the daminozide tolerances will not be delayed until cancellation under FIFRA is final, EPA believes it is appropriate under the FFDCA to implement the revocation in a manner which minimizes disruption in the food market place to the extent that such a manner of implementation is not outweighted by the risks.

The Agency considered two options regarding the timing of the revocation.

1. Revocation of all tolerances effective immediately upon issuance of the final rule with no provision for residues from prior use. (EPA estimates that today's proposal will be made final November 30, 1989, and that date is used throughout as the projected effective date for estimating the risk posed by both of the options.)

2. A phased approach which reduces and eventually revokes tolerances as residues resulting from legal applications prior to this Summer clear the market.

The risks posed by both of these options, as well as a more detailed description of Option Two, are set forth below.

The risks posed by each option are calculated on the Agency's best estimates of the actual daminozide/UDMH exposure based on data from the Uniroyal market basket survey conducted in 1986 and crop residue studies. The Agency believes it is appropriate to calculate risk based on actual and estimated average residue levels rather than the tolerance amount for a number of reasons. First, EPA has an unusually complete data base on residue levels that reflect market basket residues. Basing risk computations on the tolerance level would thus overstate

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the risk. Second, the residue levels estimated for the tolerance reduction period which this proposal would cover are for relatively short windows in time during which average residues of daminozide are unlikely to increase and in fact will probably decline further. Moreover, a number of external events (media attention to the risks of daminozide use, the apple industry trade association's recommendations against further use of daminozide, and Uniroyal's June 1989 agreement to halt sales of daminozide and recall existing stocks), while not assuring decreased exposure, probably dictate that average residues will not increase. It is unlikely, therefore, that use of actual levels will understate the risk. In fact, given EPA's current usage estimates, using actual residue levels from 1986 may overstate risk.

The Agency estimated daminozide/UDMH dietary exposure and risk for the duration of the reduced tolerance levels for the general population and the highest exposure group, non-nursing infants. The Agency estimated the lifetime dietary risks on the interim results seen in the UDMH cancer study in mice. Risks were calculated by multiplying the UDMH dietary exposure by the interim cancer potency factor (Q^*_1) for UDMH, 0.88 $(mg/kg/day)^{-1}$, and then multiplying by the period of time the tolerance would be in effect.

1. *Option One.* Option One is immediate revocation upon the date this proposed rule becomes final (estimated to be November 30, 1989). Immediate revocation should reduce exposure to daminozide to below the level of detection because all commodities above that level would be subject to seizure. Thus, all measurable risk would be eliminated. On the other hand, immediate revocation could result in a major disruption of the food market by making large numbers of legally-treated crops, particularly apples, subject to seizure. Even growers who stopped using daminozide after the 1988 season could have crops subject to seizure since daminozide's persistence may result in a significant number of commodities (and therefore processed apple products) containing detectable amounts of daminozide from previous years' treatments. The possibility for significant disruption is reflected in the results of the market basket survey conducted by Uniroyal. That study found that 56 percent of the apples and 83 percent of the processed apple products (juice and sauce) sampled contained detectable levels of daminozide. (Technical Support Document II–23 (Table 5)).

2. *Option Two.* Option Two is a phased approach which attempts to minimize making crops which were legally treated with daminozide prior to this summer subject to seizure. The timing of the reduction and revocation for each of the daminozide tolerances under this approach is discussed below. EPA has established these dates listed below based on information available to the agency on the periods of time treated crops remain in commerce either as fresh or processed commodities. EPA specifically requests comments on whether these dates are appropriate.

a. *Apples.* The Agency is proposing to lower the tolerance on apples from the current 20 ppm to 5 ppm for the period November 30, 1989 to November 30, 1990. For the following 6 months, from November 30, 1990 to May 31, 1991, the tolerance would be lowered to 1 ppm. On May 31, 1991, the tolerance would be revoked.

Treatment of apple trees with daminozide usually occurs in the Spring and Summer of the growing season. Fresh apples, harvested in the Fall, may be available for up to a year. Residues in processed apple products (juice and sauce) may be present for longer periods as such products work their way through channels of trade.

Residue data on apples from crop field trials show that most apples treated in the Spring will have residues at harvest of 5 ppm or below. Available data for most apples treated in the Summer show that residues at harvest are 10 ppm or below. EPA believes ample notice has been given to users by Agency officials at apple grower and trade association meetings that EPA would be proposing to significantly lower tolerances this summer, and that growers who did apply this summer may have crops at harvest which could be over impending lower tolerance levels. In addition, there has been informal broad-based support from growers and processors to take action on lowering the tolerance as soon as possible.

Under this Option, EPA would amend the current 20 ppm tolerance, which expires on July 31, 1990, by reducing it to 5 ppm effective November 30, 1989. The 5 ppm apple tolerance would then be lowered to 1 ppm on November 30, 1990. The 1 ppm tolerance would be in effect until May 31, 1991, and would provide tolerance coverage for fresh apple residues found in the 1990 harvest resulting from residue carryover in trees treated in the Spring of 1989. The Agency also believes any processed apple juice and sauce commodities (which should include few treated apples) made from the 1989 harvest will have cleared the marketplace by May 31, 1991 and thus will be covered by the 1 ppm tolerance.

Dietary exposure to UDMH through the consumption of apples and apple products was estimated based on the results of the 1986 market basket survey. In order to estimate the impact of the proposed 5 ppm and 1 ppm tolerances on UDMH exposure, the Agency first found the average daminozide and UDMH levels in all of the samples for the survey. The Agency then estimated UDMH exposures based on sub-samples that reflect the levels of daminozide and UDMH in the market place if the proposed tolerances are assumed. Average daminozide residues for all fresh apples found in the market basket study was 1 ppm. The average UDMH residue in these same fresh apples was 2.6 part per billion (ppb). The Agency next considered the average level of daminozide only for those samples in the survey that were less than 5 ppm to estimate the average level of daminozide if the proposed 5 ppm tolerance were in effect. The average daminozide value in the market basket survey, excluding all samples greater than 5 ppm, was 0.8 ppm. The percentage of this decline in average residue values for daminozide (20 percent), was used to estimate UDMH residues for apples as well as all apple products (adult and baby sauce and juice, dried and cooked apples) under a 5 ppm tolerance. The resultant UDMH values were used to calculate dietary exposure for the period November 30, 1989 to November 30, 1990. For the next 6 months, November 30, 1990 to May 31, 1991, a similar process for estimating UDMH residues was used. The average daminozide residues for fresh apples, excluding all values greater than 1 ppm was 0.2 ppm. The percentage of the decline in daminozide levels (80 percent) was then used to estimate the UDMH residues for all fresh apple and apple products for the 6-month period from November 30, 1990 to May 31, 1991.

A summary of average daminozide residue values used to calculate exposure for apple and apple products is presented in the following Table 3:

TABLE 3—ESTIMATES OF AVERAGE DAMINOZIDE LEVELS (IN PPM) AT THE 5 PPM AND 1 PPM TOLERANCE LEVELS

Commodity	MBS[1]	5 ppm	1ppm
apples, fresh	1.0	0.8	0.2
apple juice, baby	0.5	0.4	0.1
apple juice, adult	0.4	0.3	0.1
apple sauce, baby	0.5	0.4	0.1
apple sauce, adult	0.4	0.3	0.1
dried raw apples[2]	1.0	0.8	0.2
dried cooked apples[2]	0.5	0.4	0.1

[1] = market basket survey

[2] = dried apple products were then multiplied by an 8-fold concentration factor to determine residue for exposure estimates.

A summary of the estimated average UDMH residue levels used to calculate exposure for apple and apple products is presented in the following Table 4:

TABLE 4—ESTIMATES OF AVERAGE UDMH LEVELS (IN PPB) AT THE 5 PPM AND 1 PPM DAMINOZIDE TOLERANCE LEVELS

Commodity	MBS[1]	Daminozide levels	
		5 ppm	1 ppm
apples, fresh	2.6	2.1	0.5
apple juice, baby	33.3	26.6	6.7
apple juice, adult	14.0	11.2	2.8
apple sauce, baby	44.0	35.2	8.8
apple sauce, adult	23.9	19.1	4.8
dried raw apples[2]	20.8	16.6	4.2
dried cooked apples[2]	352.0	282.0	70.4

[1] = market basket survey

[2] = dried apple products include an 8-fold concentration factor.

Carcinogenic risk from dietary exposure to UDMH was then estimated for the 18-months' exposure under these reduced tolerances to the general population and non-nursing infants, the highest exposure group, utilizing food consumption patterns from a nationwide survey conducted by the U.S. Department of Agriculture (USDA) (White et al., *Interim Report # 1: The Construction of a Raw Agricultural Commodity Consumption Data Base,* Research Triangle Institute, 1983). The average exposure to UDMH for the general population under these reduced tolerances for 18 months is 0.009199 micrograms(μg)/ kilograms(kg)/day and the lifetime risk (i.e., any cancer response could occur at any point in the person's lifetime) is 1.7×10^{-7}. For non-nursing infants, the exposure to UDMH under these reduced tolerances for 18 months is 0.158046 μg/kg/day and the lifetime risk is 3.0×10^{-6}.

EPA's best estimate of the percent of crop treated (5 to 15 percent) is less that at the time of the market basket survey (24 percent). This estimated reduced use would result in about 40 to 80 percent lower exposure. Since usage and exposure today is probably less than the market basket survey, the risk estimation for the phaseout, based on the market basket survey probably overstates current risk. Reduced usage tends to be corroborated by some recent independent surveys, such as the one by Consumer's Union, which showed a range of daminozide values in apples of 0.1 to 2.3 ppm and average daminozide values in juice of 0.11 ppm. These estimates are significantly less than the average residues from the market basket survey (0.1 to 12.0 ppm for apples and 0.5 ppm for juice). However, in one survey average daminozide residues in apples were slightly greater than the 1.0 ppm average residue found in the market basket survey.

Unlike the market basket survey, none of the recent studies was statistically designed. Many of the surveys contained just a few samples and the limit of detection varied from study to study. Furthermore, none of the independent surveys measured for UDMH, the degradate on which the Agency's assessment is based. For these reasons, EPA has used the market basket survey acknowledging that it is a likely overestimate of interim risk.

b. *Peanuts.* The Agency is proposing to lower the tolerance on peanuts to 4 ppm until May 31, 1991. The feed additive regulation on peanut meal and the tolerances on peanut hull and hay will be revoked effective November 30, 1989.

Peanut plants are generally treated with daminozide in July and August of the growing season, although wetter than normal conditions in the Eastern United States this year may have resulted in some earlier treatments. Following harvest, roasted peanuts and peanut products may remain in channels of trade for more than a year. However, the major brands of peanut butter, the primary processed product, sold at major grocery stores usually clear the market in a month or two. The market basket survey data showed residues in roasted peanuts ranging from 0.01 to 4.43 ppm daminozide. Even though there may have been some treatments prior to this Notice, the Agency believes the market basket survey data for roasted peanuts could be used to set a level of raw peanuts. Thus, under option Two the tolerance for daminozide residues on peanuts would be reduced to 4 ppm and remain in place until May 31, 1991. The 4 ppm tolerance will cover any raw peanuts treated early in 1989 and any processed product that may remain in channels of trade.

A feed additive regulation for peanut meal (90 ppm), and tolerances for peanut hulls (10 ppm), and peanut hay (20 ppm) have also been established. Although it is not clear how long these food and feed items remain in the channels of trade, the Agency believes they should clear the market rather quickly. Therefore, the Agency is proposing that the feed additive regulation for peanut meal, and the tolerances for peanut hay, and peanut hulls be revoked effective November 30, 1989.

For purposes of estimating dietary exposure during the pendency of the peanut tolerance, the Agency did not adjust the peanut, peanut butter or peanut oil residue levels downward based on the reduced tolerance levels as was done for apples. The Agency did not make these adjustments because the risk from peanut commodities is very small. The Agency utilized the same UDMH residue levels (24.9 ppb for each) used in the Technical Support Document; these consequently are likely to represent overestimates of exposure. Total UDMH exposure from peanut and peanut products to the general population for the 18-month period under Option Two was estimated to be 0.001862 μg/kg/day with a risk of 3.5×10^{-8}. Non-nursing infants would have an estimated exposure of 0.000730 μg/kg/day with a resultant risk of 1.4×10^{-8} for the 18-month period.

c. *Sweet and sour cherries.* The Agency is proposing to lower the tolerance for sweet cherries from 30 ppm to 15 ppm; for sour cherries, the tolerance would be lowered from 55 ppm to 15 ppm. Both of these tolerances would be effective from November 30, 1989 to May 31, 1991.

Both sweet and sour cherries are treated with daminozide in the Spring of the growing season. Sweet cherries are usually consumed within a short time after harvest, although small amounts may be processed. Field trial data support reducing the sweet cherry tolerance to 15 ppm from 30 ppm on November 30, 1989. Thus, under Option Two a 15 ppm tolerance for sweet cherries would be effective from November 30, 1989 to May 31, 1991. This would allow cherries legally treated this Spring to be marketed without threat of seizure and would cover any processed sweet cherry products.

Although sour cherries are used primarily for processing and, therefore, remain in channels of trade for some time, the Agency believes the tolerance could be reduced to 15 ppm from 55 ppm (based on market basket survey results) without making any legally treated cherries subject to seizure. Under this Option, the Agency would propose that the tolerance for daminozide residues on sour cherries be reduced to 15 ppm and remain in place until May 31, 1991, in order to cover any residues in processed items such as cherry pie filling.

Most of the UDMH dietary contribution from cherries comes from cherry filling and juice (more than 90

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percent based on market basket survey data). Although reduced levels of UDMH residue could be expected from the lower tolerances, the Agency relied on the values used in the Technical Support Document for processed cherries to calculate dietary risk. The Agency did not make downward adjustments based on the reduced tolerances for reduced residue levels (as was done for residues in apple commodities) because the risk from sweet and sour cherry commodities is likely to be very small. The risk from 18-months' dietary exposure to UDMH residues in cherry products was estimated assuming no exposure to raw cherries. Total UDMH dietary exposure from cherries to the general population for the 18-month period was estimated to be 0.002847 μg/kg/day with a resultant risk of 5.4×10^{-8}. Non-nursing infants will have an estimated exposure of 0.008627 μg/kg/day with a resultant risk of 1.6×10^{-7} for the 18-month period.

d. *Grapes, peaches, pears and nectarines.* The Agency has only field trial data for the commodities grapes, peaches, pears and nectarines on which to base proposed tolerance reductions. Usage information indicates that historically very little daminozide has been used on these commodities and use in the last year has been almost nil. Crop field trial data indicate that daminozide tolerances can be reduced in November 1989 by approximately 75 percent without posing the risk of seizure to any crop treated in the Spring of 1989. To allow for the minimal use that may have occurred in 1989, the Agency is proposing that the tolerances for these commodities be reduced to the following levels with an expiration date of May 31, 1991:

Grapes—2.5 ppm
Pears—5 ppm
Peaches—7.5 ppm
Nectarines—7.5 ppm.

In estimating the dietary risk associated with these reduced tolerances, the Agency assumed that there will be no dietary exposure to UDMH residues in domestic fresh commodities after November 1989 since no treated fresh fruit would remain in commerce after that date and no carryover residue from prior years' treatment are expected. Because of a lack of data, the Agency did not reduce in its risk calculation the expected UDMH residue levels in the processed forms of these commodities and the values used (canned pears (11.9 ppb), canned peaches (21.3 ppb), grapes juice and preserves (0.2 ppb)) are the same as those in the Daminozide Technical Support Document. Thus, the actual dietary exposure and risk is likely to be lower. Combined dietary risk from exposure to processed products containing these four commodities for the duration of the reduced tolerance would be 10^{-7} to 10^{-8} for the general population and non-nursing infants.

e. *Tomatoes.* The Agency is proposing to revoke the tolerance for fresh tomatoes, which is 0.5 ppm, effective November 30, 1989. In addition, the food and feed additive regulations which currently exist for processed tomato products and dried tomato pomace (3.0 ppm and 10 ppm, respectively) will be revoked at the same time.

Daminozide is registered for use only on tomato transplants. The Agency's usage information indicates that only tomato transplants which are intended for the homeowner market are treated. Thus, it is very unlikely that there will be daminozide-UDMH exposure from tomato pomace used as animal feed. Although there may be exposure to homeowners who can or process their own tomatoes, a tolerance or food additive regulation is not necessary after the 1989 growing season is completed. Therefore, under Option Two the existing tolerance for raw tomatoes as well as the food additive regulation for processed tomato products and feed additive regulation for tomato pomace would be revoked effective November 30, 1989.

No dietary exposure or carcinogenic risk related to UDMH residues in tomatoes, tomato products, or tomato pomace was estimated since under Option Two the tolerance would be revoked in November.

f. *Meat, milk, eggs and meat by-products.* Under Option Two, the Agency is proposing to revoke the tolerances for meat, milk, eggs and meat by-products on November 30, 1989.

Animal feeding studies show that residues from treated crops used as animal feed do transfer to meat, milk and eggs, but EPA believes that any residues would be extremely small because of the anticipated reduction in treated apples this year and the correspondingly lower number of treated apples that may be processed and used as apple pomace to feed livestock. Similar reduced residues in peanut by-products used as animal feed is also anticipated. Theoretical residues for meat, meat by-products, milk and eggs accounted for more than half of the calculated risk in the Preliminary Determination to Cancel the Food Uses of Daminozide. Under Option Two the tolerance for meat, milk, eggs and meat by-products would be revoked effective November 30, 1989.

A list of the proposed tolerance levels for daminozide under Option Two, the estimated risks from these levels and their corresponding dates of expiration are presented in the following Table 5:

TABLE 5—COMPARISON OF THE CURRENT AND PROPOSED DAMINOZIDE TOLERANCES

Commodity	Current tolerance	Proposed tolerance	Effective date	Expiration date	Est. risk general pop.	Est. risk non-nursing
1. Apples	20 ppm	5 ppm	11/89	11/90	1.5×10^{-7}	2.6×10^{-6}
	(expires 7/90)	1 ppm	11/90	5/91	1.9×10^{-8}	3.3×10^{-7}
2. Peanuts	30 ppm	4 ppm	11/89	5/91	3.5×10^{-8}	1.4×10^{-6}
Peanut meal	90 ppm	none *	11/89			
Peanuts, hay	20 ppm	none *	11/89			
Peanuts, hulls	10 ppm	none *	11/89			
3. Cherries, sweet	30 ppm	15 ppm	11/89	5/91	5.4×10^{-8}	1.6×10^{-7}
Cherries, sour	55 ppm					
4. Grapes	10 ppm	2.5 ppm	11/89	5/91	(*)	(*)
5. Peaches	30 ppm	7.5 ppm	11/89	5/91	(*)	(*)
6. Pears	20 ppm	5 ppm	11/89	5/91	(*)	(*)
7. Nectarines	30 ppm	7.5 ppm	11/89	5/91	(*)	(*)
8. Tomatoes	0.5 ppm	none *	11/89			
Processed tomatoes	3.0 ppm	none *	11/89			
Tomato pomace	10 ppm	none *	11/89			
9. Meat, milk and eggs	0.02–2.0 ppm	none *	11/89			

* = revocation effective November 30, 1989.
* = combined risk of exposure to grapes, peaches, pears and nectarines ranges from 10^{-7} to 10^{-8} for the general population and non-nursing infants.

The aggregate dietary exposure from all treated commodities to the general population for the duration of the 18-month reduced tolerance period is 0.014268 ug/kg/day with a resultant risk of 2.7×10^{-7}. The aggregate dietary exposure from all treated commodities to non-nursing infants is 0.169471 ug/kg/day with a resultant risk of 3.2×10^{-6} for this period.

D. Risk Comparison Between the Two Options

To compare fully the risk of each of the Options it is necessary to consider the period of time from February 1, 1989, the day the apple tolerance was extended, until November 30, 1989. On February 1, 1989, when the Agency extended the apple tolerance to July 31, 1990, it was estimated that the excess lifetime risk for the tolerance extension period (18 months) would be 9.6×10^{-7} for the general population and 9×10^{-6} lifetime risk for non-nursing infants. Ten of the estimated 18 months (February–November 1989) will have passed by the time the reduced tolerances are effective. Risk for this 10-month period will be 5.0×10^{-7} for the general population and 5.0×10^{-6} for non-nursing infants.

Further, the risk estimates for the period from November 30, 1989 to May 31, 1991 must be adjusted to take into account the metabolic conversion of daminozide to UDMH in the digestive system. Based on the metabolism studies discussed in the Daminozide Technical Support Document, resultant risk from metabolic formation of UDMH was increased approximately 25 percent. Without considering metabolic conversion, risk as cited in the Technical Support Document was estimated to be 4.1×10^{-6}. The consideration of metabolic conversion increased the risk to 4.9×10^{-6}. The estimated risk in the 1989 February tolerance extension did not consider metabolic conversion. However, in that document exposure was slightly over-estimated. When reduced exposure and metabolic conversion are considered, the risk numbers are about the same as shown in the tolerance extension document.

Under Option One, the cumulative risk is simply the risk for the period from February 1, 1989 to November 30, 1989, including risk from metabolic conversion. Thus, the cumulative risk under Option One for the general population is 5.0×10^{-7} and the cumulative risk for non-nursing infants is 5.0×10^{-6}.

Under Option Two, the cumulative risk for the general population is calculated as follows: from February 1, 1989 to November 30, 1989 the risk would be 5.0×10^{-7}, including metabolic conversion. From November 30, 1989 to May 31, 1991 the risk based on the reduced tolerance would be 2.7×10^{-7} and the risk from metabolic conversion in this period would be 6.8×10^{-8} to give a total risk of 8.4×10^{-7}. The cumulative risk to non-nursing infants from February 1, 1989 to November 30, 1989 (5.0×10^{-6} including metabolic conversion), and from November 30, 1989 to May 31, 1991 (3.2×10^{-6}), including risk from metabolic conversion (8.0×10^{-7}), is 9.0×10^{-6}. Table 6 compares the risks between the two options:

TABLE 6.—COMPARISON OF RISK BETWEEN OPTION I AND OPTION II

	Risk
Option I (No tolerance after Nov. 30, 1989)	
General Population	5.0×10^{-7}
Non-Nursing Infants	5.0×10^{-6}
Option II (Phased approach)	
General Population	8.4×10^{-7}
Non-Nursing Infants	9.0×10^{-6}

V. Option Selection

Based on the available information and data, EPA believes that only Option Two (phased reduction) is a preferred approach. EPA does not view the differences in risk reduction between the two options as significant. On the other hand, Option One (immediate revocation) would have a significantly greater market disruption effect than Option Two. For these reasons, EPA is proposing Option Two, but is soliciting comment on both options.

VI. Public Comment Procedures

Any person who has registered or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains daminozide may request within 30 days after publication of this document in the **Federal Register** that this proposal to amend the daminozide tolerances listed at 40 CFR 180.246 be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA). No such procedure for an advisory committee is available under the FFDCA for the food and feed additive regulations listed at 40 CFR 185.1550 and 186.1550, respectively, which this document proposes to revoke.

Interested persons are invited to submit written comments on this proposal to amend all daminozide tolerances and food/feed additive regulations listed at 40 CFR 180.246, 185.1550, and 186.1550 for residues of daminozide. Comments must bear a notation indicating the document control number, (OPP–300202). Three copies of the comments should be submitted to facilitate the work of the Agency in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is set forth in the Preliminary Determination and Draft Cancellation Notice on daminozide (54 FR 22558), the Daminozide Technical Support Document, and this Notice.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

Because EPA anticipates that it will issue a notice of cancellation for the registrations of daminozide with food uses in the Spring of 1990, and few treated foodstuffs will contain levels of daminozide in violation of the reduced tolerance levels, the Agency anticipates that little or no economic impact would occur at any level of business enterprise if these tolerances were revoked.

Accordingly, I certify that this

PART 180—[AMENDED]

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Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. (Section 408(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346(m))).

List of Subjects in 40 CFR Parts 180, 185 and 186

Administrative practice and procedure, Agricultural commodities, Animal feeds, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Date: September 1, 1989.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR parts 180, 185 and 186 be amended as follows:

1. In part 180:

PART 180—[AMENDED]

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.246 is revised to read as follows:

§ 180.246 Daminozide; tolerances for residues.

Interim tolerances reflecting both daminozide and UDMH residues are established for residues of the plant growth regulator daminozide (butanedioic acid mono (2,2-dimethylhydrazide) in or on the following raw agricultural commodities and processed commodities:

Commodities	Parts per million	Expiration date
Apples	5.0	Nov. 30, 1990.
	1.0	May 31, 1991.
Cherries, sour	15.0	Do.
Cherries, sweet	15.0	Do.
Grapes	2.5	Do.
Nectarines	7.5	Do.
Peaches	7.5	Do.
Peanuts	4.0	Do.
Pears	5.0	Do.

2. In part 185:

PART 185—[AMENDED]

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 185.1550 [Removed]

b. By removing § 185.1550.

3. In part 186:

PART 186—[AMENDED]

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 186.1550 [Removed]

b. By removing § 186.1550.

[FR Doc. 89-21162 Filed 9-6-89; 8:45 am]

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Presidential Documents

Title 3—

The President

Proclamation 6015 of September 5, 1989

National Check-Up Week, 1989

By the President of the United States of America

A Proclamation

Many of the leading causes of death and disability in the United States are diseases that could be treated effectively—if detected early. That is why periodic medical examinations are important for all Americans.

Heart disease, which claims the lives of more than 500,000 Americans each year and represents the leading cause of death in our country, can be reduced in severity or even prevented through such measures as the control of high blood pressure and the maintenance of a healthy diet. In fact, improved treatment for high blood pressure has reduced the frequency of strokes in the United States to one-half the rate recorded during the early 1970's. The first step in identifying and treating such a health risk as high blood pressure is often a routine medical check-up.

Similarly, medical science has shown that the early detection of some forms of cancer—long before symptoms develop—can save lives. For example, deaths in this country from cancer of the cervix have fallen dramatically since 1950, due, in part, to routine screening tests performed by doctors. The prognosis for victims of other forms of cancer, such as breast cancer, can also be improved when the disease is detected early through periodic medical check-ups.

In addition to the early detection of illness, regular medical check-ups play an important role in disease prevention. For example, highly effective vaccines administered to young children have led to the virtual elimination of certain childhood diseases, such as polio, that were common afflictions only one generation ago.

In recent years, it has become increasingly clear that many diseases and other health problems can be prevented simply through changes in personal behavior. Refraining from smoking, improving one's diet, safe sexual practices, and avoidance of drug and alcohol abuse are some of the many measures that can help reduce one's risk of illness and injury. The medical check-up provides an important opportunity for the doctor and patient to discuss these behaviors. It is an ideal setting for the physician to assess the individual risk profile of each patient and to provide him or her with useful health care information. It also allows the physician and patient to work together in developing an effective health care regimen that can be applied at home and at work, long after the visit is over. Periodic check-ups strengthen the doctor-patient relationship and allow physicians to monitor carefully their patients' health.

To recognize the importance of periodic medical check-ups, the Congress, by Senate Joint Resolution 95, has designated the week beginning September 10, 1989, as "National Check-Up Week," and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of September 10, 1989, as "National Check-Up Week." I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of September, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

G Bush

[FR Doc. 89-21307
Filed 9-6-89; 2:38 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[Docket No. PY-89-004]

Office of Management and Budget Information Collection Control Numbers; Miscellaneous Corrections

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the mandatory regulations for the inspection of eggs and egg products. Its primary purpose is to update the information collection requirements and the control numbers assigned by the Office of Management and Budget (OMB). In addition, this amendment also corrects a typographical error.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 3944, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202/447-3506).

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this amendment is merely administrative and is not subject to the requirements of Executive Order 12291. It involves only the identification of information collection requirements and display of OMB control numbers pursuant to 5 CFR part 1320 and the correction of a typographical error.

Administrative Procedure Act

Because of its technical non-substantive nature, this amendment is not subject to the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553) nor do the provisions of section 553(d) of that Act apply. Therefore, the Department finds that notice and opportunity for comment are unnecessary and that, upon good cause, this amendment should be effective on the date of publication of this rule in the **Federal Register**.

Regulatory Flexibility Act

For these same reasons, an analysis or certification under the Regulatory Flexibility Act is not required.

Paperwork Reduction Act

This rulemaking does not require an additional collection of information from the public under the Paperwork Reduction Act of 1980.

Background

The Paperwork Reduction Act of 1980 was designed both "to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons" and "to maximize the usefulness of information collected by the Federal government." On March 31, 1983, OMB issued a final rule, 5 CFR part 1320, implementing the provisions of the Paperwork Reduction Act of 1980.

Among other provisions, the rule requires the display of OMB control numbers assigned to information collection requirements contained in Agency rules. The control numbers provide a simple and effective way for the public to tell whether a paperwork burden an agency seeks to impose has been cleared as required.

Each information collection requirement in the regulations is reviewed and evaluated periodically. In addition, every 3 years the Agency submits such requirements to OMB for review and extension of approval. Current OMB approval of the information collection requirements would have expired March 31, 1989. Prior to that, the Agency submitted a revised clearance docket to OMB. A notice of the OMB review was published February 2, 1989 (54 FR 5255), and, subsequently, the clearance docket for 7 CFR part 59 was approved by OMB. Therefore, § 59.18 of 7 CFR part 59 is updated by adding section numbers not previously displayed to the list of sections with information collection requirements and deleting one section number inadvertently displayed as containing an information collection requirement.

During a previous redesignation of some of the paragraphs in § 59.5, the wrong letter designation was inadvertently referred to in one of the paragraphs. Therefore, § 59.5(b)(4) of 7 CFR part 59 is updated by correcting the designation in the text from (a)(2), (3), or (4), to (b)(2), (3), or (4).

The Agency has determined that this amendment is not substantive. It merely provides a convenient and current listing of the information collection requirements and OMB control numbers in accordance with 5 CFR part 1320 and corrects a typographical error.

List of Subjects in 7 CFR Part 59

Egg products, Mandatory inspection service, Shell eggs.

For reasons set out in the preamble and under authority contained in the Egg Products Inspection Act (21 U.S.C. 1031-1056), title 7, part 59 of the Code of Federal Regulations, is amended as follows:

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS

1. The authority citation for Part 59 continues to read as follows:

Authority: Secs. 2-28 of the Egg Products Inspection Act (84 Stat. 1620-1635; 21 U.S.C. 1031-1056).

2. Section 59.5 is amended by revising paragraph (b)(4) of the term "Adulterated" to read as follows:

§ 59.5 Terms defined.

* * * * *

Adulterated * * *

(4) If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not otherwise deemed adulterated under paragraph (b)(2), (3), or (4) of this definition shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the Secretary in official plants;

* * * * *

3. Section 59.18 is amended by revising paragraph (b) to read as follows:

§ 59.18 OMB control numbers assigned pursuant to the Paperwork Reduction Act

* * * * *

(b) *Display.*

7 CFR section where identified and described	Current OMB control number
§ 59.10	0581-0113
§ 59.13	0581-0113
§ 59.22	0581-0113
§ 59.28(a)(1)	0581-0113
§ 59.40	0581-0113
§ 59.45(c)(1)	0581-0113
§ 59.45(c)(3)	0581-0113
§ 59.45(d)	0581-0113
§ 59.110(a)	0581-0113
§ 59.112	0581-0113
§ 59.122	0581-0113
§ 59.124	0581-0113
§ 59.126	0581-0113
§ 59.128(a)	0581-0113
§ 59.140	0581-0113
§ 59.144	0581-0113
§ 59.146(b)	0581-0113
§ 59.146(d)	0581-0113
§ 59.155	0581-0113
§ 59.160(c)	0581-0113
§ 59.160(d)	0581-0113
§ 59.160(f)(3)	0581-0113
§ 59.160(f)(4)	0581-0113
§ 59.200(a)	0581-0113
§ 59.200(b)	0581-0113
§ 59.220	0581-0113
§ 59.240	0581-0113
§ 59.320	0581-0113
§ 59.402(a)	0581-0113
§ 59.411(a)	0581-0113
§ 59.411(b)	0581-0113
§ 59.411(e)	0581-0113
§ 59.411(f)	0581-0113
§ 59.418(c)	0581-0113
§ 59.430(b)	0581-0113
§ 59.435(b)	0581-0113
§ 59.435(c)	0581-0113
§ 59.440(c)	0581-0113
§ 59.500(h)	0581-0113
§ 59.504(c)	0581-0113
§ 59.504(d)	0581-0113
§ 59.504(h)	0581-0113
§ 59.504(k)	0581-0113
§ 59.504(o)(1)	0581-0113
§ 59.504(o)(2)	0581-0113
§ 59.504(o)(3)(i)	0581-0113
§ 59.504(o)(3)(iii)	0581-0113
§ 59.504(o)(3)(iv)	0581-0113
§ 59.504(o)(3)(v)	0581-0113
§ 59.515(a)(8)	0581-0113
§ 59.520(h)	0581-0113
§ 59.522(f)	0581-0113
§ 59.522(x)	0581-0113
§ 59.522(aa)(2)	0581-0113
§ 59.530(d)	0581-0113
§ 59.534(a)	0581-0113
§ 59.544(b)	0581-0113
§ 59.544(c)	0581-0113
§ 59.544(d)	0581-0113
§ 59.552(a)(3)	0581-0113
§ 59.552(b)(1)(i)	0581-0113
§ 59.552(b)(2)	0581-0113
§ 59.570(c)	0581-0113
§ 59.575(b)(3)	0581-0113
§ 59.575(d)	0581-0113
§ 59.580(c)	0581-0113
§ 59.600	0581-0113
§ 59.610(a)	0581-0113
§ 59.620	0581-0113
§ 59.640(b)(1)	0581-0113
§ 59.680(a)	0581-0113
§ 59.690	0581-0113
§ 59.720(a)(2)	0581-0113
§ 59.720(a)(3)	0581-0113
§ 59.720(a)(4)	0581-0113
§ 59.720(c)	0581-0113
§ 59.760	0581-0113
§ 59.800	0581-0113
§ 59.840	0581-0113
§ 59.905(a)	0581-0113
§ 59.915(a)	0581-0113
§ 59.915(b)	0581-0113
§ 59.920	0581-0113
§ 59.930(f)	0581-0113
§ 59.950(a)	0581-0113
§ 59.960	0581-0113
§ 59.965	0581-0113

Done at Washington, DC, on August 30, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-21110 Filed 9-7-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 905

[Docket No. AO-85-A9; FV-88-102]

Oranges, Grapefruit, Tangerines and Tangelos Grown in Florida; Order Amending the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal marketing agreement and order for Florida citrus. The amendments: (1) Classify Canada and Mexico as export markets rather than domestic markets as they are now; (2) define the Interior District and the Indian River District in the marketing order; (3) authorize changing eligibility requirements for grower members on the Citrus Administrative Committee; (4) authorize the committee to borrow money to fund committee operations in emergency situations; and (5) provide for the conduct of periodic referenda on continuance of the order every six years. These changes are intended to improve the administration and functioning of the marketing agreement and order.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: 202-475-3918, or John R. Toth, Officer-in-Charge, Southeast Marketing Field Office, Florida Citrus Building, 500 3rd Street, NW., P.O. Box 2276, Winter Haven, Florida 33883-2276, telephone: 813-299-4770.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued January 7, 1988, and published in the **Federal Register** (53 FR 898, January 14, 1988); Recommended Decision issued February 3, 1989, and published in the **Federal Register** (54 FR 6136, February 8, 1989); and Secretary's Decision and Referendum Order issued on June 1, 1989, and published in the **Federal Register** (54 FR 24558, June 8, 1989).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement

This final rule was formulated on the record of a public hearing held at Lakeland, Florida on February 17, 1988, to consider the proposed further amendment of Marketing Agreement and Order No. 905 (7 CFR part 905) regulating the handling of oranges, grapefruits, tangerines and tangelos grown in Florida, hereinafter referred to collectively as the order. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900).

The Notice of Hearing contained several amendment proposals submitted by the Citrus Administrative Committee (committee), which locally administers the order. The notice also included a proposal by the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS), on February 3, 1989, filed with the Hearing Clerk, U.S. Department of Agriculture, a recommended decision containing a notice of the opportunity to file written exceptions thereto by March 10, 1989. Five exceptions were filed and were discussed and ruled upon in the Secretary's decision.

The Secretary's decision was issued on June 1, 1989, directing that a referendum be conducted during the period June 26 through July 10, 1989, among growers of Florida oranges, grapefruits, tangerines and tangelos to determine whether they favored the proposed amendments to the order. This final order includes these amendments,

all of which received the requisite approval of two-thirds by number of the growers who voted in the referendum or growers representing two-thirds of the volume of citrus fruit voted in the referendum. These amendments: (1) Classify Canada and Mexico as export markets rather than domestic markets as they are now; (2) define the Interior District and the Indian River District in the marketing order; (3) authorize changes in eligibility requirements for grower members on the committee; (4) authorize the committee to borrow money to fund committee operations in emergency situations; and (5) provide for the conduct of periodic referenda on continuance of the order every six years. The Department made necessary conforming changes in the order. The marketing agreement was signed by handlers who, during the representative period, handled not less than 50 percent of the volume of citrus fruit covered by the marketing order.

Small Business Considerations

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. As stated in the Notice of Hearing, interested persons were invited to present evidence at the hearing on the probable impact of the regulatory and informational requirements of the amendment proposals on small businesses for the purposes of the RFA. In that regard, such evidence was considered in arriving at the findings and conclusions contained in the Recommended Decision and in the Secretary's Decision. Those findings and conclusions are incorporated herein.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are normally brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural growers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000. Small agricultural service firms, which include shippers under the marketing agreement and order, are defined as those with gross annual revenues of less than $3,500,000.

There are about 100 shippers subject to regulation under the order for oranges, grapefruits, tangerines, and tangelos grown in Florida. A minority of these shippers may be classified as small entities. In addition, there are about 13,000 orange, grapefruit, tangerine and tangelo growers in Florida. The majority of these growers may be classified as small entities.

The amendments to the marketing order include classifying Canada and Mexico as export markets rather than domestic markets as currently provided. Such a change is expected to result in expanded Florida citrus sales by permitting shipment of the grades and sizes of fruit more consistent with the demand and preferences of the consumers in those markets, thereby benefitting Florida citrus growers and shippers. This change will not adversely affect small entities.

The amendment to make the Interior District synonymous with Regulation Area I and the Indian River District synonymous with Regulation Area II will facilitate the marketing of citrus through the use of commonly used terms, thus benefitting growers and shippers. This change will not adversely affect small entities.

The amendment, which authorizes the committee with the approval of the Secretary, to change eligibility requirements for grower members and grower alternate members to serve on the committee, provides a means to increase the number of qualified growers who could serve on the committee. This change has no adverse affect on small entities.

The amendment to permit the committee to borrow money in emergency situations provides the committee with additional flexibility in financing committee operations during such emergency situations, and thereby will benefit growers and shippers who operate under the order. There will be no adverse effect on small entities due to the change.

The amendment to require a continuance referendum every six years provides growers the opportunity to periodically vote on whether the order should be continued. This change does not adversely affect small entities.

All of the amendments set forth in this document are designed to enhance the administration, operation and functioning of the order and should result in an overall positive economic impact on small businesses.

The amendments to the order have no significant impact on the recordkeeping and reporting burdens of the affected industry. Moreover, the amendments (including referenda every six years) do not change the reporting and recordkeeping requirements under the Paperwork Reduction Act of 1980, which have been previously approved by the Office of Management and Budget (OMB) (Approval No. 0581-0094).

Order Amending The Order, As Amended, Regulating The Handling Of Oranges, Grapefruit, Tangerines, And Tangelos Grown In Florida

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon proposed further amendment of the marketing agreement, as amended, and Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida.

Upon the Basis of the Record it is Found That

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of fresh oranges, grapefruit, tangerines, and tangelos grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to

subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as amended, and as hereby further amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of fresh oranges, grapefruit, tangerines, and tangelos grown in the production area; and

(5) All handling of fresh oranges, grapefruit, tangerines, and tangelos grown in the production area defined in the order is in the current of interstate of foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Additional Findings

It is necessary and in the public interest to make this final order amending the order effective on the date of publication in the Federal Register. Any delay beyond that date would interfere with the effective functioning and administration of the order. This final order authorizes changes in the functioning of the order, which need to be made effective as soon as possible. The specified effective date is necessary to meet this objective. This final order classifies Canada and Mexico as export markets for the purpose of issuing handling regulations under the order for citrus fruit. The 1989–90 Florida citrus shipping season begins in early September and this final order should be in effect as soon as possible, so that the handling regulations effective under the order can be changed to reflect the applicable amendatory changes.

In view of the foregoing, it is found and determined that good cause exists for making this amendatory order effective upon publication in the Federal Register, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after publication in the Federal Register (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) Determinations

It is hereby determined that:

(1) The "Marketing Agreement, As Further Amended, Regulating The Handling Of Oranges, Grapefruit, Tangerines, And Tangelos Grown In Florida" upon which the aforesaid public hearing was held has been signed by shippers (excluding cooperative associations of growers who are not engaged in processing, distributing, or shipping covered by the said order, as amended, and as hereby further amended) who, during the period May 1, 1988, through April 30, 1989, handled not less than 50 percent of the volume of such oranges, grapefruit, tangerines, and tangelos covered by the said order, as amended, and as hereby further amended; and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the growers who participated in a referendum on the question of its approval and who, during the period May 1, 1988, through April 30, 1989, (which has been deemed to be a representative period), have been engaged within the in the production area in the State of Florida in the production of oranges, grapefruit, tangerines, and tangelos for market, such growers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling

It is therefore ordered, That, on and after the effective date hereof, the handling of oranges, grapefruit, tangerines, and tangelos produced in the production area in the State of Florida shall be in conformity to and in compliance with the terms and conditions of the said order, as hereby amended, as follows:

The provisions of the proposed marketing agreement and order, amending the order, contained in the Recommended Decision issued by the Administrator on February 3, 1989, and published in the Federal Register (54 FR 6136, February 8, 1989); and Secretary's Decision and Referendum Order issued on June 1, 1989, and published in the Federal Register (54 FR 24558, June 8, 1989) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

List of Subjects in 7 CFR Part 905

Florida, Grapefruit, Marketing agreements and orders, Oranges, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: These sections will appear in the annual Code of Federal Regulations.

2. Section 905.9 is revised, and § 905.52 is amended by revising paragraphs (a)(3), (a)(4), (a)(5), and (d) to read as follows:

§ 905.9 Handle or ship.

Handle or ship means:

(a) To sell, consign, deliver, or transport fruit, or in any other way to place fruit in the current of commerce between the production area and any point outside thereof in the 48 contiguous States and the District of Columbia of the United States; and

(b) To export fruit from any point in the 48 contiguous States and the District of Columbia of the United States to any destination.

§ 905.52 Issuance of regulations.

(a) * * *

(3) Limit the shipment of the total quantity of any variety by prohibiting the shipment thereof: Provided, that no such prohibition shall apply to exports or be effective during any fiscal period with respect to any variety other than for one period not exceeding five days during the week in which Thanksgiving Day occurs, and for not more than two periods not exceeding a total of 14 days during the period December 20 to January 20, both dates inclusive.

(4) Provide that exports of any variety shall be limited to grades and sizes different from the grade and size limitations applicable to shipments of such variety in the 48 contiguous States and the District of Columbia of the United States, and specify condition requirements for such variety; and

(5) Fix the size, capacity, weight, dimensions, marking, or pack of the container or containers which may be used in the shipment of fruit for export: Provided, that such regulation shall not authorize the use of any container which is prohibited for use for fruit under the provisions of Chapter 601 of the Florida Statutes and regulations effective thereunder.

* * * * *

(d) Whenever any variety is regulated pursuant to paragraph (a)(3) of this section, no such regulation shall be deemed to limit the right of any person to sell, contract to sell, or export such variety but no handler shall otherwise ship any fruit of such variety which was prepared for market during the effective period of such regulation.

3. Section 905.15 is revised and § 905.16 is amended by revising the introductory text to read as follows:

§ 905.15 Regulation Area I.

Regulation Area I is defined as the "Interior District", and shall include all that part of the production area not included in Regulation Area II.

§ 905.16 Regulation Area II.

Regulation Area II is defined as the "Indian River District", and shall include that part of the State of Florida particularly described as follows:

* * * * *

4. Section 905.19 is revised to read as follows:

§ 905.19 Establishment and membership.

(a) There is hereby established a Citrus Administrative Committee consisting of at least eight but not more than nine grower members, and eight shipper members. Grower members shall be persons who are not shippers or employees of shippers: Provided, that the committee, with the approval of the Secretary, may establish alternative qualifications for such grower members. Shipper members shall be shippers or employees of shippers. The committee may be increased by one non-industry member nominated by the committee and selected by the Secretary. The committee, with approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the non-industry member.

(b) Each member shall have an alternate who shall have the same qualifications as the member for whom this person is an alternate.

5. Section 905.41 is amended by adding a new paragraph (c) to read as follows:

§ 905.41 Assessments.

* * * * *

(c) In the case of an extreme emergency, the committee may borrow money on a short term basis to provide funds for the administration of this part. Any such borrowed money shall only be used to meet the committee's current financial obligations, and the committee shall repay all such borrowed money by the end of the next fiscal period from assessment income.

6. Section 905.83 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 905.83 Termination.

* * * * *

(c) The Secretary shall conduct a referendum six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether continuance of this part is favored by producers. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by producers who during a representative period, determined by the Secretary, have been engaged in the production for market of the fruit in the production area. Such termination shall be announced on or before July 31 of the fiscal period.

* * * * *

Dated: September 1, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Service.

[FR Doc. 89–21113 Filed 9–7–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 922

[Docket No. FV-89-059FR]

Apricots Grown in Designated Counties in Washington; Temporary Suspension of the Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule an interim final rule which suspended, for the 1989 season only, the minimum grade requirement (Washington No. 1) for fresh shipments of apricots grown in Washington. That action was designed to enable handlers to ship more fruit in fresh market channels, taking into consideration the abnormal growing conditions experienced by the Washington apricot industry this season. That action was also designed to improve returns to producers.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 922, both as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 62 apricot handlers subject to regulation under the Washington apricot marketing order. In addition, there are about 190 apricot producers in Washington. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

The Washington Apricot Marketing Committee (committee), which locally administers this marketing order, met on May 24, 1989, and unanimously recommended suspending the minimum grade requirement (Washington No. 1) for fresh shipments of apricots grown in Washington. The committee reported that the 1989 season apricot crop was severely damaged by a freeze last winter and later by hail storms. The committee estimated that only 1,100 tons of apricots would be shipped fresh during the 1989 season, even with the grade requirements suspended as requested. This amount is less than 25 percent of last season's fresh shipments of 4,405 tons. Only an estimated 700 tons of apricots would grade Washington No. 1 this season, since much of the fruit is misshapen and scarred from the hail.

The committee meets prior to and during each season to review the handling requirements for Washington apricots, which are in effect on a continuous basis. Committee meetings are open to the public, and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

An interim final rule amending paragraph (a)(1) of § 922.321 (7 CFR 922.321) was issued June 19, 1989, and published in the Federal Register (54 FR 26185, June 22, 1989). The interim final rule temporarily suspended the minimum grade requirement (Washington No. 1) for fresh shipments of apricots for the 1989 season only. That rule provided that interested persons could file written comments through July 24, 1989. No comments were received.

The suspension enables handlers to ship a larger portion of their crop to the fresh market this season, taking into account the abnormal growing and crop conditions. This is increasing fresh shipments to meet consumer needs and improve returns to producers.

The grade requirement of Washington No. 1 will resume on April 1, 1990, for the 1990 and future seasons, based upon the grade and quality characteristics of Washington apricots during normal growing and shipping seasons.

The color and minimum size requirements for all varieties of apricots and the maturity requirements for the Moorpark variety specified in § 922.321 were not changed by the interim final rule. That section provided that, with the exception of exempt shipments, all apricots shipped must be reasonably uniform in color and be at least 1⅝ inches in diameter, except for the Blenheim, Blenril, and Tilton varieties which must be at least 1¼ inches in diameter. That section provides that the Moorpark variety in open containers must be generally well matured.

The Department's view is that the impact of the suspension upon producers and handlers is beneficial because it enables handlers to ship fresh apricots consistent with 1989 season growing conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that this finalization of the interim final rule, as published in the Federal Register (54 FR 26185, June 22, 1989), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action maintains suspended grade requirements for Washington apricots; (2) Washington apricot handlers are aware of the suspension, which was unanimously recommended by the committee at a public meeting; (3) shipment of the 1989 season Washington apricot crop is currently underway; (4) the interim final rule provided a 30-day comment period, and no comments were received; and (5) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements and orders, Washington.

For the reasons set forth in the preamble, *7 CFR part 922* is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

The authority citation for 7 CFR Part 922 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; *7 U.S.C. 601–674.*

2. Accordingly, the interim final rule amending the provisions of § 922.321, which was published in the Federal Register (54 FR 26165, June 22, 1989), is adopted as a final rule without change.

Note: This section will not appear in the Code of Federal Regulations.

Dated: September 1, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–21111 Filed 9–7–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 929

[FV-89-077 FR]

Expenses and Assessment Rate for Cranberries Grown in Massachusetts, et al.

AGENCY: Agricultural Marketing Service.

ACTION: Final Rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 929 for the 1989–90 fiscal year established under the cranberry marketing order. This action is needed for the Cranberry Marketing Committee (Committee), the agency responsible for the local administration of the order, to incur operating expenses during the 1989–90 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: September 1, 1989, through August 31, 1990.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090-6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administation (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of cranberry handlers and producers may be classified as small entities.

The cranberry marketing order requires that an assessment rate for a particular fiscal year shall apply to all assessable cranberries handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of cranberries. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses for the 1989–90 fiscal year which begins on September 1, 1989.

The Committee conducted a mail vote and recommended 1989–90 marketing order expenditures of $172,602 and an assessment rate of $0.037 per 100-pound barrel of cranberries shipped. In comparison, 1988–89 marketing year budgeted expenditures were $198,000, and the assessment rate was $0.055 per 100-pound barrel of cranberries shipped. Assessment income for 1989–90 is estimated at $148,555 based on a crop of 4,015,000 barrels of cranberries. Interest income expected to be received is estimated at $4,047, bringing total income to $152,602. Adequate reserve funds are available to meet the expected deficit in assessment income.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 929.230 and is based on Committee recommendations and other information. A proposed rule was published in the August 2, 1989, issue of the Federal Register (54 FR 31844). Comments on the proposed rule were invited from interested persons until August 14, 1989. No comments were received.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 929

Connecticut, Cranberries, Long Island in the State of New York, Marketing agreements and orders, Massachusetts, Michigan, Minnesota, New Jersey, Oregon, Rhode Island, Washington, and Wisconsin.

For the reasons set forth in the preamble, 7 CFR part 929 is revised as follows:

PART 929—CRANBERRIES GROWN IN MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 929.230 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 929.230 Expenses and assessment rate.

Expenses of $172,602 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.037 per 100 pound barrel of assessable cranberries is established for the fiscal year ending August 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: September 1, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–21114 Filed 9–7–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 998

[Docket No. FV-89-040]

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Relaxation of Outgoing Quality Regulations and Changes in the Terms and Conditions of Indemnification for 1989 Crop Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule which changed the terms and conditions of indemnification and relaxed outgoing quality regulations for 1989 crop peanuts regulated under Marketing Agreement No. 146. Two changes were made in the outgoing quality regulations in effect last season. The screen sizes applicable to whole kernels in lots of split peanuts were changed to those in effect for 1987 crop peanuts and the tolerances for sound whole kernels and split and broken kernels falling through specified screens in lots of No. 2 Virginia peanuts were increased. These changes were intended to lessen the loss of sound edible splits and whole kernels and reduce handler milling costs. No adverse impact on product quality is expected as a result of these relaxations. In addition to these changes, the printed outgoing quality regulations for the numerous types and grade categories of shelled peanuts were changed from a narrative to a tabular format to make the requirements easier to read and understand. With regard to the change in the terms and conditions of indemnification, the cut-off date for weekly price calculations used to determine indemnification values was changed to make the cut-off date for calculations consistent with the deadline for filing indemnification claims.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement 146 (7 CFR part 998; 53 FR 20291, June 3, 1988), regulating the quality of domestically produced peanuts, hereinafter referred to as the agreement. This agreement is effective under the Agricultural Marketing

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Agreement Act of 1937, as amended (7

efforts. It has been in place since 1965

Southeastern Peanut Association in

1987 crop peanuts. The new slotted

31 to November 1, the deadline for filing

PART 998—MARKETING AGREEMENT

Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 67 handlers of peanuts subject to regulation under the agreement and there are about 46,950 peanut growers in the 16 States covered under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest, covered under the agreement. These areas encompass the 16 States covered under the agreement. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 16 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1988 totalled 3.98 billion pounds, a 10 percent increase from 1987, and 8 percent more than in 1986. The 1988 crop value is $1.07 billion, and the 1987 crop is valued at $1.02 billion.

The objective of the agreement is to insure that only wholesome peanuts enter edible market channels. Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products.

The agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965 with over 90 percent of U.S. shellers (handlers) participating. The participating shellers handle about 95 percent of the crop. Requirements established pursuant to the agreement require farmers' stock peanuts with visible *Aspergillus Flavus* mold (the principal producer of aflatoxin) to be diverted to non-edible uses. Each lot of shelled peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the U.S. Department of Agriculture (Department) or in laboratories approved by the Peanut Administrative Committee (committee). The committee works with the Department in administering the marketing agreement program. The sampling and chemical analysis inspection programs are administered by the Department. Having complied with these requirements, provision is made for indemnification of sheller losses if the committee or the Food and Drug Administration (FDA) deems the peanuts unsuitable for consumption because of aflatoxin. All indemnification and administration costs are paid by assessments levied on shellers signatory to the agreement.

The incoming quality regulations specify the quality of farmers' stock peanuts which handlers may purchase from producers. Handlers are required to purchase only good quality, wholesome peanuts for edible products. The outgoing quality regulations require shellers to mill peanuts to meet certain quality specifications and have them inspected before such peanuts can be sold to edible outlets. Foreign material and damaged and immature peanuts are removed in the milling operation. Each lot of shelled peanuts also must be sampled and the samples chemically analyzed for aflatoxin. If the chemical assay shows the lot to be positive as to aflatoxin, the lot is not allowed to go to edible channels. Lower quality peanuts are crushed for oil and meal. The end result is that only good quality peanuts end up in human consumption outlets.

The committee unanimously recommended changes in the outgoing quality regulations and terms and conditions of indemnification for 1989 crop peanuts at its March 28–29, 1989, meeting. An interim final rule was issued on June 9, 1989, adopting the committee's recommendations. That rule was published in the **Federal Register** on June 15, 1989 (54 FR 25439), and a minor correction was published on June 28, 1989 (54 FR 27271). Interested persons were invited to submit written comments through July 17, 1989. One comment was received from the Southeastern Peanut Association in support of the changes.

In paragraph (a) of § 998.200 *Outgoing quality regulation*, the screen sizes used in determining fall-through of whole kernels in lots of split peanuts were changed to those in effect for 1987 crop peanuts. This change relaxed the minimum size requirements for whole kernels in lots of split peanuts. Paragraph (a) was also changed to increase the fall-through tolerances for No. 2 Virginia type peanuts. Under the agreement, the term "fall-through" means sound split and broken kernels and whole kernels which pass through specified sizes of screens. These changes make more peanuts available for edible outlets.

Lots of split peanuts of the Runner type and the Spanish and Valencia types cannot contain more than four percent whole kernels. Lots of split peanuts of the Virginia type cannot contain more than ten percent whole kernels. Prior to issuance of the interim final rule, paragraph (a) specified slotted screen openings used in determining fall-through of whole kernels of $\frac{17}{64} \times \frac{3}{4}$ inch for Runner type peanuts, $\frac{16}{64} \times \frac{3}{4}$ inch for Spanish and Valencia type peanuts and $\frac{18}{64} \times 1$ inch for Virginia type peanuts. Those screen sizes, which are larger than those used in prior years, were implemented in 1988 to remove small whole kernels from edible channels. Smaller kernels tend to be immature, less flavorful and have a higher incidence of aflatoxin contamination. The increased size requirements also were applicable to lots of split peanuts and No. 2 Virginia peanuts. No. 2 Virginia type peanuts are a mixture of whole and split kernels and generally are marketed with 20 percent or 30 percent whole kernels. However, during 1988 crop operations, handlers experienced difficulties in milling lots of split peanuts to meet outgoing grade specifications. In milling this grade category of peanuts in 1988 to meet the minimum fall-through requirements, handlers experienced substantial edible product loss and higher than usual milling costs. Such losses occurred when attempting to remove the lower quality small whole kernels (which fall through the larger screens implemented in 1988) from lots of splits. Handlers of No. 2 Virginia type peanuts also experienced milling losses due to excessive fall-through caused by the new screen sizes.

In recognition of the unforeseen problems in the processing lots of split peanuts, the committee unanimously recommended that the slotted screen sizes applicable to whole kernels in lots of splits be changed to those in effect for

1987 crop peanuts. The new slotted screen sizes applicable only to lots of splits are as follows: Runner type—$\frac{16}{64} \times \frac{3}{4}$ inch; Virginia type—$\frac{17}{64} \times 1$ inch; and Spanish and Valencia type—$\frac{15}{64} \times \frac{3}{4}$ inch.

Because No. 2 Virginia peanuts are generally marketed with 20 or 30 percent whole kernels, the committee determined that a change in the screen sizes to that being made for lots of Virginia split peanuts would not correct the problem of excessive milling losses. Instead, it recommended that the tolerances for fall through of sound split and broken kernels and sound whole kernels in No. 2 Virginia type peanuts be increased from 3.00 percent to 6.00 percent. These tolerances are similar to those prescribed for U.S. No. 2 Virginia grade peanuts in the U.S. Standards for Grades of Shelled Virginia Type Peanuts (7 CFR 2851.2750–2851.2763).

These changes in the outgoing quality regulations are intended to lessen the loss of sound edible whole kernels and splits and to reduce handler milling costs. The relaxations are not expected to have an adverse impact on the quality of peanuts entering edible channels because the volume of peanuts that will be affected by the change is minimal. These changes do not increase the likelihood of aflatoxin contamination in lots of split peanuts because of the relatively low number of small whole kernels in these lots. Further, with regard to the increased tolerances in No. 2 Virginia type peanuts, the climate in the area where production of these peanuts is prevalent is not conducive to the growth of *Aspergillus flavus* mold. Thus, there is no increased risk of aflatoxin contamination with allowing more fall-through in No. 2 Virginia type peanuts. In view of this, these changes should be continued in effect.

In addition to these changes, in the regulations the outgoing quality requirements for the numerous types and grade categories of shelled peanuts were changed from a narrative to a tabular format to make the requirements easier to read and understand. With the exception of the two changes mentioned above, which have been incorporated, the tables specify the same requirements that were in effect for 1988 crop peanuts.

The committee also recommended that paragraph (u) of the terms and conditions of indemnification (§ 998.300) be changed to extend the cutoff date for making weekly price calculations used to determine indemnification values. These weekly calculations involve averaging the domestic market price of each category of indemnifiable peanuts during the most recent four week period. The cut-off date was extended from May 31 to November 1, the deadline for filing indemnification claims. Making the cut-off date for calculations consistent with the deadline for filing indemnification claims will ensure that indemnification values at the time claims are filed or settled do not exceed the market value of the peanuts for which indemnification is requested. This has been a committee goal since the inception of the agreement in 1965.

The incoming quality regulations applicable to 1989 crop peanuts were not changed from those in effect for 1988 crop peanuts. No changes were deemed necessary. In recognition of this, the heading of § 998.100 was changed from "Incoming quality regulation—1988 crop peanuts" to "Incoming quality regulation—1989 crop peanuts".

Based on available information, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, the committee's recommendation, and other information, it is found that the interim rule, as published in the **Federal Register** (54 FR 25439) on June 15, 1989, and corrected (54 FR 27271) on June 28, 1989, should be made a final rule and will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action adopts relaxed outgoing quality requirements currently being applied under an interim rule and leaves in effect terms and conditions of indemnification which conform with current industry practice; (2) peanut handlers are aware of the relaxations, which were recommended by the committee at public meetings and they are prepared to continue complying with the changed requirements; (3) the interim final rule provided a 30 day comment period; (4) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 998

Marketing agreement, Peanuts.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

Note: These sections will be published in the Code of Federal Regulations.

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 (53 FR 20291, June 3, 1988) continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of 7 CFR part 998, published in the Federal Register on June 15, 1989, (54 FR 25441), and corrected on June 28, 1989, (54 FR 27271), is adopted as a final rule.

Dated: September 1, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–21112 Filed 9–7–89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0614]

RIN: 7100–AA89

Bank Holding Companies and Change in Bank Control; Acquisition and Operation of Savings Associations by Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In light of changed economic and regulatory circumstances, and pursuant to discretionary authority granted under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Pub. L. No. 101–73), the Board is amending Regulation Y to reflect its determination that the acquisition and operation of savings associations by bank holding companies is, as a general matter, so closely related to banking as to be a proper incident thereto for purposes of section 4(c)(8) of the Bank Holding Company Act ("BHC Act") (12 USC 1843(c)(8)). The Board's determination is subject to the condition that the savings association engage only in activities that bank holding companies are otherwise permitted to conduct under section 4 of the BHC Act. Specific proposals by bank holding companies to acquire savings associations would require prior Board approval under section 4(c)(8) of the Act.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Assistant General Counsel (202/452–3583), Michael J. O'Rourke, Senior Attorney (202/452–3288), Thomas M. Corsi, Attorney (202/452–3275), Legal Division; Molly S. Wassom, Manager (202/452–2305), or Beverly Smith, Senior Financial Analyst (202/452–2965), Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only*, Telecommunications Services for the Deaf, Earnestine Hill or Dorothea Thompson, (202/452–3544).

SUPPLEMENTARY INFORMATION:

1. Background

Under the BHC Act, a savings association is expressly excluded from the definition of "bank" and is treated as a nonbank company. Its acquisition by a bank holding company is therefore governed by the nonbanking provisions of section 4(c)(8) of the Act. Section 4(c)(8) permits bank holding companies to acquire a nonbank company if it is engaged only in activities the Board has determined to be "so closely related to banking . . . as to be a proper incident thereto." In order to meet the standards of section 4(c)(8), the Board must make two findings. First, the Board must find that the activity is closely related to banking. Second, the Board must find that the proposed activity is a proper incident to banking, that is, that the expected public benefits outweigh the potential adverse effects associated with the proposed activity.[1]

In 1977, in *D.H. Baldwin & Company* ("*Baldwin*"), the Board determined that the operation of a savings association by a bank holding company is closely related to banking, but, as a general matter, is not a proper incident to banking.[2] The Board stated at that time that the public benefits associated with the affiliation of a bank and a thrift were not sufficient to outweigh the adverse effects of such an affiliation. In particular, the Board expressed concern regarding:

(1) The conflicting regulatory framework created by Congress for thrifts and banks;

(2) The possibility that cross-industry acquisitions would undermine the perceived rivalry between the two industries; and

(3) The perception that such acquisitions would undermine the interstate banking restrictions of the Douglas Amendment to the BHC Act.

In view of these adverse considerations, the Board declined to add the operation of a savings association to the Regulation Y list of permissible activities, stating that "the judgment to permit [the affiliation of a bank and a savings association] on a broad scale should be left to Congress." [3]

In 1982, Congress passed the Garn-St Germain Act, which authorized the acquisition by bank holding companies of failed or failing savings associations under the BHC Act. Since 1982, the Board has approved a number of such acquisitions.[4]

On September 21, 1987, in light of the significant changes in the financial services industry since the *Baldwin* decision, the Board invited public comment on whether it should add to the list of permissible activities in Regulation Y the acquisition and operation of savings associations in general regardless of their financial condition.[5] The Board also requested comment on what terms or conditions, if any, should be imposed in connection with such acquisitions. The Board refrained from acting on this rulemaking pending completion of Congressional consideration of banking and thrift reform legislation.

On August 9, 1989, Congress enacted the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (the "FIRREA"). Section 601 of that Act amends the Bank Holding Company Act specifically to authorize the Board to permit a bank holding company to acquire any savings association under section 4(c)(8) of the BHC Act.[6] The legislative history of FIRREA indicates that, in enacting this specific authorization, Congress intended to authorize the Board to permit acquisitions of healthy as well as failed or failing thrifts.

2. Public comments

The Board received 214 public comments in response to its request for comments regarding this proposal. Over 70 percent of these comments favored allowing bank holding companies to acquire any savings association, including non-troubled savings associations.

Commenters in favor of the proposal argued that a number of circumstances have changed since 1977 that justify revision of the Board of its decision in *Baldwin* that the adverse effects of the acquisition of a thrift by a bank holding company outweigh the public benefits. In particular, these commenters stated that thrift subsidiaries could derive numerous strengths from parent bank holding companies, such as: access to bank holding company management; increased sources of capital; the ability to offer more services and branches; and better protection for depositors. Some of these commenters also argued that once a bank holding company is able to become familiar with the operation of a thrift by acquiring a healthy one, it would be more likely to acquire a failing institution.

Virtually all of the commenters who favored allowing bank holding companies to acquire healthy thrifts opposed limiting the acquired thrifts' powers to those permissible for bank holding companies. These commenters contended that limiting acquired thrifts' powers would reduce their attractiveness as acquisition targets and would unnecessarily interject the Board into thrift regulation.

Other commenters favored limiting the activities of savings associations acquired by bank holding companies to those permissible for bank holding companies in order to prevent bank holding companies from circumventing the activities restrictions of the BHC Act through the acquisition of savings associations. These commenters also contended that allowing bank holding companies to engage in otherwise impermissible activities through a savings association could compromise the financial integrity of the holding companies.

Commenters who opposed allowing bank holding companies to acquire

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[1] Section 4(c)(8) provides that in determining whether a particular activity is a proper incident to banking, the Board shall consider: whether its performance by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. 12 U.S.C. 1843(c)(8).

[2] 63 Federal Reserve Bulletin 280 (1977).

[3] 63 Federal Reserve Bulletin 280, 284 (1977).

[4] *See, e.g., Barnett Banks, Inc. (First Federal Savings and Loan Association of Columbus)*, 75 Federal Reserve Bulletin 60 (1989); *Citicorp (National Permanent Bank, FSB)*, 72 Federal Reserve Bulletin 724 (1986); *Citicorp (Fidelity Federal Savings & Loan Association)*, 68 Federal Reserve Bulletin 656 (1982).

[5] 52 FR 36,041 (1987).

[6] Pub. L. No. 101–73, section 601, 103 Stat. 183, 408 (1989). This section amends section 4 of the BHC to state that, "Beginning on the date of the enactment of [FIRREA], the Board may approve an application by any bank holding company under subsection (c)(8) to acquire any savings association in accordance with the requirements and limitations of this section." FIRREA defines "savings association" to include: any federally-chartered savings and loan association or savings bank; any building and loan, savings and loan, or homestead association, or cooperative bank which is a member of the Savings Association Insurance Fund; and any savings bank or cooperative bank that has been certified by the Director of the Office of Thrift Supervision as having met the requirements of the Qualified Thrift Lender test. *Id.* at section 320.

healthy thrift institutions contended that the acquisition of thrifts continues to raise the concerns expressed by the Board in *Baldwin*, as well as safety and soundness concerns for bank holding companies. These commenters argued that bank holding companies would be able to circumvent the interstate banking prohibitions of the Douglas Amendment as well as state branching laws through the acquisition of savings associations. A number of commenters also argued that permitting savings associations to be acquired by bank holding companies would lead to a de-emphasis of housing finance by these savings associations, undue concentration of the financial services industry by bank holding companies, and unfair competition. Many commenters argued that the decision as to whether bank holding companies should be able to acquire healthy thrifts should be left to Congress.

3. Acquisition of savings associations as a general matter

A. FIRREA

As noted, section 601 of FIRREA amends section 4 of the BHC Act specifically to authorize the Board to approve applications by bank holding companies to acquire any savings association. The legislative history of FIRREA suggests that Congress expected the Board to exercise this authority and did not intend the Board to restrict its approval to proposals involving the acquisition of failed or failing savings associations, as the Board has in the past.

For example, FIRREA as originally adopted by the Senate contained provisions that would have limited for two years the Board's authority to authorize the acquisition of thrifts only to those that were under-capitalized. This provision was not adopted in the final legislation in favor of a general and immediate authorization to permit the acquisition of any savings association.

FIRREA requires the Board to apply the standards of section 4(c)(8) of the BHC Act to proposals by bank holding companies to acquire savings associations. The Board has already determined in *Baldwin* that the ownership and operation of a savings association is closely related to banking for purposes of section 4(c)(8) of the Act.[7]

B. Proper Incident to Banking

With respect to the proper incident to banking test, there have been a number of significant changes in the regulatory framework governing banks and thrifts since the *Baldwin* decision, including the expansion of the powers of thrifts and the emergence of interstate banking. As the Board suggested in its request for public comment, and for the reasons discussed below, these developments have diminished the concerns about the affiliation of banks and savings associations noted by the Board in *Baldwin*. Ther authorization in FIRREA to permit affiliation of banks and healthy thrifts indicates Congressional support for this view.

Interstate Banking

A major concern expressed by the Board in *Baldwin* was that the acquisition of thrifts by bank holding companies might undermine the interstate banking restrictions of the Douglas Amendment. Since the Board's decision in *Baldwin*, however, Congress has specifically excluded savings associations from the definition of "bank" in the BHC Act, and, as a result, from the restrictions on interstate banking contained in the Douglas Amendment.[8] Thus, the BHC Act contains no express provision limiting holding company acquisitions of thrifts to those states in which the holding company may own a bank.

In FIRREA, Congress focused again on the acquisition of savings associations by bank holding companies, and, in authorizing such acquisitions, did not impose any geographic limitations. In addition, nothing in the legislative history of this provision indicates that Congress intended the Board to impose geographic restrictions on these acquisitions. On the contrary, the only geographic restriction imposed by FIRREA on affiliations of savings associations and banks applies in the event the savings association seeks to merge or convert into a bank. In that situation only, the transaction must be consistent with the Douglas Amendment.[9]

Concern regarding the erosion of interstate banking restrictions has also been reduced by the significant increase in state initiatives permitting interstate banking. In this regard, twenty-two states already authorize bank acquisitions on a nationwide basis, and an additional eight states will permit nationwide entry by January 1, 1991. In addition, a total of forty-six states and the District of Columbia have enacted some type of interstate banking statutes,[10] with most of these statutes being enacted during the past 5 years.

In seeking public comment regarding this proposal, the Board asked for comment on an option to permit the acquisition of savings associations by bank holding companies only in those states where the holding company could operate a bank. For the reasons explained above, the Board has not adopted this option.

Institutional Rivalry

The Board's concern that authorizing the acquisition of savings associations by bank holding companies would undermine the institutional rivalry between banks and thrifts has also been reduced. Since 1977, the statutory interest-rate has also been reduced. Since 1977, the statutory interest-rate differential on deposits taken by savings associations have been expanded to include deposit-taking and commercial lending powers previously reserved for commercial banks. These actions have reduced the institutional differences between savings associations and banks.

To the extent that Congress was concerned about preserving this institutional distinction, it has done so by requiring savings associations to continue to meet a statutory qualified thrift lender ("QTL") test. Under this test, the thrift is required to devote a substantial amount of its resources to activities related to the provision of residential housing credit. These statutory provisions are applicable to savings associations regardless of whether or not the savings association is acquired by a bank holding company, and would not appear to be undermined by the affiliation of a savings association with a bank.

Regulatory Conflict

The Board's experience with the acquisition of failed and failing thrifts by bank holding companies also indicates that the potential for conflicts arising from the different regulatory framework for banks and savings associations does not present

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[7] In reaching this conclusion, the Board noted that banks and savings associations are both financial intermediaries whose liability structures are dominated by deposits and whose asset structures are dominated by loans. The Board also noted that the trend toward convergence of the powers authorized for banks and savings associations, particularly in the areas of commercial and consumer lending, and deposit-taking. *See American Fletcher Corporation*, 60 Federal Reserve Bulletin 868, 869 (1974); *Baldwin*, 63 Federal Reserve Bulletin 280, 281 (1977).

[8] *See* 12 U.S.C. § 1842(d); and 12 U.S.C. §§ 1841(c) and (i).

[9] Pub. L. No. 101–73, § 206, 103 Stat. 183 (1989).

[10] To date, only Iowa, Kansas, Montana, and North Dakota have not authorized any form of interstate banking (other than for existing grandfathered institutions). Hawaii provides for the acquisition of failing institutions in that state by any out-of-state organization.

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insurmountable problems for bank holding companies. In this regard, various provisions of FIRREA further take account of, and reduce, this potential regulatory overlap.[11]

Conclusion

For the foregoing reasons, and in light of the changed circumstances in the financial services industry since the *Baldwin* decision, the Board finds that the operation of a savings association by a bank holding company would not result in adverse effects that would, as a general matter, require prohibiting their affiliation under the proper incident to banking standard of section 4(c)(8) of the BHC Act. On this basis and in view of the Board's earlier finding that the ownership, control and operation of a savings association by a bank holding company is closely related to banking, the Board has determined to amend Regulation Y to add this activity to the Board's list of permissible nonbanking activities for bank holding companies. As required by the BHC Act and the Board's regulations, each specific proposal by a bank holding company to acquire a savings association would require prior review by the Board to determine whether the particular acquisition would result in public benefits that outweigh adverse effects.

4. Conditions on the Operation of Savings Associations by Bank Holding Companies

In its notice of rulemaking, the Board requested comments regarding what, if any, conditions or restrictions should be imposed if affiliations of banks and savings associations were to be allowed as a general matter. In its previous decisions involving the acquisition of failed and failing thrifts, the Board had imposed a number of conditions, including a requirement that the savings association continue to operate primarily as a residential housing lender, not change its name to one suggesting it is a bank, not convert to a bank without prior approval, limit its activities to those permissible for bank holding companies, and establish new branches only at locations permissible for national banks in that state. The Board also required that the savings association not be operated in tandem with any holding company affiliate and limited transactions between the savings association and its bank affiliates (the so-called "tandem operations conditions"). These conditions were imposed in order to address concerns that the acquisition by a bank holding company of a savings association might potentially result in unfair competition, conflicts of interest, or other adverse effects.

For the reasons discussed below, the Board has not adopted these conditions as part of the amendment to Regulation Y except for the requirement that the savings association conform its activities to those permissible for a bank holding company under section 4(c)(8) of the BHC Act.

Activities of savings associations

The Board has required bank holding companies that acquire failed or failing savings associations to conform their activities to those permissible under section 4(c)(8) of the BHC Act.[12] A number of commenters have urged the Board to remove this condition and to consider that a savings association is engaged in a cluster of activities, all of which should be authorized when the bank holding company acquires the savings association.

In its prior thrift decisions, the Board noted that the nonbanking provisions of the BHC Act require that all nonbank subsidiaries of a bank holding company engage only in activities that are permissible under the provisions of section 4 of the BHC Act. The Board stated that an activity that is otherwise impermissible for a bank holding company is not rendered permissible simply because that activity is performed by a direct or an indirect nonbanking subsidiary of a holding company.[13]

The legislative history of FIRREA indicates that this is the correct interpretation of the BHC Act and should be continued. For example, the Senate Report states that the section of FIRREA authorizing the acquisition of savings associations by bank holding companies "does not authorize a thrift institution acquired by a bank holding company to engage in any activity that would otherwise be impermissible under section 4(c)(8)." [14] Similarly, the Conference Report states that "all nonbanking restrictions and other criteria under [Section 4] will continue to apply [to thrifts acquired by bank holding companies]." [15] For these reasons, the Board continues to believe that bank holding companies that acquire savings associations must conform the activities of the savings association to those permissible for bank holding companies under the provisions of section 4 of the BHC Act, including the provisions of section 4(c)(8) of the Act.

The Board has also required that the savings association continue to have as its primary purpose the provision of residential housing credit. FIRREA has modified the provisions of current law to require all savings associations to devote at least 70 percent of their assets to housing related financing and consumer lending activities. A savings association that fails to meet these so-called Qualified Thrift Lender requirements must, within certain periods, become a bank or conform its operations to those of a bank. Any company that owns such a savings association must conform to the requirements of the BHC Act, including the Douglas Amendment. In light of these statutory requirements, the Board has not adopted a condition to its regulation requiring savings associations acquired by bank holding companies to operate with the primary purpose of providing housing related credit.

Restrictions on Tandem Operations

FIRREA specifically provides that, in approving acquisitions of savings associations, the Board shall not impose any restrictions on transactions between the savings association and its bank holding company affiliates except as required under sections 23A and 23B of the Federal Reserve Act or any other applicable law.[16] The legislative history of FIRREA indicates that this provision was directed specifically at the tandem limitations in the Board's prior decisions.

On August 21, 1989, in accordance with the new statute, the Board removed the tandem conditions as they applied to bank holding companies that currently own savings associations.

Consistent with the provisions of FIRREA and its legislative history, and in light of the continued applicability of sections 23A and 23B and the anti-tying provisions of the BHC Act, the Board has determined not to include the tandem operations conditions in the regulation.[17]

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[11] *See, e.g.,* Pub. L. No. 101–73, 103 Stat. 183 § 301 (1989). (This section exempts bank holding companies that acquire savings associations from certain requirements contained in the Savings and Loan Holding Company Act).

[12] The Board has generally granted a two-year period for thrifts to conform their activities.

[13] *Central Pacific Corporation,* 68 Federal Reserve Bulletin 362 (1982).

[14] S. Rep. No. 19, 101st Cong., 1st Sess. 44 (1989).

[15] H.R. Conf. Rep. No. 209, 101st Cong., 1st Sess. 827 (1989).

[16] *See also* H.R. Conf. Rep. No. 209, 101st Cong., 1st Sess. 427 (1989).

[17] Previous Board orders have included a requirement that a savings association acquired by a bank holding company not convert its charter to a bank charter without the Board's prior approval. This requirement is a restatement of existing law, which would require the bank holding company to seek authority under section 3 of the BHC Act and comply with the interstate banking provisions of the Douglas Amendment before converting its savings association to a bank. Under the provisions of FIRREA, bank holding companies that seek to merge an existing savings association subsidiary into a bank subsidiary must also seek Board approval and comply with the requirements of the Douglas Amendment. Pub. L. No. 101–73, § 206, 103 Stat. 183 (1989). Because this condition restates existing law, the Board has not included this requirement as an express condition in the regulation.

Continued

Restrictions on Branching

In approving thrift acquisition under the Garn-St Germain Act, the Board provided, in accordance with the Act, that the thrift could establish new branches only at locations at which a national bank located in the same state was permitted to establish branches.[18] Section 217 of FIRREA amends the Garn-St Germain Act to provide that a failed or failing savings association acquired by a bank holding company may, so long as it remains a savings association, establish and operate new branches in its home state to the same extent as any other savings association that maintains its home office in that state.[19]

In FIRREA's general authorization for bank/thrift affiliations, Congress did not restrict the branching authority of savings associations acquired by bank holding companies so long as the association meets the QTL test.[20] Moreover, the legislative history of this provision does not indicate any intent by Congress that the Board limit the branching rights of acquired thrifts.

In light of this, the Board has not adopted in the regulation the branching limit contained in its previous orders. Accordingly, savings associations acquired by bank holding companies will be permitted to branch to the extent permitted other savings associations located in the same home state.[21] This approach permits both troubled and healthy savings associations acquired by bank holding companies the same branching rights.

Use of "bank" in Acquired Thrift's Name

The Board's previous orders authorizing bank holding companies to acquire savings associations prohibited the savings association from changing its name to include the term "bank." This condition was intended to prevent public confusion regarding the association's status as a nonbank thrift institution.[22] While the provisions of FIRREA do not address this issue, the legislative history of that Act suggests that savings associations acquired by bank holding companies should be permitted to use the term "bank" in their name so long as the name is not misleading to the public.[23] In this regard, the regulations applicable to federally chartered savings associations permit these institutions to use the term "bank" in their name under certain conditions, and provided that the name does not misrepresent the nature of the institution or the services that it offers.[24]

In view of these existing regulatory requirements, and the Congressional direction that the Board eliminate the restrictions on tandem operations between banks and their affiliate thrifts, the Board has not included in the regulation a specific condition governing the use of the word "bank" in the name of savings associations acquired by bank holding companies.

Definition of Savings Association

The Board is also amending the definition of savings association in Regulation Y to conform to certain technical changes to that definition made by FIRREA. FIRREA amended the BHC Act to list specifically the types of institutions that would qualify as savings associations. Prior to FIRREA, the BHC Act referred to the definition of that term in the Home Owners Loan Act.

Final Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that the amendment will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

This amendment will permit bank holding companies to acquire and operate healthy savings associations—an activity bank holding companies are not now permitted to conduct. The amendment does not impose more burdensome requirements on bank holding companies than are currently applicable, and these provisions provide no barrier to meaningful participation by small bank holding companies in the activity.

The Board notes that there are not a significant number of small bank holding companies engaged in the operation of savings associations at this time. As noted, bank holding companies have not previously been permitted to acquire healthy savings associations; the amendment will expand the powers of bank holding companies by authorizing bank holding companies to acquire healthy, in addition to failing, savings associations.

List of Subjects in 12 CFR Part 225

Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, and Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844), the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907, and 3909.

2. In § 225.25 new paragraph (b)(9) is added to read as follows:

§ 225.25 List of Permissible nonbanking activities.

* * * * *

(b) * * *

(9) *Operating savings association.* Owning, controlling or operating a savings association, if the savings association engages only in deposit taking activities and lending and other activities that are permissible for bank holding companies under this subpart C.

3. In section 225.2, redesignate paragraphs (l) through (n) as paragraphs (m) through (o) respectively, and add the following as new paragraph (l):

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[18] 12 U.S.C. § 1730a(m)(5).

[19] Pub. L. No. 101–73, § 217, 103 Stat. 183 (1989). Troubled savings associations acquired by bank holding companies in a state in which the bank holding company does not own a bank lose the ability to retain, operate, and establish branches beyond locations at which a national bank may branch if the savings association fails to meet certain asset tests contained in the Internal Revenue Code. This asset test is substantially the same as the current Qualified Thrift Lender test.

[20] Under FIRREA, any savings association that fails to meet the Qualified Thrift Lender test must, among other things, limit its branching to locations at which a national bank located in that state may branch so long as it remains a savings association.

[21] The provisions of FIRREA do not contain a restriction on establishing or operating remote service units. Accordingly, this condition of previous Board orders has not been adopted.

[22] *See, eg., Barnett Banks, Inc.,* 75 Federal Reserve Bulletin 83 (1988), in which the Board determined that the applicant could call the thrift Barnett Savings Bank, but not Barnett Bank, F.S.B.

[23] *See* 135 Cong. Rec. H2571 (daily ed. June 14, 1989) (statement of Rep. Barnard).

[24] *See* 12 CFR 543.1.

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§ 225.2 Definitions.

FOR FURTHER INFORMATION CONTACT:

States, on the relationship between the

A310–52–2017, Revision 2, dated December

Airports Slot Allocation and Transfer

ADDRESS: Requests for copies of the

§ 225.2 Definitions.

* * * * *

(l) "Savings association" means:

(1) any Federal savings association or Federal savings bank;

(2) any building and loan association, savings and loan association, homestead association, or cooperative bank if such association or cooperative bank is a member of the Savings Association Insurance Fund; and

(3) any savings bank or cooperative which is deemed by the Director of the Office of Thrift Supervision to be a savings association under section 10(1) of the Home Owners Loan Act.

* * * * *

§ 225.126 [Amended]

4. In § 225.126, paragraph (h) is removed.

By order of the Board of Governors of the Federal Reserve System, September 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–21122 Filed 9–7–89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–77–AD; Amdt. 39–6317]

Airworthiness Directives; Airbus Industrie Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A310 series airplanes, which requires modification of the emergency exits' opening mechanism. This amendment is prompted by reports of the accumulation of moisture in the area of the locking mechanism and subsequent ice buildup. This condition, if not corrected, could prevent the exit of passengers in an emergency situation.

EFFECTIVE DATE: October 13, 1989.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Airbus Industrie Model A310 series airplanes, which requires modification of the emergency exits' opening mechanism, was published in the **Federal Register** on June 2, 1989 (54 FR 23670).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule, but requested that the compliance time be changed from 100 hours time-in-service to 9 months, due to the lack of parts availability. The FAA concurs in part with the commenter. The FAA has confirmed that, contrary to prior information received, certain parts required for a portion of the modification, specifically the special replacement sealing rings for the hinge rods, will not be available for installation within the proposed compliance time. The final rule has been revised to extend the compliance time to 9 months for installation of the replacement rings. The FAA has determined that accomplishment of this portion of the modification at nine months will not adversely affect safety. However, the other portions of the modification, namely drilling drain holes in guide fittings, drilling drain holes in spring units, and applying silicone grease to all modified parts, are required to be accomplished within 100 hours time-in-service, as proposed.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the rule.

It is estimated that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 47 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Required parts are estimated to be $841 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,978.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A310 series airplanes, as listed in Airbus Industrie Service Bulletin A310–52–2017, Revision 2, dated December 22, 1987, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent frozen condensation from blocking the emergency exit doors' operating mechanism, accomplish the following:

A. Within 100 hours time-in-service after the effective date of this AD, modify the emergency exit doors' opening mechanism, in accordance with paragraphs C.(1), C.(2), and C.(3) of Airbus Industrie Service Bulletin A310–52–2017, Revision 2, dated December 22, 1987.

B. Within 9 months after the effective date of this AD, replace all sealing rings on the hinge rods, in accordance with paragraph C.(4) of Airbus Industrie Service Bulletin A310–52–2017, Revision 2, dated December 22, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 13, 1989.

Issued in Seattle, Washington, on August 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–21135 Filed 9–7–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 93

[Docket No. 25758; Amdt. No. 93–57]

High Density Traffic Airports Slot Allocation and Transfer Methods

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: This action corrects editorial errors which appeared in a final rule, published on August 22, 1989 (54 FR 34904), amending the High Density Traffic Airports Rule and slot allocation and transfer regulations.

FOR FURTHER INFORMATION CONTACT: David L. Bennett at (202) 267–3491.

SUPPLEMENTARY INFORMATION: On August 22, 1989, the Department of Transportation published a final rule which made several technical amendments to Subparts K and S of Part 93 of the Federal Aviation Regulations (14 CFR Part 93); High Density Traffic Airports Slot Allocation and Transfer Methods; Docket No. 25758 (54 FR 34904).

The amendment number, given as No. 93–56, should be changed to No. 93–57.

Editorial errors in the regulatory text of Amendment No. 93–57, page 34906, third column, are corrected by making the following changes:

§ 93.123 [Corrected]

1. In the fourth line of the first full sentence under § 93.123(c)(1), remove "and § 93.127".

2. In the third and fourth lines of the first sentence under § 93.123(c)(2), remove "and § 93.124".

§ 93.213 [Corrected]

3. In the third line under § 93.213(a)(3), and in the second line under § 93.213(a)(4), change "fourth" to "last".

Issued in Washington, DC, on September 5, 1989.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 89–21138 Filed 9–7–89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385 and 388

[Docket No. RM87–17–000]

Natural Gas Data Collection System; Availability of PC Print Software and Corrected Record Formats for Rate, Tariff, and Certificate Filings

Issued August 31, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Availability of Print Software and Corrected Record Formats for Rate, Tariff, and Certificate Filings.

SUMMARY: Software to print rate, tariff and certificate filings required to be filed on electronic medium in accordance with Order Nos. 493 (53 FR 15025 (Apr. 27, 1988)), 493–A (53 FR 30027 (Aug. 10, 1988)), 493–B (53 FR 49652 (Dec. 9, 1988)) and 493–C (54 FR 21197 (May 17, 1989)) is now available on diskette. This notice also identifies corrections and revisions to the record formats for rate, tariff and certificate filings. The print software may be ordered on the enclosed Print Software Order Form.

DATE: The print software and the revised record formats are available on August 31, 1989.

ADDRESS: Requests for copies of the various print software packages should be directed to: Reference and Information Center, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 2200, Washington, DC 20426, (202) 357–8118.

FOR FURTHER INFORMATION CONTACT: Brooks Carter (for General Information & Tariffs) (202)357–8066, Bob Czarick (for Certificates) (202)357–8995, Craig Hill (for Rates) (202)357–8822, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 6100, Washington, DC 20426.

SUPPLEMENTARY INFORMATION: The PC software to produce a hardcopy printout of rate, tariff and certificate filings, when filed in accordance with updated record formats, is now available on diskette. The record formats for rate filings were issued on May 10, 1989; the record formats for tariff and certificate filings were issued on June 8, 1989. Staff has corrected certain errors in these formats and has made certain other minor revisions to correct anomalies or to clarify the filing instructions. The latest corrections and revisions to the record formats for rate, tariff and certificate filings are described in Appendices A, B, and C respectively. Complete copies of record formats, for rates, tariffs and certificates, as revised by this notice, are available on a separate diskette.

The programming language used for the print software is ANSI 1974 Standard COBOL. The diskettes contain files which can be run on an IBM-compatible PC with at least 640K RAM and DOS 3.0 (or later version). The PC print software is available in separate packages for rates, tariffs and certificates. Each print software package consists of 3.5" (1.44MB) or 5.25" (1.2MB) double-sided, high density diskettes containing a user's guide and hard copy executable code. The tariff and certificate print software packages also contain a test data file and COBOL source code. Persons interested in the COBOL source code for the PC version of the rates print software should contact Craig Hill at (202) 357–8822 for additional information. Mainframe versions of the print software for rates, tariffs, and certificates are scheduled for release in early October.

The PC print software has been initially tested by staff. If software problems occur, the Commission staff encourages users to provide written comments as to the exact nature of the problem and submit them to Bob Czarick, Office of Pipeline and Producer

Regulation, Room 6106, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, eight data bits and one stop bit. The text of the notice will be available on CIPS for 30 days from the date of issuance.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice and the revised record formats during normal business hours in the Reference and Information Center (Room 2200) at the Commission's headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The PC hard copy software packages are available from the Commission's Reference and Information Center through its photocopy contractor, LaDorn Systems Corporation, also located in Room 2200, 825 North Capitol Street, NE., Washington, DC 20426. Persons requesting the PC software packages should fill out the enclosed Print Software Order Form. The software is available without charge. However, the Commission's copy contractor has copy fees for both diskettes and hardcopy.

Lois D. Cashell,
Secretary.

Print Software Order Form

(please print or type)

Use this form to order copies of the print software packages relating to rates, tariffs, and certificate filings (Notice of Availability issued August 31, 1989).

Send to: LaDorn Systems Corporation, 825 North Capitol Street, NE., Room 2200, Washington, DC 20426 (202) 898–1151.

Ordered By: ______________________
Company: ______________________
Address: ______________________
Phone Number: (____) ____________
Type of Diskette: —— 3.5" (1.44MB): $8.00/diskette
(specify) —— 5.25" (1.2MB): $5.00/diskette

Package	Description	Copy fee
—Package A	Executable PC Print Software: Rates. 10 Diskettes × fee/diskette.	
—Package B	Executable PC Print Software: Tariffs. 1 Diskette × fee/diskette.	
—Package C	Executable PC Print Software: Certificates. 2 Diskettes × fee/diskette.	
—Package D	Complete Set of Corrected Record Formats for Rates, Tariffs and Certificates (ASCII). 1 Diskette × fee/diskette.	
Total Copy Fee.		

Make check payable to LaDorn Systems Corporation. Receipt of payment is required before shipment.

Information Available on Diskettes

PC Print Software: Rates

Diskette 1: *User's Guide, File name=R–USERPC. ASC Driver and Subdriver files
Diskette 2: PC Executable Files for Statements A–D
Diskette 3: PC Executable Files for Statement E
Diskette 4: PC Executable Files for Statement F
Diskette 5: PC Executable Files for Statement G, Part 1
Diskette 6: PC Executable Files for Statement G, Part 2
PC Executable Files for Statement H, Part 1
Diskette 7: PC Executable Files for Statement H, Part 2
PC Executable Files for Statement I
Diskette 8: PC Executable Files for Statements L and M
Diskette 9: PC Executable Files for Statement N, Part 1
Diskette 10: PC Executable Files for Statement N, Part 2

PC Print Software: Tariffs

Diskette 1: *Notice of Availability of PC Print Software for Rates, Tariffs and Certificates
*User's Guide, File Name=T–USERPC.ASC PC Executable Print Software for Tariffs Test Data, File name=TARIFF.DAT Source Code for PC Print Software for Tariffs

PC Print Software: Certificates

Diskette 1: *User's Guide, File name=C–USERPC.ASC PC Executable Print Software for Certificates Test Data, File names: FILE1, FILE2, FILE3
Diskette 2: Source Code for PC Print Software for Certificates

Record Formats:

Diskette 1: *Corrected Record Formats for Rates, Tariffs and Certificates (August 31, 1989)

Note: An "*" indicates that the item is available in hardcopy from LaDorn Corp. An abbreviated version of the record formats, containing only those sections or records that have been revised, is also available in hardcopy.

Appendix A—Corrections/Revisions to Rate Filing Record Formats

General Instructions

All filings by anyone to the Federal Energy Regulatory Commission, whether by mail or in person, are to be submitted to the Secretary, through the Dockets Branch, in Room 3110, 825 North Capitol Street, NE., Washington, DC 20426. Courtesy copies of filings to be delivered to other Commission offices must be left with staff in the Dockets Branch for delivery. Courtesy copies will be enclosed in an outer envelope addressed to Room 3110 with the individual's name and address on an inner envelope. Courtesy copes will be delivered to Commission staff addresses throughout the business day.

The following revisions correct errors in the final rate filing record formats dated May 10, 1989:

1. RA16: Statement F(2), Rate of Return and Cost of Capital

The number of character positions for Items 241, 242 and 243 is increased from five to six to agree with the specified format of f(6,2). Character positions for Items 243 and 244 are revised accordingly.

2. RA17: Statement F(3), Debt Capital-Individual Instruments

The format for Item 259, Net Proceeds Per Unit, is revised from f(10,2) to f(14,2). Character positions for Item 259 and subsequent are revised accordingly.

3. RA18: Statement F(3)–1, Debt Capital-Total Debt

The number of positions for Item 274 is increased from 12 to 14. Revise character positions for Item 274 and subsequent.

The number of positions for Item 280 is decreased from 14 to 6 and the entry is now a percent instead of a dollar amount. Comment column is revised to: "(%); format, f(6,2); {[(item 277)–(item 279)] ÷ (item 276)} * 100"

4. RA19: Statement F(3)(g), Amortization of Gain/Loss on Reacquired Debt and Reacquired Preferred Stock—Part 1

The comment for Item 287, Historical Amortization Factor [Future Amortization Factor] is revised to: "format, f(7, 6); when item 282 is "1" or "3", enter the quotient 1 / { [yy of item 285) — (yy of item 286)] * 12 + [mm of item 285] — 1} * 12; when item 282 is "2" or "4", enter the quotient 1 / { [yy of item 285) — (yy of item 286) — 1 —] * 12 + [(mm of item 285) — (mm of item 286) + 12] } * 12

5. RA21: Statement F(4), Preferred Stock Capital

The number of positions for Item 307 is increased from 8 to 14 and the format is now f(14,2). Revise subsequent character positions accordingly.

Item 319, Weighted Average Cost of Money-Total Only, is deleted.

Old Item Numbers 320 and 321 are renumbered 319 (Optional Gain on Reacquired Preferred for Total) and 320 (Optional Adjusted Annual Cost of all Preferred Capital), respectively. The comment for Item 320 is revised to: "amount, ($); (item 317) — (item 319)"

A new Item 321, Optional Adjusted Percent Cost of all Preferred Capital, in added in positions 210–215. The Comment column contains: "(%); format, f(6,2); (item 320) / (item 316) * 100.

6. RA22: Statement F(5) / F(5)–3(a), Common Stock Capital

The number of positions for Item 330, Title, is reduced to 35.

The format for Items 339, 340, 342, 343, 344 and 345 is revised from f(7,2) to f(12,2). Character positions for Items 330–347 are adjusted accordingly.

7. RA23: Schedule F(5)–1, Stock Dividends, Splits, Etc.

The format for Items 360 through 363 is revised from f(7,2) to f(14,2). Character positions are adjusted.

8. RA24: Schedule F(5)–2/3(b), Stock Information

The format for Items 372 through 374 is revised from f(7,2) to f(14,2). The format for Item 376 is revised from f(8,2) to f(14,2). Character positions are adjusted.

9. RA25: Schedule F(5)–4/5, Earnings Per Share/Interest Coverage

The format for Item 382 is revised from f(7,2) to f(14,2) and character positions are revised.

10. RA26: Schedule F(6) Statement of Cash Flows—Part 1

The word "Less" is deleted from the names of Items 406 and 407. A (—) sign is added after the names of Items 410 through 413 and Item 415. The (—) sign after Item 414 is deleted.

11. RA27: Schedule F(6), Statement of Cash Flows—Part 2

A (—) sign is added after the names of Items 419, 421, 424 and 431.

The (—) sign is deleted from the names of Items 420, 422, 425, 427 and 437.

12. RA28: Schedule F(6), Statement of Cash Flows—Part 3

A (—) sign is added after the name of Item 446.

13. RA30: Statement G, Gas Operating Revenues and Sales Volumes Field Sales, Non-Jurisdictional Sales and Other Sales

The note below the title is deleted.

The codes for Item 481, Total Indicator, are revised. Instead of the codes in Exhibit C, use the following codes for Item 481:

code = 0, customer data
code = 1, month data
code = 2, juris./non-juris. total
code = 3, period total
code = 4, grand total for jurisdictional
code = 5, grand total for non-jurisdictional

14. RA30: Statement G, Gas Operating Revenues and Sales Volumes Transportation of Gas for Others

The codes for Item 511, Total, are expanded as follows:

code = 0, customer data
code = 1, month data
code = 2, period total
code = 3, grand total

15. RA34: Statement G, Gas Operating Revenues and Sales Volumes Products Extracted

The character positions for the Footnote ID are revised to 149–152 and the Filler (Tape Only) begins in 153.

16. RA40: Statement H(1), Operation and Maintenance Expenses

The codes for Item 617, Type of Balance, are revised as follows:

code = 1, individual item
code = 2, total operation
code = 3, total maintenance
code = 4, total oper. and maint.
code = 5, sub-function total
code = 6, project total
code = 7, function total
code = 8, grand total

17. RA47: Schedule H(1)–2, Purchased Gas Costs—Part 6

Comments text for Item 762 is properly aligned.

18. RA49: Schedule H(2)–1, Reconciliation of Depreciable Plant

The correct positions for Items 800 and 801 are 81–92 and 93–112, respectively.

19. RA50: Statement H(3), Income Taxes

In the comments for Item 819, code = 20, delete the words "at rate specified in item 833".

In the comments column for Item 833, delete the words following "19".

20. RA51: Schedule H(3)–6, Accumulated Deferred Income Taxes

The character positions for Item 840 are revised to 52–63; Footnote ID is now in 64–67 and 68–255 are blank filled (tape only).

21. RA78, RA79 and RA80: Statement M, Parts 1–3

In Items 1311, 1331 and 1354 (Year Reported), "change from" is deleted from the comments for code=2.

22. RB05: Schedule N–4, Rate of Return and Cost of Capital

(Changes are the same as for RA16)

23. RB06: Schedule N–5, Operation and Maintenance

(Changes are the same as for RA40)

24. RB08: Schedule N–7, Income Taxes

(Changes are the same as for RA50)

25. Exhibit A: Magnetic Tape Procedures

The correct prefix for the file name is "RF", not "RA". The example at the end of Exhibit A is incorrect.

Appendix B—Corrections/Revisions to Tariff Filing Record Formats

The General Instruction for submitting filings to FERC is revised as indicated in Appendix A.

The following revisions correct errors in the final tariff filing record formats dated June 8, 1989:

1. Tariff sheet pagination guidelines

A new Exhibit C is added to the tariff sheet record formats and contains voluntary guidelines for numbering tariff sheets. These are staff guidelines only and do not constitute revisions to the regulations in § 154.33(d)(2). The guidelines follow this section.

The previous Exhibit C, Hard Copy Formats for Tariff Sheets, is now Exhibit D.

2. TF03: Tariff Sheet Header Record Number 1

Informal comments and the pagination guidelines for inserted tariff sheets (No. 6 on the guidelines), there is now a possibility that "Sheet Number" may exceed six characters. Sheet Number will be increased to eight positions (char. pos. 5–12) and the subsequent position locations in TF03 are increased by 2.

3. TF04: Tariff Sheet Header Record Number 2

This record is revised to include two items which are needed for FERC processing of tariff sheets which supersede a range of tariff sheets. The new items indicate the first and last superseded sheet numbers. "Superseded Sheet Number" is revised to "Superseded Sheet ID. Refer to General Instruction 8 in the tariff record formats for an example of a tariff sheet superseding a range of sheets. In that example, the items in TF04 have the following values:

First Superseded Sheet No.: 10
Last Superseded Sheet No.: 39
Superseded Sheet ID: Sheet Nos. 10 through 39

The text of the tariff sheet will include a list of the specific sheets that are superseded.

Appendix C—Corrections/Revisions to Certificate Filing Record Formats

Introduction

After the release of the Certificate Formats on June 8, 1989, several typographical errors were brought to our attention. Staff also had several informal discussions with pipeline company personnel regarding anomalies in the formats, the instructions, and the exhibits. Revised pages issued with this notice reflect these discussions and specific indications of changes, and clarifications to the certificate formats detailed below. Finally, Staff has performed exhaustive tests on the print software being issued today with this notice. Several modifications to the instructions and notations on the formats have been made in this regard.

General Information

I. Purpose

The words "and Subpart H" are added after Subpart G.

III. What to Submit

The word "Selected" is added to the title, "Items not required on Electronic Media." This indicates that the Commission has the flexibility to capture other sections of the regulations under these subparts or other subparts of the regulations with respect to certificated activities on electronic media.

V. Where to Submit

"Room 3110" is added to the address of the Commission. Since this is also the address for hand deliveries, that address is deleted.

General Instructions

1(B): The first sentence in the second paragraph is modified to indicate that the Regulation Codes as found in Exhibit C do not have to be inserted into FILE3 (the write or composition file) in sequential order.

1(C): This paragraph and the table are modified to indicate a new maximum number of print specifications for FILE3 as follows:

Page orientation	Maximum line length (Char.)			Max. lines per page
	10 cpi	12 cpi	15 cpi	6 lpi
Vertical (Portrait)	70	84	105	54
Horizontal (Landscape)	100	120	150	42

These modifications of line length in characters per inch (cpi) will fix the margins for both portrait and landscape orientations. For portrait orientation (vertical), there will be a one inch (1") margin at the top, on the left (binding edge), and the bottom, and a one-half inch (½") margin on the right. For landscape orientation, there will be a one inch (1") margin at the top (binding edge) and a one-half inch (½") margin on the left, right, and bottom of the page.

13. Pipeline Facility/Segment Number:

The words, "within a project or projects," are deleted. This will clarify the intent that facility/segments in Exhibit K must be numbered in the following manner so as to coincide with the segment number in Schedule/Record CA/03, the Environmental Report (Part B—Environmental Factors). The following example has been added to this instruction:

For example, Exhibit K project numbers and facility/segment numbers must use the following convention:

Project Number 01; Facility/Segment Number 01, 02, 03, 04:

Project Number 02; Facility/Segment Number 05, 06, 07:

Project Number 03; Facility/Segment Number 08, 09, 10: and so on.

25. Joint Applications:

This instruction is completely revised to read as follows:

Each company in a joint application will file its own structured data (FILE1), accompanying footnotes (FILE2), and a driver file (FILE3) to produce the applicant's hard copy submission. Each company's Schedule/Record CA/01 must contain a footnote explaining, in detail, the joint nature of the application and must cross-reference the other joint applicants and their respective file names. Also, the submittal letter with the application should identify the joint applicants and file names to avoid confusion when submitting the proper filing fee for such an application.

Schedule/Records

CA/01: General Information

Item No. 3: The comment section is revised to read as follows: Year, Month, and Day the application is filed (yymmdd)

Item No. 10e:

The comment section is revised to include "See NOTE 1A" and a new NOTE 1A is added to Record CA/01:

Note 1A: For applications which contain new facilities and proposed abandonments, Item 10e should indicate a net amount of capacity. Indicate in a footnote what the gross amounts of capacity are for the new facilities and the abandoned capacity.

Character Positions: Starting with Item No. 10e, the character positions have been corrected.

CA/10: Exhibit K, Cost Factors & Total Costs

Character Positions: The character positions for the Footnote ID have been corrected to 196–199 and the Filler has been revised to positions 200–255.

Exhibits

Exhibit C: Certificate Applications: Filing Requirements

Regulation Code 121: Structured Data Records entry is corrected to "CA/09–CA/10".

Regulation Code 403: Regulation Section and Exhibit/Information to be reported column entries are corrected to "284.224, Certain Transportation, Sales, and Assignments by Local Distribution Companies."

Regulation Code 600 (New): This is a new code for SUBPART H, Section 284.244, Application Requirements for Interstate Pipelines.

Exhibit H: Hard Copy Formats for Certificate Applications

Printout of Customer/Shipper and Services, Schedule 1: The third line in the first note is corrected to indicate Items [11], [16], [17], and [18].

Printout of Exh. K—Summary of Project Estimates: The words "New" and "Abandonment" have been added to the "Total" line, respectively, for both reports.

Printout of Exh. K—Detail of Est. Facilities Costs: The note to this report has been modified to label pipe diameter and wall thickness. Also Item 113, code = 4 has been paired with Item 113, code = 8.

[FR Doc. 89–21084 Filed 9–7–89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket Nos. 76N–0366 and 87N–0182]

Listing of Color Additives Subject to Certification; D&C Red No. 36

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing D&C Red No. 36 from the regulations (21 CFR 81.1(b) and 81.27(d)) that provide for the provisional listing of color additives. This removal corrects an inadvertent error that continued to include D&C Red No. 36 in these regulations after the confirmed effective date for the permanent listing of D&C Red No. 36 for general use in drugs and cosmetics, except for use in the area of the eye.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food and Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 2, 1988 (53 FR 29024), FDA published a final rule permanently listing D&C Red No. 36 for general use in drugs and cosmetics, except for use in the area of the eye. Among other things, the rule amended the tables of 21 CFR 81.1(b) and 81.27(d) by removing the entries for "D&C Red No. 36" from these regulations that provisionally listed the color additive. Provisional listing of D&C Red No. 36 was no longer necessary once the agency issued final regulations that permanently listed the color additive for the same uses for which the color additive was provisionally listed. The final rule was to be effective on September 2, 1988.

On October 28, 1988 (53 FR 43682), FDA published a final rule confirming the effective date of September 2, 1988, for the permanent listing of D&C Red No. 36; however, the agency stayed until December 27, 1988, one provision in the permanent listing regulations to which an objection had been made. Because of this stay, the agency also postponed the closing date of the provisional listing for D&C Red No. 36 until December 27, 1988. This postponement permitted the continued use of the color additive pending resolution of the one provision in the permanent listing to which an objection has been filed.

On December 27, 1988 (53 FR 52129), FDA terminated the stay of the one provision noted in the October 28, 1988, final rule (53 FR 43682) and amended the regulation for the permanent listing of D&C Red No. 36 to modify a limitation on use in ingested drugs. The effective date of the amended final rule was January 27, 1989, which provided time for interested persons to submit objections to the amendment. In the same issue of the **Federal Register**, FDA published a final rule (53 FR 52130) that postponed the closing date for the provisional listing of D&C Red No. 36 until February 27, 1989, so that FDA could respond to any objection received regarding the amended final rule permanently listing D&C Red No. 36.

On March 6, 1989 (54 FR 9200), the agency published a final rule announcing that no objections to the amended final rule had been submitted and confirming the effective date of January 27, 1989, for the amended final rule permanently listing D&C Red No. 36 for general use in drugs and cosmetics, except in the area of the eye. Inadvertently, FDA neglected to remove the entries from the regulations (tables in 21 CFR 81.1(b) and 81.27(d)) that provided for the provisional listing of D&C Red No. 36 until February 27, 1989. Although the passage of this date terminated the provisional listing of D&C Red No. 36, the agency's policy has been to remove references to color additives in the provisionally listed regulations when the color additives are either permanently listed or when petitions for such permanent listing are denied.

Therefore, FDA concludes that 21 CFR 81.1(b) and 81.27(d) should be amended to remove the entry for D&C Red No. 36 from each table. This action does not affect the permanent listing of this color additive for general drug and cosmetic use.

FDA further concludes that it is unnecessary to provide an opportunity for the filing of objections to this action because this rule is editorial in nature, and because the transitional provisions of the color additve amendments provide for the issuance of a final rule without providing an opportunity for objection.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. Section 81.1 *Provisional lists of color additives* is amended in the table of paragraph (b) by removing the entry for "D&C Red No. 36".

§ 81.27 [Amended]

3. Section 81.27 *Conditions of provisional listing* is amended in the table in the introductory text of paragraph (d) by removing the entry for "D&C Red No. 36".

Dated: August 30, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–21068 Filed 9–7–89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

22 CFR Part 136

[Public Notice 1126; 108,889]

Personal Property Disposition at Posts Abroad

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This action promulgates the final rule setting forth regulations governing disposition of personal property abroad by certain United States Government employees and contractors, and members of their families. As required by section 303(a) of the State Department's Basic Authorities Act (22 U.S.C. 4343(a)), the purpose of these regulations is to ensure that employees and members of their families do not personally profit from transactions with persons not entitled to exemptions from import restrictions, duties, or taxes.

EFFECTIVE DATE: August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James Merable, Office of the Comptroller, Department of State, telephone 703–875–6918.

SUPPLEMENTARY INFORMATION: On June 20, 1988, the State Department published interim regulations (53 FR 23188) on Personal Property Disposition at Posts Abroad. The comment period ended on August 20, 1988. Comments were received from Foreign Service posts abroad, USG employees who serve abroad, an employee organization (American Foreign Service Association or "AFSA"), and several USG agencies whose employees are affected. Most of the comments received were critical of parts of the legislation, asked for clarification, or concerned tax implications. Only one minor change has been made to the interim regulations based on comments received. Comments are summarized below.

Section 136.4(g) of the interim regulations stipulated that for the purposes of computing profits on property dispositions, proceeds received and costs incurred in a foreign currency shall be valued in US dollars at the time of receipt or payment. Use of these procedures was questioned by commenters. The section has been amended to provide that such conversion is only required when the purchase and sale occur in two different currencies. Profit on transactions involving goods both purchased and sold in the local currency will be calculated in the local currency rather than converting each part of the transaction to dollars before computing profit, as is required in all other transactions.

A number of comments were received which criticized the interim rule and the legislation as being unduly restrictive, or inequitable for USG employees. No regulatory relief could be provided along those lines, however, since the interim rule tracked the statute closely. The regulations already provide flexibility for chiefs of mission where the statute allows it.

For instance, it was asked if the rule could be changed to include interest or extraordinary maintenance expense in the calculation of the base price of an item. This could not be accomplished since base price (basis) and profit are defined in the statute. Similarly, the regulations cannot provide for averaging losses and profits on vehicle sales, as requested, since the law contains no such provision. Nor can they accommodate a request from AFSA and others to permit employees to retain any proceeds from the sale of personal property up to the fair replacement cost of the item sold.

The statute excludes from the definition of profit amounts contributed as charitable contributions. Commenters complained that since the IRS considers such receipts as realizable income, employees will be subject to taxes on all or part of money given to charity which they were required by the statute not to keep. The statute did not address the tax liabilities of employees, however, and does not allow retention of any profits, even to pay taxes on a capital gain, although this was suggested by several organizations and individuals.

E.O. 12291, Federal Regulations

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulations.

Regulatory Flexibility Act

These rules will not have a significant impact on a substantial number of small entities because they will affect only Federal employees and agencies.

Paperwork Reduction Act

These regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 22 CFR Part 136

Government employees, Foreign relations.

Accordingly, new part 136 is added to title 22, Code of Federal Regulations, as follows:

PART 136—PERSONAL PROPERTY DISPOSITION AT POSTS ABROAD

Sec.

136.1 Purpose.
136.2 Authority.
136.3 Definitions.
136.4 Restrictions on dispositions of personal property.
136.5 Chief of mission policies, rules or procedures.
136.6 Contractors.

Authority: 22 U.S.C. 4341.

§ 136.1 Purpose.

The primary purpose of these regulations is to ensure that employees and members of their families do not profit personally from sales or other transactions with persons who are not themselves entitled to exemption from import restrictions, duties, or taxes.

§ 136.2 Authority.

Section 303(a) of the State Department Basic Authorities Act of 1956 authorizes the Secretary of State to issue regulations to carry out the purposes of Title III of that Act.

§ 136.3 Definitions.

(a) *Basis* of an item shall include the initial price paid (or retail value at the time of acquisition if acquired by gift), inland and overseas transportation costs (if not reimbursed by the United States Government), shipping insurance, taxes, customs fees, duties or other charges, and capital improvements, but shall not include insurance on an item while in use or storage, maintenance, repair or related costs, or financing charges.

(b) *Charitable contribution* means a contribution or gift as defined in section 170(c) of the Internal Revenue Code, or other similar contribution or gift to a bona fide charitable foreign entity as determined pursuant to policies, rules or procedures issued by the chief of mission pursuant to § 136.5(b).

(c) *Chief of mission* has the meaning given such term by section 102(a) of the Foreign Service Act of 1980 (22 U.S.C. 2902(3).

(d) *Contractor* means: (1) An individual employed by personal services contract pursuant to section 2(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(c)), pursuant to section 636(a)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2396(a)(3)), or pursuant to any other similar authority including, in the case of an organization performing services under such authority, an individual involved in the performance of such service; and (2) any other individual or firm that enjoys exemptions from import limitations, customs duties or taxes on personal property from a foreign country in connection with performance of a contract for goods or services when such contract is with the United States Government or an agency or instrumentality thereof or when such contract is directly financed by grant assistance from the United States Government or an agency or instrumentality thereof and the individual or firm is a party to the contract, a subcontractor, or an employee of a contractor or subcontractor.

(e) *Employee* means an individual who is under the jurisdiction of a chief of mission to a foreign country as provided under section 207 of the Foreign Service Act of 1980. (22 U.S.C. 3927) and who is—

(1) An employee as defined by section 2105 of title 5, United States Code;

(2) An officer or employee of the United States Postal Service or of the Postal Rate Commission;

(3) A member of a uniformed service who is not under the command of an area military commander, or

(4) An expert or consultant as authorized pursuant to section 3109 of title 5, United States Code, with the United States or any agency, department, or establishment thereof; but is not a national or permanent resident of the foreign country in which employed.

(f) *Family member* means any member of the family of an employee who is entitled to exemption from import limitation, customs duties, or taxes which would otherwise apply by virtue of his or her status as a dependent or member of the household of the employee.

(g) *Foreign country* means any country or territory, excluding the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, American Samoa, Guam, the Virgin Islands, and other territories and possessions of the United States.

(h) Except as otherwise provided by a chief of mission in policies, rules or procedures issued pursuant to § 136.5(b), an item shall be deemed of "minimal value" if its acquisition cost in U.S. dollars (or retail value if received as a gift) is within the limit determined by the Administrator of General Services for "minimal value" of foreign gifts under 5 U.S.C. 7342, currently $180. For purposes of determining "minimal value," all constitutent parts of components of an audio or visual system, automobile, boat, computer system, or other integrated machine, system or item of equipment must be valued as a single item even if acquired separately, except that spare or superseded parts (e.g., an old set of tires that has been replaced on vehicle) may be valued as separate items.

(i) *Personal property* means any item of personal property, including automobiles, computers, boats, audio and video equipment and any other items acquired for personal use, except that items properly determined to be of "minimal value" shall not be subject to limitations on disposition except for purposes of § 136.4(d) or as prescribed in policies, rules or procedures issued by a chief of mission.

(j) *Profit* means any proceeds (including cash and other valuable consideration but not including amounts of such proceeds given as charitable contributions) for the sale, disposition or assignment of personal property in excess of the basis for such property.

§ 136.4 Restrictions on dispositions of personal property.

(a) An employee or family member shall not sell, assign or otherwise dispose of personal property within a foreign country except with the prior written approval of the chief of mission or designee, except where the category of dispositions has been authorized to be undertaken without prior written approval in policies, rules or procedures issued by the chief of mission (cf. § 136.5(b)(1)).

(b) An employee or family member shall not retain any profit from the sale, assignment or other disposition within a foreign country of personal property that was imported into or purchased in that foreign country and that, by virtue of the official status of the employee, was exempt from import restrictions, customs duties, or taxes which would otherwise apply, when such sale, assignment or other disposition is made to persons not entitled to exemptions from import restrictions, duties, or taxes. An employee or family member shall not profit from an indirect disposition to persons not entitled to such exemptions, such as sale through a third country diplomat acting as a middleman, where the employee or family member knows or should know that the property is being acquired by the third party for resale to persons not entitled to exemptions, except that this restriction shall not apply to sales of personal property to official agencies of the foreign country in accordance with the laws or regulations of that country.

(c) Profits obtained from dispositions of personal property by an employee or family member that cannot be retained under paragraph (b) of this section including any interest earned by the employee or family member on such profits, shall be disposed of within 90 days of receipt by contribution or gift as defined in section 170(c) of the Internal Revenue Code or by other similar contribution or gift to a bona fide charitable foreign entity as designated by the chief of mission pursuant to § 136.5(b)(11) of this part.

(d) Except as authorized in advance by the chief of mission on a case-by-case basis, no employee or family member shall sell, assign or otherwise dispose of personal property within a foreign country that was not acquired for bona fide personal use. There shall be a presumption that property that is new, unused or held by the employer or family member in unusual or commercial quantities was not acquired for bona fide personal use. For purposes of this subsection, there is no exemption for items of minimal value § 136.3(h)).

(e) No employee or family member shall import, sell, assign or otherwise dispose of personal property within a foreign country in a manner that violates the law or regulations of that country or governing international law.

(f) Violations of the restrictions or requirements of paragraphs (a) through (e) of this section shall be grounds for disciplinary actions against the employee in accordance with the employing agency's procedures and regulations. Employees shall be responsible for ensuring compliance with these regulations by family members.

(g) For purposes of computing profits on personal property dispositions subject to these regulations, where acquisition and disposition of the property were transacted in different currencies, proceeds received and costs incurred in a foreign currency shall be valued in United States dollars at the time of receipt or payment at the rate of exchange that was in effect for reverse accommodation exchanges at U.S. missions at the time of such receipt or payment. Where property was acquired and sold in the same currency, no conversion is required.

§ 136.5 Chief of mission policies, rules or procedures.

(a) Each chief of mission shall establish a procedure under which employees may request approval for the sale of personal property and for conversion of proceeds of such sale from local currency into U.S. dollars, if applicable. This procedure may be modified to meet local conditions, but must produce a documentary record to be held by the post of the following:

(1) The employee's signed request for permission to sell personal property, and, if applicable, to convert local currency proceeds to U.S. dollars;

(2) A description of each item of personal property having more than minimal value, and the cost basis and actual sales price for each item;

(3) All profits received and whether profit is retainable;

(4) Donation to charities or other authorized recipients of non-retainable profits;

(5) Approvals to sell and, if applicable, to exchange proceeds, with any restrictions or refusals of the employee's request noted, signed by the chief of mission or designee; and

(6) For privately owned vehicle transactions, data on purchaser and statement that customs requirements have been met and title has been transferred or arranged with an agent identified on document.

(b) In order to ensure that due account is taken of local conditions, including applicable laws, markets, exchange rate factors, and accommodation exchange facilities, the chief of mission to each foreign country is authorized to establish policies, rules, and procedures governing the disposition of personal property by employees and family members in that country under the chief of mission's jurisdiction. Policies, rules and procedures issued by the chief of mission shall be consistent with the general restrictions set forth in § 136.4 and may include at least the following:

(1) Identification of categories of dispositions (e.g., sales of minimal value items) that may be made without prior written approval;

(2) Identification of categories of individuals or entities to whom sales of personal property can be made without restrictions on profits (e.g., other employees, third country diplomats), individuals or entities to whom sales can be made but profits not retained, and individuals or entities to whom sales may not be made;

(3) Requirements to report the total estimated and actual proceeds for all minimal value items, even if such items are otherwise exempted from limitations on profits of sale;

(4) Categories of items of personal property excluded from restrictions on disposition because generally exempt from taxation and import duties under local law;

(5) More restrictive definition of "minimal value" (see § 136.3(h) of this part);

(6) Limitations on manner of disposition (e.g., restrictions on advertising or yard sales);

(7) Limitations on total proceeds that may be generated by dispositions of personal property, including limitations on proceeds from disposition of "minimal value" items;

(8) Limitations on total profits that may be generated by dispositions of personal property, including limitations on profits from dispositions of "minimal value" items;

(9) Limitations on total proceeds from dispositions of personal property that may be converted into dollars by reverse accommodation exchange;

(10) Limitations on the timing and number of reverse accommodation exchanges permitted for proceeds of dispositions of personal property (e.g., only in last six months of tour and no more than two exchange conversions);

(11) Designation of bona fide charitable foreign entities to whom an employee or family member may donate profits that cannot be retained under these regulations.

(12) Designation of post officials authorized to approve on behalf of chief of mission employee requests for permission to sell personal property and requests to convert local currency proceeds of sale to U.S. dollars by reverse accommodation exchange.

(c) All policies, rules, and procedures that are issued by the chief of mission pursuant to paragraphs (a) and (b) of this section shall be announced by notice circulated to all affected mission employees and copies of all such policies, rules and procedures shall be made readily accessible to all affected employees and family members.

(d) Violations of restrictions or requirements established by a chief of mission in policies, rules, or procedures issued by a chief of mission pursuant to paragraphs (a) and (b) of this section shall be grounds for disciplinary actions against the employee in accordance with the employing agency's procedures and regulations. Employees shall ensure compliance by family members with policies, rules or procedures issued by the chief of mission.

§ 136.6 Contractors.

To the extent that contractors enjoy importation or tax privileges in a foreign country because of their contractual relationship to the United States Government, contracting agencies shall include provisions in their contracts that require the contractors to observe the requirements of these regulations and all policies, rules, and procedures issued by the chief of mission in that foreign country.

Lawrence S. Eagleburger,
Acting Secretary of State.

[FR Doc. 89–21157 Filed 9–7–89; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8260]

RIN 1545–AJ92

Income Tax; Limitation on Taxpayer's Basis or Inventory Cost in Property Imported From Related Persons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the limitation on taxpayer's basis or inventory cost in property imported from a related person. This limitation is contained in section 1059A of the Internal Revenue Code of 1986 and was enacted by the Tax Reform Act of 1986. These regulations provide the public with the guidance needed to comply with section 1059A.

DATES: The regulations are effective with respect to imported property if the entry documentation required to be filed to obtain the release of the property from the custody of the United States Customs Service was filed after March 18, 1986, except that the regulations will not apply to property imported into the United States in an open transaction as described in § 1.1059A(c)(9), provided the entry documentation is filed prior to September 3, 1987.

FOR FURTHER INFORMATION CONTACT: W. Edward Williams of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, Room 3319, 950 L'Enfant Plaza, Washington, DC 20024, Attention: CC:INTL:1 (INTL–960–86). Telephone 202–287–4851 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 1059A of the Internal Revenue Code of 1986, as added by section 1248 of the Tax Reform Act of 1986. These regulations are issued under the authority contained in section 7805 of the Internal Revenue Code of 1986 (68A Stat. 917, 26 U.S.C. 7805).

On September 3, 1987, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1059A of the Internal Revenue Code of 1986 (52 FR 33427) [INTL–960–86, 1987–43 I.R.B. 36].

Section 1059A provides that a U.S. taxpayer that imports property into the U.S. in a transaction (directly or indirectly) from a person or persons related to the taxpayer, within the meaning of section 482 of the Code, may not claim, for purposes of computing the basis or inventory cost of the property, a greater cost than the amount of the cost taken into account for customs valuation purposes. However, because the rules for determining the value of imported property for customs purposes differ in some respects from the rules for determining cost basis or inventory cost for income tax purposes, certain adjustments to the customs value are required to determine the limitation to cost basis or inventory cost for income tax purposes. Congress was aware of the need for these adjustments, and the legislative history of section 1059A contemplates that the Internal Revenue Service will provide rules for making

necessary adjustments to the customs value. These regulations provide rules for adjusting the value utilized for customs value so that the customs value, as adjusted, will be the limitation under section 1059A for purposes of computing the basis or inventory cost of property imported by a U.S. taxpayer from a related person. These regulations have no applicability to the customs regulations issued under Title 19 of the Code of Federal Regulations and have no relevance in interpreting those regulations.

Numerous written comments were received with respect to the proposed regulations. The significant points raised by the comments and the changes made to the proposed amendments are discussed in the remainder of the preamble. After consideration of the comments regarding the proposed amendments, the amendments are adopted as modified by this Treasury decision.

Discussion of Major Comments and Revised Amendments

Section 1.1059A–1

In response to comments, paragraph (c)(6) has been clarified to state that the section 1059A limitation may be applied by the importer at any point in time after importation. Thus, a taxpayer is not required to compute an inventory amount which includes all capital expenses under section 471 prior to the application of section 1059A. The section 1059A limitation may be applied at any point after importation as long as costs that are taken into account for income tax valuation are also included in the comparative customs valuation.

In addition, paragraph (c)(1) has been revised to state that property subject only to the harbor maintenance tax imposed by 26 U.S.C. 4461 and property subject to both the user fee under 19 U.S.C. 58(c) and the harbor maintenance tax is not subject to the section 1059A limitation.

A suggestion was made that paragraph (c)(2) be revised to permit an adjustment to the section 1059A limitation for the value of assists when the importer does not allocate the value of assists to individual items but rather reports the total value of the assists for customs purposes on a periodic basis and includes the total value of the assists in the dutiable value of one item. The Internal Revenue Service was advised by the Customs Service that the periodic reporting of the value of assists is permitted under the circumstances described in 19 CFR 152.103(e). Therefore, paragraph (c)(2) has been revised to permit adjustments to customs values where the value of assists has been reported on a periodic basis in accordance with 19 CFR 152.103(e).

Paragraph (c)(9) has been revised to eliminate the requirement that a taxpayer may average customs values only in cases involving open transactions in which there has been a good faith overvaluation of one article and a good faith undervaluation of a second article. We were advised by the Customs Service that it does not recognize the concept of "good faith under- and overvaluation of merchandise" and that in cases where the transaction value depends on subsequent resale price, for example, an alternative or constructive method of valuation will be used. A corresponding revision was made in the example in paragraph (c)(9).

Special Analyses

It has been determined that these regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

It has also been determined that these regulations are not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Drafting Information

The principal author of these final regulations is W. Edward Williams of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.1001–1 Through 1.1102–3

Income taxes, Gain and loss, Basis, Nontaxable exchanges.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. The following new § 1.1059A–1 is added to read as follows:

§ 1.1059A–1 Limitation on taxpayer's basis or inventory cost in property imported from related persons.

(a) *General rule.* In the case of property imported into the United States in a transaction (directly or indirectly) by a controlled taxpayer from another member of a controlled group of taxpayers, except for the adjustments permitted by paragraph (c) (2) of this section, the amount of any costs taken into account in computing the basis or inventory cost of the property by the purchasing U.S. taxpayer and which costs are also taken into account in computing the valuation of the property for customs purposes may not, for purposes of the basis or inventory cost, be greater than the amount of the costs used in computing the customs value. For purposes of this section, the terms "controlled taxpayer" and "group of controlled taxpayers" shall have the meaning set forth in § 1.482–1(a).

(b) *Definitions*—(1) *Import.* For purposes of section 1059A and this section only, the term "import" means the filing of the entry documentation required by the U.S. Customs Service to secure the release of imported merchandise from custody of the U.S. Customs Service.

(2) *Indirectly.* For purposes of this section, "indirectly" refers to a transaction between a controlled taxpayer and another member of the controlled group whereby property is imported through a person acting as an agent of, or otherwise on behalf of, either or both related persons, or as a middleman or conduit for transfer of the property between a controlled taxpayer and another member of the controlled group. In the case of the importation of property indirectly, an adjustment shall be permitted under paragraph (c)(2) of this section for a commission or markup paid to the person acting as agent, middleman, or conduit, only to the extent that the commission or markup: is otherwise properly included in cost basis or inventory cost; was actually incurred by the taxpayer and not remitted, directly or indirectly, to the taxpayer or related party; and there is a substantial business reason for the use of a middleman, agent, or conduit.

(c) *Customs value*—(1) *Definition.* For purposes of this section only, the term "customs value" means the value required to be taken into account for purposes of determining the amount of any customs duties or any other duties which may be imposed on the importation of any property. Where an item or a portion of an item is not subject to any customs duty or is subject to a free rate of duty, such item or portion of such item shall not be subject to the provisions of section 1059A or this section. Thus, for example, the portion of an item that is an American good returned and not subject to duty (items 806.20 and 806.30, Tariff Schedules of the United States, 19 U.S.C. 1202); imports on which no duty is imposed that are valued by customs for statistical purposes only; and items subject to a zero rate of duty (19 U.S.C. 1202, General Headnote 3) are not subject to section 1059A or this section. Also, items subject only to the user fee under 19 U.S.C. 58(c), or the harbor maintenance tax imposed by 26 U.S.C. 4461, or only to both, are not subject to section 1059A or this section. This section imposes no limitation on a claimed basis or inventory cost in property which is less than the value used to compute the customs duty with respect to the same property. Section 1059A and this section have no application to imported property not subject to any customs duty based on value, including property subject only to a per item duty or a duty based on volume, because there is no customs value, within the meaning of this paragraph, with respect to such property.

(2) *Adjustments to customs value.* To the extent not otherwise included in customs value, a taxpayer, for purposes of determining the limitation on claimed basis or inventory cost of property under this section, may increase the customs value of imported property by the amounts incurred by it and properly included in inventory cost for—

(i) Freight charges,

(ii) Insurance charges,

(iii) The construction, erection, assembly, or technical assistance provided with respect to, the property after its importation into the United States, and

(iv) Any other amounts which are not taken into account in determining the customs value, which are not properly includible in customs value, and which are appropriately included in the cost basis or inventory cost for income tax purposes. See § 1.471–11 and section 263A.

Appropriate adjustments may also be made to customs values when the taxpayer has not allocated the value of assists to individual articles but rather has reported the value of assists on a periodic basis in accordance with 19 CFR 152.103(e). When 19 CFR 152.103(e) has been utilized for customs purposes, the taxpayer may adjust his customs values by allocating the value of the assists to all imported articles to which the assists relate. To the extent that an amount attributable to an adjustment permitted by this section is paid by a controlled taxpayer to another member of the group of controlled taxpayers, an adjustment is permitted under this section only to the extent that the amount incurred represents an arm's length charge within the meaning of § 1.482–1(d)(3).

(3) *Offsets to adjustments.* To the extent that a customs value is adjusted under paragraph (c)(2) of this section for purposes of calculating the limitation on claimed cost basis or inventory cost under this section, the amount of the adjustments must be offset (reduced) by amounts that properly reduce the cost basis of inventory and that are not taken into account in determining customs value, such as rebates and other reductions in the price actually incurred, effected between the purchaser and related seller after the date of importation of the property.

(4) *Application of section 1059A to property having dutiable and nondutiable portions.* When an item of imported property is subiect to a duty upon the full value of the imported article, less the cost or value of American goods returned, and the taxpayer claims a basis or inventory cost greater than the customs value reported for the item, the claimed tax basis or inventory cost in the dutiable portion of the item is limited under section 1059A and this section to the customs value of the dutiable portion under paragraph (c)(1). The claimed tax basis or inventory cost in the nondutiable portion of the item is determined by multiplying the customs value of the nondutiable portion by a fraction the numerator of which is the amount by which the claimed basis or inventory cost of the item exceeds the customs value of the item and the denominator of which is the customs value of the item and adding this amount to the customs value of the nondutiable portion of the item. The claimed tax basis or inventory cost in the dutiable portion is determined by multiplying the customs value of the dutiable portion by a fraction the numerator of which is the amount by which the claimed basis or inventory cost of the item exceeds the customs value of the item and the denominator of which is the customs value of the item and adding this amount to the customs value of the dutiable portion of the item. However, the taxpayer may not claim a tax basis or inventory cost in the dutiable portion greater than the customs value of this portion of the item.

(5) *Allocation of adjustments to property having dutiable and nondutiable portions.* When an item of imported property is subject to a duty upon the full value of the imported article, less the cost or value of American goods returned, and the taxpayer establishes that the customs value may be increased by adjustments permitted under paragraph (c)(2) of this section for purposes of the section 1059A limitation, the taxpayer's basis or inventory cost of the dutiable portion of the item is determined by multiplying the customs value of the dutiable portion times the percentage that the adjustments represent of the total customs value of the item and adding this amount to the customs value of the dutiable portion of the item. The taxpayer's basis or inventory cost of the nondutiable portion of the item is determined in the same manner. The amount so determined for the dutiable portion of the item is the section 1059A limitation for this portion of the item.

(6) *Alternative method of demonstrating compliance.* In lieu of calculating all adjustments and offsets to adjustments to customs value for an item of property pursuant to paragraph (c) (2) and (3) of this section, a taxpayer may demonstrate compliance with this section and section 1059A by comparing costs taken into account in computing basis or inventory costs of the property and the costs taken into account in computing customs value at any time after importation, provided that in any such comparison the same costs are included both in basis or inventory costs and in customs value. If, on the basis of such comparison, the basis or inventory cost is equal to or less than the customs value, the taxpayer shall be deemed to have met the requirements of this section and section 1059A.

(7) *Relationship of section 1059A to section 482.* Neither this section nor section 1059A limits in any way the authority of the Commissioner to increase or decrease the claimed basis or inventory cost under section 482 or any other appropriate provision of law. Neither does this section or section 1059A permit a taxpayer to adjust upward its cost basis or inventory cost for property appropriately determined under section 482 because such basis or inventory cost is less than the customs value with respect to such property.

(8) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $2,000 to Y for merchandise imported into the United States and an additional $150 for ocean freight and insurance. The customs value of the snipment

is determined to be the amount actually paid by X ($2,000) and does not include the charges for ocean freight and insurance. For purposes of computing the limitation on its inventory cost for the merchandise under section 1059A and this section, X is permitted, under paragraph (c)(2) of this section, to increase the customs value ($2,000) by amounts it paid for ocean freight and insurance charges ($150). Thus, the inventory cost claimed by X in the merchandise may not exceed $2,150.

Example (2). Assume the same facts as in Example (1) except that, subsequent to the date of importation of the merchandise, Y grants to X a rebate of $200 of the purchase price. At the time of sale, the rebate was contingent upon the volume of merchandise ultimately bought by X from Y. The value of the merchandise, for customs purposes, is not decreased by the rebate paid to X by Y. Therefore, the customs value, for customs purposes, of the merchandise remains the same ($2,000). For purposes of computing its inventory cost, X was permitted, under paragraph (c)(2) of this section, to increase the customs value for purposes of section 1059A of $2,000 by the amounts it paid for ocean freight and insurance charges ($150). However, under paragraph (c)(3) of this section, X is required to reduce the amount of the customs value by the lesser of the amount of the rebate or the amount of any positive adjustments to the original customs value. The inventory price claimed by X may not exceed $2,000 ($2,000 customs value, plus $150 transportation adjustment, less $150 offsetting rebate adjustment). While X's limitation under section 1059A is $2,000, X may not claim a basis or inventory cost in the merchandise in excess of $1,950. *See* I.R.C. section 1012; and section 1.471–2.

Example (3). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $10,000 to Y for merchandise imported into the United States. The merchandise is composed, in part, of American goods returned. The customs value of the merchandise, on which a customs duty is imposed, is determined to be $8,000 ($10,000, the amount declared by X, less $2,000, the value of the American goods returned). For income tax purposes, X claims a cost basis in the merchandise of $11,000. None of the adjustments permitted by paragraph (c)(2) of this section is applicable. The portion of the merchandise constituting American goods returned represented 20 percent of the total customs value of the merchandise. Since the cost basis claimed by X for income tax purposes represents a 10 percent increase over the customs valuation (before reduction for American goods returned), the claimed tax basis in the dutiable content is considered to be $8,800 and in the portion constituting American goods returned is $2,200. Since a customs duty was imposed only on the dutiable content of the merchandise, the limitation in section 1059A and this section is applicable only to the claimed tax basis in this portion of the merchandise. Accordingly, under paragraph (a) of this section, X is limited to a cost basis of $10,200 in the merchandise. This amount represents a cost basis of $8,000 in the dutiable content and of $2,200 in the portion of the merchandise constituting American goods returned.

Example (4). Assume the same facts as in Example (3) except that X establishes that it is entitled to increase its customs value by $1,000 in adjustments permitted by paragraph (c)(2) of this section. Since the adjustments to customs value that X is entitled to under paragraph (c)(2) of this section are 10 percent of the customs value, for purposes of determining the limitation under section 1059A and this section, both the dutiable content and the portion of the merchandise constituting American goods returned shall be increased to an amount 10 percent greater than the respective values determined for customs purposes, or $8,800 for the dutiable content and $2,200 for the portion of the merchandise constituting American goods returned. Accordingly, under paragraph (a) of this section, X is limited to a cost basis of $11,000 in the merchandise.

Example (5). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $10,000 to Y for merchandise imported into the United States. The customs value of the merchandise, on which a customs duty is imposed, is determined to be $10,000. Subsequent to the date of importation of the merchandise, Y grants to X a rebate of $1,000 of the purchase price. The value of the merchandise, for customs purposes, is not decreased by the rebate paid to X by Y. Notwithstanding the fact that X correctly reported and paid customs duty on a value of $10,000 and that its limitation on basis or inventory cost under this section is $10,000, X may not claim a basis or inventory cost in the merchandise in excess of $9,000. *See* I.R.C. section 1012; and section 1.471–2.

Example (6). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $5,000 to Y for merchandise imported into the United States. The merchandise is not subject to a customs duty or is subject to a free rate of duty and is valued by customs solely for statistical purposes. Accordingly, pursuant to paragraph (c)(1) of this section, the merchandise is not subject to the provisions of section 1059A or this section.

Example (7). Assume the same facts as in Example 6, except that the merchandise is subject to a customs duty based on value and that the customs value (taking into account no costs other than the value of the goods) is determined to be $5,000. Assume further that the $5,000 payment is only for the value of the goods, no other cost is reflected in that payment, and only the $5,000 payment to Y is reflected in X's inventory cost or basis prior to inclusion of any other amounts properly included in inventory or cost basis. Pursuant to paragraph (c)(6) of this section, X, by demonstrating these facts is deemed to meet the requirements of this section and section 1059A.

Example (8). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $9 to Y for merchandise imported into the United States and an additional $1 for ocean freight. The customs value of the article does not include the $1 paid for ocean freight. Furthermore, for customs purposes the value is calculated pursuant to computed value and is determined to be $8. For purposes of computing the limitation on its inventory cost for the article under section 1059A and this section, X is permitted, under paragraph (c)(2) of this section, to increase the customs value ($8) by the amount it paid for ocean freight ($1). Thus, the inventory cost claimed by X in the article may not exceed $9.

(9) *Averaged customs values.* In cases of transactions in which (i) an appropriate transfer price is properly determined for tax purposes by reference to events occurring after importation, (ii) the value for customs purposes of one article is higher and of a second article is lower than the actual transaction values, (iii) the relevant articles have been appraised on the basis of a value estimated at the time of importation in accordance with customs regulations, and (iv) the entries have been liquidated upon importation, the section 1059A limitation on the undervalued article may be increased up to the amount of actual transaction value by the amount of the duty overpaid on the overvalued article times a fraction the numerator of which is "1" and the denominator of which is the rate of duty on the undervalued article. This paragraph (c)(9) applies exclusively to cases of property imported in transactions that are open for tax purposes in which the actual transaction value cannot be determined and the entry has been liquidated for customs purposes on the basis of a value estimated at the time of importation in accordance with customs regulations; in these cases, the property is appropriately valued for tax purposes by reference to a formula, in existence at the time of importation, based on subsequent events and valued for customs purposes by a different formula. This paragraph (c)(9) does not apply where customs value is correctly determined for purposes of liquidating the entry and where the customs value is subsequently adjusted for tax purposes, for example by a rebate, under paragraph (c)(2) of this section. The application of paragraph (c)(9) may be illustrated by the following example:

Example. Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X purchases Articles A and B from Y on consignment and imports the Articles into the United States. The purchase price paid by X will be determined as a percentage of the sale prices that X realizes. Rather than deferring liquidation, customs liquidates the entry on the basis of estimated values and the customs duties are paid by X. Ultimately, it is determined that Article A was undervalued and Article B was overvalued by X for customs purposes. The section 1059A limitation for Article A is computed as follows:

	Article A	Article B
Finally-determined customs value	$9	$9
Transaction value	$10	$5
Duty rate	10%	5%
Customs duty paid	$.90	$.45
Duty overpaid or (underpaid)	($.10)	$.20

The section 1059A limitation on Article A may be increased by the amount of the duty over-paid on Article B, $.20, times 1/.10, up to the amount of the transaction value. Therefore, the section 1059A limitation on Article A is $9.00 plus $1.00, or a total of $10.00. The section 1059A limitation on Article B is reduced (but never below transaction value) by $2.00 to $7.00.

(d) *Finality of customs value and of other determinations of the U.S. Customs Service.* For purposes of section 1059A and this section, a taxpayer is bound by the finally-determined customs value and by every final determination made by the U.S. Customs Service, including, but not limited to, dutiable value, the value attributable to the cost or value of products of the United States, and classification of the product for purposes of imposing any duty. The customs value is considered to be finally determined, and all U.S. Customs Service determinations are considered final, when liquidation of the entry becomes final. For this purpose, the term "liquidation" means the ascertainment of the customs duties occurring on the entry of the property, and liquidation of the entry is considered to become final after 90 days following notice of liquidation to the importer, unless a protest is filed. If the importer files a protest, the customs value will be considered finally determined and all other U.S. Customs Service determinations will be considered final either when a decision by the Customs Service on the protest is not contested after expiration of the period allowed to contest the decision or when a judgment of the Court of International Trade becomes final. For purposes of this section, any adjustments to the customs value resulting from a petition under 19 U.S.C. section 1516 (requests by interested parties unrelated to the importer for redetermination of the appraised value, classification, or the rate of duty imposed on imported merchandise) or reliquidation under 19 U.S.C. section 1521 (reliquidation by the Customs Service upon a finding that fraud was involved in the original liquidation) will not be taken into account. However, reliquidation under 19 U.S.C. section 1501 (voluntary reliquidation by the Customs Service within 90 days of the original liquidation to correct errors in appraisement, classification, or any element entering into a liquidation or reliquidation) or reliquidation under 19 U.S.C. section 1520(c)(1) (to correct a clerical error, mistake of fact, or other inadvertance within one year of a liquidation or reliquidation) will be taken into account in the same manner as, and take the place of, the original liquidation in determining customs value.

(e) *Drawbacks.* For purposes of this section, a drawback, that is, a refund or remission (in whole or in part) of a customs duty because of a particular use made (or to be made) of the property on which the duty was assessed or collected, shall not affect the determination of the customs value of the property.

(f) *Effective date.* Property imported by a taxpayer is subject to section 1059A and this section if the entry documentation required to be filed to obtain the release of the property from the custody of the United States Customs Service was filed after March 18, 1986. Section 1059A and this section will not apply to imported property where (1) the entry documentation is filed prior to September 3, 1987; and (2) the importation was liquidated under the circumstances described in paragraph (c)(9) of this section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: June 26, 1989.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 89-21071 Filed 9-7-89; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 602

[T.D. 8261]

RIN 1545-AJ54

Treatment of Dual Consolidated Losses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the definition of "dual consolidated losses" for purposes of determining whether the net operating loss of a domestic corporation is available to reduce the taxable income of any other member of its affiliated group. The regulations are necessary to provide guidance to domestic corporations which are subject to an income tax of a foreign country and to other members of such corporations' affiliated group, as well as to officers and employees of the Internal Revenue Service.

EFFECTIVE DATES: The regulations are effective September 8, 1989, with respect to taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: David I. Bower of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL-961-86) (202 566-6645, not a toll-free call)).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1083. The estimated annual burden per respondent varies from ½ to 1 hour, depending on individual circumstances, with an estimated average of .75 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Background

This document contains temporary Income Tax Regulations (26 CFR part 1) under section 1503(d) of the Internal Revenue Code of 1986, which was added

to the Code by section 1249 of the Tax Reform Act of 1986 (Pub. L. 99-514).

Need for Temporary Regulations

Section 1503(d) of the Internal Revenue Code is effective for taxable years beginning after December 31, 1986. There is a need for immediate guidance as to the manner in which the requirements of the statute will be administered and as to those circumstances under which relief from the statute is provided.

Prior Law

A corporation that is created or organized in the United States or under the laws of the United States or any state is a "U.S. corporation." U.S. corporations are sometimes referred to as U.S. resident corporations. The United States taxes every U.S. corporation on its worldwide income and allows it to deduct losses wherever incurred. The United States allows U.S. corporations to file consolidated returns with other U.S. corporations that are commonly owned. When two or more U.S. corporations file a consolidated return, losses that one corporation incurs generally may reduce or eliminate tax on income that another corporation earns.

Some countries use criteria other than place of incorporation to determine whether corporations are residents for tax purposes. In particular, some countries treat corporations as residents for tax purposes if they are managed or controlled there. If one of these countries determines a corporation to be its resident, that country typically taxes it on its worldwide income and allows it to deduct losses wherever incurred. In some cases, the foreign country allows losses of a resident corporation to reduce or eliminate tax on income of other commonly owned resident corporations.

For tax purposes a corporation may be at the same time a U.S. resident for U.S. purposes and a resident of another country for its purposes if the other country uses a standard other than place of incorporation to determine residency. Such corporations are sometimes referred to as "dual resident corporations." A dual resident corporation is taxable in both countries on its worldwide income (or it could deduct its worldwide losses in both countries). In addition, if the foreign country has provisions that, like the U.S. consolidated return provisions, permit commonly controlled resident corporations to combine their income and losses, such dual resident corporations may be able, in effect, to use any losses generated twice offsetting the income of affiliates resident in the United States (but not abroad) and again offsetting the income of affiliates resident only in the other country.

Corporate groups attempted to isolate expenses in a dual resident corporation so that, viewed in isolation, the dual resident corporation was operating at a loss for tax purposes. This isolation of expenses allowed, in effect, the consolidation of the loss of the dual resident corporation with two profitable corporations, one in the United States and one in the foreign country. The profitable corporations, however, reported their income to only one country.

Statutory Provisions

Section 1249 of the Tax Reform Act of 1986 added subsection (d) to section 1503 of the Internal Revenue Code. Section 1503(d), as added by the 1986 Act, provides that if a domestic corporation is subject to a foreign country's tax on worldwide income, or on a residence basis as opposed to a source basis, any net operating loss it incurs cannot reduce the taxable income of any other member of a U.S. affiliated group for that or any other taxable year. Where a corporation is subject to foreign tax on its worldwide income or, otherwise on a residence basis, then, for U.S. tax purposes, its losses will be available to offset income of that corporation in other years, but not income of another U.S. corporation. Regulatory authority is provided to exempt a U.S. corporation from this rule to the extent that its losses do not offset the income of foreign corporations for foreign tax purposes. The provision applies to losses of dual resident corporations whether or not any of the income of any foreign corporation that the dual resident corporation's loss may reduce in the foreign country is or will be subject to U.S. tax. Loss carryovers incurred in years beginning prior to 1987 by a dual resident corporation are available to offset income that another member of the affiliated group earns in years beginning after 1986. Conversely, loss carrybacks incurred in years beginning after 1986 by a dual resident corporation are not available to offset income of affiliates earned prior to 1987.

Explanation of Regulations

Section 1.1503-2T(a) outlines the rules describing those net operating losses of domestic corporations that are not available to reduce the income of any other affiliate, so-called "dual consolidated losses." The net operating loss of a domestic corporation which is either subject to an income tax of a foreign country on its income without regard to whether such income is from sources in or outside of such foreign country, or is subject to an income tax of a foreign country on a residence basis, is a "dual consolidated loss" and will not be available to reduce the income of any other affiliate. This treatment generally applies regardless of whether the losses offset income of another corporation under the income tax laws of the foreign country and regardless of whether any income that the loss may reduce in the foreign country is subject to tax in the United States. Further, provisions are included to make clear that a dual consolidated loss, if acquired by or transferred to an affiliate in a section 381 transaction, cannot offset income of the affiliate.

Paragraph (b) defines the terms "domestic corporation," "dual consolidated loss," "dual resident corporation," "separate unit," and "subject to tax."

Paragraph (c) provides exceptions from the general rule of paragraph (a). Paragraph (c)(1) provides an exception from paragraph (a) if at no time after December 31, 1986, is there another person, corporation, or entity that is permitted, under the income tax laws of the foreign country, to use the losses, expenses, or deductions of the dual resident corporation, and the income tax laws of the foreign country do not allow the losses, expenses, or deductions of the dual resident corporation to be carried over or back to be used, by another person, corporation, or entity. Paragraph (c)(2) provides an exception from paragraph (a) where there is an elective agreement in place between the United States and the foreign country to take the loss in only one country. (There are no such agreements in force at the time of the publication of these regulations.) In other situations, an exception is available only if the dual resident corporation files an agreement to file amended returns as set forth in paragraph (c)(3) or if there is a restructuring as described in paragraph (c)(4).

Paragraph (c)(3)(i) provides an exception from the rule of paragraph (a) if at no time after December 31, 1986 is there another person, corporation, or entity that is permitted, under the income tax laws of the foreign country, to use the losses, expenses, or deductions of the dual resident corporation, but the foreign income tax law provides for a carryover or back of the losses, expenses, or deductions. Paragraph (c)(3)(i) provides that a dual consolidated loss may be used for U.S. tax purposes if the losses, expenses, or deductions of the dual resident corporation cannot currently be used under foreign laws by another person, corporation, or entity, and the U.S. group filing a consolidated return or, if there is no group, the dual resident corporation, files an agreement described in paragraph (c)(3) (ii) and (iii) to amend its return if the losses, expenses, or deductions of the dual resident corporation are subsequently used or are able to be used under foreign law. If, under the income tax laws of the foreign country, the losses, expenses, or deductions of the dual resident corporation are subsequently used or are able to be used to offset the income of another person, corporation, or entity, the dual consolidated loss will be reported on an amended return for the taxable year in which the dual consolidated loss arose and for each of the taxable years in which the tax liability is increased as a result of the application of the limitation on the use of the dual consolidated loss.

Paragraph (c)(4) provides a special transition rule that provides an exception from the rule of paragraph (a) for dual consolidated losses even though there may have been other persons, corporations, or entities which, under the income tax laws of the foreign country, could have used the losses, expenses, or deductions of the dual resident corporation to offset income. The exception of paragraph (c)(4) is allowed only if, on or before December 31, 1989, a restructuring of the corporate structure in the foreign country is completed so that at all times from the date of such restructuring to the close of the taxable year in which the dual consolidated loss arises, there is no other person, corporation, or entity which, under the income tax laws of the foreign country, could use the losses, expenses, or deductions of the dual resident corporation to offset income. The exception of paragraph (c)(4) is applicable only to dual consolidated losses arising after the restructuring takes place. Further, if the foreign income tax law provides for a carryover or back of the losses, expenses, or deductions of the dual resident corporation, then the affiliated group filing a consolidated return or, if there is no affiliated group filing a consolidated return, the dual resident corporation, must file an agreement as described in paragraphs (c)(3) (ii) and (iii), to amend its return (or returns) if the losses, expenses, or deductions are subsequently used or are able to be used to offset the income of another person, corporation, or entity under foreign law.

The Service is aware that there may be a number of dual resident corporations that were unable to utilize their losses to benefit their affiliates in the foreign country for reasons other than the enactment by the foreign country of mirror legislation prohibiting the use of such losses. If such taxpayers restructured their operations after the effective date of section 1503(d) to eliminate the dual resident status of an affiliated corporation or to terminate its ability to consolidate with foreign affiliates, then these regulations allow the U.S. consolidation of only those losses incurred after the restructuring. The Service invites comments from such taxpayers as to the reasons for their inability to utilize losses in the foreign country and the delay in restructuring in response to section 1503(d), so that a determination can be made as to whether additional transition relief would be appropriate. For example, if the Service determines that additional transition relief is justified, a closing agreement that provides safeguards to protect the government's interests will be considered.

Paragraph (d) sets forth special rules for separate units of a domestic corporation. Paragraph (d)(1) provides that if a domestic corporation holds an interest in an entity that is not taxed as an association for U.S. tax purposes, but is subject to tax in a foreign jurisdiction as a corporation on a residence or worldwide basis, then the interest held by the domestic corporation will be treated for purposes of section 1503(d) as if it were a dual resident corporation and a wholly-owned domestic subsidiary of a domestic corporation.

Paragraph (d)(2) provides that if a separate unit of a domestic corporation, other than a separate unit described in paragraph (d)(1), is permitted to use its losses, expenses, or deductions to offset the income of other persons, corporations, or entities, either in the taxable year in which a dual consolidated loss arises, or in past or future years by means of a carryover or carryback provision, then such separate unit will be treated as if it were a dual resident corporation and a wholly-owned domestic subsidiary of a domestic corporation.

Paragraph (d)(3) provides an exception from the rule in paragraph (d)(2) for any taxable year in which a certification is filed which provides that no portion of the separate unit's losses, expenses, or deductions as identified in paragraph (d)(2) has been or will be used to offset the income of any other person, corporation, or entity under the income tax laws of the foreign country. Paragraph (d)(4) provides that if the losses, expenses, or deductions of a separate unit subject to the certification requirement of paragraph (d)(3) are used by any means to offset the income of any other persons, corporation, or entity under the income tax laws of a foreign county, then such losses, expenses, or deductions shall be recaptured and reported as income. Paragraph (d)(4) also provides that in the event recapture occurs, an interest charge on the additional amount of tax owed shall be imposed.

Paragraph (d)(5) clarifies that a separate unit is treated as a separate entity for purposes of determining whether the losses of one entity are permitted under the income tax laws of a foreign country to offset the income of another entity. Accordingly, if a domestic corporation owns two separate units in a foreign country which permits the two units to combine their income and losses on a single income tax return and the two separate units actually so combine, then they will each be treated as a dual resident corporation for purposes of this section. The use of the loss of one separate unit to offset the income of the other separate unit under the foreign income tax laws will preclude a deduction of the separate unit's loss for U.S. tax purposes. However, an exception is provided in paragraph (d)(5)(ii) which treats as one single unit any two or more separate units of a domestic corporation if the units are not units described in paragraph (d)(1) and are located in the same foreign country.

Paragraph (e) provides a special rule which denies the use of a dual consolidated loss to offset the income produced by, or gain recognized from, the disposition or exchange of assets transferred to or acquired by a dual resident corporation or a corporation that has ceased to be a dual resident corporation.

Paragraph (f) provides a special rule for accounting for dual consolidated losses of dual resident corporations that are members of affiliated groups filing consolidated returns and of dual resident corporations that are separate units of a domestic corporation.

Special Analyses

It has been determined that these temporary rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to

these regulations, and, therfore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Riea M. Lainoff of the Office of Chief Counsel within the Office of Associate Chief Counsel (International), Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

Lists of Subjects

26 CFR 1.1501–1 through 1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended to read as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by adding this following citation:

Authority. 26 U.S.C. 7805. * * *

Section 1.1503–2T also issued under 26 U.S.C. 1503(d). * * *

Par. 2. New § 1.1503–2T is added to read as follows:

§ 1.1503–2T Dual consolidated loss (temporary regulations).

(a) *In general.* This section applies for purposes of determining whether and to what extent the net operating loss of a dual resident corporation incurred in tax years beginning after December 31, 1986, shall be allowed to reduce the taxable income of any other member of the affiliated group. Except as provided in paragraph (c) of this section, any dual consolidated loss of a domestic corporation incurred in taxable years beginning after December 31, 1986, cannot reduce the taxable income of any affiliate of such domestic corporation for that or any other taxable year, regardless of whether those losses offset income of another corporation under the income tax laws of the foreign country and regardless of whether any of the income of any corporation that the loss may reduce in the foreign country is, has been, or will be subject to tax in the United States. This rule shall also apply to preclude the use of a dual consolidated loss to offset any income of an affiliate (whether or not an election to file a consolidated return has been made) by means of a transaction subject to section 381 of the Code. For purposes of the preceding sentence, an "affiliate" means any member of the affiliated group as determined under section 1504(a) without regard to the exceptions contained in section 1504(b) (other than section 1504(b)(3)) relating to includible corporations. Further, this rule shall also apply to preclude the use of a dual consolidated loss of a separate unit by a domestic corporation upon or as a result of the termination, liquidation, or sale of the separate unit. The following example illustrates the application of this paragraph (a).

Example. P, a domestic corporation, owns all of the outstanding stock of DRC, a domestic corporation. DRC is managed and controlled in Country W, a country which determines the tax residence of corporations according to place of management and control. Therefore, the income of DRC is subject to tax in both the United States and in Country W. There are currently no other corporations in Country W which could use the losses of DRC to offset income under the income tax laws of Country W. P no longer wishes to operate DRC as a separate corporation. Therefore DRC will be liquidated into P under section 332 of the Code. Normally, P, under section 381, would succeed to and take into account DRC's net operating loss carryovers. However, this paragraph (a) prohibits the net operating loss of DRC from reducing P's income (including income of P generated by assets previously held by DRC) for U.S. tax purposes. Therefore, DRC's net operating loss carryovers will not be available to offset P's income unless one of the exceptions described in paragraph (c) of this section applies.

(b) *Definitions.* The following definitions apply for purposes of this section.

(1) *Domestic corporation.* For purposes of this section, the term "domestic corporation" has the meaning assigned to it by sections 7701 (a)(3) and (a)(4) and shall also include any corporation treated as a domestic corporation by the Internal Revenue Code, including, but not limited to, section 269B and section 1504(d). Subject to the rules of paragraph (d) of this section, any separate unit (as defined in paragraph (b)(4) of this section) of a domestic corporation will be treated as a separate domestic corporation (and as a dual resident corporation) for purposes of this section. The following example illustrates the application of this paragraph (b)(1).

Example. A is a domestic corporation with a branch operation in Country X. A is owned by FP, a Country X corporation. Country X allows the Country X branch income and losses of A to be used to offset FP's losses or income. Under paragraph (d) of this section, the branch operations of A in Country X will be treated as a separate domestic corporation and as a dual resident corporation for purposes of this section. See paragraph (d) of this section for the treatment of any dual consolidated loss of the branch operations of A.

(2) *Dual consolidated loss.* The term "dual consolidated loss" means the net operating loss (as defined in section 172(c) and the regulations thereunder) of a domestic corporation incurred in a year in which the corporation is a dual resident corporation. The fact that a particular item taken into account in computing such net operating loss deduction is not taken into account in computing income subject to income tax in a foreign country shall not cause such item to be excluded from the calculation of the dual consolidated loss. A dual consolidated loss shall arise even though no other person, corporation, or entity is permitted, under the income tax laws of the foreign country, to use by any means the losses, expenses or deductions of the dual resident corporation to offset income. A dual consolidated loss shall not include—

(i) The net operating loss incurred during that portion of the taxable year prior to the date on which the domestic corporation becomes a dual resident corporation or subsequent to the date on which the domestic corporation ceases to be a dual resident corporation. For purposes of determining the amount of the net operating loss incurred in that portion of the taxable year prior to the date on which the domestic corporation becomes a dual resident corporation or subsequent to the date on which the domestic corporation ceases to be a dual resident corporation, in no event shall more than a pro rata portion of the net operating loss commensurate with the portion of the taxable year during which the domestic corporation was not a dual resident corporation be allocated to that portion of the taxable year in which the domestic corporation was not a dual resident corporation; or

(ii) Losses incurred in taxable years beginning on or before December 31, 1986.

(3) *Dual resident corporation.* For purposes of this section, a domestic corporation shall be a dual resident corporation if the worldwide income of such corporation is subject to the income tax of a foreign country, or such corporation is subject to the income tax of a foreign country on a residence basis (and not on a source basis).

(4) *Separate unit.* Solely for purposes of this section, the term "separate unit" shall mean any of the following:

(i) A foreign branch as defined in § 1.367 (a)–6T(g);

(ii) A partnership interest; or

(iii) A trust interest.

(5) *Subject to tax.* For purposes of determining whether a domestic corporation is subject to the income tax of a foreign country on its income, the fact that the corporation has no actual tax liability to the foreign country for a particular taxable year shall not be taken into consideration.

(c) *Exceptions*—(1) *No ability to use dual consolidated loss under foreign law*—(i) *In general.* Paragraph (a) of this section shall not apply to a dual consolidated loss if—

(A) At no time after December 31, 1986, has there been any other person, corporation, or entity which, under the income tax laws of the foreign country, is permitted to use by any means the losses, expenses, or deductions of the dual resident corporation to offset income; and

(B) Under the income tax laws of the foreign country, the losses, expenses, or deductions of the dual resident corporation incurred in taxable years beginning after December 31, 1986, cannot be carried over or back to be used, by any means, to offset the income of any other person, corporation, or entity in other years.

(ii) *Limitations.* For purposes of paragraph (c)(1)(i) of this section, none of the following circumstances shall constitute a satisfaction of paragraph (c)(1)(i)(A) of this section—

(A) The failure to make use of an election (including, but not limited to, the ability to surrender losses, expenses or deductions) that would enable another person, corporation, or entity to use the losses, expenses, or deductions of the dual resident corporation to offset income under the income tax laws of the foreign country;

(B) The fact that the income tax laws of the foreign country deny the use of losses, expenses, or deductions of its corporate residents that are also residents for tax purposes of another country to offset income of another person, corporation, or entity;

(C) The fact that the other person, corporation, or entity does not have sufficient income to benefit from an offset permitted under the income tax laws of the foreign country for a particular taxable year; or

(D) The fact that the dual resident corporation has no losses, expenses, or deductions during a particular taxable year.

(iii) *Examples.* The following examples illustrate this paragraph (c)(1).

Example (1). DRC, a domestic corporation, is also subject to tax in Country Y on its worldwide income. DRC has been filing a consolidated return for U.S. income tax purposes with DP, its domestic parent. DRC has also been able to use its losses to offset income of its affiliates in Country Y by using Country Y's form of consolidation. In order to prevent companies like DRC from taking losses against income of affiliates under Country Y law and then again using the losses of DRC to offset income of affiliates for U.S. tax purposes. Country Y law prevents a company which is also subject to tax on its worldwide income in another country, or is subject to tax on a residence basis in another country, from using the Country Y form of consolidation. DRC is a dual resident corporation as defined in paragraph (b)(3) of this section. DRC's losses are dual consolidated losses as defined in paragraph (b)(2) of this section which under paragraph (a) of this section may not be used to offset income of any other U.S. affiliate of DRC. The Country Y statute does not cause the exception provided by this paragraph (c)(1) to apply.

Example (2). P, a domestic corporation, owns DRC, a domestic corporation which is also subject to the income tax laws of Country Z on a residence basis, and FS, a Country Z corporation. Under Country Z laws, income or losses of DRC may not be consolidated with income or losses of P or FS. There is, however, a provision under Country Z's law by which DRC's unused losses could be carried forward, acquired, and used by FS if DRC is merged into FS. DRC's dual consolidated loss does not qualify for the exception from application of paragraph (a) provided by this paragraph (c)(1) because of the loss carryforward provisions under Country Z's income tax laws. However, DRC may qualify for an exemption from paragraph (a) of this section under the provisions of paragraph (c)(3) of this section.

Example (3). DRC is a dual resident corporation subject to tax on a residence basis in foreign country Y. Under the income tax laws of Y, DRC could elect to use its losses to offset the income of foreign entity FE on a Country Y consolidated income tax return for the taxable year ending December 31, 1987. Regardless of whether such election is made, DRC fails to satisfy the requirement of paragraph (c)(1)(i)(A) of this section.

Example (4). The same facts apply as in *Example* (3), except that Country Y changes its income tax law, effective as of January 1, 1987, to prevent the consolidation of losses by dual resident corporations. Under paragraph (c)(1)(ii)(B) of this section, the fact that this Country Y legislation prevents DRC from using its losses to offset the income of FE is disregarded and DRC fails to satisfy the requirement of paragraph (c)(1)(i)(A) of this section.

Example (5). The same facts apply as in *Example* (4), except that FE has no taxable income in taxable years 1987 through 1989. Moreover, DRC is profitable throughout this period and consequently has no losses which it could share with FE. Under paragraphs (c)(1)(ii) (C) and (D) of this section, the fact that FE would not receive a tax benefit from consolidation with DRC on a Country Y return is disregarded and DRC fails to satisfy the requirement of paragraph (c)(1)(i)(A) of this section. Because DRC does not have a net operating loss during 1987 through 1989, section 1503(d) does not affect the consolidation of DRC on a U.S. return for these years. However, DRC's failure to satisfy paragraph (c)(1)(i)(A) of this section at all times after December 31, 1986 will make it ineligible for the exception described in paragraph (c)(1) of this section with respect to any future taxable year in which it incurs a net operating loss.

Example (6). The same facts apply as in *Example* (5). In 1990, FE is transferred and is no longer eligible for consolidation on a Country Y return. There are no other entities with which DRC could consolidate under the income tax laws of Y. Nevertheless, since FE and DRC could have consolidated on a Country Y return during the period after December 31, 1986 and before the transfer of FE, DRC fails to satisfy the requirement of paragraph (c)(1)(i)(A) of this section in 1990 and in all future taxable years.

(2) *Elective agreement in place between United States and the foreign country.* Paragraph (a) of this section shall not apply to a dual consolidated loss to the extent such loss is subject to an election by the dual resident corporation to deduct the loss in the United States pursuant to an agreement entered into between the United States and the foreign country which puts into place an elective procedure through which losses would offset income in only one country.

(3) *Agreement to amend returns upon later use of losses, expenses, or deductions of a dual resident corporation*—(i) *In general.* Notwithstanding that, under the income tax laws of the foreign country, the losses, expenses, or deductions of the dual resident corporation can be carried over or back to offset, by some means, the income of any other person, corporation, or entity in other taxable years, paragraph (a) of this section shall not apply to a dual consolidated loss of that dual resident corporation if the requirements described in this paragraph (c)(3)(i) are satisfied.

(A) At no time after December 31, 1986, has there been any other person, corporation, or entity which, under the income tax laws of the foreign country, is permitted to use by any means the losses, expenses, or deductions of the dual resident corporation to offset income. For purposes of the preceding sentence, none of the circumstances described in paragraphs (c)(1)(ii) (A) through (D) of this section shall constitute a satisfaction of this paragraph (c)(3)(i)(A).

(B) The affiliated group or, if there is no affiliated group filing a consolidated return, the dual resident corporation which incurs the loss, files with its U.S. tax return for the taxable year in which the dual consolidated loss arises a binding agreement described in paragraphs (c)(3) (ii) and (iii) of this section. The agreement must be filed under this paragraph (c)(3) even if the only effect of the dual consolidated loss is to increase a net operating loss for U.S. tax purposes.

(ii) *Description of agreement.* Except as otherwise provided in paragraph (c)(3)(viii) of this section, the agreement described in this paragraph (c)(3)(ii) must be attached to, and filed by the due date (including extensions) of, the tax return of the affiliated group or dual resident corporation for the taxable year in which the dual consolidated loss arises. The agreement must be signed under penalties of perjury by the person who signs the tax return of the group or dual resident corporation. The agreement must include the following items, in paragraphs labeled to correspond with the subdivisions set forth below:

(A) The name, address, identifying number, and place and date of incorporation of the dual resident corporation and the country or countries which tax the dual resident corporation on a residence basis or which tax the worldwide income of the dual resident corporation;

(B) A statement that the document submitted constitutes the agreement of the affiliated group or dual resident corporation in accordance with the requirements of § 1.1503–2T(c)(3);

(C) A statement of the amount of the dual consolidated loss to be covered by the agreement and the year in which it arose;

(D) The agreement of the group or dual resident corporation to amend returns, as described in paragraph (c)(3)(iii) of this section;

(E) A waiver of the period of limitations, as described in paragraph (c)(3)(iv) of this section; and

(F) An agreement to file with the tax returns of the group or dual resident corporation for each of the fifteen years following the year the dual consolidated loss arose a waiver of the period of limitation, as described in paragrapah (c)(3)(iv) of this section, and a certification as described in paragraph (c)(3)(v) of this section.

(iii) *Terms of agreement.* The affiliated group or dual resident corporation must agree that if there is a "triggering event" described in this paragraph (c)(3)(iii), then, the affiliated group filing a consolidated return, or if there is no affiliated group filing a consolidated return, the dual resident corporation, shall, within 90 days after the date of occurrence of the triggering event, file an amended U.S. income tax return for the taxable year in which the dual consolidated loss arose reporting the dual consolidated loss on the amended return as a loss to which paragraph (a) of this section applies. An amended U.S. income tax return must also be filed for any other taxable year in which the tax liability increases as a result of such applications of paragraph (a) of this section. In addition, upon examination, the group or dual resident corporation must provide to the District Director a schedule of the amended carryforward and carryback losses and credits for each of the group's or dual resident corporation's taxable years for which no amended return is required to be filed pursuant to this paragraph (c)(3)(iii). For purposes of section 6601, the last date prescribed for payment of the additional amount of tax shown on an amended return filed pursuant to this paragraph (c)(3)(iii) shall be the same date as the date prescribed for the payment of tax for the taxable year with respect to which the amended return is filed. Any of the following events shall constitute a "triggering event" for purposes of this section—

(A) There is a failure for any taxable year to file the annual waiver or certification described in paragraphs (c)(3)(iv) and (v) of this section.

(B) Prior to the close of the fifteenth taxable year following the taxable year in which the dual consolidated loss arose, any of the following events—

(*1*) There is a failure to satisfy both the requirement of paragraph (c)(3)(i)(A) of this section and the requirements of paragraph (c)(4) of this section;

(*2*) Where the agreement is made by an affiliated group filing a consolidated return, the dual resident corporation (or its successor-in-interest) ceases to be a member of the affiliated group;

(*3*) Where the agreement is made by a dual resident corporation that is not a member of an affiliated group filing a consolidated return, the dual resident corporation is no longer in existence; or

(*4*) Where the dual resident corporation is a separate unit of a domestic corporation, the domestic corporation sells or transfers the dual resident corporation.

(iv) *Waiver of period of limitation.* The affiliated group or the dual resident corporation (or the successor-in-interest of such group or dual resident corporation) must file, with the agreement to amend returns and with the tax return for each of the fifteen taxable years following the taxable year in which the dual consolidated loss arose, a waiver of the limitation on assessment of any tax resulting from the amendment of any return as described in paragraph (c)(3)(iii) of this section. The waiver shall extend the period for assessment of such tax to a date not earlier than three years after the return is filed for the fifteenth taxable year following the taxable year in which the dual consolidated loss arose. The waiver shall also contain such other terms with respect to assessment as may be considered by the Commissioner to be necessary to insure the assessment and collection of the correct tax liability for each year for which the waiver is required. The waiver must be signed by a person authorized to sign the agreement described in paragraph (c)(3)(ii) of this section. A failure, at any time, to comply with the requirements of this paragraph (c)(3) or with the terms of any agreement filed pursuant to this paragraph (c)(3) shall extend the period of assessment of such tax until three years after the date on which the Internal Revenue Service receives actual notice of the use of or of the ability to use the losses, expenses, or deductions of the dual resident corporation to offset the income of another person, corporation, or entity under the income tax laws of the foreign country.

(v) *Annual certification.* The affiliated group or the dual resident corporation (or the successor-in-interest of such group or dual resident corporation) must file with its income tax return for each of the fifteen taxable years following the taxable year in which the dual consolidated loss arose a certification that the losses, expenses, or deductions of the dual resident corporation were not used or permitted to be used to offset the income of another person, corporation, or entity under the income tax laws of a foreign country. The annual certification pursuant to this paragraph (c)(3)(v) must be signed under penalties of perjury by a person authorized to sign the agreement described in paragraph (c)(3)(ii) of this section. The certification must identify the dual consolidated loss with respect to which it is given by setting forth the taxpayer's year in which the loss arose and the amount of such loss and must warrant that arrangements have been made to insure that the group or dual resident corporation will be informed of any subsequent use of or ability to use the losses, expenses, or deductions of the dual resident corporation to offset the income of another person, corporation, or entity under the income tax laws of the foreign country. If dual consolidated losses of more than one taxable year are subject to the rules of this paragraph (c)(3), the certifications for those years may be combined in a single document, but each dual

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consolidated loss must be separately identified.

(vi) *Special rules for a succeeding group or a successor-in-interest*—(A) *Ceasing to be a member of the affiliated group.* For purposes of this paragraph (c)(3), and except as otherwise provided in this paragraph (c)(3)(vi), a dual resident corporation shall be deemed to have ceased to be a member of the affiliated group that filed the agreement described in paragraph (c)(3)(ii) of this section if it is no longer a member of that group, as defined in § 1.1502–1(b), or if the group ceases to exist because the common parent is no longer in existence or is no longer a common parent or the group no longer files on the basis of a consolidated return. However, the obligation to file an amended return pursuant to the agreement described in paragraph (c)(3)(ii) of this section shall not apply and the dual resident corporation shall not be deemed to have ceased to be a member of the group for purposes of this paragraph (c)(3) where the dual resident corporation ceases to be a member of the group solely by reason of an acquisition of its assets by a member of the group in a transaction to which section 381(a) applies provided the successor-in-interest of the dual resident corporation continues to be a member of the group.

(B) *Special rules for a succeeding group.* The obligation to file an amended return pursuant to the agreement described in paragraph (c)(3)(ii) of this section shall not apply where the dual resident corporation becomes a member of a succeeding group as a result of an acquisition described in § 1.1502–13(f)(2)(i) (*a*) or (*b*) (relating generally to the acquisition of assets of, by, or from a member of the affiliated group in a tax-free reorganization) and the succeeding group attaches to, and files with, its timely filed (including extensions) tax return for the taxable year in which the acquisition takes place a binding agreement—

(*1*) Which sets forth the same terms as are described in paragraph (c)(3)(ii) of this section,

(*2*) In which the group agrees to be bound by the terms of the agreement previously filed by the terminating group, and

(*3*) In which the group agrees to all the terms set forth in paragraph (c)(3)(iii) of this section.

The agreement must be signed under penalties of perjury by the person who signs the tax return of the succeeding group.

(C) *Special rules for a successor-in-interest.* In the case of a dual resident corporation that was not a member of an affiliated group filing a consolidated return in the taxable year in which the dual consolidated loss arose and that filed an agreement described in paragraph (c)(3)(ii) of this section, the assets of which are acquired in a transaction described in section 381(a), such corporation shall not be required to file an amended return pursuant to paragraph (c)(3)(iii)(B)(*3*) of this section provided its successor-in-interest attaches a binding agreement to its timely filed (including extensions) tax return for the taxable year in which the acquisition takes place. The agreement must be signed under penalties of perjury by the person who signs the tax return of the successor-in-interest. The agreement must:

(*1*) Set forth the same terms as are described in paragraph (c)(3)(ii) of this section,

(*2*) State the agreement of the successor-in-interest to be bound by the terms of the agreement previously filed by the dual resident corporation, and

(*3*) State the agreement of the successor-in-interest to all the terms set forth in paragraph (c)(3)(iii) of this section.

(vii) *Definitions.* For purposes of this section—

(A) The terms "succeeding group" and "terminating group" shall have the same meaning as in § 1.1502.13(f)(2)(i); and

(B) The term "successor-in-interest" shall mean an acquiring corporation that succeeds to the tax attributes of an acquired corporation under the provisions of section 381 by reason of a transaction described in section 381(a).

(viii) *Transition rules.* An affiliated group or a dual resident corporation (or a succeeding group or a successor-in-interest of a dual resident corporation) that meets the eligibility requirements described in paragraph (c)(3)(ix) of this section will be permitted to apply the transition rules in this paragraph (c)(3)(viii) for taxable years ending before December 31, 1989.

(A) The agreement in satisfaction of paragraph (c)(3) (ii) or (vi) of this section may be attached to the timely filed (including extensions) tax return of the affiliated group or of the dual resident corporation (or the succeeding group or the successor-in-interest of such dual resident corporation) for the first taxable year which ends on or after December 31, 1989. The agreement required for each of the taxable years ending before December 31, 1989 and for the first taxable year ending on or after December 31, 1989 may be combined on a single document.

(B) The requirement of paragraphs (c)(3)(iv) and (c)(3)(v) of this section regarding the filing of an annual waiver of the period of limitation and certification shall be satisfied for the taxable years ending before December 31, 1989, and no failure to file shall be deemed to have occurred with respect to such taxable years for purposes of paragraph (c)(3)(iii)(A) of this section if the waivers and certifications required under paragraphs (c)(3)(iv) and (c)(3)(v) of this section are filed with the tax return for the first taxable year ending on or after December 31, 1989.

(ix) *Eligibility for transition rules.* The rules in paragraph (c)(3)(viii) of this section shall apply only if, as of the date of the agreement in satisfaction of paragraph (c)(3) (ii) or (vi) of this section and filed pursuant to paragraph (c)(3)(viii) of this section, none of the triggering events described in paragraph (c)(3)(iii)(B) of this section has occurred.

(4) *No ability to use dual consolidated loss under foreign law after restructuring*—(i) *In general.* Notwithstanding that a dual resident corporation fails to satisfy either paragraph (c)(1)(i)(A) or (c)(3)(i)(A) of this section, paragraph (a) of this section shall not apply to any dual consolidated loss (or portion of a dual consolidated loss) described in paragraph (c)(4)(iii) of this section provided the requirements of either paragraph (c)(1)(i)(B) or (c)(3)(i)(B) of this section are satisfied and a restructuring that meets the requirements of paragraph (c)(4)(ii) of this section has been completed.

(ii) *Qualified restructuring.* A restructuring meets the requirements of this paragraph (c)(4)(ii) if it is completed on or before December 31, 1989, in the foreign country so that at all times from the date of such restructuring to the close of the taxable year in which the dual consolidated loss arises, there is no other person, corporation, or entity which, under the income tax laws of the foreign country, is permitted to use by any means the losses, expenses, or deductions of the dual resident corporation to offset income. For purposes of the preceding sentence, none of the circumstances described in paragraphs (c)(1)(ii) (A) through (D) of this section shall constitute a satisfaction of this paragraph (c)(4)(ii).

(iii) *Qualified losses.* Losses to which paragraph (c)(4)(i) of this section applies are the dual consolidated losses of a dual resident corporation that arise in a taxable year beginning after the restructuring described in paragraph (c)(4)(ii) of this section (or the portion of any dual consolidated loss that arises during that portion of the taxable year following the restructuring described in paragraph (c)(4)(ii) of this section). For purposes of determining the amount of

the dual consolidated loss which arises in that portion of the taxable year following the restructuring, in no event shall more than a pro rata portion of the dual consolidated loss commensurate with the portion of the taxable year beginning with the date of completion of the restructuring and ending on the last day of that same taxable year be allocated to that portion of the taxable year following the restructuring.

(d) *Special rule for separate units*—(1) *Separate units characterized as corporations under foreign law.* If a separate unit of a domestic corporation consists of an interest in an entity (including a foreign branch) that for U.S. tax purposes is not taxable as an association, but the entity is subject to income tax in a foreign jurisdiction as a corporation either on its worldwide income or on a residence basis (and not on a source basis), then for purposes of this section such separate unit of the domestic corporation will be treated as if it were a dual resident corporation and a wholly-owned domestic subsidiary of the domestic corporation. For purposes of paragraphs (c) (3) and (4) of this section, any agreement, waiver and certification required to be filed with respect to such dual resident corporation shall be filed with the federal income tax return of the domestic corporation owning the separate unit or by the affiliated group with which the domestic corporation files a consolidated return.

(2) *Other separate units.* Except as provided in paragraph (d)(3) of this section, if a separate unit of a domestic corporation (other than a separate unit described in paragraph (d)(1) of this section) is permitted under the income tax laws of a foreign country—

(i) To use its losses, expenses, or deductions to offset the income of any other person, corporation, or entity in the taxable year in which the dual consolidated loss arises; or

(ii) To carry over or back its losses, expenses, or deductions so that they may offset the income of any other person, corporation, or entity in other years, then such separate unit will be treated for purposes of this section as if it were a dual resident corporation and a wholly-owned domestic subsidiary of the domestic corporation. For purposes of the preceding sentence, none of the circumstances described in paragraphs (c)(1)(ii) (A) through (D) of this section shall preclude a separate unit from being treated as a dual resident corporation and a separate domestic corporation under this paragraph (d)(2). This paragraph (d)(2) applies regardless of whether the domestic corporation is a member of an affiliated group, and, if it is, regardless of whether the group files a consolidated return.

(3) *Certification.* Paragraph (d)(2) of this section shall not apply with respect to any taxable year for which the domestic corporation owning the separate unit (or the affiliated group of which the domestic corporation is a member) files a certification as described in this paragraph (d)(3). The certification must be attached to, and filed by the due date (including extensions) of, the federal income tax return of the domestic corporation owning the separate unit (or the affiliated group with which the domestic corporation files a consolidated return) for the taxable year to which it applies. With respect to returns filed without an attached certification for taxable years ending before December 31, 1989, the certification in satisfaction of this paragraph (d)(3) may be attached to the return for the first taxable year ending on or after December 31, 1989. The certification must be signed under penalties of perjury by the person who signs the return. The certification must include the following items, in paragraphs labeled to correspond with the subdivisions set forth below:

(i) A statement that the document submitted constitutes the certification required under the provisions of § 1.1503–2T(d)(3);

(ii) Identification of the separate unit, including the name under which it conducts business and its principal activity;

(iii) Identification of the total losses, expenses, and deductions incurred by the separate unit and included on the tax return for the taxable year;

(iv) Certification that no portion of the separate unit's losses, expenses or deductions identified above has been or will be used to offset the income of any other person, corporation, or entity under the income tax laws of the foreign country; and

(v) An agreement to comply with the recapture and interest charge requirements of paragraph (d)(4) of this section.

If the domestic corporation has more than one separate unit, the certification described above may be made on a single document, but the total losses, expenses, and deductions must be separately identified for each separate unit to which the certification applies.

(4) *Recapture upon subsequent use.* If in any taxable year any portion of the losses, expenses, or deductions of a separate unit which were the subject of a certification filed under paragraph (d)(3) of this section are used by any means to offset the income of any other person, corporation, or entity under the income tax laws of a foreign country, then the total amount of the dual consolidated loss shall be recaptured and reported as income on the tax return of the domestic corporation (or the affiliated group with which the domestic corporation files a consolidated return) for the taxable year that includes the last day of the taxable year for foreign tax purposes during which such use occurred. In addition, the domestic corporation owning the separate unit (or the affiliated group with which the domestic files a consolidated return) shall pay an interest charge on the amount of additional tax owed as a result of the recapture described in the preceding sentence. Such interest shall be determined under the rules of section 6601(a) as if the additional amount of tax had accrued and been due and owing for the taxable year in which the losses, expenses, or deductions giving rise to the recapture gave rise to a tax benefit for U.S. income tax purposes. For purposes of this paragraph (d)(4), a tax benefit will be considered to have arisen in a taxable year in which a loss that would have been considered a dual consolidated loss if paragraph (d)(3) of this section had not applied has reduced the U.S. income tax liability of the domestic corporation or of the affiliated group with which it files a consolidated return.

(5) *Treatment of separate units as separate entities*—(i) *In general.* A separate unit of a domestic corporation will be treated as a separate entity for purposes of determining under this section whether losses of one entity are permitted under the income tax laws of the foreign country to offset the income of another entity.

(ii) *Exception for separate units in same country.* If two or more separate units (not described in paragraph (d)(1) of this section) located in the same foreign country are owned by a single domestic corporation and the income and losses of such units are consolidated on an income tax return in that foreign country, then the separate units will be treated as one separate unit for purposes of paragraph (d)(2) of this section.

(6) *Examples.* The following examples illustrate this paragraph (d).

Example (1). X, a member of a U.S. affiliated group, has a foreign branch (as defined in § 1.367(a)–6T(g)) in Country Y. Under the Country Y income tax laws, the branch will be taxed as a permanent establishment and its income and losses may be used (on an elective basis) in the Country Y form of consolidation to offset the income of Z, an affiliate of X, under Country Y law. The branch of X incurs a net operating loss during the taxable year ending December 31, 1987. The foreign branch of X will be treated as a separate domestic corporation and a dual resident corporation under paragraph (d)(2) of this section, and its net operating loss will constitute a dual consolidated loss. Consequently, under paragraph (a) of this section, the branch's net operating loss may not be used to offset the income of any other U.S. affiliate or any income of X other than income derived from the branch operations. However, the branch will not be treated as a dual resident corporation if X (or the affiliated group of which X is a member) files a certification for the taxable year as described in paragraph (d)(3) of this section that its net operating loss was not in fact used by Z (or any other entity) to offset income under the Country Y income tax laws, and that such loss will be recaptured if it is so used in the future.

Example (2). X is classified as a partnership for U.S. tax purposes under Code section 7701 and applicable regulations. A, B and C are the sole partners of X. A and B are domestic corporations and C is a resident of foreign country Y. Under Country Y's law, X is classified as a corporation and its income and losses may be used in the Country Y form of consolidation to offset the income of the companies that are affiliates of X. X generates net operating losses. The partnership interests held by A and B are each treated as separate domestic corporations and dual resident corporations under paragraph (d)(1) of this section. A's and B's pro rata share of the losses of X are dual consolidated losses as defined in paragraph (b)(2) of this section. Under paragraph (a) of this section, the losses of X may not be used to offset the income of any other U.S. affiliate. A's pro rata share of losses of X may be used by A only to offset A's pro rata share of income of X. However, paragraph (a) of this section shall not apply to A's pro rata share of losses of X if A meets one of the exceptions described in paragraph (c) of this section. The same principles apply to limit the use of losses allocated to B.

Example (3). Domestic corporation W owns two unincorporated business operations in Country Y. The two businesses, A and B, constitute separate foreign branches (as defined in § 1.367(a)–6T(g)). Under the tax laws of Country Y, A is treated as a separate corporation and taxed on a residence basis. Thus, A is a separate unit described in paragraph (d)(1) of this section. B is not a separate unit described in paragraph (d)(1) of this section. W is a calendar year taxpayer for both United States and Country Y purposes. During the calendar year ending December 31, 1987, A operated at a loss and B was profitable. Country Y allows both of W's branches to report their combined operations on a single income tax return. Thus, the losses incurred by A may be used on the 1987 Country Y return to offset the income of B. A will be treated as a dual resident corporation under paragraph (d)(1) of this section. Because A is a separate unit described in paragraph (d)(1) of this section, paragraph (d)(5)(i) of this section treats A and B as separate entities for purposes of determining whether the losses, expenses, or deductions of A may be used to offset the income of another person, corporation, or entity and the exception in paragraph (d)(5)(ii) of this section does not apply. Since the loss incurred by A may be used to offset B's income under foreign tax laws, W will not qualify for the exceptions described in paragraph (c) of this section. Accordingly, W will report the income from B on its 1987 U.S. tax return, but will not be allowed to use the losses from A to offset that income or the income from any source other than from the operations of A.

(e) *Special rule for use of dual consolidated loss to offset tainted income*—(1) *In general.* The dual consolidated loss of any dual resident corporation that ceases to be a dual resident corporation shall not be used to offset income of such corporation to the extent that such income is tainted income as defined in paragraph (e)(2) of this section.

(2) *Tainted income defined.* Tainted income is any income derived from tainted assets (as defined in paragraph (e)(3) of this section), during the period beginning on the date of the transfer or acquisition of tainted assets and ending at the close of the fifteenth taxable year following the taxable year in which the dual resident corporation ceased to be a dual resident corporation.

(3) *Tainted assets defined.* Tainted assets are any assets transferred to or acquired by a dual resident corporation in a non-recognition transaction (as defined in section 7701(a)(45)) at any time during the three taxable years immediately preceding the taxable year in which such dual resident corporation ceased to be a dual resident corporation or at any time during the 15 taxable years immediately following the taxable year in which a dual resident corporation ceased to be a dual resident corporation. Tainted assets shall not include assets that were transferred to or acquired by such dual resident corporation on or before December 31, 1986.

(4) *Exception.* For assets transferred to or acquired by a dual resident corporation prior to the time it ceased to be a dual resident corporation, if it can be shown that, for the year in which assets were transferred to or acquired by such corporation, the corporation did not incur a dual consolidated loss (or carry forward a dual consolidated loss to such year) and that there was a valid business reason for the transfer or acquisition of such assets, the income derived from such assets shall not be subject to the limitation described in paragraph (e)(1) of this section.

(f) *Special rules for accounting for dual consolidated losses*—(1) *Determination of amount of dual consolidated loss*—(i) *Dual resident corporation that is a member of an affiliated group.* For purposes of determining whether a dual resident corporation that is a member of an affiliated group filing a consolidated return has a dual consolidated loss for the taxable year, the dual resident corporation shall compute its taxable income (or loss) in accordance with the provisions of § 1.1502–12 (relating to computation of separate taxable income of a member of an affiliated group filing a consolidated return), determined by taking into account the adjustments provided in § 1.1502–79(a)(3), that is:

(A) The portion of the consolidated dividends received deduction, the consolidated charitable contributions deductions, and the consolidated section 247 deduction, attributable to such member;

(B) Such member's capital gain net income (determined without regard to any net capital loss carryover attributable to such member);

(C) Such member's net capital loss and section 1231 net loss, reduced by the portion of the consolidated net capital loss attributable to such member (as determined under paragraph (b)(2) of § 1.1502–79); and

(D) The portion of any consolidated net capital loss carryover attributable to such member which is absorbed in the taxable year.

For purposes of this paragraph (f), any income, gain, or loss of a dual resident corporation shall not be deferred or eliminated under § 1.1502–13 (b)(2) or (c), or 1.1502–14. Further, sections 267 and 163(e)(3) shall not apply.

(ii) *Dual resident corporation that is a separate unit of a domestic corporation.* For purposes of determining whether a dual resident corporation that is a separate unit of a domestic corporation has a dual consolidated loss for the taxable year, the dual resident corporation shall compute its taxable income (or loss) as if it were a separate domestic corporation and a dual resident corporation, using only those items of income, expenses, and deductions which are otherwise attributable to such separate unit.

(2) *Effect of dual consolidated loss.* For any taxable year in which a dual resident corporation has a dual consolidated loss to which paragraph (a) of this section applies, the following rules shall apply.

(i) If the dual resident corporation is a member of an affiliated group filing a consolidated return, then such affiliated group shall compute its taxable income without regard to the items of income, loss, or deduction of the dual resident

corporation for the taxable year. The amount of taxable loss of the dual resident corporation for the taxable year shall be the amount of dual consolidated loss determined under paragraph (f)(1)(i) of this section. Such loss may be carried over or back for use in other taxable years as a net operating loss deduction by the dual resident corporation to the extent permitted under section 172. However, such loss shall be treated as a loss incurred by the dual resident corporation in a separate return limitation year, and, including in the case of a dual resident corporation that is a common parent, shall be subject to all of the limitations of § 1.1502–21(c)(2) (relating to limitations on net operating loss carryovers and carrybacks from separate return limitation years).

(ii) If the dual resident corporation is a separate unit of a domestic corporation, then such domestic corporation and the affiliated group with which it may file a consolidated return shall compute taxable income for the taxable year without regard to the items of income, loss, or deductions of the dual resident corporation for the current year. Further, the loss of the dual resident corporation (the separate unit of the domestic corporation) shall be treated as a loss incurred by a separate corporation and its use shall be subject to all of the limitations of § 1.1502–21(c)(2) (relating to limitations on net operating loss carryovers and carrybacks from separate return limitation years), as if such dual resident corporation were filing a consolidated return with the domestic corporation or with the affiliated group with which the domestic corporation files a consolidated return.

(3) *Basis adjustments for dual consolidated losses.* When a dual resident corporation is a member of an affiliated group filing a consolidated return, each member owning stock in the dual resident corporation shall adjust the basis of the stock in the manner described in subparagraphs (i) and (ii) of this paragraph (f)(3).

(i) *Positive adjustment.* Adjustments shall be made in accordance with the principles of § 1.1502–32(b)(1), except that there shall be no positive adjustment under § 1.1502–32(b)(1)(ii) for any amount of the dual consolidated loss which is not absorbed. There shall be no positive adjustment for any amount included in income upon the use of a dual consolidated loss in a foreign country under § 1.1503–2T(c)(3).

(ii) *Negative adjustments.* Adjustments shall be made in accordance with the principles of § 1.1502–32(b)(2), except that there shall be no negative adjustments under § 1.1502–32(b)(2)(ii) for the amount of the dual consolidated loss.

(4) *Examples.* The following examples illustrate this paragraph (f).

Example (1). (i) P, S1, S2, and T are domestic corporations. P owns all of the stock of S1 and S2. S2 owns all of the stock of T. T is a dual resident corporation. None of the exceptions described in paragraph (c) apply with respect to T. P, S1, S2, and T have filed and continue to file a consolidated federal income tax return. X, Y, and Bank are corporations which are not members of the affiliated group of which P is the common parent.

(ii) At the beginning of 1989, P had a basis in S2 of $1000. S2 had a basis in T of $500.

(iii) In 1989, T had an interest expense of $100 on a loan from Bank. T sold a noncapital item *u* in which it had a basis of $10 to S1 for $50. T sold noncapital item *v* in which it had a basis of $200 to S1 for $100. The sale of *u* and *v* are deferred intercompany transactions described in § 1.1502–13(a)(2). S1 had separate taxable income calculated in accordance with § 1.1502–12 of $200. In addition, S1 sold item *w* in which it had a basis of $50 to T for $100. The sale of item *w* is a deferred intercompany transaction described in § 1.1502–13(a)(2). P and S2 had no items of income, loss, or deduction for 1989.

(iv) For purposes of determining whether T has a dual consolidated loss in 1989 and the amount of such dual consolidated loss, T's taxable income (loss) is calculated under paragraph (f)(1) as follows:

($100)	interest expense to Bank
($100)	sale of item *v* to S1
$40	sale of item *u* to S1
($160)	

T therefore has a dual consolidated loss of $160 for 1989.

(v) Because T has a dual consolidated loss for the year, the consolidated taxable income of the P affiliated group is calculated without regard to the items of income, loss, or deduction of T. However, T is still a member of the P affiliated group. Therefore, the consolidated taxable income of the P group is $200 (attributable solely to the income of S1). The $50 gain recognized by S1 upon the sale of item *w* to T is deferred pursuant to § 1.1502–13(c)(1).

(vi) S2 may not make the positive adjustment provided for in § 1.1502–32(b)(1)(ii) to its basis in T for the dual consolidated loss incurred by T. However, S2 must make the negative adjustment provided for in § 1.1502–32(b)(2)(i) for the amount of its allocable part of the deficit in earnings and profits of T for the taxable year. Thus, as provided in § 1.1502–32(e)(1), S2 shall make a net negative adjustment to its basis in T of $160 and S2's basis in T is now $340. As provided in § 1.1502–33(b)(4)(ii)(a), S2's earnings and profits for 1989 must reflect S2's decrease in its basis in T stock for the taxable year. Since S2 has no other earnings and profits for the taxable year, S2 has a deficit in earnings and profits of $160 for the taxable year. As provided in § 1.1502–32(b)(2)(i), P must make a negative adjustment for the amount of its allocable part of the deficit in earnings and profits of S2 for the taxable year. Thus, P must make a net negative adjustment to its basis in S2 of $160 and P's basis in S2 is now $840.

Example (2). (i) The facts are the same as in *Example (1)*, except that in 1990, S1 sold items *u* and *v* to X for no gain or loss. T incurred an interest expense of $100 on a loan from Bank. T also sold item *q* in which it had a basis of $50 to S1 for $100. T also sold item *r* in which it had a basis of $100 to Y for $300. P and S2 had no items of income, loss, or deduction for 1990.

(ii) For purposes of determining whether T has a dual consolidated loss in 1990 and the amount of such dual consolidated loss, T's taxable income (loss) is:

($100)	interest expense to Bank
$50	sale of item *q* to S1
$200	sale of item *r* to Y
$150	

T therefore has no dual consolidated loss for 1990.

(iii) Since T does not have a dual consolidated loss for the taxable year, the group's consolidated taxable income is calculated in accordance with the general rule of § 1.1502–11 and not in accordance with the rule of § 1.1503–2T(f)(2). T has separate taxable income calculated in accordance with § 1.1502–12 of $100. On the disposition of items *u* and *v* outside the P affiliated group, no gain or loss is restored to income to T in accordance with § 1.1502–13(f)(1)(i) because the gain or loss on these items was not deferred, pursuant to § 1.1503–2T(f)(3). The $50 gain on the sale of item *q* from T to S1 is an intercompany transaction on which the gain or loss recognized is deferred pursuant to § 1.1502–13(c)(1). The consolidated taxable income of the P affiliated group computed without regard to the consolidated net operating loss deduction is $100.

(iv) As provided by § 1.1502–21(c)(2) of the regulations, the amount of the dual consolidated loss arising in 1989 which may be absorbed by the P affiliated group in 1990 is $100; that is, the consolidated taxable income computed without regard to the consolidated net operating loss deduction minus such consolidated taxable income recomputed by excluding the items of income and deduction of T. Section 1.1502–21(c) allows $100 of the dual consolidated loss to be included in the consolidated net operating loss deduction for 1990. The consolidated taxable income of the P group for 1990 is $0.

(v) S2 must make the positive adjustment provided for in § 1.1502–32(b)(1)(i) to its basis in T for the amount of its allocable part of the undistributed earnings and profits of T for the taxable year. S2 can not make the negative adjustment provided for in § 1.1502–32(b)(2)(ii) for the dual consolidated loss of T incurred in 1989 and absorbed in 1990. Thus, as provided in § 1.1502–32(e)(2), S2 shall make a net positive adjustment to its basis in T of $100 and S2's basis in T is now $440. As provided in § 1.1502–33(b)(4)(ii)(a), S2's earnings and profits for 1989 must reflect S2's increase in its basis in T stock for the taxable year. Since S2 has no other earnings and profits for the taxable year, S2 has earnings and profits of $100 for the taxable year. As provided in § 1.1502–32(b)(1)(i), P must make a positive adjustment for the amount of its allocable part of the undistributed earnings and profits of S2 for the taxable year. Thus, P must make a net positive adjustment to its basis in S2 of $100 and P's basis in S2 is now $940.

OMB Control Number Under the Paperwork Reduction Act

PART 602—[AMENDED]

Par. 3. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1503–2T * * * 1545–1083."

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: July 26, 1989.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 89–21072 Filed 9–7–89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS ABRAHAM LINCOLN (CVN 72) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval aircraft carrier. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 31, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS ABRAHAM LINCOLN (CVN 72) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a), pertaining to the location of the masthead lights over the fore and aft centerline of the ship; Annex 1, section 2(g), pertaining to the distance of the sidelights above the hull; and Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, without interfering with its special functions as a naval ship. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table 2 of § 706.2 is amended by adding the following ship:

Vessel and number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(k), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
U.S.S. ABRAHAM LINCOLN—CVN–72	30.0					0.6		

3. Table Five of § 706.2 is amended by adding the following ship:

Vessel and number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2)(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
U.S.S. ABRAHAM LINCOLN—CVN–72						X		

Date: August 31, 1989.

Approved:

E. D. Stumbaugh,

Rear Admiral, JAGC, U.S. Navy Judge Advocate General.

Date: September 5, 1989.

[FR Doc. 89–21179 Filed 9–7–89; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS TOPEKA (SSN 754) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS TOPEKA (SSN–754) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS TOPEKA (SSN–754) is a member of the SSN–688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of section 706.3, are equally applicable to USS TOPEKA (SSN–754).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table one of § 706.2 is amended by adding the following vessel:

Vessel and number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
U.S.S. TOPEKA—SSN–754	3.5

3. Table three of § 706.2 is amended by adding the following vessel:

Vessel and number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(k), Annex I
U.S.S. TOPEKA—SSN–754			206°	4.2	6.2	3.5	1.7 below

Dated: September 1, 1989.

Approved:

E. D. Stumbaugh,

Rear Admiral, JAGC, U.S. Navy.

Date: September 5, 1989.

[FR Doc. 89-21180 Filed 9-7-89; 8:45 am]

BILLING CODE 3810-01-M

PANAMA CANAL COMMISSION

35 CFR Parts 101, 113, 121, and 123

RIN 3207-AA18; 3207-AA19; and 3207-AA20

Arriving and Departing Vessels: Various Communication, Documentation; Dangerous Cargoes; Inspection and Registration of Vessels; Radio Communication

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: This rule changes parts of title 35, Code of Federal Regulations concerning arriving and departing vessels, specifically those provisions relating to documentation, dangerous cargoes, inspection and registration of vessels, and radio communication. The rule changes reflect a recent reorganization in the Commission's Marine Bureau which has resulted in changes of the titles of responsible officials. The rule will clarify responsibility for reporting dangerous cargoes, as well as allow for greater consistency in the area of marine inspection.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, (202) 634-6441, or Captain William Y. Clark II, USCG, Special Assistant to the Marine Director, telephone in Balboa Heights, Republic of Panama, 011-507-52-4243.

SUPPLEMENTARY INFORMATION: On June 27, 1989, a notice of proposed rulemaking was published in the Federal Register (54 27030). Comments were invited from the public until July 27, 1989. No comments were received. Since the adoption of International Maritime Organization's rules concerning dangerous or hazardous cargoes in June, 1985, considerable information has been gathered concerning the specifics necessary to the proper reporting of these cargoes and the need to be consistent throughout the regulations. The amendments are mainly procedural. The intent is to clarify information for Canal users.

Further, the rule revises the requirement for vessels carrying nuclear materials to provide proof of financial responsibility to establish that such vessels must have adequate provision for indemnity and loss comparable in general scope to the protection afforded under the United States Atomic Energy Act or consistent with international practice and standards. Vessels will also be required to furnish the Commission with the results of radiation survey reports prior to transiting.

Additionally, the Commission's Marine Bureau has been reorganized. The titles of heads of certain units have changed and are published for the benefit of our customers. For example, the inspection of floating equipment is now under the direction of the U.S. Coast Guard Liaison Officer, who is also the Special Assistant to the Marine Director for Marine Safety. He heads a Marine Safety Unit consisting of four members, two of whom are floating equipment inspectors. The main purpose served by the changes to part 121, "Inspection and Registration of Vessels", is to properly reflect the present area of responsibility and to include references pertinent to U.S. Coast Guard Marine Inspection Regulations contained in 46 CFR.

Economic Assessment and Certification

The Panama Canal Commission has determined that these changes do not constitute major rules within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193), inasmuch as these changes, will not have an effect on the economy of $100 million or more per year. These changes will not result in a major increase in cost or prices for consumers, individual industries, local government agencies or geographic regions.

Further, the agency has determined that implementation of the rules will have no adverse impact on competition, employment, investment, productivity innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Finally, the Commission has determined that these rules are not subject to the requirements of sections 603 and 604 of Title 5, United States Code, in that their promulgation will not have a significant impact on a substantial number of small entities.

List of Subjects

35 CFR Part 101

Arriving and departing vessels: Documentation requirements.

35 CFR Part 113

Dangerous cargo transportation.

35 CFR Part 121

Inspection and registration of vessels.

35 CFR Part 123

Radio communication.

For the reasons set out in the preamble, title 35, chapter I, subchapter C of the Code of Federal Regulations is amended as follows.

PART 101—ARRIVING AND DEPARTING VESSELS: VARIOUS COMMUNICATION, DOCUMENTATION, SANITATION AND ADMEASUREMENT REQUIREMENTS

1. The authority citation for Part 101 continues to read as follows:

Authority: 22 U.S.C. 3811, E.O. 12215, 45 FR 36043, 44 U.S.C. 3501.

2. Section 101.10 is amended by revising paragraphs (a)(3), (e) and (f) to read as follows:

§ 101.10 Same; list.

(a) *Documents for Commission Boarding Officer.* * * *

* * * * *

(3) Crew List (Panama Canal Form 1509)—1 Copy

* * * * *

(e) *Dangerous cargo manifest.* The dangerous cargo manifest for vessels carrying packaged dangerous goods, as defined in § 113.2(m) of this title, shall show the correct technical name, United Nations number, International Maritime Organization class and division, storage location, and quantity for each packaged dangerous good carried as cargo.

(f) *Loading plan.* The loading plan for vessels carrying dangerous cargo in bulk, as defined in § 113.2(f) of this title, shall show the location of cargo tanks or holds and the correct technical name, United Nations number, International Maritime Organization class and division, and quantity of dangerous cargo carried in each cargo tank or hold.

* * * * *

PART 113—DANGEROUS CARGOES

3. The authority citation for part 113 continues to read as follows:

Authority: Issued under authority vested in the President by 22 U.S.C. 3811, E.O. 12215, 45 FR 36043.

4. Section 113.3 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 113.3 Classifications.

(a) Dangerous cargo shall be classified in accordance with the IMO class and division. Whenever there is a doubt as to the explosive or dangerous nature of

any commodity, or in case of conflict as to its classification, determination of the nature and classification of such cargoes shall be made by the Marine Safety Advisor or his designee. Dangerous cargoes shall be divided into the following classes:

* * * * *

5. Section 113.4 is amended by revising paragraph (a) to read as follows:

§ 113.4 Safety and alarm systems.

(a) All dangerous cargo alarms, safety devices, and the vessel's firefighting systems shall be tested 24 hours prior to arrival in Canal waters by any vessel carrying dangerous cargoes. An entry shall be made in the ship's log stating that such tests were conducted and the systems found in proper working order or, if not in proper order, a detailed listing of discrepancies shall be included.

* * * * *

6. Section 113.5 is revised to read as follows:

§ 113.5 Inspections.

The Canal Operations Captain or the Marine Safety Advisor or their designees may inspect vessels carrying dangerous cargoes to ensure that such vessels are in compliance with the requirements of this part.

Subpart B—Vessels Carrying Dangerous Cargoes in Bulk

7. Section 113.21 is revised to read as follows:

§ 113.21 Application.

This subpart applies to vessels carrying dangerous liquefied gases, liquids and solids in bulk, or tankers in ballast condition which are not gas free. It does not apply to vessels carrying combustible liquids in bulk as prescribed in § 113.3(b), subpart A, of this part.

8. Section 113.22 is revised to read as follows:

§ 113.22 Advance notice.

Vessels subject to this subpart shall provide not less than 48 hours advance notice to Canal authorities by radio of the information required by the "GOLF" item in the prearrival radio message prescribed in § 123.4(a) of this subchapter.

(Approved by the Office of Management and Budget under control number 3207-0001).

9. Section 113.26 is amended by revising paragraph (a) to read as follows:

§ 113.26 Transit requirements.

(a) To better ensure the safe passage of vessels subject to this subpart, operating restrictions beyond those applicable to other vessels may be imposed by the Canal Operations Captain or his designee.

* * * * *

10. Section 113.29 is amended by revising paragraphs (b) and (c) to read as follows:

§ 113.29 Prohibited cargoes.

* * * * *

(b) Bulk dangerous cargoes not listed in the Bulk Chemical Code, Gas Carrier Codes, or Solid Bulk Code are prohibited in Canal waters unless advance approval is given by the Marine Safety Advisor or his designee to carry such cargoes.

(c) Bulk chemical and liquefied gas carriers are prohibited from carrying in Canal waters dangerous cargoes that are not listed on their Certificate of Fitness or Certificate of Compliance, unless 30 days advance notice is given by the vessel and the Marine Safety Advisor or his designee approves the carriage of such cargoes in Canal waters.

(Approved by the Office of Management and Budget under control number 3207-0001.)

Subpart C—Vessels Carrying Dangerous Packaged Goods

11. Section 113.42 is revised to read as follows:

§ 113.42 Advance notice.

Vessels subject to this subpart shall provide not less than 48 hours advance notice to Canal authorities by radio of the information required in the "HOTEL" item of the radio message prescribed in § 123.4 of this subchapter, except that vessels carrying explosives shall provide the information required in the "GOLF" item of the message.

(Approved by the Office of Management and Budget under control number 3207-0001)

12. Section 113.43 is amended by revising paragraph (c) to read as follows:

§ 113.43 Anchoring requirements.

* * * * *

(c) Vessels carrying explosives or especially reactive or large amounts of dangerous materials as determined by the Canal Operations Captain, or his designee, may be instructed to anchor in one of the explosive anchorage areas described in § 101.8(a) (2), (3) and (c)(2) of this subchapter.

13. Section 113.45 is revised to read as follows:

§ 113.45 Transit requirements.

Normal operating restrictions will generally apply unless such vessels are carrying more than five tons of explosives or carrying especially more reactive or large amounts of dangerous goods as determined by the Marine Safety Advisor or his designee, in which case additional operating restrictions may be imposed.

14. Section 113.49 is amended by revising paragraphs (b) and (c) to read as follows:

§ 113.49 Class 1, Explosives.

* * * * *

(b) Explosive cargo may be loaded and discharged only at the Mindi Dock. Explosive anchorages prescribed in § 101.8 (a) (2), (3) and (c)(2), respectively, may be used upon approval of the Marine Safety Advisor, or his designee.

(c) The Marine Safety Advisor or his designee, upon application, may permit the discharge of explosives, whether intended for civilian or military use, at Commission docks and other locations within Canal waters in an emergency or when the character or packing of the explosives permits their safe discharge there.

15. Section 113.50 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 113.50 Class 7, Radioactive substances.

* * * * *

(c) For the purpose of approval of shipments and prior notification of radioactive substances under the IMDG Code, Panama Canal waters will be considered a country en route. Notification shall be given to Canal authorities 30 days in advance of the arrival of the vessel in Canal waters for all fissionable materials, in order that approval may be given by the Marine Safety Advisor, or his designee, to transit such cargoes.

(d) Vessels carrying nuclear materials shall be required to provide current proof of financial responsibility and adequate provision for indemnity covering public liability and loss to the United States or any agency thereof, comparable in general scope to the protection afforded under section 170 of the United States Atomic Energy Act of 1954, as amended, 68 Stat. 919, 71 Stat. 576, or consistent with international practice and standards as set forth by the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. Vessels shall also be required to furnish the Commission with the results of cargo radiation survey reports in accordance with the standards in IMO class 7.

(e) For the following radioactive substances, not less than 48-hour advance information required under § 123.4 shall be provided, indicating the specifics required by the IMDG Code:

(1) Low Specific Activity Substances or Low Level Solid Radioactive Substances as specified in Class 7 schedules 5, 6, and 7 of the IMDG Code.

(2) Radioactive Substances carried in limited quantities as specified in Class 7 schedules 1, 2, 3, and 4 of the IMDG Code.

(Approved by the Office of Management and Budget under control number 3207–0001)

PART 121—INSPECTION AND REGISTRATION OF VESSELS

16. The authority citation for part 121 continues to read as follows:

Authority: 22 U.S.C. 3811, E.O. 12215, 45 FR 36043, and 44 U.S.C. 3501.

Subpart A—General Provisions

17. Section 121.2 is revised to read as follows:

§ 121.2 Definitions.

As used in this part, the following terms have the meanings indicated:

(a) *Vessel* means any vessel as defined in § 111.3 other than a motorboat as defined in this section.

(b) *Motorboat* means any vessel not more than 20 meters (65 feet) in length propelled by machinery except tugboats and towboats. The word "motorboat" includes a boat temporarily or permanently equipped with a detachable motor. Motorboats are classed as follows:

Class A—Any motorboat less than 7 meters (23 feet) in length.

Class B—Any motorboat 7 meters (23 feet) or over and less than 12 meters (40 feet) in length.

Class C—Any motorboat 12 meters (40 feet) or over and less than 20 meters (65 feet) in length.

Class D—Any cayuco or piragua not more than 20 meters (65 feet) in length equipped with an outboard motor or motors operating in Madden or Gatun Lakes.

§ 121.3 [Removed]

18. Section 121.3 is removed.

Subpart B—Inspection

Vessels

19. Section 121.41 is amended by revising paragraphs (a) and (c) to read as follows:

§ 121.41 Certificates of inspection.

(a) Certificates of inspection shall be issued for a period of 1 year to passenger vessels, vessels equipped with boilers, and vessels whose hull or machinery is, in the judgment of the Marine Safety Unit, in such condition as to require inspection annually.

* * * * *

(c) Application shall be made by the owner or other responsible person for inspection and issuance of a new certificate of inspection prior to expiration of the certificate.

20. Section 121.42 is revised to read as follows:

§ 121.42 Distribution of certificates.

Two copies of the certificate of inspection shall be retained on file by the Marine Safety Unit. The original and one copy shall be given to the master or owner of the vessel named therein.

21. Section 121.45 is revised to read as follows:

§ 121.45 Drawings of new vessels to be furnished to the Marine Safety Unit.

The owner or other responsible person, when applying for the first inspection to a new vessel, shall furnish the Marine Safety Unit the following drawings and prints for review prior to construction: Midship section, inboard profile, outboard profile, arrangement of decks and hatch details, capacity of double bottoms and fuel compartments, hull penetrations and shell connections, machinery installation, piping systems, lifesaving equipment, fire fighting equipment, electrical, general alarm, radio, and emergency light circuits, and such other drawings or prints as show the general construction of the vessel, including dimensions, spacing of frames, disposition of hull plates, construction of transverse and longitudinal bulkheads, and location of same.

(Approved by the Office of Management and Budget under control number 3207–0001)

22. Section 121.47 is amended by revising paragraph (c) to read as follows:

§ 121.47 Inspection of hulls.

* * * * *

(c) The outboard shaft or shafts on every ocean or coastwise vessel shall be drawn for examination at least once every 3 years: Provided, that when it is shown that a vessel has had a long period of lay-up the Marine Safety Unit may grant an extension equal to the time the vessel has been out of commission, but in no case shall the extension exceed 1 year.

* * * * *

23. Section 121.58 is revised to read as follows:

§ 121.58 Safety valves.

(a) At the annual inspection of each boiler, the marine safety inspector shall check the setting of each boiler safety valve and make any adjustments that may be necessary to keep the boiler within the maximum allowable pressure. After adjusting the boiler safety valves, the marine safety inspector shall seal each safety valve separately with the official seal of the Marine Safety Unit.

(b) Each chief engineer, upon taking charge of the power plant of a vessel, shall examine all safety valves and if any seals are broken, or there is any evidence that valves have been tampered with, he shall report same in writing to the Marine Safety Unit. If at any time it is necessary to break the seal on a safety valve for any purpose, the chief engineer shall advise the Marine Safety Unit in writing, giving the reason for breaking the seal and requesting the valve be examined, adjusted, and resealed.

24. Section 121.63 is amended by revising the section heading to read as follows:

§ 121.63 Guards in dangerous places.

25. Section 121.65 is revised to read as follows:

§ 121.65 Notice to the Marine Safety Unit of vessel on dock; alterations.

(a) Whenever any vessel under the supervision of the Marine Safety Unit is placed upon the dock for repairs it shall be the duty of the owner or responsible official to report same to the Marine Safety Unit so that a thorough inspection may be made to determine what is necessary to make such vessel seaworthy. No repairs or alterations affecting the safety of the vessel, either in regard to hull or machinery, shall be made without the knowledge and authority of the Marine Safety Unit. Notice of such repairs and alterations is necessary even if such work does not require the vessel to be placed in a drydock.

(b) When a repair or alteration ordered by the Marine Safety Unit has been completed the same shall be reported to the Marine Safety Unit in writing by the owner or responsible official.

26. Section 121.66 is revised to read as follows:

§ 121.66 Whistles.

Every inspected vessel under the supervision of the Marine Safety Unit shall be provided with an efficient whistle suitable for sounding the necessary whistle signals. Means shall be provided to operate the whistle from

a position adjacent to the main steering station and from the remote steering station where such steering station is fitted. Details of the whistle operating devices shall meet the requirements of 46 CFR chapter I, subchapter J (Electrical Engineering).

27. Section 121.67 is revised to read as follows:

§ 121.67 Fog bells.

Inspected vessels 12 meters in length or greater, under the supervision of the Marine Safety Unit, shall be provided with an efficient fog bell. The bell, of corrosion resistant material, shall produce a clear tone at a sound pressure level of not less than 110 decibels at a distance of 1 meter. The diameter of the mouth of the bell shall not be less than 300mm for vessels of 20 meters or more in length, and shall be not less than 200mm for vessels of 12 meters to 20 meters in length. The mass of the striker shall not be less than 3 percent of the mass of the bell.

28. Section 121.69 is revised to read as follows:

§ 121.69 Proceeding to another port for repairs.

The Marine Safety Unit may issue a permit to proceed to another port for repairs, if in its judgment this can be done with safety. Such a permit shall state the conditions upon which it is granted.

29. Section 121.70 is revised to read as follows:

§ 121.70 Marking of draft on vessel.

All vessels 20 gross tons and over, under supervision of the Marine Safety Unit, shall have the draft of the vessel plainly and legibly marked upon the stem and upon the stern post or rudder post or at such other place at the stern of the vessel as may be necessary for easy observance. The draft shall be taken from the bottom of the lowest part of the keel to the surface of the water, the bottom of the mark to indicate the draft in feet. Sufficient marks shall be used to cover all working and loading conditions of the vessel. If any part of the hull or permanent equipment extends below the lowest part of the keel, the master or other responsible person shall produce evidence from which the vessel's maximum immersion may be determined.

30. Section 121.71 is revised to read as follows:

§ 121.71 Emergency lighting system.

Provision shall be made on passenger vessels, tug boats and dredges for an electric system of lighting, sufficient for all requirements of safety, throughout the vessel. There shall be a self-contained electric source capable of supplying power when necessary. Emergency lights shall be tested at least once each week. The date of the tests required by this section shall be noted in the vessel's logbook.

31. Section 121.72 is revised to read as follows:

§ 121.72 Repairs to firefighting and lifesaving apparatus.

No extensive repairs or alterations, except in an emergency, shall be made to lifesaving or firefighting equipment without prior notice to the Marine Safety Unit.

32. Section 121.74 is revised to read as follows:

§ 121.74 Repairs on boilers and unfired pressure vessels.

(a) Before undertaking repairs to a boiler or unfired pressure vessel, the engineer in charge of such vessel shall report the condition necessitating repairs and the nature of the proposed repairs to the Marine Safety Unit in writing.

(b) When damage occurs to boilers or pressure vessels through an accident that tends to render the further use of such boilers or pressure vessels unsafe until repairs are made, the engineer in charge thereof shall promptly report the facts of the accident and the proposed repairs to the Marine Safety Unit in writing.

(c) In cases requiring a written report under this section, repairs shall not commence until the Marine Safety Unit's Inspector has approved the proposed plan of repairs.

33. Section 121.76 is revised to read as follows:

§ 121.76 Inclining test.

When the Marine Safety Unit has any reason to question the stability of any vessel under its supervision, it shall require the owners of the vessel to make inclining tests on such vessels, under the general supervision of the Marine Safety Unit.

34. Section 121.79 is revised to read as follows:

§ 121.79 Carrying of excess steam.

When it is known or comes to the knowledge of the Marine Safety Unit that any steam vessel is or has been carrying an excess of steam beyond that which is allowed by her certificate of inspection, the Marine Safety Unit shall require the owner of said vessel to place on the boiler a lockup safety valve, that will prevent the carrying of an excess of steam, which shall be under the control of the Marine Safety Unit.

35. Section 121.85 is revised to read as follows:

§ 121.85 Sanitation.

The master and chief engineer of any vessel under supervision of the Marine Safety Unit shall see that the vessel and the passenger and crew quarters are kept in a sanitary condition.

36. Section 121.87 is revised to read as follows:

§ 121.87 Examination of boilers and machinery by engineer.

When an engineer assumes charge of the boilers and machinery of a vessel he shall examine the same immediately and thoroughly, and if he finds any part thereof in bad condition, he shall immediately report the fact to the master or employer and to the Marine Safety Unit, which shall thereupon investigate the matter to determine whether the former engineer has been negligent in his duties.

37. Section 121.88 is revised to read as follows:

§ 121.88 Fusible plug report.

The chief engineer of a steam vessel subject to this part shall report promptly to the Marine Safety Unit every renewal of every fusible plug in a boiler or boilers of a steam vessel upon which he is in charge as chief engineer.

38. Section 121.89 is amended by revising paragraphs (a), (a)(1), and (b) to read as follows:

§ 121.89 Boiler steam hours.

(a) Boilers on floating equipment of the Panama Canal Commission which are inspected by the Marine Safety Unit may not be operated under steam for more than the following prescribed number of hours between boiler washout periods:

(1) Boilers which are operated under an approved system of boiler feed water conditioning and with respect to which copies of reports of boiler water conditioning are filed with the Marine Safety Unit: 2,880 hours.

* * * * *

(b) The chief engineer of the vessel shall report all washouts to the Marine Safety Unit on Form 1588–4 when the washout is completed and steam raised in a boiler. The original of this report shall be forwarded to the Marine Safety Unit and a copy to his master or employer.

39. Section 121.90 is revised to read as follows:

§ 121.90 Annual report of floating equipment on hand.

The accountable officials of the Panama Canal Commission shall furnish the Marine Safety Unit with an annual report of all vessels and floating craft on hand by January 1st of each year. This report shall show:

(a) The accountable official.
(b) The responsible official.
(c) The location of vessel or craft.
(d) The number or name of vessel or craft.
(e) The description of vessel or craft.

40. Section 121.92 is revised to read as follows:

§ 121.92 Lifesaving apparatus.

Unless otherwise provided by this part, lifesaving apparatus for vessels subject to this part shall be in accordance with the requirements of the general rules and regulations for vessel inspection of the United States Coast Guard, or with the requirements of the International Convention for the Safety of Life at Sea.

41. Section 121.99 is amended by adding paragraph (c) to read as follows:

§ 121.99 Fire axes.

* * * * *

(c) The vessel's name shall be marked on each ax handle.

42. Section 121.102 is revised to read as follows:

§ 121.102 Portable fire extinguishers.

All vessels subject to this section shall be provided with good and efficient U.S. Coast Guard approved marine portable fire extinguishers. The number and type required shall be determined by the Marine Safety Unit.

43. Section 121.107 is amended by revising paragraphs (a), (b), and (c) and adding paragraph (d) to read as follows:

§ 121.107 Non-self-propelled vessels; equipment.

* * * * *

(a) *Dredges, floating cranes, and drill boats:*

4 Life rings (2 luminous), U.S. Coast Guard approved.
1 Life preserver for each person on board, U.S. Coast Guard approved.
1 Fire pump. Outlets from fire mains to be so arranged that one 50–foot length of hose can reach any part of the vessel.
6 Portable fire extinguishers.
4 Fire axes.
1 Anchor and anchor chain as approved by the Marine Safety Unit.
Lights and day marks as required by § 111.27 (Rule 27, 72 COLREGS).

(b) *Floating pile drivers:*

2 Life rings (1 luminous), U.S. Coast Guard approved.
1 Life preserver for each person on board, U.S. Coast Guard approved.
2 Fire axes.
2 Portable fire extinguishers.
1 Anchor and anchor chain as approved by the Marine Safety Unit.
Lights and day marks as required by § 111.27 (Rule 27, 72 COLREGS).

(c) *Barges, lighters and scows:*

1 Life ring, U.S. Coast Guard approved.
1 Suitable anchor with cable.
1 Life preserver for each person on board, U.S. Coast Guard approved.
Lights as required by part 111 of this chapter and Rule 24 (72 COLREGS).
1 Stern light, white, and so fixed as to show the light 67.5 degrees from right aft on each side, an arc of 135 degrees, visibility of 3 miles.
1 Each sidelight, green starboard and red port, showing an unbroken light over an arc of the horizon of 112.5 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on its respective side, visibility of 3 miles.
1 Diamond black shape (on tows exceeding 200 meters) for daylight display where best seen.

(d) *Inconspicuous, partly submerged vessels or objects, or combination of such vessels or objects being towed, shall exhibit:*

(1) White, 32–point, 3–mile lights, one at or near the forward end and one at or near the after end, if less than 25 meters in breadth, except that dracones need not exhibit a light at or near the forward end;

(2) In vessels 25 meters or more in breadth, two additional all-round white lights at or near the extremities of its breadth;

(3) In vessels more than 100 meters in length, additional all-round white lights between the lights prescribed in paragraphs (d) (1) and (2) of this section so that the distance between the lights shall not exceed 100 meters;

(4) A diamond shape at or near the aftermost extremity of the last vessel or object being towed; and, if the length of the tow exceeds 200 meters, an additional diamond shape where it can best be seen and located as far forward as is practicable.

44. Section 121.108 is revised to read as follow:

§ 121.108 Complement of officers and crew.

A certificate of inspection will not be granted to a vessel unless it has in service and on board such complement of officers and crew as may, in the judgment of the Marine Safety Unit, be necessary for safe navigation.

45. Section 121.131 is revised to read as follows:

§ 121.131 Equipment on Motorboats.

(a) Motorboats less than 7 meters (23′) in length shall carry the following equipment:

2 Oars or paddles.
1 Whistle.
1 Bailer.
20 Meters (65′) of manila line, not less than 15mm (⅝") diameter, or synthetic line of comparable strength.
2 Fire extinguishers, either 1¼ gallon foam, 4-lb. CO–2, or 2-lb. dry chemical, when engine is inboard, or one such extinguisher, if fixed system installed in engine space or if the engine is outboard. Extinguishers to be U.S. Coast Guard approved.
1 Combination light showing red to port and green to starboard or individual red and green side lights, visibility of one mile.
1 Stern light or all-round white light, visibility of two miles.
1 Anchor and suitable cable, 40 meters (130′).
1 Red flag.
1 Life preserver for each person carried, U.S. Coast Guard approved.
1 Copy of the "Motorboat Operator's Handbook".

(b) Motorboats 7 meters (23′) or over and less than 12 meters (40′) in length shall carry the following equipment:

1 Life ring buoy of not less than 600mm (24") outside diameter, U.S. Coast Guard approved.
1 Whistle, power-operated, audible at least one mile.
1 Bailer.
20 Meters (65′) of manila line, not less than 18mm (¾") diameter, or synthetic line of comparable strength.
3 Fire extinguishers, 2 of which shall be 2½ gallon foam, 15-lb. CO–2, or 10-lb. dry chemical. The third extinguisher shall be 1¼ gallon foam, 4-lb. CO–2, or 2-lb. dry chemical. This third extinguisher is not required if a fixed system is installed in the engine space. Extinguishers to be U.S. Coast Guard approved.
1 Boat hook.
1 Combination light showing red to port and green to starboard, or individual red and green side lights, visibility one mile.
1 Stern light or all-round white light, visibility of two miles.
1 Anchor and suitable cable, 40 meters (130′).
1 Red flag.
1 Red lantern.
1 Life preserver for each person carried, U.S. Coast Guard approved.
1 Copy of the "Motorboat Operator's Handbook".

(c) Motorboats 12 meters (40′) or over and not more than 20 meters (65′) in length shall carry the following equipment:

2 Life ring buoys not less than 600mm (24") in outside diameter, U.S. Coast Guard approved.
1 Approved fog horn.
1 Whistle, power-operated, audible at least one mile.

1 Bailer.
25 Meters (82′) of manila line, not less than 21mm (⅞") diameter, or synthetic line of comparable strength.
4 Fire extinguishers, 3 of which shall be 2½ gallon foam, 15-lb. CO–2, or 10-lb. dry chemical. The fourth extinguisher may be 1¼ gallon foam, 4-lb. CO–2, or 2-lb. dry chemical. This fourth extinguisher is not required if a fixed system is installed in engine space. Extinguishers to be U.S. Coast Guard approved.
2 Boat hooks.
1 Masthead light, white, 225 degrees, fixed to show the light from right ahead to 22.5 degrees abaft the beam on either side, minimum 2.5 meters above the gunwale, visibility three miles.
1 Combination light showing red to port and green to starboard or individual red and green sidelights, visibility two miles.
1 Stern light, white, 135 degrees, placed as nearly as practicable at the stern, and so fixed to show the light 67.5 degrees from right aft on each side, visibility two miles.
2 Emergency lights, red and all-round in a vertical line where they can best be seen, visibility two miles (daylight: two black balls) used when restricted in ability to maneuver.
1 Red lantern.
1 Red flag.
1 Anchor with 40 meters (130′) suitable cable.
1 Fog bell.
1 Life preserver for each person carried, U.S. Coast Guard approved.
1 Copy of the "Motorboat Operator's Handbook".

(1) Pilot vessels only:

2 Lights at or near the masthead, one all-round white upper and one all-round red lower not less than one meter apart, visibility two miles.

(2) For those vessels engaged in towing and pushing:

2 Masthead lights in a vertical line. When the length of the tow, measured from the stern of the towing vessel to the after end of the tow, exceeds 200 meters, three such lights in a vertical line (daylight: a black diamond shape where it can best be seen).

(d) Cayucos or piraguas less than 20 meters (65 feet) in length and equipped with an outboard motor or motors and operating in Madden and Gatun Lakes shall carry the following equipment:

2 Oars or paddles.
1 Whistle.
1 Bailer.
20 Meters (65′) of manila line, not less than 21mm (⅞") diameter, or synthetic line of comparable strength.
1 Flashlight.
1 Red flag.
1 Life preserver for each person carried, U.S. Coast Guard approved.
1 Copy of the "Motorboat Operator's Handbook".

(e) Life preservers, ring buoys and fire extinguishers required by this section shall be U.S. Coast Guard approved and shall be permanently marked with the name of the motorboat on which they are carried.

Subpart C—Registration and Numbering

46. Section 121.171 is revised to read as follows:

§ 121.171 Registration and numbering of motorboats.

All motorboats shall be registered, certificated, and assigned numbers by the Marine Safety Unit.

47. Section 121.173 is revised to read as follows:

§ 121.173 Registration and numbering of vessels under 20 meters (65′) in length not propelled by machinery.

Vessels not more than 20 meters (65′) in length and not propelled in whole or in part by machinery shall be registered and numbered by the Marine Safety Unit.

PART 123—RADIO COMMUNICATION

48. The authority citation for part 123 continues to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3811, E.O. 12215, 45 FR 36043.

49. Section 123.3 is amended by revising paragraph (c) to read as follows:

§ 123.3 Radiotelephones required.

* * * * *

(c) A vessel of a type described in paragraph (a) of this section, which has notified the Traffic Management Division that it is ready to transit or otherwise navigate in Panama Canal waters and requires a Panama Canal pilot, shall, until a pilot boards the vessel, maintain a continuous watch on Channel 12. Channel 12 will be used for notification to vessels of their transit time and for advisory harbor control communication in Limon Bay.

* * * * *

50. Section 123.4 is amended by revising its heading, paragraph (a), and items GOLF and HOTEL thereunder to read as follows:

§ 123.4 Advance notification required by radio from vessels approaching the Canal.

(a) Vessels approaching the Panama Canal shall communicate by radio to the Traffic Management Division not less than 48 hours in advance of arrival at the Canal (or earlier if radio communication is practicable at an earlier time), the information required by this section unless this information has been previously communicated to the Canal authorities by other means. Symbols of the phonetic alphabet shall be used to identify each item and the word "NEGAT" shall be used after the items that can be answered "no", "none", or "not applicable". The following items of information shall be provided.

* * * * *

GOLF—If the vessel is carrying any explosives or bulk dangerous cargoes, as classified in § 113.3, state the technical name, quantity (in long tons), United Nations number, the International Maritime Organization class and division (include compatibility group for explosives only), and the stowage for each dangerous cargo carried. If the vessel is a tanker in ballast condition and not gas free, state the technical name, United Nations number and the International Maritime Organization class and division of the previously carried cargo. Tankers reporting "GOLF:NEGAT" shall, in addition, state the technical names of non-dangerous cargoes carried.

HOTEL—If the vessel is carrying any packaged dangerous goods, as specified in § 113.3, other than explosives, state the International Maritime Organization class and division and the total quantity (in long tons) within each class.

* * * * *

Dated: August 9, 1989.

D.P. McAuliffe,
Administrator, Panama Canal Commission.

[FR Doc. 89–21075 Filed 9–7–89; 8:45 am]

BILLING CODE 3640-04-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AD29

Vocational Rehabilitation Panel

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is changing the rules under which the cases of seriously disabled veterans are referred to the Vocational Rehabilitation Panel (VRP). Under the new procedure VA staff members may refer cases to the Panel on a voluntary basis. The requirement that certain cases be referred to the VRP is eliminated. This change should enable VA staff to focus their attention on cases in which their professional judgment indicates that consideration by the VRP is necessary.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Veterans

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Benefits Administration, Department of

2. In § 21.53, paragraph (f) is

for seriously disabled veterans and their

Counseling and Rehabilitation Officer in

facilities may petition the Agency to

The Agency evaluated the information

Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2888.

SUPPLEMENTARY INFORMATION: On March 6, 1989, VA published proposed regulations to place the use of the Vocational Rehabilitation Panel on a discretionary basis. Interested persons were given 30 days in which to submit comments, objections, or suggestions. Since no comments, objections, or suggestions were received these rules are adopted as final with the addition of technical amendments to bring the nomenclature in the proposed rule into conformance with Public Law 100-527 which created the Department of Veterans Affairs (see 54 FR 10476).

Thse regulatory amendments will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These regulatory amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The changes will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Secretary of Veterans Affairs certifies that these regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these final regulatory amendments concern only the internal Department procedures for reviewing the eligibility and participation of individual veterans under this program.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 10, 1989.

Edward J. Derwinski,
Secretary.

PART 21—[AMENDED]

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

§ 21.52 [Amended]

1. In § 21.52 paragraph (e)(3) is removed.

2. In § 21.53, paragraph (f) is redesignated as paragraph (g), paragraph (e)(2) is revised and new paragraph (f) is added to read as follows:

§ 21.53 Reasonable feasibility of achieving a vocational goal.

* * * * *

(e) *Criteria for reasonable feasibility not met.*

* * * * *

(2) A finding that achievement of a vocational goal is infeasible without a period of extended evaluation requires compelling evidence which establishes infeasibility beyond any reasonable doubt.

(Authority: 38 U.S.C. 1504(a)(1), 1506(b))

(f) *Independent living services.* The counseling psychologist shall determine the current reasonable feasibility of a program of independent living services in each case in which a vocational rehabilitation program is not found reasonably feasible. The concurrence of the Vocational Rehabilitation and Counseling (VR&C) Officer is required in any case in which the counseling psychologist does not approve a program of independent living services.

(Authority: 38 U.S.C. 1500)

* * * * *

3. In § 21.57 paragraph (c) is revised to read as follows:

§ 21.57 Extended evaluation.

* * * * *

(c) *Determination.* (1) The determination of the reasonable feasibility of a veteran achieving a vocational goal will be made at the earliest time possible during an extended evaluation, but not later than the end of the period of evaluation, of an extension of that period. Any reasonable doubt as to feasibility will be resolved in the veteran's favor;

(2) When it is reasonably feasible for the veteran to achieve a vocational goal, an individualized written rehabilitation plan (IWRP) will be developed as indicated in § 21.84 of this part.

(Authority: 38 U.S.C. 1506(b))

* * * * *

4. Section 21.62 is revised to read as follows:

§ 21.62 Duties of the Vocational Rehabilitation Panel.

(a) *Consultation requested.* The panel shall provide technical and consultative services when requested by professional staff of the Vocational Rehabilitation and Counseling (VR&C) Division to:

(1) Assist staff members in planning and carrying out a rehabilitation plan for seriously disabled veterans and their dependents; and

(2) Consider other cases of individuals eligible for, or being provided assistance under chapter 31 and other programs of education and training administered by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 1504(a))

(b) *Independent living services.* The Panel has a key responsibility to assure that seriously disabled service-connected veterans who need independent living services to increase their independence in daily living are provided necessary services. In carrying out this responsibility the Panel shall review all cases which come before it to assure that the proposed program of vocational rehabilitation or independent living services includes those services necessary to enable the veteran to achieve the goals of the program.

(Authority: 38 U.S.C. 1500)

(c) *Dependents.* The specific duties of the Panel with respect to dependents are more fully described §§ 21.3300, 21.3301, 21.3304, 21.4105, and 21.4276 of this part.

(Authority: 38 U.S.C. 1736, 1740, 1741, 1742, 1743)

5. In § 21.74 paragraph (c)(2) is revised to read as follows:

§ 21.74 Extended evaluation.

* * * * *

(c) * * *

(2) An additional period of extended evaluation of up to 6 months may be approved by the counseling psychologist, if there is reasonable certainty that the feasibility of achieving a vocational goal can be determined during the additional period. The counseling psychologist will obtain the concurrence of the Vocational Rehabilitation and Counseling Officer before approving the extension of a period of extended evaluation.

* * * * *

6. In § 21.76 paragraph (b) is revised to read as follows:

§ 21.76 Independent living.

* * * * *

(b) *Period of independent living services.* The duration of an independent living services program may not exceed 24 months unless the counseling psychologist finds that an additional period of up to 6 months would enable the veteran to substantially increase his or her level of independence in daily living. The concurrence of the Vocational

Counseling and Rehabilitation Officer in this finding is required.

(Authority: 38 U.S.C. 1505(d))

[FR Doc. 89-21119 Filed 9-7-89; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3642-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denial

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is finalizing its decision to deny a petition submitted by Rock Island Refining Corporation (Rock Island), Indianapolis, Indiana, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: September 8, 1989.

ADDRESS: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (Room M2427), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-89-RIDF-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Terry Grist, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4782 .

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine (1) that the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the waste at levels of regulatory concern.

B. History of the Rulemaking

Rock Island petitioned the Agency for an exclusion of its filter press cake generated from the processing and fractionation of crude oil. After evaluating the petition, EPA proposed, on June 14, 1989, to deny Rock Island's petition to exclude its waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 54 FR 25302).

This rulemaking finalizes the proposed decision to deny Rock Island's petition.

II. Disposition of Delisting Petition

Rock Island Refining Corporation, Indianapolis, Indiana

1. Proposed Exclusion

Rock Island petitioned the Agency to exclude its filter press cake generated from the treatment of the following sludges: EPA Hazardous Waste No. K049—"Slop oil emulsion solids from the petroleum refining industry;" EPA Hazardous Waste No. K050—"Heat exchanger bundle cleaning sludge from the petroleum refining industry;" and EPA Hazardous Waste No. K051—"API separator sludge from the petroleum refining industry". Rock Island petitioned to exclude its waste based on the claim that the waste does not meet the criteria of the listing.

To support its claim that both the non-listed and listed constitutents of concern are not present in the filter press cake above levels of concern, Rock Island submitted (1) descriptions of its waste treatment processes, including schematic diagrams; (2) total constituent data for the EP toxic metals, nickel, antimony, and beryllium; (3) EP leachate analysis results for the EP toxic metals for representative waste samples; (4) OWEP analysis results for the EP toxic metals, nickel, antimony, and beryllium for a single sample; (5) oil and grease data for a single sample; (6) total constituent data for volatile and semivolatile organic compounds for a single sample; and (7) results from characteristics testing for ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by Rock Island in support of its petition and the spot-check sampling visit analysis data collected as part of the EPA spot-check program, and determined that the hazardous constituents found in the petitioned waste could pose a threat to human health and the environment. Specifically, the Agency used its vertical and horizontal spread (VHS) model to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that Rock Island failed to substantiate its claim that the hazardous constituents of concern will not leach and migrate at concentrations above the health-based levels used in delisting decision-making. See 54 FR 25302, June 14, 1989, for a more detailed explanation of why EPA proposed to deny Rock Island's petition.

2. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to deny Rock Island's petition for the filter press cake.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Rock Island's filter press cake should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to the Rock Island Refining Corporation, located in Indianapolis, Indiana, for its filter press cake described in its petition as EPA Hazardous Waste Nos. K049, K050, and K051.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule does not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its waste as hazardous before and during the Agency's review of its petition (except for the period during which the temporary exclusion was in effect). See 54 FR 25303, June 14, 1989 for a discussion of the temporary exclusion previously granted to Rock Island. Because a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this denial should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The denial of this petition does not impose an economic burden on this facility because prior to submission, during the initial review of the petition, and again after November 8, 1986 (when its temporary exclusion ceased to be in effect), this facility should have handled its wate as hazardous. See 54 FR 25303, June 14, 1989. The denial of the petition means that the petitioner is to continue managing its waste as hazardous in the manner in which it has been doing, economically and otherwise. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment does not have a significant adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial segment. The overall impact, therefore, on small entities is small. Accordingly, I hereby certify that this regulation does not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et. seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: August 23, 1989.

Jonathan Z. Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 89–21166 Filed 9–7–89; 8:45 am]

BILLING CODE 6560-50-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 702, 734, and 752

[AIDAR Notice 89–5]

Miscellaneous Amendments to Acquisition Regulations

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to remove the order of succession for the Procurement Executive, establish a new threshold for major systems acquisitions, correct a reference and combine two similar contract clauses into a single clause.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Mr. James M. Kelly, Room 1600I, SA–14, Agency for International Development, Washington, DC 20523. Telephone (703) 875–1534.

SUPPLEMENTARY INFORMATION: AID considers the order of succession for the Procurement Executive unnecessary for inclusion in the AIDAR; it is basically an internal matter, not affecting the public. In the absence of the Procurement Executive, any communication addressed to him will automatically be referred to the person designated by him as acting Procurement Executive.

The dollar threshold for major systems acquisition was considered unrealistically low. Given the nature of AID acquisitions, dollar value is likely to be the primary consideration in whether or not an acquisition is a major system. AID is setting the threshold at $75 million initial year estimate or $200 million life of contract estimate.

The remaining changes are editorial—correction of a reference and combination of two versions of a contract clause into a single version with no substantive changes.

The changes being made by this Notice are not considered significant rules subject to FAR 1.301 or subpart 1.5. This Notice is exempted from the requirements of Executive Order 12291 by OMB Circular 85–7. This Notice will not have an impact on a substantial number of small entities, nor does it establish any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 702, 734, and 752

Government procurement.

For the reasons set out in the Preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in Parts 702, 734, and 752 continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979; 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 702—DEFINITIONS

Subpart 702.170—Definitions

702.170–13 [Amended]

2. Section 702.170–13, Procurement Executive, is amended by removing paragraph (d).

PART 734—MAJOR SYSTEM ACQUISITION

3. Section 734.003, is revised as follows:

734.003 Responsibilities.

AID follows the policies and procedures in OMB Circular A–109 and FAR Part 34 regarding major systems acquisitions. In order to be considered a major system an AID procurement must have an estimated value of $75 million during the first year of the contract or a $200 million life of contract estimated value.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

752.7026 [Amended]

4. Paragraph (a), *Alternate 70*, of section 752.7026, Reports, is amended by removing the reference to "*Alternate 72*" appearing in the introductory paragraph, replacing it with "*Alternate 71*".

5. Section 752.7031, Leave and Holidays, is amended by removing paragraph (c), *Alternate 72*, and

paragraph (d), *Alternate 73*. In place of these a new paragraph (c), *Alternate 72* is added as follows:

752.7031 Leave and holidays.

* * * * *

(c) *Alternate 72*. For use in addition to either *Alternate 70* or *71*, as appropriate, for any AID cost reimbursement contract involving performance overseas.

Leave and Holidays—Overseas (Aug 1989)

(a) *Vacation leave*. (1) The Contractor may grant to its employees working overseas under this contract, vacations of reasonable duration in accordance with the Contractor's practice for its employees, but in no event shall such vacation leave be earned at a rate exceeding twenty-six (26) work days per annum. Vacation leave is provided under this contract primarily for purposes of affording necessary rest and recreation to regular employees during their tour of duty in the Cooperating Country. The Contractor's Chief of Party, the employee and the Cooperating Country institution associated with this project shall develop vacation leave schedules early in the employee's tour of duty taking into consideration project requirements, employee preference and other factors.

(2) Leave taken during the concluding weeks of an employee's tour shall be included in the established leave schedule and be limited to that amount of leave which can be earned during a twelve-month period unless approved in accordance with paragraph (a)(3) of this clause.

(3) Vacation leave earned but not taken by the end of the employee's tour pursuant to paragraphs (a) (1) and (2) of this clause will be forfeited, unless the requirements of the project precluded the employee from taking such leave and the Contracting Officer, with the endorsement of the Mission, approves one of the following as an alternative:

(i) Taking, during the concluding weeks of the employee's tour, leave not permitted under (a)(2) of this section, or

(ii) Lump-sum payment for leave not taken provided such leave does not exceed the number of days which can be earned by the employee during a twelve-month period.

(b) *Sick Leave*. Sick leave is earned by regular and short-term employees in accordance with the Contractor's usual practice but not to exceed 13 work days per annum or 4 hours every 2 weeks. Additional sick leave after use of accrued vacation leave may be advanced in accordance with Contractor's usual practice, if in the judgment of the Contractor's Chief of Party it is determined that such additional leave is in the best interest of the project. In no event shall such additional leave exceed 30 days. The Contractor agrees to reimburse AID for leave used in excess of the amount earned during the employee's assignment under this contract. Sick leave earned and unused at the end of a regular tour of duty may be carried over to an immediately succeeding tour of duty under this contract. The taking of authorized home leave shall not constitute a break in service for the purpose of sick leave carryover. Contractor employees will not be compensated for unused sick leave at the completion of their duties under this contract.

(c) *Home leave*. (1) Home leave is leave earned for service abroad for use only in the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States.

(2) A regular employee who is a U.S. citizen or resident and has served at least 2 years overseas, as defined in paragraph (c)(4) of this clause, under this contract and has not taken more than 30 workdays leave (vacation, sick, or leave without pay) in the United States, may be granted home leave of not more than 15 calendar days for each such year of service overseas: *Provided*, that such regular employees agree to return overseas upon completion of home leave under an additional 2-year appointment, or for such shorter period of not less than 1 year of overseas service under the contract as the Mission Director may approve in advance. Home leave must be taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States and any days spent elsewhere will be charged to vacation leave or leave without pay.

(3) Notwithstanding the requirement in paragraph (c)(2), of this clause, that the Contractor's regular employee must have served 2 years overseas under this contract to be eligible for home leave, Contractor may grant advance home leave to such regular employee subject to all of the following conditions:

(i) Granting of advance home leave would in each case serve to advance the attainment of the objectives of this contract;

(ii) The regular employee shall have served a minimum of 18 months in the Cooperating Country on his/her current tour of duty under this contract; and

(iii) The regular employee shall have agreed to return to the Cooperating Country to serve out the remainder of his/her current tour of duty and an additional 2-year appointment under this contract, or such other additional appointment of not less than 1 year of overseas service as the Mission Director may approve.

(4) The period of service overseas required under paragraph (c)(2) or paragraph (c)(3) of this clause, shall include the actual days in orientation in the United States (less language training) and the actual days overseas beginning on the date of departure from the United States port of embarkation on international travel and continuing, inclusive of authorized delays en route, to the date of arrival at the United States port of debarkation from international travel. Allowable vacation and sick leave taken while overseas, but not leave without pay, shall be included in the required period of service overseas. An amount equal to the number of days vacation and sick leave taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States will be added to the required period of service overseas.

(5) Salary during travel to and from the United States for home leave will be limited to the time required for travel by the most expeditious air route. The Contractor will be responsible for reimbursing AID for salary payments made during home leave, if in spite of the undertaking of the new appointment, the regular employee, except for reasons beyond his/her control as determined by the Contracting Officer, does not return overseas and complete the additional required service. Unused home leave is not reimbursable under this contract.

(6) To the extent deemed necessary by the Contractor, regular employees in the United States on home leave may be authorized to spend not more than 5 days in work status for consultation at home office/campus or at AID/Washington before returning to their post of duty. Consultation at locations other than AID/Washington or home office/campus, as well as any time in excess of 5 days spent for consultation, must be approved by the Mission Director or the Contracting Officer.

(7) Except as provided in the schedule or approved by the Mission Director or the Contracting Officer, home leave is not authorized for TCN or CCN employees.

(d) *Holidays*. Holidays for Contractor employees serving overseas should take into consideration local practices and shall be established in collaboration with the Mission Director.

(e) *Military leave*. Military leave of not more than 15 calendar days in any calendar year may be granted in accordance with the Contractor's usual practice to each regular employee whose appointment is not limited to 1 year or less and who is a reservist of the United States Armed Forces, provided that such military leave has been approved in advance by the cognizant Mission Director or Assistant Administrator. A copy of any such approval shall be provided to the Contracting Officer.

Dated: August 29, 1989.

John F. Owens,

Procurement Executive.

[FR Doc. 89–21143 Filed 9–8–89; 8:45 am]

BILLING CODE 6116-01-M

Proposed Rules

Federal Register
Vol. 54, No. 173
Friday, September 8, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Docket No. FV-89-074PR]

Limes Grown in Florida; Proposed Relaxation of the Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes relaxing the container requirements currently in effect for Florida grown limes, by authorizing Florida lime handlers to use another container to ship fresh Florida limes to market. Container requirements ensure the packing of fruit in suitable containers for shipment to market, so that it arrives in the marketplace in good condition. This is in the interest of growers, handlers, and consumers.

DATES: Comments must be received by October 10, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 911, both as amended (7 CFR part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes has small entity orientation and compatibility.

There are about 26 lime handlers subject to regulation under the marketing order for limes grown in Florida. In addition, there are about 230 lime growers in Florida. Small agricultural growers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and agricultural services firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and growers may be classified as small entities.

Section 911.329 (7 CFR 911.329) specifies continuous container requirements for shipments of fresh limes grown in Florida. These requirements authorize Florida lime handlers to use specific containers for shipping fresh limes to market, and they have been in effect on a continuous basis for several seasons. The container requirements make sure the limes are packed in suitable containers for shipment to market, so that they arrive in the marketplace in good condition. Florida lime growers and handlers have found such requirements beneficial in the successful marketing of their limes.

The proposed action would add a new paragraph (a)(2)(x) to § 911.329, authorizing handlers to use another container to ship fresh limes to market. This container has inside dimensions of 12⅝ by 8¾ by 5⅞ inches, and it must contain not less than 10 pounds of limes. This proposed rule also would revise the title of § 911.329, for purposes of clarity.

The Florida Lime Administrative Committee (committee) recommended that this container be authorized. The committee recently conducted a research project on this container to determine if it would palletize efficiently when transported by truck. The research results indicate that the container ships well on pallets.

The committee works with the Department in administering the marketing agreement and order. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida limes. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida lime shipments are exempt from container requirements. Handlers may make gift shipments in individually addressed containers of up to 20 pounds of limes each. Also, limes utilized in commercial processing are not covered by the container requirements.

The proposed action reflects the committee's and the Department's appraisal of the need to relax the container requirements applicable to shipment of fresh Florida limes. The Department's view is that the proposed relaxation would benefit lime handlers. The application of container requirements over the past several years has helped keep the limes in good condition during shipment to market. Although compliance with container requirements affects costs to handlers, these costs would be significantly offset when compared to the benefits resulting to growers, handlers, consumers, and the trade from the fruit being in better

condition upon arrival in the marketplace.

Based on the above, the Administrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 911

Florida, Limes, Marketing agreements and orders.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 911 be amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 911.329 is amended by revising the section title, and by adding a new paragraph (a)(2)(x) to read as follows:

§ 911.329 Florida lime container regulation.

(a)(1) * * *
(2) * * *

(x) Containers with inside dimensions of 12⅝ by 8¾ by 5⅞ inches: Provided, that such containers shall contain not less than 10 pounds net weight of limes.

* * * * *

Dated: September 1, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–21115 Filed 9–7–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 971

[Docket No. FV-89-076]

Lettuce Grown in Lower Rio Grande Valley in South Texas; Proposed Amendment to Continuing Handling Regulation to Authorize a New Container

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize the use of bulk bin containers for shipping South Texas lettuce to shredders under the container regulations of Marketing Order 971. Allowing handlers to ship lettuce in bulk bin containers to shredders should improve the improve returns to producers and handlers of South Texas lettuce.

DATES: Comments must be received by October 10, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 144 and Marketing Order No. 971 (7 CFR part 971), both as amended, regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 handlers of South Texas lettuce subject to regulation under the marketing order, and approximately 20 producers in the production area. The Small Business Administration (13 CFR 121.1) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those who gross annual receipts are less than $3,500,000. The majority of handlers and producers of South Texas lettuce may be classified as small entities.

As of July 6, 1989, estimated South Texas lettuce acreage planted was 2,434 acres compared to 1,629 acres in 1988. Total shipments of South Texas lettuce during the 1988–89 season were approximately 921,000 50-pound cartons. This represented nearly a 25 percent increase over the estimated 738,000 cartons shipped in the 1987–88 season. The majority of the crop was shipped to the fresh markets, with only a small volume (less than 1%) utilized by processors.

The handling requirements for South Texas lettuce are specified in § 971.322 (51 FR 2, January 2, 1986, 54 FR 8182, February 27, 1989). The current requirements for South Texas lettuce specify the inside dimensions of the five cartons that may be used to pack lettuce and the number of heads of lettuce that may be packed in each of those containers. Additionally, inspection is required and packaging lettuce on any Sunday or on Christmas Day is prohibited.

This proposed rule would add the dimensions for bulk bin containers for lettuce shipments to shredders to the list of containers presently permitted under the handling regulation. No pack specifications would be included which stipulate the number of heads of lettuce which may be shipped in a bulk bin. This change was unanimously recommended by the South Texas Lettuce Commission (committee), the agency responsible for local administration of the marketing order, at its June 21, 1989, meeting.

Handlers of South Texas lettuce has been using the bulk bin container on a test basis for lettuce shipments to shredders, in accordance with § 971.322(a)(5) of the handling regulation. Last year, the committee authorized the limited use of 1,000 bulk bins for such purpose. These containers have approximate inside dimensions of 46 inches (length) x 38 inches (width) x 36 inches (height). The committee has recommended authorizing bulk bin containers meeting these approximate dimensions. The bulk bin container has found general trade acceptance, and the South Texas lettuce industry believes that these shipments are no longer experimental but an integral part of their marketing efforts. Furthermore, the use of such containers for shipping lettuce to shredders could expand their lettuce market and reduce packing costs. The recommended bulk bin container is of a proper size to be palletized.

Last season, in accordance with § 971.322(e) handlers were required to file for experimental container exemptions by applying for a Certificate of Privilege before making lettuce shipments in bulk bin containers to shredders. Handlers also were required to provide reports as requested by the committee. The committee believes that permitting handlers to use the bulk bin containers for lettuce shipments to shredders and eliminating the need to file for experimental container exemptions and related reports would encourage the industry to increase such shipments to shredders. Accordingly, this action also would reduce the information collection and recordkeeping requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). These requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0065.

Bulk bin containers are typically less expensive to use in packing lettuce than the cartons that are currently authorized for fresh market shipments. The committee believes that authorizing these bulk bin containers would assist the industry in expanding the market for shredded lettuce by reducing costs. Thus, it is proposed that the bulk bin containers would be authorized for handlers making lettuce shipments to shredders only. In addition, the handling regulation would be amended to specify that the pack requirement would be applicable to bulk bin container shipments of lettuce destined to shredders.

There is a sizable market for shredded lettuce, and allowing handlers to use bulk bin containers for such shipments would provide that market segment with the supply of lettuce it desires. This action is expected to have a positive effect on lettuce shipments which would be beneficial to producers and handlers.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons sufficient time to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 971

Marketing agreements and orders, Lettuce, South Texas.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 971 be amended as follows:

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

1. The authority citation for 7 CFR part 971 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 971.322 is amended by redesignating paragraph (a)(6) as (a)(7) and adding new paragraphs (a)(6) and (b)(4) to read as follows:

§ 971.322 Handling regulation.

* * * * *

(a) * * *

(6) Bulk bin containers with inside dimensions of approximately 46 inches x 38 inches x 36 inches to be used for lettuce shipments to shredders only.

* * * * *

(b) * * *

(4) No pack requirements shall apply to bulk bin containers for lettuce shipments to shredders.

* * * * *

Dated: September 1, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-21116 Filed 9-7-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-160-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require the installation of flexible deflectors at the left- and right-hand control quadrant assemblies. This proposal is prompted by reports of jamming of the aileron control system as a result of a loose object falling into the associated mechanisms. This condition, if not corrected, could reduce the ability of the pilot to control the airplane due to rotation of the control wheel in one direction only.

DATES: Comments must be received no later than October 30, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-160-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Airframe Branch, ANM-120S; telephone (206) 431-1928. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-160-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

An operator of a Boeing Model 757 has reported that, while the airplane was on the ground, jamming of the aileron control system was experienced.

This occurrence was the result of a loose object that became lodged in the control quadrant assembly. This condition, if not corrected, could reduce the ability of the pilot to control the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 757-27-0072, Revision 1, dated June 29, 1989, which describes procedures for installation of flexible deflectors at left- and right-hand quadrant assemblies to prevent entry of loose objects.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the installation of flexible deflectors in accordance with the service bulletin previously described.

There are approximately 110 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 69 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts are estimated at $246 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $61,134.

The regulations proposed herein would not have substantial direct effects on the States, on the relationships between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, as listed in Boeing Service Bulletin 757-27-0072, Revision 1, dated June 29, 1989, certificated in any category. Compliance required within the next 12 months, after the effective date of this AD, unless previously accomplished.

To reduce the possibility of aileron control system jamming due to loose objects being lodged in the control quadrant assembly, accomplish the following:

A. Install flexible deflectors in accordance with Boeing Service Bulletin 757-27-0072, Revision 1, dated June 29, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-21139 Filed 9-7-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASW-35]

Proposed Establishment of Control Zone; Lake Charles Chennault Industrial Airpark, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a part-time control zone at Lake Charles Chennault Industrial Airpark, LA. This proposed action is necessary because Chennault Industrial Airpark meets the criteria for the establishment of a control zone by the fact that there is a part-time nonfederal airport traffic control tower (ATCT) at the Chennault Industrial Airpark and a federally certificated weather observer who is qualified to take hourly and special weather observations at the Chennault Industrial Airpark during the times the control zone is in effect. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the standard instrument approach procedures (SIAP) serving the Chennault Industrial Airpark. The establishment of a control zone would allow the Chennault Industrial Airpark to be used as an alternate airport under instrument flight rules (IFR) weather conditions. The proposed control zone would exclude the area that overlies the Lake Charles, LA, Control Zone.

DATES: Comments must be received on or before October 31, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89-ASW-35, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

BEST COPY AVAILABLE

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASW–35." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of the Federal Aviation Regulations (14 CFR part 71) to establishing a part-time control zone at Lake Chares Chennault Industrial Airpark, LA. This proposed action is necessary because Chennault Industrial Airpark meets the criteria for the establishment of a control zone by the fact that there is a part-time nonfederal ATCT at the Chennault Industrial Airpark and there is a federally certificated weather observer who is qualified to take hourly and special weather observations at the Chennault Industrial Airpark during the times the control zone is in effect. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the SIAP's serving the Chennault Industrial Airpark. The establishment of a control zone would allow the Chennault Industrial Airpark to be used as an alternate airport under IFR weather conditions. The proposed control zone would exclude the area that overlies the Lake Charles, LA, Control Zone. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is a not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Lake Charles Chennault Industrial Airpark, LA [New]

Within a 5-mile radius of the Chennault Industrial Airpark (latitude 30°12′45″N., longitude 93°08′36″W.), excluding the area that overlies the Lake Charles, LA, Control Zone. This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, TX on August 23, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89–21137 Filed 9–7–89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 174, 175, 176, and 177

[Docket No. 89N–0138]

Packaging Materials for Use Under High Temperature Conditions in Microwave Ovens

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is considering publishing a proposal that would amend the indirect food additive regulations by establishing maximum temperatures of use for certain food-packaging materials. Should FDA decide to follow this course, the maximum temperatures of use for the materials in the proposal would be based, at least in part, upon use and safety information that is submitted in response to this advance notice of proposed rulemaking (ANPR). This ANPR identifies the data and information needed by FDA to develop a proposal.

DATE: Comments by November 7, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION:

I. Background

A. Microwave Cooking

The mechanics of heating food in microwave ovens differ from the mechanics of heating food in conventional ovens. In conventional ovens, the temperature of the oven walls and the air within the oven is raised to a cooking level, and this heat energy is transferred directly to the food or its container. The heat energy heats, browns, and crisps the food from the outside. Under normal operating conditions, microwave ovens heat the food by producing electromagnetic radiation that is absorbed by molecules, especially water and fat molecules, within the food. Absorption of microwave energy causes increased vibration of the molecules, resulting in heating of the food from the inside. This method of heating eliminates the possibility of browning and crisping the outside surface of the food.

B. Microwave Heat Susceptor Packaging

In general, dishes or packaging designed for use in microwave ovens are transparent to microwaves and play no part in heating the food. However, a new type of food-packaging material, referred to as "microwave heat susceptor packaging," has been developed that is itself an important factor in the heating of the food. This new packaging usually contains, as the food-contact surface, a metallized plastic film (i.e., the heat susceptor). The heat susceptor may be bound to a paperboard layer by means of adhesives, or a paper layer may be applied over the metallized film. In the latter case, the paper serves as the food-contact layer.

The heat susceptor absorbs the electromagnetic radiation in the microwave oven and, as a result, reaches a very high temperature, usually greater than 400 °F. The energy thus produced in the heat susceptor heats, browns, and crisps the food.

FDA did not envision the use of food-packaging materials at temperatures above 300 °F at the time that it adopted many of the regulations that list the food additive components of these packaging materials. As a result, petitions submitted in support of the use of the food additives regulated for use in these packaging materials do not contain adequate data to enable FDA to evaluate the safety of the use of these materials at high temperatures. Although microwave heat susceptor packaging may be manufactured with components that comply with various food additive regulations, such as 21 CFR 175.105, 175.300, 176.170, 177.1390, and 177.1630, FDA has not evaluated the safety of these food-packaging materials at temperatures above 300 °F.

The agency is concerned that the use of these materials at high temperatures may result in the heat susceptor packaging components (adhesives, polymers, paper, and paperboard) migrating into food at levels far in excess of those that the agency anticipated when it regulated the additives. In addition, the agency is concerned that the high temperatures produced in these packages may generate a number of degradation products whose safety needs to be assessed.

On September 22, 1988, FDA held a public meeting in Washington, DC, to notify manufacturers and users of food packaging of the agency's concerns regarding microwave food packaging that uses heat susceptors to brown or crisp food. The agency stated that while it was not aware of any hazards associated with the current uses of heat susceptor packaging, data were necessary to evaluate the safety of this high temperature use of food-packaging materials (Ref. 1). FDA also outlined the general types of data that it needs to do that evaluation. In addition, the Executive Vice President for Scientific Affairs of the National Food Processors Association presented a statement on microwave heat susceptor packaging (Ref. 2).

II. FDA Laboratory Studies

To assess the possible increased migration of heat susceptor packaging components to food, FDA has conducted preliminary laboratory studies on a number of microwavable packages that utilize heat susceptors of various designs. The results of these preliminary studies were presented at the September 22, 1988, public meeting and are summarized below:

1. Temperature measurements indicate that parts of the package reach temperatures in excess of 500 °F.
2. All of the packages used in the tests showed varying degrees of breakdown of the metallized polyethylene terephthalate (PET) film, including cracking and even melting of the film in some cases. When breakdown occurs, a functional barrier no longer exists between the food and the nonfood-contact layers of the package, allowing components of the nonfood-contact layers (adhesive and paperboard components) or their degradation products to migrate into the food.
3. In many instances, the paper and paperboard components of the heat susceptor packaging were blackened upon exposure to these high temperatures.
4. FDA's preliminary studies on the extraction of nonvolatile components followed only the migration of certain marker chemicals. These extraction studies, using corn oil as the food simulating solvent, were carried out to determine the level of migration of PET oligomers. Nearly all (95 percent) of a specific PET oligomer, the cyclic PET trimer, present in the unheated PET film migrated out of "pizza type" heat susceptor packaging into the corn oil when microwave cooking times of 3 minutes were used. Identification of other possible nonvolatile migrants from heat susceptor packaging was not carried out because this work would involve the development of many additional test protocols.
5. To determine whether volatile components of heat susceptor packages could also migrate into food, heat susceptors, formed into trays, were extracted with corn oil using a microwave cooking time of 3 minutes. The extracts were analyzed by headspace gas chromatography and found to contain detectable amounts of volatile chemicals, primarily from adhesives used in the package and from the paper substrate. These results indicate that a considerable number of volatile components of heat susceptor packaging will migrate to food under microwave heating conditions.

Further reports of these studies (Ref. 3), and copies of the experimental protocols used in FDA's preliminary laboratory studies of heat susceptor packages (Ref. 4), are available from the contact person listed above and are on file at the Dockets Management Branch (address above).

III. Regulatory Concerns

Based on the data from these studies, FDA has three primary concerns with respect to the use of heat susceptor packaging in microwave cooking. The first concern is that this use will greatly increase the levels of nonvolatile components of packaging materials that migrate into food. As indicated above, nearly all of the cyclic PET trimer migrated into corn oil from the tested heat susceptor packages in 3 minutes of microwave cooking time. This level of migration is 6 to 10 times higher than the level that FDA considered in evaluating uses of PET in contact with food. Moreover, when it evaluated those uses, FDA expected that the temperature of the food would not significantly exceed 250 °F.

A second FDA concern is that the high temperatures produced with microwave heat susceptor packaging and the cracking of the PET food-contact layer will allow adhesive components of the package, as well as degradation products of these adhesive components, to migrate directly into food. FDA laboratory studies confirm the migration of volatile components of the nonfood-contact layers into food-simulating solvents under conditions that simulate actual use. The adhesive components regulated in 21 CFR 175.105 are for applications in which a functional barrier exists between the adhesive components and the food and thus in which there is minimal migration. Consequently, available toxicology data may not be sufficient to establish the safety of the increased migration of the adhesive components of heat susceptor packages.

In addition, the high temperatures (greater than 400 °F) ionvolved in microwave cooking may cause significant decomposition of the adhesives, and the unregulated degradation products of this decomposition may also migrate into food. FDA is concerned about the safety of these unregulated degradation products.

A third FDA concern is that these high temperatures may cause increased migration of the paperboard components that are regulated in 21 CFR part 176. There is also the possibility that temperatures associated with the use of heat susceptor packages will cause significant breakdown of the paperboard components. The component chemicals and their breakdown products would be expected to migrate to the food at relatively high levels because of the high temperatures and the cracks that develop in the PET food-contact layer.

IV. Data Requirements for Heat Susceptor Packaging Materials

Based on findings from its preliminary examination of heat susceptor packages used at temperatures in excess of 400 °F, FDA believes that it may be necessary to amend existing food additive regulations to include temperature limitations and, in some cases, end test specifications to ensure that heat susceptor packaging will be safe under actual conditions of use. If FDA determines that they are necessary, the agency will establish upper temperature limits based on data submitted in response to this request and on currently available toxicological studies on the food additives involved and their possible degradation products. If no new data are submitted, existing petition data, which define the conditions under which the materials were tested, will provide the basis for any upper temperature limits.

Listed below are the types of data that FDA considers necessary for its review of whether to establish temperature limits in its regulations and of the safety at high temperatures of materials used in heat susceptor packaging:

1. Information on the chemical composition and construction of these packages.
2. Information on the temperature levels reached by various components of the package under actual conditions of use in microwave ovens.
3. Migration data obtained under maximum time/temperature conditions of use.
4. Identity of breakdown products under maximum time/temperature conditions of use.
5. Available toxicological safety data for component chemicals and breakdown products.
6. Current and anticipated use information (e.g., types of food contacted, cooking/heating times, and temperatures).

These data should be submitted to the Division of Food and Color Additives (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, as a letter, as a food additive master file, or as part of a food additive petition. These data should be submitted to FDA no later than December 7, 1989, to ensure that all relevant data for specific heat susceptor components are considered before the agency determines whether revision of the applicable regulations is necessary. General comments on this ANPR should be sent to the Dockets Management Branch (address above).

FDA is also requesting general comments and suggestions regarding the format of regulation changes for uses above 300 °F, should FDA determine that such changes are necessary. An approach currently being considered by FDA is to modify 21 CFR part 174 by adding a regulation to prohibit high temperature use except where specifically authorized in the food additive regulations. It may also be necessary to modify certain regulations, such as those governing uses of paper, polymers, and adhesives that do not limit high temperature uses. To ensure that it fully considers the effect of any decision it makes, FDA is requesting that all food additives that are currently used at temperatures above 300 °F be identified to it. In addition, anyone wishing to submit comments concerning the economic impact that might result from such changes is encouraged to do so.

V. Environmental Impact

FDA is required to consider the potential environmental effects of the action to be proposed. Therefore, FDA requests comments on the potential environmental consequences of implementing the policy discussed in this notice.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum of Conference, "Microwave Heat Susceptor Packaging Meeting," September 22, 1988, Washington, DC.
2. "Microwave Heat Susceptor Packaging," Dennis Heldman, National Food Processors Association, September 22, 1988, Washington, DC.
3. Preliminary Results of FDA's "Laboratory Studies of Susceptor Packaging," Henry Hollifield, September 22, 1988, Washington, DC.
4. Experimental protocols used in FDA's preliminary laboratory studies of heat susceptor packaging.

Interested persons may, on or before November 7, 1989, submit to the Dockets Management Branch (address above) written comments regarding this advance notice. Trade secret and commercial confidential information should be submitted to the contact person identified above. Trade secret and commercial confidential information will be protected from public disclosure in accordance with 21 CFR part 20. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 29, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–21130 Filed 9–7–89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 211

[Docket No. 88N–0320]

Current Good Manufacturing Practice in Manufacture, Processing, Packing, or Holding; Proposed Revision of Certain Labeling Controls; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Extension of comment period.

SUMMARY: The Food and Drug Administration is extending to October 20, 1989, the comment period for the proposed rule, published June 23, 1989 (54 FR 26394), to amend the current good manufacturing practice (CGMP) regulations for human and veterinary drug products to revise certain labeling control provisions. The changes are intended to reduce the frequency of drug product mislabeling. FDA is taking this action in response to a request for an extension of the comment period.

DATE: Comments by October 20, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Meyer, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8048.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 23, 1989 (54 FR 26394), FDA issued a proposed rule to modify specific sections of the packaging and labeling control subpart of the CGMP regulations. The proposal specifies conditions for the use of gang-printed or cut labeling, exempts from CGMP labeling reconciliation requirements manufacturers that employ 100-percent drug product label inspection systems, and requires manufacturers to identify filled drug product containers that are not immediately labeled. The proposed amendments are based upon findings of a recent agency study of drug product recalls which identified label mixups as the leading cause of recall incidents involving mislabeled products. The proposed rule is intended to encourage desirable labeling operations and to contribute measurably to preventing drug product mislabeling. The proposal gave interested persons an opportunity to submit written comments by August 22, 1989.

In response to the proposal, the Compressed Gas Association (CGA) has requested a 60-day extension of the comment period. CGA expressed their need for additional time to consult their membership and to gather information to adequately respond to the proposal. CGA states that the requested extension of the comment period will permit them to prepare and submit detailed comments to the proposal.

FDA has carefully considered the request. The agency has determined that additional time for the preparation and submission of meaningful information and data is in the public interest. Accordingly, the comment period for submissions by any interested person is extended to October 20, 1989.

Interested persons may, on or before October 20, 1989, submit written comments regarding this proposal to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 1, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–21198 Filed 9–7–89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 84–12, Notice No. 2]

RIN 2125–AB05

Erosion and Sediment Control on Highway Construction Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The FHWA is withdrawing a notice of proposed rulemaking (NPRM) which proposed to revise an existing regulation by adopting sections 208.01 and 208.03 of a document entitled "Guide Specifications for Highway Projects," by the American Association of State Highway and Transportation Officials (AASHTO). The existing regulation, to minimize erosion and sediment damage in the course of highway construction, will remain in effect without change. This determination has been made based on a further review as well as on comments submitted to the public docket.

DATE: This withdrawal is effective on September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Thompson, Office of Engineering, Bridge Division (202) 366–4611, or Mr. Michael Laska, Office of the Chief Counsel (202) 366–1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The policies and procedures for controlling erosion and sediment on highway construction projects are set forth in 23 CFR part 650, subpart B. The regulations require that Federal-aid highways shall be located, designed, constructed and operated according to standards that will minimize erosion and sediment damage to the highway and adjacent properties and abate pollution of surface and ground water resources pursuant to 23 U.S.C. 109 (g), (h) and 33 U.S.C. 1323. The FHWA conducted a review of the existing regulations to determine the effectiveness of current procedures in minimizing soil erosion from highway construction. The FHWA considered adopting the AASHTO Specifications for managing and enforcing erosion and sediment control activities on Federal-aid projects.

On January 18, 1985 the FHWA published an NPRM (50 FR 2694) requesting comments on the proposed revision to the regulation on sediment control on highway construction. The NPRM proposed that the AASHTO Specifications be included as an appendix to 23 CFR part 650, subpart B. Section 650.207 of the existing regulation would be revised to require inclusion of appropriate erosion and sediment control measures in a project's plans, specifications and estimates; and to include the reference to §§ 208.01 and 208.03 of the AASHTO Specifications with the requirement that policies and procedures of agencies subject to this regulation must meet or exceed the AASHTO Specifications. The comment period (Docket No. 84–12) closed March 19, 1985.

In response to the ANPRM, 21 comments were received. Eight comments supported the change, 9 supported some changes and opposed others, and 4 opposed the change. Upon further review and after carefully considering the public comments, the FHWA has determined that the existing regulation, 23 CFR part 650, subpart B provides adequate guidelines and regulation to assure that highways are located, designed, constructed and operated according to standards that will minimize erosion and sediment damage to the highway and adjacent properties and abate pollution of surface and groundwater resources. In addition to the comments, this determination was also based on findings of our continuing review of State Highway Agency activities over the last five years. These reviews indicate that temporary and permanent erosion control measures are being incorporated into project plans. Therefore, the FHWA is withdrawing the NPRM.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory

Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Programs Number 20.205, Highway Planning and Construction).

(23 U.S.C. 109 (g) and (h); and 315; 33 U.S.C. 1323; and 49 CFR 1.48(b)).

List of Subjects in 23 CFR Part 650

Grant programs—Transportation, Highway and Roads, Water pollution control.

Issued on August 31, 1989.

Thomas D. Larson,

Federal Highway Administration.

[FR Doc. 89–21078 Filed 9–7–89; 8:45 am]

BILLING CODE 4910–22–M

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23 CFR Part 658

[FHWA Docket No. 89–22]

RIN 2125–AC38

Truck Size and Weight; Saddlemount Combinations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition from the National Automobile Transporters Association (NATA) and its member companies dated September 7, 1988, the FHWA proposes to amend 23 CFR 658.5 and 658.13 to regulate the overall length of driveway saddlemount combinations and driveway saddlemount with fullmount combinations. The proposed changes would increase the overall length limit from 65 to 75 feet and clarify that both saddlemount and saddlemount with fullmount automobile transporters are specialized equipment.

DATE: Comments on this docket must be received on or before December 7, 1989.

ADDRESS: Submit written, signed comments to FHWA Docket No. 89–22, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 36Kb density) in a format that is compatible with either word processing programs Word Perfect or WordStar. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Max Pieper, Office of Motor Carrier Information Management and Analysis, (202–366–4029) or Mr. Charles Medalen, Office of the Chief Counsel, (202–366–1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On January 29, 1988, the FHWA published a final rule in the **Federal Register** (53 FR 2593) amending 23 CFR 658.13(d). It provided in part as follows:

> (iii) Drive-away saddlemount with fullmount vehicle transporter combinations are considered to be specialized equipment. No State shall impose an overall length limit of less than 65 feet on saddlemount with fullmount combinations. (Triple saddlemount combinations shall be allowed when conforming to the 65-foot length limit and the applicable safety regulations at 49 CFR 393.71.)

In saddlemount combinations one or more truck tractors or trucks are connected to and towed by a truck or truck tractor. The connection is made by placing the front axle of the towed vehicle onto the frame of the towing vehicle and connecting it by a mechanism known as a saddle. The saddle functions like a fifth wheel kingpin connection. When two vehicles are towed in this manner the combination is referred to as a double saddlemount. Three towed vehicles comprise a triple saddlemount. When a smaller vehicle is mounted completely on the frame of the first or last vehicle in a saddlemount combination, it is known as a fullmount.

There were 27 responses to the notice of proposed rulemaking (NPRM) to allow saddlemount with fullmount vehicle transporter combinations within a 65-foot overall limit (FHWA Docket No. 84–18, 50 FR 48431, November 25, 1985). Of these, 19 from industry and one from a State Department of Transportation (DOT) favored a 75-foot overall minimum length limit. Comments from 7 State DOT's either favored a 65-foot or shorter overall length limit. The NPRM discussed several issues relative to the saddlemount combinations, i.e., the number of articulation points, the additional braking requirements of 49 CFR 393.71, and the low accident rate of the drive-away automobile transporter fleet. After carefully considering all the comments, the FHWA adopted a 65-foot minimum overall length limit as a safe and equitable balance.

Petition

In a letter dated September 7, 1988, NATA and its member companies petitioned the FHWA to amend 23 CFR 658.13(d)(iii) to increase the overall length limit for saddlemount combinations from 65 to 75 feet. This is because truck manufacturers have been building longer wheelbase power units since enactment of the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97–424, 96 Stat. 2097, which prohibits overall length limits for certain vehicle combinations on the National Network (NN). In addition, many are being manufactured with wind deflectors installed on top or incorporated into the shape of the cab. Due to these increases in length and height, it is often impossible to transport three saddlemount vehicles within the 65-foot overall saddlemount length limit. Although NATA expects that more States will permit 75-foot saddlemount combinations in the future, only 10 do so at present. This means that as the length and height of trucks and truck tractors increase, fewer can be transported in saddlemount combinations, which actually decreases productivity in this industry, contrary to the intent of the STAA. Thus NATA believes that positive action by the Federal Government to restore productivity is appropriate, provided it can be achieved with the same degree of highway safety that attends the movement of other vehicle combinations of a similar size.

In October, 1984, NATA contracted with the Western Highway Institute (WHI) to conduct a comprehensive study and evaluation of saddlemount combinations. As support for its petition, NATA submitted a copy of WHI's report issued September, 1985, entitled "Saddlemount Combination Tests." A copy is available for review in the FHWA Docket Room.

Discussion

The Western Highway Institute (WHI) tested a 60-foot long double saddlemount and 65, 70 and 75-foot long triple saddlemount combinations for offtracking (expressed as swept width) and stopping distances (for service and emergency brakes). Swept width is the sum of the offtrack and the effective width of the vehicle and indicates how much total roadway width is needed to accommodate a vehicle in a given turning movement.

As part of its study, the Western Highway Institute contracted with the University of Michigan Transportation Research Institute (UMTRI) to examine, by computer simulation, the braking

efficiency, roll stability and rearward amplification of saddlemount combinations. The simulations tested the saddlemount combinations indicated. The results of these five tests are presented in Tables 1 through 5, which include other truck combinations or safety standards for comparison.

TABLE 1—OFFTRACKING

[Swept Width in Feet]

	73/75-foot triple saddlemount	60-foot double saddlemount	65/65-foot triple saddlemount	Twin 28-foot trailers	48-foot semi-trailer
60-foot radius	20.2	15.4	16.4	21.1	30.6
100-foot radius	14.0	11.7	12.0	14.9	19.0
165-foot radius	10.9	9.9	9.8	12.3	14.6

TABLE 2—STOPPING DISTANCES 96 [(IN FEET]

	73/75-foot triple saddle-mount	60-foot double saddle-mount	MVSS 121 standard
Service brakes:			
20 mph	32.1	34.3	35
30 mph	66.0	66.9	75
40 mph	105.8	115.2	131
50 mph	190.2	158.9	203
55 mph	231.8	213.2	246
Emergency brakes (20 mph):			
Primary	44.8		[1] 90
Secondary	52.7		[1] 90
Spring brakes		45.6	[1] 90

[1] 49 CFR 393.52 standard.

TABLE 3—BRAKING EFFICIENCY

[Ratio (In Percent) of Deceleration Capacity to Tire/Road Friction Level]

	73/75-foot triple saddle-mount	60-foot double saddle-mount	63/65-foot triple saddle-mount	48-foot semi-trailer
Light braking, 0.1 g [1]:				
All axles braked	60	66	61	[2] 62 [3] 96
Last axle unbraked	63	64	64	
Heavy braking, 0.4g:				
All axles braked	51	56	52	[2] 59 [3] 86
Last axle unbraked	58	59	59	

[1] A "g" is equal to the acceleration of a body caused by the force of gravity.

[2] Empty.

[3] Loaded.

Braking efficiency is a measure of the maximum braking level which can be sustained without wheel lockup and loss of vehicle control. Ideally, if the nondimensional friction level of a surface is 0.4, a vehicle would be able to attain a deceleration level of 0.4 g's for a braking efficiency value of 100 percent.

To explain the difference between light and heavy braking, the UMTRI report is quoted. "Light and heavy braking levels are distinguished in recognition of the fact that the light braking applied when operating, for example, on long downgrades and very slippery surfaces, generally involves a significantly different braking efficiency level than applies to heavy braking. Further, the 0.4 selection for the "heavy" braking level reflects the rather low braking capabilities which are generally seen with heavy-duty commercial vehicles."

TABLE 4—ROLLOVER THRESHOLD

[In g's]

73/75-foot triple saddle-mount	65-foot double saddle-mount	63/65-foot triple saddlemount	48-foot semitrailer
0.542	0.547	0.543	[1] 0.24–0.40 [2] .70

[1] Loaded.

[2] Empty.

Rollover threshold is the amount of lateral acceleration, in g's, that a turning vehicle will tolerate before rolling over.

TABLE 5—REARWARD AMPLIFICATION AT 55 MPH

73/75-foot triple saddle-mount	60-foot double saddle-mount	63/65-foot triple saddlemount	Twin 28-foot trailers
1.95	1.53	2.19	2.55 (1.9) (1.44)

Rearward amplification is an expression of the "crack-the-whip" effect on the rearmost unit compared to the towing unit in a tight turn. A value of 1.0 indicates that no exaggeration in the rear unit response is occurring, while a higher number indicates a greater response. In the report for WHI, UMTRI recorded the response to a quick lane-change maneuver as 2.55 for a twin 28-foot trailer combination. The 1.9 value for the twin-trailer combination was interpolated from Figure 3.1.2.e in a July 1986 report, "The Influence of Weight and Dimensions on the Stability and Control Of Heavy Trucks in Canada—Part 1" prepared for the Canroad Transportation Research Corporation (CTRC). This figure is based on work by UMTRI for the CTRC sponsored study. In its December, 1988 report for FHWA, "Safety Implications of Various Truck Configurations," UMTRI reported a response to a continuous weaving maneuver of 1.44 for the same combination.

The variances in these numbers for rearward amplification are attributed to different parameters in the two studies. These are (1) Sudden motion as opposed to the continuous motion present in normal operations, (2) tire loads and stiffness, and (3) the hitching mechanism. Based on a review of the information set forth in the tables above it appears that the 73/75-foot saddlemount does not provide any greater safety risks than the other vehicles and, in fact, may be safer under many conditions.

The FHWA proposes to increase the overall length limit for saddlemount combinations with up to three trailing units plus one fullmount from 65 to 75 feet. This action results in probable improved safety performance as the longer combination trucks better in a quick steering maneuver than does one 65 feet long.

Request for Comments

The FHWA solicits comments from all interested persons regarding the following matters:

1. The methods and vehicle combinations use and results obtained in the Western Highway Institute and University of Michigan Transportation Research Institute tests and other studies regarding the following vehicle characteristics:

a. Offtracking,
b. Braking,
c. Braking efficiency,
d. Rollover, and
e. Rearward amplification.

2. Any other information regarding the performance of saddlemount combinations.

3. The productivity of saddlemount combinations and the need to extend the overall Federal length limit on saddlemount combinations from 65 to 75 feet.

4. The extent to which increasing by regulation the overall length limit of saddlemount combinations from 65 to 75 feet affects, alters or impacts upon State

authority to regulate vehicles operating on State highways.

5. Any other information regarding safety concerns related to extending the overall length from 65 to 75 feet.

Regulatory Impact

The FHWA has considered the impact of this notice and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the DOT. These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the June 5, 1984, final rule (FHWA Docket 83–14, 49 FR 23302), clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in this rulemaking do not differ in substance from those fully considered in the original impact statement accompanying the June 5 final rule. Automobile transporters make up a small segment of the total medium to heavy truck population (approximately 13,000 vehicles out of the total medium to heavy truck population of over 2 million.) Although saddlemount units constitute an even smaller percentage, productivity gains could be considerable for this minor constituency. NATA estimates that these gains could amount to as much as $6 to $7 million per year. Safety considerations have been addressed earlier in this preamble. The Regulatory Impact Analysis prepared for the June 5 rulemaking is available for inspection in the FHWA Public Docket Room 4232 in the Headquarters Office, 400 Seventh Street, SW., Washington, DC 20590.

Executive Order 12612 of October 26, 1987, "Federalism," requires that the effect of Federal Regulations on the States must be weighed. Any regulatory preemption of State law must be restricted to the minimum level necessary to achieve the objective of the statute under which the regulation is promulgated. In this case, the FHWA previously authorized saddlemount combinations with a 65-foot overall length limit in a final rule published in the Federal Register on January 29, 1986. As the FHWA already has a regulation on the minimum overall length for saddlemount combinations that the States must allow on the National Nework for trucks, this action does not preempt State authority in a new area. Furthermore, this action is consistent with the intent of the STAA to increase the productivity of the industry, without adversely affecting safety.

Under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highways and roads, Motor carrier—size and weight.

Issued on August 30, 1989.

Thomas D. Larson,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend 23 CFR part 658 as follows:

PART 658—TRUCK SIZE AND WEIGHT: ROUTE DESIGNATION—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97–424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. app. 2311, 2312, and 2316), as amended by Pub. L. 98–17, 97 Stat. 59, and Pub. L. 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.5 is amended by adding paragraphs (r) and (s), as follows:

§ 658.5 Definitions

* * * * *

(r) *Saddlemount.* A saddlemount is a vehicle combination in which one or more trucks or truck tractors are connected to and towed by a single truck tractor. The connection is made by placing the front axle of the towed vehicle onto the frame of the towing vehicle and connecting it by a mechanism known as a saddle which functions like a fifth wheel kingpin connection. When two vehicles are towed in this manner the combination is referred to as a double saddlemount. When three vehicles are towed in this manner, the combination is called a triple saddlemount.

(s) *Fullmount.* A fullmount is a smaller vehicle mounted completely on the frame of either the first or last vehicle in a saddlemount combination.

3. Section 658.13(d)(1)(iii) is revised to read as follows:

§ 658.13 Length

* * * * *

(d)(1) * * *

(iii) Drive-away saddlemount vehicle transporter combinations and driveway saddlemount with fullmour. vehicle transporter combinations are considered to be specialized equipment. No State shall impose an overall length limit of less than 75 feet on such combinations. (Saddlemount combinations are subject to all applicable safety regulations including those at 49 CFR 393.71)

* * * * *

[FR Doc. 89–21079 Filed 9–7–89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part I

[INTL-399-88]

RIN 1545–AN16

Treatment of Dual Consolidated Losses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed Income Tax Regulations relating to the definition of "dual consolidated losses" for purposes of determining whether the net operating loss of a domestic corporation is available to reduce the taxable income of any other member of its affiliated group. In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary income tax regulations relating to the definition of a dual consolidated loss for purposes of determining whether the net operating loss of a domestic corporation is available to reduce the taxable income of any other member of its affiliated group. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: The regulations under § 1.1503–2T are proposed to be effective as final regulations 30 days after publication of final regulations in the **Federal Register** with respect to taxable years beginning after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by November 7, 1989.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL–0399–88), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION: David I. Bower of the Office of the Associate

Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, attention: CC:CORP:T:R (INTL–0399–88) (202 566–6645 not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to Office of Management and Budget, Paperwork Reduction Project (1545–1083), Washington, DC 20503, with copies to the Internal Revenue Service Attention: IRS Report Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.1503–2T (c)(3)(i)(B), (c)(3)(iv), (c)(3)(v), (c)(4)(i), and (c)(4)(iii). This information is required by the Internal Revenue Service to provide an exception from a general rule that dual consolidated losses are not available to reduce the income of any other domestic affiliate, and to prevent dual resident corporations that are members of affiliated groups filing consolidated returns from using the dual consolidated loss to offset income of other members of their affiliated groups. The likely respondents are businesses or other for profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated reporting burden: 300 hours.

Estimated average annual burden per respondent: .75 hour.

Estimated number of respondents: 400.

Estimated annual frequency of responses: Agreement and waiver—yearly.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new § 1.1503–2T to Part I of Title 26 of the Code of Federal Regulations. These regulations implement section 1503(d) which was added by section 1249 of the Tax Reform Act of 1986 (Pub. L. 99–514). The preamble to the temporary regulations explains these additions to the income tax regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Riea M. Lainoff of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Other personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

Lists of Subjects in 26 CFR 1.1501–1 through 1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

The temporary regulations, FR Doc. (T.D. 8261) published in the Rules and Regulations portion of this issue of the **Federal Register** are hereby also proposed as final regulations under Title 26, Parts 1 and 602, of the Code of Federal Regulations.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 89–21073 Filed 9–7–89; 8:45 am]

BILLING CODE 4830-01-M

Notices

Federal Register
Vol. 54, No. 173
Friday, September 8, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Drug Alliance; Fund Availability Demonstration Grants

ACTION: Notice of Availability of Funds.

ACTION, the federal domestic volunteer agency, announces the anticipated availability of funds during fiscal year 1990 for Drug Alliance grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title 1, part C; 42 U.S.C. 4992).

ACTION, historically a principal source of volunteer leadership in America, has been mandated by the President and Congress to respond to the crisis of illegal drug use by fostering innovative prevention programs that capitalise on volunteer resources on the local level. Volunteers of all ages and from every segment of the community can make vital contributions to drug prevention and awareness programs, and ACTION intends to support programs which encourage and sustain the spirit of voluntarism as a weapon in America's fight against drugs.

The best strategy to combat illegal drug use is to prevent it from starting. Effective prevention requires the involvement of every segment of the community, recognizing that no single approach will work in every locale. Comprehensive approaches assure that clear, consistent "no use" messages are delivered and reinforced by a variety of community resources. Reinforced by the provisions of the Omnibus Drug Abuse Act of 1988, there is growing recognition of the importance of involving youth in illicit drug use prevention activities after school and on weekends when schools are not in session and school-related prevention information and support is unavailable.

There is increasing attention being paid to the value and importance of providing youth the opportunity to participate in structured volunteer programs. As well as the obvious benefits to the community, there is increasing acceptance of the notion of "immunization"—that voluntary service may in fact reduce the risk of drug involvement among participating youth by reinforcing good work habits, helping enhance self-esteem, establishing a sense of belonging within the community, and providing positive role models.

While research on this "immunizing" effect is underway, it is clear that voluntary service can be of significant value to the community and to the participating youth. Accordingly, ACTION is very interested in efforts to combine voluntary service with drug prevention activity to maximize the likelihood of stopping illicit drug use before it begins. There is particular need for such programming in many inner city and rural low-income communities. The needs in such communities that may be met through voluntary service are often great and the youth who live in these areas are generally considered at extremely high risk for drug involvement.

Local community and youth serving organizations are in a unique leadership position to involve youth in meaningful structured volunteer programs that focus on illicit drug use prevention.

America's youth, who are often confronted by peer pressure and other encouragement to use illegal drugs, constitute the most important target for anti-drug programming. Drug-free youth also constitute a tremendous resource for a community's drug prevention educational effort. There is a critical need to develop programs which enable local communities to tap this resource. This announcement solicits innovative proposals in response to that need.

A. Eligible Strategy

Local community and youth serving organizations are encouraged to submit proposals to implement the following strategy by: (a) Expanding an existing program, or (b) developing a new program.

Strategy. The ideal program will provide structured non-stipended volunteer opportunities that focus on illicit drug prevention education activity appropriate for these youth program participants. It will involve parents, use non-stipended volunteers in its operation, and target youth at high risk of becoming involved in the use of illegal drugs, especially youth from low-income communities, in both inner city neighborhoods and rural settings, single parent or broken homes, and children of substance abusers.

The program must include a specific curriculum which conveys the harmful consequences of illicit drug use and teaches refusal skills, and may include group presentations, workshops, rallies, leadership training, peer counseling and theatrical or musical performances that involve the presentation of accurate anti-drug information. This should be structured with a specific number of hours of illicit drug use prevention education provided on a regular schedule for program participants. The involvement of other drug prevention educational resources from the community is encouraged.

B. Eligible Applicants

Only applications from private non-profit incorporated organizations and public agencies will be considered. Such organizations may include, but are not limited to, local coalitions or councils dedicated to the prevention of illegal drug use, volunteer groups, religious organizations, local government agencies, fraternities, sororities and youth service organizations.

Any applicant that does not adhere to a strict policy of the non-use of illicit drugs will not be eligible for consideration. Furthermore, an application will be ineligible if it refers to philosophy, proposed activities, training or educational materials that advocate the tolerance of the initial or responsible use of any illicit drug, or the illicit use of any legal drug. This issue must be addressed in the application.

C. Available Funds and Scope of the Grant

The amount of a grant may not be smaller than $20,000 nor larger than $35,000, and requires a 50% non-Federal match.

Applicants should specifiy the sources and nature of in-kind and other non-federal contributions. These contributions must be deemed allowable costs in accordance with ACTION requirements and be supported by a detailed budget narrative listing the source of that support and the formula used to compute those costs.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate any specific amount of money for these grants. Projects funded under this announcement may receive funds for a grant period not to exceed 12 months. They will not be eligible for renewal funding.

D. General Criteria for Grant Review and Selection

Grant applications will be reviewed and evaluated based on the criteria outlined below, as appropriate, as well as conformance to the instructions included in the application. Grant applicants with a demonstrated competence in conducting youth volunteer programs will be given preference.

1. Ability and plans to develop or expand an illicit drug use prevention program for high-risk youth that provides illicit drug use prevention education.
2. Ability and plans to involve at risk youth and parents in the development and implementation of the prevention program.
3. Ability and plans to recruit, train, utilize and retain non-stipended volunteers.
4. Plans to continue the illicit drug use prevention education beyond the end of the ACTION grant period or to incorporate the activities into future youth programs, without additional funding from ACTION.
5. Ability and plans to work with other local prevention networks and coalitions to implement the program.
6. Carefully formulated schedule for achieving objectives, including continuation of the project, and feasibility of methods for meeting those objectives.
7. Detailed description of methods to be used in evaluating the impact of the program on the drug abuse problem in the community.

E. The Associate Director of Domestic and Anti-Poverty Operations May Use Additional Factors in Choosing Among Applicants Who Meet the Minimum Criteria Specified Above, Such As

1. Geographic distribution;
2. Applicants accessibility to alternate resources, both technical and financial;
3. Allocation of Program Demonstration/Drug Alliance resources in relation to other ACTION funds;

F. Application Review Process

Applications submitted under this announcement will be reviewed and evaluated by their respective ACTION State and Regional Offices and ACTION's Program Demonstration and Development Division. ACTION's Associate Director for Domestic and Anti-Poverty Operations will make the final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

G. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the appropriate ACTION State Office no later than 5:00 p.m. local standard time on November 1, 1989. Only those applications that include a-g listed below, and h–j (if required), and are received at the appropriate ACTION State Office by 5:00 p.m. local standard time on this date will be eligible. Incomplete applications will not be considered for funding.

All grant applications must consist of:

a. Application for Federal Assistance (ACTION Form A–1036) with narrative budget justification and a narrative of project goals and objectives, and assurances.

b. Signed and dated: Certification Regarding Drug-Free Workplace Requirements.

c. Signed and dated: Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions.

d. Current resume of the candidate for the position of project director, if available, or the current resume of the director of the applicant agency or project.

e. Organization chart of the applicant organization showing how the project is related to the organization and how participating affiliates are related to the organization.

f. List of the current board of directors showing their names, addresses and organizational and professional affiliations.

g. Three letters of support attesting to the applicant's ability to meet the criteria contained in Section D.

h. CPA certification of accounting capability.

i. Articles of Incorporation.

j. Proof of non-profit status or an application for non-profit status, which should be made through documentation.

Items h, i and j above are not required for public agencies of state and local government.

To receive an application kit, please contact the appropriate ACTION State Program Office. Following is an address list of ACTION Regional Offices, along with the addresses and telephone numbers of the ACTION State Program Office under their jurisdiction.

Region I

Mr. John F. Torian, ACTION Regional Director, 10 Causeway Street, Rm. 473, Boston, MA 02222–1039, (617) 565–7000
Mr. Romero A. Cherry, ACTION State Program Director, Abraham Ribicoff Federal Bldg., 450 Main Street, Rm. 524, Hartford, CT 06103–3002, (203) 240–3237
Mr. Thomas E. Endres, ACTION State Program Director, Federal Bldg., Room 305, 76 Pearl Street, Portland, ME 04101–4188, (207) 780–3414
Mr. Malcolm Coles, ACTION State Program Director, 10 Causeway Street, Room 473, Boston, MA 02222–1039, (617) 565–7018
Mr. Peter Bender, ACTION State Program Director, Federal Post Office & Courthouse, 55 Pleasant Street, Room 316, Concord, NH 03301–3939, (603) 225–1450
Mr. Vincent Marzullo, ACTION State Program Director, John O. Pastore Federal Bldg., Room 232, Two Exchange Terrace, Providence, RI 02903–1758, (401) 528–5424

Region II

Mr. Herbert W. Stupp, ACTION Regional Director, 6 World Trade Center, Room 758, New York, NY 10048–0206, (212) 466–3481
Mr. Stanley Gorland, ACTION State Program Director, 402 East State Street, Room 422, Trenton, NJ 08608–1507, (609) 989–2243
Mr. Bernard A. Conte, ACTION State Program Director, 6 World Trade Center, Room 758, New York, NY 10048–0206, (212) 466–4471
Mr. Ruben Nazario, ACTION State Program Director, Federico DeGetau Federal Ofc Bldg., Carlos Chardon Avenue, Suite G49–3543, Hato Rey, PR 00917–2241, (809) 766–5314

Region III

Ms. Margaret Davison Matisko, ACTION Regional Director, U.S. Customs House, 2nd and Chestnut Street, Room 108, Philadelphia, PA 19106–2912, (215) 597–9972
Ms. Betsy Irvin Wells, ACTION State Program Director, Federal Building, Room 372–D, 600 Martin Luther King Jr. Place, Louisville, KY 40202–2230, (502) 582–6384
Mr. Paul Schrader, ACTION State Program Director, Leveque Tower, Room 304A, 50 W. Broad Street, Columbus, OH 43215–2888, (614) 469–7441
Mr. Donald G. Lenz, Acting, ACTION State Program Director, U.S. Customs House, Room 106, 2nd and Chestnut Streets, Philadelphia, PA 19106–2998, (215) 597–3543

Mr. Lindsay B. Scott, (Virginia and the District of Columbia), ACTION State Program Director, 400 North 8th Street, Room 1119, P.O. Box 10066, Richmond, VA 23240–1832, (804) 771–2197

Mr. Jerry E. Yates, ACTION State Program Director, Federal Bldg., Box 257, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201–2814, (301) 962–4443

Ms. Jean Taylor-Brown, ACTION State Program Director, 603 Morris Street—2nd Floor, Charleston, WV 25301–1409, (304) 347–5246

Region IV

Ms. Evelyn Morrison, Acting, ACTION Regional Director, 101 Marietta Street, N.W.—Suite 1003, Atlanta, GA 30323–2301, (404) 331–2859

Mr. John D. Timmons, ACTION State Program Director, Beacon Ridge Tower, Room 770, 600 Beacon Parkway West, Birmingham, AL 35203–3109, (205) 731–1908

Mr. Henry Jibaja, ACTION State Program Director, 930 Woodcock Road—Suite 221, Orlando, FL 32803–3750, (407) 648–6117

Mr. David A. Dammann, ACTION State Program Director, 75 Piedmont Avenue, N.E., Suite 412, Atlanta, GA 30303–2587, (404) 331–4646

Mr. Alfred E. Johnson, ACTION State Program Director, 265 Cumberland Bend Drive, Nashville, TN 37228–1890, (615) 736–5561

Mr. Robert L. Winston, ACTION State Program Director, Federal Bldg, P.O. Century Station, 300 Fayetteville Street Mall, Room 131, Raleigh, N.C. 27601–1739, (919) 856–4731

Mr. Arthur E. Brown, III, ACTION State Program Director, Federal Bldg. Room 1005–A, 100 West Capital Street, Jackson, MS 39269–1092, (601) 965–5664

Mr. Jerome J. Davis, ACTION State Program Director, Federal Building, Room 872, 1835 Assembly Street, Columbia, S.C. 29201–2430, (803) 765–5771

Region V

Cynthia Rudmann, Acting, ACTION Regional Director, 10 West Jackson Blvd.—6th Floor, Chicago, IL 60604–3964, (312) 353–5107

Mr. James E. Braxton, ACTION State Program Director, 10 West Jackson Blvd.—6th Floor, Chicago, IL 60604–3964, (312) 353–3622

Mr. Thomas L. Haskett, ACTION State Program Director, 46 East Ohio Street—Room 457, Indianapolis, IN 46204–1922, (317) 226–6724

Mr. Joel H. Weinstein, ACTION State Program Director, Federal Building, Room 722, 210 Walnut St., Des Moines, IA 50309–2195, (515) 284–4816

Mr. Stanley M. Stewart, ACTION State Program Director, Federal Bldg., Room 658, 231 West Lafayette Blvd., Detroit, MI 48226–2799, (313) 226–7848

Mr. Peter A. Marks, ACTION State Program Director, Old Federal Bldg.—Room 126, 212 Third Avenue South, Minneapolis, MN 55401–2596, (612) 334–4083

Mr. Michael P. Murphy, ACTION State Program Director, Federal Building, 517 East Wisconsin Avenue, Rm. 601, Milwaukee, WI 53202–4507, (414) 291–1118

Region VI

Ms. Paulette E. Standefer, ACTION Regional Director, 1100 Commerce Street, Room 6B11, Dallas, TX 75242–0696, (214) 767–9494

Mr. John J. McDonald, ACTION State Program Director, Federal Office Bldg., 911 Walnut, Room 1701, Kansas City, MO 64106–2009, (816) 426–5256

Mr. Jerry G. Thompson, ACTION State Program Director, 611 East Sixth Street, Suite 107, Austin, TX 78701–3747, (512) 482–5671

Mr. Robert J. Torvestad, ACTION State Program Director, Federal Bldg., Room 2506, 700 West Capitol Street, Little Rock, AR 72201–3291, (501) 378–5234

Mr. James M. Byrnes, ACTION State Program Director, Federal Bldg., Room 248, 444 SE. Quincy, Topeka, KS 66603–3501, (913) 295–2540

Mr. Willard L. Labrie, ACTION State Program Director, 626 Main Street, Suite 102, Baton Rouge, LA 70801–1910, (504) 389–0471

Mr. Ernesto Ramos, ACTION State Program Director, Federal Bldg., Cathedral Place, Room 129, Sante Fe, NM 87501–2026, (505) 988–6577

Mr. Zeke Rodriquez, ACTION State Program Director, 200 NW. 5th Street, Room 912, Oklahoma City, OK 73102–6093, (405) 231–5201

Region VIII

Ms. Joyce Emerson, ACTION Regional Director, Executive Tower Bldg., 1405 Curtis Street, Suite 2930, Denver, CO 80202–2349, (303) 844–1070

Mr. Ben Knopp, ACTION State Program Director, Columbine Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203–1167, (303) 866–1070

Mr. Ben Knopp, ACTION State Program Director, Federal Bldg., Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001–3649, (307) 772–2385

Mr. Joe R. Lovelady, ACTION State Program Director, Federal Office Bldg., Drawer 10051, 301 South Park—Room 192, Helena, MT 59626–0101, (406) 449–5404

Ms. Anne C. Johnson, ACTION State Program Director, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508–3896, (402) 437–5493

Mr. John C. Pohlman, ACTION State Program Director, Federal Bldg., Room 213, 225 S. Pierre Street, Pierre, SD 57501–2452, (605) 224–5996

Mr. Gary S. O'Neal, ACTION State Program Director, U.S. Post Office & Courthouse, 350 South Main Street, Room 484, Salt Lake City, UT 84101–2198, (801) 524–5411

Region IX

Ms. Teresa Keeshan, ACTION Regional Director, 211 Main Street, Room 530, San Francisco, CA 94105–1914, (415) 974–0673

Mr. Ricardo Gerakos, ACTION State Program Director, Federal Bldg. Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024–3671, (213) 209–7421

Mr. Michael J. Gale, ACTION State Program Director, Federal Bldg., #6326, P.O. Box 50024, 300 Ala Moana Blvd., Honolulu, HI 96850–0001, (808) 541–2832

Mr. Steven P. Gordon, ACTION State Program Director, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–5033, (702) 784–5314

Mr. Jess A. Sixkiller, ACTION State Program Director, 522 North Central, Room 205–A, Phoenix, AZ 85004–2190, (602) 261–4825

Region X

Mr. John Keller, ACTION Regional Director, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103, (206) 442–4520

Mr. Stephen Neal Stivers, ACTION State Program Director, Federal Bldg., Room 647, 511 N. W. Broadway, Portland, OR 97209–3416, (503) 326–2261

Mr. Jack R. Nunn, ACTION State Program Director, Alaska State Office, Suite 3039, Federal Office Bldg., 909 First Street Avenue, Seattle, WA 98174–1103, (206) 442–1558

Mr. Wilford E. Overgaard, ACTION State Program Director, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702–5745, (208) 334–1707

Mr. John A. Miller, ACTION State Program Director, Suite 3039 Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103, (206) 442–4975.

Signed at Washington, DC this 1st day of September 1989.

Jane A. Kenny,

Acting Director.

[FR Doc. 89–21076 Filed 9–7–89; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 1, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate or the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA. OIRM. Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Reinstatement

- Food and Nutrition Service.

Food Stamp Mail Issuance Report.

FNS–259.

Quarterly.

State or local governments: 10,060 response; 3,139 hours; not applicable under 3504(h).

David Walters (703)756–3385.

Revision

- Foreign Agricultural Service.

FAS/Cooperator Market Development Program.

Monthly; Annually.

State or local governments: Non-profit institutions; 2,795 responses; 80,958 hours; not applicable under 3504(h).

Richard E. Passig (202)447–4327.

- Foreign Agricultural Service.

Targeted Export Assistance (TEA) Program.

On occasion; Annually.

State or local governments; Businesses or other for-profit; Non-profit institutions; 965 responses; 78,147 hours; not applicable under 3504(h).

Richard E. Passig (202) 447–4327.

Extension

- National Agricultural Statistics Service.

Honey Survey.

None.

Annually.

Farms; 7,300 responses; 1,217 hours; not applicable under 3504(h).

Larry Gambrell (202) 447–7737.

- Forest Service.

Grazing Permit Administration Forms, 36 CFR 222, Subpart A and C, FS–2200–1, –2. –12, –13, –15, –16, –17, R–1–2230–5, R–2–2200–6, R–3–2200 and R–8–2200–23.

On occasion.

Farms; 4,950 responses; 1,455 hours; not applicable under 3504(h).

Don Nelson (703) 235–8142.

- Forest Service.

Forest Industries Data Collection System.

None.

Annually.

Businesses or other for-profit; 2,246 responses; 1,740 hours; not applicable under 3504(h).

John B. Tansey (704) 257–4359.

- Agricultural Stabilization and Conservation Service.

7 CFR Part 702 Colorado River Basin Salinity Control Program Regulations CRSC–1, CRSC–2, CRSC–3.

On occasion.

Farms; 248 responses; 85 hours; not applicable under 3504(h).

Paul Shanks (202) 475–5924.

New Collection

- Forest Service.

Recreation Fee Permit Envelope.

FS–2300–26.

On occasion.

Individuals or households; 2,000,000 reponses; 60,000 hours; not applicable under 3504(h).

Bob Cron (202) 382–9408.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 89–21177 Filed 9–7–89; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Review of Need for United States Sugar Import Controls

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice announces the determination of the Secretary of Agriculture that continued operation of Additional U.S. Note 2 and paragraphs (b), (c), (d), and (e) of Additional U.S. Note 3 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) with respect to tariff rates and quotas applicable to the importation of sugar into the United States, is necessary to provide due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT).

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agriculture Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: In accordance with paragraph (f) of Additional U.S. Note 3 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS), the Secretary of Agriculture has consulted with the U.S. Trade Representative, the Department of State, and other concerned agencies as to whether the operation of Additional U.S. Notes 2 and 3 to Chapter 17 of the HTSUS would give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the GATT. An analysis of various elements pertinent to the operation of Additional U.S. Notes 2 and 3 to Chapter 17 of the HTSUS is set forth below.

A. Current World and U.S. Sugar Market Situation

World sugar consumption for 1988/89 is expected to exceed production for the fourth straight year. As a result, world ending stocks have been gradually declining, leading to a recovery in world sugar prices. World production in 1988/89 is estimated at 105.5 million metric tons, raw value, while consumption is estimated at 107.4 million metric tons, raw value, and ending stocks are projected to decline by about 350,000 metric tons, raw value. However, in comparison to 1984/85, ending stocks for 1988/89 are expected to decline by 8.5 million metric tons.

Since the middle of June, 1989 the world sugar price (f.o.b.s., Caribbean, No. 11 spot contract as published by the New York Coffee, Sugar & Cocoa Exchange) has settled into the 13 to 14 cent-per-pound range. It is difficult to predict the direction of prices in the coming year; futures contracts for 1990 are currently trading in the 12 to 13 cent-per-pound range and have recently been moving up and down from and within that range.

U.S. centrifugal sugar production for 1988/89 is estimated at about 6.3 million metric tons, raw value (6.9 million short tons, raw value), and domestic utilization is expected to be about 7.5 million metric tons, raw value (8.3 million short tons, raw value). During

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the period January 1, 1989 through

and materially affected contracting

river. The Special Management Area

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public review period by April 1990. At

McCray, Project Leader, at the above

evaluated (pheasant, bobwhite quail,

the period January 1, 1989 through August 13, 1989, 749,857 metric tons, raw value of sugar were charged against the quotas for the 39 countries which have quota allocations totalling, 1,123,440 metric tons, raw value. The domestic price of raw cane sugar (c.i.f., duty and fee paid, No. 14 nearby futures contract, as quoted by the New York Coffee, Sugar & Cocoa Exchange) has exceeded 23 cents per pound, raw value, every day since June 16, 1989.

B. Outlook for World and U.S. Sugar Market

It is difficult to accurately predict future trends in world centrifugal sugar production and consumption. However, both consumption and production during 1989/90 are expected to be above their levels for 1988/89, and to be somewhat more in balance than in 1988/89. These trends provide no precise indication as to the direction of prices and their impact on expected production and consumption trends.

As already indicated, current world future prices for contracts due to mature in 1990 have settled into the 12 to 13 cent-per-pound range. Current domestic futures prices for contracts also due to mature in 1990 have stabilized in the 22 to 23 cent-per-pound range, about 10 cents per pound above world futures contracts for this period.

C. GATT Council Decision on U.S. Sugar Import Restrictions

On June 22, 1989, the GATT Council adopted the report of the panel which examined US. restrictions on imports of sugar and which concluded that the quotas maintained under Additional U.S. Note 3 to Chapter 17 are inconsistent with the General Agreement. The Council requested the United States of either terminate the restrictions or bring them into conformity with the General Agreement.

Following the Council's action, the U.S. Department of Agriculture established a Taskforce to develop options for implementing U.S. law with respect to imports of sugar in a manner consistent with our GATT obligations. The Taskforce and other appropriate Government agencies are now formulating and evaluating these options.

In the interim and since no clear alternative has been decided upon by the date that this notice must be published, continuation of the operation of Additional U.S Note 2 and paragraphs (b), (c), (d), and (e) of Additional U.S. Note 3 to Chapter 17 of the HTSUS gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT.

Determination

After have consulted with the U.S. Trade Representative, the Department of State, and other concerned agencies in accordance with paragraph (f) of Additional U.S. Note 3 to Chapter 17 of the HTSUS, I have determined that the continued operation of Additional U.S. Note 2 and paragraphs (b), (c), (d) and (e) of Additional U.S. Note 3 to Chapter 17 of the HTSUS gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT, and that the operation of paragraph (g) of Additional U.S. Note 3, which would allow entry of sugar into the United States of not to exceed 6.90 million short tons, would not give due consideration to such interests.

Signed at Washington, DC on September 1, 1989.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 89-21108 Filed 9-5-89; 10:53 am]

BILLING CODE 3410-10-M

Forest Service

Sierra and Sequoia National Forests, CA; Intent To Prepare an Environmental Impact Statement

In the matter of Comprehensive Management Plan Middle Fork of the Kings, South Fork of the Kings, and Kings Wild and Scenic Rivers: Kings River Special Management Area Sierra and Sequoia National Forests Fresno County, California; Intent to Prepare an Environmental Impact Statement and Implementation Plan.

As required by the Wild and Scenic Rivers Act of 1968, as amended, the Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement to determine future management practices for the Middle Fork of the Kings, South Forks of the Kings, and the Kings Wild and Scenic Rivers (W&SR) (totaling 28 miles), and the Kings River Special Management Area (approximately 49,000 acres), located on the Sierra and Sequoia National Forests. For that portion of the Middle Fork Kings and South Fork Kings W&SR that flows through the Sequoia National Park (totaling 55.5 miles), the Department of Interior, Park Service, will determine management practices at the time the Park's General Development Plan is updated.

In 1987, Congress created the Kings River Special Management Area (KRSMA) and designated a segment of the Kings River as a wild and scenic river. The Special Management Area was established to provide for public outdoor recreation use and enjoyment and to protect the areas' naturals, archaeological, and scenic resources, and to provide for appropriate fish and wildlife management.

The legislation also gives direction to the Forest Service to publish a management plan for the KRSMA within three years after the enactment of the act. The plan shall provide for enhancing wildlife carrying capacity, permitting grazing, developing hiking trails, and it will also include a plan for a trail from Garlic Creek to Little Tehipite Valley. The construction of any dam or diversion must have specific authority from the Congress. The plan will be tiered to the Sequoia Land and Resource Management Plan and the Sierra Draft Land and Resource Management Plan.

A range of alternatives will be considered. These alternatives will analyze various management practices and policies and their effects on resources, recreation and other current uses, and the protection of the W&SR's "Outstandingly Remarkable Values" as identified in the Sequoia National Forest Land and Resource Management Plan for the South Fork and the Kings River (2/25/88); the Environmental Assessment for the Boundaries and Classification of the Middle Fork, South Fork and The Kings Wild and Scenic Rivers (3/24/89); and the Sierra National Forest Draft Land and Resource Management plan for the Middle Fork Kings River and Kings River (6/12/89).

Federal, State, and local agencies, and individuals or organizations who may be interested in or affected by the decisions are invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Public comments have been, and will continue to be, solicited in a variety of ways including requests for written comments, information meilings, and public meetings.

Paul F. Barker, Regional Forester, Pacific Southwest Region, San Francisco, California, is the responsible official.

The draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency (EPA) and be available for a 90 day

public review period by April 1990. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**. It is very important that those interested in the management of the Middle Fork of the Kings, South Forks of the Kings, and the Kings Wild and Scenic River (W&SR) and the Kings River Special Management Area, participate at that time. To be most helpful, comments on the draft EIS should be specific as possible and may address adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, Vermont Yankee Nuclear Power Corp. v NRDC, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, Wisconsin Heritages, Inc. v Harris, 490 F Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the DEIS, comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by November 1990. In the final EIS, the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal.

Written comments and suggestions concerning the analysis should be sent to Jim Boynton, Forest Supervisor, Sierra National Forest, 1130 "O" Street, Fresno, CA 93721.

Questions about the proposed action and Environmental Impact Statement and Plan should be directed to Wallace McCray, Project Leader, at the above address, phone (209) 487-5155.

Robert L. Rice,

Acting Deputy Regional Forester.

August 31, 1989.

[FR Doc. 89-21140 Filed 9-7-89; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Finding of No Significant Impact for Middle Fork of Salt River Watershed, Macon, Monroe, Randolph and Shelby Counties, Missouri

Introduction

The Middle Fork of Salt River Watershed is a federally assisted action authorized for planning under Public Law 83-566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, state, and federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Soil Convservation Service, 555 Vandiver Drive; Columbia, Missouri 65202.

Recommended Action

The proposed plan consists of 123 small single-purpose floodwater retarding dams (permanent pool areas range from 4 to 10 acres) with grade stabilization benefits, an accelerated land treatment program to adequately protect 1,300 acres of cropland for erosion control and a forest plan to manage 6,000 acres of forest land for increased productivity of wood products and enhancement of wildlife habitat.

Effect of Recommended Plan

The proposed project will have a major beneficial effect on the watershed problems of floodwater damage, soil erosion, and lack of forest management. The 123 small dams will eliminate flooding on 2,600 acres and reduce flooding on 21,000 acres of the 100-year floodplain, and provide grade stabilization benefits. Total flood damages will be reduced by 30 percent. Erosion will be reduced significantly on 1,300 acres of cropland that will be adequately protected with the plan. Management will be implemented on 6,000 acres of forest land resulting in increased productivity and enhanced wildlife habitat. Over all habitat units will increase by 650 for the five species evaluated (pheasant, bobwhite quail, white-tailed deer, eastern wild turkey, and cottontail rabbit).

Upland, stream channel and floodplain sediment deposition will all decrease significantly with the proposed project. Sediment leaving the watershed outlet (Mark Twain Lake) will decrease by over 12 percent or 55,000 tons annually.

Prime farmland will be increased by 1,700 acres due to a change in classification when 2-year flooding is reduced.

The proposed project will increase wetlands by 150 acres. There will be 145 acres of Type 1 wetlands converted to dams, spillways and water but 295 acres of wetland will develop in the littoral zones of the pools.

Installation of the proposed plan is expected to improve the quality of water in the Middle Fork of Salt River. The 123 small reservoirs will reduce sediment, nutrient and pesticide delivery via the trapping action of the dams. The dams will also have a beneficial impact on water quality parameters affecting aquatic life.

There are no threatened or endangered species in the watershed that will be affected by the project.

A complete cultural resources survey will be made prior to project installation, but no significant resources are expected to be adversely affected.

The proposed project will maintain present stream habitat.

There are no wilderness areas in the watershed.

No significant adverse environmental impacts will result from installation of the proposed project.

Alternatives

Various levels of land treatment measures were combined with different dam combinations to arrive at alternative plans. The recommended plan was selected by watershed Sponsors as the plan that would best accomplish the study goals.

Consultation—Public Participation

Scoping of the project was initiated at a public meeting held in Macon, Missouri on September 12, 1984. Public as well as federal, state and local agencies concerns were recognized. Several resource conservation and development concerns were acknowledged.

Public meetings, field tours and neighborhood meetings were held throughout the planning process to obtain input, discuss project alternatives, and inform the general

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public and federal and state agencies

findings, Mr. Rollin N. Swank, State

Competitiveness Act of 1988 (15 U.S.C.

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with the Government of India with

Harmonized Tariff Schedule of the

man-made fiber shorts. These trousers

public and federal and state agencies about the project.

Specific consultation was conducted with the U.S. Fish and Wildlife Service concerning threatened and endangered species, with the State Historical Preservation Officer concerning archeological and historic resources, and with the Missouri Department of Conservation and U.S. Fish and Wildlife Service biologists concerning project effects on wildlife habitat.

Agency consultation and public participation to date has shown no unresolved conflicts with the implementation of the selected plan.

Conclusion

The Environmental Assessment summarized above indicates that this federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings I have determined that an environmental impact statement for the Middle Fork of Salt River Watershed Plan is not required.

Dated: August 17, 1989.

Russell C. Mills,

State Conservationist.

[FR Doc. 89–21141 Filed 9–7–89; 8:45 am]

BILLING CODE 3410-16-M

Bullskin and Long Marsh Runs Critical Area Treatment and Land Drainage RC&D Measure Plan, West Virginia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bullskin and Long Marsh Runs Critical Area Treatment RC&D Measure, Eastern Panhandle Soil Conservation District, Jefferson County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505, telephone 304–291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the measure is critical area treatment and land drainage. The measure is designed to stabilize critically eroding streambank areas along Bullskin and Long Marsh runs through the installation of livestock exclusion fencing, alternative water facilities and seeding of filter strips adjacent to cropland areas.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

Dated: July 31, 1989.

Rollin N. Swank,

State Conservationist.

[FR Doc. 89–21183 Filed 9–7–89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Office of the Under Secretary for Economic Affairs

Technical Details of National Trade Data Bank: Open Meetings

AGENCY: Office of the Under Secretary for Economic Affairs, Commerce.

ACTION: Notice of meetings.

SUMMARY: Two meetings will be held on certain technical aspects of the National Trade Data Bank (NTDB).

DATES: September 27, 1989 and September 29, 1989, 10:00 a.m.

ADDRESS: Room 1414 HCH Bldg. on September 27, 1989 and Room 4830 HCH Bldg. on September 29, 1989.

FOR FURTHER INFORMATION CONTACT: John E. Cremeans, 377–1405.

SUPPLEMENTARY INFORMATION: Pursuant to Section 5404, of Part I of Subtitle E, of Title V of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4901–4913), the Commerce Department will hold meetings on certain technical aspects of the design of the NTDB. The September 27, 1989 meeting will concern technical details and specifications of the magnetic tape and telecommunication transmission for the "standard" and "premium" services as described in **Federal Register** notice, Docket No. 90517–9117, Vol. 54, No. 159, p. 34204, August 18, 1989. The September 29, 1989 meeting will cover record layouts, indexes, and search concepts for the Compact Disk-Read Only Memory (CD–ROM) to be issued under the standard service. The meetings are intended for technical experts on these two aspects of the NTDB.

Dated: August 31, 1989.

Mark W. Plant,

Deputy Under Secretary for Economic Affairs.

[FR Doc. 89–21067 Filed 9–7–89; 8:45 am]

BILLING CODE 3510-EA-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of a Request for Bilateral Textile Consultations With the Government of India on Certain Man-Made Fiber Textile Products

September 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: September 12, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re–openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 31, 1989, under the terms of the current bilateral textile agreement between the Governments of the United States and India, the Government of the United States requested consultations

with the Government of India with respect to imports in Categories 647/648 (man-made fiber trousers, breeches and shorts).

The purpose of this notice is to advise that, pending agreement on a mutually satisfactory solution concerning these categries, the Government of the United States has decided to control imports during the ninety-day consultation period which began on July 31, 1989 and extends through October 28, 1989.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may establish a prorated specific limit of 150,625 dozen for Categories 647/648 for the period July 31, 1989 through December 31, 1989.

A summary market statement concerning Categories 647/648 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 647/648 under the agreement with India, or on any other aspect thereof, or to comment on domestic production or availability of products included in Categories 647/648, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of India, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

India—Market Statement

Man-Made Fiber Trousers, Slacks and Shorts (Category 647/648)

July 1989.

Summary and Conclusions.

U.S. imports of man-made fiber trousers, slacks and shorts (Category 647/648) from India reached 309,113 dozen during the year ending April 1989, a 67 percent increase over the 184,799 dozen imported a year earlier. Imports of man-made fiber trousers, slacks and shorts from India for the first four months of 1989 were 173,498 dozen, two and a half times the 69,794 dozen imported during the same period in 1988.

The sharp and substantial increase in Category 647/648 imports from India is disrupting the U.S. market for man-made fiber trousers, slacks and shorts.

U.S. Production and Market Share

U.S. production of man-made fiber trousers, slacks and shorts (Category 647/648) remained relatively flat from 1982 to 1986, averaging 40,901,000 dozen per year. U.S. production has been declining since 1986. Production fell to 32,599,000 dozen in 1988, 12 percent below the 1987 level and 20 percent below the 1982–86 average level. The domestic manufacturers share of the U.S. market dropped 15 percentage points in just six years, falling from 76 percent in 1982 to 61 percent in 1988.

U.S. Imports and Import Penetration

U.S. imports of man-made fiber trousers, slacks and shorts (Category 647/648) increased 58 percent from 13,163,000 dozen in 1982 to 20,766,000 in 1988. Imports during the year ending April 1989 reached 22,119,000 dozen, 15 percent above the 19,227,000 dozen imported during the same period a year earlier. Imports are up 19 percent in the first four months of 1989 over the same period in 1988. The ratio of imports to domestic production doubled during the past six years, rising from 32 percent in 1982 to 64 percent in 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 81 percent of Category 647/648 imports from India during the first four months of 1989 entered under HTSUSA numbers 6204.69.2510—women's woven man-made fiber trousers; 6204.69.2540—women's woven man-made fiber shorts. These trousers and shorts entered, the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

Committee for the Implementation of Textile Agreements

September 5, 1989.

Commissioner of Customs

Department of the Treasury

Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 12, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Categories 647/648, produced or manufactured in India and exported during the ninety-day period which began on July 31, 1989 and extends through October 28, 1989, in excess of 106,182 dozen.

Textile products in Categories 647 and 648 which have been exported to the United States on and after January 1, 1989 shall remain subject to the Group II limit established for the period January 1, 1989 through December 31, 1989.

Textile products in Categories 647 and 648 which have been exported to the United States prior to July 31, 1989 shall not be subject to the ninety-day limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–21127 Filed 9–7–89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; 1989 Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1989 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: October 10, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 24, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 12261) of proposed addition to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1989:

Handkerchief, Man's
8440-01-288-2178

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-21189 Filed 9-7-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; 1989 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 services to be provided by workshops for the blind or other severely handicapped.

Comments Must Be Received on or Before: October 10, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Grounds Maintenance, Camp Bonneville, Camp Bonneville, Washington
Janitorial/Custodial, Naval Air Facility, El Centro, California
Janitorial/Custodial, U.S. Army Reserve Center, 2100 Quaker Point Road, Quakertown, Pennsylvania
Mailroom Operation, U.S. Corps of Engineers, Estes Kefauver Building, U.S. Courthouse Annex and Adjacent Buildings, Nashville, Tennessee
Operation of Postal Service Center, Dover Air Force Base, Delaware
Package Reclamation, Ogden Air Logistics Center, Hill Air Force Base, Utah.

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-21190 Filed 9-7-89; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Amex Commodities Corporation Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Amex Commodities Corporation ("ACC") has applied for designation as a contract market in futures on two-year U.S. Treasury notes. The Director of the Division of Economic Analysis ("Division") of the Commisson, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 10, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the ACC's two-year U.S. Treasury note futures contract.

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the ACC in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at

the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and condition of the proposed futures contract, or with respect to other materials submitted by the ACC in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on August 31, 1989.

Steven Manaster,
Director, Division of Economic Analysis.

[FR Doc. 89-21084 Filed 9-7-89; 8:45 am]

BILLING CODE 6351-01-M

Chicago Mercantile Exchange Proposed Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contracts.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has applied for designation as a contract market in (1) options on Japanese yen Euro-rate differential ("DIFF") futures, (2) options on British pound sterling DIFF futures and (3) options on West German deutsche market DIFF futures. For each of the proposed futures option contracts, the applications also contain petitions for exemptions from the volume requirement for the underlying futures contract specified in the Commission's rules. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 10, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME Japanese yen DIFF option, the CME pound sterling DIFF option or the CME deutsche mark DIFF option.

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed option contracts, the Division also is requesting comment on the merits of petitions filed by the CME pursuant to § 33.11 of the Commission's rules. The petitions request exemptive relief from the trading volume tests set forth in the Commission's rules. In that regard, § 33.4(a)(5)(iii) of the Commission's rules requires, as a condition of designation for proposed options on futures contracts, that the exchange demonstrate that:

> * * * the volume of trading in all contract months for futures delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of trade for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than the 12 months preceding the date of application. * * *

The Division notes that the CME DIFF futures contracts which will underlie the proposed option contracts have only been trading since July 6, 1989. The futures trading volume requirement for each of the proposed option contracts has not been met.

As discussed in more detail in previous **Federal Register** notices (see, for example, 52 FR 41755, October 30, 1987), the Commission has stated that it believes that, at the minimum, a petition for exemption from the trading volume tests may be granted only if the underlying cash market for the commodity exhibits a high level of liquidity. Cash market liquidity would be evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads. Further, the terms of the futures contract should ensure the opportunity for arbitrage and close alignment between the cash and futures market. In combination, the liquidity of the underlying cash market and the opportunities for arbitrage are major factors in determining the extent to which a less liquid futures contract could be disrupted by the exercise of options and the alternatives available to those exercising the options. In addition, to enable position holders to evaluate accurately the value of their option positions in the absence of active trading in the underlying futures contract, the Commission stated its belief that there should exist an accurate and widely available price series which would be representative of values of the commodity underlying the future.[1]

In requesting comment on the CME's proposed options on DIFF futures, the Division is seeking specific comment on whether it should grant the CME's requests for exemptions from the requirements of § 33.4(a)(5)(iii) for the proposed contracts. Commenters are requested to consider the issues noted above. Also, commenters are requested to address whether, if the petitions were granted, additional surveillance activities and expiration reviews, particularly at the outset of trading, should be implemented by the CME for the proposed contracts.

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and condition of the proposed option contracts, or with respect to other materials submitted by the CME in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW.,

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[1] The Division notes that in those cases where the underlying futures contract fails to develop a sufficient level of trading volume, the option on the futures contract would become subject to the delisting criteria set forth in § 5.4 of the Commission's rules. Specifically, if the volume in the underlying futures contract market falls below an average weekly volume of 1,000 contracts for all months listed for the six-month period following designation of the option contract, no new option contract months may be listed until the volume in the underlying futures contract rises above an average of 2,000 contracts per week for all trading months listed for a period of three consecutive months.

Washington, DC 20581, by the specified date.

Issued in Washington, DC, on August 31, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89–21065 Filed 9–7–89; 8:45 am]

BILLING CODE 6351-01-M

Chicago Mercantile Exchange; Proposed Amendments Relating to the Live Cattle and Live Hog Futures and Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted a proposal to amend a number of the terms and conditions of the Exchange's live cattle and live hog futures and option contracts relating to termination of trading in live cattle and live hog futures and options, delivery days for live cattle and live hog futures, tendering of delivery certificates for live cattle futures, and position limits for live cattle and live hog futures.

In accordance with Section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that these proposals are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.

DATE: Comments must be received on or before October 10, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the amendments to the CME live cattle and live hog futures and option contracts.

FOR FURTHER INFORMATION CONTRACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 (202) 254–7303.

SUPPLEMENTARY INFORMATION: The Exchange submitted proposed amendments to the live cattle and live hog futures and option contracts that would:

(1) Move the last option trading day to the first Friday of the underlying futures delivery month. Under current contract specifications, the last option trading day is the last Friday that is more than three business days prior to the first business day of the contract month. As a result, option expiration currently occurs from approximately one to two weeks prior to the delivery month for the underlying futures contract.

(2) The first day futures delivery notices may be tendered will become the first business day after an option contract terminates trading. Currently, the live cattle futures contract specifies that delivery notices (certificates) may be tendered commencing with the third business day prior to the first business day of the expiring contract month. The live hog futures contract provides that delivery notices may be tendered beginning on the business day preceding the first business day of the expiring month. The first business day of an expiring contract month currently is the first delivery day of such months. Under the proposed amendments, the first delivery day of an expiring contract month for live cattle and live hog futures would be four business days and two business days, respectively, after the first Friday of that month.

(3) The last futures trading day will be moved to the business day that immediately precedes the last five business days of the contract month, so long as there are at least four delivery days following futures expiration for live cattle and at least three delivery days following futures expiration for live hogs. Currently, trading in the live cattle and live hog futures contracts ends on the 20th calendar day of the delivery month. If the 20th calendar day of the delivery month is not a business day, then trading ends on the business day preceding that day. As a result, under the proposed amendments, there will be a reduction of between zero and four days in the number of delivery days after the last trading day for both live cattle and live hogs.

(4) For live cattle futures, a certificate of delivery tendered on or after the last futures trading day will be changed from a three-day certificate to a one-day certificate. This change will allow two additional days on which delivery notices may be tendered before the end of the contract month. The proposed amendments do not contain provisions for the retender, reclaim or the issuance of demand notices for such one-day certificates of delivery.

(5) The time when the futures spot month speculative position limits of 300 contracts become effective will be moved to the close of business on the first business day after the revised option expiration date (see Item 1 above). Currently, the spot month speculative limits for the live cattle and hog futures contracts become effective at the close of business on the business day preceding the first business day of the delivery month. As amended, the contracts would allow one business day for anyone exercising an option or being exercised against on the option expiration day to liquidate any resulting futures positions over and above the spot-month speculative limits for the live cattle and live hog futures.

The CME indicates that the proposal to move the last option trading day to the first Friday of the contract month will improve the hedging effectiveness and basis predictability of both live cattle options and live hog options by causing option expiration to occur closer to the time of price convergence between the cash market and the underlying futures. The Exchange notes that the changes would benefit hog and cattle producers by allowing them to maintain option hedges through the release of the "USDA Hogs and Pigs" reports and the USDA "Cattle on Feed" reports.

Concerning the proposed amendments to the tender of certificate provision (Item 2), the CME indicates that this change would prevent the delivery process from starting before option trading ends, protecting option users who want to maintain their option positions through expiratin but do not want to participate in the futures delivery process. The Exchange notes that, under the proposed amendments, the option user would not automatically be forced into the futures delivery process and can easily avoid participating in futures delivery without negatively affecting other marketing objectives. Moreover, the proposed change would enable anyone exercising an option (or being exercised against) on or near the expiration date to more easily participate in the delivery process, if that is their objective, by reducing the time between option expiration and the start of the futures delivery period.

Regarding the last trading day proposal for live cattle and live hog futures, the Exchange states that by causing the last trading day to occur later in the month, there will be a reduction of between zero and four days in the number of delivery days after the last trading day for both live cattle and live hogs. The CME submits that this change will still allow sufficient time to settle all deliveries by the end of the contract month.

Changing the last trading day for futures also will partially offset the loss in delivery days before the last trading day that results from changing the first tender day for delivery notices in expiring contract months (see Item 2 above). In this respect, the CME notes that the proposed changes to the first tender day and the last trading day for the live cattle and hog futures contracts will genetally reduce the number of delivery days prior to the last trading day. These reductions range from zero to eight delivery days for live cattle and from zero to five delivery days for live hogs. The CME notes, however, that in all cases the total number of delivery days available in a delivery month will decline, with between four and eight fewer delivery days available during live cattle futures delivery months and between one and five fewer delivery days available during a live hog futures delivery month.

The time when the spot month speculative position limits become effective will continue to occur after the options expire. This would allow one business day for anyone exercising an option (or being exercised against) on the expiration day to liquidate any resulting futures positions over and above the spot month speculative limit.

The Exchange proposes to make the proposed amendments effective upon receipt of Commission approval. The CME intends to apply the proposed amendments only to newly listed contract months.

The Commission is seeking comment on the proposed amendments noted above. In particular, the Commission is requesting comment on the impact, if any, upon deliverable supplies for the live cattle and live hog futures contracts as a consequence of the reduced number of delivery days provided for under the CME's proposals. In addition, the Commission also is requesting comment regarding any potential effect on the proposed reduction in the number of delivery days would have on the ability to process deliveries at the delivery points.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of Secretariat by mail at the above address or by phone at (202) 254–6314.

The material submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on August 31, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89–21066 Filed 9–7–89; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Children's Sleepwear Flammability Standards

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through August 31, 1992, of information collection requirements in the flammability standards for children's sleepwear and enforcement rules, codified at 16 CFR parts 1615 and 1616. These standards and enforcement rules are applicable to children's sleepwear garments in sizes 0 through 14, and fabrics used in the production of such garments. The standards and enforcement rules require manufacturers and importers of children's sleepwear garments and fabrics to perform periodic testing of representative samples to assure that children's sleepwear items meet the performance requirements of the standards. The enforcement rules also require manufacturers and importers to compile and maintain records of the testing required by the standards, and to make those records available to Commission investigators upon request.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (16 CFR Part 1615); and Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14 (16 CFR Part 1616).

Type of request: Extension of approval.

Frequency of collection: Varies depending upon the number of styles of items produced or imported and by number of items of each style manufactured or produced each year.

General description of respondents: Manufacturers and importers of children's sleepwear garments and fabrics used for production of children's sleepwear.

Estimated number of respondents: 200.

Estimated average number of hours per respondent: 437.5 per year.

Estimated number of hours for all respondents: 87,500 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: September 5, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89–21181 Filed 9–7–89; 8:45 am]

BILLING CODE 6355-01-M

Notification of Request for Extension of Approval of Information Collection Requirements— Mattress Flammability Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through August 31, 1992, of information collection requirements in the flammability

BEST COPY AVAILABLE

standard for mattresses and mattress pads (16 CFR Part 1632). The standard is intended to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses and mattress pads. The standard prescribes a test to assure that a mattress or mattress pad will resist ignition from a smoldering cigarette. The standard requires manufacturers to perform prototype tests of each combination of materials and construction methods used to produce mattresses or mattress pads with acceptable results. Sale or distribution of mattresses or mattress pads without successful completion of the testing required by the standard violates section 3 of the Flammable Fabrics Act (15 U.S.C. 1192). An enforcement rule implementing the standard requires manufacturers to maintain records of testing performed in accordance with the standard and other information about the mattresses or mattress pads which they produce.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Standard for the Flammability of Mattresses and Mattress Pads (FF 4–74, Amended); 16 CFR part 1632.

Type of request: Extension of approval.

Frequency of collection: Varies depending upon the number of individual combinations of materials and methods of construction used to produce mattresses or mattress pads.

General description of respondents: Manufacturers and importers of mattresses and mattress pads.

Estimated number of respondents: 800.

Estimated average number of hours per respondent: 26 per year.

Estimated number of hours for all respondents: 2,080 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: September 5, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89–21182 Filed 9–7–89; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB)

Dates of meeting: 11–12 October 1989

Time: 0800–1700 hours each day

Place: The Pentagon, Washington, DC

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense (Follow-On) will meet for classified briefings and discussions reviewing matters that are an integral part of or related to the issue of the study effort. Some of the session will be a continuation of the BM/C3 studies as well as briefings from industry. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–21184 Filed 9–7–89; 8:45 am]

BILLING CODE 3710-08-M

Defense Contract Audit Agency

Privacy Act of 1974; New Record System Notice

AGENCY: Defense Contract Audit Agency (DCAA), Department of Defense (DoD).

ACTION: Notice of a new system of records for public comment.

SUMMARY: The Defense Contract Audit Agency of the Department of Defense proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The record system notice for the new system is set forth below.

DATE: The proposed action will be effective without further notice on October 10, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mr. Dave Henshall, ATTN: CMR, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, telephone: (202) 274–4400.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a), have been published in the **Federal Register** as follows:

50 FR 22884, May 29, 1985 (DoD Compilation, changes follow)
51 FR 18017, May 16, 1986

A new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on August 29, 1989, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I of OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals", dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 1, 1989.

RDCAA 211.11

SYSTEM NAME:

DCAA Drug-Free Federal Workplace Records.

SYSTEM LOCATION:

Primary location: Headquarters, Defense Contract Audit Agency, Personnel and Security Division, Building 4, Room 4B319, Cameron Station, Alexandria, VA 22304–6178.

Decentralized locations: DCAA regional offices; and offices of contractors who perform functions such as collection of urine specimens, laboratory analysis, and medical review of confirmed positive laboratory findings. The addresses for these locations may be obtained from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA Federal employees and individuals who have applied to DCAA for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to program implementation; administration (selection, notification, testing of individuals in testing designated positions, and employee assistance); inter-service/agency support agreements (specimen collection, laboratory testing, and medical review services); training requirements; and policy guidance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301; Pub. L. 100–71; and Executive Orders 12564, "Drug-Free Federal Workplace" and 9397.

PURPOSE(S):

The system is used to maintain Drug Program Coordinator records relating to the selection, notification and testing of DCAA Federal employees, and applicants for Federal employment, for use of illegal drugs.

The records are also used by the employee's Medical Review Official; the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials within the employee's agency having authority to take adverse personnel action against such employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In order to comply with the provisions of 5 U.S.C. § 7301, the DCAA "Blanket Routine Uses" do not apply to this system of records.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Records are also maintained in automated data systems and electronically secured files.

RETRIEVABILITY:

Records are retrieved by organizational levels, name of employee and/or applicant, Social Security Number, office symbol, occupational series and grade levels, or any other combination of these identifiers.

SAFEGUARDS:

Paper records are stored in locked file cabinets, and secured working environments. Automated records are protected by restricted access procedures. Access to records is strictly limited to authorized officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

Records are retained for two years and then destroyed by shredding, burning, or erasure in the case of magnetic media.

SYSTEM MANAGER(S) AND ADDRESS:

Drug Program Coordinator, Personnel and Security Division, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Drug Program Coordinator, Personnel and Security Division, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178. Individuals must furnish the following information for records to be located and identified: Name; Date of birth; Social Security Number; Identification number (if known); Approximate date of record; and Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Drug Program Coordinator, Personnel and Security Division, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178. Individuals must furnish the following information for records to be located and identified: Name; Date of birth; Social Security Number; Identification number (if known); Approximate date of record; and Geographic area in which consideration was requested.

CONTESTING RECORD PROCEDURE:

The Defense Contract Audit Agency rules for accessing records, for contesting contents, and appealing initial determinations by the individual concerned are published in DCAA Instruction Number 5410.10, "DCAA Privacy Act Program"; 32 CFR Part 290a; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual to whom the record pertains, Agency employees involved in the selection and notification of individuals to be tested, laboratories that test urine specimens for the presence of illegal drugs, and supervisors, managers and other agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89–21172 Filed 9–7–89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Special Education Programs

[CFDA No. 84.029B]

Application for New Awards Under the Training Personnel for the Education of the Handicapped; Correction

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: This notice corrects an error made in the application notice published in the **Federal Register** on July 21, 1989 (54 FR 30649). The deadline for transmittal of applications is corrected to read November 13, 1989. The deadline for Intergovernmental Review is corrected to read January 12, 1990.

FOR FURTHER INFORMATION CONTACT: Angele Thomas, Division of Personnel Preparation, Office of Special Education Programs, 400 Maryland Avenue, SW., (Switzer Building, Room 3517–M.S. 2313), Washington, DC 20202. Telephone (202) 732–1100.

Authority: 20 U.S.C. 1431.

Dated: September 1, 1989.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89–21107 Filed 9–7–89; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

[CFDA Nos. 84.133A, 84.133E, and 84.133N]

National Institute on Disability and Rehabilitation Research Invitation for Applications for New Awards Under Certain Programs for Fiscal Year 1990 and Amendment of Notice

Purpose of Program: A consolidated application package (CAP) for several programs sponsored by the National Institute on Disability and Rehabilitation Research (NIDRR) was published in the **Federal Register** at 54 FR 27570 on June 29, 1989. The CAP announced closing dates and other information for priorities that were published in the **Federal Register** on April 25, 1989 at 54 FR 17896. The

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purpose of this notice is to add two

Transportation Systems for Disabled

year 1990. The project period for the

1000 Independence Avenue, SW.,

with the Commission and are available

Hamilton contends that CCAE's latter

purpose of this notice is to add two additional competitions and to extend the project period for the Special Projects for Spinal Cord Injury. Because satisfactory applications were not received in fiscal year 1989 for the proposed Rehabilitation Engineering Center in Personal Licensed Transportation Systems for Disabled Persons and the Research and Demonstration project on Vocational Aspects of Low Back Pain Rehabilitation, and because there is a continuing need for research into these problems, NIDRR is requesting applications in these areas for fiscal year 1990. The project period for the Special Projects for Spinal Cord Injury is increased to 60 months. Applicants should use the application forms included in the CAP and refer to the notice of final funding priorities.

AMENDMENTS TO PROGRAM APPLICATION NOTICES FOR FISCAL YEAR

CFDA No.	Program Title	Funding Priority	Deadline for Transmittal of Applications	Estimated No. of Awards	Estimated Average Size of Award (Per Year)	Project Period (Months)
84.133A	Research and Demonstration	Vocational Aspects of Low Back Pain Rehabilitation.	12-18-89	1	$175,000	36
84.133E	Rehabilitation Engineering Centers	Personal Licensed Transportation For Disabled Persons.	12-08-89	1	500,000	60
84.133N	Spinal Cord Injury Model Demonstration	Does Not Apply	4-02-90	13	384,000	60

Note: The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.

For Further Information Contact: Peer Review Unit, National Institute on Disability and Rehabilitation Research, (202) 732-1141.

Authority: 29 U.S.C. 760-762.

Dated: August 31, 1989.

Michael E. Vader,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 89-21104 Filed 9-7-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Delegation of Reporting Function

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Notice is hereby given that the President has delegated to the Secretary of Energy the authority to transmit to the Congress energy targets and reports regarding such energy targets, as required by section 301 of Public Law 96-294, (42 U.S.C. 7361). This delegation of authority does not affect normal inter-agency review and concurrence procedures.

FOR FURTHER INFORMATION CONTACT: George A. Doumani, Director, Office of Technology Policy (PE-10), Office of Policy, Planning and Analysis, U.S. Department of Energy, Washington, DC 20585; telephone (202) 586-5388, (FTS) 896-5388.

SUPPLEMENTARY INFORMATION: Title III of Public Law 96-294, Energy Targets, requires that in February of every odd-numbered year the President shall transmit to Congress "* * * energy targets for net imports, domestic production, and end-use consumption of energy for the calendar years 1985, 1990, 1995, and 2000." Title III also requires that in February of every even-numbered year "the President shall transmit to the Congress reports regarding the energy targets transmitted during the preceding year." On May 25, 1989, the President delegated to the Secretary of Energy the authority to transmit to the Congress energy targets and the reports regarding the energy targets, and required that the memorandum delegating this authority be published in the **Federal Register**. Therefore the text of the Memorandum from the President to the Secretary of Energy is set forth below.

Issued in Washington, DC, on July 18, 1989.

Linda G. Stuntz,

Deputy Under Secretary, Policy, Planning and Analysis.

[FR Doc. 89-21191 Filed 9-7-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and time: Thursday, October 5, 1989, 8:30 a.m.-5:00 p.m.; Friday, October 6, 1989, 8:30 a.m.-3:00 p.m.

Place: Omni Melrose Hotel, 3015 Oak Lawn Avenue, Dallas, Texas 75219.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, GTN, Washington, DC 20545, Telephone: (301) 353-4829.

Purpose of panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative agenda:

Thursday, October 5, 1989 and Friday, October 6, 1989

—Discussion of National Science Foundation Elementary Particle Physics Programs
—Discussion of Department of Energy High Energy Physics Programs
—Discussion of Department of Energy Superconducting Super Collider (SSC) Programs
—Update on Stanford Linear Collider
—Report on LEP (Large Electron Positron) collider
—Discussion of the concept of regional detector centers
—Overview of SSC Laboratory Programs
—Reports on and discussions of topics of general interest in high energy physics
—Public Comment

Public participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building,

1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 5, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-21192 Filed 9-7-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF83-318-000]

NeKoosa Papers Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

August 30, 1989.

On August 17, 1989, NeKoosa Papers Inc. (Applicant), of 100 Wisconsin River Drive, Port Edwards, Wisconsin 54469 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Ashdown, Arkansas. The facility will consist of two (2) recovery boilers and two (2) steam turbine generators. The electric power production capacity will be 65 megawatts. The primary energy source will be black liquor. The facility will use natural gas for start-ups and shut-downs, however, such fossil fuel usage will not exceed 1.6% of the total fuel input during any calendar year period.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21059 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10601-000 Alabama]

Pea River Associates, Inc.; Availability of Environmental Assessment

September 1, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the proposed Elba Hydroelectric Project located on the Pea River in Coffee County, near Elba, Alabama, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21060 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL89-45-000]

City of Hamilton, Ohio v. Cincinnati Gas & Electric Co.; Filing

August 30, 1989.

Take notice that on August 21, 1989, the City of Hamilton, Ohio (Hamilton) filed an "Emergency Complaint," pursuant to Section 306 of the Federal Power Act (FPA), 16 U.S.C. 825e, and 18 CFR 385.206, against Cincinnati Gas & Electric Company (CG&E) seeking expedited Commission consideration of alleged violations of the FPA, 16 U.S.C. 824d, and the Commission's implementing regulations, 18 CFR part 35.

Hamilton alleges that by letter dated August 9 and received on August 15, 1989, CG&E has stated that CG&E is unilaterally altering scheduling practices for jurisdictional transmission service. Hamilton contends that CG&E's latter unilaterally changing scheduling practices violates Sections 205(c) and 205(d) of the FPA. Hamilton further alleges that absent an immediate Commission order requiring CG&E to cease and desist such changes, Hamilton will, beginning on September 1, 1989, experience severe disruption of its municipal electric system's operations and serious financial impacts for its system and its ratepayers.

Hamilton states that it has executed same or next day service of its Complaint on CG&E and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). The answer to this Complaint, as well as any motions to intervene, or protests should be filed on or before thirty days from publication of this notice in the *Federal Register*. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21061 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-219-000 and TM90-1-37-000]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

August 31, 1989.

Take notice that on August 24, 1989, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

Fifty-Fourth Revised Sheet No. 10
Thirthieth Revised Sheet No. 10-A
Second Revised Sheet No. 12
Third Revised Sheet No. 12

Original Volume No. 1-A

Nineteenth Revised Sheet No. 201

Original Volume No. 2

Tenth Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity

SSP Charge and Fixed Monthly SSP Charge, effective October 1, 1989, to: (1) reflect interest applicable to July, August and September 1989, (2) the amortization of principal and interest for the months of April, May and June 1989, and (3) to reflect the inclusion of additional SSP Costs that have been incurred since Northwest's last quarterly filing. The proposed revised Commodity SSP Charge is 3.62¢ per MMBtu. Northwest states that Second Revised Sheet No. 12 was filed to revise the Fixed Monthly SSP charge factors, effective April 1, 1989, to reflect some minor sales volume adjustments that apply to calendar years 1983 and 1984. Northwest also states that this filing supplements its Order No. 5000 take-or-pay buyout/buydown cost recovery filing in Docket No. RP89–137 by reflecting two additional supplies settlements.

Northwest states that a copy of this filing has been sent to all parties of record in Docket No. RP89–137 and to all jurisdictional customers and affected State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21082 Filed 9–7–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89–4–18–000]

Texas Gas Transmission Corp.; Tariff Filing

August 31, 1989.

Take notice that on Augsut 25, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Second Revised Sheet No. 14D
Substitute Second Revised Sheet No. 14E
Substitute Second Revised Sheet No. 14F
Substitute Second Revised Sheet No. 14G

Texas Gas states that this filing is made to reflect the modification of Tennessee Gas Pipeline Company's revised take-or-pay demand surcharge during the six-month amortization period July 1 through December 31, 1989 to Texas Gas' downstream customers. The modification was reflected in Tennessee's finding made July 14, 1989, which reduced the take-or-pay cost by one-half of the amount of foregone revenue associated with transportation discounts or $8,719,000. The filing complies with a June 30, 1989 Letter Order in this docket which allows Texas Gas to track any modifications which the Commission may approve. Texas Gas Reserves the right to revise the filing as necessary to reflect any modifications made by the Commission or as required by any appellate court. The proposed effective date of the tariff sheets listed above is August 1, 1989.

Copies of this filing have been served upon Texas Gas' jurisdictional and nonjurisdictional sales customers and interested state commissions.

Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 2.11 and 2.14 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21083 Filed 9–7–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90–1–78–000]

Overthrust Pipeline Co.; Tariff Filing

August 31, 1989.

Take notice that on August 29, 1989, Overthrust Pipeline Company (Overthrust), pursuant to 18 CFR 154.38 (d)(6) and Part 382, tendered for filing and acceptance Seventh Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 1.

Overthrust states that this filing implements the annual charge unit rate of $0.0017 per Mcf in each of its transportation rate schedules.

Overthrust requests an effective date of October 1, 1989, for the tendered tariff sheets.

Overthrust also states that copies of the filing were served upon Overthrust's jurisdictional customers and interested state public service commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21095 Filed 9–7–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89–13–51–000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

August 30, 1989

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on August 24, 1989 tendered for filing Second Substitute Twenty-Third Revised Sheet Nos. 57(i) and 57(ii), Third Substitute Tenth Revised Sheet No. 57(v) and Substitute Twenty-Fourth Revised Sheet Nos. 57(i) and 57(ii) to its FERC Gas Tariff, First Revised Volume No. 1.

Second Substitute Twenty-Third Revised Sheet Nos. 57(i) and 57(ii) and Third Substitute Tenth Revised Sheet No. 57(v) reflected revised current PGA rates for the months of August, September and October, 1989. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Substitute Twenty-Fourth Revised Sheet Nos. 57(i) and 57(ii) were filed to reflect the elimination of Michigan Gas Company as a sales customer under Rate Schedule S–1 and the implementation of a transportation service for Michigan Gas Company under a new Rate Schedule T–18. Initial tariff sheets reflecting Rate Schedule T–18 were filed by Great Lakes on August 8, 1989, to be effective September 1, 1989.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective as requested in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 8, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21085 Filed 9–7–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90–1–26–000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

August 30, 1989

Take notice that on August 28, 1989, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff sheets to be effective October 1, 1989.

Natural states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necesary for Natural to recover from its customers annual charges assessed it by the Commission pusuant to Part 382 of the Commission's Regulations. The rate authorizing by the Commission to be effective October 1, 1989, is .17¢ per Mcf. Under Natural's billing basis of 14.65 psia at 1000 Btu, this rate converts to .16¢ per Mcf.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1989.

Any person desiring to be heard or to to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21086 Filed 9–7–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90–1–41–000]

Paiute Pipeline Co.; Change in Annual Charge Adjustment

August 30, 1989

Take notice that on August 25, 1989, Paiute Pipeline Company (Paiute) tendered for filing Tenth Revised Sheet No. 10 applicable to its FERC Gas Tariff, Original Volume No. 1 and Sixth Revised Sheet No. 10 applicable to its FERC Gas Tariff, Original Volume No. 1–A. Paiute states that the purpose of said filing is to revise its annual charge adjustment surcharge in order to recover the Commission's annual charges for the 1989 fiscal year.

Paiute has requested that the Commission accept its tariff sheet to become effective October 1, 1989.

Paiute states that copies of this filing have been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Southwest Gas Corporation, Sierra Pacific Power Company, and CP National Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 8, 1989. Protests will be considered by the Commassion in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21087 Filed 9–7–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90–1–49–000]

Williston Basin, Interstate Pipeline Co.; Annual Charge Adjustment Filing

August 31, 1989.

Williston Basin Interstate Pipeline Company (Williston Basin), on August 29, 1989, submitted for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1: Eighteenth Revised Sheet No. 10
Original Volume No. 1–A: Fourteenth Revised Sheet No. 11, Seventeenth Revised Sheet No. 12
Original Volume No. 1–B: Seventh Revised Sheet No. 10, Seventh Revised Sheet No. 11
Original Volume No. 2: Twentieth Revised Sheet No. 10, Twelfth Revised Sheet No. 11B

The proposed effective date of the tariff sheets is October 1, 1989.

Williston Basin states that the instant filing reflects a revision to the Federal Energy Regulatory Commission's Annual Charge Adjustment (ACA) amount pursuant to the Commission's Statement of Annual Charges (18 CFR part 382) and Williston Basin's FERC Gas Tariff (First Revised Volume No. 1, Section 30; Oroginal Volume No. 1–A, Section 27 and Original Volume No. 1–B, Section 25). The filing incorporates an ACA surcharge of 0.170 cents per Mcf (0.159 cents per dkt on the Williston Basin system), a reduction of .01 cents per Mcf from the current amount, as authorized by the Commission.

Any person desiring to be heard or to protest said tariff application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules 211 and 214. All such petitions or protests should be filed on or before September 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21088 Filed 9–7–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90–1–67–000]

Canyon Creek Compression Co.; Proposed Change in FERC Gas Tariff

August 30, 1989

Take notice that on August 28, 1989, Canyon Creek Compression Company (Canyon) tendered for filing Tenth Revised Sheet No. 4 (Original Volume No. 1) and First Revised Sheet No. 5 (Original Volume No. 1A) to be a part of its FERC Gas Tariff to be effective October 1, 1989.

Canyon states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Canyon to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1989 is .17¢ per Mcf.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective October 1, 1989.

Canyon states that a copy of the filing is being mailed to Canyon's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21089 Filed 9–7–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90–1–63–000]

Carnegie Natural Gas Co; Proposed Changes in FERC Gas Tariff

August 30, 1989

Take notice that Carnegie Natural Gas Company ("Carnegie") on August 28, 1989, tendered for filing the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1:

Fifth Revised Sheet No. 15
Seventeenth Revised Sheet No. 47
Third Revised Sheet No. 47a
Seventeenth Revised Sheet No. 48

The proposed effective date is October 1, 1989.

Carnegie states that it is amending its sales and transportation rate schedules to reflect its Commission-authorized Annual Charge Adjustment ("ACA") unit charge of $.0017. Carnegie states that this filing is submitted in compliance with § 154.38(d)(6)(iii) of the Commission's Regulations and Section 24 of the General Terms and Conditions of Carnegie's FERC Gas Tariff, First Revised Volume No. 1.

Carnegie states that copies of the filing were served upon Carnegie's jurisdictional customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21090 Filed 9–7–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90–1–55–000]

Questar Pipeline Co.; Tariff Filing

August 31, 1989.

Take notice that on August 29, 1989, Questar Pipeline Company (Questar Pipeline), pursuant to 18 CFR 154.38(d)(6) and Part 382, tendered for filing and acceptance the following tariff sheets to its FERC Gas Tariff:

First Revised Volume No. 1
  Twenty-Fourth Revised Sheet No. 12
  Fifth Revised Sheet No. 12–A
Original Volume No. 1–A
  Tenth Revised Sheet No. 5
Original Volume No. 3
  Thirteenth Revised Sheet No. 8

Questar Pipeline states that this filing implements the annual charge unit rate of $0.0017 per Mcf in each of its transportation and sales rate schedules. Questar Pipeline requests an effective date of October 1, 1989, for the tendered tariff sheets.

Questar Pipeline also states that copies of the filing were served upon Questar Pipeline's jurisdictional customers and interested state public service commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21091 Filed 9–7–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90–1–64–000]

Pacific Interstate Offshore Co.; Change in Rate

August 31, 1989.

Take notice that on August 29, 1989, Pacific Interstate Offshore Company ("PIOC") submitting for filing, to be a part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Original Volume No. 1

Tenth Revised Sheet No. 4

PIOC states the purpose of this filing is to set forth the applicable Annual Charge Adjustment (ACA) surcharge of .17 cents per mcf in its Rate Schedule G–10 as provided for by Order No. 472. PIOC requests an effective date of October 1, 1988.

PIOC states that a copy of this filing has been served on PIOC's sole customer, Southern California Gas Company and the Public Utilities Commission of the State of California.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21092 Filed 9–7–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90–1–69–000]

Stingray Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 30, 1989.

Take notice that on August 28, 1989, Stingray Pipeline Company (Stingray) tendered for filing Second Revised Sixteenth Revised Sheet No. 4 to be a part of its FERC Gas Tariff, Original Volume No. 1 to be effective October 1, 1989.

Stingray states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Stingray to recover from its customers annual charges assessed it by the Commission pursuant to the Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1989 is .17¢ per Mcf. Under Stingray's billing basis of 14.73 psia per Dekatherm, this rate converts to .16¢ per Dekatherm.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on October 1, 1989.

Stringray states that a copy of the filing is being mailed to Stingray's jurisdictional customers and interested state regulatory agenices.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21093 Filed 9–7–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90–1–68–000]

Trailblazer Pipeline Co.; Proposed Change in FERC Gas Tariff

August 30, 1989.

Take notice that on August 28, 1989, Trailblazer Pipeline Company (Trailblazer) tendered for filing Seventh Revised Sheet No. 4 to be a part of its FERC Gas Tariff, Original Volume No. 1 to be effective October 1, 1989.

Trailblazer states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Trailblazer to recover from its customers annual charges assessed it by the Commission pursuant to the Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1989 is .17¢ per Mcf.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on October 1, 1989.

Trailblazer states that a copy of the filing is being mailed to Trailblazer's jurisdictional customers and interested state regulatory agenices.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21094 Filed 9–7–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL89–46–000]

Safe Harbor Water Power Corp.; Order To Show Cause

Issued August 31, 1989.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Safe Harbor Water Power Corporation (Safe Harbor) owns a 230 MW generating unit and sells the output to its owners, Pennsylvania Power & Light Company and Baltimore Gas & Electric Company. The unit power agreement contains a formula rate. In a settlement agreement approved by the Commission in Docket No. EL88–2–000,[1] a provision providing for annual examination of the over-all return was added to the formula rate.

Under the terms of that provision, in August of each year, interested parties may request that the Commission institute, or the Commission may itself institute, an investigation of the over-all return component of the formula rate. Also, under the terms of that provision, if the Commission proceeds on its own motion, the Commission must publish an order to show cause and give Safe Harbor and any other affected party the opportunity to respond. If the Commission decides to set the over-all return for investigation and hearing, the settlement agreement provides that the only issue to be addressed will be the level of the over-all return appropriate for Safe Harbor, that the burden of going forward will be on the party advocating a lower return, and that, if the return is ultimately determined to be unjust and unreasonable, refunds will be due dating back to the date of the Commission order setting the matter for investigation and hearing.

Safe Harbor currently uses a 10.6% over-all return in its formula rate. Our preliminary analysis indicates that this return may be excessive and may be unjust and unreasonable. We will therefore order Safe Harbor to show cause why the Commission should not set Safe Harbor's over-all return for investigation and hearing.

Any person desiring to be heard should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214 (1988). All such protests or

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[1] Safe Harbor Water Power Corporation, 42 FERC ¶ 61.210 (1988).

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motions should be filed on or before

examination of the common equity

Any person wishing to become a party

REFUND APPLICATIONS RECEIVED

motions should be filed on or before September 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

The Commission orders:

(A) Safe Harbor is hereby ordered to show cause why the Commission should not set Safe Harbor's over-all return for investigation and hearing.

(B) Safe Harbor shall file its response to the order to show cause on or before September 21, 1989.

(C) The Secretary shall promptly publish a copy of this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21097 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL89-47-000]

Commonwealth Edison Company of Indiana, Inc.; Order To Show Cause

Issued August 31, 1989.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Commonwealth Edison Company of Indiana, Inc. (CECI) owns a 600 MW generating unit and sells the output to its parent, Commonwealth Edison Company. The unit power agreement contains a formula rate. In a settlement agreement approved by the Commission in Docket No. ER88-531-000,[1] a provision providing for annual examination of the common equity return was added to the formula rate.

Under the terms of that provision, in August of each year, interested parties may request that the Commission institute, or the Commission may itself institute, an examination of the common equity return component of the formula rate. Also, under the terms of that provision, if the Commission proceeds on its own motion, the Commission must publish an order to show cause and give CECI and any other affected party the opportunity to respond. If the Commission decides to set the common equity return for investigation and hearing, the settlement agreement provides that the only issue to be addressed will be the level of the common equity return, that the burden of going forward will be on the party advocating a lower common equity return, and that, if the return is ultimately determined to be unjust and unreasonable, refunds will be due dating back to the date of the Commission order setting the matter for investigation and hearing.

CECI currently uses a common equity return of 13.91% in its formula rate. Our preliminary analysis indicates that this return may be excessive and may be unjust and unreasonable. We will therefore order CECI to show cause why the Commission should not set CECI's common equity return for investigation and hearing.

Any person desiring to be heard should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214 (1988). All such protests or motions should be filed on or before September 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

The Commission orders:

(A) CECI is hereby ordered to show cause why the Commission should not set CECI's common equity return for investigation and hearing.

(B) CECI shall file its response to the order to show cause on or before September 21, 1989.

(C) The Secretary shall promptly publish a copy of this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21098 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of May 12 Through May 19, 1989

During the Week of May 12 through May 19, 1989, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 30, 1989.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of May 2 through May 19, 1989]

Date	Name and location of applicant	Case no.	Type of submission
5/15/89	Terrol Energy, Inc., Boulder, Colorado	KEE-0177	Exception to the reporting requirements.
If granted: Terrol Energy, Inc. would not be required to file the 1988 Energy Reserve Estimates.			
5/17/89	Benedetta Enterprises, Inc., Ronkonkoma, New York	KFA-0288	Appeal of an information request denial.
If granted: The May 9, 1989 Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded and Benedetta Enterprises, Inc. would receive access to information relating to a solicitation for proposals for the operation of an on-site service station.			
5/19/89	John R. Penley, New York City, New York	KFA-0289	Appeal of an information request denial.
If granted: The March 21, 1989 Freedom of Information Request Denial issued by the Savannah River Operations would be rescinded and John R. Penley would receive a waiver of search and duplication fees with respect to copies of all records pertaining to and/or captioned with his name, or the names of two environmental organizations.			

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[1] Commonwealth Edison Company of Indiana, Inc., 44 FERC ¶ 61,446 (1988).

Refund Applications Received

[Week of May 12 to May 19, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case number
1/19/88	Brenham Quick Mart	RF300-10819
5/12/89 thru 5/19/89	Crude oil refund, applications received	FR272-75481 thru RF272-75486
5/12/89 thru 5/19/89	Atlantic Richfield refund, applications received	RF304-9285 thru RF304-9286
5/12/89 thru 5/19/89	Exxon Oil refund, applications received	RF307-9953 thru RF307-9957
5/12/89 thru 5/19/89	Shell Oil refund, applications received	RF315-5815 thru RF315-5913
5/15/89	Mike M. Hafey	RF313-150
5/15/89	Plainfield Crown	RF313-151
5/15/89	Morris Crown	RF313-152
5/15/89	Clancy's Spur #1343	RF309-1349
5/15/89	John Whites Gulf	RF300-10184
5/16/89	Fritzen-Halcyon Lijn, Inc.	RF300-10816
5/16/89	Lloyd R. Crais Oil Inc.	RF309-1350
5/17/89	Wald Oil Company, et al.	RF300-10815
5/18/89	Earl's Gulf Service Station	RF300-10817
5/19/89	Utica Square Gulf	RF300-10818
5/19/89	Ed's Farmingdale S.S., Inc.	RF313-153
5/19/89	Hopkins Spur Service	RF309-1351

[FR Doc. 89-21193 Filed 9-7-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3643-2]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073. Availability of Environmental Impact Statements Filed August 28, 1989 Through September 1, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890244, Draft, EPA, NY, NJ, New York Bight Ocean Woodburning Disposal Site Designation for wood removed from the waters and shorelines of the New York/New Jersey Harbor Complex and its Environs, Offshore NY and NJ, Due: October 23, 1989, Contact: Robert Hargrove (212) 264-1840.

EIS No. 890245, Final, AFS, NM, Cemetery Tract Land Exchange for Westgate Tract or Trail Canyon Tract or Both Tracts, Implementation, Santa Fe National Forest, Los Alamos and Sandoval Counties, NM, Due: October 10, 1989, Contact: Maynard T. Rost (505) 988-6940.

EIS No. 890246, DSuppl, SCS, PA, WV, Wheeling Creek Watershed Project, Reevaluation and Additional Flood Protection Measure, Funding and Implementation, Ohio and Marshall Cos, WV and Greene and Washington Cos, PA, Due: October 23, 1989, Contact: Rollin N. Swank (304) 291-4151.

Amended Notices

EIS No. 890068, Final, COE, FL, Miami Harbor Channel Navigation Improvements, Implementation, Dade County, FL, Due: May 8, 1989, Contact: Gerald Atmar (904) 791-2615.

Published FR 4-7-89—Officially Withdrawn by Preparing Agency.

Dated: September 5, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-21196 Filed 9-7-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3643-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 21, 1989 through August 25, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities AT (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15007).

DRAFT EISs

ERP No. D-AFS-G65049-00, Rating EC2, Ozark/Ouachita Mountains Vegetation Management Plan, Implementation, Ouachita, Ozark and St. Francis National Forests, AR and McCurtain and LeFlore Counties, OK.

Summary: EPA supports selection of the preferred alternative over the current management alternative. EPA's recommendations regarding herbicide use and prescribed burning to prevent adverse impacts to surface and groundwater quality should be incorporated in the final EIS.

ERP No. D-DOE-A07030-00, Rating EC2, Clean Coal Technology Program, Continuation.

Summary: EPA had several recommendations for improvement of the EIS and expressed concerns about air emissions and waste generation by the program.

ERP No. D-UAF-B24004-MA, Rating EC2, OTIS Air National Guard Base Wastewater Treatment Facility, Continuing Operation, Barnstable County, MA.

Summary: EPA has no objection to the Air National Guard's preferred action to pump treated effluent to new effluent infiltration basins located in the Cape

Cod Canal area. However, EPA requests that the WWTP ability's to achieve future state and federal discharge limitations and comply with water quality guidelines be evaluated.

Final EISs

ERP No. F–AFS–L65129–ID, Wing Creek-Twentymile Timber Sale and Road Construction, Geographic Display Area Management Plan, Implementation, Nezperce National Forest Land and Resource Management Plan, Elk City and Clearwater Ranger Districts, Idaho County, ID.

Summary: EPA has no objections to the proposed action as described. No formal comments were sent to the agency.

ERP No. F–AFS–L65130–AK, Big Islands Management Area Analysis, Implementation and Special Use Permit, Chugach National Forest Land and Resource Management Plan, Hawkins, Hinchinbrook, Montague, Green, Little Green and Wooded Islands and The Needle, Prince William Sound, AK.

Summary: EPA has no objections to the proposed project as described. No formal comments were sent to the agency.

ERP No. F–AFS–L82006–00, Pacific Northwest Region Western Spruce Budworm Management Plan, Implementation, WA and OR.

Summary: EPA has no objections to the project as described in the final EIS. No formal review comments were submitted to the agency on this project.

ERP No. F–FHW–L40115–OR, North Marine Drive Improvement, I–5 to Rivergate Industrial District, Funding and Section 10/404 Permits, Multnomah County, OR.

Summary: EPA has no objections to the proposed action as described. No formal comments were sent to the agency.

Dated: September 5, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89–21197 Filed 9–7–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3641–8]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of confidential data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) intends to release confidential data collected under Section 308 of the Clean Water Act to one EPA contractor for the purpose of assisting EPA in developing regulations under the Resource Conservation and Recovery Act (RCRA).

DATE: The transfer to the Contractor of the described confidential business information will occur no sooner than September 18, 1989.

ADDRESSES: Comments may be sent to the Docket Clerk, Industrial Technology Division, Office of Water (WH–552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: For technical information regarding the Office of Water databases subject to this notice, contact Ernst P. Hall, Industrial Technology Division, Office of Water (WH–552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone 202–382–7128. For technical information regarding data uses under RCRA, contact Robert W. Hall, Office of Solid Waste (OS–323), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone 202–475–8814.

SUPPLEMENTARY INFORMATION:

1. Transfer of Data

On October 12, 1980, Congress enacted the Solid Waste Disposal Act Amendments of 1980, which added Section 3001(b)(3)(A)(ii) (the Bevill Amendment) to RCRA. This section temporarily prohibits EPA from regulating "solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore" as hazardous waste under subtitle C of RCRA, pending EPA's completion of certain studies of these wastes.

Under EPA contract No. 68–01–7290, ICF Incorporated is assisting the Special Wastes Branch, Office of Solid Waste, in developing a hazard criterion. EPA will use this criterion to identify the "special wastes" that will be temporarily exempt under the Bevill Amendment.

To facilitate implementation of this criterion, the EPA Office of Water will transfer to an EPA Office of Solid Waste contractor, ICF Incorporated (Fairfax, Va.), certain information that has been submitted to the EPA under Section 308 of the Clean Water Act (the Federal Water Pollution Control Act (FWPCA) Amendments of 1972, as amended (33 U.S.C. 1251 et seq.)). The information to be transferred has been collected to support the promulgation of effluent limitations guidelines and standards for certain industry categories. Some of the information gathered under FWPCA may be subject to claims of business confidentiality.

The information to be transferred to ICF Incorporated was collected by several contractors, including the Cyrus N. Rice Division of NUS, the Radian Corporation, and Jacobs Engineering Group, Inc. who were assisting the Industrial Technology Division of the Office of Water by collecting facility-level data from a large number of ore and mineral processing industries. These data included process descriptions, waste stream volume and descriptions, waste constituent data, through-put rates, and other related information from the ferrous and non-ferrous metals, ferroalloys, coal gasification, elemental phosphorus, hydrofluoric acid, lightweight aggregate, phosphoric acid and soda ash industries. EPA used these data to develop effluent limitations guidelines and standards for several major industries, such as iron and steel manufacturing, non-ferrous metals manufacturing, and inorganic chemicals manufacturing.

The information transferred will concern all industries potentially affected by the Bevill Amendment.

Dated: August 25, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89–21169 Filed 9–7–89; 8:45 am]

BILLING CODE 6560–50–M

[OW–FRL–3642–2]

National Combined Sewer Overflow Control Strategy Document Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a document which describes EPA's National Combined Sewer Overflow Control Strategy.

DATE: Copies of this document will be available from EPA Office of Water for a period of 90 calender days, beginning September XX, 1989.

ADDRESSES: Copies of this document can be obtained by writing to Ms. Angie McLean, Permits Division, EN–336, U.S. EPA Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or by telephoning her at (202) 475–9543.

FOR FURTHER INFORMATION CONTACT: William A. Collins, Jr., telephone: (202) 475–9517.

National Combined Sewer Overflow Control Strategy

Introduction

Combined sewer overflows (CSOs) are flows from a combined sewer in excess of the interceptor or regulator capacity that are discharged into a receiving water without going to a publicly owned treatment works (POTW). CSOs occur prior to reaching the headworks of a treatment facility and are distinguished from bypasses which are "intentional diversions of waste streams from any portion of a treatment facility" (40 CFR 122.41(m)).[1]

Most major municipal areas in the United States are served by a combination of sanitary sewers, separate storm sewers, and combined sanitary and storm sewers. The Agency has estimated that there are between 15,000 and 20,000 CSO discharge points currently in operation. Sanitary sewer systems must adhere to the strict design and operational standards established to protect the integrity of the sanitary sewer system and wastewater treatment facilities. Discharges from separate sanitary sewer systems with less than secondary treatment are prohibited. The regulation of discharges from separate storm sewer systems is addressed in section 402(p) of the Clean Water Act (CWA). EPA is proposing regulations implementing section 402(p) which include requirements to develop system-wide municipal storm water management programs to reduce pollutants from municipal separate storm sewers. The following strategy is designed to control effluents from combined systems which are not regulated under the sanitary system standards nor as discharges from separate storm sewer regulations.

This CSO permitting strategy is designed to complement the control programs for sanitary sewers and separate storm sewers. This strategy establishes a uniform, nationally-consistent approach to developing and issuing NPDES permits for CSOs. CSOs have been shown to have severe adverse impacts on water quality, aquatic biota, and human health under certain conditions. Therefore, permits for CSOs are to be developed expeditiously to minimize these potential impacts by establishing technology-based and water quality-based requirements.

The objectives of this strategy are threefold:

(1) To ensure that if CSO discharges occur, they are only as a result of wet weather,

(2) To bring all wet weather CSO discharge points into compliance with the technology-based requirements of the CWA and applicable State water quality standards, and

(3) To minimize water quality, aquatic biota, and human health impacts from wet weather overflows.

Statement of Strategy

CSOs are point sources subject to NPDES permit requirements including both technology-based and water quality-based requirements of the CWA. CSOs are not subject to secondary treatment regulations applicable to publicly owned treatment works (*Montgomery Environmental Coalition* vs. *Costle*, 646 F. 2d 568 (D.C. Cir. 1980)).

Technology-based permit limits should be established for best practicable control technology currently available (BPT), best conventional pollutant control technology (BCT), and best available technology economically achievable (BAT) based on best professional judgement (BPJ) when permitting CSOs. The CWA of 1977 mandates compliance with BPT on or before July 1, 1977. The Water Quality Act Amendments of 1987 (WQA) mandates compliance with BCT/BAT on or before March 31, 1989.

Section 301(b)(1)(C) of the CWA mandates compliance with water quality standards by July 1, 1977. In addition it is likely that at least some CSO discharges will be point source discharges to waters listed under section 304(1) of the CWA and subject to the control requirements of that Section.

All CSO discharges must be brought into compliance with technology-based requirements and State water quality-based requirements. The Agency expects that this can be achieved using a combination of CSO control measures.

Applicability of Strategy

This strategy applies to all CSOs. Flows in combined sewers can be classified into two categories: wet weather flow and dry weather flow. Wet weather flow is a combination of sanitary flow, industrial flow, infiltration from groundwater, and stormwater flow, including snow melt. Dry weather flow is the flow in a combined sewer that results from domestic sewage, groundwater infiltration and industrial wastes with no contribution from stormwater runoff or stormwater induced infiltration.

This strategy applies to EPA and approved NPDES States. EPA Headquarters will oversee the implementation of the strategy to ensure actions taken by the Regions and States are consistent with the national strategy and that the Agency as a whole is making progress towards meeting the statutory requirements and achieving the water quality objectives of the CWA.

This strategy does not apply to bypasses. Bypasses are "intentional diversions of waste streams from any portion of a treatment facility." The treatment facility begins at the headworks where equalization of the waste streams takes place. Bypasses are regulated under 40 CFR 122.41(m). Bypasses from any portion of the treatment facility are prohibited unless the criteria in 40 CFR 122.41(m)(4) are satisfied. These criteria are (1) bypasses are unavoidable to prevent loss of life, personal injury, or severe property damage; (2) there are no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime; and (3) the permittee submitted notices as required under 40 CFR 122.41(m)(3).

Implementation

Communities are responsible for developing and implementing system-wide combined sewer management plans. State-wide permitting strategies will be developed by the States or Regions to ensure implementation and consistency with this CSO strategy. Permitting strategies should be developed no later than January 15, 1990 and Regions should approve State strategies no later than March 31, 1990. A discussion of different elements that may be addressed in the strategies is provided below.

1. Identification

CSO point sources currently discharging without a permit are unlawful and must be permitted or eliminated. The Regions and States must identify the communities with combined sewer systems and each particular CSO discharge point within these communities. The permitting strategy should place each CSO discharge point into one of three categories: (1) Not permitted; (2) permitted in conjunction with POTW; and (3) permitted separately from POTW. The status of compliance with technology-based and water quality-based permit requirements should be provided for each CSO discharge. An ongoing commitment of evaluating and maintaining CSO location and permit discharge status records should be adopted by every community.

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[1] Flows to the treatment works (POTW), including dry weather and wet weather flows, are subject to secondary treatment regulations, water quality standards, and the National Municipal Policy. Dry weather discharges from CSOs, which are also subject to this strategy, are illegal and must be expeditiously eliminated. Regions and approved States should use appropriate enforcement actions to eliminate such activities and assure compliance.

2. Priorities

The Regions and States are expected to set priorities in permitting and controlling the unpermitted and insufficiently permitted discharges. In addition to the requirements identified above, the permitting strategy should describe the Regional or State completed and planned actions and timing to bring the discharges into compliance. Permitting and control priorities should be established based upon a system-wide evaluation of known or suspected impacts from CSOs using estimates of flows, frequencies, durations, and pollutant loadings to rank POTW collection systems for permitting.

One of the most important considerations for establishing priorities is whether the CSO discharges to marine or estuarine waters. Other factors to be considered in the priority setting effort are the nature of CSO control measures and the use designation of streams and the estimated increases in beneficial uses resulting from these measures, receiving waters listed under section 304(1) of the Water Quality Act of 1987, other water program efforts such as the Great Lakes program and pretreatment program evaluations.

3. Permit Issuance

A single, system-wide permit should be issued whenever possible for all discharges, including overflows, from a combined sewer system operated by a single authority. The permit should identify separately, as specifically as possible, the location of each overflow in the system (i.e., longitude, latitude, street address, and a map).

Different parts of a single combined sewer system are in some cases owned and/or operated by more than one authority. Permits issued to such authorities should require joint preparation and implementation of the requirements of this strategy and specifically define the responsibilities and duties of each owner and operator. The POTW is responsible for planning and coordinating a system-wide approach. The individual owners and/or operators are responsible for their own discharges and must cooperate with the POTW. When a CSO is permitted separately from the POTW, the POTW's NPDES permit should cross-reference this for informational purposes.

4. Compliance Schedules

Compliance dates for water-quality and technology-based limitations are governed by the statutory deadlines in section 301 of the CWA. CSOs that discharge toxic pollutants into water bodies listed under paragraph (B) of section 304(1) of the CWA are additionally regulated under section 304(1). All CSOs that are subject to section 304(1) must achieve applicable water quality standards by the statutory deadlines in that Section (see Final Guidance for Implementation of Requirements Under section 304(1) of the CSW as Amended, March 1988 and forthcoming regulations). To the extent technology and water quality-based limitations cannot be met by the applicable dates, the permit should contain the statutory dates and public notice should be given simultaneously with an administrative enforcement order or other appropriate enforcement actions requiring compliance within the shortest reasonable time. Effluent limitations based upon newly developed water quality standards or new interpretations of existing water quality standards, however, may be covered by compliance schedules in the NPDES permit. This strategy is not to be considered a new development or new interpretation of water quality standards.

5. Minimum Technology-Based Limitations

All permits for CSO discharges should require the following technology-based limitations as a minimum BCT/BAT, established on a BPJ basis: (1) Proper operation and regular maintenance programs for the sewer system and combined sewer overflow points; (2) maximum use of the collection system for storage; (3) review and modification of pretreatment programs to assure CSO impacts are minimized; (4) maximization of flow to the POTW for treatment; (5) prohibition of dry weather overflows; and (6) control of solid and floatable materials in CSO discharges. Control measures, as mentioned below, may also be required on a case-by-case basis to address the particular circumstances of each combined sewer system and overflow point. All BPJ permits must consider the factors set forth at 40 CFR 125.3(d).

6. Additional CSO Control Measures

Cost is always a consideration when establishing technology-based limits in NPDES permits (40 CFR 125.3). However, the CWA under section 301(b)(1)(C) also requires any additional permit limits that may be necessary to protect State water quality standards. In the event additional control measures are necessary, the permittee should choose the most cost effective control measures which will insure compliance with water quality standards. For example, CSO control programs should be designed to incorporate best management practices and other low cost operational methods and only incorporate more expensive control measures if necessary to meet water quality standards.

Additional control measures that should be considered to bring all wet weather CSOs into compliance with technology-based and applicable State water quality standards include improved operation and maintenance, best management practices, system-wide storm water management programs, supplemental pretreatment program modifications, sewer ordinances, local limits program modifications, identification and elimination of illegal discharges, monitoring requirements, pollutant specific limitations, compliance schedules, flow minimization and hydraulic improvements, direct treatment of overflows, sewer rehabilitation, in-line and off-line storage, reduction of tidewater intrusion, construction of CSO controls within the sewer system or at the CSO discharge point, sewer separation, and new or modified wastewater treatment facilities.

7. Monitoring

Monitoring requirements for wet weather CSOs will vary based on the unique circumstances of each combined sewer system and overflow point. Cost effective monitoring requirements should be developed to serve three purposes: (1) To characterize CSO discharges, including their frequency, duration, and pollutant loadings; (2) to evaluate the water quality impacts of these discharges; and (3) to determine compliance with CSO permit requirements.

Discharge monitoring and/or modeling, wasteload allocations that address rainfall-related hydrological conditions, and often stream surveys are necessary to measure the extent to which CSO discharges are causing violations of technology-based limitations or water quality standards, and to design corrective programs. These monitoring/modeling requirements should be included in the initial CSO permits with reopener clauses to adjust permit limits as warranted.

Compliance monitoring requirements should also be included in CSO permits. These monitoring requirements should include collecting and reporting data on CSO events and insuring that no dry weather overflows occur. Monitoring may also include inspections or reports aimed at assuring that required facility improvements have been made and/or that best management practices and other operation and maintenance requirements are being effectively implemented. Permits should require development and implementation of a monitoring plan or program to assure data needs are met. In-stream monitoring is expected to be conducted after improvements are made to assure water quality standards are met.

8. Water Quality Standards Modification

Section 301(b)(1)(C) of the CWA mandates compliance with water quality standards. Permits must be written to ensure CSO discharges do not cause violations of water quality standards. The applicability of water quality standards should not be waived under any circumstances. In limited cases, it may be appropriate to adjust some water quality standards to address the impact of pollutants in wet weather flows more adequately. In these cases, this strategy encourages monitoring, modeling, or wasteload allocation procedures to better quantify influences and formulate control strategies to address rainfall-related hydrological conditions.

EPA sets forth the criteria for modifying State water quality standards at 40 CFR 131.10(g). In general, States may remove a designated use which is not an existing use as defined in 40 CFR 131.3, or establish subcategories of a use if the State can demonstrate that attaining the designated use is not feasible because of one of the six enumerated criteria listed at 40 CFR 131.10(g) including that controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact. States may not remove designated uses if they are existing uses, as defined in 40 CFR 131.3, unless a use requiring more stringent criteria is added; or if such uses will be attained by implementing effluent limits required under sections 301(b) and 306 of the Act and by implementing cost effective and reasonable best management practices for nonpoint source control. Additionally, prior to removing any uses or establishing subcategories of use, the State must provide notice and an opportunity for public hearing under 40 CFR 131.20(b). Changes in designated uses or the establishment of subcategories of uses must be made on a site-specific basis in accordance with the procedures specified in 40 CFR 131.10(j).

In instances where current State water quality standards waive or relax compliance with those standards during wet weather, these wet weather provisions should be revised during the next triennial review to ensure appropriate water quality standards coverage during wet weather events.

9. Funding

CSOs which cause adverse impacts on water quality and human health should be considered for funding. CSO corrections are fundable under both the Construction Grants and State Revolving Fund programs, although significant limitations apply.

Construction grants may be awarded for CSOs under the following CWA provisions: section 201(g)(1) Governor's 20 percent discretionary fund; section 201(n)(1) funding from State's regular allotment for CSOs that are a major State priority and meet the water quality criteria in regulation (40 CFR 35.2024); and section 201(n)(2) special national fund, from a reserve of 1 percent of construction grants appropriated in FY 89 and FY 90, for marine CSOs that meet the water quality criteria in the regulation.

Before a State Revolving Fund (SRF) may use the capitalization grant, State match, or repayments of first round loans from the grants for CSOs, the State must meet the first use requirements, i.e., its National Municipal Policy list of projects must all be in compliance, on an enforceable schedule, have an enforcement action filed, or have a funding commitment. Once the first use requirement is met, the SRF may make loans or provide other assistance for CSOs with 20 percent of its grant amount (or with other grant dollars for CSOs under section 201(n)(1)) and with all of its matching or other funds in excess of the grant amount. Before the first use requirement is met, the SRF may fund CSOs with State funds in excess of the matching, bond proceeds in excess of the grant and match, and repayments of loans made with non-grant funds. For further information regarding SRF funding, see *Initial Guidance for SRFs*, January 1988.

10. Permit Application Forms

CSOs that are permitted in conjunction with a POTW should be identified in the permit application form submitted to the permitting authority. POTWs must submit a Form A (EPA Form 7550–22) 180 days prior to discharge or permit expiration. CSOs that are permitted separately from a POTW, should submit a NPDES Form 2C (EPA Form 3510–2C) to the permitting authority 180 days prior to permit expiration. For new CSOs, NPDES Form 2D (EPA Form 3510–2D) should be submitted 180 days prior to discharge.

Dated: August 10, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89–21168 Filed 9–7–89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59274C; FRL-3642-9]

Certain Chemicals Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–89–23. The test marketing conditions are described below.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Andrea Pfahles-Hutchens, New Chemicals Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 382–2255.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–89–23. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-89-23. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 1l of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

T-89-23

Date of Receipt: July 26, 1989.

Notice of Receipt: August 18, 1989 (54 FR 34231).

Applicant: Confidential.

Chemical: (G) Organoaluminum compound.

Use: (G) Contained destructive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant environmental concerns for or releases of the test market substance. EPA did identify health concerns for corrosivity to eyes, skin, and the respiratory tract; however, exposure will be prevented through the required use of protective equipment. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: September 1, 1989.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 89-21163 Filed 9-7-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3642-6]

Proposed Administrative Penalty Assessment and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for an alleged violation(s) of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing administrative civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II administrative penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. Section 1319(g)(4)(a).

Class II proceedings are conducted under EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits." The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits." The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of the Guam Department of Public Works, Ordot Landfill, Ordot, Guam; EPA Docket No. IX-FY89-39; filed on August 30, 1989, Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415)974-8600; proposed penalty of $86,500 for discharging (leachate) without a permit as detected during Guam Environmental Protection Agency inspections.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits", review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing clerk indentified above. Unless otherwise noted, the administrative record for each of the proceedings is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to October 30, 1989.

Dated: August 25, 1989.

Keith Takata,

Acting Director, Water Management Division.

[FR Doc. 89-21165 Filed 9-7-89; 8:45am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-828-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: August 31, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 1989: Donley County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert G. Chappell,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-21171 Filed 9-7-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1000 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200059-001

Title: Port of Oakland Terminal Use Agreement

Parties: Port of Oakland (Port), Canadian Transport Company, Ltd. (CTC)

Synopsis: The Agreement amends the basic agreement (Agreement No. 224-200059) whereby the Port assigns certain facilities in the Port's Charles P. Howard Terminal to CTC. It acknowledges that the occasional discharge of Star Shipping A/S (Star) container cargo at the therein assigned premises, pursuant to Agreement No. 224-200261 between the Port and Star, will not be included in Agreement No. 224-200059 with respect to provisions covering payment of modified tariff rates. It also provides that CTC's vessels loading or discharging Star's containers at Star's assigned premises at the Port's Seventh Street Marine Terminal shall be subject to the modified dockage rates set forth in Agreement No. 224-200059.

Agreement No.: 224-2000117-002

Title: Port Authority of New York and New Jersey Terminal Agreement

Parties: Port Authority of New York and New Jersey Atlantic Container Line BV (ACL)

Synopsis: The Agreement provides for certain adjustments to the lease language relating to terminal improvements to be performed by ACL.

By Order of the Federal Maritime Commission.

Dated: September 5, 1989.

[FR Doc. 89-21120 Filed 9-7-89; 8:45 am]

BILLING CODE 6730-01-M

Issuance of Certificate (Casualty); Trans World Cruises, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Trans World Cruises, Inc./Arcalia Shipping Company, c/o Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005-1759.

Vessel: VASCO DA GAMA.

Dated: September 1, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-21099 Filed 9-7-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Albert P. Qualls, Jr. et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 22, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Albert P. Qualls, Jr.*, Fort Walton Beach, Florida; to acquire 68.05 percent of the voting shares of American National Financial Corporation, Panama City, Florida, for a total of 76.39 percent, and thereby indirectly acquire American National Bank, Panama City, Florida.

2. *James E. Dutmers, Jr.*, Traverse City, Michigan; to acquire 12.29 percent of the voting shares of Empire Banc Corporation, Traverse City, Michigan, and thereby indirectly acquire Empire National Bank of Traverse City, Traverse City, Michigan.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dominic P. Riggio and Ninfa Riggio*, Du Quoin, Illinois; to acquire an additional 2.52 percent of the voting shares of Du Quoin Bancorp, Inc., Du Quoin, Illinois, and thereby indirectly acquire Du Quoin National Bank, Du Quoin, Illinois.

Board of Governors of the Federal Reserve System, September 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21123 Filed 9-7-89; 8:45 am]

BILLING CODE 6210-01-M

United Bank Corporation of New York, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 27, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *United Bank Corporation of New York*, Downsville, New York; to acquire 100 percent of the voting shares of The First National Bank of Lisbon, Lisbon, New York.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois, and American National Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of Citizens Holding Corporation, Genoa City, Wisconsin, and thereby indirectly acquire Citizens State Bank, Genoa City, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Bank Corp.*, Fort Smith, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Fort Smith, Fort Smith, Arkansas.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Parkway Financial, Inc.*, Overland Park, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Parkway Bank, in organization, Overland Park, Kansas.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Tomball Capital Corporation*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Tomball National Bank, Tomball, Texas.

2. *Tomball National Bancshares, Inc.*, Tomball, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Tomball National Bank, Tomball, Texas.

Board of Governors of the Federal Reserve System, September 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21129 Filed 9-7-89; 8:45 am]

BILLING CODE 6210-01-M

Salin Bancshares of North Central Indiana, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 27, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Salin Bancshares of North Central Indiana, Inc.*, Indianapolis, Indiana; to acquire Skyline Village, an Indiana Limited Partnership, Corunna, Indiana, and thereby engage in promoting community welfare by the construction and operation of low income housing in Markle, Indiana, pursuant to section 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21125 Filed 9-7-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms submitted to the Office of Management and Budget for Clearance:

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C., Chapter 35). Since the last scheduled publication for August 25, 1989, the following package was submitted to OMB:

(For a copy of the package below, call the FSA Reports Clearance Officer on 202 252-5598.)

(0970-0018) Quarterly Work Incentive Demonstration Program Report. The information prescribed in the information collection requirements is used by the Secretary, Department of Health and Human Services to compare the effectiveness of the WIN demonstrations to the former WIN programs in the 24 states that elected to participate in this option. This collection is a renewal.

Number of Respondents: 24, *Frequency of Response:* 4, *Total Annual Responses:* 96, *Average per Response:* 15 hours, *Estimated Annual Burden:* 1440 hours.

OMB Desk Clearance Officer: Justin Kopca.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: August 28, 1989.

Sylvia E. Vela,

Acting Associate Administrator, Office of Management and Information Systems, FSA.

[FR Doc. 89-20918 Filed 9-7-89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 89N-0330]

Levamisole Hydrochloride for Use in Goats; Data; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of safety, effectiveness, and environmental data to be used in support of a new animal drug application (NADA) or supplemental NADA for the use of levamisole hydrochloride in goats. The data, contained in Public Master File (PMF) 5117, were compiled under Interregional Research Project No. 4 (IR-4), a national agricultural program for obtaining clearances for use of agricultural products for minor or special uses.

ADDRESSES: Submit NADA's to Document Control Section (HFV-16), Center for Veterinary Medicine, Food and Drug Administration, Rm. 6B-45, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Levamisole hydrochloride drench for use in goats is a new animal drug use under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug, levamisole hydrochloride is subject to section 512 of the act (21 U.S.C. 360b) requiring that its uses in goats be subject to an approved NADA or supplemental NADA. Goats are a minor species under 21 CFR 514.1(d). The IR-4 Project, Northeastern Region, New York State College of Veterinary Medicine, Cornell University, Ithaca, NY 14853-6401, has provided data and information to demonstrate safety and effectiveness to the target animal for use of levamisole hydrochloride drench in goats for treatment and control of stomach worms (*Haemonchus contortus* and *Trichostrongylus axei*) and intestinal worms (*T. colubriformis*). The PMF contains data from one adequate and well-controlled effectiveness study in goats and tissue residue data from a study in goats. IR-4 has also provided an environmental assessment of the proposed use.

The data and information are contained in PMF 5117. Sponsors of NADA's or supplemental NADA's may reference without further authorization the PMF to support approval of an application filed under 21 CFR 514.1(d). An NADA or supplemental NADA should include, in addition to a reference to the PMF, drug labeling and other information needed for approval, such as data concerning human food safety; data supporting extrapolation from major species to fulfill effectiveness requirements; manufacturing methods; facilities and controls; and information addressing the potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA may contact Dianne T. McRae (address above).

In accordance with the freedom of information provisions of Part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information in this PMF submitted to support approval of an application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Dated: August 31, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-21069 Filed 9-7-89; 8:45 am]

BILLING CODE 4160-01-M

Temporary Deferment of Activities Relating to Medical Device Submissions

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Office of Device Evaluation (ODE), Center for Devices and Radiological Health (CDRH) has completed the move from its former Silver Spring, MD location to Rockville, MD. FDA is announcing that during the period required for the move, June 26, 1989, through July 13, 1989 (18 calendar days), the agency, while continuing to accept mail, did not officially receive premarket notifications, premarket approval applications, or investigational device exemption applications, and did not continue its review of such pending submissions. The statutory review periods on pending submissions were suspended during this 18-day period needed for the relocation of ODE. The new address for submissions to ODE is set forth below.

ADDRESS: The new address for submissions to ODE is: Center for Devices and Radiological Health, Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850-4302.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 16, 1989 (54 FR 25705), FDA announced its intention to defer activities related to certain medical device submissions for about 10 days during ODE's move from Silver Spring, MD to Rockville, MD. FDA also announced that it would provide information on the exact period during which the activities were temporarily deferred, and provide the new address for submissions. The agency deferred its actions on new and existing submissions (as listed in the June notice) during the period June 26, 1989, through July 13, 1989 (18 calendar days). The new address for device submissions is provided above under the heading "**ADDRESSES**".

Dated: September 1, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-21131 Filed 9-7-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89D-0342]

Diagnostic Ultrasound Medical Devices; Fetal Doppler Ultrasound; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the Fetal Doppler Ultrasound Draft Guide and the summary minutes of two Obstetrics-Gynecology Devices Panel (the Panel) meetings at which the guide was discussed.

DATES: Comments by November 7, 1989.

ADDRESSES: Submit written requests for single copies of the guide and the summary minutes of the Panel meetings to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ-220), 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guide and the summary minutes of the Panel meetings to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

The guide and summary minutes of the Panel meetings and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lillian Yin, Center for Devices and

Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Drive, Rockville, MD 20850, (301) 427-1180.

SUPPLEMENTARY INFORMATION: For almost 10 years, clinical investigators have been studying various ways of using diagnostic Doppler ultrasound instrumentation to evaluate the developing fetus. During this period, FDA considered such devices to be investigational and issued a letter to this effect on March 7, 1986. Because of its concern about the use of high output Doppler ultrasound transducers for fetal applications, FDA issued a January 30, 1987, letter to the industry containing guidance about transducer labeling. Although FDA withdrew its guidance (October 30, 1987) in the face of strong opposition to such labeling, it continued to seek regulatory means of ensuring that Doppler ultrasound devices, with their potential for higher energy delivered to the fetus, would be used as safely as possible. Over the past 3 years, FDA has been working with the diagnostic ultrasound industry, the relevant medical communities, and academia to develop a regulatory policy to allow commercial marketing of fetal Doppler ultrasound instrumentation that is safe and effective.

On June 3 and 4, 1988, FDA participated in a workshop cosponsored by the American Institute of Ultrasound in Medicine (AIUM) and the National Electrical Manufacturers Association (NEMA) to address the educational needs associated with fetal Doppler ultrasound. Following that, FDA convened the Panel on August 29, 1988, to identify obstetric applications of Doppler ultrasound with proven effectiveness and the information needed to demonstrate the effectiveness of a given instrument. After reviewing and discussing the clinical studies described in the published literature (as well as the AIUM draft statement on ultrasound bioeffects), the Panel concluded that fetal Doppler ultrasound could be indicated for two instances: (1) Detection of fetal cardiac structural anomalies and (2) detection of intrauterine growth retardation. The Panel emphasized that, for both endorsed indications, the instrumentation must be used adjunctively together with other diagnostic techniques and only for high risk pregnancies. The Panel also noted the significant importance of adequate clinical training.

Following the August meeting, FDA drafted a guide outlining the information needed on a given instrument for each of the two designated indications for use, together with rationale to employ 510(k) premarket notification as the regulatory pathway for placing such devices on the market. In particular, FDA proposed to allow manufacturers to introduce instrumentation with specialized user-system feedback features that would enhance user awareness of acoustic output. FDA also outlined the types of preclinical and clinical testing that would need to be conducted. After collaborative sessions with AIUM and NEMA, FDA presented these proposals to the Panel on January 19, 1989, in an open public forum, for comment and deliberation. The Panel unanimously agreed with FDA's proposals, but emphasized its concern that fetal Doppler ultrasound for low risk (assymptomatic) populations remains investigational subject to premarket approval provisions.

FDA now seeks to make the above information available for comment to a wider audience by publishing this notice of availability of the draft guide and summary minutes of the Panel meetings where the development of these policies was discussed in detail.

Dated: September 1, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-21198 Filed 9-7-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Final Funding Categories, Final Review Criteria and Funding Preference for Training Grants for Acquired Immunodeficiency Syndrome (AIDS) Regional Education and Training Centers Program

The Health Resources and Services Administration announces the final funding categories, review criteria and funding preference which will be used in making grant awards for the (AIDS) Regional Education and Training Centers Program (ETCs) for Fiscal Year 1989, as authorized by Section 301 of the Public Health Service Act, as amended.

The (AIDS) Regional Education Training Centers will provide training for health care personnel in the care of people with Acquired Immunodeficiency Syndrome AIDS and other conditions related to infection with the Human Immunodeficiency Virus (HIV). The goal of the training is to prepare community primary care providers, including health care workers in Federal health facilities, health professional trainees, and faculty, to be able to counsel, diagnose, and manage such patients and to prepare selected trainees to act as instructors in their local areas. The centers will operate in collaboration with health professions schools, community hospitals, health departments, and other organizations involved in the provision of care to people with HIV related conditions.

Program Objectives

The purpose of the training grant program is to support the development of AIDS Regional Education and Training Centers (ETCs) for the health provider community. The program objectives for each center are to: (1) Provide multidisciplinary education and training to primary care providers, health professional trainees, and faculty on prevention and treatment of HIV infection and its implications, with particular emphasis on ambulatory care settings; (2) provide guidance in the development of a multidisciplinary approach to the management of HIV infection; (3) select and provide additional training to certain participants to qualify them for extending the training to others in their community; (4) develop multidisciplinary curricula for care of the HIV infected, including culturally relevant materials; (5) provide updates of new and timely information about HIV infection to primary and secondary health care providers; (6) serve as the support system for area health professionals through regional hotlines, clearinghouses, and referral activities, and (7) provide information on the availability of clinical trial opportunities in order to assist patients to gain access to such trials.

All public and nonprofit private entities are eligible to apply for new grants. Eligible entities may include, but are not limited to, schools in academic health science centers; professional associations; consortia of health care and community organizations, e.g., Area Health Education Centers (AHECS); public or nonprofit private hospitals; and health departments which could develop AIDS education and training programs for health care providers.

Proposed funding categories, review criteria and a proposed funding preference were published in the **Federal Register** of June 22, 1989, (54 FR 26256), for public comment. No comments were received during the 30-day comment period.

Therefore, the funding categories, review criteria and funding preference as proposed will be retained as follows:

Final Funding Categories

Funds have been appropriated for these purposes by Pub. L. 100-436. Approximately $9.3 million is available in Fiscal Year (FY) 1989 for competitive grants.

1. Applications (new or supplemental) will be accepted for the expansion of existing ETCs and/or the development of additional ETCs. For the purpose of this announcement, high incidence is defined as more than 400 new AIDS cases from February 6, 1988 to February 6, 1989 as indicated in the Centers for Disease Control *AIDS Weekly Surveillance Report* dated February 6, 1989. Approximately $1.1 million is available for this purpose to support an estimated 2 new ETC centers.

2. Supplemental applications from established ETCs will be accepted to enhance efforts to train workers in federally funded comprehensive health care services projects and develop and introduce AIDS curricula in health professions schools. Approximately $2.0 million will be awarded for these activities ($1.3 million for training and $700,000 for curriculum development). These funds are being made available only to existing ETCs because their expertise and community experience make it more efficient for prompt initiation of both of these activities. In addition, providing supplemental funding for the ETCs ongoing activities is the most expedient and cost effective mechanism to achieve the maximum results with the funds available.

3. Supplemental applications from established ETCs will be accepted to conduct specialized training of health professionals regarding alcohol and other drug abuse, with an emphasis on the effects of alcohol and other drug abuse on the prevention and management of the HIV epidemic. In the conduct of this training, the provider should utilize previously developed health professions training materials dealing with the abuse of alcohol and other drugs and HIV infection. Approximately $275,000 is available for this effort which is to provide funding for 2-3 substantive, coordinated activities. Funds for this effort are made available only to the existing ETCs because of their experience in training primary care providers in the management of HIV patients. They have an established training process which can quickly reach primary care health professionals. In addition, utilization of existing ETCs for this purpose avoids needless and inefficient duplication of effort.

Final Review Criteria

Applications for new training grants will be reviewed and rated according to the applicant's ability to meet the following review criteria:

1. The degree to which the project plan adequately provides for meeting the project specifications;
2. The potential effectiveness of the project in carrying out the purposes of the grant program;
3. The capability of the applicant to conduct the proposed activities in a cost efficient manner;
4. The soundness of the fiscal plan for assuring effective utilization of grant funds; and
5. The potential of the project to continue on a self-sustaining basis after the period of grant support.

Final Funding Preference

A funding preference will be accorded an applicant proposing a center in a State where no federally funded ETC program office exists.

This program is listed at 13.145 in the *Federal Catalog of Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: September 1, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-21129 Filed 9-7-89; 8:45am]

BILLING CODE 4160-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, August 25, 1989.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. 1990 Client Sample Survey of Outpatient Programs—NEW—This voluntary data collection will provide the National Institute of Mental Health, the States, and the mental health field with statistics on the sociodemographic, clinical, and service characteristics of clients in outpatient programs of specialty mental health organizations. A scientific sample will be selected of the client admissions and clients under care in these programs. *Respondents:* State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations; *Number of Respondents:* 730; *Number of Responses per Respondent:* 2.5; *Average Burden per Response:* 7.6153 hours; *Estimated Annual Burden:* 13,898 hours.

2. Alcoholism/Substance Abuse and Mental Health Tribal Provider Checklist—NEW—The Alcoholism/Substance Abuse and Mental Health Services program checklists will collect information from Tribal program staff under contract to the Indian Health Service (IHS), on the interaction between these two groups of health care workers in serving clients. Information collected will be used to plan joint training programs. The same information will be obtained concurrently from IHS employees who are counselors in these IHS programs. *Respondents:* Individuals; *Number of Respondents:* 590; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.33 hours; *Estimated Annual Burden:* 195 hours.

3. *Hearing Aid Devices:* Professional and Patient Labeling and Conditions for Sale (21 CFR 801.420 and 801.421)—0910-0171—The regulation requires that data useful in selecting, fitting and checking the performance of a hearing aid will be provided in a user brochure. Data is used by the physicians, audiologists, and dispensers to evaluate the appropriateness of a hearing aid for the user. Respondents: Businesses or other for-profit, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Reporting	83	25	1
Recordkeeping	12,000	3	1
Estimated annual burden	38,0795		

4. National Surveillance of Dialysis-Associated Hepatitis—0920-0033—This annual survey of hemodialysis facilities is conducted to determine the incidence and trend of hemodialysis-associated diseases so that appropriate control measures can be devised. *Respondents:* Businesses or other for-profit; *Number of Respondents:* 1,800; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .583 hours; *Estimated Annual Burden:* 1,050 hours.

BEST COPY AVAILABLE

5. *Export of Medical Devices:* Foreign Letters of Approval—NEW—U.S. Manufacturers wishing to export medical devices to a foreign country must obtain a letter of approval from the government of the receiving country for any device not approved for sale in the U.S. Review of the letter by Food and Drug Administration staff assures that the foreign government has no objection. *Respondents:* Businesses or other for-profit; small businesses or organizations; *Number of Respondents:* 400; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 2.5 hours; *Estimated Annual Burden:* 1,000 hours.

6. Piedmont Health Survey of the Elderly—0925–0267—This is a request for approval of the third telephone interview with study participants. This prospective epidemiologic study is comparing and contrasting the influence of physiological, behavioral, social and environmental forces on mortality, morbidity and health services utilization of the elderly in five North Carolina counties. *Respondents:* Individuals or households; *Number of Respondents:* 2,441; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 193 hours; *Estimated Annual Burden:* 471 hours.

7. Bureau Common Reporting Requirements (BCRR)—0915–0004—BCRR forms are used to collect performance information from health centers receiving grant or personnel support from the community health center, migrant health, national health service corps or Title X family planning programs to assure that resources are being used effectively in providing health care to underserved populations. *Respondents:* Non-profit institutions; *Number of Respondents:* 900; *Number of Responses per Respondent:* 2; *Average Burden per Response:* 23 hours; *Estimated Annual Burden:* 4,190 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: September 1, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89–21074 Filed 9–7–89; 8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–89–1917; FR–2606]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: September 8, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755–9075; TDD number for the hearing- and speech-impaired (202) 426–0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans' Administration,* No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landlording agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or suplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Finally, in lieu of declaring any particular property as excess, the landholding agency may decide to make the property available to the homeless for use on an interim basis.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more informaiton regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: (Military Facilities) HQ–DA, Attn: DAEN–ZCI–P–Robert Conte; Room 1E671 Pentagon, Washington, DC 20360–2600 (202) 693–4583; (Corps of Engineers civil works projects) Bob Swieconek, HQ–US Army Corps of Engineers, Attn: Cere–MN, 20 Massachusetts Avenue NW., Washington, DC 20415–1000 (202) 272–1750; GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405 (202) 535–7067; U.S. Navy: Andrea Wohfeld, Code 20 YAW, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332 (202) 325–7342. (These are not toll-free numbers.)

Dated: August 31, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Suitable Land—By State

Number of properties ()

Alabama

Fort Rucker (1),
Cairns Army Airfield,
Fort Rucker, AL.
Agency: Army.
Location: Property 63002T.

Comment: 720 sf trailer in restricted area; poor condition.

Kansas

Portion, Kanopolis Lake (1),
Elsworth County, KS.
Agency: GSA.
Location: Property 7–D–KS–499–C.

Comment: Parcel is 10.6 acres. Between ⅛ and ⅛ is suitable.

Suitable Buildings

Alabama

Fort Rucker (1),
Lowe Army Heliport,
Fort Rucker, AL.
Agency: Army.
Location: Property S4005T.

Comment: 800 sf trailer in partially restricted area; poor condition.

Arizona

Building KI–2000, Health Clinic (1),
Navaho Reservation,
Kaibeto, AZ.
Agency: GSA.

Comment: Use restricted to Navaho Indians (to be transferred to the Dept. of Interior).

Public Health Service Indian Hospital (1),
Fort Apache Reservation,
Whiteriver, AZ.
Agency: GSA.

Comment: 7 metal trailers on reservation; restricted to use of Indian tribe.

Georgia

Fort Benning Military Reservation (13),
Fort Benning, GA.
Agency: Army.
Location: Property 5267, 5268, 5269, 5270, 5271, 5272, 5273, 5274, 5275, 5276, 5277, 5278, 5279.

Comment: 13 trainee barracks, 4248 sf each; poor condition; no public transportation.

Fort Benning Military Reservation (1),
Fort Benning, GA.
Agency: Army.
Location: Property 5286.

Comment: Detachment dayroom, 1400 sf; no public transportation.

Fort Benning Military Reservation (1),
Fort Benning, GA.
Agency: Army.
Location: Property 278.

Comment: Very small storage building, 376 sf.

Fort Benning Military Reservation (1),
Fort Benning, GA.
Agency: Army.
Location: Property 275.

Comment: Large storehouse, 4055 st.

Fort Benning Military Reservation (1),
Fort Benning, GA.
Agency: Army.
Location: Property 276.

Comment: Small storage building, 438 sf.

Fort Benning Military Reservation (1),
Fort Benning, GA.
Agency: Army.
Location: Property 4954.

Comment: Custody facility, 3776 sf; estimated cost to modify for occupancy: $70,000.

Fort Benning Military Reservation (1),
Fort Benning, GA.
Agency: Army.
Location: Property 4092.

Comment: Small storage building, 336 sf.

Nebraska

VA Medical Center (20),
600 South 70th Street,
Lincoln, NE.
Agency: GSA.
Location: Building 20; 3420 sf.

Comment: Building interior has been severely vandalized. Eligible as historic site.

New York

Stewart Army Subpost (1), 1210 Brenning Road, New Windsor, NY. Agency: Army. Location: Property 1942.

Comment: One building, 25,690 sf.

Unsuitable land

California

Waterline—Keswick Dam Road (1), Redding, CA. Agency: GSA. Location: Property 9–B–CA–1302.

Comment: Property is a waterpipe; government does not own land.

New York

Naval Reserve Center (4), 112 House Avenue, Freeport NY. Agency: Navy. Location: Property 42, 718 SF; 40, 990 SF.

Comment: Contamination; partially buried oil tanks; all buildings contain extensive friable asbestos.

Unsuitable Buildings

Hawaii

Portion, South Point Air Force Station (6), Naalehu, HA. Agency: GSA. Location: Approximately 70 miles SW of Hilo and 85 miles SE of Kona.

Comment: Abandoned fuel tank which may be leaking; exposed friable asbestos.

Idaho

Sawtooth National Recreation Area (14), Ketchum, ID. Agency: GSA. Location: Property 9–A–ID–506D.

Comment: Remote area; no existing means to provide power water, sewage, heating systems.

North Carolina

Building 1–3358 (1), Fort Bragg, NC. Agency: Army.

Comment: Building unsafe due to termite infestation.

New York

Naval Reserve Center (4), 112 House Avenue, Freeport, NY. Agency: Navy. Location: 42, 718sf; 40, 990sf.

Comment: Contamination; within 2000 ft from flammable or explosive material; partially buried tank; all buildings contain extensive friable asbestos.

Utah

Tooele Army Depot (282), Tooele, UT. Agency: Army. Location: Various buildings.

Comment: Secured facility with no alternative public access.

Tooele Army Depot, North Area (3), Tooele, UT. Agency: Army. Location: Property 130, 105, 132.

Comment: Friable asbestos.

Virginia

Fort Lee (2), Shop Road, Fort Lee, VA. Agency: Army. Location: Property 6005, 6011.

Comment: Very serious deterioration of roof and floors; buildings must be removed from site.

Fort Lee (3), Byrd Avenue, Fort Lee, VA. Agency: Army. Location: Property 4100, 4101, 4103.

Comment: Serious deterioration of roof and floors; major cannibalization of useful parts.

West Virginia

Former Naval & Marine Reserve Center (1), 13th and Ohio River, Wheeling, WV. Agency: Navy.

Comment: Building only, land leased from city; serious friable asbestos.

[FR Doc. 89–21203 Filed 9–7–89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

Applicant: U.S. Fish and Wildlife Service, File No. PRT 690038, Alaska Office of Fish and Wildlife Research, 1011 E. Tudor Road, Anchorage, Alaska 99503

Type of Permit: Scientific Research

Name and number of Animals: Polar bear (*Ursus maritimus*); up to 200 per year

Summary of Activity to be Authorized: The applicant proposes to amend his current marine mammal permit PRT 690038 to include testing of the Bio-Electrical Impedance (BIA) as a means of measuring the fat and fat-free body mass of polar bears that are already authorized to be taken under the permit

Source of Marine Mammals for Display: Alaska

Period of Activity: Through 1990

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), P.O. Box 3507, Washington, DC 22203–3507, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application(s) are available for review during normal business hours (7:45 am to 4:15 pm) at 4401 Fairfax Drive, Room 430, Washington, DC.

Dated: September 1, 1989.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89–21070 Filed 9–7–89; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[MT-060-09-4410-12]

Closure of Public Lands; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency area closure of public land.

SUMMARY: Notice is hereby given that effective immediately all public lands in the Sweet Grass Hills, northwest of Chester, Montana are closed to all motorized vehicle uses, except those authorized by a permit. The closed lands are described as follows:

West Butte of the Sweet Grass Hills.

T. 37., R. 1 E., PMM.
  Section 13: Lots 4, 5 SE¼SW¼, SW¼SE¼
  Section 14: Lots 4, 5 W½NE¼, E½SE¼, Sw¼SW¼
  Section 15: SE¼SE¼
  Section 24: Lots 1–4, W½E½, NE¼NW¼, E½NW¼, SW¼SW¼
  Section 25: Lots 1–3, 5, 6, 8–10, SW¼NE¼, S½NW¼, NE¼NW¼, NW¼SE¼
  Section 26: SE¼NE¼
T. 37 N., 2 E., PMM.
  Section 19: Lot 4
  Section 20: NW¼NE¼, NE¼NW¼
  Section 30: Lots 1–4, S½NE¼, SE¼NW¼, E½SW¼, SE¼
  Section 31: Lots 1–3, NE¼, E½NW¼, NE¼SW¼, N½SE¼

East Butte of the Sweet Grass Hills.

T. 36 N., R. 4 E., PMM.
  Section 13: NW¼NE¼, W½
  Section 24: Lots 1–4, N½NE¼, SW¼NE¼, NE¼NW¼
  Section 25: Lots 1, 2, 4, 6, E½NE¼
  Section 36: Lots 1–3, 5
T. 36 N., 5 E., PMM.
  Section 6: SE¼NE¼, E½SE¼
  Section 7: E½
  Section 8: W½SW¼
  Section 17: W½W½
  Section 18: N½NE¼
  Section 19: Lots 2–9, Patent 20510, Patent 20511, SE¼SW¼
  Section 20: Lots 1–5, Patent 20511, W½ NE¼, SE¼NE¼, NW¼, NW¼SE¼
  Section 29: Lots 1–5, 8–10, SW¼NW¼, N½SW¼, SW¼SW¼
  Section 30: Lots 1–4, S½NE¼, E½W½, SE¼
  Section 31: Lot 1, E½NE¼, NW¼NE¼, NE¼NW¼
  Section 32: Lot 1–3, E½NE¼, SW¼NE¼

Middle Butte of the Sweet Grass Hills

T. 36 N., R. 3 E., PMM.
  Section 29: SW¼NE½, S½NW¼, SW¼, W½SE¼, NE¼SE¼
  Section 30: SE¼SE¼
  Section 31: NE¼NE¼
  Section 32: NE¼NE¼, N½NW¼

Authority for this closure is 43 CFR 8341.2. The closure will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Doug Burger, Great Falls Resource Area Manager, P.O. Box 2865, Great Falls, MT 59403.

Wayne Zinne,

District Manager.

[FR Doc. 89–21144 Filed 9–7–89; 8:45 am]

BILLING CODE 4310-DN-M

Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior, Susanville District Grazing Advisory Board, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of the Interior's discretionary authority on May 14, 1986, will meet on September 28, 1989.

The September 28 meeting will begin at 10:00 a.m. at the Surprise Resource Area Office, Bureau of Land Management, 602 Cressler Street, Cedarville, California.

Subjects to be covered during the meeting will be a discussion about FY 1990 proposed range improvement projects, proposed helicopter gathering of wild horses and burros for FY 1990, a report of the progress of R.C. Roberts trailing permit, expenditure of Section 10 funds, a report on FY 1989 progress, and

a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 p.m. to 4:30 p.m. on September 28, 1989 or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130 by September 25, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Herrick E. Hanks,

District Manager.

[FR Doc. 89–21167 Filed 9–7–89 8:45 am]

BILLING CODE 4310-40-M

[NM-030-09-4333-02]

Las Cruces District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The meeting will be held at the conference room of the A. B. Cox Visitor Center in the Organ Mountains east of Las Cruces, New Mexico. The purpose of the meeting is to elect a new Chairman, and to review general programs that are currently in progress in the Las Cruces District.

The agenda is:

1. 10:00 a.m.: Opening remarks, election of chairman
2. 10:15 a.m.: General program overview
3. 11:00 a.m.: Organ Mountains Festival review
4. 11:15 a.m.: National Conservation Area discussion
5. 11:30 a.m.: Lunch
6. 1:00 p.m.: Public Comment Period
7. 1:15 p.m.: Resource Management Plan Discussion—a. Socorro Resource Area; b. Mimbres Resource Area; c. McGregor Range
8. 2:15 p.m.: Boots and Saddles Tour Legislation
9. 2:30 p.m.: Recreation 2000
10. 3:00 p.m.: Adjourn

DATE: Meeting will be held on Wednesday, October 4, 1989.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, Las Cruces District, Bureau of Land Management, 1800 Marquess, Las Cruces, NM 88005 or at (505) 525–8228.

Dated: September 1, 1989.

H. James Fox,

District Manager.

[FR Doc. 89–21145 Filed 9–7–89; 8:45 am]

BILLING CODE 4310-FB-M

[CA-010-09-4212-13, CA 25864]

Realty Action—Acquisition of Private Lands by Exchange in Mariposa County, California

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described private lands are being considered for acquisition by the United States by way of a land exchange under sec. 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Offered Private Land:

Mariposa County, California

T. 3 S., R. 18 E., MDM
  Sec. 25: NE¼SE¼, E½SW¼
  Sec. 35: SE¼NE¼, W½NE¼, NW¼SE¼
  Sec. 36: N½NW¼
T. 4 S., R. 18 E., MDM
  Sec. 2: lots 6 through 11, inclusive
  Sec. 10: lots 18 and 19

Aggregating 600 acres, more or less.

The proponent is the Trust for Public Land, 116 New Montgomery Street, San Francisco, California 94105.

This notice deals exclusively with the offered private lands listed above. This is because the Federal lands were previously published for exchange to the proponent and the 45 day public comment period has been completed. The publication of this notice is for the purpose of soliciting comments on the offered private lands as listed above and does not reopen the comment period for the selected Federal lands previously published. The selected Federal lands were previously published in the **Federal Register** as follows: Vol. 54, No. 2, Jan. 4, 1989, pg. 194 (CA 23982); Vol. 54, No. 21, Feb. 2, 1989, pg., 5282 (CA 23982 amendment); Vol. 53, No. 42, March 3, 1988, pg. 6878 (CA 21707).

The purpose for acquiring the offered private land is to improve the Bureau's management capabilities on the Merced River. The United States would be acquiring river-front properties that are adjacent to several thousand acres of public land. This exchange is particularly significant because the land to be acquired by the U.S. is located on a section of the Merced River that is a designated part of the National Wild and Scenic River System. This action involves the transfer of both the surface and mineral estate for all parcels to be exchanged.

DATE: Comments concerning the offered private lands listed in this notice may be submitted to the District Manager on or before October 23, 1989. Any comments need to specify which parcel is being referred to.

ADDRESS: Comments should be sent to the District Manager, c/o the Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630.

FOR FURTHER INFORMATION CONTACT: Mike Kelley at (916) 985–4474 or at the address listed above.

Date: September 1, 1989.

D. K. Swickard,

Area Manager.

[FR Doc. 89–21146 Filed 9–7–89; 8:45 am]

BILLING CODE 4310-JB-M

Realty Action—Direct Sale of Public Lands in Lane County, Oregon

[OR-45323; OR-090-09-4212-14: GP9-325]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—direct sale of public lands in Lane County, Oregon.

The following land is suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

T. 21 S., R. 2 W.,
  Sec. 7: Lot 2

Containing 0.26 acre

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered to Donovan R. and Donna D. Holbrook using the direct sale procedures authorized under 43 CFR 2711.3–3. Direct sale is appropriate since the land has been inadvertently occupied by part of the Holbrook' house and yard for many years and direct sale will resolve the unauthorized use while preserving the Holbrook's equity in the improvements.

The terms, conditions, and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. All materials in the land will be reserved to the United States in accordance with section 209 of the Federal Land Policy and Management Act of 1976.

3. Patent will be issued subject to all valid existing rights and reservations of record.

4. The sale will be subject to:

a. Such rights for public road purposes as Lane County, Oregon, or its successors in interest may have pursuant to a road right-of-way R.S. 2477 (43 U.S.C. 932).

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Eugene District Office, P.O. Box 10226, 1255 Pearl Street, Eugene, Oregon 97440.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: September 1, 1989.

Ronald L. Kaufman,

District Manager.

[FR Doc. 89–21147 Filed 9–7–89; 8:45 am]

BILLING CODE 4310-33-M

[OR-090-09-4212-13; GP9-324: OROR 45339]

Realty Action—Exchange; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange of public lands in Lane County, Oregon.

SUMMARY: The following described public land is being considered for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1986 (43 U.S.C. 1716):

Willamette Meridian, Oregon

T. 15 S., R. 6 W.
  Sec. 35: NE¼NE¼
  Containing 40.00 acres in Lane County.

In exchange for these lands, the United States will acquire the following described lands from Rosboro Lumber Company:

Willamette Meridian, Oregon

T. 17 S., R. 3 E.
  Sec. 3: Lot 4
  Sec. 9: Lot 5
  Sec. 11: Lot 3
  Containing 80.37 acres in Lane County.

The purpose of the exchange is to bring into public ownership three parcels of land on the McKenzie River with important public values. The public land to be exchanged in an isolated parcel without legal access. The private lands being offered have important scenic quality, recreation, wildlife habitat and timber values. These lands will be managed to preserve existing scenic qualities and, where compatible, for multiple use. The public interest will be well served by making this exchange. The final determination on disposal will await completion of an environmental assessment.

The value of the lands to be exchanged is approximately equal and adjustments in the volume of timber on the lands to be exchanged will be made in order to bring the values as close as possible upon completion of the final appraisal of the lands. Full equalization of values will be achieved by payment to the United States of funds in an amount not to exceed 25 percent of the total value of the public land to be transferred. All mineral rights are expected to be transferred with the surface with the exception of oil and gas rights on the federal tract.

The exchange will be subject to:

1. All valid existing rights, including any right-of-way, easement, permit or lease of record.

2. A reservation to the United States of a right-of-way for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

Publication of this notice in the **Federal Register** segregates the public land, described above, from apropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years, whichever occurs first.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Eugene District Manager at the address shown below. Any objections will be reviewed by the Oregon State Director, Bureau of Land Management, who may sustain, vacate, or modify this reality action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning this exchange is available for review at the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 683–6403.

Date of Issue: August 30, 1989.

Ronald L. Kaufman,

District Manager.

[FR Doc. 89–21148 Filed 9–7–89; 8:45 am]

BILLING CODE 4310-33-M

[NM-040-4410-08]

Kansas Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability: proposed issues and planning criteria.

SUMMARY: The Bureau of Land Management (BLM), Tulsa District, Oklahoma Resource Area (ORA), has completed the public scoping process for the Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for BLM managed Federal lands and minerals throughout the State of Kansas. The result of this scoping effort, the Issue and Criteria document, proposes oil and gas leasing as the only issue to be addressed and analyzed within the Kansas RMP/EIS.

AVAILABILITY: The Issue and Criteria document has been sent to all persons on the Kansas RMP/EIS mailing list. Additional copies of the Issue and Criteria document are available upon request from the ORA manager at the address below.

DATE: Comments relating to the Issue and Criteria document will be accepted until November 6, 1989.

ADDRESS: Comments on the RMP issues and criteria or requests to be included on the mailing list sould be sent to: Paul W. Tanner, Area Manager, Oklahoma Resource Area, 200 NW Fifth Street, Room 548, Oklahoma City, OK 73102.

FOR FURTHER INFORMATION CONTACT: Paul W. Tanner, Area Manager, or Brian Mills, RMP Team Leader, Oklahoma Resource Area, (405) 231–5491.

SUPPLEMENTARY INFORMATION: The planning area for the Kansas RMP includes all BLM managed Federal surface and mineral estate within Kansas. The Federal mineral estate encompasses over 744,000 acres of both split estate minerals (Fed. minerals under private or State surface) and minerals under other Federal surface management agencies lands. Not included, are Federal minerals under the U.S. Forest Service managed Cimarron National Grassland. Planning on the USFS lands will be accomplished by the Pike and San Isabel National Forest.

The public has been invited to participate in this land use planning effort, beginning with the identification of issues and planning criteria. BLM held a series of public scoping meetings at which time oral comments and suggestions were accepted.

Public notice for coal and other resource information and indications of interest and needs pursuant to 43 CFR 3420.1–2, for inclusion in the Kansas RMP, was solicited through both the **Federal Register** and News Releases. Coal companies, state and local governments, and the general public were encouraged to submit information to the BLM to assist in the determinations of coal development potential and possible conflicts with other resources.

The lack of interest in developing the Federal coal resource has resulted in the elimination of coal considerations as a potential planning issue. The issue to be addressed by the Kansas RMP will be Federal Oil and Gas Leasing and Development. This issue will include:

1. Determining which areas will be open for leasing and development subject to standard lease terms and conditions.

2. Determining which areas will be open for leasing and development subject to minor constraints such as seasonal restrictions, (wildlife, recreation, etc.).

3. Determining which areas will be open for leasing and development subject to major constraints such as No-Surface Occupancy (NSO) stipulations on areas larger than 40 acres in size or more than ¼ mile in width.

4. Determining which areas will be closed to leasing.

5. Determining which of the previous listed categories existing leases will be subject to upon lease termination.

The proposed planning criteria includes:

1. All proposed actions must comply with laws, executive orders and regulations.

2. For each proposed action, the resource outputs must be reasonable and achievable with available technology.

3. All proposed actions must recommend resource allocations which are in accordance with the principles of multiple-use and sustained yield.

4. All proposed actions must evaluate and consider long term benefits to the public in relation to short term benefits.

5. All proposed actions must provide for the orderly development of leasable minerals while containing environmental impacts to a minimum.

The planning issue and proposed planning criteria are presented for public comment and are subject to change based upon such public comment.

Comments should be received by November 6, 1989. The planning team will seek public involvement throughout the planning process.

Complete records of all phases of the planning process will be available for public review at the Oklahoma Resource Area Office at the address above. Draft and final RMP/EIS documents will be available upon request.

Dated: August 31, 1989.

Larry L. Woodard,

State Director.

[FR Doc. 89–21126 Filed 9–7–89; 8:45 am]

BILLING CODE 4310-FB-M

[ID-943-09-4214-11; IDI-05384]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that a 149.15 acre withdrawal for eight recreation and two administrative sites continue for an additional 30 years. The land is being used for recreation and administrative site purposes. These lands will remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received, on or before September 7, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–344–1735.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 1376 be continued for a period of 30 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following described land:

Boise Meridian

Phillips Creek Recreation Area
T. 15 N. R. 14 E. (unsurveyed)
  Sec. 27, metes and bounds description within SE¼SW¼.
Josephus Lake Recreation Area
T. 14 N., R. 11 E. (unsurveyed)
  Sec. 17, metes and bounds description within N½N½NE¼SE¼ and S½S½SE¼NE¼.
Seafoam Administrative Site
T. 14 N., R. 11 E. (unsurveyed)
  Sec. 13, metes and bounds description within SW¼SW¼;
  Sec. 14, metes and bounds description within N½NW¼.
Wildhorse Recreation Area
T. 6 N., R. 20 E. (unsurveyed)
  Sec. 29, metes and bounds description within NE¼.
Flat Rock Recreation Site
T. 11 N., R. 15 E. (unsurveyed)
  Sec. 8, metes and bounds description within SE¼SE¼.
Blind Creek Recreation Site
T. 11 N., R. 15 E. (unsurveyed)
  Sec. 17, metes and bounds description within NW¼SW¼.
Beaver Creek Recreation Area
T. 13 N., R. 11 E. (unsurveyed)
  Sec. 35, metes and bounds description within S½.
Mill Creek Recreation Site
T. 13 N., R. 17 E. (unsurveyed)
  Sec. 10, metes and bounds description within NE¼NE¼.
Indian Springs Administrative Site
T. 15 N., R. 13 E.
  Sec. 2, metes and bounds description within NW¼NE¼.

The areas described aggregate 149.15 acres in Custerand Lemhi Counties.

The withdrawal is essential for protection of substantial capital improvements on the recreation and administrative sites. The withdrawal closed the described land to surface entry and mining but not to mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 30, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89-21149 Filed 9-7-89; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-050-06-4333-11]

Arizona: Long-Term Visitor Permit Program for 1989–1990 and Subsequent Use Seasons; Revision to Existing Supplementary Rules; Yuma District, Arizona, and California Desert District, California

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Changes to the Long-Term Visitor Permit Program for the 1989–1990 and subsequent use seasons, and revisions to and establishment of supplementary rules in the Yuma District, Arizona, and the California Desert District, California.

SUMMARY: The BLM's Yuma District and California Desert District announce revisions to the "Long-Term Visitor Program" for the 1989–1990 and subsequent use seasons. The program, which was instituted in 1983, establishes an annual long-term use season from September 15 to April 15. During this time, visitors who wish to camp on public lands in one location for extended periods must stay in designated Long-Term Visitor Areas (LTVAs) and purchase a $25 LTVA permit. Beginning with the 1989-1990 use season, the following modificaitons are being made to the Long-Term Visitor Program:

1. The La Posa LTVA may no longer be occupied without an LTVA or a guest permit during the period of operation of the annual Quartzite Pow Wow.

2. In addition to rules of conduct set forth in Title 43 of the Code of Federal Regulations (CFR), Part 8365.1–6, the following changes to the LTVA supplementary rules established September 15, 1988, apply to designated LTVAs.

a. Stipulation 7 shall be reworded to read as follows: "7. Unoccupied Camping Units. Camping sites or dwelling unit(s) must not be left unoccupied within any LTVA for periods of greater than 5 days unless approved in advance by the authorized officer."

b. Stipulation 12 shall be reworded to read as follows: "12. Self-Contained Vehicles. In Pilot Knob, Dunes Vista, Midland, Tamarisk, and Hot Springs LTVAs, camping is restricted to self-contained camping units only. The La Posa LTVA is restricted to self-contained camping units except within 500 feet of a BLM vault toilet. The Imperial Dam LTVA is also restricted to self-contained units except in the South Mesa area. Self-contained units must have a permanently affixed wastewater holding tank of 10 gallon minimum capacity."

c. Stipulation 13 shall be divided into two stipulations. The reference to speed limits will remain stipulation 13 and read as follows: "The speed limit in LTVAs is 15 MPH, or as otherwise posted." The reference to off-highway vehicle use shall be made a separate stipulation, to read as follows: "14. Off-Highway Vehicle Use. Motorized vehicle free play is prohibited. Motorized vehicles should be used in LTVAs only for access to and from campsites."

d. Stipulation 15 shall be reworded to read as follows: "15. Pets. Pets must be kept on a leash at all times. Keep an eye on your pets. Unwatched pets may fall prey to coyotes or other desert predators. Pet owners are responsible for cleanup and sanitary disposal of pet waste."

e. Stipulation 18 shall be reworded to read as follows: "18. Quiet hours. Quiet hours are from 10 p.m. to 6 a.m. in accordance with applicable State time zone standards."

All other stipulations as established on September 15, 1988, shall remain the same.

EFFECTIVE DATE: September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Don Applegate, Outdoor Recreation Planner, Yuma District, 3150 Winsor Avenue, Yuma, Arizona 85365, 602–726–6300; or David Mensing, Outdoor Recreation Planner, California Desert District, 1695 Spruce Street, Riverside, California 92507, 714–351–6402.

SUPPLEMENTARY INFORMATION: The purpose of the Long-Term Visitor Program is to provide areas for long-term winter camping use. The sites designated as LTVAs are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed during the land management planning process, and environmental assessments were completed for each site location.

The program was established to safely and properly accommodate the increasing demand for long-term winter visitation and to provide natural resource protection through improved management of this use. The designation of LTVAs assures that specific locations are available for long-term use year after year and that inappropriate areas are not used for extended periods.

Visitors may camp without an LTVA permit outside of LTVAs, on public lands not otherwise posted or closed to camping, for up to 14 days in any 28-day period. The Mule Mountain LTVA is also open to short-term camping without an LTVA permit for a period not to exceed 14 days.

Authority for the designation of LTVAs is contained in 43 CFR 8372.0–3 and 0–5(g). Authority for the establishment of a Long-Term Visitor Permit Program is contained in 43 CFR 8372.1, and for the payment of fees is contained in 36 CFR part 71.

The authority for establishing supplementary rules is contained in CFR Title 43, Chapter II, 8365.1–6. The LTVA supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected and posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punished by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Maps showing the location of all LTVAs are available at both the California Desert District and Yuma District Offices.

Ed Hastey,

State Director, California.

D. Dean Bibles,

State Director, Arizona.

[FR Doc. 89-21186 Filed 9-7-89; 8:45 am]

BILLING CODE 4333-12-M

[CA-010-09-4212-13: CA 19806 GP9-016]

Realty Action; Correction To Exchange of Public Lands in San Benito County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of notice of realty action, exchange of public and private lands (CA 19806).

SUMMARY: This document corrects the Notice of Realty Action (CA 19806) published in Vol. 53, pages 8807–8808, March 17, 1988. The above referenced notice should have included the following described land:

Mt. Diablo Meridian, California

T. 15 S., R. 9 E.
Section 10, E½SE¼
Containing 80.00 acres.

SUPPLEMENTAL INFORMATION: The above described land was inadvertently omitted from the land description in the above notice which is hereby corrected to include it. The parcel is contiguous with the rest of the land to be exchanged to the Bureau of Land Management.

For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Hollister Resource Area Office, P.O. Box 365, Hollister, CA 95024–0365.

FOR FURTHER INFORMATION CONTACT: Steve Addington, Hollister Resource Area Office (408) 637–8183, or at the above address.

Dated: September 1, 1989.

Robert E. Beehler,

Area Manager.

[FR Doc. 89-21185 Filed 9-7-89; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Development Operations Coordination Document; Kerr-McGee Corp.

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4832, Block 108, Main Pass Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Hopedale, Louisiana.

DATE: The subject DOCD was deemed submitted on August 28, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Warren Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 30, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-21150 Filed 9-7-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Kerr-McGee Corp.

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed Development Operations Coordination document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5479, Block 28, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 28, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 30, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–21151 Filed 9–7–89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 7804, Block 107, Main Pass Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Hopedale, Louisiana.

DATE: The subject DOCD was deemed submitted on August 30, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Dated: August 30, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–21152 Filed 9–7–89; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

a.1. Parent corporation and address of principal office: K mart Corporation, 3100 West Big Beaver Road, Troy, Michigan 48084.

2. Wholly-owned subsidiaries which will participate in the operations and their states of incorporation: Builders Square, Inc., Delaware; Huck Fixture Company, Illinois; K mart Apparel Corp., New York; Pay Less Drug Stores Northwest, Inc., Maryland; Walden Book Co., Inc., New York.

b.1. Parent corporation: Quality Trailer Products Corporation, 633 N.W. Parkway, Azle, TX 76020.

2. Wholly owned subsidiaries and State of Incorporation (I) DDR Machine Corporation, Texas; (II) Mt. Pleasant Trailer Products, Inc., Texas; (III) Trailer Products of Ocala, Texas.

Noreta R. McGee,

Secretary.

[FR Doc. 89–21168 Filed 9–7–89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31526]

Commonwealth Railway Incorporated—Lease, Operation, and Acquisition Exemption—Rail Lines in Portsmouth, Chesapeake, and Suffolk, VA

Commonwealth Railway Incorporated (CRI) has filed a notice of exemption: (1) To acquire and operate Norfolk and Western Railway Company's (NW) 3.92-mile line of railroad between milepost F–0.08 at West Norfolk in the City of Portsmouth, VA, and milepost F–4.0 at Churchland in the City of Chesapeake, VA; and (2) to lease and operate (with an option to purchase) NW's 12.5-mile line of railroad between milepost F–4.0 at Churchland. The transaction is expected to be consummated immediately after the effective date of this exemption.

And comments must be filed with the Commission and served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 4 I.C.C.2d 305 (1988).[1]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 31, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–20987 Filed 9–7–89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent order in *United States* v. *Acton Corporation, et al.,* Civil Action No. 89–3652 has been lodged with the United States District Court for the District of New Jersey on August 25, 1989. The proposed consent order concerns cleanup of a hazardous waste site known as the Lone Pine Landfill Site, which is located in Freehold Township, Monmouth County, New Jersey. The proposed consent order requires defendants to perform a cleanup at the Site, and pay certain United States Environmental Protection Agency costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Acton Corporation, et al.,* D.J. Ref. 90–11–2–294.

The proposed consent order may be examined at the office of the United States Attorney, 502 Federal Building, 970 Broad Street, Newark, New Jersey 07102, and the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the consent order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, Washington, DC 20530. A copy of the proposed consent order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $24.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Myles E. Flint,

Acting Assistant Attorney General, Land Land Natural Resources Division.

[FR Doc. 89–21153 Filed 9–7–89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume State and page number(s).

Volume I

New Jersey:	
NJ89–7 (Sept. 8, 1989).	p. 678a, pp. 678b–678f.

Volume II

Missouri:	
MO89–7 (Sept. 8, 1989).	p. 683, p. 684.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia:	
DC89–1 (Jan. 6, 1989)..	p. 77, pp. 82–84.
Delaware:	
DE89–2 (Jan. 6, 1989)..	p. 93, pp. 94–96.
Maryland:	
MD89–1 (Jan. 6, 1989).	p. 411, 412.
Maryland:	
MD89–15 (Jan. 6, 1989).	p. 449, p. 450.
New Jersey:	
NJ89–2 (Jan. 6, 1989)...	p. 613, pp. 617–620.
NJ89–3 (Jan. 6, 1989)...	p. 633, p. 635.
NJ89–7 (Jan. 6, 1989)...	p. 678a, pp. 678b–678f.
New York:	
NY89–2 (Jan. 6, 1989)..	p. 683, pp. 685,690.
NY89–6 (Jan. 6, 1989)..	p. 727, p. 730.
NY89–13 (Jan. 6, 1989).	p. 799, p. 801.

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[1] CRI certifies that it has identified to the State Historic Preservation Officer all sites and structures 50 years old and older that will be transferred as a result of this transaction.

NY89-18 (Jan. 6, 1989).	p. 827, pp. 828-829.
Pennsylvania:	
PA89-1 (Jan. 6, 1989)..	p. 837, pp. 838,840.
PA89-6 (Jan. 6, 1989)..	p. 893, pp. 894-895.
PA89-11 (Jan. 6, 1989).	p. 937, p. 938.
PA89-12 (Jan. 6, 1989).	p. 941, pp. 942-943.
PA89-14 (Jan. 6, 1989).	p. 947, pp. 949-950.
PA89-16 (Jan. 6, 1989).	p. 961, p. 962.
PA89-19 (Jan. 6, 1989).	p. 977, pp. 978-980.
PA89-21 (Jan. 6, 1989).	p. 989, pp. 990-991.
PA89-23 (Jan. 6, 1989).	p. 1005, pp. 1005-1006.
Virginia:	
VA89-50 (Jan. 6, 1989).	p. 1188ccc, p. 1188ddd.
VA89-51 (Jan. 6, 1989).	p. 1188eee, p. 1188fff.
Volume II	
Arkansas:	
AR89-1 (Jan. 6, 1989)..	p. 3, p. 4.
Missouri:	
MO89-7 (Jan. 6, 1989)..	p. 683, p. 684.
MO89-12 (Jan. 6, 1989).	p. 713, p. 714.
Ohio:	
OH89-2 (Jan. 6, 1989).	p. 787, p. 788.
OH89-29 (Jan. 6, 1989).	p. 869, pp. 869,871.
Wisconsin:	
WI89-4 (Jan. 6, 1989)..	p. 1149, p. 1150.
Volume III	
Alaska:	
AK89-1 (Jan. 6, 1989).	p. 1, pp. 2-3.
Colorado:	
CO89-4 (Jan. 6, 1989)...	p. 123, p. 124.
Hawaii	
HI89-1 (Jan. 6, 1989)...	p. 135, p. 136.
North Dakota:	
ND89-2 (Jan. 6, 1989).	p. 229, pp. 230-231.
ND89-3 (Jan. 6, 1989).	p. 235, p. 236.
ND89-5 (Jan. 6, 1989).	p. 240a, p. 240b.
South Dakota:	
SD89-2 (Jan. 6, 1989)..	p. 333, p. 334.
Utah:	
UT89-1 (Jan. 6, 1989)..	p. 341, pp. 342-343,345.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 1st day of September, 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-21132 Filed 9-7-89; 8:45am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-22,897]

Levolor-Lorentzen, Inc., Weirton, WV; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 30, 1989 applicable to all workers of Levolor-Lorentzen, Inc., Weirton, West Virginia.

Based on new information from the company, a few workers including truck drivers were separated from Levolor-Lorentzen, Inc., in Weirton, West Virginia a few weeks prior to the impact date. The notice, therefore, is amended by changing the impact date to April 17, 1988.

The amended notice applicable to TA-W-22,897 is hereby issued as follows:

All workers of Levolor-Lorentzen, Incorporated, Weirton, West Virginia engaged in the production of venetian blinds and who became totally or partially separated from employment on or after April 17, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of August 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-21175 Filed 9-7-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,912 et al.]

Noble Drilling Corp./Temple Drilling Co.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of TA-W-21,912 Noble Drilling Corporation, New Orleans, Louisiana, TA-W-21,913 Noble Drilling Corporation, Williston, North Dakota, TA-W-21,913A Noble Drilling Corporation, All Locations in Montana and TA-W-21,912A Temple Drilling Company, Houston, Texas, TA-W-21,912B Temple Drilling Company, Broussard, LA.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Certifications of Eligibility to Apply for Worker Adjustment Assistance on January 31, 1989 applicable to all workers of Noble Drilling Corporation, New Orleans, Louisiana and Williston, North Dakota. The certifications were amended on March 10, 1989 to include workers at a predecessor-in-interest firm (Temple Drilling Company) in Houston, Texas and Broussard, Louisiana. The amended notice was published in the Federal Register on March 27, 1989 (54 FR 12508).

New information from the company shows worker separations in November 1985 in the State of Montana. The Noble Drilling Company operated rigs in the Williston Basin in 1985 which encompasses Western North Dakota and Eastern Montana. Workers were moved back and forth across the state lines and several were laid off in Montana.

The notice, therefore, is amended by including coverage under TA-W-21,913 for workers of Noble Drilling Company in Montana.

The intent of the certifications is to cover all workers of Noble Drilling Corporation, New Orleans, Louisiana, Williston, North Dakota and all locations in Montana and its Predecessor-in-interest firm, Temple Drilling Company, Houston, Texas and Broussard, Louisiana. The amended notice applicable to TA-W-21,912 and TA-W-21,913 is hereby issued as follows:

All workers of Noble Drilling Corporation, New Orleans, Louisiana, Williston, North Dakota and all locations in Montana and its predecessor-in-interest firm, Temple Drilling Company, Houston, Texas and Broussard, Louisiana who became totally or partially separated from employment on or after October 1, 1985 and before June 30, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of August 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-21176 Filed 9-7-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-125-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Blacksville No. 1 Mine (I.D. No. 46-01867) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. The mine has two underground pump installations which are not able to be ventilated effectively to a return airway. The mine also has three other pump locations that will not be able to be ventilated to a return airway when nearby workings are sealed. The pumps remove water which is accumulating along the mainline haulage.

3. In the area of the pump installations, the roof and ribs have deteriorated over a period of time because of the hooving bottom. This, in turn, has caused the stoppings to crush out. If ventilating tubing were installed to the nearest return entry, it would be ineffective due to the extreme distance.

4. As an alternate method, petitioner proposes that—

(a) The pump installations would be housed in a fireproof structure, equipped with automatically closing fire doors activated by thermal devices with an activation temperature not greater than 165 °Fahrenheit. Such fire doors would be designed to enclose all associated electric components in a reasonably airtight enclosure in case of a fire or excessive temperature;

(b) An audible and visual signal, activated by the heat sensors, would be located so that it can be seen or heard by a responsible person;

(c) The electric equipment would be protected with thermal devices, or equivalent, designed and installed to interrupt all power circuits supplying electric equipment within the fireproof structure;

(d) A suitable automatic fire suppression system would be installed and maintained in the fireproof structure;

(e) Firefighting equipment would be provided on the outside of the fireproof structure on the intake side; and

(f) The area enclosing the structure would be examined daily for hazardous conditions. A record of the examinations would be kept in a book on the surface.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 10, 1989. Copies of the petition are available for inspection at that address.

Dated: August 30, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-21173 Filed 9-7-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-124-C]

Webster County Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Webster County Coal Corporation, P.O. Box 45, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Retiki Mine (I.D. No. 25-00672) located in Henderson County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On July 1, 1988, petitioner was granted a modification of 30 CFR 75.1103-4(a) to install an early warning fire detection system and to monitor the air with a carbon monoxide detection system in all belt entries utilized as intake aircourses (docket No. M-87-278-C).

2. This petition concerns paragraphs 1(b), 1(c), 3, and 5 of MSHA's Decision and Order.

3. Paragraph 1(b) of the Decision and Order requires that the carbon monoxide monitoring devices be located so that the air is monitored at each belt drive and tailpiece and at intervals not to exceed 2,000 feet along each conveyor belt entry, except as provided in 1(c) or unless the District Manager requires additional carbon monoxide monitors. A monitoring device is required at the tailpiece or not more than 50 feet outby (force ventilation) and 50 feet inby (outby exhaust ventilation) the tailpiece on the same split of air.

Petitioner requests that outby the tailpiece be changed to outby the temporary stopping (across the belt).

4. Paragraph 1(c) of the Decision and Order requires only one sensor at a belt drive under certain conditions and that it be installed not more than 50 feet outby (force ventilation) 50 feet inby the drive, belt take-up and tailpiece on the same split of air.

Petitioner requests to add the words or the belt drive discharges at an angle onto the conveyor belt system with the header within 50 feet of the tailpiece and to change the last sentence to read, It shall be installed not more than 100 feet inby (if the airflow is inby) or outby (if the airflow is outby) the drive, belt take-up and tailpiece on the same split of air.

5. Paragraph 3 of the Decision and Order requires the low-level carbon monoxide monitoring devices be capable of providing both visual and audible alarm signals.

Petitioner requests that at 10 ppm above the established ambient level, all persons shall be withdrawn to a safe area outby the working places be changed to the approved firefighting plan shall be implemented and appropriate action shall be taken to determine the cause of actuation.

6. Paragraph 5 of the Decision and Order requires in part that the sensor located at or near the section loading point activate the fire alarm signals and give a warning signal on the working section that can be seen if carbon monoxide reaches 10 ppm above the established ambient level and can be heard at 15 ppm above the ambient.

Petitioner requests that the warning be seen or heard if carbon monoxide reaches 10 ppm above the established ambient level.

7. Petitioner states that the proposed amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.1103–4(a) will improve the paragraphs addressed, and will provide no less than the same measure of protection for the miners.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 10, 1989. Copies of the petition are available for inspection at that address.

Dated: August 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–21174 Filed 9–7–89; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89–62)]

Government-owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic, and possibly foreign, licensing.

Copies of patent applications cited are available from the National Technical Information Service, Springfield, VA 22161. Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications sold to avoid premature disclosure.

DATE: Date published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, Harry Lupuloff, Director of Patent Licensing, Code GP, Washington, DC 20546, Telephone (202) 453–2430, FAX (202) 755–2371.

Patent Application 07/350,813: Digital Carrier Demodulator Employing Components Working Beyond Normal Limits; filed May 12, 1989.

Patent Application 07/357,757: A Torsoinal Suspension System for Testing Space Structures; filed May 26, 1989.

Patent Application 07/357,759: Network of Dedicated Processors for Finding Lowest Cost Map Path; filed May 26, 1989.

Patent Application 07/357,936: A Combined Air and Water Pollution Control System; filed May 26, 1989.

Patent Application 07/358,027: Apparatus and Method for Characterizing the Transmission Efficiency of a Mass Spectrometer; filed May 26, 1989.

Patent Application 07/358,028: Turbomachinery Shaft Insert; filed May 26, 1989.

Patent Application 07/359,459: Method and Circuit for Shaping Laser Output Pulses; filed May 31, 1989.

Patent Application 07/359,460: Method and Circuit for Controlling the Evolution Time Interval of a Laser Output Pulse; filed May 31, 1989.

Patent Application 07/359,801: Fiber Optic Frequency Transfer Link; filed May 31, 1989.

Patent Application 07/361,200: Spacecraft Component Heater Control System; filed June 5, 1989.

Patent Application 07/361,479: O-Ring Gasket Test System; filed June 5, 1989.

Patent Application 07/361,531: Reversal Electron Attachment Ionizer for Detection of Trace Species; filed June 5, 1989.

Patent Application 07/363,815: Laterally Stacked Schottky Diodes for Infrared Sensor Applications; filed June 9, 1989.

Patent Application 07/364,743: Turbomachinery Rotor Support with Damping; filed May 28, 1989.

Patent Application 07/366,957: Predictive Aging of Polymers; filed June 16, 1989.

Patent Application 07/369,403: Field Induced Gap Infrared Detector; filed June 21, 1989.

Patent Application 07/376,487: Controlled Method of Reducing Electrophoretic Mobility of Particles Cells and the Like; filed July 7, 1989.

Patent Application 07/386,175: Hollow Fiber Clinostat; filed July 28, 1989.

Edward A. Frankle,

General Counsel.

[FR Doc. 89–21128 Filed 9–7–89; 8:45am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Ad Hoc Challenge III Review Committee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Ad Hoc Challenge III Review Committee to the National Council on the Arts will be held on October 23, 1989, from 9:00 a.m.–5:30 p.m. in Room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 30, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–21154 Filed 9–7–89; 8:45 am]

BILLING CODE 7537–01–M

Design Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Advancement/Organizations; Grants to State & Regional Arts Agencies; and Distinguished Designer Fellowships Sections) to the National Council on the Arts will be held on September 26, 1989, from 9:00 a.m.–6:00 p.m. and on September 27–28, 1989, from 9:00 a.m.–7:00 p.m. and on September 29, 1989, from 9:00 a.m.–1:00 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 29, 1989, from 11:30 a.m.–1:00 p.m. The topic for discussion will be policy issues.

The remaining portions of this meeting on September 26, 1989, from 9:00 a.m.–6:00 p.m. and on September 27–28, 1989, from 9:00 a.m.–7:00 p.m. and on September 29, 1989, from 9:00 a.m.–11:30 a.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: August 30, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–21155 Filed 9–7–89; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 25–26, 1989, from 9:00 a.m.–5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be guidelines, the Five-Year Plan, and policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 30, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–21158 Filed 9–7–89; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences Subcommittee on Optical/Infrared Astronomy; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences Subcommittee on Optical/Infrared Astronomy.

Date & Time: September 26 and 27, 1989 9:00 a.m.–5:00 p.m.

Place: National Science Foundation September 26 Room 536, September 27 Room 1243.

Type of Meeting: September 26 and 27, 1989 Open.

Contact Person: Dr. G. Wayne van Citters, Jr., Program Director, Astronomical Instrumentation and Development, Division of Astronomical Sciences, Room 618, National Science Foundation, Washington, DC 20550 (202/357–9793).

Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Agenda: September 26 and 27.

Preparation of report on topics discussed at the Subcommittee meeting held on August 28 and 29, 1989.

M. Rebecca Winkler,

Committee Management Officer.

September 5, 1989.

[FR Doc. 89–21121 Filed 9–7–89; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Sioux City, IA; Aviation Accident

In connection with the investigation of the United Airlines flight 232 crash at Sioux City, Iowa, July 19, 1989, the National Transportation Safety Board will convene a public hearing at 9:00 a.m. (local time), on Tuesday, October 31, at the Convention Center in Sioux City, Iowa. For more information contact Ted Lopatkiewicz, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20594, telephone (202) 382–6605.

Dated: September 1, 1989.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 89–21118 Filed 9–7–89; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Meeting Change

Due to a typing error, a meeting of the Nuclear Waste Technical Review Board was announced (August 30, 1989 FR 35957) to be held on September 23, 1989. The correct date of the meeting is September 13, 1989.

Further information can be obtained from William W. Coons, Executive Director, Nuclear Waste Technical Review Board, 1111 18th Street, NW, Washington, DC 20036, (202) 254–4792.

William W. Coons,

Executive Director, Nuclear Waste Technical Review Board.

September 5, 1989.

[FR Doc. 89–21241 Filed 9–7–89; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Approval of RI 25–2 Application for Minimum Annuity Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, (title 44, U.S. Code, chapter 35) this notice announces a request to extend the use of RI 25–2 (Application for Minimum Annuity). OPM currently uses RI 25–2 to determine if an annuitant qualifies for the minimum annuity, repealed under section 305 of Public Law 99–251 (Federal Employees Benefits Improvement Act of 1986). Annuitants who were entitled to the minimum annuity prior to the repeal date of February 27, 1986 continue to receive the minimum annuity in accordance with Section 305.

Approximately 50 Civil Service annuitants complete the form, which requires approximately 15 minutes, for a total public burden of 13 hours. For copies of this proposal, call Larry Dambrose (632–0199) or Grace Butler (632–0259).

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415,

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, 202–632–5472.

U.S. Office of Personnel Management

Constance Newman,

Director.

[FR Doc. 89–21187 Filed 9–7–89; 8:45 am]

BILLING CODE 6325-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Monday and Tuesday, September 18 and 19, 1989 at the Madison Hotel, 15th & M Streets, NW., Washington, DC.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in Executive Chambers 1 and 2, second floor, at 9 o'clock a.m. September 18, 1989. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting at 9 o'clock a.m. in Mt. Vernon Salon B and C, second floor, on September 18, 1989.

The Full Commission will convene at 1:30 o'clock p.m. on September 18, 1989 with a Technical Advisory Panel on Outpatient Classification Systems in Mt. Vernon Salon B and C, second floor.

The Full Commission will convene again on September 19, 1989 at 9:00 o'clock a.m. in Mt. Vernon Salon B and C, second floor.

All meeting are open to the public.

Donald A. Young, MD,

Executive Director.

[FR Doc. 89–20698 Filed 9–7–89; 8:45 am]

BILLING CODE 6820-SW-M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Science and Technology Policy

National Advisory Committee on Semiconductors (NACS)

The purpose of the National Advisory Committee on Semiconductors, is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on September 11–12, 1989, at Science Applications International Corporation, 1555 Wilson Blvd., 7th Floor, Rosslyn, Virginia 8:00 a.m. The proposed agenda is:

(1) Briefing of the Committee on its organization and administration.

(2) Briefing of the Committee by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed studies regarding semiconductors.

(3) Discussion of composition of panels to conduct studies.

A portion of the September 11–12 sessions will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552 b.(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552 b.(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Hazel Houston, at (703) 556–7130, prior to 3:00 p.m. on September 8, 1989. Mrs. Houston is also available to provide specific information regarding time, place and agenda for the open session.

Dated: August 25, 1989.

Barbara J. Diering,

Special Assistant, Office of Science and Technology Policy.

[FR Doc. 89–21206 Filed 9–6–89; 9:34 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[34–27198; File No. SR–DTC–89–15]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Depository Trust Company Relating to Expanding Participation in the International Institutional Delivery System

August 30, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 10, 1989, The Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Depository Trust Company ("DTC") is filing herewith a proposed rule change providing for expansion of the DTC's International Institutional Delivery System (IID) system to include participation and input of data by foreign entities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose for the proposed rule change is to provide for greater participation in DTC's IID system. The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will increase efficiency in processing international securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC has not solicited or received comments on its proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR–DTC–89–15 and should be submitted by September 29, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–21101 Filed 9–7–89; 8:45 am]

BILLING CODE 8010-01-M

[34–27199; File No. NSCC–89–13]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Securities Clearing Corporation Relating to the Automated Settlement of Mutual Fund Dividends

August 30, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 14, 1989, NSCC filed with the Securities and Exchange Commission that proposed rule change as described in Items I, II, and II below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a modification of the Networking aspect of the Fund/SERV Service Rule to provide for the automated settlement of mutual fund dividend payments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) The purpose of the proposed rule filing is to provide for the automated settlement of mutual fund dividend payments between Fund Members and Members who participate in NSCC's Networking Service.[1]

Currently, through Networking, dividend information is passed between the Fund Member (or Mutual Fund Processor) and the Member. Payment of these dividend amounts occurs directly between the Fund Members and the NSCC Member and not through Networking. The proposed rule change will enable the Fund Member to make one payment to NSCC for such dividend amounts due and NSCC will include such amounts with the Members' other settlement obligations. The proposed rule change will require Fund Members to submit, along with the information currently transmitted, valid payable date for the dividends. A valid payable date will be defined as a date on which banks in New York are open for business. (This will permit settlement of these amounts to occur on the days that other monies settle through NSCC.).

Based on the data received from the Fund Member, NSCC will issue a Dividend Report to the Fund Member and Member. This report will indicate dividend amounts which must be paid by the Fund Member the day the Dividend Report is issued and the dividend amount which must be paid by the Fund Member the following day. The Dividend Report will also indicate any corrections made by the Fund Member to previously reported items.

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[1] "Networking," a service provided by NSCC on a fee basis, permits automated transmission of mutual fund data. *See* Securities Exchange Act Release No. 26376 (December 20, 1988), 53 FR 52544.

On the Dividend Payable Date, the Fund Member will be required to pay NSCC the amount of the dividends indicated on the Dividend Report. This payment will be separate from the Fund Member's other settlement obligations, and must be made in Federal Funds. On the Dividend Payable Date, Members will be credited with the amount indicated on the Dividend Report. This amount will be netted with Members' other settlement obligations, and settlement will be made in accordance with current procedures.

Since NSCC will be paid by the Fund Member on Dividend Payable Date in Federal Funds but will make payments to Members in next day funds, NSCC will credit the Members pro rata for interest earned on NSCC's investment of the dividend amounts received in Federal Funds.

The payment of dividends to Members, similar to other Fund/SERV payments, will not be a guaranteed service. If NSCC were to credit a Member with a dividend amount and not receive the corresponding payment from the Fund Member, the credit will be subject to reversal. While NSCC has a lien on such payments to Members pursuant to the provisions of Rule 18, NSCC has agreed that is a Member becomes insolvent before settlement occurs, NSCC will segregate this payment and NSCC will relinquish its lien to the extent that it has demonstrated to NSCC that the payment was for the benefit of a customer of the Member. However, if the Member becomes insolvent after settlement has occurred, and the dividend payments have already been netted with the Member's other settlement obligations, NSCC will not segregate this payment and will use it to offset the Member's payment obligations to NSCC.

(2) The proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions by providing for the settlement, on an automated basis of dividend payments between mutual funds and brokerage firms. The rule change, therefore, is consistent with the requirements of the 1934 Act and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above (SR–NSCC–89–13) and should be submitted by September 29, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirely E. Hollis,

Assistant Secretary.

[FR Doc. 89–21102 Filed 9–7–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35–24945]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 31, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their view in writing by September 25, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ocean State Power II, et al. (70-7630)

Ocean State Power ("OSP"), One Bowdoin Square, Boston, Massachusetts 02114, a general partnership and subsidiary of EUA Ocean State Corporation ("EUA–OS"), Washington Highway, Lincoln, Rhode Island 02865, and Narragansett Energy Resources Company ("NERC"), 280 Melrose Street, Providence, Rhode Island 02901, and their respective indirect parent companies, Eastern Utilities Associates ("EUA"), One Liberty Square, Boston, Massachusetts 02109 and New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582; Ocean State Power II ("OSP II"), One Bowdoin Square, Boston, Massachusetts 02114, a proposed subsidiary of EUA–OS and NERC, and their respective indirect parent companies EUA and NEES; EUA Service Corporation ("EUA Service"), 750 West Center Street, West Bridgewater, Massachusetts 02379, and New England Power Service Company ("NEP Service"), 25 Research Drive, Westborough, Massachusetts 01582, subsidiaries of EUA and NEES, respectively; Blackstone Valley Electric Company ("Blackstone"), Washington Highway, Lincoln, RI 02865, a subsidiary of EUA; TransCanada PipeLines Company ("TC"), 54 Commerce Court West, Toronto, Ontario M5L 1C2, Canada, and its indirect subsidiary TCPL Power Ltd. ("TCPL"), 123 Dyer Street, Providence, Rhode Island 02903 an affiliate of OSP and proposed affiliate of OSP II, have filed a joint application-declaration pursuant to sections 6(a), 7, 9(a)(1), 9(a)(2), 10, 12(b), 12(d), 12(f), 13(b) and 13(e) of the Act and Rules 43, 44, 45, 50(a)(5), 90, 91 and 95 thereunder.

By prior order, the Commission (i) approved the acquisition by EUA–OS and NERC of 25% and 20% equity interests, respectively, in OSP and (ii) autorized EUA and NEES to fund their respective subsidiaries' obligations to contribute to the capital of OSP under the OSP Partnership Agreement (HCAR No 24727, October 13, 1988) ("Order"). EUA–OS and NERC now propose to acquire 25% and 20% percent equity interests, respectively, in OSP II, and EUA and NEES propose to provide their respective subsidiaries the capital funding to be contributed to the capital of OSP II and to guarantee proportionately their subsidiaries' performance under the OSP II Partnership Agreement. Such funding will be in the form of purchases of common stock, capital contributions, loans, and/or advances provided that the aggregate amount of all investments, including investments already approved by the Commission in the Order in amounts of $30 million and $25 million for EUA and NEES, respectively, shall not exceed $60 million and $50 million, respectively. EUA Service and NEP Service propose to provide certain incidental services for OSP II at cost in accordance with the Commission's rules.

OSP II, in connection with its plans to construct, own and operate the second unit ("Second Unit") of a combined cycle electric generating facility ("Project") to be located in Burrillville, Rhode Island, proposes to raise one hundred percent of its construction financing for the Second Unit through non-recourse loans from a syndicate of financial institutions under an approximately $225 million general construction-loan credit facility ("Credit Facility"). Irving Trust Company will be the lead agent ("Irving") to the Credit Facility. The Credit Facility will have a seven-year term, comprised of a construction loan facility with a term of approximately two to four years that will convert to a term-loan facility upon the Second Unit's achieving commercial operation. The term-loan facility is intended to provide OSP II flexibility with regard to the timing of arranging long-term, fixed-rate permanent financing with new lenders, which will be subject to further Commission approval.

The Credit Facility will be secured by a lien on all of the physical assets of the Second Unit and by an assignment to the lenders of (i) all of OSP II's rights and interests in connection with the Second Unit under the contracts necessary for the construction and operation of the Second Unit and specified insurance, (ii) all of the partners' interests in OSP II, (iii) proportional guarantees to the partnership by the parents of the performance of the partners' obligations (herein, EUA's and NEES' guarantees of EUA–OS and NERC obligations, respectively), under the Equity Contribution Agreements, and (iv) the Equity Contribution Agreements themselves. The lenders will have the sole benefit of all of the Second Unit security.

Under the construction-loan facility, OSP II may obtain fixed-rate, 30-day advances, by exercising a competitive bid option, or if the option is not exercised, or for those amounts not covered by accepted bids, OSP II will pay its choice of the London Interbank Offered Rate ("LIBOR"), plus ½% per annum, Irving's Certificate of Deposit ("CD") rate, plus ⅝% per annum or Irving's Prime Rate, plus ⅛% per annum. These rates will increase by ⅛% per annum each time drawings occur after one of two defined reference dates. The term-loan facility employs the same base rates with margins ranging from ⅜% to ¾% on the LIBOR and CD options. Fifty percent of the outstanding amounts under the construction-loan facility will be amortized when the Second Unit goes into commercial operation, and the remainder will convert to loans under the term-loan facility. The assumed effective cost of money under the Credit Facility will be 10.241%.

Initially, OSP intended to develop and own both units of the Project. In order to provide separate collateral for the financing of the Second Unit, however, the investors in OSP decided to form a separate partnership for the development and ownership of the Second Unit. The investors in both partnerships and their respective ownership interests, will be the same although certain investors intend to form distinct, special purpose subsidiaries to hold their interests in OSP II. In connection with this arrangement, OSP purposes to transfer to OSP II all of its interests in the Second Unit, and they, along with Blackstone, will amend and restate the Interconnection Agreement.

When the First Unit commences commercial operation, OSP will be an electric utility company within the meaning of section 2(a)(3) of the Act. Pursuant to the terms of the OSP Partnership Agreement, TCPL, and indirectly its parent company TC, will then hold a 9.9 percent voting interest within the meaning of section 2(a)(11). As part of the formation of OSP II, which will own and develop the Second Unit of the Project, TCPL and indirectly TC propose to acquire a 9.9 percent voting interest in, and therefore become an affiliate of, a second electric utility company. TCPL's rights and obligations in OSP II will be governed by the OSP II Partnership Agreement.

In order to avoid obtaining zoning approvals for the operation of a generating facility on the site, OSP proposes to reconvey to Blackstone approximately four acres of the site for the Project which OSP had previously acquired from Blackstone. OSP will, however, retain an easement across such property for access to the site.

OSP II seeks an exception from the Commission's competitive bidding requirements of rules 50(b) and (c) pursuant to Rule 50(a)(5).

The Columbia Gas System, Inc. (70–7672)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

Under the existing Employees' Thrift Plan of Columbia Gas System ("Thrift Plan"), employees of Columbia system companies ("Participants") may deposit up to 16% of their salary in four available investment options, including Fund B ("Fund B"), which provides for investment in Columbia's common stock. Contributions by Participants are matched by the Columbia system company employing the Participant for up to 6% of a Participant's salary. Columbia's matching contributions are deposited only in Fund B. Columbia currently meets its matching obligations by transferring cash to the trustee of the Thrift Plan, which cash is used to purchase Columbia's common stock. Cash dividends paid on shares of Columbia common stock held in Fund B are reinvested in additional shares of Columbia common stock.

Columbia now proposes to meet its anticipated obligation to match Participants' contributions for 15 years and to provide for the reinvestment of cash dividends paid on shares held in Fund B by allocating shares of Columbia's common stock, in lieu of cash. Such shares will be purchased and held by a proposed Leveraged Employee Stock Ownership Plan ("LESOP"). The LESOP will finance the acquisition of Columbia's common stock through the issuance of debt, through December 31, 1990, in a principal amount not to exceed $208 million in the form of publicly issued medium-term notes ("Notes"), maturing in up to 15 years. Columbia anticipates that the interest rate on the debt will be 9.5% to 10.0%. The Notes would be issued under an indenture, which will contain a proposed subordinated guaranty by Columbia. The proceeds of the LESOP borrowings will be used to purchase existing shares of Columbia common stock on the open market and up to 2.5 million shares of authorized but unissued shares of Columbia common stock, which Columbia proposes to issue and sell to the LESOP at the prevailing market price. At current market prices, $200 million would purchase approximately 4.3 million shares, or 9.4%, of Columbia's total common stock outstanding.

The LESOP's debt principal and interest would be repaid from cash dividends paid on shares of Columbia's common stock held in Fund B. To the extent that such cash dividends are insufficient to service the LESOP's debt, Columbia would make periodic contributions to the LESOP in an amount which, together with the cash dividends, would be sufficient to meet the LESOP's debt principal and interest payments.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-21103 Filed 9-7-89; 8:45am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Advisory Committee on International Investment; Meeting

The Department of State will hold a meeting of the Advisory Committee on International Investment on October 5, 1989 from 9:00 a.m. to 12 noon. The meeting will be held in Room 1315 (the Loy Henderson Conference Room) at the Department of State, 2201 "C" Street, NW., Washington, DC 20520.

The agenda and approximate times topics will be discussed are as follows:

9:00—Review of agenda and introduction of first speaker by Professor Isaiah Frank of the Johns Hopkins School of Advanced International Studies.

9:05—Welcoming remarks by Assistant Secretary of State for Economic and Business Affairs Eugene J. McAllister. Assistant Secretary McAllister will provide a brief overview of U.S. Government initiatives in support of the economic reform process in Poland and Hungary. Members will be invited to comment on these initiatives and to express their views as to what reforms will be required in Poland and Hungary to induce U.S. firms to increase trade and investment activity in these countries.

10:15—Coffee.

10:30—Commentary on the current status of the strengthened National Treatment Instrument initiative in the OECD, the bilateral investment treaty (BIT) program, and of TRIMs in the GATT by William B. Milam, Deputy Assistant Secretary of State for International Finance and Development and by the Director of the Office of Investment Affairs at the Department of State. Remarks to be followed by questions and comments by committee members.

11:00—Presentation on Inward Investment. Followed by comments and questions by members of the committee.

12:00—Meeting concludes.

Access to the Department of State is controlled. Therefore, members of the public wishing to attend the meeting must notify the Office of Investment Affairs at (202) 647-1128 to arrange admittance. Please use the "C" Street entrance.

Dated: August 28, 1989.

Robert C. Reis, Jr.,

Executive Secretary.

[FR Doc. 89-21158 Filed 9-7-89; 8:45 am]

BILLING CODE 4710-07-M

Advisory Committee to United States Section International North Pacific Fisheries Commission; Partially Closed Meeting

The Advisory Committee to the United States Section, International North Pacific Fisheries Commission, will meet on September 28, 1989, at the Sheraton Anchorage Hotel, Anchorage, Alaska, at 7:00 p.m. This session will discuss the Protocol to the International Convention for the High Seas Fisheries of the North Pacific Ocean, surveillance of foreign fishing fleets, the progress of fisheries research, the Alaska salmon fisheries, and fishery developments as they affect the International North Pacific Fisheries Commission. The session will be open to the public.

The Advisory Committee will also meet at 2:00 p.m. on September 29, 1989. These sessions will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States' negotiating position to be taken at the 35th Annual Meeting of the International North Pacific Fisheries Commission to be held in Seattle, WA, November 7-10, 1989. Pursuant to section 4(c) of the North Pacific Fisheries Act of 1954, as amended, 16 U.S.C. 1023(c) which provides that the "advisory committee * * * shall be granted opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section", the members of the Advisory Committee will examine various options for the negotiating position at the Special Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, Section 10(d) and 5 U.S.C. 552b(c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Jeffrey A. Miotke, Pacific Fisheries Officer, OES/OFA Room 5806, U.S. Department of State, Washington, DC 20520. Mr. Miotke can be reached by telephone on (202) 647-2009.

Dated: August 25, 1989.

Edward E. Wolfe,

Deputy Assistant Secretary, Oceans and Fisheries Affairs.

[FR Doc. 89-21159 Filed 9-7-89; 8:45am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Special Committee 159—Minimum Aviation System Performance Standard for GPS; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the thirteenth meeting of RTCA Special Committee 159 on Minimum Aviation System Performance Standard for GPS to be held October 16–18, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 1:30 p.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the minutes of meeting held June 15-18, RTCA Paper No. 272-89/SC159-210; (3) reports of Working Group activities on integrity implementation, operations, and test requirements; (4) review of EUROCAE and other comments; (5) integration of integrity Requirements into Committee Report; (6) Working Groups meet in separate sessions; (7) assignment of tasks; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements to obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 29, 1989.

Geoffrey R. McIntyre

Designated Officer

[FR Doc. 89-21136 Filed 9-7-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Denver and Adams Counties, Colorado

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Denver and Adams Counties, Colorado.

FOR FURTHER INFORMATION CONTACT: Leon Witman, Division Administrator, Federal Highway Administration, 555 Zang Street, Room 258, Lakewood, Colorado 80228, Telephone (303) 969-6730.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Colorado, State Department of Highways, will prepare an environmental impact statement (EIS) on a proposal to improve Interstate 25 in Denver and Adams Counties, Colorado. The proposed improvement would involve the widening of existing I-25 between the interchanges with I-70 and I-76 for a distance of about 2.6 miles.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Also, included in this proposal is the reconstruction of the I-25 interchange with 58th Avenue in Adams County and the closure of the I-25 interchange with 49th Avenue in Denver County. Alternatives under consideration include (1) taking no action; (2) widening the existing four-through lane highway to five-through lane highway each direction plus auxiliary lanes; (3) replacement access for the I-25 interchange with 49th Avenue; and (4) widening the existing 58th Avenue from four to seven lanes.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. Public meetings will be held in the I-25 corridor late 1989/early 1990. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on August 29, 1989.

Leon J. Witman,

Division Administrator, Lakewood.

[FR Doc. 89-[illegible] Filed 9-7-89; 8:45am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 31, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0192.
Form Number: 4970.
Type of Review: Extension.
Title: Tax on Accumulation Distribution of Trusts.
Description: Form 4970 is used by a beneficiary of a domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. The form is used to verify whether the correct tax has been paid on the accumulation distribution.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 33,000.
Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	40 min.
Learning about the law or the form.	18 min.
Preparing the form	50 min.
Copying, assembling, and sending the form to IRS.	20 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 109,230 hours.
OMB Number: 1545-0219.
Form Number: 5884.
Type of Review: Revision.
Title: Jobs Credit.
Description: Internal Revenue Code section 38(b)(2) allows a credit against income tax to employers hiring

BEST COPY AVAILABLE

Sunshine Act Meetings

individuals from certain targeted groups (such as welfare recipients, etc.). The employer uses Form 5884 to figure this jobs credit. IRS uses the information on the form to verify that the correct amount of credit was claimed.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 85,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	4 hr, 4 min.
Learning about the law or the form.	2 hr, 20 min.
Preparing the form	7 hr, 10 min.
Copying, assembling, and sending the form to IRS.	1 hr, 20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 434,350 hours.

OMB Number: 1545–0895.

Form Number: 3800.

Type of Review: Revision.

Title: General Business Credit.

Description: Internal Revenue Code section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, jobs credit, alcohol fuel credit, research credit, low-income housing credit, and employee stock ownership (ESOP) credit. Form 3800 is used to figure the correct credit.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 200,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	10 hr, 31 min.
Learning about the law or the form.	35 min.
Copying, assembling, and sending the form to IRS.	48 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 2,382,000 hours.

OMB Number: 1545–1020.

Form Number: 1041–T.

Type of Review: Extension.

Title: Transmittal of Estimated Taxes Credited to Beneficiaries.

Description: This form was developed to implement the provisions of Internal Revenue Code section 643(g) which allows a trustee of a trust to elect to assign any overpayment of estimated tax to a beneficiary(ies). This form serves as a transmittal so that Service Center personnel can determine the correct amounts that are to be credited to the beneficiaries.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	7 min.
Learning about the law or the form.	5 min.
Preparing the form	5 min.
Copying, assembling, and sending the form to IRS.	10 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 970 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–21100 Filed 9–7–89; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

September 5, 1989.

PLACE: 1121 Vermont Avenue, NW, Room 516, Washington, DC 20425.

DATE AND TIME: Friday, September 15, 1989, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Portion open to the public and portion closed.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of July Meeting
III. Announcements
  Bigotry and Violence in North Carolina
IV. Briefing on Administration of Justice in Non-Violent Protest

11:00 a.m. Recess

12:30 p.m. Reconvene

V. Executive Session
VI. Draft Report on Economic Status of Black Women: An Exploratory Investigation
VII. Draft Statement on Intimidation and Violence, Racial and Religious Bigotry in America
VIII. SAC Reports and Recharters
  Implementation in California of the Immigration Reform and Control Act: A Preliminary Review
  Police Community Relations in Miami
  Bigotry and Violence in Georgia
  Bigotry and Violence in Minnesota
  Hawaii and Ohio SAC Recharters
IX. Commission Subcommittee Reports
X. Staff Director's Report
  A. FOIA Regulations
  B. 504 Regulations
  C. California Advisory Committee Request
XI. Future Agenda Items

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–21236 Filed 9–5–89; 5:05 pm]

BILLING CODE 6335-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, September 12, 1989, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Memorandum and resolution re: (1) Notice of establishment of the Investigative Files and Records System of Records pursuant to the Privacy Act of 1974, which system of records consists of files and records compiled by the Corporation's Office of Inspector General on Corporation employees or other persons involved with the Corporation's programs or operations who have been under investigation for fraud and abuse with respect to the Corporation's programs or operations; and (2) final amendment to Part 310 of the Corporation's rules and regulations, entitled "Privacy Act Regulations," which amendment exempts from certain provisions of the Corporation's regulations implementing the Privacy Act of 1974 the Corporation's Investigative Files and Records System of Records.

Memorandum and resolution re: Final amendments to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information," in order to conform the regulation to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which amendments substitute the term "depository institution" each place the term "bank" appears, with certain exceptions.

Memorandum and resolution re: Final amendments to Part 311 of the Corporation's rules and regulations, entitled "Rules Governing Public Observation of Meetings of the Corporation's Board of Directors," in order to conform the regulation to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which amendments: (1) Reflect that the number of directors necessary to constitute a quorum has been changed from two to three; (2) substitute the term "depository institution" each place the term "bank" appears; and (3) revise the examples of action which may be taken by the Board in closed meetings to include matters relating to conservatorships and various applications made by savings associations which require Corporation approval.

Memorandum and resolution reconstituting the membership of the Committee on Liquidations, Loans and Purchases of Assets.

Memorandum regarding the extension and modification of certain contracts.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Statement of Policy entitled "Bank Merger Transactions," which redefines and clarifies product and geographic markets and the standards to be applied in assessing both the competitive effects and prudential concerns involved in proposed bank merger transactions.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 5, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–21257 Filed 9–5–89; 5:06 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, September 12, 1989, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" ((5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 5, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–21238 Filed 9–5–89; 5:06 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday 13, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests for modification of the revenue and affiliate underwriting limits on bank holding company subsidiaries consistent with section 20 of the Glass-Steagall Act.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–21250 Filed 9–6–89; 10:52 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, September 13, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on August 24, 1989.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–21251 Filed 9–6–89; 10:52 a.m.]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:00 a.m., Thursday, September 14, 1989.

PLACE: Sheraton Portsmouth Hotel & Conference Center, 250 Market Street, Portsmouth, New Hampshire 03801, 603–431–2300.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Minutes.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Central Liquidity Facility's Reserving Policy.
5. Central Liquidity Facility's Agent Commitment Fee.
6. Insurance Fund Report.
7. Proposed Rule: Section 701.13 and Part 741, Supervisory Committee Audits, NCUA Rules and Regulations.
8. Appeal of Denial of FOM Amendment by East Idaho FCU, Idaho Falls, ID.
9. Appeal of Denial of FOM Amendment by Moore West FCU, San Leandro, CA.
10. Legislative Update.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600

Becky Baker,

Secretary of the Board.

[FR Doc. 89–21294 Filed 9–6–89; 2:37 pm]

BILLING CODE 7535-01-M

Corrections

Federal Register
Vol. 54, No. 173
Friday, September 8, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. DOE, Argonne National Laboratory; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 89-19514 beginning on page 34538 in the issue of Monday, August 21, 1989, make the following correction:

On page 34539, in the first column, nine lines from the bottom of the page, "advice" should read "advise".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Carleton College; Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 89-19517 beginning on page 34539 in the issue of Monday, August 21, 1989, make the following corrections:

1. On page 34540, in the first column, in the 15th line from the bottom of the page, "Model JEM-200 FX/SEG" should read "Model JEM-2000 FX/SEG" and in the 14th line from the bottom of the page "Jeol, Japan" should read "JEOL, Japan".
2. On the same page, in the second column, in the 17th line "samples" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9E3747 and FAP 9H5560/P486;FRL-3630-3]

Pesticide Tolerances for Cyfluthrin

Correction

In proposed rule document 89-19225 beginning on page 33718 in the issue of Wednesday, August 16, 1989, make the following correction:

§ 180.436 [Correctly Designated]

On page 33719, in the third column, the first section heading, "§ 180.435 Cyfluthrin, tolerances for residues" should read "§ 180.436 Cyfluthrin, tolerances for residues".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59872; FRL-3626-4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 89-18833 beginning on page 33071 in the issue of Friday, August 11, 1989, make the following corrections:

1. On page 33072, in the first column, under DATES, the 4th line should read, "Y 89-152, 89-153, August 2, 1989."
2. On the same page, in the same column, Y 89-142 should read Y 89-149.

BILLING CODE 1505-01-D

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CA-940-09-4212-13; CACA 19645]

California; Realty Action; Exchange of Public and Private Lands in Fresno, Monterey, and San Benito Counties and Order Providing for Opening of Public Land

Correction

In notice document 89-18381 beginning on page 32396 in the issue of Monday, August 7, 1989, make the following correction:

On page 32396, in the third column, under **Mount Diablo Meridian, California**, in the paragraph under "T. 18S., R. 12E.", in the first line, "Secs. 29 and 20," should read "Secs. 19 and 20.".

BILLING CODE 1505-01-D

federal register

Friday
September 8, 1989

Part II

Department of Education

Kuhry Bequest Program; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

The Kuhry Bequest Program

AGENCY: Department of Education.

ACTION: Notice of applicability of regulations.

SUMMARY: The Secretary is applying the Rehabilitation Short-Term Training regulations in 34 CFR part 390 to the Kuhry Bequest Program with two changes. One change is new selection criteria for this program. The other change is the addition of educational services to the types of authorized projects. The Secretary takes this action to establish appropriate procedures for the implementation of this program.

EFFECTIVE DATE: The provisions in this notice take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these provisions, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Eileen F. Lehman, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW. (Mary E. Switzer Building, Room 3318), Washington, DC 20202-2649. Telephone: (202) 732–4281.

SUPPLEMENTARY INFORMATION: The Secretary is the recipient of a bequest of $614,780 to provide for the care and welfare of people who are blind. These funds will be used to provide grants (referred to in this notice as the Kuhry Bequest Program, named after the bequestor) for short-term training of professionals related to the care and welfare of people who are blind.

The Secretary will apply the Rehabilitation Short-Term Training regulations in 34 CFR part 390 to the Kuhry Bequest Program with certain changes. These regulations have been selected because the general requirements (subpart A) of the Short-Term Training program and the Kuhry Bequest Program are similar. Subpart B and subpart E, which specify the kinds of projects authorized under the program and the conditions to be met by a grantee, have been demonstrated to be sound. Because the Kuhry Bequest Program, under the terms of the bequest, is only for the care and welfare of those who are blind, the selection criteria in subpart D are not wholly appropriate. The selection criteria to be applied adhere to the terms of the bequest, are clearer, and are presented in an order that should benefit applicants in the preparation of applications in terms of ease and coherence.

On February 23, 1989 the Secretary published a notice of proposed applicability of regulations for the Kuhry Bequest Program in the **Federal Register** (54 FR 7922).

A change since the publication of the notice is the expansion of the areas in which short-term training may be provided. Types of projects that are authorized for training now include training in areas relating to the delivery of educational services in addition to rehabilitation services. As a result of public comment, the selection criterion relating to the extent to which persons who are familiar with blindness are involved in the project is amended to include support of regional or national organizations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice, two parties submitted comments. An analysis of the comments and of the changes in the notice of applicability of regulations since publication of the proposed notice follows.

What Types of Projects Are Authorized Under This Program?

Comment: The Secretary received one comment concerned with the limitation of the short-term training to rehabilitation professionals because individuals working in settings such as nursing homes, hospitals, educational facilities, or social services agencies also provide services related to the care and welfare of the blind.

Discussion: The Secretary recognizes the need for training a broad array of professionals to provide for the care and welfare of the blind. This need is particularly evident in the provision of transition services to adolescents who are in an educational setting. The Secretary believes that personnel, such as those who provide services in nursing homes, hospitals, and social services agencies are already covered under § 390.10 of the regulations.

Changes: In section 390.10 of the regulations, in addition to the delivery of vocational, medical, social, and psychological rehabilitation services, the Secretary has included educational services.

Quality of Key Personnel

Comment: One commenter requested that the applicant be able to demonstrate a record of competence, expertise and the ability to leverage resources in national and regional training projects in the field of blindness.

Discussion: While the Secretary recognizes the relevance of the comment to applications that may be national or regional in scope, the regulations do not require applications to be national or regional in scope. Past experience has indicated that the impact of most short-term training projects is most strongly felt in the locality. It follows that the recommended expertise would not be necessary for all training projects.

Changes: None

Extent to Which Persons Who Are Familiar With Blindness Are Involved in the Project

Comment: One commenter asked that the criterion by which the Secretary reviews each application to determine the extent to which it demonstrates the support of community organizations with an interest in providing services for persons who are blind be changed to a demonstration of support from national or regional organizations knowledgeable about needs for short-term training in this area.

This commenter also urged that the number of points allotted to this criterion be increased from 10 to 25.

Discussion: The Department recognizes that national and regional groups would have valuable input regarding the need for services. However, applicants are not required to develop applications that are regional or national in scope. To increase the points available under this criterion would distort the balance of the selection factors.

Changes: The Department has amended section (e)(2) of the selection criteria to include national and regional organizations knowledgeable about the need for short-term training to further the care and welfare of persons who are blind.

Other Factors the Secretary Considers in Reviewing an Application

Comment: One commenter urged that a special priority be established to set aside funds for programs in the Pacific Basin.

Discussion: While the Secretary is authorized to consider geographical distribution of projects in making awards under this program, to give priority to the needs of one particular geographical area would not be appropriate under the terms of the bequest.

Changes: None

The Secretary will apply the regulations for Rehabilitation Short-

Term Training in 34 CFR part 390 to this competition with the exception of changes to the selection criteria in § 390.30 and to the types of projects to be funded in § 390.10. The Secretary will apply the following selection criteria:

Selection Criteria

(a) Evidence of need (15 points).

(1) The Secretary reviews each application to determine that the need for the training project has been adequately justified.

(2) The Secretary reviews each application to determine that the need for the training project has been established and validated in terms of its potential impact on the service delivery system.

(b) Plan of operation (25 points).

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary reviews each application to determine the extent to which the application shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) Nature and scope of training program content (15 points).

(1) The Secretary reviews each application to determine that the application demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary reviews each application to determine that—

(i) The educational objectives are clearly defined, measurable and achievable;

(ii) The proposed course content and methodology to develop and implement the training can be expected to achieve the stated educational objectives; and

(iii) The program and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program.

(d) Quality of key personnel (15 points).

(1) The Secretary reviews each application to determine the quality of key personnel proposed for the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) Extent to which persons who are familiar with blindness are involved in the project (10 points).

(1) The Secretary determines the extent to which the application shows:

(i) Persons who are familiar with blindness are involved in the planning and development of the project;

(ii) Persons who are familiar with blindness participate in the implementation or conduct of the project as directors, trainers, advisors, or consultants; and

(iii) Plans for recruiting persons who are familiar with blindness to participate in the project as trainees.

(2) The Secretary reviews each application to determine the extent to which it demonstrates the support of community, regional, or national organizations with an interest in providing services for persons who are blind.

(f) Adequacy of resources (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) Evaluation plan (5 points).

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(2) The Secretary determines that the methods of evaluation are appropriate for the project and, to the extent possible, are objective, and produce data that are quantifiable.

(h) Budget and cost effectiveness (10 points).

(1) The Secretary reviews each application to determine that the project has an adequate budget and is cost effective.

(2) The Secretary determines that—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under Control Number 1820-0018.)

Types of Projects

In addition to the delivery of services as listed in § 390.10, the Kuhry Bequest Program will also fund short-term training projects that provide short-term training and technical instruction in areas of special significance to the delivery of educational services.

(Authority: 20 U.S.C. 3481)

(Catalog of Federal Domestic Assistance No. 84.999, the Kuhry Bequest Program)

Dated: August 28, 1989.

Lauro F. Cavazos,
Secretary of Education.

[FR Doc. 89–21105 Filed 9–7–89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.999]

Kuhry Bequest Program; Invitation for Applications for New Awards for Fiscal Year 1990

Purpose of Program: The Secretary is the recipient of a bequest of $614,780 that provides for the care and general welfare of the people of this country who are blind. These funds will be used to provide grants for projects that provide short-term training related to the care and welfare of people who are blind. The Secretary invites applications for programs that train people in the application and use of rehabilitation technology for persons who are blind. The Secretary also invites applications for projects that propose to use innovative methods of training adolescents and young adults who are blind to improve their vocational and social functioning.

Deadline for Transmittal of Applications: November 17, 1989.

Applications Available: September 11, 1989.

Available Funds: $614,780.

Estimated Range of Awards: $25,000–$100,000.

Estimated Average Size of Awards: $55,000.

Estimated Number of Awards: 6–25.

NOTE: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in

34 CFR parts 74, 75, 77, 80, 81, and 85; and (b) The regulations governing the Rehabilitation Short-Term Training Program in 34 CFR part 390, except that educational services are added to the types of authorized projects and revised selection criteria will be used, as described in the notice of applicability of regulations as published in this issue of the **Federal Register**.

The Education Department General Administrative Regulations in 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities) do not apply because these funds are from a private bequest and are not funds appropriated for Federal financial assistance.

For Applications or Information Contact: Eileen Lehman, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3318, Switzer Building, Washington, DC 20202-2649. Telephone: (202) 732-4281.

Program Authority: 20 U.S.C. 3481

Dated: September 1, 1989.

Robert R. Davila

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89-21106 Filed 9-7-89; 8:45 am]

BILLING CODE 4000-01-M

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federal register

Friday
September 8, 1989

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Block Grants-Fair Housing Requirements; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-89-1450; FR-2658]

RIN: CPD-5-89

Community Development Block Grants—Fair Housing Requirements

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final Rule.

SUMMARY: The Fair Housing Amendments Act of 1988 (Pub. L. 100–430, approved September 13, 1988) became effective on March 12, 1989. This Act expanded the coverage of the Fair Housing Act (42 U.S.C. 3601–20) to prohibit discriminatory housing practices based on handicap and familial status. This final rule makes technical changes to HUD's Community Development Block Grant (CDBG) regulations at 24 CFR Part 570 to reflect the amendments.

DATE: Effective date: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Laurence Pearl, Director, Office of Program Standards and Evaluation, Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–5000, (202) 755–5288. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Fair Housing Amendments Act of 1988 (Pub. L. 100–430, approved September 13, 1988) expanded the coverage of the Fair Housing Act (42 U.S.C. 3601–20) to prohibit discriminatory housing practices based on two new protected classes (handicap and familial status). Classes protected before the amendments included race, color, religion, sex or national origin. The amendments became effective on March 12, 1989. Following notice and public comment, final regulations implementing the amendments to the Fair Housing Act were published on January 23, 1989 (54 FR 3231).

On September 6, 1988 (53 FR 34415), the Department published a final rule amending substantial portions of its regulations governing the Community Development Block Grant Program (CDBG Program) (24 CFR part 570). The final rule included revisions addressing the Fair Housing Act and requirements for affirmatively furthering fair housing in the CDBG program. That final rule stated that technical amendments to the CDBG regulations reflecting the expanded coverage of the Fair Housing Act would be made following the issuance of final regulations implementing the substantive provisions of that Act. Today's final rule makes these promised revisions.

The following sections have been revised to reflect the expanded coverage under the Fair Housing Act: (1) Section 570.206, which governs program administration costs for fair housing activities; (2) § 570.601(b), which contains a description of the coverage of the Fair Housing Act; and (3) § 570.904, which addresses the fair housing review criteria. Statutory citations have been revised in § 570.303, which governs grantee certification requirements.

HUD has determined that notice and prior public comment on this rule is unnecessary and that good cause exists for making this rule effective as soon as possible after publication. The substantive changes made by the recent amendments to the Fair Housing Act were fully addressed in another rule that was subject to public notice and comment. Since the changes made in today's final rule are technical corrections, further notice and public comment is not required.

Findings and certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m. weekdays) in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

The rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule does not affect the amount of funds provided in the CDBG program. Rather the rule modifies and updates program administrative and procedural requirements to comport with recently enacted legislation.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that the rule will not have a significant impact on family formation, maintenance, or well-being. The rule merely makes technical changes to administrative and procedural CDBG requirements to comport with recently enacted legislation. The impact on the family of rules implementing the legislation was fully addressed in a final rule issued January 23, 1989 (54 FR 3232, 3282).

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The rule makes only minor changes to administrative and procedural rules to reflect recent statutory changes. Federalism issues related to the implementation of the substantive amendments to the Fair Housing Act were discussed in the final rule issued January 23, 1989 (54 FR 3232, 3282).

The rule was not listed on the Department's Semiannual Agenda of Regulations published April 24, 1989 (54 FR 16708) under Executive Order No. 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are:

14.218	Community Development Block Grant—Entitlement
14.219	Community Development Block Grant—Small Cities
14.221	Urban Development Action Grant
14.225	Secretary's Discretionary Fund/ Territories Program
14.227	Secretary's Discretionary Fund/ Community Development Technical Assistance Grants
14.232	Secretary's Discretionary Fund/ Special Projects

List of Subjects for 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low- and moderate-income housing, New communities, Pockets of poverty, Small cities.

For the reasons set forth in the Preamble, Title 24 of the Code of Federal Regulations is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for Part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).

2. Section 570.206(c) is revised to read as follows:

§ 570.206 Program administration costs.

* * * * *

(c) *Fair housing activities.* Provision of fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601–20) by making all persons, without regard to race, color, religion, sex, national origin, familial status or handicap, aware of the range of housing opportunities available to them; other fair housing enforcement, education, and outreach activities; and other activities designed to further the housing objective of avoiding undue concentrations of assisted persons in areas containing a high proportion of low and moderate income persons.

* * * * *

3. Section 570.303(d)(2) is revised to read as follows:

§ 570.303 Certifications.

* * * * *

(d) * * *

(2) The Fair Housing Act (42 U.S.C. 3601–20).

* * * * *

4. Section 570.601(b) is revised to read as follows:

§ 570.601 Public Law 88–352 and Public Law 90–284; affirmatively furthering fair housing; Executive Order 11063.

* * * * *

(b) "Public Law 90–284" refers to the Fair Housing Act (42 U.S.C. 3601–20), which states that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status. The Fair Housing Act further requires the Secretary to administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of the Fair Housing Act. In accordance with this statutory direction, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act; furthermore, section 104(b)(2) of the Act requires that each grantee receiving funds under section 106 of the Act (entitlement or small cities grantees) certify to the satisfaction of the Secretary that it will affirmatively further fair housing.

* * * * *

5. In 570.904, the first sentence of paragraph (c) and paragraph (c)(1) introductory text are revised to read as follows:

§ 570.904 Equal Opportunity and Fair Housing Review criteria.

* * * * *

(c) *Fair housing review criteria.* Section 570.601(b) sets forth the general requirements for the Fair Housing Act (42 U.S.C. 3601–20) and the grantee's certification that it will affirmatively further fair housing. * * *

(1) The recipient has conducted an analysis to determine the impediments to fair housing choice in its housing and community development program and activities. The term "fair housing choice" means the ability of persons regardless of race, color, religion, sex, handicap, familial status or national origin, of similar income levels to have available to them the same housing choices. This analysis shall include a review for impediments to fair housing choice in the following areas:

* * * * *

Dated: August 22, 1989.

Audrey E. Scott,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 89–21178 Filed 9–7–89; 8:45 am]

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Friday
September 8, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121

Miscellaneous Changes to Emergency Evacuation Demonstration Procedures, Exit Handle Illumination Requirements, and Public Address Systems; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 26003; Notice No. 89-23]

RIN 2120-AC45

Miscellaneous Changes to Emergency Evacuation Demonstration Procedures, Exit Handle Illumination Requirements, and Public Address Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to modify the procedures for conducting an emergency evacuation demonstration by requiring that the flightcrew take no active role in the demonstration and by changing the age/sex distribution requirement for demonstration participants. This notice also proposes to standardize the illumination requirements for the handles of the various types of passenger emergency exits. In addition, it is proposed to add a requirement that would prevent the inadvertent disabling of the public address system because of an unstowed microphone. These proposals resulted from the public technical conference on Emergency Evacuation of Transport Airplanes held in Seattle, Washington, September 3–6, 1985, and are intended to enhance the provisions of transport category airplanes for egress of occupants under emergency conditions.

DATE: Comments must be received on or before January 8, 1990.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 26003, 800 Independence Avenue SW., Washington, DC 20591, or delivered in duplicate to FAA Rules Docket, Room 915–G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked: Docket No. 26003. Comments may be examined in Room 915–G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be examined in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Franklin Tiangsing, Regulations Branch (ANM-114), Transport Airplane Directorate, Aircraft Certification Service, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431–2121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26003." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On September 3, 1985, the FAA held a public technical conference in Seattle, Washington, to solicit and review information from the public on a variety of topics related to the emergency evacuation of transport category airplanes. As a result of the conference, three working groups were formed to discuss current safety regulations and to recommend changes. These groups, which were Design and Certification, Operations and Training, and Maintenance and Reliability, were comprised of individuals representing various aviation related organizations. The proposals in this notice are the result of certain recommendations made by the Design and Certification Working Group.

Section 25.803(c) of the Federal Aviation Regulations (FAR) defines the requirements for conducting an emergency evacuation demonstration for the type certification of transport category airplanes. Similar requirements for U.S. air carrier operators are defined in § 121.291 of the FAR and Appendix D of part 121. Section 121.291 requires, in part, that each holder must conduct an emergency evacuation demonstration in accordance with Appendix D of part 121 for each type and model of airplane to be used in passenger-carrying operations, unless compliance has been shown with § 25.803 in effect on December 1, 1978 (Amendment 25–46) during type certification, or with § 121.291(a) in effect on October 24, 1967 (Amendment 121–30). Appendix D of part 121, in turn, contains demonstration criteria which are similar to those of § 25.803. Section 25.803(c)(19) of part 25, and Appendix D, paragraph (a)(19), of part 121 currently require the applicant's approved emergency evacuation training program procedures to be fully utilized during the demonstration. Most operators' procedures call for one or more of the flight crewmembers to enter the cabin and assist in an evacuation. To the extent that they are available for such assistance, it is appropriate that they do so in an evacuation under actual emergency conditions. It cannot be assured, however, that the flight crewmembers will always be available to provide such assistance on a timely basis. They may have to perform other duties which would delay their entry into the cabin. Such duties may, for example, include engine shutdown or communications with persons on the ground. If the evacuation is initiated by a flight attendant, the flightcrew may not be immediately aware of the evacuation. Furthermore, they may not

be available to assist in the cabin because they are incapacitated or have already evacuated through one of the cockpit emergency exits. In this regard, some operators' procedures call for one of the flightcrew to leave the airplane immediately and assist on the ground.

Because it cannot be assured that the flightcrew would always be available to assist in an evacuation under actual emergency conditions, the working group recommended that the demonstration should be conducted without their assistance in the cabin. With the proposed change, the demonstration would more accurately reflect conditions that are likely to be encountered during an actual evacuation.

As proposed, the flightcrew could participate in the coordination of the demonstration by determining when the airplane is properly prepared for the demonstration, relaying information to ground personnel, or initiating the demonstration. When the demonstration starts, the flightcrew would have to be in their assigned seats. They should then leave the airplane through one of the exits close to the flight deck, after simulating the time required to complete the emergency checklist. After the flightcrew has reached the ground, they would be permitted to assist evacuees.

Section 121.291(a) would be amended to specify that any demonstration conducted on or after the effective date of the amendment would have to be conducted without the active participation of the flightcrews, regardless of whether the demonstration is conducted under the provisions of that part or during type certification under the provisions of § 25.803. This would not, however, preclude an analysis made after that date which is based on the results of earlier demonstrations.

Since the role of the flightcrew in the demonstration would be minimal, there would be no need for them to be members of a regularly scheduled line crew. Section 25.803(c)(7) of part 25, and Appendix D, paragraph (12), of part 121, would therefore be revised accordingly. Additionally, the word "or" in § 25.803(c)(7)(i) would be changed to "and" in order to clarify that the requirement is for a joint part 25 and part 121 certification effort.

Section 25.803(c), as well as Appendix D to part 121, currently specifies, in part, that the emergency evacuation demonstration must be conducted using a representative load of persons in normal health. Of this load, at least 30 percent must be female and at least 5 percent must be over 60 years of age with a proportionate number of females (i.e., 30 percent of 5 percent, or 1.5 percent of the total load must be female and over 60). In addition, at least 5 percent, but not more than 10 percent, must be children under 12 years of age.

The use of elderly persons in conducting emergency evacuation demonstrations, as currently specified, subjects those persons to a high risk of suffering injuries, such as broken bones, etc. Furthermore, it is an unnecessary risk since compensating factors can be applied to provide the same test results. Although there is less risk of injury to children, the use of minors in conducting emergency evacuation demonstrations actually violates prevailing child labor laws in many states. Because of these unnecessary risks, the FAA has permitted emergency evauation demonstrations to be conducted with other mixtures of age and sex under the equivalent safety provisions of § 21.21(b)(1).

In view of these unnecessary risks, the Design and Certification Working Group recommended that the FAA re-evaluate the mixture of sex and age used for emergency evacuation demonstrations. In responding to the recommendations, the FAA first reviewed three sources of data to determine the average mixture of passengers being flown in air carrier operations: (1) The "Demographic Characteristics of Airline Passengers (1984)," *The Airliner Cabin Environment: Air Quality and Safety*, National Academy Press; (2) an age distribution survey of trans-Atlantic passengers conducted in the United Kingdom by the Civil Aviation Authority (CAA); and (3) a cursory age/sex distribution survey of airline passengers conducted by the Air Transport Association (ATA).

A review of the age distribution data from the "Demographic Characteristics of Airline Passengers" shows that the percentage of passengers over 50 years of age is 27. The data from the CAA survey shows that the percentage of such passengers is 33. From an average of these data, it is assumed that the percentage of passengers over 50 years of age is 30.

The ATA data shows that the percentage of passengers under 12 years of age is 3. By rounding to the nearest 5 percent, it is assumed that the percentage of passengers under 12 years of age is 5.

The "Demographic Characteristics of Airline Passengers" data show that 46 percent of all passengers are female. The ATA data show that 38 percent of the passengers over 60 years of age are female (that is 5 percent of the total number of passengers) and 36 percent of the passengers, ages 12 to 59, are female (30 percent of the total).

In addition to reviewing data concerning the average mixture of passengers being flown in air carrier operations, the FAA also reviewed test data concerning the relative evacuation capability of different mixtures of age and sex.

The FAA Civil Aeromedical Institute (CAMI) conducted a series of test to compare the relative evacuation rate of four different seating configurations adjacent to a Type III emergency exit (as defined in § 25.807). From those tests, the relative evacuation rates of different mixtures of age and sex were developed. In addition, the Aerospace Industries Association of America (AIA) presented data to the working group concerning the relative evacuation capability of different mixtures of age and sex. The CAMI and AIA data indicate that two age groups, participants under 50 years of age and those over 50, will adequately represent the average passenger age distribution if the percentage of passengers under 12 years of age is added to the older age group. The 5 percent assumed to be under 12 years were therefore added to the 30 percent assumed to be over 50 years to produce 35 percent.

The relative evacuation rate data from those two reports were compared with the average mixture of passengers being flown in air carrier service to produce the mixture of age and sex proposed for use in the emergency evacuation. As proposed, at least 35 percent of the participants must be over 50 years of age, at least 40 percent must be female, and at least 15 percent must be female and over 50 years of age. The 15 percent that must be female and over 50 years of age is part of the 40 percent of the participants who must be female. Based on analyses of the data discussed above, the FAA has determined that the results of evacuation demonstrations using the proposed mixture of age and sex would be comparable to results of such demonstrations under the current rules. While the proposed change would not preclude the use of persons under 12 years of age or over 60 years, it would eliminate the requirement to unnecessarily expose them to the risk of suffering injuries.

Copies of relevant portions of the documents cited above have been placed in the docket.

It is also proposed to allow the use of an alternate mixture of sex and age, provided it would produce equivalent results. Producing equivalent results would mean that it would have to produce the same evacuation rates as the age/sex distribution specified in the regulation, or the 90-second time limit would have to be adjusted accordingly. Typically, the applicant would have to conduct comparative tests in order to show that the alternate age/sex distribution would produce equivalent results.

Although not a direct result of the working group recommendations, this notice proposes to clarify the wording in § 25.803(c)(3) and paragraph (a)(3) of Appendix D to part 121 to specify that stands and ramps may be used in emergency evacuation demonstrations at overwing exits only when off-wing descent devices are not installed on the airplane. This has been the practice since the inception of the rule, and the rewording will prevent any future uncertainty over the requirement. These changes would also require corresponding conforming changes to § 25.803(c)(18) and paragraph (a)(18) of Appendix D.

As a further conforming change, § 121.291(a) would be revised to extend the exceptions of those subparagraphs to include emergency evacuation demonstrations conducted in accordance with any later amendments to that section or § 25.803(a).

This notice also proposes to revise § 25.811 to standardize the requirements for illumination of passenger emergency exit operating handles. This section currently specifies that each operating handle of Type I and Type A passenger emergency exits must be self-illuminated, or it must be conspicuously located and well-illuminated by a separate light source. Section 25.811 does not provide this option for Type III exits. The operating handle of a Type III passenger emergency exit must be self-illuminated. Although § 25.811 does not extend this option to Type III exits, the FAA has accepted such exits with handles which are conspicuously located and well-illuminated by a separate light source, under the equivalent level of safety provisions of § 21.21(b)(1). Further, § 25.811 does not provide criteria for illumination of the operating handles of Type II and Type IV passenger emergency exits. As proposed, this section would specify the same alternative methods of illumination for the operating handles of all passenger emergency exits, regardless of the type.

The emergency lighting required by § 25.812 may provide sufficient illumination of the operating handles of Type II and Type IV passenger emergency exits in many airplanes; however, as noted above, § 25.811 does not currently provide criteria for illumination of the operating handles of such exits. Because no criteria are contained in § 25.811, there may be transport category airplanes in current air carrier, air taxi or commercial service which have no illumination or insufficient illumination of those handles. Although no retrofit requirement is proposed in this notice, the FAA is considering future rulemaking to amend parts 121 and 135 to require air carrier, air taxi and commercial operators to provide sufficient illumination of the operating handles of Type II and Type IV exits. The FAA specifically invites comments concerning the models and numbers of transport category airplanes in such service with Type II or Type IV exits, the adequacy of any existing illumination of operating handles in those airplanes, the cost of providing sufficient illumination of those handles on a retrofit basis, and whether the cost of modifying airplanes in service would be commensurate with any increase in safety that would result.

Covers are sometimes provided for the operating handles of passenger exits. Section 25.811 currently requires the instructions for the removal of such covers from Type III exits to be self-illuminated; however, the FAA has allowed the option of locating the instructions conspicuously and providing sufficient illumination by a separate source of light in lieu of self-illumination. Although the need for such illumination is of equal importance, § 25.811 does not currently specify any means to illuminate the instructions for removal of the operating handle cover from any other type of passenger emergency exit. Section 25.811 would therefore be amended to specify that the instructions for removing such covers from any type exit must either be self-illuminated or conspicuously located and well-illuminated by a separate source of light.

Part 25 does not require the installation of a public address system for type certification. Section 25.1411 does, however, contain certain accessibility standards that are applicable if a public address system is installed. The FAA proposed in Notice 86–5 (51 FR 19140; May 27, 1986) to adopt a new § 25.1423 which would, in part, require a power source which is independent of engine operation and auxiliary power unit operation, the forward motion of the airplane, and all normal means used by the flightcrew for power source disconnection. Since the time Notice 86–5 was developed, the Design and Certification Working Group identified a need for additional standards concerning the public address system.

Under certain circumstances, the public address system can be rendered inoperative inadvertently. During a recent incident in which there was an emergency evacuation due to a large fuel spill from one wing, the escape slides were deployed into the fuel. The flight attendants at the back of the cabin could not be notified of this potentially hazardous situation because the cockpit microphone was not returned to the stowed position after use and was thereby rendered inoperative. As recommended, a new regulation is proposed which would require the public address system to be designed so that it will not be rendered inoperative when any microphone is not in the stowed position. Since this requirement is a system design standard rather than an accessibility requirement as currently found in § 25.1411(a)(2), the new requirement would be placed in a new § 25.1423 entitled, "Public address system." The proposed new requirement would be in addition to any standards which may result from Notice 86–5. Additionally, the design standards found in § 121.318 would be added to the new § 25.1423 so that all the design requirements for the public address system will be found in one location in part 25. The addition of the requirements in part 121 to § 25.1423 is merely an editorial change and does not impact the regulatory evaluation of this NPRM.

As proposed in this notice, the requirement to have a public address system that will not be rendered inoperative when any microphone is not in the stowed position would apply only to future transport category airplanes for which an application for type certificate is made after the effective date of the change. Although no retrofit requirement is proposed in this notice, the FAA is considering future rulemaking to amend parts 121 and 135 to require air carrier, air taxi or commercial operators of transport category airplanes already in service to have public address systems which meet this new standard. The FAA specifically invites comments as to whether the cost of modifying such airplanes would be commensurate with the increase in safety that would result.

Regulatory Evaluation

Cost-Benefit Analysis

The regulatory evaluation analyzes the costs and benefits of a Notice of Proposed Rulemaking to amend parts 25 (Airworthiness Standards for Transport Category Airplanes) and 121 (Certification and Operations for Domestic, Flag, Supplemental Air Carriers, and Commercial Operators of

Transport Category Airplanes) of the FAR. This notice proposes to modify the procedures for conducting an emergency evacuation demonstration by requiring that the flightcrew take no active role in the demonstration and by changing the age/sex distribution requirement for demonstration participants. This notice also proposes to extend the illumination requirement for the operating handles of Type I and Type A exits currently in the regulations to include the operating handles of Type II and Type IV exits and to change the handle illumination requirement for Type III exits to correspond to the requirements for the operating handles of Type I and Type A exits. In addition, the notice proposes to add a requirement to prevent the public address system from becoming inoperative due to a microphone not being stowed. An example of a means of compliance would be to install a "push-to-talk" switch on each microphone.

This notice is a result of findings of the recent public Emergency Evacuation Task Force and is intended to improve the chances of passengers safely escaping an airplane during an emergency evacuation.

Costs

The FAA estimates the total incremental cost of compliance that would accrue from implementation of the proposed rule to be less than $74,000 (discounted present value, 10 years, 10 percent, 1986 dollars).

According to information available to the FAA, only one of the proposed amendments to part 25 would result in additional cost to manufacturers of transport category airplanes produced under new type certificates. In addition, none of the proposed amendments to part 121 are expected to adversely impact air carrier operators.

Each of the proposed amendments is evaluated below for probable cost impact:

1. Proposed Amendments

a. *Regularly Scheduled Line Crew.* This proposed amendment would require that flight crewmembers need not be members of a regularly scheduled line crew, provided they have knowledge of the airplane. In other words, such flight crewmembers need not be line pilots. This amendment is not expected to impose any additional cost on aircraft manufacturers because it represents nothing more than a minor procedural change.

b. *Age/Sex Distribution of Passengers used in an Emergency Evacuation Demonstration.* This proposed amendment would require that the age/sex distribution of persons who participate in manufacturers' emergency evacuation demonstrations must consist of at least 40 percent female, at least 35 percent must be over 50 years of age, and at least 15 percent must be female and over 50 years of age. This requirement is not expected to impose additional costs to manufacturers, because any costs generated from the age/sex distribution change would be offset by the savings accrued from the elimination from such demonstrations of the requirement that includes the participation of persons under 18 and over 60 years of age. The other part of this amendment would allow an alternate passenger load to be used if it can be shown that either the alternate passenger load will produce an equivalent evacuation rate, or the 90-second time limit is adjusted to produce a demonstration that will provide an equivalent evacuation capability to that provided by a demonstration used for the representative passenger load. This feature would not impose any additional cost to manufacturers because it only represents an option to the 90-second evacuation time limit. Moreover, it is reasonable to assume that a manufacturer would not choose to use an alternate passenger load if it were not deemed to be in the manufacturer's best interest.

c. *Emergency Evacuation Demonstrations by Flight Attendants without Flightcrew.* This proposed amendment would require that emergency evacuation demonstrations be conducted by flight attendants without reliance on the flightcrew. This requirement would not impose an additional cost to manufacturers because it represents nothing more than a minor procedural change. This change would allow the flightcrew to perform other duties, such as engine shutdown and communication with persons on the ground.

d. *Passenger Emergency Exit Handle.* This amendment would require that all passenger emergency exit operating handles and the instructions for removal of covers from those handles that are covered must be: (1) Self-illuminated, or (2) conspicuously located and well-illuminated. This amendment would impose little, if any, additional cost impact on manufacturers, because illumination of the operating handles of three of five types of exits is already required under the current regulations. For instance, the current regulations require that the operating handles of Type I and Type A passenger emergency exits must be self-illuminated or conspicuously located and well-illuminated by another source. In addition, the handles of Type III exits must be self-illuminated under the current regulations; however, the regulations do not include the option for the handle to be conspicuously located and well-illuminated by another source. The FAA has made findings of equivalent safety under the provisions of § 21.21(b)(2) for the handles of Type III exits, wherein the handle is conspicuously located and well-illuminated. Thus, for the aforementioned reasons, the optional means of lighting the handles of Type III exits would not impose additional costs on manufacturers, because they are already in compliance. This practice is expected to continue.

The current regulations do not provide criteria for the illumination of the operating handles of Type II and Type IV exits. This proposal would standardize the illumination of the operating handles of all passenger emergency exits to only two methods (self-illuminated, or conspicuously located and well illuminated by another source), regardless of the type of exit involved. Neither of these two exit types currently is required to have handles which meet the provisions of the proposed amendment. Nevertheless, the proposed amendment would not impose any significant additional cost on manufacturers. This is primarily because transport category airplanes seldom have such exits. For the few airplanes which will have Type II or IV exits, the emergency lighting currently required by § 25.812 would provide sufficient lighting for the exit handles or would provide the electrical circuitry with which additional lighting could easily be provided.

e. *Public Address System.* This amendment would require that the public address system incorporate a feature, such as a push-to-talk switch, so that the system would be capable of operating regardless of the position of any microphone. Based on the informed judgment of FAA personnel, this item is expected to cost under $400 per airplane. While some FAA personnel projected lower cost estimates, the higher cost figure was chosen to represent a worst-case scenario. From a cost impact standpoint, this worst-case cost estimate is expected to be negligible relative to the minimum cost of more than $20 million required to manufacture each of the transport category airplanes expected to come into the U.S. service, under new type certificates, in the early to middle 1990's.

f. *Appendix D to Part 121.* The proposed amendments to this part would impose the same requirements on air carrier operators as those proposed as § 25.803(c) (7) and (8) for aircraft manufacturers. They would also establish the effective date of the amendments as the date on which the new standards became effective for such operators. These proposed amendments are not expected to impose additional costs to air carrier operators for those reasons given previously for aircraft manufacturers.

Benefits

The proposed rule is expected to generate benefits in the form of enhanced safety. Such safety would take the form of reduced likelihood of serious injuries and fatalities. Such injuries and fatalities would be incurred primarily during survivable post-crash ground fire emergency evacuations from air carrier airplanes and would be due largely to ineffective public address systems and inadequate illumination near or at some passenger emergency exit handles.

Estimation of these benefits, in monetary terms, is extremely difficult, since there has not been a documented aviation accident in which either serious injuries or fatalities have been shown to have resulted due to those deficiencies noted previously. There was, however, a potentially catastrophic emergency evacuation in 1984 from a Boeing 747 airplane at Honolulu, Hawaii. During that incident, the escape slides were deployed into a large pool of spilled fuel. This presented a potential hazard due to the possibility of fire. The public address system was inoperative because one cockpit microphone was not returned to the stowed position; therefore, the flight attendants at the back of the cabin could not be notified of the fuel leakage.

As a result of that incident, the aforementioned safety deficiencies in emergency evacuation equipment and procedures, and aviation accident information contained in a report published by the National Transportation Safety Board, the FAA believes there is an increased probability, over the next 10 years, of a survivable post-crash ground fire accident which could result in injuries or fatalities. This evaluation employs benefits for total cumulative airplane-years of exposure, based on the number of newly type certificated transport category airplanes projected to come into U.S. service between 1987 and 1996. An airplane-year of exposure refers to one airplane operating for 1 year at typical utilization rates for transport category airplanes. As a result of uncertainty related to whether or not an aviation accident would occur and result in casualties that could be prevented by the provisions of the proposed rule, this evaluation employs a range of potential benefits. The lower end of the range represents the prevention of four serious injuries and the upper end represents the prevention of a fatality. In monetary terms, this equates with a potential range of total benefits between $216,000 and $1,000,000 (1986 dollars), based on FAA's estimated monetary value of $54,000 for a serious aviation injury and a $1 million minimally accepted statistical value of life used by economists for the purpose of analysis. Subsequently, these benefits were distributed over the 10-year evaluation period based on total airplane-years of exposure in each year, discounted using present value factors, and summed over the 10-year period (1987–96). This procedure results in estimates of one-time total discounted present value benefits ranging from $92,000 to $425,000. In view of the expected total cost of $74,000 and benefits of $92,000 to $425,000, the FAA believes the proposed rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional information related to the costs and benefits that are expected to accrue from the implementation of the proposed rule.

Regulatory Flexibility Determination

Under the criteria of the Regulatory Flexibility Act of 1980, the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Since this Act applies to U.S. entities, only U.S. manufacturers and air carrier operators of transport category airplanes would be potentially impacted. In the United States, there are only two manufacturers that presently specialize in commercial transport category airplanes: (1) The Boeing Company, and (2) the McDonnell Douglas Corporation. In addition, there are many manufacturers that produce transport category airplanes for general aviation (GA) use, such as business jets. Some of these GA manufacturers include, for example, Gates Learjet and Cessna Aircraft.

The FAA size threshold for a small entity for U.S. airplane manufacturers is 75 employees, i.e., any U.S. airplane manufacturer with more than 75 employees is considered not to be a small entity. None of the transport category airplane manufacturers are considered to be small entities because each manufacturer is believed to have more than 75 employees. Thus no significant economic impact would be incurred by U.S. manufacturers of commercial transport category airplanes.

In terms of small entities, none of those airplane operators under Part 121 would incur significant economic impact from implementation of the proposed rule. This assessment is based on the belief that the proposed rule would not have any cost impact on such operators for those reasons given previously for airplane manufacturers in the cost section.

International Trade Impact Assessment

The proposed rule is not expected to have an adverse impact on the trade opportunities of U.S. manufacturers of transport category airplanes doing business abroad nor on foreign airplane manufacturers doing business in the United States. Since the certification rules are applicable to both foreign and domestic manufacturers that sell in the United States, there would be no competitive trade advantage to either.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that these proposed regulations would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. As this notice concerns a matter on which there is significant public interest, the FAA has determined that this action is significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies under the criteria of the Regulatory Flexibility Act that this regulation, at promulgation, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Part 25

Air Transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 121

Air carriers, Air transportation, Aircraft, Airplanes, Airworthiness

directives and standards, Aviation safety, Common carriers, Crashworthiness, Emergency evacuation, Safety, Transportation.

The Proposed Amendments

Accordingly, the FAA proposes to amend Parts 25 and 121 of the Federal Aviation Regulations (FAR), 14 CFR parts 25 and 121, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

2. By amending § 25.803 by revising paragraphs (c)(3), (c)(7)(i), (c)(8) (i), (ii), and (iii), (c)(18), and (c)(19), and by adding a new paragraph (c)(8)(vi) to read as follows:

§ 25.803 Emergency evacuation.

* * * * *

(c) * * *

(3) Unless the airplane is equipped with an off-wing descent means, stands or ramps may be used for descent from the wing to the ground. Safety equipment such as mats or inverted life rafts may be placed on the floor or ground to protect participants. No other equipment that is not part of the emergency evacuation equipment of the airplane may be used to aid the participants in reaching the ground.

* * * * *

(7) * * *

(i) For compliance with this section and § 121.291 of this chapter, a member of a regularly scheduled line crew, except that flight crewmembers need not be members of a regularly scheduled line crew provided they have knowledge of the airplane; or

(ii) * * *

(8) * * *

(i) At least 40 percent of the passenger load must be female.

(ii) At least 35 percent of the passenger load must be over 50 years of age.

(iii) At least 15 percent of the passenger load must be female and over 50 years of age.

(iv) * * *

(v) * * *

(vi) An alternate passenger load may be used provided it can be shown to provide an evacuation rate equivalent to that provided by the passenger load specified above or the time limit is appropriately reduced from 90 seconds to compensate for any differences.

* * * * *

(18) Except as provided in paragraph (c)(3) of this section, all evacuees must leave the airplane by a means provided as part of the airplane's equipment.

(19) The applicant's approved procedures must be fully utilized, except the flightcrew must take no active role inside the cabin during the demonstration.

* * * * *

§ 25.811 [Amended]

3. By amending § 25.811 by removing paragraph (e)(3) and marking it [RESERVED] and by revising paragraph (e)(2) introductory text to read as follows:

§ 25.811 Emergency exit marking.

* * * * *

(e) * * *

(1) * * *

(2) Each passenger emergency exit operating handle and the cover removal instructions, if the operating handle is covered, must—

(i) * * *

(ii) * * *

(3) [Reserved]

* * * * *

4. By adding a new § 25.1423 to read as follows:

§ 25.1423 Public address system.

A public address system required by this chapter must—

(a) Be capable of operation within 10 seconds by a flight attendant at those stations in the passenger compartment from which its use is accessible;

(b) Be audible at all passenger seats, lavatories, and flight attendant seats and work stations;

(c) Be designed so that no unused, unstowed microphone will render the system inoperative; and

(d) Be capable of functioning independently of any required crewmember interphone system.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

5. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

6. By amending § 121.291 by revising paragraph (a) to read as follows:

§ 121.291 Demonstration of emergency evacuation procedures.

(a) Except as provided in subparagraph (1) of this paragraph, each certificate holder must conduct an actual demonstration of emergency evacuation procedures in accordance with paragraph (a) of Appendix D to this part to show that each type and model of airplane with a seating capacity of more than 44 passengers to be used in its passenger-carrying operations allows the evacuation of the full capacity, including crewmembers, in 90 seconds or less.

(1) An actual demonstration need not be conducted if that airplane type and model has been shown to be in compliance with this paragraph in effect on or after October 24, 1967, or, if during type certification, with § 25.803 of this chapter in effect on or after December 1, 1978.

(2) Any actual demonstration conducted after [insert the effective date of this amendment] must be in accordance with paragraph (a) of Appendix D to this part in effect on or after that date or with § 25.803 in effect on or after that date.

* * * * *

7. By amending Appendix D to Part 121 by revising paragraphs (a)(3), (a)(7), (a)(12), (a)(18), and (a)(19) to read as follows:

Appendix D—Criteria for Demonstration of Emergency Evacuation Procedures Under § 121.291

(a) * * *

(3) Unless the airplane is equipped with an off-wing descent means, stands or ramps may be used for descent from the wing to the ground. Safety equipment such as mats or inverted life rafts may be placed on the floor or ground to protect participants. No other equipment that is not part of the emergency evacuation equipment of the airplanes may be used to aid the participants in reaching the ground.

* * * * *

(7) A representative passenger load of persons in normal health must be used. At least 40 percent of the passenger load must be females. At least 35 percent of the passenger load must be over 50 years of age. At least 15 percent of the passenger load must be female and over 50 years of age. Three life-size dolls, not included as part of the total passenger load, must be carried by passengers to simulate live infants 2 years old or younger. Crewmembers, mechanics, and training personnel, who maintain or operate the airplane in the normal course of their duties, may not be used as passengers.

* * * * *

(12) Each crewmember must be a member of a regularly scheduled line crew, except that flight crewmembers need not be members of a regularly scheduled line crew, provided they have knowledge of the

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airplane. Each crewmember must be seated in the seat the crewmember is normally assigned for takeoff, and must remain in that seat until the signal for commencement of the demonstration is received.

* * * * *

(18) Except as provided in paragraph (a)(3) of this appendix, all evacuees must leave the airplane be a means provided as part of the airplane's equipment.

* * * * *

(19) The certificate holder's approved procedures and all of the emergency equipment that is normally available, including slides, ropes, lights, and megaphones, must be fully utilized during the demonstration, except that the flightcrew must take no active role inside the cabin during the demonstration.

* * * * *

Issued in Washington, DC, on August 31, 1989.

M.C. Beard,

Director, Aircraft Certification Service.

[FR Doc. 89-21134 Filed 9-7-89; 8:45 am]

BILLING CODE 4910-13-M

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federal register

Friday
September 8, 1989

Part V

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410, 424, 466 and 473

Medicare Program; Coverage of Home Intravenous Drug Therapy Services; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 424, 466 and 473

[BPD-615-P]

RIN 0938-AD69

Medicare Program; Coverage of Home Interavenous Drug Therapy Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would expand coverage under Medicare part B to include coverage of home intravenous (IV) drug therapy services as authorized by section 203 of the Medicare Catastrophic Coverage Act of 1988. They include requirements for certification and for review and approval of the need for the covered services by a peer review organization, and they place limits on acceptance of and payments for certain patient referrals for covered home IV drug therapy services as specified in the statute. Home IV drug therapy services are covered by Medicare beginning January 1, 1990.

DATE: To assure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on November 7, 1989.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration,
Department of Health and Human Services, Attention: BERC-615-P, P.O. Box 26676, Baltimore, maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Please address a copy of comments on information collection requirements to:

Allison Herron, Office of Information and Regulatory Affairs, Room 3002 New Executive Office Building, Washington, DC 20503.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BERC-615-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Nancy Anne Null (for coverage issues), (301) 966-4654; Patricia Booth (for PRO review), (301) 966-6860.

SUPPLEMENTARY INFORMATION:

Background

The Medicare program was established by Congress in 1965 with the enactment of title XVIII of the Social Security Act (the Act). The program provides payment for certain medical services and supplies for persons 65 years of age or over, disabled persons, and persons with end-state renal disease.

Medicare consists of essentially two complementary insurance programs, the Hospital Insurance program (known as part A) and the Supplementary Medical Insurance program (known as part B).

Under section 1832 of the Act, part B covers a wide range of medical services and supplies such as those furnished by physicians or others in connection with physicians' services, outpatient hospital services, outpatient physical and occupational therapy services, and home health services. Physicians' services covered under part B include visits by patients to physicians' offices and visits by physicians to patients in their homes, in hospitals, and in other health care institutions. Part B also currently covers certain drugs and biologicals that cannot be self-administered, diagnostic x-ray and laboratory tests, purchase or rental of durable medical equipment (DME), ambulance services, prosthetic devices, and certain medical supplies. Our regulations concerning coverage of these services are found at 42 CFR part 410.

Many individuals with conditions such as osteomyelitis or servere pain require intravenous (IV) medication on an ongoing basis, because, for example, the patient is unable to take the medicine in some other form or the medicine would not be as effective if administered differently. Many patients require hospitalization for the initiation and, frequently, the duration of IV drug therapy. There is, however, an increasing number whose care (in whole or in part) can be managed at home. Many of these patients are anxious to be at home, rather than spending additional time in the hospital. Home IV drug therapy is also less expensive than IV drug therpy furnished in an inpatient setting.

Few services furnished in conjunction with home IV drug therapy to Medicare beneficiaries are currently covered by Medicare and those few are covered in a piecemeal fashion. Some of the services, such as the insertion of the IV needle by a registered nurse, might be covered as a home health benefit, if the patient is homebound and meets all other requirements necessary for coverage of home health services (see 42 CFR 409.42).

Legislation

On July 1, 1988, the Medicare Catastrophic Coverage Act (MCCA) of 1988 (Pub. L. 100-360) was enacted. Section 203 of MCCA revised sections 1832(a)(2)(A) and 1834 of the Act and added section 1861(jj) to the Act to cover home IV drug therapy services as a separate benefit when furnished by qualified home IV drug therapy providers (referred to hereinafter as "home IV providers"). Coverage becomes effective for services furnished on or after January 1, 1990. New section 1861(jj) of the Act defines the services to be covered and who may provide them. New section 1834(d) discusses payment for the services, describes limits on acceptance of and payments for certain physician referrals, and authorizes sanctions for violations of the referral limitations. Section 203 of Public Law 100-360 also provides for studies and reports, certification of home IV drug therapy providers, sanctions for noncompliance, physicians' certification of the need for home IV services, review and approval of the services by a utilization and quality control peer review organization (PRO), and the use of regional intermediaries to administer the provision.

The scope of this proposed rule is limited to coverage of the home IV services, limitations on and acceptance of payments for certain patient referrals, PRO review and approval, and physician certification of the need for services. We are preparing separate **Federal Register** documents to address payment issues (that is, the fee schedule for home IV services and payment for the IV drugs), coverage of home IV drugs, and qualifications of providers. Following is a description of the statutory provisions of Public Law 100-360 relevant to this proposed regulation.

A. Coverage of Services

As described in the new section 1861(jj) (1) and (2) of the Act, covered home IV drug therapy services are the items and services furnished to an individual who is under the care of a physician, in a place of residence used

as the individual's home, by a qualified home IV provider, as defined in section 1861(jj)(3) of the Act, or by others under arrangements made with the provider and under a plan established and reviewed by a physician. Covered items and services include nursing, pharmacy and related services (including medical supplies, IV fluids, delivery, and equipment) as are necessary to conduct safely and effectively an intravenously administered drug regimen through use of a covered home IV drug as defined in section 1861(t)(4) of the Act.

B. PRO Review

Section 1835(a)(2)(G)(v) of the Act requires that services initiated before January 1, 1993 must be reviewed and approved by a PRO. For services to be initiated in the home following an inpatient stay, the PRO review and approval must occur before the home services begin. The PRO must complete the review within one working day of its receipt of the request for the review.

For services first initiated on an outpatient basis, the PRO review and approval must occur within one working day of the date the services start (other than in exceptional circumstances).

New section 1154(a)(16) of the Act, as added by Public Law 100-360, requires the Secretary to establish criteria for the PRO to use in conducting reviews under section 1154(a) of the Act concerning the appropriateness of home IV drug therapy services.

C. Physician Certification Requirements

New section 1835(a)(2)(G) of the Act requires that, in order for home IV drug therapy services to be covered under Medicare, a physician certify that:

- The individual needs (or needed) the services for the administration of a covered home IV drug;
- A physician has established a plan for furnishing the services and reviews it periodically;
- The services are (or were) furnished while the individual is (or was) under the care of a physician;
- The services are or were furnished in a place of residence used as the individual's home; and
- The services, if initiated before January 1, 1993, have been reviewed and approved by a PRO within specified timeframes.

D. Limitations on Acceptance of and Payment for Certain Referrals

New section 1834(d)(3) sets forth several provisions governing referrals of patients to home IV providers by physicians.

1. General

Under section 1834(d)(3) of the Act, we may not pay for services furnished by a home IV provider to an individual if his or her referring physician, or an immediate family member of the referring physician, has an ownership interest in the provider or receives compensation from the provider.

"Referring physician" as defined in section 1834(d)(3)(D) of the Act means, with respect to a beneficiary receiving home IV drug therapy services, the physician who prescribed the covered home IV drug for which the covered services are provided or who established the plan of care for such services.

2. Exceptions

Exceptions to the above prohibitions apply in the following cases:

- Under section 1834(d)(3)(B)(i) of the Act, although a physician or immediate family member has an ownership interest in the provider, we may pay for the services if (a) the ownership interest is the ownership of stock traded over a publicly regulated exchange and was purchased on terms generally available to the public; or (b) the provider is a sole home IV drug therapy provider (as defined by the Secretary) in a rural area.
- Although the physician receives compensation from the provider, we may, under section 1834(d)(3)(B)(ii) of the Act, pay for the provider's services if the compensation is reasonably related to items or services actually provided by the physician and does not vary in proportion to the number of referrals made by the referring physician. This exception does not apply to compensation to a physician for direct patient care services furnished by that physician.
- If the referring physician's (or immediate family member's) only ownership or financial relationship with the home IV provider is as an uncompensated officer or director of the provider, the limitation on referrals does not apply, as stated in section 1834(d)(3)(B)(iii) of the Act.
- Finally, under section 1834(d)(3)(B)(iv) of the Act, we are authorized to establish in regulations additional exceptions for ownership or compensation arrangements that do not pose a substantial risk of program abuse.

3. Sanctions for Violations of the Limitations on Acceptance of Certain Referrals.

- As set forth under section 1834(d)(3)(C)(i) of the Act, we will not pay for home IV drug therapy services provided in violation of the limitations on acceptance of physician referrals described above.
- Section 1834(d)(3)(C)(ii) of the Act provides that any person (including a home IV provider or physician) who presents or causes to be presented a claim for an item or service that the person knows or should know is for an item or service for which payment may not be made under section 1834(d)(3)(A) of the Act will be subject to a civil monetary penalty of not more than $15,000 for each item or service. (As provided in new section 1834(d)(3)(C)(ii) of the Act, the provisions concerning civil money penalties in section 1128A of the Act will be applied to such a violation (except that the first sentence of section 1128A(a), which refers to fraudulent claims, and all of subsection 1128A(b), which refers to improper inducements) in the same manner that they apply to a penalty or proceeding under section 1128A(a) of the Act.)

Proposed Revisions to the Regulations

To implement the provisions of section 203 of Pub. L. 100-360, we would establish a new subpart F in 42 CFR part 410, amend part 424 by adding a new § 424.28, and add a new subpart E in part 466. In many cases, our regulations would parallel the statute. Below we discuss the areas that would require interpretation or expansion.

A. General

In § 410.201, Basic Rule, we would state the gist of the subpart; i.e., that Medicare part B pays for home IV drug therapy services when they are furnished by a "qualified provider" (or by others under arrangements with that provider) to a patient under the care of a physician in a place of residence used as the individual's home and under a plan of care established and periodically reviewed by the individual's referring physician. (A "qualified provider" is one that meets certain conditions of participation discussed below.)

B. Definitions

1. We would state in new § 410.203, Definitions, that a "place of residence used as an individual's home" is a place in which the beneficiary normally resides and is not an institution or facility defined in section 1861(e)(1), section 1819(a), or section 1919(a) of the Act.

Section 1861(e)(1) of the Act defines a hospital as an institution "primarily engaged in providing . . . diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons or . . . rehabilitation services for the rehabilitation of injured, disabled, or sick persons." Section 1819(a) of the Act defines a skilled nursing facility (SNF) for purposes of qualifying to participate in Medicate. Section 1919(a) of the Act defines a nursing facility for purposes of qualifying to participate in Medicaid.

Congress used the phrase "in a place of residence used as the individual's home" (section 1861(jj)(1)(A) of the Act). Section 1861(t)(4)(A) explicitly requires the Secretary to determine whether various drugs can "generally be administered safely and effectively in a home setting." (See also H.R. Rep. No. 661, 100th Cong., 2d Sess. 186 (1988). This would be a meaningless charge if a home setting included nursing facilities. Nursing facilities that qualify to participate in Medicare or Medicaid are already required to identify each resident's need for drug therapy (§ 483.20(b)(2)(xiii)), develop a plan to meet those needs (§ 483.20(d)), provide all necessary care (§ 483.25), including drug therapy (§ 483.25)), and obtain and provide routine and emergency drugs to meet resident needs (§ 483.60). For facilities that meet these requirements, the Secretary is assured that *all* drugs provided to residents can be safely and effectively administered in that setting. It does not appear that Congress intended this to be considered "a home setting."

Furthermore, explicit evidence of this view is contained in the conference report discussion of requirements for PRO review. PROs are required to assure that beneficiaries are discharged from hospitals to home IV therapy only if "the patient (or a family member) is able to carry out the home care regimen properly." (See the H.R. Rep. No. 661, 100th Cong. 2d Sess. 203 (1988.). In a nursing facility the regimen would be carried out by facility personnel. Only in a private residence would the focus be on the patient or a *family member*.

We considered an alternative option of recognizing nursing facilities as "homes" for those beneficiaries who live in those facilities rather than in private residences. We recognize that there are some people for whom the facility is in fact and in law a residence and who have no other home. Therefore, denial of coverage for home IV services and drugs for patients who reside in such facilities would mean that the patient would either have to pay for such therapy out-of-pocket or have another payor, such as Medicaid, pay on his behalf. Such a patient might seek to enter a hospital to receive Medicare coverage for such therapy. Under this alternate line of reasoning, the patient (either on his own or with assistance from facility staff who act as *de facto* "family members") would be entitled to home IV coverage whether his home is a house, apartment, or nursing facility. (Under current regulations, such facilities must provide or obtain the necessary care and services to meet the patients' needs). Furthermore, it might be inconsistent with the coverage of all other "outpatient" prescription drugs to exclude just "home" intravenous drugs, and not all drugs, from coverage in such facilities. (Under this alternative, the facility would not be considered a home for a person receiving Medicare part A SNF care because, in the case of a Medicare-covered SNF stay, IV drug therapy would be covered under part A and, more generally, a facility is rarely if ever a permanent residence for a Medicare SNF patient). We request specific comment on both alternatives, as well as suggestions for other approaches to resolving the dilemmas posed by the special case of residents of nursing facilities that are not paid under part A of Medicare.

2. We propose to define in § 410.203 the term "referring physician" as the physician who prescribed the covered home IV drug for which the services are to be provided or who established the plan of care for the services (or both). This follows the definition of the "referring physician" found in section 1834(d)(3)(D) of the Act. We would also require that the referring physician implement the plan of care by continual involvement in the individual's course of therapy through an ongoing assessment of the patient's care. In conjunction with this monitoring, we would also expect the referring physician to update the plan of care as necessary, but at least every 30 days. We believe that in order for high quality care to take place, the referring physician must be intimately involved with the patient's continuity of care beginning with its initiation through the course of the IV drug therapy. The role of the referring physician is therefore paramount in insuring continuity of high quality care. This fundamental point underlies our requirement that the referring physician establish and review the plan of care, as well as perform the certification and recertification functions.

There may be exceptional circumstances where there is more than one "referring physician" for purposes of this benefit. For example, a beneficiary may enter an out-of-State medical center and while in that institution (e.g., hospital) begin a course of IV therapy. After discharge from the hospital, the individual returns to his or her home State to continue the therapy. In this case, "a referring physician" at the medical center may have prescribed the covered home IV drug, established the plan of care, or both. A "referring physician" in the home State will assume responsibility for the plan of care from that point forward. He or she will assume responsibility for ongoing patient assessments, coordination with the home IV provider nurse or pharmacist (or both), modification to the plan, the review and signing of the plan, and the certification and recertification procedures. We therefore expect the "referring physician," except in circumstances similar to that cited, to be the same individual for purposes of plan of care establishment and review, and certification and recertification requirements.

3. "Home intravenous drug therapy services" or "home IV services" would be defined in § 410.203 as the nursing, pharmacy, and related services (including medical supplies, training, IV fluids except when they are a covered home IV drug, equipment, and delivery of any necessary items and services) that are necessary to conduct safely and effectively an intravenously administered drug regimen through use of a covered home IV drug. The items and services would be furnished to an individual who is under the care of a physician, in a place of residence used as the individual's home, by a qualified home IV provider or by others under arrangements (e.g., under a contract between the IV provider and other entities), and under a plan established and periodically reviewed by the referring physician.

We emphasize the term "intravenously administered"; we would not cover, under the home IV drug therapy services benefit, the services associated with the administration of a covered IV drug by some other access such as arterial, subcutaneous, intramuscular, or intrathecal modes of administration. The statute, in providing the definition of covered services and items, includes those that "are necessary to conduct safely and effectively intravenously administered drug regimen * * *."

4. We are also proposing to define in § 410.203 "home intravenous drug therapy provider" or "home IV provider" as an entity that has been approved as meeting the conditions of participation in part 485, subpart C and has a provider agreement with HCFA. The conditions are being proposed in another **Federal Register** document.

C. Covered Home IV Drug Therapy Services

For purposes of home IV drug therapy, nursing and pharmacy services are

those services that are necessary to conduct safely and effectively an intravenously administered drug regimen through use of a covered home IV drug. The home IV provider would have to provide the following related services as part of the therapy when they are necessary for the safe and effective administration of a covered home IV drug:

- Medical supplies;
- Training of the patient or his or her caregiver in the technique of IV drug therapy;
- Intravenous fluids except for those that meet the definition of a covered home IV drug under section 1861(t)(4) of the Act;
- Equipment, such as IV poles and infusion pumps; and
- Delivery of medical items and supplies.

We consider training of the patient or caregiver crucial to the initiation of IV drug therapy and want to clarify that outpatient training would be included in Medicare payment for a home IV drug therapy services. Before an individual or a caregiver can administer IV drugs, it is critical that he or she be adequately trained in all aspects of the IV drug therapy. We fully expect a hospital to perform the training when a course of IV drug therapy begins in that setting. (The proposed rule addressing conditions of participation for home IV providers describes training requirements.)

Except when IV fluids are used as a drug of choice to treat medical problems caused by dehydration or to hydrate patients before and after the administration of another drug to avoid medical problems that could arise from administration of that drug, we propose to cover these fluids as a supply under the home IV drug therapy services benefit. In other words, when IV fluids are administered by themselves for hydration purposes, we would consider them to be a drug, but when they are used as diluents for other drugs or for any other purpose we would consider them to be supplies and would pay for them under the fee schedule authorized under the new section 1834(d)(2) of the Act. Accordingly, if an IV fluid is used for hydration therapy, we would determine payment for it under the payment methodology for covered outpatient prescription drugs set forth in the new section 1834(c)(3) of the Act, as added by section 202(b)(4) of Public Law 100–360. (As noted earlier, under section 1861(t)(4)(B) of the Act, we addressed the list of drugs to be covered as home IV drugs in a separate rulemaking. That list includes a category of hydration therapy drugs that we propose to classify as "covered home IV drugs".)

The home IV drug therapy services benefit is a new benefit that represents an expansion of Medicare part B services. Under proposed § 410.205(c), only a participating home IV provider can furnish and bill for "covered home IV drug therapy services" as such. In addition, if the home IV provider does not furnish the covered home IV drugs, either directly or under arrangement, we would not pay for any home IV drug therapy services it provides.

We also want to emphasize that under new section 1834(c)(1)(A)(ii) of the Act, as added by section 202(a) of Public Law 100–360, when a beneficiary continues a course of IV therapy in his or her home after the therapy was initiated during an inpatient hospital stay, he or she does not have to pay a deductible on the home IV drugs dispensed in conjunction with that therapy. However, this exception to the deductible requirement does not apply if the services are not furnished by or under arrangements with a home IV drug therapy provider.

We have identified certain policy issues arising out of the interaction between the home IV services benefit and the home health care benefit. If a beneficiary is receiving home IV drug therapy, that fact could serve to meet the home health care criterion for skilled nursing care so that the beneficiary may receive both covered home IV drug therapy services and home health care services concurrently, assuming that the other qualifying criteria for home health care are met. However, in this situation, HHAs, assuming that they are not also certified as home IV providers, would not be able to bill for any covered services related to the home IV drug therapy. In other words, HHA services, such as home health aide services, could be furnished and billed by the HHA as covered home health services but not as home IV drug therapy services. Similarly, HHAs could not bill for skilled nursing services unless such services are necessary outside of those furnished in connection with administration of the home IV drugs. If an HHA is also certified as a home IV provider, it could furnish both covered home health services and covered home IV drug therapy services. However, we would require that the entity bill separately for the two benefits, using one provider number for home health services and another for home IV services. We are aware that this situation could result in program abuse such as double billing for services. For that reason, we will consider initiating contractor review of claims for beneficiaries receiving both home health services and home IV therapy services.

We note that, under the proposed conditions of participation for home IV providers, we would require that home IV providers ensure that prospective home IV patients or their caregivers are adequately trained to handle home IV drug therapy safely and effectively; that is, that the patient or caregiver would be capable of administering the medication while taking whatever safety precautions are necessary.

Furthermore, under the conditions of participation, we would require that any nursing service necessary to the administration of the home IV benefit must be furnished by the home IV provider or by others under arrangement with the home IV provider. Accordingly, Medicare home health services would not be necessary to supplement home IV services in connection with that aspect of the beneficiary's care. However, there is a potential issue concerning whether home health aides are qualified under the laws of the various States to provide assistance for home IV patients as caregivers in connection with the administration of the home IV drug. Therefore, we are requesting comments on whether State medical practice acts will permit someone other than a physician, a physician's assistant, or a registered nurse to hang an IV container and administer prescription drugs intravenously and, if so, under what circumstances and what supervision requirements.

We are further requesting comments on who should be responsible for coordination of care when the home IV beneficiary is also receiving home health care benefits under the Medicare program. Home IV therapy care for a beneficiary qualifying for the benefit, including appropriate nursing care, must be furnished by the home IV provider; however, a variety of other concurrent health care needs may be met by an HHA, which could supply non-IV related skilled nursing care and other home health care. We believe that there must be a mechanism to assure that the patient's needs are evaluated across provider lines and that care planning by all involved providers is coordinated.

D. Limitation on Acceptance of and Payments for Certain Referrals

In § 410.207 we would implement the provision in section 1834(d)(3) of the Act concerning limitation on acceptance of certain patient referrals. If the referring physician or his or her immediate family member has an ownership interest in or receives compensation from the home IV provider, services furnished to persons referred by that physician would not be covered (except in limited circumstances) and the Office of Inspector General (OIG) could impose civil money penalties.

We propose to define "immediate family member" as a "spouse, natural or adopted child, natural or adopted parent, natural or adopted or adoptive sibling, stepparent, stepchild, stepsibling, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law." We believe that by including natural, adopted, and step relatives, as well as those related by marriage to a physician, we have encompassed the range of relatives who would be in a sufficiently close relationship to the referring physician to influence the pattern of his referrals if they had an ownership interest in or received compensation from the provider.

We want to note and emphasize several points concerning the limitation on acceptance of and payments for certain referrals, as described in section 1834(d)(3) of the Act.

First, regulations to implement this provision would be in addition to the proposed anti-kickback regulations published by the Office of Inspector General (OIG) on January 23, 1989 (54 FR 3088). The proposed regulations of the OIG (to be codified at 42 CFR 1001.952) describe various payment practices that, although potentially capable of inducing referrals of business under Medicare, would not be considered kickbacks for purposes of criminal prosecution or program exclusion because the standards in the regulations would make the potential for abuse sufficiently negligible. These practices are referred to as "safe harbors". The difference between the OIG regulations and ours is that our proposed regulations are for purposes of clarifying when Medicare payment may not be made for prohibited practices. Both of these proposed regulations would be applied independently and providers and physicians would need to examine ownership, compensation, and practice arrangements within the scope and objectives of each.

Second, we note that there may be some providers of home IV therapy who are now compensating a referring physician for patient care, or paying a fee for each referral made to them, or both. If these providers become qualified home IV providers under our conditions of participation and continue to operate in this manner, they would not qualify for the exception in section 1834(d)(3)(B)(ii) of the Act for any Medicare patient referred by a compensated physician. We base this interpretation upon sections 1834(d)(3)(A) and 1834(d)(3)(C) of the Act. Section 1834(d)(3)(A) of the Act indicates that a home IV provider may not provide services to an individual under Medicare part B if that individual's referring physician or immediate family member has an ownership interest in the provider or receives compensation from the provider. Section 1834(d)(3)(C) provides that no payment may be made under Medicare part B for home IV drug therapy services that are provided in violation of the ownership and compensation limitations.

Third, for purposes of the prohibition on compensation from the provider to the referring physician as provided for in section 1834(d)(3)(A)(ii) of the Act, we consider compensation and financial arrangements to span a variety of activities. They could encompass almost any type of remuneration. In addition, section 1834(d)(3) of the Act does not specify the period of time covered by the prohibition on compensation. We would take the approach that it covers the period of time during which a violation would occur or did occur. Even though it did not initially appear as if there were a violation of the prohibition, we would consider that the violation includes the period of time before the bonuses were paid. Since the bonuses (i.e., compensation) were of varying amounts, we would assume that an explicit or (more likely) implicit agreement existed between the provider and the referring physicians that the bonuses would vary in proportion to the number of referrals made.

Finally, we note that neither Public Law 100–360 nor existing authorities provide any protection for the beneficiary if it is found that the home IV provider and referring physician have violated either the ownership or compensation prohibitions under section 1834(d)(3) of the Act. Section 1834(d)(3)(C) provides only that no payment will be made for the services provided in violation of the aforementioned arrangements. Under section 1879 of the Act (limitation on liability of beneficiary when Medicare claims are disallowed), the beneficiary is not liable for payments relating to certain specified noncovered items and services, but this section does not apply to limitation of or payment for certain referrals. We emphasize that we expect home IV drug providers and referring physicians to be organized and to operate in accordance with the law and that we will monitor compliance with this provision very closely.

- Broad Exceptions

In addition, broad exceptions apply to both the limitations on ownership and compensation under sections 1834(d)(3)(B) (iii) and (iv) of the Act.

If the referring physician has only an ownership or financial relationship with the provider as an uncompensated officer or director of the provider, section 1834(d)(3) of the Act would not preclude us from paying for the services.

If the Secretary has determined that certain ownership or compensation arrangements do not pose a substantial risk of program abuse, section 1834(d)(3) would not preclude us from paying for the services.

Under this provision, we would rely, in part, upon OIG expertise by adapting for our purposes four of the "safe harbors" from the OIG proposed regulations to which we referred earlier. We believe these "safe harbors" are applicable to the prohibitions and limitations on provider ownership and compensation for puposes of precluding Medicare payment under section 1834(d)(3)(C) of the Act. By meeting the required criteria, these "safe harbors" could constitute beneficial commercial arrangements that are *bona fide* and that would permit referring physicians to engage freely in business practices and arrangements that encourage competition, innovation and economy, yet do not pose a risk of program abuse. With these four "safe harbors", we propose to allow reasonable ties between providers and referring physicians that we foresee as in no way purposely inducing the referral of Medicare beneficiaries from the physicians to the providers.

The four proposed "safe harbors" that we are adapting from the January 23, 1989 OIG proposed rule to be codified in 42 CFR 1001.952(b), Space rental; § 1001.952(c), Equipment rental; § 1001.952(d), Personal services and management contracts; and § 1001.952(i), Employees. As set forth in our proposed regulations in section § 410.207(e), those safe harbors would implement the Secretary's authority under section 1834(d)(3)(B)(iv) of the Act to allow physician-home IV provider relationships that do not pose substantial risk of program abuse.

Certain principles underlie the requirements that each of these new exceptions must meet in order to qualify as "safe harbors". First, any payments must be consistent with fair market value in an arms-length transaction. These payments apply to space rental, equipment rental, personal services, or managements contracts. Any

agreements or arrangements must be *bona fide*, in writing, signed by the parties involved, and specific as to what rental, services or items are involved. They must also establish a time period that, where relevant, is for not less than one year. In the case of equipment rental, if the equipment is used periodically, the schedule must be set in advance. Finally, some of the "safe harbors" directly provide that charges or payments will not be linked to the volume of Medicare referrals.

We will, of course, reconsider these "safe harbors" based upon the comments we receive. In addition, if substantial changes are made to the exceptions, as they are described in the January 23, 1989 proposed rule of the OIG, when the OIG issues final rules, we will consider the changes and any necessary revisions that may be needed in our rules as a result.

- Ownership

With respect to ownership, we would not allow the referring physician or an immediate family any ownership interest in the home IV provider except for the situations permitted in section 1834(d)(3)(B)(i) (I) and (II) of the Act. In the Conference Report accompanying Public Law 100–360, the conferees expressed their concern about a growing prevalence of ownership in health care providers and other arrangements the result of which is to bind the financial interests of referring physicians with those of the providers. The conferees saw these alliances resulting in overutilization, less independent judgment, and, in general, program abuse. (H.R. Rep. No. 661, 100th Cong., 2d Sess. 203 (1988).)

We recognize, however, that this restriction may pose problems for some existing organizational arrangements in which adverse consequences such as those discussed by the conferees do not occur. We are specifically seeking comments on whether it is possible to address these situations within the parameters of the statutory language.

The following exceptions to ownership interest in the home IV provider by the referring physician or an immediate family member apply:

If the ownership interest is the ownership of stock that is traded over a publicly regulated exchange and was purchased on terms generally available to the public, section 1834(d)(3)(B)(ii)(I) of the Act permits coverage of services furnished by a provider to a patient referred by the physician with ownership interest.

Under section 1834(d)(3)(B)(i)(II) of the Act, we may pay for services if the provider in which a referring physician has an ownership interest is a sole IV drug therapy provider in a rural area.

We propose to define "sole home IV drug therapy provider" in § 410.207(a)(2). We note that the language in this new section would be similar to that found in § 405.1633(f), Procedures for classification as a sole community HHA, and § 405.1633(g), Basis for classification as a sole community HHA. We believe that it would be reasonable to base our proposed definition of sole community home IV provider on the HHA experience. This is so because, of all Medicare providers, HHAs will be the most similar to the new home IV providers in terms of the scope of their activities. Under our definition, a home IV provider would have to submit to its intermediary a request for classification as a sole home IV drug therapy provider showing that it meets the requirements as discussed below. The intermediary would review the request and send it, with its recommendations, to HCFA. HCFA would review the request and the intermediary's recommendation and forward its approval or disapproval to the intermediary. An approved classification as a sole home IV drug provider would remain in effect without any need for reapproval unless a change occurs in the circumstances under which the classification was approved.

Under the proposed requirements, HCFA would approve a provider's classification as a sole home IV provider in a rural area only if the home IV provider designates a particular rural area, shows that no other home IV provider furnishes services within that area and shows there are no physicians (other than those with an ownership interest in the home IV provider) available to perform the certification and recertification and plan of care functions.

In addition, we propose to use the definition of rural area found in section 1861(aa)(2) of the Act. Under that definition, a rural area is one that is not an urbanized area (defined by the Bureau of the Census as an area with less than 2,500 people) and that is designated by the Secretary either as—

- An area with a shortage of personal health services under section 1302(7) of the Public Health Service Act; or
- A health manpower shortage area described in section 332(a)(1)(A) of that Act because of its shortage of primary medical care manpower.

We believe that this definition for "rural area" takes into account the fact that a major characteristic of most rural areas is a shortage of health manpower or personal health services. In addition, we would prefer, for purposes of clarity and uniformity, to use a definition that is commonly accepted throughout government; that is, that of the Bureau of Census.

- Compensation

With respect to compensation, section 1834(d)(3)(B)(ii) of the Act states that if the compensation is reasonably related to items or services actually provided by the physician and does not vary in proportion to the number of referrals made by the referring physician, the payment limitation would not apply; however, this exception would not apply to compensation provided for direct patient care services.

In other words, to qualify for the exception, the compensation could not be unreasonable for the items and services provided, and it could not deviate (e.g., rise) when compared to the number of referrals made. However, this exception under section 1834(d)(3)(B)(ii) of the Act would not apply to compensation paid by the home IV provider to the referring physician for direct patient care services. We expect the physician to bill Medicare (or the beneficiary) for such services in these circumstances. A home IV provider may retain and pay a physician a flat fee under a *bona fide* arrangement for consultative services under which the fee does not vary in accordance with the number of referrals the physician makes to the home IV provider and does not involve direct patient care. In this case, there is no prohibition against payment under section 1834(d)(3) of the Act since the compensation is set and direct patient care is not involved.

If, on the other hand, a physician provides direct patient care services to an individual, the home IV provider would not be able to pay the physician for these services. The physician would have to bill Medicare (or the beneficiary) for the services. "Direct patient care services" would be "any services covered under Medicare Part B for which a physician would bill and receive reimbursement from Medicare."

D. Physician Certification of Need for Services.

In new § 424.26, we would implement that portion of the statute that requires certification of the beneficiary's home IV drug therapy services. As required by new section 1835(a)(2)(G) of the Act, we would require the referring physician to certify that:

- The services were or are required because the individual needed or needs the services for administration of a covered home IV drug;

- A plan for furnishing the services has been established and is reviewed periodically by the referring physician;
- The services are or were furnished while the individual is or was under the care of a physician;
- The services are or were furnished in a place of residence used as the individual's home; and
- The services, if initiated before January 1, 1993, have been reviewed and approved by a PRO in accordance with §§ 466.201 through 466.224.

We would also require that recertification take place at least every 30 days to match the requirements in proposed 42 CFR 485.120 (contained in the separate proposed rule on home IV provider conditions of participation) that the referring physician review the patient's progress in attaining the objectives of the plan of care at least every 30 days. We believe 30 days would be a suitable period for recertification, as the physician would concurrently be reviewing the plan of care. Similarly, we propose that, because of the similar timing of the review of the plan of care with the period for recertification (that is, at least every 30 days), the referring physician should also perform recertification as well as the initial certification. In addition, he or she, because of active participation in the patient's course of therapy, would be the most appropriate and accountable individual to perform these functions.

E. Prior PRO Approval.

Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248)) amended Part B of Title XI of the Act to establish the Utilization and Quality Control Peer Review Organization (PRO) program. The 1982 legislation authorized PROs to review services provided or proposed to be provided to Medicare beneficiaries. PRO responsibilities generally have included review of health care services provided under Medicare (Title XVIII of the Act) for the purpose of determining whether the services were reasonable and medically necessary, were furnished at the appropriate level of care, and were of a quality that meets professionally recognized standards of care. In addition, PROs monitor and validate a sample of diagnostic and procedural information supplied by hospitals to fiscal intermediaries to establish prospective payment amounts to hospitals.

To carry out their responsibilities, PROs acquire information from the medical records of patients and from other records maintained by health care facilities, practitioners, intermediaries, and carriers. In addition, PROs generate information as a result of their reviews regarding the quality and utilization of health care services. PROs use this information to develop statistical profiles (that is, practice patterns) to allow them, for example, to focus review efforts better and to assess the quality of care being furnished. PROs transmit their determinations to intermediaries and carriers responsible for making Medicare payments under the Act.

Current PRO Prior Authorization Requirements

Currently, HCFA requires 100 percent PRO approval of 10 surgical procedures. This review is, where possible, to be performed on a preadmission or preprocedure basis. If the review cannot be performed on a preadmission or preprocedure basis (e.g., the surgery is an emergency), the PRO performs the review retrospectively. The PRO also conducts retrospective sampling of prior approved cases to assure that the quality of care met professionally recognized standards of care and to validate the accuracy of the information provided during the prior authorization process.

In addition, PROs who have identified specific utilization or quality problems require prior approval before the identified service is furnished (e.g., admissions for medical management of back problems).

Section 9353 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) amended section 1154 of the Act to require the review of services provided by health maintenance organizations (HMO) and competitive medical plans (CMP), which have contracts under section 1876 of the Act on a risk-basis with HCFA. However, notwithstanding our authority to include risk-based HMOs/CMPs within the scope of this regulation, we are not pursuing this inclusion at this time. Section 1835(a)(2)(G) of the Act cross-refers to section 1154(a)(16) as the basis for the PRO review of home IV drug therapy services. Section 1154(a)(16), in turn, refers to section 1154(a)(1) concerning the scope or nature of review that PROs are to perform with respect to this service. The statutory basis for the PRO review of risk-based HMOs lies not in section 1154(a)(1), however, but in section 1154(a)(4)(B). While this subsection would *allow* us to include these entities within the type of peer review that we expect to be performing with respect to all other health care providers, it does not require that this be the case. Rather, in our view, it permits the Secretary to set priorities for PROs in terms of selecting among all possible HMO quality issues those that require the greatest attention. While we reserve for future consideration whether home IV drug therapy performed under the auspices of risk-based HMOs/CMPs ought to be included within the scope of PRO review, we are not including it now because of what we perceive to be competing concerns in other areas. Moreover, because risk-based HMOs/CMPs already have the clear incentive to prevent unnecessary utilization of covered health care services, it would be largely duplicative and therefore wasteful to have PROs use their limited resources to make the same determinations.

In the discussion below, we describe a proposed new subpart E of 42 CFR part 466 that would implement the review of home IV drug therapy services.

1. Scope of PRO Review. The legislation states that coverage for home IV drug therapy services begins January 1, 1990 and that all payment for such services initiated before January 1, 1993 must be approved by the PRO. The Conference Report states that after 1992 (i.e., beginning January 1, 1993) "the Secretary could require PROs to conduct some focused reviews and could require prior approval in appropriate circumstances." (H.R. Rep. No. 661, 100th Cong., 1st Sess. 204 (1988)) We, therefore, have proposed that the regulations regarding PRO approval of home IV drug therapy services are effective for services beginning January 1, 1990. After the initiation of the review and before January 1, 1993, we would determine what types and amounts of review to continue.

The main thrust of the review required in this proposed rule is the assurance of quality care while a secondary concern is proper utilization. We would require the PRO to determine that the intravenous route of administration is appropriate and that the proposed home IV drug therapy services meet professionally recognized standards of care. The PRO would also determine whether the home IV drug therapy services are reasonable, appropriate, and necessary for the treatment of the illness or injury or to improve the functioning of a malformed body member.

When a physician proposes to discharge a hospital inpatient and continue administration of a drug or drugs approved to be administered at home, the PRO, while the patient is still hospitalized, would have to review and approve for payment the services required to administer the drug(s). In the case of a hospitalized beneficiary whose physician believes he or she should receive home IV drug therapy, the physician or health care facility would have to contact the PRO and request review during normal business hours on normal working days (e.g., 9 a.m. to 5 p.m., Monday through Friday).

The PRO also would periodically review home IV drug therapy services when, for example, the patient continues to receive IV drug therapy over time or where the administration of a particular drug requires close monitoring of bodily functions (e.g., kidney functioning).

If a practitioner or health care facility violates its statutory obligations (e.g., exhibits a pattern of not correctly monitoring the patient's bodily functions while on a particular drug or a combination of drugs), the PRO would have to carry out the responsibilities specified in subpart C of 42 CFR part 1004 regarding the imposition of sanctions.

2. PRO Notification of New Services That Need Prior Approval. We propose that each PRO be required to give timely notification to health care facilities and physicians in its State about the new services for which PRO review must be sought. This notification would have to include:

- The date upon which and the manner by which (e.g., telephone) the PRO plans to begin review of home IV drug therapy services;
- The information to be furnished to the PRO;
- A statement about need for expediency in responding to PRO questions;
- At no charge, a copy of the criteria and quality screening guidelines to be used in the review process;
- A description of types of validation and quality review to be performed on a sample of cases; and
- A statement about the financial liability for charges found to be not medically necessary and a statement that no claim will be paid without PRO approval before submission of the claim.

3. Responsibilities of Physicians and Health Care Facilities. We propose to require both physicians and health care facilities to meet the provisions of § 466.78, which describes their responsibilities in cooperating with PRO review. The proposed regulations also describe responsibilities specific to implementation of the provision of home IV drug therapy services.

a. Physicians. The referring physician would have the overall responsibility for correctly ordering (e.g., in the plan of care) the home IV drug therapy services and monitoring the patient while he/she receives the services (e.g., ordering and analyzing diagnostic studies and appropriately modifying the drug when necessary).

In addition, the physician would be required to seek (or allow the health care facility to do so) PRO approval of the proposed home IV drug therapy services. Some prior approval might be handled by telephone, such as in the case of non-hospitalized patients. In other cases (e.g., hospitalized patients), the review might consist of reviewing the inpatient clinical records. In either case, the physician would have to cooperate and either supply information orally or in writing (including supplying physician's office records when necessary).

b. Health Care Facilities. As used throughout this subpart, the term "health care facility" is used as defined at § 466.1. That is, all types of health care providers and HMOs/CMPs are included in the definition. We have decided to use that terminology rather than list each type of provider every time it is applicable.

For example, if an intravenous drug is being proposed to be administered at home immediately following a hospital stay, the hospital, home IV drug therapy provider or physician would seek the PRO prior approval. Conversely, if the IV drug was started outside of an inpatient hospital stay and was going to be administered to the beneficiary in his or her residence, the physician, home IV therapy provider, hospital emergency room, hospital clinic, skilled nursing facility (about to discharge the patient), cost-based HMO/CMP, or home health agency (seeing the patient for other reasons) might contact the PRO for review. Thus, for ease of reading, we have used the term "health care facility" rather than list all types of providers and cost-based HMOs/CMPs each time.

If the physician does not seek PRO approval, then the health care facilities (as defined above) would have the same responsibilities outlined above for physicians. However, even when the physician seeks the PRO approval, health care facilities (e.g., hospital, home IV therapy provider) would have the responsibility to supply the needed records (including the plan of care) to the PRO. To solidify these types of arrangements, the affected health care facilities would have to develop a memorandum of understanding with the PRO or, in the case of the hospital, modify an existing one.

c. Sanctions. If a health care facility or a physician does not comply with PRO review requirements, the PRO may determine that the requirements of 42 CFR part 1004, subpart C, have not been met. If the PRO makes such a determination, it would recommend to the OIG that the provider or physician (or both) be sanctioned for failure to meet the statutory obligations.

4. PRO Designation. The PRO "area" designation is the State or Territory (e.g., Virgin Islands). There currently are 54 PRO areas: 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and American Samoa/Guam and the Commonwealth of the Northern Mariana Islands.

In implementing this provision, we had to decide which PRO to propose to perform the required review. For example, if a beneficiary lives in one State, is hospitalized in that State by a physician who practices in that State, and receives home IV drug therapy services from a home IV therapy provider in that State, assignment of review responsibility presents no problem; i.e., the PRO in that State would do the review. As beneficiaries cross State lines to receive hospital care or if IV therapy providers are located in a State different from the one in which the beneficiary resides or is hospitalized, the PRO designation becomes more problematic.

In analyzing the various options we believe that assignment of review responsibilities could be based on several choices; i.e., we can choose the PRO in the State in which the:

- Beneficiary resides,
- Physician's office is located,
- Hospital is located, or
- Home IV therapy provider is located.

After careful consideration, we have decided that for continuation of inpatient hospital services, the PRO conducting the prior authorization review would be the PRO for the State in which the hospital is located. This is because the hospital already has an agreement with the PRO and is familiar with PRO's review process. Since we believe the majority of home IV drug therapy services will be a continuation of hospital services, the requirement for PRO prior approval would be an easy transition.

For review of continuations of previously approved home therapy services, for approval of services started on an outpatient basis, and for retrospective reviews, we believe that the location of the home IV therapy provider should be the locus for PRO designation. Thus, we would require that, for these reviews, the PRO conducting the review would be the one in the State in which the home IV therapy provider is located.

5. PRO Review Process. When performing review of home IV drug therapy services (proposed to be provided or already provided), the PRO first would have to determine that the patient does not or did not require hospitalization for the provision of the home drug therapy. That is, the PRO would be required to determine that the patient's condition is or was stable enough that discharge from the hospital would not jeopardize his or her health or safety or (for outpatient initiation) that the patient's condition is such that inpatient hospitalization is not warranted. In addition, the PRO would have to be assured that:

- The patient or caregiver meets the selection criteria outlined in the conditions of participation proposed in a new § 485.115 (to be found in a separate Federal Register document);
- The patient or caregiver has been or will be sufficiently trained as to how to administer the drugs safely and effectively in the home and has independently administered or will independently administer intravenously at least one dose of the drug under supervision;
- The plan of care executed by the referring physician has enough information to support the coverage of home IV drug therapy services;
- The drug is being used for one of the stated indications listed in our Federal Register notice of covered IV drugs. See 54 FR for our proposed listed covered drugs.
- The drug is medically indicated for the treatment of the patient's condition;
- The dosage is correct (e.g., adjusted for body weight and height);
- Appropriate diagnostic studies (e.g., culture and sensitivities, kidney function tests) have been performed and will be performed as appropriate while the patient is receiving the therapy;
- Other appropriate periodic monitoring has been and will be performed;
- The drug is not contraindicated (e.g., based upon abnormal laboratory findings, drug interactions);
- The home IV drug therapy services meet professionally recognized standards of care, as well as Medicare standards; and
- The route of administration is appropriate. When deciding that the route of administration is appropriate, the PRO would carefully review to determine if another route of administration would be effective (e.g., oral, subcutaneous, etc.) If the PRO makes a determination that another route would be effective, the PRO would deny payment.) An example might be: a physician seeking prior approval for the administration of intravenous Aminophylline.)

We propose that when performing review, the PRO would use review coordinators to screen cases for PRO physician reviews. The review coordinators would use criteria or guidelines, developed by HCFA or the PRO (or both), which would be distributed to the affected health care facilities (e.g., hospitals, home IV therapy providers) and physician organizations in the State.

The legislation states that the Secretary shall establish criteria to be used by the PRO in conducting reviews. The major portion of the PRO's criteria would be the list of drugs and their indications for use (as outlined in a separate Federal Register document) about which the PRO has no latitude. In addition, any other criteria (e.g., intervals for review, severity of signs and symptoms necessitating administration of IV drugs) would be distributed as outlined above.

As currently drafted, the key provisions in the guidelines include:

- Criteria requiring intense scrutinization of certain drugs proposed to be administered intravenously in the home to determine that the intravenous route of administration was the only effective way to administer the drug. An example of this criterion would be the administration of Cimetidine intravenously in the home when the patient is not concurrently receiving total parenteral nutrition.
- Criteria relevant to obtaining specific laboratory tests while the patient is on a specific drug. An example of this would be when the patient is receiving an Aminoglycoside, a drug that has a known potential for kidney toxicity. In instances where the patient is receiving the drug, the patient's kidney function would need to be closely monitored; that is, at least twice a week.

These criteria would be used to trigger physician review. After the guidelines/criteria are made final, they will be available from HCFA or the PRO. We specifically invite comments on criteria that should be used when performing review of the necessity and appropriateness of home IV drug therapy.

As with the current PRO review process, the review coordinator could approve the case and issue an approval number if the criteria or screening guidelines are not failed. If, however, the cases does not meet the criteria or guidelines, the case would be referred to a PRO physician for review. If the PRO physician approves the case, a PRO approval number would be issued. If the PRO physician questions the case, the physician who prescribed the home IV drug therapy and the health care facility would immediately be given an opportunity to discuss the case. The prescribing physician can discuss the case with a PRO physician and the health care facility could discuss the case with a PRO representative. If, however, the health care facility designates a physician representative, that physician would also be able to discuss the case with a PRO physician.

Even though the opportunity to discuss would be of limited duration because of the review timeframes dictated by legislation, this process would allow the physician, health care facility, or both, to present information to support coverage of services. Thus, since criteria or guidelines would be used to screen cases, the criteria would be distributed by the PRO to affected health care facilities and medical societies in the State.

6. Timing of Review. In order for payment to be made for home IV drug therapy services, a PRO would have to fulfill the requirements below:

a. Prior Review of Home IV Drug Therapy Proposed as a Continuation of Inpatient Hospital Therapy.

- We would require the PRO to conduct its review and, when appropriate, authorize for payment any home IV drug therapy services before the patient is discharged from the hospital.
- The PRO would have to complete its review within one working day of receipt of all the information needed to complete its review. The one working day does not include the time involved in giving the health care facility and physician an opportunity to discuss the case. (Absent additional information, the PRO would make its determination based upon the information in its possession.)
- If a denial is proposed or a potential quality problem is identified, the prescribing physician and the health care facility would be given an opportunity to discuss the case. The PRO would be required to attempt to contact either the requesting entity (e.g., referring physician) or the other involved entity (e.g., health care facility) to discuss the case. For potential quality problems, the PRO will follow the timeframes set forth in its contract with HCFA.

b. Initial Review of Drugs Started on an Outpatient Basis. For nonhospitalized patients that a physician believes should receive home IV drug therapy services, the PRO would have completed its review within one

working day of initiation of the home IV drug therapy services.

For clarity, we have added a definition of "outpatient basis". As used in the subpart, "outpatient basis" means any setting other than an inpatient hospital setting.

Thus, section 1835(a)(2)(G) of the Act permits the PRO to have until the end of the working day following the initiation of home IV drug therapy by which to complete its review function. Assuming that the referring physician or health care provider provides prompt notice to the PRO of the start of the IV drug therapy (that is, notice that is either simultaneous with or precedes the initiation of the service), there should be no difficulty for the PRO in finishing its review tasks by the statutory deadline.

However, we believe that the PRO is entitled to have a reasonable length of time, within the constraints of the statute, to perform its review and, therefore, are requiring that PROs be allowed to have at least eight hours from the time they are notified to finalize their decision. Most of the time, we would expect PROs to complete their tasks well within this timeframe since we anticipate that physicians or providers will make the kind of prompt notification that will assure a timely PRO response. However, to the extent that a PRO does not receive timely notification (because of the practitioner's or provider's failure to provide such) and the delay of the PRO's final decision goes beyond the general statutory deadline, we would consider this to be the kind of "exceptional" circumstance" authorized by the statute that would permit the PRO to have the necessary time within which to make the kind of informed judgment necessary in these cases.

While this is the only "exceptional circumstance" that we are able to identify at this time, we are specifically seeking public comments about what other such circumstances, if any, we should consider.

c. Subsequent Reviews of Continued Home IV Drug Therapy. We propose that when the PRO approves the IV drug therapy, it would issue an approval number and instruct the requesting entity to request PRO approval again when the drug is administered beyond a certain date or number of days. The date or number of days would be based, for example, upon such things as:

- Duration of treatment thus far,
- Specific drug(s) being used, and
- Specific condition(s) being treated.

When home IV drug therapy services are to be continued past the date or days approved by the PRO, we would require the physician or health care facility to seek PRO approval as discussed previously. The request for this review could be no less than three working days before the expiration of the PRO approval and would have to be in accordance with instructions issued by the PRO.

d. Prior Review of Change in Drug Therapy. When a physician proposes to make a change in the drug therapy, the physician or health care facility would have to seek PRO approval. The PRO review process would be the same as for first approvals of drugs started on an outpatient basis.

Since we have a responsibility to assure that the IV drug therapy is safe and effective, we are proposing this policy. We do not believe that, at this time, we can define those changes that might be minor enough to not warrant PRO review. Therefore, we specifically invite comments about other approaches to changes either in drugs or dosages of drugs once home IV drug therapy has been approved. In the event that the final regulation continues this proposed policy, we would carefully monitor the situation and would consider modifying the policy if program experience shows that such a modification is warranted.

7. Notification Procedures. We propose that when the PRO has made its determination, it would notify, by telephone, the prescribing physician and health care facility of its determination. If the PRO denies the home IV drug therapy services, it would issue, within one working day of the date of the determination, a notice (in accordance with the requirements of § 466.94(c)) to the beneficiary, the prescribing physician, the health care facility, and the fiscal intermediary.

Any notification regarding possible or confirmed quality problems would be performed by the PRO in accordance with contractual requirements and the PRO confidentiality rules in 42 CFR part 476.

8. Retrospective Reviews. Periodically, in addition to the reviews for prior approval and the periodic concurrent reviews, we would require the PRO to conduct retrospective reviews of some cases.

First, the PRO would perform a review on a random sample of cases to be assured that the home IV drug therapy services meet professionally recognized standards of care. In addition, the PRO would have to be assured that all of the conditions in § 466.214 (concerning the safe and effective administration of home IV drug therapy) are met.

The PRO also would, on a retrospective prepayment basis, review any claims for home IV drug therapy services for which PRO review was required but never completed and make a determination in accordance with § 466.214. Since the fiscal intermediary will not pay a claim without a PRO authorization number, the physician or health care facility would have to seek PRO review. Should the claim inadvertently get paid, the PRO would identify and review the case and make a determination on a postpayment basis.

In addition, the PRO would periodically conduct a validation review of a sample of cases where approval was granted upon information given over the telephone. The purpose of this review would be to validate the accuracy of the information given verbally. For these sampled cases, the PRO would also ascertain that all of the conditions of § 466.214 are met.

9. Liability and Corrective Actions. No payment would be made if the PRO has not approved the services for payment. If a PRO does not complete its review timely because of a PRO administrative error, it would still have to complete the review and issue an approval number or a notice denying the services.

When the PRO denies home IV drug therapy services, financial liability would be determined by rules set forth in § 405.330, Payments for certain nonreimbursable expenses, and § 405.336, Criteria for determining that a provider, practitioner, or supplier knew that services were excluded from coverage as custodial care or as not reasonable and necessary.

When the review is not completed timely because the physician, health care facility, or both, did not comply with the requirements (e.g., failed to make the request on a timely basis), the PRO would take whatever corrective actions are necessary. The corrective action, ultimately, could be a sanction action.

We also propose that the PRO may take other types of corrective actions. For example, if information given over the telephone by a physician or health care facility is found to be misleading, dubious, or inaccurate, the PRO could require certain physicians or health care facilities to submit all information in writing.

The ultimate purpose of corrective action would be to ensure that future cases are submitted to the PRO for review on a timely basis with accurate information.

10. Appeals. Reconsiderations and appeals of PRO denials are available under 42 CFR part 473. We would revise that part so that a denial by the PRO for home IV drug therapy services are subject to an expedited reconsideration

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individuals desiring to submit comments

Authority: Secs. 1102, 1832, 1833, 1834, 1835,

others under arrangements), and under a

(§ 473.18) and so that a reconsideration for these services follows the time requirements in § 473.32(a)(1)(ii) for hospitalized patients and for discharged patients.

Regulatory Impact Statement and Flexibility Analysis

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all PROs are treated as small entities. In addition, we believe that a majority of home IV providers, once certified, will also qualify as small entities under the RFA.

Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

This rule would implement section 203 of Public Law 100–360 that provides, effective January 1, 1990, Part B coverage for home IV drug therapy services including nursing services, pharmacy services, and related items and services necessary for the safe and effective administration of home IV drugs. We anticipate that Medicare coverage of home IV drug therapy services would provide approximately $810 million in benefits over the next five fiscal years, beginning in FY 1990. This amount reflects only expected benefit outlays for home IV therapy services and does not reflect any effects these new benefits may have on program spending for inpatient hospital care. The following table shows the amount of anticipated incurred home IV benefits by fiscal year for the next 5 fiscal years:

Projected Incurred Benefits As a Result of Medicare Coverage of Home IV Drug Therapy Services

[In millions]*

FY 1990	FY 1991	FY 1992	FY 1993	FY 1994
$100	$140	$260	$190	$220

*Rounded to the nearest ten million.

On the basis of projected incurred benefits, this proposed rule would be considered a major rule under the E.O. 12291 cost criterion. However, we believe that any effects of these provisions on the economy and public would primarily be the result of the statute and not this proposed rule. This is because we have proposed to implement the statute exercising administrative discretion in certain respects. For example, we propose to clarify the meaning of the statute by defining "home" and "referring physician". However, only the following two areas are of such significance that major effects would result: describing covered nursing services, covered pharmacy services, and covered related services and supplies; and establishing criteria to be used by PROs in conducting reviews with respect to the appropriateness of home intravenous drug therapy services. As discussed below, we do not believe these provisions would result in effects that meet either E.O. 12291 or Regulatory Flexibility Act criteria.

In this document, we are given discretion in proposing what constitutes the covered services that would have to be furnished by a home IV drug therapy provider. Although section 1861(jj)(2) of the Act covers nursing, pharmacy, and related services, it does not define services in detail. It, however, does require that these services "* * * are such as are necessary to conduct safely and effectively an intravenously administered drug regimen * * *." In describing these services, we have consulted with staff from established entities that furnish home IV drug therapy services, drug companies, and other concerned individuals to obtain advice and recommendations. In addition, we studied both the Standards for the Accreditation of Home Care issued by the Joint Commission on Accreditation of Health Care Organizations and the Intravenous Nurses Standards of Practice issued by the Intravenous Nurses Society. We have based our proposed list of services on these organization's standards, as well as on current practice for home IV drug therapy services. Therefore, we believe that our description of covered services essentially conforms with existing industry practices and, therefore, would result in only negligible effects on home IV drug therapy service providers.

We also are given administrative discretion in determining the review criteria that PROs would use in evaluating home IV drug therapy services. We believe that the effect on PROs of the criteria that we are proposing would be negligible since the review criteria are similar to those currently used for PRO review of other services. Funding for this additional review work would be provided to PROs through a modification in their current contracts.

As discussed above, we are using administrative discretion in two important areas. We believe our application of administrative discretion in these two areas would result in negligible effects. Moreover, any additional effects accruing to this proposed rule would be the result of the statute and not the proposed rule. Therefore, we do not believe this proposed rule meets E.O. 12291 criteria and an initial regulatory impact analysis is not required. Also, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities and would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Paperwork Burden

Sections 424.28, 466.206, 466.208, 466.214, 466.216, 466.218, and 466.220 of this proposed rule contain information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. The referring physician must establish a plan of care and certify (and recertify as necessary) that the services meet certain requirements (§ 424.28). In addition, the physician and health care facility would have to supply the PRO with needed information (§§ 466.208, 466.214, 466.216, and 466.220). The public reporting burden for the information collections in § 424.28 is estimated to be 730.3 hours annually shared among approximately 20,000 physicians.

A notice will be published in the **Federal Register** when approval for the burden is obtained. Organizations and

individuals desiring to submit comments regarding the burden estimate or any other aspect of this collection of information, including reducing this burden, should send comments to the agency officials specified in the "ADDRESS" section of this preamble.

Response To Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays, requirements.

42 CFR Part 424

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

42 CFR Part 466

Grant programs-health, Health care, health facilities, Health professions, Peer Review Organizations (PRO).

42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Peer Review Organizations (PRO), Reporting and recording requirements.

For the reasons set out in the preamble, 42 CFR chapter IV would be amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. 42 CFR part 410 is amended as set forth below:

1. In the table of contents for part 410, a new subpart F is added and the authority citation is revised to read as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

* * * * *

Subpart F—Coverage of Home Intravenous Drug Therapy Services

410.201 Basic rule.
410.203 Definitions.
410.205 Home IV drug therapy services.
410.207 Payment limitations concerning certain patient referrals.

Authority: Secs. 1102, 1832, 1833, 1834, 1835, 1861 (r), (s), (t), (cc), and (jj), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395m, 1395n, 1395x(r), (s), (t), (cc), and (jj), 1395hh, and 1395rr).

2. Section 410.3, the introductory language to paragraph (a) is repeated and paragraph (a)(2) is revised to read as follows:

§ 410.3 Scope of benefits.

(a) *Covered services.* The SMI program helps pay for the following:

(1) * * *

(2) Services furnished by ambulatory surgical centers (ASCs), home health agencies (HHAs), home intravenous drug therapy providers (or home IV providers), and comprehensive outpatient rehabilitation facilities (CORFs).

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3. A new subpart F is added to read as follows:

Subpart F—Coverage of Home Intravenous Drug Therapy Services

§ 410.201 Basic rule.

Under sections 1834(d) and 1861(jj), Medicare part B pays for home intravenous drug therapy services furnished by a qualified home intravenous drug therapy provider (see part 485, subpart C of this chapter) or by others under arrangements made by the qualified home IV drug therapy provider with them, to a patient who is under the care of a physician, in a place of residence used as the beneficiary's home and under a plan of care established and periodically reviewed by the beneficiary's referring physician.

§ 410.203 Definitions.

For purposes of this subpart—

Home intravenous drug therapy provider or "home IV provider" means an entity that provides home IV drug therapy services, has been certified as meeting the conditions of participation of part 485, subpart C of this chapter, and has a provider agreement with HCFA.

Home intravenous drug therapy services or "home IV services" means nursing, pharmacy and related services (including medical supplies, equipment, intravenous fluids only when used as diluents for covered home IV drugs, and delivery services) necessary to conduct an intravenously administered regimen safely and effectively in conjunction with the use of a covered home intravenous drug. These services are furnished to an individual who is under the care of a physician, in a place of residence used as the individual's home, by a qualified home IV provider (or by others under arrangements), and under a plan established and periodically reviewed by the referring physician.

IV stands for intravenous.

Place of residence used as the individual's home is a place in which the beneficiary normally resides and is not an institution or facility that is defined in section 1861(e)(1), 1819(a) or 1919(a) of the Act.

Referring physician means the physician who prescribed the covered home intravenous drug for which the services are to be provided or who established the plan of care for the services or both.

§ 410.205 Home IV drug therapy services.

(a) *Individual services.* Particular services included in the term "home intravenous drug therapy services" that are covered under this subpart are limited to the nursing services and pharmacy services described in §§ 485.135 and 485.140, respectively, of this chapter and related services described in paragraph (b) of this section that are necessary for the safe and effective administration of a covered home IV drug. Separate payment may not be made for any of these services furnished to a patient receiving covered home intravenous drug therapy services.

(b) *Related services and supplies.* The home IV provider must furnish the following if they are necessary for the safe and effective administration of a covered home IV drug—

(1) Medical supplies;

(2) Intravenous fluids for use as diluents for covered home IV drug;

(3) Training of the patient or his or her caregiver in the techniques of IV drug therapy;

(4) Equipment, such as IV poles and infusion pumps; and

(5) Delivery of medical items and supplies.

(c) *Prohibited payment.* Payment may not be made to a home IV provider for covered home IV drug therapy services unless the home IV provider furnishes the covered home IV drug either directly or under arrangements.

§ 410.207 Payment limitations concerning certain patient referrals.

(a) *Ownership and compensation rules.* Payment may not be made to a home IV therapy provider for the home IV drug therapy services furnished to a beneficiary if that beneficiary's referring physician or an immediate member of the referring physician's family has an ownership interest in the provider or receives compensation from the provider unless an exception under

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paragraph (b) through (e) of this section applies. For purposes of this paragraph, an immediate member of the family includes the physician's spouse; natural and adoptive parents, natural and adopted children; natural, adopted and adoptive siblings; stepparents, stepchildren and stepsiblings; fathers-in-law, mothers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law; and grandparents and grandchildren.

(b) *Exception applying to limitation on ownership.* (1) Payments may be made if the ownership interest is the ownership of stock in the home IV provider that is traded over a publicly regulated exchange and purchased on terms generally available to the public;

(2) Payment may be made if the provider is the sole home IV drug therapy provider in a rural area.

(3) For purposes of paragraph (b)(2) of this section, a rural area is one that is not an urbanized area (as defined by the Bureau of the Census) and that is designated by the Secretary either—

(i) As an area with a shortage of personal health services under section 1302(7) of the Public Health Service Act, or

(ii) As a health manpower shortage area described in section 332(a)(1)(A) of the Act because of its shortage of primary medical care manpower.

(4) For purposes of paragraph (b)(2) of this section, a sole home IV drug therapy provider in a rural area is one that is approved as such by HCFA after the provider—

(i) Designates a particular area;

(ii) Shows that no other home IV provider furnishes services within that area;

(iii) Shows that there are no physicians without an ownership interest in the provider available to perform certification and recertification and to write plans of care.

(c) *Exception applying to limitation on compensation.* Payment may be made under this section if the compensation is reasonably related to items or services actually provided by the physician and does not vary in proportion to the number of referrals made by the referring physician. This exception does not apply if the compensation is for direct patient care services.

(d) *Exception applying to uncompensated officer or director.* Payment may be made if the referring physician's or immediate family member's ownership or financial relationship with the provider is as an uncompensated officer or director of the provider.

(e) *Exceptions applying to instances in which there is no substantial risk of program abuse.* Payment may be made under this part in those cases in which the Secretary has specifically determined that the nature of the ownership or compensation does not pose a substantial risk of program abuse involving the following:

(1) *Space rental.* For purposes of this paragraph, the term "fair market value" means the value of the rental property for general commercial purpose (not taking account of its intended use), but it is not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the property as a result of its proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee. As used in section 1834(d) of the Act, neither "ownership" nor "compensation" includes payments made by a lessee to a lessor for the use of premises, as long as—

(i) The lease agreement is set out in writing and signed by the parties;

(ii) The lease specifies the premises covered by the lease;

(iii) If the lease is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact rent for such intervals;

(iv) The term of the lease is for not less than one year; and

(v) The rental charge is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals of business between the parties for whom the services would be paid by Medicare or Medicaid.

(2) *Equipment rental.* For purposes of this paragraph, the term "fair market value" means the value of the equipment when obtained from a manufacturer or professional distributor, but it is not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the equipment as a result of its proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee. As used in section 1834(d) of the Act, neither "ownership" nor "compensation" includes payments made by a lessee of equipment to the owner ("lessor") of the equipment for the use of the equipment, as long as—

(i) The lease agreement is set out in writing and signed by the parties;

(ii) The lease specifies the equipment covered by the lease;

(iii) If the lease is intended to provide the lessee with use of the equipment for periodic intervals of time rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact rent for such intervals;

(iv) The term of the lease is for not less than one year; and

(v) The rental charge is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals of business between the parties reimbursed under Medicare.

(3) *Personal services and management contracts.* For purposes of this paragraph, an agent of a principal is any person, other than a bona fide employee, who has an agreement to perform services for, or on behalf of, the principal. As used in section 1834(d) of the Act, neither "ownership" nor "compensation" includes payments made by a principal to an agent as compensation for the services of the agent, as long as—

(i) The agency agreement is set out in writing and signed by the parties;

(ii) The agency agreement specifies the services to be provided by the agent;

(iii) If the agency agreement is intended to provide for the services of the agent on a periodic, sporadic or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact charge for such intervals;

(iv) The term of the agreement is for not less than one year; and

(v) The aggregate compensation paid to the agent over the term of the agreement is set in advance, is consistent with fair market value in arms-length transactions and is not determined in manner that takes into account the volume or value of any referrals of business between the parties that is reimbursed under Medicare or any State health care program.

(4) *Employees.* As used in section 1834(d) of the Act, neither "ownership" nor "compensation" includes any amount paid by an employer to an employee who has a bona fide employment relationship with the employer, for employment in the provision of covered items or services. For purposes of this paragraph (f)(4), the term "employee" has the same meaning as it does for purposes of 42 U.S.C. 410(j)(2), part of the statutory definition of "employee" in the Federal Insurance Contributions Act; that is, the common law employment test.

B. 42 CFR part 424, subpart B is amended as set forth below:

1. The table of contents for part 424 subpart B, is amended by adding § 424.28 and the authority citation is revised as follows:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

* * * * *

Subpart B—Physician Certification and Plan of Treatment Requirements

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424.28 Requirements for home IV drug therapy services.

* * * * *

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1832, 1835, 1842(b), 1861, 1866(d), 1870 (e) and (f), 1871 and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g, 1395k, 1395n, 1395u(b), 1395x, 1395cc(d), 1395gg (e) and (f), 1395hh and 1395ii).

2. A new § 424.28 is added to read as follows:

§ 424.28 Requirements for home IV drug therapy services.

Medicare Part B pays for home intravenous drug therapy services only if the referring physician certifies, and recertifies as required under paragraph (b) of this section, that the requirements described in paragraphs (a)(1) through (a)(5) of this section are being met.

(a) *Certification: Content.* The referring physician must certify, or recertify if applicable, that—

(1) The home intravenous drug therapy services are or were required because the individual needs or needed the services for the administration of a covered home intravenous drug;

(2) A plan for furnishing the services has been established by the referring physician and is reviewed periodically by that physician;

(3) The services are or were furnished while the individual is or was under the care of a physician;

(4) The services are furnished in a place of residence used as the patient's home; and

(5) For services initiated before January 1, 1993, a PRO has approved the services in accordance with part 466, Subpart E, of this chapter.

(b) *Recertification*—The referring physician must recertify that the requirements in paragraph (a) of this section are still met at least every 30 days.

(c) *Plan of care requirements.*—(1) *Establishment.* The referring physician must establish and sign the plan of care and consult as necessary with the home IV provider nurse or pharmacist before the home IV therapy begins in accordance with §§ 485.135 and 485.140 of this chapter.

(2) *Content.* The plan of care must contain at least the information required in § 485.120 of this chapter.

(3) *Review.* The physician must review and sign the plan of care at least every 30 days.

C. 42 CFR Part 466 is amended as set forth below:

1. The table of contents for part 466 is amended by adding a new subpart E, and revising the authority citation to read as follows:

PART 466—UTILIZATION AND QUALITY CONTROL REVIEW

* * * * *

Subpart E—PRO Review of Home IV Drug Therapy Services

466.201 Statutory basis and applicability.
466.202 Effective dates.
466.203 Definitions.
466.204 Scope of PRO review.
466.205 Notification of PRO review procedures.
466.206 Responsibilities of physicians and health care facilities.
466.210 Lack of cooperation by a health care facility or physician.
466.212 PRO designation.
466.214 PRO approval.
466.216 Timing of review.
466.218 Notification.
466.220 Retrospective reviews.
466.222 Liability and sanctions for unreviewed cases.
466.224 Reconsiderations and appeals.

Authority: Secs. 1102, 1154, 1835, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320c—3, 1395r and 1395hh).

2. A new Subpart E is added to read as follows:

Subpart E—PRO Review of Home IV Drug Therapy Services

§ 466.201 Statutory basis and applicability.

(a) *Statutory basis.* Sections 1154(a)(16) and 1835(a)(2)(G) of the Act require PROs to review all home intravenous (IV) drug therapy services before these services begin; or, in the case of services first initiated on an outpatient basis, within one working day (other than in exceptional circumstances) of the date of the initiation of the services.

(b) *Applicability.* The regulations in this subpart apply to reviews, conducted by a PRO and its subcontractors, of home IV drug therapy services furnished, or proposed to be furnished, to all Medicare beneficiaries other than those beneficiaries enrolled in HMOs or CMPs that contract with HCFA on a risk-basis as described in Subpart C of 42 CFR part 417.

§ 466.202 Effective dates.

All home IV drug therapy services intended to be furnished to Medicare beneficaries on or after January 1, 1990 are subject to the PRO review requirements of this subpart.

§ 466.203 Definitions.

As used in this subpart—

Outpatient basis means the patient receives services other than as an inpatient of a hospital.

§ 466.204 Scope of PRO review.

(a) *General rule.* After a PRO receives a request for review of home IV drug therapy services from either the referring physician or the health care facility, the PRO must determine (in accordance with the terms of its contract) whether the home IV drug therapy is reasonable, appropriate, and necessary for the treatment of the illness or injury. This review includes a determination that the intravenous route of administration is the correct route of administration and that the home IV drug therapy services meet professionally recognized standards of care.

(b) *Coordination of sanction activities.* In implementing review of home IV drug therapy services, PROs must carry out the responsibilities specified in Subpart C, Part 1004, Chapter V of this title, regarding imposition of sanctions on health care facilities and practitioners who violate their statutory obligations under Section 1156 of the Act. For example, a PRO is to refer to the HHS Office of Inspector General a case involving a physician who exhibits a pattern of not correctly monitoring, by appropriate laboratory tests, the administration of a drug.

§ 466.205 Notification of PRO review procedures.

(a) *Criteria.* The PRO must distribute, at no charge, the criteria/quality screening guidelines to be used in screening cases, at a minimum, to all affected health care facilities and medical societies in the State.

(b) *Information required.* Each PRO must give timely written notification to health care facilities and physicians in its State the following information:

(1) *Date.* The date upon which the PRO plans to begin review of home IV drug therapy services.

(2) *Manner.* The manner in which the referring physician or health care facility is to seek PRO review.

(3) *Required information.* The information to be furnished to the PRO by the physician and/or health care

facility and the need for expediency in responding to PRO questions.

(4) *Validation and quality review.* The validation and quality review that the PRO may conduct on a sample of the cases after the services are furnished in the home.

(5) *Financial liability.* A general statement about financial liability for charges related to home IV drug therapy services that are found to be not reasonable or medically necessary and a statement that no claims will be paid without PRO approval.

§ 466.208 Responsibilities of physicians and health care facilities.

(a) *Physicians.* The referring physician must cooperate (in addition to the requirements in § 466.78) in the conduct of PRO review as follows:

(1) The physician must, in accordance with PRO-issued procedures, either seek PRO prior authorization for the drug he or she proposes to have administered intravenously at home or assist in providing necessary information in support of a health care facility that seeks PRO approval.

(2) The physician must furnish relevant medical records, upon request, to the PRO for any of the reviews described in this subpart.

(b) *Health care facilities.* (1) In addition to the general requirements for health care facilities set forth in § 466.78, the health care facility must cooperate in the conduct of PRO review (in accordance with the regulations in this part and PRO-issued procedures) by obtaining the authorization number provided by the PRO—

(i) Before beginning the administration of an IV drug in the patient's home, except, in cases where the drug is to be started on an outpatient basis on a weekend (i.e., a non-workday), the authorization must be obtained the first working day thereafter; and

(ii) In certain cases, before continuation of home IV drug therapy that the PRO has previously approved as described in § 466.216 (c) and (d).

(2) Health care facilities must maintain a written agreement with the appropriate PRO.

(3) The health care facility must in accordance with PRO-issued procedures, either seek PRO approval of the IV drug therapy services proposed to be administered at home or assist in providing necessary information in support of a referring physician that seeks PRO approval.

(4) The health care facility must transfer relevant medical records (including the plan of care described in § 424.28(c)), upon request, to the PRO for any of the reviews described in this subpart.

§ 466.210 Lack of cooperation by a health care facility or physician.

If a health care facility or physician fails to comply with the requirements for review set forth in this subpart, the PRO may determine that the health care facility or physician has failed to comply with the requirements of Subpart C, Part 1004, Chapter V of this title concerning failure by providers or practitioners to meet statutory obligations under section 1156 of the Act and may report the matter to the Office of Inspector General.

§ 466.212 PRO designation.

(a) When home IV drug therapy is proposed for a currently hospitalized inpatient, the referring physician or health care facility must contact, for prior authorization, the PRO with whom the hospital has an agreement.

(b) When home IV drug therapy is proposed for a patient who has had the drug started on an outpatient basis, the physician or health care facility must contact, for authorization, the PRO for the State in which the home IV drug therapy provider is located.

(c) For all other reviews, the PRO for the State in which the home IV drug therapy provider is located will conduct the review.

§ 466.214 PRO approval.

(a) Before approving the home IV drug therapy services, the PRO must be assured—

(1) That the patient's condition is such that inpatient hospitalization is not justified either—

(i) As a continuation of an existing hospitalization; or

(ii) As a medically necessary and appropriate admission;

(2) Orally, in writing, or from documentation (or any combination of these three), that the patient meets the selection criteria outlined in § 485.115 of this subpart;

(3) That the patient or caregiver has been or will be sufficiently trained as to how to administer the drugs safely and effectively in the home; and

(4) That the patient or caregiver has or will independently administer(ed) intravenously at least one dose of the drug under supervision.

(b) The PRO must determine that:

(1) The plan of care, executed by the referring physician, has enough information to support the coverage of home IV drug therapy services;

(2) The drug is being used for one of the stated indications listed in a Federal Register notice issued by the Secretary;

(3) The drug is medically indicated for the treatment of the patient's condition;

(4) The dosage is correct (e.g., adjusted for height and body weight);

(5) Appropriate diagnostic studies (e.g., culture and sensitivities, kidney function tests) have been performed and will be performed as appropriate while the patient is receiving the therapy;

(6) Other appropriate periodic monitoring has been and will be performed;

(7) The drug is not contraindicated (e.g., based upon abnormal laboratory findings, or drug interactions); and

(8) The home IV drug therapy services meet professionally recognized standards of care.

(c) The PRO must also determine that the intravenous route of administration is the only route of administration that will be effective.

(d) In performing review, the PRO uses review coordinators to compare the facts about the individual case to the criteria/screening guidelines developed by HCFA, the PRO, or both.

(1) If the case meets the criteria/guidelines, the review coordinator issues a PRO approval number.

(2) If the case does not meet the criteria/guidelines, the review coordinator refers the case to a PRO physician.

(3) The PRO physician review either approves the case (using a PRO approval number) or questions the case.

(4) If the case is questioned by the PRO physician, the physician who prescribed the home IV drug therapy and the health care facility are immediately given an opportunity to discuss the case.

(i) The PRO atempts to contact either the referring physician or health care facility.

(ii) The referring physician may discuss the case with a PRO physician.

(iii) The health care facility may discuss the case with a PRO representative. If, however, the health care facility designates a physician representative, that physician may also discuss the case with a PRO physician.

(iv) For potential quality problems, the PRO follows the timeframes outlined in its contract with HCFA.

§ 466.216 Timing of review.

(a) *Prior review of continuation of inpatient hospital therapy.* (1) The PRO is required, for all IV drug therapy continued at home after a hospital stay, to authorize such use before hospital discharge.

(2) The review must be requested by the referring physician or the health care facility in accordance with PRO-issued instructions.

(3) The PRO will follow the review process outlined in § 466.214(c).

(4) The PRO must complete the review within one working day of receipt of a request for review.

(i) The date of the request for review is considered to be the date upon which the PRO receives all of the information it needs to complete the review.

(ii) In this timeframe, the PRO must give the health care facility and referring physician an opportunity to discuss the case as described in § 466.214.

(iii) Failure of the health care facility and referring physician to discuss the case within the time allowed is not a basis that will prevent the PRO from making its determination based upon the information in its possession.

(b) *Initial review of IV drugs started on an outpatient basis.* In the case of a patient whose IV drug therapy services are initiated on an outpatient basis, the referring physician or health care facility will request PRO approval no later than the first working day on which the home IV drug therapy services are prescribed.

(1) The PRO has eight working hours in which to complete its review after receipt of a request for review from the referring physician or health care facility.

(2) The date the PRO receives the request for review is the date on which the PRO receives all the information it needs to complete the review.

(3) PRO review follows a request from the referring physician or health care facility that is made in accordance with PRO-issued instructions.

(4) The PRO will follow the review process outlined in § 466.214(c).

(5) The PRO must complete its review within one working day of initiation of the home IV drug services.

(i) This timeframe includes the time the PRO must give the health care facility and physician to discuss the case as described in § 466.214.

(ii) If the health care facility and physician do not take advantage of the opportunity to discuss the review within the time allowed the PRO may make its determination based upon the information in its possession.

(c) *Subsequent reviews for continuation of drugs.* In accordance with the PRO's prior approval, when drugs are to be continued for a period of time beyond the date or number of days approved by the PRO, the PRO will periodically review to determine that coverage of the home IV drug therapy services continues to be appropriate in accordance with the requirements set forth in § 466.214 (a) and (b) of this subpart.

(1) If home IV drug therapy is planned to continue for a time past the date the PRO has indicated, the physician or health care facility must request PRO review no less than three working days before the expiration of the current PRO approval.

(2) The PRO follows the process outlined in § 466.214(c).

(3) The PRO must complete subsequent reviews within three working days of the request.

(i) In this timeframe, the PRO must give the health care facility, if applicable, and physician an opportunity to discuss the case as described in § 466.214.

(ii) If the health care facility and physician do not take advantage of the opportunity to discuss within the time allowed, the PRO may make its determination based upon the information in its possession.

(d) *Prior review of change in drug.* When the referring physician proposes a change to the IV drug therapy, the referring physician or the health care facility will request PRO approval of the revision in therapy within one working day of initiation of the change.

(1) The referring physician or health care facility must request PRO review in accordance with PRO-issued instructions.

(2) The PRO will follow the review process outlined in § 466.214(c).

(3) The PRO will complete its review within three working days of the request.

(i) In this timeframe, the PRO must afford the health care facility and referring physician an opportunity to discuss the case as described in § 466.214.

(ii) If the health care facility and referring physician do not take advantage of the opportunity to discuss the case within the time allowed, the PRO will make its determination based upon the information in its possession.

(e) *Retrospective reviews.* For retrospective reviews, the PRO must adhere to the timing of review requirements found in its contract with HCFA.

§ 466.218 Notification.

(a) The PRO must, within the timeframes given in § 466.216, provide notification if its determination as follows:

(1) The PRO notifies the health care facility and referring physician by telephone as to whether it has determined that—

(i) Services are reasonable, appropriate, and medically necessary. The PRO issues an approval number and informs the health care facility, if applicable, and referring physician of the date by which review and subsequent approval must be requested for continuation of the IV drug therapy;

(ii) Services are not reasonable, appropriate, or medically necessary;

(iii) Services are medically necessary but neither the patient nor caregiver meets the selection criteria; or

(iv) The patient should receive the services in another setting.

(2) If the PRO does not authorize the services because they are not reasonable, appropriate and medically necessary in the home setting, within one working day of the determination it must, in accordance with the requirements of § 466.94(c), notify in writing:

(i) The beneficiary;

(ii) The referring physician;

(iii) The health care facility, and

(iv) The fiscal intermediary.

(b) If the PRO determines that the services do not meet professionally recognized standards of care, the PRO will notify the referring physician and health care facility in accordance with the quality intervention plan in the PRO's contract.

§ 466.220 Retrospective reviews.

(a) *Random sampling.* The PRO must periodically review a sample of cases to determine that the home IV therapy services meet professionally recognized standards of care and that the conditions in § 466.214 are met.

(b) *Retrospective review of unapproved cases.* On a retrospective, prepayment (and on an exception basis, postpayment) basis, the PRO reviews (upon the request of the physician or health care facility) any claims for home IV drug therapy services for which PRO review was required but never completed and makes a determination in accordance with § 466.214.

(c) *Validation reviews.* The PRO in the State where the home IV drug therapy provider is located must conduct a validation review of a sample of cases in which approval for home IV drug therapy services under this subpart was granted by telephone after the PRO considered medical information by telephone but did not review actual medical records.

(1) The PRO must be assured that information provided to the PRO was accurate and that the home IV drug therapy services met professionally recognized standards of care.

(2) If inaccurate information was given to the PRO, the PRO must deny payment for the services if they are

found to be noncovered based upon the correct information.

(3) As a result of this review, the PRO may decide that future medical information must be submitted in writing.

§ 466.222 Liability and sanctions for unreviewed cases.

(a) *Payment contingent upon approval.* No payment will be paid for any claim where the PRO has not approved the services for payment.

(b) *Failure of PRO to complete review.* If, because of a PRO administrative error, the review is not completed within the timeframes outlined in § 466.216, the PRO still must complete the review and issue an approval number or a notice denying the services.

(c) *Financial liability.* Financial liability is determined in accordance with provisions of sections 1842(1) and 1879 of the Act and §§ 405.330 through 405.336 of this chapter.

(d) *Corrective action.* (1) If the review is not completed timely, whether or not the PRO determines that the home IV drug therapy is appropriate and the physician or health care facility (or both) are the cause of the problem (including failure to make the request on a timely basis), the PRO must take whatever corrective actions are necessary to ensure that future cases are reported to the PRO for review within the outlined timeframes.

(2) If the information given over the telephone is found to be inaccurate or misleading, the PRO may take appropriate corrective actions.

§ 466.224 Reconsiderations and appeals.

Reconsiderations and appeals are available under part 473 of this chapter for all PRO initial denial determinations.

PART 473—RECONSIDERATIONS AND APPEALS.

D. 42 CFR Part 473 is amended as set forth below:

1. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1154, 1155, 1835, 1866, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c-3, 1320c-4, 1395r, 1395cc, 1395hh, and 1395pp).

2. Paragraph (c) of § 473.18 is revised to read as follows:

§ 473.18 Location for submitting requests for reconsideration.

* * * * *

(c) *Expedited reconsideration.* A request for an expedited reconsideration must be submitted directly to the PRO if the denial is a result of—

(1) Preadmission/preprocedure review; or

(2) Review of home intravenous drug therapy services before the initiation of or during the period in which the beneficiary is still receiving the services.

3. Paragraphs (a)(1) and (a)(3) of § 473.32 are revised to read as follows:

§ 473.32 Time limits for issuance of the reconsidered determination.

(a) *Beneficiaries.* If a beneficiary files a timely request for reconsideration of an initial denial determination, the PRO must complete its reconsidered determination and send written notice to the beneficiary within the following time limits—

(1) Within three working days after the PRO receives the request for reconsideration if—

(i) The beneficiary is still an inpatient in a hospital for the stay in question when the PRO receives the request for reconsideration; or

(ii) The initial determination relates to institutional services for which admission to the institution is sought, the initial determination was made before the patient was admitted to the institution; and a request was submitted timely for an expedited reconsideration; or

(iii) The initial determination relates to home intravenous drug therapy services for which approval was denied and a request was submitted timely for an expedited reconsideration.

(3) Within 30 working days after the PRO receives the request for reconsideration if—

(i) The initial determination concerns ambulatory or noninstitutional services;

(ii) The beneficiary is no longer an inpatient in a hospital or SNF for the stay in question or no longer receives home intravenous drug therapy services for which the PRO issued a denial determination; or

(iii) The beneficiary does not submit a request for expedited reconsideration timely.

(Catalog of Federal Domestic Assistance Programs No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: July 12, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: August 10, 1989.

Louis W. Sullivan, M.D.,

Secretary.

[FR Doc. 89-21239 Filed 9-7-89; 8:45 am]

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federal register

Friday
September 8, 1989

Part VI

The President

Proclamation 6016—Uncle Sam Day, 1989

BEST COPY AVAILABLE

Federal Register
Vol. 54, No. 173
Friday, September 8, 1989

Presidential Documents

Title 3—

The President

Proclamation 6010 of September 5, 1989

Uncle Sam Day, 1989

By the President of the United States of America

A Proclamation

The tall, white-haired figure of Uncle Sam—his stern, sagacious face graced by a flowing beard, and his distinguished top hat adorned by stars and stripes—is a beloved symbol of the United States. Recognized around the world, the striking visage of Uncle Sam recalls the pride and strength of the American people, as well as the freedom we enjoy.

One of the most familiar renditions of Uncle Sam is found on the James Montgomery Flagg recruitment poster used during World War I and World War II. With its now-famous headline, "Uncle Sam Wants You," this poster urged men and women to help defend our way of life by enlisting in the Armed Forces. Today, the figure of Uncle Sam continues to remind us of the great risks and personal sacrifices endured by generations of Americans in the quest for liberty.

In 1961, the Congress recognized Samuel Wilson of Troy, New York, as the progenitor of this celebrated American symbol. Hardworking and self-reliant, Samuel Wilson was a man of unwavering integrity. He was also an important source of food for the Army during the War of 1812. The marking "U.S." stamped on casks of meat that his packinghouse prepared for American troops represented "Uncle Sam" to many soldiers and eventually the name was associated with the U.S. Government itself.

During Samuel Wilson's lifetime, which spanned the exciting years of 1766 to 1854, Americans won our country's independence; formed a system of self-government under our great Constitution; explored and settled the frontier; and raised the hopes of freedom-loving peoples around the world. Because the character derived from his nickname embodies the proud and industrious spirit of the American people, it is fitting that we pause to remember "Uncle Sam" Wilson and his place in our Nation's history.

To honor Samuel Wilson on the anniversary of his birth and the occasion of the bicentennial of the City of Troy, New York, the Congress, by Public Law 100-645, has designated September 13, 1989, as "Uncle Sam Day" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 13, 1989, as Uncle Sam Day and call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of September, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

Bush

[FR Doc. 89-21365
Filed 9-7-89; 8:22 am]
Billing code 3195-01-M

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federal register

Friday
September 8, 1989

Part VII

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 531

Passenger Automobile Average Fuel Economy Standards; Proposed Decision To Grant Exemption

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 06–02; Notice 1]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision To Grant Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed decision to grant exemption from average fuel economy standards and to establish an alternative standard.

SUMMARY: This proposal is being issued in response to a petition filed by Rolls-Royce Motors, Ltd. (Rolls-Royce) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model year (MY) 1990 and 1991 passenger automobiles, and that a lower alternative standard be established for it. This notice proposes that the requested exemption be granted and that alternative standards of 12.7 mpg for MY 1990 and 12.7 mpg for MY 1991 be established for Rolls-Royce.

DATE: Comments on this proposal must be received on or before September 28, 1989.

ADDRESS: Comments on this proposal must refer to Docket No. LVM 86–02; Notice 1 and should be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366–0846.

SUPPLEMENTARY INFORMATION:

Background

Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if the NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactures (worldwide) fewer than 10,000 passenger automobiles in the model year for which the exemption is sought (the affected model year) and that manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

Selection of the Type of Alternative Standard

The Act permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) a separate standard may be established for each exempted manufacturer; (2) classes, based on design, size, price, or other factors, may be established for the automobiles of exempted manufacturers, with a separate average fuel economy standard applicable to each class; or (3) a single standard may be established for all exempted manufacturers.

On October 27, 1987, Rolls-Royce petitioned NHTSA for an exemption from the generally applicable fuel economy standards for MYs 1990–1991. A previous petition dated September 19, 1984, submitted for MYs 1987–1989 and requesting 11.2 mpg, was granted. In the current petition, Rolls-Royce states that its maximum feasible fuel economy for MY 1990–1991 fleets has increased to 12.7 mpg for each year. For MYs 1990 and 1991, NHTSA believes it is appropriate to establish a separate standard for Rolls-Royce. The analysis of the petitions submitted by other low volume manufacturers for MYs 1990 and 1991 have not yet been completed, so the agency cannot use the second or third approaches described above.

Background Information on Rolls-Royce

Rolls-Royce is a small company that concentrates wholly on the production of high quality prestige cars. Its annual production rate is 2,000–3,000 automobiles, 1,200–1,500 of which are sold in the U.S. market. The corporate philosophy is that concentrating on this limited range and volume is the only way to maintain its reputation for producing a car that it says is widely perceived as the best in the world.

Rolls-Royce states that it is making every effort to achieve the lowest possible fuel consumption consistent with meeting emission, safety, and other standards while maintaining customer expectations of its product. In the 10-year period from 1978, when Federal fuel economy standards were introduced, Rolls-Royce has achieved a fuel economy improvement of approximately 14% by optimizing and tuning its powertrain while leaving basic features of the vehicles unchanged. In view of its position of producing only luxury vehicles, and its long model runs (as much as fifteen years between major changes), the company states that significant fuel economy improvements cannot be made in the short term. Rolls-Royce further states that it has had difficulty increasing the fuel economy of vehicles specifically targeted for the U.S. market due to stringent emission standards.

In the longer term, technical innovation and weight saving should result in worthwhile improvements. A change in the basic concept of its cars to reduce size or downgrade the specifications would not be acceptable to its customers. The company has, on the other hand, been conscious of the need for weight saving for many years, and, since the introduction of the Silver Shadow, has made many parts of aluminum. These include the engine block and cylinder heads, transmission and axle castings, doors, hood and deck lid.

Areas specifically addressed by the Rolls-Royce petition to improve its fuel economy include mix shift, weight reduction, engine improvements, and drive train and transmission improvements.

Methodology Used to Project Maximum Feasible Average Fuel Economy Level for Rolls-Royce

Baseline Fuel Economy

To project the level of fuel economy which could be achieved by Rolls-Royce in MYs 1990 and 1991, the agency considered whether there were technical or other improvements that would be feasible for these Rolls-Royce vehicles, whether or not the company actually plans to incorporate such improvements in those vehicles. The agency reviewed the technological feasibility of any changes and their economic practicability.

NHTSA interprets "technological feasibility" as meaning that technology which would be available to Rolls-Royce for use on its 1990 and 1991 model year automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, and reduced rolling resistance.

"Economic practicability" is interpreted as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its 1990 and 1991 model year automobiles and the effects of any shift in the mix of vehicles sold that may result from changes in market demand.

Throughout this analysis, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Rolls-Royce automobiles. NHTSA assumes that Rolls-Royce will continue to produce a five-passenger luxury car. Hence, design changes that would make the cars unsuitable for five adult passengers and luggage or would remove items traditionally offered on luxury cars, such as air conditioning, automatic transmission, power steering, and power windows, were not examined. Such changes to the basic design could be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

Mix Shift

Rolls-Royce has little opportunity for improving fuel economy by changing the model mix since it makes only one basic model in various configurations, all with similarly low fuel economy. Both corporate financial limitations and the unique market sector served by Rolls-Royce preclude significant changes to the basic concept of a Rolls-Royce car. For MYs 1990 and 1991, Rolls-Royce cars will fall into four car lines, under the Rolls-Royce and Bentley name plates. All cars except the Silver Spur Limousine model are in the 5,500-pound inertia weight class. The Silver Spur Limousine is in the 6000-pound inertia weight class and has slightly lower fuel economy than the other car lines. The differences in fuel economy values among the different models are small and the model mix is essentially fixed by the market demand. Variations in sales percentages among the models have negligible effect on CAFE.

Weight Reduction

As stated previously, Rolls-Royce has used aluminum for many of its components for some time. An in-house program has been conducted by the company to evaluate the effect of further weight reduction by removing items from the vehicle with no changes to engine or transmission. Dynamometer tests indicated that emissions as well as fuel economy improvements would result from reduced weight, but the tests were conducted simply by removing components from the vehicle. An 11% reduction in weight resulted in a 4% improvement in fuel economy. To achieve an equal or greater weight reduction through design changes would require complete redesign and retooling, which is not practicable. In its petition for MYs 1987–89, the company stated that it was investigating the practicalities of producing a lighter more fuel-efficient model. It has since abandoned this project in view of the current trend toward larger luxury cars with higher performance. In a 1988 telephone conversation with NHTSA personnel, a company spokesman stated that market analysis and dealer-supplied information lead to the conclusion that Rolls-Royce could not maintain its image by producing a smaller, lighter and more economical version under current market demands and pressures.

Engine Improvements

The current petition from Rolls-Royce restates past efforts to improve fuel economy in addressing engine improvements. Past developmental activities include test and evaluation of various technologies applied to the Rolls-Royce engine. These included the Texaco Controlled Combustion system, the Honda Compound Vortex Controlled Combustion system, diesel engines, cylinder disablement, increased engine displacement, the May "Fireball" Combustion Chamber, and overall engine downsizing in conjunction with all new features including bodyshell, transmission, and suspension. Each of these approaches was discarded in turn as failing to provide a feasible option for simultaneously meeting fuel economy and emissions requirements, and the expectations of the company's customers.

The one technique which does show a high likelihood of improvement is the programmed electronic ignition advance system. This has shown a possible 10% improvement in fuel economy due to the ability to accurately shape the ignition cycle. This system will be introduced on some models for MY 1989, and all models in MY 1990, and accounts for most of the projected CAFE improvement for MYs 1990–1991. A slight contribution is also realized from reduced axle ratios which can be used in conjunction with electronic engine controls without exceeding emissions standards.

Transmission and Drive Train Improvements

Rolls-Royce uses the General Motors THM 400 three-speed automatic transmission with torque converter and hypoid rear axle on all models. In the past, the company has considered a four-speed version of this transmission but found it unsuitable for the torque and power characteristics of the engine. Rolls-Royce is now exploring the development of a new four-speed version of a GM 400 series transmission. Rolls-Royce is currently entering the test and evaluation stage with this improvement, which will not be fully deployed until after MY 1991. The rear axle ratio has also been reduced as stated above.

Effect of Other Motor Vehicle Standards

The Rolls-Royce petition cites exhaust emission standards as having the greatest effect on fuel economy, and for this reason the company considers the fuel economy program to be an integral part of its emission control program. It states that, historically, emission standards have placed a severe strain on its limited technical resources; and only with the introduction of new emission control techniques such as oxidation and three-way catalysts has the trend to higher fuel consumption been reversed.

Of the Federal safety regulations it believes have an adverse effect on fuel economy, Rolls Royce considers the most significant ones to be 49 CFR part 581 (energy absorbing bumpers), Federal Motor vehicle safety standard (FMVSS) 214 (side intrusion beams in doors), and FMVSS 208 (passive restraints). The effect of these is to increase vehicle weight notwithstanding other efforts to reduce weight, including application of other materials.

The Need of the Nation to Conserve Energy. The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it is not technologically feasible or economically practicable for Rolls-Royce to achieve an average fuel economy in the 1990 and 1991 model years above 12.7 mpg. Granting an exemption to Rolls-Royce and setting an alternative standard at that level will result in only a negligible increase in fuel consumption and will not affect the need of the Naton to conserve energy.

For illustrative purposes only, an estimate of the additional fuel consumed by operating the 1990–1991 fleets of Rolls-Royce vehicles at the company's projected CAFE of 12.7 mpg (compared to a hypothetical 27.5 mpg fleet) over 100,000 miles is 288,900 bbls. of fuel. This averages about 66 bbls. of fuel per day over the 12 year period that these cars will be an active part of the fleet. This is insignificant compared to the daily fuel used by the entire motor vehicle fleet which amounted to some 4.6 million bbls. per day for passenger cars in the U.S. in 1987.

Proposed Alternative Standard

This agency has tentatively concluded that it would not be technologically feasible and economically practicable for Rolls-Royce to improve the fuel economy of its model year 1990 and 1991 automobiles above an average of 12.7 mpg, that compliance with other Federal automobile standards will not adversely affect achievable fuel economy, and that the national effort to conserve energy will not be affected by granting the requested exemption and establishing an alternative standard. Consequently, this notice proposes to conclude that the maximum feasible average fuel economy for Rolls-Royce in the 1990 and 1991 model years is 12.7. Therefore, the agency proposes to exempt Rolls-Royce from the generally applicable standard of 27.5 mpg and to establish an alternative standard for Rolls-Royce of 12.7 mpg for model years 1990 and 1991.

List of Subjects in 49 CFR Part 531

Energy conservation, gasoline, imports, motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR Part 531 be amended as follows:

PART 531—[AMENDED]

1. The authority citation for Part 531 would continue to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. In § 531.15, the introductory text of pargraph (b) is republished and paragraph (b)(2) is revised to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(2)(b) Rolls-Royce Motors. Inc.

Model year	Average fuel economy standard (miles per gallon)
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0
1986	11.0
1987	11.2
1988	11.2
1989	11.2
1990	12.7
1991	12.7

* * * * *

NHTSA has analyzed this proposal and determined that neither Executive Order 12291 nor the Department of Transportation regulatory policies and procedures apply, because the proposal would not establish a "rule," which term is defined as "an agency statement of general applicability and future effect." The proposed exemption is not generally applicable, since it would apply only to Rolls-Royce Motors, Inc., as discussed in this notice. If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not have been required to pay civil penalties if its maximum feasible average fuel economy were achieved, and purchasers of those vehicles would not have had to bear the burden of those civil penalties in the form of higher prices. Since this proposal sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible level for model years 1990 and 1991, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered the environmental implications of this proposal in accordance with the National Environmental Policy Act and determined that this proposal, if adopted, will not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemptions and alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel available.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing data indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the

envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(Sec. 9, Pub. L. 89–670, 80 Stat. 981 (49 U.S.C. 1657); Sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 5, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89–21300 Filed 9–8–89; 10:40 am]

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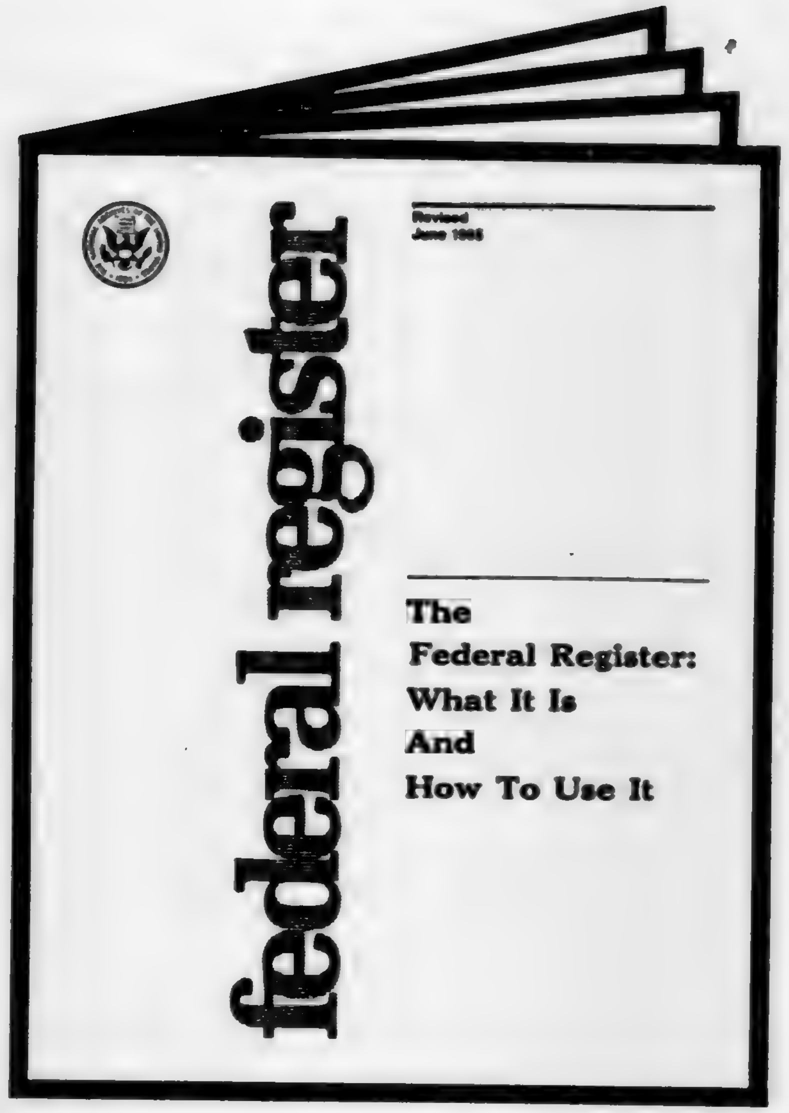

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Rules and Regulations

Federal Register
Vol. 54, No. 174
Monday, September 11, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 682]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 682 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 320,000 cartons during the period September 10 through September 16, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 682 (7 CFR part 910) is effective for the period September 10 through September 16, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on September 6, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is excellent.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been appraised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.982 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.982 Lemon Regulation 682.

The quantity of lemons grown in California and Arizona which may be handled during the period September 10, 1989, through September 16, 1989, is established at 320,000 cartons.

Dated: September 7, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-21420 Filed 9-8-89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 89-148]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of Florida from a split status of Class B/Class C to all Class B.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 731, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5533.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective June 8, 1989, and published in the **Federal Register** on June 14, 1989 (54 FR 25225–25227, Docket Number 89–097), we amended the brucellosis regulations contained in 9 CFR part 78 by changing the classification of Florida from a split status of Class B/Class C to all Class B.

Comments on the interim rule were required to be received on or before August 14, 1989. We did not receive any comments. The facts in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing that rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Florida from Class C/Class B to all Class B reduces certain testing requirements and branding and spaying costs involved in the interstate movement of cattle from Class C areas.

The principal group affected by this change is the owners of herds in the former Class C areas of Florida that are not certified brucellosis-free and are not known to be affected with brucellosis. Buyers and exporters of cattle, stockyards, feedlots, and intermediate handling facilities are affected to a negligible degree.

In accordance with 9 CFR 78.9, all cattle in Class C noncertified-free herds can move interstate only to slaughter, or to a quarantined feedlot if they are "S" branded, unless they are steers, spayed heifers, or bulls under 18 months of age. It is estimated that there are 409,000 cows in such herds in the Class C area of Florida. We anticipate that these cows will produce approximately 174,000 heifers during the next year. We estimate that at least 50,000 of these will be sold interstate. The change to Class B status makes it possible to sell them for purposes other than slaughter or consignment to a quarantined feedlot, without spaying them, in accordance with 9 CFR 78.9(c)(3).

The cost of spaying 50,000 heifers is estimated at $550,000 or $11 per head. Not all the heifers would be spayed if the Class C status remained unchanged; many would be sold for slaughter or "S" branded and moved to quarantined feedlots. However, $550,000 can be considered one upper limit for benefits accrued by the change from Class C to Class B status.

Another cost of moving cattle from Class C areas is the cost associated with "S" branding, required if unspayed animals are moved to quarantined feedlots, or indirectly to slaughter through intermediate handling facilities, nonquarantined feedlots, or stockyards. Based on current prices and demand for light heifers, the net proceeds per animal will be increased by approximately $20 if the heifers from nonquarantined herds are not required to by "S" branded or sold for slaughter, resulting in a maximum $1,000,000 savings to the industry if 50,000 heifers were so moved.

The upper limit to the economic impact of this rule would be $1,550,000 of financial benefit accrued primarily by owners of herds that are not certified brucellosis free and that are located in former Class C areas. This figure assumes that all cattle moved from these herds are not spayed, and are moved to destinations that require "S" branding. Actual savings will be less, since some cattle will be spayed or not "S" branded.

According to National Agricultural Statistics Service estimates, there are 7,144 cattle herds in the Class C area of Florida. Of these herds, 2,269 are certified free. Of the 4,875 noncertified-free herds, 4,606 are not quarantined. These 4,606 herds would be directly and positively affected by the change. The owners of these 4,606 herds could each receive additional profits of up to $20 per calf sold, or an average of $217 per herd owner, assuming equal herd sizes. About 4,556 (99 percent) of the 4,606 herds are owned by small businesses (annual revenues of less than $500,000). Because the owners of the 50 herds that are large businesses have larger herd sizes, and because not all herd owners will sell their cattle in ways that do not require spaying or "S" branding, the actual profit to each small herd owner will be less.

We have therefore determined that changing Florida's brucellosis status will not significantly affect current market patterns, and will have a significant economic impact on small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.41 that was published at 54 FR 25225–25227 on June 14, 1989.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC this 5th day of September 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–21280 Filed 9–8–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301, 510, 515, and 602

[T.D. 8262]

RIN 1545–AN43

Treaty-Based Return Positions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary Regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to the requirement that any taxpayer who takes a position that a treaty of the United States overrules, or otherwise modifies, an internal revenue law of the United States shall disclose such position. This action is necessary to implement sections 6114 and 6712 of the Internal Revenue Code of 1986 as added by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA). The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**. In addition, regulations under tax conventions with Norway and Honduras have been removed as obsolete.

EFFECTIVE DATE: These temporary regulations are to be effective for taxable years of the taxpayer for which the due date for filing returns (without extensions) occurs after December 31, 1988.

FOR FURTHER INFORMATION CONTACT: David Bergkuist of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T:R) (202–566–3872, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed, and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1126. The estimated annual burden per respondent varies from 1/2 hour to 3 hours, depending on the individual circumstances, with an estimated average of 1 hour.

These estimates are an approximation of the average time expected to be necessary for the collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register.**

Background

This document contains temporary Income Tax Regulations (26 CFR part 301) under sections 6114 and 6712 of the Internal Revenue Code of 1986. Section 1012 (aa)(5)(A) of TAMRA added section 6114 to the Code while section 6712 was added by section 1012(aa)(5)(B) of TAMRA.

Need for Temporary Regulations

The proper application of sections 6114 and 6712, which are currently effective, is dependent upon the issuance of regulations as authorized by each of these Code sections. These regulations are necessary to provide taxpayers with immediate guidance in order that they may comply with the requirements of these provisions. Therefore, good cause is found to dispense with the notice and public procedure requirements of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

Explanation of Provisions

Section 6114 requires each taxpayer who, with respect to any tax imposed by the Code, takes a position that a treaty of the United States overrides, or modifies, an internal revenue law of the United States to disclose such position on a return of tax for such tax or in such form as the Secretary may prescribe. Section 6712 provides penalties for the failure to comply with the disclosure requirement of section 6114.

This document contains temporary regulations describing the treaty-based return position reporting requirement. Section 301.6114–1T(a) describes this reporting requirement in general. Section 301.6114–1T(b) describes specific situations for which reporting is required. Section 301.6114–1T(c) describes specific situations for which reporting is waived pursuant to the grant of authority contained in section 6114(b).

Section 301.6114–1T(d) sets forth the information required to be furnished to comply with section 6114, as well as the form and the manner in which this information is to be submitted. A description of the facts relied upon to support the position taken (§ 301.6114–1T(d)(4)) must be submitted. This description must also specify the provisions (if any) of a limitation on benefits article relied upon.

These regulations do not apply to a withholding agent with respect to the performance of his withholding functions. The Service will continue to study whether this exception is appropriate.

This document also provides temporary regulations under section 6712 that describe the amount of penalties and the manner in which such penalties will be imposed for failure to disclose the information required by section 6114 as well as the procedure to be followed and the grounds upon which such penalties may be waived.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Therefore, these rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6) and a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is David Bergkuist of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 2 CFR parts 301 and 602 are amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for part 301 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 301.6114–1T also issued under 26 U.S.C. 6114. * * *

Par. 2. New § 301.6114–1T is added to read as follows:

§ 301.6114–1T Treaty-based return positions (Temporary).

(a) *Reporting requirement*—(1) *General rule.* (i) Except as provided in paragraph (c) of this section, if a taxpayer takes a return position that any treaty of the United States (including, but not limited to, an income tax treaty, estate and gift tax treaty, or friendship, commerce and navigation treaty) overrides or modifies any provision of the Internal Revenue Code and thereby effects (or potentially effects) a reduction of any tax incurred at any time, the taxpayer shall disclose such return position on a statement (in the form required in paragraph (d) of this section) attached to such return.

(ii) If a return of tax would not otherwise be required to be filed, a return must, nevertheless, be filed for purposes of making the disclosure required by this section. For this purpose, such return need include only the taxpayer's name, address, Taxpayer Identification Number (if any), and a subscription under the penalties of perjury (as well as the subject disclosure); also, the taxpayer's taxable year shall be deemed to be the calendar year (unless the taxpayer has previously established a different taxable year).

(2) *Application.* (i) A taxpayer is considered to adopt a "return position" when the taxpayer determines its tax liability with respect to a particular item of income, deduction or credit. A taxpayer may be considered to adopt a return position whether or not a return is actually filed. To determine whether a return position is a "treaty-based return position" so that reporting is required under this paragraph (a), the taxpayer must compare (A) the tax liability (including credits, carrybacks, carryovers, and other tax consequences or attributes for the current year as well as for any other affected tax years) to be reported on a return of the taxpayer, and (B) the tax liability (including such credits, carrybacks, carryovers, and other tax consequences or attributes) that would be reported if the relevant treaty provision did not exist. If there is a difference in these two amounts, the position taken on a return is a treaty-based return position that must be reported.

(ii) In the event a taxpayer's return position is based on a conclusion that a treaty provision is consistent with a Code provision, but the effect of the treaty position is to alter the scope of the Code provision from the scope that it would have in the absence of the treaty, then the return position is a treaty-based return position that must be reported.

(iii) A return position is a treaty-based return position unless the taxpayer's conclusion that no reporting is required under subdivisions (i) and (ii) of this paragraph has a substantial probability of successful defense if challenged.

(3) *Examples.* The application of section 6114 and paragraph (a)(2) of this section may be illustrated by the following examples:

Example (1). X, a Country A corporation, claims the benefit of a provision of the income tax treaty between the United States and Country A that modifies a provision of the Code. This position does not result in a change of X's U.S. tax liability for the current tax year but does give rise to, or increases, a net operating loss which may be carried back (or forward) such that X's tax liability in the carryback (or forward) year may be affected by the position taken by X in the current year. X must disclose this treaty-based return position with its tax return for the current tax year.

Example (2). Y, a foreign corporation, is engaged in a trade or business in the United States. Section 884(f)(1)(A) of the Code provides that any interest paid by Y's U.S. trade or business shall be treated as paid by a domestic corporation and, thus, as U.S. source income. However, section 1012(aa)(3)(E) of the Technical and Miscellaneous Revenue Act of 1988 provides that, to the extent that a U.S. treaty provision in effect on October 22, 1986, would treat certain interest paid by a branch of a foreign corporation with a U.S. trade or business as non-U.S. source income, the treaty shall prevail. If Y claims the benefit of such a U.S. treaty provision, Y must disclose such position (see also paragraph (b)(4) of this section).

Example (3). Z, a domestic corporation, is engaged in a trade or business in Country B. Country B imposes a tax on the income from certain of Z's petroleum activities at a rate significantly greater than the rate applicable to income from other activities. Z claims a foreign tax credit for this tax on its tax return. The tax imposed on Z is specifically listed as a creditable tax in the income tax treaty between the United States and Country B; however, there is no specific authority that such tax would otherwise be a creditable tax for U.S. purposes under sections 901 or 903 of the Code. Therefore, in the absence of the treaty, the creditability of this petroleum tax would lack a substantial probability of successful defense if challenged, and Z must disclose this treaty-based return position (see also paragraph (b)(7) of this section).

(b) *Reporting specifically required.* Reporting is required under this section except as expressly waived under paragraph (c) of this section. In particular, reporting is specifically required if the taxpayer asserts any of the following positions:

(1) That a nondiscrimination provision of a treaty precludes the application of any otherwise applicable Code provision, other than with respect to the making of or the effect of an election under section 897(i);

(2) That a treaty reduces or modifies the taxation of gain or loss from the disposition of a United States real property interest;

(3) That a treaty exempts a foreign corporation from (or reduces the amount of tax with respect to) the branch profits tax (section 884(a)) or the tax on excess interest (section 884(f)(1)(B));

(4) That, notwithstanding paragraph (c)(1) of this section, (i) a treaty exempts from tax, or reduces the rate of tax on, interest or dividends paid by a foreign corporation that are from sources within the United States by reason of section 861(a)(2)(B) or section 884(f)(1)(A), or (ii) a treaty reduces the rate of tax on fixed or determinable annual or periodical income subject to withholding under sections 1441 or 1442 and received by a foreign person from a U.S. person where either person controls, within the meaning of sections 6038 or 6038A, the other person;

(5) That, under a treaty, (i) income that is effectively connected with a U.S. trade or business of a foreign corporation or a nonresident alien is not attributable to a permanent establishment or a fixed base of operations in the United States and, thus, is not subject to taxation on a net basis, or that (ii) expenses are allowable in determining net business income so attributable, notwithstanding an inconsistent provision of the Code;

(6) That a treaty alters the source of any item of income or deduction; or

(7) That a treaty grants a credit for a specific foreign tax for which a foreign tax credit would not be allowed by the Code.

The foregoing list is not a list of all positions for which reporting is required under this section; reporting is required if not waived under paragraph (c) of this section.

(c) *Reporting requirement waived.* Pursuant to the authority contained in section 6114(b) of the Code, reporting is waived under this section with respect

to any of the following return positions taken by the taxpayer:

(1) Except as provided in paragraph (b)(4) of this section, that a treaty has reduced the rate of withholding tax otherwise applicable to a particular type of fixed or determinable annual or periodical income subject to withholding under section 1441 or 1442, such as dividends, interest, rents, or royalties;

(2) That residency of an individual is determined under a treaty and apart from the Code;

(3) That a treaty reduces or modifies the taxation of income derived from dependent personal services, pensions, annuities, social security and other public pensions, or income derived by artistes, athletes, students, trainees or teachers;

(4) That a nondiscrimination provision of a treaty allows the making of an election under section 897(i); or

(5) That a Social Security Totalization Agreement or a Diplomatic or Consular Agreement reduces or modifies the taxation of income derived by the taxpayer.

In addition, if a partnership, trust, or estate that has the taxpayer as a partner or beneficiary discloses on its information return a position for which reporting is otherwise required by the taxpayer, the taxpayer (partner or beneficiary) is then excused from disclosing that position on a return. Also, this section does not apply to a withholding agent with respect to the performance of its withholding functions.

(d) *Information to be reported.* If reporting is required under this section, the following information must be furnished in accordance with paragraph (a) of this section as an attachment to the return and set forth with the indicated heading and with paragraphs labelled to correspond with the numbers set forth below:

Treaty-Based Return Position Disclosure Under Section 6114

(1) Taxpayer's name, T.I.N. (if any), and address both in the country of residence and in the United States;

(2) Name, T.I.N. (if available to the taxpayer), and address in the United States of the payor of the income (if fixed, determinable, annual, or periodical);

(3) A statement whether the taxpayer (if an individual) is a U.S. citizen or resident or (if a corporation) is incorporated in the United States;

(4) A separate statement of facts relied upon to support each separate position taken, including for each position (i) the nature and amount of each separate payment or separate income item for which the treaty benefit is claimed, (ii) an explanation of the position taken with a brief summary of the facts on which it is based, (iii) the specific treaty provision relied upon, (iv) the Code provision overridden or modified, and (v) the provisions of the limitation on benefits article (if any) in the treaty which the taxpayer relies upon to prevent application of that article. For purposes of subdivision (i), a taxpayer may treat payments or income items of the same type (*e.g.*, interest items) received from the same ultimate payor (*e.g.*, the obligor on a note) as a single separate payment or income item.

(e) *Effective date.* This section shall be effective for taxable years of the taxpayer for which the due date for filing returns (without extensions) occurs after December 31, 1988. (1) If a taxpayer has filed a return for such a taxable year, without complying with the reporting requirement of this section, before November 13, 1989, or (2) if a taxpayer is not otherwise than by paragraph (a) of this section required to file a return for a taxable year before November 13, 1989, such taxpayer must file (apart from any earlier filed return) the statement required by paragraph (d) of this section before January 10, 1990, by mailing the required statement to the Internal Revenue Service, P.O. Box 21086, Philadelphia, PA 19114. Any such statement filed apart from a return must be dated and subscribed and sworn to by the taxpayer under the penalties of perjury. If a taxpayer files or has filed a return on or before November 13, 1989 that provides substantially the same information required by paragraph (d) of this section, no additional submission will be required.

(f) *Cross reference.* For the provisions concerning penalties for failure to disclose a treaty-based return position, see section 6712 and § 301.6712–1T.

Par. 3. New § 301.6712–1T is added to read as follows:

§ 301.6712–1T Failure to disclose treaty-based return positions (Temporary).

(a) *Penalty imposed.* A taxpayer who fails in a material way to disclose one or more positions taken for a taxable year, as required by section 6114 and the regulations thereunder, is subject to a separate penalty for each failure to disclose a position taken with respect to each separate payment or separate income item in the amount of—

(1) For a corporation taxable as such under the Code, $10,000; or

(2) For all other taxpayers, $1,000.

The penalty imposed by this section may be imposed more than once for a single taxable year if a taxpayer has failed to disclose one or more positions taken with respect to more than one separate payment or separate income item and may be imposed in addition to any other penalty imposed by law.

(b) *Penalty waived.* Pursuant to the authority contained in section 6712(b) of the Code, the penalty imposed by paragraph (a) of this section may be waived, in whole or in part, if it is established to the satisfaction of the Assistant Commissioner (International), the district director or the director of the Internal Revenue Service Center that the taxpayer's failure to disclose the required information was not due to willful neglect. An affirmative showing of lack of willful neglect must be made in the form of a written statement that sets forth all the facts alleged to show lack of willful neglect and contains a declaration by such person that the statement is made under the penalties of perjury.

(c) *Manner of payment.* The penalty set forth in paragraph (a) of this section shall be paid in the same manner as tax upon the issuance of a notice and demand thereof.

(d) *Effective date.* This section shall be effective for taxable years of the taxpayer for which the due date for filing returns (without extension) occurs after December 31, 1988.

PARTS 510 and 515—[REMOVED]

Regulations Under Tax Conventions

Par. 4. The following regulations under tax conventions are hereby removed.

1. Part 510—Norway
2. Part 515—Honduras

PART 602—[AMENDED]

OMB Control Numbers Under the Paperwork Reduction Act

Par. 5. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101(c) is amended by inserting in the respective appropriate places in the table:

"§ 301.6114–1T............ 1545–1126."
"§ 301.6712–1T............ 1545–1126."

Michael J. Murphy,
Acting Commissioner of Internal Revenue.

Approved: July 19, 1989.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 89–21201 Filed 9–8–89; 8:45am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements; Oklahoma

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is adopting a cooperative agreement between the Department of the Interior and the State of Oklahoma for the regulation of surface coal mining and reclamation operations on Federal lands in Oklahoma. Such a cooperative agreement is provided for under section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This final rule provides the terms of the cooperative agreement and additional information on other issues.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Oklahoma program was conditionally approved on January 19, 1981 (46 FR 4910). The Oklahoma program received full program approval on January 14, 1986. Information on the general background, revisions, modifications, and amendments to the proposed permanent program submission as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4910). Subsequent actions in conditions of approval and program amendments are identified at 30 CFR 936.10 and 936.15.

A. The State of Oklahoma's Application

Section 523(c) of SMCRA, 30 U.S.C. 1201 *et seq.*, and the implementing regulations at 30 CFR parts 740 and 745, allow a State and the Secretary of the Interior (Secretary) to enter into a permanent program cooperative agreement if the State has an approved State program for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands.

Permanent program cooperative agreements are authorized by the first sentence of section 523(c) of SMCRA, which provides that, "Any State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provision of this Act."

On September 21, 1988, Henry Bellmon, Governor of Oklahoma, requested that a permanent program cooperative agreement be entered into between the Secretary of the Interior and the Governor of Oklahoma.

Section 30 CFR 745.11(b) of OSMRE's regulations requires that certain information be submitted with a request for a permanent program cooperative agreement, if the information has not previously been submitted in the State program. Much of the information relating to the budget, staffing, organization, and duties of the State regulatory authority, the Oklahoma Department of Mines (ODM), was described in Oklahoma's proposed permanent program submittal. The State of Oklahoma submitted, with the proposed permanent program cooperative agreement, the remaining supporting documentation required by 30 CFR 745.11(b). As part of that documentation, ODM submitted a written certification from the General Counsel of ODM that no State statutory, regulatory or other legal constraint exists which would preclude ODM from fully carrying out the proposed cooperative agreement.

B. Relation to the Federal Lands Program of SMCRA

The nature and extent of the Secretary's ability to delegate authority for surface coal mining operations on Federal lands to States through cooperative agreements was a subject of a 1988 Court of Appeals decision in *NWF* v. *Hodel*, 839 F.2d 694, 766 (D.C. Cir. 1988). The Oklahoma cooperative agreement is consistent with that opinion and delegates the Secretary's authority under SMCRA which is required to be covered under the Federal lands program and retains the Secretary's non-delegable responsibilities under the Mineral Leasing Act of 1920 (MLA).

If changes to the Federal lands program are adopted which are not covered by this agreement, OSMRE and the Secretary will promptly initiate the steps necessary to revise the agreement.

II. Summary of Cooperative Agreement and Response to Public Comments

The proposed cooperative agreement which was published in the **Federal Register** on December 14, 1988 (53 FR 50247), announced that the public comment period would close January 13, 1989, and that a public hearing was tentatively scheduled for January 3, 1989. Because no one asked to testify, the public hearing was not held.

During the public review period, OSMRE received 7 responses from Federal and State Agencies, none of which included comments requiring revisions to the proposed cooperative agreement. See the discussion of Article X for the response to concerns raised by the Bureau of Reclamation. As a result of OSMRE's review, some minor organizational and editorial changes in the proposed agreement were made to improve clarity.

A. Article I: Introduction, Purposes, and Responsible Agencies

Paragraph A of Article I sets forth the legal authority for the Oklahoma Cooperative Agreement (Agreement), which is provided by section 523(c) of the SMCRA. This paragraph states that the Agreement provides for State regulation of surface coal mining and reclamation operations in Oklahoma on Federal lands. Paragraph B sets out the purposes of the Agreement.

Paragraph C was modified to clarify that the ODM, acting under the direction of the Oklahoma Mining Commission, is the agency responsible for administering the Agreement on behalf of the Governor of Oklahoma (Governor). Paragraph C also names the OSMRE as the agency responsible for administering the Agreement on behalf of the Secretary.

B. Article II: Effective Date

Article II provides that after the Agreement has been signed by the Secretary and the Governor, it will become effective 30 days after publication as a final rule in the **Federal Register**. It will remain in effect until terminated as provided in Article XI.

C. Article III: Definitions

Article III provides that any terms and phrases used in the Agreement have the same meanings as set forth in the Federal and State Acts, regulations promulgated pursuant to those Acts, 30 CFR parts 700, 701, and 740, and the approved State program (Program).

Defining terms and phrases in this manner ensures consistency between applicable regulations and the Agreement. Where there are conflicts in definitions, those included in the Program apply.

D. Article IV: Applicability

Paragraph A of Article IV states that the laws, regulations, terms, and conditions of the Program are applicable to Federal lands in Oklahoma except as otherwise stated in the Agreement, SMCRA, 30 CFR 740.4 and 745.13, and other applicable Federal laws, Executive Orders, or regulations. This provision is consistent with the Federal lands program, which adopted the Oklahoma State program as substantive Federal law on all Federal lands in Oklahoma.

The reference to the Oklahoma State program is intended to encompass the approval of that State program on January 19, 1981, and any amendments thereto which are approved in accordance with 30 CFR 732.17. Excluded from the scope of the Agreement are the authorities and responsibilities reserved to the Secretary pursuant to SMCRA, 30 CFR 740.4, 745.13, and other applicable Federal laws, Executive orders, or regulations.

Paragraph B lists four existing Federal permits that will not betransferred to the State by this agreement.

Paragraph C states that appealable orders or decisions would be appealed to ODM or OSMRE as appropriate in accordance with ODM's or OSMRE's established appeal procedures.

E. Article V: General Requirements

Article V mutually binds the Governor and the Secretary to the provisions of the Agreement.

Paragraph A requires that ODM continue to have authority under State law to carry out the Agreement.

Paragraph B provides that upon application for funds the State shall be reimbursed by OSMRE pursuant to section 705(c) of SMCRA if the necessary funds have been appropriated to OSMRE by Congress. Section 705(c) of SMCRA provides that a State with a cooperative agreement may receive an increase in its annual grant for the development, administration and enforcement of a State program on Federal lands by an amount which the Secretary determines is approximately equal to the amount of money the Federal government would otherwise have expended to regulate surface coal mining and reclamation operations on the Federal lands within the State. The regulations implementing section 705(c) appear at 30 CFR 735.16 through 735.28.

If, when requested by the State, adequate funds have not been appropriated, OSMRE and ODM will meet and decide on appropriate measures to ensure that mining operations are regulated in accordance with the Program. Funds provided to ODM under the Agreement will be adjusted in accordance with Office of Management and Budget Circular A-102 Attachment E.

Paragraph C of Article V requires the State to make annual reports to OSMRE with respect to compliance with this Agreement. Paragraph C also provides for a general exchange of information developed under the Agreement, unless such an exchange is prohibited by Federal law or State law. Final evaluation reports prepared by OSMRE on State administration and enforcement of this Agreement will be provided to ODM. The Agreement requires that ODM's comments on the report be appended before being sent to Congress and other interested parties.

Paragraph D requires ODM to maintain the necessary personnel to fully implement this Agreement.

Paragraph E requires that ODM avail itself of the facilities necessary to carry out the requirements of the Agreement. This provision ensures that the State has access to and will utilize any resources necessary to conduct the inspections, investigations, studies, tests, and analyses required to fulfill the requirements of this Agreement.

Paragraph F of Article V concerns permit application fees and civil penalties. Permit fees will be determined according to section 745.1 of the State Act, section 771.25 of the State regulations, and other applicable provisions of the Program and Federal law. Any permit fees collected by the State that are attributable to the Federal lands covered by the Agreement will be considered program income. The State will retain all permit fees from operations on Federal lands and deposit them with the State Treasurer. The State will report the amount of these fees in the financial status report required under 30 CFR 735.26. Civil penalties or fines collected by the State will not be considered program income.

F. Article VI: Review of a Permit Application Package

Paragraphs A through C of Article VI generally describe the procedures that the State and OSMRE will follow in the review and analysis of permit application packages (PAP) for operations on Federal lands.

"Permit application package" is a term adopted by OSMRE in the Federal lands program (48 FR 6912, February 16, 1983). It is the material submitted by an applicant proposing to mine on Federal lands, including applications for permit revisions and renewals. OSMRE adopted the term because there are requirements for mining on Federal lands in addition to those required by a permit application under the approved State program for non-Federal lands. For example, operations on Federal lands may be subject to requirements of the Federal land management agency under Federal laws other than SMCRA. The package concept allows for such information to be included with the permit application required by the approved State program. See the definition of "permit application package" under 30 CFR 740.5.

Under paragraph A, an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands will be required by ODM and the Secretary to submit a PAP in an appropriate number of copies to ODM. ODM will furnish OSMRE and other Federal agencies with the appropriate number of copies of the PAP.

The PAP will be in the form required by ODM and include any supplemental information required by OSMRE, the Federal land management agency and other agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. At a minimum, the PAP will be required to satisfy the requirements of 30 CFR part 740 and must include the information necessary for ODM to make a determination of compliance with the Program and for OSMRE and appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the Federal lands program, compliance with applicable requirements of SMCRA, the Federal lands program, other Federal laws, Executive orders, and regulations for which they are responsible.

Paragraph B of Article VI discusses review procedures for PAP's where leased Federal coal is involved and consequently, where the Secretary must make a decision on a mining plan. The Agreement does not address Federal lands where leased Federal coal is not involved because no such areas are known to exist in Oklahoma.

Under paragraph B.1., ODM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (3), (4), (6), and (7), to the extent authorized.

Under 30 CFR 740.4(c)(1), ODM will, to the extent authorized, take on the delegable responsibilities for review and approval, disapproval or conditional approval of permit applications, revisions or renewals thereof, and applications for transfer, sale and assignment of such permits. OSMRE will assist ODM in this review, upon request, to the extent possible. The Secretary retains those responsibilities that cannot be delegated to ODM including those under the Federal lands program, the MLA, the National Environmental Policy Act of 1969 (NEPA), this Agreement, and other applicable Federal laws. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws. The Secretary will carry out his responsibilities in a timely manner and avoid, to the extent possible, duplication of those responsibilities delegated to the State in this Agreement and the Program, applicable Federal laws may be specified in working agreements between OSMRE and ODM, with concurrence of any Federal agency involved, and without amendment to this Agreement.

Paragraph B.2., designates ODM as the primary contact for applicants in matters regarding review of the PAP. As such, ODM will inform the applicant of all joint State-Federal determinations. On matters concerned exclusively with 43 CFR part 3480, subparts 3480 through 3487, the Bureau of Land Management (BLM) will be the primary contact with the applicant, and will provide ODM with documentation on its decisions. ODM will provide OSMRE with copies of correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will provide ODM with copies of all correspondence which may have a bearing on the PAP. OSMRE will not ordinarily contact the applicant regarding the PAP, although OSMRE is not prevented from doing so.

ODM will consult with and obtain the consent of the Federal land management agency concerning post-mining land use and protection of non-coal resources, and will consult with and obtain the consent of BLM with respect to development, production, and recovery of mineral resources where operations involve leased Federal coal.

The Secretary reserves the right to act independently of ODM to carry out Departmental responsibilities under laws other than SMCRA or provisions of SMCRA not covered by the Program, and in instances of disagreement over SMCRA and the Federal lands program.

Under paragraph B.3., ODM will take on the responsibilities under 30 CFR 740.4(c) (2), (3), and (4). These cover consultation with the Federal land management agency and with BLM, and the approval and release of bonds. ODM will prepare documentation to comply with NEPA under 30 CFR 740.4(c)(7), but OSMRE will retain the non-delegable responsibilities under 30 CFR 740.4(c)(7) (i) through (vii).

ODM will also obtain the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. ODM will request that all Federal agencies submit their findings or any requests for additional data to ODM, and, when necessary, to OSMRE within 45 days of receiving the PAP.

Under paragraph B.4., OSMRE will assist the State in carrying out its responsibilities by coordinating resolution of conflicts between ODM and other Federal agencies in a timely manner. OSMRE will further assist by helping to schedule joint meetings, upon request.

OSMRE will exercise its responsibilities in a timely manner and will provide ODM with a work product within 50 days of receiving the State's request for assistance in reviewing the permit application unless a different time is agreed upon by OSMRE and ODM.

OSMRE will be responsible for Federal lessee protection bond requirements under 30 CFR 740.15.

Paragraph B.5. describes the procedures that OSMRE and ODM will follow in reviewing the PAP. OSMRE and ODM will coordinate their activities and exchange information during the review process. The State will review the PAP to ensure compliance with the Program and State law and regulations, while OSMRE will review the PAP to ensure compliance with the non-delegable responsibilities of SMCRA and other Federal laws and regulations. OSMRE and ODM will plan and schedule PAP reviews and each will choose a project leader, who will serve as the primary point of contact during the review process. OSMRE will provide the State with its review comments within 50 days of receiving the PAP.

ODM will prepare a State decision package indicating whether the PAP complies with the Program. The review and finalization of the State's decision package will be conducted in accordance with procedures agreed upon by ODM and OSMRE for processing PAP's.

ODM can issue a SMCRA permit pursuant to the Program on Federal lands before the necessary Secretarial approval of the mining plan. However, ODM must advise the operator that Secretarial approval of the mining plan must be obtained before the operator begins mining operations on the Federal lease. The permit issued by the State will be required to include the terms and conditions required by the lease and those required by other applicable Federal laws and regulations.

After making its decision, ODM will notify the applicant, the Federal land management agency, and any agency with jurisdiction or responsibility over Federal lands affected by operations proposed in the PAP. A copy of the permit and written findings will be submitted to OSMRE.

OSMRE will provide technical assistance to ODM upon request, if available resources allow and will have access to ODM's files concerning operations on Federal lands.

Paragraph C of Article VI addresses review procedures for permit revisions or renewals.

Paragraph C.1. assigns to ODM the authority to review, approve or disapprove permit revisions or renewals not constituting modifications of a mining plan pursuant to 30 CFR 746.18. ODM must consult with OSMRE on whether any permit revision or renewal constitutes a mining plan modification. OSMRE will inform ODM within 30 days of receiving a copy of the permit revision or renewal as to such a decision. Where approval of a mining plan modification is required, OSMRE and ODM will follow the procedures outlined in paragraphs B.1. through B.4. of this Article.

Under paragraph C.2., OSMRE may establish criteria consistent with 30 CFR 746.18 to determine which permit revisions or renewals clearly do not constitute mining plan modifications. Those revisions or renewals meeting the criteria may be approved by ODM prior to contacting OSMRE.

Under paragraph C.3., permit revisions or renewals not constituting mining plan modifications or meeting the criteria outlined in paragraph C.2. will be reviewed and approved or disapproved by ODM.

Under paragraph C.4., ODM will review applications for permit transfers, sales, and assignments of rights in accordance with the Program and 30 CFR 740.13(e). This last provision was added to clarify that an application for a transfer, assignment, or sale of permit rights is not a PAP.

G. Article VII: Inspections

Paragraphs A and B state that ODM will conduct inspections on lands covered by this Agreement and prepare and file State inspection reports in accordance with the Program.

Paragraph C designates ODM as the point of contact and primary inspection authority in dealing with the operator.

However, the Secretary retains the right to conduct inspections of surface coal mining and reclamation operations on Federal lands without prior notice to ODM for the purpose of evaluating the manner in which the Agreement is being carried out and ensuring that performance and reclamation standards are being met.

Paragraph D states that when OSMRE intends to conduct an inspection under 30 CFR 842.11, ODM will ordinarily be given reasonable notice of such an inspection to provide an opportunity for State inspectors to join in the inspection. Citizen complaints not involving an imminent harm to the public or the environment will be referred to ODM for action.

Article VII preserves OSMRE's obligation and authority to conduct inspections pursuant to 30 CFR parts 842 and 843. The right of Federal and State agencies to conduct inspections for purposes outside the scope of the proposed cooperative agreement will not be affected.

H. Article VIII: Enforcement

Article VIII sets forth the enforcement obligations and authorities of OSMRE and ODM.

Under paragraph A, ODM will have primary enforcement authority on Federal lands in accordance with the requirements of the Agreement and the Program. Enforcement authority given to the Secretary under other Federal laws and Executive Orders will be reserved by the Secretary.

Under paragraph B, ODM will have primary responsibility for enforcement during joint inspections with OSMRE. Paragraph B also includes a requirement that ODM notify OSMRE prior to suspending or revoking a permit.

Paragraph C preserves OSMRE's authority to take enforcement action to comply with 30 CFR parts 843, 845, and 846, where OSMRE conducted an inspection or where, during a joint inspection with ODM, the two cannot agree on the appropriateness of a particular enforcement action. Such action will be based upon SMCRA or the substantive provisions contained in the Program, or both, but will use the Federal procedures and penalty system.

Paragraph D provides that OSMRE and ODM will notify each other of all violations of applicable regulations and all actions taken on the violations.

Paragraph E provides that personnel of ODM and the Department of the Interior, including OSMRE, will be mutually available to serve as witnesses in enforcement actions taken by either party.

Paragraph F specifies that this Agreement will not limit the Secretary's authority to enforce Federal laws other than SMCRA.

I. Article IX: Bonds

Under paragraph A, ODM and the Secretary will require each operator conducting operations on Federal lands to submit a performance bond payable to both the State and the United States. All applicable State and Federal requirements must be fulfilled prior to releasing an operator from any obligation covered by the performance bond. If the Agreement is terminated, paragraph A requires that the portion of the bond covering Federal lands reverts to being payable solely to the United States. ODM will advise OSMRE of any adjustments to the performance bond pursuant to the Program.

Paragraph B states that a performance bond shall be released by the State after OSMRE concurs with the release.

Paragraph C states that forfeiture of performance bonds will be in accordance with the Program and subject to OSMRE concurrence.

Paragraph D clarifies that the performance bond does not meet the requirement for a Federal lease bond under 43 CFR part 3474, or for the lessee protection bond required in certain circumstances by section 715 of SMCRA.

J. Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities and Valid Existing Rights and Compatibility Determinations

Paragraph A.1. of Article X reserves to the Secretary authority to designate Federal lands as unsuitable for surface coal mining operations.

Paragraph A.2. states that ODM and OSMRE will notify each other of any petition to designate lands as unsuitable that could impact adjacent Federal and non-Federal lands, and solicit and consider each other's views on a petition. OSMRE will coordinate with the Federal land management agency with jurisdiction over the area covered by the petition, and will solicit comments.

The Bureau of Reclamation (BOR) stated that paragraphs A.1. and A.2. are difficult to understand and posed questions regarding the filing of petitions, decisions on petitions, and appeals of decisions. The Secretary notes that section 522 of SMCRA contains the requirements for designating areas unsuitable for surface coal mining. The detailed procedures for filing petitions for non-Federal lands for processing by ODM are outlined in part 764 of the Program, and those for Federal lands for processing by OSMRE are outlined in 30 CFR subchapter F, part 769. Therefore, reiteration of these detailed procedures in the Agreement is not deemed to be necessary.

BOR also stated that it should be responsible for designating areas as unsuitable for mining and should be considered the "decision maker" rather than a "commenter" in protecting BOR project resources.

The Secretary notes that the State and OSMRE processes for designating lands unsuitable for coal mining are separate from the Bureau of Land Management's unsuitability process (43 CFR part 3460) for designating no surface occupancy areas on Federal leases, for which BOR has input on protecting BOR interests. Therefore, in this respect, the cooperative agreement does not change BOR's authority or responsibility on Federal lands.

The Director of OSMRE is the decisionmaker on any Federal lands unsuitable petitions for coal mining under 30 CFR part 769.

For Federal lands petitions, the Director of OSMRE is required by 30 CFR 769.18(a) to consider information provided by governmental agencies such as BOR. If OSMRE and BOR as sister agencies within the Department could not reach an agreement on issues relating to a Federal lands petition, under 30 CFR 769.18(c), the matter would be referred to the Secretary of the Interior for resolution.

For the reasons stated above, the Secretary finds that it is not necessary to revise the cooperative agreement in response to BOR's comments.

Paragraph B discusses valid existing rights (VER) determinations. OSMRE's definition of VER, which was published on September 14, 1983 (48 FR 41314), relied on a general "takings" standard. In its March 22, 1985, decision, the District Court remanded this definition because the promulgation process violated the Administrative Procedure Act. On November 20, 1986, OSMRE published a suspension notice for the definition of VER pending further rulemaking (51 FR 41952). On December 27, 1988, OSMRE published a notice seeking comments on a proposed definition of VER (53 FR 52374), but OSMRE has not yet adopted a new definition. When the Federal rules are finalized, the Agreement will be amended as necessary to conform to the new rules.

The Secretary has decided, for areas covered by sections 522(e) (1) and (2) of SMCRA, to make VER determinations in

Oklahoma using the VER definition contained in the State regulatory program in accordance with 30 CFR 740.11(a) and the suspension notice at 51 FR 41954. Section 522(e) (1) and (2) of SMCRA address areas where, subject to VER, no surface coal mining operations shall be permitted except those which existed on the date of enactment of SMCRA.

Paragraph B.1. states that OSMRE has responsibility for processing requests for VER determinations on Federal lands within the boundaries of areas where mining is prohibited by section 522(e)(1) of SMCRA. For private inholdings within section 522(e)(1) areas, ODM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands would or would not affect the Federal interest (Federal lands as defined in section 701(4) of SMCRA). OSMRE will have the responsibility for processing requests for VER determinations on private inholdings within the boundaries of section 522(e)(1) areas where mining affects the Federal interest.

Under Paragraph B.2., OSMRE will be responsible for processing requests for determinations of VER for proposed operations on Federal lands within the boundaries of any national forest, as identified in section 522(e)(2) of SMCRA. OSMRE will process compatibility determinations on Federal lands pursuant to section 522(e)(2) of SMCRA.

Under paragraph B.3., ODM will determine, for Federal lands, whether the prohibitions or limitations of section 522(e)(3) of SMCRA are applicable to proposed mining operations which would adversely affect any units of the National Park System, and any other public park, or any historic property listed in the National Register of Historic Places in consultation with the State Historic Preservation Officer. ODM will make the VER determination for such lands. When VER is determined to exist on a unit of the National Park System, ODM will work with the NPS before any proposed operation is permitted. When VER is determined not to exist, no surface coal mining operations will be permitted unless jointly approved by ODM and any Agency with jurisdiction over the lands in question.

Under paragraph B.4., ODM will process and make VER determinations on Federal lands, using the State program, for all areas limited or prohibited by sections 522(e) (4) and (5) of SMCRA as unsuitable for mining. For such operations on Federal lands, ODM will coordinate with the affected agency and any agency with jurisdiction over the proposed operations.

K. Article XI: Termination of Cooperative Agreement

Article XI specifies that the Agreement may be terminated as specified under 30 CFR 745.15.

L. Article XII: Reinstatement of Cooperative Agreement

Article XII provides that, if terminated, the Agreement may be reinstated under 30 CFR 745.16. That provision allows for reinstatement of a cooperative agreement upon application by the State after remedying the defects for which the agreement was terminated and the submission of evidence to the Secretary that the State can and will comply with all of the provisions of the Agreement.

M. Article XIII: Amendment of Cooperative Agreement

Article XIII provides that the Agreement may be amended by mutual agreement of the Governor and Secretary in accordance with 30 CFR 745.14.

N. Article XIV: Changes in State or Federal Standards

Paragraph A of Article XIV recognizes that the Secretary or the Governor may, from time to time, promulgate new or revised performance or reclamation requirements, or enforcement and administration procedures. If it is determined to be necessary to keep the Agreement in force, the State will request necessary legislative action and either the State or OSMRE will change or revise its regulations or promulgate new regulations, as applicable. Such changes will be made in accordance with 30 CFR part 732 for changes to the approved State program and section 501 of SMCRA for changes to the Federal lands program.

Paragraph B requires the State and OSMRE to provide each other with copies of changes in their respective laws and regulations.

O. Article XV: Changes in Personnel and Organization

Article XV requires ODM and OSMRE to advise each other of substantial changes in organization, funding, staff, or other changes which could affect the implementation of the Agreement.

P. Article XVI: Reservation of Rights

Article XVI recognizes that SMCRA, 30 CFR 745.13, and other legal authorities prohibit the Secretary from delegating certain authorities to the State. Article XVI states that this Agreement will not be construed as waiving or preventing the assertion of any right in this Agreement that the State or the Secretary may have under laws other than SMCRA, or their regulations, including those listed in Appendix A of the Agreement.

III. Procedural Matters

A. Executive Order 12291 and Regulatory Flexibility Act

On October 21, 1982, the Department of the Interior received from the Office of Management and Budget (OMB) an exemption for Federal/State cooperative agreements from the requirements of sections 3 and 7 of Executive Order 12291.

The Department has reviewed this proposed agreement in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Having conducted this review, the Department has determined that this document will not have a significant economic effect on a substantial number of small entities because no significant departure from either the State or Federal requirements already in effect will occur and no new or additional information will be required by the proposed agreement.

B. Paperwork Reduction Act of 1980

There are recordkeeping and reporting requirements in the proposed Oklahoma Cocperative Agreement which are the same as those required by the permanent program regulations. Those recordkeeping and reporting requirements needed clearance from OMB under 44 U.S.C. 3501 *et seq.* and were assigned the following clearance numbers:

Location of requirements	OMB clearance No.
Article V.C. (Required by 30 CFR part 745)	1029-0028
Article VI.A. (Required by 30 CFR part 773)	1029-0041
Article VII.A. (Required by 30 CFR part 840)	1029-0051
Article IX.A. (Required by 30 CFR part 800)	1029-0043

C. National Environmental Policy Act

Proceedings relating to adoption of a permanent program cooperative agreement are part of the Secretary's implementation of the Federal lands program pursuant to section 523 of SMCRA. Such proceedings are exempt under section 702(d) of that Act from the requirements to prepare a detailed statement pursuant to section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)).

D. Author

The author of this regulation is Mr. David R. Alleman, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone (918) 581-6430.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 15, 1989.

James M. Hughes,

Deputy Assistant Secretary, Land and Minerals Management.

Accordingly, 30 CFR part 936 is amended as follows:

PART 936—[AMENDED]

1. The authority citation for part 936 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.30 is added to read as follows:

§ 936.30 State-Federal Cooperative Agreement.

The Governor of the State of Oklahoma and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purpose, and Responsible Agencies

A. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement for the regulation and control of surface coal mining, operations on Federal lands. This Agreement provides for State regulation consistent with the Act, the Federal lands program (30 CFR, chapter VII, subchapter D) and the Oklahoma State program (Program) for surface coal mining and reclamation operations on Federal lands.

B. The purposes of this Agreement are to (a) foster Federal-State cooperation on the regulation of surface coal mining (b) minimize intergovernmental overlap and duplication and (c) provide uniform and effective application of the Program on all non-Indian lands in Oklahoma in accordance with the Act and the Program.

C. The Oklahoma Department of Mines (ODM), under the direction of the Oklahoma Mining Commission, shall be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSMRE) shall administer this Agreement on behalf of the Secretary.

Article II: Effective Date

After being signed by the Secretary and the Governor, this Agreement shall be effective 30 days after publication in the **Federal Register** as a final rule. This Agreement shall remain in effect until terminated as provided in Article XI.

Article III: Definitions

The terms and phrases used in this Agreement which are defined in the Act, 30 CFR parts 700, 701, and 740, the Program, the Oklahoma Coal Reclamation Act of 1979, and in the rules and regulations promulgated pursuant to those Acts, shall be given the meanings set forth in said definitions. Where there is conflict between the above-referenced State and Federal definitions, the definitions used in the approved State program will apply except in the case of a term which defines the Secretary's continuing responsibilities under the Act and other laws.

Article IV: Applicability

A. In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Oklahoma Program are applicable to Federal lands in Oklahoma except as otherwise stated in this Agreement, the Act, 30 CFR 740.4 and 745.13, or other applicable Federal laws, Executive Orders, or regulations.

B. The following permits will not be transferred to the State by this Agreement and will remain under the jurisdiction of OSMRE: 1. CFI-Bokoshe (Federal Permit OK-0002), 2. Stigler No. 9 (Federal Permit OK-0009), 3. Bokoshe No. 10 (Federal Permit OK-0001), and 4. McCurtain No. 2 (Federal Permit OK-0002).

C. Orders and decisions issued by ODM in accordance with the Program that are appealable shall be appealed to the reviewing authority in accordance with the Program. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. Authority of State Agency

ODM has and shall continue to have the authority under State law to carry out this Agreement.

B. Funds

Upon Application by ODM and subject to appropriations, OSMRE will provide the State with the funds to defray the cost associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of the Federal Act, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by ODM in carrying out those responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended to carry out such responsibilities in the absence of this Agreement; and provided that such State incurred cost per permitted acre of Federal land does not exceed the per permitted acre cost for similar administration and enforcement activities of the Program on non-Federal and non-Indian lands during the same time period.

The ratio or cost split of Federal to non-Federal dollars allocated under this Agreement will be determined by OSMRE and ODM based on the projected cost for regulation of mines within Federal lands that are under the jurisdiction of the State, in consideration of the relative amounts of Federal and non-Federal lands involved. The designation of mines based on Federal land will be prepared by ODM and submitted to OSMRE's Tulsa Field Office. OSMRE will work with ODM to estimate the amount the Federal government would have expended for regulation of surface coal mining operations on Federal lands in Oklahoma in the absence of this Agreement.

OSMRE and the State will discuss the OSMRE Federal land cost estimate, the ODM prepared list of acres by mine, and the State's overall cost estimate. After resolution of any issues, ODM will submit its grant application to OSMRE's Tulsa Field Office. The Federal lands/non-Federal lands ratio will be applied to the final eligible total State expenditures to arrive at the total Federal reimbursement due the State. This ratio or cost split will be agreed upon by July of the year preceding the applicable fiscal year in order to enable the State to budget funds for the Program.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations, in estimating the regulatory cost for the following grant year. OSMRE will notify ODM as soon as possible if such projections are unrealistic.

If ODM applies for a grant but sufficient funds have not been appropriated to OSMRE, OSMRE and ODM will promptly meet to decide on appropriate measures that will insure that mining operations on Federal lands in Oklahoma are regulated in accordance with the Program.

Funds provided to ODM under this Agreement will be adjusted in accordance with Office of Management and Budget Circular A-102 Attachment E.

C. Reports and Records

ODM will make annual reports to OSMRE containing information with respect to compliance with terms of this Agreement pursuant to 30 CFR 745.12(d). ODM and OSMRE will exchange, upon request, except where prohibited by Federal or State law, information developed under this Agreement.

OSMRE will provide ODM with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. ODM comments on the report will be appended before transmission to the Congress or other interested parties.

D. Personnel

ODM shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Act, Federal lands program and the Program.

E. Equipment and Laboratories

ODM will assure itself access to equipment, laboratories, and facilities to perform all inspections, investigations, studies, tests, and analyses that are necessary to carry out the requirements of the Agreement.

F. Permit Application Fees and Civil Penalties

The amount of the fee accompanying an application for a permit for operations on Federal lands in Oklahoma shall be determined in accordance with section 745.1 of the Oklahoma Coal Reclamation Act of 1979, section 771.25 of the State regulations and the applicable provisions of the Program and Federal law. All permit fees and civil penalties collected from operations on Federal lands will be retained by the State and shall be deposited with the State Treasurer in the Oklahoma Department of Mines Revolving Fund. Permit fees will be considered Program income. The financial status report submitted pursuant to 30 CFR 735.26 shall include the amount of fees collected and attributable to Federal lands during the prior State fiscal year.

Article VI: Review of Permit Application Package

A. Submission of Permit Application Package

ODM and the Secretary will require an applicant proposing to conduct surface coal mining and reclamation operations and activities on Federal lands to submit a permit application package (PAP) with an appropriate number of copies to ODM. ODM will furnish OSMRE and other Federal agencies with an appropriate number of copies of the PAP. The PAP will be in the form required by ODM and will include any supplemental information required by OSMRE and the Federal land management agency. Where section 522(e)(3) of the Act applies, ODM will work with the agency with jurisdiction over the publicly owned park, including units of the National Park System, or place included in the National Register of Historic Places (NRHP) to determine what supplemental information will be required.

At a minimum, the PAP will satisfy the requirements of 30 CFR Part 740 and include the information necessary for ODM to make a determination of compliance with the Program and for OSMRE and the appropriate Federal agencies to make determinations of compliance with applicable requirements of the Act, the Federal lands program, and other Federal laws, Executive Orders, and the regulations for which they are responsible.

B. Review Procedures Where Leased Federal Coal is Involved

1. ODM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (3), (4), (6), and (7) to the extent authorized.

In accordance with 30 CFR 740.4(c)(1), ODM will assume primary responsibility for the analysis, review, and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations and activities in Oklahoma where a mining plan is required. OSMRE will, at the request of the State, assist to the extent possible in this analysis and review.

The Secretary will concurrently carry out his responsibilities that cannot be delegated to ODM under the Federal lands program, the Mineral Leasing Act (MLA), the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and where appropriate, make decisions required by the Act, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working Agreements between OSMRE and ODM with concurrence of any Federal agency involved, and without amendment to this Agreement.

2. ODM will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State laws and regulations. On matters concerned exclusively with regulations under 43 CFR part 3480, subparts 3480 through 3487, the Bureau of Land Management (BLM) will be the primary point of contact with the applicant. ODM will send to OSMRE copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will send to ODM copies of all OSMRE correspondence which may have a bearing on the PAP. OSMRE will request additional information from the applicant through ODM. Copies of OSMRE's request will be sent directly to the operator by OSMRE to help expedite the permit review process. The requested information will be submitted to OSMRE through ODM.

BLM will inform ODM of its actions and provide ODM with a copy of documentation on all decisions. ODM will be responsible for informing the applicant of all joint State-Federal determinations. Where necessary to make the determination to recommend that the Secretary approve the mining plan, OSMRE will consult with and obtain the concurrences of BLM, the Federal land management agency, and other Federal agencies as required.

The Secretary reserves the right to act independently of ODM to carry out his responsibilities under laws other than the Act or provisions of the Act not covered by the Program, and in instances of disagreement over the Act and the Federal lands program.

3. ODM will, to the extent authorized, consult with the Federal land management agency and BLM pursuant to 30 CFR 740.4(c)(2) and (3), respectively. ODM will also be responsible for obtaining the comments and determinations of other Federal agencies with jurisdiction or responsibility over the Federal lands affected by the operations proposed in the PAP. ODM will request all Federal agencies to furnish their findings on any request for additional information to ODM within 45 days of the date of receipt of the PAP. OSMRE will assist ODM in obtaining this information upon request of ODM.

ODM will be responsible for approval and release of performance bonds and liability insurance under 30 CFR 740.4(c)(4).

ODM will prepare documentation to comply with the requirements of NEPA under 30 CFR 740.4(c)(7); however, OSMRE will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7)(i)–(vii).

4. OSMRE will assist ODM in carrying out ODM's responsibilities by:

(a) Coordinating resolution of conflicts and difficulties between ODM and other Federal agencies in a timely manner;

(b) Assisting in scheduling joint meetings, upon request, between State and Federal agencies;

(c) Where OSMRE is assisting ODM in reviewing the PAP, furnishing to ODM the work product within 50 calendar days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSMRE and ODM;

(d) Exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the Program; and

(e) Assuming all responsibility for ensuring compliance with any Federal lessee protection bond requirement.

5. Review of the PAP:

(a) OSMRE and ODM will coordinate with each other during the review process as needed. ODM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE will ensure that any information OSMRE receives which has a bearing on decisions regarding the PAP is promptly sent to ODM.

(b) ODM will review the PAP for compliance with the Program and State law and regulations.

(c) OSMRE will review the applicable portions of the PAP for compliance with the non-delegated responsibilities of the Act and for compliance with the requirements of other Federal laws, Executive orders, and regulations.

(d) OSMRE and ODM will develop a work plan and schedule for PAP review and each will identify a person as the project leader. The project leaders will serve as the primary points of contact between OSMRE and ODM throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSMRE will furnish ODM with its review comments on the PAP and specify any requirements for additional data. To the extent practicable, ODM will provide OSMRE all available information that may aid OSMRE in preparing any findings.

(e) ODM will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. The review and finalization of the State decision package will be conducted in accordance with procedures for processing PAP's agreed upon by ODM and OSMRE.

(f) ODM may make a decision on approval or disapproval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that ODM advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct coal development or mining operations on the Federal lease. ODM will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

(g) The permit will include, as applicable, terms and conditions required by the lease issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by the Federal land management agency relating to post-mining land use, and those of other affected agencies, and will be conditioned on compliance with the requirements of the Federal land management agency with jurisdiction.

(h) In the case that valid existing rights (VER) are determined to exist on Federal lands under section 522(e)(3) of the Act where the proposed operation will adversely affect a unit of the National Park Service (NPS), ODM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit to mitigate environmental impacts as set forth under Article X of this Agreement.

(i) After making its decision on the PAP, ODM will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction over the publicly owned park or historic place included in the NRHP affected by a decision under section 522(e)(3) of the Act. A copy of the written findings and the permit will also be submitted to OSMRE.

(j) OSMRE will provide technical assistance to ODM when requested, if available resources allow. OSMRE will have access to ODM files concerning operations on Federal lands.

C. Review Procedures for Permit Revisions or Renewals

1. Any permit revision or renewal for an operation on Federal lands will be reviewed and approved or disapproved by ODM after consultation with OSMRE on whether such revision or renewal constitutes a mining plan modification. OSMRE will inform ODM within 30 days of receiving a copy of a proposed revision or renewal, whether the permit revision or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and ODM will follow the review procedures where leased Federal coal is involved as outlined in this Agreement.

2. OSMRE may establish criteria to determine which permit revisions and renewals clearly do not constitute mining plan modifications.

3. Permit revisions or renewals on Federal lands which are determined by OSMRE not to constitute mining plan modifications or that meet the criteria for not being mining plan modifications will be reviewed and approved by ODM.

4. Transfer, sale, or assignment of permit rights on Federal lands shall be processed in accordance with the Oklahoma Program and 30 CFR 740.13(e).

Article VII: Inspections

A. ODM will conduct inspections of all surface coal mining and reclamation operations on Federal lands, except for those operations listed in Article IV, in accordance with 30 CFR 740.4(c)(5) and the Program and prepare and file inspection reports in accordance with the Program.

B. ODM will, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and on a timely basis, file with OSMRE's Tulsa Field Office a legible copy of the completed State inspection report.

C. ODM will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR Parts 842 and 843 and its obligations under laws other than the Act.

D. OSMRE will ordinarily give ODM reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection. When OSMRE is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact ODM no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger or significant, imminent environmental harm will be referred to ODM for action. The Secretary reserves the right to conduct inspections without prior notice to ODM to carry out his responsibilities under the Act.

Article VIII: Enforcement

A. ODM will have primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive orders including, but not limited to, those listed in Appendix A (attached) is reserved to the Secretary.

B. During any joint inspection by OSMRE and ODM, ODM will have primary responsibility for enforcement procedures including issuance of orders of cessation, notices of violation, and assessment of penalties. ODM will inform OSMRE prior to issuance of any decision to suspend or revoke a permit on Federal lands.

C. During any inspection made solely by OSMRE or any joint inspection where ODM and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR parts 843, 845, and 846. Such enforcement action will be based on the standards in the Program, the Act, or both, and will be taken using the procedures and penalty system contained in 30 CFR parts 843, 845, and 846.

D. ODM and OSMRE will promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of ODM and OSMRE will be mutually available to serve as witness in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than the Act.

Article IX: Bonds

A. ODM and the Secretary will require each operator who conducts operations on Federal lands to submit a single performance bond payable to Oklahoma and the United States to cover the operator's responsibilities under the Act and the Program. Such performance bond will be conditioned upon compliance with all requirements of the Act, the Program, State rules and regulations, and any other requirements imposed by the Department. Such bond will provide that if this Agreement is terminated, the portion of the bond covering the Federal lands will be payable only to the United States. ODM will advise OSMRE of any adjustments to the performance bond made pursuant to the Program.

B. Prior to releasing the operator from any obligation under such bond, ODM will obtain the concurrence of OSMRE. OSMRE concurrence will include coordination with other Federal agencies having authority over the lands involved.

C. Performance bonds will be subject to forfeiture with the concurrence of OSMRE, in accordance with the procedures and requirements of the Program.

D. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Act.

Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities and Valid Existing Rights and Compatibility Determinations

A. Unsuitability Petitions.

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition is reserved to the Secretary.

2. When either ODM or OSMRE receives a petition that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of the Act, the agency receiving the petition will notify the other of receipt and the anticipated schedule for reaching a decision, and request and fully consider data, information and recommendations of the other. OSMRE will coordinate with the Federal land management agency with jurisdiction over the petition area, and will solicit comments from the agency.

B. Valid Existing Rights and Compatibility Determinations

The following actions will be taken when requests for determination of valid existing rights (VER) pursuant to section 522(e) of the Act or for determinations of compatibility pursuant to section 522(e)(2) of the Act are received prior to or at the time of submission of a PAP that involves surface coal mining and reclamation operations and activities:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of the Act, OSMRE will determine whether VER exist for such areas.

For non-Federal lands within section 522(e)(1) areas ODM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will

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not affect Federal lands. For such non-Federal lands affecting Federal lands, OSMRE will make the VER determination.

Under section 522(e)(1), for non-Federal lands within the boundaries of the National Park System, ODM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect the Federal interest. For such non-Federal lands within the boundaries of the National Park System which affect the Federal interest, OSMRE will make the VER determinations.

2. For Federal lands within the boundaries of any national forest where proposed operations are prohibited or limited by section 522(e)(2) of the Act and 30 CFR 761.11(b), OSMRE will make the VER determination.

OSMRE will process requests for determinations of compatibility under section 522(e)(2) of the Act and 30 CFR 761.12(c).

3. For Federal lands, ODM, with the consultation and concurrence of OSMRE, will determine whether any proposed operations will adversely affect units of the National Park System with respect to the prohibitions or limitations of section 522(e)(3) of the Act. For such operations adversely affecting units of the National Park System, ODM, with the consultation and concurrence of OSMRE, will make the VER determination.

For Federal lands, ODM will determine whether any proposed operation will adversely affect any publicly owned parks other than those covered in the preceding paragraph and, in consultation with the State Historic Preservation Officer, places listed in the National Register of Historic Places (NRHP), with respect to the prohibitions or limitations of section 522(e)(3) of the Act.

For Federal lands other than those on which the proposed operation will adversely affect units of the National Park System, ODM will make the VER determination for operations which are prohibited or limited by section 522(e)(3) of the Act. In the case that VER is determined to exist on Federal lands under section 522(e)(3) of the Act where a proposed operation will adversely affect a unit of the National Park System, ODM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit in order to mitigate environmental impacts.

In the case that VER is determined not to exist under section 522(e)(3) of the Act or 30 CFR 761.11(c), no surface coal mining operations and activities will be permitted unless jointly approved by ODM and the Federal, State or local agency with jurisdiction over the publicly owned park or place included in the NRHP.

4. ODM will process determinations of VER on Federal lands for all areas limited or prohibited by section 522(e)(4) and (5) of the Act as unsuitable for mining. For operations on Federal lands, ODM will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operation.

Article XI: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

A. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR part 732 for changes to the Program and under the procedures of section 501 of the Act for changes to the Federal lands program.

B. ODM and the Department will provide each other with copies of any changes to their respective laws, rules, regulations or standards pertaining to the enforcement and administration of this Agreement.

Article XV: Changes in Personnel and Organization

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization, and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

Article XVI: Reservation of Rights

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than the Act or their regulations, including but not limited to those listed in Appendix A.

Approved:

Henry Bellmon,

Governor of Oklahoma.

Date: August 2, 1989.

Manuel Lujan, Jr.,

Secretary of the Interior.

Date: August 30, 1989.

Editorial note: This appendix will not appear in the Code of Federal Regulations.

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 1818 *et seq.*, and implementing regulations, including 43 CFR part 3480.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.
4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.
5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*; 48 Stat. 401.
6. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.
7. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.
8. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.
9. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.
10. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*
11. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.
12. Executive Order 11988 (May 24, 1977), for flood plain protection.
13. Executive Order 11990 (May 24, 1977), for wetlands protection.
14. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.
15. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*
16. The Constitution of the United States.
17. The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*
18. 30 CFR Chapter VII.
19. The Constitution of the State and State Law.

[FR Doc. 89-21240 Filed 9-8-89; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-8, 201-13, 201-38, 201-39, and 201-40

[FIRMR Amdt. 17]

Restructuring and Simplification of Federal Information Resources Management Standards

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This rule introduces several changes being proposed to ensure that agencies have up-to-date information about Federal standards. The intent of these changes is to remove redundant and non-regulatory provisions from the Federal Information Resources Management Regulation (FIRMR) that may be found in other agency issuances, and to reorganize the FIRMR so that users may more readily locate standards provisions relevant to their particular requirements. These changes will also make FIRMR coverage of terminology to incorporate Federal standards in solicitations consistent with similar coverage in the Federal Acquisition Regulation (FAR). The changes do not relax an agency's obligation to comply with the standards. For example, Federal Information Processing Standards (FIPS) continue to be mandatory for Federal use after approval by the Secretary of Commerce.

The use of uniform standards permits the integration and sharing of information and processes among vendors, and helps agencies increase the productivity of their investments in information technology. Ready access to information about standards applicability and terminology for incorporating standards in solicitations is critical to realizing the benefits standards can help provide.

To ensure that agencies have up-to-date terminology to incorporate Federal standards in solicitation documents and contracts, GSA plans to update, publish, and distribute the "Federal ADP and Telecommunications Standards Index" at least twice each year, with updates published pursuant to a request for public comments. FIRMR changes are presently published infrequently, and continued inclusion of appropriate terminology to incorporate standards in solicitations in the codified regulation does not provide sufficiently timely information.

FIPS and the implementing terminology that is included in agency contracts can have important effects on agencies and on businesses that sell to the Government. Proposed changes to standards and applicable terminology will continue to be published in the **Federal Register** and circulated to agency regulatory and standards contracts for comment, and the comments resolved, before changes are adopted and printed in the Index. GSA plans to make the Index available on a subscription basis through the Government Printing Office to ensure widespread distribution. The FIRMR bulletin series will announce the availability of the Index and its updates.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret Truntich, General Services Administration, IRMS, Regulations Branch (KMPR), Washington, DC 20405. (Telephone: (202) 566-0194, or FTS 566-0194).

SUPPLEMENTARY INFORMATION: (1) A notice of proposed rulemaking regarding this action was published in the **Federal Register** on January 10, 1989 (54 FR 833). All comments received have been considered.

(2) In Part 201-2, Definitions of Words and Terms, the term "Standard terminology" and accompanying definition are removed.

(3) Part 201-8, Implementation and Use of Federal Standards, is removed and provisions are relocated as follows: (a) Provisions addressing overall policies and procedures for using Federal standards are relocated in part 201-13, and (b) contracting provisions that implement standards in the acquisition process are relocated in part 201-39. All existing Federal standard "requirements statements" for inclusion in solicitation documents will be removed.

(4) The changes made in part 201-13 are explained in the following paragraphs.

(a) Reserved part 201-13 is activated under the title, Operations and Control. It contains management policies and procedures pertaining to the use of standards. Information about other aspects of information resources management may be added in the future.

(b) Subpart 201-13.1, Standards, is established to contain overall policies and procedures for the use of standards, including Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED-STDS), interim standards, and agency-unique standards. This subpart also contains the separation of Telecommunications standards in accordance with Public Law 99-500. All Federal Telecommunications Standards (FED-STDS) that relate to ADPE have been renamed by the National Institute of Standards and Technology as FIPS. All other FED-STDS remain unchanged and under the control of GSA.

(c) Other subparts in part 201-13 are reserved.

(5) In part 201-38, § 201-38.006 is amended to replace the reference "part 201-8" with "part 201-13."

(6) In part 201-38, subpart 201-38.1 is added and reserved.

(7) In part 201-38, subpart 201-38.2 is added and the information contained in part 201-39 is moved into this subpart.

(8) The changes made in part 201-39 are explained in the following paragraphs.

(a) Part 201-39 is removed. The information previously contained in part 201-39 has been moved to subpart 201-38.2.

(b) A new part 201-39 is added under the title, Acquisition of Information Processing Resources by Contracting. It contains the special acquisition rules that apply Governmentwide to information resources. The organizational structure established for this part is consistent with that of the FAR.

(c) Subpart 201-39.10, Standards, is established and organized consistent with part 10 of the FAR. It contains policies and procedures from part 201-8 pertaining to the implementation and use of requirements statements in the acquisition process. Provisions are amended by replacing the term "requirements statement" with the term "terminology to incorporate standards in solicitations", removing the applicability statements for individual standards, and prescribing language for obtaining the GSA "Federal ADP and Telecommunications Standards Index" when standards are to be incorporated into solicitations by reference.

(d) Subpart 201-39.52, Solicitation Provisions and Contract Clauses, is established and organized consistent with Part 52 of the FAR to contain provisions and contract clauses to be included in solicitation documents for information resources. Currently, this subpart only includes a provision for incorporating appropriate terminology in solicitations by reference to the "Federal ADP and Telecommunications Standards Index".

(9) In part 201-40, § 201-40.005 is amended to replace the references to "subpart 201-8.1" and "201-8.104" and replacing them with "part 201-13."

(10) The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of, the rule. This rule is written to ensure maximum benefits to Federal agencies and it will not have a significant effect beyond the internal operating procedures of Federal agencies. This is a Governmentwide regulation that will have little or no net cost effect on society. It is certified that this rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR parts 201-8, 201-13, and 201-39

Computer technology, Telecommunications, Information resources activities, Government procurement, Competition, Hearing and appeal procedures.

Chapter 201 of title 41 of the Code of Federal Regulations is amended as set forth below:

PART 201-2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for part 201-2 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

§ 201-2.001 [Amended]

2. In § 201–2.001 remove the definition for "Standard terminology."

PART 201-8—[REMOVED AND RESERVED]

3. Part 201–8 is removed and reserved.

4. Part 201–13 is added to read as follows:

PART 201-13—OPERATIONS AND CONTROL

Sec.
201–13.000 Scope of part.
201–13.001 [Reserved]

Subpart 201-13.1—Standards

201–13.100 Scope of subpart.
201–13.101 General.
201–13.102 Policy.
201–13.103 Procedures.

Subparts 201-13.2—201-13.6 [Reserved]

Authority: 40 U.S.C. 486(c) and 40 U.S.C. 751(f).

§ 201-13.000 Scope of part.

This part prescribes policies and procedures pertaining to standards and other aspects of information resources management.

§ 201-13.001 [Reserved]

Subpart 201-13.1—Standards

§ 201-13.100 Scope of subpart.

This subpart prescribes policies and procedures of the General Services Administration (GSA) for the use of Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED–STDS), interim standards, and agency-unique standards.

§ 201-13.101 General.

The FIRMR implements three types and seven categories of Federal standards. The "Federal ADP and Telecommunications Standards Index" published by GSA contains relevant information about the Federal standards.

(a) Types of Federal standards.

(1) Federal Information Processing Standards (FIPS). FIPS are automatic data processing standards adopted and issued under the provisions of 15 U.S.C. 278g–3 and 40 U.S.C. 759(d). FIPS are developed and issued by the National Institute of Standards and Technology (NIST) as part of their Federal Information Processing Standards Publications (FIPS PUBS) series.

(i) Public Law 99–500 title VIII, the "Paperwork Reduction Reauthorization Act of 1986," modified the definition of automatic data processing equipment (ADPE) to include most telecommunications resources (see 40 U.S.C. 759(a)).

(ii) Public Law 100–235, the "Computer Security Act of 1987," expressly provided the Secretary of Commerce authority for the development of Federal computer system standards, which were defined to encompass all ADPE standards (see 15 U.S.C. 278g–3(d)). All such ADPE standards are called FIPS.

(2) Federal Telecommunications Standards (FED–STDS).

(i) FED–STDS are official Federal Government publications relating to standards adopted and issued originally under the provisions of 40 U.S.C. 487. These standards are developed by the National Communications System under delegation from GSA. FED–STDS include those categories in the Federal Supply Class (FSC) of "Telecommunications" of the Federal Standards Program not redefined as ADPE by Public Law 99–500.

(ii) FED–STDS relating to ADPE that were in existence when Public Law 99–500 was enacted are covered by the modified definition of ADPE in Public Law 99–500 and therefore fall under the authority of NIST. These standards were redesignated by NIST as FIPS.

(b) Categories of Federal standards.

(1) Hardware standards include areas of standardization such as character recognition, interchange codes and media, transmission, interface, and keyboards.

(2) Software standards include areas of standardization such as programing languages, operating systems, operating procedures, and documentation.

(3) Application standards include items such as payroll, personnel, inventory, and accounting.

(4) Data standards include items such as data elements, data formats, data representations, and data codes.

(5) ADP operations standards include items such as benchmarking, computer performance management, computer security, and management of multivendor ADP systems.

(6) Telecommunications standards (i.e., FED–STDS) include those Federal Supply Class (FSC) telecommunications items not redefined as ADPE by Public Law 99–500 such as time and frequency reference, and transmission frequency for maritime mobile units.

(7) Computer-related telecommunications standards include those Federal Supply Class (FSC) telecommunications items redefined as ADPE by Public Law 99–500.

(c) Standards Index. GSA publishes the "Federal ADP and Telecommunications Standards Index" to provide information on mandatory standards as well as standards under development and interim standards. The Index includes terminology for incorporating Federal standards in solicitations. Applicable terminology for interim standards is not provided. Proposed changes to standards and applicable terminology are published for comment in the **Federal Register** and the comments resolved before changes are printed in the Index. The availability and ordering information for the Index is provided through the issuance of revisions to the FIRMR bulletin series.

§ 201-13.102 Policy.

(a) Mandatory use of Federal standards. Technical and requirements personnel shall implement Federal standards by:

(1) Reviewing each standard to determine its applicability to each requirement; and

(2) Working with contracting officials in accordance with subpart 201–39.10 to ensure that all applicable Federal standards are properly specified in any resulting solicitation and that the agency acquires only those information processing resources that comply with Federal standards.

(b) Use of interim standards. Certain Federal standards are published as "interim." Agencies are not required, but are encouraged, to apply these standards to the acquisition and use of automatic data processing and telecommunications resources in appropriate situations. Agencies should develop appropriate terminology for use in solicitations that is consistent with the intended use of the interim standard.

(c) Optional use of agency standards.

(1) In those instances where Federal standards do not exist for ADP and telecommunications resources being acquired, agencies should consider the use of applicable voluntary industry standards, such as American National Standards or International Standards. In cases where no Federal or voluntary industry standards exist, agencies should consider the development and use of agency-unique standards, provided such use is not in violation of the full and open competition requirements of Public Law 98–369, the "Competition in Contracting Act."

(2) The head of a Federal agency may allow the use of alternate standards in acquisitions of ADP and telecommunications resources when required by computer security and privacy considerations. Such standards must be more stringent than the applicable Federal standards and contain, at a minimum, the provisions of the applicable Federal standards.

(3) The use of agency-unique standards shall be coordinated with the National Institute of Standards and Technology.

§ 201-13.103 Procedures.

Each Federal agency shall implement Federal standards as provided in this subpart except as discussed in this section.

(a) Waiver to a Federal Information Processing Standard (FIPS). The Secretary of Commerce has delegated the authority to waive the mandatory use of a FIPS by Federal agencies to the heads of Federal agencies under certain conditions (see 54 FR 4322, dated January 30, 1989). Further information regarding such waivers may be obtained from the: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions; Technology Building, Room B–154; Gaithersburg, MD 20899. If a waiver is obtained from the use of a FIPS, a deviation from the FIRMR is not required.

(b) Exception to a Federal Telecommunications Standard (FED–STD). GSA may grant an exception to the mandatory use of a FED–STD upon receipt of adequate justification from the requesting agency. Requests for exceptions, notifications, and assistance should be addressed to the General Services Administration (KMP), Washington, DC 20405. If an exception is obtained from the use of a FED–STD, a deviation from the FIRMR is not required.

5. The table of contents of part 201–38 is revised to read as follows:

PART 201-38—MANAGEMENT OF TELECOMMUNICATION RESOURCES

Sec.
201–38.000 Scope of part.
201–38.001 General. [Reserved]
201–38.002 Planning.
201–38.003 Controlling and reviewing.
201–38.004 Privacy.
201–38.005 Security.
201–38.006 Standards.
201–38.007 Policies on the use of telecommunications services.
201–38.007–1 Authorized use of Government telephone systems.
201–38.007–2 Abuse by employees.
201–38.007–3 Prohibitions.
201–38.007–4 Collections.
201–38.007–5 Privacy Act considerations.
201–38.007–6 Agency responsibilities.
201–38.007–7 Delegation of authority.
201–38.008 Use of toll-free telephone services.
201–38.008–1 Agency responsibilities.
201–38.008–2 GSA responsibilities.
201–38.009 [Reserved]
201–38.010 Analysis of data communication requirements. [Reserved]
201–38.011 Agency surveys and inventories of telephone station equipment.
201–38.011–1 Guidelines.
201–38.012 Use of functional telecommunications system specifications.
201–38.013 [Reserved]
201–38.014 Telecommunication requirements.
201–38.014–1 Submission of requirements to GSA.
201–38.014–2 GSA actions.
201–38.014–3 Review of proposed determinations by the Office of Management and Budget.
201–38.015 Competition.
201–38.016 Acquisition policies.
201–38.017 GSA provided service through the FTS.

Subpart 201-38.1—[Reserved]

Subpart 201-38.2—Major Changes and New Installations of Telecommunication Resources

Sec.
201–38.200 Scope of part.
201–38.201 General.
201–38.202 Description of major changes and new installations.
201–38.202–1 Local telephone service.
201–38.202–2 Intercity telephone service.
201–38.202–3 Data, facsimile, and record telecommunications services.
201–38.202–4 Communications security service.
201–38.202–5 Radio service.
201–38.202–6 Video and audio service.
201–38.202–7 Teleconference service.
201–38.203—201–38.205 [Reserved]
201–38.206 Submission of major changes and new installation requirements to GSA.
201–38.206–1 Local telephone service submissions.
201–38.206–2 Intercity telephone service submissions.
201–38.206–3 Federal Telecommunications System (FTS) intercity voice network service submissions.
201–38.206–4 Data, facsimile, and record telecommunications services submissions.
201–38.206–5 GSA common user data communication system submissions.
201–38.206–6 Other telecommunication services submissions.
201–38.207 GSA action on agency submissions.
201–38.207–1 Action on other than FTS submissions.
201–38.207–2 Action on FTS submissions.
201–38.207–3 Action on data telecommunication service submissions.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783–345 and 2128; 40 U.S.C. 751(f).

§ 201-38.006—[Amended]

6. Section 201–38.006 is amended by removing the reference to "Part 201–8" and adding "part 201–13."

Subpart 201-38.1—[Added and Reserved]

7. Part 201–38 is further amended by adding and reserving subpart 201–38.1.

Subpart 201-38.2—[Redesignated From Part 201-39]

8. The current part 201–39 is redesignated as subpart 201–38.2 in Part 201–38. The old reference numbers to part 201–39 appear below on the left. The newly designated reference numbers to subpart 201–38.2 appear to the right as follows:

Old reference	New reference
Part 201–39	Subpart 201–38.2
201–39.000	201–38.200
201–39.001	201–38.201
201–39.002	201–38.202
201–39.002–1	201–38.202–1
201–39.002–2	201–38.202–2
201–39.002–3	201–38.202–3
201–39.002–4	201–38.202–4
201–39.002–5	201–38.202–5
201–39.002–6	201–38.202–6
201–39.002–7	201–38.202–7
201–39.003	201–38.203
201–39.004	201–38.204
201–39.005	201–38.205
201–39.006	201–38.206
201–39.006–1	201–38.206–1
201–39.006–2	201–38.206–2
201–39.006–3	201–38.206–3
201–39.006–4	201–38.206–4
201–39.006–5	201–38.206–5
201–39.006–6	201–38.206–6
201–39.007	201–38.207
201–39.007–1	201–38.207–1
201–39.007–2	201–38.207–2
201–39.007–3	201–38.207–3

9. A new part 201–39 is added to read as follows:

PART 201-39—ACQUISITION OF INFORMATION PROCESSING RESOURCES BY CONTRACTING

Sec.
201–39.000 Scope of part.
201–39.001 [Reserved]

Subparts 201-39.1—201-39.9—[Reserved]

Subpart 201-39.10—Terminology for Incorporating Standards in Solicitations

201–39.1000 Scope of subpart.
201–39.1001 [Reserved]
201–39.1002 Standards.
201–39.1002–1 General.
201–39.1002–2 Policy.
201–39.1002–3 Procedures.
201–39.1002–4 Solicitation provision.

Subparts 201-39.11—201-39.51—[Reserved]

Subpart 201-39.52—Solicitation Provisions and Contract Clauses

201–39.5200	Scope of subpart.
201–39.5201	General. [Reserved]
201–39.5202	Texts of provisions and clauses.
201–39.5202–1	Availability of Standards Index.

Subpart 201-39.53—[Reserved]

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201-39.000 Scope of part.

This part sets forth the special acquisition rules that apply Governmentwide to information processing resources.

§ 201-39.001 [Reserved]

Subparts 201-39.1—201-39.9 [Reserved]

Subpart 201-39.10—Terminology for Incorporating Standards in Solicitations

§ 201-39.1000 Scope of subpart.

This subpart prescribes policies and procedures for the implementation and use of terminology for standards in the acquisition of information processing resources.

§ 201-39.1001 [Reserved]

§ 201-39.1002 Standards.

§ 201-39.1002-1 General.

(a) GSA publishes a handbook entitled "Federal ADP and Telecommunications Standards Index" which provides guidance to agencies regarding Federal standards. The Index provides terminology to incorporate applicable Federal standards in solicitations. The Index also contains a "Standards Checklist" that can be included in solicitations to incorporate applicable Federal standards.

(b) In instances where appropriate Federal standards do not exist for information processing resources being acquired, agencies may optionally develop terminology for interim Federal standards or agency-unique standards.

§ 201-39.1002-2 Policy.

The contracting officer shall include in solicitations terminology provided by technical and requirements personnel to incorporate each standard that is applicable to the information processing resource being acquired.

§ 201-39.1002-3 Procedures.

The contracting officer shall use one or a combination of the following methods to specify standards in solicitations:

(a) Include the full text of the terminology contained in the Index for each applicable standard.

(b) Incorporate the applicable terminology into the solicitation by reference to the Index.

(c) For each applicable standard, include the full text of the terminology as developed by the agency.

§ 201-39.1002-4 Solicitation provision.

If any of the terminology is incorporated by reference, the contracting officer shall insert in a solicitation the provision at § 201-39.5202-1, Availability of Standards Index.

Subparts 201-39.11—201-39.51—[Reserved]

Subpart 201-39.52—Solicitation Provisions and Contract Clauses

§ 201-39.5200 Scope of subpart.

This subpart contains provisions and contract clauses to be included in solicitations for information resources.

§ 201-39.5201 General. [Reserved]

§ 201-39.5202 Texts of provisions and clauses.

§ 201-39.5202-1 Availability of Standards Index.

As prescribed in § 201-39.1002-4, insert the following provision in solicitations:

Availability of the Federal ADP and Telecommunications Standards Index (Apr 89 FIRMR)

Copies of the "Federal ADP and Telecommunications Standards Index" may be obtained by submitting a written request to the Superintendent of Documents; U.S. Government Printing Office; Washington, DC 20402.

(End of provision)

PART 201-40—CONTRACTING FOR TELECOMMUNICATION RESOURCES

§ 201-40.005 [Amended]

10. Section 201-40.005 is amended by removing the references to "Subpart 201-8.1" and "§ 201-8.104" and replacing them with "part 201-13."

Dated: July 28, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-21142 Filed 9-8-89; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 442

[BERC-396-CN]

RIN 0938-AD12

Medicaid; Long-Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction.

SUMMARY: This document corrects technical errors in final rules with comment period that dealt with long-term care facilities and were published on February 2, 1989 at 54 FR 5316. In that document, we made changes in 42 CFR part 442 without taking into account—

- Changes already made to some of those sections by a final rule published on June 3, 1988 at 53 FR 20448, but not yet in the printed CFR; and
- The fact that Subpart B of 42 CFR part 483, established by the February 2, 1989 document, changed terminology previously used in connection with long-term care facilities. (The effective date of the February 2nd rule was postponed until January 1, 1990 by a final rule published on July 14, 1989 at 54 FR 29717.)

In order to preclude any confusion with respect to the requirements for long-term care facilities, we are presenting the complete correct revised text of the affected portions of part 442.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Irene Gibson, (301) 966-6768.

List of Subjects

42 CFR part 442, Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

PART 442—[AMENDED]

The authority citation for part 442 continues to read:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

§ 442.13 [Amended]

1. In § 442.13:

a. Paragraph (b) is correctly revised to read as follows:

* * * * *

(b) *All Federal requirements are met on the date of the survey.* The agreement must be effective on the date the onsite survey is completed (or on the day following the expiration of a current

agreement) if, on the date of the survey the provider meets all Federal requirements.

* * * * *

b. In the February 2, 1989 rule, we failed to conform paragraph (c)(2) to the changed terminology used in the new 42 CFR part 483. Paragraph (c)(2) is revised to read as follows:

* * * * *

(c) * * *

(2) The date on which a SNF or ICF is found to meet all level A requirements, or an ICF/MR is found to meet all conditions of participation, and the facility submits an acceptable correction plan for lower level deficiencies, or an approvable waiver request, or both.

§ 442.30 [Amended]

2. In § 442.30, paragraph (a)(1) is correctly revised to read as follows:

(a) * * *

(1) The survey agency failed to apply the applicable requirements under subparts B and D of part 483 of this chapter, which set forth, respectively, the requirements for SNFs and ICFs, and the conditions of participation for ICFs/MR.

* * * * *

§ 442.101 [Amended]

3. In § 442.101, paragraph (d)(1) is correctly revised to read as follows:

* * * * *

(d) * * *

(1) The facility meets the applicable requirements:

(i) A SNF or ICF meets the requirements set forth in subpart B of part 483 of this chapter.

(ii) AN ICF/MR meets the conditions of participation set forth in subpart D of part 483 of this chapter.

* * * * *

§ 442.105 [Amended]

4. The undesignated introductory text is correctly revised to read as follows:

If a survey agency finds a facility deficient in meeting the level B requirements (for SNFs and ICFs) or the standards (for ICFs/MR), as specified, respectively, under subparts B and D of part 483 of this chapter, the agency may certify the facility for Medicaid purposes under the following conditions:

* * * * *

§ 442.117 [Amended]

5. Paragraph (a)(1) is correctly revised to read as follows:

(a) * * *

(1) The facility no longer meets applicable Level A requirements (for SNFs or ICFs,) or applicable conditions of participation for ICFs/MR as specified in Subparts B and D, respectively, of part 483 of this chapter.

* * * * *

§ 442.118 [Amended]

6. In § 442.118:

a. Paragraph (a) is correctly revised to read as follows:

(a) *Basis for denial of payments.* The Medicaid agency may deny payment for new admissions to a SNF or ICF that no longer meets the level A requirements or an ICF/MR that no longer meets the applicable conditions of participation specified under Subparts B and D, respectively, of part 483 of this chapter.

* * * * *

b. Paragraph (b)(1) is correctly revised to read as follows:

(b) * * *

(1) Provide the facility up to 60 days to correct the cited deficiencies and comply with the level A requirements (for SNFs and ICFs) or the conditions or participation (for ICFs/MR).

* * * * *

c. Paragraph (b)(3)(i) is correctly revised to read as follows:

* * * * *

(b) * * *

(i) The opportunity for the facility to present, before a State Medicaid official who was not involved in making the initial determination, evidence or documentation, in writing or in person, to refute the decision that the facility is out of compliance with the applicable level A requirements (for SNFs and ICFs) or the applicable conditions of participation (for ICFs/MR.)

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13714, Medical Assistance)

Dated: August 21, 1989.

James E. Larson,

Deputy Assistant Secretary for Information and Resources Management.

[FR Doc. 89-21219 Filed 9-8-89; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA93

Migratory Bird Hunting; Zones in Which Lead Shot Will Be Prohibited for the Taking of Waterfowl, Coots and Certain Other Species in the 1989-90 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule amendment.

SUMMARY: This final rule amendment redescribes State zones, in which the use of lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1989-90 season, that were contained in the rulemaking dated Thursday, April 13, 1989 (54 FR 14814). The zones described below for the affected States (Arkansas, Kansas and Washington) consist of (1) the same areas that were already identified as nontoxic shot zones for waterfowl and coot hunting in § 20.108 of title 50 of the Code of Federal Regulations (50 CFR) for the 1988-89 hunting season and (2) the added counties identified for 1989-90 in Appendix N of the Final Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States (see Table 1 in 54 FR 14814, Supplementary Information), and (3) those areas identified by the States where changes in zone descriptions are appropriate because of omissions, potential administrative, enforcement and/or lead poisoning problems.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634—Arlington Square, 4401 N. Fairfax Drive, Arlington, Virginia 22203, or write Director (FWS/MBMO) Mail Stop 634—Arlington Square, 18th & C Streets NW., Washington, DC 20240 (703/358-1773).

SUPPLEMENTARY INFORMATION: Subsequent to publishing the parent rule (referenced above) for this rule, the Service became aware of the need to revise certain State nontoxic shot zone descriptions for the 1989-90 waterfowl hunting seasons because of omissions and an accelerated conversion. States having revised zone descriptions are Arkansas, Kansas and Washington; the revised descriptions are as follows:

Arkansas

The Arkansas Game and Fish Commission advised that Sevier County was omitted from the list of Arkansas counties appearing in the codified section of the final 1989-90 nontoxic shot zone rule. Apparently, this mistake originated with the proposed rule, although the county name appears in the tables of the two rules. Nevertheless, Sevier County is scheduled for conversion to nontoxic shot status this current waterfowl hunting season, as per Appendix N of the Final Supplemental Environmental Impact Statement on the use of lead shot for hunting waterfowl in the United States;

the Arkansas zones are reprinted herein with the correction.

Kansas

The Kansas Department of Wildlife and Parks advised that the Flint Hills National Wildlife Refuge, in its entirety, should also be subject to nontoxic shot restrictions for the 1989–90 waterfowl hunting season. The Kansas nontoxic shot zone descriptions are reprinted herein with the Flint Hills National Wildlife Refuge added. It has been the policy of the Service to convert a refuge in its entirety with the first converting county of which it is a part.

Washington

The Washington State Department of Wildlife advised the Service prior to publication of the final rule that a significant change in zones was being contemplated for the 1989–90 waterfowl hunting season, but that confirmation would not be forthcoming until later in the summer. The proposed changes were confirmed to the Service on August 12, 1989, and identify 2 major zone areas as follows: (1) A Western Washington Zone that replaces the Puget Sound and Southwestern Zones and includes all areas west of the Pacific Crest National Scenic Trail and (2) a Columbia Basin Zone that is not really changed from the previous final rule coverage—but is redescribed. The Washington State zone descriptions are prefaced with an introductory statement warning that it is "* * * unlawful in the described zones to possess while hunting for or to take ducks, geese or coots with shotshells or a muzzle-loader shotgun loaded with any other metal than steel."

The Service takes this action under authority of the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*; 40 Stat. 755).

In summary, this rule amends § 20.108 of 50 CFR to add areas to expand existing nontoxic shot zones for the 1989–90 waterfowl hunting season.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies of geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

Waiver of 30 Day Effective Date

Since the upcoming waterfowl hunting seasons begin around October 1, 1989, the Service has determined that the effective date of this rule should be immediately upon publication. Delay of this rule for 30 days would place the requirements into effect after the seasons have begun and would be confusing to hunters as well as reducing the protection to waterfowl. Therefore, under the provisions of 5 U.S.C. 553(d)(3), the Service finds good cause to waive the 30 day effective date.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to the Endangered Species Act, a "section 7" consultation was done on the potential impacts of the provisions of this rule on bald eagles. The "section 7" opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle. Also, a "section 7" opinion has concluded that the action being carried out is not likely to jeopardize the continued existence of the Aleutian Canada goose.

Authorship

The primary author of this final rule is Keith A. Morehouse, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

2. Section 20.108 is amended by revising the entries for Arkansas, Kansas, and Washington to read as follows:

§ 20.108 Nontoxic shot zones.

The areas described within the States indicated below are designated for the purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species.

* * * * *

Mississippi Flyway

* * * * *

Arkansas

1. Arkansas, Ashley, Clay, Conway, Craighead, Crawford, Crittenden, Cross, Desha, Green, Jackson, Jefferson, LaFayette, Lawrence, Lincoln, Little River, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, Sevier, St. Francis, White, Woodruff and Yell Counties.
2. Lake Dardanelle and Millwood Lake Wildlife Management Areas.
3. Felsenthal National Wildlife Refuge.

* * * * *

Central Flyway

* * * * *

Kansas

1. Barron, Cherokee, Coffey, Cowley, Crawford, Doniphan, Ellsworth, Jefferson, Linn, Mitchell, Montgomery, Neosho, Prait, Reno, and Stafford Counties.
2. All areas administered by the Kansas Department of Wildlife and Parks, U.S. Army Corps of Engineers and U.S. Bureau of Reclamation, including those within the boundaries of the above counties.
3. Kirwin Reservoir.
4. Flint Hills, Kirwin and Quivira National Wildlife Refuges.

* * * * *

Pacific Flyway

* * * * *

Washington

1. Western Washington Zone—All areas west of the Pacific Coast National Scenic Trail and west of (and including) the Big White Salmon River in Klickitat County.

2. Columbia Basin Zone—

A. Those portions of Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Okanogan and Yakima Counties bounded by the following line: Beginning at the Washington-Oregon State border on the Celilo 1 ridge on US 97, north on US 97 to State Highway 14, east on State Highway 14 to US 395/I–82, north on US 395/I–82 (formerly a continuation of State Highway 14) to Kennewick, west on State Highway 240, north on State Highway 240 to State Highway 24, west on State Highway 24 to US 97, north on US 97 to State Highway 155 at Omak, east and south on State Highway 155 to State Highway 174 at Grand Coulee, southeast on State Highway 174 to US 2, west on US 2 to State Highway 17, south on State Highway 17 to US 395, south on US 395 to US 12, south on US 12 and US 730 to the Oregon border (including the entire McNary National Wildlife Refuge), and west along the Columbia River and the Washington-Oregon border to the point of origin.

B. That part of Franklin County east of State Highway 17; that part of Grant County east and/or south of State Highway 17 and US 2; and all of Walla Walla County—including the Snake River.

* * * * *

Dated: August 23, 1989.

Richard N. Smith,

Director.

[FR Doc. 89–21302 Filed 9–8–89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 90407–9170]

RIN 0648–AC74

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; corrections.

SUMMARY: This document corrects errors in the final rule to implement Amendment 12A to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area published August 9, 1989 (54 FR 32642).

EFFECTIVE DATE: September 3, 1989, through December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Fishery Management Biologist), 907–586–7229.

In rule document 89–18612 beginning on page 32642 in the issue of August 9, 1989, make the following corrections:

§ 675.2 [Corrected]

1. On page 32649, in the first column, in § 675.2, the bottom portion of the description of Figure 2 referring to "Bycatch limitation zone 2H", the second entry under the "North latitude" heading, "56°00′ " should read "56°30′ ".

2. On the same page, in the same column in § 675.2, the fourth entry "55°42′ " should read "55°46′ ".

§ 675.21 [Corrected]

3. On the same page, in the third column, in § 675.21(b)(1), in the fifth line of that paragraph, "bycatch" should read "PSC".

Dated: September 5, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 89–21225 Filed 9–8–89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 174
Monday, September 11, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate System

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations which will delegate to the Department of Defense (DoD) the responsibility for establishing and issuing the appropriated and nonappropriated fund wage schedules for United States citizen wage employees in foreign areas. The proposal will simplify the process and result in the issuance of wage schedules on a more timely basis.

DATE: Comments must be submitted on or before November 13, 1989.

ADDRESS: Send or deliver written comments to Barry E. Shapiro, Deputy Assistant Director for Pay Programs, Personnel Systems and Oversight Group, Office of Personnel Management, Room 7H28, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Allan Summers, (202) 632–7830.

SUPPLEMENTARY INFORMATION: The Federal Wage System law (Pub. L. 92–392), codified in subchapter IV of chapter 53, title 5, United States Code, requires that OPM shall establish wage schedules and rates for appropriated and nonappropriated fund prevailing rate employees who are United States citizens employed in foreign areas of the world. The implementing regulations are in §§ 532.233 and 532.235 of title 5, Code of Federal Regulations.

We are proposing that the responsibility for computing and issuing the overseas schedules be delegated to DoD. The computation of the schedules is a mechanical process which involves the averaging of regular wage schedules in effect at a certain time. Under current procedures, OPM each year obtains from DoD a data file of current regular wage schedules, computes the foreign area schedules, and issues them as Federal Personnel Manual Letters. This process is time-consuming and sometimes results in schedules not being issued or implemented on time. We are proposing to streamline this process by delegating to DoD the responsibility for computing, issuing and distributing the schedules. DoD has a large wage survey staff familiar with the preparation and issuance of wage schedules and is the employing agency for almost all of the wage employees covered by the schedules.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will effect only employees of the Federal Government.

List of Subjects in 5 CFR Part 532

Administrative practices and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance B. Newman,

Director.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—[AMENDED]

1. The authority for part 532 continues to read:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

2. In § 532.233, paragraph (a) is revised to read as follows:

§ 532.233 Regular appropriated fund wage schedules in foreign areas and certain U.S. possessions.

(a) The Department of Defense shall establish and issue regular appropriated fund wage schedules for U.S. citizens who are employees in foreign areas and for employees in Guam, Midway, and the U.S. Virgin Islands. The Department of Transportation shall establish and issue wage schedules for employees in American Samoa. These wage schedules will provide rates of pay for nonsupervisory, leader, supervisory, and production facilitating employees.

* * * * *

§ 532.235 [Amended]

3. In § 532.235, paragraph (a) is amended by replacing the term "Office of Personnel Management" with the term "Department of Defense" and by adding the words "establish and" after the word "shall".

[FR Doc. 89–21040 Filed 9–8–89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–134–AD]

Airworthiness Directives; Airbus Industrie Model A300, A310, A300–600 Series

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to require modification of the emergency lighting system on all Airbus Industrie Model A300, A310, and A300–600 series airplanes. This proposal is prompted by flight crew reports that the Floor Proximity Emergency Escape Path Marking System (FPEEPMS), which is part of the airplane's emergency lighting system, does not illuminate automatically with loss of AC power. This condition, if not corrected, could result in lack of FPEEPMS lighting for evacuation in an emergency situation. This proposal would also supersede an existing airworthiness directive (AD), applicable only to Airbus Industrie Model A300 series airplanes, which currently requires certain changes to the procedures in the Airplane Flight Manual (AFM) related to operation of the emergency lighting system.

DATE: Comments must be received no later than October 30, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANW–103, Attention: Airworthiness Rules Docket No. 89–NM–134–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68996, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–134–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On August 8, 1988, the FAA issued AD 88–18–01, Amendment 39–5998 (53 FR 30975; August 17, 1988), applicable to Airbus Model A300 series airplanes, to require certain changes to the procedures in the Airplane Flight Manual (AFM) related to operation of the emergency lighting system. That action was prompted by pilot reports which indicated that the emergency lighting system did not illuminate with loss of AC power, and that the AFM does not contain compensating procedures which would ensure that the lights would be turned on by the flight crew prior to the need for an emergency evacuation. This condition, if not corrected, could result in failure of the emergency lights to operate when required in an emergency situation.

Since issuance of that AD, a modification has been developed to correct deficiencies in the emergency lighting operation on Airbus Industrie Model A300, A310, and A300–600 series airplanes.

Airbus Industrie has issued the following service bulletins which describe procedures for modification of the emergency lighting system:

Model	Service Bulletin
A300	A300–33–117, dated Apr. 17, 1989.
A310	A300–33–2015, dated Apr. 17, 1989.
A300–600	A300–33–6013, dated Mar. 30, 1989.

Although the Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has classified only the service bulletins pertaining to the Model A300 and A310 series airplanes as mandatory, the FAA has determined that installation of the modifications described in all three service bulletins is required to ensure automatic operation of the emergency lighting system on all affected airplane models.

These airplane models are manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 88–18–01, Amendment 39–5998, with a new airworthiness directive that would require modification of the emergency lighting system on Model A300, A310, and A300–600 series airplanes, in accordance with the service bulletins previously described.

The A300 modification, when accomplished, would constitute terminating action for the AFM changes required by AD 88–18–01, Amendment 39–5998, for Airbus Industrie Model A300 series airplanes.

It is estimated that 103 airplanes of U.S. registry would be affected by this AD, that it would take approximately 25 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for the modification kit is $500. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $154,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–5998 (53 FR 30975; August 17, 1988), AD 88–18–01, with the following new airworthiness directive:

Airbus Industrie: Applies to Model A300, A310, and A300–600 series airplanes, certificated in any category. Compliance is required within 120 days after the effective date of this AD, unless previously accomplished.

To ensure automatic operation of the emergency lighting system, including the

Floor Proximity Emergency Escape Path Marking System (FPEEPMS), accomplish the following:

A. Modify the emergency lighting system in accordance with Airbus Industrie Service Bulletin A300-33-117, dated April 17, 1989; or A310-33-2015, dated April 17, 1989; or A300-33-6013, dated March 30, 1989; as appropriate.

B. For Model A300 series airplanes: After the modification required by paragraph A., above, is accomplished, the Airplane Flight Manual (AFM) revisions required by Amendment 39-5998, AD 88-18-01, may be removed.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-21243 Filed 9-8-89; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 89-NM-130-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive inspections for corrosion and cracking in the area of the rear pressure bulkhead. This proposal is prompted by reports of corrosion and cracking in the various components associated with the rear pressure bulkhead. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

DATE: Comments must be received no later than October 30, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-130-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-130-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes. Fatigue testing by the manufacturer has revealed cracks and corrosion in various components associated with the rear pressure bulkhead. This condition, if not corrected, could lead to reduced structural capability of the fuselage, and subsequent decompression of the airplane.

Airbus Industrie has issued Service Bulletin A300-53-217, Revision 1, dated March 6, 1989, which describes procedures for a visual inspection for cracks and corrosion in the lower rim area of the rear pressure bulkhead, and removal of corrosion and repair of cracks, if necessary.

Airbus Industrie has also issued Service Bulletin A300-53-218, Revision 1, dated July 28, 1989, which describes procedures for a visual and eddy current inspections for corrosion and cracks in the upper rim area of the rear pressure bulkhead and the service apertures in the rear pressure bulkhead.

The French DGAC has classified these service bulletins as mandatory, and has issued French Airworthiness Directive 89-068-093(B).

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual and eddy current inspections of the rear pressure bulkhead and associated components, in accordance with the service bulletins previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 44 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $116,160.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficent federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage, accomplish the following:

A. 1. Within the time limits specified in paragraph A.2., below, conduct the following inspections in accordance with Airbus Industrie Service Bulletin A300-53-217, Revision 1, dated March 6, 1989:

a. Perform a visual inspection and non-destructive testing (NDT) for cracking and corrosion of the lower rim area of the rear pressure bulkhead, forward and aft faces, including skin panels, circumferential joint doublers, stringers attachment fittings, cleat profile, Frame 80, attachment angles, circumferential strap, radial stiffeners, bonding points, and attach brackets of support struts between Stringer 27 left-hand (LH) and right-hand (RH).

b. Perform a visual inspection for cracking and corrosion of the drain and toilet system pipe couplings in the vicinity of the rear pressure bulkhead.

2. a. For airplanes whose first flight was less than 7 years ago as of the effective date of this AD, perform the initial inspection required by paragraph A.1., above, within 6 months after achieving 7 years since first flight, or within 6 months after the effective date of this AD, whichever occurs later.

b. For airplanes whose first flight was 7 years ago or more as of the effective date of this AD, perform the initial inspections required by paragraph A.1., above, within 6 months after the effective date of this AD.

B. If no corrosion or cracking is found as a result of the inspections required by paragraph A., above, perform repetitive inspections as follows:

1. Repeat the visual inspections at intervals not to exceed 3 years.

2. Repeat the NDT inspection at intervals not to exceed 8,000 landings.

3. If the modification specified in Airbus Industrie Service Bulletin A300-53-226, Revision 3, dated July 10, 1989 has been accomplished:

a. Repeat the visual inspection at intervals not to exceed 5 years.

b. Repeat the NDT inspections at intervals not to exceed 8,000 landings.

C. If cracking or corrosion is found as a result of the inspections required by paragraphs A. or B., above, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-53-217, Revision 1, dated March 6, 1989.

D. 1. Within the time limits specified in paragraph D.2., below, conduct the following inspections in accordance with Airbus Industrie Service Bulletin A300-53-218, Revision 1, dated July 28, 1989:

a. Perform an X-ray inspection for cracking of the rim area of the rear pressure bulkhead, in the area of Stringer 21 LH and RH.

b. Perform a visual inspection for corrosion and cracking of the upper rim area of the rear pressure bulkhead from the aft face.

c. Perform an eddy current inspection for cracks from the outboard side in the following areas:

(1) For airplanes, MSN 002 through 006: between Stringer 25 LH and RH.

(2) For airplanes, MSN 009 through 306: between Stringer 26 LH and RH.

d. Perform a visual inspection for cracks and corrosion of the service apertures in the rear pressure bulkhead.

e. Perform an eddy current inspection for cracks of the apertures for the auxiliary power unit (APU) bleed-air and fuel.

2. a. For airplanes having accumulated 26,000 landings or fewer as of the effective date of this AD, perform the initial inspections required by paragraph D.1., above, prior to the accumulation of 24,000 landings or within 2,000 landings after the effective date of this AD, whichever occurs later.

b. For airplanes having accumulated more than 26,000 landings as of the effective date of this AD, perform the initial inspections required by paragraph D.1., above, within 1,000 landings after the effective date of this AD.

E. If no cracking or corrosion is found as a result of the inspections required by paragraph D., above, perform repetitive inspections as follows:

1. Repeat the X-ray inspection of the rim area of the pressure bulkhead at Stringer 21 LH and RH at intervals not to exceed 4 years.

2. Repeat the visual inspections of the upper rim area at intervals not to exceed 8,000 landings.

3. Repeat the eddy current inspection from the outboard side between Stringer 25 LH and RH, or Stringer 26 LH and RH, as appropriate, at intervals not to exceed 8,000 landings.

4. Repeat the visual inspection of the service apertures at intervals not to exceed 6,000 landings.

5. Repeat eddy current inspections of APU fuel apertures at intervals not to exceed 6,000 landings.

6. Repeat the eddy current inspection of the APU bleed air line service aperture at intervals not to exceed 12,000 landings.

F. If cracking or corrosion is found as a result of the inspections required by paragraphs D. or E., above, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-53-218, Revision 1, dated July 28, 1989.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-21242 Filed 9-8-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89–NM–155–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive eddy current inspections of the left- and right-hand lower flanges of gantries 1 to 5 between Frame 47 and Frame 54, and repair, if necessary. This proposal is prompted by results of the manufacturer's full-scale fatigue testing, which revealed cracks in the lower flanges between Frame 47 and Frame 54. Undetected fatigue cracks could lead to reduced structural capability of the fuselage.

DATE: Comments must be received no later than October 30, 1989.

ADDRESS: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–155–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way, South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–155–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes.

The manufacturer reported that, during full-scale fatigue tests, cracks developed in the left-hand and right-hand lower flanges of gantries 1 to 5, between Frame 47 and Frame 54. Undetected fatigue cracks could lead to reduced structural capability of the fuselage.

Airbus Industries has issued Service Bulletin A300–53–266, dated March 13, 1989, which describes procedures for repetitive eddy current inspections of the left-handed and right-handed flanges of gantries 1 to 5, between Frame 47 and Frame 54, for cracks, and repair, if necessary. The DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive eddy current inspections for cracks in the left-hand and right-hand flanges of gantries 1 to 5, between Frame 47 and Frame 54, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $31,680.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulations (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300–53–266, dated March 13, 1989, certificated in any category. Compliance is required within 30 days after the effective date of this AD or upon the accumulation of 28,500 landings, whichever occurs later, unless previously accomplished; and thereafter at intervals not to exceed 4,500 landings.

To prevent reduced structural capability of the fuselage, accomplish the following:

A. Perform an eddy current inspection of the left-hand and right-hand lower flanges of gantries 1 to 5, between Frame 47 and Frame 54, in accordance with Airbus Industrie Service Bulletin A300–53–266, dated March 13, 1989. If cracks are found, repair prior to further flight, in accordance with the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–21244 Filed 9–8–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89–NM–158–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive inspections for cracks of the left-hand and right-hand lower radius of fuselage frame 47, and repair, if necessary. This proposal is prompted by full-scale fatigue testing which revealed cracks in the lower radius of fuselage frame 47. This condition, if not corrected, could compromise the structural capability of the fuselage.

DATE: Comments must be received no later than October 30, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–158–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the addres specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-address, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–158–AD." The post card will be date/time stamped and retured to the commenter.

Discussion

The Direction Général de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Airbus Industrie Model A300 series airplanes. Full-scale fatigue testing by the manufacturer has revealed cracks in the left-hand and right-hand lower radius of fuselage frame 47. Undetected cracks could lead to cracking of the rear spar flange and bottom skin panel. This condition, if not corrected, could compromise the structural capability of the fuselage.

Airbus Industrie has issued Service Bulletin A300–53–259, dated January 26, 1989, which describes procedures for repetitive inspections of the right-hand and left-hand lower radius of fuselage frame 47 for cracks, and repair or modification, if necessary. The French DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections of the lower radius of fuselage frame 47 for cracks, and repair or modification, if necessary, in accordance with the service bulletin previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 15 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $39,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that his proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above. I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent structural failure of the fuselage, accomplish the following:

A. Prior to the accumulation of the number of landings indicated below or within 750 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals indicated below, perform either a visual or eddy current inspection of the left-hand and right-hand lower radius of frame 47, in accordance with Airbus Industrie Service Bulletin A300–53–259, dated January 28, 1989.

PART 39—[AMENDED]

1. For airplanes identified as Configuration 3 in the service bulletin, the initial inspection must be performed prior to the accumulation of 22,200 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 4,600 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 13,200 landings.

2. For airplanes identified as Configuration 4 in the service bulletin, the initial inspection must be performed prior to the accumulation of 30,300 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 4,600 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 13,200 landings.

3. For airplanes identified as Configuration 7 in the service bulletin, the initial inspection must be performed prior to the accumulation of 19,200 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 3,700 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 10,800 landings.

4. For airplanes identified as Configuration 10 in the service bulletin, the initial inspection must be performed prior to the accumulation of 14,700 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 2,800 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 8,200 landings.

5. For airplanes identified as Configuration 12 in the service bulletin, the initial inspection must be performed prior to the accumulation of 27,600 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 4,200 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 12,600 landings.

B. If cracks found are less than or equal to 4.2 mm (.165 inch), repair prior to further flight and perform an eddy current inspection to ensure that the crack has been eliminated, in accordance with Airbus Industrie Service Bulletin, A300–53–259, dated January 28, 1989. Repeat the inspections at intervals indicated in paragraph A., above.

C. If cracks are greater than 4.2 mm (.165 inch), repair prior to further flight and reinspect in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certificate Service.

[FR Doc. 89–21245 Filed 9–8–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89–CE–20–AD]

Airworthiness Directives; de Havilland Models DHC–2 Mk. I (L–20A, YL–20, U6, U–6A) and DHC–2 Mk. II Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopted a new Airworthiness Directive (AD), applicable to de Havilland Models DHC–2 Mk. I and DHC–2 Mk. II airplanes, which would supercede AD 54–11–01, to require inspections for cracks and distorted rivets at the horizontal tailplane to fuselage front attachment brackets and replacement of these brackets if cracked. This proposal extends the serial number effectively of the AD and introduces additional modifications for these airplanes. This action is prompted by new service information from the manufacturer which will prevent failure of these brackets and the resultant loss of the airplane.

DATE: Comments must be received on or before November 13, 1989.

ADDRESSES: de Havilland Service Bulletin (S/B) No. 2/42, Revision C, dated February 2, 1989, applicable to this AD, may be obtained from Boeing of Canada Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5, or may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–CE–20–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. John Maher, Airframe Branch, ANE–

172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581: Telephone (516) 791–6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Docket No. 89–CE–20–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 54–11–01 was issued in 1954 and is applicable to certain serial numbered de Havilland Models DHC–2 Mk. I and DHC–2 Mk. II airplanes, with the exception of the agricultural model. That AD was based on information presented in de Havilland Technical News Sheets (TNS) Nos. 73 and 75, Series B, which specified repetitive inspections for cracks of the tailplane to fuselage front attachment brackets, inspections for distorted rivets therein, and replacement of damaged parts with new parts. Also, the tailplane front attachment bolts were to be replaced at every 1000 hour repetitive inspection. During production of the Model DHC–2 Mk. I airplanes, the TNS were never updated to include airplanes with serial numbers (S/N) 619 through 1056. It was not until S/N 1057 was produced that Modification No. 2/1338 was incorporated on the production line. This modification involves the installation of thicker brackets and rivets, and eliminates the need for the 1000 hour repetitive inspections. de Havilland issued S/B No. 2/42, dated August 14, 1987, to include airplane S/N 1 through 1056 for the inspections, and to introduce Modification No. 2/1338, or Agricultural Modification 2/984, as applicable, with new replacement brackets for damaged Pre-Mod parts. Revision C to S/B No. 2/42 dated February 2, 1989, was issued to revise Figure 2 and change from AN456AD6–5 and –6 rivets to AN470AD6–5 and –6 rivets. As a result, Transport Canada who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, has issued Canadian AD CF–54–08R1, effective January 15, 1988, updating their original AD CF–54–08, and has classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Canadian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of Transport Canada combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of de Havilland S/B No. 2/42, Revision C, dated February 2, 1989, and the mandatory classification of this S/B on de Havilland DHC–2 Mk. I and Mk. II airplanes by Transport Canada. Based on the foregoing, the FAA believes that the condition addressed by S/B No. 2/42, Revision C, dated February 2, 1989, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would supersede AD 54–11–01 and require initial and repetitive inspections for cracks in the horizontal tailplane to fuselage Pre-Modification No. 2/1338 attachment brackets P/N C2–FS–543A and P/N C2–FS–544A, and distorted rivets in the brackets on de Havilland Models DHC–2 Mk. I and DHC–2 Mk. II airplanes. Replacement of cracked brackets and distorted rivets with new brackets, P/N C2FS1589 and P/N C2FS1590, and bolts, AN174–H12A, in Modification No. 2/1338, would be required to be accomplished prior to further flight. Pre-Modification 2/1338 brackets, P/N C2–FS–543A and P/N C2–FS–544A are no longer available. The original AD 54–11–01 required that the ¼-inch diameter forward attachment bolts must be replaced every 1000 hours time-in-service, and the new AD will continue to require this replacement of these bolts per S/B No. 2/42.

The FAA has determined there are approximately 166 airplanes affected by the proposed AD. The cost of inspecting the tailplane-fuselage front attachment brackets, as required by the proposed AD, is estimated to be $200 per airplane. If a defective bracket is found, the replacement cost is $270 per bracket per airplane. The total cost for the inspection only is estimated to be $33,200. The total labor cost only of replacing one bracket per airplane for the fleet is estimated to be $39,840. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes. The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 54–11–01 with the following new AD:

de Havilland: Applies to Models DHC–2 Mk. I (including L–20A, YL–20, U–6, and U–6A), and DHC–2 Mk. II (serial numbers 1 through 1050) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD.

To ensure the structural integrity of the horizontal tailplane to fuselage front attachment brackets, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS), or prior to the accumulation of 1000 hours TIS, whichever occurs later after the effective date of this AD, unless already accomplished per the requirements of AD 54–11–01, and thereafter at intervals not to exceed 1000 hours TIS:

(1) Inspect attachment brackets, part number (P/N) C2–FS–543A and P/N C2–FS–544A for cracks and distorted rivets in accordance with paragraph 'A' of the "ACCOMPLISHMENT INSTRUCTIONS" in de Havilland Service Bulletin (S/B) No. 2/42, Revision C, dated February 2, 1989.

(2) Prior to further flight replace any distorted rivets as indicated in the above S/B, paragraph 'B', and any cracked brackets as indicated in paragraph 'C' of the Service Bulletin.

(b) At intervals not exceeding 1000 hours TIS since the last bolt replacement, replace all ¼-inch diameter forward attachment bolts on the tailplane front attachment brackets with new bolts, P/N AN174–H12A, in accordance with S/B No. 2/42 Rev. C.

(c) The repetitive inspections or modifications in paragraph (a) of this AD are not required on airplanes modified in accordance with de Havilland Modification No. 2/1338, or Agricultural Modification No. 2/984, as applicable.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where the requirements of this AD may be accomplished.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office, at the above address. All persons affected by this directive may obtain copies of the documents referred to herein upon request to Boeing of Canada, Ltd.; de Havilland Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5, Telephone (416) 633–7310; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This AD supersedes AD 54–11–01.

Issued in Kansas City, Missouri, on August 28, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–21246 Filed 9–8–89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[INTL–361–89]

RIN 1545–AN67

Treaty-Based Return Positions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed Income Tax Regulations relating to the requirement that any taxpayer who takes a position that a treaty of the United States overrules, or otherwise modifies, an internal revenue law of the United States shall disclose such position. This action is necessary to implement sections 6114 and 6712 of the Internal Revenue Code of 1986 as added by the Technical and Miscellaneous Revenue Act of 1988. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: These regulations are proposed to be effective for taxable years of the taxpayer for which the due date for filing returns (without extensions) occurs after December 31, 1988. It is anticipated, however, that any taxpayer desiring to apply the temporary regulations in lieu of the final regulations for the period prior to the adoption of the final regulations will be allowed to so choose. Written comments and requests for a public hearing must be delivered or mailed by November 13, 1989.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service (Attention: CC:CORP:T:R, INTL–361–89)), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: David Bergkuist of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL–361–89)) (202–566–3872, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1545–1126), Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in these regulations is primarily in § 301.6114–1T(d). This information is required by section 6114 of the Code and will be used by the Service to identify taxpayers taking a treaty-based return position and the specific income for which such treaty-based return position is taken. This information will include the facts relied upon to support such position. The likely respondents are residents of foreign countries with which the United States has a treaty that affects the United States tax on income received by that resident.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 10,000 hours.

The estimated annual burden per respondent varies from ½ hour to 3 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents: 10,000.

Estimated annual frequency of responses: Annually.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 301.6114–1T and 301.6712–1T. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR parts 301 and 602. For the text of the temporary regulations, see T.D. 8262 published in the Rules and Regulations portion of this issue of the **Federal Register**.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It is hereby certified that the proposed rules will not have a significant impact on a substantial number of small entities because small entities will infrequently be required to report the information set forth in these regulations. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is David Bergkuist of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income tax investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The temporary regulations [T.D. 8262], published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under sections 6114 and 6712 of the Internal Revenue Code of 1986.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 89–21202 Filed 9–8–89; 8:45 am]

BILLING CODE 4830-10-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1602 and 1627

Proposed Modifications to Recordkeeping Provisions; Cancellation of Public Hearing

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule: cancellation of hearing.

SUMMARY: Notice is hereby given that the Commission is cancelling the public hearing on the above-proposed modifications of its recordkeeping provisions. No requests to give oral testimony at the hearing were received from the public within the thirty-day time period specified in the hearing notice of July 8, 1989. Therefore it will not be necessary to hold the hearing.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel, or Gary L. Janus, at 202/663–4669, Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20507.

Signed this day at Washington, DC.

Dated: August 29, 1989.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 89–20770 Filed 9–8–89; 8:45 am]

BILLING CODE 6570-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 FR Part 52

[FRL–3643–9]

Approval and Promulgation of Implementation Plans; Maine Ozone Attainment Plan; Control of Gasoline Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maine. These revisions will reduce emissions of volatile organic compounds from gasoline by reducing the Reid Vapor Pressure (RVP) of gasoline. EPA is also proposing to find that Maine's RVP regulations are "necessary to achieve" the national ambient air quality standards (NAAQS) for ozone and are excepted from federal preemption under section 211(c)(4) of the Clean Air Act. The intended effect of this action is to make reasonable further progress toward statewide attainment of the ozone standard as expeditiously as practicable as required under the Clean Air Act.

DATE: Comments must be received on or before October 11, 1989.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Building, Boston, MA 02203; and the Maine Department of Environmental Protection, Upham Building, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Jennifer York (617) 565–3220, FTS: 835–3220.

SUPPLEMENTARY INFORMATION: On February 14, 1989 and May 3, 1989 EPA received a SIP revision from the Commissioner of the Maine Department of Environmental Protection (DEP) that would add a new section to Maine Regulation Chapter 119. The new section requires that no person shall dispense, sell or supply gasoline from a bulk plant or terminal having a Reid Vapor Pressure (RVP) greater than 9.0 pounds per square inch (psi) from May 1 through September 15 beginning in 1989 and continuing each year thereafter.

Background

On November 12, 1987, the Commissioners of the Northeast States for Coordinated Air Use Management (NESCAUM) signed a Memorandum of Understanding expressing their intention to reduce the Reid Vapor Pressure (RVP) of gasoline to 10.0 pounds per square inch (psi) starting in the summer of 1988 and to 9.0 psi in the summer of 1989 and continuing every ozone season thereafter. The State of Maine held a hearing on April 7, 1988 on a regulation to implement this strategy. Since there were delays in adopting necessary regulations, the 1988 limit of 10.0 psi was eliminated and Maine is limiting RVP to 9.0 psi from May 1 to September 15 starting in 1989, and continuing each year thereafter. Maine adopted its regulation on August 10, 1988 and submitted it to EPA as a SIP revision on February 14, 1989. On May 3, 1989, EPA received a supplemental submittal from the state containing additional information on the state's VOC inventory and necessary changes to the state's RVP regulation.

EPA published a notice of final rulemaking on March 22, 1989 (54 FR 11868) which calls for the control of the volatility of gasoline nationally. The rule requires that in the Northeast the standard will be 10.5 psi beginning in the summer of 1989. The federal standard will be enforced each year beginning June 1 (for retail users and other end-users of gasoline) or May 1 (for all other points in the distribution system) except in 1989 when enforcement will begin June 30, 1989 and June 1, 1989 (100 days and 70 days, respectively, after the publication date of the final rule). Enforcement ends at all points in the system on September 15 of each year. The EPA regulation would normally preempt the state provision under section 211(c)(4) of the Clean Air Act (the Act). However, section 211(c)(4)(C) of the Act provides for approval of state control of fuel or fuel additives if the control is part of the SIP and is necessary to achieve the primary or secondary national ambient air quality standard (NAAQS) which the plan implements.

Criteria for Approval

Section 211(c)(4)(A) of the Act, in describing federal preemption authority, states:

> Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the **Federal Register**, or (ii) if the Administrator has prescribed under paragraph (1) a control prohibition applicable to such fuel or fuel additive, unless [the] State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

For the reasons described below, EPA does not believe this section of the Act preempts approval of the Maine revision. First, EPA has not made the finding described in subparagraph (i) of paragraph (A), that no fuel control or prohibition under paragraph (1) of section 211(c) is necessary; and EPA clearly has not published any such findings in the **Federal Register**. In fact EPA published a national fuel volatility regulation (54 FR 1188) on March 22, 1989.

Second, although EPA's national 10.5 RVP rule preempts a state's 9.0 RVP regulation, EPA may still approve certain state provisions for limits on RVP of fuel where EPA can make a finding under section 211(c)(4)(C) which would authorize EPA approval and, thus, eliminate the preemption problem. As set forth below, section 211(c)(4)(C) authorizes EPA to approve into the SIP a state-adopted fuel control measure that has otherwise been preempted by final EPA action if EPA finds that the state control "is necessary to achieve" the standard that the SIP implements.

Section 211(c)(4)(C) of the Act, in setting forth the circumstances under which an exception to federal preemption of state regulation may occur, states:

> A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

EPA first interpreted this language as requiring the Agency to find that a fuel control requirement was essential to achieve timely attainment of the standard in the **Federal Register** discussion of EPA's approval of a state oxygenated fuels program in the Maricopa County, Arizona SIP. There EPA said that a fuel control measure may be "necessary" for timely attainment if no other measures that would bring about timely attainment exist, or if such other measures exist and are technically possible to implement, but are unreasonable or impracticable. Otherwise, no fuel control would ever be "necessary," since for any area there is at least one measure—namely, required shutdowns and prohibitions on driving—that would result in timely attainment of the NAAQS. It is doubtful that Congress would have intended to bar EPA from approving State fuel controls into a SIP based on the availability of such drastic alternatives.[1] EPA has since reaffirmed this rationale in its approval of state RVP control programs in Connecticut, Massachusetts, New Jersey, New York, and Rhode Island.

Evaluation of How the Maine Revision Satisfies the "Necessary" Criterion

The Maine submittal and related documents contain the state's and EPA's analysis of the emissions reductions that various measures would achieve and the remaining shortfall needed to achieve attainment. That analysis concludes that the Maine RVP regulation would reduce VOC emissions by an estimated 3750 tons per year (TPY) statewide from the 11.5 psi gasoline in use at the time the state prepared this revision. Subsequent EPA regulation to 10.5 psi resulted in a reduction of approximately 2175 TPY. The current effect of Maine's regulation to 9.0 psi would be a 1575 TPY reduction.

The quantity of reduction was derived from AP–42 emission factors for storage and transfer of gasoline and from the EPA MOBILE 3 emission factor model for motor vehicle emissions. This estimate may understate the actual reductions because it does not include the emissions reductions that would result from decreased running losses from motor vehicles associated with lower volatility gasoline. Running losses are emissions from the gasoline tank and fuel system that occur while a car is being driven and which result from an overload of the evaporative control system or escape through the filler cap.

EPA used information available in the 1979 Maine SIP, supplemental inventory information submitted by the state, emission and population factors, and National Emissions Data System (NEDS) data to determine whether Maine's RVP control program is "necessary to achieve" the standard. Since its 1979 submittal, Maine has not submitted, nor has it been required by EPA to submit, any additional VOC reducing strategies or reasonable further progress (RFP) reports.

The VOC strategies which have the greatest potential for significant future statewide VOC reductions are:

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[1] **Federal Register** August 10, 1988, 53 FR 30220, 30228; See also EPA's approval of state RVP control programs in Massachusetts (54 FR 19173, May 4, 1989), Rhode Island and Connecticut (54 FR 23650, June 2, 1989).

Statewide measure	Statewide estimated tons reduced	Statewide estimated control	Percent Reduction from 1986 inventory
Enhanced I/M+basic I/M [1]	7236 TPY	N/A	6.0
Stage II controls	2730 TPY	70%	2.2
Stage I (gas stations) [2]	2506 TPY	85%	2.1
Consumer/commercial solvents	2244 TPY	60%	1.9
RVP 11.5 to 10.5 psi EPA	2175 TPY	100%	1.8
Misc. surface coating	1850 TPY	50%	1.5
Architectural coatings	1638 TPY	70%	1.4
RVP 10.5 to 9.0 psi	1575 TPY	100%	1.3
Paper coating	1559 TPY	70%	1.3
Bulk terminal controls	753 TPY	85%	0.6
Auto body	650 TPY	50%	0.5
Degreasing	650 TPY	50%	0.5
Printing	490 TPY	70%	0.4
Drycleaning	330 TPY	30%	0.3
Industrial solvents	350 TPY	50%	0.3
Furniture coating	210 TPY	70%	0.2
Tank truck tightness [3]	250 TPY	90%	0.2
Printing (non RACT) [4]	150 TPY	50%	0.1
Fabricated metal coating	140 TPY	70%	0.1
Traffic paint	90 TPY	90%	0.1
			22.8

Note: Percent reductions from 1986 inventory were calculated using total inventory value of 121,126 TPY in state submittal.

[1] I/M is being considered as part of post-1987 reduction strategy. To date, EPA has not required I/M in Maine as part of its post-1987 policy.

[2] The state has stage I controls which are being phased in statewide.

[3] The state has tank truck tightness regulations which are being phased in statewide. The regulations require compliance only at gas stations which have installed stage I controls.

[4] Reasonably Available Control Technology (RACT) is required for certain categories of sources in nonattainment areas.

The available control strategies, if found practicable, would collectively yield approximately a 22.8% reduction, given the expected estimated achievable control. Based on EPA's experience with Regional Oxidant Model runs it seems likely that a reduction of approximately 25% from 1986 levels in the nonattainment areas is needed for attainment of the ozone standard. This still leaves a VOC emission reduction shortfall of approximately 2.2%. Given the rural nature of much of Maine and the widespread distribution of traffic densities, and in light of the minimal VOC emission reductions that could be expected, neither Maine nor EPA has at this time concluded that any specific transportation controls are reasonable measures for achieving VOC emission reductions in Maine. No other measures that are clearly reasonable for implementation in Maine could provide sufficient reductions to achieve attainment without the state HVP control. In addition, none of the available control strategies which could achieve the same magnitude of reductions as limiting the RVP of gasoline can be as quickly implemented.

All or part of 12 of Maine's 16 counties are currently located in AQCRs which have a nonattainment designation. Recent monitoring data indicates that these areas will continue to be designated nonattainment. These 12 counties represent approximately 75% of the statewide VOC emissions inventory (based on NEDS data). NEDS data show that area source emissions of VOCs, which include mobile source emissions, represent approximately 95% of total VOC emissions measured statewide. Of those area source emissions of VOCs, 79% are in the nonattainment areas. (See the Technical Support Document which EPA has prepared for this proposal. The Technical Support Document is available as part of the docket for this action at the locations in the "**ADDRESSES**" section above.)

The NEDS data (Attachments One and Two to the Technical Support Document) indicate that there is a greater need for statewide area source controls than for statewide point source controls. While the amount of mobile source emissions in the available data cannot be apportioned between the attainment and nonattainment areas, data from the state's submittal, models and other factors suggest that mobile sources represent a substantial proportion of area source emissions. The mobile source categories in the table listing "VOC strategies which have the greatest potential for significant future VOC reductions" (above) represent approximately 15% (of the 22.8% total) of the VOC emission reductions potentially attainable.

Thus, Maine's RVP program appears to meet the appropriate test of being "necessary" to achieve attainment of the ozone standard in Maine's nonattainment areas. The fact that the state RVP regulation might not by itself fill the remaining shortfall and hence by itself achieve the standard does not mean the rule would not be "necessary" to achieve the standard within the meaning of section 211(c)(4)(C). EPA believes that if Congress intended EPA to approve a state fuel-content rule only if it were necessary and sufficient to achieve the standard, then it would have used that language in section 211(c)(4)(C). EPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels (thus bringing the area closer to achieving the NAAQS) when no other reasonable measures are available to achieve this reduction. A contrary application of "necessary to achieve" in this situation would mean that measures which result in significantly improved air quality are nonetheless unacceptable (even though no other reasonable measures are available) just because they are insufficient to actually result in attainment.

Statewide Approval of the Maine RVP Program

Although not all of the State of Maine is designated as nonattainment for the ozone standard, Maine has requested approval of this SIP revision statewide. EPA proposes approving a statewide volatility limit in Maine based on a number of factors. The ozone problem in the State of Maine has worsened as population increases, vehicle miles travelled (VMT) increase, and industrial sources increase in number and density. As evidence of the worsening ozone problem, EPA's post-1987 SIP call and

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requirements for post-1987 SIP strategies includes an additional county, Hancock County (53 FR 20722, June 6, 1988). The county is located further north and east of the presently designated nonattainment air quality control regions (AQCRs) in Maine.

Based on the locations of the gasoline terminals (which are primarily n the nonattainment region of the state), Maine would have administrative difficulties enforcing two separate RVP limits and distributors could be supplying two separate RVP gasolines to one state. This would result in the patchwork regulations which the petroleum industry has, in its comments on EPA's actions on other state RVP SIPS, been anxious to avoid. It is in the interests of both gasoline distributors and state enforcement agencies to avoid a patchwork of regulatory requirements within a state.

The success of Maine's volatility program depends on gasoline consumers using 9.0 RVP fuel. If 10.5 RVP fuel is available in part of the state, perhaps at a cheaper price, not only is there an incentive to use the higher RVP fuel, and thus undermine the program, but also certain distributors or retail outlets in the same state could be put at an economic disadvantage as gasoline consumers cross the boundaries of the nonattainment areas to purchase the less expensive, higher volatility gasoline. There might also be additional incentives for bootlegging noncomplying gasoline.

In light of the factors discussed above, until EPA is in a position to conclude that the RVP program is definitely not necessary in the areas designated attainment, the Agency believes it is appropriate to make a finding under section 211(c)(4)(C) with respect to the RVP program in the northern attainment areas. Such a finding is necessary in the northern attainment areas to preserve the integrity and enforceability of the RVP program in the southern nonattainment areas. EPA therefore proposes today to make such a finding. Furthermore, it appears that since the gasoline distribution patterns do not discriminate between attainment and nonattainment regions, logistically Maine had to make its RVP rule apply on a statewide basis in order to ensure compliance in the nonattainment areas without producing supply and distribution problems.

EPA acknowledges that the technical data to support a section 211(c)(4)(C) finding for the northern Maine attainment areas is not extensive. EPA therefore specifically requests comment on the propriety of such a finding under section 211(c)(4)(C) for the northern Maine attainment areas.

Enforceability

EPA's review of the enforceability of the Maine revision revealed a problem with the test methods section of Regulation Chapter 119 (section 4). The state requires that fuel sampling and testing shall be conducted in accordance with ASTM method D4177–82, ASTM method D4057–81, or D323–58, which are acceptable to EPA, or "* * * any other method approved by the Commissioner." EPA has informed the state that alternative methods must be approved by EPA as well. DEP has changed the regulation since the original submission to also require EPA approval of other methods by changing the language to read: "* * * any other method approved by the Commissioner and EPA." EPA is proposing to approve the DEP's RVP controls with the understanding that the state must submit an official copy of the amended regulation before EPA finally approves the regulation into the SIP. DEP has also agreed to clarify its definitions of "bulk gasoline terminal" and bulk gasoline plant." DEP must also submit an official copy of these changes before EPA will finally approve the program.

Waivers

As with its approvals of other state RVP programs, EPA proposes to approve Maine's program including any waivers or variances from compliance Maine may grant to address emergency supply dislocations that might occur as a result of Maine's lower RVP requirement. Such waivers would not affect the federal limit of 10.5 psi, but they will give the state some flexibility when initially implementing its program. EPA has received assurances from Maine that it possesses authority to grant such waivers in emergency situations.

Proposed Action

EPA is proposing to approve this revision to the Maine ozone state implementation plan to control gasoline volatility with the understanding that the state will revise the test method section of the regulation prior to final Agency action. EPA is also approving any variances Maine may issue to avoid supply dislocations. EPA is also proposing to make a finding that this SIP revision meets the requirements of section 211(c)(4)(C) of the Act for an exception to federal preemption. EPA is soliciting public comment on its proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking process by submitting written comments to the address noted at the beginning of today's notice.

Since Maine's RVP regulation cannot be implemented in time for a May 1, 1989 start date, if Maine is excepted from Federal preemption, EPA will publish a date of implementation in the final rulemaking notice on this SIP revision. EPA is proposing that the date of implementation be within thirty days of final approval of this revision. EPA requests comments on appropriate leadtime for implementation of this revision.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether it meets the requirements of sections 110(a)(2) (A)–(K), 110(a)(3) and 211(c)(4)(C) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51. These revisions are being proposed pursuant to sections 110(a) and 301(a) of the Clean Air Act, as amended.

Authority: 42 U.S.C. 7401 and 7042.

EPA is today proposing approval of the Maine SIP revision pertaining to its state gasoline volatility program.

Dated: July 10, 1989.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 89–21258 Filed 9–8–89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 64 and 98

[CGD 84–043]

RIN 2115–AB69

Portable Tanks for the Transportation of Bulk Hazardous Materials by Vessel

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to discontinue approving marine portable tanks ("MPTs") and to authorize liquid hazardous materials to be transferred to and from DOT specification portable tanks aboard vessels. Existing approved MPTs would be permitted to remain in service. The Coast Guard now inspects and approves MPTs while DOT tanks are inspected and approved by private sector agencies. Among the expected benefits of this proposal are removal of the Coast Guard from competition with private industry and greater availability of portable tanks, especially for overseas operations. In addition, in response to a petition for rulemaking, the Coast Guard proposes to permit DOT Specification 57 portable tanks to be used for the bulk carriage of high flashpoint Grade E combustible liquids and other low hazard liquids.

DATE: Comments must be received on or before December 11, 1989.

ADDRESSES: Comments should be submitted to Commandant (G–LRA–2/3600) (CGD 84–043), U.S. Coast Guard, Washington, DC 20593. Comments will be available for examination in Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank K. Thompson, (202) 267–1577.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, and arguments. Each comment should include the name and address of the person submitting it, identify this notice, and give the reason for the comment. Those desiring acknowledgement that their comments have been received should enclose a stamped self-addressed post card or envelope.

This proposal may be changed in light of the comments received. All comments will be considered before final action is taken on this proposal. Copies of all written comments will be available for examination by interested persons.

No public hearing is planned but one will be held at a time and place to be set in a later notice in the **Federal Register** if the Coast Guard determines that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this notice are Mr. Frank K. Thompson, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. William Register, Project Attorney, Office of the Chief Counsel.

Discussion of Proposed Rules

a. Background

The Marine Portable Tank (MPT) regulations currently in part 64 of title 46, Code of Federal Regulations, were developed in 1973–74 by the Coast Guard in consultation with interested manufacturers and representatives of the offshore oil industry. These regulations were developed to be consistent with the portable tank standards of the International Maritime Organization (IMO) as incorporated into the International Maritime Dangerous Goods (IMDG) Code. Since the development of the Coast Guard's regulations, the IMO portable tank standards have been improved and expanded. Additionally, the Department of Transportation has authorized two specification portable tanks, IM–101 and IM–102, analogous to the IMO Type 1 and Type 2 portable tanks. The DOT specifications for these tanks (49 CFR 178.270 through 178.272) were published in the **Federal Register** of January 29, 1981 (46 FR 9895).

The DOT specification for portable tanks requires no approval action by the Coast Guard. Instead, the owner or manufacturer of an IM portable tank sends an application to an independent approval agency (The American Bureau of Shipping, for example) designated by the Director, Office of Hazardous Materials Transportation (OHMT) for approval of the tank. The designated approval agency reviews the owner's or manufacturer's design drawings and calculations, and witnesses the required tests. If the portable tank passes the tests, the designated approval agency affixes its identifying mark to each approved tank, issues an approval certificate to the applicant and forwards a copy of the certificate to OHMT.

The current regulations allow hazardous materials to be transferred to and from portable tanks on board vessels only if those tanks meet the requirements for MPTs in 46 CFR part 64. Further, the cargoes currently authorized to be transferred to and from these tanks are limited to Grades D and E combustible liquids and those 10 cargoes listed in 46 CFR 64.9 and 98.30–3(b).

The Coast Guard's involvement in the approval of marine portable tanks (MPTs) has been costly both in terms of manpower and money. Design drawings for MPTs must be submitted to the Coast Guard Marine Safety Center for design approval. Tanks constructed to approved plans must be inspected and hydrostatically tested in the presence of a Coast Guard inspector. As now administered, the Coast Guard is performing a service that could readily be performed by private industry.

Additionally, the availability of MPTs is a problem for U.S. flag mobile offshore drilling units (MODUs) operating overseas. Even though outside the territorial boundaries of the United States, MODUs, including their equipment, are subject to U.S. regulations and Coast Guard inspection. Many U.S. flag MODUs rarely return to U.S. waters; nevertheless, their MPTs must be fabricated and approved in the United States.

An analysis was performed to determine the suitability of DOT Specification IM–101 and IM–102 portable tanks for use in service presently restricted to MPTs. From this analysis, a copy of which is in the public docket, the Coast Guard concludes that DOT specification IM–101 and IM–102 tanks are equivalent to MPTs and are suitable for this service. There is nothing inherent in the design of IM specification tanks that prohibit their use in bulk cargo service; and in other modes of transportation they are filled and discharged in much the same manner as are MPTs on board vessels.

Under 46 CFR 50.20–30 and subpart 98.15, the Commandant may accept other equipment and designs as substitutes for those specified in the subchapters in which those sections appear, if it is established that the alternative arrangement will provide a level of safety consistent with the requirements of the regulations. As indicated above, these tanks are equivalent and are being accepted for the carriage and transfer of hazardous materials. Acceptance of these tanks under the equivalence provisions will facilitate the transition from MPTs to DOT specification tanks for manufacturers and vessel operators.

b. Objectives

The objectives of this proposed rulemaking are:

1. To discontinue approving MPTs and to authorize the continued use of existing MPTs, provided they are maintained in accordance with the plans originally approved by the Coast Guard and the applicable provisions of part 64 and subpart 98.30 as revised by this rulemaking. The Coast Guard would cease accepting applications to approve plans for MPTs under 46 CFR part 64 six months after the date on which the Final Rules become effective, and cease performing shop inspections approximately 18 months after that date. This lead time would afford manufacturers of MPTs under design or fabrication time to complete their work

and obtain approval of their current production before the approval program is terminated. The continued use of existing approved MPTs would be authorized ("grandfathered") for as long as they are maintained and repaired in accordance with the plans originally approved by the Coast Guard and the applicable provisions of part 64 and subpart 98.30 as revised.

2. To allow the transfer of liquid hazardous materials to and from DOT specification IM 101 and IM 102 portable tanks on vessels as long as they comply with the cargo handling requirements in subpart 98.30 as revised. By allowing the use of DOT specification tanks, difficulties that vessels on overseas operations have encountered in obtaining approved portable tanks would be alleviated since OHMT-designated approval agencies include agencies located outside the United States.

3. To revise the list of hazardous materials currently authorized to be transferred to and from MPTs on board vessels. The current list was originally developed to meet specific needs of the offshore oil production industry at the time of its publication. This list would be partially replaced by provisions allowing various hazardous materials which are authorized to be transported as packaged cargo in portable tanks to be transferred to and from portable tanks on board vessels. The effect of this revision would be to greatly expand the number of authorized cargoes.

4. To permit Grade E combustible liquids with flashpoints of 300 °F or higher and cargoes classed by DOT as hazardous substances (Hazard Class "ORM–E") which do not meet the definition of any other hazard class to be transferred to and from portable tanks meeting DOT Specification 57.

c. Description of Proposed Specific Changes

To achieve the preceding objectives, the Coast Guard proposes to make the following changes in 46 CFR part 64 and subpart 98.30:

1. Section 64.7 concerning submission and approval of MPT plans, and subpart D of part 64—Shop Inspection would be removed entirely. This removal would become effective 24 months after the final rules are published to give manufacturers ample time to fulfill existing contracts and to complete production that was going on or planned at the time the rules change. The provisions for approval of plans for cargo handling systems would be retained, but transferred to subpart F of part 64, since they would apply to all types of portable tanks authorized under 46 CFR subpart 98.30 and 98.33.

2. Two new sections, 98.30–2 and 98.30–3a, would be added to define the types of portable tanks to or from which hazardous materials could be transferred on board vessels; and to state the provisions under which portable tanks other than MPTs could be used for this service.

3. Existing § 64.9 and paragraph 98.30-3(b) would be replaced by a new section, § 98.30–5, which would authorize the transfer of hazardous materials to and from portable tanks on the basis of their conformance with the generic hazardous materials class definitions in 49 CFR parts 171 through 179. This would allow the transfer of more hazardous materials than are permitted to be transferred under the present regulations. All products now authorized would continue to be authorized either under a generic description or by name.

4. Section 64.3 would be revised to improve the statement of applicability of the proposed rules. The MPT descriptive information and design criteria from this section would be transferred to sections 64.5 and 64.11 respectively.

5. Section 64.3 would be revised to indicate that MPT plans would not be accepted for approval by the Coast Guard after a date six months after the effective date for these rules. This should give manufacturers ample time to complete and submit their plans. It should be noted here that the Coast Guard would continue to inspect and stamp MPTs for approximately 18 months after this date, and that MPTs which are maintained and periodically tested in accordance with the proposed rules may continue in use indefinitely.

6. Sections 64.53, 64.57, 64.65, and 64.77 would be revised to make it clear that these design standards apply only to MPTs but not to other types of portable tanks.

7. The references to the 1974 Edition would be removed from the citations of the ASME Boiler and Pressure Vessel Code in sections and paragraphs 64.5(d), 64.11(a), 64.13 (a) and (b), 64.21, 64.25(b), and 64.31. The ASME Code has been revised many times since 1974, and it is now unlikely that the 1974 Edition would still be available. A new § 64.2 "Incorporation by reference" which would be added, would give the date of the currently authorized ASME Code edition which supersedes the edition date cited in the text of the rules. It should be noted that the reference to the 1974 Edition would remain in § 64.7(a)(4) during the interval between the effective date of the bulk of the rules and the effective date of the removal of § 64.7. Since the incorporation by reference section cites a more recent edition of the ASME Code, it has not been considered necessary to revise the text of the rule which would soon be removed. During the interval, manufacturers would be expected to comply with the more recent edition.

8. The design standards for MPTs in subpart B of 46 CFR part 64 would be retained. Even though there would be no new construction of MPTs after the termination date mentioned above, the Coast Guard believes that these standards would stil be needed for inspection purposes and for future repairs and alterations of "grandfathered" MPTs.

Proposed Subpart 98.33. The American Institute of Merchant Shipping (AIMS) has petitioned the Coast Guard to permit the use of Department of Transportation Specification 57 aluminum portable tanks in a bulk cargo application in which Grade E combustible lubricants having flashpoints in excess of 400 °F would be transferred from a barge or lighter to an anchored vessel. AIMS proposes that all transfer operations would be conducted in accordance with 46 CFR subpart 98.30 under the supervision of a certified tankerman, and would take place only within the confines of harbors or bay areas. Further, the probability of spilling the lubricant during transfer operations would be reduced by the use of spring-activated, cam-type valves and hose couplings, and by enclosing the deck area to ensure that any spill would be contained on the deck. A copy of AIMS's petition has been placed in the public docket.

In consideration of AIMS's petition, the Coast Guard proposes to add a new subpart 98.33 which would permit Grade E combustible liquids which have a flashpoint of 300 °F or higher to be transferred to or from DOT Specification 57 portable tanks, tanks approved by the Coast Guard for the transport of combustible liquids under 49 CFR 178.340, and other tanks specifically approved by the Coast Guard. 300 °F is the maximum flashpoint limit for various operational requirements in subpart 98.30. The high flashpoint liquids described in the AIMS petition are not regulated as hazardous materials under 49 CFR Chapter I. Experience in transporting hazardous materials in both land and water transportation to and from these tanks. The proposal also includes stowage and transfer requirements which correspond to similar proposed requirements applicable to MPTs and DOT

Specification IM–101 and IM–102 portable tanks.

Subpart 98.35. Gravity type portable tanks constructed before October 1, 1974, were "grandfathered" under subpart 98.35, until October 1, 1984. Since the use of this type of tank is no longer authorized, subpart 98.35 would be removed.

Finally, the formula for minimum emergency venting capacity in § 64.63 is misprinted in the current edition of the CFR. This proposed rulemaking would restate this formula in its correct form.

Draft Regulatory Evaluation

This proposed rulemaking is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation's "Policies and Procedures for Simplification, Analysis and Review of Regulations" (44 FR 11034, February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed above under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

This proposed rulemaking would affect owners, manufacturers, and users of marine portable tanks for use in support of the offshore oil industry. The costs to the public of the proposed action would be minimal. Replacing MPTs in marine service with DOT specification IM 101 and IM 102 portable tanks would result in several benefits to the industry:

a. Design approval and construction would not be affected by backlogs in the Marine Safety Center or delays in scheduling inspections.

b. Approval agencies would be able to provide improved response to scheduling and problem resolution.

c. The IM specification tanks are truly intermodal providing flexibility in tank utilization.

d. Tank availability, especially overseas, would be improved.

e. The number of authorized cargoes would be greatly expanded.

Shifting responsibility for design review, inspection, and testing of portable tanks to third party approval agencies would remove the Coast Guard from competition with private industry while reducing the Coast Guard effort by 95 percent or approximately 600 manhours per year of predominantly technical support. The annual savings to the Coast Guard would be approximately $17,000. There might be some increase in costs to the industry in acquiring design approval, inspection, and testing of their portable tanks which could range up to $1,000 for a single tank built to a new design. This figure, however, could be reduced to as little as $100 per tank if multiple tanks were built from the same design drawings. This is the more common occurrence and should be considered a nonsignificant increment in the cost of the tank. The total estimated annual increase in costs to all purchasers of portable tanks for use in the service discussed in this preamble would be approximately $35,000.

Each of the three known private sector operators affected by AIMS's petition is believed to own approximately 20 DOT–57 portable tanks. If subpart 98.33 were not adopted, these operators would have to replace their existing tanks with MPTs or DOT Specification IM–102 portable tanks at an approximate cost of $8000 each. The estimated total cost of such a replacement would be approximately $160,000 per operator or $480,000 for the affected industry.

Based on the information in the draft evaluation, as discussed above, the Coast Guard certifies that this proposal, if adopted, would not have a significant impact on a substantial number of small entities.

Environmental Analysis

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with sections 2.B.1.c and 1 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and filed in the rulemaking docket.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This proposed rulemaking does not add any significant reporting or recordkeeping requirements or increase the paperwork burden on industry. Since no new applications for approval of MPTs would be considered after 6 months after the effective date of the final rule, the information collection approved under OMB Control Number 2115–0101 would be eliminated. The reporting and record-keeping burdens associated with the approval, inspection, and periodic retesting of DOT specification portable tanks are addressed under OMB Control Number 2137–0018.

Proposed §§ 98.30–5(a) and 98.33–3(a) would allow the Coast Guard to authorize the transfer of materials not specifically covered by the proposed regulations. It is not anticipated that this would generate more than one or two requests annually, resulting in only a minor increment to the existing information collection approved under OMB Control Number 2115–0016.

This proposed rulemaking contains information collection and recordkeeping requirements in sections 64.9(c), 98.30–3(a), and 98.33–5(a)(3). They have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 [Public Law 96–511, 44 USC 3501 et seq.]. Persons desiring to comment on these recordkeeping and information collection requirements should submit their comments to: Office of Regulation Policy, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "**ADDRESSES**".

List of Subjects in 46 CFR Parts 64 and 98

Hazardous materials transportation, Marine safety, Packaging and containers, Vessels

In consideration of the foregoing, the Coast Guard proposes to amend parts 64 and 98 of title 46, Code of Federal Regulations as set forth below:

PART 64—MARINE PORTABLE TANKS (MPT) AND CARGO HANDLING SYSTEMS

1. The authority citation of part 64 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 46 CFR 1.46.

2. By revising § 64.1 to read as follows:

§ 64.1 Purpose.

(a) This part contains the following:

(1) Requirements for the design, construction, repairs, alterations and marking of marine portable tanks authorized by this chapter to be carried on board inspected vessels.

(2) Requirements for periodic inspections and tests of marine portable tanks.

(3) Design and construction requirements for cargo handling systems

for marine portable tanks and other portable tanks authorized under § 98.30 of this chapter.

2a. By adding a new § 64.2 to read as follows:

§ 64.2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408 and at the U.S. Coast Guard, Office of Marine Safety, Security, and Environmental Protection, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the source indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers
United Engineering Center, 1345 East 47th St., New York, NY 10017
Boiler and Pressure Vessel Code, Section VIII, Division 1, Pressure Vessels, 1980
64.5, 64.7, 64.11, 64.13, 64.21, 64.25, 64.31

3. By revising § 64.3 to read as follows:

§ 64.3 Applicability.

(a) This part applies to each Marine Portable Tank for which an application for approval is received by the Commanding Officer, U.S. Coast Guard Marine Safety Center, before (six months after effective date of Final Rules) and which is constructed, inspected and subsequently stamped by a Coast Guard inspector.

(b) Subpart F of this part also applies to portable tanks and cargo-handling systems for portable tanks authorized under subpart 98.30 of this chapter.

4. By revising paragraphs (a) and (d) of § 64.5 to read as follows:

§ 64.5 Definitions.

(a) *Marine Portable Tank* or "MPT" means a liquid carrying tank that—

(1) Has a capacity of 110 gallons or more;

(2) Is designed to be carried on board a vessel;

(3) Can be lifted onto and off a vessel in a filled or empty condition, or filled and discharged while aboard a vessel;

(4) Is not permanently attached to the vessel;

(5) Was inspected and stamped by a Coast Guard Inspector before (24 months after publication of Final Rules).

* * * * *

(d) *Maximum allowable working pressure* means the maximum gauge pressure at the top of the tank in the operating position at 122 °F, equal to or greater than the total containment pressure as defined in paragraph (c) of this section. The maximum allowable working pressure is used in the calculation of the minimum thickness of each element of the tank, excluding the allowance for corrosion and the thickness for loadings other than pressure, as provided for in Division 1 of Section VIII of the ASME Code.

* * * * *

§ 64.7 [Removed]

5. By removing § 64.7, effective (24 months after publication date of Final Rules).

6. By revising § 64.9 to read as follows:

§ 64.9 Maintenance, repair, and alteration of MPTs.

(a) Each MPT must be maintained in accordance with the approved plans, this Part, and Subpart 98.30 of this Chapter.

(b) Repair of an MPT is authorized, provided that the repairs are in accordance with the approved plans.

(c) An approved MPT may not be altered, except as approved in writing by the Commanding Officer, U.S. Coast Guard Marine Safety Center.

(d) After each welded repair or alteration, an MPT must be hydrostatically pressure tested in accordance with § 64.83(a) of this part.

7. By revising § 64.11 to read as follows;

§ 64.11 MPT design.

(a) An MPT must be designed:

(1) In accordance with Division 1 of Section VIII of the ASME Code and this subpart;

(2) With a maximum gross weight of 55,000 pounds;

(3) To hold a liquid cargo that has a vapor pressure of 43 pounds per square inch absolute (psia) or less at a temperature of 122 °F;

(4) With a minimum service temperature of 0 °F or higher;

(5) With a maximum allowable working pressure of at least 20 pounds per square inch gauge (psig) but not more than 48 psig; and

(6) To withstand dynamic loading conditions applied simultaneously.

§§ 64.13, 64.21, 64.25 and 64.31 [Amended]

8. In §§ 64.13(a), 64.21, 64.25(b), and 64. 31, and footnote 1 of § 64.13(b), by removing the comma and words reading ", 1974 edition".

9. By revising § 64.53 to read as follows:

§ 64.53 MPT information plate.

(a) A corrosion resistant metal plate containing the information in paragraph (b) of this section must be permanently attached to each MPT.

(b) Each information plate required in paragraph (a) of this section must have the following information in legible letters that are 3/16 inch or more in height:

(1) Owner's name.

(2) Manufacturer's name.

(3) Date of manufacture.

(4) Tank serial number.

(5) Maximum allowable working pressure in psig.

(6) Test pressure in psig.

(7) External pressure rating in psig.

(8) Total capacity in gallons.

(9) Maximum net weight in long tons.

(10) Maximum gross weight in long tons.

(11) Percent ullage at 122 °F.

(12) Hydrostatic test date.

10. By revising the heading of Subpart C to read as follows:

Subpart C—Pressure and Vacuum Relief Devices for MPTs

11. By revising the introductory clause of § 64.57 to read as follows:

§ 64.57 Pressure relief device acceptance.

A pressure relief device for an MPT must be—

* * * * *

12. In § 64.63(a), by revising the formula to read as follows:

§ 64.63 Minimum emergency venting capacity.

(a) * * *

$$Q = 633,000\left(\frac{A}{L\ C}\right)^{0.82}\sqrt{\frac{Z\ T}{M}}$$

* * * * *

13. by revising § 64.65 to read as follows;

§ 64.65 Vacuum relief device.

(a) Each MPT that is designed for an external pressure of less than 7.5 psig must have a vacuum relief device.

(b) A vacumm relief device for an MPT must—

(1) Open at an external pressure of not less than 3 psig; and

(2) Have an opening with a cross-section of 0.44 square inches or more.

Subpart D—[Removed]

14. By removing subpart D, effective (24 months after publication date of Final Rules)

15. By revising the heading of subpart E to read as follows:

Subpart E—Periodic Inspections and Tests of MPTs

16. By revising the introductory paragraph of § 64.77 to read as follows:

§ 64.77 Inspection and test.

For the handling and stowage requirements in § 98.30–3 of this chapter, each MPT must pass the following inspections and tests conducted by the owner or the owner's representative:

* * * * *

§ 64.85 [Removed]

17. By removing § 64.85.

Subpart F—Cargo Handling System

18. By revising § 64.87 to read as follows:

§ 64.87 Purpose.

Each cargo handling system required to meet § 98.30–25 or § 98.33–13 of this chapter must meet the requirements of this subpart.

19. By adding new § 64.88 to read as follows:

§ 64.88 Plan approval, construction, and inspection of cargo handling systems.

(a) Plans for the cargo handling system of a portable tank authorized under subpart 98.30 of this Chapter must be approved by the Coast Guard in accordance with the requirements of § 56.01–10 of this subchapter. In addition, the cargo handling system must be constructed and inspected in accordance with part 56 of this subchapter.

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

20. By removing all authority citations within part 98. The authority citation of the part continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 98.01-1 [Amended]

21. By removing and reserving paragraphs (b) and (d) of § 98.01–1.

22. By revising § 98.01–5 including the section heading to read as follows:

§ 98.01-5 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408 and at the U.S. Coast Guard, Office of Marine Safety, Security, and Environmental Protection, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the source indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected, are:

Materials Transportation Bureau (now the Office of Hazardous Materials Transportation), Research and Special Programs Administration, Department of Transportation	
400 7th St. SW., Washington, DC 20590	
IM Tank Table, January 1, 1989 ...	98.30–3a, 98.30–5.

23. By revising the heading of subpart 98.30 to read:

Subpart 98.30—Portable Tanks

24. By revising § 98.30–1 to read as follows:

§ 98.30-1 Applicability.

(a) This Subpart contains regulations concerning transfer of a combustible liquid or other hazardous material to or from a portable tank on board a vessel.

25. By adding new § 98.30–2 to read as follows:

§ 98.30-2. Definitions.

(a) As used in this part, "Portable tank" includes—

(1) A marine portable tank (MPT);

(2) A Department of Transportation (DOT) Specification IM–101 or IM–102 portable tank constructed in accordance with 49 CFR 178.270 through 178.272 and approved under 49 CFR 173.32a; or

(3) A portable tank authorized for liquid hazardous materials, other than liquefied gases, by the Director, Office of Hazardous Materials Transportation, DOT, Under a DOT exemption issued in accordance with subpart B of 49 CFR part 107.

(b) *MPT* means a marine portable tank which was inspected and stamped by the Coast Guard before (24 months after the publication date of the final rule) and which meets the applicable requirements in this part and part 64 of this chapter.

26. By revising § 98.30–3, including the section heading, to read as follows:

§ 98.30-3 Vessels carrying MPTs.

(a) Each MPT on board a vessel to which this part applies must have—

(1) On a metal or other corrosion-resistant tag, an inspection date for pressure and vacuum relief devices in accordance with § 64.79(b) of this Chapter that is within 12 months before the month in which the vessel is operated.

(2) an inspection date in accordance with § 64.81(b) of this chapter that is within 30 months before the month during which the vessel is operated; and

(3) a hydrostatic test date in accordance with § 64.83(b) of this chapter that is within 60 months before the month during which the vessel is operated.

27. By adding new § 98.30–3a to read as follows:

§ 98.30-3a Vessels carrying portable tanks other than MPTs.

(a) Each portable tank, other than an MPT, on board a vessel to which this part applies must be one of the following:

(1) A DOT Specification IM–101 or IM–102 tank that is authorized for its contents in accordance with 49 CFR part 173 under the conditions set forth in the "IM Tank Table".

(2) A portable tank that is authorized by the Director, Office of Hazardous Materials Transportation, DOT under a DOT exemption issued in accordance with subpart B of 49 CFR part 107, and which is—

(i) According to the terms of the exemption equivalent to a DOT Specification IM–101 or IM–102 portable tank; and

(ii) Authorized for its contents under the terms of the exemption or by written acknowledgement from the Director, Office of Hazardous Materials Transportation.

(b) Each IM–101 and IM–102 portable tank must be tested and inspected in accordance with 49 CFR 173.32b, and used only as specified in 49 CFR 173.32c.

(c) Each portable tank authorized under a DOT exemption must be inspected and tested, maintained, and

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used in accordance with the terms of that exemption.

§ 98.30-4 [Amended]

28. In paragraphs (a) and (b) of § 98.30-4, by removing the word "marine" before "portable tank".

§ 98.30-6 [Redesignated from § 98.30-5]

29. By redesignating present § 98.30-5 as § 98.30-6, and adding new § 98.30-5 to read as follows:

§ 98.30-5 Materials authorized for transfer to and from portable tanks.

(a) The following hazardous materials are authorized to be transferred to and from portable tanks under this subpart:

(1) Any Grade D or E combustible liquid listed in § 30.25-1 of this chapter that does not meet the definition of any hazard class in 49 CFR part 173 other than the definitions of "flammable liquid", "combustible liquid", or "ORM-E".

(2) Corrosive liquids that—

(i) Are compatible with the materials of the tank;

(ii) Meet to other hazard class definition in 49 CFR part 173; and

(iii) Are authorized for transport in IM-101 or IM-102 portable tanks under subpart F of 49 CFR part 173.

(3) A hazardous material listed in Table 98.30-5(a).

(4) Liquid hazardous substances classed as ORM-E and listed in the Appendix to 49 CFR Table 172.101, and aqueous solutions of solid hazardous substances classed as ORM-E and listed in that Appendix.

(5) Other hazardous materials authorized in writing by the Commandant (G-MTH).

TABLE 98.30-5(A)—CERTAIN HAZARDOUS MATERIALS AUTHORIZED FOR TRANSFER TO AND FROM PORTABLE TANKS

Acetone
Alcohols; flash point of 80 °F (27 °C) or less by open cup test
Benzene
Gasoline
Hydrochloric acid—hydrofluoric acid mixtures containing not more than 36 percent hydrochloric acid or 2 percent hydrofluoric acid [1]
Methyl Ethyl Ketone
Toluene (Toluol)

Note:
[1] Marine portable tanks (MPTs) must be lined with rubber or equally acid-resistant material of equivalent strength and durability.

(b) Grades D and E combustible liquids with flash points of 100 °F (38 °C) or higher by closed cup test which are not listed by name in the IM Tank Table may be transferred to and from MPTs or IM-102 portable tanks conforming to the IM Tank Table entry for "Combustible liquid, not listed by name in this table."

(c) MPTs for sulfuric acid having a concentration not over 51 percent must be lined with rubber or equally acid-resistant material of equivalent strength and durability.

(d) Sulfuric acid having a concentration of 65.25 percent or greater may be transferred to or from a portable tank, provided that the corrosion rate on steel measured at 100 °F (38 °C) of sulfuric acid having a concentration greater than 65.25 percent is not greater than the corrosion rate of 65.25 percent sulfuric acid.

(e) Liquids classed as ORM-E may be transferred only from an IM-101 or IM-102 portable tank or an MPT.

(f) A hazardous material authorized to be transferred to and from an IM-102 portable tank may also be transferred to and from an IM-101 portable tank.

(g) Hazardous materials not referred to in this section may not be transferred to or from a portable tank on board a vessel.

30. By adding a new § 98.30-8 to read as follows:

§ 98.30-8 Gaskets and lining.

(a) No person may transfer a hazardous material to or from a portable tank on board a vessel unless each gasket and the lining of the portable tank is made of a material that is—

(1) Chemically compatible with the product for which the portable tank is approved; and

(2) Resistant to deterioration from the product for which the portable tank is approved.

31. By revising § 98.30-9(b)(2) to read as follows:

§ 98.30-9 Portable tank stowage.

* * * * *

(b) * * *

(2) Unless all electrical equipment is explosion-proof or intrinsically safe, as defined in §§ 111.105-9 and 111.105-11, respectively, of this chapter, in the area of the tank and its associated equipment that is—

* * * * *

32. By adding a new § 98.30-10 to read as follows:

§ 98.30-10 Pipe connections and filling and discharge openings.

(a) No person may transfer a hazardous material to or from a portable tank on board a vessel, unless each filling and discharge opening in the tank bottom is equipped with the following:

(1) If an IM-101 or IM-102 portable tank, the closures specified in 49 CFR 173.32c(g)(2).

(2) If an MPT, the valves and closures specified in §§ 64.33 through 64.41 of this chapter.

§ 98.31-5 [Amended]

33. In § 98.31-5, by removing the word "marine" before "portable tank".

34. By adding a new subpart 98.33 to read as follows:

Subpart 98.33—Portable Tanks for Certain Grade E Combustible Liquids and Other Regulated Materials

Sec.	
98.33-1	Applicability.
98.33-3	Cargoes authorized.
98.33-5	Portable tanks authorized.
98.33-7	Pipe and hose connections.
98.33-9	Stowage.
98.33-11	Smoking.
98.33-13	Cargo handling system.
98.33-15	Transfer operations.

§ 98.33-1 Applicability.

(a) This subpart applies to the transportation of certain low-hazard materials in portable tanks by vessel when that transportation involves the transfer of those materials to or from the portable tank while on board the vessel.

§ 98.33-3 Cargoes authorized.

(a) The following cargoes are authorized to be transferred to or from a portable tank described in § 98.33-5:

(1) Grade E combustible liquids that have a closed cup flashpoint of 300 °F or higher, and which do not meet the definition of a DOT hazard class in 49 CFR part 173 except hazardous substance ("ORM-E").

(2) Materials and aqueous solutions thereof which meet the definition of hazardous substance in 49 CFR 171.8 and which are of DOT Hazard Class ORM-E. (See Appendix to 49 CFR 172.101 and 49 CFR part 173, subpart J.)

(3) Other cargoes subject to regulation under 49 CFR parts 171 through 176 when approved in writing by the Commandant (G-MTH).

§ 98.33-5 Portable tanks authorized.

(a) The following portable tanks are authorized for the transport of the cargoes authorized under § 98.33-3:

(1) DOT Specification 57 Portable Tanks. (See 49 CFR 173.24, 173.32, 173.251, and 173.253.) Minimum design pressure must be 9 psig. Pressure relief devices may not open at less than 5 psig. Frangible pressure relief devices (rupture disks) are not authorized.

(2) A portable tank authorized under 49 CFR 176.340(a)(4).

(3) A portable tank approved by the Commandant (G-MTH).

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§ 98.33-7 Pipe and Hose Connections.

(a) If a portable tank authorized under § 98.33-5 of this part has a pipe or hose connection in its bottom, the connection must have a manually operated valve and a bolted flange, threaded cap, or similar device to protect against leakage of the tank's contents.

§ 98.33-9 Stowage.

(a) Each portable tank authorized under § 98.33-5 of this part must be secured to the vessel by devices of sufficient strength and number to prevent the tank from moving in any direction during transport.

§ 98.33-11 Smoking.

(a) No person may smoke within 50 feet of a portable tank containing a combustible liquid on the deck where the tank is stowed.

§ 98.33-13 Cargo handling system.

(a) A cargo authorized under § 98.33-3 of this part may not be transferred to or from a portable tank authorized under § 98.33-5 of this part on board a vessel unless the cargo handling system meets the requirements of subpart F of part 64 of this chapter.

§ 98.33-15 Transfer operations.

A cargo authorized under § 98.33-3 of this part may not be transferred to or from a portable tank authorized under § 98.33-5 of this part on board a vessel unless the following requirements are met:

(a) *Cargo pumps:* See § 98.30-11 of this part.

(b) *Ground connection:* See § 98.30-13 of this part.

(c) *Leakage containment:* See § 98.30-15 of this part.

(d) *Qualification of person in charge:* See § 98.30-17 of this part.

(e) *Supervision of person in charge:* See § 98.30-19 of this part.

(f) *Requirements for transfer, general:* See § 98.30-23 of this part.

(g) *Connections:* See § 98.30-27 of this part.

(h) *Pumping incompatible products:* See § 98.30-29 of this part.

(i) *Conditions for pumping:* See § 98.30-31 of this part.

Subpart 98.35—[Removed]

35. By removing subpart 98.35 entitled "Portable Tanks Constructed Before October 1, 1974 That Carry Combustible Liquids."

Dated: August 21, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-21234 Filed 9-8-89; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 54, No. 174
Monday, September 11, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Monday, September 18, 1989. The meeting will be held in the Grand Ballroom at the Officers' Club, the Presidio of San Francisco, California, beginning at 1:00 p.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Council Business
III. Executive Director's Report
IV. Section 106 Cases
V. New Business
VI. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202-786-0503, at least seven (7) days prior to the meeting.

For further information contact: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washingotn, DC 20004.

Dated: September 6, 1989.

Robert D. Bush,
Executive Director.

[FR Doc. 89-21298 Filed 9-8-89; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

National Arboretum Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92-463), the Agricultural Research Service announces the following meeting:

Name: National Arboretum Advisory Council.

Date: October 29–31, 1989.

Time: 8:30 a.m.—4:30 p.m., October 30, 8:30 a.m.—3:30 p.m., October 31.

Place: U.S. National Arboretum, 3501 New York Avenue, NE., Washington, DC.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review progress of National Arboretum relating to Congressional mandate of research and education concerning trees and plant life. The Council submits its recommendations to the Secretary of Agriculture.

Contact person: Howard J. Brooks, Executive Secretary, National Arboretum Advisory Council, Room 234 Bg-005, BARC-W, Beltsville, MD 20705. Telephone: AC 301/344-3912.

Done at Beltsville, Maryland, this 27th day of July 1989.

Howard J. Brooks,
Executive Secretary, National Arboretum Advisory Council.

[FR Doc. 89-21286 Filed 9-8-89; 8:45 am]

BILLING CODE 3410-03-M

Intention To Grant an Exclusive License; AgriSense

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to AgriSense, 4230 West Swift, Suite 106, Fresno, California 93722, an exclusive license to U.S. Patent Application Serial No. 07/247,546, "Attractants for Dacus Latifrons, The Malaysian Fruit Fly," dated September 2, 1988.

DATE: Comments must be received by November 13, 1989.

ADDRESS: Send comments to: USDA-ARS-Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, Room 401, BARC-W, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville addres given above; telephone: 301/344-2786, (FTS) 344-2786.

SUPPLEMENTARY INFORMATION: The USDA-ARS intends to grant to AgriSense, an exclusive license in the United States, its territories, possessions, and selected foreign countries to practice the invention disclosed in U.S. Patent Application Serial No. 07/247,546, "Attractants for Dacus Latifrons, The Malaysian Fruit Fly," dated September 22, 1988.

Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. The exclusive license will be royalty bearing and will comply with the provisions of 35 U.S.C. 209 and 37 CFR 404.7.

The applicant has submitted acceptable development and marketing plans and it is in the public interest to award this license to bring the invention to the point of practical application and, thereby, make it available to the public. The license will be granted unless ARS receives written evidence and argument which convincingly establishes that the intended course of action is not in the public interest.

William H. Tallent,
Assistant Administrator.

[FR Doc. 89-21286 Filed 9-8-89; 8:45 am]

BILLING CODE 3410-03-M

Availability for Licensing and Intention To Grant an Exclusive License; Bristol-Myers Co.

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, has available for licensing U.S. Patent Application Serial No. 07/327,493, "Production of Taxol or Taxol-Like Compounds in Cell Culture," dated March 23, 1989, and intends to grant an exclusive license to Bristol-Myers Company, 345 Park Avenue, New York, New York 10154.

DATE: Comments must be received December 11, 1989.

ADDRESS: Send comments to: USDA-ARS-Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, Room 401, BARC-W, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344-2786, (FTS) 344-2786.

SUPPLEMENTARY INFORMATION: The USDA-ARS intends to grant to Bristol-Myers Company, 345 Park Avenue, New York, New York 10154, a worldwide exclusive license to practice the invention disclosed in U.S. Patent Application Serial No. 07/327,493 "Production of Taxol or Taxol-Like Compounds in Cell Culture," dated March 23, 1989. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. The exclusive license will be royalty-bearing and will comply with the provisions of 35 U.S.C. 209 and 37 CFR 404.7.

This action is based upon acceptable development plans submitted by the applicant and is necessary to bring the invention to the point of practical application and, thereby, make it available to the public. The applicant is also negotiating a Cooperative Research and Development Agreement with the Agricultural Research Service.

The license will be granted unless ARS receives written evidence and argument which convincingly establishes that the intended course of actions is not in the public interest.

William H. Tallent,
Assistant Administrator.

[FR Doc. 89-21287 Filed 9-8-89; 8:45 am]

BILLING CODE 3410-03-M

Commodity Credit Corporation

1989 Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured (Types 35-36), Virginia Sun-Cured (Type 37), Cigar-Filler and Binder (Types 42-44, 53-55) and Cigar-Filler (Type 46) Tobaccos

AGENCY: Commodity Credit Corporation (CCC).

ACTION: Notice of determination of 1989 price support levels for six kinds of tobacco.

SUMMARY: This notice sets forth the levels of price support for: (1) Fire-cured (type 21), (2) fire-cured (types 22–23), (3) dark air-cured (types 35–36), (4) Virginia sun-cured (type 37), (5) cigar-filler and binder (types 42–44; 53–55), and (6) cigar-filler (type 46) kinds of tobacco for the 1989 marketing year. The levels of price support for these kinds of tobacco are required to be determined under the provisions of section 106 of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: May 18, 1989.

FOR FURTHER INFORMATION CONTACT: Robert H. Miller, (202) 447-8839 or Kenneth Robison, (202) 4476-7477. A Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available upon request from Mr. Robison.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1, and has been classified as "not major." The provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significantly adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983). It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Determinations of Levels of Price Support

Price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1989 crop of the six kinds of tobacco which are the subject of this notice, the respective maximum level of support is determined in accordance with section 106 of the Agricultural Act of 1949, as amended (the "Act").

Section 106(f)(6)(A) of the Act provides that the level of support for the 1989 crop of a kind of tobacco shall be the level in cents per pound at which the 1988 crop of such kind of tobacco was supported, plus or minus, respectively, the amount by which (i) the support level for the 1989 crop, as determined under section 106(b) of the Act, is greater or less than (ii) the support level for the 1988 crop, as determined under section 106(b) of the Act, as that difference may be adjusted by the Secretary under section 106(d) of the Act if the support level under clause (i) is greater than the support level under clause (ii).

Accordingly, under section 106(f)(6)(A) of the Act, the support level for the 1989 crop of such kind of tobacco will be the 1988 level, adjusted by the difference between (plus or minus) the 1989 "basic support level" and the 1988 "basic support level."

In addition, section 106(f)(6)(B) of the Act provides that to the extent requested by the board of directors of an association through which price support is made available to producers ("producer association") the Secretary may reduce the support level determined under section 106(f)(6)(A) for any kind of tobacco (except flue-cured and burley) to more accurately reflect the market value and improve the marketability of tobacco. Accordingly, the price support for a kind of tobacco which are set forth in this notice could be reduced if such a request is made.

Additionally, section 106(f)(8)(A) of the Act provides that for the 1989 crop of a kind of tobacco the support level shall be reduced by 1.4 percent of the level otherwise established. Any such reduction under this subsection shall not be taken into consideration in determining the support level for the subsequent crop of tobacco. Also, section 106(f)(8)(B) provides that in lieu of making any such reduction, the Secretary may impose assessments on the producers and purchasers in an amount sufficient to realize a reduction in outlays equal to the amount that would have been achieved as a result of the reduction required under section 106(f)(8)(A).

The levels of price support for the 1988 crops of various kinds of tobacco, which were determined in accordance with section 106(f)(6)(A), are as follows:

Kind and type	Support (cents per pound)
Virginia fire-cured, type 21	118.8
KY-TN fire-cured, types 22–23	123.0
Dark air-cured, types 35–36	104.7
Virginia sun-cured, type 37	104.9
Cigar-filler and binder, types 42–44, 53–55	90.8
Puerto Rican filler, type 46	74.1

Section 106(b) of the Act provides that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers including wage rates, interest, and taxes (referred to as the "parity index") for the three previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year (298). For the 1989-crop year, the average parity indexes for the three previous years are: 1986—1093; 1987—1110; and 1988—1166. The average of the parity indexes for these years is 1123 and the ratio of the 1986–88 index to the 1959 index is 3.77. For the 1988-crop year, the average parity indexes used to calculate the 1988 "basic support level" were: 1985—1120; 1986—1096; and 1987—1115. The ratio of the 1985–87 index to the 1959 index equaled 3.72. Thus, the "basic support level" for the 1988 and 1989 crops of the various kinds of tobaccos and the annual increase are as shown in the following table:

Kind and type	Basic support level (cents per pound)		Increase in 1989 from 1988
	1988	1989	
Virginia fire-cured type 21	144.3	146.3	2.0
Kentucky-Tennessee fire-cured, types 22–23	144.3	146.3	2.0
Dark air-cured, types 35–36	128.3	130.1	1.8
Virginia sun-cured, type 37	128.3	130.1	1.8
Cigar-filler and binder, types 42–44, 53–55	106.4	107.8	1.4
Puerto Rican filler, type 46	110.5	112.0	1.5

Section 106(d) of the Act provides that the Secretary of Agriculture may reduce the level of support which would otherwise be established for any grade of such kind of tobacco which the Secretary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction, reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary shall take into consideration the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, and anticipated domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco.

As noted in the following table, the stocks of the associations that manage the loan inventories for Kentucky-Tennessee fire-cured and dark air-cured tobaccos are composed almost exclusively of thin leaf, lug and nondescript grades. Therefore, these grades of Kentucky-Tennessee fire-cured and dark air-cured tobaccos are determined to be in excess supply.

Grade Groups	Kentucky-Tennessee fire-cured		Dark air-cured	
	Types 22–23		Types 35–36	
	Mil. lbs.	Percent	Mil. lbs.	Percent
Heavy body	1.3	1	.7	7
Thin body	7.7	62	4.8	46
Tip			.3	3
Lug	3.0	24	4.3	42
Nondescript	.4	3	.2	2
Total	12.4	100	10.3	100

ASCS/CAD, April 30, 1989.

For Puerto Rican filler (type 46) tobacco, the Secretary proclaimed national marketing quotas for the 1989–90, 1990–91, 1991–92 marketing years and proclaimed a zero quota for the 1989–90 marketing year on March 1, 1989. With carryover from the 1988–89 marketing year estimated to be 3.7 million pounds and the reserve supply level set at 2.0 million pounds, an excess supply situation exists. Because of the excess supply situation and the proclamation of a zero quota, zero pounds are eligible to be marketed by a producer without the assessment of a penalty during the 1989–90 marketing year. Even though no Puerto Rican filler production is expected it will eliminate confusion in future price support calculations to determine a price support level for the 1989–90 marketing year.

Because the total supply is below the reserve supply level for fire-cured (type 21), Virginia sun-cured (type 37), and cigar-filler and binder (types 42–44; 53–55) tobaccos, the 1989 support level for each kind consists of the 1988 level of support increased by the difference between the 1989 "basic support level" and the 1988 "basic support level". Because the total supply is near the reserve supply level, but certain grades are in excess supply for fire-cured (types 22–23) and dark air-cured (types 35–36) tobaccos, the 1989 support level for each kind consists of the 1988 level of support increased by 65 percent of the difference between the 1989 "basic support level" and the 1988 "basic support level."

Because the total supply is well above the reserve supply level for Puerto Rican filler (type 46) tobacco, the 1989 support level consists of the 1988 level of support increased by 65 percent of the difference between the 1989 "basic support level" and the 1988 "basic support level."

For the 1989 crops, the 1.4 percent decrease provided by section 106(f)(8)(A) of the Act would require reductions to the support level of 1.7 cents to 1.3 cents per pound, depending on the kind of tobacco.

Determinations

Accordingly, the Secretary of Agriculture has determined, in accordance with sections 106(f)(6)(A) and 106(f)(8)(A) of the 1949 Act, the following price support levels for the 1989 crops of Virginia fire-cured (type 21), Kentucky-Tennessee fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar filler and binder (types 42–44, 53–55), and Puerto Rican filler (type 46) tobaccos:

Kind and type	Amount (cents per pound)	Reduced 1.4 percent
Virginia fire-cured, type 21	120.8	119.1
Kentucky-Tennessee fire-cured, types 22–23	124.3	122.6
Dark air-cured, types 35–36	106.7	105.2
Cigar-filler and binder, types 42–44, 53–55	92.2	90.9
Puerto Rican filler (type 46)	75.1	74.0

Authority: Secs. 4 and 5, Stat. 1070, 1072, as amended (15 U.S.C. 714b, 714c); Secs. 101, 106, 401, 403, 406, 63 Stat. 1051, as amended, 74 Stat. 6, as amended, 63 Stat. 1054, as amended, 1055 (7 U.S.C. 1441, 1445, 1421, 1423, 1426).

Signed at Washington, DC on August 30, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–21248 Filed 9–8–89; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Lowman Fire Recovery, Boise National Forest, Boise County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental impact statement for wildfire recovery activitives on the Lowman fire complex near Lowman, Idaho. Wildfire recovery activities may include the harvesting of salvageable timber with development of associated harvest systems, reforestation, and watershed and wildlife habitat restoration.

DATE: Comments concerning the scope of the analysis should be received in writing by October 10, 1989.

ADDRESS: Written comments are encouraged, and should be sent to Dave Rittersbacher, Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, Idaho 83702.

FOR FURTHER INFORMATION CONTACT: Daniel Deiss, Project Director, Bosie National Forest, 1750 Front Street, Boise, ID 83702, (208) 364–4173.

SUPPLEMENTARY INFORMATION: A range of alternatives for recovery of the burn area will be considered in the environmental impact statement, including natural recovery of the fire affected area. Other alternatives will consider the salvage of fire damaged timber and actions to recover long-term productivity of wildlife, watershed, timber, and other resource values. Federal, State, and local agencies, organizations, and individuals who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of those issues to be addressed in the environmental impact statement.
2. Elimination of insignificant issues or those which have been covered by a previous environmental review.
3. Identification of interested agencies, organizations, businesses, and individuals who may wish to prepare alternatives for the analysis.

Some of the issues and alternatives to be analyzed in the environmental impact statement include: the salvaging of fire damaged timber, the relationship of roadless areas to salvage timber and transportation needs, and proposed activity effects on cultural resources, wildlife, fish, water, soils, range, and local communities. Further defining of issues, concerns, opportunities and alternatives will occur through scoping with other Federal, State and local agencies, and with interested individuals and organizations. Contracts with these groups will be through the news media, by letter or personal contact.

Scoping meetings to provide opportunity for comments will be held at Boise, ID, Boise National Forest Supervisor's Office, 1750 Front Street, Sept. 19, 1989, 7:00 p.m.; Garden Valley area, Community Hall, Crouch, ID, Sept.

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19, 1989, 7:00 p.m.; Cascade, ID, Senior Citizen's Center, Sept. 20 1989, 7:00 p.m.; Yellowpine, ID, Community Hall, Sept. 20, 1989, 7:00 p.m.; Lowman, ID, Lowman Ranger District Office, Sept. 21, 1989, 7:00 p.m.

Comments concerning Forest Service recovery efforts for all recent burn areas on the Forest will be entertained at these meetings.

Due to the short timeframes involved with the fire recovery efforts, scoping document preparation, and public involvement processes must be expedited.

Dave Rittersbacher, Forest Supervisor of the Boise National Forest in Boise, Idaho, is the responsible official.

The analysis is expected to take four months. The draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedure provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental review of the proposal so that it is meaningful and alerts an agency to the reviews' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: September 1, 1989.

Dave Rittersbacher,

Forest Supervisor.

[FR Doc. 89–21204 Filed 9–8–89; 8:45 am]

BILLING CODE 3410-11-M

Warm Lake Fire Recovery, Boise National Forest, Valley County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental impact statement for wildfire recovery activities on the Warm Lake fire complex near Warm Lake, Idaho. Wildfire recovery activities may include the harvesting of salvageable timber with development of associated harvest systems, reforestation, and watershed and wildlife habitat restoration.

DATE: Comments concerning the scope of the analysis should be received in writing by October 10, 1989.

ADDRESSES: Written comments are encouraged, and should be sent to Dave Rittersbacher, Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, Idaho 83702.

FOR FURTHER INFORMATION CONTACT: Daniel Deiss, Project Director, Boise National Forest, 1750 Front Street, Boise, ID 83702, (208) 364–4173.

SUPPLEMENTARY INFORMATION: A range of alternatives for recovery of the burn area will be considered in the environmental impact statement, including natural recovery of the fire affected area. Other alternatives will consider the salvage of fire damaged timber and actions to recover long-term productivity of wildlife, watershed, timber, and other resource values. Federal, State, and local agencies, organizations, and individuals who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of those issues to be addressed in the environmental impact statement.
2. Elimination of insignificant issues or those which have been covered by a previous environmental review.
3. Identification of interest agencies, organizations, businesses, and individuals who may wish to prepare alternatives for the analysis.

Some of the issues and alternatives to be analyzed in the environmental impact statement include: The salvaging of fire damaged timber, the relationship of roadless areas to salvage timber and transportation needs, and proposed activity effects on cultural resources, wildlife, fish, water, soils, range, and local communities. Further defining of issues, concerns, opportunities and alternatives will occur through scoping with other Federal, State and local agencies, and with interested individuals and organizations. Contacts with these groups will be through the news media, by letter or personal contact.

Scoping meetings to provide opportunity for comments will be held at Boise, ID, Boise National Forest Supervisor's Office, 1750 Front Street, Sept. 19, 1989, 7:00 p.m.; Garden Valley area, Community Hall, Crouch, ID, Sept. 19, 1989, 7:00 p.m.; Cascade, ID, Senior Citizen's Center, Sept. 20, 1989, 7:00 p.m.; Yellowpine, ID, Community Hall, Sept. 20, 1989, 7:00 p.m.; Lowman, ID, Lowman Ranger District Office, Sept. 21, 1989, 7:00 p.m.

Comments concerning Forest Service recovery efforts for all recent burn areas on the Forest will be entertained at these meetings.

Due to the short timeframes involved with the fire recovery efforts, scoping, document preparation, and public involvement processes must be expedited.

Dave Rittersbacher, Forest Supervisor of the Boise National Forest in Boise, Idaho, is the responsible official.

The analysis is expected to take four months. The draft environmental impact statement should be available for public review by December 30, 1989. The final EIS will be filed by March 2, 1990.

The comment period of the draft environmental impact statement will be 45 days from the date of Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is ensure that substantive comments and objections are made

available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: September 1, 1989.

Dave Rittersbacher,

Forest Supervisor.

[FR Doc. 89–21205 Filed 9–8–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held September 26, 1989, 9:30 a.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW, Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

General Session

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Presentation by the National Center for Advanced Technologies on Key Technologies for the 1990's.
5. Discussion of the 1989 Annual Report and the 1990 Annual Plan.
6. Discussion on Committee Support on the FX Project.

Executive Session

7. Discusssion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technolgy & Policy Analysis, 14th & Constitution Avenue, NW., Room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: September 5, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 89–21207 Filed 9–8–89; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket No. 14–89]

Proposed Foreign-Trade Zone, Palmetto, FL; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Manatee County Port Authority (MCPA), requesting authority to establish a general-purpose foreign-trade zone at Port Manatee in Palmetto, Florida, within the Port Manatee Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 31, 1989. The applicant is authorized to make this proposal under § 288.36, Florida Statutes Annotated (1987).

The application requests zone status for the 837-acre Port Manatee complex operated by MCPA at the east entrance of Tampa Bay on the West Coast of Florida. The site is located west of U.S. Highway 41, adjacent to Piney Point Road, in northwest Manatee County. The Port owns approximately 775 acres and leases an additional 62 acres from the State of Florida.

The application contains evidence of the need for zone services at Port Manatee. Initially, 12,500 square feet of warehouse space within an existing 112,500 square foot warehouse would be activated. Several firms have indicated an interest in using zone procedures for the storage and warehousing of vehicles and vehicle parts, lumber and lumber products, as well as production involving glass, fish, and rubber life raft products. Specific manufacturing approvals are not being sought at this time, however, such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 909 SE. First Avenue, Miami, Florida 33131–2595; and Colonel Bruce A. Malson, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, Florida 32232–0019.

As part of its investigation, the examiners committee will hold a public hearing on October 18, 1989, beginning at 9 a.m., at the Manatee County Administration Center, Manatee County Commission Chambers, 1st Floor, 1112 Manatee Avenue West, Bradenton, Florida 34206.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by October 11, 1989. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through November 20, 1989.

A copy of the application and

accompanying exhibits will be available during this time for public inspection at each of the following locations:

Manatee County Port Authority, Port Manatee, Route #1/Tampa Bay, Palmetto, Florida 34221

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Room 2835, Washington, DC 20230

Dated: September 5, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–21303 Filed 9–8–89; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to request a review: Not later than September 30, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
Antidumping Duty Proceeding	
Canada: Replacement Parts for Self-Propelled Bituminous Paving Equipment (A–122–057)	09/01/88–08/31/89
Canada: Carbon Steel Bars & Structural Shapes (A–122–005)	09/01/88–08/31/89
Canada: Steel Jacks (A–122–006)	09/01/88–08/31/89
Italy: Pads for Woodwind Instrument Keys (A–475–017)	09/01/88–08/31/89
Japan: Filament Fabric (A–588–607)	09/01/88–08/31/89
Japan: Metal-Walled Above-Ground Swimming Pools (A–588–058)	09/01/88–08/31/89
The Federal Republic of Germany: Certain Forged Steel Crankshafts (A–428–604)	09/01/88–08/31/89
The People's Republic of China: Greige Polyester/Cotton Printcloth (A–570–101)	09/01/88–08/31/89
The United Kingdom: Certain Forged Steel Crankshafts (A–412–602)	09/01/88–08/31/89
Suspension Agreements	
Canada: Light Weight Steel Sheet Piling (A–122–007)	09/01/88–08/31/89
Argentina: Carbon Steel Wire Rod (C–357–004)	01/01/86–12/31/86
Peru: Cotton Shop Towels (C–333–401)	01/01/88–12/31/88
Countervailing Duty Proceeding	
Argentina: Pipe and Tube (C–357–601)	07/14/88–12/31/89
Israel: Fresh Cut Roses (C–508–064)	10/01/87–09/30/88
New Zealand: Lamb Meat (C–614–503)	04/01/88–03/31/89
New Zealand: Steel Wire (C–614–601)	07/01/88–06/30/89
Mexico: Lime (C–201–402)	01/01/88–12/31/88
Mexico: Portland Hydraulic Cement and Cement Clinker (C–201–013)	01/01/88–12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by September 30, 1989.

If the Department does not receive by September 30, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: August 31, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89–21208 Filed 9–8–89; 8:45 am]

BILLING CODE 3510–DS–M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory committee will be held on Friday, September 22, 1989, Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue, NW, Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets and retailing of cotton, wool, and man-made fiber, silk blend and other vegetable fiber textiles.)

General Session: 10:00 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 10:30 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes, contact Alfreda Burton, (202) 377–3737.

Dated: September 6, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–21304 Filed 9–8–89; 8:45 am]

BILLING CODE 3510–DR–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of first request for panel review of a final determination of sales at less than fair value respecting new steel rail, except light rail, from Canada made by International Trade Administration, Import Administration, which was filed by the Algoma Steel Corporation, Limited, with the United States Section of the Binational Secretariat on September 1, 1989.

SUMMARY: On September 1, 1989, the Algoma Steel Corporation, Limited, filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final determination of sales at less than fair value respecting new steel rail, except light rail, from Canada, Import Administration file number C–122–804, issued by the International Trade Administration, Import Administration, and published in 54 FR 31984 on August 3, 1989. The Binational Secretariat has assigned Case Number USA–89–1904–08 to this Request for Panel Review.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel will be established to act in place of national courts to expeditiously review the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and Government of Canada established "Rules of Procedure for Article 1904 Binational Panel Reviews" ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988, (53 FR 53212). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on September 1, 1989, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 2, 1989);

(b) a Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is October 16, 1989); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: September 6, 1989.

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 89–21305 Filed 9–8–89; 8:45 am]

BILLING CODE 3510–DA–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review of final affirmative countervailing duty determination respecting new steel rail, except light rail, from Canada made by International Trade Administration, Import Administration, which was filed by the Sydney Steel Corporation with the United States Section of the Binational Secretariat on September 1, 1989

SUMMARY: On September 1, 1989, the Sydney Steel Corporation filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final affirmative countervailing duty determination respecting new steel rail, except light rail, from Canada, Import Administration file number C–122–805, issued by the International Trade Administration, Import Administration, and published in 54 FR 31991 on August 3, 1989. The Binational Secretariat has assigned Case Number USA–89–1904–07 to this Request for Panel Review.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel will be estabilshed to act in place of national courts to expeditiously review the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

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Rules 35(2) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on September 1, 1989, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 2, 1989);

(b) a Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is October 16, 1989); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: September 6, 1989.

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 89-21306 Filed 9-8-89; 8:45 am]

BILLING CODE 3510-OA-M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Partially Closed Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Tuesday, September 26, 1989, from 8:30 a.m. to 5:00 p.m., and Wednesday, September 27, 1989 from 8:30–11:00 a.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The discussion on NIST Budget scheduled to begin at 10:00 a.m. and ending at 11:00 a.m., on September 27, 1989, will be closed.

DATES: The meeting will convene September 26, 1989, at 8:30 a.m. and will adjourn for the day at 5:00 p.m. The meeting will resume at 8:30 a.m. on September 27, 1989, and will end at 11:30 a.m.

ADDRESS: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 1, 1989, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with Section 552(b)(9)(B) of Title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: September 5, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89-21276 Filed 9-8-89; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF DEFENSE

Department of the Navy

Intention To Prepare An Environmental Impact Statement for Dredging at Naval Air Station Alameda, California and at Naval Support Center Oakland, CA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council of Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to dredge about 600,000 cubic yards at Naval Air Statement (NAS) Alameda to increase the exiting authorized maintenance depth from −42 feet mean lower low water (MLLW) with an overdraft of two feet to −50 feet MLLW. Also, the EIS will address dredging of about 1,000,000 cubic yards at Naval Supply Center (NSC) Oakland to increase the authorized maintenance depth from −35 feet MLLW to −38 feet MLLW in the berthing area and −41 MLLW in the channel. Dredge material disposal alternatives being considered are upland disposal, in-bay disposal, open ocean disposal, and the no action alternative. Environmental impacts of the proposed project and its alternatives shall be determined in the EIS.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on September 27, 1989, beginning at 7:30 pm, in the Gold Room of the Henry J. Kaiser Convention Center, 10 Tenth Street, Oakland, California. This meeting will be advertised in Alameda and Oakland area newspapers.

A formal presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than 30 days from date of this publication to Dr. Ronald Hudson, (telephone (415) 877–7695 (Code 2022)), Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, California 94055–0720.

Dated: September 6, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-21263 Filed 9-8-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM90-1-70-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

September 1, 1989.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on August 30, 1989 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1989:

Seventh Revised Sheet No. 5A
Sixth Revised Sheet No. 31

Columbia Gulf states that the listed tariff sheets set forth the transportation rates and applicable tariff provisions required to place the rates into effect, applicable to the Annual Charge Adjustment, pursuant to the

Commission's Regulations as set forth in Order No. 472 and 472–A issued May 29, 1987 and June 17, 1987, respectively.

Columbia Gulf also states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 12. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21226 Filed 9-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2424-000]

Robert G. Lane; Filing

September 1, 1989.

Take notice that on August 28, 1989, Robert G. Lane (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President Operations—Central Illinois Public Service Company
Director—Electric Energy, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois C. Cashell,

Secretary.

[FR Doc. 89-21227 Filed 9-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-71-000]

Michigan Consolidated Gas Co., Interstate Storage Division; Proposed Changes in FERC Gas Tariff

September 1, 1989.

Take notice that on August 30, 1989, Michigan Consolidated Gas Company-Interstate Storage Division (ISD) tendered for filing proposed changes to the following tariff sheets in its FERC Gas Tariff, Original Volume No. 1, Original Volume No. 2 and Original Volume No. 3:

Original Volume No. 1

Third Revised Sheet No. 1E

Original Volume No. 2

Third Revised Sheet No. 1A

Original Volume No. 3

Fifth Revised Sheet No. 2

The proposed changes reflect the revised Annual Charge Adjustment (ACA) unit charge of $.0017 in ISD's FERC Gas Tariffs. The proposed changes are pursuant to the Commission's regulations promulgated in Order No. 472.

ISD requests that these proposed tariff sheets become effective on October 1, 1989. ISD states that copies of its filing have been served upon its customers and the Michigan Public Service Comission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21228 Filed 9-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-47-000]

MIGC, Inc.; Compliance Filing

September 1, 1989.

Take notice that on August 30, 1989, MIGC, Inc. ("MIGC") tendered for filing Fifty-Fourth Revised Sheet No. 32, Sixth Revised Sheet Nos. 102 and 140, and Third Revised Sheet Nos. 165, 188 and 250, all to MIGC's FERC Gas Tariff, Original Volume No. 1. These tariff sheets are proposed to become effective October 1, 1989.

MIGC states that the instant filing is being submitted to reflect Annual Charge Adjustment unit charges applicable to sales and transportation services during the fiscal year commencing October 1, 1989.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before September 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any peson wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21229 Filed 9-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 1, 1989.

Take notice that on August 31, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, FERC Gas Tariff, Original Volume No. 2-A, and FERC Gas Tariff, Original Volume No. 3:

FERC Gas Tariff, Original Volume No. 1

Ninteenth Revised Sheet No. 10
Ninteenth Revised Sheet No. 10A

FERC Gas Tariff, Original Volume No. 2-A

Second Revised Sheet No. 10
Second Revised Sheet No. 11

FERC Gas Tariff, Original Volume No. 3

Fifth Revised Sheet No. 21

The revised tariff sheets are being filed pursuant to section 25 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, Original Volume No. 1, and section 21 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, Original Volume No.

2–A, which affords Texas Gas the right to recover the costs billed to Texas Gas by the Federal Energy Regulatory Commission via the FERC ACA Unit Charge method. That unit charge, as determined by the Commission, is $.0017/Mcf ($.0016/MMBtu converted), as set forth on Texas Gas's Annual Charges Bill for fiscal year 1989, to be effective October 1, 1989.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington , DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests should be filed on before September 12, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21230 Filed 9–8–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90–1–42–000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 1, 1989.

Take notice that on August 31, 1989 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

68th Revised Sheet No. 5

The tariff sheet listed above is being filed pursuant to Transwestern's Purchased Gas Adjustment (PGA) provision set forth in section 19.4 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1.

The Current Adjustment reflected in the instant filing represents an increase of $0.1644/dth as measured against Transwestern's Annual PGA filing in Docket No. TA89–1–42, which became effective July 1, 1989.

The instant filing also reflects a decrease in the ACA Surcharge of $0.0001/dth. The adjustment of the ACA Surcharge is determined each fiscal year pursuant to the Commission's Order No. 472. The ACA Unit Surcharge of $0.0017/dth as determined by the Commission on July 15, 1989 has been converted to a dekatherm basis of $0.0016/dth. Transwestern requests that the revised ACA Surcharge become effective October 1, 1989.

The proposed effective date for the tariff sheet listed above is October 1, 1989.

Transwestern states that copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petition or protests should be filed on or before September 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21231 Filed 9–8–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88–99–004]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 31, 1989.

Take notice that Transwestern Pipeline Company ("Transwestern") on August 14, 1989, tendered for, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets: to be effective October 1, 1989:

Substitute 5th Revised Sheet No. 1
Substitute 1st Revised Sheet No. 1A
Original Sheet No. 5(i)
Substitute 5th Revised Sheet No. 38
Substitute 1st Revised Sheet No. 39
Substitute 1st Revised Sheet No. 40
Substitute 1st Revised Sheet No. 41–47
Substitute 5th Revised Sheet No. 133
Substitute 5th Revised Sheet No. 134
Substitute 5th Revised Sheet No. 135
Substitute 5th Revised Sheet No. 136
Substitute 5th Revised Sheet No. 137

Transwestern states these tariff sheets are being filed to comply with the Commission's May 11, 1988 Order issued in Docket No. CP88–99–000, *et al.* ("Order"). In its Order of May 11, 1988, the Commission issued to Transwestern a Certificate of Public Convenience and Necessity authorizing it to institute an on-system and off-system interruptible sales program pursuant to Rate Schedule IS–1, subject to various conditions. On August, 14, 1989, Transwestern notified the Commission that it would accept the IS–1 Certificate as conditioned. The above-listed tariff sheets have been filed to comply with the conditions in the commission's Order.

Transwestern, herein, respectfully requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary so as to permit the above-listed tariff sheets to become effective on the dates requested.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before September 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21232 Filed 9–8–89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3643–6]

Region I: Prevention of Significant Deterioration of Air Quality (PSD); Determination of Exemption; Lakes Region General Hospital, Laconia, NH

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of final determination of exemption.

SUMMARY: The purpose of this notice is to announce that on July 14, 1989, Judd Gregg, Governor of New Hampshire, issued a final determination that the Lakes Region General Hospital oil-fired boiler project located at the Lakes Region General Hospital in Laconia, New Hampshire is exempt from EPA's PSD review requirements (40 CFR 52.21(j)–(r)). This determination was made under the March 18, 1982 PSD delegation of authority agreement between Region I and the State of New Hampshire. The determination was issued because the institutional arrangement involving the hospital is such as to render the hospital a "nonprofit health or education" institution pursuant to section 169(1) of the Clean Air Act. (42 U.S.C. 7479(1), and 40 CFR 52.21(i)(4)(vi)). Accordingly, the installation and operation of the 500 HP boiler fired with No. 6 fuel oil (2.0% sulfur, maximum) at the Lakes Region General Hospital will not be subject to PSD review requirements.

DATES: The determination was effective July 14, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Courcier, State Air Programs Branch, U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Room 2311, Boston, Massachusetts 02203 (617/565–3260) or Mr. Donald Davis, New Hampshire Air Resources Division, 64 North Main Street, Concord, New Hampshire 03302–2033 (603/271–1370).

SUPPLEMENTARY INFORMATION: This final determination of exemption was made in response to a request dated July 2, 1989 by Robert C. Abbott, Director of Risk Management and Safety, Lakes Region General Hospital.

Copies of this Final Determination and all information used in making the determination are available for public inspection at the New Hampshire Air Resources Division, 64 North Main Street, Concord, New Hampshire 03302. Copies of the determination are also available for public inspection at the U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Room 2311, Boston, Massachusetts 02203.

The determination is a final action under the Clean Air Act. Under Section 307(b)(1) of the Act, judicial review of this determination is available only by the filing of a petition for review in the United States Court of Appeals for the First Circuit within 60 days from the date of publication in the **Federal Register**. Under Section 307(b)(2) of the Clean Air act, this final determination shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: August 24, 1989.

Paul G. Keough,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region I.

[FR Doc. 89–21270 Filed 9–8–89; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3643–5]

Region I: Prevention of Significant Deterioration of Air Quality (PSD); Determination of Exemption; Mary Hitchcock Memorial Hospital, a Component of Dartmouth-Hitchcock Medical Center, Hanover, NH

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of final determination of exemption.

SUMMARY: The purpose of this notice is to announce that on June 27, 1989, Judd Gregg, Governor of New Hampshire, issued a final determination that the relocation project of the Mary Hitchcock Memorial Hospital, a component of Dartmouth-Hitchcock Medical Center in Hanover, New Hampshire, is exempt from EPA's PSD review requirements (40 CFR 52.21(j)–(r)). This determination was made under the March 18, 1982 PSD delegation of authority agreement between Region I and the State of New Hampshire. The determination was issued because the institutional arrangement involving the hospital is such as to render the hospital a "nonprofit health or education" institution pursuant to section 169(1) of the Clean Air Act. (42 U.S.C. 7479(1), and 40 CFR 52.21(i)(4)(vi)). Accordingly, the relocation project, in particular the installation and operation of three boilers fired with No. 6 fuel oil (1.0% sulfur, maximum) and an incinerator for the disposal of non-recyclable waste and infectious waste at the Mary Hitchcock Memorial Hospital, will not be subject to PSD review requirements.

DATES: The determination was effective June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Courcier, State Air Programs Branch, U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Room 2311, Boston, Massachusetts 02203, (617/565–3260) or Mr. Donald Davis, New Hampshire Air Resources Division, 64 North Main Street, Concord, New Hampshire 03302–2033, (603/271–1370).

SUPPLEMENTARY INFORMATION: This final determination of exemption was made in response to a request dated June 14, 1989 by Frederick W. Nothnagel, Vice President of Facilities Development, Mary Hitchcock Memorial Hospital.

Copies of this Final Determination and all information used in making the determination are available for public inspection at the New Hampshire Air Resources Division, 64 North Main Street, Concord, New Hampshire 03302–2033. Copies of the determination are also available for public inspection at the U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Room 2311, Boston, Massachusetts 02203.

The determination is a final action under the Clean Air Act. Under section 307(b)(1) of the Act, judicial review of this determination is available only by the filing of a petition for review in the United States Court of Appeals for the First Circuit within 60 days from the date of publication in the **Federal Register**. Under section 307(b)(2) of the Clean Air Act, this final determination shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: August 24, 1989.

Paul G. Keough,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region

[FR Doc. 89–21271 Filed 9–8–89; 8:45 am]

BILLING CODE 6560-50-M

[FRL—3643–8]

Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of guidance document..

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of an interim final guidance document entitiled "Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities." This document provides guidance to RCRA facility permit applicants and writers concerning the statistical evaluation of ground-water monitoring data, pursuant to the recently promulgated requirements of 40 CFR part 264, subpart F (53 FR 39720: October 11, 1988). The hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) require owners and operators of hazardous waste facilities to utilize design features and control measures that prevent the release of hazardous waste into ground water. Further, regulated units (i.e., all surface impoundments, waste piles, land treatment units, and landfills that receive hazardous waste after July 28, 1982) are also subject to the ground-water monitoring and corrective action standards of 40 CFR part 264, subpart F. These regulations require that a statistical method and sampling

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procedure approved by EPA be used to determine whether there are releases from regulated units into ground water.

DATE: EPA will accept public comments until December 8, 1989. All comments must be postmarked on or before this date.

ADDRESSES: Three copies of written comments should be submitted to the Docket Clerk, Office of Solid Waste (OS–321), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and identified as follows: F–89–HWGWS–FFFF. Copies of the document entitled, "Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities" are available for viewing at all EPA Libraries and in the EPA RCRA Docket (#M–2417), U.S. Environmental Protection Agency, 401 M. Street, SW., Washington D.C. 20460 from 9:00 a.m. to 4:00 p.m., Monday thru Friday, excluding Federal Holidays, by appointment only. Appointments can be made by calling (202) 475–9327. Copies cost 20 cents per page. In addition, this document is available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487–4600: Guidance Document on the Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities. (NTIS # PB89-151–047).

FOR FURTHER INFORMATION CONTACT: For general information contact: RCRA/Superfund Hotline, Office of Solid Waste (WH–563C), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (800) 424–9346, or (202) 382–3000.

For technial information contact Jim Brown, (202) 382–4658.

SUPPLEMENTARY INFORMATION: This document provides guidance to RCRA Facility permit applicants and writers concerning the statistical analysis of ground-water monitoring data at RCRA facilities. Section 1 is an introduction to the guidance; it describes the purpose and intent of the document, and emphasizes the need for site-specific considerations in implementing the subpart F regulations of 40 CFR part 264.

Section 2 provides the reader with an overview of the recently promulgated regulations concerning the statistical analysis of ground-water monitoring data (53 FR 39720: October 11, 1988). The requirements of the regulations are reviewed, and the need to consider site specific factors in evaluating data at a hazardous waste facility is emphasized.

Section 3 discusses the important hydrogeologic parameters to consider when choosing a sampling interval. The Darcy equation is used to determine the horizontal component of the average linear velocity of ground water. This parameter provides a good estimate of time of travel for most soluble constituents in ground water and may be used to detemine a sampling interval. In situations where the Darcy equation does not apply (e.g., karst and "pseudo karst" terranes), the reader is referred to recent EPA publications for information on determining an appropriate sampling interval. Example calculations are provided at the end of the section to further assist the reader.

Section 4 provides guidance on choosing an appropriate statistical method. A flowchart to guide the reader through this section, as well as procedures to test the distributional assumptions of data are presented. Finally, this section outlines procedures to test specifically for equality of variance.

Section 5 covers statistical methods that may be used to evaluate ground-water monitoring data when background wells have been sited hydraulically upgradient from the regulated unit, and a second set of wells are sited hydraulically downgradient from the regulated unit at the point of compliance. The data from these compliance wells are compared to data from the background wells to determine whether a release from a facility has occurred. Parametric and nonparametric analysis of variance, tolerance intervals, and prediction intervals are suggested methods for this type of comparison. Flowcharts, procedures and example calculations are given for each testing method.

Section 6 includes statistical procedures that are appropriate when comparing ground-water constituent concentrations to fixed concentration limits (e.g., alternate concentration limits or maximum concentration limits). The methods applicable to this type of comparison are confidence intervals and tolerance intervals. As in Section 5, flowcharts, procedures, and examples explain the calculations necessary for each testing method.

Section 7 presents the case where the level of each constituent within a single, uncontaminated well is being compared to its historic background concentrations. This is known as an intra-well comparison. In essence, the data for each constituent in each well are plotted on a time scale and inspected for obvious features such as trends or sudden changes in concentration levels. The method suggested in this section is a combined Shewhart-CUSUM control chart.

Section 8 contains a variety of special topics that are relatively short and self contained. These topics include methods to deal with data that are below the limit of analytical detection and methods to test for outliers or extreme values in the data.

Finally, the guidance presents appendices that cover general statistical considerations, a glossary of statistical terms, statistical tables, and a listing of references. These appendices provide necessary and ancillary information to aid the user in evaluating ground-water monitoring data.

Dated: August 29, 1989.

Jonathan Z. Cannon,

Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

[FR Doc. 89–21267 Filed 9–8–89; 8:45 am]

BILLING CODE 6560-50-M

[FRL–3645–1]

Science Advisory Board, Environmental Engineering Committee; Open Meeting

Under the Public Law 92–463, notice is hereby given that the Science Advisory Board's Products Incomplete Combustion Subcommittee will meet September 15, 1989 from 2–5 pm Eastern Time and possibly September 22, 1989 from 12–2 pm Eastern Time by teleconference. The purpose of the meeting is to discuss proposed changes to the Subcommittee's final report, including those based on the June 20, 1989 report "THC Monitor Survey". The teleconference is open to the public, however the teleconference bridge is limited in size and requests for tie-in to the conference call will be honored in the order in which they are received.

Any member of the public wishing to hear the conference call should contact Kathleen Conway, Deputy Director, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 at 202/382–2552 no later than noon the day of the teleconference.

This emergency notice is requested because the decision to have such a conference call was made on August 29 and times suitable to the Subcommittee were not identified until September 1. The meetings must be held in September if the report is to be approved at the October Executive Committee meeting.

Dated: September 5, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89–21407 Filed 9–8–89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3642-5]

Proposed Settlement; City of Youngstown/Republic Hose Mfg. Co.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), notice is hereby given of a proposed Settlement Under section 122(h) concerning the Republic Hose Site at 1650 Albert Street in Youngstown, Ohio. The proposed settlement requires Youngstown and Republic Hose to pay $300,000 of the approximately $450,000 of costs incurred by U.S. EPA in performing an Immediate Removal Action at the Site. The proposed settlement would resolve the cost recovery case related to response actions taken by U.S. EPA at the Site.

DATE: Comments must be provided on or before October 11, 1989.

ADDRESS: Comments should be addressed to the U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604, and should refer to: In the Matter of: City of Youngstown/Republic Hose Mfg. Co.

FOR FURTHER INFORMATION CONTACT: Peggy Q. Andrews, U.S. EPA, Office of Regional Counsel, 5CS–TUB–3, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6827.

Notice of section 122(h) Cost Recovery Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (CERCLA), notice is hereby given that on May 19, 1989, a proposed administrative settlement was agreed to by the City of Youngstown, Ohio ("Youngstown") and Republic Hose Manufacturing Company ("Republic Hose"). The proposed settlement requires Youngstown and Republic Hose to pay $300,000 of the approximately $450,000 of costs incurred by U.S. EPA in performing an Immediate Removal Action at the Republic Hose Site located at 1650 Albert Street in Youngstown, Ohio.

U.S. EPA is entering into this agreement under the authority of sections 122(h) and 107 of CERCLA. Section 122(h) authorizes administrative settlement of a claim under section 107 where total response costs incurred by the United States for the facility concerned do not exceed $500,000 (excluding interest). Accordingly, in June of 1988, a decision was made by U.S. EPA and the Department of Justice that a complaint would not be filed in this case. On July 25, 1988, U.S. EPA and the Department of Justice determined this case to be one suitable for alternative dispute resolution ("ADR"), and on January 17, 1989, an ADR agreement was entered into between U.S. EPA and Youngstown. The mediation continued until May 19, 1989, at which time a 122(h) Consent Agreement was signed by Youngstown and Republic Hose. Under the terms of the Consent Agreement, Republic Hose will pay $5,000 within 30 days of the effective date of the Consent Agreement, and Youngstown will pay a total of two hundred and ninety five thousand ($295,000) in three installments over three years following the entering of the Consent Agreement.

The Environmental Protection Agency will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed settlement agreement.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Additional background information relating to the settlement is available for review at this address.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Dated: August 15, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–21266 Filed 9–8–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

[Notice 1989–16]

Filing Dates for Texas Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Texas special election.

SUMMARY: Texas has scheduled a special election on November 7, 1989, in the 18th Congressional District to fill the seat that was held by the late Representative Mickey Leland.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street NW., Washington, DC 20463, Telephone: (202) 376–3120; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Principal campaign committees of candidates who participate in the Texas Special Election must file reports according to the schedule in the following charts. Party committees and PACs that make contributions or expenditures in connection with the Special Election during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not file Special Pre- and Post-Election reports.

In the event that no candidate receives a majority of the vote in the Special Election, a second Special Election will be called within 5 days after the official election results are declared. If a second Special Election is necessary, filing dates for the appropriate reports will be established.

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTION 18TH CONGRESSIONAL DISTRICT

Report	Period Covered [1]	Reg./Cert. Mailing Date [2]	Filing Date
All committees involved in the 11/7/89 election must file:			
Pre-Special	07/01/89–10/18/89	10/23/89	10/26/89
Situation 1: If one candidate receives a majority of votes, all committees must file:			
Post-Special	10/19/89–11/27/89	12/07/89	12/07/89
Year-End	11/28/89–12/31/89	01/31/90	01/31/90

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTION 18TH CONGRESSIONAL DISTRICT—Continued

Report	Period Covered [1]	Reg./Cert. Mailing Date [2]	Filing Date
Situation 2: If no candidate receives a majority of the votes a run-off election will be scheduled. Committees that participate in the special run-off election will be notified of their filing requirements in a separate notice.			

[1] The period begins with the close of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

Dated: September 5, 1989.

Danny L. McDonald,

Chairman.

[FR Doc. 89–21212 Filed 9–8–89; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–826–DR]

Amendment To Notice of a Major Disaster Declaration; Alaska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–826–DR), dated May 10, 1989, and related determinations.

DATES: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice

The notice of a major disaster for the State of Alaska, dated May 10, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 10, 1989:

The communities of Seldovia, St. George, and Sleetmute for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89–21265 Filed 9–8–89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200255–001.

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles, California Stevedore and Ballast Co.

Filing Party: Mr. Raymond P. Bender, Assistant City Attorney, City of Los Angeles, Habor Division, 425 S. Palos Verdes St., P.O. Box 151, San Palos, CA 90733–0151.

Synopis: The Agreement reduces the assigned premises from 30 acres to 22.6 acres and reduces the monthly minimum guarantee from $160,000 to $121,600. The Agreement also provides for the monthly revenue sharing of wharfage, dockage, storage and demurrage. The Agreement provides for the City's right to terminate the assignment under certain conditions.

By Order of the Federal Maritime Commission.

Dated: September 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–21274 Filed 9–8–89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 40 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200262.

Title: Maryland Port Authority Terminal Agreement.

Parties: Maryland Port Authority, Polish Ocean Lines, Inc. (POL).

Synopsis: The Agreement provides POL with the lease of 15 acres at the Dundalk Marine Terminal for a term of four years. POL agrees to move at least 12,000 loaded containers through the terminal in each lease year at certain discounted base rates. The rate charges per loaded container cover all charges to POL for land rental, dockage and container wharfage. Separate charges for crane rental, ro/ro cargo, steel and non-containerized cargo are specified in the Agreement.

Agreement No.: 224–200283.

Title: Port of Tampa Terminal Agreement.

Parties: Tampa Bay International Terminals, Inc. (TBIT), Garrison Stevedoring, Inc. (Garrison).

Synopsis: The Agreement provides that Garrison will perform, for the benefit of TBIT, all marine terminal and stevedoring services at the Port of Tampa, including management and supervision of all personnel necessary for the day-to-day operational services. Garrison shall act as an independent contractor in performing its obligations and duties under this Agreement but it

shall not obligate TBIT in any manner without prior consent of TBIT. Compensation and reimbursement for services rendered shall be as specified in the Agreement.

By Order of the Federal Maritime Commission.

Dated: September 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–21275 Filed 9–8–89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; La Mar Line Corp.

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

La Mar Line Corporation
  7984 NW. 14th St., Miami, FL 33126
  Officers: Ulises Perez, President/Director/Stockholder; Maria Antonia Perez, Director; Nelson Suarez, Vice President/Director/Stockholder; Antonio Elortegui, Secretary/Stockholder
Fond Express Inc.
  10420 LaCienega Blvd., Inglewood, CA 90304
  Officers: Ernest So, President; Winnie So, Secretary
Ecuamerica International Transport
  6203 Johns Road, Suite 4, Tampa, FL 33634
  Officers: Michael De La Llana, President; Susana E. De La Llana, Vice President
Fast Cargo U.S., Inc.
  168–01 Rockaway Blvd., Jamaica, New York 11434
  Officers: Jannette Taylor, President; Steven Farella, Gen. Manager
Super Trans Plus, Inc.
  746 S. Glasgow Ave. 2/FL, Inglewood, CA 90301
  Officers: David Lee, Stockholder; Bob Jan, President; Frank Chiang, Secretary; Judy Wei, Financial Officer
Ransar International, Inc.
  1034 Jericho Turnpike, Smithtown, New York 11787
  Officers: Fortunato C. Rana, President; Rosalina Sarigumba, Vice President
Zen Continental Company, Inc.
  337 E. San Antonio Drive, Suite 110, Long Beach, CA 90807
  Officer: Henry Chen, Chief Executive Officer
Christopher Chee Y Neo dba Crown International Forwarders
  209 Manana Drive, Grand Prairie, TX 75050
  Officer: Christopher Chee Y Neo, Sole Proprietor
Zuazu International, Inc.
  476 Broadway, 5th FL, New York, NY 10013
  Officers: Vincente Urrutia Nadal, President; Juan Granena Ciurana, Executive Vice President; Joaguin Puevo Giminez, Vice President
Simtex Ocean Service, Inc.
  559 Saginaw St., Calumet City, IL 60409
  Officer: Luella Hunter, President
Integrated Traffic Systems, Inc.
  One Pierce Place, Suite 135C, Itasca, IL 60143
  Officers: Clayton W. Dabbert, President; Christine Hedge, Vice President/Secretary; Dale T. Gomez, Chairman of Board (C.E.O.)
Morex Shipping Corporation
  400 S. Points Drive, Suite 409, Miami, FL 33139
  Officer: Ramon S. Moro, President

By the Federal Maritime Commission.

Dated: September 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–21273 Filed 9–8–89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder Licenses; Reissuance of Licenses; SCAC (Texas) Inc.

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address	Date reissued
2556	SCAC (Texas) Inc., P.O. Box 60953 AMF, 15734 Lee Road, Houston, TX 77205.	Aug. 17, 1989.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 89–21272 Filed 9–8–89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 5, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR § 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following reports, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received by September 21, 1989.

ADDRESS: Comments, which should refer to the OMB Docket number, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m. except as provided in § 261(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files upon approval may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—

Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report title:* Consolidated Financial Statements for Bank Holding Companies; Parent Company Only Financial Statements for Bank Holding Companies

Agencies form numbers: FR Y-9C, FR Y-9LP, FR Y-9SP.

OMB Docket number: 7100-0128.

Reporters: Bank holding companies.

Report	Number of respondents	Frequency	Average hours per response
FR Y-9C and Y-9LP:			
For bank holding companies with total consolidated assets of $150 million or more	935	Quarterly	25.25
For bank holding companies with consolidated assets of less than $150 million but which have more than one subsidiary bank.	449	Quarterly	14.25
FR Y-9SP	4,501	Semiannually	3

No significant effect on small businesses is affected.

General description of report: These reports are required by law [12 U.S.C. 1844(b) and (c)] and are not given confidential treatment.

These reports are the source of information for the Federal Reserve's surveillance function in its ongoing monitoring of the financial condition of bank holding companies.

2. *Report title:* Combined Financial Statement of Nonbank Subsidiaries of Bank Holding Companies; Annual Supplement to the Combined Financial Statement of Nonbank Subsidiaries of Bank Holding Companies.

Agency form number: FR Y-11Q, FR Y-11AS.

OMB Docket number: 7100-0244.

Reporters: Bank holding companies.

Annual reporting hours: 4,380.

Report	Number of respondents	Frequency	Average hours per response
FR Y-11Q	292	Quarterly	2.5
FR Y-11AS	292	Annually	5.0

No significant effect on small businesses is expected.

General description of report: These reports are required by law [12 U.S.C. § 1844(c)] and are not given confidential treatment.

As part of the Federal Reserve System's surveillance function, these reports collect financial data on combined nonbank subsidiaries of bank holding companies with total consolidated assets of $1 billion or more, and on bank holding companies with total consolidated assets of at least $150 million but less than $1 billion and that have material nonbanking activities.

Proposal to approve under OMB delegated authority the implementation of the following report:

Report title: Report of Medium-Term Note Issuance.

Agency form number: FR 2800.

OMB Docket number: 7100-0245.

Freqency: Monthly or quarterly or semiannually.

Reporters: U.S. corporations.

Annual reporting hours: 49.

Estimated average hours per response: 0.083.

Number of respondents: 182.

Small businesses are not affected.

General description of report: This information collection is voluntary [12 U.S.C. 225a and 353] and is given confidential treatment [5 U.S.C. 552(b)(4)].

The report will collect monthly balances of corporate medium-term note issues. Medium-term notes are interest-bearing noncallable corporate obligations with a maturity greater than 270 days but generally less than 10 years. The data will be used to improve the estimates of corporate securities issues issued and outstanding.

Board of Governors of the Federal Reserve System, September 5, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-21252 Filed 9-8-89; 8:45 am]

BILLING CODE 6210-01-M

A.B.N. Stichting; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR § 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *A.B.N. Stichting*, Amsterdam, The Netherlands, and Algemene Bank Nederland N.V., Amsterdam, The Netherlands; to engage *de novo* through its subsidiary, ABN Capital Markets Corporation, New York, New York, in (i) providing advice in conduction with merger, acquisition/divestiture and financial transactions f/r nonaffiliated financial and nonfinancial institutions; (ii) providing fairness opinions in connection with merger, acquisition and similar transactions for nonaffiliated financial and nonfinancial institutions; (iii) providing advice regarding the structuring of and arranging for loan syndications, interest rate "swap", interest rate "cap" and similar transactions; (iv) providing valuations of nonaffiliated financial and nonfinancial institutions. The Board has previously determined by Order that the above activities are permissible nonbanking activities under section 4(c)(8) of the Bank Holding Company Act; (v) offering combined investment advice and securities brokerage services, as previously approved by the Board, to retail and institutional customers; (vi) engaging in investment advisory activities and securities brokerage activities on a separate basis pursuant to §§ 225.25(b)(4) and 225.25(b)(15), respectively, and (vii) underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16) of the Board's Regulation Y. These activities will be conducted in the United States and abroad.

Board of Governors of the Federal Reserve System, September 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21253 Filed 9-8-89; 8:45 am]

BILLING CODE 6210-01-M

Guaranty Bancshares Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 29, 1989.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Guaranty Bancshares Corporation*, Shamokin, Pennsylvania; to acquire 80 percent of the voting shares of Guaranty Bank of Princeton (in organization), Princeton, New Jersey.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Home Credit Corporation*, Salt Lake City, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Home Credit Bank, Salt Lake City, Utah, a *de novo* bank which will assume the assets and liabilities of Home Credit Financial, Salt Lake City, Utah, a Utah industrial loan corporation currently controlled by Home Credit Corporation.

Board of Governors of the Federal Reserve System, September 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21254 Filed 9-8-89; 8:45 am]

BILLING CODE 6210-01-M

Dan R. Moore; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 25, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dan R. Moore*, Matewan, West Virginia, and James H. Harless, Gilbert, West Virginia; to acquire over 25 percent of the voting shares of Matewan BancShares, Inc., Matewan, West Virginia, and thereby indirectly acquire The Matewan National Bank, Matewan, West Virginia.

Board of Governors of the Federal Reserve System, September 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21255 Filed 9-8-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2045]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street

Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 5, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Recertification of family income and composition.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Homeowners will submit these forms to the mortgagees to determine their continued eligibility for assistance and the amount of assistance the homeowner will receive. Mortgagees will use the form to report statistical and general program data to the Department.

Form Number: HUD–93101 and 93101–A.

Respondents: Individuals or households, and businesses or other for-profit.

Frequency of Submission: On occasion, monthly, and annually.

Reporting Burden:

	Number of respondents	x ⅛	Frequency of response	x	Hours per response	=	Burden hours
HUD–93101	150,000		1.25		1.00		187,500
HUD–93101–A	962		12		.17		1,962

Total Estimated Burden Hours: 189,462.

Status: Extension.

Contact: Florence Brooks, HUD, (202) 755–7330 and John Allison, OMB, (202) 395–6880.

Dated: September 5, 1989.

[FR Doc. 89–21295 Filed 9–8–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–2047]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for a review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 5, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Performance Funding System: Formal Review Process, Energy Conservation Savings, Audit Responsibilities, Definition of Responsible Insurance Company (FR–2504)

Office: Public and Indian Housing

Description of the need for the information and its proposed use: Public Housing Authorities (PHAs) and Indian Housing Authorities (IHAs) must submit documentation for approval of a nonprofit insurance entity created by PHAs/IHAs. They may apply for increased operating subsidy payments due to: (1) sharing of energy rate reductions, (2) non-HUD financing of energy conservation, (3) revision of allowable expense levels, or (4) units lost through combining of units into larger units.

Form Number: None

Respondents: State or Local Governments

Frequency of Submission: Annually

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Section							
965.105(e)(1)	8		1		5		40
990.107(c)(4) and (g), 990.110(f)	200		1		8		1,600
990.110(c)(1)(i) and 990.110(c)(4)	100		1		2		200
990.110(e)(3)	720		1		4		2,880
990.105(c)(5)(ii)(b)	2,500		1		1		2,500
990.108(e)	15		1		1		15
Recordkeeping Burden							
990.107(c)(4) and (g), 990.110(f)	200		1		2		400

Total Estimated Burden Hours: 7,235

Status: New

Contact: Theodore R. Daniels, HUD, (202) 755–8145, John Allison, OMB, (202) 395–6880

Dated: September 5, 1989.

[FR Doc. 89–21296 Filed 9–8–89; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–09–4630–10–H603]

Montana; Area Closure, Headwaters Resource Area; Butte District, MT

AGENCY: Bureau of Land Management, Butte District Office.

ACTION: Emergency area closure on public lands.

SUMMARY: Notice is hereby given that effective immediately all public lands in the Limestone Hills Area, west of the River Road in Sections 1, 2, 11, 12, 13, 14, and 23, T. 6, N., R. 1 E., and Section 35, T. 7 N., R. 1 E., P.M.M. are closed to all motorized vehicle uses. This area is located about 1 mile north of Townsend, Montana. The purpose of this closure is to allow for the rehabilitation of the area burned by the Indian Creek Fire and to prevent the spread of noxious weeds.

Authority for this closure is 43 CFR 8341.2. The closure will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Gary Leppart, Headwaters Resource Area Manager, P.O. Box 3388, Butte, MT 59702.

Dated: August 31, 1989.

Orval L. Hadley,

Acting District Manager.

[FR Doc. 89–21257 Filed 9–8–89; 8:45 am]

BILLING CODE 4310–DN–M

[MT–070–09–4050–91; Designation Order MT–075–8901]

Montana; Off-Road Vehicle Designation, Headwaters Resource Area, Butte District, MT

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Off-road Vehicle Designation Decision.

SUMMARY: Final notice (supersedes FR Notice of October 28, 1988, Page 43775) is hereby given that effective immediately all public lands in the Jimmys Gulch area (1,524 acres), north of Confederate Gulch Road in Sections 26, 27, and 35, T. 10 N., R. 2 E., and Sections 3, 4, and 9, T. 9 N., R. 2 E., P.M.M. are permanently closed to all yearlong motorized vehicle uses with the exception that a yearlong open route will be established on a portion of the Jimmys Gulch Road pending an easement acquisition. The area is located about 20 miles north of Townsend, Montana. The purpose of this closure is to reduce further soil erosion, inhibit the spread of noxious weeds, enhance elk security, minimize visitor safety risks, provide equitable public access, and reduce user conflicts.

A public meeting and comment period were provided and all responses received were considered prior to making this designation.

This decision is consistent with the Headwaters Resource Management Plan and is authorized in 43 CFR 8342. This designation will remain in effect until rescinded or modified by the authorized official. An appeal of this decision may be filed within 30 days of this notice with the Interior Board of Land Appeals.

FOR FURTHER INFORMATION CONTACT: Gary Leppart, Headwaters Resource Area Manager, P.O. Box 3388, Butte, MT 59702.

Dated: August 31, 1989.

Orval L. Hadley,

Acting District Manager.

[FR Doc. 89–21258 Filed 9–8–89; 8:45 am]

BILLING CODE 4310–DN–M

[CA–065–09–3110–10–DTHA]

Realty Action; Exchange; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of public and private lands in Kern County, CA 23833, CA 23836, CA 24307, CA 24454.

SUMMARY: The following public lands in Kern County have been examined and determined suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

CA 23833, Selected public lands:

San Bernadino Meridian, California

T. 11 N., R. 10 W.,
  Sec. 8, S½SE¼

Containing 80 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Sigmund and Elizabeth Lichter.

CA 23833 offered lands:

Mount Diablo Meridian, California

T. 31 S., R. 38 E.,
  Sec. 31, Parcel 1 of Parcel Map 2187, in the City of California City, County of Kern, State of California, as filed June 14, 1974 in Book 10, Page 108 of Parcel Maps, in the Kern County Recorder's Office, and Parcel 4 of Parcel Map 2200, in the City of California City, County of Kern, State of California, as filed in Book 10, Page 110 of Parcel Maps, in the Kern County Recorder's Office. Containing 81.65 acres of non-federal lands, more or less.

CA 23836, Selected public lands:

San Bernadino Meridian, California

T. 11 N., R. 10 W.,
  Sec. 8, W½SW¼.

Containing 80 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Marc Batz.

CA 23836, offered lands:

Mount Diablo Meridian, California

T. 31 S., R. 38 E.,
  Sec. 31, Parcel 2 of Parcel Map 2187, in the City of California City, County of Kern,

State of California, as filed June 14, 1974 in Book 10 Page 108 of Parcel Maps, in the Kern County Recorder's Office, Parcel 2 of Parcel Map 2200, in the City of California City, County of Kern, as filed June 14, 1974 in Book 10 Page 110 of Parcel Maps, in the Kern County Recorder's Office. Containing 81.87 acres of non-federal lands, more or less.

CA 24307, Selected public lands:

San Bernadino Merdian, California

T. 11 N., R. 10 W.,
Sec. 8, S½N½SE¼.

Containing 40 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Wojtek Jaskiewicz.

CA 24307, offered lands:

Mount Diablo Meridian, California

T. 31S., R. 38E.,
Sec. 31, Parcel 1 of Parcel Map 2199, in the City of California City, County of Kern, State of California, as filed June 14, 1974 in Book 10 Page 109 of Parcel Maps, in the Kern County Recorder's Office.

Containing 38.87 acres of non-federal lands, more or less.

CA 24454, Selected public lands:

San Bernadino Meridian, California

T. 11N., R. 10 W.,
Sec. 8, N½NE¼SE¼,NE¼NW¼SE¼.

Containing 30 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Jim and Gale McMahon.

CA 24454, offered lands:

Mount Diablo Meridian, California

T. 31 S., R 38 E.,
Sec. 31, Parcels 1, 2 and 4 of Parcel Map 3403, in the City of California City, County of Kern, State of California, as filed June 22, 1976, in Book 16, Page 55 of Parcel Maps, in the Kern County Recorder's Office.

Containing 30.36 acres of non-federal lands, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchanges is to acquire non-federal lands within the designated Desert Tortoise Research Natural Area. The designated area encompasses lands which have historically supported the highest and most stable population of tortoise within its range.

This Notice is issued to provide supplementary information to Notice of Realty Action CA 23082, published in Volume 54, Number 4, of the **Federal Register**, January 6, 1989. The segregative effect will end upon issuance of patent or two years from the date of first publication, whichever occurs first.

The values of the lands to be exchanged are approximately equal; equalization of values required by law will be achieved by acreage adjustments or by cash payments in amounts not to exceed 25 percent of the fair market value of the selected lands.

Lands transferred out of federal ownership will be subject to the following reservations, terms and conditions:

1. Reservations to the United States: (a). Right of way for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. Subject to: (a). Restrictions that may be imposed by Kern County in accordance with floodplain regulations established under Kern County Ordinance G–4707, adopted on March 15, 1988. (Applies to 100-year flood zones shown on Federal Insurance Rate Map 060075 1625B as affecting the selected public lands in exchange CA 23836), (b). Public easements in favor of Kern County for road and utility purposes, (c). Such rights as I & M Sheep Company has to graze the land until July 31, 1991, in accordance with section 15 Taylor Grazing Act lease No. 6550.

Private lands to be acquired by the United States will be subject to easements and mineral reservations noted in the preliminary title reports.

The exchanges are scheduled to be completed in February of 1990.

FOR FURTHER INFORMATION CONTACT: Tom Gey, Ridgecrest Resource Area (619) 375–7125. Information relating to these exchanges is available for review at the Ridgecrest Resource Area Office, 112 East Dolphin Street, Ridgecrest, California 93555.

DATES: On or before October 26, 1989, interested parties may submit comments to the District Manager, California Desert District Office, 1695 Spruce Street, Riverside, California 92507. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: August 17, 1989.

H.W. Riecken,

Acting, District Manager.

[FR Doc. 89–21292 Filed 9–8–89; 8:45 am]

BILLING CODE 4310-40-M

National Park Service

Chattahoochee River National Recreation Area Advisory Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Advisory Commission Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Chattahoochee River National Recreation Area Advisory Commission will be held at 2:00 p.m. at the following location and date.

DATE: October 4, 1989.

ADDRESS: The Chattahoochee River National Recreation Area, Headquarters Building, at the Island Ford Unit in North Fulton County.

FOR FURTHER INFORMATION CONTACT: Warren D. Beach, Superintendent, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Dunwoody, Georgia 30350. Telephone (404) 394–7912.

SUPPLEMENTARY INFORMATION: The purpose of the Chattahoochee River National Recreation Area Advisory Commission is to consult and advise the Secretary of the Interior regarding the management and operation of the area, protection of resources within the area, and the priority of land to be required within the area. The members of the Advisory Commission are as follows:

Mr. J. Neal Shepard, Jr.
Mr. Robert A. Meadows
Mrs. Joy Bauer
Mr. Benjamin H. West
Mr. Howard D. Zeller
Mr. Larry B. Thompson
Mrs. Lillian Webb
Mr. David O. Eldridge
Mr. Robert Kerr
Mr. H. Edwin Schultz
Ms. Evelyn H. Hopkins
Mr. Michael Bennett
Mr. James O. Watson, Jr.

The meeting will be a forum to share information on the Chattahoochee River National Recreation Area and discuss current issues.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: September 1, 1989.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 89–21299 Filed 9–8–89; 8:45 am]

BILLING CODE 4310-70-M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:00 p.m., on October 11, 1989, at the University of New Orleans Student Center, New Orleans, Louisiana.

The Delta Region Preservation Commission was established pursuant to section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Environmental Education Center
—Water Management Plan
—General Management Plan Revisions
—1990 Budget
—Old Business
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact M. Ann Belkov, Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, Room 210, New Orleans, Louisiana 70130–2341, telephone 504/589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: August 30, 1989.

Richard D. Marks,

Acting Regional Director, Southwest Region.

[FR Doc. 89–21300 Filed 9–8–89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT CORPORATION AGENCY

Agency for International Development

Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on Tuesday and Wednesday September 19–20, 1989. The topic to be discussed is "The Shifting Level and Composition of Public and Private Resources for International Development Activities."

Date: September 19–20, 1989.

Time: Tuesday, September 19, 1:30 p.m.—6:00 p.m., Wednesday, September 20, 9:00 a.m.–1:00 p.m.

Place: The National Press Club, 14th and F Streets, NW., Washington, DC 20045.

The meeting is free and open to the public. However, notification by September 14 through the advisory committee headquarters is required.

Persons wishing to attend the meeting must call Melissa Nuwaysir, (703) 875–4407, or write, not later than September 14 to: The Advisory Committee on Voluntary Foreign Aid, Room 310, SA–8, Agency International Development, Washington, DC 20523–0808.

Dated: August 31, 1989.

Sally H. Montgomery,

Deputy Assistant Administrator, Private and Voluntary Cooperation Food for Peace and Voluntary Assistance.

[FR Doc. 89–21297 Filed 9–8–89; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31471]

Farley Inc.; Control Exemption; Chattahoochee Valley Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission, under 49 U.S.C. 10505, exempts Farly Inc. from the requirements of 49 U.S.C. 11343, *et seq.*, to control indirectly the Chattahoochee Valley Railway Company, subject to standard labor protective conditions.

DATES: This exemption is effective on September 21, 1989. Petitions for reconsideration must be filed by October 6, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31471 to:

Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31471, Interstate Commerce Commission, Washington, DC 20423

Michael F. Morrone, Keller and Heckman, 1150 17th Street, NW., Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

[TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4347/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: September 5, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary

[FR Doc. 89–21264 Filed 9–8–89; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 3112, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC, on October 12, 1989, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made that the subject of the meeting falls within the exceptions to exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: September 5, 1989.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 89-21209 Filed 9-8-89; 8:45 am]

BILLING CODE 4810-25-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Bankruptcy Rules, Meeting

AGENCY: Advisory Committee on Bankruptcy Rules, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules to complete work on the Official Forms, which includes revision and renumbering. Rule 9009 of the Bankruptcy Rules provides that the Official Forms be promulgated by the Judicial Conference of the United States. The meeting will be open to public observation.

DATE: The meetiong will be held on October 18, 1989, beginning at 9:00 a.m.

ADDRESS: The meeting will be held at the Administrative Office of the United States Courts, 811 Vermont Avenue NW., Conference Room 638, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Commitee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone: (202) 633-6021.

Dated: August 29, 1989.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 89-21220 Filed 9-8-89; 8:45 am]

BILLING CODE 2210-01-M

Committee on Criminal Rules; Meeting

AGENCY: Advisory Committee on the Federal Rules of Criminal Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Judicial Conference Committee on Criminal Rules to consider proposed amendments to the Federal Rules of Criminal Procedure under the provisions of Chapter 131 of Title 28, United States Code. The meeting will be open to public observation.

DATE: The meeting will be held on November 16 and 17, 1989, beginning at 9:00 a.m.

ADDRESS: The meeting will be held at the Administrative Office of the United States Courts, 811 Vermont Avenue NW., Conference Room 638, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Commitee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone: (202) 633-6021.

Dated: September 28, 1989.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 89-21221 Filed 9-8-89; 8:45 am]

BILLING CODE 2210-01-M

Advisory Committee on Civil Rules, Meeting

AGENCY: Advisory Committee on the Federal Rules of Civil Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a three-day meeting of the Judicial Conference Advisory Committee on Civil Rules to consider proposed amendments to the Federal Rules of Civil Procedure pursuant to Chapter 131 of Title 28, United States Code. The meeting will be open to public observation.

DATE: The meeting will be held on November 16, 17 and 18, 1989, beginning at 9:00 a.m.

ADDRESS: The meeting will be held in the Clark Room at the Federal Judicial Center, Dolley Madison House, 1520 H Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone: (202) 633-6021.

Dated: September 28, 1989.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 89-21222 Filed 9-8-89; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; American Iron and Steel Institute Direct Steelmaking Project and Steel Technology Corp.

Notice is hereby given that, on August 21, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), American Iron and Steel Institute ("AISI") and Steel Technology Corporation filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled: "AISI Direct Steelmaking Project." The notification discloses (1) the identities of the parties to the project and to Steel Technology Corporation and (2) the nature and objectives of the project and of Steel Technology Corporation. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the project and to Steel Technology Corporation and their general areas of planned activities are given below.

The parties to the project are Department of Energy, American Iron and Steel Institute (AISI), Steel Technology Corporation, and the following member companies of AISI: Acme Steel Company; Armco Inc.; Atlantic Steel Company; Avesta Stainless Inc.; Berg Steel Pipe Corporation; Bethlehem Steel Corporation; California Steel Industries, Inc.; Citisteel USA, Inc.; Cleveland-Cliffs Inc.; Copperweld Corporation; A. Finkl & Sons Co.; Geneva Steel Company; Georgetown Industries, Inc.; Gulf States Steel, Inc.; M.A. Hanna Company; Harsco Corporation; Hi Specialty America; Inland Steel Industries, Inc.; Earle M. Jorgensen Company; Laclede Steel Company; Lone Star Steel Group, Lone Star Technologies, Inc.; LTV Steel, Inc.; Lukens Inc.; McLouth Steel Products Corporation; National Steel Corporation; North Star Steel Company; Ocean State Steel, Inc.; Oglebay Norton Company; Raritan River Steel Company; Rouge Steel Company; Sandvik Inc.; Sharon Tube Company; Shenango Incorporated; Stony Creek Steel, Inc.; The Timken Company; USS, a Division of USX Corporation; Valley-Vulcan Mold Company; Warren Consolidated Industries, Inc.; Weirton Steel Corporation; Wheatland Tube Company; Wheeling-Pittsburgh Steel Corporation.

The purpose of the project is to develop a coal-based continuous in-bath smelting process for the direct and energy-efficient production of liquid steel. The project will consist of laboratory studies, pilot-scale research and development and full-scale plant trials at existing steelmaking facilities. At the conclusion of the experimental work, an analysis will be made of the feasibility of commercializing a coal-based, continuous direct steelmaking process in the United States. The project will be conducted under the auspices of the Department of Energy's Steel Initiative Program.

In conjunction with the Direct Steelmaking Project and as required by the Steel Initiative Program, AISI and its members have established a holding company, Steel Technology Corporation, for the purpose of holding title to, protecting, licensing and administering intellectual property developed under the Direct Steelmaking Project. Steel Technology Corporation will conduct, on behalf of the participants in the project, such activities as patenting, licensing, accounting, recordkeeping, and funds distributing relating to inventions arising out of the project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-21259 Filed 9-8-89; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on August 16, 1989, disclosing that there has been a change in the membership of PCA. Specifically, Blue Circle West Inc. should now be listed as BCW Inc. Also, Cemtech, Inc. has become a participating associate effective July 15, 1989. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Accordingly, at present the members of the PCA are those companies listed below:

United States

Aetna Cement Corporation
Alamo Cement Company
Alaska Basic Industries
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Blue Circle Atlantic. Inc.
Blue Circle, Inc.
BCW Inc.
Calaveras Cement Company
CalMat Co.
Capitol Aggregates, Inc.
Continental Cement Company Inc.
Coplay Cement Company
Davenport Cement Company
Dragon Products Company
Dundee Cement Company
Glens Falls Cement Company, Inc.
Hawaiian Cement
Hercules Cement Company
Ideal Basic Industries, Inc.
Independent Cement Corporation
Lafarge Corporation
Lehigh Portland Cement Company
LoneStar-Falcon
Lone Star Industries, Inc.
Lone Star Northwest
Medusa Cement Corporation
Missouri Portland Cement Company
The Monarch Cement Company
National Cement Company, Inc.
National Cement Company of California, Inc.
Northwestern States Portland Cement Co.
Phoenix Cement Company
RC Cement Co., Inc.
Rinker Materials Corporation
River Cement Company
RMC Lonestar
Rochester Portland Cement Corporation
St. Marys Peerless Cement Company
St. Marys Wisconsin Inc.
Santee Portland Cement Corp.
Signal Mountain Cement Company
The South Dakota Cement Plant
Southwestern Portland Cement Company
Tarmac-LoneStar, Inc.
Tilbury Cement Company

Canada

Federal White Cement Ltd.
Ideal Cement Company Ltd.
Inland Cement Limited
Lafarge Canada Inc.
Lake Ontario Cement Limited
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Corporation
Tilbury Cement Limited

Mexico

Instituto Mexicano del Cemento y del Concreto (IMCYC)
Cementos Acapulco, S.A.
Cementos Apasco, S.A.
Cementos de Chihauahua, S.A.
Cementos Mexicanos, S.A.
Cementos Moctezuma, S.A.
Cooperative de Cementos Curz Azul
Cooperative de Cementos Hidalgo

Affiliate Members

Cement and Concrete Promotion Council of Texas
Florida Concrete and Products Association
Mississippi Concrete Industries Association
North Central Cement Promotion Association
Northern California Cement Promotion Group
Northwest Concrete Promotion Group
Rocky Mountain Cement Promotion Council
South Central Cement Promotion Association
Southern California Cement Group

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C–E Raymond
Cemtech, Inc.
Claudius Peters, Inc.
F. L. Smidth and Company
Holderbank Consulting Ltd.
Humboldt Wedag Company
Magotteaux-Slegten Companies
Polysius Corp.
The Fuller Company
W.R. Grace & Company

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1985, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, January 23, 1989, February 24, 1989, march 13, 1989, May 25, 1989, and July 20, 1989, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 26163), August 26, 1987 (52 FR 32165), November 17, 1986 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29397), September 15, 1988 (53 FR 35935), September 28, 1988 (53 FR 37883), February 23, 1989 (54 FR 7894), March 20, 1989 (54 FR 11455), April 25, 1989 (54 FR 17835), June 28, 1989 (54 FR 27220), and August 23, 1989 (54 FR 35092), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–21260 Filed 9–8–89; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Forecast Update of U.S. Transportation Fuel Quality; Southwest Research Institute

Notice is hereby given that, on August 15, 1989, pursuant to section 6(a) of the National Cooperative Research act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Forecast Update of U.S. Transportation Fuel Quality". The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the act, the identities of the parties to the project and its general areas of planned activities are given below:

The parties to the project are:

1. Burlington Northern Railroad Co. (effective April 1, 1989).
2. Texaco, Inc.(effective April 1, 1989).
3. Toyota Motor Corporation (effective April 1, 1989).
4. Euron S.p.A. (effective April 1, 1989).

The purpose of the project is to provide a forecast of future fuel quality (gasoline, diesel and jet fuel) that will be a useful planning tool in the automotive, fuels and transportation industries. The major tasks involve: (1) gathering new information from multiple sources that relates to fuel quality; (2) evaluating the new information and interpreting its potential effects on future fuel quality; (3) considering in-depth those factors which may result in changes to the previous forecast; and (4) reporting forecasts of fuel properties.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–21261 Filed 9–8–89; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Environmental Assessment and Finding of no Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Power Company (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2 and 3, located in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the provisions in the Technical Specifications (TS) to allow a one-time outage time of 10 days for inoperability of power circuit breaker (PCB) 9.

The proposed action is in accordance with the licensee's application for amendments dated June 9, 1989.

The Need for the Proposed Action

The proposed changes to the TS are required to allow replacement of PCB–9 with a breaker of higher fault current interruption capability.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revision would allow the licensee to replace PCB–9 which would require that the overhead emergency power path be inoperable for 10 days. Although the extension of the inoperable period may slightly increase the probability of accidents, the consequences of the accidents are within the bounds of those analyzed in the FES for operation. After the modification, the probability of accidents will be reduced due to increased reliability. Consequently, no changes are being made in the types of any effluents that may be released offsite and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed changes to the TS involve systems which are not located within the restricted area as defined in 10 CFR part 20. These changes do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 12, 1989 (54 FR 29405). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would prevent implementation of the modification which would provide increased reliability of the overhead emergency power path.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the Operation of Oconee Nuclear Station, Units 1, 2 and 3, dated March 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect this action, see the application for amendments dated June 9, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 1st day of Sept. 1989.

For the Nuclear Regulatory Commission.

Lawrence P. Crocker,

Acting Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21277 Filed 9–8–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; Issuance of Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–9 and NPF–17 issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

Environmental assessment

Identification of Proposed Action

A planned modification to the McGuire Nuclear Station will add new areas to the station for use in holding, processing and reduction of liquid and solid radwaste materials. As a result of the modification, a new Heating, Ventilation and Air Conditioning (HVAC) system will be added to provide ventilation services for the new area and some areas previously serviced by the Auxiliary Building Filtered Ventilation Exhaust (ABFVE) system. This will require a change to existing ABFVE system flowrates given in the Technical Specifications (TS) because the reduction in the area served by the ABFVE system will result in lower ABFVE system flowrates to the Unit 1 and 2 Vents. Presently, the flowrates listed in TS 4.7.7 are 54,000 CFM +/− 10% for Unit 1 and 43,000 CFM +/− 10% for Unit 2. Upon completion of the modification, these values will be reduced to 45,700 CFM +/− 10% for Unit 1 and 40,500 CFM +/− 10% for Unit 2,

The modification will also relocate an existing gaseous effluent release point, and relocate an existing radiation monitor (EMF 53). Relocating the release point requires a change to TS Figure 5.1–3 that identifies the location of the existing McGuire gaseous release points. A more legible copy of Figure 5.1–3 would also be substituted. Also, administrative changes to several TS tables are proposed to rename the "Contaminated Parts Warehouse Ventilation System" to the "Waste Handling Ventilation System."

The proposed amendments would change the McGuire TS consistent with the above planned modifications. The above proposed changes will affect TS 4.7.7, "Auxiliary Building Filtered Ventilation Exhaust System—Surveillance Reqirements;" Table 3.3–13 (Item 8), "Radioactive Gaseous Effluent Monitoring Instrumentation—Contaminated Parts Warehouse Ventilation System;" Table 4.3–9 (Item 8), "Radioactive Gaseous Effluent Monitoring Instrumentation Surveillance Requirements—Contaminated Parts Warehouse Ventilation System;" Table 4.11–2 (Item 4b), "Radioactive Gaseous Waste Sampling and Analysis Program—Contaminated Parts Warehouse;" and Figure 5.1–3, "Site Boundary for Gaseous Effluents."

The Need for the Proposed Action

The changes to the TS are needed to reflect station modifications to improve the handling and processing of radioactive waste and to provide improved housing and ventilation systems for waste handling and processing areas.

Environmental Impacts of the Proposed Action

A proposed modification to the facility will achieve further improvements in the processing, storage and reduction of solid and liquid contaminated materials to be disposed of as low-level radioactive waste and in the decontamination of reusable materials. A new high-density waste shredder and compactor will reduce solid radwaste disposable volume and associated requirements for temporary holding area space. A new laundry dry cleaning system using a re-usable dry cleaning solvent will reduce waste water by replacing the existing laundry decontamination facility that uses conventional water wash machines. New decontamination equipment will replace existing equipment that uses aggressive cleaning chemicals that are not compatible with materials of construction or with the process media in the radwaste system. The new decontamination equipment will also be more effective in the removal of oil, grease, paint and adhesive residues from surfaces; and unlike existing equipment, can be used to decontaminate electrical equipment.

The equipment will be housed in a new addition to the north end of the Auxiliary Service Building. This new addition will also provide space for temporary radwaste storage, handling and shipping; and will provide additional space for health physics offices and the chemistry laboratory. The existing Waste Storage Building is being modified to be an enclosed structure adjoining the Auxiliary Service Building, with direct access provided between the two.

Enclosing the Waste Storage Building provides for the addition of an HVAC system to service the radwaste areas and new building areas. This will ensure that potential airborne contamination in these areas will be collected, monitored, filtered and exhausted 68 feet above grade level. The new release point is through a vent stack located 60 feet from the existing location. The new stack provides for improved atmospheric disperson of the gaseous effluent because it is higher than the existing release point and is more favorably located with respect to nearby structures. Existing radiation monitor EMF 53 will be relocated to monitor all exhaust gases for the new release point and will continue to terminate releases automatically if significant radiation levels are sensed. Since the new HVAC system will service some areas presently serviced by the ABFVE, changes to the TS are needed to reflect reduced ABFVE system flowrates. TS changes are also needed to reflect the new elevated gaseous release point and changes in structure terminology.

The NRC has reviewed the proposed facility modification and finds no significant adverse environmental impact. Moreover, the proposed changes would represent significant improvements in environmental impacts associated with plant operation. Nonradiological environmental impacts would be improved by the new waste solidification equipment which eliminates the use of volatile chemicals for the waste solidification media and by new decontamination equipment no longer dependent upon aggressive cleaning chemicals. Radiological environmental impacts would be improved as noted above by reducing the disposable volume of solid and liquid radioactive waste and through improvements in the ventilation systems for associated buildings. The new ventilation systems and the existing ABFVE system with adjusted flowrate would provide a suitable environment for workers to maintain occupational radiological exposures within the limits of 10 CFR part 20 and would be consistent with maintaining occupational radiological exposure as low as is reasonably achievable. Moreover, the proposed modifications and TS changes would not result in a significant increase in individual or cumulative occupational exposure. The gaseous curie released to unrestricted areas and associated offsite doses during normal operation or after postulated accidents would not be increased by the proposed facility modifications or the associated TS changes. The modifications and TS changes also would not change the type of radioactivity released to unrestricted areas.

Accordingly, the Commission concludes that this proposed action would result in no significant adverse environmental impact.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would preclude improvements in the processing, storage and reduction of solid and liquid contaminated materials to be disposed of as low-level radioactive waste.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Relating to Operation of the William B. McGuire Nuclear Station, Units 1 and 2," dated April 1976 or its addendum dated January 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated May 11, 1989 and supplemental letter of June 14, 1989. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 31st day of August 1989.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89-21278 Filed 9-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-224]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Authorizing Dismantling of the Reactor and Disposition of Component Parts University of California, Berkeley

The Nuclear Regulatory Commission is considering issuance of an Order authorizing the University of California, Berkeley (UCB) to dismantle their TRIGA research reactor facility located on the licensee's campus in Berkeley, California and to dispose of the reactor components in accordance with the application dated January 8, 1988, as supplemented on January 31, 1989 and April 14, 1989.

Environmental Assessment

Identification of Proposed Action: By application dated January 6, 1988, as supplemented, UCB requested authorization to decontaminate and dismantle the TRIGA research reactor, to dispose of its components parts in accordance with the proposed dismantling plan, and to terminate Facility Operating License No. R-101. The UCB TRIGA was shutdown in December 1987, and has not operated since then. Following reactor shutdown the fuel was removed from the core and shipped as directed by the Department of Energy in accordance with DOE, NRC, and DOT requirements.

Opportunity for hearing was afforded by a "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" published in the **Federal Register** on March 10, 1988 (53 FR 7823).

The City of Berkeley filed a "Petition To Intervene in License Amendment Proceeding, Request For Hearings And Further Relief." The city and the licensee held discussion, arrived at a settlement agreement and filed a "Joint Motion For Dismissal Of Hearing Procedure" with the Atomic Safety and Licensing Board. The Board issued an Order on January 5, 1989 to dismiss the proceeding.

Need for Proposed Action: In order to prepare the facility for unrestricted access and use, the dismantling and decontamination activities proposed by UCB must be accomplished.

Environmental Impact of the Proposed Action: All decontamination will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The staff has calculated that the collective dose equivalent to the staff and public for the project will be less than 8 person-rem.

These conclusions were based on the fact that all proposed operations are carefully planned and controlled, all contaminated components are removed, packaged, and shipped offsite, and that the radiological control procedures ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR part 20 and are as low as reasonably achievable (ALARA).

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the UCB facility, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area.

Alternative Use of Resources: The only alternative to the proposed dismantling and decontamination activities is to maintain the facility as a restricted area. This approach would include monitoring and reporting for the duration of the safe storage period. However, the UCB intends to use the area for other academic purposes.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. We conclude that the proposed action will not have a significant effect on the quality of the human environment.

For detailed information with respect to this proposed action, see the application for dismantling, decontamination and license termination dated January 8, 1988, as supplemented and the Safety Evaluation prepared by the staff. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 5th day of September 1989.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate Division of Reactor Projects III, IV, V and Special Projects Office of Nucear Reactor Regulation.

[FR Doc. 89-21279 Filed 9-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

GPU Nuclear Corp; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-23 to General Public Utilities Nuclear Corporation (GPUN or the licensee), for Three Mile Island Nuclear Generating Station, Unit No. 2 (TMI-2) located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Appendix A Technical Specifications (TS) relating to the disposal of the Accident Generated Water (AGW). The proposed action is in response to the licensee's application dated February 25, 1987 and revised April 13, 1987.

The Need for the Proposed Action

The NRC staff, in response to the licensee's application for a change in the technical specifications to allow the disposal of the AGW, prepared Supplement 2 to the Programmatic Environmental Impact Statement (PEIS) related to decontamination and disposal of radioactive wastes resulting from the March 28, 1979 accident at TMI-2. Final Supplement 2 to the PEIS, issued in June 1987, evaluated the licensee's proposal and a number of alternatives for the disposal of AGW.

Subsequent to the issuance of Final Supplement 2 the licensee has modified its plans for pretreatment and for the packaging and shipping of the evaporator bottoms to the commerical low level waste disposal site near Richland, Washington. Since the current proposal is different than that evaluated in Final Supplement 2 the staff has evaluated the impacts associated with this change and has determined that implementation of the licensee's plan would result in impacts different than those reported for the licensee's proposal in Supplement 2 to the PEIS.

Environmental Impacts of the Proposed Action

The licensee's original proposal involved feeding the water, which was to be pretreated by ion exchange, to a modified commerically available evaporator. The majority of the liquid would be released to the atmosphere and the residue (evaporator bottoms) would be mixed with Portland cement and the slurry poured into containers for solidification. The solid waste would then be transported to a commerical NRC-licensed low level waste disposal site, near Richland, Washington. The total solidified volume was expected to be between 27,000 and 46,000 ft^3. Approximately 80 to 250 shipments between TMI-2 and Richland, Washington would be required. The number of injuries and fatalities due to trucking accidents estimated for the shipping campaign ranged from 0.5 to 1.6 and from 0.04 to 1.3 respectively.

No occupational exposure to the truck crews resulting from the shipping of the evaporator bottoms was expected. No routine radiological dose to the public was calculated due to the low specific activity of the solidified waste and the self shielding characteristics of the Portland cement binder. Likewise no radiation exposure to the public in the event of a trucking accident was expected since dispersal of the solidified evaporator bottoms was unlikely. The total cost of shipping the solidified waste was estimated to be between $410,000 and $690,000.

The licensee's current proposal is to still evaporate the AGW in a commerically available evaporator. However, the evaporator may be used in place of ion exchange for pretreatment. The solid waste stream may contain radionuclides that were expected to be shipped offsite in spent ion exchange resin liners. For the purposes of this assessment the maximum concentration permissible in class A waste was assumed for determining dose. Additionally the evaporator bottoms will, not be mixed with a binder and solidified. Instead the bottoms will be pelletized, dried and the pellets packaged in 55 gallon drums and shipped to Richland, Washington. The packaging and shipment of the dry pelletized waste will be in conformance with all regulations governing shipment of low level wastes. The number of shipments is expected to be 14. The number of injuries and fatalities due to trucking accidents for the shipping campaign is estimated at 0.09 and 0.007 repectively. For the entire shipping campaign the dose of the truck crews was estimated at 3.5 person-rem and the estimated dose to the general public along the shipping route (1.3 million people) is 3.6 person-rem.

There is also a small probability that a shipping accident may be severe enough to result in the breach of a waste container and release of some of the waste. To determine the risk of radiation exposure from a damaged waste container, the staff used a model that estimates the population dose by multiplying accident frequences (the expected number of accidents) by accident consequences. Using these methodology the staff estimated that a dose of about 0.16 person-rem would result from accidents during shipment of all the AGW waste. The shipping cost of the dry pelletized waste is estimated at $70,000.

Based on the reduced level of injuries and fatalities associated with the reduced number of shipments, the small estimated dose to the general population along the truck route and the low level of truck crew exposure the staff concludes that there are no significant adverse environmental impacts associated with the proposed action. Furthermore, the staff recognizes that the licensee's proposal would result in a significant decrease in the amount of waste to be disposed and a significant reduction in the overall cost of shipping.

Alternatives to the Proposed Action.

Since the staff concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated. The principal alternative to the licensee's current proposal would be the licensee's original proposal which was to solidify the wastes prior to shipment. Implementation of this alternative would result in increased cost, increase waste, and increased potential for transportation related accidents without a significant reduction in radiation dose to either the public or the truck crews.

Alternative Use of Resources.

This action does not involve the use of any resources not previously considered in Supplement 2 to the PEIS dated June 1987.

Agencies and Persons Consulted.

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The staff has determined not to further supplement the environmental impact statements for the proposed license amendment.

Based upon the foregoing environmental assessment, the staff concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 25, 1987 revised April 13, 1987, the staff's Final Supplement 2 to the PEIS dated June 1987, and the licensee's Technical Evaluation Report dated October 7, 1988, which are all available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the State Library of Pennsylvania Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Harrisburg, Pennsylvania 17126.

Dated at Rockville, Maryland, this 31st day of August 1989.

For the Nuclear Regulatory Commission.

John F. Stolz, Director,

Project Directorate I-4 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89-21213 Filed 9-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-454 and 50-455]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (Commission) is considering issuance of amendment to Facility Operating License Nos. NPR-37 and NPF-66, issued to the Commonwealth Edison (the licensee), for operation of the Byron Station, Units 1 and 2 located in Ogle County, Illinois.

The amendments would change the Technical Specifications to reflect the use of VANTAGE 5 fuel.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulation

By October 1, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practices for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Paul C. Shemanski: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer to the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing if received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 31, 1989, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Streeet NW., Washington, DC 20555, and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Dated at Rockville, Maryland, this 1st day of September 1989.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89-21280 Filed 9-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 35 to Facility Operating License No. NPF-43 issued to Detroit Edison Company (the licensee), which revised the Technical Specifications for operation of Fermi-2, located in Monroe County, Michigan.

The amendment is effective as of the date of issuance.

The amendment revises the TS to reflect the modifications made to the Automatic Depressurization System (ADS). The ADS will be modified in accordance with TMI Action Plan II.K.3.18 of NUREG-0737.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 13, 1989 (54 FR 29622). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human behavior environment.

For further details with respect to the action, see (1) the application for amendment dated April 3, 1989, (2) Amendment No. 35 to License No. NPF-43, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V, and Special Projects.

Dated at Rockville, Maryland, this 30th day of August.

For the Nuclear Regulatory Commission.

John F. Stang,

Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V, and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-21281 Filed 9-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co., Wolverine Power Supply Cooperative, Inc.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 36 to Facility Operating License No. NPF-43 issued to Detroit Edison Company (the licensee), which revised the Technical Specifications for operation of Fermi-2, located in Monroe County, Michigan.

The amendment is effective as of the date of issuance.

The amendment revises the Technical Specification (TS) relating to the Source Range Monitors (SRM) to permit complete core off-loading during the first refueling outage. The proposed amendment also increases the minimum signal-to-noise ratio required for a reduced SRM minimum count rate requirement and eliminates a related TS provision which is no longer needed.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 11, 1989 (54 FR 29117). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human behavior environment.

For further details with respect to the action, see (1) the application for amendment dated April 3, 1989, (2) Amendment No. ________ to License No. NPF-43, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Local Public Document Room. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 30th day of August 1989.

For the Nuclear Regulatory Commission

John F. Stang,

Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-21282 Filed 9-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR-61 and issued to Connecticut Yankee Atomic Power Company (CYAPCO/licensee) for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would provide revised Technical Specifications to reflect changes associated with the Haddam Neck Plant fire detection/suppression system upgrades in support of the new switchgear building. These changes consist of the installation of additional fire detectors, an increase in the minimum number of these detectors required to be operable, relocation of hose stations, and the addition of the new fire detection and suppression systems associated with the new switchgear building.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

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(the Act) and the Commission's regulations.

By October 10, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petition promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, . Counselors at Law, City Place, Hartford, Connecticut 06103–3499 (attorney for the licensee).

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this section, see the application for amendment dated July 31, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 31st day of August, 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21214 Filed 9–8–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR–61 and issued to Connecticut Yankee Atomic Power Company (CYAPCO/licensee) for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

During the upcoming 1989 refueling outage, CYAPCO will upgrade the reactor protection system (RPS) and the nuclear instrumentation system (NIS) by making advanced technology, hardware changes. These changes will improve RPS and NIS reliability and redundancy. The proposed amendment would change the Technical Specifications to reflect modifications to be made to upgrade the RPS and the NIS.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 10, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an

Atomic Safety an Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary for the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addresssed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselers at Law, City Place, Hartford, Connecticut 06103–3499 (attorney for licensee).

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 28, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 31st day of August, 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21215 Filed 9–8–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR–61 and issued to Connecticut Yankee Atomic Power Company (CYAPCO/licensee) for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would upgrade the current custom Technical Specification (TS) format to the Westinghouse Standard-Format Technical Specifications (WSTS). The NRC staff and Connecticut Yankee Power Company (CYAPCO) agreed that the proposed amendment would represent an interim step before CYAPCO addresses a full WSTS conversion. All sections of the current custom TS will be re-formatted and upgraded except for Sections 3.6, "Core Cooling Systems," 3.7, "Minimum Water Volume and Boron Concentration in the Refueling Water Storage Tank," 3.12, "Station Service Power," 4.3, "Core Cooling Systems-Periodic Testing" and 4.5, "Emergency Power System Periodic Testing." Sections 3.6, 3.7, 3.12, 4.3 and 4.5 will be re-formatted under separate amendment requests. CYAPCO has stated that the current TS requirements will be maintained, that the proposed amendment will not change the facility as described in the Licensing Basis Documents and no changes will be made to the Final Safety Analysis Reprot (FSAR). Furthermore, CYAPCO has stated that the proposed changes will result in additional limitations, restrictions or controls to conform to the WSTS

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 10, 1989, the license may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for

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Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervne or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselers at Law, City Place, Hartford, Connecticut 06103–3499.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 26, 1988, as supplemented March 6, June 2 and 23, July 28 and August 4, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 31st day of August, 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89-21216 Filed 9-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–413 and 50–414 License Nos. NPF–35 and NPF–52 EA 89–46]

Duke Power Co. (Catawba Units 1 and 2); Order Imposing Civil Monetary Penalty

Duke Power Company, Charlotte, North Carolina (licensee) is the holder of Operating License Nos. NPF–35 and NPF–52 (licenses) issued by the Nuclear Regulatory Commission (Commission or NRC) on January 17, 1985 and May 15, 1986, respectively. The licenses authorize the licensee to operate Catawba Units 1 and 2 in accordance with the conditions specified therein.

II

NRC inspection of the licensee's activities under the license was conducted on November 27, 1988—February 4, 1989. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated May 19, 1989. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed civil penalty and requested that the civil penalty be partially mitigated. In addition, the licensee asserted that Violation B should be categorized as a Severity Level IV instead of a Severity Level III violation.

III

After consideration of the licensee's response and the statement of fact, explanation, and argument for partial mitigation of Violation A and recategorization of Violation B contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support (DEDS) has determined, as set forth in the Appendix to this Order, that the penalty proposed for Violation A designated in the Notice of Violation and Proposed Imposition of the Civil Penalty should be imposed, and that Violation B was properly categorized.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It Is Hereby Ordered* That:

The licensee pay a civil penalty in the amount of Seventy-Five Thousand Dollars ($75,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with copies to the Assistant General Counsel for Hearings and Enforcement, at the same address, the Regional Administrator, Region II, 101 Marietta Street, NW., Atlanta, Georgia 30323, and a copy to the NRC Resident Inspector at Catawba.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions to this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether on the basis of Violation A set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in section II above, which the licensee has admitted, the Order to pay a Seventy-Five Thousand Dollar civil penalty should be sustained.

Dated at Rockville, Maryland this 31st day of August 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusions

On May 19, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty was issued for violations identified during a routine NRC inspection. The Notice cited two Severity Level III violations, and proposed a civil penalty for Violation A. Duke Power Company (DPC) responded to the Notice on June 16, 1989. In its response, the licensee requested mitigation of the proposed Civil Penalty and a reduction in severity level of Violation B. The NRC's evaluation and conclusions regarding DPC's arguments are as follows:

Restatement of Violation

Violation A

Technical Specification 3.6.5.6 requires in Modes 1 through 4 that two independent Containment Air Return and Hydrogen Skimmer Systems (VX) be OPERABLE. With one Containment Air Return and Hydrogen Skimmer System (VX) inoperable, the inoperable system shall be restored to OPERABLE status within 72 hours or the unit is to be in the least HOT STANDBY within the next 6 hours, and in COLD SHUTDOWN within the following 30 hours.

Contrary to the above, during a period of 42 days from February 19, 1988 to April 1, 1988, Unit 2 operated in Modes 1 through 4 with one of the two independent Containment Air Return and Hydrogen Skimmer Systems (VX) inoperable. During this period, both trains of VX were required to be operable.

Proposed Civil Penalty—$75,000

Summary of Licensee's Response

Duke Power Company admits the violation occurred. However, the licensee maintains that escalation of the base civil penalty to $75,000 was not warranted and proposes that the civil penalty be mitigated to $25,000.

The licensee's response addresses the following three mitigation factors and other reasons for mitigation as summarized below.

Identification and Reporting. The licensee maintains that the NRC characterization that the post modification test should have been capable of detecting this unique problem is in error. The licensee contends that their Post Modification Testing and Independent Verification Programs work together in detecting problems, and that the performance test (the VX test), used as the post modification test in this situation, worked properly in evaluating VX operability. The impact of the "sneak-path" established by the wiring error was not fully understood for the VX performance test until lengthy and detailed tests were performed recreating the original miswired condition.

Corrective Action to Prevent Recurrence. The Notice stated, "the base penalty for Violation A was increased by 50 percent becasue initial corrective actions were narrowly focused on correcting the improperly installed electrical wiring and failed to address the broader problem of inadequate PMT."

The licensee's response states that the 50 percent escalation of the civil penalty was inappropriate for two reasons:

—A major effort was required to understand the reason for the failure of the VX Periodic Test to catch the unique error. The comprehensive aspect of that review and the revision of LER 414/88–33 that reported those findings showed initiative on their part to ensure this situation would not recur. The issues of licensee initiative and comprehensive action are both factors for mitigation in this category.

—The improvement made to the PMT process through the TOPFORM program have come about subsequent to this modification and as a result no other similar violations have occurred. Further, the additional "lessons learned" approach taken shows "exstensive" corrective action in PMT to prevent recurrence.

The licensee contends that rather than a 50 percent escalation of the base penalty, a 50 percent reduction should be applied since the actions taken in regard to PMT and those that are ongoing have been complete and timely in preventing recurrence.

Past Performance. The licensee's reply contends that with no similar problems in the past two years and an overall SALP 2 rating, which is clearly "adequate," at least a 50 percent reduction in the base civil penalty should be applied.

Other Reasons for Mitigating the Civil Penalty. The licensee's response argues that the issue of safety significance must play a part in establishing a final level of the civil penalty. The licensee's response states that in the Enforcement Conference it was shown through analysis that equipment qualification profiles were not exceed and the damper could be reopened within 30 minutes as demonstrated in a drill. The licensee also argues that the "B" train of VX being out of service for a total of 7 hours during the 42 days that "A" train was unknowingly inoperable was relatively insignificant in that the probability of a LOCA event having a "one train response" from the VX system was low.

NRC's Evaluation of Licensee's Response

Identification and Reporting

The Licensee's Post Modification Testing and Independent Verification Programs failed to detect a significant VX system operability problem due to a control circuit wiring error prior to placing the reactor in a mode that required the VX system to be operable. Regardless of the failure of the Independent Verification Program to detect the wiring error during the design modification process, an adequate post modification test should have identified the error. The performance test chosen by the licensee as the post modification test was inadequate for this situation because it did not verify operability of that portion of the VX control circuit that would be activated by the Solid State Protection System (SSPS) during an actual emergency, even though the modification was to the control circuit. The error was discovered during reactor operation by performance of the SSPS logic test, which verifies the slave relay actuation of the VX control circuit. Clearly, the licensee's post modification test should have identified the installation error prior to reactor startup, and the NRC, therefore, does not consider this factor as adequate to justify mitigation.

Corrective Action to Prevent Recurrence

In evaluating this event in terms of corrective actions, it was noted that immediate corrective actions on April 1, 1988, were to correct the wiring error, retest the damper in accordance with the original post modification test and declare the system operable. Although the VX damper inoperability and wiring error had been detected by a Technical Specification (TS) required SSPS surveillance test, once the wiring error had been corrected, this test was not repeated prior to declaring the system operable. Instead the same test which had originally failed to detect the wiring error in January 1988 was used to determine operability. Not only did the licensee rely on a test (VX functional) that had already proven itself inadequate, but the system was returned to service without performing the failed TS required SSPS surveillance test that initially identified the deficiency. This, in terms of corrective action, is both unacceptable and narrow in focus.

Substantial changes have subsequently been made in the Post-Modification Test Program and full implementation is in progress. As presented in Duke's meeting with the NRC at Region II on August 15, 1989, the changes include focusing responsibility on the "system expert," verifying that the design basis has not been compromised, and verifying that the system is functionally operable after modification. The new procedures were first used in April, 1989 for S/G PORV modification, but full development is still in progress, including additional training of system experts. However, while these are extensive and appropriate corrective actions, these actions were not sufficiently timely to warrant mitigation. The licensee's June 1, 1989 response to this enforcement action continued to take the narrow view of post modification test requirements. Therefore, the NRC considers the 50 percent escalation of the civil penalty based on this factor warranted.

Past Performance

With regard to the licensee's contention that a base civil penalty be mitigated 100 percent for a SALP 1 rating, 50 percent for a SALP 2 rating, and 0 percent for a SALP 3 rating, the NRC does not believe that application of such a rigid formula serves to appropriately explain the need to improve performance. The Enforcement Policy clearly allows application of broad discretion in this area by allowing the base civil penalty to be either escalated or mitigated by up to 100 percent. Application of discretion (in either direction) can only be taken after due consideration of the many facts that make up each case.

The NRC recognizes that the licensee's general past performance has been adequate as evidenced by an overall SALP 2 rating in all functional areas. However, upon examination of the details in several of the last SALP's functional areas (Operations, Maintenance and Surveillance, and Safety Assessment) that are related to the violations cited here, it was noted that the licensee has experienced past problems with the proper classification and reporting of safety component failures and significant events in a timely manner. Other specific concerns also addressed by the last SALP included the adequacy of maintenance and modification retesting and the need to improve the support provided by the Compliance and Design Engineering groups in determining technical specification compliance. Although these concerns were judged not to be significant enough to warrant a category 3 SALP rating, they were indicative of a need for further improvement. While the licensee's overall past performance was adequate, the staff has determined that the past performance was not such as to merit mitigation in this case.

Other Reasons for Mitigating the Civil Penalty

Once the Severity Level is determined in accordance with the Enforcement Policy (Policy), the base civil penalty is established in Table IB of the Policy. The escalation and mitigation factors are then considered to determine what adjustments, if any, to the base civil penalty are warranted. Safety significance is not an escalation or mitigation factor but a determinant of the severity level. In this case, the NRC appropriately considered safety significance in establishing the severity level of the violation. Specifically, the licensee's Post Modification Testing Program did not ensure that a technical specification required safety system train was operable prior to placing the reactor in a mode where that system was required to be operable. Such program errors are considered significant because they could be applied to any safety system.

Restatement of Violation

Violation B

10 CFR 50.73(a)(2) requires the submittal of a Licensee Event Report within 30 days after discovery of any operation or condition prohibited by the plant's Technical Specifications.

Contrary to the above, on September 14, 1988, the licensee determined that Catawba Unit 2 had previously operated for 42 days in a condition prohibited by the plant's Technical Specifications because train A of the Containment Air Return and Hydrogen Skimmer (VX) System had been inoperable and a Licensee Event Report was not submitted until January 27, 1989.

Summary of Licensee's Response

Duke Power Company admits the violation. In the response, however, the licensee contends that as they interpret the enforcement policy a Severity Level III should not have been imposed in this case and that the violation should have been characterized as a Severity Level IV. The response states that because of the complexity of the circuit as a result of the wiring swap and the time required to understand the effects, an unusual amount of time was taken to report the problem.

NRC Evaluation of Response to Violation B

As stated in the NRC letter of May 19, 1989, Violation B concerned the excessive amount of time that it took to report this event. It is not acceptable to take 10 months to evaluate an event to determine reportability. The NRC was

particularly concerned that after the licensee correctly determined that the system was previously inoperable, it took an additional 4 months to issue the LER. This represents a significant programmatic weakness with the licensee's event evaluation and reporting system. The staff recognizes that the Enforcement Policy provides an example at a Severity Level IV for a violation involving the failure to submit an LER. However, the examples in the Supplement are just that. In accordance with the Enforcement Policy they are neither controlling nor exhaustive. Under the circumstances of this case the staff concluded that the delay in submitting this report represented a significant regulatory concern therefore justifying a Severity Level III categorization. After review of the licensee's response, which provided no additional information not already considered, the NRC determined that there is insufficient cause to reduce the severity level of Violation B.

[FR Doc. 89-21217 Filed 9-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp, et. al. (Nine Mile Point Nuclear Station Unit 1); Exemption

I

Niagara Mohawk Power Corporation, et. al. (the licensee) is the holder of Facility Operating License No. DPR-63, which authorizes operation of the Nine Mile Point Nuclear Station Unit No. 1 at a steady-state power level not in excess of 1850 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in the town of Scriba, New York. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Appendix J to 10 CFR part 50 requires that primary reactor containments shall meet certain containment leakage test requirements. Among these are the requirements that containment isolation valves receive local leak rate tests (Type C) and the results of all of the Type C tests are to be added to the results of the Type B tests and the combined leakage rate shall be less than $0.60L_a$.

III

By letter dated May 6, 1988, the staff sent to the licensee a Safety Evaluation (SE) concerning a review of a portion of the licensee's containment leakage rate testing program. One conclusion of that SE was that Appendix J to 10 CFR Part 50 requires Type C tests to be periodically performed on the four containment isolation valves in the shutdown cooling system return and suction lines.

Consequently, by letter dated November 22, 1988, the licensee requested a temporary exemption from certain requirements of Appendix J to 10 CFR part 50. Specifically, the licensee requested a temporary exemption from the requirement to perform Type C testing of containment isolation valves 38-01, -02, -12 and -13 in the shutdown cooling system return and suction lines and from the requirement to include the leakage rates of these valves in the sum of all Type B and C leakage rates for comparison to the acceptance criterion ($0.60\ L_a$) of Appendix J. The requested exemption is for the period up to and including the next plant refueling outage, currently scheduled for 1990.

IV

In the past, the licensee had not included the subject valves in the Type C testing program. The licensee did not consider them to be containment isolation valves under design basis accident situations. However, as stated above, the staff has recently determined that these valves must be Type C tested.

A recent attempt was made to perform a local leakage rate test on the shutdown cooling system isolation valves. However, since these valves were not originally designed to meet Appendix J leakage rate testing requirements and had not been locally leakage rate tested in the past, the valves were found to exhibit leakage rates greater than that allowed by Appendix J. The licensee has determined that these valves cannot be made sufficiently leak-tight to meet Appendix J leakage criteria.

In order to meet the Appendix J requirements the licensee will have to either replace existing shutdown cooling system suction and return line isolation valves or provide the valves with a seal-water system fluid inventory sufficient to assure the sealing function for at least thirty days at an accident pressure of 1.1 Pa. In either case major system changes may be necessary in addition to procurement of any replacement or new equipment. As a result the licensee requested additional time until the next refueling outage to design, procure, install, test, operate and demonstrate the new system.

The following information was provided by the licensee in support of the exemption request.

The shutdown cooling system isolation valves are normally closed even during design basis accident conditions. The shutdown cooling system forms a closed loop with the reactor recirculation system. As a result, if a break inside the containment occurs, leakage will be contained in a closed system. If a break outside the containment occurs, the existing shutdown cooling isolation valves will reduce leakage from the reactor coolant system to the extent that the core will remain covered and fuel damage will not occur. During a water test performed on these valves in 1988, leakage was found to be minor (1.321 gallons/minute).

The shutdown cooling system was recently checked for excessive leakage and was tested for system integrity to be able to contain radioactive materials following an accident.

The shutdown cooling system isolation valves are closed during normal operation. The system is only placed in operation when the plant is in a shutdown condition. These isolation valves are always initially closed prior to, during, and after LOCA.

For a LOCA at NMP-1, the decay heat is removed from the containment by the containment spray system. Even if fission products were released to the reactor coolant, the shutdown cooling system would only recirculate the radionuclides through a closed loop back to the reactor coolant system. The containment spray system will reduce pressure and temperature inside the containment. The rapid depressurization of the containment will reduce leakage through the isolation valves.

The four isolation valves have process system control valves for backup system isolation; thus minimizing any intra-system leakage. Any leakage from the closed loop will be within the secondary containment where it will be treated before release.

The solid wedge valves used as the inner isolation valves have the unique characteristic whereby the accident pressure itself will assist their leakage tightness.

Based on the above information, the staff finds that plant operation without Type C testing of the subject valves, and consequently, without adding the result of these Type C tests into the summation leakages for comparison to the $0.60L_a$ acceptance criterion, during the period until the next refueling outage will not present an undue risk to the public health and safety, considering the mitigating features of the system described above. After the next refueling outage is complete, the plant will be brought into compliance with Appendix J.

V

On the basis of the above evaluation, the staff concludes that the requested temporary exemption from the Type C testing requirements of Appendix J to 10 CFR Part 50 for shutdown cooling isolation valves 38–01, –02, –12, and –13 and consequently, the omission of the results of these Type C tests from the summation of leakages for comparison to the 0.60 L_a acceptance criterion, is justified for the period up to and including the next refueling outage for Nine Mile Point, Unit 1.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a), that (1) this exemption as described in section IV is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) special circumstances are present for this exemption in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts as described below to comply with the regulation since the staff's position was sent to them on May 6, 1988.

The licensee has demonstrated a good faith effort through continuous cooperation with the NRC staff while resolution of this issue was finalized. Although the staff issued its Safety Evaluation on May 6, 1988, further discussions and meetings were required to clarify the issues and separate correspondence dated November 9, 1988 was sent to the licensee to finalize the staff's position. The licensee was cooperative in working through the resolution with the staff and also performed a test, which the staff indicated would be acceptable in its May 6, 1988 Safety Evaluation. However, the test as discussed previously did not produce acceptable results due to physical constraints. Because major system changes may be necessary in addition to procurement of any replacement or new equipment, not granting the exemption would result in an extension of the current outage without significant safety improvements. Therefore, the Commission hereby grants the exemption request identified in section IV above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment 54 FR 26279.

Dated at Rockville, Maryland, this 29th day of August 1989.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21218 Filed 9–8–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–282 and 50–306]

Northern States Power Co., Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 89 and 82 Facility to Operating License Nos. DPR–42 and DPR–60 issued to Northern States Power Company (licensee) which revised the Technical Specifications for operation of the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2 located in Goodhue County, Minnesota.

The amendment is effective as of the date of issuance.

The amendment revised the Technical Specifications by modifying the pressure-temperature limits taking into consideration the irradiation effects of the embrittlement of the reactor vessel material up to 20 effective full power years. Other modifications are administrative in nature serving to clarify the existing requirements.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 8, 1989 (54 FR 24609). No request for a hearing or petition for leave to intevene was filed following this notice.

The Commission has prepared an Environemntal Assessment related to the action and has determined not to prepare an enviromental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendent will not have a signficiant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated January 12, 1989, (2) Amendment Nos. 89 and 82 to Facility Operating License Nos. DRP–42 and DPR–60, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Technology and Science Department, Minneapolis Public Library, 200 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this August 28, 1989.

For the Nuclear Regulatory Commission.

Dominic C. DiIanni

Project Manager, Project Directorate III–1, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21283 Filed 9–8–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–282 and 50–306]

Northern States Power Co., Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Issuance of Amendments to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 90 and 83 to Facility Operating License Nos. DPR–42 and DPR–60 issued to Northern States Power Company (licensee) which revised the Technical Specifications for operation of the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2 located in Goodhue County, Minnesota.

The amendment is effective as of the date of issuance.

The amendment revised the Technical Specification by permitting the irradiation of the fuel assemblies with enrichment up to 4.25 weight percent (w/o) Uranium-235 and the storage of such assemblies prior to and subsequent to loading the assemblies in the reactors at the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for

Hearing in connection with this action was published in the **Federal Register** on June 27, 1989 (54 FR 27083). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated April 6, 1989, (2) Amendment Nos. 90 and 83 to Facility Operating License Nos. DPR–42 and DPR–60, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V & Special Projects.

Dated at Rockville, Maryland this August 28, 1989.

For the Nuclear Regulatory Commission.

Dominic C. DiIanni,

Project Manager, Project Directorate—III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–2184 Filed 9–8–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030–13036; License No. 45-17606–01; EA 88–287]

Rappahannock General Hospital, Order Imposing Civil Monetary Penalty

I

Rappahannock General Hospital, Kilmarnock, Virginia (licensee), is the holder of License No. 45–17606–01 issued by the Nuclear Regulatory Commission (Commission or NRC), which authorizes the medical use of byproduct material in accordance with the conditions specified in the license. The license was issued September 20, 1977, most recently renewed on July 11, 1988, and is due to expire on July 31, 1993.

II

An NRC safety inspection of the licensee's activities under this license was conducted on January 13, 1987. During the inspection, the NRC inspector noted a number of discrepancies in the minutes of the Radiation Safety Committee meeting for September 13, 1986. Among other things, it appeared that the date on the meeting minutes had been altered. A subsequent investigation conducted by the NRC Office of Investigations (OI) disclosed that the minutes of the September 13, 1986 meeting had been fabricated and were presented to the inspector as representing an actual meeting when in fact no such meeting was held. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated May 17, 1989. The Notice stated the nature of the violation, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice by letter dated May 24, 1989. In this response, the licensee denied the violation and requested the withdrawal of the violation and retraction of the civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation and argument for withdrawal of the violation and civil penalty contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support has determined as set forth in the Appendix to this Order, that the violation occurred as stated, and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered, That:*

The licensee pay a civil penalty in the amount of Two Thousand Five Hundred Dollars ($2,500) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and the Regional Administrator, U.S. NRC, Region II, 101 Marietta Street NW., Suite 2900, Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing, as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland, this 30th day of August 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusion

On May 17, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection and investigation. Rappahannock General Hospital (licensee) responded to the Notice on May 24, 1989. In its response, the licensee denied the violation and requested retraction of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

I. Restatement of Violation

License Condition 16 of NRC License No. 45–17606–01 requires the licensee to possess and use licensed material in accordance with statements, representations, and procedures contained in the letter dated October 23, 1981, and the license application dated July 20, 1982.

Item 7 of license application requires the licensee to follow Appendix B of Regulatory Guide 10.8 (Rev. 1). Appendix B of Regulatory Guide 10.8 requires the Radiation Safety Committee (Medical Isotopes Committee) to meet not less than once in each calendar quarter and to maintain written records of all committee meetings, actions, recommendations, and decisions.

Contrary to the above, on or before January 13, 1987, a written record was fabricated to document a Radiation Safety Committee meeting that, in fact, did not take place; and on January 13, 1987, this fabricated record was presented to an NRC inspector for review.

II. Summary of Licensee Response

The licensee denied that a written record was fabricated to document that a Radiation Safety Committee (RSC) meeting took place in 1986 and that the record was presented to the NRC inspector with the intent to defraud. The licensee stated that it could find no other copy of the 1985 RSC minutes, and, because the body of the minutes states 1985, the 1985 minutes were filed in that manner. The licensee stated that its Administrator had the "impression" that the inspector had been authorized to look through the licensee's file cabinets and may have found the document there, and that the claim that the document was presented to the inspector to defraud does not agree with the facts. The licensee acknowledged that required quarter RSC meetings were not held during the two-year period ending in January 1987, and indicated that it was not reasonable to believe that a licensee representative would have offered documentation to indicate that one meeting out of this period was held in the hope of making the situation appear any better when its officers and employees admitted all along that there were no such meetings. The licensee acknowledged that it was odd that the document reviewed by the inspector had two items deleted with white correction fluid ("whited out"), and that contradictory dates appeared on the document.

III. NRC Evaluation of Licensee Response

During the NRC inspection conducted on January 13, 1987, the inspectors requested that the nuclear medicine physician and/or the chief nuclear medicine technologist produce the minutes of the most recent RSC meeting. During the investigation conducted by the NRC Office of Investigations (OI), one inspector testified that, after a brief absence, the nuclear medicine physician provided him with a document purported to be a copy of the requested minutes. The document contained alterations and discrepancies, including a discrepancy in the date of the meeting and a deletion of the name of one of the attendees. Contrary to the statement in the licensee's response, the inspectors did not find the document in the licensee's files.

The licensee indicated both during the Enforcement Conference held in the NRC Region II office on March 10, 1989, and in its May 24, 1989, response that the document which was purported to be a copy of the requested minutes appears to have been altered. The OI investigation did not conclusively establish who actually altered the September 13, 1985, minutes to represent that a meeting had been held on September 13, 1986. However, a review of the pertinent records clearly established that an RSC meeting was convened on September 13, 1985, rather than September 13, 1986, as indicated in the minutes, and that the altered document was proffered to the NRC inspector. Based upon this evidence, NRC has concluded that an individual affiliated with the hospital altered or directed the alteration of a copy of the minutes for the September 13, 1985 RSC meeting, and, when the inspector requested to see the minutes of the most recent RSC meeting held, the altered document was presented to the inspector as the official minutes of a September 13, 1986 meeting that was, in fact, not held.

NRC Conclusion

The NRC staff has carefully reviewed the licensee's response and has concluded that the violation occurred as stated in the Notice and that the licensee has not provided an adequate basis for withdrawal of the violation or retraction of the civil penalty. Therefore, the civil penalty in the amount of $2,500 should be imposed.

[FR Doc. 89–21285 Filed 9–8–89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

[Public Notice CM–8/1304]

Shipping Coordinating Committee; Subcommittee on Ocean Dumping; Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on October 19, 1989 to review agenda items and preliminary U.S. positions for the Twelfth Consultative Meeting of Contracting Parties to the London Dumping Convention.

The meeting will be held at 10:00 a.m. at the Environmental Protection Agency, Fairchild Building, 499 South Capitol Street, SW., Washington D.C. 20003 in the Conference Room of the Office of Marine and Estuarine Protection, on the 8th floor. Members of the public are invited and are free to attend up to the seating capacity of the room.

For further information, please contact Dr. Al Wastler, Office of Marine Protection, Telephone (202) 475–6741.

Dated: August 24, 1989

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89–21293 Filed 9–8–89; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[GD 89–070]

National Offshore Safety Advisory Committee; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applicants to fill one vacancy on the National Offshore Safety Advisory Committee (NOSAC). The committee acts in advisory capacity to the Commandant of the Coast Guard on matters relating to the offshore mineral and energy industry.

The vacancy is for an individual representing a company engaged in the production of petroleum. It is expected that the member would serve for a term of no more than three years.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

DATE: Applications should be received not later than October 11, 1989.

ADDRESS: Persons interested in applying should write to Commandant (G–MP–2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001 or call (202) 267–1406.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Hammel, Executive Director, National Offshore Safety Advisory Committee, U.S. Coast Guard Headquarters (G–MP–2), 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1406.

Dated: August 31, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Safety, Security and Environmental Protection.

[FR Doc. 89–21235 Filed 9–8–89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Air Traffic Control Tower, Martha's Vineyard, MA; Commissioning

Notice is hereby given that on October 1, 1989, the airport traffic control tower at Martha's Vineyard Airport, Martha's Vineyard, Massachusetts, will be commissioned. Tower hours of operation will be published in the Airport-Facility Directory. The designated facility identification for the airport control tower will be: Vineyard Tower.

Communications to the tower should be directed to: Midwest ATC, Martha's Vineyard Airport, RFD, Box 880, Vineyard Haven, Massachusetts 02568.

(49 U.S.C. 1348 and 1354(a); 49 U.S.C. 106(g) (Revised Pub. L. 97–449 (January 12, 1983)))

Issued in Burlington, Massachusetts, on August 29, 1989.

James I. Lucas,

Manager, Air Traffic Division, New England Region.

[FR Doc. 89–21247 Filed 9–8–89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Intention to Prepare an Environmental Impact Statement and Conduct a Public Scoping Meeting for Road Reconstruction; Cody Yellowstone National Park, WY

ACTION: Notice is hereby given that the Federal Highway Administration (FHWA) intends to prepare an Environmental Impact Statement (EIS) for proposed road reconstruction in the Cody—Yellowstone National Park Vicinity of northwestern Wyoming. The EIS will be prepared in cooperation with the Wyoming State Highway Department (WSHD) and the U.S. Forest Services (USFS).

SUMMARY: The proposed highway reconstruction project will consist of reconstruction of the existing U.S. Highway 14/16/20 beginning at the east entrance to Yellowstone National Park and extending eastward 27.5 miles along the North Fork of the Shoshone River to the east boundary of the Shoshone National Forest. The purpose of this proposal is to provide a modern two lane road with emergency parking shoulders. Line and grade will be adjusted to improve sight distance and safety of the roadway. All bridges will be replaced.

Alternatives to be considered in the EIS will include the no action alternative and various alignment and design alternatives. The development of these specific alternatives is an ongoing process that will incorporate features brought forth during public scoping in addition to those identified by project engineers as preliminary road design activities progress.

Scoping Process: A public scoping meeting addressing the proposed project will be held in Cody at the City Council Chambers at 7:00 PM on October 4, 1989. Written Scoping comments are due by November 3, 1989, at the address provided below.

EIS Schedule: The draft EIS (DEIS) is expected to be completed by February 20, 1990, at which time its availability will be announced in the **Federal Register** and public comments will again be solicited. A public hearing will be held after the draft EIS has been made available for public and agency review. Public notice will be given of the time and place for the hearing. Final EIS availability will be in May, 1990.

FOR FURTHER INFORMATION CONTACT: C.P. Damon, Operations Supervisor, P.O. Box 1127, Cheyenne, WY 82003, Telephone (307) 772–2101.

Issued on August 31, 1989.

Frederick A. Behrens, P.E.,

Division Administrator, Cheyenne, Wyoming.

[FR Doc. 89–21224 Filed 9–8–89; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 174
Monday, September 11, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:08 p.m. on Tuesday, September 5, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,338
  First Service Bank for Savings, Leominster, Massachusetts
Case No. FL-89-001
  First Gibraltar Bank, FSB, Houston, Texas

Application of Stockman's Bank of Commerce, Elk Grove, California, a proposed new bank in organization to be located at 9663 Stockton Boulevard, Elk Grove, California, for Federal deposit insurance and for consent to merge with California Livestock Production Credit Association, Elk Grove, California, a noninsured production credit association.

Application of the First Bremen Bank, Bremen, Ohio, for consent to purchase certain assets of and to assume the liability to pay deposits made in the West Fair, Lancaster, Ohio, Branch of Citizens Federal Bank, a Federal Savings Bank, Miami Florida, a savings association; for consent to participate in the foregoing purchase and assumption transaction deemed a "conversion transaction" as contemplated in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and for consent to establish a branch at the location of the West Fair, Lancaster, Ohio, Branch of Citizens Federal Bank, a Federal Savings Bank.

Matters relating to the possible failure of certain insured banks.

A memorandum regarding the Corporation's liquidation activities.

A personnel matter.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: September 6, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 89-21379 Filed 9-7-89; 10:51 am]

BILLING CODE 6714-01-17

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 36094, August 31, 1989.

PREVIOUSLY ANNOUNCED DATE OF MEETING: September 11, 1989.

CHANGE: Delete the following item from the closed meeting agenda:

2. Consideration of Contract Award for Outside Audit Services.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,
Secretary.

[FR Doc. 89-21436 Filed 9-7-89; 3:21 pm]

BILLING CODE 7710-12-M

U.S. COMMISSION ON CIVIL RIGHTS

September 5, 1989.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 54, page 37401, September 8, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Friday, September 15, 1989, 9:00 a.m.–5:00 p.m.

CHANGES IN THE MEETING: Remove item V. from the agenda and renumber remaining items sequentially.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376-8312.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 89-21488 Filed 9-8-89; 10:45 am]

BILLING CODE 6335-01-M

Corrections

Federal Register
Vol. 54, No. 174
Monday, September 11, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62036G; FRL-3476-2]

Asbestos; Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions

Correction

In rule document 89-16262 beginning on page 29460 in the issue of July 12, 1989, make the following corrections:

1. On page 29462, in the first column, in the 16th line, "*State 3*" should read "*Stage 3*".

2. On page 29483, in the second column, in the first complete paragraph, in the first line, "control" should read "continue".

3. On page 29497, in the 2nd column, in the 12th line from the bottom of the page, "EAP" should read "EPA".

4. On the same page, in 3rd column, in the 11th line from the bottom of the page, "10^{6}" should read "10^{-6}".

5. On page 29502, in the second column, in the 6th line "environmental" should read "environment".

6. On page 29504, in the second column, in the first complete paragraph, in the eighth line, "consumers" should read "consumer".

7. On the same page, in the same column, in number (33), in the first line, "EED" should read "ETD".

§ 763.173 [Corrected]

8. On page 29511, in the third column, in § 763.173(b)(7) and (8), in the first line, "agency" should read "Agency".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 85P-0584]

Cheeses: Amendment of Standards of Identity to Permit Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging and to Update the Formats of Several Standards

Correction

In a correction to rule document 89-18225 appearing on page 35756 in the issue of Tuesday, August 29, 1989, make the following correction:

In correction 5, in the third line, "colon" should read "semicolon".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1216-AA82

Occupational Exposure to Formaldehyde

Correction

In rule document 89-20245 appearing on page 35639 in the issue of Tuesday, August 29, 1989, make the following correction:

In the 1st column, in the **SUMMARY**, in the 11th line, "December 18, 1988" should read "December 13, 1988".

BILLING CODE 1505-01-D

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federal register

Monday
September 11, 1989

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Polymeric Coating of Supporting Substrates; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3528-7]

RIN 2060-AB67

Standards of Performance for New Stationary Sources; Polymeric Coating of Supporting Substrates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for new, modified, and reconstructed facilities that perform polymeric coating of supporting substrates were proposed in the **Federal Register** on April 30, 1987 (52 FR 15906). This action promulgates final standards for this industry. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that emissions from the industrial surface coating of fabric cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed facilities that perform polymeric coating of supporting substrates to control emissions of volatile organic compounds (VOC) to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

DATES: *Effective Date:* September 11, 1989.

These standards apply to affected facilities for which construction, reconstruction, or modification commenced after April 30, 1987.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Polymeric Coating of Supporting Substrates—Background Information for Promulgated Standards" (EPA-450/3-85-022b). The BID contains: (1) A summary of all the public comments made on the proposed standards and the Administrator's response to the comments; (2) a summary of the changes made to the standards since proposal; and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket. A docket, number A-83-42, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), South Conference Center, Room 4, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For policy questions—Mr. Doug Bell at telephone number (919) 541-5568 or Ms. Laura Butler (541-5267) Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; for technical questions—Mr. James C. Berry (541-5606) or Mr. Robert Blaszczak (541-5408), Chemicals and Petroleum Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. The Standards

Standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated (section 111(a)(1)).

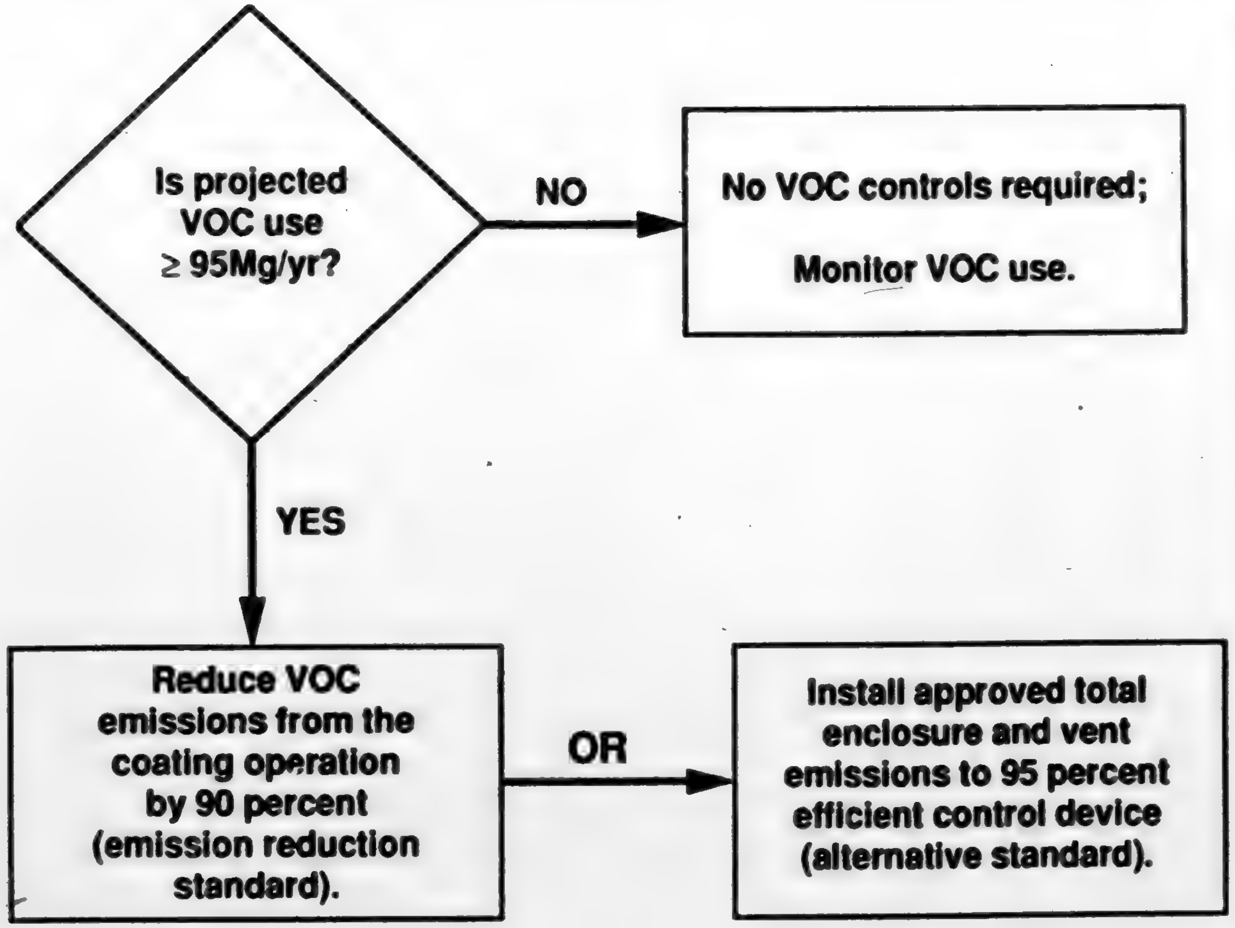
For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The source category to be regulated is the polymeric coating of supporting substrates. "Polymeric coating of supporting substrates" is defined as a web-coating that applies an elastomer or other polymeric material onto a supporting substrate. Typical substrates include: Woven, knit, and nonwoven textiles, fiberglass, yarn; and cord. Examples of polymeric coatings are natural and synthetic rubber, urethane, polyvinyl chloride, acrylic, epoxy, silicone, phenolic, and nitrocellulose.

The promulgated standards apply to each affected facility, which is defined as each new, modified, or reconstructed coating operation and the associated coating mix preparation equipment (mix equipment) used to prepare the coating for the operation. A coating operation consists of the application/flashoff area(s) and drying oven(s). Mix equipment is defined as the vessels in which ingredients are blended to prepare polymeric coatings. Only onsite mix equipment is considered a part of the affected facility.

A. Standards for Coating Operations

The standards for coating operations are based on BDT, which is defined as a 90 percent efficient emission reduction system composed of an emission capture system and control device. The standards require either: (1) A minimum 90 percent reduction of VOC emissions from the coating operation (emission reduction standard), or (2) the installation of an approved total enclosure (as defined in §§ 60.741(a) and 60.743(b)(1) of the regulation) and venting emissions to a 95 percent efficient control device (alternative standard). Once a coating operation becomes subject to the standards (VOC use exceeds 95 megagrams per year [Mg/yr]), emission control would be required even if VOC use falls below 95 Mg/yr at some future time. A logic flow diagram of the coating operations standards is presented in Figure 1.


Is projected VOC use ≥ 95Mg/yr?
NO
No VOC controls required;
Monitor VOC use.
YES
Reduce VOC emissions from the coating operation by 90 percent (emission reduction standard).
OR
Install approved total enclosure and vent emissions to 95 percent efficient control device (alternative standard).

COATING OPERATION STANDARDS

Figure 1. Logic flow diagram for polymeric coating NSPS.

BILLING CODE 6560-50-C

Demonstration of compliance with the standards varies with the type of control system in use and the particular standard that applies. For example, compliance with the emission reduction standard can be demonstrated by the use of EPA Methods 1 or 1A; 2, 2A, 2C, or 2D; 3; 4; 18; and 25 or 25A to measure all the gaseous emissions, including fugitive emissions from the affected coating operation, and all emissions entering and exiting the control device. These data are used to calculate the capture efficiency of the system and the efficiency of the control device. The product of these two values yields the overall efficiency of the control system. This type of compliance demonstration is available for all facilities, regardless of the type of control device.

A second means of demonstrating compliance may be used if a VOC recovery system is used and controls only a single coating operation. This demonstration involves a liquid material balance based on VOC contained in the coatings applied at the coating applicator and of the VOC recovered by the control device. The liquid-liquid material balance may be performed either for each nominal 1-month period every month, or for a single period of 3 to 7 days followed by continuous monitoring. For the latter option, the owner or operator must select the number of days (between 3 and 7) that reflect the plant's typical coating practices and provide data that are representative of normal operating conditions. If a liquid material balance is used to demonstrate compliance, the owner or operator has the option of accounting for the VOC retained on the product. Any credit for retained VOC would be subject on a case-by-case basis to verification and approval by the Administrator.

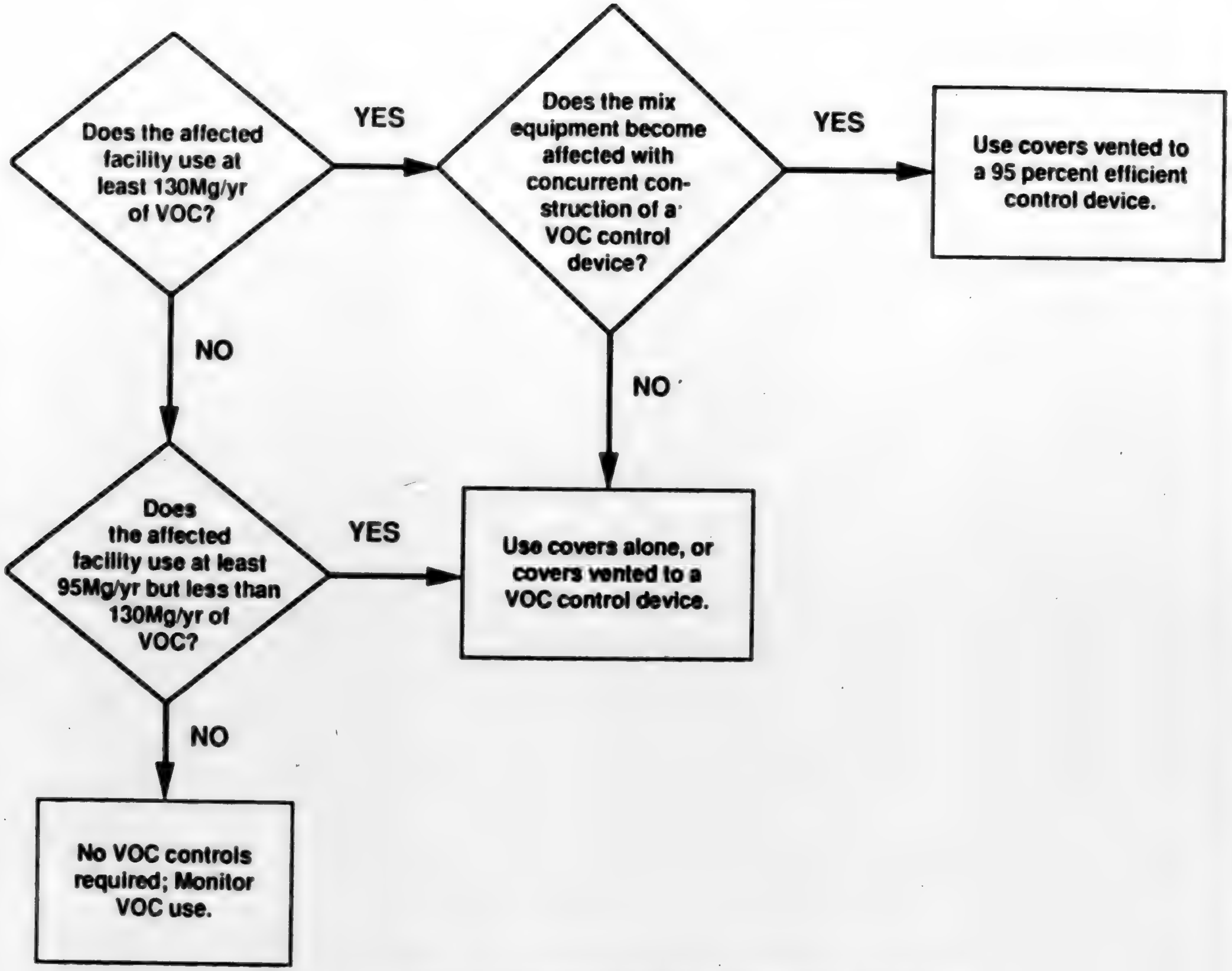
The third means of demonstrating compliance applies to any facility choosing to meet the alternative standard. In this case, the owner or operator is required to demonstrate installation of an approved total enclosure (as defined in §§ 60.741(a) and 60.743(b)(1) of the regulation) around the coating operation and the venting of the emissions from the coating operation to a 95 percent efficient control device. All efficiency measurements will be made using EPA Methods 1 or 1A; 2, 2A, 2C, or 2D; 3; 4; 18; and 25 or 25A.

Monitoring and reporting are required of owners or operators of all affected coating operations. Facilities that claim to use less than 95 Mg/yr of VOC must submit reports of projected and actual VOC use to verify their status with respect to the VOC use cutoff. For coating operations that use a least 95 Mg/yr of VOC are not demonstrating compliance by means of the 30-day liquid material balance method, the requirements specify that a monitor that continuously measures and records a critical parameter of control device operation (e.g., VOC concentration, thermal incineration combustion temperature) must be installed. A baseline level of the monitored parameter is established during compliance tests, and any subsequent 3-hour period (or applicable carbon adsorption system cycle) of excessive variation from the baseline must be reported quarterly.

B. Standards for Mix Equipment

Three categories of mix equipment have been distinguished based on the associated control equipment determined to be BDT. A logic flow diagram of the mix equipment standards is presented in Figure 2. For any polymeric coating facility that uses at least 130 Mg/yr of VOC and is served by a control device that was constructed concurrently with the affected coating operation, the standards require that covers be installed on associated onsite mix equipment and that the mix equipment be vented to a control device that is at least 95 percent efficient. Any coating facility that uses at least 95 Mg/yr but less than 130 Mg/yr of VOC, or that uses at least 130 Mg/yr of VOC but is not served by a control device that was constructed concurrently with the affected coating operation, is required only to install and use covers that meet the specifications of the standard on each piece of mix equipment. Each cover must be in place at all times except during addition and withdrawal of ingredients or visual inspection. Those affected facilities that use less than 95 Mg/yr of VOC are not required to control emissions from mix equipment.

BILLING CODE 6560-50-M


Does the affected facility use at least 130Mg/yr of VOC?
YES
Does the mix equipment become affected with concurrent construction of a VOC control device?
YES
Use covers vented to a 95 percent efficient control device.
NO
NO
Does the affected facility use at least 95Mg/yr but less than 130Mg/yr of VOC?
YES
Use covers alone, or covers vented to a VOC control device.
NO
No VOC controls required; Monitor VOC use.

MIX EQUIPMENT STANDARDS

Figure 2. Logic flow diagram for polymeric coating NSPS.

BILLING CODE 6560-50-C

Equivalent means of emission limitation may be approved on a case-by-case basis by the Administrator if, after notice and an opportunity for hearing, the means of emission limitation is demonstrated to be equivalent in reducing emissions to the level required by the standards.

Compliance will be determined by inspection to verify that each piece of mix equipment is equipped with the required cover and, where applicable, that the equipment is vented to a 95 percent efficient control device. When only covers are required, the procedures for their use must be posted in areas of use. The efficiency of the control device will be determined using Reference Methods 1 or 1A; 2, 2A, 2C, or 2D; 3; 4; 18; and 25 or 25A.

Other than requirements associated with VOC use projections and reports of actual use associated with the applicable cutoffs (95 Mg/yr and 130 Mg/yr), there are no monitoring or reporting requirements associated with mix equipment covers, but a determination of compliance status is made at every inspection. When mix equipment is required to be vented to a control device, the requirements are identical to those presented in section A for coating operation. In fact, it is expected that the mix equipment and coating operation will be vented to a common control device.

As discussed in the proposal preamble, an emission limitation is not a feasible standard for mix equipment. A mass emission limit imposed on this type of equipment (from which emissions vary widely as a function of temperature, vapor pressure, molecular weight of the solvent, vessel capacity, operating time, and throughput rate) could not both be achievable under worst-case conditions and, at the same time, require the construction of systems that reflect BDT under more favorable conditions. The extreme difficulties that would be encountered in attempting to obtain representative and accurate measurements of emissions from mix equipment render impractical a percent-reduction format. Therefore, equipment standards were proposed and have been promulgated.

II. Environmental Impacts

Because it is expected that facilities will choose to comply with the coating operation standards by means of the alternative standard, and thus achieve at least 93 percent overall control, the environmental impacts have not changed since proposal. In the fifth year after the standards become applicable, nationwide VOC emissions from new, modified, or reconstructed polymeric coating lines (consisting of the coating operation and associated mix equipment) will be reduced by an estimated 1,300 Mg below the emission level required by the typical State implementation plan (SIP) in an ozone nonattainment area. This represents a reduction of 83 percent.

The estimated national increase in the volume of wastewater discharge in the fifth year of applicability of the final standards of performance is 5,300 m^3, an increase of 69 percent. The EPA has determined that the benefits from recovering and recycling a large percentage of the VOC in the emissions from polymeric coating processes far outweigh this increase (only 300 gallons per day) over the volume of wastewater currently discharged. In addition, the minimal environmental impact of this raw wastewater would be reduced because the wastewater has to meet either the effluent limitations in the National Pollutant Discharge Elimination System (NPDES) permit for the industrial discharger if it is discharged to a receiving stream or pretreatment standards if it is discharged to a municipal sewer.

As a result of the standards, the estimated nationwide incremental solid waste increase in the fifth year of applicability will be about 1,000 kilograms (kg) greater than that associated with typical SIP control. This assumes that all sources use fixed-bed carbon adsorbers to meet the standards and 75 percent of the carbon is recycled by commercial regeneration rather than disposed of as waste. This is an increase of nearly 145 percent but, again, this amount is insignificant. The benefits derived from the VOC emission reduction far outweigh the negative impacts of this additional amount of solid waste.

The only noise-producing additions that might result from the standards would be the fans, motors, and pumps associated with add-on controls at plants that would not otherwise be required to control emissions. It is not expected that these will result in any significant increase in the noise levels at these plants. There are no radiation impacts associated with these standards.

III. Energy Impacts

The energy impacts remain unchanged from those reported at proposal. In the fifth year after this NSPS becomes applicable, nationwide energy consumption by plants performing polymeric coating of supporting substrates will increase by 15 terajoules (TJ) compared with energy consumption determined from the current regulatory baseline. It was determined that the control technologies that are the basis for the regulatory alternatives have a negligible effect on the energy requirements for facilities performing polymeric coating of supporting substrates. Therefore, a negligible energy impact was attributed to the proposed standards; this determination remains unchanged for the final standards.

IV. Cost Impacts

The estimated cost impacts are identical to those estimated at proposal. Annualized control costs for a new coating line (consisting of the coating operation and associated mix equipment) equipped to meet the SIP level of control would range from a net credit to $66,000. The total annualized control costs for an identical coating line controlled to the level of the promulgated standards would range from a net credit to $105,000. The annualized cost of the coating line itself (utilities, raw materials, building and land costs for the line alone, excluding any control costs) would be $0.9 to $11.2 million. The control system annualized costs represents less than 1 percent of the total annualized cost for the controlled coating line.

The estimated capital cost for control equipment to meet the standards at a new line will be about $310,000 to $750,000 compared with $260,000 to $500,000 necessary to meet the SIP level of control. The capital cost of a new coating line without control equipment will be $0.7 to $1.1 million.

In the fifth year of implementation, the estimated nationwide annualized cost of control of coating lines covered by the standards will amount to $340,000 over the regulatory baseline. The cumulative capital costs for control under the proposed standards will be $3.1 million over the regulatory baseline.

V. Economic Impacts

There has been no change in our evaluation of economic impacts since proposal. By the end of the fifth year after the standards are promulgated, there would be the same number of affected facilities as there would be if the controls had remained at the SIP level. No significant retail price change attributable to the standards is expected because there would be no significant increase in annualized cost. No adverse impacts on capital availability, competition, employment, productivity, or small businesses are expected as a result of the standards.

The environmental, energy, and economic impacts are discussed in

greater detail in the BID for the promulgated standards, "Polymeric Coating of Supporting Substrates—Background Information for Promulgated Standards" (EPA–450/3–85–022b).

VI. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (50 FR 31025) July 31, 1985, of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards recommended for proposal for the polymeric coating of supporting substrates. This meeting was held on September 18, 1985. The meeting was open to the public, and each attendee was given an opportunity to comment on the standards recommended for proposal.

The proposed standards were published in the **Federal Register** on April 30, 1987 (52 FR 15906). The preamble to the proposed standards discussed the availability of the BID ("Polymeric Coating of Supporting Substrates—Background Information for Proposed Standards" [EPA–450/3–85–022a]), which describes in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the proposal BID were distributed to interested parties.

The opportunity for interested persons to present data, views, or arguments concerning the proposed standards at a public hearing was provided. However, there were no requests to hold such a hearing; therefore, no hearing was held.

The public comment period was from April 30, 1987, to July 14, 1987. In addition, several late comments were received by EPA. A total of 24 comment letters were received concerning issues relative to the proposed standards of performance for facilities that apply polymeric coatings to supporting substrates. All comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made to the standards.

VII. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry, one State air pollution control agency, and two trade associations. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serves as the basis for the revisions that have been made to the standards between proposal and promulgation.

In response to the public comments and as a result of reevaluation by EPA, several changes have been made to the standards since proposal. In addition, several revisions have been made to clarify the standards.

The applicability of the standards has been modified and clarified. The definition of mix equipment has been changed to include only those vessels in which the actual mixing takes place. On paragraph has been added (§ 60.740(c)(2)) to state explicitly the exclusion for the graphic arts industry from the standards. Definitions have been changed to clarify that paper coating facilities (including plastic film and metallic foil coaters), leather finishers that apply coatings to discrete skins, and coaters of metal coil are not covered. An exemption also was added for waterborne coatings because use of these coatings may be incompatible with the control technologies required to comply with the standards. These revisions are not expected to result in any significant changes in the impact of the standards.

The standards for the coating operation have been revised to require a 90 percent overall emission reduction rather than 93 percent as proposed. This change was made based on a reevaluation of the feasibility of total enclosures in this industry and of the test data available to support the standards. In general, EPA concluded that while facilities that can use total enclosures and 95 percent efficient control devices may achieve 93 percent or greater overall control, the use of this technology may not be available if EPA-prescribed total enclosures cannot be used in existing plants. It was determined that 90 percent overall control is universally achievable, and the standards have been set at this level.

The standards also have been revised to include an alternative standard, i.e., the use of a total enclosure and 95 percent efficient control device, as an alternative to the 90 percent overall emission reduction standard. While this alternative was allowed at proposal as an alternative means of compliance with the emission reduction standard, EPA has now decided to include it as an alternative standard in order to clarify the intent of the rule. This change is not a revision to the substance of the proposed rule.

The standards for mix equipment have been changed to provide allowances for opening the covers during periods of legitimate need such as when adding ingredients, withdrawing samples, transferring the contents, or making visual inspection when such activities cannot be carried out with the cover in place. In addition, the standards for mix equipment have been changed to require covers that meet specified requirements rather than vapor-tight covers equipped with conservation vents as proposed. The use of covers alone is also allowed on mix equipment associated with coating operations where there is no concurrent construction of a control device. These revisions are not expected to result in any significant changes in the impacts of the standards.

Several changes have been made in the compliance provisions. Although no public comment was received on the subject, the definition for total enclosure has been clarified, and requirements for demonstrating that a capture system qualifies as a total enclosure have been added. These changes were made to provide guidance to industry regarding the requirements to gain automatic approval of total enclosures to meet the alternative standard for coating operations. The key requirements are as follow: (1) All sources of VOC emissions are a minimum of four equivalent diameters away from natural draft openings (NDO's); (2) the cumulative area of all NDO's is no greater than 5 percent of the surface area of the enclosure; (3) the average inward face velocity across the NDO's is a minimum of 3,600 meters per hour (m/h), and demonstrably inward at all times; (4) all VOC gas sreams from the enclosure are directed to a control device; and (5) all access doors and windows not considered NDO's are closed during routine operation of the process. A procedure for determining the average inward face velocity across the NDO's is included in the regulation.

The final coating operation standards have been revised to clarify that the use of certain equipment, i.e., a total enclosure and a 95 percent efficient control device, are available as an alternate standard to the 90 percent emission reduction standard. In other words, the owner or operator may choose to comply with either the emission reduction standard or the alternative standard. In addition, the compliance provisions for coating operations meeting the emission reduction standard have been revised to clarify that owners or operators may demonstrate compliance by any of the applicable methods. The option of performing a one-time short-term (3- to 7-day) material balance followed by continuous monitoring was added as an optional compliance method. This option may be attractive at facilities that cannot or do not, want to conduct the continuous detailed monthly measurements that are required for the other liquid material balance option.

Other minor revisions to the compliance provisions have been made. One portion of the gaseous emissions test compliance method (§§ 60.743(a)(1)(ii) and (a)(2)(ii)) that was unclear and subject to interpretation has been deleted in favor of the alternative standard previously discussed. A paragraph has been added to provide for the use of control devices other than carbon adsorbers, incinerators, and condensers (§ 60.743(e)).

Minor changes have been made to the section on monitoring (§ 60.744). Wording has been added to specify clearly that monitors must be in place and operating during all performance tests. The monitors required for carbon adsorbers are now required to measure the "concentration level of organic compounds" instead of the VOC concentration in parts per million by volume. Although many monitors give readings in terms of parts per million by volume, the revision is intended to reflect the fact that EPA has not developed performance specifications or other quality assurance procedures to ensure the accuracy of such monitors. However, units are available that are sufficiently precise to allow assessment of operation and maintenance practices by comparing monitoring data with the baseline value established during the performance test. The accuracy requirements for temperature monitors have been changed to be consistent with other VOC control regulations.

The performance testing and monitoring provisions for fixed-bed carbon adsorption systems have been revised to represent more accurately the performance of multibed systems. This revision was an indirect result of a public comment concerning the performance of fixed-bed carbon adsorbers. Performance tests are the direct means of determining the compliance status of an affected facility and serve as the basis for legal enforcement actions against noncomplying sources. In contrast, the monitoring devices required by these standards serve only as indicators of control device performance to aid enforcement agencies in targeting inspections and performance tests toward potential violaters. The revised procedures will ensure that the performance test runs and monitoring averaging periods will parallel the adsorption cycles of all the individual adsorber vessels or the system's complete sequential rotation through the adsorption cycles of all the vessels. Use of a testing or monitoring period that does not correspond to an integral number of adsorber vessel cycles or system rotations could bias the results slightly in either direction. Efficiencies would be biased high if the test run or monitoring period did not include the elevated emissions typical at the beginning and end of a vessel's adsorption cycle; efficiencies would be biased low if the period included a disproportionate number of these emission peaks.

The revised carbon adsorption system performance testing provisions include separate requirements for systems with a single common exhaust stack and for systems with individual stacks for each adsorber vessel. The Agency believes that a common exhaust stack allows simpler performance testing that is more representative of the entire system's performance but has included provisions for individual exhaust stacks because this is currently the more typical configuration.

For adsorption systems with a common exhaust stack serving all the adsorber vessels, the entire system must be tested. Three test runs are required; each run must correspond to one or more complete rotations through the sequential adsorption cycles of all the adsorber vessels.

For adsorption systems with individual exhaust stacks, each adsorber vessel must be tested individually. Three test runs are required for each vessel; each run must correspond to one or more complete adsorption cycles. A procedure has been added to the compliance provisions for computing a system efficiency from the individual adsorber vessel efficiencies.

The final adsorber monitoring provisions parallel the final performance testing provisions. Again, separate provisions apply to systems with a common exhaust stack and those with individual stacks. No increase in monitoring costs is anticipated.

For adsorption systems with a common exhaust stack, a monitoring device must be installed on the common exhaust stack and one also may be installed on the common inlet duct. The owner or operator must report each occurrence when the average emission level or system efficiency (depending on whether the outlet only, or the inlet and outlet gas streams are monitored) over three successive system rotations varies outside the specified range.

For adsorption systems with individual vessel exhaust stacks, a monitoring device must be installed on each individual exhaust stack, and a monitoring device also may be installed on the common inlet duct or on each individual inlet duct. Each adsorber vessel must be monitored for a minimum of one complete adsorption cycle per day. A 3-day rolling average emission level or efficiency for each vessel (depending on whether the outlet only, or the inlet and outlet gas streams are monitored) must be computed each day from the daily averages, and these 3-day rolling averages must be reported when they vary outside the specified ranges.

Other changes have been made to the sections on alternate means of emission limitation, reporting and recordkeeping requirements, and definitions and symbols. For the most part these changes correct or clarify the sections and are dealt with in the comments and responses that follow. All references in the final standards have been changed from cubic meters to megagrams to be consistent with the mass reporting basis typically used by industry and enforcing agencies. It is now specified that monitoring data recorded during performance tests and instances when actual annual VOC use exceeds the applicable cutoff must be reported. Periods when monitors or control devices are not operational during process operations must also be reported. If no excessive variations of the monitored parameters specified in § 60.747(d)(1)–(6) have occurred, a seminannual statement certifying this fact is required.

The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: selection of the source category, affected facility, selection of BDT and emission limits, control costs, test methods and monitoring, and wording of the regulation. All comments and responses are included in the promulgation BID.

A. Selection of the Source Category

Commenters questioned the applicability of the proposed polymeric coating standards to the leather finishing, graphic arts, and paper coating industries. One commenter said that leather finishing does not meet the applications criteria established in the proposed standards because leather is not handled as a continuous substrate. The commenter stated that leather-like materials (bonded leather fiber products and artificial leathers) can be coated in continuous form and would, therefore, meet the proposed standards'

applicability criteria. Other commenters stated that it was unclear if the standard included graphic arts and paper coating industries (including plastic and metallic foil coating).

The EPA agrees that leather, when used as a general term for discrete hides or skins, is not a continuous substrate and that leather finishing was not intended to be covered under the standards. Therefore, leather finishing has been excluded from the list of web coating operations in the final standards. Leather-like materials, such as urethane-coated and bonded leather fiber products are, however, covered by the standards. The graphic arts and paper coating industries were not intended to be included in the proposed polymeric coating standards. Language has been added to the final standards to make these exclusions clear.

Other commenters requested that EPA establish a separate subcategory in the standards for textile coating operations. The commenters cited product and operational variability as factors limiting this industry's ability to comply with the proposed standards. Specific technical comments related to this issue and EPA's responses are discussed in Section C. After fully considering the points raised by the commenters, EPA has decided not to create a separate subcategory or standard for the textile coating industry. However, EPA has adjusted the overall level of the coating operation standard downward to 90 percent in response to the concerns raised by the commenters. The EPA believes that this level of control is universally achievable by the polymeric coating industry, including textile coaters.

B. Affected Facility

One commenter asked for clarification of how the determination of affected facility is made for coating operations that share mix equipment. The commenter presented an example of a new coating operation served by an existing central mix room and asked whether existing coating operations served by the common mix equipment would also become affected facilities.

The affected facility is defined as "each coating operation and any onsite coating mix preparation equipment used to prepare coating for the coating operation." In the case presented by the commenter, the existing coating operations would not become subject to the standards because they are not part of the affected facility that includes the new coating operation. However, the existing mix equipment that serves the new coating operation would become subject to the standards. The only way that an existing coating operation would come under the standards would be if the potentially affected facility of which it is a part (i.e., the coating operation with associated mix equipment) were to be modified or reconstructed.

Other commenters noted that it is not always possible to dedicate a limited number of pieces of mix equipment to a given affected coating line and were concerned that entire mix rooms would become affected if a new coating operation is added.

The commenters have interpreted the proposed regulation correctly. However, EPA has revised the regulation to reduce the burden on plants subject to the mix equipment standards. In most cases, venting mix equipment emissions to a control device is judged to be cost effective whether one piece or an entire mix room becomes affected. When a new coating operation is constructed, a new control device would be necessary to control its emissions. This control device could readily be designed to accommodate emissions from the associated mix equipment that becomes affected when the coating operation is constructed. Under this scenario, the venting of mix equipment emissions to a control device is cost effective.

The hypothetical scenario of concern is that mix equipment could become affected by the standards through modification or reconstruction of a coating operation that uses an existing control device. Although it is considered unlikely, it is possible that the existing control device would have insufficient capacity in reserve to handle all or part of the mix equipment emissions. This would result in a requirement to install a separate control device for these emissions; such separate control of mix equipment emissions is not cost effective. Because it is possible that mix equipment at some modified or reconstructed facilities could not be controlled by existing control devices, the standards have been revised to require use of covers alone if a coating operation is modified or reconstructed without concurrent construction of a control device. Concurrent construction is defined in the final regulation as the period of time in which construction of an emission control device serving an affected facility is commenced or completed, beginning 6 months prior to the date that construction of the affected facility commences and ending 2 years after the date that construction of the affected facility is completed. This period is designated because it is consistent with the normal planning and purchase cycles for equipment of this type. The 2-year period also coincides with the period for which records required under these standards must be retained.

C. Selection of BDT and Emission Limits

1. Control of Coating Operation. Commenters questioned the overall control efficiency of 93 percent required of coating operations under the proposed standards. The commenters addressed both the degree of capture and the carbon adsorber efficiency required to comply with the standards. One commenter questioned the practicality of capturing virtually 100 percent of vapors at all times and joined other commenters in expressing concern that the need for workers to access equipment for feeding raw materials and retrieving products also makes compliance with a requirement for 100 percent capture difficult. The commenter suggested that, with diligent attention to the equipment, a control device efficiency of 95 percent and a capture efficiency of 80 percent could be attained, for an overall efficiency of 76 percent. Another commenter stated that the 98 percent capture efficiency that would be required to obtain an overall efficiency of 93 percent has not been demonstrated relative to the design factors assumed in the economic analysis.

Other commenters believed that the 95 percent efficiency ascribed to carbon adsorption is based on insufficient data from the polymeric coating industry. The 95 percent efficiency was based on test data that included only one polymeric coating operation that used a single solvent. According to the commenters, these data cannot adequately demonstrate a control technology for an entire industry that uses a multitude of solvents and coating formulations. A commenter said that the recovery efficiencies are biased because they rely on data obtained with gas analyzers only under the most favorable short-term operating conditions.

The EPA has determined that the final standards for coating operations are attainable. The following discussion of support for this conclusion addresses: (a) Capture efficiency, (b) control device efficiency, (c) overall control efficiency, and (d) VOC recovery.

a. Capture efficiency. In response to comments, EPA has reevaluated the feasibility of total enclosures in the polymeric coating industry. The term "total enclosure" is defined in § 60.741(a) as a structure that is constructed around a source of VOC emissions so that all VOC emissions are collected and exhausted through a stack or duct. With a total enclosure, there will be no fugitive emissions, only stack

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emissions. The drying oven itself may be part of the total enclosure. A total enclosure must satisfy all of the design and operational requirements as defined in the promulgated regulation (§ 60.743(b)(1)) or be demonstrated to be equivalent to these requirements to the Administrator's satisfaction.

To evaluate the comments, information requests were sent to three facilities that had indicated that enclosures were in use, and plant visits were made to three facilities that had indicated that they were batch operations and needed frequent access to the coating equipment during operation. An expert in industrial ventilation and a vendor of local ventilation systems were contacted. Using the data gathered and standard ventilation principles and guidelines, EPA reached the conclusions discussed below.

As a result of its investigation, EPA has concluded that most facilities would be able to install and properly use a total enclosure around an affected coating operation. Even at facilities with extensive access requirements, local ventilation systems (hoods or other partial enclosures) can be constructed that will achieve a very high capture efficiency while affording necessary access. In most cases, the local ventilation system could be used in conjunction with a larger enclosure (up to room-size) to meet the specifications for a total enclosure.

However, there remains the possibility that some facilities may not be able to install an enclosure that meets the specifications. For instance, at an existing facility adding a new coating operation or modifying/reconstructing an existing coating operation, space constraints might not allow construction of any enclosure large enough for personnel to work within during operation. If the same facility could not install a small total enclosure immediately around the application/flashoff area because of access requirements, the use of a total enclosure would not be feasible for that facility. One of the facilities visited during the investigation of this issue would probably encounter these constraints.

Because there may be facilities at which a total enclosure is not feasible, EPA investigated capture systems that fell short of the requirements for a total enclosure and concluded that a capture efficiency of 95 percent can be achieved even without a total enclosure through the use of a well-designed local ventilation system. Although the actual percentage varies from facility to facility, about 90 percent of the VOC emissions from a coating operation are generated within the drying oven. Because proper design, operation and maintenance assure a high capture efficiency of drying ovens, only 50 percent of the emissions generated in the application/flashoff area must be captured to achieve a total capture efficiency of 95 percent. Even if only 80 percent of VOC emissions from the coating operation are generated in the drying oven, only 75 percent of the application/flashoff area emissions must be captured to achieve 95 percent overall capture. The EPA has concluded that these capture efficiencies can be achieved in a cost-effective manner with a well-designed local ventilation system (hood or other partial enclosures).

b. Control device efficiency. The EPA thoroughly reviewed available information and test data for carbon adsorbers to address the commenters' concerns that carbon adsorption may not be able to reduce VOC emissions by 95 percent for the polymeric coating industry. Carbon adsorption has been used for the last 50 years by many industries to recover a wide variety of solvents. With the experience gained from extensive application under very diverse conditions, the technology has matured to the point that an adequately designed, operated, and maintained system can readily attain an efficiency of 95 percent or higher on a continuous basis. This fact has been demonstrated across many industries with many different solvents and solvent blends. The efficiency of a carbon adsorption system is determined by its design and operating parameters and the composition of the solvent-laden airstream (SLA) vented to it, not by the process equipment that generates the exhaust stream. Thus, it is reasonable to expect the attainment of similar efficiencies through the application of this technology in the polymeric coating industry.

Data indicating the efficiency of carbon adsorption in this and related web coating industries were discussed in the proposal BID. Those data as well as data received after proposal from a polymeric coating plant support control efficiencies capable of meeting the standards. The EPA also has recently concluded an extensive study of the ability of carbon adsorbers to operate continuously at an efficiency of at least 95 percent. This report addresses many of the problems cited by commenters that could be faced by a batch operator, such as situations where multiple lines are ducted to a carbon adsorption system or where the SLA contains varying blends of solvents and other VOC, resulting in short-term variations in flow rate or inlet concentrations.

The report fully addresses these concerns and is discussed more thoroughly in the promulgation BID. The report indicates that these concerns would not significantly affect the efficiency of a properly designed and operated carbon adsorption system. The presence of low inlet concentrations or minor variations in outlet concentrations should not pose a major problem for a facility attempting to show compliance with the coating operation standard. Performance test and monitoring data are averaged over adsorber system cycles, so short-term inlet variations will not greatly affect the long-term average. If the bed is properly designed and regenerated, a constant outlet concentration can be attained such that greater than 95 percent removal is achieved for the entire range of inlet concentrations. Furthermore, by diverting or shutting off the airflow from idle equipment, inlet concentrations can be consistently maintained at higher levels to ensure the desired removal efficiency.

c. Overall control efficiency. An overall control efficiency of 93 percent has been demonstrated by a 4-week liquid material balance at a plant in the pressure sensitive tapes and labels (PSTL) industry that is equipped with a "total building air evacuation system," which was assumed to be a total enclosure for purposes of proposal analyses. The performance of this PSTL plant is considered representative of the control efficiency attainable in the polymeric coating industry because of the many similarities in the two industries. In both, coatings with a similar range of solvent contents are applied with the same types of applicators to continuous substrates and dried in the same types of drying ovens. Capture and control systems for emissions of VOC are very similar. The production at the PSTL plant during the test period was characterized by many short runs of many different products using a variety of solvents, as is often the case at polymeric coating plants.

Since proposal of the polymeric coating standards, EPA received liquid material balance data from a member of the industry (Grace) who coats textile printing blankets. This operation consists of two coating lines in a room-type enclosure. The EPA concluded that these data, which show 93 percent overall recovery based on a 3-day liquid material balance, substantiate, along with the PSTL data, that emission capture and reduction systems are capable of achieving 93 percent control.

The EPA, however, has reevaluated the proposed standards in light of industry comments (particularly issues related to batch operations and design and use of total enclosures). Although the polymeric coating standards require demonstration of an overall level of control, the BDT for the standards is discussed typically in terms of the capture system and control device efficiencies. The product of these efficiencies yields the overall level of control. The control device component of BDT has been demonstrated to be a minimum efficiency of 95 percent for this industry. Therefore, the important variable in evaluating the overall level of control that can be achieved by BDT is the efficiency associated with capture component.

Any change in the assumed level of capture efficiency should be evaluated considering that: (1) The two data points at 93 percent overall efficiency (PSTL and Grace) are associated with unknown capture and control device efficiencies and (2) neither capture system demonstrated complete consistency with EPA's total enclosure criteria. It is quite possible (and perhaps probable) that capture efficiency at these plants was less than the 98 percent minimum previously ascribed to a total enclosure. Therefore, to conclude that capture efficiency was 98 percent, based on an assumed control device efficiency of 95 percent (i.e., 0.98 capture × 0.95 control =0.93 overall control efficiency) may be oversimplification. Another way to estimate capture efficiency of these two facilities is to assume the control device efficiency was higher (i.e., 98 percent) instead of the minimum 95 percent. If so, the 93 percent overall control could have resulted with only a 95 percent efficient capture device.

To ensure the selection of achievable standards for the entire industry, the overall level of control required should be based on the minimum efficiencies of the two components of BDT. The EPA has concluded that control devices are at least 95 percent efficient, even while acknowledging that they are capable of, and often achieve, much higher efficiencies. Although EPA believes that total enclosures achieve essentially 100 percent or total capture, it has not been adequately demonstrated that all segments of this diverse industry can install and operate total enclosures that meet EPA's specifications. It is, therefore, reasonable to allow for this variability when setting the capture system efficiency component of BDT for this industry. Based on these considerations, EPA has adjusted the standards downward from 93 percent to 90 percent overall control (i.e., 0.95 capture × 0.95 control =0.90 overall control efficiency). The promulgated standards recognize that strict adherence to EPA's total enclosure criteria may be neither universally achievable nor required to meet the standards but would still allow use of the alternative standard for those sources that can meet the total enclosure specifications. The EPA believes that this will be an attractive alternative for that majority of plants for which a total enclosure is feasible. Because the compliance test provisions associated with a total enclosure are simpler and less expensive to carry out than a capture efficiency test, there is continuing incentive for sources to install total enclosures.

In conclusion, the standards have been established at an overall control level of 90 percent, with BDT defined as a 90 percent efficient emission reduction system that is composed of an emission capture system and control device. The option of using a total enclosure as the emission capture system is allowed where feasible and is attractive to the source because it simplifies the performance test. This change to the standards takes into account concerns about variability in measurement technique, operating parameters, worker access requirements, etc. The revised standards remain cost effective despite a lower emission reduction. This option potentially results in a projected decrease in nationwide VOC reduction over 5 years compared to the standards as proposed (964 Mg compared to 1,060 Mg). However, because of the use of total enclosures or control devices that achieve more than 95 percent efficiency, facilities will actually achieve emission reductions greater than 90 percent.

d. VOC recovery. The type of solvent used and VOC generated is a key design criterion in any carbon adsorption system. The adsorption characteristics of each compound are assessed using data on their physical properties, and the system is designed to accommodate these properties. While adsorbers can be designed to recover a blend of solvents and other VOC successfully, changes in the characteristics of a feed stream (i.e., the introduction of varying solvent blends due to a batch process and cure volatiles) can affect both adsorption and desorption cycles. If the system cannot accommodate the new SLA stream, it is possible that the working capacity of the bed could decrease below design conditions or that costs of increased steam requirements or carbon bed replacement due to excessive fouling could lead to poor performance or excessive costs of operation.

The operator's responsibilities under these conditions are to design the system to accommodate worst-case VOC composition conditions and to monitor the adsorber outlet streams adequately to assure that the beds are not operated after breakthrough. It is advantageous to standardize solvent blends and minimize the number of "incompatible" solvents likely to be ducted to the control device simultaneously. There may be cases where these measures are impossible and carbon adsorber performance cannot be continuously maintained at 95 percent efficiency at reasonable cost; in these cases, carbon adsorption is not the appropriate control technology. Incineration is often selected, because it can control a wide variety of VOC with relative ease.

A preliminary cost analysis shows that, when compared to baseline control assuming use of an incinerator, a 98 percent efficient incinerator can cost-effectively control emissions from a coating operation equipped with a total enclosure. Incinerators were not considered cost effective at proposal, because they were considered a more stringent regulatory alternative, and the incremental cost compared to a carbon adsorber at 93 percent overall control was considered unreasonable. However, if conditions at a new or modified line prohibit the use of carbon adsorption, these same conditions would prohibit the use of carbon adsorption under baseline regulations. Therefore, the cost of incineration under the NSPS should more logically be compared to the cost of incineration under baseline regulations. The cost effectiveness of control is reasonable in all cases when analyzed using these assumptions.

A commenter presented data that, according to the commenter, indicated that only under ideal conditions could the plant (Grace) recover 93 percent of the VOC applied at the coating operation and that, on a day-to-day basis, recovering 93 percent is very unlikely. Over a 3-day continuous run, the operation achieved 93 percent recovery based on a liquid-liquid material balance. The average recovery efficiency over a month for this operation, also calculated using a liquid liquid material balance was 88 percent. The commenter stated that even though 93 percent is theoretically possible, 85 percent is the maximum practical recovery rate.

Followup contacts were made with the commenter to determine the

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differences between the "ideal" conditions during the 3-day run when a 93 percent overall efficiency was measured and the "typical" operation during the remainder of the month when a monthly average of 85 percent was measured. The two major differences noted by the commenter were (1) More careful measurements were taken during the 3-day run and (2) there was a shorter carbon bed adsorption time during the 3-day run. The commenter emphasized the extensive effort and extreme care used in obtaining measurements for the 3-day material balance. The adsorption time was decreased to 75 percent of the normal adsorption time during the 3-day run to ensure that breakthrough would not occur. The commenter noted that this reduction in adsorption cycle time was not cost effective because of the increased steam requirements for desorption. However, the commenter added that the difference in cycle time would probably not have a significant effect on performance because the original cycled length is "very conservative." The commenter stated that the plant would prefer to use breakthrough monitors instead of timers to control adsorption/desorption cycles however, a reliable monitor has not been found.

Although it is not possible to determine quantitatively the cause of the difference between the two data sets because separate control and capture efficiency are not provided in either case, comparison of the short-term and long-term performance data indicates that the measured differences may largely be due to accounting for mix room losses, retained VOC in the web, and waste VOC in the short-term calculations. These losses were not taken into account in the monthly efficiency calculations. When the short-term efficiency is recalculated without accounting for these losses, the value is consistent with the typical monthly efficiencies reported by the source. Thus, it is reasonable to expect that, if these types of losses were taken into account during the long-term measurements, the measured overall efficiency would approximate the short-term results. This indicates that short-term data may be reasonably representative of long-term performance if measured on the same basis. Furthermore, the short-term measurement techniques reflect the control system's efficiency in accordance with the procedures required for a liquid material balance in the final regulation. Thus, EPA believes that rather than discredit the level of the standards, these test data support the standards.

The information from the commenter does indicate that performing a monthly material balance in some cases (i.e., when multiple coatings are used) may require more resources than are reasonable to spend on compliance demonstrations. However, alternative methods of demonstrating compliance with the standards are available such as the alternative standard, gas-phase test, and short-term (3- to 7-day) liquid material balance. In any case, the monthly liquid material balance compliance provision has limited applicability and would not be an appropriate compliance method for the situation described by the commenter because multiple emission sources are ducted to the same control device.

A commenter recommended adding a requirement for 90 percent control for facilities using less than 110 m^3/yr of VOC if the incremental cost effectiveness is less than $1,100/Mg. The commenter stated that 90 percent control appears to be cost effective below 110 m^3/yr of VOC and suggested evaluating this option by using model operation(s) below 95 m^3/yr of VOC usage.

With the decision to reduce the overall level of control required by the standards from 93 to 90 percent, EPA reevaluated the VOC use cutoff level for this industry. This analysis focused on the same basic question as that raised by the commenter, e.g., would cost-effective control be possible for facilities that qualify for the lower cutoff level. As discussed in the promulgation BID, cost effective control of such facilities at a 90 percent (or lower) overall control level is theoretically possible. However, it is expected that the environmental impact of the change would be relatively small. According to the economic impact analysis conducted at proposal, it is expected that growth in this industry will occur in lines with annual VOC usage greater than 95 Mg/yr (110 m^3/yr). Therefore, the promulgation of a lower VOC use cutoff will not affect the costs and emission reductions projected as a result of the standards, and the cutoff level has been retained as proposed. Furthermore, it is expected that most facilities will choose to comply with the alternative standard, thus achieving at least 93 percent overall control. For these facilities, the analysis that determined the proposed cutoff is still applicable. In any case, EPA will reconsider the cutoff level at the 4-year review of the standards if additional data indicate that there is an environmental benefit to use of a lower cutoff.

Commenters believed that EPA's model plants do not adequately reflect the diversity in the polymeric coating industry and disagreed with several assumptions used in the analysis. The model plants are based on operations that use one solvent on one substrate and use equipment dedicated to one method of coating. However, according to the comments, coating operations use several solvents or solvent blends; substrates of several types, thicknesses, and widths; and various impregnating and coating head configurations. Also, because of the specialized properties of coated fabrics, long, efficient runs are rare, and batch processing is typical. Thus, models that base control efficiency only on size and solvent use fail to consider adequately major differences in process operations that affect both efficiencies and costs.

A commenter questioned the following assumptions that were used in the analysis: (1) Characterizing magnetic tape coating operations as similar to polymeric coating operations; (2) including a model plant controlled by an air-atmosphere condenser, a control device that has not been demonstrated for the polymeric coating industry, while not considering an inert-atmosphere condenser; and (3) setting the solvent concentration in the oven exhaust and control device inlet stream at 25 percent of the lower explosion limit (LEL), a level that, according to the commenter, is unsafe for oven operating and does not account for the lower concentrations in the air from solvent storage tanks, mixers, and flashoff areas, which would reduce control efficiency by lowering the overall inlet stream concentration.

The EPA believes that the range of practices typical in the polymeric coating industry have been adequately considered in the development of the standards and that the standards are achievable over the range of practices expected to occur. Based on contacts with and visits to a large number of polymeric coating plants over the course of standards development, four different types of "model lines" were developed to represent the diverse segments of the industry. To account for the range of sizes typically found in each sector of the industry, the impacts of the regulatory alternatives were analyzed for two or three annual VOC use rates within each type of model facility. In all, a total of nine different combinations of facility type and size were analyzed. In the judgment of EPA, these model plants cover the range of variables that affect VOC emissions, and these variables

have been given proper consideration in the development of the standards. In fact, after proposal EPA visited and requested detailed process information from representative plants in order to learn more about enclosure design and capture efficiency parameters as well as batch operations. This information confirmed the validity of EPA's approach.

The responses to the comments that questioned EPA's assumptions are as follows:

1. Although there are differences between the magnetic tape and polymeric coating operations, the basic configuration of unwind station, application/flashoff area, drying oven, and rewind station is common to both. Also, the VOC content of the coatings, the types of solvents, coating application techniques, and the mix equipment is often similar. As a result, the SLA streams generated by the processes are similar in composition, as are the applicable control technologies.

2. At least one air-atmosphere condenser has been used on a polymeric coating operation. A representative of the plant indicated that no major difficulties with the system had been encountered. However, it is unlikely that this control technology will be used at polymeric plants that are controlling mix equipment emissions as well as coating operation emissions because the operation of a fine-tuned, closed-loop condenser can be adversely affected by the moist, intermittent airflow from mix equipment. The use of an inert-atmosphere condenser was not analyzed because use of this system is incompatible with a process where oxygen in the application/flashoff area is essential for worker access.

3. The assumption that the SLA stream at the inlet of the control device has a concentration as high as 25 percent of the LEL is justified. The standards contain no requirement that emissions from solvent storage tanks be ducted to a control device. In any case, a more dilute SLA stream could be used as makeup air in the drying oven. Good design should ensure that emissions from mix equipment are ducted to the control device at a concentration of 25 percent or less of the LEL. In addition, the airflow from this source is quite small in comparison to that from the drying oven, so a reduced concentration would have little effect on the overall concentration of the inlet SLA stream. The air containing the emissions from the application/flashoff area is expected to be used as makeup air for the drying oven, not ducted directly to the control device. Drying ovens in this and other industries are operated safely at a concentration of 25 percent of the LEL. In fact, ovens equipped with appropriate safety features are allowed to operate at up to 50 percent of the LEL.

One commenter stated that there is no best demonstrated technology for a coating operation that uses both aqueous and organic solvent coating systems, nor is there a provision for handling this type of operation where a common mixer is used.

The commenter is correct. Use of the proposed control technologies may be incompatible with the use of waterborne coatings. Therefore, an exemption for waterborne coatings has been added in § 60.740, Applicability and Designation of Affected Facility, to specify that the coating operation or mix equipment may be vented directly to the atmosphere while waterborne coatings are used. A definition of waterborne coatings has been developed that sets the minimum water content (5 percent by weight of the volatile fraction) necessary to be considered a waterborne coating. Because "waterborne" coatings may actually contain organic solvent and generate VOC emissions, the exemption for their use provides a VOC content ceiling of 9 percent weight of the volatile fraction. This ceiling was developed based on a "worst-case" baseline coating that is 85 percent solvent (15 percent solids) by volume. The level specified in the exemption is equivalent to a 90 percent VOC reduction for this coating. The VOC in waterborne coatings is not to be included in the annual VOC usage rate when determining if a facility is below the VOC use cutoff. However, the amount of VOC in waterborne coatings reported by the industry is negligible (0 to 2 percent by weight) of coating applied, and the impact of this exclusion is expected to be minor.

2. Control of Coating Mix Preparation Equipment. A commenter recommended that coating mix preparation equipment include only mixers and not mills, holding tanks, or other equipment. The commenter observed that the only coating mix preparation equipment considered in developing the standards and demonstrating the feasibility of the standards was the mix tank. The feasibility of the proposed standard for mills, holding tanks, and other equipment, which are included in the definition for coating mix preparation equipment, was not considered. At the commenter's plant, portable containers are used to transport coating from the mixing area to subsequent coating preparation and application areas. These portable containers appear to be included in the definition as "holding tanks," but, according to the commenter, there is no feasible or practical way for these portable containers to comply with the requirement that all VOC emissions be vented to a control device. The commenter also questioned the feasibility of (1) Capturing and venting all VOC emissions from mills to a control device at a concentration range within which the control device is efficient or (2) installing a vapor-tight cover equipped with a conservation vent. The commenter said that only equipment that was specifically addressed in the development of the standard should be included in the definition of coating mix preparation equipment. The commenter recommended that "coating mix preparation equipment" be defined as "mix tanks in which solvent and polymer are blended to prepare polymeric coating formulations."

The final rule requires that only affected mixing vessels be covered and vented to a 95 percent efficient control device. The definition of "coating mix preparation equipment" has been changed to "all mixing vessels in which solvent and other materials are blended to prepare polymeric coatings."

Only mixing vessels were considered in the analysis of the cost and cost effectiveness of mix equipment control because essentially all mixing area emissions that were intended to be regulated are generated from the mixers. Mills in this industry are most frequently operated using dry ingredients alone and are often tightly sealed to contain the ingredients. Emissions from holding tanks are negligible compared to those from the mixers because both breathing and working losses are minimized. Breathing losses are minimized because holding tanks are generally located indoors at relatively constant temperatures and because the vessels typically are covered during storage to minimize coating composition changes through solvent loss and contamination. Working losses due to the filling of vessels are minimized because holding tanks typically are cleaned between uses; a clean, dry vessel does not have any vapor in the air space to be displaced as the coating is introduced. Emissions during the cleaning process are not regulated because of the inherent difficulties of control. Nevertheless, mills, holding tanks, and other equipment had been included in the proposed rule because it was determined that the controls mandated for the mixers could be easily applied to such equipment.

However, based on a reexamination of the information gathered during the development of the standards and on the information presented by the commenter, EPA has decided that the standards should be applied only to mixers because they are the primary source of mix room emissions and the costs of controlling emissions from mills were not demonstrated. The EPA also agrees with the commenter that it is infeasible to duct emissions from portable equipment to a controld device. However, during the actual mixing process, these portable containers are stationary, and ducting emissions to a control device is feasible. Thus, portable tanks, including holding tanks, are required to be covered and vented during those times that they are in use as mixing vessels. Covers alone are required when these tasks are in transit or at nonmixing locations.

Commenters questioned the technical feasibility of capturing and venting all VOC emissions from coating mix preparation equipment. One commenter noted that the need for access to the mixers makes sealed covers impractical. Also, according to the commenter, the total enclosure of and ducting emissions from all transfers from mixers to transfer containers, strainers, coaters, and other mixers is not feasible. Another commenter focused on the portable containers or "change cans" used specifically in the printing blanket industry for high-viscosity coatings that cannot readily be pumped beyond the shortest distances. According to the commenter, the change cans are generally covered during storage, movement, and mixing but because they are portable, cannot be ducted to a control device. Some VOC emissions from these containers are inevitable when covers are necessarily removed between the steps of the process.

A commenter pointed out that companies frequently use different sizes of mix equipment ranging from 5-gallon pails to 500-gallon portable tanks. Some are totally enclosed, while others are virtually impossible to enclose well enough to meet the proposed standard. The commenter maintained that companies would find it impossible to capture all emissions from mix equipment because of the nature of the process, cleanups, color changes, short runs, container handling, etc. The commenter also questioned the validity of EPA's contention that coating operations that apply urethane coatings, which are purchased premixed, do not use mix equipment. According to the commenter, all such operations use mix equipment either to adjust the specific properties of a batch of coating or to obtain the proper coating consistency.

A commenter pointed out that, while the proposal preamble states that BDT for mix equipment is the use of covers vented to a control device and that the format for the standard is an equipment format, the proposed standard does not mention equipment. The commenter stated that the requirement that all VOC emissions be captured and vented makes the proposed standard a performance standard, requiring a 100 percent capture efficiency. The commenter recommended that the performance standard language be deleted and that the standard (§ 60.742(a)(2) at proposal) be restated as an equipment standard.

The format of the standards for mix equipment was intended to be an equipment standard. But, as noted by the commenters, the use of the term "all" in the proposed standard implies 100 percent-capture, which has not been demonstrated in the polymeric coating industry. The standards for mixing vessels that serve coating operations that use at least 130 Mg/yr of VOC (and are associated with a coating operation with concurrent construction of a control device) have been revised to reflect actual workplace conditions. These mixing vessels are required to be covered during mixing and vented to a 95-percent efficient control device. The mixing vessles must be covered except when adding ingredients, withdrawing samples, transferring the contents, or making visual inspection if these activities cannot be carried out with the cover in place. Specifications for the covers have been added in § 60.743(c)(1).

The EPA does not believe that the use of portable containers or containers of varying sizes precludes the venting of emissions to a control device during the actual mixing process. In cases where portable tanks are used, the mixing apparatus remains stationary. Ductwork can be installed from this point to the control device. No evidence has been presented that small mixing vessels cannot be similarly equipped. The change to an equipment format with allowances for opening covers during periods of legitimate need addresses the concerns cited by the commenters.

The commenter's contention that sources applying urethane coatings employ mix equipment does not change the conclusions of the background study. Should these sources use mix equipment, the same cost factors that apply to mix equipment at other plants would apply. In fact, the higher value of the solvents saved by the application of control technology at this type of plant would improve the cost effectiveness of control beyond that calculated for other types of polymeric coating plants. Because of the direction of this change, the impacts of the standards were not recalculated. When such sources use mixers, the beneficial impacts of the standards will be obtained with reasonable cost effectiveness and will far outweigh the negative impacts.

One commenter said that EPA appears to have incorrectly applied information on emissions from solvent storage tanks to emissions from mix tanks. The resulting estimate that vapor-tight covers with conservation vents would reduce emissions by 40 percent significantly understates the emission reduction that would be obtained. The commenter presented results from a bench-scale experiment that showed a simple cover not equipped with vapor-tight seals or a conservation vent would reduce emissions 74 percent and 96 percent when covering 87 percent and 100 percent of the vessel, respectively. The commenter contended that economic analysis would show that the small gain in emissions control achieved by a vapor-tight cover with a conservation vent as opposed to a simple cover would not be cost effective. The commenter suggested that the standard for mix equipment using at least 110 m^3/yr but less than 150 m^3/yr of VOC (§ 60.742(a)(3) at proposal) be revised to require only a cover that encloses at least 95 percent of the opening and that must be closed at all times except when adding ingredients, withdrawing samples, transferring the contents, or making visual inspection when such activities cannot be carried out with the cover in place.

The EPA agrees that the improvement in control efficiency on mix equipment to be gained from a vapor-tight cover with a conservation vent compared to that from a simple tight-fitting cover is insignificant. The chief benefit to be gained from conservation vents is the control of "breathing losses" resulting from diurnal temperature changes. Because mix equipment is not normally exposed to such changes in this industry, the requirement that covers be sealed and equipped with conservation vents has been dropped. However, EPA does not agree that the emission reduction ascribed to covers is significantly underestimated. The experiment conducted by the commenter explored only evaporative losses during the mixing process. This treatment neglects the impact of the "working losses" that occur due to the filling and emptying of a vessel that contains a solvent-saturated air space. An analysis of cover efficiency was carried out for

mix equipment in the magnetic tape manufacturing industry, and the results of this analysis are considered representative of the polymeric coating industry as well. The efficiency of covers was determined by this analysis to be 40 percent.

The standards for mixing vessels that use at least 95 Mg/yr (110 m^3/yr) but less than 130 Mg/yr (150 m^3/yr) (§ 60.742(c)(3)) of VOC has been revised to require the equipment to be covered at all times except when adding ingredients, withdrawing samples, transferring the contents, or making visual inspection when such activities cannot be carried out with the cover in place. The same requirements have been extended to mix equipment at facilities using at least 130 Mg/yr of VOC that are associated with coating operations without concurrent construction of a control device. Specifications for the covers are the same as those listed under § 60.743(c)(1) for mix equipment serving coating operations that use at least 130 Mg/yr. The cost of compliance with the revised standard will be less than that associated with the use of covers and conservation vents, which were cost effective under the proposed standard. This is because the cost of covers is expected to be included in the purchase price of new equipment, so that there is no incremental cost associated with the emission reduction.

D. Control Costs

One commenter claimed that the cost of totally enclosing print blanket coating equipment was seriously underestimated. According to the commenter, the nature of these operations requires constant operator access to the coater; therefore, a small enclosure immediately around the coating application/flashoff area cannot be used. The commenter further stated that a total room enclosure is infeasible for existing plants because there are typically multiple lines in a single large room with many openings and ventilation systems. The remaining option is to enclose the equipment within a smaller room of sufficient size to allow the constant presence and mobility of equipment operators. The commenter stated that, for worker safety, the concentration of solvent within this enclosure must be limited to 100 parts per million by volume and that the only option for achieving this low solvent concentration would be to flush high volumes of air through the enclosure.

The commenter presented an analysis of the costs and cost effectiveness of this approach. The commenter's analysis was based on the assumption that the only way to protect workers within a total enclosure is to dilute the emissions to the level considered safe for personnel. The resulting airflow rate required an entirely new carbon adsorption system at a cost of $2.5 million to control the emissions. The capital cost of this system, coupled with the high operating costs associated with maintaining a high removal efficiency from such a dilute SLA steam, resulted in an unreasonable cost-effectiveness value.

The EPA believes that the commenter's assumption is unrealistic and erroneous. In practice, localized pickup points (hoods or other enclosures) should be placed within a total enclosure to both protect any workers that must be inside and reduce the ventilation rate to a level such that the air from the enclosure can be used as makeup air in the drying oven. Thus, a new carbon adsorption system would not be required, and the composition of the SLA stream ducted to the control device would be similar to that assumed in EPA's analyses.

The analysis presented by the commenter was reworked using more realistic assumptions. Using the commenter's values for annual solvent use, electricity and stream costs, and the value of reclaimed solvent and the factors from EPA's original analysis for adsorber steam and electricity demand, the cost effectiveness of moving from the source's current control level to the level required by the standards is less than $200 per ton of additional VOC recovered. The EPA considers this to be a reasonable value. Thus, EPA believes that the costs associated with totally enclosing equipment such as that operated by the commenter were not underestimated.

E. Compliance Provisions

One commenter sought confirmation that under the proposed regulations compliance could be demonstrated with an "approved" room enclosure around the coating equipment and data that indicate proper operation of collecting equipment. The commenter's interpretation is that the design of the room enclosure will be approved by EPA on a case-by-case basis and that the major requirement for approval is that the room be under negative pressure and the exhaust which produces this negative pressure be vented to a 95 percent efficient control device. Data to prove proper operation of the control device would be taken from continuous recordings of the pollutant concentration in the gas vented from the carbon beds.

The final standards have been revised to clarify that the use of certain equipment, i.e., a total enclosure and a 95 percent efficient control device is available as an alternative standard to the 90 percent emission reduction standard. In other words, the owner or operator may choose to comply with either the emission reduction standard or the alternative standard. The EPA also has revised the compliance provisions to include specifications for a total enclosure. Case-by-case approval by the Administrator is not required if these specifications are met. After the initial determination of compliance, an approved parameter (such as fan amperage or duct flow rates) shall be monitored to demonstrate proper operation of the vapor capture system. Also, the control device must be monitored in accordance with the same provisions that apply when the two-part gaseous emissions test is used to demonstrate compliance. If the control device is a carbon adsorber, monitoring of the pollutant concentration in either the control device outlet stream or both inlet and outlet streams is required.

In addition, the compliance provisions for coating operations meeting the emission reduction standard have been clarified and revised since proposal. In the final standards, one method of demonstrating compliance is to perform a two-part gaseous emissions test to measure both capture efficiency and control device efficiency. Compliance is demonstrated if the product of these two efficiencies is equal to or greater than 0.90. This compliance method is available to all affected facilities. An alternative to performing the gaseous emissions tests is performing a liquid-liquid material balance. However, this compliance provision has limited applicability. A liquid-liquid material balance can only be used when a single coating operation is vented to a dedicated control device (i.e., the control device may not be used to control emissions from any other emission source, including mix equipment.) This compliance provision is most likely to be applicable for facilities with mix equipment that is not required to be vented to the control device. The liquid-liquid material balance compliance provisions include two options. The first option requires that a liquid-liquid material balance be performed for each nominal 1-month period. When using this option, no monitoring is required beyond that necessary to perform the material balance. The second option, which has been added since proposal, requires performing a one-time material balance over 3 to 7 days followed by continuous monitoring. The number of days for the performance test is selected by the operator and shall provide data that represent the plant's typical coating practices. The monitoring requirements are the same as those specified for the two-part gaseous emissions test and alternative standard. This second option may be attractive for facilities that cannot or do not want to conduct the continuous, detailed monthly liquid material balance measurements that are required for an accurate balance (e.g., VOC applied at the coater, retained VOC [optional], VOC waste losses).

F. Test Methods and Monitoring

One commenter stated that the 93 percent reduction required of coating operations will be unattainable because of the inherent vagaries of the parameters that must be measured to perform the liquid material balance compliance test. The commenter noted that the method requires measurement techniques that are not currently used. The commenter also stated that the measurement techniques and formula for the control device efficiency in the gas balance compliance test are realistic but that the formula for capture efficiency appears to assume that all uncontrolled solvent vapors will be discharged through a measurable point and that there will be no "stray" fugitive emissions.

The EPA acknowledges that short-term variations in process conditions could affect a facility's ability to perform the measurements required to demonstrate compliance in the short term by means of a liquid material balance. For this reason, a relatively long averaging time (in this case, 1 month) is available to allow for a representative variety of coatings and products, as well as to reduce the impact of short-term variations due to process upsets, solvent spills, and variable amounts of solvent in use in the process. Facilities should already keep at least some of the required records as part of normal business practices and should be able to negotiate any specific problems faced by an individual facility with the enforcing agency. As stated in section E, facilities that find the recordkeeping and measurements burdensome may opt to conduct the short-term liquid balance or gas-phase test to demonstrate compliance. In any case, the alternative standard, use of a total enclosure and 95 percent efficient control device, is available to facilities that do not wish to perform the testing and measurements associated with the capture portion of the emission reduction standard. Because EPA has determined that facilities can conduct the measurements required for a liquid material balance and because several alternatives are available, the month-long liquid material balance has been retained in the final standards.

In response to the commenter's other concern, it appears that the commenter has misinterpreted the requirements of the gaseous emissions compliance test. The standard requires (not assumes) that all uncontrolled VOC emissions, including solvent vapors, will be passed through stacks suitable for measurement. To carry out the compliance test, the source must ensure that all VOC emissions will either be directed to the control device or be measured at the exit stack of a temporary enclosure or at all room exhaust points. In other words, there should be no "stray" fugitive emissions that are not accounted for in the compliance test.

One commenter recommended that the standards include a plant-wide VOC recovery of 85 percent as an alternative method of demonstrating compliance and that this is justified because of its simplicity, low expense, and effectiveness. The commenter said that the standards regulate some processes at different levels and leave other emissions, such as those from storage, cleaning, and transfers, unregulated. The commenter believes that enforcement officers would prefer a plant-wide material balance and said that enforcement officers routinely ask for this information along with the data required by a particular standard. According to the commenter, the solvent disbursed to the plant can be readily measured by metering withdrawals from the solvent tanks. Also, solvent purchases, which are always measured accurately, are a direct measure of emissions bcause recovered solvent is replaced into inventory. Thus, the plant's VOC recovery efficiency can be calculated as the difference between VOC used and VOC (including solvent) purchased, divided by VOC used. Because some emissions in the plant would be unregulated, the commenter concluded that the standards assume and accept a plant-wide recovery of less than 93 percent. The commenter suggested that EPA determine an appropriate recovery level under the final standard. Using several years of data from a modern facility that nearly conforms with the standard, the commenter concluded that a reasonable plant-wide recovery level for a new plant designed to comply with the standards would be 85 percent.

The option of demonstrating compliance using a plant-wide material balance has not been incorporated into the final standards. Section 111 of the Clean Air Act requires that the standard be based on BDT. Compliance methods must demonstrate that the affected facility meets the control efficiency set by BDT. If a plant-wide material balance were used to demonstrate compliance for polymeric coating operations, a plant-wide control efficiency that ensures 90 (formerly 93) percent control of VOC emissions from an affected coating operation(s) would be required. Without extensive testing to apportion emissions from all VOC sources in the plant, a plant-wide material balance demonstrating less than 90 percent control does not ensure that the affected facility initially achieves 90 percent control or maintains 90 percent control over each month of operation.

It is not feasible to select a plant-wide VOC recovery value because of the wide range of potential emission points that differ from plant to plant. These include existing coating operations and mix equipment, solvent storage tanks, and cleanup operations. With the variation in emissions from such sources, it is not possible to select a single plant-wide recovery efficiency value that would reflect BDT, yet be achievable in all cases. Even if such a level were established, it would be impossible to tell whether the affected facilities within the plant were in compliance with the standards applicable to them individually. For these reasons, a plant-wide material balance has not been added to the standards as an alternative method of demonstrating compliance.

One commenter noted the unreliability and the expense of maintaining a continuous monitoring device for a carbon adsorber. The commenter stated that these monitors work well for short-term measurements but are not reliable for continuous measurements because the high water content of the carbon adsorber exhaust immediately after desorption damages the monitors. Thus, the industry may have difficulty maintaining continuous monitoring over the long term as required in the proposed regulation.

The EPA must have some means to determine whether proper carbon adsorber operation and maintenance practices are being carried out. The monitoring of organic compounds is the only parameter that has been identified that adequately relates to adsorber performance. Without these monitors, sources are unable to detect when they may be operating out of compliance. Tests on existing systems show that the lack of proper monitoring is a major cause of poor performance of carbon

adsorber systems. Discussions with carbon adsorber experts indicated that continuous monitors are available that are reliable when the proper calibration and maintenance procedures are used.

G. Wording of the Regulation

One commenter recommended converting all references to m^3 to pounds. This would be consistent with the units normally used by the industry for recordkeeping, solvent purchases, and pollution control system and equipment specifications.

Consistent with U.S. government policy, EPA has chosen the International System of Units as the format for regulations. However, EPA has revised all references in the final standards of m^3 to Mg to be consistent with the mass reporting basis typically used by industry and enforcing agencies. Reporting emissions and VOC usage rates on a mass basis rather than a volume basis also avoids the need to select average or typical densities of materials when reporting general values.

One commenter suggested that the volumetric flow rate be stated on a wet basis rather than a dry basis because, according to a contact at EPA, Method 25A gives results in parts per million by volume on a wet basis.

The commenter is correct. Method 25A gives results in terms of parts per million by volume on a wet basis; therefore, the volumetric flow rate also should be stated on a wet basis when the method is used. The final standard has been corrected. However, volumetric flow rates used in conjunction with Method 25 concentration measurements are to be expressed in dry standard cubic meters per hour.

One commenter stated that, for consistency with other NSPS and State regulations, coating mix preparation equipment should not be included in the definition for a coating line and that the term "coating line" was unnecessary since "coating operations" and "coating mix preparation equipment" are described. The commenter suggested changing all references to "coating operations" to "coating lines" since these two terms, by his definition, are synonymous.

In the proposed standards, coating line is defined as "the coating operation(s) and coating mix preparation equipment that service the coating operation(s)." According to the commenter, the term coating line is commonly used interchangeably with coating operation. To avoid confusion, the term "coating line" is not used in the final standard. The term "coating operation" has been retained in order to maintain consistency with the proposal BID and preamble.

One commenter recommended eliminating references to baking, curing, and polymerizing from the definition for drying oven. Although the preamble makes clear that the curing oven is not covered by the standard, the proposed definition for "drying oven" suggests that the curing oven is included.

The definition of drying oven has been changed to "a chamber within which heat is used to dry a surface coating; drying may be the only process or one of multiple processes performed in the chamber." By eliminating references to baking, curing, and polymerizing, this revised definition makes it clear that the standard does not apply to chambers in which drying is not performed. The definition also makes it clear that the standard does apply to any chamber within which drying is performed, regardless of the other processes performed in the chamber. This change is consistent with the fact that cure volatiles resulting from separate curing ovens are expected to be minimal in this industry, or to occur offsite, and thus, are not available for control.

One commenter recommended changing the definition for solvent used from "the amount of solvent delivered to the coating mix preparation equipment of the affected facility" to "the net quantity consumed in the coating operation line." According to the commenter, coating mixes are typically prepared in greater quantities than required for a specific production run. The excess coating may be recycled, which would result in double counting, or disposed as a waste material.

"Solvent used" was defined at proposal as the amount of solvent delivered to the coating mix preparation equipment because: (1) This is the simplest and most direct measurement point, and (2) it reflects the quantity used in determining the cutoff. The commenter's suggested definition of "solvent used" would make accurate measurement considerably more difficult because sampling and analysis of the applied coating would be required. Also, the commenter's suggested definition does not take into account VOC emitted during mixing, which were included in the computation of the solvent-use cutoff. The cutoff was computed by determining the minimum quantity of applied VOC that could be cost-effectively controlled and then adjusting this volume to account for VOC emitted before the coating reaches the applicator of the affected coating operation.

The proposed definition was not intended to result in double counting. However, it may require the owner or operator to keep careful records of VOC use in cases where prepared coatings are not used immediately.

To clarify the meaning of this term, the definition has been changed to "VOC used." The amount of "VOC used" should be computed as the sum of: (1) The VOC delivered to the mix equipment from storage, (2) any VOC added after initial formulation is complete (e.g., dilution solvent added at the coating operation), and (3) the VOC content of any ingredients prepared off the plant site that are used in the preparation of coatings. When excess coating is recycled for use in a later coating run, the VOC it contains will not be counted a second time. When premixed coatings or ingredients are used in the formulation of coatings, only the VOC content of coatings prepared off the plant site must be included in the volume of VOC used. Should a source reclaim the VOC from excess coatings, the VOC will enter the recovery system just as if it were applied to a substrate. When this reclaimed VOC is reused, it will be properly counted toward the volume of VOC used. It is true that coatings disposed as waste materials were not considered when the annual VOC-use cutoff was calculated. However, EPA believes that such wastes should be minimized. Thus, to provide an incentive to minimize these wastes, no change has been made to this aspect of the definition.

A change has been made to the proposed definition to account for facilities that purchase premixed coatings or other ingredients that contain VOC. The new definition of "VOC used" reads "the amount of VOC delivered to the coating mix preparation equipment of the affected facility (including any contained in premixed coatings or other ingredients prepered off the plant site) for the formulation of polymeric coatings to be applied to supporting substrates at the coating operation, plus any VOC added after initial formulation is complete (e.g., dilution solvent added at the coating operation). If premixed coatings that require no mixing at the plant site are used, "VOC used" means the amount of VOC delivered to the coating applicator(s) of the affected facility.

A commenter suggested redefining the symbol M_r used in Equation 1 (as proposed) as the total VOC recovered before purification because the proposed definition does not allow for VOC losses during separation/purification.

As proposed, the definition of "M_r" does not specify whether the recovered

VOC is to be measured before or after separation/purification. The 93 percent recovery efficiency required to demonstrate compliance using Equation 1 was determined considering the total VOC recovered by the carbon adsorption system. It did not include any losses from separation/purification. Therefore, EPA requires that "M_r," be measured after adsorption. There may be cases, however, where it is more convenient to measure "M_r," after separation/purification. Thus, a measurement point for "M_r," has not been specified, but it is to be established when the compliance procedures are approved. This is explained in § 60.743(a)(3)(vi), which has been added to the compliance provisions.

A commenter suggested redefining the term RS_i in Equation 1 (as proposed) to include all VOC, not just the solvent, retained on the substrate. A portion of the VOC in some coating formulations is monomer that is retained in the substrate either as free monomer or polymer. The suggested definition change would make it clear that any monomer retained in the substrate would be included in the term RS_i. Another commenter recommended that the provisions of justifying the need for retained solvent be broadened to include economic and technical feasibility concerns.

In response to the commenter's suggestion, the definition of RS_i has been changed to "the total mass (kg) of VOC retained on the coated substrate after oven drying or contained in waste coating for a given combination of coating and substrate." Without this change, coatings that release reaction by-products when tested by Method 24 would indicate the presence of some VOC which may not be available for recovery by the VOC recovery system unless the coating is exposed to a similar temperature within the oven. If the amount of monomer retained on the substrate is significant, this may affect a source's ability to demonstrate compliance. By changing "solvent" to VOC in the definition of RS_i enables the source to account for the amount of VOC retained on the substrate. The source is responsible for demonstrating the quantity retained on the substrate.

In response to the other commenter, EPA notes that the intent of the retained solvent (now VOC) provision as proposed was to ensure that all facilities take steps to minimize uncontrolled emissions from retained VOC whenever possible. The exemption for retained VOC was written to permit the facility as much flexibility as possible in demonstrating to the Administrator the level of, and need for, retained VOC. However, EPA has revised this requirement to minimize the burden on both enforcement and plant personnel. The revised requirement eliminates the need for the plant to justify the need for retained VOC if the measured value of RS_i is less than or equal to 6 percent by weight of the liquid VOC applied. A limited survey of the industry indicated that 6 percent is a common breakpoint in retained VOC values and would encompass the majority of plants reporting retained VOC. Plants reporting RS_i values above 6 percent by weight of the liquid VOC applied would still be required to demonstrate to the satisfaction of the Administrator that the retained VOC is required for product quality or to meet product specifications. In all cases, plants would be required to submit for approval data on the specific measurement techniques used to determine RS_i.

VIII. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

The effective date of this regulation is September 11, 1989. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, the construction or modification of which was commenced after April 30, 1987, the date of proposal.

As prescribed by section 111, the promulgation of these standards is based on the Administrator's determination (40 CFR 60.16, 44 FR 4922, dated August 21, 1979) that industrial fabric coating contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The polymeric coating of supporting substrates category includes the fabric coating category. In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control No. 2060–0181.

Public reporting burden for this collection of information is estimated to average 3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Initial performance testing is estimated to average 100 hours per occurrence.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060–0181), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis (RIA). The EPA has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." The cost increases resulting from the

NSPS will be small and will have an insignificant impact on the industry. The EPA has concluded, therefore, that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Incorporation by reference, Polymeric coating of supporting substrates (SIC Codes 2295, 2296, 2394, 3041, 3069, and 3293), Reporting and recordkeeping requirements.

Dated: August 28, 1989.

F. Henry Habicht,

Acting Administrator.

40 CFR part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601.

2. By adding a new subpart VVV to read as follows:

Subpart VVV—Standards of Performance for Polymeric Coating of Supporting Substrates Facilities

Sec.

60.740 Applicability and designation of affected facility.
60.741 Definitions, symbols, and cross-reference tables.
60.742 Standards for violatile organic compounds.
60.743 Compliance provisions.
60.744 Monitoring requirements.
60.745 Test methods and procedures.
60.746 Permission to use alternative means of emission limitation.
60.747 Reporting and recordkeeping requirements.
60.748 Delegation of authority.

Subpart VVV—Standards of Performance for Polymeric Coating of Supporting Substrates Facilities

§ 60.740 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each coating operation and any onsite coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates.

(b) Any affected facility for which the amount of VOC used is less than 95 Mg per 12-month period is subject only to the requirements of § 60.744(b), § 60.747(b), and § 60.747(c). If the amount of VOC used is 95 Mg or greater per 12-month period, the facility is subject to all the requirements of this subpart. Once a facility has become subject to the requirements of this subpart, it will remain subject to those requirements regardless of changes in annual VOC use.

(c) This subpart applies to any affected facility for which construction, modification, or reconstruction begins after April 30, 1987, except for the facilities specified in paragraph (d) of this section.

(d) This subpart does not apply to the following:

(1) Coating mix preparation equipment used to manufacture coatings at one plant for shipment to another plant for use in an affected facility (coating operation) or for sale to another company for use in an affected facility (coating operation);

(2) Coating mix preparation equipment or coating operations during those times they are used to prepare or apply waterborne coatings so long as the VOC content of the coating does not exceed 9 percent by weight of the volatile fraction;

(3) Web coating operations that print an image on the surface of the substrate or any coating applied on the same printing line that applies the image.

§ 60.741 Definitions, symbols, and cross-reference tables.

(a) All terms used in this subpart not defined below have the meaning given to them in the Act and in subpart A of this part.

Coating applicator means any apparatus used to apply a coating to a continuous substrate.

Coating mix preparation equipment means all mixing vessels in which solvent and other materials are blended to prepare polymeric coatings.

Coating operation means any coating applicator(s), flashoff area(s), and drying oven(s) located between a substrate unwind station and a rewind station that coats a continuous web to produce a substrate with a polymeric coating. Should the coating process not employ a rewind station, the end of the coating operation is after the last drying oven in the process.

Common emission control device means a device controlling emissions from an affected coating operation as well as from any other emission source.

Concurrent means the period of time in which construction of an emission control device serving an affected facility is commenced or completed, beginning 6 months prior to the date that construction of the affected facility commences and ending 2 years after the date that construction of the affected facility is completed.

Control device means any apparatus that reduces the quantity of a pollutant emitted to the air.

Cover means, with respect to coating mix preparation equipment, a device that fits over the equipment opening to prevent emissions of volatile organic compounds (VOC) from escaping.

Drying oven means a chamber within which heat is used to dry a surface coating; drying may be the only process or one of multiple processes performed in the chamber.

Equivalent diameter means four times the area of an opening divided by its perimeter.

Flashoff area means the portion of a coating operation between the coating applicator and the drying oven where VOC begins to evaporate from the coated substrate.

Natural draft opening means any opening in a room, building, or total enclosure that remains open during operation of the facility and that is not connected to a duct in which a fan is installed. The rate and direction of the natural draft across such an opening is a consequence of the difference in pressures on either side of the wall or barrier containing the opening.

Nominal 1-month period means a calendar month or, if established prior to the performance test in a statement submitted with notification of anticipated startup pursuant to 40 CFR 60.7(a)(2), a similar monthly time period (e.g., 30-day month or accounting month).

Onsite coating mix preparation equipment means those pieces of coating mix preparation equipment located at the same plant as the coating operation they serve.

Polymeric coating of supporting substrates means a web coating process that applies elastomers, polymers, or prepolymers to a supporting web other than paper, plastic film, metallic foil, or metal coil.

Substrate means the surface to which a coating is applied.

Temporary enclosure means a total enclosure that is constructed for the sole purpose of measuring the fugitive VOC emissions from an affected facility.

Total enclosure means a structure that is constructed around a source of emissions and operated so that all VOC emissions are collected and exhausted through a stack or duct. With a total enclosure, there will be no fugitive emissions, only stack emissions. The drying oven itself may be part of the total enclosure.

Vapor capture system means any device or combination of devices designed to contain, collect, and route solvent vapors released from the coating mix preparation equipment or coating operation.

VOC in the applied coating means the product of Method 24 VOC analyses or formulation data (if those data are demonstrated to be equivalent to Method 24 results) and the total volume of coating fed to the coating applicator.

VOC used means the amount of VOC delivered to the coating mix preparation equipment of the affected facility (including any contained in premixed coatings or other coating ingredients prepared off the plant site) for the formulation of polymeric coatings to be applied to supporting substrates at the coating operation, plus any solvent added after initial formulation is complete (e.g., dilution solvent added at the coating operation). If premixed coatings that require no mixing at the plant site are used, "VOC used" means the amount of VOC delivered to the coating applicator(s) of the affected facility.

Volatile organic compounds or *VOC* means any organic compounds that participate in atmospheric photochemical reactions; or that are measured by a reference method, an equivalent method, an alternative method, or that are determined by procedures specified under any subpart.

Waterborne coating means a coating which contains more than 5 weight percent water in its volatile fraction.

Web coating means the coating of products, such as fabric, paper, plastic film, metallic foil, metal coil, cord, and yarn, that are flexible enough to be unrolled from a large roll; and coated as a continuous substrate by methods including, but not limited to, knife coating, roll coating, dip coating, impregnation, rotogravure, and extrusion.

(b) The nomenclature used in this subpart has the following meaning:

"A_k" means the area of each natural draft opening (k) in a total enclosure, in square meters.

"C_{aj}" means the concentration of VOC in each gas stream (j) exiting the emission control device, in parts per million by volume.

"C_{bi}" means the concentration of VOC in each gas stream (i) entering the emission control device, in parts per million by volume.

"C_{di}" means the concentration of VOC in each gas stream (i) entering the emission control device from the affected coating operation, in parts per million by volume.

"C_{fk}" means the concentration of VOC in each uncontrolled gas stream (k) emitted directly to the atmosphere from the affected coating operation, in parts per million by volume.

"C_{gv}" means the concentration of VOC in the gas stream entering each individual carbon adsorber vessel (v), in parts per million by volume. For purposes of calculating the efficiency of the individual adsorber vessel, C_{gv} may be measured in the carbon adsorption system's common inlet duct prior to the branching of individual inlet ducts.

"C_{hv}" means the concentration of VOC in the gas stream exiting each individual carbon adsorber vessel (v), in parts per million by volume.

"E" means the control device efficiency achieved for the duration of the emission test (expressed as a fraction).

"F" means the VOC emission capture efficiency of the vapor capture system achieved for the duration of the emission test (expressed as a fraction).

"FV" means the average inward face velocity across all natural draft openings in a total enclosure, in meters per hour.

"H_v" means the individual carbon adsorber vessel (v) efficiency achieved for the duration of the emission test (expressed as a fraction).

"H_{sys}" means the carbon adsorption system efficiency calculated when each adsorber vessel has an individual exhaust stack.

"M_{ci}" means the total mass (kg) of each coating (i) applied to the substrate at an affected coating operation during a nominal 1-month period as determined from facility records.

"M_r" means the total mass (kg) of VOC recovered for a nominal 1-month period.

"Q_{aj}" means the volumetric flow rate of each gas stream (j) exiting the emission control device, in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

"Q_{bi}" means the volumetric flow rate of each gas stream (i) entering the emission control device, in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

"Q_{di}" means the volumetric flow rate of each gas stream (i) entering the emission control device from the affected coating operation, in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

"Q_{fk}" means the volumetric flow rate of each uncontrolled gas stream (k) emitted directly to the atmosphere from the affected coating operation, in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

"Q_{gv}" means the volumetric flow rate of the gas stream entering each individual carbon adsorber vessel (v), in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration. For purposes of calculating the efficiency of the individual adsorber vessel, the value of Q_{gv} can be assumed to equal the value of Q_{hv} measured for that adsorber vessel.

"Q_{hv}" means the volumetric flow rate of the gas stream exiting each individual carbon adsorber vessel (v), in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

"Q_{ini}" means the volumetric flow rate of each gas stream (i) entering the total enclosure through a forced makeup air duct, in standard cubic meters per hour (wet basis).

"Q_{outj}" means the volumetric flow rate of each gas stream (j) exiting the total enclosure through an exhaust duct or hood, in standard cubic meters per hour (wet basis).

"R" means the overall VOC emission reduction achieved for the duration of the emission test (expressed as a fraction).

"RS_i" means the total mass (kg) of VOC retained on the coated substrate after oven drying or contained in waste coating for a given combination of coating and substrate.

"W_{oi}" means the weight fraction of VOC in each coating (i) applied at an affected coating operation during a nominal 1-month period as determined by Method 24.

(c) Tables 1a and 1b present a cross reference of the affected facility status and the relevant section(s) of the regulation.

TABLE 1A.—CROSS REFERENCE[a] [b]

Status	Standard	Compliance provisions § 60.743
A. Coating operation:		
1. If projected VOC use is <95 Mg/yr.	§ 60.740(b): Monitor VOC use	Not applicable.
2. If projected VOC use is >95 Mg/yr.	§ 60.742(b)(1): Reduce VOC emissions to the atmosphere from the coating operation by at least 90 percent; or. § 60.742(b)(2): Install, operate, and maintain a total enclosure around the coating operation and vent the captured VOC emissions from the total enclosure to a control device that is at least 95 percent efficient.	(a)(1), (a)(2), (a)(3), or (a)(4); (b), (e).
B. Coating mix preparation equipment:		
1. If projected VOC use is >95 Mg/yr but <130 Mg/yr.	§ 60.742(c)(3): (i) Install, operate, and maintain a cover on each piece of affected equipment; or (ii) install, operate, and maintain a cover on each piece of affected equipment and vent VOC emissions to a VOC control device.	(d), (e).
2. If projected VOC use is > 130 Mg/yr but there is no concurrent construction of a control device.	§ 60.742(c)(2): (i) Install, operate, and maintain a cover on each piece of affected equipment; or (ii) install, operate, and maintain a cover on each piece of affected equipment and vent VOC emissions to a VOC control device.	(d).
3. If projected VOC use is >130 Mg/yr and there is concurrent construction of a control device.	§ 60.742(c)(1): Install, operate, and maintain a cover on each piece of affected equipment and vent VOC emissions from the covered equipment to a 95 percent efficient control device while preparation of the coating is taking place within the vessel.	(c), (e).

[a] This table is presented for the convenience of the user and is not intended to supercede the language of the regulation. For the details of the requirements, refer to the text of the regulation.

[b] Refer to Table 1b to determine which subsections of §§ 60.744, 60.745, and 60.747 correspond to each compliance provision (§ 60.743).

TABLE 1B.—CROSS REFERENCE

Compliance provisions—§ 60.743	Test methods—§ 60.745	Category/equipment[a]	Monitoring requirements—§ 60.744	Reporting and recordkeeping requirements—§ 60.747
A. Coating operation:				
(a)(1)—Gaseous emission test for coating operations not using carbon adsorption beds with individual exhausts.	(b)–(g)	General, CA, CO, TI, CI, PE, TE.	(a), (i), (j), (k), (c)(1), (d), (e), (f), (g).	(a), (d)(7), (f), (g), (h), (d)(1)(i), (d)(2)(i), (d)(3), (d)(4), (d)(5), (d)(6).
(a)(2)—Gaseous emission test for coating operations using carbon adsorption beds with individual exhausts.	(b)–(g)	General, CA, PE, TE	(a), (i), (j), (k), (c)(2), (g)	(a), (d)(7), (f), (g), (h), (d)(1)(ii), (d)(2)(ii), (d)(6).
(a)(3)—Monthly liquid material balance—can be used only when a VOC recovery device controls only those emissions from one affected coating operation.	(a)	VOC recovery	(i), (k)	(e), (f), (g), (h).
(a)(4)—Short-term (3 to 7 day) liquid material balance—may be used as an alternative to (a)(3).	(a)	General, CA, CO, PE, TE	(a), (i), (j), (k), (c)(1), (c)(2), (d), (g).	(a), (d)(7), (f), (g), (h), (d)(1), (d)(2), (d)(3), (d)(6).
(b)—Alternative standard for coating operation—demonstrate use of approved total enclosure and emissions vented to a 95 percent efficient control device.	(b)–(g)	General, CA, CO, TI, CI, PE, TE.	(a), (i), (j), (k), (c)(1), (c)(2), (d), (e), (f), (h).	(a), (d)(7), (f), (g), (h), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(6).
B. Coating mix preparation equipment:				
(c)—Standard for equipment servicing a coating operation with concurrent construction of a control device that uses at least 130 Mg/yr of VOC—demonstrate that covers meeting specifications are installed and used properly; procedures detailing proper use are posted; the mix equipment is vented to a 95 percent efficient control device.	(b)–(g)	General, CA, TI, CI	(a), (i), (j), (k), (c)(1), (c)(2), (e), (f).	(a), (d)(7), (f), (g), (h), (d)(1), (d)(2), (d)(4), (d)(5).
(d)—Standard for equipment servicing a coating operation that does not have concurrent construction of a control device but uses at least 130 Mg/yr of VOC or for equipment servicing a coating operation that uses <130 Mg/yr but >95 Mg/yr of VOC—demonstrate that covers meeting specifications are installed and used properly; procedures detailing proper use are posted; the mix equipment is vented to a control device (optional).	No other requirements apply.			

[a] CA=carbon adsorber; CO=condenser; TI=thermal incinerator; CI=catalytic incinerator; PE=partial enclosure; TE=total enclosure.

§ 60.742 Standards for volatile organic compounds.

(a) Each owner or operator of an affected facility that is subject to the requirements of this subpart shall comply with the emissions limitations set forth in this section on and after the date on which the initial performance test required by § 60.8 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated or 180 days after initial startup, whichever date comes first.

(b) For the coating operation, each owner or operator of an affected facility shall either:

(1) Reduce VOC emissions to the atmosphere from the coating operation by at least 90 percent ("emission reduction" standard); or

(2) Install, operate, and maintain a total enclosure around the coating operation and vent the captured VOC emissions from the total enclosure to a control device that is at least 95 percent effecient (alternative standard).

(c) For the onsite coating mix preparation equipment of an affected facility, the owner or operator shall comply with the following requirements, as applicable:

(1) For an affected facility that has concurrent construction of a control device and uses at least 130 Mg of VOC per 12-month period, the owner or operator shall install, operate, and maintain a cover on each piece of affected coating mix preparation equipment and vent VOC emissions from the covered mix equipment to a 95 percent efficient control device while preparation of the coating is taking place within the vessel.

(2) For an affected facility that does not have concurrent construction of a control device but uses at least 130 Mg of VOC per 12-month period, the owner or operator shall either:

(i) Install, operate, and maintain a cover on each piece of affected coating mix preparation equipment; or

(ii) Install, operate, and maintain a cover on each piece of affected coating mix preparation equipment and vent VOC emissions to a VOC control device.

(3) For an affected facility that uses at least 95 Mg but less than 130 Mg of VOC per 12-month period, the owner or operator shall either.

(i) Install, operate, and maintain a cover on each piece of affected coating mix preparation equipment; or

(ii) Install, operate, and maintain a cover on each piece of affected coating mix preparation equipment and vent VOC emissions to a VOC control device.

§ 60.743 Compliance provisions.

(a) To demonstrate compliance with the emission reduction standard for coating operations specified in § 60.742(b)(1), the owner or operator of the affected facility shall use one of the following methods.

(1) *Gaseous emission test for coating operations not using carbon adsorption beds with individual exhausts.* This method is applicable when the emissions from any affected coating operation are controlled by a control device other than a fixed-bed carbon adsorption system with individual exhaust stacks for each adsorber vessel. The owner or operator using this method shall comply with the following procedures:

(i) Construct the vapor capture system and control device so that all gaseous volumetric flow rates and total VOC emissions can be accurately determined by the applicable test methods and procedures specified in § 60.745(b) through (g);

(ii) Determine capture efficiency from the coating operation by capturing, venting, and measuring all VOC emissions from the coating operation. During a performance test, the owner or operator of an affected coating operation located in an area with other sources of VOC shall isolate the coating operation emissions from all other sources of VOC by one of the following methods:

(A) Build a temporary enclosure, as defined in § 60.741(a) and conforming to the requirements of § 60.743(b)(1), around the affected coating operation. The temporary enclosure must be constructed and ventilated (through stacks suitable for testing) so that it has minimal impact on performance of the capture system; or

(B) Shut down all other sources of VOC and continue to exhaust fugitive emissions from the affected coating operation through any building ventilation system and other room exhausts such as those on drying ovens. All such ventilation air must be vented through stacks suitable for testing because the VOC content in each must be determined.

(iii) Operate the emission control device with all emission sources connected and operating.

(iv) Determine the efficiency (E) of the control device by Equation 1:

$$E = \frac{\sum_{i=1}^{n} Q_{bi}C_{bi} - \sum_{j=1}^{n} Q_{aj}C_{aj}}{\sum_{i=1}^{n} Q_{bi}C_{bi}} \qquad \text{(Equation 1)}$$

(v) Determine the efficiency (F) of the vapor capture system by Equation 2:

$$F = \frac{\sum_{i=1}^{n} Q_{di}C_{di}}{\sum_{i=1}^{n} Q_{di}C_{di} + \sum_{k=1}^{p} Q_{fk}C_{fk}} \qquad \text{(Equation 2)}$$

(vi) For each affected coating operation subject to § 60.742(b)(1) (emission reduction standard for coating operations), compliance is demonstrated if the product of (E)x(F) is equal to or greater than 0.90.

(2) *Gaseous emission test for coating operations using carbon adsorption beds with individual exhausts.* This method is applicable when emissions from any affected coating operation are controlled by a fixed-bed carbon adsorption system with individual exhaust stacks for each adsorber vessel. The owner or operator using this method shall comply with the following procedures:

(i) Construct the vapor capture system and control device so that each volumetric flow rate and the total VOC emissions can be accurately determined by the applicable test methods and procedures specified in § 60.745 (b) through (g);

(ii) Assure that all VOC emissions from the coating operation are segregated from other VOC sources and that the emissions can be captured for measurement, as described in § 60.743(a)(1)(ii) (A) and (B);

(iii) Operate the emission control device with all emission sources connected and operating;

(iv) Determine the efficiency (H_v) of each individual adsorber vessel (v) using Equation 3:

$$H_v = \frac{Q_{gv}C_{gv} - Q_{hv}C_{hv}}{Q_{gv}C_{gv}} \qquad \text{(Equation 3)}$$

(v) Determine the efficiency of the carbon adsorption system (H_{sys}) by computing the average efficiency of the adsorber vessels as weighted by the volumetric flow rate (Q_{hv}) of each individual adsorber vessel (v) using Equation 4:

$$H_{sys} = \frac{\sum_{v=1}^{q} H_v Q_{hv}}{\sum_{v=1}^{q} Q_{hv}} \qquad \text{(Equation 4)}$$

(vi) Determine the efficiency (F) of the vapor capture system using Equation (2).

(vii) For each affected coating operation subject to § 60.742(b)(1) (emission reduction standard for coating operations), compliance is demonstrated if the product of (H_{sys})x(F) is equal to or greater than 0.90.

(3) *Monthly liquid material balance.* This method can be used only when a VOC recovery device controls only those emissions from one affected coating operation. It may not be used if the VOC recovery device controls emissions from any other VOC emission sources. When demonstrating compliance by this method, § 60.8(f) (Performance Tests) of this part does not apply. The owner or operator using this method shall comply with the following procedures to determine the VOC emission reduction for each nominal 1-month period:

(i) Measure the amount of coating applied at the coating applicator. This quantity shall be determined at a time and location in the process after all ingredients (including any dilution solvent) have been added to the coating, or appropriate adjustments shall be made to account for any ingredients added after the amount of coating has been determined;

(ii) Determine the VOC content of all coatings applied using the test method specified in § 60.745(a). This value shall be determined at a time and location in the process after all ingredients (including any dilution solvent) have been added to the coating, or appropriate adjustments shall be made to account for any ingredients added after the VOC content in the coating has been determined;

(iii) Install, calibrate, maintain, and operate, according to the manufacturer's specifications, a device that indicates the cumulative amount of VOC recovered by the control device over each nominal 1-month period. The device shall be certified by the manufacturer to be accurate to within ±2.0 percent;

(iv) Measure the amount of VOC recovered; and

(v) Calculate the overall VOC emission reduction (R) for each and every nominal 1-month period using Equation 5. Emissions during startups and shutdowns are to be included when determining R because startups and shutdowns are part of normal operation for this source category.

$$R = \frac{M_r}{\sum_{i=1}^{n} [W_{oi}M_{ci} - RS_i]} \qquad \text{(Equation 5)}$$

If the value of R is equal to or greater than 0.90, compliance with § 60.742(b)(1) is demonstrated.

(A) The value of RS_i is zero unless the owner or operator submits the following information to the Administrator for approval of a measured value of RS_i that is greater than zero but less than or equal to 6 percent by weight of the liquid VOC applied:

(*1*) Measurement techniques; and

(*2*) Documentation that the measured value of RS_l exceeds zero but is less than or equal to 6 percent by weight of the liquid VOC applied.

(B) For those facilities not subject to paragraph (a)(3)(v)(A) of this section, the value of RS_l is zero unless the owner or operator submits the following information to the Administrator for approval of a measured value of RS_l that is greater than 6 percent by weight of the liquid VOC applied.

(*1*) Measurement techniques;

(*2*) Documentation that the measured value of RS_l exceeds 6 percent by weight of the liquid VOC applied; and

(*3*) Either documentation of customer specifications requiring higher values or documentation that the desired properties of the product make it necessary for RS_l to exceed 6 percent by weight of the liquid VOC applied and that such properties cannot be achieved by other means.

(C) The measurement techniques of paragraphs (a)(3)(v)(A)(*1*) and (a)(3)(v)(B)(*1*) of this section shall be submitted to the Administrator for approval with the notification of anticipated startup required under § 60.7(a)(2).

(vi) The point at which M_r is to be measured shall be established when the compliance procedures are approved. The presumptive point of measurement shall be prior to separation/purification; a point after separation/purification may be adopted for enhanced convenience or accuracy.

(4) *Short-term liquid material balance.* This method may be used as an alternative to the monthly liquid material balance described in paragraph (a)(3) of this section. The owner or operator using this method shall comply with the following procedures to determine VOC emission reduction for a 3- to 7-day period and shall continuously monitor VOC emissions as specified in § 60.744.

(i) Use the procedures described in paragraphs (a)(3) (i) through (vi) of this section to determine the overall emission reduction, R. Compliance is demonstrated if the value of R is equal to or greater than 0.90.

(ii) The number of days for the performance test (3 to 7) is to be based on the affected facility's representative performance consistent with the requirements of § 60.8(c). Data demonstrating that the chosen test period is representative shall be submitted to the Administrator for approval with the notification of anticipated startup required under § 60.7(a)(2).

(b) Each owner or operator of an affected coating operation subject to the standard specified in § 60.742(b)(2) (alternative standard for coating operations) shall:

(1) Demonstrate that a total enclosure is installed. The total enclosure shall either be approved by the Administrator in accordance with the provisions of § 60.746, or meet the requirements in paragraphs (b)(1) (i) through (vi) of this section, as follows:

(i) The only openings in the enclosure are forced makeup air and exhaust ducts and natural draft openings such as those through which raw materials enter and exist the coating operation;

(ii) Total area of all natural draft openings does not exceed 5 percent of the total surface area of the total enclosure's walls, floor, and ceiling;

(iii) All access doors and windows are closed during normal operation of the enclosed coating operation, except for brief, occasional openings to accommodate process equipment adjustments. If such openings are frequent, or if the access door or window remains open for a significant amount of time during the process operation, it must be considered a natural draft opening. Access doors used routinely by workers to enter and exit the enclosed area shall be equipped with automatic closure devices;

(iv) Average inward face velocity (FV) across all natural draft openings is a minimum of 3,600 meters per hour as determined by the following procedures:

(A) Construct all forced makeup air ducts and all exhaust ducts so that the volumetric flow rate in each can be accurately determined by the test methods and procedures specified in § 60.745 (c) and (d). Volumetric flow rates shall be calculated without the adjustment normally made for moisture content; and

(B) Determine FV by Equation 6:

$$FV = \frac{\sum_{j=1}^{n} Q_{out\ j} - \sum_{i=1}^{p} Q_{in\ i}}{\sum_{k=1}^{g} A_k} \qquad \text{(Equation 6)}$$

(v) The air passing through all natural draft openings flows into the enclosure continuously. If FV is less than or equal to 9,000 meters per hour, the continuous inward airflow shall be verified by continuous observation using smoke tubes, streamers, tracer gases, or other means approved by the Administrator over the period that the volumetric flow rate tests required to determine FV are carried out. If FV is greater than 9,000 meters per hour, the direction of airflow thourgh the natural draft openings shall be presumed to be inward at all times without verification.

(vi) All sources of emissions within the enclosure shall be a minimum of four equivalent diameters away from each natural draft opening.

(2) Determine the control device efficiency using Equation (1) or Equations (3) and (4), as applicable, and the test methods and procedures specified in § 60.745 (b) through (g).

(3) Compliance is demonstrated if the installation of a total enclosure is demonstrated and the value of E determined from Equation (1) or the value of H_{avg} determined from Equations (3) and (4), as applicable, is equal to or greater than 0.95.

(c) To demonstrate compliance with § 60.742(c)(1) (standard for coating mix preparation equipment servicing a coating operation with concurrent construction of a control device that uses at least 130 Mg per year of VOC), each owner or operator of affected coating mix preparation equipment shall demonstrate that:

(1) Covers meeting the following specifications have been installed and are being used properly:

(i) Cover shall be closed at all times except when adding ingredients, withdrawing samples, transferring the contents, or making visual inspection when such activities cannot be carried out with cover in place. Such activities shall be carried out through ports of the minimum practical size;

(ii) Cover shall extend at least 2 centimeters beyond the outer rim of the opening or shall be attached to the rim;

(iii) Cover shall be of such design and construction that contact is maintained between cover and rim along the entire perimeter;

(iv) Any breach in the cover (such as a slit for insertion of a mixer shaft or port for addition of ingredients) shall be covered consistent with paragraphs (c)(1) (i), (ii), and (iii) of this section when not actively in use. An opening sufficient to allow safe clearance for a mixer shaft is acceptable during those periods when the shaft is in place; and

(v) A polyehtylene or nonpermanent cover may be used provided it meets the requirements of paragraphs (c)(1) (ii), (iii), and (iv) of this section. Such a cover shall not be reused after once being removed.

(2) Procedures detailing the proper use of covers, as specified in paragraph (c)(1)(i) of this section, have been posted in all areas where affected coatings mix preparation equipment is used;

(3) The coating mix preparation equipment is vented to a control device while preparation of the coating is taking place within the vessel; and

(4) The control device efficiency (E or H_{avg}, as applicable) determined using Equation (1) or Equations (3) and (4), respectively, and the test methods and procedures specified in § 60.745 (b) through (g) is equal to or greater than 0.95.

(d) To demonstrate compliance with § 60.742(c)(2) (standard for coating mix preparation equipment servicing a coating operation that does not have concurrent construction of a control device but uses at least 130 Mg of VOC per year) or § 60.742(c)(3) (standard for coating mix preparation equipment servicing a coating operation that uses at least 95 Mg but less than 130 Mg of VOC per year), each owner or operator of affected coating mix preparation equipment shall demonstrate upon inspection that:

(1) Covers satisfying the specifications in paragraphs (c)(1) (i) through (v) of this section have been installed and are being properly operated and maintained; and

(2) Procedures detailing the proper use of covers, as specified in paragraph (c)(1)(i) of this section, have been posted in all areas where affected coating mix preparation equipment is used.

(3) Owners or operators meeting the standard specified in § 60.742 (c)(2)(ii) or (c)(3)(ii) shall also demonstrate that the coating mix preparation equipment is vented to a control device.

(e) If a control device other than a carbon adsorber, condenser, or incinerator is used to control emissions from an affected facility, the necessary operating specifications for that device must be approved by the Administrator. An example of such a device is a flare.

§ 60.744 Monitoring requirements.

(a) Each owner or operator of an affected facility shall install and calibrate all monitoring devices required under the provisions of this section according to the manufacturer's specifications, prior to the initial performance test in locations such that representative values of the monitored parameters will be obtained. The parameters to be monitored shall be continuously measured and recorded during each performance test.

(b) Each owner or operator of an affected facility that uses less than 95 Mg of VOC per year and each owner or operator of an affected facility subject to the provisions specified in § 60.742(c)(3) shall:

(1) Make semiannual estimates of the projected annual amount of VOC to be used for the manufacture of polymeric coated substrate at the affected coating operation in that year; and

(2) Maintain records of actual VOC use.

(c) Each owner or operator of an affected facility controlled by a carbon adsorption system and demonstrating compliance by the procedures described in § 60.743 (a)(1), (a)(2), (b), or (c) (which include control device efficiency determinations) or § 60.743(a)(4) (short-term liquid material balance) shall carry out the monitoring provisions of paragraph (c)(1) or (c)(2) of this section, as appropriate.

(1) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the concentration level of organic compounds in either the control device outlet gas stream or in both the control device inlet and outlet gas streams. The outlet gas stream shall be monitored if the percent increase in the concentration level of organic compounds is used as the basis for reporting, as described in § 60.747(d)(1)(i). The inlet and outlet gas streams shall be monitored if the percent control device efficiency is used as the basis for reporting, as described in § 60.747(d)(2)(i).

(2) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the concentration level of organic compounds in the outlet gas stream for a minimum of one complete adsorption cycle per day for each adsorber vessel. The owner or operator may also monitor and record the concentration level of organic compounds in the common carbon adsorption system inlet gas stream or in each individual carbon adsorber vessel inlet stream. The outlet gas streams shall be monitored if the percent increase in the concentration level of organic compounds is used as the basis for reporting, as described in § 60.747(d)(1)(ii). In this case, the owner or operator shall compute daily a 3-day rolling average concentration level of organics in the outlet gas stream from each individual adsorber vessel. The inlet and outlet gas streams shall be monitored if the percent control device efficiency is used as the basis for reporting, as described in § 60.747(d)(2)(ii). In this case, the owner or operator shall compute daily a 3-day rolling average efficiency for each individual adsorber vessel.

(d) Each owner or operator of an affected facility controlled by a condensation system and demonstrating compliance by the test methods described in § 60.743 (a)(1), (a)(2), (b), or (c) (which include control device efficiency determinations) or § 60.743(a)(4) (short-term liquid material balance) shall install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the temperature of the condenser exhaust stream.

(e) Each owner or operator of an affected facility controlled by a thermal incinerator and demonstrating compliance by the test methods described in § 60.743 (a)(1), (a)(2), (b), or (c) (which include control device efficiency determinations) shall install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the combustion temperature of the incinerator. The monitoring device shall have an accuracy within ±1 percent of the temperature being measured in Celsius degrees.

(f) Each owner or operator of an affected facility controlled by a catalytic incinerator and demonstrating compliance by the test methods described in § 60.743 (a)(1), (a)(2), (b), or (c) (which include control device efficiency determinations) shall install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the gas temperature both upstream and downstream of the catalyst bed. The monitoring device shall have an accuracy within ±1 percent of the temperature being measured in Celsius degrees.

(g) Each owner or operator of an affected facility who demonstrates compliance by the test methods described in § 60.743(a) (1) or (2) (which include vapor capture system efficiency determinations) or § 60.743(a)(4) (short-term liquid material balance) shall submit a monitoring plan for the vapor capture system to the Administrator for approval with the notification of anticipated startup required under § 60.7(a)(2) of the General Provisions. This plan shall identify the parameter to be monitored as an indicator of vapor capture system performance (e.g., the amperage to the exhaust fans or duct flow rates) and the method for monitoring the chosen parameter. The owner or operator shall install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the value of the chosen parameter.

(h) Each owner or operator of an affected facility who demonstrates compliance as described in § 60.743(b) shall follow the procedures described in paragraph (g) of this section to establish a monitoring system for the total enclosure.

(i) Each owner or operator of an affected facility shall record time periods of mixing or coating operations when the emission control device is malfunctioning or not in use.

(j) Each owner or operator of an affected facility shall record time periods of mixing or coating operations when each monitoring device is malfunctioning or not in use.

(k) Records of the measurements and calculations required in § 60.743 and § 60.744 must be retained for at least 2 years following the date of the measurements and calculations.

(Approved by the Office of Management and Budget under Control No. 2060-0181.)

§ 60.745 Test methods and procedures.

Methods in Appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance as follows:

(a) Method 24 is used to determine the VOC content in coatings. If it is demonstrated to the satisfaction of the Administrator that coating formulation data are equivalent to Method 24 results, formulation data may be used. In the event of any inconsistency between a Method 24 test and a facility's formulation data, the Method 24 test will govern. For Method 24, the coating sample must be a 1-liter sample collected in a 1-liter container at a point in the process where the sample will be representative of the coating applied to the substrate (i.e., the sample shall include any dilution solvent or other VOC added during the manufacturing process). The container must be tightly sealed immediately after the sample is collected. Any solvent or other VOC added after the sample is taken must be measured and accounted for in the calculations that use Method 24 results.

(b) Method 25 shall be used to determine VOC concentrations from incinerator gas streams. Alternative Methods (18 or 25A), may be used as explained in the applicability section of Method 25 in cases where use of Method 25 is demonstrated to be technically infeasible. The owner or operator shall submit notice of the intended test method to the Administrator for approval along with the notification of the performance test required under § 60.8(d) of the General Provisions. Except as indicated in paragraphs (b)(1) and (b)(2) of this section, the test shall consist of three separate runs, each lasting a minimum of 30 minutes.

(1) When the method is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual adsorber vessels pursuant to § 60.743 (a)(1), (b), or (c), the test shall consist of three separate runs, each coinciding with one or more complete system rotations through the adsorption cycles of all the individual adsorber vessels.

(2) When the method is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with individual exhaust stacks for each adsorber vessel pursuant to § 60.743 (a)(2), (b), or (c), each adsorber vessel shall be tested individually. Each test shall consist of three separate runs, each coinciding with one or more complete adsorption cycles.

(c) Method 1 or 1A is used for sample and velocity traverses;

(d) Method 2, 2A, 2C, or 2D is used for velocity and volumetric flow rates;

(e) Method 3 is used for gas analysis;

(f) Method 4 is used for stack gas moisture;

(g) Methods 2, 2A, 2C, or 2D; 3; and 4 shall be performed, as applicable, at least twice during each test run.

§ 60.746 Permission to use alternative means of emission limitation.

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in emissions of VOC from any emission point subject to § 60.742(c) at least equivalent to that required by § 60.742(b)(2) or § 60.742(c), respectively, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means. The Administrator may condition permission on requirements that may be necessary to ensure operation and maintenance to achieve the same emission reduction as specified in § 60.742(b)(2) or § 60.742(c), respectively.

(b) Any notice under paragraph (a) of this section shall be published only after public notice and an opportunity for a public hearing.

(c) Any person seeking permission under this section shall submit to the Administrator either results from an emission test that accurately collects and measures all VOC emissions from a given control device or an engineering evaluation that accurately determines such emissions.

§ 60.747 Reporting and recordkeeping requirements.

(a) For each affected facility subject to the requirements of § 60.742 (b) and (c), the owner or operator shall submit the performance test data and results to the Administrator as specified in § 60.8(a) of this part. In addition, the average values of the monitored parameters measured at least every 15 minutes and averaged over the period of the performance test shall be submitted with the results of all performance tests.

(b) Each owner or operator of an affected facility subject to the provisions specified in § 60.742(c)(3) and claiming to use less than 130 Mg of VOC in the first year of operation and each owner or operator of an affected facility claiming to use less than 95 Mg of VOC in the first year of operation shall submit to the Administrator, with the notification of anticipated startup required under § 60.7(a)(2) of the General Provisions, a material flow chart indicating projected VOC use. The owner or operator shall also submit

actual VOC use records at the end of the initial year.

(c) Each owner or operator of an affected facility subject to the provisions of § 60.742(c)(3) and initially using less than 130 Mg of VOC per year and each owner or operator of an affected facility initially using less than 95 Mg of VOC per year shall:

(1) Record semiannual estimates of projected VOC use and actual 12-month VOC use;

(2) Report the first semiannual estimate in which projected annual VOC use exceeds the applicable cutoff; and

(3) Report the first 12-month period in which the actual VOC use exceeds the applicable cutoff.

(d) Each owner or operator of an affected facility demonstrating compliance by the methods described in § 60.743 (a)(1), (a)(2), (a)(4), (b), or (c) shall maintain records and submit quarterly reports to the Administrator documenting the following:

(1) For those affected facilities monitoring only the carbon adsorption system outlet concentration levels of organic compounds, the periods (during actual coating operations) specified in paragraph (d)(1) (i) or (ii) of this section, as applicable.

(i) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, all periods of three consecutive system rotations through the adsorption cycles of all the individual adsorber vessels during which the average value of the concentration level of organic compounds in the common outlet gas stream is more than 20 percent greater than the average value measured during the most recent performance test that demonstrated compliance.

(ii) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, all 3-day rolling averages for each adsorber vessel when the concentration level of organic compounds in the individual outlet gas stream is more than 20 percent greater than the average value for that adsorber vessel measured during the most recent performance test that demonstrated compliance.

(2) For those affected facilities monitoring both the carbon adsorption system inlet and outlet concentration levels of organic compounds, the periods (during actual coating operations), specified in paragraph (d)(2) (i) or (ii) of this section, as applicable.

(i) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, all periods of three consecutive adsorption cycles of all the individual adsorber vessels during which the average carbon adsorption system efficiency falls below the applicable level as follows:

(A) For those affected facilities demonstrating compliance by the performance test method described in § 60.743(a)(1), the value of E determined using Equation (1) during the most recent performance test that demonstrated compliance.

(B) For those affected facilities demonstrating compliance by the performance test described in § 60.743(a)(4), the average value of the system efficiency measured with the monitor during the most recent performance test that demonstrated compliance.

(C) For those affected facilities demonstrating compliance pursuant to § 60.743 (b) or (c), 0.95.

(ii) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, all 3-day rolling averages for each adsorber vessel during which the average carbon adsorber vessel efficiency falls below the applicable level as follows:

(A) For those affected facilities demonstrating compliance by the performance test method described in § 60.743 (a)(2), (b), or (c), the value of H_v determined using Equation (3) during the most recent performance test that demonstrated compliance.

(B) For those affected facilities demonstrating compliance by the performance test described in § 60.743(a)(4), the average efficiency for that adsorber vessel measured with the monitor during the most recent performance test that demonstrated compliance.

(3) For those affected facilities monitoring condenser exhaust gas temperature, all 3-hour periods (during actual coating operations) during which the average exhaust temperature is 5 or more Celsius degrees above the average temperature measured during the most recent performance test that demonstrated compliance;

(4) For those affected facilities monitoring thermal incinerator combustion gas temperature, all 3-hour periods (during actual coating operations) during which the average combustion temperature of the device is more than 28 Celsius degrees below the average combustion temperature of the device during the most recent performance test that demonstrated compliance;

(5) For those affected facilities monitoring catalytic incinerator catalyst bed temperature, all 3-hour periods (during actual coating operations) during which the average gas temperature immediately before the catalyst bed is more than 28 Celsius degrees below the average gas temperature during the most recent performance test that demonstrated compliance and all 3-hour periods (during actual coating operations) during which the average gas temperature difference across the catalyst bed is less than 80 percent of the average gas temperature difference during the most recent performance test that demonstrated compliance;

(6) For each affected facility monitoring a total enclosure pursuant to § 60.744(h) or vapor capture system pursuant to § 60.744(g), all 3-hour periods (during actual coating operations) during which the average total enclosure or vapor capture system monitor readings vary by 5 percent or more from the average value measured during the most recent performance test that demonstrated compliance.

(7) Each owner or operator of an affected coating operation not required to submit reports under paragraphs (d) (1) through (6) of this section because no reportable periods have occurred shall submit semiannual statements clarifying this fact.

(e) Each owner or operator of an affected coating operation, demonstrating compliance by the test methods described in § 60.743(a)(3) (liquid-liquid material balance) shall submit the following:

(1) For months of compliance, semiannual reports to the Administrator stating that the affected coating operation was in compliance for each 1-month period; and

(2) For months of noncompliance, quarterly reports to the Administrator documenting the 1-month amount of VOC contained in the coatings, the 1-month amount of VOC recovered, and the percent emission reduction for each month.

(f) Each owner or operator of an affected coating operation, either by itself or with associated coating mix preparation equipment, shall submit the following with the reports required under paragraphs (d) and (e) of this section:

(1) All periods during actual mixing or coating operations when a required monitoring device (if any) was malfunctioning or not operating; and

(2) All periods during actual mixing or coating operations when the control device was malfunctioning or not operating.

(g) The reports required under paragraphs (b), (c), (d), and (e) of this section shall be postmarked within 30 days of the end of the reporting period.

(h) Records required in § 60.747 must be retained for at least 2 years.

(i) The requirements of this section remain in force until and unless EPA, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In this event, affected sources within the State will be relieved of the obligation to comply with this subsectdion, provided that they comply with the requirements established by the State.

(Approved by the Office of Management and Budget under Control No. 2060-0181.)

§ 60.748 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: §§ 60.743(a)(3)(v)(A) and (B); 60.743(e); 60.745(a); 60.746.

[FR Doc. 89-21170 Filed 9-8-89; 8:45 am]

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federal register

Monday
September 11, 1989

Part III

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 2

Amendments to Patent and Trademark Rules to Implement Trademark Law Revision Act; Miscellaneous Trademark Rule Amendments; Final Rule

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 90374-9181]

RIN 0651-AA38

Amendments to Patent and Trademark Rules to Implement Trademark Law Revision Act; Miscellaneous Trademark Rule Amendments

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in trademark cases, and the rules of practice in patent cases which are applicable to trademark cases, to implement the provisions of the Trademark Law Revision Act of 1988 (Title 1 of Pub. L. 100–667, 102 Stat. 3935 (15 U.S.C. 1051)), codify changes in practice resulting from a Trademark Trial and Appeal Board decision commonly known as the "Crocker" decision, and otherwise codify, clarify, and/or revise certain procedures for the examination of applications.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Carlisle E. Walters by telephone at (703) 557–7464 or by mail marked to her attention and addressed to Box 5, Office of the Assistant Commissioner for Trademarks, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking published in the **Federal Register** on May 4, 1989, at 54 FR 19286, the Patent and Trademark Office "Official Gazette" of May 16, 1989, at 1102 O.G. 47–70, and the Bureau of National Affairs' "Patent, Trademark, & Copyright Journal", at 38 PTCJ 43–71, (May 11, 1989), the Patent and Trademark Office proposed to amend Parts 1 and 2 of title 37 of the Code of Federal Regulations by amending or revising §§ 1.1, 1.8, 2.6, 2.18, 2.21, 2.24, 2.31, 2.33, 2.38, 2.39, 2.41, 2.44, 2.45, 2.47, 2.51, 2.52, 2.53, 2.56, 2.57, 2.58, 2.61, 2.64, 2.65, 2.66, 2.69, 2.71, 2.72, 2.73, 2.75, 2.81, 2.82, 2.83, 2.84, 2.86, 2.87, 2.99, 2.101, 2.111, 2.129, 2.133, 2.161, 2.162, 2.181, 2.185 and 2.187; and adding §§ 2.2, 2.59, 2.76, 2.77, 2.88 and 2.89. The notice of proposed rulemaking was designed primarily to implement certain provisions of the Trademark Law Revision Act of 1988 (Title 1 of Pub. L. 100–667, 102 Stat. 3935 (15 U.S.C. 1051)) (hereinafter "Pub. L. 100–667"), which was enacted on November 16, 1988, and will become effective on November 16, 1989. The text of the law was published in the "Congressional Record", S. 1883, 100th Cong., 2d Sess., 134 Cong. Rec. 149, H10411 (daily ed. October 19, 1988), and in "BNA's Patent, Trademark & Copyright Journal", at 36 PTCJ 751 (October 27, 1988).

Written comments were submitted by one firm, eight individuals, and six organizations. Six individuals testified at the oral hearing. Four of those individuals testified on behalf of two organizations, both of which also submitted written comments. Of the two individuals who testified on their own behalf, one also submitted written comments.

The following includes a summary of the "intent-to-use" provisions of Pub. L. 100–667, a summary of the other provisions of Public Law 100–667 which are relevant to PTO practice, a list of rules being changed as a result of Public Law 100–667, a brief discussion of other rules being changed and the reasons for those changes, a detailed section-by-section analysis of the final rules, and an analysis of all comments received in response to the notice of proposed rulemaking.

Discussion of "Intent-to-Use" Provisions of Public Law 100–667

Pub. L. 100–667 substantially revises the Trademark Act of 1946 ("Act"). Previously, the Act permitted the filing of an application for Federal registration of a trademark based upon use of the mark in commerce in connection with goods or services, under section 1 of the Act; or, ownership of a foreign application or registration, under section 44 of the Act. The new law adds a third basis for the filing of an application, namely, a bona fide intention to use a mark in commerce in relation to specific goods or services. For these "intent-to-use" applications, actual use of the mark in commerce will be a prerequisite to the ultimate issuance of a registration.

Section 103, Public Law 100–667, 102 Stat. 3935, amends section 1 of the Act to permit the filing of an application for Federal registration of a trademark based upon either use of the mark in commerce or a bona fide intention to use the mark in commerce. Use-based applications will be governed by an amended and redesignated section 1(a) of the Act. A new section 1(b) of the Act authorizes the filing of "intent-to-use" applications and sets forth the filing requirements of such applications.

Section 113, Public Law 100–667, 102 Stat. 3940, amends section 12 of the Act, concerning examination of applications and publication, to provide that if the Trademark Examining Attorney examines an "intent-to-use" application and finds that the applicant would be entitled to registration upon the acceptance of a statement of use, the mark will be published in the "Official Gazette" for purposes of opposition.

Section 114, Public Law 100–667, 102 Stat. 3940, amends section 13 of the Act, concerning opposition to registration of marks on the Principal Register, to add a new section 13(b) to govern the handling of applications which are not successfully opposed. New section 13(b) provides that, unless registration is successfully opposed, a notice of allowance will be issued to the applicant in an "intent-to-use" application.

Section 103, Public Law 100–667, 102 Stat. 3935, further amends section 1 of the Act by adding a new section 1(c), which permits an "intent-to-use" applicant, at any time during examination, to amend the application to bring it into conformity with the requirements for an application based on use; and by adding a new section 1(d) which sets forth the registration requirements for an "intent-to-use" application following issuance of a notice of allowance.

Section 1(d)(1) of the Act requires that, within six months after the issuance of the notice of allowance, the applicant must file specimens evidencing use of the mark in commerce, the prescribed fee, and a verified statement which asserts that the mark is in use in commerce and contains certain averments related to that use.

Section 1(d)(2) provides that the time for filing the statement of use will be extended for a period of six months upon written request of the applicant, if the request is filed before expiration of the six-month period for filing a statement of use. The request must be accompanied by the prescribed fee and a verified statement that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance for which that intention exists.

Section 1(d)(2) provides that further extensions of time for filing a statement of use may be granted by the Commissioner, for periods aggregating not more than 24 months, upon a showing of good cause by the applicant. A written request must be filed before the expiration of the last granted extension and accompanied by the prescribed fee and by a verified statement (of continued bona fide intention to use the mark in commerce) as required for the first extension of time. The Commissioner is to issue regulations setting forth what

constitutes good cause for a further extension of time for filing a statement of use.

Section 1(d)(3) of the Act provides that any applicant who files a statement of use will be notified of the acceptance or refusal thereof and, if the statement is refused, of the reasons for the refusal, and that the statement of use may be amended.

Section 1(d)(4) of the Act provides that the failure of an applicant to timely file a statement of use, as required under section 1(d) of the Act, will result in the abandonment of the application.

Discussion of Other Provisions of Public Law 100–667

The new law includes certain other provisions which significantly affect practice in the PTO. Section 104, Public Law 100–667, 102 Stat. 3937, amends section 2(f) of the Act, pertaining to registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The amendment will permit the Commissioner to accept, as prima facie evidence that a mark has become distinctive, proof of substantially exclusive and continuous use as a mark by the applicant in commerce for "five years before the date on which the claim of distinctiveness is made." The Act previously permitted such a showing by the applicant to be only for "the five years next preceding the date of the filing of the application."

Section 109, Public Law 100–667, 102 Stat. 3938, adds a new section 7(c) to the Act to provide, *inter alia,* that contingent on the registration of a mark on the Principal Register, the filing of an application to register such mark on the Principal Register shall constitute constructive use of the mark and confer nationwide priority.

Section 110, Public Law 100–667, 102 Stat. 3939, amends section 8(a) of the Act to provide that each certificate of registration shall remain in force for ten (rather than twenty) years. Section 110 further amends section 8(a) of the Act to require that the affidavit, which must be filed during the sixth year after issuance of a registration, set forth "those goods or services recited in the registration on or in connection with which the mark is in use in commerce and attaching to the affidavit a specimen or facsimile showing current use of the mark, * * *" instead of the previous requirement for a "showing that said mark is in use in commerce * * *"

Section 111, Public Law 100–667, 102 Stat. 3939, amends section 9(a) of the Act to reduce the term for which a registration may be renewed from twenty years to ten years. Similarly, section 135, Public Law 100–667, 102 Stat. 3948, amends the Act by adding a new section, section 51, which provides that certificates of registration which issue from applications pending in the PTO on November 16, 1989, the effective date of the new law, shall remain in force for a period of ten years.

Section 118, Public Law 100–667, 102 Stat. 3941, amends section 18 of the Act to expand a portion of the description of the actions which may be taken by the Trademark Trial and Appeal Board ("Board"), in an inter partes proceeding, from "may refuse to register the opposed mark, may cancel or restrict the registration of a registered mark, or may refuse to register any or all of several interfering marks, * * *" to "may refuse to register the opposed mark, may cancel the registration, in whole or in part, may modify the application or registration by limiting the goods or services specified therein, may otherwise restrict or rectify with respect to the register the registration of a registered mark, may refuse to register any or all of several interfering marks, * * *" The same section of the new law further amends section 18 of the Act to provide, with respect to inter partes proceedings before the Board, that no final judgment shall be entered in favor of an intent-to-use applicant before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c) of the Act, as amended by section 109, Public Law 100–667, 102 Stat. 3938.

Section 121, Public Law 100–667, 102 Stat. 3942, amends section 23 of the Act, which governs applications for registration on the Supplemental Register, to delete the requirement that the mark must have been in lawful use in commerce for the year preceding the filing of the application; and to substitute a requirement that the mark must be in lawful use in commerce by the owner.

Section 122, Public Law 100–667, 102 Stat. 3943, amends section 24 of the Act, which governs petitions to cancel registrations on the Supplemental Register, to delete the requirement that such a petition be verified, and to add a provision that (in such a cancellation proceeding) no final judgment shall be entered in favor of an intent-to-use applicant before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c) of the Act, as amended.

Finally, section 133, Public Law 100–667, 102 Stat. 3946, amends section 44 of the Act to require that an application filed pursuant to section 44(d) or 44(e) of the Act include a statement that the applicant has a bona fide intention to use the mark in commerce. The new law further amends section 44(e) of the Act to specify that use in commerce shall not be required prior to registration in the case of an application under that section of the Act.

Specific Rules Changed or Added

The existing rules of practice in Parts 1 and 2 of Title 37 of the Code of Federal Regulations which are amended as a result of the enactment of Public Law 100–667 are §§ 1.1, 1.8, 2.6, 2.21, 2.33, 2.38, 2.39, 2.41, 2.44, 2.45, 2.47, 2.51, 2.52, 2.53, 2.56, 2.57, 2.61, 2.64, 2.65, 2.69, 2.71, 2.72, 2.73, 2.75, 2.81, 2.82, 2.84, 2.86, 2.87, 2.99, 2.101, 2.111, 2.129, 2.133, 2.161, and 2.162. In addition, new §§ 2.2, 2.59, 2.76, 2.77, 2.88, and 2.89 are added. The amendments made to existing rules, and the provisions of the new rules which are added, are described in detail hereafter.

Other changes are made in the rules of practice in trademark cases as a result of the decision of the Board in *Crocker National Bank* v. *Canadian Imperial Bank of Commerce,* 223 USPQ 909 (TTAB 1984) ("Crocker"). Prior to Crocker, an applicant applying under section 44 of the Act was allowed, under present § 2.39, to omit certain of the allegations required for an application based on use, namely, the allegation that the mark sought to be registered was in use in commerce, and the statements of the applicant's date of first use of the mark, and first use of the mark in commerce, on or in connection with the specified goods or services. Nevertheless, it was the practice of the PTO to require such an applicant to allege use of the mark (somewhere in the world) and to submit specimens of the mark as used on or in connection with the specified goods or services. The Board held in Crocker, however, that an applicant filing in accordance with section 44 need not allege use or submit specimens. The practice of the PTO was thereafter modified to bring it into accordance with the Board's decision. The rules of practice which are amended to codify the present practice are §§ 2.21, 2.33, 2.39, 2.41, 2.44, 2.45, 2.47, 2.51, 2.56, and 2.72. As indicated above, those rules are also amended to implement changes in practice required as a result of the enactment of Public Law 100–667.

Additionally, certain miscellaneous amendments are made to codify, clarify, and/or revise procedures for the examination of applications. Specifically, § 2.18 is amended to clarify the practice of the PTO regarding correspondence with foreign applicants.

Section 2.24 is amended to correct a cross-reference. Section 2.31 is amended to indicate that it is preferable that an application be on approximately "lettersize" (i.e., 8½ inches by 11 inches) rather than legal-size, paper. Section 2.52(e) is amended to simplify the drawing color linings for the colors orange and yellow or gold. Sections 2.56 and 2.57 are amended to reduce the number of specimens or facsimiles required to be filed, in those instances where specimens are necessary, from five to three, and to indicate that specimens or facsimiles may not exceed eleven inches in length. When specimens exceeding the size limitations are submitted, the applicant will be required to submit proper substitute specimens. Section 2.83, which governs procedure in the case of conflicting marks, is amended to delete a provision which does not conform to present PTO practice, namely, the provision that a notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the earliest-filed mark (or, if the conflicting applications have the same effective filing date, of the publication or issuance of the application with the earliest date of execution). Finally, § 2.187 is amended to revise the conditions under which a certificate of registration will be issued in the name of an applicant's assignee, or in an applicant's new name.

Discussion of Specific Sections Changed or Added

In this discussion, "Patent and Trademark Office" is abbreviated as "PTO," "Trademark Trial and Appeal Board" is abbreviated as "Board," the Trademark Act of 1946 is abbreviated as "the Act," and all references to sections of the Act are as amended by Public Law 100–667, unless otherwise stated.

Section 1.1, which specifies the address to be used on communications intended for the PTO, and also provides special box designations which may be used on certain types of communications to the PTO, is amended to add new paragraph (h) which establishes a new separate receipt box for statements of use under section 1(d) of the Act and requests for extensions of time to file such statements. The new paragraph encourages, but does not require, applicants to use the designation "Box ITU" when submitting the identified papers. Use of the box designation will permit prompt and efficient processing of the identified papers. The proposed rule also included amendments to allege use under section 1(c) of the Act as papers which should be identified by the new "Box ITU" designation. However, as a result of a change in planned internal workflow, that proposal is withdrawn. Amendments to allege use under section 1(c) of the Act should not be identified with the "Box ITU" designation.

Section 1.8, which provides that certain papers will be considered filed in the PTO on the date the papers are certified as mailed, subject to specified conditions, is amended to add new paragraphs (a)(2)(xiv) through (a)(2)(xvi) to exclude the following papers from the "Certificate of Mailing" procedure established under the section: Statements of use under new § 2.88 (15 U.S.C. 1051(d)), requests for extensions of time to file such statements, and amendments to allege use under new § 2.76 (15 U.S.C. 1051(c)). The specified papers are excluded due to the nature and significance of the papers and the importance of their prompt receipt in the PTO. Before a registration can be issued in an application under section 1(b) of the Act, either an amendment to allege use or a statement of use must be filed and accepted. An amendment to allege use may be submitted only during the examination of an application prior to approval of the mark for publication for opposition in the Trademark "Official Gazette". After issuance of a notice of allowance in an application under section 1(b) of the Act, applicant must file either a statement of use or request a six-month extension of time to file a statement of use within six months thereafter (successive extension requests may not aggregate more than 36 months from the notice of allowance). Each of these papers is required to be filed within tight time frames and should be processed by the PTO expeditiously. Thus, to avoid problems related to mail delays, these papers are excluded from the "Certificate of Mailing" procedure.

Section 2.2 is added to establish a definitions section for part 2 of 37 CFR.

Section 2.2(a) is added to state that all references to "the Act" pertain to the Trademark Act of 1946, as amended.

Section 2.2(b) is added to state that all references, for example in §§ 2.101 and 2.111, to "entity" include both natural and juristic persons.

Section 2.6, which governs trademark fees, is amended to add paragraphs (u) and (v) to establish two new fees for the filing of papers required or permitted under section 1(c) or 1(d) of the Act. Section 2.6(a) establishes the fee for filing an application, per class, and it is applicable to all new applications filed in the PTO, regardless of the basis asserted for filing. Section 2.6(u) is added to establish a filing fee of $100.00 for an amendment to allege use under new § 2.76 (15 U.S.C. 1051(c)) or for a statement of use under new § 2.88 (15 U.S.C. 1051(d)). Section 2.6(v) is added to establish a filing fee of $100.00 for any request, under new § 2.89 (15 U.S.C. 1051(d)), for a six-month extension of time to file a statement of use.

The PTO is amending § 2.6 to establish new fees required under provisions of Public Law 100–667. A fee is required under section 1(b)(2) of the Act for the filing of an application under section 1(b) of the Act ("intent-to-use"). A fee is required under section 1(d)(1) of the Act for the filing of a statement of use in an application under section 1(b) of the Act; and a fee is required under section 1(d)(2) of the Act for the filing of a request for an extension of time to file a statement of use. A fee is being established for an amendment to allege use, which is filed under section 1(c) of the Act, to bring an application under section 1(b) of the Act into conformity with the requirements of section 1(a) of the Act ("use in commerce"). These actions are consistent with section 103(a) of Public Law 100–703 which governs the way fees established under section 31 of the Act may be adjusted.

Section 103(a) of Public Law 100–703 provides that the Commissioner cannot establish additional fees under section 31 of the Act during fiscal years 1989, 1990 and 1991. However, Public Law 100–667 requires that the fees for filing an application under section 1(b) of the Act, a statement of use, and a request for an extension of time to file a statement of use be established. Further, Congressman Kastenmeier has stated that "the Commissioner is not precluded from charging a new fee for a new service or material or from charging a different fee where a significant and material improvement in service or material, such as in promptness or quality is offered. Under any circumstances, augmented fees ought to be clearly justified and reported to the Congress." "Congressional Record," S. 1883, 100th Cong., 2d Sess., 134 Cong. Rec. 149, H9677 (daily ed. October 5, 1988). Amendments to allege use filed under section 1(c) of the Act create a new examination practice that was not contemplated when the fees were established for activities performed under the Act and this fee is clearly not an increase in an existing fee.

On February 15, 1989, a final rule was published in the **Federal Register** at 54 FR 6893 to adjust patent and trademark fees. Effective April 17, 1989, three trademark fees were reduced: The fee for filing an application for trademark registration was reduced from $200 to $175 per class, and two fees for recording trademark assignments or other papers relating to a registered mark or application for registration were reduced from $100 to $8.

In establishing the new fees related to Public Law 100–667, the PTO followed the fee methodology which was described in the February 15, 1989, **Federal Register** notice (54 FR 6893), and is summarized as follows:

Cost Calculations: The PTO calculated unit costs for the new fees based on OMB Circular A–25, "User Fees," and OMB Circular A–130, "Management of Federal Information Resources." Costs were determined from the best available records (for example, the FY 1987 end-of-year financial statements for the Office) and included direct and indirect costs to the PTO for carrying out the activity, as directed by OMB Circular A–25. To estimate costs for the three-year period from November 1989 to October 1992, the 1987 actual costs were adjusted by the Administration's inflation projection ("Budget of the United States Government, Fiscal Year 1990", Part 3, "The Economy and the Budget"). This methodology was utilized in conjunction with an analysis of the worksteps and procedures that will be involved in the processing of a new application to register a mark under section 1(b) of the Act. The PTO has determined that the processing and examination of an application under section 1(b) of the Act from the filing date through issuance of a notice of allowance is expected to cost the same as the processing and examination of an application under section 1(a) of the Act from the filing date through issuance of the certificate of registration. Therefore, the fee for applications filed under section 1(a) or 1(b) is the same.

Workload Projections: The PTO has estimated that there will be a one-time, twenty-five percent (25%) increase in trademark applications filed in FY 1990, bringing the estimated trademark application filings for FY 1990 to approximately 100,000. In FY 1991, the PTO estimates that approximately 86,700 trademark applications will be filed and that, thereafter, trademark application filing increases will drop to normal levels (approximately six percent (6%) over the previous year) for the remainder of the fee cycle. The PTO estimates that sixty percent (60%) of the total applications filed in FY 1990 and subsequent years in this fee cycle will be filed under section 1(b) of the Act.

The PTO estimates that, beginning in FY 1991, the first requests for extensions of time to file a statement of use will be filed; and that these requests will be filed in approximately ten percent (10%) of the section 1(b) applications filed in the prior year. In FY 1992, the filing of requests for extensions of time to file a statement of use will increase to sixteen percent (16%) of the new section 1(b) applications filed in the previous year and remain at that level during the remainder of the fee cycle.

The PTO estimates that approximately twenty-five percent (25%) of all applications filed under section 1(b) of the Act will be abandoned before the filing of either an amendment to allege use, under section 1(c) of the Act, or a statement of use, under section 1(d) of the Act.

The PTO estimates that twenty-five percent (25%) of all applications filed under section 1(b) of the Act will be amended to conform to the provisions of section 1(a) of the Act (by the filing of an amendment to allege use under new § 2.76) during the first examination of the application, before approval of the mark for publication for opposition; and that this filing will increase first examination processing by a factor of forty percent (40%).

The PTO estimates that a statement of use under new § 2.88 will be filed in fifty percent (50%) of all applications filed under section 1(b) of the Act; and that the second examination required under section 1(d)(1) of the Act will require additional processing time equal to forty percent of the processing time required for the first examination.

Fee Adjustment Methodology: Based on the fee methodology described in the February 15, 1989, **Federal Register** notice (54 FR 6893), the projected revenue from these fees, when coupled with the fees generated by all other trademark fees, does not exceed the costs associated with the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by, and materials furnished by, the PTO related to trademarks and other marks.

The PTO has detailed cost calculation worksheets for each fee item, which are available for public inspection in Suite 914 of Building 2, Crystal Park at 2121 Crystal Drive, Arlington, Virginia.

Section 2.18, which specifies to whom correspondence will be sent by the PTO, is revised to add a new sentence to the section to clarify PTO policy regarding correspondence with foreign applicants. The new sentence provides that PTO correspondence will be sent to the domestic representative of a foreign applicant unless the application is being prosecuted by an attorney at law or other qualified person duly authorized, in which event correspondence will be sent to the attorney at law or other qualified person duly authorized. The section, as amended, conforms to present § 2.24.

Section 2.21(a), which governs the requirements for receiving an application filing date, is amended by revising paragraphs (a)(5) and (a)(6) and adding new paragraphs (a)(5)(i), (a)(5)(ii), (a)(5)(iii), and (a)(5)(iv) to revise the minimum filing requirements for applications under section 1(a) or 44 of the Act, and to add minimum filing requirements for applications under section 1(b) of the Act. A requirement that an application be verified by the applicant in order to receive a filing date is added for all types of applications. The minimum filing requirements for an application under section 44 are revised to comply with the Crocker decision and to implement the provisions of Public Law 100–667.

Section 2.21(a)(5), which presently specifies the filing date requirement of at least one specimen or facsimile of the mark as actually used, is revised to delete that requirement from the paragraph and to indicate that the four new paragraphs added thereunder all relate to the assertion of a basis for filing.

Section 2.21(a)(5)(i) is added to specify all filing requirements which pertain only to the assertion of a basis for filing an application under section 1(a) of the Act, namely, the statement of a date of first use in commerce and at least one specimen or facsimile of the mark as actually used.

Section 2.21(a)(5)(ii) is added to specify all filing requirements which pertain only to the assertion of a basis for filing an application under section 44(e) of the Act, namely, a claim of a bona fide intention to use the mark in commerce and a certification or a certified copy of the foreign registration on which the application is based. In accordance with Crocker, the new paragraph contains no requirement for a statement of use of the mark anywhere or for the filing of a specimen or facsimile of the mark as used.

Section 2.21(a)(5)(iii) is added to specify all filing requirements which pertain only to the assertion of a basis for filing an application pursuant to section 44(d) of the Act, namely, a claim of a bona fide intention to use the mark in commerce and a claim of the benefit of a prior foreign application. In accordance with Crocker, the new paragraph contains no requirement for a statement of use of the mark anywhere or for the filing of a specimen or facsimile of the mark as used.

Section 2.21(a)(5)(iv) is added to specify all filing requirements which pertain only to an assertion of a basis for filing an application under section 1(b) of the Act, namely, a claim of a bona fide intention to use the mark in commerce.

Section 2.21(a)(6), which presently includes certain of the filing requirements incorporated in new paragraphs (a)(5)(i), (a)(5)(ii), and (a)(5)(iii), is revised to require that an application include a verification in accordance with § 2.33(b), signed by the applicant, as a condition for receiving a filing date. The proposed requirement is in accordance with sections 1 and 44 of the Act.

Section 2.24, which relates to the designation of a representative by a foreign applicant, is revised to clarify language concerning official communications from the PTO to indicate that such communications will be addressed to the domestic representative unless the application is being prosecuted by an attorney at law or other qualified person duly authorized, in which event the communication will be sent to the attorney at law or other qualified person duly authorized. Additionally, the section is revised to correct cross-references. Cross-references to § 10.14 of the subchapter, which now governs qualifications of individuals to practice before the PTO in trademark and other non-patent cases, are substituted for the cross-references to § 2.12, which has been removed.

Section 2.31, which presently states that it is preferable that an application be on legal or lettersize paper, is revised to state that it is preferable that an application be on lettersize (i.e., 8½ inches by 11 inches) paper. This amendment conforms generally to the standards of Federal court practice.

Section 2.33, which specifies the complete requirements for a written application, is amended by changing the section title from "Requirements for application." to "Requirements for written application.," revising certain existing paragraphs, redesignating and revising certain other existing paragraphs, and adding three new paragraphs to, *inter alia.*, incorporate in this section the requirements for an application under section 44 of the Act, and add the requirements for an application under section 1(b) of the Act. The application requirements for an application under section 44 of the Act are in accordance with the Crocker decision.

Section 2.33(a)(1)(ii), which requires a statement of applicant's citizenship, is revised to clarify the language of the section and to codify the requirement that an applicant which is a partnership must specify in the application the state or nation under the laws of which the partnership is organized.

Section 2.33(a)(1)(iv), which presently requires a statement that applicant has adopted and is using the mark shown in the accompanying drawing, is revised to limit this requirement to an application under section 1(a) of the Act; and to add, for an application under section 1(b) or 44 of the Act, a requirement for a statement that applicant has a bona fide intention to use the mark shown in the accompanying drawing in commerce.

Section 2.33(a)(1)(v), which presently requires an identification of the particular goods on or in connection with which the mark is used, is revised to include a reference to services, as well as goods; to limit the requirement to an application under section 1(a) of the Act; and to add, for an application under section 1(b) or 44 of the Act, the requirement for an identification of the particular goods or services on or in connection with which the applicant has a bona fide intention to use the mark. The paragraph is further amended to incorporate the provision, presently included in § 2.39, that the goods or services specified in an application under section 44 may not exceed the scope of the goods or services covered by the foreign application or registration.

Section 2.33(a)(1)(vi), which presently requires a statement of the class of merchandise according to the official classification, if known to the applicant, is revised to substitute the words "goods or services" for the word "merchandise."

Section 2.33(a)(1)(vii), which presently requires a statement of the date of applicant's first use of the mark as a trademark on or in connection with goods specified in the application, is revised to include references to a service mark, as well as a trademark, and to services, as well as goods; to limit the requirement to an application under section 1(a) of the Act; and to add for such an application the requirement, presently stated in paragraph (a)(1)(viii) of the section, for a statement of applicant's date of first use of the mark in commerce on or in connection with the goods or services listed in the application, specifying the nature of such commerce.

Section 2.33(a)(1)(viii), which presently requires a statement of the date of applicant's first use in commerce of the mark as a trademark on or in connection with goods specified in the application, specifying the nature of such commerce, is revised to remove this requirement, which is added to paragraph (a)(1)(vii); and to incorporate the requirements, presently stated in § 2.39(a), concerning submission, with an application under section 44(e) of the Act, of a certificate of the trademark office of the applicant's country of origin and, if the certificate is not in the English language, of a translation thereof.

Section 2.33(a)(1)(ix), which presently requires a statement of the mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods specified, is redesignated as (a)(1)(x); revised to indicate that this requirement pertains only to an application under section 1(a) of the Act; and amended to include a requirement, for an application under section 1(b) of the Act, for a statement of the intended mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods or services specified.

A new § 2.33(a)(1)(ix) is added to require, for an application claiming the benefit of a foreign application in accordance with section 44(d) of the Act, that the application comply with the requirements of § 2.39.

Section 2.33(a)(2), which presently provides that if more than one item of goods is specified in the application, the dates of use required in present paragraphs (a)(1)(vii) and (viii) of the section need be for only one of the items specified, provided the particular item to which the dates apply is designated, is revised to refer to services as well as goods and to delete the cross-reference to paragraph (a)(1)(viii), the present substance of which is incorporated in paragraph (a)(1)(vii).

Section 2.33(b), which presently states the requirement that an application include certain averments concerning ownership of the mark, use of the mark in commerce, and the truth of the statements contained in the application, is redesignated as (b)(1); revised to indicate that the requirement of the paragraph pertains only to an application under section 1(a) of the Act; and revised to clarify the language of the paragraph and to make such language gender neutral.

Section 2.33(b)(2) is added to specify, for an application under section 1(b) or 44 of the Act, a requirement that the application include certain averments concerning ownership of the mark, the truth of the statements contained in the application, and applicant's bona fide intention to use the mark in commerce on or in connection with the specified goods or services.

Section 2.33(c), which concerns the applicability of this section to an application for the registration of a mark for goods or services falling within multiple classes, is revised to correct a cross-reference which presently is correct but would be incorrect when the amendments to §§ 2.86 and 2.87 become effective. Specifically, § 2.33(c) is revised to refer to § 2.86 rather than § 2.87.

Section 2.33(d) is added to state that an applicant may not file under both sections 1(a) and 1(b) of the Act in a single application, nor may an applicant in an application under section 1(a) of the Act amend that application to seek registration under section 1(b) of the Act. An application which is filed under both sections 1(a) and 1(b) of the Act will not be accorded a filing date and will be returned to the applicant. The provision that an applicant under section 1(a) of the Act is precluded from amending the application to seek registration under section 1(b) of the Act is based upon the language of section 1(b) of the Act which requires that an application under the section include, upon filing, a verified statement of a bona fide intention to use the mark in commerce; however, an application filed under section 1(a) of the Act does not include such a statement and cannot be based on a bona fide intention to use a mark. There is no prohibition against amending the basis for an application from section 1(b) to section 1(a) of the Act because section 1(a) requires that an application assert use in commerce prior to the filing date of the application. This is a factual assertion that is verifiable at any time.

Section 2.38 is revised to change a cross-reference which presently is correct but would be incorrect when the amendments to § 2.33 become effective. Specifically, § 2.38 is revised to refer to § 2.33(a)(1)(vii) rather than § 2.33(a)(1)(vii) and (viii).

Section 2.39, which presently contains provisions concerning the omission of an allegation of use in commerce and statements of dates of first use in applications filed under Section 44 of the Act, as well as provisions specifying certain requirements for such applications, is amended by changing the section title from "Omission of allegation of use in commerce by foreign applicants." to "Priority claim based on foreign application.," and revising paragraphs (a) and (b). The purpose of the amendments is to delete the omission provisions and the provisions specifying requirements for applications under section 44(e) of the Act which are subsumed by § 2.33 as amended; and to add certain provisions concerning applications claiming the benefit of a prior foreign application in accordance with section 44(d) of the Act.

In the notice of proposed rulemaking, present paragraphs (a) and (b) of § 2.39 were proposed to be revised and a new paragraph (c) was proposed to be added. As the result of a written comment concerning proposed paragraph (a) (*see* "Response to Comments on the Rules"), paragraph (a) is withdrawn, and proposed paragraphs (b) and (c) are redesignated (a) and (b), respectively.

Section 2.39(a), Which presently contains provisions concerning the omission of an allegation of use in commerce and statements of dates of first use by applicants filing under section 44(e) of the Act, as well as provisions specifying requirements for such applications, is revised to delete those provisions, which are subsumed by § 2.33 as amended; to add requirements, presently specified in paragraph (b) of the section, for filing an application in accordance with section 44(d) of the Act.

Section 2.39(b), which presently contains provisions concerning the omission of an allegation of use in commerce and of statements of dates of first use by applicants filing under section 44(d) of the Act, and a statement of certain other requirements for an application in accordance with section 44(d) of the Act, is revised to delete the omission provisions, which are subsumed by § 2.33 as amended. The paragraph is further revised to provide that before an application filed in accordance with section 44(d) of the Act can be approved for publication, a basis for registration under section 1(a), 1(b) or 44(e) of the Act must be established.

Section 2.41(a), which relates to proof of distinctiveness of a mark, pursuant to section 2(f) of the Act, is revised to indicate that allegations and evidence of acquired distinctiveness must be based upon use of the mark on or in connection with goods or services "in commerce."

Section 2.41(b) is revised in the same manner as § 2.41(a) above, and is revised further to implement section 104 of Public Law 100–667. Section 2(f) of the Act presently requires an applicant relying upon an allegation of five years of substantially exclusive and continuous use of a mark in commerce in support of a claim of distinctiveness to assert that such use was made during the five years next preceding the filing date of the application. Section 104 of Public Law 100–667 amends section 2(f) of the Act to permit an applicant to rely upon such use made for the five years before the date on which the claim of distinctiveness is made.

Section 2.44, which presently requires that an application to register a collective mark include certain statements concerning the class of persons entitled to use the mark, their relationship to the applicant, and the nature of applicant's control over the use of the mark, is amended to redesignate the present paragraph as (a); revise redesignated paragraph (a) to indicate that it pertains only to applications under section 1(a) of the Act; and add a new paragraph (b) which requires, for collective mark applications under section 1(b) or 44 of the Act, that the application include certain statements concerning the class of persons entitled to use the mark, their relationship to the applicant, and the nature of applicant's control over the use of the mark.

Section 2.45, which presently requires that an application to register a certification mark include certain statements concerning the use of the mark, applicant's control thereover, and that applicant is not engaged in the production or marketing of the goods or services to which the mark is applied, is amended to redesignate the present paragraph as (a); revise redesignated paragraph (a) to indicate that it pertains only to applications under section 1(a) of the Act; and add a new paragraph (b) which requires, for certification mark applications under section 1(b) or 44 of the Act, that the application include certain statements concerning the intended use of the mark, applicant's intended control thereover, and that applicant will not engage in the production or marketing of the goods or services to which the mark is applied.

Section 2.47, which governs applications to register on the Supplemental Register, is amended to redesignate the present paragraph as (a); revise redesignated paragraph (a); and add new paragraphs (b), (c) and (d) to implement certain provisions of Public Law 100–667.

Section 2.47(a), as redesignated, is revised to implement section 23 of the Act by eliminating provisions pertaining to the requirement for one year of use of the mark for an application for registration on the Supplemental Register.

Section 2.47(b) is added to provide, in accordance with the Crocker decision, that in an application to register on the Supplemental Register under section 44 of the Act, the statement of lawful use in commerce may be omitted.

Section 2.47(c) is added to provide that a mark in an application to register on the Principal Register under section 1(b) of the Act is eligible for registration on the Supplemental Register only after an acceptable allegation of use under section 1 (c) or (d) of the Act has been timely filed. Section 23 of the Act requires lawful use in commerce as a prerequisite for an application for registration on the Supplemental Register. This requirement bars an application under section 1(b) of the Act from the Supplemental Register until an acceptable allegation of use has been submitted.

Section 2.47(d) is added to provide that an application for registration on the Supplemental Register must conform to the requirements for registration on the Principal Register under section 1(a) of the Act so far as applicable.

Section 2.51, which specifies certain general requirements for drawings, is amended by redesignating present paragraph (a) as (a)(1), revising paragraph (a)(1), adding new paragraphs (a)(2) and (a)(3), redesignating present paragraph (b) as (b)(1), revising paragraph (b)(1), adding new paragraphs (b)(2) and (b)(3), revising paragraph (c), redesignating and republishing present paragraph (d) as (e), and adding a new paragraph (d) to codify existing practice and to specify certain drawing requirements for applications under sections 1(b) of the Act and applications under section 44 of the Act.

Section 2.51(a), which presently requires that the drawing of a trademark be a substantially exact representation of the mark as used on or in connection with the goods, is redesignated as (a)(1) and revised to indicate that it pertains only to applications under section 1(a) of the Act.

Section 2.51(a)(2) is added to provide that, in an application under section 1(b) of the Act, the drawing of a trademark shall be a substantially exact representation of the mark as intended to be used on or in connection with the goods specified in the application and, that once an amendment to allege use under new § 2.76, or a statement of use under new § 2.88 has been filed, the drawing of the trademark shall be a substantially exact representation of the mark as used.

Section 2.51(a)(3) is added to provide that, in an application under section 44 of the Act, the drawing of the trademark shall be a substantially exact representation of the mark as it appears in the drawing in the registration certificate of a mark duly registered in the country of origin of the applicant.

Section 2.51(b), which presently specifies, for service marks, requirements similar to those specified in paragraph (a) for trademarks, is amended by redesignating the present paragraph as (b)(1) and adding paragraphs (b)(2) and (b)(3) to parallel, for service marks, the provisions of new paragraphs (a)(1), (a)(2) and (a)(3).

Section 2.51(c), which presently provides that, when appropriate and necessary, the drawing in an application for registration on the Supplemental Register may be the drawing of a package or configuration of goods, is revised to delete that provision, which is outdated, and to add a provision codifying the practice that the drawing of a service mark may be dispensed with in the case of a mark not capable of representation by a drawing, but in any such case the application must contain an adequate description.

Section 2.51(d) is redesignated as (e) and a new paragraph (d) is added to provide that broken lines should be used in the drawing of a mark to show placement of the mark on the goods, or on the packaging, or to show matter not claimed as part of the mark, or both, as appropriate, and to provide further that, in an application to register a mark with three-dimensional features, the drawing shall depict the mark in perspective in a single rendition. These proposed provisions codify existing practice.

Section 2.52(a), which pertains to the character of drawings, is revised to correct a cross-reference which presently is correct but would be incorrect when the amendments made herein to § 2.51 become effective. Specifically, § 2.52(a) is amended to refer to paragraph (e), rather than (d), of § 2.51.

Section 2.52(d), which pertains to drawing headings and which presently includes, *inter alia*, a requirement that the heading of a drawing (except for a drawing in an application under section 44 of the Act) not exceed one-fourth of the sheet and specify dates of use, is revised to indicate that the heading should not exceed one-third of the sheet and that the dates of use requirement pertains only to an application under 1(a) of the Act; to add a requirement that the heading of a drawing in an application filed in accordance with section 44(d) of the Act specify the priority filing date of the relevant foreign application; and to add a provision that, if a drawing is in special form, the heading of the drawing should include a description of the essential elements of the mark.

Section 2.52(e), which pertains to drawing linings for color, is revised to simplify the conventional color linings for orange and yellow or gold.

Section 2.53 is revised to change a cross-reference which presently is correct but would be incorrect when the amendments made herein to § 2.51 become effective. Specifically, § 2.53 is amended to refer to paragraph (e), rather than (d), of § 2.51.

Section 2.56, which concerns specimens for trademarks, is revised to indicate that the requirement for the filing of specimens pertains only to an application under section 1(a) of the Act, an amendment to allege use under new § 2.76, and a statement of use under new § 2.88; remove the redundant word "actually," in accordance with section 1(a)(1)(C) of the Act; add a provision, in accordance with section 45 of the Act, that if placement of the mark on labels, tags, containers or displays associated with the goods is impracticable, then specimens may be documents associated with the goods or their sale; and reduce the maximum size limit for specimens (the proposed maximum size limit parallels the preferable size of paper for a trademark application as specified in amended § 2.31). When specimens exceeding the size limitations are submitted, the applicant will be required to submit proper substitute specimens. The paragraph is revised further to reduce the number of specimens required from five to three. The present requirement for five specimens was adopted to permit members of the public to obtain specimens directly from the application file. Advances in copying technology have rendered the requirement for five specimens unnecessary because members of the public may now obtain quality photocopies of the specimens in the file, making removal of specimens unnecessary in most cases. The requirement for three specimens will provide one specimen for the file and make two specimens available for removal by third parties.

Section 2.57, which pertains to facsimiles in the case of a trademark, is amended to revise paragraph (a) to reduce the number of facsimiles required from five to three, and to reduce the maximum size limit for specimens (the maximum size limit parallels the preferable size of paper for a trademark application as specified in amended § 2.31); and to revise paragraph (b) by removing the redundant word "actually," in accordance with section 1(a)(1)(C) of the Act. When facsimiles exceeding the size limitations are submitted, the applicant will be required to submit proper substitute specimens.

Section 2.58, which concerns the filing of audio cassette tape recordings as specimens for service marks not used in written or printed form, was proposed to be amended to reduce the number of audio tapes required from three to two. As a result of comments received with

respect to this proposal, it has been withdrawn.

Section 2.59, entitled "Filing substitute specimens," is added to specify the requirements related to the filing of substitute specimens for applications under section 1(a) or 1(b) of the Act. The new section codifies existing practice with respect to applications under section 1(a) of the Act and sets forth the requirements which will apply to applications under section 1(b) of the Act.

Section 2.59(a) is added to provide that, in an application based upon use in commerce, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services, provided that any substitute specimens are properly verified as to their use in commerce at least as early as the filing date of the application; and that the verification requirement shall not apply if the specimens are duplicates or facsimiles, such as photographs, of specimens already of record in the application. The new provision is in accordance with section 1(a) of the Act, which requires use in commerce, evidenced by specimens, as a prerequisite to the filing of an application thereunder.

Section 2.59(b) is added to provide that, after filing either an amendment to allege use under new § 2.76 or a statement of use under new § 2.88, in an application under section 1(b) of the Act, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services, provided that the use in commerce of any substitute specimens submitted is supported by applicant's affidavit or declaration in accordance with § 2.20; and to provide further that, in the case of a statement of use under new § 2.88, the applicant must verify that the substitute specimens were in use in commerce prior to the filing of the statement of use or prior to the expiration of the time allowed to applicant for filing a statement of use. Since use in commerce is not required before filing an application under section 1(b) of the Act, there is no requirement that a substitute specimen have been in use at the time of the filing of the application. Furthermore, because an applicant may file a statement of use at any time during the six-month period following the notice of allowance, or at any time during any extension of time for filing a statement of use, a substitute specimen need not be in use any earlier than the expiration of the relevant period.

Section 2.61, which concerns the examination of an application, is amended to provide also for the examination of amendments to allege use under section 1(c) of the Act and statements of use under section 1(d) of the Act.

Section 2.61(a) is revised to indicate that not only applications for registration, but also amendments to allege use under section 1(c) of the Act and statements of use under section 1(d) of the Act will be examined.

Section 2.61(c) is revised to clarify the language.

Section 2.64, which relates to final action by the Trademark Examining Attorney and the applicant's permissible responses thereto, is amended by adding new paragraphs (c)(1), (c)(2), and (c)(3) concerning examination of an amendment to allege use under new § 2.76, filed during the six-month response period after issuance of a final action.

Section 2.64(c)(1) is added to provide that if an amendment to allege use under new § 2.76 is filed during the six-month response period after issuance of a final action, the Trademark Examining Attorney shall examine the amendment, but that the filing of such an amendment will not extend the time for filing an appeal or petitioning the Commissioner.

Section 2.64(c)(2) is added to provide that if the amendment to allege use under new § 2.76 is acceptable in all respects, the applicant will be notified of its acceptance.

Section 2.64(c)(3) is added to provide that if a new refusal or requirement is necessary as a result of the examination of the amendment to allege use under new § 2.76, the final action will be withdrawn and all unresolved refusals or requirements will be stated in a new non-final action.

Section 2.65(c) is added to provide that if an applicant in an application under section 1(b) of the Act fails to timely file a statement of use under new § 2.88, the application shall be deemed to be abandoned. The new paragraph is in conformity with section 1(d)(4) of the Act.

Section 2.66, which governs the revival of abandoned applications, is amended by redesignating the present paragraph as (a), and revising redesignated paragraph (a), which presently provides for the filing of a petition to revive an application abandoned for failure to respond, to pertain also to an application abandoned for failure to timely file a statement of use under new § 2.88, in an application under section 1(b) of the Act. Section 2.66 is further amended by transferring the last sentence of paragraph (a), which states the requirements for a petition to revive for failure to respond, to new paragraph (b), and by adding new paragraphs (c) and (d).

Section 2.66(c) is added to state the requirements for a petition to revive an application abandoned for failure to timely file a statement of use under new § 2.88, in an application under section 1(b) of the Act. The requirements parallel those stated in present § 2.66 and new paragraph (b).

Section 2.66(d) is added to provide that a petition to revive must be filed promptly, but that no petition to revive will be granted in an application under section 1(b) of the Act if granting the petition would permit the filing of a statement of use more than 36 months after the issuance of a notice of allowance under section 13(b)(2) of the Act. The 36-month limit for the filing of a statement of use is in accordance with the provisions of section 1(d) of the Act. Usually a petition to revive will be considered filed promptly if it is filed within two months of the date the application was abandoned for failure to respond.

Section 2.69, which pertains to inquiry by a Trademark Examining Attorney as to the applicant's compliance with other laws, is revised to delete the words "before allowance." The word "allowance," as presently used in the section, signifies approval of a mark for publication. The purpose of the deletion is to prevent confusion between this word and the new "notice of allowance" provided in section 13(b)(2) of the Act.

Section 2.71, which concerns amendments to correct informalities in applications, is amended by changing the section title from "Amendments to application." to "Amendments to correct informalities."; revising paragraphs (a), (b), and (c); and adding new paragraphs (d)(1), (d)(2), and (d)(3) to govern amendments to the dates of use.

Section 2.71(a), which presently provides for the amendment of applications to correct informalities and for other reasons, and also contains a provision concerning amendments to dates of use, is revised by deleting the provision concerning dates of use, which is transferred to a new paragraph designated as (d)(1).

Section 2.71(b), which presently provides that additions to the identification of goods or services will not be permitted unless certain specified conditions are met, is revised to provide that the identification of goods or services may be amended to clarify or limit the identification, but that additions thereto will not be permitted. The purposes of the requirement for the identification of goods or services are to give notice to third parties of the scope of the rights claimed by the applicant and to permit an accurate search for conflicting marks. Addition of goods or services to the identification, after the filing of an application, would frustrate these purposes. Moreover, section 7(c) of the Act provides that, contingent on the registration of a mark on the Principal Register, the filing of the application to register such mark shall constitute constructive use of such mark on or in connection with the goods or services specified in the registration.

Section 2.71(c), which presently provides, in essence, that a defect in the verification or declaration may be corrected only by filing a substitute or supplemental verification or declaration, is revised to clarify the language. The paragraph is further revised to provide that a verification or declaration required under §§ 2.21(a)(6), 2.76(e)(3) or 2.88(e)(3), to be properly signed, must be signed by the applicant, a member of the applicant firm, or an officer of the applicant corporation or association; that a verification or declaration which is signed by a person having color of authority to sign is acceptable for the purpose of determining the timely filing of the paper; but that a properly signed substitute verification or declaration must be submitted before the application will be approved for publication or registration, as the case may be. Persons having color of authority to sign are those who have first-hand knowledge of the truth of the statements in the verification or declaration and who also have actual or implied authority to act on behalf of the applicant. In the case of a corporate applicant, a person having color of authority might include, within the contemplation of the amended section, managers or similar persons who are in positions of authority, although not actually officers, if they have first-hand knowledge of the truth of the statements in the application and actual or implied authority to act on behalf of the applicant. However, an applicant's attorney ordinarily will not be considered a person having color of authority to sign.

Section 2.71(d)(1) is added to provide that no amendment to the dates of use will be permitted unless the amendment is supported by applicant's affidavit or declaration in accordance with § 2.20 and by such showing as may be required. This provision, which is the second sentence of present § 2.71(a), is transferred to new paragraph (d)(1) to be grouped with two other new paragraphs, designated (d)(2) and (d)(3), relating to amendments to the dates of use.

Section 2.71(d)(2) is added to codify the practice that, in an application under section 1(a) of the Act, no amendment to specify a date of use which is subsequent to the filing date of the application will be permitted. The new provision is in accordance with section 1(a) of the Act, which requires use in commerce as a prerequisite to the filing of an application thereunder.

Section 2.71(d)(3) is added to provide that after the filing of a statement of use under new § 2.88, in an application under section 1(b) of the Act, no amendment will be permitted to the statement of use to recite dates of use which are subsequent to the expiration of the time allowed to applicant for filing a statement of use. The reason for this limitation is that section 1(d) of the Act requires use of the mark in commerce, in an application under section 1(b) of the Act, within a specified period of time and imposes certain absolute limitations on extensions of that period. Any use later than the time permitted would not comply with the requirements of section 1(d) of the Act.

Section 2.72, which governs amendments to the description or drawing of a mark, is amended by redesignating the present paragraph as (b), revising redesignated paragraph (b), and adding new paragraphs (a), (c), and (d).

Section 2.72(a) is added to provide that amendments may not be made to the description or drawing of the mark if the character of the mark is materially altered, and that the Trademark Examining Attorney will determine whether a proposed amendment materially alters the character of the mark by comparing the proposed amendment with the description or drawing of the mark as originally filed. Concerning material alteration of a mark *see Torres* v. *Cantine Torresella S.r.l.*, 808 F.2d 46, 1 USPQ 2d 1483 (Fed. Cir. 1986); In re Holland American Wafer Co., 737 F.2d 1015, 222 USPQ 273 (Fed. Cir. 1984); *United Rum Merchants, Ltd.* v. *Distillers Corp.(S.A.) Ltd.*, 9 USPQ 2d 1481 (TTAB 1988); *Visa International Service Assn.* v. *Life-Code Systems, Inc.*, 220 USPQ 740 (TTAB 1983). The first of these two provisions is the last sentence of present § 2.72. The second provision is added to codify present practice, the purpose of which is to prevent an applicant from repeatedly amending the mark sought to be registered until it bears little resemblance to the mark as originally filed.

Section 2.72(b), as redesignated, is revised to transfer the last sentence, which specifies the general rule concerning amendments to marks, to new paragraph 2.72(a). The remainder of the paragraph, which presently provides that amendments to the description or drawing of the mark may be permitted only if warranted by the specimens (or facsimiles) as originally filed, or supported by additional specimens (or facsimiles) verified as to their use prior to the filing date of the application, is further revised to indicate that the provisions of the paragraph pertain only to applications under section 1(a) of the Act. The amendment is in accordance with section 1(a) of the Act, which requires use in commerce as a prerequisite to the filing of an application thereunder.

Section 2.72(c) is added to provide that, in applications under section 1(b) of the Act, amendments to the description or drawing of the mark, which are filed after submission of an amendment to allege use under new § 2.76 or a statement of use under new § 2.88, may be permitted only if warranted by the specimens (or facsimiles) filed, or supported by additional specimens (or facsimiles) and a supplemental affidavit or declaration in accordance with § 2.20 alleging that the mark shown in the amended drawing is in use in commerce; and that in the case of a statement of use under new § 2.88, applicant must verify that the mark shown in the amended drawing was in use in commerce prior to the filing of the statement of use or prior to the expiration of the time allowed to applicant for filing a statement of use. The reason for the latter requirement, in the case of a statement of use, is that section 1(d) of the Act requires use of the mark in commerce, in an application under section 1(b) of the Act, within a specified period of time and imposes certain absolute limitations on extensions of that period. Any use later than the time permitted would not comply with the requirements of section 1(d) of the Act.

Section 2.72(d) is added to codify the practice that in applications under section 44 of the Act, amendments to the description or drawing of the mark may be permitted only if warranted by the description or drawing of the mark in the foreign registration certificate.

Section 2.73, which governs amendments to recite concurrent use, is amended by redesignating the present paragraph as (a), revising redesignated

paragraph (a), and adding new paragraph (b).

Section 2.73(a), as redesignated, which presently provides that an application may be amended so as to be treated as an application for a concurrent registration, provided the application as amended satisfies the requirements of § 2.42, is revised to indicate that this provision pertains only to an application under section 1(a) of the Act. The Trademark Examining Attorney will determine whether the application, as amended, is acceptable.

Section 2.73(b) is added to provide that an application under section 1(b) of the Act may not be amended so as to be treated as an application for a concurrent registration until an acceptable amendment to allege use under new § 2.76 or statement of use under new § 2.88 has been filed in the application, after which time such an amendment may be made, provided the application as amended satisfies the requirements of § 2.42. To provide otherwise would be to permit an application for concurrent registration based on an intent to use concurrently, which would be in conflict with the well-established legal principle that an applicant for concurrent registration must have adopted and used the mark in good faith without knowledge of the prior right of another in the same or similar mark for the same or similar goods or services. The Trademark Examining Attorney will determine whether the application, as amended, is acceptable.

Section 2.75, which governs amendments to change register, is amended to redesignate the present paragraph as (a), revise redesignated paragraph (a), and add new paragraph (b).

Section 2.75(a), as redesignated, which presently provides for amendments to change applications from one register to another and also contains provisions relating to the effect of such an amendment on the filing date of an application, is revised to indicate that the paragraph pertains only to applications under section 1(a) or 44 of the Act; and to delete the provisions concerning the effect on the filing date. Prior to the enactment of Public Law 100–667, section 23 of the Act required that the mark in an application for registration on the Supplemental Register have been in use for one year prior to the filing of the application, whereas there is no such requirement for an application to register on the Principal Register. However, section 23, as amended, does not require use of a mark for one year prior to application on the Supplemental Register. Thus, under the Act, as amended, an amendment to change registers has no effect on the filing date of an application under section 1(a) or 44 of the Act.

Section 2.75(b) is added to provide that an application under section 1(b) of the Act may be amended to change the application to a different register only after submission of an acceptable amendment to allege use under new § 2.76 or statement of use under new § 2.88, and that when such an application is changed from the Principal Register to the Supplemental Register, the effective filing date of the application is the date of the filing of the allegation of use under section 1(c) or 1(d) of the Act. The amendment is in accordance with section 23 of the Act, both in its prior and amended forms, which requires use in commerce as a prerequisite to filing an application thereunder.

Section 2.76, entitled "Amendment to allege use.," is added to govern amendments to allege use under section 1(c) of the Act in an application under section 1(b) of the Act.

Section 2.76(a) is added to specify the time when such an amendment may be filed, namely, at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action, and to specify further that, thereafter, an allegation of use may be submitted only as a statement of use under new § 2.88 after the issuance of a notice of allowance under section 13(b)(2) of the Act. If an amendment to allege use is filed outside the time period specified, it will be returned to the applicant. The paragraph is in accordance with section 1(c) of the Act, which provides that an amendment to allege use may be filed at any time during examination of an application. The examination of an application extends from the filing of the application to the date the mark is approved for publication or the expiration of the six-month response period after issuance of a final action. The date a mark is approved for publication is the date the approval is entered into the TRAM (Trademark Reporting and Monitoring) System. The date of approval for publication is immediately available to the public through TRAM.

Section 2.76(b) is added to specify the elements of a complete amendment to allege use, namely, three specimens or facsimiles, conforming to the requirements of §§ 2.56, 2.57 and 2.58, of the mark as used in commerce; the fee prescribed in § 2.6; and a verified statement by the applicant containing certain averments concerning applicant's ownership of the mark and use of the mark in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, those goods or services specified in the application on or in connection with which the mark is in use in commerce and the mode or manner in which the mark is used on or in connection with such goods or services.

Section 2.76(c) is added to provide that an amendment to allege use may only be filed when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the application, for which applicant will seek registration in that application, unless the amendment is accompanied by a request, in accordance with amended § 2.87, to divide out from the application the goods or services to which the amendment pertains; and that if more than one item of goods or services is specified in the amendment to allege use, the dates of use required in paragraph (b)(1) of the section need be for only one of the items specified in each class, provided the particular item to which the dates apply is designated. The first provision in the paragraph prevents piecemeal prosecution of an application. The second provision in the paragraph is in conformity with both present and amended § 2.33(a)(2).

Section 2.76(d) is added to provide that the title "Amendment to allege use under § 2.76." should appear at the top of the first page of the paper.

Section 2.76(e) is added to specify minimum requirements for an amendment to allege use, namely, that the amendment be filed within the time period specified in paragraph (a) of the section, and include the fee prescribed in § 2.6, at least one specimen or facsimile of the mark as used in commerce, and a verification or declaration signed by the applicant stating that the mark is in use in commerce. The paragraph corresponds in principle to § 2.21, which sets forth minimum requirements for the filing of an application.

Section 2.76(f) is added to provide that a timely filed amendment to allege use which meets the minimum requirements specified in paragraph (e) of this section will be examined in accordance with §§ 2.61 through 2.69. If, as a result of the examination of the amendment to allege use, applicant is found not entitled to registration for any reason not previously stated, applicant will be notified and advised of the reasons and of any formal requirements or refusals.

The notification shall incorporate all unresolved refusals or requirements previously stated. The amendment to allege use may be amended in accordance with §§ 2.59 and 2.71 through 2.75. If the amendment to allege use is acceptable in all respects, the applicant will be notified of its acceptance. The filing of such an amendment shall not constitute a response to any outstanding action by the Trademark Examining Attorney.

Section 2.76(g) is added to provide that if the amendment to allege use is filed within the permitted time period but does not meet the minimum requirements specified in paragraph (e) of this section, applicant will be notified of the deficiency. The deficiency may be corrected provided the mark has not been approved for publication or the six-month response period after issuance of a final action has not expired. If an acceptable amendment to correct the deficiency is not filed prior to approval of the mark for publication or prior to the expiration of the six-month response period after issuance of a final action, the amendment will not be examined.

Section 2.76(h) is added to provide that an amendment to allege use may be withdrawn for any reason prior to approval of a mark for publication or expiration of the six-month response period after issuance of a final action.

Section 2.77, entitled "Amendments between notice of allowance and statement of use.", is added to provide that an application under section 1(b) of the Act may not be amended during the period between the issue date of the notice of allowance under section 13(b)(2) of the Act and the filing of a statement of use under new § 2.88, except to delete specified goods or services. Other amendments filed during this period will be placed in the application file and considered when the statement of use is examined.

The heading entitled "Publication and Allowance," for §§ 2.80 through 2.84, is changed to "Publication and Post Publication." The amended heading more accurately reflects the scope of the sections which follow. The word "allowance," as presently used in the heading, signifies approval of a mark for registration. The purpose of the deletion is to prevent confusion between the word "allowance" and the new "notice of allowance" provided in section 13(b)(2) of the Act.

Section 2.81 is amended by changing the section title from "Allowance of application." to "Post publication."; redesignating the present paragraph as (a); revising redesignated paragraph (a), which presently concerns the preparation of an application for registration after publication, to indicate that it does not apply to applications under section 1(b) of the Act for which no amendment to allege use under new § 2.76 has been submitted and accepted; and adding new paragraph (b) concerning the post-publication processing of applications under section 1(b) of the Act for which no amendment to allege use under new § 2.76 has been submitted and accepted. The word "allowance," as presently used in the section title, signifies approval of a mark for registration. The purpose of the title change is to prevent confusion between this word and the new "notice of allowance" provided in section 13(b)(2) of the Act.

Section 2.81(b) is added to provide that, in an application under section 1(b) of the Act, for which no amendment to allege use under new § 2.76 has been submitted and accepted, if no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared, a notice of allowance will issue stating the serial number of the application, the name of the applicant, the correspondence address, the mark, the identification of goods or services, and the issue date of the notice of allowance; that the mailing date that appears on the notice of allowance will be the issue date of the notice of allowance; and that thereafter, the applicant shall submit a statement of use under new § 2.88. The paragraph is in accordance with the provisions of section 13(b)(2) of the Act.

Section 2.82, which concerns the processing of an application for registration on the Supplemental Register after the examiner has approved the application for issuance, is revised to clarify the language of the section.

Section 2.83, which concerns the processing of conflicting marks, is amended by revising paragraph (a) to delete a provision stating "a notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the earliest filed mark," and by revising paragraph (b) to delete a provision stating "a notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the application with the earliest date of execution." These provisions are deleted because they do not conform to present practice.

Section 2.84, which concerns jurisdiction over published applications, is amended by deleting the words "or allowed" from the section title, which presently reads "Jurisdiction over published or allowed applications."; and revising paragraphs (a) and (b) to clarify the provisions and to add provisions concerning jurisdiction over applications under section 1(b) of the Act which have been published. The words "allowed" and "allowance," as presently used in the section title and in paragraphs (a) and (b), signify approval of a mark for registration. The purpose of the amendments deleting these words is to prevent confusion between the words "allowed" and "allowance" and the new "notice of allowance" provided in section 13(b)(2) of the Act.

Section 2.86, which presently concerns applications with a plurality of goods or services comprised in a single class, is amended by changing the section title from "Plurality of goods or services comprised in single class may be covered by single application." to "Application may include multiple goods or services comprised in single class or multiple classes."; redesignating the present paragraph as (a); and adding new paragraphs (b) and (c).

Section 2.86(a), as redesignated, which presently provides that an application may recite a plurality of goods or services comprised in a single class provided the particular identification of goods or services is stated and the mark has actually been used in connection with all of the goods or services specified, is revised to clarify the language of the paragraph and to add, as an alternative to the requirement of use, a requirement that the applicant have a bona fide intention to use the mark on or in connection with all the goods or services specified.

Section 2.86(b) is added to incorporate in § 2.86 the provisions of the present § 2.87, which governs the filing of an application to register a mark for goods and/or services which fall within a plurality of classes; clarify the language of those provisions; and add certain requirements relating to multiple class applications under section 1(b) of the Act.

Section 2.86(c) is added to prohibit applicants from alleging use as to certain goods or services and a bona fide intention to use as to other goods or services in the same application, regardless of the number of classes contained therein.

Section 2.87, which presently governs the filing of an application to register a mark for goods and/or services which fall within a plurality of classes, is amended by changing the section title from "Combined applications." to "Dividing an application."; redesignating the present paragraph as (a); revising redesignated paragraph (a); and adding

new paragraphs (b) and (c), to govern the division of applications.

Section 2.87(a), as redesignated, is revised by deleting the existing paragraph, which is incorporated in revised form in new paragraph (b) of amended § 2.86, and adding the new provisions that an application may be physically divided into two or more separate applications upon submission by the applicant of a request therefor; that in the case of a request to divide out some, but not all, of the goods or services in a class, a fee for each new separate application to be created by the division must be submitted; and that any outstanding time period for action by the applicant in the original application at the time of the division will be applicable to each new separate application created by the division.

Section 2.87(b) is added to provide that an application may be divided at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action; or during an opposition, upon motion granted by the Board. The paragraph provides further that an application under section 1(b) of the Act also may be divided upon request filed with a statement of use under new § 2.88 or at any time between the filing of a statement of use and the date the Trademark Examining Attorney approves the mark for registration or the date of expiration of the six-month response period after issuance of a final action. The date a mark is approved for publication is the date the approval is entered into the TRAM (Trademark Reporting and Monitoring) System. The date of approval for publication is immediately available to the public through TRAM.

Section 2.87(c) is added to provide that a request to divide an application should be made in a separate paper from any other amendment or response in the application. The title "Request to divide application." should appear at the top of the first page of the paper. Failure to make the request to divide in a separate paper or to title it as a "Request to divide application" will delay action on the request.

A new heading, entitled "Post Notice of Allowance," and two new sections, designated §§ 2.88 and 2.89, are added to govern the filing of statements of use, and requests for extensions of time, under section 1(d) of the Act, in applications under section 1(b) of the Act, after issuance of a notice of allowance under section 13(b)(2) of the Act.

Section 2.88, entitled "Filing statement of use after notice of allowance.", is added to govern statements of use under section 1(d) of the Act in an application under section 1(b) of the Act.

Section 2.88(a) is added to specify the time when such an amendment may be filed, namely, within six months after the date on which the notice of allowance under section 13(b)(2) of the Act is issued to an applicant under section 1(d)(2) of the Act. A statement of use filed prior to the issue date of a notice of allowance is premature, will not be considered, and will be returned to the applicant.

Section 2.88(b) is added to specify the elements of a complete statement of use under section 1(d) of the Act, namely, three specimens or facsimiles, conforming to the requirements of §§ 2.56 and 2.57, as amended, and § 2.58, of the mark as used in commerce; the fee prescribed in amended § 2.6; and a verified statement by the applicant containing certain averments concerning applicant's ownership of the mark and use of the mark in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, those goods or services specified in the application on or in connection with which the mark is in use in commerce and the mode or manner in which the mark is used on or in connection with such goods or services.

Section 2.88(c) is added to provide that a statement of use under section 1(d) of the Act may only be filed when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the application, for which applicant will seek registration in that application, unless the statement of use is accompanied by a request in accordance with amended § 2.87 to divide out from the application the goods or services to which the statement of use pertains; and that if more than one item of goods or services is specified in the statement of use, the dates of use required in proposed paragraph (b)(1) of this section need be for only one of the items specified in each class, provided the particular item to which the dates apply is designated. The latter provision in the paragraph is in conformity with both present and amended § 2.33(a)(2).

Section 2.88(d) is added to provide that the title "Statement of use under § 2.88." should appear at the top of the first page of the paper.

Section 2.88(e) is added to specify minimum requirements for a statement of use, namely, that the statement be filed within the time period specified in paragraph (a) of the section, and include the fee prescribed in amended § 2.6, at least one specimen or facsimile of the mark as used in commerce, and a verification or declaration signed by the applicant stating that the mark is in use in commerce. The paragraph corresponds in principle to amended § 2.21, which sets forth minimum requirements for the filing of an application.

Section 2.88(f) is added to provide that a timely filed statement of use which meets, at least, the minimum requirements specified in paragraph (e) of this section will be examined in accordance with §§ 2.61 through 2.69. If, as a result of the examination of the statement of use, applicant is found not entitled to registration, applicant will be notified and advised of the reasons and of any formal requirements or refusals. The statement of use may be amended in accordance with §§ 2.59 and 2.71 through 2.75. If the statement of use is acceptable in all respects, the applicant will be notified of its acceptance. The provision of the new paragraph permitting amendment of the statement of use is in accordance with section 1(d)(3) of the Act, which specifically provides that an applicant may amend the statement of use.

Section 2.88(g) is added to provide that if the statement of use does not meet the minimum requirements specified in paragraph (e) of this section, applicant will be notified of the deficiency. If the time permitted for applicant to file a statement of use has not expired, applicant may correct the deficiency. After the filing of a statement of use during a permitted time period for such filing, the applicant may not withdraw the statement to return to the previous status of awaiting submission of a statement of use, regardless of whether the statement is in compliance with paragraph (e) of this section.

Section 2.88(h) is added to provide that the failure to timely file a statement of use which meets the minimum requirements specified in paragraph (e) of this section shall result in the abandonment of the application. The new paragraph is in conformity with section 1(d)(4) of the Act.

Section 2.88(i)(1) is added to provide that the goods or services specified in a statement of use must conform to those goods or services identified in the notice of allowance; and that an applicant may specify the goods or services by stating "those goods or services identified in the notice of allowance" or, if appropriate, "those goods or services identified in the notice of allowance except * * *" followed by an identification of the goods or services to be deleted. The requirement that the goods or services specified in the statement of use must conform to those goods or services identified in the notice of allowance is in accordance with section 1(d)(1) of the Act. The suggested format for specifying goods or services in the statement of use will prevent inadvertent errors in the applicant's recital of the goods or services and facilitate examination of statements of use by the PTO.

Section 2.88(i)(2) is added to provide that if any goods or services specified in the notice of allowance are omitted from the identification of goods or services in the statement of use, the Trademark Examining Attorney shall inquire about the discrepancy and permit the applicant to amend the statement of use to include any omitted goods or services, provided that the amendment is supported by a verification that the mark was in use in commerce, on or in connection with each of the goods or services sought to be included, prior to the expiration of the time allowed to applicant for filing a statement of use. The paragraph is in accordance with section 1(d)(3) of the Act, which specifically provides that the applicant may amend the statement of use.

Section 2.88(i)(3) is added to provide that the statement of use may be accompanied by a separate request to amend the identification of goods or services in the application, as stated in the notice of allowance, in accordance with amended § 2.71(b). The paragraph is in conformance with new § 2.77, which provides that an application under section 1(b) of the Act may not be amended during the period between issuance of the notice of allowance under section 13(b)(2) of the Act and the filing of a statement of use, except to delete specified goods or services. Other amendments filed during this period will be placed in the application file and considered when the statement of use is examined.

In the notice of proposed rulemaking, § 2.88(j) was proposed to be added to provide that the mark shown in the specimens submitted with the statement of use must be materially the same as the mark depicted in the drawing of record. However, because this provision duplicates requirements already stated in §§ 2.51 and 2.72, the provision is withdrawn. The provision that was proposed as § 2.88(k) is redesignated as § 2.88(j).

Section 2.88(j) is added to provide that the statement of use may be accompanied by a separate request to amend the drawing in the application in accordance with amended §§ 2.51 and 2.72.

Section 2.89, entitled "Extensions of time for filing a statement of use.", is added to govern the filing and examination of requests for extensions of time for filing statements of use under new § 2.88.

Section 2.89(a) is added to provide that an applicant may request a six-month extension of time to file the statement of use under new § 2.88 by submitting a written request, before the expiration of the six-month period following the issue date of a notice of allowance under section 13(b)(2) of the Act, accompanied by the fee prescribed in amended § 2.6 and a verified statement by the applicant that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce. The paragraph is in conformity with section 1(d)(2) of the Act.

Section 2.89(b) is added to provide that an applicant may request further six-month extensions of time for filing the statement of use by submitting a written request, prior to the expiration of a previously granted extension of time, accompanied by the fee prescribed in amended § 2.6; a verified statement by the applicant that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce; and a showing of good cause, as specified in paragraph (d) of this section.

Section 2.89(c) is added to provide that extensions of time, for good cause, under § 2.89(b) will be granted only in six-month increments and may not aggregate more than 24 months. The provision is in conformity with section 1(d)(2) of the Act.

Section 2.89(d) is added to provide that the showing of good cause which is required as part of a request for an extension of time under § 2.89(b) must include certain specified elements listed in paragraphs (d)(1) and (d)(2).

Section 2.89(d)(1) is added to require that the showing of good cause which is required as part of a request for an extension of time under § 2.89(b) must include, in part, an allegation that the applicant has not yet made use of the mark in commerce on all the goods or services specified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce.

Section 2.89(d)(2) is added to require that the showing of good cause which is required as part of a request for an extension of time under § 2.89(b) must include, in part, a statement of applicant's ongoing efforts to make use of the mark in commerce on or in connection with each of the goods or services specified in the verified statement of continued bona fide intention to use required under § 2.89(b); that the efforts may include, without limitation, product or service research or development, market research, manufacturing activities, promotional activities, steps to acquire distributors, steps to obtain required governmental approval, or other similar activities; and that, in the alternative, a satisfactory explanation for the failure to make such efforts must be submitted. The paragraph is in compliance with section 1(d)(2) of the Act, which requires the Commissioner to issue regulations setting forth what constitutes good cause for a request for an extension of time for filing a statement of use under section 1(d)(2) of the Act. The listing in the paragraph of examples of efforts to make use of the mark in commerce is intended to be illustrative rather than exhaustive. The inclusion in the examples of "steps to obtain required governmental approval" is not intended to imply that any use of a mark prior to such approval may not constitute "use in commerce" as that term is defined in section 45 of the Act.

Section 2.89(e)(1) is added to provide that at the time of the filing of a statement of use, or during any time remaining in the existing six-month period in which a statement of use is filed, the applicant may file one request, in accordance with paragraph (a) or (b) of the section, for a six-month extension of time for filing a statement of use, provided that the time requested would not extend beyond 36 months from the issue date of the notice of allowance; and that, thereafter, applicant may not request any further extension of time. This paragraph permits an applicant to obtain additional time to submit a substitute statement of use in case the original statement of use is rejected, as fatally defective, by the PTO near or after the expiration of the six-month period in which such original statement was filed.

Section 2.89(e)(2) is added to provide that a request for an extension of time that is filed at the time of the filing of a statement of use, or during any time remaining in the existing six-month

period in which a statement of use is filed, must comply with all the requirements of paragraph (a) of this section, if it is applicant's first extension request, or paragraph (b) of this section, if it is a second or subsequent extension request. The new rule further provides that in a request under paragraph (b), applicant may satisfy the requirement for a showing of good cause by asserting that applicant believes it has made valid use of the mark in commerce, as evidenced by the submitted statement of use, but that if the statement of use is found by the PTO to be fatally defective, applicant will need additional time in which to file a new statement of use.

Final § 2.89(e)(2) includes a provision which was not included in the proposed rule, namely, a request for an extension of time that is filed at the time of the filing of the statement of use, or during any time remaining in the existing six-month period in which a statement of use is filed, must comply with all of the requirements of paragraph (a) of this section if it is applicant's first extension request, or paragraph (b) of this section, if it is a second or subsequent extension request. The additional provision was included in the final rule in order to clarify the rule. It is not a material change since proposed and final paragraph (e)(1) of this section requires that an extension request be filed "in accordance with paragraph (a) or (b)" of the section.

Section 2.89(f) is added to provide that the goods or services specified in a request for an extension of time for filing a statement of use must conform to those goods or services identified in the notice of allowance. The requirement is in accordance with section 1(d)(2) of the Act. The paragraph also provides that any goods or services specified in the notice of allowance which are omitted from the identification of goods or services in the request for extension of time will be presumed to be deleted and the applicant may not thereafter request that the deleted goods or services be reinserted in the application. Finally, the paragraph provides that an applicant may specify the goods or services by stating "those goods or services identified in the notice of allowance" or, if appropriate, "those goods or services identified in the notice of allowance except * * *" followed by a list of the goods or services to be deleted. The format will prevent inadvertent errors in the applicant's recital of the goods or services and facilitate examination of such a request by the PTO.

Section 2.89(g) is added to provide that the applicant will be notified of the grant or denial of a request for an extension of time, and of the reasons for a denial; that failure to notify the applicant of the grant or denial of the request prior to the expiration of the existing or requested extension does not relieve the applicant of the responsibility of timely filing a statement of use under new § 2.88; that if, after denial of an extension request, there is time remaining in the existing six-month period for filing a statement of use, applicant may submit a substitute request for extension of time; that otherwise, the only recourse available after denial of a request for an extension of time is a petition to the Commissioner in accordance with amended § 2.66 or § 2.146; that a petition from the denial of a request for an extension of time to file a statement of use shall be filed within one month from the date of mailing of the denial of the request; and that if the petition is granted, the term of the requested six-month extension of time which was the subject of the petition will run from the date of the expiration of the previously existing six-month period for filing a statement of use. The paragraph parallels §§ 2.163 through 2.165, concerning affidavits and declarations under section 8 of the Act, except that the paragraph does not permit a request for reconsideration, but rather provides a petition to the Commissioner as the only recourse after a denial of a request for an extension of time.

Section 2.99(g), which presently lists the types of applications and registrations that are not subject to concurrent use registration proceedings, is revised to provide, additionally, that applications to register under section 1(b) of the Act are subject to concurrent use registration proceedings only after an acceptable amendment to allege use under new § 2.76 or statement of use under new § 2.88 has been filed.

Section 2.99(h) is added to provide that the Board will consider and determine concurrent use rights only in the context of a concurrent use registration proceeding. The amendment parallels an amendment to add § 2.133(c) to provide that geographic limitations will be considered and determined only in the context of a concurrent use registration proceeding.

Section 2.101(b), which pertains to the filing of an opposition, is amended to be gender neutral, and to specify that an opposition need not be verified and may be signed by the opposer or the opposer's attorney or other authorized representative. The amendment parallels an amendment to § 2.111(b) relating to petitions to cancel. At one time, sections 13, 14 and 24 of the Act required verification for oppositions, petitions to cancel registrations on the Principal Register, and petitions to cancel registrations on the Supplemental Register, respectively. The verification requirement was deleted from sections 13 and 14 of the Act by Public Law 97–247, enacted August 27, 1982. Through inadvertence, a provision deleting, from section 24 of the Act, the verification requirement for petitions to cancel registrations on the Supplemental Register was omitted from Public Law 97–247. The omitted provision was incorporated, however, in Public Law 100–667. Accordingly, it is now appropriate to amend §§ 2.101(b) and 2.111(b) to indicate that verification is not necessary.

Section 2.111(b), which pertains to the filing of a petition for cancellation, is amended to be gender neutral, and to specify that a petition to cancel need not be verified and may be signed by the petitioner or the petitioner's attorney or other authorized representative. This amendment parallels an amendment to § 2.101(b) relating to oppositions. The section is amended further to indicate that a petition may seek to cancel a registration in whole or in part. It has been the practice of the Board to entertain a petition which seeks to "partially cancel" a registration by restricting the identification of goods or services therein. *See Alberto-Culver Co.* v. *F.D.C. Wholesale Corp.*, 3 USPQ2d 1460 (TTAB 1987), and *U.S. Steel Corp.* v. *National Copper & Smelting Co.*, 131 USPQ 397 (TTAB 1961). *Cf. Stanspec Co.* v. *American Chain & Cable Co., Inc.*, 531 F.2d 563, 566 n.9, 189 USPQ 420, 423 n.9 (CCPA 1976), and *Pegasus Petroleum Corp.* v. *Mobil Oil Corp.*, 227 USPQ 1040, 1043–1044 (TTAB 1985). However, there has been some question as to the Board's authority, under section 18 of the Act, to "partially cancel" a registration in a cancellation proceeding. *See Selfway, Inc.* v. *Travelers Petroleum, Inc.*, 579 F.2d 75, 198 USPQ 271 (CCPA 1978). Section 118 of Public Law 100–667 resolves this question by amending section 18 of the Act (which specifies the actions that the Board, acting on behalf of the Commissioner, may take in inter partes proceedings) to provide that the Board may, *inter alia*, "cancel the registration, in whole or in part," "modify the application or registration by limiting the goods or services specified therein," and "otherwise restrict or rectify with respect to the register the registration of a registered mark." Accordingly, § 2.111(b) is amended to indicate the availability of a petition for "partial cancellation."

Section 2.129(d) is added to provide that when a party to an inter partes proceeding before the Board cannot prevail without establishing constructive use pursuant to section 7(c) of the Act in an application under section 1(b) of the Act, the Board will enter judgment in favor of that party, subject to the party's establishment of constructive use; and that the time for seeking judicial review under section 21 of the Act shall run from the date of the judgment.

Section 2.133, which governs the amendment of an application or registration involved in an inter partes proceeding before the Board, is amended to redesignate and republish the present paragraph as (a) and to add new paragraphs, designated (b), (c), and (d), to reflect the expanded authority granted to the Board under section 18 of the Act, as amended. At present, the Board, in determining an inter partes proceeding other than a concurrent use registration proceeding, is bound to determine the proceeding based on the defendant's application or registration as presented, including the identification of goods or services specified therein, and cannot consider restrictions or limitations to defendant's use (such as restrictions or limitations as to types of goods, trade channels, or classes of purchasers) which may exist although not incorporated in the identification of goods or services in the application or registration. *See,* for example, *Canadian Imperial Bank* v. *Wells Fargo Bank,* 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); *CTS Corp.* v. *Cronstoms Manufacturing, Inc.,* 515 F.2d 780, 185 USPQ 773 (CCPA 1975); USTA Trademark Review Commission, "Report and Recommendations on the United States Trademark System and the Lanham Act," 77 TMR 375, 452–453 (1987); and Daniel L. Skoler, "Trademark Identification—Much Ado About Something?", 76 TMR 224, 237–239 (1986). As a result, the Board must often decide, for example, the issue of likelihood of confusion on a hypothetical rather than "real world" basis. Section 118 of Public Law 100–667 remedies this situation by amending section 18 of the Act to confer upon the Board (acting on behalf of the Commissioner) the authority to "cancel the registration in whole or in part," "modify the application by limiting the goods or services specified therein," and "otherwise restrict or rectify with respect to the register the registration of a registered mark."

Section 2.133(b) is added to provide that if, in an inter partes proceeding, the Board finds that a defendant is not entitled to registration in the absence of a specified restriction to the defendant's involved application or registration, the Board will allow the defendant time in which to amend the application or registration to conform to the findings of the Board, failing which judgment will be entered against the defendant.

Section 2.133(c) is added to provide that geographic limitations will be considered and determined by the Board only in the context of a concurrent use registration proceeding. The amendment parallels an amendment to add § 2.99(h) to provide that the Board will consider and determine concurrent use rights only in the context of a concurrent use registration proceeding.

Section 2.133(d) is added to provide that a plaintiff's pleaded registration will not be restricted in the absence of a counterclaim or another proceeding between the same parties or their privies to cancel the registration in whole or in part.

Section 2.161, which concerns the cancellation of a registration for failure to file an affidavit or declaration during the sixth year of the registration pursuant to section 8 of the Act, is revised to clarify the language of the section and to implement the provisions of section 110 of Public Law 100–667. Section 8(a) of the Act presently requires, *inter alia,* that the registrant file in the PTO an affidavit "showing that said mark is in use in commerce, or showing that its nonuse is due to special circumstances * * *" Section 110 of Public Law 100–667 amends section 8(a) of the Act to require, *inter alia,* that the registrant file in the PTO an affidavit "setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and attaching to the affidavit a specimen or facsimile showing current use of the mark, or showing that any nonuse is due to special circumstances * * *"

Section 2.162, which concerns requirements for the affidavit or declaration which must be filed during the sixth year of a registration pursuant to section 8 of the Act, is amended by revising paragraphs (e) and (g) to implement the above-specified provisions of section 110 of Public Law 100–667, and by revising paragraph (f) to clarify the language of the paragraph.

Section 2.181, which concerns the terms of original registrations and renewals, is amended by redesignating present paragraph (a) as (a)(1), revising redesignated paragraph (a)(1), and adding new paragraph (a)(2) to implement the provisions of sections 110 and 111 of Public Law 100–667. Section 110 of Public Law 100–667 amends section 8(a) of the Act to reduce the term of a registration from twenty years to ten years, and section 111 of Public Law 100–667 amends section 9(a) of the Act to reduce the term of a renewal from twenty years to ten years.

Section 2.181(a)(1), as redesignated, is revised to indicate that registrations issued or renewed under the Act prior to November 16, 1989, Whether on the Principal Register or on the Supplemental Register, remain in force for twenty years from their date of issue or expiration, and may be renewed for periods of ten (rather than twenty) years from the expiring period unless previously cancelled or surrendered.

Section 2.181(a)(2) is added to indicate that registrations issued or renewed under the Act on or after November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for ten years from their date of issue or expiration, and may be renewed for periods of ten years from the expiring period unless previously cancelled or surrendered. The paragraph is in conformity with section 51 of the Act, added by section 135 of Public Law 100–667.

Section 2.187 presently provides that a certificate of registration will be issued to the assignee of an applicant, or in a new name of applicant, provided that an appropriate document is of record in the Assignment Search Room of the PTO no later than the time the notice of publication is mailed, or if such document is not of record, then if a statement that such document has been filed for recordation is in the application file by the time the application is being prepared for issuance of the certificate of registration; and that the address of the assignee must be made of record in the application file or in the recorded document. The paragraph is revised to provide that a certificate of registration will be issued to an assignee of an applicant, or in a new name of an applicant, provided that the party makes a written request in the application record by the time the application is being prepared for issuance of the certificate of registration, and the appropriate document is of record in the Assignment Search Room of the PTO, or if the assignment or name change document is not of record in the Assignment Search Room, the written request must state that the document has been filed for recordation. The purpose of the revision is to permit an assignee or an applicant whose name has been changed to ensure, by complying with the requirements of the paragraph, that the certificate of registration will be issued in the name of such party. The paragraph is revised further to provide that the address of the assignee must be made of record in both the application file and the recorded document. This revision will help to ensure that the certificate of registration, and any subsequent papers which the PTO may need to send to the owner of the registration, will be mailed to the proper address.

Response to Comments on the Rules

The comments received in response to the notice of proposed rulemaking have been given careful consideration, and a number of the suggested modifications have been adopted. The comments and responses are discussed below.

Comment: Section 1.8 was proposed to be amended to exclude three new papers from the certificate of mailing procedure established under the section, namely, statements of use under new § 2.88, requests for extensions of time to file such statements, and amendments to allege use under new § 2.76. The certificate of mailing procedure permits papers to be mailed later than they otherwise could be and still be considered timely filed.

Two organizations and one individual expressed concern that this proposal was too restrictive. They suggested that the certificate of mailing procedure should be extended to cover these new papers, if possible.

Response: An amendment to allege use may be submitted only during the examination of an application prior to approval of the mark for publication for opposition in the Trademark Official Gazette. An amendment to allege use which is filed immediately before approval of the mark for publication may not be received in the Law Office until after the application is in the publication cycle. In such a case, the mark would have to be withdrawn from publication. Withdrawal of a mark from publication is a significant administrative problem. Use of the certificate of mailing procedure to file amendments to allege use would result in an increase in the number of applications which would have to be withdrawn from the publication cycle.

Both statements of use and requests for an extension of time to file such a statement are required to be filed during specified six-month periods. If a statement of use or an extension request is not filed during the time allowed, the application stands abandoned as a matter of law and the PTO amends its public records to reflect the abandonment. A statement of use or an extension request which is filed immediately before the expiration of the six-month period for filing a statement of use may not be received by the ITU Unit, which processes such papers, until after the application has been "abandoned" by the PTO. In such a case, the application would have to be reinstated. Reinstatement of an application is a significant administrative problem. Use of the certificate of mailing procedure to file statements of use and extension requests would result in an increase in the number of applications which would have to be reinstated. Moreover, during the time prior to reinstatement, the public records of the PTO would incorrectly indicate that these applications stood abandoned.

Accordingly, the suggestion that the certificate of mailing procedure be extended to cover these three papers has not been adopted.

Comment: Section 2.6 was proposed to be amended to establish two new fees for the filing of papers required or permitted under section 1(c) or 1(d) of the Act, namely, a filing fee of $100.00 for an amendment to allege use under new § 2.76 or for a statement of use under new § 2.88, and a filing fee of $100.00 for any request, under new § 2.89, for a six-month extension of time to file a statement of use. In addition, § 2.6(a) establishes the fee for filing an application, per class, and it was proposed to be made applicable to all new applications filed in the PTO, regardless of the basis asserted for filing.

Two organizations commented that the proposed amendment favors foreign Convention "intent-to-use" applicants over domestic applicants because foreign Convention applicants who perfect a basis for registration under section 44 of the Act do not need to submit evidence of actual use to support an application and, hence, will not need to avail themselves of the "intent-to-use" process beyond the initial application filing fee; whereas, domestic "intent-to-use" applicants will have to pay not only the initial application filing fee, but also the fee for an amendment to allege use or a statement of use and for any extensions of time they may request. To ameliorate this perceived inequity, the organizations recommended that the basic filing fee for an application asserting "intent-to-use" as a basis for filing should be increased to approximately $400.00 for all applicants and that the fees for the other three new papers be reduced to truly token amounts. An alternative suggestion was to require foreign applicants pay an additional fee for reliance on a foreign registration without use in commerce.

Response: The proposed fee increase would be inconsistent with the trademark fee schedule that took effect on April 17, 1989 as described in the February 15, 1989 Federal Register notice (54 FR 6893). The PTO will review the trademark fee structure approximately 18 months from implementation and propose fee adjustments, if warranted. Neither the Act nor the Paris Convention permit the PTO to charge a section 44 applicant an additional fee to register without asserting use in commerce. Accordingly, the suggested fee modifications have not been adopted.

Comment: Section 2.21(a)(5)(ii) was proposed to be added to specify all the filing requirements which pertain only to the assertion of a basis for filing an application under section 44(e) of the Act, including a certification or certified copy of the foreign registration on which the application is based. Section 7(c) of the Act states, in part, that contingent upon registration of the mark on the Principal Register, the filing of the application to register such mark shall constitute constructive use of the mark, conferring a right of priority.

One individual commented that in view of the provisions of section 7(c) of the Act and the delay which is sometimes encountered in receiving a certified copy of a foreign registration from a foreign applicant, it would be more equitable to foreign applicants if they could obtain a filing date without the certified copy of the foreign registration.

Response: Section 44(e) of the Act specifically requires that an application filed thereunder "shall be *accompanied* (emphasis added) by a certification or a certified copy of the registration in the country of origin of the applicant." In view thereof, the PTO believes that the statute requires submission of a certification or certified copy of the foreign registration as a necessary condition for receipt of a filing date. Accordingly, the suggested modification has not been adopted.

Comment: Section 2.21(a)(6) was proposed to be revised to require that an application include the verification in accordance with § 2.33(b), signed by the applicant, as a condition for receiving a filing date. One organization and four individuals objected to the proposed requirement.

The organization suggested that the PTO reconsider the necessity for imposing this requirement in the case of use-based applications under section 1(a) of the Act, where the verification of the applicant's bona fide intent is not at issue.

One individual suggested that the proposed rule be modified to allow an applicant who seeks registration on the basis of foreign trademark rights, and/or on use of a mark in commerce, to receive a filing date for the application even without the applicant's personal signature. This individual stated that one can, in virtually any country of the world, file a trademark application through counsel and obtain an effective filing date; that this has been the practice in the United States for many decades; that no reason exists to change the current practice; and that the proposed practice would be more burdensome to foreign nationals.

One individual suggested that signature by applicant's attorney or agent should be sufficient to receive a filing date and that when the signature is by applicant's agent or attorney, a substitute verification or declaration signed by the applicant could be required thereafter. This individual expressed his belief that requiring signature by the applicant in order to obtain a filing date would frustrate one of the purposes of Public Law 100–667 (namely, to encourage the earliest possible filing of applications) by unnecessarily delaying the filing of applications, especially in the case of foreign applicants.

One individual noted that, at present, a trademark applicant is allowed to file an unsigned application and receive a filing date, and to submit the verification later. The individual expressed his belief that obtaining a filing date without signature is in accordance with sections 1 and 44 of the Act, and that no change has been made to the Act which would require this amendment to the rules.

Another individual also objected to the proposed requirement, noting that in dealing with foreign applicants there may be a delay in obtaining a signed declaration. This individual suggested that the proposed requirement be deleted or, in the alternative, that a filing date be allowed on the basis of a facsimile copy, to be ratified and confirmed subsequently by a paper copy.

Response: Section 7(c) of the Act provides, in part, that contingent upon registration of a mark on the Principal Register, the filing of the application to register the mark shall constitute constructive use of the mark, conferring a right of priority. Thus, upon registration, all registrants on the Principal Register obtain a new substantive right, effective from the filing date of the application. For this reason a verified assertion, signed by the applicant, of the basis for filing the application is believed to be essential. However, for the purpose of determining the timely filing of a paper which must contain applicant's verification or declaration, amended § 2.71(c) permits the verification or declaration to be signed by a person having color of authority to sign for the applicant.

Although the Trademark Operation cannot receive any documents by "fax," for filing date purposes, a "fax" copy of an appropriately signed written application statement will be accepted, provided that the original document is later submitted.

Accordingly, the suggested changes have not been adopted.

Comment: Section 2.31, which presently states that it is preferable that an application be on legal or lettersize paper, was proposed to be amended to delete the reference to legal-size paper. One individual questioned whether the PTO could also allow the use of A–4 size paper.

Response: It is understood that A–4 size paper is $8\frac{9}{32}$ inches by $11\frac{11}{16}$ inches. The processing of papers of differing sizes is an administrative problem for the PTO. However, it should be noted that the paper size is expressed in the rule as a preference rather than as a mandatory requirement. An application filed on paper of a different size will not be denied a filing date for that reason. Accordingly, the suggested change has not been adopted.

Comment: Section 2.33(a)(1)(vii) was proposed to be amended, and § 2.88(b) was proposed to be added, to require, in part, that an application under section 1(a) of the Act, and a statement of use under section 1(d) of the Act, respectively, include a statement of applicant's date of first use of the mark in commerce on or in connection with the applicant's goods or services, specifying the nature of such commerce.

One individual commented that the proposed rules could be improved by including acceptable descriptions of "such commerce." The descriptions suggested by the individual were "interstate, federal (in the case of commerce in the District of Columbia), territorial (in the case of Puerto Rico and similar geographic areas) or foreign (when the nature of the commerce on the date of first use is of more than one type, than any of such types may be specified)."

Response: Section 45 of the Act defines commerce as "all commerce which may lawfully be regulated by Congress." The types of commerce which fall within this definition are many and varied, and are the subject of a large body of case law. Any attempt to include descriptions of such commerce in the rules could be perceived as limiting the types of commerce falling within the definition, and would also make the rules unduly lengthy. Accordingly, the suggested change has not been adopted.

Comment: Section 2.33(d) was proposed to be added to provide, in part, that an applicant in an application under section 1(a) of the Act may not amend that application to seek registration under section 1(b) of the Act.

Two organizations objected to this proposed provision. The organizations commented that a bona fide intention to use a mark in commerce is manifested clearly by the filing of an application based upon use of that mark in commerce; that the proposed provision would result in a loss of the application filing date (and the constructive use priority which would attach thereto, pursuant to section 7(c) of the Act, upon registration) if the use forming the basis for an application under section 1(a) proves to be defective; and that this provision discriminates against domestic applicants.

Response: Section 1(b) of the Act provides, in part, that a person who has a bona fide intention to use a mark in commerce may apply to register the mark on the Principal Register by filing in the PTO a written application, verified by the applicant and specifying, *inter alia,* applicant's bona fide intention to use the mark in commerce. Since the statement of a bona fide intention to use the mark in commerce is the sole statutory basis for filing an application under section 1(b) of the Act, the statement must be included in the application at the time of its filing. An application filed pursuant to section 1(a), based upon use of a mark in commerce, does not include such a statement and, hence, does not meet the requirements for an application under section 1(b) of the Act.

If an applicant has any doubt concerning the sufficiency of its use of a mark in commerce, the applicant may file its application under section 1(b) of the Act. Thereafter, the applicant may submit an amendment to allege use under section 1(c) of the Act, claiming use prior to the application filing date.

Accordingly, the suggested changes have not been adopted.

Comment: One individual commented, with respect to proposed §§ 2.33(a)(1)(ix) and 2.39(a), that the two rules contain cross-references to each other which are confusing.

Response: Upon further consideration, it is believed that the cross-reference in proposed § 2.39(a) to § 2.33 is

unnecessary. The cross-reference to § 2.33 has been deleted from § 2.39(a).

Comment: Section 2.39(b) (redesignated in the final rule as § 2.39(a)) was proposed to be revised to provide, in part, that an application claiming the benefit of a foreign application in accordance with section 44(d) of the Act shall specify the foreign application upon which it is based. One organization suggested that the rule should specify that the foreign application must be for a substantially identical mark and include the same goods or services as set forth in the U.S. application.

Response: The requirements concerning conformance of mark and goods in a U.S. application to its underlying foreign application are addressed in the rules. Section 2.33(a)(1)(v) provides, in part, that the goods or services asserted in an application under section 44 may not exceed the scope of the goods or services covered by the foreign application or registration. Sections 2.51 (a)(3) and (b)(3) provide that, in an application under section 44 of the Act, the drawing of a mark shall be a substantially exact representation of the mark as it appears in the drawing in the registration certificate of a mark duly registered in the country of origin of applicant. Accordingly, the suggested changes have not been adopted.

Comment: Section 2.39(c) (redesignated in the final rule as § 2.39(b)) was proposed to be added to provide that before an application filed in accordance with section 44(d) of the Act can be approved for publication, a basis for registration under section 1(a), 1(b) or 44(e) of the Act must be established; that the PTO will assume that basis to be section 44(e) unless otherwise stated in the application within six months of the filing date of the foreign application forming the basis of the section 44(d) claim; and that the filing of a paper, which claims a different basis for registration, more than six months after the filing date of the foreign application will result in a loss of priority under section 44(d).

One individual commented that the proposed paragraph is inconsistent with Public Law 100–667 "in requiring that U.S. applications claiming the priority of a foreign application, must forfeit the claim of priority in the event that registration is based on anything other than a foreign registration issuing on the priority application," and that it is also inconsistent with the Paris Convention. The individual expressed his belief that the basis for receiving a filing date under the Act can be separated into two categories, namely, use of a mark in commerce under section 1(a) of the Act and a bona fide intention to use a mark in commerce under section 1(b) of the Act; and that the second category includes applications under section 44 of the Act.

One individual commented that the assertion of a different basis might destroy not only the priority claim, but also the jurisdictional basis of the application as of the filing date; and that even if a different basis is asserted within six months of the filing date of the foreign application, a different basis might result in the loss of a priority claim. The individual suggested that the paragraph be revised to indicate that the loss of priority is not the only possible consequence that might follow from assertion of a different basis for registration.

One individual commented (without reference to a specific proposed rule) that "since section 44 applications are now required to include a statement of a bona fide intention to use a mark, it would appear equitable to permit such applicants to convert section 44 applications to section 1(b) applications." The individual noted that "this is especially true where the applicant may begin to use the mark prior to the date on which a registration from its home country issues."

Response: The proposed paragraph did not require "that U.S. applications claiming the priority of a foreign application must forfeit the claim of priority in the event that registration is based on anything other than a foreign registration issuing on the priority application." Rather, the proposed paragraph provided only that assertion of a different basis for registration, including reliance on a different registration under section 44(e) of the Act, more than six months after the filing date of the foreign application would result in a loss of priority. This provision was intended to apply to applications which, at the time of their filing, contained only a claim of priority pursuant to section 44(d), and no other asserted basis for filing under section 1(a), 1(b) or 44(e) of the Act. There is no provision in either Public Law 100–667 or the Paris Convention which prohibits the PTO from requiring an applicant, who filed an application in the U.S. asserting only a claim of priority under section 44(d) of the Act, to assert a basis for registration (i.e., under section 1(a), 1(b) or 44(e) of the Act) within a certain period of time after the filing date of the foreign priority application. Thus, this provision is not contrary to either Public Law 100–667 or the Paris Convention.

The PTO believes that the subject matter of these sentences may be addressed more appropriately in the "Trademark Manual of Examining Procedure". Accordingly, the proposal to add these two sentences to § 2.39 is withdrawn.

It should be noted that although an application filed under section 44 of the Act is required to include a statement that the applicant has a bona fide intention to use the mark in commerce, the PTO will not construe such an application to be an application filed also under section 1(b) of the Act unless the applicant specifically asserts section 1(b) as a basis for filing. An application asserting only a claim of priority under section 44(d) may not be amended to assert section 1(b) of the Act as a basis for filing without loss of the foreign priority date unless the amendment is submitted within six months of the filing date of the foreign application. *Cf. In re Daiwa Seiko, Inc.,* 230 USPQ 794 (Comm'r Pats. 1983).

Comment: Section 2.44, which presently specifies the requirements for an application to register a collective mark, including the requirement that an applicant state the nature of applicant's control over the use of the mark, was proposed to be amended to indicate that the present paragraph pertains only to applications under section 1(a) of the Act, and to add a new paragraph specifying the requirements for an application to register a collective mark under section 1(b) or 44 of the Act, including the requirement that an applicant state the nature of the control applicant intends to exercise over the use of the mark.

One individual commented that there are some types of collective organizations, such as a university alumni association, which cannot reasonably be expected to exercise control over use of their indicia of membership once it has been given to a new member upon enrollment. The individual suggested that § 2.44 should be amended "so that only in appropriate cases would it be necessary for the applicant to show the exercise of control."

Response: Proposed new paragraph (b) requires only that the applicant specify, *inter alia,* "the nature of the control applicant intends to exercise over the use of the mark." Thus, the rule does not require that a particular degree of control be exercised, or intended to be exercised, over the use of a mark. This reflects the requirement under section 4 of the Act that an applicant exercise legitimate control over the use of the mark that it seeks to register. Accordingly, the suggested modification has not been adopted.

Comment: One individual commented (without reference to a specific proposed rule) that the proposed rules do not specify the procedure for filing a statement of use if the applicant amends to the Supplemental Register.

Response: Section 2.47(c) was proposed to be added to provide that a mark in an application to register on the Principal Register under section 1(b) of the Act is eligible for registration on the Supplemental Register only after an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88 has been timely filed. Section 23 of the Act requires lawful use in commerce as a prerequisite for an application for registration on the Supplemental Register. This requirement bars an application under section 1(b) of the Act from the Supplemental Register until an acceptable allegation of use has been submitted. Moreover, section 1(b) of the Act only provides for filing an application based upon a bona fide intention to use a mark in commerce on the Principal Register. Accordingly, no modification of the rules is necessary.

Comment: Section 2.51(d) was proposed to be revised to provide that broken lines should be used in the drawing of a mark to show placement of the mark on the goods, or on packaging, or to show matter not claimed as part of the mark, or both, as appropriate, and to provide further that, in an application to register a mark with three-dimensional features, the drawing shall depict the mark in perspective in a single rendition. One individual commented that when a mark is three-dimensional, or when placement of the mark on the goods or packaging is significant, multiple drawings should be permitted; each drawing should be labeled with figure numbers as in the case of utility and design patent applications; and the trademark application should include a description of the figures.

Response: A drawing with multiple renditions, although suitable for a patent application, is not satisfactory for trademark purposes. The drawing of a trademark should depict the mark as it is seen by the consumer; the consumer does not see the mark in multiple renditions or from more than one perspective at a time. For the same reason, the labeling of a trademark drawing with figure numbers would be inappropriate. It has been the experience of the PTO that a three-dimensional mark can be adequately depicted in a single rendition, particularly when the application includes an appropriate description of the mark. *Cf.* In re Weber-Stephen Products Co., 3 USPQ2d 1659, 1661 (TTAB 1987); In re Vico Products Mfg. Co., Inc., 229 USPQ 364, 366 (TTAB 1985); In re Pierre Faber S.A., 221 USPQ 1210, 1211 (TTAB 1984); In re Ovation Instruments, Inc., 201 USPQ 116, 123 (TTAB 1978). Accordingly, the suggested modification has not been adopted. If an applicant believes that its mark is incapable of being depicted in a single rendition, it may file a petition to the Commissioner, pursuant to § 2.146(a)(5), to waive the requirement of the rule.

Comment: Section 2.52(d), which pertains to drawing headings and which presently includes, *inter alia,* a requirement that the heading of a drawing (except for a drawing in an application under section 44 of the Act) specify dates of use, was proposed to be revised to indicate that the requirement pertains only to an application under section 1(a) of the Act; and to add a requirement that the heading of a drawing in an application filed in accordance with section 44(d) of the Act specify the priority filing date of the relevant foreign application.

One individual commented that proposed § 2.52(d) does not reflect current practice because it continues the existing requirement that the heading must not exceed one fourth of the sheet; whereas, in the individual's experience, the PTO routinely accepts drawings when the heading occupies one-half or, in some cases, even two-thirds of the sheet. The individual suggested that the paragraph be modified to enlarge the heading size limit from one-fourth to one-half of the sheet.

One organization suggested that § 2.52(d) be amended to provide that when a significant element of a special form drawing is unclear or ambiguous, the heading should include a brief description of the mark in the drawing. The organization noted that such a description would provide more accurate information in the paper search file and facilitate accurate coding of marks for entry into the computer search system. The organization emphasized, however, that the suggested provision should be encouraging rather than mandatory in nature.

Response: The suggested modifications have been adopted, except that the heading size limit has been enlarged only to one-third of the sheet instead of the suggested one-half of the sheet. If a drawing had a heading of one-half of the sheet and a special form depiction of the mark which was four inches by four inches in size, there would not be enough room remaining for the required margins.

Comment: Sections 2.56, 2.57 and 2.58, which pertain to the specimens of use in an application, were proposed to be amended to reduce the number of specimens required from five to two in §§ 2.56 and 2.57 and from three to two in § 2.58. Similarly, the PTO proposed to require that two specimens be filed in connection with an amendment to allege use under proposed § 2.76 and a statement of use under proposed § 2.88.

Four organizations objected to the reduction in the required number of specimens from five to two. They commented that original specimens show color and detail more effectively than photocopies and provide valuable information enabling practitioners to better evaluate potential conflicts. One of the organizations recommended requiring at least three specimens, while the other three organizations favored maintaining the present requirement for five specimens.

Response: Having five specimens in an application or registration file increases the amount of storage space required for these files. Moreover, it is unusual for more than one party to ask to remove a specimen from the same application or registration file. A requirement for three specimens would provide one specimen to remain in the file and make two specimens available for removal by third parties. The PTO believes that this number requirement will meet the needs of both the public and the PTO. Since § 2.58(b) presently requires three audio cassettes, no change to that rule is required and the proposed amendment is withdrawn. Accordingly, the suggestion that the PTO require three specimens has been adopted in the final rules.

Comment: Section 2.59(a) was proposed to be added to provide that, in an application based upon use in commerce, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services, provided that any substitute specimens are properly verified as to their use in commerce at least as early as the filing date of the application.

One individual commented that there should be no need to submit a verification in support of substitute specimens which are, in fact, "faithful photographic reproductions" of the specimens already of record and recommended that proposed § 2.59(a) be modified to indicate that a verification will not be required in such circumstances.

Response: This suggestion codifies present practice set out in section 808.10 of the "Trademark Manual of Examining Procedure" and has been adopted.

Comment: Section 2.66(d) was proposed to be added to provide that a petition to revive an abandoned application must be filed promptly, but that no petition to revive will be granted in an application under section 1(b) of the Act if granting the petition would permit the filing of a statement of use more than 36 months after the issuance of a notice of allowance under section 13(b)(2) of the Act.

One organization commented that "in view of the constructive use awarded applications under the new law, it will be more important than ever for practitioners to be able to rely on the fact that an application uncovered in a search has truly been abandoned in the PTO without the specter of its revival after an indeterminate period of time." The organization recommended that "the rules should place an outside limit of six months or one year on petitions to revive either 1(a) or 1(b) applications."

Response: Usually a petition to revive will be considered filed promptly if it is filed within two months of the date the application was abandoned for failure to respond. Section 12(b) of the Act provides, in part, that an application "shall be deemed to have been abandoned, unless it can be shown to the satisfaction of the Commissioner that the delay in responding was unavoidable, whereupon such time may be extended." The Commissioner cannot determine in advance that facts asserted beyond a certain time limit cannot show unavoidable delay. Accordingly, the suggested modification has not been adopted.

Comment: Section 2.71(b), which presently provides that additions to the identification of goods or services will not be permitted unless certain specified conditions are met, was proposed to be revised to provide that the identification of goods or services may be amended to clarify or limit the identification, but that additions will not be permitted. It was indicated in the notice of proposed rulemaking that the purposes of the requirement for the identification of goods or services are to give notice to third parties of the scope of the rights claimed by the applicant and to permit an accurate search for conflicting marks; and that addition of goods or services to the identification, after the filing of an application, would frustrate these purposes. It was also noted that section 7(c) of the Act provides that, contingent on the registration of a mark on the Principal Register, the filing of the application to register such mark shall constitute constructive use of such mark on or in connection with the goods or services specified in the registration.

One individual commented that he agreed in principle with the proposed rule and the reasoning offered, but that the PTO should not apply the proposed amendment without some flexibility that allows an applicant to minimally enlarge the scope of the initially claimed goods or services in an application. The individual expressed his belief that such flexibility would not defeat either of the two legitimate reasons cited for the proposal and that "strict adherence to the proposed change would result in additional workload due to refiled or additional applications to comprehensively cover goods or services that the applicant inadvertently failed to claim." The individual suggested that the rule be modified to provide that the identification of goods or services may be amended to clarify or limit the identification, but that "substantive additions" will not be permitted.

Response: For the reasons stated in the notice of proposed rulemaking, the PTO believes that it would be inappropriate to allow any additions to the identification of goods or services in an application. Accordingly, the suggested modification has not been adopted.

Comment: Section 2.71(c), which presently provides that a defect in the verification or declaration may be corrected only by filing a substitute or supplemental verification or declaration, was proposed to be revised to clarify the language. The paragraph was proposed to be further revised to provide that a verification or declaration required under §§ 2.21(a)(6), 2.76(e)(3) or 2.88(e)(3), to be properly signed, must be signed by the applicant, a member of the applicant firm, or an officer of the applicant corporation or association; that a verification or declaration which is signed by a person having color of authority to sign, is acceptable for the purpose of determining the timely filing of the paper; but that a properly signed substitute verification or declaration must be submitted before the application will be approved for publication or registration, as the case may be. It was indicated in the notice of proposed rulemaking that persons having color of authority to sign are those having first-hand knowledge of the truth of the statements in the verification or declaration; that in the case of a corporate applicant, a person having color of authority might include, within the contemplation of the amended section, managers or similar persons who are in positions of authority, although not actually officers, if they have first-hand knowledge of the truth of the statements in the application; and that an applicant's attorney ordinarily will not be considered a person having color of authority to sign, unless he/she is an officer.

One individual expressed his belief that the language "amendment of the verification or declaration will not be permitted" in the present and proposed rule could lead some people to believe that there is no way in which an amendment of a declaration or verification can be effected when, in fact, it can be effected by the submission of a substitute document. The individual suggested that the rule be revised to state that changes may not be made in the verification of declaration document already in the PTO file, but that any amendment would have to be made by the filing of a substitute or supplemental amendment.

Three organizations commented that the definition in the proposed rule of persons having color of authority to sign a verification or declaration could include many persons not authorized to act on behalf of the applicant. One of the organizations suggested that the proposed definition ("those having first-hand knowledge of the truth of the statements in the verification or declaration") should be clarified by adding "and who are authorized to act on behalf of the applicant."

Response: In response to the comment by the individual, the beginning of the final rule has been modified to read: "If the verification or declaration filed with the application is defective, the defect may be corrected only by the submission of a substitute or supplemental verification or declaration in accordance with § 2.20."

In response to the comments of the organizations, the definition of persons having color of authority to sign has been modified in the final rule to read: "Persons having color of authority to sign are those who have first-hand knowledge of the truth of the statements in the verification or declaration and who also have actual or implied authority to act on behalf of the applicant."

Comment: Section 2.77 was proposed to be added to provide, in part, that an application under section 1(b) of the Act may not be amended during the period between the issue date of the notice of allowance under section 13(b)(2) of the Act and the filing of the statement of use under § 2.88, except to delete specified goods or services.

Four organizations expressed their concern that the word "delete" may be unnecessarily limiting and may restrict

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the ability of parties to negotiate settlement of potential conflicts. The organizations suggested that the rule be modified to allow amendments "to delete or restrict" the specified goods or services during this time period.

Response: An amendment seeking to restrict the specified goods or services would require examination by the Trademark Examining Attorney. However, the application file will not be in the possession of the Examining Attorney during the time between issuance of the notice of allowance and submission of the statement of use. Inasmuch as this rule applies only to the specified time period, it will not affect the settlement of oppositions or potential oppositions, which take place prior to issuance of the notice of allowance. Moreover, the last sentence of new § 2.77, which in the notice of proposed rulemaking read: "Other amendments filed during this period will not be considered. unless resubmitted at, or after, the time of filing the statement of use," has been modified to read: "Other amendments filed during this period will be placed in the application file and considered when the statement of use is examined." This change has been made so that the applicant will not have to resubmit the proposed amendment at the time of filing the statement of use. Thus, during the period covered by the rule, amendments restricting the goods may be filed for later consideration by the Trademark Examining Attorney at the time of examination of the statement of use. Accordingly, the proposed modification has not been adopted.

Comment: Section 2.83, which concerns the processing of conflicting marks, was proposed to be amended by revising paragraph (a) to delete a provision stating "a notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the earliest filed mark," and by revising paragraph (b) to delete a provision stating "a notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the application with the earliest date of execution."

One individual commented that interferences are sometimes declared, and that the rule ought to make provision for interferences so that the declaration of an interference cannot be challenged on the ground that there is no provision for interferences in the rules.

One individual commented that the rule should not be amended to delete the notice provisions presently set forth in paragraphs (a) and (b). The individual expressed his belief that such notice is helpful to applicants who do not subscribe to the "Official Gazette" and that "providing notice does not in any way inconvenience the PTO or add to the workload of Examiners who are aware of the conflicting applications and, as a matter of good practice, have both files before them when they act on either one."

Response: Provision is made in § 2.91 for the declaration of interferences.

The provisions concerning notice were proposed to be deleted because they do not conform to present practice. The Trademark Examining Attorney notifies applicants of conflicting applications during examination. To provide a second notice upon publication of the earlier filed, or earlier executed, application would require that a system be developed for monitoring the progress of that application and for sending the second notice. Thus, sending second notices would be unduly burdensome to the PTO.

Accordingly, the suggestion has not been adopted.

Comment: Section 2.84, which governs jurisdiction over published applications, was proposed to be revised to provide, in part, that after publication of an application under section 1(b) of the Act, the examiner may exercise jurisdiction over the application after issuance of the notice of allowance under section 13(b)(2) of the Act.

One individual suggested that the phrase "the examiner may exercise jurisdiction" be modified to read "the examiner must exercise jurisdiction." In this regard, the individual noted that after the issuance of the notice of allowance the examiner must exercise jurisdiction over the application to examine the statement of use, and that jurisdiction must also be exercised over requests for extensions of time to file a statement of use.

Response: The purpose of both present and proposed § 2.84 is to specify when an examiner is allowed to exercise jurisdiction over an application, not to specify when an examiner must exercise jurisdiction over an application. Accordingly, the proposed modification has not been adopted.

Comment: Section 2.86, which presently provides that an application may recite a plurality of goods or services comprised in a single class, provided the goods or services are specifically identified and the mark has actually been used in connection with all of the specified goods or services, was proposed to be amended by, *inter alia,* redesignating the present paragraph as (a); and to add, as an alternative to the requirement of use, a requirement that the applicant have a bona fide intention to use the mark on or in connection with all the specified goods or services.

Two organizations expressed their concern about the requirement that applicants state a bona fide intention to use the mark on all goods recited in the application. The organizations noted that registration will be granted to domestic applicants only for those goods for which actual use in commerce is made, but that foreign applicants could specify overly extensive lists of goods, secure registration for them, and, if no use occurs during the first six years of registration, simply re-file for these same goods to circumvent the requirements of section 8 of the Act. The organizations recommended that the PTO "require use at least somewhere for all goods specified prior to granting registrations to section 44 applicants."

One organization recommended that the beginning of the proposed paragraph, which states "an application may recite more than one item of goods, or more than one service comprised in a single class provided the goods or services are specifically identified and * * *," be revised by inserting thereafter the phrase "and in accordance with subsection (c) of this rule." Proposed subsection (c) provides that the applicant may not allege use as to certain goods or services and a bona fide intention to use as to other goods or services in the same application, regardless of the number of classes contained therein.

Response: To require "use at least somewhere for all goods specified prior to granting registration to section 44 foreign applicants" would be inconsistent both with the Act and the Paris Convention.

The PTO believes that the suggested modification of proposed paragraph (a) to include a reference to proposed paragraph (c) would not further clarify the rule and is unnecessary.

Accordingly, the suggested modifications have not been adopted.

Comment: Section 2.86(b), which governs multiple class applications, provides, in part, that "A single certificate of registration for the mark shall be issued."

One organization suggested that the phrase "unless the application is divided pursuant to Rule 2.87" be added to the provision.

Response: The suggested modification is adopted.

Comment: Sections 2.76 and 2.88 were proposed to be added to govern amendments to allege use under section 1(c) of the Act and statements of use under section 1(d) of the Act, respectively. Proposed paragraphs (d)

and (e) of the new sections required that an amendment to allege use and a statement of use be made in a separate paper from any other filing.

Three organizations and one individual expressed their belief that the proposed requirement would be unduly harsh since violation could result in the abandonment of the application.

Response: The proposed requirement has been withdrawn.

Comment: Sections 2.76(c) and 2.88(c) were proposed to be added to provide, *inter alia,* that if more than one item of goods or services is specified in an amendment to allege use or a statement of use, the dates of use required to be specified need be for only one of the items specified, provided the particular item to which the dates apply is designated.

One individual commented that under the proposed paragraphs dates of use are apparently not required to be stated for each class of goods or services. The individual questioned whether this was an inadvertent omission.

Response: The PTO did not intend to imply that dates of use did not need to be specified for each class of goods or services. A requirement for a specification of dates of use for each class has been included in the final rules.

Comment: Section 2.88(f) was proposed to be added to provide, in part, that if a statement of use does not comply with all of the requirements specified in paragraph (e) of the proposed section, applicant will be notified of the deficiency.

One organization recommended that the proposed paragraph be modified to require that applicant be given "a statement of reasons for finding a statement of use to be defective."

Response: The proposed paragraph specifically provides that "applicant will be notified of the deficiency." A "notification of a deficiency" is a description of the nature of the deficiency, i.e., of the reason why the statement of use was found to be defective. Accordingly, the suggested modification has not been adopted.

Comment: Section 2.88(e) was proposed to be added to specify minimum requirements (in addition to timeliness) for a statement of use, namely, the prescribed fee, one specimen or facsimile of the mark as used in commerce, and a verification or declaration signed by the applicant stating that the mark is in use in commerce, and specifying the date of the applicant's first use of the mark in commerce and the goods or services on or in connection with which the mark is used in commerce. Proposed § 2.88(f) provided, in part, that if a statement of use does not comply with the requirements of proposed paragraph (e), applicant may correct the deficiency only if the time permitted for applicant to file a statement of use has not expired; and that after the filing of a statement of use during a permitted time period for such filing, the applicant may not withdraw the statement to return to the previous status of awaiting submission of a statement of use.

Section 2.89, governing extensions of time for filing a statement of use, was proposed to be added to, *inter alia,* specify the requirements for a request for an extension of time for filing a statement of use; permit an applicant to file, during the six-month period in which a statement of use is filed, one last request for a six-month extension of time; and provide that any defect in an extension request may be corrected only if there is time remaining in the six-month period for filing a statement of use.

Comments relating to these proposed provisions and their interrelationship were submitted by six organizations, one firm and three individuals.

One organization commented that the proposed sections require an applicant to remedy defects in a statement of use or a request for an extension of time to file a statement of use "within the original or an extended six-month period" for filing a statement of use; and that failure to remedy a defect within the specified period causes the application to become abandoned in the case of a statement of use, or requires the applicant to file a petition to the Commissioner in the case of a request for extension of time. The organization expressed its concern that "an applicant's valuable trademark rights will be destroyed or jeopardized for minor informalities in a statement of use or request for an extension of time." The organization recommended that a new § 2.65(d) be added to provide, in effect, that when a timely filed statement of use "is a bona fide attempt to respond to a notice of allowance, and is substantially complete, but compliance with some requirement has been inadvertently omitted, opportunity to explain and supply the omission should be given before the question of abandonment is considered."

Another organization and a firm offered comments to the same effect and also expressed their belief that the provision in proposed § 2.89 for the filing of one last extension request during the six-month period in which a statement of use is filed is not "an acceptable solution" because, *inter alia,* an applicant would have to submit a fee for such a request which might otherwise not be needed, and because the extension request might be rejected as informal and, therefore, be useless.

Three other organizations and one individual recommended that the applicant be afforded an automatic one or two-month period to respond to a notice of a deficiency in a statement of use. One of these organizations commented that an applicant should not be forced to either risk abandonment, or undergo the inconvenience and expense of filing an additional and probably unnecessary request for an extension of time. This organization expressed its belief that the plain language of the Act "requires that the PTO permit the applicant to amend the statement of use regardless of the expiration of any extension period, including the last one;" and that section 1(d)(2) of the Act provides for an aggregate of 36 months for an applicant to file a statement of use.

One individual commented with respect to proposed § 2.88(g), that "it is not clear what will happen in cases where the statement of use is filed near the end of the total 36 months from the notice of allowance if the statement of use is deficient but does include the fee, a specimen and a verification or declaration of use."

One individual commented, in effect, that it is not clear why requirements for amendments to allege use and statements of use are specified in both paragraphs (b) and (e) of proposed §§ 2.76 and 2.88, respectively, and why the specified requirements vary.

One organization expressed its belief "that an intent-to-use applicant should be allowed to withdraw a statement of use and restore the application to its prior status;" that "such withdrawal, while prohibited by proposed § 2.88(f), is not prohibited by the statute;" and that allowance of such a withdrawal would parallel the permissible withdrawal of an amendment to allege use.

Response: Paragraphs (b) of proposed §§ 2.76 and 2.88 specify the requirements for a complete amendment to allege use and statement of use, respectively. Paragraphs (e) of the proposed sections specify the minimum requirements for such papers. The provisions of the proposed rules have been modified in the final rules to clarify this distinction. Moreover, the minimum requirements specified in proposed §§ 2.76(e) and 2.88(e) have been reduced in the final rule to the prescribed fee, at least one specimen or facsimile of the mark as used in commerce, and a verification or declaration signed by the

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applicant stating that the mark is in use in commerce.

Section 1(d) of the Act sets forth certain minimum requirements for a statement of use. In view of the statutory requirements, § 2.88 provides that a timely statement of use which does not meet the minimum requirements specified in paragraph (e) may be corrected only if the time permitted for applicant to file a statement of use has not expired.

Further, section 1(d) of the Act requires that a statement of use be filed within six months after the issuance of the notice of allowance, and provides that the time for filing the statement of use may be further extended upon proper request, but that such time may not be extended beyond 36 months after the issuance of the notice of allowance. The Act, as amended, does not allow every applicant a period of 36 months from the notice of allowance in which to make use of its mark in commerce and file a statement of use; rather, only those applicants who file proper requests for five successive extensions of time, and are able to meet the specified requirements for such extensions, will have the benefit of the full 36-month period. Nor does the Act provide that an applicant may file a statement of use, then withdraw the statement of use and ask for an extension of time for filing a statement of use.

In view of the statutory requirements in section 1(d) of the Act, a statement of use must be filed within the six months after the issuance of a notice of allowance, or within an extension of time granted to applicant for filing a statement of use. Use of the mark in commerce must be made during such period. If the use upon which a statement of use is based is not valid trademark use, applicant may make a new use, and amend the statement of use to rely upon the new use, only if the new use is made prior to the expiration of applicant's time for filing a statement of use. Once a statement of use has been filed, applicant may not withdraw the statement of use and request an extension or a further extension of time for filing a statement of use. Section 1(d) of the Act permits amendment of the statement of use, but does not provide for withdrawal of the statement of use once it is filed.

The fears of some commenters that, under proposed § 2.88, an applicant's trademark rights would be destroyed or jeopardized for minor informalities in a statement of use, are not well-founded. The intent of § 2.88 is to permit a timely statement of use which meets the minimum requirements specified in paragraph (e) to be amended, in accordance with §§ 2.59 and 2.71 through 2.75, at any time during examination to meet any of the remaining requirements for a complete statement of use specified in paragraph (b) of the section or to overcome other refusals or requirements which may be raised by the examiner. See proposed §§ 2.88 (g) and (h) and final § 2.88(f). The time period for filing a statement of use and the right to amend a statement of use are independent of each other.

For example, under final § 2.88, a timely statement of use which meets the specified minimum requirements may be amended to, *inter alia:*

(1) Add or correct dates of use (provided that the amendment is in accordance with § 2.71(d), i.e., that it is properly verified and the amended dates are not subsequent to the expiration of the time allowed to applicant for the filing of a statement of use);

(2) Specify the type of commerce in which the mark is used;

(3) State the goods or services specified in the notice of allowance on or in connection with which the mark is in use (provided that the amendment is in accordance with § 2.88(i)(2), i.e., that it is supported by a verification that the mark was in use in commerce, on or in connection with each of the goods or services sought to be included, prior to the expiration of the time allowed to applicant for filing a statement of use);

(4) State the mode or manner in which the mark is used on or in connection with the goods or services;

(5) Substitute a statement of use verification signed by the applicant for a verification signed by a person having color of authority (see § 2.71(c)); and

(6) Submit substitute specimens (provided that the amendment is in accordance with § 2.59(b), i.e., that the use in commerce of any substitute specimen submitted is supported by applicant's verification that the substitute specimens were in use in commerce prior to the filing of the statement of use or prior to the time allowed to applicant for filing a statement of use).

Once the minimum requirements are met, the rules allowing amendment to a statement of use, in accordance with §§ 2.59 and 2.71 through 2.75, are more liberal than the proposal by several commenters suggesting an applicant should receive an automatic one to two-month period to respond to a notice of deficiency in a statement of use.

For the foregoing reasons, the modifications suggested by the commenters have not been adopted in § 2.88. The rule was revised to clarify the rule and reduce the minimum requirements for a statement of use.

Section 2.76, concerning amendments to allege use, has been revised to be consistent with § 2.88 as appropriate.

Comment: One individual questioned why, in a verification for an amendment to allege use or a statement of use, the applicant is required, under proposed §§ 2.76(b)(1) and 2.88(b)(1), respectively, to state that it believes it is the owner of the mark sought to be registered. The individual noted that there is no such requirement "for other types of applications provided for in the Act or the rules."

Response: Section 22 of the Act provides that registration on the Principal Register "shall be constructive notice of the registrant's claim of ownership [of the mark]." Therefore, the PTO believes that each application must contain a claim of ownership, and that ownership should be reaffirmed upon the filing of an allegation of use under § 2.76 or § 2.88.

Comments: Section 2.89(d)(2) was proposed to be added to provide that a showing of good cause for a request for an extension of time for filing a statement of use must include, in part, a statement of facts demonstrating ongoing efforts to make use of the mark in commerce on or in connection with each of the goods or services specified in applicant's verified statement of continued bona fide intention to use the mark in commerce. The proposed paragraph further provides that those efforts may include, without limitation, product or service research or development, market research, manufacturing activities, promotional activities, steps to acquire distributors, steps to obtain required governmental approval, or other similar activities.

One organization expressed its concern that this rule may be administered by the PTO to require an applicant to disclose details of highly sensitive or confidential market research or business plans. The organization noted that section 1(d)(2) of the Act requires only that applicant provide "a showing of good cause" to support a request for an extension of time. The organization suggested "facts demonstrating ongoing efforts to make use of the mark" could be sensitive or confidential market research or business information. It recommended that the first sentence of proposed § 2.89(d)(2) be amended to substitute the word "applicants" for the words "facts demonstrating." One individual submitted comments to the same general effect.

Response: The rule does not require a particular showing to establish good cause for a request for an extension of

time to file a statement of use. The suggested modification has been adopted in the final rule.

Comment: Section 2.89(f) was proposed to be added to provide, in part, that the goods or services specified in a request for an extension of time for filing a statement of use must conform to those goods or services identified in the notice of allowance; and that any goods or services specified in the notice of allowance which are omitted from the identification of goods or services in the request for extension of time will be presumed to be deleted and the applicant may not thereafter request that the deleted goods or services be reinserted in the application.

Section 2.89(g) was proposed to be added to provide, in part, that the applicant will be notified of the grant or denial of a request for an extension of time; that if, after denial of an extension request, there is time remaining in the existing six-month period for filing a statement of use, applicant may submit a substitute request for extension of time; and that otherwise, the only recourse available after denial of a request for an extension of time is a petition to the Commissioner in accordance with §§ 2.66 or 2.146.

One individual pointed out that proposed § 2.88(i)(2) provides that if any goods or services specified in the notice of allowance are omitted from the identification of goods or services in the statement of use, the examiner shall inquire about the discrepancy and permit the applicant to amend the statement of use to include any omitted goods or services, provided that the amendment is supported by a verification that the mark was in use in commerce, on or in connection with each of the goods or services sought to be included, prior to the expiration of the time allowed to applicant for filing a statement of use. The individual noted that there is no comparable provision in proposed § 2.89 relating to requests for extensions of time to file a statement of use. The individual commented that "an applicant could unwittingly forfeit rights by failing to specify all goods and services for which the extension is sought," and that "if Examiners can ask about the completeness of statements of use, they can ask about the completeness of extensions to file such statements."

Two organizations commented, with respect to proposed § 2.89(g), that it is unduly harsh and time consuming for the PTO to permit the only recourse from a denial of an extension request to be a petition to the Commissioner. The organizations recommended that the examiner should be required to state what is needed for acceptance of the extension request and reasonable time should be allowed for response. The organizations also recommended that the filing of a petition concerning the denial of an extension request should allow an automatic extension of time in connection with the application (subject to the caveat that the Act "appears to provide 36 month maximum pendency permitted for an 'intent to use' application regardless of the difficulty encountered in prosecution").

Response: Although § 2.88 includes certain provisions relating to the amendment of timely statements of use, § 2.89 includes no analogous provisions with respect to a request for an extension of time to file a statement of use. This is because the Act, as amended, specifically provides that a statement of use may be amended, but makes no provision for the amendment of an extension request. Moreover, the inclusion in § 2.89 of amendment provisions similar to those in § 2.88 would require that the PTO track not only extension period deadlines, but also deadlines for responding to PTO notifications of extension request deficiencies. This would create a serious administrative problem.

Furthermore, to avoid inadvertently omitting goods or services from a request for an extension of time to file a statement of use, the PTO permits and encourages applicants to identify goods or services in an extension request by incorporating by reference the goods or services listed in the notice of allowance.

The Act permits extension of the time for filing a statement of use only upon proper written request. The Act does not provide for an automatic extension of time upon the filing of a petition, pursuant to § 2.89(g), from the denial of an extension request.

Accordingly, the suggested modifications have not been adopted.

Comment: One organization recommended that the first sentence of proposed § 2.89(g), which provides that the applicant will be notified of the grant or denial of a request for an extension of time to file a statement of use, be modified by inserting at the end of the sentence the words "and if denied, the reasons for denial." The organization also noted that the rule fails to clarify when the new extension period will begin when a petition to the Commissioner from a denial of an extension request is granted.

Response: The organization's suggestion for modification of the first sentence of proposed § 2.89(g) has been adopted. It is understood that a denial would include the reasons for denial.

A six-month extension of time in which to file a statement of use will always run from the expiration of the preceding six-month period, regardless of whether applicant has been notified of the grant or denial of the request, or of a petition to the Commissioner relating thereto, prior to the expiration of the existing period. Accordingly, final § 2.89(g) includes the following new sentence: "If the petition is granted, the term of the requested six-month extension which was the subject of the petition will run from the date of the expiration of the previously existing six-month period for filing a statement of use."

Comment: Section 2.111(a), which pertains to the filing of petitions for cancellation, was proposed to be amended to provide, in part, for the filing of a petition to cancel a registration "in whole or in part." One individual expressed his concern that the phrase "in whole or in part" could perhaps be interpreted as a reference to a geographical cancellation. The individual suggested that it might be helpful to revise the paragraph to provide for cancelling the registration "for all or part of the goods or services."

The individual also suggested that § 2.101(b), which pertains to the filing of oppositions, should be amended to provide for opposing an application for "all or part of the goods or services."

Response: The language "in whole or in part" parallels the language of section 18 of the Act. Further, § 2.99(h) provides that the Board will consider and determine concurrent use rights only in the context of a concurrent use proceeding, and § 2.133(c) provides that geographic limitations will be considered and determined by the Board only in the context of a concurrent use proceeding. Accordingly, the suggestion pertaining to § 2.111(b) has not been adopted.

The language of § 2.101(a) parallels the language of section 13(a) of the Act. Modification of the section to provide for opposing an application for "all or part of the goods or services" is unnecessary in view of the Board's authority, under section 18 of the Act, to modify the application by limiting the goods or services specified therein. Accordingly, the suggestion pertaining to § 2.101(b) has not been adopted.

Comment: Section 2.129(d) was proposed to be added to provide that when a party to an inter partes proceeding before the Board cannot prevail without establishing constructive use pursuant to section 7(c) of the Act in an application under section 1(b) of the Act, the Board will enter a "declaratory judgment" in favor of that party, subject to the party's establishment of constructive use; and that the time for filing an appeal or for commencing a civil action under section 21 of the Act shall run from the date of the declaratory judgment.

Four organizations and one individual commented variously that "declaratory judgment" is a term of art for a different type of proceeding; that use of the term "declaratory" is inconsistent with the language of sections 18 and 21(a)(4) of the Act, which refers only to "judgments"; and that a phrase such as "conditional judgment," "contingent judgment," or "judgment" should be substituted for the phrase "declaratory judgment."

One individual commented that the better procedure would be for the Board to acknowledge the rights of the intent-to-use applicant, but then suspend proceedings until after the intent-to-use applicant has established its right to a constructive date of first use, following which a final judgment could be issued.

One individual suggested that the language of the proposed paragraph should be clarified by inserting the phrase "but will prevail in whole or in part upon establishing constructive use" after the opening phrase "When a party to an inter partes proceeding before the Trademark Trial and Appeal Board cannot prevail without establishing constructive use pursuant to section 7(c) of the Act in an application under section 1(b) of the Act, * * *"

One individual expressed a belief that where a situation of the type described in the proposed paragraph arises in a cancellation or an interference proceeding, the opinion of the Board might be advisory, but that in an opposition proceeding it would not, because in such a proceeding there is "a case or controversy involving present rights of two parties." The individual suggested that the last sentence of the proposed paragraph be amended to read:

> The time for filing an appeal or for commencing a civil action under section 21 of the Act shall run from the date of the entry of the declaratory judgment in an opposition proceeding, and from the date of acceptance of a statement of use in all other inter partes proceedings.

Response: The PTO believes that the use of the term "judgment" is more appropriate in this situation. Accordingly, the word "declaratory" has been omitted from the final rule.

Sections 18 and 21(a)(4) of the Act prohibit the entry of a final judgment in favor of an applicant under section 1(b) of the Act before the applicant's mark is registered in those cases where an applicant cannot prevail without establishing constructive use under section 7(c). If possible, the time for appeal should not be deferred until use has been established. If the time for appeal is deferred until after acceptance of the statement of use, appellant would be deprived of a speedy determination of the issues on appeal. Accordingly, the suggestions to defer the time for seeking judicial review have not been adopted.

The purpose of "intent-to-use" would be best accomplished if judicial review can occur promptly after entry of a judgment by the Board. Nevertheless, the PTO recognizes, as have other commentators, that there is an issue whether a Board decision is "ripe" for judicial review prior to the time an applicant under section 1(b) of the Act establishes its right to register its mark. This issue was called to the public's attention in the notice of proposed rulemaking. 54 FR at 19300. The PTO also published a notice in the Official Gazette calling attention to the issue and asking for comments. 1102 OG 58 (May 16, 1989). The Subcommittee on Courts, Civil Liberties and the Administration of Justice expressed concern with respect to any provision which permitted an intent-to-use applicant to sue before it made use of the mark and the mark was granted registration. "Permitting a plaintiff to sue before use occurs * * * raises serious questions about whether Federal jurisdiction and a case or controversy exists, and about whether such a case is 'ripe.'" See H.R. Rep. 1028, 100th Cong., 2d Sess., at 4 (1988).

Ultimately, the issue will be resolved by Federal courts. In order to permit early resolution of the issue, it has been decided to provide in § 2.129(d) that the 60-day time period for seeking judicial review runs from the date the Board enters its judgment.

With respect to the suggestion that the phrase "but will prevail in whole or in part upon establishing constructive use" be inserted in the rule, the PTO does not believe that the phrase is necessary or would serve to clarify the rule. Accordingly, the suggested modification has not been adopted.

Comment: One individual suggested that § 2.162, which governs the requirements for an affidavit or declaration during the sixth year after registration, should be amended to require that each affidavit or declaration include the current street address of the person submitting the declaration. The individual commented that "while many registrants currently do this, the fact remains that it is not required, and it should be mandatory."

Response: While the PTO encourages registrants to state their current address in a section 8 affidavit, it is not a statutory requirement for an acceptable affidavit and it would be an administrative burden to process substitute affidavits. Accordingly, the suggested modification has not been adopted. However, the "Trademark Manual of Examining Procedure" will be amended to recommend that this useful information be included in an affidavit or declaration under section 8 of the Act.

Comment: Section 2.162(f), which specifies certain of the requirements for an affidavit or declaration during the sixth year, was proposed to be revised to provide, in part, that if the registered mark is not in use in commerce on or in connection with the goods or services recited in the registration, the affidavit or declaration must recite facts to show that nonuse as to those goods or services is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark as to those goods or services.

One organization suggested that after the phrase "on or in connection with," the phrase "any or all" should be substituted for the word "the."

Response: The suggested language could be construed to imply that an allegation of use on less than all of the goods or services will suffice to maintain the registration for all of the goods or services; or that if the affidavit or declaration does not include an allegation of use or excusable nonuse as to all of the goods or services, the affidavit or declaration will not be accepted and the registration will be cancelled in its entirety. In fact, in the latter situation, the affidavit or declaration would be accepted and those goods or services not included in the allegation of use or excusable nonuse would be deleted from the registration. Accordingly, the suggested modification has not been adopted.

Comments: Section 2.181, which concerns the terms of original registrations and renewals, was proposed to be amended by redesignating present paragraph (a) as (a)(1); revising redesignated paragraph (a)(1) to provide that registrations issued under the Act prior to November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for twenty years from their date of issue or renewal, if that date is prior to November 16, 1989, and may be renewed for periods of ten (rather than twenty) years from the expiring period unless previously cancelled or surrendered; and adding new paragraph

(a)(2) to provide that registrations issued under the Act on or after November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for ten years, and may be renewed for periods of ten years from the expiring period unless previously cancelled or surrendered.

Four organizations and two individuals commented that the renewal term provisions in the proposed rule are ambiguous because "renewal" may be deemed to take place either (a) on the twentieth anniversary of the registration's issuance, or (b) when a proper renewal application is filed, or (c) when the renewal application is processed and a renewal certificate is issued. They recommended that the rule be revised and clarified to provide that the anniversary of the date of the original registration will control the length of the renewal term.

One organization recommended that, if the rule is not amended to reflect the aforesaid comments, the words "or renewed" should be inserted in proposed paragraphs (a) (1) and (2) of the rule after the words "Registrations issued."

Response: The PTO believes that the date of the grant of the renewal application controls whether the term of renewal of a registration is 20 years or ten years. Accordingly, the recommendation that the rule be modified to provide that the anniversary of the date of the original registration will control the length of the renewal term, has not been adopted. However, with respect to registrations due to expire before November 16, 1989, the PTO will do everything possible to maximize the chance that the renewal will be granted prior to November 16, 1989, so that the term of renewal will be twenty years. Registrations due to expire on or after November 16, 1989, will be renewed, on or after that date, for periods of ten years from the date of expiration, regardless of the filing date of the renewal application.

The recommendation that the words "or renewed" be inserted at the beginning of paragraphs (a) (1) and (2) after the words "Registrations issued" has been adopted and the paragraphs have been further modified for purposes of clarity. Specifically, the word "expiration" has been substituted in paragraph (a)(1) for the words "renewal, if that date is prior to November 16, 1989" and the phrase "from their date of issue or expiration" has been inserted in paragraph (a)(2) after the words "remain in force for ten years."

Comment: Section 2.185(a)(1) was proposed to be revised to liberalize certain requirements for the recordation in the PTO of assignments.

One organization recommended that, since any documents affecting title to registrations and applications are recorded pursuant to this rule, the words "and other documents affecting title" should be added to the section title. The organization also recommended that the proposed rule be revised and reorganized to eliminate lengthy, confusing and redundant wording. The organization submitted a suggested substitute draft of the rule.

Response: To permit further review of the language of this section, the proposal is withdrawn.

Comment: Several comments were submitted which do not relate to any rule amendment proposed in the notice of proposed rulemaking.

Response: To the extent that the comments suggest changes to existing rules, the changes cannot be made without affording members of the public an opportunity to comment.

Environmental, Energy, and Other Considerations

The rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354) because the rule change includes no additional or increased fees for existing filings. Public Law 100–667 creates a new statutory right to file an application based upon a bona fide intention to use a mark in commerce ("intent-to-use"). The rule change includes fees for intent-to-use applications. However, filing an intent-to-use application under the new law is permissive. Such a filing will reduce the substantial burden of securing and protecting trademark rights by enabling small entities to obtain trademark rights prior to the use of a mark and the expending of funds in relation thereto. Thus, substantive rights to use valuable trademarks are not adversely affected and, in some instances, can be established prior to the expenditure of large amounts of funds.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect to the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The rule change will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. in relation to any existing filings. However, Public Law 100–667 creates a new additional basis for filing an application, as well as certain other new filings in relation thereto, namely, an amendment to allege use under section 1(c) of the Act, a statement of use under section 1(d) of the Act, and requests for extensions of time, under section 1(d) of the Act, to file a statement of use. The public reporting burden for these new collections of information is estimated to vary from .25 hours to .50 hours per filing, with an average of .35 hours per filing, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding the burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to the Commissioner of Patents and Trademarks, Office of Management and Organization, Washington, DC 20231; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Paperwork Reduction Project 0651–0023.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble and pursuant to the authority contained in section 41 of the Act (15 U.S.C. 1123), parts 1 and 2 of title 37 of the Code of Federal Regulations are amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.1 is amended by adding new paragraph (h) to read as follows:

§ 1.1 All communications to be addressed to Commissioner of Patents and Trademarks.

* * * * *

(h) In applications under section 1(b) of the Trademark Act, 15 U.S.C. 1051(b), all statements of use filed under section 1(d) of the Act, and requests for extensions of time therefor, should be additionally marked "Box ITU."

3. Section 1.8 is amended by adding new paragraphs (a)(2)(xiv) through (a)(2)(xvi) to read as follows:

§ 1.8 Certificate of Mailing.

(a) * * *

(2) * * *

(xiv) In an application under section 1(b) of the Trademark Act (15 U.S.C. 1051(b)), the filing of a statement of use under § 2.88 (15 U.S.C. 1051(d)).

(xv) In an application under section 1(b) of the Trademark Act (15 U.S.C. 1051(b)), the filing of a request, under § 2.89 (15 U.S.C. 1051(d)), for an extension of time to file a statement of use under § 2.88 (15 U.S.C. 1051(d)).

(xvi) In an application under section 1(b) of the Trademark Act (15 U.S.C. 1051(b)), the filing of an amendment to allege use in commerce under § 2.76 (15 U.S.C. 1051(c)).

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

4. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

5. Section 2.2 is added to read as follows:

§ 2.2 Definitions.

(a) *The Act* as used in this part means the Trademark Act of 1946, 60 Stat. 427, as amended, codified in 15 U.S.C. 1051 et seq.

(b) *Entity* as used in this part includes both natural and juristic persons.

6. In section 2.6 the introductory text is republished and new paragraphs (u) and (v) are added to read as follows:

§ 2.6 Trademark fees.

The following fees and charges are established by the Patent and Trademark Office for trademark cases:

* * * * *

(u) For filing an amendment to allege use under section 1(c) of the Act or a statement of use under section 1(d)(1) of the Act, per class—100.00

(v) For filing a request under section 1(d)(2) of the Act for a six-month extension of time for filing a statement of use under section 1(d)(1) of the Act, per class—100.00

7. Section 2.18 is revised to read as follows:

§ 2.18 Correspondence, with whom held.

Correspondence will be sent to the applicant or a party to a proceeding at its address unless papers are transmitted by an attorney at law, or a written power of attorney is filed, or written authorization of other person entitled to be recognized is filed, or the applicant or party designates in writing another address to which correspondence is to be sent, in which event correspondence will be sent to the attorney at law transmitting the papers, or to the attorney at law designated in the power of attorney, or to the other person designated in the written authorization, or to the address designated by the applicant or party for correspondence. Correspondence will continue to be sent to such address until the applicant or party, or the attorney at law or other authorized representative of the applicant or party, indicates in writing that correspondence is to be sent to another address. Correspondence will be sent to the domestic representative of a foreign applicant unless the application is being prosecuted by an attorney at law or other qualified person duly authorized, in which event correspondence will be sent to the attorney at law or other qualified person duly authorized. Double correspondence will not be undertaken by the Patent and Trademark Office, and if more than one attorney at law or other authorized representative appears or signs a paper, the Office reply will be sent to the address already established in the file until another correspondence address is specified by the applicant or party or by the attorney or other authorized representative of the applicant or party. .

8. Section 2.21 is amended by revising paragraphs (a)(5) and (a)(6) to read as follows:

§ 2.21 Requirements for receiving a filing date.

(a) * * *

(5) A basis for filing:

(i) A date of first use of the mark in commerce, and at least one specimen or facsimile of the mark as used, in an application under section 1(a) of the Act, or

(ii) A claim of a bona fide intention to use the mark in commerce and a certification or certified copy of the foreign registration on which the application is based in an application under section 44(e) of the Act, or

(iii) A claim of a bona fide intention to use the mark in commerce and a claim of the benefit of a prior foreign application in an application filed in accordance with section 44(d) of the Act, or

(iv) A claim of a bona fide intention to use the mark in commerce in an application under section 1(b) of the Act;

(6) A verification or declaration in accordance with § 2.33(b) signed by the applicant;

* * * * *

9. Section 2.24 is revised to read as follows:

§ 2.24 Designation of representative by foreign applicant.

If an applicant is not domiciled in the United States, the applicant must designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. If this document does not accompany or form part of the application, it will be required and registration refused unless it is supplied. Official communications of the Patent and Trademark Office will be addressed to the domestic representative unless the application is being prosecuted by an attorney at law or other qualified person duly authorized, in which event Official communications will be sent to the attorney at law or other qualified person duly authorized. The mere designation of a domestic representative does not authorize the person designated to prosecute the application unless qualified under paragraph (a), (b) or (c) of § 10.14 of this subchapter and authorized under § 2.17(b).

10. Section 2.31 is revised to read as follows:

§ 2.31 Application must be in English.

The application must be in the English language and plainly written on but one side of the paper. It is preferable that the application be on lettersize (i.e., 8½ inches, 21.6 cm., by 11 inches, 27.9 cm.) paper, typewritten double spaced, with at least a one and one-half inch (3.8 cm.) margin on the left-hand side and top of the page.

11. Section 2.33 is amended by revising the section title, revising paragraphs (a)(1)(ii), (a)(1)(iv), (a)(1)(v), (a)(1)(vi), (a)(1)(vii), and (a)(1)(viii), redesignating paragraph (a)(1)(ix) as (a)(1)(x), revising redesignated paragraph (a)(1)(x), adding a new paragraph (a)(1)(ix), revising paragraphs (a)(2), (b), and (c), and adding new paragraph (d) to read as follows:

§ 2.33 Requirements for written application.

(a)(1) The application shall include a request for registration and shall specify:

* * * * *

(ii) The citizenship of the applicant; if the applicant is a partnership, the state or nation under the laws of which the partnership is organized and the names and citizenship of the general partners or, if the applicant is a corporation or association, the state or nation under the laws of which the corporation or association is organized;

* * * * *

(iv) In an application under section 1(a) of the Act, that the applicant has adopted and is using the mark shown in the accompanying drawing, or, in an application under section 1(b) or 44 of the Act, that the applicant has a bona fide intention to use the mark shown in the accompanying drawing in commerce;

(v) In an application under section 1(a) of the Act, the particular goods or services on or in connection with which the mark is used or, in an application under section 1(b) or 44 of the Act, the particular goods or services on or in connection with which the applicant has a bona fide intention to use the mark, which in an application under section 44 may not exceed the scope of the goods or services covered by the foreign application or registration;

(vi) The class of goods or services according to the official classification, if known to the applicant;

(vii) In an application under section 1(a) of the Act, the date of applicant's first use of the mark as a trademark or service mark on or in connection with goods or services specified in the application and the date of applicant's first use in commerce of the mark as a trademark or service mark on or in connection with goods or services specified in the application, specifying the nature of such commerce (see § 2.38);

(viii) In an application under section 44(e) of the Act for registration of a mark duly registered in the applicant's country of origin, as that term is defined in section 44(c), accompanying the application, a certificate of the trademark office of the applicant's country of origin showing that the mark has been registered in such country and also showing the mark, the goods or services for which the mark is registered, the date of filing of the application on the basis of which registration was granted and that said registration is in full force and effect and, if the certificate is not in the English language, a translation thereof;

(ix) In an application claiming the benefit of a foreign application in accordance with section 44(d) of the Act, compliance with the requirements of § 2.39;

(x) In an application under section 1(a) of the Act, the mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods or services specified or, in an application under section 1(b) of the Act, the intended mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods or services specified.

(2) If more than one item of goods or services is specified in the application, the dates of use required in paragraph (a)(1)(vii) of this section need be for only one of the items specified, provided the particular item to which the dates apply is designated.

* * * * *

(b)(1) In an application under section 1(a) of the Act, the application must include averments to the effect that the applicant is believed to be the owner of the mark sought to be registered; that the mark is in use in commerce, specifying the nature of such commerce; that no other entity to the best of the declarant's knowledge and belief, has the right to use such mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of such other entity, to cause confusion, or to cause mistake, or to deceive; that the specimens or facsimiles show the mark as used on or in connection with the goods or services; and that the facts set forth in the application are true; or

(2) In an application under section 1(b) or 44 of the Act, the application must include averments to the effect that the applicant is believed to be the owner of the mark sought to be registered; that the applicant has a bona fide intention to use the mark in commerce on or in connection with the specified goods or services; that no other entity, to the best of the declarant's knowledge and belief, has the right to use such mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of such other entity, to cause confusion, or to cause mistake, or to deceive; and that the facts set forth in the application are true.

(c) For an application for the registration of a mark for goods or services falling within multiple classes, see § 2.86.

(d) An applicant may not file under both sections 1(a) and 1(b) of the Act in a single application, nor may an applicant in an application under section 1(a) of the Act amend that application to seek registration under section 1(b) of the Act.

12. Section 2.38(a) is revised to read as follows:

§ 2.38 Use by predecessor or by related companies.

(a) If the first use, the date of which is required by paragraph (a)(1)(vii) of § 2.33, was by a predecessor in title, or by a related company (sections 5 and 45 of the Act), and such use inures to the benefit of the applicant, the date of such first use may be asserted with a statement that such first use was by the predecessor in title or by the related company as the case may be.

* * * * *

13. Section 2.39 is revised to read as follows:

§ 2.39 Priority claim based on foreign application.

(a) An application claiming the benefit of a foreign application in accordance with section 44(d) of the Act shall specify the filing date and country of the first regularly filed foreign application or, if the application is based upon a subsequent regularly filed application in the same foreign country, the application shall so state and shall show that any prior filed application has been withdrawn, abandoned or otherwise disposed of, without having been laid open to public inspection and without having any rights outstanding, and has not served as a basis for claiming a right of priority.

(b) Before the application can be approved for publication, a basis for registration under section 1(a), 1(b) or 44(e) of the Act must be established.

14. Section 2.41 is revised to read as follows:

§ 2.41 Proof of distinctiveness under section 2(f).

(a) When registration is sought of a mark which would be unregistrable by reason of section 2(e) of the Act but which is said by applicant to have become distinctive in commerce of the goods or services set forth in the application, applicant may, in support of registrability, submit with the application, or in response to a request for evidence or to a refusal to register, affidavits, or declarations in accordance with § 2.20, depositions, or other appropriate evidence showing duration, extent and nature of use in commerce and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements), and affidavits, or declarations in accordance with § 2.20, letters or statements from the trade or public, or both, or other appropriate evidence tending to show that the mark distinguishes such goods.

(b) In appropriate cases, ownership of one or more prior registrations on the Principal Register or under the Act of 1905 of the same mark may be accepted as prima facie evidence of distinctiveness. Also, if the mark is said to have become distinctive of applicant's goods by reason of substantially exclusive and continuous use in commerce thereof by applicant for the five years before the date on which the claim of distinctiveness is made, a showing by way of statements which are verified or which include declarations in accordance with § 2.20, in the application may, in appropriate cases, be accepted as prima facie evidence of distinctiveness. In each of these situations, however, further evidence may be required.

15. Section 2.44 is revised to read as follows:

§ 2.44 Collective mark.

(a) In an application to register a collective mark under section 1(a) of the Act, the application shall specify and contain all applicable elements required by the preceding sections for trademarks, but shall, in addition, specify the class of persons entitled to use the mark, indicating their relationship to the applicant, and the nature of the applicant's control over the use of the mark.

(b) In an application to register a collective mark under section 1(b) or 44 of the Act, the application shall specify and contain all applicable elements required by the preceding sections for trademarks, but shall, in addition, specify the class of persons intended to be entitled to use the mark, indicating what their relationship to the applicant will be, and the nature of the control applicant intends to exercise over the use of the mark.

16. Section 2.45 is revised to read as follows:

§ 2.45 Certification mark.

(a) In an application to register a certification mark under section 1(a) of the Act, the application shall specify and contain all applicable elements required by the preceding sections for trademarks. It shall, in addition, specify the manner in which and the conditions under which the certification mark is used; it shall allege that the applicant exercises legitimate control over the use of the mark and that the applicant is not engaged in the production or marketing of the goods or services to which the mark is applied.

(b) In an application to register a certification mark under section 1(b) or 44 of the Act, the application shall specify and contain all applicable elements required by the preceding sections for trademarks. It shall, in addition, specify the manner in which and the conditions under which the certification mark is intended to be used; it shall allege that the applicant intends to exercise legitimate control over the use of the mark and that the applicant will not engage in the production or marketing of the goods or services to which the mark is applied.

17. Section 2.47 is revised to read as follows:

§ 2.47 Supplemental Register.

(a) In an application to register on the Supplemental Register under section 23 of the Act, the application shall so indicate and shall specify that the mark has been in lawful use in commerce, specifying the nature of such commerce, by the applicant.

(b) In an application to register on the Supplemental Register under section 44 of the Act, the application shall so indicate. The statement of lawful use in commerce may be omitted.

(c) A mark in an application to register on the Principal Register under section 1(b) of the Act is eligible for registration on the Supplemental Register only after an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88 has been timely filed.

(d) An application for registration on the Supplemental Register must conform to the requirements for registration on the Principal Register under section 1(a) of the Act, so far as applicable.

18. Section 2.51 is revised to read as follows:

§ 2.51 Drawing required.

(a)(1) In an application under section 1(a) of the Act, the drawing of the trademark shall be a substantially exact representation of the mark as used on or in connection with the goods; or

(2) In an application under section 1(b) of the Act, the drawing of the trademark shall be a substantially exact representation of the mark as intended to be used on or in connection with the goods specified in the application, and once an amendment to allege use under § 2.76 or a statement of use under § 2.88 has been filed, the drawing of the trademark shall be a substantially exact representation of the mark as used on or in connection with the goods; or

(3) In an application under section 44 of the Act, the drawing of the trademark shall be a substantially exact representation of the mark as it appears in the drawing in the registration certificate of a mark duly registered in the country of origin of the applicant.

(b)(1) In an application under section 1(a) of the Act, the drawing of a service mark shall be a substantially exact representation of the mark as used in the sale or advertising of the services; or

(2) In an application under section 1(b) of the Act, the drawing of a service mark shall be a substantially exact representation of the mark as intended to be used in the sale or advertising of the services specified in the application and, once an amendment to allege use under § 2.76 or a statement of use under § 2.88 has been filed, the drawing of the service mark shall be a substantially exact representation of the mark as used in the sale or advertising of the services; or

(3) In an application under section 44 of the Act, the drawing of a service mark shall be a substantially exact representation of the mark as it appears in the drawing in the registration certificate of a mark duly registered in the country of origin of applicant.

(c) The drawing of a mark may be dispensed with in the case of a mark not capable of representation by a drawing, but in any such case the application must contain an adequate description of the mark.

(d) Broken lines should be used in the drawing of a mark to show placement of the mark on the goods, or on the packaging, or to show matter not claimed as part of the mark, or both, as appropriate. In an application to register a mark with three-dimensional features, the drawing shall depict the mark in perspective in a single rendition.

(e) If the application is for the registration of only a word, letter or numeral, or any combination thereof, not depicted in special form, the drawing may be the mark typed in capital letters on paper, otherwise complying with the requirements of § 2.52.

19. Section 2.52 is amended by revising paragraphs (a), (d) and (e) to read as follows:

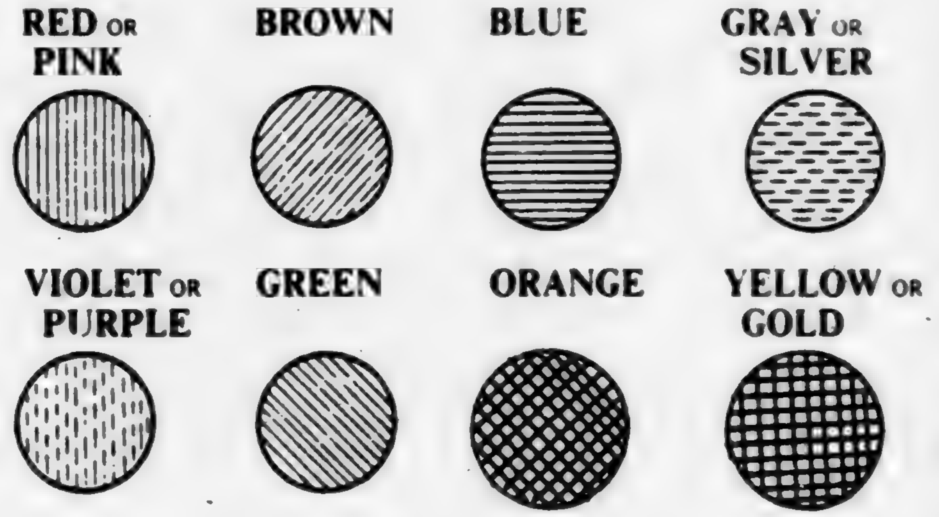
§ 2.52 Requirements for drawings.

(a) *Character of drawing.* All drawings, except as otherwise provided, must be made with the pen or by a process which will provide high definition upon reproduction. A photolithographic reproduction or printer's proof copy may be used if otherwise suitable. Every line and letter, including color lining and lines used for shading, must be black. All lines must be clean, sharp, and solid, and must not be fine or crowded. Gray tones or tints may not be used for surface shading or any other purpose. The requirements of this paragraph are not necessary in the case of drawings permitted and filed in accordance with paragraph (e) of § 2.51.

* * * * *

(d) *Heading.* Across the top of the drawing, beginning one inch (2.5 cm.) from the top edge and not exceeding one third of the sheet, there must be placed a heading, listing in separate lines, applicant's complete name; applicant's post office address; the dates of first use of the mark and first use of the mark in commerce in an application under section 1(a) of the Act; the priority filing date of the relevant foreign application in an application claiming the benefit of a prior foreign application in accordance with section 44(d) of the Act; and the goods or services recited in the application or a typical item of the goods or services if a number of items are recited in the application. This heading should be typewritten. If the drawing is in special form, the heading should include a description of the essential elements of the mark.

(e) *Linings for color.* Where color is a feature of a mark, the color or colors employed may be designated by means of conventional linings as shown in the following color chart:



20. Section 2.53 is revised to read as follows:

§ 2.53 Transmission of drawings.

Drawings transmitted to the Patent and Trademark Office, other than those typed in accordance with § 2.51(e), should be sent flat, protected by a sheet of heavy binder's board, or should be rolled for transmission in a suitable mailing tube to prevent mutilation or folding.

21. Section 2.56 is revised to read as follows:

§ 2.56 Specimens.

An application under section 1(a) of the Act, an amendment to allege use under § 2.76, and a statement of use under § 2.88 must each include three specimens of the trademark as used on or in connection with the goods in commerce. The specimens shall be duplicates of the labels, tags, or containers bearing the trademark, or the displays associated with the goods and bearing the trademark (or if the nature of the goods makes use of such specimens impracticable then on documents associated with the goods or their sale), when made of suitable flat material and of a size not to exceed 8½ inches (21.6 cm.) wide and 11 inches (27.9 cm.) long.

22. Section 2.57 is revised to read as follows:

§ 2.57 Facsimiles.

(a) When, due to the mode of applying or affixing the trademark to the goods, or to the manner of using the mark on the goods, or to the nature of the mark, specimens as above stated cannot be furnished, three copies of a suitable photograph or other acceptable reproduction, not to exceed 8½ inches (21.6 cm.) wide and 11 inches (27.9 cm.) long, and clearly and legibly showing the mark and all matter used in connection therewith, shall be furnished.

(b) A purported facsimile which is merely a reproduction of the drawing submitted to comply with § 2.51 will not be considered to be a facsimile depicting the mark as used on or in connection with the goods or in connection with the services.

23. Section 2.59 is added to read as follows:

§ 2.59 Filing substitute specimens.

(a) In an application under section 1(a) of the Act, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services, provided that any substitute specimens submitted are supported by applicant's affidavit or declaration in accordance with § 2.20 verifying that the substitute specimens were in use in commerce at least as early as the filing date of the application. The verification requirement shall not apply if the specimens are duplicates or facsimiles, such as photographs, of specimens already of record in the application.

(b) In an application under section 1(b) of the Act, after filing either an amendment to allege use under § 2.76 or a statement of use under § 2.88, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services, provided that the use in commerce of any substitute specimens submitted is supported by applicant's affidavit or declaration in accordance with § 2.20. In the case of a statement of use under § 2.88, the applicant must verify that the substitute specimens were in use in commerce prior to the filing of the statement of use or prior to the expiration of the time allowed to applicant for filing a statement of use.

24. Section 2.61 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2.61 Action by examiner.

(a) Applications for registration, including amendments to allege use under section 1(c) of the Act, and statements of use under section 1(d) of the Act, will be examined and, if the applicant is found not entitled to registration for any reason, applicant will be notified and advised of the reasons therefor and of any formal requirements or objections.

* * * * *

(c) Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, each party and also the attorney shall be notified of this fact.

25. Section 2.64 is amended by adding new paragraph (c) to read as follows:

§ 2.64 Final action.

* * * * *

(c)(1) If an applicant in an application under section 1(b) of the Act files an amendment to allege use under § 2.76 during the six-month response period after issuance of a final action, the examiner shall examine the amendment. The filing of such an amendment will not extend the time for filing an appeal or petitioning the Commissioner.

(2) If the amendment to allege use under § 2.76 is acceptable in all respects, the applicant will be notified of its acceptance.

(3) If, as a result of the examination of the amendment to allege use under § 2.76, the applicant is found not entitled to registration for any reason not previously stated, applicant will be notified and advised of the reasons and of any formal requirements or refusals. The Trademark Examining Attorney shall withdraw the final action previously issued and shall incorporate all unresolved refusals or requirements previously stated in the new non-final action.

26. Section 2.65 is amended by adding new paragraph (c) to read as follows:

§ 2.65 Abandonment.

* * * * *

(c) If an applicant in an application under section 1(b) of the Act fails to timely file a statement of use under § 2.88, the application shall be deemed to be abandoned.

27. Section 2.66 is revised to read as follows:

§ 2.66 Revival of abandoned applications.

(a) An application abandoned for failure to timely respond, or for failure to timely file a statement of use under § 2.88 in an application under section 1(b) of the Act, may be revived as a pending application if it is shown to the satisfaction of the Commissioner that the delay was unavoidable.

(b) A petition to revive an application abandoned for failure to timely respond must be accompanied by:

(1) The required fee,

(2) A showing which is verified or which includes a declaration in accordance with § 2.20 of the causes of the delay, and

(3) The proposed response, unless a response has been previously filed.

(c) A petition to revive an application abandoned for failure to timely file a statement of use under § 2.88 in an application under section 1(b) of the Act must be accompanied by:

(1) The required petition fee,

(2) A showing which is verified or which includes a declaration in accordance with § 2.20 of the causes of the delay,

(3) The required fees for the number of requests (in accordance with § 2.89 for extensions of time to file a statement of use) which should have been filed if the application had not been abandoned, and

(4) Either a statement of use in accordance with § 2.88 (unless the same has been previously filed) or a request in accordance with § 2.89 for an extension of time to file a statement of use.

(d) The petition must be filed promptly. No petition to revive will be granted in an application under section 1(b) of the Act if granting the petition would permit the filing of a statement of use more than 36 months after the issuance of a notice of allowance under section 13(b)(2) of the Act.

28. Section 2.69 is revised to read as follows:

§ 2.69 Compliance with other laws.

When the sale or transportation of any product for which registration of a trademark is sought is regulated under an Act of Congress, the Patent and Trademark Office may make appropriate inquiry as to compliance with such Act for the sole purpose of determining lawfulness of the commerce recited in the application.

29. Section 2.71 is revised to read as follows:

§ 2.71 Amendments to correct informalities.

(a) The application may be amended to correct informalities, or to avoid objections made by the Patent and Trademark Office, or for other reasons arising in the course of examination.

(b) The identification of goods or services may be amended to clarify or limit the identification, but additions will not be permitted.

(c) If the verification or declaration filed with the application is defective, the defect may be corrected only by the submission of a substitute or supplemental verification or declaration in accordance with § 2.20. A verification or declaration required under §§ 2.21(a)(6), 2.76(e)(3) or 2.88(e)(3), to be properly signed, must be signed by the applicant, a member of the applicant firm, or an officer of the applicant corporation or association. A verification or declaration which is signed by a person having color of authority to sign, is acceptable for the purpose of determining the timely filing of the paper. Persons having color of authority to sign are those who have first-hand knowledge of the truth of the statements in the verification or declaration and who also have actual or implied authority to act on behalf of the applicant. However, a properly signed substitute verification or declaration must be submitted before the application will be approved for publication or registration, as the case may be.

(d)(1) No amendment to the dates of use will be permitted unless the amendment is supported by applicant's affidavit or declaration in accordance with § 2.20 and by such showing as may be required.

(2) In an application under section 1(a) of the Act, no amendment to specify a date of use which is subsequent to the filing date of the application will be permitted.

(3) In an application under section 1(b) of the Act, after the filing of a statement of use under § 2.88, no amendment will be permitted to the statement of use to recite dates of use which are subsequent to the expiration of the time allowed to applicant for filing a statement of use.

30. Section 2.72 is revised to read as follows:

§ 2.72 Amendments to description or drawing of the mark.

(a) Amendments may not be made to the description or drawing of the mark if the character of the mark is materially altered. The determination of whether a proposed amendment materially alters the character of the mark will be made by comparing the proposed amendment with the description or drawing of the mark as originally filed.

(b) In applications under section 1(a) of the Act, amendments to the description or drawing of the mark may be permitted only if warranted by the specimens (or facsimiles) as originally filed, or supported by additional specimens (or facsimiles) and a supplemental affidavit or declaration in accordance with § 2.20 alleging that the mark shown in the amended drawing was in use prior to the filing date of the application.

(c) In applications under section 1(b) of the Act, amendments to the description or drawing of the mark, which are filed after submission of an amendment to allege use under § 2.76 or a statement of use under § 2.88, may be permitted only if warranted by the specimens (or facsimiles) filed, or supported by additional specimens (or facsimiles) and a supplemental affidavit or declaration in accordance with § 2.20 alleging that the mark shown in the amended drawing is in use in commerce. In the case of a statement of use under § 2.88, applicant must verify that the mark shown in the amended drawing was in use in commerce prior to the filing of the statement of use or prior to the expiration of the time allowed to applicant for filing a statement of use.

(d) In applications under section 44 of the Act, amendments to the description or drawing of the mark may be permitted only if warranted by the description or drawing of the mark in the foreign registration certificate.

31. Section 2.73 is revised to read as follows:

§ 2.73 Amendment to recite concurrent use.

(a) An application under section 1(a) of the Act may be amended so as to be treated as an application for a concurrent registration, provided the application as amended satisfies the requirements of § 2.42. The examiner will determine whether the application, as amended, is acceptable.

(b) An application under section 1(b) of the Act may not be amended so as to be treated as an application for a concurrent registration until an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88 has been filed in the application, after which time such an amendment may be made, provided the application as amended satisfies the requirements of § 2.42. The examiner will determine whether the application, as amended, is acceptable.

32. Section 2.75 is revised to read as follows:

§ 2.75 Amendment to change application to different register.

(a) An application for registration on the Principal Register under section 1(a) or 44 of the Act may be changed to an application for registration on the Supplemental Register and vice versa by amending the application to comply with the rules relating to the appropriate register, as the case may be.

(b) An application under section 1(b) of the Act may be amended to change the application to a different register only after submission of an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88. When such an application is changed from the Principal Register to the Supplemental Register, the effective filing date of the application is the date of the filing of the allegation of use under section 1(c) or 1(d) of the Act.

33. Section 2.76 is added to read as follows:

§ 2.76 Amendment to allege use.

(a) An application under section 1(b) of the Act may be amended to allege use of the mark in commerce under section 1(c) of the Act at any time between the filing of the application and the date the examiner approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action. Thereafter, an allegation of use may be submitted only as a statement of use under § 2.88 after the issuance of a notice of allowance under section 13(b)(2) of the Act. If an amendment to allege use is filed outside the time period specified in this paragraph, it will be returned to the applicant.

(b) A complete amendment to allege use must include:

(1) A verified statement that the applicant is believed to be the owner of the mark sought to be registered and that the mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, those goods or services specified in the application on or in connection with which the mark is in use in commerce and the mode or manner in which the mark is used on or in connection with such goods or services;

(2) Three specimens or facsimiles, conforming to the requirements of §§ 2.56, 2.57 and 2.58, of the mark as used in commerce; and

(3) The fee prescribed in § 2.6.

(c) An amendment to allege use may be filed only when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the application, for which applicant will seek registration in that application unless the amendment to allege use is accompanied by a request in accordance with § 2.87 to divide out from the application the goods or services to which the amendment pertains. If more than one item of goods or services is specified in the amendment to allege use, the dates of use required in paragraph (b)(1) of this section need be for only one of the items specified in each class, provided the particular item to which the dates apply is designated.

(d) The title "Amendment to allege use under § 2.76" should appear at the top of the first page of the paper.

(e) The Office will review a timely filed amendment to allege use to determine whether it meets the following minimum requirements:

(1) The fee prescribed in § 2.6;

(2) At least one specimen or facsimile of the mark as used in commerce; and

(3) A verification or declaration signed by the applicant stating that the mark is in use in commerce.

(f) A timely filed amendment to allege use which meets the minimum requirements specified in paragraph (e) of this section will be examined in accordance with §§ 2.61 through 2.69. If, as a result of the examination of the amendment to allege use, applicant is found not entitled to registration for any reason not previously stated, applicant will be so notified and advised of the reasons and of any formal requirements or refusals. The notification shall restate or incorporate by reference all unresolved refusals or requirements previously stated. The amendment to allege use may be amended in accordance with §§ 2.59 and 2.71 through 2.75. If the amendment to allege use is acceptable in all respects, the applicant will be notified of its acceptance. The filing of such an amendment shall not constitute a response to any outstanding action by the Trademark Examining Attorney.

(g) If the amendment to allege use is filed within the permitted time period but does not meet the minimum requirements specified in paragraph (e) of this section, applicant will be notified of the deficiency. The deficiency may be corrected provided the mark has not been approved for publication or the six-month response period after issuance of a final action has not expired. If an acceptable amendment to correct the deficiency is not filed prior to approval of the mark for publication or prior to the expiration of the six-month response period after issuance of a final action, the amendment will not be examined.

(h) An amendment to allege use may be withdrawn for any reason prior to approval of a mark for publication or expiration of the six-month response period after issuance of a final action.

34. Section 2.77 is added to read as follows:

§ 2.77 Amendments between notice of allowance and statement of use.

An application under section 1(b) of the Act may not be amended during the period between the issuance of the notice of allowance under section 13(b)(2) of the Act and the filing of a statement of use under § 2.88, except to delete specified goods or services. Other amendments filed during this period will be placed in the application file and considered when the statement of use is examined.

35. The undesignated center heading for §§ 2.80 through 2.84 is revised to read as follows:

Publication and Post Publication

36. Section 2.81 is amended by revising the section title, redesignating the present paragraph as (a), revising redesignated paragraph (a), and adding new paragraph (b) to read as follows:

§ 2.81 Post publication.

(a) Except in an application under section 1(b) of the Act for which no amendment to allege use under § 2.76 has been submitted and accepted, if no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared and no concurrent use proceeding is instituted, the application will be prepared for issuance of the certificate of registration as provided in § 2.151.

(b) In an application under section 1(b) of the Act for which no amendment to allege use under § 2.76 has been submitted and accepted, if no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared, a notice of allowance will issue. The notice of allowance will state the serial number of the application, the name of the applicant, the correspondence address, the mark, the identification of goods or services, and the issue date of the notice of allowance. The mailing date that appears on the notice of allowance will be the issue date of the notice of allowance. Thereafter, the applicant shall submit a statement of use as provided in § 2.88.

37. Section 2.82 is revised to read as follows:

§ 2.82 Marks on Supplemental Register published only upon registration.

In the case of an application for registration on the Supplemental Register the mark will not be published for opposition but if it appears, after examination or reexamination, that the applicant is entitled to have the mark registered, a certificate of registration will issue as provided in § 2.151. The mark will be published in the "Official Gazette" when registered.

38. Section 2.83 is amended by revising paragraphs (a) and (b) to read as follows:

§ 2.83 Conflicting marks.

(a) Whenever an application is made for registration of a mark which so resembles another mark or marks pending registration as to be likely to cause confusion or mistake or to deceive, the mark with the earliest effective filing date will be published in the "Official Gazette" for opposition if eligible for the Principal Register, or issued a certificate of registration if eligible for the Supplemental Register.

(b) In situations in which conflicting applications have the same effective filing date, the application with the earliest date of execution will be published in the "Official Gazette" for opposition or issued on the Supplemental Register.

* * * * *

39. Section 2.84 is revised to read as follows:

§ 2.84 Jurisdiction over published applications.

(a) The examiner may exercise jurisdiction over an application up to the date the mark is published in the "Official Gazette." After publication of an application under section 1(a) or 44 of the Act the examiner may, with the permission of the Commissioner, exercise jurisdiction over the application. After publication of an application under section 1(b) of the Act, the examiner may exercise jurisdiction over the application after the issuance of the notice of allowance under section 13(b)(2) of the Act. After publication, and prior to issuance of a notice of allowance in an application under section 1(b), the examiner may, with the permission of the Commissioner, exercise jurisdiction over the application.

(b) After publication, but before the printing of the certificate of registration in an application under section 1(a) or 44 of the Act, or before the printing of the notice of allowance in an application under section 1(b) of the Act, an application which is not the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board may be amended if the amendment does not necessitate republication of the mark or issuance of an Office action. Otherwise, an amendment to such an application may be submitted only upon petition to the Commissioner to restore jurisdiction of the application to the examiner for consideration of the amendment and further examination. The amendment of an application which is the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board is governed by § 2.133.

40. Section 2.86 is revised to read as follows:

§ 2.86 Application may include multiple goods or services comprised in single class or multiple classes.

(a) An application may recite more than one item of goods, or more than one service, comprised in a single class, provided the goods or services are specifically identified and the applicant either has used the mark on or in connection with all of the specified goods or services, or has a bona fide intention to use the mark on or in connection with all of the specified goods or services.

(b) An application also may be filed to register the same mark for goods and/or services comprised in multiple classes, provided the goods or services are specifically identified; a fee equaling the sum of the fees for filing an application in each class is submitted; and the application includes either dates of use and three specimens for each class, or a statement of a bona fide intention to use the mark on or in connection with all of the goods or services specified in each class. An amendment to allege use under § 2.76 or a statement of use under § 2.88, filed in a multiple class application under section 1(b) of the Act, must include, for each class, the required fee, dates of use and three specimens. A single certificate of

registration for the mark shall be issued, unless the application is divided pursuant to § 2.87.

(c) The applicant may not allege use as to certain goods or services and a bona fide intention to use as to other goods or services in the same application, regardless of the number of classes contained therein.

41. Section 2.87 is revised to read as follows:

§ 2.87 Dividing an application.

(a) An application may be physically divided into two or more separate applications upon submission by the applicant of a request therefor, in accordance with paragraph (c) of this section. In the case of a request to divide out some, but not all, of the goods or services in a class, a fee for each new separate application to be created by the division must be submitted. Any outstanding time period for action by the applicant in the original application at the time of the division will be applicable to each new separate application created by the division.

(b) A request to divide an application may be filed at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action; or during an opposition, upon motion granted by the Trademark Trial and Appeal Board. Additionally, a request to divide an application under section 1(b) of the Act may be filed with a statement of use under § 2.88 or at any time between the filing of a statement of use and the date the Trademark Examining Attorney approves the mark for registration or the date of expiration of the six-month response period after issuance of a final action.

(c) A request to divide an application should be made in a separate paper from any other amendment or response in the application. The title "Request to divide application." should appear at the top of the first page of the paper.

42. A new undesignated center heading, and two new sections, designated §§ 2.88 and 2.89, are added to read as follows:

Post Notice of Allowance

§ 2.88 Filing statement of use after notice of allowance.

(a) In an application under section 1(b) of the Act, a statement of use, required under section 1(d) of the Act, must be filed within six months after issuance of a notice of allowance under section 13(b)(2) of the Act, or within an extension of time granted under § 2.89. A statement of use that is filed prior to issuance of a notice of allowance is premature, will not be considered, and will be returned to the applicant.

(b) A complete statement of use must include:

(1) A verified statement that the applicant is believed to be the owner of the mark sought to be registered and that the mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, those goods or services specified in the notice of allowance on or in connection with which the mark is in use in commerce and the mode or manner in which the mark is used on or in connection with such goods or services;

(2) Three specimens or facsimiles, conforming to the requirements of §§ 2.56, 2.57 and 2.58, of the mark as used in commerce; and

(3) The fee prescribed in § 2.6.

(c) The statement of use may be filed only when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the notice of allowance, for which applicant will seek registration in that application, unless the statement of use is accompanied by a request in accordance with § 2.87 to divide out from the application the goods or services to which the statement of use pertains. If more than one item of goods or services is specified in the statement of use, the dates of use required in paragraph (b)(1) of this section need be for only one of the items specified in each class, provided the particular item to which the dates apply is designated.

(d) The title "Statement of use under § 2.88." should appear at the top of the first page of the paper.

(e) The Office will review a timely filed statement of use to determine whether it meets the following minimum requirements:

(1) The fee prescribed in § 2.6;

(2) At least one specimen or facsimile of the mark as used in commerce;

(3) A verification or declaration signed by the applicant stating that the mark is in use in commerce.

(f) A timely filed statement of use which meets the minimum requirements specified in paragraph (e) of this section will be examined in accordance with §§ 2.61 through 2.69. If, as a result of the examination of the statement of use, applicant is found not entitled to registration, applicant will be notified and advised of the reasons and of any formal requirements or refusals. The statement of use may be amended in accordance with §§ 2.59 and 2.71 through 2.75. If the statement of use is acceptable in all respects, the applicant will be notified of its acceptance.

(g) If the statement of use does not meet the minimum requirements specified in paragraph (e) of this section, applicant will be notified of the deficiency. If the time permitted for applicant to file a statement of use has not expired, applicant may correct the deficiency. After the filing of a statement of use during a permitted time period for such filing, the applicant may not withdraw the statement to return to the previous status of awaiting submission of a statement of use, regardless of whether it is in compliance with paragraph (e) of this section.

(h) The failure to timely file a statement of use which meets the minimum requirements specified in paragraph (e) of this section shall result in the abandonment of the application.

(i)(1) The goods or services specified in a statement of use must conform to those goods or services identified in the notice of allowance. An applicant may specify the goods or services by stating "those goods or services identified in the notice of allowance" or, if appropriate, "those goods or services identified in the notice of allowance except * * *" followed by an identification of the goods or services to be deleted.

(2) If any goods or services specified in the notice of allowance are omitted from the identification of goods or services in the statement of use, the Trademark Examining Attorney shall inquire about the discrepancy and permit the applicant to amend the statement of use to include any omitted goods or services, provided that the amendment is supported by a verification that the mark was in use in commerce, on or in connection with each of the goods or services sought to be included, prior to the expiration of the time allowed to applicant for filing a statement of use.

(3) The statement of use may be accompanied by a separate request to amend the identification of goods or services in the application, as stated in the notice of allowance, in accordance with § 2.71(b).

(j) The statement of use may be accompanied by a separate request to amend the drawing in the application, in accordance with §§ 2.51 and 2.72.

§ 2.89 Extensions of time for filing a statement of use.

(a) The applicant may request a six-month extension of time to file the statement of use required under § 2.88 by submitting:

(1) A written request, before the expiration of the six-month period following the issuance of a notice of allowance under section 13(b)(2) of the Act;

(2) The fee prescribed in § 2.6; and

(3) A verified statement by the applicant that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce.

(b) The applicant may request further six-month extensions of time for filing the statement of use by submitting:

(1) A written request, prior to the expiration of a previously granted extension of time;

(2) The fee prescribed in § 2.6;

(3) A verified statement by the applicant that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce; and

(4) A showing of good cause, as specified in paragraph (d) of this section.

(c) Extensions of time under paragraph (b) of this section will be granted only in six-month increments and may not aggregate more than 24 months.

(d) The showing required by paragraph (b)(4) of this section must include:

(1) An allegation that the applicant has not yet made use of the mark in commerce on all the goods or services specified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce, and

(2) A statement of applicant's ongoing efforts to make use of the mark in commerce on or in connection with each of the goods or services specified in the verified statement of continued bona fide intention to use required under paragraph (b) of this section. Those efforts may include, without limitation, product or service research or development, market research, manufacturing activities, promotional activities, steps to acquire distributors, steps to obtain required governmental approval, or other similar activities. In the alternative, a satisfactory explanation for the failure to make such efforts must be submitted.

(e)(1) At the time of the filing of a statement of use, or during any time remaining in the existing six-month period in which a statement of use is filed, applicant may file one request, in accordance with paragraph (a) or (b) of this section, for a six-month extension of time for filing a statement of use, provided that the time requested would not extend beyond 36 months from the issuance of the notice of allowance. Thereafter, applicant may not request any further extensions of time.

(2) A request for an extension of time that is filed at the time of the filing of a statement of use, or during any time remaining in the existing six-month period in which a statement of use is filed, must comply with all the requirements of paragraph (a) of this section, if it is applicant's first extension request, or paragraph (b) of this section, if it is a second or subsequent extension request. However, in a request under paragraph (b) of this section, applicant may satisfy the requirement for a showing of good cause by asserting that applicant believes that it has made valid use of the mark in commerce, as evidenced by the submitted statement of use, but that if the statement of use is found by the Patent and Trademark Office to be fatally defective, applicant will need additional time in which to file a new statement of use.

(f) The goods or services specified in a request for an extension of time for filing a statement of use must conform to those goods or services identified in the notice of allowance. Any goods or services specified in the notice of allowance which are omitted from the identification of goods or services in the request for extension of time will be presumed to be deleted and the applicant may not thereafter request that the deleted goods or services be reinserted in the application. If appropriate, an applicant may specify the goods or services by stating "those goods or services identified in the notice of allowance" or "those goods or services identified in the notice of allowance except * * *" followed by an identification of the goods or services to be deleted.

(g) The applicant will be notified of the grant or denial of a request for an extension of time, and of the reasons for a denial. Failure to notify the applicant of the grant or denial of the request prior to the expiration of the existing period or requested extension does not relieve the applicant of the responsibility of timely filing a statement of use under § 2.88. If, after denial of an extension request, there is time remaining in the existing six-month period for filing a statement of use, applicant may submit a substitute request for extension of time. Otherwise, the only recourse available after denial of a request for an extension of time is a petition to the Commissioner in accordance with §§ 2.66 or 2.146. A petition from the denial of a request for an extension of time to file a statement of use shall be filed within one month from the date of mailing of the denial of the request. If the petition is granted, the term of the requested six-month extension which was the subject of the petition will run from the date of the expiration of the previously existing six-month period for filing a statement of use.

43. Section 2.99 is amended by revising paragraph (g) and adding new paragraph (h) to read as follows:

§ 2.99 Application to register as concurrent user.

* * * * *

(g) Registrations and applications to register on the Supplemental Register and registrations under the Act of 1920 are not subject to concurrent use registration proceedings. Applications to register under section 1(b) of the Act of 1946 are subject to concurrent use registration proceedings only after an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88 has been filed.

(h) The Trademark Trial and Appeal Board will consider and determine concurrent use rights only in the context of a concurrent use registration proceeding.

44. Section 2.101 is amended by revising paragraph (b) to read as follows:

§ 2.101 Filing an opposition.

* * * * *

(b) Any entity which believes that it would be damaged by the registration of a mark on the Principal Register may oppose the same by filing an opposition, which should be addressed to the Trademark Trial and Appeal Board. The opposition need not be verified, and may be signed by the opposer or the opposer's attorney or other authorized representative.

* * * * *

45. Section 2.111 is amended by revising paragraph (b) to read as follows:

§ 2.111 Filing petition for cancellation.

* * * * *

(b) Any entity which believes that it is or will be damaged by a registration may file a petition, which should be addressed to the Trademark Trial and Appeal Board, to cancel the registration in whole or in part. The petition need not be verified, and may be signed by the petitioner or the petitioner's attorney

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or other authorized representative. The petition may be filed at any time in the case of registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under section 12(c) of the Act, or on any ground specified in section 14 (c) or (e) of the Act. In all other cases the petition and the required fee must be filed within five years from the date of registration of the mark under the Act or from the date of publication under section 12(c) of the Act.

* * * * *

46. Section 2.129 is amended by adding new paragraph (d) to read as follows:

§ 2.129 Oral argument; reconsideration.

* * * * *

(d) When a party to an inter partes proceeding before the Trademark Trial and Appeal Board cannot prevail without establishing constructive use pursuant to section 7(c) of the Act in an application under section 1(b) of the Act, the Trademark Trial and Appeal Board will enter a judgment in favor of that party, subject to the party's establishment of constructive use. The time for filing an appeal or for commencing a civil action under section 21 of the Act shall run from the date of the entry of the judgment.

47. Section 2.133 is revised to read as follows:

§ 2.133 Amendment of application or registration during proceedings.

(a) An application involved in a proceeding may not be amended in substance nor may a registration be amended or disclaimed in part, except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or except upon motion.

(b) If, in an inter partes proceeding, the Trademark Trial and Appeal Board finds that a party whose application or registration is the subject of the proceeding is not entitled to registration in the absence of a specified restriction to the involved application or registration, the Trademark Trial and Appeal Board will allow the party time in which to file a request that the application or registration be amended to conform to the findings of the Trademark Trial and Appeal Board, failing which judgment will be entered against the party.

(c) Geographic limitations will be considered and determined by the Trademark Trial and Appeal Board only in the context of a concurrent use registration proceeding.

(d) A plaintiff's pleaded registration will not be restricted in the absence of a counterclaim to cancel the registration in whole or in part, except that a counterclaim need not be filed if the registration is the subject of another proceeding between the same parties or anyone in privity therewith.

48. Section 2.161 is revised to read as follows:

§ 2.161 Cancellation for failure to file affidavit or declaration during sixth year.

Any registration under the provisions of the Act and any registration published under the provisions of section 12(c) of the Act (§ 2.153) shall be cancelled as to any goods or services recited in the registration at the end of six years following the date of registration or the date of such publication, unless within one year next preceding the expiration of such six years the registrant shall file in the Patent and Trademark Office an affidavit or declaration in accordance with § 2.20 setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and attaching a specimen or facsimile showing current use of the mark, or an affidavit or declaration under § 2.20 showing that its nonuse as to any goods or services recited in the registration is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark as to those goods or services.

49. Section 2.162 is amended by revising paragraphs (e), (f), and (g) to read as follows:

§ 2.162 Requirements for affidavit or declaration during sixth year.

* * * * *

(e) State that the registered mark is in use in commerce, list the goods or services recited in the registration on or in connection with which the mark is in use in commerce, and specify the nature of such commerce (except under paragraph (f) of this section). The statement must be accompanied by a specimen or facsimile, for each class of goods or services, showing current use of the mark. If the specimen or facsimile is found to be deficient, a substitute specimen or facsimile may be submitted and considered even though filed after the sixth year has expired, provided it is supported by an affidavit or declaration pursuant to § 2.20 verifying that the specimen or facsimile was in use in commerce prior to the expiration of the sixth year;

(f) If the registered mark is not in use in commerce on or in connection with the goods or services recited in the registration, recite facts to show that nonuse as to those goods or services is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark as to those goods or services. If the facts recited are found insufficient, further evidence or explanation may be submitted and considered even though filed after the sixth year has expired; and

(g) Contain the statement of use in commerce or statement as to nonuse and appropriate specimen or facsimile, as required in paragraphs (e) and (f) of this section, for each class to which the affidavit or declaration pertains in this registration.

50. Section 2.181(a) is revised to read as follows:

§ 2.181 Term of original registrations and renewals.

(a)(1) Registrations issued or renewed under the Act, prior to November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for twenty years from their date of issue or expiration, and may be renewed for periods of ten years from the expiring period unless previously cancelled or surrendered.

(2) Registrations issued or renewed under the Act on or after November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for ten years from their date of issue or expiration, and may be renewed for periods of ten years from the expiring period unless previously cancelled or surrendered.

* * * * *

51. Section 2.187 is revised to read as follows:

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§ 2.187 Certificate of registration may issue to assignee.

The certificate of registration may be issued to the assignee of the applicant, or in a new name of applicant, provided that the party makes a written request in the application record, by the time the application is being prepared for issuance of the certificate of registration, and an appropriate document is of record in the Assignment Search Room of the Patent and Trademark Office. If the assignment or name change document is not of record in the Assignment Search Room, then the written request must state that the document has been filed for recordation. The address of the assignee must be made of record in the application file and in the recorded document.

Dated: August 2, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-21210 Filed 9-8-89; 8:45 am]

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federal register

Monday
September 11, 1989

Part IV

Department of the Treasury

Customs Service

19 CFR Parts 162 and 171

Seizure of Property for Possession of Controlled Substances; Final Rule

Department of Justice

Office of the Attorney General

Drug Enforcement Administration

21 CFR Part 1316

Anti-Drug Abuse Act of 1988; Expedited Forfeiture Procedures for Certain Property; Final Rule

Department of Transportation

Coast Guard

33 CFR Part 1

Summons in Lieu of Seizure of Commercial Fishing Industry Vessels; Final Rule

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 162 and 171

[T.D. 89–86]

Seizure of Property for Possession of Controlled Substances

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide certain expedited procedures when property is seized due to violations involving the possession of personal use quantities of controlled substances. The procedures comply with the requirements of the Anti-Drug Abuse Act of 1988. The regulations set forth procedures allowing an owner or interested party whose property was seized due to a violation involving possession of a personal use quantity of a controlled substance to have the property returned promptly if he can establish his innocence. The regulations also require, when a violation involving the possession of personal use quantities of a controlled substance is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations, that a summons to appear be issued in lieu of seizure of the vessel. These regulations have been prepared in conjunction with the Attorney General and the Secretary of Transportation; regulations from these Departments on this subject area also appear in today's **Federal Register**.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Harriett D. Blank, Regulatory Procedures and Penalties Division, (202) 566–8317.

SUPPLEMENTARY INFORMATION:

Background

Section 6079 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, title VI) (the Act) requires the Attorney General and the Secretary of the Treasury to prescribe regulations to minimize the adverse impact caused by prolonged detention of property seized for civil forfeiture for violations involving the possession of personal use quantities of a controlled substance pursuant to section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)), section 511(a) of the Controlled Substance Act (21 U.S.C. 881(a)), or section 2 of the Act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. App. 782). Pursuant to section 6079, such seized property shall be promptly returned where an owner can establish: (1) A valid, good faith interest in the property; (2) that he did not know of or consent to the violation; and (3) that he had no knowledge or reason to believe that the property was being or would be used in violation of law, or that if he at any time had, or should have had knowledge that the property would be used in a violation, that he did what reasonably could be expected to prevent the violation.

Section 6079 also provides that the Attorney General, Secretary of the Treasury and the Secretary of Transportation shall provide joint regulations providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel for violations involving the possession of personal use quantities of a controlled substance. These regulations are to apply when the violation is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actually engaged in fishing operations.

Representatives of the Department of Justice on behalf of the Attorney General, the U.S. Coast Guard on behalf of the Secretary of Transportation and the U.S. Customs Service on behalf of the Secretary of the Treasury developed, in accordance with section 6079 of the Act, proposed regulations which were published in the **Federal Register** (54 FR 14242) on April 10, 1989.

Eleven comments were received by Customs in response to its Notice of Proposed Rulemaking. Customs exchanged the comments it received with the Coast Guard and the Department of Justice. A discussion of the comments and our responses follows:

Discussion of Comments

Comment: Proposed § 171.53 provided that Customs will attempt to make a final administrative determination regarding the disposition of property seized for particular statutory violations involving the possession of personal use quantities of a controlled substance within 21 days of the seizure. If such a determination is not made within 21 days, Customs shall determine, within 20 days after receiving a timely submitted petition for expedited procedures, whether a petitioner established his right to have the property returned or whether Customs should proceed with the administrative forfeiture action. Several commenters stated that this proposed procedure is contrary to the purpose of section 6079, which is to require Customs to make a final determination in 21 days or release the property. The commenters stated that § 171.53 actually provides Customs with 40 days during which to make a final determination.

Response: We do not agree. Customs is unable to make a final determination until it receives a petition for expedited procedures establishing the elements required by the Act. The regulations provide that Customs will attempt to make a final determination within 21 days, but this is entirely dependent upon the receipt of petitions. Because the names and addresses of interested parties who should be notified of a seizure are not always known to Customs immediately, and because interested parties who are not in possession of their conveyances at the time of seizure do not always petition promptly, there are frequent delays in the administrative process which are entirely outside of Customs control. If Customs were required to make a final determination 21 days after seizure, it would be forced to deny relief when petitions are not received shortly after seizure. Parties submitting petitions which may otherwise have been granted would be forced to submit supplemental petitions or to unnecessarily file claim and cost bonds requesting judicial determinations. The procedure proposed by Customs is more flexible giving the petitioner a reasonable period of time in which to submit his petition. Further, if the petitioner does submit his petition on the same day of the seizure, Customs will make a final determination within 20 days.

Comment: A commenter stated that "personal use quantity" should be defined as that quantity which can be easily concealed upon the body or personal effects of an individual rather than a quantity that is based on weight.

Response: We do not agree. It is possible to conceal on a person or in personal effects amounts of controlled substances which are clearly for non-personal use. We believe that the use of weight as a criterion while, at the same time, allowing certain other variables to be taken into consideration is a preferable way to determine whether an amount of controlled substance possessed by an individual is a personal use quantity.

Comment: Some commenters complained that the proposed procedures are harsh in that a seizure may be imposed upon an innocent owner. They also took issue with the proposed regulations assuming guilt and requiring an owner to prove his innocence before a conveyance is returned.

Response: When a conveyance is seized because of a violation involving

the possession of a personal use quantity of a controlled substance, long-standing statutory authority specifies that the burden of proof is upon the claimant to prove his innocence. Section 1615 of title 19, United States Code (19 U.S.C. 1615), provides this unique allocation of the burden of proof in all forfeiture actions for drug-related offenses as it considers the property the "guilty" party. The purpose of the proposed procedures is to protect the interests of innocent owners by allowing them to prove their innocence as expeditiously as possible.

Comment: One commenter stated that the Anti-Drug Abuse Act required new alternative procedures to expedite release of seized property and the substitute res procedure set forth in proposed § 171.54 should not be considered a new procedure as it is already available. Further, the commenter indicated that proposed § 171.54 was a little unclear and specifically questioned under what circumstances could an offer to post a substitute res not be accepted.

Response: The substitute res procedure contained in proposed § 171.54 is distinct and separate from the expedited procedures. The alternative expedited procedures required by the statute were set forth in paragraphs (a) and (b) of proposed § 171.53. Release, pending a final determination, upon the deposit of the domestic value of seized merchandise, is well-established Customs procedure and is effected pursuant to 19 U.S.C. 1614. The substitute res is not mandatory. We included the substitute res procedures in these regulations for the convenience of innocent owners who may wish to consider all the ways they may obtain release of their property expeditiously. We believe, however, that some clarification is needed regarding the substitute res provision. The substitute res is not a bond; it is the actual payment of the appraised value of the property and it may be posted at any time up until a conveyance has been administratively forfeited. We stated in the proposal that the payment may be in the form of cash, irrevocable letter of credit, or a traveler's check or money order made payable to U.S. Customs. We now believe that an additional category of payment, certified funds such as a certified check, should be added. Finally, we are changing the language in § 171.54 to more clearly reflect that an offer to post a substitute res may not be accepted by Customs when the seized conveyance that is in Customs custody is evidence of violation of law or has other characteristics that particularly suit it for use in illegal activities.

Comment: A commenter suggested that, in the case of commercial vessels appraised at very high values, the substitution of substantial bonds, rather than the equivalent of the domestic value of the vessel, be permitted to obtain release of the vessel prior to a final determination.

Response: The Act does not require such a provision. However, Customs may choose, as it has in some past cases, to release such large vessels, pending a final determination, upon the execution of a constructive seizure agreement which requires no deposit, or upon other terms which protect the government's interest.

Comment: One commenter suggested that a demonstration of company compliance with Federal mandatory drug testing regulations be specified to constitute prima facie evidence that a company established the element set forth in proposed § 171.52(c)(3)—that it did not know or consent to the illegal use of the property or, in the event that it knew or should have known of the illegal use, it did what reasonably could be expected to prevent the violation.

Response: We do not agree. However, compliance with federal mandatory drug-testing regulations may be considered in determining whether § 171.52(c)(3) has been satisfied.

Comment: Some commenters were concerned that Customs will consider arrest and/or conviction records of persons in possession of controlled substances as evidence of possession for other than personal use. They stated that innocent owners may not know of the criminal records of all lessees, employees, and acquaintances who may be on board their conveyance.

Response: A determination of whether a controlled substance is possessed solely for purposes of personal use is a determination of subjective intent based upon the totality of the circumstances. Customs will take many factors into account, including the quantity of controlled substances possessed, in determining whether the possessor of the controlled substance intended to distribute. This operates both to the advantage of interested parties and the government. It must be stressed that a person's prior arrest or conviction record for drug offenses will not necessarily be determinative of whether the drugs were possessed for personal use; it is merely one factor Customs will consider. It should also be noted that one may still be found to be an innocent owner even though persons on the conveyance had drug-related criminal records.

Comment: A commenter questioned why hearsay (proposed § 171.52(b)(6)(ii)(C) and (F)) should be permitted to be introduced as a means of denying the right to an expedited proceeding.

Response: Hearsay is admissible in administrative proceedings. As noted earlier, the issue of whether a controlled substance is possessed solely for purposes of personal use involves a determination of subjective intent. Hearsay may be considered in determining that intent. Further, as stated earlier, many factors may be considered in determining whether the possessor of a controlled substance intended to use the controlled substance for personal use. The types of statements discussed in § 171.52(b)(6)(ii)(C) and (F) are just two of the factors that may be considered.

Comment: A commenter stated that proposed § 171.51(b)(5), by stating that holding primary and direct title to property may not constitute a sufficient beneficial interest in the property to support a petition, may be disqualifying some innocent lienholders.

Response: We agree. Accordingly, we are deleting the last sentence of § 171.51(b)(5).

Comment: A commenter stated that the definition of "normal and customary manner" in proposed § 171.51(b)(4) is too restrictive.

Response: We disagree. We believe that the reasonable and prudent standard combined with consideration of established norms, standards and customs is a broad definition permitting Customs to consider a large number of factors. What is "normal and customary" will vary with the circumstances of individual cases, and there may be cases in which mere compliance with an industry "norm" or customary industry practice, for example, would not be viewed by an objective person as reasonable, normal or customary under the circumstances.

Comment: A commenter suggested that the term "sweepings" as used in proposed § 171.51(b)(6)(ii) should be clarified so as to exclude substances other than controlled substances and to reflect a collective amount of sweepings.

Response: The term "sweepings" as used in both the Act and the proposed regulations has a clear meaning which does not include substances other than controlled substances. Further, the term "sweepings" clearly relates to small quantities which are actually evidence of larger quantities having been carried on board.

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Comment: Some commenters wished to see the applicability of the provisions for issuance of a summons to appear expanded to different kinds of vessels other than those included within the definition of commercial fishing industry vessels set forth in proposed § 171.51(b)(2). One commenter stated that the term "commercial fishing industry vessel" meant to embrace private-for-hire and charter sport fishing vessels and headboats.

Response: Section 6079 of the Act specifies that the summons to appear in lieu of physical seizure is applicable to "a commercial fishing industry vessel as defined in § 2101(11a), (11b), and (11c) of title 46, United States Code." The definition set forth in proposed § 171.51(b)(2) is totally consistent with the definition in section 2101(11a), (11b) and (11c) of title 46, United States Code. The definition does not include sport-fishing vessels, headboats, or vessels in the barge and towing industry. Customs is not statutorily required to provide the summons to appear in lieu of seizure procedure to other vessels. However, Customs is not prohibited by the Act from expanding the procedures to other kinds of vessels. Any policy decisions to expand the summons to appear procedure to other vessels will be based on Customs experience under these regulations.

Comment: One commenter asked that the regulations include a definition of what constitutes "proceeding to or from a fishing area or intermediate port of call." It was also suggested that the definition include times when a vessel has been outfitted for a voyage whether or not it is still in port.

Response: The language at issue has been taken directly from the statute and is unambiguous on its face. There is no reason to give the terms "proceeding to or from" other than their literal meaning. The literal meaning cannot be said to include times when the vessel is in port.

Comment: One commenter suggested that the regulations clarify the provision in the summons that requires a commercial fishing industry vessel to report to the port designated in the summons to take into account unique geographic factors confronted in Alaska.

Response: We do not agree that such clarification belongs in the regulations. Local ports have been instructed to workout appropriate operational details in unique and/or unusual circumstances.

Comment: A commenter stated that the regulations should not specify, as they did in § 171.52(e)(3), that a statement of the facts and circumstances, supported by satisfactory evidence, should be included in a petition because § 171.52(c)(1)–(3) specifies the statutory elements of proof. The commenter stated that § 171.52(e)(3) requires more than section 6079 of the Act.

Response: We do not agree. The section, as written, makes it clear that a petitioning party may not obtain return of the seized conveyance by merely citing § 171.52(c)(1)–(3) verbatim. Evidence is required to support the assertions.

Comment: A commenter suggested that the regulations address the treatment of cargo carried on board a commercial vessel that is seized.

Response: We disagree. Cargo is not part of a vessel. It is, therefore, not subject to forfeiture and may be returned to its owner. Customs already has procedures for the disposition of cargo on seized vessels.

Other Changes

Based on a change being made to the Department of Justice regulations on this subject because of a comment, Customs has decided to modify § 171.52(c) to reflect that petitioners also may establish in their petition any statutory rights or defenses beyond those encompassed by the three elements specified in section 6079(b)(2) of the Act.

Conclusion

After careful consideration of all the comments received and further review of the matter, it has been determined that the amendments, with the modifications discussed above, should be adopted.

Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), are not applicable to these amendments.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service; however, personnel from other offices participated in its development.

List of Subjects in 19 CFR Parts 162 and 171

Administrative practice and procedures, Law enforcement, Penalties, Seizures and forfeiture.

Amendments to the Regulations

Parts 162 and 171, Customs Regulations (19 CFR parts 162 and 171), are amended as set forth below:

PART 162—RECORDKEEPING, INSPECTION, SEARCH AND SEIZURE

1. The general authority citation of part 162, Customs Regulations, and the specific authority citation for § 162.22, Customs Regulations are revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

Section 162.22 also issued under 18 U.S.C. 546; 19 U.S.C. 1459, 1460, 1594, 1595a, 1701, 1703–1708.

* * * * *

2. Section 162.22(b) is revised to read as follows:

§ 162.22 Seizure of conveyances.

* * * * *

(b) *Facilitating importation contrary to law.* Except as provided in § 171.52(b), every vessel, vehicle, animal, aircraft, or other thing, which is being or has been used in, or to aid or facilitate, the importation, bringing in, unlading, landing, removal, concealing, harboring or subsequent transportation of any article which is being, or has been introduced or attempted to be introduced into the United States contrary to law, shall be seized and held subject to forfeiture. Any person who directs, assists financially or otherwise, or is in any way concerned in any such unlawful activity shall be liable to a penalty equal to the value of the article or articles involved.

* * * * *

3. Section 162.31(a) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 162.31 Notice of fine, penalty, or forfeiture incurred.

(a) *Notice.* * * * For violations involving the possession of personal use quantities of a controlled substance, also see § 171.55.

* * * * *

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The contents of part 171 are amended by adding the contents of subpart F to read as follows:

Subpart F—Expedited Petitioning Procedures

Sec.
171.51 Application and definitions.
171.52 Petition for expedited procedures in an administrative forfeiture proceeding.

Sec.
171.53 Ruling on petition of expedited procedures.
171.54 Substitute res in an administrative forfeiture action.
171.55 Notice provisions.

2. The general authority citation for part 171 is revised and a specific citation added for subpart F to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624.

* * * * *

d. Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614, Pub. L. 100–690.

3. Section 171.12(b) is revised to read as follows:

§ 171.12 Filing of petition.

* * * * *

(b) *When filed.* If a petitioner seeks expedited relief under subpart F of this part, a petition must be filed within the time frame stated in § 171.52(d). Otherwise, unless additional time has been authorized as provided in § 171.15, petitions for relief shall be filed within 30 days from the date of the mailing of notice of fine, penalty, or forfeiture incurred.

* * * * *

4. Part 171 is amended by adding a new subpart F consisting of §§ 171.51 through 171.55, to read as follows:

Subpart F—Expedited Petitioning Procedures

§ 171.51 Application and definitions.

(a) *Application.* The following definitions, regulations, and criteria are designed to establish and implement procedures required by section 6079 of the Anti-Drug Abuse Act of 1988, Public Law 100–690, title VI (102 Stat. 4181). They are intended to supplement existing law and procedures relative to the forfeiture or property under the identified statutory authority. The provisions of these regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and responsibilities in pursuing their interests through such courses of action. These regulations are intended to reflect the intent of Congress to minimize the adverse impact occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving possession of personal use quantities of controlled substances. The definition of personal use quantities of controlled substance as contained herein is intended to distinguish between those quantities small in amount which are generally considered to be possessed for personal consumption and not for distribution, and those larger quantities generally considered to be subject to distribution.

(b) *Definitions.* As used in this subpart, the following terms shall have the meanings specified:

(1) *Appraised value.* "Appraised value" has the meaning given in § 162.43(a) of this chapter.

(2) *Commercial fishing industry vessel.* "Commercial fishing industry vessel" means a vessel that:

(i) Commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(ii) Commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking icing, freezing, or brine chilling; or

(iii) Commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or fish processing facility.

(3) *Controlled substance.* "Controlled substance" has the meaning given in 21 U.S.C. 802.

(4) *Normal and customary manner.* "Normal and customary manner" means that inquiry suggested by particular facts and circumstances which would customarily be undertaken by a reasonably prudent individual in a like or similar situation. Actual knowledge of such facts and circumstances is unnecessary, and implied, imputed, or constructive knowledge is sufficient. An established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether a petitioner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property.

(5) *Owner or interested party.* "Owner or interested party" means one having a legal and possessory interest in the property seized for foreiture or one who was in legal possession of the property at the time of seizure and is entitled to legal possession at the time of granting the petition of expedited procedure. This includes a lienholder, to the extent of his interest in the property, whose claim is in writing (except for a maritime lien which need not be in writing), unless the collateral is in the possession of the secured party. The agreement securing such a lien must create or provide for a security interest in the collateral, describe the collateral and be signed by the debtor.

(6) *Personal use quantities.* "Personal use quantities" means possession of controlled substances in circumstances where there is no evidence of intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing or exporting of any controlled substance. A quantity of a controlled substance is presumed to be for personal use if the amounts possessed do not exceed the quantities set forth in paragraph (b)(6)(i) of this section if there is no evidence of illicit drug trafficking or distribution such as, but not limited to the factors set forth in paragraph (b)(6)(ii) of this section. The possession of a narcotic, a depressant, a stimulant, a hallucinogin or a cannabis-controlled substance will be considered in excess of personal use quantities if the dosage unit amount possessed provides the same or greater equivalent efficacy as described in paragraph (b)(6)(i) of this section.

(i) *Quantities presumed to be for personal use unless evidence of illicit drug trafficking of distribution exists.* (A) One gram of a mixture of substance containing a detectable amount of heroin;

(B) One gram of a mixture of substance containing a detectable amount of—

(*1*) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(*2*) Cocaine, its salts, optional and geometric isomers, and salts of isomers;

(*3*) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(*4*) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (b)(6)(i)(B) (*1*) through (*3*) of this section;

(C) ⅒th gram of a mixture of substances described in paragraph (b)(6)(i)(B) of this section which contains cocaine base;

(D) ⅒th gram of mixture of substance containing a detectable amount of phencyclidine (PCP);

(E) 500 micrograms of a mixture of substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) One ounce of a mixture of substance containing a detectable amount of marihuana; or

(G) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture of substances containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

(ii) *Evidence of possession for other than personal use.* Quantities shall not be considered to be for personal use if sweepings are present or there is other evidence of possession for other than personal use such as:

(A) Evidence such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug "cutting" agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(B) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(C) The arrest and/or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, State or local law that indicates an intent to distribute a controlled substance;

(D) The controlled substance is related to large amounts of cash or any amount of prerecorded government funds;

(E) The controlled substance is possessed under circumstances that indicate such a controlled substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery; or

(F) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute.

(7) *Property.* "Property" means property subject to forfeiture under 21 U.S.C. 881(a) (4), (6), and (7); 19 U.S.C. 1595a, and 49 U.S.C. App. 782.

(8) *Seizing agency.* "Seizing agency" means the Federal agency which has seized the property or adopted the seizure of another agency, and has the responsibility for administratively forfeiting the property.

(9) *Sworn to.* "Sworn to" refers to the oath as provided by 28 U.S.C. 1746 or as notarized in accordance with state law.

§ 171.52 Petition for expedited procedures in an administrative forfeiture proceeding.

(a) *Procedures for violations involving possession of controlled substance in personal use quantities.* The usual procedures for petitions for relief when property is seized are set forth in subpart B of this part. However, where property is seized for administrative forfeiture pursuant to 21 U.S.C. 881(a) (4), (6) or (7), 19 U.S.C. 1595a and/or 49 U.S.C. App. 782 due to violations involving controlled substances in personal use quantities, a petition may be filed pursuant to paragraphs (c) and (d) of this section to seek expedited procedures for release of the property. A petition filed pursuant to this subpart shall also serve as a petition for relief filed under subpart B of this part. The petition may be filed by an owner or interested party.

(b) *Commercial fishing industry vessels.* Where a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations is subject to seizure for administrative forfeiture for a violation of law involving controlled substances in personal use quantities, a summons to appear shall be issued in lieu of a physical seizure. The vessel shall report to the port designated in the summons no later than the date specified in the summons. When a commercial fishing industry vessel reports, the appropriate Customs officer shall, depending on the facts and circumstances, either issue another summons to appear at a time deemed appropriate, execute a constructive seizure agreement prusuant to 19 U.S.C. 1605, or take physical custody of the vessel. When a summons to appear has been issued, the seizing agency may be authorized to institute administrative forfeiture as if the vessel had been physically seized. When a summons to appear has been issued, the owner or interested party may file a petition for expedited procedures pursuant to subsection (a); the provisions of subsection (a) and other provisions in this subpart relating to a petition for expedited release shall apply as if the vessel had been physically seized.

(c) *Elements to be established in petition.* (1) The petition for expedited procedures shall establish that:

(i) The petitioner has a valid, good faith interest in the seized property as owner or otherwise;

(ii) The petitioner reasonably attempted to ascertain the use of the property in a normal and customary manner; and

(iii) The petitioner did not know or consent to the illegal use of the property or, in the event that the petitioner knew or should have known of the illegal use, the petitioner did what reasonably could be expected to prevent the violation.

(2) In addition, the petitioner may submit evidence to establish that he has statutory rights or defenses such that he would prevail in a judicial proceeding on the issue of forfeiture.

(d) *Manner of filing.* A petition for expedited procedures must be filed in a timely manner to be considered by Customs. To be filed in a timely manner, the petition must be received by Customs within 20 days from the date the notice of seizure was mailed, or in the case of a commercial fishing industry vessel for which a summons to appear is issued, 20 days from the original date when the vessel is required to report. The petition must be sworn to by the petitioner and signed by the petitioner or his attorney at law. If the petitioner is a corporation, the petition may be sworn to by an officer or responsible supervisory employee thereof and signed by that individual or an attorney at law representing the corporation. Both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED PROCEDURES." The petition shall be addressed to the U.S. Customs Service and filed in triplicate with the district director for the district in which the property was seized, or for commercial fishing industry vessels, with the district director having jurisdiction over the port to which the vessel was required to report.

(e) *Contents of petition.* The petition shall include the following:

(1) A complete description of the property, including identification numbers, if any, and the date and place of the violation and seizure;

(2) A description of the petitioner's interest in the property, supported by the documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(3) A statement of the facts and circumstances relied upon by the petitioner to justify expedited return of the seized property, supported by satisfactory evidence.

§ 171.53 Ruling on petition for expedited procedures.

(a) *Final administrative determination.* Upon receipt of a petition filed pursuant to § 171.52, Customs shall determine first whether a final administrative determination of the case can be made within 21 days of the seizure. If such a final administrative determination is made within 21 days, no further action need be taken under this subpart.

(b) *Determination within 20 days.* If no such final administrative determination is made within 21 days of the seizure, Customs shall within 20 days after the receipt of the petition make a determination as follows:

(1) If Customs determines that the factors listed in § 171.52(c) have been established, it shall terminate the administrative proceedings and release the property from seizure, or in the case of a commercial fishing industry vessel for which a summons has been issued, but not yet answered, dismiss the summons. The property shall not be returned if it is evidence of a violation of law.

(2) If Customs determines that the factors listed in § 171.52(c) have not been established, it shall proceed with the administrative forfeiture.

§ 171.54 Substitute res in an administrative forfeiture action.

(a) *Substitute res.* Where property is seized for administrative forfeiture for a violation involving controlled substances in personal use quantities, the owner or interested party may offer to post an amount equal to the appraised value of the property (the res) to obtain release of the property. The offer, which may be tended at any time subsequent to seizure and up until the completion of administrative forfeiture proceedings, must be in the form of cash, irrevocable letter of credit, certified funds such as a certified check, traveler's check(s), or money order made payable to U.S. Customs. Unless the property is evidence of a violation of law or has other characteristics that particularly suit it for use in illegal activities, it will be released to the owner or interested party subsequent to tender of the substitute res.

(b) *Forfeiture of res.* If a substitute res is posted and it is determined that the property should be administratively forfeited, the res will be forfeited in lieu of the property.

§ 171.55 Notice provisions.

(a) *Special notice provision.* At the time of seizure of property defined in § 171.51, written notice must be provided to the possessor of the property regarding applicable statutes and Federal regulations including the procedures established for the filing of a petition for expedited procedures as set forth in section 6079 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

(b) *Notice provision.* The notice as required by section 1607 of Title 19, United States Code and applicable regulations shall be made at the earliest practicable opportunity after determining ownership of, or interest in, the seized property and shall include a statement of the applicable law under which the property is seized and a statement of the circumstances of the seizure sufficiently precise to enable an owner or interested party to identify the date, place and use of acquisition which makes the property subject to forfeiture.

William von Raab,

Commissioner of Customs.

Approved: September 1, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89–21211 Filed 9–8–89; 8:45 am]

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DEPARTMENT OF JUSTICE

Office of the Attorney General

Drug Enforcement Administration

21 CFR Part 1316

[Order No. 1363–89]

Anti-Drug Abuse Act of 1988; Expedited Forfeiture Procedures for Certain Property

AGENCY: Office of the Attorney General, Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: Section 6079 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690) requires the Attorney General and the Secretary of the Treasury to prescribe regulations for expedited administrative procedures for seizures under section 511(a)(4), (6) and (7) of the Controlled Substances Act (21 U.S.C. 881(a)(4), (6) and (7)); section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)); and section 2 of the Act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. App. 782) for violations involving the possession of personal use quantities of a controlled substance. Section 6079 further requires that the Attorney General, the Secretary of the Treasury, and the Secretary of Transportation prescribe joint regulations providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel as defined in section 2101(11a), (11b), and (11c) of title 46, United States Code, for violations involving the possession of personal use quantities of a controlled substance. These regulations would apply when a violation is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations.

The Department of Justice, on behalf of the Attorney General, has consulted with the U.S. Customs Service, acting on behalf of the Secretary of the Treasury, and the U.S. Coast Guard, acting on behalf of the Secretary of Transportation, in formulating consistent and compatible regulations to carry out section 6079.

Section 6080 of the Anti-Drug Abuse Act of 1988 requires the Attorney General to prescribe regulations providing for: (1) The expedited release, in certain cases, of conveyances seized for drug-related offenses during the pendency of civil judicial forfeiture proceedings against the conveyance; (2) the expedited filing of complaints against conveyances seized for drug-related offenses; and (3) the release, except in certain specified circumstances, of any such conveyance to any owner who provides security in the form of a bond in an amount equal to the value of the conveyance.

The Department of Justice, on behalf of the Attorney General and in consultation with the United States Customs Service and United States Coast Guard, published a Notice of Proposed Rulemaking in the **Federal Register** on April 10, 1989. (54 FR 14246). On that same date, the United States Customs Service and the United States Coast Guard published separate Notices of Proposed Rulemaking in the **Federal Register** to carry out their respective responsibilities under section 6079. (54 FR 14242 and 54 FR 14250).

Various comments have been received in response to these Notices of Proposed Rulemaking. The Department of Justice has reviewed the comments received by all of the agencies and is today responding to those comments and promulgating its Final Rule. The United States Customs Service and the United States Coast Guard are also responding to comments and promulgating Final Rules which are being published separately in today's **Federal Register**.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Harry S. Harbin, Associate Director, Asset Forfeiture Office, Criminal Division, (202) 786–4950.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in drafting this Final Rule is Harry S. Harbin, Associate Director, Asset Forfeiture Office, Criminal Division.

Discussion of Comments

Seven comments were received in response to the Notices of Proposed Rulemaking published by the Department of Justice, the United States Customs Service and the United States Coast Guard. Several of the comments were duplicates that were sent either to two or to all three agencies. Copies of all of the comments were exchanged by the three agencies.

Applicable Time Periods

Several comments complained that § 1316.93 of the Proposed Regulation allows the Department of Justice more time to make a decision on a petition filed in an administrative forfeiture action than section 6079 of the Anti-Drug Abuse Act of 1988 (ADAA) provides for. We disagree.

Section 6079 of the ADAA specifies that the regulations shall "provide for a final administrative determination of the case within 21 days of seizure, or provide a procedure by which the defendant can obtain release of the property pending a final determination of the case". It is virtually impossible in most cases for the Department of Justice to make a "final administrative determination" of a forfeiture case within 21 days of seizure. Title 19, United States Code, section 1607 requires the publication of notice of seizure and intention to forfeit for at least three successive weeks prior to issuance of a declaration of administrative forfeiture. Thus, in order to make a "final administrative determination of the case" within 21 days of seizure, publication of notice would have to commence on the day of seizure—a demand which is virtually impossible to meet given the realities of the newspaper publishing industry.

Moreover, notice by publication is the most minimal form of notice that will satisfy the requirements of due process. The Department of Justice makes every reasonable effort to identify the record owners of all property seized for forfeiture and to provide these owners with actual notice of seizure and intention to forfeit prior to issuance of a declaration of administrative forfeiture. In some cases (particularly those involving absentee owners), it is simply impossible to identify and provide actual notice to all record owners within 21 days of seizure. These owners would be foreclosed from filing petitions or challenging the administrative forfeiture if they did not receive notice via publication and failed to file their petitions prior to issuance of the determination of administrative forfeiture 21 days after seizure. The only recourse for such owners would be to file a petition for remission or mitigation pursuant to title 19, United States Code, section 161. We do not believe that Congress intended this result.

Even if the words were more loosely interpreted to mean that the seizing agency must rule on a petition for release within 21 days of seizure, the result would be untenable. First, as just explained, many owners would not receive notice in time to file their petitions within 21 days of seizure. These owners would be foreclosed from the expedited release procedures under section 6079 of the ADAA by virtue of the strict 21-day limit established in the statute. Second, this interpretation would leave the system open to abuse by non-innocent owners who could file their petitions on the 21st day after seizure and leave the government no time to investigate or determine the accuracy of their representations. Again, we do not believe that Congress intended either of these results.

It should be noted that the regulations nonetheless provide for a "final administrative determination of the case" within 21 days of seizure to allow for the rare case in which such determinations are possible without offending due process or opening the system to abuse. *See* § 1316.93(a). To avoid the foregoing problems, however, the Department of Justice also implemented the second alternative under section 6079(b)(2) of the ADAA by devising a "procedure by which a claimant can obtain release of the property", in an expedited manner, "pending a final determination of the case." This procedure allows an owner to file a petition for expedited release of the property at any time from the date of seizure through the twentieth day following first publication of the notice of seizure. *See* § 1316.92(d). This is more time than would be possible if the government were required to make a final administrative determination of the case within 21 days of seizure.

More importantly, the regulations require the seizing agency to make a decision on the petition within 20 days of the filing of the petition, regardless of when the petition is filed. *See* § 1316.93(b). Thus, an owner may file a petition on the day of seizure, even if notice of seizure has not been published, and the seizing agency must make a decision within 20 days. On the other hand, an owner may wait until the twentieth day following first publication of the notice of seizure to file the petition and the seizing agency must still make its decision within 20 days. It is the owner, not the government, who controls the timing of release under this procedure and, in no case, is the seizing agency allowed more than 20 days after filing to make its decision.

The procedure adopted by the Department of Justice provides greater safeguards to owners while, at the same time, limiting the decision-making period to twenty-days following filing of the petition. We feel that this procedure "minimize[s] the adverse impact caused by prolonged detention", while limiting the potential for abuse of the system by non-innocent owners.

It should be noted that these procedures differ somewhat from the procedures in the Final Rule being implemented by the United States Customs Service. Under the Final Rule of the Customs Service, a petition must be filed within 20 days from the date the notice of seizure was mailed, or in the case of a commercial fishing industry vessel for which a summons to appear is issued, 20 days from the original date when the vessel is required to report. Under the Justice Department regulations, the petition must be filed within 20 days from the date of the first publication of the notice of seizure. This difference reflects the differing administrative practices of the Customs Service and the seizing agencies of the Department of Justice.

Burden of Proof/"Presumption of Guilt"

Several comments complained that the regulations violated due process by imposing the burden of proof on the petitioning owner, instead of the seizing agency, with respect to the factors specified in §§ 1316.92(c) and 1316.95(b). Another comment objected to the requirement in § 1316.92(e)(3) that petitions contain a statement of facts and circumstances supporting the petition instead of a mere recitation of the elements specified in section 6079(b) of the ADAA. These comments simply misconceive the unique allocation of burden of proof in civil forfeiture actions. Title 19, United States Code, section 1615—which governs all forfeiture actions for drug-related offenses—specifies that the burden of proof in such actions shall lie upon the claimant. This is as it should be since the only issue of guilt in such *in rem* cases is the "guilt" of the property, which the government must establish by probable cause. *See* 19 U.S.C. 1615. The "innocent owner" defense is an affirmative statutory defense, under certain provisions of the drug statutes, which the owner must establish by a preponderance of the evidence.

It should be noted that several provisions of section 6079(b) of the ADAA consistently reflect this historical allocation of the burden of proof. Thus, subsection 6072(b)(2)(B) expressly states that the owner must establish a valid, good faith interest in the property as owner or otherwise. Similarly, subsection 6079(b)(2)(C) states that the owner must establish the factors identified therein. More importantly, northing on the face of either section 6079 or 6080 even remotely suggests a congressional intent to reverse or modify the traditional allocation of burden of proof in civil forfeiture cases for drug-related offenses.

Summons in Lieu of Seizure

Section 1316.92(b) implements section 6079(d) of the ADAA which specifically provides for the promulgation of joint regulations "providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel as defined in section 2101 (11a), (11b) and (11c) of title 46, United States Code, for violations involving personal use quantities of a controlled substance." Section 1316.91(b) defines the term "commercial fishing industry vessel" consistent with its definition in section 2101 (11a), (11b) and (11c) of title 46, United States Code.

Several comments urged that this definition be expanded to include vessels that are not "commercial fishing industry vessels" as defined in the statute. We disagree. Section 6079(d) clearly specifies the scope of applicability for issuance of a summons in lieu of seizure: To "a commercial fishing industry vessel as defined in section 2101 (11a), (11b) and (11c) of title 46, United States Code". There is no ambiguity in the terms of the statute and the statute does not extend its provisions to any other kinds of vessels. Moreover, section 6079(d) specifically provides that the *in rem* jurisdiction of the district court "shall not be affected by the use of a summons under this section". It does not appear from the face of the statute that this jurisdictional safeguard would apply in cases involving any other kinds of vessels. Thus, we have decided not to amend the regulations in question.

One comment suggested including a definition of what constitutes "proceeding to or from a fishing area or intermediate port of call". It was also suggested that the definition include the time when a vessel has been outfitted for a voyage whether or not it is still in port. We disagree. The language at issue is taken directly from the statute and is unambiguous on its face. There is no reason to give the term "proceeding to or from" any meaning other than its literal meaning. That literal meaning cannot be said to include the time when the vessel is in port.

Normal and Customary Manner

Several comments objected to that part of the definition of "Normal and Customary Manner" in § 1316.91(h) which states that "[a]n established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether an owner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property" as too restrictive. We disagree.

The thrust of the statute is to grant certain rights to owners who acted reasonably in ascertaining how their property would be used by another in possession. The statutory provision in question merely provides that the property shall not be returned to the owner in any case in which the owner did not act in a normal or customary manner to ascertain how the property will be used. What is "normal and customary" will vary with the circumstances of the individual case, and there may be cases in which mere compliance with an industry "norm" or customary industry practice, for example, would not be viewed by an objective person as resonable, normal or customary under the circumstances. Thus, we have decided to retain this provision which states that compliance with an established norm, custom or standard will be deemed persuasive, but not controlling, in determining whether a person acted in a normal or customary manner.

Substitute Res Bond

Section 6080 of the ADAA created a new Federal statute codified at 21 U.S.C. 881–1. Subsection (d) of this statute provides that, except in certain specified instances, any owner of a conveyance seized for a drug-related offense may obtain release of the conveyance pending judicial forfeiture by providing security in the form of a bond to the Attorney General in an amount equal to the value of the conveyance. This requirement is reflected in § 1316.98. A decision was made to extend this alternative release procedure to owners facing administrative forfeiture actions in the circumstances specified in section 6079 of the ADAA as well. The availability of this alternative release procedure for administrative forfeitures is reflected in § 1316.94. This provision merely formalizes an existing practice among the seizing agencies.

Several comments were recieved which appear to interpret § 1316.94 not as an alternative to the petition procedures specified in §§ 1316.92 and 1316.93, but as a precondition to use of those procedures. This is simply not the case. An owner of property described in title 21, United States Code, section 881(a) (4), (6) and (7), which has been seized for a drug-related offense involving personal use quantities of a controlled substance, may seek expedited release of the property through two alternative procedures. First, the owner may file a timely petition under §§ 1316.92 and 1316.93 and seek return of the property based upon the owner's innocence. This procedure does not require the posting of a bond of any kind. Second, the owner may, at any time prior to issuance of the declaration of administrative forfeiture, post a substitute res bond in an amount equal to the value of the property and obtain its release pursuant to § 1316.94. This latter alternative permits an owner to obtain release of the property immediately after seizure without filing a petition or making any showing of innocence. It is intended as an alternative to the petition procedures in §§ 1316.92 and 1316.93, not as a prerequisite to those procedures.

One comment advocated that the regulations be amended to provide for return of the substitute res bond if the seizing agency fails to decide a petition within twenty-one days. The substitute res bond is intended to be a true substitute for the property seized. Thus, when the owner of property posts a substitute res bond to obtain release of the property immediately after seizure and also files a timely petition under the procedures set forth in § 1316.92, a ruling will be made on the petition within twenty days and the substitute res bond shall be returned to the owner or retained for administrative forfeiture in accordance with § 1316.93. When the owner posts a substitute res bond to obtain release of the property immediately after seizure and also files a claim and cost bond and petition pursuant to § 1316.95, the substitute res bond shall be returned to the owner if the United States Attorney does not rule on the petition within twenty days in accordance with § 1316.96(b).

Sections 1316.94(a) and 1316.98(a), as originally proposed, specified that the substitute res bond must be in the form of a traveler's check or money order. Several comments advocated that other forms of payment be authorized. After reviewing these comments, we have decided to amend §§ 1316.94(a) and 1316.98(a) to allow for posting of the bond in the form of a cashier's check or an irrevocable letter of credit. In order to provide security to the seizing agency and to prevent abuse of the substitute res bond procedure, a sentence has been added to §§ 1316.94(a) and 1316.98(a) specifying that a bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which furnished the check. Other suggested means for posting the substitute res bond were rejected because of security concerns.

"Personal Use Quantities"

Several comments were directed at the proposed regulatory definition of the term "personal use quantities". Before addressing these comments, we wish to note that section 6079(e) of the ADAA specifically provides that "personal use quantities of a controlled substance shall not include sweepings or other evidence of non-personal use amounts".

The regulatory definition of the term "personal use quantities" is set forth in § 1316.91(j). This definition specifically provides that the term "personal use quantities" shall not include "sweepings" and it sets forth a list of "other evidence" which may be considered in determining whether or not a controlled substance is possessed for personal use only. *See* § 1316.91(j)(1). It also formulates a presumption that the possession of controlled substances is for personal use only when the amounts possessed do not exceed a certain specified quantity and there are no other indicia of illicit drug trafficking or distribution. *See* § 1316.91(j)(2).

Several comments complained of the inclusion of "[t]he arrest and/or conviction record of the person or persons in * * * possession of the controlled substance for offenses * * * that [indicate] an intent to distribute a controlled substance" as "other evidence" which may be considered in determining whether a controlled substance is possessed solely for purposes of personal use in any given case. *See* § 1316.91(j)(1)(iii). After considering these comments, we have decided to retain this provision in the Final Rule. First, it must be emphasized that a determination of whether a controlled substance is possessed solely for purposes of personal use is a determination of subjective intent based upon the totality of the circumstances. Among the more reliable indicia of a person's intent is his or her past record with respect to the illegal distribution of controlled substances. Second, a person's prior arrest or conviction record for drug offenses is not necessarily determinative of whether a controlled substance is possessed solely for purposes of personal use. It is but one of several factors which may be considered in determining a person's subjective intent.

Several comments noted that it is difficult for the owner of a conveyance to know the arrest and/or conviction records of all employees, lessees, acquaintances or other persons who may be on or in possession of a conveyance at any given time. This observation confuses the issue of an owner's innocence with the issue of whether a controlled substance is possessed solely for purposes of personal use. The knowledge of the owner as to the arrest and/or conviction record of the person in possession of a controlled substance is simply irrelevant to an administrative determination of whether the controlled substance is possessed for personal use only. Moreover, a determination that a controlled substance was possessed solely for purposes of personal use does not foreclose the owner from seeking expedited release of the conveyance pursuant to the procedures specified in §§ 1316.95 and 1316.96 or through the substitute res bond procedures specified in §§ 1316.94 and 1316.98. Finally, the owner's lack of knowledge as to the arrest and/or conviction record of the person in possession of the controlled substance is not necessarily determinative of the owner's innocence under the criteria specified in § 1316.95(b) nor is it necessarily determinative of any rights or defenses that the owner may assert in a judicial forfeiture action.

Several comments objected to the fact that the criteria specified in § 1316.91(j)(1) allow for use of various forms of hearsay in determining whether, in a particular case, the controlled substance was possessed solely for purposes of personal use. These forms of hearsay include "[i]nformation from reliable sources indicating possession of a controlled substance with intent to distribute" and "statements attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute". However, section 6079 of the ADAA merely requires an administrative determination as to whether an owner is entitled to the expedited release procedures specified thereunder. Hearsay is freely admissible in administrative proceedings. *See Richardson* v. *Perales*, 402 U.S. 389, 407–08 (1971). As noted earlier, the issue of whether a controlled substance is possessed solely for purposes of personal use involves a determination of subjective intent. We believe that hearsay evidence may properly be considered in determining that intent. And it is worth reiterating that a determination that a controlled substance was not possessed solely for purposes of personal use—whether based upon information from reliable sources or upon hearsay statements attributable to the possessor—does not foreclose the owner from seeking expedited release of the property under either the procedures specified in §§ 1316.94 and 1316.95 or the substitute res bond procedures specified in §§ 1316.94 and 1316.98.

One comment suggested that the definition of "personal use quantities" be defined as quantities that can be easily concealed upon the body or personal effects of an individual. We disagree. Enormous quantities of controlled substances can easily be concealed upon the person, or in the personal effects, of an individual. In one very recent decision, two defendants were discovered with six and one-half pounds of cocaine concealed in tightly wrapped packages taped to the small of their backs; the bundles were inconspicuous and the defendants were stopped only because one of them engaged in suspicious behavior. *See United States* v. *Charleus*, 871 F.2d 265 (2d Cir. 1989). This is but one recent example; many cases of "personal concealment" involve far larger quantities of controlled substances. The quantities specified in § 1316.91(j)(2)(i)–(vii) are quantities which, in the experience of the Drug Enforcement Administration, are generally consistent with possession of a controlled substance for purposes of personal use.

Section 6079(e) of the ADAA specifically provides that the term "personal use quantities" shall not include "sweepings". One comment suggested that only when the "sweepings" exceed the "personal use" amounts specified in § 1316.91(j)(2)(i)–(vii) should the owner be barred from utilizing the expedited release procedures under section 6079. We disagree. It is not unusual for a conveyance, which has been used to transport significant quantities of a controlled substance, to contain only "sweepings" of the controlled substance after the illicit cargo has been unloaded or the controlled substances have been destroyed in an effort to avoid seizure or arrest. *See generally United States* v. *"Monkey"*, 725 F.2d 1007 (5th Cir. 1984) (ship involved in major marijuana smuggling operation contained only "sweepings" at time of seizure). We feel that the owners of such conveyances should not be eligible for the expedited release procedures under section 6079 even where the aggregate amount of the sweepings is less than the presumptive "personal use quantity" specified for the substance in § 1316.91(j)(2).

"Owner"

One comment criticized the definition of "owner" in § 1316.91(i) as one having a legal and possessory interest in the property seized for forfeiture on the ground that this definition would exclude many innocent lienholders from obtaining prompt release of seized property. We disagree. Lienholders with an immediate right to possession of the seized property would qualify as an "owner" under this definition. The definition necessarily excludes other lienholders in order to avoid problems in which multiple petitions are filed with respect to a single asset by persons

claiming a property interest in the asset. Section 1316.91(i) goes on to provide that "[e]ven though one may hold primary and direct title to the property seized, such person may not have sufficient actual beneficial interest in the property to support a petition as owner if the facts indicate that another person had dominion and control over the property" (emphasis supplied). The purpose of this limitation is not to exclude innocent lienholders with immediate possessory interests in the property seized; it is to exclude "straw owners" from obtaining expedited release of the property. The limitation is discretionary and will be applied on a case-by-case basis. It is not the intent of the Department of Justice to disqualify any bona fide lienholder with an immediate right to possession of the seized asset from filing a petition under these regulations.

Section 1316.92(c)(2)

Several comments noted that § 1316.92(c)(2) of the Proposed Rule appeared to require proof of a factor not provided for in the statutory language of section 6079(b)(2) of the ADAA: That the petitioner had statutory rights or defenses, that would show to a substantial probability that the owner would prevail on the issue of forfeiture. By adding this factor, the Department did not intend to add to the burden of persons filing petitions for expedited release under § 1316.92. Rather, this factor was inserted to provide certain petitioners with an additional basis for obtaining expedited release of their property.

In order to clarify this intent, the factor in question has been removed from the provisions of § 1316.92(c) and a new paragraph (d) has been added which allows petitioners the opportunity to establish statutory rights or defenses beyond those encompassed by the criteria specified in section 6079(b)(2) of the ADAA.

Section 1316.95(b)(3)

One comment complained that the requirement in § 1316.95(b)(3)—that an owner demonstrate that he/she "reasonably attempted to ascertain the use of the conveyance in a normal and customary manner"—constitutes an improper attempt to "lift" a requirement out of section 6079(b)(2) and include it as a requirement in petitions filed pursuant to section 6080 of the ADAA. We agree that the requirement in question constitutes a statutory element applicable to petitions filed pursuant to section 6079(b)(2) of the ADAA but we disagree that inclusion of this element as a requirement for petitions filed pursuant to section 6080 is in any way improper.

Section 6080 of the ADAA requires the Attorney General, *inter alia*, "to make a determination on a petition [for release of a conveyance seized for a drug-related offense] expeditiously, including a determination of any rights or defenses available to a petitioner." *See* 21 U.S.C. 881–1(a)(1). The statute is silent as to what must be included in a petition filed thereunder and does not confine the discretion of the Attorney General in any way. It merely specifies that "[t]he Attorney General shall prescribe regulations to carry out this section." *See* 21 U.S.C. 881–1(a)(4). Thus, the Attorney General has broad discretion to determine the requirements for petitions filed under the statute.

It is not unreasonable to include, as a requirement for petitions filed under section 6080, a provision that the owner establish that he/she "reasonably attempted to ascertain the use of the conveyance in a normal and customary manner." It seems logical to impose, as to owners of conveyances seized for *any* drug-related offenses, the same threshold requirement which must be met by owners seeking release of property seized for drug-related offenses involving only personal use quantities of a controlled substance.

Moreover, a demonstration that the owner reasonably attempted to ascertain the use of the conveyance in a normal and customary manner is directly relevant to the "determination of [the] rights or defenses available to the [owner]" as required by section 6080. One's "conscious indifference" to the use of a conveyance is sufficient, without more, to negate any common law "innocent owner" defense. *See, e.g., United States* v. *1966 Beechcraft Aircraft Model King Air*, 777 F.2d 947, 952 (4th Cir. 1985). Similarly, one who avoids knowledge concerning the illegal use of a conveyance by "sticking his head in the sand" cannot prevail on a statutory innocent owner defense. *See United States* v. *1980 Red Ferrari*, 827 F.2d 477, 480 (9th Cir. 1987) (rejecting "innocent owner" defense under 21 U.S.C. 881(a)(6)). The requirement in question is certainly relevant to the issue, under 21 U.S.C. 881(a)(4)(C), of whether the owner acted with knowledge or willful blindness as to the illegal use of the conveyance and it clearly may be relevant in determining whether a common carrier either consented or was privy to the illegal use of a conveyance. Because the requirement specified in § 1316.95(b)(3) is not barred by the language of section 6080 and because it is clearly relevant to the determination of rights or defenses which may be available to the petitioner, we feel that its inclusion in the regulations is both rational and proper.

Section 1316.96(d)

One comment noted that § 1316.96(d), as set forth in the Proposed Rule, specified that "[i]f, within 20 days, the United States Attorney * * * advises the petitioner that there is not enough available information to make a decision on the petition, the Government shall retain possession of the conveyance until the owner provides a substitute res bond * * * or until the forfeiture is finalized". This comment correctly noted that this provision directly contradicts that part of section 6080 of the ADAA which provides that "[i]f the Attorney General does not grant or deny a petition * * * within 20 days after the date on which the petition is filed, the conveyance shall be returned to the owner pending further forfeiture proceedings". Section 1316.96(d) has been amended to conform with the statutory language.

Seizure of Cargo

One comment advocated that there be a specific provision in the Final Rule for release of any cargo carried on board a conveyance that is seized for forfeiture. The relevant statutes do not require inclusion of such a provision. The release of cargo from seized conveyances is currently handled by the seizing agencies on a case-by-case basis. This will continue to be the case after the Final Rule becomes effective.

Notice Provisions

Due to a typing error, § 1316.99 was misnumbered in the Proposed Rule as § 1316.19. This error has been corrected. The first sentence of § 1316.99(a) has also been amended to reflect the distinction between the expedited release procedures under section 6079 of the ADAA, which apply to property identified in § 1316.91 that is seized for violations involving personal use quantities of a controlled substance, and the procedures under section 6080 of the ADAA, which apply to conveyances seized for drug-related offenses. This amendment is consistent with the intent of Congress and states more precisely the categories of cases to which the "special notice provision" applies.

An erroneous reference was made to a "petition for substitute res bond" in this section as published in the Proposed Rule. There are no "petitions" for substitute res bonds. Rather, the owner of property seeking its expedited release pursuant to § 1316.94 or § 1316.98 need only establish his identity as owner of the property, post a bond satisfactory in form, and the property will be released to the owner as provided therein unless the property is evidence of violation of law or has design or other characteristics that particularly suit it for use in illegal activities.

Technical Amendments

A citation to section 1316.92(e) was inadvertently omitted from the definition of "Sworn to" in § 1316.91(n) of the Proposed Rule. The word "industry" was inadvertantly omitted from the phrase "commercial fishing industry vessel" in § 1316.93(b)(1) of the Proposed Rule. These omissions are corrected in the Final Rule. A reference to "property" was added to the phrase "property or conveyance" in § 1316.99(b) to more clearly specify the scope of the standard notice provisions.

Conclusion

After due consideration of the comments noted above, the Department of Justice has adopted the proposal as originally set forth, except for the amendments noted above.

Regulatory Flexibility Act/Executive Order 12281

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a substantial impact on small business entities. 5 U.S.C. 604(B). It is not a major rule within the meaning of Executive Order No. 12291 of February 17, 1981.

List of Subjects in 21 CFR Part 1316

Administrative practice and procedure, Drug traffic control, Seizures and forfeitures.

Amendment

By virtue of the authority vested in me by law, including 28 U.S.C. 509, 510 and sections 6079 and 6080 of the Anti-Drug Abuse Act of 1988, Public Law No. 100–690, 102 Stat. 4181, title 21, chapter II, of the Code of Federal Regulations is amended as follows:

PART 1316—[AMENDED]

1. The authority citation for part 1316 is revised to read as follows:

Authority: 21 U.S.C. 822, 871, 872, 880, 881, 881–1, 883, 958, 965; 19 U.S.C. 1606, 1607, 1608, 1610, 1613, 1618; 28 U.S.C. 509, 510; Pub. L. No. 100–690, sec. 6079, 6080.

2. A new subpart F is added to part 1316 to read as follows:

Subpart F—Expedited Forfeiture Proceedings for Certain Property

Sec.
1316.90 Purpose and scope.
1316.91 Definitions.
1316.92 Petition for expedited release in an administrative forfeiture action.
1316.93 Ruling on petition for expedited release in an administrative forfeiture action.
1316.94 Posting of substitute res in an administrative forfeiture action.
1316.95 Petition for expedited release of a conveyance in a judicial forfeiture action.
1316.96 Ruling on a petition for expedited release of a conveyance in a judicial forfeiture action.
1316.97 Initiating judicial forfeiture proceeding against a conveyance within 60 days of the filing of a claim and cost bond.
1316.98 Substitute res bond in a judicial forfeiture action against a conveyance.
1316.99 Notice provisions.

Subpart F—Expedited Forfeiture Proceedings for Certain Property

§ 1316.90 Purpose and scope.

(a) The following definitions, regulations, and criteria are designed to establish and implement procedures required by sections 6079 and 6080 of the Anti-Drug Abuse Act of 1988, Public Law No. 100–690 (102 Stat. 4181). They are intended to supplement existing law and procedures relative to the forfeiture of property under the identified statutory authority. The provisions of these regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and responsibilities in pursuing their interests through such courses of action. These regulations are intended to reflect the intent of Congress to minimize the adverse impact on those entitled to legal or equitable relief occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving personal use quantities of controlled substances, and conveyances seized for drug-related offenses. The definition of personal use quantities of a controlled substance as contained herein is intended to distinguish between those quantities small in amount which are generally considered to be possessed for personal consumption and not for further distribution, and those larger quantities generally considered to be subject to further distribution.

(b) In this regard, for violations involving the possession of personal use quantities of a controlled substance, section 6079(b)(2) requires either that administrative forfeiture be completed within 21 days of the seizure of the property, or alternatively, that procedures are established that provide a means by which an individual entitled to relief may initiate an expedited administrative review of the legal and factual basis of the seizure for forfeiture. Should an individual request relief pursuant to these regulations and be entitled to the return of the seized property, such property shall be returned immediately following that determination, and the administrative forfeiture process shall cease. Should the individual not be entitled to the return of the seized property, however, the administrative forfeiture of that property shall proceed. The owner may, in any event, obtain release of property pending the administrative forfeiture by submitting to the agency making the determination, property sufficient to preserve the government's vested interest for purposes of the administrative forfeiture.

(c) Section 6080 requires a similar expedited review by the Attorney General or his representative in those instances where a conveyance is being forfeited in a civil judicial proceeding following its seizure for a drug-related offense.

§ 1316.91 Definitions.

As used in this subpart, the following terms shall have the meanings specified:

(a) The term "Appraised Value" means the estimated domestic price at the time of seizure at which such or similar property is freely offered for sale.

(b) The term "Commercial Fishing Industry Vessel" means a vessel that:

(1) Commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(2) Commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling; or

(3) Commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or fish processing facility.

(c) The term "Controlled Substance" has the meaning given in section 802 of title 21, United States Code (U.S.C.).

(d) The term "Drug-Related Offense" means any proscribed offense which involves the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or

transfer any substance the possession of which is prohibited by Title 21, U.S.C.

(e) The term "Immediately" means within 20 days of the filing of a petition for expedited release by an owner.

(f) The term "Interested Party" means one who was in legal possession of the property at the time of seizure and is entitled to legal possession at the time of the granting of the petition for expedited release. This includes a lienholder (to the extent of his interest in the property) whose claim is in writing (except for a maritime lien which need not be in writing), unless the collateral is in the possession of the secured party. The agreement securing such lien must create or provide for a security interest in the collateral, describe the collateral, and be signed by the debtor.

(g) The term "Legal and Factual Basis of the Seizure" means a statement of the applicable law under which the property is seized, and a statement of the circumstances of the seizure sufficiently precise to enable an owner or other interested party to identify the date, place, and use or acquisition which makes the property subject to forfeiture.

(h) The term "Normal and Customary Manner" means that inquiry suggested by particular facts and circumstances which would customarily be undertaken by a reasonably prudent individual in a like or similar situation. Actual knowledge of such facts and circumstances is unnecessary, and implied, imputed, or constructive knowledge is sufficient. An established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether an owner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property. The failure to act in a normal and customary manner as defined herein will result in the denial of a petition for expedited release of the property and is intended to have the desirable effect of inducing owners of the property to exercise greater care in transferring possession of their property.

(i) The term "Owner" means one having a legal and possessory interest in the property seized for forfeiture. Even though one may hold primary and direct title to the property seized, such person may not have sufficient actual beneficial interest in the property to support a petition as owner if the facts indicate that another person had dominion and control over the property.

(j) The term "Personal Use Quantities" means possession of controlled substances in circumstances where there is no other evidence of an intent to distribute, of to facilitate the manufacturing, compounding, processing, delivering, importing or exporting of any controlled substance. Evidence of personal use quantities shall not include sweepings or other evidence of possession of quantities of a controlled substance for other than personal use.

(1) Such other evidence shall include:

(i) Evidence, such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug "cutting" agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(ii) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(iii) The arrest and/or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, State or local law that indicates an intent to distribute a controlled substance;

(iv) The controlled substance is related to large amounts of cash or any amount of prerecorded government funds;

(v) The controlled substance is possessed under circumstances that indicate such a controlled substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery; or

(vi) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute.

(2) Possession of a controlled substance shall be presumed to be for personal use when there are no indicia of illicit drug trafficking or distribution such as, but not limited to, the factors listed above and the amounts do not exceed the following quantities:

(i) One gram of a mixture of substance containing a detectable amount of heroin;

(ii) One gram of a mixture or substance containing a detectable amount of—

(A) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(B) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(C) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(D) Any compound, mixture or preparation which contains any quantity of any of the substances referred to in paragraphs (j)(2)(ii)(A) through (j)(2)(ii)(C) of this section;

(iii) 1/10th gram of a mixture or substance described in paragraph (j)(2)(ii) of this section which contains cocaine base;

(iv) 1/10th gram of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 500 micrograms of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) One ounce of a mixture of substance containing a detectable amount of marihuana;

(vii) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

(3) The possession of a narcotic, a depressant, a stimulant, a hallucinogen or cannabis-controlled substance will be considered in excess of personal use quantities if the dosage unit amount possessed provides the same or greater equivalent efficacy as described in paragraph (j)(2) of this section.

(k) The term "Property" means property subject to forfeiture under title 21, U.S.C., sections 881(a) (4), (6), and (7); title 19, U.S.C., section 1595a, and; title 49, U.S.C. App., section 782.

(l) The term "Seizing Agency" means the Federal agency which has seized the property or adopted the seizure of another agency, and has the responsibility for administratively forfeiting the property;

(m) The term "Statutory Rights or Defenses to the Forfeiture" means all legal and equitable rights and remedies available to a claimant of property seized for forfeiture.

(n) The term "Sworn to" as used in §§1316.92(e) and 1316.95(c) refers to the oath as provided by Title 28, U.S.C., section 1746.

§ 1316.92 Petition for expedited release in an administrative forfeiture action.

(a) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities the owner may petition the seizing agency for expedited release of the property.

(b) Where property described in paragraph (a) of this section is a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations, which would be subject to seizure for administrative forfeiture for a violation of law involving controlled substances in personal use quantities, a summons to appear shall be issued in lieu of a physical seizure. The vessel shall report to the port designated in the summons. The seizing agency shall be authorized to effect administrative forfeiture as if the vessel had been physically seized. Upon answering the summons to appear on or prior to the last reporting date specified in the summons, the owner of the vessel may file a petition for expedited release pursuant to paragraph (a) of this section and the provisions of paragraph (a) of this section and other provisions in this subpart pertaining to a petition for expedited release shall apply as if the vessel had been physically seized.

(c) The owner filing the petition for expedited release shall establish the following:

(1) The owner has a valid, good faith interest in the seized property as owner or otherwise;

(2) The owner reasonably attempted to ascertain the use of the property in a normal and customary manner; and

(3) The owner did not know or consent to the illegal use of the property, or in the event that the owner knew or should have known of the illegal use, the owner did what reasonably could be expected to prevent the violation.

(d) In addition to those factors listed in paragraph (c) of this section, if an owner can demonstrate that the owner has other statutory rights or defenses that would cause the owner to prevail on the issue of forfeiture, such factors shall also be considered in ruling on the petition for expedited release.

(e) A petition for expedited release must be filed in a timely manner to be considered by the seizing agency. In order to be filed in a timely manner, the petition must be received by the appropriate seizing agency within 20 days from the date of the first publication of the notice of seizure. The petition must be executed and sworn to by the owner and both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED RELEASE." Such petition shall be filed in triplicate with the Special Agent in Charge of the Drug Enforcement Administration (DEA) or Federal Bureau of Investigation (FBI) field office in the judicial district in which the property was seized, depending upon which agency seized the property. The petition shall be addressed to the Director of the FBI or to the Administrator of the DEA, depending upon which agency seized the property.

(f) The petition shall include the following:

(1) A complete description of the property, including identification numbers, if any, and the date and place of seizure;

(2) The petitioner's interest in the property, which shall be supported by title documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(3) A statement of the facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify expedited release of the seized property.

§ 1316.93 Ruling on petition for expedited release in an administrative forfeiture action.

(a) Upon receipt of a petition for expedited release filed pursuant to § 1316.92(a), the seizing agency shall determine first whether a final administrative determination of the case, without regard to the provisions of this subpart, can be made within 21 days of the seizure. If such a final administrative determination is made within 21 days, no further action need be taken under this subpart.

(b) If no such final administrative determination is made within 21 days of the seizure, the following procedure shall apply. The seizing agency shall, within 20 days after the receipt of the petition for expedited release, determine whether the petition filed by the owner has established the factors listed in § 1316.92(c) and:

(1) If the seizing agency determines that those factors have been established, it shall terminate the administrative proceedings and return the property to the owner (or in the case of a commercial fishing industry vessel for which a summons has been issued shall dismiss the summons), except where it is evidence of a violation of law; or

(2) If the seizing agency determines that those factors have not been established, the agency shall proceed with the administrative forfeiture.

§ 1316.94 Posting of substitute res in an administrative forfeiture action.

(a) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities, the owner may obtain release of the property by posting a substitute res with the seizing agency. The property will be released to the owner upon the payment of an amount equal to the appraised value of the property if it is not evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a traveler's check, a money order, a cashier's check or an irrevocable letter of credit made payable to the seizing agency. A bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which issued the check.

(b) If a substitute res is posted and the property is administratively forfeited, the seizing agency will forfeit the substitute res in lieu of the property.

§ 1316.95 Petition for expedited release of a conveyance in a judicial forfeiture action.

(a) Where a conveyance has been seized and is being forfeited in a judicial proceeding for a drug-related offense, the owner may petition the United States Attorney for an expedited release of the conveyance.

(b) The owner filing the petition for expedited release shall establish the following:

(1) The owner has a valid, good faith interest in the seized conveyance as owner or otherwise;

(2) The owner has statutory rights or defenses that would show to a substantial probability that the owner would prevail on the issue of forfeiture;

(3) The owner reasonably attempted to ascertain the use of the conveyance in a normal and customary manner; and

(4) The owner did not know or consent to the illegal use of the conveyance; or in the event that the owner knew or should have known of the illegal use, the owner did what reasonably could be expected to prevent the violation.

(c) A petition for expedited release must be filed in a timely manner in order to be considered by the United States Attorney. To be considered as filed in a timely manner, the petition must be received by the appropriate United States Attorney within 20 days from the date of the first publication of the notice of the action and arrest of the property, or within 30 days after filing of the claim, whichever occurs later. The petition must be executed and sworn to by the owner, and both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED RELEASE." Such petition shall be filed in triplicate and addressed to and filed with the United States Attorney prosecuting the conveyance for forfeiture with a copy to the seizing agency.

(d) The petition shall include the following:

(1) A complete description of the

conveyance, including the identification number, and the date and place of seizure;

(2) The petitioner's interest in the conveyance, which shall be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and,

(3) The facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify expedited release of the seized conveyance.

§ 1316.96 Ruling on a petition for expedited release of a conveyance in a judicial forfeiture action.

(a) Upon receipt of a petition for expedited release filed pursuant to § 1316.95, the United States Attorney shall rule on the petition within 20 days of receipt. A petition shall be deemed filed on the date it is received by the United States Attorney.

(b) If the United States Attorney does not rule on the petition for expedited release within 20 days after the date on which it is filed, the conveyance shall be returned to the owner or interested party pending further forfeiture proceedings, except where it is evidence of a violation of law. Release of conveyance under provisions of this paragraph shall not affect the forfeiture action with respect to that conveyance.

(c) Upon a favorable ruling on the petition for expedited release, the United States Attorney shall, where necessary, move to terminate the judicial proceedings against the conveyance and immediately direct the return of the conveyance except where it is evidence of a violation of law.

(d) If, within 20 days, the United States Attorney denies the petition for expedited release, the government shall retain possession of the conveyance until the owner provides a substitute res bond pursuant to § 1316.98 or the forfeiture is finalized.

§ 1316.97 Initiating judicial forfeiture proceeding against a conveyance within 60 days of the filing of a claim and cost bond.

(a) The United States Attorney shall file a complaint for forfeiture of the conveyance within 60 days of the filing of the claim and cost bond.

(b) Upon the failure of the United States Attorney to file a complaint for forfeiture of a conveyance within 60 days unless the court extends the 60-day period following a showing of good cause, or unless the owner and the United States Attorney agree to such an extension, the court shall order the return of the conveyance and the return of any bond.

§ 1316.98 Substitute res bond in a judicial forfeiture action against a conveyance.

(a) Where a conveyance is being forfeited in a judicial proceeding for a drug-related offense, the owner may obtain release of the property by filing a substitute res bond with the seizing agency. The conveyance will be released to the owner upon the payment of a bond in the amount of the appraised value of the conveyance if it is not evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities. This bond must be in the form of a traveler's check, a money order, a cashier's check or an irrevocable letter of credit made payable to the Department of Justice or to the United States Customs Service depending on which agency seized the conveyance. A bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which issued the check.

(b) If a substitute res bond is filed and the conveyance is judicially forfeited, the court will forfeit the bond in lieu of the property.

§ 1316.99 Notice provisions.

(a) *Special notice provision.* At the time of seizure of property defined in § 1316.91 for violations involving the possession of personal use quantities of a controlled substance and conveyances seized pursuant to § 1316.95, written notice must be provided to the possessor of the property regarding applicable statutes and Federal regulations including the procedures established for the filing of a petition for expedited release and for the posting of a substitute res bond as set forth in sections 6079 and 6080 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

(b) *Standard notice provision.* The standard notice to the owner as required by title 19, U.S.C., section 1607 and applicable regulations, shall be made at the earliest practicable opportunity after determining ownership of the seized property or conveyance and shall include the legal and factual basis of the seizure.

Dated: August 18, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89-20305 Filed 9-8-89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 89-003]

RIN 2115-AO20

Summons in Lieu of Seizure of Commercial Fishing Industry Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These regulations provide for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel for violations involving the possession of personal use quantities of a controlled substance. The Anti-Drug Abuse Amendments Act of 1988 requires the Attorney General, the Secretary of the Treasury, and the Secretary of Transportation to issue such regulations. These regulations require, when a violation involving the possession of personal use quantities of a controlled substance is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations, that a summons to appear be issued in lieu of seizure of the vessel.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Commander Gerald A. Gallion, Office of the Chief Counsel, (202) 267-1534.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in the drafting of this final rule is Commander Gerald A. Gallion, Office of the Chief Counsel.

Background

Section 6079 of the Anti-Drug Amendments Act of 1988 (Pub. L. 100-690) requires the Attorney General and the Secretary of the Treasury to prescribe regulations for expedited administrative procedures for seizures under section 511(a) (4), (6), and (7) of the Controlled Substances Act (21 U.S.C. 881(a) (4), (6), and (7)); section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)); and section 2 of the Act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. App. 782) for violations involving the possession of personal use quantities of a controlled substance. Section 6079 further requires that the Attorney General, the Secretary of the Treasury, and the Secretary of Transportation prescribe joint regulations providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel, as defined in section

2101 (11a), (11b), and (11c) of title 46, United States Code, for violations involving the possession of personal use quantities of a controlled substance. These regulations are to apply when a violation is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations. Section 6079 further provides that these regulations shall not interfere with existing authority to arrest an individual for drug-related offenses or to release that individual into the custody of the master.

The Coast Guard, on behalf of the Secretary of Transportation, has consulted with the U.S. Customs Service, acting on behalf of the Secretary of the Treasury, and the Department of Justice, acting on behalf of the Attorney General, in formulating consistent and compatible regulations to carry out section 6079. Customs Service and Department of Justice final rules are published separately in this **Federal Register** issue.

The Coast Guard exercises broad authority under 14 U.S.C. 89 on the high seas and waters over which the United States has jurisdiction to prevent, detect and suppress violations of the laws of the United States. That authority includes searches, seizures, and arrests for violations of the laws cited in section 6079 of the Anti-Drug Abuse Amendments Act of 1988. Coast Guard law enforcement action, then, may include the seizure of a commercial fishing industry vessel for a violation involving the possession of personal use quantities of a controlled substance.

These regulations apply to commercial fishing industry vessels, as defined in section 2101 (11a), (11b), and (11c) of title 46, United States Code. These definitions address fishing vessels, fish processing vessels, and fish tender vessels, all of which are commercially engaged in activities related to the catching, processing, transporting, or storing of fish. Sport fishermen are not affected by the provisions of these regulations.

These regulations provide, when a commercial fishing industry vessel is subject to seizure for a violation involving the possession of a personal use quantity of a controlled substance, that the Coast Guard will issue a summons to appear in lieu of seizing the vessel, if that vessel is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations. What constitutes a "personal use quantity" for determining whether or not a summons should be issued is defined in Customs Service regulations (19 CFR part 171). That definition and a parallel one in Department of Justice regulations (21 CFR 1316.91) govern all regulations developed to implement section 6079 of the Anti-Drug Abuse Amendments Act of 1988. In that the Coast Guard, after escorting a seized vessel into U.S. waters, routinely transfers custody of the vessel to the Customs Service for appropriate disposition, including forfeiture to the United States, the summons to be issued in lieu of seizure will be that prescribed in Customs regulations (19 CFR 171.52).

Discussion of Comments

On April 10, 1989, the Coast Guard published a Notice of Proposed Rulemaking for the issuance of a summons in lieu of seizure (54 FR 14250). Proposed Customs Service and Department of Justice regulations for expedited administrative procedures for seizures, including provisions for the issuance of a summons in lieu of seizure, were published separately in the same issue of the **Federal Register** (54 FR 14242 and 14246). Three comments were received on the Coast Guard proposal.

Two comments recommended extending the coverage of the regulations to provide for issuance of a summons in lieu of seizure to vessels other than commercial fishing industry vessels. One advocated expansion to include sport fishing vessels and headboats; another encouraged extension to vessels in the barge and towing industry. We disagree. These regulations implement the requirements of section 6079 of the Anti-Drug Abuse Amendments Act of 1988. That statute clearly specifies the scope of applicability of the requirement for issuance of a summons in lieu of seizure: to "a commercial fishing industry vessel as defined in section 2101 (11a), (11b), and (11c) of title 46, United States Code." There is no ambiguity in the terms of the statute, and those terms do not encompass sport fishing vessels, headboats, or vessels in the barge and towing industry. To expand the applicability of the summons in lieu of seizure requirement would exceed the legislative mandate.

One comment suggested including a definition of what constitutes "proceeding to or from a fishing area or intermediate port of call." It was also suggested that the definition include times when a vessel has been outfitted for a voyage whether or not it is still in port. The Coast Guard disagrees. Again, the language at issue has been taken directly from the statute and is unambiguous on its face. There is no reason to give the terms "proceeding to or from" other than their literal meaning. That literal meaning cannot be said to include times when the vessel is in port.

In view of the above, the Coast Guard is adopting the proposed rule as a final rule, without change.

E.O. 12291

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary.

Regulatory Flexibility Act

The final rule affects the owners of commercial fishing industry vessels. In that the rule provides for issuance of a summons in lieu of seizing such a vessel engaged in fishing or in transit to or from a fishing area, it bestows a financial benefit on the owner of a vessel subject to seizure because of a violation of law involving a personal use quantity of a controlled substance. Rather than seizing the vessel as it currently has the authority to do, and thus depriving its owner of the income associated with its voyage, the Coast Guard will issue a summons to appear. Accordingly, the Coast Guard certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Drug traffic control, Freedom of information, Penalties.

For the reasons set forth in the preamble, part 1 of title 33 of the Code of Federal Regulations is amended as set forth below:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 is revised to read as follows:

Authority: 14 U.S.C. 633; 49 U.S.C. 322; Sec. 6079(d), Pub. L. 100-690, 102 Stat. 4181; 49 CFR 1.45(b), 1.46; section 1.01-70 also issued under the authority of E.O. 12316, 46 FR 42237.

2. Section 1.07-100 is added to read as follows:

§ 1.07-100 Summons in lieu of seizure of commercial fishing industry vessels.

(a) As used in this section, the following terms have the meanings specified:

(1) *Commercial fishing industry vessel* means a fishing vessel, a fish processing vessel, or a fish tender vessel as defined in 46 U.S.C. 2101 (11a), (11b), or (11c), respectively.

(2) *Personal use quantity* means a quantity of a controlled substance as specified in 19 CFR 171.51.

(b) When a commercial fishing industry vessel is subject to seizure for a violation of 21 U.S.C. 881(a)(4), (6), or (7); of 19 U.S.C. 1595a(a); or of 49 U.S.C. App. 782 and the violation involves the possession of a personal use quantity of a controlled substance, the vessel shall be issued a summons to appear as prescribed in subpart F of 19 CFR part 171 in lieu of seizure, provided that the vessel is:

(1) Proceeding to or from a fishing area or intermediate port of call; or

(2) Actively engaged in fishing operations.

Dated: August 4, 1989.

W. T. Leland,

Chief, Office of Law Enforcement and Defense Operations.

[FR Doc. 89-18604 Filed 9-8-89; 8:45 am]

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federal register

Monday
September 11, 1989

Part V

Department of Health and Human Services

Agency for Toxic Substances and Disease Registry

Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–11]

Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Request for Public Comment on the Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles.

SUMMARY: This notice announces the Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles. Section 104(i)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499), requires that ATSDR prepare (1) a list of hazardous substances found at NPL sites (in order of priority), (2) toxicological profiles of those substances, and (3) a research program to fill data gaps associated with the substances. The priority list of substances was published in the **Federal Register** on April 17, 1987 and October 20, 1988 (52 FR 12866 and 53 FR 41280). The availability of the first 10 final toxicological profiles was published in the **Federal Register** on April 6, 1989 and June 23, 1989 (54 FR 14037 and 54 FR 26417). As the first step in preparing a research program, ATSDR has developed a Decision Guide. This Decision Guide, as approved by the Agency's Board of Scientific Counselors, is published below. Public comment is invited.

DATE: Comments concerning this notice must be received by October 26, 1989.

ADDRESSES: Comments on this notice should bear the docket control number ATSDR–11 and should be submitted to Mr. Edward Skowronski, Research Analysis Branch, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 37, Executive Park Drive, Atlanta, Georgia 30329, from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Skowronski, Research Analysis Branch, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333. *Telephone:* 404–639–0730.

SUPPLEMENTARY INFORMATION:

Administrative Record: ATSDR has established a public version of this record with materials pertaining to this notice (ATSDR docket control number–11). The public file is available for inspection during the times and at the address given in the section entitled Address of this notice.

Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles

I. Background

Created by the original Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA or Superfund), the Agency for Toxic Substances and Disease Registry (ATSDR) of the Public Health Service (PHS) is responsible for implementing health related authorities of Superfund. Among the original responsibilities delegated to ATSDR by this Act was to establish and maintain an inventory of literature, research, and studies on the health effects of toxic substances.

It was the sense of Congress that more complete toxicological and health effects data were needed to determine the potential threat to human health due to exposure to hazardous substances. Toward that end, Congress expanded ATSDR's mandates with several significant new responsibilities in the Superfund Amendments and Reauthorization Act of 1986 (SARA) including: (A) listings of hazardous substances, (B) preparation of toxicological profiles, and (C) initiation of research to fill research needs. The legislative mandates in CERCLA as amended underlying these three responsibilities are discussed below.

A. Listings of Hazardous Substances

Section 104(i)(2)(A). This section directs ATSDR and the Environmental Protection Agency (EPA) to jointly prepare a list of the substances most commonly found at sites on the National Priorities List and that pose the most significant risk to human health. The statute requires:

- First list of 100 priority substances to be prepared by April 17, 1987;
- Second List of 100 priority substances to be prepared by October 17, 1988;
- An additional 25 priority substances to be added annually.

B. Preparation of Toxicological Profiles

Section 104(i)(2)(A). ATSDR is directed to prepare a toxicological profile for each substance on these lists of priority substances in accordance with a given schedule. In addition, this section of CERCLA requires ATSDR to:

- Update each profile, at a minimum, every 3 years;
- Determine whether adequate information on health effects is available for each substance or in the process of development and, where appropriate, identify the toxicological testing needs for each substance.

C. Research

Section 104(i)(5)(A). For each substance on the list, ATSDR should consult with EPA and other PHS agencies to assess whether adequate information on the health effects of each substance is available.

For any substance for which adequate information is not available, ATSDR, in conjunction with National Toxicology Program (NTP) is required to assure the initiation of a program of research designed to determine the health effects (and techniques for developing methods to determine such health effects) for each substance. Where possible, the program should develop methods to determine the health effects of such a substance in combination with other substances with which it is commonly found.

> Such a program shall include, to the extent necessary to supplement existing information, but shall not be limited to—
> (i) Laboratory and other studies to determine short, intermediate, and long-term health effects;
> (ii) Laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;
> (iii) Laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and
> (iv) Where there is possibility of obtaining human data, the collection of such information.

Section 104(i)(5)(C). In developing and implementing a research program, ATSDR is required to coordinate with EPA and NTP to avoid duplicating research being conducted in other programs and under other authorities. In addition ATSDR is directed to consider the recommendations of the Interagency Testing Committee (ITC).

Section 104(i)(5)(D).

> It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Within 1 year after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act, and recovery of such costs from responsible parties under this Act.

The mission of ATSDR is to prevent or mitigate adverse human health effects or diminished quality of life that result from exposure to hazardous substances in the environment. To meet its mission, ATSDR must base its public health concerns, programs, activities, and actions on the application of contemporary science and resulting scientific findings. Sound science provides the cement for sound risk-management decisions. Bad or inadequate science provides a poor foundation for these decisions.

No matter how toxic a substance may be, people must come in contact with it (exposure) for harmful human health effects to result. Exposure may occur either by direct contact with the substance or indirect contact in the environment through breathing air, eating, or drinking material that contains the substance.

The scientific literature on the human health effects of hazardous substances in the environment clearly indicates hazard to human health from exposure to some substances. The literature base consists of relevant occupational studies, laboratory animal toxicology studies, and some community health studies. Regarding community health studies, a small body of literature indicates adverse human health effects in persons exposed to drinking water containing halomethanes and hydrocarbons (Grisham, 1986). Other hazardous substances that have been investigated for adverse effects on human health include some pesticides, metals, and organic compounds (Buffler *et al.*, 1985). However, most of the human epidemiologic investigations cited in these reviews suffer from poorly documented exposure data. In general, there is a paucity of exposure data in relevant human populations exposed to hazardous substances of concern.

II. Tenets for Decision Making in Research

Given the pivotal importance of scientific knowledge for public health actions on hazardous substances in the environment, ATSDR sponsors an applied research program authorized by provisions in the Superfund Act, as amended. The program is based on tenets that ATSDR has developed from the expertise of the Agency's staff, reports in the scientific literature, and from discussions with public health officials in Federal, State, and local agencies.

The tenets presented below will serve as a guide to ATSDR's decision making. To the extent that others may find them useful, ATSDR encourages their consideration.

- Because there is a paucity of human exposure data, a need exists for research programs directed toward filling the gaps with sound scientific data.
- Exposure data from appropriately selected human populations are vital for risk assessment and risk management.
- Validation of human exposure models with actual exposure data is essential.
- Scientific findings from occupational health studies are relevant to exposure of community residents to hazardous substances, but great caution must be used when making extrapolations from worker populations to populations that include children and other critical populations in the community setting.
- Toxicologic studies using laboratory animals are important for identifying potential human health effects but extrapolations between species must be made carefully and based on commonly accepted scientific principles.
- Well-designated and -conducted epidemiologic studies of relevant human health outcomes are the best source of data for decision-making on hazardous substances. In particular, longitudinal studies of carefully chosen cohorts are encouraged for evaluating health consequences of long-term exposure to low levels of hazardous substances. Exposure registries will be a vital resource to the conduct of such studies.
- A pressing need exists both for improving health surveillance systems and for linking them to environmental data systems.
- Community populations should be examined for evidence of health outcomes in addition to cancer and reproductive sequelae, e.g., effects on immune function, effects on the nervous system, and effects on skin.
- The effects of environmental hazardous substances on the health of children, the elderly, minorities, persons with infirmities, and other potentially impacted subpopulations need to be addressed through appropriate research and health surveillance.
- Better environmental health science will improve risk assessment and risk management.

III. Proposed Decision Guide

A. Background

An instrument is essential to guide ATSDR in identifying the substance-specific information that conforms to ATSDR's tenets for decision making. This key information is termed substance-specific data needs. Such an instrument would aid the Agency's scientific staff and its contractors in preparing toxicological profiles, specifically in identifying of substance-specific data needs and ultimately ATSDR's substance-specific research agenda.

An important consideration in the identification of data needs is the informational needs of the Agency regarding health assessments. A health assessment requires the following kinds of information.

- Background—Evaluation of information on the site's physical, geographical, historical, and operational setting;
- Environmental contamination and physical hazards;
- Potential environmental (air, water, soil, biota) and human exposure pathways (inhalation, ingestion, contact);
- Demographics—Populations at risk;
- Evaluation of human exposure—Comparison of contaminant levels relative to existing health standards;
- Public health implications;
- Conclusions/Recommendations—Determination of public health implications based on available medical and toxicologic information.

It is apparent from the Health Assessment process that data needs in both the areas of exposure assessment and substance toxicity affect ATSDR's ability to assess the impact of hazardous substances from Superfund sites on human health. The lack of sound scientific data on human health implications from exposure to hazardous substances produces uncertainties in the resulting conclusions and recommendations in a health assessment.

B. Attributes of the Decision Guide

The investment would guide the scientific staff to identify the exposure, toxicity, and substance-specific data needs while meeting the mandates of CERCLA in the following manner:

> Determining . . . whether adequate information of the health effects of each substance is available or in the process of development to determine levels of exposure

which present a significant risk to human health of acute, subacute, and chronic health effects.

Identifying . . . toxicological testing needed to identify the types of levels of exposure that may present significant risk of adverse health effects in humans.

The ATSDR's Research Agenda for Priority Substances must possess the following characteristics:

- It should facilitate the progressive accumulation of priority data while containing cost.
- It should strike a balance in developing both exposure and toxicity data to evaluate public health concerns.
- It must be flexible and tailored to the data needs for each individual substance rather than using an automatic fill-in-the-blank approach.
- It must allow simultaneous research efforts in more than one area of investigation for a given substance.

Ultimately, the data from ATSDR's Research Agenda for Priority Substances would reduce or eliminate the uncertainties of health assessments.

C. Substance-Specific Research

The first step in identifying substance-specific research is the detailed examination of existing substance-specific data on exposure and toxicity. This requires a judgment on the quality of the existing information.

ATSDR has adopted the National Research Council's (NRC) "Guidelines for Assessing the Quality of Individual Studies" in "Toxicity Testing: Strategies to Determine Needs and Priorities" (NRC, 1984). ATSDR also agrees with the NRC that judging the quality of past and future studies solely by standards of today is not appropriate. The NRC guidelines suggest that a report of scientific findings will be considered adequate for use in health hazard assessment if it meets the following basic criteria:

- All elements of exposure are clearly described.
- Results in test subjects are predictive of human response and test subjects are sensitive to the effects of the substance.
- Controls are comparable with test subjects in all respects except the treatment variable.
- End points answer the specific questions addressed in the study and observed effects are sufficient in number or degree to establish a dose-response relationship that can be used in estimating the hazard to the target species.
- Due consideration in both the design and the interpretation of studies must be given for appropriate statistical analysis of the data.

The ATSDR subscribes to the NRC guidelines. To the extent that they are appropriate, they should also be applied to judgments on the quality of data from epidemiological investigations and other scientific studies of relevance to ATSDR's substance-specific research program. In addition, the reliability of epidemiological data in hazard identification is increased when the results are obtained from studies that have the following assets (Johnson, 1988; Houk, 1989):

- Are derived from well-designed and well-executed case control or cohort studies that are free from bias;
- Display a strong association unlikely to be due to chance variation;
- Follow a logical, temporal sequence of exposure-response;
- Have been replicated in a variety of settings;
- Exhibit a dose-response relationship, using valid estimates of exposure and dose;
- Are toxicologically plausible;
- Where possible, include an examination of causality.

In addition, ATSDR recognizes the following desirable factors of studies or reports of scientific findings as set forth in the NRC guidelines:

- Subjective elements should be minimized.
- Peer review of scientific papers and of reports is desirable. (Note: CERCLA mandates that toxicologic testing results used by ATSDR be peer reviewed.)
- Results reported have increased credibility if they are supported by findings from other investigations.
- Similarity of results to those of tests and conducted on structurally related compounds increases scientific confidence.
- Evidence of adherence to good laboratory practices improves confidence in results.

The types of information that ATSDR requires to identify data needs fall into three levels and these are defined below and depicted in Figure 1.

Level I—A base set of exposure and toxicity information for *identifying* basic exposure and toxicity characteristics of each substance. This information would be used to *identify* further research needs.

Level II—A set of tests and research for *confirming* the toxicity and exposure indicated by Level I data. These data would be used to evaluate further research needs.

Level III—Research to improve the *application* to humans of the results of Level II research.

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Categories of Data Needs

Approach for ATSDR's Data Needs

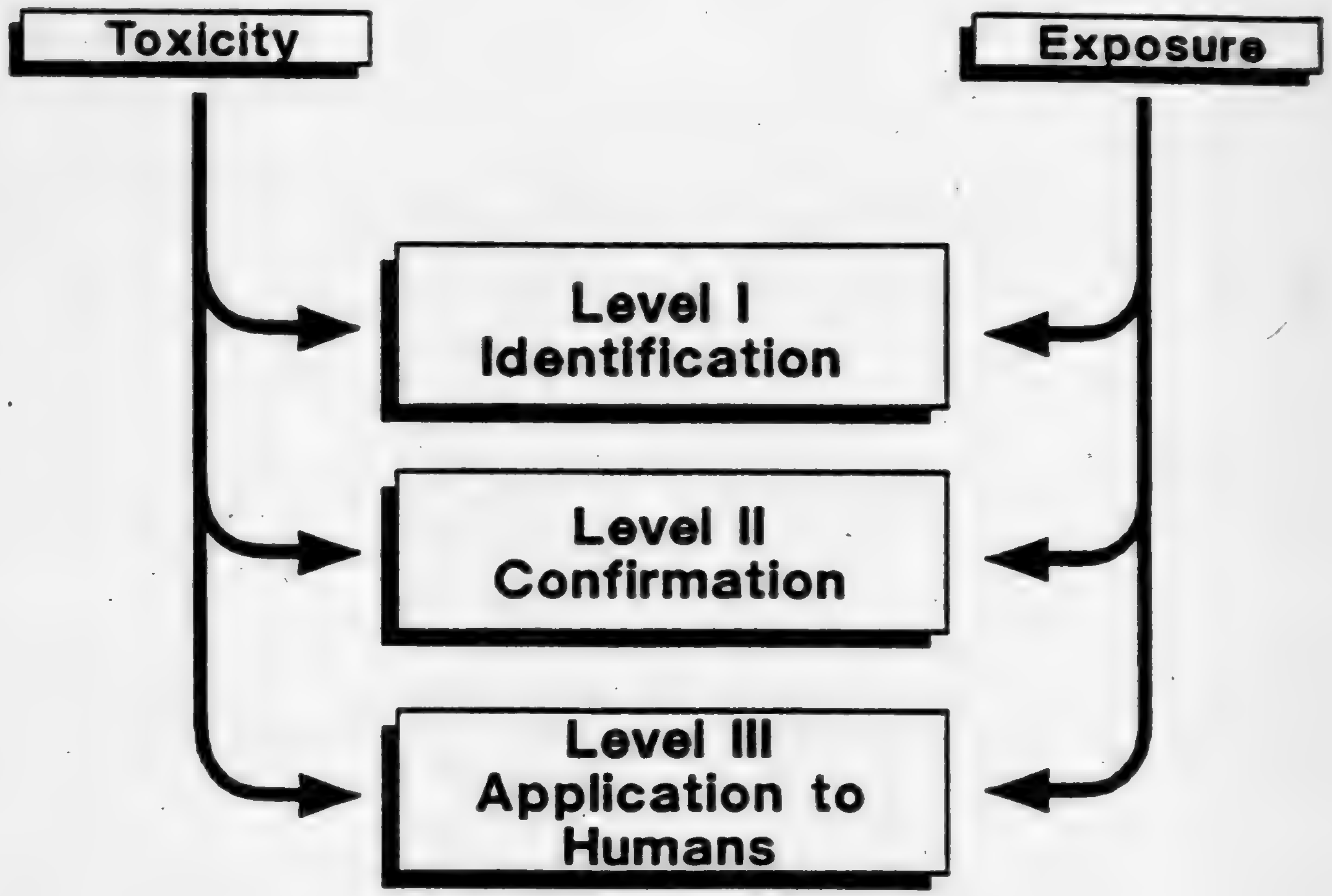

Figure 1

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As the initial stage of the overall guide for developing and evaluating data and information on exposure and toxicity, Level I is designed to be:

- Broad enough across subcategories to support decisions on the need for further studies in exposure and toxicity;
- Extensive enough within subcategories to support reasoned judgments concerning further studies in each major aspect of exposure and toxicity; and
- Sufficient as a *guide* to organize substance-by-substance scientific judgment on additional research needs, not a rigid recipe.

Data needs are categorized as exposure or toxicity and are then subcategorized (Tables 1 and 2). The subcategories of exposure reflect ATSDR's need for data that would allow evaluation of humans exposed to substances in the environment and consist of analytical methods, physical/chemical properties, environmental fate, and bioavailability. Toxicity is divided into ten subgroups relating either to duration of exposure or type of effect. These subcategories are single-dose exposure, repeated-dose exposure, chronic exposure, genotoxicity, reproduction, development, immunotoxicity, neurotoxicity, sensitization, and carcinogenicity.

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Table 1
Exposure Data

Exposure	Level I	Level II	Level III
Analytical	Methods for parent compound in REM*	methods for degradation products in REM*	Registries of Exposed Persons Human Dosimetry Studies Epidemiology Disease Registries
	Methods for parent compound in blood or urine	methods for parent compound\ metabolites\biomarkers	
	Structure-Activity Relationships (SAR)		
Physical/ Chemical Properties	Water solubility		
	Volatility/vapor pressure		
	Kow		
	Henry's law		
Exposure Levels	Production volume Use Release/disposal may be used in lieu of monitoring data	monitoring in REM* monitoring for human exposure (personal sampling, biomarkers of exposure, tissue levels)	
Environment Fate	Aerobic/anaerobic Biodegradation in H_2O Oxidation Hydrolysis Aerosolization Photoreactivity Volatilization Soil adsorption/desorption	small field plot studies monitoring for products in REM *	
Bioavailability		food chain bioaccumulation availability from REM* (analytical or toxicity) emphasize in vivo	

*REM = Relevant Environmental Media

Table 2
Toxicity Data

Toxicity	Level I	Level II	Level III
Single Dose Exposure	Single Dose Disposition Skin/Eye Irritation Acute Toxicity		
Repeated Dose Exposure	14-day by Relevant Route 90-day Subchronic	Comparative Toxicokinetics	
Chronic Exposure	SAR	2-year Bioassay	Epidemiology
	Ames Micronucleus	Additional Genotoxicity Studies	Mechanism of Toxic Action
			Biomarkers of disease
Reproductive	Extended Repro Workup in Subchronic	2-Generation or Continuous Breeding	Clinical Methods for Mitigating Toxicity
Developmental	Short Term in vivo Screen	2-Species Developmental	
Immunotoxicity	(Use Subchronic Results) Battery	Immunotox	
Neurotoxicity	Neuropath in Subchronic Demeanor in Subchronic	Neurotox Battery	
Sensitization	Dermal Sensitization		
Carcinogenicity	(Use Muta & subchronic results)	2-year Bioassay	

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In each subcategory the guide begins with the basic information needed to make scientific judgment on more complex research (Level I). It then proceeds through intermediate types of information that confirm information either found or apparent in Level I (Level II). Finally it deals with the most complex, i.e., information that applies to humans and which, when available, would allow identification of the types of levels of exposure that may present significant risk of adverse health effects in humans (Level III). Given the data available at any one time, data needs for a particular chemical could fall in Level I for certain subcategories, in Level II for others, and in Level III for still others. In fact, in exceptional situations, the data needs for a given substance could require studies (for different subcategories) in all three levels simultaneously.

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Process for Application of ATSDR's Decision Guide

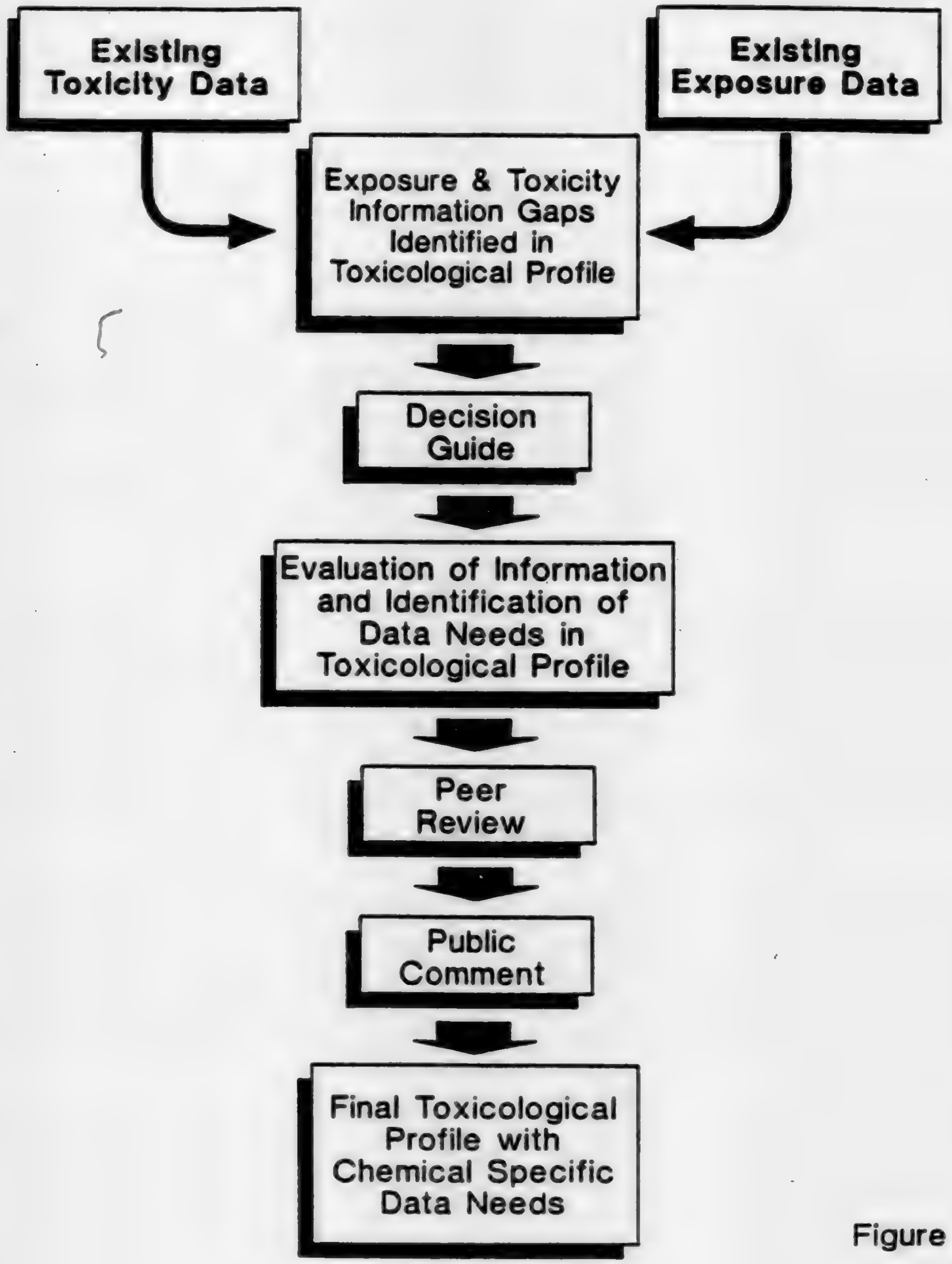
Existing Toxicity Data
Existing Exposure Data
Exposure & Toxicity Information Gaps Identified in Toxicological Profile
Decision Guide
Evaluation of Information and Identification of Data Needs in Toxicological Profile
Peer Review
Public Comment
Final Toxicological Profile with Chemical Specific Data Needs

Figure 2

At the end of each level a decision would be made whether further research is needed for the subcategory. The use of the decision guide would provide a substance-by-substance scientific judgment of data needs. The results of applying the decision guide, i.e. the data needs for each chemical, would appear in the toxicological profile. The profile would be peer reviewed and subsequently released for public comment. These two steps allow for review, critique, and comment on the data needs. The scientific staff would revise the data needs in the profile as appropriate. Paramount to the program design is:

(1) The survey of international and national ongoing studies, and

(2) The periodic reconsideration of data needs—inherent in the triennial profile update process—based upon acquisition and review of new data.

ATSDR is mandated to initiate a program of research for each substance, and the data needs identified by the above process would be the first step toward the identifying the substance-specific research agenda. The other steps, setting substance-specific and cross-substance priorities of data needs are discussed below (section IV, A and B).

D. Application of the Decision Guide

1. *Sample Exercise for Di(2-ethylhexyl) phthalate—DEHP.* The results of applying the decision guide are presented for DEHP.

This is a sample exercise and the data needs identified in this exercise have not been developed beyond identification, nor have they been evaluated for the feasibility or potential of being filled by other research sources. A discussion of the basis for identifying data needs for the exposure and toxicity categories follow (Tables 3 and 4).

A review and evaluation of the DEHP literature was made to determine the presence and acceptability of key information in the decision guide. Special considerations were made for the application to Superfund sites; e.g., common routes of exposure and the availability of analytical methods sensitive enough for environmental exposure conditions.

2. *DEHP—Discussion of exposure Data Needs.* Phthalic acid esters (PAE) represent a class of compounds with large production volume and potential for environmental release. Because of their low solubility in water and persistence in the environment, the potential for bioconcentration is recognized. Di(2-ethylhexyl) phthalate (DEHP), a representative PAE, is a commonly used plasticizer that has become widely distributed in the environment and has recognized toxicity in animal models. Because of usage patterns, PAEs occur as mixtures in the environment, but at this time ATSDR is dealing only with DEHP. It is apparent that we must consider DEHP as a sentinel for other PAEs with an eye toward addressing the issues that arise from the following statements on environmental PAE mixtures:

- In general, phthalate solubilities in water decrease with increasing molecular weight. High molecular weight phthalates are practically insoluble, making detection in water extremely difficult.
- Vapor pressure decreases with increasing molecular weight; PAE vapor pressures are essentially nil at ambient temperatures. It is generally accepted that low levels of phthalates occur in the atmosphere and higher levels occur near release sources, e.g. incinerators.
- Data on octanol-water partitioning verify the tendency of phthalates to partition to organic matter and to soil or sediment.
- Biodegradation half-lives generally correlate with the length of alkyl sidechains.

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Table 3
Exposure Data

Exposure	Level I	Level II	Level III
Analytical	Methods for parent compound in REM*	Methods for degradation products in REM*	**Registries of Exposed Persons** **Human dosimetry studies** **Epidemiology** **Disease Registries**
	Analytical Method to Separate Homologs/Isomers		
	Methods for parent compound in blood or urine	Methods for parent compound\ metabolites\biomarkers	
	Structure-Activity Relationships (SAR)		
Physical/ Chemical Properties	Water solubility		
	Volatility/vapor pressure		
	Kow		
	Henry's law		
Exposure Levels	Production volume Use Release/disposal } may be used in lieu of monitoring data	Monitoring in REM* Monitoring for human exposure (personal sampling, biomarkers of exposure, tissue levels)	
	Determine which phthalate esters and their amounts around sites		
Environment Fate	Aerobic/anaerobic Biodegradation in H_2O Oxidation Hydrolysis Aerosolization Photoreactivity Volatilization Soil adsorption/desorption	Small field plot studies Monitoring for products in REM* **Determine aerobic and anaerobic degradation of homologs/isomers**	
Bioavailability		Food chain Bioaccumulation Availability from REM* (analytical or toxicity) emphasize in vivo	

*REM = Relevant Environmental Media

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Analytical methods consisting of GC/MS and HPLC/UV are available and adequate for detecting DEPH. However, methods for separating, identifying, and quantifying PAEs are not available. Use of the Decision Guide identified a need' for developing such analytic methods to address the enrivonmental situation, i.e. mixtures of PAEs. This class of chemicals is recognized as having differing abilities to induce toxic responses and this problem must be addressed from the analytic standpoint before one can ascertain to what and to how much human populations are being exposed. This need must also be filled before one can assess the *in situ* degradation potential of PAEs and the resultant levels of human exposure.

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Table 4
DEHP Toxicity Data

Toxicity	Level I	Level II	Level III
Single Dose Exposure	Single Dose Disposition Skin/Eye Irritation Acute Toxicity		
Repeated Dose Exposure	14-day by Relevant Route 90-day Subchronic	Comparative Toxicokinetics	Epidemiology
		Physiologically based Pharmacokinetics	**Cohort Study Medical Devises (DEHP only) Peroxisome proliferation?**
Chronic Exposure	SAR **Determine Additivity of phthalates via SAR: Is DEHP a prototype for phthalates?**	2-year Bioassay	**Epi Study Occupational Exposure M/F reproductive toxicity?** Mechanism of Toxic Action **Mechanism of peroxisome proliferation**
Genotoxicity	Ames Micronucleus	Additional Genotoxicity	Biomarkers of disease
Reproductive	Extended Repro workup in Subchronic	2-Generation or Continuous Breeding	Clinical Methods for Mitigating Toxicity
Developmental	Short term in vivo screen	2-species Developmental	
Immunotoxicity	(Use subchronic results)	Immunotox Battery	
Neurotoxicity	Neuropath in subchronic Demeanor in subchronic	Neurotox Battery	
Sensitization	Dermal sensitization		
Carcinogenicity	(Use Muta & subchronic results)	2-year Bioassay	

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3. *DEHP—Discussion of Toxicity Data Needs.* Most toxicity data for DEHP has been derived from gavage studies. DEHP has been shown to be a carcinogen in an NTP bioassay. Using the Decision Guide, questions arise as to species differences in the route of exposure, metabolism, and endpoints, i.e., mechanisms producing peroxisome proliferation. In addition, reproductive and developmental toxicity appear to be a possibility for DEHP. Because populations exist that have had high levels of exposure both to DEHP alone (medical device users) and to mixtures of PAEs (occupational), a research need was identified to assess these two populations for toxicity related to DEHP. Specifically, the study should address the potential of DEHP to produce peroxisome proliferation in humans (medical device users) and alterations in reproductive function (occupation). The data needs are shown in their respective levels in Table 4.

IV. Setting Priorities

Once the data needs have been identified in the profile, the needs for substance-specific data must then undergo further scientific evaluation leading to priorities and ultimately to ATSDR's Research Agenda for Priority Substances (Figure 3). The scientists from the ATSDR, EPA and NTP as well as the profile author from the contractor will use the tenets previously set forth (section II) and the following criteria for setting priorities for substance-specific data needs. Once priorities have been set for these data needs, each substance's data needs will be submitted for public comment and subsequently revised where appropriate. The revised data needs are termed substance-specific research needs. These procedures will take place as the three agencies progress from identifying information gaps and data needs to determining substance-specific research needs and eventually to creating ATSDR's Research Agenda for Priority Substances. This process involves setting first substance-specific and then cross-substance priorities (Figure 3).

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A. Substance-Specific Priorities

• Investigation of methods for

generalized to other substances or areas

Proposed Process for Development of ATSDR's Research Agenda

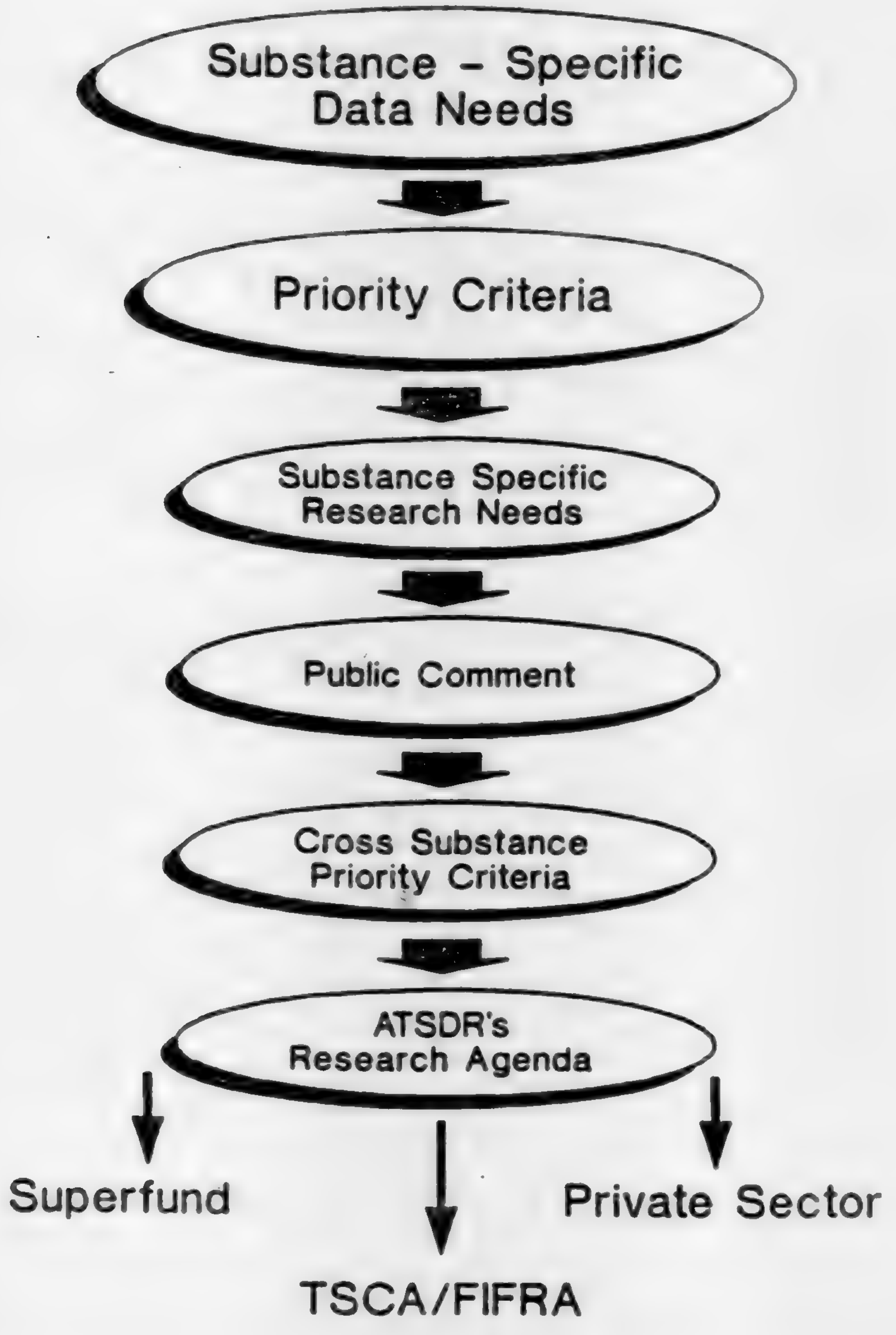
Substance - Specific Data Needs
Priority Criteria
Substance Specific Research Needs
Public Comment
Cross Substance Priority Criteria
ATSDR's Research Agenda
Superfund
TSCA/FIFRA
Private Sector

Figure 3

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A. Substance-Specific Priorities

In the process of setting substance-specific priorities data needs, some general principles must be recognized.

- Not all information gaps are data needs.
- All data needs are not of the same priority.
- Substance should be considered individually but may be grouped because of structural similarity or other relevant factors.
- ATSDR's Tenets for Decision Making in Research should be used.

Once the data needs have been identified in the toxicological profile, a technical panel composed of scientists from the three agencies and the contractor will convene. This group will have the responsibility for setting priorities for substance-specific data needs. The technical panel will consider the following:

- All levels of data should be considered in selecting priority data needs.
- Level I gaps are not automatically in the priority grouping. In general, Level I data have priority when there are no higher level data and when data are insufficient to make higher level priority testing decisions.
- Priority for either exposure or toxicity data requires thorough evaluation of research needs in other areas to help achieve a balanced research program for each substance.

Because the hazardous substances have varying amounts of existing exposure and toxicity data, there is an inherent need to build on a sound basic data foundation (Level I and II). Doing otherwise would usually not justify higher level research. In general, the data needs for individual hazardous substances listed below will be considered research priorities, usually in the following descending order:

- Development and/or confirmation of appropriate analytic methods.
- Determination of environmental and human exposure levels when analytic methods are available.
- Bioavailability studies for substances of known significant toxicity and exposure.
- Studies available for all toxicological profile substances to characterize target organs and dose response.
- Disposition studies and comparative physiological-based pharmacokinetics when a toxic endpoint has been determined and differences in species response have been noted.
- Mechanistic studies on substances with significant toxicity and substantial human exposure.
- Investigation of methods for mitigation of toxicity for substances where enough is known about mode of action to guide research.
- Epidemiologic studies that will provide a direct answer on human disease for a substance of known significant toxicity.

B. Cross-Substance Priorities

Considering ATSDR's Tenets for Decision Making in Research, the substance-specific priorities (substance-specific research needs) will undergo a process to set cross-substance priorities with the following considerations.

- The aggregate of prioritized data needs for individual hazardous substances will form the information base for determining priority research needs across a set of hazardous substances. In general, Level III research will be given priority over Levels I and II when prioritizing across substances.
- As ATSDR's Listings of Hazardous Substances take into account the known toxicity, occurrence at NPL sites, and potential for human exposure, the position of a substance on those lists should be considered in setting cross-substance priority research needs. In general, greater weight will be given to higher ranking substances.
- As stated in many of ATSDR's Tenets for Decision Making for Research (Section II), human exposure considerations are vital to health assessments. Thus the size of the human population exposed to the substance should be considered in setting cross-substance priority research needs. In general, greater weight will be given to research that is relevant to the greatest number of persons in populations of concern.
- As the effects of hazardous environmental substances on the health of children, the elderly, minorities, persons with infirmities, and other potentially impacted subpopulations need to be addressed. The existence and size of susceptible subpopulations exposed to the substance should be considered in setting cross-substance priority research needs.
- CERCLA mandates that the research program identify types of exposure that may present significant risk of adverse health effects in humans. Thus, consideration of the use of such data, i.e. data that is key to making a judgment as to levels of significant human exposure, is a matter of priority. This would enhance the ability of public health officials to implement appropriate health protective actions.
- Where possible, priority will be given to research that can be generalized to other substances or areas of science.
- Other things being equal, priority will be given to studies of substances that will provide insight on multiple substances rather than on a single substance.

V. Definitions

Adequate Data: A substance-specific information base that is complete enough to permit performance of an ATSDR Health Assessment; judged on sound scientific basis.

ATSDR's Registry of Data Needs for Superfund Substances: Collection of needs that have been identified, and subsequently peer reviewed, for any of the Superfund Hazardous Substances.

Data Gap: Phrase used in first 25 profiles indicating lack of information in current knowledge relevent to stated criteria listed in the profile.

Data Needs: Substance-specific information need identified via decision guide; information required to perform health assessments.

Decision Guide: ATSDR's proposed categories of data that, if available, would support the preparation of a health assessment by reducing the uncertainties that are inherent to the process.

Exposure: Direct contact with the substance or indirect contact in the environment through breathing air, eating, or drinking material that contains the substance.

Health Assessment: ATSDR's evaluation of data and information on the release of hazardous substances into the environment, performed to assess any current or future impacts on public health, develop health advisories or other health recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects.

Research Needs: Substance-specific data needs identified as priority via a technical evaluation and subject to public comment.

Research Program: Substance-specific research needs identified as priority across chemicals and directed toward reducing the uncertainty of health assessments. The program will permit determination of the types or levels of exposure that may present significant risk of adverse health effects in humans.

Sufficient Information: Phrase used in the first 25 toxicological profiles to indicate when information available on a specific substance fulfilled stated criteria listed in the profile.

VI. List of Abbreviations

ATSDR: Agency for Toxic Substances and Disease Registry
CERCLA: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund)
DEHP: Di(2-ethylhexyl) phthalate
EPA: Environmental Protection Agency
FIFRA: Federal Insecticide, Fungicide and Rodenticide Act
ITC: Interagency Testing Committee
NTP: National Toxicity Program
PAE: Phthalic acid esters
PHS: Public Health Service
SAR: Structure-Activity Relationship
SARA: Superfund Amendments and Reauthorization Act of 1986
TSCA: Toxic Substances Control Act

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Dated: August 28, 1989.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

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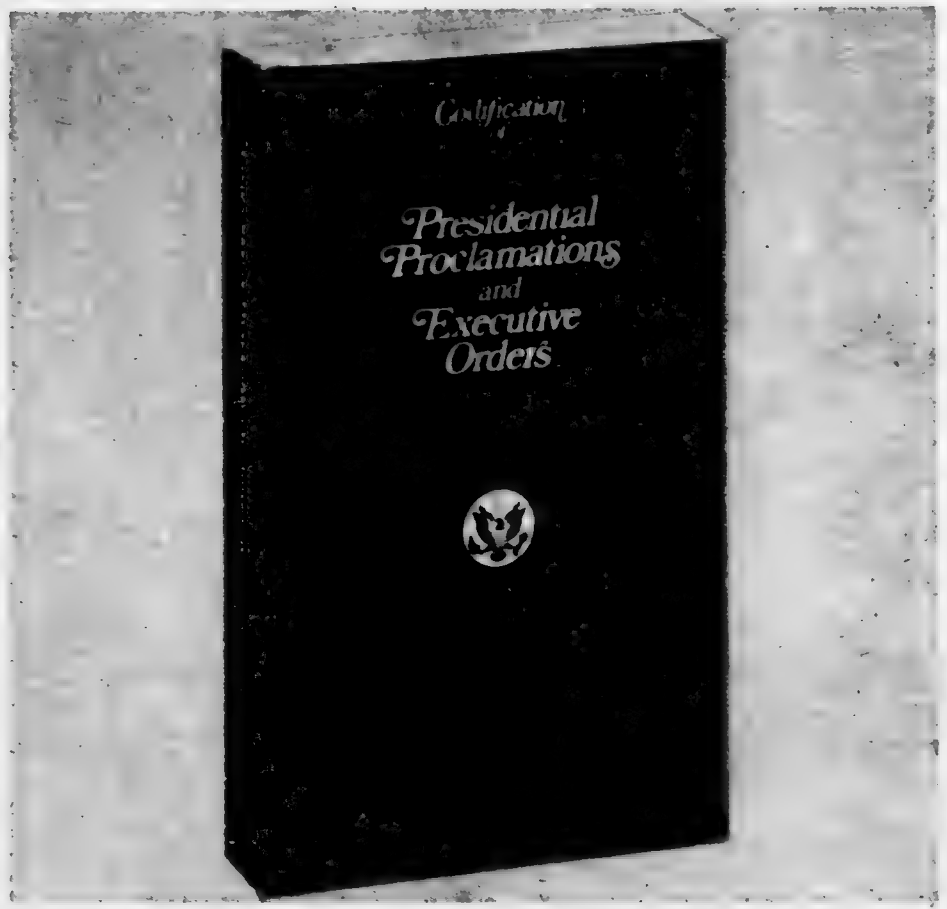

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Rules and Regulations

Federal Register
Vol. 54, No. 175
Tuesday, September 12, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 967

[FV-89-062FR]

Final Handling Regulation for Celery Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of Florida celery which handlers may ship to fresh markets during the 1989–90 marketing season at 6,789,738 crates or 100 percent of producers' base quantities. This final rule is intended to lend stability to the industry and, thus, help to provide consumers with an adequate supply of the product. As in past marketing seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, since production and shipments are anticipated to be less than the allotment. This action was recommended by the Florida Celery Committee (Committee), which is responsible for local administration of the order.

EFFECTIVE DATE: September 12, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Divison, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 967 (7 CFR part 967), both as amended, regulating the handling of celery grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

There are approximately seven handlers of celery grown in Florida subject to regulation under the celery marketing order and approximately 13 producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of celery handlers and producers may be classified as small entities.

This final rule is based upon the recommendation of and information submitted by the Committee and upon other available information. The Committee met on May 24, 1989, and recommended a marketable quantity of 6,789,738 crates of fresh celery for the 1989–90 marketing season beginning August 1, 1989. Additionally, a uniform percentage of 100 percent was recommended which would allow each producer registered pursuant to § 967.37(f) of the order to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1989–90 supplies and prospective demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent (407,384 crates) of the 1988–89 total base quantities is authorized for new producers and for increases by existing producers.

The final rule will limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1989–90 marketing season to 6,789,738 crates. This marketable quantity is identical to the 1988–89 marketable quantity and is about 20 percent more than the average number of crates marketed fresh during the 1982–83 through 1986–87 seasons. It is expected that the 6,789,738-crate marketable quantity will be above actual shipments for the 1989–90 season. Thus, the 6,789,738-crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, the final rule will lend stability to the industry and, thus, help to provide consumers with an adequate supply of the product.

Based on available information, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

This action was proposed in the August 2, 1989, issue of the **Federal Register** (54 FR 31845). Comments on the proposed rule were invited from interested persons until August 14, 1989. No comments were received.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action applies to all Florida celery handled by handlers during the 1989–90 crop year, which began August 1, 1989, and (2) handlers are aware of this action, which was recommended by the Committee at a public meeting, and need no additional time to comply with the requirements.

List of Subjects in 7 CFR Part 967

Celery, Florida, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 967 is revised as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. A new § 967.325 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 967.325 Handling regulation, marketable quantity, and uniform percentage for the 1989–90 season beginning August 1, 1989.

(a) The marketable quantity established under § 967.36(a) is 6,789,738 crates of celery.

(b) As provided in § 967.38(a), the uniform percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harvested celery unless it is within the marketable allotment of a producer who has a base quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1), a reserve of six percent of the total base quantities is hereby authorized for:

(1) New producers and

(2) Increases for existing base quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: September 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–21396 Filed 9–11–89; 8:45 am]

BILLING CODE 3410–02–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

RIN 3245–AB76

Minority Small Business and Capital Ownership Development Program; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: The Small Business Administration (SBA) is correcting a typographical error in the effective dates of the Minority Small Business and Capital Ownership Development Program regulations which appeared in the **Federal Register** on August 21, 1989. (54 FR 34692.)

FOR FURTHER INFORMATION CONTACT: Associate Administrator for Minority Small Business and Capital Ownership Development (202) 653–6407, Jane P. Butler, (202) 653–6813, or Rodney A. Lewis, (202) 653–6549.

SUPPLEMENTARY INFORMATION: On August 21, 1989 SBA published in the **Federal Register** a final rule to amend the Minority Small Business and Capital Ownership Development Program. (54 FR 34692.) A typographical error in the effective dates was discovered which SBA is now correcting. The October 1, 1989 effective date applies to §§ 124.306 and 124.311 respectively, not §§ 124.311 and 124.312 as published.

The following corrections are made to part 124 of title 13, Code of Federal Regulations, Minority Small Business and Capital Ownership Development Program, published in the **Federal Register** on August 21, 1989 (54 FR 34692):

In the first column, following the caption EFFECTIVE DATES in the first sentence, "Except for §§ 124.311 and 124.312," should read "Except for §§ 124.306 and 124.311," and in the second sentence, "Sections 124.311 and 124.312" should read "Sections 124.306 and 124.311".

Dated: August 31, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–21350 Filed 9–11–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 23, 25, 27, 29, 31, 33, 35, 36, 43, 45, 47, 61, 63, 65, 71, 91, 93, 99, 103, 121, 125, 127, 133, 135, 137, and 141

[Docket No. 18334; Amdts. No. 1–36, 21–66, 23–37, 25–68, 27–24, 29–27, 31–5, 33–13, 35–6, 36–18, 43–31, 45–18, 47–24, 61–84, 63–27, 65–34, 71–13, 91–211, 93–56, 99–15, 103–3, 121–206, 125–12, 127–43, 133–10, 135–32, 137–12, 141–2]

Revision of General Operating and Flight Rules; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: In the August 18, 1989, issue of the **Federal Register** (54 FR 34284) the FAA published a final rule reorganizing and realigning the general operating and flight rules to make them more understandable and easier to use. Also, several changes were made to provide more flexibility for certain operations.

FAA is correcting editorial errors that appeared in the listing of amendment numbers and in the preamble. Amendment number "99–11" should read "99–15" and amendment number "141–11" should read "141–2".

On page 34287, second column, first complete paragraph, fifth line: The repeated "91.165" should read "91.169".

On page 34288, first column, second complete paragraph, sixth line: "91.91.90(c)(1)" should read "91.90(c)(1)".

Additional corrections to this document are published elsewhere in the Corrections Section of this issue.

FOR FURTHER INFORMATION CONTACT: William T. Cook (202) 267–3840.

Issued in Washington, DC, on September 5, 1989.

Clara Thieling,

Editor, Program Management Staff, Office of the Chief Counsel.

[FR Doc. 89–21249 Filed 9–11–89; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing certain option contracts traded on the London International Financial Futures Exchange ("LIFFE") to be offered or sold to persons located in the United States. This order is issued pursuant to Commission Rule 30.3(a), 17 CFR 30.3(a) (1988), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered in the United States.[1]

EFFECTIVE DATE: October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or Victoria R. Hartke, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW.,

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[1] *See* 52 FR 28980, 28998 (August 5, 1987). Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1988), may continue to be offered or sold.

Washington, DC 20581.[2] Telephone: (202) 254–6955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.3(a) Permitting Option Contracts Traded on the London International Financial Futures Exchange To Be Offered or Sold in the United States Thirty Days After Notice to the Commission and Publication in the **Federal Register** *of the Option Contracts To Be Traded*

On July 23, 1987, the Commission adopted final rules governing the domestic offer or sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer or sale of foreign options to persons located in the United States.[3] Specifically, Rule 30.3(a) provides that:

> [N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer or sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States. * * * 52 FR 28998.

In view of the history of abuses in the options markets prior to the imposition of the options ban,[4] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission. In adopting the final rules which implement that procedure, the Commission stated that notwithstanding Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer or sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered or sold in the United States.[5] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange as part of its decision to authorize transactions in specific foreign exchange-traded options.[6]

By letter dated May 24, 1989, the London International Financial Futures Exchange ("LIFFE"), a recognized investment exchange ("RIE") which is subject to regulatory oversight by the United Kingdom Securities and Investments Board ("SIB"), requested that the Commission authorize the offer or sale of option contracts traded on LIFFE to persons located in the United States under Commission Rule 30.3(a).

In issuing this Order, the Commission has considered: (1) The existence of information sharing arrangements relevant to preventing abuses in the trading of option contracts on LIFFE; [7] (2) the arrangements in place for assuring that sales practice abuses in such options do not occur, including that sales practice compliance audits commensurate with those which apply to domestic products will be conducted with respect to firms engaged in the offer or sale of its foreign option products in the United States; (3) the arrangements for United States customers to redress grievances with respect to matters directly pertaining to the conduct of trading or other activities relevant to the offer or sale of such products occurring within the jurisdiction where the option is traded; and (4) the regulatory environment in which such foreign options are traded, including, among other things, the determination by the Commission under Rule 30.10, 17 CFR 30.10 (1988), to exempt specified firms in the United Kingdom from the application of certain of the Commission's rules governing foreign futures and option transactions based on the existence of a generally comparable regulatory system in effect in the United Kingdom.[8]

In determining that LIFFE's showing with respect to the foregoing matters is sufficient to warrant the issuance of the Order herein, the Commission notes that as it acquires further experience it may determine that other considerations are also relevant. To this end, the Commission expects to continue to monitor the offer or sale of the products subject to this Order.[9]

Based upon the representations of LIFFE contained in its letter dated May 24, 1989, as supplemented, SIB's letter dated July 28, 1989 in which SIB confirms that it monitors LIFFE for compliance with its obligations as an RIE,[10] the existence of information sharing arrangements with SIB and other relevant United Kingdom authorities,[11] the determination of the

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[2] In considering requests under Rule 30.3(a), the Commission notes that it has received a significant number of comments that the offer or sale of foreign options should be permitted. *See* advance notice of proposed rulemaking, 49 FR (July 25, 1984), proposed rules, 51 FR 12104 (April 8, 1986) and final rules, 52 FR 28980 (August 5, 1987). The Commission continues to welcome comments on this process. On July 20, 1988, the Commission issued orders authorizing certain option contracts traded on the Montreal Exchange, the Singapore International Monetary Exchange and the Sydney Futures Exchange to be offered or sold in the United States.

[3] Rule 30.1(b), 17 CFR 30.1(b) (1988), defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty" or "decline guaranty," made or to be made on or subject to the rules of a foreign board of trade.

[4] Although the statutory prohibition on the offer or sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. No. 99–641, section 102, 100 Stat. 3556 (1986), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1988), adopted pursuant to section 4c(b) of the Act, remains in effect.

[5] 52 FR 28980, 28998.

[6] 51 FR 12104, 12105.

[7] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed. *See* 43 FR 16156 (April 17, 1978).

[8] *See* Orders of the Commission dated May 15, 1989 granting Rule 30.10 relief to the Securities and Investments Board, the Association of Futures Brokers and Dealers, The Securities Association and the Investment Management Regulatory Organisation. 54 FR 21599 (May 19, 1989). In issuing such Orders, the Commission determined that the requirements in Appendix A to Part 30, "Interpretative Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of its Rules," which sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Rule 30.10, had generally been satisfied. *Id.*

[9] The Commission has not sought to analyse the individual option contracts under the requirements which apply to the designation of an option contract proposed to be traded on a United States contract market. In particular, the Commission has not analysed whether these instruments would meet the Commission's economic purpose test, 17 CFR § 33.4(a)(5)(i) (1988), or other criteria relating to the specific terms and conditions of such foreign option contract. *See* 17 CFR 33.4. The Commission, however, has plenary authority with respect to option products. *See* section 4c of the Act.

[10] *See* letter from M.B. Gittins, SIB, to Andrea M. Corcoran, Commission, dated July 28, 1989.

[11] *See, e.g.,* "Memorandum of Understanding on Exchange of Information between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and Between the United States Commody Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures" signed on September 23, 1988, as supplemented by

Continued

Commission to grant Rule 30.10 relief to specified firms in the United Kingdom by Orders dated May 15, 1989, the memorandum from the Division of Trading and Markets to the Commission dated August 30, 1989 ("Staff Memorandum") recommending the approval of the Order herein, and pursuant to Commission Rule 30.3(a), the Commission hereby authorizes the offer or sale in the United States of options traded on LIFFE subject to the following conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any LIFFE option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order;

(2) That SIB and LIFFE represent that LIFFE is an RIF under the Financial Services Act and, as such, is subject to regulatory obligations under that Act, that transactions on LIFFE in the LIFFE option(s) referenced in such notice [12] will be subject to the rules of LIFFE and that SIB and/or LIFFE provide the Commission with information as to all material changes thereto promptly;

(3) That options on futures on stock indices [13] and options on futures on foreign government debt securities [14] will not be permitted to be offered or sold hereunder absent certain additional procedures;

(4) That options trade pursuant to this Order may only be offset on LIFFE or another market with respect to which the Commission has issued an order under Commission Rule 30.3(a) authorizing its option products to be offered or sold in the United States;

(5) That options traded pursuant to the Order herein may only be offered or sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, provided such persons also provide customers resident in the United States with the options risk disclosure statement in Commission Rule 33.7, 17 CFR 33.7 (1988), and, if the persons elect not to collect the full premium for the contract as margin from the customer at the time of purchase, the Addendum thereto attached hereto as Exhibit B, but may not be offered or sold by persons doing business in the United States pursuant to interim relief granted and extended by the Commission (*See* 53 FR 3338 (February 5, 1988) and subsequent orders and letters of the Commission); and

(6) If experience demonstrates that the continued effectiveness of this Order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject hereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted herein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in this Order, as appropriate, on its own motion. In such event, appropriate arrangements to service existing positions will be made.

This Order is issued based on the information provided to the Commission and its staff as set forth herein and in the Staff Memorandum. Any changes or material omissions might require the Commission to reconsider the autorization granted in this Order.

Issued in Washington, DC on September 5, 1989.

Jean A. Webb,

Secretary of the Commission.

Exhibit A

Options on Futures—Interest Rate

[Option on Long Gilt Future]

Unit of Trading	1 Long Gilt futures contract.
Delivery/Expiry Months.	March, June, September, December.
Delivery Day/ Exercise Day/ Expiry Day.	Exercise by 17.00 on any business day, extended to 18.00 on last trading day. Delivery on the first business day after the exercise day. Expiry at 18.00 on the last trading day.
Last Trading Day	16.15. Six business days prior to the first delivery day of the Long Gilt Futures contract.
Quotation	Multiples of 1/64.
Minimum Price Movement.	1/64.
(Tick size & value)	(£7.8125).
Initial Margin (Straddle Margin).	See footnotes.
Trading Hours	09.02–16.15.

Note.—Option on Long Gilt Future:

Contract Standard: Assignment of 1 Long Gilt futures contract for the delivery month at the exercise price.

Exercise Price Intervals: £1 e.g. £96–00, £97–00 etc.]

Introduction of New Exercise Prices: 13 exercise prices will be listed for new series. Additional prices will be introduced on the business day after the Long Gilt futures contract settlement price is within £16/32 of the sixth highest or lowest existing exercise price.

Initial Margin: Initial margin charged by clearing house for long and short options positions is calculated with reference to daily published risk factors and the level of initial margin for the related futures contract which it cannot exceed. Initial margin is reduced for all options and option-futures combinations which include offsetting positions.

Option Price: The contract price is payable by the buyer to the seller on exercise or expiry of the option, not at the time of purchase. Positions are marked to market daily.

Options on Futures—Interest Rate

[Option on US Treasury Bond Future]

Unit of Trading	1 US Treasury Bond futures contract.
Delivery/Expiry Months.	March, June, September, December.
Delivery Day/ Exercise Day/ Expiry Day.	Exercise by 17.00 on any business day; extended to 20.30 on last trading day. Delivery on the first business day after the exercise day. Expiry at 20.30 on the last trading day.
Last Trading Day	16.10 First Friday preceding by at least six CBOT working days the first delivery day of the US Treasruy Bond futures contract.
Quotation	Multiples of 1/64.
Minimum Price Movement.	1/64.
(Tick size & value)	($15.625).
Initial Margin (Straddle Margin).	See footnotes.
Trading Hours	08.17–16.10.

Note.—Option on U.S Treasury Bond Future:

Contract Standard: Assignment of 1 US Treasury Bond futures contract for the delivery month at the exercise price.

Exercise Price Intervals: $1 e.g. 86–00, 87–00 etc.

Introduction of New Exercise Prices: 13 exercise prices will be listed for new series. Additional prices will be introduced on the business day after the U.S. Treasury Bond futures contract settlement price is within $16/32 of the sixth highest or lowest existing price.

Initial Margin: Initial margin charged by clearing house for long and short options positions is calculated with reference to darily published risk factors and the level of initial margin for the related futures contract which it cannot exceed. Initial margin is reduced for all options and option-futures combinations which include offsetting positions.

Option Price: The contract price is payable by the buyer to the seller on exercise or expiry of the option, not on purchase. Positions are marked to market daily.

Last Trading Day: The last trading day is defined to coincide with the last trading day for the Chicago Board of Trade Option on US Treasury Bond futures, where this is a LIFFE trading day.

Options on Futures—Interest Rate

[Option on German Government Bond (Bund) Future]

Unit of Trading	1 Bond futures contract.
Delivery Months	March, June, September, December.
Delivery Day/ Exercise Day/ Expiry Day.	Exercise by 17.00 on any business day, extended to 18.00 on last trading day. Delivery on the first business day after the exercise day. Expiry at 18.00 on the last trading day.
Last Trading Day	16.00 Six business days prior to the first day of the delivery month.
Quotation	Multiples of DM 0.01.
Minimum Price Movement.	DM 0.01.
(Tick size and value).	(DM 25).

"Memorandum Relating to UK/US MOU" signed on November 22, 1988 adding the SIB as a signatory to the MOU (hereinafter collectively referred to as "UK/US MOU"), and the "Side Letter Relating to UK/US MOU" signed on May 15, 1989.

[12] The option contracts which will initially be offered or sold pursuant to this Order, the terms and conditions for which are attached hereto as Exhibit A, are options on Long Gilt, U.S. Treasury Bond, German Government Bond, Three-Month Sterling Interest Rate and Three-Month Eurodollar Interest Rate contracts and on Sterling Currency and Dollar-Mark Currency.

[13] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the Act.

[14] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–8 promulgated thereunder. The Securities and Exchange Commission has designated the government debt securities issued by the United Kingdom and West Germany as exempted securities. *See* Securities Exchange Act Release No. 20708, March 2, 1984, and 53 FR 43860 (October 31, 1988).

Exhibit A—Continued

Options on Futures—Interest Rate—Continued

[Option on German Government Bond (Bund) Future]

Initial Margin (Straddle Margin).	See footnotes.
Trading Hours	08.07–16.00 London time.

Note.—Option on German Government Bond Future:

Contract Standard: Assignment of 1 Bond futures contract for the delivery month at the exercise price.

Exercise Price Intervals: DM 0.05, e.g. 94.00, 95.50, etc.

Introduction of New Exercise Prices: 9 exercise prices will be listed for new series. Additional prices will be introduced on the business day after the Bond futures contract settlement price is within DM 0.25 of the fourth highest or lowest existing price.

Initial Margin: Initial margin charged by the clearing house for long and short options positions is calculated with reference to daily published risk factors and the level of initial margin for the related futures contract which it cannot exceed. Initial margin is reduced for all options and options futures combinations which include offsetting positions.

Option Price: The contract price is payable by the buyer to the seller on exercise or expiry of the option, not at the time of purchase. Positions are marked to market daily.

Options on Futures—Interest Rate

[Option on Three Month Sterling Interest Rate Future]

Unit of Trading	1 Three Month Sterling futures contract.
Delivery/Expiry Months.	March, June, September, December.
Delivery Day/ Exercise Day/ Expiry Day.	Exercise by 17.00 on any business day. Delivery on the first business day after the exercise day. Expiry at 17.00 on last trading day. Fully automatic exercise of in-the-money options on last trading day.
Last Trading Day	11.00 Last trading day of Three Months Sterling futures contract.
Quotation	Multiples of 0.01 (i.e. 0.01%).
Minimum Price Movement.	0.01.
(Tick size & value)	(£12.50).
Initial Margin (Straddle Margin).	See footnotes.
Trading Hours	08.22–16.02.

Note.—Option on Three Month Sterling Interest Rate Future:

Contract Standard: Assignment of 1 Three Month Sterling futures contract for the delivery month at the exercise price.

Exercise Price Intervals: 0.25 (i.e. 0.25%) e.g. 90.50, 90.75, 91.00 etc.

Introduction of New Exercise Prices: 13 exercise prices will be listed for new series. Additional prices will be introduced on the business day after the Three Month Sterling futures contract settlement price is within 0.12 of the sixth highest or lowest existing exercise price.

Initial Margin: Initial margin charged by the clearing house for long and short options positions is calculated with reference to daily published risk factors and the level of initial margin for the related futures contract which it cannot exceed. Initial margin is reduced for all options and options-futures combinations which include offsetting positions.

Option Price: The contract price is payable by the buyer to the seller on exercise or expiry of the option, not at the time of purchase. Positions are marked to market daily.

Options on Futures—Interest Rate

[Option on Three Month Eurodollar Interest Rate Future]

Unit of Trading	1 Eurodollar futures contract.
Delivery/Expiry Months.	March, June, September, December.
Delivery Day/ Exercise Day/ Expiry Day.	Exercise by 17.00 on any business day. Delivery on the first business day after the exercise day. Expiry at 17.00 on last trading day. Automatic exercise of in-the-money options on last trading day.
Last Trading Day	11.00 Last trading day of Eurodollar futures contract.
Quotation	Multiples of 0.01 (i.e. 0.01%).
Minimum Price Movement.	0.01.
(Tick size & value)	($25.00).
Initial Margin (Straddle Margin).	See footnotes.
Trading Hours	08.32–16.00.

Note.—Option on Three Month Eurodollar Interest Rate Future:

Contract Standard: Assignment of 1 Eurodollar futures contract for the delivery month at the exercise price.

Exercise Price Intervals: 0.25 (i.e. 0.25%) e.g. 89.50, 89.75, 90.00.

Introduction of New Exercise Prices: 13 exercise prices will be listed for new series. Additional prices will be introduced on the business day after the Eurodollar futures contract settlement price is within 0.12 of the third highest or lowest existing exercise price.

Initial Margin: Initial margin charged by the clearing house for long and short options positions is calculated with reference to daily published risk factors and the level of initial margin for the related futures contract which it cannot exceed. Initial margin is reduced for all options and options-futures combinations which include offsetting positions.

Option Price: The contract price is payable by the buyer to the seller on exercise or expiry of the option, not at the time of purchase. Positions are marked to market daily.

Options on Cash

[Option on Sterling Currency]

Unit of Trading	£25,000 traded against US$.
Delivery/Expiry Months.	March, June, September, December with three nearby months (See footnotes).
Delivery Day/ Exercise Day/ Expiry Day.	Exercise by 17.00 on any business day. Delivery on the third business day after the exercise day. Expiry at 17.00 on last trading day.
Last Trading Day	16.02 Three business days before third Wednesday of expiry month.
Quotation	US cents per £.
Minimum Price Movement.	0.01 cents per £.
(Tick size & value)	($2.50).
Initial Margin (Straddle Margin).	See Footnotes.
Trading Hours	08.34–16.02.

Note.—Option on Sterling Currency:

Expiry Months: For example, in early November the following expiry months would be available for trading: November, December, January plus other months on the Mar/Jun/Sep/Dec cycle.

Contract Standard: Delivery of the currency at the exercise price.

Exercise Price Intervals: 5 cents per £ e.g. $1.15, $1.20, $1.25 per £.

Introduction of New Exercise Prices: At least 5 exercise prices will be listed for new series. Additional prices will be introduced on the business day after the Sterling Currency futures contract settlement price, spot sterling exchange rate (at 16.02) or sterling-dollar forward price (at 16.02) is within 2.5 cents of the second highest or lowest exercise price.

Initial Margin: Initial margin charged by the clearing house for long and short options positions is calculated with reference to daily published risk factors and the level of initial margin for the related futures contract which it cannot exceed. Initial margin is reduced for all options and options-futures combinations which include offsetting positions.

Option Price: The contract price is payable by the buyer to the seller on exercise or expiry of the option, not at the time of purchase. Positions are marked to market daily.

Options on Cash

[Option on Dollar-Mark Currency]

Unit of Trading	$50,000 traded against DM.
Delivery/Expiry Months.	March, June, September, December with three nearby months (See footnotes).
Delivery Day/ Exercise Day/ Expiry Day.	Exercise by 17.00 on any business day up to Expiry Day; by 10.00 on Expiry Day. Delivery on third business day after exercise, except for options exercised on Expiry Day, for which delivery is on second business day after exercise. Expiry at 10.00 two business days before third Wednesday of expiry month.
Last Trading Day	16.04 Three business days before third Wednesday of expiry month.
Quotation	pfennigs per $US.
Minimum Price Movement.	0.01 pfennigs per $US.
(Tick size & value)	(DM 5.00).
Initial Margin (Straddle Margin).	See footnotes.
Trading Hours	08.36–16.04.

Note.—Option on Dollar-Mark Currency:

Expiry Months: For example, in early November the following expiry months would be available for trading: November, December, January plus other months on the Mar/Jun/Sep/Dec cycle.

Contract Standard: Delivery of the currency at the exercise price.

Exercise Price Intervals: 5 pfennigs per $US eg DM 2.45, DM 2.50, DM 2.55.

Introduction of New Exercise Prices: At least 5 exercise prices will be listed for new series. Additional prices will be introduced on the business day after the Dollar-Mark futures contract settlement price, spot dollar-mark exchange rate (at 16.04) or dollar-mark forward price (at 16.04) is within 2.5 pfennigs of the second highest or lowest existing price.

Initial Margin: Initial margin charged by the clearing house for long and short options positions is calculated with reference to daily published risk factors and the level of initial margin for the related futures contract which it cannot exceed. Initial margin is reduced for all options-futures combinations which include offsetting positions.

Option Price: The contract price is payable by the buyer to the seller on exercise or expiry of the option, not at the time of purchase. Positions are marked to market daily.

Exhibit B—Addendum to CFTC Options Disclosure Statement

(CFTC Rule 33.7)

The CFTC "Options Disclosure Statement," a copy of which is attached, is modified as set forth below to reflect some particular futures of LIFFE options:

(i) LIFFE is a board of trade (exchange) located *outside* the United States on which certain options are authorized by the CFTC for sale in the United States;

(ii) LIFFE option contracts have provision for deferred payment of the option premium, are marked-to-market and are subject to initial margin requirements. Consequently, the futures commission merchant ("FCM") or a firm granted an exemption from the FCM registration requirement might not require the purchaser of a LIFFE option to put up the full premium at purchase.

Although there is provision for deferred payment of premium, the purchaser of an option is still subject to the risk of losing the entire purchase price of the option, that is, the option premium plus all tansaction costs. Consequently, before purchasing an option, an individual should fully understand the applicable margin requirements, and particularly should be aware of the obligation to pay variation margin in the case of adverse market movement. Although the purchaser may receive some accruing profit during the life of the option, he should be aware that in order to realize and retain any value from the option, it will be necessary either to offset the option position or to exercise the option.

August 30, 1989.

Memorandum

To: The Commission.

From: The Division of Trading and Markets.

Subject: Order Under Commission Rule 30.3(a) Permitting Certain Option Contracts Traded on the London International Financial Futures Exchange to be Offered or Sold in the United States.

Recommendation: That the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order permitting option contracts traded on the London International Financial Futures Exchange to be offered or sold in the United States upon thirty days notice.

Other Divisions and Offices Consulted: Division of Economic Analysis, Division of Enforcement, Office of the Executive Director, Office of the General Counsel.

I. Introduction

On July 23, 1987, the Commission adopted final rules governing the domestic offer or sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer or sale of foreign option products to persons located in the United States.[1] Specifically, Rule 30.3(a) provides that:

> [N]otwithstanding any other provision of this part, it shall be unlawful for any person to engage in the offer or sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States. * * * 52 FR 28988.

In this regard, in view of the history of abuses in the options markets prior to the imposition of the options ban,[2] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission.[3] In adopting the final rules which implement that procedure, the Commission stated that notwithstanding Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer or sale of a particular foreign option product to a customer resident in the United States until the Commission specifically authorizes such foreign option to be offered or sold in the United States.[4] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange in determining whether to authorize transactions in specific foreign exchange-traded options.[5]

By letter dated May 24, 1989, the London International Financial Futures Exchange ("LIFFE"), a recognized investment exchange ("RIE") which is subject to regulatory oversight by the United Kingdom Securities and Investments Board ("SIB"),[6] requested that the Commission authorize the offer or sale of option contracts traded on LIFFE to persons located in the United States.

II. Recommendation

The Division of Trading and Markets ("Division") has carefully reviewed and considered the application of LIFFE to offer or sell option products traded on LIFFE in the United States, in particular addressing: (1) The availability of certain information relevant to preventing abuses in the trading of such contracts; (2) the arrangements in place for monitoring compliance with sales practice obligations; (3) the ability of United States customers to redress grievances with respect to the conduct of trading and other offshore activities relevant to the offer or sale of LIFFE option products; and (4) the regulatory environment in which such options are traded. In particular, the review of LIFFE's petition under Commission Rule 30.3(a) has been facilitated by the Commission's determination by Orders issued on May 15, 1989, under Rule 30.10, 17 CFR 30.10 (1988), to exempt specified firms in the United Kingdom from the application of certain of the Commission's rules governing foreign futures and option transactions based on the existence of a generally comparable regulatory system in effect in the United Kingdom. Specifically, on May 15, 1989, the Commission granted the Rule 30.10 petitions of the SIB and of certain self-regulating organizations ("SROs"), *i.e.*, the Association of Futures Brokers and Dealers ("AFBD"), The Securities Association ("TSA") and the

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[1] Rule 30.1(b), 17 CFR 30.1(b) (1988), defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty" or "decline guaranty," made or to be made on or subject to the rules of a foreign board of trade.

[2] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed. *See* 43 FR 16155 (April 17, 1978).

[3] Although the statutory prohibition on the offer or sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. No. 99–641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1988), adopted pursuant to section 4c(b) of the Act, remains in effect.

[4] 52 FR 28980, 28998. Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1988), may continue to be offered or sold.

[5] 51 FR 12104, 12105.

[6] *See* Section 37 of the Financial Services Act ("FSA") and Order of SIB dated April 25, 1988 declaring LIFFE to be an RIE attached as Appendix 6 to the May 24, 1989 Petition of LIFFE.

SIB has confirmed that it monitors all RIEs, including LIFFE, for compliance with their obligations as RIEs. *See* letter from M.B. Gittins, SIB, to Andrea M. Corcoran, Commission, dated July 28, 1989.

Investment Management Regulatory Organisation ("IMRO"), which are responsible for regulating the investment business activities of firms which they designate. In granting such petitions, the Commission determined that the requirements in Appendix A to Part 30, "Interpretative Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of its Rules,"[7] generally had been satisfied and that compliance with the rules of the SIB and/or the equivalent rules of the relevant SRO may be substituted, subject to certain conditions, for compliance with specified sections of the Commodity Exchange Act.

As discussed more fully below, based upon its determinations with respect to the foregoing matters, and subject to the terms and conditions specified herein, the Division recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attached Order permitting certain option contracts traded on LIFFE to be offered or sold in the United States.[8]

III. Discussion

Information Sharing

Prior to the imposition of the options ban in 1978, the ability of the Commission to address problems which occurred with respect to the offer or sale of certain ostensibly foreign options in the United States was impeded by the inaccessibility of information from their purported jurisdiction of origin. As a consequence, in determining to lift the options ban with respect to foreign products, the Commission indicated that a primary consideration would be the availability of transaction information.[9]

Information sharing arrangements have been the subject of extensive discussion between the Commission and the United Kingdom regulatory bodies in connection with the execution of the "Memorandum of Understanding between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in matters relating to Securities and between the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in matters related to Futures" signed on September 23, 1986, as supplemented by the "Memorandum Relating to UK/US MOU" signed on November 22, 1988 adding the SIB as a signatory to that document, (hereinafter collectively referred to as "UK/US MOU") and the Side Letter Relating to UK/US MOU ("Side Letter") entered into on May 15, 1989 by the SIB and the Commission. In particular, the Side Letter provides for information sharing necessary to monitor compliance with applicable Part 30 rules and the terms and conditions of any order issued by the Commission under Part 30, including any foreign option order issued pursuant to Commission Rule 30.3(a). In addition, the Financial Information Sharing Memorandum of Understanding ("FISMOU") entered into on September 1, 1988 by, among others, the SIB, the Commission and United Kingdom and United States SROs and the Addendum to the FISMOU signed on May 15, 1989 provides for routine and "as needed" information sharing in connection with the financial condition of firms which are exempt from compliance with certain financial requirements pursuant to the FISMOU and the Addendum thereto.

Further, in its May 24, 1989 Petition, LIFFE has represented that it is committed to cooperating with United Kingdom regulatory authorities by sharing information with such authorities and that, as an RIE, LIFFE is obligated to do so under the FSA.[10]

Sales Practice Audits

In developing its pilot program for domestic exchange-traded options, the Commission specifically required as a condition of designation that the contract market seeking approval of an option adequately provide for the monitoring and detection of sales practice abuses.[11] As such abuses ultimately contributed to the banning of options trading altogether in 1978, the Commission has indicated that any options offered in the United States must be subject to an adequate sales practice audit program.[12] In this connection, LIFFE represents that under the FSA, SIB or the SRO to which a specific firm belongs is responsible for establishing sales practice rules and monitoring compliance with such rules. Specifically, LIFFE represents, and the Commission staff determined in connection with its review of the relevant Rule 30.10 petitions, that SIB, AFBD, TSA and IMRO each has sales practice rules which address, without limitation, customer complaints, supervision of employees and accounts, solicitation, notification of disciplinary actions, risk disclosure, contents of customer accounts, discretionary accounts and misleading advertising.[13] Further, SIB and the SROs have rules relating to "best execution." These rules are intended to prevent a firm from taking advantage of a customer's order, whether for its own account or for that of another customer. For example, SIB Conduct of Business Rule 5.15 establishes the priorities to be given to customers' orders in instances where a firm also is trading for its own account.

Additionally, the SIB and United Kingdom SROs have procedures for conducting sales practice audits of firms in the United Kingdom selling LIFFE options into the United States.[14] In particular, under Part 15 of SIB's Conduct of Business Rules, firms are required to establish and maintain written rules and compliance procedures to ensure compliance with the requirements of the FSA and the rules or regulations made by SIB under the FSA. SIB has established a direct regulation division to maintain continuous oversight with respect to firms which it has authorized. As a condition of recognition by SIB as an SRO, the SRO must demonstrate to SIB that it has rules relating to, among other things, protection of investors, the monitoring and enforcement of compliance with its rules and the promotion and maintenance of high standards of integrity and fair dealing which provide protection to investors "at least equivalent" to that provided by SIB under its rules. Also, the National Futures Association ("NFA") has confirmed by letter dated August 16, 1989 that the sales practices of firms located in the United States engaged in such activities will be audited.[15]

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[7] Appendix A sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Rule 30.10.

[8] *See* Exhibit A of the Order recommended herein which contains the list of option contracts and their terms and conditions. Additional LIFFE option contracts may be offered or sold thirty days after publication of the terms and conditions of the specific option contract in the **Federal Register**. The Division believes that review of the individual foreign option contracts should be limited at this time to the regulatory issues discussed above and should not include an analysis of whether these foreign option contracts would meet the Commission's economic purpose test, 17 CFR 33.4(a)(5)(i) (1988), or other criteria relating to the specific terms and conditions of the option contract. *See* 17 CFR 33.4.

[9] 52 FR 28980, 28988.

[10] *See* FSA, Schedule 4, paragraph 5 and Appendix 6 to May 24, 1989 Petition of LIFFE, to which is attached a Memorandum of Understanding between SIB and LIFFE.

[11] *See* 46 FR 54500 (November 3, 1981).

[12] *Id.*

[13] *See* Rules of SIB, AFBD, TSA and IMRO as discussed in Staff Memoranda dated May 5, 1989 recommending that the Commission grant the Rule 30.10 petition of the above-referenced entities.

[14] *Id.*

[15] On January 14, 1988, the Commission approved amendments to NFA's Bylaws and the adoption of

Continued

In conjunction with the SROs' sales practice programs, LIFFE's Market Supervision Department ("MSD") conducts surveillance on a daily basis to monitor members' compliance with LIFFE rules and to ensure that an orderly and secure market is maintained.[16] LIFFE has represented that MSD's surveillance function encompasses:

(i) *Trading Surveillance*—MSD works with the [LIFFE's] Floor Trading Department of approximately 30 pit observers * * * [During normal market conditions, the pit observer] report[s] [all] bid, offer, and traded price levels for input to the price reporting system, and * * * ensure[s] compliance with floor trading procedures and maintain[s] an orderly market within the pit * * *. The surveillance of the market floor has been enhanced by the introduction of video recording of all futures and option pits [which assists in] * * * the reconstruction of a sequence of events in the pit for both dispute resolution and disciplinary purposes.

* * * * *

[LIFFE also has a real-time matching system and a requirement that all telephone lines onto the LIFFE floor be audio logged]. The real-time matching system is designed to ensure that transaction details are input, matched and processed promptly throughout the trading day and forms an integral part of LIFFE's Trade Registration System ("TRS"). MSD has real-time enquiry access to TRS during the trading day. This facility enables MSD to closely monitor trading activity; enquiry selection parameters used include trader, member, contract month, price and counterparty.

The audio logging of telephone lines to the market floor has been utilized by many brokers for several years. [LIFFE represents that its] [m]embers find that this facility often enables them to resolve amicably occasional disputes with their clients * * *.

(ii) *Market Surveillance*—MSD monitors the trades and positions of all Exchange members to detect the possible buildup of large positions or unusual trading activity. MSD has the right to require members to disclose for whom they are dealing [and] * * * also monitors the relationship between futures, options and cash market prices, their convergence at expiry, and the determination of [LIFFE] Delivery Settlement Prices.

On a daily basis, MSD is in close liaison with the clearing house [the International Commodities Clearing House, Ltd. ("ICCH")]. On a regular basis, MSD review[s] initial margin levels in conjunction with [ICCH] and, in response to a significant price movement or increase in volatility, MSD or [ICCH] may initiate an intraday margin call. Similarly, [ICCH] may apply differential margin requirements to specific clearing members in certain circumstances; perhaps where a single member holds a high percentage of open positions in a particular contract.

(iii) *Financial Surveillance*—MSD is responsible for ensuring members' compliance with [LIFFE's] net worth and financial requirements. These net worth requirements are independent from, although not inconsistent with, those of [ICCH] (for LIFFE clearing members) and of the various SRO's * * *.

Generally, MSD is authorized to investigate any suspected or alleged breach of LIFFE rules or trading procedures. Such an investigation may involve the interviewing of member staff, correspondence with the member, and analysis of documents and trading data. MSD has authority to visit the offices of LIFFE members and examine any records relating to their LIFFE business. Where sufficient evidence of an alleged breach of the rules is found, disciplinary proceedings will be initiated.[17]

Dispute Resolution

The availability of a forum to address complaints with respect to trade execution is relevant to any determination to lift the ban on foreign option products. This is because the provision of such a forum evidences the relevant foreign jurisdiction's intention to afford practical mechanisms to address complaints originating with customers not located in that jurisdiction and to assure a fair trading environment.

In recommending that the Commission grant the Rule 30.10 petition of SIB, AFBD, TSA and IMRO, the Staff Memoranda dated May 5, 1989 noted that SIB and each of the United Kingdom SROs have procedures for dispute resolution to redress customer complaints. However, to facilitate a customer's access to a dispute resolution forum, the Commission granted Rule 30.10 relief subject to the condition that each United Kingdom firm consent to participate in NFA's expanded arbitration program to cover disputes between United States customers and non-NFA member foreign firms in connection with transactions subject to part 30. Such consent, however, is subject to NFA's stated policy to reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange. Further, United Kingdom firms may require their United States customers to first exhaust certain mediation or conciliation procedures made available in the United Kingdom prior to initiating an NFA arbitration proceeding.[18]

Section 6 of LIFFE's Rules had required the compulsory referral of disputes arising out of any LIFFE contract to arbitration. In this regard, LIFFE has represented that its Board has approved amendments to section 6 of its Rules, the effects of which, according to LIFFE, will be as follows: [19]

(a) LIFFE will retain jurisdiction where the dispute arises primarily out of delivery, clearing, settlement or floor practices;

(b) In other areas of dispute, LIFFE will be able to decline jurisdiction if arbitration by some other body (*e.g.*, NFA and AFBD) seems more appropriate; and

(c) In the case of a United States customer, in disputes involving those matters referred to in paragraph (b) above, the customer may elect the forum in which he desires to arbitrate, NFA or United Kingdom arbitration.[20]

LIFFEs arbitration program is fully available to United States customers of LIFFE members. The rules envisage that the parties to the dispute may not be located in the United Kingdom and generally provide for written submissions by the parties. Although rule 6.8 provides for the possibility of a *viva voce* (that is, oral) hearing, paragraph (a) of rule 6.8 gives the arbitrators discretion to refuse such a hearing and to decide the case on the basis of written submissions. LIFFE generally would expect arbitrators to take into account the practicality and cost of attendance at a *viva voce* hearing by a party not located in the United Kingdom in deciding how to exercise their discretion in this regard.[21] In any event, a party need not appear at the hearing in person but may be represented by any agent engaged in the business of finance. *See* LIFFE rule 6.8(d).

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new Bylaws to provide for the regulation of the foreign futures and option activities of NFA members and associates. By letter dated August 10, 1989, from Daniel A. Driscoll, Vice-President of NFA, to Andrea M. Corcoran, Commission, NFA confirmed that arrangements have been made to provide sales practice audits of firms in the United States selling LIFFE options.

[16] *See* Appendix 8 to May 24, 1989 Petition of LIFFE.

[17] *Id.*

[18] The United Kingdom mediation/conciliation and arbitration programs were examined in connection with the issuance of the Commission's Rule 30.10 Orders, and NFA's new international arbitration program was reviewed in connection with the Commission's approval of amendments to NFA's rules which became effective on June 12, 1989.

[19] *See* letters from J.L. Foyle and Nick Carew Hunt, LIFFE, to Andrea M. Corcoran and Jane C. Kang, Commission, dated June 28 and August 30, 1989.

[20] *See* letters from J.L. Foyle and Nick Carew Hunt, LIFFE, to Andrea M. Corcoran and Jane C. Kang, Commission, dated June 28 and August 30, 1989.

[21] *Id.*

Further, in an August 10, 1989 supplement to its May 24, 1989 Petition, LIFFE stated that its Board has approved further revisions to LIFFE's arbitration rules which clarify that *viva voce* hearings would, in the normal course of events, be held only if the arbitrators considered it necessary to avoid injustice or if, in the light of a request by one of the parties for a *viva voce* hearing, the arbitrators considered such a hearing necessary.[22]

Failure by a LIFFE member to refer or to participate in the reference of a dispute to arbitration or to comply with an award made against him is a disciplinary offense which may result in such member's suspension or expulsion from LIFFE. *See* LIFFE rule 6.13. The party obtaining an award in his favor may obtain a judgment in any court of competent jurisdiction to enforce the award. The decision of the arbitrators will be final, but a party may refer an issue to the High Court in England with the Court's leave on a point of law, on the grounds that the arbitrators engaged in improper conduct during the proceedings, the award was improperly procured or on certain other bases.

Regulatory Environment

When options were originally banned in the United States, they had not been subjected to a full regulatory program. It is appropriate, therefore, to inquire as to whether the market which proposes to offer option products in the United States has a regulatory structure which addresses market integrity and the sales practices of firms doing options business with United States firms or customers.[23] This review is for the purpose of establishing the existence of a supervised marketplace and does not constitute a comparability analysis of the nature required under Rule 30.10 for certain other relief the Commission may accord under its foreign futures and option rules.[24] The United Kingdom regulatory system under the Financial Services Act, however, was the subject of detailed scrutiny during the Commission's consideration of the petitions submitted by SIB, AFBD, TSA and IMRO on behalf of designated firms for relief from the application of certain Commission rules under Commission Rule 30.10. In reviewing such petitions, the Commission's staff examined, among other things, the regulation of United Kingdom RIEs, including LIFFE. In addition, in connection with this petition, SIB has confirmed that:

> In issuing any Order pursuant to section 37 of the Financial Services Act 1986 declaring an exchange to be a recognized investment exchange ("RIE"), the Securities and Investments Board ("SIB") must determine, among other things, that such an exchange has adequate arrangments and resources for the effective monitoring and enforcement of compliance with its rules.
>
> In connection with the foregoing, as the United Kingdom authority with supervisory responsibilities over RIEs, the SIB confirms to the Commodity Futures Trading Commission that it monitors all RIEs for compliance with their obligations as RIEs.[25]

Further, Commission staff analyzed the rules of SIB, AFBD, TSA and IMRO as they related to fitness review of qualifications of persons, minimum financial requirements, protection of customer funds, recordkeeping and reporting requirements and sales practice and compliance standards. The Staff Memoranda dated May 5, 1989 concluded that subject to the terms and conditions recommended therein, the systems and rules in effect in the United Kingdom afforded protections comparable to those in effect in the United States.

The only matter of note in connection with LIFFE's petition under Rule 30.3(a) which was not considered in the context of the Commission's consideration of the Rule 30.10 petitions of the SIB, AFBD, TSA and IMRO relates to the requirement that any firm which offers or sells any such LIFFE option product must provide the Commission's options risk disclosure statement in Rule 33.7.

The Commission stated in granting the Rule 30.10 petitions of SIB, AFBD, TSA and IMRO that in considering any petition requesting that United Kingdom option products subject to Part 30 be approved for offer or sale to customers resident in the United States, the Commission would assess the degree to which the United Kingdom's options risk disclosure statement addresses the same matters as those set forth in the Commission's options risk disclosure statement in determining whether the United Kingdom's statement may be substituted for the language in Commission Rule 33.7. The Division has reviewed the general risk disclosure statements required to be provided under the rules of SIB and the United Kingdom SROs [26] and believes that the risks addressed in such disclosure statements in connection with option transactions are not as comprehensive as the risk disclosures contained in Commission Rule 33.7. Accordingly, the Division recommends that the Commission require as a condition of granting LIFFE's petition that any firm, including a firm in the United Kingdom granted relief under Rule 30.10, provide customers resident in the United States with the options risk disclosure statement required by Rule 33.7.

However, all option contracts traded on LIFFE are designed with a provision for deferred payment (on exercise or expiry) of the option premium rather than payment at purchase.[27] In this connection, LIFFE has represented that in order to maintain prudent cover against the risk of loss in option positions, a system of margining supports the form of contract. This system is similar in principle and practice to that used for futures contracts, and involves three elements:

(i) Daily revaluation of positions (marking-to-market) resulting in positive or negative variation margin;

(ii) Initial margin calculated to provide protection against short term position risk;

(iii) Full integration with the margining of related futures contracts.

The form of the option contract and associated margining do not affect the "traditional" characteristic of purchased options in that the maximum potential loss is limited to the price of the option (*i.e.* premium).

In its June 28, 1989 supplement to its May 24, 1989 Petition, LIFFE has represented that the main benefits of LIFFE's option margining system may be summarized as follows:

> —Improved utilization of funds and cash flow.
>
> As for futures contracts, the buyer of the option contracts does not need to pay the full

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[22] *See* letters from J.L. Foyle and Nick Carew Hunt, LIFFE, to Andrea M. Corcoran and Jane C. Kang, Commission, dated August 10, 16 and 30, 1989.

[23] Although the Commission has not indicated an intention to review the terms and conditions of foreign option products, *see* S. Rep. No. 384, 97th Cong., 2d Sess. 45–46 (1982), the Commission's authority with respect to options is plenary.

[24] 52 FR 28980, 29001.

[25] *See* letter from M.B. Gittins, SIB, to Andrea M. Corcoran, Commission, dated July 28, 1989.

[26] *See* SIB Conduct of Business Rules 4.15(3)(a) and 4.16(3) and AFBD Rules 5.45.1 and 5.45.4. In a supplemental filing dated June 28, 1989, LIFFE has represented that it is currently drafting the necessary changes to LIFFE Rules and a General Notice which will require LIFFE members to incorporate the Commission Rule 33.7 options risk disclosure statement into their customer agreements with customers resident in the United States. *See* letter from J.L. Foyle, LIFFE, to Andrea M. Corcoran, Commission, dated June 28, 1989.

[27] By letters dated July 11 and 27, 1989, the Chicago Board of Trade and the Chicago Mercantile Exchange, respectively, petitioned the Commission for repeal of Commission Regulation 33.4(a)(2), 17 CFR 33.4(a)(2) (1988), which requires the full payment of the premium in connection with the purchase of a domestic-exchange traded option. On March 14, 1989, the Commission published a Notice of Petition for Rulemaking and a Request for Comments to delete Commission Regulation 33.4(a)(2) in order to permit the development of "futures-style margining" of commodity options. 54 FR 11233 (March 17, 1989).

DEPARTMENT OF HOUSING AND

1. The authority citation for part 8

responsible for the improvement in air

price at the time of purchase, and the daily variation margin results in improved cash flow.

—Profits made available *without* the need for early exercise.

Cash-flow problems are reduced where options are used in hedging strategies, in conjunction with futures or other options. By making available profits through daily variation margin, there is less likely to be a need to liquidate a position for reasons of cash flow rather than risk—an important advantage at times of major market movements, such as occurred in October 1987.

—Encouragement of risk-management.

Major users have commented that daily variation margin assists them in monitoring profit and loss, and LIFFE believes that this has proved to be a significant benefit. This is consistent with what happens with futures contracts and builds on that experience.

—Appreciation by users of the risks involved in option trading.

A positive feature is that option margining discourages the naked writing of options * * * as the seller is prevented from using options to generate immediate cash in order to avoid problems elsewhere.

In connection with the foregoing, in order to ensure that customers in the United States solicited to trade a LIFFE option contract understand that LIFFE permits the deferred payment of premium on such product, the Division further recommends that the Commission require as a condition of issuing the Order attached hereto that firms provide the Addendum attached to that Order as Exhibit B if they elect not to collect the full premium as margin from customers at the time of purchase.

IV. Conclusion

Based upon the foregoing, the representations of LIFFE contained in its letter dated May 24, 1989, as supplemented, SIB's letter dated July 28, 1989 confirming tha tit monitors LIFFE for compliance with its obligations as an RIE, the issuance by the Commission of Rule 30.10 petitions to SIB, AFBD, TSA and IMRO on May 15, 1989, the existence of, among other things, information sharing arrangements as discussed above and pursuant to Commission Rule 30.3(a) the Division recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order authorizing the offer or sale in the United States of options traded on LIFFE subject to the following terms and conditions:

(1) except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any LIFFE option product in the United States will be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to the order;

(2) that SIB and LIFFE represent that LIFFE is an RIE under the FSA and, as such, is subject to regulatory obligations under that Act, that transactions on LIFFE in the LIFFE option(s) referenced in such notice will be subject to the rules of LIFFE and that SIB and/or LIFFE will provide the Commission with information as to all material changes thereto promptly;

(3) that options on futures on stock indices [28] and options on futures on foreign government debt securities [29] will not be permitted to be offered or sold absent certain additional procedures;

(4) that options traded pursuant to the Order may only be offset on LIFFE or another market with respect to which the Commission has issued an order under Commission Rule 30.3(a) authorizing its option products to be offered or sold in the United States;

(5) that options traded pursuant to the Order may only be offered or sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, provided such persons also provide customers resident in the United States with the options risk disclosure statement in Commission Rule 33.7 and, if the persons elect not to collect the full premium for the contract as margin from the customer at the time of purchase, the Addendum thereto attached to the Order as Exhibit B, but may not be offered or sold by persons doing business in the United States pursuant to interim relief granted and extended by the Commission (*see* 53 FR 3338 (Feb. 5, 1988) and subsequent orders and letters of the Commission); and

(6) if experience demonstrates that the continued effectiveness of the order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject thereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted therein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in the order, as appropriate, on its own motion.

LIFFE has specified that the following option contracts, the terms and conditions for which are attached hereto, will initially be offered or sold in the United States: Options on Long Gilt, United States Treasury Bond, German Government Bond, Three-month Sterling Interest Rate and Three-month Eurodollar Interest Rate contracts and on Sterling Currency and Dollar-Mark Currency.[30] As noted in condition (6) above, the Division recommends that the Commission retain the authority to terminate the order granting authorization to offer or sell LIFFE options in the United States or to take such other steps as may be appropriate in light of the circumstances. In that connection, if the order is approved by the Commission, the Division intends to monitor the offer or sale of LIFFE options to persons in the United States pursuant to the terms of the recommended order and to make recommendations for further action to the Commission, as appropriate, in light of the operation of that program.

List of Subjects in 17 CFR Part 30:

Commodity futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a (1982).

2. Appendix B to Part 30 is amended by adding the following entry alphabetically:

APPENDIX B—OPTION CONTRACTS PERMITTED TO BE OFFERED AND SOLD IN THE U.S. PURSUANT TO § 30.3(a)

Exchange	Type of contract	FR date and citation
London Int'l Financial Futures Exchange.	Options on Long Gilt, U.S. Treasury Bond, German Government Bond, 3-month Sterling Interest Rate and 3-Month Eurodollar Interest Rate contracts and on Sterling Currency and Dollar-Mark Currency.	September 12, 1989; 54 FR——.

* * * * *

[FR Doc. 89-21223 Filed 9-11-89; 8:45 am]

BILLING CODE 6351-01-M

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[28] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the Act.

[29] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–8 promulgated thereunder.

[30] The Securities and Exchange Commission under section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–8 promulgated thereunder has designated the government debt securities issued by the United Kingdom and West Germany as exempted securities. *See* Securities Exchange Act Release No. 20708, March 2, 1984, and 53 FR 43860 (October 31, 1988).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 8

[Docket No. R-89-528; FR-770]

Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Technical amendment.

SUMMARY: The Department of Housing and Urban Development's regulations, as implemented by section 504 of the Rehabilitation Act of 1973, as amended, assure against nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department. Certain sections of the Department's regulations contain information collection requirements and were submitted for approval to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The purpose of this document is to amend those regulations to include OMB control numbers at the places where current information collection requirements are described.

EFFECTIVE DATE: September 12, 1989.

FOR FURTHER INFORMATION CONTACT: Waite Madison, Acting section 504 Program Manager, Office of Fair Housing and Equal Opportunity, (202) 755–5404. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory sections listed below were approved by the Office of Management and Budget on August 8, 1988, under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and assigned the control number listed. The approval expires on January 31, 1991.

List of Subjects in 24 CFR Part 8

Administrative practice and procedure, Handicapped, Civil rights, Reporting and recordkeeping requirements, Equal employment opportunity, Loan programs: housing and community development, Grant programs: housing and community development.

Text of the Amendment

Accordingly, part 8 of title 24 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 8 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); sec. 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309); sec. 7(d) of the Housing and Community Development Act (42 U.S.C. 3535(d)).

§§ 8.21, 8.24, 8.25, 8.51, 8.55 [Amended]

2. Sections 8.21, 8.24, 8.25, 8.51, and 8.55 are amended by adding at the end of each section, the following statement:

(Approved by the Office of Management and Budget under OMB Control Number 2529–0034)

Dated: September 6, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-21364 Filed 9-11-89; 8:45 am]

BILLING CODE 4210-32-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-3644-7]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: In a June 29, 1988 (53 FR 24454), notice, USEPA proposed to disapprove a request from the State of Wisconsin to revise the attainment status designation, at 40 Code of Federal Regulations (CFR) 81.350, for a sub-city area in the City of Kenosha, Kenosha County, Wisconsin, from secondary nonattainment to attainment relative to the former total suspended particulates (TSP) National Ambient Air Quality Standards (NAAQS). Under the Clean Air Act (CAA) and USEPA's transitional particulate matter policy (July 1, 1987, 52 FR 24682), TSP designations can continue to be changed if sufficient data are available to warrant such a change. USEPA continues to process TSP redesignation requests, because various regulatory provisions remain tied to the TSP attainment status.

USEPA is disapproving Wisconsin's redesignation request because the Wisconsin Department of Natural Resources (WDNR) failed to provide sufficient evidence that (1) the monitoring data were representative of worst-case ambient concentrations, (2) emission reductions must be federally approved, permanent, and resulted in the decrease in ambient concentrations, (3) dispersion techniques were not responsible for the improvement in air quality. These redesignation criteria are contained in an April 21, 1983, memorandum entitled "Section 107 Designation Policy Summary" from Sheldon Meyers, then Director, Office of Air Quality Planning and Standards (OAQPS), and a September 30, 1985, memorandum entitled "Total Suspended Particulate (TSP) Redesignations" from Gerald A. Emison, Director, OAQPS.

EFFECTIVE DATE: This final rulemaking becomes effective October 12, 1989.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886–6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. A sub-city area of Kenosha, Wisconsin, was designated as not attaining the secondary TSP standard. On July 23, 1987, pursuant to section 107(d)(5) of the CAA, the WDNR requested that the sub-city nonattainment area of Kenosha[1] be redesignated to attainment of the TSP NAAQS.

For areas designated nonattainment for TSP, a TSP State Implementation Plan (SIP) was required which satisfied the requirements of section 110(a) and Part D of the CAA, including assuring the attainment and maintenance of the TSP NAAQS. USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less

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[1] The Kenosha sub-city secondary TSP nonattainment area is defined as follows:

North: 52nd Street east from 39th Avenue to Lake Michigan.

West: 39th Avenue south from 52nd Street to 67th Street.

South: 67th from 39th Avenue to Lake Avenue.

East: Lake Michigan.

(PM$_{10}$). USEPA will continue to process redesignations of areas from nonattainment to attainment for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (page 24682, column 1) described USEPA's transition policy. TSP redesignation requests are to be reviewed for compliance with USEPA's redesignation policies issued in memoranda on April 21, 1983, and September 30, 1985. These are: (1) The monitoring data must be representative of worst-case ambient concentrations, (2) emission reductions must be federally approved, must be permanent, and must have resulted in the decrease in ambient concentrations, (3) dispersion techniques must not be responsible for the improvement in air quality.

USEPA proposed to disapprove Wisconsin's redesignation request on June 29, 1988. Comments on this notice of proposed rulemaking were received from WDNR. Comments and USEPA's responses are provided below:

The WDNR comments addressed three basic points: (1) Applicable requirements for approvable TSP redesignations, (2) the implementation of Reasonably Available Control Technology (RACT) for TSP in 1983, and (3) a request to act promptly on the Wisconsin PM$_{10}$ SIP. A discussion of each item follows.

Applicable Requirements—As technical support for Wisconsin's redesignation requests, WDNR only submitted the Kenosha County monitoring data. WDNR believed that the monitoring data were all that were necessary based on their understanding of a July 1987 conference call between USEPA Region V and the Region V States. However, other requirements do apply. The PM$_{10}$ regulations published on July 1, 1987 (52 FR 24682) clearly state that "[redesignation] requests will continue to be reviewed during the transition period for compliance with USEPA's redesignation policies as issued in memoranda from the Director of the Office of Air Quality Planning and Standards, April 21, 1983, and September 30, 1985."

Implementation of RACT—According to WDNR, the requirement for a USEPA control strategy which has been fully implemented is fulfilled by the Wisconsin TSP RACT rules as approved by USEPA in 1983. USEPA disagrees because the RACT rules apply only in primary nonattainment areas. In the March 9, 1983, **Federal Register** notice (48 FR 9860), USEPA took no action on the RACT rules for secondary nonattainment areas in Brown (Green Bay), Dane (Madison), Douglas, Kenosha (Kenosha), Manitowoc (Manitowoc), Marathon, Racine, Winnebago, and Wood Counties, because WDNR did not submit a plan for the RACT rules for secondary nonattainment areas in Brown (Green Bay), Dane (Madison), Douglas, Kenosha (Kenosha), Manitowoc (Manitowoc), Marathon, Racine, Winnebago, and Wood Counties, because WDNR did not submit a plan for attainment and maintenance of the TSP NAAQS in these areas. The WDNR would have had to state specifically that all sources are in compliance with the 1972 SIP and note those specific federally enforceable emission decreases from mid-1970 emission levels which resulted in the change to attainment.

Wisconsin PM$_{10}$ Committal SIP—WDNR urged prompt action on their PM$_{10}$ committal SIP. An approved commital SIP would allow the redesignation of Kenosha without the information currently required under the transition policy. This is because the transition policy applies to areas which are in transition from TSP to PM$_{10}$ regulations. Once the committal SIP is approved, the PM$_{10}$ Group Three Areas, of which Kenosha is a part, are no longer in transition. WDNR submitted their PM$_{10}$ committal SIP on April 30, 1988. USEPA is proceeding with rulemaking. WDNR may formally request that USEPA redesignate Kenosha (and other Group Three Areas) concurrent with approval of the committal SIP.

Conclusion

USEPA is disapproving the redesignation request for a sub-city nonattainment area of Kenosha, Wisconsin, because the WDNR did not demonstrate that (1) the monitors indicating attainment were placed at the points of expected maximum TSP impact, (2) an USEPA-approved control strategy had been implemented, (3) emission reductions and the improvement in air quality were not merely the result of economic downturn or temporary, and (4) dispersion techniques were not responsible for the improvement in air quality.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1989. This action may not be challenged later in the proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: August 30, 1989.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 89–21409 Filed 9–11–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FRL–3644–6]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: In a June 29, 1988 (53 FR 24454), notice, USEPA proposed to disapprove a request from the State of Wisconsin to revise the attainment status designation, at 40 Code of Federal Regulations (CFR) 81.350, for a sub-city area in the City of Manitowoc, Manitowoc County, Wisconsin, from secondary nonattainment to attainment relative to the former total suspended particulates (TSP) National Ambient Air Quality Standards (NAAQS). Under the Clean Air Act (CAA) and USEPA's transitional particulate matter policy (July 1, 1987, 52 FR 24682), TSP designations can continue to be changed if sufficient data are available to warrant such a change. USEPA continues to process TSP redesignation requests, because various regulatory provisions remain tied to the TSP attainment status.

USEPA is disapproving Wisconsin's redesignation request because the Wisconsin Department of Natural Resources (WDNR) failed to provide sufficient evidence that (1) the monitoring data were representative of worst-case ambient concentrations, (2) emission reductions were federally approved, were permanent, and resulted in the decrease in ambient concentrations, (3) dispersion techniques were not responsible for the improvement in air quality. These redesignation criteria are contained in an April 21, 1983, memorandum entitled "Section 107 Designation Policy Summary" from Sheldon Meyers, then Director, Office of Air Quality Planning and Standards (OAQPS), and a September 30, 1985, memorandum entitled "Total Suspended Particulate (TSP) Redesignations" from Gerald A. Emison, Director, OAQPS.

EFFECTIVE DATE: This final rulemaking becomes effective October 12, 1989.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886–6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. A sub-city area of Manitowoc, Wisconsin, was designated as not attaining the secondary TSP standard. On July 23, 1987, pursuant to section 107(d)(5) of the CAA, the WDNR requested that the sub-city nonattainment area of Manitowoc[1] be redesignated to attainment of the TSP NAAQS.

For areas designated nonattainment for TSP, a TSP State Implementation Plan (SIP) was required which satisfied the requirements of section 110(a) and part D of the CAA, including assuring the attainment and maintenance of the TSP NAAQS. USEPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less (PM$_{10}$). USEPA will continue to process redesignations of areas from nonattainment to attainment for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (page 24682, column 1) described USEPA's transition policy regarding TSP redesignations. According to USEPA's transition policy, TSP redesignation requests are to be reviewed for compliance with USEPA's redesignation policies issued in memoranda on April 21, 1983, and September 30, 1985. These are: (1) The monitoring data must be representative of worst-case ambient concentrations, (2) emission reductions must be federally approved, must be permanent, and must have resulted in the decrease in ambient concentrations, (3) dispersion techniques must not be responsible for the improvement in air quality.

USEPA proposed to disapprove Wisconsin's redesignation request on June 29, 1988. Comments on this notice of proposed rulemaking were received from WDNR. Comments and USEPA's responses are provided below:

The WDNR comments addressed three basic points: (1) Applicable requirements for approvable TSP redesignations, (2) the implementation of Reasonably Available Control Technology (RACT) for TSP in 1983, and (3) a request to act promptly on the Wisconsin PM$_{10}$ SIP. A discussion of each item follows.

Applicable Requirements—As technical support for Wisconsin's redesignation requests, WDNR only submitted the Manitowoc County monitoring data. WDNR believed that the monitoring data were all that were necessary based on their understanding of a July 1987 conference call between USEPA Region V and the Region V States. However, other requirements do apply. The PM$_{10}$ regulations published on July 1, 1987 (52 FR 24682) clearly state that "[redesignation] requests will continue to be reviewed during the transition period for compliance with USEPA's redesignation policies as issued in memoranda from the Director of the Office of Air Quality Planning and Standards, April 21, 1983, and September 30, 1985."

Implementation of RACT—According to WDNR, the requirement for a USEPA control strategy which has been fully implemented is fulfilled by the Wisconsin TSP RACT rules as approved by USEPA in 1983. USEPA disagrees because the RACT rules apply only in primary nonattainment areas. In the March 9, 1983, **Federal Register** notice (48 FR 9860), USEPA took no action on the RACT rules for secondary nonattainment areas in Brown (Green Bay), Dane (Madison), Douglas, Kenosha (Kenosha), Manitowoc (Manitowoc), Marathon, Racine, Winnebago, and Wood Counties, because WDNR did not submit a plan for attainment and maintenance of the TSP NAAQS in these areas. The WDNR would have had to state specifically that all sources are in compliance with the 1972 SIP and note those specific federally enforceable emission decreases from mid-1970 emission levels which resulted in the change to attainment.

Wisconsin PM$_{10}$ Committal SIP—WDNR urged prompt action on their PM$_{10}$ committal SIP. An approved committal SIP would allow the redesignation of Manitowoc without the information currently required under the transition policy. This is because the transition policy applies to areas which are in transition from TSP to PM$_{10}$ regulations. Once the committal SIP is approved, the PM$_{10}$ Group Three Areas, of which Manitowoc is a part, are longer in transition. WDNR submitted their PM$_{10}$ committal SIP on April 30, 1988. USEPA is proceeding with rulemaking. WDNR may formally request that USEPA redesignate Manitowoc (and other Group Three Areas) concurrent with approval of the committal SIP.

Conclusion

USEPA is disapproving the redesignation request for a sub-city nonattainment area of Manitowoc, Wisconsin, because the WDNR did not submit sufficient documentation to demonstrate that (1) the monitoring data were representative of worst-case ambient concentrations, (2) emission reductions were federally approved, were permanent, and resulted in the decrease in ambient concentrations, and (3) dispersion techniques were not responsible for the improvement in air quality.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1989. This action may not be challenged later in the proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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[1] The Manitowoc sub-city secondary TSP nonattainment area is defined as follows:

North: East from Manitowoc River to York St. to Lake Michigan.

West: 14th St. south from Wollmer St. to Hamilton St.

South: Hamilton St. east from 14th St. to Lake Michigan.

East: Lake Michigan.

BEST COPY AVAILABLE

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: August 31, 1989.

Frank M. Covington,
Acting Regional Administrator.

[FR Doc. 89–21410 Filed 9–11–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FRL-3644-4]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of Final Rulemaking.

SUMMARY: In a June 29, 1988 (53 FR 24454), notice, USEPA proposed to disapprove a request from the State of Wisconsin to revise the attainment status designation, at 40 Code of Federal Regulations (CFR) 81.350, for a sub-city area in the City of Madison, Dane County, Wisconsin, from secondary nonattainment to attainment relative to the former total suspended particulates (TSP) National Ambient Air Quality Standards (NAAQS). Under the Clean Air Act (CAA) and USEPA's transitional particulate matter policy (July 1, 1987, 52 FR 24682), TSP designations can continue to be changed if sufficient data are available to warrant such a change. USEPA will continue to process TSP redesignation requests, because various regulatory provisions remain tied to the TSP attainment status.

USEPA is disapproving Wisconsin's redesignation request because the Wisconsin Department of Natural Resources (WDNR) failed to demonstrate that (1) an USEPA-approved control strategy had been implemented, (2) emission reductions and the improvement in air quality were not merely the result of economic downturn or temporary, and (3) dispersion techniques were not responsible for the improvement in air quality. In addition, although WDNR did submit eight consecutive quarters of quality-assured data, they failed to demonstrate that the monitors indicating attainment were placed at the points of expected maximum TSP impact. These redesignation criteria are contained in an April 21, 1983, memorandum entitled "Section 107 Designation Policy Summary" from Sheldon Meyers, then Director, Office of Air Quality Planning and Standards (OAQPS), and a September 30, 1985, memorandum entitled "Total Suspended Particulate (TSP) Redesignations" from Gerald A. Emison, Director, OAQPS.

EFFECTIVE DATE: This final rulemaking becomes effective October 12, 1989.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886–6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. A sub-city area of Madison, Wisconsin, was designated as not attaining the secondary TSP standard. On July 23, 1987, pursuant to section 107(d)(5) of the CAA, the WDNR requested that the sub-city nonattainment area of Madison [1] be redesignated to attainment of the TSP NAAQS.

For areas designated nonattainment for TSP, a TSP State Implementation Plan (SIP) was required which satisfied the requirements of section 110(a) and Part D of the CAA, including assuring the attainment and maintenance of the TSP NAAQS. USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less (PM_{10}). USEPA will continue to process redesignations of areas from nonattainment to attainment for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (page 24682, column 1) described USEPA's transition policy regarding TSP redesignations. According to USEPA's transition policy, TSP redesignation requests are to be reviewed for compliance with USEPA's redesignation policies issued in memoranda on April 21, 1983, and September 30, 1985. These are: (1) The monitoring data must be representative of worst-case ambient concentrations, (2) emission reductions must be federally approved, must be permanent, and must have resulted in the decrease in ambient concentrations, (3) dispersion techniques must not be responsible for the improvement in air quality.

Based on these criteria, USEPA proposed to disapprove Wisconsin's redesignation request on June 29, 1988 (53 FR 24454). Comments on this notice of proposed rulemaking were received from WDNR. Comments and USEPA's responses are provided below:

The WDNR comments addressed three basic points: (1) Applicable requirements for approvable TSP redesignations, (2) the implementation of Reasonably Available Control Technology (RACT) for TSP in 1983, and (3) a request to act promptly on the Wisconsin PM_{10} SIP. A discussion of each item follows.

Applicable Requirements—As technical support for Wisconsin's redesignation requests, WDNR only submitted the Dane County monitoring data. WDNR believed that the monitoring data were all that were necessary based on this understanding of a July 1987 conference call between the USEPA Region V and the Region V States. However, other requirements do apply. The PM_{10} regulations published on July 1, 1987, (52 FR 24682) clearly state that "[redesignation] requests will continue to be reviewed during the transition period for compliance with USEPA's redesignation policies as issued in memoranda from the Director of the Office of Air Quality Planning and Standards, April 21, 1983, and September 30, 1985."

Implementation of RACT—According to WDNR, the requirement for a USEPA control strategy which has been fully implemented is fulfilled by the Wisconsin TSP RACT rules as approved by USEPA in 1983. USEPA disagrees because the RACT rules apply only in primary nonattainment areas. In the March 9, 1983, **Federal Register** notice (48 FR 9860), USEPA took no action on the RACT rules for secondary nonattainment areas in Brown (Green Day), Dane (Madison), Douglas, Kenosha (Kenosha), Manitowoc (Manitowoc), Marathon, Racine, Winnebago, and Wood Counties, because WDNR did not submit a plan for attainment and maintenance of the TSP NAAQS in these areas. The WDNR would have had to state specifically that all sources are in compliance with the 1972 SIP and note those specific federally enforceable emission decreases from mid-1970 emission levels which resulted in the change to attainment.

Wisconsin PM_{10} Committal SIP—WDNR urged prompt action on their PM_{10} commital SIP. An approved commital SIP would allow the redesignation of Madison without the information currently required under the transition policy. This is because the transition policy applies to areas which are in transition from TSP to PM_{10} regulations. Once the committal SIP is approved, the PM_{10} Group Three Areas, of which Madison is a part, are no longer in transition. WDNR submitted their PM_{10} committal SIP on April 30, 1988. USEPA is proceeding with rulemaking. WDNR may formally request that USEPA redesignate Madison (and other Group Three Areas) concurrent with approval of the committal SIP.

Conclusion

USEPA is disapproving the redesignation request for a sub-city nonattainment area of Madison, Wisconsin, because the WDNR did not demonstrate that (1) the monitors indicating attainment were placed at the points of expected maximum TSP impact, (2) an USEPA-approved control strategy had been implemented, (3) emission reductions and the improvement in air quality were not merely the result of economic downturn or temporary, and (4) dispersion techniques were not responsible for the improvement in air quality.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1989. This action may not be challenged later in the proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Date. August 31, 1989.

Frank M. Covington,
Acting Regional Administrator.

[FR Doc. 89–21411 Filed 9–11–89; 8:45 am]

BILLING CODE 6560-50-M

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[1] The Madison sub-city secondary TSP nonattainment area is defined as follows:

North: Corner of Schlimgen Ave. and Padkers Ave. west to Lakewook Blvd.

Northwest: Corner of Lakewook Blvd. and Del Mar Drive south to Lake Mendota, continue along eastern shoreline of Lake Mendota to Charter Street.

West: Charter St. north from Vilas St. to Lake Mendota.

South Southeast: Vilas St. east from Charter St. to west Washington Ave., continue southeast to Lake Monona, continue along west shoreline of Lake Monona northeast to Starkweather Creek.

North Northeast: Western branch of Starkweather Creek northeast to Fair Oak Ave. then north along Bryan St. to Milwaukee St. continue west to Oak St. then north to Abreg Ave., continue northwest to Packers Ave., then North to Schlimgen Ave.

Remainder of Dane County: Better than national standard.

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40 CFR Part 272

[FRL-3643-7]

Hazardous Waste Management Program Codification of Approved State Hazardous Waste Program for Illinois

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule and request for comments.

SUMMARY: The Resource Conservation and Recovery Act of 1976 as amended (RCRA) authorizes the United States Environmental Protection Agency (EPA) to grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. 40 CFR Part 272 codifies EPA's prior authorization of State programs and incorporates by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA Section 3008. Thus, EPA is codifying the Illinois authorized State program in Part 272.

DATES: The codification of Illinois' authorized hazardous waste program shall be effective November 13, 1989 unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Illinois' codification must be received by the close of business October 12, 1989. The incorporation of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 1989.

ADDRESSES: Written comments should be sent to Gary Westefer, Illinois Regulatory Specialist, Office of RCRA, U.S. EPA Region V, 230 South Dearborn Street, 5HR–JCK–13, Chicago, Illinois 60604, (312) 886–7450, (FTS: 8–886–7450).

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Illinois Regulatory Specialist, Office of RCRA, U.S. EPA Region V, 230 South Dearborn Street, 5HR–JCK–13, Chicago, Illinois, 60604, (312) 886–7450, (FTS: 8–886–7450).

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA) 42 U.S.C. 6926 *et seq.*, allows the U.S. Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's **Federal Register** notice is to codify EPA's approval of Illinois' base hazardous waste management program and its revisions to that program.

On January 30, 1986, EPA published a **Federal Register** notice announcing its decision to grant final authorization to Illinois (see 51 FR 3778, January 30, 1986). On January 5, 1988, EPA published a **Federal Register** notice announcing its decision to grant Illinois final authorization for program revisions to its hazardous waste management program (see 53 FR 126, January 5, 1988).

The January 5, 1988, **Federal Register** announced EPA's approval of Illinois equivalent rules for the following Federal hazardous waste regulatory amendments:

- Warfarin and Zinc Phosphide (49 FR 19923, May 10, 1984);
- Lime Stabilized Pickle Liquor Sludge (49 FR 23287, June 5, 1984);
- Exclusion of Household Waste (49 FR 44980, November 13, 1984);
- Interim Status Standards Applicability (49 FR 46095, November 21, 1984);
- Corrections to the Test Methods Manual (49 FR 47391, December 4, 1984);
- Satellite Accumulation (49 FR 47391, December 20, 1984);
- Redefinition of Solid Waste (50 FR 614, January 4, 1985);
- Dioxin Waste Listing and Management Standards (50 FR 1978, January 14, 1985);
- Interim Status Standards for Landfill Cover (50 FR 16044, April 23, 1985);
- Design Standards (50 FR 16044, April 23, 1985);
- Availability of Information (RCRA Section 3006(f)).

Illinois submitted an application requesting approval of these rule changes on August 7, 1986. That application contained a description of the rule changes, a revised Memorandum of Agreement, an Attorney General's Statement certifying the equivalence of the State rules and a copy of the rules. EPA approved of the rule changes and the State application in the January 5, 1988, Federal Register. The final authorization for this program revision became effective on March 5, 1988.

EPA has decided to codify its approval of State programs in Part 272 of Title 40, Code of Federal Regulations (CFR) and to incorporate by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. The codification reflects the State program that was in effect when EPA granted Illinois final authorization under Section 3006(b) for its revised hazardous waste program (see 53 FR 126, January 5, 1988).

This effort will provide clearer notice to the public of the scope of the authorized program in each State. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Pub. L. 98–616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By codifying the authorized Illinois program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Illinois, the status of Federally approved requirements of the Illinois program will be readily discernible.

The Agency will only codify for enforcement purposes those provisions of the Illinois hazardous waste management program for which authorization approval has been granted by EPA. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogues.

To codify Illinois' authorized hazardous waste program, EPA will add Subpart O to Part 272 of Title 40 of the CFR. Subpart O has previously been reserved for Illinois. Sections 272.701(a)(1)–(2), and 272.701(b)–(d) intend to codify for enforcement purposes, the State statutes and regulations, the Memorandum of Agreement, the Attorney General's Statements, and the Program Descriptions, which are authorized and made part of the hazardous waste management program under Subtitle C of RCRA.

The Agency retains the authority under Sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to codify for purposes of enforcement such particular, authorized Illinois enforcement authorities. Section 272.701(a)(2) lists those authorized Illinois authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i)). As a result, State provisions which are "broader in scope" than the Federal program are not codified for purposes of enforcement in part 272. Section 272.701(a)(3) of the intended codification simply lists for reference and clarity the Illinois statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being codified. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

As noted above, the Agency is not amending Part 272 to include HSWA requirements and prohibitions that are immediately effective in Illinois and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (See 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and codified State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to Part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the Part 272 codification every time a new HSWA provision takes effect under the authority of RCRA 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's Part 272 codification. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The codification of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to codify the decisions already made to authorize Illinois's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: July 21, 1989.

Robert Springer,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR Part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for Part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. 40 CFR part 272, Subpart O is amended by adding §§ 272.700 and 272.701 and by reserving §§ 272.702 through 272.749 to read as follows:

§ 272.700 State authorization.

(a) The State of Illinois is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6921 *et seq.*, subject to the Hazardous and Solid Waste Amendments of 1984 (HSWA), (Pub. L. 98–616, Nov. 8, 1984), 42 U.S.C. 6926(c) and (g). The Federal program for which a State may receive authorization is defined in 40 CFR Part 71. The State's base program and revisions to that program, as administered by the Illinois Environmental Protection Agency, were approved by EPA pursuant to 42 U.S.C. 6926(b) and Part 271 of this Chapter. EPA's approval of Illinois' base program was effective on January 31, 1986 (51 FR 3778, January 30, 1986). EPA's approval of revisions to Illinois' base program was effective on March 5, 1988 (53 FR 126, January 5, 1988).

(b) Illinois is authorized to implement certain HSWA requirements in lieu of EPA. EPA has explicitly indicated its intent to allow such action in a **Federal Register** notice granting Illinois authorization on January 5, 1988 (see FR 126, January 5, 1988).

(c) Illinois has primary responsibility for enforcing its hazardous waste program. However, EPA retains the authority to exercise its enforcement authorities under Sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, and 6973, as well as under other Federal laws and regulations.

(d) Illinois must revise its approved program to adopt new changes to the Federal Subtitle C program in accordance with Section 3006(b) of RCRA and 40 CFR Part 271, Subpart A. Illinois must seek final authorization for all program revisions pursuant to Section 30069b) of RCRA but, on a temporary basis, may seek interim authorization for revisions required by HSWA pursuant to section 3006(g) of RCRA, 42 U.S.C. 6926(g). If Illinois obtains final authorization for the revised requirements pursuant to Section 3006(g), the newly authorized provisions will be listed in § 272.701 of this Subpart. If Illinois obtains interim authorization for the revised requirements pursuant to Section 3006(g), the newly authorized provisions will be listed in § 272.702.

Section 272.701 State-Administered Program: Final Authorization, Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Illinois has final authorization for the following elements submitted to EPA in Illinois' base program and its revision application for final authorization approved by EPA effective on January 31, 1986, and March 5, 1988, respectively.

(a) *State Regulations.* (1) The following Illinois regulations are incorporated by reference and codified as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.:* Illinois Administrative Code, Title 35, Part 702, Sections 702.101–702.104, 702.110–720.187; Part 703, Sections 703.100–703.246, Part 709, Sections 709.102–709.603; Part 720, Sections 720.101–720.122, Appendix A; Part 721, Sections 721.101–721.133, Appendices A, B, C, G, H, I; Part 722, Sections 722.110–722.151; Part 723, Sections 723.110–723.131; Part 724, Sections 724.101–724.451, Appendices A, D, E; Part 725, Sections 725.101–725.530, Appendices A, D, E; and Part 729, Sections 729.100–729.321 (January 1, 1985, as amended January 1, 1986). This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a). Copies of the Illinois regulations that are incorporated by reference in this paragraph are available from the Office of the Secretary of State, Index Division, 111 East Monroe Street, Springfield, Illinois 62756.

(2) The following statutes and regulations concerning State enforcement and procedures, although not codified herein, are part of the authorized State program:

(i) Illinois Revised Statutes, Chapter 111½, sections 1–5.1, sections 7–7.1, sections 20–22, sections 22.3–22.6, sections 30–34, and section 39, subsections a, d, g, k; Chapter 116, sections 201–211; and Chapter 127, sections 1001–1021 (1986).

(ii) Illinois Administrative Code, Title 35 Part 700, sections 700.101–700.504; Part 702, sections 702.105–702.109; Part 705, sections 705.101–705.212 (January 1, 1985, as amended January 1, 1986). The following statutory and regulatory provisions of the Illinois Administrative Code are broader in scope than the Federal program, are not part of the authorized program, and are not codified herein for enforcement purposes.

(A) Illinois Revised Statutes, chapter 111½, sections 22.01–22.2, section 22.8, section 39, subsections h and i, and section 39.2 (1986).

(B) Illinois Administrative Code, Title 35, Part 700, sections 700.601–700.605; Part 704, sections 704.201–704.240; Part 730, sections 730.101–730.152; and Part 731, sections 731.101–731.901.

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region V and the Illinois Environmental Protection Agency, signed by the EPA Regional Administrator on January 21, 1986, is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921, *et seq.*

(c) *Statements of Legal Authority.* The Illinois Attorney General's Statements for final authorization signed by the Attorney General of Illinois on June 4, 1985, and July 15, 1986, are codified as part of the authorized hazardous waste management program under Subtitle C of RCRA 42 U.S.C. 6921 *et seq.*

(d) *Program Description.* Program Descriptions dated July 26, 1985, and August 7, 1986, and any other materials submitted as part of, or as supplements to, the original application or revision applications are codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

[FR Doc. 89–21269 Filed 9–11–89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101

[FPMR Amdt. A–46]

Regulation System

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation deletes some outdated references and revises some references to reflect the current Federal Property Management Regulations (FPMR) system. This regulation also establishes a more flexible policy for granting deviations from the requirements of the FPMR.

EFFECTIVE DATE: September 12, 1989.

FOR FURTHER INFORMATION CONTACT: Rodney P. Lantier, Directives and Correspondence Management Branch, 202–566–0666.

SUPPLEMENTARY INFORMATION: The proposed rule for the deviations granting process was published in the **Federal Register** on August 1, 1988 (53 FR 28895).

GSA has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternate approach involving the least net cost to society.

List of Subjects in 41 CFR 101–1

Government property management.

Title 41 Part 101–1 of the Code of Federal Regulations is amended as follows:

PART 101–1—INTRODUCTION

1. The authority citation for 41 CFR Part 101–1 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Subpart 101–1.1—Regulation System

2. Section 101–1.101 is revised to read as follows:

§ 101–1.101 Federal Property Management Regulations System.

The Federal Property Management Regulations System described in this subpart is established and shall be used by General Services Administration (GSA) officials and, as provided in this subpart, by other executive agency officials, in prescribing regulations, policies, procedures, and delegations of authority pertaining to the management of property, and other programs and activities of the type administered by GSA, except procurement and contract matters contained in the Federal Acquisition Regulations (FAR).

3. Section 101–1.103 is revised to read as follows:

§ 101–1.103 FPMR temporary regulations.

(a) FPMR temporary regulations are authorized for publication when time or exceptional circumstances will not permit promulgation of an amendment to the Code of Federal Regulations and if the regulation will be effective for a period of 12 months or less except as provided in § 101–1.103(b), below. These temporary regulations will be codified before the designated expiration date or their effective date will be extended if it is determined that conversion to permanent form cannot be accomplished within the specified timeframe.

(b) FPMR temporary regulations may have an effective period of up to 2 years when codification is not anticipated or is not considered practical.

4. Section 101–1.108 is revised to read as follows:

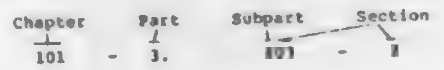
§ 101–1.108 Agency implementation and supplementation of FPMR.

Chapters 102 through 150 of this title are available for agency implementation and supplementation of FPMR contained in Chapter 101 of this title. Supplementation pertains to agency regulations in the subject matter of FPMR but not yet issued in Chapter 101.

5. Section 101–1.109 is revised to read as follows:

§ 101–1.109 Numbering in FPMR system.

(a) In the numbering system, all FPMR material is preceded by the digits 101–. This means that it is Chapter 101 in Title 41 of the Code of Federal Regulations. It has no other significance. The digit(s) before the decimal point indicates the part; the digits after the decimal point indicate, without separation, the subpart and section. For example:



(b) At the bottom of each page appears the number and date (month and year) of the FPMR amendment which transmitted it.

(c) Agency implementing regulations should conform to the FPMR section numbers, except for the substitution of the chapter designation of the agency. Agency supplementing regulations should be numbered "50" or higher for section, subpart, or part as may be involved.

6. Section 101–1.110 is revised to read as follows:

§ 101–1.110 Deviation.

(a) In the interest of establishing and maintaining uniformity to the greatest extent feasible, deviations; i.e., the use of any policy or procedure in any manner that is inconsistent with a policy or procedure prescribed in the Federal Property Management Regulations, are prohibited unless such deviations have been requested from the approved by the Administrator of General Services or his authorized designee. Deviations may be authorized by the Administrator of General Services or his authorized designee when so doing will be in the best interest of the Government. Request for deviations shall clearly state the nature of the deviation and the reasons for such special action.

(b) Requests for deviations from the FPMR shall be sent to the General Services Administration for consideration in accordance with the following:

(1) For onetime (individual) deviations, requests shall be sent to the address provided in the applicable regulation. Lacking such direction, requests shall be sent to the Administrator of General Services, Washington, DC 20405.

(2) For class deviations, requests shall be sent to only the Administrator of General Services.

7. Section 101–1.112 is revised to read as follows:

§ 101–1.112 Change lines.

(a) Single-column format: Vertical lines in the right margin of a page indicate material changed, deleted, or added by the FPMR amendment cited at the bottom of that page. Where insertion of new material results in shifting of unchanged material on following pages, no vertical lines will appear on such pages but the FPMR amendment transmitting such new pages will be cited at the bottom of each page.

(b) Double-column format: Arrows printed in the margin of a page indicated material changed, deleted, or added by the FPMR amendment cited at the bottom of that page.

Dated: June 28, 1989.

Richard G. Austin,

Acting Administrator of General Services

[FR Doc. 89–21371 Filed 9–11–89; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[CGD 87–015b]

RIN 2115–AC67

Tonnage Measurement of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This action revises the Coast Guard's vessel tonnage measurement regulations. This revision incorporates the system of measurement established under the International Convention on Tonnage Measurement of Ships, 1969, and provides a framework for phasing in the Convention Measurement System as the method of measuring ships domestically to establish uniformity in vessel measurement. The availability of the alternate domestic measurement systems is continued for regulatory purposes so that the application of the laws of the United States are preserved in order that vessels engaged in domestic and international commerce are not adversely affected.

This revision is necessary to implement the statutory mandate calling for these changes. In the process of incorporating these changes into the regulations, the Coast Guard rearranged and renumbered the regulations in a more current and readable format.

This revision should carry out the intent of Congress, while facilitating the use of these complex regulations by the maritime industry.

EFFECTIVE DATE: This rule is effective on October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis A. Lamont, Tonnage Survey Branch, (202) 267–2992.

SUPPLEMENTARY INFORMATION: On April 26, 1989, a notice of proposed rulemaking (NPRM), entitled "Tonnage Measurement of Vessels", was published in the **Federal Register** (54 FR 17966). On May 12, 1989, the Office of the Federal Register published a notice correcting its misprint of the telephone number under "**FOR FURTHER INFORMATION CONTACT**" in the NPRM to read "(202) 267–2992" instead of "(202) 267–2292". The Coast Guard received seven letters commenting on the proposed rulemaking. A public hearing was not requested and one was not held.

Drafting Information

The principal persons involved in drafting this document are Mr. Dennis A. Lamont, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Background

Public Law 99–509 (the Omnibus Budget Reconciliation Act of 1986) made major revisions to the vessel tonnage measurement laws and consolidated them into a new part J of 46 U.S.C. subtitle II. Part J authorized the Secretary of Transportation (Coast Guard) to promulgate regulations—

(a) For phasing in the system of measurement under the International Convention on Tonnage Measurement of Ships, 1969, (Convention) as the method for measuring ships domestically in order to establish uniformity in measurement; and

(b) For retaining the existing domestic systems (i.e. the standard, Dual, and Simplified Measurement Systems) as alternative systems for use in applying domestic laws based on tonnage, in order that the vessels engaged in domestic activities will not be adversely affected.

These regulations—

(a) Implement the Convention Measurement System and other tonnage measurement requirements of Public Law 99–509; and

(b) Reorganize and clarify the regulations in part 69 of title 46 of the Code of Federal Regulations (46 CFR part 69) concerning the Standard, Dual, and Simplified Measurement Systems, without substantive change not called for under Public Law 99–509.

Discussion of Comments and Changes to the Regulation

1. One comment endorsed the proposed regulations and recommended that the Coast Guard retain the language and content of the Convention Measurement System as set forth in the proposed rule.

2. Two comments proposed that a study of the possibility of entirely eliminating regulatory tonnage be performed and addressed in the preamble to the final rule.

Such a study is not within the scope of this regulatory project. However, as provided for in Public Law 99–509, a Congressionally mandated study of this type is presently being performed by the Coast Guard. Public input to this study was solicited by a notice in the **Federal Register** (54 FR 30625; July 21, 1989).

3. One comment emphasized the importance of regulatory tonnage for determining future domestic fees and assessments. It suggested that the rule specify that, when a vessel is measured under the Convention Measurement System and also under a regulatory measurement system, the tonnage certificate issued for the vessel must recite the regulatory tonnages of the vessel, as well as its Convention tonnages.

As in the past, this rule does not require a vessel that is not operating internationally to carry any tonnage certificate. However, as in the past, the owner of a vessel assigned regulatory tonnages may, at the owner's request, obtain a copy of the vessel's tonnage certificate used internally by the Coast Guard for documentation purposes. This certificate will be similar to the present "Certificate of Admeasurement", recite all tonnages that are assigned to the vessel, and indicate for what purpose each tonnage is to be used.

4. One comment suggested that the term, "Convention Measurement System", be changed to "International Measurement System", and the term, "Standard, Dual, and Simplified Measurement Systems", be changed to "U.S. Traditional Measurement System" throughout the regulations.

The word, "Convention", is used throughout these regulations to align them with the terminology used in Public Law 99–509, the legislation which this rule implements. The word, "International", is avoided because it tends to suggest that the only vessels required to be measured under the Convention System are those that are engaged on an international voyage. The word, "Traditional", is not used because it is time-related and would begin to lose its suggested meaning as the Convention System becomes more and more the "tranditional" system.

5. One comment suggested that the definition in § 69.9 of the word, "tonnage", as calculated under the Convention Measurement System, be change to read "enclosed volume in cubic meters modified by a logarithmic function", instead of "tons of 100 cubic feet modified by a logarithmic function".

The definition of "tonnage" in § 69.9 of "subpart A—General", is intended to indicate the basic differences between the methods used to calculate tonnages under each measurement system. The terms, "gross tonnage" and "net tonnage" as calculated under the Convention Measurement System, are more completely defined in "subpart B—Convention Measurement System" at §§ 69.53, 69.57, and 69.63.

6. Two comments questioned why proposed § 69.11 would require barges 79 feet or more in overall length not engaged on a foreign voyage to be measured under the Convention Measurement System. The comments point out that such a requirement deviates from the existing Coast Guard regulations in 46 CFR 69.05–1(a)(2) that allows barges to be measured under the Simplified Measurement System. The comments contend that Simplified measurement is less costly than Convention measurement and, therefore, is favored by domestic barge owners.

Though the proposed rule differs from the existing Coast Guard regulation in 46 CFR 69.05–1(a)(2), the difference results from Congressional mandate in Public Law 99–509 (46 U.S.C. 14301), rather than from Coast Guard discretion. Therefore, the existing Coast Guard applicability regulations are being amended by this rulemaking to conform them to the requirements of the Public Law.

In preparing the response to these comments, it was noted that two other classes of vessels permitted under Public Law 99–509 to be Simplified measured were omitted inadvertently from proposed § 69.11(d) on applicability of the Simplified Measurement System. Therefore, these two classes (i.e. vessels that are non-self-propelled and operated only on the Great Lakes and vessels that are operated only for pleasure and operated only on the Great Lakes) have been added, as permitted under Public Law 99–509, to § 69.11(d) in this final rule.

7. One comment suggested that §§ 69.11(a)(2)(iii) and 69.11(a)(2)(iv) indicate the date upon which "a change that the Commandant finds substantially affects the vessel's gross tonnage" is effective.

The deadline in 46 U.S.C. 14301(b)(4), "on or after January 1, 1986", has been inserted in § 69.11(a)(2)(iii) in the final rule. The deadline in 46 U.S.C. 14301(d), "on or after July 18, 1982", has been inserted in § 69.11(a)(2)(iv) in the final rule.

8. One comment suggested that a definition of "existing vessel" as used in proposed § 69.11(a)(2)(iv) be included in the regulations.

The definition of "existing vessel" in 46 U.S.C. 14101(2), that is, "a vessel the keel of which was laid or that was at a similar stage of construction before July 18, 1982", has been inserted in § 69.11(a)(2)(iv) in the final rule.

9. One comment stated that § 69.13(b) prohibited a vessel measured under subpart C, D, or E from being remeasured interchangeably under subpart C, D, and E, even though the provisions of the separate systems are not combined.

Section 69.13(b) is not an applicability section and does not specify the subpart under which a vessel is required to be measured or remeasured. It is intended only to assure that the measurement of a vessel under one system complies with the requirements for that system and that requirements under other systems are not used in the process of measuring that vessel.

10. One comment questioned why proposed § 69.27 continues in force a 1988 amendment that would authorize delegation of authority to foreign classification societies to perform tonnage measurement of U.S. vessels. The comment contends that this program is wasteful and should be rescinded.

Section 69.27 does not differ from the existing Coast Guard regulation in 46 CFR 69.01–20 and conforms with Public Law 99–509 (46 U.S.C. 14301). The provisions of this section were thoroughly considered when the amendment was promulgated (53 FR 20619; June 6, 1988). Although no foreign classification society has qualified under these provisions, the Coast Guard considers it appropriate to have the requirements in the regulations for the benefit of future applicants.

11. One comment stated that linear measurements in proposed subpart B (Convention) are in fact foot-inch units, while the formulas for calculating gross and net tonnages in proposed §§ 69.57 and 69.63 call for volumes expressed in cubic meters. The comment recommended that both foot-inch and metric units be specified throughout the regulations, as is done in the text of the Convention.

The metric equivalents of foot-inch units stated in the Convention are not precise. For example, there is more than a three inch difference between the critical applicability dimensions of 79 feet and Convention's equivalent of 24 meters. The Coast Guard selected a single system in its regulations for the purpose of preciseness. The foot-inch system was chosen because it is used throughout 46 CFR part 69 for each of the measurement systems. However, application information, such as drawings and calculations that are required to be submitted by the owner under subpart B, will be accepted even if metric units are used.

Though foot-inch dimensions are used throughout the regulatory text in the existing and proposed regulations, there are two exceptions in subpart B. As noted in the comment, §§ 69.57 and 69.63 on the formulas for calculating gross tonnage and net tonnage, respectively, call for volume in cubic meters. As the Convention sets forth these formulas only in cubic meters, rather than both in cubic feet and cubic meters, the Coast Guard decided to restate the formulas as they appear in the Convention to avoid confusion.

12. One comment suggested that proposed § 69.65(b) on the methods for calculating the volume of the hull below the upper deck be expanded to add "any acceptable method or combinations of methods".

Existing regulations for the Standard Measurement System and the Dual Measurement System require that Simpson's first rule be used when calculating hull tonnages. Because this method is commonly used by naval architects, it was selected by the Coast Guard in 1983 as the method for calculating hull tonnages under the Convention Measurement System. Both Coast Guard and American Bureau of Shipping computer programs that are used to calculate hull tonnages require input information in this format. Although other methods may produce equally accurate hull volumes, our research indicates that most vessels are designed about an equal number of equally-spaced increments to which Simpson's first rule is easily applied. Although information furnished under other formats is acceptable, it will have to be converted to the computer-acceptable format by the organization calculating the vessel tonnage.

13. One comment questioned the definition of "double bottom" in proposed § 69.103. The comment points out that this definition deviates from the existing Coast Guard definition in 46 CFR 69.13–41 that allows a double bottom to include tanks for other than water ballast.

Though the proposed definition of "double bottom" differs from the existing definition, the method of determining depth measurements to double bottoms and bottom framing is not changed. The existing procedure is to terminate depths on a double bottom only when that double bottom meets the definition in the proposed rule. This procedure is not subject to the discretion of the Coast Guard but is required in 46 U.S.C. 14512(a), which provides for tonnages comparable to tonnages formerly assigned under section 4153 of the Revised Statutes. (See former 46 U.S.C. 77.)

14. One comment stated that the term, "registered length", as defined in § 69.103 appears to serve no useful purpose and is extremely difficult to measure on smaller craft, where drawings usually are not available. The comment suggested that the registered length be taken as the molded length on the upper deck to the hull.

Section 69.103 defines "registered length" using the same definition as used for vessels measured under the Convention Measurement System (§ 69.53). This allows vessels assigned tonnages under both the Convention Measurement System and the Standard or Dual Measurement Systems to be assigned one length. Most smaller vessels (i.e. vessels of less than 79′ in overall length) are assigned a registered length based on the vessel's overall length.

15. One comment stated that § 69.117(f)(4) appears to require a water ballast justification when a ballast

exemption exceeds 30% of the vessel's gross tonnage after the water ballast exemption. The comment suggests that "the vessel's gross tonnage (excluding the water ballast spaces)" be changed to "the vessel's gross tonnage (exclusive of the water ballast spaces)".

For clarity, the proposed wording has been changed in the final rule to read "the vessel's gross tonnage (as calculated under this subpart without any allowance for water ballast)".

16. One comment suggested that proposed subpart E (Simplified Measurement System) be changed to permit a metric alternative for furnishing vessel dimensions to be used in calculating tonnages under the Simplified Measurement System.

Section 69.207 requires measurements in feet and inches or in feet and tenths of a foot because the Coast Guard computer program used to calculate tonnages from the applicant's information requires a foot-inch or foot-tenths unit input. The actual formula coefficients that are indicated in foot-inch units are not required to be used by the owner. If the owner submits vessel dimensions in metric measurements, the dimensions will require conversion to foot-inch units by the Coast Guard and possibly delay application processing.

17. One comment asked that § 69.207 specify dimension accuracy.

As suggested, § 69.207(a) has been changed to specify dimension accuracy. Dimensions must be expressed in feet and inches "to the nearest half inch" or in feet and tenths of a foot "to the nearest .05 of a foot".

Derivation and Distribution Tables

The material in part 69 is entirely rearranged and renumbered using the current regulatory format. The following tables should assist the reader in locating the source of or Congressional authority for the material in this rulemaking.

Derivation Table

New section	Old section
69.1	69.01–1.
69.3	69.01–3(a).
69.5	69.01–3(a), 69.01–5.
69.7	69.01–3(b), 69.01–9(a).
69.9	69.01–7.
69.11	69.01–9, 69.05–1.
69.13	69.01–9(b).
69.15	69.01–3(c), 69.01–11.
69.17	69.01–13.
69.19	69.01–15, 69.05–9.
69.21	69.01–17.
69.23	69.01–19.
69.25	New—46 U.S.C. chapter 147.
69.27	69.01–20.
69.29	69.01–21.
69.51–69.75	New—46 U.S.C. chapter 143.
69.101	69.01–1.
69.103	69.03–11, 13, 15, 17, 19, 25, 29 and subparts 69.09 and 69.11.
69.105	69.01–13.
69.107	69.01–07.
69.109	69.03–11, 21, 25, 27, 29, 31, 33, 35, 37, 39, 41, 45, 47, 51, 53, 73.
69.111	69.03–55.
69.113	69.03–57.
69.115	69.03–59.
69.117	69.03–63, 65, 67, 69, 71.
69.119	69.03–75, 77, 78 and subpart 69.11.
69.121	69.03–79, 81, 83, 85, 87, 89, 91, 93, 95.
69.123	69.07–1.
69.151	69.15–17.
69.153	NVIC 3–66.
69.155	69.15–5.
69.157	69.15–1, 35.
69.159	69.15–39.
69.161	69.15–13, 15.
69.163	69.15–7.
69.165	69.15–9.
69.167	69.15–11.
69.169	69.15–3.
69.171	69.15–19 (e) and (f).
69.173	69.15–17.
69.175	69.15–17.
69.177	69.15–19, 21, 23, 25, 27, 29, 31, 33, 37.
69.179	69.15–41.
69.181	69.15–25, 29 figure 57.
69.183	69.15–19 figure 54, 55, 56.
69.201	69.05–1.
69.203	69.05–3.
69.205	69.05–5.
69.207	69.05–5.
69.209	69.05–7.

Distribution Table

Old section	New section
69.01–01	69.1.
69.01–03(a)	69.3.
69.01–03(b)	69.7.
69.01–03(c)	69.15(d).
69.01–05	69.5.
69.01–07	69.9.
69.01–09 (a)–(a)(4)	69.11.
69.01–09 (a)(5)–(a)(6)	69.7.
69.01–09(b)	69.13(b).
69.01–09(c)	Unnecessary.
69.01–09(d)	Unnecessary—all new vessels are measured under the Convention Measurement System.
69.01–11	69.15.
69.01–13	69.17, 69.105.
69.01–15	69.19.
69.01–17	69.21.
69.01–19	69.23.
69.01–20	69.27.
69.01–21	69.29.
69.03–1	Unnecessary.
69.03–3	Unnecessary.
69.03–5	Unnecessary.
69.03–7	Unnecessary.
69.03–9	Unnecessary.
69.03–11	69.103, 69.109(j).
69.03–13	Unnecessary—the Convention Measurement System registered length in 69.53 and 69.103 is the only length required to be recorded.
69.03–15	Unnecessary—the Convention Measurement System registered breadth in 69.53 and 69.103 is the only breadth required to be recorded.
69.03–17	Unnecessary—the Convention Measurement System molded depth in 69.53 and 69.103 is the only breadth required to be recorded.
69.03–19	69.103, 69.109(d).
69.03–21	69.109(d).
69.03–23	Unnecessary.
69.03–25	Redundant—69.103 and 69.109(h)(1) are adequate.
69.03–27	Redundant—69.103 and 69.109(h)(1) are adequate.
69.03–29(a)	69.103 and 69.109(c).
69.03–29(b)	69.103 and 69.109(e).
69.03–29(c)	69.109(d).
69.03–31	69.109(f).
69.03–33(a)	69.109(h).
69.03–33(b)	Redundant—69.103 and 69.109(j) are adequate.
69.03–33(c)	69.109(j).
69.03–33 (d)–(f)	69.109 (h) (2)–(3).
69.03–35	69.109(h)(4).
69.03–37	69.109(i).
69.03–39	69.109(f).
69.03–41	69.109(g).
69.03–43	Unnecessary.
69.03–45(a)	69.109(k).
69.03–45(b)	69.109(l).
69.03–47	69.109(m).
69.03–49	Unnecessary.
69.03–51	69.109(n)—the procedures and mathematical formula indicated for a particular shaped shaft tunnel is not considered necessary.
69.03–53	69.109(f)(2).
69.03–55	69.111.
69.03–57	69.113.
69.03–59	69.115.
69.03–61	Unnecessary—this information is no longer required to be listed on vessel document.
69.03–63 (a)–(f)	69.117 (a)–(b).
69.03–63(g)	69.117(f).
69.03–63(h)	69.117(b)(8).
69.03–63(i)	69.117(b)(9).
69.03–65	69.117(c).
69.03–67	69.117(d).
69.03–69	69.117(e).
69.03–71	69.117(d)(5).
69.03–73	69.109(o).
69.03–75(a)	69.119(a).
69.03–75(b)	69.119(b).
69.03–75(c)	69.119(p).
69.03–75(d)	69.119(g).
69.03–75(e)	69.119(e).
69.03–75(f)	69.119(h).
69.03–75 (g)–(i)	69.119(q).
69.03–77(a)	69.119(b)(c)(i).
69.03–77(b)	69.119(c).
69.03–77(c)	69.119(d).
69.03–77(d)	69.119(e).

Distribution Table—Continued

Old section	New section
69.03-77(e)	69.119(j).
69.03-77(f)	69.119(k).
69.03-77(g)	69.119(l).
69.03-77(h)	69.119(i).
69.03-77(i)	69.119(m).
69.03-78	69.119(n).
69.03-79	69.121 (a)–(b)(1).
69.03-81	69.121(b)(2).
69.03-83	69.121(b) (3)–(5).
69.03-85	Redundant—69.121(b) (1)–(3) is adequate.
69.03-87	Redundant—69.121(b) (1)–(4) is adequate.
69.03-89	69.121(b) (6)–(12).
69.03-91	Incorporated in 69.121(b) (1)–(12).
69.03-93	69.121(e).
69.03-95 (a)–(c)	69.121(d).
69.03-95(d)	Unnecessary example.
69.03-97(a)	Unnecessary.
69.03-97(b)	Obsolete.
69.05-1	69.11(d) and 69.201.
69.05-3	69.203.
69.05-5(a)	69.205 and 69.207(b).
69.05-5(b)	69.207(a).
69.05-5(c)	Unnecessary—indicated on application.
69.05-5(d)	69.207(c).
69.05-7	69.209.
69.05-9(a)	69.19(a).
69.05-9(b)	69.11(d)
69.05-11	Unnecessary.
69.07-1	69.123—obsolete and unnecessary figures are deleted.
69.07-3	Unnecessary.
69.07-5	Unnecessary.
69.07-7	Unnecessary.
69.07-9	Unnecessary.
69.07-11	Unnecessary.
69.09-1 through 69.09-21.	69.103—obsolete and unnecessary definitions are deleted.
69.11-1 through 69.11-15.	Incorporated in 69.119(b)—unnecessary definitions are deleted.
69.13-1 through 69.13-157.	Unnecessary—although structural terms are used in the new section, a separate definition section is not necessary.
69.15-1	69.157.
69.15-3	69.159.
69.15-5	69.155.
69.15-7	69.163.
69.15-9	69.165.
69.15-11	69.167.
69.15-13	69.161(a)(4).
69.15-15	69.161.
69.15-17(a)	69.173.
69.15-17 (b) and (c)	69.175.
69.15-19 (a)–(d)	69.177.
69.15-19 (e)–(f)	69.171.
69.15-19–figure	69.185(a).
69.15-21	69.177(a)(4).
69.15-23	69.177(a) (5)–(6).
69.15-23–figures	69.185 (b)–(c).
69.15-25	69.181(b).
69.15-27	69.157(b) and 69.181(a).
69.15-29	69.177(a)(5).
69.15-31	69.177(a)(5).
69.15-33	69.177(d).
69.15-35	69.177(c).
69.15-37	69.177(a).
69.15-39	69.17 and 69.159.
69.15-41	69.179.

E.O. 12291 and DOT Regulatory Policies and Procedures

This rule is considered to be nonmajor under Executive Order 12291 and nonsignificant under Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary.

As required by Public Law 99–509, this rule changes the measurement system under which some vessels are measured and is administrative in nature. This rule affects barges and recreational vessels of 79 feet or more in length by eliminating the option of having these vessels measured under the Simplified Measurement System. However, measurement of these vessels, if they will not engage on a foreign voyage, is and will continue to be at the owner's option. Measurement is usually a one-time expenditure that is insignificant in terms of the overall cost of owning and operating the vessel. Further, it is noted that this rule will not affect vessels presently measured and documented under laws of the United States until those vessels are altered.

The potential impacts that this rule might have on States and local governments with laws or regulations based on federally-assigned tonnage result from statutory mandate, as discussed under "Federalism Implications" in this preamble.

Regulatory Flexibility Act

The economic impact of this rule is expected to be minimal. This rule will affect the measurement requirements for certain larger vessels and will limit the option of measurement under the Simplified Measurement System to smaller vessels. No new application costs, burdens, or procedures are imposed and the larger vessels previously required to be measured under two systems will be required to be measured under only one system.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains no new information collection or recordkeeping requirements. However, several previous provisions already assigned Office of Management and Budget (OMB) control numbers are restated in this rulemaking. As discussed in the preamble to the NPRM, the Coast Guard requested that OMB consolidate all of the Control Numbers assigned to the restated provisions into a single Control Number. OMB has approved this request and assigned OMB Control Number 2115–0086 to §§69.17, 69.19, 69.21, 69.27, 69.55, 69.105, 69.121(d), 69.159, 69.179, and 69.205.

One comment was received on the "Paperwork Reduction Act" section in the preamble to the NPRM. The comment questioned the adequacy of the quantity "34" in the sentence that states: "This proposal might cause an estimated 34 additional vessels per year to be measured under the Convention, Standard, or Dual Measurement Systems, rather than under the Simplified Measurement System". The comment believes the figure to be low on average because of the abnormally low levels of barge construction since 1982.

The Coast Guard agrees that construction levels have been low and recognizes that they may increase. However, regardless of the number of barges that will be constructed in future years, two things remain unchanged. One is that domestic barges not engaged on a foreign voyage are not required to be documented and, therefore, not required to be measured under any system. The second is that when the owner of a barge that is 79 feet on more in length and not operated only on the Great Lakes elects to have the barge measured, Public Law 99–509 prevents its measurement under the less costly Simplified measurement procedure.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The regulations will have a minimal effect on State or local laws and regulations based on federally-assigned tonnages by requiring or permitting vessels presently eligible to be measured under one system to be measured under another system. Measurement under another system would produce a different tonnage. However, this rule and its resulting effect on the States and local governments is due to specific statutory mandate under Public Law 99–509 and not to discretionary action by the Coast Guard. Any effect on State or local governments most likely will be temporary because they can amend their laws or regulations as necessary to maintain the status quo.

The NPRM specifically requested public comment on federalism implications and no comments were received.

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that, under section 2.B.2.1. of Commandant Instruction M16475.1B, the regulations are categorically excluded from further environmental documentation. The regulations are administrative and procedural in nature and concern the procedures for measuring vessels. They clearly have no environmental impact.

List of Subjects in 46 CFR Part 69

Measurement standards, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, 46 CFR (chapter I is amended by revising part 69 to read as follows:

PART 69—MEASUREMENT OF VESSELS

Subpart A—General

Sec.
69.1 Purpose.
69.3 Applicability.
69.5 Vessels required or eligible to be measured.
69.7 Vessels transiting the Panama and Suez Canals.
69.9 Definitions.
69.11 Determining the measurement system or systems for a particular vessel.
69.13 Deviating from the provisions of a measurement system.
69.15 Organizations authorized to measure vessels.
69.17 Application for measurement services.
69.19 Remeasurement and adjustment of tonnage.
69.21 Appeals.
69.23 Fees.
69.25 Penalties.
69.27 Delegation of authority to measure vessels.
69.29 OMB control numbers assigned under the Paperwork Reduction Act.

Subpart B—Convention Measurement System

69.51 Purpose.
69.53 Definitions.
69.55 Application for measurement services.
69.57 Gross tonnage.
69.59 Enclosed spaces.
69.61 Excluded spaces.
69.63 Net tonnage.
69.65 Calculation of volumes.
69.67 Marking of cargo spaces.
69.69 Issuance of an International Tonnage Certificate (1969).
69.71 Change of net tonnage.
69.73 Variance from the prescribed method of measurement.
69.75 Figures.

Subpart C—Standard Measurement System

69.101 Purpose.
69.103 Definitions.
69.105 Application for measurement services.
69.107 Gross and net tonnages.
69.109 Under-deck tonnage.
69.111 Between-deck tonnage.
69.113 Superstructure tonnage.
69.115 Excess hatchway tonnage.
69.117 Spaces exempt from inclusion in gross tonnage.
69.119 Spaces deducted from gross tonnage.
69.121 Engine room deduction.
69.123 Figures.

Subpart D—Dual Measurement System

69.151 Purpose.
69.153 Application of other laws.
69.155 Measurement requirements.
69.157 Definitions.
69.159 Application for measurement services.
69.161 Gross and net tonnages.
69.163 Under-deck tonnage.
69.165 Between-deck tonnage.
69.167 Superstructure tonnage.
69.169 Spaces exempt from inclusion in gross tonnage.
69.171 When the tonnage mark is considered submerged.
69.173 Tonnage assignments for vessels with only one deck.
69.175 Tonnage assignments for vessels with a second deck.
69.177 Markings.
69.179 Certification of markings.
69.181 Locating the line of the second deck.
69.183 Figures.

Subpart E—Simplified Measurement System

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69.203 Definitions.
69.205 Application for measurement services.
69.207 Measurements.
69.209 Calculation of tonnages.

Authority: 46 U.S.C. 14102, 14103; 49 CFR 1.46. Sec. 69.27 issued under 44 U.S.C. 3507; 49 CFR 1.45.

Subpart A—General

§ 69.1 Purpose.

This part implements legislation concerning the measurement of vessels to determine their tonnage (part J of 46 U.S.C. subtitle II). Tonnages are required before a vessel may be documented as a vessel of the United States. Also, tonnages are used to apply commercial vessel safety regulations based on tonnage, to meet the requirements of the International Convention on Tonnage Measurement of Ships, 1969, and to determine Federal and State regulatory fees and private operational charges based on tonnage. Tonnages are determined by the physical measurement of a vessel (Convention, Standard, and Dual Measurement Systems) or by application of a formula based on the vessel's dimensions provided by the owner (Simplified Measurement System). This part indicates the particular measurement system or systems under which the vessel is required or eligible to be measured, describes the application and measurement procedures for each system, identifies the organizations authorized to measure vessels under this part, and provides for the appeal of measurement organizations' decisions.

§ 69.3 Applicability.

This part applies to vessels of the United States over five net tons (as that tonnage is determined under this part) which are required or eligible to be measured under this part, a Federal law, or an international agreement or which are subject to a Federal law or international agreement based on the vessel's tonnage.

§ 69.5 Vessels required or eligible to be measured.

(a) The following vessels (including public vessels) are required to be measured under this part:

(1) Vessels that are to be documented as a vessel of the United States.

(2) Vessels of 79 feet or more in overall length that engage on a foreign voyage.

(3) Vessels subject to a Federal law or regulation based on vessel tonnage.

(4) Vessels determined by the Commandment to require measurement under this part.

(b) The following vessels are not required to be measured under this part but are eligible to be measured, if the owner requests:

(1) Public vessels that are not to be documented and will not engage on a foreign voyage.

(2) Vessels of war.

§ 69.7 Vessels transiting the Panama and Suez Canals.

(a) All vessels intending to transit the Panama Canal, other than vessels of war, must be measured and certificated under the system prescribed in 35 CFR part 135.

(b) All vessels intending to transit the Suez Canal must be measured and certificated under the Arab Republic of Egypt Suez Canal Authority Rules of Navigation, Part IV.

(c) Panama Canal and Suez Canal tonnage certificates are in addition to tonnage certificates issued under this part.

(d) Tonnage measurement services for Panama Canal and Suez Canal certificates are provided by measurement organizations authorized by the respective canal authority.

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§ 69.9 Definitions.

As used in this part—

Commandant means Commandant of the Coast Guard at the following address: Commandant (G–MVI), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593–0001.

Convention means the International Convention on Tonnage Measurement of Ships, 1969.

Convention Measurement System means the system under subpart B of this part.

Dual Measurement System means the system under subpart D of this part.

Great Lakes means the Great Lakes of North America and the St. Lawrence River west of a rhumb line drawn from Cap des Rosiers to West Point, Anticosti Island, and, on the north side of Anticosti Island, the meridian of longitude 63 degrees west.

Gross tonnage means a vessel's approximate volume. Under the Convention Measurement System, it means the total volume of all enclosed spaces modified by a coefficient. Under the Standard and Dual Measurement System, it means the total volume of all enclosed spaces less certain exempt spaces. Under the Simplified Measurement System, it means the product of a vessel's length, depth, and breadth modified by a coefficient.

Net tonnage means a measure of a vessel's earning capacity. Under the Convention Measurement System, it means the volume of the actual cargo and passenger spaces modified by a formula based on the vessel's volume. Under the Standard and Dual Measurement Systems, it means the gross tonnage less certain deducted spaces. Under the Simplified Measurement System, it means the gross tonnage modified by a coefficient.

Overall length means the horizontal distance between the foremost part of a vessel's stem to the aftermost part of its stern, excluding fittings and attachments.

Simplified Measurement System means the system under subpart E of this part.

Standard Measurement System means the system under subpart C of this part.

Tonnage means the volume of a vessel's enclosed spaces as calculated under a measurement system in this part. Tonnage calculated under the Standard, Dual, or Simplified Measurement System is based on tons of 100 cubic feet each. Tonnage calculated under the Convention Measurement System is based on tons of 100 cubic feed modified by a logarithmic function.

Vessel engaged on a foreign voyage means a vessel—

(a) Arriving at a place under the jurisdiction of the United States from a place in a foreign country;

(b) Making a voyage between places outside of the United States;

(c) Departing from a place under the jurisdiction of the United States for a place in a foreign country; or

(d) Making a voyage between a place within a territory or possession of the United States and another place under the jurisdiction of the United States not within that territory or possession.

Vessel of war means "vessel of war" as defined in 46 U.S.C. 2101.

§ 69.11 Determining the measurement system or systems for a particular vessel.

(a) *Convention Measurement System (subpart B).* (1) Except as otherwise provided in this section, this system applies to a vessel documented or to be documented under part 67 of this chapter and to a vessel engaged on a foreign voyage.

(2) This system does not apply to the following vessels:

(i) A vessel of less than 79 feet in overall length.

(ii) A vessel operating only on the Great Lakes, unless the owner requests measurement under this system.

(iii) A vessel that is not engaged on a foreign voyage and that had its keel laid or was at a similar stage of construction before January 1, 1986, unless the owner requests measurement under the Convention Measurement System or unless, on or after January 1, 1986, the vessel undergoes a change that the Commandant finds substantially affects the vessel's gross tonnage.

(iv) Before July 19, 1994, a vessel the keel of which was laid or that was at a similar stage of construction before July 18, 1982, unless the owner requests or unless, on or after July 18, 1982, the vessel undergoes a change that the Commandant finds substantially affects the vessel's gross tonnage.

(v) A vessel of war.

(3) A vessel made subject to this system at the request of the owner may be remeasured only under this system.

(4) For the purpose of vessel documentation, a vessel measured under this system is not required to be measured under another system.

(5) After July 18, 1994, a vessel the keel of which was laid or that was at a similar stage of construction before July 18, 1982, (except vessel measured under this system at the request of the owner or because of a change that substantially affects the vessel's gross tonnage) may retain its tonnage in effect on July 18, 1994, for the application of relevant requirements under an international agreement (except the Convention) or other laws of the United States. However, if the vessel undergoes a change after July 18, 1994, that the Commandant finds substantially affects the vessel's gross tonnage, the vessel must be remeasured only under this system.

(6) A tonnage assignment under this system does not affect the applicability to the vessel of international agreements to which the United States Government is a party that are not in conflict with the Convention or with the application of International Maritime Organization (IMO) Resolutions A.494(XII) of November 19, 1981, A.540(XIII) of November 17, 1983, and A.541(XIII) of November 17, 1983. When applicable to the vessel, these Resolutions provide interim schemes for using the vessel's existing gross tonnage, instead of the gross tonnage under the Convention Measurement System, for applying the International Convention for the Safety of Life at Sea (SOLAS), the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, (STCW), and the International Convention for the Prevention of Pollution from Ships, 1973, (MARPOL), respectively.

(b) *Standard Measurement System (subpart C).* This system applies to a vessel not required to be measured under the Convention Measurement System if the vessel is to be documented or if the application of a law of the United States to the vessel depends on the vessel's tonnage. Upon request of the owner, this system also applies to a documented vessel measured under the Convention Measurement System when Standard Measurement System tonnages are to be used in applying the provisions of a law under 46 U.S.C. 14305.

(c) *Dual Measurement System (subpart D).* This system may be applied, at the owner's option, instead of the Standard Measurement System, to a vessel eligible or required to be measured under the Standard Measurement System.

(d) *Simplified Measurement System (subpart E).* This system may be applied, at the owner's option, instead of the Standard Measurement System to the following vessels:

(1) A vessel that is under 79 feet in overall length.

(2) A vessel that is non-self-propelled and operated only on the Great Lakes.

(3) A vessel that is operated only for pleasure and operated only on the Great Lakes.

§ 69.13 Deviating from the provisions of a measurement system.

(a) In measuring a vessel under a measurement system in this part, all provisions of that system applicable to the vessel must be observed.

(b) The provisions of more than one measurement system may not be applied interchangeably or combined.

§ 69.15 Organizations authorized to measure vessels.

(a) Except as under paragraphs (c) and (d) of this section, all U.S. vessels to be measured or remeasured under the Convention, Standard, or Dual Measurement Systems must be measured by the American Bureau of Shipping (ABS). Applications for measurement must be directed to the American Bureau of Shipping, P.O. Box 910 (45 Eisenhower Drive), Paramus, New Jersey 07653–0910, (201) 712–5092.

(b) All vessels to be measured or remeasured under the Simplified Measurement System must be measured by the Coast Guard. Applications for measurement under the Simplified Measurement System are obtainable from any Coast Guard documentation office.

(c) All U.S. Coast Guard vessels and all U.S. Navy vessels of war to be measured or remeasured under any measurement system must be measured by the Coast Guard.

(d) At the option of the Commandant, the Coast Guard may measure any vessel to determine its tonnage.

(e) The appropriate certificate of measurement is issued by the measuring organization as evidence of the vessel's measurement under this part.

§ 69.17 Application for measurement services.

(a) Applications for measurement are available from and, once completed, are submitted to the measurement organization listed in § 69.15 that will perform the service. The contents of the application are described in this part under the requirements for each system.

(b) Applications for measurement under more than one system may be combined.

(c) For vessels under construction, the application must be submitted before the vessel is advanced in construction. Usually, this means as soon as the decks are laid, holds cleared of encumbrances, engine and boilers installed, and accommodations partitioned.

§ 69.19 Remeasurement and adjustment of tonnage.

(a) If a vessel that is already measured is to undergo a structural alteration or if the use of a space within that vessel is to be changed, a remeasurement may be required. Vessel owners shall report immediately to a measurement organization listed in § 69.15 any intent to structurally alter the vessel or to change the use of a space within the vessel. The organization advises the owner if remeasurement is necessary. Spaces not affected by the alteration or change need not be remeasured.

(b) When there is a perceived error in the application of a regulation or in the tonnage calculations, the vessel owner should contact the responsible measurement organization. If the error is verified, the tonnage is adjusted as necessary.

(c) If a remeasurement or adjustment of tonnage is required, the organization will issue a new tonnage certificate. If the vessel is documented, the vessel's owner must surrender the Certificate of Documentation as required under part 67, subpart 67.25, of this chapter.

(d) A vessel of less than 79 feet in overall length measured under the Standard or Dual Measurement Systems may be remeasured at the owner's request under the Simplified Measurement System.

§ 69.21 Appeals.

(a) The Commandant determines the appropriate application and interpretation of U.S. laws and regulations and international agreements as they are applied to vessels under this part.

(b) Appeals of decisions made by a measurement organization listed in § 69.15 must be submitted in writing with all supporting data to the measurement organization. The measurement organization then forwards the submittals to the Commandant for consideration of the appeal.

(c) While an appeal is in progress, the decision upon which the appeal is based remains in effect. The decision of the Commandant is final agency action.

§ 69.23 Fees.

Organizations listed in § 69.15(a) are authorized to charge a fee for measurement services. Information on fees is available directly from the organizations.

§ 69.25 Penalties.

(a) *General violation.* The owner, charterer, managing operator, agent, master, and individual in charge of a vessel in violation of a regulation in this part are each liable to the United States Government for a civil penalty of not more than $20,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

(b) *False Statements.* A person knowingly making a false statement or representation in a matter in which a statement or representation is required by this part is liable to the United States Government for a civil penalty of not more than $20,000 for each false statement or representation. The vessel also is liable in rem for the penalty.

§ 69.27 Delegation of authority to measure vessels.

(a) Under 46 U.S.C. 14103 and 49 CFR 1.46, the Coast Guard is authorized to delegate to a "qualified person" the authority to measure vessels and to issue appropriate certificates of measurement for U.S. vessels that are required or eligible to be measured as vessels of the United States.

(b) Authority to measure and certify U.S. vessels under the Convention, Standard, and Dual Measurement Systems may be delegated to an organization that—

(1) Is a full member of the International Association of Classification Societies (IACS);

(2) Is incorporated under the laws of the United States, a State of the United States, or the District of Columbia;

(3) Is capable of providing all measurement services under the Convention, Standard, and Dual Measurement Systems for vessels domestically and internationally;

(4) Maintains a tonnage measurement staff that has practical experience in measuring U.S. vessels under the Convention, Standard, and Dual Measurement Systems; and

(5) Enters into a Memorandum of Agreement, as described in paragraph (d) of this section.

(c) Applications for delegation of authority under this section must be forwarded to the Commandant and include the following information on the organization:

(1) Its name and address.

(2) Its organizational rules and structure.

(3) The location of its offices that are available to provide measurement services under the Convention, Standard, and Dual Measurement Systems.

(4) The name, qualifications, experience, and job title of each full-time or part-time employee or independent contractor specifically designated by the organization to provide measurement services under the Convention, Standard, or Dual Measurement Systems.

(5) Its tonnage measurement training procedures.

(d) If, after reviewing the application, the Coast Guard determines that the organization is qualified to measure and certify U.S. vessels on behalf of the Coast Guard, the organization must enter into a Memorandum of Agreement with the Coast Guard which—

(1) Defines the procedures for administering and implementing the tonnage measurement and certification processes, including the roles and responsibilities of each party;

(2) Outlines the Coast Guard's oversight role;

(3) Prohibits the organization from using an employee or contractor of the organization to measure and certify the tonnage of a vessel if that employee or contractor is acting or has acted as a tonnage consultant for that same vessel; and

(4) Requires the organization to—

(i) Accept all requests to perform delegated services without discrimination and without regard to the vessel's location, unless prohibited from doing so under the laws of the United States or under the laws of the jurisdiction in which the vessel is located;

(ii) Physically inspect each vessel before issuing a tonnage certificate;

(iii) Provide the Coast Guard with current schedules of measurement fees and related charges;

(iv) Maintain a tonnage measurement file for each U.S. vessel that the organization measures and permit access to the file by any person authorized by the Commandant;

(v) Permit observer status representation by the Coast Guard at all formal discussions that may take place between the organization and other vessel tonnage measurement organizations pertaining to tonnage measurement of U.S. vessels or to the systems under which U.S. vessels are measured;

(vi) Comply with and apply all laws and regulations relating to tonnage measurement of U.S. vessels within the scope of authority delegated; and

(vii) Comply with all other provisions, if any, of the Memorandum of Agreement.

(e) Upon delegation of authority, the organization is listed in § 69.15(a), Organizations authorized to measure vessels.

§ 69.29 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and record keeping requirements in this part by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Coast Guard intends that this part comply with 44 U.S.C. 3507(f), which requires that agencies display the current control number assigned by the Director of OMB for each approved agency information collection requirement.

(b) *Display*—

Section of 46 CFR part 69	Currently assigned OMB control No.
69.17	2115-0086
69.19	2115-0086
69.21	2115-0086
69.27	2115-0086
69.55	2115-0086
69.105	2115-0086
69.121(d)	2115-0086
69.159	2115-0086
69.179	2115-0086
69.205	2115-0086

Subpart B—Convention Measurement System

§ 69.51 Purpose.

This subpart prescribes the requirements for measuring a vessel in order to comply with the International Convention on Tonnage Measurement of Ships, 1969 (Convention), and 46 U.S.C. chapter 143.

§ 69.53 Definitions.

As used in this subpart—

Amidships means the midpoint of the registered length, as "registered length" is defined in this section.

Cargo space means an enclosed space appropriated for the transport of cargo which is to be discharged from the vessel. The term does not include a space which qualifies as an excluded space under § 69.61.

Enclosed space is defined in § 69.59.

Excluded space is defined in § 69.61.

Gross tonnage or *GT* means the tonnage determined under § 69.57.

Line of the upper deck means a longitudinal line at the underside of the upper deck or, if that deck is stepped, the longitudinal line of the underside of the lowest portion of that deck parallel with the upper portions of that deck.

Molded depth means the vertical distance amidships between the following points:

(a) From the line of the upper deck at the vessel's side or, if the vessel has rounded gunwales, from the intersection of the line of the upper deck extended to the molded line of the shell plating as though the gunwales were of angular design.

(b) To the top of the flat keel, to the lower edge of the keel rabbet if the vessel is of wood or composite structure, or to the point where the line of the flat of the bottom extended inward cuts the side of the keel if the vessel's lower part is hollow or has thick garboards.

Molded draft means—

(a) For vessels assigned a load line under part 42, 44, 45, or 47 of this chapter, the draft corresponding to the Summer Load Line (other than a timber load line);

(b) For passenger vessels assigned a load line under part 46 of this chapter, the draft corresponding to the deepest subdivision load line assigned;

(c) For vessels to which part 42, 44, 45, 46, or 47 of this chapter do not apply but which otherwise have been assigned a load line, the draft corresponding to the Summer Load Line so assigned;

(d) For vessels to which no load line has been assigned but the draft of which is restricted under any Coast Guard requirement, the maximum draft permitted under the restriction; and

(e) For other vessels, 75 per cent of the molded depth.

Net tonnage or *NT* means tonnage determined under § 69.63.

Passenger means a person on board a vessel other than—

(a) The master, a member of the crew, or other person employed or engaged in any capacity in the business of the vessel; and

(b) A child under one year of age.

Registered breadth means the maximum breadth of a vessel measured amidships to the molded line of the frame in a vessel with a metal shell and to the outer surface of the hull in all other vessels.

Registered length means either 96 percent of the length on a waterline at 85 percent of the least molded depth measured from the top of the flat keel or the length from the fore side of the stem to the axis of the rudder stock on that waterline, whichever is greater. In vessels designed with a rake of keel, this length is measured on a waterline parallel to the design waterline.

Upper deck means the uppermost complete deck exposed to weather and sea, which has permanent means of weathertight closing of all openings in the weather part of the deck, and below which all openings in the sides of the vessel are fitted with permanent means of watertight closing.

Weathertight means secure against penetration of water into the vessel in any sea condition.

§ 69.55 Application for measurement services.

Applications for measurement under this subpart must include the following information and plans:

(a) Type of vessel.

(b) Vessel's name, official number (if assigned), and intended port of documentation.

(c) Builder's name and the vessel hull number assigned by builder.

(d) Place and year built.

(e) Date keel was laid.

(f) Overall length, breadth, and depth of vessel.

(g) Lines plan.

(h) Booklet of offsets at stations.

(i) Capacity plans for tanks and cargo compartments.

(j) Hydrostatic curves.

(k) Construction plans showing measurements and scantlings of deck structures, hatches, appendages, recesses, and other enclosed spaces.

(l) Arrangement plans.

§ 69.57 Gross tonnage.

Gross tonnage (GT) is determined by the following formula $GT=K_1V$, in which V=total volume of all enclosed spaces in cubic meters and $K_1=0.2+0.02 \log_{10}V$.

§ 69.59 Enclosed spaces.

Enclosed space means a space which is bounded by the vessel's hull, by fixed or portable partitions or bulkheads, or by decks or coverings other than permanent or movable awnings. No break in a deck, nor any opening in the vessel's hull, in a deck or in a covering of a space, or in the partitions or bulkheads of a space, nor the absence of a partition or bulkhead precludes the space from being included in the enclosed space.

§ 69.61 Excluded spaces.

(a) *Excluded space* means an enclosed space which is excluded from volume (V) in calculating gross tonnage. Except as under paragraph (g) of this section, this section lists the excluded spaces.

(b) A space that is within a structure and that is opposite an end opening extending from deck to deck (except for a curtain plate of a height not exceeding by more than one inch the depth of the adjoining deck beams) and having a breadth equal to or greater than 90 percent of the breadth of the deck at the line of the opening is an excluded space, subject to the following:

(1) Only the space between the actual end opening and a line drawn parallel to the line or face of the opening at a distance from the opening equal to one-half of the breadth of the deck at the line of the opening is excluded. (See § 69.75, Figure 1.)

(2) If, because of any arrangement (except convergence of the outside plating as shown in § 69.75, figure 3), the breadth of the space is less than 90 percent of the breadth of the deck, only the space between the line of the opening and a parallel line drawn through the point where the athwartship breadth of the space is equal to 90 percent or less of the breadth of the deck is excluded. (See § 69.75, figures 2 and 4.)

(3) When any two spaces, either of which is excluded under paragraphs (b)(1) or (b)(2) of this section, are separated by an area that is completely open except for bulwarks or open rails, these two spaces must not be excluded if the separation between the two spaces is less than the least half breadth of the deck in way of the separation. (See § 69.75, figures 5 and 6.)

(4) When the deck at the line of an opening has rounded gunwales, the breadth of the deck is the distance between the tangent points indicated in § 69.75, figure 11.

(c) A space that is open to the weather and that is under an overhead deck covering with no connection on the space's exposed sides between the covering and the deck other than the stanchions necessary for the covering's support is an excluded space. An open rail or bulwark fitted at the vessel's side does not disqualify the space from being an excluded space if the height between the top of the rail or bulwark and the overhead structure or curtain plate (if fitted) is not less than 2.5 feet or one-third of the height of the space, whichever is greater. (See § 69.75, figure 7.)

(d) A space in a side-to-side structure directly in way of opposite side openings not less than 2.5 feet in height or one-third of the height of the structure, whichever is greater, is an excluded space. If the opening is only on one side of the structure, the space to be excluded is limited inboard from the opening to a maximum of one-half of the breadth of the deck in way of the opening. (See § 69.75, figure 8.)

(e) A space in a structure immediately below an uncovered opening in the deck overhead is an excluded space, if the opening is exposed to the weather and the space to be excluded is limited to the area of the opening. (See § 69.75, figure 9.)

(f) A recess in the boundary bulkhead of a structure which is exposed to the weather and which has an opening that extends from deck to deck without a means of closing is an excluded space, if the interior width of the space is not greater than the width of the opening and extension of the space into the structure is not greater than twice the width of the opening. (See § 69.75, figure 10.)

(g) Any space described in paragraphs (b) through (f) of this section which fulfills at least one of the following conditions is not an excluded space:

(1) The space is fitted with shelves or other means designed for securing cargo or stores.

(2) The opening that would otherwise permit the space to be excluded space is fitted with a means of closure.

(3) Other features of the space make it possible for the space to be closed.

§ 69.63 Net tonnage.

Net tonnage (NT) is determined by the formula:

$$NT=K_2V_c\left(\frac{4d}{3D}\right)^2+K_3\left(N_1+\frac{N_2}{10}\right)$$

in which:

V_c=total volume of cargo spaces in cubic meters.

$K_2=0.2+0.02 \log_{10} V_c$

$$K_3=1.25\left(\frac{GT+10{,}000}{10{,}000}\right)$$

D=molded depth amidships in meters, as "molded depth" is defined in § 69.53.

d=molded draft amidships in meters, as "molded draft" is defined in § 69.53.

N_1=number of passengers in cabins with not more than eight berths, as "passenger" is defined in § 69.53.

N_2=number of other passengers, as "passenger" is defined in § 69.53.

GT=gross tonnage as determined under § 69.57.

N_1 plus N_2 must equal the total number of passengers the vessel is permitted to carry as indicated on the Ship's Passenger Certificate. If N_1 plus N_2 is less than 13, both N_1 and N_2 are zero.

$\left(\frac{4d}{3D}\right)^2$ must not be greater than unity.

$K_2V_c\left(\frac{4d}{3D}\right)^2$ must not be less than 0.25 GT.

NT must not be less than 0.30 GT.

§ 69.65 Calculation of volumes.

(a) Volumes V and V_c used in calculating gross and net tonnages, respectively, must be measured and calculated according to accepted naval architectural practices for the spaces concerned.

(b) The volume of the hull below the upper deck is determined as follows:

(1) If the number and location of sections originally used in making other calculations which relate to the form of the vessel (such as displacement volumes and center of buoyancy) are reasonably available, Simpson's first rule may be applied using those sections.

(2) If the number and location of stations originally used are not reasonably available or do not exist and the hull is of conventional design with faired lines, Simpson's first rule may be applied using a number and location of stations not less than those indicated in § 69.109(g)(1).

(3) If the hull is of standard geometric shape, a simple geometric formula that yields a more accurate volume may be used.

(4) If the lines of the hull are not fair, the volume may be measured by using a combination of methods under this section.

(c) The volume of structures above the upper deck may be measured by applying the superstructure provisions in § 69.113 or by any accepted method or combinations of methods.

(d) Measurements must be taken, regardless of the fitting of insulation or the like—

(1) To the inner side of the shell or structural boundary plating, in vessels constructed of metal; and

(2) To the outer surface of the shell or to the inner side of structural boundary surfaces, in all other vessels.

(e) When determining the volume of a cargo space, measurements must be taken without consideration for insulation, sparring, or ceiling fitted within the space.

(f) Measurements must be to the nearest one-twentieth of a foot.

(g) Calculations must be made on a worksheet and must be sufficiently detailed to permit easy review. The measurement procedures used must be identified on the worksheet.

§ 69.67 Marking of cargo spaces.

Cargo spaces used in determining volume (Vc) for calculating net tonnage must be permanently marked with the letters "CC" (cargo compartment) which are at least four inches in height and positioned so as to be visible at all times.

§ 69.69 Issuance of an International Tonnage Certificate (1969).

On request of the vessel owner, an International Tonnage Certificate (1969) is issued for a vessel measured under this subpart that is 79 feet or more in registered length and that will engage on a foreign voyage. The Certificate is issued to the vessel owner or master and must be maintained on board the vessel when it is engaged on a foreigh voyage.

§ 69.71 Change of net tonnage.

(a) When a vessel is altered so that the net tonnage is increased, the new net tonnage must be applied immediately.

(b) A vessel concurrently assigned load lines under both the International Convention on Load Lines (parts 42, 44, 45, or 47 of this chapter) and either the International Convention for the Safety of Life at Sea (SOLAS) (part 46 of this chapter) or other international agreement must be assigned only one net tonnage. The net tonnage assigned must be the net tonnage applicable to the load line assigned under the International Convention on Load Lines or SOLAS for the trade in which the vessel in engaged.

(c) When a vessel is altered so that the net tonnage is decreased or the vessel's trade is changed so that the load line assigned for that trade under paragraph (b) of this section is no longer appropriate and results in a decrease in its net tonnage, a new International Tonnage Certificate (1969) incorporating that net tonnage may not be issued until twelve months after the date on which the current Certificate was issued. However, if one of the following apply, a new Certificate may be issued immediately:

(1) The vessel is transferred to the flag of another nation.

(2) The vessel undergoes alterations or modifications which the Coast Guard deems to be of a major character, such as the removal of a superstructure which requires an alteration of the assigned load line.

§ 69.73 Variance from the prescribed method of measurement.

(a) When application of this supart to a novel type vessel produces unreasonable or impractical results, the Commandant may determine a more suitable method of measurement.

(b) Requests for a determination must be submitted to the Commandant, explain the problem, and include plans and sketches of the spaces in question.

§ 69.75 Figures.

0=excluded space.
C=enclosed space.
I=space to be considered as an enclosed space.
B=breadth of deck in way of the opening.

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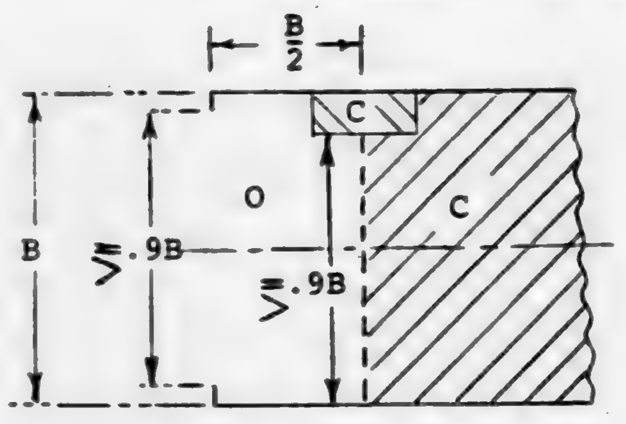


Figure 1

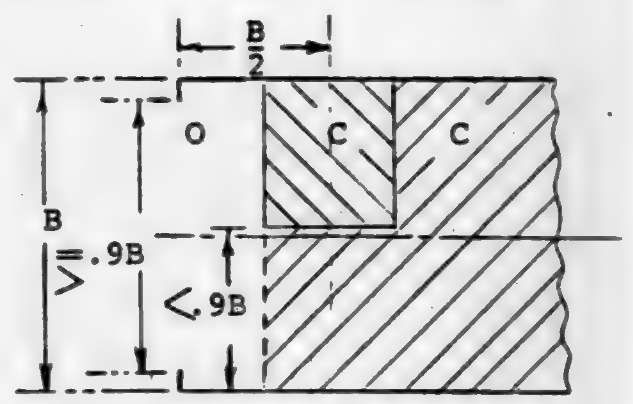
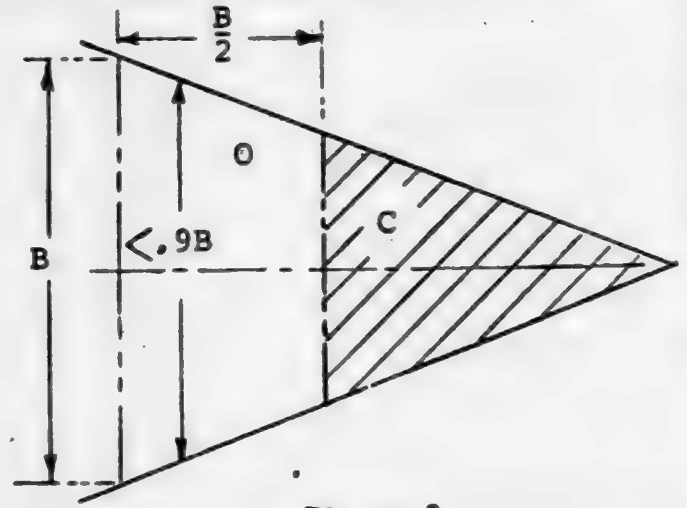


Figure 2



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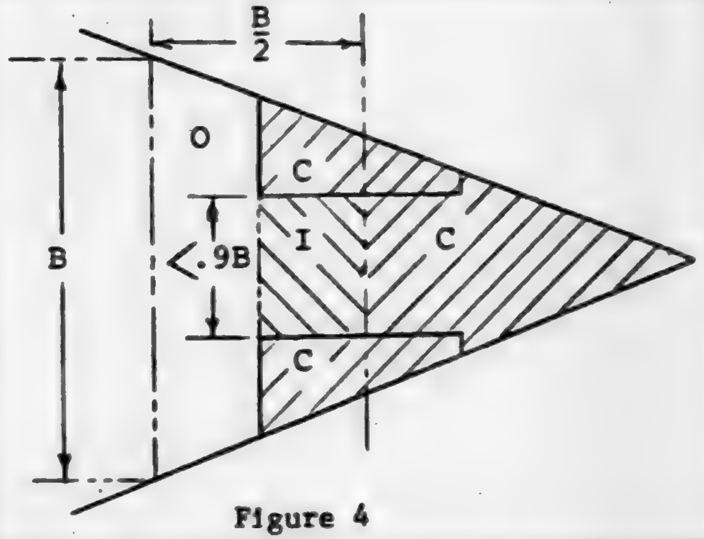


Figure 4

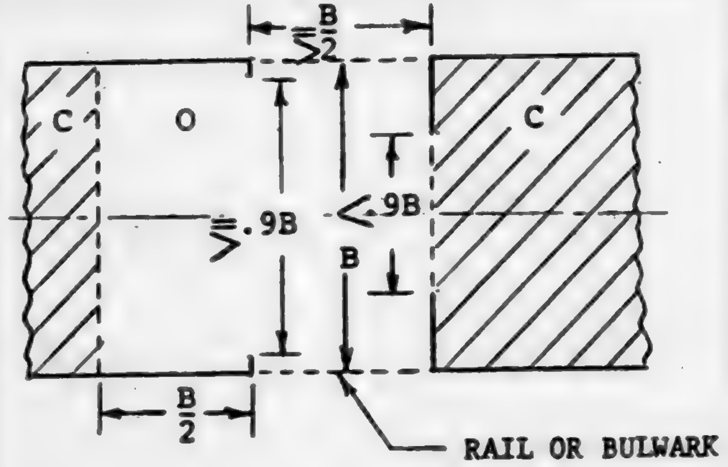
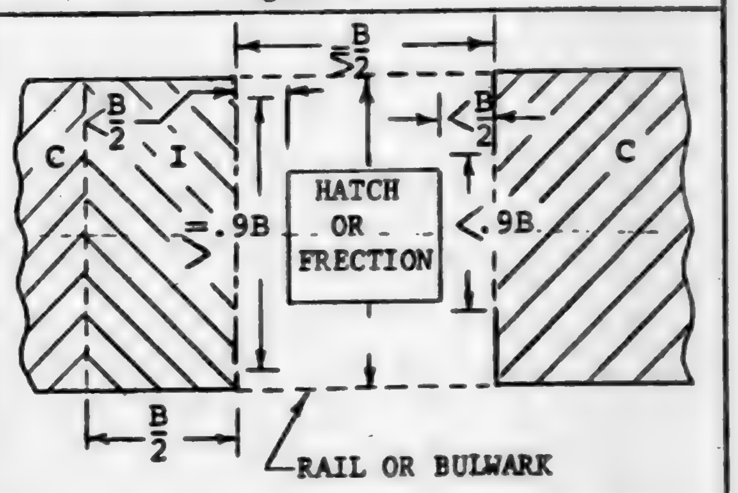


Figure 5



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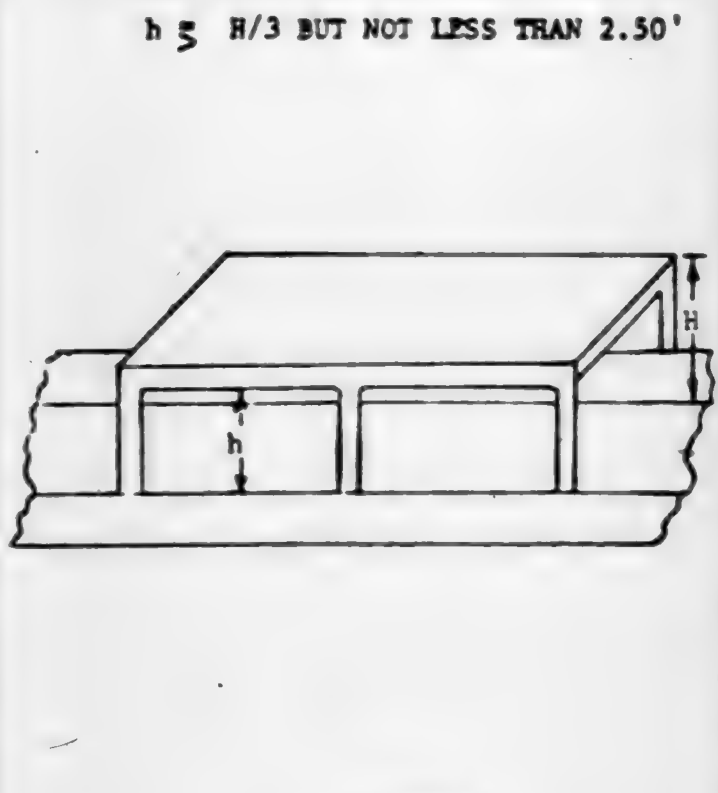

Figure 7

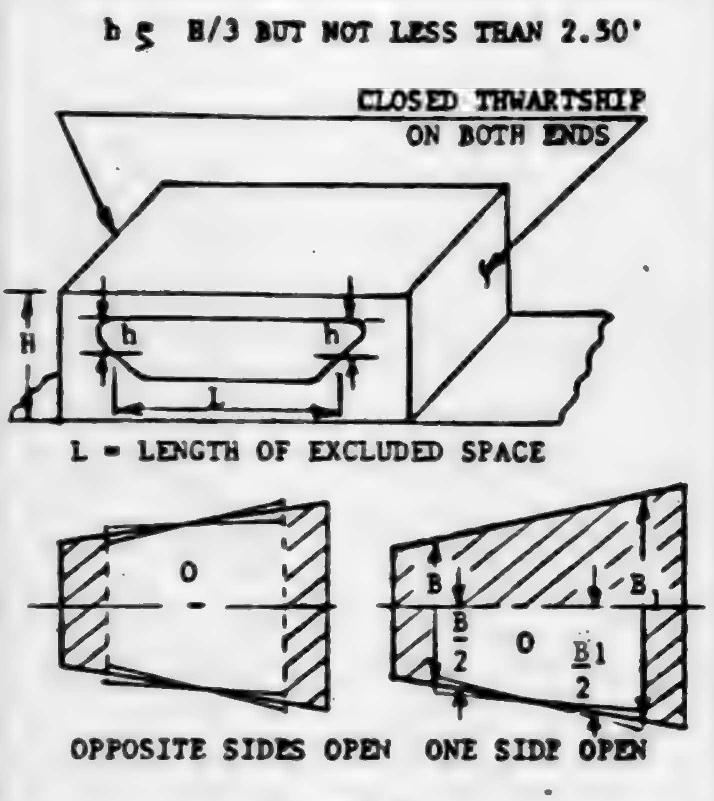
h ≤ B/3 BUT NOT LESS THAN 2.50'
CLOSED THWARTSHIP ON BOTH ENDS
H
h
h
L
L = LENGTH OF EXCLUDED SPACE
O
B
B/2
O
B1
B1/2
OPPOSITE SIDES OPEN
ONE SIDE OPEN

Figure 8

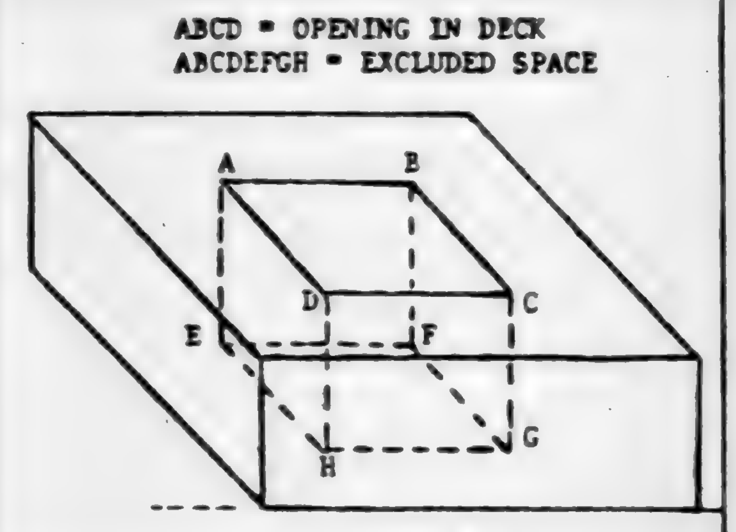

Figure 9

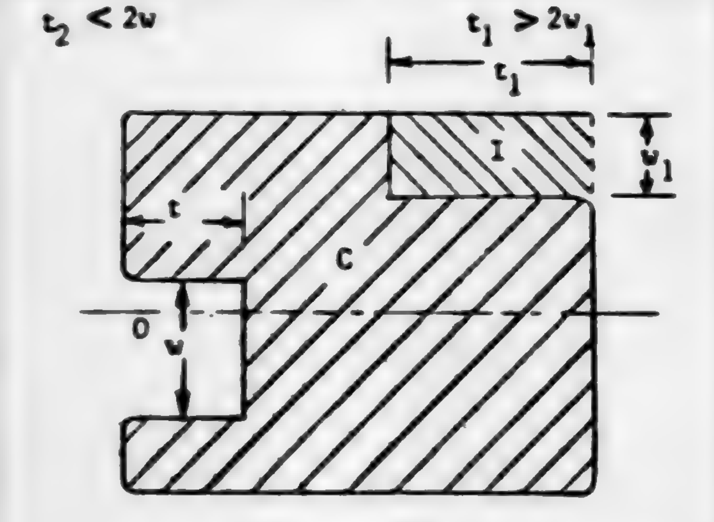

Figure 10

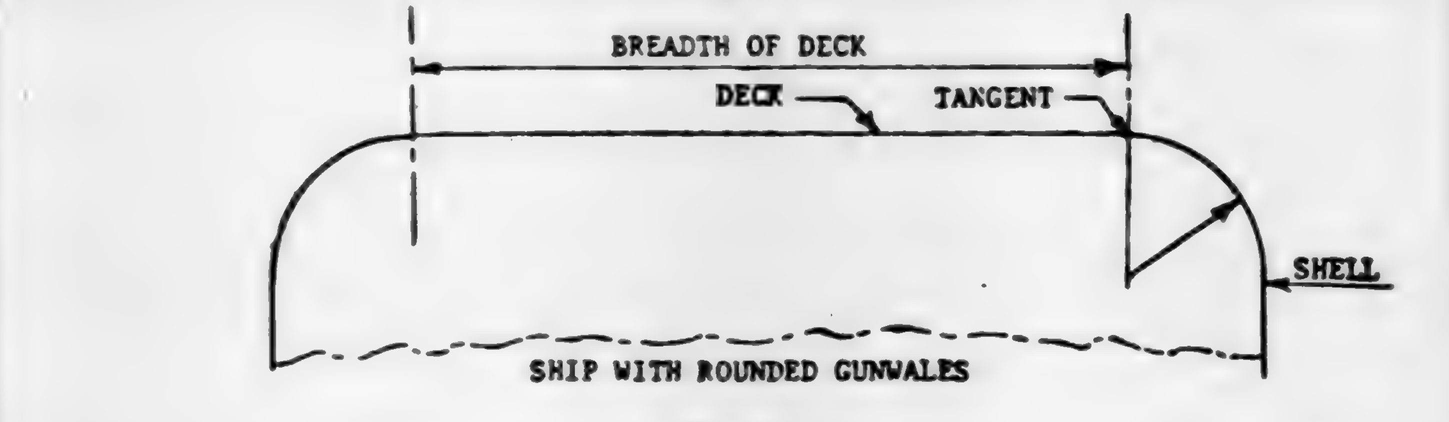

Figure 11

BILLING CODE 4910-14-C

Subpart C—Standard Measurement System

§ 69.101 Purpose.

This supart prescribes the procedures for measuring a vessel under the Standard Measurement System described in 46 U.S.C. 14512.

§ 69.103 Definitions.

As used in this subpart—

Between-deck means the space above the line of the tonnage deck and below the line of the deck next above.

Break means the space between the line of a deck and the upper portion of that deck, in cases where that deck is stepped and continued at a higher elevation.

Camber means the perpendicular rise or crown of a deck at the centerline of the vessel measured above the skin of the vessel at the vessel's sides.

Ceiling means the permanent planking or plating fitted directly on the inboard side of frames, floors, or double bottom and includes cargo battens and refrigeration insulation but does not include false ceiling which stands off from the framing.

Coaming means both the vertical plating around a hatch or skylight and the sill below an opening in a bulkhead.

Deckhouse means a structure that is on or above the uppermost complete deck and that does not extend from side to side of the vessel. The term includes cabin trunks and closed-in spaces over the holds of vessels.

Depth of frame means the perpendicular depth of a bottom frame and the athwart distance between the inboard and outboard faces of a side frame.

Double bottom means a space at the bottom of a vessel between the inner and outer bottom plating and used solely for water ballast.

Floor means a vertical plate or timber extending from bilge to bilge in the bottom of a vessel. In a wooden vessel, "floor" means the lowermost timber connecting the main frames at the keel when that timber extends the full depth of the frames to which it is fastened. In a double bottom, floors usually extend from the outer to the inner bottom.

Gross tonnage is defined in § 69.107(a).

Hatch means an opening in a deck through which cargo is laden or discharged.

Line of tonnage deck means the line determined under § 69.109(e).

Line of uppermost complete deck means the line determined under § 69.111(b).

Net tonnage is defined in § 69.107(b).

Registered breadth is defined in § 69.53.

Registered depth means "molded depth" as defined in § 69.53.

Registered length is defined in § 69.53.

Shelter deck means the uppermost deck that would have qualified as the uppermost complete deck had it not been fitted with a middle line opening.

Step means a cutoff in a deck or in the bottom, top, or sides of a space resulting in varying heights of a deck or varying heights or widths of a space.

Superstructure means all permanent structures (such as forecastle, bridge, poop, deckhouse, and break) on or above the line of the uppermost complete deck or, if the vessel has a shelter deck, on or above the line of the shelter deck.

Tonnage deck is defined in § 69.109(c).

Tonnage length is defined in § 69.109(f).

Uppermost complete deck means the uppermost deck—

(a) Which extends from stem to stern and from side to side at all points of its length;

(b) The space below which is enclosed by the sides of the vessel;

(c) Through which there is no opening that would exempt the space below from being included in gross tonnage; and

(d) Below which there is no opening through the hull that would exempt the space below from being included in gross tonnage.

§ 69.105 Application for measurement services.

Applications for measurement services under this subpart must include the following information and plans:

(a) Type of vessel.

(b) Vessel name, official number, and intended port of documentation.

(c) Builder's name and the vessel hull number assigned by the builder.

(d) Place and year built.

(e) Date keel was laid.

(f) Overall length, breadth, and depth of vessel.

(g) Lines plan.

(h) Booklet of offsets.

(i) Capacity plans for tanks

(j) Construction plans showing measurements and scantlings of hull and superstructure.

(k) Tonnage drawing showing tonnage length in profile and tonnage sections.

(l) Arrangement plans.

§ 69.107 Gross and net tonnages.

(a) Gross tonnage is the sum of the following tonnages, less certain spaces exempt under § 69.117:

(1) Under-deck tonnage (§ 69.109).

(2) Between-deck tonnage (§ 69.111).

(3) Superstructure tonnage (§ 69.113).

(4) Excess hatchway tonnage (§ 69.115(c)).

(5) Tonnage of framed-in propelling machinery spaces included in calculating gross tonnage (§ 69.121(d)(1)).

(b) Net tonnage is gross tonnage less deductions under §§ 69.119 and 69.121.

§ 69.109 Under-deck tonnage.

(a) *Defined.* "Under-deck tonnage" means the tonnage of the space below the line of the tonnage deck, as that volume is calculated under this section.

(b) *Method of calculating tonnage.* Under-deck tonnage is calculated by applying Simpson's first rule using the tonnage length and the areas of the transverse sections prescribed by this section.

(c) *Identifying the tonnage deck.* In vessels with two or less decks, the tonnage deck is the uppermost complete deck. In vessels with more than two decks, the tonnage deck is the second deck from the keel as determined in paragraph (d) of this section.

(d) *Enumerating the decks to identify the second deck from the keel.* Only decks without openings that permit space below to be exempt from inclusion in under-deck tonnage are enumerated. Partial decks are not considered decks for the purpose of enumerating decks. However, the presence of engine and boiler casings, peak tanks, or cofferdams that penetrate a deck do not disqualify the deck from being enumerated.

(e) *Identifying the line of the tonnage deck.* (1) If the tonnage deck runs in a continuous line from stem to stern, the line of the tonnage deck is the longitudinal line at the underside of the tonnage deck.

(2) If the tonnage deck runs at different levels from stem to stern, the line of the tonnage deck is the longitudinal line of the underside of the lowest portion of that deck parallel with the upper portions of that deck. (See § 69.123, figures 1 and 2.) Spaces between the line of the tonnage deck and the higher portions of that deck are not included in under-deck tonnage.

(f) *Tonnage length.* (1) "Tonnage length" means the length of a horizontal straight line measured at the centerline of the vessel from the point forward where the line of the tonnage deck intersects the line of the inboard faces of the ordinary side frames to the point aft where the line of the tonnage deck intersects the inboard face of the transom frames or cant frames. (See § 69.123, figure 3.)

(2) For a vessel having a headblock or square end with framing which extends

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except in vessels (such as barges) with

not an open vessel and that has a

from the tonnage deck to the bottom of the vessel, the tonnage length terminates on the inboard face of the head block or end framing. When a headblock extends inboard past the face of the end side frames or when the headblock plates are excessive in length, the tonnage length terminates at the extreme end of the vessel less a distance equal to the thickness of an ordinary side frame and shell plating. (See § 69.123, figure 4.)

(3) For a vessel having a square bow or stern and tonnage deck with camber, the effect of the camber on the tonnage length must be considered. The tonnage length must be measured below the tonnage deck at a distance equal to one-third of round camber an done-half of straight pitch camber.

(g) *Division of vessel into transverse sections.* (1) Except as under paragraph (m)(1)(iii) of this section, the tonnage length is divided into an even number of equal parts as indicated in the following table:

Class	Tonnage length	Divisions
1	50 ft. or less	6
2	Over 50 ft. but not exceeding 100 ft.	8
3	Over 100 ft. but not exceeding 150 ft.	10
4	Over 150 ft. but not exceeding 200 ft.	12
5	Over 200 ft. but not exceeding 250 ft.	14
6	Over 250 ft.	16

(2) Transverse sections are cut at each end of the tonnage length and at each point of division of the tonnage length. Intervals and one-third intervals between the points of division are measured to the nearest thousandth of a foot. (See § 69.123 figures 5 and 6.)

(h) *Depths of transverse sections.* (1) Transverse section depths are measured at each point of division of the tonnage length at the centerline of the vessel from a point below the line of the tonnage deck equal to one-third of the camber or to one-half of the pitch of the beam down to the upper side of the ordinary frames, floors, longitudinals, or tank top of a cellular double bottom, as the case may be.

(2) When a depth falls at a point where the tank top of a double bottom has a straight fall from centerline to the wings, the depth terminates at one-half of the height of fall. (See § 69.123 figure 8.)

(3) When a depth falls at a point where the tank top of a double bottom rises from the centerline to the wings, the depth terminates at one-half the dead rise. (See § 69.123, figure 9.)

(4) The depth at the midpoint of the tonnage length or, when a vessel is measured in parts, the depth at the midpoint of each part determines the number of equal parts into which each depth is divided, as follows:

(i) If the midpoint depth is 16 feet or less, each depth is divided into four equal parts. If the midpoint depth exceeds 16 feet, each depth is divided into six equal parts. (See § 69.123, figure 7.)

(ii) The interval between the points of division of a depth and one-third intervals are carried to the nearest hundredth of a foot.

(i) *Breadths of transverse sections.* (1) Transverse section breadths are measured horizontally at each point of division of each depth and also at the upper and lower points of each depth. Breadths are measured to the inboard face of the ordinary frames or to the line of the ordinary frames. Breadths are measured parallel to each other and at right angle to the vessel's centerline. (See § 69.123, figure 7.)

(2) Upper breadths are not reduced by measuring to deck-beam brackets. In cases of camber when an upper breadth passes through the deck (see § 69.123, figure 7), the breadth is measured to the line of the side frames at the under side of the deck projected vertically up to the height of the upper breadth.

(3) Bottom breadths are measured only as far as the flat of the floor extends. (See § 69.123, figures 7 and 10.) When bottom frames rise immediately from the flat keel, bottom breadths are equal to the breadth of the flat keel. Where there is no double bottom and where there is dead rise of the bottom out to the sides of the vessel, bottom breadths are equal to the part of the bottom plating not affected by dead rise.

(4) Bottom breadths falling in way of a double bottom, the top of which rises or falls from certerline to the wings, are measured between the inboard faces of the frame brackets which connect the double bottom with the frames. (See § 69.123, figures 8 and 9.)

(j) *Measuring spaces having ceiling.* The maximum allowance for terminating measurements on ceiling is three inches on the bottom frames or tank top and three inches on each side frame. When ceiling is less than three inches thick, only the actual thickness is allowed. When ceiling is fitted on a platform directly above the bottom frames, depths are measured down through the platform to the upper side of the frames and the allowable ceiling on the platform is then deducted.

(k) *Area of transverse sections.* (1) A transverse section at an end of the tonnage length may not yield area,

except in vessels (such as barges) with an upright bow or stern.

(2) The breadths of each transverse section are numbered from above, the upper being "1", the second down being "2", and so on to the lowest.

(3) Multiply the even numbered breadths by four and the odd numbered breadths by two, except for the first and last breadths, which are multiplied by one.

(4) Add together the products from paragraph (k)(3) of this section.

(5) Multiply the sum from paragraph (k)(4) of this section by one-third of the interval between the breadths. The product is the area of the transverse section.

(l) *Tonnage.* (1) Number the transverse sections successively "1", "2", and so forth, beginning at the bow.

(2) Multiply the area of the even numbered sections by four and the area of the odd numbered sections by two, except the first and last sections, which are multiplied by one.

(3) Add together the products from paragraph (l)(2) of this section and multiply the sum by one-third of the interval between the sections. The product is the volume under-deck.

(4) The volume under-deck is divided by 100 and is, subject to exemptions, the under-deck tonnage.

(m) *Steps in double bottom.* (1) The tonnage length of a vessel having a step exceeding six inches in height in its double bottom is divided into longitudinal parts at the step. Each part is subdivided as follows to determine the number of transverse sections:

(i) Parts 20 feet or under in length are divided into two equal parts.

(ii) Parts over 20 feet and under 40 feet in length are divided into four equal parts.

(iii) Parts 40 feet or over are divided as provided in paragraph (g)(1) of this section.

(2) The tonnage of each part is calculated separately. The sum of the tonnages of the parts is the under-deck tonnage.

(n) *Outside shaft tunnel exclusion.* Any portion of an outside shaft tunnel included in tonnage through the process of measurement is subtracted from the under-deck tonnage.

(o) *Open vessels.* (1) An open vessel is one of any length without a deck or with one or more partial decks, the total length of which is less than one-half the tonnage length.

(2) The line of the tonnage deck for an open vessel is the upper edge of the upper strake. Depths of transverse sections are taken from this line.

(3) Any vessel, other than one having a mechanically refrigerated hold, that is not an open vessel and that has a tonnage length of less than 50 feet is measured as an open vessel, if the distance between the line of its tonnage deck and the upper edge of the upper strake is more than one-sixth of the midship depth. "Midship depth" means the depth measured from the line of the upper edge of the upper strake to the point in the bottom used for measuring tonnage depths.

§ 69.111 Between-deck tonnage.

(a) *Defined.* "Between-deck tonnage" means the tonnage of the space above the line of the tonnage deck and below the line of the uppermost complete deck.

(b) *Identifying the line of the uppermost complete deck.* (1) If the uppermost complete deck runs in a continuous line from stem to stern, the line of the uppermost complete deck is the longitudinal line of the underside of the uppermost complete deck.

(2) If the uppermost complete deck runs at different levels from stem to stern, the line of the uppermost complete deck is the longitudinal line of the underside of the lowest portion of that deck parallel with the upper portions of that deck. Spaces between the line of the uppermost complete deck and the higher portions of the deck are included in superstructure tonnage.

(c) *Method for calculating tonnage.* The tonnage of each level of the between-deck space is calculated separately, as follows:

(1) The length of each level is measured at the mid-height between the line of the deck above and the line of the deck below. Measure from the point forward where the continuation of the line of the inboard face of the normal side frames intersects the center line of the vessel aft to the forward face of the normal transom framing.

(2) Divide the length under paragraph (c)(1) of this section into the same number of equal parts into which the tonnage length is divided under § 69.109(g)(1).

(3) Measure at mid-height between the faces of the normal side frames the inside breadth of the space at each end and at each point of division of the length. Number the breaths successively "1", "2", and so forth beginning at the bow.

(4) Multiply the even numbered breadths by four and the odd numbered breadths by two, except the first and last, which are multiplied by one.

(5) Add together the products under paragraph (c)(4) of this section and multiply the sum by one-third of the interval between the points at which the breadths are taken. The product is the square foot area of the space at mid-height.

(6) Multiply the area of the space at mid-height by the average of the heights taken each point of division of the space. The product divided by 100 is the tonnage of that space.

(7) The between-deck tonnage is the sum of the tonnage of each level within the between-deck space.

§ 69.113 Superstructure tonnage.

(a) *Defined.* "Superstructure tonnage" means the tonnage of all permanent structures, such as forecastle, bridge, poop, deckhouse, and break, on or above the line of the uppermost complete deck (or line of shelter deck, if applicable).

(b) *Method of calculating tonnage.* The tonnage of all structures on each level on or above the uppermost complete deck (or shelter deck, if applicable) is calculated separately as follows:

(1) The length of each structure is measured along its centerline at mid-height between the line of the inboard face of the framing on one end to the line of the inboard face of the framing on the other end. (See § 69.123, figure 11.)

(2) Divide the length under paragaph (b)(1) of this section into an even number of equal parts most nearly equal to those into which the tonnage length is divided under § 69.109.

(3) Measure at mid-height the inside breadth at each end and at each point of division of the length. Number the breadths successively "1", "2", and so forth, beginning at the extreme forward end of the structure. If an end of the structure is in the form of a continuous arc or curve, the breadth at that end is one-half the nearest breadth. If an end is in the form of an arc or curve having a decided flat, the breadth at the end is two-thirds of the nearest breadth.

(4) Multiply the even numbered breadths by four and the odd numbered by two, except the first and last breadth, which are multiplied by one.

(5) Add together the products under paragraph (b)(4) of this section and multiply the sum by one-third of the interval between the points at which the breadths are taken. The product is the square foot area of the structure at mid-height.

(6) Multiply this area by the average of the heights taken at each point of division of the structure between its decks or the line of its decks. The product divided by 100 is the tonnage of that structure.

(c) A structure having steps in its deck or side must be measured in parts.

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(d) The superstructure tonnage is the sum of tonnages of each level above the line of the uppermost complete deck (or shelter deck, if applicable).

(e) When a structure is located over a cut-away portion of the tonnage deck, the structure's height is measured from the under side of its overhead deck to the line of the tonnage deck. If the tonnage deck has no camber, allow for camber in the overhead deck.

(f) For structures of a standard geometric shape, a simple geometric formula that yields an accurate volume may be used.

§ 69.115 Excess hatchway tonnage.

(a) Hatchways that are above the tonnage deck and are either open to the weather or within open structures are measured to determine excess hatchway tonnage. Hatchways that are in between-deck spaces, on decks within closed-in structures, or on open structures are not measured.

(b) The tonnage of a hatchway is its length times breadth times mean depth divided by 100. Mean depth is measured from the under side of the hatch cover to the top of the deck beam.

(c) From the sum of the tonnage of the hatchways under this section, subtract one-half of one percent of the vessel's gross tonnage exclusive of the hatchway tonnage. The remainder is added as excess hatchway tonnage in calculating gross tonnage.

§ 69.117 Spaces exempt from inclusion in gross tonnage.

(a) *Purpose.* This section lists spaces which are exempt from inclusion in gross tonnage.

(b) *Spaces on or above the line of the uppermost complete deck.* The following spaces or portions of spaces on or above the line of the uppermost complete deck are exempt if the spaces or portions are reasonable in extent and adapted and used exclusively for the purpose indicated:

(1) Spaces for anchor gear, including capstan, windlass, and chain locker, are exempt.

(2) Companions and booby-hatches protecting stairways or ladderways leading to spaces below are exempt, whether or not the spaces below are exempt.

(3) Galley or other spaces fitted with a range or oven for cooking food to be consumed onboard the vessel are exempt.

(4) Spaces designed to provide light or air to propelling machinery are exempt, as follows:

(i) When propelling machinery is located entirely on or above the line of the uppermost complete deck, the entire propelling machinery space and all fuel bunker spaces that are also located above that line are exempt as light or air spaces. (See exception in § 69.121(d)(1) for framed-in spaces.)

(ii) When part of the propelling machinery projects above the line of the uppermost complete deck into a space used exclusively to provide light or air to the propelling machinery, the entire space is exempt as light or air space. When any portion of this space is used for purposes other than providing light or air, only the portion of the space used for light or air, the space occupied by the propelling machinery itselt, and a propelling machinery working space allowance under § 69.121 limited to two feet, if available, on each side of the propelling machinery are exempt.

(iii) Any part of an escape shaft, or a companion sheltering an escape shaft, above the line of the uppermost complete deck is exempt as light or air space.

(iv) Space that would otherwise be exempt as a light or air space is not exempt when propelling machinery is boxed-in and does not extend above the line of the uppermost complete deck. Any portion of the boxed-in space above the line of the uppermost complete deck is exempt.

(5) Skylights affording light or air to a space below, other than to propelling machinery spaces. Space immediately below the line of the deck on which a skylight is located is exempt only when there is an opening in the next lower deck directly below the skylight to permit light or air to an even lower deck.

(6) Machinery spaces, other than for propelling machinery under § 169.121.

(7) Spaces for steering gear.

(8) Water closet spaces that are fitted with at least a toilet and are intended for use by more than one person.

(9) The space in a wheelhouse necessary for controlling the vessel.

(c) *Passenger spaces.* (1) As used in this section, the term "passenger" includes officers and enlisted men on military vessels who are not assigned ship's duties and not entered on the ship's articles.

(2) As used in this section, "passenger space" means a space reserved exclusively for the use of passengers and includes, but is not limited to, berthing areas, staterooms, bathrooms, toilets, libraries, writing rooms, lounges, dining rooms, saloons, smoking rooms, and recreational rooms. The space need not be part of or adjacent to a berthing area to be considered a passenger space.

(3) A passenger space located on or above the first deck above the uppermost complete deck is exempt from gross tonnage.

(4) A passenger space located on the uppermost complete deck is exempt from gross tonnage only when it has no berthing accommodations and is an open structure under paragraph (d) of this section.

(d) *Open structures.* (1) Structures that are located on or above the line of the uppermost complete deck that are under cover (sheltered) but open to the weather are exempt from gross tonnage.

(2) A structure is considered "open to the weather" under paragraph (d)(1) of this section when an exterior end bulkhead of the structure is open and, except as provided in paragraph (d)(4) of this section, is not fitted with any means of closing. To be considered "open to the weather", the end bulkhead must not have a coaming height of more than two feet in way of any required opening and have one of the following:

(i) Two openings, each at least three feet wide and at least four feet high in the clear, one on each side of the centerline of the structure.

(ii) One opening at least four feet wide and at least five feet high in the clear.

(iii) One opening at least 20 square feet in the clear with a breadth in excess of four feet and a height of not less than three feet.

(3) A compartment within an open structure is considered open to the weather only when an interior bulkhead of that compartment has an opening or openings that meet the requirements for end bulkheads under paragraphs (d)(2)(i) through (d)(2)(iii) of this section. Other compartments within the structure are not considered open to the weather.

(4) An interior or exterior opening that is temporarily closed by shifting boards dropped into channel sections at the sides of the opening or by plates or boards held in place by hook bolts is considered open to the weather—

(i) If the hook bolts are spaced at least one foot apart and hook over a stiffener bar around the perimeter of the opening;

(ii) If the cover plates fay against the bulkhead;

(iii) If battening, cawlking, or gaskets of any material are not used; and

(iv) If cleats, stud bolts, hinges, bolts through the bulkhead, or other attachments (other than hook bolts) that may be used in conjunction with the temporary cover as a means of closing the opening are not installed at the edge of opening. (See § 69.123, Figure 12.)

(5) A structure with its aft end entirely open from the under side of its overhead stiffeners down to the deck, to the line of the deck, or to a coaming not

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exceeding three inches in height and open athwartship between the inboard faces of the side stiffeners is considered open to the weather. The opening may be covered by a wire mesh screen or temporarily closed by canvas secured at the top and lashed or buttoned in place.

(e) *Open space between the shelter deck and the next lower deck.* (1) Space that is between the shelter deck and the next lower deck and that is under cover (sheltered) but open to the weather is exempt from gross tonnage when all openings in the uppermost complete deck are provided with a watertight means of closing.

(2) A space is considered "open to the weather" under paragraph (e)(1) of this section when the shelter deck above the space has a middle line opening which conforms to the following:

(i) The middle line opening must be at least four feet long in the clear and at least as wide as the after cargo hatch on the shelter deck, but not less than one-half the width of the vessel at the midpoint of the length of the opening. The opening may have rounded corners not exceeding a nine inch radius. When a greater radius is required by the Coast Guard or a Coast Guard recognized classification society under § 42.05–60 of this chapter, notification of that requirement must be submitted to the Commandant.

(ii) The middle line openings must be located so that the distance between the aft edge of the middle line opening and the vessel's stern is not less than one-twentieth of the tonnage length of the vessel and the distance between the fore edge of the opening and the vessel's stem is not less than one-fifth of the tonnage of the vessel.

(iii) The middle line opening must not be within a structure of any type.

(iv) If the middle line opening is guarded by rails or stanchions, the rails and stanchions must not be used to secure or assist in securing a cover over the opening.

(v) The coaming of the middle line opening must not exceed one foot mean height above the shelter deck. Bolts must not pass through the stiffeners or flanges on the coaming, nor may there be any other attachments on the coaming for fastening a cover. Portable wood covers may be fitted over the middle line opening if held in place only by lashings fitted to the under side of the covers. Metal covers may be fitted if held in place only by hook bolts spaced not less than 18 inches apart that pass through the cover and hook over angle stiffeners or flanges fitted to the outside of the coaming.

(vi) The space below the middle line opening must have a minimum length of four feet throughout its entire breadth and height and be in the clear at all times.

(vii) A scupper having a five inch minimum inside diameter and fitted with a screw down non-return valve geared to and operated from the shelter deck must be fitted on each side of the upper deck in way of the middle line opening.

(3) When the shelter deck space forward or aft of the middle line opening is divided by interior bulkheads, only those compartments with at least two openings that progress to the middle line opening are considered "open to the weather" under paragraph (e)(1) of this section. Each required opening must be at least three feet wide and at least four feet high in the clear, must not have a coaming height or more than two feet, and must not be fitted (except as provided in paragraph (d)(4) of this section) with any means of closing. Other compartments within the shelter deck space are not considered "open to the weather" under paragraph (e)(1) of this section.

(f) *Water ballast spaces.* A space, regardless of location, adapted only for water ballast and not available for stores, supplies, fuel, or cargo (other than water to be used for underwater drilling, mining, and related purposes, including production), upon request, may be exempt from gross tonnage if the following are met:

(1) The space must be available at all times only for water ballast that is piped through a system independent of other systems (except fire fighting and bilge suction systems). Pumps, pipes, and other equipment for loading and unloading water ballast must be of a size suitable for the efficient handling of the water ballast within a reasonable time frame. All manholes providing access to a water ballast space must be oval or circular and not greater than 34 inches in diameter. Except for those on a deck exposed to the weather, the manholes may have a coaming not exceeding six inches in height. Existing hatches over spaces being converted to water ballast spaces must have a watertight cover plate welded to the hatch and a manhole, as described in this paragraph, fitted in the plating.

(2) The primary purpose of the water ballast must be to afford a means of maintaining the vessel's stability, immersion, trim, pre-loading conditions, or seakeeping capabilities.

(3) If the space is in a vessel that is subject to inspection under 46 U.S.C. 3301, the space must be considered when determining the adequacy of the vessel's stability under 46 CFR chapter I.

(4) If the total of all water ballast spaces to be exempted from gross tonnage exceeds 30% of the vessel's gross tonnage (as calculated under this subpart without any allowance for water ballast), a justification of the operating conditions that require the water ballast must be submitted to the measuring organization. The measuring organization reviews the submittal for completeness and, when complete, forwards the submittal to the Commandant for approval. Although a single condition may justify all water ballast spaces, several conditions may be necessary in other cases. However, a particular tank is not justified by a condition if another tank already justified by another condition could be used as effectively. The justification must—

(i) Designate the vessel's service;

(ii) Explain for what purpose under paragraph (f)(2) of this section the water ballast is being used;

(iii) Provide the calculations required in paragraphs (f)(4)(vi) through (f)(4)(ix) of this section for those uses on a form similar to Coast Guard Stability Test Form CG–993–9;

(iv) Include the capacity, tank arrangement, and piping plans for the vessel;

(v) Include a statement certifying that the space will be used exclusively for water ballast as prescribed by this section;

(vi) If water ballast is used for stability, describe each loading condition and the resultant metacentric height (GM) and include calculations;

(vii) If water ballast is used for immersion or trim, describe those conditions and include loading and trim calculations;

(viii) If water ballast is used for pre-loading, describe how it is used and include strength and weight calculations; and

(ix) If water ballast is used for seakeeping, describe each loading condition, GM, period of roll, and, if speed is involved, speed versus trim and draft and include calculations.

(5) If the water ballast space or its use, purpose, or piping are changed, the vessel owner or operator must report the change promptly to a measurement organization listed in § 69.15 for a determination as to whether a tonnage remeasurement is required.

(g) *Methods for measuring exempt spaces.* (1) If the exempt space is located within the superstructure, the exempt space is measured using the same procedures used to measure superstructure tonnage under § 69.113.

(2) If the exempt space is located between-deck, the space is measured using the same procedures used for

between-deck tonnage under § 69.111(c), except that the length of the exempt space is divided into the even number of spaces most equal to the number of spaces into which the between-deck was divided.

(3) If the exempt space is located under-deck, the space is measured using the same procedures used for under-deck tonnage under § 69.109, except that the length of the exempt space is divided into the even number of spaces most equal to the number of spaces into which the under-deck was divided.

§ 69.119 Spaces deducted from gross tonnage.

(a) *Purpose.* This section lists the requirements for spaces (other than propelling machinery spaces under § 69.121) which, though included in calculating gross tonnage (i.e., are not exempt under § 69.117), are deducted from gross tonnage in deriving net tonnage.

(b) *General.* (1) A deductible space must be used exclusively for, and be reasonable in size for, its intended purpose.

(2) When a space is larger than necessary for the safe and efficient operation of deductible equipment, only the space occupied by the equipment plus a two foot maximum working space on each side of the equipment, if available, is deductible.

(3) Space specified in this section may be located anywhere within the vessel, unless otherwise specified.

(c) *Anchor gear.* A space below the line of the uppermost complete deck occupied by the anchor gear, capstan, windlass, and chain locker is deductible. A fore peak used exclusively as chain locker is measured by the method prescribed under § 69.177(g)(3).

(d) *Boatswain's stores.* A space containing oils, blocks, hawsers, rigging, deck gear, or other boatswain's stores for daily use is deductible. The maximum deduction allowed for vessels less than 100 gross tons is one ton and, for vessels 100 gross tons or over, is one percent of the gross tonnage, not to exceed 100 tons.

(e) *Chart room.* A space for keeping charts and nautical instruments and for plotting the vessel's course is deductible. For a combined wheelhouse and chart room, that part not exempted as wheelhouse under § 69.117(b)(9) is deductible. For small vessels in which the only space for a chart room is in a cabin or saloon, one half the space not to exceed 1.5 tons is deductible as chart room.

(f) *Donkey engine and boiler.* Donkey engine and boiler space is deductible when connected with the main (non-cargo) pumps of the vessel, except as follows:

(1) If the space is within the engine room or within the casing above the engine room and if the donkey engine is an auxiliary to the main propelling machinery, the space is an engine room deduction under § 69.121(b).

(2) If the space is above the line of the uppermost complete deck and if the donkey engine is not an auxiliary to the main propelling machinery, the space is exempt under § 69.117(b).

(g) *Spaces for the exclusive use of officers or crew.* (1) The following spaces, regardless of their location (unless otherwise noted), are deductible if not used by passengers:

(i) Sleeping rooms.

(ii) Bathrooms with a bath tub or shower but without a water closet.

(iii) Water closets below the line of the uppermost complete deck serving more than one person, with or without a bath tub or shower. Water closets, regardless of location, that serve only one person or that are accessible only through a stateroom or bedroom serving one person are considered as part of the space they serve and are deductible only if that space is deductible.

(vi) Clothes drying rooms.

(v) Drinking water filtration or distilling plant below the line of the uppermost complete deck.

(vi) Hospitals.

(vii) Mess rooms.

(viii) Office of the chief engineer.

(ix) Oil skin lockers.

(x) Pantries.

(xi) Recreation rooms.

(xii) Smoking rooms.

(xiii) Galleys below the line of the uppermost complete deck.

(2) Shops for engineers, carpenters, plumbers, or butchers and offices for clerks, pursers, or postmasters are not deductible, wherever located.

(h) *Master's cabin.* The master's sleeping room, dressing room, bathroom, observation room, reception room, sitting room, water closet, and office are deductible.

(i) *Radio room.* Spaces in which radio apparatus is installed and messages are sent and received and which may provide off-duty operator accommodations are deductible.

(j) *Steering gear.* Spaces for steering gear below the line of the uppermost complete deck are deductible.

(k) *Generators.* Spaces for generators below the line of the uppermost complete deck are deductible regardless of what space the generators serve. These spaces may include other equipment necessary for the generator's operation.

(l) *Pump room.* Spaces below the line of the uppermost complete deck containing pumps that are not capable of handling cargo and that are not fuel oil transfer pumps considered part of the propelling machinery under § 69.121(b)(2)(v) are deductible.

(m) *Sail stowage.* A space for stowing sails on a vessel propelled only by sails is deductible up to two and one-half percent of the vessel's gross tonnage.

(n) *Waste material space.* (1) A tank or collection space, regardless of location, used for the carriage or collection of sewage, garbage, galley waste, trash, slop-oil mixture, tank cleaning residue, bilge residue, or other waste material generated aboard the vessel is deductible.

(2) Space below the line of the uppermost complete deck used exclusively to separate, clarify, purify, or otherwise process waste material generated aboard the vessel is deductible.

(o) *Passageways.* A passageway or companionway is deductible—

(1) If it serves deductible space only; or

(2) If it serves deductible space and is also the sole means of access to one of the following non-deductible spaces:

(i) Lockers of less than two tons each, containing medicine, linen, mops, or other items for the free use of the crew.

(ii) A ship's office.

(iii) Spare rooms (not exceeding two) used by a pilot, customs officer, reserve engineer, or employee or agent of the vessel's owner or operator.

(p) *Markings for deductible spaces.* (1) Each space deducted under this section must be marked with the words "Certified ______" (inserting the space designation, such as "Seaman", "Generator", Office of Chief Engineer", "Hospital", or "Anchor Gear"). If a deductible space berths more than one crew member, the marking must indicate the number of crew members berthed, such as "Certified ______ Seamen" (inserting the number of crew).

(2) The abbreviations "Cert." for "certified" and "W.C." for "water closet" may be used.

(3) The markings must be in Roman letters and Arabic numerals at least ½ inch in height, must be painted in a light color on a dark background, must be embossed, center-punched, carved, or permanently cut in a bulkhead or metal plate, and must be placed in a legible location over a doorway on the inside of the space. A metal plate, if used, must be permanently fastened in place by welding, riveting, lock screws, or a Coast Guard-approved bonding agent.

(q) *Method for measuring deductible spaces.* (1) A rectangular space must be measured by taking the product of its length, breadth, and height.

(2) A space with curved sides on or above the tonnage deck is measured according to § 69.109.

(3) Space less than 15 feet in length may be measured by any practical method.

(4) Spaces below the tonnage deck exceeding 15 feet in length and bounded by a curved surface conforming to the side of the vessel must be measured by the formula used for measuring the superstructure under § 69.113.

(5) The height of a space located on a platform in the hull must be measured from the top of the bottom hull frames, if the platform is used only to form a flat surface at the bottom of the space, if the platform is not more than one foot above the top of the bottom frames, and if the space below the platform is not usable.

(6) The height of a space is measured through any ceiling, paneling, false overhead, or other covering, to the space's structural boundary, unless the space enclosed by the covering is available for a non-deductible use.

§ 69.121 Engine room deduction.

(a) *General.* The engine room deduction is either a percentage of the vessel's total propelling machinery spaces or a percentage of the vessel's gross tonnage.

(b) *Propelling machinery spaces.* (1) Propelling machinery spaces are the spaces occupied by the main propelling machinery and auxiliary machinery and spaces reasonably necessary for the operation and maintenance of the machinery. Propelling machinery spaces do not include spaces for fuel tanks, spaces exempt from gross tonnage under § 69.117, and spaces not used or not available for use in connection with the propelling machinery.

(2) Propelling machinery spaces are—

(i) Space below the crown. The crown is the top of the main space of the engine room to which the heights of the main space are taken. The crown is either the underside of a deck or, if the side bulkheads are sloping, the uppermost point at which the slope terminates. (See § 69.123, figures 13 and 14.)

(ii) Framed-in space located between the crown and the uppermost complete deck and used for propelling machinery or for the admission of light or air to propelling machinery spaces. (See § 69.123, figures 13 and 14.)

(iii) Shaft tunnel space and thrust block recess space.

(iv) Space below the uppermost complete deck used for escape shafts or trunked ladderways leading from the aft end of the shaft tunnel to the deck above.

(v) Space containing a fuel oil transfer pump located in a separate space and not used for bunkering the vessel. When the pump serves both ballast and fuel oil, only one-half of the pump's space is considered a propelling machinery space.

(vi) Spaces containing fuel oil settling tanks used solely for the main boilers. The space must not exceed one percent of the vessel's gross tonnage.

(vii) Spaces for engineers' stores and workshops located below the uppermost complete deck and either open to a propelling machinery space or separated from a propelling machinery space only by a screen bulkhead. The space must not exceed three-quarters of one percent of the vessel's gross tonnage.

(viii) Framed-in space located above the line of the uppermost complete deck and used for propelling machinery or for the admission of light or air to a propelling machinery space, when requested under paragraph (d) of this section.

(ix) If the propelling machinery is boxed-in below the tonnage deck, the boxed-in space plus the spaces outside of the boxing for the shaft, auxiliary engines, and related propelling machinery. If a portion of the boxed-in space extends above a platform or partial deck that is below the uppermost complete deck, that portion is also considered part of the propelling machinery space.

(c) *Methods for measuring propelling machinery spaces.* (1) If the propelling machinery space is bulkheaded off or is not larger than necessary for the safe operation and maintenance of the propelling machinery, the entire space, or, if bulkheaded off, the portion bulkheaded off, is measured for the engine room deduction.

(2) If the propelling machinery space is not bulkheaded off or is larger than necessary for the safe operation and maintenance of the propelling machinery, only the space occupied by the propelling machinery itself plus a working space of two feet, if available, on each side of the propelling machinery is measured for the engine room deduction. If the working space overlaps another working space not related to the propelling machinery, only one-half of the overlapping working space is included in the propelling machinery space. The height of the working space is measured as provided in paragraph (c) of this section.

(3) If the propelling machinery is located in more than one space, each space must be measured separately.

(4) If the propelling machinery is located in a space with a step in the bottom or side lines, each stepped portion of the space must be measured separately.

(5) The length of a space under paragraph (c)(1) of this section is measured from the bulkhead just forward of the propelling machinery to the bulkhead just aft of the propelling machinery. The length of a space under paragraph (c)(2) of this section is measured from the forward edge of the working space to the aft edge of the working space.

(6) If the boundaries of the propelling machinery space form a rectangle, the product of the length, breadth, and height, divided by 100, is the tonnage of the space.

(7) If the boundaries of the propelling machinery space are continuous fair lines, heights are measured at the fore and aft ends and at the center of the space from the bottom frames, floors, or tank top of a double bottom up to the line of the crown. A breadth is measured at half-length of each height. The product of the length, mean breadth, and mean height, divided by 100, is the tonnage of the space.

(8) If the propelling machinery space is in the aft end of the hull, extends from side to side of the hull, and has a continuous bottom line, the length of the space is divided into the even number of equal parts most nearly equal to the number of parts that the tonnage length under § 69.109(g) was divided. The tonnage is then calculated by the same method used for calculating the under-deck tonnage in § 69.109(l).

(9) The tonnage of a framed-in space located between the crown and the uppermost complete deck and used for propelling machinery or for the admission of light or air to the propelling machinery space, is the product of its length, breadth, and height, divided by 100.

(10) The tonnage of a shaft tunnel, or a thrust block recess, having a flat top is the product of its length, breadth, and height, divided by 100. If the shaft tunnel or thrust block recess top is not flat, the space above must be calculated by using the appropriate geometrical formula. If the space aft of the shaft tunnel extends from side to side of the vessel, the tonnage of the space is found by the formula for measuring peak tanks in § 69.109(l).

(11) The length and breadth of the space for a shaft tunnel, or a thrust block recess, when not cased is that

which is necessary for maintenance of the shaft. The height allowed for thrust block recess space must not exceed seven feet. The mean height allowed for the shaft tunnel space must not exceed six feet. In a multi-screw vessel where the shaft tunnel or thrust block recess space is open from side to side, measure only the space used for purposes of propelling the vessel.

(12) When the propelling machinery is on a bed at the vessel's bottom, the height of the propelling machinery space is measured from the top of the bottom frames or floors.

(d) *Request to treat certain framed-in engine room spaces as part of a propelling machinery space.* (1) Under § 69.117(b)(4), framed-in spaces located above the line of the uppermost complete deck and used for propelling machinery or for admitting light or air to a propelling machinery space are exempt from inclusion in gross tonnage. However, upon written request to a measurement organization listed in § 69.15, the vessel owner may elect to have these spaces included in calculating gross tonnage, then deducted from gross tonnage as propelling machinery spaces under paragraph (b)(2)(viii) of this section.

(2) The framed-in space must be safe, seaworthy, and used only for propelling machinery or for the admission of light or air to the propelling machinery space. The length of the space must not exceed the length of the propelling machinery space and the breadth must not exceed one-half of the extreme inside midship breadth of the vessel. Portions of the framed-in space that are plated over are not included in the propelling machinery space.

(3) To exercise the option in paragraph (d)(1) of this section, all of the framed-in space need not be treated as propelling machinery space, but only that portion required to entitle the vessel to have 32 percent of its gross tonnage deducted as an engine room deduction under paragraph (e) of this section.

(e) *Calculating the engine room deduction.* (1) The engine room deduction is based on a percentage of the vessel's gross tonnage or a percentage of the total propelling machinery space.

(2) for vessels propelled in whole or in part by screw—

(i) If the total propelling machinery space is 13 percent or less of the vessel's gross tonnage, deduct $^{32}/_{13}$ times the total propelling machinery space;

(ii) If the total propelling machinery space is more than 13 but less than 20 percent of the vessel's gross tonnage, deduct 32 percent of the vessel's gross tonnage; or

(iii) If the total propelling machinery space is 20 percent or more of the vessel's gross tonnage, deduct either 32 percent of the vessel's gross tonnage or 1.75 times the total propelling machinery space, whichever the vessel's owner elects.

(3) For vessels propelled in whole or in part by paddle-wheel—

(i) If the total propelling machinery space is 20 percent or less of the vessel's gross tonnage, deduct $^{37}/_{20}$ times the total propelling machinery space;

(ii) If the total propelling machinery space is more than 20 but less than 30 percent of the vessel's gross tonnage, deduct 37 percent of the vessel's gross tonnage; or

(iii) If the total propelling machinery space is 30 percent or more of the vessel's gross tonnage, deduct either 37 percent of the vessel's gross tonnage or 1.5 times the total propelling machinery space, whichever the vessel's owner elects.

§ 69.123 Figures.

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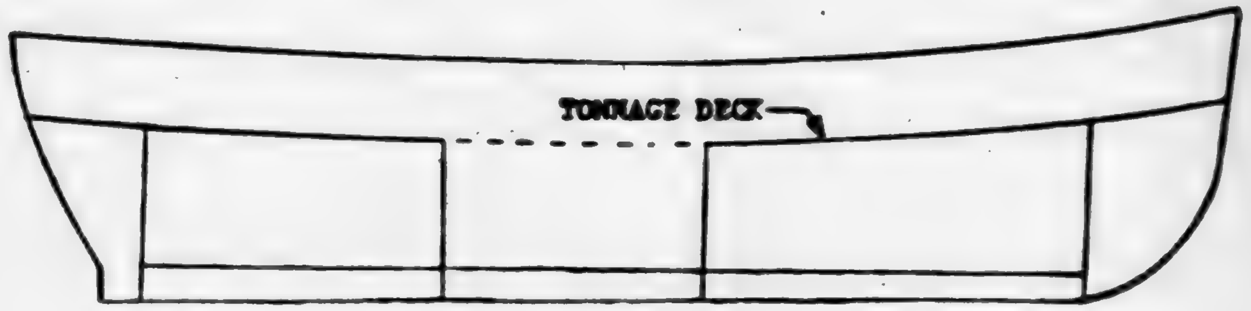


Figure 1

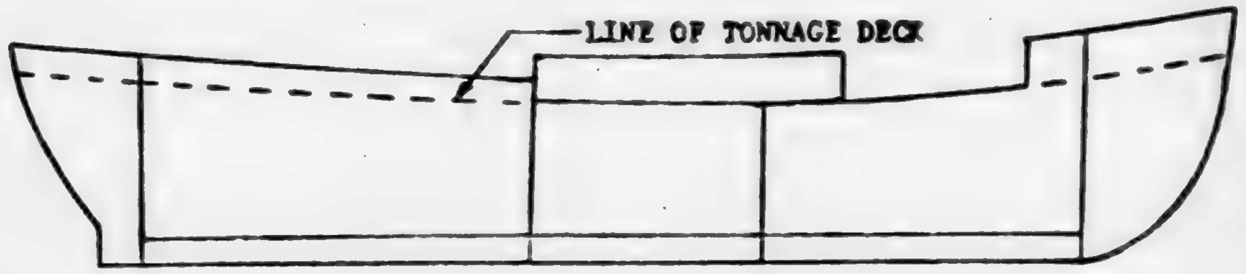
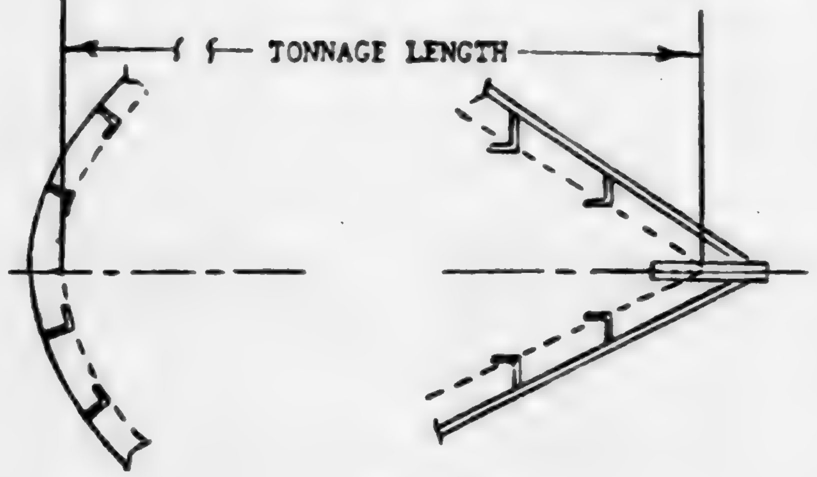


Figure 2



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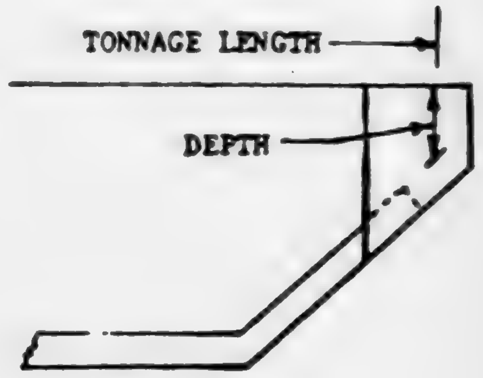

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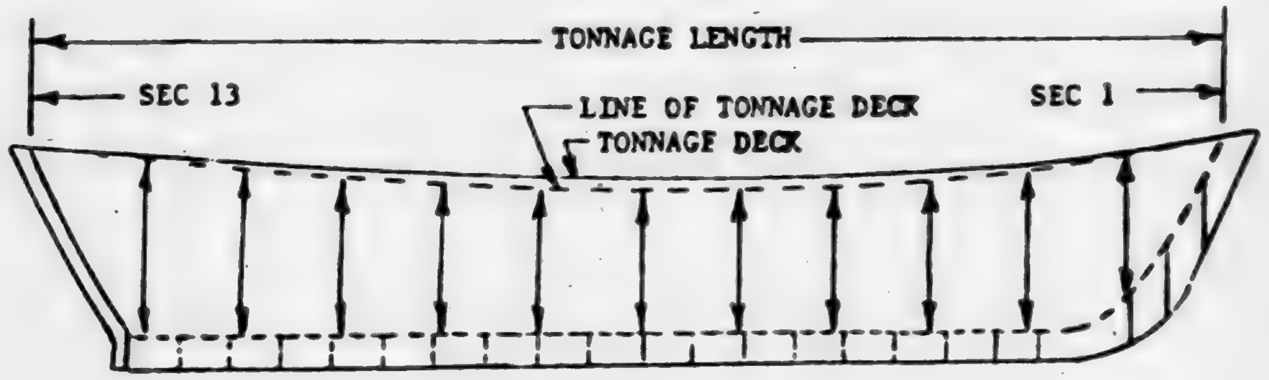


Figure 5

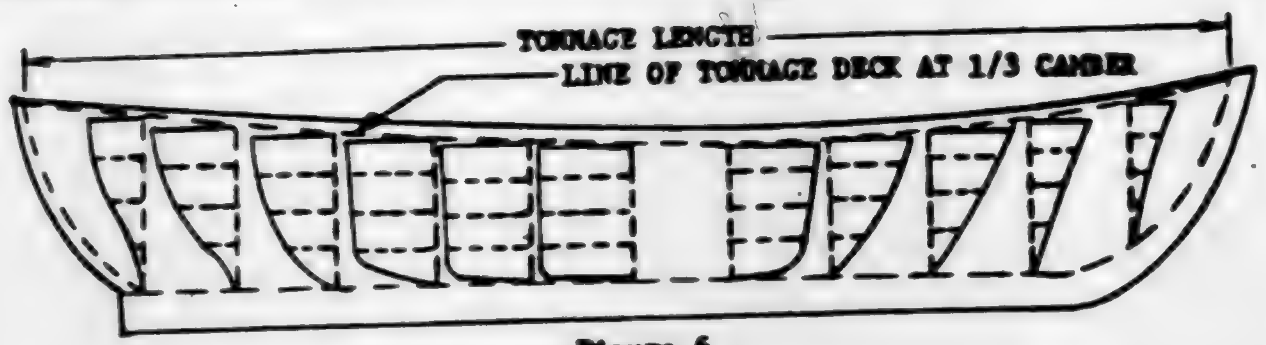

TONNAGE LENGTH
LINE OF TONNAGE DECK AT 1/3 CAMBER

Figure 6

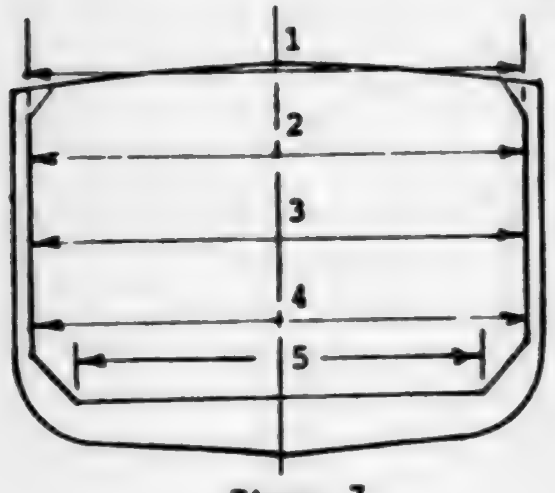


Figure 7

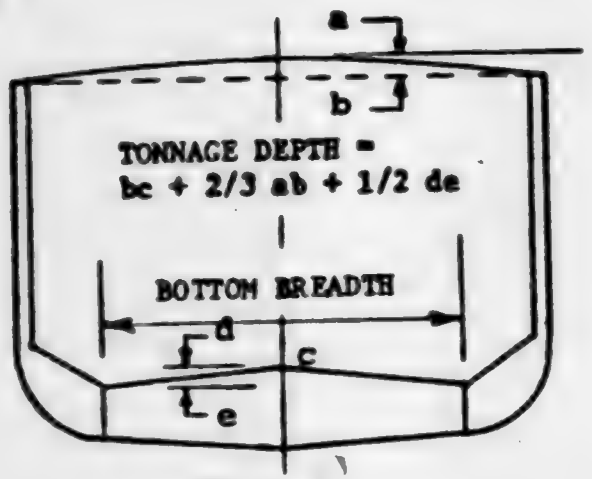

a
b
TONNAGE DEPTH =
bc + 2/3 ab + 1/2 de
BOTTOM BREADTH
d
c
e

Figure 8

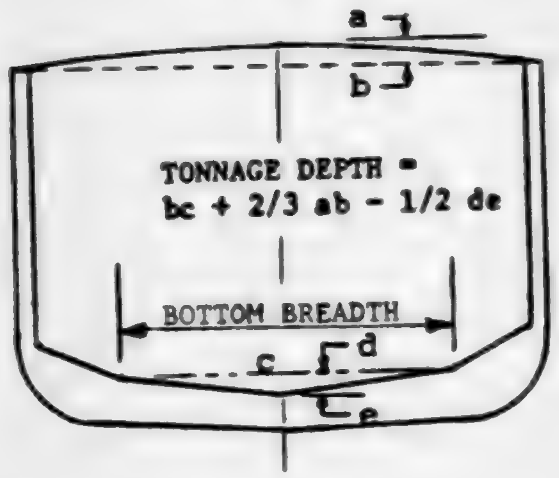

a
b
TONNAGE DEPTH =
bc + 2/3 ab - 1/2 de
BOTTOM BREADTH
c
d
e

Figure 9

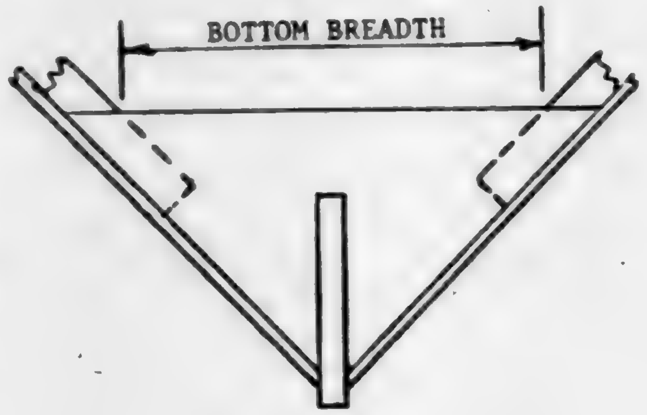

BOTTOM BREADTH

Figure 10

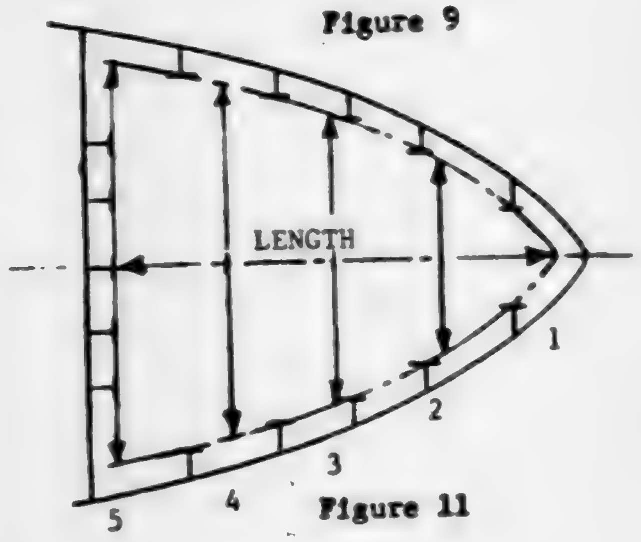

LENGTH
1
2
3
4
5

Figure 11

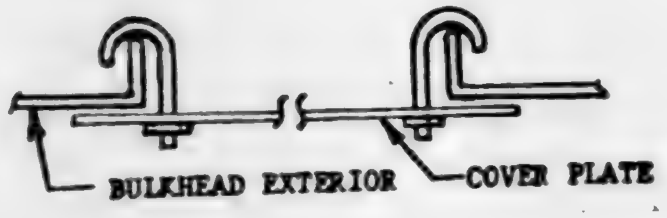

BULKHEAD EXTERIOR
COVER PLATE

Figure 12

H = Height of main space.
H' = Height between crown and upper deck.
L/A = Light or air space above the upper deck.

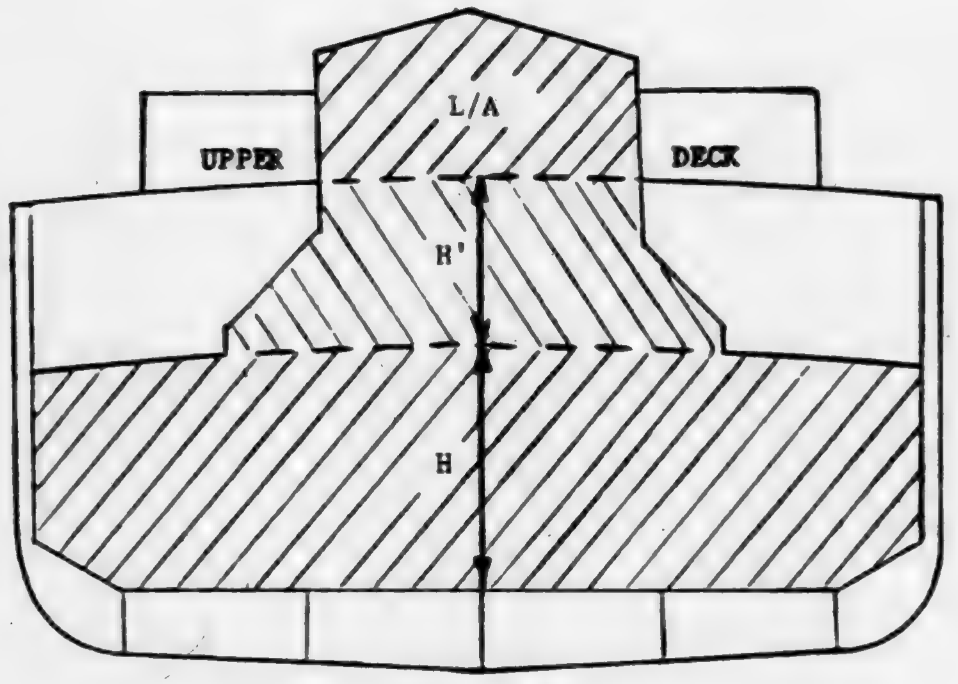

L/A
UPPER
DECK
H'
H

Figure 13

H = Height of main space.
H' = Height between crown and upper deck.
L/A = Light or air space above the upper deck.

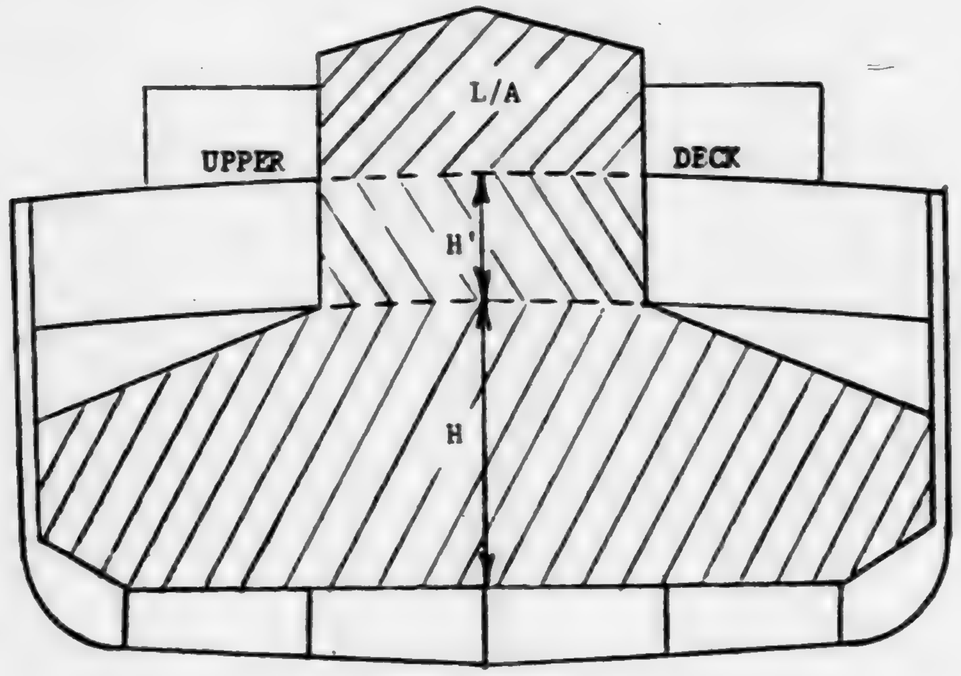

L/A
UPPER
DECK
H'
H

Figure 14

Subpart D—Dual Measurement System

§ 69.151 Purpose.

This subpart prescribes measurement requirements for the assignment of either one gross and one net tonnage or two gross and two net tonnages to vessels under the Dual Measurement System.

§ 69.153 Application of other laws.

(a) If a vessel is assigned two gross tonnages under § 69.175(b), the higher gross tonnage is the tonnage used when applying inspection, manning, and load line laws and regulations to the vessel.

(b) Tonnage marks are not to be construed as additional load line marks. Whether or not a tonnage mark is submerged under § 69.171 has no effect on the applicability of load line laws and regulations.

§ 69.155 Measurement requirements.

Except as otherwise required by this subpart, the measurement requirements under the Standard Measurement System in subpart C of this part apply to the measurement of vessels under the Dual Measurement System.

§ 69.157 Definitions.

Terms used in this subpart that are defined in § 69.103 have the same meaning as in § 69.103, except the terms listed below. As used in this subpart,—

Gross tonnage is defined in § 69.161(a).

Line for fresh and tropical waters means the line described in § 69.177(b)(2).

Line of the second deck means the line described in § 69.181.

Line of the uppermost complete deck means a longitudinal line at the underside of the uppermost compelte deck or, if that deck is stepped, the longitudinal line of the underside of the lowest portion of that deck parallel with the upper portions of that deck.

Net tonnage is defined in § 69.161(b).

Second deck means the next deck below the uppermost complete deck that meets the following:

(a) Is continuous athwartships and in a fore-and-aft direction at least between peak bulkheads, even though the deck may have interruptions or openings due to propelling machinery spaces, to hatch and ventilation trunks not extending longitudinally completely between main transverse bulkheads, to ladder and stairway openings, to chain lockers, or to cofferdams.

(b) Is fitted as an integral and permanent part of the vessel.

(c) Has proper covers to all main hatchways.

(d) Does not have steps the total of which exceed 48 inches in height.

Tonnage deck means, for a vessel with only one deck, the uppermost complete deck and, for a vessel with a second deck, the second deck.

Tonnage mark means the line described in § 69.177(a)(2).

§ 69.159 Application for measurement services.

Applications for measurement services under this subpart must include the application information and plans required for the Standard Measurement System under § 69.105. The application must indicate whether a line for fresh and tropical waters is requested under § 69.177(b) and, for vessels with more than one deck, indicate whether one or two sets of tonnages are desired under § 69.175.

§ 69.161 Gross and net tonnages.

(a) *Gross tonnage* means the tonnage of a vessel, less certain spaces exempt under § 69.169, and is the sum of the following:

(1) Under-deck tonnage (§ 69.163).

(2) Between-deck tonnage (§ 69.165)

(3) Superstructure tonnage (§ 69.167)

(4) Excess hatchway tonnage (§ 69.115)

(5) Tonnage of framed-in propelling machinery spaces included in calculating gross tonnage (§ 69.121(d)(1)).

(b) *Net tonnage* means gross tonnage less deductions under § 69.119 and § 69.121.

§ 69.163 Under-deck tonnage.

The under-deck tonnage provisions in § 69.109 apply; except that, under the Dual Measurement System, spaces between the line of the tonnage deck and the tonnage deck itself due to a stepped tonnage deck are included in under-deck tonnage.

§ 69.165 Between-deck tonnage.

The between-deck tonnage provisions in § 69.111 apply, except that, under the Dual Measurement System, between-deck space extends from the tonnage deck to the uppermost complete deck, rather than from the line of the tonnage deck to the line of the uppermost complete deck.

§ 69.167 Superstructure tonnage.

The superstructure tonnage provisions in § 69.113 apply; except that, under the Dual Measurement System, spaces between the line of the uppermost complete deck and the uppermost complete deck itself due to a stepped uppermost complete deck are not included in the superstructure tonnage.

§ 69.169 Spaces except from inclusion in gross tonnage.

The tonnage of the following spaces is exempt from inclusion in gross tonnage:

(a) Spaces listed in § 69.117(b) when located within the superstructure.

(b) Spaces listed in § 69.117(c)(1) through (c)(3) when located above, but not on, the uppermost complete deck.

(c) Spaces listed in § 69.117(f), regardless of locations.

(d) Spaces available for carrying dry cargo and stores when located on or above the uppermost complete deck.

(e) When a vessel is assigned a tonnage mark and the tonnage mark is not submerged,—

(1) Spaces listed in § 69.117(b) when located between the uppermost complete deck and the second deck;

(2) Spaces listed in § 69.117(c)(1) through (c)(3) when located on the uppermost complete deck; and

(3) Spaces available for carrying dry cargo and stores when located between the uppermost complete deck and the second deck.

§ 69.171 When the tonnage mark is considered submerged.

For the purpose of this subpart, a tonnage mark is considered submerged when—

(a) In salt or brackish water, the upper edge of the tonnage mark is submerged; and

(b) In fresh or tropical water, the upper edge of the line for fresh and tropical waters is submerged.

§ 69.173 Tonnage assignments for vessels with only one deck.

A vessel without a second deck is assigned only one gross and one net tonnage. In calculating the gross tonnage, only the exemptions in § 69.169 (a) through (d) are allowed. Markings under § 69.177 are not permitted on these vessels.

§ 69.175 Tonnage assignments for vessels with a second deck.

(a) At the option of the vessel owner, a vessel having a second deck is assigned either two gross and two net tonnages or one gross and one net tonnage.

(b) If two gross and two net tonnages are assigned, the higher tonnages (i.e. those based only on exemptions under §69.169 (a) through (d)) are applicable when the upper edge of the tonnage mark is submerged and the lower tonnages (i.e. those based only on all exemptions under §69.169) are applicable when the upper edge of the tonnage mark is not submerged.

(c) If only the low gross and low net tonnages, as calculated under paragraph

(b) of this section, are assigned, these tonnages are applicable at all times. On these vessels, the tonnage mark must be located in accordance with § 69.177(a)(6) at the level of the uppermost part of the load line grid.

§ 69.177 Markings.

(a) *Tonnage mark.* (1) All vessels with a second deck that are measured under the Dual Measurement System must have, on each side of the vessel, a tonnage mark, and an inverted triangle identifying the tonnage mark, as described and located under this section. (See the figure in § 69.183(a).) Vessels with only one deck are not assigned markings under this section.

(2) The tonnage mark is a horizontal line 15 inches long and one inch wide. The tonnage mark must be designated by a welded bead or other permanent mark 15 inches long placed along the top edge of the tonnage mark.

(3) Above the tonnage mark is placed an inverted equilateral triangle, each side of which is 12 inches long and one inch wide, with its apex touching the upper edge of the center of the tonnage mark.

(4) If the vessel has a load line mark, the longitudinal location of the center of the tonnage mark must be between 21 inches and six feet six inches aft of the vertical centerline of the load line ring. (See the figures in § 69.183 (b) and (c).) If the vessel does not have a load line mark, the center of the tonnage mark must be located amidships.

(5) Except as under paragraph (a)(6) of this section, the upper edge of the tonnage mark must be located below the line of the second deck at the distance indicated in Table 69.177(a)(5). (See the figure in § 69.183(b).)

TABLE 69.177(a)(5)—MINIMUM DISTANCE IN INCHES BETWEEN THE TONNAGE MARK AND THE LINE OF THE SECOND DECK

L (in feet)	L divided by D								
	12	13	14	15	16	17	18	19	20
220 and under	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0
230	3.2	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0
240	4.7	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0
250	6.3	3.3	2.0	2.0	2.0	2.0	2.0	2.0	2.0
260	8.0	4.8	2.1	2.0	2.0	2.0	2.0	2.0	2.0
270	9.9	6.4	3.5	2.0	2.0	2.0	2.0	2.0	2.0
280	11.8	8.1	4.9	2.1	2.0	2.0	2.0	2.0	2.0
290	13.9	9.9	6.5	3.5	2.0	2.0	2.0	2.0	2.0
300	16.0	11.7	8.1	4.9	2.1	2.0	2.0	2.0	2.0
310	18.3	13.7	9.8	6.4	3.5	2.0	2.0	2.0	2.0
320	20.7	15.8	11.7	8.1	4.9	2.1	2.0	2.0	2.0
330	23.2	18.0	13.6	9.8	6.4	3.5	2.0	2.0	2.0
340	25.9	20.4	15.7	11.6	8.1	4.9	2.1	2.0	2.0
350	28.7	22.9	17.9	13.6	9.8	6.5	3.6	2.0	2.0
360	31.7	25.5	20.2	15.7	11.7	8.2	5.0	2.2	2.0
370	34.7	28.3	22.7	17.9	13.6	9.9	6.6	3.7	2.0
380	38.0	31.1	25.3	20.2	15.7	11.8	8.3	5.2	2.4
390	41.3	34.1	27.9	22.6	17.9	13.8	10.1	6.8	3.8
400	44.8	37.2	30.7	25.0	20.1	15.8	11.9	8.4	5.3
410	48.2	40.3	33.5	27.7	22.6	18.1	14.0	10.4	7.2
420	51.5	43.4	36.4	30.4	25.2	20.6	16.4	12.7	9.7
430	54.8	46.5	39.4	33.3	27.9	23.2	19.0	15.2	11.8
440	58.4	49.9	42.6	36.4	30.9	26.0	21.7	17.8	14.4
450	62.1	53.4	46.0	39.6	33.9	29.0	24.6	20.6	17.1
460	65.9	57.0	49.5	42.9	37.1	32.1	27.6	23.5	19.9
470	69.6	60.7	53.0	46.3	40.4	35.2	30.6	26.5	22.8
480	73.7	64.4	56.5	49.7	43.7	38.4	33.7	29.5	25.7
490	77.5	68.1	60.0	53.0	46.9	41.5	36.7	32.4	28.5
500	81.2	71.6	63.4	56.2	50.0	44.5	39.6	35.2	31.2
510	84.9	75.1	66.7	59.4	53.0	47.4	42.4	37.9	33.9
520	88.4	78.4	69.9	62.4	55.9	50.2	45.1	40.5	36.4
530	91.8	81.6	72.9	65.3	58.7	52.9	47.7	43.0	38.8
540	95.2	84.6	75.9	68.1	61.4	55.5	50.2	45.4	41.2
550	98.4	87.6	78.8	70.9	64.0	58.0	52.8	47.8	43.4
560	101.6	90.6	81.6	73.6	66.6	60.5	55.0	50.1	45.5
570	104.8	93.6	84.4	76.3	69.2	62.9	57.3	52.3	47.8
580	107.9	96.6	87.2	78.9	71.7	65.3	59.6	54.5	49.9
590	111.0	99.7	90.0	81.5	74.2	67.7	61.9	56.7	52.0
600	114.0	102.5	92.6	84.0	76.5	69.9	64.0	58.6	54.0
610	117.0	105.3	95.2	86.5	78.9	72.1	66.2	60.6	56.0
620	120.0	108.0	97.8	88.9	81.2	74.4	68.3	62.6	58.0
630	122.9	110.7	100.4	91.3	83.5	76.6	70.4	64.6	59.9
640	125.7	113.4	102.9	93.7	85.8	78.7	72.4	66.6	61.7
650	128.6	116.1	105.4	96.1	88.0	80.8	74.4	68.7	63.6
660	131.4	118.7	107.8	98.3	90.1	82.8	76.3	70.6	65.3
670	134.2	121.2	110.2	100.6	92.2	84.8	78.3	72.4	67.1
680	136.9	123.8	112.6	102.9	94.3	86.8	80.2	74.2	68.9
690	139.6	126.3	115.0	105.1	96.4	88.8	82.1	76.0	70.6
700	142.3	128.8	117.3	107.3	98.5	90.8	83.9	77.8	72.3
710	144.9	131.3	119.6	109.4	100.5	92.7	85.7	79.5	73.9
720	147.5	133.7	121.8	111.5	102.5	94.6	87.5	81.2	75.5
730	150.1	136.1	124.0	113.6	104.5	96.5	89.3	82.9	77.1
740	152.7	138.5	126.2	115.7	106.5	98.3	91.5	84.5	78.7
750	155.3	140.8	128.5	117.8	108.4	100.1	92.8	85.1	80.3
760	157.8	143.1	130.6	119.7	110.3	101.9	94.4	87.8	81.7
770	160.2	145.4	132.7	121.7	112.1	103.6	96.0	89.3	83.2
780	162.6	147.6	134.8	123.7	113.9	105.3	97.6	90.8	84.7
790	165.1	149.9	136.9	125.6	115.7	107.0	99.2	92.3	86.1

EXAMPLE: (1)

TABLE 69.177(a)(5)—MINIMUM DISTANCE IN INCHES BETWEEN THE TONNAGE MARK AND THE LINE OF THE SECOND DECK—Continued

L (in feet)	L divided by D								
	12	13	14	15	16	17	18	19	20
800	167.5	152.1	138.9	127.4	117.4	108.6	100.6	93.8	87.4

L=the length in feet of the line of the second deck at the centerline of the vessel from the inner surface of the frames at the vessel's stem to the inner surface of the frames at the vessel's stern.

D=The vertical distance in feet from the top of the flat keel of the vessel to the line of the second deck.

EXAMPLE (1) For a vessel in which L=450 feet and L/D=15 feet, read down from the L/D column "15" and to the right on the column "450" to where the two columns intersect at 39.6. The tonnage mark must be located 39.6 inches below the line of the second deck.

EXAMPLE (2) If L or L/D is an intermediate number, the distance "a" between the tonnage mark and the line of the second deck must be obtained by linear interpolation. For a vessel in which L=424.80 feet and L/D=15.17:

L	Table L/D=15	Actual L/D=15.17	Table L/D=16
Table 420	30.4		25.2
Actual 424.80	r	a	s
Table 430	33.3		27.9

Interpolation:
$r=30.4+0.48\ (33.3-30.4)=31.79$
$s=25.2+0.48\ (27.9-25.2)=26.50$
$a=r-0.17\ (r-s)=31.79-0.17\ (31.79-26.50)=30.89$ inches

(6) For the following vessels with a load line mark, the upper edge of the tonnage mark must be located at the level of the uppermost part of the load line grid:

(i) Vessels assigned only one gross and one net tonnage under § 69.175(c).

(ii) Vessels for which a load line assigning authority certifies that the vessel's load line mark was located as though the second deck were the freeboard deck.

(b) *Line for fresh and tropical waters.* (1) Except as under paragraph (b)(4) of this section, a horizontal line for fresh and tropical waters may be assigned at the vessel owner's request.

(2) The line must be nine inches long and one inch wide and located above and to the left of the tonnage mark at a distance equal to one forty-eighth of the distance from the top of the flat keel to the tonnage mark. The tonnage mark and the line for fresh and tropical waters must be connected by a vertical line one inch wide. (See the figure in § 69.183(a).)

(3) The line for fresh and tropical waters must be designated by a welded bead or other permanent mark nine inches long placed along the upper edge of the line.

(4) For vessels with a load line mark, if the load line assigning authority certifies that the load line mark was located as though the second deck were the freeboard deck, a line for fresh and tropical waters must not be placed on the vessel.

(c) *Freeboard deck mark.* A vessel assigned two gross and two net tonnages which has more than one deck and no load line mark assigned must have a mark on each side of the vessel with the same dimensions and location as the freeboard deck line mark under § 42.13–20 of this chapter, except that the mark must be located directly above the tonnage mark.

(d) *The line of the second deck.* The line of the second deck must not be marked on the side of the vessel.

(e) *Color of markings.* All markings under this section must be maintained in either a light color on a dark background or a dark color on a light background.

§ 69.179 Certification of markings.

(a) Before a certificate of measurement is issued for a vessel requiring a tonnage mark, a certification by a measurement organization under § 69.15 that all markings meet the requirements of this subpart is required.

(b) The Coast Guard, at any time, may verify markings under this subpart.

§ 69.181 Locating the line of the second deck.

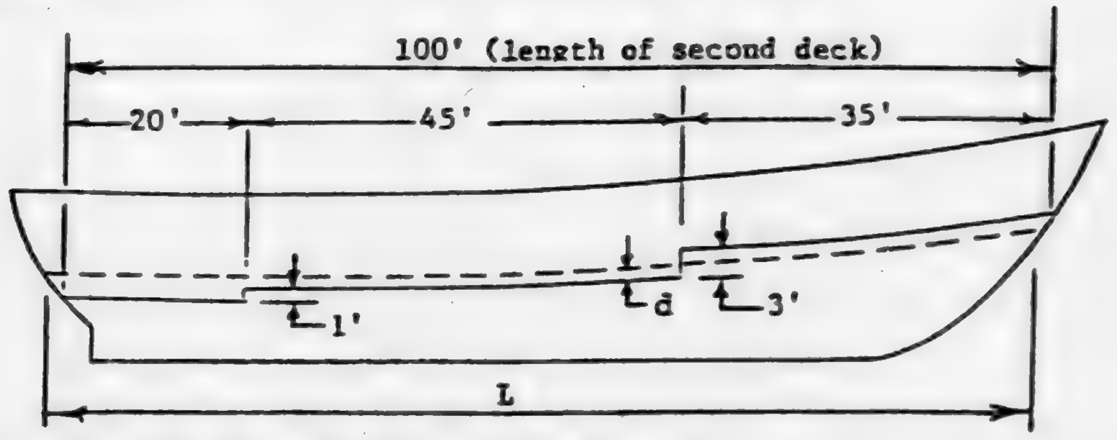
(a) If the second deck is not stepped, the line of the second deck is the longitudinal line of the underside of the second deck at the side of the hull.

(b) If the second deck is stepped (as in the examples following this paragraph), the line of the second deck is a longitudinal line extended parallel to each portion of the second deck and located at the height of the underside of the amidships portion of the second deck at the side of the hull—

(1) Plus, for each stepped portion of the second deck higher than the second deck at amidships, a distance equal to the length of the stepped portion divided by the total length of the second deck times the height that the step is above the height of the amidship portion of the second deck; and

(2) Minus, for each stepped portion of the second deck lower than the second deck at amidships, a distance equal to the length of the stepped portion divided by the total length of the second deck times the height that the amidship portion of the second deck is above the height of the step.

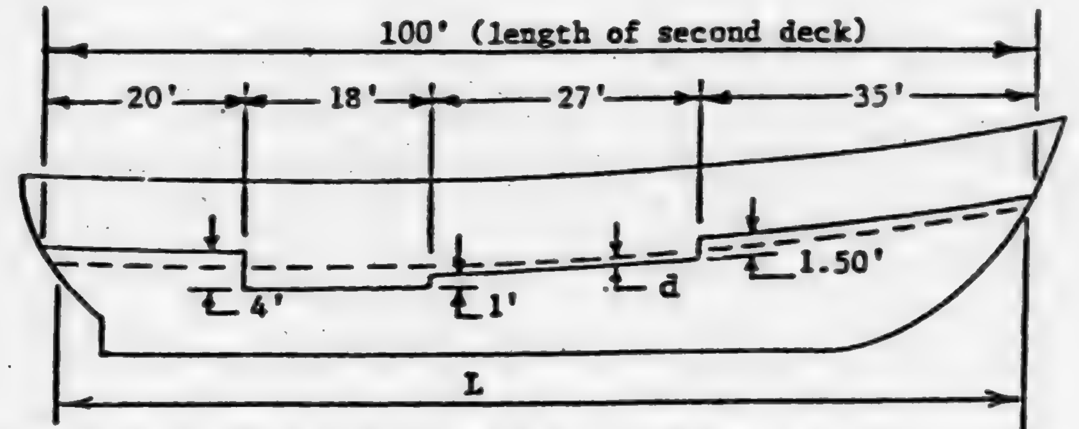
EXAMPLE: (1)



L = Length of the line of the second deck.
d = Distance from amidship portion of second deck to line of second deck.

$$d = \frac{35 \times 3}{100} - \frac{20 \times 1}{100} = +\ 0.85 \text{ feet.}$$

EXAMPLE: (2)



$$d = \frac{20 \times 3}{100} + \frac{35 \times 1.5}{100} - \frac{18 \times 1}{100} = +\ 0.945 \text{ feet.}$$

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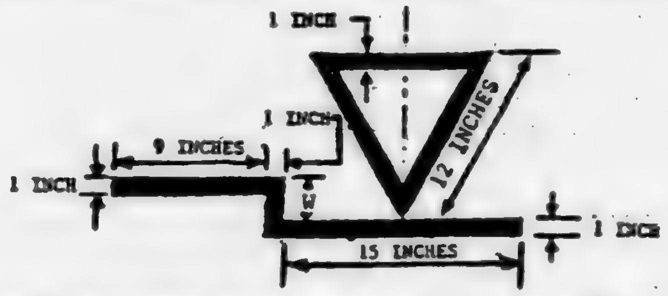
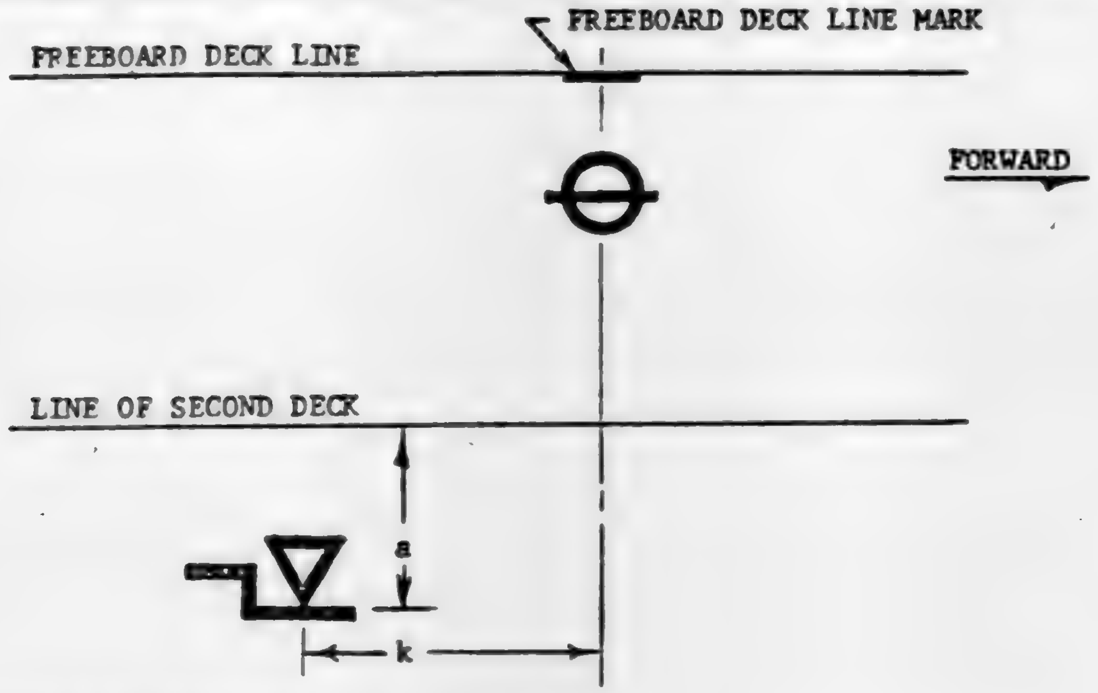
§ 69.183 Figures.

(a) *Tonnage mark with an equilateral triangle and a line for fresh and tropical waters.*



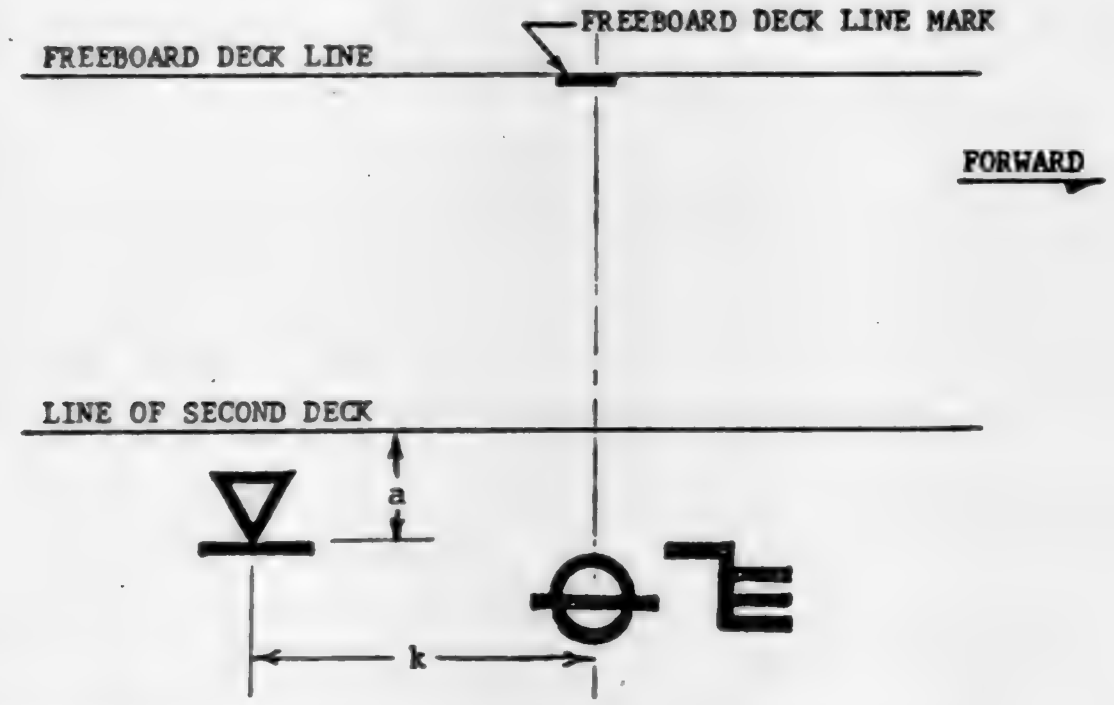
W=1/48 of the distance from the top of the flat keel to the tonnage mark. (See § 69.177(b)(2).)

(b) *Tonnage mark location if the load line mark is not placed as though the second deck were the freeboard deck.*



k=a distance between 21 inches and six feet six inches.
a=distance derived from Table 69.177(a)(5).

(c)—*Tonnage mark location if the load line mark is placed as though the second deck were the freeboard deck.*



k=a distance between 21 inches and six feet six inches.
a=the distance between the line of the second deck and the uppermost part of the load line grid.

Subpart E—Simplified Measurement System

§ 69.201 Purpose.

This subpart prescribes the procedures for measuring a vessel under the Simplified Measurement System described in 46 U.S.C. chapter 145, subchapter III.

§ 69.203 Definitions.

As used in this subpart and in Coast Guard Form CG–5397 under § 69.205—

Overall breadth means the horizontal distance taken at the widest part of the hull, excluding rub rails, from the outboard side of the skin (outside planking or plating) on one side of the hull to the outboard side of the skin on the other side of the hull.

Overall depth means the vertical distance taken at or near midships from a line drawn horizontally through the uppermost edges of the skin (outside planking or plating) at the sides of the hull (excluding the cap rail, trunks, cabins, and deckhouses) to the outboard face of the bottom skin of the hull, excluding the keel. For a vessel that is designed for sailing and has a keel faired to the hull, the keel is included in "overall depth" if the distance to the bottom skin of the hull cannot be determined reasonably.

Overall length means the horizontal distance between the outboard side of the foremost part of the aftermost part of the stem and the outboard side of the aftermost part of the stern, excluding rudders, outboard motor brackets, and other similar fittings and attachments.

Registered breadth means—

(a) For a single-hull vessel, the vessel's overall breadth; and

(b) For a multi-hull vessel, the horizontal distance taken at the widest part of the complete vessel between the outboard side of the skin (outside planking or plating) on the outboardmost side of one of the outboardmost hulls to the outboard side of the skin on the outboardmost side of the other outboardmost hull, excluding rubrails.

Registered depth means—

(a) For a single-hull vessel, the vessel's overall depth; and

(b) For a multi-hull vessel, the overall depth of the deepest hull.

Registered length means—

(a) For a single-hull vessel, the vessel's overall length; and

(b) For a multi-hull vessel, the horizontal distance between the outboard side of the foremost part of the stem of the foremost hull and the outboard side of the aftermost part of the stern of the aftermost hull, excluding fittings or attachments.

Vessel designed for sailing means a vessel which has the fine lines of a sailing craft and is capable of being propelled by sail, whether or not the vessel is equipped with an auxiliary motor, a decorative sail, or a sail designed only to steady the vessel.

§ 69.205 Application for measurement services.

To apply for measurement under the Simplified Measurement System, the owner of the vessel must complete the current issue of Coast Guard Form CG–5397 and submit the form to the Coast Guard Port of Documentation Office at the port where the vessel will be documented. (See part 67, appendix D, of this chapter for a list of these offices.)

§ 69.207 Measurements.

(a) All lengths and depths must be measured in a vertical plane at centerline and breadths must be measured in a line at right angles to that plane. All dimensions must be expressed in feet and inches to the nearest half inch or in feet and tenths of a foot to the nearest .05 of a foot.

(b) For a multi-hull vessel, each hull must be measured separately for overall length, breadth, and depth and the vessel as a whole must be measured for registered length, breadth, and depth.

(c) The Coast Guard may verify dimensions of vessels measured under this subpart.

§ 69.209 Calculation of tonnages.

(a) *Gross tonnage.* (1) Except as in paragraphs (a)(2) through (a)(5) of this section, the gross tonnage of a vessel designed for sailing is one-half of the product of its overall length, overall breadth, and overall depth (LBD) divided by one hundred (i.e., 0.50 LBD/100), and the gross tonnage of a vessel not designed for sailing is 0.67 LBD/100.

(2) The gross tonnage of a vessel with a hull that approximates in shape a rectangular geometric solid (barge-shape) is 0.84 LBD/100.

(3) The gross tonnage of a multi-hull vessel is the sum of all the hulls as calculated under this section.

(4) If the volume of the principal deck structure of a vessel that is indicated as a houseboat on Coast Guard Form CG–5397 is as large as, or larger than, the volume of the vessel's hull, the volume of the principal deck structure in tons of 100 cubic feet is added to the tonnage of the hull to establish the vessel's gross tonnage. The volume of the principal deck structure of a vessel is determined by the product of its average dimensions.

(5) If the overall depth of a vessel designed for sailing includes the keel, only 75 percent of that depth is used for gross tonnage calculations.

(b) *Net tonnage.* (1) For a vessel having propelling machinery in its hull—

(i) The net tonnage is 90 percent of its gross tonnage, if it is a vessel designed for sailing; or

(ii) The net tonnage is 80 percent of its gross tonnage, if it is not a vessel designed for sailing.

(2) For a vessel having no propelling machinery in its hull, the net tonnage is the same as its gross tonnage.

Dated: August 21, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–21233 Filed 9–11–89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 89–773]

Administrative Practice and Procedure

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: This order amends § 1.45(d) of the Commission's rules to reflect that § 1.4(g), which provides three additional days when service is by mail, was re-designated § 1.4(h). This change occurred in December 1987 when the Commission amended its rules regarding computation of time.

EFFECTIVE DATE: September 12, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Donna Viert, Office of General Counsel, (202) 632–6990.

SUPPLEMENTARY INFORMATION: On July 7, 1989, the Commission released an Order in the matter of amendment of § 1.45(d) of the Commission's rules. 4 FCC Rcd 5585.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Edward J. Minkel,
Managing Director.

Rule Change

PART 1—[AMENDED]

Part 1 of title 47 of the CFR is amended as follows:

1. The authority citation for part 1 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; implement, 5 U.S.C. 552, unless othewise noted.

2. 47 CFR 1.45(d) is amended by substituting "§ 1.4(h)" for "§ 1.4(g)" in the last sentence thereof.

[FR Doc. 89-21311 Filed 9-11-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-417]

Radio Broadcasting Services; Idalia; CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 231A to Idalia, Colorado, as a first local broadcast service, in response to a petition filed by Virginia K. Cutforth. Coordinates for Channel 231A to Idalia, Colorado, are 39-42-06 and 102-17-30. With this action the proceeding is terminated.

DATES: Effective October 20, 1989; The window period for filing applications on Channel 231A at Idalia, Colorado, will open on October 23, 1989, and close on November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Ordee Pearson, (202) 634-6530. Questions related to the window application filing process at Idalia, Colorado, should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order MM Docket 88-417, adopted August 15, 1989, and released September 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.302 [Amended]

2. Section 73.202(b), the Table of Allotments, is amended by adding Idalia, Colorado, Channel 231A.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-21312 Filed 9-11-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-413; RM-5630]

Radio Broadcasting Services; Ligonier, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 274A to Ligonier, Indiana, as that community's first local FM service, in response to a petiton filed on behalf of Erwin Draper. See 52 FR 38798, October 19, 1987. Coordinates used for Channel 274A at Ligonier are 41-28-51 and 85-35-34. With this action, the proceeding is terminated.

DATES: Effective October 20, 1989; The window period for filing applications on Channel 274A at Ligonier, Indiana, will open on October 23, 1989, and close on November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket 87-413, adopted August 22, 1989, and released September 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.302 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Indiana, by adding Ligonier, Channel 274A.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-21313 Filed 9-11-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-49; RM-5866]

Radio Broadcasting Services; Gladstone, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 288C1 for Channel 288A at Gladstone, Michigan, in response to a petition filed by David C. Schaberg. We shall also modify the permit of Station WWTM, Channel 288A, to specify operation on Channel 288C1. The coordinates for Channel 288C1 at Gladstone are 46-07-50 and 86-56-52. Concurrence of the Canadian government has been obtained since Gladstone is located within 320 kilometers of the U.S.-Canadian border. With this action, the proceeding is terminated.

EFFECTIVE DATE: October 20, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-49, adopted August 21, 1989, and released September 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Michigan is amended by removing Channel 288A and adding Channel 288C1 at Gladstone.

Federal Communications Commission.

Karl Kensinger,
Chief, Allocations Branch, Policy & Rules Division, Mass Media Bureau.

[FR Doc. 89-21315 Filed 9-11-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-532; RM-6415]

Radio Broadcasting Services; Rayville, Louisiana and Yazoo City, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 221C2 for Channel 221A at Yazoo City, Mississippi, in response to a petition filed by St. Pe' Broadcasting, Inc. We shall also modify the license of Station WJNS(FM) to specify operation on Channel 221C2 in lieu of Channel 221A in accordance with § 1.420(g) of the Commission's Rules. The coordinates for Channel 221C2 are 33-03-57 and 90-35-01. To accommodate the substitution at Yazoo City, it is necesssary to substitute Channel 222A for Channel 221A at Rayville, Louisiana. Channel 222A can be allotted to Rayville at the licensed site for Station KTJC(FM). The coodinates for Channel 222A at Rayville are 32-27-22 and 91-39-27. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 20, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-532, adopted August 14, 1989, and released September 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi is amended by removing Channel 221A and adding Channel 221C2 at Yazoo City.

3. In § 73.202(b), the Table of Allotments under Louisiana is amended by removing Channel 221A and adding Channel 222A at Rayville.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-21314 Filed 9-11-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 3

[MM Docket No. 89-76; RM-6633]

Television Broadcasting Services; Thief River Falls, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF Television Channel *30 to Thief River Falls, Minnesota, reserving the channel for noncommercial educational use, in response to a petition filed by Thief River Falls Technical Institute. Canadian concurrence has been obtained for the allotment of Channel *30 to Thief River Falls. The coordinates for Channel *30 are 48-07-08 and 96-10-24. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 20, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-76, adopted August 21, 1989, and released September 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments is amended under Minnesota by adding Channel *30 at Thief River Falls.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-21317 Filed 9-11-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-609; RM-6498]

Radio Broadcasting Services; Galeton, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Lori L. Michael, allots Channel 264B1 to Galeton, Pennsylvania, as the community's first local FM service. Channel 264B1 can be allotted to Galeton in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.4 kilometers (9.6 miles) southeast to avoid a short-spacing to Stations WQIX, Channel 265A, Horesheads, New York, and WBJZ, Channel 265A, Olean, New York. The coordinates for this allotment are North Latitude 41-36-26 and West Longitude 77-33-43. Canadian concurrence has been received since Galeton is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective October 20, 1989. The window period for filing applications will open on October 23, 1989, and close on November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–609, aodpted August 22, 1989, and released September 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by adding the following entry, Galeton, Pennsylvania, Channel 264B1.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–21316 Filed 9–11–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of finding of conformance.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, announces that the Government of Mexico has submitted information which demonstrates that Mexico and the tuna purse seine fishing vessels under its control are in conformance with United States marine mammal regulations. As a result of this finding, yellowfin tuna from Mexico may continue to be imported into the United States through 1990.

EFFECTIVE DATES: This finding is effective September 11, 1987, and remains in effect until December 31, 1990 or until superseded.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731, Phone: (213) 514–6196. Copies of the NMFS decision memorandum and analysis of Mexico's 1988 Annual Report are available upon request.

SUPPLEMENTARY INFORMATION: On March 18, 1988 (53 FR 8910), the NMFS promulgated an interim rule within 50 CFR 216.24 concerning the importation of yellowfin tuna caught by purse seines in the eastern tropical Pacific Ocean (ETP). Under this rule, in order to import yellowfin tuna into the United States, any nation which has purse seine vessels greater than 400 tons carrying capacity operating in the ETP must supply documentary evidence that it has a regulatory program governing the incidental taking of marine mammals in the tuna fishery and a comparable marine mammal mortality rate to that of the United States.

On July 31, 1989 the Government of Mexico submitted their 1988 Annual Report seeking a finding to export yellowfin tuna to the United States in 1990. The report contained publications relating to their marine mammal regulations (Circular No. 20 from the Directorate-General of Fisheries Regions, dated September 12, 1977; provisions from the "Official Register", dated June 29, 1987); a list of Mexican-flag purse seine vessels greater than 400 tons, their status from 1986 through 1989 in the ETP, and the performance date for same vessels; a description of the nation's regulatory and enforcement program governing incidental taking of marine mammals in the purse seine fishery for yellowfin tuna; and data relating to fleet performance during 1986, 1987, and 1988, obtained from the Inter-American Tropical Tuna Commission (IATTC) based on reports from observers placed aboard fishing vessles by the IATTC.

The Assistant Administrator, after consultation with the Department of State, finds that the Government of Mexico has met all of the current requirements for importing yellowfin tuna into the United States and may continue to do so through December 31, 1990, subject to the terms and conditions of the Marine Mammal Importation Regulations (**Federal Register** Vol. 54, No. 43, 7 March 1989).

Dated: September 6, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89–21328 Filed 9–11–89; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 175
Tuesday, September 12, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 302

RIN 3206–AD73

Considering Candidates for Excepted Appointment

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations governing procedures used to refer and select candidates for appointments in the excepted service. The proposed regulations would distinguish between candidates who are legally entitled to priority consideration for reemployment and those who are considered for reemployment at the agency's discretion. This change would ensure that those candidates with statutory reemployment rights receive the full priority intended by applicable laws. The revised regulations would also eliminate the requirement that agencies establish delegation agreements with OPM in order to approve use of alternative plans for ranking and referring candidates for excepted appointment

DATE: Comments must be received on or before November 13, 1989.

ADDRESS: Send or deliver written comments to Curtis J. Smith, Associate Director for Career Entry and Employee Development, Office of Personnel Management, Room 6F0B, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632–6817.

SUPPLEMENTARY INFORMATION: In 1988, OPM revised the procedural requirements for ranking and referring candidates for excepted appointment (final regulations issued September 13, 1988, 53 FR 35291). Comments received on those regulations suggested the need for further revisions. However, since the issues raised did not relate directly to those for which we had solicited comments, it would not have been appropriate to adopt those suggestions in final regulations. Instead, the suggestions have been considered in developing these proposed regulations.

I. Priority on Reemployment Lists

The reemployment provisions of 5 CFR part 302 implement several statutory provisions including: 5 U.S.C. 3315 and 3316, which provide for reinstatement of veteran preference eligibles who have resigned or who have been separated or furloughed without delinquency or misconduct; 5 U.S.C. 7701, which provides for appeals of unjustified personnel actions to the Merit Systems Protection Board; and 5 U.S.C. 8151, which provides for reemployment of employees who recover from compensable injuries. Most of these laws afford the same reemployment or reinstatement eligibility to preference eligibles in the excepted service as to those in the competitive service.

In practice, however, reemployment provisions in the excepted service have not fully paralleled those in the competitive service because the excepted service lacks a uniform appointment authority. In the competitive service, career and career-conditional appointments are used to fill jobs in all agencies. Employees who receive such appointments may be considered for transfer or reinstatement to competitive positions in any agency without going through all the procedures required for new appointments. In the excepted service, however, jobs are filled under numerous appointing authorities, each of which covers specific positions in a specific agency. Employees appointed under those authorities gain eligibility only for movement to other positions which may be filled under the same authority, i.e., to other specified positions in the same agency. Movement to any position filled under a different appointing authority must necessarily be processed as a new appointment under that authority. Similarly, because excepted appointments confer no status or reinstatement eligibility comparable to that afforded by career or career-conditional appointments in the competitive service, reemployment following a break in service must be processed in the same manner as a new appointment.

To provide a mechanism similar to reinstatement, the regulations in 5 CFR part 302 permit agencies to include current or former employees on their reemployment lists. (Employees on the reemployment list are generally considered ahead of employees on the regular employment list.) Once on the reemployment list, however, these employees receive the same treatment as those who are entitled to priority consideration for reemployment, and who would generally be considered ahead of reinstatement candidates if the jobs were in the competitive service.

To correct this problem, we propose to establish a priority category within the reemployment list. Priority consideration for reemployment would be required for former employees legally entitled to such consideration and permitted for former employees who have no statutory entitlement but who would be eligible for inclusion on the agency's reemployment priority list if their positions were in the competitive service. All other reemployment candidates would be considered after candidates on the priority reemployment list, but would generally be considered ahead of candidates on the regular employment list, in accordance with the procedures currently prescribed by 5 CFR part 302.

II. Eligibility for Inclusion on Reemployment List

The current regulations in part 302 do not limit the types of former employees who may be considered for reemployment. From time to time, agencies have asked about their authority to extend reemployment eligibility to nonpermanent employees, to set time limits on reemployment eligibility, or to restrict reemployment eligibility to employees who previously served in the same occupation, grade level, geographical location, or organizational unit.

The revised regulations would effectively limit eligibility for inclusion on the priority reemployment list to former permanent employees because the laws and regulations on which eligibility would be based apply only to employees separated from appointments without time limit. Nonpermanent employees could be included on the reemployment list at an agency's discretion. However, the revised regulations would limit their eligibility to positions with tenure and work schedules comparable to the positions previously held. Eligibility of former employees who are preference eligibles to be reappointed without regard to lists would be limited to nontemporary employees. This would ensure that temporary and seasonal employees would not bypass other applicants, including preference eligibles, in consideration for permanent excepted employment. The revised regulations will also clarify agencies' authority to set additional conditions for reemployment eligibility.

III. Approval of Alternate Ranking Plans

Currently, 5 CFR part 302 requires agencies to refer applicants for employment consideration in one of two ways: in preference order without ranking; or under ranking and referral procedures comparable to those used in competitive examinations. Use of any alternative method, such as ranking by adjective categories, requires OPM approval unless the agency has established a delegation agreement. The proposed regulations would remove the requirement for agencies to have delegation agreements in order to approve special ranking plans, as long as the plans meet basic veteran preference requirements.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation effects only the procedures used to appoint certain Federal employees.

List of Subjects in 5 CFR Part 302

Administrative practice and procedure, Government employees.

Constance B. Newman,
Director,
Office of Personnel Management.

PART 302—[AMENDED]

Accordingly, OPM proposes to amend 5 CFR part 302 as follows:

1. The authority citation for Part 302 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 8151, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 *et seq.*

2. Section 302.105 is revised to read as follows:

§ 302.105 Special agency plans.

An agency having a position subject to this part may establish a system which will result in granting to eligible persons the preference or priority consideration referred to in sections 1302(c) or 8151 of title 5, United States Code, but which does not conform to all the procedural requirements set forth in this part. The agency establishing such a system must ensure that all eligible applicants entitled to veteran preference or priority consideration receive at least as much advantage in referral as they would receive under the procedures set forth in this part.

3. In § 302.303, paragraphs (b) and (c) are removed, paragraph (a) is redesignated paragraph (b), the introductory text to newly redesignated paragraph (b) is revised, and a new paragraph (a) is added to read as follows.

§ 302.303 Maintenance of employment lists.

(a) *Establishment.* An agency shall enter the names of all applicants rated eligible under § 302.302 on the priority reemployment list, the reemployment list, or the regular employment list, as appropriate. In establishing its lists, an agency may limit priority consideration of non-preference eligibles and reemployment consideration of current and former employees to applicants who meet specific conditions, but must make those conditions a matter of record and must apply its policy uniformly to all eligible employees. Generally, full-time employees may be considered only for full-time positions and other-than-full-time employees only for other-than-full-time positions. However, full-time employees may be considered for other-than-full-time positions if there are no other-than-full-time employees on the appropriate priority or reemployment list; and other-than-full-time employees may be considered for full-time positions if there are no full-time employees on the appropriate list.

(1) *The priority reemployment list* includes:

(i) The name of each former employee of the agency who is a preference eligible, has been furloughed or separated from a continuing appointment without delinquency or misconduct, and applies for reemployment;

(ii) The name of each former employee of the agency who is a preference eligible and who, as the result of an appeal under part 752 of this chapter, is found by the Merit Systems Protection Board to have been unjustifiably dismissed from the agency, but who is not entitled to immediate restoration under the Board's decision;

(iii) The name of each former employee of the agency who has been furloughed or separated due to compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter I, who is not entitled to immediate restoration, and who is eligible for priority consideration under this part; and

(iv) *At the agency's discretion,* the name of each former employee of the agency who is not a preference eligible, has been furloughed or involuntarily separated from a continuing appointment without delinquency or misconduct, and applies for reemployment.

(2) *The reemployment list* may include the names of current employees of the agency and of former employees of the agency who are to be considered for future employment and who are not eligible for inclusion on the priority reemployment list. Employees may be entered on the reemployment list only for positions in which tenure and/or work schedule is no greater than that of the position previously held.

(3) *The regular employment list* includes the names of applicants rated eligible under § 302.302 whose names are not included on either the priority reemployment list or the reemployment list.

(b) *Order of entry.* An agency shall enter the names of all applicants rated eligible under § 302.302 on the appropriate list (priority reemployment, reemployment, or regular employment) in the following order:

* * * * *

4. In § 302.304, paragraphs (b) through (e) are revised to read as follows:

§ 302.304 Arrangement of ratings.

* * * * *

(b) *Order A.* (1) The name of each qualified preference eligible who has a compensable service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's priority reemployment list, in the order of his/her numerical ranking.

(2) The name of each qualified preference eligible who has a compensable service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's reemployment list, in the order of his/her numerical ranking.

(3) The name of each qualified preference eligible who has a compensable service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's regular employment list, in the order of his/her numerical ranking.

(4) The name of each other qualified applicant on the agency's priority reemployment list, in the order of his/her numerical ranking.

(5) The name of each other qualified applicant on the agency's reemployment list, in the order of his/her numerical ranking.

(6) The name of each other qualified applicant on the agency's regular employment list, in the order of his/her numerical ranking.

(c) *Order B.* (1) The name of each qualified preference eligible who has a compensable service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's priority reemployment list, in the order of his/her numerical ranking.

(2) The name of each other qualified applicant on the agency's priority reemployment list, in the order of his/her numerical ranking.

(3) The name of each qualified preference eligible who has a compensable service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's reemployment list, in the order of his/her numerical ranking.

(4) The name of each other qualified applicant on the agency's reemployment list, in the order of his/her numerical ranking.

(5) The name of each qualified preference eligible who has a compensable service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's regular employment list, in the order of his/her numerical ranking.

(6) The name of each other qualified applicant on the agency's regular employment list, in the order of his/her numerical ranking.

(d) *Professional order.* An agency shall consider applicants who have been assigned eligible ratings for professional and scientific positions at the GS–9 level and above, or equivalent, in the following order:

(1) *Applicants on the agency's priority reemployment list.* If numerical scores have been assigned, the applicants will be considered in the order of their augmented scores. If numerical scores have not been assigned, all preference eligibles will be considered together regardless of the type of preference, followed by all other priority reemployment candidates.

(2) *Applicants on the agency's reemployment list.* If numerical scores have been assigned, the applicants will be considered in the order of their augmented scores. If numerical scores have not been assigned, all preference eligibles will be considered together regardless of the type of preference, followed by all other reemployment candidates.

(3) *Applicants on the agency's regular employment list.* If numerical scores have been assigned, the applicants will be considered in the order of their augmented scores. If numerical scores have not been assigned, all preference eligibles will be considered together regardless of the type of preference, followed by all other candidates.

(e) *Unranked order.* When numerical scores are not assigned, the agency may consider applicants who have received eligible ratings for positions not covered by paragraph (d) of this section in either of the following orders:

(1) *By preference status.* Under this method, preference eligibles having a compensable service-connected disability of 10 percent or more are considered first, followed, second, by other 10-point preference eligibles, third, by 5-point preference eligibles, and, last, by nonpreference eligibles. Within each category, applicants from the priority reemployment list will be placed ahead of applicants from the reemployment list, and applicants from the reemployment list will be placed ahead of applicants from the regular employment list.

(2) *By reemployment/regular list status.* Under this method, all applicants on the priority reemployment list are considered before applicants on the reemployment list, and all applicants on the reemployment list are considered before applicants on the regular employment list. On each list, preference eligibles having a compensable service-connected disability of 10 percent or more are considered first, followed, second, by other 10-point preference eligibles, third, by 5-point preference eligibles, and, last, by nonpreference eligibles.

5. In § 302.401(a), the introductory text and paragraph (a)(1) are revised to read as follows:

§ 302.401 Selection and appointment.

(a) *Selection.* When making an appointment from a priority reemployment, reemployment, or regular list on which candidates have not received numerical scores, an agency must make its selection from the highest available preference category, as long as at least three candidates remain in that group. When fewer than three candidates remain in the highest category, consideration may be expanded to include the next category. When making an appointment from a list on which candidates have received numerical scores, the agency must make its selection for each vacancy from not more than the highest three names available for appointment in the order provided in § 302.304. Under either method, an agency is not required to—

(1) Accord an applicant on its priority reemployment or reemployment list the preference consideration required by § 302.304 if the list on which the applicant's name appears does not contain the names of at least three preference eligibles; or

* * * * *

6. Section 302.402 is revised to read as follows:

§ 302.402 Reappointment.

An agency may reappoint a current or former nontemporary employee of the executive branch of the Federal Government who is a preference eligible to a position covered by this part without regard to the names of qualified applicants on the agency's priority reemployment, reemployment, or regular employment list.

[FR Doc. 89–21039 Filed 9–11–89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV 89–111 PR]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Revision of the Administrative Rules and Regulations (Short Life Allotments)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise procedures which are contained in the administrative rules and regulations of the California-Arizona navel and Valencia orange marketing orders. This proposal was recommended by the Navel and Valencia Orange

BEST COPY AVAILABLE

Administrative Committees (committees), the agencies responsible for local administration of the orders. The proposal would require handlers requesting short life allotments to submit additional information to the committees in order to aid the committees in administering the short life allotment provisions in the orders in an equitable manner.

DATES: Comments must be received by September 27, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION:

This proposed rule is issued under Marketing Order Nos. 907 and 908 (7 CFR parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three fiscal years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

This proposed rule invites comments on changes to the administrative rules and regulations of the navel and Valencia orange marketing orders. The proposed changes would require handlers requesting short life allotments to submit additional information to the committees in order to aid the committees in administering the short life allotment provisions of the orders in an equitable manner.

Paragraph (a) of §§ 907.50 and 908.50 of the navel and Valencia orange marketing orders, respectively, provide that, prior to recommendations for regulation for each prorate district, the committees shall submit to the Secretary their respective marketing policies for the ensuing season. These marketing policies include, among other information, the estimated utilization of the navel or Valencia orange crops, showing the quantity and percentages of those crops that will be marketed in domestic, export, and byproduct channels.

Paragraph (b) of §§ 907.51 and 908.51 of the orders provide that the committees shall provide equity of marketing opportunity to handlers in all districts. Paragraph (a) of §§ 907.110 and 908.110 of the administrative rules and regulations of the orders state that the committees shall establish an equity factor which is the same for all prorate districts. The equity factor is a percentage of the tree crop in each district and reflects a quantity of oranges (grown in each district) for which there will be equitable marketing opportunity under volume regulation each season. Paragraph (b) of the same sections provide that at the marketing policy meetings for each prorate district the committees shall formulate weekly shipping schedules for the ensuing season reflecting, insofar as practicable, the quantity or oranges grown in that district to be shipped under volume regulation each week. The quantity of oranges on such schedules is computed by application of the equity factor to the tree crop of the district. Paragraph (f) of §§ 907.110 and 908.110 give the committees authority to make such adjustments as they deem advisable in the equity factors, the weekly shipping schedules, and the percentage allocations to prorate districts, so as to reflect changing crop or market conditions.

Paragraph (h) of §§ 907.53 and 908.53 of the orders provide that during any week when volume regulation is likely to be recommended, the committees shall compute, with respect to each prorate district, the total quantity of oranges available for current shipment by each person who has applied for a prorate base and for allotments. On the basis of such computation, the committees fix a prorate base for each person who is entitled thereto. Based on such prorate bases, the committees calculate the quantity of oranges (allotment) which may be handled by each handler during each week in which volume regulations are issued.

Paragraph (g) of §§ 907.110 and 908.110 authorize the committees to calculate each season an estimated percentage of the total tree crop in the production areas which, in the judgment of the committees, will be handled under volume regulation and prepare a schedule of estimated weekly shipment based thereon, taking into account the purposes of the Act. Such percentages and schedules are used as references for determining adjustments in the prorate bases of handlers, for granting short life allotments, and for matters where it is necessary to consider utilization of the crop within a district.

Most navel and Valencia oranges are picked and packed as needed as they can be stored on the tree for an indefinite period without significant losses in fruit quality and condition. However, because of environmental conditions in separate producing localities, some oranges are produced which do not possess the keeping qualities of other oranges produced in the same prorate district. At the end of the shipping season, the fruit is puffy, soft, and deteriorates very quickly. These oranges are called short life oranges. The shipping life of such oranges, therefore, is shorter than the shipping life of other oranges in the same district and thus, they have a shorter marketing period. Under the orders, the normal marketing period for navel and Valencia oranges is that period in which the fruit is of such keeping quality that it can be shipped and will hold sufficiently well to be acceptable to consumers. The normal marketing period of short life oranges is

shorter than that of other oranges and can very not only between districts but between groves in the same district.

Sections 907.61 and 908.61 of the orders provide for the committees to withhold from the allotments of handlers, on a uniform proportionate basis for all handlers, an amount sufficient to permit handlers of short life oranges to handle during the normal marketing period of such short life oranges as large a proportion of oranges as the average which will be handled by all handlers. The committees determine, on the basis of all available information, the extent to which a handler needs short life allotment and allocate such allotment to such handler at a uniform weekly rate, insofar as practicable, during the normal marketing period of the handler's short life oranges. Thus, handlers who are granted short life allotments are permitted to handle during the shipping season of their short life oranges a quantity of short life oranges equal proportionately to the average to be handled by all handlers of navel or Valencia oranges within their prorate district. After a handler of short life oranges has received allotment sufficient to permit such total handling, allotment thereafter due such handler of short life oranges is allocated to handlers from whom allotment has been withheld.

Short life allotments are only applicable during the normal marketing period of such oranges. Thus, a handler whose oranges can only be marketed for a six-week period beginning in November could receive short life allotment only during that period, whereas a handler whose short life oranges can only be marketed for a six-week period beginning in January could receive short life allotment for those oranges only during that period.

To require handlers of short life oranges to market their oranges at the same rate as other handlers would result in handlers of short life oranges shipping a lower percentage of their crop of oranges to the fresh domestic market compared to other handlers in the district and industry because short life oranges shipped during the latter part of the shipping season could not be shipped to consuming markets in good condition.

There are handlers who ship both short and normal life oranges. Some of these handlers, because they have a low percentage of short life oranges, are able to adjust their picking and packing operations to allow the shipment of all of their short life oranges before they begin to deteriorate. Thus, they are able to handle their total supply of oranges without undue difficulty. However, there are other handlers who have a high percentage of short life oranges and, while under prorate limitations, might not be able to ship all their short life oranges prior to the time such oranges begin to deteriorate. Therefore, without short life allotments, they would be unable to ship the same percentage of oranges into the fresh domestic market which the industry and their district would move under regulation.

Short life allotment provisions in the navel and Valencia orange marketing orders state that short life allotments shall be allocated to handlers of short life oranges at a uniform weekly rate, insofar as practicable, during the normal fiscal year for navel oranges and the normal marketing year for Valencia oranges of the handler's short life oranges. The uniform weekly rate in calculated by comparing the total allotment a handler would have received under general maturity during that handler's shortened shipping season and the actual amount of allotment necessary for such handler to ship up to the industry equitable percentage during that same shipping season. The amount of extra allotment a handler must receive is expressed as a percentage uniformly applied, insofar as practicable, each week of the handler's short life shipping schedule. This percentage is derived by dividing the number of additional cartons the handler needs in order to ship up to the industry season average by the number of cartons the handler would receive under general maturity, and coverting that number to a percent.

The phrase in the regulation "insofar as practicable" gives the committees flexibility in setting percentages for short life allotments each week. This is necessary since the shipping schedules for navel and Valencia oranges are estimates, and it is impossible to arrive at an estimate that would be accurate for each week of the season. However, handlers who qualify for short life allotments must receive such allotment as uniformly as possible each week of their reduced shipping season. Thus, the allocation percentage for handlers with short life oranges must be adjusted each week that actual allotment levels established by the Secretary deviate from the shipping schedule. Such adjustments must continue in order to permit handlers of short life oranges to ship up to the equitable percent before the ending date of their short life season. The modifications to the administrative rules and regulations of the orders proposed herein would not alter this method of issuing short life allotments.

Sections 907.114 and 908.114 of the administrative rules and regulations of the orders require that handlers controlling short life oranges who desire to obtain short life allotments must file, with their respective committees, an application for such allotment on N.O.A.C./V.O.A.C. Forms No. 10. These applications request information which includes the following: (1) The location of each grove producing short life oranges; (2) a record covering the maximum number of years available, but not in excess of the 10 immediately preceding years, which shows the marketing period and total utilization of all oranges; (3) a suggested shortened marketing season which shows the final date when the the short life oranges covered by the application should be marketed; and (4) a showing satisfactory to the committees why the oranges covered by the application cannot be marketed during the normal marketing period for the applicable district through appropriate adjustments in the handler's packinghouse operations.

Recently, there has been growing concern among the orange industries that the current applications for short life allotments do not provide enough information for the committees to determine that short life allotments are necessary. Therefore, the committees have unanimously recommended amending §§ 907.114 and 908.114 to require that additional information be submitted by applicants for short life allotments. The additional reporting requirements would be reported on revised N.O.A.C./V.O.A.C. Forms No. 10 and new N.O.A.C./V.O.A.C. Forms No. 10A, which would request information on each grove producing short life oranges. The N.O.A.C./V.O.A.C. Forms No. 10 would be revised to require information on the percentage of grades of oranges packed out each year, the beginning and ending dates of the shipments in each year and the estimated quantity and the acreage of all general maturity and short life oranges controlled by the applicant.

New N.O.A.C./V.O.A.C. Forms No. 10A would require additional information such as: (1) The root stock and scion used, if known, of the trees in the short life producing grove; (2) a breakout of historical short life crop utilization for the past 10 years, if available, which includes the beginning and ending dates of shipments for each year; (3) a physical description of the fruit at the end of each of the previous 10 shipping seasons; (4) information regarding the application of materials to extend on-tree storage life of navel and Valencia oranges during the past 10 years; and (5) planned treatments to extend on-tree storage life of the upcoming crop.

Information regarding percentages of grades of fruit shipped to the domestic market each year would allow the committees to determine if "high grading" of fruit is being practiced by the handler. High grading is a practice whereby handlers choose to selectively pack and ship primarily high grade (i.e., high quality) fruit. This results in the handler harvesting a larger quantity of fruit each week in order to utilize such handler's prorate for only high grade fruit. Therefore, a lower percentage of such handler's fruit is shipped in fresh domestic channels than the average since the handler is selectively packing only high grade fruit and utilizing the remainder in our outlets. This shortens the handler's marketing season, as the handler can ship only as much high grade fruit as such handler has available, and, once that fruit is picked, the handler's shipments from that particular grove are complete.

Information on the rootstock and scion variety would aid the committees in determining if the applicant's trees are susceptible to producing short life fruit. Certain varieties and combinations of rootstock and scion varieties are known to be susceptible to the production of short life fruit.

Information regarding historical crop utilization would allow the comittees to determine if the handler applying for short life allotment has been able to market the same proportionate share of fruit to fresh domestic markets in relation to the average of all handlers in that district.

A description of the fruit at the ending date of the shipments would help the committees determine if the fruit is actually in a less marketable condition than is normal for fruit in that district at that point of the general shipping season.

Use of materials such as growth regulators to extend on-tree fruit life is a common practice in the orange industries. Information regarding the use of such materials used to extend on-tree fruit life would aid in the committees' review and decision process to determine if the applicant's fruit is actually short life fruit. Information on planned treatments to extend on-tree storage life of the upcoming crop would help the committees determine if the handler has planned to take appropriate measures to extend the on-tree life of the short life oranges.

This action would require handlers to submit additional information on their short life oranges in order to qualify for short life allotments. It is estimated that the additional information would take less than ten minutes per form to complete and thus would present no significant burden to handlers.

This additional information would aid the committees in determining that short life fruit genuinely exists, that the shortened marketing season is not a result of marketing patterns and handler decisions, and that the handler cannot adequately intermingle such handler's short life and normal life oranges to be able to ship up to the industry's average. The committees consider the additional information necessary so that they can consider short life requests in as equitable a manner as possible. Therefore, the committees recommended amending §§ 907.114 and 908.114 by revising paragraphs (b) of those sections and adding new paragraphs (c). In addition, changes to paragraphs (a) of §§ 907.114 and 908.114 are made to provide gender neutral language.

This proposed rule would require navel orange handlers to file applications for short life allotments by August 31 prior to the fiscal year for navel oranges in Districts 1, 3, and 4 and by September 30 for handlers in District 2. However, for the 1989–90 fiscal year, navel orange handlers in all districts would be required to file applications for short life allotments prior to October 31 in order to give handlers sufficient time to file such applications during this fiscal year. Valencia orange handlers would be required to file applications for short life allotments by December 31 prior to the marketing year for Valencia oranges in District 3 and January 31 for handlers in Districts 1 and 2. The different dates for the districts reflect their different growing seasons. Applications received by these dates would give the committees adequate time to include considerations for short life allotments in their respective marketing policies and shipping schedules. Once the handlers have provided the committees with adequate information in order for the committees to determine the validity of the short life applications, the committees would give written notice to the applicants before general maturity allotments are issued for the prorate district in which the short life oranges are grown. Since short life allotments would be issued during each week of the handler's short life shipping season, the committee could not delay its decision. In addition, once the committees approve short life allotments for a handler, such allotments would be issued from the beginning of the handler's shipping season for such oranges at a uniform weekly rate, insofar as practicable.

Based on available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504) the information collection provisions that are included in §§ 907.114 and 908.114 of this proposed rule have been submitted to the Office of Management and Budget (OMB). They will not be made effective until OMB approval has been obtained.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered appropriate because the fiscal year for navel oranges begins on November 1 and applications for short life allotments for navel orange handlers should be filed no later than October 31 for all districts for this season.

List of Subjects

7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navels, and Oranges.

7 CFR Part 908

Arizona, California, Marketing agreements and orders, Oranges, and Valencias.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 are proposed to be amended as follows:

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. Section 907.114 is revised to read as follows:

Subpart—Rules and Regulations

§ 907.114 Short life allotments.

(a) *Qualification for short life allotment.* A handler shall be considered to have short life oranges when such handler has oranges which historically are known to lack keeping qualities which will permit such handler to handle, during the normal marketing period for the oranges grown in the handler's prorate district, the same proportion of such oranges as the average which will be handled by all handlers pursuant to § 907.110(g).

(b)(1) *Application to be filed.* Each handler controlling short life oranges who desires to obtain short life allotments shall file with the committee, prior to the crop year for which an application for a Prorate Base and Allotments is filed by such handler, a signed application for such allotments on N.O.A.C. Form No. 10. The deadline for the filing of such application shall be August 31 for handlers in Districts 1, 3, and 4 and September 30 for handlers in District 2: *Provided,* That for the 1989–90 fiscal year, handlers in all districts must file applications for short life allotments no later than October 31. The application shall contain the following information: Name and address of the handler applicant; location of each grove producing short life oranges; the estimated quantity and the acreage of all general maturity and short life oranges controlled by the applicant; a record covering the maximum number of years available, but not in excess of the 10 immediately preceding years, which shows the utilization of all oranges; the percentage pack-out of fruit by grade; the beginning and ending dates of the shipments in each year; a suggested shortened marketing season showing the beginning date of the normal marketing period of such fruit and the ending date which is the final date when the short life oranges covered by the application could be marketed; and a showing satisfactory to the committee why the oranges covered by the application cannot be marketed during the normal marketing period for the applicable district through appropriate adjustments in the handler's packinghouse operations.

(2) *Application supplement.* At the time handlers file applications for allotment for short life oranges they shall file, for each grove having short life oranges included in the application, a signed application information supplement on N.O.A.C. Form No. 10A. The application supplement shall include the following information: Name of the applicant handler; the location of the grove; the acreage in the grove; the year it was planted; the rootstock and scion of the trees, if known; a record covering the maximum number of years available, but not in excess of the 10 immediately preceding years, which shows the utilization of the oranges produced in the grove and the beginning and ending dates of the shipments of the short life oranges for each year in which utilization is listed in the application, a description of the condition of the short life oranges at the ending date of shipments; a description of any methods or materials used by the grower to extend the on-tree storage life of the short life oranges; and any planned treatments to extend the on-tree storage life of the short life oranges in the upcoming year.

(c) Using the information furnished on the forms referred to in subsection (b) above, along with such other relevant information as is available, the committee shall determine which applicants are entitled to receive short life allotments, the amount of the allotments, and the specific time span (which includes the beginning and ending dates of the normal marketing season of such fruit) over which they will be given. Action shall be taken for each applicant as soon as is practicable after the application is received, but in no event later than the time when general maturity allotments are issued for the prorate district in which the short life oranges are grown: *Provided,* That such application provided the committee with adequate information to allow the committee to determine the validity of such application. Each applicant shall be given written notice of the committee's action as soon as it is taken.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

3. Section 908.114 is revised to read as follows:

Subpart—Rules and Regulations

§ 908.114 Short life allotments.

(a) *Qualification for short life allotment.* A handler shall be considered to have short life oranges when such handler has oranges which historically are known to lack keeping qualities which will permit such handler to handle, during the normal marketing period for the oranges grown in the handler's prorate district, the same proportion of such oranges as the average which will be handled by all handlers pursuant to § 908.110(g).

(b)(1) *Application to be filed.* Each handler controlling short life oranges who desires to obtain short life allotments shall file with the committee, prior to the crop year for which an application for a Prorate Base and Allotments is filed by such handler, a signed application for such allotments on V.O.A.C. Form No. 10. The deadline for the filing of such application shall be December 31 for handlers in District 3 and January 31 for handlers in Districts 1 and 2. The application shall contain the following information: Name and address of the handler applicant; location of each grove producing short life oranges; the estimated quantity and the acreage of all general maturity and short life oranges controlled by the applicant; a record covering the maximum number of years available, but not in excess of the 10 immediately preceding years, which shows the utilization of all oranges; the percentage pack-out of fruit by grade; the beginning and ending dates of the shipments in each year; a suggested shortened marketing season showing the beginning date of the normal marketing period of such fruit and the ending date which is the final date when the short life oranges covered by the application could be marketed; and a showing satisfactory to the committee why the oranges covered by the application cannot be marketed during the normal marketing period for the applicable district through appropriate adjustments in the handler's packinghouse operations.

(2) *Application supplement.* At the time handlers file applications for allotment for short life oranges they shall file, for each grove having short life oranges included in the application, a signed application information supplement on V.O.A.C. Form No. 10A. The application supplement shall include the following information: Name of the applicant handler; the location of the grove; the acreage in the grove; the year it was planted; the rootstock and scion of the trees, if known; a record covering the maximum number of years available, but not in excess of the 10 immediately preceding years, which shows the utilization of the oranges produced in the grove and the beginning and ending dates of the shipments of the short life oranges for each year in which utilization is listed in the application, a description of the condition of the short life oranges at the ending date of shipments; a description of any methods or materials used by the grower to extend the on-tree storage life of the short life oranges; and any planned treatments to extend the on-tree storage life of the short life oranges in the upcoming year.

(c) Using the information furnished on the forms referred to in subsection (b) above, along with such other relevant information as is available, the committee shall determine which applicants are entitled to receive short life allotments, the amount of the allotments, and the specific time span (which includes the beginning and ending dates of the normal marketing season of such fruit) over which they will be given. Action shall be taken for each applicant as soon as is practicable after the application is received, but in no event later than the time when general maturity allotments are issued for the prorate district in which the short life oranges are grown: *Provided,* That such application provided the committee with adequate information to allow the committee to determine the validity of such application. Each applicant shall be given written notice of the committee's action as soon as it is taken.

Dated: September 7, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–21307 Filed 9–11–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Remining

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSMRE is reopening the public comment period on Revised Program Amendment No. 37 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments proposed in Revised Program Amendment No. 37 are intended to respond to OSMRE questions about proposed Program Amendment No. 37 concerning the remining of previously affected areas. The proposed changes in Revised Program Amendment No. 37 are also intended to adopt revisions to chapter 1513 of the Ohio Revised Code (ORC) enacted through House Bill No. 399 of the Ohio General Assembly.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on October 12, 1989. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on October 10, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on September 27, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B–3, Columbus, Ohio 43224, Telephone: (614) 265–6675

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated January 20, 1989 (Administrative Record No. OH–1131), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment No. 37 to the Ohio program. The proposed amendments were initiated by Ohio to take advantage of the increased flexibility afforded to the Ohio Environmental Protection Agency (OEPA) under the amended Clean Water Act. Ohio's proposed amendments were intended to create incentives for mine operators to enter, mine, and reclaim areas that were previously affected by mining and which, as a result, have continuing water pollution.

On February 7, 1989, OSMRE published a notice in the **Federal Register** (54 FR 5940) announcing receipt of proposed Program Amendment No. 37 and inviting public comment on its adequacy. The public comment period ended on March 9, 1989. The public hearing scheduled for March 6, 1989 was not held because no one requested an opportunity to testify.

By letter dated July 26, 1989 (Administrative Record No. OH–1203), OSMRE requested additional information from Ohio concerning several aspects of the proposed amendment.

By letter dated August 16, 1989 (Administrative Record No. OH–1201) Ohio submitted responses to OSMRE's questions about proposed Program Amendment No. 37. With its responses, Ohio submitted Revised Program Amendment No. 37 incorporating changes resulting from OSMRE's questions and from revisions to Chapter 1513 of the Ohio Revised Code (ORC) enacted through House Bill No. 399 of the Ohio General Assembly.

The changes proposed by Ohio in Revised Program Amendment No. 37 are briefly discussed below. In addition to the specific changes discussed below, numerous other nonsubstantive changes are being made throughout these statutes and rules to correct grammar, punctuation, and paragraph number and letter notations.

(1) ORC section 1513.07(B)(2)(s): The previous version of this paragraph proposed in Program Amendment No. 37 is being rewritten to clarify that "previously mined areas" means areas that were affected by coal mining operations before August 3, 1977; to include the authorization of reclamation as well as mining operations; to delete reference to "pollution abatement areas" in this paragraph; and to clarify that the pollution abatement plan may improve water quality with respect to pH, iron, and manganese.

(2) ORC section 1513.07(E)(7): The previous version of this paragraph proposed in Program Amendment No. 37 is being rewritten to clarify the conditions which an applicant must demonstrate in order for the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) to authorize coal mining and reclamation operations in previously mined areas. Paragraph (E)(7)(f) is being rewritten to clarify that the partners and corporate officers of the applicant must not have any existing legal responsibilities to reclaim or treat water discharge from the area of proposed remining, must not have had any mining permits revoked or suspended with respect to water quality within eighteen months prior to the

application, and must not have forfeited a reclamation bond or similar security within the United States.

(3) ORC section 1513.16(F)(1): This paragraph is being rewritten to include a description of the operator's pollution abatement plan, if applicable, in the newspaper advertisement announcing the operator's filing of a request for bond release.

(4) ORC section 1513.16(F)(3)(a), (b), and (c): The previous versions of these paragraphs proposed in Program Amendment No. 37 are being rewritten to specify that remining areas being considered for bond release under this paragraph are those authorized by the Chief under ORC 1513.07(E)(7); to include the requirement that the operator comply with the approved pollution abatement plan for bond release; and to specify that additional bond release requirements for pollution abatement areas are established by the Chief in ORC section 1513.02.

(5) ORC section 1513.16(H)(2)(b) and (H)(3)(b): These paragraphs are being rewritten to delete the mining license number from the information provided by the operator when requesting an inspection of the permit area.

(6) ORC section 1513.16(H)(2)(d) and (H)(3)(d): These paragraphs are being rewritten to delete the presumption of reclamation approval by the Chief if the Chief does not notify the operator within the prescribed period following a request for inspection that the reclamation is not approved. These changes were previously approved by OSMRE in Program Amendment No. 25 and have been enacted in Ohio House Bill No. 399.

(7) OAC section 1501:13–4–15: The version of this new rule proposed in Program Amendment No. 37 is being rewritten as follows:

Paragraph (B)(6): The reference to 33 U.S.C. Section 1311(p) is being corrected.

Paragraph (E)(1)(a): References are being added to include partners of the applicant, if the applicant is a partnership, and the director and controlling officers, if the applicant is a corporation.

Paragraphs (E)(1)(a)(i) and (ii): Reference is being added to the water treatment and reclamation responsibilities under ORC Chapter 1513.

Paragraph (E)(1)(a)(iv): Reference is being added to coal or surface mining bond or security deposited in lieu of bond in this or any other State or within the United States.

Paragraph (E)(5): This new criterion for authorization of remining is being added. No authorization may be granted by the Chief until a remining NPDES permit has been issued by the Ohio Environmental Protection Agency and a copy of the remining NPDES permit has been provided to the Chief.

Paragraph (G)(1): The phrase "which are not encountered during mining or the implementation of the abatement plan" is being deleted.

Paragraph (G)(2): The phrase "which are encountered during mining or the implementation of the abatement plan" is being deleted.

Paragraph (G)(3): This paragraph explaining the term "encountered" is being deleted. Subsequent paragraphs are being renumbered.

Paragraph (G)(5): This paragraph is being rewritten to delete statements about the operator's compliance with the effluent limitations established in the remining NPDES permit and limitations for settleable and suspended solids pursuant to 40 CFR Part 434.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR MORE INFORMATION CONTACT**" by 4:00 p.m. by September 27, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 31, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89–21380 Filed 9–11–89; 8:45 am]

BILLING CODE 4310–05–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1230

RIN 3095–AA22

Micrographics Records Management

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Archives and Records Administration (NARA) proposes to revise regulations relating to microfilming Federal records and to the maintenance, use, and disposition of microform records. The proposed rule would update references to Federal and industry micrographics standards. It would also provide separate standards for microfilming and storing permanent records and temporary records and would revise requirements relating to the inspection of microforms making the standards for temporary records less stringent than those for permanent records. The proposed rule would affect Federal agencies and private contractors tht microfilm records for Federal agencies.

DATES: Comments must be received by November 13, 1989.

ADDRESSES: Comments should be sent to Director, Policy and Program Analysis Division, National Archives and Records Administration (NAA), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: John A. Constance or Nancy Allard at 202–523–3214 (FTS 523–3214).

SUPPLEMENTARY INFORMATION: The industry micrographics standards cited in the current 36 CFR part 1230 require updating to reflect the latest editions of the standards. These standards will be incorporated by reference in the final rule.

In addition, NARA proposes to provide separate filming and storage requirements for unscheduled records and records designated as permanent in a NARA approved records disposition schedule and for records of temporary value. Current § 1230.14 is revised to cover film and image requirements for permanent records and unscheduled records. New § 1230.16 is added to provide guidance on film and image requirements for temporary records, duplicates, and user copies.

The proposed rule makes a number of changes in the inspection requirements in § 1230.22. Currently, agencies must inspect master films of permanent microform records every 2 years, even after the records have been transferred to a Federal records center operated by NARA. The inspection requirement is based on ANSI PH1.43–1985 and is intended to ensure the degradation of film is found and corrected before the permanent record images on the film are completely lost.

The proposed rule would require agencies to conduct inspections when the records are 2 years old and every 2 years thereafter until transferred to a Federal records center or to the National Archives. Film cannot be transferred to the National Archives until the first inspection has been performed. Permanent microforms may be transferred to a Federal records center only after the agency has performed the first inspection or has certified that the microform will be inspected by the agency, an agency contractor, or the Federal records center (on a reimbursable basis) when the records become 2 years old. NARA will assume responsibility for inspecting the microforms after they are transferred to NARA custody (after the initial 2-year inspection).

The proposed rule simplifies the sampling technique to require a randomly selected sample of 1,000 microform units (rolls of film, single microfiche, or similar appropriate unit) or 1 percent of the total number of microform units in the collection. At least one microform unit must be inspected in collections of less than 100 units.

Under the proposed rule, agencies would no longer be required to send inspection reports to the NARA Office of Records Administration (NI) within 30 days after the inspection was completed. Instead, the proposed rule requires results of inspections conducted by the creating agency to be documented and attached to the SF 135 when permanent microforms are transferred to a Federal records center for storage or to the SF 258 if the permanent microforms are transferred directly to the National Archives.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1230

Archives and records; Incorporation by reference; Micrographics.

For the reasons set forth in the preamble, NARA proposes to amend part 1230 of title 36 of the Code of Federal Regulations as follows:

PART 1230—MICROGRAPHICS

1. The authority statement for part 1230 continues to read as follows:

Authority: 44 U.S.C. 2907, 3302 and 3312.

2. Section 1230.1 is revised to read as follows:

§ 1230.1 Scope of part.

This part provides standards for using micrographic technology in the creation, use, storage, retrieval, preservation, and disposition of Federal records. Agencies should also consult 41 CFR subpart 201–45.1 for General Services Administration (GSA) requirements relating to micrographics management for Federal records.

3. Section 1230.2 is revised to read as follows:

§ 1230.2 Authority.

As provided in 44 U.S.C. chapters 29 and 33, the Archivist of the United States is authorized to establish standards for the photographic and microphotographic production and reproduction of records by Federal agencies for the purpose of destroying the original records; to establish uniform standards within the Government for the creation, storage, use, and disposition of processed microform records; and to establish, maintain, and operate centralized microfilming services for Federal agencies.

4. Section 1230.3 is added to read as follows:

§ 1230.3 Publications incorporated by reference.

(a) The following publications cited in this part are hereby incorporated by reference. They are available from the issuing organization at the addresses listed in this section. They are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 USC 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the **Federal Register**.

(b) *American National Standard Institute (ANSI) and International (ISO) Standards.* ANSI and ISO standards cited in this part are available from the American National Standards Institute, 1430 Broadway, New York City, NY 10018.

ANSI IT9.1–1988, American National Standard for Imaging Media (Film)—Silver-Gelatin Type—Specifications for Stability.

ANSI PH1.43–1985, American National Standard for Photography (film)—Processed Safety Film—Storage.

ANSI IT9.2–1988, American National Standard for Imaging Media—Processed Films, Plates, and Papers—Filing Enclosures and Containers for Storage.

ANSI/ISO 5/2–1985, ANSI PH2.19–1986, International Standard for Photography (Sensitometry)—Density Measurements—Geometric Conditions for Transmission Density.

ANSI/ISO 5/3–1984, ANSI PH2.18–1985, International Standard for Photography (Sensitometry)—Density Measurements—Spectral Conditions.

ANSI/ISO 3334–1979, International Standard for Microcopying ISO Test Chart No. 2—Description and Use in Photographic Documentary Reproduction.

(c) *Association of Information and Image Management (AIIM) Standards.* The following AIIM standards are available from the Association for Information and Image Management, 1100 Wayne Avenue, Suite 1100, Silver Spring, MD 20910.

ANSI/AIIM (NMA) MS1–1981, Practice for Operational Practice/Inspection and Quality Control for Alphanumeric Computer-Output Microforms.

ANSI/AIIM MS5–1985, American National Standard for Micrographics—Microfiche.

ANSI/AIIM (NMA) MS14–1988, Specifications for 16 and 35mm in Roll Microfilm.

ANSI/AIIM (NMA) MS19–1987, Recommended Practice for Identification of Microforms.

ANSI/AIIM (NMA) MS23–1983, Practice for Operational Procedures/Inspection and Quality Control of First Generation, Silver-Gelatin Microfilm of Documents.

ANSI/MS 32–1967, Standard for Micrographics—Microrecording of Engineering Source Documents on 35mm Microfilm.

ANSI/AIIM MS41–1988, Unitized Microfilm Carriers (Aperture, Camera, Copy, and Image Cards).

ANSI/AIIM MS43–1988, Recommended Practice for Operational Procedures/Inspection and Quality Control of Duplicate Microforms of Documents and from COM.

ANSI/SIP34–1989, Microspots and Aging Blemishes. This is a republication of NBS HB96, Inspection of Processed Photographic Record Films for Aging Blemishes.

(d) *National Institute of Standards and Technology (NIST) publications.* The following publication is available from the National Institute of Standards and Technology (NIST was formerly the National Bureau of Standards (NBS).), Office of Standard Reference Materials, Rm. B311 Chemistry, Gaithersburg, MD 20899.

NBS–SRM 1010a-1982, Microcopy Resolution Test Chart.

5. Section 1230.4 is revised to read as follows:

§ 1230.4 Definitions.

For the purpose of this part the following definitions shall apply:

Archival microfilm. A photographic film that meets the standards described in § 1230.14 and that is suitable for the preservation of permanent records when stored in accordance with § 1230.20.

Archival storage conditions. Storage conditions, as specified in § 1230.20(a), that are suitable for the preservation of photographic film appraised as having permanent value. Archival storage conditions prolong the useful life of both permanent and temporary photographic records.

Computer Output Microfilm (COM). Microfilm containing data produced by a recorder from computer generated signals.

Facility. An area set aside for equipment and operations required in the production or reproduction of microforms either for internal use or for the use of other organizational elements of the Federal Government.

Microfilm. (a) Raw (unexposed and unprocessed) fine-grain, high resolution photographic film with characteristics that make it suitable for use in micrographics;

(b) The process of recording microimages on film; or

(c) A fine-grain, high resolution photographic film containing an image greatly reduced in size from the original.

Microform. A term used for any form containing microimages.

Microimage. A unit of information such as a page of text or a drawing, that has been made too small to be read without magnification.

Permanent record. Any record (see definition in 44 U.S.C. 3301) that has been determined by the Archivist of the United States to have sufficient historical or other value to warrant its continued preservation by the Government.

Temporary record. Any record determined by the Archivist of the United States to contain information of transient value in accordance with Part 1228 of this chapter. Temporary records may warrant microfilming for economies of storage and distribution.

Unscheduled record. Any record that has not been appraised by NARA, i.e., a record that has neither been approved for disposal nor designated as permanent by the Archivist of the United States in accordance with Part 1228 of this chapter.

Use or work copies. Duplicates of original film which are prepared for use as reference copies or as duplication masters for recurring or large-scale duplication. These copies are not to be confused with the preservation master copies which are stored under the conditions in § 1230.20 and which are not to be used for reference purposes.

6. Subpart A is revised to read as follows:

Subpart A—Standards for Microfilming Records

Sec.
1230.10 Authorization.
1230.12 Preparatory steps prior to filming.
1230.14 Film and image requirements for permanent records or unscheduled records.
1230.16 Film and image requirements for temporary records, duplicates, and user copies.

Subpart A—Standards for Microfilming Records

§ 1230.10 Authorization.

(a) Agencies proposing to microfilm permanent records or unscheduled records shall submit Standard Form (SF) 115, Request for Records Disposition Authority, in accordance with part 1228 of this chapter. The SF 115 shall provide for the disposition of original records and microforms.

(1) Agencies proposing microfilming methods and procedures meeting the standards in § 1230.14(a) shall include on the SF 115 the following certification: "This certifies that the records described on this form will be microfilmed in accordance with the standards set forth in 36 CFR part 1230."

(2) Agencies having proposed microfilming methods, materials and procedures that do not meet the standards in § 1230.14(a) shall include on the SF 115 a description of the system and standards proposed for use.

(b) The approved retention period for temporary records shall be applied to microform copies of such records; the original records shall be destroyed upon verification of the microfilm, unless legal requirements preclude early destruction of the originals. The agency, not the Federal Records Center, is responsible for carrying out the provisions of this paragraph for records stored in a Federal Records Center. NARA approval is not required prior to implementation of this paragraph.

(c) Agencies proposing to retain and store the silver original microforms of permanent records after disposal of the original records shall include on the SF 115 a statement that the agency's storage conditions shall comply with the standards of § 1230.20 and that the inspections required by § 1230.22 will be performed.

§ 1230.12 Preparatory steps prior to filming.

(a) The integrity of the original records authorized for disposal shall be maintained by ensuring that the microforms are adequate substitutes for the original records and serve the purpose for which such records were created or maintained. Copies shall be complete and contain all information shown on the originals.

(b) The records shall be arranged, identified, and indexed so that any particular document or component of the records can be located. Each microform roll or fiche shall include accurate titling information on a titling target or header. At a minimum, titling information shall include the name of the agency and organization; the title of the records; the number or identifier for each unit of film; the security classification, if any; and the inclusive dates, names, or other data identifying the records to be included on a unit of film.

(c) Each microform shall contain an identification target showing the date of filming. When possible, to give the film copy better legal standing, the target shall also show the signature of the person authorizing the microfilming and the dated signature(s) of the camera operator(s). When the microfilm is directly generated by a computer (COM), the target shall contain the names of the persons since signatures cannot be conveniently added. See ANSI/AIIM (NMA) MS19–1987 for standards for identification targets.

(d) The following formats are mandatory standards for microforms.

(1) *Roll film.* The formats described in ANSI/AIIM (NMA) MS14–1988 shall be used for microfilming source documents or computer generated information (COM) on 16mm and 35mm roll film. A reduction ratio of 1:24 shall be used whenever document size and quality permits. See § 1230.14 (d) for determining the appropriate reduction ratio and format for meeting the image quality requirements. When microfilming on 35mm film for aperture card applications, the format dimensions in AIIM/MSS 32–1987, Table 1 shall be mandatory and the aperture card format "D Aperture" shown in ANSI/AIIM MS41–1988, Figure 1 shall be used.

(2) *Microfiche.* For microfilming source documents or computer generated information (COM) on microfiche, the appropriate formats and reduction ratios prescribed in ANSI/AIIM MS 5–1985 shall be used as specified for the size and quality of the documents being filmed. See § 1230.14 (d) for determining the appropriate reduction ratio and format for meeting the image quality requirements.

(e) *Index placement.* When filming original (source) documents all indexes, registers, or other finding aids, if microfilmed, shall be placed in the first frames at the beginning of a roll of film or in the last frames of a microfiche or microfilm jacket. Computer-generated microforms shall have the indexes following the data on a roll of film or in the last frames of a microfiche or microform jacket. Other index locations may be used only if dictated by special system constraints.

§ 1230.14 Film and image requirements for permanent records or unscheduled records.

(a) *Application.* The following standards shall apply to the microfilming of permanent records where the original paper record will be destroyed. Systems that produce original permanent records on microfilm with no paper originals, such as computer output microfilm (COM), shall be designed so that they produce microfilm which meets the standards of this section. Unscheduled records from systems such as COM must also meet the standards of this section. Unscheduled paper records may not be destroyed after microfilming.

(b) *Film stock standards.* Only polyester-based film that conforms to ANSI IT9.1–1988 shall be used in all applications, except when generating film to be spliced to existing rolls of cellulose acetate film, when cellulose triacetate film that conforms to ANSI IT91–1988 shall be used. To ensure protection for permanent records, agencies using microfilm systems which do not produce silver gelatin originals meeting these standards shall submit with the Standard Form 115 required by § 1230.10 a schedule for the production of silver gelatin duplicates meeting the standards.

(c) *Processing standards.* Microforms shall be processed so that the residual thiosulfate ion concentration will not exceed 0.014 grams per square meter in accordance with ANSI IT9–1–1988. Processing shall be in accordance with processing procedures in ANSI/AIIM (NMA) MS1–1981 and MS23–1983.

(d) *Quality standards.*—(1) *Resolution.* The method for determining minimum resolution on microforms of source documents shall conform to the Quality Index Method for determining resolution and anticipated losses when duplicating as described in ANSI/AIIM MS23–1983 and MS43–198. Computer Output Microforms (COM) shall meet the requirements of ANSI/AIIM MS1–1981. Resolution tests shall be performed using a NBS–SRM 1010a–1982, Microcopy Resolution Test Chart (a calibrated and certified photographic reproduction) as specified in ANSI/ISO 3334–1979, (the standard practice for using the test chart) and the patterns will be read following the instructions of ANSI/ISO 3334–1979. The character used to determine the height used in the Quality Index formula shall be the smallest character used to display information. A Quality Index of five is required at the third generation level.

(2) *Background density of images.* The background ISO standard visual diffuse transmission density on microforms shall be appropriate to the type of documents being filmed. The procedure for density measurement is described in ANSI/AIIM MS23–1983 and the densitometer shall be in accordance with ANSI/ISO 5/3–1984, for spectral conditions and ANSI/ISO 5/2–1985, for geometric conditions for transmission density. Recommended visual diffuse transmission background densities for images of documents are as follows:

Classification	Description of document	Background density
Group 1	High-quality, high-contrast printed books, periodicals, and black typing	1.3–1.5
Group 2	Fine-line originals, black opaque pencil writing, and documents with small high-contrast printing	1.15–1.4
Group 3	Pencil and ink drawings, faded printing, and very small printing, such as footnotes at the bottom of a printed page	1.0–1.2
Group 4	Low-contrast manuscripts and drawings, graph paper with pale, fine-colored lines; letters typed with a worn ribbon; and poorly printed, faint documents.	0.8–1.0
Group 5	Poor-contrast documents (special exception)	0.7–0.85

Recommended visual diffuse transmission densities for computer generated images are as follows:

Film type	Process	Density measurement method	Min. Dmax*	Max. Dmin*	Minimum density difference
Silver gelatin	Conventional	Printing or diffuse	0.75	0.15	0.60
Silver gelatin	Full reversal	Printing	1.50	0.20	1.30

*Character or line density, measured with a microdensitometer or by comparing the film under a microscope with an image of a known density.

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(3) *Line or Stroke Width.* Due to optical limitations in most photographic systems, film images of thin lines appearing in the original document will tend to fill in as a function of their width and density. Therefore, as the reduction ratio of a given system is increased, the background density shall be reduced as needed to ensure that the copies produced will contain legible characters.

§ 1230.16 Film and image requirements for temporary records, duplicates, and user copies.

(a) *Film stocks.* The preferred film stock for all microforms is specified in § 1230.14(b). However, for economic reasons and systems applications, other film types may be better suited for microforms containing temporary records, and for duplicates and user copies. Diazo, vesicular, electrophotographic, and thermographic type films may be used to microfilm temporary records.

(b) *Processing.* The films will be processed according to the manufacturers' instruction.

(c) *Quality Standards.*—(1) *Resolution.* See § 1230.14(d)(1) for method of determining resolution. A Quality Index of five is recommended at the level of the specific number of generations used in the system for temporary records, duplicates and user copies.

(2) *Background density of images.* The densities recommended in § 1230.14(d)(2) apply to microforms of temporary records, duplicates and user copies. However, a ten percent per generation wider range is acceptable.

(i) For diazo and electrophotographic films with ISO standard visual diffuse transmission density shall be measured in accordance with ANSI/ISO 5/3–1984, ANSI PH2.18–1985 for spectral conditions and ANSI/ISO 5/2–1985, for geometric conditions.

(ii) For vesicular and other light scattering films the ISO standard for f/4.5 projection transmission density shall be measured in accordance with ANSI/ISO 5/2–1985, for geometric conditions for transmission density.

7. Subpart B is revised to read as follows:

Subpart B—Standards for the Storage, Use and Disposition of Microform Records

Sec.
§ 1230.20 Storage.
§ 1230.22 Inspection.
§ 1230.24 Use of microform records.
§ 1230.26 Dispostion of microform records.

Subpart B—Standards for the Storage, Use and Disposition of Microform Records

§ 1230.20 Storage.

(a) *Permanent records.* The conditions specified in ANSI PH1.43–1985 and ANSI IT9.2–1988, are required for storing permanent record microforms.

(b) *Temporary records.* Temporary microform records can be safely stored under the same conditions as temporary paper records.

§ 1230.22 Inspection.

(a) *Permanent records.*

(1) Master films of permanent records microfilmed in order to dispose of the original record and master films of permanent records originally created on microfilm shall be inspected when 2 years old and, until they are transferred to a Federal records center or to the National Archives, every 2 years thereafter. The inspection shall be made on a randomly selected sample consisting of 1000 microform units, or 1 percent of the total number of microform units in the collection, whichever is smaller. At least one microform unit must be inspected in collections of less than 100 units. The term "microform unit" refers to a single roll of microfilm, a microfiche, or similar appropriate unit for inspection. The term "collection" refers to microform units which were processed on the same equipment within a short time span and which have been stored together in the same environment since their creation.

(2) Microforms cannot be accepted for deposit with the National Archives of the United States until the first inspection (occurring after it is 2 years old) has been performed. Permanent microforms may be transferred to a Federal records center only after the agency has performed the first inspection or has certified that the microforms will be inspected by the agency, an agnecy contractor, or the Federal records center (on a reimbursable basis) when they become 2 years old.

(3) To facilitate inspection, an inventory of microfilm must be maintained, listing each microform series/publication by production date, producer, processor, format, and results of previous inspections.

(4) The elements of the inspection shall consist of:

(i) An inspection for aging blemishes following the guidelines in the AIIM/SIP34–1989;

(ii) A rereading of resolution targets;

(iii) A remeasurement of density; and

(iv) A certification of the environmental conditions under which the microforms are stored, as specified in § 1230.20(a)

(5) An inspection log shall be maintained and furnished in hard copy form to NARA in accordance with § 1230.26(b). Information to be contained in the log shall include:

(i) A complete description of all records tested (title; number or identifier for each unit of film; security classification, if any; and inclusive dates, names, or other data identifying the records on the unit of film);

(ii) The date of inspection;

(iii) The elements of inspection;

(iv) Any defects uncovered; and

(v) The corrective action taken.

In addition, the log shall contain the results of all archival film tests required by § 1230.14.

(6) A copy of the inspection report shall be furnished to NARA in accordance with § 1230.26(b). The inspection report shall include:

(i) The quantity of microform records on hand, i.e., number of rolls and number of microfiche;

(ii) The quantity of microforms inspected;

(iii) The condition of the microforms;

(iv) A summary of any defects discovered; and

(v) A summary of corrective action taken.

(7) An agency having in its custody a master microform that is deteriorating, as shown by the inspection, shall prepare a silver duplicate in accordance with § 1230.14 to replace the deteriorating master. The duplicated film will be subject to the 2-year inspection required before transfer to a Federal Record Center or to the National Archives.

(8) Inspection should be performed in an environmentally controlled area which avoids pollutant gases and particulates, temperatures in excess of 70 °F (20 °C) or relative humidities above 55 percent.

(b) *Temporary records.* Inspection by sampling procedures described in § 1230.22(a) is recommended but not required.

§ 1230.24 Use of microform records.

(a) The master microform shall not be used for reference purposes. Duplicates shall be used for reference and for further duplication on a recurring basis or for large-scale duplication, as well as for distribution of records on microform. Agency procedures shall ensure that the master microforms remain clean and undamaged during the duplication process.

(b) Agencies retaining the original record in accordance with an approved records disposition schedule may apply agency standards for the use of microform records.

§ 1230.26 Disposition of microform records.

The disposition of microform records shall be carried out in the same manner prescribed for other types of records in part 1228 of this chapter with the following additional requirements:

(a) The silver gelatin original (or a silver gelatin duplicate negative microform record created in accordance with § 1230.14) plus one copy (silver, diazo, electrophotographic, or vesicular) of each permanent or unscheduled record microfilmed by an agency, shall be transferred to an aprpoved agency records center, the National Archives, or to a Federal records center, at the time that the records are to be retired in accordance with the approved records disposition schedule. Non-silver copies must be packaged separately and stored separately from silver originals.

(b) The microforms shall be accompanied by:

(1) Information identifying the agency and organization; the title of the records; the number or identifier for each unit of film; the security classification, if any; the inclusive dates, names, or other data identifying the records to be included on a unit of film;

(2) Any finding aids relevent to the microform that are not contained in the microform; and

(3) The inspection log forms and inspection reports required by § 1230.22(a) (5) and (6).

(c) The information required in this paragraph (b) shall be attached to the SF 135 when records are being transferred to a Federal records center and to the SF 258 when records are being transferred to the legal custody of the National Archives.

Dated: August 22, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–21374 Filed 9–11–89; 8:45 am]

BILLING CODE 7515–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AD99

Definition of Marginal Employment in Consideration of Total Evaluations Based on Individual Unemployability

AGENCY: Department of Veterans Affairs.

ACTION: Correction; proposed regulations.

SUMMARY: On August 28, 1989, commencing on page 35507 (54 FR 35507–35508), the Department of Veterans Affairs (VA) published a proposed rule to amend the Schedule for Rating Disabilities to define marginal employment in consideration of total disability ratings based on unemployability of an individual. In § 4.16 a phrase was inadvertently left out of the published text. The portion left out currently appears in 38 CFR 4.16 and was to remain as published. VA is republishing that text to prevent any confusion over the changes being made. In addition, a typographical error in § 4.16(a) is being corrected. VA regrets the errors and hereby corrects them.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Drebmus, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Dated: September 6, 1989.

Donald R. Howell,

Acting Chief, Directives Management Division.

PART 4—[CORRECTED]

1. On page 35508, in the third column, in 38 CFR part 4, Schedule for Rating Disabilities, in § 4.16(a) the first sentence of the undesignated flush left paragraph is corrected to read as follows:

§ 4.16 [Corrected]

(a) *Total disability ratings for compensation based on unemployability of the individual.*

* * * * *

It is provided further that the existence or degree of nonservice-connected disabilities or previous unemployability status will be disagarded where the percentages referred to in this paragraph for the service-connected disability or disabilities are met and in the judgment of the rating agency such service-connected disabilities render the veteran unemployable.

* * * * *

2. On the same page, in the same column, in § 4.16(a), in the undesignated flush left paragraph remove the phrase "as the poverty threshold of one person." where is appears and add, in its place, the phrase "as the poverty threshold for one person.".

[FR Doc. 89–21366 Filed 9–11–89; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS–66008G; FRL–3645–3]

Polychlorinated Biphenyls; Manufacturing, Processing, and Distribution in Commerce Exemptions; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and reopening of comment period.

SUMMARY: This notice reopens the comment period on an amendment to a petition in the proposed rule issued in the **Federal Register** of August 24, 1988. EPA has accepted for review an amendment to the exemption petition from the prohibition against the processing and distribution in commerce of polychlorinated biphenyls (PCBs). In this document, EPA proposes to grant the amendment exemption petition. EPA, thereby, reopens the comment period and solicits comment on the amendment to this petition only.

DATES: This document reopens the comment period only for the additional amendment to a petition as described herein until October 12, 1989. An informal hearing will be scheduled if requested.

ADDRESSES: All comments should reference the docket control number OPTS–66008G, and be sent in triplicate to: TSCA Public Docket Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. G004 NE Mall, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St. SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

I. Background

For a discussion of the statutory authority for this rulemaking, the history of this rulemaking, and standards for granting an exemption, see the proposed rule issued in the **Federal Register** of August 24, 1988 (53 FR 32326).

II. Disposition of Pending Exemption Petitions

On July 26, 1988, Electrical Apparatus Service Association (EASA) submitted to EPA an amendment to their current

exemption petition to allow processing and distribution in commerce of PCB-contaminated fluid from component parts during activities of servicing and buying and selling of used transformers, while a double-rinse method for the non-porous components from PCB-contaminated transformers is being developed.

EASA also asserts both economic loss and detriment to society if reuse of the component parts is prohibited. Although EPA makes no judgment regarding this claim, EPA acknowledges that without stocks of component parts, there could be a severe detriment to equipment users as a result of the interruption of electrical services as well as the premature disposal of reusable units.

Therefore, due to the non-porous nature of these component parts and because of the relatively small amounts of PCBs involved (less than 10 percent of the original petition amount), EPA has determined that the activity of reusing non-porous component parts, does not pose an unreasonable risk under TSCA, section 6(e)(3)(B)(i).

To demonstrate compliance with the TSCA good faith efforts standard, EASA also submitted evidence to EPA that there may be no substitute for some components needed to repair or rebuild equipment, and that it is not feasible to sample the existing stockpiles of components for historic PCB contamination.

EASA submitted a substantial amount of evidence to indicate an effort to develop a double-rinse procedure similar to that in the spill clean-up policy. EASA maintains that the introduction of the double-rinsed, non-porous component parts back onto the PCB-contaminated transformers will not change the original parts per million PCB content of the transformer into which the component is incorporated.

EPA concludes that an exemption that is limited to processing and distribution in commerce of the PCB residues on non-porous transformer component parts meets both the no unreasonable risk and good faith efforts standards.

Therefore, EPA has determined to grant the petition for 1 year to continue processing and distribution in commerce of non-porous components that may have PCB residues. EPA has determined that the renewal of a class exemption for EASA members to reuse components, will be contingent upon EASA members showing further efforts to reduce their involvement with PCBs during buying and selling activities.

It shall be incumbent upon the petitioner, in future requests for renewal of their exemption, to show evidence of good faith efforts in eliminating their inventories of PCB-contaminated transformers in uncontained storage areas and, also, that establishing stockpiles of component parts can be effectively decontaminated.

III. Official Rulemaking Record

This proposed rule is a continuation of docket number OPTS–66008F and includes all information listed in the original proposed rule published in the **Federal Register** of August 24, 1988 (53 FR 32326).

IV. Other Regulatory Requirements

EPA discussed Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act in detail in the August 24, 1988 proposal, and no changes are indicated for this document.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: August 24, 1989.

Michael Shapiro,

Acting Director, Office of Toxic Substances.

Therefore, it is proposed that 40 CFR part 761 be amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 would continue to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2611; subpart G is also issued under 15 U.S.C. 2614 and 2616.

2. Section 761.80 is amended by adding paragraph (p) to read as follows:

§ 761.80 Manufacturing, processing, and distribution in commerce exemptions.

* * * * *

(p) The Administrator grants the following petitioner 1 year to continue to process and distribute in commerce non-porous components that may have PCB residues.

(1) Electrical Apparatus Service Association, St. Louis, MO 63132, provided the following conditions are met:

(i) Demonstration of the efficacy of a method to decontaminate existing stocks of non-porous components.

(ii) A list showing that the PCB-contaminated transformers in inventory have been identified and placed in PCB storage areas with proper containment as outlined in § 761.65(b).

(iii) Evidence that all future sources of the components, including inventories of PCB-contaminated transformers stored onsite for reuse, shall be properly identified and managed.

(2) [Reserved]

[FR Doc. 89–21413 Filed 9–11–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, 90

[General Docket 86–96]

Amendment of the Commission's Rules Relative to Allocation of the 849–851/894–896 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; motion to accept late-filed comments.

SUMMARY: This action accepts late-filed comments filed by the Goeken Group Corporation (Goeken Group) to the *Notice of Proposed Rule Making* in this proceeding. Further, it provides for reply comments to the Goeken Group comments to be filed until October 9, 1989. This action is in response to a *Motion To Accept Late Filed Comments,* filed by the Goeken Group. The Goeken Group requested that the comments be accepted since they provide new information that could not have been filed in a timely manner due to Mr. John Goeken's affiliation at that time with the GTE Corporation.

DATES: Reply comments are due October 9, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, telephone (202) 653–8116.

SUPPLEMENTARY INFORMATION: The Proposed Rule was published on May 13, 1988, 53 FR 17082.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 89–21318 Filed 9–11–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–384, RM–6884]

Radio Broadcasting Services; Epworth, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Margaret

Keefer seeking the allotment of Channel 247C3 to Epworth, Iowa, as the community's first local FM service. Channel 247C3 can be allotted to Epworth in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for the allotment are North Latitude 42–26–42 and West Longitude 90–55–55.

DATES: Comments must be filed on or before October 27, 1989, and reply comments on or before November 13, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Margaret Keefer, 811 Duke, Rice Lake, Wisconsin 54868 (Petitioner), Larry G. Fuss, P.O. Box 159, Fayetteville, Georgia 30214 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89–384, adopted August 22, 1989, and released September 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commmission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–21319 Filed 9–11–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–385, RM–6892]

Radio Broadcasting Services; Glen Arbor and Scottsville, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed jointly by David Schaberg and West Shore Broadcasting. David Schaberg requests the substitution of FM Channel 240C2 for Channel 240A at Glen Arbor, Michigan, and modification of his construction permit for Channel 240A to specify operation on Channel 240C2. West Shore Broadcasting proposes the substitution of Channel 235C3 for Channel 240A at Scottsville, Michigan, and modification of the license for Station WKZC to the higher class channel. The coordinates for Channel 240C2 are 44–51–00 and 85–45–00 and the coordinates for Channel 235C3 are 44–04–40 and 86–25–00. Canadian concurrence will be obtained for the allotment of Channel 240C2 at Glen Arbor and Channel 235C3 at Scottsville.

DATES: Comments must be filed on or before October 27, 1989, and reply comments on or before November 13, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

David C. Schaberg, P.O. Box 21055, Lansing, Michigan 48909–1055, (Permittee of Channel 240A, Glen Arbor)

Katheryn Ziehm, West Shore Broadcasting, P.O. Box 36, Scottsville, Michigan, (Licensee of Station WKZC, Channel 240A, Scottsville)

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89–385 adopted August 21, 1989, and released September 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–21320 Filed 9–11–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–382, RM–6753]

Radio Broadcasting Services; Blue Earth, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KBEW, Inc., proposing the allotment of FM Channel 270C3 to Blue Earth, Minnesota, as that community's second FM broadcast service. The coordinates used for Channel 270C3 at Blue Earth with a site restriction 19.0 kilometers northwest are 43–43–15 and 94–18–21.

DATES: Comments must be filed on or before October 27, 1989, and reply comments on or before Novemher 13, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David E. Hilliard, Edward A. Yorkgitis, Jr., Wiley, Rein & Fielding,

1776 K Street NW., Washington, DC 20006, (Counsel for KBEW, Inc.).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89-382, adopted August 22, 1989, and released September 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to the proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–21321 Filed 9–11–89; 8:45am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–383, RM–6917]

Radio Broadcasting Services; Cambridge, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Monday Media, Inc., proposing the substitution of FM Channel 287C3 for Channel 288A at Cambridge, Minnesota. Canadian concurrence will be sought for this allotment at coordinates 45–26–40 and 93–11–45.

DATES: Comments must be filed on or before October 27, 1989, and reply comments on or before November 13, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Steven A. Lerman, Sally A. Buckman, Leventhal, Senter & Lerman, 2000 K Street, NW., Suite 600, Washington, DC 20006, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89–383, adopted August 22, 1989, and released September 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–21322 Filed 9–11–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–377, RM–6576]

Radio Broadcasting Services; Waite Park, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal filed by Ronald J. Linder requesting the substitution of FM Channel 279C3 for Channel 279A at Waite Park, Minnesota, and modification of his permit for Channel 279A to specify the higher class channel. The coordinates for Channel 279C3 are 45–28–03 and 94–09–18.

DATES: Comments must be filed on or before October 27, 1989, and reply comments on or before November 13, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ronald J. Linder, Genesis Broadcast Complex, 1986 Julep Road, P.O. Box 5119, St. Cloud, Minnesota 56302.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89–377, adopted August 15, 1989, and released September 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–21323 Filed 9–11–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89–388, RM–6580]

Radio Broadcasting Services; Orangeburg, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Wilkes-Posey Broadcasting Inc. seeking the substitution of Channel 280C3 for Channel 280A at Orangeburg, South Carolina, and the modification of its license for Station WKSO to specify operation on the higher powered channel. Channel 280C3 can be allotted to Orangeburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (6.3 miles) north to avoid a short-spacing to Station WGEC, Channel 280A, Springfield, Georgia, and to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 33–35–00 and West Longitude 80–50–00. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 280C3 at Orangeburg or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 27, 1989, and reply comments on or before November 13, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Wilkes-Posey Broadcasting, Inc., P.O. Box 430, Orangeburg, South Carolina 29115 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89–388, adopted August 21, 1989, and released September 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–21324 Filed 9–11–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–381, RM–6739]

Radio Broadcasting Services; Amarillo, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Amarillo Community Broadcasting Company, proposing the allotment of Channel 265C1 to Amarillo, Texas, as that community's ninth local FM service. The proposed allotment can be made consistent with the Commission's minimum distance separation requirements at the city reference coordinates. The coordinates are 35–12–30 and 101–50–00.

DATES: Comments must be filed on or before October 27, 1989, and reply comments on or before November 13, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Jr., Esquire, 1359 Black Meadow Road, Spotsylvania, VA 22553 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89–381, adopted August 22, 1989, and released September 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media-Bureau.

[FR Doc. 89–21325 Filed 9–11–89; 8:45am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

Intent To Prepare an Environmental Impact Statement for the Corporate Average Fuel Economy Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of intent.

SUMMARY: NHTSA is issuing this Notice to advise the public that a programmatic Environmental Impact Statement (EIS) will be prepared to address the environmental impacts of the Corporate Average Fuel Economy (CAFE) program for passenger cars and light trucks. The EIS will address the potential environmental impacts which could arise from NHTSA's setting and amending CAFE standards for passenger cars, as well as the agency's actions in setting and amending CAFE standards for light trucks.

DATE: Comments on this notice must be received by the agency no later than November 13, 1989.

ADDRESS: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 7th Street SW., Washington, DC, 20590. Docket hours are 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 7th Street SW., Washington, DC 20590 (202) 366–0846.

SUPPLEMENTARY INFORMATION: Title V of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*, as amended) requires the Secretary of Transportation to administer a program for regulating the average fuel economy of new passenger cars and light trucks in the U.S. market. The authority to administer the program has been delegated by the Secretary to the Administrator of NHTSA.

NHTSA's general responsibilities with regard to fuel economy include (1) establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as appropriate, (2) promulgating regulations concerning procedures, definitions and reports necessary to administer the fuel economy standards, and (3) enforcing fuel economy standards and regulations.

Section 502 sets the CAFE standard for passenger cars at 27.5 mpg for model year (MY) 1985 and beyond. Section 502(a)(4) of the Act authorizes, but does not require, NHTSA to amend the 27.5 mpg standard for 1985 or any subsequent model year. If the standard is amended for a particular model year, it must be set at a level which is the maximum feasible average fuel economy for that year. In determining the maximum feasible average fuel economy level, the agency is required by section 502(e) of the Act to consider the following four factors: (1) Technological feasibility, (2) economic practicability, (3) the effect of other Federal motor vehicle standards on fuel economy, and (4) the need of the nation to conserve energy.

Pursuant to section 502(f)(2), any amendment that has the effect of making a CAFE standard more stringent must be promulgated at least 18 months prior to the beginning of the model year in question. The legislative history of the Act provides that amendments reducing a standard must be promulgated prior to the commencement of the model year in question.

The Act does not require absolute achievement of the standard by manufacturers for each model year. Instead, it allows a shortfall in one year (or years) to be offset if a manufacturer exceeds the standard for another year (or years). Credits for exceeding average fuel economy standards may be carried back for three model years, or carried forward for three model years. If a manufacturer still does not meet the standard after taking credits into account, it is liable to the Federal government for civil penalties under section 508.

Acting in accordance with the provisions discussed above, NHTSA has on several occasions reduced the statutory passenger car CAFE standard. It reduced the 27.5 mpg standard to 26.0 mpg for MY's 1986, 1987, and 1988, and to 26.5 mpg for MY 1989. Most recently, in May 1989, NHTSA issued a notice terminating a rulemaking that it had commenced to consider amending the standard for MY 1990. As a result, the standard for MY 1990 remains at the statutory level of 27.5 mpg. A detailed discussion of these rulemakings and the bases for the agency's decisions is found in the May 1989 termination notice (54 FR 21985, May 22, 1989).

Although NHTSA's authority to amend the statutory standard for passenger cars is discretionary, the agency is required by section 502(b) of the Cost Savings Act to set standards each model year for light trucks. Such standards must be prescribed at least 18 months prior to the beginning of the affected model year. Following the same statutory criteria as for passenger car standards regarding selection of the maximum feasible level, in recent years NHTSA set the light truck standard at 20.0 mpg for MY 1986, 20.5 mpg for MY 1987 through MY 1989, 20.0 mpg for MY 1990, and 20.2 mpg for MY 1991 (alternative standards for 2-wheel drive and 4-wheel drive light trucks are also provided for each of those years). In addition, the agency has twice reduced the standard for light trucks, once in MY 1985, and once in MY 1981, for two-wheel drive trucks. A comprehensive discussion of the agency's decisions with regard to light truck fuel economy standards is found in the April 1988 final rule setting light truck standards for MY's 1990 and 1991 (53 FR 11080, April 5, 1988).

In the May 1989 termination notice, NHTSA announced that it had determined that it would be appropriate at this time to prepare a programmatic EIS to address the possible cumulative environmental impacts of NHTSA's past and possible future actions relating to the amendment of passenger car standards. as well as those from setting or amending standards for light trucks. In recent years, NHTSA has not prepared an EIS in connection with the CAFE program. Instead, on the basis of environmental assessments and supplements addressing the potential impacts of each proposed action, it concluded that those actions would not have a significant environmental impact.

Under the Council on Environmental Quality (CEQ) regulations, the first step following an agency decision to prepare an EIS is to initiate the scoping process to identify significant issues and determine the scope of issues to be addressed. Comments are requested on the types of impacts which should be analyzed and their relative significance so that the detail of analysis may be geared to potential significance of impact. Among the environmental impacts suggested by the public in past CAFE rulemaking actions were those related to changes in petroleum consumption, emissions of pollutants and their impacts on large cities and non-attainment areas under the Clean Air Act, oil spills, and global warming. Comments are also requested on the extent to which any mitigation measures are available to NHTSA in light of its statutory mandate to set CAFE standards at the maximum feasible level.

Public involvement and interagency coordination will be maintained throughout the development of the EIS. Members of the public and interested Federal, state and local agencies are also invited to comment on evaluation criteria to be used to consider any significant environmental impacts associated with the agency's actions in implementing the CAFE program.

Finally, the commenters are requested to indicate whether they would be interested in attending a public scoping meeting later this year to discuss the issues identified in the comments. A notice announcing the number, date and location of the meeting or meetings will be published in the **Federal Register** within 30 days after the closing of the public comment period for this notice.

Issued September 6, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89–21335 Filed 9–11–89; 8:45 am]

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Notices

Federal Register
Vol. 54, No. 175
Tuesday, September 12, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Bear Mountain Ski Area; Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposal to permit the expanded development of Bear Mountain Ski Area on the Big Bear Ranger District, San Bernardino National Forest, San Bernadino County, California. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by October 27, 1989.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Charles H. Irby, Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernadino, California 92408–3430.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement (EIS) to Marion Borrell, Recreation Officer, Big Bear Ranger District, P.O. Box 290, Fawnskin, California 92333, telephone: 714–866–3437.

SUPPLEMENTARY INFORMATION: The San Bernardino National Forest Land and Resource Management Plan was completed in January 1989. The management direction in the Plan called for the expansion of existing ski areas.

In preparing the EIS, the Forest Service will evaluate the Bear Mountain Ski Resort Winter Sports 1989 Development Plan and identify and consider a range of alternatives for this site, including those considered in the environmental assessment (EA) for which a Decision Notice and Finding of No Significant Impact was issued on June 29, 1989. This Decision and Finding of No Significant Impact was withdrawn and replaced with a new one on August 23, 1989, as a result of four appeals which indicated that not all issues had been adequately addressed nor were all issues resolved through the mitigation measures identified in the EA. Alternatives will consider development designs with capacities ranging from the existing 6,100 to approximately 10,000 skiers at one time. Alternative locations for new uphill facilities, ski runs, and support facilities also will be considered.

Charles H. Irby, Forest Supervisor, San Bernadino National Forest, San Bernardino, California, is the responsible federal official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used, in conjunction with the input received in response to the environmental assessment, in the preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The City of Big Bear Lake, California will be jointly preparing an environmental impact report (EIR) to evaluate potential impacts which would be created by implementation of the development plan.

Bear Mountain, Ltd. has retained the services of Michael Brandman Associates to develop the joint EIS/EIR. Public scoping meetings will be held at the City of Big Bear Lake City Hall, 39707 Big Bear Blvd., Big Bear Lake, CA at 7:00 p.m. on October 19, 1989 and 10:00 a.m. on October 21, 1989.

The DEIS/EIR is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 1990. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the Bear Mountain Ski Area participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy) Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of a DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the FEIS. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed by April 1990. In the FEIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of

Decision. That decision will be subject to appeal pursuant to 36 CFR 217.3 (**Federal Register**, Vol. 54, No. 13, January 23, 1989, pages 3357 to 3362).

Dated: September 1, 1989.

Charles H. Irby,

Forest Supervisor.

[FR Doc. 89–21333 Filed 9–11–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Rules for Patent Maintenance Fees.

Form Number: Agency—PTO–1536; OMB—0651–0016.

Type of Request: Extension of the expiration date.

Burden: 56,992 respondents; 4,560 reporting hours. Average hours per response is .08 hours.

Needs and Uses: The patent number and serial number of the patent on which maintenance fees are paid are required in order to insure proper crediting of such payments. Such payments are required to maintain a patent in effect.

Affected Public: Individuals, businesses or other for profit institutions, Federal agencies or employees.

Frequency: Once every four years.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Robert Veeder, 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Robert Veeder, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: September 6, 1989

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–21398 Filed 9–11–89; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Patent Cooperation Treaty Chapter II.

Form Number: Agency—PCT/IPEA/409; OMB—0651–0021.

Type of Request: Extension of the expiration date.

Burden: 2,350 respondents; 2,350 reporting hours. Average hours per response is one hour.

Needs and Uses: PTO needs certain information from applicants using the preliminary examination procedures under Chapter II of the Patent Cooperation Treaty in order to meet the requirements of the Treaty.

Affected Public: Individuals, businesses or other for-profit institutions, Federal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Robert Veeder, 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Robert Veeder, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: September 6, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–21399 Filed 9–11–89; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Benchmark Survey of U.S. Direct Investment Abroad–1989.

Form Number: Agency—BE–10; OMB 0608–0049.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 2,500 respondents; 390,100 reporting hours.

Average Hours Per Response; 156 hours.

Needs and Uses: The purpose of the benchmark survey of U.S. direct investment abroad is to obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. parent companies and their foreign affiliates. The data from the survey will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. The data are needed to measure the size of U.S. direct investment abroad, monitor changes in such investment, assess its impact on the U.S. and foreign economies, and, based upon this assessment, make informed policy decisions regarding U.S. indrect investment abroad. They are required for compiling the balance of payments, international investment position, and national income and product accounts of the United States.

Affected Public: Businesses or other for-profit institutions.

Frequency: Quinquennial.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Donald Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 6, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–21400 Filed 9–11–89; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on October 12, 1989. The meeting will be

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from 10:00 a.m. in the David Dubinsky Student Center, also known as Building A, at the Fashion Institute of Technology, 227 West 27th Street, New York.

The Committee advises Department of Commerce officials on textile and apparel export issues.

Agenda: Reports on conditions in the export market; review of Office of Textiles and Apparel export expansion activities; and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/377-4324).

Dated: September 7, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-21428 Filed 9-11-89; 8:45 am]

BILLING CODE 3510-DR-M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Meeting

AGENCY: Patent and Trademark Office.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATE: The Public Advisory Committee for Trademark Affairs will meet from 10:00 a.m. until 4:00 p.m. on October 17, 1989.

Place: Days Inn Crystal City, 2000 Jefferson Davis Highway, Arlington, Virginia.

Status: The meeting will be open to public observation; seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

Matters To Be Considered: The agenda for the meeting is as follows:

(1) Finance;
(2) Automation;
(3) Implementation of Intent-to-Use;
(4) Strategic Planning; and
(5) Trademark Examining Operation.

Contact Person for More Information: For further information, contact Carlisle E. Walters, Office of the Assistant Commissioner for Trademarks, Room CPK2-910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 557-7464.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-21394 Filed 9-11-89; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Feasibility Report and Environmental Impact Statement on Flood Control Improvements Along the Petaluma River, City of Petaluma, Sonoma County, CA

AGENCY: U.S. Army Corps of Engineers (San Francisco District), Department of Defense.

ACTION: Notice of intent (NOI) to Prepare a Draft Feasibility Report and Environmental Impact Statement (EIS).

SUMMARY: The Corps of Engineers (Corps) is currently conducting a Feasibility Study of flood control improvements along the Petaluma River authorized for study under section 205 of the Flood Control Act of 1948, as amended. The primary objective of this study is to recommend a solution(s) to the highly flood prone Payran Street area from Lakeville Avenue to the Lynch Creek confluence, along with any recommendation for Federal participation in implementing a project.

The study will include analysis of flood control improvements along 3,500 feet of the Petaluma River adjacent to the Payran reach area. The purpose of the proposed project would be to reduce the severity of flooding on residential and commercial development, thereby reducing flood hazards and damages in the affected areas.

FOR FURTHER INFORMATION CONTACT: Questions regarding the preparation of the Feasibility Report should be directed to Don Hancock, Design Branch, U.S. Army Corps of Engineers, San Francisco District, 211 Main Street, San Francisco, California 94105-1905, (Telephone 415-974-0394). Questions regarding the scoping process or the EIS should be directed to Dave Hodges, Environmental Branch, U.S. Army Corps of Engineers, San Francisco District, 211 Main Street, San Francisco, California 94105-1905 (Telephone 415-974-0439).

SUPPLEMENTARY INFORMATION:

Petaluma River Flood Control Alternatives

The Reconnaissance Report for flood control improvements on the Petaluma River identified several plans to be carried forward for further study. The Corps will consider the following alternatives (which are subject to modification as updated information and data becomes available) in the draft Feasibility Report and EIS:

a. No-Action Plan

The no-action plan would result in the continued flooding of the Petaluma River in the city of Petaluma. This would result in continued damage during the winter seasons when flood discharges would exceed the existing carrying capacity of the Petaluma River. The most critical area affected by this flooding would be Lakeville Avenue to Payran Street reach.

b. Petaluma River Channel Improvements, 25-Year Plan

This alternative consists of a 3,500-foot long excavated trapezoidal channel with a bottom width of 50 feet and side slopes of 1 Vertical on 2.5 Horizontal. Because of the relatively low flow velocity, riprap bank protection is not considered necessary. Removal and replacement of several automobile and railroad bridges that cross the Petaluma River would be required. In addition, a sanitary sewer line which is presently an obstruction to flow, would be raised.

c. Petaluma River Channel Improvements, 50-Year Plan

This alternative is identical to the 25-year plan except that the channel bottom width is increased to 70 feet and would require the removal of one home.

d. Petaluma River Channel Improvements, 100-Year Plan

This plan is identical to the 25-year and the 50-year plan, except that the channel bottom width is increased to 90 feet and would require the removal of two homes, as well as two structures located on the east side of the Lakesville Avenue bridge, and three structures upstream of Lakeville Avenue before Edith Street. Additionally, this plan requires moderate improvements around the Washington Street bridge. These improvements would consist of clearing the silt from under the bridge and adding a 280-foot long sheet pile bulkhead wall to the north bank to ensure bank stabilization.

Additional alternatives identified during the course of the study will be considered in the draft Feasibility Report and EIS.

Corps Scoping Process

The scoping of the Petaluma River flood control improvements project will involve identifying the scope of issues to be addressed for in-depth analysis.

a. The scoping process will include public participation in order to integrate information regarding public needs and concerns into the draft EIS. A public involvement program has therefore been planned. A scoping meeting will be held on September 25, 1989, at the Petaluma City Council Chambers, 11 English Street, from 7:00 p.m. until 11:00 p.m. Written comments may be sent to the U.S. Army Corps of Engineers, San Francisco District, 211 Main Street, San Francisco, California 94105-1905, ATTN: Environmental Branch (Dave Hodges). Written comments should be received no later than 45 days after the date of NOI publication. Governmental agencies, public and private interests groups, and the public are invited to participate in the scoping process.

b. The Corps is planning to conduct in-depth studies of the following issues:

(1) Hydrology (including stream sedimentation and erosion);

(2) Fish and wildlife resources and habitat;

(3) Riparian habitat;

(4) Hazardous materials;

(5) Cultural resources;

(6) Recreation and public access;

(7) Aesthetic quality.

c. Environmental review and other consultation requirements applicable to EIS preparation include:

(1) National Environmental Policy Act, as amended;

(2) Clean Air Act, as amended;

(3) Clean Water Act, as amended;

(4) Archaeological and Historic Preservation Act;

(5) National Historic Preservation Act, as amended;

(6) Executive Order 11593—Protection and Enhancement of the Cultural Environment;

(7) Fish and Wildlife Coordination Act;

(8) Endangered Species Act, as amended;

(9) Executive Order 11988—Floodplain Management.

City and County plans and ordinances, as well as other applicable statues or regulations, will be addressed during the preparation of the draft EIS.

Availability of Report

The Corps expects to complete preparation of the draft Feasibility Report and EIS and have review copies of its available on or before September 1990.

Galen H. Yanagihara,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89-21370 Filed 9-11-89; 8:45 am]

BILLING CODE 3710-FB-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Minority Participation in Graduate Education Program

AGENCY: Department of Education.

ACTION: Notice changing the application deadline date for the grants to institutions to encourage minority participation in graduate education program.

On August 16, 1989, the Assistant Secretary for Postsecondary Education published in the **Federal Register** (54 FR 33816), a notice inviting applications for the Grants to Institutions to encourage minority participation in graduate education program. This document changes the application deadline date to October 10, 1989. The application deadline date which appeared in the notice of August 16, 1989 is October 9; October 9, 1989 is a Federal holiday.

FOR FURTHER INFORMATION CONTACT: Mr. Walter T. Lewis, Program Manager, or Mrs. Barbara J. Harvey, U.S. Department of Education, Division of Higher Education Incentive Programs, Mail Stop 5338, 400 Maryland Avenue SW., Room 3022, ROB-3, Washington, DC 20202-5251. Telephone (202) 732-4393 or 732-4863, respectively.

Dated: September 5, 1989.

Roberta B. Dunn,

Acting Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance No. 84-202, Grants to Institutions to Encourage Minority Participation in Graduate Education Program)

[FR Doc. 89-21336 Filed 9-11-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 89-44-NG]

Conoco Inc.; Application to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 17, 1989, of an application filed by Conoco Inc. (Conoco) for blanket authorization to import up to 20 Bcf of Canadian natural gas over a two-year period beginning on the date of the first delivery. The gas would be purchased from Conoco Canada Limited, a Conoco subsidiary, and other Canadian producers to fulfill potential customer needs. Conoco proposes to submit quarterly reports giving details of individual transactions.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than October 12, 1989.

FOR FURTHER INFORMATION CONTACT:

Perry Bolger, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-055B, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1789.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Conoco is a Delaware corporation with its petroleum operation headquarters in Houston, Texas. Under the blanket authority sought, Conoco intends to import gas from Canada on a short-term and spot basis for resale to or as agent for undesignated purchasers located primarily in the western United States. The specific terms of each import transaction would be negotiated on an individual basis in response to prevailing gas market conditions.

To the extent gas is imported by Conoco as agent, the specific location where the gas would enter the U.S. may vary for different transactions with delivery points to be established during sales contract negotiations. In support of its application, Conoco asserts that transactions negotiated under the authority requested would be competitive with other, domestic gas supply alternatives, and would be sufficiently flexible to remain competitive over the term. Conoco states that only existing pipeline

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facilities will be utilized to transport the volumes proposed to be imported.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority. The applicant asserts that imports made under this requested arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices on intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., October 10, 1989.

A decisional record on the application will be developed through responses to this notice by parties, including the parties written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Conoco's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 5, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-21422 Filed 9-11-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-36-NG]

Northern Natural Gas Co., Division of Enron Corp; Order Granting Blanket Authorization To Import National Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Northern Natural Gas Company, Division of Enron Corp. (Northern), blanket authorization to import natural gas from Canada. The order issued in FE Docket No. 89-36-NG authorizes Northern to import up to 219 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except on Federal holidays.

Issued in Washington, DC., September 5, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossile Energy.

[FR Doc. 89-21423 Filed 9-11-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 89-17; Certification Notice—43]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C.

8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Three owners and operators of proposed new electric base load powerplants have filed self certifications in accordance with section 201(d). Further information is provided in the SUPPLEMENTARY INFORMATION section below.

SUPPLEMENTARY INFORMATION: The following companies have filed self certifications:

Name	Dated received	Type of Facility	Megawatt capacity	Location
Cogen Technologies, Inc., Houston, TX	06-21-89	Combined Cycle	229	Everett, MA
Cornerstone Energy Company, Miami, FL	06-21-89	Combined Cycle	45	Boulder City, NV
Masspower, Boston, MA	06-16-89	Combined Cycle	240	Springfield, MA

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Issued in Washington, DC on September 5, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-21424 Filed 9-11-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 89-16; Certification Notice—44]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Two owners and operators of proposed new electric base load powerplants have filed self certifications in accordance with section 201(d). Further information is provided in the SUPPLEMENTARY INFORMATION section below.

SUPPLEMENTARY INFORMATION: The following companies have filed self certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
Kamine/Besicorp Carthage L.P., Union, NJ	06-25-89	Combined Cycle	50	Carthage, NY
Kamine/Besicorp South Glens Falls L.P., Union, NJ	06-25-89	Combined Cycle	50	South Glens Falls, NY.

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Issued in Washington, DC on September 5, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossile Energy.

[FR Doc. 89-21425 Filed 9-11-89; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted to the Office of Management and Budget for review.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public Law 96-511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before October 12, 1989. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, 1000 Independence Avenue SW., Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-557
3. 1902-0042
4. The Public Utilities Regulatory Policy Act of 1978, section 133 Cost of Service Data
5. Extension
6. Biennially
7. Mandatory
8. Businesses or other for profit, state or local governments, federal agencies or employees, non-profit institutions.
9. 8 respondents
10. 8 responses annually
11. The estimated average hours per response for each of the respondents is 2,700 burden hours.
12. The estimated total reporting hours are 21,600.
13. PURPA, section 133 requires electric utilities to gather and file information necessary to determine a utility's cost of providing retail electric service.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law No. 93-275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89-21426 Filed 9-11-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Pre-Freshman Engineering Program (PREP)

AGENCY: Department of Energy.

ACTION: Program Solicitation Announcement.

SUMMARY: The purpose of this notice is to announce the availability of the PREP solicitation, to identify the institutions which will be eligible for this grant program, and to inform potential applicants of the closing date and location for submission of applications for awards under this program.

SUPPLEMENTARY INFORMATION:

Background

The Department of Energy (DOE) is concerned with the supply of science and engineering professionals to perform its R&D mission and is authorized in the Energy Reorganization Act of 1974 to "* * * assure an adequate supply of manpower for the accomplishment of energy research and development programs by sponsoring and assisting in education and training activities in postsecondary institutions, vocational schools, and other institutions * * *", 42 U.S.C. 5813(11). Specifically, DOE's concern is based on the consideration that the future supply of engineering manpower is threatened by two factors: fewer students enrolling in science and mathematics courses in high school and fewer students available to join the science and engineering pool due to declining birth rates. Students who have completed the ninth grade in high school often decide not to take another science or mathematics course. Once the traditional math/science sequence is disrupted, it is too late for students to meet the minimum requirements for admission to college and university engineering programs.

The primary purpose of PREP is to alleviate manpower shortages in engineering by preparing and guiding high school students in the selection of college-preparatory courses in science and mathematics. In the past 16 years, 249 PREP projects have been funded. These projects have reached over 16,000 students, principally women and minorities who have been underrepresented in the field of engineering. Pending Congressional action, DOE intends to commit about $350,000 for the Pre-Freshman Engineering Program for fiscal year 1990. DOE invites all qualified institutions (see following section) to write for a copy of its Pre-Freshman Engineering Program solicitation, DOE/ER-0414, Notice of Program Announcement Number DE-PS05-90ER75525.

Eligibility and Limitations

The overall intent of the program is to increase the number of engineers who graduate from college, and who will continue to play critically important roles in the Nation's overall energy programs. Therefore, institutions which offer engineering degree programs are deemed most qualified.

Accordingly, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7 (b)(1), applications will be accepted only from colleges and universities which grant engineering degrees at the baccalaureate level, institutions which have articulation agreements with engineering degree-granting institutions and institutions which have formal dual-degree pre-engineering programs with institutions granting engineering degrees at the baccalaureate level. (If applying under the latter two categories, specific details should be given about the formal dual-degree program or articulation agreement). Other institutions interested in participating in PREP may do so through cooperative projects with engineering degree-granting institutions (in this case, the application must be submitted by the engineering degree-granting institution).

Application Forms: Program solicitations are ready for mailing. Applications must be prepared and submitted in accordance with the instructions and forms included in the program solicitation. Copies of this solicitation may be obtained by writing to: Division of University and Industry Programs, ER-44, Office of Field Operations Management, Office of Energy Research, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone Number: (202) 586-1634.

Closing Date for Submission of Applications: To be eligible, applications must be received by the Department of Energy by 4:30 p.m., October 30, 1989.

FOR FURTHER INFORMATION CONTACT: All communications or questions

regarding this program solicitation should be directed to: PREP Contracting Officer; Procurement and Contracts Division; Oak Ridge Operations; Department of Energy; Oak Ridge, Tennessee 37831; Telephone Number: (615) 576-7564.

(Catalog of Federal Domestic Assistance No. 81.047, Pre-Freshman Engineering Program.)

Issued in Washington, DC on July 25, 1989.

Robert O. Hunter, Jr.,

Director, Office of Energy Research.

[FR Doc. 89-21427 Filed 9-11-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-546-000, et al.]

Nevada Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 1, 1989.

Take notice that the following filings have been made with the Commission:

1. Nevada Power Co.

[Docket No. ER89-546-000]

Take notice that on August 21, 1989, Nevada Power Company (Nevada) tendered for amended filing a revised agreement entitled Agreement for Transmission Service Among Nevada Power Company and Overton Power District No. 5 (Overton) and Lincoln County Power District No. 1 (Lincoln) hereinafter "the Agreement." The purpose of the Agreement is to establish the terms and conditions for the transmission of Federal Power by Nevada to Overton and Lincoln.

Nevada requests that this Agreement become effective as of March 1, 1989, and therefore requests waiver of the Commission's notice requirements.

Nevada states that copies of the amended filing were served upon Overton and Lincoln.

Comment date: September 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Co.

[Docket Nos. ER88-630-005 and ER88-631-005 and ER89-38-005]

Take notice that on August 28, 1989, New England Power Company (NEP) tendered for filing its compliance refund report pursuant to the Commission's order issued on July 28, 1989.

Comment date: September 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Co.

[Docket No. ER89-124-000]

Take notice that on August 30, 1989, Carolina Power & Light Company (CP&L) filed revised hourly transmission charges as directed by the FERC Staff in which daily transmission costs were spread over sixteen hours per day. The change affects CP&L's interchange service schedules with South Carolina Electric & Gas Company, South Carolina Public Services Authority, and Virginia Electric and Power Company. In addition, all the utilities are filing revised production demand and transmission use rates based on updated costs as set forth in the annual review process under the provisions of the various interchange agreements. The changes to the rates are requested to become effective on the date the FERC accepts this filing.

Comment date: September 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Power & Light Co.

[Docket No. ER89-624-000]

Take notice that on August 24, 1989, Puget Sound Power & Light Company (Puget) tendered for filing documents relating to the Residential Purchase and Sale Agreement between Puget and Bonneville Power Administration. Puget states that these documents relate to the calculation of the Average System Cost (ASC) for Puget for the exchange period effective February 1, 1989, through May 31, 1989.

Comment date: September 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Electric and Gas Co.

[Docket No. ER89-461-000]

Take notice that on August 28, 1989, Public Service Electric and Gas Company (PSO) submitted for filing additional information, regarding the basis for determination of the lump sum payment which restores parity between PSO and the Jersey Central Power & Light Company.

Comment date: September 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Canal Electric Company

[Docket No. ER89-626-000]

Take notice that on August 13, 1989, Canal Electric Company (Canal) tendered for filing a Notice of Termination of Supplement No. 10 to Rate Schedule FERC No. 21 and Rate Schedule FERC No. 28.

Canal requests an effective date of April 30, 1989.

Canal states that copies of this filing have been served upon Cambridge Electric Light Company and Commonwealth Electric Company.

Comment date: September 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Minnesota Power & Light Co.

[Docket No. ER89-625-000]

Take notice that on August 17, 1989, Minnesota Power & Light Company (MP&L) tendered for filing a Notice of Termination of Rate Schedule No. 115 between the City of Proctor and MP&L.

MP&L requests an effective date of December 31, 1989.

Comment date: September 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Power & Light Co.

[Docket No. ER89-628-000]

Take notice that on August 30, 1989, Wisconsin Power & Light Company (WPL) tendered for filing an amended wholesale power agreement dated August 9, 1989, between the City of Sheboygan and WPL. WPL states that this new wholesale power agreement revises the previous agreement between the two parties which was dated January 4, 1977, and designated Rate Schedule No. 115 by the Commission.

The purpose of this new agreement is to identify an additional delivery point. Terms of service for this customer will be on a similar basis to the terms of service for other W-3 wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the City of Stoughton and the Wisconsin Public Service Commission.

Comment date: September 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21337 Filed 9–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER89–621–000 et al.]

Nevada Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Nevada Power Co.

[Docket No. ER89–621–000]

August 30, 1989.

Take notice that on August 25, 1989, Nevada Power Company (Nevada) tenderd for filing a Notice of Cancellation of Short Term Seasonal Power Agreements with Overton Power District No. 5 (Overton), FERC Rate Schedule No. 44.

The Agreement expired by its own terms on April 1, 1989. Therefore, Nevada requests waiver of the Commission's notice requirements and requests the cancellation be effective April 1, 1989.

Nevada states that copies of the filing were served upon Overton, the Public Service Commission of Nevada, and the Office of the Consumer Advocate.

Comment date: September 14, 1989, in accordance with Standard Paragraph E end of this notice.

2. Public Service Company of Oklahoma

[Docket No. ER89–476–001]

August 30, 1989.

Take notice that on August 28, 1989, Public Service Company of Oklahoma (PSO) tendered for filing a letter agreement (Letter Agreement), dated August 18, 1989, amending the Transmission Service Agreement, dated May 30, 1989, between KAMO Electric Cooperative, Inc. (KAMO) and PSO which PSO filed in this proceeding on June 1, 1989. PSO and KAMO have made various minor modifications to the earlier Agreement which produce a decrease in the proposed rates. PSO proposes that the Transmission Service Agreement, as amended, be made effective as of June 1, 1989 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been sent to the Oklahoma Corporation Commission and to KAMO.

Comment date: September 14, 1989, in accordance with Standard Paragraph E end of this notice.

3. Public Service Company of New Mexico

[Docket No. ER89–622–000]

August 30, 1989.

Take notice that on August 28, 1989, Public Service Company of New Mexico (PNM) tendered for filing a Contract for Services by PNM to accept and simultaneously redeliver Western Area Power Administration power and energy to Kirtland Air Force Base (KAFB). The Services Contract provides for PNM to furnish certain services to KAFB so that KAFB can utilize its allocation of long-term firm power and energy from the Salt Lake City Area Integrated Projects. KAFB will pay a service charge of $4.33/kW-month which reflects the costs of providing such services, as well as a $1000/month fee for dispatch and administrative services.

PNM is requesting a waiver of the Commission's notice requirements and is requesting that the Services Contract be accepted for filing to be effective as of October 1, 1989.

Copies of the filing have been served upon KAFB and the New Mexico Public Service Commission.

Comment date: September 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. American Electric Power Service Corp.

[Docket No. ER89–415–000]

August 30, 1989.

Take notice that American Electric Power Service Corp. on August 25, 1989, tendered for filing an amendment to Addendum IV, which was filed on May 5, 1989 (Docket No. ER89–415–000), on behalf of its affiliates, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company (I&M), Kentucky Power Company, and Ohio Power Company (AEP Parties), which are all affiliated operating subsidiaries of the American Electric Power Company (AEP).

The original filing has been amended pursuant to discussions with the Commission staff to establish a revenue cap for Short Term, Limited Term, and Non-Displacement transactions. This cap insures that the total charge for such transaction will not exceed a rate based on the investment costs and energy costs associated with I&M's Rockport Plant Unit No. 1. This amendment also revises the AEP demand charges to "up to" $3.70/kW-week for Short Term power and establishes commensurate rates for Limited Term and Non-Displacement.

Copies of the filing were served upon the Kentucky Public Service Commission, the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, the Public Utilities Commission of Ohio, the State Corporation Commission of Virginia, the Public Service Commission of West Virginia, and the appropriate utilities interconnected with the AEP Parties.

Comment date: September 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. El Paso Electric Co.

[Docket No. ER89–620–000]

August 30, 1989.

Take notice that on August 25, 1989 El Paso Electric Company (EPE) tendered for filing an executed amendment to its Power Sales Agreement with Imperial Irrigation District (IID) dated December 2, 1986. The amendment provides for a reduction in the demand charge for Firm Capacity and System Contingent Capacity and was agreed to by EPE and IID in accordance with section 12.3.1 and Exhibit A of the December 2, 1986 agreement.

EPE requests waiver of the notice requirement in order to permit the amendment to become effective at the point in time, which is projected to occur in December 1995.

EPE states that copies of the filing have been served on IID and the Public Utilities Commission of the State of California.

Comment date: September 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Montana Power Co.

[Docket No. ER89–530–000]

August 30, 1989.

Take notice that on August 16, 1989, Montana Power Company (Montana) tendered for filing supplemental background information requested by staff in the above referenced docket.

Comment dated: September 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Interstate Power Co.

[Docket No. ES89–33–000]

August 31, 1989.

Take notice that on August 28, 1989, Interstate Power Company (Applicant), filed an application with the Federal Energy Regulatory Commission (Commission), pursuant to section 204 of the Federal Power Act, seeking authorization to issue short-term promissory notes to lending banks and/

or commercial paper, not to exceed an aggregate of $50 million outstanding at any one time, said short-term promissory notes to be issued on or before December 31, 1990 and to mature not later than December 31, 1991 with not to exceed twelve-month maturities, and said commercial paper to be issued with not to exceed nine-month maturities and to mature on or before December 31, 1991.

Comment date: September 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Connecticut Light and Power Co.

[Docket No. ER89–586–000]

August 31, 1989.

Take notice that on August 25, 1989, Connecticut Light and Power Company (CL&P) supplemented its earlier filing in this docket. CL&P provided Table 1 to Appendix A of its earlier filing, which table may have been inadvertently omitted from its earlier filing.

Comment date: September 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Montana Power Co.

[Docket No. ER89–565–000]

August 31, 1989.

Take notice that on August 17, 1989, Montana Power Company supplemented its earlier filing in this docket by filing copies of exhibits to the General Transfer Agreement between Montana Power Company and Bonneville Power Administration. These exhibits were inadvertently omitted from the company's earlier filing.

Comment date: September 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Iowa Public Service Co.

[Docket No. ER89–430–000]

August 31, 1989.

Take notice that on Iowa Public Service Company (IPS) on August 29, 1989, tendered for filing an amended filing for its Electric Utility Services Agreement between IPS and the Municipal Electric Utility Services Agreement between IPS and the Interim Wheeling Letter Agreement whereby IPS will supply intermediate and peaking capacity to Waverly, as well as provide dispatch and transmission services. IPS has requested an effective date of May 1, 1989 for the initial rate, and accordingly seeks waiver of the notice requirements of the Commission's rules.

IPS states that copies of this filing were served on Waverly and the Iowa Utilities Board.

Comment date: September 15, 1989, in accordance with Standard Paragraph E end of this notice.

11. Mississippi Power & Light Co.

[Docket No. ER89–623–000]

August 31, 1989.

Take notice that Mississippi Power & Light Company (MP&L) on August 28, 1989 tendered for filing a replacement energy service schedule with, and three letter agreements for the sale of energy to, the Tennessee Valley Authority.

MP&L requests an effective date of August 16, 1989 for the service schedule; July 24, 1989 for the First Letter Agreement; August 1, 1989 for the Second Letter Agreement; and August 5, 1989 for the Third Letter Agreement. Energy Services requests waiver of the Commission's notice requirements under § 35.11 of the Commission's Regulations.

Comment date: September 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21338 Filed 9–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 3944–002, Illinois]

City of Rockdale; Availability of Environmental Assessment

September 5, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Brandon Road Lock and Dam Hydroelectric Project on the Illinois River in Will County, Illinois, near Rockdale, Illinois, and has prepared a draft Environmental Assessment (EA) for the proposed project.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Please affix Project No. 3943–003 to all comments. For further information, please contact Marc Zimmerman, Environmental Assessment Coordinator, at (202) 376–9052).

Lois D. Cashell,

Secretary.

[FR Doc. 89–21339 Filed 9–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–1982–000 et al.]

Equitrans, Inc., et al; Natural Gas Certificate Filings

August 25, 1989.

Take notice that the following filings have been made with the Commission:

1. Equitrans, Inc.

[Docket No. CP89–1982–000]

Take notice that on August 21, 1989, Equitrans, Inc. (Equitrans), 4995 Steubenville Pike, Pittsburgh, PA 15205, filed in Docket No. CP89–1982–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Equitable Resources Marketing Company (ERMC), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated April 1, 1989 under its Rate Schedule ITS, it proposes to transport up to 14,7000 Mcf per day of natural gas or ERMC. Equitrans states that it would transport the gas from various receipt points in Pennsylvania and West Virginia, and would redeliver the gas at the interconnect between Equitrans and Equitable Gas Company in Pennsylvania.

Equitrans advises that service under § 284.223 (a) commenced July 1, 1989, as reported in Docket No. ST89–4416–000. Equitrans further advises that it would transport 9,000 Mcf on an average day and 300,000 Mcf annually.

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP89–1984–000]

Take notice that on August 23, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–1984–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Enron Gas Marketing, Inc. (Enron), a marketer, under the blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated July 20, 1989, as amended, under its Rate Schedule FT–1, it proposes to transport up to 15,000 MMBtu per day equivalent of natural gas for Enron. Northern states that it would transport the gas from receipt points in Beckham and Roger Mills Counties, Oklahoma, and would deliver the gas in Winkler County, Texas, as shown in Appendix "A" of the agreement.

Northern advises that service under § 284.223(a) commenced July 20, 1989, as reported in Docket No. ST89–4451–000 (filed August 11, 1989). Northern further advises that it would transport 11,250 MMBtu on an average day and 5,475,000 MMBtu annually.

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Co. Division of Enron Corporation

[Docket No. CP89–1985–000]

Take notice that on August 23, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. 89–1985–000, a prior notice request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for TranAm Energy, Inc., (TranAm), a marketer of natural gas, under the certificate issued in Docket No. CP86–435–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern requests authorization to transport up to 30,000 MMBtu of natural gas per day, pursuant to a July 25, 1989, agreement between Northern and TranAm from receipt points located in Oklahoma to a delivery point located in Texas. Northern would provide the srvice to TranAm under the provisions of its Rate Schedule FT–1, it is indicated. Northern further states that the average and annual quantities would be 22,5000 MMBtu and 10,950,000 MMBtu, respectively.

Northern states that the transportation of natural gas for TranAm commenced July 25, 1989, for a 120–day period pursuant to § 284.223(a) of the Commission's Regulations as reported in Docket No. ST89–4450–000.

Comment date: October 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21340 Filed 9–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–1983–000, et al.]

Texas Gas Transmission Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corp.

[Docket No. CP89–1983–000]

August 28, 1989.

Take notice that on August 22, 1989, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP89–1983–000, an application pursuant to section 7(b) of the Natural Gas Act requesting the authority necessary to abandon an interruptible transportation service performed by Texas Gas for Gulf Oil Corporation (Gulf), along with certain related facilities, all as more fully set forth in the Application which is on file with the Commission and open to public inspection.

Texas Gas is requesting authority to abandon a transportation service performed for Gulf for which Texas Gas received authority to render by an order issued on January 24, 1963, in Docket No. CP63–35. The service presently certificated involves the transportation by Texas Gas of up to 1,000 Mcf per day, on an interruptible basis, from points of receipt at the Claiborne Plant in Claiborne Parish, Louisiana, and the Church Point Field in Acadia Parish, Louisiana, for delivery to Gulf at its refinery in Cleves, Ohio. Texas Gas is also requesting authority to abandon the meter station constructed by Texas Gas in Hamilton County, Ohio to deliver such gas to the Cleves Refinery.

Texas Gas states that the Gulf refinery at Cleves has been non-operational for several years and that Gulf (now Chevron U.S.A.) has indicated it has no objection to the abandonment of the services or facilities requested by Texas Gas in the application.

Comment date: September 18, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP89–2003–000]

August 29, 1989.

Take notice that on August 28, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89–2003–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Mallon Oil Company (Mallon), under the blanket certificate issued in Docket No. CP88-433–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation service agreement dated June 21, 1989, under its Rate Schedule T–1, it proposes to transport up to 22,000 MMBtu per day equivalent of natural gas for Mallon. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points at the borderline between the States of Arizona and

California near Topock, Arizona, and Blythe, California, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.223(a) commenced July 23, 1989, as reported in Docket No. ST89–4409–000. El Paso further advises that it would transport 10,550 MMBtu on an average day and 3,850,750 MMBtu annually.

Comment date: October 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Texas-Ohio Gas, Inc.

[Docket No. CP89–1998–000]

August 29, 1989.

Take notice that on August 23, 1989, Texas-Ohio Gas, Inc. (Texas Ohio), One Mineral City Plaza, 800 Gessner Suite #1030, Houston, Texas 77024, has filed a complaint against Equitrans, Inc. (Equitrans) alleging that Equitrans is violating the concept of open-access transportation by curtailing interruptible transportation service for Texas Ohio, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Texas Ohio states that during the past year it has contracted to sell natural gas to several end users served by Equitable Gas Company (Equitable), a local distribution company, in the Pittsburgh, Pennsylvania area. Texas Ohio indicates that the only way to transport gas to that distribution company is by means of Equitable's affiliated transmission line, Equitrans. Texas Ohio indicates that it has been notified for the third consecutive month by Equitrans that its interruptible transportation volumes have been curtailed, due to capacity constraints at the major interconnects with Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation. Texas Ohio alleges that in spite of the apparent difficulties related to transporting volumes to their system, Equitrans has managed to have surplus gas on its system that is being offered for sale to the curtailed companies like Texas Ohio, Texas Ohio concludes that Equitrans is clearly violating the concept of open-access transportation.

Comment date: September 18, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. United Gas Pipe Line Co.

[Docket No. CP89–1992–000]

August 29, 1989.

Take notice that on August 24, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, made a prior notice filing pursuant to §§ 157.205 and 284.223 in Docket No. CP89–1992–000, to provide interruptible transportation service on behalf of LaSER Marketing Company, a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the Interruptible Gas Transportation Agreement T1–21–1857, dated October 1, 1988 as amended on June 13, 1989, June 29, 1989, July 5, 1989 and July 20, 1989, proposes to transport a maximum daily quantity of 626,240 MMBtu, and that service commenced June 23, 1989, as reported in Docket No. ST89–4472–000, pursuant to § 284.233(a) of the Commission's Regulations.

Comment date: October 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. El Paso Natural Gas Co.

[Docket No. CP89–1987–000]

August 29, 1989.

Take notice that on August 24, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89–1987–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide interruptible transportation service for Western Gas Processors, Ltd. (Western Gas), under El Paso's blanket certificate issued by the Commission in Docket No. CP88–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

El Paso requests authority to transport up to 55,000 MMBtu equivalent of natural gas per day for Western Gas from any point of receipt on El Paso's system to various delivery points at the borderline between the States of Arizona and California, and in the States of Colorado, New Mexico, and Texas. El Paso states that the estimated daily and annual quantities would be 27,500 MMBtu 10,073,500 MMBtu equivalent of natural gas, respectively. El Paso further states that transportation service under § 284.223(a) commenced on June 22, 1989, as reported in Docket No. ST89–4234–000.

Comment date: October 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Pipeline Corp.

[Docket No. CP89–1980–000]

August 29, 1989.

Take notice that on August 21, 1989, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108–0899, filed in Docket No. CP89–1980–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Fuel Resources Development Co. (Fuel Resources), a marketer, under Northwest's blanket certificate issued in Docket No. CP86–578–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated February 10, 1988, as amended on November 28, 1988, and December 5, 1988, it proposes to receive up to 32,608 million Btu of natural gas per day from Fuel Resources from all transportation receipt points on its system and redeliver the gas at any transportation delivery point on its system. Northwest estimates that the peak day volumes, average day volumes, and annual volumes would be 32,608 million Btu, 100 million Btu, and 36,500 million Btu, respectively. It is stated that on July 20, 1989, Northwest commenced a 120-day transportation service for Fuel Resources under § 284.223(a), as reported in Docket No. ST89–4486–000.

Northwest further states that no facilities need be constructed to implement the service. Northwest states that the agreement, as amended, provides for a primary term expiring February 10, 1993, but that the term would continue on a month to month basis until terminated by 30 days written notice. Northwest proposes to charge the rates and abide by the terms and conditions of its Rate Schedule IT–1.

Comment date: October 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Natural Gas Pipeline Co. of America

[Docket No. CP89–1990–000]

August 29, 1989.

Take notice that on August 24, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1990–000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for Hadson Gas Systems, Inc. (Hadson), a marketer of natural gas, respectively, under its blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport natural gas for Hadson between receipt points in offshore Louisiana, Louisiana, offshore Texas, Texas, New Mexico, Oklahoma, Illinois, Arkansas, Kansas, Colorado, Iowa, Nebraska, and Wyoming and delivery points in Louisiana, Colorado, Texas, offshore Texas, Louisiana, offshore Louisiana, New Mexico and Oklahoma.

Natural further states that the maximum daily, average daily and annual quantities that it would transport for Hadson would be 500,000 MMBtu equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS), 100,000 MMBtu equivalent of natural gas and 36,500,000 MMBtu equivalent of natural gas, respectively.

Natural indicates that in a filing made with the Commission on August 24, 1989, it reported in Docket No. ST89–4546 that transportation service for Hadson had begun on June 20, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: October 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP89–2009–000]

August 30, 1989.

Take notice that on August 28, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–2009–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for WTG Exploration, Inc. (WTG), a producer, under the blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated August 1, 1989, under its Rate Schedule IT–1, it proposes to transport up to 2,000 MMBtu per day equivalent of natural gas for WTG. Northern states that it would transport the gas from receipt points in Crockett County, Texas, and would deliver the gas to multiple delivery points, as shown in Appendix "A" of the agreement.

Northern advises that service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89–4502 (filed August 18, 1989). Northern further advises that it would transport 1,500 MMBtu on an average day and 730,000 MMBtu annually.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Trunkline Gas Co.

[Docket No. CP89–2004–000]

August 30, 1989.

Take notice that on August 28, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–2004–000 a request pursuant to § 284–223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service for Mobil Natural Gas, Inc. (Mobil), a marketer of natural gas, under Trunkline's blanket transportation certificate authority issued April 30, 1987, in Docket No. CP83–586–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states it will receive the gas at various existing points on its system in the offshore areas of Texas and Louisiana and the states of Texas, Louisiana, Tennessee and Illinois and deliver the gas for the account of Mobil to Northern Indiana Public Service Company in the counties of Marshall, Pulaski, Elkhart and Jasper, Indiana.

Trunkline proposes to transport up to 100,000 dt of gas per peak and average day and approximately 36,500,000 dt of gas annually. Trunkline states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on July 1, 1989, pursuant to a transportation agreement dated May 5, 1989. Trunkline notified the Commission of the commencement of the transportation service in Docket No. ST89–4351–000.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. El Paso Natural Gas Co.

[Docket No. CP89–2014–000]

August 30, 1989.

Take notice that on August 29, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP 89–2014–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by sale segments of certain sales laterals to the City of Mesa, Arizona, under the blanket abandonment authorization issued in Docket No. CP82–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to abandon segments of certain facilities by sale to the City of Mesa, Arizona, an existing customer. El Paso states that the facilities are described as a 4½" O.D. sales lateral, known as the Mesa Line, and a 6⅝" O.D. sales lateral looping the Mesa Line, known as the Mesa Loop Line. El Paso would abandon 5.04 miles of the Mesa Line and 2.98 miles of the Mesa Loop Line by conveyance to the City of Mesa. El Paso states that the Mesa Line was constructed and operated under authorization issued in Docket No. G–1345 (10 FPC 644) on November 7, 1951, and the Mesa Loop Line was authorized by Commission order issued February 28, 1958, in Docket No. G–13107 (19 FPC 282).

El Paso states that as a result of the State of Arizona's Price Road Expressway Expansion Project, it has reached an agreement with the Arizona State Highway Department to disconnect segments of the Mesa Line and Mesa Loop Line from the remainder of the El Paso system. It is explained that a portion of these lines would be removed from the ground to allow for expansion of the Price Road Expressway. El Paso states that in order to continue natural gas service to the City of Mesa, El Paso would construct, in replacement thereof, a new 10¾" O.D. line 4.0 miles long to connect to its existing meter stations which provide service to the City of Mesa.

El Paso advises that it would no longer need to use the remaining segments of the Mesa Line and Mesa Loop Line which would be physically separated from its system. In this regard, El Paso states that it has entered into a December 16, 1988, letter agreement providing for the sale of the Mesa Line and Mesa Loop Line to the City of Mesa. El Paso states that the City of Mesa is the only customer served by these

pipeline facilities and the referenced letter agreement reflects the city's consent to the abandonment of such facilities. It is stated that the City of Mesa has indicated to El Paso that the Mesa Line and Mesa Loop Line would be an integrated part of its natural gas distribution system.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Co.

[Docket No. CP89–1996–000]

August 30, 1989.

Take notice that on August 24, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1996–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service on behalf of American Central Gas Companies, Inc. (American Central), a marketer of natural gas under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it would transport a maximum daily quantity of 185,400 MMBtu for American Central pursuant to an Interruptible Gas Transportation Agreement, dated November 9, 1988, as amended on June 9, 1989, between United and American Central. United further states that it would receive the natural gas at existing points of receipt in offshore Louisiana and in the States of Alabama, Louisiana, Mississippi, and Texas and would redeliver the natural gas at existing points of delivery in the States of Alabama, Florida, Louisiana, Mississippi, and Texas. United indicates that the estimated average day and annual quantities to be transported for American Central would be 185,400 MMBtu and 67,671,000 MMBtu, respectively.

United states that it commenced the transportation of natural gas for American Central on June 27, 1989, as reported in Docket No. ST89–4263–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Trunkline Gas Co.

[Docket No. CP89–2006–000]

August 30, 1989.

Take notice that on August 28, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–2006–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of American Central Gas Marketing Company (American Central), under the authorization issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline would perform the proposed interruptible transportation service for American Central, a shipper and marketer of natural gas, pursuant to a transportation agreement dated September 14, 1988 (contract No. T–PLT–1222). The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter unless terminated upon 30 days prior written notice by on party to the other party. Trunkline proposes to transport on a peak day up to 150,000 dekatherm; on an average day up to 20,000 dekatherm; and on an annual basis 7,300,000 dekatherm of natural gas for American Central. Trunkline proposes to receive the subject gas from various existing receipt points in the States of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt point at Douglas County, Illinois, and from the areas of Offshore Louisiana and Offshore Texas. Trunkline would then transport and redeliver the subject gas, less fuel and unaccounted for line loss, to Illinois Power Company in Douglas County, Illinois. It is alleged that American Central would pay Trunkline the effective rate contained in Trunkline's rate schedule PT, which is currently 30.41 cents, which includes the ACA and GRI surcharge. Trunkline avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's regulations. Trunkline commenced such self-implementing service on July 13, 1989, as reported in Docket No. ST89–4352–000.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Transwestern Pipeline Co.

[Docket No. CP89–2012–000]

August 30, 1989.

Take notice that on August 28, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas, filed in Docket No. CP89–2012–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Union Pacific Resources Company (Union Pacific), a producer, under Transwestern's blanket certificate issued in Docket No. CP88–133–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transwestern states that pursuant to a transportation service agreement dated April 20, 1989, it proposes to receive up to 50,000 dt equivalent of natural gas per day from Union Pacific at specified receipt points located in Texas, Oklahoma, and New Mexico and redeliver the gas at specified points located in Texas, Oklahoma, New Mexico, and Arizona. Transwestern estimates that the peak day volumes, average day volumes, and annual volumes would be 50,000 million Btu, 37,500 million Btu, and 18,250,000 million Btu, respectively. It is stated that on July 20, 1989, Transwestern commenced a 120-day transportation service for Union Pacific under § 284.223(a), as reported in Docket No. ST89–4436–000.

Transwestern further states that no facilities need be constructed to implement the service. Transwestern states that the agreement provides for a primary term of fifteen years but the term would continue on a month to month basis thereafter unless terminated at any time subsequent to the primary term by either party upon thirty days prior written notice to the other party. Transwestern proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS–1.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. United Gas Pipe Line Co.

[Docket No. CP89–1995–000]

August 30, 1989.

Take notice that on August 24, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1995–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Seagull Marketing Services (Seagull), a marketer of natural gas, under the blanket certificate issued by the Commission's order No. 509, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 25,750 MMBtu equivalent of natural gas on a peak day, 25,750 MMBtu equivalent on an average day, and 9,398,750,750 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for Seagull's account at South Marsh Island, Block 160, offshore Louisiana, and would deliver equivalent volumes at South Marsh Island, Block 160, offshore Louisiana. It is asserted that the transportation service would be effected utilizing existing facilities and would not require any construction of additional facilities. It is explained that the transportation service commenced July 2, 1989, under the automatic authorization provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4280.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Trunkline Gas Co.

[Docket No. CP89-2016-000]

August 30, 1989.

Take notice that on August 29, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2016-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PPG Industries, Inc. (PPG), an end-user, under the blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated July 6, 1989, under its Rate Schedule PT, it proposes to transport up to 10,000 dekatherms (dt) per day equivalent of natural gas for PPG. Trunkline states that it would transport the gas from receipt points in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas, as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel and unaccounted for line loss, to Illinois Power Company in Douglas County, Illinois.

Trunkline advises that service under § 284.223(a) commenced July 20, 1989, as reported in Docket No. ST89-4543-000. Trunkline further advises that it would transport 8,000 dt on an average day and 3,650,000 dt annually.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Texas Gas Transmission Corp.

[Docket No. CP89-1955-000]

August 30, 1989.

Take notice that on August 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1955-000, as supplemented, August 29, 1989, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for American Central Gas Marketing Company (American Central), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 100,000 MMBtu equivalent of natural gas for American Central, with an estimated average daily quantity of 50,000 MMBtu. It is stated that on an annual basis, American Central estimates a volume of 18,250,000 MMBtu equivalent of natural gas.

Texas Gas states that transportation service for American Central commenced July 1, 1989, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4203.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Mississippi River Transmission Corp.

[Docket No. CP89-1991-000]

August 31, 1989.

Take notice that on August 24, 1989, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis Missouri 63124, filed in Docket No. CP89-1991-000 and application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing MRT to increase the currently authorized firm entitlement it provides to Laclede Gas Company (Laclede) under MRT's Rate Schedule CD-1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT states that it currently provides firm sales service to Laclede pursuant to an existing service agreement that will terminate on October 31, 1989. MRT further states that a new service agreement will become effective November 1, 1989. MRT requests that the Commission approve the new service agreement between MRT and Laclede which would increase Laclede's contract demand from 608,480 Mcf per day to 675,00 MMBtu per day. MRT notes that the new service agreement contract demand is stated in BTU's rather than MCF's in order to be consistent with its pending open access filing in Docket No. CP89-1121-000. According to MRT, it will be required to restate all of its customers' contract demands at their thermal equivalents to be consistent with its pending filing in Docket No. CP89-1121-000, and that such a tariff filing will be made in the near future. Since MRT has not yet filed to convert its unit of measure from an Mcf to an MMBtu basis, it states that the pro forma tariff sheets contained in the application reflect the increased contract demand quantity requested by Laclede as 661,765 Mcf.[1]

MRT states that it will not install any new facilities to provide the service contemplated by the new service agreement, and that the new service agreement will have no effect on MRT's service to any of its existing firm customers, other than Laclede. In that regard, MRT states that it has total firm gas deliverability which will be more than sufficient to meet MRT's systemwide demands after the new service agreement takes effect. MRT adds that it has contracted for a substantial amount of firm transportation capacity with upstream pipelines and that it also has access to additional gas directly from producers through its West Line, which provides MRT direct access to a variety of gas producers in North Louisiana and East Texas. MRT adds that it has also contracted with United Gas Pipe Line Company for firm purchases of 50,000 Mcf per day. Finally, MRT states that its winter deliveries can be supplemented by withdrawals from its existing storage facilities.

According to MRT, the increase in contract demand proposed herein represents peak day requirements which Laclede has historically purchased

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[1] 675.000 MMBtu divided by 1.020 Btu.

under a combination of MRT's Rate Schedule's CD-1, X-19 and occasionally PI-1, when available. MRT states that in Docket No. CP89-2001-000 it proposes to abandon service provided to Laclede under Rate Schedule X-19 concurrently with the implementation of the new service agreement. As such, MRT states that the effective increase in MRT's systemwide service obligation will only be 3.6 percent.

MRT requests expeditious consideration of its application so that the new service agreement may be approved by November 1, 1989, which is the commencement of the 1989 winter heating season. MRT avers that this date is also significant because service is scheduled to commence under the new service agreement, and MRT proposes to abandon its Rate Schedule X-19 service to Laclede on that date. According to MRT, the increased level of service is necessary to ensure that Laclede can adequately serve its system requirements in the current and subsequent heating seasons.

Comment date: September 21, 1989, in accordance with Standard Paragraph F at the end of this notice.

18. Panhandle Eastern Pipe Line Company

[Docket No. CP89-2015-000]

August 31, 1989.

Take notice that on August 29, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2015-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Amgas, Inc. (Amgas), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Panhandle requests authorization to transport, on an interruptible basis, up to a maximum of 1,000 dt equivalent of natural gas per day for Amgas pursuant to a transportation agreement dated June 22, 1989. Panhandle states that it would receive the gas from various existing points of receipt in Colorado, Kansas, Michigan, Ohio, Oklahoma, Texas and Wyoming and redeliver the gas, less fuel and unaccounted for line loss, to Union Electric-Columbia in Boone County, Missouri. Panhandle indicates that the total volume of gas to be transported for Amgas on a peak day would be 1,000 dt; on an average day would be 500 dt; and on an annual basis would be 365,000 dt.

Panhandle states that it commenced the transportation of natural gas for Amgas on July 22, 1989, at Docket No. ST89-4544-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: Octber 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Mississippi River Transmission Corp.

[Docket No. CP89-2001-000]

August 31, 1989.

Take notice that on August 25, 1989, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis Missouri 63124, filed in Docket No. CP89-2001-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a special winter sales service provided to Laclede Gas Company (Laclede) under MRT's Rate Schedule X-19, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT states that Laclede is its largest jurisdictional sales customer and purchases most of its gas supply requirements from MRT under MRT's Rate Schedule CD-1 contained in MRT's FERC Gas Tariff, Second Revised Volume No. 1. It is stated that pursuant to an April 16, 1989, contract between MRT and Laclede, as amended, MRT also provides Laclede a special winter sales service under rate Schedule X-19. MRT advises that the Rate Schedule X-19 service is provided to Laclede on 80 winter days, as selected by Laclede, during the 100-day winter period from November 21 through February 28. MRT sells Laclede up to 36,500 Mcf per day during this period to supplement Laclede's system supply. MRT states that it has restructured its use of outside storage and transportation services and that as part of this restructuring, MRT and Laclede have agreed to terminate the X-19 service. MRT states that it provides the X-19 service to Laclede through gas supplies stored in ANR Storage Company (ANR Storage) facilities in Michigan, and by transportation of certain field production to MRT's system.

MRT states that it has agreed with Laclede to terminate the X-19 service effective November 1, 1989, and that Laclede has advised MRT to abandon the transportation arrangements and ANR Storage service used to deliver the winter service gas and has declined to arrange for its injection into ANR Storage for the coming summer injection season. According to MRT, Laclede no longer has a need for the special winter sales service provided under Rate Schedule X-19. MRT adds that there will be no abandonment of facilities.

MRT states that while it will continue to receive storage service from ANR Storage (and storage-related transportation services from off-system transporters) through March 31, 1990, it has assigned its ANR Storage capacity and its storage-related transportation agreements to Panhandle Eastern Pipe Line Company effective April 1, 1990. MRT states that its actions in this regard were a part of an overall plan to restructure its outside storage and transportation services. MRT states that ANR Storage and the off-system transporters filed applications to effectuate such assignments on May 26, 1989.[2] The application herein to abandon the X-19 service is related to those applications but, according to MRT, is not contingent upon the receipt of regulatory approval for such applications. MRT further states that approval of the assignment of such services will benefit MRT and its customers through the removal of outside storage and transportation costs from MRT's cost of service, a portion of which costs are currently borne directly by Laclede under Rate Schedule X-19.

Under Rate Schedule X-19, MRT states that Laclede is charged for the cost of the field production and associated transportation charges under the transportation component of the rate schedule. MRT states that it separately identifies and determines the volumes and costs related to the field purchases in order to avoid a double collection of such costs through MRT's Purchased Gas Adjustment (PGA) account. Additionally, MRT states it pays storage component charges related to the ANR Storage fees and the storage-related transportation charges into and out of ANR Storage's facilities. Further, a special PGA calculation is made to recognize and account for the storage-related purchases of MRT's Rate Schedule CD-1 gas by Laclede under Rate Schedule X-19.

Upon abandonment of Rate Schedule X-19 service, MRT states it will file to cancel Rate Schedule X-19, and also modify its PGA tariff provisions to eliminate the special calculation for the CD–1 storage component gas sold to Laclede under Rate Schedule X–19.

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[2] MRT states that applications were filed by ANR Storage in Docket No. CP78-432-000; ANR Pipeline Company in Docket No. CP78-545-006; and Michigan Consolidated Gas Company in Docket No. CP89-1523-000.

Comment date: September 21, 1989, in accordance with Standard Paragraph F at the end of the notice.

20. Northern Natural Gas Co.; Division of Enron Corp.

[Docket No. CP89-2010-000]

August 31, 1989.

Take notice that on August 28, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–2010–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas on behalf of Carnation Company (Carnation), an end-user of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to transport on an interruptible basis up to 2,000 MMBtu of natural gas equivalent per day on behalf of Carnation pursuant to a transportation agreement dated July 27, 1989, between Northern and Carnation. Northern would receive the gas at existing delivery points in Oklahoma, Kansas, Texas, Iowa and Minnesota and redeliver equivalent volumes, less fuel used, at an existing delivery point in Iowa.

Northern further states that the estimated average daily and annual quantities would be 1,500 MMBtu and 730,000 MMBtu, respectively. Service under § 284.223(a) commenced on August 18, 1989, as reported in Docket No. ST89–4501–000, it is stated.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. United Gas Pipe Line Co.

[Docket No. CP89-1993-000]

August 31, 1989.

Take notice that on August 28, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77152–1478, filed in Docket No. CP89–1993–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texaco Gas Marketing (Texaco), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 360,500 MMBtu per day for Texaco. United states that construction of facilities would not be required to provide the proposed service.

United further states that the maximum day, average day, and annual transportation volumes would be approximately 360,500 MMBtu, 360,500 MMBtu and 131,582,500 MMBtu respectively.

United advises that service under § 284.223(a) commenced May 25, 1989, as reported in Docket No. ST89–4279.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. United Gas Pipe Line Co.

[Docket No. CP89-1997-000]

August 31, 1989.

Take notice that on August 24, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77152–1478, filed in Docket No. CP89–1997–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Conoco, Inc. (Conoco) as agent for E.I. duPont de Nemours and Company, an end user of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 15,450 MMBtu per day for Conoco. United states that construction of facilities would not be required to provide the proposed service.

United further states that the maximum day, average day, and annual transportation volumes would be approximately 15,450 MMBtu, 15,450 MMBtu and 5,639,250 MMBtu respectively.

United advises that service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89–4207.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. ANR Pipe Line Co.

[Docket No. CP89-2023-000]

August 31, 1989.

Take notice that on August 29, 1989, ANR Pipe Line Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–2023–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Xebec Gas Co. (Xebec), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport, on an interruptible basis, up to 7,463 MMBtu per day for Xebec. ANR states that construction of facilities would not be required to provide the proposed service.

ANR further states that the maximum day, average day, and annual transportation volumes would be approximately 7,463 MMBtu, 7,463 MMBtu and 2,724,000 MMBtu respectively.

ANR advises that service under § 284.223(a) commenced July 1, 1989, as reported in Docket No. ST89–4292.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Stingray Pipeline Co.

[Docket No. CP89-2018-000]

August 31, 1989.

Take notice that on August 29, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–2018–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for EnMark Gas Corporation (EnMark), a marketer, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated April 3, 1989, under its Rate Schedule ITS, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for EnMark. Stingray states that it would transport the gas from various receipt points on its system as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less gas attributable to fuel used and unaccounted for line loss, in Louisiana and offshore Texas.

Stingray advises that service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89–4434. Stingray further advises that it would transport 7,000 MMBtu on an average day and 2,555,000 MMBtu annually.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. Iowa Public Service Co.

[Docket No. CP89-2002-000]

August 31, 1989.

Take notice that on August 25, 1989, Iowa Public Service Company (IPS), 401 Douglas, P.O. Box 778, Sioux City, Iowa 51102, filed in Docket No. CP89–2002–000 an application requesting the Commission issue IPS a section 7(f) determination for a service area comprised of Union, Clay, Turner and Lincoln Counties of South Dakota, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

IPS also requests that the Commission make a determination that IPS qualifies as a local distribution company (LDC) in the area proposed as a section 7(f) service area.

IPS states that it owns and operates a pipeline which extends from Sioux City, Iowa, across the South Dakota border (Big Sioux River) providing natural gas service at retail to the communities of North Sioux City and McCook Lake in South Dakota. All the gas transported serves both residential and commercial customers and is not for resale. IPS indicates that it has one arrangement to sell gas for resale off the ANR Pipeline Company (ANR) system whereby it purchases gas from ANR for resale to Great River Gas Company.

Comment date: September 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

26. Northwest Pipeline Corp.

[Docket No. CP89-2030-000]

August 31, 1989.

Take notice that on August 29, 1989, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108 filed in Docket No. CP89–2030–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of GasMark, Inc. (GasMark), under its blanket authorization issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for GasMark, a marketer of natural gas, pursuant to a transportation agreement dated June 10, 1989, as amended June 10, 1989, and July 10, 1989, under its Rate Schedule TI–1 (contract number 5612D). The term of the transportation agreement is from the date of execution and shall remain in full force and effect for a term continuing on a month to month basis, subject to termination upon 30 business days written notice by either party. Northwest proposes to transport on a peak day up to 5,500 MMBtu; on an average day up to 1,700 MMBtu; and on an annual basis 620,000 MMBtu for GasMark. Northwest proposes to transport the subject gas through its transmission system from wells located in Grand County, Utah; La Plata County, Colorado and Rio Arriba and San Juan Counties, New Mexico to delivery points located in Grand County, Utah; La Plata County, Colorado and Rio Arriba County, New Mexico. It is stated that the natural gas transported under the transportation agreement may be received on behalf of GasMark by any local distribution company or affiliate of GasMark which has an appropriate contractual arrangement with GasMark. Northwest avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on July 1, 1989, as reported in Docket No. ST89–4428–000.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. United Gas Pipe Line Co.

[Docket No. CP89-1994-000]

August 31, 1989.

Take notice that on August 24, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1994–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of MidCon Marketing Company (MidCon), under the blanket certificate issued in Docket No. CP88–6–00 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that pursuant to a Transportation Agreement dated May 23, 1989, it proposes to transport, on an interruptible basis, up to a maximum of 41,200 MMBtu of natural gas for MidCon under Rate Schedule ITS.

United also states that it will transport approximately, 41,200 MMBtu on an average day and approximately 15,038,000 on an annual basis.

United further states it commenced on July 1, 1989, as reported in Docket No. ST89–4281–000.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. Stingray Pipeline Co.

[Docket No. CP89-2019-000]

August 31, 1989.

Take notice that on August 29, 1989, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–2019–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Phillips Petroleum Company (Phillips), a producer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray requests authorization to transport, on an interruptible basis, up to a maximum of 10,000 MMBtu of natural gas per day for Phillips from receipt points located in Louisiana, Offshore Louisiana and Offshore Texas to a delivery point located in Cameron Parish, Louisiana. Stingray anticipates transporting 5,500 MMBtu of natural gas on an average day and an annual volume of 2,007,500 MMBtu. Stingray advises that service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89–4433–000.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

29. Texas Gas Transmission Corp.

[Docket No. CP89-1986-000]

August 31, 1989.

Take notice that on August 24, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed a request with the Commission in Docket No. CP89–1986–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to add a delivery point for its service to

Citizens, Gas and Coke Utility (C, G & C), a local distribution company, under the blanket certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is open to public inspection.

Specifically, Texas Gas requests authority to add the existing Worthington No. 2 meter station in Greene County, Indiana, as a delivery point to its proposed service agreement with C, G & C. Texas Gas states that it installed the Worthington No. 2 meter station in 1987 for the sole purpose of delivering natural gas volumes to C, G & C under section 311 of the Natural Gas Policy Act of 1978. Texas Gas now states that it needs this meter station as a jurisdictional delivery point for the sales service to C, G & C authorized January 11, 1989, in Docket No. CP87–205–001 (46 FERC ¶61,010).

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

30. ANR Pipeline Co.

[Docket No. CP89–2027–000]

August 31, 1989.

Take notice that on August 29, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center Detroit, Michigan 48243, filed in Docket No. CP89–2027–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport natural gas on an interruptible basis for Coastal Gas Marketing Co. (Coastal). ANR explains that service commenced July 1, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–4296. ANR further explains that the peak day quantity would be 900,000 dekatherms, the average daily quantity would be 900,000 dekatherms, and that the annual quantity would be 328,500,000 dekatherms. ANR explains that it would receive natural gas at existing points of receipt in the states of Kansas, Louisiana, Oklahoma, Texas and Wisconsin, and the Offshore Texas and Louisiana gathering areas. ANR states that it would deliver the gas to Coastal at existing interconnections located in the state of Michigan.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21341 Filed 9–11–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90–1–61–000]

Bayou Interstate Pipeline System; Proposed Change in FERC Gas Tariff

September 5, 1989.

Take notice that on August 31, 1989, Bayou Interstate Pipeline System (Bayou) tendered for filing Twelfth Revised Sheet No. 4 to be a part of its FERC Gas Tariff.

The proposed tariff sheet provides a revised Annual Charges Adjustment (ACA) that the Federal Energy Regulatory Commission ("Commission") assesses Bayou under § 382.103 of the Commission's Regulations.

Bayou states that a copy of this filing was mailed to Bayou's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211. All such motions or protests must be filed on or before September 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21342 Filed 9–11–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90–1–32–000]

Colorado Interstate Gas Co.; Filing

September 5, 1989.

Take that on August 31, 1989, Colorado Interstate Gas Company ("CIG") submitted for filing tariff sheets reflecting a decrease of 1.01¢ per Mcf in the ACA adjustment charge as filed on August 31, 1988 resulting in a new ACA rate of .17¢ per Mcf based on CIG's 1989 ACA billing.

Pursuant to section 25 of CIG's FERC Original Volume No. 1 Tariff and Article No. 20 of CIG's Volume No. 1–A Tariff, CIG will file at least thirty days prior to the proposed effective date to reflect any changes in the ACA billing charge.

CIG has received its 1989 ACA billing, and is making this filing to reflect the 0.01¢ reduction to be effective October 1, 1989.

CIG submits for filing six copies of the following tariff sheets to reflect the reduction in the Annual ACA billing charge rate:

Original Volume No. 1 Tariff:

Substitute Forty-First Revised Sheet No. 7
Substitute Forty-First Revised Sheet No. 8

Volume No. 1–A Tariff:

Fourth Revised Sheet No. 4

Original Volume No. 2 Tariff:

Ninth Revised Sheet No. 187
Eighth Revised Sheet No. 463
Sixth Revised Sheet No. 517A
Eighth Revised Sheet No. 544
Sixth Revised Sheet No. 593A
Seventh Revised Sheet No. 625
Seventh Revised Sheet No. 662
Seventh Revised Sheet No. 674
Sixth Revised Sheet No. 697
Sixth Revised Sheet No. 774
Sixth Revised Sheet No. 801A
Sixth Revised Sheet No. 862
Fifth Revised Sheet No. 885
Fifth Revised Sheet No. 911
Fifth Revised Sheet No. 934
Fifth Revised Sheet No. 904
Fifth Revised Sheet No. 995
Fifth Revised Sheet No. 2021
Fifth Revised Sheet No. 1046
Fifth Revised Sheet No. 1101
Fifth Revised Sheet No. 1182
Fifth Revised Sheet No. 1216
Fifth Revised Sheet No. 1248
Fifth Revised Sheet No. 1284
Fifth Revised Sheet No. 1335
Fifth Revised Sheet No. 1347
Fifth Revised Sheet No. 1370
Fourth Revised Sheet No. 1450
Fourth Revised Sheet No. 1483

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21343 Filed 9–11–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA89–9–000]

Corpus Christi Transmission Co.; Petition for Adjustment

September 5, 1989.

Take notice that on August 21, 1989, Corpus Christi Transmission Company (Corpus Christi) filed pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from § 284.123(b)(ii) of the Commission's regulations to permit Corpus Christi to base its rates for NGPA section 311(a) transportation services on the rate contained in Tariff Sheet No. T–05 currently on file with the Railroad Commission of Texas (Texas). Corpus Christi states that the gas will be transported under transportation agreements providing for rates not greater than comparable intrastate service as reflected in rates filed with Texas. Corpus Christi further states that Tariff Sheet No. T–05 provides for a rate of $.30 per MMBtu.

Corpus Christi submits that since it does not render city gate service it is requesting this adjustment. Corpus Christi further submits that the adjustment it seeks is necessary to prevent special hardship and inequity that would otherwise result from requiring it to submit a § 284.123(b)(2) filing, and would avoid unnecessary dual agency review.

The procedures applicable to the conduct of this adjustment proceeding are found in subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**. The petition is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21344 Filed 9–11–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90–1–34–000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 5, 1989.

Take notice that on August 31, 1989, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC Gas Tariff, to be effective October 1, 1989.

FERC Gas Tariff, First Revised Volume No. 1

Ninth Revised 37th Revised Sheet No. 8

FERC Gas Tariff, Original Volume No. 2

Eighth Revised 59th Revised Sheet No. 128

Reason for Filing

FGT states that above-referenced tariff sheets are being filed to revise the Annual Charge Adjustment (ACA) to .17¢/Mcf (.017¢/therm), as authorized by the Commission for the 1990 fiscal year.

FGT states that copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person whishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21345 Filed 9–11–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90–1–27–000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

September 5, 1989.

Take notice that North Penn Gas Company (North Penn) on August 31, 1989 tendered for filing Ninety-Fifth Revised Sheet No. PGA–1 to its FERC Gas Tariff, First Revised Volume No. 1.

North Penn states that the filed tariff sheet reflects revision, pursuant to § 154.38(d)(6) of the Commission's regulations, of North Penn's Annual Charge Adjustment (ACA) surcharge to recover the Commission's annual charges billing. The new ACA surcharge rate is 0.17¢ per Mcf.

North Penn proposes an effective date of October 1, 1989.

North Penn states that copies of the filing have been served on the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of North Penn's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-21346 Filed 9-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-72-000]

Pelican Interstate Gas System; Proposed Changes in FERC Gas Tariff

September 5, 1989.

Take notice that on August 31, 1989, Pelican Interstate Gas Company (Pelican) tendered for filing Second Revised Sheet No. 2A to be a part of its FERC Gas Tariff.

The proposed tariff sheet provides a revised Annual Charges Adjustment (ACA) that the Commission assesses Pelican under Part 382.103 of the Commission's Regulations.

Pelican states that a copy of this filing was mailed to Pelican's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests should be filed on or before September 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[Docket No. TM 90-1-80-000]

Tarpon Transmission Co.; Tariff Filing

September 5, 1989.

Take Notice that on August 21, 1989, Tarpon Transmission Company (Tarpon) tendered for filing the following revised tariff sheet to be effective October 1, 1989:

Original Volume No. 1

Second Revised Sheet No. 2-A

On July 14, 1989, the Commission notified Tarpon of a downward revision of 0.01 cents per Mcf to the unit rate of the Annual Charge Adjustment Clause (ACA) to be applied to interstate gas pipeline rates for recovery of 1989 Annual Charges, pursuant to Order 472. This revision, reflected in the above-described tariff sheet, authorizes Tarpon to collect 0.17 cents for each jurisdictional Mcf of natural gas transported to be applied to the 1989 Annual Charges assessed Tarpon by the Commission under Part 382 of the Commission Regulations.

Tarpon requests an effective for this revised tariff sheet of October 1, 1989.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions of protest should be filed on or before September 13, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-21348 Filed 9-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM 90-1-56-000]

Valero Interstate Transmission Co.; Proposed Change in Rates

September 5, 1989.

Take Notice that on August 31, 1989, Valero Interstate Transmission Company ("Vitco") tendered the following tariff sheets for filing containing changes to the ACA unit rate in each applicable rate schedule:

Original Volume No. 1

16th Revised Sheet No. 14.
14th Revised Sheet No. 14.2.
3rd Revised Sheet No. 21.12.
2nd Revised Sheet No. 29.9.

Original Volume No. 2

19th Revised Sheet No. 6.
3rd Revised Sheet No. 7.
2nd Revised Sheet No. 12.50.

The proposed effective date for the above filings is October 1, 1989. Vitco requests a waiver of any Commission regulations or orders which would prohibit implementation by October 1, 1989.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC., 20426, in such accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 384.211 and 385.214). All such petitions or protests should be filed on or before September 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-21349 Filed 9-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 5, 1989.

Take notice that Williams Natural Gas Company (WNG) on August 31, 1989, tendered for filing Fourteenth Revised Sheet No. 6 and Thirteenth Revised Sheet No. 7 to its FERC Gas Tariff, Original Volume No. 1. WNG states that pursuant to Article 24 of the General Terms and Conditions of such Tariff, it proposes to decrease its rates effective October 1, 1989, to reflect a decrease in the FERC Annual Charge Adjustment from $.0018 to $.0017 for the fiscal year beginning October 1, 1989, per the Commission's Annual Charges Billing issued July 14, 1989.

WNG states that copies of its filing were served on all jurisdictional

customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell.
Secretary.

[FR Doc. 89-21350 Filed 9-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-76-000]

Wyoming Interstate Company, Ltd., Filing

September 5, 1989.

Take note that on August 31, 1989, Wyoming Interstate Company, Ltd., ("WIC") submitted for filing tariff sheets reflecting a decrease of 0.01¢ per Mcf in the ACA adjustment charge as filed on August 31, 1988 resulting in a new ACA rate of 0.17¢ per Mcf based on WIC's 1989 ACA billing.

Pursuant to section 20.3 of WIC's FERC Original Volume No. 1 tariff, WIC will file at least thirty days prior to the proposed effective date to reflect any changes in the ACA billing charge. WIC has received its 1989 ACA billing, and is making this filing to reflect the 0.01¢ reduction to be effective October 1, 1989.

WIC submits for filing six copies of Eighth Revised Sheet No. 5 to its FERC Gas Tariff, Original Volume No. 1, to reflect the reduction in the Annual ACA billing charge rate.

WIC states that copies of this filing are being served on all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-21351 Filed 9-11-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3644-9]

Science Advisory Board Executive Committee; Open Meeting—October 23-24, 1989

Under Public Law 92-463, notice is hereby given that the Executive Committee of the Science Advisory Board (SAB) will meet on October 23 from 8:30 a.m. to 5:00 p.m. and on October 24 from 8:30 a.m. to 3:00 p.m. at the Holiday Inn, 550 C Street SW., Washington, DC 20024.

The purpose of the meeting is to enable the Executive Committee to act on reports from its subcommittees and standing committees that have been completed since the last meeting and receive status reports from each of the committees. Some action items include: SAB Report on "Dioxin Potency and Exposure"; SAB Report on Equilibrium Partitioning for Assessing Sediment Quality; SAB Review of Global Climate Change Research Plan; the SAB Review of Lead Carcinogenicity and Agency Science and Policy; and SAB Review of Products of Incomplete Combustion (PIC) of Hazardous Wastes. The Committee will receive a status report on the SAB Mission and Functioning Subcommittee and a status report on the Management and Organization Study of the SAB.

The meetings are open to the Public. Any member of the public wishing to attend should notify Joanna Foellmer or Dr. Donald G. Barnes, Staff Director, Science Advisory Board, at 202-382-4126 by October 18, 1989.

Dated: September 5, 1989.

Donald G. Barnes,
Staff Director, Science Advisory Board.

[FR Doc. 89-21406 Filed 9-11-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3646-2]

Establishment and Open Meeting of the Negotiated Rulemaking Advisory Committee for the Volatile Organic Chemical Equipment Leak Rule

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the establishment of an Advisory Committee to negotiate a rule to control fugitive emissions of toxic volatile organic compounds (VOCs) from chemical equipment leaks. We have determined that this is in the public interest and will assist the Agency in performing its duties prescribed in Sections 111 and 112 of the Clean Air Act, as amended.

Copies of the Committee Charter will be filed with the appropriate committees of Congress and the Library of Congress.

The committee's initial meeting will be held on September 27, 1989 from 9:00 am to 12:30 pm and on September 28 from 9:00 am to 5:00 pm at the Quality Hotel Capitol Hill, 415 New Jersey Avenue N.W., Washington, D.C. The Committee's facilitator has notified interested parties of the meeting dates. The purpose of the meeting is to complete outstanding procedural matters, determine how best to address the substantive issues and begin to address them.

An orientation for Committee members on September 27, 1989 at from 2:00 to 5:00 pm at the Quality Hotel Capitol Hill, Washington, DC.

Persons needing further information on the substantive matters of the rule should call Robert Ajax, Office of Air Quality Planning and Standards, EPA, (919) 541-5579. Persons needing further information on procedural matters should call Deborah Dalton, Regulatory Negotiation Project, EPA, at (202) 382-5495 or the Committee's facilitator, Philip Harter at (202) 887-1033.

SUPPLEMENTARY INFORMATION:

Background

Fugitive emissions of toxics and volatile organic compounds (VOCs) from equipment leaks (valves, etc.) contribute significantly to air quality problems. For example, some estimates indicate that fugitive emissions account for approximately one third of all routine (non-accidental) toxic air emissions. Recent reports completed under section 313 of the Superfund Amendments and Reauthorization Act (SARA) included 385,878 tons per year from fugitive sources. Moreover, becaue they are released near the ground, the impact from fugitive emissions is 10-40 times greater than equal releases from stacks.

Current regulations adopted under sections 111 and 112 of the Clean Air Act and in State Implementation Plans (SIPs) have been effective in heightening awareness of the significance of the source and in stimulating control efforts. The rules basically require that equipment in place be inspected quarterly for leaks with a portable hydrocarbon detector. If concentrations in excess of 10,000 ppm are found, the component is identified as a "leaker" and maintenance is required. This approach is known as "leak detection and repair" (LDAR).

EPA studies from the early 1980s indicated that typical uncontrolled chemical plants and refineries have a leak frequency of 11 to 12 percent. Maintenance studies indicate this can be reduced by about 60–70 percent with the current leak detection and repair program. The actual frequency rate, and associated emissions, varies widely, however, and is believed to be a function of: original design (e.g. number of valves), age of the process unit, equipment selected, quality of maintenance, standard operating procedures used by the company, training provided to employees, and motivation. Recent data for highly toxic chemicals demonstrate that leak frequencies in the 0.0 to 2 percent range can be achieved in some situations. But, no one is sure what combination of factors guarantees such results, nor how to require them through enforceable regulations.

Accurate quantification of fugitive emissions from chemical equipment leaks is becoming a high priority, yet regulatory approaches currently being used do not develop accurate profiles of emissions. Specific emission levels are necessary for baseline and residual risk assessments needed for making regulatory decisions. These include setting of new regulations, issuing permits for new facilities or establishing appropriate emission fees. Further, companies must report emissions under the Community Right to Know Act (Title III of the Superfund Amendments and Reauthorization Act (SARA)). These figures were widely publicized early this summer and sparked considerable public attention on the level of emissions of toxics and VOCs.

Under the current approach, and in the absence of comprehensive component by component testing, a company complying with the regulations is assumed by EPA to achieve an estimated percentage reduction in the baseline emissions. These, in turn, are based entirely on an uncontrolled plant using the technology that was prevalent at the time the regulations were written. The actual emission levels at many facilities are probably significantly different than these assumptions. The best controlled plants emit less than the typical plants using LDAR.

Theoretically, the actual emissions from chemical equipment leaks could be measured; however, it is expensive and impractical to do so. Indirect measurements have been used in relatively few plants thus far, but their use is increasing. The accuracy of these indirect approaches varies with the procedure, with the more expensive ones providing reasonable accuracy; interestingly, however, the accuracy of these measurements may be the poorest at the best controlled plants.

Not only does the current regulatory appraoch not achieve accurate estimates of the actual emissions, it does not provide incentives or credit to firms for establishing programs and facilities that achieve the best control. Nor does the approach ensure that emission rates are reduced to levels that are readily achievable with available technology.

Because of these shortcomings in the current regulatory approach to control of VOCs from equipment leaks, EPA decided that a new strategy is needed. The new method would provide a more accurate picture of the actual emissions from fugitive sources and would assure that emissions rates are reduced to levels achievable with best technology. New regulations could be based on performance and/or emissions and could give credit for original plant design. EPA has concluded, however, that developing such a regulation using traditional data gathering and analysis would be very difficult, costly, time consuming and controversial.

Scope of the Proposed Negotiation

On April 25, 1989, EPA announced its intention to form an Advisory Committee to Negotiate A New Approach for Control of Volatile Organic Chemical Equipment Leaks (54 FR 17944, 17945). This notice announced an informational meeting in May, 1989 with the start of committee deliberations in June or July 1989. As a result of information received during and after the informational meeting and from comments provided to the docket, the decision on whether to proceed with negotiating this rule was delayed to consider modification in the scope of the negotiation.

Discussions with many of the potential parties revealed that without addressing actual levels in some manner or another, the issue was not ripe for resolution: the level of control would not have been defined in the negotiations but rather would have been set in a subsequent EPA proceeding. Moreover, the nature of the approach might also be a function of the actual requirements. Further, without addressing the regulation itself, the parties would not be participating in the actual decision as to the critical aspect of the rule: what is to be required with respect to fugitive emissions.

Equally important, some parties were vitally interested in revising the emission factors while others were vitally interested in ensuring a reduced level of emissions; combining the two would make for more productive negotiations. Broadening the negotiations to encompass the minimum requirements of technology based controls would make the negotiations sufficiently tangible and ripe so that the committee could adequately address the issues.

In subsequent discussions, several parties agreed explicitly with the need to include technological stringency and requested EPA to include it in the negotiations. EPA and the parties believe that this negotiation is not the forum to decide the goals or limits of specific risk-based standards.

EPA has made the decision to focus the negotiation on the fugitive emissions from equipment leaks for source categories that would be affected by EPA's forthcoming HON (hazardous organic NESHAPS (National Emission Standards for Hazardous Air Pollutants)). The source categories and compounds expected to be affected by the HON regulation are listed below in Table 1.

The current objectives of the proposed regulatory negotiation are:

- Revise the emission factors for fugitive emissions of VOCs from equipment leaks, leading to a better quantification of the magnitude of the leaks;
- Develop a new standard for control of toxic fugitive organic emissions from equipment leaks at HON source categories based upon best technology and lowest achievable rates. This standard would be designed to reflect the maximum degree of reduction of emissions of toxic organic compounds as defined in the Administration's proposed amendments to section 112 of the Clean Air Act (House Bill—H.R. 3030 and Senate Bill—S. 1490).
- Develop a format that could be used to implement a risk based standard for toxic organic emissions from equipment leaks. Specific risk limits or goals will not be a topic for negotiation.

Parties to the Negotiation

The following parties have been identified as tentative committee members. Membership will be finalized at the initial meeting.

Robert Ajax, U.S. EPA, Office of Air Quality Planning & Standards, Research Triangle Park, NC
David Dunn, Sterling Chemical Corp., Texas City, TX
Thomas Kittleman, E.I. DuPont de Nemours & Co., Newark, DE, On Behalf of Chemical Manufacturers Assn.
David Doniger and Allen Hershkowitz, Natural Resources Defense Council, Washington, DC. and New York, NY
Anupom Ganguli, South Coast Air Quality Management District, El Monte, CA
Les Montgomery, Texas Air Control Board, Austin, TX
Gus Von Bodungen, Department of Environmental Quality, Baton Rouge, LA
Harvele Rogers, Air Pollution Control District, Louisville, KY
Bruce Bowers, Standard Chlorine, Delaware City, DE
John Prokop, Independent Liquid Terminals Assn., Washington, DC.
International Institute for Synthetic Rubber Producers, Houston, TX.

Several other parties have been contacted and are considering whether to participate. Organizations or individuals that believe these parties do not adequately represent their interests should contact the committee facilitator, Philip Harter, at (202) 887–1033 or attend the initial meeting.

Dated: September 8, 1989.

Terry Davies,

Assistant Administrator, Office of Policy, Planning and Evaluation.

TABLE 1—HON SOURCE CATEGORIES AND CHEMICAL COMPOUNDS

Source Category	Compounds
Butadiene Production	BD
SBR Production	BD
Polybutadiene	BD
Neoprene/Chloroprene	BD
Chlorine Production	CT
CFC Production	CT, CF, PCE
EDC Production	EDC
EO Production	EO
Pesticide Production	CT, EDC, MC
Chemical Plants (Chlorinated Compound Users).	CT, MC, PCE, CF, EDC
Chlorinated HC Production.	CT, MC, PCE, CF, TCE
Pharmaceutical Manufacturing.	MC, CT
Other Production Processes that Use Butadiene.	BD

Compounds are abbreviated as follows: (BD) Butadiene, (CT) Carbon Tetrachloride, (CF) Chloroform, (PCE) Perchloroethylene, (EDC) Ethylene Dichloride, (EO) Ethylene Oxide, (MC) Methylene Chloride, (TCE) Trichloroethylene.

[FR Doc. 89–21574 Filed 9–11–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

August 31, 1989.

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0029.

Title: Application for New Broadcast Station License.

Form No.: FCC 302.

Action: Revision.

Respondents: Business or other for-profit, non-profit institutions, small businesses or organizations.

Frequency of Response: On occasion.

Estimated Annual Burden: 2,922 Responses; 283,856 Hours.

Needs and Uses: The FCC 302 is required to be filed by all AM, FM and TV stations to obtain a new or modified broadcast station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. Data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit and to update FCC station files. Data is then extracted from the FCC 302 for inclusion in the license to operate the station.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89–21326 Filed 9–11–89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 8–21–89 AND 9/1/89

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Community Hospitals of Indiana, Inc., University Heights Hospital, Inc., University Heights Hospital, Inc	89–2385	08/22/89
Ralph J. Roberts, QVC Network, Inc., QVC Network, Inc	89–2395	08/22/89
Time Warner Inc. (formerly Time Incorporated), Centel Corporation, Centel Cable Television of Ohio	89–2398	08/22/89
Yamato,Kogyo Co., Ltd., Razorback Steel Corporation, Razorback Steel Corporation	89–2399	08/22/89
Sumitomo Corporation, Razorback Steel Corporation, Razorback Steel Corporation	89–2400	08/22/89

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT:

Dated: September 1, 1989.

The Notice lists the following

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 8–21–89 AND 9/1/89—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Marukin Shoji Co., Ltd., LAACO, Ltd. Riviera Associates	89–2401	08/22/89
Kenneth R. Thomson, Thomas E. Worrell, Jr., Worrell Enterprises, Inc	89–2408	08/22/89
Sara Lee Corporation, Matt F. Gorges, Gorges Foodservices, Inc	89–2411	08/22/89
Garden States Newspapers, Inc., Kenneth R. Thomson, Thomson Newspapers Holdings Inc	89–2417	08/22/89
Kenneth R. Thomson, Garden State Newspapers, Inc., eight newspapers	89–2418	08/22/89
Inspiration Resources Corporation, Alan Bond, Bond Gold Placer Corp	89–2446	08/22/89
Akzo N.V., Nylon Corporation of America, Nylon Corporation of America	89–2448	08/22/89
Exxon Corporation, Occidental Petroleum Corporation, Oxy USA Inc	89–2486	08/22/89
Michel Gaucher, Steinberg Inc., Steinberg Inc	89–2535	08/22/89
Cemex, S.A., Marmac Corporation, Aggregate Transpodation, Inc	89–2357	08/23/89
Charter Consolidated, P.L.C., Romolo Panetti, Speno Ballast Cleaning Company	89–2436	08/23/89
Daniel E. Heffernan, Danaher Corporation, Mohawk Rubber Company	89–2459	08/23/89
The Yokohama Rubber Company, Limited, Daniel E. Heffernan, The Mohawk Rubber Company	89–2461	08/23/89
British Gas, plc, Panhandle Eastern Corporation, Texas Eastern North Sea Inc	89–2462	08/23/89
Nortek, Inc., Federal-Mogul Corporation, Federal-Mogul Corporation	89–0041	08/24/89
Nortek, Inc., Federal-Mogul Corporation, Federal-Mogul Corporation	89–0170	08/24/89
HCS Technology, N.V., Savin Corporation, Savin Corporation	89–2382	08/24/89
Oppenheimer & Co., L.P., NEOAX, Inc., Nuclear Automation, Inc	89–2472	08/24/89
Tokyo General Corporation, Century City Holdings LTD., Kona Operating Partnership L.P	89–2419	08/25/89
Noel Group, Inc., Global Natural Resources, Inc., Global Natural Resources, Inc	89–2436	08/25/89
PSE Inc., General Electric Corporation, General Electric Capital Corporation,	89–2460	08/25/89
W.W. Grainger, Inc., Vonnegut Industrial Products, Inc., Vonnegut Industrial Products, Inc	89–2493	08/25/89
Bunzl plc, Bennett Family Partnership, Benco Building Products, Inc	89–2494	08/25/89
Harrisons & Crosfield plc, Grossman's Inc., Grossman's Inc	89–2495	08/25/89
Ramada Inc., H&M Station, Inc., H&M Station, Inc	89–2496	08/25/89
Golder, Thomas, Cressey Fund III Limited Partnership, S.A. Louis Dreyfus et Cie, Louis Dreyfus Propane Corporation	89–2506	08/25/89
ML Media Partners, L.P., Anaheim Broadcasting Corporation, Anaheim Broadcasting Corporation	89–2515	08/25/89
Texfi Industries, Inc., Kingstree Knits, Inc., Kingstree Knits, Inc	89–2521	08/25/89
Quantum Fund N.V., Crystal Oil Company, Crystal Oil Company	89–2526	08/25/89
The News Corporation Limited, The News Corporation Limited, MKV/SLM III Company, W-Oal/SLM IV Company & Multi-plc	89–2536	08/25/89
Corporate Capital Limited, Sports & Recreation, Inc., Sports & Recreation, Inc	89–2539	08/25/89
Pennzoil Company, Jiffy Lube International, Inc., Jiffy Lube International, Inc	89–2414	08/28/89
Whitman Corporation, Grand Metropolitan, P.L.C., The Pillsbury Company (Van de Kamp division)	89–2480	08/28/89
Pulitzer Voting Trust, c/o Ronald H. Ridgeway, The Liberty Corporation, Cosmos Broadcasting Corporation	89–2491	08/28/89
Polar Construction Corporation, The Turner Corporation, F.N. Thompson, Inc	89–2497	08/28/89
BE&K, Inc., The Turner Corporation, F.N. Thompson, Inc	89–2498	08/28/89
McCown De Leeuw & Co., Continental Graphics Holdings, Inc., Graphic Arts Center, Inc	89–2505	08/28/89
Ameritech Pension Trust, a pension trust, William A. Estes, Jr., CID Development Co. (dba Estes Development Co.)	89–2511	08/28/89
Blue Circle Industries PLC, First Chicago Corporation, Georgia Marble Aggregates Corporation	89–2561	08/28/89
TELECOM*USA, Inc., Async Corporation, Async Corporation	89–2392	08/29/89
PacifiCorp, Societe Nationale Elf Aquitaine Texasgulf Minerals and Metals, Inc	89–2544	08/29/89
Warburg, Pincus Capital Company L.P., Mattson Instruments, Inc., Mattson Instruments, Inc	89–2397	08/29/89
Noranda Inc., Falconbridge, Limited, Falconbridge, Limited,	89–2530	08/30/89
Trelleborg AB, Falconbridge, Limited, Falconbridge, Limited,	89–2531	08/30/89
Noranda Inc. FL Acquisition Corp., FL Acquisition Corp	89–2532	08/30/89
Trelleborg AB, FL Acquisition Corp., FL Acquisition Corp	89–2533	08/30/89
Dominion International Group plc, John C. York, Jr., York Associates, Inc	89–2346	08/31/89
Fujita Corporation USA, Koll KW Associates, KW Partnership	89–2369	08/31/89
JWP Inc., Aldo P Lera, individually and as Trustee of M.D. Trust, Lera Electric Company, Inc	89–2422	08/31/89
Camellia Food Stores Cooperative, Inc., Nick and Laurna Styke, Eastern Shore Markets, Inc	89–2445	08/31/89
Ashland Oil, Inc., Albert Anderson, ETS Holdings Company, Inc., E-Town Delta, Inc., E-Town	89–2476	08/31/89
The Coast Distribution System, William J. Griffin, Jr., Griffin's Outboard Marine Inc	89–2518	08/31/89
General Electric Company, Dollar Dry Dock Bank, Dollar Dry Dock Bank,	89–2573	08/31/89
National Electrical Contractors Assn. Pension Fund, Chronar Corp., Chronar Corp	89–2290	09/01/89
Sheet Metal Workers National Pension Fund, Chronar Corp., Chronar Corp	89–2291	09/01/89
REPH Acquisition Company, American Medical International, Inc., Parkway Regional Medical Center, Inc.; Parkway	89–2470	09/01/89
JWP, Inc., Environmental Reclamation Company, Environmental Reclamation Company	89–2474	09/01/89
Compagnie Francaise de l'Afrique Occidentale, W.R. Grace & Co., Grace Equipment Co	89–2508	09/01/89
International Proteins Corporation, Hanson PLC, The Ground Round, Inc	89–2519	09/01/89
Hanson PLC, International Proteins Corporation, International Proteins Corporation	89–2520	09/01/89
Westinghouse Electric Corporation, Robert F.X. Sillerman, Metropolitan Broadcasting Corporation	89–2522	09/01/89
Westinghouse Electric Corporation, Carl E. Hirsch, Legacy Broadcasting, Inc	89–2523	09/01/89
Mr. Dumri Konuntakiet, Grand Metropolitan Public Limited Company, Bumble Bee Seafoods, Inc	89–2526	09/01/89
Mission Insurance Group, Inc., GEICO Corporation, Resolute Group, Inc	89–2542	09/01/89
D.M. Draime, Chip Supply, Inc., Chip Supply, Inc	89–2545	09/01/89
American Exploration Company, Cabot Corporation, Cabot Petroleum Corporation	89–2546	09/01/89
Legend Capital Group, L.P., Jerrico, Inc., Jerrico, Inc	89–2550	09/01/89
Clondalkin Group PLC, Florida Progress Corporation, Better Business Forms, Inc	89–2553	09/01/89
Tele-Communications, Inc., Tele-Communications, Inc., Waltham Tele-Communications	89–2557	09/01/89
Golder, Thoma, Cressey Fund III Limited Partnership, Golder, Thoma, Cressey Fund II Limited Partnership, Florida Food Industries	89–2564	09/01/89
Delta Air Lines, Inc., Swissair, Swiss Air Transport Company Ltd., Swissair, Swiss Air Transport Company Ltd	89–2566	09/01/89
Christopher C. Skase, Kirk Kerkorian, MGM/UA Communications Co	89–2567	09/01/89
Mitsuo Kokufu, Nestle S.A., Wailea Beach Hotel Partners and Stouffer Hotel Company	89–2570	09/01/89
Donn Chickering, Panhandle Eastern Corporation, The Youghiogheny and Ohio Coal Company	89–2577	09/01/89
Lilly Industrial Coatings, Inc., Whittaker Corporation, Ram Chemicals	89–2590	09/01/89
JBG Holding Company, Inc., Continental Bank Corporation, Securities Settlement Corporation	89–2594	09/01/89
Centel Corporation, Graceba Total Communications, Inc., Graceba Cellular Systems, Inc	89–2607	09/01/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89–21384 Filed 9–11–89; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89D–0359]

Refusals by Institutional Review Boards; Compliance Policy Guide; Revocation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of Compliance Policy Guide (CPG) 7150.09, "Refusals by Institutional Review Boards—October 1, 1980."

FOR FURTHER INFORMATION CONTACT: Paul W. Goebel, Jr., Center for Drug Evaluation and Research (HFD–343), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8026.

SUPPLEMENTARY INFORMATION: CPG 7150.09, "Refusals by Institutional Review Boards—October 1, 1980" has been made unnecessary by regulation at §§ 56.115 and 56.120 (21 CFR 56.115 and 56.120) and is being revoked. The regulation at § 56.115(b) requires institutional review boards (IRB's) to make certain IRB records accessible for inspection and copying by FDA, and § 56.120 provides for administrative action for refusals of IRB's to permit inspection and/or copying of records by FDA. Therefore, CPG 7150.09 is being revoked because it is unnecessary.

Dated: September 1, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–21310 Filed 9–11–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2048]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public commends on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 6, 1989.

John T. Murphy,

Information Policy and Management Division.

Proposal: Designation of Depository for Direct Deposit of Loan and/or Grant Fund.

Office: Administration.

Description of the Need for the Information and Its Proposed Use: The Department will use HUD–274 to request recipients of loan and grant funds being funded by requisition, to designate a depository that they wish to receive funds in connection with HUD programs. This will be an internal control system instituted to safeguard Federal funds as well as provide a service to recipients.

Form number: HUD–274.

Respondents: State or Local Governments.

Frequency of submission: On Occasion.

Reporting burden:

Number of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
HUD–274 1,000		1		.08		83

Total Estimated Burden Hours: 63.
Status: Extension.
Contact: Donald C. Dispanet, HUD, (202) 755–5143, John Allison, OMB, (202) 395–6880.

Dated: September 6, 1989.

[FR Doc. 89–21332 Filed 9–11–89; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: E.G. & G. Energy Measurements, Goleta, CA, PRT 683011.

The applicant requests an amendment to their current endangered species permit to authorize an increase in the numbers of San Joaquin kit fox *(Vulpes macrotis mutica)* that may be radio-collared, from the presently-authorized 60 to 120, and to authorize the following activities with the gopher tortoise *(Gopherus agassizi)* in Nevada:

(1) Capture, handle, mark, attach transmitters and take blood samples;
(2) Modify tortoise habitat by building drift fences and underpasses at roads;
(3) Relocate up to 10 desert tortoises per year from their existing home ranges to a new area; and
(4) Salvage carcasses of desert tortoises.

The requested gopher tortoise activities are to be conducted in order to evaluate and monitor the effects of DOE activities on the desert tortoise population on the Nevada test site and elsewhere in south central Nevada.

Applicant: Helen Carpenter, Jefferson, TX, PRT 737979.

The applicant requests a permit to export and re-import four captive-bred male tigers *(Panthera tigris)* for the purpose of conservation education. In the future applicant may amend her permit to add animals captive-born at her facility and re-export and re-import these animals for the same purpose.

Applicant: Donald Kitchens, Utica, MS, PRT 738936.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus dorcas dorcas)* to be culled from the captive herd maintained by Mr. J. D'Alton, Bredasdorp, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Priscilla Witherell, Las Vegas, NV, PRT 741186.

The applicant requests a permit to purchase in interstate commerce twelve scarlet-chested parakeets *(Neophema splendida)* from Ole Borreson of California, for the purpose of enhancement of propagation and survival of the species.

Applicant: New York Zoological Society, Bronx, NY, PRT 741444.

The applicant requests a permit to import internal organs removed from captive-hatched Orinoco crocodiles *(Crocodylus intermedius)* for necropsy purposes. The crocodiles were hatched at the Fundo Pecuario Masaguaral, Calabozo, Venezuela, for eventual reintroduction into the wild. However, they recently died of unknown causes. The applicant would like to import the internal organs in order to perform necropsies to attempt to determine the causes of death.

Applicant: Henry Doorly Zoo, Omaha, NE, PRT 741447.

The applicant requests a permit to export frozen semen collected from two captive-born male gaurs *(Bos gaurus)* to the Kunming Institute of Zoology Academia, Sinica Kunming, Yunnan, People's Republic of China. The Kunming Institute will use the semen samples to artificially inseminate two female gaur currently maintained at their facility.

Documents and other information submitted with this application are available to the public during normal business hours (7:45 am to 4:15 pm) Room 432, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203–3507.

Interested persons may comment on any of these applications within 30 days of the date of this duplication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: September 6, 1989.

Susan M. Lawrence,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89–21353 Filed 9–11–89; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–060–09–4320–02]

Battle Mountain District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice of Grazing Advisory Board Meeting.

SUMMARY: In accordance with Public Law 94–579 and section 3, Executive Order 12548 of February 14, 1986, a meeting of the Battle Mountain District Grazing Advisory Board will be held.

DATE: October 11, 1989, beginning at 1:00 p.m. in the Battle Mountain District Conference Room, N. Second and Scott Streets, Battle Mountain, Nevada.

SUPPLEMENTARY INFORMATION: The meeting agenda will include:

(1) Election of Chairperson and Vice Chairperson,
(2) Status of FY 89 range inprovements, and
(3) FY 90 range improvements—review and recommendations.

The meeting is open to the public. Interested persons may make oral statements to the board between 4:00 and 4:30 p.m. on October 11, 1989, or file written statements for the board's consideration. If you wish to make oral comments, please contact James D. Currivan by October 4, 1989.

FOR FURTHER INFORMATION CONTACT: James D. Currivan, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone [702] 635–5181.

Dated: August 31, 1989.

James D. Currivan,

District Manager, Battle Mountain, Nevada.

[FR Doc. 89–21373 Filed 9–11–89; 8:45 am]

BILLING CODE 4310–HC–M

[CA–23065; CA–060–09–4212–14]

Noncompetitive Sale of Public Land in Kern County, CA; Realty Action

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action: noncompetitive sale of public land in Kern County, California; CA–23065.

SUMMARY: The following public land in Kern County has been examined and determined suitable for disposal by direct sale pursuant to section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 stat. 2750, 43 U.S.C. 1713), at not less than the appraised fair market value:

Mount Diablo Meridian
T. 30S., R. 37E.,
Section 28, Lot 5
containing 0.19 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of this sale is to resolve an unintentional occupancy trespass by Eugene S. and Lenora A. McKendry. A small portion of their primary residence was inadvertently constructed on public land due to a survey error. The lot proposed for sale was created by supplemental survey, and disposal will equitably resolve this trespass. Examination of the subject land has resulted in a determination that the sale would not result in land use conflicts or loss of significant resources and does not conflict with the California Desert Conservation Area Plan.

Sale will be at full fair market value as established by appraisal under applicable Federal standards. The parcel contains no known developable mineral values, and acceptance of this sale offer will also allow the purchaser to apply for mineral conveyance. The patent will be issued subject to the reservation to the United States of right of way for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945). The patent shall also be subject to all prior existing rights.

Publication of this notice in the **Federal Register** segregates the subject land from appropriation under the public land laws, including the general mining laws, but not the mineral leasing laws. The segregative effect shall terminate on issuance of patent pursuant to this notice, or two years from the date of first publication of this notice, whichever occurs first. Mining claims of record may encumber the subject land on the date of this notice. No sale will be completed until any claims of record are relinquished.

DATES: For period of 45 days from the date of first publication of this notice, interested parties may submit comments to the Bureau of Land Management, Area Manager, Ridgecrest Resource Area, at the address below. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this action will become the final determination of the Department of the Interior. No transfer of public lands will occur sooner than 60 days from first publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Joe Liebhauser, Ridgecrest Resource Area, 112 East Dolphin Avenue, Ridgecrest, California 93555, telephone (619) 375–7125. Detailed information, including the official casefile, is available for public review at this address.

Dated: August 31, 1989.

Gerald E. Hillier,

District Manager.

[FR Doc. 89–21367 Filed 9–11–89; 8:45 am]

BILLING CODE 4310–40–M

Minerals Management Service

Alaska OCS Region; Outer Continental Shelf Advisory Board; Alaska Regional Technical Working Group Meeting

AGENCY: Minerals Management Service, Alaska OCS Region, Interior.

ACTION: Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group Committee; Notice for meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463.

The Alaska Regional Technical Working Group (RTWG) committee of the Outer Continental Shelf (OCS) Advisory Board is scheduled to meet from 9:00 a.m. to 4:00 p.m., September 27, 1989, in room 601 of the Minerals Management Service (MMS), Alaska OCS Region offices at 949 East 36th Avenue, Anchorage, Alaska. The Alaska RTWG is one of six such committees of the OCS Advisory Board that provides advice to the Director of MMS about technical matters of regional concern regarding OCS prelease and postlease sale activities.

Topics which may be addressed at the meeting are:

(a) Alaska OCS Region issues and activities.
(b) Prince William Sound oil spill—member roundtable discussion.
(c) Status of MMS review of oil-spill-contingency plans.
(d) Technology Assessment and Research Program for Offshore Minerals Operations.
(e) Report on and status of drilling activitiy on OCS leases in the Chukchi Sea.
(f) Oil-spill contingency plan and readiness for activity on OCS leases in the Chukchi Sea.

The Alaska RTWG meeting will be open to the public, although seating may be limited. Interested persons may make oral or written presentations to the committee. A request to make a presentation should be made no later than September 20, 1989, to Alan D. Powers, Regional Director, Alaska OCS Region, 949 East 36th Avenue, Room 110, Anchorage, Alaska 99508–4302, and should be accompanied by a written summary of the presentation.

Minutes of the meeting will be available 70 days after the meeting for public inspection and copying at the Alaska OCS Region Library, 949 East 36th Avenue, Anchorage, Alaska, and at the Office of OCS Advisory Board Support, MMS, Department of the Interior, 18th and C Streets, NW., Washington, DC.

Dated: September 1, 1989.

Alan D. Powers,

Regional Director, Alaska OCS Region.

[FR Doc. 89–21483 Filed 9–11–89; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0084), Washington, DC 20503, telephone 202–395–7340.

Title: Consolidated Consumers' Report.
OMB Approval Number: 1032–0084.
Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Survey (MIS), Minerals Chapters, Mineral Facts and Problems, Mineral Commodity Summaries, Mineral Commodity Profiles, and Minerals and Materials/A Bimonthly Survey for use by private organizations and other Governmental agencies.
Bureau Form Number: 6–1109–MA.
Frequency: Monthly/Annually.
Description of Respondents: Operations that consume ferrous metals.
Estimated Completion Time: 1 Hour.
Annual Responses: 5,098.
Annual Burden Hours: 5,098.
Bureau clearance officer: James T. Hereford, 202–634–1125.

Dated: August 21, 1989.

John D. Morgan, Jr.,

Acting Director, Bureau of Mines.

[FR Doc. 89-21372 Filed 9-11-89; 8:45 am]

BILLING CODE 4310-53-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 2, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by September 27, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Coconino County

CHARLES H. SPENCER Hulk, Address Restricted, Lee's Ferry vicinity, 89001583

ARKANSAS

Desha County

Parnell—Sharpe House, 302 N. Second St., McGehee, 89001594

Lawrence County

Ficklin—Imboden House, (Powhatan MPS), Powhatan Log House, Powhatan, 89001611

Powhatan Jail (Powhatan MPS), AR 25, Powhatan, 89001612

Telephone Exchange Building (Powhatan MPS), First and Main Sts., Powhatan, 89001613

Washington County

Routh—Bailey House, Old Wire Rd. 3 mi. E. of Fayetteville, Fayetteville vicinity, 89001592

FLORIDA

Escambia County

Alger—Sullivan Lumber Company Residential Historic District, Roughly bounded by Pinewood Ave., Front St., Jefferson Ave., Church St., and Mayo St., Century, 89001586

KENTUCKY

Campbell County

St. Vincent de Paul School, 117 Main St., Newport, 89001598

Franklin County

Arrowhead, US 60, 0.5 mi. S of Hanley Ln., Frankfort vicinity, 89001597

Kenton County

Highland Cemetery Historic District (Fort Mitchell MPS), 2167 Dixie Hwy., Fort Mitchell, 89001565

Nicholas County

Carlisle Historic District, Roughly Second, Broadway, North, Archdeacon, Trueman, Chestnut, Walnut, Market, Elm, W. Main, and School Dr., Carlisle, 89001599

Dinsmore House, 210 S. Elm St., Carlisle, 89001602

Dorsey, Thomas A., Farmhouse, 416 High St., Carlisle, 89001603

Kennedy, Thomas, House, Eastern Ave. at E. Main St., Carlisle, 89001601

Mathers, William, House, KY 36, Carlisle, 89001600

Maryland

Frederick County

Camp Greentop Historic District (ECW Architecture in Catoctin Mountain Park MPS), Off Park Central Rd. in Catoctin Mountain Park, Thurmont vicinity, 89001563

Camp Misty Mount Historic District (ECW Architecture in Catoctin Mountain Park MPS), Off Park Central Rd. in Catoctin Mountain Park, Thurmont vicinity, 89001562

MASSACHUSETTS

Essex County

Estey Tavern, Central and Maple Sts. at MA 114, Middleton, 89001587

Middlesex County

Fox, Warren, Building, 190-196 Middlesex St., Lowell, 89001609

Howe Building, 208 Middlesex St., Lowell, 89001606

NEW JERSEY

Bergen County

Vaill, Edward W., House, 663 Midland Rd., Oradell, 89001595

Union County

Smith Nathaniel, House, 105 Springfield Ave., Berkeley Heights, 89001584

NEW MEXICO

Bernalillo County

Santa Barbara School, 1420 Edith Blvd., NE., Albuquerque, 89001590

Solar Building, 213 Truman St., NE., Albuquerque, 89001589

SOUTH CAROLINA

Kershaw County

Cool Springs, 726 Kershaw Hwy., Camden vicinity, 89001596

Richland County

St. Peter's Roman Catholic Church (Columbia MRA), 1529 Assembly St., Columbia, 89001610

SOUTH DAKOTA

Hanson County

Bloom Site (39HS1), Address Restricted, Ethan vicinity, 89001591

Yankton County

*Fantle, William J., House,*1201 Douglas, Yankton, 89001588

WASHINGTON

King County

New Washington Hotel, 1902 Second Ave., Seattle, 89001607

Pierce County

Holy Trinity Orthodox Church, 433 Long St., Wilkeson, 89001608

Snohomish County

Coaster II, C Dock South, Port of Everett, Everett, 89001605

[FR Doc. 89-21301 Filed 9-11-89; 8:45 am]

BILLING CODE 4310-70-M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875-1608, IRM/PE, Room 1100B, SA-14, Washington, DC 20523.

Date Submitted: August 31, 1989.

Submitting Agency: Agency for International Development.

OMB Number: 0412-0014.

Form Number: AID 1550-6.

Type of Submission: Renewal.

Title: Collection of Information for the Ocean Freight Reimbursement Program.

Purpose: A.I.D.'s Ocean Freight program reimburses approved Private and Voluntary Organizations (PVOs) registered with the Agency for their transportation costs incurred when transporting donated goods overseas. To effectively monitor the program, A.I.D. has developed a proposal solicitation package and a monitoring document to collect necessary information from qualified and interested PVOs.

Respondents will have a submission burden of four responses per year.

Reviewer: Donald Arbuckle (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: August 31, 1989.

Wayne H. Van Vechten,

Planning and Evaluation Division.

[FR Doc. 89-21355 Filed 9-11-89; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 5, 1989, a proposed Consent Decree in *United States* v. *Arkwright, Inc., et al.*, Civil No. 87-2009D, was lodged with the United States District Court for the District of New Hampshire. The proposed Consent Decree concerns the prevention of the discharge of volatile organic compounds ("VOCs") in violation of the Clean Air Act and the limits set forth in Regulation 19 of the Rhode Island State Implementation Plan. The proposed Consent Decree requires Arkwright to maintain compliance with the Act and the applicable emission limits for VOCs, to monitor and report on their compliance. Arkwright and its former parent company, Oce Van der Grinten, N.V. will also pay a civil penalty of $175,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Arkwright, D.J. Ref. 90-5-2-1-960.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of New Hampshire, 55 Pleasant Street, James Cleveland Federal Building and Courthouse, Concord, New Hampshire; the office of the United States Attorney, District of Rhode Island, Westminster Square Building, 10th Floor, 10 Dorrance Street, Providence, Rhode Island; and at the Region 1 Office of the Environmental Protection Agency, J.F.K. Federal Building, Boston, Massachusetts 02203. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.10 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Divison.

[FR Doc. 89-21375 Filed 9-11-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Proposed Termination of Final Judgment; N.P. Benson Optical Co.

Notice is hereby given that Benson Optical Co., Inc. ("Benson"), as successor in interest to N.P. Benson Optical Company and The House of Vision-Belgard-Spero, Inc., has filed with the United States District Court for the Northern District of Illinois a motion to terminate the final judgement in *United States* v. *N.P. Benson Optical Company,* Civil No. 89 C 18 and *United States* v. *The House of Vision-Belgard-Spero, Inc.,* Civil No. 48 C 607; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgments, but has reserved the right to withdraw its consent based on public comments or for other reasons. The complaints in these cases (filed on May 4, 1948) alleged a rebating and price fixing conspiracy between the corporate defendants, which were wholesale optical goods supply companies, and a number of ophthalmologists who also are defendants in the cases. The judgments (entered on May 16, 1951) in each case enjoin: (1) The corporated defendant from making any payment to any ophthalmologist or other refractionist in connection with dispensing optical goods to patients; (2) the defendant physicians from accepting any payment from dispensers in connection with dispensing optical goods to their patients; and (3) all defendants from entering into price fixing agreements with any party.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgments would serve the public interest. Copies of the complaints and final judgments, Benson's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC. 20530 (telephone 202-633-2481), and at the Office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, Chicago, Illinois 60604. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decrees to the Department. Such comments must be received within the sixty-day period established by court order, and will be filed with the court by the Department. Comments should be addressed to Kent Brown, Chief, Midwest Field Office, Antitrust Division, Department of Justice, Chicago, Illinois 60604 (telephone 312-353-7530).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 89-21376 Filed 9-11-89; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION

Meeting of Advisory Committee for Astronomical Sciences

The dates, location, and times have been changed for the Subcommittee on Optical/Infrared Astronomy Meeting of the Advisory Committee for Astronomical Sciences.

The Subcommittee will meet in Denver, Colorado on September 28-29 rather than in Washington, DC on September 26-27.

Dates & Times: September 28, 1-5 p.m.; September 29, 9-5 p.m.

Place: Denver, Colorado

Type of Meeting: Open

Contact Person: Dr. G. Wayne van Citters, Jr., Program Director, Astronomical Instrumentation and Development, Division of Astronomical Sciences, Room 618, National Science Foundation, Washington, DC 20550 (202/357-9793)

Minutes: May be obtained from the contact person at the above address.

Purpose of Subcommittee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Meeting of Advisory Panel for

Contact Person: Dr. Fred W.

Meeting of Advisory Panel for

Agenda: Preparation of report on topics discussed at the Subcommittee meeting held on August 28, and 29, 1989.

The original meeting notice appeared in the **Federal Register** on September 8, 1989.

Dated: September 7, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-21385 Filed 9-11-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Ecology

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecology.

Date and Time: October 4-6, 1989—8:30 a.m.-5:00 p.m. each day.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Patrick J. Webber, Program Director, Ecology (202) 357-9734, Room 215, National Science Foundation, Washington, DC 20550.

Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: September 7, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-21386 Filed 9-11-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Ecosystem Studies

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecosystem Studies.

Date and Time: October 5 & 6, 1989—8:30 a.m.-5:00 p.m. each day.

Place: Room 6423, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. James E. Schindler, Program Director, Ecosystem Studies (202) 357-9596, Room 215, National Science Foundation, Washington, DC 20550.

Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in ecosystem studies.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: September 7, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-21387 Filed 9-11-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Committee for Engineering

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering

Date and Time: October 5-6, 1989; 8:30 a.m.-5:00 p.m., October 5, 1989 (open), 8:00 a.m.-9:00 a.m., October 6, 1989 (closed), 9:00 a.m.-12:00 Noon, October 6, 1989 (open).

Place: National Science Foundation, 1800 "G" Street NW., Room 540, Washington, DC 20550.

Type of Meeting: Partially Closed.

Contact Person: Ms. Rose Szwast, Advisory Committee for Engineering, Room 537, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9832.

Minutes: Ms. Rose Szwast at the above address.

Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Reason for Closing: The personnel matters being discussed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within exemption 6 of U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: The determination made on September 6, 1989 by the Director of the National Science Foundation pursuant to the provisions of section 10(d) of Public Law 92-463.

Agenda: Friday, October 6, 1989, Room 540—8:00 a.m. to 9:00 a.m.—Closed. Discussion of personnel issues including candidates for vacancies. Thursday, October 5, 1989, Room 540—8:30 a.m. to 5:00 p.m., and Friday, October 6, 1989, Room 540—9:00 a.m. to 12:00 Noon—Open. Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items.

Dated: September 7, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-21388 Filed 9-11-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Informal Science Education

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Informal Science Education.

Date and Time: October 5-6, 1989, from 8:30 a.m. to 5:00 p.m.

Place: National Air & Space Museum, Washington, DC 20560, Room 3501.

Type of Meeting: Closed Meeting.

Contact Person: Michael Templeton or Kenneth Starr, National Science Foundation, 1800 G St. NW., Washington, DC 20550, Informal Science Education, Room 635-A, Phone (202) 357-7076.

Minutes: May be obtained from the Contact persons at the above address.

Purpose of Meeting: To provide advice and recommendations concerning Informal Science Education proposals.

Agenda: To review and evaluate Informal Science Education proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552 b (c), Government in the Sunshine Act.

Dated: September 7, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-21389 Filed 9-11-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Physiological Processes

In accordance with the Federal Advisory Committee Act, as amended, Public Law 92-463, the National Science Foundation announces the following meeting

Name: Advisory Panel for Physiological Processes.

Date and Time: October 2-6 1989, 8:30 a.m. to 5:00 p.m.

Place: Room 643, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

Type of Meeting: Part Open—October 2—12:00 p.m.-1:00 p.m. (open); October 3—12:00 p.m.-1:30 p.m. (open); October 4—12:00 p.m.-1:00 p.m. (open). All other times the meeting is closed.

Contact Person and Minutes: Dr. Ernest J. Peck, Program Director, Physiological Processes, Room 321, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7975.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Physiological Processes.

Agenda: Open—General discussion of the current status and future plans of the Physiological Processes Program. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individual associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: September 7, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-21390 Filed 9-11-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Population, Biology and Physiological Ecology

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Population Biology and Physiological Ecology

Date and Time: October 4-6, 1989—8:00 a.m to 5:00 p.m. each day

Place: Room 536, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Fred W. Allendorf, Program Director, Population Biology and Physiological Ecology (202) 357-9728, Room 215, National Science Foundation, Washington, DC 20550.

Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in population biology and physiological ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: September 7, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-21391 Filed 9-11-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Committee for Science and Technology Centers Development

Name: Advisory Committee for Science and Technology Centers Development.

Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Date: October 5, 1989.

Time: 8:30 a.m.

Type of Meeting: Open.

Contact: Dr. William C. Harris, Director, Office of Science and Technology Centers Development, Room 533, National Science Foundation, Washington, DC 20550, Telephone: 202/357-9808.

Purpose of Meeting: To provide advice on the development of the National Science Foundation's Science and Technology Research Centers Program.

Minutes: May be obtained from Director, Office of Science and Technology Centers Development.

Agenda: Discussion of review and selection procedures and criteria for Science and Technology Centers.

Dated: September 7, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-21392 Filed 9-11-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Systematic Biology

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.

Date and Time: October 2-4, 1989—8:30 a.m. to 5 p.m. each day.

Place: Room 1242, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. William S. Moore, Program Director, Systematic Biology (202) 357-9588, Room 215, National Science Foundation, Washington, DC 20550.

Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are with exemptions (4) and (6) of 5 U.S.C. 552b(b), Government in the Sunshine Act.

Dated: September 7, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-21393 Filed 9-11-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-6 issued to the Consumers Power Company (the licensee), for the Big Rock Point Plant, located in Charlevoix County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would delete § 6.4.2(d) from the Big Rock Point Technical Specifications. This section

stated that the portable neutron or

radioactive and non-radioactive

assemblies and GE analyses and

The Notices of Consideration of

[Docket No. 50-029]

1988, and is due to expire on July 31,

stated that the portable neutron or gamma dose-rate measuring instruments provided for establishing permissible working limits be calibrated at least once every three months.

The proposed action is in accordance with the licensee's application for amendment dated October 24, 1988.

The Need for the Proposed Action

The proposed change would make the Big Rock Point Plant Technical Specifications consistent with industry practice and the Standard Technical Specifications. The plant has committed to follow ANSI N323–1978 including the performance of a source check daily or prior to use, whichever is less frequent, on each scale or decade normally used and perform a calibration semi-annually.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Technical Specifications. Performance of a more complete source check (source checking each scale or decade normally used versus source check daily or prior to use) of portable gamma and neutron dose-rate measuring instruments will better assure instrument reliability and accuracy. The licensee feels that changing the calibration frequency from once every three months to once every six months will not result in less accurate instruments because of the more extensive source checks and because less than 5% of the instruments fail the pre-calibration checks. The Commission concludes that there are no measurable radiological or nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 29, 1989 (54 FR 12976). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

It has been determined that there is no measurable impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested amendment. The proposed dose-rate measuring instrument checking changes do not involve any increase in the release of radioactive and non-radioactive effluents from the plant.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal operation.

Agencies and Persons Contacted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the request for amendment dated October 24, 1988. This document is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and at North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Maryland this 6th day of September 1989.

For The Nuclear Regulatory Commission.

John O. Thoma,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV V & Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89–21401 Filed 9–11–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–341; FERMI–2]

Detroit Edison Co., Wolverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for the operation of Fermi–2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise provisions in the Fermi–2 Operating License and operation of Fermi–2 Cycle 2 with a reload of General Electric (GE) manufactured fuel assemblies and GE analyses and methodologies. In addition, TS changes are also proposed to allow operation of Fermi–2 with an Extended Load Line Limit Region (ELLLR).

The proposed action is in accordance with the licensees' applications dated April 3 and May 31, 1989, as supplemented by letter dated August 23, 1989.

The August 23, 1989 letter provided only additional information and clarifications which did not alter the substance or scope of the original applications.

The Need for the Proposed Action

The proposed changes to the TSs are required in order to provide appropriate TS requirements and limits related to cycle 2 operations and the analyzed operating domain for cycle 2.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Operating License and the TS. The proposed changes relate to Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and Linear Heat Generation Rate (LHGR) limits for the new fuel, Minimum Critical Power Ratio (MCPR) limits for all of the fuel using Cycle 2 core and transient parameters, extended operating regions and conditions, and editorial changes. The proposed change will not increase fuel burnup in excess of the levels evaluated on the "Final Environmental Statement related to operation of Fermi–2," dated August 1981.

Therefore, the proposed changes do not increase the probability of consequences of any accidents, no changes are being made in types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact and could result in the reduction of the radiological impacts.

With regard to potential nonradiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notices of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action were published in the **Federal Register** on July 11, 1989 (54 FR 29116 and 54 FR 29122). No request for hearing or petition for leave to intervene was filed following these notices.

Alternative to the Proposed Action

Because the Commission has concluded that there is no significant environment impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This would result in the TS not correctly reflecting the nuclear core design for Cycle 2 Operation.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Fermi-2, dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with aspect to this action, see the applications for amendment dated April 3 and May 31, 1989 which are available for public inspection at the Commission's Public Document Room 2120 L Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 7th day of September 1989.

For the Nuclear Regulatory Commission.

John O. Thoma,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89–21402 Filed 9–11–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–029]

Yankee Atomic Electric Co.; Yankee Nuclear Power Station; Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Yankee Atomic Electric Company to withdraw its March 21, 1989 and as supplemented on April 14, 1988 application for an amendment to Facility Operating License No. DPR–3 issued to the licensee for operation of the Yankee Nuclear Power Station. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on May 3, 1989 (54 FR 18965).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) pertaining to snubber listing.

Subsequently, the licensee informed the staff that the amendment is no longer requested. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see the application for amendment dated March 21, 1989 and as supplemented on April 14, 1988.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 02111.

Dated at Rockville, Maryland, this 1st day of September 1989.

For the Nuclear Regulatory Commission.

Patrick M. Sears,

Project Manager, Project Directorate I–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21403 Filed 9–11–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030–60017, License No. 45–23009–01, EA 89–44]

Lee County Community Hospital, Pennington Gap, VA; Order Imposing Civil Monetary Penalty

I

Lee County Community Hospital, Pennington Gap, Virginia (licensee), is the holder of License No. 45–23009–01 issued by the Nuclear Regulatory Commission (Commission or NRC), which authorizes the medical use of byproduct material by the licensee. The license was issued August 22, 1983, was most recently renewed on August 19, 1988, and is due to expire on July 31, 1993.

An NRC safety inspection of the licensee's activities under this license was conducted on August 11, 1988. During the inspection, the NRC inspector noted that the minutes of Radiation Safety Committee meetings dated May 28, 1987 and August 27, 1987 were identical, except for the date. A subsequent investigation conducted by the NRC Office of Investigations disclosed that the minutes for one of the Radiation Safety Committee meetings was falsified at the direction of a licensee official. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated April 18, 1989. The Notice stated the nature of the violation, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the civil penalty amount proposed for the violation. Responses dated May 18 and August 1, 1989, were received from the licensee in response to the Notice. In these responses, the licensee did not deny the violation but requested a reduction in the Severity Level of the violation and mitigation of the civil penalty.

III

After consideration of the licensee's responses and the statements of fact, explanation and argument for mitigation contained therein, the NRC staff has determined as set forth in the Appendix to this Order, that the penalty proposed in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby Ordered That:*

The licensee pay a civil penalty in the amount of $2,500 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the U.S. Nuclear Regulatory Commission, ATTN:

Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and the Regional Administrator, U.S. NRC, Region II, 101 Marietta Street, NW., Suite 2900, Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Impostion of Civil Penalty referenced in Section II above, and (b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland this 1st day of September 1989.

For the Nuclear Regulatory Commission.

James Liberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusion

On April 18, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty was issued to Lee County Community Hospital. The licensee responded to the Notice on May 18 and August 1, 1989, did not deny the violation, but requested a reduction in the severity level of the violation and mitigation of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's responses is as follows:

Summary of Licensee's Request for Mitigation

The licensee's reasons for requesting reduction in the Severity Level of the violation and mitigation of the civil penalty can be summarized as follows: (1) the hospital stated that they have had no major deficiencies in their program which were identified by the NRC since the inception of the nuclear medicine program, (2) there was no intent to defraud or mislead the NRC but merely an attempt to document a meeting that was held but for which the minutes were lost, (3) the licensee physicist's agenda and findings discussed at the May and August quarterly meetings were basically the same, (4) the Chief Technologist's performance has been well above average, and (5) corrective action has been taken, including involving the hospital administrator in the quarterly radiation safety committee meetings and detailed reviews of all aspects of operations with the staff.

NRC Evaluation of Licensee's Request for Mitigation

The licensee requested a reduction of the severity level assigned to the violation. The NRC Enforcement Policy (10 CFR Part 2, Appendix C, 1989) classifies at Severity Level II violations involving inaccurate or incomplete information which is provided to the NRC by a licensee official because of careless disregard for the completeness or accuracy of the information. In deciding to downgrade the classification of this violation from Severity Level II to Severity Level III, NRC has already taken into account the information that the Radiation Safety Committee meeting was actually held and that the discussion that took place may have been similar to the previous meeting. However, the NRC maintains that when the Chief Radiation Technologist noted that the minutes for one meeting were missing, he directed that the date be substituted for the date on a copy of some minutes that presented a specific, detailed account of a previous meeting; and, thereafter, this falsified document, which is an NRC-required document, was maintained in the files and was available for NRC inspection. It is unacceptable for a licensee official to direct that an NRC-required document be falsified. Therefore, mitigation or further reduction in the severity level is not appropriate.

The appropriate way to document the missing meeting minutes would have been to acknowledge that the record was misplaced and to recreate the minutes from other records or discussions with those in attendance and to annotate in the minutes that the original record was lost and that the record had been reconstructed.

The licensee stated that no other major deficiencies have been identified by NRC inspections. NRC has, however, identified fourteen violations during the period covered by the last two inspections. Therefore, additional mitigation of the civil penalty based on past performance is not warranted.

NRC Conclusion

The NRC staff has carefully reviewed the licensee's responses and has concluded that the licensee has not provided adequate basis for reduction of the severity level or mitigation of the civil penalty. Therefore, the civil penalty in the amount of $2,500 should be imposed.

[FR Doc. 89-21405 Filed 9-11-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-390 and 50-391]

Tennessee Valley Authority, Watts Bar Nuclear Plant, Units 1 and 2;

Exemption I

The Tennessee Valley Authority (TVA) holds Special Nuclear Material License Nos. 70-02910 and 70-02928, which authorize the use of unirradiated fuel at the Watts Bar Nuclear Plant, Units 1 and 2 (the facility, Units 1 and 2). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect concerning Special Nuclear Material. The facility consists of two pressurized water reactors located on TVA's site in Rhea County, Tennessee.

II

Section 70.51(d) of 10 CFR part 70 requires, in part, that each licensee who is authorized to possess special nuclear material is a quantity totaling more than 350 grams of Uranium-235, Uranium-233, or plutonium, or any combination thereof, shall conduct a physical inventory of all special nuclear material in the licensee's possession at intervals not to exceed 12 months. TVA holds licenses to have special nuclear material in a quantity totaling greater than 350 grams at the facility site. The special nuclear material is unirradiated nuclear fuel for the nuclear power plant. The licenses are 70-02910 and 70-02928 for Units 1 and 2, respectively.

Pursuant to the above requirement, a physical inventory of the facility fuel was conducted by piece count and serial number verification in August 1988. The next inventory should have been conducted by August 9, 1989. In order to perform the inventory, removal of the spent fuel pit covers and the new fuel vault covers is required. However, the Auxiliary Building crane which is required to remove those covers is currently out of service. This crane was not returned to service in time to conduct the physical inventory before the required date. The spent fuel pit covers weight about 5,000 pounds each and the new fuel vault covers weight about 6,000 pounds each.

In order to comply with NRC requirements, TVA requested a temporary exemption from the time requirements in 10 CFR 70.71(d). TVA

stated it will perform the physical inventory of the nuclear fuel assemblies within 90 days of the original scheduled inventory date, which will be no later than November 7, 1989. The Auxiliary Building crane is expected to be returned to service within that time.

TVA has an approved facility security plan which has acceptable requirements to protect the fuel stored at the facility.

Based on the above, the staff finds that the temporary exemption is acceptable if the physical inventory of the fuel is conducted as soon as practical after the Auxiliary Building crane is returned to service but not later than November 7, 1989. TVA stated that the crane should be returned to service so that the inventory can be conducted by November 7, 1989.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 70.14(a), this temporary exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. The Commission further determines that special circumstances are present justifying the temporary exemption; namely; that the application of the regulation in the particular circumstances would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted. TVA can not conduct the inventory of the fuel at the Watts Bar site without the Auxiliary Building crane being able to remove the spent fuel pit covers and the new fuel vault covers.

Accordingly, the Commission hereby grants a temporary exemption from 10 CFR Part 70.51(d) for Watts Bar, Units 1 and 2 as described above, provided that the physical inventory of all special nuclear material is conducted as soon as practical after the Auxiliary Building crane is returned to service but not later than November 7, 1989.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this temporary Exemption will have not significant impact on the environment. An Environment Assessment and Finding of No Significant Impact for this temporary exemption was issued in the Federal Register (54 FR 35953), on August 30, 1989.

For further details with respect to this action, see the request for the temporary exemption dated July 10, 1989, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC., and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

The temporary Exemption is effective upon issuance and must be implemented no later than November 7, 1989. Dated at Rockville, Maryland this 1st day of September, 1989.

For the Nuclear Regulatory Commission.

B.D. Liaw,

Director, TVA Projects Division, Office of Nuclear Reator Regulation.

[FR Doc. 89-21404 Filed 9-11-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 030-19752, 030-20466, 030-05985; License Nos. 29-19769-02, 29-19769-03, 29-15364-01; EA 89-19]

Isomedix, Inc., Whippany, NJ; Order Imposing Civil Monetary Penalties

I

Isomedix, Inc., (license) is the holder of License Nos. 29-19769-02 and 29-19769-03 issued by the Nuclear Regulatory Commission (Commission or NRC) which authorizes the licensee to irradiate materials as a commercial service. The current licenses were issued on December 10, 1987 and October 20, 1988 and are due to expire on December 31, 1992 and October 31, 1993.

The licensee was also the holder of License No. 29-15364-01, which was last issued on May 30, 1986, which authorized the commercial irradiation of materials at their Parsippany, New Jersey facility. That license was terminated by the NRC on April 28, 1989 after the licensee closed the Parsippany facility on December 31, 1987, and requested termination of the license.

II

NRC safety inspections of the licensee's activities were conducted at the licensee's former facility in Parsippany, New Jersey on August 19 and 25, 1987, and at its facility in Northboro, Massachusetts on August 20, 1987. Further, investigations were also conducted by the NRC Office of Investigations subsequent to the inspections. The results of the inspections and investigations indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the licensee by letter dated June 28, 1989. The Notice stated the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee has violated, and the civil penalty amount for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties by letter dated July 28, 1989. In its response the licensee admitted the violations, however requested that the civil penalties be mitigated.

III

After consideration of the licensee's response and the statement of fact, explanations, and argument for mitigation contained therein, the NRC staff has determined as set forth in the appendix to this Order that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby* ordered that:

The licensee pay civil penalties in the amount of $28,500 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to the Regional Administrator, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of the admitted violations set forth in the Notice of

Violation and Proposed Imposition of

radioactive source) was not equipped

Violations Not Assessed a Civil penalty

that when the inspectors identified the

Violation and Proposed Imposition of Civil Penalties referenced in Section II, above, this Order should be sustained.

Dated at Rockville, Maryland, this 1st day of September 1989.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusions

On June 28, 1989, a Notice of Violation and Proposed Imposition of Civil Penalties was issued to Isomedix, Incorporated for violations identified during NRC inspections and investigations. The licensee responded to the Notice on July 26, 1989. In its response, the licensee admits all of the violations but requests mitigation of the civil penalties. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

1. Restatement of Violations

Violations Assessed Civil Penalties:

I. 10 CFR 20.203(c)(6)(i) requires that each entrance or access point to an area (in which there may exist radiation levels in excess of 500 rems in one hour at one meter from a sealed radioactive source) must be equipped with entry control devices which function automatically to prevent any individual from inadvertently entering the area when such radiation levels exist.

A. Contrary to the above, for a period of time of at least one day prior to and after February 11, 1985, the access point to the irradiator room at the licensee's former irradiator facility in Parsippany, New Jersey (in which radiation levels existed in excess of 500 rems in one hour at one meter from a sealed radioactive source) was not equipped with an entry control device which functioned automatically to prevent an individual from entering the area. Specifically, during this time period, while the irradiator was operating, the required entry control device radiation monitor, which functions automatically to lock the entrance when excessive radiation levels are present, was not present and operating because it had been removed and sent for calibration without a replacement monitor being installed.

This a Severity Level II violation. (Supplement IV) Civil Penalty—$8,000.

B. Contrary to the above, for a period of time of at least one day prior to and after April 14, 1986, the access point to the irradiator room at the licensee's former irradiator facility in Parsippany, New Jersey (in which radiation levels existed in excess of 500 rems in one hour at one meter from a sealed radioactive source) was not equipped with an entry control device which functioned automatically to prevent an individual from entering the area. Specifically, during this time period, while the irradiator was operating, the required entry control device radiation monitor, which functions automatically to lock the entrance when excessive radiation levels are present, was not present and operating because it had been removed and sent for calibration without a replacement monitor being installed.

This is a Severity Level II violation. (Supplement IV) Civil Penalty—$8000.

C. Contrary to the above, from May 29, to August 19, 1987, the access point to the irradiator room at the licensee's former irradiator facility in Parsippany, New Jersey (in which radiation levels existed in excess of 500 rems in one hour at one meter from a sealed radioactive source) was not equipped with an entry control device which functioned automatically to prevent an individual from entering the area. Specifically, during this time period, while the irradiator was operating, the required entry control device radiation monitor, which functions automatically to lock the entrance when excessive radiation levels are present, was not present and operating because it had been removed and sent for calibration without a replacement monitor being installed.

This is a Severity Level II Violation. (Supplement IV) Civil Penalty—$10,000.

II. Condition 19 of License No. 29–19769–02 requires that the licensee possess and use licensed radioactive material at its facility in Northboro, Massachusetts in accordance with the statements, representations, and procedures contained in the license application dated May 24, 1982.

Section 4.6.1 of the license application dated May 24, 1982 requires that the proper operation of the irradiator ventilation fan be monitored by an air flow switch installed in the filter body such that if no air flow is indicated, the source is returned to the fully shielded position.

Contrary to the above, on August 20, 1987 and for an indeterminate number of times prior to that date (specifically whenever water from heavy rainfall entered the ventilation system), no air flow was indicated in the ventilation system and, because jumper cables were installed to bypass the interlock associated with the air flow switch, the source was not returned to the fully shielded position.

This is a Severity Level III violation. (Supplement VI) Civil Penalty—$2,500.

Violations Not Assessed a Civil penalty

III. Condition 20 of License No. 29–15364–01 required that the licenses possess and use licensed radioactive material at its former Parsippany facility in accordance with statements, representations, and procedures contained in the application dated December 20, 1985.

Item 7.2 of this application required that formalized weekly and monthly safety and maintenance related checks be performed on the mechanical systems of the irradiator.

Contrary to the above, the required monthly safety and maintenance related checks of the mechanical systems of the irradiator were not performed for January and February 1987, and the required weekly safety and maintenance related checks were not performed between December 17, 1986 and March 24, 1987.

This is a Severity Level IV violation. (Supplement VI)

IV. 10 CFR 20.203(c)(6)(vii) requires that entry control devices required in accordance with 10 CFR 20.203(c)(6)(i) be tested with a source of radiation for proper functioning prior to initial operation on any day that operations are not uninterruptedly continued from the previous day, or before resuming operations after any interruptions, and records maintained of the date, time, and results of such tests.

Contrary to the above, records were not maintained of the safety interlock checks performed during the period from August 29, 1986 to February 1, 1987.

This is a Severity Level V Violation. (Supplement IV)

2. Summary of Licensee Response Requesting Mitigation of the Civil Penalties

Although the licensee admits the occurrence of all of the violations, the licensee requests mitigation of the respective civil penalties proposed for Violations. I.A, I.B and I.C. In support of its request, the licensee argues that during those periods that the radiation cell monitor was out for calibration, the safety of personnel was not jeopardized because (1) alternate safety procedures were instituted requiring two individuals with two survey meters to monitor the door entry point, and the operators were instructed in these procedures which were posted at the entry point; and (2) seven other safety features were operable as part of the normal cell entry procedure. The licensee also argues that it was totally open and honest with the NRC during the inspections and investigations. The licensee also states that when the inspectors identified the violations, the licensee responded honestly regarding whether it had operated in this manner before, and that this form of self-incrimination should not be a basis for civil action.

3. NRC Evaluation of the Licensee's Response

In its letter dated June 28, 1989, transmitting the Notice of Violation and Proposed Imposition of Civil Penalties to Isomedix, Inc., the NRC recognized that alternate safety procedures had been instituted when the radiation monitor was removed for calibration. However, the NRC also noted that the licensee knew that the alternate procedures did not constitute an entry control device which functioned automatically to prevent inadvertent entry to the area, and this did not constitute compliance with the requirements set forth in 10 CFR 20.203 (c)(6)(i). These factors were considered by the NRC in evaluating the significance and severity level of the violations. In accordance with the guidance provided in the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (Enforcement Policy), these factors are not considered by the NRC in the decision to escalate and mitigate a civil penalty (although a reduced Severity Level of a violation will generally result in a lower civil penalty amount). In this case, the NRC considered classifying each of these three violations at Severity Level I since the violations were willful. However, because alternate procedures and other safety features were in effect, the NRC determined that a Severity Level II classification was appropriate, and the amount of the civil penalties was determined after considering the normal escalation and mitigation factors in the manner described in the NRC's letter dated June 28, 1989.

Furthermore, while the NRC acknowledges the openness and honesty exhibited during the inspection and investigation, the NRC requires such honesty from its licensees and anything less would have been unacceptable and may have resulted in more significant civil and/or criminal enforcement action. It is a fundamental regulatory principal that all information provided to the NRC be complete and accurate in all material ways. Therefore, while this openness and honesty is commendable, it provides no basis for mitigation of the penalty.

4. NRC Conclusion

The NRC staff has carefully reviewed the licensee's response and has concluded that the licensee has not provided a sufficient basis for mitigation of the amount of the civil penalties. Therefore, civil penalties in the amount of $28,500 should be imposed.

[FR Doc. 89–21406 Filed 9–11–89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

SMALL BUSINESS ADMINISTRATION

Final Policy Directive

AGENCY: Office of Federal Procurement Policy (OFPP); Small Business Administration (SBA).

ACTION: Notice of final policy directive.

SUMMARY: The OFPP and SBA are issuing a final policy directive and test plan implementing title VII of the "Business Opportunity Development Reform Act of 1988," Public Law (Pub. L.) 100–656, which establishes the Small Business Competitiveness Demonstration Program. As a result of comments received following publication of an interim policy directive and test plan in the **Federal Register** on December 29, 1988 (53 FR 52889), changes have been made to the interim policy directive and test plan as indicated below. The changes include deleting Federal Procurement Data System (FPDS) service codes C217, Mapping Incidental to A&E Services, and C218, Surveying Incidental to A&E Services, and establishing an annual report on results of the Program.

In addition, the "Business Opportunity Development Reform Act Technical Corrections Act," Pub. L. 101–37, adds the Department of Interior as a participating agency in the Program. The final policy directive and test plan reflect this change.

EFFECTIVE DATE: October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Karen Maris, Deputy Associate Administrator, (202) 395–3300; or Robert Neal, Deputy Associate Administrator, (202) 395–6810.

SUPPLEMENTARY INFORMATION:

A. Background

Title VII of the "Business Opportunity Development Reform Act of 1988," Pub. L. 100–656, seeks to test the effectiveness of eliminating small business set-asides in certain industries through the establishment of the "Small Business Competitiveness Demonstration Program." The program has two primary objectives: (1) To demonstrate whether small businesses in certain industry groups can compete successfully on an unrestricted basis for Federal contracts; and (2) to demonstrate whether targeted goaling and management techniques can expand Federal contract opportunities for small businesses in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. OFPP and SBA are charged with issuing a policy directive to ensure consistent government-wide implementation of Title VII.

B. Public Comments

OFPP and SBA published an interim policy directive and test plan with request for comment on December 29, 1988 (53 FR 52889). Forty public comments were received in response to that notice. Twenty-nine specifically supported the Program or the interim policy directive. Only one expressed disagreement with the Program as a whole.

A majority of the comments suggested adding more Federal agencies to the list of nine participating agencies covered by the interim policy directive and test plan. The agencies mentioned include the Departments of Interior, Commerce, State, Justice, and Housing and Urban Development. The Department of Interior has been added as a participating agency by the "Business Opportunity Development Reform Act Technical Corrections Act," Pub. L. 101–37.

The Administrator of OFPP (Administrator) is authorized by section 718(c) of Pub. L. 100–656 to specify the list of executive agencies designated to participate in the Program, but is required to include at least the ten agencies listed in the law, as amended. The Conference Report on Pub. L. 100–656 indicates that Congress intended to include in the Program agencies whose combined procurement constituted a substantial portion of all Federal procurement and to exclude those agencies whose procurement was relatively insignificant. After considering the comments received and analyzing procurement award data for FY 1987 and 1988 from the FPDS, the Administrator has decided that it is inappropriate to include any other agencies in the Program.

The statutorily designated agencies already account for over 90% of the Federal procurement awards in each of the four designated industry groups covered by the Program. The inclusion of any one of the remaining suggested agencies would not result in an appreciable expansion of coverage for any of the designated industry groups because the maximum increase obtained would be less than 2 percent. Therefore, the Administrator has determined that the amount of procurement done by these agencies, in the industry groups covered by the Program, is not sufficient to warrant their inclusion in the Program.

Thirteen comments were received which recommended that FPDS service codes C217, Mapping Incidental to A&E Services, and C218, Surveying Incidental to A&E Services, be deleted from the Program. The commenters urged that these codes, which were created specifically for the Program, are confusing because surveying and mapping services are considered to be architectural and engineering services; consequently, there is no need to refer to surveying and mapping "incidental" to A&E services. Several commenters also argued that adequate FPDS service codes already existed for reporting surveying and mapping contracts, and therefore the new codes C217 and C218 were superfluous and confusing. OFPP and SBA have decided to delete new FPDS service codes C217 and C218 because we agree that the previously existing FPDS service codes are adequate for reporting purposes and that the addition of the new codes could cause confusion.

Ten comments were received that recommended that OFPP and SBA report regularly to the public on the results of the Program. We believe this is a good idea and will issue reports summarizing Program results on an annual basis.

Several comments were received that suggested the language in paragraph IV.A. of the test plan be clarified to indicate that the references to monitoring goal attainment based on awards in "individual codes" means FPDS service codes rather than Standard Industrial Classification (SIC) codes. The use of the words "individual codes" rather than "FPDS service codes" in paragraph IV.A. was intentional. This is because as provided in paragraph IV.B.4., the construction industry is to be monitored by SIC codes rather than FPDS service codes. (We believe that the construction SIC codes sufficiently identify the components of that industry for reporting purposes, while the same is not true for the other industries covered by the Program.) We have, however, amended paragraph IV.A. to clarify this point.

Several comments from firms engaged in the surveying and mapping professions and from associations that represent them suggested the addition to Program coverage of FPDS service codes D315, Digitizing Services to T099, Other Photographic, Mapping, Printing and Publication Services, in order to cover the fullest range of surveying and mapping contracts. We have decided not to add these codes to the Program. D315 is a code that falls under automated data processing (ADP) services, and it is our understanding that digitizing is an ADP application. While it is used for putting maps into a digitized form, it may be done by an ADP firm and need not be done by a surveying and mapping firm. Similarly, FPDS service code T099 is a miscellaneous code that covers a variety of services that may include, but are not limited to, surveying and mapping. If we added T099 to the Program, we would be covering services other than surveying and mapping which should not be included in the Program.

A few commenters also recommended the creation of new product and service codes to better define surveying under the program. We have determined that such an undertaking is not properly within the scope of the Program, which is a four year test that covers selected executive agencies. FPDS service codes are used for reporting purposes across the Federal government. Therefore, we do not believe a comprehensive restructuring of the surveying service codes for a limited purpose such as the Demonstration Program is appropriate.

Nine comments were received that suggested revising the size ranges included in Clause No. 1 and Clause No. 3 of Attachment A of the test plan. These clauses contain blanks that an offeror must check to indicate its size according to one of a series of specified size ranges, starting at $1 million or less and going to over $17 million. The commenters recommended that the size ranges should better reflect the actual size standard for their own industry. We have determined not to change the size ranges in the clauses.

The size ranges used in Clause No. 1 and Clause No. 3 were chosen because they generally are the same ranges used elsewhere in the government, such as the Bureau of Census, to collect data on small businesses. We did, however, make minor modifications to those ranges, such as providing more detailed breakdowns between the commonly used ranges of $1–$5 million and 500–1000 employees, to accommodate the most frequently used size standards. In order to change the size ranges so that they reflect the size standards for each of the covered industry groups, we would have to replace each clause with several alternative clauses because the size standards for the covered industry groups are all different. This would be cumbersome and confusing, and would make it difficult to make across the board comparisons between data obtained under the Program and data from other sources, such as the Bureau of the Census.

We also have been asked to amend Clause No. 1, paragraph (c) and Clause No. 3, paragraph (c) to clarify for offerors which of the two alternative columns, "No. of employees" and "Avg. annual gross revenues," they should check. This has been done by adding a parenthetical explanation to each clause. The parenthetical indicates that the column entitled "No. of employees" should be checked when the size standard stated in the solicitation is expressed in terms of number of employees, and the column entitled "Avg. annual gross revenues" should be checked when the size standard is expressed in terms of annual receipts.

Several comments were received which suggested changes which we believe would be inconsistent with the requirements of Pub. L. 100–656. For example, some commenters argued that the trigger for reinstituting set-asides should be set at a lower percentage, such as 20 percent. The 40 percent figure used in the Program is required by sections 712(a) and 713(a) of Pub. L. 100–656. Section 712(a) requires that each participating agency establish an annual small business participation goal of 40 percent, and section 713(a) provides that an agency that has failed to attain its small business participation goal shall solicit subsequent contracting opportunities through the use of small business set-asides to the extent necessary to attain its goal.

We also received several other comments recommending changes to policies that have broad applicability beyond the scope of the Program. We have determined that such changes are not appropriate within the limited context of the Program.

C. Clarification of Monitoring Requirements

We have learned that there is some confusion concerning whether the monitoring requirements in paragraphs IV.A.1., IV.A.2., and IV.A.3. of the test plan apply to emerging small businesses. These requirements do apply to emerging small businesses, and the paragraphs in question have been amended to clarify this point.

In addition, we have amended paragraphs III.A.1. and IV.A.3. to clarify that modifications to contracts covered by the Program should be counted toward goal attainment.

D. Addition of Portable Sanitation Services to the Program

We received a request to include portable sanitation services in the Program. The requestor points out that the Conference Report on Pub. L. 100–656 (H. Rep. No. 1070, at 84–85) states that the industry group "Refuse Systems and Related Services" is intended to include contracts for the regular collection and disposal of nonhazardous waste material from federal facilities and operations. The requestor argues that portable sanitation services come within this description. The requestor also notes that including portable sanitation services in the Program would advance the objectives of Pub. L. 100–656 because virtually all contracts for these services currently are being set aside, which indicates that this industry is already dominated by small businesses.

We believe that the inclusion of portable sanitation services in the Program is consistent with the congressional intent expressed in Pub. L. 100–656. These services do entail the regular collection and disposal of nonhazardous waste. Furthermore, they do not fit within any of the categories that the Conference Report indicates should not be covered: the operation of dumps, landfills, and sludge disposal sites; sea disposal operations; incinerators, and the collection and disposal of acid, radioactive, or other hazardous waste material. Accordingly, we have amended paragraphs III.A.2.b. and IV.B.1. to include portable sanitation services.

E. Regulatory Flexibility Act

These procedures may have a significant economic impact on a substantial number of small businesses, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and an Initial Regulatory Flexibility Analysis is necessary. However, data adequate for performance of an initial analysis are not yet available. An initial analysis will be prepared when adequate data are available and will be provided to the Chief Counsel for Advocacy, U.S. Small Business Administration.

The Program seeks to demonstrate whether expanded use of full and open competition in the four designated industry groups adversely affects small business participation in those industry groups. This element of the Program contains two protective features to ensure that any possible adverse impacts on small business participation in these industry groups are limited. First, the Program sets a small business participation goal of 40 percent in each of these groups. Second, the Program sets a goal for participation by emerging small businesses of 15 percent in each of these groups. Baseline data needed to perform an initial analysis of the likely effects of these provisions in the designated industry groups are not currently available.

Also, the Program directs each of the participating agencies to identify ten procurement categories that represent products and services purchased in substantial quantities by the agency that historically have had a small business participation rate of less than 10 percent by category, and in which there is a significant amount of small business productive capacity that has not been utilized by the Government. Successful implementation of this aspect of the Program would have a significant beneficial impact on a substantial number of small businesses. Baseline data to be used in performing the initial analysis of this portion of the Program also are not currently available.

F. Executive Order 12291

For the purposes of E.O. 12291, OFPP and SBA have determined that this interim policy directive is a major rule because it will have an annual effect on the economy of $100 million or more. In FY 1988, the total amount of Federal contract dollars set aside for small businesses by the participating agencies in the four designated industry groups affected by this directive was approximately $4.5 billion. We assume that the figures will be comparable for FY 1989. Most of these contracts will no longer be set aside for small businesses. This is expected to have a substantial impact on the small businesses in the four designated industry groups; however, the net effect on the economy is expected to be positive due to the increased level of competition for Federal contracts, by all sizes of firms, and the resulting reduction in Federal contract costs. This estimate does not include the portion of the Program covering the ten industry categories. Estimates of the economic impact for this portion of the Program cannot be developed here and instead must be developed by each agency covered by the Program for the ten industry categories it has selected to target for increased participation.

The lack of available economic data will not allow us to publish a regulatory analysis at this time. We, therefore, requested and received from the Office of Management and Budget (OMB) a waiver from the requirements of section 3 of E.O 12291 regarding the preparation and consideration of a Regulatory Impact Analysis at this time. We will publish in the **Federal Register** a notice of availability of the results of the regulatory analysis upon its completion.

G. Paperwork Reduction Act

The information collection requirements contained in the policy directive and test plan were previously approved by OMB and assigned OMB control number 9000–0100. Pub. L. 101-37, however, expanded the universe of contracts requiring this data submission. A revised information collection request has been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. 35).

Dated: August 31, 1989.

Allan V. Burman,

Deputy Administrator and Acting Administrator Office of Federal Procurement Policy.

Robert J. Moffitt,

Acting Associate Administrator for Procurement Assistance Small Business Administration.

Memorandum For: The Secretary of Agriculture, The Secretary of Defense, The Secretary of Energy, The Secretary of Health and Human Services, The Secretary of the Interior, The Secretary of Transportation, The Administrator of the Environmental Protection Agency, The Administrator of the General Services, The Administrator of the National, Aeronautics and Space Administration, The Secretary of Veterans Affairs.

Subject: The Small Business Competitiveness Demonstration Program.

August 31, 1989.

1. *Purpose.* This memorandum provides policy direction to the participating agencies for implementation of Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100–656, that establishes the Small Business Competitiveness Demonstration Program.

2. *Authority.* This memorandum is issued pursuant to Sec. 715. of Pub. L. 100–656 which requires that the Office of Federal Procedurement Policy (OFPP) and the Small Business Administration (SBA) issue a policy directive to ensure consistent government-wide implementation of Title VII in the Federal Acquisition Regulation (FAR).

3. *Background.* Section 15(a) of the Small Business Act mandates that small businesses receive a fair proportion of Federal procurements. To achieve this goal, Subpart 19.5 of the FAR requires that Federal agencies reserve, or set aside, procurements for exclusive small business participation when a contracting officer determines that two

or more small businesses are capable of providing the goods or services at reasonable prices. While restricting procurements for exclusive small business participation has been very effective in assuring a small business share of Federal contracts, one unintended result is a concentration of awards in certain industries often dominated by small businesses. A further result is that agencies expend resources in those industries that are conducive to high levels of small business participation rather than expand the base of small business contracting into areas were small businesses do not traditionally obtain a significant share of procurement awards.

4. *Policy.* The Small Business Competitiveness Demonstration Program is designed to provide for enhanced goals for small businesses in certain industry groups and to expand small business participation in a broader range of industry categories. The Program is conducted under the authority of section 15 of the Office of Federal Procurement Policy Act which provides for the test of unique and innovative procurement procedures and techniques. The goal of the Program is to test the ability of small businesses in certain designated industry groups to retain a fair proporation of procurement awards in unrestricted competition in those industry groups. The Act designates SBA to act as the executive agent for OFPP in conducting the test. The procedures for implementing the test required by the Program are set forth in the attached test plan.

5. *Implementation.* This final policy directive shall be implemented in FAR Part 19. Pursuant to Sec. 714(a) of Pub. L. 100–656, provisions of the FAR that are inconsistent with this final policy directive and the attached test plan are hereby waived.

6. *Expiration Date.* The Small Business Competitiveness Demonstration Program and this policy will expire on December 31, 1992.

Allan V. Burman,

Deputy Administrator and Acting Administrator, Office of Federal Porcurement Policy.

Robert J. Moffitt,

Acting Associate Administrator for Procurement Assistance, Small Business Administration.

Small Business Competitiveness Demonstration Program Test Plan

I. Purpose

This document implements Title VII of the "Business Opportunity Development Reform Act of 1988", which establishes the Small Business Competitiveness Demonstration Program (the Program). There are three primary purposes for this Program. First, the Program seeks to demonstrate whether the competitive capabilities of small business firms in certain industry groups will enable them to successfully compete on an unrestricted basis for Federal contracts. Second, the Program attempts to demonstrate whether the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Small Business Administration (SBA), will expand small business participation in Federal contracting opportunities that have been historically low despite adequate numbers of qualified small business contractors in the economy. Finally, the Program seeks to demonstrate whether expanded use of full and open competition adversely affects small business participation in certain industry groups, taking into consideration the numerical dominance of small firms, the size and scope of most contracting opportunities, and the competitive capabilities of small firms.

II. Authority

The Program is established pursuant to Title VII of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656) and Section 15 of the Office of Federal Procurement Policy Act, 41 U.S.C. 413, which provides for the testing of innovative procurement methods and procedures.

III. Program Requirements

A. Applicability

1. The Program shall be conducted over a period of four (4) years, from January 1, 1989, through December 31, 1992. The Program will consist of two major components: (1) four Designated Industry Groups, which test unrestricted competition, and (2) ten Targeted Industry Categories, which test enhanced small business participation. Contracts resulting from solicitations issued from January 1, 1989 through December 31, 1992, and any subsequent modifications to such contracts, are covered by this Program.

2. Contract awards in the following designated industry groups are covered by this Program:

a. Construction under standard industrial classification (SIC) codes that comprise major groups 15, 16, and 17 (excluding dredging—Federal Procurement Data System (FPDS) service codees Y216 and Z216);

b. Refuse systems and related services, including portable sanitation services, under SIC code 4212 or 4953, limited to FPDS service code S205;

c. Architectural and engineering (A&E) services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C216, C219, T002, T004, T008, T009, T014, and R404); and

d. Non-nuclear ship repair—ship repair (including overhauls and conversions) performed on non-nuclear propelled and nonpropelled ships under SIC code 3731, limited to FPDS service codes J998 (repair performed east of the 108th meridian) and J999 (repair performed west of the 108th meridian).

3. Targeted industry categories for enhanced participation will be determined by each participating agency, in conjunction with SBA.

4. Contract awards under the Federal Schedule Program are not covered by the Program.

B. Participating Agencies

The following agencies are participants in the Program:

1. The Department of Agriculture,
2. The Department of Defense, except the Defense Mapping Agency,
3. The Department of Energy,
4. The Department of Health and Human Services,
5. The Department of Transportation,
6. The Environmental Protection Agency,
7. The General Services Administration,
8. The National Aeronautics and Space Administration,
9. The Department of Veterans Affairs, and
10. The Department of the Interior

C. Agency Goals for the Four Designated Industry Groups

1. Each participating agency shall have a small business participation goal that is 40 percent of the agency's total contract dollars awarded for each of the four designated industry groups. In addition, each participating agency must make a good faith effort to assure that emerging small businesses receive not less than 15 percent of the agency's total contract dollars awarded for each of the four designated industry groups.

2. The Business Opportunity Development Reform Act of 1988 defines an emerging small business as one whose size is no greater than 50 percent of the numerical size standard applicable to the SIC Code assigned to the procurement. Subject to the requirements of paragraph D.3 below, contract opportunities in the four designated industy groups, which have an estimated award value equal to or less than the reserve amount established

for emerging small businesses, are reserved for such businesses.

3. Contract awards made to fulfill the 15 percent goal for emerging small businesses also count toward attainment of the 40 percent goal. All prime contract awards to small businesses, including awards under section 8(a) of the Small Business Act, section 1207 of the FY 87 National Defense Authorization Act, and sole source awards, count toward attainment of goals.

D. Procurement Procedures for the Four Designated Industry Groups

Participating agencies shall use the following procedures for procurements in the four designated industry groups.

1. Full and Open Competition for Contracts in Excess of the Emerging Business Reserve Amount. Subject to the requirements of the Competition in Contracting Act of 1984, participating agencies are required to use full and open competition for all solicitations issued on or after January 1, 1989, in the four designated industry groups, if the anticipated award value exceeds the dollar amount reserved for emerging small businesses (unless the procurement is placed under section 8(a) of the Small Business Act or set aside under section 1207 of the FY National Defense Authorization Act). Each participating agency shall continue to use full and open competition as long as quarterly reviews show that the agency's 40 percent goals are being attained. The continued use of full and open competition is not affected by an agency's failure to meet its 15 percent award goals for emerging small businesses.

2. Restricted Competition for Contracts in Excess of the Emerging Small Business Reserve Amount. a. If any participating agency's quarterly review of its awards to small businesses in the four designated industry groups shows that the agency has failed to attain its 40 percent goals for any of the groups, subsequent contracting opportunities, in excess of the amount reserved for emerging small businesses, shall be solicited through competition ½restricted to eligible small businesses to the extent necessary for the agency to attain its goals for that industry. Such solicitations (unless placed under section 8(a) of the Small Business Act or set aside under section 1207 of the FY National Defense Authorization Act) shall be conducted in accordance with section 15(a) of the Small Business Act and Subpart 19.5 of the Federal Acquisition Regulation (FAR).

b. Agencies shall be responsible for determining the extent to which restricted competition shall be employed in order to attain their small business participation goals; successive failures to meet small business participation goals warrant more aggressive measures. (For example, if an agency only misses a goal by five percent, the agency may conclude that it can attain its goal by restricting competition for a portion of its procurements, rather than all of them. Agencies are expected to exercise this discretion judiciously, and make appropriate adjustments if they miss their goal again.) Agencies shall return to the use of full and open competition upon determining that their contract awards to small business concerns meet the required goals.

c. Modifications to agency solicitation practices (instituting restricted competition and reinstituting full and open competition) shall be made as soon as practicable, but no later than the beginning of the quarter following completion of the review indicating the need for such change.

3. Reserve Program for Emerging Small Businesses

a. The emerging small business reserve amount is $25,000, or such higher amount as OFPP sets in the event that emerging small business concerns are not receiving 15 percent of the total dollar value of contract awards in one or more of the four designated industry groups. Any required adjustments to the emerging small business reserve amount will be made semi-annually by industry group.

b. Competition for all contract opportunities in the four designated industry groups with an estimated award value that is equal to or less than the emerging small business reserve amount shall be restricted to emerging small businesses, provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible emerging small businesses that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, requirements will be processed in accordance with FAR Subpart 13.105 or in accordance with FAR Subpart 19.5 or 19.8. However, if no such reasonable expectation exists where OFPP has raised the small business reserve amount to a level over $25,000, requirements over $25,000 will be processed in accordance with paragraphs D.1 and D.2, above.

c. The use of small purchase procedures is not required under the reserve program; any competitive source selection method may be used. The reserve program applies only to new awards within the emerging small business reserve threshold. Modifications within the scope of work contracts having an initial award value in excess of the emerging small business reserve amount are not subject to the reserve program.

d. Each solicitation under the Program that utilizes small purchase procedures shall include the applicable SIC code and size standard for the procurement. The exception for small purchases in FAR subpart 19.303(a) is hereby waived for the Program.

4. Solicitation Provisions for Procurements in the Four Designated Industry Groups

a. The provision set forth in Attachment A entitled "Small Business Concern Representation For The Small Business Competitiveness Demonstration Program (AUGUST 1989)" shall be inserted in full text in all solicitations issued by the participating agencies under the Small Business Competitiveness Demonstration Program for the four designated industry groups.

b. The clause set forth in Attachment A entitled "Notice of Emerging Small Business Set-Aside (DEC 1988)" shall be inserted in full text in all solicitations and resulting contracts restricted to emerging small businesses pursuant to paragraph III.D.3.

c. The face of each award issued by a participating agency under the Small Business Competitiveness Demonstration Program for the four designated industry groups shall contain a statement that the award is being issued pursuant to such Program.

E. Agency Programs For Targeted Industry Categories With Limited Small Business Participation

1. Each participating agency is required to select ten industry categories (four-digit SIC Code or some segmented portion(s) of such code(s), as identified by FPDS product or service code) as targeted categories for expansion of small business participation.

2. In order to achieve such expanded participation, agencies shall select categories that represent products and services purchased in substantial quantities by the agency; that historically have had a small business participation rate of less than 10 percent by category; and, in which there is a significant amount of small business productive capacity that has not been utilized by the Government.

3. Each participating agency shall consult with the Administrator of SBA in selecting the ten targeted categories, developing the plan for expanded small business participation, and establishing

the goals for the Program. Upon completion of their consultation with SBA, participating agencies shall publish in the **Federal Register**, an announcement soliciting public comment on that agency's program for expansion of small business participation in the targeted categories.

4. Each plan shall be submitted to the Administrator of SBA and shall contain a detailed time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures shall be included. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability. Such joint ventures or teams shall comply with the applicable small business guidelines. (See 13 C.F.R. § 121.3(a)(vii)(C) and 121.5(a)).

5. Participating agencies shall report to OFPP and SBA on the results of the expansion program regarding the ten targeted categories on the same quarterly schedule as required for the four designated industry groups.

6. Goal attainment for the ten targeted industry categories shall be determined on the basis of awards to U.S. business firms.

7. The provision set forth in Attachment A entitled "Small Business Size Representation For Targeted Industry Categories Under The Small Business Competitiveness Demonstration Program (AUGUST 1989)" shall be inserted in full text in any soliciation issued in each of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program that is expected to result in a contract award in excess of $25,000.

8. The face of each award issued in any of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program shall contain a statement that the award is being issued pursuant to such Program.

IV. Monitoring and Reporting for Four Designated Industry Groups

A. Monitoring of Goals for the Four Designated Industry Groups

1. Each participating agency shall monitor its attainment of its small business and emerging small business participation goals on a quarterly basis. Written reports must be made to OFPP and SBA as to whether goals have been attained for each industry group, as specified in paragraph A.3 below. The Department of Defense shall submit a report that separately identifies performance by the Army, Air Force, Navy and the Defense Agencies. The report submitted by the General Services Administration shall separately identify performance by the Public Building Service. Reports shall be submitted within 60 days after the end of each quarter.

2. Agencies shall monitor their goal attainment for the first three quarters based on aggregate data for the following time periods:

a. First quarterly review: 1/1/89–3/31/89.

b. Second quarterly review: 1/1/89–6/30/89.

c. Third quarterly review: 1/1/89–9/30/89.

Thereafter, monitoring is to be based on aggregate data for the four preceding quarters.

3. Attainment of small business and emerging small business participation goals for the four designated industry groups will be monitored by each participating agency. Monitoring of goal attainment will be based on awards (and any subsequent modifications to those awards) in the individual codes comprising the industry, as specified in paragraph B. below.

4. Any necessary modifications to agency solicitation practices for the purpose of achieving the agency's small business participation goals (instituting restricted competition or reinstituting full and open competition) will be accomplished for each of the industry groups as follows:

a. Construction (excluding dredging).

i. Major Group 15.

ii. Major Group 16.

iii. Major Group 17.

b. Refuse Systems and related services.

c. Architectural and engineering services (including surveying and mapping).

d. Non-nuclear ship repair.

However, if goal attainment for any individual FPDS service code within the architectural and engineering services or non-nuclear ship repair industry groups falls below 35 percent, the agency shall reinstitute set-asides for that individual service code, even if overall goal attainment in the industry group is 40 percent or more. In addition, if goal attainment for any individual SIC code within one of the major groups comprising the construction industry group falls below 35 percent, the agency shall reinstitute set-asides for that individual SIC code, even if overall goal attainment in the major group is 40 percent or more.

5. Agencies shall monitor goal attainment in the four designated industry groups by reviewing total prime contract award dollars to (a) all U.S. business firms (b) small U.S. business concerns and (c) emerging small U.S. business concerns.

6. OFPP and SBA will closely monitor the Program using data from the FPDS to ensure that each participating agency makes a consistent effort to achieve goals evenly across all individual codes that comprise a designated industry group. Data shall be retrieved in the format set forth at Attachment B.

7. All prime contract awards to small businesses, including awards under section 8(a) of the Small Business Act, Section 1207 of the FY 87 National Defense Authorization Act, and sole source awards, count toward attainment of goals.

B. Codes for Monitoring and Reporting Goal Attainment For The Four Designated Industry Groups

1. Refuse Systems and Related Services.

The Business Opportunity Development Reform Act of 1988 outlines the SICs that are included in the designated industry groups. However, in the area of refuse systems and related services, SICs 4212 and 4953 include services that should not be included in the Program. The Program is designed to test small firms' competitiveness generally in procurements for the collection, transportation, and disposal of residential and nonhazardous commercial garbage, refuse and waste materials. For example, contracts for the regular collection and disposal at publicly or privately operated landfills of residential and nonhazardous commercial solid waste, garbage, debris, or other refuse from military installations, federal office buildings, and other federal facilities, and garbage processing and recycling activities, should be included. Contracts for the operation of those facilities, collection and disposal of acid, radioactive, or other hazardous waste should not be included. Therefore, participating agencies shall use FPDS service code S205 (trash/garbage collection services—including portable sanitation services) to monitor goal attainment for refuse systems and related services.

2. Architectural and Engineering Services.

a. The statute designates SICs 8711, 8712, 8713, and 7389 (if identified as mapping), as the codes for tracking architectural and engineering services, which includes surveying and mapping. Since SIC 7389 includes many more services than mapping, participating agencies shall use the following FPDS service codes to monitor goal attainment for mapping services:

T002 Cartography services
T004 Charting services
T006 Photogrammetry services
T009 Aerial photographic services
T014 Topography services

b. Participating agencies shall use the following FPDS service codes to monitor A&E services under SICs 8711 and 8712:

C111 Administrative and Service Buildings
C112 Airfield, Communication and Missile Facilities
C113 Educational Buildings
C114 Hospital Buildings
C115 Industrial Buildings
C116 Residential Buildings
C117 Warehouse Buildings
C118 Research and Development Facilities
C119 Other Buildings
C121 Conservation and Development
C122 Highways, Roads, Streets and Bridges
C123 Electric Power Generation (EPG)
C124 Utilities
C129 Other Non-Building Structures
C130 Restoration
C211 Architect—Engineer Services (non-construction)
C212 Engineering Drafting Services
C213 A&E Inspection Services (non-construction)
C214 A&E Management Engineering Services
C215 A&E Production Engineering Services
C216 Marine A&E Services
C219 Other Architect and Engineering Services

(c) Participating agencies shall identify surveying by using FPDS service code R404 (land surveys, cadastral services—non construction).

3. Non-nuclear Ship Repair.

Non-nuclear ship repair is included within SIC 3731. Since this SIC includes all ship repair as well as shipbuilding, participating agencies shall use the following FPDS service codes to monitor goal attainment for non-nuclear ship repair: J998 (Ship Repair (Including Overhauls and Conversions) Performed on Non-nuclear Propelled and Nonpropelled Ships East of the 108th Meridian) or J999 (Ship Repair (Including Overhauls and Conversions) Performed on Non-nuclear Propelled and Nonpropelled Ships West of the 108th Meridian).

4. Construction.

Goal attainment for construction shall be monitored through the use of the SIC codes identified in Attachment B.

V. Data Collection Requirements

Participating agencies shall maintain and report procurement data to the FPDS in order to determine the level of small business participation in the four designated industry groups and the ten targeted industry categories for the small business expansion program.

A. Awards in Excess of $25,000

For contract awards in excess of $25,000, the FPDS (1) has information on the SIC code of the procurement and (2) can distinguish awards to small business concerns. However, the FPDS reporting requirements are being revised to:

1. Distinguish awards resulting from solicitations issued under the Program from awards resulting from solicitations issued prior to January 1, 1989, in the four designated industry groups. A distinction must be made between contract actions awarded from solicitations issued under the Program and contract actions awarded from solicitations issued prior to January 1, 1989.

2. Distinguish emerging shall business firms from other small businesses. Participating agencies must make a good faith effort to award not less than 15 percent of the dollar value of awards in the four designated industry groups to emerging small businesses.

3. Distinguish awards to emerging small business firms in the small business reserve program. Participating agencies must reserve for exclusive competition among emerging small business concerns all contracts of $25,000 or less in the four designated industry groups or a greater amount set by OFPP if the 15 percent goal is not attained. Emerging small businesses can also receive awards above the small business reserve threshold.

4. Provide the size of the small business concern in terms of number of employees or dollar volume of sales for awards in the four designated industry groups and the ten targeted industry categories. Section 714(c) of the Business Opportunity Development Reform Act of 1988 requires each participating agency to collect data pertaining to the size of the small business concern receiving any award for services in the four designated industry groups and products or services in the ten targeted industry categories.

5. The number of employees will be based on the average of the pay periods for the last twelve months. The volume of sales will be based on the average annual gross revenue for the last three fiscal years (See FAR 19.101).

6. Specific details outlining the FPDS changes have been included in an amendment to the October 1988 FPDS Reporting Manual.

B. Awards of $25,000 or Less

During the term of the Program, each award of $25,000 or less made by a participating agency for the procurement of a service in the four designated industry groups shall be reported to the Federal Procurement Data Center in the same manner as if the award was in excess of $25,000. This means that all applicable data collected in the FPDS via the Individual Contract Action Report (SF 279), or agencies' equivalent computer-generated format, shall be reported for these purchases. It should be noted that awards of $500 or less are not reportable to the FPDS.

C. Subcontracting Activity

1. The OFPP Administrator must devise and implement, during the Program, a simplified system to test the collection, reporting, and monitoring of data on subcontract awards to small business concerns and small disadvantaged business concerns for services in the four designated industry groups and products or services in the ten targeted industry categories. The Test Subcontracting Reporting System must, even if limited to only a small number of buying activities or products or services, effectively capture the full range of small business participation at all tiers.

2. The simplified system should be implemented at the beginning of FY 1990 (October 1989). OFPP is working with officials from participating agencies' Small and Disadvantaged Business Utilization Office to develop the requirements for the simplified subcontracting system.

Attachment A—Clause No. 1

Insert the following provision (clause no. 1) in full text in all solicitations issued by the participating agencies under the Small Business Competitiveness Demonstration Program for the four designated industry groups. Insert this clause as Alternate I in addition to the clause at FAR 52.219–1.

Small Business Concern Representation for the Small Business Competitiveness Demonstration Program (August 1989)

(a) *Definition.*

"Emerging small business", as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

(b) (Complete only if Offeror has certified itself under the clause at FAR 52.219–1 as a

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small business concern under the size standards of this solicitation.)

The Offeror represents and certifies as part of its offer that it ______ is, ______ is not an emerging small business.

(c) (Complete only if the Offeror is a small business or an emerging small business, indicating its size range.)

Offeror's number of employees for the past twelve months (check this column if size standard stated in solicitation is expressed in terms of number of employees) *or* Offeror's average annual gross revenue for the last three fiscal years (check this column if size standard stated in solicitation is expressed in terms of annual receipts). (Check one of the following.)

No. of employees	Avg. annual gross revenues
50 or fewer	$1 million or less.
51–100	$1,000,001–$2 million.
101–250	$2,000,001–$3.5 million.
251–500	$3,500,001–$5 million.
501–750	$5,000,001–$10 million.
751–1,000	$10,000,001–$17 million.
Over 1,000	Over $17 million

(End of clause)

Clause No. 2

A. Insert the following provision (clause no. 2) in full text in all solicitations and resulting contracts restricted to emerging small businesses pursuant to paragraph III. D. 3.

Notice of Emerging Small Business Set-Aside (Dec 1988)

Offers or quotations under this acquisition are solicited from emerging small business concerns only. Offers that are not from an emerging small business shall not be considered and shall be rejected.

(End of provision)

B. When using other than small purchase procedures, insert the clause at 52.219–14 in all solicitations and resulting contracts restricted to emerging small businesses.

Clause No. 3

Insert the following provision (clause no. 3) in full text in all solicitations issued in each of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program that is expected to result in a contract award in excess of $25,000. Insert this clause as Alternate II in addition to the clause at FAR 52.219–1.

Small business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program (Augst 1989)

(Complete only if the Offeror has certified itself under the clause at FAR 52.219–1 to be a small business concern under the size standards of this solicitation.)

Offeror represents and certifies as follows:

Offeror's number of employees for the past twelve months (check this column if size standard stated in solicitation is expressed in terms of number of employees) *or* Offeror's average annual gross revenue for the last three fiscal years (check this column if size standard stated in solicitation is expressed in terms of annual receipts). (Check one of the following.)

No. of employees	Avg. annual gross revenues
50 or fewer	$1 million or less.
51–100	$1, 000,001–$2 million.
101–250	$2, 000,001–$3.5 million.
251–500	$3, 500,001–$5 million.
501–750	$5, 000,001–$10 million.
751–1,000	$10, 000,001–$17 million.
Over 1,000	Over $17 million.

(End of clause)

Attachment B—Report on Small Business Participation under the Small Business Competitiveness Demonstration Program for Designated Industry Groups

Fiscal Year ________ Quarter ________

Agency: ____________________

Subagency (if applicable) ____________________

Designated groups	Total US business actions/dollars	Small business actions/dollars [1]	Percentage of dollars	Emerging small business actions/dollars	Percentage of dollars
I. Construction (excluding dredging)					
SIC Group 15					
1521					
1522					
1531					
1541					
1542					
Subtotal					
SIC Group 16					
1611					
1622					
1623					
1629					
Subtotal					
SIC Group 17					
1711					
1721					
1731					
1741					
1742					
1743					
1751					
1752					
1761					
1771					
1781					
1791					
1793					
1794					
1795					
1796					
1799					
Subtotal					
Grand Total					
II. Refuse Systems and Related Services					
PSC 5205					
Total					
III. Architectural and Engineering Services (including mapping and surveying)					
SIC 7389:					
PSC T002					
PSC T004					
PSC T006					
PSC T009					
PSC T014					
Subtotal					
SIC 8711 or SIC 8712:					
PSC C111					
PSC C112					
PSC C113					
PSC C114					
PSC C115					
PSC C116					
PSC C117					
PSC C118					
PSC C119					
PSC C121					
PSC C122					
PSC C123					
PSC C124					
PSC C129					
PSC C130					
PSC C211					
PSC C212					
PSC C213					
PSC C214					
PSC C215					
PSC C216					
PSC C219					
Subtotal					
SIC 8713:					
PSC R404					
Subtotal					
Grand Total					
IV. Non-nuclear Ship Repair					
SIC 3731:					
PSC J998					
PSC J999					
Total					

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[1] Small Business Dollars include dollars to Emerging Small Businesses.

[FR Doc. 89–21334 Filed 9–1–89; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–17124; 812–7274]

Allied Capital Corp., et al.; Notice of Application

September 1, 1989

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Allied Capital Corporation ("Allied Capital"), Allied Capital Corporation II ("Allied Capital II") (together, the "Funds"), Allied Advisory, Inc. ("Allied Advisory"), Allied Management Partners ("Management Partners") and Allied Venture Partnership ("Venture"), and Allied Technology Partnership ("Technology") (Venture and Technology, the "Venture Partnerships").

Relevant 1940 Act Sections: Order requested under Sections 6(c), 17(d) and Rule 17d–1 thereunder permitting certain joint transactions otherwise prohibited by Sections 17(d) and 57(a)(4).

Summary of Application: Applicants seek an order under Sections 6(c) and 17(d) of the Act and Rule 17d–1 thereunder permitting certain joint transactions relating to a proposed co-investment program involving Allied Capital, Allied Capital II, and the Venture Partnerships.

Filing Dates: The application was filed on March 23, 1989, and an amendment thereto was filed on September 1, 1989.

Hearings or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant[s] with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 25, 1989, and should be accompanied by proof of service on the Applicant[s], in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1666 K Street, NW., Suite 901, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Stuart Horwich, Staff Attorney (202) 272–3035 or Karen Skidmore, Branch Chief, at (202) 272–3023, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Allied Capital is a closed-end investment company registered under the Act. It is a holding company engaged in providing venture capital financing to small businesses primarily through four wholly-owned subsidiaries also registered as closed-end investment companies. Allied Capital's total consolidated assets as of December 31, 1988 were valued at $127,530,000.

2. Allied Capital II is a closed-end investment company. Its board of directors has determined that it will elect to be regulated as a business development company ("BDC") pursuant to Section 54 of the Act. As is true of Allied Capital, the investment objective of Allied Capital II is a long-term capital appreciation through venture capital investments in small businesses ("Portfolio Companies"). Like Allied Capital, it will invest in high-yielding debt, debt with equity features, and equity securities of companies believed to have significant potential for growth. A registration statement on Form N–2 has been filed registering the offering of shares of Allied Capital II under the Securities Act of 1933. Upon the effectiveness of such registration, a public offering expected to raise up to $125 million will commence. The principal underwriter for Allied Capital II is Shearson Lehman Hutton Inc.

3. Allied Advisory, a wholly-owned subsidiary of Allied Capital, will be the investment adviser of Allied Capital II. Allied Advisory is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Commission is reviewing an application for exemptive relief under the Act to permit the spin-off of 100 percent of the shares of Allied Advisory to the shareholders of Allied Capital (the "spin-off"). Under the terms of the spin-off, shareholders of Allied Capital would receive shares of Allied Advisory equal to the number of shares of Allied Capital owned. Upon effectuation of the spin-off, Allied Advisory will become the investment adviser of Allied Capital pursuant to a contract to be submitted to the shareholders of Allied Capital.

4. Allied Capital and Allied Capital II have identical fundamental investment policies and strategies. The principal difference between the two companies is in their structure: Allied Capital makes its investments principally through its investment company subsidiaries, while Allied Capital II will make its investments directly. Both Funds will have officers in common, and two of Allied Capital's directors will be interested directors of Allied Capital II. Except for the two directors the Funds will have in common, their boards will be composed of different and unrelated persons, including the non-interested directors.

5. Allied Advisory structures all investments made by Allied Capital and the Venture Partnerships and will do so as well for Allied Capital II. Fees received from potential and actual borrowers are treated as either "commitment fees" or "management advisory fees". When Allied Advisory receives these fees, they are then distributed to the various entities such as Allied Capital and the Venture Partnerships (and will be distributed to Allied Capital II) based on each fund's pro rata commitment to invest, or, in the case of management advisory fees, the amount they have already invested. This means that no fees remain in Allied Advisory; they are all directed to the various funds.

6. Under the terms of a proposed investment advisory contract, Allied Capital II will pay an advisory fee of 2 percent of invested assets under management to Allied Advisory during its first year of operation, and 2.5 percent in its second year. In those first two years, it will pay a fee of .5 percent on assets invested in money market instruments and a business management fee of .25 percent of assets under management to The Boston Company Advisors, Inc. In its third year, Allied Capital II will pay to Allied Advisory a fee of 2.5 percent of all assets under management; Allied Advisory will either provide business management services itself or pay an outside entity to perform that function. When shareholders of Allied Advisory are solicited for approval of the spin-off proposal, they will also be asked to approve an advisory contract that will call for Allied Capital to pay a fee to Allied Advisory of 2.5 percent of assets under management.

7. Allied Capital has been granted orders of the Commission to permit it to co-invest with the two Venture Partnerships and certain other affiliates (Release IC–14725, September 17, 1985; Release IC–15833, June 30, 1987; Release IC–13461, August 23, 1983; Release IC–14961, February 27, 1986; and Release IC–16468, July 5, 1988) ("Prior Orders"). Venture and Technology are private venture capital investment partnerships that manage the assets of institutional and sophisticated investors. Allied Advisory is the investment adviser of the Venture Partnerships.

8. Applicants propose to allow Allied Capital and Allied Capital II to invest in tandem in Portfolio Companies and to allow Allied Capital II to co-invest with Venture and Technology to the extent that Allied Capital shares its portion of investment opportunities with its affiliates, including Venture and Technology under the terms of the Prior Orders; Allied Capital II will never make direct co-investments with the Venture Partnerships. This cooperative program ("Co-Investment Program") will apply to all potential investments identified by Allied Advisory as suitable investments for both Funds, except when such investments involve Portfolio Companies already in Allied Capital's portfolio. It is expected that the Co-Investment Program will increase favorable investment opportunities for both Funds and the Allied Group as a whole. Such tandem investing will make larger amounts of capital available for Portfolio Companies, thus permitting Applicants to invest on more favorable terms and to exert a greater influence in the management and operations of those Portfolio Companies.

9. The relative amounts offered each Fund will be a function of a predetermined ratio derived by comparing the total consolidated assets

of Allied Capital plus the Venture Partnerships (the "Allied Group") with the total assets of Allied Capital II. The percentage participation offered the Allied Group in any transaction will equal the percentage determined by dividing its total consolidated assets by the total consolidated assets by the total consolidated assets of both the Allied Group and Allied Capital II. The percentage participation offered Allied Capital II will be for the balance of the investment. Once a Venture Partnership is fully invested, its total assets will not be used in the formula since it is no longer seeking investments. Each Fund's board of directors will determine how much the Funds will purchase of the offerings made available by Allied Advisory.

10. The non-interested directors of each Fund will be provided with independent counsel so that they may be advised as to potential conflicts. Among other things, counsel will present the non-interested directors with a memorandum detailing the responsibilities associated with their non-interested status and their obligations under the terms of any exemptive order obtained.

Applicant's Legal Conclusions

1. Allied Capital owns 100 percent of the outstanding voting securities of Allied Advisory. Allied Capital and Allied Advisory are thus affiliated persons of each other. Assuming Allied Advisory is retained by Allied Capital II as the investment adviser, Allied Advisory will be an affiliated person of Allied Capital II and Allied Capital will thus be an affiliated person of an affiliated person (Allied Advisory) of Allied Capital II. After the spin-off, it is expected that Allied Advisory will become the investment adviser to Allied Capital, as well as to Allied Capital II, and, if so, it will be an affiliate of both Allied Capital and Allied Capital II. Allied Advisory is the general partner of Management Partners, which is in turn the general partner of the Venture Partnerships. The Venture Partnerships, therefore, may be deemed to be controlled by, and therefore affiliates of, Allied Advisory. The Venture Partnerships could therefore be deemed to be affiliates of an affiliate (Allied Advisory) of Allied Capital II. Because of their relationships, Allied Capital, Allied Capital II, Allied Advisory, Management Partners and the Venture Partnerships may be deemed to be precluded from cooperation in the Co-Investment Program by virtue of Sections 17(d) and 57(a) of the Act and Rule 17d–1 thereunder.

2. Applicants assert that the Co-Investment Program meets the standards for granting relief under Sections 17(d) and 57(a)(4) of the Act and Rule 17d–1 thereunder in that the terms of the Co-Investment Program are not less advantageous to either Fund and each Fund would be offered the opportunity to participate in the transactions on an identical basis. Further, the formula for the sharing of investment opportunities ensures that the Funds will be treated fairly and the non-overlapping independent boards of the Funds will ensure that no overreaching occurs. Also, the non-interested directors of each Fund will be provided with independent counsel to advise them as to potential conflicts.

3. Applicants seek an exemption pursuant to Section 6(c) for a class of transactions under the Co-Investment Program. Applicants submit that it would be impractical to attempt to obtain separate exemptive relief for each transaction because: (a) participation in investment opportunities may be precluded because of time delays in obtaining separate exemptive orders; and (b) use of an escrow account pending receipt of an exemptive order is not a viable alternative since Portfolio Companies must be assured of non-contingent funds.

4. Under the terms of the Prior Orders, Allied Capital is allowed to engage in transactions with certain affiliates relating to the co-investment in Portfolio Companies. Nothing in the proposed Co-Investment Program will affect the conditions established in those Prior Orders; Allied Capital will merely share with those affiliates covered by the Prior Orders its portion of the Co-Investment Program securities. The conditions in the Prior Orders were designed to ensure that co-investments would always be made in the best interest of Allied Capital and that any disproportionate allocation of investment opportunities and any disposition of investments would be approved by a majority of Allied Capital's directors who have no interest in the Venture Partnerships. For this reason, Applicants do not believe the Prior Orders need to be amended. However, Applicants seek an order pursuant to Section 57(a)(4) of the Act and Rule 17d–1 thereunder to allow Allied Capital II to co-invest with Venture and Technology in Portfolio Companies to the extent that mutual holding of the securities of Portfolio Companies could be deemed a joint transaction.

Applicants' conditions

Applicants agree that any order of the Commission permitting the Co-Investment Program will be subject to the following conditions:

1. No concurrent investments will occur with respect to Portfolio Companies in which Allied Capital or any of its affiliates have acquired an interest prior to the implementation of the Co-Investment Program.

2. The boards of directors of Allied Capital and Allied Capital II will have no more than two common directors. The remaining directors of the two companies, including the "non-interested" directors, will be unrelated. Each board, including the non-interested directors, will approve investments in advance. To facilitate the boards' determinations, they will be provided with periodic information listing all venture capital investments made by the other Fund. Allied Advisory, the Funds' adviser, will be responsible for providing such information to the directors of each Fund, including the non-interested directors. Neither Fund will have more than 85 percent of their total consolidated assets [1] invested jointly with the Venture Partnerships, except as a higher percentage may result from appreciation rather than acquisition of assets.

3. (a) Allied Advisory will review investment opportunities. To the extent that a Fund has funds available for investment or is otherwise considering new investments, Allied Advisory will make a preliminary determination as to whether each particular investment opportunity meets applicable investment criteria and is consistent with the existing composition of the Fund's portfolio in terms of diversification of investments. If Allied Advisory makes a favorable determination with respect to a particular investment, such investment will be deemed eligible for investment by the Funds. Investment opportunities will be offered to the Funds in amounts proportionate to total consolidated assets.[2] The adviser will maintain at

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[1] "Total consolidated assets" is a technical accounting term. It refers to all of the assets of the entity in question, including cash, investments, loans, receivables, and other assets. Each quarter, Allied Capital, Allied Capital II and the Venture Partnerships determine their total consolidated assets in accordance with general accepted accounting principles. This is done as a matter of course and is required for public companies in order to report to their shareholders. In allocating investment opportunities, the ratio would be based on the last quarter's total consolidated assets for each of the entities. The ratio would be expected to change quarterly.

[2] The relative amounts offered by each Fund will be function of a predetermined ratio derived by

Continued

each Fund's office written records of the factors considered in any preliminary determination.

(b) Following the making of the determination referred to in (a), information concerning the proposed investment will be distributed to the directors of each Fund, including the non-interested directors, except that such information need not be distributed to the directors of any Fund that, at that time, either does not have funds available for investment or is not otherwise considering new investments. Such information will be presented in written form and will include the name of each affiliated entity that proposes to make the investment and the amount of each proposed investment.

(c) Information regarding the adviser's preliminary determinations referred to in (a) will be reviewed by the board of directors of each Fund, including the non-interested directors. Each board, including a majority of the non-interested directors, will make an independent decision as to whether and how much, to participate in an investment based on what is appropriate under the circumstances. A Fund wil only make a joint investment if a majority of the non-interested directors of the Fund prior to making the investment conclude, after consideration of all information deemed relevant (including the extent to which such participation is on a basis different from or less advantageous than that of other participants), that the investments by another Fund or Venture Partnership would not disadvantage the Fund in the making of such investment, maintaining its investment position or disposing of such investment. The non-interested directors will maintain at the Fund's office written records of the factors considered in any decision regarding the proposed investment.

4. Joint purchases of securities by a Fund with the other Fund or a Venture Partnership will consist of the same class of securities, including the same registration rights (if any), and other rights related thereto, purchased at the same unit consideration and the approval of such transactions, including determination of the terms of the transactions by a Fund's non-interested directors will be made in the same time period.

5. Neither non-interested directors of a Fund nor any other Allied Advisory affiliate, will co-invest with a Fund unless a separate exemptive order with respect to such transaction has been obtained.

6. If one Fund or a Venture Partnership elects to sell, exchange or otherwise dispose of an interest in a security that is also held by another Fund or Venture Partnership, notice of the proposed sale will be given to the Fund(s) at the earliest practical time and the Fund(s) will be given the opportunity to participate in such disposition at the same time for the same unit consideration and in amounts proportional to their respective holdings of such securities. Allied Advisory, will formulate a recommendation as to participation by such Fund in such a disposition, and provide the recommendation to the non-interested directors of such Fund. Each Fund will participate in such disposition if a majority of its non-interested directors determines that such action is in the best interest of the Fund. Each Fund will bear its own expenses associated with the disposition of a portfolio security. The non-interested directors of each Fund will record in their records the adviser's recommendation and their decision as to whether to participate in such disposition, as well as the basis for their decision that such action is in the best interest of the Fund.

7. If a Fund or Venture Partnership determines that the Fund or Venture Partnership should make a "follow-on" investment (i.e., an additional investment in the same entity) in a particular Portfolio Company whose securities are held by one or both Funds or a Venture Partnership or to exercise warrants or other rights to purchase securities of such an issuer, notice of such transaction will be provided to the other Fund (or to the Funds in the case of the Venture Partnerships) at the earliest practical time. The adviser will formulate a recommendation as to the proposed participating by a Fund in a follow-on investment and provide the recommendation to the non-interested directors of the Fund along with notice of the total amount of the follow-on investment. Each Fund's non-interested directors will make their own determination with respect to follow-on investments. Assuming that the amount of a follow-on investment available to a Fund is not based on the amount of such Fund's initial investment, the relative amount of investment by each Fund participating in the follow-on investment will be based on a ratio derived by comparing the total consolidated assets of each participating Fund with the total amount of the available follow-on investment. Each Fund will participate in such investment if a majority of the non-interested directors determines that such action is in the best interest of their Fund. The non-interested directors of each Fund will record in their records the adviser's recommendation and their decision as to whether to engage in a follow-on transaction with respect to that Portfolio Company, as well as the basis for such decision.

8. The non-interested directors of a Fund will be provided quarterly for review, all information concerning co-investments made by the Funds, including co-investments in which one or both Fund declined to participate, so they may determine whether all investments made during the preceding quarter, including those investments they declined, complied with the conditions set forth above. In addition, at least annually, as well as during any quarter in which a co-investment was made, the non-interested directors will consider the continuing appropriateness of the standards established for investments by a Fund. The non-interested directors will consider whether use of such standards continues to be in the best interest of the Fund and its shareholders and does not involve overreaching of the Fund or its shareholders on the part of any party concerned.

9. The non-interested directors of Allied Capital and Allied Capital II will maintain the records required by Section 57(f)(3) of the Act and will comply with the provisions of Section 57(h) of such Act,[9] and each Fund will otherwise maintain all records required by the Act. All records referred to or required under these conditions will be available for inspection by the Commission.

10. The Funds will make no changes in conditions (1)–(9) until an amendment of any order issued pursuant to this Application is obtained from the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-21382 Filed 9-11-89; 8:45 am]

BILLING CODE 8010-01-M

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comparing the total consolidated assets of the Allied Group (Allied Capital plus the Venture Partnerships) with the total assets of Allied Capital II. As stated above, once a Venture Partnership is fully invested, its total assets will not be used in the formula since it is no longer seeking investments.

[9] Allied Capital will comply with such provisions even though it is not a BDC and, therefore, not subject to these sections of the Act.

[File No. 22-19598]

Application and Opportunity for Hearing; American Airlines, Inc.

September 6, 1989.

Notice is hereby given that American Airlines, Inc. (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission ("Commission") that (*a*) the trusteeship of the Connecticut National Bank ("CNB") under two or more indentures to be qualified under the Act and (*b*) the trusteeship of CNB under one or more of such qualified indentures and under certain other indentures described below, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify CNB from acting as trustee under such qualified indentures or such other indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for a hearing thereon, that trusteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures. The Applicant alleges that:

1. The Applicant has filed one or more Registration Statements on Form S–3 covering the proposed issuance of up to four new series of 1989 Equipment Trust Certificates, Series A, *et seq.* (the "Proposed Certificates").

2. Each series of the Proposed Certificates will be issued pursuant to a separate identure (a "Proposed Indenture", and collectively, the "Proposed Indentures"), each to be qualified under the Act, among a banking institution, as trustee (the "Proposed Owner Trustee"), the Applicant, as lessee, and an indenture trustee (the "Proposed Indenture Trustee"). The Applicant desires to appoint CNB as the Proposed Indenture Trustee under each such Proposed Indenture.

3. The proceeds from the sale of the Proposed Certificates will be used to provide long-term financing for a portion of the equipment cost of up to four Boeing 757–223 aircraft or McDonnell Douglas DC–9–82 aircraft (collectively, the "Proposed Aircraft"), each of which will be leased by the Proposed Owner Trustee to the Applicant.

4. Each series of the Proposed Certificates will be secured by a security interest in one of the Proposed Aircraft and by the right of the Proposed Owner Trustee to receive rentals payable in respect of such Aircraft by the Applicant under the applicable lease. No Aircraft will be covered by more than one Proposed Indenture or by any other indenture, and the Proposed Certificates to be issued pursuant to any one Proposed Indenture will be separate from the Proposed Certificates to be issued pursuant to any other Proposed Indenture.

5. Each Proposed Indenture will provide, pursuant to section 310(b) of the Act, for the resignation of the Proposed Indenture Trustee in the event that it does not eliminate a conflicting interest, and will provide that trusteeship under another indenture of the Applicant constitutes a conflicting interest, provided, however, that the Applicant may apply to the Commission for a finding that no material conflict exists.

6. CNB currently acts as indenture trustee (the "Pass Through Trustee") under four qualified indentures under which the Equipment Note Pass Through Certificates, Series 1988–A, are outstanding (the "1988 Qualified Indentures") and as indenture trustee (the "Loan Trustee") under four separate leveraged lease indentures related to the 1988 Qualified Indentures (the "1988 Lease Indentures").

7. Each of the 1988 Lease Indentures relates to a separate leveraged lease transaction in which an owner trustee leases one McDonnell Douglas DC–9–82 Aircraft to the Applicant. In 1988, each owner trustee, for the benefit of institutional investors acting as equity participants, issued four series of loan certificates (the "1988 Equipment Notes") under each 1988 Lease Indenture to four separate grantor trusts. These grantor trusts in turn issued four series of Pass Through Certificates (the "1988 Pass Through Certificates") under the four separate 1988 Qualified Indentures. The 1988 Equipment Notes issued with respect to each 1988 Lease Indenture are secured by a security interest in the aircraft to which such 1988 Lease Indenture relates and by the right of the owner trustee to receive rentals on such aircraft from the Applicant.

8. Each aircraft covered by a 1988 Lease Indenture is not covered by any other indenture, and the 1988 Equipment Notes issued under each 1988 Lease Indenture are separate from loan certificates issued under any other indenture.

9. The Pass Through Certificates issued under the 1988 Qualified Indentures represent undivided interests in the 1988 Equipment Notes held by the related Pass Through Trustee. The 1988 Equipment Notes are not covered by any other indenture, and the 1988 Pass Through Certificates issued under each 1988 Qualified Indenture are separate from loan certificates issued under any other indenture.

10. None of the 1988 Lease Indentures is subject to the Act and, accordingly, none contains the language regarding conflicts required by Section 3.10(b) of the Act for qualified indentures.

11. Each 1988 Qualified Indenture provides, pursuant to Section 310(b) of the Act, for the resignation of the Pass Through Trustee in the event that it does not eliminate a conflicting interest, and provides that trusteeship under another indenture of the Applicant constitutes a conflicting interest, provided, however, that the Applicant may apply to the Commission for a finding that no material conflict exists.

12. The Applicant is not in default in any respect under any of the 1988 Qulaified Indentures or the 1988 Lease Indentures.

13. CNB also acts as Pass Through Trustee under five qualified indentures under which the Equipment Note Pass Through Certificates, Series 1987–A, are outstanding (the "1987 Qualified Indentures") and as Loan Trustee under six separate leveraged lease indentures related to the 1987 Qualified Indentures (the "1987 Lease Indentures").

14. Each of the 1987 Lease Indentures relates to a separate leveraged lease transaction in which an owner trustee leases one McDonnell Douglas DC–9–82 Aircraft to the Applicant. In 1987 each owner trustee, for the benefit of institutional investors acting as equity participants, issued seven series of loan certificates (the "1987 Equipment Notes") under each 1987 Lease Indenture to seven separate grantor

if any, should be imposed by the

trusts. These grantor trusts in turn issued seven series of Pass Through Certificates (the "1987 Qualified Indentures.) (One series of 1987 Equipment Notes matured on January 1, 1988, and another series of 1987 Pass Through Certificates issued by the two grantor trusts holding such Equipment Notes were paid off. As a result, the two 1987 Qualified Indentures under which such 1987 Pass Through Certificates were issued terminated, and thus only five 1987 Qualified Indentures remain.) The 1987 Equipment Notes issued with respect to each 1987 Lease Indenture are secured by a security interest in the aircraft to which such 1987 Lease Indenture relates and by the right of the owner trustee to receive rentals on such aircraft from the Applicant.

15. Each aircraft covered by a 1987 Lease Indenture is not covered by any other indenture, and the 1987 Equipment Notes issued under each 1987 Lease Indenture are separate from loan certificates issued under any other indenture.

16. The Pass Through Certificates issued under the 1987 Qualified Indentures represent undivided interests in the 1987 Equipment Notes held by the related Pass Through Trustee. The 1987 Equipment Notes are not covered by any other indenture, and the 1987 Pass Through Certificates issued under each 1987 Qualified Indenture are separate from loan certificates issued under any other indenture.

17. None of the 1987 Lease Indentures is subject to the Act and, accordingly, none contains the language regarding conflicts required by Section 310(b) of the Act for qualified indentures.

18. Each 1987 Qualified Indenture provides, pursuant to Section 310(b) of the Act, for the resignation of the Pass Through Trustee in the event that it does not eliminate a conflicting interest, and provides that trusteeship under another indenture of the Applicant constitutes a conflicting interest, provided, however, that the Applicant may apply to the Commission for a finding that no material conflict exists.

19. The Applicant is not in default in any respect under any of the 1987 Qualified Indentures or the 1987 Lease Indentures.

20. CNB also acts as indenture trustee under an indenture, dated as of October 15, 1986 (the "Other Indenture"), between CNB and Wilmington Trust Company ("WTC"), which relates to a leveraged lease transaction in which WTC, as owner trustee for the benefit of certain institutional investors acting as equity participants, issued in a private placement loan certificates to institutional investors acting as loan participants. Such loan certificates had an original principal amount of $32,829,735 and have a final maturity date of January 2, 2005.

21. The proceeds of the issuance of the loan certificates issued under the Other Indenture were used by the owner trustee to purchase one Boeing 767–223 aircraft that was then leased by such owner trustee to the Applicant. The Applicant is not a party to the Other Indenture (only WTC, as the owner trustee and as issuer of the loan certificates, and CNB are parties), but the Applicant's unconditional obligation to make rental payments under the lease relating to such Other Indenture is the only credit source of principal and interest payments on the loan certificates.

22. The loan certificates issued under the Other Indenture are secured by a security interest in the aforementioned Boeing 767–223 aircraft and the right of the owner trustee to receive rentals on such aircraft from the Applicant. Such aircraft is not covered by any other indenture, and the loan certificates issued under the Other Indenture are separate from loan certificates issued under any other indenture.

23. The Other Indenture is not subject to the Act and, accordingly, does not contain the language regarding conflicts required by Section 310(b) of the Act of the qualified indentures.

24. The Applicant is not in default in any respect under the Other Indenture.

The Applicant waives notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public Reference Section, File Number 22–19593, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than October 2, 1989, request in writing that a hearing be held on such matter, stating the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Jonathan G. Katz, Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–21381 Filed 9–11–89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1–1657]

Issuer Delisting; Application To Withdraw From Listing (Crane Co., Common Stock, $1 Par Value; Preferred Shares Purchase Rights; 7% Subordinated Debentures Due July 1, 1994; 5% Convertible Subordinated Debentures, Due July 1, 1994

September 5, 1989.

Crane Co. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the Pacific Stock Exchange ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Crane Co. ("the Company") has requested the PSE to delist the foregoing securities because the volume of trading with respect to each such security has been minimal.

Crane Co. Common Stock, its Preferred Share Purchase Rights and the 7% Subordinated Debentures are presently listed on the New York Stock Exchange and will continue to be so listed with that Exchange.

The Company's 5% Convertible Subordinated Debentures, due July 1, 1994, when delisted from the PSE will not be listed on any Exchange. As of July 31, 1989 the aggregate outstanding principal amount of Convertible Debentures was $993,500 and Convertible Debentures were held by approximately 590 holders. Accordingly, the Company that states the Convertible Debentures could not presently meet the applicable listing requirements of a national securities exchange.

Any interested person may, on or before September 26, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms,

if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–21383 Filed 9–11–89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before October 12, 1989. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: Prime Contracts Program Quarterly.

Form Nos.: SBA Forms 843.

Frequency: 4 times annually.

Description of respondents: Procurement Center Representatives.

Annual Responses: 1,280.

Annual Burden Hours: 1,280.

Title: Nominate a Small Business Person or Advocate of the Year.

Frequency: On occasion.

Description of respondents: Individuals nominating a Small Business Person or Advocate of the Year.

Annual Responses: 400.

Annual Burden Hours: 400.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 89–21360 Filed 9–11–89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #2376 and #2377]

Delaware and Contiguous Counties in the State of Maryland; Declaration of Disaster Loan Area

Sussex County and the contiguous county of Kent, in the State of Delaware, and Caroline, Dorchester, Wicomico, and Worcester Counties, in the State of Maryland, constitute a disaster area as a result of damages from heavy rains and flooding which occurred on August 18 and 19, 1989. Applications for loans for physical damage may be filed until the close of business on October 30, 1989 and for economic injury until the close of business on May 29, 1990 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308,

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Businesses and non-profit organizations (EIDL) without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125

The numbers assigned to this disaster for physical damage are 237606 for the State of Delaware and 237706 for the State of Maryland. The numbers assigned for economic injury are 683000 for the State of Delaware and 683100 for the State of Maryland.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 29, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–21361 Filed 9–11–89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04–0236]

The Remington Fund, Inc.; Surrender of License

Notice is hereby given that The Remington Fund, Inc. (TRF), 1927 First Avenue North, Birmingham, Alabama 35202, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). TRF was licensed by the Small Business Administration on May 16, 1985.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was effective on August 29, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 5, 1989.

Robert G. Linsberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89–21362 Filed 9–11–89; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting in Sacramento, CA

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting at 10:00 a.m., Wednesday, September 27, 1989, at the Sacramento Commercial Bank, Conference Room, 525 "J" Street, Sacramento, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call J. Mark Quinn, Acting District Director, U.S. Small Business Administration, San Franscisco District Office, 211 Main Street, 4th Floor, San Francisco, California 94105, phone (415) 974–0642.

Dated: September 5, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–21358 Filed 9–11–89; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Public Meeting in Macon, GA

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Georgia, will hold a public meeting from 12:30 p.m. on Thursday, October 5, 1989, through 11:30 a.m. on Friday, October 6, 1989, at The Shoney's Inn, 3850 Riverside Drive, Macon, Georgia 31210.

The purpose of the meeting is to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Wilfred A. Stone, District Director, U.S. Small Business Administration, 1720 Peachtree Road, NW., 6th Floor, Atlanta, Georgia 30309, (404) 347-4749.

Dated: September 5, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-21359 Filed 9-11-89; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council; Public Meeting in St. Louis, MO

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of St. Louis and Eastern Missouri, will hold a public meeting at 9:00 a.m. on Wednesday, October 25, 1989, at the St. Louis District Office of the U.S. Small Business Administration, The Old Post Office, 815 Olive Street, Room 242, St. Louis, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert L. Andrews, District Director, U.S. Small Business Administration, 815 Olive Street, Room 242, St. Louis, Missouri, 63101, phone (314) 539-6600.

Dated: September 5, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-21357 Filed 9-11-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 05/05/0212]

Polaris Capital Corp., Application for a Small Business Investment Company License

An application for a license to operate a small business investment company (SBIC) under the provisions of the Small Business Invest Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Polaris Capital Corp. (Applicant), One Park Plaza, Suite 320, 11270 W. Park Place, Milwaukee, Wisconsin 53224, with the Small Business Administration pursuant to 13 CFR 107.102 (1989).

The Proposed Officers, Directors and Shareholders of the Applicant will be as follows:

Name	Title or position	Percent of ownership
Dean A. Treptow, N61W5353 Edgewater Dr., Cedarburg, WI 53012.	Chairman, Director and Chief Executive Officer.	10.87
Richard F. Laabs, N99W16743 Woodcock Rd., Germantown, WI 53022.	President/Director.	4.35
John C. Gardner, 320 E. Buffalo Street, Milwaukee, WI 53202.	Director	10.87
Frederick G. Luber, 777 N. Prospect Ave., Milwaukee, WI 53202.	Director	10.87
Franklin M. Buchta, 2480 N. Mayfair Dr., Brookfield, WI 53005.	Director	4.35
Robert H. Taylor, 2116 W. Raleigh Ct., Mequon, WI 53092.	Director	2.17

The Applicant, a Wisconsin corporation, is expected to begin operations with $3,450,000 of private capital. The Applicant will conduct its activities primarily in the State of Wisconsin.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including profitability and financial soundness, in accordance with Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in Milwaukee, Wisconsin.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 5, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-21363 Filed 9-11-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 1, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46474

Dated filed: August 29, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 28, 1989

Description: Application of Express One International, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

Docket Number: 46475

Date Filed: August 30, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 27, 1989

Description: Application of Transbrasil S.A. pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit authorizing it to conduct scheduled combination transportation of passengers, cargo and mail on the route between a point or points in the Federative Republic of Brazil and the terminal point of Orlando, Florida. Transbrasil requests that its foreign air carrier permit include authorization for long-term charter authority for the transportation of passengers and cargo between a point or points in the United States of America and a point or points in the Federative Republic of Brazil.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-21354 Filed 9-11-89; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Continental/American Route Transfer

[Docket 46303]

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Tentative approval of transfer of Continental Airlines, Inc.'s Texas-Alberta, Canada route authority to American Airlines, Inc., Order to Show Cause, Order 89-9-7.

SUMMARY: The Department has tentatively decided to approve (1) the transfer of Continental Airlines, Inc.'s Houston/Dallas/Ft. Worth-Calgary/Edmonton, Alberta, Canada-Fairbanks, Alaska route authority (Route 470) to American Airlines, Inc., and (2) renewal of the authority for five years from the effective date of final approval of the route transfer. Continental's existing route authority will expire by its own terms February 5, 1990. The Department tentatively concludes that approval of the transfer will not conflict with any important international aviation policy objectives; will have no adverse impact on industry balance; and will not otherwise be inconsistent with the public interest.

DATES: Objections and comments to the Department's tentative decision are due not later than September 20, 1989; answers thereto shall be filed not later than September 27, 1989.

ADDRESS: Objections, comments and answers should be filed in Docket 46303, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 7th St., SW. Room 4107, Washington, DC 20590 and should be served in all parties in Docket 46303.

Dated: September 5, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-21329 Filed 9-11-89; 8:45 am]

BILLING CODE 4910-10-M

Fitness Determination of Las Vegas Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 89-9-8, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Las Vegas Airlines, Inc., is fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: September 5, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-21330 Filed 9-11-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances; Notice of Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance under Notice 89-61, 1989-21 I.R.B. 25, of a petition requesting that *ABS (ACRYLONITRILE, BUTADIENE, STYRENE) PELLETS* be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89-61. This is not a determination that the list of taxable substances should be modified.

DATE: Written comments and requests for a public hearing relating to this petition must be delivered or mailed by November 13, 1989.

ADDRESS: Send comments and requests for a public hearing to the Internal Revenue Service, Attention: CC:CORP:T:R (Petition), Room 4429, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). Telephone 202-566-4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on July 11, 1989. The petitioner is GE Chemicals, Inc., a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

Harmonized Tariff System number: 3903.30

Schedule B number: 3903.30.0000-6

Chemical Abstract Service number: 003-56-9

This substance is derived from the taxable chemicals *benzene, ethylene, propylene, ammonia, butadiene, potassium hydroxide,* and *sulfuric acid.* ABS is made by the emulsion polymerization process. The ABS resin is a great polymer that is manufactured by the continuous polymerization of a mixture of styrene and acrylonitrile in the presence of a butadiene homopolymer.

According to the petition, taxable chemicals constitute 95 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $8.09 per ton.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-21306 Filed 9-11-89; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register

Docket No. GP89-35-000, Jennings

Docket Nos. RP89-140-004 and RP89-195-

CAG-41.

Sunshine Act Meetings

Federal Register

Vol. 54, No. 175

Tuesday, September 12, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter To Be Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the "summary agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, September 12, 1989, in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC:

Memorandum and resolution re: Final amendments to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information," in order to conform the regulation to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which amendments substitute the term "depository institution" each place the term "bank" appears, with certain exceptions.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-3811.

Dated: September 7, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretaary.

[FR Doc. 89-21514 Filed 9-8-89; 1:04 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

September 6, 1989.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), 5 U.S.C. 552B:

DATE AND TIME: September 13, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Power Agenda, 982nd Meeting—September 13, 1989, Regular Meeting (10:00 a.m.)

CAP-1.

Docket Nos. EL86-24-001 and EL86-29-001, Municipal Electric Utilities Association of New York State v. Power Authority of the State of New York; and Connecticut Municipal Wholesale Electric Cooperative and Massachusetts Municipal Wholesale Electric Company v. Power Authority of the State of New York

CAP-2.

Project No. 2959-021, The City of Seattle, Washington

CAP-3.

Project No. 4632-004, Clifton Power Corporation

CAP-4.

Project No. 7270-002, Northern Wasco County People's Utility District

CAP-5.

Project No. 4435-008, Damnation Peak Power Company

CAP-6.

Project No. 4412-008, Thornton Lake Resources Company

CAP-7.

Project No. 2716-015, Virginia Electric and Power Company

CAP-8.

Project Nos. 8256-009 and 010, Electro-Technologies, Ltd.

CAP-9.

Project No. 2144-008, City of Seattle, Washington

CAP-10.

Project No. 9732-000, Brookside Hydroelectric Company, Inc.

Project No. 9277-000, Riverside Dam, Inc.

Project No. 10060-000, Lower Falls Hydro Co., Inc.

CAP-11.

Docket No. QF86-608-002, Fort Howard Corporation

CAP-12.

Docket No. ER89-522-000, Vermont Electric Power Company, Northeast Utilities Service Company and New England Power Company

CAP-13.

Docket Nos. ER89-465-000 and ER89-569-000, Green Mountain Power Corporation

CAP-14.

Docket No. ER89-470-000, AEP Generating Company

CAP-15.

Docket No. ER89-355-000, CP National Corporation

CAP-16.

Docket Nos. ER85-646-001, ER86-341-001 and ER87-593-000, Central Hudson Gas and Electric Corporation

Docket Nos. ER85-607-001, ER85-621-001, ER85-763-001 and 003, Consolidated Edison Company of New York, Inc.

Docket Nos. ER86-262-001, ER88-465-000, ER89-237-000, ER89-366-000, ER89-488-000 and ER89-502-000, New York State Electric and Gas Corporation

Docket Nos. ER88-554-000, ER88-556-000, ER88-579-000, ER88-566-000, ER89-50-000, ER89-271-000, Niagara Mohawk Power Corporation

Docket Nos. ER85-598-001, 002, 003, 005, 007 and ER85-634-001, Orange and Rockland Utilities, Inc.

CAP-17.

Docket No. EL89-20-001, Southern California Edison Company v. Arizona Public Service Company

CAP-18.

Docket No. ER89-205-001, Arizona Public Service Company

CAP-19.

Docket No. ER87-180-005, Cincinnati Gas & Electric Company

CAP-20.

Omitted

CAP-21.

Docket Nos. ER89-228-001, ER89-125-002 and ER89-66-000, Canal Electric Company

CAP-22.

Docket No. EL88-39-001, Northern States Power Company (Wisconsin)

Docket No. EL89-9-001, Northern States Power Company (Minnesota)

CAP-23.

Docket No. ER88-316-000, Commonwealth Edison Company

CAP-24.

Docket No. ER88-540-000, Louisiana Power & Light Company

Consent Miscellaneous Agenda

CAM-1.

Docket No. FA86-51-002, Indianapolis Power & Light Company

CAM-2.

Docket No. FA89-44-000, UNISON Transformer Services, Inc.

CAM-3.

Docket No. FA86-19-001 (Phase I), System Energy Resources, Inc.

CAM-4.

Docket No. RM79-52-001, Procedures for Shortages of Electric Energy and Capacity Under Section 206 of the Public Utility Regulatory Policies Act of 1978

CAM-5.

Docket No. RM80-13-000, Revision of Formula for Computing Monthly Carrying Charges in PGA Filings

CAM-6.

Docket No. GP89-35-000, Jennings Exploration Company

CAM-7.

Docket No. GP89-45-000, Amoco Production Company

CAM-8.

Docket No. GP87-20-000, ANR Pipeline Company v. Plains Resources, Inc.

CAM-9.

Docket No. GP89-51-000, Michigan Department of Natural Resources, Section 102 NGPA Determination, West Bay Exploration Company, Duff-Grant Farms No. 3-36D Well, FERC J.D. No. 85-04112

Consent Gas Agenda

CAG-1.

Docket Nos. RP89-217-000 and 001, El Paso Natural Gas Company

CAG-2.

Docket No. RP89-121-000, West Texas Gathering Company

CAG-3.

Docket Nos. TA89-1-6-003 and 004, Sea Robin Pipeline Company

CAG-4.

Docket Nos. TA89-1-4-004 and TQ89-7-4-001, Granite State Gas Transmission, Inc.

CAG-5.

Omitted

CAG-6.

Docket Nos. RP89-140-000 and RP89-195-000, Williams Natural Gas Company

CAG-7.

Docket Nos. RP89-98-000 and RP89-133-000, Colorado Interstate Gas Company

CAG-8.

Docket No. RP89-120-003, Questar Pipeline Company

CAG-9.

Docket Nos. CP83-254-324, 325, 326, 327, 328, 329, 330, CP 83-335-250 and 251, Williston Basin Interstate Pipeline Company

CAG-10.

Docket Nos. TA89-1-31-001, 002, 003, 004, RP89-62-001, 002, 003, TQ89-3-31-001, 002 and 003, Arkla Energy Resources

CAG-11.

Docket Nos. RP89-121-000, West Texas Gathering Company

CAG-12.

Docket Nos. TA89-1-27-000 and 001, North Penn Gas Company

CAG-13.

Docket No. TA89-1-46-000, Kentucky-West Virginia Gas Company

CAG-14.

Docket No. TA89-1-47-002, MIGC, Inc.

CAG-15.

Docket Nos. RP89-212-000 and CP89-759-001, Transcontinental Gas Pipe Line Corporation

CAG-16.

Docket Nos. RP89-84-003 and RP88-228-024, Tennessee Gas Pipeline Company

CAG-17.

Docket No. RP88-259-020, Northern Natural Gas Company

CAG-18.

Docket Nos. RP86-27-016, RP88-264-013 and CP87-524-007, United Gas Pipe Line Company and Texas Gas Transmission Corporation

CAG-19.

Docket Nos. RP89-140-004 and RP89-195-001, Williams Natural Gas Company

CAG-20.

Docket Nos. RP89-130-002, 003, 006, RP88-196-009 and RP89-59-003, Transwestern Pipeline Company

CAG-21.

Docket No. RP89-194-001, Texas Gas Transmission Corporation

CAG-22.

Docket Nos. RP85-177-063, CP88-136-006 and RP88-67-014, Texas Eastern Transmission Corporation

CAG-23.

Docket No. RP88-191-009, Tennessee Gas Pipeline Company

CAG-24.

Docket No. RP89-160-001, Trunkline Gas Company

CAG-25.

Docket No. RP89-124-001, CNG Transmission Corporation

CAG-26.

Docket Nos. RP89-23-003 and RP89-182-001, Northern Natural Gas Company, Division of Enron Corp.

CAG-27.

Docket No. RP89-120-001, Questar Pipeline Company

CAG-28.

Docket No. RP89-161-001, ANR Pipeline Company

CAG-29.

Docket Nos. RP80-55-013, RP80-116-014, RP81-73-006 and RP82-32-009, Sea Robin Pipeline Company

CAG-30.

Omitted

CAG-31.

Docket No. TQ89-2-27-001, North Penn Gas Company

CAG-32.

Docket No. RP89-200-001, Pacific Gas Transmission Company

CAG-33.

Docket No. RP88-106-002, Northern Natural Gas Company

CAG-34.

Docket Nos. RP88-28-000 and 001, Northern Illinois Gas Company v. Natural Gas Pipeline Company of America

CAG-35.

Docket No. ST89-3130-000, The Nueces Company

CAG-36.

Docket Nos. ST89-481-000, ST89-916-000, ST89-917-000, ST89-958-000 and ST89-1367-000, Phillips Natural Gas Company

CAG-37.

Docket No. CI89-190-000, Nielson Enterprises Inc. and J.W. Bullion, Trustee

CAG-38.

Docket No. G-18679-001, Jupiter Corporation and Tennessee Gas Pipeline Company

CAG-39.

Docket Nos. CP87-389-005, CP88-225-002 and CP88-759-001, National Fuel Gas Supply Corporation

CAG-40.

Docket Nos. CP88-129-004 and CP88-163-002, Columbia Gas Transmission Corporation

Docket No. CP89-656-002, Algonquin Gas Transmission Company

CAG-41.

Docket No. CP89-657-001, Commonwealth Gas Pipeline Corporation

CAG-42.

Docket No. CP89-3-003, Panhandle Eastern Pipe Line Company

CAG-43.

Docket Nos. CP88-490-003 and CP88-548-003, Panhandle Eastern Pipe Line Company

CAG-44.

Docket No. CP89-1582-001, National Fuel Gas Supply Corporation

CAG-45.

Docket No. CP89-465-001, Arkansas Oklahoma Gas Corporation

CAG-46.

Docket No. CP86-530-002, Great Lakes Gas Transmission Company

CAG-47.

Docket No. CP61-92-020, El Paso Natural Gas Company

Docket No. CP61-139-017, Northern Natural Gas Company, Division of Enron Corp.

CAG-48.

Docket No. CP89-1106-001, Stingray Pipeline Company

CAG-49.

Omitted

CAG-50.

Docket Nos. CP89-275-000 and CP89-594-000, Ozark Gas Transmission System

CAG-51.

Docket No. CP88-778-001, Hall-Houston Oil Company

CAG-52.

Docket No. CP89-1895-000, Colorado Interstate Gas Company

CAG-53.

Docket No. CP89-1993-000, United Gas Pipe Line Company

CAG-54.

Docket No. CP89-1997-000, United Gas Pipe Line Company

CAG-55.

Docket No. CP89-983-000, Riverside Pipeline Company, L.P.

CAG-56.

Docket No. CP89-14-000, Northern Natural Gas Company, Division of Enron Corp.

CAG-57.

Docket No. CP89-1127-000, CNG Transmission Corporation

CAG-58.

Docket No. CP89-1270-000, Midwestern Gas Transmission Company

CAG-59.

Docket No. CP89-1121-000, Mississippi River Transmission Corporation

CAG-60.

Docket No. CP88-708-000, Natural Gas Pipeline Company of America

CAG-61.

Omitted

CAG-62.

Docket No. CP89-655-000, Iowa-Illinois Gas and Electric Company

CAG-63.

Docket Nos. CP88-464-000 and CP88-509-000, Michigan Consolidated Gas Company-Utility Division

Docket No. CP89-1233-000, CNG Transmission Corporation v. Michigan

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Consolidated Gas Company-Utility

Pennsylvania Renewables Resources,

Docket No. RP89-200-000, Natural Gas

Pipeline Company of America. Order

Affirmation/Discussion and Vote (Public

Dated: September 7, 1989.

Office of Thrift Supervision), and

Consolidated Gas Company-Utility Division

CAG-64.

Docket No. RP89-60-000, Southwest Gas Storage Company

CAG-65.

Docket No. RP89-162-000, ANR Pipeline Company

I. Licensed Project Matters

P-1.

Project No. 2971-002, Allegheny Electric Cooperative

Project No. 7914-003, Allegheny Hydropower, Inc.

Project No. 8908-000, Borough of Brownsville, Pennsylvania, Washington County Board of Commissioners, and Pennsylvania Renewables Resources, Inc.

Project No. 4675-002, Borough of Charleroi, Pennsylvania, Washington County Board of Commissioners, and Pennsylvania Renewables Resources, Inc.

Project No. 4474-003, Borough of Cheswick, Pennsylvania, and Allegheny Valley North Council of Governments

Project No. 7660-000, Borough of Point Marion, Pennsylvania, and Noah Corporation

Project No. 7307-000, City of Grafton, West Virginia

Project No. 6939-001, City of Jackson, Ohio

Project Nos. 6901-001 and 6902-003, City of New Martinsville, West Virginia

Project No. 3218-001, City of Orrville, Ohio

Project No. 4017-002, City of Pittsburgh, Pennsylvania

Project No. 10098-000, City of Point Pleasant, West Virginia, and WV Hydro, Inc.

Project No. 9999-000, City of St. Marys, West Virginia, and WV Hydro, Inc.

Project Nos. 7568-001 and 7909-002, County of Allegheny, Pennsylvania

Project No. 9042-000, Gallia Hydro Partners

Project Nos. 7399-000, 8990-000 and 6654-001, Noah Corporation

Project Nos. 3490-003 and 7041-001, Potter Township, Pennsylvania

Project No. 8999-001, Upper Mississippi Water Company, Inc.

Project No. 10332-000, WV Hydro, Inc.

Order regarding the 24 applications for license for projects to be located in the upper Ohio River Basin that were assessed in the Final Environmental Impact Statement, Upper Ohio River Basin.

(A)

Project No. 3218-001 West Virginia/Ohio, City of Orrville, Ohio

(B)

Project No. 4017-002 Pennsylvania, The City of Pittsburgh, Pennsylvania

(C)

Project No. 4474-003 Pennsylvania, a Borough of Cheswick, Pennsylvania and the Allegheny Valley North Council of Governments

(D)

Project No. 4675-002 Pennsylvania, Borough of Charleroi, Washington County Board of Commissioners, and Pennsylvania Renewables Resources, Inc.

(E)

Project No. 6901-001 WV-Ohio, City of New Martinsville, West Virginia

Project No. 10332-000 WV-Ohio, WV Hydro, Inc.

(F)

Project No. 6902-003 WV-Ohio, City of New Martinsville, West Virginia

Project No. 9999-000 West Virginia, City of St. Marys, West Virginia, and WV Hydro, Inc.

(G)

Project No. 6939-001 West Virginia, The City of Jackson, Ohio

(H)

Project No. 7041-001 Pennsylvania, Potter Township, Pennsylvania

(I)

Project No. 7307-000, The City of Grafton, West Virginia

Project No. 7399-000, Noah Corporation

(J)

Project No. 7568-001 Pennsylvania, Allegheny County, Pennsylvania

(K)

Project No. 7660-000 Pennsylvania, Borough of Point Marion, Pennsylvania, and Noah Corporation

(L)

Project No. 7909-002 Pennsylvania, Allegheny County, Pennsylvania

(M)

Project No. 6645-001 West Virginia, Noah Corporation

(N)

Project No. 8908-000 Pennsylvania, The Borough of Brownsville, Pennsylvania, the Washington County Board of Commissioners, Pennsylvania, and Pennsylvania Renewable Resources, Inc.

(O)

Project No. 8990-000 West Virginia, Noah Corporation

(P)

Project No. 9042-000, Gallia Hydro Partners

Project No. 10098-000, City of Point Pleasant, West Virginia, and WV Hydro, Inc.

Project No. 6381-000 Ohio/West Virginia, Noah Corporation.

Orders regarding the 24 applications for license for projects to be located in the upper Ohio River Basin that were assessed in the Final Environmental Impact Statement, Upper Ohio River Basin, Docket No. EL85-19-114, September 1988.

II. Electric Rate Matters

ER-1.

Reserved

Miscellaneous Agenda

M-1.

Reserved

M-2.

Reserved

I. Pipeline Rate Matters

RP-1.

Docket Nos. RP88-45-000, 016, RP88-46-000 and 002, Arkla Energy Resources, a Division of Arkla, Inc. Order concerning settlement involving sales and transportation rates.

RP-2.

Docket No. RP89-200-000, Natural Gas Pipeline Company of America. Order concerning settlement involving sales and transportation rates.

II. Producer Matters

CI-1.

Reserved

III. Pipeline Certificate Matters

CP-1.

Docket No. CP89-123-000, Katy Interchange Service. Order ruling on application to authorize a natural gas interchange service for the closing of gas futures contracts and spot transactions.

CP-2.

Docket No. CP89-570-000, Mobile Bay Pipeline Project. Procedural order on multiple filings for certificate authorizations to construct and operate pipeline projects in the Mobile Bay Area.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21446 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 11, 18, 25, and October 2, 1989.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 11

Monday, September 11

10:00 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Amendments to 10 CFR Part 34: Safety Requirements for Industrial Radiographic Equipment

b. Motion by Joseph J. Macktal to Reconsider CLI-89-14 (Tentative)

Thursday, September 14

10:00 a.m.

Briefing on Status of NRC Technical Training Programs (Public Meeting)

Friday, September 15

9:00 a.m.

Briefing on Status of Maintenance Initiatives and Schedule (Public Meeting)

Week of September 18—Tentative

Wednesday, September 20

10:00 a.m.

Briefing on EPRI Design Requirements Document for Advanced Light Water Reactors (Public Meeting)

Thursday, September 21

10:00 a.m.

Briefing on Study of Adequacy of Regulatory Oversight of Materials Under a General License (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 25—Tentative

There are not meetings scheduled for the Week of September 25.

Week of October 2—Tentative

Wednesday, October 4

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: September 7, 1989.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89-21523 Filed 9-8-89; 2:51 pm]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:47 p.m. on Tuesday, September 5, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider (1) matters relating to the resolution of certain depository institutions placed in conversatorship under the joint regulatory oversight program; and (2) matters regarding the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, DC.

Dated: September 6, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89-21517 Filed 9-8-89; 2:06 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register

Vol. 54, No. 175

Tuesday

Corrections

Federal Register
Vol. 54, No. 175
Tuesday, September 12, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0141; DESI 12706]

Diutensen Tablets; Withdrawal of Approval of New Drug Application

Correction

In notice document 89-18592 appearing on page 32696 in the issue of Wednesday, August 9, 1989, make the following corrections:

In the second column, under **SUPPLEMENTARY INFORMATION:**

1. In the third line the date should read "June 5, 1986";
2. In the fourth line "Drug" should read "Drugs"; and
3. In the second paragraph, in the sixth line, "had" should read "has".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Annual License Fees for Fiscal Year 1990 for Power Reactor Operating Licenses

Correction

In notice document 89-20500 appearing on page 36074 in the issue of Thursday, August 31, 1989, make the following corrections:

1. In the second column, in the ninth line "effected" should read "affected".
2. In the third column, in the third column of the table, the seventh entry should read "858,000". Also, the last entry in that column should read "734, 000".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

Proposed Demonstration Project; Department of Agriculture

Correction

In notice document 89-19673 beginning on page 35134 in the issue of Wednesday, August 23, 1989, make the following correction:

On page 35135, in the first column, under *E. Types and Numbers of Participating Employees*, in the second line, "500 employees" should read "5000 employees".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 18334; Amdts. No. 1-36, 21-66, 23-37, 25-68, 27-24, 29-27, 31-5, 33-13, 35-6, 36-18, 43-31, 45-18, 47-24, 61-84, 63-27, 65-34, 71-13, 91-211, 93-56, 99-11, 103-3, 121-206, 125-12, 127-43, 133-10, 135-32, 137-12, 141-11]

RIN 2120-AA13

Revision of General Operating and Flight Rules

Correction

In rule document 89-18775 beginning on page 34284 in the issue of Friday, August 18, 1989, make the following corrections:

§ 91.185 [Corrected]

1. On page 34303, in the second column, in § 91.185(c)(2) introductory text, in the third line, "segment" was misspelled.

§ 91.323 [Corrected]

2. On page 34310, in the third column, in § 91.323(a)(2), in the fourth line, "1" should be removed.

§ 91.409 [Corrected]

3. On page 34312, in the first column, in § 91.409(d)(2)(ii), in the third line, after "routine", insert "and detailed inspections will be performed and including".

§ 91.801 [Corrected]

4. On page 34322, in the first column, in § 91.801(b), in the sixth line from the bottom of the paragraph, after "under" insert a comma.

PART 91 Appendix A—[Corrected]

5. On page 34328, in Appendix F to part 91, in the 3rd column, in the 10th line, before "5", insert "²"

Note: For a Federal Aviation Administration correction to the document referenced in this correction, see the Rules and Regulations section of this issue.

BILLING CODE 1505-01-D

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federal register

**Tuesday
September 12, 1989**

Part II

Department of Transportation

Research and Special Programs Administration

Reichhold Ltd. Application for Inconsistency Ruling Concerning State of Maine Regulations for the Transportation of Hazardous Materials; Public Notice and Invitation To Comment

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA–48]

Reichhold Ltd., Application for Inconsistency Ruling Concerning State of Maine Regulations for the Transportation of Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Reichhold Limited has applied for an administrative ruling determining whether Maine's regulations requiring a license for the transportation of hazardous materials are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA. RSPA is expanding the proceeding to include Maine's licensing and enforcement statute concerning such transportation, and its fee statue for hazardous materials transported by railroad.

DATES: Comments received on or before October 20, 1989, and rebuttal comments received on or before December 8, 1989, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation (OHMT). Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number, IRA–48. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Mr. G.R. Beasant, Reichhold Limited, Mississauga Executive Centre, Four Robert Speck Parkway, Suite 700, Mississauga, Ontario, Canada L4Z 1S1, and to Mr. Garry R. Hinkley, Director, Commercial Vehicle, Secretary of State, Motor Vehicles Division, Station No. 29, Augusta, Maine 04333, and that fact certified to at the time each comment is submitted to the Dockets Unit. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Mr. Beasant and Mr. Hinkley at the addresses specified in the Federal Register.").

FOR FURTHER INFORMATION CONTACT: Mr. Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 4000 Seventh Street SW., Washington, DC 20590, telephone number 202–366–4400.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 App. U.S.C. 1801–1811), at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.201 through 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the folowing factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual complaince" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address issues of preemption under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order No. 12,612 entitled "Federalism" (52 FR 41,685 (Oct. 30, 1987)). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

2. The Application for Inconsistency Ruling

On June 21, 1989, Reichhold Limited (Reichhold), Mississauga, Ontario, Canada, through Mr. G.R. Beasant, its Transportation Manager, applied for an inconsistency ruling concerning the State of Maine's Bureau of State Police regulations (chapter 11) requiring a license for the transportation of hazardous materials, reproduced in Appendix A to this Notice.

To facilitate consideration of all relevant issues, this proceeding is being expanded to include the State's statute, Me. Rev. Sta. Ann. tit. 29, sections 246–B and 246–C (1988), which require such a license and provide for enforcement; and Me. Rev. Sta. Ann. tit. 38, section 1319–I, subsection 4–B (1988), which imposes a fee on hazardous materials transported by railroad. Those statutes are reproduced in appendix B to this Notice.

Section 246–B.2 of Maine's statute concerning a license for transportation of hazardous materials states that "[h]azardous materials subject to the requirements of this section shall mean those substances identified pursuant to the United States Superfund Amendments and Reauthorization Act (SARA) of 1986, title III, sections 302 and 313" (Pub. L. No. 99–499, 100 Stat. 1730–31; 1742–47). Pursuant to this statute, Maine promulgated regulations governing the display and examination of the license for transportation of hazardous materials. These regulations apply to "any person * * * who transports certain hazardous materials, identified pursuant to the United States Superfund Amendments and Reauthorization Act of 1986, title III sections 302 and 313." Section 1319–I, subsection 4–B of Maine's statute concerning the imposition of fees on hazardous materials transported by railroad also identifies hazardous materials as those identified in sections 302 and 313 of SARA. The Environmental Protection Agency has published a list of the hazardous substances and toxics under sections 302 and 313 of SARA; a copy of that list is available from RSPA's Dockets Unit, Room 8421, Nassif Building, 400 Seventh Street SW., Washington, DC 20590 (202–366–4453).

In its application, Reichhold contends that SARA is applicable to fixed facility hazardous materials emissions and was never intended to apply to hazardous materials transportation. Reichhold further states that Maine's use of SARA

as a basis for its licensing requirement is inconsistent with 49 CFR 171.8, which defines "hazardous materials" as "a substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property *when transported* in commerce, and which has been so designated." (Emphasis added.) Reichhold states that certain hazardous chemicals covered by sections 302 and 313 of SARA, such as melamene, are not included in the Hazardous Materials Table, 49 CFR 172.101, and that certain hazardous materials in the table, such as paraformaldehyde, are not covered by section 302 or section 313 of SARA.

Reichhold alleges that it received a summons for violation of Maine state laws for operating without a hazardous materials license. Reichhold states that the material being transported from Quebec, Canada to Maine was a phenolic resin containing the following substances listed in 49 CFR 172.101: phenol, formaldehyde, and sodium hydroxide. However, Reichhold states that the substances transported were in concentrations below those defined as constituting a hazardous substance pursuant to 49 CFR 171.8 (less than 1.0%, 0.5%, and 0.25%, respectively). Reichhold thus contends the phenolic resin is not a material that is regulated for purposes of interstate transportation.

Therefore, Reichhold requests a ruling that the relevant State of Maine regulations are inconsistent with the hazardous materials regulations and are thus preempted by section 112(a) of the HMTA. Because those regulations were effectively mandated by Me. Rev. Sta. Ann. tit. 29, sections 246–B and 246–C (1988) and because Me. Rev. Sta. Ann. tit. 38, section 1319–I, subsection 4–B (1988) contains similar SARA-based provisions, this proceeding is being expanded to include those statutes.

3. Public Comment

Comments should be limited to the issues of whether Maine's above-described statutes and regulations, requiring a license for transportation of hazardous materials, and imposing a fee on hazardous materials transported by railroad, are inconsistent with the HMTA and the HMR. They should specifically address the "dual compliance" and "obstacle" tests described above under "Background".

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Unit, Appendices A and B to this Notice, and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201–107.211).

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC on September 5, 1989.

Appendix A—State of Maine Bureau of State Police

Chapter 11—License for the Transportation of Hazardous Materials Rules

Sec.
11.01: Purpose
11.02: Scope
11.03: Rules
11.04: Enforcement

Summary: These rules adopt the regulations governing the display and examination of the license for transportation of hazardous materials.

Section 11.01: Purpose

These rules prescribe the requirements of the Commissioner of Public Safety governing the examination and display of the license for transportation of hazardous materials. They are established in order to meet the requirements of 29 MRSA section 246–B and 246–C.

Section 11.02: Scope

These rules apply to any person, including a private carrier or a common or contract carrier who transports certain hazardous materials, identified pursuant to the United States Superfund Amendments and Reauthorization Act of 1986, title III sections 302 and 313, by highway such that the motor vehicle used in that transportation transports more than 2,000 pounds of any of those hazardous materials at any one time.

Section 11.03: Rules

There shall be issued to each motor vehicle that transports more than 2,000 lbs. of any of those hazardous materials at any one time as specified in 29 MRSA section 246–B a license from the Secretary of State.

This license shall be readily accessible for inspection by Main State Police officers or any member of the Department of Public Safety designated by the Commissioner of Public Safety and shall be displayed upon demand. The license shall be filled out completely and legibly.

Section 11.04: Enforcement

Only Maine State Police officers or any members of the Maine Department of Public Safety designated by the Commissioner of Public Safety are authorized and directed to enforce 29 MRSA section 246–B, 246–C, and these rules.

Authority: 29 MRSA Section 246–B.

Effective Date: February 1, 1989.

Appendix B—Maine Revised Statutes Annotated

Title 29, Section 246–B. License for Transportation of Hazardous Materials

1. *License required.* As of January 1, 1989, any person, including a private carrier or a common or contract carrier, who transports certain hazardous materials as specified in this section by highway, such that the motor vehicle used in that transportation, transports more than 2,000 pounds of any of those hazardous materials at any one time shall first obtain from the Secretary of State an annual license or single-trip license for each motor vehicle used in that transportation. This license shall be available for examination and displayed in accordance with rules adopted by the Commissioner of Public Safety. Annual licenses shall expire one year following the date of issuance. The license shall be in such form as the Secretary of State by rule prescribes. No license may be transferable to another motor vehicle.

2. *Hazardous materials covered.* Hazardous materials subject to the requirements of this section shall mean those substances identified pursuant to the United States Superfund Amendments and Reauthorization Act of 1986, title III, sections 302 and 313.

3. *Exceptions.* This section shall not apply to:

A. Any motor vehicle owned or operated by the Federal Government or any political subdivision of the Federal Government;

B. Any properly registered agricultural motor vehicle used in a bona fide farming operation;

C. Any motor vehicle used during an emergency with the specific approval of a peace officer, fire chief, designated official of the Department of Environmental Protection or the Department of Public Safety; or

D. Any motor vehicle which has a valid license issued by the Department of Environmental Protection for the transportation of hazardous waste or waste oil pursuant to title 38, section 1319–O.

4. *Fee.* The fee for an annual license is $50 and the fee for a single-trip license is $25. No portion of the annual fee for licensing may be prorated or reduced.

5. *Apportionment of fees.* Fees shall be paid to the Secretary of State and, upon receipt, credited to the Maine Hazardous Waste Fund. Fees collected shall be apportioned in the following manner:

A. Sixty-five percent to the Maine Hazardous Waste Fund administered by the Department of Environmental Protection;

B. Fifteen percent to the Secretary of State for the costs of administering the licensing program;

C. Ten percent to the Department of Public Safety for costs related to motor vehicle inspections and enforcement of this section; and

D. Ten percent to the State Emergency Response Commission established under the Maine Emergency Management Agency for hazardous materials training of local and State officials.

Title 29, Section 246–C. Enforcement

Every State police officer or any member of the Department of Public Safety designated by the Commissioner of Public Safety is authorized and directed to enforce section 246–B. A violation of section 246.B is a Class E crime, except that any owner or operator who displays, causes or permits to be displayed a fictitious license or a license issued to another motor vehicle shall be guilty of a Class D crime. All fines shall accrue to the Maine Hazardous Waste Fund.

Title 3o, Section 1319–I, Subsection 4–B

Fee on hazardous materials transported by railroad. Effective October 1, 1988, any person who transports more than 25 tons of certain hazardous materials as specified in this subsection at any one time by rail shall register annually with the department. Fees for the transportation of hazardous materials by rail shall be imposed on the registrant who first transports the materials in Maine by rail. Fees for the transportation of hazardous materials shall be determined on the basis of fifteen cents per ton of hazardous materials transported by the registrant during the period of registration and shall be paid monthly by the registrant on the basis of records certified to the department. Fees shall be paid to the department and upon receipt by it credited to the Maine Hazardous Waste Fund.

Hazardous materials subject to the requirements of this subsection shall mean those substances identified pursuant to the United States Superfund Amendments and Reauthorization Act of 1986, title III, sections 302 and 313. The registrant shall make available to the department and its authorized representatives all documents relating to the hazardous materials transported by the registrant during the period of registration.

[FR Doc. 89–21331 Filed 9–11–89; 8:45 am]

BILLING CODE 4910–60–M

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federal register

Tuesday
September 12, 1989

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Vibration, Buffet and Aeroelastic Stability Requirements for Transport Category Airplanes; Notice of Proposed Rulemaking

BEST COPY AVAILABLE

DEPARTMENT OF TRANSPORTATION

FOR FURTHER INFORMATION CONTACT:

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 26007; Notice No. 89-24]

RIN 2120-AD36

Vibration, Buffet and Aeroelastic Stability Requirements for Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise the airworthiness standards of the Federal Aviation Regulations (FAR) for transport category airplanes concerning flutter, divergence, vibration, and buffet. It would clarify the requirement to consider flutter and divergence when treating certain damage and failure conditions required by other sections of the FAR. It would revise the required safety margins by slightly reducing the safety margin concerning airplane speed for normal configurations and providing a minimum safety margin concerning airplane speed for damage and failure configurations. These changes are intended to provide consistency with other sections of the FAR, to relieve a design burden which is now unnecessary as a result of advances in technology, and to improve certain safety margins as a result of the evolution in the design of transport airplanes.

DATE: Comments must be received on or before March 12, 1990.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26007, 800 Independence Avenue SW., Washington, DC 20591, or delivered in duplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked: Docket No. 26007. Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: James Haynes, Airframe and Propulsion Branch (ANM-112), Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2113.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of proposals contained in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address specified above. All comments will be considered by the Administrator before taking action on the proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26007." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

The term "aeroelastic" is applied to an important class of phenomena which involves the mutual interaction between the inertial, aerodynamic, and elastic forces in a structure. These forces can interact to give rise to a variety of aeroelastic phenomena ranging from transient or dynamic responses as a result of external forces (vibration or buffeting) to aeroelastic instabilities (flutter or divergence). The important distinction between response and instability phenomena is that instabilities are self-excited, that is, they can exist even in smooth air in the absence of any external forces. A slight perturbation of the structure at or above the critical airspeed is all that is needed to initiate the unstable condition which then may be maintained or grow to destructive proportions in the absence of any external forces.

Few aeroelastic phenomena fit neatly into classifications where exact definitions can be considered to apply without qualification. For the purpose of better understanding the proposals in this NPRM the following definitions are provided. They should be considered to apply to classical aeroelastic phenomena and used with a certain amount of judgment since not even the experts in the field would agree completely on any set of definitions.

1. *Vibration.* An oscillation of the structure or of a control surface resulting from an independent external excitation.

2. *Buffeting.* A random oscillation of the structure resulting from unsteady aerodynamic forces, usually associated with separated flow.

3. *Flutter.* The unstable self-excited structural oscillation at a definite frequency where energy is extracted from the airstream by the motion of the structure. The deformation and motion of the structure result in forces on the structure that tend to maintain or augment the motion. The displacement modes associated with potential flutter instabilities are often called "flutter modes" even though they may be well damped or do not become unstable within the flight envelope.

4. *Whirl Flutter.* Flutter in which the aerodynamic and gyroscopic forces associated with rotations and displacements in the plane of a propeller or large turbofan play an important role. The displacement modes associated with whirl flutter are frequently called "whirl modes."

5. *Divergence.* A static instability at a speed where the aerodynamic forces resulting from the deformation of the structure exceed the elastic restoring forces resulting from the same deformation.

6. *Control Reversal.* A condition in which the intended effects of displacing a given component of the control system are completely overcome by the aeroelastic effects of structural deformation, resulting in reversed command at higher speeds.

7. *Deformation Instability.* The loss of airplane stability and control as a result of the aeroelastic effects of structural deformation.

Many of the above terms have been used in the airworthiness regulations and associated advisory material for many years and there is no intent to redefine these phenomena or require consideration of new phenomena by this proposal.

Regulations dealing with flutter and divergence for transport category airplanes were first introduced in part 04 of the Civil Air Regulations (CAR) in the 1940's. A safety margin was established by requiring that the airplane be designed to be free from flutter and divergence at an airspeed 20 percent greater than the maximum design dive speed. Flutter analyses, using the available theoretical methods of that time, were used to show compliance. The 20 percent margin was intended to account for the inaccuracy in the analytical prediction of the flutter speed, as established by those early methods, and to provide for production and service variations. A 20 percent margin was chosen as the safety margin for civil airplanes after comparing analytical studies with the results of model testing conducted by the Army Air Corps. Based on the same studies and tests, a 15 percent margin was chosen by the Army Air Corps as the safety margin for the related military specification.

The flutter requirement of part 04 evolved into section 4b.308 of the CAR, where developing fail-safe philosophy continued to change the scope of the flutter and divergence substantiation requirements. Among the early fail-safe provisions were the requirements that control surface tabs and flutter damper systems be fail-safe. The most comprehensive fail-safe requirement was adopted in 1964 (29 FR 12609, September 5, 1964) and required compliance with the single failure criteria for the entire airplane, as well as compliance with special provisions for turbopropeller airplanes. The most recent substantive change in the fail-safe provisions was the addition of a requirement in § 25.629(d) for freedom from flutter with any combination of failures not shown to be extremely improbable (Amendment 25-46, 43 FR 50578; October 30, 1978).

Part 25 has been continually upgraded with failure and damage requirements in other sections. Among these requirements are the criteria for complete loss of all engines in § 25.671, the empennage bird strike criteria of § 25.631, and the discrete source damage criteria of § 25.571(e). These sections generally require "no catastrophic failure" or "safe flight and landing" or similar provisions. These regulations have been interpreted to require flutter substantiation if the failure or damage event could have a significant effect on the flutter modes.

The design margin for the fail-safe design conditions has been the margin between design cruise speed, V_C/M_C and design dive speed, V_D/M_D. This margin originally was 25 percent, but has since been reduced by the incorporation of an upset criterion to establish V_D/M_D (§ 25.335(b)). This criterion generally results in a margin of between 15 and 20 percent on modern conventional transport airplanes at altitudes where V_C is not limited by Mach number.

While the scope of the flutter requirements was being widened by additional fail-safe criteria, the ability of the industry to substantiate freedom from flutter and other aeroelastic instability phenomena was continually improving. At the time the 20 percent margin was established, the analytical capability was minimal and unreliable without a large speed margin. Current analytical methods employ finite element solutions with advanced unsteady aerodynamic theories and can accommodate airplanes of complex configurations. In addition, model testing, ground vibration testing and flight flutter testing techniques have all undergone significant improvements. Complete airplane experimental modal analyses are now commonplace. Furthermore, the cost of these analytical methods and testing techniques has been kept reasonable by the advances in computer technology.

The requirements to withstand vibration and buffet, as contained in part 4b of the CAR at the time of recodification to part 25 of the FAR, were divided into two parts, (1) a flight demonstration requirement (section 4b.190) in subpart B "Flight" and (2) a design requirement (section 4b.308) in subpart C "Structure." As a result of the recodification, these requirements were combined into a single requirement in § 25.251 of subpart B "Flight." In addition, since § 4b.190 referred to both flutter and vibration, the fail-safe flutter requirements from section 4b.308 were also incorporated into § 25.251 by reference to the new § 25.629(d) which was the recodified section 4b.308(d). However, at the same time the reference to flutter was removed from § 25.251 and it became only a vibration and buffet regulation. As a result of the placement in subpart B, there is a tendency to interpret the vibration and buffet requirements as only flight requirements. Also, because of the reference to the fail-safe requirements of § 25.629(d), § 25.251 literally requires that freedom from excessive vibration be demonstrated with failure conditions. The rule also continued to reference the structural design dive speed V_D rather than a flight speed such as V_{DF}.

Discussion

The scope of this proposal is to revise § 25.629 "Flutter, deformation and fail-safe criteria" which includes several substantive changes, and to reorganize some requirements of § 25.251 "Vibration and buffeting," without substantive changes.

The proposed changes to § 25.251 involve the creation of a new § 25.305(e) to incorporate the design requirements for buffet and vibration of § 25.251(a) into § 25.305, creating a new § 25.305(e). This requirement is a structural design requirement and should be set forth in subpart C. Section 25.251(a) would be revised to require only a flight demonstration for freedom from vibration and buffet in any likely operating condition, including probable inadvertent excursions beyond the buffet boundaries. Furthermore, the third sentence of § 25.251(b) would be deleted. This would provide relief from the requirement that freedom from excessive vibration be demonstrated in flight for the failure and damage conditions of § 25.629(d). The speed referenced in § 25.251 would be changed to the flight speed V_{DF} while the corresponding structural requirements that are moved to § 25.305(e) would continue to reference the structural design dive speed V_D.

It is also proposed to relocate the requirement for the evaluation of loads resulting from forced structural vibration after failures in the automatic flight control system. This requirement is currently located in § 25.629(d)(4)(vi), although it is a structural loading condition for oscillatory failures rather than for aeroelastic instability. It is proposed that it be set forth in subpart C, specifically in § 25.305, creating a new paragraph § 25.305(f). Furthermore, it is proposed to clarify that the loads resulting from these forced structural vibrations are limit loading conditions.

Section 25.629 would be retitled "Aeroelastic stability requirements" to more accurately describe the objective of the revised section. Originally the regulation contained vibration, buffet requirements and oscillatory failure load requirements, as well as flutter,

divergence, control reversal and

damage and failure conditions as well

for establishing a proper margin of

divergence, control reversal and deformation instability requirements. However, as a result of this proposal and previous amendments, the rule would only contain flutter (including whirl flutter), divergence, control reversal, and deformation instability requirements, all of which can be considered aeroelastic instabilities.

The references to propellers and turbopropellers in § 25.629 would be replaced by "propeller or rotating device that contributes significant dynamic forces" to encompass all types of rotating machinery which could influence the basic aeroelastic modes or create new "whirl modes." The general growth of compressors to large bypass fans and now to unducted fans has obscured the differences between propellers and other rotating machinery. The proposed rule would impose the requirements for the consideration of gyroscopic inertial forces and whirl flutter analysis on a more objective basis.

It is proposed to reduce the design envelope in which freedom from aeroelastic instability is to be shown for the normal (undamaged) airplane. The requirement for a 20 percent increase in equivalent airspeed at both constant altitude and constant Mach number would be reduced to a 15 percent increase. The principal purpose of the 20 percent margin has been for substantiation reliability. When the 20 percent margin was first established, flutter and divergence substantiation was in its infancy, and a large margin was needed because of the unreliability of the techniques. In addition, there were no failure or damage conditions at that time and the 20 percent margin, by virtue of the added stiffness, provided some degree of protection against damage and failure conditions as well as production and service variations. The transport airplane aeroelastic stability requirements, as provided in this proposal, and advances in aeroelastic substantiation techniques are now sufficient to justify a reduction in the substantiation margin. These provisions now require a complete program of analyses validated with test data and full-scale flight flutter testing. Furthermore, previous amendments, as well as the provisions of this proposal, have significantly amplified the specific fail-safe and damage conditions which must be considered with a separate fail-safe aeroelastic stability envelope. Since many transport airplanes serve both civil and military purposes, an added benefit of this proposal would be similarity with the military specifications which have used a 15 percent margin for many years without adverse service experience.

A further proposal affecting the normal envelope would be the inclusion of a general statement concerning aeroelastic stability criteria within the design envelope. The statement would require that, for the normal airplane without failures, malfunctions, or adverse conditions, there must be a proper margin of damping up to V_D/M_D and no large and rapid reduction in stability as V_D/M_D is approached. These words are currently in the rule but are stated as a condition required in order to allow the limiting of the aeroelastic stability substantiation envelope to Mach 1.0 when M_D is less than 1.0. This Mach 1.0 limitation would still be allowed, but the damping criteria would be a requirement in any case. Advisory Circular 25.629-1, Flutter Substantiation of Transport Category Airplanes, currently contains acceptable criteria for establishing a proper margin of damping.

It is also proposed that the fail-safe stability envelope be modified to provide a minimum speed margin. The margins between V_C/M_C and V_D/M_D have provided a sufficient margin in the past; however, with the advent of new types of propulsion systems, speed protection systems and unusual configurations, there is concern that this margin may be reduced to the point that it might not always serve as a sufficient margin for aeroelastic stability substantiation in the failed or damaged condition. Failures and damage conditions are typically substantiated by analyses or wind tunnel tests with very little flight test verification. The proposal would still require fail-safe aeroelastic stability substantiation within the structural design envelope, V_D/M_D; however, a minimum margin would be provided to ensure protection against substantiation unreliability if the V_D/M_D, envelope did not provide sufficient margin over V_C. The minimum margin would be a 15 percent increase in equivalent airspeed over design cruise speed, V_C, at all altitudes from sea level up to the altitude of the intersection of the extension of the constant cruise Mach number line, M_C, with 1.15 V_C. Then the minimum margin would be a linear variation in equivalent airspeed from that intersection to the point of intersection of the constant $M_C+.05$ line with the altitude of the lowest V_C/M_C intersection and a Mach increment of .05 over M_C at higher altitudes. Figure 1. shows the minimum flutter substantiation envelope for fail-safe conditions.

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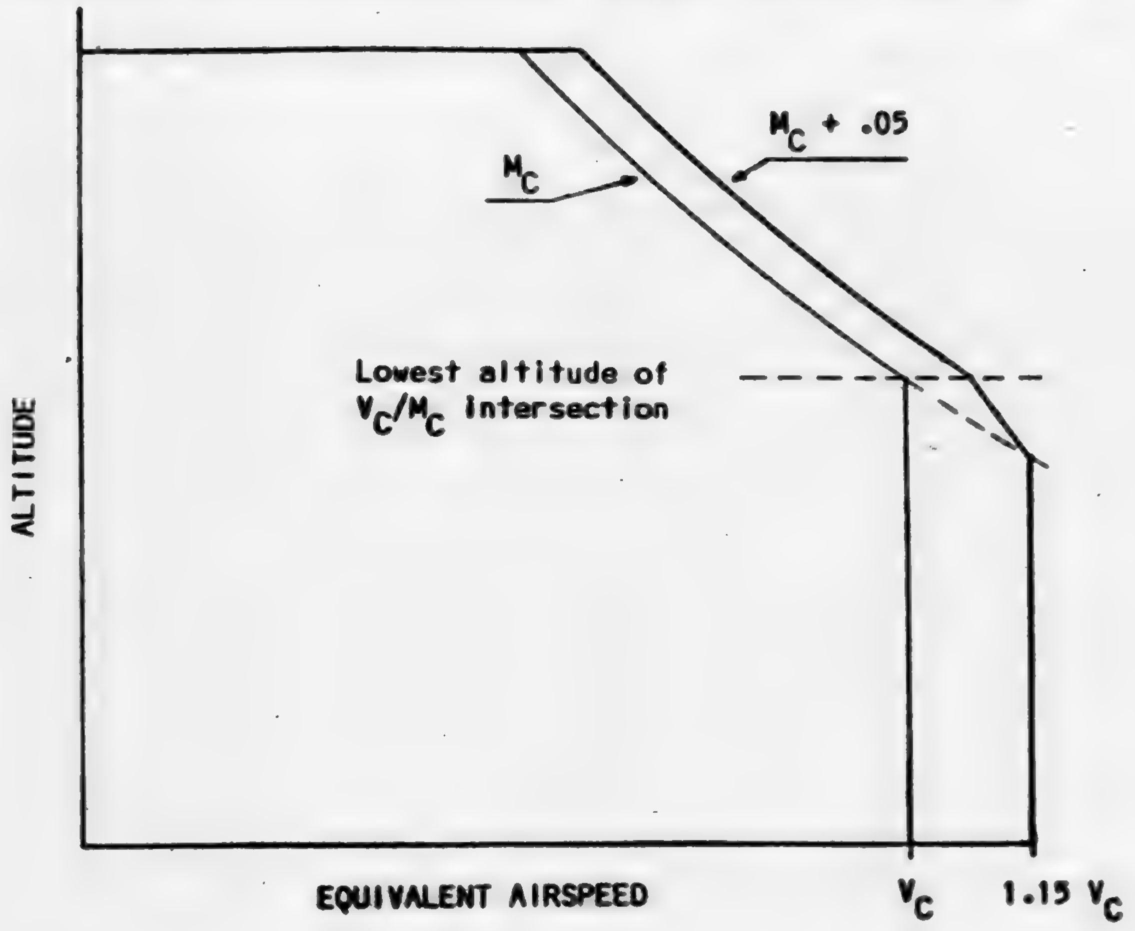

Minimum Fail-safe Flutter Substantiation Envelope.

Figure 1.

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Also proposed are additions to the

be considered "negligible." This has

TABLE 1 — SUMMARY OF CHANGES AND

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PART 25—AIRWORTHINESS

or other means found necessary by the

Also proposed are additions to the specified failure, malfunction, damage and adverse conditions specified in § 25.629(d). The list of conditions would be revised to add mismanagement of fuel not shown to be extremely improbable, the empennage bird strike requirement of § 25.631, and the discrete source damage conditions of § 25.571(e). Also included is a provision to consider inadvertent encounter with icing conditions, even though the airplane may not be approved for operation in icing conditions. Many of these are conditions that have generally required aeroelastic stability substantiation in order to show "safe flight and landing." This placement of the requirements in § 25.629(d) would make the margins and substantiation criteria of § 25.629 directly applicable to these aeroelastic stability substantiations.

The mismanagement of fuel condition is not specifically mentioned in part 25, although its consideration has been a practice for many years and has been required under general rules such as § 25.629(d)(1)(ii). There is an increasing complexity in fuel loading configurations including empennage fuel and automatic fuel distribution systems and these can have a significant effect on aeroelastic stability. Therefore, it is proposed to specifically require consideration of fuel mismanagement conditions, not shown to be extremely improbable, in order to provide a probability basis consistent with other fail-safe flutter conditions and to assure that this condition is not overlooked.

The combinations of feathered propellers in § 25.629(d) would also be revised to include any combination of feathered propellers (or rotating devices capable of significant dynamic forces) including all propellers feathered. The requirement in § 25.671 for the airplane to be controllable with all engines inoperative has made the current requirement inconsistent since the power failure requirement necessitates the feathering of all propellers.

The current § 25.629(d) requires single failures to be considered in engine mounts, other attachments of external bodies and engine structure supporting propeller shafts. Relief from this requirement for structural elements of these attachments is provided if "conservative static strength margins" or "sufficient fatigue strength" are shown. This provision was adopted in 1964 (29 FR 12809, September 5, 1964) and was intended to require design integrity of mounts and engine structures sufficiently above the normal design load and fatigue requirements so that the probability of their failure could be considered "negligible." This has resulted in confusion and inconsistencies in the application of the regulation. It is proposed that the damage-tolerance requirements of § 25.571(b) be used as a basis of evaluating these structures to determine if they should be treated under the single failure criteria of § 25.629(d). However, in order to assure conservative margins above the normal requirements of § 25.571, the damage-tolerance requirements would be applied with the specific loading conditions of § 25.571(b) replaced by "all ground and flight load conditions specified in this part." The quoted phrase is taken from the current rule (§ 25.629(d)(3)(i)), and when combined with the damage-tolerance requirements of § 25.571(b), should provide the conservatism necessary to warrant relief from the single failure requirement for the structural elements of these attachments. The proposal also provides a further alternative damage-tolerant method in case the inspection provisions of § 25.571 are impracticable.

It is also proposed to revise the full-scale flight flutter test requirement to the extent that full-scale flight flutter tests would always be required for new designs. Currently, flight flutter tests are specifically required if M_D is greater than .8. Indirectly, flight tests have always been necessary and required on transports, either as proof of freedom from flutter or as a means of validating the flutter analysis. The specific requirement for flight flutter testing on all new designs is considered necessary and consistent with the reduction of the normal flutter margins from 1.2 V_D to 1.15 V_D. It is also proposed to add a requirement that the flight test show a proper damping margin and that there be no large and rapid reduction in damping as V_{DF}/M_{DF} is approached.

Regulatory Evaluation

This section reviews the economic impact of the proposed regulatory changes. Table 1 below shows the proposed changes and their associated economic impact. Additional detail is contained in the regulatory evaluation that has been placed in the docket.

TABLE 1.— SUMMARY OF CHANGES AND ECONOMIC IMPACT

Change	Economic Impact
Changes to § 25.251. Incorporate design requirements § 25.251(a) into § 25.305.	Changes organization of regulations. No economic impact.

TABLE 1.— SUMMARY OF CHANGES AND ECONOMIC IMPACT—Continued

Change	Economic Impact
Provide for relief from requirement that freedom from vibration be demonstrated for failure conditions.	Clarifies the intent of the rule. No economic impact.
Reorganize contents of § 25.629 into a new section.	Reorganization of rule. No economic impact.
Change title of § 25.629....	Editorial change. No economic impact.
Include requirements for rotating devices other than propellers.	Clarifies the intent of the rule. No economic impact.
Reduce the design envelope from a 20 percent increase in equivalent airspeed to a 15 percent increase.	Relieving, no derogation of safety. Reduction in costs.
Provide a minimum speed margin or floor for aeroelastic stability analysis.	Ensures current practice as required by special conditions. No economic impact.
Provide additions to the failure, malfunction, damage and adverse conditions of § 25.629(d).	Consolidates existing requirements. No economic impact.
Require aeroelastic analysis of any combination of feathered propellers.	Resolve inconsistencies in regulations. No economic impact.
Revise the damage tolerance requirements for aeroelastic analysis.	Clarifies meaning of regulation. No economic impact.
Require full scale flight flutter tests for new designs.	Codifies what is currently required in practice. No economic impact.

Table 1 shows that most of the changes have no cost implications and the change relating to reducing the design airspeed margin from 20 percent to 15 percent will reduce costs.

International Trade Impact Analysis

The proposals are likely to have little impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the U.S. The proposals which do have an economic impact are relieving in nature and will reduce costs. If foreign nations do not adopt U.S. standards, their manufacturers may be at a disadvantage in the U.S. market. U.S. manufacturers selling abroad could continue to design to foreign standards which would also meet U.S. standards. However the impact is expected to be slight.

Regulatory Flexibility Determination

Under the criteria of the Regulatory Flexibility Act of 1980, the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Since the Act applies to U.S. entities, only U.S. manufacturers of transport category airplanes would be affected. In the United States, there are two manufacturers that specialize in commercial transport category airplanes, the Boeing Company and the McDonnell Douglas Corporation. In addition, there are a number of general aviation (GA) entities that manufacture other transport category airplanes such as large business jets, including Cessna Aircraft and Gates Lear Jet.

The FAA size threshold for a determination of a small entity for U.S. airplane manufacturers is 75 employees; any U.S. airplane manufacturer with more than 75 employees is considered not to be a small entity. None of the transport category airplane manufacturers is known to be a small entity. Thus, there would not be a significant economic impact on a substantial number of small entities as the result of the implementation of this proposal.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons given above, the FAA has determined that this proposed regulation is not considered to be major under Executive Order 12291, or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies that this proposed rule, if promulgated, would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, since none would be affected.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, the FAA proposes to amend part 25 of the Federal Aviation Regulations (FAR) 14 CFR part 25 as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a),1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983). 49 CFR 1.47(a).

2. By amending section § 25.251 by revising paragraphs (a) and (b) to read as follows:

§ 25.251 Vibration and buffeting.

(a) The airplane must be demonstrated in flight to be free from any vibration and buffeting that would prevent continued safe flight in any likely operating condition.

(b) Each part of the airplane must be demonstrated in flight to be free from excessive vibration under any appropriate speed and power conditions up to V_{DF}/M_{DF}. The maximum speeds shown must be used in establishing the operating limitations of the airplane in accordance with § 25.1505.

* * * * *

3. By amending § 25.305 by adding new paragraphs (e) and (f) to read as follows:

§ 25.305 Strength and deformation.

* * * * *

(e) The airplane must be designed to withstand any vibration and buffeting that might occur in any likely operating condition up to V_D/M_D, including stall and probable inadvertent excursions beyond the boundaries of the buffet onset envelope. This must be shown by analysis, flight tests, or other tests found necessary by the Administrator.

(f) Unless shown to be extremely improbable, the airplane must be designed to withstand any forced structural vibration resulting from any failure, malfunction or adverse condition in the flight control system. These must be considered limit loads and must be investigated at airspeeds up to V_C/M_C.

4. By revising § 25.629 to read as follows:

§ 25.629 Aeroelastic stability requirements.

(a) *General.* The aeroelastic stability evaluations required under this section include flutter, divergence, control reversal and any undue loss of stability and control as a result of structural deformation. The aeroelastic evaluation must include whirl modes associated with any propeller or rotating device that contributes significant dynamic forces. Compliance with this section must be shown by analyses, wind tunnel tests, ground vibration tests, flight tests, or other means found necessary by the Administrator.

(b) *Aeroelastic stability envelopes.* The airplane must be designed to be free from aeroelastic instability for all configurations and design conditions within the aeroelastic stability envelopes as follows:

(1) For normal conditions without failures, malfunctions, or adverse conditions, all combinations of altitudes and speeds encompassed by the V_D/M_D versus altitude envelope enlarged at all points by an increase of 15 percent in equivalent airspeed at both constant Mach number and constant altitude. In addition, a proper margin of stability must exist at all speeds up to V_D/M_D and, there must be no large and rapid reduction in stability as V_D/M_D is approached. The enlarged envelope may be limited to Mach 1.0 when M_D is less than 1.0 at all design altitudes, and

(2) For the conditions described in § 25.629(d) below, for all approved altitudes, any airspeed up to the greater airspeed defined by:

(i) The V_D/M_D envelope determined by § 25.335(b); or,

(ii) An altitude-airspeed envelope defined by a 15 percent increase in equivalent airspeed above V_C at constant altitude, from sea level to the altitude of the intersection of 1.15 V_C with the extension of the constant cruise Mach number line, M_C, then a linear variation in equivalent airspeed to M_C+.05 at the altitude of the lowest V_C/M_C intersection; then, at higher altitudes, up to the maximum flight altitude, the boundary defined by a .05 Mach increase in M_C at constant altitude.

(c) *Balance weights.* If concentrated balance weights are used, their effectiveness and strength, including supporting structure, must be substantiated.

(d) *Failures, malfunctions, and adverse conditions.* The airplane must be shown to be free from any aeroelastic instability that would preclude continued safe flight and landing within the fail-safe envelope described in paragraph (b)(2) of this section for each of the failures described in paragraph (d)(3) of this section.

(1) Safety following the failures, malfunctions, or adverse conditions of paragraph (d)(3) may be substantiated by showing that losses in rigidity or changes in frequency, made shape, or damping are within the parameter investigations.

(2) The structural failures described in paragraphs (d)(3)(iv) and (d)(3)(v) of this section need not be considered in showing compliance with this paragraph if a damage tolerance investigation,

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using a conservative operating

(iv) Failure of any single element of

(x) Any other combination of failures,

Tuesday

using a conservative operating spectrum, shows that the structural element is designed with:

(i) Damage tolerance in accordance with § 25.571(b) using all the flight and ground loading conditions specified in this part in lieu of the loading conditions specified in § 25.571, or

(ii) If compliance with the inspection provisions of § 25.571(b) is shown to be impracticable, damage tolerance without inspections where analysis supported by tests shows that each critical structural element is capable of sustaining two lifetimes of slow crack growth starting with a 0.05 inch deep flaw and terminating with the maximum extent of damage at the limit load conditions specified in this part.

(3) The damage, failures, malfunctions, and adverse conditions which must be considered in showing compliance with this section are:

(i) Any critical fuel loading conditions, not shown to be extremely improbable, which may result from mismanagement of fuel.

(ii) Any single failure in any flutter damper system.

(iii) For airplanes not approved for operation in icing conditions, the maximum likely ice accumulation expected as a result of an inadvertent encounter.

(iv) Failure of any single element of the structure supporting any engine, independently mounted propeller shaft, large auxiliary power unit, or large externally mounted aerodynamic body (such as an external fuel tank).

(v) For airplanes with engines that have propellers or large rotating devices capable of significant dynamic forces, any single failure of the engine structure that would reduce the pitch or yaw rigidity of the rotational axis.

(vi) The absence of aerodynamic or gyroscopic forces resulting from the most adverse combination of feathered propellers or other rotating devices capable of significant dynamic forces. In addition, the effect of a single feathered propeller or rotating device must be coupled with the failures of paragraphs (d)(3)(iv) and (d)(3)(v) of this section.

(vii) Any single propeller or rotating device capable of significant dynamic forces rotating at the highest likely overspeed.

(viii) Any failure or malfunction, or combinations thereof, in the flight control system considered under §§ 25.671, 25.672, and 25.1309.

(ix) Any damage or failure condition, required or selected for investigation by § 25.571 or § 25.631, and

(x) Any other combination of failures, malfunctions, or adverse conditions not shown to be extremely improbable.

(e) Flight flutter testing. Full scale flight flutter tests at speeds up to V_{DF}/M_{DF} must be conducted for new type designs and for modifications to a type design unless they have been shown to have an insignificant effect on the aeroelastic stability. These tests must demonstrate that the airplane has a proper margin of damping at all speeds up to V_{DF}/M_{DF}, and that there is no large and rapid reduction in damping as V_{DF}/M_{DF} is approached. If a failure, malfunction, or adverse condition is simulated during flight test in showing compliance with paragraph (d) of this section, the maximum speed investigated need not exceed V_{FC}/M_{FC} if it is shown, by correlation of the flight test data with other test data or analyses, that the airplane is free from any aeroelastic instability at all speeds within the altitude-airspeed envelope described in paragraph (b)(2) of this section.

Issued in Washington, DC, on September 5, 1989.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 89–21395 Filed 9–11–89; 8:45 am]

BILLING CODE 4910-13-M

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federal register

Tuesday
September 12, 1989

Part IV

Department of Education

Office of Educational Research Improvement

National Research and Development Centers Competition; Solicitation of Written Public Comments

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

National Research and Development Centers Competition; Solicitation of Written Public Comments

ACTION: Notice to solicit written public comments on a proposed research and development centers competition.

Purpose: The Secretary invites written public comments on twelve planned research and development centers and the potential lines of inquiry within each center. Written comments received in response to this notice will be carefully considered by the Office of Educational Research and Improvement (OERI) in preparation for an upcoming national research and development centers competition to be held during FY 1990, with awards to be made in FY 1991.

Deadline for transmittal of written comments: To be considered, all written comments must be received on or before October 31, 1989. Written comments received on or before this date will be considered in preparing final mission statements that will describe the Department's recommendations for the research areas, activities, and objectives of the national research and development centers.

Applicable regulations: The regulations for the Research and Development Centers Program, 34 CFR Parts 706 and 708.

SUPPLEMENTARY INFORMATION: The Secretary plans to compete twelve educational research and development centers. At a later date, an application notice will be published for the competition to be conducted in FY 1990 for the national research and development centers to be awarded in FY 1991.

Prior to this announcement, OERI has engaged in a series of activities designed to identify the kinds of research most likely to benefit learners in this society. Recommendations were solicited from organizations and individuals with a variety of perspectives on the present status of education and how educational research and development activities could improve education. Planning meetings were held with parents, practitioners, policymakers, researchers, and public officials. Written comments were received from the general public, from members of the National Academy of Education, and from representatives of various interest groups, including many education organizations. OERI considered this planning work the essential first step in the conduct of both educational research and disciplined inquiry in education theory and practice.

The recommendations received by OERI often called for substantially new initiatives. In contrast to the ideas and recommendations offered in previous years—which typically addressed how schools could improve on what they were already doing—current advice repeatedly suggested that "tinkering at the edges" and "business as usual" would not suffice. Instead, the following sorts of fundamental questions were voiced: What should children know? What should they be able to do? Does the increasing cultural diversity of today's school population mean that new educational strategies are needed to ensure that tomorrow's citizens are literate, knowledgeable in mathematics and science, active in the community, and committed to learning throughout life? If so, what are these strategies? What should teachers know, and how do they learn it? What State and district policies encourage parental and community involvement in education or more effective school organization, and does the implementation of such policies foster student learning? What policies discourage student learning? How can adults learn to read and write? At the same time as OERI was counseled to encourage sustained basic research whose benefits are not so predictable, OERI was urged to support a timely practical response to current needs.

As result of the planning meetings, written comments, staff analyses, and further consideration of national needs, the present status of education and education research, and the limited resources available, OERI concluded that twelve particular research and development centers should be established. The planned array of research centers includes support for ongoing lines of inquiry that continue to warrant investigation, redirection of some current research activity, and also fundamentally new directions for center research. The twelve planned centers are designed as a group to reflect a comprehensive approach to education, one that aims to improve teaching and learning across the broad span of ages from childhood to adulthood, across the broad spectrum of languages and cultures in schools, and across large and small, urban and rural, public and private schools. Finding imaginative ways to create educated graduates, accountable teachers and schools, productive workers, and knowledgeable citizens is vital to national well-being.

In addition to recommendations which informed the development of the twelve missions outlined below, OERI identified four pervasive themes among the ideas and comments offered during the planning process which deserve special attention: student and teacher engagement, cultural diversity, student transitions, and the middle grades and high school years.

Student and teacher engagement: Exploring the factors that enable students and teachers to be actively involved in the education process, especially understanding what leads them to persist in the active pursuit of educational goals.

Cultural diversity: Finding ways to make use of opportunities presented by the increasingly wide range of linguistic and cultural backgrounds found in American classrooms, and finding ways to surmount the educational challenges posed by this diversity.

Student transitions: Exploring the educational significance of the maturational changes children and young people undergo as they progress from one institutional setting to another, from home to school, from one school to the next, from school to work and family, and from job to job.

Middle grades and high school: Examining the serious mismatch between the organization and curriculum of the middle grades and high schools, on the one hand, and the needs and capabilities of young adolescents, on the other hand.

OERI plans to encourage prospective centers to propose activities that address these themes in constructive ways that are consistent with the centers' particular research missions. Also, based in part on the ideas and comments received during its planning activities, OERI plans to encourage collaboration among centers and the dissemination of research findings to audiences who can make good use of them.

Planned priorities: OERI plans to invite proposals to establish research and development centers concerning the subjects listed below. The numbers following each priority correspond to the priorities listed in the regulations for this program at 34 CFR 706.3(b).

(1) *Families, Communities, and Young Children's Learning.* (Learning (Priority 1); Home, family, cultural, and community influences on education, including parental choice and involvement in schooling (Priority 14); Early childhood education (Priority 23)).—Family, community, and culture are recognized as powerful influences on learning. There are serious research problems involved in studying these complex influences properly, but the potential benefits of understanding them

and how they may contribute positively to education cannot be denied. Important areas of inquiry include: (1) Studying not only how family structural characteristics and socio-economic condition affect children's education, but what practices families might engage in which support and contribute to children's intellectual and moral development; (2) developing and disseminating useful information and effective strategies to assist parents' efforts to improve their children's learning; (3) exploring the nature of the learning experiences of the young child from birth through preschool and the transition into formal education, to understand how that learning takes place and how the influence of various people and learning environments encountered affect the young child's learning; (4) understanding the relationships between family and community and school during the early school years; (5) investigating learning opportunities in communities, both formally organized activities—such as day care and preschool facilities, scouting and church groups, civic association activities, and community service programs—and informal activity, to identify and augment the crucial educational qualities of such experiences; and (6) examing the cultural influences of family and community on children's education, to develop ways to overcome practical problems and take advantage of opporunities to enhance learning.

(2) *Student Learning.* (Learning (Priority 1); Student achievement, including students' motivation to learn, their failure to learn, and their failure to attend school and graduate (Priority 13)).—Recent evidence indicates that large numbers of students are completing their years of formal schooling without having achieved proficiency in learning, reasoning, problem solving, and other higher order thinking skills. In our highly complex and rapidly changing technological world, such individuals are poorly prepared to cope with the everyday demands they will encounter throughout their lives, both as citizens and as workers. The impressive strides researchers have made in elucidating the nature of certain high order thinking skills, such as reading comprehension and arithmetic problem solving, have served as a basis for the design of teaching experiments that have led to substantial improvements in the percentage of students mastering such skills. Areas of inquiry critical to the continued creation of a knowledge base useful in teaching higher order thinking skills include: (1) Delineation of similarities and differences in the patterns of thinking fostered in different academic subjects; (2) exploration of the role of social interactions in promoting the acquisition of higher order thinking; (3) exploration of ways of restructuring the presentation of academic content to help students achieve integrated knowledge; (4) assessment of the effectiveness of alternative methods for teaching thinking skills, looking in particular at the special learning problems of low achieving students; and (5) the relationship between learning higher order thinking skills and student motivation.

(3) *Writing and Literacy.* (English literacy, including reading, writing, and language skills (Priority 19)).—Because writing proficiency is an integral part of the literacy skills students need for academic success, understanding the ways in which students acquire and develop writing skills is an important prerequisite for improving the literacy level of all learners. Areas of inquiry critical to promoting writing proficiency and related literacy skills include: (1) The intersections between writing, reading, and oral language; (2) writing assessment (that is, measure of writing competence based upon classroom practice and instructional goals); (3) writing as a learning tool (that is, writing strategies that facilitate the comprehension and learning of subject matter content as well as teach students how to think more effectively); (4) the acquisition of writing skills by students with different language backgrounds; (5) instructional strategies that include the use of technology to teach writing and take into account individual learning differences; and (6) early literacy learning.

(4) *Mathematics Teaching and Learning.* (Mathematics (Priority 20); Teaching (Priority 2); Learning (Priority 1)).—Improving student achievement in mathematics, especially in problem solving, reasoning, and higher order thinking, is imperative to meeting the demands of a rapidly changing society. Mathematics educators have completed important work in such areas as establishing curricular and evaluation standards and researching how students learn mathematics. Areas of inquiry that promise to improve the learning, teaching, and assessment of mathematics include: (1) Improving the skills, knowledge, and teaching practices of mathematics teachers; (2) expanding our knowledge of how students learn mathematics, especially at the middle and secondary grades, with particular attention to the influence of student engagement; (3) uncovering barriers to implementing curricular reform in mathematics; (4) identifying the contextual and organizational features of classrooms and schools that promote improved student achievement in mathematics; (5) learning how teaching and assessing mathematics can be aligned more closely; (6) improving the integration of mathematics with other curricular areas; and (7) determining how technology can improve the mathematical problem solving and reasoning skills of all students.

(5) *Science Teaching and Learning.* (Science (Priority 21); Learning (Priority 1); Teaching (Priority 2)).—It is imperative that all students become scientifically literate. Areas of inquiry for improving the science proficiency of all students include: (1) The relationships among science, mathematics, and other subjects and the inclusion of scientific ideas into other subjects; (2) the use of innovative techniques to accurately assess students' knowledge and skills; (3) applying research on students' cognition and motivation to problems of classroom instruction in science; (4) studying the ways in which school and classroom organization and policy affect student problem-solving and reasoning in the classroom; and (5) the incorporation of technology into the science curriculum.

(6) *Learning to Teach.* (Teaching (Priority 2); Teachers (Priority 34)).—The quality of teaching is central to students' learning. Research on learning to teach focuses on understanding the continuing development of teachers' expertise. In contrast, such questions as determining the best combination of subject matter knowledge and teaching techniques, or how to recruit competent teachers, adopt a comparatively static prespective in which teachers are thought to master discrete elements of teaching competence near the beginning of their professional careers, and subsequently need only to maintain or preserve that competence. Focusing on how people learn to teach implies that good teaching depends on special kinds of knowledge, and that the quality of teaching may change and improve as that knowledge develops. Relevant areas of inquiry include studying (1) How teachers acquire their expertise both at the beginning of teaching and over the course of their professional careers; (2) the content of teachers' learning, including subject matter and how to teach it, how to teach students from diverse populations, and how teaching responds to the various ways in which

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students learn; and (3) the effects of

since 1980, 45 States have either

skills (Priority 19); Adult and continuing

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pedagogical skills, educational delivery students learn; and (3) the effects of innovative pedagogies (for example, case methods, computer technology) and nontraditional contexts (for example, professional development schools, teacher education in other countries, alternative routes to licensure) on teachers' learning.

(7) *Education in the Inner Cities.* (Education of special populations, including the educationally disadvantaged or students-at-risk, those with limited English proficiency, and immigrants (Priority 38); Secondary education (Priority 29); Early adolescent education (Priority 30); Home, family, cultural, and community influences on education, including parental choice and involvement in schooling (Priority 14)).—Inner cities pose formidable problems for education, both inside and outside of schools. Research in this area focuses on the distinctive characteristics of inner city education, taking into account the whole set of social, economic, cultural, and political conditions in which children and adolescents live and go to school. Developing constructive responses to the challenges of education in inner cities depends partly on knowing which problems are unique to education in inner cities, and which problems are common to other social contexts. Areas of inquiry include: (1) Studying how the educational system operates, for example, the functioning of its bureaucratic administration, the causes determining which students attend which of the different (public or private) schools, the allocation of resources among schools, and influences on the relationship between schools and other agencies; (2) examining how inner city conditions affect the features of schools, for example, the recruitment and retention of school personnel, the creation of school and classroom atmosphere, and examining what kinds of inner city schools and teachers are particularly successful, and why; (3) understanding how the cultural diversity of the inner city student population shapes students' educational experiences and interactions; and (4) studying both the beneficial and the detrimental effects of activities pursued by students outside of school.

(8) *Education Policies and Student Learning.* (Implementation and affects of educational policies (Priority 39); Learning (Priority 1); Improvement in education, including State and local reform initiatives (Priority 12)).—Teaching and learning take place within the context of Federal, State and local policies. In the past decade, new education policies have been developed at an unprecedented rate. For example, since 1980, 45 States have either specified for the first time or increased the number of courses a student must pass to graduate from high school. Similarly, more than 1,000 pieces of legislation regarding teachers were considered over this period, and a substantial number were passed. Virtually every State, enacted legislation to reform teacher education, licensing, or compensation during the decade of the 80's. Policymakers, such as governors, State legislators and members of State and local school boards, as well as concerned citizens, can be helped by studies that: (1) Describe the conceptual underpinnings of alternative policy approaches, (2) delineate the strengths and weaknesses of those alternative approaches, and (3) demonstrate which alternative approaches most effectively promote particular learner outcomes. Areas of inquiry include: (1) Examining such existing policies as raising student standards, changing teacher certification and compensation, increasing parental choice of schools, and moving education decisions to the school site level to study the impact of such policies on learning; (2) studying the development of innovative, promising policy approaches that have yet to be implemented, focusing on determining the type and nature of information that policymakers and concerned citizens need if they are to develop and implement policies that promote effective learning, and discovering the most effective means for delivering that information to those who need it.

(9) *Assessment, Evaluation, and Testing.* (Evaluation and indicator measures, including testing, measurement, and standards of performance (Priority 7)).—Assessment, evaluation, and testing processes and procedures have profound influences on what is taught and learned. Areas of inquiry include: (1) The interdisciplinary design of innovative assessments of student learning processes, student performance, and student products within and across content and skill areas—including higher order thinking and noncognitive development—for purposes of increasing the validity and usefulness of classroom and large-scale assessments; (2) the development of theories, models, and methodologies that support emerging assessment needs and practices and that accommodate an increasingly diverse student population; and (3) studies of the intended and unintended effects of assessment-related practices and reforms.

(10) *Adult Literacy.* (English literacy, including reading, writing, and language skills (Priority 19); Adult and continuing education (Priority 33); Postsecondary education (Priority 32)).—It is estimated that some 40–60 million adults in the United States are either illiterate or underliterate. Public and private programs, whether formal or informal, serve only 3–4 million adults. The instruction in these programs is often not very effective, and many people enrolled in such instruction gain only a year or two in reading ability before leaving the program. Areas of inquiry critical to adult learning and literacy include: (1) the identification of model programs with high enrollment; (2) the study of model programs with high rates of student persistence; (3) the assessment of the effectiveness of various programs; and (4) research on the effectiveness of basic skills training based upon new technologies.

(11) *Educational Quality of the Workforce.* (Education, work, and careers (Priority 15); Adult and continuing education (Priority 33); Postsecondary education (Priority 32)).—Being able to hire educated people who can be trained throughout their working lives has become a critical issue for the national economy. Areas of inquiry important to improving the educational quality of the workforce include: (1) The identification of the full range of threshold skills and competencies that workers need in order to be productive in modern work settings; (2) the identification of the factors that account for the differences in skills and competencies required across different jobs, firms, and industries; (3) the long-term effects of school and college achievement on labor market outcomes; and (4) the perceived, real, and projected career consequences of earned graduate degrees, and other post-baccalaureate education.

(12) *Postsecondary Learning and Teaching Assessment.* (Postsecondary education (Priority 32); Learning (Priority 1); Teaching (Priority 2); Evaluation and indicator measures, including testing, measurement, and standards of performance (Priority 7)).—Identifying effective teaching strategies and ways to enhance student learning, developing methods for assessing the quality of the undergraduate educational experience, and testing ways to incorporate new pedagogical approaches are essential prerequisites for improvng the quality of undergraduate education. Areas of inquiry critical to the improvement of postsecondary teaching and learning include: (1) An examination of instructional resources and support systems, faculty preparation and

pedagogical skills, educational delivery systems, learning environments, and student educational outcomes; (2) an examination of student backgrounds, study skills, levels of effort, learning styles, strategies, and motivation; (3) an exploration of general education and graduation requirements, along with the specific content of courses and majors; and (4) the identification, development, testing, and dissemination of effective indicators and methods for assessing instructional quality, student learning, and the outcomes of higher education.

Request for information: For additional information contact Dr. Joseph Conaty, U.S. Department of Education, OERI, Office of Research, Room 610, 555 New Jersey Avenue, NW., Washington, DC 20208–5573, (202) 357–6079.

Program Authority: 20 U.S.C. 1221e.

Dated: September 8, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

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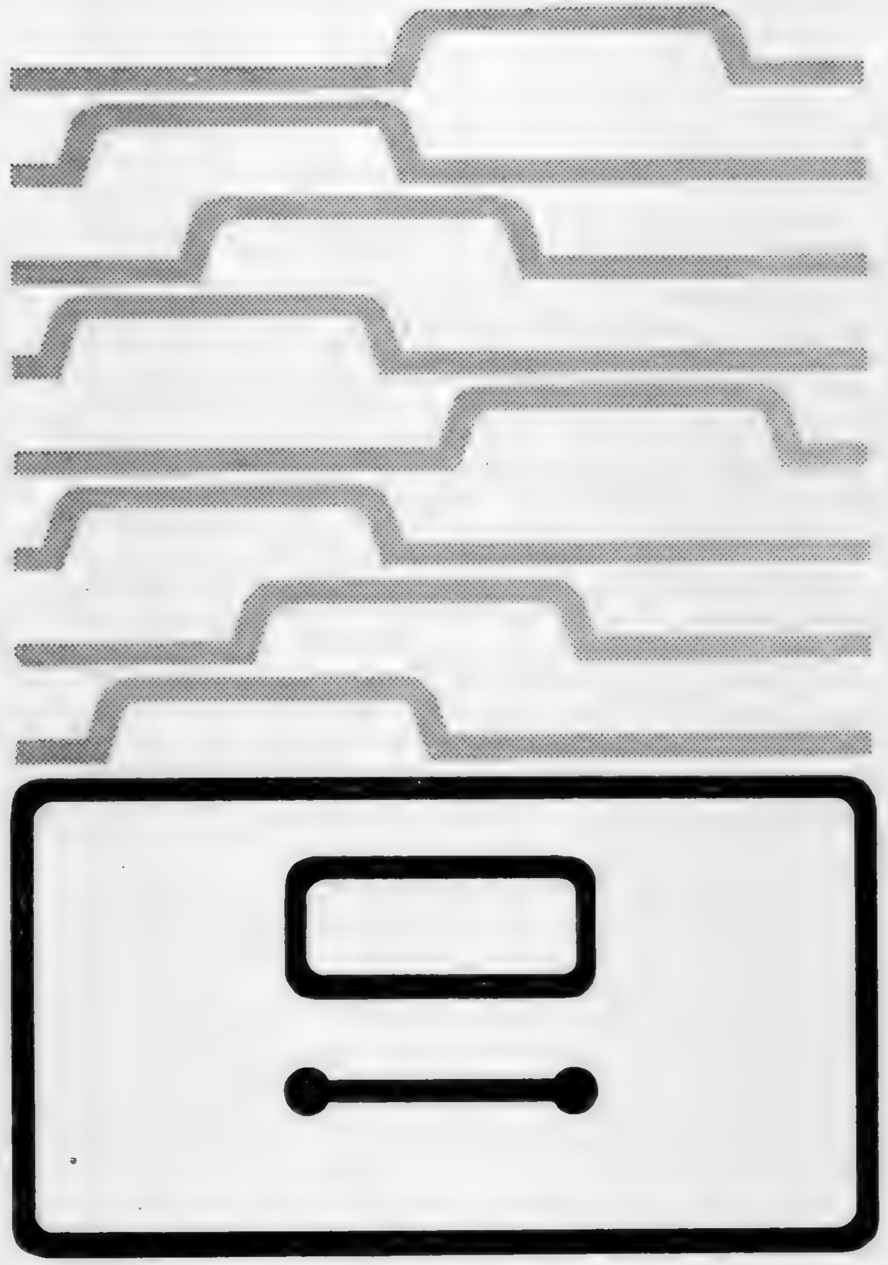

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**Wednesday
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Commodity Credit Corporation

7 CFR Parts 11, 1485 and 1550

Foreign Market Development Programs

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations applicable to certain foreign market development programs for United States agricultural commodities conducted by the Foreign Agricultural Service (FAS) and Commodity Credit Corporation (CCC). The revised regulations contain provisions designed to ensure that the benefits generated by the programs are as broadly distributed throughout the relevant agricultural sector(s) as feasible and, particularly, that no U.S. firm or individual derives an unfair advantage or benefit from program activities. The final rule also updates regulations applicable to FAS' foreign market development programs in 7 CFR part 11, subpart B, by revising legal citations and terminology and updating references to FAS programs. As revised, the regulations would now appear in 7 CFR part 1550. The final rule also adds a new part 1485 dealing specifically with certain CCC foreign market development programs.

EFFECTIVE DATE: October 13, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Passig, Director, Marketing Programs Division, Foreign Agricultural Service, USDA. Telephone: (202) 447–5521.

SUPPLEMENTARY INFORMATION:

Rulemaking Matters

This action has been reviewed under Department of Agriculture procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "non-major". It has been determined that this rule will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since neither FAS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to this rule.

This action will not have a significant impact upon area and community development. Therefore, review as provided by Executive Order 12372 was not used to assure that units of local government are informed of this action.

Discussion of Comments

A proposed rule indicating proposed revisions to the regulations was published for public comment on April 21, 1988 (53 FR 13125). Comments were received from nonprofit trade associations, private firms, individuals, and state organizations. A total of thirty-six (36) responses were received within the comment period (by June 20, 1988), and five (5) additional comments were received after the close of the comment period. In considering the comments received, only those that arrived within the specified comment period were considered by FAS in the formulation of this final rule.

Of the thirty-six (36) comments receiving consideration, eleven (11) were generally opposed to, while twenty-five (25) were in support of, the proposed rule. Those comments that were in favor of the proposed rule generally focused on section 1550.6 of the proposed rule, Program Participation and Benefits, (§ 1550.5 of this final rule) commonly referred to as the "conflict of interest" provision and stated that the rule would accomplish its objective of ensuring that benefits derived from the foreign market development programs would be as broadly distributed throughout the relevant agricultural sector(s) as feasible, and that no U.S. firm or individual would derive an unfair advantage or benefit from program activities. Other comments in favor of the proposed rule stated that such a rule would improve the overall fairness of the foreign market development programs, would serve to broaden participation among potential exporters, and would generally increase support for such programs at all levels of U.S. agriculture.

Of those eleven (11) organizations and individuals that were opposed to the proposed rule, four (4) nonprofit trade organizations and one (1) private individual believed that such a proposed rule was unnecessary because the motive for the proposed rule has its basis in unsubstantiated accusations that some firms received unfair commercial benefits from participation in the programs. These respondents propose that program participants adopt provisions for self-regulation as an alternative to § 1550.6 of the proposed rule (§ 1550.5 of this final rule). In considering these comments, the idea of self-regulation was rejected since separate industry guidelines may not be as beneficial as formal uniform guidance from the FAS regarding what constitutes conflicts of interest. Furthermore, it is irrelevant that any accusations of unfairness may be unsubstantiated. The regulation dealing with conflict of interest is intended to eliminate even the appearance of unfairness and to avoid future problems.

Another nonprofit trade organization that opposed the proposed rule recommended that penalties be established for conflict of interest violations in addition to those specified in the proposed rule. The commentor did not specify the nature of the desired penalties. Additionally, it was suggested that FAS channel funding for livestock promotion through a new organization which would include livestock exporters. In considering this comment, the suggestion that penalties be established was rejected. The remedies for noncompliance in § 1550.7(b) of the proposed rule (§ 1550.6(b) of this final rule), including disallowing claims and terminating agreements, are deemed

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List of Subjects in 7 CFR Parts 1485 and

§ 1485.3 Targeted Export Assistance

and will serve as a basis for the

sufficient to provide reasonable assurance of compliance. The Department is not desirous of penalizing firms, but merely desires to assure that no firm has an unfair advantage from program participation. The suggestion that FAS support livestock promotion by working with a new organization does not address the general issue of safeguards against conflict of interest program-wide. The potential for possible abuse would still exist in a new organization and remains an issue for other industry groups.

One (1) nonprofit agricultural trade association indicated that it was not opposed to the proposed rule if in fact it was necessary to achieve the objectives of the foreign market development programs. However, they do not support the proposed changes if no enhancement to the programs for the segments of the agricultural industry currently represented by the various cooperators are made. FAS is of the strong opinion that a need for these regulations does exist and is proceeding on that basis.

One (1) nonprofit agricultural trade association objected to the rule's apparent failure to adequately differentiate between a variety of diverse programs in the attempt to fit all varieties of programs under one overall rule. Also, two (2) nonprofit trade associations recommended elimination of a specific provision in § 1550.3 of the proposed rule interpreting that provision as an indication of a preference on the part of FAS to authorize activities of agricultural commodities on a generic basis. In response to these comments, the definition of market development project agreements has been revised to make it clear that the rule applies to programs which are entirely generic (i.e. not brand identified), entirely brand-identified, or programs which include both elements. Nonprofit trade organizations may sponsor brand promotion activities, when such promotion is in accord with the purposes of the market development programs, and specifically approved. In addition, the definition has been revised to remove any implication that generic promotion is favored.

Two (2) nonprofit trade associations and one (1) private firm expressed concern about the reference to a specific reimbursement level in § 1550.4 dealing with Export Incentive Program (EIP) Agreements. The proposed rule was revised to eliminate this reference as it may inaccurately give the impression that a specific contribution level is required. In the EIP, FAS reimburses the participant a stated percentage of eligible promotion costs and the reimbursement percentage can vary by participant, program, and commodity. It was also suggested that probable success in cutting market losses should be included as a criterion in approving programs. The regulations already include the concept of maintaining markets which adequately addresses the stated concerns. However, § 1550.4(c) was revised to include consideration of the adequacy of supplies of U.S. commodities among the criteria for approving programs.

One (1) nonprofit trade association criticized § 1550.6 of the proposed rule (§ 1550.5 of this final rule) for failing to define the types of export activities and related services that industry representatives can perform overseas while participating in approved activities. We feel that the rule is sufficiently clear in that § 1550.5(e)(3) of the final rule states that individuals cannot conduct private business unless as part of a sales team. No further change is necessary in this regard. The same organization stated that it was not known whether prior approval of the selection criteria of industry representatives to participate in activities would be required by the Administrator, FAS. The regulation gives the Administrator the option to require prior approval of the criteria for selecting industry representatives and was revised to make this requirement clearer. This flexibility was deemed necessary to insure that programs are not unduly disrupted; however, it is anticipated that such approval will usually be required. Therefore, participants should be prepared to submit the information in a timely fashion.

Internal review resulted in revising several subsections for clarification purposes with no substantive changes. For example, the sections setting forth the criteria for reviewing program proposals has been clarified to distinguish between the eligibility of organizations to participate and the merits of particular market development proposals. Also, the review criteria have been revised for clarity without any substantive change from the proposed rule.

In addition, a definition section was added to clarify the scope and intent of the regulations even though such changes were not recommended by any comments received.

The conflict of interest provisions of the proposed rule (§ 1550.6) were intended to apply to the Targeted Export Assistance (TEA) program, a market development program of CCC administered by FAS, in addition to programs operated with funds appropriated to FAS. The TEA program operates under cooperative agreements between CCC and commodity groups for the specific purpose of developing foreign markets for U.S. agricultural commodities.

Since CCC is a separate organizational unit within the Department of Agriculture, the final rule adds a new part 1485 to title 7 of the Code of Federal Regulations which specifically restates the conflict of interest provisions as being applicable to the TEA program. The TEA program, mandated by section 1124 of the Food Security Act of 1985 (7 U.S.C. 1736s), is intended to counter or offset the adverse effect on the export of U.S. agricultural commodities or the product thereof of a subsidy, import quota, or other unfair trade practices of a foreign country.

The final rule includes a description of the TEA program and the criteria utilized in reviewing the merits of proposals for program funds. This description restates in a clearer manner the information published in the **Federal Register** notice on May 3, 1989 (54 FR 18916).

Changes were made in the conflict of interest provision itself. The regulation now refers only to "affiliates" with respect to prohibitions on export sales since reference to "parent organizations" and "subsidiaries" was superfluous. The regulation was also revised to more clearly specify that "affiliates" refers to any investment relationship and applies only to investments by organizations participating in market development agreements. It was also determined that the requirement to submit a certification under § 1550.7 of the proposed rule (§ 1550.6 of this final rule) was unnecessary and a statement of intent regarding export sales submitted within 30 days after the effective date of the regulations would be sufficient when coupled with the possibility of requiring a certification at a later time.

The citation of authority for part 1550 has been changed to include reference to section 4214(d) of the Agricultural Competitiveness and Trade Act of 1988 (title IV of the Omnibus Trade and Competitiveness Act of 1988). This section directs the Secretary of Agriculture to take appropriate action to prevent conflicts of interest in the cooperator program.

The Office of Management and Budget has received the collection of information contained in the proposed rule and assigned OMB Control No's. 0551-0027 and 0551-0028. See §§ 1485.7 and 1550.7.

List of Subjects in 7 CFR Parts 1485 and 1550

Agricultural commodities, Exports.

Accordingly, title 7 of the Code of Federal Regulations is amended as follows:

1. Part 11 is removed.

2. Part 1485 is added to read as follows:

PART 1485—COOPERATIVE AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

Sec.
1485.1 Purpose and scope.
1485.2 Definitions.
1485.3 Targeted Export Assistance Program Agreements.
1485.4 Targeted Export Assistance/Export Incentive Program Agreements.
1485.5 Program participation and benefits.
1485.6 Compliance with program requirements.
1485.7 Paperwork Reduction Act assigned number.

Authority: Sec. 5(f) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c(f)).

§ 1485.1 Purpose and scope.

This part sets forth policies and requirements with respect to the conduct by the Commodity Credit Corporation of the Targeted Export Assistance (TEA) program conducted pursuant to section 1124 of the Food Security Act of 1985. In addition, §§ 1485.2, 1485.5 and 1485.6 apply to any other agreement with the Commodity Credit Corporation that specifically incorporates the provisions of such sections.

§ 1485.2 Definitions.

(a) *Agricultural commodities* includes agricultural commodities and products thereof.

(b) *Affiliate or affiliated organization* means any partnership, association, company, corporation, trust, or any other legal entity in which the program participant has any investment other than an investment in any mutual fund.

(c) *CCC* means the Commodity Credit Corporation.

(d) *Participant and program participant* shall be deemed to mean any entity entering into an agreement within the scope of this part 1485.

(e) *Sales teams* are teams engaged in activities intended to result in specific sales by team members.

(f) *Trade teams* are teams engaged in activities to promote the interests of the entire agricultural sector represented by the program participant.

§ 1485.3 Targeted Export Assistance Program Agreements.

(a) *Purpose.* Agreements entered into under this section will be for the purpose of countering or offsetting the adverse effect on exports of agricultural commodities of a subsidy, import quota or other foreign unfair trade practices of a foreign country, with first consideration given to commodities with respect to which there has been a favorable decision under section 301 of the Trade Act of 1974 or for which exports have been adversely affected by retaliatory actions related to a favorable decision under section 301 of the Trade Act of 1974.

(b) *Eligible Organizations.* Organizations selected shall represent the commodity being assisted on the broadest possible basis, with priority given to those which are industry-wide and nation-wide in membership and scope. Participants must demonstrate an ability to provide a U.S.-based staff capable of developing, supervising and carrying out market development projects overseas, and be willing and able to contribute resources to a joint project.

(c) *Use of Third Parties.* A participant may undertake activities directly or through a third party provided that such participant remains responsible for the activities of the third party.

(d) *Contributions.* Participants are expected to contribute funds or make in-kind contributions toward completion of approved market development projects. Contributions by third parties will be accepted as partially satisfying the contribution obligation of the participant.

(e) *Reimbursement.* CCC will make commodity certificates or, at the option of CCC, U.S. dollar funds, available up to the amount stated in the Targeted Export Assistance Program Agreement, to reimburse participants for expenditures incurred in conducting activities authorized by the agreement and described and budgeted in an activity plan approved in advance by FAS.

(f) *Consideration of Projects.* Targeted Export Assistance Project Agreements will be entered into by FAS only if it is determined that such agreements could counter or offset the effects of foreign unfair trade practices by contributing to the effective creation, expansion, or maintainance of markets for the affected commodities in foreign markets based on available supplies of those commodities for export and international market conditions. Activity plans will be required from organizations selected to participate in the Targeted Export Assistance program and will serve as a basis for the expenditure of CCC resources committed to Targeted Export Assistance Project Agreements. Activity plans will be reviewed according to the following criteria:

(1) The market potential for the commodities covered in the markets identified for promotional effort and the identification of conditions affecting the level of U.S. exports which could be influenced by the projects proposed;

(2) The extent and complexity of activities proposed in relation to each Cooperator's prior export market development experience and U.S. based staff resources;

(3) The likelihood of these activities influencing conditions affecting the level of U.S. exports.

(4) Anticipated U.S. industry and third party contributions to the projects proposed, as indicators of the potential success of those activities which would require such support to succeed;

(5) Provision for appropriate monitoring and evaluation of activities proposed within the plan.

§ 1485.4 Targeted Export Assistance/Export Incentive Program Agreements.

(a) *Eligible Commodities.* Agreements entered into under this section will be for the purpose specified in § 1485.3(a), when FAS has determined that branded promotion of the commodity in export markets will be a preferred means of expanding total U.S. exports of the commodity concerned.

(b) *Eligible Organizations.* TEA/EIP agreements will be entered into with private U.S. entities.

(c) *Use of Third Parties.* An entity that enters into a TEA/EIP Agreement may undertake market development activities directly or through a third party provided such entity remains responsible for the activity.

(d) *Consideration of Projects.* TEA/EIP Agreements will be entered into by FAS only if it is determined that such agreements with private firms could counter or offset the effects of foreign unfair trade practices by contributing to the effective creation, expansion, or maintenance of markets for the affected commodities in foreign markets. Project proposals will be reviewed in relation to market conditions in the countries where activities are proposed, and in relation to the proposing firms prior experience in exporting and in market promotion activities abroad, based upon the same criteria set forth in § 1485.3(f)(1–3).

§ 1485.5 Program Participation and Benefits.

(a) This section establishes requirements applicable only to participation in Targeted Export Assistance Project Agreements and any other agreement with CCC that specifically incorporates the provision of this part.

(b) *General.* It is the policy of CCC to insure that the benefits generated by agreements for the development of foreign markets for United States agricultural commodities are as broadly distributed throughout the relevant agricultural sector as feasible and, particularly, that no program participant derives an unfair advantage or benefit from activities conducted pursuant to the agreement, whether funded with CCC assets or industry contributions.

(c) *Industry Participation.* When required by CCC, program participants entering into an agreement shall promptly furnish to CCC for approval its criteria for the selection of U.S. agricultural industry representatives to participate in activities conducted pursuant to the agreement, such as trade teams, sales teams, and trade fairs, and its criteria for the selection of firms to participate in U.S. brand-identified promotions. Such criteria must ensure participation on an equitable basis by a representative cross section of the relevant U.S. agricultural industry. If CCC requests submission of criteria for approval, the program participant shall not make any selections using criteria disapproved by CCC after the program participant has been notified of CCC's disapproval.

(d) *Distribution of Information.* All program participants shall provide, on a timely basis, upon request of any entity in the United States, other than a representative of a foreign government, any and all data developed and produced with CCC assets or funds of the program participant contributed under the terms of the agreement with CCC. Any fee charged in connection therewith may not exceed the costs incurred in assembling, duplicating and distributing the requested material.

(e) *Export Activities and Related Services.* (1) Neither program participants nor affiliated organizations shall, during the term of the agreement, make export sales of agricultural commodities of the kind which are promoted, in whole or in part, by use of CCC assets.

(2) Neither program participants nor affiliated organizations may assess fees for services provided to exporters in facilitating an export sale if the promotional activities intended to directly result in that specific export sale are supported, in whole or in part, by CCC assets. This paragraph applies to activities such as those involving discussions with potential buyers or the solicitation of specific sales including activities performed by sales teams and performed through trade fairs rather than activities of a more general promotional nature. This paragraph does not apply to checkoffs or membership dues based on commodity sales when such assessments are a condition of membership in the participating organization.

(3) Participants in approved program activities shall not use the activities to promote private self-interests or conduct private business, except as members of sales teams or as part of a U.S. brand-identified promotion when such activities are specifically approved by CCC.

§ 1485.6 Compliance with Program Requirements.

(a) Within 30 days after the effective date of these regulations, program participants shall submit a written statement to the Vice President, CCC, who is the Administrator, Foreign Agricultural Service (FAS), that neither they, nor their affiliated organizations, will, after the effective date of these regulations, make export sales of agricultural commodities promoted, in whole or in part, by the use of CCC assets during the term of an agreement between the program participant and CCC within the scope of this part 1485. CCC may, from time to time, require program participants to submit certifications for purposes of this part as to export sales.

(b) In the event of noncompliance with any provisions of these regulations CCC may disallow a claim submitted under an agreement for expenses incurred after the effective date of these regulations or terminate the agreement in addition to any other remedies available to CCC.

§ 1485.7 Paperwork Reduction Act assigned number.

Information collection requirements contained in these regulations have been submitted to OMB for approval under control number 0551–0027. However, these requirements are not effective until final clearance is received from OMB.

3. Part 1550 is added to read as follows:

PART 1550—PROGRAMS TO HELP DEVELOP FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

Sec.

1550.1 Purpose and scope.
1550.2 Definitions.
1550.3 Market Development Project Agreements.
1550.4 Export Incentive Program Agreements.
1550.5 Program participation and benefits.
1550.6 Compliance with program requirements.
1550.7 Paperwork Reduction Act assigned number.

Authority: Sec. 601 of the Agricultural Act of 1954, as amended (7 U.S.C. 1761); Secs. 108(d)(2)(B) and 108(f) of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1708); Sec. 4214(d) of the Agricultural Competitiveness and Trade Act of 1988 (7 U.S.C. 5234(d)); E.O. 12220, 45 FR 44245.

§ 1550.1 Purpose and scope.

(a) This part sets forth policies and requirements with respect to the conduct by the FAS of programs utilizing public or private entities in the United States to help develop foreign markets for United States agricultural commodities on a mutually benefiting basis. As far as practicable, FAS relies upon representatives of the private U.S. agricultural sector to carry out market development activities through cooperative agreements.

(b) These activities include entering into contracts pursuant to which FAS procures, for a stated consideration, property and services needed in developing markets for U.S. agricultural commodities.

§ 1550.2 Definitions.

(a) *Agricultural commodities* includes agricultural commodities and products thereof.

(b) *Affiliate* or *affiliated organization* means any partnership, association, company, corporation, trust, or any other legal entity in which the program participant has any investment other than an investment in any mutual fund.

(c) *Cooperator* means an entity entering into a Market Development Project Agreement.

(d) *Export Incentive Program Agreements* mean cooperative agreements between FAS and a private United States entity for the purpose of maintaining, expanding or creating foreign markets for United States agricultural commodities through the promotion of brand-identified agricultural commodities.

(e) *FAS* means the Foreign Agricultural Service of the United States Department of Agriculture.

(f) *Incentive payment* means FAS reimbursement for eligible promotion costs incurred under the terms of an Export Incentive Program Agreement.

(g) *Market Development Project Agreements* mean cooperative agreements between FAS and United States agricultural trade associations or associations of State Departments of Agriculture for the purpose of maximizing sales in foreign markets of U.S. agricultural commodities. Activities to be undertaken are intended to promote specific commodities on a generic or brand-identified basis, or through programs which include both elements.

(h) *Participant or program participant* means any entity entering into an agreement within the scope of this part 1550.

(i) *Project funds* are funds made available by FAS to program participants.

(j) *Sales teams* are teams engaged in activities intended to result in specific sales by team members.

(k) *Trade teams* are teams engaged in activities to promote the interests of the entire agricultural sector represented by the program participant.

§ 1550.3 Market Development Project Agreements.

(a) *Eligible Organizations.* In selecting trade and Agricultural groups as cooperators, representative nonprofit U.S. agricultural trade organizations will be used to the maximum extent possible. Organizations selected should represent the commodity being promoted on the broadest possible basis, with priority given to those which are industry-wide or nationwide in membership and scope. Cooperators must demonstrate an ability to provide U.S.-based staff capable of developing, supervising, and carrying out projects overseas, and be willing and able to contribute resources to a joint project.

(b) *Use of Third Parties.* A Cooperator that enters into a Market Development Project Agreement may undertake market development activities directly or through a third party provided that such Cooperator remains responsible for the activities of the third party.

(c) *Contributions.* Cooperators are expected to contribute funds or make in-kind contributions towards completion of approved market development projects. Contributions by third parties will be accepted as partially satisfying the contribution obligation of the Cooperator.

(d) *Project Funds.* FAS will make funds available, up to the amount stated in the Market Development Project Agreement, to reimburse Cooperators for expenditures incurred in conducting activities authorized by the agreement and budgeted in a marketing plan approved in advance by FAS. Funds will be paid in United States dollars unless the Cooperator and FAS specifically agree that payment will be made in foreign currencies.

(e) *Consideration of Projects.* Market Development Project Agreements will be entered into by FAS only if it is determined that such agreements could contribute to the effective creation, expansion, or maintenance of foreign markets for U.S. agricultural commodities based on available supplies of those commodities for export and international market conditions. Marketing plans will be required from organizations selected to participate in Market Development Project Agreements and will serve as a basis for the expenditure of funds committed to Market Development Project Agreements. Marketing plans will be reviewed according to the following criteria:

(1) The market potential for the commodities covered in the markets identified for promotional effort and the identification of conditions affecting the level of U.S. exports which could be influenced by the projects proposed;

(2) The extent and complexity of activities proposed in relation to each Cooperator's prior export market development experience and U.S.-based staff resources;

(3) The likelihood of these activities influencing conditions affecting the level of U.S. exports.

§ 1550.4 Export Incentive Program Agreements.

(a) *Eligible Organizations.* Export Incentive Program (EIP) agreements will be entered into with private U.S. entities.

(b) *Use of Third Parties.* An entity that enters into an Export Incentive Program Agreement may undertake market development activities directly or through a third party provided such entity remains responsible for the activity.

(c) *Reimbursement.* After submission of a claim for an incentive payment, FAS will reimburse a percentage of eligible promotion costs defined in the Export Incentive Program Agreement, up to the amount stated in the Agreement, to carry out the purposes of the project. Such a claim will be submitted on a marketing year basis or at such other time as may be agreed by FAS. The amount of funds to be paid by FAS on each claim will be specified in the Agreement and will be based upon either a stated percentage of the promotional expenditures claimed, volume of exports over a stated period, or a combination of both. Funds will be paid in U.S. dollars only.

(d) *Consideration of Projects.* Export Incentive Program Agreements will be entered into by FAS only if it is determined that such agreements with private firms could contribute to the effective creation, expansion, or maintenance of foreign markets for the commodities concerned. Project proposals will be reviewed in relation to market conditions in the countries where activities are proposed, and in relation to the proposing firm's prior experience in exporting and in market promotion activites abroad, based upon the same criteria set forth in section 1550.3(e)(1–3).

§ 1550.5 Program participation and benefits.

(a) *Scope.* This section establishes requirements applicable only to participation in Market Development Project Agreements and any other agreement with FAS that specifically incorporates the provisions of this part.

(b) *General.* It is the policy of FAS to insure that the benefits generated by agreements are as broadly distributed throughout the relevant agricultural sector as feasible and, particularly, that no program participant derive an unfair advantage or benefit from activities conducted pursuant to the agreement, whether funded with project funds or industry contributions.

(c) *Industry Participation.* When required by FAS, program participants shall promptly furnish to FAS for approval its criteria for the selection of U.S. agricultural industry representatives to participate in activities conducted pursuant to the agreement such as trade teams, sales teams, and trade fairs, and its criteria for the selection of firms to participate in U.S. brand-identified promotions. Such criteria must ensure participation on an equitable basis by a representative cross section of the relevant U.S. agricultural industry. If FAS requests submission of criteria for approval, the program participant shall not use criteria disapproved by FAS after the program participant has been notified of FAS's disapproval.

(d) *Distribution of Information.* All program participants shall provide, on a timely basis, upon request of any entity in the United States, other than a representative of a foreign government, any and all data developed and produced with project funds or contributions. Any fee charged in connection therewith may not exceed the costs incurred in assembling, duplicating and distributing the requested material.

(e) *Export Activities and Related Services.* (1) Neither program participants nor their affiliated organizations shall, during the term of the agreement, make export sales of agricultural commodities of the kind which are promoted, in whole or in part, with project funds.

(2) Neither the program participants nor affiliated organizations may assess fees for services provided to exporters in facilitating an export sale if the promotional activities intended to directly result in that specific export sale are supported, in whole or in part, by project funds. This paragraph applies to activities such as those involving discussions with potential buyers or the solicitation of specific sales including activities performed by sales teams and performed through trade fairs rather than activities of a more general promotional nature. This paragraph does not apply to checkoffs or membership dues based on commodity sales, when such assessments are a condition of membership in the participating organization.

(3) Participants in approved program activities shall not use the activities to promote private self-interests or conduct private business, except as members of sales teams or as part of a U.S. brand-identified promotion when such activities are specifically approved by FAS.

§ 1550.6 Compliance with program requirements.

(a) Within 30 days after the effective date of these regulations, program participants shall submit a written statement to the Administrator, FAS, that neither they, nor their affiliated organizations, will make export sales of agricultural commodities promoted, in whole or in part, with project funds during the term of any agreement between the program participant and FAS within the scope of section 1550.5. FAS may from time to time require program participants to submit certifications as to export sales for purposes of this part.

(b) In the event of noncompliance with any provision of these regulations, FAS may disallow a claim submitted under an agreement for expenses incurred after the effective date of these regulations or terminate the agreement in addition to any other remedy available to FAS.

§ 1550.7 Paperwork Reduction Act assigned number.

Information collection requirements contained in these regulations have been submitted to OMB for approval under control number 0551–0026. However, these requirements are not effective until final clearance is received from OMB.

Signed at Washington, DC on August 22, 1989.

F. Paul Dickerson,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–27231; File No. S7–25–89]

RIN 3235–AD80

Exemption of Certain Securities Issued by the Resolution Funding Corporation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission today announced the adoption of emergency Rule 3a12–10 under the Securities Exchange Act of 1934 ("Exchange Act"). The rule defines certain securities issued by the Resolution Funding Corporation as "exempted securities" for purposes of those provisions of the Exchange Act that by their terms do not apply to an "exempted security" or to "exempted securities."

EFFECTIVE DATE: Rule 3a12–10 is effective upon publication in the **Federal Register**. Comments should be received on or before December 12, 1989.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–25–89. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L.D Colby, Chief Counsel, Edward L. Pittman, Assistant Chief Counsel, or John Polanin, Jr., Special Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW, Mail Stop 5–1, Washington, DC 20549, telephone (202) 272–2848.

SUPPLEMENTARY INFORMATION:

I. Background

The Financial Institutions Reform, Recovery and Enforcement Act (the "FIRRE Act") [1] was approved by Congress on August 4, 1989 and signed into law on August 9, 1989. The FIRRE Act provides for a comprehensive reform of the savings and loan industry, and establishes the Resolution Trust Corporation ("RTC") and the Resolution Funding Corporation ("Refcorp").[2] In addition, the FIRRE Act creates an Oversight Board of the RTC (the "Oversight Board"), whose function is to establish general policies for the oversee the activities of RTC.

RTC, which is specifically designated an instrumentality of the U.S. Government,[3] is charged with managing and resolving liquidation and other restructing matters relating to Federal Savings and Loan Insurance Corporation ("FSLIC") insured savings and loan associations that are or become insolvent during the period between January 1, 1989 and August 9, 1992. Under the management of a Directorate composed of government officials, Refcorp is a special purpose limited finance company formed to fund RTC's activities through the issuance of debt securities to the public, and nonvoting capital stock to Federal Home Loan Banks. Refcorp's obligations are designated as not being issued by an instrumentality of the U.S. Government for purposes of the federal securities laws.

Financing for the resolution of matters relating to insolvent savings and loan associations will be obtained from public and private sources, including $20 billion from the Department of the Treasury and $30 billion from public offerings of debt securities to be issued by Refcorp.[4] Interest and principal

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[1] Public Law No. 101–73, _______ Stat. _______ (August 9, 1989). All provisions discussed in this release are included in title V of the FIRRE Act (sections 501, 511, and 512), which amends the Federal Loan Bank Act, 12 U.S.C. 1421 *et seq.* ("FHLBA").

[2] *See generally* FHLBA sections 21A(b)(1)(A) and 21B(b) (establishing the entities, respectively).

[3] FHLBA section 21A(b)(1)(A).

[4] Refcorp expressly is authorized to issue "bonds, notes, debentures and similar obligations in an aggregate amount not to exceed $30,000,000,000." FHLBA section 21B(f)(1). Net proceeds received from the offerings by Refcorp will be transferred to RTC through Refcorp's purchase of RTC's nonvoting capital certificates, and will be used to finance the activities of RTC.

payable on Refcorp's obligations will be backed directly (with respect to interest) and indirectly (with respect to principal) by the Department of the Treasury. The funds to pay interest on Refcorp's debt securities will come first from any cash revenues generated by: (1) Earnings on Refcorp's assets not used for other enumerated purposes; (2) proceeds, if any, received by RTC from liquidating dividends and receivership claims; (3) payments by the Federal Home Loan Banks; and (4) proceeds received by the FSLIC Resolution Fund from sales of assets.[5] To the extent that funds from these sources are insufficient to pay interest on Refcorp's debt securities, the Secretary of the Treasury is directed to pay to Refcorp the amount of any shortfall.[6]

Repayment of principal on the debt securities will be funded through proceeds received on maturity of zero-coupon Treasury securities that are required to be purchased and held by Refcorp specifically for this purpose.[7] Under the FIRRE Act, Refcorp is authorized only to issue debt securities in amounts that do not exceed the principal amount of the zero-coupon securities that is payable at maturity.[8] These zero-coupon Treasury securities must be held in a separate account, the Principal Fund, to ensure payment of principal on Refcorp's debt securities.[9] Because of the linkage between Refcorp's obligations and the Principal Fund, principal payable on maturity of Refcorp's securities, while not backed by the full faith and credit of the U.S. Government,[10] will be completely backed by direct obligations of the U.S. Government.

II. Discussion

"Government securities," as defined in section 3(a)(42)(A) of the Exchange Act,[11] are "exempted securities" for purposes of the Exchange Act,[12] and therefore are not subject to the same reporting, registration, and regulatory provisions of the Exchange Act that apply to corporate securities.[13] Although the debt securities issued by Refcorp fall within the definition of "government securities" in section 3(a)(42)(A), they are not exempted securities for all purposes of the Exchange Act. The FIRRE Act provides that Refcorp's securities:

> [S]hall not be considered "exempted securities" within the meaning of section 3(a)(12)(A)(i) of the Securities Exchange Act of 1934, except that such obligations shall be considered to be exempted securities for purposes of section 15 of such Act.[14]

Thus, while persons effecting transactions in Refcorp's securities will not be required to register as broker-dealers under section 15(a) of the Exchange Act,[15] the securities, and persons selling and trading in the securities, would be subject to a host of other provisions of the Exchange Act that normally would not apply to government securities.

Among other provisions, underwriters selling the securities would be subject to the restrictions in section 11(d)(1) of the Exchange Act [16] preventing the extension of credit, by persons who are both brokers and dealers, during the distribution of a new issue of securities. A significant portion of the sales of new issues of government securities are financed by dealers through the use of repurchase agreements, which are regarded as an extension of credit. Applying section 11(d)(1) to Refcorp's securities seriously would limit the ability of non-bank dealers to participate in the offering of such securities. Similar problems would be raised under section 7(c) of the Exchange Act, governing the initial margin that may be extended on securities.[17] Moreover, absent an exemption from section 15A of the Exchange Act,[18] trades in Refcorp's securities also would be subject to rules of the National Association of Securities Dealers, Inc., including fair practice and advertising rules, that currently do not apply to sales of exempt government securities.

Secretary of the Treasury Nicholas F. Brady, as Chairman of the Oversight Board, has informed the Commission that the Oversight Board intends to list the securities on a national securities exchange.[19] Therefore, absent an exemption, Refcorp's securities would need to be registered under section 12(a) of the Exchange Act,[20] and would be subject to the reporting requirements of section 13(a) of the Exchange Act,[21] the proxy provisions of sections 14(a) and 14(c) of the Exchange Act,[22] and the Commission's rules and regulations thereunder.

Concurrent with the publication of this release, the Commission has issued an Order ("Order") [23] exempting Refcorp's securities from the registration requirements of section 5 of the Securities Act.[24] The Order was issued under explicit Securities Act exemptive authority provided by the FIRRE Act.[25] The FIRRE Act also carefully preserved for these securities the Commission's exemptive authority contained in section 3(a)(12)(A)(v),[26] thus, in the Commission's view, countenancing an exemption of Refcorp's securities from Exchange Act regulations applicable to non-exempt securities. In this connection, the Commission notes the colloquy of Senators Donald W. Riegle, Jr. and Jake Garn, urging the Commission to act quickly to assess the need for applying the registration provisions of the Securities Act and the Exchange Act to Refcorp's securities.[27]

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[5] FHLBA section 21B(f)(2).

[6] FHLBA section 21B(f)(2)(E)(i). The FIRRE Act appropriates to the Secretary of the Treasury, for the fiscal year 1989 and all future fiscal years, the funds needed to satisfy the interest payments. *See* FHLBA section 21B(f)(2)(E)(iii).

[7] The zero-coupon Treasury securities are backed by the full faith and credit of the U.S. Government. *See* FHLBA section 21B(g)(2)(A). The Oversight Board represents that the zero-coupon securities will be issued directly to Refcorp, so that amounts and maturities can and will be matched exactly to the principal amounts and maturity dates on the corresponding Refcorp obligations at the time of issuance. Letter from Nicholas F. Brady, Secretary, Department of the Treasury, to David S. Ruder, Chairman, SEC (September 6, 1989) (the "Application"), at 5.

[8] FHLBA section 21B(f)(1).

[9] FHLBA section 21B(f)(3).

[10] *See* FHLBA section 21B(f)(10).

[11] 15 U.S.C. 78c(a)(42)(A). This section defines "government securities" to include "securities which are direct obligations of, or obligations guaranteed as to principal *or* interest by, the United States * * * *" (emphasis added). Because the Department of the Treasury is obligated to pay interest, Refcorp's debt securities are "government securities" under the Exchange Act.

[12] Section 3(a)(12)(A)(i) (15 U.S.C. 78c(a)(12)(A)(i)) provides that the term "exempted security" includes government securities as defined in section 3(a)(42) of the Exchange Act. Sections 3(a)(12)(A)(ii)–(iv) exempt additional securities.

[13] *See, e.g.*, Sections 7(f)(2)(B), 8(a), 11(d), and 12(a) (15 U.S.C. 78g (f)(2)(B), 78h(a), 78k(d) and 78*l*(a)). Exempted securities remain subject to the antifraud provisions of the federal securities laws. *See, e.g.*, Section 17(a) of the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77q(a)) and section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) and Rule 10b–5 thereunder (17 CFR 240.10b–5).

[14] FHLBA section 21B(f)(8)(A)(ii).

[15] 15 U.S.C. 78*o*(a). They would be subject, however, to the provisions of section 15C of the Exchange Act [15 U.S.C. 78*o*–5] concerning government securities brokers and dealers.

[16] 15 U.S.C. 78k(d)(1).

[17] 15 U.S.C. 78g(c).

[18] 15 U.S.C. 78*o*–3.

[19] *See* Application at 7.

[20] 15 U.S.C. 78*l*(a).

[21] 15 U.S.C. 78m(a) ("Every issuer of a security registered pursuant to section 12 * * * shall file with the Commission * * * such annual reports * * * and such quarterly reports * * * as the Commission may prescribe.").

[22] 15 U.S.C. 78n(a) and 78n(c). Because Refcorp will not have a class of equity securities registered under section 12, however, compliance with sections 13(d) [15 U.S.C. 78m(d)], 13(e) [15 U.S.C. 78m(e)] and 16 [15 U.S.C. 78p] would not be required.

[23] *See* Securities Act Release No. 6844 (September 8, 1989).

[24] 15 U.S.C. 77e.

[25] FHLBA section 21B(f)(8).

[26] Section 3(a)(12)(A)(v) (15 U.S.C. 78c(a)(12)(A)(v) authorizes the Commission, by rule or regulation, consistent with the public interest and the protection of investors, to define securities as exempted securities in addition to those enumerated in sections 3(a)(12)(A)(i)–(iv) as exempted securities. The specific reference to section 3(a)(12)(A)(i) in the FIRRE Act indicates that Congress did not intend to impinge upon the Commission's ability to define exempted securities under section 3(a)(12)(A)(v).

More recently, the Oversight Board also has requested that the Commission exempt Refcorp's securities from certain provisions of the Exchange Act discussed above.[28] The Application states that unless the Exchange Act regulatory issues are resolved promptly, the Board believes that the interest costs of Refcorp's debt securities would increase substantially, and would ultimately increase the costs to taxpayers. The Board specifically noted that subjecting the Refcorp securities to sections 7, 8, and 11(d)(1) of the Exchange Act [29] would preclude the development of a market for repurchase transactions in the securities, restricting severely the ability of dealers to finance their positions.

III. Rule 3a12–10

As noted above, the debt securities of Refcorp are government securities within the meaning of section 3(a)(42) of the Exchange Act,[30] because payment of interest on the securities is assured by the Department of the Treasury. In addition, repayment of principal will be made through proceeds received on maturity from zero-coupon Treasury securities held by Refcorp solely for that purpose. Accordingly, the credit and investment risks to investors essentially are equivalent to those associated with direct obligations of the U.S. Government.

Because Refcorp will have no separate operations, and is not dependent on any cash generated by RTC, investors will be looking solely to the U.S. Government for repayment. The investment considerations pertaining to Refcorp's securities will be almost identical to those relating to securities issued or guaranteed directly by the Department of the Treasury. Moreover, Refcorp is subject to substantial government regulation of its securities. In light of the similarities between the securities issued by Refcorp and other government securities, the Commission believes that it would be inconsistent to apply different regulatory requirements to Refcorp's securities.

In order to regulate Refcorp's securities in an equivalent manner to securities issued by the U.S. Government or quasigovernmental agencies, the Commission has determined to exercise its authority in section 3(a)(12)(A)(v) of the Exchange Act [31] to adopt Rule 3a12–10 (the "Rule"), which defines the securities as exempted securities for purposes of those provisions of the Exchange Act that by their terms do not apply to an "exempted security" or to "exempted securities."

The Commission deems the adoption of the Rule to be consistent with the public interest and the protection of investors.

IV. Emergency Rulemaking

Commission rulemaking is done pursuant to the procedures specified in the Administrative Procedure Act ("APA"). Under sections 553 (b) and (c) of the APA,[32] notice of proposed rulemaking by the Commission generally must be given in the **Federal Register**, and interested persons must have the opportunity to submit written comments on the proposed rule. Under section 553(b)(3)(B) of the APA, however, the Commission may dispense with the notice and comment rulemaking process if it "for good cause finds * * * that notice and public procedure * * * are impracticable, unnecessary, or contrary to the public interest." [33]

The Application states that it is probable that Refcorp will be requested to provide funding for RTC in early October of 1989. The Oversight Board therefore requests that the Commission act by September 8, 1989 in order to assure that the orderly maintenance of savings and loan case resolutions and liquidity funding can continue. In addition, the legislative history of the FIRRE Act reveals that Congress intended the Commission to consider this matter promptly.[34]

In this instance, the Commission believes that affording notice of, and opportunity for comment on, the Rule would delay unnecessarily the raising of funds needed for the management and liquidation of insolvent savings and loan associations. In light of the important policy objectives embodied in the FIRRE Act, and the limited likelihood that the adoption of Rule 3a12–10 will affect any private parties negatively, the Commission finds that observing the normal notice and comment procedures under the APA to adopt the Rule are impracticable, unnecessary, and contrary to the public interest. Accordingly, Rule 3a12–10 will become effective immediately upon publication in the **Federal Register**.[35]

Although it is necessary for the Commission to use an expedited rulemaking procedure in order to comply with the Oversight Board's request, the Commission is interested in receiving comments on the Rule and would consider either amending or rescinding the Rule in light of the comments. Commentators are invited to express their views on any substantive differences between Refcorp's securities and those of other governmental issuers that may require Refcorp's securities to be treated differently for purposes of federal securities regulation.

V. Effects on Competition

Section 23(a)(2) of the Exchange Act [36] requires that the Commission, in adopting rules under the Exchange Act, consider the anticompetitive effects of such rules, if any, and balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission is of the view that Rule 3a12–10 will not result in any burden or competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

As stated above, the Commission believes that the exemptions provided to Refcorp's debt securities pursuant to Rule 3a12–10 will encourage the development of liquid markets for these securities and will apply equally to all participants in those markets. Although the Rule may reduce some of Refcorp's costs, and therefore provide a limited competitive advantage to Refcorp vis-a-vis issuers of non-exempted securities, the Commission believes that, among other things, the credit quality of these securities warrants their being treated in the same fashion as similar exempted government securities for purposes of Exchange Act regulation.[37]

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[27] 135 Cong. Rec. S10212(daily ed. August 4, 1989).

[28] *See* Applications at 9. A copy of the Application is contained in File S7–25–89.

[29] 15 U.S.C. 78g, 78h and 78k(d)(1), respectively.

[30] *See supra* note 11

[31] *See supra* note 28.

[32] 5 U.S.C. 553 (b) and (c).

[33] 5 U.S.C. 553(b)(3)(B).

[34] As discussed above, in a colloquy on the Senate floor, Senators Riegle and Garn agreed that the Commission should act quickly regarding the exempt status of the debt securities to be issued by Refcorp. *See supra* note 27.

[35] Because Rule 3a12–10 provides an exemption for Refcorp's securities from certain provisions of the Exchange Act, the APA does not require thirty days' notice prior to the Rule's effective date. *See* 5 U.S.C. 553(d)(1).

[36] 15 U.S.C. 78w(a)(2).

[37] The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) provides, with exceptions, that in connection with notice and comment rulemaking, agencies should prepare an Initial and Final Regulatory Flexibility Act Analysis examining the impact of the rule on small businesses. Because the Commission is using the expedited rulemaking procedures under section 553(b)(3)(B) of the APA, it has not prepared these analyses. Interested persons are invited, however, to submit views on any impact that the Rule may have on small businesses.

VI. List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Statutory Basis and Text of Amendments

Chapter II of title 17 of the Code of Federal Regulations is amended by adding § 240.3a12–10 as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w * * * § 240.3a12–10 also issued under 15 U.S.C. 78 b and c.

2. By adding § 240.3a12–10 as follows:

§ 240.3a12–10 Exemption of Certain Securities Issued by the Resolution Funding Corporation.

Securities that are issued by the Resolution Funding Corporation pursuant to section 21B(f) of the Federal Home Loan Bank Act (12 U.S.C. 1421 *et seq.*) are exempt from the operation of all provisions of the Act that by their terms do not apply to any "exempted security" or to "exempted securities."

By the Commission.

Dated: September 8, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–21620 Filed 9–12–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

RIN 0960–AC07

Federal Old-Age, Survivors, and Disability Insurance; Supplemental Security Income for the Aged, Blind, and Disabled; Decisions by Administrative Law Judges in Cases Remanded by the Courts

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final rules amend the regulations to provide that, if a court remands a case to the Secretary and the Appeals Council subsequently remands the case to an administrative law judge (ALJ) for further proceedings and a new decision, the ALJ may issue a decision which will become the final decision of the Secretary after remand unless the Appeals Council assumes jurisdiction of the case. The regulations also provide that, if the party disagrees with the ALJ's decision, the party may file exceptions to the decision with the Appeals Council. Under the current regulations on cases remanded to the Secretary by a court for further administrative proceedings, the ALJ must issue a recommended decision, and the Appeals Council must review that decision and take further action in every case before the ALJ's recommended decision becomes the final decision of the Secretary after remand.

Under these final regulations, ALJ decisions fully or partially favorable to the party that are not reviewed by the Appeals Council on its own initiative will be effectuated on a more timely basis, i.e., parties will receive their benefits sooner because the Appeals Council will not have to act in every case. Final Agency action on those decisions that are not fully or partially favorable to the party will also be accomplished more expeditiously because these decisions will no longer require the Appeals Council to issue an adopting or modifying decision. Further, if a party does not file exceptions and the Appeals Council does not assume jurisdiction without exceptions being filed, the party is again entitled to judicial review.

EFFECTIVE DATES: These amendments are effective September 13, 1989, for all court remand cases, including all court remand cases pending before the Secretary on September 13, 1989, on which an ALJ has not yet issued a recommended decision.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1769.

SUPPLEMENTARY INFORMATION: On October 16, 1987, we published proposed rules to eliminate the requirement that ALJs issue recommended decisions in cases remanded by the courts (52 FR 38466). The Notice of Proposed Rulemaking (NPRM) provided that in these cases, the ALJ could issue an initial decision rather than a recommended decision unless the Appeals Council directed otherwise or the ALJ elected to issue a recommended decision. The NPRM further provided that the ALJ's decision would become the final decision of the Secretary unless (1) the party disagreeing with the decision filed written exceptions with the Appeals Council within a specified time period and the Appeals Council took jurisdiction at any time based on the filing or (2) if no written exceptions were filed, the Appeals Council took jurisdiction of the case within 60 days after the date of the ALJ's decision. The NPRM also provided that the Appeals Council, on assuming jurisdiction of any case, would have the authority to review any aspect or issue in the case.

We have analyzed the public comments we received from six commenters in response to the NPRM. Most of the comments favored eliminating the requirement that ALJs issue recommended decisions in court remand cases. Except for several clarifying changes discussed below, the final regulations are unchanged from the NPRM. Responses to the public comments appear below.

The Final Regulations

These final regulations amend the regulations to eliminate the requirement that ALJs issue recommended decisions in court remand cases. ALJs will issue decisions which will become the final decision of the Secretary after remand unless: (1) Within 30 days after receipt of the ALJ decision, the parties submit written exceptions to the Appeals Council objecting to the ALJ's decision or, within that period, submit a written request for an extension of time to file exceptions and, based on these exceptions, the Appeals Council assumes jurisdiction of the case; or (2) the Appeals Council decides to assume jurisdiction of the case within 60 days after the date of the ALJ's decision. If the Appeals Council assumes jurisdiction, it may affirm, modify, or reverse the ALJ's decision or it may remand the case to the ALJ for further consideration. If the Appeals Council affirms, modifies, or reverses the ALJ's decision, the Appeals Council's decision and not that of the ALJ will become the final decision of the Secretary after remand. Its review will not necessarily be limited to the issues in the ALJ's decision, but may encompass all of the issues in the case. When parties file written exceptions to an ALJ's decision, the Appeals Council may assume jurisdiction at any time. Certain court remand orders may specifically direct the Secretary to consider only a particular issue or to follow a procedure other than the procedures specified in these regulations. We may seek to have such orders vacated or modified. If an order is not vacated or modified, we will comply with it.

Pursuant to 20 CFR 404.901 and 416.1401, we presume that the parties receive the ALJ's decision within 5 days of the date shown on the notice of the decision. New §§ 404.984(b) and

416.1484(b) allow the parties 30 days after receipt of the ALJ's decision to file written exceptions with the Appeals Council. Further, these sections provide that a 30-day extension for filing exceptions will be granted if the party makes the extension request within the 30-day period. This provision allows more time than the current regulations, which provide a 20-day period for the party to file briefs or other written statements with the Appeals Council when an ALJ issues a recommended decision.

If a party files written exceptions objecting to the ALJ's decision, the Appeals Council will consider the party's objections and all of the issues in the case, and take one of three actions: issue a new decision; remand the case to an ALJ for further proceedings; or issue a notice to the party explaining why it has concluded that the ALJ's decision is correct.

Under these regulations, if the Appeals Council decides to assume jurisdiction and no exceptions are filed, it will send a notice to all parties and their representatives within 60 days after the date of the ALJ's decision. The notice will inform them of the Appeals Council's proposed action and provide an opportunity to file a brief or other written statement with the Appeals Council relating to the proposed action.

If the parties do not file exceptions and the Appeals Council does not assume jurisdiction of the case on its own initiative, we will immediately effectuate the matters which the ALJ's decision resolved. ALJ's do not always decide all factors involved in a case. When they do not do so, the appropriate component of the Social Security Administration or the Health Care Financing Administration will make determinations on pertinent matters not addressed in the ALJ's decision. If these determinations are not fully favorable to the parties, we will advise the parties of the determinations and their right to request us to reconsider the determinations.

If an ALJ issues a decision, that decision will be the final decision of the Secretary after remand if: (1) The parties or their representatives do not file written exceptions disagreeing with the decision within the specified time period or any extension of time they may receive; and (2) the Appeals Council does not assume jurisdiction of the case.

Under these regulations, an ALJ may choose to issue a recommended decision, or the Appeals Council may order the ALJ to issue a recommended decision. In any case in which the ALJ issues a recommended decision, the parties will continue to have the right to file briefs or other written statements with the Appeals Council within 20 days of the ALJ's recommended decision and the Appeals Council will issue the final decision. 20 CFR 404.977(d) and 416.1477(d).

Public Comments and Responses

We received comments from attorneys engaged in the private practice of law, legal aid attorneys, and two city/state legal advocacy organizations. We have carefully considered all of the comments we received. For ease of reference, we have grouped comments according to the issues raised.

Comment: Definition of "at any time"

One commenter expressed concern about proposed §§ 404.984(b)(3) and 416.1484(b)(3), which state that if the party files exceptions, the Appeals Council may assume jurisdiction at any time, even after the 60-day time limit which applies if no exception has been filed. The commenter asked "what does 'at any time' mean?"

Response

"At any time" means that, if the party files timely written exceptions, the regulations do not limit the time within which the Appeals Council must assume jurisdiction of the case. Because the party may have up to 60 days to file exceptions (including the 30-day extension upon request), the Appeals Council may not receive the exceptions until its 60-day period to assume jurisdiction on its own initiative has elapsed. Once the Appeals Council receives exceptions, it must have sufficient time to consider them and to determine whether or not to assume jurisdiction. Although the regulation specifies no time limit, the Appeals Council will, as in all instances, handle the case as expeditiously as possible.

Comment: Relationship to Own Motion Review in § 404.969

One commenter stated that this proposed regulation directly contravenes § 404.969 which provides a 60-day period after the issuance of an ALJ decision for the Appeals Council to exercise its authority to review the decision on its own motion.

Response

The final regulations at §§ 404.984 and 416.1484 govern the Appeals Council's authority to review ALJ decisions in cases remanded by the Court. Sections 404.969 and 416.1469 are not applicable to ALJ decisions issued in court remand cases. In both situations, however, if the Appeals Council wishes to assume jurisdiction on its own initiative, it must do so within 60 days of the ALJ decision.

Comment: Considering Other Issues After 60 Days

With regard to the Appeals Council's authority to consider issues after the 60-day period for review on its own initiative has ended, a commenter asserted that the proposed rule contravened numerous court decisions which have held the Appeals Council to 60 days within which to notify parties of its intent to review issues other than those raised by the party.

Response

We do not agree with the commenter's reading of the case law that was cited in support of this observation. We believe that the proposed rule and the final rule fully inform the parties about the Appeals Council's authority to consider and review issues other than those raised by the party, and in so doing the rules are consistent with the court decisions cited by the commenter. By making the Appeals Council's authority explicit in these regulations, a party will have notice that the Appeals Council may consider and review any issues(s) relating to the claim, whether or not the party raises them in either the judicial or administrative proceedings.

Comment: Notice to Parties

One commenter stated that when the Appeals Council assumes jurisdiction of the case it should give the party notice of any issues it will consider that were not raised in the party's exceptions.

Response

Under the final rules, the Appeals Council may consider issues the party did not raise in the exceptions, and, as a matter of policy, issues the ALJ decided in the party's favor or issues the ALJ did not decide. The Appeals Council will notify the party and his or her representative, and provide an opportunity for comment on the proposed action when it assumes jurisdiction.

Comment: Chilling Effect on Filing Exceptions to Partially Favorable Decisions

Another commenter stated that the proposed regulations would have a chilling effect on the filing of exceptions to partially favorable decisions since, if a party files exceptions to those parts of the decision with which he or she disagrees, the Appeals Council will also review those parts of the decision which are favorable to the claimant.

Response

We do not agree with this comment and believe that the exceptions process will enable the party to obtain a more comprehensive administrative decision. The Appeals Council acts on behalf of the Secretary in ensuring that in any case in which it assumes jurisdiction, the final decision of the Secretary is correct in all respects, and in cases remanded from the courts, the final decision after remand comports fully with the court's order. Thus, the Appeals Council must have the authority to consider all of the issues in a case if it assumes jurisdiction. Likewise, the ALJ must have the authority to consider all of the issues if he or she is to make a final decision. We have amended § 404.983 and § 416.1483 to make clear this authority.

Comment: Effect on Judicial Review

One commenter noted that the NPRM was not clear as to the effect of a party's failure to file exceptions and recommended that the rule be clarified so that the party's failure to file written exceptions would not be viewed as a waiver of the right to judicial review.

Response

Because these regulations deal with decisions of ALJs and appeals of those decisions to the Appeals Council, we do not believe it is appropriate in these rules to discuss the effects on judicial review of the claimant's failure to file exceptions with the Appeals Council. Because courts in most instances retain jurisdiction of civil actions when they remand them to the Secretary, we cannot bar a person's right to return to that court. However, the Secretary has the right to prescribe the procedures under which the administrative review will be conducted. We have required the filing of exceptions for the claimant to obtain Appeals Council review because we believe that filing exceptions will help both the claimant and the Secretary to focus accurately and quickly on the issues still in dispute.

Comment: Time for Effectuation

One commenter expressed the belief that the proposed regulations would lengthen the time period for effectuation of partially favorable decisions, if a party filed exceptions.

Response

Partially favorable ALJ decisions in court remand cases will no longer require a decision by the Appeals Council before they can be effectuated. Thus, these regulations will in fact significantly reduce the time required to effectuate partially favorable ALJ decisions. Consideration of exceptions to such decisions by the Appeals Council will be undertaken after the decision is effectuated.

Comment: Retain Recommended Decisions

We received only one comment objecting to eliminating the requirement that ALJs issue recommended decisions in court remand cases. Noting that the proposed regulations provide for review by the Appeals Council only under certain circumstances, the commenter stated that the current regulations permit all parties to exercise their right to appeal to the fullest extent.

Response

As noted previously, eliminating the requirement for recommended decisions in all court remands will allow most favorable ALJ decisions to be effectuated more promptly. When a party disagrees with the ALJ's decision, the regulations permit the party to file exceptions with the Appeals Council and require the Appeals Council to respond to the exceptions. The new regulations do not diminish any right to appeal the ALJ decision issued on court remand.

Comment: Impact on Fee Petition Processing

One commenter inquired who will handle fee petitions for representatives in court remand cases, noting that staff in the Attorney Fee Branch of the Appeals Council currently handles fee petitions in these cases. He commented that, if the Appeals Council is no longer issuing the final decision in these cases, it would seem appropriate to transfer this function to the ALJs.

Response

SSA will continue its current policy that provides for the ALJ who issues the final decision to evaluate the request for approval of a fee. Thus, if an ALJ decision in a court remand case becomes the final decision of the Secretary after remand, the ALJ will evaluate the request for approval of a fee. If the Appeals Council issues the final decision, the Appeals Council will evaluate the fee request and determine the fee.

Comment: New Civil Action Required

One commenter believes it is confusing to call the "new" decision, i.e., the ALJ or Appeals Council decision issued after a court remand, "the final decision of the Secretary," since it suggests that a new civil action must be filed to obtain judicial review.

Response

We agree that calling the ALJ or Appeals Council decision that is made after a court remand "the final decision of the Secretary" is confusing and have changed the term to "the final decision of the Secretary after remand." We believe that referring to the decision issued after remand as the final decision of the Secretary after remand is the most accurate description, since it is the Agency's final determination of the issues in dispute. We do not believe using this new term will mislead a claimant, whose case has been remanded by a court, into believing that the claimant must file a new civil action to obtain judicial review. Notices accompanying the ALJ decisions and the Appeals Council's responses to exceptions will clearly set forth the claimant's rights in this regard.

Cases Affected

The procedures set forth in these regulations apply to cases under titles II and XVI of the Social Security Act. They also apply to cases involving remands by the courts of appeals arising under titles XI and XVIII of the Act, involving rights and benefits under the Medicare program. Regulations governing these appeals incorporate the regulations in 20 CFR part 404, Subpart J by reference. Therefore, the amendments to 20 CFR part 404 Subpart J set forth in the final regulations would apply to these appeals.

These procedures will not apply to appeals under 42 CFR Part 498. That part primarily governs appeals by providers of services and other entities as to their participation in the Medicare program. Under that part, the ALJ is not required to issue a recommended decision in a court remand case unless the Appeals Council so directs. Thus, that part is consistent with the procedures to be implemented in these regulations.

These procedures will also not apply to appeals pursuant to 20 CFR part 410, Subpart F. That subpart sets forth the procedure for appeals in claims under the Federal Coal Mine Health and Safety Act, Title IV, Black Lung Benefits, for which the Social Security Administration still has jurisdiction. We believe the existing procedures, considering that there are few cases, are appropriate. Thus, we are not changing the procedures for issuing decisions in court remand cases involving Black Lung benefits.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will result in negligible administrative costs and savings. It will result in about $1 million administrative cost savings a year because it will reduce the number of workyears required to review ALJ decisions in court remand cases. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 13.773 and 13.774, Medicare; 13.802–13.805, Social Security; and 13.807 Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure; Aged; Blind; Disability benefits; Public assistance programs; Supplemental Security Income (SSI).

Dated: January 6, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: August 4, 1989.

/s/ Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Subpart J of Part 404 and Subpart N of Part 416 of 20 CFR Chapter III are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

1. The authority citation for Subpart J of Part 404 continues to read as follows:

Authority: Secs. 201(j), 205 (a), (b), and (d) through (h), 221(d), and 1102 of the Social Security Act; 42 U.S.C. 401(j), 405 (a), (b), and (d) through (h), 421(d), and 1302; sec. 5 of Pub. L. 97–455, 96 Stat. 2500; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

2. Paragraph (b) of § 404.953 is revised to read as follows:

§ 404.953 The decision of an administrative law judge.

* * * * *

(b) Recommended decision. Although an administrative law judge will usually make a decision, he or she may send the case to the Appeals Council with a recommended decision where appropriate. The administrative law judge will mail a copy of the recommended decision to the parties at their last known addresses and send the recommended decision to the Appeals Council.

3. Paragraphs (d) and (e) are revised and a new paragraph (f) is added to § 404.955 to read as follows:

§ 404.955 The effect of an administrative law judge's decision.

* * * * *

(d) The expedited appeals process is used;

(e) The decision is a recommended decision directed to the Appeals Council; or

(f) In a case remanded by a Federal court, the Appeals Council assumes jurisdiction under the procedures in § 404.984.

4. An undesignated center heading is added immediately before § 404.983 and new § 404.984, and § 404.983 is revised to read as follows:

Court Remand Cases

§ 404.983 Case remanded by a Federal court.

When a Federal court remands a case to the Secretary for further consideration, the Appeals Council, acting on behalf of the Secretary, may make a decision, or it may remand the case to an administrative law judge with instructions to take action and issue a decision or return the case to the Appeals Council with a recommended decision. If the case is remanded by the Appeals Council, the procedures explained in § 404.977 will be followed. Any issues relating to your claim may be considered by the administrative law judge whether or not they were raised in the administrative proceedings leading to the final decision in your case.

5. A new § 404.984 is added to read as follows:

§ 404.984 Appeals Council review of administrative law judge decision in a case remanded by a Federal court.

(a) *General.* In accordance with § 404.983, when a case is remanded by a Federal court for further consideration, the decision of the administrative law judge will become the final decision of the Secretary after remand on your case unless the Appeals Council assumes jurisdiction of the case. The Appeals Council may assume jurisdiction based on written exceptions to the decision of the administrative law judge which you file with the Appeals Council or based on its authority pursuant to paragraph (c) of this section. If the Appeals Council assumes jurisdiction of your case, any issues relating to your claim may be considered by the Appeals Council whether or not they were raised in the administrative proceedings leading to the final decision in your case or subsequently considered by the administrative law judge in the administrative proceedings following the court's remand order. The Appeals Council will either. make a new, independent decision based on the entire record that will be the final decision of the Secretary after remand or remand the case to an administrative law judge for further proceedings.

(b) *You file exceptions disagreeing with the decision of the administrative law judge.* (1) If you disagree with the decision of the administrative law judge, in whole or in part, you may file exceptions to the decision with the Appeals Council. Exceptions may be filed by submitting a written statement to the Appeals Council setting forth your reasons for disagreeing with the decision of the administrative law judge. The exceptions must be filed within 30 days of the date you receive the decision of the administrative law judge or an extension of time in which to submit exceptions must be requested in writing within the 30-day period. A timely request for a 30-day extension will be granted by the Appeals Council. A request for an extension of more than 30 days should include a statement of reasons as to why you need the additional time.

(2) If written exceptions are timely filed, the Appeals Council will consider your reasons for disagreeing with the decision of the administrative law judge and all the issues presented by your case. If the Appeals Council concludes that there is no reason to change the decision of the administrative law judge, it will issue a notice to you addressing your exceptions and explaining why no change in the decision of the administrative law judge is warranted. In this instance, the decision of the administrative law judge is the final decision of the Secretary after remand.

(3) When you file written exceptions to the decision of the administrative law judge, the Appeals Council may assume jurisdiction at any time, even after the 60-day time period which applies when you do not file exceptions. If the Appeals Council assumes jurisdiction, it will make a new, independent decision based on its consideration of the entire record affirming, modifying, or reversing the decision of the administrative law judge or remand the case to an administrative law judge for further proceedings, including a new decision. The new decision of the Appeals Council is the final decision of the Secretary after remand.

(c) *Appeals Council assumes jurisdiction without exceptions being filed.* Any time within 60 days after the date of the decision of the administrative law judge, the Appeals Council may decide to assume jurisdiction of your case even though no written exceptions have been filed. Notice of this action will be mailed to all parties at their last known address. You will be provided with the opportunity to file briefs or other written statements with the Appeals Council about the facts and law relevant to your case. After the briefs or other written statements have been received or the time allowed (usually 30 days) for submitting them has expired, the Appeals Council will either issue a final decision of the Secretary affirming, modifying, or reversing the decision of the administrative law judge, or remand the case to an administrative law judge for further proceedings, including a new decision.

(d) *Exceptions are not filed and the Appeals Council does not otherwise assume jurisdiction.* If no exceptions are filed and the Appeals Council does not assume jurisdiction of your case, the decision of the administrative law judge becomes the final decision of the Secretary after remand.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for Subpart N of Part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

2. paragraph (c) of § 416.1453 is revised to read as follows:

§ 416.1453 The decision of the administrative law judge.

* * * * *

(c) *Recommended decision.* Although an administrative law judge will usually make a decision, he or she may send the case to the Appeals Council with a recommended decision where appropriate. The administrative law judge will mail a copy of the recommended decision to the parties at their last known addresses and send the recommended decision to the Appeals Council.

3. Paragraphs (d) and (e) are revised and a new paragraph (f) is added to § 416.1455 to read as follows:

§ 416.1455 The effect of an administrative law judge's decision.

* * * * *

(d) The expedited appeals process is used;

(e) The decision is a recommended decision directed to the Appeals Council; or

(f) In a case remanded by a Federal court, the Appeals Council assumes jurisdiction under the procedures in § 416.1484.

4. An undesignated center heading is added immediately before § 416.1483 and new § 416.1484, and 416.1483 is revised to read as follows:

Court Remand Cases

§ 416.1483 Case remanded by a Federal court.

When a Federal court remands a case to the Secretary for further consideration, the Appeals Council, acting on behalf of the Secretary, may make a decision, or it may remand the case to an administrative law judge with instructions to take action and issue a decision or return the case to the Appeals Council with a recommended decision. If the case is remanded by the Appeals Council, the procedures explained in § 416.1477 will be followed. Any issues relating to your claim may be considered by the administrative law judge whether or not they were raised in the administrative proceedings leading to the final decision in your case.

5. A new § 416.1484 is added to read as follows:

§ 416.1484 Appeals Council review of administrative law judge decision in a case remanded by a Federal court.

(a) *General.* In accordance with § 416.1483, when a case is remanded by a Federal court for further consideration, the decision of the administrative law judge will become the final decision of the Secretary after remand on your case unless the Appeals Council assumes jurisdiction of the case. The Appeals Council may assume jurisdiction based on written exceptions to the decision of the administrative law judge which you file with the Appeals Council or based on its authority pursuant to paragraph (c) of this section. If the Appeals Council assumes jurisdiction of your case, any issues relating to your claim may be considered by the Appeals Council whether or not they were raised in the administrative proceedings leading to the final decision in your case or subsequently considered by the administrative law judge in the administrative proceedings following the court's remand order. The Appeals Council will either make a new, independent decision based on the entire record that will be the final decision of the Secretary after remand or remand the case to an administrative law judge for further proceedings.

(b) *You file exceptions disagreeing with the decision of the administrative law judge.* (1) If you disagree with the decision of the administrative law judge, in whole or in part, you may file exceptions to the decision with the Appeals Council. Exceptions may be filed by submitting a written statement to the Appeals Council setting forth your reasons for disagreeing with the decision of the administrative law judge. The exceptions must be filed within 30 days of the date you receive the decision of the administrative law judge or an extension of time in which to submit exceptions must be requested in writing within the 30-day period. A timely request for a 30-day extension will be granted by the Appeals Council. A request for an extension of more than 30 days should include a statement of reasons as to why you need the additional time.

(2) If written exceptions are timely filed, the Appeals Council will consider your reasons for disagreeing with the decision of the administrative law judge and all the issues presented by your case. If the Appeals Council concludes that there is no reason to change the decision of the administrative law judge, it will issue a notice to you addressing your exceptions and explaining why no change in the decision of the administrative law judge is warranted. In this instance, the decision of the administrative law judge is the final decision of the Secretary after remand.

(3) When you file written exceptions to the decision of the administrative law judge, the Appeals Council may assume jurisdiction at any time, even after the 60-day time period which applies when you do not file exceptions. If the Appeals Council assumes jurisdiction, it will make a new, independent decision based on its consideration of the entire record affirming, modifying, or reversing the decision of the administrative law judge or remand the case to an administrative law judge for further proceedings, including a new decision. The new decision of the Appeals Council is the final decision of the Secretary after remand.

(c) *Appeals Council assumes jurisdiction without exceptions being filed.* Any time within 60 days after the date of the decision of the administrative law judge, the Appeals Council may decide to assume jurisdiction of your case even though no written exceptions have been filed. Notice of this action will be mailed to all parties at their last known address. You will be provided with the opportunity to file briefs or other written statements with the Appeals Council about the facts and law relevant to your case. After the briefs or other written statements have been received or the time allowed (usually 30 days) for submitting them has expired, the Appeals Council will either issue a final decision of the Secretary affirming, modifying, or reversing the decision of the administrative law judge, or remand the case to an administrative law judge for further proceedings, including a new decision.

(d) *Exceptions are not filed and the Appeals Council does not otherwise assume jurisdiction.* If no exceptions are filed and the Appeals Council does not assume jurisdiction of your case, the decision of the administrative law judge becomes the final decision of the Secretary after remand.

POSTAL SERVICE

39 CFR 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 32 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1. All of the revisions are minor, editorial, or clarifying.

EFFECTIVE DATE: September 17, 1989.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268–2960.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 32, dated September 17, 1989. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 32 covers all of the changes.

Summary of Changes

Chapter 1

Section 122.15, Return Address, is revised to clarify that the Postal Service will use the return address on a mailpiece bearing a mailer's ancillary service endorsement in determining the place where the mailer will accept and pay for mail rendered the ancillary service requested. (PB 21732, 7–6–89)

Exhibits 122.63a-r are changed to reflect the Florida ZIP Code changes previously announced. Compliance with these revisions is mandatory by September 17, 1989. (PB 21731, 6–29–89)

Exhibits 122.63e, 122.63o, are revised to reflect processing changes for ZIP Code areas 228, 229, 324–326, 365–366, 439 and 457. (PB 21726, 5–25–89)

Section 124.125, *Other laws and Regulations,* is revised to include a reference to 18 U.S.C. 2512 regarding the mailing of surveillance devices. (PB 21731, 6–29–89)

Sections 125 and 126 are amended to be in concert with current mailability and Department of State regulations. (PB 21729,6–15–89)

Sections 136.754 and 136.954, *Makings,* are revised to permit mailers who drop ship mail via Express Mail or Priority Mail to inform their customers that their mail was drop shipped by those services. (PB 21728, 6–8–89)

Section 137.15, *Forwarding Mailing Records for Franked Mail,* reflects changes in administrative and reporting responsibilities in the franked mail sampling system. (PB 21733, 7–13–89)

Section 137.252 is updated with several new agencies and revised business reply mail numbers. Some agencies have changed from sampling number to direct accountability.

Section 144.112 is revised to permit metered reply postage on all Express Mail shipments. (PB 21732, 7–6–89)

Sections 144.2, 144.3, 144.6, and 144.9 are revised to reflect changes in postage meter procedures and responsibilities. (PB 21741, 9–7–89)

Section 145.8 is revised to standardize the procedures for an Optional Procedure Mailing System. (PB 21742, 9–14–89)

Section 146.132a is revised to clarify how to handle refused, shortpaid First-Class Mail. (PB 21731, 6–29–89)

Exhibit 159.151a is revised to allow an authorized abbreviation for a First-Class Mail endorsement where space does not permit the full endorsement: *Forward and Address Correction Requested.* (PB 21731, 6–29–89)

Chapter 3

Section 322, *Postal Cards and Postcards,* is revised to (1) permit postcards to be formed of two pieces of paper that are permanently and uniformly bonded together; (2) permit paper labels to be permanently affixed to the back or the left portion of the address side; and (3) permit limited use of stickers on double postcards. (PB 21732, 7–6–89)

Section 392.1, *Return,* is revised to clarify how to handle refused, shortpaid First-Class Mail. (PB 21731, 6–29–89)

Chapter 4

Section 425.8, is revised to eliminate requirements for publishers of second-class publications to file Forms 15 and 15–E. (PB 21735, 7–27–89)

Section 429.31g(2) is revised to clarify what may be placed on the front of a label carrier for a second-class publication when it is completely enclosed in a plastic wrapper (polybag). (PB 21729, 6–15–89)

Chapter 6

Section 643.2, *Revocation for Nonuse,* is revised to include instructions advising postmasters to notify the General Manager, Rates and Classification Center, of the names of organizations that have not made use of their special rate privileges for at least 2 years. (PB 21729, 6–15–89)

Chapter 7

Section 792.1, *Endorsed and Unendorsed Pieces,* is revised to clarify procedures for return on undeliverable fourth-class mail. (PB 21731, 6–29–89)

Minor nonsubstantive changes are found in: 144.1, 144.3, 144.9, Exhibit 159.151a, 263.2, Exhibit 463.24, 623.51, 667.675, 941.2, and others.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201-3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter	Dated	FEDERAL REGISTER publication
32	September 17, 1989	54 FR * * *

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 89–21434 Filed 9–12–89; 8:45 am]

BILLING CODE 7710-12-M

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39 CFR Part 233

Adding Child Pornography to the List of Offenses for Which Rewards May Be Paid for Information

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In 1988 the Postal Service added to the offenses listed on Notice 96, *Notice of Reward,* for which rewards will be paid for information on the offense of child pornography. The purpose of this final rule is to conform the regulations in title 39, Code of Federal Regulations, with that action.

EFFECTIVE DATE: September 12, 1989.

FOR FURTHER INFORMATION CONTACT: H.J. Bauman, (202) 268–4415.

SUPPLEMENTARY INFORMATION:

List of Subjects in 39 CFR Part 233

Crime, Postal Service

In consideration of the foregoing, 39 CFR 233 is amended as set forth below.

PART 233—[AMENDED]

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 2254.

2. In § 233.2, add new paragraph (b)(1)(ix) as follows:

§ 233.2 Circulars and rewards.

* * * * *

(b) * * *

(1) * * *

(ix) Mailing or receiving through the mail any visual depiction involving the use of a minor engaging in sexually explicit conduct.

* * * * *

3. In the Note to § 233.2, after the offense entitled "Burglary of Post Office, $5,000.", add the following:

Child Pornography, $2,500. The mailing or receiving through the mail of any visual depiction involving the use of a minor engaging in sexually explicit conduct.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89–21435 Filed 9–12–89; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3644-5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: In a July 7, 1988, **Federal Register** (53 FR 25509), notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Ohio State Implementation Plan (SIP) for ozone. This revision is a compliance date extension and a relaxation of emission limits of Navistar's (formerly called International Harvester) one surface coating line at its Body plant and nine lines at its Assembly plant. Both plants are located in Springfield, Clark County, Ohio.

In today's Final Rulemaking, USEPA is disapproving this SIP revision because the State has not demonstrated that Navistar's compliance plan is expeditious and that it is technically or economically infeasible for Navistar to meet the volatile organic compounds (VOC) emission limits contained in the existing SIP.

EFFECTIVE DATE: This final rulemaking becomes effective on October 13, 1989.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, Columbus, Ohio 43216.

A copy of today's revision to the Ohio SIP is available for inspection at: Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On March 10, 1986, the Ohio Environmental Protection Agency (OEPA) submitted a site-specific revision to the Ohio ozone SIP for volatile organic compound (VOC) emissions from Navistar's one surface coating line at its Body plant and nine lines at its Assembly plant. Both plants are located in Springfield, Clark County, Ohio. Clark County is designated nonattainment for the pollutant ozone under section 107 of the Clean Air Act (Act) (40 CFR 81.336).[1]

I. Emission Limits

The two Navistar plants contain surface coating lines that are used to paint truck cabs, hoods, chassis, and miscellaneous metal parts. Under the existing federally approved SIP, each miscellaneous metal parts and products surface coating line is subject to the control requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U). OAC 3745–21–09(U)(1)(a)(iii) limits the VOC content of an extreme performance coating to 3.5 pounds of VOC per gallon (lbs of VOC/gal) of coating, excluding water. OAC Rule 3745–21–04(C)(28) requires compliance with this limit by December 31, 1982. USEPA approved these rules and others as meeting the reasonably available control technology (RACT)[2] requirements of part D and the Act on June 29, 1982 (47 FR 28097).

Navistar's nine lines at its Assembly plant (P001–P004, P007–P009, R004 and R005) and one line at its Body plant (K001) are currently being operated in violation of OAC Rule 3745–21–09(U) for surface coating of miscellaneous metal parts and products. In lieu of the requirements mentioned above, OEPA

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[1] Because of the proximity of Clark County to Dayton, Clark County emissions and emission reductions were included as an integral part of the greater Dayton ozone demonstration area SIP. USEPA approved Ohio's attainment demonstration for the greater Dayton area including Clark County, on October 31, 1980 (45 FR 72122), because the State's plan for the area as a whole demonstrated the attainment and maintenance for the ozone standard there by December 31, 1982. Violations of the ozone standard were recorded in the Dayton area subsequent to 1982.

[2] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

BEST COPY AVAILABLE

has submitted for Navistar as a revision to the Ohio SIP (1) a compliance date extension until December 31, 1987, and (2) for seven of the lines, a relaxation from the RACT based limits to the VOC content of coatings currently in use on these lines. The coatings currently used are acrylic enamel, urethane, and chassis coating with VOC contents of 4.86, 4.66, and 3.66 lbs of VOC per gallon of coating, excluding water, respectively.

II. Compliance Date Extension

The OEPA requested a compliance date extension to December 31, 1987, for lines K001, P001, and P002. By that date, the lines will be shut down and replaced with new coating lines which will be in compliance with OAC Rule 3745–21–09(U). In order for a compliance date extension to be approvable, the request must comply with USEPA's criteria. The extension for Navistar's surface coating lines does not satisfy these criteria because the OEPA did not adequately research the compliance status of other similar sources to determine if compliance by the original deadline was reasonable. As explained below, Illinois has documentation that complying coatings are available (and in use) for the heavy duty off highway vehicle manufacturing industry. In addition, USEPA policy requires the State to demonstrate that the extension will not interfere with the timely attainment and maintenance of the ozone standard and, where relevant "reasonable further progress" (RFP) towards timely attainment. This would generally be done by comparing the margin for attainment predicted by the approved ozone attainment demonstration, and the increased emissions that would result under the extension. However, if the State or USEPA believes that there has been a substantial change in the inventory since the ozone SIP was approved so that the margin of attainment has changed significantly, a revised demonstration in support of the revision request is required. Such a demonstration would be necessary in areas which purported to demonstrate attainment by 1982, but for which post 1982 monitoring data are indicating exceedances of the ozone standard. Because Navistar is located in such an area, a revised demonstration of attainment for the Dayton area would be required before the compliance date extension can be approved.

III. Status of Ozone Attainment Demonstration-Clark County

Navistar's Body and Assembly plants are located in Clark County, which is designated nonattainment for the ozone NAAQS, and which is a part of the greater Dayton nonattainment area for ozone. Navistar provided an air quality demonstration for the proposed revision which was based on the 1979 USEPA approved ozone SIP for the Dayton area. In order to get approval of a source-specific SIP revision, a State must demonstrate that the revision will not interfere with expeditious attainment and maintenance of the ozone standard and reasonable further progress toward attainment. Dayton's 1979 ozone SIP was approved for attainment of the standard by the end of 1982 and maintenance thereafter. However, because violations have been measured in 1983 and 1984, and there have been more recent exceedances of the ozone standard (as late as 1987), USEPA cannot determine whether the SIP is maintaining the ozone standard. Ohio cannot, therefore, rely on the 1979 demonstration of attainment to show that the revision will not interfere with continued maintenance of the ozone standard. While USEPA has not chosen to call for a SIP revision because of a substantially inadequate plan for this area, any relaxations, such as the one addressed in this notice, must be accompanied by a persuasive demonstration that the area will continue to maintain the ozone standard for the foreseeable future despite the relaxation. Since the State has not made this demonstration, USEPA cannot approve this relaxation.

USEPA is disapproving this variance as a SIP revision because (1) the State has not shown that the granting of the variance will not interfere with expeditious attainment of the ozone NAAQS in the area; (2) the State did not demonstrate that Navistar's compliance plan is expeditious; and (3) the State has not demonstrated that the current emission limits for Navistar are technically or economically infeasible and that the proposed limits are RACT for that particular source.

IV. Proposed SIP Revision

In a July 7, 1988, **Federal Register** (53 FR 25509) notice, USEPA proposed to disapprove a revision to Ohio's ozone SIP, which would allow for a compliance date extension and for a relaxation of emission limits for Navistar's one surface coating line at its Body plant and nine lines at its Assembly plant, USEPA proposed to disapprove this SIP revision because the State has not demonstrated that Navistar's compliance plan is expeditious and that the present emission limits for Navistar in the SIP are technically or economically infeasible.

V. Comments and USEPA's Response

Comments on this notice of proposed rulemaking were received from the OEPA, the (Dayton) Regional Air Pollution Control Agency (RAPCA), the Motor Vehicle Manufacturer's Association (MVMA), and Navistar. These comments and USEPA's response are provided below.

A. Expeditiousness of the Compliance Plan

1. Comment

OEPA and RAPCA stated in their comments that Navistar's compliance plan is expeditious because the operations performed on lines K001, P001 and P002 (for which compliance date extensions were requested) are being transferred to new, well-controlled sources and the schedule is consistent with the schedule contained in the permit to install for the new sources. Navistar made the same comment and added that it has shut down more lines than it initially promised to the State of Ohio.

USEPA's Response. USEPA's May 2, 1987, Technical Support Document (TSD) stated that "for this compliance date extension to be approved, [Navistar] must demonstrate that it proceeded expeditiously to develop, and implement its compliance plan from the time the regulations were adopted to the present with no significant periods of inaction. [Navistar] has provided no information concerning the development of this compliance plan." Navistar still has not provided any information concerning its compliance plan. The earliest indication of Navistar's intent to replace old lines with new lines is the November 6, 1985, Permit to Install. This permit was issued nearly three years after Navistar was required to be in compliance with OAC rule 3745–21–09(U). No evidence has been provided that the new lines could not have been installed sooner.

Although Navistar has indicated that it has shut down more lines than it originally intended, it has not shut down lines K001, P001, and P002 as required by the variances.

2. Comment

OEPA and RAPCA commented that the compliance status of two other medium and heavy duty truck assembly plants was examined at the time Navistar applied for the variance, and it was determined that neither was using coatings capable of complying with OAC Rule 3745–21–09(U).

USEPA's Response. OEPA's previous submittals contained no evidence that

the State examined the compliance status of other sources. Only one of the two sources examined by OEPA and RAPCA is subject to a rule similar to OAC Rule 3745–21–09(U). Although this source also requested a compliance date extension until December 31, 1987, for its "specialty" topcoats, the majority of its remaining operations were in compliance or expected to be in compliance by April 15, 1985. It should be noted that the extensions were not approved by USEPA.

In addition, OEPA has not provided a complete survey of the availability of complying coatings and the compliance status of other similar sources. The State should provide evidence that it made all reasonable efforts to determine the availability of complying coatings or other kinds of control, as appropriate. Examples of these efforts include, but may not be limited to examining information that is or should be reasonably available to the State including whether sources operating in the State that were in an industry comparable to the source are using complying coatings, or other kinds of controls, that the source could adopt. Reasonable efforts also include seeking all information that is reasonably available to the source requesting the SIP revision. This would include contacting suppliers that the source uses or could use, to determine if they have, or could develop, complying coatings or other controls. In addition, the State or source should contact regional or national trade associations for the industry, and review information the associations may have concerning coatings or other controls.

3. Comment

The Notice of Proposed Rulemaking (NPR) stated that Illinois has documentation that complying coatings are available (and in use) for the heavy duty, off-highway vehicle (HOV) manufacturing industry, and that an explanation should be provided of why Navistar cannot use such coatings. OEPA and RAPCA commented that they do not believe the study referred to in the notice of proposed rulemaking is relevant to Navistar's Springfield facilities. This is based on the dissimilarities between Navistar's trucks, which utilize customized coatings designed to meet the individual customer's preference, and the HOV's referred to in the study.

Navistar added that the two are not comparable because the HOV industry uses standard color coatings which do not have to meet the performance tests of the high-quality finishings applied at the Springfield plants. Finally, all three commenters stated that the industries are not comparable due to the differences in the numbers and volumes of coatings used.

USEPA's Response. The commenters have misinterpreted the statements in the NPR. USEPA is not suggesting that Navistar must use the coatings used by the HOV industry. However, because the two industries appear to be similar in some respects, USEPA does feel that some explanation of possible differences in the operations which would make it infeasible for Navistar to use the coatings used by some HOV manufacturers is in order.

OEPA, RAPCA and Navistar have all attempted to indicate such differences. The fact that coatings used by Navistar must meet more stringent performance tests would be more convincing if it has been shown that the coatings used by the HOV manufacturers would not be able to meet such requirements. Likewise, the differences in number and volume of coatings used may have some merit as a basis for not using the coatings used by the HOV manufacturers. However, no detailed information has been provided concerning the number and volumes of coatings used by Navistar and how this relates to the number and volumes of coatings used by the HOV manufacturers or how these factors affect Navistar's ability to use the complying coatings used by the HOV industry. Therefore, USEPA is not able to evaluate the merit of these arguments.

B. Economic Feasibility of Meeting the SIP Limit

1. Navistar's Comment

Navistar's comments contain a lengthy discussion of the appropriate cost-effectiveness cutoff for determining the economic feasibility of add–on control equipment.

USEPA's Response. This entire discussion is completely irrelevant to the rulemaking. The NPR clearly states that the issue of concern is the validity of the cost estimates provided by Navistar, not whether, based on these estimates, control equipment can be considered economically feasible.

2. Navistar's Comment

Navistar's comments reference a draft report prepared by a contractor for USEPA as part of USEPA's enforcement case. Navistar states that the cost estimates contained in this report yield cost-effectiveness values ranging from $7,935 to $604,428 per ton of VOC controlled. In addition, this report only considers two control alternatives.

USEPA's Response. The draft report referenced by Navistar was never intended to be a comprehensive evaluation of the economic feasibility of add-on control equipment. The purpose of the report was to evaluate the technical feasibility of control equipment, with cost estimates provided for informational purposes only. Furthermore, because this report was prepared for USEPA only as part of its enforcement action, it has no relevance to the rulemaking.

3. Navistar's Comment

Navistar's comments provide additional information concerning the economic feasibility of add-on control equipment. This new information consists of more detailed cost estimates and an explanation of how cost figures were determined. Navistar believes that this information shows that add-on control is economically infeasible.

USEPA's Response. Based on the more detailed cost estimates provided by Navistar, add-on control equipment appears to be economically infeasible for the spray booths. However, Navistar still has not demonstrated that it would not be feasible to control oven exhausts. Navistar has argued that such control is not feasible because of the low volume gas stream and low VOC content of the oven exhaust, and because the great majority of VOC emissions from the facilities are exhausted from the spray booths and flash-off areas. The only information provided to support this argument is a September 4, 1984, Kintech report. The report shows that for lines 57 and 58, only 4 to 5 percent of VOC emissions are exhausted from the bake ovens. The report does not discuss the distribution for the other five lines which have ovens. While control of the bake ovens may not reduce emissions enough to bring these lines into compliance, it still may be a reasonable way to reduce emissions beyond the level proposed in the variances. It is common, for example, in the auto industry to control bake ovens where less than 20 percent of emissions are exhausted.

C. Technical Feasibility of Meeting the SIP Limit

Navistar's Comment. Navistar's comments concerning technical feasibility of meeting the existing SIP limit are, in large part, the same as its comments on the expeditiousness of the compliance plan. Navistar believes that the information adequately demonstrates that the complying coatings are unavailable

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USEPA's Response. As discussed

that such an extension will not

that the Dayton area was in attainment

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the requested SIP revision. Navistar's

requirements of section 3 of Executive

pharmacokinetics test only, EPA will

USEPA's Response. As discussed previously, Navistar has not demonstrated that complying coatings are unavailable. In addition to the lack of information concerning the compliance status of other heavy duty trucks assembly plants and the feasibility of using coatings used by HOV manufacturers, Navistar still has not demonstrated that it has been unable to reformulate a sufficient number of its coatings to achieve compliance with the applicable rule on a daily basis. Navistar argues that reformulation (and compliance) is not feasible because Navistar uses 6500 different coatings. However, it seems likely that if Navistar uses that many coatings, some of the coatings are used in large quantities while others are only used occasionally, or that some of the coatings may be similar. If this is the case, Navistar should have focused its reformulation efforts on high volume coatings (or groups of coatings). In any case, Navistar has not provided any detailed information concerning the number and volumes of coatings used or its efforts to reformulate coatings. Although Navistar has provided a chronology of coating development and testing, it is not clear how many of the items listed in the chronology relate to development of complying coatings for the Springfield plants.

D. Other Comments

1. OEPA's RAPCA's and Navistar's Comments

OEPA, RAPCA and Navistar all state that USEPA incorrectly evaluated the variances for seven of the lines as permanent relaxations. They feel that, because the variances expired on December 31, 1987, the revisions should be considered a compliance date extension for all of the lines.

USEPA's Response. The variances for the seven lines were treated as permanent relaxations because they do not require lines to come into compliance with the SIP once the variances expire. Instead, the variances require Navistar to evaluate the feasibility of three different emission limitations (one of which is a permanent relaxation). OEPA's and RAPCA's comments indicate that Navistar has submitted an alternative emission control strategy which is under review by OEPA.

In addition, it should be noted that even if these variances could be considered compliance date extensions, they would still not be approvable. As discussed previously, it has not been demonstrated that compliance by December 31, 1987, is expeditious and that such an extension will not jeopardize attainment or maintenance.

Finally, because the variances expired before they went into effect (they are effective upon approval by USEPA), even if they were approved as SIP revisions, they would have no effect.

2. Navistar's and MVMA's Comments

Navistar and MVMA state that the NPR does not provide an adequate explanation of USEPA's basis for its determination and that USEPA does not identify any specific control technology or coating reformulation which is reasonably available considering technological and economic feasibility.

USEPA's Response. The NPR clearly explains the basis of USEPA's proposed disapproval. The compliance date extension is not approvable because the compliance schedule was not demonstrated to be expeditious. This must include a survey of other similar sources. The relaxation is not approvable because it has not been demonstrated that it is infeasible to meet the existing SIP limit. In addition, for both the extension and the relaxation the State must demonstrate that approval will not jeopardize attainment or maintenance. As discussed in the NPR, there is a lack of documentation to support the revision.

The limits and schedules contained in Ohio's Federally approved SIP are presumed to represent the implementation of RACT as expeditiously as practicable unless a demonstration is made that such limits are not achievable in the time allowed. It is not the responsibility of USEPA to demonstrate that such limits are achievable, but it is the responsibility of the State (and Navistar) to demonstrate that they are not.

3. Navistar's Comment

Navistar states that the Agency record is incomplete because it does not contain a number of relevant documents.

USEPA's Response. USEPA's docket files regarding Navistar's site-specific RACT SIP revision contains all of the documents directly pertinent to this SIP revision.

4. Navistar's Comment

Navistar provided additional information concerning ozone levels in the vicinity of the Navistar facility. Navistar's consultant indicated that the meteorological data and air quality data for high ozone days in the Dayton area during the 1979 through 1987 period imply that Navistar's emissions did not contribute to the monitored standard exceedances. In addition, it is indicated that the Dayton area was in attainment of the ozone standard during the 1985–1987 period even without an emission reduction from the Navistar facility.

USEPA's Response. The meteorological analysis included in the report was based on single line forward and backward trajectories for the high ozone days. The single line trajectory of the analysis ignores the three dimensional nature of ozone formation and transport. A more sophisticated analysis is necessary. Further, despite the report's claim that Navistar's emissions only impacted downwind attainment areas, little can be said about this impact because no or little data exist in these areas upon which to base conclusions. No modeling analyses were conducted to support any claim of a lack of ozone standard exceedances downwind of Navistar.

Although no violations of the ozone standard were monitored in the 1985–1987 period in the Dayton area, they were monitored in the 1986–1988 period. In the 1986–1988 period, the Urbana Road site in Clark County recorded seven exceedances of the standard, with five occurring in 1988. The Spangler Road site in Clark County experienced six exceedances of the standard in the 1986–1988 period. Clearly, Clark County and the rest of the Dayton area continue to experience violations of the standard. More ozone precursor emission reduction is required in this area.

5. Navistar's Comment

Navistar contends that USEPA's review of its site-specific RACT SIP revision "has been tainted by an improper mixture of its program and enforcement functions."

USEPA's Response. Navistar bases this argument on two facts, neither of which is supported in the administrative record. First, Navistar argues that the mere filing of an enforcement action against Navistar automatically undermines USEPA's ability to review objectively the site-specific RACT SIP revision. Yet, Navistar fails to note that the enforcement actions against its plants were instituted before it submitted its March 10, 1986, SIP revision. The USEPA's notice of violations at Navistar's assembly plant was issued on March 21, 1984, and the notice of violations at its body plant was issued on December 30, 1985. Moreover, the Federal complaint for assembly plant violations was filed on April 30, 1985. A second complaint for body plant violations was filed November 30, 1986. Almost all of USEPA's enforcement actions were taken prior to USEPA's knowledge of

the requested SIP revision. Navistar's argument that the filing of a SIP revision should suspend all Federal enforcement action would gravely undercut the enforcement requirements of the Clean Air Act, 42 U.S.C. 7413. A violator remains subject to the existing requirements of a SIP until a SIP revision is obtained. *Train* v. *Natural Resources Defense Council,* 421 U.S. 60, 92 (1975); *Duquesne Light Co.* v. *USEPA,* 698 F.2d 456, 471 (D.C. Cir. 1983); *National Resources Defense Council* v. *USEPA,* 507 F.2d 905, 915 (9th Cir. 1974).

The other fact Navistar refers to which purportedly supports its argument that there has been an improper mixture of rulemaking and enforcement is that USEPA allegedly has made a Federal court pleading part of the administrative record. Navistar cities "Record Item 261–5," which it alleges corresponds to the pleading styled, "Defendant's First Set of Requests for Admissions dated December 17, 1987." After a careful review of the index to the administrative record and the administrative record itself, USEPA can locate no such document.

In summary, the administrative record contains the very items Navistar suggests it should: "the identities of all persons involved in the Agency's review of the SIP revision and * * * memoranda, records of conversations, or other documents reflecting that review" (Navistar comment, page 23). USEPA's rulemaking on Navistar's site-specific RACT SIP revision has been completely independent of its enforcement action as mandated by the law. *See Bethlehem Steel* v. *USEPA,* 636 F.2d 994 (7th Cir. 1980).

Conclusion

USEPA is disapproving this revision because the State has not demonstrated that Navistar's compliance schedule is expeditious, that meeting the existing SIP limit is technically or economically infeasible, and that the revision will not jeopardize attainment or maintenance.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Carbon monoxide, Hydrocarbon, Intergovernmental offices.

Authority: 42 U.S.C. 7401–7642.

Dated: August 31, 1989.

Frank M. Covington,
Acting Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

Title 40 of the Code of the Federal Regulations, chapter 1, part 52, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1885 is amended by adding paragraph (p) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(p) Disapproval—On March 10, 1986, the Ohio Environmental Protection Agency (OEPA) submitted a site-specific revision to the Ohio ozone SIP for volatile organic compound emissions from Navistar's (Formerly called International Harvester) one surface coating line at its Body plant and nine lines at its Assembly plant. Both plants are located in Springfield, Clark County, Ohio. Clark County is designated nonattainment for the pollutant ozone under section 107 of the Clean Air Act (40 CFR 81.336).

[FR Doc. 89–21450 Filed 9–12–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS–42099A; FRL–3645–8]

Methyl Ethyl Ketoxime; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing this final test rule under section 4 of the Toxic Substances Control Act (TSCA), requiring manufacturers and processors of methyl ethyl ketoxime (MEKO, CAS No. 96–29–7) to perform testing for health effects. The testing requirements include oncogenicity, mutagenicity, developmental toxicity, reproductive toxicity, neurotoxicity, and pharmacokinetics. For the pharmacokinetics test only, EPA will finalize the test standard and reporting requirement in a separate final rule.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern (daylight or standard as appropriate) time on September 27, 1989. This rule should become effective on October 27, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA is issuing a final test rule under section 4(a) of TSCA to require health effects testing for MEKO.

I. Introduction

A. Test Rule Development Under TSCA

This final rule is part of the overall implementation of section 4 of TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require the development of data relevant to assessing the risk to health and environment posed by exposure to particular chemical substances or mixtures (chemicals).

Under section 4(a) of TSCA, EPA must require testing of a chemical to develop data if the Administrator makes certain findings as described in TSCA under section 4(a)(1) (A) or (B). Detailed discussions of the statutory section 4 findings are provided in the EPA's first and second proposed test rules which were published in the **Federal Register** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

B. Regulatory History

The Interagency Testing Committee (ITC) designated MEKO for priority testing consideration in its 19th Report, published in the **Federal Register** of November 14, 1986 (51 FR 41417). The ITC recommended that MEKO be considered for health effects testing. EPA responded to the ITC's recommendations for MEKO by publishing a notice of proposed rulemaking in the **Federal Register** of September 15, 1988 (53 FR 35838), which proposed that MEKO be tested for oncogenicity, mutagenicity, reproductive toxicity, developmental toxicity, neurotoxicity, and pharmacokinetics. The proposed rule contained a chemical profile of MEKO, a discussion of EPA's TSCA section 4(a) findings, and the proposed test standards and reporting requirements.

II. Response to Public Comments

EPA received written comments on the MEKO proposed test rule from Allied-Signal, Inc. (Allied), Huls America Inc. (Huls), Cosan Chemical Corp. (Cosan), and ICI Americas Inc. (ICI). A public meeting was also requested by Allied and was held on December 15, 1988 (Ref. 18). Allied submitted additional comments on human exposure to MEKO (Ref. 21) and on the economic impact of the rule (Ref. 23). The comments submitted by these companies and the EPA's response are contained in the public record for this rule (Ref. 24)

A. Route of Administration

Huls believes that all major toxicity tests should be conducted by the inhalation route and that inhalation is the major route of human exposure to MEKO. Allied believes the oncogenicity test should be conducted by inhalation.

EPA believes that, in addition to inhalation exposure, dermal contact may also be an important route of exposure to MEKO (Refs. 3 and 11). EPA has no information at this time to reject the inhalation route for the oncogenicity, in vivo mammalian cytogenetics, and neurotoxicity studies, and the final rule has been modified to allow either inhalation or oral routes for these tests. EPA believes there will be severe methodological problems associated with performing the developmental and reproductive toxicity tests by the inhalation route. The most serious problem is that dosing the dams by inhalation requires prolonged separation from their offspring (Ref. 40). Because the reproductive land developmental studies are complimentary, EPA has concluded that they should be conducted by the same route.

B. Oncogenicity

Huls believes acetoxime is not a good analogue because MEKO is asymmetrical and because acetoxime may be an atypical homologue.

EPA believes that, although acetoxime is symmetrical and the first member of a homologous series, it is still a good analogue for MEKO and is adequate for the finding that MEKO may present an unreasonable risk of injury to human health. Structurally, MEKO differs from acetoxime by a single methyl group, both chemicals are relatively water soluble and both exhibit similar acute toxicity (Ref. 24).

Allied believes the study by Mirvish concerning acetoxime and the positive results from a mouse lymphoma mutagenicity study are not an adequate basis for requiring a bioassay.

EPA has concluded that the Mirvish study of acetoxime, while not sufficient for use in quantitative risk assessment, is sufficient to raise concern for the possible oncogenicity of MEKO. EPA's use of structure-activity relationships (SAR) in supporting the section 4(a)(1)(A) TSCA finding was upheld by the D.C. Circuit Court of Appeals in a case reviewing the final rule for 2-Ethylhexanoic Acid (EHA, Ref. 39). The court stated, "But Congress explicitly contemplated that EPA would base test rules on comparisons among structurally similar chemicals" (Ref. 41). In addition, the Third Circuit has suggested that "structure-activity relationships" be used even when there is uncertainty and that such uncertainty may "highlight the need for testing" (Ref. 42).

EPA believes the positive results from the mouse lymphoma study of MEKO provide further evidence that MEKO may be oncogenic.

Allied indicates that neither of the hypothesized metabolites of MEKO, methyl ethyl ketone (MEK), or hydroxylamine, have been implicated in a positive carcinogenic response.

EPA believes MEKO itself may be oncogenic. This alone is sufficient for EPA's findings under TSCA section 4(a)(1)(A). Furthermore, even if the metabolites are not carcinogenic, there is no assurance that the parent compound (MEKO) is not.

Allied believes that, because tumors were observed in male rates in the study of acetoxime, the male rat would be an adequate subject for testing MEKO, and testing females is not necessary.

EPA disagrees. Testing experience and standard scientific references indicate there may be substantial sex-related differences in sensitivity to different compounds, EPA is requiring that females as well as males be tested.

Allied expressed general concern for the unnecessary sacrifice of animals.

EPA shares this concern, and has made every effort to design studies which economize on the number of animals while providing adequate numbers for acceptable statistical analysis. Industry may further reduce the number of animals by submitting study plans which use satellite groups or the same animals for different measurements, wherever feasible. EPA also notes that there are presently no alternatives to whole-animal testing for the toxicological endpoints required by this rule.

Allied and Huls believe there is no justification for using two species in any oncogenicity study of MEKO. They believe testing should be limited to the rat because the mouse is a poor test species for a substance where they believe the liver is the sole target organ. Huls is concerned about using the B6C3F1 mouse.

EPA disagrees. It has not been established that the liver is the only target for possible MEKO oncogenicity. EPA requires data from two species under its cancer risk assessment guidelines. Thus, a negative single species test would be insufficient evidence to exonerate MEKO. This requirement is consistent with those of the EPA Office of Pesticide Programs and the Organization for Economic Cooperation and Development (OECD).

EPA has not specified the strain of mouse for testing MEKO, however, the National Toxicology Program (NTP) concluded that even with the variable rate of background liver tumors in males, the B6C3F1 mouse is an acceptable species for oncogenicity studies (Ref. 19). EPA would consider the variable rate of background tumors with other evidence in estimating potential human risk from MEKO.

Huls believes that the reporting requirements should be extended to 65 months if conducted in only the rat and 79 months if both rat and mouse are used.

EPA does not believe that MEKO presents special testing problems requiring an extension of the reporting requirements.

C. Mutagenicity

Allied believes that because the mouse lymphoma assay conducted on MEKO was negative with activation, MEKO would be deactivated by enzymes in vivo.

EPA believes the positive results from this mouse lymphoma study, without activation, indicate that MEKO can potentially cause mutagenic effects. The negative result obtained by using enzymes in vitro does not necessarily predict how MEKO would react in vivo, nor how it would be processed by human enzyme systems. This information must be obtained through further testing. In addition, EPA found that hydroxylamine, a possible metabolite of MEKO, and hydroxylamine hydrochloride, a structurally related chemical, are mutagenic in a variety of test systems (Refs. 6 and 7). Therefore, MEKO may also be mutagenic. Allied noted that hydroxylamine is active in vitro but not in vivo. Further, hydroxylamine, a product of normal cell metabolism, is endogenously present in humans where it apparently does not have mutagenic effect.

EPA believes in vitro studies indicate that hydroxylamine is intrinsically

mutagenic, and are sufficient to raise concern for MEKO. Further study is needed to determine the mutagenic risk of MEKO itself.

Allied requests that in vitro cytogenetics, sister chromatid exchange, and Ames *Salmonella* studies of MEKO being conducted by NTP be evaluated before conducting mutagenicity studies of MEKO.

EPA's tiered testing system for both gene mutations and chromosomal aberrations is explained in detail in the final test rules for C9 aromatic hydrocarbon fraction (40 CFR 799.2175; 50 FR 20662; May 17, 1985), and diethylenetriamine (40 CFR 799.1575; 50 FR 21398; May 23, 1985).

NTP has indicated that the in vitro cytogenetics and the in vitro sister chromatid exchange studies conducted by NTP are negative (Ref. 31). EPA has not reviewed the studies but will do so when they are available. However, regardless of the results of NTP's testing, both the sex-relinked recessive lethal assay in *Drosophila* and an in vivo mammalian bone marrow cytogenetics test are required to confirm the negative.

D. Developmental and Reproductive Toxicity

Allied proposed that a protocol combining developmental toxicity, neurotoxicity, and reproductive toxicity be devised.

EPA believes that a combined protocol testing for neurotoxicity, developmental toxicity, and reproductive toxicity will compromise the results of these studies. Developmental and reproductive tests require different exposure periods and different dose levels. Neurotoxicity tests also require longer exposure times than the developmental test (Ref. 24, 25, and 40). Theoretically, the neurotoxicity and reproductive studies could be combined. However, at this time, the commenter failed to establish that it can be done successfully.

Allied disagrees with EPA's interpretation of data used to support the need for reproductive toxicity testing of MEKO.

Although EPA believes data from the 13-week subchronic toxicity study (Ref. 30) are inadequate to prove that MEKO causes hypospermatogenesis, these data strongly suggest that MEKO may cause adverse effects on male reproductive organs (Ref. 25).

Allied questions EPA's use of Ramaija's study with hydroxylamine (Ref. 31) to support the need for reproductive toxicity testing, and especially the use of spermatogenesis staging studies.

Although the Ramaija data do not prove conclusively that hydroxylamine is a reproductive toxicant, EPA believes the data suggest that hydroxylamine has adverse effects on spermatogenesis and embryonic viability. These study results support concern for the potential reproductive toxicity of hydroxylamine, and hence of MEKO. We also believe that if reproductive toxicity testing is to be conducted, it would be prudent to include the "histopathology of the tests with staging of the sperm" as outlined in the proposed rule. We do not concur with Allied that staging of sperm is only appropriate for compounds that are metabolized slowly. The purpose of the staging study is to determine if a particular stage of sperm development is uniquely sensitive to the toxic effects of a compound. For this purpose quantitation is not necessary. Since spermatogenesis is a continual process, and not a cyclic process, all stages of sperm development will be present and exposed to a compound even if the compound is metabolized and eliminated rapidly. Although the data from the study by Ramaija are of limited value because of the high doses used, they do not provide suggestive evidence that specific stages of sperm development may be more sensitive to the effects of hydroxylamine than other stages.

Allied questions EPA's use of the available information on hydroxylamine as support for developmental toxicity testing of MEKO.

EPA considers none of the studies available on the developmental toxicity of hydroxylamine to be adequate for risk assessment. However, these data are considered sufficient to raise concern for the developmental toxicity potential of hydroxylamine. Since hydroxylamine is a possible metabolite of MEKO, EPA believes MEKO may also be developmentally toxic.

Allied considered the results of two developmental toxicity tests (Ref. 16) to be contradictory and thus insufficient to support developmental toxicity testing.

EPA disagrees (Ref. 25). Both studies demonstrated increased frequencies of skeletal anomalies and grossly malformed fetuses. Because MEKO is structurally related to the chemicals from these studies, MEKO may cause similar effects.

E. Neurotoxicity

Allied and Huls believe that existing data for MEKO indicate it is unlikely that MEKO will cause neurotoxic effects.

As a matter of testing policy, the substantial production, the substantial potential exposure to MEKO, and the lack of adequate neurotoxicity data justify definitive testing under TSCA. The available data are limited (Refs. 1, 16 and 24). There is no evidence that other than gross cage side observations were conducted in any of the existing studies, and EPA believes data from these studies is inadequate for evaluating the potential for neurotoxic effects from MEKO.

If neurotoxicity testing is to be conducted, Huls recommends that satellite groups be added to the subchronic probe study for the oncogenicity test to conserve animals.

As prescribed in 40 CFR 798.6400, the neurotoxicity tests may be combined with any other toxicity test as long as one of the requirements of either are violated by the combination.

Huls commented that, only if pathologic evidence from examination of a variety of neurologic tisses provides reason for concern, should the additional proposed neurotoxicity testing be required.

No data were provided by the commenters to support their contention that a persistent nervous system effect must have a basis in observable pathology. EPA does not agree that only those chemicals that test positive for neuropathological effects warrant testing for functional or behavioral type effects. The National Academy of Sciences also supports the consideration of both behavior and pathology in evaluation of neurotoxic effects (Refs. 43, 44, 45).

Allied believes that EPA has not considered the availability of contract laboratories to conduct the neurotoxicity studies.

EPA has determined that laboratories are available to complete the neurotoxicity testing requirements for the MEKO final rule (Ref. 38).

F. Pharmacokinetics

Allied believes that the pharmacokinetics test guideline has not undergone full scientific and technical evaluation and comment.

Because numerous comments were received on the generic pharmacokinetics guideline published in the MEKO proposed rule (53 FR 35838; September 15, 1988), EPA has decided to reevaluate the pharmacokinetics test standard and reporting requirements for MEKO. EPA plans to promulgate the pharmacokinetics test standard and related reporting requirements for MEKO in a separate rule.

G. Exposure

Allied contends that MEKO has insufficient exposure potential to pose unreasonable risk of injury since workplace exposure is controlled during manufacture, and consumer and occupational exposure to MEKO from paint is low. In support of this claim, Allied submitted the results of an exposure study (Ref. 21).

EPA has reviewed this study (Ref. 20) and has found that the methodology used by Allied in developing exposure estimates was similar to the methodology used by EPA. Furthermore, the MEKO exposure levels and number of people exposed agree with or exceed those previously estimated by EPA. EPA has found that individual exposure estimates can vary a great deal with small changes in the assumptions used for the calculations. Exposure to MEKO is a range of values depending upon factors like ventilation, application method, duration, amount of paint used, and others. Moreover, as risk is a function of toxicity and exposure, levels of exposure have no meaning for determining risk until testing is conducted to determine the toxicity of a chemical. EPA believes the potential exposure to MEKO both with regard to the large numbers of individuals exposed and the duration and levels to which they are exposed are sufficient to support the TSCA section 4 (a)(1) (A) and (B) findings.

H. Economic Impact

Allied believes that the cost of testing will force Allied to abandon its production of MEKO. They state that price competition for Meko is keen, and foreign suppliers respond aggressively to opportunities to gain market share.

EPA believes that even though the annualized costs of testing may appear high relative to the product price, other factors indicate that the potential for economic impact is moderate. Because there are no cost-effective substitutes for MEKO, the price of MEKO can be increased to cover the cost of testing. In addition, because small quantities are used in paints, the increased cost of MEKO would have little effect on retail paint prices. EPA believes the market for alkyd resin paints is relatively stable, and alkyd resin paint manufacturers will continue to use MEKO in their formulations. In addition, EPA believes the market structure of MEKO may change, but the market will support testing for MEKO, and MEKO will continue to be available to domestic users.

EPA cost reimbursement procedures subject all manufacturers and importers, under the rule, to the same requirements for cost reimbursement. EPA has not received adequate information for evaluating the cost structure of foreign suppliers or of Allied. Foreign suppliers could use subsidies, as Allied has claimed, to increase market share. But, EPA believes subsidies could be used independent of a test rule for MEKO.

Allied believes the anti-skinning agent market will be eliminated in 5 years and that a 5-year amortization period will more than double EPA's estimated annual burden.

EPA notes there is some indication of a possible decline in the demand for alkyd resin paints, but does not believe that the anti-skinning market will be eliminated in 5 years. Nonetheless, EPA used Allied's estimate of a 5-year amortization period as a worst case scenario. The increase does not appropach the price of the substitutes for MEKO. No data have been provided to EPA to justify use of a 5-year amortization period.

Allied claims key economic determinants of competition profitability, and historical price competition were neglected in EPA's economic analysis.

EPA requested information on cost structure, profitability, and historical price competition (Ref. 26). Additional information provided to EPA was inadequate to change EPA's analysis of economic impact. However, EPA acknowledges that Allied may leave the MEKO market.

Allied believes the total cost of testing will be $2.3 million.

EPA estimates that testing will cost between $1.4 and $1.9 million. Allied has not substantiated its claim for higher costs; and, without further information, EPA cannot justify using higher cost estimates. Nonetheless, using Allied's cost figures does not significantly change the economic viability of MEKO and does not change the conclusion of the economic analysis.

III. Final Test Rule for MEKO

A. Findings

Although findings under either section 4(a)(1) (A) or (B) may independently support testing, EPA is basing its oncogenicity, mutagenicity, developmental toxicity, reproductive toxicity, neurotoxicity, and pharmacokinetics testing for MEKO on the authority of section 4(a)(1) (A) and (B) of TSCA.

Under section 4(a)(1)(B)(i) of TSCA, EPA finds that MEKO is produced in substantial quantities and there may be substantial human exposure to MEKO during its manufacture, processing, and use.

Although the total annual production of MEKO is confidential business information (CBI), public information indicates the total imports and domestic annual production are in excess of 5 million pounds per year (Ref. 2). Over two million consumers may be exposed to MEKO through use of oil-based paints. In addition, consumers may be exposed to MEKO through use of household cleaning products and adhesives, caulking, and repair products (Refs. 3, 4, and 9). An estimated 900,000 professional painters may be routinely exposed to MEKO through use of oil-based paints (Ref. 14), and an estimated 12,000 workers in 1,500 plants may be exposed through manufacture and processing of MEKO (Refs. 10 and 11). EPA finds that this production volume and potential exposure to large numbers of consumers and workers constitutes sufficient basis for making a finding under section 4(a)(1)(B)(i) of TSCA.

Under section 4(a)(1)(A)(i), EPA finds that the manufacture, processing, and use of MEKO may present an unreasonable risk of injury to human health due to its potential to cause oncogenic, mutagenic, reproductive, developmental, and subchronic effects. The finding for potential oncogenic risk is based upon data which indicate that acetoxime, a structural analogue of MEKO, caused benign and carcinogenic hepatocellular tumors in mice (Refs. 5 and 6). In addition, MEKO is positive in the mouse lymphoma gene mutation test (Ref. 28) which also raises concern that MEKO may be oncogenic.

The finding for potential mutagenic risk is based on data indicating that MEKO caused gene mutations in a mouse lymphoma test (Ref. 28). In addition, data on hydroxylamine, a possible metabolite of MEKO, indicates hydroxylamine is mutagenic in various systems (Refs. 6 and 7). Because there is concern for potential mutagenicity from hydroxylamine, there is concern for potential mutagenci risk from MEKO.

The finding for potential reproductive risk is based on adverse effects on the tests of rats from a 90-day exposure to MEKO (Ref. 6). In addition, hydroxylamine, a possible metabolite of MEKO, appears to adversely affect spermatogenesis, mammary gland development, prolactin levels, estrous cycle, and development of Graafian follicles (Refs. 5, 6, 30, 31, and 37). These results suggest potential reproductive risk from MEKO.

The finding for potential developmental risk is based on data from tests on MEK, a possible metabolite of MEKO, which indicate that MEK causes skeletal and soft tissue abnormalities in rats at 1,000 ppm and soft tissue abnormalities in rats at 3,000 ppm (Ref. 13). In addition, data on

hydroxylamine (Refs, 5, 6, 30, 32, 37, and 39), another possible metabolite of MEKO, suggest that hydroxylamine is developmentally toxic. These studies on the metabolites of MEKO suggest that MEKO may also potentially cause developmental effects.

The finding for potential blood effects risk is based on data from a 90-day oral toxicity study of MEKO (Ref. 30) which suggest that MEKO induces hemolytic anemia in the rat with compensatory erythropoiesis as described in unit II.E.3. of the proposed rule (53 FR 35838; September 15, 1988), and supports concern for the risk of blood effects from MEKO.

Although the available data on blood effects are adequate for risk assessment, it may be in the interest of those subject to this rule to further assess blood effects. The 90-day subchronic study (Ref. 30) does not provide a no-observed-adverse-effect level (NOAEL) for blood effects for MEKO. Uncertainty factors would be added to the lowest-observed-adverse-effect level (LOAEL) to establish acceptable levels of exposure. Testing to determine the NOAEL for blood effects associated with subchronic and chronic exposure would reduce the uncertainty in evaluating these effects.

The NOAEL for blood effects could be established in the subchronic range-finding studies for the MEKO oncogenicity test. These data should be developed according to the test guidelines at 40 CFR 798.2650, modified to direct specific attention towards the hematology profile. Hematology determinations (hematocrit, hemoglobin concentrations, erythrocyte count, total and differential leukocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count, and certain clinical biochemistry determinations on blood) could be made on all groups, including controls, at day 30 and at day 90 of the test period for the rat. A chronic NOAEL for blood effects could be obtained by modifying the oncogenicity study to include hematology and blood biochemistry. This could be accomplished by modifying the oncogenicity test guideline at 40 CFR 798.3300 to include hematology determinations and certain clinical biochemistry determinations on blood for rats, in accordance with 40 CFR 798.3320, the combined chronic toxicity/oncogenicity test guideline. Satellite groups of rats may be necessary to avoid stress to the test animals from blood sampling and to provide sufficient animals for adequate blood collections.

The findings for the potential health effects as listed above along with the exposure cited above (Refs. 2, 3, 4, 9, 10, 11, and 14) are sufficient to support EPA's finding that the manufacturing, processing, and use of MEKO may present an unreasonable risk of injury to human health.

Under section 4(a)(1) (A)(ii) and (B)(ii), EPA finds that there are insufficient data and experience from which the potential oncogenicity, mutagenicity, reproductive toxicity, developmental toxicity, and neurotoxicity from manufacturing, processing, and use of MEKO can reasonably be determined or predicted.

Under section 4(a)(1) (A)(iii) and (B)(iii), EPA finds that testing of MEKO is necessary to develop such data for oncogenicity, mutagenicity, reproductive toxicity, developmental toxicity, and neurotoxicity. EPA believes the data resulting from this testing will be relevant to a determination as to whether manufacturing, processing, and use of MEKO does or does not present an unreasonable risk of injury to human health.

Because of the concerns for oncogenicity, mutagenicity, blood effects, reproductive toxicity, and developmental toxicity for the described exposures to MEKO, EPA finds that pharmacokinetics testing is necessary. Pharmacokinetics data will be used for making extrapolations of toxicologic data from species to species, from route to route of administration, and from high to low doses. Pharmacokinetics data will be used to detect differences between sexes relative to the metabolic processes of absorption, tissue distribution, biotransformation and excretion. In addition, these data will show if metabolic processes are modified by different routes of administration or by repeated dosing.

B. Required Testing and Test Standards

On the basis of the findings presented in Unit III.A. of this preamable, EPA is requiring that health effects testing be conducted for MEKO. The tests shall be conducted in accordance with EPA's TSCA Good Laboratory Practice Standards in 40 CFR part 792 and in accordance with specific test standards based on the guidelines set forth in 40 CFR part 798, or other published test methods as specified in this test rule and enumerated in the following Table.

REQUIRED TESTING, TEST STANDARDS AND REPORTING REQUIREMENTS FOR MEKO

Test	Test standard (40 CFR citation)	Reporting deadline for final report [1]	Number of interim (6 month) reports required
Health Effects:			
Oncogenicity, oral/inhalation	§ 798.3300	53	8
Developmental toxicity, oral	§ 798.4900	15	2
Reproductive toxicity, oral	§ 798.4700	29	4
Sex-linked recessive lethal assay in *Drosophila*	§ 798.5275	18	2
In vivo mammalian bone marrow cytogenetics tests:			
Chromosomal analysis, oral/inhalation	§ 798.5385	14/17	2
or			
Micronucleus assay, oral/inhalation	§ 798.5395	18/17	2
Functional observational battery: Acute and subchronic, oral/inhalation	§ 798.6050	18/21	2
Motor activity test: Acute and subchronic, oral/inhalation	§ 798.6200	18/21	2
Neuropathology: Subchronic oral/inhalation	§ 798.6400	18/21	2
Pharmacokinetics [3]	(2)	(2)	

[1] Number of months, beginning with the effective date of this rule. These reporting requirements have been adjusted from those specified in the proposed rule to be consistent with other test rules under section 4 and to allow additional time if inhalation testing is conducted.

[2] Pharmacokinetics test standard and reporting requirements will be promulgated at a later date.

[3] [Reserved].

The health effects tests to be conducted for MEKO are: (1) An oral or inhalation 2-year oncogenicity study, using the guideline at 40 CFR 798.3300; (2) an oral 2-species developmental toxicity study using the guideline at 40 CFR 798.4900; (3) an oral 2-generation reproductive toxicity study using the guideline at 40 CFR 798.4700 and including histopathology of the ovaries, and vaginal cytology for the last 3 weeks prior to mating to monitor the estrus cycle; (4) sex-linked recessive lethal gene mutation assay in *Drosophila* using the guideline at 40 CFR 798.5275, (5) oral or inhalation in vivo mammalian bone marrow cytogenetics test using the guideline for either the chromosomal analysis at 40 CFR 798.5385 or the micronucleus assay at 40 CFR 798.5395; and (6) acute and subchronic (90-day) oral or inhalation neurotoxicity tests, including: a functional observational battery using the guideline at 40 CFR 798.6050, and a motor activity test using the guideline at 40 CFR 798.6200, and subchronic neuropathology using the guideline at 40 CFR 798.6400.

The test guideline for the two-generation reproductive toxicity test (40 CFR 798.4700) in the test standard for MEKO is modified as follows: The integrity of the various cell stages of spermatogenesis shall be determined, with particular attention directed toward achieving optimal quality in the fixation and embedding. Preparations of testicular and associated reproductive organ samples for histology should follow the recommendations of Lamb and Chapin (Ref. 46), or an equivalent procedure. Histopathology of the testes shall be conducted on all P and F_1 adult males at the time of sacrifice, and histological analyses shall include evaluations of the spermatogenic cycle, i.e., the presence and integrity of the 14 cell stages. These evaluations should follow the guidance provided by Clermont and Percy (Ref. 47). Information shall also be provided regarding the nature and level of lesions observed in control animals for comparative purposes.

Data on female cyclicity shall be obtained by performing vaginal smears and cytology in parental (P) and first generation (F_1) females over the last 3 weeks prior to mating. The cell staging technique of Sadleir (Ref. 33), and the vaginal smear method in Hafez (Ref. 34), or equivalent methods should be used. Data shall be provided on whether the animal is cycling and the cycle length.

P and F_1 females shall continue to be exposed to MEKO for at least an additional 2 weeks following weaning of offspring to permit them to begin cycling once again. They shall then be sacrificed and their ovaries shall be serially sectioned with a sufficient number of sections examined to adequately detail oocyte and follicular morphology. The methods of Mattison and Thorgiersson (Ref. 35) and Pederson and Peters (Ref. 36) may provide guidance. The strategy for sectioning and evaluation is left to the discretion of the investigator, but shall be described in detail in the protocol and final report. The nature and background level of lesions in the control tissue shall also be noted. Gross and histopathologic evaluations shall be conducted on the mammary glands in F_1 females and second generation (F_2) pups sacrificed at weaning and in adult (F_1) females at the termination of the study. Any abnormalities shall be described in the final report.

An in vitro mammalian cytogenetics assay, and a sister chromatid exchange test on MEKO were conducted by NTP, which indicates that both of these tests were negative (Ref. 31). NTP is also conducting a gene mutation assay in *Salmonella*. EPA will evaluate this information along with lower-tier mutagenicity data developed through this test rule to determine if the mouse visible specific locus assay, the rodent dominant lethal assay, the rodent heritable translocation assay, or other mutagenic testing is necessary for MEKO. These upper-tier mutagenic tests are not being required at this time. EPA is requiring that the TSCA Health Effects Testing Guidelines referenced in the table, including all modifications made herein, be the test standards for the required tests for MEKO. The TSCA testing guidelines for health effects testing specify generally accepted minimum conditions for determining the health effects for substances such as MEKO to which humans are exposed.

C. Test Substance

EPA is requiring that MEKO of at least 99 percent purity be used as the test substance. MEKO of this purity is commercially available. EPA has specified a relatively pure substance for teting because EPA is interested in evaluating the effects attributable to MEKO itself.

D. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which EPA makes section 4(a) findings (manufacture, processing, distribution in commerce, use, and/or disposal) determine who bears the responsibility for testing a chemical. Manufacturers and persons who intend to manufacture the chemical are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processor and persons who intend to process the chemical are required to test if the findings are based on processing. Manufacturers and processors and persons who intend to manufacture or process the chemical are required to test if exposure giving rise to the potential risk occurs during distribution in commerce, use, or disposal of the chemical.

Because EPA has found that there are insufficient data and experience to reasonably determine or predict the effects of the manufacture, processing, and use of MEKO on human health, EPA is requiring persons who manufacture and/or process, or who intend to manufacture and/or process MEKO, including persons who manufacture or process or intend to manufacture or process MEKO as a byproduct, or who import or intend to import products which contain MEKO, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements contained in this final rule. Persons who manufacture, import, or process MEKO only as an impurity are not subject to these requirements. The end of the reimbursement period shall be at least 5 years after the last final report is submitted, but if it takes longer than 5 years to develop the data, the reimbursement period shall be extended an amount of time equal to that which was required to develop the data.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR part 790.

Processors subject to this rule, unless they are also manufacturers, are not required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. EPA expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or other reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, EPA will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR part 790.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing for MEKO. As noted in Unit IV.B., EPA is interested in evaluating the effects attributable to MEKO itself and has specified a relatively pure substance for testing.

Manufacturers and processors subject to this test rule shall comply with the test rule development and exemption procedures in 40 CFR part 790 for single-phase rulemaking.

E. Reporting Requirements

All data developed under this rule shall be reported in accordance with TSCA Good Laboratory Practice (GLP) Standards which appear in 40 CFR part 792.

In accordance with 40 CFR part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each test.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. EPA's reporting requirements for each of the test standards are specified in the table in Unit III.B. Note that longer reporting periods are provided for inhalation tests to calibrate and set up inhalation chambers. Progress reports for all tests are required at 6-month intervals starting 6 months from the effective date of the final test rule.

TSCA section 14(b) governs EPA disclosure of test data submitted pursuant to section 4 of TSCA. Upon receipt of test data required by this rule, EPA will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the

requirements of section 12(b) are in 40 CFR part 707. In brief, as of the effective date of the final test rule, an exporter of MEKO must report to EPA the first annual export or intended export of MEKO to each country. EPA will notify the foreign country concerning the test rule for the chemical.

F. Enforcement Provisions

EPA considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by TSCA or any rule issued under TSCA. Section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by TSCA section 11. Section 11 applies to any "* * * establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *" EPA considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with the final rule for MEKO. These inspections may be conducted for purposes which include verification that testing has begun, schedules are being met, and reports accurately reflect the underlying raw data, interpretations, and evaluations, and to determine compliance with TSCA GLP Standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under test rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. EPA maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 of TSCA could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision applies primarily to manufacturers who fail to submit a letter of intent or an exemption request and continue manufacturing after the deadlines for such submissions. This provision also applies to processors who fail to submit a letter of intent or an exemption application and continue processing after EPA has notified them of their obligation to submit such documents (see 40 CFR 790.48(b)). Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation, imprisonment for up to 1 year, or both. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator, as well as all the other factors listed in TSCA section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Economic Analysis

To assess the potential economic impact of this rule, EPA has prepared an economic analysis (Ref. 2) that evaluates the potential for significant economic impact on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these tests costs by examining four market characteristics of MEKO: Price sensitivity of demand, industry cost characteristics, industry structure, and market expectations. Since, in the case of MEKO, preliminary analysis indicated some potential for significant economic impact, a more comprehensive and detailed analysis was conducted to more precisely predict the magnitude and distribution of the expected impact.

Total testing costs for MEKO are estimated to range from $1.4 to $1.9 million. To predict the financial decision making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period to finance the testing expenditure in the first year. EPA recognizes that inhalation exposure during toxicity testing is more expensive than oral dosing. However, since exercising this option is voluntary, its cost has not been included in the economic analysis.

The annualized test costs, calculated using a cost of capital of 7 percent over a period of 15 years, range from $150,000 to $205,000. Though the annualized unit costs of the tests relative to the product price of MEKO appear to be high, EPA believes that the potential for adverse economic impact is moderate. This conclusion is based on the following observations: Demand for MEKO appears to be inelastic with respect to price in its largest end use as an antiskinning agent in alkyd paints because of the higher price of substitutes, and the market for MEKO appears to be stable.

Refer to the economic analysis which is contained in the public record for this rulemaking for a complete discussion of test cost estimation and potential for economic impact resulting from these costs (Ref. 2). Some of the information reviewed in the economic analysis is confidential business information and not available for public review. However, consideration of this information does not change the conclusions of the economic analysis.

V. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule. Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing (PB 82–140773), can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 or the docket for this rule. On the basis of this study, EPA believes that there will be available test facilities and personnel to perform the testing specified in this rule.

EPA has recently reviewed the availability of contract laboratory facilities to conduct the neurotoxicity testing requirements (Ref. 38) and believes that facilities will be available for conducting these tests. The laboratory review indicates that few laboratories are currently conducting these tests according to TSCA test guidelines and TSCA GLP Standards. However, the barriers faced by testing laboratories to gear up for these tests are not formidable. Laboratories will need to invest in testing equipment and personnel training, but EPA believes that these investments will be recovered as the neurotoxicity testing program under TSCA section 4 continues. EPA's expectations of laboratory availability were borne out under the testing requirements of the C_9 aromatic hydrocarbon fraction test rule at 40 CFR 799.2175. Pursuant to that rule, the manufacturers were able to contract with a laboratory to conduct the testing according to TSCA test guidelines and TSCA GLP Standards.

VI. Rulemaking Record

EPA has established a record for this rulemaking proceeding (docket number OPTS–42099A). This includes:

A. Supporting Documentation

(1) Federal Register notices pertaining to this rule consisting of:

(a) Notice containing the ITC's recommendation of MEKO to the Priority List (50 FR 41417; Nov. 14, 1986) and comments on MEKO in response to that notice.

(b) Methyl Ethyl Ketoxime; Proposed Test Rule and Proposed Pharmacokinetics Test Guideline (53 FR 35838; September 15, 1988).

(c) Rule requiring TSCA section 8(a) and 8(d) reporting on MEKO (51 FR 41329; Nov. 14, 1986).

(d) TSCA test guidelines cited as test standards for this rule, 40 CFR part 798.

(e) Final rule on Ethyltoluenes, Trimethylbenzenes, and the C_9 Aromatic Hydrocarbon Fraction (50 FR 20662; May 17, 1985).

(f) Final rule on Diethylenetriamine (50 FR 21398, May 23, 1985).

(2) Communications before final rulemaking, consisting of:

(a) Written public comments and letters.

(b) Meeting summaries.

(c) Telephone contact reports.

(3) Reports—published and unpublished factual materials including: Chemical Testing Industry: Profile of Toxicological Testing (October, 1981).

B. References

(1) U.S. Environmental Protection Agency (USEPA). Technical Support in Response to Public Comments: Methyl Ethyl Ketoxime. Syracuse Research Corporation. Contract number 68D80117. Office of Toxic Substances, Washington, DC. (December 12, 1988).

(2) USEPA Economic Impact Analysis of Proposed Test Rule for Methyl Ethyl Ketoxime. Mathtech, Inc. Contract number 68–02–4209. Office of Toxic Substances, Washington, DC. (1989).

(3) USEPA. Consumer Exposure to Methyl Ethyl Ketoxime from Use of Alkyl Paint. Intragency memorandum from P. Kennedy, Exposure Evaluation Division, to B. Carton, Test Rules Development Branch, Office of Toxic Substances, Washington, DC. (September 30, 1987).

(4) USEPA. National Household Survey of Interior Painters. Westat, Inc. Office of Toxic Substances. Exposure Evaluation Division. Washington, DC. (July 1987).

(5) USEPA. Validation of Toxicity Studies on MEKO and Policy Paper on Acetoxime. Intra-agency memorandum from P. Fenner-Crisp, Health and Environmental Review Division, to G. Timm, Test Rules Development Branch, Office of Toxic Substances. (September 24, 1987).

(6) USEPA. Chemical Hazard Information Profile, Hydroxylamine. Prepared by Science Applications, Inc., Oak Ridge TN, for the Office of Toxic Substances. Washington, DC. (September 11, 1984).

(7) USEPA. Review of Genotoxicity Sections of CHIP on Hydroxylamine. Intra-agency memorandum from Michael C. Cimino, Health and Environmental Review Division, to William Thompson, Health and Environmental Review Division. Office of Toxic Substances, Washington, DC. (April 7, 1986).

(8) USEPA. Basis for Conclusion that Acetoxime and Methyl Ethyl Ketoxime are Possible Human Carcinogens. Intra-agency memorandum from Don Clay, Director, Office of Toxic Substances, to John A. Moore, Assistant Administrator for Pesticides and Toxic Substances, Washington, DC. (January 29, 1985).

(9) U.S. Consumer Product Safety Commission. CHIP Data Request, Interagency memorandum from E.W. Leland, to M. Wind, through W.R. Hobby, Washington, DC (October 11, 1985).

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(13) National Toxicology Program. Yang, R.S.H. "The toxicology of methyl ethyl ketone." "Residence Reviews", Volume 97. Springer-Verlag, New York Inc. P.O. Box 12233, Research Triangle Park, NC 27709 (1986).

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(15) ICI Americas, Inc., Central Toxicology Laboratory. Letter from P.L. Patten to D. Farrar Re: Methyl Ethyl Ketoxime Proposed Pharmacokinetic Test Guideline, Wilmington, DE (November 18, 1988).

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(17) Huls America, Inc. Document Control Number OPTS–42099 Proposed Test Rule for Methyl Ethyl Ketoxime, Letter from John Hodgson, Huls America, Inc., to USEPA, Washington, DC (November 14, 1988).

(18) USEPA. Transcript of Proceedings in the Matter of: Request to Present Oral Comments on MEKO. Heritage Reporting Corporation, Official Reporters, 1220 L St. NW, Washington, DC (December 15, 1988).

(19) National Toxicology Program. Maronpot, R.R. "Liver lesions in B6C3F1 Mice, Experience and Position." Research Triangle Park, NC (1987).

(20) USEPA. Arthur D. Little Report on MEKO Exposure. Intra-agency memorandum from P. Kennedy, Exposure Evaluation Division, to R. Jones, Test Rules Development Branch, Office of Toxic Substances, Washington, DC (January 30, 1989).

(21) Allied Signal, Inc. Exposure Evaluation for Methyl Ethyl Ketoxime in Paint Manufacture and Application. Report prepared by Arthur D. Little Inc., Morristown, NJ (January 16, 1989).

(22) Cosan Chemical Corp. Comments on methyl ethyl ketoxime; proposed rule. Washington, DC (November 11, 1988).

(23) Allied Signal inc. Economic Matters Associated With Allied's Production and Sales of MEKO, Letter from P. Milley, Allied Signal Inc. to E. Coe, Regulatory Impacts Branch, Office of Toxic Substances, Washington, DC (January 9, 1989).

(24) Syracuse Research Inc. Technical Support in Response to Public Comments: Methyl Ethyl Ketoxime, Contract No. 68D80117, Task B–04, Office of Toxic Substances, Washington, DC (1989).

(25) USEPA. Response to Public Comments on Developmental and Reproductive Toxicity of MEKO, Intra-agency memorandum, from M. Campbell, Health and Environmental Review Division to R. Jones, Test Rules Development Branch, Office of Toxic Substances, Washington, DC (1989).

(26) USEPA. Request for Economics Information to Update EPA's Economic Analysis for MEKO, Letter from E. Coe, Regulatory Impacts Branch, to P. Milley, Allied Signal Inc., Morristown, NJ (December 20, 1988).

(27) National Cancer Institute (NCI). Mouse Lymphoma genesis Assay with No. 83890 (ML–NCI No. 160) Report prepared by Microbiological Associates under contract No. NO1–CP–41004, Silver Spring, MD (December 11, 1985).

(28) Allied Signal, Inc. Methyl Ethyl Ketoxime (MEKO), Letter from J.B. Charm, Corporate Product Safety, Allied Corporation, Morristown, NJ to R. Jones, USEPA, Washington, DC (March 5, 1984).

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(41) *Chemical Manufacturers Association* v. *USEPA*. 859 F.2d 977, (D.C. Cir. 1988).

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Confidential business information (CBI), while part of the record is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. G–004, NE Mall, 401 M Street SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in costs or prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprise to compete with foreign enterprises.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*., Pub. L. 96–511, December 11, 1980), and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to total 12,534 hours and to average 1,253 hours per test, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments or information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: August 28, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, and 2625.

2. By adding new § 799.2700, to read as follows:

§ 799.2700 Methyl ethyl ketoxime.

(a) *Identification of test substance.* (1) Methyl ethyl ketoxime (MEKO, CAS No. 96–29–7) shall be tested in accordance with this section.

(2) MEKO of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import) or process or intend to manufacture or process MEKO, including persons who manufacture or process or intend to manufacture or process MEKO as a byproduct, or who import or intend to import products which contain MEKO, after the date specified in paragraph (e) of this section to the end of the reimbursement period, shall submit letters of intent to conduct testing, submit study plans, conduct tests and submit data, or submit exemption applications, as specified in this section, subpart A of this part, and parts 790 and 792 of this chapter for single-phase rulemaking. Persons who manufacture, import, or process MEKO only as an impurity are not subject to these requirements.

(c) *Health effects testing*—(1) *Pharmacokinetics testing*—(i) *Required testing.* Pharmacokinetics testing shall be conducted with MEKO in accordance with paragraph (c)(1)(ii) of this section.

(ii) [Reserved.]

(2) *Oncogenicity*—(i) *Required testing.* Oncogenicity testing shall be conducted in accordance with § 798.3300 of this chapter.

(ii) *Route of administration.* MEKO shall be administered either orally or by inhalation.

(iii) *Reporting requirements.* (A) Oncogenicity testing shall be completed and a final report submitted to EPA within 53 months of the date specified in paragraph (e) of this section.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after the date specified in paragraph (e) of this section, until submission of the final report to EPA.

(3) *Developmental toxicity*—(i) *Required testing.* Developmental toxicity testing shall be conducted in a rodent and a nonrodent mammalian species in accordance with § 798.4900 of this chapter.

(ii) *Route of administration.* MEKO shall be administered orally.

(iii) *Reporting requirements.* (A) Developmental toxicity testing shall be completed and a final report submitted to EPA within 15 months of the date specified in paragraph (e) of this section.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after the date specified in paragraph (e) of this section.

(4) *Reproductive toxicity*—(i) *Required testing.* (A) Reproductive toxicity testing shall be conducted orally in accordance with § 798.4700 of this chapter except for the provisions in paragraphs (c) (8)(iii) and (9)(i) of § 798.4700.

(B) For the purpose of this section, the following provisions also apply:

(*1*) The following organs and tissues, or representative samples thereof, shall be preserved in a suitable medium for possible future histopathological examination: Vagina, uterus, oviducts, ovaries, testes, epididymides, vas deferens, seminal vesicles, prostate, pituitary gland, and, target organ(s) of all P and F_1 animals selected for mating.

(*2*)(*i*) Full histopathology shall be conducted on the organs and tissues listed in paragraph (c)(4)(i)(B)(*1*) of this section for all high dose and control P and F_1 animals selected for mating.

(*ii*) The integrity of the various cell stages of spermatogenesis shall be determined, with particular attention directed toward achieving optimal quality in the fixation and embedding. Preparations of testicular and associated reproductive organ samples for histology should follow the recommendations of Lamb and Chapin (1985) under paragraph (d)(1) of this section, or an equivalent procedure. Histopathology of the testes shall be conducted on all P and F_1 adult males at the time of sacrifice, and histological analyses shall include evaluations of the spermatogenic cycle, i.e., the presence and integrity of the 14 cell stages. These evaluations should follow the guidance provided by Clermont and Percy (1957) under paragraph (d)(2) of this section. Information shall also be provided regarding the nature and level of lesions observed in control animals for comparative purposes.

(*iii*) Data on female cyclicity shall be obtained by conducting vaginal cytology in P and F_1 females over the last 3 weeks prior to mating; the cell staging technique of Sadleir (1978) and the vaginal smear method in Hafez (1978) under paragraphs (d)(3) and (d)(7) of this section, respectively, or equivalent methods should be used. Data shall be provided on whether the animal is cycling and the cycle length.

(*iv*) P and F_1 females shall continue to be exposed to MEKO for at least an additional 2 weeks following weaning of offspring to permit them to begin cycling once again. They shall then be sacrificed and their ovaries shall be serially sectioned with a sufficient number of sections examined to adequately detail oocyte and follicular morphology. The methods of Mattison and Thorgiersson (1979) and Pederson and Peters (1968) under paragraphs (d) (4) and (5) of this section, respectively, may provide guidance. The strategy for sectioning and evaluation is left to the discretion of the investigators, but shall be described in detail in the study plan and final report. The nature and background level of lesions in control tissue shall also be noted.

(*v*) Gross and histopathologic evaluations shall be conducted on the mammary glands in F_1 females and F_2 pups sacrificed at weaning and in adult F_1 females at the termination of the study. Any abnormalities shall be described in the final report.

(ii) *Reporting requirements.* (A) Reproductive toxicity testing shall be completed and a final report submitted to EPA within 29 months of the date specified in paragraph (e) of this section.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals, beginning six months after the date specified in paragraph (e) of this section until submission of the final report to EPA.

(5) *Mutagenic effects—gene mutations*—(i) *Required testing.* The sex-linked recessive lethal assay in *Drosophila* shall be conducted with MEKO in accordance with § 798.5275 of this chapter.

(ii) *Reporting requirements.* (A) The sex-linked recessive lethal assay in *Drosophila* shall be completed and a final report submitted to EPA within 16 months of the date specified in paragraph (e) of this section.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals beginning 6 months after the date specified in paragraph (e) of this section.

(6) *Mutagenic effects—chromosomal aberrations*—(i) *Required testing.* (A) An in vivo mammalian bone marrow cytogenetics test shall be conducted with MEKO in accordance with either § 798.5385 (chromosomal analysis) of this chapter, or § 798.5395 (micronucleus assay) of this chapter except for the provisions in paragraphs (d)(5) (ii), (iii), and (iv) of §§ 798.5385 and 798.5395.

(B) For the purpose of this section, the following provisions also apply if § 798.5385 of this chapter is used in conducting the test:

(*1*) *Dose levels and duration of exposure.* At least three dose levels shall be tested. The highest dose tested shall be the maximum tolerated dose or that dose producing some signs of cytotoxicity (e.g., partial inhibition of mitosis) or shall be the highest dose attainable. Under oral administration, animals shall be exposed once per day for 5 consecutive days. Under administration by inhalation, animals shall be exposed 6 hours per day for 5 consecutive days.

(*2*) *Route of administration.* Animals shall be exposed to MEKO either orally or by inhalation.

(C) For the purpose of this section, the following provisions also apply if § 798.5395 of this chapter is used in conducting the test:

(*1*) *Dose levels and duration of exposure.* At least three-dose levels shall be tested. The highest dose tested shall be the maximum tolerated dose or that dose producing some signs of cytotoxicity (e.g., a change in the ratio of polychromatic to normochromatic erythrocytes) or shall be the highest dose attainable. Under oral administration animals shall be exposed once per day for 5 consecutive days. Under administration by inhalation, animals shall be exposed 6 hours per day for 5 consecutive days.

(*2*) *Route of administration.* Animals shall be exposed to MEKO either orally or by inhalation.

(ii) *Reporting requirements.* (A) The oral in vivo mammalian cytogenetics test shall be completed and a final report submitted to EPA within 14 months of the date specified in paragraph (e) of this section. The inhalation in vivo mammalian cytogenetics test shall be completed and a final report submitted to EPA within 17 months of the date specified in paragraph (e) of this section.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after the date specified in paragraph (e) of this section.

(7) *Neurotoxicity*—(i) *Required testing*—(A) *Functional observational battery.* (*1*) A functional observational battery shall be conducted with MEKO in accordance with § 798.6050 of this chapter except for the provisions in paragraphs (d) (4)(ii), (5), and (6) of § 798.6050.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of exposure.* Animals shall be exposed either orally or by inhalation.

(*ii*) *Lower doses.* The data from the lower doses shall show either graded dose-dependent effects in at least two of all the doses tested, including the highest dose, or no neurotoxic (behavioral) effects at any dose tested.

(*iii*) *Duration and frequency of exposure.* For the oral acute testing, animals shall be exposed once. For the oral subchronic testing, animals shall be exposed once per day 5 days per week for a 90-day period. For the inhalation acute testing, animals shall be exposed for 6 hours for 1 day. For the inhalation subchronic testing, animals shall be exposed 6 hours per day 5 days per week for a 90-day period.

(B) *Motor activity.* (*1*) A motor activity test shall be conducted with MEKO in accordance with § 798.6200 of this chapter except for provisions in paragraphs (d) (4)(ii), (5), and (6) of § 798.6200.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of exposure.* Animals shall be exposed either orally or by inhalation.

(*ii*) *Lower doses.* The data from the lower doses shall show either graded dose-dependent effects in at least two of all the doses tested including the highest dose, or no neurotoxic (behavioral) effects at any dose tested.

(*iii*) *Duration and frequency of exposure.* For the acute oral testing, animals shall be exposed once. For the oral subchronic testing, animals shall be exposed once per day 5 days per week for a 90-day period. For the acute inhalation testing, animals shall be exposed for 6 hours for 1 day. For the inhalation subchronic testing, the animals shall be exposed for 6 hours per day 5 days per week for a 90-day period.

(C) *Neuropathology.* (*1*) A neuropathology test shall be conducted with MEKO in accordance with § 798.6400 of this chapter except for the provisions in paragraphs (d) (4)(ii), (5), (6), and (8)(iv)(C) of § 798.6400.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of exposure.* Animals shall be exposed either orally or by inhalation.

(*ii*) *Lower doses.* The data from the lower doses shall show either graded dose-dependent effects in at least two of all the doses tested including the highest dose, or no neurotoxic (behavioral) effects at any dose tested.

(*iii*) *Duration and frequency of exposure.* Animals shall be exposed orally once per day 5 days per week for a 90-day period; or if exposed by inhalation, for 6 hours per day 5 days per week for a 90-day period.

(*iv*) *Clearing and embedding.* After dehydration, tissue specimens shall be cleared with xylene and embedded in paraffin or paraplast except for the sural nerve which should be embedded in plastic. Multiple tissue specimens (e.g., brain, cord, ganglia) may be embedded together in one single block for sectioning. All tissue blocks shall be labeled to provide unequivocal identification. A suggested method for plastic embedding is described by Spencer et al. in paragraph (d)(6) of this section.

(ii) *Reporting requirements.* (A) The neurotoxicity tests required under this paragraph (c)(7) and administered orally shall be completed and the final results submitted to EPA within 18 months of the date specified in paragraph (e) of this section. The neurotoxicity tests required under this paragraph (c)(7) and administered by inhalation shall be completed and the final results submitted to EPA within 21 months of the date specified in paragraph (e) of this section.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals beginning 6 months after the date specified in paragraph (e) of this section until submission of the final report to EPA.

(d) *References*. For additional background information, the following references should be consulted.

(1) Lamb, J. and Chapin, R.E. "Experimental models of male reproductive toxicology." In: "Endocrine Toxicity." Thomas, J.A., Korach, K.S., and McLachlan, J.A., eds. New York, NY: Raven Press. pp. 85–115. (1985).

(2) Clermont, Y. and Percey, B. "Quantitative study of the cell population of the seminiferous tubules in immature rats." "American Journal of Anatomy." 100:241–267. (1957).

(3) Sadleir, R.M.F.S. "Cycles and seasons." In: "Reproduction in Mammals: I. Germ Cells and Fertilization." Austin, R. and Short R.V., eds. New York, NY: Cambridge Press. Chapter 4. (1978).

(4) Mattison, D.R. and Thorgiersson, S.S. "Ovarian aryl hydrocarbon hydroxylase activity and primordial oocyte toxicity of polycyclic aromatic hydrocarbons in mice." "Cancer Research." 39:3471–3475. (1979).

(5) Pederson, T. and Peters, H. "Proposal for classification of oocytes and follicles in the mouse ovary." "Journal of Reproduction and Fertility." 17:555–557. (1968).

(6) Spencer, P.S., Bischoff, M., and Schaumburg, H.H. "Neuropathological methods for the detection of neurotoxic disease." In: "Experimental and Clinical Neurotoxicology." Spencer, P.S. and Schaumburg, H.H., eds. Baltimore, MD: Williams and Wilkins, pp. 743–757 (1980).

(7) Hafez, E.S., ed., "Reproduction and Breeding Techniques for Laboratory Animals." Chapter 10. Philadelphia: Lea and Febiger. (1970).

(e) *Effective dates*. (1) The effective date of this final rule is October 27, 1989.

(2) The guidelines and other test methods cited in this section are referenced here as they exist on October 27, 1989.

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 2070-0033).

[FR Doc. 89–21497 Filed 9–12–89; 8:45 am]

BILLING CODE 5560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–4

[FTR Amendment 1]

Federal Travel Regulation

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation to increase the mileage reimbursement rate from 22.5 cents to 24 cents per mile for use of privately owned automobiles when authorized as advantageous to the Government. This FTR amendment reflects the results of the General Services Administration's (GSA's) report to Congress on the investigation of the cost of operating privately owned automobiles.

EFFECTIVE DATE: This final rule is effective for travel performed on or after September 17, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond F. Price, Jr., Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557–1253 or commercial (703) 557–1253.

SUPPLEMENTARY INFORMATION: The Travel Expense Amendments Act of 1975 (Pub. L. 94–22, May 19, 1975) authorizes the Administrator of General Services to issue regulations prescribing, within statutory limits, mileage allowance rates. GSA is required by law to periodically investigate the cost of operating privately owned vehicles (automobiles, airplanes, and motorcycles) to employees while on official travel and report the results of these investigations to the Congress. GSA reported the results of the December 1988 investigation of the cost of operating privately owned automobiles to the Congress indicating that the governing regulation would be revised to reflect an increase in the mileage allowance for use of privately owned automobiles. Necessary adjustments are reflected in this amendment to the FTR.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 301–4

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 301–4 is amended as follows:

PART 301–4—REIMBURSEMENT FOR USE OF PRIVATELY OWNED CONVEYANCES

1. The authority citation for part 301–4 continues to read as follows:

AUTHORITY: 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 301–4.2 is amended by revising paragraphs (a)(2), (d)(1), and (d)(2) to read as follows:

§ 301–4.2 When use of a privately owned conveyance is advantageous to the Government.

(a) * * *

(2) For use of a privately owned automobile: 24 cents per mile.

* * * * *

(d) * * *

(1) *Round trip instead of taxicab to carrier terminals*. Instead of using a taxicab under § 301–2.3(c), payment on a mileage basis at the rate of 24 cents per mile and other allowable costs as set forth in § 301–4.1(c) shall be allowed for the round-trip mileage of a privately owned automobile used by an employee going from either the employee's home or place of business to a terminal or from a terminal to either the employee's home or place of business. However, the amount of reimbursement for the round trip shall not in either instance exceed the taxicab fare, including tip, allowable under § 301–2.3(c) for a one-way trip between the applicable points.

(2) *Round trip instead of taxicab between residence and office on day of travel*. Instead of using a taxicab under § 301–2.3(d) (in connection with official travel requiring at least one night's lodging), payment on a mileage basis at the rate of 24 cents per mile and other allowable costs as set forth in § 301–4.1(c) shall be allowed for round-trip mileage of a privately owned automobile used by an employee going from the employee's residence to the employee's place of business or returning from place of business to residence on a day travel is performed. However, the amount of reimbursement for the round trip shall not exceed the taxicab fare, including tip, allowable

under § 301–2.3(d) for a one-way trip between the points involved.

* * * * *

Dated: August 24, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–21478 Filed 9–12–89; 8:45 am]

BILLING CODE 6820-34-M

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41 CFR Parts 302–6 and 302–12

[FTR Amendment 2]

Federal Travel Regulation

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: Because of a change in the law, this final rule amends the Federal Travel Regulation to authorize, under certain conditions, reimbursement of allowable residence transaction expenses for employees transferred from an official station in a foreign area to a different nonforeign area official station than the one from which the employee was transferred when assigned to the foreign post of duty.

EFFECTIVE DATE: This final rule is effective for employees whose effective date of transfer (date the employee reports for duty at the new nonforeign area official station) is on or after February 19, 1988.

FOR FURTHER INFORMATION CONTACT: Doris L. Jones, Regulations Branch (FBTR), Washington, DC 20406, telephone FTS 557–1253 or commercial (703) 557–1253.

SUPPLEMENTARY INFORMATION: The Continuing Resolution for fiscal year 1988, Public Law 100–202 (101 Stat. 1329–430, 431) December 22, 1987, authorized new relocation benefits for certain transferred employees. Section 628 of that law amended 5 U.S.C. 5724a to specifically authorize, under certain specified conditions, reimbursement of allowable residence transaction expenses for employees transferred from an official station in a foreign area to a different nonforeign area official station than the one the employee left when transferred to the foreign post of duty.

The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Parts 302–6 and 302–12

Government employees, Transfers, Relocation allowances and entitlements.

For the reasons set out in the preamble, 41 CFR parts 302–6 and 302–12 are amended as follows:

PART 302–6—ALLOWANCE FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

1. The authority citation for part 302–6 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 302–6.1 is amended by revising the introductory text, paragraphs (a), (b), (c), (d), and (e)(1), and by adding paragraph (g) to read as follows:

§ 302–6.1 Conditions and requirements under which allowances are payable.

To the extent allowable under this part 302–6, the Government shall reimburse an employee for expenses required to be paid by him/her in connection with the sale of one residence at his/her old official station, for purchase (including construction) of one dwelling at his/her new official station, or for the settlement of an unexpired lease involving his/her residence or a lot on which a mobile home used as his/her residence was located at the old official station provided the conditions set forth in this section are met:

(a) *Transfers covered—agreement required*. A permanent change of station is authorized or approved and, except as provided in paragraph (g) of this section, the old and new official stations are located within the 50 States, the District of Columbia, the territories and possessions of the United States, the Commonwealth of Puerto Rico, or the former Canal Zone area (i.e., areas and installations in the Republic of Panama made available to the United States under the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979)), and the employee has signed an agreement as required in § 302–1.5. (See exclusions in § 302–6.4.)

(b) *Location and type of residence*. The residence or dwelling is the residence as described in § 302–1.4(j), which may be a mobile home and/or the lot on which such mobile home is located or will be located. These criteria also apply to the former nonforeign area official station residence of employees who are eligible for residence transaction expenses under paragraph (g) of this section (see definition in paragraph (g)(1)(i) of this section).

(c) *Title requirements*. The title to the residence or dwelling at the old or new official station, or the interest in a cooperatively owned dwelling or in an unexpired lease, is in the name of the employee alone, or in the joint names of the employee and one or more members of his/her immediate family, or solely in the name of one or more members of his/her immediate family. For an employee to be eligible for reimbursement of the costs of selling a dwelling or terminating a lease at the old official station, the employee's interest in the property must have been acquired prior to the date the employee was first officially notified of his/her transfer to the new official station. In the case of employees covered by paragraph (g) of this section, the employee's interest must have been acquired prior to the date the employee was first officially notified of his/her transfer to the foreign area.

(d) *Occupancy requirements*. The dwelling for which reimbursement of selling expenses is claimed was, except as provided in paragraph (g) of this section, the employee's residence at the time he/she was first officially notified by competent authority of his/her transfer to the new official station.

(e) *Time limitation*—(1) *Initial period*. The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than 2 years after the date that the employee reported for duty at the new official station. For employees eligible under paragraph (g) of this section, new official station means the official station to which the employee reports for duty when reassigned or transferred from a foreign area.

* * * * *

(g) *Transfer from a foreign area to a nonforeign area*—(1) *Definitions*. For purposes of this paragraph (g), the following definitions apply:

(i) *Former nonforeign area official station*. This term means the official station from which the employee was transferred when assigned to the post of duty in the foreign area.

(ii) *Nonforeign area*. Nonforeign area includes the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the former Canal Zone area (i.e., areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979)).

(iii) *Foreign area.* Foreign area refers to any area not defined as a nonforeign area.

(2) *Applicability.* The provisions of this part 302-6 are applicable, as specified in this paragraph (g), to employees who have completed an agreed upon tour of duty in a foreign area and instead of being returned to the former nonforeign area official station, are reassigned or transferred in the interest of the Government to a different nonforeign area official station than the official station from which the employee was transferred when assigned to the foreign post of duty. The distance between the former and new official station must meet the mileage criteria specified in § 302-1.7 for short distance transfers.

(3) *Authorized reimbursement.* Generally, an employee is required to serve at least one tour of duty in a foreign area and retain a residence in a nonforeign area with the expectation of returning to the former official station in the nonforeign area. However, there are instances when an employee completes a tour of duty in a foreign area and is subsequently transferred to a different official station or post of duty in a nonforeign area than the one from which he/she transferred when assigned to the foreign post of duty. When this type of transfer is authorized or approved, reimbursement is allowable for real estate expenses required to be paid by the employee in connection with:

(i) The sale of the residence (or the settlement of an unexpired lease) at the official station from which the employee was transferred when he/she was assigned to a post of duty located in a foreign area; and

(ii) The purchase of a residence at the new official station when the employee is transferred in the interest of the Government from a post of duty located in a foreign area to a nonforeign area official station (other than the official station from which he/she was transferred when assigned to the foreign post of duty).

(4) *Reimbursement limitations.* Reimbursement under this paragraph (g) is prohibited for any sale (or settlement of an unexpired lease) or purchase transaction that occurs prior to the employee's first being officially notified (generally in the form of a change of official station travel authorization) that instead of returning to the former nonforeign area official station, he/she will be reassigned or transferred to a different nonforeign area official station than the one from which he/she was transferred when assigned to the foreign post of duty.

(5) *Service agreement required.* A signed service agreement shall be required as prescribed in § 302.1.5 for any employee who is eligible for reimbursement of residence transaction expenses authorized under this paragraph (g).

PART 302-12—USE OF RELOCATION SERVICE COMPANIES

3. The authority citation for Part 302-12 continues to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747); E.O. 12466, February 27, 1984 (49 FR 7349); E.O. 12522, June 24, 1985 (50 FR 26337).

4. Section 302-12.4 is amended by revising paragraph (b)(3) to read as follows:

§ 302-12.4 General conditions and limitations for eligibility.

* * * * *

(b) * * *

(3) Employees assigned or transferred to or from a post of duty in a foreign area except employees eligible for reimbursement of residence transaction expenses as provided in § 302.6.1(g).

Dated: August 24, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-21479 Filed 9-12-89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6747

[ID-943-09-4214-10; IDI-27036]

Partial Revocation of Secretarial Order Dated October 8, 1921; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order which withdrew 80 acres of National Forest System land from surface entry for use by the U.S. Forest Service for Stock Driveway No. 48 in the Sawtooth National Forest. The land is not needed for the purpose for which it was withdrawn. This action will open the land to surface entry and allow for a proposed exchange. The land will remain closed to mining and mineral leasing due to an overlapping withdrawal.

EFFECTIVE DATE: October 13, 1989.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial order dated October 8, 1921, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 7 N., R. 14 E.,
Sec. 24, W½SE¼.

The area described contains 80 acres in Blaine County.

2. At 9:00 a.m. on October 13, 1989, the land described shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The land will remain closed to mining and mineral leasing.

Dated: September 1, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89-21500 Filed 9-12-89; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR 217 and 227

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Reinstatement of regulations.

SUMMARY: NOAA published an interim final rule on August 10, 1989, as a temporary substitute for the rule that requires shrimp fishermen in the Gulf of Mexico (Gulf) and the Atlantic Ocean off the coast of the southeastern United States to use Turtle Excluder Devices (TEDs) to reduce incidental captures of endangered and threatened species of sea turtles during shrimp fishing operations. The interim final rule allowed shrimp fishermen in offshore waters to choose between continuing to use TEDs or to restrict trawling times to specific 105-minute periods. That rule expired on September 8, 1989, at 12:01

a.m. After reviewing the comments on the interim final rule and evaluating the 105-minute trawl restriction, NOAA has decided to reinstate the TEDs regulations originally promulgated on June 29, 1987 (and as amended on October 5, 1987 and September 1, 1988). NOAA has also decided to allow emergency sea turtle conservation regulations promulgated on February 23, 1989, to continue in effect.

DATE: These regulations are effective September 8, 1989.

ADDRESS: Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles Karnella, (301) 427-2322, or Charles A. Oravetz, (813) 893-3366.

SUPPLEMENTAL INFORMATION:

Background

NOAA issued regulations under the Endangered Species Act (ESA) on June 29, 1987 (hereafter referred to as the TED regulations, 52 FR 24244) to protect endangered and threatened sea turtles. Those regulations required shrimp fishermen in the south Atlantic Ocean and the Gulf to use TEDs in certain areas and at certain times. Due to a delay imposed by Congress, those regulations did not become effective in most areas until May 1, 1989. In the Canaveral area of Florida, however, regulations have been in effect since October 1, 1987. In the Atlantic offshore waters of south Georgia and north Florida, an emergency rule requiring the use of TEDs became effective March 9, 1989 (see 54 FR 7773 (2/23/89)). That rule continues in effect.

The Secretary of Commerce (Secretary) implemented a 60-day grace period, issuing only written warnings for most violations, when the congressional delay expired. On July 20, 1989, the Secretary announced that enforcement of the TED regulations would resume. Over the weekend of July 22-23, shrimp fishermen in several Gulf ports engaged in various forms of civil disobedience protesting the enforcement of the TED regulations. In response to the protests, the Secretary suspended enforcement of the TED regulations on July 24 for 45 days and announced his intention to consider alternatives such as limitations on trawling times.

On July 25, 1989, the National Wildlife Federation filed suit against the Secretary, claiming that his actions violated the ESA (including the ESA amendments of 1988), the National Environmental Policy Act, and the Administrative Procedure Act. On August 3, 1989, the U.S. District Court for the District of Columbia granted summary judgment for the plaintiffs. The court ordered the Secretary to "reinstitute existing TED regulations, or issue interim turtle conservation measures to become effective immediately." The Secretary issued the interim final rule in response to the court's order.

NOAA provided a 15 day comment period (comments were actually accepted until September 1, 1989) on the 105-minute trawling period option provided in the interim final rule. During the comment period, a total of 3,736 comments were received. Of those comments, 3,459 favored the use of TEDs and 151 opposed mandatory TEDs. Some comments did not specifically address the use of TEDs. Also, NOAA scientists estimated that full compliance with 105-minute trawl times would result in turtle mortalities unacceptably higher than would full compliance with the TED regulations. Based upon the comments received, as well as NOAA's evaluation of the 105-minute trawling period option, NOAA decided to abandon the approach of the interim rule.

The interim rule stated the "existing TED regulations may be reinstated or modified after September 7, 1989 * * * *" NOAA now reinstates the 1987 TED regulations, as amended.

Dated: September 8, 1989.

James Brenner,

Assistant Administrator for Fisheries.

For the reasons set out in the preamble, provisions of 50 CFR Parts 217 and 227 are reinstated as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for Part 217 continues to read as follows:

Authority: 16 U.S.C. 1521-1543 and 16 U.S.C. 742a *et seq.*

2. In § 217.12, the definition of *"tow time"* is reinstated in alphabetical order to read as follows:

§ 217.12 Definitions.

* * * * *

Tow time means the interval from trawl doors entering the water to trawl doors being removed from the water.

* * * * *

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for Part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Paragraph 227.72(e)(2), (3) and (6) are reinstated to read as follows:

§227.72(e) Exceptions to Prohibitions

* * * * *

(e) * * *

(2) *Gear requirements.* (i) Except as provided in paragraphs (e)(2)(ii), (e)(2)(iii) and (e)(2)(iv) of this section, a qualified turtle excluder device (TED) must be carried and used in each net during trawling by a shrimp trawler 25 feet or longer in length fishing for white, brown, pink, or seabob shrimp (or for rock shrimp in the Gulf of Mexico) in areas and during periods as follows (see Table 1 for a summary of the requirements and Maps 1 and 2 for depictions of the areas):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year, commencing October 1, 1987.

(*2*) Atlantic Area, offshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore to 15 nautical miles—all year, commencing January 1, 1988.

(*2*) Gulf Area, offshore to 15 nautical miles—March 1 through November 30, each year, commencing March 1, 1988.

(*3*) Southwest Florida Area, offshore—all year, commencing January 1, 1989.

(*4*) Gulf Area, offshore—March 1, through November 30, each year, commencing March 1, 1989.

(ii) In the Southwest Florida and Gulf Areas a shrimp trawler fishing for or possessing royal red shrimp is exempt from the TED requirement provided that 90 percent of all shrimp offloaded from, or on board, the trawler are royal red shrimp.

(iii) In the Canaveral and Atlantic Areas, a shrimp trawler fishing for or possessing rock shrimp or royal red shrimp is exempt from the TED requirement provided that 90 percent of all shrimp offloaded from, or on board, the trawler are rock shrimp or royal red shrimp.

(iv) A single test net having a headrope length of 20 feet or less is exempt from the TED requirement provided that the test net is pulled immediately in front of any other net or is not connected to another net in any way.

(3) *Tow time restrictions.* (i) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler, regardless of length, fishing for white brown, pink, or seabob shrimp (or rock shrimp in or from the Gulf or Southwest Florida Areas) must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements and Maps 3 and 4 for depictions of the areas):

(A) Atlantic Ocean:

(*1*) Canaveral Area, inshore—all year, commencing October 1, 1988.

(*2*) Atlantic Area, inshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, inshore—all year, commencing January 1, 1988.

(*2*) Gulf Area inshore—March 1 through November 30, each year, commencing March 19, 1988.

(ii) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler less than 25 feet in length fishing for white, brown, pink, or seabob shrimp must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements and Maps 1 and 2 for depictions of the areas):

(A) Atlantaic Ocean:

(*1*) Canaveral Area, offshore—all year, commencing October 1, 1987.

(*2*) Atlantic Area, offshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore to 15 nautical mile—all year, commencing January 1, 1988.

(*2*) Gulf Area, offshore to 15 nautical miles—March 1 through November 30, each year, commencing March 1, 1988.

(*3*) Southwest Florida Area, offshore—all year, commencing January 1, 1988.

(*4*) Gulf Area, offshore—March 1 through November 30, each year, commencing March 1, 1989.

(iii) In the Southwest Florida and Gulf Areas a shrimp trawler fishing for or possessing royal red shrimp is exempt from the tow time restrictions provided than 90 percent of all shrimp offloaded from, or on board, the trawler are royal red shrimp.

(iv) In the Atlantic and Canaveral Areas, a shrimp trawler fishing for or possessing royal red or rock shrimp is exempt from the tow time restriction provided that 90 percent of all shrimp offloaded from, the trawler are royal red or rock shrimp.

(4) * * *

(5) * * *

(6) *Prohibitions.* It is unlawful for any person to do any of the following:

(i) Fail to use a qualified TED in each net during trawling on a vessel 25 feet or longer in length in an area where and at a time when a TED is required pursuant to this part;

(ii) Fail to restrict a tow time to 90 minutes in an area and at a time such restriction applies, unless a qualified TED is being used in each net during trawling;

(iii) Land from or possess on board a vessel white, brown, pink, or seabob shrimp in quantities exceeding 10 percent of the total shrimp landed or on board after having fished for royal red shrimp (or for rock shrimp in the Atlantic Ocean) in TED required area without using a qualified TED in each net during trawling;

(iv) Fail to follow sea turtle handling and resuscitation procedures specified in paragraph (e)(1)(i) of this section; or

(v) Fail to comply with instructions and signals issued by an authorized officer. Enforcement procedures and signals used in the Gulf of Mexico shrimp fishery are listed at 50 CFR Part 658. These procedures will be used to enforce the rules of this section in all geographic areas.

3. In § 227.72(e) the title of Table 1 is reinstated to read "Table 1.—Waters Where TEDs Are Required on Shrimp Trawlers 25 Feet or Longer in Length". Table 2 is reinstated as follows:

TABLE 2.—90-MINUTE TOW TIMES [1]

Area	Start data	Season	Vessel sizes
Atlantic Ocean:			
Canaveral Area—inshore	October 1, 1988	All Year	All.
Atlantic Area—inshore	May 1, 1988	May 1 through August 1, each year	All.
Gulf of Mexico:			
Southwest Florida Area—inshore	January 1, 1988	All year	All.
Gulf Area—inshore	March 1, 1988	March 1 through November 1, each year	All.
Atlantic Ocean:			
Canaveral Area—offshore	October 1, 1987	All year	<25 feet.
Atlantic Area—offshore	May 1, 1988	May 1 through August 31, each year	<25 feet.
Gulf of Mexico:			
Southwest Florida Area—offshore to 15 nautical miles	January 1, 1988	All year	<25 feet.
Gulf Area—offshore to 15 nautical miles	March 1, 1988	March 1 through November 30, each year	<25 feet.
Southwest Florida Area—offshore	January 1, 1989	All year	<25 feet.
Gulf Area—offshore	March 1, 1989	March 1 through November 30, each year	<25 feet.

[1] Tow time restrictions do not apply to shrimp trawlers using a qualified TED in each net during trawling.

4. Also in § 227.72(e), the title to Map 1 is reinstated to read "Offshore Atlantic Waters Where TEDs Are Required". The title to Map 2 is reinstated to read "Offshore Gulf of Mexico Waters Where TEDs Are Required".

[FR Doc. 89–21516 Filed 9–8–89; 1:09 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 176
Wednesday, September 13, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-217-84]

RIN 1545-AH49

Golden Parachute Payments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to golden parachute payments.

DATES: The public hearing will be held on Friday, November 17, 1989. Outlines of oral comments must be delivered by Friday, October 27, 1989.

ADDRESSES: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (PS-217-84) Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Angela Wilburn telephone (202) 566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations appearing in the **Federal Register** for Friday, May 5, 1989, (54 FR 19390).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, October 27, 1989, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral prsentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 89–21520 Filed 9–12–89; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3645-5]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Alternative Emission Reduction Plan for Vista Chemical Co., Westlake, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Reopening of public comment period.

SUMMARY: Through this notice, EPA is reopening the comment period for a proposed rule published on June 17, 1985, at 50 FR 25093. In that notice, EPA proposed to approve a source specific SIP revision submitted by the State of Louisiana, which would allow an alternate emission reduction plan ("bubble") for a Vistal Chemical Company (formerly CONOCO) facility in Westlake, Louisiana (a community within the rural Lake Charles, Louisiana, ozone nonattainment area). Today EPA is requesting additional comment on the availability of emissions credits under the proposed trade with regard to an aspect of the trade not discussed previously.

DATE: Interested persons are invited to submit comments on this reproposed action no later than October 13, 1989.

ADDRESSES: Written comments on this proposed action should be addressed to Thomas H. Diggs of the EPA Region 6 office (address below). Copies of the State's submittals and EPA's technical review may be examined during normal business hours at the following locations:

Environmental Protection Agency,
  Region 6, Air Programs Branch, Mail
  Code 6T-AN, 1445 Ross Avenue,
  Dallas, Texas 75202-2733.

Louisiana Department of Environmental
  Quality, Office of Air Quality, 625
  North Fourth St., Baton Rouge,
  Louisiana 70804-4096.

FOR FURTHER INFORMATION CONTACT: Barbara Durso at (214) 655-7214 or FTS 255-7214.

SUPPLEMENTARY INFORMATION: At 47 FR 15076 (April 7, 1982) EPA issued a proposed policy statement entitled "Emissions Trading Policy Statement; General Principles for Creation, Banking, and Use of Emission Reduction Credits." The statement described emissions trading, outlined EPA's criteria for review of emissions trades, and provided guidelines to aid states and industry in meeting these requirements. On December 4, 1986, EPA issued a revised policy statement. The December policy stated that for pending bubbles "in other areas (i.e., in areas not classified as urban nonattainment) these bubbles must show that applicable standards, increments, and visibility requirements will not be jeopardized. Pending bubbles which meet these tests and all other applicable requirements of the 1982 policy will be processed for approval."[1]

In accordance with the then applicable Emissions Trading Policy Statement, the State of Louisiana submitted a revision to its SIP to EPA on November 22, 1983. This SIP revision authorized Vista Chemical Company's use of a bubble to bring two oil-water separators and two alcohol plant batch oxidation reactors into compliance with the applicable State regulations. EPA proposed to approve this bubble in the **Federal Register** [2] but has not taken

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[1] 51 FR 43840.

[2] 50 FR 25093 (June 17, 1985).

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final action on the State's submittal to date. EPA received comments from one party which will be addressed when the final action is taken on the trade.

In reviewing the matter EPA has uncovered an issue that was not raised during the original comment period. We now solicit comments on this issue.

The subject of interest is ozone formation and how hydrocarbons contribute to ozone formation. The issue of concern is the contribution of halogenated versus nonhalogenated hydrocarbons to excessive ambient ozone concentrations.[3] Halogenated and nonhalogenated hydrocarbons contribute to ozone pollution in the following fashion: Nitrogen dioxide strongly absorbs ultraviolet radiation from the sun causing molecular dissociation of NO_2. The resulting atomic oxygen quickly combines with molecular oxygen in a three-body reaction, forming ozone (O_3). Some of the NO formed reacts with volatile organic compounds (VOCs) which removes the opportunity for some of the O_3 to react with NO to form NO_2 and O_2. When this opportunity is removed, the O_3 that would have reacted with NO remains in the ambient air and results in elevated O_3 concentrations. In simpler terms, VOCs take away the opportunity for ozone to self-destruct.

Now, as related to VOCs, it was thought in the past that halogenated VOCs and nonhalogenated VOCs had different reactivity rates with NO: that is, the nonhalogenated VOCs were thought to react more quickly and easily with NO than the halogenated hydrocarbons. However, EPA has never treated halogenated VOCs as a class differently from nonhalogenated VOCs. With a few receptions, EPA believes all VOCs should be regulated equally and, in emissions trades, generally considers VOCs as a single pollutant that may be traded on a pound-for-pound basis.[4]

When the State of Louisiana adopted Louisiana Air Quality Regulation 22.8 to control hydrocarbon emissions from waste gas streams, it used a different approach. LAQR 22.8(a) requires that nonhalogenated hydrocarbons be burned at 1300 °F for 0.3 seconds or greater in a direct-flame afterburner or an equally effective device, but LAQR 22.8(b) allows halogenated hydrocarbons to be simply flared without specifying flame temperature and residence time for burning. By devising two regulatory requirements, one could infer that the State considers these two types of VOCs as inherently different with regard to controlling ambient ozone concentrations.

Complicating matters, EPA approved LAQR 22.8(a) as part of Louisiana's 1979 ozone SIP for the Lake Charles area, but took no action on LAQR 22.8(b) when it was submitted by the State, apparently because it misunderstood the nature of the obligation the regulation imposed.[5] As a result, Louisiana regulates halogenated and nonhalogenated VOCs as "different" pollutants under LAQR 22.8, but EPA only recognizes the regulation of nonhalogenated VOCs under the Federally approved SIP.

The waste stream at issue includes halogenated and nonhalogenated VOCs, and Vista incinerates them both. Under the proposed bubble, Vista would receive credit for destroying the halogenated VOCs in the waste stream (regulated under LAQR 22.8(b) but not under the SIP). These credits would then be aplied to another waste stream within the facility to satisfy its requirement to destroy nonhalogenated VOCs (imposed by LAQR 22.8(a) and the SIP). There are no surplus emissions under the State's regulations, but there are under the SIP. Whereas the State regulates the two components of the single waste gas stream as two different entities, the federally approved SIP only regulates the nonhalogenated component. However, EPA policy does not recognize that the two components are necessarily different with regard to ozone control.

To summarize the problem, there is a conflict between the two concepts and there exist arguments for and against granting these credits. EPA wants to solicit comments on what the public thinks is the appropriate decision and why. The various arguments for or against the bubble are described below.

To approve the credits could be possible under this argument: The credits are available because LDEQ 22.8(b) was not Federally approved at the time of bubble submittal and therefore, there was no requirement under the SIP to incinerate the halogenated hydrocarbons in the waste stream. Thus, this incineration went beyond the requirements of the SIP. Furthermore, since NESHAP does not require control of oxyvents, these credits would be valid.

To disapprove the credits could be possible under another argument: The required control of the nonhalogenated compounds in the stream necessarily results in the control of the halogenated compounds in that same waste stream because the two kinds of compounds are inseparable. The concept of splitting the stream into halogenated and nonhalogenated hydrocarbons for the purpose of control is abstract and theoretical, but not practical or maybe even not possible. Thus there is no alternative for the company but to incinerate the halogenated hydrocarbons when it is fulfilling its duties to incinerate the nonhalogenated hydrocarbons; therefore, it is not going beyond the requirements of the SIP.

Yet another argument could be made as follows: Assumning that the State's implied difference between halogenated and nonhalogenated VOCs with regard to the NO–O_3 is legitimate, then halogenated and nonhalogenated VOCs would be considered different pollutants under this regulation. Because the emissions trading policy limits trades to like pollutants, one could trade a pound of halogenated VOCs for a pound of halogenated VOCs but not for a pound of nonhalogenated VOCs. This argument would work against this particular trade but would open the way for other trades.

Proposed Action

EPA is reopening the comment period on a proposed approval of a bubble for Vista Chemical as published at 50 FR 25093 to solicit comment on an aspect of the proposal that was not set out for comments previously.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

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[3] Halogenated hydrocarbons are compounds composed of hydrogen, carbon, and at least one halogen atom (e.g., fluorine, chlorine, bromine, iodine). A related term is "volatile organic compounds" (VOCs). VOCs are hydrocarbons, either halogenated or not, that vaporize easily. The terms "hydrocarbon" and "VOC" are often used interchangeably.

Another term the reader should be familiar with its "photochemically reactive" which refers to how easily the VOC participates in the NO-O_3 cycle. EPA recognizes that some VOCs do not participate in the NO-O_3 cycle and terms these VOCs "negligibly photochemically reactive." To date, EPA has designated only 15 compounds as negligibly photochemically reactive. These 15 compounds are also known as "exempt VOCs."

[4] EPA has declared 15 VOCs to be negligibly photochemically reactive in a series of policy statements published in the **Federal Register**. Of these 15 compounds, 13 are halogenated. See 42 35314 (July 8, 1977), 44 FR 32042 (June 4, 1979), 45 FR 32424 (May 16, 1980), 45 FR 48941 (July 22, 1980), and 54 FR 1987 (January 18, 1989).

[5] 47 Fr 6016 (February 10, 1982).

List of Subjects in 40 CFR Part 52

Air pollution, Hydrocarbons, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: September 5, 1989.

Robert E. Layton Jr.,

Regional Administrator.

[FR Doc. 89–21500 Filed 9–12–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FRL–3645–4, TN–077]

Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of Knox County for Total Suspended Particulates

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On May 16, 1989, the State of Tennessee requested redesignation of that portion of Knox County within downtown Knoxville from unclassified to attainment for total suspended particulates. Today, EPA is proposing approval of the change in attainment status.

DATES: To be considered, comments must reach us on or before October 13, 1989.

ADDRESSES: Written comments should be addressed to Rosalyn Hughes of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the State's submittal are availabe for review during normal business hours at the following locations:

Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Knox County Air Pollution Control Department, City/County Building, 400 Main Avenue, Suite L222, Knoxville, Tennessee 37902

Environmental Protection Agency, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Rosalyn Hughes, EPA Region IV Air Programs Branch, at the address listed above and phone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On May 16, 1989, the State of Tennessee submitted Board Order 04–89, reclassifying Knox County from unclassifiable to attainment for TSP. The local agency, the Knox County Department of Air Pollution Control, submitted eight consecutive quarters of the most recent ambient air quality data to support their request for reclassification. The State of Tennessee reviewed the Knox County request and on May 10, 1989 adopted Board Order 04–89 approving the reclassification request. The State then submitted the redesignation request, in the form of a Board Order, to EPA.

Proposed Action

EPA reviewed the request along with the monitoring which revealed no violations of the TSP National Ambient Air Quality Standards and found it to meet present EPA requirements. Therefore, EPA is today proposing to approve the redesignation of Knox County from unclassified to attainment for TSP and is soliciting public comment on it. EPA will consider all comments received within thirty days of publication of this notice.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: August 30, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 89–21501 Filed 9–12–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL–3645–6]

Rhode Island; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination for Final Authorization on Application of Rhode Island for Program Revision and Public Comment Period.

SUMMARY: Rhode Island has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (EPA) has reviewed Rhode Island's application and has made a tentative determination, subject to public review and comment, that Rhode Island's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Rhode Island's hazardous waste program revisions. Rhode Island's application for program revision is a available for public review and comment.

DATES: Comments on Rhode Island's program revision application must be received by the close of business on October 13, 1989.

ADDRESSES: Copies of Rhode Island's program revision application are available 8:30 a.m. to 4:00 p.m. Monday thru Friday at the following addresses for inspection and copying: R.I. Department of Environmental Management, Division of Air and Hazardous Materials, 291 Promenade Street, Providence, Rhode Island 02908–5767, Phone: (401) 277–2797; U.S. EPA Headquarters Library, PM–211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382–5926; U.S. EPA Region I Library, JFK Federal Building, Room 1500, Boston, Massachusetts 02203, Phone: (617) 565–3300. Written comments on the application should be sent to Frank Battaglia, at the address below.

FOR FURTHER INFORMATION CONTACT: Frank Battaglia, NH & RI Waste Management Branch, U.S. EPA, HSR–CAN5, JFK Federal Building, Boston, Massachusetts 02203, Phone: (617) 573–9643.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State authority or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266 and 124 and 270.

B. Rhode Island

Rhode Island initially received Final Authorization of its hazardous waste program on January 31, 1986 (51 FR 3780, January 30, 1986). On April 3, 1989 Rhode Island submitted a final program revision application for non-HSWA requirements promulgated through June 30, 1985. Today, Rhode Island is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(4). Specific provisions which are included in the Rhode Island Program Authorization Revision made today are listed in Table I below.

The State of Rhode Island submitted an initial draft application for the revision of its authorized hazardous waste program on March 9, 1987. After review of this application Rhode Island was placed on a schedule of compliance to obtain program modifications for the redefinition of solid waste on April 8, 1987 (52 FR 11263). A final program revision application was received on April 3, 1989. Today, Rhode Island is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(4).

TABLE I.—PROVISIONS COVERED BY THIS PROGRAM AUTHORIZATION REVISION

Federal requirement	State authority
1. Biennial Report, 48 FR 3977–3983, January 28, 1983.	Rule 5.05[1] Rule 5.06. Rule 7.01(E). Rule 9.10. Rule 9.14. Rule 9.22.
2. Permit Rules: Settlement Agreement, 48 FR 39622, September 1, 1983.	Rule 8.01(B) Rule 8.01(C). Rule 2.02.
3. Interim Status Standards—Applicability, 48 FR 52718–52720, November 22, 1983 and 49 FR 46095, November 21, 1984.	Rule 7.01(E)
4. Chlorinated Aliphatic Hydrocarbon Listing, 49 FR 5312–5313, February 10, 1984.	Rule 3.25. Rule 3.59.
5. National Uniform Manifest, 49 FR 10490–10510, March 20, 1984.	Rule 3.45. Rule 5.03(B). Rule 5.03(C) Rule 5.03(G).
6. Permit Rules—Settlement Agreement, 49 FR 17716–17719, April 24, 1984.	Rule 7.09(G)
7. Correction to Test Methods Manual, 49 FR 47391, December 4, 1984.	Rule 5.08. Rule 9.21.
8. Satellite Accumulation, 49 FR 49571–49572, December 20, 1984.	Rule 5.02.
9. Redefinition of Solid Waste, 50 FR 614–68, January 4, 1985.	Rule 3.05. Rule 3.15. Rule 3.25. Rule 3.34. Rule 3.36. Rule 3.69. Rule 7.01(A)(2). Rule 7.01(E). Rule 11.00.
10. Interim Status Standards for Landfills, 50 FR 16044–16048, April 23, 1985.	Rule 7.01(E).
11. RCRA Section 3006(F): Availability of Information, 40 CFR Part 2 Subpart A, 5 U.S.C. § 552	RIGL 38-2-2.[2] RIGL 38-2-3. RIGL 38-2-4. RIGL 38-2-7. RIGL 38-2-8. RIGL 38-2-9. RIGL 42-92.

[1] Rules and Regulations for hazardous waste generation, transportation, treatment, storage and disposal.

[2] Rhode Island General Law (RIGL).

EPA has reviewed Rhode Island's application, and has made a tentative determination, subject to public review and comment, that Rhode Island's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. EPA recognizes Rhode Island's limitations on the award of reasonable attorney fees and other litigation costs to a party who substantially prevails in judicial review of an agency action, as specified at Section 552(a)(4)(E) of the Freedom of Information Act, 5 U.S.C. 552(a)(4)(E). The Agency interprets section 3006(f) of RCRA 42 U.S.C. 6926(f), as requiring Rhode Island to have authority equivalent to 5 U.S.C. 552(a)(4)(E), in order to provide for the availability of hazardous waste information "in substantially the same manner, and to the same degree" as EPA. Rhode Island General Law 42–92, entitled "Equal Access to Justice for Small Businesses and Individuals," provides for the award of reasonable litigation expenses when a small business or individual prevails in contesting an agency action. Parties eligible for such award are defined as: "Party" means any individual whose net worth is less than two hundred fifty thousand dollars ($250,000) at the time the adversary adjudication was initiated; and, any individual, partnership, corporation, association, or private organization doing business and located in the state, which is independently owned and operated, not dominant in its field, and which employs one hundred (100) or fewer persons at the time the adversary adjudication was initiated. R.I.G.L. 42–92–2(a)

It is the Region's opinion that Rhode Island's limitations on parties eligible for award of litigation costs does not place an undue burden on the public seeking information from state agencies. R.I.G.L. 42–92 serves the purpose of encouraging parties who are least able financially to contest unjust actions by state agencies. The law eliminates the significant disincentive of legal costs facing small business and individuals who want to challenge an agency's decision to withhold documents. Furthermore, Rhode Island asserts that R.I.G.L. 42–92 provides relief to most of the parties covered by 5 U.S.C. 552(a)(4)(E). In Rhode Island's program revision application, the Attorney General writes: "The universe of non-small businesses and non-individuals for purposes of this statute is very small." Finally, the Region believes that a certain amount of flexibility with regard to such state procedural requirements is allowable in evaluating whether Rhode Island makes hazardous waste information available to the public "in substantially the same manner" as EPA. Consequently, EPA intends to grant Rhode Island Final Authorization for the additional program modification in Table I. EPA solicits comments on this proposed decision.

The public may submit written comments on EPA's decision until October 13, 1989. Copies of Rhode Island's application for program revision are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

EPA will consider all public comments on its proposed decision received during the public comment period. Issues raised by those comments may be the basis for a decision to deny authorization of the program revision to Rhode Island.

Approval of Rhode Island's program revision shall become effective when the Regional Administrator's final approval is published in the **Federal Register.** If adverse comment(s) pertaining to Rhode Island's program revision discussed in this notice is received, EPA will publish either (1) a notice of disapproval or (2) a final rulemaking approving the modification, which will include a summary of the reasons for hte final decision and a response to all major comments.

Rhode Island is not seeking authorization to operate on Indian Lands.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Rhode Island's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities, and therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedures, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of secs. 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: August 9, 1989.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 89-21499 Filed 9-12-89; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 54, No. 176
Wednesday, September 13, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CIVIL RIGHTS COMMISSION

Alaska Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Alaska Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 12 noon on October 5, 1989, at the Federal Building, 701 C Street (Room 130), Anchorage, Alaska 99513. The purpose of the meeting is to develop a proposal for a new study on employment issues and to discuss follow-up activities to the Committee's published report on minority and womens' business enterprise programs.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Daniel Alex or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 5, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–21476 Filed 9–12–89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Current Industrial Reports (Wave II Mandatory)

Form Number: Various

Agency Approval Number: 0607–0395

Type of Request: Revision of a currently approved collection

Burden: 28,217 hours

Number of Respondents: 37,696

Avg Hours Per Response: 45 minutes

Needs and Uses: The Current Industrial Reports Program (CIR) is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Many government agencies use the data for industrial analysis, projections, and monitoring import penetration. Private business firms and organizations use the data for trend projections, market analysis, product planning, and other economic and business-oriented analysis.

Affected Public: Businesses or other for-profit organizations

Frequency: Monthly, quarterly, and annually

Respondent's Obligation: Mandatory

OMB Desk Officer: Don Arbuckle, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 8, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–21518 Filed 9–12–89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Current Industrial Reports (Wave II Voluntary)

Form Number: Various

Agency Approval Number: 0607–0206

Type of Request: Revision of a currently approved collection

Burden: 12,728 hours

Number of Respondents: 22,496

Avg Hours Per Response: 34 minutes

Needs and Uses: The Current Industrial Reports Program (CIR) is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Many government agencies use the data for industrial analysis, projections, and monitoring import penetration. Private business firms and organizations use the data for trend projections, market analysis, product planning, and other economic and business-oriented analysis.

Affected Public: Businesses and other for profit organizations

Frequency: Monthly, Quarterly, and Annually

Respondent's Obligation: Voluntary, (Monthly and Quarterly responses) Mandatory (Annual responses)

OMB Desk Officer: Don Arbuckle 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 8, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–21519 Filed 9–12–89; 8:45 am]

BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

Marine Mammals; Permit Modification Request; Southwest Fisheries Center, NMFS (P77#33)

Notice is hereby given that the Southwest Fisheries Center, National Marine Fisheries Service has requested a modification of Permit No. 680 issued on August 16, 1989 (54 FR 35221), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit authorizes the taking of tissue samples by biopsy dart from up to 80 individuals/yr for three years of 30 stocks of marine mammals in the Eastern Tropical Pacific. The Permit Holder is requesting authorization to include authorization to collect tissue samples by biopsy dart from up to 80 individuals/yr for three years each, the Costa Rican form of the spinner dolphin (*Stenella longirostris*) and the coastal form of the spotted dolphin (*Stenella attenuata*) to the stocks already authorized.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, Silver Spring Metro Center 1, 1335 East-West Highway, Room 7330, Silver Spring, Maryland 20910, within 30 days of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

The modification request and associated documents are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Room 7330, Silver Spring, MD 20910; Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731–7451; and Administrator, Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396.

Dated: September 7, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89–21456 Filed 9–12–89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modifications; Theater of the Sea (P92 and P92B); Dolphin Research Center (P53B); Dolphins Plus, Inc. (P234 and P234A)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), public display permit Nos. 69 and 326 issued to Theater of the Sea, Inc., Islamorada, FL, No. 514 issued to Dolphin Research Center, Marathon, FL, Nos. 292 and 577 issued to Dolphins Plus, Inc., Key Largo, FL are modified by adding the following Special Conditions on swin-with-the-dolphin programs.

The National Marine Fisheries Service (NOAA Fisheries) informed the permit holders of these Special Conditions on August 25, 1988. A public hearing was requested under § 216.33(d), but the request was subsequently withdrawn. In the interim, permit holders have continued to provide quarterly reports and other information required by the Special Conditions. Thus, the effective date of these modifications is September 30, 1988. Notice of these modifications inadvertently was not published at that time.

Since the authority to use marine mammals in swim-with-the-dolphin programs expires on December 31, 1989 (Special Condition D.1.), NOAA Fisheries intends to decide whether to continue such authority at that time. To assist us in making a decision on the future of swim-with-the-dolphin programs, NOAA Fisheries is preparing an environmental impact statement under the National Environmental Policy Act of 1969 (See 54 FR 20170, May 10, 1989).

Documents concerning the above modifications and permits are available for inspection in the Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, Room 7324, 1335 East-West Highway, Silver Spring, Maryland 20910.

Dated: September 7, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Section D. Special Conditions on Human/Dolphin Swim Programs

D. 1. The Permit Holder is authorized to use dolphins in an experimental human/dolphin swim program until December 31, 1989. The National Marine Fisheries Service (NMFS) may revoke this authority before December 31, 1989 if this program is found to have an adverse effect on the health or well-being of the animals, if an ongoing review of public display permit authorities, procedures and criteria results in new regulations that disallow such programs, or if the terms of the following conditions are not being met.

D. 2. The Permit Holder must identify the individual animals to be used in the program and submit: (a) A detailed description of the planned human/dolphin swim program, including (1) descriptions of the planned nature of the human/dolphin encounters and the anticipated maximum, minimum, and average frequency and duration of encounters per animal, per day, and per week, and (2) the content and planned methods for conducting the preencounter orientation and instructions for human swimmers regarding, among other things, any restrictions on physical contact with the dolphins and proper response in the event of aggressive dolphin behavior; (b) a detailed description of the facilities that will be used to house the dolphins and to conduct the human/dolphin swim program, and how the dolphins have been or will be trained to participate in the program; (c) curriculum vitae for the dolphin trainers, the attending veterinarian(s), and any other persons responsible for handling, feeding or otherwise insuring the welfare of the animals; and (d) an assessment by the attending veterinarian of the current (baseline) health and behavior patterns of each animal and a description of the monitoring program that will be used to detect and determine the cause(s) and significance of any changes in the health or behavior of the dolphins as a result of the authorized activities.

D. 3. Human/dolphin swim operations must be continuously supervised by experienced trainers. An appropriately qualified and locally available veterinarian must be on call, but not necessarily present, during each human/dolphin encounter. The animals must be provided with adequate escape access from the swimming area should they choose to terminate the human/dolphin encounter and adequate security arrangements must be provided at all times to prevent harrassment or injury to the dolphins. NMFS may inspect facilities and monitor swim operations.

D. 4. The Permit Holder must develop and implement a monitoring program to detect any changes in the health or behavior of the animals involved in the human/dolphin swim program. Animals that respond adversely to encounters with humans must be removed from the program until such time as their health is restored and/or their behavior poses no risk to humans involved in the program. The program must be suspended immediately if the dolphins show signs of program-related health problems or undesirable behavioral modifications that are a result of the human/dolphin swim program.

D. 5. The Permit Holder must advise NMFS immediately of any injuries to dolphins or humans resulting from the authorized activities, any program changes that might cause additional stress or otherwise have an adverse effect on the health or behavior of the dolphins involved in the program, and any removals or additions of animals to the program and the reasons for such removals or additions. In addition, the Permit Holder must submit quarterly reports describing the nature and extent of the program in the preceding quarter, any problems that may have developed, and steps taken to overcome such problems. Among other things, the quarterly progress report should provide: (a) Summary statistics on (1) the number of people by age and sex that participated in the program during the reporting period and (2) the number of times, by day and week, that each dolphin participated in the program; (b) descriptions of any encounters that resulted in, injury to a human or dolphin and any changes made in the program to improve the safety, educational or other aspects of the program; and (c) a brief summary and assessment of the results of the required dolphin monitoring program. Reports must be submitted to the Director, Office of Protected Resources and Habitat Programs, NMFS, Washington, DC 20235. Failure to submit adequate and timely reports may result in revocation of the Permit Holder's authority to use dolphins in an experimental human/dolphin swim program.

D. 6. By authorizing this experimental program, NMFS assumes no liability for physical or other injuries or harm to individuals participating in the experimental human/dolphin swim program. This fact must be reflected in any liability waivers or program instructions prepared by and for the Permit Holder.

[FR Doc. 89-21467 Filed 9-12-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

AGENCY: Under Secretary of Defense (Acquisition).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Office of the Under Secretary of Defense for Acquisition announces a forthcoming planning meeting for a Defense Manufacturing board project on concurrent engineering.

DATE AND TIME: 25 Sep 89, 0900–1500.

ADDRESS: Institute for Defense Analysis, 1801 N. Beauregard, Room 216S, Alexandria, VA 22311.

The agenda for the meeting will include an overview of Department of Defense activity in the general area of concurrent engineering.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Fitzpatrick of the DMB Secretariat, (202) 697–0957.

Dated: September 6, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-21465 Filed 9-12-89; 8:45 am]

BILLING CODE 3810-01-M

DELAWARE RIVER BASIN COMMISSION

Amendment to Comprehensive Plan and Water Code of the Delaware River Basin: Correction

AGENCY: Delaware River Basin Commission.

ACTION: Notice.

In notice document 89–13380 beginning on page 24381 in the issue of Wednesday June 7, 1989, make the following correction: On page 24382, in the first column, in section 2.1.5(3), the last sentence should read: "Plumbing fixtures and fittings shall be labeled in accordance with ANSI A112.18.1M and ANSI A112.19.2M."

Delaware River Basin Compact, 75 Stat. 688

Dated: September 6, 1989.

Susan M. Weisman,

Secretary.

[FR Doc. 89-21477 Filed 9-12-89; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 13, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 7, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Existing

Title: Final Performance Report for Library Services and Construction Act, Title VI

Frequency: Annually

Affected Public: State of local governments

Reporting Burden: Responses, 250; *Burden Hours,* 250; *Recordkeeping Burden: Recordkeepers,* 0; *Burden Hours:* 0

Abstract: This report is used by State and local Libraries that have participated in the Library Literacy Program are to submit these reports to the Department. The Department uses this information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Office of Educational Research and Improvement

Type of Review: Existing

Title: Application for Grants Under the Research Grant Program: Teachers as Researchers Program

Frequency: Annually

Affected Public: Individuals or households; State or local governments

Reporting Burden: Responses, 400; *Burden Hours:* 12,000; *Recordkeeping Burden: Recordkeepers,* 0; *Burden Hours:* 0

Abstract: This application will be used by individuals or households and State or local governments to improve educational practices or policies under the Teachers as Researchers Program. The Department uses the information to make grant awards.

Office of Special Educational Rehabilitative Services

Type of Review: Extension

Title: Preschool Grants Program under the Education of the Handicapped Act

Frequency: Annually

Affected Public: State or local government

Reporting Burden: Responses, 57; *Burden Hours:* 57; *Recordkeeping Burden: Recordkeepers,* 0; *Burden Hours:* 0

Abstract: This form will be used by State agencies to apply for funding under the Preschool Grants Program. The Department will use this information to make grant awards.

[FR Doc. 89-21446 Filed 9-12-89; 8:45 am]

BILLING CODE 4000-1-M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by October 6, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915. Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, the information collection request is also included as an attachment to this notice.

Dated: September 7, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Expedited.

Title: TeleCaption 4000 Rebate Officer.

Abstract: This form will be used by consumers to receive a rebate offer for purchasing the telecaption decoder. The National Captioning Institute, (NCI) funded by the Department will use the information to verify purchase of the decoder in order to mail the rebate to the consumer.

Additional Information: An expedited review is requested for this rebate certificate to allow NCI sufficient time to print and distribute the certificates to potential customers in a timely manner. This rebate offer is scheduled to expire on December 31, 1989. Allowing for the normal review period would adversely affect timely implementation of this project.

Frequency: Annually.

Affected Public: State or Local Governments.

Reporting Burden:
Responses: 57
Burden Hours: 57
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

BILLING CODE 4000-01-M

DRAFT

OMB Form No.__________
Approval Expires_____

TeleCaption 4000 $20 Limited Rebate Offer

Public reporting burden for this collection of information is estimated to average two (2) minutes per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-NEW, Washington, D.C. 20503.

To receive your TeleCaption 4000 decoder rebate, you must do the following:

1. Purchase a TeleCaption 4000. Complete this rebate certificate. No reproduction of this certificate will be honored.
2. Enclose a copy of the dated sales slip with purchase price circled.
3. Enclose the word "TeleCaption 4000" cut from the top of the shipping carton.
4. Mail to: TeleCaption Rebate Offer, National Captioning Institute.
5. Complete the questions below:

   This is my first TeleCaption decoder purchase.

   Yes ________ No _________

   Name of the store where TeleCaption was purchased.

   ____

Please send my $20.00 rebate to:

____
NAME (Please print)

____
ADDRESS

____
CITY STATE ZIP

This is a mail-in offer and is not payable at retail stores.

Offer expires December 31, 1989. All requests must be postmarked by January 15, 1990. Please allow eight weeks to receive your rebate. Offer good in USA and its territories only, and is void where prohibited, taxed, or restricted by law. Only one refund per family/address, group, or organization. Request from dealers or others who are not retail customers will not be honored.

Funds for this activity are provided by the U.S. Department of Education.

[FR Doc. 89-21445 Filed 9-12-89; 8:45 am]

DUE TO PATTERNS COVERING PRINT, MANY PAGES DID NOT REPRODUCE WELL. THIS REPRODUCTION IS MADE FROM THE BEST COPY AVAILABLE.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89-627-000, et al.]

Florida Power Corporation, et al.; Electric rate, Small Power Production, and Interlocking Directorate Filings

September 5, 1989.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. ER89-627-000]

Take notice that on August 30, 1989, Florida Power Corporation (Florida Power) tendered for filing (1) new All Requirements Electric Service Agreements between Florida Power and the City of Wauchula, The Town of Havana, the City of Bartow, and the City of Newberry, all located in Florida; and (2) a rate decrease based on a prefiling Settlement Agreement between Florida Power and all of its wholesale and transmission customers, including the City of Wauchula, Town of Havana, the City of Bartow, and the City of Newberry.

Comment date: September 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Connecticut Light and Power Company

[Docket No. ER89-631-000]

Take notice that on August 31, 1989, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed Sales Agreement with Respect to Base Load/Pumped Storage Units, for a four-year sale of entitlements in a group of units from CL&P's generating system, for service to Boston Edison Company (Buyer).

CL&P states that the Sales Agreement provides for a sale of capacity and energy from CL&P's base Load/Pumped Storage Units (the Units) during the period November 1, 1989 to October 31, 1993. CL&P states that the rates for the proposed service are based on cost-of-service formulas. CL&P requests that the Commission permit the Sales Agreement to become effective as of November 1, 1989.

CL&P states that a copy of the Sales Agreement has been mailed or delivered to buyer and to the Massachusetts Department of Public Utilities.

Comment date: September 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Golden Spread Electric Cooperative, Inc. v. Southwestern Public Service Company

[Docket No. EL89-50-000]

Take notice that on August 31, 1989, Golden Spread Electric Cooperative, Inc. (Golden Spread) tendered for filing a complaint against Southwestern Public Service Company (SPS). Golden Spread submits that the wholesale rates charged by SPS are grossly excessive. Golden Spread further states that based upon a fully allocated cost of service analysis, that the rate SPS is seeking to maintain in effect will yield a return on equity of 28%. Golden Spread requests that the Commission: (1) Initiate an investigation into the justness and reasonableness of the full requirements rate of SPS, (2) establish hearing procedures on SPS' full requirements rate and require SPS to show why the full requirements rate is not unjust and unreasonable, (3) establish lower, just and reasonable rates for full requirements customers of SPS, (4) establish a refund effective date in this proceeding at the earliest date permitted by law and (5) grant such other relief as the Commission finds appropriate.

Comment date: October 5, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Connecticut Light and Power Company

[Docket No. ER89-629-000]

Take notice that on August 31, 1989, Connecticut Light and Power Company (CL&P) tendered for filing a Sales Agreement with respect to Slice-Of-Systems Units, for a five-year sale of entitlements in a group of units representative of CL&P's generating system, for service to Fitchburg Gas and Electric Light Department (Buyer).

CL&P states that the Sales Agreement provides for the sale of capacity and energy from CL&P's Slice-of-System Units (the Units) during the period November 1, 1989 to October 31, 1994. CL&P states that the rates for the proposed service are based on cost-of-service formulas. CL&P requests that the Commission permit the Sales Agreement to become effective on November 1, 1989.

CL&P states that a copy of the Sales Agreement has been mailed or delivered to Buyer and to the Massachusetts Department of Public Utilities.

Comment date: September 18, 1989, in accordance with Standard Paragraph E end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER89-630-000

Take notice that on August 31, 1989, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to fourteen of its Rate Schedules:

Rate schedule no.	Supplement no.	Person receiving service
55	5	Philadelphia Electric Company (PECO)
56	6	Public Service Electric and Gas Company (Public Service)
57	6	Northeast Utilities (NU)
62	6	Orange and Rockland Utilities, Inc. (O&R)
69	5	NU
70	3	Niagara Mohawk Power Corporation (Mohawk) and Pennsylvania Power & Light Company (PP&L)
71	3	New England Power Co. (NEP)
74	6	PP&L
75	7	GPU Service Corporation (GPU)
78	8	Power Authority of the State of New York (the Power Authority)
82	4	Baltimore Gas & Electric Company (BG&E)
83	4	Atlantic City Electric Company (Atlantic)
84	4	Connecticut Municipal Electric Energy Cooperative (CMEEC)
88	3	Boston Edison (BE)
95	1	Long Island Lighting Company (LILCO)

The Supplements provide for an increase in rate from 2.4 mills to 2.5 mills per Kwh of interruptible transmission of power and energy over Con Edison's transmission facilities, thus increasing annual revenues under the Rate Schedules by a total of $21,961.10. Con Edison has requested waiver of notice requirements so that the Supplements can be made effective as of September 1, 1989.

Con Edison states that copies of this filing have been served by mail upon PECO, Public Service, NU, O&R, Mohawk, PP&L, NEP, GPU, the Power Authority, BG&E, Atlantic, CMEEC, BE and LILCO.

Comment date: September 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 89-21514 Filed 9-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-132-008]

El Paso Natural Gas Co.; Compliance Tariff Filing

September 6, 1989.

Take notice that on August 30, 1989, El Paso Natural Gas Company ("El Paso") filed, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with the Letter Order dated August 1, 1989 at Docket Nos. RP89-132-001 and 003, certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that on May 12, 1989, as supplemented May 26, 1989, at Docket No. RP89-132-000, *et al.*, El Paso tendered for filing with the Commission certain tariff sheets in compliance with ordering paragraphs (A)(1) and (2) of the Commission's order issued April 28, 1989 at Docket Nos. RP89-132-000, RP88-184-000, RP88-184-001 and TA88-1-1-33-000. By the Letter Order dated August 1, 1989 at Docket Nos. RP89-132-001 and 003, the Commission accepted such tariff sheets, effective May 1, 1989, subject to refund and conditions. The Commission directed El Paso to refile certain tariff sheets to (i) remove certain vague language regarding the definition of buyout and buydown costs and (ii) clarify the period interest can be charged. Accordingly, El Paso tendered tariff sheets in compliance with such directives.

El Paso requested, pursuant to Section 154.51 of the Commission's Regulations, that waiver of the notice requirements of Section 154.22 of the Commission's Regulations be granted, to the extent necessary, so as to permit the tendered tariff sheets to become effective May 1, 1989, the same date as authorized in the Commission's August 1, 1989 Letter Order.

Copies of this filing were served upon all parties of record in Docket Nos. RP89-132-000, RP88-184-000 and TA88-1-33-000 and, otherwise upon all interstate pipeline system sales customers of El Paso and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before Sept. 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21451 Filed 9-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-9-4-000]

Granite State Gas Transmission, Inc.; Tariff Filing

September 6, 1989.

Take notice that on August 30, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following revised tariff sheet in its FERC Gas Traiff, First Revised Volume No. 1, for effectiveness on July 1, 1989:

Substitute Second Revised Sheet No. 7-C

According to Granite State, the instant filing is submitted pursuant to a Letter Order issued July 7, 1989 accepting a filing made on June 14, 1989 tracking take-or-pay charges billed to Granite State by Tennessee Gas Pipeline Company (Tennessee) under Order No. 500 procedures. It is further stated that Granite State's filing was accepted subject to a condition that it be modified to reflect any changes ordered by the Commission in Tennessee's underlying filing. It is further stated that the instant filing tracks the modifications in Tennessee's filing which were accepted by the Commission on August 7, 1989 in Docket No. RP88-191-011.

According to Granite State, copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc. and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 13, 1989. Protests will be considered by the Comission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21450 Filed 9-12-89 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-35-005]

Midwestern Gas Transmission Co.; Rate and Tariff Filing Pursuant to Stipulation and Agreement

September 6, 1989.

Take notice that on August 30, 1989, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, tendered for filing the following Tariff Sheets to its First Revised FERC Gas Tariff Volume Nos. 1 and 2, proposed to be effective September 1, 1989:

First Revised Volume No. 1

First Revised Sheet Nos. 1 and 5
Original Sheet Nos. 32-59
First Revised Sheet Nos. 61-62, 64-66
Original Sheet Nos. 62A-62G, 64A
Original Sheet Nos. 85, 86-109, 117-119
Original Sheet Nos. 120-159

First Revised Volume No. 2

First Revised Sheet No. 60
First Revised Sheet Nos. 85-86

Midwestern states that the filing implements the terms of a Stipulation and Agreement filed by Midwestern in Docket No. RP89-35 on August 29, 1989 (the Stipulation), pursuant to which Midwestern agreed to file reduced interim rates for existing sales and certificated transportation services based upon the settlement cost of service and original and revised tariff sheets to established the terms and conditions under which Midwestern will conduct blanket open-access transportation under Order No. 500 and part 284 of the Commission's Regulations. Midwestern states that the filing includes tariff sheets for Rate Schedules FT and IT, including initial rates for such service, General Terms and Conditions for FT and IT, and Forms of Service Agreements. Midwestern states that it intends to provide open-access transportation pursuant to section 311 of the Natural Gas Policy Act and part 284, subpart B of the Commission's Regulations, effective September 16, 1989, assuming acceptance of the instant tariff filing.

Midwestern requests the Commission to waive the thirty-day notice requirement of §154.22 to the extent necessary to allow the interim rates and part 284 terms and conditions to become effective as of September 1, 1989. Midwestern also requests waiver of § 284.10 of the Commission's Regulations pending Commission approval of the Stipulation.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the requirements of Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1989. Persons who are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21452 Filed 9-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-2013-000]

Natural Gas Pipeline Co. of America; Application

September 1, 1989.

Take notice that on August 28, 1989, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-2013-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon partially firm sales service to Associated Natural Gas Company, a division of Arkansas Western Gas Company, (Associated), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Associated, it is said, has elected to convert 1,000 Mcf per day of firm sales entitlements to firm transportation service pursuant to § 284.10 of the Commission's Regulations. Applicant seeks approval to permanently abandon that portion of its certificated sales obligation to Associated which was converted to firm transportation service.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customer's option to convert constitutes consent to the proposed abandonment. Accordingly, any person desiring to be heard or any person, other than the converting customer, desiring to make any protest with reference to said application should on or before September 22, 1989, file with the Federal Energy Regulatory Commission, Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21449 Filed 9-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-222-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 6, 1989.

Take notice that Transwestern Pipeline Company ("Transwestern") on August 30, 1989, tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 25A
Original Sheet No. 25B
Original Sheet No. 25C
Original Sheet No. 25D
Original Sheet No. 25B
Original Sheet No. 25C
Original Sheet No. 25D
4th Revised Sheet No. 30
Original Sheet No. 32B
Original Sheet No. 32C
Original Sheet No. 32D

Transwestern states that these tariff sheets are filed to revise Transwestern's tariff to include scheduling and balancing penalties. The tariff sheets also revise the provisions regarding unauthorized gas flow, waiver of penalty payments and reservation of other remedies provisions in such schedules.

Transwestern, herein, respectfully requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary so as to permit the above-listed tariff sheets to become effective on October 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21453 Filed 9-12-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3544-8]

Establishment of the Policy Review Board of the Gulf of Mexico Program

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of Establishment and Chartering of the Policy Review Board of the Gulf of Mexico Program.

SUMMARY: EPA Regions IV and VI have established the Gulf of Mexico Program, designed to develop and implement a comprehensive strategy to manage and protect the Gulf of Mexico. A Policy Review Board has been selected to guide and review activities of the Program. In accordance with the Federal Advisory Committee Act (FACA) administered by the General Services Administration (GSA), notice of establishment of the Policy Review Board is hereby given.

DATE: Effective on September 13, 1989.

ADDRESSES: Comments should be mailed to the Gulf of Mexico Program Office, Building 1103, John C. Stennis Space Center, Stennis Space Center, MS 39529-6000.

FOR FURTHER INFORMATION CONTACT: William Whitson (Assistant Director of Operations), (601) 688-3726, FTS 494-3726.

SUPPLEMENTARY INFORMATION: As required by Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the establishment of a Policy Review Board for the Gulf of Mexico Program. This Board, consisting of twenty (20) senior level representatives from state and Federal agencies with regulatory or resource management authorities in the Gulf of Mexico and citizens representatives, will guide and review activities of the Gulf of Mexico Program. The Board approves program goals and objectives and establishes priorities and direction for the Gulf Program. The Board is chaired by the US EPA Region IV Regional Administrator, with the US EPA Region VI Regional Administrator serving as the vice-chair.

The primary purpose of the Gulf of Mexico Program is to provide a forum for defining and addressing environmental problems that face the Gulf. It is designed to better coordination the collaboration efforts of the many different organizations that carry out programs affecting the Gulf of Mexico, resulting in a strategy developed through the consensus process that will better manage and protect the resources of the Gulf.

We have determined that this is in the public interest and will assist the Agency in performing its duties described in the Clean Water Act. This effort compliments the Agency's Near Coastal Waters Initiative. Copies of the Policy Review Board's charter will be filed with appropriate committees of Congress and the Library of Congress.

September 7, 1989.

Joseph R. Franzmathes,

Assistant Regional Administrator for Policy and Management.

[FR Doc. 89-21498 Filed 9-12-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3645-9]

Science Advisory Board; Drinking Water Committee, Open Meeting

Under Public Law 92-463 notice is hereby given that a two-day meeting of the Drinking Water Committee of the Science Advisory Board will be held October 11 & 12, 1989, at the Governor's House Holiday Inn, 1615 Rhode Island Avenue, NW, Washington, DC 20036. The meeting will be held from 8:30 a.m. to 5:00 p.m. on October 11th and from 8:30 a.m. to 12:00 p.m. on October 12th.

The purpose of this meeting is to review recent developments in the thinking of the Office of Drinking Water concerning the regulation of disinfectants and disinfection by-products and to review the scientific research needed to support a proposed regulation in this area. Also the Committee will be briefed on the current and future activities of the Office of Drinking Water. The meeting will be open to the public. Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. Richard Cothern, Executive Secretary, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC 20460 or contact him on (202) 382-2552 by September 29, 1989. The Science Advisory Board expects that the public statements presented at this meeting will not be repetitive of previously submitted written statement. In general, each individual or group making an oral presentation will be limited to at total time of ten minutes.

Dated: September 5, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-21496 Filed 9-12-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100068; FRL-3645-2]

Computer Sciences Corporation and CRC Systems Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connecton with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Computer Sciences Corporation (CSC) and its subcontractor, CRC Systems, Inc. have been awarded a contract to perform work for EPA's Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be made available to CSC and CRC Systems, Inc. in accordance with requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2), respectively. This transfer will enable CSC and CRC Systems, Inc. to fulfill the obligations of the contract and serves to notify affected persons.

DATE: CSC and CRC Systems, Inc. will be given access to this information no sooner than (September 18, 1989.

FOR FURTHER INFORMATION CONTACT: By mail:

Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-01-7176, Delivery Order No. 518, CSC and CRC Systems, Inc. will provide automated document processing support functions which include operating key-to-disc terminal stations, operating numerous DATA/100 remote job entry equipment, operating of the DEC2020 and have access to data bases containing information submitted to EPA under FIFRA and FFDCA. This access is incidental to their work, which involves loading and maintenance of all systems and applications software, system performance tuning, data file backup services, diagnosis and remedy of system hardware and software failures, and implementation of EPA directed security protocols within the system environment. While CSC and CRC Systems, Inc. employees have complete access to all data within the systems environment, they are not in a position to know the actual significance to the data, nor do they use the data within its subject matter context.

The Office of Pesticide Programs has determined that access by CSC and CRC Systems, Inc. to information on all pesticide chemicals is necessary for the performance of the contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), the contract with CSC and CRC Systems, Inc. prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and handle it in accordance with the FIFRA Information Security Manual. In addition, CSC and CRC Systems, Inc. are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor and it's subcontractor until the above requirements have been fully satisfied. Records of information provided to this contractor and subcontractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to CSC and CRC Systems, Inc. by EPA for use in connection with this contract will be returned to EPA when CSC and CRC Systems, Inc. have completed their work.

Dated: August 31, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-21414 Filed 9-12-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Docket No. 89-16]

Actions to Address Adverse Conditions Affecting United States Carriers That Do Not Exist for Foreign Carriers in the United States/Taiwan Trade; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that Docket No. 89-16 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. section 4321 et seq., and that preparation of an environmental impact statement is not required.

Docket No. 89-16 initiates an investigation under the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. § 1710a, of the shipping conditions in the United States/Taiwan trade. The investigation seeks to determine whether Taiwan laws, rules, regulations, policies or practices result in the existence of conditions which adversely affect the operations of United States carriers and which do not exist for Taiwan carriers in the United States.

This investigation focuses on certain "doing business" restrictions which appear to affect adversely the intermodal operations of United States carriers in Taiwan. These include restrictions of off-dock container terminal licensing, shipping agency licensing, and trucking licensing as well as restrictions affecting chassis registration and the domestic use of containers.

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6 (b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washigton, DC 20573-0001, telephone (202) 523-5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-21433 Filed 9-12-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

BancTenn Corp., et al., Applications To Engage de novo in Permissible Nonbanking Activities

The Companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 27, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *BancTenn Corp.*, Kingsport, Tennessee; to engage *de novo* through its subsidiary, BancTenn Service Corporation, Johnson City, Tennessee, in (1) servicing loans pursuant to § 225.25(b)(1); and (2) real estate and personal property appraisals pursuant to § 225.25(b)(13) of the Board's Regulation Y. These activities will be conducted in

Sullivan, Hawkins, Washington and Unicol Counties, Tennessee.

2. *Gold Coast Bancshares, Inc.*, Hypoluxo, Florida, and Gulfstream Financial Services, Inc., Fort Lauderdale, Florida; to engage *de novo* through their subsidiary, Gold Coast Financial Services, Inc., Hypoluxo, Florida, in mortgage banking and brokerage activities, including originating, brokering, and servicing of first and junior mortgages in the commercial and residential markets, purchase and sale of existing mortgages, and other activities incidental to a mortgage banking and mortgage brokerage business pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Liberty National Bancorp., Inc.*, Louisville, Kentucky; to engage *de novo* through its subsidiary, Banker's Investment Group, Inc., Louisville, Kentucky, in underwriting and dealing in government obligations and money market instruments, pursuant to § 225.25(b)(16); providing investment advice incidental to transactions involving these securities pursuant to § 225.25(b)(4); and acting as broker in these and other government and money market securities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21485 Filed 9-12-89; 8:45 am]

BILLING CODE 6210-01-M

Changed in Bank Control Notices; Acquisitions of Share of Banks or Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-20278) published at page 35722 of the issue for Tuesday, August 29, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for Ed Berrong is amended to read as follows:

1. *Ed Borrong*, Weatherford, Oklahoma; to acquire an additional 4.32 percent of the voting shares of First National Bancshares of Weatherford, Inc., Weatherfood, Oklahoma, for a total of 20.00 percent, and thereby indirectly acquire First National Bank and Trust Company, Weatherford, Oklahoma.

Comments on this application must be received by September 27, 1989.

Board of Governors of the Federal Reserve System September 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

The Royal Bank of Canada, Montreal, Quebec, Canada; Application to Conduct Private Placements of All Types of Securities as Agent

The Royal Bank of Canada, Montreal, Quebec, Canada ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage through RBC Dominion Securities Corporation ("Company") in the placement, as agent for issuers, of all types of obligations and securities, registered and nonregistered. Company is currently authorized to engage in providing various types of brokerage and investment and financial advisory services, as well as underwrite and deal in obligations that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act.

The Board previously has authorized a bank holding company subsidiary to privately place third-party commercial paper as agent subject to certain limitations. *Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 138 (1987) (*"Bankers Trust"*); *Bank of Montreal*, 74 Federal Reserve Bulletin 500 (1988). Applicant has proposed to engage in the placement activity subject to the limitations contained in *Bankers Trust* and *Bank of Montreal*, with certain exceptions. In particular, Applicant's proposal differs from that approved in *Bankers Trust* and *Bank of Montreal* in the following principal respects:

- The instruments proposed to be placed include all types of obligations and securities, registered and nonregistered;
- The eligible purchasers include individuals with a net worth of over $1 million and other persons who meet the standards of the SEC's Regulation D;
- Company's foreign affiliates and, under certain circumstances, its U.S. affiliates may engage in credit enhancement activities with respect to the securities placed;
- Officers of Company's foreign affiliates would be permitted to serve on Company's board of directors; and
- The limitations imposed in *Bankers Trust* on certain activities of affiliates of the subsidiary engaging in placement activities would apply only to Company's U.S. affiliates.

The Board has not previously determined that the proposed placement activities are permissible under section 4(c)(8) of the Act. Section 4(c)(8) provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined [by order or regulation— to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 **Federal Register** 806 (1984). Applicant maintains that the proposed placement activities are closely related to banking because banks are currently active participants in the private placement market and because such activities are operationally and functionally equivalent to many traditional commercial banking functions.

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Applicant contends that permitting bank holding companies to engage in the proposed activities would result in increased competition and would raise no substantial risks of unsound banking, conflicts of interest, unfair competition, or similar problems.

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the

affiliation of a member bank with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicant contends that the proposed placement activities do not raise an issue under section 20, first, in that Applicant is not affiliated with a member bank, and second, in that the proposed activities do not differ in any material respect from those approved in the Board's *Bankers Trust* Order and *Securities Industry Ass'n* v. *Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 483 U.S. 1005 (1987).

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the Act.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than October 13, 1989. Any request for a hearing must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, September 7, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-21487 Filed 9-12-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in October

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of October 1989.

The Extramural Science Advisory Board, NIMH, will discuss the peer review process that evaluates all grant applications to the NIMH extramural research program. Attendance by the public will be limited to space available.

The initial review committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d).

Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Biological and Neurosciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH

Date and Time: October 4-6: 9:00 a.m.

Place: The Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW., Washington, DC 20008

Status of Meeting: Open—October 5: 9:00-10:00 a.m. Closed—Otherwise

Contact: Monica Woodfork, Room 9C-05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4843

Purpose: The Subcommittee is charged with the initial review of applications for research in all disciplines pertaining to mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH

Date and Time: October 4-6: 9:00 a.m.

Place: The Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW., Washington, DC 20008

Status of Meeting: Open—October 5: 9:00-10:00 a.m. Closed—Otherwise

Contact: Kimberly Crown, Room 9C-05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4843

Purpose: The Subcommittee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA

Date and Time: October 11-13: 9:00 a.m.

Place: The Carlyle Suites, 1731 New Hampshire Avenue, N.W., Washington, DC 20009

Status of Meeting: Open—October 11: 9:00-10:00 a.m. Closed—Otherwise

Contact: Lenore Sawyer Radloff, Room 16C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6106

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for suport of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Aging Subcommittee of the Life Course and Prevention Research Review Committee, NIMH

Date and Time: October 12-13: 9:00 a.m.

Place: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW., Washington, DC 20008

Status of Meeting: Open—October 12: 9:00-10:00 a.m. Closed—Otherwise

Contact: Phyllis Zusman, Room 9C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3857

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health, in the fields of child, family, and aging, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Behavioral Neurobiology Subcommittee of the Neurosciences Research Review Committee, NIMH

Date and Time: October 12-14: 8:30 a.m.

Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: Open—October 12: 8:30-9:30 a.m. Closed—Otherwise

Contact: Gerry Perlman, Room 9C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3936

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to behavioral neurobiology, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cellular Neurobiology and Psychopharmacology

Subcommittee of the Neurosciences Research Review Committee, NIMH

Date and Time: October 12–14; 8:30 a.m.

Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: Open—October 12: 8:30–9:30 a.m. Closed—Otherwise

Contact: Barbara Campbell, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 , (301) 443–3944

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institution of Mental Health for Support of research and research training activities relating to cellular neurobiology, and psychopharmacology with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cognition, Emotion, and Personality Research Review Committee, NIMH

Date and Time: October 12–14: 9:00 a.m.

Place: Henley Park Hotel, 926 Massachusetts Avenue, NW., Washington, DC 20001

Status of Meeting: Open—October 12: 9:00–10:00 a.m. Closed—Otherwise

Contact: Shirley Maltz, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3944

Purpose: The committee is charged with the initial reivew of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychobiology and Behavior Research Review Committee, NIMH

Date and Time: October 16–17: 9:00 a.m.

Place: The State Plaza Hotel, 2117 E Street, NW., Washington, DC 20037

Status of Meeting: Open—October 16: 9:00–10:00 a.m. Closed—Otherwise

Contact: Doris East, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activites relating to experimental and physiological psychology and comparative behavior, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA

Date and Time: October 17–18: 8:30 a.m.

Place: Bethesda Holiday Inn, Pennsylvania Room, Bethesda, MD 20814

Status of Meeting: Open—October 17: 8:30 a.m. to 9:00 a.m. Closed—Otherwise

Contact: Rita Liu, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Drug Abuse Clinical and Rehavioral Research Review Committee NIDA

Date and Time: October 17–20: 9:00 a.m.

Place: Bethesda Holiday Inn, Georgia Room, 8120 Wisconsin Avenue, Bethesda, MD 20814

Status of Meeting: Open—October 17: 9:00–9:30 a.m. Closed—Otherwise

Contact: Daniel Mintz, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Drug Abuse Epidemiology and Prevention Research Review Committee NIDA

Date and Time: October 17–19: 8:30 a.m.

Place; Bethesda Holiday Inn, Gallery Room, 8120 Wisconsin Avenue, Bethesda, MD 20814

Status of Meeting: Open—October 17: 8:30–12:00 noon. Closed—Otherwise

Contact: Raquel Crider, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee NIAAA

Date and Time: October 18–20: 8:30 a.m.

Place: Carlyle Suites, 1731 New Hampshire Avenue, NW., Washington, DC 20009

Status of Meeting: Open—October 18: 8:30–9:30 a.m. Closed—Otherwise

Contact: Thomas D. Sevy, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 (301) 443–6106

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Clinical Biology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH

Date and Time: October 18–20: 9:00 a.m.

Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036

Status of Meeting: Open—October 18: 9:00–10:00 a.m. Closed—Otherwise

Contact: Maureen Eister, Room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1340

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Criminal and Violent Behavior Research Review Committee, NIMH

Date and Time: October 18–19: 9:15 a.m.

Place: Carlyle Suites, 1731 New Hampshire Avenue, NW., Washington, DC 20009

Status of Meeting: Open—October 18: 9:15–10:15 a.m. Closed—Otherwise

Contact: Peg Lyons, Room 9C–18, Parklawn, Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the mental health aspects of antisocial, criminal, and individual violent behavior, including sexual assault and victimization, and law-mental health interactions related to these areas, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Research Scientist Development Review Committee, NIMH

Date and Time: October 18–20: 9:00 a.m.

Place: The Inn at Foggy Bottom, 824 New Hampshire Avenue, NW., Washington, DC 20037

Status of Meeting: Open—October 18: 9:00–10:00 a.m. Closed—Otherwise

Contact: Phyllis D. Artis, Room 9C–15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support of individuals who are engaged full-time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee, NIMH

Date and Time: October 19–21: 9:00 a.m.

Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: Open—October 19: 9:00 a.m.–10:00 a.m. Closed—Otherwise

Contact: Christina De Mare, Room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities that focus on topics in the periods of the life cycle from infancy through adulthood where vulnerability to mental distress is known and assumed to be high and where research efforts can identify, prevent, reduce, or eliminate that distress or vulnerability with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA

Date and Time: October 23–25: 9: a.m.

Place: Holiday Inn—Capitol, 550 C Street, SW., Washington, DC 20024

Status of Meeting: Open—October 23: 9:00–9:30 a.m. Closed—Otherwise

Contact: Ronald Suddendorf, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Clinical Program Projects and Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH

Date and Time: October 23–24: 9:00 a.m.

Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: Open—October 23: 9:00–10:00 a.m. Closed—Otherwise

Contact: Helen Craig, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of Mental Health Clinical Research Centers, clinical program projects, and other large-scale multi-disciplinary research projects, and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Extramural Science Advisory Board, NIMH

Date and Time: October 23–24: 8:30 a.m.

Place: National Institutes of Health, Building, 31, Conference Room 6, Bethesda, MD 20892

Status of Meeting: Open

Contact: Tony Pollitt, Room 17C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3175

Purpose: The Committee advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, on the direction, scope, balance, and emphasis of the Institute's extramural science programs.

Committee Name: Small Business Research Review Committee, NIMH

Date and Time: October 23–24: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815

Status of Meeting: Open—October 23: 9:00–11:00 a.m. Closed—Otherwise

Contact: Gloria Levin, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367

Purpose: The Committee is charged with the initial review of applications requesting support from the National Institute of Mental Health for small businesses involved in mental health research. Final review and recommendations are made from the National Advisory Mental Health Council.

Committee Name: Mental Health Behavioral Sciences Research Review Committee, NIMH

Date and Time: October 26–28: 9:00 a.m.

Place: The River Inn, 924 25th Street NW., Washington, DC 20037

Status of Meeting: Open—October 26: 9:00–10:00 a.m. Closed—Otherwise

Contact: Sheila O'Malley, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name:

- Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH

Date and Time: October 26–27: 9:00 a.m.

Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: Open—October 26: 9:00–10:00 a.m. Closed—Otherwise

Contact: Helen Craig, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychopathology and Clinical Biology Research Review Committee NIMH

Date and Time: October 31–November 1: 9:00 a.m.

Place: Days Inn Congressional Park, 1775 Rockville Pike, Rockville, MD 20852

Status of Meeting: Open—October 31: 9:00–10:00 a.m. Closed—Otherwise

Contact: Barbara Silver, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1330

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, Room 16C–20, 443–4375; Ms. Camilla Holland, NIDA Committee Management Officer Room 10–42, (301) 443–2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, (301) 443–4333. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: September 7, 1989.

Peggy W. Cockrill,

Committee Management Officer Alcohol, Drug Abuve, and Mental Health Administration.

[FR Doc. 89–21431 Filed 9–12–89; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 89M–0352]

CooperVision, Inc.; Premarket Approval of CooperVision SURGEON PLUS+® Nylon Monofilament Suture U.S.P.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CooperVision, Inc., Irvine, CA, for premarket approval, under the Medical Device Amendments of 1976, of the CooperVision SURGEON PLUS+® Nylon Monofilament Suture U.S.P. After reviewing the recommendation of the General and Plastic Surgery Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 2, 1989, of the approval of the application.

DATES: Petitions for administration review by October 13, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Palmer, Center For Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1090.

SUPPLEMENTARY INFORMATION: On September 19, 1988, CooperVision, Inc., Irvine, CA 92713, submitted to CDRH an application for premarket approval of CooperVision SURGEON PLUS+® Nylon Monofilament Suture U.S.P. The device is indicated for use in soft tissue approximation in ophthalmic surgery, but not in general surgery, cardiovascular surgery, microsurgery, and neural tissue. The device is available in sterile packets in U.S.P. sizes 9–0 through 11–0.

In the **Federal Register** of September 30, 1977, FDA published a final regulation listing the color additive logwood extract (21 CFR 73.1410) for use in coloring nylon surgical sutures. The use of logwood extract in coloring CooperVision SURGEON PLUS+® Nylon Monofilament Suture U.S.P. conforms to the color additive listing requirements specified in the regulation.

On March 10, 1989, the General and Plastic Surgery Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 2, 1989, CDRH approved the application by a letter to the applicant fom the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kenneth A. Palmer (HFZ–410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 13, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 6, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–21469 Filed 9–12–89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2051]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required, (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Housing Counseling Program and Recordkeeping Requirements (Non-Funded)
Office: Housing
Description of the need for the information and its proposed use: Section 106 of the Housing and Urban Development (HUD) Act authorizes HUD to approve organizations with knowledge and experience in counseling to provide housing counseling services to HUD clientele. Section 106 also authorizes HUD to make grants to these organizations for the delivery of services. The information will be used to meet the requirements of the program, to obtain data to prepare and support the program, and to obtain recommendations from grantees for improving the program
Form Number: HUD–9900, 9902, 9903, and 9909
Respondents: Non-Profit Institutions
Frequency of Submission: Recordkeeping and Semi-Annually
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD-9900	25		1		54		1,350
HUD-9902	475		2		1⅙		1,108
HUD-9903	4,166		1		1/12		347
HUD-9909	1,000		1		¼		250
Recordkeeping	5,666		1		1		5,666

Total Estimated Burden Hours: 8,721
Status: Reinstatement
Contact: William Feingold, HUD, (202) 755–6664; John Allison, OMB, (202) 395–6880.

Dated: September 7, 1989.

[FR Doc. 89–21511 Filed 9–12–89; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N–89–2050]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department,

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: September 6, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Housing Counseling Program and Recordkeeping Requirements (Funded)
Office: Housing
Description of the need for the information and its proposed use: Section 106 of the Housing and Urban Development (HUD) Act authorizes HUD to approve organizations with knowledge and experience in counseling to provide housing counseling services to HUD clientele. Section 106 also authorizes HUD to make grants to these organizations for the delivery of services. The information will be used to meet the requirements of the programs, to obtain data to prepare and support the program, and to obtain

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recommendations from grantees for improving the program

Form Number: HUD-9921

Respondents: State or Local Governments and Non-Profit Institutions

Frequency of Submission: Recordkeeping, Quarterly, and Other

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Quarterly Performance Report	200		4		.5		400
Final Report	200		1		3		600
Recordkeeping	200		1		35		7,000

Total Estimated Burden Hours: 8,000

Status: Reinstatement

Contact: William Feingold, HUD, (202) 755-6664; John Allison, OMB, (202) 395-6880

Date: September 6, 1989.

[FR Doc. 89-21512 Filed 9-12-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Records for Oneida Indian-Owned Lands in the State of Wisconsin

August 28, 1989.

ACTION: Notice; Transfer of Custody.

SUMMARY: This notice is published in accordance with 25 CFR part 150 and in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs under 209 DM 8.1. As of October 1, 1989, the official custody of all Oneida land records and title documents pertaining to Indian-owned trust or restricted lands under the jurisdiction of the Minneapolis Area Office, Minneapolis, Minnesota, and the Great Lakes Agency, Ashland, Wisconsin, that are located within the boundaries of the Oneida Indian Reservation, is transferred from the Central Office, Washington, DC, to the Aberdeen Land Titles and Records Office, Bureau of Indian Affairs, 115 4th Avenue, S.E., Aberdeen, South Dakota 57401. The Aberdeen Land Titles and Records Office is thereafter the official office of record for the recording and maintenance of the records.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Quentin M. Jones, Land Records Officer, Division of Real Estate Services, Bureau of Indian Affairs, 18th and C Streets, NW., Washington, DC 20245.

Walter R. Mills

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89-21444 Filed 9-12-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AA-320-09-4212-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0023), Washington, DC 20503, telephone 202-395-7340.

Title: Indian Allotments, 43 CFR 2530

OMB approval number: 1004-0023

Abstract: Respondents supply identifying information to be used by the agency to determine eligibility and identify information needed to assist in the conveyance of Title.

Bureau form number: 2530-1

Frequency: Once

Descripton of respondents: Individuals applying for conveyance of Public Land under the General Allotment Act.

Estimated completion time: ½ hour

Annual responses: 50

Annual burden hours: 25

Bureau clearance officer: Rick Iovaine 202-653-8853

Dated: August 21, 1989.

Billy R. Templeton,

Acting Assistant Director, for Land and Renewable Resources.

[FR Doc. 89-21507 Filed 9-12-89; 8:45 am]

BILLING CODE 4310-84-M

[UT-048-9-4320-10]

Environmental Assessment Proposed Action Within the Paria Canyon-Vermilion Cliffs Wilderness Area, UT

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of availability of a Draft Environmental Assessment for a proposed action within the Paria Canyon-Vermilion Cliffs Wilderness Area.

ADDRESS: To obtain a copy of the Environmental Assessment for the proposed maintenance contact Martha Hahn, Area Manager, Kanab Resource Area, 318 North First East, Kanab, Utah 84741 or telephone (801) 644-2672.

SUMMARY: The Bureau of Land Management, Cedar City District, is proposing to authorize the maintenance of existing range improvements within its area of livestock grazing responsibility in the Paria Canyon-Vermilion Cliffs Wilderness Area. This maintenance will authorize the use of vehicle access.

COMMENTS: Comments will be accepted October 13, 1989.

Dated: September 5, 1989.

Ronald A. Montagna,

Acting District Manager.

[FR Doc. 89-21480 Filed 9-12-89; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-048-9-4212-10]

Environmental Assessment Proposed Action Within Wilderness Study Areas; UT

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of availability of a draft environmental assessment for a proposed action within the Wahweap Wilderness Study Area.

ADDRESS: To obtain a copy of the environmental assessment for a proposed filming project, contact Martha Hahan, Area Manager, Kanab Resource

Area, 318 North First East, Kanab, Utah 84741, or telephone (801) 644-2672.

SUMMARY: The Bureau of Land Management, Cedar City District, is proposing to authorize the film company Highway Production, Inc., to film within the Wilderness Study Area.

COMMENTS: Comments will be accepted October 13, 1989.

Dated: September 5, 1989.

Ron Montagna,

Acting District Manager.

[FR Doc. 89-21481 Filed 9-12-89; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-010-09-3110-CAPL; Casefile # CACA 25767]

Realty Action Exchange of Public and Private Lands in Kern and San Luis Obispo Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—CACA 25767.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 USC 1716):

Mt. Diablo Meridian, California
T.31S., R.32E.
Sec. 32 E½NE¼, NE¼SE¼ (surface and mineral estate)
Sec. 34 SW¼NE¼, SE¼NW¼, SW¼SW¼, SE¼SE¼ (minerals only)
T.32S., R.32E.
Sec. 2 W½of lot 1 of NW¼, W½ of Lot 2 of NW¼, SW¼SE¼ (minerals only)
Sec. 4 W½ of Lot 2 of NW¼ (minerals only)
Sec. 8 E½Nw¼, S½SW¼ (minerals only)
Sec. 10 N½, E½SW¼, SE¼ (minerals only)
Containing 120 acres of public surface plus mineral estate, and 1,040.95 acres of public mineral estate only.

In exchange for these lands, the United States will acquire an equal value of lands within the Carrizo Plain Natural Area from The Nature Conservancy, a private, nonprofit organization.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire a portion of the non-federal lands within the Carrizo Plain Natural Area. This Natural Area would promote the conservation of threatened and endangered species and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna.

The ultimate goal of the Bureau of Land Management is to acquire approximately 155,000 acres within the Natural Area. A secondary purpose of the exchange is to consolidate the Bureau lands and reduce the number of scattered, isolated Bureau parcels that are difficult for the Bureau to manage and that may develop use conflicts with adjacent or surface owners. The public interest will be well served by completing the exchange.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and mining laws. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first.

After the exchange is completed, The Nature Conservancy plans to offer the former BLM land for sale to the surrounding landowner.

The exchange will be on an equal value basis. Acreage of the private land will be adjusted to approximate equal values. Full equalization of value will be achieved by future exchanges under a pooling agreement with The Nature Conservancy.

Land transferred from the United States will retain the following reservations

1. A right-of-way for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (43 USC 945). This reservation will apply only to the aforementioned public lands in sec. 32, T.31S., R.32E., MDM.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861-4236.

DATE: On or before October 30, 1989, interested parties may submit comments to the Area Manager, Caliente Resource Area Office, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: September 1, 1989.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 89-21482 Filed 9-12-89; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service and OMB, Paperwork Reduction Project (1018-0067), Washington, DC 20503, telephone 202-395-7340.

Title: Migratory Bird Hunting: Nontoxic Shot Approval Procedures

OMB Approval No: 1018-0067

Abstract: Regulations contained in 50 CFR 20.134(a) require that the Service Director determine the nontoxicity of candidate shot material that could be used for migratory bird hunting. Applicants proposing candidate shot, as alternatives to existing types, must gain a determination of status of nontoxicity through confirmatory tests. The process of application and testing is designed to eliminate obviously unacceptable candidate shot types, unnecessary testing and/or reviews. Failure to require this procedure would result in no further research and development of alternative nontoxic shot types, as there would be no mechanism for obtaining approval for its use.

Service Form number: N/A

Frequency: On occasion

Description of Respondents: Individuals and households, farms, small businesses or organizations, and businesses or other for profit.

Estimated Completion Time: The reporting burden is estimated to be 8 hours per response. The recordkeeping burden is estimated to be 500 hours, for a total burden of 508 hours.

Annual Responses: 1

Annual Burden Hours: 508

Service Information Collection Clearance Officer: James E. Pinkerton, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240; telephone 358-1943.

David Olsen,

Dated: August 21, 1989.

Assistant Director—Refuges and Wildlife.

[FR Doc. 89-21443 Filed 9-12-89; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Samedan Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5670, Block 33, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on September 5, 1989. Comments must be received September 28, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 5, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–21484 Filed 9–12–89; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–298 (Final)]

Fresh, Chilled, or Frozen Pork From Canada

Determination

On thè basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the act), that an industry in the United States is threatened with material injury [3] by reason of imports from Canada of fresh, chilled, or frozen pork, provided for in subheadings 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Canda.

Background

The Commission instituted this investigation effective May 8, 1989, following a preliminary determination by the Department of Commerce that imports of fresh, chilled or frozen pork from Canada were being subsitlized within the meaning of section 701 of the act (19 U.S.C. 1671). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 25, 1989 (54 FR 22634). The hearing was held in Washington, DC on August 1, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 5, 1989. The views of the Commission are contained in USITC Publication 2218 (September 1989) entitled "Fresh, Chilled, or Frozen Pork from Canada: Determination of the Commission in Investigation No. 701–TA–298 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: September 6, 1989.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–21506 Filed 9–12–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation Nos. 701–TA–300 (Preliminary) and 731–TA–438 (Preliminary)]

Limousines From Canada

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of limousines,[3] provided for in subheadings 8703.23.00, 8703.24.00, and 9802.00.50 of the Harmonized Tariff Schedule of the United States (previously under items 692.10 and 806.20 of the Tariff Schedules of the United States), that are alleged to be subsidized by the Government of Canada and sold in the United States at less than fair value (LTFV).

Background

On July 24, 1989, petitions were filed with the Commission and the Department of Commerce by Southhampton Coachworks, Ltd., Farmingdale, NY, on behalf of U.S. manufacturers of limousines, alleging that an industry in the United States is materially injured by reason of subsidized imports and LTFV imports of limousines from Canada. Accordingly, effective July 24, 1989, the Commission instituted preliminary countervailing duty and antidumping investigations Nos. 701–TA–300 (Preliminary) and 731–TA–438 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 2, 1989 (54 FR 31897). The conference was held in Washington, DC on August 15, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 7, 1989. The views of the Commission are contained in USITC Publication 2220 (September 1989) entitled "Limousines from Canada: Determinations of the Commission in Investigations Nos. 701–TA–300 (Preliminary) and 731–TA–438 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: September 8, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–21504 Filed 9–12–89; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Chairman Brunsdale and Vice Chairman Cass dissenting. Commissioner Lodwick did not participate.

[3] Commissioners Eckes, Rohr, and Newquist further determine that, pursuant to section 705(b)(4)(B), they would not have found material injury by reason of the imports subject to the investigation but for the suspension of liquidation of the entries of the subject merchandise.

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Commissioner Rohr did not participate.

[3] The products covered by these investigations are limousines, which are defined as extended wheelbase and expanded seating capacity motor vehicles principally designed for the transport of persons, of a cylinder capacity exceeding 1,500 cubic centimeters, and having spark-ignition internal combustion reciprocating piston engines of six or more cylinders. The vehicles are built on Lincoln Town Car, Mercury Grand Marquis, Cadillac Brougham, or any other six or eight cylinder gasoline engine powered chassis.

[Investigation No. 337–TA–300]

Certain Doxorubicin and Preparations Containing Same; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, George C. Summerfield, Esq. and Gary M. Hnath, Esq., of the Office of Unfair Import Investigations have been designated as the Commission investigative attorneys in the above-cited investigation instead of George C. Summerfield, Esq.

The Secretary is requested to publish this notice in the **Federal Register**.

Dated: September 8, 1989.

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 89–21503 Filed 9–12–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–429 (Final)]

Mechanical Transfer Presses From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–429 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of mechanical transfer presses,[1] provided for in subheadings 8462.99.00 and 8466.94.50 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Commerce will make its final LTFV determination on or before December 26, 1989 and the Commission will make its final injury determination by February 8, 1990 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207, as amended by 53 FR 33041, August 29, 1988, and 54 FR 5220, February 2, 1989), and part 201, subparts A through E (19 CFR part 201 as amended by 54 FR 13672, April 5, 1989).

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–252–1182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of mechanical transfer presses from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on January 12, 1989, by Verson Division of Allied Products Corporation, Chicago, IL, the United Auto Workers of America, and the United Steelworkers of America (AFL–CIO–CLC). In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (54 FR 9905, March 8, 1989).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

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[1] For purposes of this investigation, the term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled.

Limited disclosure of business proprietary information under a protective order.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on December 15, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 4, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 21, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on December 27, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is December 27, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on January 10, 1990. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 10, 1990.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than January 16, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

Issued: September 7, 1989.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-21505 Filed 9-12-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31387 (Sub-No. 1)]

Canadian National Railway Co.—Lease From Grand Trunk Western Railroad Co.

Decided: September 5, 1989.

AGENCY: Interstate Commerce Commission.

ACTION: Extension of period for filing comments.

SUMMARY: The date for filing comments is extended for one week, with corresponding extensions in the succeeding filing dates.

DATES: Written comments must be filed by September 25, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by October 10, 1989. The Commission will prepare a service list shortly thereafter. Comments must be served within 10 days of the issuance of the service list. Applicant's reply is due by October 31, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: By application filed July 20, 1989, Canadian National Railway Company (CN) and Grand Trunk Western Railroad Company (GTW), collectively referred to as applicants, seek Commission approval under 49 U.S.C. 11343, *et seq.*, for CN to lease GTW's Railport intermodal facility (Railport) in Chicago, IL. In a decision served August 17, 1989 (54 FR 34260, August 18, 1989),[1] the Commission determined that the proposal is a minor transaction within the meaning of 49 CFR 1180.2(c), and since the application was filed in conformity with the consolidation regulations at 49 CFR Part 1180, it formally accepted the application for consideration. The Commission requested comments from interested persons by September 18, 1989, and from the Secretary of Transportation (Secretary) and the Attorney General of the United States (Attorney General) by October 2, 1989. Applicant's reply comments were due by October 23, 1989.

On August 29, 1989, the Railway Labor Executives' Association (RLEA) requested a 30-day extension of the procedural schedule, computed from the date of this decision, because it was not

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[1] A corrected version was served August 22, 1989, (54 FR 35258, August 24, 1989).

served with a copy of the August 17 decision accepting the application for consideration. It says that it did not receive actual notice until August 29. Applicants state that they do not object to the extension request so long as the Commission does not modify the date upon which it is considered to have accepted the application.

Previously, RLEA had participated as a party in Finance Docket No. 31387, *Canadian National Ry. Co.—Partial Revoc. of Class Exempt.—Lease from Grand Trunk West. R. Co.* (not printed), served January 27, 1989. In that proceeding, the Commission granted a partial revocation of the class exemption for transactions within a corporate family under 49 CFR 1180.2(d)(3) to the extent that it related to the rail properties involved in this anticipated application proceeding. Mistakenly, applicants then filed this application under that same exemption proceeding docket number, Finance Docket No. 31387, and served a copy of the application on RLEA since RLEA had been a party to the exemption proceeding. However, the exemption revocation proceeding and the proposed lease are two separate proceedings. Thus, the Commission redocketed the application proceeding as Sub-No. 1. Accordingly, RLEA was not served directly.

When an application is filed under 49 U.S.C. 11343, *et seq.*, and is determined to involve a minor transaction, the decision is published in the **Federal Register**, but is not made on private parties. Publication in the **Federal Register** is deemed adequate notice for interested parties to determine their interest in the proceeding and to file appropriate comments. *See Friends of Sierra Railroad v. ICC*, No. 87-7407, slip op. at 8501 (9th Cir. July 31, 1989). It is unfortunate that the misfiled application and subsequent redocketing procedure created confusion on the part of RLEA, but the Commission's adding the sub-number to distinguish the lease transaction from the previous exemption revocation proceeding does not affect the adequacy of the **Federal Register** notice.

RLEA has not shown why it needs a new 30-day period to file comments. However, since the applicants do not object to an extension of the comment period, I will grant a one week extension. The comment period for the Secretary and Attorney General and the period for applicants to file a reply will also be extended correspondingly.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,
Secretary.

[FR Doc. 89-21309 Filed 9-12-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting; Advisory Policy Board (APB) Uniform Crime Reporting (UCR)

The UCR APB will meet on October 13, 1989, from 1:00 p.m. until close of business at the Galt House, Fourth Street and River Road, Louisville, Kentucky 40202.

The major topics of discussion will be the current implementation status of the National Incident-Based Reporting System to include Federal participation, Federal representation on the APB, and the current status of Hate/Bias crime legislation in Congress.

The meeting will be open to the public with approximately 25 seats available on a first-come, first-served basis. Any member of the public may file a written statement with the APB before or after the meeting. Anyone wishing to address a session of the meeting should notify the Committee Management Liaison Officer, Mr. J. Harper Wilson, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain their name, corporate or Government designation, and consumer affiliation, along with the capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairperson of the Board.

Inquiries may be addressed to Mr. J. Harper Wilson, Committee Management Liaison Officer, Records Management Division, Federal Bureau of Invetigation, Washington, DC 20535, telephone number (202) 324-2614.

Dated: August 24, 1989.

William S. Sessions,
Director.

[FR Doc. 89-21509 Filed 9-12-89; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-21,406 Dallas, TX; TA-W-21,406A Magnolia, AR; TA-W-21,406B Irving, TX]

Core Laboratories, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 19, 1988 applicable to all workers of Core Laboratories, Inc., Dallas, Texas and Magnolia Arkansas.

The Department is amending the certification to show the correct locations of the worker groups. In late 1987 the Dallas, Texas operation was moved to Irving, Texas. Worker separations have occurred at both Dallas and Irving, Texas and in Magnolia, Arkansas. The notice, therefore, is amended by including workers in Irving, Texas under this petition.

The amended notice applicable to TA-W-21,406 is hereby issued as follows:

> "All workers of Core Laboratories, Inc., Dallas, Texas; Irving, Texas and Magnolia, Arkansas who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of August 1989.

Robert O. Deslongchamps,
Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-21460 Filed 9-12-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,078 Dallas, TX; TA-W-23,078A Giddings, TX]

HECI Exploration Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 3, 1989 applicable to all workers of HECI Exploration Company, Dallas, Texas.

The Department is amending the certification to show the correct locations of the worker groups. HECI

Exploration has its headquarters in

Mine Safety and Health Administration

75.305 (weekly examination for

are available for inspection at that

[Docket No. M-89-134-C)]

entry would be patrolled twice each

Exploration has its headquarters in Dallas, Texas and operates in Giddings, Texas where worker separations occurred. The notice, therefore, is amended by including workers in the field office in Giddings, Texas.

The amended notice applicable to TA–W–23,078 is hereby issued as follows:

> All workers of HECI Exploration Company, Dallas, Texas, and Giddings, Texas who became totally or partially separated from employment on or after May 31, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of August 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–21461 Filed 9–12–89; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–22,369A Mount Pleasant, MI]

Schlumberger Well Services; Cancellation of Certification Regarding Eligibility to Apply for Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 2, 1989 applicable to all workers of Schlumberger Well Services, Traverse City, Michigan and Mount Pleasant, Michigan.

The Department, on its own motion, has reopened the investigation and is cancelling the certification for the Mount Pleasant, Michigan location of Schlumberger Well Services since the workers at Mount Pleasant are already certified eligible for adjustment assistance under petition TA–W–21,755. However, that part of the certification concerning workers of Schlumberger Well Services at Traverse City, Michigan, TA–W–22,369, remains in effect.

Signed at Washington, DC, this 31st day of August 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–21462 Filed 9–12–89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M–89–10–M]

Lone Star Industries, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Lone Star Industries, Inc., 162 Old Mill Road, West Nyack, New York 10994, has filed a petition to modify the application of 30 CFR 57.15020 (life jackets and belts) to its Clinton Point Quarry (I.D. No. 30–00082) located in Dutchess County, New York. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that life jackets or belts be worn where there is danger from falling into water.

2. In the dock loading operation, employees (trimmers) are required to work on top of the load as it is being loaded. There is no danger of falling into the water.

3. During warm weather, the wearing of a life jacket causes problems because of heat stress.

4. As an alternate method, petitioner proposes that employees not be required to wear life jackets during the "trimming" phase of barge loading from May 15 through October 15.

5. For these reasons, petitioner requests a modification of the standard.

Request for comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1989. Copies of the petition are available for inspection at that address.

Dated: September 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–21463 Filed 9–12–89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M–89–128–C]

McElroy Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examination for hazardous conditions) to its McElroy Mine (I.D. No. 46–01437) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows;

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Due to numerous roof falls, certain areas of the return aircourses cannot be safely traveled. Restoration of these areas would require an exorbitant amount of time and work would be performed under extremely hazardous conditions.

3. As an alternate method, petitioner proposes to establish checkpoints at specific locations where the air returning to these areas would be monitored.

4. In support of this request, petitioner states that—

(a) All monitoring stations and the approaches to such stations would, at all times, be maintained in a safe condition. Additionally, the fan operation is continuously monitored at the 24-hour manned Communication Center. Also, the water gauge is continuously monitored at the Communication Center, so that any sudden drop or increase would set off an alarm. The fan is inspected and the water gauge signal is tested on a daily basis, and the results recorded;

(b) Tests for methane and the quantity of air would be determined weekly by a certified person at each station; and

(c) The person making such examinations and tests would place his/her initials and the date and time at each station. A record of these examinations, tests and actions taken would be recorded in a book kept on the surface and made available for inspection by interested persons.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administation, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1989. Copies of the petition

are available for inspection at that address.

Dated: September 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–21464 Filed 9–12–89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M–89–132–C]

Preece Processing, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Preece Processing, Inc., P.O. Box 449, Turkey Creek, Kentucky 41570 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.D. No. 15–16441) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's 74 S & S Scoop, Serial No. 74BCA–125.

2. The mine ranges in height from 30 to 50 inches.

3. The use of a canopy on the mine's 74 S & S Scoop, Serial No. 74BCA–125 would result in a diminution of safety to the miners affected because the canopy would:

(a) Rub the top of the mine, pulling out roof bolts and loose rock;

(b) Cause the operator to lean outside of the scoop to operate it; and

(c) Limit the operator's visibility.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1989. Copies of the petition are available for inspection at that address.

Dated: September 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–21465 Filed 9–12–89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M–89–134–C)]

Pyro Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pryo Mining Company, P.O. Box 267, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (automatic fire sensor and warning device systems; installation, minimum requirements) to its Pyro No. 11 Mine (I.D. No. 15–10339), its Pyro No. 9 Wheatcroft Mine (I.D. No. 15–13920), and its Placo Mine (I.D. No. 15–14492) all located in Webster County, Kentucky, and its Pyro No. 9 Slope, William Station Mine (I.D. No. 15–13881) located in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide (CO) detection system would be installed in all belt entries. The low-level CO system would be capable of giving warning of a fire for four hours should the power fail; both visual and audible alarms would be activated when the CO level is 225 ppm above the established ambient level or in the event of any system failure. All persons would be evacuated when the level reaches 25 ppm. When the alarm is activated because of system failure, immediate repair work would begin. The CO monitoring system would initiate the fire alarm signals at an attended surface location where there is two-way communication. This responsible person would notify all affected personnel when an alarm occurs. The CO system would be capable of identifying any activated sensor and for detecting any system failures and providing alarms if failures occur.

3. The CO monitoring system would be inspected weekly. The CO sensors would also be calibrated monthly, and since each calibration would activate the alarm system, the entire system would also be functionally tested monthly.

4. If at any time the CO monitoring system or any portion of the system would be deenergized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor would continue to operate provided the affected portion of the belt conveyor entry would be patrolled twice each shift and monitored for CO by a qualified person using a hand-held CO detector.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1989. Copies of the petition are available for inspection at that address.

Dated: September 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–21466 Filed 9–12–89; 8:45 am]

BILLING CODE 4510-33-M

[Docket No. M–89–119–C]

Westmoreland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Drawer A & B, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Pierrepont Mine (I.D. No. 44–06206) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On August 2, 1986, petitioner was granted a modification of 30 CFR 75.1105 to use air currents which are used to ventilate dry-type transformers, permanent pumps containing no flammable liquid hydraulic oil (except for capacitors in transformers which may contain up to a total of 3 gallons of flammable liquid) and rectifiers to ventilate active working places and to install an early warning fire detection system and to monitor the air with a carbon monoxide detection system in all belt entries utilized as intake aircourses [Docket No. M–85–59–C].

2. This petition concerns paragraph 1(d) of MSHA's Decision and Order which requires that the velocity of air in

the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction. The velocity of the air current in the belt conveyor entry cannot exceed 300 feet per minute.

3. Paragraph 1(d) should be modified to require that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction.

4. In support of this request, petitioner states that limiting velocities to 300 feet per minute seriously impairs the ability to maintain the minimum velocity of 50 feet per minute required for a definite and distinct air movement in the designated direction in section belt entries. Furthermore restricting the air current in the belt conveyor entries to 300 feet per minute would reduce the volume of air coursed to mining sections necessary to dilute, render harmless and to carry away flamable, explosive, noxious, and harmful gases and dust and to ensure adequate ventilation for diesel equipment operated in aircourses common to the belt entries and the working section.

5. For these reasons, petitioner requests an amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.1105.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1989. Copies of the petition are available for inspection at that address.

Dated: September 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–21467 Filed 9–12–89; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–89–118–C]

Westmoreland Coal Co; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Drawer A & B, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Pierrepont Mine (I.D. No. 44–06206) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On August 7, 1986, petitioner was granted a modification of 75.1103–4(a) to use a fire sensor and warning device system capable of identification of fire by activated sensors rather than identification of fire within each belt flight and to install an early warning fire detection system and to monitor the air with a carbon monoxide system in all belt entries utilized as intake aircourses [Docket No. M–85–58–C].

2. This petition concerns paragraph 1(d) of MSHA's Decision and Order which requires that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction. The velocity of the air current in the belt conveyor entry cannot exceed 300 feet per minute.

3. Paragraph 1(d) should be modified to require that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction.

4. In support of this request, petitioner states that limiting velocities to 300 feet per minute seriously impairs the ability to maintain the minimum velocity of 50 feet per minute required for a definite and distinct air movement in the designated direction in section belt entries. Furthermore, restricting the air current in the belt conveyor entries to 300 feet per minute would reduce the volume of air coursed to mining sections necessary to dilute, render harmless and to carry away flammable, explosive, noxious, and harmful gases and dust and to ensure adequate ventilation for diesel equipment operated in aircourses common to the belt entries and the working section.

5. For these reasons, petitioner requests an amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.1103–4(a).

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1989. Copies of the petition are available for inspection at that address.

Dated: September 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–21468 Filed 9–12–89; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–89–117–C]

Westmoreland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Drawer A & B, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Pierrepont Mine (I.D. No. 44–06206) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On August 2, 1986, petitioner was granted a modification of 30 CFR 75.326 to use intake air which is coursed through belt haulage and or track entries to ventilate active working places and to install an early warning fire detection system and to monitor the air with a carbon monoxide detection system [Docket No. M–85–57–C].

2. This petition concerns paragraph 1(d) of MSHA's Decision and Order which requires that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction. The velocity of the air current in the belt conveyor entry cannot exceed 300 feet per minute.

3. Paragraph 1(d) should be modified to require that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction.

4. In support of this request, petitioner states that limiting velocities to 300 feet per minute seriously impairs the ability to maintain the minimum velocity of 50 feet per minute required for a definite and distinct air movement in the designated direction in section belt entries. Furthermore, restricting the air current in the belt conveyor entries to 300 feet per minute would reduce the volume of air coursed to mining sections necessary to dilute, render harmless and to carry away flammable, explosive, noxious, and harmful gases and dust and to ensure adequate ventilation for diesel equipment operated in aircourses common to the belt entries and the working section.

5. For these reasons, petitioner requests an amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.326.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1989. Copies of the petition are available for inspection at that address.

Dated: September 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–21469 Filed 9–12–89; 8:45 am]

BILLING CODE 4510–43–M

Occupational Safety and Health Administration

[Docket No. NRTL–1–89]

ETL Testing Laboratories, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of recognition as a nationally, recognized testing laboratory.

SUMMARY: This notice announces the Agency's final decision on the ETL Testing Laboratories, Inc., applications for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that ETL Testing Laboratories, Inc., which made application for recognition pursuant to 29 CFR 1910.7, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or materials listed below.

The addresses of the laboratories covered by this recognition are:

ETL Testing Laboratories, Inc., Cortland Safety Division, Industrial Park, Cortland, New York 13045

ETL Testing Laboratories, Inc., 5855–P Oakbrook Parkway, Norcross, Georgia 30093

ETL Testing Laboratories, Inc., West Coast Division, 660 Forbes Boulevard, South San Francisco, California 94080

Background

ETL Testing Laboratories, Inc., (ETL), was founded in New York City as the Lamp Testing Bureau in 1896 by the Edison Illuminating Companies. After 46 years of performing electrical, chemical and photometric tests, ETL was divested by the illuminating companies and purchased by its employees in 1942. By that time the name of the company had been changed to Electrical Testing Laboratories. In 1977, the Electrical Testing Laboratories, Inc., moved its operation to Cortland, New York. Soon after moving to Cortland, the name of the company was changed to ETL Testing Laboratories, Inc. In 1979, the decision was made to implement a product safety labeling, listing, and follow-up program similar to that of Underwriters' Laboratories, Inc. In 1984, ETL established a West Coast Division in South San Francisco, California, specializing in product safety testing, to serve clients west of the Rocky Mountains. In 1985, a Southeast Division located in Norcross, Georgia was established. This Division also specializes in product safety testing. Also in 1985, ETL was purchased by its management, along with a New York based investment firm. In October 1988, ETL Testing Laboratories, Inc., was purchased by Inchcape Inspection and Testing Services USA, Inc.

ETL Testing Laboratories, Inc., applied to OSHA for recognition as a Nationally Recognized Testing Laboratory in May 1988. The application was subsequently revised and additional data provided as requested. On-site evaluations were conducted (Exs. 2B(1), 2C(1), and 2D(1)), and the results were discussed with the applicant who responded with appropriate corrective actions and clarifications to recommendations made as a result of the survey (Exs. 2B(2), 2C(2), and 2D(2)). Final on-site review reports, consisting of the on-site evaluations of ETL's testing facilities and administrative and technical practices and the corrective actions taken by ETL in response to these evaluations (Exs. 2B, 2C, and 2D) and the OSHA staff recommendation, were subsequently forwarded to the Assistant Secretary for a preliminary finding on the application. A notice of ETL's application together with a positive preliminary finding was published in the **Federal Register** on February 28, 1989 (54 FR 8411–8414). Interested parties were invited to submit comments.

There were seventeen responses to the **Federal Register** notice of the ETL application and preliminary finding (Docket No. NRTL–1–89). Exhibits 3–1 through 3–6 and 3–8 through 3–17 attested to the credibility of the applicant, agreed with the positive preliminary finding, and recommended recognition as a nationally recognized testing laboratory. The other comment, Exhibits 3–7, will be discussed more fully below.

The Occupational Safety and Health Administration has evaluated the record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the testing laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

Based upon the on-site review reports, the products and standards in question, ETL's three laboratories have adequate floor space for testing and evaluation and numbers of technical and professional personnel to accomplish the services required for the present workload in the areas of recognition it seeks.

The Cortland Safety Division is located in an ETL owned commercial building complex on a 45 acre site. The main building contains more than 160,000 square feet of floor space of which approximately 18,000 square feet is allocated to product testing and evaluation.

Ambient environmental conditions in the building are monitored and controlled by a central heating, ventilating, and air conditioning system while the temperature and humidity are more closely controlled in rooms used for calibrating test instruments and for specific product testing. Visitor entry to the facility is carefully controlled and the premises are protected by security personnel at all times. The building has a security alarm system and fire sprinkler systems.

The Cortland Safety Division consists of 72 professional or technical employees, of which 67 are located at

determine compliance with the manual.

improper or unauthorized use of its

Creditable Reports/Complaint Handling

the Cortland, New York facility, as follows:

1—Safety Division Manager
4—Department Managers
1—Staff Engineer
2—Senior Engineers
9—Project Engineers
36—Field Engineers
3—Team Leaders
5—Technicians
5—Report Writers
1—Staff Assistant

The Norcross (Atlanta) laboratory, which is a department of the Cortland Safety Division, leases 5,000 square feet of floor space in a commercial/industrial park; some 1,800 square feet in the facility is devoted to product testing and evaluation.

Ambient environmental conditions within the laboratory are monitored and controlled by a central heating, ventilating, and air conditioning system. Entrance to the laboratory is monitored during working hours. The facility has a manual key-activated security alarm system and a water sprinkler system for fire protection.

The Norcross laboratory consists of the following professional or technical personnel:

1—Department Manager
3—Project Engineers
1—Report Writer

The East Coast Divison laboratory located in South San Francisco leases a commercial building consisting of more than 10,500 square feet of floor space. Of this space, some 7,000 square feet is allocated to product testing and evaluation.

Ambient environmental conditions in the office areas are monitored and controlled by a central heating, ventilating, and air conditioning system. Other individual rooms in the laboratory are temperature controlled for specific product testing. The building has a security alarm and motion detection systems. The laboratory has a water sprinkler system for fire protection.

The South San Francisco laboratory consists of the following professional or technical personnel:

1—Division Manager
4—Project Engineers
2—Technicians
1—Report Writer
2—Marketing

ETL has submitted copies of the job responsibilities and qualifications for each of the technical positions listed above and the employees, in OSHA's opinion, appear to be qualified by training or experience for performing testing in the areas for which ETL seeks recognition.

ETL has more than 1,470 items of test equipment it uses to perform the testing required by the various test standards. This equipment is located as follows:

The Cortland, New York laboratory maintains some 1,380 pieces of equipment for product testing.

The Norcross (Atlanta) facility and the South San Francisco laboratory normally maintain some 35 and 57 test instruments, respectively, for product testing.

Test equipment which is not available at the Cortland laboratory would be leased as necessary. Test equipment not available at either the Norcross or the South San Francisco facilities would either be borrowed from the Cortland laboratory or leased locally.

One respondent (Ex. 3–7, p. 3) believed that the applicant has attempted to cover too many product categories for the facilities, test equipment, and staff resources of the firm. OSHA is satisfied that ETL has adequate facilities, personnel and test equipment to accomplish the services required for its present workload in the applied-for product categories.

This same respondent (Ex. 3–7, p. 3) noted further that ETL applied to test two more test standards than appeared in its January 1989 Directory of Listed Products, and felt that recognition should not be extended to any test standard or product category for which no experience can be demonstrated. However, 29 CFR 1910.7 merely requires that the applicant have the capability to do the work. OSHA believes that an otherwise qualified laboratory may be extended recognition to test a certain product category if the personnel have adequate expertise in a given area, even if that laboratory does not have a background of testing a particular product category. To decide differently would have the effect of inhibiting an otherwise qualified laboratory's growth into new areas merely because they had not done the work previously. OSHA's requirements for recognition as a nationally recognized testing laboratory were not intended to have this effect. ETL has staff expertise in those categories not yet listed. Additionally, many of the test standards which ETL seeks to use and which have not appeared in the ETL Directory are closely allied to those already listed. OSHA will, of course, continue to monitor the operations of ETL as part of its oversight function.

The EL project engineer utilizes written standard operating procedures to describe and evaluate the construction of a sample of the product submitted for testing. These procedures refer to specific sections of the standards. The procedures are detailed in the on-site review reports. See the On-Site Evaluations (Exs. 2B(1), 2C(1), and 2D(1), pp. 3–4).

The applicant has various procedures in place to help assure consistent test protocol and interpretations. For example, a test method must be written for each test performed, and must be of sufficient detail to permit duplication of the test at a subsequent time. Copies of all these test methods are maintained by the laboratories and, as appropriate, filed in the test record of the product listing report. ETL also retains a Technical Advisory Council composed of leading national experts in the field of public safety which advises it on interpretations of codes and standards. In addition, issues concerning the investigation that are not covered by the standard or that require an interpretation of the standard are discussed in meetings of key personnel. Engineering decisions to resolve these issues are based upon input from the laboratory staff, members of the Technical Advisory Council and, in some cases, the organization that developed the standard (see the On-Site Evaluations, Exs. 2B(1), 2C(1), and 2D(1), p. 3). OSHA considers these procedures to be adequate.

The on-site review reports (Exs. 2B, 2C, and 2D) revealed that ETL has a comprehensive calibration program for its test equipment. A separate calibration laboratory at the Cortland site calibrates, repairs, and maintains most of the test equipment used for product testing for all three laboratory locations. ETL permits outside vendor calibration services to be used when approved by the appropriate laboratory official. A written Equipment Calibration Program is available and, as detailed in the on-site evaluation of the Cortland facility (Ex. 2B(1)), is in use. The Program includes periodic calibration, color-coded labels to identify calibration standards, date of last calibration, and due date for next calibration. The Calibration Manager is responsible for specifying the test equipment calibration intervals, typically on an annual basis, and for retention of records of calibration, repair and maintenance of the test equipment, and for the decision to use outside vendor calibration services. The Calibration Manager also issues monthly reports to appropriate personnel indicating the equipment due for calibration during the following month. These reports are generated by a computer data base.

ETL has a written Quality Control (QC) Systems Manual which describes the appointment of an auditor to make periodic reviews of each division to

determine compliance with the manual. It also details the responsibilities of each division manager to implement specific procedures. (See the On-Site Evaluations, Exs. 2B(1), 2C(1), and 2D(1), p. 6).

Type of Testing

The standard contemplates that testing done by NRTLs fall into one of two categories: testing to determine conformance with appropriate test standards, or experimental testing where there might not be one specific test standard covering the new product or material. ETL has applied for recognition in the first category.

Follow-Up Procedures

Section 1910.7(b)(2) requires that the NRTL shall provide certain follow-up procedures to the extent necessary for the particular equipment or material to be listed, labeled or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting of field inspections to monitor and assure the proper use of the label.

The Follow-Up Listing Program is the responsibility of the Field Engineering Services Division located at the Cortland site. ETL requires the client/submitter to sign a listing, labeling, and follow-up service agreement and to allow an initial plant inspection prior to applying the laboratory's listing label to the product. This initial inspection is for the purpose of reviewing the client's quality control program and its ability to conduct any production line tests required by the standard. Follow-up inspections on actively produced products are conducted at the manufacturing site on a quarterly basis. ETL conducts unannounced inspections and selects random samples of the listed products and components for inspection and test at any time. The laboratory has written procedures for conducting these inspections. Follow-up inspections are scheduled by the Manager of the Field Engineering Services and assigned to selected field inspectors under contract to ETL. Any discrepancies discovered between the product and the listing report during the inspection are documented and reported to the laboratory. The use of the laboratory's listing mark is suspended until corrective action is taken to resolve the discrepancies. Field inspectors are audited by the Field Engineering Office at least once each year. ETL has the right to notify vendors, authorities, potential users, and others of an improper or unauthorized use of its mark. The printing and distribution of the listing label is controlled by ETL. The manufacturer must account for all labels.

Field inspections may be necessary under various circumstances. The determination on whether to conduct these field inspections routinely, sporadically, or not at all for a given product, will depend upon the results of the factory follow-up and other relevant considerations. As an example, field inspections may be appropriate when the laboratory has reason to believe that its mark or label is being improperly used. Such belief could result from observed events or information from complainants. Another situation necessitating a field inspection could arise where it is impractical to conduct regular factory inspections because of a limited production schedule. It is expected that the decision on conducting field inspections will be continually reevaluated to fit the circumstances. ETL, in the written terms and conditions of its follow-up services, states that it will make periodic examinations or tests of products at the factory and may, from time to time, select samples from the factory, the open-market, or elsewhere to be sent to a ETL testing station for examination or test to determine compliance with ETL's requirements.

The on-site review demonstrated that ETL has experience with a follow-up program to correct product problems and insure the integrity of the label. Moreover, OSHA will periodicially review the follow-up procedures to evaluate their efficacy.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements and of any manufacturer or vendor of equipment or materials being tested. The applicant stated in its application that, with reference to services performed, there are no managerial affiliations with any producer, supplier, or vendor, and there are no securities investments or stock options in the product line. Furthermore, the employment security of personnel is free from influence by any producer, supplier, or vendor and, finally, the laboratory is not owned, operated, or controlled by any producer, supplier or vendor.

ETL has stated that it will maintain this same level of independence throughout its existence as a Nationally Recognized Testing Laboratory.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias. The laboratory, in order to be recognized, must also maintain effective procedures for handling complaints under a fair and reasonable system.

The ETL application as well as the on-site review report indicate that ETL does maintain effective procedures for producing creditable findings and reports that are objective. As part of the review, several test reports were reviewed and found to be consistent with the intent of 1910.7(b)(4)(i) to produce creditable findings and reports. This requirement is, however, essentially procedural in nature (see 53 FR at 12111, 4/12/88). OSHA believes that its evaluation of ETL's capabilities, including its personnel, equipment, facilities, calibration program, and quality assurance program, as well as its independence, among other things, indicates that there are appropriate procedures being implemented to produce objective test reports that are without bias.

The requirement that a laboratory have a fair and reasonable system for handling complaints was intended to allow interested parties an avenue of redress when, for example, it was believed that an item had been improperly labeled or that an inappropriate test procedure had been applied. It was not intended to interfere with any laboratory's recognized responsibility to decide whether to approve, list, label, or certify any particular type of equipment or material which it had tested. Indeed, many of the ANSI test standards include in the preface a statement specifically indicating that an item may not be acceptable even though it may meet all the test criteria. In fact, 29 CFR 1910.7(b)(4)(ii) was intended to help settle complaints and disputes after an item had been approved, listed, labeled, or certified.

One respondent (Ex. 3–7, p. 2) questioned ETL's dispute handling procedure claiming that inconsistent results will be inherent in the program since the product manufacturer is unable to question any of the decision-making by ETL regarding implementation of a test standard for a particular client. The essential ingredient in 29 CFR 1910.7(b)(4)(ii) is that all interested persons have access to a dispute handling system which is both "fair and reasonable" (cf *ASME* v.

Hydrolevel 456 U.S. 556, 102 S.Ct. 1935 (1982)). ETL's appeals procedure, which includes an ad hoc appeals committee appointed by the ETL president, appears to provide a fair and reasonable method of dispute handling.

While ETL's formal appeals procedure was originally limited to disagreements between the client and the laboratory regarding the evaluation and testing of products to a standard, it has since been expanded to address and resolve complaints from end users and other interested parties regarding products listed by ETL.

One commentator (Ex. 3–7, p.3) objected to the lack of coverage of dispute resolution in the ETL application, noting that no information is presented describing the ETL appeals procedure. A written appeals procedure describing the hierarchy of appeals and assuring procedural safeguards has been included in the Laboratory's Quality Control Manual (Ex. 5). OSHA believes that the ETL appeals procedures, as detailed in this Quality Control Manual, are consistent with the requirement that a recognized NRTL maintain effective procedures for handling complaints and disputes under a fair and reasonable system.

Test Standards

Section 1910.7 requires that a nationally recognized testing laboratory use "appropriate test standards". The regulation defines an appropriate test standard as a document which specifies the safety requirements for specific equipment or a class of equipment and is recognized in the United States as providing adequate level of safety, compatible with and maintained current with periodic revisions of applicable national codes, and developed by a standards developing organization under a system of providing for broad input from interested parties § 1910.7(c)(1), (2), and (3)). Section 1910.7 also specifies as "appropriate" any standard that is currently designated as an ANSI safety designated product standard or an ASTM test standard used for evaluation of products or materials. (See § 1910.7(c)(4)). Laboratories may also use other test standards that the Assistant Secretary of Labor has evaluated to determine that such standard provides an adequate level of safety. (See § 1910.7(d)). In this case, ETL has indicated that it will use the ANSI, ANSI/UL and UL test standards listed below. The ANSI and ANSI/UL standards are appropriate test standards within the meaning of 29 CFR 1910.7 (b) and (c)(4). All of the UL test standards which ETL has applied to use, with the exception of nine, have also been adopted by ANSI. Eight of these nine UL standards (UL No's. 141, 416, 544, 733, 763, 795, 1059, and 1244) have not been considered for adoption by ANSI as ANSI/UL standards since similar standards sponsored by other organizations have previously received ANSI approval. The one remaining UL standard (UL 775) is either in canvass or about to be canvassed to establish a consensus for approval by ANSI. As to the non-ANSI UL test standards ETL has applied to use, OSHA has examined the status of these Underwriters Laboratories Inc. (UL) Standards for Safety and, in particular, the method of their development, revision and implementation and has determined that they are appropriate test standards under the criteria described in 29 CFR 1910.7(c) (1), (2), and (3). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible with and remain current with periodic revisions of applicable national codes and installation standards (that is, they have all been revised within the past five years); and they are developed by a standards developing organization (i.e., UL) under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

One of the commentators (Ex. 3–7, p. 2) stated that the test standards "are listed without their date of issue" and raised the spectre of inconsistency; this commentator believes "there is need for assurance of testing to latest versions of the standard". ETL tests to the latest published versions of the test standards. ETL indicated that part of its testing includes a Revision Subscription Service to automatically obtain the latest revisions of the standards. The main (Cortland) laboratory maintains a central standards library and distributes updates of the standards to the engineers at the Cortland site, and to the Norcross laboratory. The South San Francisco laboratory receives copies of the standards directly from Underwriters Laboratories Inc. (see Ex. 2B, p. 5, Ex. 2C, p. 5, and Ex. 2D, p. 5). The procedures identified by ETL indicate its capability to test to the latest revisions of the test standards. This is the same level of assurance that would be required of other recognized laboratories. The procedures to be followed in the event of test standard changes are adequately stated in Appendix A of 29 CFR 1910.7. The commentator also questioned whether the ANSI implementation of each revision or the UL implementation of each revision of an ANSI/UL standard will be applicable. The standard effective date as established by UL is generally applicable. It would be a rarity if such a situation would result in potentially different levels of safety. If such were the case, however, ETL would use the more safe application. (Ex. 4–1, p. 2).

Other Issues

One of the respondents (Ex. 3–7) raised several issues that were not directly relevant to the issue of ETL meeting the definition of an NRTL as set forth in 29 CFR 1910.7. These comments were general criticisms of the standard. For example, one such comment focused on the need to designate and use a single test standard for each product. (Ex. 3–7, pp. 1–2). This issue had been raised by the same respondent during the rulemaking proceeding and was discussed and resolved in the preamble to the final rule (see 53 FR at 12108–12109, 4/12/88). Since these general issues were raised and resolved during the promulgation of the standard it is not now timely to comment on them.

Two other issues, directly related to ETL, were also raised. One commentator (Ex. 3–7, p. 4) suggested that ETL's organizational chart, showing a "Design Sources" unit under the Business Development Group, would constitute a potential "conflict of interest if (the) laboratory participates in any manner in the design of a product which the laboratory is to evaluate". In certain circumstances such action might compromise the ability of a laboratory to produce test results which are objective and unbiased and might adversely impact their independence. However, ETL stipulates that the "Design Sources" unit shown on their organizational chart refers to test facility design services and not product design services (see Ex. 4–1, p. 2). OSHA finds ETL's response to be adequate and believes no further investigation is necessary.

The second issue raised by the respondent (Ex. 3–7, p. 4), had to do with the ETL application description of an "on-site" test procedure performed at a location where an item of commercial or industrial equipment is installed. The respondent believes that, while that type of testing may be valid, it should be the exception rather than the rule and should only include custom installations where the manufacturer's self-certification is usually the only available

option. The applicant's response to this comment (Ex. 4–1, p. 3) is that ETL's test activity is generally limited to equipment already installed where this is the only alternative to manufacturer self-certification. This service utilizes a special serialized label to identify it as distinct from the labeling and listing program. Reports are maintained against the specific individual pieces of apparatus and referenced against the serial number appearing on the label. In any event, this type of testing is outside of the scope of 29 CFR 1910.7 and, therefore, is not considered to be part of this recognition.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, the OSHA staff finding including the on-site review report, and the comments presented during the public review and comment period, OSHA finds that ETL Testing Laboratories, Inc., has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, ETL Testing Laboratories, Inc., is hereby recognized as a Nationally Recognized Testing Laboratory subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

ETL has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction:

ANSI/UL 4 Armored Cable
ANSI/UL 20 General-Use Snap Switches
ANSI/UL 45 Portable Electric Tools
ANSI/UL 48 Electric Signs
ANSI/UL 50 Electrical Cabinets and Boxes
ANSI/UL 67 Electric Panelboards
ANSI/UL 73 Electric Motor-Operated Appliances
ANSI/UL 82 Electric Gardening Appliances
ANSI/UL 83 Thermoplastic-Insulated Wires and Cables
ANSI/UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 98 Enclosed and Dead-Front Switches
ANSI/UL 114 Electric Office Appliances and Business Equipment
ANSI/UL 122 Photographic Equipment
ANSI/UL 130 Electric Heating Pads
UL 141 Garment Finishing Appliances
ANSI/UL 153 Portable Electric Lamps
ANSI/UL 174 Household Electric Storage-Tank Water Heaters
ANSI/UL 187 X-Ray Equipment
ANSI/UL 197 Commercial Electric Cooking Appliances
ANSI/UL 231 Electrical Power Outlets
ANSI/UL 250 Household Refrigerators and Freezers
ANSI/UL 291 Automated Teller Systems
ANSI/UL 296 Oil Burners
ANSI/UL 298 Portable Electric Hand Lamps
ANSI/UL 303 Refrigeration and Air Conditioning Condensing and Compressor Units
ANSI/UL 310 Electrical Quick-Connect Terminals
ANSI/UL 325 Door, Drapery, Gate, Louver, and Window Operators and Systems
ANSI/UL 399 Drinking-Water Coolers
ANSI/UL 412 Refrigeration Unit Coolers
UL 416 Refrigerated Medical Equipment
ANSI/UL 427 Refrigerating Units
ANSI/UL 429 Electrically Operated Valves
ANSI/UL 430 Electric Waste Disposers
ANSI/UL 464 Audible Signal Appliances
ANSI/UL 465 Central Cooling Air Conditioners
ANSI/UL 466 Electric Scales
ANSI/UL 471 Commercial Refrigerators and Freezers
ANSI/UL 474 Dehumidifiers
ANSI/UL 478 Information-Processing and Business Equipment
ANSI/UL 482 Portable Sun/Heat Lamps
ANSI/UL 484 Room Air Conditioners
ANSI/UL 489 Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 496 Edison Base Lampholders
ANSI/UL 497 Protectors for Communication Circuits
ANSI/UL 498 Electrical Attachment Plugs and Receptacles
ANSI/UL 499 Electric Heating Appliances
ANSI/UL 506 Speciality Transformers
ANSI/UL 507 Electric Fans
ANSI/UL 508 Electric Industrial Control Equipment
ANSI/UL 519 Impedance-Protected Motors
ANSI/UL 541 Refrigerated Vending Machines
ANSI/UL 542 Lampholders, Starters, and Starter Holders for Fluorescent Lamps
UL 544 Electric Medical and Dental Equipment
ANSI/UL 547 Thermal Protectors for Electric Motors
ANSI/UL 559 Heat Pumps
ANSI/UL 560 Electric Home-Laundry Equipment
ANSI/UL 563 Ice Makers
ANSI/UL 574 Electric Oil Heaters
ANSI/UL 609 Local Burglar-Alarm Units and Systems
ANSI/UL 621 Ice Cream Makers
ANSI/UL 639 Intrusion-Detection Units
ANSI/UL 705 Power Ventilators
ANSI/UL 726 Oil-Fired Boiler Assemblies
ANSI/UL Oil-Fired Central Furnances
ANSI/UL 731 Oil-Fired Unit Heaters
ANSI/UL 732 Oil-Fired Water Heaters
UL 733 Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 749 Household Electric Dishwashers
ANSI/UL 751 Vending Machines
UL 763 Motor-Operated Commercial Food Preparing Machines
UL 775 Graphic Arts Equipment
ANSI/UL 778 Motor-Operated Water Pumps
UL 795 Commercial-Industrial Gas-Heating Equipment
ANSI/UL 796 Electrical Printed-Wiring Boards
ANSI/UL 813 Commercial Audio Equipment
ANSI/UL 817 Cord Sets and Power-Supply Cords
ANSI/UL 834 Heating, Water Supply, and Power Boilers—Electric
ANSI/UL 845 Motor Control Centers
ANSI/UL 854 Service-Entrance Cables
ANSI/UL 858 Household Electric Ranges
ANSI/UL 863 Time-Indicating and Recording Appliances
ANSI/UL 867 Electrostatic Air Cleaners
ANSI/UL 869 Electric Service Equipment
ANSI/UL 873 Elecrical Temperature-Indicating and Regulating Equipment
ANSI/UL 883 Fan-Coil Units and Room Fan-Heater Units
ANSI/UL 891 Dead-Front Electrical Switchboards
ANSI/UL 913 Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1, Hazardous Locations
ANSI/UL 917 Clock-Operated Switches
ANSI/UL 921 Commercial Electric Dishwashers
ANSI/UL 923 Microwave Cooking Appliances
ANSI/UL 935 Fluorescent-Lamp Ballasts
ANSI/UL 943 Ground-Fault Circuit Interrupters
ANSI/UL 969 Marking and Labeling Systems
ANSI/UL Motor-Operated Household Food Preparing Machines
ANSI/UL 984 Hermetic Refrigerant Motor-Compressors
ANSI/UL 987 Stationary and Fixed Electric Tools
ANSI/UL 998 Humidifers
ANSI/UL 1004 Electric Motors
ANSI/UL 1005 Electric Flatirons
ANSI/UL 1008 Automatic Transfer Switches
ANSI/UL 1012 Power Supplies
ANSI/UL 1017 Electric Vaccum Cleaner Machines and Blower Cleaners
ANSI/UL 1020 Thermal Cutoffs for Use in Electrical Appliances and Components
ANSI/UL 1025 Electric Air Heaters
ANSI/UL 1026 Household Electric Cooking and Food-Serving Appliances
ANSI/UL 1029 High-Intensity-Discharge Lamp Ballasts
ANSI/UL 1030 Sheathed Heating Elements
ANSI/UL 1042 Electric Baseboard Heating Equipment
ANSI/UL 1054 Special-Use Switches
UL 1059 Electrical Terminal Blocks
ANSI/UL 1077 Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1081 Electric Swimming Pool Pumps, Filters, and Chlorinators
ANSI/UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083 Household Electric Skillets and Frying-Type Appliances

ANSI/UL 1086 Household Trash Compactors
ANSI/UL 1096 Electric Central Air-Heating Equipment
ANSI/UL 1097 Double Insulation Systems for Use in Electrical Equipment
ANSI/UL 1236 Electric Battery Chargers
UL 1244 Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1261 Electric Water Heaters for Pools and Tubs
ANSI/UL 1262 Laboratory Equipment
ANSI/UL 1270 Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1410 Television Receivers and High-Voltage Video Products
ANSI/UL 1411 Transformers and Motor Transformers for Use in Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1414 Across-the-Line, Antenna-Coupling, and Line-By-Pass Capacitors for Radio- and Television-Type Appliances
ANSI/UL 1433 Control Centers for Changing Message Type Electric Signs
ANSI/UL 1436 Outlet Circuit Testers and Similar Indicating Devices
ANSI/UL 1438 Household Electric Drip-Type Coffee Makers
ANSI/UL 1453 Electric Booster and Commercial Storage Tank Water Heaters
ANSI/UL 1564 Industrial Battery Chargers
ANSI/UL 1570 Fluorescent Lighting Fixtures
ANSI/UL 1571 Incandescent Lighting Fixtures
ANSI/UL 1572 High Intensity Discharge Lighting Fixtures
ANSI/UL 1585 Class 2 and Class 3 Transformers
ANSI A90.1 Safety Standard for Belt Manlifts

For purposes of certification using the following standards, only equipment designed for use with "liquefied petroleum gas" (also known as "LP-Gas" or "LPG") is intended.

ANSI Z21.1 Household Cooking Gas Appliances
ANSI Z21.5 Gas Clothes Dryers
ANSI Z21.10 Gas Water Heaters
ANSI Z21.11 Unvented Room Heaters
ANSI Z21.12 Draft Hoods
ANSI Z21.13 Gas-Fired Low-Pressue Steam and Hot Water Heating Boilers
ANSI Z21.15 Manually Operated Gas Valves
ANSI Z21.17 Domestic Gas Conversion Burners
ANSI Z21.18 Gas Appliance Pressure Regulators
ANSI Z21.20 Automatic Gas Ignition Systems and Components
ANSI Z21.21 Automatic Valves for Gas Appliances
ANSI Z21.23 Gas Appliance Thermostats
ANSI Z21.35 Gas Filters on Appliances
ANSI Z21.40.1 Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.47 Gas-Fired Central Furnaces
ANSI Z21.48 Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49 Gas-Type Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.56 Gas-Fired Pool Heaters
ANSI Z83.4 Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.8 Gas Unit Heaters
ANSI Z83.9 Gas-Fired Duct Furnaces
ANSI Z83.11 Gas Food Service Equipment—Ranges and Unit Broilers
ANSI Z83.12 Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.13 Gas Food Service Equipment—Deep Fat Fryers
ANSI Z83.14 Gas Food Service Equipment—Counter Appliances
ANSI Z83.15 Gas Food Service Equipment—Kettles, Steam Cookers, and Steam Generators
ANSI Z83.16 Gas-Fired Unvented Commercial and Industrial Heaters

ETL Testing Laboratories, Inc., also must abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of the "FACTS" program, under which ETL might rely on some test results from certain highly qualified manufacturers (clients) in the evaluation of a product for listing or approval;

The Occupational Safety and Health Administration shall be allowed access to ETL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ETL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ETL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ETL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ETL will continue to meet the requirements for recognition in all areas for which it has applied; and

ETL will cooperate with OSHA at all times to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

Effective Date: This recognition will become effective on September 13, 1989, and will be valid for a period of five years from that date, until September 13, 1994, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC, this 7th day of September 1989.

Alan C. McMillan,

Acting Assistant Secretary.

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BILLING CODE 4510-26-M

Puerto Rico State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On August 30, 1977, notice was published in the **Federal Register** (42 FR 43628) of the approval of the Puerto Rico plan and the adoption of subpart FF to part 1952 containing the decision.

The Puerto Rico plan provides for the adoption of Federal standards as State standards by reference. Section 1953.20 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

In response to Federal standards changes, the State has submitted by letter dated November 12, 1987 from Filiberto Cruz Aguila, Assistant Secretary for OSHO, to Regional Administrator James W. Stanley, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration standards for Hazardous Waste Operations and Emergency Response; Interim Final Rule, 29 CFR 1910.120, as published in the **Federal Register** (51 FR 45654) dated December 19, 1986, and corrections as published in the **Federal Register** (52 FR 16241) dated May 4, 1987. These standards which are contained in the Puerto Rico Regulations, Number Four (equivalent to 29 CFR 1910) were promulgated by resolutions adopted by the Puerto Rico Department of Labor and Human Resources on September 14, 1987, pursuant to the Puerto Rico Act Number 16 and Chapter 52 of the Puerto Rico Rules and Regulations Act of 1958.

The State has also submitted by letter dated January 19, 1988, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration standards for Commercial Diving—Final Rule; Technical Amendments, 29 CFR 1910.430, as published in the **Federal Register** (51 FR 33033) dated September 18, 1986; Accident Prevention Tags, 29 CFR 1910.145, as published in the **Federal Register** (51 FR 33251) dated September 19, 1986; Recordkeeping Requirements for Tests, Inspections, and Maintenance Checks; 29 CFR 1910 and 1915, as published in the **Federal Register** (51 FR 34552) dated September 29, 1986; and Hazard Communication; Definition of Trade Secret and Disclosure of Trade Secrets to Employees, Designated Representatives and Nurses, 29 CFR 1910.1200, as published in the **Federal Register** (52 FR 34590) dated September 30, 1986.

These standards which are contained in the Puerto Rico Rules and Regulations, Number Four (equivalent to 29 CFR 1910) were promulgated by resolution adopted by the Puerto Rico Department of Labor and Human Resources on July 1, 1987, pursuant to the Puerto Rico Act Number 16 and Chapter 52 of the Puerto Rico Rules and Regulations Act of 1958.

2. Decision

Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly are hereby approved.

3. Location of Supplement for Inspection and Copying

A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 670, 201 Varick Street, New York, New York 10014; Puerto Rico Department of Labor and Human Resources, Prudencio Rivera Martinez Bldg., Munoz Rivera Avenue 505, Hato Rey, Puerto Rico 00917; and the Directorate of Federal-State operations, Room N3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Puerto Rico State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law meeting requirements for public participation.
2. The standards were adopted in accordance with the procedural requirement of State Law and further participation would be unnecessary.

The decision is effective September 13, 1989 (sec. 18 Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)). Signed at New York City, New York, this seventh day of March 1988.

James W. Stanley,

Regional Administrator.

[FR Doc. 89–21471 Filed 9–12–89; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL COMMISSION ON CHILDREN

Hearing

Background

The National Commission on Children was created by Public Law 100–203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President.
2. Twelve members appointed by the Speaker of the House of Representatives.
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces the first hearing of the National Commission on Children to be held in Chicago, Illinois.

Time: 1:00 pm–4:30 pm, Monday, September 25, 1989.

Place: Dirksen Federal Building, Ceremonial Court Room, 219 Dearborn Street, Chicago, Illinois.

Status: 1:00 pm–4:30 pm, open to the public.

Agenda: Healthy Mothers–Healthy Babies.

Contact: Jeannine Atalay, (202) 254–3800.

Dated: Sepember 7, 1989.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 89–21581 Filed 9–12–89; 8:45 am]

BILLING CODE 6820-37-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on September 27, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, September 27, 1988–8:30 a.m. until the conclusion of business.*

The Subcommittee will review the proposed Access Authorization Rule, and performance indicators.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed or whether the meeting has been cancelled or rescheduled can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio G. Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 6, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–21430 Filed 9–12–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–20, issued to Consumers Power Company (the licensee), for operation of the Palisades Plant, located in Van Buren County, Michigan.

The proposed amendment would revise the Technical Specifications (TS) related to the applicability of limiting conditions for operation (LCO) and surveillance requirements of TS Tables 3.17.1, 4.1.1, 4.1.2 and section 4.0, based in part on recommendations provided by the staff in Generic Letter (GL) 87–09. Several changes of an administrative nature are also requested in accordance with the licensee's application for amendment dated April 3, 1989.

Specification 4.0.3 is added to incorporate an appropriate time period for completion of missed surveillance testing prior to initiating the Action Requirements, when the Action Requirements provide a restoration time of less than 24 hours.

Specification 4.0.4 is added to strengthen the definition of the plant surveillance program and to provide conformance with the Standard Technical Specifications (STS).

Specification 4.0.5 is added to consolidate requirements for inservice inspection of ASME Code Class 1, 2, and 3 components. The new specification includes requirements previously addressed by Specification 4.3 and adds appropriate requirements for inservice testing of valves. The portions of Specifications 4.3 superseded by this revision are deleted.

TS Tables 3.17.1, 4.1.1, and 4.1.2 are revised to identify operational conditions during which certain reactor protection system instrumentation is required to be operable, and when associated instrument checks are required. These changes are needed to ensure consistency with the proposed revisions to Section 4.0.

Several administrative changes deleting outdated references and statements, and the addition of relevant Basis statements for the changes discussed above, are also included.

Before the issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences or an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes against the above three standards as required by 10 CFR 50.91(a) and has concluded:

1. The proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated. The proposed changes to the TS do not involve physical changes to the plant. The changes do include requirements for testing of ASME Class 1, 2, and 3 valves. This testing is presently accomplished under an administratively controlled program at Palisades and, therefore, no additional surveillance tests are required. The addition of reactor protection system (RPS) instrumentation operability requirements and exceptions to when certain RPS surveillances are required to be performed is consistent with the plant safety analysis and the STS.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. No physical modification to the plant is involved in this proposed change. The operability and surveillance requirements for RPS instrumentation are not reduced with respect to the safety analysis.

3. The proposed change does not involve a significant reduction in a margin of safety. The addition of operabillity/applicability requirements for RPS instrumentation to TS Table 3.17.1 is consistent with the safety analysis requirements. The revisions to Tables 4.1.1 and 4.1.2 allow surveillances to be omitted when the RPS equipment is not required to be operable. The addition of Specifications 4.0.3, 4.0.4, 4.0.5, and a Basis statement for Section 4.0 serves to strengthen the definition of the Palisades Plant surveillance program and will ensure that interpretation of the specifications of Section 4.0 will be consistent with their intent. Incorporation of a time limit into Specification 4.0.3 for completion of missed surveillances prior to initiating the applicable Action Requirement balances the risks associated with the time allowance, against the risks associated with the potential for plant upset and challenge to safety systems when the alternative is a shutdown to comply with Action Requirements before the surveillance can be completed. The addition of Specification 4.0.5 includes inservice testing requirements for both pumps and valves versus the present 4.3 requirements which apply only to testing of pumps. Therefore, there is no reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

The staff also concludes that the licensee's no signficant hazards determination given above would apply to the administrative changes identified.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 8:15 a.m. to 4 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 13, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John O. Thoma, Acting Director, Project Directorate III–1; petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 30th day of August 1989.

For the Nuclear Regulatory Commission.

Albert De Agazio,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21485 Filed 9–12–89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549–1002.

Extension

Form SE, File No. 270–289
Form ID, File No. 270–291
Form ET, File No. 270–290

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Forms ET, SE, and ID under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1938, the Investment Advisers Act of 1940 and the Investment Company Act of 1940, for use by registrants voluntarily participating in the Edgar pilot project. The first, Form SE, is used by new registrants to file paper copies of exhibit documents that cannot be transmitted electronically. The second, Form ET, accompanied tapes and diskettes submitted to the Commission. The third, Form ID, is used to obtain company identification numbers, passwords, and personal identification numbers to access to Edgar system.

Each of the estimated 642 respondents using Form SE incurs an average estimated .1 burden hour to comply with the Form requirements. Each of the 283 respondents using Form ET incurs an average .25 burden hour to comply with the Form. Each of the 8,879 respondents using Form ID incurs an average .15 estimated burden hour to comply with the Form.

The estimated average burden hours are solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative sample or study of the costs of the Securities and Exchange Commission's rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Management and Budget [Paperwork Reduction Projects 3235–0327–Form SE, 3235–0328, Form ID, and 3235–0329, Form ET], Room 3208 New Executive Office Building, Washington, DC 20543.

Dated: August 31, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–21430 Filed 9–12–89; 8:45 am]

BILLING CODE 8010-01-M

[34–27227; File No. 600–24]

Self-Regulatory Organizations; Delta Government Options Corporation; Application for Registration as a Clearing Agency; Request for Additional Comments

September 7, 1989.

On July 29, 1988, Delta Government Options Corporation ("Deltas") filed an application under section 19(a) of the Securities Exchange Act of 1934 ("Act")[1] for registration as a clearing agency under section 17A of the Act.[2] On August 5, 1988, the Commission published notice of Delta's application in the Federal Register and requested comment on the application.[3] On October 7, 1988, Delta filed an amendment to its application and on October 18, 1988, notice of that amendment was published in the Federal Register and comments again were requested.[4] On January 12, 1989, the Commission approved, on a temporary basis for a period of 36 months, pursuant to sections 17A(b)(2) and 19(a) of the Act, Delta's application for registration as a clearing agency.[5]

On August 17, 1989, the U.S. Court of Appeals for the Seventh Circuit ("Court") issued an opinion in *Board of Trade* v. *SEC*, Civ. Doc. Nos. 89–1064 and 89–1449 slip op. (7th Cir. Aug. 17, 1989), in which the Court vacated the Commission's Order temporarily registering Delta as a clearing agency ("Order"), deferring for 120 days after the date of its mandate the effectiveness of that decree. The Commission's Order concluded that Delta, as required by section 17A(b)(3)(A) of the Act, was so organized and had the capacity to comply with the Act and rules and regulations thereunder. The Court held, however, that "(b)efore concluding that Delta's proposed operations could 'comply' with the '34 Act, the Commission had to determine that the (Over-The-Counter Options Trading) System [with which Delta is affiliated] is not an exchange." slip op. at 21. Because the Commission's Order contained no determination as to the status of the system as an exchange, the Court vacated the Commission's Order, but deferred for 120 days the effectiveness of the judgement. The ourt stated, "the SEC has 120 days after that (the date of the Court's mandate) to decide whether the System is an exchange and to re-register Delta or decline to do so." slip op. at 22. The Court stated that a Commission decision during that time would be effective as a new decision.

In light of the Court's decision, the Commission requests further general comment on Delta's clearing agency registration application. Also, the Commission invites commentators to address specifically whether the System should be registered as an exchange and whether Delta has demonstrated an ability to promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds within its custody or control. The Commission will consider all written comments previously received concerning Delta's clearing agency registration application. The comment period will terminate 30 days from the date of publication of this notice in the Federal Register. Due to time constraints placed on the Commission by the Court, the comment period will not be extended.

Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. 600–24. Copies of the application and all written comments will be available for inspection at the Securities and Exchange Commission's Pubic Reference Room, 450 Fifth Street NW., Washington, DC.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–21623 Filed 9–12–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27210; File No. IDD–89–03]

Self-Regulatory Organizations; the Options Clearing Corp.; Order Approving Proposed Amendment to Index Participations Disclosure Document

On August 24, 1989, the Options Clearing Corporation ("OCC"), in conjunction with the Philadelphia ("Phlx") and American ("Amex") Stock and the Chicago Board Options ("CBOE") Exchanges, Inc. [collectively, the self-regulatory organizations ("SROs")] submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 9b–1 of the Securities Exchange Act of 1934 ("Act")[1] copies of an amendment to the Index Participations ("IPs") Disclosure Document ("IDD").[2]

The proposed amendment to the IDD clarifies the disclosure concerning the OCC cash-out of outstanding IP longs contained in a recent amendment to the IDD,[3] submitted by the OCC and approved by the Commission, in response to the August 18, 1989 opinion of the United States Court of Appeals for the Seventh Circuit ("Seventh Circuit") setting aside the Commission order approving the proposed SRO rule changes to list for trading and to issue, clear, and settle IPs.[4] Specifically, the amendment notes that all IP longs which are exercised by the OCC on September 14, 1989[5] shall be entitled to receive, and all IP shorts will be obligated to pay (1) the accumulated dividend equivalents on September 15, 1989, and (2) the cash-out value of such IPs on September 18, 1989. The amendment notes further that any holder of physical IPs (*i.e.*, Amex Equity Index Participations), who is entitled and desires to exercise the delivery privilege in respect to such IPs, must tender an exercise notice to OCC on September 14, 1989, or OCC will exercise the IP cash-out privilege in respect of such IPs.

Rule 9b–1 provides that an options market must file five copies of amendments to a disclosure document with the Commission at least 30 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the protection of investors.[6]

The Commission has reviewed the IDD amendment and finds that it provides adequate disclosure of the change in IPs' status due to the Seventh Circuit opinions as well as the OCC's determination to exercise the cash-out privilege on behalf of all outstanding IP longs. In addition, the Commission believes it is consistent with the public interest and the protection of investors to allow its distribution as of September 1, 1989, less than 30 days prior to the date definitive copies are furnished to customers. Specifically, allowing immediate distribution of the IDD amemdment should help eliminate any possible investor confusion concerning the rights and obligations of IP longs and shorts in respect of the OCC cash-out of outstanding IP longs.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: September 1, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–21442 Filed 9–12–89; 8:45 am]

BILLING CODE 8010-01-M

[34–27211; File No. SR–OCC–89–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Consolidation of the Membership and Margin Committees

September 1, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on August 21, 1989, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

File No. SR–OCC–89–11 proposes amendments to OCC's Rules which would consolidate the Membership and Margin Committees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change General

The purpose of the proposed rule change is to allow OCC to consolidate its Membership and Margin Committees since the issues considered by the two committees are related.

The Membership Committee and the Margin Committee both work with Clearing Member issues. The Membership Committee reviews applications for Clearing Membership and recommends approval or disapproval thereof. The Margin Committee reviews the financial status of Clearing Members and establishes margin requirements therefor.

Accordingly, since the work of the two committees overlap, the Board of Directors determined that a consolidating of the Committees would best serve the interests of the Clearing Members and the Participant Exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW.,

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[1] 15 U.S.C. 78s(a) (1988).

[2] 15 U.S.C. 78q–1 (1988).

[3] *See* Securities Exchange Act Release No. 25956 (August 1, 1988), 53 FR 29536. Four letters of comment were received, all opposing Delta's application.

[4] *See* Securities Exchange Act Release No. 26172 (October 12, 1988), 53 FR 40816. Four letters of comment were received, all opposing Delta's application.

[5] *See* Securities Exchange Act Release No. 26450 (January 12, 1989), 54 FR 2010.

[1] 17 C.F.R. 240.9b–1 (1988).

[2] *See* Letter from James R. McDaniel, Schiff Hardin & Waite, OCC legal counsel, to Richard G. Katchum, Director of Market Regulation, SEC, dated August 24, 1989.

[3] *See* Securities Exchange Act Release No. 27101 (August 22, 1989), 54 FR 35552.

[4] *Chicago Mercantile Exchange, et al. v. Securities Exchange Commission, et al.*, Nos. 89–1538, 89–1763, 89–1786, 89–2012 (7th Cir., Aug. 18, 1989).

[5] The Seventh Circuit recently extended the date upon which its mandate will issue and the Commission orders will be set aside from September 8 to September 25, 1989. *Chicago Mercantile Exchange, et al. v. Securities and Exchange Commission, et al.*, Nos. 89–1538, 89–1763, 89–1786, 89–2012 (7th Cir., August 25, 1989).

[6] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[7] 17 CFR 200.30–3(a)(12) (1988).

BEST COPY AVAILABLE

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–OCC–89–11 and should be submitted by October 4, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–21441 Filed 9–12–89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34–27220; File No. SR–CSE–89–1]

Self-Regulatory Organizations; Cincinnati Stock Exchange; Order Approving Proposed Rule Change Relating to Guaranteed Agency Order Executions

On January 24, 1989, the Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 11.9(c) so as to permit the Exchange's Securities Committee to assign the obligation of guaranteeing public agency order executions to one Designated Dealer ("DD") in a new National Securities Trading System ("NSTS") issue.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 26853 (May 22, 1989), 54 FR 23003 (May 30, 1989). No comments were received on the proposal.[4]

The CSE, through its NSTS, guarantees the execution of up to 2,099 shares of public agency market orders at the national best bid or offer. Because NSTS is a multiple market maker system, the obligation to guarantee agency orders rotates daily among DDs in issues for which there is more than one such dealer.

In its filing, the Exchange stated that it is necessary to provide an incentive for prospective market makers to become DDs in issues not yet traded in NSTS so that the Exchange could improve the quality of its markets and also achieve broader coverage of issues in NSTS. Accordingly, the Exchange adopted a policy which permits its Securities Committee ("Committee") to authorize a requesting member to become the "primary" DD [5] in any issue which was not traded in NSTS as of September 9, 1988. Because NSTS is a multiple market maker system, the proposed amendment to Rule 11.9 provides that the obligation to guarantee agency orders will rotate daily among DDs in issues for which there is more than one member as the primary DD in that issue.

As provided in the Exchange's Securities Committee Stock Allocation Policy for DDs ("Policy"),[6] the Committee shall use its best judgment in determining whether to allocate non-NSTS issues to requesting members. As set forth in Section III.B.2 of the Policy, the factors which will be considered by the Committee in making this determination shall include the following: (1) The member's commitment to bring public agency order flow to the CSE in his requested issues; [7] (2) the number of issues requested by the member; (3) the member's capital position; and (4) the member's technical capability. In addition, Section III.B.2 of the policy provides that the Committee will consider the capital, market quality, and performance criteria that members must satisfy in order to be approved as a DD in NSTS issues, as set forth in Section II.A. of the policy, when determining whether to approve a member as a primary DD in a non-NSTS issue.[8] The allocation criteria for NSTS issues set forth in Section II.A. of the policy include the following: (1) The commitment by the requesting member to maintain "competitive" quotation spread and size parameters [9]; (2) the satisfactory past performance of the requesting member; [10] and (3) any other factor which the Committee deems relevant to the public interest, the maintenance of fair and orderly markets, or just and equitable principles of trade.

Stock price	Spread parameters
$0 to $50	No more than ½ point.
$50 to $100	No more than ¾ point.
$100 to $200	No more than 1 point.
Greater than $200	No more than 2 points.
Activity Level	Size
"Active" Stocks (defined as stocks which trade more than 5 million shares per month on a consolidated basis).	No less than 500 shares each side.
Inactive stocks	No less than 200 shares each side.

The exchange has indicated that although the above-described spread and size quotation parameters are not included specifically in the text of the proposed rule change, they have been adopted as binding policy by the Exchange. *See* Letter from David Colker, General Counsel and Vice President, Market Regulation, CSE, to Sharon L. Itkin, Esq., Division of Market Regulation, Securities and Exchange Commission, dated June 22, 1989 ("Letter").

Before a member can be registered as a primary DD, the member must agree to maintain "competitive" quotations throughout the trading day.[11] Exceptions to the primary DD's obligation to maintain competitive quotations will be permitted only during unusual market conditions [12] or as

otherwise allowed by an Exchange official.[13]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) [14] of the Act in that the proposal is designed to facilitate transactions in securities and to perfect the mechanism of a national market system. In this regard, the Commission notes that the proposed modifications to the Exchange's stock allocation and order execution procedures, which the CSE states are designed to improve the quality of its markets and to achieve broader coverage of issues in NSTS, may result in improved execution of public customer orders.

The Commission notes that the CSE's Securities Committee Stock Allocation Policy is designed to enhance the quality of the Exchange's markets by ensuring narrow quotation spread parameters, and significant size quotation. In the past, the Commission has recognized the benefits of a multiple market maker system that has elements of a specialist system.[15] The Commission notes that the grafting of elements of a specialist system onto a multiple market maker system may facilitate the execution of customer orders and provide tight and liquid markets. This may be particularly true in less active securities. In this case, the CSE's proposal is designed to improve its DD system and attract a DD who is best able to make tight and liquid markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [16] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Dated: September 5, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–21491 Filed 9–12–89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34–27224; File No. SR–CBOE–89–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Priority of Bids and Offers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 16, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 6.45 to permit combination orders which are executed in conjunction with stock orders the same priorities as combination orders that do not involve stock transactions and to update the Rule with respect to the limit order book to reflect that Board Brokers are no longer on the Exchange. (Brackets indicate language to be deleted, italic indicate new language.)

Priority of Bids and Offer

Rule 6.45. Except as provided by Rule 6.47 below, the following rules of priority shall be observed with respect to bids and offers:

(a) Priority of bids. The highest bid shall have priority, but where two or more bids for the same option contract represent the highest price and one such bid is displayed [by the Board Broker or Order Book Official] *in the customer limit order book* in accordance with Rule 7.7, such bid shall have priority over any other bid at the post. If two or more bids represent the highest price and a bid [by a Board Broker or Order Book Official] *from the customer limit order book* is not involved, priority shall be afforded to such bids in the sequence in which they are made.

(b) No change.

(c) Openings. Notwithstanding anything in paragraphs (a) and (b) to the contrary, where necessary to achieve a single-priced opening, market orders in which no member or any non-member broker/dealer has an interest shall have priority over limit orders at the same opening price [on the Board Broker's or Order Book Official's] *in the customer limit order* book. The cut-off time for orders entitled to participate in the opening is set forth in Interpretation .02 to Rule 7.4.

(c) Exception. Notwithstanding anything in paragraphs (a) and (b) to the contrary, when a member holding a spread order, a straddle order, or a combination order and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions with or within the bids and offers displayed [by the Board Broker or Order Book Official] *in the customer limit order book* or announced by members in the trading crowd, then the order may be executed as a spread, straddle, or combination at the total credit or debit with one other member without giving priority to bids or offers of members in the trading crowd or of the [Board Broker or Order Book Official] *customer limit order book* that are no better than the bids or offers comprising such total credit or debit. Under the circumstances described above, a stock-option order, as defined in Rule 1.1(ii)(*a*), has priority over the bids and offers of members in the trading crowd but not over the bids and offers [of] *in* the [Board Broker or Order Book Official] *customer limit order book. A stock option order as defined in Rule 1.1(ii)(b), consisting of a combination order with stock, may be executed in conjunction with the exception provisions as provided herein.*

* * * Interpretations and Policies:

.01 When [A Board Broker or Order Book Official] *the customer limite order book* is displaying, pursuant to Rule 7.7, limit orders to sell at 1/16th which have priority pursuant to Rule 6.45, no [Floor Broker] *member,* [Board Broker] or Order Book Official shall hold a market order to sell that series. Whenever this condition occurs, any such market order held by a [Floor Broker, Board Broker] *member* or Order Book Official shall be considered a limit order to sell at a price of 1/16th and the [Floor Broker, Board Broker] *member* or Order Book Official shall change the market sell order to reflect a limit price of 1/16th.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] NSTS is an electronic securities communication and execution facility through which bids and offers of competing dealers, as well as public orders, are consolidated for review and execution by users. *See* CSE Rule 11.9(a)(1).

[4] The CSE filed amendment no. 1 to its proposal on May 2, 1989.

[5] Primary DD status in an issue entitles a member to receive all of the guaranteed portion of all public agency market and marketable limit orders even if other DDs subsequently become registered in that issue. The guaranteed portion of an order is equal to 2,099 shares minus the number of shares executed in NSTS against any agency or principal interest, including interest of the DD of the day, priced at the ITS best bid or offer when the order enters the system.

[6] *See* Letter from David Colker, Vice President, Market Regulation and General Counsel, CSE to Howard Kramer, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, dated August 8, 1989.

[7] David Colker indicated to Howard Kramer, Assistant Director, Market Regulation, Securities and Exchange Commission, in a conversion on August 23, 1989, that this includes such factors as the member's commitment to quote tight or large size markets in order to attract order flow to the Exchange. This in no way requires the applicant's firm to direct order flow to the Exchange.

[8] *See* Section II.A of the Policy.

[9] In this context, "competitive" is defined by compliance with the following spread and size parameters:

[10] The committee will consider the following factors in determining whether the member's performance was satisfactory: (1) whether the member maintained competitive quotations in issues for which the member has been acting as DD; (2) trade and share activity in such issues; and (3) the member's cooperation with the Exchange in resolving ITS disputes and NSTS errors.

[11] *See* note 7, *supra*

[12] The Exchange defines "unusual market conditions" for purposes of allowing exceptions to this policy as market conditions during which (1) a trading halt is in effect, or (2) the Exchange is incapable of collecting, processing, disseminating, and receiving quotation information in a manner which accurately reflects the current state of the market. *Id.*

[13] The Exchange President and Vice President for Market Regulations are the officers who have authority to permit exceptions to the new quotation policy. Such officers shall grant exceptions when a system problem prevents a member from inputing his quotations. *Id.*

[14] 15 U.S.C. 78f(b)(5) (1982).

[15] *See* the Commission's approval order of the Chicago Board Options Exchange's proposal to provide for designated dealer status on that exchange.

[16] 15 U.S.C. 78s(b)(2) (1982).

[17] 17 C.F.R. 200.30–3(a)(12) (1988).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule filing will afford combination orders which are executed in conjunction with stock (conversions and reversals) the same priorities as combination orders that do not involve stock. Current Exchange rules allow combination, spread and straddle orders to touch the customer limit order book on one side (*i.e.*, in one series). The extension of the priority to combination orders with stock does not include straight stock/option orders such as buy writes that only involve one option series. The Exchange believes that the priority of the public customer limit order book will not be greatly affected because of this change. The two-sided option order which is part of a conversion/reversal will only be able to touch the book on one side. In addition, by not extending the exception to straight stock-option orders where the option component consists of only one side, the public customer limit order book will maintain its current priority over any single series (side) option orders.

The filing also addresses the need for the Exchange to update the rules concerning the customer limit order book. There are no Board Brokers on the Exchange and, therefore, their functions as to running the limit order book have been deleted. A new category of members, Designated Primary Market-Makers ("DPM's"), has been created. The DPM has in qualifying securities taken the place of Order Book Officials. As such, the other rule revisions contained herein reflect the deletion of Board Brokers and addition of DPMs.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder, and, in particular, the provisions of section 6(b)(5) of the Act, which provide, among other things, that the rules of the exchange are to be designed to promote just and equitable principles of trade and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 4, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: September 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-21492 Filed 9-12-89; 8:45 am]

BILLING CODE 8010-01-M

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[1] 17 CFR 200.30-3(a)(12) (1988).

[Release No. 34-27219; File No. SR-NASD-89-27]

Self Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Study Outlines and Specification for Series 11 Examination, Assistant Representative-Order Processing

The National Association of Securities Dealers, Inc. ("NASD") submitted the proposed rule change on July 11, 1989, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b-4 thereunder, to establish the examination specifications and study outline for the new registration category of Assistant Representative-Order Processing. This new category was proposed in an amendment to Schedule C of the NASD By-Laws in File No. SR-NASD-88-28 and was approved by the Commission on June 12, 1989 (Securities Exchange Act Release No. 26920 (June 12, 1989), 54 FR 26289 (June 22, 1989)].

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 27067, July 26, 1989) and by publication in the **Federal Register** (54 FR 31909, August 2, 1989). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of Section 15A and the rules and regulations thereunder. Specifically, the proposed rule change meets the requirements of section 15A(g)(3)(B) which permits the NASD to "examine and verify the qualifications of an applicant to become a person associated with a member."

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR-NASD-89-27, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR § 200.30-3(a)(12).

Dated: September 5, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-21494 Filed 9-12-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27207 File No. SR-NSCC-89-08]

Proposed Rule Change by National Securities Clearing Corp. Regarding an Amendment to NSCC's Proposed Rule Filing Concerning Basket Trades

September 1, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 24, 1989 NSCC filed with the Securities and Exchange Commission the proposed amendment to NSCC-89-08 as described below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to NSCC's proposed rule filing on Basket Trades in order to describe the processing of Basket Trades involving specialists and the establishment of fees for processing of Basket Trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(I) The purpose of the proposed rule change is to detail how specialist involvement in New York Stock Exchange Basket Trading will be processed by NSCC.

The Basket Trade currently proposed by the New York Stock Exchange will be comprised of 462 New York Stock Exchange listed securities and 38 non-New York Stock Exchange listed securities. The New York Stock Exchange will require each specialist to maintain two quotes for his securities within the 462 listed securities that are part of the Basket. A Basket Book Dealer will maintain a quote for the 38 non-listed stocks, which are referred to as a "Mini-Basket".

Whenever a Basket Trade is executed where the specialist is involved, the New York Stock Exchange will break down the Basket into the 462 equity trades and a Mini-Basket. NSCC will receive from the New York Stock Exchange, 462 locked-in trades for the equity trades (which are the component securities the specialists are assigned to), and one locked-in trade for the Mini-Basket. The trades involving specialists will be reported by NSCC as locked-in trades on T-contracts which are available on T+1. These trades will be identifiable as trades resulting from Basket Trades because the contra party will always be a unique omnibus account number.

The Mini-Basket will be reported on a separate section of the Basket Trade Detail Report (referred to in the original filing as the Basket Trade Settlement Detail Report) to the NSCC Member which is the Basket Book Dealer. The Mini-Basket trades will be processed, including netting of the Mini-Baskets, bursting of the component parts and assignment of the Basket Value Settlement Sum, and settled the same way regular Basket Trades are processed. (If a Basket Book Dealer also executes Basket Trades these will not be netted with the Mini-Baskets. However, the component securities of the Mini-Baskets will be netted with components of regular Basket Trades and other Regular Way or Balance Order securities for settlement.)

In its filing NSCC also stated that certain operational features of Basket Trading would possibly not be ready when the New York Stock Exchange implemented Basket Trading. NSCC will, by implementation date, have developed the operational features referred to in the filing. Specifically, NSCC will net Basket Trades prior to separating them into the component securities. The Trade Summaries will separately indicate securities to be received or delivered from Basket Trading. In addition, the Basket Value Settlement Sum (cash adjustment) will be separately set forth on the Members' Settlement Statements and not included with the clearance cash adjustment for Balance Orders. Lastly, NSCC will issue all applicable reports in printed form and the Basket Trade Detail Report in machine readable output and print image output.

NSCC will charge $30.00 to the buyer and seller per Basket Trade received and $10.00 to the Basket Book Dealer per Mini-Basket received. These fees are in addition to the trade recording fees currently charged by NSCC which will be applied to the individual stock components after netting.

(2) Since the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, and provides for the equitable allocation of charges among Members, it is consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public

Reference Section, 450 Fifth Street NW., Washington, DC 20549.

Copies of such filing will also be available for inspection any copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file No. NSCC-89-08 and should be submitted [October 4, 1989].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-21440 Filed 9-12-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27223; File No. SR-PSE-89-21]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Narrowing of Certain Options Bid/Ask Differentials

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 15, 1989, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule VI, Section 79, to allow for a maximum differential of ¼ of $1 between the bid and the offer for each option contract for which the bid is less than $2, and to provide that the maximum bid/ask differential for in-the-money options series may be identical to the bid-ask spread in the underlying security market when the spreads in such market are wider than those allowed by section 79. (Brackets indicate langauge to be deleted, italics indicate new language.)

Obligations of Market Makers

Sec. 79:

(a) No change.

(b) No change.

(1) Bidding and/or offering so as to create differences of no more than ¼ of $1 between the bid and the offer for each option contract for which the bid is [$1 or less] *less than $2*, no more than ⅜ of $1 where the bid is [more than $1] *$2 or more* but does not exceed $5, no more than ½ of $1 where the bid is more than $5 but does not exceed $10, no more than ¾ of $1 where the bid is more than $10 but does not exceed $20, and no more than $1 when the last bid is $20⅛ or more, proided that the Options Floor Trading Committee may establish differences other than the above for one or more series or clases of options. *In the event the bid/ask differential in the underlying security is greater than the bid/ask differential set forth herein, the permissible price differential for any in-the-money option series may be identical to those in the underlying security market.*

(b)(2) and (b)(3) No change.

(c) through (d)(3) No change.

Commentary:

.01 through .07 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change involves the tightening of markets for option series in which the bid is less than $2, such that the maximum bid/offer differential may not exceed ¼ of $1. Currently, the maximum differential is ¼ of $1 for option contracts for which the bid is $1 or less, and ⅜ of $1 for option contracts for which the bid is more than $1 but does not exceed $5. The maximum differential would remain ⅜ of $1 for option contracts in which the bid is $2 or more, but does not exceed $5.

The Exchange believes that the narrowed spreads resulting from this rule change will provide improved price continuity and tighter, more liquid markets to a significant number of public investors. All orders, including public customer orders, will benefit from the narrower bid/ask differentials.

The proposed amendment further provides that in connection with in-the-money series in which the quote differential in the underlying security is greater than the bid/ask differentials specified in Rule IV, section 79, the permissible differential for the respective option series may be identical to those in the underlying security.

These changes are being proposed to effect conformity with rules of the other option exchanges and thus avoid member and investor confusion.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and in particular, section 6(b)(5), as it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriated and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 4, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: September 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-21493 Filed 9-12-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice No. 1130]

Laredo, TX.; Application for Bridge Permit

Notice is hereby given that the Department of State has received an application for a permit authorizing construction of a bridge across the Rio Grande River from Laredo, Texas to Colombia, Nuevo Leon, Mexico.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, and the International Bridge Act of 1972 (Pub. L. 92-434, 86 Stat. 731, 33 U.S.C. 535 approved September 26, 1972).

As required by E.O. 11423, the Department of State is circulating this application to concerned agencies for comment.

Interested persons may submit their views regarding the application in writing by October 13, 1989 to Mr. Kenneth R. Propp, Office of Legal Adviser, Economic, Business and Communications Affairs, Room 6420, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520.

The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for inspection and copying in the Office of the Assistant Legal Adviser for Economic, Business and Communications Affairs during normal business hours.

Any questions relating to this notice may be addressed to Mr. Propp at the above address (202) (647-7770).

Dated: August 31, 1989.

Ted A. Borek,

Assistant Legal Adviser, Economic, Business and Communications Affairs.

[FR Doc. 89-21522 Filed 9-12-89; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Monterey County, CA

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepard for a proposed highway project in Monterey County, California.

FOR FURTHER INFORMATION CONTACT: John R. Schultz, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: 551-1307.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the California Department of Transportation (CALTRANS) will prepare an environmental impact statement (EIS) on a proposal to improve the segment of Route 1 between Castroville and the Santa Cruz County line in Monterey County to relieve congestion and improve safety. Four alternative concepts have been identified.

Alternative 1: Expressway along Existing Alignment

Alternative 1 would involve widening the existing two-lane highway to a four-lane divided expressway with interchanges at Merritt Street and Salinas Road and access from local roads at intermediate points along the route.

Alternative 2: Expressway with Adjusted Horizontal Alignment to Minimize Wetland Impacts

Alternative 2 is identical to Alternative 1 except for an adjustment in the horizontal alignment of the roadway widening to minimize wetland impacts in the vicinity of Struve Pond and Bennett Slough.

Alternative 3: Expressway with Realignment to Avoid Wetland Impacts

Alternative 3 is also identical to Alternative 1 except for a one-mile segment where the road would be routed around the northwest side of Struve Pond to avoid wetland impacts in the vicinity of Struve Pond and Bennett Slough.

Alternative 4: "No-Build" Alternative

Alternative 4 is basically a "no-action" option; however limited operational and safety improvements could be made including shoulder widening, passing land additions, and intersection improvements.

Public information meetings will be held at several points during the study process. A public environmental study scoping meeting is planned for September 21, 1989 at 7:00 p.m. at North Monterey County High School, 13990 Castroville Boulevard in Castroville.

"Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)"

Issued on September 7, 1989.

John R. Schultz,

District Engineer, Sacramento, California.

[FR Doc. 89-21490 Filed 9-12-89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Safety Administration

Rulemaking, Research and Enforcement Programs and Air Bag Related Issues of Automatic Occupant Protection Requirements; Meetings

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of meetings.

SUMMARY: This notice announces a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

This notice also announces the second meeting to be held on the implementation of the automatic occupant protection requirements of Standard No. 208, *Occupant Protection*. This meeting will focus on air bag related issues.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research and enforcement programs will be held on October 16, 1989, beginning at 3:00 p.m. Questions relating to the agency's rulemaking, research and enforcement programs, must be submitted in writing by October 9, 1989. If sufficient time is available, questions received after the October 9, 1989 date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by October 9, 1989, and the issues to be discussed, will be mailed to interested persons by October 11, 1989. This list will also be available at the meeting.

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[1] 17 CFR 200.30-3(a)(12) (1986).

The meeting on the implementation of the automatic occupant protection requirements of Standard No. 208, focusing on air bag related issues, will be held on October 17, 1989, beginning to 10:30 a.m. Anyone interested in making a presentation at the October 17, meeting must submit a request in writing to Mary Coyle, NHTSA, NRD–01, 400 Seventh Street SW., Room 6208, Washington, DC 20590, by September 29, 1989. The agenda for the October 17, meeting will be available by October 12.

ADDRESS: Both meetings will be held in the Conference Room of the Environmental Protection agency's Laboratory Facility, 2565 Plymouth Road, ann Arbor, Michigan.

FOR FURTHER INFORMATION CONTACT: Questions for the October 16, meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking. Room 5401, 400 Seventh Street SW., Washington, DC 20590.

Questions on, or requests to make presentations at, the October 17, meeting on air bag related issues should be directed to Ms. Mary Coyle, NHTSA, 400 Seventh Street SW., Room 6208, Washington, DC 20590, telephone (202) 366–1537.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on October 16, 1989. The meeting will begin at 3:00 p.m., and will be held in the Conference Room of the Environmental protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590. Room 5108, 400 Seventh Street SW., Washington, DC 20590.

On July 13, 1989, the agency held a meeting on issues regarding automatic safety belts. The agency now wishes to announce the second meeting to be held on the implementation of the automatic occupant protection requirements of Standard No. 208. This meeting will begin at 10:30 a.m., on October 17, 1989, at the Environmental Protection Agency Facility in Ann Arbor, Michigan. The purpose of this meeting is to discuss air bag-related issues, including their safety effectiveness, reliability, belt usage with air bags, threshold deployment strategies, sensor strategies, bag design (tethered, folded, type of material, venting, etc.), belt pretensioner use, data collection protocols, and consumer acceptance issues. Presentations by agency staff will be made at this meeting. Anyone desiring to make a presentation at the October 17, meeting should contact May Coyle, NHTSA, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366–1537 by September 29, 1989. A transcript of this meeting will also be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page upon request to NHTSA Technical Reference section, Room 5108, 400 Seventh Street SW., Washington, DC 20590.

Issued on September 7, 1989.

Barry Felnice,

Associate Administrator for Rulemaking.

[FR Doc. 89–21437 Filed 9–12–89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1989 Rev., Supp. No. 3]

Surety Companies Acceptable on Federal Bonds

Covenant Mutual Insurance Company

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1989 Revision, on page 27807 to reflect this addition:

Covenant Mutual Insurance Company. *Business Address:* 241 Main Street, Hartford, CT 06106–1862. *Underwriting Limitation* [b]: *$3,166,000. Surety Licenses* [c]: AL, AZ, CA, CO, CT, DE, FL, GA, ID, IL, IN, ME, MD, MA, MS, MO, NV, NH, NJ, NY, OH, OK, PA, TX, VT and WA. *Incorporated In:* Connecticut.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasure Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287–3921.

Dated: September 1, 1989.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial management Service.

[FR Doc. 89–21476 Filed 9–12–89; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an

indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: September 6, 1989.

By direction of the Secretary.

David N. Stone,

Executive Assistant, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration
2. Veterans' Job Training Act
3. VA Forms 22–8929, 22–8930, 22–8931, 22–8932
4. These four forms are used to administer the Veterans' Job Training Program created by Public Law 98–77: (1) Certification of Training; (2) Notice of Intent to Employ a Veteran; (3) Employer's Application for Approval of Job Training Program; and (4) Application for Certificate of Eligibility.
5. On occasion, monthly, quarterly
6. Individuals or households, State or local governments, businesses or other for-profit, non-proft institutions, small businesses or organizations
7. 105,000 responses
8. .555 hour
9. Not applicable

[FR Doc. 89–21472 Filed 9–12–89; 8:45 am]

BILLING CODE 8320-01-M

Wage Committee; Notice of Meetings

The Department of Veterans Affairs (VA) in accordance with Pub. L. 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Thursday, October 5, 1989, at 2:00 p.m.
Thursday, October 19, 1989, at 2:00 p.m.
Thursday, November 2, 1989, at 2:00 p.m.
Thursday, November 16, 1989, at 2:00 p.m.
Thursday, November 30, 1989, at 2:00 p.m.
Thursday, December 14, 1989, at 2:00 p.m.
Thursday, December 28, 1989, at 2:00 p.m.

The meetings will be held in Room 300, Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, Room 1175, 810 Vermont Avenue N.W., Washington, DC 20420.

Dated: September 5, 1989.

By Direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89–21473 Filed 9–12–89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 178
Wednesday, September 13, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 7, 1989.

TIME AND DATE: 10:00 a.m., Thursday, September 14, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Consolidation Coal Company,* Docket No. WEVA 88–178. (Issues include whether the administrative law judge erred in concluding that the operator violated 30 CFR 50.10, dealing with the immediate contact of MSHA concerning reportable accidents.)

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)]

MATTERS TO BE CONSIDERED:

2. *Robert Simpson v. Kenta Energy, Inc.,* Docket No. KENT 83–155–D. (Consideration of a Motion to Remand).
3. *Ronald Tolbert v. Chaney Creek Coal Corporation,* Docket No. KENT 86–123–D. (Consideration of Motion to Reopen and Remand).

It was determined by a unanimous vote of Commissioners that this portion of the meeting be closed.

Any person intending to attend the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay 800–877–8339 for Toll Free.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 89–21575 Filed 9–8–89; 4:30 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, September 18, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve Systems employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 8, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89–21576 Filed 9–8–89; 4:31 pm]

BILLING CODE 6210-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 2–89

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thurs., September 28, 1989, at 10:00 a.m.

SUBJECT MATTER: Consideration of Supplemental Proposed decisions on claims against Egypt.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC. Requests for information, or advance notices of intantion to observe a meeting, may be directed to Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street NW., Room 400, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, DC, on September 11, 1989.

Judith H. Lock,
Administrative Officer.

[FR Doc. 89–21650 Filed 9–11–89; 2:19 pm]

BILLING CODE 4410-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 9:30 a.m. (closed portion), 11:00 a.m. (open portion), Tuesday, September 26, 1989.

PLACE: Offices of the Corporation, fourth floor Board Room, 1615 M Street NW., Washington, DC.

STATUS: The first part of the meeting from 9:30 a.m. to 11:00 a.m. will be closed to the public. The open portion of the meeting will commence at 11:00 a.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 9:30 a.m. to 11:00 a.m.):

1. President's Report
2. Finance Project in West Asian Country
3. Finance Project in Central American Country
4. Finance Project in South American Country
5. Insurance Project in Oceanian Country
6. Claims Report
7. Report on Conversion Funds

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 11:00 a.m.)

1. Approval of Minutes of Previous Meeting
2. Treasurer's Report
3. Scheduling Dates for Future Meetings
4. Information Reports

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Secretary of the Corporation on (202) 457–7079.

Dated: September 11, 1989.

Margaret A. Kole,
OPIC Corporate Secretary.

[FR Doc. 89–21612 Filed 9–11–89; 11:21 am]

BILLING CODE 3210-01-M

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federal register

Wednesday
September 13, 1989

Part II

Department of Health and Human Services

Office of Child Support Enforcement

45 CFR Parts 302, 303, and 304

Child Support Enforcement Program: $50 Pass-through; Mandatory Support Guidelines; Mandatory Genetic Testing; Paternity Establishment; Laboratory Testing; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 302, 303, and 304

RIN 0970–AA64

Child Support Enforcement Program: $50 Pass-Through; Mandatory Support Guidelines; Mandatory Genetic Testing; Paternity Establishment; Laboratory Testing

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed rules would implement five provisions of the Family Support Act of 1988 (Pub. L. 100–485) signed by the President October 13, 1988, which amend title IV–D of the Social Security Act (the Act), the authority for the child support enforcement program. The provisions amend the Act to require payment to the family and disregard for purposes of eligibility for Aid to Families with Dependent Children (AFDC), the first $50 of child support payments for each month which were made in the month when due; to require that State guidelines be used as a rebuttable presumption of support levels; to require the child and all other parties in a contested paternity case to submit to genetic testing upon request; to specify that the requirement for a State law permitting paternity establishment up to a child's eighteenth birthday also applies to any child for whom a paternity action was previously dismissed under a statute of limitations of less than 18 years; and to provide 90 percent Federal matching for laboratory costs incurred in determining paternity.

DATES: Consideration will be given to comments received by November 13, 1989. It should be noted that the statutory effective dates of certain statutory provisions occur before the end of the comment period on these proposed rules. The statutory provisions are effective as prescribed in the statute regardless of the absence of final implementing regulations.

ADDRESS: Address comments to: Director, Office of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attention: Director, Policy and Planning Division. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., on the 4th floor of the Department's office at the above address.

FOR FURTHER INFORMATION CONTACT: Policy Branch, OCSE, specifically:

Andrew Hagan (202) 252–5375—$50 pass-through, 90% Federal matching for laboratory costs, and mandatory genetic testing

Craig Hathaway (202) 252–5367—Mandatory guidelines and paternity establishment until age 18.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Public reporting burden for the collection of information requirement at 45 CFR 302.56(g) is estimated to be a one-time burden of 20 hours to develop criteria to determine when application of guidelines would be inappropriate. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Child Support Enforcement, Family Support Administration, 370 L'Enfant Promenade SW., Washington, DC 20447; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. OMB has already approved the requirement for State notice to employers concerning wage withholding under 45 CFR 303.100(d) and the requirement for guidelines for setting support awards under 45 CFR 302.56 (OMB approval number 0970–0051).

Statutory Authority

These proposed rules are published under the authority of the following provisions of the Act, as amended by Public Law 100–485: Section 457(b)(1) (with respect to the $50 pass-through), section 467(b) (with respect to mandatory support guidelines), section 466(a)(5) (with respect to State laws and procedures requiring parties to submit to genetic testing and State law and procedures for establishment of paternity), and section 455(a)(1) (with respect to 90 percent matching for laboratory testing). The proposed rules are also published under the general authority of section 1102 of the Act, which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Background and Description of Regulatory Provisions

1. Pass-through of Child Support Payments

Section 2640 of the Deficit Reduction Act (Pub. L. 98–369) amended section 457(b)(1) of the Act to require States to pay the first $50 of such amounts collected periodically which represent the monthly support obligation to the AFDC family. The statute also amended section 402(a)(8)(A)(vi) of the Act to require States to disregard "the first $50 of any child support payments received in such month" when determining AFDC eligibility and the amount of the AFDC payment. These changes resulted in AFDC families having up to $50 of additional disposable income each month.

Section 102 of Public Law 100-485 amends sections 402(a)(8)(A)(vi) and 457(b)(1) of the Act, effective January 1, 1989, to clarify that the first $50 of support payments received in a month which was due for a prior month must be paid to the family if paid by the absent parent in the month when due. Under the new law, the AFDC family may not be denied the $50 payment when the absent parent pays support on-time but there is a delay in transmitting the payment from the point of collection to the agency responsible for distribution.

This is consistent with regulations at 45 CFR 302.51(a) (final regulations published on June 9, 1988 (53 FR 21642)), which provide that the date of collection of a child support payment for purposes of distribution is the date on which payment is received by the State IV–D agency or by the legal entity of any State or political subdivision actually making the collection, whichever is earliest. We are expanding the date of collection rule however, with respect to payments made through wage or other income withholding for the reasons noted below.

Public Law 100-485 also made significant changes in the Act affecting requirements for income withholding. Immediate income withholding is required in child support orders issued or modified on or after November 1, 1990, and other changes were made which will ensure that income withholding applies in a majority of cases in the future. (The changes to the Act as a result of Pub. L. 100–485 not addressed in this document will be regulated separately.)

From the inclusion in Public Law 100-485 of the amendments concerning the $50 pass-through, and the amendments which will result in payment of child support through income withholding in the vast majority of cases, we conclude that the Congress' intent was to apply the $50 pass-through, after January 1, 1989, as of the date of withholding. Therefore, in any case in which an absent parent's child support payment is irrevocably withheld from his or her wages or other income in the month in which the payment was due, even where the IV–D agency does not receive the payment until a later month (because the absent parent's employer or other entity withholding income did not promptly forward to the IV–D agency the support withheld), the date of collection, for distribution purposes, will be the date of the withholding. If the State's withholding law includes withholding of other income such as unemployment compensation or pension benefits, the date of collection would be the date of the withholding. In order to implement this statutory requirement, a regulatory amendment is needed to treat the date of witholding from wages or other income as the date of collection for distribution purposes. Amendments are also needed to clarify the applicability of § 302.51(a) and to ensure reporting by employers of the date of wage withholding and appropriate information exchange in interstate cases, as follows:

Section 302.51—Distribution of Support Collections

Section 302.51(a) requires support collected to be treated first as current support for the month in which it was collected and excess amounts to be applied to arrearages. It also defines the date of collection for distribution purposes, effective June 9, 1988, as the date on which payment is received by the IV–D agency or the legal entity of any State or political subdivision actually making the collection, whichever is earliest. Finally, § 302.51(a) requires that, in any case in which collections are received by an entity other than the agency responsible for final distribution, the entity must transmit the collection within 10 days of receipt.

There appears to be some misunderstanding about whether § 302.51(a) applies for distribution purposes in all IV–D cases and, specifically, whether the definition of the date of collection, which determines how amounts collected must be distributed, must be used in determining the appropriate distribution in all IV–D cases, e.g., AFDC and non-AFDC cases, intra- and interstate cases. In addition, some States have asked if the clarification in Public Law 100–485 with respect to payment of the $50 pass-through when payments are made in the month when due applies only to the $50 payment or to distribution of all collections in IV–D cases under § 302.51.

In response to these concerns, accurate distribution in IV–D cases depends on the date of collection. Therefore, when payments which were made in the month when due are received in a later month by the IV–D agency responsible for final distribution, that agency must recompute distribution of all collections for the month in which payments were made on-time, not just the $50 payment.

In response to these concerns, we are revising § 302.51(a) to clarify under the proposed first sentence that, for purposes of distribution in all IV–D cases, amounts collected shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amounts, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months.

For purposes of distribution and redetermining eligibility in AFDC cases, States are required, in OCSE–AT–76–5 (March 11, 1976), to convert to a monthly amount support that is ordered to be paid more frequently than monthly. The proposed second sentence in § 302.51(a) would indicate that, in AFDC cases in which conversion to a monthly amount is necessary, the IV–D agency may round down the converted amount to the next lower whole dollar amount for the purpose of distribution under § 302.51. This is consistent with the method for determining the amount of the assistance payment in 45 CFR 233.20(a)(2)(iv). Conversion is not necessary in other IV–D cases.

We propose to clarify that the third sentence of § 302.51(a) applies in all IV–D cases and to address the date of collection when payments are made through wage or income withholding. Therefore, the third sentence of 45 CFR 302.51(a) would define the date of collection for distribution purposes, effective June 9, 1988, for all IV–D collections, other than those payments made through wage or other income withholding, as the date on which the payment is received by the IV–D agency or the legal entity of any State or political subdivision actually making the collection, whichever is earliest. Under a new fourth sentence, with respect to payments made through wage or other income withholding and received by the IV–D agency on or after January 1, 1989, the date of collection for distribution purposes would be the date the wages or other income are withheld to meet the support obligation. The last sentence of 45 CFR 302.51(a) would continue to indicate, until the effective date of distribution timeframes regulations published in response to the Family Support Act of 1988, that in any case in which collections are received by an entity other than the agency responsible for final distribution under this section, the entity must transmit the collection within 10 days of receipt.

Section 303.7—Provision of Services in Interstate IV–D Cases

We propose to amend the regulation governing provision of services in interstate IV–D cases (which was published as a final rule on February 22, 1988 (53 FR 5246) and amended June 9, 1988 (53 FR 21642)) to require under § 303.7(c)(7)(iv) the responding State IV–D agency to forward support payments to the location specified by the initiating State IV–D agency no later than 15 calendar days from the date of *initial* receipt in the responding State. This will clarify that payments must be forwarded to the initiating State timely and will eliminate delays when each entity through which a collection must be sent holds the collection for no legitimate reason. We would point out that this does not include, in wage withholding cases, the time between when the wages are withheld and when they are sent by the employer to the State. The 15-day clock starts running only upon receipt by a legal entity of the State. In addition, paragraph (c)(7)(iv) will be revised to require the responding State IV–D agency to inform the initiating State IV–D agency of the date of collection as defined under § 302.51(a).

Section 303.100—Procedures for Wage or Income Withholding

We propose to amend § 303.100 by revising paragraph (d)(1)(ii) to require that the IV–D agency's notice to employers concerning wage withholding state that employers must report to the IV–D agency, or such other individual or entity as the State may direct, at the time they forward support withheld from wages or other income, the date such amounts were withheld from the absent parent's wages.

2. State Guidelines for Child Support Award Amounts

Section 18 of the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378) amended title IV–D of the Act to add Section 467 requiring each State, as a condition of State IV–D plan approval, to establish guidelines for child support award amounts within the State. The State must make the guidelines available to all judges and other officials who have the power to determine awards, but the guidelines need not be binding on them.

Section 103 of Public Law 100–485 amends section 467 of the Act to delete the clause that the State guidelines need not be binding upon judges or other officials and to require that the State's guidelines be used to create a rebuttable presumption in any judicial or administrative proceeding for the award of child support that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. The statute further provides that a written finding or specific finding on the record that application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case. The State must review the guidelines at least every four years to ensure that their application results in the determination of appropriate child support award amounts.

In response to the Child Support Enforcement Amendments of 1984, a number of States implemented mandatory guidelines rather than the advisory guidelines required under the statute. Therefore, some States may already be in compliance with the requirement in Public Law 100–485. However, the concern has been raised that some States may have implemented procedures for using guidelines which are more restrictive than the new requirements. For example, procedures requiring that guidelines be followed in setting all support awards without the possibility of rebuttal appear not to comply with the requirements of the new law. We advise States in this position that changes to their guidelines and accompanying procedures will be necessary to conform to the requirements of Public Law 100–485 unless Congress clarifies an intent to the contrary.

We propose to make the following regulatory changes in response to the requirements under section 103 of Public Law 100–485 outlined above:

Section 302.50—Support Obligations

Under current regulations at § 302.50(b)(2), when there is no court order for support, States are required to establish a support obligation, in an amount determined in writing by the IV–D agency in accordance with a formula which meets criteria prescribed under § 302.53. We propose to replace the reference to the formula and the criteria under § 302.53 with reference to § 302.56, Guidelines for setting child support awards. Since guidelines will eliminate the need for such a formula, this is a technical change to conform the requirements for establishing support obligations with the proposed requirement mandating the use of guidelines in setting support amounts.

Section 302.53—Formula for Determining the Amount of the Obligation

Under current regulations at § 302.53, for cases without court orders for support, States must utilize a formula in setting support amounts which takes into consideration a number of criteria. The formula must be designed to ensure that the child benefits from the income and resources of the absent parent on an equitable basis with other minor children of the parent and must be utilized to determine the required monthly obligation, any arrearages and the amount to be paid periodically against any existing arrearages.

We are proposing to delete § 302.53 in its entirety effective October 13, 1989, to conform to the new requirement mandating the use of child support guidelines in setting all support awards. Because guidelines under § 302.56 must be used, effective October 13, 1989, in any proceeding, judicial or administrative, for the award of support, it is no longer necessary to have a separate formula for setting child support orders administratively. All decision makers will be responsible for using the State's guidelines as a rebuttable presumption of support levels in setting child support award amounts.

Section 302.56—Guidelines for Setting Child Support Awards

The Conference Report (Report 100–98) states that judges and other officials must use the "State's guidelines, uniformly applied, as a rebuttable presumption." Therefore, there must be one set of guidelines developed by the State and uniformly applied as a rebuttable presumption in setting all child support awards.

Paragraph (a) of 45 CFR 302.56 requires each State, effective October 1, 1987, to establish guidelines by law or by judicial or administrative action for setting child support award amounts within the State. This paragraph remains unchanged under this proposed rule. Paragraph (b) of this section requires the State to have procedures for making guidelines available to decision makers for advisory purposes. We propose to delete reference in paragraph (b) to the fact that guidelines need not be binding on decision makers because Public Law 100–485 requires that, effective October 13, 1989, guidelines be used by all decision makers as a rebuttable presumption of support levels.

We propose to revise paragraph (c) to require that at a minimum the guidelines established under paragraph (a): (1) Take into consideration all earnings, income and resources of the absent parent; (2) be based on specific descriptive and numeric criteria and result in a computation of the support obligation (this is required under current paragraph (c)); (3) provide for coverage of the child or children's health care needs and include health insurance when available to either parent at reasonable cost as defined in § 306.51(a); and (4) apply to all child support orders issued in the State.

Recent studies estimated that there are up to 1.4 million children with no health coverage who could have received it had absent parents been instructed to include the children on available employment-based health coverage. Medical care for children without health coverage is a concern of the President. Including health coverage in State guidelines is an important step toward helping these children receive private health coverage.

Children's health coverage can be included in support orders in several ways. Either the absent parent or the custodial parent can cover children with their employment-based or other reasonably priced group coverage. If only one parent has access to employment-based coverage which would include the children, the other parent may be deemed responsible for an appropriate share of the premiums and unreimbursed health care expenses. When neither party has access to reasonably priced private group health coverage, support orders might specify the parents' liability for health care costs incurred and include a triggering mechanism requiring coverage should it become available.

In a substantial subset of cases, employment-based or other reasonably priced group coverage that could cover the children is available to one parent, but not to the other. In such cases, guidelines would require that coverage will be awarded to the children when available to either parent at reasonable cost. We are evaluating what additional steps would help children receive health coverage under either parents' plans and policies, and welcome suggestions.

We believe that inclusion of these basic elements are essential to developing reasonable, responsible support guidelines. However, we have chosen not to prescribe to States more specific requirements at this time. We believe States are generally in a better position to determine specific considerations for families residing in their jurisdictions. We will closely monitor State guidelines and their application to assure that children's

support is met adequately and equitably. If not, more specific requirements may become appropriate.

Paragraph (d) continues to require States to include a copy of the guidelines in the State plan. A new paragraph (e) would be added to require that each State review its guidelines at least once every four years to ensure that their application results in the determination of appropriate child support award amounts, as required in section 103(b) of Public Law 100–485. Congress included this requirement to ensure that guidelines continue to remain equitable over time. A four-year cycle for review will protect the needs of the children for whom support is ordered, guarantee the validity of the guidelines and provide States the opportunity to update the guidelines to meet changing economic and social conditions.

Proposed paragraph (f) would require States, effective October 13, 1989, to provide that there will be a rebuttal presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) is the correct amount, as required under section 103(a)(3) of Public Law 100–485.

Also in accordance with section 103(a)(3) of the new law, we propose under paragraph (g), to stipulate that only a written finding on the record of a proceeding for the award of child support that the use of the guidelines would be inappropriate in a particular case shall be sufficient to rebut the presumption in that case. Such finding must be predicated on criteria established by the State. While development of the specific criteria for rebuttal is being left to each State's discretion, we are proposing under this paragraph that the State's criteria must be based on the best interests of the child. We believe that in any proceeding regarding child support, the interests of the child should prevail and determinations not to use the guidelines in a particular case should be the exception rather than the rule. We also propose that written findings that rebut State guidelines clearly state the nature and extent of the variation from the guidelines. In cases where items of value are conveyed in lieu of a portion of the support presumed under the guidelines, that value should be noted. This information will be useful in cases where support orders are appealed and in States' evaluation of the effectiveness of their guidelines.

We are concerned that States construct guidelines in such a way as to reasonably limit the number of cases in which the guidelines are rebutted. States should gather data on what proportion of orders are being issued under guidelines and the reasons for rebuttal where the guidelines are not applied. The data should be analyzed by the State in conducting a review of those guidelines and the State should enhance the guidelines as necessary where they find that a disproportionate number of orders have been established in which the guidelines are rebutted. Therefore, in paragraph (h), we are proposing that States should gather such data and use this information to make any revisions as part of their initial review of their guidelines. Data collection should start as soon as possible to assist in any reviews conducted before the statutorily required date in 1993. We plan to publish draft audit regulations for guidelines and other parts of the program within the next six months.

3. State Laws Providing for Paternity Establishment

Section 466(a)(5) of the Act, added by the Child Support Enforcement Amendments of 1984, Public Law 98–378, requires that States have in effect laws requiring the use of procedures which permit the establishment of the paternity of any child at any time prior to such child's eighteenth birthday. The implementing regulation at 45 CFR 302.70(a)(5) requires, effective October 1, 1985, that the State plan provide that the State has in effect such a law and has implemented such procedures.

Section 111(b) of Public Law 100–485 amends section 466(a)(5) of the Act by redesignating the above requirement as section 466(a)(5)(A) and adding a new requirement under paragraph (B) to require each State to have in effect laws requiring the use of procedures under which the State is required (except in cases where the individual involved has been found under section 402(a)(26)(B) of the Act to have good cause for refusing to cooperate) to require the child and all other parties in a contested paternity case to submit to genetic tests upon the request of any party, effective November 1, 1989. Further, paragraph (c) of section 111 of Public Law 100–485 amends section 454(6) of the Act to allow States to impose a fee for performing genetic tests on any individual who is not an AFDC recipient. We strongly encourage the charging of fees for genetic tests in order to discourage frivolous requests for testing.

In addition, section 111(e) of Public Law 100–485 amends section 466(a)(5)(A) of the Act (as amended by section 111(b)), retroactive to August 16, 1984 (the effective date of Public Law 98–378), to provide that the State law requirement permitting the establishment of paternity of any child prior to the child's 18th birthday, also applies to any child for whom paternity has not yet been established and any child for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

To address these statutory changes we are proposing the following regulatory amendments:

Section 302.70—Required State Laws

We propose to amend 45 CFR 302.70 to reiterate the statutory changes outlined above by revising the introductory language in paragraph (a) regarding effective dates and by revising paragraph (a)(5) to redesignate the current contents as § 302.70(a)(5)(i) and to add at the end thereof "including for any child for whom paternity has not yet been established and any child for whom a paternity action was previously dismissed under a statute of limitations of less than 18 years."

We propose to add a new § 302.70(a)(5)(ii) to require that, effective November 1, 1989, States have in effect laws providing for procedures under which the State is required, except in cases where good cause has been found, to require the child and all other parties in a contested paternity case to submit to genetic tests upon the request of any party.

Section 303.5—Establishment of Paternity

Regulations at § 303.5 set forth requirements States must adhere to in establishing paternity. We propose to amend § 303.5 by adding two new paragraphs to be designated as §§ 303.5(d) and (e).

Section 303.5(d) would require, upon the request of any party in a contested paternity case, that all parties submit to genetic testing, unless, in the case of an individual receiving AFDC, there has been a determination of good cause for refusal to cooperate under §§ 232.40 through 232.49. Genetic testing should be done promptly after the request is made, notwithstanding the age of the child in early months of infancy. Procedures currently exist which permit testing regardless of the child's age.

Proposed paragraph (e) would provide that the IV–D agency may charge any individual who is not receiving AFDC a reasonable fee for the costs of performing genetic tests. We strongly encourage States to charge fees for genetic tests in order to discourage frivolous requests for testing. The development of a fee payment mechanism would also reduce the incidence of contested cases by reducing frivolous denials or accusations of paternity.

States electing to charge such fees may set a flat fee for genetic tests in an amount not exceeding the actual cost of performing such tests or may establish a fee schedule based on income. Such fees may be collected from non-AFDC custodial parents or from the absent parent if paternity is substantiated. States electing to charge such fees must ensure that the amount is reasonable so as not to discourage the application of non-AFDC families needing paternity establishment services. Paragraph (e) would also require that, if paternity is established due to genetic test results, the IV–D agency must attempt to obtain a judgment for the costs of the genetic tests from the putative father.

4. Increased Federal Financial Participation for Laboratory Testing to Determine Paternity

Section 112 of Public Law 100–485 amends section 455(a)(1) of the Act to provide 90 percent Federal matching for States' costs for laboratory testing to determine paternity. The amendment is effective with respect to laboratory costs incurred on or after October 1, 1988. Under prior law, these costs were matched at the applicable rate pursuant to section 455(e) of the Act (68 percent for FY 1988 and 1989).

Section 304.20—Availability and rate of Federal Financial Participation

We propose to amend § 304.20 by adding a new paragraph (d) to specify that 90 percent Federal matching is available for laboratory costs of paternity determination incurred on or after October 1, 1988. This matching rate would be available for laboratory costs incurred in determining paternity in a specific case, including, for example, the costs of obtaining and transporting blood and other samples of genetic material, repeated testing where necessary, analysis of test results, and the costs for expert witnesses in a paternity determination proceeding, when the expert witness costs are included as part of the genetic testing contract. We have decided to include costs for expert witnesses because we believe that such costs are usually included as part of genetic testing contracts and are necessary and reasonable costs for the State to incur in making paternity determinations. The same costs may be excluded, pursuant to section 458(c) of the Act and the implementing regulation at 45 CFR 303.52(b)(4)(iv), in determining a State's incentive payments.

The final regulation on standards for program operations, published on August 4, 1989, require that paternity testing laboratories be selected competitively. Consistent with current Federal requirements, Federal financial participation will be available only for reasonable and necessary costs; costs significantly above market rate are not reasonable. This requirement for competitive selection will also reduce coss to individuals in States that choose to charge fees to the requesting party.

Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), we are required to prepare a regulatory flexibility analysis for those rules which would have a significant economic impact on a substantial number of small entities. While this regulation requires States to notify employers that they must indicate the date wages are withheld when forwarding wages to the State, this would not have a significant economic impact on employers because they are already required to comply with wage withholding requests, and supplying this date when forwarding withheld wages would not significantly increase the economic burden placed on them. Because the impact of these regulations is primarily on States, these regulations would not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule for the following reasons:

(1) The annual effect on the economy would be less than $100 million;

(2) This rule would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) This rule would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

Parts 302 and 303

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

45 CFR Part 304

Child support, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program)

Wayne A. Stanton,
Director, Office of Child Support Enforcement.

Approved: April 10, 1989.

Louis W. Sullivan,
Secretary.

For the reasons set out in the preamble, we propose to amend Title 45 Chapter III of the Code of Federal Regulations as follows:

PART 302—STATE PLAN REQUIREMENTS [AMENDED]

1. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2) 1396b(o), 1396b(p) and 1396(k).

2. Section 302.50(b)(2) is amended by replacing the words "a formula which meets the criteria prescribed in § 302.53" with the words "the requirements of § 302.56".

3. Section 302.51 is amended by revising paragraph (a) to read as follows:

§ 302.51 Distribution of support collections.

* * * * *

(a) For purposes of distribution in any IV–D case, amounts collected shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months. In AFDC cases in which conversion to a monthly amount is necessary, the IV–D agency may round down the converted amount to the next lower whole dollar amount for the purpose of distribution under this section. Effective June 9, 1988, the date of collection for distribution purposes in all IV–D cases, except with respect to those collections addressed under the next sentence of this section, shall be the date on which the payment is received by the IV–D agency or the legal entity of any State or political subdivision actually making the collection, whichever is earliest. With respect to payments made through wage or other income withholding and received by the IV–D agency on or after January 1, 1989, the date of collection for distribution purposes in all IV–D cases shall be the date the wages or other income are withheld to meet the support obligation. Until the effective date of regulations setting distribution timeframes in accordance with the Family Support Act of 1988, in any case in which collections are received by an entity other than the agency responsible for final distribution under this section, the entity must transmit the collection within 10 days of receipt.

4. Section 302.53 is removed.

5. Section 302.56 is amended by revising paragraphs (b) and (c) and adding paragraphs (e), (f), (g), and (h) to read as follows:

§ 302.56. Guidelines for setting child support awards.

* * * * *

(b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.

(c) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into consideration all earnings, income and resources of the absent parent;

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation;

(3) Provide for coverage of the child or children's health care needs and include health insurance when available to either parent at reasonable cost as defined in § 306.51(a); and

(4) Apply to all orders in the State.

(d) * * *

(e) The State must review the guidelines established under paragraph (a) of this section at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.

(f) Effective October 13, 1989, the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(g) A written finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must be based on the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required, how the order varies from the guidelines, including the value of any property or other support awarded in lieu of support presumed by the guidelines, the justification of how the finding serves the best interests of the child; and, in cases where items of value are conveyed in lieu of a portion of the support presumed under the guidelines, the estimated value of items conveyed.

(h) As part of the initial review of a State's guidelines required under paragraph (e) of this section, a State must gather and analyze data regarding the number of cases in which guidelines have been applied, the number in which there has been a deviation from the guidelines, and the reasons for such deviation. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

6. Section 302.70(a) is amended by adding the clause "Unless otherwise indicated," at the beginning of the introductory text, and by revising paragraph (a)(5) to read as follows:

§ 302.70 Required State laws.

(a) * * *

(5)(i) Procedures for the establishment of paternity for any child at least to the child's 18th birthday, including any child for whom paterntiy has not yet been established and any child for whom a paternity action was previously dismissed under a statute of limitations of less than 18 years; and

(ii) Effective November 1, 1989, procedures under which the State is required (except in cases where the individual involved has been found under §§ 232.40 through 232.49 of this title to have good cause for refusing to cooperate) to require the child and all other parties in a contested paternity case to submit to genetic tests upon the request of any such party, in accordance with §§ 330.5 (d) and (e) of this chapter.

* * * * *

PART 303—STANDARDS FOR PROGRAM OPERATIONS

7. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

8. Section 303.5 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 303.5 Establishment of paternity.

* * * * *

(d) Upon the request of any party in a contested parternity ase, the IV–D agency shall require all parties to submit to genetic tests unless, in the case of an individual receiving aid under the State's title IV–A plan, there has been a determination of good cause for refusal to cooperate under §§ 232.40 through 232.49 of this title.

(e) The IV–D agency may charge any individual who is not a recipient of aid under the State's title IV–A plan a reasonable fee for the costs of performing genetic tests. If paternity is established as a result of genetic tests, the IV–D agency must attempt to obtain a judgment for the costs of the genetic tests from the putative father.

9. Section 303.7 is amended by revising paragraph (c)(7)(iv) to read as follows:

§ 303.7 Provision of services in interstate IV–D cases.

* * * * *

(c) * * *

(7) * * *

(iv) Collecting and monitoring any support payments from the absent parent and forwarding payments to the location specified by the IV–D agency in the initiating State no later than 15 calendar days from the date of initial receipt in the responding State, except with respect to certain Federal tax refund offset collections as specified in § 303.72(h)(5) of this part. The IV–D agency must include sufficient information to identify the case, indicate the date of collection as defined under § 302.51(a) of this title, and include the responding State's identifying code as defined in the Federal Information Processing Standards Publication (FIPS) issued by the National Bureau of Standards or the Worldwide Geographic Location Codes issued by the General Services Administration.

* * * * *

10. Section 303.100(d)(1)(ii) is amended by inserting the following words before the semicolon at the end:

§ 303.100 Procedures for wage or income withholding.

* * * * *

(d) * * *

(1) * * *

(ii) * * *, and must report to the State (or to such other individual or entity as the State may direct) the date on which the amount was withheld from the absent parent's wages;

* * * * *

PART 304—FEDERAL FINANCIAL PARTICIPATION

11. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

12. Section 304.20 is amended by adding a new paragraph (d), as follows:

§ 304.20 Availability and rate of Federal financial participation.

* * * * *

(d) Federal financial participation at the 90 percent rate is available for laboratory costs incurred in determining paternity on or after October 1, 1988, including the costs of obtaining and transporting blood and other samples of genetic material, repeated testing when necessary, analysis of test results, and the costs for expert witnesses in a paternity determination proceeding, but only if the expert witness costs are included as part of the genetic testing contact.

[FR Doc. 89-21327 Filed 9-12-89; 8:45 am]

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federal register

Wednesday
September 13, 1989

Part III

Department of Education

34 CFR Parts 245, 246, 247, and 745

Women's Educational Equity Act Program; Rule and Notice Inviting Applications

DEPARTMENT OF EDUCATION

34 CFR Parts 245, 246, 247, and 745

RIN: 1810-AA16

Women's Educational Equity Act Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Women's Educational Equity Act (WEEA) Program. These regulations implement the changes mandated by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), include new regulations for projects of local significance, reflect program policy changes and effect other revisions based on a thorough review of the current regulations for the purpose of deregulation.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mrs. Alice T. Ford, Women's Educational Equity Act Program, 400 Maryland Avenue SW. (Room 2053, FOB–6), Washington, DC 20202–6439. (202) 732–4351.

SUPPLEMENTARY INFORMATION: The purpose of the Women's Educational Equity Act (WEEA) Program is to: (1) Provide equity for women—including girls—at all levels of education, (2) provide financial assistance to educational agencies and institutions in meeting all requirements of Title IX of the Education Amendments of 1972 (relating to nondiscrimination on the basis of sex in federally assisted educational programs), and (3) promote educational equity for women who suffer multiple discrimination, bias, or stereotyping based on sex and race, ethnic origin, disability, or age. Funds are provided through grants and contracts for projects of national, statewide, or general significance (referred to in this preamble as projects of general significance) that could be disseminated widely and replicated in a variety of settings. Projects of general significance include challenge grants, not to exceed $40,000 each, for projects to develop new dissemination and replication strategies and innovative approaches to achieving the purposes of the WEEA.

Funds may also be provided for projects of local significance, if the appropriation for the WEEA Program exceeds a statutorily specified amount. In that case, the Secretary has the option of using the excess funds for projects of general significance, projects of local significance, or both.

On January 30, 1989, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** (54 FR 4742–4748). The NPRM included a discussion of the specific changes to be made by these regulations.

Changes include revisions to sections of the current regulations, based on a deregulation review, because the provisions were either not necessary to the administration of the program (i.e., § 745.5—equity in education) or they could be streamlined (i.e., § 745.4—the definition of educational equity for women). In addition, certain sections of these regulations were revised to focus on some current issues affecting educational equity for women and girls. For example, some of the priorities for general significance grants were deleted (§§ 745.26 and 745.27) and replaced with new priorities (§ 246.11) to highlight some areas of growing concern to women and girls: participating in mathematics, science, and computer science courses and in careers in which they are underrepresented; expanding opportunities for economically disadvantaged women; and ensuring that women remain in school or, if they drop out, resume their education.

Analysis of Comments and Responses

In response to the Secretary's invitation in the NPRM, fifty parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these regulations. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Some changes have been made in these regulations as a result of public comments. The following substantive changes have been made to these final regulations:

- The definition of educational equity for women in § 245.5 has been changed to clarify that eliminating institutional sex discrimination and inequitable educational policies and procedures is a part of the definition.
- Section 246.1 has been changed by eliminating the words "likely to" in describing the types of general significance grants that will be funded, to clarify that general significance projects must have nationwide or statewide significance.
- Section 246.32 has been revised to include the requirement that applicants demonstrate how their projects will address, or can be adapted to address, the needs of racial and ethnic minority women, disabled women, and older women. In addition, the prefatory language in this section has been revised to clarify that all projects funded under Part 246 must be of general significance.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Executive Order.

Executive Order 12606

These regulations will have a positive impact on the family and are consistent with the requirements of Executive Order 12606—The Family. These regulations strengthen the authority and participation of parents in the education of their children. For example, the regulations specifically require that a local educational agency hold an open meeting regarding the contents of its application to give parents and the public in general an opportunity to testify or otherwise comment on the contents.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the responses to the proposed rules and on its own review,

the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 245, 246, 247, and 745

Education, Government contracts, Grant programs—education, Reporting and recordkeeping requirements, Sex discrimination.

Dated: September 6, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.083, Women's Educational Equity Act Program)

The Secretary amends Title 34 of the Code of Federal Regulations by redesignating Part 745 as Part 245, revising redesignated Part 245, and adding new Parts 246 and 247 to read as follows:

PART 245—WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM—GENERAL PROVISIONS

Subpart A—General

Sec.
245.1 What is the Women's Educational Equity Act Program?
245.2 Who is eligible for an award?
245.3 Are men and boys eligible to participate in projects and activities?
245.4 What regulations apply?
245.5 What definitions apply?

Subpart B—What Kinds of Projects and Activities May the Secretary Fund?

245.10 What kinds of projects may the Secretary fund?
245.11 What kinds of activities may the Secretary fund?
245.12 How does the Secretary establish priorities?

Subpart C—How Does One Apply for an Award?

245.20 How must a local educational agency satisfy the requirement for an open meeting certification?
245.21 What assurance must an application include?

Subpart D—What Conditions Must Be Met by a Recipient?

245.40 What costs are allowed?
245.41 What cost principles apply to individuals?

Authority: 20 U.S.C. 3041–3045, unless otherwise noted.

Subpart A—General

§ 245.1 What is the Women's Educational Equity Act Program?

(a) The Women's Educational Equity Act Program provides funds for projects designed to do one or more of the following:

(1) Promote educational equity for women in the United States.

(2) Promote educational equity for women who suffer multiple discrimination, bias, or stereotyping based on—

(i) Sex; and

(ii) Race, ethnic origin, disability, or age.

(3) Enable educational agencies and institutions to meet the requirements of Title IX of the Education Amendments of 1972 (relating to nondiscrimination on the basis of sex in federally assisted educational programs).

(b) Unless otherwise specified, as used in this part—and in 34 CFR Parts 246 and 247—the term "women" includes girls.

(c) The Secretary may provide funds under this program in the form of a grant or contract.

(Authority: 20 U.S.C. 3041(b), 3042(a))

§ 245.2 Who is eligible for an award?

The following are eligible to receive awards under the Women's Educational Equity Act Program:

(a) Public agencies, institutions, and organizations.

(b) Nonprofit private agencies, institutions, and organizations, including student and community groups.

(c) Individuals.

(Authority: 20 U.S.C. 3042(a))

§ 245.3 Are men and boys eligible to participate in projects and activities?

Nothing in this part or in 34 CFR Parts 246 or 247 prohibits men and boys from participating in any project or activity assisted under the Women's Educational Equity Act Program.

(Authority: 20 U.S.C. 3043(c))

§ 245.4 What regulations apply?

The following regulations apply to the Women's Educational Equity Act Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations); 34 CFR Part 75 (Direct Grant Programs); 34 CFR Part 77 (Definitions that Apply to Department Regulations); 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities); 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); 34 CFR Part 81 (General Education Provisions Act—Enforcement); and 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR Chapter 34.

(c) The regulations in 34 CFR Parts 246 and 247, as appropriate.

(d) The regulations in this Part 245.

(Authority: 20 U.S.C. 3041–3045)

§ 245.5 What definitions apply?

The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Contract
EDGAR
Grant
Local educational agency
Nonprofit
Private
Project
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to this part:

"Act" means the Women's Educational Equity Act, as amended.

"Educational equity for women" means—

(1) The elimination of institutionalized barriers and inequitable educational policies and practices that prevent full and fair participation by women in educational programs and in American society generally; and

(2) The ability of women to choose freely among benefits and opportunities in educational institutions, programs and curricula, without limitations based on sex.

"Title IX" means Title IX of the Education Amendments of 1972 (Pub. L. 92–318).

(Authority: 20 U.S.C. 3041–3045)

Subpart B—What Kinds of Projects and Activities May the Secretary Fund?

§ 245.10 What kinds of projects may the Secretary fund?

(a) The Secretary provides Federal funds for projects of general significance (34 CFR Part 246).

(b) If funds appropriated for the Women's Educational Equity Act Program exceed an amount specified in 20 U.S.C. 3042(b), the Secretary may also

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provide funds for projects of local significance (34 CFR Part 247).

(Authority: 20 U.S.C. 3042)

§ 245.11 What kinds of activities may the Secretary fund?

(a) The Secretary awards at least one grant or contract each fiscal year for the performance of each of the activities described in paragraph (c) of this section.

(b) The Secretary awards funds for demonstration, developmental, and dissemination activities designed to provide, advance, ensure, or achieve educational equity for women at all levels of education.

(c) Activities described in paragraph (b) of this section may include, but are not restricted to, the following:

(1) Development—if materials are commercially unavailable—and evaluation of curricula, textbooks, and other educational materials.

(2) Model training programs for educational personnel.

(3) Research and development projects.

(4) Guidance and counseling activities, including the development of nondiscriminatory tests.

(5)(i) Educational activities to increase opportunities for women, including continuing educational activities and programs for underemployed and unemployed adult women.

(ii) As used in paragraph (c)(5)(i) of this section, "adult" refers to women who—

(A) Have attained the age of 16; and

(B) Are no longer in school.

(6) Expansion and improvement of educational programs and activities for women in vocational education, career education, physical education, and educational administration.

(Authority: 20 U.S.C. 3042(a))

§ 245.12 How does the Secretary establish priorities?

(a) Each year, in a notice published in the **Federal Register,** the Secretary establishes separate priorities for projects of general significance and projects of local significance. The Secretary selects one or more priorities for each category of projects, from among the following:

(1) The priorities in § 246.11.

(2) The priorities in § 247.11.

(b)(1) Applicants may submit applications under one or more of the selected priorities. Applicants must identify in their applications the priorities under which they wish to compete.

(2) Applications under a priority compete against other applications under that priority for funds allocated to the priority.

(c)(1) An applicant may propose a project that is not under a priority, but is within the scope of the authorized activities described in § 245.11. These applications compete for funds not allocated to any priority.

(2) If an applicant fails to identify a priority, the application competes with other applications that are not under a selected priority.

(d)(1) Each year the Secretary may select one or more of the priorities established for general grants to apply to challenge grants.

(2) In any year that the Secretary establishes priorities for challenge grants, the procedures in paragraphs (a) through (c) of this section apply.

(Authority: 20 U.S.C. 3045)

Subpart C—How Does One Apply for an Award?

§ 245.20 How must a local educational agency satisfy the requirement for an open meeting certification?

An applicant that is a local educational agency shall—

(a) Give reasonable notice of the general public's opportunity to testify or otherwise comment at an open meeting regarding the subject matter of the application;

(b) Hold the open meeting;

(c) Consider comments obtained at the meeting in developing the final application; and

(d) Certify in the application submitted to the Secretary that the LEA has held an open meeting regarding the application, as required by this section.

(Authority: 20 U.S.C. 3386)

§ 245.21 What assurance must an application include?

In addition to meeting the other requirements in this part, and as appropriate, Parts 246 and 247, an application must include an assurance that the applicant, if selected for an award, would administer or supervise the project or activity for which the applicant seeks Federal financial assistance under the program.

(Authority: 20 U.S.C. 3043(a))

Subpart D—What Conditions Must Be Met by a Recipient?

§ 245.40 What costs are allowed?

In addition to the costs allowed in EDGAR, the Secretary allows project funds to be used for the following:

(a) The payment of stipends, travel costs, and child care to persons who participate in training under the project and to persons who participate in field-testing of materials and programs developed under the project if—

(1) Provision for these payments was included in the application;

(2) The applicant demonstrates to the Secretary's satisfaction that the payments are necessary to achieve the objectives of the project; and

(3) Participants who receive stipends are not otherwise paid for the time during which they participate in the training or testing.

(b) The costs of tuition and fees for participants in a training activity under the project if—

(1) Provision for these costs was included in the application; and

(2) The applicant demonstrates to the Secretary's satisfaction that payment of the costs is necessary to achieve the objectives of the project.

(Authority: 20 U.S.C. 3042(a))

§ 245.41 What cost principles apply to individuals?

The cost principles referenced in 34 CFR 80.22 (Allowable Costs) apply to an individual who receives a grant under this program, except that an individual may not use an indirect cost rate.

(Authority: 20 U.S.C. 3042(a))

PART 246—WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM—PROJECTS OF GENERAL SIGNIFICANCE

Subpart A—General

Sec.

246.1 What are projects of general significance under the Women's Educational Equity Act Program.
246.2 Who is eligible for an award?
246.3 What regulations apply?

Subpart B—What Kinds of Projects and Activities May the Secretary Fund?

246.10 What kinds of projects and activities may the Secretary fund?
246.11 What priorities may the Secretary select?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

246.30 How does the Secretary evaluate an application?
246.31 Selection criterion: Need.
246.32 Selection criterion: Impact.
246.33 Selection criterion: Plan of operation.
246.34 Selection criterion: Qualifications of staff.
246.35 Selection criterion: Innovative approach.
246.36 What additional factors does the Secretary consider in selecting projects for funding?

Authority: 20 U.S.C. 3041–3045, unless otherwise noted.

Subpart A—General

§ 246.1 What are projects of general significance under the Women's Educational Equity Act Program?

Under the Women's Educational Equity Act Program—Projects of General Significance, the Secretary provides Federal funds to projects—

(a) That address one or more purposes of the Act;

(b) That will—

(1) Have national or statewide significance; or

(2) Be of significance to women generally; and

(c) Whose potential impact is not confined to a local area.

(Authority: 20 U.S.C. 3042(a)(1))

§ 246.2 Who is eligible for an award?

(a) The types of entities listed in 34 CFR 245.2 are eligible to receive awards under the Women's Educational Equity Act Program—Projects of General Significance.

(b) In addition to the types of entities referred to in paragraph (a) of this section, a consortium of these entities is eligible to receive a challenge grant.

(Authority: 20 U.S.C. 3042(a); 3044(b))

§ 246.3 What regulations apply?

The following regulations apply to the Women's Educational Equity Act Program—Projects of General Significance:

(a) The regulations in 34 CFR Part 245.

(b) The regulations in this Part 246.

(Authority: 20 U.S.C. 3041–3045)

Subpart B—What Kinds of Projects and Activities May the Secretary Fund?

§ 246.10 What kinds of projects and activities may the Secretary fund?

Under the Women's Educational Equity Act Program—Projects of General Significance, the Secretary provides Federal funds for the following kinds of activities:

(a) *General grants or contracts.* The Secretary may provide assistance through a general grant or award a contract for one or more of the kinds of activities described or listed in 34 CFR 245.11.

(b)(1) *Challenge grants.* The Secretary may provide assistance through a challenge grant for projects designed to develop innovative approaches to achieving the purposes of the Act.

(2) These approaches may include, but are not restricted to the following:

(i) Comprehensive plans for implementation of equity programs at every educational level.

(ii) Innovative approaches to school-community partnerships.

(iii) New dissemination and replication strategies.

(Authority: 20 U.S.C. 3042, 3044(a))

§ 246.11 What priorities may the Secretary select?

In establishing priorities for funding each year according to 34 CFR 245.12, the Secretary may select one or more of the following:

(a) Projects to develop and test model programs and materials that could be used by local educational agencies and other entities in meeting the requirements of Title IX.

(b) Projects to develop new educational programs, training programs, counseling programs, or other programs, designed to increase the interest and participation of women in instructional courses in mathematics, science, and computer science.

(c) Projects to develop new educational programs, training programs, counseling programs, or other programs, or to expand existing model programs, designed to accomplish the following:

(1) Reduce the rate at which women drop out of formal education.

(2) Encourage women dropouts to resume their education.

(d) Projects to develop or expand guidance and counseling programs designed to increase the knowledge and awareness of women regarding opportunities in careers in which women have not significantly participated.

(e) Projects to develop new educational programs or expand existing model educational programs designed to enhance opportunities for educational achievement by economically disadvantaged women.

(f) Projects to develop new educational programs or expand existing model educational programs designed to enhance opportunities for educational achievement by women who suffer multiple discrimination on the basis of sex and race, ethnic origin, age, or disability.

(Authority: 20 U.S.C. 3045)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 246.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria in §§ 246.31 through 246.34.

(2) The Secretary awards up to 100 points for these criteria.

(b)(1) In the case of an application for a challenge grant under 34 CFR Part 246, the Secretary also applies the criterion in 34 CFR 246.35.

(2) The Secretary awards up to five additional points for this criterion.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 3045)

§ 246.31 Selection criterion: Need.

The Secretary determines the extent to which—

(a) The proposed project addresses a need or needs that—

(1) Are central to one or more of the purposes of the Act; (8 points) and

(2) Have magnitude and significance; (8 points) and

(b) The applicant has sufficient knowledge of other projects dealing with this need or these needs, and demonstrates convincingly that the proposed project would not duplicate the other projects. (4 points)

(Authority: 20 U.S.C. 3045)

§ 246.32 Selection criterion: Impact.

The Secretary determines the degree to which the project is of general significance, as evidenced by the extent to which—

(a) The objectives of the proposed project are realistic; (6 points)

(b) The strategy and activities proposed to implement the project are likely to accomplish the project's objectives; (6 points)

(c) The proposed project holds promise of making a substantial contribution toward attaining one or more of the purposes of the Act; (6 points) and

(d) The applicant demonstrates that the project will address or can be adapted to address the educational equity needs of racial and ethnic minority group women, disabled women and older women. (6 points)

(Authority: 20 U.S.C. 3043, 3045)

§ 246.33 Selection criterion: Plan of operation.

The Secretary determines the extent to which—

(a) The management plan proposed by the applicant—

(1) Is likely to be effective for implementing the proposed project and achieving the project's objectives; (10 points)

(2) Provides for adequate and appropriate allocation of resources; (5 points) and

(3) Contains realistic schedules; (5 points)

(b) The budget proposed by the applicant is adequate and provides for costs that are reasonable in relation to the objectives of the project; (10 points) and

(c) The policies and procedures provided by the applicant for evaluating the proposed project are likely to ensure adequate evaluation including, if appropriate, an evaluation or estimate of the potential for continued significance following completion of the grant period. (10 points)

(Authority: 20 U.S.C. 3043, 3045)

§ 246.34 Selection criterion: Qualifications of staff.

The Secretary determines the extent to which—

(a) The director of the proposed project has the qualifications and capability to conduct the project successfully; (5 points)

(b) The staff of the project has the qualifications and capability to implement and operate the project successfully; (5 points)

(c) The time to be spent on the project by the director and staff is sufficient to carry out the project activities. (3 points) and

(d) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions. (3 points)

(Authority: 20 U.S.C. 3045)

§ 246.35 Selection criterion: Innovative approach.

The Secretary determines the extent to which the proposed project uses a new or untried approach to achieving some aspect of educational equity for women.

(Authority: 20 U.S.C. 3044, 3045)

§ 246.36 What additional factors does the Secretary consider in selecting projects for funding?

(a) In addition to the criteria in §§ 246.31 through 246.34—and, if appropriate, the criterion in § 246.35—the Secretary, in selecting projects for funding, gives special consideration to—

(1) Applications submitted by applicants that have not received assistance under this part or Part C of Title IX of the Elementary and Secondary Education Act of 1965; and

(2) The geographical distribution of awards.

(b) The Secretary awards ten additional points to each project that is eligible for consideration under paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 3043(b); 3045)

PART 247—WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM—PROJECTS OF LOCAL SIGNIFICANCE

Subpart A—General

Sec.

247.1 What are projects of local significance under the Women's Educational Equity Act Program?
247.2 Who is eligible for an award?
247.3 What regulations apply?

Subpart B—What Kinds of Activities May the Secretary Fund?

247.10 What kinds of activities may the Secretary fund?
247.11 What priorities may the Secretary select?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

247.30 How does the Secretary evaluate an application?
247.31 Selection criterion: Need.
247.32 Selection criterion: Impact.
247.33 Selection criterion: Plan of operation.
247.34 Selection criterion: Qualification of staff.
247.35 Selection criterion: Cooperation and commitment.
247.36 Selection criterion: Budget and cost effectiveness.
247.37 Selection criterion: Evaluation.
247.38 What is the maximum period of an award?

Subpart E—What Conditions Must Be Met by a Recipient?

247.40 What portion of the costs must a recipient contribute?

Authority: 20 U.S.C. 3041–3045, unless otherwise noted.

Subpart A—General

§ 247.1 What are projects of local significance under the Women's Educational Equity Act Program?

Under the Women's Educational Equity Act Program—Projects of Local Significance, the Secretary provides Federal funds to pay a portion of the costs of establishing and operating special programs and projects of local significance that provide equal opportunities for both sexes.

(Authority: 20 U.S.C. 3042(a)(2))

§ 247.2 Who is eligible for an award?

(a) The types of entities listed in 34 CFR 245.2 are eligible to receive awards under the Women's Educational Equity Act Program—Projects of Local Significance.

(b) Each year the Secretary allocates at least 75 percent of the funds available for these types of projects for awards to local educational agencies (LEAs).

(Authority: 20 U.S.C. 3042(a)(2))

§ 247.3 What regulations apply?

The following regulations apply to the Women's Educational Equity Act Program—Projects of Local Significance:

(a) The regulations in 34 CFR Part 245.

(b) The regulations in this Part 247.

(Authority: 20 U.S.C. 3041–3045)

Subpart B—What Kinds of Activities May the Secretary Fund?

§ 247.10 What kinds of activities may the Secretary fund?

Under the Women's Educational Equity Act Program—Projects of Local Significance, the Secretary provides Federal funds for the following kinds of activities:

(a) The kinds of activities described or listed in 34 CFR 245.11.

(b) Activities incident to achieving compliance with Title IX.

(c) Other special activities designed to achieve the purposes of the Act.

(Authority: 20 U.S.C. 3042(a)(2))

§ 247.11 What priorities may the Secretary select?

In establishing priorities for funding each year, according to 34 CFR 245.12, the Secretary may select one or more of the following:

(a) Projects to help LEAs and other educational agencies and institutions meet the requirements of Title IX.

(b) Projects to develop—if materials are commercially unavailable—and adapt to local needs, curricula, textbooks, and other educational materials that will promote educational equity.

(c) Projects to develop and implement training programs, counseling programs, or other programs designed to enhance the skills of women in mathematics, science, and computer science.

(d) Projects to develop and implement guidance and counseling programs designed to—

(1) Increase the knowledge and awareness of women regarding non-traditional career options and opportunities for women; and

(2) Provide information on educational and other requirements for women entering those careers.

(Authority: 20 U.S.C. 3045)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 247.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for Federal financial assistance for a project of local significance on the basis of the criteria in §§ 247.31 through 247.37.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 3045)

§ 247.31 Selection criterion: Need.

The Secretary determines the extent to which—

(a) The proposed project addresses needs that are central to the purposes of the Act; (5 points) and

(b) The applicant documents that there are severe and significant needs to be addressed in the local community, agency, or institution to be served. (5 points)

(Authority: 20 U.S.C. 3045)

§ 247.32 Selection criterion: Impact.

The Secretary determines the extent to which—

(a) The project will help educational agencies or institutions meet the requirements of Title IX or otherwise provide educational equity in the local community, agency or institution to be served; (5 points) and

(b) The project will increase the knowledge and commitment of administration, faculty, staff, students, parents, and the public to the needs and issues addressed by the project. (5 points)

(Authority: 20 U.S.C. 3045)

§ 247.33 Selection criterion: Plan of operation.

The Secretary determines the extent to which—

(a) The project's objectives are clear and related to the needs identified in the application; (8 points)

(b) The applicant's strategies and activities are feasible and are likely to address the identified needs successfully; (8 points)

(c) The applicant has an effective management plan that ensures proper management and administration of the project, including realistic schedules and adequate allocation of resources and personnel to achieve each objective; (8 points) and

(d) The applicant demonstrates how it will provide equal access and treatment for eligible project participants who are members of groups that suffer multiple discrimination, bias, or stereotyping based on sex and race, ethnic origin, age, or disability. (8 points)

(Authority: 20 U.S.C. 3045)

§ 247.34 Selection criterion: Qualifications of staff.

The Secretary determines the extent to which—

(a) The project director and staff have the qualifications and the capability to conduct the project successfully; (10 points)

(b) The time to be spent on the project by the director and staff is sufficient to carry out project activities; (5 points) and

(c) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions. (5 points)

(Authority: 20 U.S.C. 3045)

§ 247.35 Selection criterion: Cooperation and commitment.

The Secretary determines the extent to which—

(a) There is involvement and cooperation in the planning and implementation of the project by appropriate community groups, such as parent-teacher groups, that could contribute to the project's success; (3 points)

(b) There is support for the project and commitment to the success of the project by the top administration of the applicant; (3 points)

(c) The project's activities and management of those activities will be centrally placed in the agency or institution and will be an integral part of the agency's or institution's ongoing activities; (3 points) and

(d) The applicant plans to incorporate the proposed project into the permanent policies and practices of the agency or institution following completion of the grant period. (3 points)

(Authority: 20 U.S.C. 3045)

§ 247.36 Selection criterion: Budget and cost effectiveness.

The Secretary determines the extent to which the budget for the project is adequate to support the project activities. (8 points)

(Authority: 20 U.S.C. 3045)

§ 247.37 Selection criterion: Evaluation.

The Secretary determines the extent to which—

(a) The policies and procedures provided by the applicant for evaluating the proposed project are likely to ensure adequate evaluation including, if appropriate, an evaluation or estimate of the potential for continued significance following completion of the grant period; (4 points) and

(b) The methods of evaluation, to the extent possible, are objective and produce data that are quantifiable. (4 points)

(Authority: 20 U.S.C. 3043, 3045)

§ 247.38 What is the maximum period of an award?

A project of local significance may receive Federal funds for a period that does not exceed two years.

(Authority: 20 U.S.C. 3042(a)(2))

Subpart E—What Conditions Must Be Met by a Recipient?

§ 247.40 What portion of the costs must a recipient contribute?

(a) If selected for funding under the Women's Educational Equity Act Program—Projects of Local Significance, an LEA shall contribute the following share of approved costs:

(1) In the first year of the project, 20 percent.

(2) In the second year of the project, if applicable, 40 percent.

(b) If selected for funding under the Women's Educational Equity Act Program—Projects of Local Significance, an entity other than an LEA shall contribute the following share of approved costs:

(1) In the first year of the project, 10 percent.

(2) In the second year of the project, if applicable, 20 percent.

(Authority: 20 U.S.C. 3042(a)(2)).

Note—This appendix will not be published in the Code of Federal Regulations.

Appendix—Analysis of Comments and Changes

Women's Educational Equity Act (WEEA) Program Regulations

General Comments

Comments: Numerous commenters expressed concern that the changes proposed in the NPRM were not required by the legislation reauthorizing the program, and that the proposed changes could undermine the intent of the WEEA program to end institutionalized sex discrimination, bias, and stereotyping. Some commenters also viewed the regulations as an attempt to move the program away from the statutory requirement that projects be of national, statewide, or general significance. One commenter felt that the NPRM had not adequately explained the substantive changes being made, that statutory requirements for the changes were not cited, and that therefore, the NPRM should be withdrawn.

Discussion: As explained in the preambles to the NPRM and these final regulations, the new regulations were developed as a result of a deregulation review and policy changes reflecting the changing needs of women, in addition to the amendments to the WEEA, made by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. For example, § 745.5 was deleted because it was not necessary for the administration of the WEEA program. Some of the priorities for general significance grants were deleted and replaced with new priorities to reflect the need to encourage women and girls to stay in school or resume their education, participate in mathematics, science and computer science courses, and move into careers in which women have been underrepresented; and the need to expand educational opportunities for economically disadvantaged women. In addition, the NPRM included proposed regulations for the program of local significance that was added to the WEEA by the 1984 amendments, but for which the Secretary had not yet published regulations. Proposed deletions from the current regulations and other proposed changes, *e.g.*, changes in the selection criteria and priorities for general significance grants, were not intended to undermine the purpose of the WEEA. On the contrary, the Secretary believes the regulations fully effectuate the purposes of the WEEA. Nevertheless, after reviewing the comments received, the Secretary has adopted some changes to ensure that the regulations clearly implement the requirements of the WEEA.

Changes: Specific changes made in these regulations are explained in the sections that follow.

Section 245.5 What definitions apply?

Comments: Many commenters said that the Secretary should not eliminate the definition of sex role stereotyping or revise the definition of educational equity for women. They felt that the revised definition of educational equity for women assumes that all sex discrimination and bias have been eliminated. Several commenters stated that the proposed regulations deleted sex bias and sex role stereotyping as goals of the program.

Discussion: The Secretary did not intend for the new definition of "educational equity for women" to imply that institutionalized sex discrimination, sex bias, and sex role stereotyping no longer exist. The elimination of the institutional and social barriers to women's educational equity, including eliminating sex bias and sex role stereotyping, are indeed among the purposes of this program. The Secretary only intended to streamline the definition of "educational equity for women". The definition of sex role stereotyping was deleted because it was not used in the revised regulations and, therefore, did not need to be defined.

Changes: The definition of "educational equity for women" in § 245.5(b) has been revised and expanded, to clarify that the elimination of institutionalized barriers and inequitable educational practices and procedures that prevent full and fair participation by women in educational programs and in American society generally is part of the definition.

Projects of General Significance

Section 246.1 What are projects of general significance under the Women's Educational Equity Act Program?

Comments: The proposed regulations stated that, under the general grants program, projects can be funded if they are "likely to" have a national, statewide or general significance. Several commenters felt that the phrase "likely to" weakens the requirement that only projects of national, statewide, or general significance may be funded.

Discussion: The Secretary did not intend to weaken the statutory requirement that general significance grants have national or statewide impact. Therefore, to avoid confusion, the Secretary has adopted the change suggested by the commenters.

Changes: The words "likely to" have been deleted from § 246.1(b).

Comments concerning multiple discrimination

Comments: Many commenters stated that the proposed regulations reflected a decreased interest in and lack of understanding of the different needs of racial and ethnic minority women and disabled women. In support of their position, these commenters pointed to the deletion from the current regulations of § 745.6 (requiring applications that proposed broad-based projects to address the diverse needs of women); §§ 745.24 and 745.25 (the priorities for projects addressing racial and ethnic minority women and girls and disabled women and girls); and § 745.32(c) (a selection criterion under which the Secretary awards points for projects that will address or may be adapted to address the educational equity needs of racial and ethnic minority group women). Moreover, one commenter stated that by deleting § 745.6, it appears that the Secretary believes that discrimination no longer exists against women and girls who are members of racial and ethnic groups and who are disabled.

Discussion: The Secretary did not intend to dilute the focus in this program on addressing the unique needs of women and girls who suffer multiple discrimination based on sex and on race, ethnic origin, disability, or age. Section 745.6 of the current regulations applied only to applications that propose broad-based projects designed to address all women. In reviewing the applications that are submitted to the WEEA program, the Secretary determined that most of the applications focus on the needs of a particular group of women or girls. Therefore, this requirement was not applicable to most of the applications for WEEA funding. However, the Secretary wants to ensure that all projects address or can be adapted to address the needs of women and girls who suffer multiple discrimination, and that priority funding may be given to projects that address multiple discrimination. A priority for funding projects focusing on educational equity for women and girls who suffer multiple discrimination is in § 246.11(f) of these regulations.

Changes: The Secretary has added paragraph (d) to § 246.32 (Selection Criterion: Impact), as a factor for evaluating all applications for general significance grants on how well they address the issue of multiple discrimination in their projects.

Section 246.11 What priorities may the Secretary select?

Comment: Numerous commenters recommended that the current priority for model projects to influence leaders in educational policy and administration, the separate priorities for projects that address racial and ethnic minority women and girls and disabled women and girls, and the priority for projects that address eliminating persistent barriers to educational equity for women, be retained. These commenters felt that deletion of the current priorities was another attempt to shift the emphasis of the program away from eliminating institutional sex discrimination.

Discussion: Under the WEEA, the Secretary is given the discretion to establish priorities to ensure that available funds are used for programs that most effectively will achieve the purpose of the statute. The Secretary believes that the priorities should reflect the changing needs of women and focus on broad issues of educational equity for women and girls. Thus, with the

exception of the current priority for model projects on Title IX compliance, the priorities have been revised. In most cases, applications that fall within one of the current priorities will qualify under one of the new priorities. For example, a model project to counsel women on careers in mathematics and science submitted under the priority for eliminating persistent barriers, could be submitted now under the new priority for projects designed to increase the interest and participation of women in instructional courses in mathematics, science, and computer science. Moreover, as explained above, the new priorities include a priority for projects that focus on multiple discrimination, including discrimination based on sex and age. The priorities in the current regulations do not address age discrimination.

Changes: None.

Section 246.32 Selection criterion: Impact

§ 246.32 Selection criterion: Impact.

Comments: Several commenters stated that applications should be evaluated on and receive points for the extent to which they propose projects that are of national, statewide, or general significance.

Discussion: The evaluation factor and the points attributed to how well a project is of national, statewide and general significance in the current regulations were deleted in the NPRM, because the Secretary determined that the selection factor alone did not ensure that all projects submitted for funding under part 246 would be of national, statewide, or general significance, as required by the statute. However, the Secretary agrees that projects funded under part 246 must be of national, statewide, or general significance.

Changes: Section 246.32 (Selection Criterion: Impact) has been revised to clarify that all projects funded under part 246 must be of general significance and that the Secretary determines the degree to which the project is of general significance by evaluating the extent to which the project meets the criteria in § 246.32.

Comments: A few commenters also stated the applications proposing projects of general significance should not compete with applications proposing projects of local significance.

Discussion: Applications proposing projects of general significance are evaluated under a different set of criteria than projects of local significance. They do not compete against each other for funding.

Changes: None.

Comments: A few commenters stated that the criterion requiring an applicant to demonstrate its commitment to educational equity for women should be retained.

Discussion: This selection criterion has been deleted because the Secretary determined that an applicant's commitment to educational equity for women would be demonstrated by its responses to other evaluation criteria.

Changes: None.

Section 246.34 Selection Criteria: Qualifications of Staff

Comments: Numerous commenters felt that experience in addressing women's issues should be retained as a separate evaluation factor in these regulations and that extra points should be awarded.

Discussion: The requirements under § 246.31 of these regulations ensure that the staff of the project will have sufficient knowledge and experience to carry out the project successfully. The experience of the proposed staff will affect the number of points an applicant can receive under this criterion. A seperate evaluation factor for experience is not necessary.

Changes: None.

Projects of Local Significance

Section 247.40 What portion of costs must a recipient contribute?

Comments: One commenter felt that the requirement for successful applicants to contribute to the approved costs of the project is discriminatory and imposes an undue hardship on smaller applicants that may not be able to meet this requirement.

Discussion: The WEEA statute mandates that the Department pay only a portion of the costs to eligible entities for the establishment and operation of special programs and projects of local significance. In determining how much of the cost of the project a grantee should assume, the Secretary considered the statutory requirement, including the two-year limitation on funding projects under this program, and the limited funding available for this program. The Secretary determined that the levels of grantee contributions established in these regulations would ensure that grantees would be committed to their projects, and more likely continue the projects when the grantees could no longer receive funding under this program.

Changes: None.

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DEPARTMENT OF EDUCATION

Notice Inviting Applications for New Awards Under the Women's Educational Equity Act Program for Fiscal Year 1990 (CFDA No. 84-083)

Purpose of Program: To promote educational equity for women and girls, particularly those who suffer multiple discrimination, bias, or stereotyping; and to provide assistance to agencies and institutions to meet the requirements of title IX of the Education Amendments of 1972.

Deadline for Transmittal of Application: November 2, 1989.

Deadline for Intergovernmental Review Comments: January 1, 1990.

Applications Available: September 28, 1989.

Available Funds Anticipated: It is estimated that approximately $2,436,000 will be available for fiscal year 1990 awards under this program. However, applicants should note that the Congress has not yet completed action on the fiscal year 1990 appropriation.

Estimated Range of Awards: Challenge Grants: $30,000–$40,000; General Grants: $50,000–$200,000.

Estimated Average Size of Awards: Challenge Grants: $35,000; General Grants: $125,000.

Estimated Number of Awards: Challenge Grants: 15; General Grants: 15.

Project Period: Up to 24 months.

Priority: For FY 1990, the Secretary has allocated 60% of the funds to be divided equally among the following priorities listed in 34 CFR 246.11:

(a) Projects to develop new educational programs, training programs, counseling programs, or other programs, or to expand existing model programs, designed to accomplish the following:

(1) Reduce the rate at which women drop out of formal education.

(2) Encourage women dropouts to resume their education. (20%)

(b) Projects to develop new educational programs or expand existing model educational programs designed to enhance opportunities for educational achievement by economically disadvantaged women. (20%)

(c) Projects to develop new educational programs or expand existing model educational programs designed to enhance opportunities for educational achievement by women who suffer multiple discrimination on the basis of sex and race, ethnic origin, age, or disability. (20%)

These priorities apply to general significance and challenge grants. An applicant must indicate if it is submitting an application under one of these priorities. Applications under a priority complete against other applications submitted under that priority for funds allocated to the priority. An applicant may propose a project that is not under one of these priorities but is within the scope of the authorized activities described in 34 CFR 245.11. If an applicant fails to identify a priority, the application will complete with other applications that are not under one of these priorities. The remaining 40% of the funds will be allocated for applications within the scope of other authorized activities. An applicant may not submit an application under one of the priorities and also submit the same application for consideration to compete with applications that are not under one of the priorities.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, and 85; and (b) the regulations for this program in 34 CFR Parts 245–247 published in this issue of the **Federal Register**.

For Applications or Information Contact: Mrs. Alice T. Ford, U.S. Department of Education, 400 Maryland Avenue SW., Room 2053, FOB #6, Washington, DC 20202-6439. Telephone: (202) 732-4351.

Program Authority: 20 U.S.C. 3041–3047.

Dated: September 6, 1989.

Daniel F. Bonner,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 89-21378 Filed 9-12-89; 8:45 am]

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federal register

**Wednesday
September 13, 1989**

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of the Orlando Terminal Control Area and Revocation of the Orlando International Airport Radar Service Area, Florida; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–AWA–4]

RIN 2120–AD03

Proposed Establishment of the Orlando Terminal Control Area and Revocation of the Orlando International Airport Radar Service Area, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Terminal Control Area (TCA) at Orlando, FL. The TCA would consist of airspace from the surface or higher within a 30-nautical-mile radius of the Orlando International Airport up to and including 10,000 feet above mean sea level (MSL). Establishment of this TCA would impose certain operating rules and pilot/equipment requirements, including requirements for an operable two-way radio, a 4096 transponder with automatic altitude-reporting equipment, an operable very high frequency omnidirectional radio range (VOR) or tactical air navigational aid (TACAN) receiver, and restrictions on student pilot operations. This action is intended to increase the capability of the air traffic control (ATC) system to separate aircraft in the terminal airspace around the Orlando International Airport. The objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users. Orlando International Airport is currently served by an Airport Radar Service Area (ARSA) which would be rescinded concurrent with the establishment of this TCA.

DATES: Comments must be received on or before November 13, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–10], Airspace Docket No. 89–AWA–4, 800 Independence Avenue SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AWA–4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published FAR Amendment 91–78 (35 FR 7782) which provided for the establishment of TCA's.

On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule adopted continues to require a transponder for operation in each TCA.

On June 21, 1988, the FAA published a final rule which requires Mode C equipment when operating within 30 nautical miles of any designated TCA primary airport from the surface up to 10,000 feet MSL, except for operations by certain aircraft types specifically excluded (53 FR 23356).

On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) establishes a single-class TCA; (b) requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminates the helicopter exception from the minimum navigational equipment requirement.

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide

aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 24 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

On August 22, 1987, the Secretary of Transportation announced nine locations for which the FAA would issue Notices proposing the establishment of TCA's. The nine candidates cited qualify for TCA status by meeting the criteria published in FAA Handbook 7400.2C, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA are based on factors which include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two elements—the number of enplaned passengers and the number of aircraft operations.

PRE-NPRM Public Input

Airspace Meetings

Two pre-NPRM airspace meetings were held August 16–17, 1988, to permit local aviation interests and airspace users an opportunity to present ideas on the design of the proposed Orlando TCA. In attendance were fixed-base operators, civilian flight instructors, the Florida Department of Transportation, the TCA Planning Workshop, representatives of Sun 'n Fun Experimental Aircraft Association Fly-In, Inc., the Florida Aviation Trades Association, private pilots and concerned citizens. Although it was generally agreed that a TCA is needed for the Orlando/Tampa area, it was felt that the generic TCA should be replaced by a rectangular design, which would be about 33×41 miles, with altitudes ranging from the surface to 8,000 feet MSL. This rectangular design would permit access to Orlando Executive Airport and Kissimmee Municipal Airport, FL.

Written Comments

Five comments were received. Three supported and two opposed the establishment of the TCA. The comments received are summarized as follows:

1. The Florida Department of Transportation Planning and Utilization Committee offered a different airspace configuration for the TCA which they felt would accomplish the enhancement of safety and separation of traffic required at a major airline hub and military base, yet allow access to other airports by general aviation users.
2. The Florida Aviation Trades Association recommended acceptance of the plan and the boundaries of the TCA and mandatory Mode C use in the Orlando area.
3. The Marathon Flight School, Inc., recommended a cutout for the Kissimmee Municipal Airport and the lowering of the floor from 5,000 to 4,000 feet MSL, suggesting that this would allow better handling of IFR traffic into the Orlando International Airport.
4. The Central Florida General Aviation Association generally supports the implementation of the Orlando TCA.
5. A general aviation pilot expressed his concern that the establishment of the TCA would restrict the operation of his float plane which he bases at his home on Bear Gully Lake, FL. The pilot requested that some mechanism be established for use of the lower altitudes of airspace.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a TCA at Orlando, FL. The total number of annual enplaned passengers at Orlando International Airport was 4,847,194, as of June 1988, which more than qualifies it for consideration as a candidate for a TCA. The total number of airport operations was 251,602 of which 60 percent were air carrier operations. This figure exceeds the criteria necessary for the establishment of a TCA. Additionally, within the proposed boundaries more than 430,000 flights are conducted annually. Consequently, the FAA has determined that establishment of a TCA at Orlando International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in that terminal area. Orlando International Airport is currently served by an ARSA, which would be rescinded concurrent with the establishment of this TCA. The proposed location is depicted on the attached chart.

Section 91.90 of part 91 of the Federal Aviation Regulations (14 CFR part 91) defines TCA's and prescribes operating rules for aircraft in airspace designated as a TCA. The TCA rule provides, in part, that prior to entering the TCA, any pilot arriving at any airport within the TCA or flying through the TCA must: (1) Obtain appropriate authorization from ATC; (2) comply with applicable procedures established by ATC for pilot training operations at an airport within a TCA; (3) hold at least a private pilot certificate; and (4) meet the requirements of § 61.95 of the Federal Aviation Regulations if the aircraft is operated by a student pilot. Any aircraft arriving at any airport within a TCA or flying through a TCA must: Have an operable VOR or TACAN receiver; have an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and be equipped with the applicable operating transponder and automatic altitude-reporting equipment specified in paragraph (a) of § 91.24 of the Federal Aviation Regulations, except as provided in paragraph (d) of that section. Unless otherwise authorized by ATC, all large turbine-engine aircraft operating to or from a primary airport must be operated above the designated floors of a TCA. The pilot of any aircraft departing from an airport located within a TCA is required to receive a clearance from ATC prior to takeoff.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions, and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the TCA rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions, operating requirements, and specific airspace designations applicable to TCA's may be found in §§ 71.12, 71.401, and 71.403 of part 71 of the Federal Aviation Regulations (14 CFR part 71); and §§ 91.1 and 91.90 of part 91 of the Federal Aviation Regulations (14 CFR part 91).

The standard configuration of a TCA consists of three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles respectively. The vertical limits of the TCA are 12,500 feet above MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration contained herein is the result of an extensive staff study conducted by the local FAA authority after obtaining public input from informal airspace meetings and coordinating with the FAA regional office. The FAA has determined the following proposed TCA airspace configuration is consistent with TCA objectives and allows consideration of terminal area flight operations and terrain:

Summary

The basic design of the proposed Orlando TCA is a rectangle with airspace extending upward from the surface to 10,000 feet MSL. The outer segments of the TCA extend upward from 6,000 feet to 10,000 feet MSL. Airports within the TCA include Orlando Executive, Sanford Regional, Kissimmee Municipal, Orlando Country, Orlando West, Mid Florida Air Service, Dunn Air Park, Space Center Executive, and Orlando International. The estimated number of locally based aircraft is 1,110. Approximately 767 of these aircraft would be required to purchase Mode C transponders.

The proposed Orlando TCA would bring all aircraft operating within that airspace under ATC, thereby increasing aviation safety. The Mode C equipment requirements would make potential traffic conflicts readily apparent to the controller. Inadvertent intrusions into the TCA by Mode C equipped aircraft would minimize the safety problem to aircraft operating within 30 nautical miles of the TCA. The ever-increasing operations in the Orlando terminal airspace by air carrier and high-performance business aircraft compound the complexity of the problem.

The preceding general summary of the proposed TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at the Orlando International Airport. Air traffic control would provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is requisite to aircraft operations within that airspace. Establishment of this TCA would greatly enhance the safety of flight within the congested airspace overlying the Orlando metropolitan area by facilitating the separation of controlled and uncontrolled flight operations. Section 71.403 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

Regulatory Evaluation Summary

The FAA is required to assess the benefits and costs of each proposed rulemaking action to assure that the public is not burdened with rules having costs which outweigh their benefits. This section contains an analysis which quantifies, to the maximum possible extent, the costs and benefits of establishing a TCA at Orlando, FL. This regulatory evaluation summary should be read in conjunction with the NPRM since it provides additional background information.

This proposal is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate all aircraft in terminal airspace around the Orlando International Airport. This action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VFR aircraft that are not required to be under the control of ATC. Thus, the overall objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users.

Cost-Benefit Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of the proposed rule to be $7.3 million ($4 million, discounted, 15 years) in 1987 dollars. Approximately $3.8 million (discounted) or 95 percent of the total estimated costs would be incurred by the FAA primarily for additional personnel. The remaining costs would be incurred by small GA aircraft operators who would be required under this proposal to equip their aircraft with Mode C transponders sooner than they would have for the ARSA under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). This rule will be implemented in two phases. Phase I, which began in July 1989, requires a transponder with Mode C at and above 10,000 feet MSL and in the vicinity (30 nautical miles) of TCA-primary airports. There are currently 24 TCA's.

Phase II will implement a transponder with Mode C requirement in the airspace in the vicinity (10 nautical miles) of ARSA-primary airports. Phase II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, most aircraft without Mode C transponders would need ATC authorization to fly within 30 nautical miles of a TCA-primary airport, within 10 nautical miles of an ARSA-primary airport, or within controlled airspace of other designated airports that would also require Mode C transponders.

Thus, this evaluation, as well as the Mode C rule, assumes that all aircraft without Mode C would acquire such equipment rather than circumnavigate the subject airport. The only aircraft without this equipment would be nonelectrical types. Costs to these types of aircraft operators have already been accounted for by the Mode C rule. As a result, aircraft operators impacted by this proposal would only incur the opportunity cost of capital by requiring them to acquire, install, and maintain Mode C transponders one year earlier than they would be required to do so in accordance with Phase II of the Mode C rule.

b. Benefits

This proposed rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, would take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions due to increased ATC in airspace to be established by the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this proposal would be the reduction in the probability of midair collisions resulting from converting the existing ARSA to a TCA. However, due to the recent Mode C rule (and to some extent, the rule for Traffic Alert and Collision Avoidance (TCAS), 54 FR 940, January 10, 1989), the number of potential midair collisions avoided by this proposal is expected to be significantly lower. Nevertheless, this proposal is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale.

This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (NMAC) incidents in lieu of actual midair collisions. (A critical NMAC is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot but, rather, is due purely to chance.) Since midair collisions involving part 135 aircraft and especially part 121 aircraft are rare, the use of critical NMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety from implementing this proposal.

Simple regression analyses were prepared for this evaluation which focused on critical NMAC's' aircraft operations in the 23 existing TCA's, and a random sample of 23 of the existing 79

ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have approximately 68 percent fewer critical NMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between NMAC's and actual midair collisions, the lower NMAC rate does indicate a more efficient separation of aircraft in congested airspace.

As the result of these findings, if the existing Orlando ARSA were to remain unchanged (and the recent Mode C and TCAS rules were not in effect), the Orlando Terminal Area would be expected to experience approximately 2.3 critical NMAC's annually (or 34 critical NMAC's over the next 15 years). If, however, the ARSA were to become a TCA, this figure would reduce to approximately 0.7 critical NMAC's annually (or 11 critical NMAC's over the next 15 years). Thus, over the next 15 years, this proposal could result in the reduction of approximately 23 critical NMAC's. However, it is important to note that many, if not most, of these potential critical NMAC's would never materialize as predicted primarily because of the Mode C rule as it is applied to the Orlando ARSA and, to some extent, the TCAS rule.

According to Phase II of the Mode C rule, all aircraft operating within ten nautical miles (except for flights below the outer five-mile "shelf") of an ARSA-primary airport must be equipped with a Mode C transponder. Phase I of the Mode C rule requires, as of July 1989, aircraft operating within 30 nautical miles of a TCA to be equipped with a Mode C transponder. These requirements are expected to significantly reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of this proposal to create a TCA in 1990 at Orlando is that the safety enhancements of the Mode C and TCAS requirements will occur earlier than would be otherwise expected without this proposal. A second safety benefit would be in terms of the lowered likelihood of midair collisions as a result of expanding the lateral boundaries by 20 nautical miles through replacing the Orlando ARSA with a TCA.

Thus, the safety benefits of the establishment of a new TCA, while positive, would be less than would otherwise accrue in the absence of the Mode C and TCAS rules. Since this proposal essentially extends the effects of the Mode C rule, virtually all of its potential safety benefits are assumed to be part of that rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimate of $310 million for 10 years has been adjusted to a 15-year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions). It is important to note that part of these safety benefits would be attributed to the TCAS rule. Thus, the potential safety benefits of this proposal, and the Mode C and TCAS rules, are considered to be inextricably linked.

Another potential benefit of the proposed rule would be improved operational efficiency on the part of FAA air traffic controllers. Under the proposed rule, Mode C transponder requirements would ease controller workload as a result of aircraft being controlled due to a reduction in radio communications. The proposed rule would also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of controller workload, increased by separation requirements in the proposed TCA, would be somewhat offset due to the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA.

Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and in the number of VFR aircraft delayed during busy periods. As the result of converting the existing Orlando ARSA to a TCA, improved operational efficiency would accrue due to the availability of additional air traffic controllers. If the Orlando ARSA were to remain intact, such air traffic personnel would not be required. Therefore, the potential benefits of improved operational efficiency, which are not considered to be quantifiable in monetary terms in this evaluation, would be attributed to this proposal rather than either the Mode C rule or TCAS rule.

c. Comparison of Benefits and Costs

The total cost that would accrue from implementation of the proposed rule is estimated to be $4 million (discounted, in 1987 dollars). Approximately five percent of this total cost estimate would fall on those GA aircraft operators without Mode C transponders in the form of opportunity costs requiring them to acquire such avionics equipment, including maintenance, sooner than they otherwise would under the status quo. The typical individual GA aircraft operator impacted would incur an estimated one-time cost ranging from $86 to $191 (discounted) under the proposed rule. (As a result of the opportunity cost concept, the derivation of these cost estimates are too complex to discuss briefly. Therefore, the reader should refer to the detailed regulatory evaluation, which is contained in the docket, for a full explanation of the method by which these costs estimates were made.)

The potential benefits of the proposed rule would be the lowered likelihood of midair collisions from the conversion of the existing ARSA to a TCA. The number of midair collisions avoided and their respective monetary values cannot be estimated for this proposal independent of the Mode C and TCAS rules, but the FAA believes this risk would be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately two-thirds less frequently in a TCA than within an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's would continue to experience reduced critical NMAC's. In addition, the proposed rule would generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the cost of compliance relative to the significant reduction in the likelihood of midair collisions as well as improved operational efficiency in the Orlando Terminal Area, the FAA firmly believes the proposed rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional detailed information related to the costs and benefits that are expected to accrue from the implementation of this NPRM.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this proposed rule would be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this proposed rule already have Mode C transponders due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost would not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders then the annual one-time cost per impacted aircraft would be approximately $210 (undiscounted, for the purpose of comparability with the figure of $3,700). The total annual one-time cost per small entity would amount to an estimated $1,890. Thus, the annual worst case cost for a small entity would fall far below the FAA's annual threshold of $3,700. Therefore, the FAA believes this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

International Trade Impact Assessment

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This proposed regulation would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, terminal control areas, airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97.449, January 12, 1983); 14 CFR 11.69.

§ 71.403 [Amended]

2. Section 71.403 is amended as follows:

Orlando, FL [New]

Primary Airport

Orlando International Airport (lat. 28°25′54″N., long. 81°19′29″W.)

Boundaries:

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at lat. 28°30′15″ N., long. 81°26′30″ W.; to lat. 28°34′00″ N., long. 81°16′15″ W.; to lat. 28°34′00″ N., long. 81°11′00″ W.; to lat. 28°19′15″ N., long. 81°10′45″ W.; to lat. 28°17′45″ N., long. 81°14′45″ W.; to lat. 28°19′30″ N., long. 81°26′45″ W.; to the point of beginning.

Area B. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL beginning at lat. 28°28′45″ N., long. 81°30′15″ W.; to lat. 28°30′13″ N., long. 81°26′30″ W.; to lat. 28°19′30″ N., long. 81°26′45″ W.; to lat. 28°17′45″ N., long. 81°14′45″ W.; to lat. 28°19′15″ N., long. 81°10′45″ W.; to lat. 28°11′30″ N., long. 81°10′30″ W.; to lat. 28°11′30″ N., long. 81°29′30″ W.; to the point of beginning.

Area C. That airspace extending upward from 1,600 feet MSL to and including 10,000 feet MSL beginning at lat. 28°41′00″ N., long. 81°31′00″ W.; to lat. 28°40′30″ N., long. 81°11′15″ W.; to lat. 28°34′00″ N., long. 81°11′00″ W.; to lat. 28°34′00″ N., long., 81°16′15″ W.; to lat. 28°30′15″ N., long. 81°26′30″ W.; to lat. 28°28′45″ N., long. 81°30′15″ W.; to the point of beginning.

Area D. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at lat. 28°51′00″ N., long. 81°39′00″ W.; to lat. 28°51′15″ N. long. 81°36′00″ W.; to lat. 28°52′30″ N., long. 81°18′00″ W.; to lat. 28°51′30″ N., long. 81°10′30″ W.; to lat. 28°51′00″ N., long. 81°05′30″ W.; to lat. 28°32′00″ N., long. 81°02′00″ W.; to lat. 28°16′15″ N., long. 80°58′15″ W.; to lat. 28°03′00″ N., long. 81°05′45″ W.; to lat. 28°03′00″ N. long. 81°35′30″ W.; to lat. 28°13′00″ N., long. 81°40′30″ W.; to lat. 28°37′30″ N., long. 81°46′30″ W.; to lat. 28°41′30″ N., long. 81°44′15″ W.; to the point of beginning, excluding Areas A, B, and C.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at lat. 28°10′15″ N. long. 81°46′30″ W.; to lat. 28°13′00″ N., long. 81°40′30″ W.; to lat. 28°03′00″ N., long. 81°38′30″ W.; to lat. 28°03′00″ N., long. 81°46′45″ W.; to the point of beginning.

Area F. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at lat. 28°48′30″ N., long. 81°50′00″ W.; to lat. 28°55′30″ N., long. 81°43′00″ W.; to lat. 28°51′15″ N., long. 81°36′00″ W.; to lat. 28°51′00″ N., long. 81°39′00″ W.; to lat. 28°41′30″ N., long. 81°44′15″ W.; to the point of beginning.

Area G. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at lat. 29°00′00″ N. long. 81°10′30″ W.; to lat. 29°00′00″ N., long. 81°00′00″ W.; to lat. 28°53′00″ N., long. 81°00′00″ W.; then clockwise along the 27 NM DME arc of the Orlando VOR to lat. 28°23′14″ N. long. 80°51′21″ W.; to lat. 28°26′15″ N. long. 81°00′37″ W.; to lat 28°32′00″ N., long. 81°02′00″ W.; to lat. 28°51′00″ N., long. 81°05′30″ W.; to lat. 28°51′30″ N., long. 81°10′30″ W.; to the point of beginning.

§ 71.501 [Amended]

3. Section 71.501 is amended as follows:

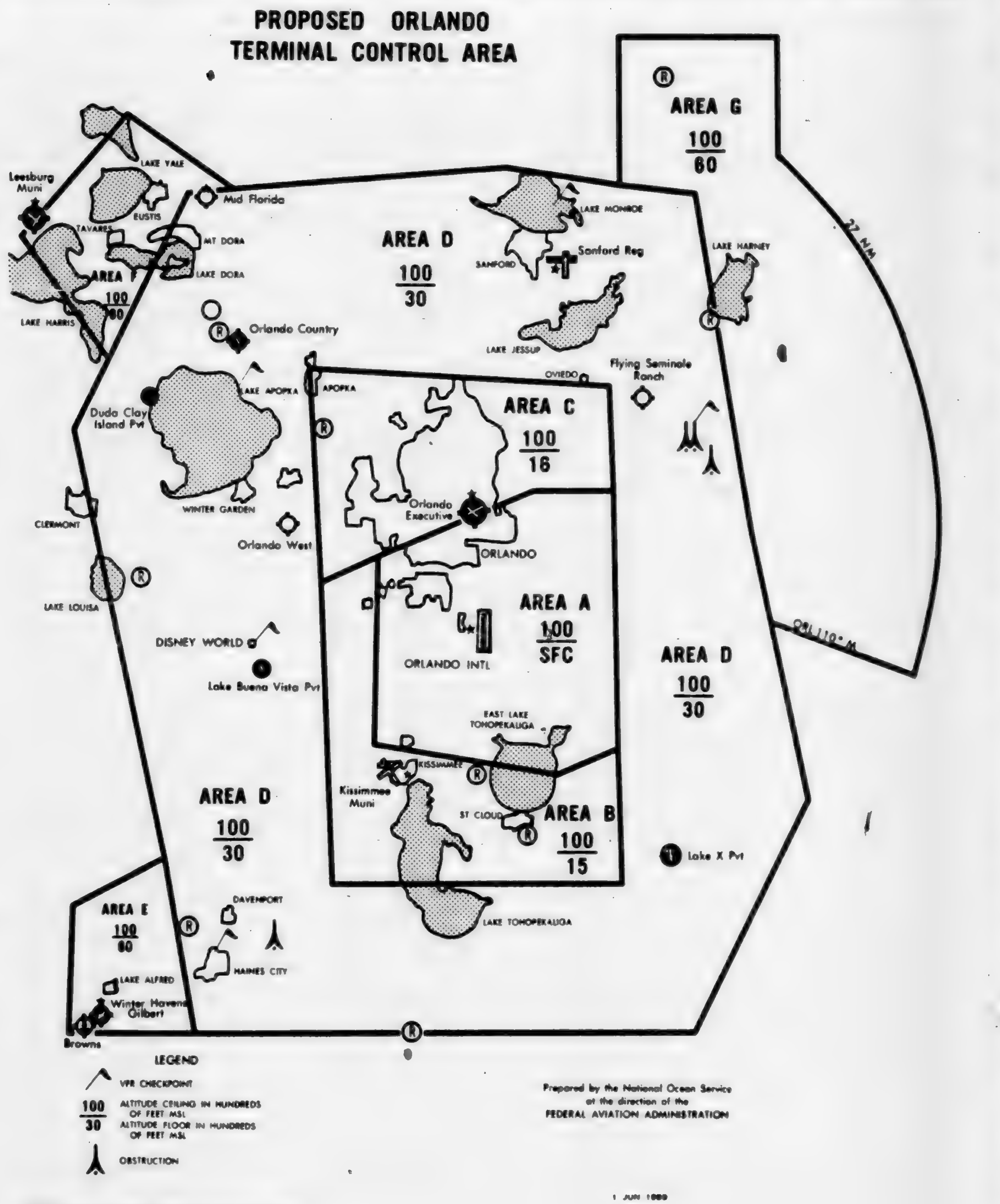
Orlando International Airport, FL [Removed]

Issued in Washington, DC, on September 7, 1989.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M


PROPOSED ORLANDO
TERMINAL CONTROL AREA
AREA G
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27 NM
ORL 110° M
Leesburg Muni
LAKE YALE
EUSTIS
TAVARES
MT DORA
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LAKE HARRIS
Mid Florida
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LAKE APOPKA
APOPKA
Duda Clay Island Pvt
WINTER GARDEN
CLERMONT
Orlando West
LAKE LOUISA
DISNEY WORLD
Lake Buena Vista Pvt
LAKE MONROE
SANFORD
Sanford Reg
LAKE HARNEY
LAKE JESSUP
OVIEDO
Flying Seminole Ranch
Orlando Executive
ORLANDO
ORLANDO INTL
EAST LAKE TOHOPEKALIGA
KISSIMMEE
Kissimmee Muni
ST CLOUD
LAKE TOHOPEKALIGA
Lake X Pvt
DAVENPORT
HAINES CITY
LAKE ALFRED
Winter Haven Gilbert
Browns
LEGEND
VFR CHECKPOINT
100/30 ALTITUDE CEILING IN HUNDREDS OF FEET MSL
ALTITUDE FLOOR IN HUNDREDS OF FEET MSL
OBSTRUCTION
Prepared by the National Ocean Service at the direction of the FEDERAL AVIATION ADMINISTRATION
1 JUN 1989

[FR Doc. 89-21458 Filed 9-12-89; 8:45 am]

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federal register

Wednesday
September 13, 1989

Part V

Environmental Protection Agency

40 CFR Part 307

Response Claims Procedures for the Hazardous Substance Superfund; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 307

[FRL-3399-6]

RIN 2050-AA90

Response Claims Procedures for the Hazardous Substance Superfund

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing regulations to establish the procedures for filing, evaluating, and resolving claims for costs incurred for responding to releases of harzardous substances, pollutants, or contaminants asserted against the Hazardous Substance Superfund (the "Fund") established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or the "Act"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. 9601 *et seq.* In addition, this proposed regulation would establish procedures for notifying concerned parties regarding limitations on the payment of response claims. This proposed regulation is consistent with EPA's proposed revisions to the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP" or the "Plan") (53 FR 51394 *et seq.*, December 21, 1988).

DATES: Comments must be submitted on or before November 13, 1989.

ADDRESSES: Written comments on the proposed procedures may be submitted, in triplicate, to the Superfund Docket, located in Room 2427, at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The record supporting this rulemaking is contained in the Superfund Docket and is available for public inspection by appointment only, (202) 382-3046, from 9:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays. As provided in 40 CFR Part 2, EPA may charge a reasonable fee for copying services.

FOR FURTHER INFORMATION CONTACT: William O. Ross, Office of Emergency and Remedial Resonse (WH-220), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4645, or The RCRA/CERCLA Hotline, (800) 424-9346 (or 382-3000 in the Washington, DC metropolitan area).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction.
II. Statutory Background.
  A. Statutory Framework.
  B. Response Mechanisms.
  C. Response Measures Compensable as Claims.
III. Relationship of Proposed Claims Procedures to Proposed NCP Revisions.
  A. Proposed Revisions to Subpart B of the NCP (Responsibility).
  B. Proposed Revisions to Subpart F (Hazardous Substances Response).
IV. Preauthorization.
  A. Basis for Requiring Preauthorization.
  B. Fund Priorities.
  C. Preauthorization of Operable Units and Response Stages.
  D. Requirements for Preauthorization Applications.
V. Preauthorization Under CERCLA Section 122.
VI. Submission and Evaluation of Applications for Preauthorization.
  A. Confidential Business Information.
  B. Criteria for Evaluating Applications for Preauthorization.
  C. Preauthorization Does Not Create Third Party Rights or Benefits.
VII. Submission of Response Claims.
  A. Site Cleanup Following Preauthorization.
  B. Election to Commence a Court Action or File a Claim.
  C. Presentation of Claims to Potentially Responsible Parties.
  D. Presentation to EPA.
VIII. EPA Review and Payment of Claims Against the Fund.
IX. Notification of Concerned Parties Regarding Limitations to Response Claims.
X. Regulatory Status and Required Analysis.
  A. Executive Order No. 12291.
  B. Regulatory Flexibility Act.
  C. Paperwork Reduction Act.
XI. List of Subjects in 40 CFR Part 307.
  Appendix—List of EPA Regional Offices

I. Introduction

This proposed response claims regulation provides the forms and procedures required by section 112(b)(1) of CERCLA for filing response claims authorized by sections 111(a)(2) and 122(b)(1) of the Act. This proposed regulation applies only to claims for reimbursement from the Fund established by section 517 of SARA. This proposed regulation is intended for use by any individual, private entity, potentially responsible party, or foreign entity eligible to submit a claim pursuant to section 111(a)(2) or 122(b)(1) of CERCLA. Such persons, as prescribed by section 112, must use the forms and procedures as promulgated in this rule. EPA has elected to utilize the procedures in this proposed rule, which are issued under the authority of section 112, to implement its authority to reimburse from the Fund parties who are potentially liable for a release and who agree to conduct a response action pursuant to section 122(b)(1) of CERCLA.

This proposed rule does not apply to: (1) Responses undertaken pursuant to section 104 of CERCLA, (2) petitions for reimbursement of the costs of complying with a CERCLA section 106 order, (3) actions to recover response costs under section 107 of CERCLA (See also Section IV.D.1. of this preamble), or (4) reimbursement of local governments pursuant to section 123 of CERCLA. This regulation also does not address claims for response to discharges of petroleum, as defined in sections 101(14) and 101(33) of CERCLA, since such response actions are not covered by CERCLA.

This proposed regulation addresses only response claims; i.e., claims for necessary response costs incurred as a result of carrying out the NCP (40 CFR Part 300). The NCP is established under section 311(c) of the Clean Water Act and amended under section 105 of CERCLA. The NCP provides for efficient, coordinated, and effective response to: (1) Discharges or substantial threats of discharges of oil, (2) releases or substantial threats of releases of hazardous substances, and (3) releases or substantial threats of releases of pollutants or contaminants that may present an imminent and substantial danger to public health or welfare. The NCP provides for the division and designation of responsibility among the Federal government, States and political subdivisions, and Indian Tribes in response actions, and specifies the appropriate roles for private entities. The recently proposed revisions to the NCP would clarify the roles of these parties as they relate to response claims authorized under section 111(a)(2) of CERCLA.

Today's proposed response claims rule would establish the process under which claimants may be reimbursed for the costs of response actions from the Fund. The claims process consists of two parts: the preauthorization process and the claims award process.

Under the preauthorization process, a potential claimant must first obtain the prior approval of EPA for any proposed response actions for which he/she plans to seek reimbursement. This prior approval is necessary for the claimant to be consistent with the NCP, and is initiated by submitting an application for preauthorization to EPA. The process for obtaining EPA's prior approval to submit a claim for a response action is referred to as "preauthorization." Only after the Agency has determined that the preauthorization application is complete will EPA review and analyze

the application according to the criteria proposed in today's rule. If EPA determines that the preauthorization application adequately meets the requirements for approval, the applicant will be approved to conduct the proposed response actions. EPA will then prepare a Preauthorization Decision Document (PDD) that will contain the terms and conditions that must be satisfied by the claimant in order to be reimbursed by EPA from the Fund. (Hereinafter, response actions reviewed and approved by EPA through the preauthorization process will be referred to as "preauthorized response actions" or "response actions preauthorized by EPA.")

After the preauthorized response actions have been completed by the protential claimant, he/she may submit a claim(s) to EPA under the claims award process for the previously-approved costs of the completed actions. Once EPA determines that the claim contains all the information and documentation necessary for evaluation (i.e., the claim has been "perfected"), the Agency will review and analyze the claim according to the criteria proposed in this rule and contained in the PDD. If the claim sufficiently fulfills the established requirements, EPA will award the claim and reimburse the claimant in the amount of the approved response costs. If a claim for response costs (which has been previously preauthorized) is denied by EPA in whole or in part, the claimant is authorized by section 112(b)(2) of CERCLA to request an administrative hearing.

II. Statutory Background

CERCLA authorizes several options for responding to releases or substantial threats of releases of hazardous substances, pollutants, or contaminants. This section describes briefly the framework of the statute as it applies to this regulation, the types of claims compensable under CERCLA, and the planning required for response actions.

A. Statutory Framework

CERCLA establishes broad authority for responding to actual or threatened releases of hazardous substances, pollutants, or contaminants. CERCLA establishes the Fund for use by the Government to respond to releases and to pay claims to certain other parties for responding to releases. CERCLA also imposes liability on certain categories of persons who own or operate vessels or facilities (both currently and in the past) and on persons who were involved with the transportation, treatment, or disposal of hazardous substances. Furthermore, the Act provides authority to pursue enforcement and abatement actions against these responsible parties.

CERCLA authorizes responses to releases or threats of releases of hazardous substances, pollutants or contaminants from vessels and facilities. ("Hazardous substance" is defined by section 101(14) of CERCLA, and the term "pollutant or contaminant" is defined by section 101(33) of CERCLA.) Under section 104 of CERCLA, the Government may take response actions whenever there is a release or a substantial threat of a release of a hazardous substance into the environment or whenever there is a release or substantial threat of a release of pollutants or contaminants into the environment that may present an imminent and substantial danger to public health or welfare. (Hereinafter, unless otherwise indicated, the term "release" refers to either actual or threatened releases of hazardous substances, or actual or threatened releases of pollutants or contaminants into the environment that may present an imminent and substantial danger to public health or welfare.) "Release" is broadly defined by section 101(22) of CERCLA, and includes abandoning or discarding barrels, containers, and other closed receptacles containing hazardous substances, pollutants, or contaminants.

In the event of a release, EPA may use CERCLA's response authorities unless: (1) The release is of a naturally occurring substance in its unaltered form, (2) the release is from products that are part of residential or business structures and result in exposure within the structure, or (3) the release is into drinking water due to deterioration of the drinking water system through ordinary use. CERCLA section 104(a)(3). However, EPA may respond to any of the above releases if the release constitutes a major public health or environmental emergency and no other person with the authority and capability to respond to the emergency will respond in a timely manner. CERCLA section 104(a)(4).

Parties responsible for a release can conduct any type of response activity; however, section 104(a)(1) of CERCLA requires that certain conditions be met before EPA authorizes a responsible party to conduct either a remedial investigation or a feasibility study (RI/FS). Section V of this Preamble discusses these conditions and other special requirements for preauthorization of potentially responsible parties.

The first type of response action authorized by section 104(a) of CERCLA is a removal. "Removal," as defined by section 101(23) of CERCLA, includes: (1) Cleanup or removal of released hazardous substances from the environment; (2) actions to prevent releases from occurring; (3) monitoring, assessment, or evaluation of threatened or actual releases; and (4) other actions that prevent, minimize, or mitigate damage to public health, welfare, or the environment. Under the NCP, when the lead agency determines that there is a threat to public health, welfare or the environment, it may take any appropriate action to abate, minimize, stabilize, mitigate or eliminate the release, or the threat resulting from that release. Obligations from the Fund for removal actions are limited to not more than 12 months in duration or the expenditure of not more than $2 million unless certain statutory findings are made. CERCLA section 104(c)(1). One hundred percent of the cost of these removal actions may be paid out of the Fund (unless the site was operated at the time of disposal by a unit of State or local government and there is a subsequent remedial action). Removal actions should, to the extent practicable, contribute to the efficient performance of any long-term remedial actions with respect to the release concerned.

The other type of response action available under section 104(a) of CERCLA is the remedial action. "Remedial actions", as defined in section 101(24) of CERCLA, may be taken in place of, or in addition to, removal actions. Remedial actions are those actions consistent with a permanent remedy that are taken to prevent or minimize the release of hazardous substances into the environment so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. Remedial actions may include off-site transport and storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials. The NCP restricts CERCLA-funded remedial actions to sites that are on the National Priorities List (NPL). Remedial actions may take several years to plan, design, and implement. There is no statutory limitation on the amount of time or money that can be spent for a remedial action. However, section 121 of CERCLA sets forth a number of requirements for remedial actions: the remedy must be protective of human health and the environment, cost effective, and utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. States are required by section 104(c)(3) of CERCLA to contribute ten percent of the cost of the remedial action selected (or at least fifty percent of all response costs at the site if that site was operated by the State or political subdivision at the time of any disposal of hazardous substances).

Section 104(b) authorizes studies, investigations, monitoring, surveys, testing, and other information-gathering necessary to identify the existence, extent, source, and nature of an actual or threatened release, and the extent of danger to the public health, welfare, or the environment. Under this broad authority, EPA may authorize Fund expenditures for studies and investigations that are necessary or appropriate to plan and direct response actions. One hundred percent of the costs of section 104(b) studies may be paid from the Fund; i.e., there is no requirement of a State cost-share.

Section 106(a) of CERCLA authorizes Federal enforcement actions, including administrative orders, where a release or threatened release of a hazardous substance may cause an imminent and substantial endangerment to the public health, welfare, or the environment. Section 106(b) of CERCLA allows certain persons to petition EPA for reimbursement of the costs, plus interest, of complying with a section 106(a) order in certain circumstances.

Section 107 imposes broad liability for a hazardous substance release on: (1) Current owners or operators of vessels; (2) current and certain former owners and operators of facilities; and (3) certain persons connected with the disposal, treatment, or transportation of hazardous substances. Section 107 also confers a right of action upon the United States, States, and Indian Tribes to recover response costs incurred in a manner not inconsistent with the NCP; and upon "other persons" to recover necessary response costs incurred in a manner consistent with the NCP.

Section 111 of the Act governs how the money in the Fund may be used. Under this section, funds may be made available directly to units of governments to pay for "response costs incurred pursuant to section 104 of this title" (section 111(a)(1)). Payment also may be made to persons who submit claims for their response costs if those response actions were approved in advance (i.e., preauthorized) by EPA. (*See* section 111(a)(2)) This proposed rule applies to response claims asserted under section 111(a)(2) of CERCLA.

Other paragraphs of section 111 contain: authorization for payment of technical assistance grants, authorization to pay costs of pilot programs to remove or treat lead-contaminated soil, and limitations on the use of Fund money and other matters relevant to this regulation. Section 111(o) requires that procedures be developed so that local and State officials and "other concerned persons" shall be informed of the limitations on the payment of claims for necessary reponse costs "as soon as practicable" after a site is placed on the NPL. EPA is today proposing procedures to implement section 111(o) of CERCLA. The procedures are discussed in Section IX of this preamble.

Section 112 of the Act sets forth procedures for asserting claims against the Fund. That section requires the President (by delegation, EPA) to establish forms and procedures for claims. If a claim is denied in whole or in part, a claimant can request an administrative hearing. Payment of any claim is subject to the claimant subrogating to the United States his/her rights as claimant to recover costs incurred from the person responsible for the release to the extent his/her response costs are compensated from the Fund.

Section 122 of CERCLA was added by SARA to provide procedures for negotiating settlements with potentially responsible parties (PRPs) willing to conduct and finance response actions. One aspect of this CERCLA settlement provision directly affects response claims: the section 122(b) authorization for "mixed funding" agreements with PRPs. Preauthorization is one form of mixed funding agreement. The others are described in detail in "Superfund Program; Mixed Funding Settlements" (53 FR 8279 *et seq.*, March 14, 1988). EPA may agree to the partial reimbursement of a PRP's response costs. Such reimbursement may be accomplished by the PRPs filing a response claim against the Fund. While States and political subdivisions are otherwise ineligible for reimbursement through the response claims mechanism, States and political subdivisions that are PRPs and that enter into settlement agreements pursuant to section 122(b)(1) of CERCLA are eligible for reimbursement.

B. Response Mechanisms

CERCLA provides three basic mechanisms for removal or remedial actions: (1) Administrative orders and civil judicial actions to secure abatement of an actual or threatened release and otherwise protect human health, welfare, or the environment; (2) Fund-financed actions (either directly by the Federal Government or by a State, political subdivision, or Indian Tribe) through a contract or cooperative agreement, as authorized by section 104 of CERCLA; and (3) Fund-reimbursed actions by "any other persons" through a reponse claim against the Fund.

The first statutory mechanism authorizes the President to secure, through the Attorney General, such relief as may be necessary to abate an imminent or substantial endangerment to public health or welfare or the environment due to an actual or threatened release (section 106(a)). EPA may secure such relief through a judicial settlement or filing a law suit. This section also authorizes the issuance of administrative orders to responsible parties requiring them to abate releases or threatened releases.

The second mechanism authorized by CERCLA (section 104) is a direct government removal or remedial action conducted by a Federal agency, State (or political subdivision thereof), or Indian Tribe. Such action will not be taken by the government if the lead agency determines that the response will be done properly and promptly by a responsible party. Obligations from the Fund for removal actions may not continue beyond $2 million or after 12 months has elapsed from the date of initial response unless EPA makes certain determinations pursuant to section 104(c)(1) of CERCLA regarding the necessity to continue the response actions due to emergency conditions, the unavailability of such assistance by others on a timely basis, or that continued response action is consistent with the remedial action to be taken. As provided by the NCP, Fund-financed remedial actions may be undertaken only at sites on the NPL. The NPL, as authorized by section 105, currently includes 890 national priority sites and 273 proposed sites for remedial response (40 CFR part 300, 54 FR 13296 *et seq.*, March 31, 1989). Federal-lead removal actions are implemented through several contracts covering geographical regions of the country. Remedial actions directed by the Federal Government are implemented through contracts covering geographical regions of the country, and through EPA agreements with the U.S. Army Corps of Engineers and the Department of the Interior's Bureau of Reclamation.

Pursuant to section 104(d)(1) of CERCLA, response actions may also be implemented through cooperative agreements between EPA and any of the following parties: States, political subdivisions, or Indian Tribes. Undertaking response actions through cooperative agreements may afford advantages to the Federal Government over the use of claims in that: (1) Cooperative agreements must contain

certain assurances and provide minimum financial contributions by the State, and (2) the procedures for awards, settlements, and payments under cooperative agreements are well established and known to both parties.

CERCLA prohibits EPA from funding any section 104 remedial action unless the affected State first assures: (1) That it will share in the costs of the action; (2) the availability of an off-site disposal facility that complies with Subtitle C of the Solid Waste Disposal Act, if wastes are to be taken off-site; (3) all future maintenance of the remedial action; (4) after October 17, 1989, adequate capacity for hazardous waste to be generated during a 20-year period; and (5) that it will accept title to any real property acquired by EPA to conduct the response action. (*See* 40 CFR part 35, Subpart O regarding assurances from Indian Tribes.) EPA utilizes a cooperative agreement to obtain State assurances, among other things, when a State has lead responsibility for a remedial action. EPA uses Superfund State contracts to obtain these assurances when the Federal Government has lead responsibility for a remedial action.

For most sites listed on the NPL, EPA expects to pursue enforcement actions against the responsible party or enter into contracts or cooperative agreements with States, political subdivisions thereof, or Indian Tribes for the response actions. EPA and the States have already initiated response or enforcement actions at many of these sites and will initiate actions at many more in the near future. Under some circumstances, however, a third mechanism (i.e., claims for reimbursement of response costs under section 111 of CERCLA) may be useful to expedite remedial and removal actions.

The above mechanisms are not mutually exclusive and may be used in combination. For example, EPA may designate a site, for purposes of an RI/FS, as Fund-lead (mechanism two) and still bring an enforcement action against a responsible party (mechanism one) to provide for necessary remedial design and construction. Similarly, an enforcement action may be initiated against a responsible party, which may result in a partial settlement and authorization for a claim against the Fund for a portion of the cleanup costs. The Agency in most instances will bring suit under section 107 to recover any necessary response costs where there are viable PRPs.

C. Response Measures Compensable as Claims

Response measures which may be compensated as claims under this regulation (as defined in sections 101 (23) and (24) of CERCLA, and detailed in §§ 300.415(d) and Appendix D of the proposed revised NCP) may include: (1) Cleaning up or removing hazardous substances from the environment; (2) actions that may be necessary to prevent a threatened release of a hazardous substance into the environment; (3) monitoring, assessing, and evaluating the release or threatened release of hazardous substances; (4) disposing of removed substances; (5) constructing security fencing or other measures to limit access; (6) supplying alternative drinking water; (7) providing temporary evacuation and housing for threatened individuals for whom other arrangements have not been made; and (8) other actions as the lead agency may determine to be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release.

Pursuant to § 300.700(d)(1)(iii) of the proposed revision to the NCP, no claim shall be paid pursuant to section 111(a)(2) of CERCLA for expenses incurred by a person carrying out a response action pursuant to a contract or assistance agreement with the United States. (This requirement, initially established in § 300.25(d)(1) of the 1985 NCP, remains in effect and is restated for clarification only.) Payments under such agreements shall be made in accordance with those agreements. Disputes shall also be resolved in accordance with the agreement and other guidelines and regulations governing contract and cooperative agreement dispute resolution.

CERCLA response claims are authorized under section 111, and as such are not required to meet the conditions of section 104. However, under section 111 claims may be paid for reimbursement only of necessary response costs incurred in carying out the NCP. Under § 300.700(d)(2) of the proposed revised NCP, claims for reimbursement under section 111(a)(2) must receive prior approval by EPA in order to be in conformance with the NCP. Section III below discusses the other NCP requirements with which the claimant must comply.

Individuals, private entities, foreign entities, and parties to agreements pursuant to section 122(b)(1) of CERCLA are eligible to present claims to the Fund for the costs of response actions. When multiple applicants or claimants are involved in a response action, EPA strongly encourages them to select a lead claimant for purposes of simplifying the administration of the claim. As provided by section 111(1) of the Act, foreign claimants may submit a claim only if: (a) The hazardous substance release occurred in U.S. navigable waters or in or on the territorial sea or adjacent shoreline of the country of which the claimant is a resident; (b) the claimant is not otherwise compensated; (c) the hazardous substance release occurred from a facility or vessel within or adjacent to U.S. navigable waters or a discharge connected with activities conducted under the Outer Continental Shelf Lands Act or the Deepwater Port Act; (d) comparable remedy for recovery by U.S. claimants is authorized by treaty or executive agreement, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants; and (e) these regulations are met.

III. Relationship of Proposed Claims Procedures to Proposed NCP Revisions

The NCP provides for the division and specification of responsibility among the Federal Government, States and political subdivisions, and Indian Tribes in response actions. It also specifies the appropriate roles for private entities. As explained previously, EPA has recently proposed revisions to the current NCP. These proposed revisions clarify the roles of the Federal Government, States and political subdivisions, and private parties as they relate to response claims authorized under sections 111(a)(2) and 122(b)(1) of CERCLA. Provisions which are contained in the 1985 NCP are in effect. Provisions which would be established by the recently proposed amendments to the NCP will take effect upon promulgation of the NCP. (Note that some provisions of SARA are self-executing and are already effective even without any revision to the NCP.)

A. Proposed Revisions to Subpart B of the NCP (Responsibility)

Subpart B of the current NCP identifies the roles and responsibilities of those who may assist or conduct response actions under the Plan. One provision of this subpart is § 300.25, entitled "Nongovernment Participation," which in part provides an elaboration of CERCLA section 111(a)(2). Section 300.25 discusses the payment of claims for necessary response costs incurred by persons as a result of carrying out the NCP and identifies the roles and

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responsibilities of the private sector. (In the proposed revisions, the language of § 300.25(d) of the current NCP would be transferred to proposed § 300.700 in a new Subpart H. Other subparagraphs of § 300.25 are located at proposed § 300.185 (Nongovernmental Participation).

The recently proposed revisions to the NCP: (1) Specify that States and political subdivisions (except in the context of a settlement agreement pursuant to section 122(b)(1)) cannot file response claims; (2) clarify which requirements of the NCP must be met in order for a preauthorized response action to be consistent with the NCP; (3) clarify that certain persons (i.e., those who are not undertaking responses pursuant to sections 104 or 106 of CERCLA or for which reimbursement from the Fund will be sought) may take any action which can be taken by the "lead agency" in carrying out the response action; and (4) clarify that preauthorization represents EPA's intention to reimburse the amount of the claimant's response costs that is specified in the PDD, but only if the claimant can demonstrate that the costs incurred were reasonable and necessary and that all the terms and conditions of the PDD were met. The Agency has attempted to incorporate in this proposal, for the convenience of the reader, the NCP provisions that may logically be applied to private-party cleanups. (Hereinafter, "private-party" includes States and political subdivisions that are PRPs. "PRP private-parties" and "non-PRP private-parties" are eligible for preauthorization.) Once preauthorization is obtained, the Federal Government will continue to oversee the subsequent cleanup.

In order for claims to be awarded, the claimant must perform the preauthorized actions in compliance with the NCP. This requirement was initially established in the 1985 NCP, is contained in § 300.700 of the proposed revisions, and is included here only for the convenience of the reader. Thus, this requirement continues to apply to preauthorized response actions. The claimant must also comply with the terms and condition of the PDD and, for PRPs, the terms of any applicable consent decree. The burden of proving the claim rests with the claimant. The claimant may submit claims only in accordance with the schedule set forth in the PDD.

B. Propposed Revisions to Subpart F (Hazardous Substances Response)

Subpart F of the current NCP (redesignated as Subpart E of the proposed revision) establishes the methods and criteria for determining the appropriate extent of response for both removal and remedial actions authorized by CERCLA. The proposed revised NCP contains a number of amendments to this subpart.

1. Section 300.62 State Role

Paragraph (c) of § 300.62 of the current NCP provides that contracts and cooperative agreements with States, authorized by section 104(c)(3) of CERCLA, are not a precondition to access, information gathering, investigations, studies, or liability pursuant to sections 106 and 107 of CERCLA. State cooperative agreements are the mechanism used to allow States to take the lead in a Fund-financed response action pursuant to section 104 of CERCLA. State contracts are the mechanism used to obtain the necessary assurances when the Federal Government assumes the lead in a Fund-financed response action pursuant to section 104 of CERCLA. There is no need for a contract or cooperative agreement with respect to a response action performed by a private-party. Accordingly, EPA proposed to amend paragraph (c) to make clear that a contract or a cooperative agreement with a State (or Indian Tribe, as a result of the SARA amendments) is not a prerequisite to claims against the Fund pursuant to section 111(a)(2). However, EPA may still consult with States or Indian Tribes during the preauthorization process. These changes are currently in effect because they are merely clarifications of the 1985 NCP, or were required by the SARA amendments.

2. Section 300.67(b) Community Relations Requirements for Removal Actions

Section 300.67(b) of the current NCP states that a formal community relations plan is not necessary for removal actions unless the action is expected to extend or does extend beyond 45 days. EPA has proposed in § 300.415(n)(3) to amend this provision so that a community relations plan is not necessary unless the removal is expected to extend or does extend beyond 120 days. Community relations plans are required for removal actions that extend beyond 45 days until the revised NCP is promulgated.

3. Section 300.68(a) Remedial Action Introduction—Permit Requirements

Sections 300.68(a)(3) of the current NCP states that Federal, State, and local on-site permits are not required for Fund-financed remedial actions taken pursuant to section 104 of CERCLA or for remedial actions taken pursuant to section 106 of CERCLA. As EPA explained in the preamble to the NCP, remedial actions undertaken pursuant to other authorities (e.g., actions preauthorized under section 111(a)(2) or other private-party cleanups with subsequent cost recovery actions under section 107) are not exempt from on-site permit requirements. The rationale for permit exemption applies only to remedial actions selected pursuant to section 121(e) of CERCLA and implemented pursuant to sections 104 or 106. Accordingly, a private-party response action that is not conducted pursuant to section 106 of CERCLA, even though it receives some reimbursement through the claims process is a private-party response action and thus, in EPA's view, is subject to on-site permit requirements.

EPA has proposed in § 300.400(e) to clarify that three general categories of response activity may be conducted without an on-site permit. In addition to responses taken pursuant to sections 104 and 106 of CERCLA, actions to be undertaken by PRPs using "mixed funding" (i.e., where the remedy is selected by the Federal lead agency but the response action is preauthorized pursuant to section 122 of CERCLA) are exempt from the on-site permit requirement (see section V of this preamble). All other response actions preauthorized pursuant to section 111 will continue to be subject to Federal, State or local permit requirements. This requirement is currently in effect.

4. Section 300.68(i) Selection of Remedy

Section 121 (b) and (d) of CERCLA mandate that all remedial actions assure protection of human health and the environment. If the remedy requires that a hazardous substance, pollutant, or contaminant remain on site, section 121(d) provides for compliance with legally applicable, or relevant and appropriate, Federal and State environmental requirements (ARARs) with certain enumerated exceptions. If the remedy requires that substances be transferred off site, section 121(d)(3) of CERCLA requires that the off-site facility be in compliance with applicable law. Section 121(d)(3) also imposes requirements on units at the off-site facility.

Consistent with section 121 of CERCLA, EPA will approve remedial activities under the preauthorization process only to the extent that they are cost-effective. EPA has proposed in § 300.430(f)(3) to amend the selection of remedy requirements to conform to the statutory changes. While the proposed

amendments cannot take effect until promulgation of the NCP, section 121 of CERCLA as amended established many of these requirements by statute.

5. Section 300.68(1) Response Actions Pursuant to Section 106 and 111(a)(2) of CERCLA/Consistency with NCP

Section 300.68(1) of the current NCP sets forth the requirements that response actions pursuant to sections 106 or 111(a)(2) must meet in order to be consistent with the NCP. Since § 300.700(d)(4) of the proposed revised NCP specifies the requirements for response claims to be consistent with the NCP (see discussion above), there is no need for § 300.68(1) to also discuss response claims. In the proposed NCP revisions, therefore, EPA has deleted any reference to response claims in this subsection.

6. Section 300.71 Other Party Responses

In the November 20, 1985 revision to the NCP, EPA added § 300.71 to address response actions other than those taken pursuant to sections 104 and 106 of CERCLA. The section sets forth in some detail what is required in order for a response action conducted by a private-party to be consistent with the NCP for the purpose of cost recovery under section 107 of CERCLA. Under § 300.700(c)(3)(i) of the proposed revisions to the NCP, EPA intends that a response action will be considered to be consistent with the NCP if the person taking the response action (including claimants) complies with an order issued by EPA pursuant to section 106 of CERCLA, a consent decree entered into pursuant to section 122 of CERCLA, or the following provisions where pertinent to the particular response chosen for the particular facility:

- Section 300.150 (on worker health and safety);
- Section 300.160 (on documentation and cost recovery);
- Section 300.400(c) (1), (4), (5) and (7) (on determining need for a response action), (e) (on permit requirements), and (g) (on identification of ARARs);
- Section 300.405(b), (c) and (d) (on reports of releases to the National Response Center (NRC));
- Section 300.410 (on removal site evaluation) except paragraphs (e) (5) and (6) and the reference to listing releases in EPA's data base in (h);
- Section 300.415 (on removal actions) except for paragraphs (a)(2), (b)(2)(vii), (b)(5) and (g);
- Section 300.420 (on remedial site evaluation);
- Section 300.430 (on RI/FS and selection of remedy) except paragraph (f)(3)(iv)(F); and
- Section 300.435 (on RD/RA and operation and maintenance).

In addition, "other persons" undertaking response actions must provide an opportunity for public comment concerning the selection of the response action. A response action shall not be considered consistent with the NCP unless:

- The person taking the response action complies with the following proposed NCP provisions regarding public participation, with the exception of administrative record and information repository requirements stated therein:
  - —Section 300.155 (on public information and community relations);
  - —Section 300.415(n) (on community relations during removal actions);
  - —Section 300.430(c) (on community relations during RI/FS) except paragraph (5);
  - —Section 300.430(f)(1), (2), and (5) (on community relations during selection of remedy); and
  - —Section 300.435(c) (on community relations during RD/RA); or
- The person taking the response action complies with State or local requirements which provide a substantially equivalent opportunity for public involvement in the choice of the remedy.

Finally, when selecting the appropriate remedial action, any other person shall, as appropriate, consider the methods of remedying releases listed in Appendix D of the proposed revised NCP. Except for actions taken pursuant to CERCLA sections 104 or 106 or response actions for which reimbursement from the Fund will be sought, any action to be taken by the lead agency in §§ 300.415, 300.430, and 300.435 may be taken by the person carrying out the response action.

Proposed § 300.700(c) would establish requirements that claimants must meet in carrying out preauthorized response actions. Some of these requirements were set forth in the 1985 NCP, and have been restated in the revised NCP for clarity. These requirements, which are essentially unchanged in the proposed revised NCP, remain in effect. However, some of the requirements in the proposed revised NCP are different from the 1985 requirements. Most of these new requirements interpret mandates established in CERCLA section 121 which was added by the 1986 amendments. For example, the proposed revised NCP defines the process for selecting a remedy that utilizes permanent solutions and alternative treatment technologies to the maximum extent practicable, as mandated by CERCLA. Although the proposed revisions to the NCP are of course not promulgated and not legally binding, they do generally represent EPA's current views, and the Agency will generally use them as guidance until the revisions are promulgated.

Section 300.71(a)(4) of the current NCP requires certain private-parties to comply with all applicable law and also on-site permit requirements when performing response actions. EPA has proposed to clarify, in § 300.400(e) of the proposed NCP, that the requirement to obtain on-site permits applies to persons undertaking response actions which are not undertaken pursuant to sections 104, 106, or 122. In other words, section 121(e)(1) of CERCLA does not apply to response actions *reimbursed* by EPA through the authority of section 111. Because this is merely a clarification of the current NCP, this requirement is currently in effect.

Response actions by PRPs preauthorized pursuant to section 122 of CERCLA are included among the response actions performed pursuant to section 106 and are therefore governed by the same standards as section 106 (e.g., no on-site permits are required). (see Sections III.B.2, B.3 and V of this preamble.) On the other hand, all other section 111 claims (i.e., non-PRP claims) are subject to legally applicable requirements, including on-site permit requirements. However, like actions under sections 104 and 106, such actions undertaken by claimants must comply with all relevant and appropriate requirements unless certain waivers apply (§ 300.68(i)(5) of the 1985 NCP and § 300.430(f)(3)(IV) of the proposed revised NCP). The waivers are discussed in more detail under General Requirements for preauthorization applications (See IV.D.).

Section 300.71(a)(4) of the current NCP has itself been partially superseded by section 121 of CERCLA, which is self-executing and therefore already effective. This new provision of the statute is more explicit with regard to the substantive standard that a particular cleanup should achieve. The NCP revisions proposed in § 300.700(d)(4)(ii) make clear that response claimants are required to adhere to these new requirements.

Additionally, EPA has proposed to amend § 300.71 to remove paragraph (c). Section 300.71(c) provides that organizations may be "certified" by EPA to conduct site response actions. The provision states that:

> Certification is not necessary for, but may facilitate, Fund preauthorization under § 300.25(d) and lead agency evaluation of the

adequacy of proposed response actions. (50 Federal Register 7978, November 20, 1985.)

In proposing the certification provision, the Agency stated:

> The advantage of certification is that the organization need only submit the written request demonstrating its qualifications one time rather than each time it requests preauthorization. (50 Federal Register 5870, Feb. 12, 1985.)

In developing the proposed revised NCP, EPA considered elaborating on the requirements for certification and the benefits that certification would confer. Upon further reflection, however, the Agency believes that certification would not be a useful tool in the claims process. The capability of applicants to perform proposed response actions must necessarily be evaluated on a case-by-case basis, taking into account the nature and scope of the proposed response. In addition, the qualifications of the applicant's personnel, as well as the sum total of the applicant's commitments and obligations, must be evaluated each time a preauthorization application is filed, regardless of whether the applicant is "certified." Finally, the Agency is concerned about use of certification as a marketing tool and about the potential for public misperception that certified firms are working on behalf of EPA. Accordingly, the Agency has not proposed a provision in the revised NCP comparable to that found in § 300.71(c) of the 1985 NCP.

By proposing to remove the certification provision in § 300.71(c), EPA is not seeking to discourage private entities from undertaking response actions. This deletion means only that EPA will evaluate capabilities on a case-by-case basis. Of course, entities that have already been preauthorized for one response action may incorporate the previous application by reference, which will aid the Agency in evaluating the applicant's capabilities. Effective with the proposal of the revised NCP on December 21, 1988, EPA, as a matter of policy, will not process requests for certification.

IV. Preauthorization

In accordance with section 111(a)(2) of CERCLA and § 300.25(d) of the current NCP (section 300.700(d) of the proposed revised NCP), all response actions must be approved in advance by EPA through the preauthorization process in order for a claim to be submitted to the Fund. The Agency will not allow a claim for a response action unless the response action has been preauthorized by the Agency. Claims for response actions that were not preauthorized will be returned without a determination of the merits of such claims. "Preauthorization" by EPA represents the Agency's intention that if response actions are taken in accordance with the PDD, and costs are reasonable and necessary, reimbursement will be made from the Fund, subject to any maximum amount of money set forth in the PDD. Preauthorization is not a contract between EPA and the claimant, nor does the claimant become an agent or authorized representative of EPA. Approval of an application for preauthorization does not detract from the lead agency's authority to review the adequacy of work at the site, nor does it override other terms of any settlement agreement between the United States and the PRP(s). Preauthorization is intended to benefit only the applicant and EPA. It extends no benefit to nor creates any right in any third party.

This section describes the existing statutory and regulatory basis for preauthorization and explains the Agency's response priorities, the procedural requirements to obtain preauthorization, the criteria EPA will use in evaluating applications for preauthorization, and the policy on preauthorization of operable units and response stages. The next section will discuss claims accompanying settlements with PRPs.

A. Basis for Requiring Preauthorization for Response Claims

The preauthorization requirement is based on the approval and certification provision in section 111(a)(2) of CERCLA, which states that the Fund may be used for:

> Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan * * * *Provided, however,* That such costs must be approved under said plan and certified by the responsible Federal official.

This statutory provision contemplates Agency review of the necessity and priority of response claims before authorizing use of the money in the Fund for such claims. In accordance with the statute, § 300.25(d) of the NCP and § 300.700(d) of the proposed revised NCP provide that persons who would submit claims to the Fund for response actions must notify EPA and obtain EPA's prior approval before undertaking response activities.

Section 300.25(d) of the 1985 NCP was upheld in *State of Ohio* v. *U.S. EPA*, 838 F.2d 1325 (D.C. Cir., 1988), and is not reproposed. It is merely restated in § 307.22(a) of this Regulation in order to make Part 307 readable without extensive cross references to other regulations.

Preauthorization achieves four important objectives. First, it enables the Agency to fulfill its role as Fund manager by ensuring appropriate uses of the Fund. In this way, Fund money available for claims is expended in accordance with environmental and public health priorities. Because the number of incidents that may give rise to claims is large, and because remediating a single incident can involve considerable expense, it is essential that the Agency screen possible claims to determine the importance of the response that may be undertaken relative to other response needs.

Second, preauthorization of response actions reduces the likelihood that responses themselves will create environmental hazards. The Federal Government has considerable experience in performing and overseeing cleanup activities. This experience has shown that poorly-handled cleanup efforts can cause other environmental damage or can present risks to workers and the surrounding population. Moreover, nongovernmental persons may not be fully aware of statutory and regulatory requirements that apply to proposed activities. Through the preauthorization process, EPA can review a proposed response plan and either obtain necessary modifications to a plan or, if it appears desirable, replace the plan for nongovernmental response with one in which the Government would become involved directly in the response. Additionally, the NCP requires that persons who wish to undertake a response action demonstrate the necessary technical expertise before the request is approved.

Third, preauthorization ensures that a claimant is aware of, and will carry out a response action in a manner consistent with the NCP.

Fourth, preauthorization gives the claimant an assurance that if the response is conducted in accordance with EPA's approval and the costs are reasonable and necessary, monies may be had from the Fund.

B. Fund Priorities

EPA will approve a response action through the preauthorization process only if the response action is of sufficient priority to merit Fund expenditure. The Agency's top priority, as set forth in section 104(a)(1) of CERCLA, is response to releases of hazardous substances that pose a threat to public health. Accordingly, the Agency has formulated priorities that

take into consideration the potential risk of one release when compared with another.

EPA's Superfund Comprehensive Accomplishments Plan (SCAP) comprehensively identifies the plan for each fiscal year's activities and the interactions of the Superfund removal, remedial, enforcement, community relations, and other program components. The SCAP contains: targets for removals at NPL and non-NPL sites; a reserve for unanticipated removal actions; projected remedial, enforcement, and community relations activities by site name, State, activity type (e.g., investigation, design, construction), expected start date, and estimated cost; and tentative lead agency assignments. The SCAP is available from EPA Headquarters in Washington, DC, or any EPA Regional Office at the beginning of each fiscal year.

The Agency will consider all applications for preauthorization against the alternatives of an enforcement action or conducting the remedial action through a cooperative agreement or a contract. EPA will approve a response action by a private-party when it determines that such a response is the best available means to address a release for the site at issue.

Releases may occur at sites both on and off the NPL. Fund-financed remedial actions may be taken only at NPL sites; however, removal actions may be taken both at NPL and non-NPL sites. For this reason, EPA proposes to adopt two approaches to determine whether to approve response actions under the preauthorization process: one for removal actions, and a second for remedial actions.

1. Removal Claims

The release or threat of release of a hazardous substance may be accompanied by an acute threat of direct human contact and/or fire or explosion. Assessing the degree of risk and the necessity for a removal action usually requires an on-site inspection by the lead agency. Undertaking such an inspection as a precondition to approving a response by a third party may unduly delay cleanup and increase the danger to the environment. EPA will not approve removal actions under the preauthorization process where the need for immediate action does not allow sufficient time for site inspection or for the data collection and evaluation necessary to evaluate a preauthroization request. Potential claimants who may wish to be preauthorized to respond to a release are advised to contact the National Response Center (NRC) (800–424–8802 or 554–1400 in the Washington, DC, metropolitan area), as provided in § 300.405(b) of the proposed revised NCP (§ 300.63(b) of the 1985 NCP), and as would be required by proposed § 300.700(d), to request advice on whether there is sufficient time for the preauthorization process. (This notification is separate and distinct from the CERCLA section 103 requirement (i.e., any person in charge of a vessel or a facility must notify the NRC of a hazardous substance release if certain specified conditions are met)).

The NRC may direct the potential claimant to the U.S. Coast Guard Marine Safety Office or Captain of the Port or to the emergency response program in the EPA Regional Office that may be assigned lead responsibility for the release. The lead agency will determine if an immediate governmental response is necessary. Alternatively, the lead agency may determine that sufficient time is available to process a preauthorization application. In such a case, the potential claimant must comply with the requirements for obtaining preauthorization. This policy is designed to: (1) Provide an immediate response action where the conditions warrant such a response; and (2) protect the health and safety of the surrounding population and those who would be involved in cleanup.

2. Remedial Claims

Section 105(a)(8)(B) of CERCLA requires that the President (EPA by delegation) establish the NPL to identify priorities among releases and potential releases. Consequently, the NPL serves as a basis to guide the allocation of Fund resources among releases. Section 300.425(b)(1) of the proposed revised NCP (§ 300.66(c)(2) of the 1985 NCP) provides that only those releases included on the NPL will be eligible for Fund-financed remedial action. The purpose of this restriction is to ensure that limited Fund monies are used only at sites that have been identified as posing the greatest potential threats to human health and the environment. (The purpose is *not* to make the NPL the exclusive list of necessary remedial and enforcement actions.) Therefore, the Agency will consider applications for preauthorization of remedial actions only for releases that are on the NPL. Inclusion on the NPL is *not* a precondition to removal actions, remedial planning activities, non-Fund-financed remedial actions, or any type of Agency action under section 106 of CERCLA.

For sites that are on the NPL, EPA will consider applications for pre-authorization of remedial actions where the Agency does not in the near future intend: (1) To bring an enforcement action against responsible parties; (2) to initiate a Fund-financed response through contracts or cooperative agreements with States; or (3) where the Agency finds it desirable to allow claims in addition to one or more of the above mechanisms (e.g., mixed funding). EPA will also weigh whether preauthorization of a response action will facilitate meeting the schedules for initiating RI/FSs and remedial actions mandated by section 116 of CERCLA.

C. Preauthorization of Operable Units and Response Stages

As defined in § 300.5 of the proposed revised NCP (described in § 300.68(c) of the 1985 NCP), an operable unit is a discrete action that comprises an incremental step toward comprehensively addressing site problems. The definition contained in today's proposed rule at § 307.13 also states that such a discrete portion of a remedial response acts to either manage migration or to eliminate or mitigate a release or pathway of exposure. While EPA may approve operable units, the Agency may require a commitment to finish site cleanup, and in some instances will not reimburse claims for operable units until the entire site is cleaned up. This is to ensure that projects, once initiated, are completed in a timely manner. Additionally, EPA may approve an application for preauthorization of stages (e.g., RI/FS, design, construction) of a response or an operable unit. Preauthorization of stages may be advantageous when subsequent actions and costs are dependent upon the findings of a previous stage.

D. Requirements for Preauthorization Applications

EPA today proposes that an applicant satisfy the requirements set forth in §§ 307.20, 307.21 and 307.22 in order to obtain EPA's preauthorization. These provisions set forth those who are eligible to file CERCLA response claims (see II.C.). They also define eligible claims and specify the elements that must be addressed in an application for preauthorization.

1. Eligible Claims

There are four general requirements in order for costs to be eligible for reimbursement: the response action must be preauthorized by EPA, the costs must be incurred for activities within the scope of such preauthorization, the response action must be consistent with the NCP, and the costs incurred must be necessary response costs.

(a) Necessary Costs. In order to be reimbursed from the Fund, the applicant must demonstrate that proposed response costs are "necessary response costs." In order for EPA to consider costs to be necessary, they must be: (1) Required (based upon the site-specific circumstances), (2) reasonable (nature and amount do not exceed that estimated or which would be incurred by a prudent person), (3) allocable (incurred specifically for the site at issue), and (4) otherwise allowable (consistent with the limitations and exclusions under the appropriate Federal cost principles). Hereinafter, "necessary response costs" shall be used to refer to costs which are required, resonable, allocable and allowable. EPA will issue guidance to prospective claimants on necessary response costs.

Section 111(a)(2) of CERCLA authorizes the Fund to reimburse claimants only for "necessary" response costs. This limitation is distinct from and does not apply to cost recovery actions initiated by the government under CERCLA section 107. In section 107 actions, the United States, States, and Indian Tribes may recover "all" response costs incurred in a manner not inconsistent with the NCP.

The applicant must justify in the application for preauthorization any proposal to perform an activity either in-house or to contract it out, and must describe plans to conduct all procurement transactions in a manner that: ensures to the maximum practicable extent, open and free competition; does not unduly restrict or eliminate competition; and provides where applicable for the award of contracts to the lowest responsive, responsible bidder, where selection can be made principally on the basis of price.

Necessary response costs may include costs incurred for the payment of contractor claims. Unless approved in advance by EPA, necessary response costs will not include costs incurred under construction contracts that do not contain a differing sites conditions clause as provided in proposed § 307.21(g). In addition, where the Fund has been used to pay the cost of a response action, EPA will pay no other claim for the same cost from the Fund.

Proposed § 307.21(c) would authorize reimbursement of expenses incurred by a claimant as a result of the settlement of a contractor claim. It would also allow reimbursement of an award by a third party of such a claim to the extent that EPA determines that the following conditions are met. First, the contractor claim must arise from work that is preauthorized and that is within the scope of the contract at issue. Second, the contractor claim must be meritorious (i.e., the contractor has demonstrated the requisite facts to establish the claimant's liability and the contractor's legal right to the claimed costs). Third, the contractor claim cannot be caused by the mismanagement of the claimant (e.g., errors and omissions in the plans and specifications, impact costs caused by defects). Fourth, the contractor claim cannot be caused by the claimant's vicarious liability for the improper actions of others (e.g., liability for the actions of others that the claimant must accept as a part of his/her general management responsibility). Fifth, the claimed amount must be reasonable and necessary. Sixth, the CERCLA claim for the amount of the contractor claim must be filed within five years of completion of the preauthorized activities. Seventh, payment of the contractor claim will not result in total payments from the Fund exceeding the amount that was preauthorized. The claimant has the burden of proof in substantiating the allowability of settlements, arbitration awards, and judgments.

An award by a third party of a contractor claim should include: (i) findings of fact; (ii) conclusions of law; (iii) allocation of responsibility for each issue; (iv) basis for the amount of award; and (v) the rationale for the decision.

Proposed § 307.21(f) provides that expenses incurred by a claimant for the payment of a person while such person is on the "List of Parties Excluded from Federal Procurement or Non-Procurement" shall not be reimbursable from the Fund unless the claimant obtains approval from EPA prior to incurring the obligation. The "List of Parties Excluded from Federal Procurement or Non-Procurement" is available as a monthly subscription through the Government Printing Office (Order # 722–002–00000–8). Copies of this list are also available from EPA's Office of Compliance. EPA may approve the use of such persons in a manner not inconsistent with 40 CFR part 32.

Proposed § 307.21(g) would require claimants to include a differing sites conditions clause in construction contacts as a precondition to reimbursement, unless EPA waives the requirement. Such clauses prevent firms competing for contracts from inflating their bids to account for contingencies such as differing site conditions. If the applicant does not propose the use of a differing site conditions clause equivalent to that in § 307.21(g), he/she should fully explain why this is appropriate in the application for preauthorization.

2. Elements of the Application for Preauthorization

A potential claimant must seek preauthorization by completing an application for preauthorization. A preauthorization application form, available for EPA, must include the following information, where applicable: (1) The location of the release or threatened release; (2) the type and quantity of hazardous substance, pollutant, or contaminant; (3) a description of the surrounding population and/or environmental risk; (4) any identification and investigation of PRPs; (5) a description of the proposed cleanup or investigation or evaluation actions and how such actions would be consistent with the NCP; (6) the applicant's capabilities (including financial capability) to perform the proposed activities; (7) evidence of consultation with the State on the proposed action; (8) provisions for long-term operation and maintenance; (9) projected costs; and (10) proposed project management, contracting procedures and proposed procedures for reporting to EPA.

The application is organized in a manner to enable EPA to determine whether: (1) It is appropriate to authorize a response under CERCLA; (2) the proposed response action can be carried out in manner consistent with the NCP; (3) proposed costs are, in the meaning of section 111(a)(2) of CERCLA, "necessary response costs;" and (4) the proposed procedures are consistent with sound business judgment and good administrative practices.

(a) Appropriate Response Action. As stated above, the applicant must state the nature and extent of the release or threat of release. The applicant should be guided by § 300.400(a) of the proposed revised NCP (§ 300.61(a) of the 1985 NCP) in determining whether a response to a release or threat of release is appropriate and authorized by CERCLA. Further, in determining the need for and in planning or undertaking a response action, the applicant must, to the extent practicable, comply with the requirements of § 300.400(c) (1), (4), (5) and (7) of the proposed revised NCP (§ 300.61(c) (1), (4), (5) and (7) of the 1985 NCP). These provisions require that the applicant: (1) Be capable of engaging in a prompt response when authorized; (2) be sensitive to local community concerns; (3) consider using treatment technologies; and (4) encourage the involvement and sharing of technology by industry and other experts. For remedial actions, the applicant should be guided by § 300.420 of the proposed revised NCP (§ 300.66(a) of the 1985 NCP) in evaluating releases or threats of release.

(b) Potentially Responsible Parties. If EPA previously notified the applicant that he/she was a PRP pursuant to section 107 of CERCLA, the applicant must disclose this fact to EPA. The applicant must also disclose whether he/she has reason to believe, without regard to any potential defenses that may be available under section 107(b), the he/she may be:

(1) The owner and operator of a vessel or a facility;

(2) Any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of;

(3) Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substance; or

(4) Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, or incinerator vessels or sities selected by such person, from which there is a release, or a threatened release that causes the incurrence of response costs, or a hazardous substance.

If the following conditions are met, an approved preauthorization application will be deemed invalid and any subsequent claim will be denied in total: (1) The applicant is a person previously notified by EPA that he/she is a PRP and that applicant does not disclose this information on his/her application for preauthorization, and (2) EPA subsequently determines that the applicant is a potentially liable party under section 107 of CERCLA. Similarly, if an applicant has reason to believe that he/she may be a person as described above and does not disclose this information on his/her application for preauthorization, and EPA subsequently determines that the applicant is a potentially liable party under section 107 of CERCLA, an approved preauthorization application will be deemed invalid and any subsequent claim will be denied. In either case, withdrawal of preauthorization will be preceded by written notice from EPA. The procedures for preauthorizing PRPs are explained in section V of this preamble.

The applicant must list all known PRPs and any contacts with and replies by such parties. If PRPs are unknown to the applicant, any efforts undertaken by the applicant to locate and identify PRPs should be described.

(c) Proposed Response Action. The applicant must describe the proposed response action, explain why the actions are necessary and how they are consistent with the NCP, and provide a schedule for major response activities.

(1) Requirements for Removal Actions. Prior to applying for preauthorization for a removal action, the applicant must comply with the requirements of § 300.410 of the proposed revised NCP (§ 300.64 of the 1985 NCP) regarding preliminary assessments for removal actions, with the exception of §§ 300.410(e) (5) and (6), and (h) of the proposed revised NCP (§§ 300.64(c) (4) and (5), and (e) of the 1985 NCP). The applicable subsections require the applicant, as appropriate, to: (1) undertake a preliminary assessment as promptly as possible to evaluate the nature and extent of the actual or threatened release; (2) consider information readily available and make a site visit if necessary; and (3) determine the impact on natural resources and notify the appropriate trustee. The applicant will determine, based on the exigency of the situation, whether a preliminary assessment is necessary. The applicant will be guided by § 300.415 of the the proposed revised NCP (§ 300.65 of the 1985 NCP) in determining the appropriate extent of action required to mitigate the actual or threatened release and shall consider the factors contained in § 300.415(b)(2) of the proposed revised NCP (§ 300.65(b)(2) of the 1985 NCP) in proposing a response. However, §§ 300.415(j) and 300.415(k) of the proposed revised NCP (§§ 300.65(f) and 300.65(h) of the 1985 NCP), which concern removal actions pursuant to sections 104 and 106, apply to response claims only if they are preauthorized in the context of administrative orders or consent decrees reached pursuant to section 122.

(2) Requirements of Studies and Remedial Planning. Persons interested in responding to a release or threat of release may request preauthorization to conduct a remedial investigation (RI) or feasibility study (FS). The purpose of an RI is to determine the nature and extent of the problem presented by the release. The purpose of an FS is to define the objectives of the response action, using data from the RI, and to develop and analyze remedial action alternatives. Applicants for RI/FS preauthorization must submit a plan detailing how the RI/FS will be conducted. In developing that plan, the applicant will be guided by the provisions contained in § 300.430(a)(2) of the proposed revised NCP (§ 300.68(d) of the 1985 NCP), which defines the components of an RI/FS. In the revision, to the NCP, EPA has proposed that each applicant design his/her plan to assure compliance with the following provisions of § 300.430 (note: corresponding sections of the 1985 NCP are noted in parentheses):

- Section 300.430(b)(5) (300.68(k)) on sampling and analysis plans.
- Section 300.430(d)(2) (300.68(e)) characterizing the release;
- Section 300.430(e) (1)–(6) (300.68(f)) on the development of alternatives;
- Section 300.430(e)(7) (300.68(g)) on screening of alternatives;
- Section 300.430(e)(9) (300.68(h)) on detailed analysis of alternatives;
- Section 300.430(e)(7)(iii) (300.68(i) except for paragraph (iv), regarding waivers) on selection of the remedy.

In general, EPA does not anticipate preauthorzing private-parties to conduct an RI/FS unless such parties also agree to implement any response action that EPA may subsequently determine is required at the site. This is because preauthorization will prove too burdensome for the relatively small amount of money associated with such studies and the short time-frames within which the RI/FS is gennerally needed will not permit protracted negotiations. Additionally, section 104(a)(1) of CERCLA imposes new requirements on RI/FSs conducted by PRPs (see section V of this preamble for special requirements for PRPs).

(3) Requirements for Remedial Actions. Once a potential claimant has decided on a proposed remedy or chosen to implement the remedy selected by EPA, he/she may seek preauthorization to complete that remedy. EPA recommends that the applicant develop his/her proposed remedy in accordance with § 300.430 of the revised NCP (§ 300.68 of the current NCP). An RI/FS is generally required at any site where an expenditure from the Fund for remedial work will be authorized. Under the proposed revised NCP, alternative remedies will have to be: developed in accordance with § 300.430(e) (§ 300.68(f) of the 1985 NCP), screened in accordance with § 300.430(e)(7) (§ 300.68(g) of the 1985 NCP), and analyzed in accordance with § 300.430(e)(9) (§ 300.68(h) of the 1985 NCP). The proposed remedy must also have been selected from the alternatives in accordance with proposed § 300.430(f)(3) (§ 300.68(i) except for the waivers in paragraph (iv) of the 1985

NCP). The applicant must also have considered, as appropriate, the methods of remedying releases as specified in proposed Appendix D (§ 300.70 of the 1985 NCP) (except for Appendix D, paragraph (g) (§ 300.70(e) of the 1985 NCP) on relocation, which should be coordinated pursuant to § 300.175(b)(3)). The types of remedial actions that are generally appropriate in particular situations are listed in proposed Appendix D (§ 300.68(j) of the 1985 NCP). Preauthorization may be sought with respect to individual operable units.

If the applicant proposes a remedy other than that selected by EPA for the site, the application for preauthorization shall describe, as appropriate, whether and how the proposed remedy: (1) Differs from the one selected by EPA; (2) is cost-effective; (3) mitigates and minimizes future risks; (4) improves the reliability of the remedy; and/or (5) utilizes new or innovative technology. If the applicant proposes a remedy other than the remedy selected by EPA, the Agency will evaluate the information submitted and modify its remedy, if appropriate, consistent with the procedures proposed in Subpart E of the proposed revision to the NCP. If EPA has not selected a remedy, the application for preauthorization shall describe, as appropriate: (1) The proposed remedy; (2) how the remedy achieves protection of public health and welfare and the environment and complies with Federal public health or environmental ARARs; (3) whether the remedy is cost-effective; (4) how the remedy mitigates and minimizes future risks; (5) the reliability of the remedy; (6) whether the remedy utilizes new or innovative technology; and (7) whether the remedy employes treatment that reduces toxicity, mobility, or volume of the hazardous substances. (See EPA's "Superfund Remedial Design and Remedial Action Guidance," EPA/OSWER Directive 9355.0–4A, June 1986, for more details.)

As discussed above, private-party response actions are not exempt from other applicable Federal, State, and local laws. Thus, a private-party response action (other than those preauthorized in the context of an administrative order or a consent decree performed pursuant to section 106/122 of CERCLA) will be preauthorized only if it will comply with all legally applicable requirements, including on-site permit requirements. The response action also must comply with environmental laws that, although not applicable, are relevant and appropriate to the situation at hand, unless the waivers of section 121 apply. Section 300.700(d)(3) of the proposed revised NCP clarifies these requirements. Similarly, certain exemptions proposed in § 300.430(f)(3)(iv) (which is proposed to be revised pursuant to section 121 of CERCLA) would apply to private-party response actions only (except for the Fund-balancing waiver in subparagraph (F)). The specific exemptions are: the selected alternative is an interim measure not a final remedy (subparagraph (A)); all alternatives that meet the requirements would result in greater risk to human health and the environment (subparagraph (B)); no alternative that meets the relevant and appropriate requirements is technically practical (subparagraph (C)); the alternative that does not attain ARARs will attain an equivalent standard of performance (subparagraph (D)); and, with respect to State ARARs, the State has not consistantly applied the standard (subparagraph (E)). The sixth waiver (subparagraph (F)) applies to Fund-financed response actions only remedy.

As stated earlier, for most sites listed on the NPL, EPA intends to pursue CERCLA section 106 actions against and, if possible, to enter into consent agreements pursuant to CERCLA section 122 with parties responsible for the release, or enter into contracts or cooperative agreements with States for response actions. EPA and the States have already initiated response or enforcement actions at many of these sites, and it is unlikely that EPA will approve through the preauthorization process a private-party to implement remedial design and construction already underway through a consent decree or order or a cooperative agreement. If the applicant seeks preauthorization in this circumstance, he/she must demonstrate special or unique capabilities to implement the selected remedy.

(d) *Other Requirements for Consistency with the NCP.* Section 300.700(c)(3) of the proposed revised NCP (see III.A.) sets forth the requirements in order to be consistent with the NCP. The discussion above highlights the requirements related to specific types of response actions. Other requirements relate to worker/community health and safety and community relations.

(1) Health and Safety. In order to be consistent with the NCP, § 300.700(c) of the proposed revised NCP would require compliance with § 300.150 of the proposed revised NCP (§ 300.38 of the 1985 NCP). Today's proposed rule would require that applicants provide evidence of adequate provision for worker training, health and safety, and the safety of the public in order to satisfy this requirement. While a site safety plan is not required in advance of submitting an application for preauthorization, the applicant must demonstrate familiarity with "OSHA Safety and Health Standards: Hazardous Waste Operations and Emergency Response" (29 CFR part 1910, 51 FR 45654 *et seq.*, December 19, 1986).

If the site safety plan is not included with the application for preauthorization, the applicant must specify when, in advance of site work, the plan will be completed and submitted to EPA. Section 300.150(a) of the proposed revision to the NCP reiterates that private employers are directly responsible for the health and safety of their own employees.

The applicant should attach, or describe plans to develop a spill/volatile emissions contingency plan that will address the protection of area residents from the physical, chemical and/or biological hazards particular to the release or the proposed response action.

(2) Community Relations. In order to be consistent with the NCP, § 300.700(c) of the proposed revised NCP would require compliance with §§ 300.155, 300.415, 300.430, and 300.435 of the proposed revised NCP, or substantially equivalent State or local requirements. Applications for preauthorization must address the appropriate provisions regarding public participation. Community relations plans developed for preauthorized response actions are to be in accordance with the relevant sections of the NCP. The applicant must demonstrate, through information contained in the application for preauthorization, a thorough knowledge of applicable EPA guidance, and describe the applicant's proposed role in community relations during the conduct of the response action. The discussion below provides information on the requirements for public participation for removal and remedial actions. Note that special provisions apply to response actions to be conducted by PRPs.

In the case of removal actions taken pursuant to proposed § 300.415 (§ 300.65 of the current NCP) or other short-term actions, a formal community relations plan is not necessary. However, for removal actions expected to extend beyond 45 days (proposed to be 120 days in the proposed revised NCP), the applicant must agree to develop a formal community relations plan upon EPA's approval of the response action and prior to the initiation of field work. If the following conditions are satisfied, the claimant must develop a formal plan: (1) EPA approves a response action which is expected to extend beyond 45 days (120 days under the proposal), and (2) it becomes apparent that a brief response action will require more than 45 days (120 days under the proposal). An applicant need not prepare a new plan if a detailed current plan already exists.

Prior to commencing field activities for an RI, a community relations plan must be developed by the applicant. After completion of a final draft FS, the applicant shall provide for public review of the study for at least 30 days. An applicant shall also provide an opportunity for a public meeting at or near the facility. A transcript of the meeting shall be compiled, and the transcript shall be available to the public. Once a plan is adopted, it shall be available to the public before the remedial action is commenced. The plan shall include a discussion of any significant differences from the proposed plan. Applicants requesting preauthorization for remedial actions must demonstrate familiarity with any community relations plan already developed for the site, and must demonstrate the ability to obtain public comment and keep the public informed throughout field activities. If conditions require reconsideration of major aspects of the remedy, the applicant should describe the process proposed for public review and comment.

Response actions preauthorized in the context of administrative orders or consent decrees will be governed by the provisions of § 300.67 regarding actions pursuant to CERCLA section 106. As proposed in § 300.430(c)(3) (§ 300.67(c) of the current NCP), PRPs may participate in aspects of the community relations program at the discretion and with oversight by the lead agency.

Applicants should consult EPA's *Community Relations in Superfund: A Handbook* (EPA/OSWER Directive 9230.0–3B, June 1988) for more details. PRPs should consult Chapter 6 of the *Handbook* and subsequent clarifying guidance contained in "Community Relations During Enforcement Activities and Review of Administrative Record" (EPA/OSWER Directive 9836.0–1A, November 1988). Both the Handbook and the Guidance are available through EPA Regional Offices.

(e) Schedule of Response Activities. Proposed § 307.22(b) of this Regulation would also require that the applicant supply a proposed schedule of response activities. The purposes of the schedule are to ensure: (1) The timely initiation and completion of the response action consistent with section 300.400(c)(1) of the proposed revised NCP (section 300.61(c)(1) of the 1985 NCP); (2) that the applicant understands the major tasks associated with the proposed response action; and (3) that the applicant has allowed sufficient time for response activities, including necessary reviews by EPA. The format for this information may be a milestone chart or timeline that lists the major tasks/activities. The time may be expressed in weeks or months, at the option of the applicant, and may be reflect elapsed time (e.g., 6 months to complete task A) rather than a date certain, due to uncertainties regarding the effective date of preauthorization. At a minimum, the applicant must supply the point following preauthorization at which the response action will be initiated (e.g., contractor on-board within 3 months) and the point at which the response action will be completed (e.g., completion 54 months from start-up).

(f) Capabilities. Just as section 104(d)(1) of CERCLA requires that the President determine whether a State, political subdivision, or Indian Tribe is capable of carrying out a given action before entering into a contract or cooperative agreement, EPA believes it reasonable and appropriate to include a demonstration of technical expertise as one of the requirements for obtaining preauthorization to conduct a response action. Section 300.700(d)(4)(i) of the proposed revised NCP (§ 300.25(d)(5) of the current NCP) requires that all persons filing an application for preauthorization demonstrate their technical and other capabilities to respond.

The application for preauthorization should demonstrate, in addition to a knowledge of the NCP and EPA procedures: the applicant's engineering, scientific, or other technical expertise necessary to evaluate the appropriate extent of remedy; the ability to handle any on-site emergency action; the ability to oversee the design of remedial actions; the ability to manage any necessary contracts; the ability to manage the sampling plan; the ability to furnish continuous contruction oversight; and the financial ability to implement the removal or remedial action.

The applicant may demonstrate technical capabilities in part through: (1) Previous experience in hazardous site cleanups; (2) management of other types of government or private contracts or similar scope, magnitude and complexity; or (3) previous experience that required similar technical and managerial capabilities. The applicant may demonstrate financial capability through the inclusion of audited financial statements or balance sheets and tax returns or other evidence that the applicant has the necessary resources to carry out and complete the proposed response action. As appropriate, the applicant may propose a financial bond, letter of credit, or other assurance of completion.

(g) Consultation with State Agencies and Indian Tribes. In order to accomplish timely coordination and consultation with the affected State(s) and Indian Tribe(s), the applicant seeking preauthorization of a remedial action is encouraged, at the time the application for preauthorization is filed, to obtain a letter signed by the designated State or Indian Tribe hazardous waste official that: (1) Concurs with the proposed action; and (2) assures the cooperation of the State or Indian Tribe in the proposed actions. This will facilitate EPA's processing of the application for preauthorization by reducing or eliminating the need for EPA to consult with the affected State(s) or Indian Tribe(s) during its review of the applications for preauthorization of remedial actions. If the applicant does not supply a letter from the State or Indian Tribe official, documentation must be supplied that every reasonable effort was made to obtain the cooperation of the State or Indian Tribe.

(h) Future Maintenance. Section 104(c)(3) of CERCLA requires the assurance of future maintenance of response actions. Section 300.430(e)(7)(iii) of the proposed revision to the NCP (§ 300.68(g)(1) of the current NCP) requires that the lead agency consider costs for each alternative, including operation and maintenance costs. While section 104 does not apply to private-party response actions, EPA does not believe it is appropriate to approve a response action through the preauthorization process unless long-term operation and maintenance will be undertaken and/or paid for by a party other than EPA.

The applicant may satisfy long-term operation and maintenance activities, if applicable, in one of two ways: (1) A bond or other financial assurance, satisfactory to EPA, sufficient in amount to cover the costs of necessary long-term operation and maintenance; or (2) a written assurance from the State to provide for long-term operation and maintenance of the response action. Pursuant to sections 104(c)(3) and (6) of CERCLA, in the case of ground- or surface-water contamination, the remedial action must include measures necessary to restore ground- and surface-water quality and provide for the operation of such measures for up to 10 years. It is EPA policy to pay operating costs necessary to ensure that all or a portion of the remedy is operational and functional (i.e., shakedown costs), only if such costs are incurred within one year of the completion of the remedy or a portion of the remedy. The Agency will not pay for the long-term costs (i.e., operation and maintenance) necessary to maintain the effectiveness of a response measure following completion in either Fund-financed or claims situations.

(i) Projected Costs. Section 307.22(b) of the proposed rule would require that applications for preauthorization contain projected costs of response activities. The applicant may demonstrate the validity of projected costs on the basis of: (1) Cost estimates from firms qualified to provide goods or services; (2) competitive procurements for similar activities, if the prices were determined on an open market; or (3) documentation of market prices (e.g., price sheets) based on similar procurements. The proposed rule would also require that the applicant base such projected costs on actual anticipated costs without a contingency for unanticipated site conditions. (See Section IV.D.—necessary response costs.)

(j) Management, Contracting and Reporting. The application for preauthorization should describe in detail the management structure that the applicant proposes to use to implement the project and control financial matters. The project management structure should include an organizational and functional statement (complete with chart) to assist EPA in determining the level of management necessary for the project. The structure should demonstrate the relationship among the following parties (if relevant): the applicant, the technical committee or advisors, the project manager, the Trustee, and the contractors/subcontractors.

The applicant should describe in detail proposed contracting procedures that are in accordance with sound business judgment and good administrative practice and that are consistent with the requirements for eligible costs (see Section IV.D.1.). The applicant should fully explain the type of contract proposed for specific activities and proposed procedures to settle and satisfactorily resolve all contractual and administrative issues arising out of agreements he/she may enter into to perform preauthorized response actions. The applicant should describe proposed procedures for: the issuance of invitations for bids or requests for proposals; selection of contractors; the award of subcontracts; a system or strategy to minimize change orders and prevent contractor claims; and procedures for settlement of protests, claims disputes, and other related procurement matters. The applicant should also describe how he/she proposes to handle contracts to assure that subcontracted work is performed in accordance with the terms, conditions, and specifications of such contracts. EPA will issue guidance on procurement and other management practices that may be adopted by the applicant to help assure that costs incurred are eligible for reimbursement.

Section 300.160 of the proposed revisions (§ 300.69 of the current NCP), would require documentation of all phases of response actions. The applicant must demonstrate, through proposed reporting, oversight, and recordkeeping procedures, a knowledge of how the Superfund program operates. EPA recommends that the applicant utilize a flow diagram or other chart to demonstrate critical activities, processes, the relationship of activities and processes to each other, and key decision points. Reporting and oversight are key to the satisfactory management and monitoring of a project. The applicant's plan should show: (1) The number and frequency of reports to EPA and the State detailing progress at the site; (2) documents that the applicant proposes to submit to EPA prior to undertaking key steps (e.g., requesting proposals, contract awards, or analysis of lab results); (3) reports that document conditions at the site (e.g., actions taken, resources committed, problems encountered, or recommendations for further actions); and (4) documents that will be retained by the applicant for ten years or until EPA completes cost recovery. Applications submitted by PRPs may rely on the reporting requirements contained in the most recent draft settlement agreement.

In order to establish that costs are allocable (see "necessary response costs") the claimant should propose a financial management system that consistently applies generally accepted accounting principles and practices. At a minimum, the system must include an accurate, current, and complete accounting of all financial transactions for the project (complete with supporting documents) and a systematic method to resolve audit findings and recommendations. Proposed section 307.32(m) provides for the adjustment of the claimed amount if the claimant fails to maintain records, documents, and other evidence of claimed costs in accordance with generally accepted accounting principles and practices consistently applied.

EPA will approve or modify the applicant's proposed management, procurement and reporting plans and may: (1) Provide additional oversight as deemed appropriate, pursuant to proposed § 300.400(h) (§ 300.61(d) of the 1985 NCP); and (2) condition preauthorization on such requirements as it may deem necessary, pursuant to § 307.23(c) of the proposed rule.

V. Preauthorization Under CERCLA Section 122

Section 122(b) provides the President with the discretionary authority to enter into agreements with PRPs, whereby the PRPs will perform all or a portion of an operable unit of a response action in return for reimbursement of an agreed-on portion of response costs, plus interest. The intent of section 122(b) is to encourage private-party cleanups where PRPs are willing and able to perform response actions properly. These "mixed funding" agreements should encourage a PRP or a group of PRPs to settle when, for example, the other PRPs either refuse or lack the funds to participate in a settlement. Therefore, while the Agency strives to obtain complete cleanup by PRPs or to collect 100 percent of cleanup costs in every case, it will consider settlement proposals for less than 100 percent of cleanup activities or costs in certain limited circumstances.

The Agency's Interim CERCLA Settlement Policy (50 FR 5034 *et seq.*, February 5, 1985) and guidance entitled "Evaluating Mixed Funding Settlements under CERCLA" (53 FR 8279 *et seq.*, March 14, 1988) contain a number of criteria or factors to be used in considering offers from PRPs for less than 100 percent of cleanup. The criteria or factors include the nature and volume of wastes, the PRPs' ability to pay, the strength of available evidence, public interest considerations, the nature of the case remaining after partial settlement, and other mitigating and aggravating factors. If the Government determines on the basis of such factors to accept an offer for less than 100 percent of cleanup costs, it could then determine whether allowing preauthorization would be useful to expedite cleanup.

This approach is fully consistent with joint and several liability under CERCLA. First, it involves a pragmatic determination by the Government that settlement for less than 100 percent will facilitate cleanup. Second, it does not involve a Government apportionment

scheme to allocate costs among responsible parties. Third, the Government retains its discretion to pursue an action against non-settling parties for the Fund-reimbursed portion of a PRPs' response.

In addition to preauthorization, which is the subject of this proposed rule, the guidance "Evaluating Mixed Funding Settlements under CERCLA" discusses two other types of mixed funding: "cash-out" and "mixed work." Consult the guidance for more information on these types of mixed funding agreements.

The partial reimbursement of PRPs' costs under the preauthorization type of mixed funding will occur through the response claims mechanism. While applications for preauthorization may be filed at any time prior to undertaking work for which reimbursement will be sought, EPA will not consider any application for preauthorization from PRPs outside of negotiations aimed at reaching a judicial or administrative settlement. That is, if EPA has not initiated negotiations with PRPs, an application for preauthorization will serve to notify EPA that a PRP wishes to initiate negotiations with EPA. The Agency will not consider preauthorization of response actions to be conducted by PRPs until negotiations are underway. Preauthorization of PRPs generally will not become effective until the consent decree or administrative order is entered.

EPA is exploring methods to streamline the application process for PRPs seeking preauthorization. Such streamlining may incorporate by reference available documents (e.g., RI/FS, ROD) and thereby reduce the amount of information to be submitted by PRPs and the time required to prepare the application for preauthorization. EPA requests comment on whether and how the regulation can assure that the Agency receives necessary information yet does not require unnecessary submissions. EPA expects to issue subsequent guidance reflecting any streamlining of the process.

Section 122(d)(3) of CERCLA authorizes the use of an administrative order or a consent decree to enable a PRP to conduct an RI/FS. However, preauthorization of an RI/FS in the context of a settlement agreement is not likely unless the PRPs agree to undertake any response action EPA may subsequently determine is necessary. The Agency has concluded that it would be an inefficient use of resources to negotiate settlement agreements limited in scope to an RI/FS. In addition, there is generally insufficient information available during the early stages of negotiation to evaluate fully the merits of a mixed funding agreement. However, where the PRP enters into negotiations with EPA for remedial design and/or remedial action, it is EPA's policy to consider the extent to which the PRP has cooperated with the Government in determining the percentage of reimbursement for such subsequent remedial actions at the site.

It should also be noted that section 104(a)(1) of CERCLA requires that certain conditions be met before EPA authorizes a responsible party to conduct either an RI or an FS. First, the Agency shall determine that the party is qualified to conduct the RI/FS. Second, EPA must contract or arrange for a qualified person to assist in overseeing and reviewing the conduct of the RI/FS. Third, the responsible party shall agree to reimburse the Fund for any cost incurred by the Agency through such an oversight contract or arrangement.

EPA will pay claims submitted by PRPs who are preauthorized up to a specified maximum amount only to the extent that such parties are in compliance with the order or consent decree. The Fund share of any preauthorized response action will not be available until either an agreed-upon stage of a cleanup or the entire cleanup is completed. Unless cleanup is conducted in complete satisfaction of the terms and conditions set forth in the administrative order or consent decree and the PDD, PRPs will not be entitled to full reimbursement. Further, § 300.700(g) of the proposed revised NCP (§ 300.71(d) of the current NCP) states that a response completed by any party (including a PRP) does not of itself release parties from liability to the Government under CERCLA. Response actions preauthorized in the context of orders or decrees will be governed by the NCP provisions regarding actions taken pursuant to sections 106 and 122 of CERCLA and other requirements established by this regulation as ultimately promulgated.

Section 122(b) requires EPA to take all reasonable efforts to require the non-settling PRPs to reimburse the Fund for the amount of the claim. CERCLA requires that EPA acquire by subrogation the rights of the claimant to recover his/her response costs once the Agency awards the claim.

Under a settlement pursuant to section 122(b) of CERCLA, if there is a failure of the original remedial action, the Fund may be available for the reimbursement of some costs of any new cleanup required, but is obligated only for that proportion contributed by the Fund for the original remedial action. (*See* section 122(b)(4)). However, the Fund is not obligated to reimburse the claimant for subsequent remedial actions if those subsequent remedial actions are necessary as a result of the failure of the claimant, his/her employees or agents, or any third party to perform properly the required response activities. Required response activities include those specified by: the administrative order or consent decree, any modification to such order or decree approved by EPA, or by the PDD, which specifies many of the terms and conditions of reimbursement.

Section 122(b) authorizes not only that a portion of a PRP's response costs be reimbursed, but also that interest be paid. Interest will accrue on amounts due the PRP(s) if EPA fails to pay the amount within 60 days of EPA receipt of a complete claim from the settlors. A completed claim is a demand for a sum certain that includes all documentation required to substantiate the appropriateness of the amounts claimed. Where the PRPs submit a claim that is technically complete, but for which EPA requires additional information in order to evaluate the amount claimed, interest will not accrue on the claim until 60 days after EPA's receipt of the requested additional information. The rate of interest paid on a claim is the rate of interest on investments of the Fund established by subchapter A of chapter 98 of the Internal Revenue Code of 1954.

VI. Submission and Evaluation of Applications for Preauthorization

Preauthorization of a response action may be obtained only in accordance with this regulation, once these rules are promulgated and effective. In the meantime, preauthorization will be determined on a case-by-case basis. Unless otherwise agreed to by the Agency, the following are not deemed to be preauthorization: (1) Terms, provisions or requirements of court judgments, (2) consent decrees, (3) administrative orders, or (4) any other consensual agreement with EPA requiring a response action. The previous section specifies the procedures for preauthorization of a response action to be conducted by PRPs.

Forms and instructions for submitting an application for preauthorization may be obtained from any EPA Regional Office. The current addresses for these offices are contained in the Appendix to this preamble. The preauthorization application, EPA Form 2075–3, "Application for Preauthorization," must be filled out completely, signed, and submitted to EPA, 401 M Street, SW., Washington, DC 20460, Attention:

Director, Office of Emergency and Remedial Response (OS-220).

A. Confidential Business Information

A person may assert a claim of business confidentiality for information submitted as part of an application for preauthorization or a claim against the Fund. Information claimed confidential will be disclosed by EPA only to the extent permitted by CERCLA, this proposed rule, and 40 CFR part 2, Subpart B. The applicant or claimant must assert his/her claim at the time the information is submitted to EPA by clearly marking the specific information claimed confidential. Items should be marked confidential as prescribed on the forms. For information either on the forms or in the attachments to the forms, items claimed confidential should be circled or bracketed. Unless a business confidentiality claim is asserted in this manner at the time the application for preauthorization or claim against the Fund is first filed, EPA will deem the applicant or claimant to have waived any rights to confidentiality for that information, and the information may be made public with no further notice.

Any response claimant or applicant claiming information confidential must submit two copies of his/her submittal: a complete copy containing all information claimed confidential clearly marked as such and a redacted copy from which only information claimed confidential has been deleted. EPA will assume that the redacted copy accurately deletes any information claimed confidential. EPA will not consider an application for preauthorization to be complete or a claim against the Fund to be perfected until the applicant/claimant supplies a complete version and a redacted version of any submittal which contains information claimed as business confidential.

B. Criteria for Evaluating Applications for Preauthorization

In determining whether to approve a response action through the preauthorization process, EPA will evaluate information submitted by the applicant according to the criteria described below. The criteria EPA will use to evaluate the advisability of using the claims process, compared to other mechanisms, include: (1) Priority; (2) proposed approach, projected costs, and schedule for cleanup; (3) capabilities and experience of the applicant; and (4) consultation with the State or Indian Tribe. EPA will, on the basis of its evaluation, develop a PDD, which will establish a record of the Agency's decision regarding preauthorization of a site-specific response action. The PDD will contain the terms and conditions that must be satisfied in order for a claimant to be reimbursed from the Fund.

1. Priority—Significance of Threat

As stated above, EPA must ensure that Fund expenditures are used to address the most significant threats to public health, welfare, and the environment. EPA will, through the preauthorization process, evaluate whether the applicant has demonstrated that the proposed cleanup merits expenditure of Fund monies. Section 104 of CERCLA limits the circumstances under which Fund monies may be used to respond to: (1) The release or substantial threat of release of hazardous substances; and (2) the release or substantial threat of release of pollutants or contaminants that may present an imminent and substantial endangerment to public health or welfare.

For removal actions, EPA will, as proposed in § 300.415(b)(2) of the proposed revised NCP (§ 300.65(b)(2) of the 1985 NCP), evaluate the information submitted to determine whether a threat to public health, welfare, or the environment exists (e.g., exposure of nearby populations, contamination of drinking water or sensitive ecosystems, weather conditions, threat of fire or explosion).

For remedial actions, EPA will carefully evaluate the threat (e.g., population at risk, routes of exposure, amount and concentration of substances, whether the substances are on the CERCLA section 102 toxicological lists, area hydrogeology, climate, likelihood of future releases, extent of possible migration, and extent to which contamination levels exceed health and environmental standards). Section 118 of CERCLA provides that high priority is to be given to facilities where the release resulted in closing drinking water wells or the contamination of a principal drinking water supply.

2. Proposed Approach, Projected Costs, and Schedule for Cleanup

EPA will evaluate the proposed removal, remedial planning, or remedial action under the NCP and will be guided by the proposed revisions of the NCP and these proposed response claims procedures. The proposed response action must be a cost-effective means of addressing the release or threat of release at issue. EPA will also evaluate: (1) The consistency of the proposed response action with other environmental requirements, (2) the extent to which the applicant has assured timely initiation and completion of response actions and (3) reporting and record-keeping requirements. As set forth in the NCP, EPA encourages response approaches that utilize new and innovative technology and/or offer an alternative to land disposal. However, where the proposed action would implement a remedial action previously selected by EPA, the Agency does not contemplate undertaking a new analysis of that remedy.

EPA will evaluate the estimated cost based on: (1) Methodology used for the estimates (including the applicant's use of the differing site conditions clause, if appropriate); (2) the reasonableness of estimates; (3) the necessity of proposed activities; and (4) the applicant's proposed procurement method (including the use of sealed bidding, contractor selection criteria, approach to contracts management, and accounting procedures). Where feasible, costs will be compared against costs for similar activities under contracts and cooperative agreements with States, political subdivisions, or Indian Tribes. Similarily, EPA will consider the schedule proposed by the applicant against the time required to implement activities under contracts and cooperative agreements. Contracts or cooperative agreements are likely to be used (assuming agreement with the State, political subdivision, or Indian Tribe) where the comparison between claims and such agreements results in a marginal advantage for claims. As stated earlier, the contract and cooperative agreement mechanisms offer advantages over the claims mechanism.

3. Technical Capabilities and Experience

EPA will evaluate whether the application demonstrates: (1) a knowledge of the NCP and EPA procedures; (2) sufficient engineering, scientific, or other technical expertise necessary to evaluate the appropriate extent of remedy; (3) the ability to handle any on-site emergency action; (4) the ability to oversee the design of remedial actions; (5) the ability to manage any necessary contracts (including change order management, termination, and re-bidding and close-out); (6) the ability to manage the sampling plan; (7) the ability to furnish continuous construction oversight; and (8) the ability to implement the removal or remedial action. EPA will evaluate the applicant's experience, technical and financial capabilities based upon the demonstrations contained in the preauthorization application. EPA will

also evaluate the applicant's proposed quality control and quality assurance program against EPA's quality control and quality assurance program guidelines.

4. State and Indian Tribe Consultation

Sections 104(c)(2) and 126 of CERCLA provide that EPA will consult with the affected State(s) or Indian Tribe(s) before determining the appropriate remedial action to be taken at a site pursuant to section 104. EPA will consult with the affected State(s) or Indian Tribe(s) during its review of a request for preauthorization of a remedial planning study or a remedial action, unless the applicant has already obtained such a letter of cooperation (see Section IV.D.2.f). EPA will consider the views of the State(s) or Indian Tribe(s) in evaluating the application for preauthorization. The applicant's submission of a letter signed by the designated State or Indian Tribe hazardous waste official will minimize the time required for coordination and consultation with States or Indian Tribes. This letter should state that the State or Indian Tribe: (1) Concurs with the proposed action, and (2) assures its cooperation in the proposed response action.

5. Summary of Criteria for Preauthorization

In summary, EPA will approve a response action through the preauthorization process only when the Agency determines that a Fund-reimbursed private-party response is the appropriate means to achieve site cleanup. The proposed expenditures must be reasonable and the proposed activities must be necessary to the response action at issue. EPA will, as appropriate, consult with the affected State or Indian Tribe before approving an application for preauthorization, unless the applicant supplies a letter of cooperation signed by the designated State or Indian Tribe official. EPA may approve all or any portion of a response action at a site, but will not approve less than a stage of an operable unit (see section IV.C.). EPA may approve a private party to do planning work (e.g., RI/FS). EPA's approval of an application for preauthorization of construction constitutes acceptance of the proposed remedy and a determination that the remedy is consistent with the NCP.

EPA will review and analyze the information contained in the application for preauthorization against the non-exclusive list of criteria proposed in § 307.23(b). EPA will generally approve the filing of a claim for the response action where:

1. The release is within the scope of CERCLA;

2. The release or threat of release merits expenditure from the Fund in view of competing demands on the Fund;

3. There is sufficient time to process the request for preauthorization (if a removal action is proposed);

4. The party liable for the release or threat of release of the hazardous substance is unknown, or if known, has been notified of the application for preauthorization and is unwilling or incapable of performing the response in a reasonable period of time;

5. The State, political subdivision, or Indian Tribe is unwilling to undertake the response action through a contract or a cooperative agreement;

6. The cost and effectiveness of the proposed response actions compare favorably with an alternative cleanup under section 104 of CERCLA;

7. The proposed response can be carried out in accordance with the NCP and other environmental requirements;

8. The applicant is eligible to file a claim and has the capabilities, experience, technical expertise, and knowledge of and familiarity with the NCP and relevant guidance necessary to carry out the proposed response action;

9. The applicant is implementing an administrative order or has entered into a consent decree with the Government regarding the site for which the request is made (if the applicant is a PRP);

10. The applicant is implementing an administrative order or has entered into a consent decree with the Government to undertake a remedial investigation and feasibility study and has affirmed that he/she will not directly or indirectly benefit from the preauthorization as a response action contractor, or as a person hired or retained by such a contractor with respect to the site at issue, and agrees to reimburse the Fund for any cost incurred under, or in connection with, the oversight contract or arrangement for the remedial investigation and feasibility study;

11. The proposed costs are eligible and the applicant has proposed appropriate procurement, contract management, project management, financial management and documentation procedures;

12. The applicant has met the necessary assurances, financial responsibilities, and other requirements;

13. The applicant has made the adequate provisions for long-term operation and maintenance of the response action, if appropriate;

14. The applicant has consulted with the State or Indian Tribe on the proposed response action;

15. The proposed procedures for oversight and the reporting of project issues and progress are acceptable to EPA;

16. The applicant cooperated with EPA at any earlier stage of response activity; and

17. The proposed schedule for filing a claim(s) is based on completion of the project or an operable unit.

C. Preauthorization Does Not Create Third Party Rights or Benefits

The terms and conditions set forth by EPA in the Preauthorization Decision Document (PDD) establish the requirements that the claimant must satisfy in order that costs incurred for a specific response action are eligible for reimbursement from the Fund. The terms and conditions are intended to clearly set forth the general technical, procedural and administrative requirements to be met by the claimant and are intended to benefit only the claimant and EPA. The terms and conditions contained in the PDD establish the requirements for reimbursement from the Fund. The PDD neither extends benefits to nor creates any rights in any third party. Nor is compliance with the terms and conditions of the PDD required for recovery of costs under other sections of CERCLA or other laws.

VII. Submission of Response Claims

This section describes the steps that the claimant must follow after completing the preauthorized response action.

A. Site Cleanup Following Preauthorization

Once EPA issues the PDD, the applicant may begin the preauthorized action and, upon the completion of all work or an authorized phase, submit a claim on EPA Form 2075-4, "Claim for CERCLA Response Actions," for the costs of approved activities up to the maximum dollar amount contained in the PDD. As proposed in § 300.400(h) (§ 300.61(d) of the current NCP), the lead agency may monitor (through an On-Scene Coordinator (OSC) or Remedial Project Manager (RPM)) an applicant's response actions. If, due to previously unknown or unexpected site conditions or to other factors that could not have been previously discovered by the exercise of due diligence, the applicant finds it necessary to modify the actions that EPA preauthorized, or if it becomes apparent that the project's costs will exceed the approved costs, the applicant may submit to EPA a revised application for preauthorization. If the applicant intends to seek compensation from the Fund for activities that deviate from the activities preauthorized, additional preauthorization by EPA would then be necessary before additional or different actions can be undertaken.

B. Election to Commence a Court Action or File a Claim

Up to the point when a claimant actually files a claim for a preauthorized response action, he/she is free either to present a claim to the Fund or to sue the responsible parties under section 107 of CERCLA for the response costs. Thus, a claimant preserves the option of seeking reimbursement either from the PRP through a court action or from the Fund through invocation of the administrative process contemplated by the PDD. However, pursuant to section 112(a) of CERCLA, EPA will not consider a claim while an action for the same costs is before the courts. The claim will be returned to the claimant without a determination of its merits. Should the claimant elect to pursue a judicial remedy that proves unsuccessful, he/she is then free to pursue a claim against the Fund, if all other requirements for filing a claim are satisfied.

C. Presentation of Claims to Potentially Responsible Parties

Section 112(a) states that claims may not be submitted against the Fund unless they have first been presented to the owner, operator, or guarantor of the vessel or facility from which the hazardous substance has been released and to any other person who may be liable under section 107. If the PRP is unknown, the claimant must make a good-faith effort to identify the parties believed responsible for the release. The standard for determining what is a "good-faith" effort will depend on the circumstances of the release; however, at a minimum, it should include a search of deed records, a letter to the last known address requesting a forwarding address, and a notice in a local newspaper requesting information on, or witnesses to, the release. These efforts must be documented and must be available for EPA's review.

Upon a request from the potential claimant, EPA will provide the names and addresses of PRPs to whom the Agency has sent notice letters, or PRPs who have reported a release at the site pursuant to section 8(e) of the Toxic Substances Control Act or section 103(a) of CERCLA.

Before presentation of a claim to the Fund, a potential claimant who can identify the PRPs should make a reasonable effort to settle the claim with them. If the claim against the parties remains unsatisfied for 60 days, the potential claimant may present the claim for the preauthorized response action to the Fund for payment pursuant to section 112(a) of CERCLA. Any reply or other correspondence received from the PRPs should be retained and submitted with the claim.

If the first claim was denied by the responsible party or not responded to, and EPA agrees that there is no reason to believe that subsequent claims would be honored by the responsible party, the denial of the first claim, or lack of response, will be considered a denial of every subsequent claim.

If the potential claimant and the PRP reach a settlement for less than the total amount of the claim, the potential claimant may submit a claim against the Fund for the difference between the amount of any settlement and the amount preauthorized only if EPA has approved any release of liability given to the PRP by the claimant.

The potential claimant may submit a claim for a preauthorized response action to the Fund if the claimant: (1) Is unable to locate the PRP; (2) is unable to reach a settlement; or (3) has obtained EPA's approval of any partial settlement between the claimant and the PRP that contains a release from liability.

D. Presentation to EPA

Only persons who have obtained preauthorization from EPA to conduct a response action and who have first presented their claim to the parties believed responsible (when identified) may submit claims for reimbursement against the Fund.

In order for a claim for reimbursement to be considered by EPA, a fully completed claims form (i.e., a "perfected" claim) must be submitted to EPA. Claimants may obtain the required claims forms and instructions from any EPA Regional Office (see Appendix).

Claims for response actions may be filed only after the response action or the preauthorized phase (e.g., RD/RA for the operable unit) has been completed and within five years of completion of the preauthorized response action. Among other things, the claims form requires: (1) Certification that the action was preauthorized, (2) a statement that the preauthorized actions were taken, (3) itemization of the claimed costs, and (4) a description of the procedures followed in identifying and searching for the parties believed responsible for the release. Forms must be completed, signed, and submitted to EPA, 401 M Street, SW., Washington, DC 20460, Attention: Director, Office of Emergency and Remedial Response (OS–220).

The maximum size of a claim award is explicitly set forth in the PDD. This ceiling is usually stated in the alternative: that the award cannot exceed a particular dollar figure or a specified percentage of response costs, whichever is lower.

For example, a PDD may authorize a single claim award for an amount not to exceed the lesser of $1 million or 15 percent of eligible response costs. If the actual costs totaled $5 million, the most the claimant could receive would be $750,000 (or 15 percent). However, if the response costs were $10 million (15 percent of which would be $1.5 million), the highest possible award would be $1 million.

In cases where the PDD authorizes multiple claims (i.e., for operable units or response stages), both the individual awards and the final total must be within the lower of the two reimbursement caps. For example, a PDD could authorize four claims, with the reimbursement cap set at $1 million or 15 percent of response costs. As the following scenarios indicate, each of the four claim awards cannot exceed 15 percent of the eligible response costs represented by the particular claim. However, if a particular award would cause the total to exceed $1 million, that award may be for substantially less than 15 percent of eligible response costs.

In Scenario A, the most that can be awarded for Claim 4 is $100,000. If EPA would award 15 percent of the $3 million response costs, this would cause the total award to exceed the $1 million cap. The interaction between the 15 percent cap for individual awards and the $1 million cap for overall awards in our example is further illustrated in Scenarios B and C.

Claim	Actual response cost (in millions)	Highest possible award (in thousands)	Award to date (in thousands)
		Scenario A	
1	$2	$300 (or 15%)	$300
2	1	150 (or 15%)	450
3	3	450 (or 15%)	900
4	3	100	1,000
		Scenario B	
1	3	450 (or 15%)	450
2	3	450 (or 15%)	900
3	3	100	1,000
4	3	0	1,000
		Scenario C	
1	1	150 (or 15%)	150
2	1	150 (or 15%)	300
3	1	150 (or 15%)	450
4	1	150 (or 15%)	600

VIII. EPA Review and Payment of Claims Against the Fund

Upon receiving a claim, EPA will review and analyze the forms and documentation and determine whether all filing requirements have been met. Once the claimant has complied with all filing requirements, the claim will be considered "perfected." When EPA is unable to evaluate the claim because of omissions in filed documents, the Agency will return the materials and advise the claimant of specific problems with the filing. When EPA needs additional information to evaluate the claim's validity, EPA will suspend further processing of the claim and will request that the claimant provide the necessary information. A claim that EPA returns because of a filing deficiency may be corrected and resubmitted. Failure of the claimant to provide the information in a timely manner can form the basis for denial of the claim. As proposed in §§ 300.120(e)(3) and 300.400(h) (§§ 300.33(b)(14)(iii) and 300.61(d) of the current NCP), the OSC/RPM may review the response for consistency with the preauthorized response actions.

EPA may adjust claims and will make awards of response claims only to the extent that the Agency determines that the expenditures were necessary to carry out the preauthorized response action. EPA's review of the expenditures will include: (1) The documentation supporting all claimed costs under generally accepted accounting principles and practices consistently applied; and (2) documentation that all contracts were awarded using to the maximum extent practicable, open and free competition (i.e., formal advertising, competitive negotiations, or other generally accepted procurement methods). These criteria are designed to conserve Fund monies and protect against fraud and abuse. The claimant may demonstrate the reasonableness of claimed costs through reference to cost estimates by firms qualified in such areas, the results of competitive procurements for similar activities, or documentation of market costs based on similar procurements by others (assuming such prices were arrived at through free and open competition).

As provided in proposed § 307.32(i), if EPA determines (based on its monitoring or subsequent evaluation) that the response action is ineffective due to acts or omissions of the claimant, payment of the claim by EPA will be adjusted accordingly.

Where a claimant disagrees with the amount of an award, the claimant may, within 30 days of receiving notice of the decision, request that EPA arrange for an administrative hearing (section 112(b) of CERCLA). In such a hearing, the claimant bears the burden of proof. The administrative hearing shall be conducted by an Administrative Law Judge (ALJ) and shall proceed in accordance with 5 U.S.C. 554 and any rules that EPA may promulgate. All administrative decisions shall be in writing, with notification to all appropriate parties. Moreover, pursuant to section 112(b)(4) of CERCLA all decisions shall be rendered within 90 days of submission of the claim, unless all parties agree in writing to an extension, or EPA, in its discretion, extends the time limits for a period not to exceed 60 days.

Pursuant to section 112(b) of CERLA, awards from the Fund shall be made within the following time periods. First, after EPA's decision whether to award or deny a claim, the claimant has 30 days to request an administrative hearing. If the claimant does not exercise this option, EPA must pay any award within 20 days of the expiration of the period for administrative appeal. Thus, the claimant shall receive reimbursement of costs from the Fund within 50 days of the Agency's determination of an award if he/she does not exercise his/her option of requesting an administrative hearing.

If, however, the administrative hearing option is exercised, the time periods shift. Once the ALJ determines whether to award or deny the claim, any party has 30 days to decide whether to appeal the ALJ's determination to the appropriate Federal district court. If no party decides to exercise this option, the Fund must pay any award within 20 days of the expiration of the appeal period. Therefore, payment of any claim shall occur within 50 days of an ALJ determination, if no party appeals.

Finally, if a party does not seek judicial review, EPA will award the claim within 20 days of the final judicial decision (which may be a decision of a Federal district court, a Federal court of appeals, or the U.S. Supreme Court, depending on the history of the case).

A claimant receiving an award from the Fund must retain the documentation and any other records relating to the claim, and must provide EPA with access to such records. These records must be maintained for ten years from the date of award of the final claim from the Fund. A ten-year record retention period is established to: (1) Create a window beyond the six-year statute of limitations established by section 112(d) of CERCLA; (2) permit the completion or resolution of all issues related to any litigation, claim, negotiation, audit, cost recovery, or other action involving the records for Superfund expenditures; and (3) create a uniform period for documentation involving Superfund expenditures. Before the records are destroyed, the claimant must notify EPA of the location or the records and allow EPA the opportunity to take possession of the records.

Section 112(c)(1) states that payment of any claim shall be subject to the claimant(s) subrogating to the United States all rights as claimant to the extent that the claimant's response costs are compensated from the Fund. Further, the claimant(s) and contractors and subcontractors shall furnish the personnel, services, documents, and materials needed to assist the United States in any cost recovery action that it may initiate. In particular, the claimant's contractors and subcontractors shall be available to testify in all proceedings relating to EPA's cost recovery efforts. All of the claimant's contracts shall include a specific requirement that the contractors and subcontractors agree to provide this cost recovery assistance.

Payment of a claim indicates EPA's judgment that the claimant incurred response costs pursuant to the PDD and that all or a portion of those costs should be reimbursed. Such payment does not denote acceptance of the response action for purposes of compliance with the consent decree. For purposes of consent decrees, the Agency will issue a certificate of completion to denote final acceptance of the adequacy and quality of the response work.

IX. Notification of Concerned Parties Regarding Limitations to Response Claims

Section 111(o) of CERCLA requires that the Agency develop and implement procedures to inform certain persons concerning limitations on payment of response claims. Those persons are "concerned local and State officials and other concerned persons." Moreover, this notification is to occur "as soon as practicable" after the site is included on the NPL.

The Agency proposes to institute two procedures to notify concerned parties of limitations on the payment of response claims. First, a citation to this proposed rule (after promulgation, the promulgated rule), along with a brief statement of its contents, will be published in the **Federal Register** preamble each time a site is added to the final NPL (see Appendix C). Second, the public docket established for each NPL site by EPA Headquarters and the applicable EPA Region will contain a summary of response claims limitations, along with a citation to this proposed rule. A copy of the document that will be placed in these public dockets is attached as Appendix D. The Agency solicits comments on this approach.

X. Regulatory Analyses

Proposed and final rules issued by Federal agencies are governed by several statutes and executive orders. These include Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

A. Executive Order No. 12291

Executive Order No. 12291 requires that proposed regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget. A Regulatory Impact Analysis is required for a "major" rule. According to E.O. 12291, "major" rules are regulations that are likely to result in:

(1) An annual adverse (cost) effect on the economy of $100 million or more; or

(2) A major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this regulation is a "non-major" rule under Executive Order 12291 because it is unlikely to result in any of the economic impacts identified above. Therefore, the Agency has not prepared a Regulatory Impact Analysis for this regulation.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." The response claims regulation involves reimbursement of the costs of certain parties for responding to a hazardous substance release. This is a benefit authorized by CERCLA, and does not adversely affect the private sector economy. EPA therefore certifies that this regulation will not have a significant impact on a substantial number of small businesses, organizations and units of government. EPA certifies that a Regulatory Flexibility Analysis is not necessary.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq*. An Information Collection Request document has been prepared by EPA (ICR No. 1304) and a copy may be obtained from Carl Koch, Information Policy Branch; U.S. Environmental Protection Agency; 401 M Street, SW. (PM–223); Washington, DC 20460 or by calling (202) 382–2739.

Public reporting burden for the collection of information under EPA Form 2075–3, "Application for Preauthorization of Response Actions," for a response action is estimated to vary from 95 to 173 hours per response, with an average of 134 hours per response. These burden estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Public reporting burden for the collection of information under EPA Form 2075–4, "Claim for CERCLA Response Action," is estimated to vary from 25 to 58 hours per response, with an average of 42 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimates or any other aspects of this collection of information, including suggestion for reducing this burden to the following addresses: Chief, Information Policy Branch, (PM–223); U.S. Environmental Protection Agency, 401 M Street, SW.; Washington, DC 20460 and Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place, NW., Washington, DC 20503; Attention: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

XI. List of Subjects in 40 CFR Part 307

Administrative practices and procedures, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal.

Dated: August 14, 1989.

William K. Reilly,

Administrator.

Appendix

Forms applicable to the CERCLA response claims process, EPA Form 2075–3 and EPA Form 2075–4 may be obtained from and must be submitted to EPA Headquarters, CERCLA Response Claims, Office of Emergency and Remedial Response (OS–220), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Forms may also be obtained from the EPA regional offices at these addresses:

(a) Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203
(b) Region II, 26 Federal Plaza, New York, New York 10278
(c) Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107
(d) Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365
(e) Region V, 230 South Dearborn Street, Chicago, Illinois 60604
(f) Region VI, 1445 Ross Avenue, Dallas, Texas 75202
(g) Region VII, 726 Minnesota Avenue, Kansas City, Missouri 66101
(h) Region VIII, One Denver Place, Denver, Colorado 80202
(i) Region IX, 215 Fremont Street, San Francisco, California 94105
(j) Region X, 1200 Sixth Avenue, Seattle, Washington 98101

For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is proposed to be amended by adding Part 307 to read as follows:

PART 307—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) CLAIMS PROCEDURES

Subpart A—General

307.10 Purpose.
307.11 Scope and applicability.
307.12 Use of number and gender.
307.13 Definitions.
307.14 Penalties.

Subpart B—Eligible Claimants; Allowable Claims; Preauthorization

307.20 Who may present claims.
307.21 Nature of eligible claims.
307.22 Preauthorization of response actions.
307.23 EPA's review of preauthorization applications.

Subpart C—Procedures for Filing and Processing Response Claims

307.30 Requesting payment from the potentially responsible party.
307.31 Filing procedures.
307.32 Verification, award, and administrative hearings.
307.33 Records retention.

Subpart D—Payments and Subrogation

307.40 Payment of approved claims.
307.41 Subrogation of claimants' rights to the Fund.
307.42 Fund's obligation in the event of failure of remedial actions taken pursuant to section 122.

Appendix A—Application for Preauthorization of a CERCLA Response Action

Appendix B—Claim for CERCLA Response Action

Appendix C—Notice of Limitations on the Payment of Claims for Response Actions, Which is to be Placed in the Federal Register Preamble Whenever Sites Are Added to the Final NPL

Appendix D—Notice of Limitations on the Payment of Claims for Response Actions, Which is to be Placed in Public Dockets

Authority: 42 U.S.C. 9601 *et seq.* and Executive Order 12580, Sections 4 and 9, 3 CFR, 1987 Comp., p. 193 (52 FR 2923; January 29, 1987).

Subpart A—General

§ 307.10 Purpose.

This regulation prescribes the appropriate forms and procedures for presenting claims for necessary response costs as authorized by section 112(b)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (hereinafter referred to as CERCLA, or the Act) (42 U.S.C. 9601 *et seq.*). Such claims may be presented to the Hazardous Substance Superfund (the Fund) established by section 9507 of the Internal Revenue Code of 1986. See section 101(11) of CERCLA.

§ 307.11 Scope and applicability.

Claims for responses to a release or substantial threat of release of a hazardous substance into the environment; responses to a release or substantial threat of release of any pollutants or contaminants into the environment, which may present an imminent and substantial danger to public health or welfare; and response actions undertaken pursuant to settlement agreements in which the Federal Government agrees to reimburse a portion of the cost, may be submitted only through the procedures established by this regulation. Under this regulation, persons may bring claims for necessary costs incurred in carrying out the National Contingency Plan (NCP or the Plan) (40 CFR Part 300) developed under section 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) and revised pursuant to section 105 of CERCLA. Only response actions that EPA has preauthorized are eligible for reimbursement through the claims process of section 112 of CERCLA. Authority for the payment of claims for response costs is provided by section 111(a)(2) of CERCLA. Authority for the reimbursement of certain costs incurred by parties to a settlement agreement entered pursuant to section 122 of CERCLA is provided by section 122(b) of CERCLA.

§ 307.12 Use of number and gender.

As used in these regulations, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 307.13 Definitions.

Terms that are not defined in this section or restated herein, shall have the meaning set forth in section 101 of CERCLA or the 1985 NCP or any final revision thereto. *As used in this regulation, the following words and terms shall have the meanings set forth below:*

Act or *CERCLA* both mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

Administrative Hearing means an administrative adjudication required by section 112(b)(2) of CERCLA in the event a claimant contests a determination of his claim made by the U.S. Environmental Protection Agency (EPA).

Assistance Agreement means the legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose. It is either a grant, cooperative agreement, or Superfund State Contract (see 40 CFR part 35) and will specify: budget and project periods; the Federal share of eligible project costs; a description of the work to be accomplished; and any special conditions.

Claim means a demand in writing for a sum certain presented to the Fund in accordance with sections 111 and 112 of CERCLA.

Claimant means any person who presents a claim to the Fund for reimbursement under section 112(b)(1) of CERCLA.

Contractor Claim means the disputed portion of a written demand or written assertion by any contractor who has contracted with a person (i.e., the owner) for the conduct of a preauthorized response action, seeking as a matter of right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or related to a contract, which has been finally rejected or not acted upon by the owner and which is subsequently settled by the owner or is awarded by a third party in accordance with the disputes clause of the contract document.

Eligible Claim means any claim that has satisfied the requirements set forth in § 307.21(b) of this rule.

Facility as defined by section 101(9) of CERCLA, means any:

(1) Building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or

(2) Any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

Fund means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

Hazardous Substance as defined by section 101(14) of CERCLA, means:

(1) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*);

(2) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA;

(3) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6901 *et seq.*) (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress);

(4) Any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act;

(5) Any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7401 *et seq.*); and

(6) Any imminently hazardous chemical substance or mixture with respect to which the Administrator of EPA (Administrator) has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under paragraphs (1) through (6) of this definition, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

National Contingency Plan, NCP, or the Plan means the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) developed under section 311(c) of the Federal Water Pollution Control Act and revised pursuant to section 105 of CERCLA.

Necessary Costs means "necessary response costs" as required by section 111(a)(2) of CERCLA for Fund reimbursement of a preauthorized response action. Necessary response costs are costs determined to be:

(1) Required (based upon the site-specific circumstances);

(2) Reasonable (nature and amount do not exceed that estimated or which would be incurred by a prudent person);

(3) Allocable (incurred specifically for the site at issue); and

(4) Otherwise allowable (consistent with the limitations and exclusions under the appropriate Federal cost principles). *See* OMB Circular A–122 (non-profit organizations); OMB Circular A–87 (States and political subdivisions); and 48 CFR 31.1 and 31.2 (profit-making organizations).

NPL means the National Priorities List established pursuant to section 105 of CERCLA and 40 CFR 300.425 [1] (§ 300.66 of the existing 40 CFR), which consists of uncontrolled hazardous substance facilities in the United States that need to be addressed under CERCLA authorities. Only NPL sites are eligible for Fund-financed remedial action.

Operable Unit means a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site. Operable units will not impede implementation of subsequent actions, including final action at the site.

Party means EPA or a claimant.

Perfected means the point at which EPA determines that the written demand for a sum certain (i.e., claim) has all the documentation required to substantiate the appropriateness of the amounts claimed.

Person as defined by section 101(21) of CERCLA, means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

Political Subdivision means any general purpose unit of a local or State government.

Pollutant or Contaminant as defined by section 101(33) of CERCLA, includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14) (A) through (F) of the Act, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

Preauthorization means EPA's prior approval to submit a claim against the Fund for necessary response costs incurred as a result of carrying out the NCP. The process of preauthorization consists of three steps:

(1) EPA's receipt of the application for preauthorization;

(2) EPA's review and analysis of the application; and

(3) EPA's issuance of the Preauthorization Decision Document (PDD) which sets forth the terms and conditions for reimbursement.

Preauthorized response actions are response actions approved through the preauthorization process.

Respond or Response as defined by section 101(25) of CERCLA, means remove, removal, remedy, and remedial action, all such terms (including *removal* and *remedial action*) including enforcement activities related thereto.

Response claim means a preauthorized demand in writing for a sum certain for response costs referred to in section 111(a)(2) of CERCLA, and for certain costs of actions referred to in section 122(b)(1) of CERCLA.

§ 307.14 Penalties.

(a) If any person knowingly gives a material statement or representation in the application for preauthorization or in the claim that is false, misleading, misrepresented, or misstated, and EPA relies upon such a statement or representation in making its decision, the preauthorization or the award by EPA may be withdrawn following written notice to the claimant.

(b) Any person who knowingly gives, or causes to be given, any false information as part of an application for preauthorization or of a claim (including any person who meets the conditions of paragraph (a) of this section) may, upon conviction, be fined or imprisoned in accordance with CERCLA section 112(b)(1) and other laws.

Subpart B—Eligible Claimants; Allowable Claims; Preauthorization

§ 307.20 Who may present claims.

(a) Subject to the provisions of this subpart, claims for the costs of response actions may be asserted against the Fund by any person other than the United States Government, States, and political subdivisions thereof, except to the extent the claimant is otherwise compensated for the loss. States and political subdivisions may assert such claims if they are potentially responsible parties subject to an agreement reached pursuant to section 122(b)(1) of CERCLA.

(b) Claims presented by an individual must be signed by that individual. If, because of death, disability, or other reasons satisfactory to EPA, the foregoing requirement cannot be fulfilled, the claim may be filed by a duly authorized agent, executor, administrator, or other legal representative. A claim presented by an entity or an authorized agent, executor, administrator, or other legal representative must be presented in the name of the claimant. The claim must be signed by the authorized agent, executor, administrator, or other legal representative (including the title or legal capacity of the person signing) and be accompanied by evidence of the authority to present a claim on behalf of the claimant as authorized agent, executor, administrator, or other legal representative.

(c) A claim for response costs as to which any release from liability was executed between the claimant and a potentially responsible party may be presented against the Fund to the extent that the claimant obtained EPA's approval prior to executing such release

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[1] See the proposed NCP at 53 FR 51394, December 21, 1988.

and provided that the other requirements of this Part are met.

(d) A foreign claimant may present a response claim to the Fund, to the same extent that a United States claimant may assert a claim, if:

(1) The requirements of § 307.21 and § 307.22 are met; and

(2) The release of a hazardous substance occurred in the navigable waters of the United States, including the territorial sea, or in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident; and

(3) The claimant is not otherwise compensated for the loss; and

(4) The hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*), or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 *et seq.*); and

(5) Recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

§ 307.21 Nature of eligible claims.

(a) Claims may be asserted against the Fund for necessary costs incurred for response actions due to a release or substantial threat of release of a hazardous substance into the environment; a release or substantial threat of release of pollutants or contaminants into the environment that may present an imminent or substantial danger to public health or welfare; or actions taken by a potentially responsible party subject to an agreement reached pursuant to section 122(b)(1) of CERCLA. Claims must be filed in accordance with § 307.22 of this regulation. Claims may be asserted for the costs of removal actions, remedial planning activities, and remedial actions.

(b) Costs will be considered to be eligible under this section if:

(1) The response action is preauthorized by EPA pursuant to § 307.22 of this regulation;

(2) The costs are incurred for activities within the scope of EPA's preauthorization;

(3) The response action is conducted in a manner consistent with the NCP; and

(4) The costs incurred are necessary costs pursuant to § 307.11 of this regulation.

(c) Money in the Fund may be used for paying any claim under this section for expenses incurred for the payment of contractor claims either through settlement of such claims or an award by a third party to the extent EPA determines that:

(1) The contractor claim arose from work within the scope of the contract at issue and the contract was for preauthorized response activities;

(2) The contractor claim is meritorious;

(3) The contractor claim was not caused by the mismanagement of the claimant;

(4) The contractor claim was not caused by the claimant's vicarious liability for the improper actions of others;

(5) The claimed amount is reasonable and necessary;

(6) The claim for such costs is filed by the claimant within 5 years of completion of the preauthorized response action; and

(7) Payment of such a claim will not result in total payments from the Fund in excess of the maximum amount for which claims were preauthorized.

(d) An award by a third party on a contractor claim under paragraph (c) of this section should include:

(1) Findings of fact;

(2) Conclusions of law;

(3) Allocation of responsibility for each issue;

(4) Basis for the amount of award; and

(5) The rationale for the decision.

(e) Money in the Fund may not be used for paying any claim under this section for expenses incurred for procurement that were not conducted in a manner that provided to the maximum extent practicable, open and free competition; unduly restricted or eliminated competition; and did not provide where applicable for the award of contracts to the lowest responsive, responsible bidder where the selection was made principally on the basis of price.

(f) Money in the Fund may not be used for paying any claim under this section for expenses incurred by a person operating pursuant to a procurement contract or assistance agreement with the United States.

(g) Money in the Fund may not be used for paying any claim under this section for expenses incurred for the payment of persons who are on the "List of Parties Excluded From Federal Procurement or Non-Procurement" at the time the contract is awarded, unless EPA approval is obtained in advance.

(h) Unless EPA waives this requirement prior to the award of a construction contract, money in the Fund may not be used for paying any claim under this section for expenses incurred under such a construction contract that does not contain a "differing site conditions" clause equivalent to the following:

(1) The contractor shall promptly, and before such conditions are disturbed, notify the claimant in writing of:

(i) Subsurface or latent physical conditions at the site differing materially from those listed in this contract, or

(ii) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

(2) Upon notification by the construction contractor, the claimant shall promptly investigate the conditions. If the claimant finds that conditions materially differ and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under its contract, whether or not changed as a result of such conditions, the claimant shall make an equitable adjustment and modify the contract in writing.

(3) No claim of the contractor under the differing site conditions clause shall be allowed unless the contractor has given the notice required in paragraph (h)(1) of this section. However, the claimant may extend the time prescribed in paragraph (h)(1) of this section.

(4) No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(i) Where money in the Fund has been used to pay for any response costs under this section, no other claim may be paid out of the Fund for the same costs.

§ 307.22 Preauthorization of response actions.

(a) No person may submit a claim to the Fund for a response action unless that person notifies the Administrator of EPA or his designee prior to taking such response action and receives preauthorization by EPA. In order to obtain preauthorization, any person intending to submit a claim to the Fund must fulfill the following requirements *before commencing a response action:*

(1) Notify the lead agency through the National Response Center (as described in 40 CFR 300.125 [2] and § 300.36 of the

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[2] See footnote 1 of § 307.13.

existing 40 CFR), if there is acute threat of fire, explosion, or direct human contact with hazardous substances, pollutants or contaminants or other emergency situation, to determine if there is sufficient time to submit an application for preauthorization;

(2) Submit an application for preauthorization (EPA Form 2075–3, found at Appendix A) to the Director, Office of Emergency and Remedial Response EPA, 401 M Street, SW., Washington, DC 20460; and

(3) Obtain the approval of the Administrator before initiating the response action.

(b) All applications for preauthorization must include, where available.

(1) A description of the location and nature of the release or threatened release of a hazardous substance or pollutant or contaminant (e.g., type and location of vessel or facility, population at risk, routes of exposure);

(2) A description of the nature and quantity of the hazardous substance or pollutant or contaminant which has been or may be released, including whether the substance is on the list of hazardous substances set forth pursuant to section 102 of CERCLA;

(3) The identity of any person who received a general or special notice letter from EPA or any known potentially responsible parties (including the applicant), and any contact with such parties, including, but not limited to, any correspondence, agreements, or litigation with such parties;

(4) Evidence of the applicant's eligibility to file a claim pursuant to § 307.20;

(5) An explanation of why the proposed response action is necessary, and how the proposed action is consistent with 40 CFR 300.700(d)(4)(ii) [3] (section 300.25(d) of the existing 40 CFR);

(6) A description of the applicant's capability (including financial and technical capability) to implement the proposed response action;

(7) Proposed schedule of activities;

(8) Projected costs of response activities, with the basis for those projections (projections shall be based on actual anticipated costs without a contingency for unanticipated conditions);

(9) The proposed contracting procedures;

(10) Proposed procedures for project management, EPA oversight, and reporting of progress of the project; and

(11) The assurances of timely initiation and completion.

(c) Applications for preauthorization to undertake a removal action shall, in addition to the requirements in paragraph (b) of this section, include:

(1) A summary or copy of the preliminary assessment; and

(2) A description of the proposed removal action for which the claim will be made, which environmental requirements are applicable or relevant and appropriate, and how the removal will comply with such requirements.

(d) Applications for preauthorization to undertake a remedial investigation and feasibility study shall, in addition to the requirements in paragraph (b) of this section, include:

(1) The scope of the proposed study;

(2) A proposed site sampling plan and quality assurance procedures;

(3) The plan for the development of alternatives;

(4) Approaches to consideration of alternatives to land disposal;

(5) Plans for initial screening of alternatives;

(6) Proposed procedures for the detailed analysis of alternatives; and

(7) Proposed considerations in selection of the remedy.

(e) Applications for preauthorization to undertake a remedial alternative other than that selected by EPA, or where EPA has not selected a remedy, shall, in addition to the requirements in paragraph (b) of this section, include a discussion of how the proposed remedy:

(1) Differs from the one selected by EPA, if applicable;

(2) Achieves protection of public health and welfare and the environment and complies with legally applicable or otherwise relevant and appropriate Federal, State, local requirements pursuant to 40 CFR 300.400(g) [4] (§ 300.71(a)(4) of the existing 40 CFR) or waivers to those requirements in 40 CFR 300.430(f)(3)(iv) [5] (§ 300.68(i)(5) of the existing 40 CFR). The application shall also include a discussion of pertinent Federal and State guidance, advisories, and criteria;

(3) Will be cost-effective as set out in section 121(a) of CERCLA and 40 CFR 300.430(f)(3) [6] (§ 300.68(i) of the existing 40 CFR);

(4) Mitigates and minimizes future risks;

(5) Improves the reliability of the remedy;

(6) Utilizes new or innovative technology, if appropriate;

(7) Employs treatment that reduces the volume, toxicity or mobility of the hazardous substances;

(8) Impacts projected costs; and

(9) Takes into account Appendix D [7] (methods of remedying releases).

(f) Applications for preauthorization to undertake a remedial action, including those described in paragraph (e) of this section, shall in addition to the requirements in paragraph (b) of this section, include:

(1) A description of the proposed remedial action for which the claim will be made;

(2) A proposed site sampling plan and quality assurance procedures;

(3) Assurance of State or Indian Tribe cooperation;

(4) A bond or other financial assurance to cover the costs of necessary long-term operation and maintenance of the response action or written assurance from the State to provide such long-term operation and maintenance;

(5) Proposed procedures using sealed bidding to select the construction contractor, or an explanation of why the applicant intends to use any other method; and

(6) Documentation showing that the response will be carried out in accordance with applicable or relevant and appropriate environmental requirements. Documentation should include the potential impacts on any environmentally sensitive areas.

(g) Claims of business confidentiality may be asserted for information submitted to EPA under this subpart. Information claimed confidential will be disclosed by EPA only to the extent permitted by CERCLA, this subpart, and Part 2, Subpart B, of this chapter.

(1) Any claim of business confidentiality must accompany the information when it is submitted to EPA. Claims must be asserted as prescribed on the forms. Items claimed confidential on the forms and attachments to the forms must be clearly marked by circling or bracketing them.

(2) The applicant or response claimant must provide EPA with two copies of its submittal if any information is claimed confidential.

(i) One copy of the submittal must be complete, with items claimed confidential clearly marked in accordance with paragraph (g)(1) of this section.

(ii) The second copy must be complete except that all information claimed as confidential in the first copy must be

deleted. EPA may make this second copy available to the public.

(iii) If the applicant does not provide a redacted copy, the application for preauthorization is incomplete. If the claimant does not provide a redacted copy, the claim against the Fund is not perfected. EPA will not process such submittals until it receives the redacted copy.

(3) If a submitter of a response claim or an application for preauthorization does not assert a claim of business confidentiality for information at the time the information is submitted to EPA, the Agency may make the information public without further notice to the submitter.

(h) In addition to the foregoing, an application for preauthorization filed by a potentially responsible party for partial reimbursement of response costs shall include:

(1) A copy of the settlement agreement, or the most recent draft of any pending agreement, reached between such parties and the Federal Government; and

(2) If the application is to undertake a remedial investigation and feasibility study, an affirmation that the applicant will not directly or indirectly benefit from the preauthorization as a response action contractor, or as a person hired or retained by such a contractor with respect to the site at issue and an agreement to reimburse the Fund for any costs incurred under, or in connection with, the oversight contract or arrangement for the remedial investigation and feasibility study.

(i) If it is subsequently determined that the preauthorized response actions require modification or if it appears that project costs will exceed approved costs, a revised application for preauthorization must be approved by EPA before different, or additional, actions can be undertaken, if such actions are to be eligible for compensation from the Fund.

(j) Unless otherwise specified and agreed to by EPA, the terms, provisions, or requirements of a court judgment, consent decree, administrative order (whether unilateral or on consent), or any other consensual agreement with EPA requiring a response action do not constitute preauthorization to present a claim to the Fund.

§ 307.23 EPA's review of preauthorization applications.

(a) EPA shall review each preauthorization application and will notify the applicant of the decision to grant or deny preauthorization. Decisions to grant preauthorization will be memoralized in a Preauthorization Decision Document.

(b) Each application for preauthorization must include information sufficient for EPA to determine whether the response will be consistent with 40 CFR 300.700(d) [8] (§ 300.25(d) of the existing 40 CFR). EPA will evaluate applications based on the following non-exclusive list of criteria, as appropriate:

(1) Whether the release is within the scope of CERCLA;

(2) The seriousness of the problem or importance of the response activity when compared with competing demands on the Fund;

(3) Whether there is sufficient time to process the request for preauthorization (if a removal action is proposed);

(4) Whether the party liable for the release or threat of release of the hazardous substance is unknown, or if known, has been notified of the application for preauthorization and is unwilling or incapable of performing the response in a reasonable period of time;

(5) Whether the State, political subdivision, or Indian Tribe is willing to undertake the response action through a contract or a cooperative agreement;

(6) The cost and effectiveness of the proposed response actions when compared with other alternatives;

(7) Whether the proposed response can be carried out in accordance with the NCP and other environmental requirements;

(8) The applicant's eligibility to file a claim; his capabilities, experience, and technical expertise; and his knowledge and familiarity with the NCP and relevant guidance;

(9) Whether the party is proposing to conduct a cleanup through an administrative order or a consent decree with the Government regarding the site for which the request is made (if the applicant is a potentially responsible party);

(10) Whether the applicant, if he is a potentially responsible party seeking to undertake a remedial investigation and feasibility study has affirmed that he will not directly or indirectly benefit from the preauthorization as a response action contractor, or as a person hired or retained by such a contract with respect to the site at issue, and agrees to reimburse the Fund for any cost incurred under, or in connection with, the oversight contract or arrangement for the remedial investigation and feasibility study;

(11) Whether the proposed costs are eligible and the applicant has proposed appropriate procurement, contract management, project management, financial management and documentation procedures;

(12) Whether the applicant has met the necessary assurances, financial responsibilities, and other requirements;

(13) Provisions for long-term operation and maintenace of the site, if appropriate;

(14) Whether the applicant has consulted with the State or Indian Tribe on the proposed response action;

(15) The applicant's proposed procedures for oversight and the reporting of project issues and progress;

(16) Cooperation of the applicant at any earlier stage of response activity; and

(17) Whether the proposed schedule for filing a claim(s) is based on completion of the project or an operable unit.

(c) The Administrator may grant preauthorization for all or part of a proposed response action, but not less than a stage of an operable unit.

(1) The Administrator may set a limit on the amount that may be claimed as reimbursement from the Fund for any response action.

(2) The Administrator may condition the preauthorization on such inspection, monitoring, reporting, safety, and long-term operation and maintenance requirements as he deems necessary. The costs of such requirements may not necessarily be reimbursed from the Fund.

(3) The Administrator may condition the preauthorization on such time period for starting and completing the response action as he may deem necessary.

(4) The Administrator may condition the preauthorization on such financial or other assurance from the claimant or other entity as he may deem necessary to ensure completion of work at the site.

(5) The Administrator will not subject potentially responsible parties who may wish to undertake a remedial investigation and feasibility study to a lesser standard of liability nor will he give such parties preferential treatment in EPA's review of applications for preauthorization.

(d) If EPA denies a preauthorization because of an insufficient balance in the Fund or the low priority assigned to the response action when weighed against other applications or uses of the Fund, the applicant may resubmit the application in another fiscal year. If preauthorization is denied because of the inability of the applicant to demonstrate his experience and capabilities, the applicant may resubmit the application form only after

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[3] See footnote 1 of § 307.13.

[4] See footnote 1 of § 307.13.

[5] See footnote 1 of § 307.13.

[6] See footnote 1 of § 307.13.

[7] See footnote 1 of § 307.13.

[8] See footnote 1 of § 307.13.

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correcting the deficiencies, or by proposing an alternative approach.

(e) If EPA grants preauthorization, the applicant may begin the approved response action subject to the terms and condition contained in the PDD. The applicant as a condition of preauthorization shall assure that the lead agency shall have such site access as may be necessary for oversight and monitoring.

(f) If the applicant is unable to initiate or complete the preauthorized response action, the applicant shall immediately notify EPA in writing.

(g) EPA will not grant preauthorization for any response actions where:

(1) The proposed action is not a response action authorized under CERCLA;

(2) There is a significant threat to the public health or the environment caused by acute threat of fire, explosion, direct human contact with a hazardous substance, or other similar hazardous situations requiring immediate action, and there is insufficient time to process an application for preauthorization;

(3) The proposed response is a remedial action and the site is not on the NPL; or

(4) The action is to be performed by a State, political subdivision, Indian Tribe through an assistance agreement with the United States, or a person operating pursuant to a contract with the United States.

(h) EPA will deny preauthorization to a person whom the Agency believes is a liable party under section 107 of CERCLA unless negotiations are underway aimed at reaching a judicial or administrative settlement. Such parties may be preauthorized under this paragraph to submit claims to the Fund for response costs up to the maximum amount specified in the Preauthorization Decision Document.

Subpart C—Procedures for Filing and Processing Response Claims

§ 307.30 Requesting payment from the potentially responsible party.

(a) A claimant must present all claims to any person who is known to the claimant and who may be liable under section 107 of CERCLA at least 60 days before filing a claim against the Fund. The presentation to the potentially responsible party must be a written request for payment, delivered either by certified mail (return receipt requested) or in such a manner as will establish the date of receipt. At a minimum this request must contain:

(1) The name of the claimant (commercial entity or individual);

(2) The name, title, and address of any authorized representative;

(3) The location of the release and cleanup;

(4) The date of the release, if known;

(5) The owner of the property, if other than the claimant;

(6) A description of the response action taken; and

(7) The amount of the request (in dollars);

(8) If applicable, notice of intent to file a subsequent application for preauthorization or claim against the Fund for additional operable units.

(b) Where the potentially responsible party is unknown, the claimant must make a good-faith effort to identify the potentially responsible party prior to submitting a claim. If the potentially responsible party is identified, the claimant must then comply with the procedures of § 307.30(a). Where a potentially responsible party cannot be identified, the claimant may submit a claim to the Fund pursuant to § 307.31. Claims submitted under this paragraph must be accompanied by documentation of efforts to identify potentially responsible parties.

(c) If the claimant and the potentially responsible party agree to a settlement involving a release from liability, the claimant may submit a claim against the Fund for any costs that are not recovered provided the claimant complies with the provisions of § 307.20(d), which require EPA's prior approval of such releases from liability.

(d) If the claim is denied by the potentially responsible party, or has not been satisfied after 60 days of presentation to such party, the claimant may submit a claim to the Fund in accordance with § 307.31.

(e) If the first claim was denied by the responsible party or not responded to, and EPA agrees that there is no reason to believe that subsequent claims would be honored by such responsible party, the denial of the first claim, or lack of response, shall be considered denial of every subsequent claim.

§ 307.31 Filing procedures.

(a) A response claim must be submitted on EPA Form 2075–4 and must include:

(1) Documentation showing that the claimed response activities were preauthorized by EPA; and

(2) Documentation showing that the response activity was accomplished in a manner consistent with the PDD, noting any deviation from preauthorized activities; and

(3) Documentation that a search to identify potentially responsible parties was conducted in accordance with § 307.30 and of any contacts with such parties; and

(4) Substantiation that all claimed costs are necessary costs.

(b) Claimants (or their authorized representatives) may amend their claims at any time before final action by EPA. Amendment of claims after final action by EPA will be allowed only at EPA's discretion. Each amendment must be submitted in writing and must be signed by the claimant or authorized representative. The time limitations of § 307.32(i) refer to the date by which an amendment is filed.

(c) Claimants may not pursue both an action in court against potentially responsible parties and a claim against the Fund at the same time for the same response costs. EPA will return claims presented under this subpart when the Agency determines that a claimant has initiated an action for recovery of the same response costs, in court, against a party potentially liable under section 107 of CERCLA.

§ 307.32 Verification, award, and administrative hearings.

(a) Upon receipt of a response claim, EPA will verify that it complies with all filing requirements. Where the claim is incomplete or has significant defects, EPA will return the claim to the claimant with written notification of its deficiencies.

(b) A claim returned to the claimant for failure to comply with the filing requirements may be resubmitted to EPA.

(c) For purposes of this regulation, a response claim is deemed perfected when EPA determines that the claim complies fully with all filing requirements. When the claim is perfected, a notice will be provided to the claimant of EPA's receipt and acceptance of the claim for evaluation.

(d) EPA may adjust claims and in making a determination whether costs are allowable, the Agency will be guided by the Federal cost principles (non-profit organizations—OMB Circular A–122; States and political subdivisions—OMB Circular A–87; profit-making organizations—48 CFR subparts 31.1 and 31.2).

(e) In evaluating claims, EPA will determine whether the claimant has settled and satisfactorily completed in accordance with sound business judgment and good administrative practice all contractual and administrative matters arising out of agreements to perform preauthorized response actions. This includes the issuance of invitations for bids or requests for proposals, selection of

contractors, approval of subcontracts, settlement of protests, claims, disputes, and other related procurement matters. EPA will examine how the claimant assured (e.g., by the use of a subcontract administration system) that work was performed in accordance with the terms, conditions, and specifications of such agreements.

(f) Awards will be made:

(1) Only for necessary costs of completing the response action or stage of an operable unit;

(2) Only to the extent that the response actions were preauthorized by EPA pursuant to § 307.23 of this rule;

(3) Only to the extent that the cleanup was performed effectively, as provided in 40 CFR 300.120(e)(3) and 300.400(h) [9] (§§ 300.33(b)(14)(iii) and 300.61(d) of the existing 40 CFR); and

(4) Only to the extent that the cleanup was performed in compliance with the terms and conditions of the PDD.

(g) No award will be made on a claim where the claimant has released the potentially responsible party from liability unless EPA has approved the release in advance.

(h) Where a response action is determined to have been ineffective due to acts or omissions of the claimant, his employees or agents, or any third party having a contractual relationship with the claimant, payment of the claim will be adjusted accordingly. EPA may require the claimant to submit any additional information needed to determine whether the actions taken were reasonable and necessary.

(i) For claims submitted in connection with a settlement reached under section 122(b) of CERCLA only, interest will be paid on amounts due if EPA fails to pay the amount within 60 days of a perfected claim.

(1) Interest shall accrue on the amounts due the claimant where EPA fails to pay the claim for the preauthorized response action within 60 days of EPA's receipt of a perfected claim.

(2) Where the claim is technically complete but EPA requires additional information in order to evaluate the amount claimed, interest will not accrue on the claim until 60 days after EPA's receipt of the requested additional information.

(3) The rate of interest paid on a claim is the rate of interest on investments of the Fund established by subchapter A of chapter 98 of the Internal Revenue Code of 1954.

(j) For claims submitted in connection with a settlement reached under section 122(b) of CERCLA, a preauthorized potentially responsible party will be entitled to full reimbursement only where the response action is conducted in complete satisfaction of the requirements set forth in the consent order or decree.

(k) Future site-specific actions required by preauthorized potentially responsible parties, and any future obligations on the Fund, shall be governed by § 307.42 of this rule.

(1) Any withdrawal of preauthorization will be preceded by written notice from EPA. The application for preauthorization will be deemed invalid and no award will be made from the Fund where the claimant is determined by EPA to be liable under section 107 of CERCLA for the costs for which the claim is made, and the application for preauthorization did not disclose that the claimant may be a person described as follows:

(1) The owner and operator of a vessel or a facility;

(2) Any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of;

(3) Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substance; or

(4) Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance.

(m) If EPA determines that it cannot complete its evaluation of a claim because of insufficient information, it will request the necessary information from the claimant. If EPA determines that it cannot complete its evaluation of a claim because the records, documents, and other evidence were not maintained in accordance with generally accepted accounting principles and practices consistently applied, or were for any reason inadequate to demonstrate that claimed costs are necessary costs, EPA will adjust the claim accordingly. Further consideration of such amounts will depend on the adequacy of subsequent documentation. Any additional information requested by EPA must be submitted within 30 days unless specifically extended by EPA. The failure of the claimant to provide in a timely manner the requested information without reasonable cause may be cause for denial of the claim.

(n) Once the claim is perfected, EPA will proceed to:

(1) Make an award on the claim; or

(2) Decline to make an award.

(o) If the claimant is dissatisfied either with EPA's denial of a claim or with the amount of an award, the claimant may request that EPA arrange an administrative hearing in accordance with section 112(b) of CERCLA and 5 U.S.C. 554. The request for an administrative hearing must occur within 30 days of being notified of EPA's decision.

(p) Notice of an award under paragraph (f) of this section will be given by First Class Mail within five (5) days of the date of the decision. Payment of approved claims will be made according to § 307.40 of this regulation.

§ 307.33 Records retention.

A claimant receiving an award from the Fund is required to maintain all cost documentation and any other records relating to the claim, and to provide EPA with access to such records. These records must be maintained until cost recovery is initiated by EPA. If, after ten (10) years from the date of award of the final claim, EPA has not initiated a cost recovery action, the claimant need no longer retain the records. The claimant shall, however, notify EPA of the location of the records, and allow EPA the opportunity to take possession of the records before they are destroyed. The claimant shall cause to be inserted in all agreements between itself and contractors performing work at the site a clause providing for the same requirement to maintain records and to provide access to records as that required of the claimant.

Subpart D—Payments and Subrogation

§ 307.40 Payment of approved claims.

(a) Payment of claims will be made, as applicable, within:

(1) 50 days of EPA's decision to make an award, if the claimant does not request an administrative hearing;

(2) 50 days of an award by an administrative tribunal if no appeal of such award is taken; or

(3) 20 days of the final judicial decision of any appeal taken.

(b) Payment of a claim shall not be seen as EPA's final acceptance of the claimant's response action. Final acceptance shall await EPA's determination that the response action was conducted in accordance with the terms and conditions of the PDD or the consent order or decree, as applicable.

---

[9] See footnote 1 or § 307.13.

§ 307.41 Subrogation of claimants' rights to the Fund.

(a) The United States acquires by subrogation all rights of the claimant to recover the amount of the claim paid by the Fund from the person or persons liable under section 107 of CERCLA for the release giving rise to the response action.

(b) Claimants shall assist in any cost recovery action that may be initiated by the United States. The claimant and the claimant's contractors shall furnish the personnel, services, documents, and materials needed to assist EPA in the collection of evidence to document work performed and costs expended by the claimant or the claimant's contractors at the particular site in order to aid in cost recovery efforts. The claimant and the claimant's contractors shall also provide all requested assistance in the interpretation of documents detailing work and costs that may be needed as evidence, and shall testify on behalf of the United States in any judicial or administrative cost recovery proceeding regarding the response costs claimed. All of the claimant's contracts for implementing the Preauthorization Decision Document shall expressly require their contractors to provide this cost recovery assistance.

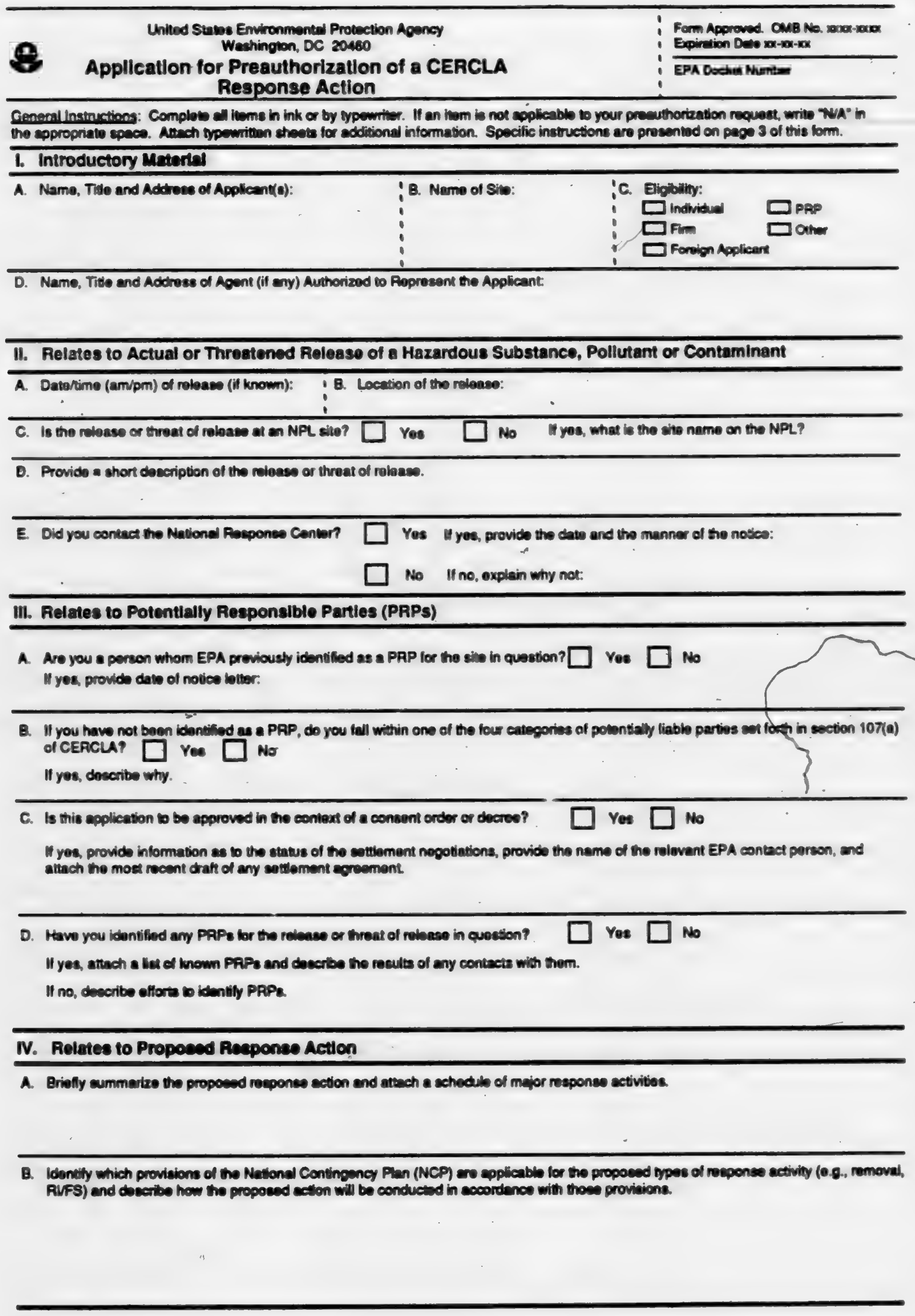
§ 307.42 Fund's obligation in the event of failure of remedial actions taken pursuant to Section 122.

(a) In the case of the failure of a completed remedial action taken by a potentially responsible party pursuant to a remedial action preauthorized in connection with a settlement under section 122(b)(1) of CERCLA, the Fund may be available for the costs of any new cleanup required, but shall not be obligated to a proportion exceeding that proportion contributed by the Fund for the original remedial action.

(b) The Fund is not obligated by preauthorization of a response action to reimburse the claimant for subsequent remedial actions if those subsequent remedial actions are necessary as a result of the failure of the claimant, his employees or agents, or any third party having a contractual relationship with the claimant to properly perform authorized activities or otherwise comply with the terms and conditions of the PDD, and the consent decree or order regarding the site cleanup entered into by EPA and the claimant.

Appendix A—Application for Preauthorization of a CERCLA Response Action

BILLING CODE 6560-50-M



United States Environmental Protection Agency
Washington, DC 20460

Application for Preauthorization of a CERCLA Response Action

Form Approved. OMB No. xxxx-xxxx
Expiration Date xx-xx-xx

EPA Docket Number

General Instructions: Complete all items in ink or by typewriter. If an item is not applicable to your preauthorization request, write "N/A" in the appropriate space. Attach typewritten sheets for additional information. Specific instructions are presented on page 3 of this form.

I. Introductory Material

A. Name, Title and Address of Applicant(s):

B. Name of Site:

C. Eligibility:
☐ Individual ☐ PRP
☐ Firm ☐ Other
☐ Foreign Applicant

D. Name, Title and Address of Agent (if any) Authorized to Represent the Applicant:

II. Relates to Actual or Threatened Release of a Hazardous Substance, Pollutant or Contaminant

A. Date/time (am/pm) of release (if known):

B. Location of the release:

C. Is the release or threat of release at an NPL site? ☐ Yes ☐ No If yes, what is the site name on the NPL?

D. Provide a short description of the release or threat of release.

E. Did you contact the National Response Center? ☐ Yes If yes, provide the date and the manner of the notice:
☐ No If no, explain why not:

III. Relates to Potentially Responsible Parties (PRPs)

A. Are you a person whom EPA previously identified as a PRP for the site in question? ☐ Yes ☐ No
If yes, provide date of notice letter:

B. If you have not been identified as a PRP, do you fall within one of the four categories of potentially liable parties set forth in section 107(a) of CERCLA? ☐ Yes ☐ No
If yes, describe why.

C. Is this application to be approved in the context of a consent order or decree? ☐ Yes ☐ No

If yes, provide information as to the status of the settlement negotiations, provide the name of the relevant EPA contact person, and attach the most recent draft of any settlement agreement.

D. Have you identified any PRPs for the release or threat of release in question? ☐ Yes ☐ No

If yes, attach a list of known PRPs and describe the results of any contacts with them.

If no, describe efforts to identify PRPs.

IV. Relates to Proposed Response Action

A. Briefly summarize the proposed response action and attach a schedule of major response activities.

B. Identify which provisions of the National Contingency Plan (NCP) are applicable for the proposed types of response activity (e.g., removal, RI/FS) and describe how the proposed action will be conducted in accordance with those provisions.

C. Address how the proposed response action will be consistent with the NCP with regard to the following performance standards:

1. Worker training, health and safety, and the safety of the public.
2. Community relations plan.
3. Compliance with legally applicable, or relevant and appropriate, Federal and State environmental requirements (ARARs).

V. Relates to Applicant's Capabilities

Describe your capabilities to carry out the proposed response actions.

VI. Relates to State or Indian Tribe Consultation

Has a letter signed by the designated State or Indian Tribe official been attached? ☐ Yes ☐ No If no, explain.

VII. Relates to Long-Term Operations and Maintenance (O&M) (If applicable)

☐ I will provide a bond or other financial assurance for O&M. ☐ The State has agreed to provide for O&M.

Attach documentation to support your assertion.

VIII. Relates to Projected Costs

Provide the projected costs for each proposed response activity and attach an explanation of why each of these costs is "necessary."

1. ______ $______
2. ______ $______
3. ______ $______
4. ______ $______

TOTAL $______

IX. Relates to Project Management

A. Describe the management structure to be put in place to implement the proposed project and to control financial matters.

B. Describe your procedures for comprehensively documenting the work performed and the costs incurred for all phases of the proposed response action.

C. Describe your procedures for reporting to EPA on the progress of the proposed project and for EPA oversight.

D. Describe your proposed procurement procedures.

Certification

I certify that all information herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this application and access to the site for purpose of inspection.

Signature of Applicant Date

CERCLA Penalty for Presenting Fraudulent Claim

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Superfund may, upon conviction, be fined in accordance with the applicable provisions of Title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. (42 USC 9612 (b)(1))

Civil Penalty for Presenting Fraudulent Claim

The claimant is liable to the United States for a civil penalty of $2,000 and an amount equal to two times the amount of damages sustained by the Government because of the acts of that person, including costs of the civil action.

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements

The claimant will be charged a maximum fine of not more than $10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001)

INSTRUCTIONS TO APPLY FOR PREAUTHORIZATION OF A CERCLA RESPONSE CLAIM

This form is to allow parties to apply for EPA preauthorization of a claim against the Hazardous Substances Superfund (Fund) as authorized by sections 111(a)(2) and 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). EPA preauthorization is required before a party can begin response work if that party desires Fund reimbursement of his/her response costs. The regulatory procedures for obtaining preauthorization from EPA are found at 40 CFR Part 307. The public reporting burden for the completion of this form is estimated to vary between 95 and 173 hours – averaging 134 hours per application. These estimates include the time needed to review instructions, search existing data services, gather and maintain the data needed for completing and reviewing the collection of information. Any comments concerning the burden estimate (including suggestions for reducing the burden) or any other aspect of this form should be sent to the following addresses:

Chief, Information Policy Branch, PM-223
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

and

Office of Information and Regulatory Affairs
Office of Management and Budget
726 Jackson Place, N.W.
Washington, D.C. 20503
Attention: Desk Officer for EPA

The applicant bears the burden for demonstrating that scarce Fund resources should be utilized for this project. Consequently, all preauthorization applications should be factually thorough, well-documented and based on sound analysis. Due to the complexity of the issues involved, it is in the applicants' best interest to organize the submission so that it can be easily read by EPA officials.

In many cases, the spaces provided on this form will be insufficient for a full presentation of the information solicited. In such circumstances, the applicant shall attach typewritten sheets and provide clear cross-references between the items on this form and the attachments.

A number of items will also require that the applicants provide appendices. In these appendices, the applicants shall supply sufficient documentation to support the statements presented in the form. Since it would be impractical and undesirable to include all supporting data, the appendices should usually consist of detailed summaries of the primary data. However, the original documents should be identified, catalogued and available for presentation, if requested. As with the attachments, the applicant shall provide clear cross-references between this form and the appendices.

Applicants should consult 40 CFR section 307.22(g) to assert any claims of business confidentiality.

When completed this form should be sent to:

U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
Attention: Director, Office of Emergency and Remedial Response (OS-200)

The sections below provide instructions for particular items on the claim form.

I. A. Provide the name, title and address of the person(s) submitting the application. If the claim is submitted by a group of persons who have created a legal entity to act as claimant, information should be provided concerning the identity and location of both the entity and the constituent parties.

B-C. Self-explanatory.

D. "Agent" refers to any duly authorized agent, executor, administrator, or other legal representative of the applicant. If the preauthorization application is submitted by such an agent, he/she must present evidence of authority to so represent the applicant. (See 40 CFR Section 307.20)

II. A-C. Self-explanatory.

D. This description must include the following information: the type of vessel and facility; the type and quantity of hazardous substance (including whether the substance is listed under CERCLA section 102), and a description of the surrounding population and/or environmental risk.

E. Self-explanatory.

III. A. Check whether you are a person who EPA previously identified as a potentially responsible party (PRP).

B. Check whether you have reason to believe, without regard to whether a defense under Section 107(b) may be available, that you may be a person described as follows:

1) the owner or operator of a vessel or facility,

2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substance, or

4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, or sites selected by such person, from which there is a release, or a threatened release of a hazardous substance, which causes the incurrence of response costs.

C. If you checked YES for item A or B and NO for this item, explain why this application is not to be approved in the context of a consent order or decree. Describe the status of any settlement negotiations.

D. List all PRPs known to you. Describe any contacts with PRPs and any reply from such parties. If PRPs are unknown, describe efforts to locate PRPs.

IV. A. Self-explanatory.

B. Describe the response action(s) that is the subject of this request (e.g., removal, RI/FS, selection of remedy, design, construction), and methods proposed for carrying out such actions, including site sampling plan and quality assurance procedures. Address the requirements contained in 40 CFR 307.22.

C. Worker/community health and safety plan. The worker plan must comply with OSHA Safety and Health standards at 29 CFR Part 1910.120. The community plan must address the protection of area residents from the physical, chemical and/or biological hazards particular to the site and the selected response.

Community Relations Plan. The applicant need not develop a plan if the response action is of short duration or a community relations plan already exists for the site at issue.

ARARs. See 40 CFR Sections 300.400(g), 300.430(f)(3)(iv).

V. Include a discussion of financial and technical/scientific capabilities.

VI. If a letter of cooperation signed by the designated State or Indian Tribe is not attached to an application to undertake a remedial action, explain efforts made by the applicant to obtain such cooperation.

VII. Self-explanatory.

VIII. The figures provided on the form should be the overall cost for a particular type of response activity (e.g., removal, RI/FS, design). Documentation should be attached to support each cost figure. In addition, the applicant must explain why each of the proposed costs is "necessary." "Necessary" costs are those which are 1) required, 2) reasonable, 3) allowable and 4) allocable according to Federal cost principles. Federal cost principles are presented in the following documents: OMB Circular A-87 (State and local government and Federally recognized Indian Tribes), OMB Circular A-122 (non-profit organizations), 48 CFR sections 31.1, 31.2 (profit-making organizations).

IX. Self-explanatory.

BILLING CODE 6560-50-C

Appendix B—Claim for CERCLA Response Action

United States Environmental Protection Agency Washington, DC 20460	Form Approved. OMB No. xxxx-xxxx Expiration Date xx-xx-xx EPA Docket Number

Claim for CERCLA Response Action

General Instructions: Complete all items in ink or by typewriter. If an item is not applicable to your claim, write "N/A" in the appropriate space. Attach typewritten sheets for additional information. Specific instructions are presented on page 3 of this form.

I. Introductory Material

A. Name, Title and Address of Claimant(s):	B. Name of Site:	C. Preauthorization Decision Document (PDD): Number __________ Date __________ (attach copy)

D. Name, Title and Address of Agent (if any) Authorized to Represent the Claimant:

II. Relates to Potentially Responsible Parties (PRPs)

A. Has the claimant made a reasonable effort to identify any PRPs (other than any who may be parties to this claim)? Describe those efforts.	B. Has the claimant presented a request for reimbursement to known PRPs (other than any who may be parties to the claim)? ☐ Yes ☐ No Attach names, addresses and dates of presentation. Describe any responses.
C. If a partial settlement was reached with PRPs after presentation of the claim as described in II.B., did EPA approve any release? ☐ Yes ☐ No If no, explain.	D. Is there any action pending in court regarding this site or response actions? ☐ Yes ☐ No If yes, explain.

III. Relates to Operable Unit Claims

A. Is this a claim for an operable unit? ☐ Yes ☐ No

If no, provide the completion date of the subject response action and skip B, C, D and E.

B. How many operable units are authorized in the PDD?	C. Which operable unit are you filing a claim for at this time?
D. Is completion of the next operable unit on schedule? ☐ Yes ☐ No If no, explain.	E. Estimated date for submitting claim for the next operable unit.

IV. Relates to Response Action

A. Was the response/operable unit completed in accordance with the PDD? ☐ Yes ☐ No If yes, skip B

B. Was a modification to the preauthorization request submitted to and approved by EPA?

☐ Yes — Supply number and date ____________________

☐ No — Explain how and why response differs from PDD.

C. Was the response completed in accordance with the Statement of Work and the Work Plan? ☐ Yes ☐ No If yes, skip D

D. Explain how and why the response differs from the Statement of Work and/or the Work Plan.

E. Address how each of the PDD terms and conditions were met (in the order that they appear in the PDD). Provide documentation of such adherence in an appendix.

V. Relates to Amount of Response Claim

A. Provide the following summary information:

Re Current Claim Submission:

Type of Response Activity(ies) Represented by Claim	- ________
Total Response Costs Represented by Claim	- $________
Percentage of Claimed Costs to Total Response Costs	- ________ %
Dollar Amount of Reimbursement Claimed	- $________

Re Any Past Claim Awards Under the Subject PDD:

Number of Previous Claims	- ________
Total Sum of Previous Awards	- $________

Re PDD:

Reimbursement Cap Set For All Claim Submissions	- $________

B. Provide the following breakdown of the response costs asserted in this claim submission:

Labor	$________
Travel	$________
Equipment	$________
Materials and Supplies	$________
Contractual Services	$________
Other Direct Costs	$________
Indirect Costs	$________
TOTAL RESPONSE COSTS	$________

With the exception of contractual services, provide detailed summaries of the components of each of the above cost categories. Address how the costs incurred were required under the PDD and reasonable, allowable and allocable according to Federal cost principles.

C. Provide a cost breakdown of all contractual services performed for this claim submission. Explain how the incurred costs were required under the PDD and reasonable, allowable and allocable according to Federal cost principles.

Certification

I certify that all information herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this application and access to the site for purpose of inspection.

Signature of Claimant Date

CERCLA Penalty for Presenting Fraudulent Claim

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Superfund may, upon conviction, be fined in accordance with the applicable provisions of Title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. (42 USC 9612 (b)(1))

Civil Penalty for Presenting Fraudulent Claim

The claimant is liable to the United States for a civil penalty of $2,000 and an amount equal to two times the amount of damages sustained by the Government because of the acts of that person, including costs of the civil action.

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements

The claimant will be charged a maximum fine of not more than $10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001)

INSTRUCTIONS FOR SUBMITTING A CLAIM FOR A CERCLA RESPONSE ACTION

This form is for claims against the Hazardous Substances Superfund as authorized by sections 111 (a)(2) and 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). Claims can only be awarded for reasonable response costs incurred pursuant to a preauthorization decision document (PDD) issued by EPA. The regulatory procedures for obtaining preauthorization from EPA and for the submission and award of claims are found at 40 CFR Part 307.

The public reporting burden for the completion of this form is estimated to vary between 25.0 and 58 hours -- averaging 41.5 hours per claim. These estimates include the time needed to: review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Any comments concerning the burden estimate (including suggestions for reducing the burden) and any other aspect of this form should be sent to the following addresses:

Chief, Information Policy Branch, PM-223
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

and

Office of Information and Regulatory Affairs
Office of Management and Budget
725 Jackson Place, N.W.
Washington, D.C. 20503
Attention: Desk Officer for EPA

The claimant bears the burden for demonstrating that his response costs should be reimbursed. Consequently, all claim submissions should be factually thorough, well-documented and based on sound analysis. Due to the complexity of the issues involved, it is in the claimant's best interest to organize the submission so that it can be easily read by EPA officials.

In many cases, the spaces provided on this form will be insufficient for a full presentation of the information solicited. In such circumstances, the claimant shall attach typewritten sheets and provide clear cross-references between the items on this form and the attachments.

A number of items will also require that the claimants provide appendices. In these appendices, the claimant shall supply sufficient documentation to support the statements presented in the form. Since it would be impractical and undesirable to include all supporting data, the appendices should usually consist of detailed summaries of the primary data. However, the original documents should be identified, catalogued and available for presentation, if requested. As with the attachments, the claimant shall provide clear cross-references between this form and the appendices.

Claimants should consult 40 CFR Section 307.22 (g) to assert any claims of business confidentiality.

When completed, this form should be sent to:
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
Attention : Director, Office of Emergency and Remedial Response (OS-220)

The sections below provide instructions for particular items on the claim form.

I. A. Provide the name, title and address of the person(s) submitting this claim. If the claim is submitted by a group of persons who have created a legal entity to act as claimant, information should be provided concerning the identity and location of both the entity and the constituent parties.

B. Provide the site name as it appears on the PDD.

C. Supply the number and date of the PDD for this claim. A copy of the PDD shall also be provided in an appendix. If the claimant has been granted preauthorization to modify the PDD, these amendments must be described and copies provided.

D. "Agent" refers to any duly authorized agent, executor, administrator or other legal representative of the claimant. If this claim is submitted by such an agent, he/she must present evidence of authority to so represent the claimant.

II-IV. Self-explanatory.

V. A. Self-explanatory.

B. This item is concerned with the actual response costs incurred during the time period represented by this claim submission -- not the percentage of those response costs for which the claimant is seeking reimbursement. Federal cost principles are presented in the following documents: OMB Circular A-87 (State and local governments and Federally recognized Indian Tribes); OMB Circular A-122 (non-profit organizations); 48 CFR 31.1, 31.2 (profit-making organizations). If the claim represents more than one stage of response activity, indicate this on the form and provide similar cost breakdown in an appendix. These instructions are applicable to Item V.C. below.

C. Contractual services will vary depending on the response action performed and the operable unit represented by the claim submission. Typical categories of response activity include:

Security
Groundwater sampling
Construction
    Administrative Expenses
    Materials
Operation & Maintenance.

BILLING CODE 6560-50-C

Appendix C—Notice of Limitations on the Payment of Claims for Response Actions, Which is to be Placed in the Federal Register Preamble Whenever Sites Are Added to the Final NPL

Limitations on the Payment of Claims for Response Actions

Sections 111(a)(2) and 122(b)(1) of CERCLA authorize the Fund to reimburse certain parties for necessary costs of performing a response action. As is described in more detail at____Federal Register______ (____________), 40 CFR Part 307, there are two major limitations placed on the payment of claims for response actions. First, only private parties, certain potentially responsible parties (including States and political subdivisions), and certain foreign entities are eligible to file such claims. Second, all response actions under sections 111(a)(2) and 122(b)(1) must receive prior approval, or "pre-authorization," from EPA.

Appendix D—Notice of Limitations on the Payment of Claims for Response Actions Which is to be Placed in Public Dockets

Statutory Limitations on the Payment of Claims for Response Actions Filed Pursuant to Section 111(a)(2) and 122(b)(1) of CERCLA

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C 9601 *et seq.*) authorizes a number of mechanisms for responding to a release, or threat of release, of hazardous substances or pollutants or contaminants. One of these mechanisms is response claims. Section 111(a)(2) of CERCLA authorizes the Environmental Protection Agency (EPA or the Agency) to compensate claimants for necessary response costs if certain conditions are met. Section 122(b)(1) of CERCLA authorizes EPA to reimburse certain potentially responsible parties for a portion of the costs of response actions conducted pursuant to a settlement agreement. These conditions are outlined below.

First, only private parties, parties to section 122(b)(1) agreements (including States and political subdivisions thereof) and foreign entities are eligible for payment through the response claims mechanism. Federal, State, and local government units, and Indian Tribes, can receive funding for response activities through other authorities of sections 111(a) and 123 of CERCLA.

Second, eligible claimants can only be reimbursed for costs that are incurred in carrying out the National Contingency Plan (NCP), 40 CFR Part 300. In order to be in conformity with the NCP, all claims must receive prior approval, or "preauthorization," from EPA. This means that before response work is initiated, the party must: (1) Notify EPA of its intent to file a claim; (2) demonstrate that the release merits priority consideration; (3) propose activities to remedy the release that can be carried out consisent with the NCP; and (4) demonstrate the capabilities necessary to carry out such activities in a safe and effective manner. In order for potentially responsible parties to be eligible for reimbursement they must conduct the response actions as specified in a consent decree or administrative order. Only if EPA preauthorizes a response action can the party begin work, and later file a claim for reimbursement of costs.

The limitations placed on the payment of claims for response actions and the procedures for filing such claims are described in more detail at____Federal Register______ (____________), 40 CFR Part 307. Additional information can be obtained by contacting William O. Ross, Office of Emergency and Remedial Response (OS-220), 401 M Street, SW., Washington, DC 20460, (202) 382–4645, or the RCRA/CERCLA Hotline, (800) 424–9386 (or 382–3000 in the Washington DC, metropolitan area).

[FR Doc. 89–19467 Filed 9–12–89; 8:45 am]

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Reader Aids

Federal Register

Vol. 54, No. 176

Wednesday, September 13, 1989

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